

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

3 FRANCES E. KEMNER, et al)
)
4 Plaintiff,)
)
5 VS.) No. 30-L-970
)
6 MONSANTO COMPANY,)
)
7 Defendant.)

8
9 Before the HON. RICHARD P. GOLDENHERSH, Judge

10
11 REPORT OF PROCEEDINGS

12 JURY TRIAL

13 April 10, 1935

14
15 APPEARANCES:

16 MR. REX CARR and MR. JEROME SEIGFREID
17 on behalf of the Plaintiffs;

18 MR. JOHN R. MUSGRAVE and MR. JOSEPH NASSIF
19 on behalf of the defendant.

20
21 KIMBERLY GANZ, CSR, RPR, CM
22 Official Court Reporter
23
24

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

8 (The following proceedings were had in the hearing
9 and presence of the jury)

10 JAMES MIEURE

11 having resumed the witness stand, being previously sworn,
12 testified further as follows:

13 CROSS EXAMINATION

14 By

15 MR. REX CARR.

16 Q. Doctor, you recognize 1281A as the paragraph from
17 exhibit 1281 in which you point out the potential substantial
18 risk?

19 A. Yes.

20 MR. CARR: I offer 1281A into evidence, if it please
21 the court.

22 MR. MUSGRAVE: Okay. The court has already ruled
23 on the exhibit.

24 THE COURT: I will incorporate all of your

1 objections and the rulings.

2 Q. Doctor, this paragraph which I have placed on this
3 individual board from Exhibit 1281, that was contained as you
4 have indicated in 1281 and the upper right-hand corner of
5 1281 there is a list of persons that received copies of this
6 memo of December 30, 1980, is that correct, sir?

7 A. In the upper right-hand corner you said?

8 Q. Yes.

9 A. Yes.

10 Q. And those persons include Gloeckner, Callis, senior
11 vice president Throdahl and Doctor James D. Wilson, is that
12 correct, sir?

13 A. That is correct.

14 Q. Now, you mentioned yourself that you were not at
15 any other meetings in which this matter was discussed,
16 presumably if one or several of these persons in this, listed
17 on the document 1281 in the upper right-hand corner, if they
18 were at meetings at which time it was discussed, they would,
19 of course, know or should know, at least, if they read your
20 report, should know what you said about the potential
21 substantial hazard that might be present if it were true that
22 the 2,4 dichlorophenol contained 9.5 parts per billion of the
23 tetrachlorodibenzo-p-dioxin? Do you follow that question?

24 A. No, I don't. The question was long enough and had

1 enough parts, I don't.

2 Q. I think we have established yesterday that this
3 paragraph was precipitated or caused by the report that batch
4 sample 703 of 2,4 dichlorophenol was reported to have 9.5
5 parts per billion of tetrachlorodibenzo-p-dioxin in it. Do
6 you recall that was your testimony yesterday?

7 A. My testimony was that the report says, yes. There
8 was a tetra there at that level.

9 Q. My question went beyond that. What precipitated
10 the inclusion of this paragraph in your December 30, 1980,
11 report or critique was the fact that that October 10, 1980,
12 report reported 9.5 parts per billion of
13 tetrachlorodibenzo-p-dioxin in it, correct, sir?

14 A. I believe my answer from yesterday was and would
15 still be correct. Today it is hard for me to remember
16 exactly what prompted it but since that appears to be the
17 highest tetra concentration in the report, that most likely
18 is the case, yes.

19 Q. I think we went through this and you correct me.
20 You go through that report again. If there is something else
21 reported that could have precipitated that paragraph that I
22 have put on this exhibit other than the presence or reported
23 presence of these tetras, I want you to let me know. I don't
24 want to be guessing about this.

1 A. I don't see anything else, sir. It is hard for me
2 to remember exactly why I did something 6 years ago.

3 Q. Look at it again and be sure, sir.

4 A. Look at it?

5 MR. MUSGRAVE: Your Honor, the witness has answered
6 the question as best he can. Looking at it again. He says
7 it is hard for him to remember. He has fully answered the
8 question and I object to counsel continuing to ask the same
9 question when he has gotten the responsive answer.

10 MR. CARR: I will rephrase it.

11 Q. Look at the report today and see if there is
12 anything else that in your judgment could have or would have
13 precipitated this paragraph other than the reported presence
14 of 9.5 parts per billion of tetrachlorodibenzo-p-dioxin?

15 A. If you want me to look at it today, I will have to
16 have a copy of it. I did look at it yesterday and I didn't
17 see anything else at that time.

18 Q. All right. And presumably, then, that paragraph
19 would have been read by others, the people to whom it was
20 directed, if they were doing their job? You, of course,
21 don't know whether they did or did not but it was there for
22 them to read, wasn't it, sir?

23 A. The paragraph that you have highlighted here?

24 Q. Yes.

1 A. Yes.

2 Q. And if those persons received copies of the
3 September 15, 1981, memo which you pointed out yesterday,
4 confirmed the presence of the 9.5
5 tetrachlorodibenzo-p-dioxin, they presumably would have known
6 then that what precipitated the paragraph describing it as
7 potential substantial risk, they would have known that that
8 was confirmed, wouldn't they, sir, presumably?

9 A. I am sure the connection could be drawn. It is
10 just that with that kind of an expiration of time, it is hard
11 to know whether they would remember what I had said back a
12 year before or not.

13 Q. Well, as a matter of fact, the September 15th memo
14 specifically refers to these various other memos, doesn't it,
15 sir? I am handing you now Plaintiffs' Exhibit 1282 and I ask
16 you whether or not it specifically refers to your memo of
17 12-30-80 and to the October 10, 1980 report?

18 A. Yes. That is specific reference to my December 30,
19 1980, memo and to the original memo.

20 Q. So that the chronology is all there in the
21 September 15, 1981, memo and does it say who received that?
22 Wilson, Dahm and Hileman and Gloeckner all received that
23 document, is that correct, sir?

24 A. Yes, it is.

1 Q. Handing you now what has been marked Plaintiffs'
2 Exhibit 1284 which has been previously marked by Monsanto as
3 a Monsanto Exhibit 841 and I will ask you if you recognize
4 that as a report dealing with dichlorophenol, 2,4
5 dichlorophenol and in particular batches KSA7005 and 7009?

6 A. Yes. This reports on the analysis of a number of
7 chlorophenols including the ones you mentioned.

8 Q. Now, we have been told before -- strike that. Let
9 me -- Handing you now what has been marked Plaintiffs'
10 Exhibit 1284A. You see that is a copy of the table 2 from
11 that exhibit, do you not, sir?

12 A. Yes, I do.

13 MR. CARR: Your Honor, I ask permission to pass
14 copies of that to the jury.

15 THE COURT: You haven't offered --

16 MR. CARR: That exhibit is not in evidence. I offer
17 Exhibit 1284 into evidence, if it please the court.

18 THE COURT: Any objection?

19 MR. NUSGRAVE: The same objection as we made
20 previously to the extent that the memorandum deals with OCP
21 or OCP-crude. We have no objection. It deals with other
22 products. We make the same objection that we have been
23 making.

24 MR. CARR: Your Honor --

1 THE COURT: I will admit it to the extent that it
2 is objected to. It is admitted over objection to the
3 extent. It is admitted without objection. You may pass it
4 to the jury.

5 MR. CARR: And would the record also reflect that
6 this exhibit is Monsanto Exhibit 841. It does now bear --

7 THE COURT: The record will so show.

8 MR. MUSGRAVE: May the record also reflect, Your
9 Honor, that I marked this in clarification examination with a
10 witness after the court had overruled my objection and has
11 done so repeatedly with regard to evidence concerning
12 products other than orthochlorophenol and I have, therefore,
13 responded in view of the court's ruling but I for the sake of
14 consistency and simply maintaining Monsanto's position with
15 regard to the relevancy.

16 THE COURT: The record reflects that consistency
17 also. The record reflects all of that. You may pass it to
18 the jury.

19 (Plaintiffs' Exhibit 1234A is passed to the jury.)

20 Q. Doctor Mieure, we have been told previously that
21 the letters and numbers to the left or under the column
22 headed samples can be interpreted to show the date, the year
23 and the month on the sample, is that correct?

24 A. Yes, sir.

1 Q. And the sample 7005 would have been products of
2 what date?

3 A. Sir, you are right in what you say but I have
4 forgotten the code.

5 Q. You have forgotten the formula?

6 A. Yes, I have.

7 Q. It is my understanding that this would be April of
8 1981. I have written that down somewhere. I believe it is
9 in evidence as to what it is. And the sample shows, does it
10 not, the tetras being discovered yesterday in the, let's
11 see. In the KM stands for, according to Doctor Hileman in a
12 previous sample, Plaintiffs' Exhibit 1174, the K stands for
13 the Krummrich Plant. The letter stands for the year. M in
14 that case was 1980. Since there is -- and I would assume the
15 A as well that that means it is 1981. The number 2 or the
16 number 4 would mean the month being in this case would be
17 April. So if Doctor Hileman's interpretation is correct,
18 this would indicate that this batch tested on or reported
19 later on October 7th of 1981 would have been taken from the
20 batch manufactured at the Krummrich Plant in 1981 in April,
21 is that correct, sir?

22 A. Yes. If all the assumptions are correct.

23 Q. And if my math is correct. And, Doctor, it reports
24 there that there are, and the standard used in this instance

1 as well was to quantitate the 2,3,7,8 standard for the
2 tetras, was it not?

3 A. Yes. The tetrachloro standard was the 2,3,7,8 from
4 table 4.

5 Q. And the report indicates that there were 2 parts
6 per billion in the 2,4 dichlorophenol sample referred to that
7 coeluted with that standard, isn't that correct, sir?

8 A. Yes, sir.

9 Q. Handing you now what has been marked Plaintiffs'
10 Exhibit 1176, could you mark this 1176A. Do you recognize
11 1176A? 1176A is table 1 from that exhibit, is it not?

12 A. Yes, it is.

13 MR. CARR: Leave to pass that table to the jury,
14 Your Honor.

15 THE COURT: 1176 has been admitted?

16 MR. CARR: Yes, it has.

17 THE COURT: You may pass it to the jury.

18 (Plaintiffs' Exhibit 1176A is passed to the jury.)

19 Q. Now, this table 1 shows, does it not, that there
20 were 5 parts per billion of tetrachlorodibenzo-p-dioxin in
21 the sample tested?

22 A. Yes. In sample 7005.

23 Q. And that is dated December 4, 1981, is it not, sir?

24 A. Yes. That is the report date.

1 Q. And could you find Plaintiffs' Exhibit 1174.
2 Handing you now what has been marked Plaintiffs' Exhibit 1174
3 which has previously been in evidence and 1174A is the table
4 1 from that exhibit, Doctor Mieure. And, you find that to be
5 so, sir? You can just take my word for it, Doctor. We have
6 previously marked it and it has previously been admitted into
7 evidence. This report has a number of isomers there that are
8 identified, isn't that correct, sir, the tetra isomers?

9 A. Yes. A number of tetra isomers.

10 Q. Actually there is 1, 2, 3, 4, 5, 6, 7 specifics and
11 an 8th one that has 2 isomers in it, correct, sir?

12 A. That is correct.

13 Q. And it even reports that there is .3 parts per
14 billion of the 1,3,7,8 isomer, doesn't it, sir?

15 A. .3 of the 1,3,7,8, yes, sir.

16 Q. And there is 4 parts per billion of the 2,3,7,8
17 isomer, isn't it, sir?

18 A. That is what the report says and the sample 7003.

19 Q. And this would be a sample that would have been
20 manufactured according to the symbols that Doctor Hileman
21 told me correctly, January of 1980. The M standing for 1980
22 and the 1 standing for January?

23 A. According to what you said earlier, yes.

24 Q. So, these exhibits taken together show that over a

1 period of time from at least the ones that I have asked you
2 about today, from January of 1980 into 1981, the 2,4
3 dichlorophenol was found to contain
4 tetrachlorodibenzo-p-dioxins and those reports that were more
5 specific than others identified those isomers as therein
6 quantities eluting as if it were 2,3,7,8 and this report for
7 January of 1980 is more specific than ever and shows that it
8 is 4 parts per billion of 2,3,7,8 TCDD, correct, sir?

9 A. Yes. That is what it says.

10 Q. So, you know from your prior examination that as
11 far as the 2,4 dichlorophenol is concerned, that samples
12 tested in 1979 were found to contain
13 tetrachlorodibenzo-p-dioxin isomers therein, samples tested
14 in 1980 were found to have such isomers therein and this
15 sample tested in 1981, albeit of a 1980 sample showed again
16 that there were tetra isomers in it. So we have got all 3
17 years, '79, '80 and '81 so far as these documents show having
18 2,3,7,8 or isomers that coelute with 2,3,7,8 without more
19 specificity in 2,4 dichlorophenol, isn't that correct, Doctor
20 Mieure?

21 A. Yes. Although in only the one case is it
22 specifically reported as the 2,3,7,8.

23 Q. Only the one case is that specific. That is all
24 that they tried to be specific. They had the capacity to

1 be. Well, your laboratories and the Dayton laboratories
2 reported the information that you wanted to have insofar as
3 your capabilities was concerned relative to the
4 tetrachlorodibenzo-p-dioxins, isn't that correct, sir?

5 MR. MUSGRAVE: Mr. Carr, you are referring to this
6 witness or you and who?

7 MR. CARR: I am referring to you as Monsanto. That
8 is, the knowledge that he has as what Monsanto did at Dayton
9 and what it reported, what it looked for and what it did at
10 Creve Coeur and what it looked for in Sauget, Illinois.

11 MR. MUSGRAVE: What point in time are you talking
12 about?

13 MR. CARR: For the years, Mr. Musgrave, I think it
14 is pretty clear in the years that I am talking about is '79,
15 '80 and '81.

16 A. We reported the tetras according to the best
17 capability that we had in those, over that time period and,
18 of course, it changed from time to time.

19 Q. And, of course, we have had other documents, I
20 don't know whether I asked you about them but other witnesses
21 have been asked about them, that it was the policy of
22 Monsanto at that time if you couldn't, if you were not more
23 specific that when you have a tetra, you should treat it as
24 if it is all 2,3,7,8 TCDD. You recall that policy at

1 Monsanto or do you know that to be the fact?

2 MR. MUSGRAVE: I object to the vagueness of the
3 question. For what purpose, Mr. Carr? I object to the
4 vagueness of the question, Your Honor.

5 THE COURT: Overruled. I don't think it is vague.

6 A. Analytically we try to differentiate as best we
7 could between them. What the medical community did with
8 their assessment was something that was outside of my realm
9 of authority.

10 Q. All right. Then you are not, you don't know
11 whether it is correct or incorrect that Monsanto, the
12 company, insofar as its relation to its customers were
13 concerned and insofar as assessing possible health effects of
14 tetrachlorodibenzo-p-dioxin upon the ultimate users of the
15 product, are you saying that you don't know that it was the
16 policy of Monsanto to treat all tetras as if it were 2,3,7,8
17 TCDD in assessing health risks?

18 A. I believe it was our policy but I am not certain.

19 Q. All right. And at any rate, these documents
20 established that there are tetra isomers present in all of
21 the 2,4 dichlorophenol being manufactured from 1979 through
22 1981, isn't that correct, sir?

23 MR. MUSGRAVE: Objection, Your Honor. That is a
24 misrepresentation of the evidence that Mr. Carr has put forth

1 with this witness. If you will look at the sample, Mr. Carr,
2 on the same sample right there, sample KM7003 there is no
3 detection of tetras in that sample so your reference to all,
4 Mr. Carr, is obviously incorrect.

5 MR. CARR: I am sorry. I didn't mean to say and
6 indeed you are absolutely correct.

7 MR. MUSGRAVE: And furthermore, there are many
8 other samples. Mr. Carr suggests that you have already put
9 into evidence that show no detectable tetras.

10 MR. CARR: I agree 100 percent that there are
11 probably in this period of time in 1980 and '81, there are
12 probably more samples that showed no detectable tetras than
13 there were samples that showed detectable tetras.

14 Q. Are you aware of that fact, Doctor Mieure?

15 A. I haven't looked at the data recent enough to know
16 that, sir.

17 Q. Mr. Musgrave and I both agree that that is the
18 case, that there were. I know that is the case. Whether he
19 does or not. I know that the samples that were tested, more
20 showed no detectable tetras than in fact showed detectable
21 tetras but my question and I did inaptly phrase it. My
22 question is is that we know that 2,4 dichlorophenol being
23 manufactured, that some batches of 2,4 dichlorophenol being
24 manufactured in '79, '80 and '81 contained

1 tetrachlorodibenzo-p-dioxin in parts per billion. We know
2 that, don't we, sir?

3 A. According to our best analytical capability, yes.

4 Q. And, of course, if you were not privy to any
5 customer notification process, you, of course, don't know
6 whether the customer was ever notified that a particular
7 batch had a tetra in it or one or more parts per billion of
8 tetras in it or not, isn't that correct, Doctor Mieure?

9 A. You are talking about these products, all these
10 products?

11 Q. Yes. 2,4 dichlorophenol right now. I think you
12 testified earlier that you were not party to any customer
13 notification?

14 A. That is correct.

15 Q. All right. Handing you now what has been marked
16 Plaintiffs' Exhibit 1285, Doctor Mieure. You recognize that
17 as a report by -- is it Doctor Taulli or just Tom Taulli?

18 A. I believe it is Mr.

19 Q. All right. Do you recognize that as a report by
20 Mr. Taulli with reference to samples of Santophen tested for
21 various periods of time described in the exhibit?

22 A. Well, I am not certain, sir, whether it is a report
23 in the formal sense of the word. It is 3 data tables.

24 Q. Well, and it has got the author Tom A. Taulli,

1 October 15 of '79. I think it is on all 3 sheets, is it
2 not? I don't see a date on the last sheet.

3 A. It is cut off at the bottom but there appears to be
4 his name and a date down there, yes. It appears to be on all
5 3.

6 Q. All right.

7 MR. CARR: I offer this 1285 into evidence if it
8 please the court.

9 MR. MUSGRAVE: Yes, Your Honor. Again, it appears
10 to deal strictly with Santophen. We make the same objection
11 that we made previously. The document does not deal with
12 orthochlorophenol or orthochlorophenol-crude and has no
13 probative value weighed against other considerations.
14 Irrelevant and immaterial.

15 THE COURT: It will be admitted over objection.

16 MR. CARR: And ask leave to pass that exhibit,
17 rather, a page. No, we have got the entire exhibit. That
18 exhibit to the jury, Your Honor.

19 THE COURT: Fine. Go right ahead.

20 (Plaintiffs' Exhibit 1285 is passed to the jury.)

21 Q. Doctor Mieure, you recognize 1285A as the last page
22 of that document?

23 A. Yes, sir.

24 Q. And for the record, the handwriting that appears on

1 that document, August '78 through April '79 is my
2 handwriting, Your Honor. It is the date was cut off when it
3 was given to me and I deduced from the document that it was
4 and from the letters that did exist that what was really up
5 there was August '78 to April of '79.

6 THE COURT: Fine.

7 MR. CARR: But I want the record to be clear that
8 that is my handwriting. And offer 1285A into evidence.

9 THE COURT: I will incorporate your same
10 objections.

11 MR. MUSGRAVE: Thank you, Your Honor.

12 THE COURT: And the same ruling.

13 Q. Now, Doctor Mieure, this exhibit shows the date of
14 certain samples and the batch number or sample identification
15 number and the parts per billion of 2,3,7,8 TCDD et al that
16 was identified in each of those samples, isn't that correct,
17 sir?

18 A. Yes, it is.

19 Q. Now, the second page of the document, I am sorry,
20 the third page of the document that goes, that is on the
21 board as well goes back as far as August of 1978, August 17,
22 1978, does it not, sir?

23 A. That is the date of the first sample here.

24 Q. And that particular table is somewhat more isomer

1 specific than the first page, correct, sir?

2 A. Yes, it is.

3 Q. Now, that page covering samples from August of '73
4 to April of '79 and by the way, the identification code you
5 can see there, it now confirms what I told you before. L
6 stands for '79, M for '80 and A would be 1981 and K would be
7 1973. Do you see that, sir?

8 A. Yes. It appears to confirm that.

9 Q. All right. Now, there were in August of '78 the
10 batch that was tested apparently in October or reported in
11 October of '79 had 14.2 parts per billion of the tetras, did
12 it not, sir?

13 A. In October of '79?

14 Q. The date of this report, October 15th of '79, the
15 date of the report?

16 A. I am sorry. Could you please identify again which
17 material you are talking about there? I didn't follow
18 your --

19 Q. The very first sample, August 17th of '78.

20 A. Okay.

21 Q. Shows 14.2 parts per billion of the tetra isomers,
22 doesn't it, sir?

23 A. Total tetras, yes, sir.

24 Q. And the next sample shows 26.1 part per billion

1 total tetras, doesn't it, sir?

2 A. Yes, sir.

3 Q. And at this point in time when you are testing
4 these products, you have, or this product, you have the
5 isomers that allow you to be more specific at least between 3
6 coeluters or 3 isomers. You can quantitate it with 3
7 standards that you have at that time, the 2,3,7,8 standard,
8 the 1,3,6,8 standard and the 1,3,7,9 standard?

9 A. I am assuming when you say we, now, you mean
10 Monsanto Company?

11 Q. Yes.

12 A. Apparently so because that is the way the data are
13 reported.

14 Q. Prior to that time if my memory serves me right, up
15 until sometime mid 1979, you had the only the one, or early
16 '79. Not mid. I think you got the second isomer in March
17 but any testing that would have been done of these samples
18 back in 1978 or '79 to the best of your knowledge, the only
19 tetra isomer that you had would have been the 2,3,7,8
20 standard?

21 MR. MUSGRAVE: Well, Mr. Carr, this is a '79
22 document. You said '78 or '79.

23 MR. CARR: I said '78.

24 MR. MUSGRAVE: You said '78 or '79, Mr. Carr.

1 Q. Well, early '79. The only standard you had if you
2 tested these products back in '78. For instance, this
3 product was manufactured August 17, 1978. If you had tested
4 that product at that time, it would have revealed 14.2 parts
5 per billion of TCDD, wouldn't it, sir?

6 A. If the analytical methods were the same and were
7 consistent, why it would reveal that.

8 Q. Assuming these factors are true. But you could not
9 differentiate. You could not break it down at that time,
10 isn't that correct, sir?

11 A. We could not identify isomers, that is correct.

12 Q. So if what I have advised you before and what you
13 believe to be the case, that the medical department treats
14 all the tetras as if it were 2,3,7,8, you would be and by you
15 I mean Monsanto, you would be obliged to treat all of these
16 samples as having TCDD, that should be treated as if it is
17 2,3,7,8 as it appears in this last column of TCDD level,
18 would that be correct, sir?

19 A. No, sir.

20 Q. No, that would not be correct?

21 A. No.

22 Q. Well, do you want to correct me on that?

23 A. Well, if one had evidence that it wasn't the
24 2,3,7,8. In other words, that it coeluted with 1,3,6,8 or

1 coeluted with --

2 Q. You forgot some. I said in '78. You only got the
3 one isomer in '78, according to the sworn testimony here.

4 A. Okay.

5 Q. We have only got the 2,3,7,8 isomer?

6 A. Evidently I didn't understand your question.

7 Q. Back up again. You do know that to be the case.

8 You were working in this department in '78?

9 A. I do know what to be the case, sir?

10 Q. That you had just the 2,3,7,8 isomer.

11 A. That is correct.

12 Q. So, at that time you would have reported, if you
13 had tested these samples using that standard, you would have
14 reported these various levels of TCDD as shown in this last
15 column, would you not, sir?

16 A. We would have reported it that way if that is what
17 we saw on the chromatograph but you just remember, sir --

18 Q. We have already gone through that assumption.

19 A. But if something didn't coelute, it would not have
20 been reported as a 2,3,7,8 or coeluter. I think that is the
21 key that we are discussing here.

22 Q. Well, but 1,3,6,8, my understanding is, you have
23 said it, I think you have said it, maybe the others have said
24 it, that it does coelute with 2,3,7,8?

1 A. No, sir. 1,3,6,8 does not coelute.

2 Q. Well, then we have had some people who have misled
3 us here, Doctor Mieure, because earlier witnesses have
4 testified that when they report and there is documents in
5 evidence that say and Doctor Wilson has testified to it, that
6 1,3,6,8 coelutes with 2,3,7,8 and you can't distinguish
7 them. You can't separate. You may be talking about all
8 1,3,6,8 --

9 MR. MUSGRAVE: Just a moment, Doctor Mieure. I
10 object to counsel's speech because it clearly is a speech.
11 His interpretation of the testimony. I object to counsel's
12 erroneous interpretation of the testimony and counsel stating
13 conclusions that he might be drawing from the testimony. It
14 is clearly contrary to the evidence and I object to it and I
15 request that the court instruct the jury to disregard it and
16 that Mr. Carr ask a question.

17 Q. I direct your attention to exhibit --

18 MR. MUSGRAVE: Just a moment, Mr. Carr.

19 MR. CARR: I wasn't. I really didn't pay to much
20 attention to Mr. Musgrave's objection because I knew I could
21 meet it because I will withdraw the question and whatever he
22 is objecting to and demonstrate what I said is correct.

23 MR. MUSGRAVE: The speech, Mr. Carr, is what I was
24 objecting to. You withdraw the speech?

1 MR. CARR: Well, if it wasn't a speech I withdraw
2 it.

3 THE COURT: Let's me rule on that part. That was a
4 question and not a speech. So your objection to that part is
5 overruled. The question has been withdrawn and I will allow
6 it to be withdrawn.

7 MR. MUSGRAVE: May the jury be instructed to
8 disregard it now that he has withdrawn it?

9 THE COURT: I will reserve ruling on it to see if
10 he can establish it.

11 Q. Doctor, if you look at Exhibit 1116 which Doctor
12 Wilson has previously identified it but might be a little
13 difficult for to you read it up close.

14 A. I think I can read it.

15 MR. MUSGRAVE: What is the exhibit number, Mr.
16 Carr?

17 MR. CARR: 1116.

18 Q. Have you read that, sir?

19 A. I haven't finished it yet. All right. Okay, I
20 have read it.

21 Q. My memory doesn't serve me to tell me exactly the
22 date of this but it is either May or March. It wouldn't be
23 May because it says -- So it would be March or April of 1979?

24 MR. MUSGRAVE: Mr. Carr --

1 MR. CARR: You haven't seen it?

2 MR. MUSGRAVE: I have it here. This is one page, I
3 believe, out of a month end summary.

4 MR. CARR: That is correct.

5 MR. MUSGRAVE: And I think it is important if you
6 are going by your memory that you go by your memory according
7 to the evidence that you put in and I believe if you look at
8 the appropriate document, we will have the date.

9 MR. CARR: I think you will find it would be March
10 of '79, counsel.

11 MR. MUSGRAVE: Well, I think it is a month end
12 summary dated March but --

13 MR. CARR: Yes. That is the only date that was on
14 it was March '79.

15 MR. MUSGRAVE: It comes out after the month of
16 March.

17 MR. CARR: I really don't care whether it came out
18 in June or July. It is unimportant when it came out.

19 MR. MUSGRAVE: Well, it may be to you, Mr. Carr.

20 Q. You do see that by this time, Doctor Mieux, the
21 testimony is that they do have the 1,3,5,8 isomer standard.
22 Do you understand that?

23 A. Does it say that in there?

24 Q. No, it doesn't say that in there but I am advising

1 you that that is the fact.

2 MR. MUSGRAVE: Well, I object to by this time with
3 no identified date, Your Honor.

4 MR. CARR: By whenever this document was prepared.

5 THE COURT: Objection is overruled.

6 Q. And, Doctor, this document addresses the point of
7 inability to distinguish some coeluters from other isomers,
8 does it not, sir?

9 A. Yes, it does.

10 Q. Now, Doctor, whatever the report would be, in 1978,
11 you had no standard other than the 2,3,7,8 standard to use to
12 quantify tetras, isn't that correct?

13 A. That is correct.

14 Q. And at that time while they weren't tested at that
15 time, it is in evidence some 7 samples of Santophen that was
16 tested, one of these documents here, these TCDD levels were
17 in these products whether they were detected or not, isn't
18 that correct, sir?

19 A. The TCDD levels were in the products whether they
20 were tested or not?

21 Q. Yes.

22 A. If these are the same samples, I would assume that,
23 yes.

24 Q. The product that was manufactured in '78 and '79

1 contained these levels of tetrachlorodibenzo-p-dioxins, did
2 they not, sir?

3 MR. MUSGRAVE: I object, Your Honor.

4 Q. According to this report?

5 MR. MUSGRAVE: I object, Your Honor. The question
6 calls for pure conjecture and speculation. He is now asking
7 whether all products contain these levels. There is not
8 anyone can say that.

9 MR. CARR: I didn't say that.

10 MR. MUSGRAVE: That is exactly what you said.

11 THE COURT: Objection is overruled. Answer the
12 question.

13 A. The report says that some samples contained some
14 dioxins.

15 Q. All of the samples tested at least the tests that
16 were reported shown in this exhibit, they all contained tetra
17 dioxins in addition, it doesn't refer to other dioxins but
18 they all contained tetra dioxins, did they not, sir?

19 MR. MUSGRAVE: I object to it, Your Honor. That is
20 clear misrepresentation of the document that he has in front
21 of him. There are clear samples here where there are none
22 detected at the levels of detection for all.

23 MR. CARR: Point out the document, the sample shown
24 on 1285A that did not have tetra dioxins and so reported?

1 Point that out to me. Which one is not --

2 MR. MUSGRAVE: I thought you were referring to
3 1285. The entire document.

4 MR. CARR: But I am referring from the beginning to
5 exhibit 1285A, as you know and as the witness knows.

6 MR. MUSGRAVE: No, Mr. Carr. You have been saying
7 all products. You see, sir? Now you are referring
8 specifically to samples, I understand.

9 THE COURT: Objection is overruled. Go ahead, Mr.
10 Carr.

11 Q. All of these products that were tested and shown by
12 this chart, that were tested in 1979, but that were
13 manufactured both in '78 and in '79 showed detectable levels
14 of TCDD?

15 MR. MUSGRAVE: You are referring to 1285A?

16 Q. Do they not, Doctor Mieux?

17 A. Referring to the chart that is up here, yes.

18 Q. Yes. And, Doctor --

19 MR. MUSGRAVE: May the record show -- Do I
20 understand that to be 1285A?

21 THE COURT: I think the record was clear on what
22 the question referred to.

23 Q. Doctor, insofar as the 2,3,7,8 isomer is concerned,
24 that is those isomers that coelute with 2,3,7,8 now that you

1 have more specificity, the batch identified as having been
2 manufactured on the 15th of October, 1978, contained 1.4
3 parts per billion of 2,3,7,8 TCDD et al, does it not, sir?
4 Did it not, sir?

5 A. The date again was what?

6 Q. October 15, 1978?

7 A. 1.4 ppb, yes, sir.

8 Q. And the product manufactured on November 30, 1978,
9 contained 1.2 parts per billion of 2,3,7,8 et al, did it not,
10 sir?

11 A. That is correct.

12 Q. And the batch manufactured on December 15, 1978,
13 contained 2.2 parts per billion of 2,3,7,8 TCDD et al, did it
14 not, sir?

15 A. That is what is reported here, yes, sir.

16 Q. And the batch manufactured on the third one of
17 December of 1978 contained 2.9 parts per billion of 2,3,7,8
18 et al, did it not, sir?

19 A. Yes.

20 Q. And in January and no day in January but the month
21 of January as specified contained either 1.2 or 3.4 parts per
22 billion of 2,3,7,8 TCDD et al, did it not, sir?

23 A. Contained something in that range, yes.

24 Q. Well, the thing says plus or minus 1.1?

1 A. Well, that is a standard deviation so that means
2 that the result, the true value is expected to lie within
3 there. Within 95 percent limits.

4 Q. So where from 1.3 parts per billion 2,3,7,8 TCDD
5 and average it out at 2.3 after having 5 runs, isn't that
6 correct, sir?

7 A. That is what the report says.

8 Q. Doctor, another batch manufactured in 1979, January
9 30, 1979, has 7.9 parts per million -- parts per billion,
10 rather, of 2,3,7,8 TCDD?

11 A. That is what the report says.

12 Q. Doctor Mieux, you are now aware of the fact,
13 aren't you, sir, that the 2,4 dichlorophenol that was
14 manufactured in February of '79 contained, according to your
15 own report, 120 parts per billion of 2,3,7,8 TCDD; according
16 to the University of Nebraska it contained 2600 parts per
17 billion of 2,3,7,8 TCDD; and the Santophen manufactured in
18 January of 1979 contained 7.1 parts per billion of 2,3,7,8
19 TCDD et al. All of that, all of these have high findings of
20 2,3,7,8 all occurred in the months of January and February of
21 1979, isn't that correct, sir?

22 MR. MUSGRAVE: I object to the question. It mis-
23 characterizes and misrepresents and misstates the evidence,
24 Mr. Carr. You yesterday put in documents with regard to the

1 finding of Nebraska. That clearly showed by that document
2 that the finding of Nebraska was all tetras. In fact,
3 included some isomers that did not even coelute with the
4 2,3,7,8 standard. Just for starters. That is the beginning
5 of where you mischaracterized the evidence. I object, Your
6 Honor, to the question as a mischaracterization of the
7 evidence and an attempt to mislead the jury.

8 THE COURT: The objection is overruled.

9 A. Sir, I don't recall what University of Nebraska
10 report was.

11 Q. Let me show you Doctor Ward's analysis.

12 MR. MUSGRAVE: Why don't you show him the report,
13 counsel?

14 Q. 1169A. Now, does that refresh your recollection,
15 Doctor Mieuire?

16 A. I can read what is said here but in terms of does
17 it refresh my recollection, no, it doesn't. Is that a
18 report?

19 Q. Doctor Brian Ward's memo dated 9-25-79. You do
20 recognize his signature, don't you?

21 A. No, I don't recognize his signature. It says
22 something Ward but I don't recognize his signature.

23 Q. You have not seen his signature?

24 A. I probably seen it but it has been years.

1 Q. Who is Doctor Brian Ward?

2 A. He was an industrial hygienist with Monsanto at
3 that time.

4 Q. And you do recognize that he described these
5 Nebraska samples as having those parts per billion of the
6 2,3,7,8 family?

7 MR. MUSGRAVE: I object to counsel testifying as to
8 what anybody described. The document speaks for itself.

9 MR. CARR: I am asking what the document describes.

10 THE COURT: Objection is overruled.

11 A. And your question again was?

12 Q. The document describes the 2600 parts per billion
13 as being in the 2,3,7,8 family, doesn't it, Doctor Mieux?

14 A. 2,3,7,8 family. Yes, sir. Is this a final report,
15 sir?

16 Q. I haven't the vaguest idea, Doctor Mieux. These
17 were reports given to me.

18 MR. MUSGRAVE: Do you have the vaguest idea?

19 Q. This is a report of Doctor Mieux in which he
20 compares the Dayton findings to the Nebraska findings?

21 A. No, sir. That is not my report. You just said it
22 is a report of Doctor Mieux.

23 Q. You are correct. Doctor Ward's report in which he
24 compares the Dayton findings to the Nebraska findings and

1 different dates for the Dayton findings, June 23rd and
2 October 3rd of '79. You see that date also?

3 A. Yes. I would be very surprised if that is a final
4 report. It is probably --

5 Q. I don't want to get into a hassle with you. It is
6 not a report at all. It is his analysis, apparently his
7 analysis of what these other final reports said and all I am
8 directing your attention to is that this Monsanto document
9 prepared by Doctor Ward described 2600 parts per billion,
10 Nebraska report as being in the 2,3,7,8 family, does it not,
11 sir?

12 A. This particular piece of paper says that, yes. But
13 you can't vouch for what this reports. It may even be
14 telephone notes.

15 Q. I am addressing the objection that Mr. Musgrave
16 made as to what was identified by Nebraska and what was not
17 identified by Nebraska.

18 MR. MUSGRAVE: Well, you are not, Mr. Carr. You
19 are not addressing it. Show him the report that you put into
20 evidence, Mr. Carr, if you want to address my objection.

21 MR. CARR: Mr. Musgrave --

22 THE COURT: I have already ruled on the objection.
23 It need not be addressed, for that matter, and the point that
24 Mr. Carr has chosen to address it, that is proper. You may

1 proceed, Mr. Carr.

2 Q. Doctor Mieure, whether it is 120 parts per billion
3 or 2600 parts per billion is irrelevant to the question that
4 I am asking you. The question that I am asking you, is it
5 not a fact that high tetras were reported in the Santophen or
6 found in the Santophen that were manufactured in January of
7 '79 just as there were high tetras found in the OCP
8 manufactured in January of '79 and just as there were high
9 tetras found in the 2,4 dichlorophenol manufactured in
10 February of '79? Isn't that correct, sir?

11 A. I wouldn't use high to characterize the findings.
12 No. They were detectable.

13 Q. Well, they were above, weren't they, sir, what
14 document for Santophen 1239A describes as probably medically
15 acceptable for Santophen?

16 A. I am not familiar with it. What is the document,
17 sir?

18 Q. You are not familiar with it?

19 A. Okay. Your question is?

20 Q. These levels of Santophen that were detected in
21 this material that was tested in '79 had a number of samples
22 that were above the one part per billion level that this
23 document describes Doctor Paget estimating that is quote
24 probably acceptable medically in Santophen, isn't that

1 correct, sir?

2 A. Some of those other numbers were higher than that.

3 Q. Could you answer that question, please?

4 A. I would have to --

5 COURT REPORTER: These levels of Santophen that
6 were detected in this material that was tested in '79 had a
7 number of samples that were above the one part per billion
8 level that this document describes Doctor Paget estimating
9 that is quote probably acceptable medically in Santophen,
10 isn't that correct, sir?

11 A. Yes, that is correct, but I don't think he is
12 saying that something above that is necessarily unsafe,
13 though. I think that was his judgment that allows certainly
14 if you can get down to that level you have got a safe level.

15 Q. Now, you have discussed that with Doctor Paget,
16 haven't you, sir?

17 A. No, sir.

18 Q. You have discussed that with Doctor Wilson, haven't
19 you, sir?

20 A. I haven't seen Doctor Wilson.

21 Q. You have discussed that with the lawyers?

22 A. I have heard it discussed.

23 Q. You have heard it discussed with the lawyers and
24 you got that thought from them, didn't you, Doctor Mieure?

1 A. No, sir.

2 Q. From whom did you get that thought?

3 A. From myself.

4 Q. You had never seen this document before, Doctor

5 Mieuire. You just got through telling us that?

6 A. I don't know that I have seen the document. I told

7 you the thought, not the document.

8 Q. And you discussed that with who, Mr. Musgrave?

9 A. I don't know who I discussed it with.

10 Q. Well, think, think. When did you discuss it with

11 them, Doctor Mieuire?

12 A. When did I discuss it?

13 Q. This one part per billion. Whether or not what

14 Doctor Paget meant when he said one part per billion is

15 probably acceptable medically? Think back hard.

16 A. I believe I was asked what and I don't remember.

17 Q. I am not asking you that. I am asking you to think

18 back when you had the discussions and with whom you had the

19 discussions.

20 A. Within the last couple of days but I don't remember

21 whom.

22 Q. Who were those persons in the last couple of days

23 you had those discussions with?

24 A. Some of those attorneys.

1 Q. Name those attorneys?

2 A. The attorneys that it could have been?

3 Q. No, I want to know the attorneys that you discussed
4 it with, not who it could have been.

5 A. Sir. I don't know who I discussed this with.

6 Q. Think hard. It just happened a couple of days ago,
7 didn't it, Doctor Mieure?

8 A. Yes.

9 Q. It just happened while you were waiting here to
10 come on the stand, didn't it, sir?

11 A. Yes.

12 Q. Who was present when you had that discussion?

13 A. I don't recall, sir.

14 Q. What attorneys were present, sir?

15 A. I don't recall.

16 Q. Was Mr. Musgrave there?

17 A. Possibly.

18 Q. You surely can remember whether you discussed it
19 with Mr. Musgrave? .

20 A. You are implying there was a big discussion of
21 this, sir, and that isn't the case.

22 Q. I am asking you discussed it. With whom did you
23 discuss it?

24 A. I don't remember, sir.

1 Q. Give me you are best memory then?

2 MR. MUSGRAVE: I object. It has been asked and
3 answered.

4 Q. I want your best memory?

5 MR. MUSGRAVE: Just a moment. May I finish making
6 my objection. I object, Your Honor,. He has been asked and
7 answered the question and this is just a repetitive question.

8 THE COURT: Overruled.

9 Q. Your best memory, Doctor Mieuse?

10 A. It could have been --

11 Q. I don't want who it could have been.

12 A. I don't know who it was, sir.

13 Q. Was Mr. Musgrave present?

14 A. He may have been.

15 Q. Was Mr. Heineman present?

16 A. He may have been.

17 Q. Was he present or not?

18 A. I don't know, sir. I really don't.

19 Q. Where did the discussion take place?

20 A. Probably in the annex about 3 blocks from here.

21 Q. And was Mr. Nassif present?

22 A. I don't know, sir.

23 Q. Well, tell us who wasn't present? Was Mr. Thiess
24 present?

1 A. Who is Mr. Thiess. Mr. Thiess must have been
2 absent because I don't know who Mr. Thiess is.

3 Q. Was Mr. Cornfeld there?

4 A. I don't know Mr. Cornfeld.

5 Q. Well, name the attorneys that you do know from
6 Monsanto that represents Monsanto?

7 A. The attorneys from Monsanto that represent
8 Monsanto?

9 Q. Yes, that could possibly be the candidates?

10 A. Beyond the group that we have mentioned, I think
11 you have just about covered them.

12 Q. Well, then it is either Mr. Nassif, Mr. Heineman or
13 Mr. Musgrave, is that correct, sir?

14 A. Yes.

15 Q. Or could be all 3, couldn't it, sir?

16 A. It could be.

17 Q. You could have been in a room with all 3 of those
18 attorneys, couldn't you, sir?

19 A. Could be.

20 Q. And it is that discussion that you learned of what
21 Doctor Paget said and what Doctor Wilson recorded, isn't that
22 correct, sir?

23 A. That is when these facts came up. It wasn't
24 presented to me as what there is, who said what and where.

1 Q. I didn't ask you that. I asked you that is when
2 you learned it?

3 A. Yes.

4 Q. And that is when you determined, when you decided
5 what you were going to testify to that Doctor Paget must have
6 meant that anything above that could also be safe. That is
7 where you made that decision, isn't it, sir?

8 A. I don't believe that is what I said that anything
9 above that could be safe.

10 Q. Well, what did you say?

11 A. I believe I said that that isn't saying that a
12 level above that would be harmful.

13 Q. And you don't interpret that as saying that, I take
14 it?

15 A. I think he made a judgment that a level below that
16 certainly is safe.

17 Q. And --

18 A. He is not saying a level above it is not safe.

19 Q. Is it saying that a level above it is safe?

20 A. It is not saying that it is not, it is not saying
21 that it is.

22 Q. Yes. Indeed. That is exactly right, isn't that
23 correct, Doctor Mieure? So he is not saying with this memo
24 that anything above one part per billion 2,3,7,8 TCDD is

1 safe, is he, sir?

2 A. He is not saying that it is safe, no.

3 Q. Excuse me. That is exactly right. And, therefore,
4 one part per billion could indeed be unsafe, couldn't it,
5 sir?

6 A. Could indeed be.

7 Q. Yes?

8 A. Yes.

9 Q. And that is what Doctor Paget is telling you people
10 at Monsanto that is manufacturing this product. That above
11 one part per billion could be medically speaking unsafe,
12 isn't that correct, sir?

13 MR. MUSGRAVE: I object to that, Your Honor.

14 THE COURT: Objection is overruled.

15 A. I think he is saying that if you --

16 Q. Could you answer that question? Read the question
17 back to him and you can say yes and you can say no, you can
18 say anything that is responsive to that question.

19 MR. MUSGRAVE: You asked him, Mr. Carr, what Doctor
20 Paget was telling him and he is about to answer it.

21 MR. CARR: That isn't what I asked him.

22 COURT REPORTER: And that is what Doctor Paget is
23 telling you people at Monsanto that is manufacturing this
24 product. That above one part per billion could be medically

1 speaking unsafe, isn't that correct, sir?

2 A. He was telling us if we he can get down to that
3 level we can be certain we have a safe product.

4 Q. Doctor Mieure, answer that question, please, that I
5 asked you. I asked you whether or not what I said was
6 correct. You can say yes, it is correct. You can say no, it
7 is not correct. I am either wrong in what I said to you or I
8 am right in what I said to you. Please answer that
9 question.

10 A. Well, I don't know whether you are wrong or right.

11 Q. Would you read the question back to him again and
12 answer that question?

13 COURT REPORTER: And that is what Doctor Paget is
14 telling you people at Monsanto that is manufacturing this
15 product. That above one part per billion could be medically
16 speaking unsafe, isn't that correct, sir?

17 A. Well, I don't believe this is the question that can
18 be fairly answered with a yes or no.

19 MR. CARR: Your Honor, would you direct the
20 witness --

21 THE COURT: Doctor Mieure, you have to answer.

22 MR. MUSGRAVE: Are you directing him to answer yes
23 or no?

24 THE COURT: I am directing him to answer yes or no.

1 MR. MUSGRAVE: May I be noted that the witness
2 is --

3 THE COURT: The question is clear. Doctor Mieure,
4 please answer the question yes or no.

5 A. The question again was he --

6 Q. Could you read the question again?

7 THE COURT: It has been read twice and stated once
8 and I think that is enough. Doctor Mieure, answer the
9 question.

10 A. Okay. Well I truly have forgotten but I believe
11 the answer is yes.

12 Q. Doctor Mieure, in point of fact, at least by
13 October 15, 1979, somebody at Monsanto, if they read Tom
14 Taulli's report, knew that of the batches that were
15 manufactured in 1978 and 1979, 1, 2, 3, 4, 5, 6, 7, 8 of
16 those batches or 9 of those batches contained 2,3,7,8 et al
17 isomers above the level of one part per billion, isn't that
18 correct, sir?

19 A. Sir, I am not sure there is a report. You said if
20 there was a report.

21 Q. The document, Doctor Mieure, that is 1285A, isn't
22 that correct, sir. That 9 contain 2,3,7,8 TCDD et al above
23 the level of one part per billion?

24 A. I guess a smaller number, sir. You are talking

1 about the 2,3,7,8 et al?

2 Q. That is right. You get 9?

3 A. Could I see once again.

4 Q. 1, 2, 3, 4, 5, 6, 7, 8, 9?

5 A. Yes, sir.

6 Q. And the -- you don't know, do you, sir, whether or
7 not all of the, and in addition to the ones that had 9, there
8 is 1, 2, 3, 4 additional that contain a half of one part per
9 billion, isn't that correct, sir, of 2,3,7,8 TCDD et al?

10 A. Yes.

11 Q. And Doctor Mieure, I take it you don't know whether
12 or not this information was ever disseminated to the people
13 that make Lysol, do you, sir?

14 A. No, sir. I don't know that.

15 Q. All right. And you, of course, wouldn't know how
16 the people that make Lysol would react if they knew that the
17 product that was being shipped to them contained TCDD levels
18 not just the 2,3,7,8 levels that we have described but the
19 all the TCDD levels that is described in this Exhibit 1285A?
20 You don't know how they would react to that, do you, sir?

21 A. No, sir.

22 Q. Doctor Mieure, because I don't want to get into it
23 if you were not party to it but were you ever at any
24 discussion at any level in which it was discussed whether or

1 not Lehn and Fink or Sterling Drug Company should or should
2 not be advised of these things that are contained in this
3 Exhibit 1265A?

4 A. I believe the question was was I every in any
5 meetings of that type?

6 Q. That is correct.

7 A. No. I was never in any meetings of that type.

8 THE COURT: Mr. Carr, is this a good point for a
9 short break?

10 MR. CARR: Yes, Your Honor.

11 THE COURT: Ladies and gentlemen, we will take a
12 short recess at this time. I would remind you and this will
13 go for any other breaks that we take during the day that you
14 are not to discuss this matter among yourselves, with anyone
15 outside the jury panel or as of yet form any opinions or
16 conclusions about the matters on trial. Court will be in a
17 short recess.

18 COURT RECESSED:

19 (The following proceedings were had in the hearing
20 and presence of the jury)

21 JAMES MIEURE

22 having resumed the witness stand, being previously sworn,
23 testified further as follows:

24

1 CROSS EXAMINATION

2 By

3 MR. REX CARR.

4 Q. Doctor Mieure, turn to the front page of document
5 1285, if you would, 1285A, that is the last page of the
6 document, refers to the production from August 17th of '78
7 through April 29th of '79, does it not, sir?

8 A. August 17th through April 29th of '79, yes, sir.

9 Q. Now, the front page deals with the production
10 period from May 16th of '79 to September 12th of '79, does it
11 not, sir?

12 A. It appears to, yes, sir.

13 Q. So in these documents we have the production
14 covered from August, at least some of the material produced
15 in that period of time, from August of '78 through September
16 12th of '79, a period just slightly over one years time,
17 correct, sir?

18 A. Yes, sir.

19 Q. All right. And on that front page of 1285, it
20 shows, does it not, that in May of '79 there were 2 batches
21 that had one or above part per billion of 2,3,7,8 TCDD et
22 al. In June again there were 2 out of 3 batches that had
23 above one or above 2,3,7,8 TCDD, isn't that correct, sir?

24 MR. MUSGRAVE: Et al, Mr. Carr.

1 Q. Isn't that correct, sir?

2 A. Yes, it is.

3 Q. And in July they were all below the detection limit
4 of .5, is that correct, sir? Detected but was below that .5
5 limit, correct, sir?

6 A. I am trying to see what the designation, what that
7 caret actually means in this case. Whether it means detected
8 or not detected. It is somewhat ambiguous. It really should
9 be defined and I don't see it defined exactly what that
10 means.

11 Q. Well, my understanding from other documents, I
12 don't know, I don't recall whether you have testified to it
13 or not but other documents where you have the none detected,
14 you put ND caret and then your detection level. Where you
15 have detected something that may be the isomer you are
16 looking for, you don't use the initials ND, you just put the
17 caret and then your detection limit or the level at which you
18 detected it not more than?

19 MR. MUSGRAVE: We will object.

20 Q. Is that correct, sir?

21 MR. MUSGRAVE: I object to Mr. Carr's
22 understanding. If that purports to be his understanding
23 based upon the evidence because it is a mischaracterization
24 and misrepresentation of the evidence.

1 THE COURT: Overruled.

2 A. My group generally would have reported it the way
3 you said. Not all analytical chemists were consistent and I
4 am not completely certain how Mr. Taulli reported.

5 Q. Well, the way that you criticized, well I don't
6 know whether you criticized that particular point but you
7 pointed out that the letters ND should be used where it is
8 none detected?

9 A. Yes, I did, and I also pointed out that it would be
10 best to show right on the document it is what your
11 abbreviations meant.

12 Q. All right. So in any event, be that as it may,
13 whether there was or was not, it was below one part per
14 billion that Doctor Paget estimated was probably medically
15 acceptable in the document that we referred to earlier, isn't
16 that correct, sir? That is. All the batches for July?

17 A. July production, yes.

18 Q. And in August of '79 there was of the 2 batches
19 reported, one had one part per billion of 2,3,7,8 et al and
20 that was August 31st of '79, is that correct, sir?

21 A. That is correct.

22 Q. And now, do you have any knowledge, Doctor Mieux,
23 that from September 12th of '79 for a period of the next 3
24 years, do you know whether or not any Santophen was ever

1 again tested to discover whether or not it had one part per
2 billion or more of 2,3,7,8 et al in it?

3 A. It is my recollection that Monsanto set up a
4 routine screening procedure for monitoring Santophen.

5 Q. Well, they did on paper but my question is, do you
6 have knowledge of any single Santophen sample that was tested
7 between that period of time and the next 3 years?

8 A. Do I have personal knowledge of it?

9 Q. Yes. Have you ever seen any report? Do you have
10 any knowledge that Santophen was tested again after September
11 12, 1979, up to late 1982, a period of some 3 years?

12 A. I have no personal knowledge of that but I would
13 not have expected to have had that knowledge.

14 Q. All right. You don't have any recollection of ever
15 having tested it, I take it, do you, sir, in that period of
16 time? Of course, you wouldn't remember specifically anyway,
17 would you, sir?

18 A. I would not have tested it myself specifically
19 because I was a manager at that time.

20 Q. Now, if these levels of -- you had these kind of
21 levels in '78 and '79. You changed your, you quit using
22 caustic in April of '79 but even after you quit using the
23 caustic, you were still getting 2,3,7,8 et al at one and
24 above, weren't you, sir, according to these documents?

1 A. Sir, I don't know when these changes took place.

2 Q. Well, if you would assume, if you would, that they
3 quit using the caustic in the chlorinated phenols, according
4 to the documents we have in evidence, sometime in April of
5 '79. That still notwithstanding whatever change in processes
6 may or may not have taken place in that period of time, they
7 were still detecting or they were still being manufactured
8 Santophen that had 2,3,7,8 TCDD et al in it after that change
9 in manufacturing process, isn't that correct, sir?

10 A. Based on these results?

11 Q. Yes.

12 A. These results indicate --

13 MR. MUSGRAVE: You say 2,3,7,8 et al, Mr. Carr?

14 MR. CARR: That is what I said.

15 MR. MUSGRAVE: You said 2,3,7,8, Mr. Carr.

16 Q. Isn't that correct, Doctor Mieux, according to
17 these documents?

18 A. According to these documents, yes.

19 Q. And do you have, do you know, have you discussed
20 with counsel, do you have any knowledge from any source
21 whatsoever that a single other batch of Santophen was tested
22 after September 12th of '79 up until late '82?

23 A. As I just testified, no, I don't know that but I
24 would not have effected to know that.

1 Q. Now, and these results are erratic. Sometimes you
2 get detectable levels of Santophen in the product, according
3 to these reports, and sometimes you don't, according to the
4 first page of document 1285, isn't that correct, sir?

5 A. I don't know if I would describe it as erratic but
6 sometimes you appear to get it and sometimes you don't.

7 Q. And you never really know whether the product
8 manufactured then has the 2,3,7,8 et al isomer in it without
9 testing it then, would that be a fair conclusion to make,
10 sir?

11 A. That you would never know.

12 Q. You don't know that it is in there since you don't
13 have consistent results. Since one month you can detect it
14 and the next month you don't detect it and then the following
15 month you detect it again or the one batch you detected and
16 the next batch you don't and one batch you detect and the
17 next batch you don't. If you don't test it, you will never
18 know whether it is there or not, will you, sir?

19 A. At these low levels, no.

20 Q. And, of course, if you don't detect it, if you
21 don't test it, you wouldn't detect it and if you wouldn't
22 detect it you can't notify anybody that it is there, can you,
23 sir?

24 A. Well, I don't know why you would want to notify but

1 --

2 Q. I didn't ask you that Doctor Mieure, did I?

3 A. No, sir.

4 Q. And don't you think that a customer, since you
5 brought up the customer, don't you think that a customer
6 ought to have the right to know what is in the product he is
7 buying from you?

8 A. I guess that would depend on whether it is a
9 significant finding or not.

10 Q. Whether who judged it was significant? You or the
11 customer?

12 A. Whoever had the information.

13 Q. Well, if you don't pass that information on to me,
14 I can't make a decision whether it is significant or not, can
15 I, sir?

16 A. Who are you representing in this?

17 Q. The customer. If you don't give me the
18 information, I can never make that decision, can I, Doctor
19 Mieure? Isn't that correct, sir?

20 A. You are talking about the customer now?

21 Q. Yes, the customer.

22 A. The customer couldn't make the decision if he
23 didn't have the information, no.

24 Q. And, do you know of any reason why you wouldn't

1 want to tell your customer that it does contain dioxins in
2 the product you are selling? Can you think of any reason why
3 Monsanto wouldn't want to tell their customers of that?

4 A. Sir, there are hundreds of trace organic chemicals
5 in every product and you can't possibly relate all of those
6 to a customer.

7 Q. But that isn't really what I asked you. I asked
8 you whether or not you know of any reason why Monsanto would
9 not want to tell its customers that the product it is
10 shipping to it does or does not contain 2,3,7,8 isomers et
11 al?

12 MR. MUSGRAVE: I object to the question as calling
13 for this witness to speculate and state conjecture as to what
14 somebody else may or may not think with regard to reasons why
15 they would or wouldn't do something. It calls for him to
16 state such testimony. It is improper and I object.

17 THE COURT: Overruled. I think it calls for his
18 opinion within an area which he has expertise. Overruled.

19 A. Okay. No. I don't know what criteria Monsanto
20 used to decide when and when not to notify a customer.

21 Q. Doctor, I don't think that is exactly responsive to
22 what I asked you. Do you know of any reason why Monsanto,
23 can it occur to you, any reason why Monsanto might not want
24 to tell the people that make Lysol whether what they are

1 shipping them does or does not contain 2,3,7,8 TCDD?

2 A. No, sir.

3 Q. Okay. You don't know what, how Monsanto views the
4 Lehn and Fink, whether or not they would quit buying the
5 product if they discovered that there were dioxin isomers in
6 the product. You don't know that?

7 MR. MUSGRAVE: I object to that. That calls for
8 the man to speculate and to state conjecture as to what Lehn
9 and Fink or people at Lehn and Fink would or would not think.

10 THE COURT: Overruled.

11 Q. I am asking his knowledge.

12 A. I have no knowledge of that issue, sir. I have no
13 contact with Lehn and Fink.

14 Q. But in any event, you do know that if you don't
15 pass the information on, you and I can differ as to what is
16 significant, can't we, sir? Doctor Paget says one part per
17 billion is probably safe but even he is using the word
18 probably safe. He doesn't know that and he says it is
19 probably acceptable medically. Even he isn't being 100
20 percent sure when he uses the word probably, isn't that
21 correct, sir?

22 MR. MUSGRAVE: I object to that, Your Honor.
23 Calling for this witness to testify as to what Doctor Paget
24 thinks or doesn't think. Doctor Paget has been here. He has

1 testified and I also object it is a mischaracterization and
2 misrepresentation of the testimony of Doctor Paget.

3 THE COURT: Overruled, on both grounds.

4 A. And the question again, sir, was?

5 MR. MUSGRAVE: Let me add that that is also a
6 question that has about 5 questions in it and I object to the
7 multiple nature of the question.

8 THE COURT: Overruled.

9 A. That is what I was going to ask you. Which of
10 those would you like me to answer?

11 Q. The one that ended up isn't that correct that he is
12 not 100 percent sure that one part per billion is acceptable
13 medically?

14 MR. MUSGRAVE: The same objection with regard to
15 speculation and conjecture. Requiring the witness to
16 interpret.

17 THE COURT: Same ruling. Overruled.

18 A. Doctor Paget used the word probably. I don't know
19 the context in which he used it.

20 Q. My question is, though, that that means that using
21 the word probably means that he isn't 100 percent sure that
22 it is acceptable medically, isn't that correct, sir?

23 MR. MUSGRAVE: I object. It has been asked and
24 answered. On the same basis. Calling for conjecture and on

1 what Doctor Paget meant.

2 THE COURT: Overruled.

3 A. I believe it is Doctor Paget's opinion that is
4 stated there and so he put it down as probably because it is
5 his opinion.

6 Q. And that means he is not 100 percent sure, isn't
7 that correct, Doctor Mieure?

8 MR. MUSGRAVE: May my objection to these continued
9 questions requesting this witness to speculate and to draw
10 conclusions as to what Doctor Paget meant be a continuing
11 objection, Your Honor?

12 THE COURT: It is noted as a continuing objection.

13 A. Which means he is not 100 percent sure was your
14 question, I believe?

15 Q. Yes.

16 A. Scientists are seldom 100 percent sure of anything.

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

19 THE COURT: Doctor Mieure, you have to answer the
20 question directly.

21 MR. CARR: And ask the jury to be instructed to
22 disregard his response.

23 THE COURT: The jury is so instructed. It was not
24 responsive.

1 A. Which means, the question again was which means he
2 is not, which means --

3 MR. CARR: Would you direct the witness to answer
4 the question?

5 THE COURT: Doctor Mieure, please answer the
6 question.

7 A. Was the question, I don't know whether yes or no is
8 the answer. Was it directed as a positive question or as a
9 negative question?

10 Q. Could you answer the question please, Doctor
11 Mieure?

12 A. I am not sure what the question was, sir.

13 Q. You are not sure what it is?

14 A. I am not sure whether you asked it in a negative
15 time.

16 Q. Doctor Paget isn't 100 percent sure, is he, sir?

17 A. He doesn't appear to be. Scientists seldom --

18 MR. CARR: Would you direct the witness to answer
19 the question again?

20 A. I don't know whether he is or not, sir.

21 THE COURT: Doctor Mieure, please answer the
22 question.

23 MR. MUSGRAVE: Well, I object. He has. He said he
24 doesn't know whether he is or he is not. That is his answer.