

1                                    IN THE CIRCUIT COURT  
2                                    TWENTIETH JUDICIAL CIRCUIT OF ILLINOIS  
                                         ST. CLAIR COUNTY

3    FRANCES E. KEMNER, et. al.    )  
                                         )  
4                                    Plaintiffs,                                    )  
                                         )  
5    VS.                                    )    NO:    80-L-970  
                                         )  
6    MONSANTO COMPANY,                                    )  
                                         )  
7                                    Defendant.                                    )

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9  
10                                    REPORT OF PROCEEDINGS

11                                    Before the HON. RICHARD P. GOLDENHERSH

12                                    JURY TRIAL

13                                    April 15, 1985  
14                                    (morning session)

15                                    APPEARANCES:

16                                    Mr. Rex Carr  
17                                    Mr. Jerome Seigfreid  
                                         On Behalf of the Plaintiffs;

18                                    Mr. John Musgrave  
19                                    Mr. Joseph Nassif  
                                         On Behalf of the Defendant.

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24                                    Debra M. Musielak, CSR, CM  
                                         Official Court Reporter

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WITNESSES CALLED ON BEHALF OF THE PLAINTIFF:

1. PHOCION PARK (2-1102)

Cross Examination. . . . . 2

1 BE IT REMEMBERED, that on the 15th day of April,  
2 1985, the same being one of the regular judicial days of said  
3 court, the above-styled cause came on regularly for hearing  
4 before the HONORABLE RICHARD P. GOLDENHERSH, one of the  
5 Judges at the St. Clair County Building, 10 Public Square, in  
6 the City of Belleville, County of St. Clair, State of  
7 Illinois. Whereupon the following proceedings were had:

8 COURT CONVENED:

9  
10 PHOCION PARK

11 (being called as a witness on behalf of the Plaintiff, under  
12 Section 2-1102, having been previously sworn, having resumed  
13 the stand, continued to testify as follows)

14 CROSS EXAMINATION

15 BY MR. REX CARR

16 Q. Doctor, I have left with you a copy of Plaintiff's  
17 Exhibit 1275, didn't I?

18 A. Yes.

19 Q. And that is the memorandum that you wrote relative  
20 to the TSCA meeting that you held and relative to the memo  
21 that you had written on May 14th, 1979, isn't that correct,  
22 sir?

23 A. Let's see, meetings were held on May 11 and May 22,  
24 and this was subsequent to a memo dated May 14.

1           Q.   Now, Mr. Park, the conclusions that your committee  
2 reached at that time, the number one conclusion reached as  
3 reported here for your May 22nd meeting, was that the  
4 information that you had received does not support a  
5 conclusion that the 2,4-dichlorophenol presents a substantial  
6 risk of injury to health or the environment, and that in  
7 order to prevent possible misuse of the product by a  
8 customer, it is recommended that the responsible business  
9 group send a letter to its customers for this product. Is  
10 that correct, sir?

11           A.   It does say the information evaluated was actually  
12 something published in the Federal Register.

13           Q.   Now, what misuse did the committee consider that  
14 this 2,4-dichlorophenol might be put to by its customers?

15           A.   I's sorry, I cannot recall specifically what it  
16 would have been. I think they just felt that even though  
17 this study had been published in the Federal Register which  
18 is the official publication of government documents that it  
19 would be well to inform customers about that information that  
20 had been in the Federal Register.

21           Q.   Well, I take it the meaning of this is that there  
22 was some misuse that the product could be put to even though  
23 you may not recall just what the misuse is at this time, is  
24 that correct, sir?

1           A.    I guess it's always possible for a product to be  
2 misused.

3           Q.    My question, Mr. Park, you considered that there  
4 were possible misuses to which this product might be put, did  
5 you not, by you, I mean this committee?

6           A.    I can't recall the extent to which we would have  
7 considered the possibility that a customer would have  
8 specifically misused the product.

9           Q.    Well, it was important enough that it was one of  
10 the two final conclusions or recommendations that you  
11 reached, isn't that correct, sir?

12          A.    Right, well, the second conclusion was that --

13          Q.    My --

14          A.    The customers be informed.

15          Q.    My question it was one of the two conclusions or  
16 recommendations that your committee reached, isn't that  
17 correct, sir?

18          A.    The recommendation that customers be informed, yes.

19          Q.    Answer to my question is yes, it was one of your  
20 two conclusions?

21          A.    Well, I'm concerned about did you say it was one,  
22 the recommendation that the customers be informed was one of  
23 our two conclusions.

24          Q.    That's what I've asked you. And, Mr. Park, it was

1 important enough that you believed that the customers should  
2 be notified, isn't that correct, sir?

3 A. Well, again, we recommended --

4 Q. Could you answer that question, Mr. Park?

5 A. I cannot go beyond the recommendation.

6 Q. Responding to my questions?

7 A. We recommended that you say be notified, I don't  
8 understand quite what you mean, you are not using the words  
9 that we used in this memorandum, Mr. Carr.

10 Q. You made a conclusion and your conclusion was that  
11 you should prevent possible misuse of the product by a  
12 customer, that's a conclusion reached, was it not, sir?

13 A. No, that's not how it's stated, Mr. Carr.

14 Q. Did you reach the conclusion that there could be  
15 possible misuse of the product by a customer?

16 A. That's not stated either.

17 Q. Excuse me, my question is did you reach the  
18 conclusion that there could possibly be misuse of the product  
19 by a customer?

20 A. I don't recall such a conclusion. The conclusion  
21 --

22 Q. Excuse me, did you not say that the May 22nd  
23 meeting ended with the following conclusions and  
24 recommendations?

1           A.    That's correct.

2           Q.    And that number two was in order to prevent  
3 possible misuse of the product by a customer it is  
4 recommended so forth and so on?

5           A.    That is correct.

6           Q.    And you, therefore, did you not, it follows, did it  
7 not, that you concluded that there was a possibility that a  
8 customer might misuse this product?

9           A.    Was that a statement, Mr. Carr, or a question?

10          Q.    No, Mr. Park, that's a question.

11          A.    I don't recall that specific conclusion. This  
12 appears to be a recommendation.

13          Q.    Mr. Park, I'm not asking you to recall.

14          A.    Yes.

15          Q.    Your specific -- because you stated you have no  
16 memory, I'm asking you to interpret this document that you  
17 wrote in -- on June 6th, 1979? And did you not reach a  
18 conclusion in that meeting, that it was possible that  
19 customers could misuse the product and you wanted to prevent  
20 it?

21          A.    I don't read this as indicating that conclusion,  
22 Mr. Carr.

23          Q.    Did you recommend that something be done to prevent  
24 possible misuse?

1           A.    Yes, we did.

2           Q.    Then why would you recommend that something be done  
3 to prevent possible misuse if you had not concluded that that  
4 was something that needed to be prevented?

5           A.    I thought that was an appropriate recommendation.

6           Q.    Could you answer that question, please, Mr. Park?

7           A.    Yes, we felt it was an appropriate recommendation  
8 to make.

9           MR. CARR: Your Honor, would you direct the witness  
10 to answer the question as I posed it to him.

11           THE COURT: Mr. Park, you have to answer the  
12 question as it's posed, you are so directed.

13           A.    Your Honor, I felt that I had.

14           THE COURT: I don't believe that you have. Now  
15 answer the question, please.

16           A.    Well, your question was how did we come to this  
17 recommendation?

18           MR. CARR: Could you read the question to him,  
19 please?

20           COURT REPORTER: "Then why would you recommend  
21 that something be done to prevent possible misuse if you had  
22 not concluded that that was something that needed to be  
23 prevented."

24           A.    (pause) My answer is this seemed like an

1 appropriate recommendation to make to our customers.

2 Q. And why, sir?

3 A. Information that could be of use to them in  
4 preventing --

5 Q. Why, sir?

6 A. Misuse of the product.

7 Q. Then you did conclude that there could be a misuse  
8 of the product?

9 A. Mr. Carr, I don't see a conclusion to the extent of  
10 the conclusion in Paragraph 1 of the memorandum.

11 Q. I'm talking about Paragraph 2, numbered 2, Mr.  
12 Park.

13 A. That's correct.

14 Q. You know I'm talking about paragraph number 2. I'm  
15 not talking about paragraph number 1. Direct your attention,  
16 please, to paragraph number 2, sir.

17 A. Paragraph 2 --

18 Q. You wanted to prevent possible misuse, did you not,  
19 sir?

20 A. That's correct.

21 Q. And what possible misuse is it that you wanted to  
22 prevent?

23 A. I cannot recall any misuse.

24 Q. What possible misuse could there possibly be,

1 possibly?

2 A. I cannot recall.

3 Q. To what use -- well, then, at least there was a  
4 misuse, could be a misuse of this product, isn't there, sir?

5 A. There could be a misuse of any product.

6 Q. And the misuse, what is this product used for, this  
7 2,4-dichlorophenol?

8 A. I don't know, Mr. Carr, that's not in my line.

9 Q. Do you not consider that, sir, when you determine  
10 whether or not it should be reported to the EPA?

11 A. Yes, we do.

12 Q. And did you not consider it at that time, sir?

13 A. I'm sure we did.

14 Q. And are you telling this jury that you do not know  
15 a single use to which 2,4-dichlorophenol is put by your  
16 customers and the ultimate use of 2,4-dichlorophenol  
17 products?

18 A. Mr. Carr, there is an earlier memorandum that's  
19 referred to here. I think the earlier memorandum may have  
20 described some of the uses of the product.

21 Q. Would you direct the witness to answer that  
22 question.

23 THE COURT: Please answer the question that was  
24 posed to you. That was not an answer to the question. I'm

1 directing you to answer the question posed to you.

2 A. May I refresh my memory by looking at the other  
3 memorandum?

4 Q. Mr. Park, are you telling the jury at this point in  
5 time that you have no knowledge of what uses

6 2,4-dichlorophenol is put without looking for a memoranda to  
7 refresh your memory? Is that what you are telling this jury,  
8 Mr. Park?

9 A. Mr. Carr, those meetings took place five years ago.

10 Q. Mr. Park, is that what you are telling this jury?

11 A. Let me respond to your question, please.

12 Q. I'm asking you, are you telling this jury that you  
13 cannot respond in your mind, you have nothing in your mind  
14 that lets you know or makes you think of what possible uses  
15 or to what uses 2,4-dichlorophenol is put, are you saying  
16 that, sir?

17 A. Mr. Carr, there are very few products that I have  
18 familiarity with on a continuing basis.

19 MR. CARR: Your Honor, would you direct the witness  
20 to answer?

21 THE COURT: Mr. Park, answer the question that's  
22 asked of you.

23 A. Off the top of my head at this moment I cannot  
24 recall the uses that this product was put --

1 Q. Not a single use, is that correct, Mr. Park?

2 MR. MUSGRAVE: Object, he's asked a question and  
3 the witness has answered it. Now he's continuing to ask the  
4 same question. The witness said --

5 MR. CARR: He said uses, I want to see if there is  
6 a single use that he can recall.

7 THE COURT: Okay, your objection is overruled. Go  
8 ahead.

9 A. I guess I cannot recall a single use at this time.

10 Q. And, you understand, Mr. Park, that you are under  
11 oath and you are telling this jury that you have forgotten  
12 the uses that we discussed just last Friday and you didn't  
13 have any memo and you didn't need to refer to a memo then?  
14 Have you forgotten what we discussed just last Friday as to  
15 the uses to which 2,4-dichlorophenol is put by the customer,  
16 is that what you are telling this jury, Mr. Park?

17 A. No, I'm not telling the jury that, Mr. Carr.

18 Q. Then, if you haven't forgotten it, if you are not  
19 telling the jury then, then you have not forgotten, have you,  
20 sir, you do indeed remember the uses to which, or some of the  
21 uses or one of the uses to which 2,4-dichlorophenol is put,  
22 don't you, sir?

23 A. Mr. Carr, what I tried to say --

24 Q. Mr. Park, you do indeed remember some uses to which

1 2,4-dichlorophenol is put, don't you?

2 A. At this moment I'm sorry I cannot remember the  
3 uses.

4 Q. You have forgotten all of those uses, can't recall  
5 a single use that we discussed last Friday, is that what you  
6 are saying, Mr. Park?

7 A. Uses we discussed last Friday, those described in  
8 the other memorandum, Mr. Carr.

9 Q. Is what what you are saying to the jury?

10 A. No, Mr. Carr.

11 Q. Then please use your memory, use the resources that  
12 you have in your mind to think back on what the uses of  
13 2,4-dichlorophenol are, sir?

14 A. You won't allow me to look at my other memorandum?

15 Q. That's correct, Mr. Park, because I don't believe  
16 you are telling us the truth. That's the reason I won't let  
17 you look at that memo.

18 MR. MUSGRAVE: Object to counsel's statement, ask  
19 the jury be instructed to disregard it. It's improper.

20 THE COURT: Overruled, it was in response to the  
21 witness' request for clarification.

22 A. Mr. Carr, I'm sorry I cannot recall now the uses to  
23 which this product was put.

24 Q. You said uses again, I'm asking you you cannot

1 recall a single use?

2 A. I cannot recall a use, any use.

3 Q. A single use?

4 A. Yes.

5 Q. And, Mr. Park, does Monsanto -- has Monsanto known  
6 in the past that your memory, that you cannot remember things  
7 from Friday until Monday?

8 MR. MUSGRAVE: Object to that totally improper  
9 question.

10 Q. Is this something new that has come up since this  
11 case started, your faulty memory?

12 MR. MUSGRAVE: Object to that again for the same  
13 reason, as also badgering the witness.

14 THE COURT: No, I don't think so, objection is  
15 overruled. I think it's proper cross examination.

16 A. Mr. Carr, unlike you, I didn't study this just  
17 before we started today. My memory I think is at least  
18 average, hopefully in general it might be --

19 Q. Then what you are displaying today is not something  
20 new. This is the way you have been since you went through  
21 law school, I take it?

22 MR. MUSGRAVE: I object to that also, Your Honor,  
23 may my objection to this entire lining of questioning about  
24 commenting on Mr. Park's memory be a continuing objection?

1 THE COURT: It may be a continuing objection. So  
2 noted.

3 Q. Is this the kind of memory that you had in law  
4 school, Mr. Park?

5 A. Mr. Carr, I found I have so many things to  
6 remember, that if I write them down then I need not remember  
7 them, then I refer to my notes.

8 Q. Mr. Park, when you take an examination in law  
9 school, you are not allowed to refer to notes, are you, sir?  
10 When you passed the bar exam, you weren't allowed to refer to  
11 notes?

12 A. No, that's correct.

13 Q. You remembered at that time things you had learned  
14 in the first year of law school, didn't you, sir?

15 A. That's right.

16 Q. And you passed the examination in Missouri and  
17 Texas, didn't you, sir?

18 A. Yes, I did.

19 Q. Now, has your memory failed since you passed the  
20 bar exam in Missouri and Texas?

21 A. No, it hasn't, Mr. Carr.

22 Q. Mr. Park, then you know we discussed a number of  
23 uses to which 2,4-dichlorophenol is put, didn't we, sir, just  
24 Friday, did we not discuss it, sir?

1           A.    I don't recall that discussion in depth, Mr. Carr.

2           Q.    Notwithstanding what we discussed then and I didn't  
3 ask you about in depth, notwithstanding the number of years  
4 that you served on this TSCA committee, notwithstanding the  
5 things you discussed with the toxicologists, notwithstanding  
6 the requirement that you have to know the uses to which the  
7 product is put, if by your definition you are going to meet  
8 TSCA, you are telling this jury today that you have forgotten  
9 all of the uses to which 2,4-dichlorophenol can be put by  
10 your customers and by their customers, is that what you are  
11 saying, Mr. Park?

12               MR. MUSGRAVE: Object, this has been asked several  
13 times now, Your Honor. It's been answered.

14               THE COURT: It has been asked and answered.  
15 Sustained.

16           Q.    Now, Mr. Park, notwithstanding your present lack of  
17 knowledge, your committee at least knew that there were uses  
18 to which it might be put by a customer, is that correct, sir?

19           A.    That's correct.

20           Q.    And it considered that if they misused it that  
21 might create a hazard to the customer, did they not, sir?

22           A.    That's correct.

23           Q.    And that hazard would be based upon the content of  
24 the trichlorophenol as you understood it at that time, isn't

1 that correct, sir?

2 A. Both the government study and the  
3 2,4,6-trichlorophenol content.

4 Q. And it was based upon that that your committee  
5 believed that there could be hazards to the customer, what  
6 kind of hazards could there be to your customers, if they  
7 misused 2,4-dichlorophenol?

8 A. There could be exposure to customers or the  
9 environment as the general rule.

10 Q. No, I'm asking the hazard --

11 A. But Mr. Carr, I've already stated that.

12 Q. I want to know the result of the exposure, sir,  
13 what hazards you considered might result from being exposed  
14 to 2,4-dichlorophenol?

15 A. You never want a customer to misuse a product.

16 Q. Would you answer that question, Mr. Park?

17 A. I can't recall the specific uses or misuses.

18 Q. I know you can't. I'm not asking you that.

19 A. That were discussed five years ago.

20 Q. I'm not asking you that now, Mr. Park, what I'm  
21 asking you is about the hazard. The hazard that you wanted  
22 the customers to avoid by not misusing the product. I've  
23 left the uses of it. I'm now discussing with you the  
24 hazard. What hazards were involved to the customers if they

1 misused the product?

2 A. Mr. Carr, I can't now recall the specific hazards  
3 but there is always concern about hazards to the customers.

4 Q. You recall the only hazard that the committee  
5 discussed in May of 1979?

6 A. I assume it would relate to exposure but I cannot  
7 rule --

8 Q. Exposure is not a hazard, exposure is the means by  
9 which the hazard develops, Mr. Park, and you know it. The  
10 hazard is the health effect. That's the hazard involved,  
11 isn't that correct, Mr. Park?

12 A. No, the hazard would be exposure.

13 Q. What would result from the exposure?

14 A. Health effects.

15 Q. That's what we are talking about. Now, what  
16 hazards would result from exposure to 2,4-dichlorophenol that  
17 your committee considered?

18 A. Well, it wasn't the effects, it would have been  
19 possible misuse resulting in exposure.

20 Q. And, well exposure by itself is meaningless. You  
21 could be exposed to water, you can swim in water all day  
22 long, there is no hazard unless you drown, unless you get in  
23 your over head. You are not discussing swimming in  
24 2,4-dichlorophenol. You are discussing at that time, Mr.

1 Park, the health effects from exposure to  
2 2,4-dichlorophenol. Now, I want to know what health effects  
3 was it that your committee considered might result from  
4 exposure through misuse of the product by the customer?

5 A. I cannot recall without some notes or something,  
6 Mr. Carr.

7 Q. You don't recall that we discussed at length, Mr.  
8 Park, the single health effects that your committee  
9 discussed?

10 A. Can I see a memorandum or note to that effect?

11 Q. You don't recall that it was cancer and we  
12 discussed it for hours last week, your committee had cancer  
13 and you related the 2,4-dichlorophenol to one part per  
14 billion of 2,3,7,8 as far as carcinogenic effects, you recall  
15 that, Mr. Park? Surely you do recall that?

16 A. In our discussion, or your discussion with other  
17 witnesses, Mr. Carr?

18 Q. Our discussion, Mr. Park?

19 A. I could remember our discussing cancer.

20 Q. In relation to this memo and this meeting, can't  
21 you, sir?

22 A. Not specifically. Would you give me some  
23 specifics, please, Mr. Carr.

24 Q. Mr. Park, do you recall that we had the memo that I

1 suggested to you was written by Dr. Wilson and you read it,  
2 we read it over and over and over as recently as Friday in  
3 which it said the carcinogenic effects of exposure to  
4 2,4-dichlorophenol the amount fed the rats and the mice and  
5 the NCI study was equivalent to one part per billion of  
6 2,3,7,8-TCDD, you recall that?

7 A. I do recall a discussion of that memorandum, Mr.  
8 Carr.

9 Q. Now, that's the hazard that you discussed in those  
10 meetings, isn't that correct, sir, and you have 1275 in front  
11 of you, sir. I've been referring you to it, that's the  
12 hazard, the carcinogenic effects, isn't that correct, sir?

13 A. Not that I recall, sir.

14 Q. The hazard is right in front of you, Mr. Park,  
15 would you look at Exhibit 1275, the quote from Dr. Paget?

16 A. Would you like me to read it?

17 Q. Just to yourself, so that your memory can be  
18 refreshed with the hazard you all discussed was cancer. Now,  
19 is your memory refreshed, Mr. Park?

20 A. I'm not prepared to say that the hazard we  
21 discussed was cancer.

22 Q. Mr. Park, my question was, is your memory  
23 refreshed?

24 A. To the extent of this memorandum, it is, Mr. Carr.

1 Q. And cancer was the hazard that you discussed,  
2 wasn't it, sir?

3 A. Apparently at this meeting that's written up here,  
4 we discussed Dr. Paget's evaluation of this Federal Register  
5 notice.

6 Q. Mr. Park, what I'm asking you, cancer was the  
7 hazard discussed, wasn't it, sir?

8 A. I'm not prepared to say that, Mr. Carr.

9 Q. What other hazard was discussed except cancer?

10 A. Mr. Carr, I can't remember off the top of my head,  
11 but this material may have a, may well have acute toxicity  
12 that would have been discussed.

13 Q. Let me show you Plaintiff's Exhibit 1289, see if  
14 that refreshes your memory as to the hazards that were  
15 discussed?

16 A. Mr. Carr, this is someone's handwritten notes that  
17 the author is not known, apparently, nor is it dated.

18 Q. Let me show you 1290, then, which is dated May  
19 22nd, '79, and it refers to you at that meeting and we  
20 discussed 1290 already, haven't we, sir?

21 A. I recall some discussion of Plaintiff's Exhibit  
22 1290.

23 Q. What hazard is discussed in Exhibit 1290?

24 A. Those are someone's handwritten notes, Mr. Carr,

1 and it's not at all clear that the matters mentioned here  
2 were discussed at the meetings.

3 MR. CARR: Your Honor, would you direct the witness  
4 to answer the question I posed to him.

5 THE COURT: Mr. Park, that was not responsive to  
6 the question. Please answer the question that was posed to  
7 you.

8 A. This doesn't indicate whether it was discussed or  
9 not.

10 Q. My question what hazard is referred to in that memo  
11 1290?

12 A. It does mention that TCP --

13 Q. My question is what hazard is discussed.

14 A. I can see the word, the words extremely weak  
15 carcinogen.

16 Q. And do you recall that the NCI report discussed  
17 lymphomas and adnomas, you recall that, sir, you had the  
18 exhibit there, I think it's May 11th exhibit, I don't know if  
19 you have it now.

20 A. You took all my copies of exhibits.

21 Q. Exhibit 1288, sir, does that help you, sir, to come  
22 to the present memory as to what hazards you discussed at  
23 that meeting, the second paragraph of that memo, sir, where  
24 you discussed the fact that it was carcinogenic to F344 rats

1 inducing lymphomas or leukemias, carcinogenic hepatocellular  
2 carcinomas or adnomas, you recall we discussed that at some  
3 length, Mr. Park?

4 A. Yes, that was the subject of --

5 Q. Were there any hazards other than cancer discussed  
6 at that meeting, that you can recall?

7 A. May I read this memorandum, Mr. Carr?

8 Q. To refresh your memory, Mr. Park, yes.

9 THE COURT: What number is that memorandum?

10 MR. MUSGRAVE: 1288.

11 MR. CARR: Let me give you Exhibit 1292, maybe that  
12 can help you.

13 A. May I retain this one?

14 Q. Let me see, we have got -- we have got two exhibits  
15 that are -- I don't know how it happened, Plaintiff's Exhibit  
16 1288, I know how it happeed, 1292 is the one that has your  
17 notes to it, sir. 1288 and 1982 are exactly the same except  
18 1292 is 1288 with Mr. Park's notes attached to it, Your  
19 Honor.

20 THE COURT: Thank you.

21 A. The only health effect I see referred to in this  
22 would have been this weak carcinogenic effect in the rats or  
23 mice.

24 Q. And, then, the only hazard then that could be

1 referred to in your notes, your memo of June 6th, 1979, would  
2 be the risk of cancer, is that correct, sir?

3 A. It's the only one mentioned in the memorandum.

4 Q. And you have no memory of any other hazards, do  
5 you, sir?

6 A. That's correct.

7 Q. Then, the hazard that your committee wished to  
8 avoid insofar as your customers misuse of the product is  
9 concerned would be the hazard cancer, is that correct, sir?

10 A. Mr. Carr, there may have been others that I cannot  
11 remember.

12 Q. I understand that, but as far as you can remember  
13 right now, this is a hazard that you wanted to prevent if  
14 there were misuse that took place, isn't that correct, Mr.  
15 Park?

16 A. I don't really remember that specifically, the  
17 memoranda do speak of the weak carcinogenic effects in test  
18 animals from the trichlorophenol.

19 Q. And it was the carcinogenic effects that you were  
20 concerned about and that you wanted to prevent, isn't that  
21 correct, sir?

22 A. I would say so.

23 Q. And now did you tell the customers that if they  
24 misused your product that cancer could result?

1           A.    I would not have been involved in customer  
2 contacts.

3           Q.    Do you have any knowledge that any customer of  
4 2,4-dichlorophenol was told that if they misused the product  
5 cancer could result?

6           A.    Mr. Carr, I'm not involved in dealing with  
7 customers.

8                   MR. CARR: Your Honor, would you direct the witness  
9 to answer that question?

10           THE COURT: Mr. Park, you have to answer the  
11 question. Your answer was not responsive.

12           A.    I'm sorry.

13                   MR. MUSGRAVE: You are asking him personally, Mr.  
14 Carr, whether he did?

15           THE COURT: The question is clear. Go ahead and  
16 answer the question, Mr. Park.

17           A.    Since I am not personally involved in customer  
18 contacts, I am not personally aware of the manner of customer  
19 information.

20           Q.    And you, Mr. Park, did not -- well, we have already  
21 established that. The EPA was not given the notification and  
22 you have no knowledge whether or not the customers were given  
23 notification, is that right, sir?

24           A.    Yes, there was no substantial risk of injury to

1 health or the environment here, and so there was no need --

2 MR. CARR: Your Honor, I'd ask the --

3 A. You asked me two questions, Mr. Carr.

4 MR. CARR: -- answer be stricken and jury be  
5 instructed to disregard it.

6 THE COURT: So ordered, not responsive. The answer  
7 is stricken. Jury is ordered to disregard it. You may  
8 proceed, Mr. Carr.

9 Q. And, Mr. Park, you had other meetings relating to  
10 2,4-dichlorophenol, did you not, sir, and directing your  
11 attention specifically, you had meetings in January of 1981  
12 discussing 2,4-dichlorophenol, did you not, sir?

13 A. I believe that's correct. I would like to see the  
14 memorandum, Mr. Carr, if I may.

15 Q. And I intend to give you that memorandum, as soon  
16 as I can find it. It's an exhibit that's already in  
17 evidence. You had one Exhibit 1281, I'll give you, it's a  
18 memo dated December 30th, 1980. And the other exhibit is  
19 undoubtedly in this stack. Jerry, do you have the number of  
20 the January '81 memo? The original must be in with the  
21 Clerk. I'll find the blow-up, be easier to find it, Your  
22 Honor. It gives the initial number to start with. Would be  
23 Exhibit 1241 if you have it. It would be -- start from the  
24 front? All right, I've had it all the time, Your Honor. Put

1 where it should be. Sorry.

2 THE COURT: That's okay.

3 Q. Mr. Park, referring now to 1241, if you would, it  
4 is the report that you wrote relative to the  
5 2,4-dichlorophenol that was discussed in a memo dated October  
6 the 10th, 1980, which is Plaintiff's Exhibit 1279, which I'll  
7 also hand you, sir. Have you had an opportunity now to  
8 refresh your memory, Mr. Park?

9 A. Let me have another minute or two, please, Mr.  
10 Carr?

11 Q. All right.

12 THE COURT: While you are doing that, gentlemen,  
13 could I see you at the bench for a moment?

14 (The following Side Bar conversation was had outside the  
15 hearing of the jury.)

16 THE COURT: I don't know about this motion but I'd  
17 like to have it argued after court today.

18 MR. MUSGRAVE: Okay.

19 THE COURT: So, whoever, you know, let them know.  
20 If it's you congratulations, I'll see you after court.

21 MR. MUSGRAVE: Fine. Thank you.

22 (The following proceedings were had in open court.)

23 A. Okay, I've read through most of it, Mr. Carr.

24 Q. All right. Now, Mr. Park, the product in question

1 was 2,4-dichlorophenol, was it not, sir?

2 A. Yes.

3 Q. And, you received a memo dated December 30th, 1980  
4 from --

5 A. Mr. Carr, I'm searching here, I hate to -- it says  
6 dichlorophenol, I guess I'm at a little bit of a loss,  
7 because of unfamiliarity with the chemistry here, I'm not  
8 sure whether that's 2,4-dichlorophenol or whether it isn't,  
9 I'm sorry. I don't know if that's significant to your  
10 question or not.

11 Q. I've given you the memo dated December 30th, 1980,  
12 have I not, sir?

13 A. Yes.

14 Q. And have I also given you a memo dated October the  
15 10th, 1980?

16 A. Yes.

17 Q. And, do you see, sir, that the subject matter is  
18 2,4-dichlorophenol in those memos, sir, among others?

19 A. I don't yet.

20 Q. Do you know that the numerical system for Monsanto  
21 is the 7,000 stands for 2,4-dichlorophenol?

22 A. No, I do not.

23 Q. Well, is your memo discussing dichlorophenols then,  
24 sir?

1 A. Yes.

2 Q. And it is also say that Diamond Shamrock uses  
3 dichlorophenol to make 2,4-D?

4 A. Yes.

5 Q. And, you discussed whether or not the TCDD  
6 contamination in dichlorophenol was such that required the  
7 notification under TSCA to the EPA, isn't that correct, sir?

8 A. Yes, -- I didn't completely hear as you were  
9 walking away the first part of your question, you say --

10 Q. Did you discuss at the January 6th meeting that  
11 resulted in your January 7th, 1981 memo, Plaintiff's Exhibit  
12 1241, the levels of TCDD found in the dichlorophenol as to  
13 whether or not that required a notice to the EPA under TSCA,  
14 isn't that correct, sir?

15 A. Yes, sir.

16 Q. And what was the level of  
17 tetrachlorodibenzo-p-dioxin that was discussed at that  
18 meeting in the dichlorophenols?

19 A. One to three parts per billion with one analysis  
20 indicating a higher level.

21 Q. And what was the higher level that was discussed?

22 A. It's not indicated in this memo, Mr. Carr.

23 Q. Well, if you look to the -- you discussed the memo  
24 dated October the 10th, 1980, did you not, sir?

1 A. Right. Yes.

2 Q. And I've given you that memo, sir, will you refer  
3 to that memo?

4 A. Yes.

5 Q. And what were the levels of tetras, TCDD found in  
6 the dichlorophenols, sir. I have on the board here Table 2  
7 in that exhibit dated October the 10th, 1980, could you turn  
8 to Table 2 that I directed you to earlier, Mr. Park?

9 A. It does appear that this sample 7003, I guess there  
10 is a question as to what it was, but it could have been 9.5  
11 parts per billion, if I'm reading this correctly here.

12 Q. And you discussed that at this meeting and you  
13 concluded that since those low levels are going to be diluted  
14 by customers operations that it would be unlikely to cause  
15 any health environmental hazard, didn't you, sir?

16 A. That's right.

17 Q. And it was on that basis that you determined to not  
18 notify the EPA, isn't that correct, sir?

19 A. Well, that and no one at the meeting was aware of  
20 any other possible harm that could have come from the  
21 product.

22 Q. Where is the other harm other than the harm that  
23 might be connected to TCDD discussed?

24 A. Well, it would have been for any other use, I'm

1 just reading the second sentence of that third to last  
2 paragraph, Mr. Carr.

3 Q. It refers to TCDD, doesn't it, sir?

4 A. That's right.

5 Q. It doesn't refer to dichlorophenol, refers to TCDD  
6 level in that dichlorophenol, doesn't it, sir?

7 A. Yes.

8 Q. And, that level was one to three parts per billion  
9 with one analysis indicating nine and a half parts per  
10 billion, is that correct, sir?

11 A. It is not clear to me whether that means a  
12 possibility of four and a half to nine and a half.

13 Q. It has been testified to me that is the nine and a  
14 half, that is the part that coelutes with 2,3,7,8 TCDD. The  
15 4.5 I think is included in the 9.5, but that's not important  
16 at this point in time. That was the level you discussed,  
17 wasn't it, sir?

18 A. Well, we discussed the entire analysis.

19 Q. All right. And this entire analysis, the highest  
20 level for the tetras was 9.5, wasn't it, sir?

21 A. According to your chart there.

22 Q. No, according to the memo that you have in front of  
23 you dated October 10th, 1980, which you discussed?

24 A. Yes.

1 Q. And you determined that that would not constitute a  
2 risk particularly when further diluted by customer's  
3 operations, did you, sir?

4 A. That's right.

5 Q. You consider that a customer would take the  
6 2,4-dichlorophenol and put it in a product where perhaps it  
7 would be diluted by a factor of 50 percent or by a factor of  
8 90 percent, something of that sort, isn't -- didn't you, sir?

9 A. It would have been diluted to some degree, yes.

10 Q. And you consider that?

11 A. Yes.

12 Q. And that was important in your consideration,  
13 wasn't it, Mr. Park?

14 A. That was an important factor, yes.

15 Q. And, you decided then that since they are going to  
16 perhaps this 9.5 might get as low down to one part per  
17 billion or below it, that that wouldn't present a hazard,  
18 didn't you?

19 A. The consideration may have even gone beyond that,  
20 Mr. Carr.

21 Q. Now, you are speculating, Mr. Park, aren't you, you  
22 are not going to pretend you got a memory for particulars at  
23 that meeting when you can't remember what you discussed last  
24 Friday, are you, Mr. Park?

1           A.    If you let me finish occasionally it would be clear  
2    what I'm saying.

3           Q.    Do you have any memory of that meeting, Mr. Park,  
4    any whatsoever?

5           A.    Which meeting, Mr. Carr?

6           Q.    The meeting we are discussing, Mr. Park?

7           A.    I cannot remember the meeting, no, off the top of  
8    my head without reference to notes.

9           Q.    Mr. Park, you are fully -- you were fully aware  
10   when you came to the courtroom that I was going to ask you  
11   questions about that meeting, weren't you, sir?

12          A.    No, I was not so aware.

13          Q.    You were not, you did not discuss this with your  
14   attorneys?

15          A.    I discussed certainly my appearance with my  
16   attorneys.

17          Q.    You didn't discuss the subject matter of your  
18   appearance?

19          A.    We felt it would probably relate to my position as  
20   a member of this group that sits down to discuss TSCA Section  
21   8(e).

22          Q.    And they didn't tell you or did tell you, I'm sure,  
23   that Exhibit 1241 had been admitted into evidence on March  
24   27th.

1 MR. MUSGRAVE: Object to asking questions about  
2 conversations with counsel.

3 Q. Three weeks ago.

4 THE COURT: Objection is sustained.

5 A. There are thirteen hundred Plaintiff's exhibits  
6 now, they did not discuss every one of those with me.

7 THE COURT: Wait a second. Gentlemen, could you  
8 approach the bench for a minute?

9 (The following Side Bar conversation was had outside the  
10 hearing of the jury.)

11 THE COURT: When we get into specifics, I think we  
12 might be getting into some attorney-client problems. I  
13 sustained your objection at this point as far as the  
14 specifics.

15 MR. CARR: As far as what he's discussed with Mr.  
16 Musgrave?

17 THE COURT: With Mr. Musgrave.

18 MR. MUSGRAVE: Or any of the attorneys.

19 MR. CARR: Yeah.

20 MR. MUSGRAVE: Yeah.

21

22 (The following proceedings were had in open court.)

23 Q. (by mr. Carr) Now, Mr. Park, you were aware of the  
24 fact that you had been asked to, and you did produce your

1 files relating to the TSCA meetings and dioxin, isn't that  
2 correct, sir?

3 A. Yes.

4 Q. There has only been about three, isn't that right,  
5 sir? Or even two?

6 A. Section 8(e) meetings?

7 Q. Yes.

8 A. No, we have held a number, I would say, total  
9 meetings of any subject?

10 Q. No, Mr. Park, you know what I'm talking about,  
11 dioxin content in chlorinated phenols?

12 A. I think there have been, I would guess, four.

13 Q. Four meetings dealing with chlorinated phenols for  
14 TSCA?

15 MR. MUSGRAVE: You said dioxin, Mr. Carr.

16 Q. Dioxin in the chlorinated phenols.

17 MR. MUSGRAVE: Different question.

18 THE COURT: Overruled.

19 A. I believe that's correct.

20 Q. Sir?

21 A. I believe that's correct, yes.

22 Q. When were those meetings held, sir?

23 A. I'd have to refer to my notes.

24 Q. Could you please?

1 A. Well, I don't have those notes with me.

2 Q. Because the only thing that I have, the only notes  
3 that I have would be one for December 1981, and the one for  
4 March '79 that we have been discussing, and this one now that  
5 we are on for January '81?

6 A. Then there was one, I'm sorry, I forgot the dates  
7 you mentioned, but there was one in January of '79, I  
8 believe, that related to the Sturgeon spill itself.

9 Q. That was the TSCA meetings?

10 A. Yes.

11 Q. Then there were four indeed then?

12 A. Yes.

13 Q. And no others?

14 A. Relating to dioxin in chlorophenols?

15 Q. Yes.

16 A. No, I think that's correct.

17 Q. And you knew, didn't you, sir, that I'm going to  
18 ask questions about this meeting?

19 A. I didn't know for sure that you would, no.

20 Q. Well, I didn't ask you if you knew for sure, you  
21 knew that was a topic, didn't you, sir?

22 A. I --

23 Q. You didn't refresh your memory as to what I might  
24 ask you about, the levels, what you discussed?

1           A.    Mr. Carr, this whole thing we are in is kind of a  
2 new experience for me. I, frankly, did not know what to  
3 expect, sir.

4           Q.    Mr. Park, would you now refresh your memory as to  
5 whether or not you have any memory whatsoever as to what was  
6 discussed other than as related in those memos at your  
7 meeting of January the 6th, 1981?

8           A.    I can't recall anything beyond what is in the  
9 memoranda, Mr. Carr.

10          Q.    And, that memorandum refers to the tetra, TCDD  
11 content of the dichlorophenol in question, doesn't it, sir?

12          A.    That's correct.

13          Q.    And you considered that 9.5 would be diluted when  
14 it got to the customer, doesn't it, sir?

15          A.    What I was going to say, Mr. Carr --

16          Q.    Mr. Park, could you listen, kind of try to listen  
17 to what, and kind of try to answer the question that I'm  
18 asking you?

19          A.    Either that or that it may have been a blip, may  
20 have been an incorrect reading.

21          Q.    And you considered it might have been an incorrect  
22 finding at that time?

23          A.    Yes.

24          Q.    Now, is that somewhere in this memo? That's

1 something that you remember, isn't it, sir?

2 A. I notice in the December 30th, 1980, memorandum  
3 there is some criticism of the, appears to be criticism of  
4 the analysis.

5 Q. Well, did you consider then that it might have been  
6 a mistake then when you decided not to notify the EPA?

7 A. Mr. Carr, I can't recall off the top of my head,  
8 I'm trying --

9 Q. I'm asking you not to do it off the top of your  
10 head, Mr. Park. Dig into the bottom of your head, dig into  
11 the memos.

12 A. I am.

13 Q. Now, having dug into the bottom of your head and  
14 into those memos, is that one factor that you considered when  
15 you decided not to notify the EPA?

16 A. That that might have been an error.

17 Q. Yes. I would think that would be one factor.

18 Q. Now, if it had been, if it was in fact, if you  
19 hadn't had that doubt in there, would that have made a  
20 difference in you notifying the EPA?

21 A. I don't know, Mr. Carr.

22 Q. Well, think about it, Mr. Park.

23 A. I guess I doubt it. I see here there were 81  
24 samples, one had indicated a possibility of 9.5 parts per

1 billion. The use of the product being one where in fact it's  
2 apparently the major uses as an intermediate product.  
3 Assuming that would be a correct reading, I doubt that would  
4 have been sufficiently significant to have warranted  
5 informing the EPA.

6 Q. All right. Then you have a doubt, though, you are  
7 not sure, is that right, sir?

8 A. No, I can't recall the specific discussions, Mr.  
9 Carr, that took place. It's clear that it was concluded that  
10 notification was not required. I feel pretty certain that  
11 all relevant factors were discussed at the meeting as is  
12 generally the case.

13 Q. And, Mr. Park, when you discussed all those  
14 relevant factors and you discussed the fact that this might  
15 have been an accident, accidental thing, and that all the  
16 other findings just showed one to three parts per billion?

17 A. Yes.

18 Q. Now, if you discovered that it was not an isolated  
19 finding, would that have made a difference, sir, it was not  
20 an accident, not an artifact, not a blip?

21 MR. MUSGRAVE: Object, it's been asked and  
22 answered, he already testified to that.

23 THE COURT: I think it's in a different context.  
24 Overruled.

1 A. I don't think that would of made any difference.

2 Q. What level would make a difference, Mr. Park?

3 A. I have no idea.

4 Q. No idea at all?

5 A. No.

6 Q. What about the 250 parts per billion for total  
7 dioxin content that we discussed last Friday, would that have  
8 made a difference?

9 A. I don't recall that we discussed that, Mr. Carr.

10 Q. You don't recall that we discussed 250 parts per  
11 billion as a total dioxin concentration last Friday in the  
12 products?

13 A. I can simply recall you asking me a question.

14 Q. Mr. Park, you don't recall that we discussed at  
15 considerable length the 250 parts per billion average finding  
16 and tetra ethyl?

17 A. I can recall --

18 Q. Of total dioxins, sir?

19 A. I can recall some discussion of that.

20 Q. All right, then you do have some memory of what we  
21 discussed last Friday?

22 A. With regard to the --

23 Q. Sir?

24 A. Yes, with regard to the, whatever it was, 250 parts

1 per million average.

2 Q. 250 parts per billion?

3 A. Billion, yeah, average analysis in the tetrathal.

4 Q. And what if you had concluded there were 250 parts  
5 per billion not 9.5 for tetra but for total dioxins, that  
6 there were 250 parts per billion of dioxins in this product,  
7 sir?

8 MR. MUSGRAVE: Object, speculation and conjecture.

9 THE COURT: Overruled.

10 A. Mr. Carr, it's important that here we are talking  
11 about TCDD and in the tetrathal we are not.

12 Q. And what's important about that, Mr. Park?

13 A. The TCDD is generally held to be far and away the  
14 most toxic of the various dioxins.

15 Q. Yes, and that's important then to take that into  
16 consideration along with the toxicity of the other dioxins,  
17 isn't it, sir? So if you have TCDD's in the product, that's  
18 a level of toxicity to be concerned and you add to that the  
19 concern that you'd have about total dioxin in the product,  
20 wouldn't you, sir?

21 A. Well, some various dioxins very very low, very  
22 little toxicity, I understand.

23 Q. Could you answer my question, please, sir?

24 A. I'm sorry, I guess I thought I did, Mr. Carr,

1 toxicity of TCDD.

2 Q. Could you read the question to the witness,  
3 please?

4 COURT REPORTER: "And that's important then to take  
5 that into consideration along with the toxicity of the other  
6 dioxins, isn't it, sir?"

7 A. Recognizing the toxicity is extremely low, if at  
8 all in the other ones, the answer is yes.

9 Q. Could you answer my question?

10 A. Yes.

11 Q. You do -- it is important to take into effect the  
12 toxicity of the other dioxins along with the toxicity of the  
13 TCDD dioxins, isn't that correct, sir?

14 A. That's correct.

15 Q. Because when they are added together, along with  
16 the toxicity of the product without a contaminant, you are  
17 then -- that's what you consider for total toxicity, that's  
18 being shipped out of that Monsanto plant, isn't that correct,  
19 sir?

20 A. You are asking me questions now, Mr. Carr, that  
21 really are beyond my realm of knowledge and training. I am  
22 not a toxicologist.

23 Q. And when you meet and draw up those memos and make  
24 those recommendations, you are not considering the total

1 toxicity of the product including dioxins that's therein, Mr.  
2 Park?

3 A. We certainly do.

4 Q. And, Mr. Park, that's what I'm asking you here now,  
5 because that's what you consider in your function in this  
6 committee and that's exactly what I'm asking you now, not  
7 asking you any question different than what you would  
8 consider in those EPA notification meetings. Now, Mr. Park,  
9 it is important that you consider the total toxicity not just  
10 of the product without the dioxin content but the toxicity of  
11 the product itself, plus the toxicity that's added to it by  
12 the TCDD component, plus the toxicity that's added to it by  
13 the other dioxin component, isn't that correct, sir?

14 A. Mr. Carr, you are trying to put words in my mouth  
15 again. The other --

16 MR. CARR: Your Honor, would you direct the witness  
17 to answer that question? I thought it was fairly --

18 THE COURT: Mr. Park, I think you have to answer  
19 the question as posed and your answer was not responsive.

20 A. Okay.

21 THE COURT: Please answer the question as posed to  
22 you.

23 A. We do consider the toxicity of the entire product.

24 Q. Is that a yes to my answer, Mr. Park, to my

1 question?

2 A. To the extent that other dioxins than TCDD have  
3 toxicity, that would be considered.

4 Q. Then that is a yes to my question?

5 A. On that basis, yes.

6 Q. You consider the toxicity of the product without  
7 dioxin content, you consider the toxicity of the product  
8 including the TCDD toxicity if it has it therein, you  
9 consider the toxicity of that product, plus the toxicity of  
10 the TCDD, plus the toxicity of the other dioxins, isn't that  
11 correct, sir?

12 A. I think that is correct.

13 Q. Now, Mr. Park, did you make any effort at the  
14 January 1st, '81, meeting to consider what other dioxins  
15 might be present in some of those products?

16 MR. MUSGRAVE: January 6?

17 Q. January 6th.

18 MR. MUSGRAVE: You said the 1st, I just wanted to  
19 be sure what you were talking about.

20 A. I noticed that the the analyses that are attached  
21 to the October 10, 1980 memorandum do indicate, as I read it,  
22 that the analyses included a search for the other dioxins in  
23 whether they appear there on the chart.

24 Q. And they had, did they not, for the sample in

1 question, 108 parts per billion of tri-dioxin, 553 parts per  
2 billion of a di-dioxin, 15 parts per billion of a  
3 mono-dioxin, isn't that correct, sir? In addition to the  
4 tetra that we have discussed?

5 A. It does appear on the chart.

6 Q. And, did you consider the toxicity of tri-dioxin?

7 A. Mr. Carr, I can't recall. I would assume that we  
8 did.

9 Q. And you, of course, do recall that  
10 tribenzo-p-dioxin is nearly as toxic as tetras according to  
11 the memo that you have from the, dated May 22nd, 1979  
12 meeting, isn't that correct, sir?

13 MR. MUSGRAVE: Object, that's a misrepresentation  
14 of the evidence, there are many isomers of tri- also, Mr.  
15 Carr, you know the references to a specific isomer.

16 MR. CARR: You also know if you can identify it,  
17 your company goes by the rule, is to assume it's the most  
18 toxic and that's been testified to by a number of your  
19 witnesses.

20 THE COURT: Objection is overruled. Answer the  
21 question, please.

22 A. I don't recall that, Mr. Carr.

23 Q. Well, would you refresh your memory and look at the  
24 May 22nd, 1979 memo, I think you have it in front of you

1 Exhibit 1290.

2 A. Well, it is not a memorandum, Mr. Carr.

3 Q. The notes of the May 22nd, '79 meeting, Mr. Park?

4 A. My notes.

5 Q. What my question referred to?

6 A. Those unknown, those anonymous notes.

7 Q. By some member of your committee?

8 Q. Not very anonymous, an employee of Monsanto. It  
9 appears to be the handwriting of Dr. Wilson?

10 A. I see a note on his -- this handwritten thing here,  
11 Mr. Carr.

12 Q. That's my request referring to you, sir, that the  
13 tridibenzo-p-dioxin is nearly as toxic as the 2,3,7,8,  
14 according to that note by one of the members of your  
15 committee in '79, isn't that correct, sir?

16 A. I cannot add any dignity to this thing beyond what  
17 it has on it, Mr. Carr.

18 MR. CARR: Would -- Your Honor, would you direct  
19 the witness to --

20 THE COURT: Mr. Park, that was not an answer to the  
21 question. Answer the question.

22 A. The answer is I don't know.

23 Q. Mr. Park --

24 A. This will have to speak for itself, Mr. Carr.

1 MR. CARR: Your Honor, I ask the Court to direct  
2 the witness to assume that last week we established that this  
3 memo pointed out that trichlorodibenzo-p-dioxin is nearly as  
4 toxic as 2,3,7,8 and that this witness last week agreed, yes,  
5 that's what the memo said.

6 THE COURT: So ordered.

7 Q. Now, Mr. Park, assuming as the Court has ordered  
8 you to assume, this particular batch of dichlorophenol has in  
9 it a 108 parts per billion of something that's nearly as  
10 toxic as 2,3,7,8, isn't that correct, sir?

11 MR. MUSGRAVE: Object, that's an improper  
12 hypothetical. There is no evidence as to what it is.

13 THE COURT: Overruled.

14 A. On the basis of the Court's instruction, it does  
15 have that reference.

16 Q. Did you at this meeting consider this meeting on  
17 January the 6th, 1981, consider the toxicity of 108 parts per  
18 billion of this tridibenzo-p-dioxin?

19 A. I would assume that we had.

20 Q. And, not having any independent recollection, it is  
21 an assumption on your part without any knowledge, isn't that  
22 correct, sir?

23 A. That's correct.

24 Q. Did you discuss the toxicity of 553 parts per

1 billion of dichlorodibenzo-p-dioxin?

2 A. Again, I would assume that we did.

3 Q. And again you have no specific memory of it and you  
4 don't know, isn't that correct, sir?

5 A. That's correct.

6 Q. Now, Doctor, --

7 MR. CARR: I'm -- does the Court -- I note I'm past  
8 11. I'll be glad to go on if the Court wants.

9 THE COURT: Okay, I had missed it to. We will take  
10 a short break at this time. Ladies and gentlemen, I would  
11 admonish you, and this will go for any other breaks that we  
12 take today, that you are not to discuss this matter among  
13 yourselves, with anyone outside the jury panel or as of yet  
14 form any opinions or conclusions about the matters on trial.  
15 Court will be in short recess.

16 (Following a recess, these proceedings were had in open  
17 court.)

18 Q. (by Mr. Carr) Mr. Park, May 1979 meeting, the 11th  
19 and the 22nd resulted in the June memo, dealt with something  
20 that was published in the Federal Register, is that correct,  
21 sir?

22 A. Yes.

23 Q. And, of course, the Federal Register has been used  
24 in the past by the EPA to publish notices as well, has it

1 not, we referred to the rules and, or the interpretation and  
2 policy that were published in the Federal Register? So they  
3 surely presumed to know that which is contained in the  
4 Federal Register that they use themselves, is that correct,  
5 sir?

6 A. Yes.

7 Q. And, Doctor, you testified last week that you need  
8 not notify the EPA about things that they know about  
9 themselves, that was one interpretation that you put at one  
10 point in time upon the TSCA Section 8(e), isn't that correct?

11 A. That's correct.

12 Q. Why did you then meet in May of '79 to consider  
13 whether or not notification should take place to the EPA,  
14 since obviously it was in the Federal Register, they get the  
15 Federal Register, they know of the contents of the Federal  
16 Register, why did you even consider you are obligated to  
17 meet?

18 A. The meetings are requested by other people. I do  
19 not call the meetings myself. And we hold meetings whenever  
20 anyone feels that the meeting should be held.

21 Q. My question is why was this meeting held if the EPA  
22 obviously, everybody at that meeting knew that it was in the  
23 Federal Register because that's the subject of the meeting,  
24 the 1979 meeting. I just can't recall, it may have been that

1 for that reason it was actually not necessary to hold the  
2 meeting, but we did hold it.

3 Q. Mr. Park, you know in point of fact simply because  
4 the EPA may know something or is in the Federal Register or  
5 they may know about a particular chemical, does not excuse  
6 you at Monsanto from having those meetings, isn't that  
7 correct, sir?

8 MR. MUSGRAVE: Your Honor, I believe we have been  
9 through this same question, has been asked several times  
10 before that whole topic of the interpretation of 8(e) and  
11 this witness' interpretation has been gone into at length, I  
12 believe this is repetitive and I object to it.

13 THE COURT: Overruled, I don't think those Federal  
14 Register aspects were gone into before. You may continue,  
15 Mr. Carr.

16 A. No, in my opinion it is not necessary or  
17 appropriate to hold a meeting to consider 8(e) reporting if  
18 the information is already known to the EPA.

19 Q. And is there any law, any policy, any statement put  
20 out by the Government that agrees with your interpretation of  
21 the requirements and the chemical company's?

22 A. I think the law itself does.

23 Q. Point it out, please, sir?

24 A. I don't have it right here, but the law, Section

1 8(e).

2 Q. I want you to point it out, Mr. Park.

3 A. Well --

4 Q. Those are in what order from now, they are stacked  
5 on top of one other, what order are they in now?

6 THE CLERK: Which exhibit do you need?

7 MR. CARR: Exhibit 880, Monsanto's, and 881.

8 A. Monsanto's policy was in this bunch that was here  
9 on the desk Friday.

10 Q. Here's 881.

11 A. Thank you. This is Section 8(e).

12 MR. MUSGRAVE: What exhibit do you have, Mr. Park,  
13 please?

14 MR. CARR: 881 I just handed to counsel. And here  
15 is Monsanto Exhibit 880.

16 A. Thank you. In its entirety, Section 8(e) of the  
17 Toxic Substances Control Act reads, "Any person who  
18 manufactures, processes, or distributes in commerce a  
19 chemical substance or mixture, and who obtains information  
20 which reasonably supports the conclusion that such a  
21 substance or mixture presents a substantial risk of injury to  
22 health or the environment, shall immediately inform the  
23 administrator of such knowledge, unless such person has  
24 actual knowledge that the administrator has been adequately

1 informed of such information."

2 Q. All right. Now, do you have actual knowledge, sir

3 --

4 MR. MUSGRAVE: Mr. Park, I believe you misread  
5 that, I think it says "of such information" unless the person  
6 has actual knowledge.

7 A. I'm sorry.

8 MR. MUSGRAVE: "That the administrator has been  
9 adequately informed of such information." You said  
10 knowledge, I think information is used consistently  
11 throughout.

12 A. Yes.

13 Q. Now, my question is, Mr. Park, do you at Monsanto  
14 know, do you have actual knowledge, that the EPA has been  
15 informed of those things that's published in the Federal  
16 Register?

17 A. This policy statement in Section VII includes a  
18 number of sources of information which it is assumed the EPA  
19 has knowledge of.

20 Q. Would you direct me to that Section VII of Monsanto  
21 Exhibit 880?

22 A. Yes. In the --

23 Q. Roman numeral VII?

24 A. Yes.

1 Q. All right. Would you point out where it describes  
2 the Federal Register, sir?

3 A. I don't see a reference to the Federal Register  
4 itself in this --

5 Q. All right. Now, Mr. Park, will you point out to me  
6 where the law exempts Monsanto from informing EPA of the fact  
7 that a batch of its material has been found to be  
8 contaminated with something that it didn't know was there  
9 before?

10 A. We are back to the substantial risk of injury  
11 question, Mr. Carr.

12 Q. No, as far as the knowledge of the EPA, you said  
13 that they know about 2,4-dichlorophenol, is what you said.  
14 They know about it. I'm asking you, sir, you are required to  
15 have actual knowledge that they know that your product  
16 contains dioxin, isn't that correct, sir?

17 A. Well --

18 Q. If dioxin has a substantial health risk?

19 A. If the EPA has knowledge of some information then  
20 certainly no reporting obligation exists with respect to that  
21 information.

22 Q. And my question is, sir, do they have actual  
23 knowledge that the batch referred to here in January 7th,  
24 1981 memo, Exhibit 1241 A, do they have actual knowledge that

1 that batch contained nine and a half parts per billion of  
2 tetra, 108 parts per billion of tri-, 553 parts per billion  
3 of dichlorophenol dibenzo-p-dioxin?

4 A. So far as I am aware, they don't.

5 Q. And is there any place in the Statute that exempts  
6 you from giving that information where you know they don't  
7 have actual information?

8 A. If I understand you correctly, no, the only  
9 exception to the obligation is where the EPA has the  
10 information.

11 Q. Yes. And you considered in January of '81 the  
12 possible exposure, didn't you, sir?

13 A. I just don't recall the exact discussion, Mr. Carr,  
14 I would assume that we would.

15 Q. Your memo discusses customer dilution, doesn't it,  
16 sir?

17 A. Yes.

18 MR. MUSGRAVE: Your Honor, we have been through all  
19 this before. He's asked him this question two or three times  
20 already this morning. He's answered does discuss it.

21 Q. That's exactly the point, it does discuss possible  
22 customer dilution and exposure, doesn't it, sir?

23 THE COURT: Objection is overruled.

24 A. It discusses customer dilution.

1 Q. And that relates to what they will or will not be  
2 exposed to, isn't that correct, sir?

3 A. It doesn't say this, Mr. Carr.

4 Q. Isn't that the meaning of it, sir? What difference  
5 does it make if it's diluted or not diluted, if they are not  
6 going to be exposed to it, you consider risks involved in the  
7 exposure of this diluted substance, didn't you, sir, this  
8 diluted chemical?

9 A. Mr. Carr, as I stated, I cannot remember the exact  
10 discussions that went on.

11 Q. I didn't ask you to remember the exact discussions,  
12 what I'm saying is this memo shows that you on that committee  
13 considered the actual exposure that customers might be  
14 presented by this low level of TCDD in your product, isn't  
15 that correct, sir?

16 A. I don't remember.

17 Q. I'm not asking you to remember, doesn't this memo  
18 show that because you concluded that it was going to be  
19 diluted that it refers to customers exposure?

20 A. It doesn't say that, Mr. Carr.

21 Q. You don't take that to mean that, Mr. Park?

22 A. It says the extremely low levels of TCDD will be  
23 further diluted by customer operations.

24 Q. And was particularly when further diluted we would

1 be unlikely to cause any health environmental effects, isn't  
2 that correct, sir?

3 A. Yeah.

4 Q. Sir?

5 A. Yes.

6 Q. So, you did consider and this memo points out that  
7 you considered exposure to the customer of this diluted  
8 chemical, isn't that correct, sir?

9 A. Mr. Carr, I just cannot remember the discussions.

10 Q. Mr. Park, I am not asking you to remember, I'm  
11 asking you to give me the plain sense of those words that  
12 I've just read to you, that you used in your memo of January  
13 7th, 1981?

14 A. The plain meaning as I see it is that any levels of  
15 TCDD in the dichlorophenol would be so low after customer  
16 dilution as to present no hazard.

17 Q. And the exposure would be to say as to present no  
18 hazard, isn't that correct?

19 A. I don't see the word exposure.

20 Q. Isn't that the meaning, sir, when you are  
21 discussing the customer dilution, the ultimate use of the  
22 product?

23 MR. MUSGRAVE: Object to this, Your Honor, the  
24 witness has answered the question, he's referred to the

1 sentence that Mr. Carr has asked him to, answered it  
2 interpreting what he feels it means, referring to levels, and  
3 it's very clear what he testified to and Mr. Carr insists  
4 upon asking the same question. I object to it, it's  
5 repetitive. This is the same topic going over and over  
6 again.

7 THE COURT: Overruled.

8 A. I don't know, Mr. Carr.

9 Q. You don't know what the meaning of this paragraph  
10 involves considering customer exposure after the chemical has  
11 been diluted?

12 A. I assume it.

13 Q. You don't know that, Mr. Park?

14 A. I assume it means just what it says.

15 Q. I'm sorry?

16 A. I assume it means just what it says.

17 Q. What does it say relative to customers health, are  
18 they going to be at greater risk because it's diluted or be  
19 at lesser risk because it's diluted?

20 A. It doesn't specifically state.

21 Q. What does it state, are they going to be at greater  
22 risk or lesser risk after it's diluted, what is the plain  
23 meaning of that, Mr. Park?

24 A. It implies that any TCDD levels in the product will

1 be reduced when the product is diluted by the customers  
2 operations.

3 Q. And that when one is exposed to this reduced or  
4 diluted TCDD, what does that do with the health risk, does  
5 that increase the health risk or decrease the health risk?

6 MR. MUSGRAVE: Object, that's a  
7 mischaracterization. It's not reduced TCDD, it's reduced  
8 level, and that's what the witness is testifying to.

9 THE COURT: Overruled.

10 A. It just doesn't state, Mr. Carr.

11 Q. Mr. Park, I'm asking you what this means, are you  
12 now swearing in front of this jury that this paragraph does  
13 not consider customer exposure to the product?

14 A. No, I'm not so swearing.

15 Q. Then you know this paragraph does consider customer  
16 exposure, don't you, sir?

17 A. I think the memorandum should speak for itself, Mr.  
18 Carr.

19 Q. Would you answer that question, please, Mr. Park?

20 A. No.

21 MR. CARR: Your Honor, will you direct -- did you  
22 answer the question, you simply --

23 A. No, I'm answering your question.

24 Q. This does not refer to exposure or does it refer to

1       --

2           A.    I just don't recall, Mr. Carr.

3           Q.    No, Mr. Park, again I'm not asking you to recall,  
4 I'm asking you whether or not this paragraph contemplates  
5 customer exposure to the product after it's been diluted, and  
6 after it's been diluted that exposure it would be unlikely to  
7 cause any health problems, did you not of necessity when you  
8 considered that paragraph and concluded to put that paragraph  
9 in there, did you not of necessity, consider customer  
10 exposure to this product in its diluted state?

11          A.    Mr. Carr.--

12               MR. MUSGRAVE:  Object, this question has been asked  
13 and answered.  He has interpreted this sentence for Mr. Carr  
14 to the best of his ability about two times now.

15               THE COURT:  Object --

16               MR. MUSGRAVE:  I object, this is repetitive.

17               THE COURT:  It has been asked, excuse me, I don't  
18 think it has been answered and your objection is overruled.  
19 It's properly asked again.

20          A.    I don't see how I can add to the memorandum, Mr.  
21 Carr.

22          Q.    Your Honor, would you direct the witness to  
23 answer?

24               THE COURT:  Mr. Park, you have to answer the

1 question as directly posed to you.

2 A. I'm sorry.

3 THE COURT: I've ruled it is a proper question.

4 A. Okay, could I impose on your clerk --

5 THE COURT: What did you say?

6 A. Could I impose to read --

7 THE COURT: You can read it back to him once.

8 COURT REPORTER: "No, Mr. Park, again, I'm not  
9 asking you to recall, I'm asking you whether or not this  
10 paragraph contemplates customer exposure to the product after  
11 it's been diluted, that exposure, it would be unlikely to  
12 cause any health problems. Did you not of necessity when you  
13 considered that paragraph and concluded to put that paragraph  
14 in there, did you not of necessity consider customer exposure  
15 to this product in its diluted state?"

16 A. I don't know.

17 MR. CARR: Your Honor, would you direct the witness  
18 to answer this question?

19 MR. MUSGRAVE: He has, Your Honor, says he doesn't  
20 know.

21 MR. CARR: I think he's contemptuous of the Court.  
22 I think the questions that I've asked for the last five  
23 minutes admit of only one conclusion and this witness knows  
24 that he dare not give the only conclusion that can be given,

1 and I think it's contemptuous that -- I think it's a mockery  
2 of the system that I should go around phrasing the question  
3 thirty different ways and then the witness comes up and says  
4 I don't know that that's the meaning. He has the education,  
5 he has the intelligence, he has the background to know that  
6 that is the plain meaning of that paragraph.

7 MR. MUSGRAVE: I object, Your Honor, to counsel's  
8 speech. I object to counsel's insinuations. I request the  
9 Court instruct the jury to disregard them. I ask that the  
10 Court admonish Mr. Carr to stop theatrics and stop making  
11 inappropriate and improper comments like that. The witness  
12 has answered the question when he was asked didn't he  
13 consider and he says I don't know. Is there anything wrong  
14 with a witness in this court or any court in the United  
15 States not being able to answer question because he doesn't  
16 know? Just because it doesn't satisfy Mr. Carr. This is  
17 totally improper. I object for all of those reasons.

18 THE COURT: Your objections are overruled. I don't  
19 think your answer is responsive to the question. The  
20 question has been asked of you a number of times. It has  
21 been read back once. I am directly ordering you to answer  
22 the question posed to you.

23 MR. MUSGRAVE: Are the rest of my requests also  
24 overruled for the record?

1           THE COURT: Yes, they are. They most certainly  
2 are.

3           A. Your Honor, are you instructing me that I must  
4 answer either yes or no?

5           THE COURT: I most certainly am.

6           A. Even though it contains what I consider to be  
7 improper limitations and premises?

8           THE COURT: I have ruled that the answers that you  
9 have given are not responsive and that the question posed to  
10 you is proper. Answer.

11          A. You will not allow me to answer that I don't know?

12          THE COURT: I will not allow that kind of answer,  
13 it does not call for that kind of answer.

14          A. Then within those constraints, I would respond that  
15 along with many other considerations, exposure to the product  
16 would probably have been considered.

17          MR. CARR: Your Honor, that again is not a response  
18 to my question. My question is as to the plain meaning of  
19 this paragraph, not whether probably would have been  
20 considered. He can answer that question that of necessity  
21 this paragraph contemplates discussion of, consideration of  
22 exposure by customers after the product is diluted, does it  
23 not, Mr. Park?

24          A. Among many other things, yes.

1 Q. And Mr. Park, that follows because in the  
2 preliminary paragraph to it, you pointed out the uses to  
3 which the product is put, did you not, sir?

4 A. Yes.

5 Q. And the only reason you would consider the uses to  
6 which it is put, is because you are going to consider the  
7 exposure following from such use, isn't that correct, Mr.  
8 Park?

9 A. There could be other reasons, Mr. Carr. That would  
10 be one.

11 Q. And, you have considered the fact that  
12 dichlorophenol is used to manufacture 2,4-D, didn't you, sir?

13 A. I don't remember that.

14 Q. The memo states that you considered that, doesn't  
15 it, sir?

16 A. Yes, it does.

17 Q. And you know what 2,4-D is, don't you, sir?

18 A. I'm not well informed on it, I believe it's a  
19 herbicide.

20 Q. It's used on people's lawns to kill weeds and  
21 dandelions isn't it, sir?

22 A. (shrugs shoulder)

23 Q. Don't put your hands up, you know that for a fact,  
24 don't you, sir?

1 MR. MUSGRAVE: Object, he's arguing with the  
2 witness.

3 THE COURT: Overruled.

4 Q. You know that, don't you, Mr. Park?

5 A. I am not well informed on its --

6 Q. I'm not asking you if you are well informed, you  
7 know that 2,4-D is used to kill dandelions on people's lawns,  
8 don't you, sir?

9 A. No, I don't, Mr. Carr, particularly. I don't know  
10 what the ingredients of this can are that you put up here.

11 Q. And I'm not asking you about that can, Mr. Park,  
12 I'm asking you about 2,4-D.

13 A. I don't know that people put it on their lawns. I  
14 believe I have heard that it is a herbicide.

15 Q. And do you know --

16 A. Kills vegetation.

17 Q. And do you know if it kills vegetation, it would  
18 kill dandelions on people's lawns, you know that, don't you,  
19 sir?

20 A. I might be afraid it would kill the grass, I don't  
21 know, this is beyond my area of expertise.

22 Q. When you discussed -- when this memo discusses that  
23 it's being used to manufacture 2,4-D, can you consider at  
24 that time what 2,4-D is going to be used for?

1           A.    Mr. Carr, I cannot recall the discussions that went  
2 on during the meeting, the discussions.

3           Q.    You pointed out in this memo that in addition to  
4 using it for other customers to use it to make 2,4-D, others  
5 incorporated into oil well additives, isn't that correct,  
6 sir?

7           A.    That's correct.

8           Q.    And you considered those uses at that time, didn't  
9 you, sir? As pointed out by the memo?

10          A.    Uh-huh, yes.

11          Q.    And, you concluded, did you not, sir, that the  
12 exposure in using this product in those methods would not  
13 constitute -- would be unlikely, when it's further diluted,  
14 would be unlikely to cause any health or environmental  
15 hazard?

16          A.    Particularly when it's for the --

17          Q.    Now, when you considered that, you did go beyond  
18 the restraints of the law, didn't you, sir, the policy set  
19 out by the EPA relative to that law, isn't that correct, sir?

20          A.    Not at all.

21          Q.    Did you consider that there was sufficient evidence  
22 of exposure simply because it went into commerce?

23          A.    I explained last week, Mr. Carr.

24          Q.    Excuse me, my question is did you consider at that

1 time at this meeting in January of '81, that there would be,  
2 that the mere fact that it went into commerce was sufficient  
3 evidence of exposure?

4 A. Mr. Carr, I can't recall the exact discussions that  
5 took place, I said that several times now.

6 Q. And did I ask you to recall the exact discussions,  
7 my question -- would you read back the question?

8 COURT REPORTER: "Excuse me, my question is did you  
9 consider at that time at this meeting in January of '81, that  
10 there would be, that the mere fact that it went into commerce  
11 was sufficient evidence of exposure?"

12 A. Frankly, I do not recall.

13 Q. Now, Mr. Park, you didn't say that this dilution  
14 would not cause a hazard to health, did you, sir? You simply  
15 said in your memo after it's diluted it would be unlikely to  
16 cause any health problems, didn't you, sir?

17 A. That's correct.

18 Q. That means, did it not, sir, that it's possible  
19 that there could be serious health effects by the use of even  
20 diluted 2,4-dichlorophenol that contains 9.5 parts per  
21 billion of TCDD?

22 A. I don't think so.

23 Q. And you are saying then that the -- this means that  
24 there is no possibility of any bad effects or health effects

1 if using 9.5 parts per billion of TCDD in a diluted product?

2 A. Not being a toxicologist I would feel it would be  
3 extremely unlikely to occur.

4 Q. You didn't even use the word extremely unlikely,  
5 you used the words would be unlikely, didn't you, sir?

6 A. Yes.

7 Q. And that means that you cannot exclude the  
8 possibility that someone would be injured by this TCDD even  
9 as it is diluted in the customer's use of it, isn't that  
10 correct, sir?

11 A. I wouldn't read it that way, Mr. Carr.

12 Q. I'm sorry?

13 A. I would not read it that way.

14 Q. Did you say there is no possibility that it would  
15 cause any health or environmental harm, sir?

16 A. Did not say that.

17 Q. You said it would be unlikely. Unlikely means not  
18 likely but certainly possible, doesn't it, sir?

19 A. I would say it means not likely.

20 Q. And not likely means that it could occur, doesn't  
21 it, sir?

22 A. Yeah, likely means it probably will occur.

23 Q. Likely means it probably will occur, but you are  
24 not even saying for sure that it will occur. Unlikely means

1 that it probably won't occur, isn't that correct?

2 A. I don't know, I guess I'd say likely means it will,  
3 unlikely, that it won't.

4 Q. Unlikely that it won't, that's a double negative,  
5 you are now saying that it will.

6 A. You misunderstood what I said, Mr. Carr, I was  
7 trying to give you my impression of the words likely and  
8 unlikely.

9 Q. You just said a moment ago that likely means it  
10 probably will cause harm?

11 A. Well --

12 Q. Isn't that correct?

13 A. Then I went on to say I guess likely would mean  
14 that it will.

15 Q. I thought you said that likely means it probably  
16 will?

17 A. I did at one time then I said on the other hand  
18 maybe likely means that it will cause harm.

19 Q. And now you are changing that because you know, Mr.  
20 Park, that likely doesn't mean for sure that it will, but  
21 simply that it probably will not a hundred percent sure that  
22 it will cause it, but that it's your judgment that it  
23 probably will cause this harm, isn't that correct, sir?

24 A. I really don't know, Mr. Carr.

1           Q.    Can't you equate that if you are going through a  
2 school zone where there are children present and the speed  
3 limit says 20 miles per hour and if you go above 20 miles per  
4 hour, 50 miles per hour, it's probable that you are going to  
5 cause some harm, likely that you are going to cause harm,  
6 isn't that correct, sir, if you speed through a school zone,  
7 isn't it probable that you will cause harm, if there are  
8 children present?

9           A.    I don't know, Mr. Carr, it would be a very improper  
10 thing to do.

11          Q.    Indeed it would, because that 20 mile per hour is a  
12 speed limit and you are not supposed to go above that, they  
13 set a safe limit, didn't they, sir, what they considered to  
14 be safe, isn't that right, sir?

15          A.    True, but Mr. Carr --

16          Q.    There is no question about that, is there, sir,?

17          A.    Right.

18          Q.    If you saw a sign that says 20 miles per hour in a  
19 school zone when children are present, there is no question  
20 in your mind but that that is a limit above which you should  
21 not go, isn't that correct, sir?

22          A.    That's correct.

23          Q.    And there wouldn't be any doubt in the minds, say,  
24 of somebody that went to Harvard and had a Ph.D., anybody

1 that sees a speed limit sign that says 20 miles per hour in a  
2 school zone when children are present, he must interpret that  
3 to mean don't go above that because you may cause harm to  
4 somebody if you go above that speed, under those  
5 circumstances, isn't that correct, sir?

6 A. I would assume so.

7 Q. You would assume so, you know so, don't you, sir,  
8 that's the purpose of the sign?

9 A. You are supposed to stay within the speed limit.

10 Q. In order to protect the safety of those children  
11 that are in that area at that time, isn't that correct, sir?

12 A. Yes.

13 Q. And there is no question about that, is there,  
14 sir? Is there, sir?

15 A. No, about staying within the speed limit?

16 Q. That 20 mile per hour is a speed limit that is set  
17 for the sake of the safety of the children, isn't that  
18 correct, sir?

19 A. To the best of my knowledge, yes.

20 Q. Mr. Park, the mere fact that you use the word  
21 unlikely in this memo means that you believe it is not  
22 probable that somebody's health is going to be harmed, isn't  
23 that correct, sir?

24 A. I would read it to mean that health would not be

1 harmed, health nor --

2 Q. Why didn't -- then Mr. Park why didn't you say it  
3 will not cause any health effects, why didn't you use that  
4 word? You are skilled in the use of words, you've been to  
5 law school, you use words with precision, you know what the  
6 word unlikely means. Unlikely means it's not probable,  
7 doesn't it, sir? It doesn't mean won't, it means not  
8 probable, doesn't it, sir?

9 A. I don't know, Mr. Carr.

10 Q. And did you not know the meaning of the word  
11 unlikely when you used it in this memo, sir?

12 A. No, I think I knew the meaning of the word.

13 Q. And, did your idea of the meaning of that word  
14 differ from the ordinary meaning of that, did you have a  
15 special meaning to that word other than what would be in the  
16 dictionary, sir? Did you have your own unique meaning?

17 A. No.

18 Q. You used that word the way others use it, didn't  
19 you, sir?

20 MR. MUSGRAVE: Object to counsel now asking this  
21 witness to determine how others might use it in this  
22 particular context. It requires this witness to draw  
23 conclusions, speculate as to what others may or may not do.

24 MR. CARR: Let me withdraw it.

1 Q. You meant this memo to be read by others and to be  
2 interpreted by others, didn't you, sir?

3 A. This memo really describes the conclusions reached  
4 by the group that met --

5 MR. CARR: Would you direct the witness to answer  
6 the question.

7 THE COURT: That was not responsive, you'll have to  
8 answer the question that's asked of you, Mr. Park. Please  
9 answer.

10 A. Yes, it would ultimately be read by others.

11 Q. And you meant to convey to those others particular  
12 meanings, didn't you, sir?

13 A. Yes.

14 MR. CARR: Your Honor, it's noon.

15 THE COURT: Okay. Okay. Ladies and gentlemen, we  
16 will break for lunch at this time. We will resume again at  
17 1:30. The admonishments that I've given you earlier will  
18 apply during this lunch break also. Court is in recess for  
19 lunch.

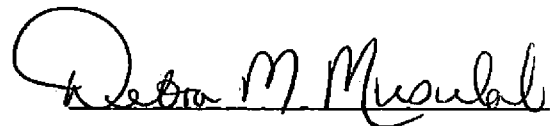
20 (Following a recess, these proceedings were had in open  
21 court.)

22 COURT ADJOURNED:  
23  
24

1 STATE OF ILLINOIS )  
2 TWENTIETH JUDICIAL CIRCUIT ) SS  
3 COUNTY OF ST. CLAIR )  
4

5 I, DEBRA M. MUSIELAK, certify the foregoing to be a  
6 true and accurate transcript of the testimony and proceedings  
7 in the above-entitled cause.

8 Dated this 16 day of April, 1985.  
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Debra M. Musielak

1     STATE OF ILLINOIS                     )  
                                                   )  
2     TWENTIETH JUDICIAL CIRCUIT         )   SS  
                                                   )  
3     COUNTY OF ST. CLAIR                 )  
4

5                 I, RICHARD P. GOLDENHERSH, one of the Judges in and  
6     for the Twentieth Judicial Circuit, do hereby certify that I  
7     have examined the aforesaid transcript of proceedings, and  
8     certify the foregoing to be a true and accurate transcript of  
9     the testimony and proceedings in the above-styled cause.

10                Dated this \_\_\_\_\_ day of April, 1985.

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HON. RICHARD P. GOLDENHERSH