

1 Q And that would be in parts per billion how much?

2 A .44.

3 Q .44 parts per billion?

4 A Yes.

5 Q All right. So less than one part per billion?

6 A Yes.

7 Q And again that would be below the detection limits
8 of Monsanto in July of 1979?

9 A That's correct.

10 Q Now, with regard to the other September, 1979
11 Nebraska report, I believe that's Plaintiffs' 1277 or---let me
12 be sure.

13 A 76.

14 Q 1276. Now, Mr. Carr referenced you to a number on
15 that Nebraska report which he then, this number right here of
16 2,700, the one of 2,700.

17 A Yes, that's correct.

18 Q Now, do you know if this University of Nebraska report,
19 September 11, 1979, that was done, or at least was reported, at
20 the same time as the samples you took up there? Do you know
21 if that's in parts per trillion, sir?

22 A Okay, on their data table they give their detection
23 limits or their concentrations in nanograms per milliliter,
24 which is parts per billion.

1 Q Uh-huh. Well, do you know why they would have
2 reported parts per trillion in one and parts per billion on
3 another?

4 A I assume it would have had something to do with the
5 experts at detection limits that were experienced on the
6 particular samples.

7 Q So they may have been on one particular sample if
8 they get down to parts per trillion, on another particular
9 sample they were reporting parts per billion?

10 A As detection limits.

11 Q As detection limits. And is this something that is,
12 should I say, not unusual when you are talking about analytical
13 chemistry and the ability to achieve detection limits in
14 different matrixes, different mixtures of those chemicals?

15 A That's absolutely correct, detection limit is an
16 experimentally termed performance characteristic. It is very
17 highly matrix dependent.

18 Q In any event, we have just established that
19 September of 1979 by their own report they were not isomer
20 specific for 2,3,7,8, isn't that correct?

21 A That's correct.

22 Q So obviously this report that was issued at the
23 same time when those same--different samples were taken up
24 there by Dr. Ward does not reflect 2,600 parts per billion of

1 2,3,7,8, isn't that correct?

2 A Yes, that's correct.

3 Q As a matter of fact, the table itself states that,
4 does it not, in Plaintiffs' Exhibit 1276?

5 A Okay, there is a statement that samples showed
6 previously peaks with isomers other than 2,3,7,8, that's
7 correct.

8 Q So there is a statement on the table from the
9 Nebraska report that reported this 2,600 that says, "Many
10 samples showed previously allowing peaks which may be isomers
11 other than 2,3,7,8 TCDD".

12 A Right.

13 Q So there is no way of knowing whether---how much of
14 that 2,600 for instance---is 2,3,7,8, if any of it is?

15 A That's correct.

16 Q And, Dr. Kaley, any representation that may have
17 been made in this Courtroom or other places that the Nebraska
18 report showed 2,600 parts per billion of 2,3,7,8 would be
19 incorrect, wouldn't it?

20 A Based on the evidence that I have, yes, that's
21 incorrect.

22 Q And that's the evidence that Mr. Carr just put into
23 evidence, isn't it? You were here when he put it into
24 evidence, isn't that correct?

1 A I don't recall him telling me whether it was 2,3,7,8,
2 but yes, the evidence that he has shown me says that there is
3 tetrachlorodibenzo, but not 2,3,7,8 necessarily.

4 Q The evidence upon which you rely in answer to my
5 question that a representation that there was a Nebraska report
6 saying there were 2,600 parts per billion of 2,3,7,8 in the
7 sample given us upon what you relied, saying that that's not
8 so because Nebraska was not isomer specific is the very
9 document that you saw here today?

10 A Those documents and the fact that I had visited
11 Nebraska.

12 Q Of course those are documents that Mr. Carr showed
13 you and put into evidence in this case?

14 A That's correct.

15 Q Now, Plaintiffs' 1120, sir, the January 11, 1981
16 memo of Dr. Hileman.

17 A Okay, I don't have that in front of me anymore.

18 MR. MUSGRAVE: Did you take that back, Mr. Carr?

19 MR. CARR: Not to my knowledge. It's here, though.

20 Q Now, Mr. Carr kept asking you if this table attached
21 to Plaintiffs' Exhibit 1120 didn't say that there was a finding
22 in spill sample number three of 120 parts per billion of
23 2,3,7,8. Do you remember those questions?

24 A Yes.

1 Q And you kept saying, that's not what it says, it says
2 it coelutes, isn't that correct?

3 A That's correct.

4 Q Well, now, and you referred to the first page of the
5 Exhibit, Dr. Kaley, does it expressly state on the first page
6 of this Exhibit exactly what you kept telling Mr. Carr?

7 A Yes, it does.

8 Q And would you read that to the jury?

9 A Okay. It says in this memo, "The isomeric configura-
10 tion associated with that peak indicates the particular TCDD
11 isomer which coeluted with the peak in question. It does not
12 serve as a positive identification of that particular peak."

13 Q And that information on the table is footnoted and
14 referred to right here and says the same thing, doesn't it?

15 A That's correct.

16 Q And is it plain English? Can you understand it very
17 clearly, Dr. Kaley, when you read the body of the report that
18 is clearly saying that this is not isomer specificity, but
19 simply coelution?

20 A Yes.

21 Q It's fairly easy to understand, isn't it?

22 A Yes.

23 MR. MUSGRAVE: That's all I have, your Honor.

24 Doctor, thank you.

1 MR. CARR: Nothing, your Honor. I'd like to call
2 Dr. Mieure back to the stand again.

3 THE COURT: Okay.

4 DR. JAMES MIEURE,

5 (being recalled as an adverse witness under
6 Section 2-1102 of the Civil Practice Act,
7 having previously been duly sworn, on oath
8 testified as follows:)

9 CROSS EXAMINATION

10 BY MR. CARR

11 Q Doctor, you understand that your oath taken
12 previously still binds you at this time?

13 A Yes, I do.

14 (Plaintiffs' Exhibit 1279 was marked for
15 identification.)

16 Q Handing you now what's been marked Plaintiffs'
17 Exhibit 1279.

18 MR. CARR: And that is the Exhibit which has been
19 previously identified as Monsanto Exhibit 839, your Honor.
20 No, I'm sorry, that's not correct, referred at that time but
21 I don't believe that's been marked before.

22 Q Dr. Mieure, you recognize that---

23 MR. MUSGRAVE: What's the number on this?

24 MR. CARR: You've forgotten already?

1 THE COURT: Plaintiffs' 1279.

2 Q You recognize that as a memo created by Mr. Ivory of
3 the Dayton Laboratory referring to some testing that took place
4 for various products including orthochlorophenol and dichloro-
5 phenol?

6 A The subject says analysis of chlorophenols, yes, sir.

7 Q And parachlorophenols as well. You recognize that,
8 don't you, Dr. Mieure?

9 A Yes, I do.

10 MR. CARR: I offer that Exhibit into evidence and
11 ask leave to pass copies to the jury.

12 (Plaintiffs' Exhibit 1279 was offered into
13 evidence.)

14 MR. MUSGRAVE: Let me just have a moment, your
15 Honor.

16 THE COURT: Sure, go ahead.

17 (Plaintiffs' Exhibit 1279A was marked for
18 identification.)

19 Q You recognize 1279A as one of the tables, Table 2
20 that's in that Exhibit, Dr. Mieure?

21 A Yes, sir.

22 MR. CARR: I offer 1279 and 1279A.

23 (Plaintiffs' Exhibit 1279A was offered
24 into evidence.)

1 MR. MUSGRAVE: Have you not previously marked the
2 September 15, 1981 document?

3 MR. CARR: Yes, it is previously marked, but this is
4 not that document.

5 MR. MUSGRAVE: But it embodies the same data, and we
6 need to get that to make sure of the references, your Honor,
7 with regard to Plaintiffs' 1279. It refers to analysis of
8 products other than orthchlorophenol or orthchlorophenol crude
9 and for the same reason we have previously objected, we continue
10 to object to it being irrelevant and immaterial.

11 THE COURT: Same argument for 1279A?

12 MR. MUSGRAVE: Yes, in that it does refer to OCP and
13 OCP crude, we do not object.

14 THE COURT: They are both admitted over objection.

15 (Plaintiffs' Exhibits 1279 and 1279A were
16 admitted into evidence.)

17 MR. CARR: And ask leave to pass copies to the jury?

18 THE COURT: Leave is granted.

19 BY MR. CARR:

20 Q Doctor, direct your attention to Table 2 of that
21 Exhibit, if I might. Table 2 refers to the dichlorophenols.

22 A Yes, sir, that's the heading.

23 Q Yes. And sample 7003 has dichlorophenol in that
24 sample, reports to have two particular quantities of tetras,

1 does it not, sir?

2 A There are two figures given there in the footnote.
3 It is not clear to me why there are two figures there.

4 Q Well, the footnote tells you, Footnote A tells you
5 that the 4.5 is quantitation that was carried out on an isomer
6 other than that in question, does it not, sir?

7 A That's what the footnote says.

8 Q Yes. And the body of the report then tells you the
9 standard that was being used, doesn't it, sir?

10 A I will have to read it to see. I don't see where it
11 does say what standard was being used.

12 Q I think you're right. A later report will refer to
13 the standard when we get to the September '81 report which is
14 a repeat of this report, we will identify it. But in any
15 event, this Exhibit does show that there were 9.5 parts per
16 billion of a tetra, one or more tetra isomers detected in
17 sample 7003, isn't that correct, sir?

18 A Apparently so. Again, I am not sure why there are
19 two notations there.

20 Q Dr. Mieure, you wrote a memo on it. We will get to
21 it very shortly. You actually wrote a memo, and I think it is
22 the---yes, it is the next Exhibit as a matter of fact in which
23 you discuss the shortcomings of this particular report. And
24 all I ask you really right now is that it is identified here

1 as 9.5 parts per billion of tetra isomers in the 2,4 dichloro-
2 phenol that's been analyzed, and I will now hand you---

3 (Plaintiffs' Exhibit 1280 was marked for
4 identification.)

5 Q ---handing you what's been marked Plaintiffs'
6 Exhibit 1280, and see if you can recognize that as a memo that
7 you wrote on December the 30th, 1980?

8 A Yes, sir, it is.

9 Q And it relates to this Exhibit that we were just
10 referring to, does it not, sir?

11 A Yes, it does.

12 Q And you make a number of constructive, critical
13 comments regarding that Exhibit, that report, don't you, sir?

14 A Yes, sir.

15 Q And you sent that memo dated---

16 MR. CARR: Did I offer that into evidence?

17 THE COURT: Not yet.

18 MR. CARR: I offer that Exhibit into evidence.

19 (Plaintiffs' Exhibit 1280 was offered into
20 evidence.)

21 MR. MUSGRAVE: This is the December 30 memo?

22 MR. CARR: That's correct.

23 MR. MUSGRAVE: To the extent it refers to orthchloro-
24 phenol and orthochlorophenol crude, we have no objection. To

1 the extent that it refers to other products, we object on the
2 basis of relevance and materiality and no probative value of
3 the issues.

4 THE COURT: It is admitted over objection to the
5 extent that objection has been raised.

6 (Plaintiffs' Exhibit 1280 was admitted into
7 evidence.)

8 BY MR. CARR:

9 Q Dr. Mieure, let me hand you another Exhibit.

10 (Plaintiffs' Exhibit 1281 was marked for
11 identification.)

12 Q Handing you now what's been marked Plaintiffs'
13 Exhibit 1281, do you recognize that as the same Exhibit but
14 this time with handwriting on it, do you not, sir?

15 A Yes, sir, that is correct.

16 MR. CARR: I offer that Exhibit into evidence, if it
17 please the Court.

18 (Plaintiffs' Exhibit 1281 was offered into
19 evidence.)

20 MR. MUSGRAVE: Same objection, and also object with
21 regard to the handwritten portions unless they are identified,
22 your Honor.

23 MR. CARR: I'll stand by it as given to me, your
24 Honor. This is the way it was given to me.

1 THE COURT: I will admit it over objection.

2 (Plaintiffs' Exhibit 1281 was admitted into
3 evidence.)

4 MR. CARR: Let me see if the witness can identify the
5 handwriting.

6 Q Do you know whose handwriting that is?

7 A No, sir, I am not sure whose that is.

8 Q It's somebody that commented on the---or was replying
9 to your various critiques, isn't that correct, sir?

10 A Apparently so, yes.

11 Q And in some places discusses and states in effect
12 that some of the things that you were criticizing have already
13 been done and the retesting has been done and reported to you.

14 MR. MUSGRAVE: Just a moment, Mr. Carr. Your Honor,
15 I don't know whether the Court has ruled on that.

16 THE COURT: I did. I may have not said it loud
17 enough.

18 MR. MUSGRAVE: Fine, you overruled my objection?

19 THE COURT: I'm sorry if I didn't say it loud enough.

20 MR. CARR: And can we pass this Exhibit?

21 THE COURT: Yes, you may.

22 BY MR. CARR:

23 Q Dr. Mieure, the first paragraph of this report you
24 state that the methodology appears to be flawed and the report-

1 ing format is so ambiguous that you can't understand or use the
2 data, is that correct, sir?

3 A That's what it says, yes.

4 Q And in point of fact, you caused that to be reanalyzed,
5 didn't you, sir?

6 A I don't know, sir.

7 Q You don't know?

8 A Uh-huh.

9 Q Well, I will give you another Exhibit then.

10 (Plaintiffs' Exhibit 1282 was marked for
11 identification.)

12 Q Handing you now what's been marked Plaintiffs'
13 Exhibit 1282 and ask you if you can recognize that as a memo
14 dated September the 5th, 1981, and this is, counsel, also
15 Monsanto Exhibit 839. Do you recognize that, sir, as involving
16 the same samples?

17 MR. MUSGRAVE: Also marked as what?

18 MR. CARR: 839, September the 15th, 1981.

19 MR. MUSGRAVE: September 15th?

20 MR. CARR: That's what I said.

21 MR. MUSGRAVE: You said 5th.

22 MR. CARR: And offer whatever the number of this one
23 is, 1282, into evidence as well, your Honor, along with the
24 Exhibit that I just handed the witness.

1 (Plaintiffs' Exhibit 1282 was offered into
2 evidence.)

3 THE COURT: Any objection?

4 MR. MUSGRAVE: I would only object to it, your Honor,
5 again on the same grounds to the extent that it involves
6 references to items other than orthchlorophenol and orthchloro-
7 phenol crude.

8 THE COURT: Fine. It is admitted over the objection
9 to the extent that it's objected to.

10 (Plaintiffs' Exhibit 1282 was admitted into
11 evidence.)

12 MR. CARR: And leave to pass---

13 THE COURT: Yes.

14 MR. CARR: ---1282 to the jury also.

15 THE COURT: Okay. Leave is granted.

16 Q Dr. Mieure, I want to direct your attention back to
17 the memo written by you dated December 30, 1980, that is
18 Plaintiffs' Exhibit 1281.

19 A Okay.

20 Q All right. Now you by now have had the opportunity
21 to compare Exhibit 1282 with Exhibit 1280, have you not---
22 1279 it would be.

23 A I'm sorry, sir. What was the question?

24 Q You have had an opportunity to compare 1279 and 1282,

1 that is the memo dated October the 10th, 1980 and the memo
2 dated September 15th, 1981, directing your attention to Table 2
3 on both Exhibits.

4 A Please, sir, I believe you said a chance to compare
5 Table 2 out of the two documents?

6 Q Table 3 out of the September 15th, '81 Exhibit, it
7 would be Table 3.

8 MR. MUSGRAVE: What are you asking him to compare,
9 Mr. Carr?

10 MR. CARR: Table 2 in the October 10, 1980 to
11 Table 3 in the September 15, 1981 Exhibit.

12 (Plaintiffs' Exhibit 1282A was marked for
13 identification.)

14 BY MR. CARR:

15 Q And Dr. Mieure, Plaintiffs' Exhibit 1282 is an
16 accurate blowup of Table 3 in Exhibit 1282, is it not, sir?

17 A Yes, sir.

18 MR. CARR: I offer 1282A into evidence if it please
19 the Court.

20 (Plaintiffs' Exhibit 1282A was offered into
21 evidence.)

22 MR. MUSGRAVE: Same objection.

23 THE COURT: Same ruling.

24 (Plaintiffs' Exhibit 1282A was admitted into

evidence.)

BY MR. CARR:

Q Now, Doctor, once again this Exhibit 1282A, Table 3 refers to 9.5 parts per billion of a tetra, doesn't it, sir?

A In one sample, apparently, yes, uh-huh.

Q Apparently, yes, it does, does it not?

A In one sample.

Q And in this report, that is the September 15th, 1981 report, the standards used are identified, aren't they, sir?

A I don't know.

Q Well, would you look at the report on the second page, Page No. 2, and see if they do not identify the standard used in identification process, the tetra standard being the 2,3,7,8 tetrachlorodibenzo-p-dioxin.

A Yes, sir. That's what Table 1 says.

Q So that deficiency that you pointed out existed in the October 10th, 1980 memo has been satisfied and he is now identifying the standard used, is he not, sir?

A Apparently the standard, I haven't read this in detail, sir, but according to what you asked me to read it would appear that a standard has been identified.

Q Well, read it and make sure that I am not misleading you, Dr. Mieure, that the standard table one describes the standards used to identify the various isomers in this Exhibit---

1 MR. MUSGRAVE: He answered that, Mr. Carr.

2 MR. CARR: He said apparently. I don't want any
3 apparently. I want him to say yes or no. I want him to be
4 firm on it. I don't want any apparently business.

5 A It says that these are the standards used in the
6 spiking solution and you are using the terms to identify, and
7 I testified previously that we weren't able to identify the
8 2,3,7,8 isomer.

9 Q I didn't ask you that question. What you said was
10 these were the standards used in the identification process or
11 in identifying the tetras that had existed. You had the
12 standard, the 2,3,7,8 standard, and that's what you used to
13 identify.

14 A No, sir. That's what was used to quantitate.

15 Q And what standard did you use to identify?

16 A The mass spectral pattern was used.

17 Q You didn't use any standard to identify. You compared
18 the peaks that you got on this standard, the 2,3,7,8 peak on
19 this standard when you put in your spiking solution in the
20 chromatogram with the peak that you got in the sample tested,
21 did you not, sir?

22 A You compare the mass spectral characteristics, sir.

23 Q And isn't that what you did, sir?

24 A That's not what I did, no. This was work done in

1 Dayton.

2 Q Dr. Mieure, when I say you, when you know that you
3 were not personally involved, you understand that I was talking
4 about Monsanto and its personnel?

5 MR. MUSGRAVE: Mr. Carr, that's not always true, sir,
6 and I think the witness is entitled to have you specify when
7 you are talking about him or Monsanto. You flip-flop back and
8 forth like night and day.

9 Q Dr. Mieure, is the tetra standard that was used in
10 this report the 2,3,7,8 TCDD standard?

11 A Yes, sir.

12 Q And does he so identify it as that standard?

13 A Yes, sir.

14 Q And the 9.5 per billion quantities in the tetra
15 column, he used the 2,3,7,8 standard to quantify that amount of
16 tetra, did he not, sir?

17 A He used the tetra standard to quantitate the tetra.

18 Q He used the 2,3,7,8 standard to quantify the amount
19 of tetra that was in that material, that is 9.5, he quantified
20 that using the 2,3,7,8 standard, did he not, sir?

21 A Apparently so, yes.

22 Q And so he said there are 9.5 parts per billion of
23 something in this material that coelutes with the standard that
24 we have, the 2,3,7,8, isn't that correct, sir?

1 A I don't see where it says that something coeluted
2 here, sir.

3 Q Well then, don't use the word coeluted. That it was
4 2,3,7,8 then?

5 A No, sir, I don't see where he says that either.

6 Q Now, Dr. Mieure, what does he say with regard to the
7 identification?

8 A He is reporting 9.5 parts per billion of tetra.

9 Q And the only standard he used to quantify that was
10 what standard?

11 A It was 2,3,7,8.

12 Q All right. And in using the 2,3,7,8 standard, he
13 quantified that sample as having 9.5 of the tetra isomer,
14 did he not?

15 A Of the tetra isomer, yes.

16 Q Now, Doctor, that is exactly what he reported but
17 without identifying the standard that he used to quantify it
18 in the October 10th, 1981 report, isn't it, sir? 9.5 parts per
19 billion tetras?

20 A Yes, sir.

21 Q Now, Doctor, referring if you will to your memo
22 dated December 30th, 1980.

23 A Yes, sir.

24 Q The second paragraph of that, that is an Exhibit

1 1281. You say, do you not, "possible presence of chloro-
2 dibenzo-p-dioxin or chlorodibenzofuran impurities products and
3 processes of critical concern to MIC, that's Monsanto, a
4 subsidiary of Monsanto?

5 A Monsanto Industrial Chemicals.

6 Q And to all Monsanto.. "Because of their concern, we
7 considered reporting your data to EPA as a potential substantial
8 risk, TSCA Section 8(e) until we recognize the uncertainties
9 in your report," do you say that, sir?

10 A That's what the words say, yes.

11 Q Now, the level of tetra that was found in 2,4 di-
12 chlorophenol in the October 10, 1980 report was 9.5, was it
13 not, sir?

14 A One sample, yes.

15 Q And it was because of that finding, that report that
16 you considered reporting the data to the EPA as a potential
17 substantial risk, isn't that correct, sir?

18 A I will have to look at the other data tables, sir.

19 Q Look at them, please, sir.

20 A Well, I don't recall exactly what prompted us to,
21 but that appears to be the highest value of a tetra reported
22 in this report.

23 Q And it is the highest value of the most toxic sub-
24 stance that could be in this material, isn't it, sir?

1 A Well, the 2,3,7,8 would be the most toxic material.

2 Q And that's in the tetra column, is it not, sir?

3 A No, sir, all that's in the tetra column are tetras.

4 Q Doctor, what was reported to you in October of 1980
5 was there was 9.5 of something in the tetra column, parts per
6 billion, is that correct, sir?

7 A In what time period, sir?

8 Q On October the 10th, 1980.

9 A Yes, sir. Except it wasn't reported to me but it
10 was reported---

11 Q It was reported to Monsanto and you pointed it out
12 in your memo of December 30th that you at Monsanto considered
13 reporting that data to the EPA as a potential substantial risk,
14 didn't you, sir?

15 A Yes, sir.

16 Q And that was until you recognized the uncertainties
17 in the report, correct, sir?

18 A That's what it says.

19 Q Sir?

20 A That's what it says, yes.

21 Q Now, the September 15th, 1981 report eliminated those
22 uncertainties, didn't it, sir?

23 A I really don't know, sir.

24 Q Look at it and see. Did you write another memo

1 criticizing it?

2 A I was not in this area doing this sort of work.

3 Q Look at the September 15th memo and see if you
4 recognize it and see if there were any uncertainties in there.

5 A Sir, it was not my job responsibility to be reviewing
6 this information.

7 Q I am not saying it was.

8 A You're asking me what I did at this time and my job.

9 Q I'm asking you now, Dr. Mieure, to look at the
10 September 15th, 1981 report and tell me whether or not the
11 uncertainties, the questionable methodology, the ambiguous
12 reports, the equivocal data was eliminated. Now, Dr. Hileman
13 testified that he worked on this one.

14 A Uh-huh.

15 MR. MUSGRAVE: Well, your Honor, I would object to
16 the question. It now calls for this witness to take one
17 document and to critique it as though he were doing it back at
18 the time he would have received it in '81 based upon a prior
19 critique. If the Court is going to permit the witness or
20 require the witness to answer that question, then I would
21 request that the Court give the witness ample time to fully
22 review those documents if Mr. Carr is going to ask him that he
23 critique these things after some four or five years since they
24 have been generated, and he authored them having in mind what

1 his criticisms were at the time.

2 THE COURT: Objection is overruled. The witness is
3 being given time right now to review them.

4 A Okay, sir, and what was your question again, please?

5 Q Did the report of September 15th, 1981 meet and
6 correct the flaws you found in the report on the same samples
7 on October 10th, 1980?

8 A It appears to, yes.

9 Q Now, Doctor, did you or did anyone else know that the
10 uncertainties were resolved now that the data is no longer
11 equivocal, now that the methodology is not questionable, now
12 that the ambiguous report was eliminated, did you report it to
13 the EPA that you got 2,4 dichlorophenol that has 9.5 parts per
14 billion of something in it that coelutes with 2,3,7,8 TCDD?

15 A Sir, as I've explained previously, I was not in any
16 job capacity with Monsanto where this would be my function to
17 make such a report. Furthermore, I was working under such a
18 different area that I wouldn't know what Monsanto personnel
19 would have done at that time.

20 Q If it was reported, you believed, I take it, that
21 9.5 tetras, if true, was a potential substantial risk, did you
22 not, sir?

23 A Not necessarily, sir.

24 Q Did you say that in your December 30, 1980 memo?

1 A I believe I used the term---let's see.

2 Q You used the term, "because of this concern we
3 considered reporting your data to the EPA as a potential sub-
4 stantial risk until we recognize the uncertainties in your
5 report," isn't that correct, sir?

6 A Yes, that's what it says.

7 Q And if the report was not uncertain, you would have
8 reported it, I take it, to the EPA?

9 A No, sir.

10 Q No, sir?

11 A I don't know whether he would or not, are you
12 familiar with the TSCA 8(e) procedure?

13 Q Yes, indeed. You stated that you considered it to
14 be a potential substantial risk.

15 A Potential is the key word, sir.

16 Q And that's what you are supposed to report, isn't it,
17 sir? Potential substantial risk?

18 A TSCA 8(e) stipulates that any time an employee of a
19 company that manufactures a material comes into possession of
20 information which might even be suggestive that a risk exists,
21 that that company or that individual then has the obligation
22 to go through an internal reporting procedure and an assess-
23 ment to determine if a substantial risk exists, so it would
24 have been my responsibility to report this to our Director of

1 Environmental Operations who would then convene a committee
2 which would consist primarily of representatives from our
3 Medical Department to determine if a substantial risk existed.

4 Q Doctor, doesn't your reference to TSCA Section 8(e)
5 refer to a notice to the Administrator of the EPA and not any
6 house business but report to the EPA?

7 A No, sir.

8 Q Would you mind looking at it?

9 (Plaintiffs' Exhibit 1283 was marked for
10 identification.)

11 Q Handing you Exhibit 1283, asking if you recognize
12 that as the TSCA act that you referred to in Section 8(e)
13 thereof. You recognize it, Dr. Mieure?

14 MR. MUSGRAVE: Well, may I see it, Mr. Carr?

15 MR. CARR: Sure.

16 MR. MUSGRAVE: Is this just a statute, Mr. Carr?
17 Do you have the regulations that deal with this particular
18 section, Mr. Carr?

19 MR. CARR: No, I don't, counsel.

20 MR. MUSGRAVE: Well, I think you ought to get them
21 and then if you are going to cross-examine this man with
22 regard to what Section 8(e) means, you ought to see if there
23 is any relation---

24 MR. CARR: I am cross-examining this man with

1 what he referred to in this Exhibit and what he said was
2 required---

3 MR. MUSGRAVE: The regulations, if there are regula-
4 tions, are part of the statute.

5 MR. CARR: ---and bring them forth, if you want to
6 exculpate Monsanto from their failure to report this. Your
7 Honor, it is a dereliction of duty---

8 MR. MUSGRAVE: I object to that comment by counsel,
9 your Honor, and I request that you instruct the jury to
10 disregard the comment.

11 THE COURT: Let me see the Exhibit first.

12 MR. MUSGRAVE: The comment I have specific reference
13 to is his accusation to Monsanto's dereliction of duty. It
14 was totally improper.

15 THE COURT: Just a second. Your objection is
16 overruled. Would you give this back to Mr. Carr, please?

17 BY MR. CARR:

18 Q Does your memo refer to TSCA Section 8(e), Dr. Mieure?

19 A The memo, sir, refers to a potential substantial
20 risk.

21 Q Could you answer that question, please?

22 A I just did, sir.

23 Q Does it refer to TSCA Section 8(e)?

24 A Yes, it does. I just told you that.

1 Q And do you have in front of you a copy of TSCA
2 Section 8(e)?

3 A The Act, yes. Not the regulations.

4 Q You refer to regulations or do you refer to the Act
5 in your memo, Dr. Mieure?

6 A It doesn't say which.

7 Q Well, Dr. Mieure, it refers specifically to TSCA,
8 which is your shorthand for the Act, Section 8(e), does it not,
9 sir?

10 A But I don't deal---

11 Q Excuse me, Doctor. I didn't ask you whether you
12 dealt with or what you dealt with.

13 A I don't refer to either one here. I refer to TSCA
14 8(e). It doesn't say whether it is the Act or the regulation.

15 Q T-S-C-A stands for Toxic Substances Control Act,
16 does it not, sir?

17 A Yes, it does.

18 Q And you refer to TSCA, Toxic Substances Control Act
19 Section 8(e), don't you, sir, in your memo of October the 10th,
20 1980?

21 A The memo as you are well aware I'm sure is an
22 abbreviation.

23 Q Excuse me. Would you answer that question, please?

24 MR. MUSGRAVE: He is trying to, if you let him finish,

1 object.

2 THE COURT: Overruled.

3 Q Do you refer to TSCA, T-S-C-A 8(e)?

4 A I make a reference to TSCA 8(e).

5 Q And have I given you a copy of TSCA Section 8(e)?

6 A You have given me a copy of the Act, but not the
7 regulations.

8 Q Do you refer to regulations in your memo or to the
9 Act, T-S-C-A stands for Act, Dr. Mieure?

10 A I refer to TSCA 8(e), but it is the regulations that
11 we deal with in every day life.

12 Q Doctor, I'm not asking you what you deal with. I'm
13 asking you what you refer to in this memo, and you refer to
14 TSCA Section 8(e)---

15 MR. MUSGRAVE: Object. It's been asked and answered.

16 THE COURT: Objection overruled.

17 A Yes, it has been answered.

18 THE COURT: Dr. Mieure, I will rule on the objections.
19 You have no status to quarrel with my ruling on an objection.
20 You are not the judge here and you are not a licensed attorney
21 in the State of Illinois. When I rule, you follow the ruling.
22 Do you understand that, Dr. Mieure?

23 A Yes, sir.

24 THE COURT: Now answer the question.

1 A Again?

2 THE COURT: Answer the question.

3 Q It refers to TSCA Section 8(e).

4 A TSCA 8(e), yes.

5 Q And TSCA 8(e), I've given you a copy of it, have I
6 not, sir?

7 A You've given me a copy of the Act but not of the
8 regulations.

9 Q Dr. Mieure, would you answer the question.

10 A I did.

11 Q Did I ask you whether or not I had given you a copy
12 of the regulations? Now, Mr. Musgrave is going to have all
13 day tomorrow to ask you those questions. I'm asking you this
14 question. Did I give you a copy of TSCA Section 8(e)?

15 A No, I think you gave me a copy out of TSCA 8(e), the
16 Table of Contents and one page.

17 Q Did I give you a copy of TSCA Section 8(e)?

18 A Let's see, does it complete all of 8(e)?

19 Q Do you see the Subparagraph (e) there?

20 A This appears to include all of 8(e), yes.

21 Q And I gave you a copy of that?

22 A Yes, sir.

23 Q And does it say notice of administrator of substan-
24 tial risk?

1 A Those are the words, yes, sir.

2 Q And the administrator referred to is the Administra-
3 tor of the EPA, is it not, sir?

4 A I would assume so, yes.

5 Q Doctor, at the time you wrote this memo, you
6 considered that---we considered reporting your data to the EPA,
7 and by EPA you mean the Environmental Protection Agency, do
8 you not, sir?

9 A That's the reference, yes.

10 Q And you were talking about reporting the data as a
11 potential substantial risk under this particular Act, isn't
12 that correct, sir?

13 A That's the reference.

14 Q Is the answer to my question yes, that is correct?

15 A Yes.

16 Q And, Doctor, you didn't report it because, "we
17 recognize the uncertainties in your report," isn't that
18 correct?

19 A That's only a small part of why it wasn't reported.

20 Q I'm asking you, isn't that what you said, Dr. Mieure,
21 in this memo of October 30, 1980?

22 MR. MUSGRAVE: You want to clarify that? You want
23 the exact words as they read in the memo or you want him to
24 tell you what the memo says, Mr. Carr?

1 BY MR. CARR:

2 Q Dr. Mieure, did you say we considered reporting it
3 until we recognize the uncertainties in your report?

4 A The memo says because of this concern we consider---

5 Q Excuse me, Dr. Mieure. Would you answer that
6 question, please, sir?

7 A I told you there were several reasons.

8 MR. CARR: Your Honor, would you direct the witness
9 to answer that question? I think he can say yes he said that
10 or no he didn't say that.

11 THE COURT: Answer the question.

12 MR. MUSGRAVE: Your Honor, if I may, Mr. Carr is
13 wanting him to interpret the memo on one hand, and when he
14 doesn't like the interpretation, he wants him to read what the
15 words say, and the witness can't do both.

16 THE COURT: Well, I don't think he is being asked to
17 do them at the same time, and I think the question posed to him
18 is crystal clear, and he has to answer it yes or no. It is a
19 question that can only be answered in that manner. Your objec-
20 tion is overruled; Dr. Mieure, answer the question.

21 A The question again, sir, is?

22 Q Did you not say in this memo that you considered
23 reporting the data, "until we recognize the uncertainties in
24 your report,"?

1 A That's a quote right out of here, yes, sir.

2 Q You said that, didn't you?

3 A Yes, sir.

4 Q Now, the memo of September the 15th, 1981, you have
5 acknowledged no longer contains these uncertainties, isn't that
6 correct, sir?

7 A I don't know whether it contains all, whether it's
8 taking care of all my concerns or not, but in just the few
9 minutes that I had to read this, it certainly has taken care
10 of many of those concerns, yes.

11 Q And, Doctor, you have no knowledge or do you have,
12 that the EPA was then reported the potential substantial risk
13 that would be involved with users of this shipment of 2,4
14 dichlorophenol in Weed-B-Gon or 2,4 D or something else that
15 it might be used in, or in the oil well workers working with
16 it, putting their hands in it if it is used in an additive of
17 that sort. Do you have any knowledge whether or not that level
18 of 2,4 dichlorophenol was ever reported to the EPA?

19 A I don't know whether it was or not, sir.

20 THE COURT: Mr. Carr, is this a good point at which
21 to quit?

22 MR. CARR: Yes, your Honor.

23 THE COURT: Ladies and gentlemen, we will break for
24 the day at this time. I would remind you on any overnight

1 breaks that you are not to read, listen to, or watch anything
2 about this case in particular or subject matter in general in
3 any of the media. Thank you for your attention and cooperation.
4 We will resume at 9:30 tomorrow morning. The Court is
5 adjourned.

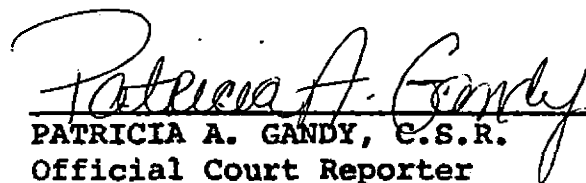
6 (At this time Court was adjourned for the day.)
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STATE OF ILLINOIS |)
) SS.
COUNTY OF ST. CLAIR)

I, Patricia A. Gandy, C.S.R., Official Court
Reporter in and for the Twentieth Judicial Circuit, and the
Official Court Reporter who transcribed the above-styled cause
had on April 9, 1985, do hereby certify that the foregoing
transcript of proceedings is a true, correct and complete
transcript of the proceedings had on said date.

DATED this 22nd day of April, 1985.

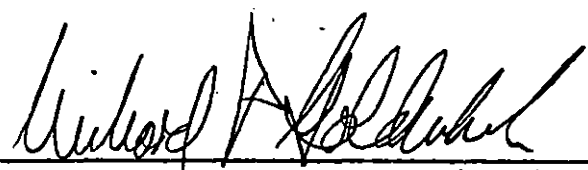

PATRICIA A. GANDY, C.S.R.
Official Court Reporter

1 STATE OF ILLINOIS)
2) SS.
3 COUNTY OF ST. CLAIR)
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5

6 I, RICHARD P. GOLDENHERSH, Circuit Judge in and for
7 the Twentieth Judicial Circuit, hereby certify that the above
8 is a true and correct transcript of the proceedings had in the
9 case captioned: FRANCES E. KEMNER, et al., v. MONSANTO
10 COMPANY, et al., Cause No. 80-L-970, heard on April 9, 1985.

11 DATED this BRD day of April, 1985.
12

13 ENTER: .
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16 RICHARD P. GOLDENHERSH, Circuit Judge
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