

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

3 FRANCES E. KEMNER, et al.,)

4 Plaintiffs,)

5 vs.)

 NO. 80-L-970

6 MONSANTO COMPANY,)

7 Defendant.)

8 Before the HON. RICHARD P. GOLDENHERSH, Judge
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12 TRANSCRIPT OF TRIAL PROCEEDINGS

13 April 17, 1985
14
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16 APPEARANCES:

17 Mr. Rex Carr

18 Mr. Jerome Seigfreid

 On Behalf of the Plaintiffs

19 Mr. William Musgrave

20 Mr. Joseph Nassif

 On Behalf of Defendant Monsanto
21
22

 SANDRA ROE

 Official Court Reporter
23
24

1 BE IT REMEMBERED AND CERTIFIED that heretofore, on to-wit:
2 April 17, 1985, being one of the regular judicial days of
3 this Court, the matter as hereinbefore set forth came on for
4 hearing before the HON. RICHARD P. GOLDENHERSH, Circuit Judge
5 in and for the Twentieth Judicial Circuit, State of Illinois,
6 in Courtroom #14, St. Clair County Building, Belleville, St.
7 Clair County, Illinois, and the following was had of record,
8 to-wit:

9 * * * * *

10
11 (Court convened)

12 THE COURT: Good morning. Okay. Ladies and
13 gentlemen, before we start, in keeping with our policy
14 of letting you know when you are going to have time when
15 Court is not going to be in session, one of those times
16 will be Monday, the 22nd of April. So I wanted to let
17 you know that. Mr. Carr?

18 PHOCION PARK,

19 called as a witness under Section 2-11-2 by the plaintiff,
20 having been previously sworn, deposes and states as follows:

21 RECROSS-EXAMINATION

22 BY MR. CARR:

23 (Plaintiff's Exhibit No. 1303 marked for identifi-
24 cation by the reporter as requested.)

1 Q I am handing you what's been marked Plaintiff's
2 Exhibit 1303, Mr. Park, and ask you to look at that, please.
3 Do you recognize that, Mr. Park, do you not, as a report from
4 your analytic chemist dealing with 2,4-dichlorophenol dated
5 September 2, 1981?

6 A I don't recognize it specifically, Mr. Carr, but I
7 do see it has a Monsanto letterhead on it.

8 Q And you see it's dated September 2, 1981?

9 A Yes.

10 Q And you see it has analysis as a title, analysis of
11 orthochlorophenol, parachlorophenol and 2,4-dichlorophenol
12 for chlorinated dibenzofurans?

13 A Yes.

14 MR. CARR: I offer this exhibit into evidence, if
15 it please the court.

16 THE COURT: Any objection.

17 MR. MUSGRAVE: I'm sorry -- he offered it in evidence?

18 THE COURT: Yes, he did.

19 MR. MUSGRAVE: Yes, Your Honor, it deals with the
20 dibenzofurans and 2,4-dichlorophenol, not being dioxin,
21 and I would object on the basis of the fact that it does
22 deal with 2,4-dichlorophenol, and secondly, not with dioxin.

23 THE COURT: It's admitted over objection.

24 MR. CARR: And ask leave to pass --

1 Q (MR. CARR) And Mr. Park, if you will refer to
2 Page 5, Table 3, you will see that that is an analysis of
3 2,4-dichlorophenol for chlorinated dibenzofurans, sir?

4 A Yes.

5 MR. CARR: I have copies of the cover page and of
6 Table 3 that I wish to pass to the jury with the Court's
7 leave.

8 THE COURT: Fine, go right ahead.

9 (At this time the exhibit was passed to the jury)

10 Q MR. CARR: And directing your attention to that
11 Table 3, that is the analysis of 2,4-dichlorophenols for
12 chlorinated dibenzofurans, you see that all of the samples
13 tested from May through November, that there were tetradibenzo,
14 chlorinated dibenzofurans found, you see that, sir?

15 A This is Table 3?

16 Q Yes.

17 A I'm sorry, I don't see dates on there.

18 Q Well, it has the KM05, 6, 7 and so forth. There is
19 previous testimony that the first number stands for the month.

20 A I see, yes, I do see a footnote at each one of those
21 numbers, it may indicate some question.

22 Q You see the footnote B, do you, sir?

23 A Yes.

24 Q And the footnote B says two TCDFs were present in

1 the samples with this particular isomer having analytical
2 characteristics on a packed GC column comparable to the
3 2,3,7,8 TCDF. Do you see that there, sir?

4 A Yes.

5 Q And what they are telling you about Letter B is
6 that they found those quantities of isomers that are comparable,
7 that have the same analytical characteristics as the
8 2,3,7,8 TCDF, is that correct, sir?

9 MR. MUSGRAVE: I object, it's a misrepresentation,
10 Your Honor, he didn't read all of it. It does say see
11 the discussion of these results for further results using
12 capillary columns.

13 MR. CARR: Indeed, it says that, but I am directing
14 your attention, however, to what this table characterizes
15 these tetras.

16 THE COURT: Objection is overruled.

17 A I don't really understand what that means.

18 Q Mr. Park, but you do understand the language that
19 is there, do you not, sir?

20 A No, I really don't.

21 MR. MUSGRAVE: I object, Your Honor, to this witness
22 interpreting a document that he did not author, when he
23 is not qualified as an analytical chemist with analytical
24 training to interpret such documents, or a chemist of any

1 background to interpret such document. So, I object to
2 counsel questioning him on this basis.

3 THE COURT: Overruled.

4 MR. CARR: Mark this as an exhibit, please.

5 (Plaintiff's Exhibit 1304 was marked for identifi-
6 cation by the reporter as requested.)

7 Q (MR. CARR) Mr. Park, you recognize Exhibit 1304 as
8 your file, which Mr. Seigfreid and I reviewed at 7:30 last
9 night, do you not, sir, that was produced at your attorney's
10 office for us?

11 A This does appear to be my file.

12 Q And you recognize in your file, that is your
13 TSCA 8(e) file, is it not, sir?

14 A For one of the meetings, yes.

15 Q That's right, this particular meeting that was held
16 on September 14, 1981, isn't it, sir?

17 A The meeting was on November 24.

18 Q November 24, and your memo was dated September 14,
19 relative to that meeting?

20 A That's correct.

21 Q And would you look within that file 1304 and see if
22 there is not in there, Exhibit 1303, the original of Exhibit
23 1303 which we are now discussing.

24 A Yes.

1 Q And it has -- is that your handwriting on the cover
2 of that, where it says BU, November 24, for 8(e) meeting?

3 A No, it isn't.

4 Q In any event, it's in your file and it was sent to
5 you, was it not, sir?

6 A All I can say is it's in my file here.

7 Q Well, it got in your file by some device or method,
8 didn't it, Mr. Park?

9 A Yes.

10 Q It was sent to you for your consideration and use
11 in determining what you are going to report or whether or not
12 you are going to report pursuant to the law on 8(e) as to the
13 presence of toxic substances in 2,4-dichlorophenol, isn't that
14 correct, sir?

15 A I have no idea, Mr. Carr. It's in my file, it's
16 conceivable, it either may have been placed in there after the
17 meeting, it could have been used for discussion during the
18 meeting.

19 Q Is it conceivable that you could have written on
20 the front of it November 24 for 8(e) meeting?

21 A That is not my handwriting, Mr. Carr.

22 Q I don't care whether it is or not, Mr. Park, it's
23 conceivable that it's written on there, it was written on there
24 in your file, isn't it, sir?

1 A It's in the file you handed me this morning.

2 Q It's in the file that was handed to me by your
3 attorney last night, Mr. Park, which you handed to your attorney
4 sometime prior to that time, isn't that correct, sir? So,
5 don't tell me that it was in the file that I handed you. It
6 was in the file when you handed it to your attorney, wasn't
7 it, sir?

8 A All I know, Mr. Carr, is it was in the file when
9 you handed it to me.

10 Q And you don't know that it was in the file when you
11 handed it to your attorney?

12 A I didn't check the file carefully before I handed
13 it to my attorney, Mr. Carr.

14 Q Well, if it was in the file when your attorney
15 handed it to me, somebody slipped it in there if it wasn't
16 in there when you handed it to your attorney, is that correct,
17 sir?

18 A I am not saying that at all.

19 MR. MUSGRAVE: I object, Your Honor, there was no
20 testimony that it wasn't in there when he gave it to me.

21 THE COURT: Objection is overruled.

22 Q (MR. CARR) Are you saying, Mr. Park, that you did
23 not see and consider this memorandum when you had your November
24 8(e) meeting?

1 A I am not saying that, I am saying this appears to
2 be toxicological information, the type that I am not qualified
3 to interpret --

4 Q Oh, Mr. Park, I didn't ask you anything about that,
5 sir. It's in your file for a purpose, for your consideration,
6 isn't it, Mr. Park?

7 A It's in my file, Mr. Carr.

8 Q It's in your file for a purpose, isn't it, Mr. Park?
9 You don't just put papers in there just to fill up files, to
10 make it look like you are busy, do you?

11 A No, if it was in there at the time of the meeting
12 then it would have been used during discussion among those
13 familiar with toxicology.

14 Q It's in there for your consideration as a member of
15 that committee, isn't it, sir?

16 A If it was present at the committee meeting it would
17 have been for consideration --

18 Q It says November 24 for 8(e) meeting, doesn't it
19 say that, sir?

20 A That is a handwritten note by someone --

21 Q Doesn't it say that, sir?

22 A It says B-W-N-O-V-24.

23 Q And that's in your file and it's for that meeting
24 purposes, wasn't it, sir?

1 A The note could be so construed.

2 Q And you explained yesterday how -- or a couple of
3 days ago when Mr. Musgrave asked you, you interpreted these
4 documents yesterday, and you explained things for him quite
5 capably, didn't you, Mr. Park, just yesterday?

6 A I don't recall explaining any toxicological data.

7 Q Is this toxicological data? This is analytical
8 chemistry data here, isn't it? But it really is toxicological
9 data, isn't it, Mr. Park, it's called analytical data, but
10 indeed it is toxicological data, isn't it, Mr. Park?

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

12 Q You don't know that it is?

13 A We're in a technical area here that's beyond my area
14 of expertise.

15 Q It's beyond your area of expertise today, but it
16 wasn't beyond your area of expertise yesterday when you were
17 answering questions similar to this for Mr. Musgrave, was it,
18 sir?

19 A If you could find those questions, I'd have to deal
20 with them, Mr. Carr.

21 Q You do understand what the letters and symbols mean
22 on this Table 3, don't you, sir?

23 A No, I don't. I can see the numbers.

24 Q Well, let's go through it and maybe we can educate

1 you.

2 A All right.

3 Q You do know nanogram, the Ng furan/g phenol, you
4 know what that means, don't you, sir? Nanogram per gram of
5 phenol, that's in parts per billion. You know that, don't
6 you, sir?

7 A I guess I am not familiar with the term nanogram
8 furan per gram -- okay, nanograms per gram of phenol, yes,
9 I understand that.

10 Q That is parts per billion, isn't it, sir?

11 A I don't know.

12 Q You don't know that that's parts per billion?

13 A I am not sure off the top of my head what a nanogram
14 is.

15 Q Well, let me advise you, Mr. Park, that it does
16 mean parts per billion and that you know that it means parts
17 per billion and you have seen it in any number of these
18 documents that you've seen in the twenty years that you have
19 worked for Monsanto and been a member of this committee. And
20 you do understand what tetra stands for, don't you, sir?

21 A Yes, I do.

22 Q That stands for tetrachlorodibenzo-p-dioxin, doesn't
23 it, sir?

24 MR. MUSGRAVE: No, Mr. Carr, this is furans.

1 Q Furans, doesn't it, sir?

2 A Furans, yes.

3 Q And the tetra you know is that tetra 2,3,7,8 TCDF
4 is a tetrafurane, isn't it, sir?

5 A Well, this column is just headed tetra.

6 Q Excuse me, my question was, sir, you understand
7 tetrachlorodibenzofuran, one of those is 2,3,7,8, you know
8 that, too, don't you, sir?

9 A I guess that would be a tetra because it would
10 have the four chlorine atoms.

11 Q Indeed it would. And you understand what the
12 numbers 2-5-5 mean, don't you, sir? It means two hundred
13 fifty-five parts per billion, you recognize that, don't you,
14 Mr. Park?

15 A Yes.

16 Q And now when you see that letter B, that takes you
17 down to the footnote, doesn't it, sir?

18 A Yes.

19 Q And you know what the word two means, don't you, sir?

20 A Yes.

21 Q And you know what the letters TCDF means, don't you,
22 sir?

23 A Yes.

24 Q That stands for tetrachlorodibenzofuran, doesn't it,

1 sir?

2 A Yes.

3 Q And you know what the word were means, don't you,
4 sir?

5 A Yes.

6 Q And you know what the word present means?

7 A Yes.

8 Q And you know what the words in the samples means,
9 don't you, sir?

10 A Yes.

11 Q And you know what the words with this particular
12 isomer means, don't you, sir?

13 A I am not sure I do in this context.

14 Q Didn't Mr. Musgrave just yesterday talk about
15 seventy-two isomers being outstanding and you said yes, that's
16 correct, you understand there are seventy-two isomers --

17 MR. MUSGRAVE: I don't believe he did, Mr. Carr.

18 I believe I had to tell him that there were seventy-two
19 isomers.

20 MR. CARR: Well, he certainly agreed with you that
21 that was a fact. Are you saying that he swore to some-
22 thing that you knew and that he does not know? This man
23 has taken an oath to swear to things that you tell me,
24 Mr. Musgrave?

1 MR. MUSGRAVE: I asked him to assume it, Mr. Carr.
2 I said, if you assume that there are, sir, by doing
3 simple math, would it come to a particular amount. That's
4 the same type of assumption at least sometimes that you
5 have been asking witnesses to assume.

6 MR. CARR: Did you not describe what 2,3,7,8 isomer
7 was to the jury the other day, you told them how they
8 have this atom, you described the rings and how the
9 chlorine attaches at different places, didn't you describe
10 that quite competently just the other day, didn't you do
11 that, sir?

12 A I don't know about quite competently. I think I
13 attempted to describe it.

14 Q And you were describing an isomer at that time,
15 weren't you, sir?

16 A Yes.

17 Q And you do know what isomer means, and when you sit
18 here and pretend that you don't, you are lying, aren't you,
19 Mr. Park?

20 A Not a bit, Mr. Carr. I don't know what this
21 particular isomer means.

22 Q You don't know what the words with this particular
23 isomer refers to --

24 A Which one does it refer to?

1 Q You don't know what this particular isomer refers
2 to when it's in the tetra column for the chlorinated
3 dibenzofuran isomer, Mr. Park?

4 A Okay. It's my understanding that an isomer is a
5 particular one, not a whole branch, not a whole category.

6 Q You don't understand two TCDFs were present in the
7 samples with this particular isomer, the tetra isomer they are
8 talking about, that's the isomer they are talking about, isn't
9 it, Mr. Park?

10 A I thought that an isomer was one single dioxin or
11 furan.

12 Q Sure it is, it most certainly is, Mr. Park. An
13 isomer is --

14 A Then it wouldn't be two, would it, Mr. Carr?

15 Q Then you don't understand that this is talking about
16 the tetra isomer as a single group of isomers, you don't
17 understand that, when they use the word mono isomer and
18 di isomer they are talking about those isomers that are in that
19 group?

20 A This appears to be speaking of a single isomer.

21 Q No, it talks about two TCDFs were present with this
22 particular isomer, and you understand perfectly they are
23 talking about the column tetra, aren't they, sir, that's where
24 the letter B comes from, doesn't it, sir?

1 A The B is on every number in that column.

2 Q In what column, the tetra isomer column, isn't it,
3 sir?

4 A Well, it's the column with the term tetra above it.

5 Q And that's what it's referring to, isn't it, sir,
6 when it says this particular isomer, it's referring to the
7 tetra isomers, isn't it, sir?

8 A There could be more than one isomer, I would assume.

9 Q There are more than one isomer, according to what
10 this says. It says there are two isomers there, doesn't it,
11 sir?

12 A It says this particular isomer.

13 Q And you understand what having analytical
14 characteristics means, don't you, sir?

15 A I believe so.

16 Q And you understand what the words comparable to
17 the 2,3,7,8 TCDF means, don't you, sir?

18 A I think so.

19 Q Then indeed, you understand and anybody else that
20 reads this understands and your committee meeting understood
21 that this analytical chemist, Dr. Fred Hileman, your senior
22 research chemist, was reporting to you in this table that in
23 the sample KM05-7024 there were two hundred fifty-five parts
24 per billion of two isomers in the tetra column that had the

1 same analytical characteristics as the 2,3,7,8 TCDF, you
2 understood that, did you not?

3 A I didn't understand that all that well.

4 Q Sir?

5 A I just do not understand this all that well. I
6 don't deal with this terminology.

7 Q Mr. Park, you have been dealing with it for twenty
8 years. You have been dealing with it all the time that you
9 were on the committee. You dealt with it on the memos that
10 you wrote and discussed 2,3,7,8 TCDF. You used those very words.
11 You are indeed, and you have been familiar with those very
12 words for a number of years, haven't you, sir?

13 A I deal with them only when they arise in a meeting
14 to consider an 8(e) obligation or occasionally in other
15 meetings.

16 Q And they arose in the November 24 meeting. Now,
17 if you had any doubt in your mind as to the meaning of this
18 particular exhibit that you had in your file, you had people
19 there competent to tell you, didn't you, sir?

20 A There were people with responsibilities to deal with
21 this type of information --

22 Q And you discussed the presence of whether there were
23 or were not 2,3,7,8 tetrachlorodibenzofuran in this 2,4-d
24 sample, did you not, sir?

1 A If we can look at the minutes of the meeting.

2 Q I ask you not to look at it at this point in time.

3 A I can't recall off the top of my head.

4 Q Well, I want you to recall and see if you can, and
5 I will give it to you in a moment, Mr. Park. The purpose of
6 that meeting was to discuss whether or not you were going to
7 report the risks to the EPA, this chemical to the EPA, isn't
8 that correct, sir?

9 A May I refresh my memory --

10 Q No, you may not, Mr. Park.

11 MR. MUSGRAVE: Object to counsel refusing the
12 witness to see a document to refresh his memory, Your
13 Honor, as unfair to the witness.

14 THE COURT: Overruled.

15 Q (MR. CARR) He can see it in due course, but for
16 now I want to explore what you remember about that meeting.
17 Mr. Park, you had this document and this document reported
18 to you that there were three hundred forty-five parts per
19 billion of TCDF in these samples, four hundred nineteen,
20 two hundred twelve, two-twenty-six, three-twelve, one ninety
21 seven, one eight-two, seventy-five, one hundred seven, seventy,
22 ninety-two, one hundred thirty-six, two hundred two, three
23 hundred seventy-six, three hundred thirty-five, two ninety
24 five, two fifty-eight, and one eighty-two in those various

1 samples, isn't that correct, sir?

2 A Those are the numbers.

3 Q And now, there is no question, is there, sir, that
4 this chemist is telling you that there is something in this
5 tank car that has the analytical characteristics comparable
6 to the 2,3,7,8 TCDF, isn't he telling you --

7 MR. MUSGRAVE: Are you representing that that's what
8 this document says, Mr. Carr?

9 Q (MR. CARR) Isn't he telling you that, sir?

10 MR. MUSGRAVE: Are you representing that that's what
11 this document says, Mr. Carr?

12 MR. CARR: Yes, indeed, in Table 3, counsel --

13 MR. MUSGRAVE: It's a misrepresentation --

14 MR. CARR: We will see about that, counsel.

15 MR. MUSGRAVE: Because it does consider the entire
16 document, and you know it, Mr. Carr.

17 MR. CARR: We will consider the discussion, Mr.
18 Musgrave, in due time.

19 THE COURT: Objection is overruled.

20 Q (MR. CARR) This table, the chemist is telling you
21 by this table, by this standard analytical method that he's
22 used, he sees that these are comparable to the 2,3,7,8 TCDF
23 isomer, doesn't he, sir?

24 A Yes. He does qualify that with this second sentence.

1 Q Yes, indeed he does. But what he tells you and what
2 he reports is that these isomers have the same characteristics
3 of the 2,3,7,8, doesn't he, sir?

4 A Appears to be, yes.

5 Q And he doesn't say in that table, however, he did
6 an experimentation and he's unsure whether it is or is not,
7 he is not telling you about experiments, he is telling you
8 about standard methods used to find out what is or is not in
9 your chemicals, isn't he, sir?

10 A I don't know if it's standard or not.

11 Q Well, he's got it in his table and he tells you
12 that he's having the analytical characteristics on a packed
13 GC column comparable to the 2,3,7,8 TCDF. Now, he did use
14 other capillary columns in an effort to differentiate, and there
15 is no question but what he says that. But what he's telling
16 you here, in the standard method used there was these two
17 TCDFs that had comparable analytic characteristics to 2,3,7,8
18 TCDF, didn't he, sir?

19 A That appears to be what he's saying, yes.

20 Q Now, would you please refer to December 14, 1981
21 memo, Monsanto's Exhibit 882, in which you all considered
22 whether or not you should report to the EPA, under Section
23 8(a). You can now refresh your memory, Mr. Carr.

24 A Thank you, Mr. Carr.

1 Q I'll direct your attention to the third sentence
2 in the third paragraph, quote, also it was noted that no
3 2,3,7,8 dibenzofurans were found in the 2,4-dichlorophenol.
4 Levels up to one hundred parts per billion 2,3,7,8 tetrachloro-
5 dioxin have been believed to be safe levels by some toxico-
6 logists of 2,4,5 T, end of quote. Do you see that, sir?

7 A Yes, I do.

8 Q And you are stating affirmatively that no 2,3,7,8
9 dibenzofurans were found in 2,4-dichlorophenol, aren't you, sir?

10 A That's what it says.

11 Q And in fact, the chemistry reported to you in this
12 September 8 -- September 2, 1981 memo, Table 2 that hundreds
13 of parts per billion of that which is similar to 2,3,7,8 TCDF
14 was found in those chemicals 2,4-dichlorophenol, wasn't he, sir?

15 A It was apparently determined that this was not
16 2,3,7,8.

17 Q Excuse me, did he report that to you or not, sir?

18 MR. MUSGRAVE: My objection to counsel examining
19 this witness about what was reported in this document
20 for reasons I previously stated is to be a continuing
21 objection.

22 THE COURT: Sure, it's so noted.

23 A What page was that table on?

24 Q Table -- Page 5, Table 3.

1 A All it says there is that two TCDFs were present.

2 Q Yes. Go on, what else does he say?

3 A Well, it has with this particular isomer having
4 analytical characteristics on a packed GC column comparable
5 to the 2,3,7,8 TCDF. That by no means to my mind would say
6 that 2,3,7,8 TCDF is present. There may be a number of things
7 that have comparable analytical characteristics.

8 Q Well, I won't quarrel with that. But you can't
9 say positively, can you, sir, that no 2,3,7,8 dibenzofurans
10 were found there, sir?

11 A If additional information indicated so, yes.

12 Q And you have got additional information that says
13 in these samples it wasn't found, sir? Do you want to look
14 at the exhibit that counsel has been hinting that you should
15 refer to, and I'll be glad for you to look at Page 10, where
16 they talk about 2,4-dichlorophenol analyses.

17 (Pause)

18 Q Have you turned to it, sir?

19 A Yes, I have.

20 Q In the second paragraph it says -- the first
21 paragraph, it says, the results of the analysis of the
22 2,4-dichlorophenols are given in Table 3, doesn't it, sir?
23 At the top, the first paragraph there, first sentence?

24 A Yes, it does.

1 Q Table 3 of the table we are talking about, isn't
2 it, sir?

3 A Yes, it is.

4 Q And in the middle of the second paragraph it says,
5 however, one fact of Table 3 stands out and that is the
6 presence of high levels of two TCDFs one of which has analytical
7 characteristics comparable to 2,3,7,8 TCDF. Now, that's
8 exactly what he said at the footnote for Table 3, isn't it,
9 sir?

10 A Sir, I was looking at the third paragraph, it
11 appears to --

12 Q Mr. Park, we will get to the third paragraph in a
13 moment. If you don't mind, direct your attention, please,
14 to the area that I am asking you to look at.

15 A Okay, that was what, Mr. Carr?

16 MR. CARR: Your Honor, would you direct the witness
17 to listen to the question that I am asking so I need not
18 repeat it over and over again.

19 THE COURT: I think you have to pay better attention
20 to the question, Mr. Park, there is no need for that.

21 Q (MR. CARR) Mr. Park, in the second paragraph the
22 chemist says however, one fact of Table 3 stands out and that
23 is the presence of high levels of two TCDFs, one of which has
24 analytical characteristics comparable to 2,3,7,8 TCDF. And

1 that's exactly what he said as a footnote on Table 3, isn't
2 it, sir?

3 A Not exactly, but that's some of the same wording.

4 Q It means the same, doesn't it, sir?

5 A I don't know if the meaning is the same or not, Mr.
6 Carr.

7 Q Mr. Park --

8 A The wording has analytical characteristics --

9 Q Mr. Park, you are obviously an intelligent and
10 well-educated man, experience in this field, having a
11 responsible position, and are you telling us that the meaning
12 of that sentence that I read to you is not the same meaning
13 as the footnote that's at the bottom of Table 3?

14 A No, I am not telling you that at all, Mr. Carr.

15 Q That's exactly what you did say, Mr. Park.

16 A No, no.

17 Q Now, Mr. Park, he also points out that he uses
18 Figure 5, doesn't he, sir, to illustrate that this is so,
19 that they do have the same characteristics, doesn't he, sir?
20 He says that in the second sentence, he says this is
21 illustrated in Figure 5 in which the analyses were performed
22 on the SE-S4 capillary column adding the 37-CL4 2,3,7,8 TCDF
23 to the sample to assist in the qualitative identification,
24 doesn't he say that, sir?

1 A He does say that.

2 Q And that tells us, tells you, as a member of the
3 committee, that he did a second test to confirm that these
4 were comparable to 2,3,7,8 TCDF, did he not, sir?

5 A Mr. Carr, I really don't know. Looking at the
6 next sentence raises confusion --

7 Q Mr. Park, I have asked you to direct your attention,
8 the Court has instructed you to direct your attention to what
9 I am asking you. Will you listen to the question that I am
10 asking you.

11 A My answer was I don't know. I don't know what is
12 meant by that. It says to assist in the --

13 Q You are going to the next sentence again. I am
14 going to direct your attention to that sentence in a moment,
15 Mr. Park, and we'll get along a lot faster if you would
16 please listen to what I am asking you. Isn't it the sense of
17 what he says in that sentence I just read to you, sir, that
18 he illustrates the fact that there are high levels of two
19 TCDFs one of which has analytical characteristics comparable
20 to 2,3,7,8 TCDF by doing the analyses that he performed on
21 the SE-S4 capillary column?

22 A I don't know if that supports the other or not, Mr.
23 Carr. It appears to me --

24 Q Doesn't he use the word this is illustrated?

1 A In Figure 5.

2 Q What does it mean to you when he says this is
3 illustrated, Mr. Park?

4 A This is -- I guess it would be an illustration, that
5 he refers to Figure 5.

6 Q You are using the word I used. What does it mean
7 when it says illustrated, it means shown, this is shown, this
8 is demonstrated, isn't that what illustrated means, Mr. Park?

9 A It could mean.

10 Q Sir? Isn't that what illustrated means? Demonstrated,
11 shown, Mr. Park?

12 A I guess it would be -- yes, shown.

13 Q All right, Mr. Park, the next sentence that you
14 want to refer to from this figure it can be observed that at
15 least two TCDF isomers are present one of which coelutes with
16 the labeled 2,3,7,8 TCDF, you see that, sir?

17 A Yes.

18 Q So now he's saying again that one of these isomers
19 coelutes with that which is labeled 2,3,7,8 TCDF, you see that,
20 sir?

21 A Yes, I see that.

22 Q Now, I want you to assume, Mr. Park, at this point
23 in time that we have had testimony in this case from others,
24 that when they see other chemists, organic chemists and

1 otherwise, when they see the word that it coelutes with 2,3,7,8,
2 that they understand that to mean that they treat it as if it
3 is 2,3,7,8, that it should be treated as if it is 2,3,7,8,
4 because they cannot be more specific than that and they want
5 to be on the safe side. That if it looks like a duck and it
6 walks like a duck and it quacks like a duck, they are going to
7 treat it as if it is a duck. Would you assume that statement,
8 Mr. Park, from this point forward?

9 A In the absence of information to the contrary. Is
10 that your question?

11 Q No, I am asking you to assume that that is the
12 evidence in this case, that is the sworn testimony of Monsanto's
13 chemists in this case, sir.

14 MR. MUSGRAVE: Well, Your Honor, the qualifications
15 that the witness gave, if Mr. Carr won't let him assume,
16 I think it's a misrepresentation of prior testimony on
17 this topic, and it's an improper question for that reason.

18 THE COURT: Overruled.

19 Q (MR. CARR) Now, Mr. Park, he talks out because of
20 the importance of this identification, and he understands how
21 important it is to determine whether or not this is or is not
22 2,3,7,8, doesn't he, sir? He tells you it's important, doesn't
23 he, sir?

24 A He says, he indicates that the identification is

1 important.

2 Q And you know from being on this committee that it's
3 important because if it's there, it is a highly toxic substance,
4 or at least you've been told that it's a highly toxic substance
5 and it may affect the people to whom 2,3-dichlorophenol might
6 come in contact. You understand that that's the reason it is
7 important, don't you, sir?

8 A I am not that familiar with the toxicity of the furans.

9 Q I want you to assume then, Mr. Park, that others
10 have testified in this case that furans are highly toxic,
11 2,3,7,8 TCDF is highly toxic, close to the toxicity of 2,3,7,8
12 dioxin. Would you assume that, please, sir?

13 A Very well.

14 Q And he says because this identification was important
15 he repeated it, didn't he, sir?

16 A Yes.

17 Q And the mass spectrometer was now operated in the
18 ion mode rather than the selected ion monitoring mode and it
19 was carried out to determine whether there was any other
20 compounds coeluting with the TCDF and thus confuse the original
21 analysis. He says that, too, doesn't he, sir?

22 A Well, you missed a word, Mr. Carr. He said it was
23 now operated in the scanning mode rather than the selected ion
24 monitoring mode.

1 Q And he did that in order to determine whether any
2 other compounds were coeluting with the TCDF and thus confuse
3 the original analysis, didn't he, sir?

4 A Yes, he does say that.

5 Q And then he goes on and says normally it's not
6 possible to do that on a routine basis since we knew exactly
7 where to look this analysis was possible, isn't that correct,
8 sir?

9 A Yes.

10 Q Isn't that what he said, sir?

11 A Yes.

12 Q And then he goes on to say that the mass spectra
13 of the TCDF which coelutes with the 37 Cl4-2,3,7,8-TCDF is
14 shown in Figure 6, and there is a Figure 6 there, isn't there,
15 sir? Page 13?

16 A Yes.

17 Q And he says the spectra matches the spectra of
18 TCDF and shows no possible interferences, doesn't he, sir?

19 A Yes.

20 Q So thus far in this paragraph, he discusses the fact
21 that he has run perhaps four different tests to confirm whether
22 or not this is 2,3,7,8 TCDF, and each of these analyses and
23 tests show that it is, isn't that correct, sir?

24 MR. MUSGRAVE: Object, Your Honor, that's a

1 mischaracterization.

2 THE COURT: Overruled.

3 MR. MUSGRAVE: It's not a test to confirm whether
4 it's 2,3,7,8, it's a mischaracterization of the document.

5 THE COURT: Overruled.

6 A If I understood your question correctly, he does
7 say that the spectra matches the spectra of TCDF.

8 Q And shows no possible interferences.

9 A That's correct.

10 Q So thus far in this paragraph he has confirmed
11 that report in Table 3 and he has told you the number of things
12 that he has done to confirm it, hasn't he, sir?

13 A I will assume so.

14 Q Now, the next paragraph he goes on to tell you what
15 else he did to confirm that this was TCDF, doesn't he, sir?

16 A Yes, he's continuing the analysis of the TCDF.

17 Q And he ends up, gives you another Figure 7 and
18 Figure 8, and he ends up that paragraph saying however, the
19 major TCDF isomer in the sample still coelutes with the
20 Label 2,3,7,8, TCDF, but an enlargement of the chromatographic
21 trace (Figure 8) reveals that the peak in question does not
22 exactly coelute with the labeled internal standard, doesn't
23 he, sir?

24 A Yes.

1 Q And he gives you again Figure 8, to show, which is
2 an enlargement of those two peaks, isn't it, sir? It's on
3 Page 15.

4 A Yes. I guess it's a picture. I have never seen a
5 gas chromatograph, but I guess this is a picture of it.

6 Q Then he goes on in the next paragraph to tell you
7 at that point in time they stopped the analyses and the workup
8 of the sample all over again, using Dr. Mieure's method, using
9 neutral workup procedures this time, as described being done
10 back in 1977 by Dr. Mieure, doesn't he, sir?

11 A Yes.

12 Q So as to make sure there couldn't be any possible
13 artifact formation in the workup, isn't that correct, sir?

14 A I don't know about that, Mr. Carr.

15 Q Well, isn't that what he says. The results of those
16 analyses are shown in Figure 9 in which the analyses from both
17 the base workup and the neutral workup show comparable results
18 thus indicating no artifact formation, doesn't he say that, sir,
19 in that paragraph that starts on Page 10 and ends on Page 16?

20 A That's the sentence.

21 Q So he's telling you again that it's sure not an
22 artifact, isn't he, sir? That what's there is there in the
23 sample and not made up by accident.

24 A I don't think he's that positive. He says thus

1 indicating no artifact formation.

2 Q Well, you are right, that's not a positive statement.
3 So you can't be absolutely sure, correct, sir?

4 A That's the way I would read it.

5 Q Well, that's the way I would read the word indicating
6 as well. Pointing that way but not being sure, correct?

7 A That would be my interpretation.

8 Q Well now, remember that because I am going to call
9 that interpretation to mind in a few moments, Mr. Park.
10 Indicating means you can't be sure. Points that way but you
11 can't be sure, got that in mind, Mr. Park?

12 A In this context --

13 Q Mr. Park, do you have that in mind that that's just
14 what you said?

15 A I think the context could indicate a different
16 meaning.

17 Q Context could indicate a different meaning, sure it
18 can, but then you can't be sure, it just indicates, doesn't
19 it, sir. Indicates is not a positive word.

20 A It could be stronger or weaker, depending on the way
21 it was used.

22 Q All right. Now, the next paragraph he tells you now
23 that he devised a new method, a different method, something
24 that he thought up, to define whether or not the 2,3,7,8 TCDF

1 was there, doesn't he, sir?

2 A Yes, he says devising an HPLC analysis procedure.

3 Q And he pursued the idea of trying to define whether
4 it was present by devising an HPLC analysis procedure. Now,
5 he had an idea of what else to do, didn't he, sir, wanted to
6 go farther from the other standard methods and he thought of
7 something new to do?

8 A Apparently so.

9 Q And he went on then and described something that
10 we have not seen before in any of these documents, he used a
11 twenty-five centimeter reverse phase Zorbax ODS column with
12 seventy percent acetonitrile thirty percent water as eluant,
13 is that correct, sir?

14 A That's what I read the sentence the same way.

15 Q And he goes on to say with that method the 2,3,7,8
16 TCDF elutes shortly after the peak present in the sample,
17 doesn't he, sir?

18 A Let's see. There's another sentence between there.
19 Yes.

20 Q And he then goes on to say the results of these
21 analyses -- well, he did another run, he spiked it with two
22 hundred parts per billion, and discusses that in Figure 11,
23 shows the analysis on Figure 11, doesn't he, sir?

24 A Yes.

1 Q And then he says the unspiked sample shows a
2 symmetrical peak while the spiked sample shows a peak with a
3 definite hump on the back side. This would indicate that the
4 TCDF in question was not 2,3,7,8 TCDF, but some other isomer,
5 doesn't he, sir?

6 A Yes.

7 Q But then he says, this leads to a very significant
8 problem because there is no TCDF isomers other than the
9 2,3,7, 8 TCDF isomer that are commercially available. And so
10 he can't really tell anything more because there is nothing
11 but the 2,3,7,8 TCDF isomers available, correct, sir?

12 A Yes.

13 Q Now, he goes on down to further discuss what he
14 has been doing and how he identifies a particular isomer as
15 2,3,4,8 TCDF and cannot make chlorine distribution on the
16 other TCDF, does he not, sir?

17 A Let's see. Are you in that next-to-the-last
18 paragraph, Mr. Carr?

19 Q Yes, where he's doing some other things with PCB
20 isomers. He is talking about other PCB isomers that he is
21 working up and going on to explain other things that he's
22 doing about confirming 2,3,4,8 being present in samples?

23 A I do see references to 2,3,4,8.

24 Q And he talks about Professor Rappes' laboratory and

1 identifying work that they did and what he is using there.
2 And what it boils down to is he's got about five tests and
3 analyses of the standard method used for determining whether
4 or not it's 2,3,7,8 TCDF, all of which show that it is, and
5 he's got one newly-devised method which he says it indicates
6 that TCDFs in question was not 2,3,7,8 TCDF but some other
7 isomer, doesn't he, sir?

8 MR. MUSGRAVE: Object, Your Honor. That's a totally
9 mischaracterization of the document. It's counsel's
10 testimony, it's improper and it's attempting to mislead
11 the jury. It's not what the document says at all and Mr.
12 Carr knows that.

13 THE COURT: Overruled.

14 A It's not indicated that it's a new analytical
15 process. I would read this that he has tried one or two and
16 the results are confusing, so now he tries this one and the
17 results are more clear. And it appears that it is not the
18 2,3,7,8 TCDF, but some other isomer.

19 Q Well, he's talking about the isomer 2,3,4,8 TCDF in
20 Sample KMO6-7025, isn't he, sir? That's the sample that he's
21 worked up, isn't it, sir, that he's analyzed for 2,3,4,8 TCDF?
22 Does he indicate he worked up any other samples that way?

23 A He's analyzing for 2,3,7,8.

24 Q In that sample KMO6-7025?

1 A I believe so.

2 Q And he talks about all of that initial, subsequent
3 analyses that he's done that he finds 2,3,4,8 TCDF is in a
4 sample KMO6-7025, isn't that correct, sir?

5 A I'm sorry, where are you reading -- oh, down below
6 the 2,3,4,8?

7 Q Yes.

8 MR. MUSGRAVE: Where are you seeing the KMO6-7025,
9 Mr. Carr?

10 MR. CARR: Page 22 when he's discussing the
11 2,3,4,8 TCDF isomer that he's found and also on Page 10
12 when he talks about that he took the, bottom of Page 10,
13 when he talks about sample KMO6-7025 DCP sample.

14 MR. MUSGRAVE: But that talks about the neutral
15 workup. That doesn't refer to this continued work.

16 MR. CARR: Indeed it does.

17 Q (MR. CARR) Well, look on Page 22, if you will, and
18 there won't be any question about it.

19 A Yes.

20 Q He is talking about KMO6-7025, isn't he, sir?

21 A Which paragraph, Mr. Carr?

22 Q The second paragraph, Page 22, middle of that
23 paragraph toward the bottom part of it.

24 A Yes, I do see the reference to KMO6-7025.

1 Q He also says in that same paragraph, it should be
2 noted that the TCDFs were considerably lower in the Dow 2,4
3 DCP as compared to our samples, doesn't it, sir?

4 A I see that sentence.

5 Q It also says, however, the same isomers present in
6 the Monsanto DCPs were also present in the Dow DCP.

7 A Yes.

8 Q Now, as a result of this, he prepared the table, and
9 this table is in there prepared, and when she labeled all
10 these samples on Table 3 as being those TCDFs that have
11 analytical characteristics comparable to 2,3,7,8 TCDF, doesn't
12 he, sir?

13 A Well, we are back to the footnote on --

14 Q Yes, back to the footnote on Page 5, Table 3.

15 MR. MUSGRAVE: Object, that's a mischaracterization
16 of what it says. It says packed column, Mr. Carr.

17 MR. CARR: That's all right with me, I'll accept it,
18 Your Honor.

19 THE COURT: Overruled.

20 Q (MR. CARR) It says packed GC column comparable to
21 the 2,3,7,8 TCDF.

22 MR. MUSGRAVE: And then it refers, Your Honor, and
23 Mr. Carr, see the discussion of these results for further
24 results using capillary columns.

1 MR. CARR: And we have seen the further discussion,
2 he has told us quite in detail the number of things that
3 he did to confirm that it was 2,3,7,8, didn't he, sir.

4 MR. MUSGRAVE: I object, that's total -- that, Mr.
5 Carr, is a lie.

6 THE COURT: Overruled.

7 MR. MUSGRAVE: It's a mischaracterization of the
8 evidence, Your Honor.

9 THE COURT: Overruled.

10 A We are back -- he appears to be saying that one of
11 the -- I see now that there are two columns under -- if I am
12 reading this Table 3 correctly, there appear to be two columns
13 under the Tetra heading and he is saying that one of these
14 has analytical characteristics on a packed GC column comparable
15 to the 2,3,7,8 TCDF.

16 Q Now, Mr. Park, directing your attention to the
17 December 14, 1981 memo, Monsanto Exhibit 882, the statement
18 that we have discussed earlier, quote, also it was noted that
19 no 2,3,7,8 dibenzofurans were found in the 2,4-dichlorophenol,
20 end of quote. Now, you put that statement in there, didn't
21 you, sir?

22 A That came from a chemist who was present at the
23 meeting.

24 Q My question is you put that statement in there,

1 didn't you, sir?

2 A It's in the minutes.

3 Q And you, by putting that statement in there, meant
4 to convey that your tests revealed no 2,3,7,8 dibenzofurans,
5 didn't it, sir?

6 A I relied on a chemist who was present at the meeting
7 and who said put it in.

8 Q Mr. Park, you meant to convey the meaning that there
9 was in fact, and that you could rely on it, and if anybody ever
10 came along and checked and looked why you didn't report the
11 furans to the EPA as a risk, as a health risk, you could pull
12 this document out and say, well, look, there wasn't any 2,3,7,8
13 furan in that 2,4-dichlorophenol. You could do that. You are
14 making a record, aren't you, Mr. Park?

15 A The sentence was put in there, Mr. Carr, because
16 there were no 2,3,7,8 dibenzofurans, I assume.

17 Q There were none, sir? What does Table 3 say? Does
18 it say that there isn't any in there, sir?

19 A Mr. Carr --

20 Q Does this document anywhere say that in Sample 7024
21 there are no 2,3,7,8 dibenzofurans?

22 A I think we've been through what the table says.

23 Q We have indeed, and does it say anywhere that there
24 is no 2,3,7,8 dibenzofurans in Sample KMO5-7024?

1 A It doesn't say that.

2 Q But, Mr. Park, what you say in this memo is that
3 there wasn't any, don't you, sir?

4 A Yes.

5 Q But the document doesn't say that there is not any,
6 does it, sir?

7 A Not this document by itself.

8 Q Is there another document somewhere that says, that
9 you went back and rechecked Sample 7024 and you discovered
10 that the September, 1981 table was wrong? That in fact there
11 was no 2,3,7,8? Have you got another file that I haven't
12 seen, Mr. Park?

13 A There's another document in this file, Mr. Carr,
14 that indicates there was none.

15 Q Please find that document if you would, sir.

16 A Here it is, Mr. Carr. This is a memorandum to me
17 from --

18 Q May I see it, please?

19 A Yes. This is where it came from right here.

20 Q Mr. Park, this is attached to Plaintiff Exhibit --
21 I don't know the number offhand, but this is Clayton Callis'
22 comment, isn't it, sir?

23 A That's correct.

24 Q And he's using your language, he hasn't changed your

1 language, he's suggesting that the third paragraph that you
2 have should read as he puts it. He doesn't change anything.
3 He doesn't tell you anything new, does he, sir?

4 A Yes, he does, Mr. Carr. If you read it.

5 Q What does he tell you new, sir?

6 A He added that sentence that you just referred to and
7 read to the Court a moment ago.

8 Q And it's not in your report of December 14?

9 A It went from here into the final. I don't believe
10 it was in my --

11 Q We are talking about your final report, sir.

12 A Which was based upon what he said, Mr. Carr. See,
13 it included his comments to go in the final.

14 Q And where is there documentation, where is there
15 some evidence that it was not in there?

16 A Well, it's not in the first draft that I circulated,
17 I don't believe. No.

18 Q You added that because he --

19 A At his request.

20 Q All right. And now where did he get the information
21 then that there was no 2,3,7,8 in this material tested, sir?

22 A I don't know. He's a very capable chemist. He's a
23 former president of the American Chemical Society.

24 Q And did he dream it up out of the sky?

1 A I doubt that.

2 Q Is there a document in there other than his state-
3 ment, sir?

4 A I don't know. I assume he would have obtained the
5 information.

6 Q And it should be in your file if you got it somewhere,
7 shouldn't it, sir?

8 A Not necessarily.

9 Q Well, where is it, sir? I have asked for all this
10 information.

11 A I don't know.

12 Q You have never seen it? Did you consider that
13 evidence that he had at this meeting, sir?

14 A I give great weight to someone with his qualifi-
15 cations says.

16 Q Did you consider that evidence that he had at this
17 meeting, sir, the TSCA 8(e) meeting, did you consider this
18 evidence that he said supports the conclusions that there is
19 no 2,3,7,8 in the samples?

20 A We consider all evidence.

21 Q And what evidence is it that you considered then,
22 that would indicate there is no 2,3,7,8 in the samples?

23 A Dr. Callis, I assume, had other information
24 available to him that's not in the file.

1 Q And my question is where is that other evidence?

2 A I don't know.

3 Q Did your committee have it?

4 A I can't tell you off the top of my head, Mr. Carr.

5 Q That file of yours is supposed to have all the data
6 in it that supports the conclusions that you reach in your
7 meetings, isn't it, sir?

8 A Not necessarily, no.

9 Q Well, is there any evidence of any sort at any time
10 that you are aware of to support the statement that you put,
11 that your committee adopted in this report, final report of
12 December 14, 1981?

13 A This statement by someone with the qualifications of
14 Dr. Callis I think would support that.

15 Q I asked you for evidence, sir.

16 A Well, right here.

17 Q He didn't analyze the samples, did he, sir?

18 A I don't know.

19 Q Well, you do know. Look at the document and see
20 who analyzed the samples. Dr. Hileman analyzed the samples,
21 didn't he, sir?

22 A Others would be better qualified to speak on this,
23 but I would assume he would have talked to Hileman or others
24 about it and maybe they reached some conclusion.

1 Q But not put those conclusions in writing, not have
2 data there to support your statements, sir?

3 A Huh-uh.

4 Q Is that the way you do it at Monsanto?

5 A Everything that's considered at these meetings is
6 not put down on paper.

7 Q Well, something as important as whether there is or
8 is not 2,3,7,8 dibenzofuran in your 2,4-dichlorophenol,
9 surely you would have some evidence to support that, Mr. Park,
10 some chemist somewhere would have analyzed it and said in
11 this sample 7024, why, all that tetra in there, none of that
12 is 2,3,7,8. Surely you would have some -- we've got tables
13 and tables, we've got reports and reports, where they say
14 non-detected for tetras. We see that all the time, all kinds
15 of documents, every single sample that we've got here, some
16 chemist has analyzed it. Now the analysis that we have says
17 that there is something in there that has the same analytical
18 characteristics as 2,3,7,8, isn't that right, sir?

19 MR. MUSGRAVE: Object, Your Honor. That's a
20 mischaracterization of the document with regard to a
21 packed column, but it says see discussion.

22 THE COURT: Overruled.

23 A It says there appeared to be analytical
24 characteristics comparable to 2,3,7,8.

1 Q I'll accept that. And did you say that in your
2 memo of December 14?

3 A No.

4 Q What you said was that there isn't any. You said
5 affirmatively and positively for somebody to rely on that
6 there isn't any, and that was a lie, wasn't it, Mr. Park?

7 A Absolutely not.

8 MR. MUSGRAVE: Objection, Your Honor, that's totally
9 improper. Request the jury be instructed to disregard it.

10 THE COURT: Overruled.

11 Q (MR. CARR) Mr. Park, if it's the truth, where is
12 the chemist's analysis that shows Sample 7024 does not have
13 2,3,7,8 TCDF in it?

14 A Mr. Carr, I can't tell you why another report was
15 not filed, was not prepared. I assume that this was discussed
16 verbally and was confirmed.

17 Q My question is where is the analysis that says to
18 your committee, you don't have to report because there isn't
19 any 2,3,7,8 in it. I am asking you where is that document --
20 and counsel, if you have it, I'd like to have it produced.

21 A As I showed you, Mr. Carr, here is the basis for
22 the statement.

23 Q My question, however, that is not an analysis of the
24 samples is it, sir? What this is, he's suggesting to you how

1 to word a particular paragraph, isn't he, sir?

2 A That's correct.

3 Q He's telling you to put this paragraph in place of
4 the paragraph that you sent out and in fact, you adopted that
5 paragraph?

6 A That's correct.

7 Q And this Clayton Callis is a senior chemist?

8 A I would consider him a very highly qualified chemist.
9 He's a Dr. Callis, PhD, I believe.

10 Q And so is Dr. Hileman, isn't he?

11 A I'm not that familiar with Dr. Hileman.

12 Q Well, let me represent to you that Dr. Hileman was
13 hired because of his capabilities in analyzing these products
14 and that he is relied upon, all kinds of documents come through
15 here with his signature on it, analyzing these products, and
16 that he's testified here. Would you accept, please, that he
17 is also a Doctor, PhD?

18 A I'll accept that.

19 Q And you have his analysis there that tells you
20 there is something in there comparable to 2,3,7,8 TCDF, you
21 have that, don't you, sir?

22 A Yes, I have the results.

23 Q And you haven't a single other chemist's analysis
24 of those samples in your file, have you, sir?

1 A That's correct.

2 Q All the evidence that you have is that there was
3 something in there that looked like 2,3,7,8, isn't that correct?

4 A No, I would consider Dr. Callis' memorandum evidence.

5 Q You would consider that evidence of an analysis of
6 it? My question is the only evidence you have of any
7 analysis is the Hileman report, isn't it, sir?

8 A I consider that evidence of a lack of non-presence.

9 Q My question is, the only analysis you have is the
10 Hileman report, isn't it, sir?

11 A That would appear to be the only analysis in this
12 file.

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

15 MR. CARR: Yes, Your Honor.

16 THE COURT: Ladies and gentlemen, we will take a
17 short recess. I will remind you you are not to discuss
18 this matter among yourselves, with anyone outside the
19 jury panel, or as of yet form any opinions or conclusions
20 about the matters on trial. Court will be in a short
21 recess.

22 (Whereupon a short recess was taken, after which
23 time the proceedings were had, in open court:)

24 THE COURT: Mr. Carr?

1 Q (MR. CARR) Yes, Your Honor. Now, Mr. Park,
2 regardless of what Mr. Callis may say, one fact -- or did say,
3 one fact does stand out and that's the presence of high level
4 of two TCDFs, one of which has analytical characteristics
5 comparable to 2,3,7,8 TCDF, isn't that correct, sir?

6 A There were levels --

7 Q Could you answer that question, please?

8 A No, I don't think they were high levels.

9 MR. MUSGRAVE: That's a mischaracterization of the
10 entire document.

11 THE COURT: Overruled.

12 Q Could you answer that question?

13 A I would say there were no high levels present.

14 Q Would you turn to Page 10 of Dr. Hileman's report,
15 about the eighth line of the second paragraph? Does he not
16 say -- are you there, sir?

17 A Page 10, second paragraph?

18 Q Yes, about the eighth line.

19 A Yes.

20 Q Does he not say, however, one fact of Table 3 stands
21 out and that is the presence of high levels of two TCDFs, one
22 of which has analytical characteristics comparable to 2,3,7,8
23 TCDF. Did I read that exact quote of Dr. Hileman?

24 A I think so.

1 Q And he calls it a fact, doesn't he, sir?

2 A Yes, he does.

3 Q And he said high levels, didn't he, sir?

4 A Yes, he did.

5 Q And he said one of which had analytic characteristics
6 comparable to 2,3,7,8, TCDF, did he not, sir?

7 A Yes, he did.

8 Q Now, those high levels that were present, the fact
9 that there were high levels present, was absolutely denied by
10 Dr. Callis when he gave you that suggested change in your memo,
11 isn't that correct, sir?

12 MR. MUSGRAVE: I object, Your Honor, to counsel's
13 interpretation of this document. The sentence says one
14 fact of Table 3. The sentence refers to only one table
15 in this document, in the entire document and its entire
16 contents, does not say what Mr. Carr is saying it says.
17 And that is a mischaracterization of the evidence.

18 MR. CARR: The chemist that wrote the document, and
19 he wrote it after he did all the tests, he said one fact
20 of Table 3 stands out -- and this is after he did all
21 these tests and all these analyses, and found that an
22 isomer present was -- one isomer there was 2,3,4,8 and
23 did his study to discover that one isomer of the two was
24 2,3,4,8, he said, however, one fact of Table 3 stands out

PENGAD CO., BAYONNE, N.J. 07002 FORM IL 248

1 and that is the presence of high levels of two TCDFs.

2 MR. MUSGRAVE: Table 3 is not the entire document,
3 Mr. Carr.

4 MR. CARR: And nobody said it is. There's a lot of
5 facts --

6 MR. MUSGRAVE: Yes, you did, Mr. Carr. That's
7 exactly what you tried to say, and you know it was a
8 misrepresentation.

9 MR. CARR: I read this exactly, counsel, that one
10 fact, whether it's a fact in Table 3 or a fact in
11 Table 5, a fact is a fact is a fact.

12 MR. MUSGRAVE: Not in reference to the entire
13 document. When you first mentioned it, Mr. Carr, you
14 said one fact without referencing only Table 3, which is
15 what Dr. Hileman said in the report.

16 MR. CARR: Dr. Hileman says it's a fact, does he not,
17 sir?

18 THE COURT: Objection is overruled.

19 MR. MUSGRAVE: Objection to the statement he just
20 said Dr. Hileman says it's a fact of Table 3.

21 THE COURT: Overruled, objection is overruled.

22 Q (MR. CARR) I don't care if it's a fact on Table 5
23 or Table 10, a fact is a fact is a fact, isn't it, Mr. Park?

24 A The word --

1 Q My question is a fact is a fact, isn't it, sir?

2 A I assume so.

3 Q And this chemist says that it's a fact as shown by
4 Table 3 that there are high levels of these TCDFs, doesn't he,
5 sir?

6 A Right, he says it -- right, the presence of high
7 levels of TCDFs.

8 Q And Dr. Callis represented to your committee without
9 any analysis of his own that that wasn't a fact, didn't he, sir?

10 A No, he did not.

11 MR. MUSGRAVE: Objection. That's not what Dr. Callis
12 represented.

13 THE COURT: Overruled.

14 A No, he did not.

15 Q (MR. CARR) He said also it was noted that no
16 2,3,7,8 dibenzofurans were found in the 2,4-dichlorophenol,
17 didn't he, sir?

18 A Yes.

19 Q He meant, and you would read that and the person
20 reading that would it to mean that Monsanto did not find those
21 things that looked like 2,3,7,8, would they, sir?

22 A No, not necessarily.

23 Q Not necessarily?

24 A He said that that particular thing was found in the

1 2,4-dichlorophenol.

2 Q No, he says that no 2,3,7,8s were found, he states
3 it as an affirmative fact. He alleges, he states positively
4 that none were found, doesn't he, sir?

5 A That's correct.

6 Q And does the chemist say that, the chemist that
7 analyzed it, or does the chemist say that it's a fact?

8 A No, what the chemist says --

9 MR. MUSGRAVE: Again, I object, he's misrepresenting,
10 trying to hook this up with that. Your Honor, the chemist
11 says it's one fact of Table 3 --

12 MR. CARR: The Court has overruled counsel's
13 objection --

14 MR. MUSGRAVE: Just a second, Mr. Carr, until I
15 finish my objection. He says it's one fact of Table 3.
16 And I insist that the statement on Table 3 is what the
17 chemist said and is what is represented in the document
18 and not what Mr. Carr is now trying to say.

19 THE COURT: Objection is overruled.

20 A This exhibit, the chemist's exhibit here is not
21 necessarily inconsistent with what Dr. Callis said. The chemist
22 does not state that 2,3,7,8 is present.

23 Q And so this document then -- excuse me. Do you
24 understand, Mr. Park, that when one takes an oath he says he

1 will tell the truth, but the oath goes farther than that,
2 doesn't it? It's not just to tell the truth, but the oath
3 requires you to tell the whole truth, doesn't it, sir?

4 A Of course.

5 Q And if you just tell part of the truth and not the
6 whole truth, that can be the same thing as a lie, can't it, sir?

7 A It would be contrary to the oath.

8 Q That's not what I asked you.

9 MR. MUSGRAVE: Objection to the line of questioning
10 as irrelevant and immaterial, Your Honor.

11 THE COURT: Overruled.

12 A I don't know that it would be exactly the same as
13 a lie.

14 Q (MR. CARR) You don't know that it would be
15 exactly the same?

16 A I would not classify that as exactly the same as a
17 lie. It would be contrary to the oath. If one swears to
18 tell the whole truth and one does not, that would be contrary
19 to the oath.

20 Q And when he gives you half of the truth, without
21 the rest of the truth, you indeed can be misled and you can
22 act on your peril upon half of the truth, and juries can come
23 to wrong conclusions just on half the truth, or just on
24 ninety percent of the truth, can't they, Mr. Park? Governmental

1 agencies, just like juries, can reach wrong conclusions just
2 on a part of the fact, can't they, sir?

3 MR. MUSGRAVE: I object to the question as being
4 vague and indefinite, without reference to any particular
5 fact relevant and material to this case. It's totally
6 improper questioning.

7 THE COURT: Overruled.

8 A Obviously it's desirable to have as much of the
9 truth as possible.

10 Q (MR. CARR) That isn't what I asked you, Mr. Park.
11 I didn't ask you whether or not it was desirable. I asked
12 you whether or not juries can be misled just getting part of
13 the truth and governmental agencies can be misled just getting
14 part of the truth, that's what I asked you, Mr. Park, isn't
15 that correct, sir?

16 A It might be possible.

17 Q Yes. You know governmental agencies can be misled
18 if they are just getting part of the truth, don't you, sir?

19 A MR. MUSGRAVE: May my objection to the type of
20 questioning as vague and indefinite without any relation-
21 ship to the issues in this lawsuit be a continuing
22 objection.

23 THE COURT: Sure, it's noted.

24 A I don't know that, no.

1 Q Do you know that juries can be misled getting just
2 part of the truth?

3 A Juries should have as much of the truth as possible.

4 Q That isn't what I asked you, Mr. Park.

5 A Might be.

6 Q And did this document that you put memoranda to file
7 in compliance with the law, did it tell the whole truth when
8 it said it was noted that no 2,3,7,8 dibenzofurans were found
9 in the 2,4-dichlorophenol?

10 A Yes.

11 Q Isn't the whole truth, put a comma there, what we
12 found high -- the fact is we found high levels of two TCDFs,
13 one of which has all the analytical characteristics of
14 2,3,7,8 TCDF?

15 A No, not at all.

16 Q And it is, you believe then, I take it, that what
17 and the way that your committee treated the fact pointed out
18 by the chemist in Table 3 was proper and appropriate and that
19 you were fulfilling your complete obligation under Section
20 8(e), is that correct, sir?

21 A I think I can rely fully on someone with the
22 qualifications of Dr. Callis, who have explored this subject
23 and confirmed what he put in his memorandum to me.

24 MR. CARR: Your Honor, would you direct the witness

1 to answer the question that I asked him.

2 THE COURT: Mr. Park, you have to answer the
3 question.

4 A I think Dr. Hileman wrote this. Dr. Hileman's report
5 was dealt with properly.

6 MR. CARR: Your Honor, would you direct the witness
7 to answer the question.

8 THE COURT: That was not responsive. You have to
9 answer the question that was asked of you, Mr. Park, I
10 am directing you to.

11 A As I recall the question, the answer is yes.

12 Q And has Monsanto so far as you know, and all the other
13 8(e) meetings that it's held, dealt with the subject matter
14 and made its report in the same fashion and with the same idea
15 toward whether or not you are fulfilling your obligation under
16 the law as you did in the instance of the November, 1981 meeting?

17 MR. MUSGRAVE: Objection, vague and indefinite.

18 THE COURT: Overruled.

19 A Yes, we always try to fully fulfill our obligations
20 under the law.

21 Q And you are doing that in the same fashion in these
22 other meetings as you did on the November 24, 1981 meeting as
23 reported in your memo of December 18, 1981, Monsanto's Exhibit
24 882, is that correct, sir?

1 MR. MUSGRAVE: Same objection, vague and indefinite.

2 THE COURT: Overruled.

3 A I'm sorry, I am a little confused by the question.
4 You mention Monsanto's Exhibit 882 and I don't have that
5 before me.

6 Q That is the December 14, 1981 memo that we have
7 been referring to all morning.

8 A The answer is yes.

9 Q Now, you knew at that meeting that you held on
10 December -- on November 24, that it was vitally important to
11 discovery whether or not these furans were poisonous and toxic,
12 didn't you, sir?

13 MR. MUSGRAVE: Your Honor, just for the record,
14 may my objection to the relevancy and materiality of the
15 continued examination on furans be noted as a continuing
16 objection.

17 THE COURT: Sure.

18 MR. MUSGRAVE: With this witness.

19 THE COURT: It's so noted.

20 A I would assume that the toxicity of the furans was
21 considered by those present qualified to do so.

22 Q Is the answer to my question yes?

23 A Yes.

24 Q And you knew that if you concluded that the furan

1 level, the high levels of furan in that product constituted a
2 health risk, you knew that you would have to report that to
3 the EPA, didn't you, sir?

4 A If for any reason we had concluded that there was a
5 substantial risk of injury to health or the environment, we
6 would have so reported to the EPA.

7 Q Is the answer to my question yes, Mr. Park?

8 A If that would have been sufficiently high, yes.

9 Q And therefore you had considered at that time,
10 whether or not it was toxic, didn't you, sir?

11 A The toxicity of the furans together with the use
12 of the product, all relevant factors would have been
13 considered, Mr. Carr.

14 Q And you asked for information as to that toxicity,
15 your committee asked for and received information as to the
16 toxicity of furans, didn't you, sir?

17 A I think some of the committee probably was familiar
18 with toxicity of furans.

19 Q And, of course, you knew -- is the answer to that
20 question yes, you did get information?

21 A Right, in addition to information already known.

22 Q And you knew, of course, that the 2,3,7,8 TCDF was
23 the most toxic of all the furans, you knew that as well,
24 didn't you?

1 A I can't answer that, I don't know, Mr. Carr.

2 Q You don't know that? Would you mark this Plaintiff's
3 Exhibit, please?

4 (Plaintiff's Exhibit No. 1305 was marked for
5 identification by the reporter as requested.)

6 Q (MR. CARR) Handing you what's been marked Plaintiff's
7 Exhibit No. 1305, you recognize that again as one of the
8 documents that came from your file, do you not, sir?

9 A Yes, I do.

10 Q Your TSC file that I saw last night, you see that,
11 don't you, sir?

12 A I recognize it as being in the file, yes.

13 Q And it is information as to the toxicity of furans,
14 isn't it, sir?

15 MR. MUSGRAVE: May I see the document, Mr. Carr?

16 MR. CARR: Oh, I'm sorry.

17 MR. MUSGRAVE: Thank you.

18 A It does appear to deal with toxicity of furans.

19 Q It discussed whether or not there is exposure to
20 humans that might eat fish containing these furans, doesn't
21 it, sir?

22 A Yes.

23 Q And discusses how the humans consume fifty grams
24 of fish per day? Paragraph 3 under the letter A?

1 A Yes, yes, I see that.

2 Q It discusses how much exposure the humans will have
3 to this furan contamination in the 2,4-DCP, doesn't it, sir?

4 A Yes, I believe so.

5 Q It discusses exposure via drinking water, doesn't it,
6 sir, on the next page, Paragraph B?

7 A Yes.

8 Q It also discussed whether or not there is going to
9 be widespread significant exposure from the use of 2,4-D on
10 cropland, doesn't it, sir?

11 A Yes.

12 Q Now, all of those things -- and it also discusses
13 whether or not there can be exposure as from a spill, for
14 instance, acutely as in a spill, correct, sir?

15 A Yes.

16 Q And you understand that means if the product is
17 spilled in the plant, or if the product might be spilled on
18 the way to someplace, like in a little town in Sturgeon, you
19 understand that that's what that's discussing, don't you, sir?

20 A Spill at any location.

21 Q Yes. And it discusses in that regard, the minimum
22 fatal exposure, doesn't it, sir, to guinea pigs?

23 MR. MUSGRAVE: EPA, Mr. Carr.

24 Q Yes, indeed. It does, doesn't it, sir?

1 A Well, it says maximum exposure.

2 Q The comment at the bottom of the page, sir, comment,
3 EPA gives the minimum fatal exposure to 2,3,7,8 TCDD in guinea
4 pigs as .6 micrograms per kilograms, doesn't it, sir?

5 A Yes.

6 Q Now, the person that did this calculation calculated
7 that this exposure as if in a spill are chronically, acutely
8 in this instance, that they would get .1 micrograms per
9 kilogram, didn't they, sir?

10 MR. MUSGRAVE: Less than, Mr. Carr.

11 A Where are you reading?

12 Q Not more than . -- Paragraph 1-C under the letter D.

13 MR. MUSGRAVE: Less than, Mr. Carr.

14 Q (MR. CARR) Get not more than .1 micrograms per
15 kilogram, do you see that, sir?

16 A That's right, yes.

17 MR. MUSGRAVE: Objection Your Honor.

18 THE COURT: Overruled.

19 Q (MR. CARR) And they are making equations there,
20 micrograms per kilogram for the guinea pig and micrograms per
21 kilogram for the human being, aren't they, sir?

22 A He does make a comment, yes.

23 Q And this calculation says that a human being would be
24 exposed to .1 micrograms of that which is fatal to .6 micrograms

1 in guinea pigs, doesn't it, sir?

2 A No, Mr. Carr, I believe the guinea pig number
3 relates to dioxin and --

4 Q Oh, yes, 2,3,7,8 TCDD, which we have had testimony
5 is -- 2,3,7,8 TCDF has toxicity close to it. And he knows,
6 he's talking about TCDF, that's what the whole document is
7 about, is about furans, isn't it, sir?

8 A The rest of it appears to be, but it just says
9 comment, colon, and it says EPA gives the minimum fatal
10 exposure to 2,3,7,8 TCDD, dioxin, in guinea pigs.

11 Q So what it says here is that a human exposure is
12 going to be getting one-sixth of the dose per kilogram, so
13 the equivalent per kilogram for the guinea pig or kilogram for
14 a human being is equivalent, he's going to be getting one-sixth
15 the dose that would kill a guinea pig, doesn't he, sir? Not
16 more than one-sixth?

17 A He is not talking about the same thing, though, Mr.
18 Carr.

19 Q Is that what the document says?

20 A No.

21 MR. MUSGRAVE: Object. Mr. Carr's statement is a
22 misrepresentation of the document. He knows it says that
23 the calculation there says less than .1.

24 MR. CARR: Your Honor --

1 THE COURT: Overruled.

2 MR. CARR: The caret there can be read less than or
3 more than, and counsel continues to make that objection
4 and could we agree that he has a standing objection so I
5 might not be interrupted on this point, you have over-
6 ruled him about twenty times.

7 THE COURT: Why don't we just make it a continuing
8 objection. I think that's a good suggestion. Thank you.

9 Q (MR. CARR) Equates the exposure here to one-sixth
10 per kilogram not more than one-sixth per kilogram as that which
11 is fatal to guinea pigs for the same kilogram weight, isn't it,
12 sir?

13 A I don't think he equates to.

14 Q You don't think so?

15 A No.

16 Q Does he not work out the exposure levels there?

17 MR. MUSGRAVE: My objection also to this individual
18 being asked to interpret this document and what it means
19 and what the author meant when he did not author the
20 document.

21 THE COURT: It's overruled and it will be a
22 continuing objection.

23 MR. MUSGRAVE: And of his interpretation of this
24 document, both on his background and experience as well

1 as the fact, Your Honor, that it was authored by somebody
2 else.

3 THE COURT: It's a continuing objection. Overruled
4 on all counts.

5 A I would construe what he says here in this D-1, that
6 he has a theoretical formula and he gets down to saying that
7 the exposure, acute exposure to human beings in the event of
8 a spill would be less than one-tenth of a microgram per
9 kilogram of furan. Then he skips a space and says comment:
10 EPA gives the minimum fatal exposure to 2,3,7,8 TCDD, the
11 dioxin, in guinea pigs as 0.6 micrograms per kilogram. I
12 would read that as just merely making a comment, not comparing
13 the two.

14 Q Well, why has he got it in Column A, B, C and D if
15 he is not comparing the two?

16 A I don't know.

17 Q You don't know that, do you?

18 A I don't know.

19 Q What he says in A, B, C and D is that a human being
20 is going to be getting per body weight per kilogram one-sixth
21 the dosage of the total TCDFs of that which has been fatal
22 as far as 2,3,7,8 TCDD is concerned in guinea pigs.

23 MR. MUSGRAVE: Object, Your Honor, that's not a
24 question, that's counsel testifying, and the witness has

1 already answered the question that he doesn't know, he's
2 not an expert in this area, he doesn't know, Your Honor,
3 and now counsel is testifying. I object and request that
4 the jury be instructed to disregard it.

5 THE COURT: Overruled on all points.

6 Q Isn't that what he is saying there?

7 A I have no idea what he had in mind.

8 Q You have no idea what he had in mind. The next page
9 he discusses chronic exposure to it, doesn't he, sir?

10 A Yes.

11 Q But he says he can't perform a similar calculation
12 because you've got no information on chronic no effect exposure
13 for 2,4-DCP, doesn't he, sir?

14 A Yes, he does.

15 Q And he is not even talking about chronic exposure to
16 the furans, is he, sir, he's talking about chronic exposure
17 for 2,4-DCP?

18 A Yes.

19 Q Now, when -- you all have this document, it's dated
20 November 18, 1981, and the subject is background for your
21 November 28 meeting 8(e), you all had this document where he
22 made these calculations, where he made these comments at your
23 November 24 meeting, didn't you, sir?

24 A I would assume so, yes.

1 Q And you considered at that time whether or not
2 people are going to be exposed to these at the levels suggested
3 in your Hileman's report, isn't that correct, sir?

4 A Yes.

5 Q And you decided, I take it, that since there were
6 no 2,3,7,8 TCDFs found and reported and you decided that since
7 you have no information as to the effects of chronic exposure,
8 although you know what, may get one-sixth the dose that would
9 be fatal per kilogram weight, you nevertheless ignore the
10 plain requirements of the law, you discuss exposure at some
11 length, and you give weight to exposure, you determine whether
12 or not people are going to eat the fish, whether or not a
13 spill might take place, whether or not they are going to drink
14 the water, and you decided at that point in time that whatever
15 exposure there was, it wasn't going to be sufficient to hurt
16 the human being, notwithstanding the comment made by the author
17 of the document, isn't that correct, sir?

18 A That's right. There would be no substantial risk..

19 Q And you ignored the constraint of the law that when
20 you have human health effects as bad as death and cancer and
21 incapacitation, that the fact that it goes in commerce is
22 sufficient evidence of exposure, you ignored that aspect of
23 the law, you found that it didn't apply, you said that it
24 didn't apply, didn't you, sir?

1 A Didn't ignore it at all. That's a misconception,
2 Mr. Carr.

3 Q Did this memo discuss exposure to human beings?
4 The memo by Dr. Wilson?

5 A The memo doesn't -- let's see.

6 Q Doesn't it say, is there significant exposure to
7 humans eating fish contaminated, doesn't it give you a
8 calculation on exposure, doesn't it say is there significant
9 exposure via drinking water? Is there significant exposure
10 via residues spread on the croplands? Is there significant
11 industrial exposure, acutely, as in a spill or chronically?
12 Doesn't this memo discuss exposure, the entire document deals
13 with exposure, doesn't it, Mr. Park?

14 A The minutes summarize the meeting.

15 Q Dr. Park, directing your attention to Plaintiff's
16 Exhibit 1305 that you have in your left hand, the entire
17 document discussed exposure, doesn't it, sir, human exposure?

18 A Well, it discusses toxicity, I guess.

19 Q You guess. What does the word exposure mean --

20 A It appears to.

21 Q What does the word exposure mean, significant exposure
22 mean?

23 A Yes, yes, I do see exposure here.

24 Q The entire document discusses exposure, doesn't it,

1 sir?

2 A Yes, it does.

3 Q And the law says however, the fact that it's in
4 commerce, these high levels of these furans, this toxicity of
5 the product, the fact that it's in commerce constitutes
6 sufficient evidence of exposure, doesn't it, sir?

7 A That's only in the event that a product is so
8 dangerous or hazardous that it itself creates a substantial
9 risk of injury.

10 Q Well, by that do you mean you ignore the toxic
11 components of the product?

12 A Mr. Carr, hazardous products are shipped every day
13 around the country.

14 Q You ignore the toxic components of the product,
15 Mr. Park, is that what you are saying?

16 A Of course not.

17 Q Of course not. You do consider it. And you spent
18 some time yesterday with Mr. Musgrave explaining how you
19 consider the toxicity of the components of the product, didn't
20 you, sir? You spent considerable time with Mr. Musgrave
21 yesterday afternoon, didn't you, sir?

22 A Yes, we did.

23 Q Yes. And it is the toxicity of the product as a
24 whole, including its toxic constituents that is the implicated

1 chemical?

2 A And whether the health effects are known and so
3 forth. You've got here one -- the product has to be in
4 commerce --

5 Q Well, the health effects are known. Dr. Wilson
6 points out the health effects and they are pretty damn serious,
7 aren't they, sir?

8 A Yes, he does. It can be a fatal dose in animals.

9 Q And in humans? Now, that's pretty serious, isn't it,
10 sir? This is serious health effects as listed in sub part A
11 below, isn't it, sir? Are those not serious health effects?

12 A These are not new health effects.

13 Q Dr. Park, are they serious health effects?

14 A Which health effects, Mr. Carr.

15 MR. CARR: Your Honor, direct the witness to quit
16 this.

17 THE COURT: Mr. Park, answer the question directed
18 to you.

19 MR. MUSGRAVE: Well, Your Honor, he is just trying
20 to clarify what Mr. Carr is talking about.

21 THE COURT: No, he's not. Objection is overruled.
22 Mr. Park, answer the question.

23 A Yes, yes.

24 Q (MR. CARR) Now, Mr. Park, you ignored the

1 requirement of the law that says if it goes out of the plant
2 that's sufficient evidence of exposure. You ignored that,
3 didn't you, sir?

4 A No, we didn't, Mr. Carr.

5 Q Did you consider exposure?

6 A Yes.

7 Q Does the law say that you just in commerce is
8 sufficient?

9 A No, it doesn't.

10 Q It doesn't say that?

11 A You don't have the law there, Mr. Carr, you have
12 an excerpt from the policy statement of the EPA.

13 Q Well, do you believe that you've been following
14 this excerpt?

15 A I think that we have.

16 Q All right. So let's get back to whether you call it
17 a rule or regulation, you understand it's binding on you?

18 A Right.

19 Q And that it applies. So, now back to the question.
20 Did you ignore this rule, this policy statement of EPA?

21 A No. We, I think, would be in conformance with
22 the policy statement.

23 Q By discussing exposure and concluding that there
24 would be no exposure or no significant exposure, is that the

1 way you followed the law, sir?

2 A It was concluded that this product --

3 Q My question is is that the way you followed the law,
4 sir?

5 A By considering the toxicity and exposure of the
6 product?

7 Q Yes.

8 A Yes.

9 Q The law tells you, though, you don't need to
10 consider, just putting it out there is sufficient, and yet
11 you considered it. You said there is not going to be enough
12 exposure and therefore will not notify the EPA, isn't that
13 correct, Mr. Park?

14 MR. MUSGRAVE: Object. That's a misrepresentation of
15 what the law is, Your Honor. Counsel is still, and
16 furthermore, he is continuing to ask the same question
17 over and over again, it's been asked and answered.

18 THE COURT: Overruled on both counts.

19 A You did misstate the law. We did comply with the
20 law, Mr. Carr. The excerpt that you have here on this board
21 applies to new human health effects that result from studies
22 on chemicals.

23 Q And that's the way you view the law and that's the
24 reason that you discussed exposure --

1 A That's the application of that with respect, to,
2 if it's in commerce at all, that's evidence of exposure. If
3 sufficiently dire health effects, new health effects are
4 derived from animal studies, the EPA wants to know right then.

5 Q Then why consider the toxicity at all, sir, if they
6 are not new health effects, because the health effects from
7 the furans is well known? Why consider it at all? Why do
8 you consider the levels at all, because none of them are new?
9 So why are you doing this for, why did he write this memo?

10 A Mr. Carr, we held the meeting because someone
11 requested it. Someone said, look, let's consider whether or
12 not there might be an 8(e) reporting requirement. Someone
13 else might have thought a meeting should not have been held.
14 So when it's requested, we hold one.

15 Q All right. So your view is that a meeting need not
16 be held?

17 A I didn't say that at all, Mr. Carr.

18 Q Well, why did you hold the meeting and why did you
19 consider human exposure if all the health effects of furans
20 and dioxin are well known, there is nothing new about it, you
21 didn't discover anything new in that meeting. You didn't even
22 discuss any new findings. Nobody gave you any report on new
23 health effects. Nobody even talked about new health effects
24 at that meeting, did they, sir?

1 A I would say in an effort to lean over backwards
2 to make sure we complied with the law.

3 Q Well, what law is it that you are complying with if
4 only you have to consider the new health effects, what in the
5 law then --

6 A Section 8(e) of the Toxic Substances Control Act.

7 Q Well, what in that law, if it's just new human
8 health effects that you have to consider, what information do
9 you have then? You don't even need to have a meeting.

10 A The law requires that the EPA be informed when we
11 have information which reasonably supports the conclusion that
12 a chemical presents a substantial risk of injury.

13 Q Well now, that's not new health effects, is it, sir?
14 They are not saying substantial risk that new health effects
15 are going to be caused. I'm afraid I'm a little confused here.
16 Now, did you hold this meeting to discuss the law because you
17 say it only applies to new health effects or did you hold the
18 meeting --

19 A I didn't say that at all, Mr. Carr. I said that
20 the excerpt that you have pulled out of the policy statement,
21 I think, relates to new human health effects derived from
22 animal studies, or in other ways also.

23 Q Well then, why consider health effects at all?

24 A Because they are important.

1 Q Sir?

2 A Because they are important.

3 Q And you've always interpreted this law to require
4 you to just talk about health effects, new health effects?

5 A No.

6 MR. CARR: Your Honor, I am encroaching on the
7 jury's time.

8 THE COURT: Okay. Ladies and gentlemen, we will
9 break until 1:30 for lunch. The admonishments that I
10 have given you earlier will apply to this break also.
11 Court is in recess for lunch.

12 (Whereupon court recessed for lunch after which time
13 the following proceedings were had in open court, in the
14 presence and hearing of the jury, as follows:)

15 Q (MR. CARR) Mr. Park, at the lunch break we were
16 discussing your interpretation of the regulations or the
17 statement of policy that's contained in Monsanto Exhibit 880,
18 and do you have a copy of that exhibit in front of you?

19 A No, I don't, Mr. Carr.

20 Q Do you have it -- do you have the rest of Monsanto's
21 exhibits?

22 MR. MUSGRAVE: We were told to keep them, Mr. Carr,
23 is the reason we have them back here. You might take
24 that up with the Judge or the clerk if you don't agree.

1 Q (MR. CARR) Now, yesterday, among other things, you
2 and Mr. Musgrave discussed the contention that you need not
3 report anything except new human health effects that might be
4 caused by exposure to your chemical, do you recall that, sir?

5 A The chemicals that we would be testing, yes.

6 Q I'm sorry?

7 A By that, you mean chemicals that we might be
8 testing?

9 Q Chemicals that you might be producing?

10 A That's correct.

11 Q And I take it from what I understand of your
12 testimony yesterday that the human health effects of cancer,
13 birth defects, mutagenicities, deaths, serious or prolonged
14 incapacitation, including the loss of or inability to use a
15 normal bodily function with a consequent relatively serious
16 impairment of normal activities, if that is ascribed to dioxin
17 and because those health effects are known to be caused by
18 dioxin, it is Monsanto's position that you need not report
19 that a chemical that you are manufacturing has dioxin in it,
20 if I understand your position correctly, is that correct, sir?

21 A Let me make sure I understand your question, Mr.
22 Carr.

23 Q Well, I'll state it again if you don't understand it.
24 Is it Monsanto's position that you need not report the

1 presence of dioxin in a chemical being manufactured by
2 Monsanto simply because it is known that these injurious
3 health effects can be caused by dioxin in that they are not
4 new health effects, is that Monsanto's position?

5 A It's my interpretation of the law that it would
6 not require reporting --

7 Q Mr. Park, will you answer my question?

8 A I can only tell you what my interpretation is. I
9 am not a policy maker, Mr. Carr.

10 Q Well, Mr. Park, you are a policy maker when you
11 decide what, in your capacity as the attorney for this
12 committee, what should or should not be reported to the EPA.
13 You are making policy, you are aware of this, aren't you, sir?

14 A I do not so decide. I render legal advice to this
15 committee.

16 Q And the committee, not knowing the law, relies upon
17 your interpretation of the law, isn't that correct, sir?

18 A They probably would rely on my interpretation.

19 Q And you do then determine in your capacity as
20 attorney for that committee, what the law means and the commit-
21 tee, they are well-advised, they follow their lawyer's
22 interpretation of the law, don't they, sir?

23 A I do advise them on legal matters.

24 Q And you have interpreted, in behalf of that committee,

1 this policy and this law to mean that if a chemical contains
2 dioxin, and if the health effects of dioxin are known to the
3 EPA, that Monsanto need not report to the EPA the fact that
4 its chemicals contain dioxin, is that correct, sir?

5 A That would be my interpretation of Section 8(e).

6 Q And it is that which has guided, that interpretation
7 of yours has guided this committee that you act as attorney
8 for, isn't that correct?

9 A The committee has considered other matters --

10 Q Excuse me, Mr. Park, could you answer that question,
11 please, sir?

12 A That has been one of the guiding factors.

13 Q Have they had any other lawyer sitting with you at
14 these meetings that we have discussed thus far?

15 A Not that I can recall.

16 Q All right. And --

17 A But as you know we have held meetings to consider
18 other matters.

19 Q The only thing that you can discuss, Mr. Park, are
20 those that you have been connected with and those are the ones
21 that we have seen your file last night, and those are the
22 ones that we are discussing today?

23 A Those are the ones I am mentioning, Mr. Carr.

24 Q Yes. And Mr. Park, well, we have established that no

1 chemical content of dioxin had as yet been reported to the
2 EPA from any committees' actions that you have been a member
3 of on these four instances that we have discussed, is that
4 correct, sir?

5 A I think that is correct, dioxin, yes.

6 Q Now, if you direct your attention to the second --
7 third page, rather, of Monsanto's Exhibit 880, which is the
8 exhibit dealing with the Toxic Substances Control Act, you
9 and Mr. Musgrave discussed the human health effects, but you
10 didn't discuss Paragraph No. 2 there under Human Health
11 Effects, any pattern of effects or evidence which reasonably
12 supports the conclusion that the chemical substance or mixture
13 can produce cancer, mutation, birth defects or toxic effects
14 resulting in death or serious or prolonged incapacitation.
15 You understand they are talking about a pattern of effects
16 and evidence that supports the conclusion that the chemical
17 can do these things?

18 A That is correct.

19 Q But it's your belief that again this does not apply
20 to chemicals manufactured by Monsanto that may contain a toxic
21 substance, the attribute or health effects of that toxic
22 substance being known, although one doesn't know that your
23 chemical contains that toxic substance, is that correct, sir?

24 A That would be my interpretation of the requirements

1 of Section 8(e).

2 Q And the Paragraph C, at the bottom of the page there
3 talks about emergency incidents of environmental contamination.
4 And it says, doesn't it, sir, any environmental contamination
5 by a chemical substance or mixture to which any of the above
6 adverse effects has been ascribed and which because of the
7 pattern, extent, and amount of contamination seriously
8 threatens humans with cancer, birth defects, mutation, death,
9 or serious or prolonged incapacitation, that is part of the
10 policy here as well, is it not, sir?

11 A It's part of the policy statement.

12 Q Now, they are not discussing new health effects from
13 this environmental contamination, are they, sir?

14 A Says adverse effects. We did hold a meeting --

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

16 A Any of the above adverse effects. Section C is one
17 that --

18 Q Could you answer that question, please?

19 A I don't know.

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

22 THE COURT: Mr. Park, answer the question.

23 A I would interpret C as not --

24 Q Would you answer that question, Mr. Park, you can say

1 yes, they are talking about new health effects, or no,
2 they are not talking about new health effects.

3 A In my opinion, no, they are not necessarily talking
4 about new health effects in C.

5 Q All right. Now, because they are talking about the
6 health effects that are known, that have been ascribed to the
7 particular chemical mixture, aren't they, sir?

8 A In an emergency incident.

9 Q Whether it's emergency or however it is, they are
10 talking about those non-health effects that can come from
11 environmental contamination with your chemical mixture, aren't
12 they, sir?

13 A Mr. Carr, C is an emergency --

14 Q Indeed it is.

15 A Yes.

16 Q And they are talking about known health effects
17 that could occur if a tank of 2,4-dichlorophenol spilled in
18 the environment. They are telling you you've got to notify
19 us on an emergency basis that your chemical can do that,
20 aren't they, sir?

21 A No, no, not an emergency basis. This is another --
22 this is Item C, following A and B of what's attempted to be
23 the criteria on which one might report under 8(e), and this
24 is in addition to the others.

1 Q Mr. Park, didn't you just say that this applies
2 to emergency incidents?

3 A Yes.

4 Q And isn't the title of it emergency incidents?

5 A That's what I was reading, Mr. Carr.

6 Q And aren't they telling you that when one of your
7 chemicals that has in it a substance that can cause these
8 known adverse health effects, nothing new about it, that you
9 have got to notify the EPA immediately?

10 A Well, the same reporting requirement applies to this.

11 Q Isn't that what it's saying?

12 A With the qualifications that occur later, yes.

13 Q Now, you don't have to know that there is going to
14 be a new health effect from this chemical, do you, sir?

15 A I do not read C as requiring new health effects.

16 Q They are saying that when this chemical that's got,
17 for instance, if you shipped out a chemical that would other-
18 wise be harmless, and if it's spilled in a community, this
19 doesn't apply, if it doesn't have these adverse health effects,
20 does it, sir, this chemical? That Section C doesn't apply?

21 A No, it would not apply unless --

22 Q Unless it had some of these adverse health effects?

23 A Yes.

24 Q And I told you that this chemical spills, it doesn't

1 have these serious health effects, and we know that
2 2,4-dichlorophenol uncontaminated, in its pure state, doesn't
3 have these serious health effects, we know that, don't we, sir?

4 A What are these serious health effects that you
5 are referring to, those back here?

6 MR. CARR: Your Honor, would you direct the witness
7 that he knows exactly the serious health effects we are
8 talking about.

9 MR. MUSGRAVE: Well, I object --

10 THE COURT: Answer the question.

11 Q (MR. CARR) It says the above adverse effects, Mr.
12 Park, you can read, I can read, the jury can read, it says the
13 above adverse health effects, Mr. Park, don't play games with us.

14 A I am just trying to understand your question, Mr.
15 Carr.

16 Q Mr. Park, before you understand the question, you
17 have to be able to understand what's on the plain paper. And
18 the plain paper says the above adverse effects, doesn't it, sir?

19 A I see that.

20 Q And, Mr. Park, would you answer the question that I
21 asked you?

22 A Yes. There would be no reporting requirement in the
23 absence of the adverse health effects.

24 Q But if this chemical contains dioxin that can cause

1 these adverse health effects and it spills in this community,
2 then you do have to notify the EPA even though there are no
3 new health effects ascribed to that chemical, isn't that
4 correct, sir?

5 A Mr. Carr, admittedly if you interpret --

6 Q Mr. Park, -- would you direct the witness to
7 answer the question?

8 A Not necessarily.

9 THE COURT: Okay, fine.

10 Q (MR. CARR) Mr. Park, what you are saying is is that
11 if this chemical contains dioxin that can cause these serious
12 health effects, that this does not apply then, is that what
13 you are saying, sir?

14 A I am saying the fact that it contains dioxin might
15 not be a factor which would have to be considered.

16 Q Oh, I agree if it was a harmless level, insignificant
17 level, I agree. But Mr. Park, I didn't give you that in the
18 question that I asked you. I said it contains chemicals
19 which can cause, and by that it follows that it's in levels
20 that can cause these adverse health effects.

21 A Then it might be considered for reporting under
22 Section C.

23 Q Might be considered. You are required to report it.
24 You are not just required to consider it. And that's where

1 your thesis falls down. You are not required simply to
2 consider reporting it. You are required to report it, aren't
3 you, Mr. Park?

4 A No, Mr. Carr.

5 Q All right. And your interpretation of this rule
6 in this regard is the same way that you have interpreted all
7 these other sections, isn't it, sir?

8 A No, it isn't, Mr. Carr.

9 Q Then it's somewhat different than you interpreted
10 these others, you are using a different philosophy for this one,
11 or legal skill and legal knowledge interpreting the plain
12 meaning of this document, Mr. Park?

13 A No, Mr. Carr.

14 Q Now, Mr. Park, how can you avoid agreeing with a
15 conclusion that this law requires you, or this policy requires
16 you to report these spillages in the environment of dioxin
17 when the dioxin is there at such a level that it can cause the
18 above adverse effects?

19 A Because Section C is a different kind of section
20 from A and B. A relates to new human health effects that may
21 have come from control studies, uncontrolled studies, a pattern
22 of effects, if you will. B is environmental as opposed to
23 health effects, adverse effects on the environment as a result
24 of controlled or uncontrolled studies or patterns. C is

1 something different. It's entitled emergency incident of
2 environmental contamination. It indicates, at least to my
3 own mind, and this may not be shared by others, but that it
4 should be dealt with a little bit differently, in the event
5 there is some sort of a catastrophic emergency incident.

6 Q All right. A, you said human health effects, and
7 this you say is new. New human health effects, A.

8 A Yes, not previously known to the EPA.

9 MR. MUSGRAVE: I'm sorry, what did you say, sir?

10 A Not previously known to the EPA.

11 Q (MR. CARR) Now, that's what Section A, human health
12 effects applies to, new, not previously known, human health
13 effects, and therefore the dioxin in the tank car need not be
14 reported because there are no new health effects being
15 discovered as far as dioxin. All the health effects are known,
16 is that correct, sir?

17 A That would be my interpretation.

18 Q All right. And the presence of dioxin in that tank
19 car therefore need not be reported to the EPA even though it
20 may be at levels that can injure somebody's health?

21 A That is correct.

22 Q All right. And C is ones that you do have to report,
23 when you have a spillage, is that correct, sir?

24 A C is entitled Emergency Incidents.

1 Q My question is you do have to report the spillage
2 of a tank car that contains dioxin if it spills in Sturgeon
3 then?

4 A No, not unless it would present a substantial effect --

5 Q If it has serious adverse health effects, you have
6 to report it?

7 A If it would be considered to be present --

8 Q No, no, you are saying considered. I'm insisting
9 the law requires you not just to consider it but if it
10 contains levels of dioxin that will cause serious health
11 effects, then you have to report it, don't you, sir?

12 A That's not the way I read it, Mr. Carr.

13 Q I thought we just went through that that you did
14 read it that way, sir. If a tank car spills in Sturgeon and
15 has dioxin in it at levels that can be injurious to human
16 health, do you not agree that this requirement is that you
17 shall report it immediately? Didn't we just get through that
18 and didn't you just agree to it?

19 A I don't know that we did. If you are giving me a
20 hypothetical situation --

21 MR. CARR: Your Honor, would you direct him, because
22 I surely don't have to spend the rest of my life
23 re-establishing points just established. He said --

24 MR. MUSGRAVE: Just a minute, just a minute. Mr.

1 Carr, you keep changing the question. The policy
2 statement that you are referring to is, first of all,
3 talks about specific effects --

4 MR. CARR: Your Honor --

5 THE COURT: Gentlemen, approach the bench.

6 (Whereupon the following discussion was had at the
7 bench between court and counsel and out of the hearing of
8 the jury)

9 THE COURT: You are right, he has recanted. I will
10 allow you to phrase it in terms of an assumption which
11 he has to accept.

12 MR. MUSGRAVE: May I make my objection? I think
13 it's totally improper. Mr. Carr keeps changing the
14 question and the way the question is phrased is very
15 important. The question he just asked, Your Honor, just
16 said health effects. It didn't specify the kind talked
17 about in here, and that's what has to be dealt with if
18 that's the kind of question that can be answered. Health
19 effects can be all kinds of health effects, serious or
20 not serious.

21 THE COURT: That's a hairsplitting non-difference.
22 Overruled.

23 MR. MUSGRAVE: I beg to differ and I object.

24 (Whereupon the following proceedings were had in the

1 hearing of the jury)

2 Q (MR. CARR) Mr. Park, your attorney suggests that
3 you may be relying upon an out that I didn't say serious
4 health effects such as cancer, birth defects, mutations,
5 and so forth. Now, assuming if you would, Mr. Park, that your
6 chemical in your tank car contains dioxin in it that has levels
7 of dioxin that it would cause serious health effects and
8 seriously threaten humans with cancer, birth defects, mutation,
9 death or serious or prolonged incapacitation, do you agree,
10 Mr. Park, that you must report that to the EPA under Section C?

11 A Could I read this?

12 Q Do you agree, Mr. Park, that you must report that to
13 the EPA under Section C?

14 A As I understood your words, I think that you were
15 quoting portions at least of Section C, and I think that that
16 might be reportable.

17 Q I am not asking you if that might be. I am asking
18 if you know that you must report that to the EPA. If your
19 tank car contains chemicals as I have described it, dioxin as
20 I have described it, sir?

21 A As you described it, I think my interpretation would
22 still be no under 8(e).

23 Q I'm sorry?

24 A As you described it, if you would put --

1 Q Your answer is no under 8(e)?

2 A It appeared to me that you left out part of C, which
3 must be in there, Mr. Carr.

4 Q And what part did I leave out, Mr. Park?

5 A May I read it from the beginning, please?

6 Q Just tell me what part I left out, you said I left
7 out a part.

8 A And which, and which because of the pattern,
9 extent and amount of the contamination.

10 Q Yes?

11 A Seriously threatens and so forth and so on.

12 Q I'll certainly accept that.

13 A Then I would say yes.

14 Q Then if it has dioxin in it at such levels which
15 because of the pattern, extent, and amount of contamination
16 with dioxin, it seriously threatens humans with cancer, birth
17 defects, mutation and so forth, you are obligated to report
18 it then, aren't you, sir?

19 A Yes.

20 Q Now, there are no new health effects listed there,
21 are there, sir?

22 A No.

23 Q It refers to the above adverse effects, doesn't it,
24 sir?

1 A Yes.

2 Q And those above adverse effects are the ones
3 described in Paragraph A, aren't they, sir?

4 A I would so interpret it.

5 Q Now, you just got through saying, though, that the
6 ones in Paragraph A are new health effects?

7 A That's correct.

8 Q But the ones in Paragraph C are not new health
9 effects, are they, sir?

10 A I would so interpret it.

11 Q Now, do you consider, Mr. Park, that you are in
12 somewhat of a dilemma, you said you have to report the
13 spillage of the tank car that has the above health effects,
14 and those are not new health effects, are they, sir, not a
15 single one is new for dioxin?

16 A I think that's correct.

17 Q There are no new health effects, are there, sir?

18 A I think that's correct.

19 Q And you have to report it if it spills, on an
20 emergency basis?

21 A Depending on the amount of contamination and so forth.

22 Q That's right, depending on all of that in that
23 question, you have to report it on an emergency basis, don't
24 you, sir?

1 A Yes, sir.

2 Q Because they are not new health effects, they are
3 known health effects, isn't that correct, sir?

4 A Well, because of the amount of contamination.

5 Q Yes. Now, the only difference in the hypotheticals
6 I have given you, sir, is that the tank car spilled in the
7 one instance and the other instance it didn't spill, it was
8 manufactured and it was put out in commerce. Now, that's
9 the only difference I have given you in those two questions.

10 A And that's the difference in this policy statement.

11 Q One policy statement is when it's spilled and the
12 exposure took place in fact, and you have got to do that on
13 an emergency basis.

14 A No, no, the same reporting requirement applies
15 either way.

16 Q Doesn't it say emergency, sir?

17 A No, this is an emergency incident.

18 Q Emergency incidents.

19 A But the reporting is the same.

20 Q Well, the reporting is the same but it's an
21 emergency incident, isn't it, sir?

22 A Yes.

23 Q Now, sir, Paragraph C doesn't say new health
24 effects, does it, sir?

1 MR. MUSGRAVE: Object, this has been asked and
2 answered.

3 Q (MR. CARR) And Paragraph A doesn't say new health
4 effects, does it, sir?

5 A Paragraph C reads in such a way that I interpret it
6 to --

7 Q My question is it doesn't say --

8 A I am trying to answer your question, Mr. Carr.

9 Q -- new health effects. But my question, Mr. Park,
10 is not that. My question is simply it doesn't contain any
11 new health effects, does it, sir?

12 A Paragraph C does not, Paragraph A does, in my opinion.

13 Q Where is the word new in Paragraph A. And if it is
14 there, sir, then why don't you transpose the word new down
15 here because it says the above adverse health. So you should
16 read that then the above adverse new health effects is the
17 way you would read that if your interpretation of the law is
18 the law. You have got to put the word new in here above
19 adverse new health effects, don't you, sir? But you didn't
20 interpret it that way.

21 A You may, Mr. Carr. I don't.

22 Q Oh, don't you have to put the word new in there if
23 you are referring to the above health effects, and the above
24 health effects are, according to your interpretation, all new

1 ones?

2 A My new --

3 MR. MUSGRAVE: I object. He's misquoting what he
4 started out with originally where the witness said new
5 health effects, which meant the health effects the EPA
6 didn't have knowledge of. You remember, Mr. Carr, that
7 very well that's what you went through at the very begin-
8 ning.

9 Q (MR. CARR) This is fine, I'll accept that, new
10 health effects, ones that EPA didn't have knowledge of. They
11 have got knowelge of the health effects of dioxin, don't they,
12 sir, whether it's in a tank car or whether it's spilled. They
13 know that dioxin has those health effects, so there is nothing
14 new about this chemical that spilled in the community, is there,
15 sir?

16 A About the health effects of dioxin?

17 Q Right, nothing new there.

18 A Not to my knowledge.

19 Q There is nothing new about the health effects of
20 this dioxin in the tank car when it's manufactured and shipped
21 out and may result in exposure somewhere along the line, and
22 there is nothing new about the health effects that occurs when
23 it does spill out, isn't that correct, sir?

24 A Probably so.

1 Q Yes. Now, Mr. Park, as a matter of fact, you know
2 that other chemical companies when they do encounter dioxin
3 in their chemicals, in fact, do report it to the EPA, you know
4 that, too, don't you, sir?

5 A I do not know that. There may have been an incident
6 or two when someone might have.

7 Q Again, a document I got from your file last night
8 or from the Roush files, says send this to the full TSCA
9 committee, I assume that's you.

10 (Plaintiff's Exhibit No. 1306 was marked for
11 identification by the reporter)

12 Q (MR. CARR) Handing you now what's been marked
13 Plaintiff's Exhibit 1306 and ask you to look at that, if you
14 would. Direct your attention to the -- well, first of all,
15 do you recognize this as an EPA listing of substantial risk
16 notices received under Section 8(e) of the Toxic Substances
17 Control Act, starting April, of '77 and ending, this ending
18 on September 21, '79.

19 A Yes.

20 Q So this is the listing for about two years and a
21 half under the newly-enacted act that came into effect on
22 January, of '77, is it not, sir?

23 A It appears to be so, yes.

24 Q And it covers the period of time in May, of '79 when

1 you met to consider whether or not the 2,4-dichlorophenol
2 should be reported to the EPA as having dioxin content, isn't
3 that correct, sir?

4 A Yes -- I forget the date.

5 MR. CARR: I'll offer 1306 into evidence, if it
6 please the court.

7 MR. MUSGRAVE: Your Honor, I object, it's hearsay
8 and also deals with all types of chemicals that have
9 nothing to do with lawsuit, manufactured by other
10 companies, and it is hearsay, there is no way to
11 substantiate the information that it purports to contain.

12 THE COURT: Overruled. It's admitted over objection.

13 Q (MR. CARR) Mr. Park, directing your attention to
14 the second page of the document itself -- or the first page,
15 let's back up. The first page of this, it says, a little memo
16 from the desk of W. R. Corey. It says send this to full TSCA
17 committee plus George Roush plus George Levinskas, doesn't it,
18 sir?

19 A I see that, yes.

20 Q And presumably it was sent to the full TSCA committee,
21 wasn't it, sir?

22 A If that's what he was referring to, I would assume so.

23 Q And the third page of Plaintiff's Exhibit 1306,
24 the very first entry on that third page of the document that we

1 got from your files last night, show that the Velsicol
2 Chemical Corporation reporting on a substance dichloro
3 dibenzo p-dioxin on September 26, 1977, reported, "Occurrence
4 of dioxin in products," didn't it, sir?

5 A I see that.

6 Q Now, it doesn't indicate that they reported a new
7 health effect from dioxin, does it, sir?

8 A It doesn't indicate why they reported that. There
9 may have been some health effects or extremely high concen-
10 trations or whatever.

11 Q Oh, extremely high concentrations, does that cause
12 you to report it, because I thought you said you just have to
13 report if there were new health effects?

14 A I have no idea why they reported it.

15 Q Are you changing your testimony, Mr. Park, do you
16 have to report it if it's got extremely high concentrations of
17 dioxin in your product?

18 A I don't know --

19 Q Are you changing your testimony, Mr. Park?

20 A Not a bit, Mr. Carr.

21 Q Then it couldn't be for that, because they would
22 interpret, of course, the law, the same way. So it wouldn't
23 be that they are reporting it for extremely high levels, so
24 it must be the other thing.

1 MR. MUSGRAVE: Mr. Carr, I object to counsel
2 stating and testifying that this could interpret the law
3 the same way. There is no evidence of that, and that is
4 a total assumption and conjecture on counsel's part. It's
5 not in evidence and it's an improper statement. And I
6 would request the Court to instruct the jury to disregard
7 it and have it stricken from the record.

8 THE COURT: Overruled. It's proper cross-examination.

9 Q (MR. CARR) Is there any indication in that document
10 that you had in your file, Mr. Park, that they were reporting
11 new health effects when they said "Occurrence of dioxin in
12 products?"

13 A There is no indication of why.

14 Q My question, Mr. Park, is simple, is there any
15 indication that they are reporting new health effects?

16 A No.

17 Q What they do, what it does say is they are reporting
18 the occurrence of dioxin in their products, doesn't it, sir?

19 A That's what this B.N.A. publication.

20 Q And on that same page, there are two reports of
21 chemical spills, aren't there, sir?

22 A I see one spill in misuse.

23 Q Well, one spill is what I note there. There is
24 another notice on that same page that a product contains

1 epichlorhydrin, isn't there, sir?

2 A Yes.

3 Q That's not a new health effect, is it, sir?

4 MR. MUSGRAVE: Which one are you referring to?

5 Q Notice their product contains, on the same page,
6 Entry No. 16, by the Thompson Hayward Chemical Company.
7 That's not a health effect, is it, sir?

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

9 Q Notice that a product contains epichlorhydrin?

10 A It doesn't appear to me.

11 Q It's notice that a product contains toxic substance,
12 isn't it, sir?

13 A That's what it says.

14 Q And Velsicol also reported an environmental
15 contamination on Entry No. 14 -- well, 13 and 1/2 apparently
16 on that page, you see that, sir?

17 A Yes. There are about fifty reports of Velsicol
18 apparently.

19 Q Excuse me, Mr. Park?

20 A I'm sorry.

21 Q You are not really sorry, but we'll pass it for now.
22 My question is there is an environmental contamination report,
23 isn't there, sir, on October 28, 1977?

24 A Yes.

1 Q There is a spill report October 10, 1977, isn't
2 there, sir?

3 A I don't see an October 10 on here, Mr. Carr.

4 Q The second entry on the page.

5 A Yes. We have covered that one.

6 Q Turn to Page No. 1327, if you will, Mr. Park,
7 entry No. 85, Velsicol there is reporting on 2,3,7,8
8 tetrachlorodibenzo, aren't they, sir?

9 A Yes.

10 Q Now, that's not a new toxic substance, is it, sir,
11 not a new health effect. It's an old well-known toxic
12 substance, isn't it, sir?

13 A Yes.

14 Q And right above that Ashland Chemical reported a
15 spill of chemicals, didn't they, sir?

16 A That's what it says.

17 Q Now, and on Page -- mine doesn't have a number
18 apparently, be the page preceding Page 1333, Entry 181,
19 Uniroyal is notifying the EPA of an accidental spill of just
20 twenty to twenty-five pounds of chlorine vented accidentally.

21 MR. MUSGRAVE: This is Entry 181, you say?

22 MR. CARR: 181 -- it must be 183, my copy is poor,
23 183, June 9, of '78.

24 A Yes, I see that there.

1 Q And on the next page, we have entered by Dow
2 Chemical Company an entry again concerning TCDD, don't we, sir?

3 A Yes.

4 Q And it's an analysis, not of health effects but it's
5 an analysis of TCDD and other chlorinated dioxins, chlorinated
6 phenols, PBB's and PCB's, an analysis of these compounds in
7 fish samples and river mud, is there not?

8 A Yes.

9 Q Now, that isn't a new health effect, is it, sir?

10 A No.

11 Q And it's a report on a well-known toxic substance,
12 isn't it, sir?

13 A Yes.

14 MR. MUSGRAVE: What's the number of that one, Mr. Carr,
15 please?

16 MR. CARR: Looks like 209, on Page 1333.

17 MR. MUSGRAVE: Thank you.

18 Q (MR. CARR) And on Page 1336, has no number in the
19 upper right-hand corner, entry 277 Phillips Petroleum reports
20 a spill of Benzene, don't they, sir, in March, of 1979?

21 A Yes.

22 Q And on the next Page 1337, Entry 299 and 300,
23 discusses reports spills of Furadan and Acrylonitrile,
24 isn't that correct?

1

A Yes.

2

Q Thirty to thirty-five gallons of the latter substance.

4

A Yes.

5

Q Now, Mr. Park, were any of those reports that I referred to dealing with new health effects?

7

A Not to my knowledge.

8

Q And there are a large number of reports here for health effect studies, aren't there, sir?

10

A Yes.

11

Q The law does require the chemical companies to report new health effects, don't they, sir, doesn't it, sir?

13

A Yes, those described in the policy.

14

Q Now, Mr. Park, with relation to your reporting obligations, do I understand that your committee looked at all aspects and tried to comply with the law in its -- or to give it the broadest interpretation possible so as to protect the public from exposure to environmental contaminants? Is that what your committee did?

20

A We tried to interpret the law properly, Mr. Carr.

21

Q And by proper, do you agree that if there is any error in interpreting the law, that the error should be on the side of safety to the public?

23

24

A Yes, I think that's so.

1 Q And would you mark this?

2 (Whereupon Plaintiff's Exhibit 1307 was marked for
3 identification by the reporter as requested.)

4 Q (MR. CARR) I hand you now what's been marked
5 Plaintiff's Exhibit 1307, and ask you if you recognize that
6 as some notes again from your file last night?

7 A Yes, I believe so.

8 Q And this note refers to -- I'll offer this exhibit
9 into evidence, if it please the Court. It's attached to an
10 exhibit that's already in evidence, or was attached to an
11 exhibit already in evidence, would be the January 24, 1985
12 memo written by Mr. Park.

13 MR. MUSGRAVE: Same objection as before, Your Honor,
14 with regards to the exhibit that it was attached to.
15 This involves tetrathal and has no bearing on the issues
16 here in this case.

17 THE COURT: Okay. Admitted over objections.

18 MR. CARR: And we'd ask leave to pass it to the jury.

19 THE COURT: Yes, you may.

20 (Whereupon the exhibit was passed to the jury.)

21 Q (MR. CARR) Now, Mr. Park, the exhibit that it's
22 attached to, or rather the report that it's attached to, is
23 dated January 24, 1985, and it's not signed by you, is it, sir?

24 A That's correct.

1 Q It has a place for your signature but this was a
2 memo that you circulated to other members of the committee
3 before you prepared your final report for the file?

4 A That's right. I wanted their comments as to whether
5 I had expressed things correctly or not.

6 Q And it contains in the fifth paragraph of the
7 original draft, quote, it was noted that the spectrum of
8 polychlorinated dibenzo-p-dioxins found in tetrathal is
9 similar to that found in pentachlorophenols, except that it
10 is at a much lower concentration in tetrathal. While the
11 U. S. Environmental Protection Agency is aware of the
12 concentrations of TCDD's present in penta, the manufacture,
13 distribution and use of penta continues to be acceptable.
14 That was in your original draft, wasn't it, sir?

15 A That's correct.

16 Q Now, you got a memo, Exhibit 1307, you got it back
17 from GJL, that would be Mr. Levinskas, would it not?

18 A Dr. Levinskas.

19 Q The toxicologist that you rely upon for information
20 about these things?

21 A One of our toxicologists, yes.

22 Q And he tells you, I believe EPA has or has proposed
23 to limit sales of penta to professional applicators and the
24 uses or uses. If this is so, then comment that sale of penta

1 continues to be acceptable to EPA is somewhat misleading.

2 This should be checked. Do you see that, sir?

3 A Yes, I do.

4 Q Now, Dr. Levinskas is pointing out that when you
5 say it's acceptable, you are misleading the one that might
6 read it, isn't he?

7 A Yes, he is.

8 Q So what you say, you strike out the words that is
9 acceptable, and you simply change it to read, as it reads
10 in the final document, quote, while the U.S. Environmental
11 Protection Agency is aware of the concentrations of TCDDs
12 present in penta, the manufacture, distribution and use of
13 penta is continuing. But you don't use the words continues
14 to be acceptable, do you, sir?

15 A This modification was Dr. Levinskas'.

16 Q Yes, it was. And what you did, you simply took out
17 the words that it's acceptable to the EPA, but again you did
18 not put in there what Dr. Levinskas told you that there are
19 rules requiring that penta be put on, or going to be rules
20 that penta be used only by professional applicators?

21 A This was Dr. Levinskas' modification, it's his words
22 here, not mine.

23 Q Where is his wording?

24 A Right here. He scratched it out, continues to be

1 acceptable and put in is continuing.

2 Q Then what he and you accepted that, and then he,
3 too then is giving a half-truth?

4 A No, it's not a half-truth, the sale is continuing.

5 Q And you don't consider that that would mislead
6 someone to make the person reading this believe that EPA
7 thinks that pentachlorophenol is perfectly safe and that it
8 can be used by anybody and everybody and so is tetrathal.
9 You don't think that a person can read that and come to the
10 conclusion that it's okay with EPA?

11 A I think it's fully correct as it's worded.

12 Q Oh, it's fully correct, I am not quarreling with
13 the correctness of it at all, it is fully correct, the penta
14 is continuing to be used. But it's not continuing to be
15 used by the public at large. It's restricted people who are
16 professionally trained in using toxic substances are now the
17 ones that are going to be using it. You know that, too, Mr.
18 Park, sir, because Mr. Levinskas told you that?

19 A He said he thought it might. He said I believe.
20 And so it was changed on that basis.

21 Q But you still didn't tell people that are going to
22 read this memo that only professionals can use that substance
23 because it's toxic.

24 MR. MUSGRAVE: Objection, that's not what the

1 documents says, Your Honor. Mr. Carr is again intentionally
2 trying to misrepresent the contents of a document,
3 intentionally, and I object to it, it's totally improper.
4 The document says I believe the EPA has or has proposed.
5 It doesn't say it has or that he knows.

6 MR. CARR: It does say have.

7 MR. MUSGRAVE: It says I believe, it doesn't say that
8 he knows.

9 THE COURT: Objection overruled.

10 MR. CARR: But he does say it should be checked.

11 Did somebody check it?

12 A I checked it. I telephoned someone in the agricultural
13 products part of the company, I do not remember who it was right
14 now, and they said as far as they knew they were not even aware
15 of a proposal to limit it.

16 Q Well, did you check it then?

17 A Yes, I checked it.

18 Q Well, what you got was they don't know anything
19 about it, is what you got?

20 A No, they said to the best of their knowledge it was
21 continuing to be marketed.

22 Q You were not making penta at that time. You quit
23 making penta back in 1977 and '78?

24 A Years ago.

1 Q He's not selling it. This is 1985. Did you check
2 anybody to determine whether or not this statement was
3 correct or not?

4 A I checked with someone I thought would have more
5 knowledge than Dr. Levinskas.

6 Q And so you eliminated them the statement that he
7 said was misleading, didn't you?

8 A I sure did.

9 Q Now, if you checked it and found out that what he
10 said wasn't true, you wouldn't have had to eliminate it,
11 would you, sir?

12 A We tried to --

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

14 A We probably would have followed his wording in any
15 event.

16 Q My question is you wouldn't have had to eliminate it,
17 would you, sir?

18 A Yes.

19 Q I am not asking you probabilities.

20 A Yes, I would follow the request of the toxicologist.

21 Q He didn't tell you to eliminate it, he told you it
22 should be checked?

23 A This is his wording, Mr. Carr.

24 Q I understand that, well indeed I understand it.

1 A All right.

2 Q The point is you did eliminate the wording and you
3 put out a half-truth, didn't you, sir?

4 A No, we didn't.

5 Q Mr. Park, in that same particular meeting, when you
6 were discussing your tetrathal -- would you mark this?

7 (Whereupon Plaintiff's Exhibit 1308 was marked for
8 identification by the reporter as requested.)

9 Q (MR. CARR) I hand you what's now been marked as
10 Plaintiff's Exhibit 1308 and ask you if you recognize it as
11 another document from your file that I got from your file last
12 night?

13 A Yes, this appears to be, yes, I do.

14 MR. CARR: I will offer Exhibit 1308, Your Honor.

15 THE COURT: Any objection?

16 MR. MUSGRAVE: Yes, same objection as was made to
17 their other exhibit, that's the same as this, Your Honor,
18 except for the first sheet. Basically it deals with
19 tetrathal, it's irrelevant and immaterial. Same
20 objection that I made with regards to the other memo
21 dated January 24, 1985, it's identical to this dealing
22 with tetrathal.

23 THE COURT: It's admitted over objection and I will
24 incorporate the same objections.

1 MR. CARR: I'll ask leave to pass this document to
2 the jury if I may.

3 THE COURT: Yes, you may.

4 (Whereupon the exhibit was passed to the jury.)

5 Q (MR. CARR) Now, Mr. Park, the first page of this
6 Document 1308 is another memo that you received from Mr. C. P.
7 Farley, isn't that correct, sir?

8 A That's correct.

9 Q And who is Mr. C. P. Farley?

10 A He is one of the, in one of the D.E.O. functions, he
11 reports to a director of environmental operations.

12 Q And he was part of your TSCA committee?

13 A Well, he attended that meeting. I believe he
14 accompanied Mr. Papageorge.

15 Q And he came there out of I take it out of some
16 concern for the Nair memo?

17 A Well, the Nair memo prompted the meeting.

18 Q And he suggested, did he not, I suggest that the
19 allegations in the Nair memo be specifically refuted, didn't
20 he, sir?

21 A Yes, he was particularly --

22 Q Now, Mr. Park, I think you answered my question?

23 A Yes.

24 Q You were concerned about the Nair memo, and he called

1 them allegations, didn't he, sir?

2 A Yes, he opposed it.

3 Q Now, Mr. Park, if there was some truth in the Nair
4 memo, that would mean that this toxicologist believes that a
5 real risk can take place to those that may come in contact
6 with tetrathal, if you take what she says as true, isn't that
7 correct.

8 MR. MUSGRAVE: I object to the questions, having
9 this witness speculate and state conjecture as to the
10 state of mind of Dr. Nair as to what she believes or
11 doesn't believe.

12 THE COURT: Overruled.

13 A I don't think she necessarily felt that way.

14 Q (MR. CARR) That's what her memo says, though,
15 doesn't it, sir? She said that a real risk exists and that it
16 should be reported to EPA just as other chemical companies
17 up to that time had reported the presence of dioxin in the
18 chemicals manufactured.

19 MR. MUSGRAVE: Object to counsel's statement
20 characterizing the evidence. The document of Dr. Nair
21 speaks for itself. And it's a mischaracterization of
22 what the document says, it speaks for itself, and I object
23 to the question in this regard.

24 THE COURT: Overruled.

1 A No. She felt that a hypothetical risk might exist
2 and she suggested that the information might be required to
3 be reported.

4 Q Did she ever write a memo in which she said that
5 the things that she believed there are not true?

6 A Not to my knowledge, it wasn't necessary.

7 Q Was she called to the committee meetings to be
8 allowed to support her position?

9 A No. Other toxicologists were present.

10 Q Did you believe then that she is making allegations
11 that have to be specifically refuted?

12 A No.

13 Q Isn't that what Mr. Farley believed?

14 A He suggested that.

15 Q And he suggested it because he apparently believed
16 that her allegations that these are allegations that she is
17 making and that they must be refuted?

18 MR. MUSGRAVE: Object to counsel asking questions
19 about what Mr. Farley believed. This is requiring this
20 witness to speculate, conjecture as to the state of mind
21 of others and what they meant by words, that he is not the
22 author of and they are the authors of, and I object to it
23 as an improper question.

24 THE COURT: Overruled.

1 A As I recall, Mr. Farley was particularly upset
2 because he felt the allegations in the Nair memo were so wrong.

3 Q And you believe they are allegations as well, don't
4 you, sir?

5 A They were hypothetical cases she prepared.

6 Q My question is you believe they were allegations
7 as well, don't you, sir?

8 A No.

9 Q Didn't you just use the word, sir, in describing
10 her memo?

11 A I was tracking your question, Mr. Carr.

12 Q Didn't you just use the word allegations in describing
13 her memo?

14 A I may have.

15 Q Just as Mr. Farley used that word in describing
16 her memo?

17 A I was reading his wording here also, I guess.

18 Q Did you use the word, Mr. Park?

19 A I may have, Mr. Carr.

20 Q I know you did. Why would you say you may have.
21 You surely can remember what you said ten seconds ago.

22 A Okay, I assume I did.

23 Q You assume you did, Mr. Park? I don't want you to
24 assume you did, Mr. Park. Why would you use that kind of word

1 when you know you said it.

2 A I guess I used it because I was reading Mr. Farley's
3 memo.

4 MR. MUSGRAVE: You just asked him why, Mr. Carr,
5 and you are not letting him finish the answer. Your
6 Honor, may the witness for one time finish the answer.

7 MR. CARR: I am just asking why he would use the
8 word assume when he knows he said it. I didn't ask him
9 why he said it.

10 THE COURT: The answer was not responsive to the
11 question. Your objection is overruled.

12 Q (MR. CARR) Mr. Park, do you believe we are playing
13 some kind of game here?

14 A Of course not, Mr. Carr.

15 MR. MUSGRAVE: Objection.

16 THE COURT: Overruled.

17 Q (MR. CARR) Did you consider as Mr. Farley
18 apparently considered that Dr. Nair was making statement
19 that somehow or other, or allegations, in that they have to
20 be refuted?

21 MR. MUSGRAVE: My objection to requiring this
22 witness to testify as to why somebody else said something
23 and what was the state of mind of the speaker and will
24 it be a continuing objection.

1 THE COURT: So noted.

2 A It was not my opinion that the comments made in
3 Dr. Nair -- I forget now whether she's a doctor or not, Mrs.
4 Nair, Dr. Nair.

5 Q Yes, she has a PhD.

6 A And Dr. Nair's memo needed to be specifically
7 referred to. I did not feel that way. The toxicologist and
8 those with more experience in chemicals apparently felt as
9 I did because no one suggested this. I might say that I tried
10 to contact Mr. Farley to see if he had some specific statements
11 that he wished to include and I was unable to contact him.
12 And so since no one else had made a similar response to me,
13 I went ahead with the minutes as you see them in the final form.

14 Q Well, what about calling in Dr. Nair to answer,
15 to support what she said? You got a document from Levinskas
16 later after Dr. Nair submitted hers, and he took some issue
17 with it apparently, although he didn't contradict it completely,
18 he took an issue with it, he said it's kind of extreme. Did
19 you then recontact Dr. Nair and say, now this is what Dr.
20 Levinskas says. Do you still hold your belief that there is
21 a risk here? Did you do that, Mr. Park?

22 A There was no need to do that, Mr. Carr.

23 Q My question is did you do that?

24 A No, I did not.

1 Q Now, do you think it's possible that Dr. Nair could
2 have, if you had heard her out, if you had brought her to the
3 committee, as you did Dr. Levinskas, or as you got a memo from
4 him, if she were told that Dr. Levinskas is saying this and
5 that this committee is about to decide not to report it to the
6 EPA, do you think she might have been able to give you some
7 thoughts on the subject?

8 MR. MUSGRAVE: Object, speculation and conjecture.

9 THE COURT: Overruled.

10 A I had not been a recipient of Dr. Nair's memo in the
11 first place.

12 Q Mr. Park, you indeed did receive a copy of Dr. Nair's
13 memo.

14 A Not in the first place. I received it attached to
15 Dr. Levinskas' memorandum.

16 Q A day or two days later is not important, you did
17 receive the memo.

18 A Attached to Dr. Levinskas' memo.

19 Q We are talking about whether or not you called Dr.
20 Nair to this meeting, I didn't talk about when you received
21 the memo. My question referred to did you call Dr. Nair to
22 the meeting?

23 A I did not.

24 Q Did anybody?

1 A Apparently not. I called only two individuals,
2 actually three. I called Dr. Roush, I called the appropriate
3 DEO, and then I also tried to reach the individual who has
4 a great deal to do with the Toxic Substances Control Act and
5 he was out of town on this day and couldn't be present.

6 Q And you went ahead and decided not to notify the
7 EPA consistent with what you have said and what you have done
8 in the past, isn't that correct, sir?

9 A Yes and no.

10 MR. MUSGRAVE: Object, the question is vague.

11 THE COURT: Overruled.

12 MR. CARR: Mark this as an exhibit, please.

13 (Whereupon Plaintiff's Exhibit 1309 was marked for
14 identification by the reporter as requested.)

15 THE COURT: Is this a good time for a break?

16 MR. CARR: Yes.

17 THE COURT: Ladies and gentlemen, we will take a
18 short break at this time. The admonishments that I have
19 given you earlier will apply to this break, also. Court
20 will be in a short recess.

21 (A short recess was taken at this time after which
22 time the following proceedings were had in open Court,
23 in the presence and hearing of the jury.)

24 Q (MR. CARR) Mr. Park, at the recess I had marked

1 Plaintiff's Exhibit 1309, and I'll ask you if you recognize
2 that, sir, as also being part of your file that I saw last
3 night?

4 A Yes, this would be the note from Mr. Condray.

5 MR. CARR: I'll offer 1309 into evidence at this
6 time, if it please the court.

7 THE COURT: Any objection?

8 MR. MUSGRAVE: 2,4-dichlorophenol, Your Honor, same
9 objection, it's irrelevant and immaterial to the issues
10 in this lawsuit.

11 THE COURT: Admitted over objection.

12 Q (MR. CARR) And who is Mr. Condray?

13 A He is a member of what's called the Environmental
14 Policy Staff, in which there are several individuals who
15 have titles relating to the Federal Environmental Laws.

16 MR. CARR: And, Your Honor, I'd ask leave to pass
17 this exhibit to the jury.

18 THE COURT: Yes, you may.

19 A And Mr. Condray deals primarily with the Toxic
20 Substances Control Act.

21 (Whereupon the exhibit was passed to the jury.)

22 Q (MR. CARR) Now, he sent back your proposed memo
23 with a portion of it circled, that part being, quote,
24 particularly when further diluted by customers' operations,

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1 and being part of a sentence that reads it was concluded that
2 the extremely low levels of TCDD found in dichlorophenol,
3 particularly when further diluted by customers' operations,
4 would be unlikely to cause any health or environmental hazard.
5 Isn't that correct, sir?

6 A That's correct.

7 Q And what he said was, I didn't hear this. Is this
8 a fact, didn't he, sir?

9 A That's right. He asked the question.

10 Q Now, that would indicate that he was not aware of
11 the fact that these low levels of TCDD would be not hazardous
12 when they are further diluted by customers' operations, when
13 he used the phrase particularly when further diluted by
14 customers' operations.

15 MR. MUSGRAVE: I object. He didn't use the phrase.

16 This is not Mr. Condray's phrase, this is Park's phrase.

17 Q (MR. CARR) I'm sorry. When he outlined that
18 phrase used by you -- Mr. Musgrave is correct. Isn't that
19 correct, sir?

20 A I would construe his note to mean why not just
21 dilute that part. That the sentence would be correct without
22 it.

23 MR. MUSGRAVE: May my objection continue to run,
24 Your Honor, to counsel questioning with regard to this

1 document. This witness, about what Mr. Condray meant
2 or didn't mean or -- well, I'll just object on an
3 individual basis.

4 THE COURT: I'll take it as a continuing objection.

5 MR. MUSGRAVE: Speculation and conjecture about the
6 state of mind of Mr. Condray as to what he heard or didn't
7 hear or what he believed or didn't believe as part of the
8 evidence by this comment, that would be the nature of my
9 objection, it would be overruled then and would be a
10 continuing objection.

11 THE COURT: It's overruled and it will be continuing.

12 MR. MUSGRAVE: Thank you.

13 THE COURT: You're welcome.

14 Q (MR. CARR) Mr. Park, he's questioning whether or
15 not what you are saying in this memo is correct, isn't he, sir,
16 he's questioning whether or not that's factual, isn't he, sir?

17 A He's questioning whether or not this was spoken, was
18 said at the meeting.

19 Q He's questioning whether or not it was spoken, he's
20 not challenging whether or not it was a fact?

21 A His words are, I didn't hear.

22 Q Excuse me, could you answer that question, Mr. Park?

23 A That's correct.

24 Q Sir?

1 A That's correct.

2 Q And when he used the words then is this a fact,
3 he is not referring to the dilution by customers' operations,
4 he's just referring to whether or not he heard it? Is that
5 what you're saying, Mr. Park?

6 A I don't know. I would construe his words to mean --

7 Q Mr. Park, would you answer the question that I asked
8 you because just a second ago you said that all he's saying
9 is that he didn't hear it at the meeting.

10 A Yes.

11 Q And now what he is saying is, is this a fact?

12 A That is further diluted by customers' operations,
13 that's what I would assume his question is.

14 Q And did you respond that it was a fact, that it's
15 not hazardous when it's particularly when diluted by customers'
16 operations?

17 A I don't recall responding to him. I believe I can
18 recall checking. I think it would have been with the DEO here
19 about this.

20 Q And when did you check about that, Mr. Park?

21 A This would have been after receiving his memo.

22 Q And do you remember checking on that, do you, sir?

23 A I think I can.

24 Q Do you remember checking on it?

1 A Not vividly, no, I do not.

2 Q Well, you said not vividly, I didn't even ask for a
3 vivid. Just do you remember checking on it, sir?

4 A I think I can faintly remember doing that.

5 Q Now, you think you can faintly remember it. Now,
6 Mr. Park, this is something that took place four years ago,
7 and a day or two ago you couldn't remember, on Monday, what
8 you said on Friday?

9 A That's right.

10 Q Now, if that's correct, has your memory suddenly
11 developed greater capacity from, what is today, Wednesday,
12 in two days? Has something occurred that you can have that
13 revival of your memory powers?

14 A My memory is still the same.

15 Q Still the same, isn't it?

16 A Yes.

17 Q Now, can you remember checking at all, Mr. Park?

18 A May I see the file on this?

19 Q Can you remember checking at all, Mr. Park?

20 A I'd like to see what the other comments were.

21 Q Mr. Park, can you remember checking at all?

22 A I cannot remember specifically checking on this.

23 Q Yes.

24 A It would be significant if anyone else raised the

1 same issue.

2 Q Well, whether it might or might not be significant,
3 Mr. Park, my question is did this gentleman challenge your
4 statement that this TCDD becomes, would be unlikely to cause
5 any health or environmental hazard particularly when further
6 diluted by customers' operations?

7 A No, he didn't. He only questioned the part about
8 dilution. He did not question that it would be unlikely to
9 cause health or environmental hazards.

10 Q All this time, Mr. Park, now you've told us earlier
11 that -- well, you've told us a number of things. You've
12 said at one point in time that you all never did consider the
13 levels of contamination with TCDD as being irrelevant. And
14 then yesterday morning when Mr. Musgrave asked you questions
15 in the morning, you again said that you did not consider the
16 health effect hazard from dioxin contamination in these
17 products. But then for the greater part of yesterday afternoon
18 you and Mr. Musgrave discussed various levels of TCDD in the
19 product and concluded that they were not health effects, that
20 they wouldn't cause health effects. Now, the point of fact is
21 is that you have indeed at every one of these meetings discussed
22 health effects, not new health effects, but old health effects
23 caused by various levels of contamination with TCDD, haven't
24 you, sir?

1 A I would suspect that we had discussed the possibility,
2 the likelihood.

3 Q Now, Mr. Park, I didn't ask you whether or not you
4 suspected it. I asked you point blank and point of fact you
5 have at these meetings discussed every time the health effects
6 from certain levels of contamination with TCDD, haven't you,
7 sir?

8 A Whether it would be likely to occur, yes.

9 Q Isn't that correct, sir?

10 A If you are talking about the two meetings.

11 Q Isn't that correct, sir?

12 A You say every one of these meetings, Mr. Carr, are
13 you talking about the two meetings on dioxin contamination?

14 Q Or any contamination by toxic substances, the four
15 that we are talking about, sir.

16 A Okay.

17 Q You, at each and every one of these meetings,
18 discussed and considered the health effects from certain levels
19 of contamination with toxic substances in your product, didn't
20 you, sir?

21 A Health effects, if any.

22 Q Didn't you, sir?

23 A Whether any would be likely to occur, yes. Health
24 effects, if any.

1 Q And connected with the level of contamination,
2 didn't you, sir? Isn't that right, sir?

3 A Yes.

4 Q Now, those weren't new human health effects you
5 considered, were they, sir?

6 A That's correct.

7 Q Those were old health effects, weren't they, sir?

8 A That's correct.

9 Q And each and every meeting you discussed those
10 health effects, didn't you, sir?

11 A I think that's correct.

12 Q And, Mr. Park, you testified last week that it
13 would have to be contamination of something greater than
14 trace amounts before it would be considered significant and
15 before you would consider reporting it to the EPA, do you
16 remember that, sir?

17 A I don't remember that specific. I'll take your word
18 for it, Mr. Carr.

19 Q And do you remember also testifying that you
20 considered anything from detectable levels up to one percent
21 as being a trace amount?

22 A I remember having great difficulty as to what trace
23 was.

24 Q Do you remember that, sir?

1 A I remember you kept trying to pin me down on that --

2 Q Yes, I did.

3 A And I just don't know. That's an analytical
4 chemist's term.

5 Q Excuse me. My question is not whether or not I
6 was trying to pin you down, but the question is whether or not
7 I succeeded and whether or not you did not in fact testify
8 that trace amounts in your judgment would be detectable
9 amounts, so many parts per million, anything up to one percent,
10 isn't that what you testified then, sir?

11 A I may have, yes.

12 Q Now, Mr. Park, if you are only going to discuss,
13 and you are only going to report it, concentrations of TCDD
14 contamination above one percent, that's ten million parts per
15 billion, Mr. Park, isn't it, sir?

16 MR. MUSGRAVE: Object, there is no testimony that
17 this man has testified, he would only report levels of
18 that nature. It's a mischaracterization of the testimony
19 in evidence intentionally and request the jury be
20 instructed to disregard it.

21 THE COURT: Overruled.

22 A I didn't state anything like that, Mr. Carr.

23 Q You didn't, sir?

24 A I may have said trace amounts, when I was saying it

1 could be anything depending on the contents on anything up to
2 one percent. I would agree with you that ten million would be
3 ten percent of a billion.

4 Q That's not what I'm asking you, Mr. Park. You said
5 on Page 19 of the --

6 MR. MUSGRAVE: Which date is that?

7 MR. CARR: April 11, 1985, this is the portion of
8 the transcript, and it may be a different page on the
9 full transcript. This is the part that I had produced
10 ahead of time.

11 Q (MR. CARR) And I asked you what you considered
12 to be trace amounts. And the question was, you are saying at
13 those meetings you do not cover, you do not discuss the level
14 of contamination? And your answer then, it would, if it was
15 significant. And then I asked you, what levels you considered
16 significant.

17 MR. MUSGRAVE: Do you want to read his answer now,
18 Mr. Carr?

19 Q (MR. CARR) And you hedged and I persisted --

20 MR. MUSGRAVE: I object to counsel -- just a moment,
21 Mr. Carr. I object to counsel's commenting that the
22 witness hedged, that's totally improper.

23 THE COURT: Gentlemen, could you approach the bench
24 and bring the transcript, please?

1 (Whereupon the following discussion was had at the
2 bench between Court and counsel and out of the hearing
3 of the jury.)

4 THE COURT: Where is the answer? ~~Where is the answer?~~

5 MR. CARR: I just read this and then I'm going over
6 to read this. If he continues to testify the way he did.

7 THE COURT: Okay.

8 MR. MUSGRAVE: He was reading the question at
9 Line 16 and I want him to read the answer.

10 THE COURT: Yes, I got that. I don't think you have
11 to read it. I don't think it was responsive.

12 MR. MUSGRAVE: Is my objection --

13 THE COURT: Your objection is overruled. I think
14 that what was said was not responsive. I think it was an
15 attempt to evade it. It's been said once and I don't see
16 any reason why it has to be said again. Your objection
17 is overruled.

18 MR. MUSGRAVE: My objection is to counsel using the
19 word hedged.

20 THE COURT: Uh-huh, right, I know that.

21 (Whereupon the following proceedings were had in the
22 hearing of the jury.)

23 Q (MR. CARR) Mr. Park, you do recall that we got into
24 this colloquy because you said you were not a toxicologist and

1 that if a toxicologist told you that trace amounts are present
2 that, I don't feel I need to go further, there would be some-
3 thing insignificant, that's how you described and the reason
4 we got into defining trace amounts, do you recall that, sir?

5 A I don't recall that, but it's all right.

6 Q Well, I'll read it to you so that you can recall it.
7 I asked you what you consider trace amounts, and Mr. Musgrave
8 objected. And then your answer was, I'm not a toxicologist,
9 Mr. Carr, I would if a toxicologist tells me trace amounts
10 are present, I guess I don't feel I need to go further. There
11 would be something insignificant. And then I asked you, you
12 are saying at those meetings, you do not cover, you do not
13 discuss the level of contamination. And your answer, it would
14 if it was significant. And then I asked you what was
15 significant. And you said, at one point in time, the trace
16 amounts would be again from my guess detectable amounts up
17 to so many parts per million --

18 MR. MUSGRAVE: What page are you on?

19 Q (MR. CARR) 22, something less perhaps than one
20 percent. And then I asked you detectable amounts, you have
21 the capacity to detect it then, it is not a trace chemical,
22 is that correct? And your answer was, no, no, no, you have
23 to detect it before it can become a trace. Question, well,
24 what is it, what level? Answer, anything, let's say, up to

1 one percent. Question, anything that you can detect up to
2 one percent is considered a significant amount? And your
3 answer was, see, your question was what would I consider trace.
4 And then I asked you --

5 MR. MUSGRAVE: May I inquire as to the purpose of
6 Mr. Carr reading this prior testimony? I don't understand
7 it and I object to counsel just willy-nilly reading
8 testimony into the record, Your Honor. I object.

9 THE COURT: Overruled.

10 Q (MR. CARR) And you responded to a question, what
11 would you consider to be of significant -- this is the top of
12 Page 23, counsel. What would you consider to be of signifi-
13 cance for dioxin in your chlorinated phenols. And your answer
14 was, as a lawyer responding to a chemist's question, I would
15 say I would guess that, depending upon the substance, a trace
16 amount could be anything, any concentration perhaps up to one
17 percent. Do you recall saying that, sir?

18 A I can't recall it clearly, but if it's in the record
19 then I did, yes.

20 Q Now, and at a later point you said, well, it would
21 be several parts per million, and then we went into a soliloquy
22 does a thousand mean several, and we finally set upon between
23 one and thirty parts per million as several. And do you recall
24 that you testified then that trace amounts, that is that you

1 have defined need not be reported to the EPA? Do you recall
2 that, sir?

3 A Not specifically, Mr. Carr, but if that's in there,
4 then I did say it.

5 Q Do you want to read your answer so you can refresh
6 your recollection, sir?

7 A Mr. Carr, I have been over here many hours and I
8 cannot remember everything that I have said.

9 Q My question is do you want to read it so as to know
10 whether or not exactly what you said to that question and that
11 answer?

12 A Yes.

13 MR. MUSGRAVE: Tell me where you are showing.

14 MR. CARR: Page 30 in the middle of the page.

15 MR. MUSGRAVE: Page 30, that's not what you read to
16 him before.

17 MR. CARR: What?

18 Q (MR. CARR) Is your recollection refreshed now,
19 Mr. Park?

20 A I am not quite through reading your question, Mr.
21 Carr. Could I read the question out loud?

22 Q Do you need to read it out loud to understand what
23 you are reading, Mr. Park?

24 A I think it might help.

1 Q Help you understand it? Mr. Park, can't you under-
2 stand a word without -- when you read to yourself, you really
3 don't read out loud to yourself, do you, sir? My question is,
4 do you read out loud to yourself, sir?

5 A Sometimes when there's a convoluted question, Mr.
6 Carr. .

7 Q Do you want to study it some more, sir?

8 A I'm just not sure quite what the question was.

9 Q Well, do you want to study it some more, sir?

10 A Yes.

11 Q Read it some more and study it some more?

12 A Uh-huh. Okay, all right. Yes.

13 Q Now, Mr. Park, do you now remember that you testified
14 that you need not report trace amounts or less to the EPA
15 under the mandatory provisions of the Toxic Substance Control
16 Act?

17 A That's what I said.

18 Q I know that's what you said, Mr. Park, but I am
19 asking you do you recall now that that is what you said?

20 A I don't recall the specific event, Mr. Carr, but
21 I read the transcript. So, I will assume that I said that,
22 I accept that I said that.

23 Q Mr. Park, if all this time when you were talking to
24 Mr. Musgrave about levels that you were considering with Mr.

1 Musgrave, and telling how, what you considered about that
2 thing, why would your committee even discuss that when clearly
3 none of your products have dioxin at ten million parts per
4 billion? Why would you even discuss it, sir?

5 A This is discussed by toxicologists and analytical
6 chemists and others who know what they are talking about. I
7 write down what they say, Mr. Carr.

8 Q Well now, did anybody ever tell you what was a safe
9 level if one percent is not the level?

10 A I think a safe level is going to vary with the
11 product in its use and so on. And whatever it is we're talking
12 about.

13 Q Well, nobody's going to quarrel with that, Mr. Park.
14 My question is did anybody ever tell you we have what Dr.
15 Paget said here, did anybody ever tell you what was a safe
16 level?

17 A Of what, Mr. Carr?

18 Q Of dioxin contaminant in your chlorinated phenols,
19 any or all of your chlorinated phenols.

20 A I frankly cannot recall.

21 Q And if you don't know what is safe levels, and you
22 cannot recall ever determining what was a safe level, then why
23 don't you error on the side of safety, why didn't you error on
24 the side of safety and report your dioxin content to the EPA?

1 A There is no indication that would have added to
2 any safety.

3 Q What do you think the function of the law is, Mr.
4 Park? Do you think it's just written there because somebody
5 wanted to fill up a page? You know it has a function, it has
6 the safety of human beings.

7 A That's why the EPA wants to be informed about health
8 effects and things that are discovered.

9 Q Mr. Park, do you recall in May, of -- well, let me
10 show you this.

11 (Whereupon Plaintiff's Exhibit 1310 was marked for
12 identification by the reporter as requested.)

13 MR. CARR: I hand you what's been now marked
14 Plaintiff's Exhibit 1310, another one of the documents that
15 I was given last night, and ask you if you recognize that, sir?

16 A Yes.

17 MR. CARR: Offer this exhibit into evidence if it
18 please the Court.

19 THE COURT: Any objection?

20 MR. MUSGRAVE: Yes, it's just a repeat, Your Honor,
21 of other exhibits dealing with 2,4,6-trichlorophenol and
22 2,4-dichlorophenol, and we object for the same reasons to
23 the prior exhibit bearing the same date, May 14, 1979,
24 being the date.

1 THE COURT: I'll incorporate all those objections.
2 It will be admitted over objection.

3 MR. CARR: I ask leave to pass the exhibit to the
4 jury.

5 THE COURT: Yes, you may.

6 (At this time the exhibit was passed to the jury.)

7 Q (MR. CARR) Mr. Park, this memo, your May 14 version,
8 has attached to it a memo from Clayton Callis, and I think
9 you've described Dr. Callis before, have you not?

10 A I have referred to him before, yes.

11 Q And he makes a suggestion that you should hedge at
12 the end of the report, doesn't he, sir?

13 A No, he says note my suggestion for hedging at the end.

14 Q Well, isn't that what he's saying? He's telling you
15 to hedge at the end?

16 MR. MUSGRAVE: Your Honor, my objection, this
17 document requiring this witness to testify as to what
18 someone else meant by comments put on a document, to
19 speculate and state conjecture as to what they may or may
20 not have meant beyond what the words say, the document
21 speaks for itself. May that be a continuing objection
22 and I assume it's overruled.

23 THE COURT: It is overruled and it will be a
24 continuing objection.

1 MR. MUSGRAVE: Thank you.

2 Q (MR. CARR) Isn't that what the gentleman suggested
3 by this memo that there should be hedging at the end?

4 A I think he meant just what he says, note my
5 suggestion for hedging at the end.

6 Q Now, Doctor, if your committee -- Mr. Park, if your
7 committee is concerned about the health of the public or
8 concerned that the EPA should get the correct information,
9 why would Dr. Callis want to hedge at the end?

10 A I don't understand why he said what he did, because
11 if he didn't, as I see it, substantially alter what I had said.
12 The meeting --

13 Q You adopted his language, didn't you, sir?

14 A I always try to adopt the language given to me by
15 people more experienced in technical matters than I.

16 Q But my question is, you did adopt the language,
17 the final report, Exhibit 1292, Plaintiff's Exhibit 1292,
18 indeed does contain that hedging paragraph, sentence, doesn't
19 it, sir?

20 A I don't have it before me, Mr. Carr.

21 Q Miss, could you give him Exhibit 1292?

22 A The meeting reconvened, I know, after there had been
23 an opportunity to review this NCI study which had been referred
24 to in the Federal Register Notice at a later date. So I don't

1 know why he said that.

2 Q Well, you went a little farther, too, didn't you,
3 sir, you asked Dr. Paget to give you something, didn't you,
4 sir? Did you hear my question, Mr. Park?

5 A I'm still reading this sentence, Mr. Carr. Just one
6 moment.

7 Q I'm not asking you a question now about that
8 sentence, Mr. Park. I'm passing to another point at the same
9 meeting.

10 A Okay.

11 Q You asked Dr. Paget to give you something, didn't
12 you, sir, to include in a new revised report, didn't you, sir?

13 A No, I think we had expected Dr. Roush to do this
14 and I would guess that Dr. Roush was then unavailable later
15 and so Dr. Paget took his place and reviewed the minutes.

16 Q And didn't you ask Dr. Paget to supply something
17 to you, sir, to take away from the import and the significance
18 of the report from NCI?

19 A Could I see my file on this meeting?

20 Q If you can't remember, all you have got to do is
21 say you don't remember, sir.

22 A I glanced at this file hurriedly just a few days
23 ago, and I believe I remember that Dr. Roush was unable to
24 attend the subsequent meeting, that Dr. Paget reviewed the

1 NCI report, it was -- he reviewed that for the group when the
2 group convened to consider a report on the NCI report. The
3 group concluded -- I'd like to see the minutes.

4 Q Mr. Park, what I'm asking you is a simple question,
5 didn't you ask Dr. Paget to supply you with something?

6 A Well, I asked him to provide me with what should go
7 in the final minutes to reflect the view of the group.

8 Q That's all I asked you, Mr. Park. That wasn't
9 really difficult to answer.

10 A Okay.

11 (Plaintiff's Exhibit No. 1311 was marked for
12 identification by the reporter.)

13 Q (MR. CARR) Now, did you tell him what you had in
14 mind, what you needed?

15 A To the extent that I needed something to reflect
16 the views of the group to go in the minutes.

17 Q Well, where were the views of the group other than
18 what I have given before?

19 A They were expressed at the meeting attended by Dr.
20 Paget.

21 Q Didn't you tell Dr. Paget that you needed something
22 to take away from the NCI report that you could quote directly
23 in your report, sir?

24 A I don't recall that. Is that in the minutes?

1 Q Well, let me hand you Plaintiff's Exhibit 1311, sir.

2 A Yes.

3 Q Do you recognize that as a note from Dr. Paget?

4 A Yes.

5 MR. CARR: I'll offer 1311 into evidence and ask
6 leave to pass it to the jury, Your Honor.

7 MR. MUSGRAVE: Same objection with regard to the
8 prior exhibits, the subject matter.

9 THE COURT: So noted. Objection is overruled. You
10 may pass it.

11 Q (MR. CARR) For the record, this is another document
12 we were given for the first time last night, Your Honor. Now,
13 it's a simple point, Dr. Park, you told -- Mr. Park, you told
14 Dr. Paget what you needed or what you had in mind, didn't you?

15 A I asked for something from him being a toxicologist
16 that I could place in the minutes.

17 Q But you see, he is not a toxicologist -- well, I'll
18 take that back, he purports to be in this area. And you did
19 take from him then this report and you did incorporate this
20 statement of his in this record, didn't you, sir, in your memo?

21 A I would like to see my file if I might to confirm
22 that.

23 Q Well --

24 A I would suspect that I did.

1 Q You can have Plaintiff's Exhibit 1275. Could you
2 give him Exhibit 1275, and if the complete file is here you
3 can have it as well. Did you bring that?

4 A Yes, Mr. Carr, it does appear that I incorporated
5 Dr. Paget's remarks into the minutes of the meeting.

6 Q Now, there weren't at that meeting any new health
7 effects discussed, were there, sir?

8 A I'm sorry, I just can't recall. It was the NCI
9 study.

10 Q Well, if you would look at your various memos, sir,
11 it wasn't a new health effect that you determined by any study,
12 was it, sir?

13 A I don't believe there were any new health effects.

14 Q Insofar as the contamination of these products is
15 concerned, you testified yesterday when Mr. Musgrave was
16 questioning you, that if you found hazardous levels in the
17 chemical that you were manufacturing, that you would report
18 it to the EPA, didn't you, sir?

19 A If it presented a substantial risk of injury to
20 health or the environment.

21 Q Well, I use the word hazardous levels, by definition
22 that means injury, doesn't it, sir?

23 A On that basis, I suspect we would.

24 Q And didn't you tell Mr. Musgrave yesterday that if

1 your chemical contained hazardous levels of contaminant,
2 dioxin, that you would report it?

3 A I can't recall exactly what I said, Mr. Carr. If
4 it presented a substantial risk of injury, I think we would.

5 Q Well, now, Mr. Musgrave used the words hazardous
6 levels, and you responded to Mr. Musgrave, yes, if there were
7 hazardous levels present in the product that you would report it?

8 A If I did, I did, Mr. Carr.

9 Q If he uses the word hazardous level and you agree
10 with it, why won't you allow me to use the same words, sir?

11 A You may have used them differently in your question,
12 Mr. Carr.

13 Q He was asking you whether or not you would report it
14 under TSCA, Section 8(e), and you said you would if the tank
15 car contained hazardous levels of the contaminant. You said
16 specifically in discussing Monsanto Exhibit 882 that if the
17 furans were hazardous to health --

18 MR. MUSGRAVE: So as to create a substantial risk,
19 Mr. Carr, did I perhaps use those words?

20 Q No, it just says here hazardous to health.

21 MR. MUSGRAVE: Is that the transcript, Mr. Carr, or
22 is that just your notes?

23 MR. CARR: It's my notes. Do you have a better
24 notation, sir?

1 MR. MUSGRAVE: I was standing up asking questions,
2 Mr. Carr, I wasn't taking notes.

3 Q (MR. CARR) And I don't care whether you use the
4 word hazardous really or not, sir. You testified with Mr.
5 Musgrave whether it was a substantial risk to health or not
6 that you would be required to report it to the EPA. Do you
7 recall that, sir?

8 MR. MUSGRAVE: I'll object to that as a misrepre-
9 sentation, whether it was a substantial risk or not, he
10 would be required --

11 Q (MR. CARR) If it was a substantial risk, you would
12 be required to report it to the EPA, if it contained levels of
13 a toxic substance. Do you recall that, sir?

14 A I will accept that if it presented a substantial
15 risk of injury to health and the environment, we would report
16 it.

17 Q Well, what you said more specifically, you said a
18 case could be made that no report is required, is what you said.
19 But then you went on to say that you would report it.

20 A Yes. We're back to another thing again, Mr. Carr.
21 To my interpretation of the act which is one thing, and what
22 I feel that the company would do which is something else.

23 Q The company thus far has done it the way, at least
24 the occasions you have been connected with, has done it the

1 way that you interpreted the act, haven't they, sir? We
2 went through that once already, Mr. Park. Remember, we just
3 established that before the break, I think after lunch we
4 established that the committee took your advice on the law,
5 do you recall that, sir?

6 A Yes. The company does lean over backwards, we have
7 held 8(e) meeting when I think --

8 Q Oh, the company leans over backwards in holding
9 the meetings. I'm not quarreling with that. Oh, yes indeed,
10 you hold meetings every time -- well, not really every time
11 because there is a lot of products you have come out of there,
12 but that you never held meetings on, but you do hold the
13 meetings. You didn't hold any meetings on any of these
14 levels of dioxin, but you do hold meetings. And I'm not
15 challenging you on failure to hold the meetings, Mr. Park.
16 My challenge is your failure to report these levels to the
17 EPA, that's my challenge, sir. You understand that, don't
18 you, sir?

19 A I understand what you say, Mr. Carr.

20 Q You understand I'm not finding fault with Monsanto
21 for simply failing to hold meetings? You do understand that,
22 don't you, sir?

23 A If you so say, yes.

24 Q Now, holding the meeting is not equivalent to

1 reporting to the EPA, is it, sir?

2 A That's correct.

3 Q And my question now, sir, is you said to Mr.
4 Musgrave that if the tank car had a level of harmful
5 contaminants in it, that would be hazardous or injurious to
6 the health of the people exposed to it, that you would
7 report it to the EPA, didn't you, sir?

8 A I said I would suspect that we would, I would
9 assume that we would.

10 Q Now you are saying that because you believe the law
11 obliges you to do that?

12 A Not at all, Mr. Carr. I have explained the law.

13 Q You are doing it out of the goodness of your heart.
14 You are back again to saying that you are not required to
15 report it?

16 A Yes. There are a lot of things that are not required
17 by Section 8(e), a great many things. It's quite limited in
18 its scope.

19 Q And it's clear we are back then to the, if you had
20 a tank car that by some fluke, manufacturing accident,
21 contained half cyanide or half 2,3,7,8, TCDD, and going out
22 for inclusion in santopehn and Lysol or 2,4-dichlorophenol,
23 it is your position, still your position then, that the law
24 doesn't require you to report that fact to the EPA?

1 A Under 8(e), no. There would be a number of things
2 we would do. But a Section 8(e) report would not be required.

3 Q You still believe that you are doing a favor then
4 and not something that is required by the law, is that correct,
5 sir?

6 A If we did file a report in that context?

7 Q Yes.

8 A It would be doing something beyond what is required
9 by the law.

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

12 MR. CARR: Yes, Your Honor.

13 THE COURT: Ladies and gentlemen, we will take a
14 short break and resume testimony and the admonishments
15 I have given you earlier will apply to this break, also.

16 (Whereupon a short break was taken, after which time
17 the following proceedings were had in the presence and
18 hearing of the jury.)

19 (Plaintiff's Exhibit 1302-A was marked for identi-
20 fication by the reporter.)

21 Q (MR. CARR) Mr. Park, do you recognize 1302-A as a
22 blowup of that exhibit which I previously asked you questions
23 about?

24 A I believe I do.

1 Q Dealing with 2,4-dichlorophenol?

2 A Yes.

3 MR. CARR: Offer 1302-A into evidence if it please
4 the court.

5 MR. MUSGRAVE: Is that the same as -- same objections,
6 Your Honor --

7 THE COURT: Fine, I'll incorporate them.

8 MR. MUSGRAVE: -- previously made to the exhibit in
9 its non-blowup form.

10 THE COURT: They are incorporated and admitted over
11 the objections.

12 Q (MR. CARR) Now, Mr. Park, you were discussing the
13 reporting to the EPA. Now, we have established to your
14 satisfaction that other companies have reported the occurrence
15 of dioxin in their products, have we not, sir?

16 A If you are referring to this list we looked at
17 earlier, we really don't know what the circumstances were
18 or what the reports were.

19 Q Well, what you knew, what was in your file, you
20 knew what other companies were reporting unless you've got
21 some more information that's not in your file, you did know
22 and you have agreed that other companies have reported the
23 occurrence of dioxins in their products.

24 MR. MUSGRAVE: I believe there is only one, Mr. Carr.

1 You showed him, anyway.

2 MR. CARR: No, I showed him a number of them.

3 MR. MUSGRAVE: Both of them were Velsicol, one was
4 Dow, and it dealt with fish and mud. I don't believe
5 Dow makes fish and mud, Mr. Carr.

6 MR. CARR: You have seen the reports, you have seen
7 this 1306 in which others have reported referable to
8 dioxin and at least one of which deals with dioxin in
9 their products, isn't that correct, sir?

10 A That's what this list indicated.

11 Q All right. Now, Mr. Park, you did not report to
12 the EPA the content of the tank car that spilled even though
13 OSHA came in and cited your company and required that it be
14 cordoned off so that workers couldn't get to it, required
15 that the workers that were there wear protective clothing,
16 because there was a hundred and fifty, or they reported a
17 hundred fifty parts per billion of TCDD or 2,3,7,8 TCDD, I
18 can't remember which at this point in time, but nevertheless
19 OSHA required Monsanto to take that action for the protection
20 of the workers. Are you aware of that. Or if you are not
21 aware of that I'm telling you that as a fact. And now you
22 know it. But yet, notwithstanding that, and that OSHA made
23 that finding, your committee did not consider that that
24 2,4-dichlorophenol contained high enough levels of contaminant

1 to report -- oh, strike that. Your view is that whatever the
2 level of toxic substance in your 2,4-dichlorophenol need not
3 be reported. In any event, it wasn't reported, was it, sir,
4 by Monsanto?

5 A This was a spill on the plant site?

6 Q That's correct.

7 A Yes, I don't recall a meeting about that. Apparently
8 no one called a meeting.

9 Q And no one reported to the EPA that a tank car that
10 was being filled and that is where the fifty gallons came from
11 or fifty barrels or whatever it was came from was from a tank
12 car that they were filling to be shipped out to a customer.
13 Nobody reported to the EPA that that tank car contained that
14 level of toxic substance, isn't that correct, sir?

15 A Not to my knowledge.

16 Q And now, and of course, your position is is that the
17 law doesn't require you to report that to the EPA, isn't that
18 correct, sir?

19 A That would be my interpretation of Section 8(e).

20 Q And that's the interpretation that Monsanto insofar
21 as that part of Monsanto that you have any connection with has
22 been following, isn't that correct, sir?

23 A Except that we have considered some matters that I
24 think would go beyond my interpretation of 8(e).

1 Q You considered it, but you didn't report it. And,
2 again, Mr. Park, I insist considering it is not equivalent to
3 reporting it, is it, sir?

4 A Not the equivalent. But it was not reported because
5 it was felt there was no substantial risk of injury to health
6 or the environment.

7 Q And up to fifty percent of the tank car containing
8 2,3,7,8 TCDD would not be any substantial risk to the
9 environment or to the health of others?

10 A I don't know, that would be a consideration for it.

11 Q Well, isn't that what you said. You are not
12 required to report it even if it's got fifty percent 2,3,7,8
13 TCDD, Mr. Park? I can't understand, you said on the one hand
14 you didn't report it because it didn't contain high enough
15 levels to be hazardous to the health, but on the other hand,
16 and I take it you are saying that you are required to report
17 it if it does contain such levels, it obviously follows, you
18 said you didn't report it because it did not contain those
19 levels. Mr. Park, don't you see a certain inconsistency in
20 the position that you have taken. You have said that you are
21 not required to report to the EPA a tank car that would
22 contain fifty percent of 2,3,7,8 TCDD. You said the law
23 doesn't require you to report it. But yet you gave as a
24 justification for not reporting these others that it wasn't a

1 high enough level to have injurious or serious health effects.

2 Do you see an inconsistency in what you are saying, Mr. Park?

3 A No, Mr. Carr. One is my own interpretation of the
4 statute. The other is we consider matters and I think we
5 would as a company, be inclined to go beyond what the statute
6 would require in some instances where our people might feel
7 that a situation presented a substantial risk of injury to
8 health or the environment. And that was the conclusion, that
9 was what was discussed at these 8(e) meetings.

10 Q And, Mr. Park, that's exactly what was discussed
11 because you know the law is is that you are required to report
12 it. You had those meetings, not because you wanted to pass
13 the time of day. You had these notes come up from people as
14 to how to change your reports and what to do and what to say.
15 You had all of those things because you know for certainty
16 that if the tank car contained injurious levels of toxic
17 substances, injurious to the health of others, the law requires
18 you to report it. You know that for a fact, don't you, sir?

19 A The way you phrase the question, Mr. Carr, no.

20 Q Mr. Park, if I understand you correctly then, you
21 don't need to report a tank car that contains fifty percent
22 of 2,3,7,8 TCDD?

23 A With only that section 8(e) would not require
24 reporting to the EPA. There may be other requirements you see

1 elsewhere.

2 Q Well, why not, Mr. Park?

3 A It's just not covered by the --

4 Q But my question is why not, Mr. Park?

5 A It's, unless, there is no new health effects, I
6 assume.

7 Q We're back to new health effects then?

8 A Yes.

9 Q Then you are saying that you don't have to report
10 hazardous levels of a toxic substance because those toxic
11 substances don't present a new health effect. We're back to
12 that again, aren't you?

13 A You're saying hazardous substances as opposed to
14 the substantial risk of injury.

15 Q Oh, no, no, no, it is a substantial -- half a tank
16 car loaded with half 2,3,7,8 TCDD even by your standard is
17 more than one percent. It does present a substantial risk
18 of injury to the people that may be exposed to it, doesn't it,
19 sir?

20 A In that event we would report it.

21 Q My question is does the law require you to report it?

22 A The law is just simply is not clear, Mr. Carr.

23 Q My question is does the law require you to report
24 it, Mr. Park?

1 A I think the policy would not --

2 Q I am not asking you that, sir. Does the law require
3 you to report it?

4 A If it presents a substantial risk of injury to health
5 or the environment in my opinion the law would.

6 Q And does a tank car loaded with fifty percent
7 2,3,7,8 present a substantial risk?

8 A I couldn't say.

9 Q You can't say that, sir?

10 A Out of context.

11 Q A tank car loaded with santophens that has fifty
12 percent 2,3,7,8 TCDD, does it represent a substantial risk
13 to the injury of the children that's going to put the santophen
14 washed things in their mouth?

15 A This would be a question for a medical expert.

16 Q I understand that, sir. But are you saying that
17 it does not present a substantial risk?

18 A No.

19 Q Then if a tank car is loaded with fifty percent
20 2,3,7,8 TCDD, then it does present a substantial risk to the
21 public, doesn't it, sir?

22 A This would be a question for --

23 Q My question is does it, sir?

24 A I don't know. It depends on the context.

1 Q You don't know that, sir?

2 A I couldn't say just sitting here, no, I don't know
3 that a tank car setting still presents a substantial risk of
4 injury. I think other facts would have to be considered, Mr.
5 Carr.

6 Q What if it's got ninety-five percent 2,3,7,8 TCDD
7 in it, going on its way to Lehn and Fink to be incorporated
8 in santophen?

9 A Mr. Carr, these are questions for medical experts,
10 toxicologists, chemists, and so forth.

11 Q Mr. Park, these are questions that have been asked
12 you and you answered yesterday Mr. Musgrave with no problem
13 at all, in answer to these questions about hazardous levels
14 about which you would report or wouldn't report. And now you
15 have a big problem. The problem that you have, Mr. Carr, is
16 that you know that what you are saying simply isn't the law.
17 You know that if a tank car contains levels of a toxic sub-
18 stance that can pose a substantial risk to the health of those
19 people exposed to it, you know the law requires you to report
20 it, don't you, sir?

21 A Mr. Carr, this is an unreal example you are giving
22 me. We would not ship a tank car like that.

23 MR. CARR: Your Honor, would you direct the witness
24 to answer the question?

1 THE COURT: Mr. Park, you have to answer the
2 question.

3 A No, I don't know that, Mr. Carr.

4 Q (MR. CARR) Mr. Park, what if that tank car containing
5 that fifty percent TCDD spilled in a community, would you be
6 required then to report it, sir?

7 A I'd certainly want to hear what our expert said on
8 that.

9 Q My question is would your interpretation of the law
10 lead you to the conclusion that you would be required to report
11 that spillage of a tank car containing fifty percent 2,3,7,8
12 TCDD in a community?

13 A If that situation would present a substantial risk
14 of injury to health or the environment, and it was -- I guess
15 that would come right under our Section C that we discussed
16 earlier, Mr. Carr.

17 Q And you would be required to report it?

18 A That's correct.

19 Q So if this tank car on the way to Lehn and Fink
20 containing fifty percent 2,3,7,8 TCDD spills in a community,
21 and of course, firemen and everybody else is going to be out
22 there to clean it up and everybody is going to be notified,
23 and they are going to get the people to dig the dirt up, if
24 that spills in the community you are required to notify the

1. EPA according to your interpretation of the act, is that
2 correct, Mr. Park?

3 A If it presents a substantial risk of injury to
4 health or the environment.

5 MR. CARR: Your Honor, would you direct the witness
6 to answer the question?

7 THE COURT: Mr. Park, answer the question.

8 A As you phrased the question, no.

9 Q Is that correct, sir?

10 A As you have phrased the question, no.

11 Q If the tank car spills in the very center of Belle-
12 ville, half a block from this courthouse, and it contains
13 fifty percent 2,3,7,8 TCDD, would you be required to report
14 it to the EPA, sir?

15 A And it presents a substantial risk of injury to
16 health or the environment, that's a required part of the
17 8(e) reporting obligation.

18 Q Oh, I understand that. And your committee under-
19 stands that, everybody understands that, Mr. Park. My question
20 is would you be required to report it to the EPA? Half a block
21 from the courthouse here.

22 A If it does present that substantial risk, the answer
23 would be yes, under Section C of the policy.

24 Q Now, if that tank car, the same tank car with the

1 same things applying to it, if it goes to Lehn and Fink, it
2 didn't spill in Belleville, it went through Sauget and past
3 the tracks right here three or four blocks from the courthouse,
4 South Illinois, and it didn't spill, it didn't derail, there
5 wasn't anything wrong, and it got to Lehn and Fink, and you
6 know it's got the same fifty percent 2,3,7,8 TCDD in it, are
7 you required to notify the EPA of that, sir?

8 A Section 8(e) would not require notification.

9 Q All right. Now, for a certainty, if that tank car
10 spills in Belleville, for a certainty it would be roped off
11 and children wouldn't be allowed to play in it, and they would
12 do something about cleaning it up, however haphazardly they
13 would clean it up, and they would try to prevent exposure,
14 wouldn't they, sir? But also for a certainty, if that tank
15 car didn't spill and it got to Lehn and Fink, they would
16 incorporate fifty percent 2,3,7,8 TCDD in their Lysol house-
17 wives would use it, it's two percent -- no, five percent
18 santophen, or its derivative, housewives would use it, and
19 they would be washing their children's bassinets with it,
20 they would be scrubbing the floor, they would do all kinds of
21 things with that, and some housewives you know, they think it
22 helps not to wash it off with water. They think it helps to
23 leave it there, that it will kill the germs better and longer.
24 You know that, don't you, sir?

1 A No, I don't.

2 Q Oh, you don't know that. All right. Well, some
3 housewives do that. You know for a certainty then under
4 those circumstances this fifty percent of 2,3,7,8 TCDD is
5 going to enter everybody's home. And you say that you are
6 not required to notify the EPA of that fact, sir?

7 A Mr. Carr, under the circumstances you described,
8 the first thing that would have been done would have been to
9 recall that -- car.

10 Q My question is are you required -- no, you haven't
11 recalled the car. My question is, sir, are you required to
12 notify the EPA if you are going to put that product in commerce?

13 A You've made a --

14 Q It left the plant, sir. You are going to put it in
15 commerce. Are you required to notify the EPA?

16 A The shipments of toxic substances made every day
17 around the country that the EPA is --

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

20 THE COURT: Mr. Park, answer the question.

21 A Section 8(e) would not require that the EPA be
22 informed in my opinion.

23 Q Now, do you see a certain inconsistency in that
24 interpretation, Mr. Park? You are required to notify the EPA

1 if it spills in Belleville and gets cleaned up and going to
2 get cleaned up, but the law for some strange reason doesn't
3 require you to notify the EPA of the greater dangers. Do you
4 see a certain inconsistency in your interpretation of the law,
5 Mr. Park?

6 A No, I don't, Mr. Carr.

7 Q All right. And it is that interpretation of the law
8 that has been guiding you and you have been guiding the
9 committee. And that is the reason that your committee has
10 never notified the EPA of these levels of dioxin in your
11 products, isn't that correct, sir?

12 A As you phrase the question, no, it's not, Mr. Carr.

13 Q And why haven't you notified the EPA of these
14 levels of dioxin in your products, Mr. Park? Because they
15 have not been notified.

16 A One reason would be because no one has felt these
17 levels would present any substantial risk of injury to health
18 or the environment.

19 Q We're back to that again. But we know that a tank
20 car with fifty percent of 2,3,7,8 TCDD does represent a
21 substantial risk, but yet you have said you are not required
22 to present it. Now, Mr. Park, you can't have it both ways.
23 If you haven't reported this because the levels aren't high
24 enough, I deliberately, and that's the reason you haven't

1 reported it, because the levels aren't high enough. That
2 means then at some level it will be high enough for you to
3 report, doesn't it, sir?

4 A I don't know. Mr. Carr --

5 Q No, it doesn't?

6 A We're back to the --

7 Q Then why haven't you reported the dioxin content
8 of these products to the EPA, sir?

9 A I repeat, I answered the question a moment ago, Mr.
10 Carr.

11 Q Because you said the levels weren't high enough is
12 what you said. Isn't that correct, sir? Is fifty percent --

13 A I did not say that, Mr. Carr.

14 Q Would you read his answer back, Sandy, please?

15 (Whereupon the answer was read back by the reporter
16 as requested.)

17 A That's different.

18 Q Do you recall you said that, sir?

19 A You said because the levels of contaminants weren't
20 high enough. And that's not what I said, Mr. Carr. I said
21 because no one felt that any of these situations presented a
22 substantial risk of injury to health or the environment. And
23 there is a substantial difference.

24 Q And that's because the levels aren't high enough.

1 A That could play a role in it.

2 Q Is that because the levels aren't high enough?

3 A I wouldn't say that, Mr. Carr, no.

4 Q Well, why didn't you report these levels of dioxin
5 contaminant in the product to the EPA. You said because they
6 don't present a substantial risk to the health of the people,
7 did you not, sir?

8 A Yes.

9 Q Why don't they present a substantial risk to the
10 health of the people, sir?

11 A We can look at the minutes of the meeting --

12 Q Could you answer that question, Mr. Park? Why do not
13 these dioxin contaminants in these products present a
14 substantial risk to the health of the people?

15 A I am trying to recall now, Mr. Carr, what the
16 discussions between the medical --

17 Q Mr. Park, could you answer that question, please.

18 A Mr. Carr, this was a question that was --

19 MR. MUSGRAVE: Mr. Carr, he's trying to answer the
20 question, he's trying to respond to it.

21 THE COURT: Overruled. It's not responsive.

22 A This was resolved by the toxicologists, the medical
23 experts and others of that sort. And, as I recall, there were
24 several factors they considered.

1 THE COURT: Mr. Park, you have to answer the
2 question directly. Go ahead and answer it.

3 A Yes. Okay. There were several factors considered.

4 Q Were one of the factors the level of the dioxin
5 contaminant, sir?

6 A That could have been one of the factors.

7 Q Not could have been --

8 A I would assume.

9 Q You have discussed it at some length at all of these
10 meetings, did you not, sir?

11 A We did.

12 Q Now, is one of the reasons you didn't report it
13 because the level wasn't high enough, sir?

14 A Mr. Carr, I am not going to go that far. It was a
15 substantial risk of injury.

16 Q Well, high enough to pose a substantial risk of
17 injury?

18 A Yes.

19 Q It follows, doesn't it, sir, the levels weren't
20 high enough to pose a substantial risk of injury, isn't that
21 correct, sir?

22 A Mr. Carr, you have a long list there, I don't --

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

24 A It wasn't even considered on most of those, Mr. Carr.

1 Q It wasn't considered on any of these, Mr. Park.
2 The ones you did consider you didn't report because the
3 levels weren't high enough, isn't that correct, sir?

4 A The conclusion was there was no substantial risk
5 of injury to health or the environment.

6 Q And why, sir?

7 A One of the reasons for that conclusion would be
8 that the levels of contaminants were not high enough.

9 Q All right. Then at a particular point, sir, you
10 understand the law to be if the level is high enough and
11 the other things being equal, if that high enough level is
12 going to cause a substantial risk of injury to the health and
13 the environment, then you know that you are required to report
14 it, aren't you, sir?

15 A That is not my understanding of the law.

16 Q Well then, what did you just say, sir?

17 A I just said what I think -- well, what the company
18 would do and go beyond the law, Mr. Carr.

19 Q Oh, we're talking about the law, not what the
20 company would do. We're talking about whether or not you're
21 required by the EPA to report it.

22 A A minute ago I thought you were talking about what
23 the company would do. If you are talking about what the
24 company is required to do, then there would be no Section 8(e)

1 report required.

2 Q No matter what the level of contaminant?

3 A That's correct.

4 Q And you did consider these levels though, didn't you,
5 sir?

6 A That's what you stated.

7 Q Why then, Mr. Park, are you required to report it
8 if it spills in Belleville, but not required to report it when
9 it gets to the customer?

10 A Because the policy statement so states in Section C.

11 Q And that is the policy that you go along with and
12 when you consider it in these committee meetings, don't you,
13 sir?

14 A We do make reference to the policy statements.

15 Q And your committee then pays no attention as far as
16 the law is concerned about reporting these contaminants to the
17 EPA. Those things that you consider at every meeting that
18 you considered, you considered the nature of the contaminant,
19 Dr. Nair reported two hundred and fifty parts per billion was
20 a high enough level to require reporting, didn't she, sir,
21 the toxicologist, didn't she, sir?

22 A She suggested reporting, yes.

23 Q She said two hundred and fifty parts per billion of
24 total dioxin is a high enough level to require reporting, didn't

1 she, sir?

2 MR. MUSGRAVE: Objection, Your Honor. This is a
3 mischaracterization of the document.

4 THE COURT: Overruled.

5 A I can't recall exactly how her memorandum read.

6 Q Well, why don't you refresh your memory, sir?

7 A All right. Do you have it there, Mr. Carr?

8 Q Give him 1296. She says on the first page, I have
9 taken the conservative approach to determine if the low levels
10 of dioxin found pose a health hazard, didn't she, sir?

11 A Yes.

12 Q And then she determined that since the potential --
13 and then she calculated how much they are going to absorb,
14 didn't she, sir, at an average of two hundred fifty parts per
15 billion?

16 A Yes, hypothetically.

17 Q And then she said, I feel this information should
18 be submitted to EPA under Section 8(e) under TSCA, didn't she,
19 sir?

20 A Yes.

21 Q And she was referring to the law, wasn't she, sir?

22 A Yes.

23 Q She wasn't referring to Monsanto policy, but she
24 was referring to the law?

1 A That's correct.

2 Q Now, she was refuted, the allegations were refuted
3 by Dr. Levinskas and what he said was these levels don't pose
4 a health risk, didn't he, sir?

5 A That's right.

6 Q And so you didn't report them because you chose not
7 to follow Dr. Nair's suggestion that the level was high enough
8 to be hazardous, and you didn't report them because you
9 adopted Dr. Levinskas' theory that the level wasn't high
10 enough to be hazardous, didn't you, sir?

11 A That's correct.

12 Q Now, so then, whether or not the level is high
13 enough is indeed a factor that would require you to report
14 it under the EPA?

15 A Mr. Carr, in my opinion, that is not a factor in
16 the law. Now I do think the company would report if the
17 levels were high enough.

18 Q Was Dr. Nair considering the law or considering
19 company policy?

20 A She was considering reporting pursuant to the law.

21 Q And did anybody in any of these memos mention that
22 the law doesn't require or did you say your meeting under
23 company policy, or did you say you're having a TSCA meeting?

24 A The company wants to be sure it is in full compliance

1 with the law.

2 Q I understand that, Mr. Park, I have heard you say
3 that. But my question is were you making these meetings
4 under the requirements of the law or under company policy?

5 A The company policy is to conform to the requirements
6 of the law, it's both.

7 Q And the law is what you were considering at these
8 meetings, wasn't it, sir?

9 A That's right.

10 Q Now, sir, at what level then would this tetrathal
11 have to be contaminated before you believe it has to be
12 reported to the EPA?

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

14 Q Oh, Mr. Park, you can say a hundred percent, because
15 that's what you said in the past. You said it could be a
16 hundred percent 2,3,7,8 TCDD and the law doesn't require you
17 to report it.

18 A It would not be me, it would be our toxicologist,
19 or medical experts who would make that decision, Mr. Carr.

20 Q They make it based upon the level of contaminant,
21 don't they, sir?

22 A They would consider that and other factors.

23 Q They make their decision based upon the level of
24 the toxic substance, don't they, sir?

1 A It gets down to exposure, as Dr. Nair --

2 Q Yes, exposure to the level whether it's spilled in
3 the community, put in the mouth, it's exposure, isn't it, sir,
4 a baby's rattle in the mouth is exposure?

5 A Or inhaled or whatever, whatever the exposure is.

6 Q That's correct. So you do consider the level and
7 you consider the exposure, don't you, sir?

8 A Exposure reduced by --

9 Q And the levels are high enough, you know the law
10 requires you to report it, don't you, sir?

11 A Mr. Carr, we've been over this any number of times.
12 It's my opinion, it's my interpretation of the law, that it
13 would not require reporting based upon levels. I do feel that
14 the company would so report if levels were sufficiently high.

15 Q Mr. Park, did the toxicologist agree with you and
16 did you tell the toxicologist that, no, we don't have to
17 report it under the law regardless of the level?

18 A We have discussed that to some degree, and they tend
19 to lean on the, if you will, what the conservative -- in other
20 words, they want to error on the side of reporting particularly
21 if there is a substantial risk of injury.

22 Q Is it your policy then to report it if the levels
23 are high enough to pose a substantial risk of injury?

24 A I think, yes.

1 Q And if that's so then, Mr. Park, and that's the
2 policy you have established under the law, why haven't you
3 reported these levels, all of which are factors, some of them
4 ten times higher.

5 A First, Mr. Carr --

6 Q Some of them twenty times higher than the two hundred
7 fifty parts per billion.

8 A It's not a policy.

9 Q Oh, I thought you said it was?

10 A I'm sorry. I didn't mean to.

11 Q But you did. In fact, it's the law that we are
12 talking about, isn't it, sir, not Monsanto policy?

13 A I thought you were talking about what I thought
14 Monsanto would do. Are we back to what I feel the law requires
15 again?

16 Q No, Mr. Park, we are apparently back to the point
17 where you would be willing to agree that the law requires you
18 to report a spill in Belleville, but doesn't require you to
19 report it when it's in the product that you ship out to your
20 customers. And if you are satisfied that that's the way you
21 want this jury to believe that law is interpreted by Monsanto,
22 I'll leave it at that. If you're satisfied with that.

23 A Mr. Carr --

24 Q Are you satisfied with that, Mr. Park?

1 A We are talking only about Section 8(e) of the law?

2 Q That's what we're talking about, sir.

3 A It's my interpretation that that law would not --

4 Q My question is are you satisfied with that, that you
5 are not required by the law to report it if it goes into the
6 household or may go into the household, but you are required
7 to report it if it spills in the street.

8 A As you phrase the question, my answer is yes.

9 Q And that policy carries over to your customers, to
10 Lehn and Fink as well, doesn't it, sir?

11 A No.

12 Q You don't report it to Lehn and Fink, either, do
13 you, sir?

14 A I would certainly think we would, yes.

15 Q You would certainly think you would, yes?

16 A Yes.

17 Q Mr. Park, would it surprise you if I were to tell
18 you that you don't report it to Lehn and Fink?

19 A We have never had a tank car with that much 2,3,7,8,
20 Mr. Carr.

21 Q Well, you're talking about fifty percent?

22 A That's what you said, I believe.

23 Q What about the levels shown in the exhibit here,
24 ten thousand five hundred parts per billion for santophen?

1 How about those levels?

2 A Mr. Carr, I don't know. You had me run through
3 that chart. I don't know who prepared -- I assume you
4 prepared that chart.

5 Q Yes, I did.

6 A And you pulled some of the information from several
7 different sources.

8 Q And I showed you the exhibit for each of those
9 items of information, all exhibits in evidence, you remember
10 that, don't you, sir? If it wasn't on the exhibit, then I
11 got corrected here. I had some wrong numbers on one line and
12 I got corrected, you recall that, don't you, sir?

13 A But I am not familiar, Mr. Carr, with the degree
14 to which customers may have been contacted or what.

15 Q Are you familiar with whether or not your policy
16 that you would notify your customers about dioxin whether or
17 not it is carried over to Lehn and Fink?

18 A Which policy is that, Mr. Carr?

19 Q That you would notify your customers of these levels?

20 A Which levels?

21 Q Any levels, Mr. Park. Or is your policy in effect
22 that you will not report to anybody, not the EPA, not the
23 news media, not the public, not the worker, not the customer,
24 not the people in Sturgeon, not anybody, that your product

1 contains dioxins?

2 A Of course not.

3 Q Well, can you tell me an instance, sir, a single
4 instance since January, of 1979, when you reported to a
5 customer, other than a direct inquiry from Diamond Shamrock
6 in 1981 or '82, when you reported to a customer that your
7 product contained dioxin?

8 A Mr. Carr, as I have mentioned, I would not be aware
9 of that. I do not deal with customers. Other attorneys do
10 at the company and other people.

11 Q Don't you think in between the time I have been
12 asking those questions of not just you, but other witnesses,
13 don't you think that if those letters were in existence and
14 your lawyers are under court order to produce them to me,
15 don't you think they would have been produced by now if the
16 customers had been notified?

17 A If the letters should have been produced, I would
18 assume that they would.

19 Q Now, do you know of a single instance when the
20 workers were even told that they were being exposed to dioxin,
21 other than the single time when the bulletin was put out that
22 OSHA says dioxin is present, but we have never detected it.
23 And there was such a bulletin. Do you know of a single time
24 when the workers have been told they were exposed to dioxin?

1 A Mr. Carr, I am not really qualified on that. It
2 could well have been done and I am not aware of it.

3 Q Well, do you believe that since Monsanto is under
4 orders to produce these things to me that I might have
5 received that bulletin where they were notified if such a
6 bulletin were in existence?

7 MR. MUSGRAVE: I object to that.

8 Q Your Honor?

9 THE COURT: Overruled.

10 A If we had been ordered to provide that to you, I
11 would assume that we would.

12 Q But I don't have it, do I -- well, you don't know
13 that, Mr. Park.

14 MR. MUSGRAVE: You asked him everything else that
15 he ought to know about everybody else's mind, you might
16 as well try yours, Mr. Carr.

17 THE COURT: Overruled.

18 Q (MR. CARR) Do you know of a single instance where
19 Monsanto, if they are not following your policy, of a single
20 instance where they have notified the press or the media that
21 thousands of parts, hundreds, thousands of parts per billion
22 of dioxin is in your products? Can you think of a single
23 instance now from the president of your company on down to the
24 plant manager or anybody else?

1 A I can't recall any, Mr. Carr.

2 THE COURT: Mr. Carr, is this a good point at which
3 to break?

4 MR. CARR: Yes, Your Honor.

5 THE COURT: Ladies and gentlemen, we'll end testimony
6 for the day. At this point in time and we'll resume
7 again tomorrow morning. I would remind you on the over-
8 night breaks, besides the regular admonishments, you are
9 not to read, listen to, or watch anything about this case
10 in particular or about the subject matter in general in
11 any of the media. Court is adjourned.

12 (Court adjourned for the day.)
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STATE OF ILLINOIS)
)
TWENTIETH JUDICIAL CIRCUIT)
)
COUNTY OF ST. CLAIR)

I, SANDRA ROE, certify the foregoing to be a true and accurate transcript of the testimony and proceedings in the above entitled cause.

Date this 24 day of April, 1985.

Sandra Roe
Official Court Reporter

RENUSS CO., BAYONNE, N.J. 07002 FORM IL 24B

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

5 I, RICHARD P. GOLDENHERSH, Circuit Judge in and for the
 6 Twentieth Judicial Circuit, do hereby certify that I have
 7 examined the aforesaid transcript, and certify the foregoing
 8 to be a true and accurate transcript of the testimony and
 9 proceedings in the above styled cause.
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11 Dated this 24 day of April, 1985.
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15 HON. RICHARD P. GOLDENHERSH
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