

1/31/02 pgs 3360-3407

Robert George Kaley

Doc # 523099

8 seated. Let the record reflect
9 everyone's back in the courtroom.
10 Ladies and gentlemen, I know it's
11 about ten 'til. I'm going to ask
12 the plaintiffs to go ahead and
13 call their next witness. We're
14 going to take maybe a little bit
15 longer lunch break, I don't know.
16 But we'll need to come back in
17 around 2:00 instead of 1:00 or
18 1:30. So I would rather go ahead
19 and put on a little testimony
20 now, maybe break around 12:30 or
21 a quarter to 1:00 and then we'll
22 still get the same lunch break,
23 just be a little bit later today.
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1 So go ahead and call your next
2 witness.

3 MR. STEWART: Robert Kaley, Judge.

4
5 ROBERT GEORGE KALEY,
6 called as a witness, having first been duly sworn,
7 testified as follows; to-wit:
8

9 DIRECT EXAMINATION

10
11 BY MR. STEWART:
12 Q. State your name, if you would, sir, for the
13 ladies and gentlemen of the jury?
14 A. My name is Robert George Kaley, II.
15 Q. And, Mr. Kaley, where do you work? Where
16 are you presently employed?
17 A. I work for Solutia, Inc. in St. Louis,
18 Missouri.
19 Q. To get a little idea of your work history,
20 where did you work before you went to work
21 for Solutia, Inc.?
22 A. I worked for Monsanto Company also in St.
23 Louis.

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1 Q. Now, when did you go to work for Monsanto?
2 A. In December of 1973.
3 Q. And did you work for Monsanto before you
4 went to work for Solutia in about the same
5 position you now hold with Solutia?
6 A. Well, I had several positions within
7 Monsanto. But at the time that Monsanto
8 spun off Solutia I was doing -- it was
9 about the same position at the time of the
10 spin, yes.
11 Q. What was that position that you held with
12 Monsanto when they spun off Solutia?
13 A. I was director environmental affairs.
14 Q. Did you have any particular
15 responsibilities, Dr. Kaley, at the time
16 you were working for Monsanto in
17 connection with PCBs?

18 A. Yes, I did.
19 Q. What was your position with regard to
20 PCBs? Would you call yourself the --
21 responsible for the corporate stewardship
22 of PCBs for Monsanto before you went to
23 work for Solutia?

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1 A. I think that's a fair description. Among
2 my other responsibilities was a
3 responsibility to be knowledgeable and
4 stay knowledgeable about PCB issues both
5 in the past and in the present, yes.
6 Q. When did you first start doing that for
7 Monsanto?
8 A. It was approximately 1985.
9 Q. Who had done it before you?
10 A. There was a gentleman named Dr. John
11 Craddock who had done that.
12 Q. And who had done it before Dr. Craddock?
13 A. Well, there wasn't any -- Before Dr.
14 Craddock there wasn't really any official
15 person doing that job.
16 Q. Who did it unofficially?
17 A. I don't -- I'm not even sure I know at
18 that time.
19 Q. Do you know a gentleman named William
20 Papageorge?
21 A. Yes, I do. Yes. Dr. Papageorge worked
22 for Monsanto and had responsibility for
23 PCB issues from I believe about 1970 until

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1 about 1984. Then there was a period in
2 between where nobody really had that
3 official responsibility -- or not -- I'm
4 sorry 1974. And then there was a period
5 in between where no one really had that
6 that official responsibility.
7 Q. And then Mr. Craddock took it and then you
8 took it?
9 A. Generally that's true, yes.
10 Q. So you took your PCB hat with you when you
11 moved from Monsanto to Solutia is that; is
12 that correct, Dr. Kaley?
13 A. That's a fair way of putting that, yes.
14 Q. Now, when you make a statement today about
15 that particular problem are you speaking
16 for Solutia or are you speaking for
17 Monsanto?
18 A. Well, I'm employed by Solutia so the
19 statements I make are being made on behalf
20 of Solutia, Inc.
21 Q. But sometimes don't you have to talk about
22 when you talk about Solutia and the
23 relationship that they have to PCBs and

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1 your stewardship of PCBs, don't you have
2 to talk about what happened at Monsanto?

3 A. I certainly do. Yes, I do.
4 Q. And aren't you familiar with what happened
5 at Monsanto?
6 A. Yes, I am.
7 Q. Now, in your position as -- And what were
8 you -- I know you said you were
9 stewardship but what was your actual
10 position?
11 A. It's director of environmental affairs is
12 the official title.
13 Q. So you were the director of environmental
14 affairs for Monsanto before you became the
15 director of environmental affairs for
16 Solutia?
17 A. That's correct.
18 Q. Well, where were your offices located?
19 A. Our offices are in St. Louis.
20 Q. No. I mean, where was your physical
21 office located at the time you worked for
22 Monsanto before it became -- before the
23 spin-off. In a building there in St.

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1 Louis?
2 A. Yes.
3 Q. And when the spin-off took place I guess
4 you picked up all your stuff and moved out
5 to a new building, didn't you?
6 A. Well, actually there was a period of about
7 a year or two years probably -- I think
8 two years where Solutia rented space from
9 Monsanto until we could acquire our own
10 offices. And then when we acquired our
11 own offices we did move, yes, to another
12 location.
13 Q. Oh, you moved to another location?
14 A. Yes.
15 Q. So when you became the director of
16 environmental affairs and took this
17 stewardship position about PCBs with
18 Solutia, you just stayed in the same place
19 you were; is that right?
20 A. Well, actually -- there was actually a
21 move of buildings but we stayed on the
22 same -- on Monsanto's campus for some
23 period of time, yes.

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1 Q. For the two years?
2 A. That's correct.
3 Q. When you say "we" who all stayed there
4 with the company? Who all was involved
5 when Monsanto moved over to Solutia?
6 A. There were a number of people. Primarily
7 people associated with the chemical
8 businesses of Monsanto.
9 Q. So that's what spun off?
10 A. Right. That's correct.
11 Q. And that was in 1997; is that correct?
12 A. That's correct.

13 Q. Now, what happened to that other Monsanto?
14 A. Well, several things have happened to that
15 other Monsanto.
16 Q. Well, can you tell the ladies and
17 gentlemen of the jury what happened?
18 A. Well, at some point -- and I don't know
19 the exact dates. At some point the
20 Monsanto that we were spun off from merged
21 with a company called Pharmacia.
22 Q. Pharmacia?
23 A. That's correct.

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1 Q. And then what happened after that?
2 A. All right. After -- subsequent to that
3 Pharmacia has spun off a different -- a
4 new Monsanto as a -- a -- an independent
5 company.
6 Q. Now, let's see if I understand it now.
7 There was a Monsanto and then they spun
8 y'all off and it was Solutia, and then
9 they got picked up by Pharmacia, and then
10 they spun out a new Monsanto?
11 A. That's essentially the story, yes.
12 Q. All right. And y'all don't have any
13 connection; is that right?
14 A. That's correct. We do not.
15 Q. Now, y'all got the Anniston plant, didn't
16 you?
17 A. That's correct.
18 Q. And by "y'all" I mean Solutia.
19 A. Solutia. Yes, I understood that. Yes.
20 Q. Now, who else in the management of
21 Monsanto went with you that would work in
22 this environmental area? Who do you
23 report to?

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1 A. At this time I -- at that time that they
2 spun off I reported to the remediation
3 department.
4 Q. You reported to the remediation
5 department?
6 A. Yes.
7 Q. And in connection with that you had a
8 relationship with this Anniston plant,
9 didn't you?
10 A. Yes, I did.
11 Q. And made statements about it?
12 A. Yes, I have.
13 Q. And dealt with the regulators?
14 A. I have done some of that, yes.
15 Q. And you dealt with the regulators at
16 Region 4, didn't you?
17 A. Yes. I have done some of that, yes.
18 Q. And you dealt with the regulators at ADEM
19 didn't you?
20 A. I have, yes.
21 Q. On a regular basis in connection with the
22 remediation efforts there at the Anniston

23 plant?

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1 A. On an occasionally basis. I don't know
2 what regular means. But, yes, we have
3 certainly -- I have interacted with those
4 agencies.

5 Q. Now, as a part of that corporate
6 stewardship responsibilities that you had
7 with Monsanto and then that you have with
8 Solutia, is it fair to say that you're
9 probably the most knowledgeable person in
10 the corporation, whether it's Monsanto or
11 Solutia, about PCBs?

12 A. I -- I think that's probably a fair
13 statement, yes.

14 Q. Okay. And are you familiar with a recent
15 press release that was put out by -- and I
16 -- it referred both to Solutia and to
17 Monsanto but it was -- it appeared in the
18 press.

19 A. I'm not sure which one you're talking
20 about.

21 Q. In that press release --

22 MR. FORD: Excuse me, Your Honor.

23 We're going to object to him

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1 reading from any press release.
2 That's rank hearsay,
3 inadmissible.

4 THE COURT: Well, if you want to show
5 it to him and ask him if he's
6 seen it.

7 MR. STEWART: I'll be glad to show it
8 to him, Judge. And it's a
9 statement from the company and
10 I'll be glad to show it him.

11 MR. STEWART: Let me show you --
12 here's a copy. May I approach
13 the witness, Judge?

14 THE COURT: Sure.

15 Q. Here's 622A. I'll ask you, Dr. Kaley, if
16 you will take a look at that. And that's
17 a statement I believe that was issued by
18 Solutia, Incorporated?

19 A. Yes. I recognize this as a statement that
20 was released by Solutia.

21 Q. Well, you helped put it together, didn't
22 you?

23 A. Pardon?

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1 Q. You helped put it together, didn't you?

2 A. I had input into this, yes.

3 Q. Yeah. And it says in the first statement
4 while --

5 MR. FORD: Objection, Your Honor.

6 It's not admitted into evidence
7 yet.

8 MR. STEWART: Well, I offer it into
9 evidence, Judge.
10 MR. FORD: And I don't believe it is
11 admissible in evidence.
12 THE COURT: Overruled. It's
13 admitted.
14 (Whereupon Plaintiffs' Exhibit
15 622A was offered and admitted
16 into evidence.)
17 Q. You said in that statement, "While PCBs
18 were manufactured at the Anniston facility
19 for four decades and have been found in
20 the environment, Solutia" -- and then it
21 goes on to say something else and I want
22 to ask you about that, "and Monsanto have
23 acted fairly and responsibly in dealing

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1 with the community and regulators about
2 PCBs in Anniston." Does it say that?
3 A. Yes, it does.
4 Q. And do you believe that statement to be
5 true, Dr. Kaley?
6 A. Yes, I do.
7 Q. Well, in fact, you helped put that
8 together, did you not?
9 A. I helped put the statement together, yes.
10 Q. Now, it's my understanding that at the
11 time you did that you had your Solutia hat
12 on but you were talking about Monsanto.
13 Were you speaking for Monsanto, too?
14 A. I was speaking for both companies in that
15 time, yes.
16 Q. And in the next statement it says, "From
17 the earliest emergence of environmental
18 concerns about PCBs, Monsanto worked with
19 the government and academic scientists and
20 researchers, to help learn as much as
21 possible about PCBs, their environmental
22 levels and behavior, and their potential
23 health effects."

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1 Now, do you believe that statement
2 to be true?
3 A. Yes, I do.
4 Q. And is that Monsanto's position, and I
5 would assume Solutia's position, today?
6 A. Well, certainly it is Solutia's position.
7 I believe Monsanto would agree with that.
8 Q. Well, now the statement says, in
9 connection with that, it does not refer to
10 Solutia it talks about Monsanto and not
11 just Sol -- It leaves Solutia out.
12 A. Well, that's because the time period which
13 it is addressing there was no Solutia.
14 Q. Well, are you sure that Monsanto would
15 agree with that statement?
16 A. I can't speak for what somebody in
17 Monsanto might or might not say. I would

18 hope they would, yes.
19 Q. Well, the statement said it. And you
20 helped put it together. Didn't you talk
21 to them about it, Dr. Kaley?
22 A. I didn't specifically, no.
23 Q. But it's your feeling that they would hold
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1 that that was true?
2 A. Yes.
3 Q. Well, let's take a look at some of
4 Monsanto's documents. Let me ask you to
5 take a look at this document, please, sir,
6 Plaintiffs' Exhibit 90. Now, Dr. Kaley,
7 who is Mr. R. Emmet Kelley, M.D.? Who is
8 he?
9 A. He was the former medical director for
10 Monsanto Company.
11 Q. Did you know him?
12 A. I did.
13 Q. Now, this memo concerns the publicity
14 about the work of some Swedish scientists,
15 Jenssen, do you -- are you familiar with
16 Dr. Jenssen?
17 A. Yes, I am.
18 Q. And you heard about the testimony that was
19 given in this case about Dr. Jenssen, have
20 you not?
21 A. I heard some of it, yes.
22 Q. Okay. And there's a line of the memo --
23 MR. STEWART: Judge, we would offer
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1 Plaintiffs' Exhibit 90 into
2 evidence at this time and ask
3 that it be pulled up.
4 THE COURT: It's admitted.
5 (Whereupon Plaintiffs' Exhibit 90
6 was offered and admitted into
7 evidence.)
8 MR. STEWART: Okay. And let's pull
9 that up, if you would. Can you
10 pull up -- pull up the top line
11 up there? And you've got to look
12 at the memo. These machines work
13 awfully well, Dr. Kaley. We've
14 had a lot of fun with them but
15 this -- you may be able to read
16 that on that better than we can
17 here.
18 THE WITNESS: Okay.
19 MR. STEWART: Tried to pull it up and
20 make it big so folks can --
21 Q. What does that say up there?
22 A. I believe it says, "Evil publicity on
23 chlorinated biphenyls."
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1 Q. And --
2 A. And there's a date February 13, 1967.

3 Q. February what, sir?
4 A. 13th, I believe, 1967.
5 Q. Okay. And in the last paragraph of the
6 first page there's a reference and I want
7 you to take a look at that, if you would.
8 Can you read that for the ladies and
9 gentlemen of the jury?
10 A. I'll try. "Due to the importance of the
11 Aroclor products to the organic division
12 we decided on the following plan of
13 action. Since all of the actions require
14 falls -- since all the action required
15 falls within the realm of your authority
16 you accepted the responsibility to follow
17 through on the following."
18 Q. And it says that the company there is
19 going to have a -- well, let's go back to
20 that paragraph again and pull that up.
21 It said, "Due to the importance of
22 the Aroclor products to the organic
23 division." What would that be? What
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1 would the Aroclor products be?
2 A. Well, among the Aroclor products were the
3 polychlorinated biphenyl products.
4 Q. And it says that the company's going to
5 make or have a plan of action to make sure
6 that our Aroclor business is not affected
7 by this evil publicity, isn't that what it
8 says on the last paragraph of the first
9 and second page?
10 MR. FORD: Objection, Your Honor,
11 his characterization of what it
12 says. Objection, Your Honor, and
13 move to strike Mr. Stewart's
14 testimony. The document says
15 what it says.
16 THE COURT: Okay. Well, let's -- I'm
17 going to sustain. Can we pull it
18 up and see what it says?
19 MR. STEWART: Let's go to the last
20 paragraph on the last page. Pull
21 that up.
22 Q. Can you read that for us, please, sir?
23 A. I'll try. "Please do let me know if there
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1 is anything I can do or any way I can help
2 in getting these actions started and
3 getting our information together so that
4 we can make sure our Aroclor business is
5 not affected by this evil publicity."
6 Q. Now, what evil publicity do you understand
7 from reading that letter the author of the
8 letter was referring to?
9 A. Well, the publicity, I assume, are the --
10 I think there are two or three articles
11 mentioned on the front page of the memo
12 itself.

13 Q. Well, one's a letter from Dinner Widmark
14 of the Institute of Analytical Chemistry
15 at the University of Stockholm to Mr.
16 Jenssen talking about his research?
17 A. Yes. I think that's a fair
18 characterization.
19 Q. And had that not been widely reported at
20 that time?
21 A. I -- I -- well, I guess it depends on your
22 definition of widely reported. It
23 appeared in a public press and in English

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1 science magazine.
2 Q. And had there not been some concerns,
3 serious concerns, raised by the scientific
4 community about the findings of Dr.
5 Jenssen?
6 A. Well, I would think by February of '67 the
7 scientific community was just beginning to
8 understand and try to come to some
9 understanding of what that publicity was.
10 I don't -- at this point I don't know if
11 they were necessarily concerns raised.
12 Q. Well, how does that square with your
13 earlier statement that -- or the statement
14 that you made on January 3, 2002, that
15 from the earliest emergence of the
16 environmental concerns about PCBs Monsanto
17 worked with government and academic
18 scientists and researchers to help learn
19 as much as possible?
20 A. Well, I think it fits right in perfectly.
21 I think the second indented paragraph on
22 the first page says, "One of our
23 employees," you know, "sent the LTB

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1 process. And he -- doctor -- not doctor
2 -- David Wood was summarizing his visit
3 with Jenssen. We were. When we found
4 that information we made it, you know, the
5 same way everybody else did, we made
6 immediate contact with those researchers
7 to try to understand what was happening in
8 their laboratories and what their findings
9 meant.
10 Q. Well, in this letter dated 2/13/90 -- '67
11 rather, weren't y'all already aware of
12 some fairly significant things about PCBs
13 and the effect that they were having on
14 the environment surrounding your plant?
15 A. No. I don't believe we were.
16 Q. Do you know a Dr. Ferguson?
17 A. I know the name, yes.
18 Q. And you know of the work that Dr. Ferguson
19 did in Snow Creek in Anniston, Alabama, at
20 that time?
21 A. I have some familiarity with that, yes.
22 Q. And hadn't Dr. Ferguson started his work

23 in 1966?

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1 A. He had done some work in 1966; that's
2 right.
3 Q. And weren't y'all fully familiar with the
4 fact that he was finding adverse effect in
5 Snow Creek right off your plant site
6 because of PCBs at that time?
7 A. No. I don't believe we had that
8 understanding at all. I believe the
9 effects he was reporting were not related
10 to PCBs.
11 Q. What was he reporting?
12 A. My recollection is some acute effects or
13 some effects on fish, rather, right at our
14 plant outflow.
15 Q. Killing the fish?
16 A. I believe that was one of the report --
17 the effects he reported, yes.
18 Q. Well, Dr. Kaley, wasn't he finding
19 something in the tests that he did in that
20 creek that looked a little different from
21 the pesticide that he was looking for?
22 A. Well, he reported that there were some
23 peaks that he couldn't identify in

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1 Choccolocco Creek, yes. But there were
2 also no environmental effects in
3 Choccolocco Creek. The effects he was
4 reporting on the fish were immediately at
5 our plant outfall.
6 Q. Oh, Dr. Ferguson didn't know about it.
7 But y'all knew what he was finding, didn't
8 you?
9 A. I don't believe that's correct, no.
10 Q. Well, haven't you been doing tests on PCBs
11 and knew what those peaks looked like to
12 test the quality of that product?
13 A. There have been some of that going on but
14 that doesn't -- that did not necessarily
15 agree with what Dr. Ferguson was
16 reporting.
17 Q. Now, Dr. Kaley, didn't y'all have tests on
18 that product to determine the quality of
19 that product where you saw what an Aroclor
20 peak looked like at the time Dr. Ferguson
21 was looking for his stuff in the creek,
22 didn't you?
23 A. That's correct, yes.

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1 Q. And so when he said, I'm seeing some
2 pesticide peaks above the peaks that I'm
3 finding with this -- I mean some peaks in
4 my pesticide tests that are above what I
5 expected to see in a pesticide, y'all knew
6 exactly what it was.
7 A. I do not believe that's correct, no.

8 Q. And when Dr. Jenssen was finding this
9 thing in the environment, y'all knew that
10 it was in the environment in Snow Creek
11 right outside your plant, didn't you?
12 A. I do not believe that's correct, no.
13 Q. Well, did you call up Dr. Jenssen and you
14 said, Well, we found this stuff in the
15 environment, too, right out there in Snow
16 Creek. Did you do that?
17 A. I don't know whether that such statement
18 was made to Dr. Jenssen or not. I
19 certainly didn't do it because I was
20 working for the company at the time.
21 Q. Well, I'm not asking you if you did it.
22 I'm asking you if Monsanto told him that
23 y'all were finding that in the creek?

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1 A. I don't know.
2 Q. You later had some people that did some
3 additional work, Dr. Suttikus, was it, and
4 Dr. Gunning?
5 A. I'm familiar with those names, yes.
6 Q. Well, when was that?
7 A. I believe it was in the early 1970s.
8 Q. Early 1970s. And they found it in the
9 creek, didn't they?
10 A. Yes. By then we were aware it was in the
11 creek.
12 Q. And found it all the way down to
13 Choccolocco Creek, didn't they?
14 A. I believe that's correct, yes.
15 Q. Did y'all call up Dr. Jenssen or Dr.
16 Risebrough -- do you know who he was?
17 A. Yes, I do.
18 Q. And where did he work?
19 A. University of California Berkley, I
20 believe, one of the California schools.
21 Q. Okay. Did y'all share with him the
22 information that y'all had?
23 A. Well, we shared a great deal of

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1 information with him, yes.
2 Q. Now --
3 A. We provided him samples we had discussions
4 with him.
5 Q. But I assume that once y'all found out
6 that this stuff was out in the creek and
7 was gathering up in the environment that's
8 what Dr. Jenssen found out, wasn't it?
9 Isn't that what he found out?
10 A. Dr. Jenssen had found PCBs in some
11 samples, environmental samples, in Europe,
12 yes.
13 Q. And Dr. Risebrough found it in animals,
14 didn't he? Gathering up in animals,
15 bioaccumulating is that what --
16 A. Well, he found evidence of PCBs in birds,
17 yes.

18 Q. And I assume that since y'all's corporate
19 emphasis at the time was to work with
20 scientists and to begin to take care of
21 this problem, that y'all rushed out there
22 and cleaned up Snow Creek?

23 A. We worked with Dr. Risebrough -- as the
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1 statement says, we worked with Dr.
2 Risebrough and other scientists to provide
3 samples to provide information about the
4 PCB situation at the time, yes.

5 Q. That's not what I'm talking about, Dr.
6 Kaley, I'm sure. And I want to make sure
7 you understand my question. Did y'all
8 clean up that creek at that time in the
9 '70s?

10 A. I don't know if any cleanup was done in
11 the creek in the '70s. I don't know if --
12 in the '70s?

13 Q. Yeah.

14 A. Well --

15 Q. When you were finding it in the creek in
16 the '70s, did you do anything to clean it
17 up?

18 A. Well, we were doing things at the plant to
19 restrict our outflow from the plant so
20 that those materials would no longer make
21 it into the creek.

22 Q. Was there a plan of action? You talked
23 about the plan of action to combat this

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1 evil publicity about the Aroclors, but did
2 you have a plan of action for the people
3 in west Anniston at that time, Dr. Kaley,
4 in 1967 or in 1970?

5 A. Well, by 1970 we had reported our findings
6 and our information to the State of
7 Alabama, yes.

8 Q. No, sir. That's not what I'm asking you,
9 Dr. Kaley, and I want you to be sure you
10 understand my question. One of those
11 guys, whether it was Ferguson -- I think
12 it was Dr. Ferguson, indicated that
13 whatever was going through that creek down
14 there might affect children and I think he
15 said an animal, some animals, dogs. Did
16 y'all put a plan in place -- You protected
17 your product but did you put a plan in
18 place that protected the people there in
19 west Anniston?

20 A. I'm not aware of such a plan, no.

21 MR. STEWART: And let's go next to
22 the next statement in that press
23 release if you can.

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1 Q. This press release says that y'all were not
2 on --

3 MR. FORD: Excuse me, Your Honor.
4 I'm going to again object to
5 press releases as hearsay.
6 MR. STEWART: I thought this was in
7 evidence.
8 MR. FORD: Oh. Are you talking
9 about this same press release?
10 MR. STEWART: Yes.
11 MR. FORD: I'm sorry. That's already
12 admitted
13 MR. STEWART: I'm sorry.
14 MR. FORD: I still object.
15 THE COURT: You're still overruled.
16 MR. STEWART: I should have referred
17 to it by exhibit number.
18 MR. FORD: I'm sorry.
19 MR. STEWART: I apologize, George.
20 MR. FORD: All right. Thank you.
21 MR. STEWART: It's 622A.

22 Q. That press release said that Monsanto's
23 not only worked to help scientists but you
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1 were actually working to help the
2 government and the regulators in that
3 area; isn't that correct? Have I
4 paraphrased that a little garbley? I want
5 to make sure that I got it right.
6 A. Well, I mean, the document says, "worked
7 with government and academic scientists
8 and researchers."
9 Q. To help learn as much as possible?
10 A. Right. Yeah. I'm sorry. You're correct.
11 "To learn -- help learn as much as
12 possible about PCBs." You're right.
13 Thank you.
14 Q. Y'all really weren't doing that, were you?
15 A. We certainly were.
16 Q. Y'all had a plan for actually how you
17 worked with the government that's a little
18 bit different from this press release,
19 isn't it? Did you or did you not?
20 A. I'm not aware of what you're addressing.
21 Q. I'm just asking you generally if y'all had
22 a plan a little bit different than what
23 that press release said?

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1 A. As a corporation we did not, no.
2 Q. Let me show you what we've marked as
3 Plaintiffs' Exhibit 131. I'll let you
4 take a look at that. And let me let you
5 have some time to take a look at it.
6 A. Do you want me to read the whole document
7 or do you want to --
8 Q. I just want you to look at it so you're
9 familiar enough with it so I can ask you
10 some questions about it, Doctor.
11 A. I'm broadly familiar with it. If I can't

12 answer your questions I'll take some more
13 time to try to find out where I need to
14 look.
15 Q. All right. Now this document has at the
16 top of it E. Wheeler; is that the Wheeler
17 we talk about earlier?
18 A. I don't believe we've talked about Mr.
19 Wheeler earlier, no.
20 Q. I get him mixed up with Mr. Kelley all the
21 time.
22 A. All right.
23 Q. So that's a different person. Who is

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1 that?
2 A. He was, I believe, an industrial hygienist
3 at Monsanto.
4 Q. And the date of this document is what?
5 A. September 9, 1969.
6 Q. And what is the title of the document?
7 A. "Defense of Aroclor F. Fluids." I believe
8 that stands for functional fluids.
9 Q. And that is the Aroclors in PCB?
10 A. Among -- yes. There were PCBs and other
11 products, yes.

12 MR. STEWART: Okay. And we would
13 offer that into evidence at this
14 time, Judge, and ask if we can
15 bring it up.

16 THE COURT: It's admitted.
17 (Whereupon Plaintiffs' Exhibit
18 131 was offered and admitted
19 into evidence.)

20 MR. STEWART: Now, let's take a look
21 at the first paragraph there,
22 please, ma'am if we could.

23 Q. Now, what does that general policy say
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1 that y'all were going to do at that
2 time --
3 A. Well, it says "Make the --
4 Q. -- Dr. Kaley?
5 A. "Make the government, states and
6 universities prove their case but avoid as
7 much confrontation as possible. Comply
8 and work with public officials to meet or
9 exceed requirements ahead of time.
10 Adverse publicity and competition are the
11 real weapons."

12 Q. Real weapons? Okay.
13 Let's take a look at two paragraphs
14 down. "Proved bi" -- no just above that.
15 Now, this says, "Prove bioharm -- let
16 government prove its case on a
17 case-by-case basis. Monsanto was visiting
18 government biolabs in search of
19 toxicological experience and evidence
20 versus Aroclors."

21 What does it mean there, Dr. Kaley,

22 when you say y'all are going to make the
23 government prove it's case on a

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1 case-by-case basis?
2 A. Well, I don't know for sure what the
3 writer meant. But to me it would mean
4 that we need to look at each piece of
5 information and each piece of research
6 independently to be sure that it's
7 properly carried out and that the results
8 are being properly interpreted.
9 Q. Well, do you think that's working with the
10 government to force them, Dr. Kaley, to
11 prove their case on a case-by-case basis?
12 A. Well, it doesn't say force. It says,
13 "let" and I believe that was working with
14 them. Yes, I believe it was. Because I
15 think everyone was trying to work together
16 to understand this emerging issue.
17 Q. Well, I guess, then that y'all told them
18 about this Ferguson study and this study
19 and work that Mr. Gunning later did. Did
20 y'all share that with them?
21 A. I don't know.
22 Q. You don't know whether you did that or
23 not?

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1 A. I don't know.
2 Q. Well, wouldn't it have been important for
3 those scientists with the government to
4 know that y'all were finding this stuff
5 down there in those creeks and streams and
6 bioaccumulating in those fish?
7 A. Certainly by -- within a year of this memo
8 the government did know of our information
9 in Snow Creek and other places.
10 Q. Now, during this time frame y'all really
11 weren't truthful with researchers, were
12 you, Dr. Kaley?
13 A. I don't know what you're speaking of
14 specifically. I would disagree with that
15 characterization.
16 Q. Well, would you agree that if you knew
17 about the harmful effects of a substance
18 such as PCBs, that if you were working
19 with the government and you were working
20 with the scientists that you ought to be
21 truthful with them?
22 A. I believe that's the case, yes.
23 Q. Let me show you a document, please, sir,

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1 Plaintiffs' Exhibit 2028.
2 May I approach, Judge? Take the
3 time to look at that.
4 Could you bring that up, please?

5 A. Okay. I've read the first two pages.
6 Q. That's what I'm going to be asking you
7 about.
8 A. Okay.
9 Q. Now, that's a letter from Mr. Papageorge
10 that we've talked about earlier?
11 A. Yes.
12 Q. William Papageorge, is it not?
13 A. Yes, it is.
14 Q. And the person who held the position that
15 you now hold about PCBs?
16 A. Well, it was a different position because
17 he was actually working for the company
18 while it was an ongoing product. But he
19 did have a role as basically the
20 spokesperson for PCB issues, yes.
21 Q. And this is to a doctor -- and I'm
22 probably going to mess his name up, but to
23 a Dr. Basil Continelli, Continelli?

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1 A. That's as good as I could do.
2 Q. You and I are together on that one. But
3 he's connected with the drug information
4 center at the Buffalo Children's Hospital,
5 is it not?
6 A. That's correct. That's what the title
7 says, yes, sir.
8 Q. And apparently he had written to Monsanto
9 and he was concerned about what was
10 happening as far as all this publicity was
11 concerned about PCBs at the time. Does it
12 appear that that's what Papageorge is
13 responding to?
14 A. Apparently Dr. Continelli had seen an
15 article and he was asking Monsanto
16 questions about what that article said. I
17 don't know which article nor do I know
18 what it said. But, yes, that's...
19 Q. Wouldn't it be fair to say that if there
20 was anybody in Monsanto Chemical Company
21 who knew about the effects of PCBs at that
22 time, at the time of this letter, that
23 Papageorge was somebody who knew about it,

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1 wasn't it?
2 A. Either Dr. Papageorge or Dr. Kelley, yes.
3 Q. He had been the plant manager at one time
4 with the Anniston plant, hadn't he?
5 A. That's correct.
6 Q. And he was familiar, as a result of that,
7 with the history of the plant and the
8 history of the manufacturing of this
9 product and what might have happened at
10 that plant, wasn't he?
11 A. I don't know that, what he was or wasn't
12 familiar with.
13 Q. Well, wouldn't he more than likely be,
14 Doctor?

15 A. I would think he would have some
16 understanding of certainly ongoing
17 operations. I don't know the depth of his
18 knowledge about history.
19 MR. STEWART: Let's take a look -- we
20 can pull it up at the first few
21 sentences there in -- I think the
22 first sentence in the third
23 paragraph, please, ma'am.

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1 Q. Can you read that for us, Dr. Kaley?
2 A. Yes. Monsanto has manufactured Aroclors
3 for about 40 years and throughout the
4 period we have not observed any harmful
5 effects on our -- excuse me -- on our
6 employees or our customers employees. And
7 then there's a partial sentence,
8 "extensive animal testing -- "
9 Q. That's what I want you to read.
10 A. I know.
11 Q. But, Dr. Kaley, this is August 31, 1970.
12 That was not an accurate statement that
13 Mr. Papageorge wrote to this gentleman up
14 there at the Buffalo Children'S Hospital,
15 was it?
16 A. I believe it was, yes.
17 Q. Well, let me show you, if I can,
18 Plaintiffs' Exhibit 2. Now, I want you to
19 take a look, if you would, at page
20 DSLW001398 and DSW001399 of Plaintiffs'
21 Exhibit 2 and read that. I want to ask
22 you some questions.

MR. FORD: Excuse me, Your Honor,

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1 this hadn't been identified yet
2 as to what it is or whether he
3 knows what it is or where it came
4 from.
5 THE COURT: Well, if you want --
6 MR. STEWART: Judge, it was provided
7 to us in discovery.
8 Q. But do you know -- have you seen this
9 document before, Dr. Kaley?
10 A. I don't know that I've seen this
11 particular document, no.
12 Q. That's a Monsanto document, isn't it, an
13 internal document it?
14 A. Could very well be.
15 Q. And it makes some references --
16 A. Well, I would say -- Number one, I would
17 say it's June 1935 so I really don't know
18 whether that -- Monsanto purchased Swann
19 Chemical sometime in 1935. I don't know
20 the exact month. So it -- it could be a
21 Swann Chemical document. I don't know.
22 Q. Well, doesn't it refer to the
23 manufacturing of Aroclors?

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1 A. Yes, it does.
2 Q. And doesn't it refer to some problems that
3 developed in the plant because of that?
4 A. Well, I should point out that Swann
5 Chemical developed and manufactured
6 Aroclors before Monsanto purchased the
7 plant.
8 Q. Well, y'all didn't quit making it after
9 you bought the plant?
10 A. Oh, no. We continued to make Aroclors,
11 yes.
12 Q. Doesn't it refer to some problems that you
13 had in the plant after that time?
14 A. It does.
15 MR. STEWART: And, Judge, we would
16 offer it into evidence at this
17 time.
18 MR. FORD: I'm not sure he's
19 identified it sufficiently to be
20 offered, Your Honor.
21 THE COURT: Well --
22 MR. STEWART: Judge, I believe he's
23 indicated --

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1 THE COURT: Let's go ahead and recess
2 for lunch and during lunch we'll
3 talk about getting the person
4 here who can properly identify
5 this.
6 MR. STEWART: That's fine. That's
7 fine with me.
8 THE COURT: Okay. We'll be in recess
9 until two o'clock.
10 (Jury was excused at 12:30)

11
12 (12:35)

13 (Jury is not present)

14 (All parties are present)

15
16 MR. FORD: I don't know why but
17 there was something attached to
18 Plaintiffs' Exhibit 2028 which
19 has nothing to do with exhibit
20 2028.
21 MR. FETTERMAN: That was just a
22 copying error. We would like to
23 take that off.

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1 MR. FORD: I want to have that
2 removed if I may. It's out of
3 sequence in numbers and
4 everything else. I don't know
5 what the purpose was in putting
6 that on there.
7 MR. FETTERMAN: It was no purpose.
8 MR. FORD: It had to be surreptitious
9 and underhanded.

10 MR. FETTERMAN: No, it wasn't
11 surreptitious.
12 THE COURT: What document --
13 MR. WHITE: It's not that one,
14 Judge.
15 MR. FORD: 2028, the letter to Dr.
16 Continelli, there was some pages
17 attached that have nothing to do
18 with that --
19 MR. FETTERMAN: And we would withdraw
20 their being offered.
21 MR. FORD: -- they weren't --
22 shouldn't have been attached, the
23 ones that are attached.

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1 MR. FORD: In the event the Court
2 admits 2, which is this 1935
3 document, there is a chart on the
4 back of it which has nothing to
5 do with the contents of the
6 document either which --
7 MR. STEWART: Judge, I didn't know
8 the chart was there.
9 MR. FORD: The chart was no purpose
10 with respect to this line of
11 examination in which reference
12 refers to material which could
13 become inflammatory for no
14 reason.
15 THE COURT: Yeah.
16 MR. STEWART: Okay. It's part of
17 the document.
18 THE COURT: It hasn't been admitted
19 yet but we'll take plaintiff page
20 three off -- page four, I'm
21 sorry. Page four that has
22 DSW001400 at the bottom right
23 corner.

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1 MR. FORD: Yes, sir.
2 MR. FETTERMAN: Well, perhaps, Judge,
3 since it's a document that they
4 produced, came out of their
5 files, has their Bates number on
6 it that -- you know, if we agree
7 to take off that last page they
8 might withdraw any objections
9 they have to that document.
10 MR. WHITE: That's a New York rule.
11 MR. FORD: Perhaps we might.
12 MR. STEWART: Now, listen, I want to
13 correct something from you, Jere,
14 so you don't feel so offended by
15 anything that Mr. Fetterman said.
16 He comes from Mobile, you know.
17 MR. WHITE: I know that.
18 MR. STEWART: And he would love to
19 move back.

20 MR. FETTERMAN: But they've gone to
21 great lengths to make sure that
22 this jury understands where my
23 present residence is.
013102A 3405

1 MR. WHITE: Judge, similarly on
2 Plaintiffs' Exhibit number 622A.
3 Come here, Dan, so you can look
4 over my shoulder. This was the
5 press release. It's got
6 information in it about insurance
7 and reserves and then it talks
8 about --
9 THE COURT: Well, why did y'all put
10 it in there?
11 MR. WHITE: Well, we didn't write
12 this for --
13 THE COURT: Litigation purposes, I
14 know.
15 MR. WHITE: -- litigation purposes.
16 THE COURT: But you did do it for
17 defense purposes.
18 MR. WHITE: No, not for defense
19 purposes, not for this lawsuit.
20 Yes, sir.
21 THE COURT: Well, I don't know. It's
22 partially for this lawsuit.
23 Solutia states its side of the
013102A 3406

1 story so I think the story is
2 about this case.
3 MR. WHITE: That's in response to --
4 THE COURT: I know, Washington Post.
5 MR. WHITE: Yes, sir. An article --
6 THE COURT: But the article was about
7 this case. So what are you
8 talking about?
9 MR. WHITE: The very last paragraph
10 down at the end.
11 MR. STEWART: Now, that was in, Jere.
12 Y'all keep coming back and
13 getting on to my documents. That
14 was already in.
15 THE COURT: The last paragraph on the
16 first page?
17 MR. WHITE: Right here. Are we
18 looking at the same thing?
19 THE COURT: Yes, I think so.
20 MR. WHITE: "Solutia believes -- "
21 THE COURT: Are you talking about
22 that first sentence?
23 MR. WHITE: The whole paragraph.
013102A 3407

1 MR. FORD: That appears to be the
2 writer's summary of some evidence
3 he got from Solutia, not what
4 Solutia actually said.

5 MR. FETTERMAN: Well, Judge, if you
6 look up there it comes right off
7 the Solutia, Inc. Investor
8 Relations website. It's a
9 Solutia statement. It's on their
10 website.
11 MR. WHITE: Well, whether we -- let's
12 assume --
13 THE COURT: Oh, I see. On the top of
14 the next page it talks about the
15 company self-insurance reserves.
16 MR. WHITE: That's right.
17 MR. STEWART: We're not interested in
18 that. You can qualify on that.
19 We don't want that kind of stuff
20 before the jury, Judge.
21 MR. WHITE: I didn't think you did.
22 THE COURT: Y'all work on
23 redacting --
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1 MR. STEWART: Yeah. I'll work on
2 redacting that.
3 (Break at 12:45)
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(2:08 p.m.)

(Jury present.)

(All parties present.)

DIRECT EXAMINATION RESUMED

BY MR. STEWART:

Q. Dr. Kaley, before we broke for lunch, we were taking a look at Plaintiffs' Exhibit Number Two. And I believe you have identified that as a document that had to do with Aroclors, the operators in distilled Aroclors. Is that y'all's trade name for PCBs?

A. Yeah. Operators in the Aroclor department.

Q. But that is Monsanto's trade name for PCBs?

A. After 1935 it was Monsanto's trade name for a number of products, which included PCBs.

Q. So that would be your document?

A. No. Looking at this document and 013102B

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looking at the date, it may be a Swann document; it may be a Monsanto document. Aroclor was also the Swann trade name for those materials. I really don't know, Mr. Stewart.

Q. Well, are you saying y'all didn't have possession of this document when you took over as the steward of the PCB problem?

A. I'm sure that Monsanto had this document. I don't know for sure, but that would make sense, yes.

Q. Doesn't it have your Bates number on it, DSW 001279 on the first page?

A. My understanding is those were documents that were produced by Monsanto or Solutia, yes.

Q. And y'all produced those from either St. Louis or --

MR. FORD: Judge, we have withdrawn the objection to this. I don't see any reason to belabor this.

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MR. STEWART: I'm sorry. I just wanted to make sure he agreed that it was his.

I would offer it in evidence.

THE COURT: It is admitted.

(Whereupon Plaintiffs' Exhibit 2 was offered and admitted into evidence.)

10 Q. This document predates, obviously, the
11 letter that Papageorge wrote on August
12 31st, 1970 to Dr. Basil Continelli,
13 doesn't it?
14 A. Yes, it does.
15 Q. On page two of that document -- Get the
16 first sentence up there on the second
17 paragraph, if you would.
18 What does that say, now?
19 A. It says, "In May" -- I believe it is
20 1935 -- "the operators in distilled
21 Aroclors, both Badger" -- and I think it
22 is 1269 -- I'm not sure what that means
23 -- "began to develop a severe type of

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1 dermatitis."
2 Q. Let's go down to the third or fourth
3 paragraph from the bottom which starts
4 off "skin specialists." Pull that up.
5 And then would you read that for
6 us? Does that say, "Skin specialists
7 were consulted, but cure of the disease
8 was found to be slow and difficult. The
9 company became involved in expensive
10 litigation since suit was entered by a
11 majority of the men affected." Is that
12 correct?
13 A. You read that correctly.
14 Q. Would that indicate to one who read it,
15 Dr. Kaley, that these employees who were
16 working either for Swann or for Monsanto
17 had suffered some fairly severe form of
18 skin disease as a result of being around
19 PCBs?
20 A. No, it wouldn't. The middle part of
21 that paragraph -- of the large first
22 paragraph, explains Monsanto's or
23 Swann's understanding of the cause of

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1 that disease, which was an impurity in
2 one of the raw materials.
3 Q. What is the raw material?
4 A. The raw material in here is called
5 Benzol, B-e-n-z-o-l, which is today
6 known as benzene.
7 Q. So that's a part of the process that you
8 all used to make PCBs?
9 A. Yes. The benzene is a raw material to
10 biphenyl, and then the biphenyl is
11 chlorinated. And one of that impurity
12 was carried through the process and
13 apparently was the outcome -- or caused
14 that dermatitis outbreak.
15 Q. But as a result of that particular
16 event, didn't y'all put in adequate
17 ventilation facilities?
18 Highlight, that if you would.
19 Is that, right?

20 A. It does say that, yes.
21 Q. Let's go to the next page, please, if
22 you would, of that document. And tell
23 us what happened there.

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1 And bring it up so he can read it,
2 please, ma'am.
3 Now, number five, what does that
4 say?

5 A. It says the men are examined regularly
6 by the plant physician.

7 Q. And were those people who were examined
8 regularly by the plant physician,
9 Dr. Kaley, involved in the production of
10 Aroclors?

11 A. Well, my understanding was all of the
12 Anniston plant employees were examined
13 by the physician regularly, but
14 certainly the Aroclor men were, yes.

15 Q. Were they examined by the plant
16 physician, those who were involved in
17 the PCBs, manufacturing PCBs?

18 A. Yes. I'm sure they were.

19 Q. Well, you have just indicated -- We can
20 take that down, please.

21 You just indicated this was caused
22 -- this particular instance was caused
23 by a product that was used in

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1 manufacturing Aroclors. Are you saying
2 that Monsanto did not know before this
3 letter was written on August 31st, 1970
4 that PCBs caused problems for
5 individuals who were around it, health
6 problems, adverse health problems?

7 A. I think Monsanto understood that PCBs
8 could cause skin problems. This
9 particular one wasn't caused by them,
10 but they can cause dermatological
11 problems.

12 Q. Let's pull up Plaintiffs' Exhibit 8,
13 Number 8.

14 MR. STEWART: Could I approach,
15 Judge?

16 THE COURT: Yes.

17 Q. Take a look at that, if you would. What
18 is that, Dr. Kaley?

19 A. Well, judging from the title, it says it
20 is a salesman's manual, Aroclor.

21 Q. And that was a document of Monsanto
22 Chemical Company's, isn't it?

23 A. It says that up at the top, yes.

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1 Q. Do you know the date of that document?

2 A. Apparently it is October 1st of 1944.

3 Q. Can you turn with me over in there -- I

4 think it is about eight pages over. Let
5 me make sure. Put that up.
6 MR. STEWART: We would offer this
7 document into evidence,
8 Exhibit 8.
9 THE COURT: It is admitted.
10 (Whereupon Plaintiffs'
11 Exhibit 8 was offered and
12 admitted into evidence.)
13 Q. Now, what workers are these -- is this
14 talking to -- or talking about?
15 A. I don't know for sure without looking at
16 the whole document.
17 Q. Okay. I'll give you a little time. I
18 may help you. Let's just go to page
19 five, if you can.
20 MR. STEWART: We will take that
21 down, please, ma'am.
22 Q. Let me show you the first page, if you
23 will. This is the salesmen's manual for
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1 Aroclor?
2 A. Yes. I see that, yes.
3 Q. So we are talking about Aroclors?
4 A. Well, that is a presumption. Without
5 looking, I don't know. It probably is,
6 but I don't know that for sure.
7 Q. Let's turn to page five. All right. Go
8 down to the bottom of the page where it
9 talks about toxicity.
10 MR. STEWART: Bring it up, please,
11 ma'am.
12 Q. All right. Can you read that for us?
13 A. It says, "All chlorinated hydrocarbons
14 have measurable degree of toxicity to
15 the animal organism. Aroclors are no
16 exception. The symptoms of Aroclor
17 poisoning are pore acne" -- I think it
18 says pore acne -- "or chloracne, nodular
19 eruptions of the hair follicles or
20 sebaceous glands as a result of
21 insufficient cleansing of the skin."
22 Q. Then it goes on over on the next page
23 and talks I think -- Yeah.
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1 MR. STEWART: Go to the next page,
2 please. Pull it up, please.
3 Q. What does that say?
4 A. It says, "Acute yellow atrophy of the
5 liver in which the liver cells show
6 swelling, hypergranulation, hyaline
7 inclusions, and vaculation as a result
8 of extensive exposure over long periods
9 of time."
10 Q. Now, this is talking about problems
11 humans would have as a result of being
12 exposed to PCBs over a long period of
13 time?

14 A. Presumably. It says animal organism. I
15 assume -- This mentions humans. It is
16 not clear from the document itself,
17 though.
18 Q. The salesman's manual wasn't given to
19 animals, was it? It was given to people
20 that might be exposed to Aroclors,
21 wasn't it, Dr. Kaley?
22 A. It was used for the salesman to discuss
23 the product characteristics with the

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1 customer --
2 Q. And to sell to customers who weren't
3 animals, but people, what they might see
4 as a result of this thing?
5 A. Again, he may have been talking about
6 humans; he may have been talking about
7 animal studies. I don't know from this
8 document.
9 Q. And as a result of having this document,
10 certainly Dr. Papageorge was aware of
11 that. Let's take a look at Plaintiffs'
12 Exhibit 28, if we can.
13 Well, let's go to Plaintiffs'
14 Exhibit 67.
15 MR. STEWART: May I approach,
16 Judge?
17 THE COURT: Certainly.
18 Q. Let me give you the original. Can you
19 identify that document?
20 A. As we discussed before, Elmer Wheeler
21 was a Monsanto employee. So other than
22 that, I can't. It looks like it, but it
23 doesn't say Monsanto on it but --

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1 Q. Is that a letter from Mr. Wheeler to a
2 gentleman named Richard Davis, dated
3 September 3rd, 1965?
4 A. Yes, it is.
5 Q. Did that document come from y'all's
6 archives?
7 A. Presumably yes.
8 MR. STEWART: We would offer it in
9 evidence, Judge.
10 Q. And we would like to pull up the first
11 page of that document, Dr. Kaley.
12 THE COURT: It is admitted.
13 (Whereupon Plaintiffs'
14 Exhibit 67 was offered and
15 admitted into evidence.)
16 Q. Let's take a look at the first sentence
17 of that and highlight that. What does
18 that say, Dr. Kaley?
19 A. It says, "As I told you on the
20 telephone, Mr." -- I think it says
21 Haredos -- "called me earlier this week
22 quite disturbed as a result of my letter
23 of October 27th."

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- 1 Q. August 27th?
2 A. August 27th. Correct.
3 Q. He corrected me, and I corrected you, to
4 be sure the record is correct.
5 MR. STEWART: Let's go down to
6 paragraph two down at the
7 bottom, please, ma'am, and
8 pull that up. It is the
9 bottom of the second
10 paragraph about Mr. Haredos
11 went on to say, right there.
12 Q. What does that say?
13 A. It says, "Mr. Haredos went on to say
14 that in his own plant hot Aroclor spills
15 on the floor were common and that his
16 own employees had complained of
17 discomfort. I was brutally frank and
18 told him that this had to stop before he
19 killed somebody with liver or kidney
20 damage, not because of a single exposure
21 necessarily, but only to emphasize that
22 eight-hour daily exposures of this type
23 would be completely unsafe."

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- 1 Q. So Mr. Papageorge said that after forty
2 years Monsanto had not observed any
3 harmful effects on its employees, and
4 the employees of its customers.
5 That statement just wasn't an
6 accurate statement, was it, Dr. Kaley?
7 A. I believe it was an accurate statement.
8 This doesn't say that those people had
9 anything wrong with them. It says that
10 their exposures needed to be kept below
11 to threshold limit which had been
12 established for PCBs.
13 Q. Do what, now?
14 A. In the middle it talks about a threshold
15 limit value of PCBs in air, which is an
16 industrial standard for exposure to
17 those materials.
18 Q. Now, let's go back to one of these
19 statements. You indicated and I believe
20 you said Monsanto had, that from the
21 earliest --
22 A. Mr. Stewart, I'm sorry. Are you back to
23 the press release?

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- 1 Q. Yes.
2 A. Could I ask the court reporter if I
3 could have that in front of me while you
4 are reading from it?
5 Q. Certainly. It says from the earliest --
6 You can have that copy and take a
7 look at it.
8 A. Thank you.

9 Q. I'm sorry.
10 A. No problem. It says, "From the earliest
11 emergence of environmental concerns
12 about PCBs Monsanto worked with
13 government and academic scientists and
14 researchers to help learn as much as
15 possible."
16 And I went back and looked at your
17 testimony earlier -- You stand by that
18 statement still, I assume?
19 A. Yes, sir.
20 Q. You said that we worked with
21 Dr. Risebrough, as the statement says,
22 "We worked with Dr. Risebrough and other
23 scientists to provide samples to provide

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1 information about the PCB situation at
2 the time."
3 That is what you said this
4 morning?
5 A. Yes, sir.
6 Q. Let me show you, if I can, Plaintiffs'
7 Exhibit 2067.
8 MR. STEWART: Can I approach,
9 Judge?
10 THE COURT: Certainly.
11 Q. I'll ask you to take a look at and
12 identify it, if you would, for me.
13 Well, I gave you the wrong one
14 again. I have got to keep this little
15 yellow sticker on there so it gets into
16 evidence.
17 Would you look at that? This is
18 Mr. Papageorge again, I believe.
19 A. Yes, sir.
20 Q. And this is a letter to Mr. Robert W.
21 Risebrough?
22 A. Dr. Risebrough.
23 Q. Dr. Robert W. Risebrough. And it is in
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1 response to a letter that Dr. Risebrough
2 wrote to him apparently, is it not,
3 about some concerns about the company.
4 Is that not correct?
5 A. From the first sentence it says, "I
6 understand and respect the strong belief
7 you express in your letter of October
8 25th."
9 Q. Let's pull that up, please.
10 MR. STEWART: We would offer that
11 in evidence, please, sir, if
12 we can.
13 THE COURT: Is it admitted.
14 (Whereupon Plaintiffs'
15 Exhibit 2067 was offered and
16 admitted into evidence.)
17 Q. Now, pull up the first paragraph. This
18 says -- This is Papageorge writing to

19 Dr. Risebrough, to build your position
20 at the time. Apparently Dr. Risebrough
21 had a strong belief that you couldn't
22 protect the environment unless it was
23 possible to relate PCB production

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1 figures and environmental input to
2 contamination levels in fish and other
3 components of the biosphere. What is
4 "input," Dr. Kaley? Stuff that left
5 your plant site and perhaps got in the
6 environment?
7 A. I think it isn't necessarily our plant
8 site; it is materials by whatever source
9 are put into the environment.

10 Q. Okay.

11 A. And let's take a look at this next
12 paragraph and see what Dr. Risebrough
13 was asking y'all to do.

14 "It is the company's position with
15 respect to the possible PCB
16 contamination of the environment that
17 our responsibility should and do include
18 not only consideration of our employees,
19 shareholders and customers, but also
20 consideration of all other persons."
21 And then let's go to the next paragraph
22 and see what y'all told him. Apparently
23 he's looking for some information.

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1 Let's see what y'all told him. What
2 does that say?
3 A. Says, "It is with these responsibilities
4 in mind that we have been reluctant to
5 divulge PCB usage numbers to the general
6 public. We are extremely concerned and
7 sincerely believe that abstract
8 production figures can be misunderstood,
9 misinterpreted, and misapplied to the
10 detriment of the interests of both the
11 public and the company."

12 Q. Now, is this just a way of saying to
13 Dr. Risebrough, who you claimed before
14 we went to lunch that you were going to
15 cooperate with, that y'all weren't going
16 to tell him about production figures and
17 the stuff that left your plant site and
18 got into the atmosphere?

19 A. It was an explanation of why we weren't
20 disclosing that information to him
21 specifically, but it goes on to tell
22 Dr. Risebrough that we are going to give
23 that information to the U.S. Government

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1 and it will then be available -- I think
2 it says as part of a complete and
3 thorough scientific study.

4 Q. Oh, so y'all were going to make it
5 available to the government?
6 A. Yes, sir.
7 Q. That is what y'all chose to do; is that
8 correct?
9 A. That's correct.
10 Q. And it is it your position -- You are
11 telling the ladies and gentlemen of the
12 jury that rather than let this gentleman
13 who was concerned about this stuff,
14 gathering information on it, and thought
15 it might cause harm, y'all turned it
16 over to the U.S. government?
17 A. Yes, it --
18 MR. FORD: Objection -- Excuse me.
19 Objection, Your Honor. That
20 is argumentative.
21 THE COURT: Overruled.
22 A. Yes. The U.S. government had begun a
23 task force of a number of agencies which

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1 were going to study and investigate the
2 entire PCB situation at the time, and we
3 were working with that government task
4 force to make that information available
5 to them with the proper safeguards.
6 That's correct.
7 Q. Wasn't it this same time frame y'all
8 were trying to make a determination as
9 to whether or not to let them know what
10 left the plant site up here in Anniston?
11 A. 1971. By 1971, we were making reports
12 of what was leaving our plant site.
13 MR. STEWART: Let me have 2092,
14 please, ma'am.
15 Q. Take a look at that document, if you
16 would, Dr. Kaley, and then I want to ask
17 you some questions about it.
18 A. Okay. I've taken a quick look at it.
19 Q. And that is your document?
20 A. It appears be a Monsanto document, yes.
21 Q. And that is a letter from a W. B.
22 Papageorge to a W. R. Richard?
23 A. Yes.

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1 Q. And that is dated January 26, 1972?
2 A. Yes.
3 MR. STEWART: We'd offer that into
4 evidence at this time, this
5 whole set of documents,
6 Judge.
7 THE COURT: It is admitted.
8 (Whereupon Plaintiffs'
9 Exhibit 2092 was offered and
10 admitted into evidence.)
11 Q. Let's bring up the second page, please,
12 ma'am. Pull it up. We've got the
13 technology, might as well use it.

14 Who is Dr. Robert E. Opferkuch?
15 A. I don't know other than he apparently
16 works for Monsanto Research Corporation
17 in Dayton. I don't know specifically.
18 Q. And there is a Gene Jessee there. Was
19 he the Anniston plant manager?
20 A. At some point in time, yes. In '72 he
21 would have been.
22 Q. He would have been corporate at that
23 time, wouldn't he? Isn't that about

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1 right?
2 A. In '72? I believe he was still the
3 plant manager.
4 Q. Oh, I see. And requested permission to
5 include the results of the Anniston PCB
6 removal study. Then the letter goes on
7 to say, "It appears that this may be an
8 opportunity to share some of the costs
9 of the study with MRC. Are you
10 interested?"
11 A. Yes.
12 Q. So Mr. Papageorge is writing
13 Mr. Richards and saying, can we get this
14 money from the government? Is that it?
15 And take a look at some things?
16 A. Well, Monsanto Research Corporation --
17 if I can explain -- was kind of an
18 independent research arm of Monsanto and
19 really wasn't involved in the day-to-day
20 operations of the company. And in fact
21 was mostly a government contractor. So
22 like other groups, they applied for
23 government grants to study a variety of

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1 issues. And I think, yes, at this point
2 it looks like that corporation is asking
3 whether -- you know, is preparing to
4 submit a grant to the government for
5 study or something with regard to PCBs.
6 Q. Now, on the front page of this document,
7 there is a little note from a fellow
8 named "Jim S" or Jim Savage to
9 Mr. Papageorge? Was Mr. Savage a
10 Monsanto employee?
11 A. Yes, he was.
12 Q. Working at corporate headquarters at
13 that time?
14 A. I believe so.
15 Q. What does that say?
16 A. I think it says, "I don't see any
17 problem unless you think that the
18 studies are an admission we used to
19 pollute."
20 Q. "We used to pollute." Is that right?
21 A. That is what it says, yes.
22 MR. STEWART: Now, let's have a
23 look at Plaintiffs' Exhibit

1 2102, please, ma'am.
2 Q. Take a look at that. Is that a letter
3 from M. L. Mullins to G. L. Jessee?
4 A. Yes, sir.
5 MR. STEWART: We would offer that
6 in evidence, Judge.
7 THE COURT: It is admitted.
8 (Whereupon Plaintiffs'
9 Exhibit 2102 was offered and
10 admitted into evidence.)
11 MR. STEWART: Now, bring that up,
12 if you would. Can you pull
13 that out, please, ma'am, so
14 the ladies and gentlemen of
15 the jury can see it and the
16 Court can see it.
17 Q. This is a litter from Mr. Mullins to
18 Mr. Jessee about this information that
19 was requested. What does that say?
20 A. Do you want me to read the whole thing?
21 Q. Well, doesn't it say, Dr. Kaley, that
22 there was some serious concerns on the
23 part of Mr. Mullins that he expressed to

1 Mr. Jessee that if you turned over the
2 information about what left the Anniston
3 plant, provided that wasn't "screened by
4 a qualified individual to insure that no
5 statements are transmitted to EPA which
6 might prove incriminating. For
7 example..." What did they not want to
8 tell the EPA at that time?
9 A. It says, "For example, we would not want
10 to document concentration of PCBs in our
11 plant discharge, pounds of product loss
12 to the river over some period of time,
13 etc."
14 Q. Then its goes on to say down there
15 something else, doesn't it?
16 A. Yes.
17 Q. "If such a screening can be completed
18 and any potentially damaging statements
19 removed or revised, we see no reason why
20 the results of this work cannot be
21 available to MRC." Is that what it
22 says?
23 A. That is what it says.

1 Q. Now, help me a little bit. But does
2 that -- is that full disclosure to the
3 EPA?
4 A. Well, apparently not. Well, it is not
5 full disclosure to the MRC. And I
6 frankly don't understand why he would
7 say that because we were already
8 disclosing our discharges to the Alabama

9 regulators.
10 Q. We heard about that earlier. But what
11 I'm saying is --
12 MR. FORD: Excuse me. Would you
13 let him finish, Mr. Stewart?
14 MR. STEWART: I'm sorry.
15 THE COURT: Were you finished?
16 THE WITNESS: I think I am now.
17 MR. STEWART: I thought he was.
18 I'm sorry, George. I won't
19 talk over him.
20 Q. But this was going to the EPA, wasn't
21 it? The information --
22 A. No. The information was going to
23 Monsanto Research Corporation in order
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1 to incorporate it into a grant request
2 from the EPA.
3 Q. It was going to the EPA, though?
4 A. Presumably at some point, had the
5 request been granted, there would have
6 been a report to the EPA but not at this
7 point.
8 Q. Well, wasn't the EPA looking at that
9 time to try to find out what was coming
10 off plant sites and what was getting
11 into the environment?
12 A. With regard to that specific time, I'm
13 not sure. I don't know.
14 Q. I thought you said just a few minutes
15 ago to the ladies and gentlemen of the
16 jury that you might not have given that
17 information to Dr. Risebrough but you
18 were giving it to the government in this
19 task force.
20 A. That was specific information we were
21 giving to the government, was specific
22 -- excuse me -- specific information
23 with regard to our -- our marketing and
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1 PCB usage among our customers. That is
2 different from what this document is
3 talking about.
4 Q. Wait just a minute. Let me understand
5 what you are telling me now. I want to
6 understand it. Are you saying that the
7 government was looking for what y'all
8 were selling your customers?
9 A. The government, yes. I mean, if we go
10 back to that document, that is
11 specifically what it was talking about.
12 Q. So the government is looking for what
13 y'all are selling your customers, and
14 your testimony here today is that you
15 told them what you were selling your
16 customers; is that right?
17 A. Yes, we did.
18 Q. On a cooperative basis. Is that right,

19 Dr. Kaley?
20 A. Yes. We told them.
21 Q. Let's take a look at Plaintiffs' Exhibit
22 2110. Here you go, Dr. Kaley.
23 A. Thank you.

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1 Q. Can you identify that document for us,
2 please, sir?
3 A. It appears to me to be another memo from
4 Mr. Mullins to Mr. Jessee.
5 Q. This is a memo from them about this same
6 report or same grant that this research
7 fellow was asking about, isn't it?
8 A. I haven't read it. If I can have a
9 minute, please.
10 Q. Oh, certainly, certainly. Absolutely.
11 A. Okay.
12 Q. Have you reviewed it, sir?
13 A. I have reviewed it.
14 Q. And he is referring to the same grant
15 application?
16 A. Yes, sir. It appears to be so, yes,
17 sir.
18 Q. Because it appears that some of these
19 letters are -- It refers to a letter of
20 February 23rd, 1972, and that is the one
21 we just looked at.
22 A. That is correct.

23 MR. STEWART: We would offer that
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1 into evidence, Judge. And we
2 would like to bring it up.
3 THE COURT: It is admitted.
4 (Whereupon Plaintiffs'
5 Exhibit 2110 was offered and
6 admitted into evidence.)
7 MR. STEWART: Pull up the first
8 two paragraphs up there,
9 please, ma'am.

10 Q. Now, this appears, Dr. Kaley, to state
11 that they're not going to let this grant
12 application be made because of what?
13 A. I guess because -- seems logical to
14 assume that any conclusion drawn by MRC
15 study would be imposed on us at WGK and
16 possibly Anniston residuals.
17 Q. Up above there it refers to Toby Bell?
18 A. Yes.
19 Q. Who says that if you remove the data --
20 and the data refers to something fairly
21 significant, doesn't it?
22 A. I don't know if it is significant or
23 not. It is talking about plant losses

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1 and flows and dates. It is the
2 information that was being discussed in
3 the previous two memos.

4 Q. The loss of PCB waste from the plant
5 site. Isn't that effluent? Isn't that
6 what they are talking about?
7 A. I don't know if it was waste or what it
8 was. It was presumably PCB effluent,
9 yes.
10 Q. At the plant site in Anniston? Toby
11 Bell worked in Anniston?
12 A. Yes, sir.
13 Q. And then in the last paragraph -- Well,
14 next to the -- three from above --
15 By the way, who are Jack
16 Garrett -- We know who Mr. Papageorge
17 is. They concur in this assessment.
18 Who is Jack Garrett?
19 A. Jack Garrett was in the medical
20 department at Monsanto.
21 Q. Anniston department --
22 A. He was in the medical department in
23 Anniston. He is an industrial

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1 hygienist.
2 Q. In the medical department?
3 A. I believe so.
4 Q. Look at the third one from the bottom.
5 Pull that up.
6 Now, that says, "While this seems
7 to be a severe approach to take with an
8 arm of our company, I do not see how
9 else we would could adequately control
10 the use of such information."
11 A. That is what it says. Yes.
12 Q. But I understood you earlier to say that
13 the government wanted to use this
14 information to find out how much of this
15 stuff was getting into the environment.
16 What were y'all --
17 A. No. That isn't what I said. I said
18 this was a grant application from a
19 research corporation, an arm of Monsanto
20 that was looking to use the information
21 to try to get an EPA grant. As I sit
22 here, I have no idea what the study was
23 or what use the EPA might or might not

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1 have made of it. I just don't know,
2 Mr. Stewart.
3 Q. Let's go to the last sentence there.
4 Let me ask you one more question about
5 this, and we will close the loop.
6 "I am returning the PCB report to
7 Toby Bell as I understand it is the only
8 copy."
9 Have you ever seen that report,
10 Dr. Kaley?
11 A. Not to my knowledge.
12 Q. So you have never seen that --
13 A. I don't know specifically.

14 Q. -- report?
15 A. I don't know specifically what the
16 report is talking about. I don't know
17 that there is a report that I would
18 identify with that.
19 Q. Apparently the report had on it what
20 left the plant site.
21 MR. FORD: Object to counsel
22 testifying, Your Honor.
23 THE COURT: Sustained.
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1 Q. But you have never seen that report,
2 have you?
3 A. As I said, I have not seen a report that
4 I know to be identified with that
5 report.
6 Q. Now, I believe you indicated earlier
7 that y'all voluntarily provided
8 information to the United States
9 government when they asked for it about
10 production figures and who you sold
11 stuff to.
12 A. We provided the information with certain
13 constraints, yes.
14 Q. And that was a part of what you were
15 saying y'all did to act responsibly,
16 wasn't it, Dr. Kaley?
17 A. I believe that was a responsible action,
18 yes.
19 Q. Let me show you Plaintiffs' Exhibit
20 2057, if I can, Dr. Kaley.
21 Can you identify that document for
22 us, please, sir?
23 A. Well, it says a Monsanto document at the
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1 top.
2 Q. And it is a letter from a gentleman
3 whose name I won't try to pronounce to a
4 D. R. Hansen. Is that another employee
5 that you know to be working for
6 Monsanto?
7 A. No, I don't. I don't recognize either
8 one of those names.
9 Q. But this is one of y'all's internal
10 documents?
11 A. I believe so, yes.
12 MR. STEWART: We would offer 2057
13 into evidence and ask her to
14 bring it up.
15 THE COURT: It is admitted.
16 (Whereupon Plaintiffs'
17 Exhibit 2057 was offered and
18 admitted into evidence.)
19 MR. STEWART: Pull that first
20 paragraph up. Well, make it
21 the first two. Make it the
22 first two, please.
23 Q. Now, apparently somebody called the

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1 office on Friday morning, August the
2 13th, and asked for the organic division
3 sales. Apparently that is where Mr. Bob
4 Bevacqua worked. Is that probably so?
5 And he identified himself as a Mr. Dave
6 Anderson, and he was asking about
7 polychlorinated biphenyls from Monsanto.
8 It turned out he was from where?
9 A. It says the U.S. Attorney General's
10 Office.
11 Q. And then he suggested that this matter
12 be discussed that Mr. Anderson was
13 asking about with Bill Papageorge; is
14 that right?
15 A. Yes.
16 Q. And let's take a look at the next
17 paragraph, next two paragraphs in this
18 letter. In this paragraph, and I quote,
19 "My reason for writing this memo is to
20 is first to inform you that we received
21 this type of call and secondly to give
22 my compliments to Marjorie Davies for
23 her quick thinking and awareness of

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1 Monsanto's difficulties in this business
2 area. I shudder to think how easily it
3 would have been for someone to receive
4 this call and start spilling the beans
5 as to whom we have been selling
6 polychlorinated biphenyl products."
7 Now, is that activities that you
8 would characterize as working with the
9 U.S. Government? This guy was from the
10 U.S. Attorney's office, calling, and
11 apparently trying to find out who y'all
12 were selling this stuff to.
13 A. No. That isn't what it says. It says
14 he was asking to buy polychlorinated
15 biphenyls.
16 Q. Now, you know, Dr. Kaley, that a guy who
17 is a U.S. Attorney ain't going to be
18 buying polychlorinated biphenyls.
19 A. Well, that's true. Apparently he was
20 misrepresenting himself to the first
21 person who answered the call.
22 Q. Would it be that he might have been
23 misrepresenting himself because it was

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1 difficult to get the information out of
2 y'all?
3 A. I have no idea.
4 Q. Well, you certainly didn't tell him at
5 this point in time as far as this letter
6 is concerned?
7 A. No. Because as we previously discussed,
8 we were in negotiations with the

9 government -- discussions with the
10 government information, our sales and
11 usage information at that time. And
12 that was the situation under which we
13 were willing to do that.
14 Q. Now, Dr. Kaley, Monsanto had suggested,
15 and so have you, in public statements
16 that y'all acted responsibly and to
17 protect the environment of west Anniston
18 and the soils around that plant in west
19 Anniston in 1971, closed down Aroclor
20 production. Is that correct? Do you
21 agree with that statement?
22 A. Yes. We did close down Aroclor
23 production in 1971.

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1 Q. I believe the way it has been put in the
2 trial of this case, that was a good
3 thing, we did that because it was a good
4 thing and it was a responsible thing.
5 Now, as the person who has been
6 responsible, do you agree with that
7 statement?
8 A. Yes, I think it was a responsible part
9 of all of the things that we were doing
10 in that time frame to try to understand
11 and deal with the PCB issues, yes.
12 Q. Take a look at Plaintiffs' Exhibit 227.
13 See if this might shed some light. I
14 believe it was previously admitted, but
15 I will give you a copy of it, sir, to
16 see if you can take a look at it. Just
17 take a look at that document, if you
18 would, Dr. Kaley.
19 There were several considerations
20 that went into that particular decision,
21 weren't there?
22 A. Well, there are certainly a number of
23 paragraphs in this document. I haven't

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1 read it all, but presumably that's
2 correct.
3 Q. Well, take your time to read it. I want
4 to ask you some questions about it. I
5 don't want to be unfair to you.
6 A. Okay.
7 MR. STEWART: Now, let's take a
8 look -- We would offer
9 Plaintiffs' Exhibit 227 into
10 evidence.
11 THE COURT: Is admitted.
12 Q. This is minutes, is it not, of a 12/4/70
13 meeting on Aroclor manufacturing sites;
14 is that correct?
15 A. That reflects the title, yes.
16 Q. Let's go to paragraph number seven on
17 page three.
18 A. Okay.

19 MR. STEWART: Now, if you could,
20 pull that up, please, ma'am,
21 and pull out paragraph seven.
22 Q. Now, this had to do with shutting down
23 Anniston liquid Aroclor, did it not?

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1 A. Yes.
2 Q. This consideration here. The question
3 put was, "Do the legal and PR
4 considerations dictate?" Is that right?
5 A. That's what it says.
6 Q. And the answer seems to be "not quite."
7 It says, "While recent Illinois
8 regulatory activity indicates some
9 threat that the PCB control at WGK" --
10 What is WGK?
11 A. That the W. G. Krummrich plant in
12 Sauget, Illinois.
13 Q. Bill Papageorge, who used to run this
14 plant, "stated that the Law and Medical
15 Departments and others would welcome a
16 decision to shut down Anniston liquid
17 Aroclor since the legal threats are more
18 imminent and the problems more visible."
19 And it says, "There is some uncertainty
20 as to where this block belongs on the
21 diagram."

22 Do y'all have a block diagram that
23 y'all use -- or they use -- pardon me,

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1 Dr. Kaley -- to make this decision? Is
2 that attached to this letter?
3 A. Yes.
4 MR. STEWART: Could we pull it up,
5 please, ma'am?
6 Q. It may be my age, but this looks like
7 some of the planning I do.
8 A. I'm with you.
9 Q. I'm trying to figure this chart out.
10 But I've looked on there, and I have
11 read it carefully, and you just had an
12 opportunity to. Where on there does it
13 say that you all or Monsanto -- pardon
14 me again -- Monsanto looked at the
15 problems that PCB production might cause
16 with the people in west Anniston? Where
17 on that chart is that?
18 A. I don't see it on there.
19 Q. It says, "Can we afford to drop some
20 business." And, "Are savings
21 substantial." It even asks about
22 capital for Anniston pollution. What
23 happened to that?

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1 A. I don't know.
2 Q. Doesn't this letter refer to that?
3 A. I have scanned it. I haven't -- it may.

4 Q. That is number four? Number three? I
5 think it is number four. Do you know
6 where they got the capital they needed?
7 Or did they just shut her down?
8 A. Certainly I know that there were some
9 efforts going on prior to the shutdown
10 to try to reduce the number of
11 discharges from the plant. I don't know
12 specifically what the monies talked
13 about in this document are.
14 Q. My worthy colleague has pointed out that
15 there is an answer in this letter. It's
16 unfair to you to -- Let's look on the
17 conclusions page and see if something
18 was said about that. Turn to page three
19 and paragraph three. Can we pull that
20 up?

21 What does that say, now? "PCB
22 pollution capital at Anniston should be
23 held to a minimum consistent with the
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1 timing of the phase-out and reasonable
2 control of the chlorinated terphenyl."
3 Is that another PCB type product?
4 A. Well, is it related. That's the other
5 component of the Aroclor product line.
6 Q. Is that a corporate way of saying that
7 we are just not going to spend a whole
8 heck of a lot of money down there at
9 Anniston when we shut her down?
10 A. That is one of the conclusions of these
11 minutes. I don't believe that is an
12 enacted. We did continue to enact up
13 until the shutdown of the plant a
14 variety of pollution reduction measures.
15 Q. I assume one of those was cleaning up
16 Snow Creek?
17 A. We were certainly reducing our emissions
18 to Snow Creek at that time frame, yes.
19 Q. I'm not talking about reducing your
20 emissions; I'm talking about cleaning it
21 up.
22 A. I don't know that that was specifically
23 done.

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1 Q. I assume some of that was doing the air
2 tests about that time to find out if
3 something was happening in that
4 neighborhood that shouldn't happen?
5 A. At that time it was practically
6 impossible to do air tests at the kind
7 of levels that would be expected to be
8 out there. It was a very difficult
9 procedure.
10 Q. Dr. Kaley, you are not telling me that
11 y'all didn't do air tests in this time,
12 are you?
13 A. No.

14 Q. You are not telling the ladies and
15 gentlemen of the jury that, are you?
16 A. No, I'm not. We did air tests near our
17 process where the levels would have been
18 expected to be higher. But at trace
19 levels you would expect to see in the
20 environment, it is a very difficult
21 analysis now, and it was even more
22 difficult thirty or forty years ago.
23 Q. Now, you said in this press release --
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1 Do you still have that up there with
2 you?
3 A. Yes, I do.
4 Q. You said in this press release that
5 y'all worked with scientists. There was
6 a way that y'all worked with scientists,
7 wasn't there?
8 A. I'm sorry. I don't understand your
9 question.
10 Q. Well, if somebody criticized Monsanto,
11 y'all hired them, didn't you?
12 A. I don't know what the basis of that
13 question is.
14 Q. Let me show you Plaintiffs' Exhibit
15 2118. Can you identify that document,
16 please, for the ladies and gentlemen of
17 the jury?
18 A. It is a memo or a letter or note from

19 Mr. Papageorge to a variety of folks.
20 Q. Good old Mr. Papageorge again?
21 A. Yes.
22 Q. And he writes to a Callis, Corey,
23 Graham, Hill and Metcalf. Do you know
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1 who those people are?
2 A. I know who some of them are.
3 Q. Are they Monsanto employees?
4 A. Certainly. And they have Monsanto
5 addresses, so presumably they are. Yes.
6 Q. And this is a Monsanto document?
7 A. Yes. Yeah. I mean, it seems to have
8 been written by Mr. Papageorge, yes.
9 MR. STEWART: We would offer that
10 in evidence at this time,
11 Plaintiffs' Exhibit 2118.
12 And bring it up if you could.
13 THE COURT: It is admitted.
14 (Whereupon Plaintiffs'
15 Exhibit 2118 was offered and
16 admitted into evidence.)
17 MR. STEWART: Now, would you pull
18 up the first two paragraphs,
19 please.
20 Q. Dr. Lee was the fellow who worked at the
21 University of Wisconsin, wasn't he?
22 A. That is what it says, yes.

23 Q. It says at the time Dr. Lee appeared to
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1 conduct himself as a responsible
2 scientist, anxious to preserve
3 objectivity in the environmental
4 matters.

5 What did you get your degree in?
6 A. Environmental chemistry.

7 Q. Is that not what a scientist is supposed
8 to do, Dr. Kaley?

9 A. Yes, sir.

10 Q. To conduct himself in an objective
11 manner and say to the world, if you find
12 something like Dr. Jenssen did or
13 Dr. Risebrough did, that there may be a
14 problem?

15 A. I think if that's been established -- I
16 kind of lost you because I was getting
17 ready to answer -- yes, as a responsible
18 scientist, yes, I believe scientists
19 should behave as responsible scientists.

20 MR. STEWART: Bring up the next
21 three paragraphs, please,
22 ma'am. The next two. I'm
23 sorry.

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1 Q. Now, Dr. Papageorge had a little
2 criticism of Dr. Lee, doesn't he?

3 A. Well, is it an observation.

4 Q. Well, some instances during which "Dr.
5 Lee appears to strike out with limited
6 information."

7 He was making some critical
8 comments about PCBs, wasn't he?

9 A. Apparently he was making some comment
10 about the fact that there were trace
11 levels, low levels, of PCBs in Economics
12 Laboratories dishwasher compounds, yes.

13 Q. And there was a belief on
14 Dr. Papageorge's part that unless he is
15 hired he might react negatively to some
16 kind of proposal that he made to consult
17 with him; is that right?

18 A. That is what that sentence says, yes.

19 Q. Might say something else bad about PCBs?

20 A. Or something, not necessarily just PCBs.

21 Q. And what happened? Let's take a look at
22 the next paragraph and see what happened
23 to Dr. Lee.

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1 I'm sorry. I forgot the money.
2 What does it say about the money
3 there?

4 A. It says, "If we do agree to some
5 arrangement we could tend to neutralize
6 any tendency on his part to criticize
7 Monsanto."

8 Q. Now, let's take a look and see what was
9 done. Take the next paragraph.
10 What does he say there? "Propose
11 that rather than commit Monsanto to an
12 annual arrangement, we should approach
13 Dr. Lee to determine if he could be
14 available on a sporadic or as needed
15 basis." Do you know whether or not he
16 was hired?
17 A. I do not.
18 Q. Let's take a look at Plaintiffs' Exhibit
19 2125. Can you identify that document,
20 please, sir?
21 A. Is it a -- Appears to be a letter to
22 Professor Lee -- or a contract. I can't
23 tell. Apparently there is a page
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1 missing. But it is some sort of
2 agreement, apparently, between Mr. Lee
3 and the Monsanto Company.
4 MR. STEWART: Okay. We would
5 offer that into evidence, if
6 we could, Judge.
7 THE COURT: It is admitted.
8 (Whereupon Plaintiffs'
9 Exhibit 2125 was offered and
10 admitted into evidence.)
11 Q. Let's take a look at the first page of
12 that document. And pull up the last
13 part of the first paragraph, please,
14 ma'am. And then pull down through the
15 first full sentence on the next
16 paragraph. So they did hire him, did
17 they not?
18 A. Apparently so.
19 Q. On the next page it says in fact what
20 they paid him. Let's take a look at
21 that. This is June 13th of '72. The
22 second paragraph there, "Monsanto agrees
23 to pay you at the rate of three hundred
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1 dollars per day for each day of
2 consulting services actually
3 provided...or forty dollars per hour
4 spent on behalf of Monsanto in your
5 office."
6 Now, Dr. Kaley, you all have made
7 arrangements, have you not, with other
8 scientists after they were critical of
9 Monsanto?
10 A. I don't know. We have made arrangements
11 with lots of scientists, some of whom
12 may have been critical of Monsanto and
13 some who may not have been.
14 Q. And you have made arrangements with
15 scientists after they in fact,
16 Dr. Kaley, were critical of PCBs
17 themselves, had done tests on PCBs and

18 found that they -- in rats, and found
19 that they were harmful to those animals.
20 A. I am not sure what you are talking
21 about.
22 Q. Do you know a Dr. Renate Kimbrough?
23 A. Yes, I do.

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1 Q. Do you know whether or not y'all have
2 had her do work for you in the past?
3 A. Yes, we have.
4 Q. When was the last time that you know of
5 that y'all had her do some work for you
6 here in the Anniston area?
7 A. She visited Anniston on our behalf, I
8 believe, in 1995.
9 Q. Oh, she came down to Anniston on your
10 behalf?
11 A. Yes, she did.
12 Q. Who asked her to do that?
13 A. I did.
14 Q. And did you ask her to go out and take a
15 tour of the community?
16 A. Yes, I did.
17 Q. Did you ask her to talk to any state
18 officials?
19 A. I don't recall that specifically.
20 Q. Well, did she while she was there?
21 A. Not that I know of, not while she was in
22 Anniston that I know of, no.
23 Q. Did he she ever talk by phone to any

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1 state official working with ADEM or the
2 Alabama Department of Public health at
3 your request?
4 A. She may have. I don't recall
5 specifically.
6 Q. Did she ever make criticism of documents
7 that were put out by the Alabama
8 Department of Public Health, at your
9 request?
10 A. Yes. She filed criticisms or comments
11 on a draft risk assessment that ADPH had
12 done, yes.
13 Q. You asked her to do that?
14 A. I asked her to take a look at the
15 document and give her our -- her my
16 thoughts on that document, yes. I'm
17 sorry I think I misspoke. To give me
18 her thoughts on that document, yes.
19 Q. Now, who were you working for at the
20 time, Dr. Kaley, you asked her to do
21 that?
22 A. I was working for Monsanto Company.
23 Q. And what had this report been put out

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1 about? I mean, about the PCB problem in
2 west Anniston?

3 A. It was specifically about some risk
4 assessment on fish in Choccolocco Creek,
5 yes.
6 Q. Well, now, is she a scientist?
7 A. Yes, she is.
8 Q. And where does she work?
9 A. She is an independent consultant right
10 now.
11 Q. Oh, she is an independent consultant?
12 A. Yes, she is.
13 Q. Wasn't she at one time working for the
14 government?
15 A. Yes, she did.
16 Q. Didn't she do some tests back when she
17 was working for the United States
18 government and say that PCBs were bad?
19 A. She reported in, I believe, a 1974
20 publication that according to her

21 studies PCBs cause cancer in rats, yes.
22 Q. Is that what Dr. Levinskas and all those
23 folks got upset about and went rushing
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1 up there to see Dr. Kimbrough about back
2 in the '70s when she came out and she
3 said PCBs were bad?
4 A. I don't know that I would say that they
5 were all upset about it. Certainly, it
6 was new information. It was information
7 that we were interested in, and yes, I
8 believe that some Monsanto
9 representatives did meet with
10 Dr. Kimbrough, yes.
11 Q. Met with Dr. Kimbrough.
12 A. Yes.
13 Q. She does some work for GE, too, doesn't
14 she?
15 A. Not in that time frame, no.
16 Q. She did sometime recently, didn't she?
17 A. Recently she has performed a study on
18 behalf of General Electric, yes.
19 Q. Wasn't that about PCBs?
20 A. Yes, it was.
21 Q. Wasn't that about the Hudson River?
22 A. Not specifically. It was about GE
23 worker population on plants on the
013102B

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1 Hudson River; it wasn't about the Hudson
2 River.
3 Q. Dr. Kaley, didn't GE wave that Renate
4 Kimbrough report all over New York
5 City --
6 MR. FORD: Objection, Your Honor.
7 We are not responsible for
8 whatever GE may have done.
9 THE COURT: I'll sustain.
10 Q. Now, we've talked about, Dr. Kaley, what
11 y'all did in connection with closing the

12 plant, some of the things y'all had to
13 do with scientists. But y'all also
14 attempted in this same time frame to
15 influence regulators who were trying to
16 do something about PCBs, didn't you?

17 MR. FORD: Object to the word
18 "influence," Your Honor, to
19 be positive or negative.

20 MR. STEWART: I didn't say either
21 way.

22 THE COURT: Overruled.

23 Q. In May of 1975 Monsanto was a part of
013102B

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1 the PCB working committee, wasn't it?

2 A. I'm --

3 Q. Back in the '70s?

4 A. I'm not sure what you are talking about.
5 It very well could be.

6 Q. If you would, take a look at that,
7 please, sir. Let me get that out of
8 your way.

9 A. Thank you. Okay. I've reviewed it
10 briefly.

11 Q. Okay. Let's take a look.

12 MR. STEWART: We would offer that
13 into evidence.

14 THE COURT: It is admitted.

15 (Whereupon Plaintiffs'
16 Exhibit 2164 was offered and
17 admitted into evidence.)

18 Q. Is that a letter from Mr. Papageorge to
19 C. A. Tuttle?

20 A. Yes, it is.

21 Q. Let's take a look at the first page.

22 MR. STEWART: Can you bring that
23 up, please, the first two
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1 paragraphs?

2 Q. Now, this refers to Mr. Papageorge is
3 writing to Mr. Tuttle about an EPA -- I
4 mean a PCB working committee, when
5 Monsanto wanted to submit an action plan
6 relative to the work of that committee.
7 Is that correct?

8 A. Well, it talks about the fact that there
9 was this EIA. I am not sure what EIA
10 stands for.

11 Q. Neither am I. You and I are at a loss
12 there together.

13 But this was a working committee,
14 was it not, on PCBs?

15 A. It says that.

16 Q. What they were trying to do was get an
17 action plan to respond to EPA, weren't
18 they?

19 A. It says -- Well, to get an action plan,
20 I guess, apparently to address issues
21 with EPA, yes. That would be a fair

22 characterization for it.
23 Q. Let's take a look at paragraph one,
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1 right under that. And the first part of
2 that says, "We will remain informed of
3 personnel changes within EPA and
4 establish communications with those
5 individuals with any influence in the
6 promulgation of effluent standards."
7 Now, that is standards for stuff
8 that was leaving the plant going into
9 the water, correct?
10 A. At some point, yes.
11 Q. And then on down there it says what
12 y'all are going to be doing -- what
13 Monsanto is going to be doing with those
14 people.
15 MR. STEWART: Let's go to
16 paragraph three here.
17 Q. Y'all were going to meet personally with
18 those individuals. And you had a
19 strategy there, Monsanto did. You were
20 going to be using your data and your
21 information to influence, what, the
22 definition of PCBs? Do you see that?
23 A. I do.

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1 Q. Analytical methods and round-robin
2 testing; is that right?
3 A. Yes.
4 Q. And then, "absorption by soil and
5 significance to landfill disposal and
6 entrapment by sediment in water bodies."
7 A. Yes.
8 Q. What does that have reference to, if you
9 know, Dr. Kaley?
10 A. I don't know specifically. I know that
11 we had done some studies of PCBs
12 absorption in soil and the fact that if
13 you take water containing PCBs and run
14 it through different kinds of soil, that
15 it adheres to that soil. I would guess
16 that that is what it would be.
17 Q. Was the EPA going to set some kind of
18 standards as to what could go into the
19 water?
20 A. I don't know. These are all -- All six
21 of these are really pretty objective
22 kinds of things, definition of PCBs and
23 testing. And certainly, we had a lot of

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1 experience on that. So I don't know
2 specifically what information is being
3 presented. As I said, these are things
4 that we currently had research going on.
5 So it makes sense that we were
6 presenting our information.

7 Q. Then on the next page you were looking
8 at some other things, were you not?
9 A. Yes.
10 Q. Toxicity studies, background levels,
11 bioaccumulation.
12 A. Correct.
13 Q. And y'all were going to attempt to
14 influence the EPA as to how they dealt
15 with those particular kind of problems
16 in the environment.
17 A. We were going to use our information
18 with discussions with the EPA, yes.
19 Q. Well, y'all had, did you not -- In this
20 group at that time -- And I left it
21 before here.
22 But General Electric and
23 Westinghouse, were those customers of
013102B

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1 y'all's?
2 A. Yes, they were.
3 Q. Y'all had pretty good inside contact
4 with the EPA at that time, didn't you?
5 A. I have no idea.
6 Q. Dr. Kaley?
7 A. I don't know. Obviously, we knew of the
8 people in this memo. I don't know that
9 they were inside contacts. It is fairly
10 common for the industrial regulated
11 community to meet with the regulators.
12 Q. What did you just say, sir?
13 A. I said is it fairly common for the
14 regulated community to meet with the
15 regulators to try to understand where
16 the regulations are going.
17 Q. Wouldn't that be in the context of
18 public meetings where you would meet
19 with them just like anybody else would,
20 just like citizens from west Anniston
21 would or citizens from anywhere would,
22 Dr. Kaley?
23 A. Certainly.

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1 Q. Y'all wouldn't have any kind of special
2 kind of relationship with them where you
3 would know what they would say before
4 they said it, would you?
5 A. I don't know.
6 Q. Let me show you Plaintiffs' 22 -- or
7 2174 and ask you to take a look at that,
8 Dr. Kaley, and ask you if you could
9 please identify it for us.
10 A. It appears to be some kind of a draft
11 statement.
12 Q. Some kind of a what?
13 A. Draft statement.
14 Q. And on the front of it is a note from
15 Papageorge?
16 MR. FORD: Excuse me, Your Honor.

17 That hasn't been offered yet,
18 and I want to make an
19 objection it to.
20 (Whereupon a side-bar
21 conference was had outside
22 the hearing of the jury,
23 during which the following
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1 occurred.)
2 THE COURT: State your objection.
3 MR. FORD: This is a proposal or
4 statement to be made before
5 some congressional committee,
6 subcommittee on the
7 environment. It is a
8 Constitutional right to
9 present matters such as that
10 outside -- This concerns a
11 statement made in a
12 Congressional subcommittee,
13 subcommittee on environment,
14 dated October 21, 1975, a
15 presentation made by
16 Monsanto. To allow this to
17 be used in a civil trial
18 would violate the defendant's
19 right to free speech, a right
20 of the Constitution of the
21 United States.
22 MR. WHITE: I don't have any cases
23 because I didn't know we were
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1 going to be here. But there
2 is a body of law that when
3 you get into things such as
4 lobbying or meeting with
5 regulators or congressmen or
6 whatever, that that is not
7 admissible for purposes like
8 this because it infringes on
9 a citizen's First Amendment
10 rights to contact their
11 representatives and
12 regulators.

13 THE COURT: Is this guy a
14 representative?

15 MR. STEWART: No, sir, Judge.

16 THE COURT: Is he a regulator?

17 MR. STEWART: A regulator.

18 MR. WHITE: It is the same thing.

19 THE COURT: And that was the law
20 in October of 1975?

21 MR. WHITE: No, sir. But it is
22 common. It is the law now.
23 I have dealt with this
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1 before. No, I'll tell you

2 how I've dealt with it
3 before. It was in the
4 context of contacts with like
5 federal regulators who
6 oversee automobile safety
7 standards and things like
8 that, that that has been kept
9 out because of the reasons
10 I've stated, because it has a
11 chilling effect on those
12 affected by the possible
13 legislation.

14 THE COURT: This whole thing is
15 having a chilling effect on
16 me.

17 MR. FORD: This is a statement
18 made by a regulator. It is
19 not anything Monsanto
20 created. It is a statement
21 made by an EPA regulator to
22 some subcommittee that
23 Monsanto just happened to
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1 receive a copy of. It is not
2 generated by Monsanto.

3 MR. STEWART: Judge, while we are
4 fussing about this, can we
5 let them go out? I have been
6 going about an hour.

7 THE COURT: Ladies and gentlemen,
8 let's go ahead and take a
9 brief recess.

10 (Jury not present.)

11 MR. FORD: I'm sorry, judge. I
12 withdraw my original
13 objection on the First
14 Amendment rights, but I want
15 to reassert the objection --
16 I will accede to Mr. White
17 further about the case.

18 MR. WHITE: I think it is the
19 Noerr Pennington, N-o-e-r-r,
20 document that has been out
21 there for years about how
22 speech to government agencies
23 is protected speech. In
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1 addition, my recollection
2 is --

3 THE COURT: Protected --

4 MR. WHITE: Under the First
5 Amendment.

6 THE COURT: How so? When you are
7 talking about protection, you
8 are talking about different
9 levels of protection and
10 different ways of protection.

11 MR. WHITE: Yes, sir. And I think

12 I can help. There is a
13 relatively recent United
14 States Supreme Court case
15 that dealt with the so-called
16 fraud on the FDA theory,
17 where they claimed that these
18 drug manufactures were trying
19 to get drugs approved by the
20 FDA misrepresented to them
21 what the drug could or could
22 not do.
23 And the United States

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1 Supreme Court said that is
2 not a tort because the FDA --
3 it is their responsibility to
4 make sure that the
5 information that they receive
6 is correct and they are the
7 ones that have the power to
8 impose sanctions on the
9 businesses that may provide
10 incorrect information to
11 them.
12 THE COURT: How is that analogous
13 to what we are dealing with
14 here?
15 MR. STEWART: Judge, could I state
16 for the record --
17 MR. WHITE: I'm sorry. Go ahead,
18 Donald.
19 MR. STEWART: I wanted to clear up
20 for the record what we are
21 talking about. We are
22 talking about a note from a
23 Toni to a Mr. Bergen, who are
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1 obviously Monsanto employees.
2 And they are talking about a
3 copy, and it says a bootleg
4 copy of a speech that a
5 regulator was going to make
6 to a Congressional committee.
7 This does not have to
8 do at all with a contact that
9 was made by Monsanto with the
10 regulator unless they will
11 admit for the record that
12 they helped him write his
13 speech that he was going to
14 make to the committee. I
15 mean, I don't know. It says
16 bootleg copy of a speech.
17 That is what it appears to
18 be, which he was going to
19 make, as I understand it, on
20 -- to, rather, October 21st,

21 1975, to the subcommittee on
22 the environmental committee
23 on commerce.

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1 And he was a Dr. John
2 L. Buckley, and he was
3 talking about the PCB
4 problem.

5 But this does not
6 involve a contact they were
7 making with anybody. This
8 involved them receiving a
9 copy of the bootlegged speech
10 that he was apparently going
11 to make ahead of time. So I
12 don't see how that violates
13 their free speech or their
14 right to free speech at all.

15 MR. PRATER: Let's look at it
16 aside from that, Your Honor.
17 Unless they can show some
18 evidence that what was stated
19 in the speech was in any way
20 influenced by us getting an
21 advance copy of this speech,
22 it has absolutely no
23 relevance to any issue in

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1 this case.
2 MR. FETTERMAN: May I speak to
3 that, Judge?
4 THE COURT: Go ahead.
5 MR. FORD: There is no evidence of
6 whose notes are on here
7 either, Your Honor.
8 THE COURT: That's right. I don't
9 know where this is going
10 other than simply showing
11 they had a copy prior to his
12 statement. But I see a lot
13 of notes on here. I haven't
14 read the statement that
15 Dr. Buckley wanted to make,
16 and I haven't read the
17 changes that have been made
18 and have no idea who made
19 those changes and what
20 significance they have. I
21 don't know if the plaintiffs

22 are trying to go into the
23 fact that someone did make

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1 comments and if those
2 comments were then related to
3 Dr. Buckley or someone else.
4 MR. STEWART: Judge, the document

5 itself is all we have to
6 offer on this particular
7 point. There is nothing
8 beyond that. We feel like
9 the jury ought to have a
10 right to see it in line with
11 what Dr. Kaley has said
12 publicly they either did or
13 did not do in connection with
14 this area.

15 They make statements
16 that we cooperated with
17 regulators, did the kinds of
18 things we were supposed to
19 do. And I think the jury has
20 a right to know how.

21 We have already put
22 information in, Judge, that
23 was not objected to prior to
013102B

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1 this time about conversations
2 they had with Mr. Crockett
3 down at the ADEM place. And
4 they didn't object to them.
5 It wasn't objected to at all.

6 MR. FETTERMAN: And we put in the
7 preceding memo which talked
8 about the very things they
9 are now objecting to. If
10 they had a First Amendment
11 issue, what they are really
12 objecting to is they don't
13 like this particular
14 document. But they have
15 already waived that objection
16 with the previous document,
17 Judge.

18 MR. FORD: I don't agree with
19 that.

20 MR. FETTERMAN: In addition, I
21 would just suggest that this
22 document is relevant because
23 it shows the close
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1 relationship and the
2 influence that -- they were
3 talking about staying in
4 touch with personnel changes
5 at the EPA, and they were
6 obviously able to get bootleg
7 copies. So it is obviously
8 relevant to evidence we have
9 already put in, Judge.

10 MR. FORD: For all we know, it
11 could have been stolen.

12 MR. PRATER: I think they made an
13 interesting concession just
14 now, that this is all they

15 have, that this Exhibit 2174
16 is all they have on this
17 point. They don't have any
18 evidence of how Monsanto got
19 this document. It could have
20 come from GE or anyplace.
21 There is no evidence before
22 this jury, that can be placed
23 before this jury based on
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1 what they just said, that it
2 came from the EPA.
3 MR. FETTERMAN: But, Judge --
4 MR. PRATER: Let me finish.
5 MR. STEWART: Let him finish, Dan.
6 MR. PRATER: There is no evidence
7 of that, Your Honor. In
8 addition, they have admitted
9 that there is no evidence
10 that what was said at this
11 meeting by this government
12 official was in any way
13 influenced by Monsanto.

14 They simply want to get
15 this document into evidence
16 because it says "bootleg
17 copy." And that would merely
18 seek to inflame the jury on
19 nothing more than a
20 collateral matter.

21 THE COURT: Well, I'm going to
22 sustain because I'm not sure
23 you need this one particular
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1 document to inflame this
2 jury. I think there has been
3 plenty of other evidence to
4 do that.
5 (A break was taken.)
6 (Jury present.)
7 (All parties present.)
8

9 DIRECT EXAMINATION RESUMED

10
11 BY MR. STEWART:

12 Q. Dr. Kaley, Monsanto regularly monitored
13 its people that worked around PCBs,
14 didn't it, medically monitored?

15 MR. WHITE: Objection, Your Honor.
16 Med monitoring is not
17 relevant to this.

18 THE COURT: Okay. You may be
19 right. Y'all want to come up
20 here?

21 (Whereupon a side-bar
22 conference was had outside
23 the hearing of the jury,
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1 during which the following
2 occurred.)
3 THE COURT: Where are you wanting
4 to go with this?
5 MR. STEWART: I'm just asking and
6 trying to determine if they
7 knew about the health effects
8 that were caused by PCBs.
9 MR. WHITE: It is not relevant.
10 THE COURT: I'm going to sustain
11 and let you rephrase your
12 question.
13 MR. STEWART: I can ask if he knew
14 about the health effects?
15 MR. WHITE: Let me ask you this:
16 Are you talking about for the
17 workers?
18 MR. STEWART: I'm ultimately going
19 to ask about the people out
20 there. But I will leave off
21 the medical monitoring part.
22 MR. WHITE: Again, this is not an
23 injury case. So I don't see
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1 the relevancy of health
2 effects, you know, sitting
3 here thinking about it. We
4 object to the whole line of
5 questioning. They are not
6 making any claim in this case
7 that anybody is sick.
8 MR. STEWART: The things they were
9 checking for back in that
10 period of time confirm what
11 our health experts talked
12 about, and that also ties in
13 not with any kind of personal
14 injury claim but the
15 emotional distress our
16 clients feel about -- about
17 validating their feelings.
18 THE COURT: Doesn't it tie into
19 the reason that folks say
20 these things are harmful?
21 MR. STEWART: Sort of confirms
22 what our people are saying.
23 THE COURT: Sort of an underlying
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1 basis for the lawsuit.
2 MR. FORD: Checking somebody who
3 is exposed to this stuff in
4 hundreds or thousand of
5 micrograms or nanograms on a
6 regular basis with them
7 heated and everything else is
8 not the same as somebody
9 living a mile away.

10 MR. STEWART: Judge, our experts
11 have indicated in the first
12 place that the long term
13 exposure that our people have
14 to the environmental exposure
15 is more toxic and for longer
16 periods of time, not subject
17 to the ventilation. So that
18 is a misstatement, frankly,
19 of what our folks said.
20 MR. FETTERMAN: And we have
21 testimony in the record that
22 our plaintiffs have higher
23 levels than the Anniston PCB
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1 workers. That came in
2 through Dr. Nisbet, the

3 higher PCB levels.
4 MR. WHITE: That would only be
5 relevant if there were some
6 claim, viable legal claim
7 that they were at risk. And
8 again, that --
9 MR. STEWART: Judge, I think there
10 is a viable legal claim that
11 these things are harmful and
12 that they place people who
13 would buy our clients'
14 properties, for instance, at
15 risk. That is why they are
16 asking them to clean the
17 blooming thing up.
18 I thought that is why
19 we were here in the first
20 place. They have things that
21 they were testing them for
22 that tie in to -- I'm not
23 asking about medical
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1 monitoring -- but that tie in
2 to what our experts have said
3 are the harmful effects of
4 PCBs, which was not said by
5 Nisbet and Clapp, and I think
6 that's relevant evidence. I
7 do.

8 THE COURT: What group of people
9 are you talking about?

10 MR. STEWART: The people they are
11 checking, the people who were
12 involved in the Aroclor
13 production inside the plant.

14 MR. WHITE: Again, checking goes
15 to med monitoring.

16 MR. STEWART: Actually I --

17 THE COURT: Not necessarily.

18 MR. WHITE: That is what medical
19 monitoring is.
20 MR. STEWART: That is not what
21 y'all argued at the Supreme
22 Court.
23 THE COURT: Don't you check people
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1 not necessarily for medical
2 monitoring but also for the
3 purpose of knowing what
4 effects the chemicals they
5 are working with have? That
6 is not to say they would
7 check them to make sure they
8 got proper medical treatment
9 if something happened to
10 them.

11 MR. WHITE: I don't think that is
12 where he is going with this,
13 Your Honor.

14 MR. STEWART: That is what they
15 said they were doing when
16 they argued at the Supreme
17 Court, doing surveillance on
18 on these people to see if it
19 was having some kind of toxic
20 effect and then take them out
21 of the department. That is
22 what they said.

23 MR. FETTERMAN: Judge, I think it
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1 is certainly relevant that
2 more than fifty years ago
3 that they were looking and
4 monitoring and checking for
5 the very same adverse health
6 effects like liver problem,
7 likes gastrointestinal
8 problems that our experts
9 came in fifty years later and
10 testified PCBs cause adverse
11 health effects. And they are
12 now challenging that.

13 It is consistent and
14 corroborates with our
15 experts, and we are entitled
16 to show that this company,
17 over fifty years ago, was
18 concerned about the same
19 thing our experts are
20 testifying about today.

21 MR. WHITE: And none of these
22 ailments or conditions he
23 says we were checking for do
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1 any of these plaintiffs
2 complain about.

3 THE COURT: Yeah? So?
4 MR. WHITE: Well, it is not
5 relevant.
6 THE COURT: It is not relevant on
7 any issue in this case?
8 MR. WHITE: Yes, sir. Absolutely.
9 It is not relevant.
10 MR. STEWART: He wants to try it
11 in a vacuum.
12 MR. WHITE: Well, I've got to tell
13 you --
14 THE COURT: Here is what I'm going
15 to do. Ladies and gentlemen,
16 we will be in recess until
17 9:15 tomorrow morning.
18 (Jury not present.)
19 THE COURT: Gentlemen, y'all
20 follow me to Anniston.
21 (Adjournment at 4:00 p.m.)
22
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