

1 aware of it yet, correct?

2 A. Correct.

3 Q. So when you say you're not going to
4 screen people with a present manifest
5 injury, you might actually have a
6 present manifest injury and you're going
7 to try to pick that up with this test?

8 A. That is correct.

9 MR. CUNNINGHAM: Thank you.

10 That's all I have.

11 THE COURT: Anything else?

12 MR. PECK: No, sir.

13 THE COURT: Thank you. You can
14 step down.

15 Plaintiffs go ahead and
16 call the next witness.

17 MR. STEWART: We call Dr. Kaley,
18 please.

19 THE COURT: Dr. Kaley, you are
20 still under oath.

21
22 RICHARD KALEY,
23 having previously been duly sworn, was

1 examined and testified further as follows; to
2 wit:

4 EXAMINATION

5 BY MR. STEWART:

6 Q. Dr. Kaley, you recall being deposed, do
7 you not, on -- I'm looking for the date
8 on this -- I think it was in August,
9 August 21st, 2001?

10 A. I recall being deposed. I don't recall
11 the date specifically.

12 Q. At the law office of Lightfoot,
13 Franklin, and White?

14 A. I believe that's where it was, yes.

15 Q. And Mr. Kelley was there, and I was
16 there deposing you on that date?

17 A. Yes, yes.

18 Q. And that was at a time, certainly, after
19 you all had had your discussions in
20 Washington, was it not, the meeting in
21 Washington sometime in January of 2001?

22 A. Well, if that is when there was a
23 meeting in Washington and I was there,

1 it would have been after that, yes.

2 Q. Do you remember me asking you about a
3 trip that was made to Washington that
4 was arranged by a gentleman named Glen
5 Ruskin with EPA?

6 A. Well, I'm not sure if that particular
7 meeting had anything to do with
8 arrangements made by Mr. Ruskin or not.

9 Q. I asked you on the date that I mentioned
10 have you been to Washington any time
11 recently with Mr. Ruskin to meet with
12 the people at EPA, and you said you had
13 been to Washington in the company of
14 Glen Ruskin, and we have met with people
15 at EPA. Are you saying now --

16 A. I don't recall specifically. I have
17 been to Washington more than once and
18 met with EPA or other agency people
19 sometimes with Mr. Ruskin, sometimes
20 not. I just don't remember
21 specifically, number one, which meeting
22 you are speaking about and whether
23 Mr. Ruskin had an involvement in that or

1 not. If I said that at the time, that
2 was my recollection at the time. I just
3 don't know. I don't recall.

4 Q. And do you recall being there at a
5 meeting in Washington where y'all met
6 with some representatives? You
7 indicated at your deposition y'all met
8 with some representatives from EPA at
9 Region Four and a gentleman named
10 Weinischke.

11 A. Yes. And I believe that meeting was not
12 arranged by Mr. Ruskin. If that is the
13 meeting you are speaking about, I
14 believe that had nothing to do with
15 Mr. Ruskin.

16 Q. What was the meeting for, to discuss
17 dealing with an order on consent?

18 A. Yes.

19 Q. Do you recall me asking you what area
20 that would cover at the time?

21 A. I don't recall that specifically. You
22 may very well have.

23 Q. Do you recall me asking you what about

1 the residential areas and you saying
2 that is dealing with the residential
3 areas which we are dealing with that are
4 covered by EPA or CERCLA?

5 A. Yes. At the time that was the correct
6 response, yes.

7 Q. And do you remember saying in the
8 deposition that if there was any effort
9 made to work out an agreement for
10 dealing with the plant site, that would
11 be done with ADEM because they were
12 regulating the plant site and
13 surrounding areas?

14 A. I would have probably said something
15 like that at the time in response to
16 that question, yes.

17 Q. And certain other areas under RCRA,
18 dealing with that under RCRA? Isn't
19 that what you said?

20 A. I'm sure it is, yes.

21 Q. That was in fact the case as of August
22 21st, 2001, wasn't it?

23 A. I believe that would have been the case,

1 yes.

2 Q. And that was the case as of the date you
3 received a draft order, which is
4 Plaintiff's Exhibit I-18, from EPA,
5 isn't it?

6 A. I don't know which draft you are talking
7 about, so I can't really answer that.

8 Q. It was the draft that was provided to me
9 and to the Court by your attorney,
10 Mr. Cox, just yesterday, and it is --

11 MR. STEWART: May I approach,
12 Judge?

13 THE COURT: Certainly.

14 Q. -- marked I-18, and it is -- I assume
15 that is 2002 --

16 A. 2001.

17 Q. 2001.

18 A. I assume that's correct.

19 MR. COX: I'm sorry. I was just
20 looking over your shoulder,
21 Donald.

22 MR. STEWART: It is the document
23 you gave me. I still have

1 your little Post-it on it.

2 Q. Now, turn to page eight and I'll get
3 mine and turn to page eight. And when
4 you look at site there, the site that is
5 referred to on page eight of mine means
6 residential, commercial, and public
7 properties, which is, again, still the
8 area, Dr. Kaley, that you were talking
9 about back at the other meeting in
10 Washington with EPA, correct?

11 A. That would be correct, yes.

12 Q. So as of 11-17 of 2002 -- or 2001 --
13 wait just a minute -- 2001, y'all were
14 still talking about the EPA residential
15 properties, not the plant site, not the
16 creeks, as of that date?

17 A. That is what the document is addressing,
18 yes.

19 Q. Well, I'm not necessarily looking now,
20 Dr. Kaley, for the document. But
21 certainly your understanding of that
22 document is what I'm looking for. And
23 what we are talking about in that

1 document is the site that was going to
2 be governed by this order on consent.

3 You understand that, don't you?

4 A. Yes, I do.

5 Q. And that was the area that EPA had for
6 all intents and purposes historically
7 taken the responsibility for; isn't that
8 correct?

9 A. I don't know what you mean by forever
10 taken responsibility for, but at the
11 time of this draft that was our
12 understanding of the area that EPA had
13 responsibilities for, vis-a-vis the
14 areas ADEM had responsibility for, yes.

15 Q. And on that date -- I'm glad you said
16 what you did. But on that date as a
17 practical matter, ADEM had the
18 responsibility for the plant site,
19 creeks and streams, certain residential
20 areas adjacent to the plant and the
21 tributaries leading a way from the
22 plant, didn't they?

23 A. Generally I would agree with that

1 characterization, yes.

2 Q. Then we got Plaintiff's Exhibit I-20,
3 and for the life of me I can't find my
4 copy of this.

5 MR. STEWART: Can I approach
6 again, Judge?

7 THE COURT: Certainly.

8 MR. COX: Judge, I have a copy, if
9 he would like for me to give
10 Dr. Kaley my copy.

11 Q. If you will turn to page seven in that
12 one, it talks about site in that one,
13 and this is something you all forwarded
14 to them on January 22nd of 2002 -- well,
15 not you, but Allen J. Topol, who is an
16 attorney representing your company. And
17 he sent it to Bill Weinischke and Dustin
18 F. Minor, and it is styled "Dear Bill
19 and Dustin." We turn to page seven of
20 that document and you talk about site
21 then. And then you are talking about
22 broadening things just a tad, aren't
23 you?

1 A. Well, I don't know that we are
2 broadening things. We are attempting in
3 this exchange of drafts to clarify which
4 areas were under which regulatory
5 responsibility, yes.

6 Q. We are? Who is we, Dr. Kaley?

7 A. The agencies that are involved and
8 Solutia.

9 Q. Well, now, y'all have had a series of
10 meetings after you had this initial
11 meeting in Washington, and the people
12 that were meeting, Dr. Kaley, were
13 perhaps you, Craig Branchfield, some
14 representatives from Region Four either
15 in Atlanta or some offices up in the
16 Justice Department. There weren't any
17 ADEM people meeting, were there?

18 A. I don't recall them specifically at the
19 meeting, no.

20 Q. So when you talk about agencies, you
21 really mean one agency, and that is EPA.
22 Now, whose idea --

23 A. No. I would say it was my understanding

1 that EPA and ADEM were in communication
2 during this entire period.

3 Q. They weren't at your meeting, though,
4 were they?

5 A. They weren't at the meeting, but my
6 understanding is they were in
7 communication.

8 Q. Then there were some creeks added in.
9 Snow Creek from the confluence of the
10 Eleventh Street ditch where it crosses
11 Interstate 20, right?

12 A. Yes.

13 Q. And then all land and structures and
14 other appurtenances and improvements on
15 the land owned as of this date of this
16 consent decree by Solutia. But then it
17 says "exclusive of the operating
18 facility," right?

19 A. Yes, that's what it says.

20 Q. What did that include? That operating
21 facility would not include the landfills
22 or the plant site, would it?

23 A. I'm sorry?

1 Q. The operating facility would not include
2 the landfills and plant site, would it?

3 A. Yes, it certainly would.

4 Q. The operating facility would include the
5 plant site and the landfills?

6 A. Yes.

7 Q. So you took that out?

8 A. Well, we didn't take it out. It was
9 part of ongoing negotiations.

10 Q. Now, the trial had started as of this
11 time, this trial?

12 A. Yes.

13 Q. Been underway for a while. Had y'all
14 discussed the trial in any of those --
15 any of those meetings?

16 A. Other than the fact it was going on, no.
17 I mean, everyone was aware obviously
18 that the trial was going on.

19 Q. Is it your testimony as you sit here
20 today, Dr. Kaley, that there have been
21 no discussions about injunctive relief
22 and the injunctive relief phase of this
23 case as of the time y'all got this draft

1 which was 5-20 -- or sent this draft
2 which is dated January 22nd, 2002?

3 A. I don't know that injunctive relief was
4 not mentioned at one point or another.
5 It certainly has always been a part of
6 this case. I don't recall any specific
7 discussions about it.

8 Q. Well, y'all started discussing it, then,
9 after that letter was written on January
10 22nd?

11 A. I'm sorry? We had had discussions with
12 EPA for a year and a half.

13 Q. You started discussions about the
14 injunctive relief phase of this trial
15 after y'all sent this letter of January
16 22nd, 2002, didn't you?

17 A. The injunctive phase of this trial had
18 been discussed and the fact that it may
19 or may not occurred during the entire
20 time of that negotiation.

21 Q. What I'm talking about, Dr. Kaley, was
22 in fact y'all had increased discussions
23 about the injunctive relief phase of

1 this case in the three meetings
2 Mr. Branchfield testified that took
3 place within the last month, didn't you?

4 A. I don't recall any increased intensity
5 in those discussions, no.

6 Q. Isn't it a fact y'all had three meetings
7 in the last month with the folks at EPA?

8 A. I believe there have three, yes.

9 Q. And you attended the meetings, didn't
10 you?

11 A. I attended two of them.

12 Q. Where did those meetings take place?

13 A. In Atlanta.

14 Q. And was Mr. Weinischke down there trying
15 to work something out with y'all
16 sometime in the past couple of weeks
17 about this order on consent?

18 A. Mr. Weinischke has been involved in all
19 these ongoing discussions in attempt to
20 reach agreement with the agencies on
21 this order on consent. Yes,
22 Mr. Weinischke has been involved.

23 Q. With the agencies?

1 A. Yes.

2 Q. How many of those meetings that you
3 attended in Atlanta did ADEM attend?

4 A. One.

5 Q. Just one?

6 A. Just one.

7 Q. That was the one that lasted, according
8 to Mr. Branchfield, about two or three
9 hours?

10 A. It was the better part of a morning as I
11 recall, yes.

12 Q. There is a charge in this site -- Take a
13 look at page seven of Exhibit I-21 -- We
14 have it up here. Y'all supposedly got
15 this one at noon, and there is another
16 one -- We will talk about this one.
17 There is something added to that. And
18 that is this site includes -- well, you
19 took something out and added. This site
20 includes but is not limited to the area
21 covered by the RCRA permit. Who added
22 that language? Who suggested that it be
23 added?

1 A. I don't recall specifically. I mean, I
2 have not been in the language adding and
3 taking out phases of the discussion. I
4 don't know specifically who added or
5 took out that language. I mean, it is
6 consistent.

7 Q. Did some lawyer recommend it?

8 A. Pardon?

9 Q. Did some lawyer recommend it?

10 A. I don't know who recommended it.

11 Q. Well, there were people there
12 representing you, weren't there?

13 A. Yes.

14 Q. Who was that?

15 A. Mr. Topol was there.

16 Q. Mr. Topol, is that right?

17 A. Mr. Topol was attending the meetings,
18 yes.

19 Q. Now, this is a document that y'all got
20 apparently a draft of on 3-13 of 2002,
21 wasn't it?

22 A. I'll take your word for that. I mean,
23 that is what it says.

1 Q. I was told that by --

2 MR. COX: We will stipulate to
3 that, Your Honor.

4 Q. -- Mr. Cox. You don't recall who from
5 your side recommended that?

6 A. I don't know that anybody from our side
7 recommended it. It may have been
8 somebody from EPA, may have been
9 somebody from ADEM. I don't know who
10 recommended that particular language.

11 Q. Who was it from EPA that told -- Strike
12 that.

13 Who told the EPA folks that
14 Mr. Cobb had testified and the substance
15 of his testimony from that witness stand
16 that you are sitting in right there?

17 A. Who told the EPA folks that?

18 Q. Yeah. Who shared with the EPA people
19 what Mr. Cobb testified about ADEM's
20 regulatory authority in this courtroom
21 when we were talking about injunctive
22 relief before y'all got this draft
23 document?

1 A. I'll cut to your question about who
2 spoke about Mr. Cobb's testimony with
3 EPA. The rest of it I'm not sure I got.
4 But the answer to that is I don't know
5 if anyone did or, if they did, who did.

6 Q. Is it your testimony here today,
7 Dr. Kaley, that there was no discussion
8 between Solutia and EPA, you being one
9 of the parties or participants in that
10 particular negotiation, about the fact
11 that Mr. Cobb and them felt they had the
12 regulatory authority at ADEM to govern
13 the plant site and also the creeks
14 leading away from that plant site and
15 the creeks and streams going down to
16 Lake Logan Martin, including Snow and
17 Choccolocco Creek?

18 A. I'm sorry. Are you asking me whether I
19 was aware that that testimony by
20 Mr. Cobb was transmitted to EPA after
21 his testimony? I was not aware of that.
22 Am I aware that has been in the past a
23 position consistent with ADEM's view of

1 their responsibility under the RCRA
2 permit, I believe that is consistent
3 with that, yes.

4 Q. Did y'all try to get EPA to get ADEM to
5 sign on to a memorandum indicating y'all
6 were going to go over to federal court
7 and try to get an order on consent
8 spread over the record of the district
9 court? Did y'all try to get them to do
10 that?

11 A. At EPA and ADEM we felt -- and I believe
12 the agency felt, EPA felt it would be
13 advantageous to have ADEM as a signatory
14 to the consent decree which we were
15 negotiating with the agency.

16 Q. When exactly did y'all decide you needed
17 to get ADEM involved?

18 A. I don't recall when that was.

19 Q. Didn't y'all go to try to see them
20 Friday after the testimony ended up over
21 here last week?

22 A. Not that I'm aware of.

23 Q. You are not aware there was some effort

1 by EPA to get ADEM to sign on to that
2 sometime last week?

3 A. Not that I'm aware of.

4 Q. Tell me if you would, Dr. Kaley, why EPA
5 told y'all they felt like it would be
6 important to have ADEM sign on? Isn't
7 it a fact that that was done because
8 ADEM had been seen as the agency that
9 has the authority to regulate the RCRA
10 plant site?

11 MR. COX: Objection to what EPA
12 felt or what EPA believed.
13 If he has an understanding, I
14 believe he can testify to it.

15 Q. What did they express to you? Why did
16 they say to you, they felt like it would
17 be advantageous? You just got through
18 saying they felt like it was. What did
19 they say the reason for that was,
20 Dr. Kaley?

21 A. I'm sorry, Mr. Stewart. You have lost
22 me in your speech. I'm sorry. Would
23 you please repeat your question?

1 Q. You just indicated a minute ago that EPA
2 felt like it would be advantageous to
3 have the signature of ADEM's
4 representative on this consent order.
5 What did they tell you about why they
6 felt it would be advantageous --

7 A. I don't recall what they said. I think
8 we also felt it would be advantageous to
9 have ADEM for the very reason you said,
10 that we are trying to negotiate a
11 consent decree which will regulate the
12 further investigation and remediation of
13 the site under both agencies, whatever
14 RCRA was responsible for with ADEM and
15 whatever CERCLA was responsibility for
16 under EPA. Certainly I can't speak to
17 what EPA felt, but I think we believed
18 and believe that it would be better if
19 all the investigation and remediation of
20 this site were dealt with under a single
21 consent decree.

22 Q. Isn't it a fact, Dr. Kaley, that what
23 y'all were trying to do is just avoid

1 the jurisdiction of this court? Isn't
2 that a fact?

3 A. I have no idea that that would be true,
4 no.

5 Q. Is it your testimony here today that Mr.
6 Weinischke didn't tell you that is what
7 would happen if y'all signed that?

8 A. That would be my testimony, yes.

9 Q. He hasn't stated that to anybody?

10 A. Not that I'm aware of.

11 Q. Has Dustin Minor ever said that to you,
12 that he felt like this Court didn't have
13 the authority or capability to
14 circumvent anything that EPA was doing
15 if y'all went running over there to
16 federal court and signed this order on
17 consent and got it spread on the record?

18 A. Is there a question in there?

19 Q. I'm asking you if he ever told you that.

20 A. No, he never told me that.

21 Q. Well, y'all didn't have a suit filed
22 against you by EPA, have you?

23 A. I think we have been put on notice under

1 a CERCLA decree that -- I don't know
2 that we have had a suit filed. I know
3 we have been put on notice. We have
4 responsibilities under CERCLA.

5 Q. Y'all do not have a pending matter of
6 litigation, do you?

7 A. Not that I'm aware of.

8 Q. They haven't sued you, have they?

9 A. Not that I'm aware of.

10 Q. Never have fined you, have they?

11 A. No, they have not fined us.

12 Q. Who is Linda Fisher?

13 A. Linda Fisher is at this point an
14 administrator in the Environmental
15 Protection Agency.

16 Q. Who did she used to work for?

17 A. She used to work for Monsanto Company.

18 Q. How long did she work for Monsanto
19 before she became a -- What does she do
20 now?

21 A. She is one of the assistant
22 administrators. I don't know
23 specifically what her title is.

1 Q. To Christie Todd Whitman?

2 A. To Administrator Whitman, yes.

3 Q. How long did she work for you all?

4 A. I don't know. Five or six years I would
5 guess. I don't recall.

6 Q. I thought you said eight at your
7 deposition, that she left EPA where she
8 worked previously when the
9 administrations changed and during the
10 Clinton administration she worked for
11 y'all up there, didn't she?

12 A. During some of that time she worked for
13 Monsanto Company, yes.

14 Q. Worked for Monsanto Company as a
15 lobbyist?

16 A. I'm not sure what her responsibilities
17 were.

18 Q. She was in Washington, wasn't she?

19 A. She was in Washington.

20 Q. When the administration changed last
21 year, she went back to work for EPA?

22 A. She was asked to join EPA by
23 Administrator Whitman.

1 Q. What part did she play in getting old
2 Bill -- to enter into this order on
3 consent with you?

4 A. None whatsoever.

5 Q. Did she encourage you to do that?

6 A. None whatsoever.

7 Q. Help you arrange a meeting up there?

8 A. I doubt she even knows about it.

9 Q. Who is it that picked -- By the way,
10 what are y'all penalized generally if
11 you fail or violate an order of the EPA?
12 Can't they fine y'all up to \$25,000 a
13 day?

14 A. I don't know what the specifics are.
15 I'm sure they have the ability to fine
16 us if we violate a specific order, yes.
17 I don't know what the provisions are.

18 Q. Well, y'all have got some real stiff
19 penalties in this last draft, don't you?

20 A. I don't recall what the numbers are.
21 There is a section that deals with
22 penalties, yes.

23 Q. Take a look at page ten.

1 A. Are you talking at 3-13, I-21?

2 Q. Yes. Page ten, y'all's stipulated
3 penalties.

4 A. All right.

5 Q. And tell us if you would what the
6 violations are if you violate and don't
7 comply for the first through the
8 fourteenth day.

9 A. \$750 a day.

10 Q. And what is the penalty if you don't
11 comply the fifteenth through the
12 thirtieth day?

13 A. \$2,000.

14 Q. And the thirty-first day and beyond?

15 A. \$5,000.

16 Q. That's certainly a good bit less, is it
17 not, than \$27,500 a day, isn't it,
18 Dr. Kaley?

19 A. Certainly smaller numbers, yes.

20 Q. Aren't you aware of the fact that some
21 of the people who have had their
22 property polluted by Monsanto with
23 threatened of being fined by EPA of

1 \$27,500 a day?

2 A. No, I wasn't aware of that.

3 Q. And old Bill had that letter sent out to
4 those people, Bill Weinischke, the
5 gentleman y'all met with up there in the
6 Justice Department?

7 A. I assume you are talking about letters
8 with regard to Solutia access to
9 properties of your clients either for
10 sampling or cleanup. And I don't know
11 whether Mr. Weinischke was involved in
12 that or not. I thought that was EPA.
13 May have been Department of Justice. I
14 don't know.

15 Q. Let me ask you this much: Who was it
16 that suggested that y'all not have to
17 put up any kind of typical assurance or
18 bond or whatever you call it? Who
19 suggested that?

20 A. I don't know the specifics of that.

21 Q. Didn't y'all suggest that?

22 A. I believe -- Again, I'm treading on
23 ground I really have very little

1 knowledge of. But I believe that we
2 suggested or told the agency that in
3 other situations the viability of the
4 company was such that those guarantees
5 were not required in consent orders of
6 this type. But as I said, I'm way
7 beyond what I really know.

8 Q. Isn't it a fact that your financial
9 liability as far as a company was a
10 little different at that point than it
11 is today?

12 A. I don't believe that's true, no.

13 MR. COX: Objection, relevance and
14 foundation.

15 THE COURT: Overruled.

16 A. I don't believe that is true, no.

17 Q. Haven't y'all lost value of stock since
18 this case started?

19 MR. COX: Same objection.

20 THE COURT: Overruled.

21 A. Yes.

22 Q. What is your cap? Y'all are worth about
23 six hundred and something million

1 dollars today?

2 MR. COX: Same objection, Your
3 Honor.

4 THE COURT: Overruled.

5 A. I have no idea.

6 Q. If y'all had to pay out a billion
7 dollars, Solutia couldn't do it, could
8 they?

9 A. I don't know.

10 Q. You don't know if Solutia could?

11 A. That's correct.

12 Q. Aren't y'all presently paying out about
13 thirty million dollars a year based on
14 what Mr. Hunter and Mr. Barnacle and
15 Mr. Clausen said in a recorded statement
16 that they made, all these analysts, when
17 this case first started on January 7th
18 or 8th?

19 MR. COX: Objection. He is asking
20 him to comment on hearsay,
21 and lack of foundation.

22 THE COURT: Overruled.

23 A. I believe that thirty million dollars is

1 a reflection of our budgeted -- expected
2 budgeted cost for remediation over some
3 time period, basically based on previous
4 costs.

5 Q. But isn't that what he said y'all had
6 the financial capability to pay?

7 A. I don't believe that is true, no. I
8 believe he said those were our budgeted
9 costs.

10 Q. So you have the capability as you sit
11 here today, if this Court would order
12 you to spend about a billion dollars
13 over here to clean up this plant site,
14 at Solutia to pay that?

15 MR. COX: Objection, speculation,
16 foundation.

17 THE COURT: Overruled.

18 A. I have no idea.

19 Q. Who would?

20 A. Mr. Hunter.

21 Q. Mr. Hunter would know about that?

22 A. Yes.

23 Q. Would Mr. Clausen know about that?

1 A. I believe he should.

2 Q. Those are two people who would be aware
3 of what y'all's capabilities were?

4 A. Yes.

5 Q. Now, did y'all ever have, you,
6 Mr. Branchfield, any of those gentlemen
7 I just mentioned, ever have any
8 discussions with Linda Fisher, after she
9 took her position, about the Anniston
10 plant site?

11 A. I certainly did not. I can't speak to
12 whether anybody else has or not.

13 Q. There is a possibility they have, then?

14 MR. COX: Objection, speculation.

15 THE COURT: Overruled.

16 A. Anything is possible. I know of no
17 circumstances under which that would
18 have occurred, but I'm certainly not
19 aware of any. And there certainly were
20 none by me.

21 Q. None by you?

22 A. Nor am I aware of any by any of the
23 other people you mentioned.

1 Q. What about Glen Ruskin?

2 A. I don't know.

3 Q. Isn't it a fact that Glen would be the
4 one meeting with her since she serves as
5 y'all's Washington public relations
6 person?

7 A. I don't know

8 MR. STEWART: Judge, I believe I'm
9 at a stopping point. I can
10 start with some other things
11 depending on how long you
12 want to go.

13 THE COURT: Are y'all going to
14 save him?

15 MR. COX: We were going to ask him
16 some questions. We were
17 planning on doing that now.
18 If it would be possible to
19 save Dr. Kaley a trip, if we
20 could finish him up today.

21 THE COURT: I really kind of
22 needed to be out of here by
23 five.

1 MR. STEWART: I'm going into some
2 taped conversations and get
3 him to identify those. They
4 will take about forty-five
5 minutes each to play.

6 MR. COX: That is not going to
7 happen, obviously. This
8 doesn't need to be on the
9 record.

10 (Discussion held off record.)

11 MR. MONK: We brought up my
12 potential conflict of
13 interest, and these guys have
14 provided me with a waiver of
15 conflict, which the Court
16 asked for. I need it on the
17 record. It does say that --
18 it is from Jere White --
19 saying in accordance with our
20 conversation the defendants
21 have no objection to me
22 representing the City of
23 Anniston.

1 I just want to document
2 in the record what our
3 conversation was in that
4 regard. I don't want that to
5 be left hanging or have any
6 dispute about our
7 conversation.

8 After I made my
9 potential conflict aware in
10 open court, Jere and I had a
11 discussion on that date.

12 Were you here?

13 MR. PECK: No.

14 MR. COX: I wasn't.

15 MR. MONK: I don't remember who
16 was, but I want it on the
17 record and I would like this
18 to be confirmed. He simply
19 asked me if I had any
20 specific knowledge of the
21 case from the period it was
22 filed until Mr. Fite
23 physically removed himself

1 and Mr. Miller from my law
2 firm, which would have been
3 June of 1999.

4 And I told him no.
5 Certainly I had general
6 information regarding the
7 case. I think Buddy and a
8 lot of these defense lawyers
9 were in and out of our office
10 during that period of time.
11 But I know I didn't have any
12 specific discussions with you
13 regarding the details of the
14 case.

15 MR. COX: No. And probably the
16 conversations we had you
17 don't want on the record.

18 MR. MONK: But they weren't about
19 the case.

20 MR. COX: Not about the case.

21 MR. MONK: I will represent that
22 neither did I have any
23 specific conversations with

1 Mr. Fite about the details of
2 the defense strategy or any
3 information in the case.

4 If I talked to him
5 about it, it was purely on a
6 level of what's going on, you
7 know, procedurally what is
8 happening in the case. That
9 was it.

10 I may not have gotten
11 that much in detail with
12 Mr. White, but that is the
13 limit of our information, and
14 Mr. Fite was quite diligent
15 in not sharing any
16 information regarding
17 Monsanto's information, their
18 strategies, tactics, or
19 anything such as that with
20 any member of the firm that I
21 knew of up there and
22 certainly not with me.

23 THE COURT: I guess to that

1 extent, exactly how much was
2 communicated to Mr. Fite to
3 begin with? That might have
4 been limited.

5 MR. COX: How much was
6 communicated, or how much did
7 he remember?

8 MR. PECK: Or receive?

9 THE COURT: We won't go any
10 further.

11 MR. MONK: I will simply say this:
12 I don't want my participation
13 to be a problem in this case.

14 MR. COX: And we have agreed it is
15 not.

16 MR. MONK: I don't want it to be a
17 problem with my insurance
18 company either.

19 THE COURT: All right. I'll see
20 you in Gadsden at eight
21 o'clock Monday morning.

22 (Court adjourned at 4:10 p.m.)
23