

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

CECIL SCOTT, ET AL

VS.

MONSANTO COMPANY

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CIVIL ACTION
NO. B-84-1103-CA

VOLUME II

VIDEO DEPOSITION OF

ELMER P WHEELER

9:46 a.m. to 4:31 p.m.

May 8, 1987

Holiday Inn - Camden
Lugoff, South Carolina

Reported by:

Linda C. Baker
Texas CSR No. 505/Notary Public
Nell McCallum & Associates
2900 Smith, Suite 104
Houston, Texas 77006
(713) 523-3767

Taxable Cost: \$_____

Charged to: DAVID M. LACEY, ESQ.

State Bar No:

Attorney for: Plaintiffs

COPY

1 APPEARANCES:

2 For the Plaintiffs:

3 DAVID M. LACEY, ESQ.
4 Gilpin, Pohl & Bennett
5 1300 Post Oak Boulevard
6 Allied Bank Tower, 23rd Floor
Houston, Texas 77056

7 For the Defendant:

8 JONATHAN B. SHOEBOOTHAM, ESQ.
9 Woodard, Hall & Primm
4700 Texas Commerce Tower
Houston, Texas 77002

10 Videotechnician:

11 James Heironimus
12 Executive Service Groups
13

14 *****
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16 Deposition of ELMER P. WHEELER, taken on
17 May 8, 1987, at Holiday Inn - Camden, Lugoff,
18 South Carolina, between the hours of 9:46 a.m.
19 and 4:31 p.m., before Linda C. Baker, CSR No. 505
20 and Notary Public in and for the State of Texas,
21 at the instance of the Plaintiffs, pursuant to
22 Notice and the Federal Rules of Civil Procedure.
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TABLE OF CONTENTS

WITNESS: ELMER P. WHEELER - VOLUME II

	<u>PAGE</u>
APPEARANCES	203
PROCEEDINGS	205
CONTINUED EXAMINATION BY: Mr. Lacey	206
AFTERNOON SESSION -- CONTINUED EXAMINATION BY: Mr. Lacey	317
EXAMINATION BY: Mr. Shoebbotham	393
RE-EXAMINATION BY: Mr. Lacey	395
WITNESS SIGNATURE PAGE AND JURAT	400
REPORTER'S CERTIFICATE	401
LAWYER'S NOTES	402

WHEELER EXHIBITS MARKED

<u>NO.</u>	<u>PAGE</u>
1 - Memo dated August 19, 1959, from G. Robert Sido regarding "LABELING, AROCLORS - PYRANOLS - INTERTEENS"	247
2 - Seven-page document on Monsanto Industrial Chemicals Co. letterhead stationery, titled <u>THE POLYCHLORINATED BIPHENYLS LITERATURE</u> <u>REFERENCES</u> (undated)	351

*** VOLUME II ***

May 8, 1987

PROCEEDINGS

THE VIDEOTECHNICIAN: Okay. This is the continuing deposition of Mr. Elmer P. Wheeler.

The date is May 8th, 1987. The time is approximately 9:46 a.m.

MR. SHOEBOOTHAM: Let me say one thing on the record before we begin.

Mr. Wheeler told me this morning that he misspoke on one question yesterday.

You asked him about his prior deposition testimony. He answered that he had been deposed once before, and he remembered overnight that he's actually been deposed on two occasions.

CONTINUED EXAMINATION

QUESTIONS BY MR. LACEY:

Q Well, let me just -- I -- no, I -- I was going to come back and ask you about that, anyway, so let me just go ahead and do that now.

Tell me about the events where you have previously given deposition testimony, what the cases were about and what you recall about them

A One deposition related to PCBs in the environment. The second one was in relation to 2,4,5-T and the Agent Orange situation.

Q So in one case you testified in the Agent Orange -- is this the big Agent Orange case that all the veterans had?

A Yes, sir.

Q And that related to -- was Monsanto a defendant in that case?

A Yes, sir.

Q Okay. And you were testifying on behalf of Monsanto?

A Yes, sir.

Q And Monsanto was a party in that case because they manufactured 2,4,5-T?

A Yes, sir.

1 Q And does that have any relationship to -- I
2 don't -- I don't know that I understand the relationship
3 between 2,4,5-T and I've heard of Agent Orange and
4 dioxin. Are those -- is 2,4,5-T dioxin, or is that --

5 A The dioxin eventually showed up as a
6 contaminant in the 2,4,5-T.

7 Q Okay. And why were you a witness in that?
8 What did you know about all of that?

9 A Well, Monsanto made the 2,4,5-T in our Nitro,
10 West Virginia, plant; so we were producers of the
11 2,4,5-T.

12 Q Well, I guess what I'm trying to find out is:
13 What -- what was your testimony about in that regard,
14 though?

15 A Monsanto had had an unfortunate accident in
16 1949. I don't recall all of the details, but no one was
17 injured at the time of the -- when the reaction got out
18 of control and spewed material from the reactor release
19 valve inside the building. And subsequently there were
20 a number of cases of chloracne from the products that
21 were produced by that decomposition reaction.

22 Q And was your testimony about that accident that
23 happened at the plant?

24 A Yes, sir.

25 Q I guess I -- what was the relationship between

1 that accident that happened in 1949 at the plant and the
2 litigation that the veterans had?

3 A Well, in '60- -- '61, I believe, a German
4 company that had had a similar occurrence was able to
5 identify the contaminant that was in the reaction
6 product as dioxin; whereas, in all of our efforts to
7 make a chemical identification, we'd been unsuccessful.

8 Q So other companies had been more successful
9 than Monsanto in finding dioxin as a contaminant in
10 Monsanto product?

11 A No, sir. What I'm saying was that at that time
12 the analytical technique was such that they could
13 identify the dioxin in the unwanted reaction products
14 that contaminated the 2,4,5-T.

15 Q Well, what I'm trying to find out is: Monsanto
16 had previously looked for dioxin as a contaminant or
17 looked for contaminants and didn't find dioxin?

18 A They did not find dioxin.

19 Q And then this German company looked for
20 contaminants and found dioxin?

21 A Yes, sir; finally identified the contaminant,
22 one of the contaminants, to be dioxin.

23 Q And did Monsanto ultimately conclude that this
24 German company was correct, and that dioxin was one of
25 the contaminants in its product?

1 A We concluded that there was -- the dioxin in
2 the residues from the runaway reaction was dioxin.

3 Q Okay. And when you describe a runaway
4 reaction, what do you mean?

5 A Well, the manufacturer in this case was to --
6 to put into a large steel or -- or metal vessel that may
7 have been five or six feet in diameter and eight or ten
8 feet tall -- it was jacketed so that the temperature
9 of -- of the materials in the reaction could be
10 controlled. There were also safety relief valves
11 provided so that if the pressure in the -- in the
12 reactor exceeded certain limits, the pressure release
13 valve would open to prevent an explosion of the vessel
14 itself.

15 In this case, it's my recollection that the
16 cooling -- the water cooling system which was provided
17 to control the temperature of the reaction failed, so
18 that the pressure built up to a point that the -- the
19 pressure-relief valve blew as it was supposed to, and
20 spewed the contents of that -- of the vessel around the
21 interior of the building in which it was being made.

22 When it was determined by instrumentation and
23 by observation of the operators that the cooling effect
24 was not -- the cooling action was not effective in
25 controlling the pressure, they shut things down and left

1 the building.

2 Q What were the raw materials that were used to
3 make 2,4,5-T?

4 A I don't recall specifically, sir.

5 Q Did 2,4,5-T have a benzene ring in it?

6 A Yes, sir.

7 Q And was there chlorine in it?

8 A Yes, sir.

9 Q Was that basically what the product was, was a
10 chlorinated benzene ring?

11 A Yes, I think that we described yesterday, when
12 they were trying to decide where the commas were, it was
13 2,4,5- --

14 MR. SHOEBOTHAM: Mr. Wheeler, please
15 don't guess or speculate. If you -- if
16 the --

17 A I -- I'm -- I'm -- I'm sorry, sir. I've
18 forgotten the complete chemical designation for it.

19 BY MR. LACEY:

20 Q I wasn't so concerned with that, but I -- just
21 whether the chemical compound 2,4,5-T was benzene ring
22 with some chlorination to it.

23 A Yes.

24 Q Okay. And when we talk about chlorinated
25 biphenyl, we're talking about two benzene rings that are

1 joined together and chlorinated. Correct?

2 A Yes, sir.

3 Q If we were able to take a PCB that was
4 chlorinated and split the two benzene rings apart,
5 depending on where the chlorine molecules were, we might
6 have some molecules of 2,4,5-T. Correct?

7 A No, sir.

8 Q Would that not be correct?

9 A No, sir.

10 Q Why not?

11 A It's my understanding that the chemical bonding
12 of the two benzene rings is such that that would not
13 occur.

14 Q No. I'm sorry. I meant to ask you: If they
15 were split apart, if that were chemically possible, you
16 would then have two benzene rings that were chlorinated.
17 Correct?

18 MR. SHOEBOTHAM: Mr. Wheeler has just
19 indicated to you that that's not
20 chemically possible.

21 BY MR. LACEY:

22 Q I see. It's not chemically possible. Is that
23 your testimony?

24 A To my knowledge, that's not possible.

25 Q Okay.

1 Now, with regard to the other lawsuit, the PCB
2 lawsuit, what was that lawsuit about?

3 A It related to the unin- -- unintended release
4 of leaking hydraulic fluid in -- I don't remember the
5 name of the town, but it was -- it was a town on Lake
6 Michigan.

7 Q Was it in the State of Michigan?

8 A Yes, sir -- oh, I beg your pardon. No, I
9 believe it was in Wisconsin.

10 Q When did you, approximately, give the
11 deposition in the Agent Orange case?

12 A About four years ago, sir.

13 Q And when did you give the deposition in the
14 PCB case?

15 A I believe two years before that.

16 Q I guess you follow the newspaper and understand
17 the Agent Orange case is at least in the Courts of
18 Appeal at this point?

19 A I don't know that that's the case, sir.

20 Q Were you ever called to testify at trial in
21 that case?

22 A No, sir.

23 Q Were you ever called to testify at trial in
24 this PCB case in Wisconsin or Michigan?

25 A No, sir.

1 Q Do you know whether or not that case has been
2 disposed of?

3 A I don't know the disposition of it, sir.

4 Q What was your testimony in that case about?

5 A My recollection is that it referred to when the
6 evidence became available that PCBs were showing up in
7 the environment in conjunction with DDT and other
8 chlorinated pesticides.

9 Q Did that case deal at all with the adverse
10 effects on human health from PCBs?

11 A No, sir.

12 Q Did your testimony in the Agent Orange case
13 deal at all with the adverse effects on human health of
14 Agent Orange or 2,4,5-T or dioxin or whatever?

15 A I think my testimony was limited only to the
16 chloracne effects.

17 Q Okay. So you weren't testifying whether or not
18 there were effects beyond chloracne, only that chloracne
19 was an effect?

20 A That's right, sir.

21 Q You have never, I take it, testified any time
22 at trial.

23 A No, sir.

24 Q And all the testimony you've ever given now
25 will consist of three cases: One -- one testimony by

1 deposition in Agent Orange, one testimony by deposition
2 in the Wisconsin PCB case, and one testimony by
3 deposition in this case.

4 A In this case, yes, sir.

5 Q Okay.

6 Are there any other ways that you misspoke
7 yourself yesterday?

8 A Not that I recall, sir.

9 Q Okay. If during the course of this day you
10 remember any ways in which you misspoke yourself, please
11 let me know, because I'd like to be able to explore
12 those things with you before we conclude your
13 deposition. Okay?

14 A I would, sir, because I recognize I'm under
15 oath, and --

16 Q Certainly.

17 Among other just housekeeping matters, do you
18 own any stock in Monsanto?

19 A Yes, sir.

20 Q How much stock do you own?

21 A It's 601 or 603 shares.

22 Q Okay.

23 A I can't understand the oddness; because there
24 was a stock split, and it seems like it ought to be 602,
25 perhaps, or 604, but --

1 Q Okay.

2 A Approximately 600 shares.

3 Q All right. Are those all owned in your own
4 name?

5 A Yes, sir.

6 Q Do any of your family members own any stock?

7 A No, sir.

8 Q Okay. And -- and do you have a -- I take it
9 you do have a pension of some sort from Monsanto?

10 A Yes, sir.

11 Q Approximately what do you receive each month in
12 that pension?

13 A I think currently, after income tax
14 withholding, it's about \$1,500.

15 Q Okay. Per month?

16 A I beg your pardon?

17 Q Per month?

18 A Yes, sir.

19 Q After tax?

20 A Yes, sir; plus \$135.25 from Travelers Insurance
21 Company, which was made available as part of the
22 Monsanto Pension Plan.

23 Q That's just a -- a pension payment?

24 A I beg your pardon?

25 Q That's just a pension payment of some sort?

1 A Yes, sir.

2 MR. SHOEBOTHAM: Sounds like some
3 sort of an annuity or something.

4 MR. LACEY: I guess.

5 BY MR. LACEY:

6 Q Do you have any other things that you receive
7 from Monsanto, other than your pension and whatever you
8 get as a result of your stock ownership?

9 A No, sir.

10 Q Okay.

11 Let me discuss with you the process by which --
12 or actually not the process; I think we discussed
13 yesterday the process by which information was supplied
14 to other companies that bought PCB products from
15 Monsanto -- but the information that was conveyed.

16 And we discussed yesterday the fact that there
17 were sometimes questions that might be asked by
18 customers about Monsanto products that would not be
19 disclosed; for example, the information that Ford
20 requested on the specific composition of a specific
21 product, and Monsanto did not disclose that. Do you
22 recall that?

23 A Excuse me. Did you say, "decomposition
24 products"?

25 Q No. The specific composition of a product;

1 exactly what it contained.

2 A Do you have a -- a document there, sir, that --

3 Q No. I'm referring to the documents that you
4 reviewed with Mr. Shoebottom about the correspondence
5 with Ford.

6 A It -- it's my recollection that we wrote to
7 Ford, and -- and I think that we testified yesterday
8 that we did not release that identification.

9 Q Okay. Well, that's what I wanted to establish.

10 Now, my question really is: Was there ever any
11 time when Monsanto would not at least advise customers
12 that a product contained some PCB?

13 A Yes, sir.

14 Q There were times that you would not even
15 disclose that information?

16 A In connection with the Pydrauls, yes, sir.

17 Q I see. What about the Aroclors? If someone
18 were purchasing Aroclor, would they be advised that
19 Aroclors contained PCB?

20 A Ever since I was with the company, the people
21 were told that either by label or by any other means of
22 communication that we had with them.

23 Q Okay. And, certainly, it would be your
24 expectation as a member of the Medical Department who
25 was preparing literature to be provided to other

1 customers or to -- I'm sorry.

2 It would be your expectation as a member of the
3 Corporate Medical Department who was involved in
4 preparing literature to provide to customers that
5 persons who bought, companies that bought, Aroclor
6 products would know that they were buying products
7 containing PCBs. Correct?

8 A Sir, the answer to that is they knew they were
9 buying PCBs. The Aroclors were PCBs.

10 Q Okay. And within a company that was a
11 customer, if the company had its own Industrial Hygiene
12 or Toxicology Department, you would certainly expect
13 that the manager of that department would be aware of
14 the fact that Monsanto's Aroclors contained PCBs, would
15 you not?

16 A I think I just said, sir, that the labels
17 and any information on Aroclors said they were
18 polychlorinated biphenyls.

19 Q That's not my question. If you would listen,
20 please.

21 My question is that you would certainly expect
22 that for a customer that was buying Aroclors from
23 Monsanto, the manager of the Industrial Hygiene and
24 Toxicology Section or Department of that customer would
25 be aware that Aroclors contained PCBs, would you not?

1 MR. SHOEBOTHAM: Mr. Lacey, you've
2 got a letter in your hand there. If -- if
3 you want to show that to Mr. Wheeler and
4 talk about it, why don't you do that,
5 instead of asking him a general question
6 like this?

7 MR. LACEY: Well, I want to get his
8 answer to the general question first.
9 Then we can look at the specific problem.

10 MR. SHOEBOTHAM: Well, I want the
11 record to be clear that you're holding the
12 exhibit within your hand right now, and
13 you haven't shown it to Mr. Wheeler.

14 MR. LACEY: Well, let the record be
15 clear what I'm holding in my hand is a
16 document that's not been produced by
17 Monsanto.

18 MR. SHOEBOTHAM: Well, why don't you
19 show that to Mr. Wheeler and then to me?

20 MR. LACEY: Well, let me ask the
21 question now.

22 A I -- I think I answered earlier. I -- the
23 answer is that -- you asked if they would know that the
24 Aroclors contained PCBs. My response, sir, was they
25 would know that Aroclors were PCBs.

1 BY MR. LACEY:

2 Q Okay. Well, when we talk about "they" were --
3 the company, "they," do you mean every employee of that
4 customer would know that; every single one of them?

5 A Oh, no, sir.

6 Q Okay. Now, that's the point of my question.
7 Would you expect that the manager of the Industrial
8 Hygiene and Toxicology Section of that customer would
9 know that Aroclors contained PCBs?

10 A Yes, sir.

11 Q In fact, it would be very important that the
12 people who were responsible for the industrial hygiene
13 and toxicology efforts of Monsanto customers know that
14 Aroclors contained PCBs so they could do their job
15 properly.

16 A Sir, again, not that Aroclors contained PCBs.
17 Aroclors were PCBs.

18 Q Okay. That's fine. With that -- with that
19 rephrasing, it would be very important that whoever at a
20 customer of Monsanto that purchased Aroclors was
21 responsible for industrial hygiene and toxicology, it
22 would be important that they know that Aroclors are
23 PCBs, wouldn't it?

24 A Yes, sir.

25 Q They really couldn't do an effective job as a

1 manager of industrial hygiene and toxicology without
2 knowing that Aroclors were PCBs, would they?

3 MR. SHOEBOOTHAM: Let me object to
4 that question. It completely excludes all
5 the warning labels that were placed on the
6 Aroclor products, and all the information
7 that went out with Aroclor products to
8 individuals like you're apparently
9 discussing.

10 And, again, Mr. Lacey, you have in
11 your hand a letter which apparently
12 specifically addresses these things. I'd
13 appreciate it if you'd show that to
14 Mr. Wheeler, and let's talk about the
15 exhibit.

16 MR. LACEY: I will at the appropriate
17 time, Mr. Shoebotham.

18 MR. SHOEBOOTHAM: Well, I think now
19 would be an appropriate time --

20 MR. LACEY: Well --

21 MR. SHOEBOOTHAM: -- since you've
22 started discussing the topic.

23 MR. LACEY: I -- I'm asking the
24 questions, and I -- when I think it's
25 appropriate, I'll do that.

1 MR. SHOEBOTHAM: Well, I want the
2 record to be clear again that you -- you
3 have an exhibit here in your hand you
4 haven't shown to Mr. Wheeler.

5 MR. LACEY: It's not even marked as
6 an exhibit, Mr. Shoebbotham. I have a
7 piece of paper I'm looking at.

8 MR. SHOEBOTHAM: And it's in your
9 hands right now, and you haven't --

10 MR. LACEY: It is not in my hands
11 right now.

12 BY MR. LACEY:

13 Q Now, let me ask the question again, and we can
14 get beyond this problem here.

15 Among or within any company that has an
16 Industrial Hygiene and Toxicology Department, those
17 people within the company are the ones who are going to
18 be doing the very same things that you did for Monsanto;
19 that is, inspecting plants and looking out for workers'
20 safety. Correct?

21 A Yes, sir.

22 Q That's the very job of an industrial hygienist?

23 A Yes, sir.

24 Q And one of the things the industrial hygienist
25 has got to know to do his job right is what chemicals

1 the workers he's trying to protect are working with.

2 Correct?

3 A Yes, sir.

4 Q Now, if the information distribution network
5 that you have told us about was working correctly -- and
6 by that, I mean if the warning labels were all working
7 like they should be, if the distribution of technical
8 literature was all working like it should be, and if
9 people were getting the information directly from the
10 Medical Department if that was appropriate -- a person
11 who was managing an Industrial Hygiene Department of a
12 major company would not be in the dark about the fact
13 that Aroclors were PCBs, would they?

14 A That's correct.

15 Q And if, in fact, in February of 1972 the
16 manager of an Industrial Hygiene and Toxicology
17 Department for a major company didn't know that Aroclors
18 were PCBs, that would indicate some sort of breakdown in
19 the distribution of information that Monsanto hoped
20 would take place?

21 MR. SHOEBOTHAM: I object to the
22 form of the question. You're asking
23 Mr. Wheeler to speculate as to why some
24 individual in another company would not
25 know that the products contained PCBs.

1 I think you're calling on Mr. Wheeler to
2 speculate, and I object to the question on
3 that basis.

4 MR. LACEY: Well, I'm not calling for
5 him to speculate.

6 BY MR. LACEY:

7 Q I'm just simply asking you: Wouldn't it be
8 true that if in February of 1972 the manager of
9 Industrial Hygiene and Toxicology for a major company
10 didn't know that PCBs were Aroclors, then that would
11 indicate that somewhere along the line the system of
12 information and warning that Monsanto had hoped would
13 get information to the customers had broken down?

14 A I can't answer that, sir, because you've set up
15 again a hypothetical situation. You've -- you have --
16 your question began with "if."

17 Q Well, let me see if we can remedy that
18 hypothetical --

19 MR. SHOEBOTHAM: And, again --

20 BY MR. LACEY:

21 Q -- situation.

22 MR. SHOEBOTHAM: And, again, I think
23 the problem Mr. Wheeler is having with the
24 question is you're asking him to speculate
25 as to why this individual, whom you

1 haven't identified to him yet, didn't know
2 that PCBs were Aroclors. And I think that
3 calls upon him to speculate as to why
4 someone did or did not have certain
5 knowledge.

6 BY MR. LACEY:

7 Q Well -- well, let me -- let me for a moment
8 explore the -- the line of suggestion that your lawyer's
9 been giving.

10 MR. SHOEBOOTHAM: Let me on the record
11 clear that up.

12 I don't represent Mr. Wheeler. I
13 represent Monsanto.

14 MR. LACEY: I see.

15 BY MR. LACEY:

16 Q How -- how many hours have you spent meeting
17 with Mr. Shoebotham both before and during this
18 deposition?

19 A Four to six hours, I guess.

20 Q He was here the entirety of the day Wednesday
21 before the deposition, wasn't he?

22 A I beg your pardon?

23 Q The entire day of Wednesday before your
24 deposition started on Thursday, he was here, wasn't he?

25 A I wasn't with him the full day, sir.

1 Q I see. How many hours were you with him on
2 Wednesday?

3 A I just said, sir, I think four to six hours.

4 Q And then yesterday at every break and at
5 lunchtime you and Mr. Shoebotham stayed together and
6 talked about the case, didn't you?

7 A We talked about what?

8 Q About your testimony and about the case.

9 A Among other things, yes, sir.

10 Q And again this morning you met with
11 Mr. Shoebotham to discuss your testimony in the case?

12 A Yes, sir.

13 Q Okay.

14 Let's go back and talk a little bit about the
15 system of warnings and the system of information that
16 Monsanto intended to take place.

17 What the Medical Department intended as its
18 method of communication with customers was that
19 Technical Bulletins would go to the appropriate
20 information receivers at customers so they would know
21 about the properties of Aroclors, the toxicity of
22 Aroclors, and the safe handling of Aroclors. Correct?

23 A Yes, sir.

24 Q It was intended that warning labels would give
25 information on the proper handling and the toxicity of

1 Aroclors and would get this appropriate information to
2 customers. Correct?

3 A Yes, sir.

4 Q And if that didn't work, that would indicate
5 that what the Medical Department had designed as its
6 method of communicating information about toxicity and
7 safe handling was not working, wouldn't it?

8 A I can't think of any indication where we had
9 knowledge that it was not working, sir.

10 Q Okay. That's not my question.

11 My question is: If that didn't take place --
12 if that information wasn't enough, wasn't effective to
13 get to the appropriate information within -- or to the
14 appropriate people within a customer, what Aroclors were
15 and how to handle them safely -- then that was an
16 indication that what you had designed wasn't working.
17 Isn't that correct?

18 MR. SHOEBOTHAM: Mr. Lacey,

19 Mr. Wheeler told you that he didn't know
20 about any instances of that happening.

21 Again, you've apparently got some
22 letter over there. Why don't you just
23 mark that and show it to Mr. Wheeler, and
24 let's talk about that.

25

1 BY MR. LACEY:

2 Q I'm trying to find out how the system was
3 designed first. Then we can try to determine whether it
4 worked or not. I want to understand what the intention
5 of Medical Department was and when, if ever, they would
6 concede that what they had designed was a failure.

7 Now, the system that you designed was to use
8 Technical Bulletins and to use product labels and, if a
9 customer contacted, to provide information to the
10 customer. Isn't that correct?

11 A Yes, sir.

12 Q There wasn't any other system, was there?

13 MR. SHOEBOTHAM: Well, Mr. Lacey,
14 there are Material Safety Data Sheets, and
15 there are also system sales and
16 development representatives in the field
17 that Mr. Wheeler's told you about.

18 BY MR. LACEY:

19 Q Do you want to adopt that, too; the Material
20 Safety Data Sheets and the sales representatives in the
21 field?

22 MR. SHOEBOTHAM: It's not a question
23 of him adopting it, Mr. Lacey. He told
24 you about it yesterday.

1 BY MR. LACEY:

2 Q So there are five things that make up the
3 system, then. Correct? Is that accurate?

4 A I haven't counted them, sir.

5 Q Well, let's count them. What's the No. 1
6 thing? The Technical Bulletins?

7 A I would think, yes.

8 Q The second thing -- and I -- I'm not really
9 trying to get them in order of priority -- but the
10 second thing the product labels that went on the
11 containers?

12 A Yes, sir.

13 Q The third thing would be the Material Safety
14 Data Sheets?

15 A Yes, sir.

16 Q The fourth thing would be the salesmen?

17 A Yes, sir.

18 Q And then we'd have the direct contact with the
19 Medical Department if there were questions?

20 A Yes, sir.

21 Q Anything else that was part of the Monsanto
22 system for getting information to customers about PCB
23 products?

24 A I can't think of any, sir.

25 Q Okay.

1 Now, within the customer's organization, every
2 customer that Monsanto sold PCBs to was a corporation or
3 a major company. Isn't that correct?

4 A I -- I -- I'm not sure. I don't have a list of
5 all of the customers. I can't say that they were all
6 major customers. I'm not sure whether materials were
7 sent to research laboratories --

8 Q Okay.

9 A -- free or were sold.

10 Q Okay. So there may be a few cases where some
11 were sent to research laboratories?

12 A I would think so, sir.

13 Q But generally they went to major companies,
14 because they were industrial chemicals. Correct?

15 A Yes, sir.

16 Q And within a major company, one of the most
17 important groups that needed to have appropriate
18 information about the PCB products would be the
19 industrial hygiene and toxicology group of that company.

20 A Yes, sir.

21 Q There's almost no group that's more important
22 within a company to have appropriate information on
23 Monsanto's PCB products than the customer's industrial
24 hygiene and toxicology prod- -- group. Isn't that
25 correct?

1 A Yes, sir.

2 Q Because that's the group within the customer
3 that's responsible for looking after their own workers'
4 safety?

5 A Not the only group, sir.

6 Q But it's one of the major groups, isn't it?

7 A Yes, sir.

8 Q That's what industrial hygiene is all about?

9 A Yes, sir.

10 Q Now, it was the intention of the Medical
11 Department in their five-point program to ensure that
12 every customer and, in particular, that the Industrial
13 Hygiene and Toxicology Department of every major
14 customer, had information about the PCB products that
15 Monsanto sold them. Isn't that correct?

16 A Yes, sir.

17 Q And if there were customers who in their
18 Industrial Hygiene and Toxicology Department did not
19 have that information, that would be evidence of a
20 breakdown in the program of communication, would it not?

21 A Not from within Monsanto, no, sir.

22 Q Well, let's try to explore that. Who had the
23 obligation as the manufacturer and seller of PCBs to get
24 the necessary information on toxicity and safe handling
25 to the customer? Monsanto or the customer?

1 A I would say the customer.

2 Q The customer had the obligation to get the
3 information to it?

4 A To their own people?

5 Q No; to -- in to the customer in the first
6 place.

7 A Oh, no, sir. I didn't say that.

8 Q Well, listen to what I'm asking. Isn't it true
9 that it was Monsanto's obligation to get appropriate
10 information on tox- -- toxicology and safe handling to
11 the appropriate people within the customer's
12 organization?

13 A It was our responsibility to see that the
14 information was in the hands of the customer's plants
15 who could make the best use of that information within
16 the procedures of that own company.

17 Q And among the people that Monsanto had an
18 obligation to get that information into the hands of
19 would be the Industrial Hygiene and Toxicology
20 Department of the customer. Correct?

21 A I don't consider that an obligation; no, sir.

22 Q I see. So if the program designed by Monsanto
23 to communicate information to customers wasn't good
24 enough to get it into the customer's Industrial Hygiene
25 and Toxicology Department, that would not concern you as

1 the Assistant Director of the Medical Department of
2 Monsanto. Is that correct?

3 A I would be disappointed that the information
4 did not get to those people.

5 Q But you wouldn't think that Monsanto had failed
6 to do its job. Is that correct?

7 A That's right, sir.

8 Q Okay. Is there any group within a customer
9 who, if the information on PCBs did not reach that
10 group, you would feel that Monsanto had failed to carry
11 out its obligation to disclose the information about
12 PCBs?

13 A I think I -- excuse me. I think our -- our --
14 I think our obligation was to get the information to the
15 people within the company who supervised the use of the
16 product and ensure that that they had the precautionary
17 statements and Technical Bulletins and the information
18 that we provided.

19 Q Well, who are those people, in your opinion?

20 A I would say the production and -- and
21 supervisory people of that particular operation within
22 that company.

23 Q Okay. So, as -- as you view the obligation, it
24 is to get it into the hands of production personnel, not
25 into the hands of the medical personnel or industrial

1 hygiene personnel. Correct?

2 MR. SHOEBOOTHAM: I'd have to object
3 to the question. It misstates what
4 Mr. Wheeler said. He said the production
5 and supervisory personnel who were in
6 charge of handling the products, was his
7 testimony.

8 BY MR. LACEY:

9 Q You can answer the question.

10 A I -- I would expect the people that I've
11 mentioned to rely on their sources of interpretation of
12 any information.

13 Q Okay. Was there an organization of industrial
14 hygienists that got together from time to time?

15 A Yes, sir. I testified yesterday there was the
16 Industrial Hygiene Association.

17 Q Did they put out a directory of their members
18 and who held various industrial hygiene positions within
19 companies?

20 A They put out a directory. I'm not sure in all
21 cases, sir, that it indicated the title of the
22 individual within the corporation or within the
23 university or --

24 Q Did you ever consider as the Medical Department
25 simply ensuring that the appropriate Industrial Hygiene,

1 Toxicology, and Medical Departments at customers got
2 information on PCBs by just sending a copy of the
3 appropriate Technical Bulletins to the Medical
4 Department or Industrial Hygiene Department of every
5 customer to whom you sold PCBs?

6 A I don't think I understood the first part of
7 your question.

8 Q Yes. Let me -- let me make it very clear.

9 Did it ever occur to you that one way to
10 disseminate information about PCBs that Monsanto sold to
11 appropriate people at its customers would be to send the
12 literature on PCBs and their safe handling to the
13 Industrial Hygiene and/or Medical Department of every
14 customer to whom you sold PCBs?

15 A Not as a routine practice; no, sir.

16 Q That would not have been a hard thing to do,
17 would it?

18 A I don't know what would be involved, sir. I
19 don't know how many customers we had.

20 Q Well, from the standpoints of identifying
21 whether they had an Industrial Hygiene Department, you
22 could do that pretty easily by using your directory,
23 couldn't you?

24 A Oh, yes, sir.

25 Q And so if you got a customer list and had a

1 secretary simply take the manual that listed these
2 members of the Industrial Hygiene Association and
3 compare it with the customer list for PCBs, a secretary
4 could have sent transmittal letters with that
5 information to those people without even involving your
6 time or the salesman time, couldn't they?

7 A I don't know of anybody that followed that
8 practice in the field.

9 Q Well, that's not my question.

10 My question is: It could have been done with
11 nothing more than a customer list for PCBs and the
12 directory of the members of the American Industrial
13 Hygiene Association. Isn't that correct?

14 A No, sir.

15 Q What else would it have taken?

16 A It would have taken a -- a review of the area,
17 the specific area of interest of a particular member.

18 Q I see.

19 A I would see no point in sending it to a -- a
20 member whose primary field was radiation, protection
21 from radiation.

22 Q No, no, no. I'm -- I'm sorry. Maybe I didn't
23 make my question clear.

24 I said, if a secretary had a list of the
25 customers of Monsanto who bought PCB-containing products

1 and had a copy of the directory for the American
2 Industrial Hygiene Association, that secretary could
3 then go down the customer list by the side of each
4 customer, look up the representatives who were members
5 of the Industrial Hygiene Association, and send those
6 people on behalf of the company that purchased PCBs
7 technical literature about PCBs, couldn't she?

8 A You said, is it possible? It is possible.

9 Q In fact, it would not be all that difficult a
10 task to do, would it?

11 A I can't answer that, sir. We -- we didn't do
12 it.

13 Q Well, what I'm saying is: It wouldn't be
14 technologically difficult to do, would it?

15 MR. SHOEBOTHAM: Mr. Lacey,
16 Mr. Wheeler's just told you they
17 didn't do it and he can't answer the
18 degree of difficulty that it would have
19 taken to do that. He's told you that
20 several times. Why don't you --

21 MR. LACEY: Well -- well, let me
22 see --

23 MR. SHOEBOTHAM: -- move on to a
24 different area.

25 MR. LACEY: Well, let me see if I can

1 understand what would have been difficult
2 about it.

3 BY MR. LACEY:

4 Q The only difficulty would have been looking up
5 the name of each customer that Monsanto sold PCBs to,
6 and then looking in the American Industrial Hygiene
7 Association directory to see if you had the name of a
8 person at that company who was interested in industrial
9 hygiene -- that's all it would have taken, wouldn't
10 it? -- then typed the letter and sent them the material?

11 MR. SHOEBOTHAM: Mr. Wheeler, you
12 don't have any obligation to speculate in
13 answer to --

14 A I don't --

15 MR. SHOEBOTHAM: -- Mr. Lacey's
16 questions.

17 A I -- I can't -- I can't honestly answer the
18 question, sir.

19 BY MR. LACEY:

20 Q Fine. Do you know whether or not Texaco had
21 people who were members of the Industrial Hygiene
22 Association?

23 A Yes, sir.

24 Q Who do you recall at Texaco were members of the
25 Industrial Hygiene Association?

1 A Their principal industrial hygienist -- their
2 principal industrial hygienist was a gentleman named
3 Alan Dooley, who was in the Army -- I first met him in
4 the Army Laboratory at Johns Hopkins.

5 Q Do you know any other people who were on their
6 industrial hygiene staff?

7 A I don't recall any others on his staff. I --
8 and I can't think of the name of his Medical Director,
9 although I knew the Medical Director quite well.

10 Q I see. Would you expect -- what was the
11 fellow's name again?

12 A Alan Dooley.

13 Q Was Mr. -- was Mr. Dooley a pretty competent
14 person?

15 A Yes, sir.

16 Q Would you expect that Mr. Dooley and the people
17 on his staff, if Monsanto had been supplying the
18 appropriate information to Texaco, would be aware that
19 Aroclors contained PCBs?

20 A Yes, sir.

21 Q And if it turned out that Mr. Dooley and his
22 staff were not aware of the fact that Aroclors contained
23 PCBs, would that give you some concern about how
24 effective your program of getting information to
25 customers was?

1 A Excuse me. I -- I -- I have to correct you
2 again, sir. The -- the Aroclors did not contain PCBs.
3 They were a PCB.

4 Q I see. Well, let me ask the question again.
5 I -- I apologize for that.

6 If it turns out you discover that Mr. Dooley
7 and his staff at Texaco were not aware of the fact that
8 Aroclors were PCBs, would that give you some cause for
9 concern about how effective Monsanto's program of
10 getting information out to the customer was?

11 A If I knew that they were purchasers and users
12 of PCBs, I would think that their program had broken
13 down somehow.

14 Q Well, would it occur to you that maybe your
15 program at Monsanto had broken down somewhere, and you
16 ought to be trying to evaluate your own program to see
17 if maybe it wasn't as effective as it should be?

18 A I don't think that I ever saw a list of all of
19 the people who were customers of Aroclors.

20 Q That's not my question. Let me -- let me ask
21 it this way, if I can: If somebody at Monsanto came to
22 you and said, "Elmer, I've just found out that the
23 Industrial Hygiene Department at Texaco doesn't know
24 that Aroclors are PCBs," would that cause you to want to
25 try to investigate your information-generating and

1 -sending program to see if maybe there was a breakdown
2 that you needed to fix?

3 A No, sir.

4 Q Would you have felt any obligation at all to do
5 anything to figure out why in the world industrial
6 hygienists at Texaco didn't know that Aroclors were
7 PCBs, or would you just say, "Forget it. It's not my
8 problem"?

9 A I would say I believe that if the Texaco people
10 were buying and using the PCBs, then they were
11 practicing the procedures that we recommended to avoid
12 exposure.

13 Q Well, that's what you'd believe. I'm -- I'm
14 trying to ask a different question.

15 My question is: If you found out that
16 industrial hygienists in Texaco didn't know that the
17 Aroclors they were purchasing from Monsanto were PCBs,
18 would that cause you, as a Monsanto person responsible
19 for getting out information on safe handling and
20 toxicology, to want to try to find out what had gone
21 wrong and even consider the possibility that what
22 Monsanto was doing wasn't enough?

23 A I don't think so, sir.

24 Q Okay. You would simply assume that was their
25 problem, not your problem?

1 MR. SHOEBOTHAM: Mr. Wheeler, do you
2 want to take a quick break?

3 THE WITNESS: May I just answer this
4 question?

5 MR. SHOEBOTHAM: Sure.

6 A No, sir. I -- what I expect I would have done,
7 because Alan and I were such good friends, would have
8 been to pick up the telephone and say, "Are you aware
9 that your company is buying Aroclors and using
10 Aroclors?"

11 BY MR. LACEY:

12 Q Okay. I understand that, and -- and I would
13 certainly expect that you would do that. Now, my
14 question is: Would you then try to do a little bit of
15 investigation to figure out why he didn't already know
16 that?

17 A No, sir.

18 Q You wouldn't at all be concerned that these
19 five points in your program of getting information out
20 had failed up to that point in time?

21 A Not as the result of -- of one incidence, which
22 I think you've said "if."

23 Q Well, that -- that brings me back to the -- and
24 do you want to take a break now, or --

25 A Yeah, please.

1 Q Let's do.

2 A And clear my throat.

3 Q Let's do.

4 THE VIDEOTECHNICIAN: We're off the
5 record.

6

7 (Recess)

8

9 THE VIDEOTECHNICIAN: Okay. We've
10 been off the record for a short break.
11 We're now back on the record. The time is
12 10:47 a.m.

13 BY MR. LACEY:

14 Q Do you know who Mr. Sido was, S-i-d-o, in
15 Monsanto?

16 A S-i-d-o? Bob -- Bob Sido?

17 Q Yes.

18 A Yes. He headed up the -- well, originally,
19 he -- I -- I -- I've forgotten where he was originally,
20 but he was one of our representatives in the Washington
21 office; and then he came back to St. Louis and headed up
22 the labeling group, which was in, I guess, the Traffic
23 Department.

24 Q Was Mr. Sido the person that you and
25 Mr. Wheeler worked directly with on making sure that

1 labels had the appropriate information from the Medical
2 Department standpoint?

3 A I am Mr. Wheeler.

4 Q I'm sorry. Mr. Kelly. I apologize. Actually,
5 it's Dr. Kelly. Let's start that one over again. I've
6 trying to think how to pronounce "Sido," and I'm in
7 trouble.

8 MR. LACEY: Now, offhand -- this is
9 totally off the thing, but I was -- had
10 a bankruptcy case one time, and I
11 represented a bank. We were going real
12 hard after the -- the debtor, and we had
13 a -- a Disclosure Statement Hearing.

14 And we got up and -- to -- to just
15 make our announcements, and I'd just been
16 handed this pile of financial information
17 I had to go through to -- in order to make
18 the -- and I got up and announced that I
19 represented the debtor in the case,
20 because I was -- I was thinking about what
21 I was doing; I just wasn't thinking about
22 the -- so don't -- it's not the first time
23 I've ever blown the formalities.

24 MR. SHOEBOTHAM: Well, as long as you
25 were going to represent the debtor in that

1 case, you should have made a couple of
2 motions on his behalf.

3 MR. LACEY: Well, actually, the
4 debtor didn't like me too well. He wrote
5 a couple of letters to Ben Love about
6 the -- about the way the case was going,
7 so -- we won the case. We finally got it
8 resolved amicably.

9 BY MR. LACEY:

10 Q Was Mr. Sido the person with whom you and
11 Dr. Kelly dealt with in trying to get labels and product
12 information to contain the materials that you wanted
13 them to contain about safe handling and toxicology?

14 A Bob Sido; yes, sir.

15 Q Okay; Sido.

16 A Yes, sir.

17 Q Sido; okay. Did Mr. Sido have any role in the
18 actual wording of the information on the labeling?

19 A His role was to prepare or draft labels for
20 circulation to a number of people; to get comments,
21 corrections, additional information if necessary; and
22 see that the labels were then printed and supplied to
23 the plants that manufactured the product.

24 Q I guess I'm trying to find out whether he had a
25 role in selecting the wording, the cautionary wording.

1 A He may have drafted some of the material based
2 on previous labels for similar products. But we always
3 had the opportunity and obligation to make whatever
4 changes we felt were necessary or to ensure that the
5 final copy was in accordance with language which we
6 approved.

7 Q Did the salespeople have any role in the actual
8 language used on the warning labels?

9 A I don't think so, sir.

10 Q You don't recall any situations where the
11 salespeople might suggest that the warning be toned down
12 so as not to adversely affect sales?

13 A I can't think of any, sir.

14 Q You will agree with me, won't you, that the
15 stronger the warning language, the more likely it is to
16 have an adverse impact on the quantity sold. Correct?

17 A That was not our consideration.

18 Q No. That's not my question to you.

19 You can agree with me that that is true, can
20 you not?

21 A I don't think so, sir.

22 Q I see. Can you think of any reason why the
23 salespeople would have any input into what the warning
24 labels said?

25 A I would say that they did not have input. I'm

1 sure they were kept informed of the development of the
2 label. At what point in the development, I don't know.
3 It may well have been only after the label had been
4 approved and printed.

5 Q They wouldn't have any control over what labels
6 went on what products, though?

7 A Not to my knowledge.

8 MR. LACEY: I'll ask the court
9 reporter to mark this as an exhibit in
10 this deposition.

11
12 (Deposition Exhibit Wheeler 1 marked
13 for identification)

14
15 BY MR. LACEY:

16 Q Mr. Wheeler, let me hand you what's been marked
17 as Wheeler Deposition Exhibit 1 and ask you to take a
18 look at that memo (tendering). And I apologize for the
19 fact it's not a very good copy.

20 A Well, I believe I can make it out. I just
21 wanted to check. Is this August 1959? I guess -- is
22 that the date (tendering)?

23 Q That's what it appears to be to me; August
24 19th, 1959. And there's down here a reference to a memo
25 previous of August 17, 1959 (tendering).

1 A Thank you.

2 (Reviews document.)

3 I can't make out that (indicating) --

4 Q The name?

5 A Yes, sir.

6 Q P. E. something, but you're not sure who?

7 A It looks like P. E. something.

8 Q Meisler?

9 A Something-eisler, I would say.

10 Q I see.

11 A The name does not ring a bell with me.

12 What's this. "Current plant practice is to
13 store all the drugs and in" -- "standard 3 x 5-inch
14 white pressure sensitive labels with black printing are
15 available."

16 I don't remember that memo, sir.

17 Q Well, let me ask you about that memo for a
18 moment. Who on that memo, as either author or
19 recipient, was a member of the Medical Department?

20 A Dr. Kelly.

21 Q Okay. There are a number of other people
22 referenced on that memo, are there not?

23 A Yes, sir.

24 Q Can you tell me the names of the people and
25 what departments that they were in?

1 A I've already told you who Mr. Sido was.

2 Q All right.

3 A I don't recognize Sigler, this Reisler or
4 Meisler.

5 Paul Benignus was a development -- was involved
6 in development.

7 Q He was also involved in sales, was he not?

8 A I -- I think probably sales development, sir,
9 rather than --

10 Q Okay.

11 A -- rather than sales.

12 Q When you say "sales development," what is that?

13 A I -- I think I told you yesterday, sir, that
14 the standard practice was that Research would develop
15 new materials.

16 There would be some object -- the object -- the
17 object of the research was obviously to provide more and
18 better and different products. The research might be
19 related to possible plasticizer use, or a better fluid
20 for dielectrics, or what have you.

21 There would be certain tests done within the
22 company, and I suspect by prospective customers on very
23 limited quantities. And we would run acute toxicity
24 studies.

25 If there appeared to be commercial interest in

1 the product, then the product would be essentially
2 assigned to the development personnel to contact
3 potential users and discuss with them in detail the
4 benefits of the fluid, the fire protection, either a
5 change in the dielectric content, the difference in
6 physical and chemical characteristics, et cetera.

7 And Benignus, I think, would fit into that
8 category.

9 Q So he was sort of in a customer
10 development/sales function?

11 A Use development.

12 Q What I mean is that -- that when you talk about
13 sales development, you're talking about somebody who is
14 going out and trying to have new customers so Monsanto
15 can be able to sell more of that product. Correct?

16 A Yes, sir.

17 Q Okay. You can go ahead and identify the other
18 people, if you can.

19 A The name Gibson rings a bell, but I don't know
20 what his function was. And Dr. Kelly.

21 Q Where it says now Dr. Kelly, that's R. -- what
22 does it say? R. E. Kelly?

23 A R. -- R. K. Kelly.

24 Q R. K. Kelly?

25 A It looks like a K.

1 Q Well, is that section number -- it gives the
2 section number in the plant, doesn't it, where he is
3 located?

4 A Well, this -- it's preceded by "Dr. R."
5 Something "Kelly," and I -- I --

6 Q Was Emmet Kelly the only Dr. Kelly there at
7 Monsanto?

8 A Yes, sir. And -- and this A-209 designation
9 would indicate the mail drop for Dr. Kelly.

10 Q Okay. So that's just a typing error.

11 A Yeah.

12 Q All right.

13 A Newcombe, I believe, was in sales.

14 Bob Pohl was -- I -- I couldn't remember this
15 yesterday, but he was a plant manager at Anniston for
16 some period of time.

17 Q I see.

18 A Potter was obviously at the Krummrich plant.
19 I -- I don't know what his function was.

20 S. E. Sancey, S-a-n-c-e-y -- I don't recall
21 that name.

22 Q All right. Now, that memo was written by
23 Mr. -- I'm going to try to get it right -- Sido?

24 A Sido.

25 Q Sido.

1 A S-e-e-d-o, phonetically.

2 Q Okay; Mr. Sido.

3 A Or s-e-a, with the ocean.

4 Q Okay; Mr. Sido. Maybe that'll help me
5 remember. It's like the ocean.

6 That memo was written by Mr. Sido. Correct?

7 A Yes, sir. It's over his signature.

8 Q And it deals with the labeling that is supposed
9 to go on Aroclor products. Correct?

10 A Yes, sir.

11 Q And in that memo Mr. Sido is talking about
12 Sales having agreed to let certain particular cautionary
13 information go on products, is he not?

14 A Yes, sir.

15 Q And that, in fact, was the way that Monsanto
16 labeling worked, wasn't it?

17 A Not generally, sir; no.

18 Q So this memo is example of an exception to the
19 rule, instead of the rule?

20 A To my knowledge, because it refers to Inerteen,
21 which was not a Monsanto trademark product. I believe
22 it was a Westinghouse trademark product.

23 Q But Inerteen was manufactured by Monsanto,
24 wasn't it?

25 A I'm not positive that we made the formulation.

1 They used Monsanto's polychlorinated biphenyl, yes.

2 Q Yes.

3 Now, that memo makes it very clear that at
4 least with regard to these warning labels that are
5 discussed in that memo, that the Sales Department had
6 input in a decision-making process over what label went
7 on the PCB products discussed in that memo, doesn't it?

8 A I would say they did not have the final
9 decision over what went on the label.

10 Q They certainly had substantial input, didn't
11 they?

12 A They had some input, particularly because they
13 were dealing with a label for a customer's product.

14 Q Well, they didn't --

15 A And the chief -- the chief contact between
16 Monsanto and the customer would either be Paul Benignus
17 or -- or sales representatives.

18 Q Well, actually, they were dealing with a label
19 that was going to go on products that Monsanto sold to
20 customers, weren't they?

21 A If we sold Inerteen as such, sir.

22 Q Well, there are another list of products that
23 were sold there besides Inerteen, aren't there, that
24 memo dealt with?

25 A It says "PYRANOLS," yes, sir.

1 Q And there are others listed, aren't there,
2 besides Inerteen and Pyranols?

3 A It says, "AROCLORS - PYRANOLS" and -- and
4 "INERTEENS."

5 Q That's all the PCB products that Monsanto made,
6 isn't it?

7 A Well, I think the Aroclors was -- is referenced
8 here because they were in the Pyranols and Inerteens.

9 Q Well, let me see the memo for just a second.

10 A (Tendering.)

11 Q Doesn't the memo say -- and we can -- maybe I
12 can come over and we can look at it together. You
13 can -- you can sit there. I'll --

14 A I pulled this.

15 Q Uh-oh. Let me -- do you want me to help you
16 there? Let's see. It's under -- caught under your
17 foot. That's what our problem is.

18 A Oh. I'm sorry.

19 Q Okay.

20 The first sentence of the memo says, "Sales
21 have agreed," and then it references "(Mr. Paul
22 Benignus)" -- "to use the same Caution Statement for all
23 AROCLOR, PYRANOL, and INERTEEN containers." Isn't that
24 correct?

25 A Yes, sir.

1 Q So this memo deals with a statement that went
2 on all the PCB products that Monsanto was shipping out,
3 whether they went under the name Aroclor, Pyranol, or
4 Inerteen. Correct?

5 A I believe that's so. And the reason is my
6 recollection is that about this time there were state
7 laws being developed that said products containing
8 chlorinated hydrocarbons should so state.

9 And this developed because of research efforts
10 in the Los Angeles smog situation that indicated
11 chlorinated hydrocarbons played a role in the
12 development of the smog.

13 And I -- I suspect that in this case
14 Westinghouse said, "What are we going to do to comply
15 with the laws that are developing that indic- -- that
16 mandate that we must say they contain chlorinated
17 hydrocarbon?"

18 Q Well, let me just make sure I understand.
19 It -- it's your understanding that this memo is
20 discussing labels that you were making for your
21 customers to put on their products that they sold to
22 third parties?

23 A In the case of the Inerteen, certainly. I --
24 I -- I'm -- I can't recall whether Pyranol was a GE
25 trademark or not.

1 Q I -- I believe Pyranol was a GE trademark.

2 Well, let me make sure I understand this. Is
3 it your testimony that people at Monsanto decided what
4 information should be on the labels that were put on the
5 products sold by GE and Westinghouse that contained
6 PCBs?

7 A Yes, at their request.

8 Q I see. So you assumed that responsibility for
9 them and told them what to put on there?

10 A In this case. But I think, sir, you will find
11 that all of the other comments there are -- are standard
12 for PCB-containing materials, the only difference being
13 that the "Contains Chlorinated Hydrocarbons" was a new
14 statement.

15 Q And -- and with regard to that new statement,
16 the only reason Monsanto started putting that statement
17 on its PCB products is because State law in California
18 required you to do so. Correct?

19 MR. SHOEBOOTHAM: If you know,
20 Mr. Wheeler, but please don't speculate on
21 something like that that goes back to the
22 late 1950's.

23 A Well, my recollection is that California was
24 not the only state that was proposing such legislation.

25

1 BY MR. LACEY:

2 Q Okay. So there were states, California and
3 others, that were putting forward legislation that
4 required listing hydrocar- -- chlorinated hydrocarbons
5 on the label?

6 A Yes, sir.

7 Q And Monsanto changed its labels in response to
8 that legislation. Correct?

9 A Yes, sir.

10 Q And but for that legislation, Monsanto would
11 not have changed its labels. Correct?

12 A Not to use the words "chlorinated
13 hydrocarbons," because we were using the "chlorinated
14 biphenyls" terminology.

15 Q Okay. Now, at least with regard to this label
16 that was developed in response to this state
17 legislation, the Sales Department, and in particular
18 Mr. Benignus, had a role in deciding whether to use this
19 label on all PCB products, did he not??

20 A I'm not sure that's the case.

21 Q Well, let me hand you Wheeler Exhibit No. 1
22 again, and it says very clearly (tendering) -- and this
23 is Mr. Sido who's responsible for labeling at Monsanto.
24 Correct? Am I correct this is Mr. Sido's memo?

25 A Has agreed -- it says that Mr. Benignus has

1 agreed to use the following language; yes, sir.

2 Q So, clearly, Mr. Sido is indicating that the
3 question had been put to Mr. Benignus, "Is it agreeable
4 to use this label on all these products?" And he
5 finally agreed, "Yes, we'll use it on all these
6 products."

7 A I suspect, sir, the reverse is true; that
8 Mr. Benignus was contacted by the -- the Inerteen and
9 Pyranol folks and said, "What are we going to do to
10 comply with the law? Would -- would you agree that
11 the -- the simple wording, 'Caution: Contains
12 Chlorinated Hydrocarbons,' would be adequate?"

13 And I -- from this, I would say Mr. Benignus
14 agreed on the basis that the -- the producers of Pyranol
15 and Inerteen agreed (tendering).

16 Q I see. In any event, Mr. Benignus had a role
17 to play in deciding what cautionary statements went on
18 the warning labels. Correct?

19 MR. SHOEBOTHAM: In this particular
20 instance?

21 MR. LACEY: Yes, in this particular
22 instance.

23 A In this instance, yes.

24 BY MR. LACEY:

25 Q And this is the same warning label that was

1 used by Monsanto all the way from 1959 up until around
2 1970, isn't it?

3 A I don't know whether -- whether there were
4 other changes or not, sir.

5 Q I see.

6 Let me show you what was marked as Jones
7 Deposition Exhibit No. 1 (tendering) and ask you if you
8 recognize that as warning labels or stickers, whatever
9 you call them -- product labels -- used by Monsanto.

10 A (Reviews document.)

11 I don't recall this particular memo. I
12 would -- I would not have expected that --

13 Q Would not have expected what?

14 A Well, looking at the date, I -- I -- again,
15 I assume this relates to the change because of the
16 mandatory use of declaration of chlorinated
17 hydrocarbons, even though on the front we said
18 "chlorinated" -- "polychlorinated biphenyls."

19 Q Okay. Well, do -- do these labels, the first
20 page and the second page of Jones Exhibit No. 1, comport
21 with your recollection about the labeling used by
22 Monsanto on its PCB products; and do the dates on the
23 back correspond to your recollection of when these labels
24 started in use (tendering)?

25 A I don't know when the labels were -- when

1 the -- this particular label was originally used.

2 Q Well, is there anything about those labels and
3 the dating of them given on the back that you find to be
4 inconsistent with your recollection of labeling and when
5 it was used?

6 MR. SHOEBOOTHAM: Mr. Wheeler, please
7 don't feel compelled to speculate about
8 the labels. You've already told Mr. Lacey
9 that you don't remember these particular
10 labels and you're not sure about the
11 dates.

12 BY MR. LACEY:

13 Q My question to you is: Are they inconsistent?
14 Is there something that jumps out at you as being wrong
15 about the labels or the dating given on the back?

16 A No, sir.

17 Q Okay.

18 A (Tendering.)

19 Q Now, when labels were changed at Monsanto, was
20 it generally in response to either legislative action or
21 proposed legislative action?

22 A The only situation that I can recall is the use
23 of the words "chlorinated hydrocarbons," which we have
24 discussed.

25 Q Well, let me see if I understand that. Now,

1 let me just tell you that with regard to Jones
2 Deposition Exhibit No. 1, Warren Jones -- who was
3 retained by Monsanto in this case to give testimony, and
4 he was provided with this document by Monsanto -- has
5 testified that what he was told by the Monsanto people
6 who came -- the lawyers who came to visit him and
7 provided this material was that the dates on the back of
8 these exhibits show when these things went into use.

9 And his testimony was that the first page of
10 Jones Exhibit No. 1, which states, "This package
11 contains Paraclor, a chlorinated diphenyl technical.
12 Avoid repeated contact with skin and inhalation of the
13 fumes and dust," was a label that he understands from
14 what Monsanto told him was in use sometime prior to May
15 of 1947.

16 Is there anything about Mr. Jones' testimony in
17 that regard that's inconsistent with your recollection?

18 A Only that I would believe that under the -- the
19 material under your thumb at the top of the additional
20 page was also part of the label.

21 Q Well, what Mr. Jones testified that this second
22 page was an add-on sticker that went into use in
23 accordance with the information on the back, a
24 supplemental stick-on used with the first page beginning
25 in 1959. Is that your recollection?

1 A No, sir.

2 Q I see. Well, isn't it a fact that the second
3 page of Jones Exhibit No. 1, this supplemental stick-on
4 (tendering), is, in fact, the exact same label that is
5 referred to in Mr. Sido's memo that's been marked as
6 Wheeler Deposition Exhibit No. 1? And I'll hand you
7 Wheeler Deposition Exhibit No. 1 so you can compare the
8 language (tendering).

9 While you're comparing that, we'll stop so that
10 our technician can change the tape for us.

11 A Okay.

12

13 (Recess)

14

15 THE VIDEOTECHNICIAN: We're back on
16 the record after a tape change. The time
17 is now 11:16 a.m.

18 BY MR. LACEY:

19 Q Mr. Wheeler, have you had a chance to review
20 that second page of Jones Deposition Exhibit No. 1,
21 which is labeled on the back as the 1959 Supplemental
22 stick-on, with the language in Mr. Sido's memo of 1959,
23 which is Exhibit No. 1 to your deposition?

24 A Yes, sir.

25 Q Doesn't it appear that the language that

1 Mr. Sido in his memo indicated had been approved by
2 Mr. Benignus is the language that went on the
3 supplemental stick-on label?

4 A This section (indicating) appears to be word
5 for word this section in the Sido memo (indicating).

6 Q Uh-huh. When you say "this section," you mean
7 the -- the section at the top that says "Caution"?

8 A On the exhibit; yes, sir (indicating). I --
9 I -- is there any difference between these two?

10 Q I don't think so, but please feel free -- I
11 think those are two different labels, one large and one
12 small in size.

13 A They appear to be identical.

14 Q Okay. So, in fact, the supplemental stick-on
15 that Monsanto started using in 1959, in accordance with
16 Mr. Sido's memo, was the one that had been approved by
17 Mr. Benignus and the salespeople for all these products.
18 Correct?

19 MR. SHOEBOTHAM: Mr. Wheeler, if you
20 don't have some personal knowledge of
21 that, you're not required to speculate as
22 to it.

23 A My response would be speculative.

24 BY MR. LACEY:

25 Q Well, was the Medical Department responsible

1 for these labels and all these cautionary statements?

2 A Yes, sir.

3 Q I mean, when we get right down to it, the
4 second page of Jones Exhibit No. 1, there isn't anything
5 on there that wouldn't be the responsibility of the
6 Medical Department (tendering).

7 A That's right, sir (tendering)

8 Q Okay. And that meant you and Dr. Kelly, did it
9 not?

10 A Yes, sir.

11 Q And I understood you to say that you and
12 Dr. Kelly pretty much discussed in your business back
13 and forth what you did so that both of you were familiar
14 with it.

15 A Yes, sir, although I don't recall this specific
16 instance.

17 Q I see. Okay.

18 Were you still working with the labeling of
19 products in the 1970's, or had you basically left that
20 area to others?

21 A I don't recall the dates that the
22 responsibility was taken over by other -- by anybody
23 other than Dr. Kelly. My last recollection of
24 involvement in labeling related to the additions to the
25 PCB labels in relation to the potential environmental

1 disposal.

2 Q And -- and what led to those changes?

3 A Well, there was evidence that was being
4 developed originally in -- in Sweden that indicated that
5 by very, very refined analytical techniques, unknown
6 peaks in gas chromatograph mass spectrometry chemistry
7 appeared to be some of the isomers of the PCBs.

8 Q And Monsanto started being pressured by
9 environmental groups to do something to keep that
10 material from continuing to get into the environment.
11 Is that correct?

12 A Monsanto undertook a program to determine
13 the -- the facts and acted unilaterally to provide any
14 information and data, including even more sensitive
15 analytical techniques, to anybody that was involved in
16 the area.

17 We provided samples to hundreds of people, and
18 ultimately discontinued the production of those uses
19 where the eventual disposition under conditions that
20 could lead to environmental addition without pressure
21 from environmental groups.

22 Q So it's your testimony that Monsanto's
23 limitation of sales, additional labeling information,
24 and the like, was not in response to any pressure from
25 environmental groups?

1 A I think that's the case, sir.

2 Q Do you remember a Congressman named Congressman
3 Ryan?

4 A Yes, sir.

5 Q In fact, Congressman Ryan had introduced
6 proposed legislation as early as 1971 to ban PCBs
7 entirely, had he not?

8 A Yes, sir.

9 Q And part of Monsanto's action with regard to
10 PCBs was a response to proposed legislation to ban them
11 entirely, was it not?

12 A I beg your pardon?

13 Q Part of Monsanto's action in limiting the sales
14 of PCBs for certain uses, and so on and so forth,
15 changing the labeling with regard to environmental
16 hazards and handling, was in response to legislation
17 proposed by Congressman Ryan, was it not?

18 A I think to a minor degree.

19 Q Just like Monsanto changed its labeling in 1959
20 in response to legislation proposed by California and
21 other states. Isn't that true?

22 A The situations were not similar; because in the
23 '59 instance there was legislation not only proposed,
24 but I believe enacted.

25 Q And in Congressman Ryan's case, it was only

1 proposed and hadn't yet passed?

2 A I'm not sure it was even considered in the --
3 in the -- in the Congress.

4 Q I see. Monsanto was strenuously opposed to
5 Congressman Ryan's legislation, was it not?

6 A I can't answer that.

7 Q Monsanto made a substantial public relations
8 effort to suggest that Congressman Ryan's legislation
9 was not necessary, did it not?

10 A I believe it did, in terms of ensuring that
11 where no substitutes existed -- and I'm speaking of the
12 dielectric fluids and transformer fluids -- the safety
13 of the fluids in preventing fires, loss of life, took
14 precedent over the possibility that these materials were
15 getting into the environment from those uses.

16 And, in fact, their -- their prescribed --
17 what's the word I want for Government? -- specifications
18 in Government contracts that demanded the use of PCBs.

19 An example I was told was the use of floor tile
20 aboardship in the United States Navy. Any vinyl floor
21 tile had to be plasticized with PCBs to add fire
22 resistance and eliminate the possibility of problems
23 from that use.

24 More importantly, I was told that there were
25 building codes around the world --

1 Q You said you were told. Is this all hearsay to
2 you? You just were told; you don't know anything about
3 that personally, do you?

4 MR. SHOEBOTHAM: Well, let's let
5 Mr. Wheeler finish his answer, Mr. Lacey.

6 MR. LACEY: I'm going to object to
7 the responsiveness of the entire answer
8 when he gets through.

9 MR. SHOEBOTHAM: Well, I think the
10 answer --

11 MR. LACEY: And I'm also going to
12 object on the grounds that it's now
13 hearsay.

14 MR. SHOEBOTHAM: Well, I think the
15 answer is responsive.

16 MR. LACEY: All right.

17 MR. SHOEBOTHAM: And I would
18 appreciate your not interrupting the
19 witness.

20 A It's more than hearsay, sir, in that there was
21 an inter-Governmental task force organized that declared
22 the immediate phase-out of the use of PCBs in
23 transformers and capacitors that would not only upset
24 the whole economic system, but make the manufacture of
25 needed transformers and dielectrics with fire-resistant

1 characteristics impossible, because there was no
2 subsubstitute.

3 BY MR. LACEY:

4 Q Are you through with your answer?

5 A I beg your pardon?

6 Q Are you through with your answer?

7 A Yes, sir.

8 MR. LACEY: I'm going to object to
9 the responsiveness of the entire answer.

10 BY MR. LACEY:

11 Q Mr. Wheeler, I didn't ask you for the public
12 relations pitch that Monsanto gave. I simply want to
13 establish that Monsanto did engage in an extensive
14 public relations campaign by going out on public
15 speaking engagements, making technical presentations,
16 and the like, in opposition to the ban proposed by
17 Congressman Ryan on PCBs. Isn't that correct?

18 A I'm not sure it is, sir.

19 Q Do you recall appearing on WNBC News in March
20 or April of 1970 with Frank McGee, Dr. Frank Field,
21 Congressman Ryan, and Mr. Papageorge?

22 A I recall the interview. It was with
23 Mr. Fields, not with Ryan.

24 Q I see. So you don't recall appearing on --
25 maybe juxtaposed with -- on that program where -- where

1 you were interviewed on that program with Congressman
2 Ryan, Mr. Papageorge, Dr. Field, Frank McGee?

3 A No, sir. The interview was with Dr. Frank
4 Field. The only people who were interviewed were Elmer
5 Wheeler and Bill Papageorge.

6 Q I see.

7 A I learned that afterwards that although the
8 interview took a number of minutes to get an acceptable
9 tape, the coverage on Mr. Fields' NBC broadcast that
10 evening -- I guess the 7:00 o'clock news -- included
11 about 20 seconds of Mr. Wheeler.

12 And I believe it was the next day that I got a
13 call from Alan Dooley of Texaco Company, who said he'd
14 reached home in Connecticut and was watching the evening
15 news when all of a sudden Elmer Wheeler appeared on the
16 screen.

17 Q Did they -- did they do you justice on that
18 appearance?

19 A I never saw it, sir.

20 MR. SHOEBOTHAM: One question,
21 Mr. Wheeler, that Mr. Lacey posed to you
22 had to do with Congressman Ryan being
23 involved in the interview. I understand
24 he was not actually present when you and
25 Mr. Papageorge were there; but do you know

1 whether he had some remarks on the same
2 program, as well, that might have been
3 edited in or taped in or something?

4 THE WITNESS: I don't know.

5 A What happened was that Congressman Ryan had
6 announced a press conference, and Frank Fields called
7 our public relations representative in New York and
8 offered us the opportunity to present our views of what
9 he thought was going to be a -- statements by Mr. Ryan
10 that might be exaggerated or might, in fact, not be
11 true.

12 BY MR. LACEY:

13 Q I see. Well, let me ask about this. This
14 happened in the spring of 1970, did it not?

15 A I think you referenced the date, sir. I
16 believe that's right.

17 Q Okay. That's your recollection, is it not?

18 A Yes.

19 Q And it was in the spring of 1970 that
20 Congressman Ryan began the efforts to ban the use of
21 PCBs, was it not?

22 A I beg your pardon? He -- he began to --

23 Q The efforts to try to ban the use of PCBs, did
24 he not?

25 A I believe that's right.

1 Q And, of course, the vehicle he used was to try
2 to get a law enacted to accomplish that.

3 A Yes, sir.

4 Q And isn't it a fact that the actions that
5 Monsanto took, limiting the uses of PCBs for which it
6 would sell PCBs, were in response to the efforts of
7 Congressman Ryan to ban the use of PCBs in their
8 entirety?

9 MR. SHOEBOOTHAM: Objection. The
10 question has been asked and answered.

11 MR. LACEY: I don't believe it has
12 been answered.

13 MR. SHOEBOOTHAM: I believe it was.

14 BY MR. LACEY:

15 Q You can answer the question.

16 A I think I told you I don't think that that was
17 a major factor.

18 Q I see.

19 A The company had been working on substitute
20 products for months before Mr. Ryan appeared on the
21 scene.

22 Q Well, the company didn't actually stop selling
23 PCBs to anybody for any use until after Congressman Ryan
24 had sought publicly on national TV to institute an
25 effort to ban PCBs in their entirety, did it?

1 A I don't know that Mr. Ryan was ever on national
2 TV.

3 Q I see. Well, let's -- without regard to the TV
4 issue, it was not until after Congressman Ryan had his
5 press conference that you referred to, and started his
6 efforts to try to ban the use of PCBs in their entirety,
7 that Monsanto actually started restricting the sales of
8 PCBs, was it?

9 A I've forgotten the date, sir, that Monsanto --

10 Q I see.

11 A -- took their action.

12 Q I see. Okay.

13 Let me show you Jones Deposition Exhibits 31,
14 32, and 33. These are labels that speak to Interteen or
15 Inerteen. I'm not sure how you pronounce it. Let me
16 ask you to review those, just briefly (tendering).

17 A I -- I think it's Inerteen.

18 Q Inerteen?

19 A Inerteen --

20 Q Okay.

21 A -- I believe, is the pronunciation.

22 Q All right.

23 A (Reviews documents.) I'm trying to find a date
24 on here.

25 Q All right. I believe it's right on the back.

1 Unfortunately, these labels were not dated by Monsanto
2 when they went out, but we have from Mr. -- from
3 Dr. Jones the testimony the dates on the back were
4 represented to him by Monsanto representatives to be the
5 dates that those labels were used.

6 A Must I read each of them? Are the comments
7 exact?

8 Q Well, really, I have -- I have a more general
9 question. From those labels it's very clear, is it not,
10 that Monsanto was selling Inerteen?

11 A It says, sir, "Made for Westinghouse Electric
12 Corporation."

13 Q But the label has the big "M" for "Monsanto" on
14 it, doesn't it?

15 A Yes, sir.

16 Q And it shows it went on the container that
17 Monsanto was sending out with Inerteen in it, doesn't
18 it?

19 A Yes, sir.

20 Q So it wasn't just that Monsanto was
21 manufacturing PCBs that they sold to Westinghouse, which
22 then turned it into Inerteen; it was that Monsanto
23 itself was manufacturing and selling Inerteen.

24 A I -- I would prefer the word "blending." I
25 don't think there was any chemical reaction between the

1 bichlorinated biphenyls and the other materials.

2 Q Okay. Well, let me ask it a different way,
3 then. Monsanto manufactured all the component parts of
4 Inerteen and blended it together into the final product
5 and then sold it?

6 A That's not my understanding, sir.

7 Q Well, what is your understanding?

8 A That the chlorobenzenes that were used were
9 purchased, not manufactured by Monsanto.

10 Q I see. Monsanto manufactured the PCB component
11 of Inerteen --

12 A Yes, sir.

13 Q -- blended in other products it purchased from
14 chemical companies, and then sold it under the Inerteen
15 name?

16 A To the specifications of Westinghouse, yes,
17 sir.

18 Q And so if we go back to Mr. Sido's memo that
19 we've previously looked at, which has been marked as
20 Wheeler Deposition Exhibit No. 1, when the caution talks
21 about going on Aroclors, Inerteens, and Pyranols, it's
22 talking about going on products that were manufactured
23 and sold by Monsanto. Correct?

24 A Yes, sir.

25 Q All right.

1 A I don't recall ever seeing these labels, sir.
2 I don't know what the -- what the X -- I don't recall
3 ever having seen that on a Monsanto label (tendering).

4 Q Okay. Well, who in the Medical Department was
5 responsible for these labels at this time?

6 A 1971?

7 Q Yes.

8 A I presume I was.

9 Q But you don't recall seeing them?

10 A No, sir.

11 Q Do you suppose maybe the Sales Department was
12 still having some input into what the labels said and
13 how they looked?

14 A I can't say whether the normal procedure of
15 preparing labels were sent to the Sales Department for
16 comments.

17 MR. SHOEBOTHAM: Mr. Wheeler,
18 Dr. Kelly was still in the Medical
19 Department as of 1971, wasn't he?

20 THE WITNESS: Yes, sir.

21 MR. LACEY: Are you through with your
22 cross-examination?

23 MR. SHOEBOTHAM: I -- I -- do you
24 want me to ask some more questions.

25 MR. LACEY: No. I really would

1 prefer to do my own examination, and you
2 can do yours when I get through.

3 MR. SHOEBOOTHAM: Well, I -- I
4 appreciate that.

5 BY MR. LACEY:

6 Q Let me hand you a document, 18731 through
7 18737, and ask if you've seen that before (tendering).

8 A Do you know the date of this, sir?

9 Q My question to you is: Have you ever seen it
10 before?

11 A I don't recall seeing it as such, sir.

12 Q I see. This is a document that deals with the
13 toxicology and safe handling of Monsanto Aroclor, is it
14 not?

15 A That's the title of it; yes, sir.

16 Q Documents that dealt with that topic were to be
17 generated and approved by the Medical Department of
18 Monsanto, were they not?

19 A I'm not sure the word "generated" is right,
20 because I think that indicates that we proposed the --
21 the document; whereas, it's more likely that somebody
22 proposed that we needed a document, and then the Medical
23 Department proceeded to participate in the development
24 of it.

25 Q Okay. Well, then the way it worked, the

1 Medical Department itself didn't necessarily propose
2 that such a document might be needed, but would, after
3 the proposal was made, be involved in generating it.
4 Correct?

5 A Oh.

6 Q What's the "Oh" about? Is that an answer to my
7 question, or --

8 A No, sir, but I think it relates to an earlier
9 question.

10 Q All right. What's that?

11 A You asked if I'd seen this document, and I said
12 I didn't recall seeing it; and perhaps the reason is
13 that this was -- according to this, this was developed
14 at -- at Monsanto Europe.

15 Q How are you able to tell that?

16 A Well, it would appear here it says, "Monsanto
17 House, number, Victoria Street, London, South Wales."

18 Q And -- and what does that tell you about the
19 document, sir?

20 A Well, I would think it -- it -- it means that
21 it was generated in Great Britain.

22 Q Was the Medical Department responsible for the
23 information distributed in Great Britain about the
24 toxicology and safe handling of PCBs?

25 A Not routinely, sir.

1 Q So the people in Europe, then, who worked for
2 Monsanto were free to develop their own information
3 about the toxicology and safe handling of PCBs; and it
4 might be different than that supplied in the United
5 States?

6 A I believe that's correct, sir.

7 Q Okay. Is -- let me ask you to review that
8 document and tell me if there's anything in that
9 document that you believe is factually incorrect.

10 A This is going to take some time, sir.

11 MR. SHOEBOTHAM: Why don't we go off
12 camera and give him an opportunity to --

13 THE WITNESS: I -- I never took Speed
14 Reading.

15 MR. LACEY: Well, do you want a take
16 an early lunch break? Do you want to save
17 this to the lunch break? I'm not quite
18 sure how to --

19 MR. SHOEBOTHAM: Why don't we -- why
20 don't we go off camera and just take a
21 break? It's a little early for a lunch
22 break.

23 MR. LACEY: Okay. That's fine.

24 THE VIDEOTECHNICIAN: We're off the
25 record.

(Recess)

THE VIDEOTECHNICIAN: Okay. We've been off the record for a short break. We're now back on the record. The time is 12:14 p.m.

BY MR. LACEY:

Q Mr. Wheeler, have you had a chance to review this document on the toxicology and safe handling of Monsanto Aroclor, Document 18731 through 18737?

A Let's see. 18733 through -37, did you say?

Q -31; the first page, if you'll flip back. I just numbered it --

A Oh, the first page --

Q -- and there's still a --

A Yeah. Yeah. Oh, the first page --

Q There's still one more page.

A Oh, I'm sorry. Yes, sir; yes, sir.

Q Have you had a chance to review it?

A Yes, sir.

Q Do you find anything in there with which you disagree?

A No, sir.

Q So, then, in terms of the statements contained about, for example, precautions in the use of Aroclors

1 and the toxicology of Aroclors, you would find all of
2 those things to be appropriate statements?

3 A I would say they were consistent with the type
4 of document that we would have prepared in -- in
5 St. Louis, for the most part; yes, sir.

6 Q Now, did you ever have -- well, strike that.
7 Was this document used in the United States?

8 A I don't know, sir. I've never seen it before.

9 Q To your knowledge, was it used in the United
10 States?

11 A No, sir.

12 Q You've indicated you think that this document
13 was generated in England?

14 A Yes, sir.

15 Q Did, to your knowledge, Monsanto have a
16 document like this on toxicology and safe handling that
17 it distributed in the United States?

18 A I believe we did, sir.

19 Q A document which dealt only with the subject of
20 toxicology and safe handling?

21 A I'm not sure that's the case sir.

22 Q Well, that's what I was really asking about.

23 A I'm -- I'm sorry. I -- I don't recall.

24 Q And this document is one that is limited solely
25 to toxicology and safe handling, is it not?

1 A I beg your pardon?

2 Q This particular document, 18731 through -737,
3 is limited solely to the toxicology and safe handling of
4 Aroclors, is it not?

5 A Yes, sir.

6 Q And it is the type of document that would be
7 very suitable for distribution to Industrial Hygiene,
8 Toxicology, and Medical Departments of customers that
9 bought PCBs from Monsanto, would it not?

10 A If they did not receive other documents that
11 had the similar information.

12 Q Well, no. My -- my question is: This type of
13 document would be very suitable for distribution to
14 those sorts of people, would it not?

15 A It would convey information perhaps in a
16 different form than we did -- did prepare -- did provide
17 it to people.

18 Q Well, again, that's not my question.

19 I'm just trying to find out if there's anything
20 about this document that makes it not suitable for
21 distribution to customers, industrial hygienists,
22 toxicologists, and Medical Departments.

23 A I don't see any.

24 Q Okay. And as a document that dealt solely with
25 toxicology and safe handling, that's the specific

1 information that an industrial hygienist or a
2 toxicologist or a medical officer of a customer would
3 want to look at. Correct?

4 A Yes, sir.

5 Q He wouldn't be particularly interested in
6 details of the types of plasticizers it could go into or
7 anything like that, would he?

8 A That -- that's not quite true, sir, because --

9 Q I see.

10 A -- if they were going into plasticizers, they
11 certainly would be interested in what the end use of the
12 plast- -- of what the end use of the product was.

13 Q And that's because industrial hygienists have a
14 responsibility to know what the end uses of their
15 products are?

16 A I think that's correct; yes, sir.

17 Q And to take those end uses into account in
18 preparing any warnings or directions that might go on
19 those products. Correct?

20 A I can't say, sir, where the end of that
21 responsibility lie.

22 Q But, certainly, some of the responsibility, as
23 I understand your testimony, lies with the industrial
24 hygienist and the Medical Department to know about end
25 uses and to have appropriate warnings and instructions

1 to protect people who are end users. Correct?

2 A Yes, sir.

3 Q Now, as far as you know, all of the United
4 States literature on toxicology and safe handling of
5 PCBs was contained in -- to the extent they were
6 Technical Bulletins like this -- in Technical Bulletins
7 that had much other information besides toxicology and
8 safe handling, was it not?

9 A I can't recall, sir, whether there was an
10 equivalent booklet on just toxicology and safe handling
11 prepared for U. S. distribution.

12 Q You do remember many Technical Bulletins that
13 covered many other topics, though, besides just
14 toxicology and safe handling?

15 A Oh, yes, sir.

16 Q And you do not recall, do you, any Technical
17 Bulletins that contained other information in addition
18 to toxicology and safe handling having as much detail as
19 Document 18731 through 18737 had on toxicology and safe
20 handling, do you?

21 A I don't recall that there was such a bulletin.

22 Q Okay. Your recollection today is that you
23 don't recall one. Correct?

24 A That's right.

25 Q And, of course, if you had a bulletin that had

1 the toxicology and safe-handling information buried
2 somewhere in it, it would not be as easy a reference for
3 an industrial hygienist or a toxicologist or a medical
4 officer as a single-purpose bulletin containing all that
5 information in one ready reference, would it?

6 A Certainly, a bulletin like this would highlight
7 the data that were summarized in other bulletins.

8 Q Okay. And, if you will, turn with me to the
9 page that has the number 18734 on it.

10 THE WITNESS: Do you want to look at
11 this, John?

12 MR. SHOEBOOTHAM: Certainly.

13 A I'm open to that page, sir.

14 BY MR. LACEY:

15 Q And do you see the section that talks about
16 precautions?

17 A Yes, sir.

18 Q Note at the very last portion of that section
19 there are two lines that are in all capitalization.
20 Correct?

21 A Yes, sir.

22 Q The main section is not in all caps, is it?

23 A No, sir.

24 Q And at the end it says in all caps, "YOU HAVE
25 READ THIS." Now, that is designed for the person that's

1 actually seeing the bulletin to catch his attention that
2 he's read this material on precautions. Correct?

3 A Yes, sir.

4 Q And then it asks the question, "DOES THE MAN ON
5 THE JOB KNOW HOW TO HANDLE THESE PRODUCTS?" Is that
6 correct?

7 A Yes, sir.

8 Q The point of that being in all caps there and
9 with that question is to convey to the industrial
10 hygienist or medical officer or toxicologist who's
11 reading this type of bulletin the importance of getting
12 the information he's just read about precautions down to
13 the men in his plant who are actually working with the
14 product. Isn't that correct?

15 A In Great Britain, yes, sir.

16 Q Well, that's something that's important
17 wherever the medical person or the industrial hygienist
18 may be to emphasize to him the importance of getting the
19 precautionary information to the people who are actually
20 working with the product.

21 A I don't know, sir. The capacity or -- excuse
22 me -- the expertise of the people in our -- in the
23 customer's plants for the Great Britain production -- I
24 can't -- I don't know the purpose that they prepared
25 this bulletin.

1 I feel very strongly that as far as the United
2 States was concerned, our efforts in presenting
3 precautionary information and warnings were adequate.

4 Q Well, that's not my question to you,
5 Mr. Wheeler.

6 MR. LACEY: And I object to the
7 responsiveness of that answer.

8 BY MR. LACEY:

9 Q My question to you is: It is important that
10 the industrial hygienist, the toxicologist, or the
11 medical officer make sure that the precautionary
12 information he's aware of with regard to products that
13 his workers are going to be handling actually gets to
14 the workmen and is put in use. Isn't that correct?

15 A I would think so, yes, sir.

16 Q The fact that the industrial hygienist or the
17 toxicologist or the medical officer may know what
18 precautions should be taken doesn't protect a single
19 workman unless those precautions are put into place,
20 does it?

21 A Would you phrase that again?

22 Q Surely. The industrial hygienist or the
23 toxicologist or the medical officer for a company knows
24 how to protect the workers at that company --

25 A Yes, sir.

1 Q -- from the dangers of the product they're
2 working with. That knowledge doesn't do those workers
3 any good, unless the industrial hygienist, toxicologist,
4 or medical officer makes sure that those precautions are
5 actually put into practice in the plant. Isn't that
6 correct?

7 A I can't speak for the practice in plants
8 outside of Monsanto. The responsibility may well have
9 been with the production supervisors.

10 Q Well, I'm not trying to talk about who had the
11 responsibility. My point is: The fact that the
12 industrial hygienist for a company knows what the
13 hazards of a product are and how to protect the workers
14 at that company from being injured by the product
15 doesn't -- doesn't do the workers any good unless the
16 precautions are put into effect, does it?

17 A That's correct.

18 Q Okay. And what this all-capitalization
19 statement on Document No. 18734 emphasizes is the
20 importance of the person who's reading this document --
21 people like industrial hygienists, toxicologists,
22 medical officers -- of getting the warnings and the
23 precautions into the plant to protect the workmen.
24 Correct?

25 A Sir, I think you referred specifically to this

1 document, and again I say, I -- I don't know who got
2 these documents in Great Britain. I'm not sure that the
3 practice of industrial hygiene had developed to the
4 point that there were industrial hygienists in the plant
5 that -- that received this information.

6 Q Fine. Let me broaden my question for you,
7 then. It's clear that this document was not intended to
8 be handed to individual workmen in the plant, isn't it?

9 A I believe that's right, sir.

10 Q Okay. It's clear that it was intended to go to
11 the appropriate personnel who had the ability to put
12 into place work procedures to protect workmen. Isn't
13 that correct?

14 A Yes, sir.

15 Q And the point of this bold-capitalization
16 statement at the end of the precautions section on
17 Page 18734, or Document No. 18734, was to emphasize to
18 the people who were reading this the importance of
19 making sure that these precautions were actually put
20 into practice.

21 A Yes, sir.

22 Q Okay. Now, these precautions were very
23 specific, were they not? You may want to look at them
24 again.

25 A (Reviews document.)

1 I would say they were specific; yes, sir.

2 Q For example, they specifically instructed that
3 one should wash well with soap and water before smoking
4 a cigarette.

5 A Yes, sir.

6 Q One should wash well with soap and water before
7 taking a drink.

8 A Yes, sir.

9 Q And one should wash well with soap and water at
10 the end of the shift.

11 A Yes, sir.

12 Q They were very specific that if someone came
13 into contact with Aroclor on his skin, it should be
14 washed off immediately.

15 A Yes, sir.

16 Q And they point out the importance of doing it
17 immediately, do they not?

18 A The word "immediately" is used. It's not
19 emphasized.

20 Q But the word "immediately" is used. Correct?

21 A Yes, sir.

22 Q It specifically points out that hand tools that
23 have been in contact with Aroclors should be cleaned,
24 does it not?

25 A Yes, sir.

1 Q It specifically states that if Aroclor is
2 spilled on the bench or floor, it should be cleared up
3 immediately. Correct?

4 A Yes, sir.

5 Q It provides that any cloths or rags used to
6 clean up Aroclor should be destroyed.

7 A Yes, sir.

8 Q It provides that oil-resistant gloves should be
9 used to protect the hands.

10 A Yes, sir.

11 Q Those are all very specific precautions set
12 forth in this document on the toxicology and safe
13 handling of Monsanto Aroclor.

14 A Yes, sir.

15 Q And this is a document that Monsanto produced
16 in its English operation?

17 A Yes, sir.

18 Q To your knowledge, did the United States
19 operation of Monsanto have any document giving as much
20 specific detail about precautions to be used in the
21 handling of Aroclors intended for United States
22 customers?

23 A I don't recall any, sir.

24 Q Can you agree with me that in retrospect,
25 having precautions in the level of detail provided in

1 this document that was put out by Monsanto in Great
2 Britain was a good idea?

3 A I would say in the case of Great Britain, a --
4 the people involved thought it was a good idea.

5 In this country, I would say that we felt that
6 business -- manufacturing operations and handling
7 operations, shipping operations, were such that we
8 accomplished the avoidance of injury without such
9 detailed precautions spelled out.

10 Q Did you ever go and visit any plant of a
11 customer who purchased PCBs from Monsanto?

12 A Yes, sir.

13 Q What plants did you go visit personally?

14 A I visited a dielectric plant in Wisconsin. I
15 believe it was Milwaukee.

16 Q Who was the customer?

17 A I -- I -- I can't recall the name.

18 Q That's fine.

19 A I think they were probably the third-largest
20 producer of capacitors, following General Electric and
21 Westinghouse.

22 Q Okay. Did you inspect the operations at that
23 plant where the workmen were actually producing
24 capacitors?

25 A Where they were doing what, sir?

1 Q Where they were actually manufacturing
2 capacitors.

3 A I visited a specifying area where the
4 capacitors, after being built, with the layers of
5 materials that are in a capacitor -- excuse me -- the
6 capacitor had been filled with one of the Aroclor
7 dielectric fluids; and I don't know whether it was
8 Pyranol Askarel, or what.

9 The units were then placed in an oven that was
10 almost the size of a walk-in oven. And I'm -- I
11 don't -- I'm not sure "oven" is the correct word; but,
12 anyway, a chamber in which the temperature was raised.

13 And I believe the purpose was to ensure
14 impregnation of the material, the solid material in
15 the -- in the capacitor with the mixture of -- I believe
16 it was a 1242 and a chlorinated benzene.

17 After a period of subjecting the dielectric --
18 I'm sorry -- the capacitor to elevated temperatures --
19 and I've forgotten what those were --

20 THE WITNESS: Did I lose my mike
21 again? I'm sorry.

22 BY MR. LACEY:

23 Q Let me help you. There you go.

24 A The doors of the heating chamber were opened --
25 and I think these were large capacitors that were on

1 dollies or mobile equipment -- were removed; and then
2 where they went from there, I'm not sure.

3 But the workmen had complained of irritation to
4 the eyes from the vapors that were released when they
5 opened this chamber after the heating process. And that
6 was the only complaint.

7 My recommendation was that they provide means
8 of withdrawing those vapors that had been released
9 during the heating to the outside before the doors were
10 opened so that it would not get into the work room.

11 Q So you did actually observe the workmen working
12 with the -- the PCBs in the workplace?

13 A In this instance, yes, sir.

14 Q Okay. And you found a process being used by
15 that manufacturer that you would not personally approve
16 of; and, therefore, you recommended changes?

17 A Yes, sir.

18 Q Was it your impression that the warnings that
19 had been previously provided by Monsanto in its
20 Technical Bulletins and on its warning labels should
21 have been sufficient to advise this customer of the fact
22 that the process they were using before you got there
23 was one that you thought was inappropriate?

24 A Was inappropriate?

25 Q Yes.

1 MR. SHOEBOTHAM: Do you understand
2 the question, Mr. Wheeler? I'm not --

3 THE WITNESS: I -- I -- I'm a little
4 confused. I'm --

5 BY MR. LACEY:

6 Q Let me make it very clear.

7 A Okay.

8 Q You concluded that what they were doing was not
9 appropriate?

10 A That's right.

11 Q And you recommended a change?

12 A That's right.

13 Q Now, my question to you is whether it was your
14 opinion that that customer should have been able to
15 determine solely from the literature that you provided
16 to them, Technical Bulletins and warning labels, that
17 the process they were using was inappropriate.

18 A Was inappropriate?

19 Q Yes.

20 A Yes, sir.

21 Q And so you were able to see in that
22 circumstance that despite warning labels that you
23 thought should be adequate and Technical Bulletins that
24 you thought should be adequate to tell the customer what
25 they were doing wasn't appropriate, for whatever reason

1 those labels and those Technical Bulletins had not
2 caused the customer to reach that conclusion. Correct?

3 A In this instance.

4 Q And it took a personal visit from you to
5 determine the problem and cause the customer to change
6 his conduct. Correct?

7 A Yes, sir.

8 Q What other plants did you visit where PCBs were
9 being used?

10 A I visited a similar plant in Sweden that was
11 not having any problem.

12 Q Did they purchase PCBs from Monsanto?

13 A I believe they purchased some from Monsanto
14 Limited, although they may have also bought some from
15 Germany or France. And I visited that plant in
16 conjunction with the prevention of allowing the PCB to
17 escape into the environment.

18 Q Now, when you say --

19 A I beg your pardon.

20 Q I'm sorry.

21 A Well, I was going to mention another plant, but
22 if you --

23 Q Well, let me do one plant at a time.

24 A All right.

25 Q That -- that's easiest for me to do.

1 A Yes, sir.

2 Q Now, this plant, you said, was buying PCBs from
3 Monsanto Limited?

4 A If they were buying it from Monsanto, it would
5 have been from Monsanto Limited.

6 Q And that would have been the English group?

7 A Yes, sir.

8 Q So if this customer were buying PCBs, they
9 would have been buying them from the portion of Monsanto
10 that was the one that put out this bulletin we've
11 previously talked about, 18731 through 18737. Correct?

12 A I don't know the date of this bulletin. I
13 was -- I visited that plant in spring of -- I guess it
14 was May 1970.

15 Q Yeah. My -- my question to you wasn't the date
16 of the bulletin. My question to you was: They were
17 buying from the same Monsanto division or group that put
18 out the bulletin, 18731 through 18737?

19 A That's right.

20 Q Now, to try to date this bulletin, one of the
21 things that we can do is look in the bulletin to see if
22 we can find anything that for it to be true, would have
23 to indicate it was written about a certain time. Isn't
24 that correct?

25 A In reading through it, sir, I don't see

1 anything that would allow me to put a date on it.

2 Q Well, let me -- let me direct your --

3 MR. SHOEBOTHAM: Mr. Wheeler has also
4 testified that he had never seen this
5 document before today; so I think any
6 testimony from him as to the circumstances
7 of its publication, or when it was put
8 out, or who it went to, or whether it went
9 to --

10 MR. LACEY: I see.

11 MR. SHOEBOTHAM: -- the plant in
12 Sweden would be pure speculation --

13 MR. LACEY: I see.

14 MR. SHOEBOTHAM: -- on his part, and
15 I would object to any questions on that --
16 in that regard.

17 MR. LACEY: Okay.

18 BY MR. LACEY:

19 Q Well, let me direct your attention to Page
20 18733, the introduction. In the second sentence of the
21 introduction, it states that these compounds -- talking
22 about Aroclors or PCBs -- "have been used safely in
23 industry throughout the world for over 30 years." Do
24 you see that statement?

25 A Yes, sir.

1 Q PCBs started being used about 1930, did they
2 not?

3 A I believe the GE patent was dated in 1929.

4 Q That would be about 1930, then?

5 A Yes, sir.

6 Q And if you add 30 years to 1930 or thereabouts,
7 you'd come up about 1960. Correct?

8 A I -- as I read this, it says the compounds were
9 used throughout the world for 30 years. I -- I'm not
10 sure that this dates the use in Great Britain.

11 Q Well, it doesn't -- it actually doesn't talk
12 about the use in Great Britain at all, does it?

13 A It says that they're -- are manufactured in
14 this country and "have been used safely in industry
15 throughout the world for over 30 years."

16 Q "Throughout the world" would include the United
17 States, wouldn't it?

18 A Yes, sir.

19 Q Okay. And if you look at the 30-year period,
20 you're looking at sometime after 1960, aren't you?

21 MR. SHOEBOTHAM: You're asking
22 Mr. Wheeler to speculate as to the date of
23 this bulletin that he has never seen
24 before today?

25 MR. LACEY: No. I'm not -- I'm

1 asking nothing about the date of the
2 bulletin, Mr. Shoebottom.

3 BY MR. LACEY:

4 Q I'm asking about when could one truthfully --
5 when could Monsanto truthfully make the statement that
6 "PCBs have been used in industry throughout the world
7 for over 30 years." It would have to be sometime after
8 about 1960, wouldn't it?

9 A Based on their introduction, I guess, in 1930,
10 that -- that's an assumption.

11 Q Well, it's not -- it's more than an assumption.
12 I mean, you couldn't truthfully say they had been used
13 for more than 30 years in 1950, could you?

14 A I beg your pardon?

15 Q If you made the statement in 1950 that PCBs had
16 been used for more than 30 years in industry, that
17 wouldn't be a true statement, would it?

18 A I'm -- I believe that's correct.

19 Q Okay. Now, the -- the use or the reference to
20 the number of years that PCBs have been used in industry
21 was a frequent statement made not only in Great Britain,
22 but also in United States publications about PCBs, was
23 it not?

24 A Yes, sir.

25 Q You and Dr. Kelly had those types of statements

1 included in documents that you had put out, did you not?

2 A Yes, sir.

3 Q And you would update the number of years that
4 you've referred to PCBs having been used from time to
5 time in using those publications, would you not?

6 A I presume we did.

7 Q Okay. And so, for example, when you reached
8 the 40-year mark, you would say, "PCBs have been used
9 for more than 40 years," didn't you?

10 A I suspect that we did; yes, sir.

11 Q Okay. So, assuming that -- and we are making
12 an assumption at this point -- but assuming that that
13 was the practice that the people in England used, too,
14 this document would have gone out sometime in the
15 1960's, wouldn't it?

16 A That's a logical conclusion.

17 Q Okay. And if we then assume that this customer
18 at this Swedish plant that you went to see in 1970
19 bought PCBs from Monsanto, and that -- and we're talking
20 about bought them from Monsanto Limited, the English
21 outfit -- and the Monsanto people there did what you
22 endeavored to do in the United States, which was give
23 Monsanto customers the appropriate Technical Bulletins,
24 then those -- that Swedish plant should have had
25 Document 18731 through 18737. Isn't that correct?

1 MR. SHOEBOTHAM: I object to the form
2 of the question.

3 It calls upon Mr. Wheeler to rankly
4 speculate as to, first of all, the date of
5 the publication. Just because it came
6 after 1960 does not in any way date the
7 document or indicate that it came before
8 or after Mr. Wheeler's visit to the plant.

9 Secondly, Mr. Wheeler's testified he
10 hasn't seen the document before today.

11 Thirdly, Mr. Wheeler has no personal
12 knowledge as to whether the plant in
13 Sweden had this bulletin or not. It
14 clearly calls upon him to speculate.

15 A I might add I have no idea what the
16 distribution of that document was.

17 MR. SHOEBOTHAM: Why don't you repeat
18 your answer, Mr. Wheeler?

19 A To add to Counsel's three points, I would say,
20 in the fourth place, I have no idea what the -- the
21 distribution of that document was.

22 BY MR. LACEY:

23 Q Well, let me -- again, I -- I'm not asking you
24 what the distribution of it was. I'm asking to
25 understand the process that Monsanto used, and let's

1 just stop and do that, because that's what I want to
2 accomplish.

3 If this document were written in the same form
4 that documents were written in the United States -- that
5 is, using the reference to the number of years of use --
6 it would be logical to date this document sometime in
7 the 1960's, would it not?

8 MR. SHOEBOOTHAM: I believe the
9 testimony from Mr. Wheeler was after 1960.

10 MR. LACEY: No, I believe the
11 testimony -- well, let's ask the question
12 so we're clear.

13 BY MR. LACEY:

14 Q It would be logical to date the document
15 sometime in the 1960's, would it not?

16 A I think that's right.

17 Q Okay. Now, you visited the Swedish plant in
18 1970 --

19 A Right.

20 Q -- after the conclusion of the 1960's.

21 A Yes, sir.

22 Q Okay. And if that Swedish plant were
23 purchasing PCBs from Monsanto, they would have been
24 purchasing them from the English group. Correct?

25 A I believe that's right, sir.

1 Q And if the English group had been selling PCBs
2 to this Swedish plant and distributing literature on
3 safe handling and toxicology in accordance with the
4 Monsanto practice, they should have distributed by the
5 time you got to the Swedish plant to that customer a
6 copy of Document 18731 through 18737. Correct?

7 MR. SHOEBOTHAM: Same objections as
8 stated earlier. It calls upon Mr. Wheeler
9 to speculate.

10 BY MR. LACEY:

11 Q You can answer the question.

12 A I can't answer it, sir, because I -- by the
13 time I saw the plant, there was great concern in Sweden
14 about the environmental aspects and what -- when the --
15 when the plant was providing the kind of production
16 facilities that I saw, when those were introduced, I
17 don't know.

18 Q That's not my question. My only question was
19 whether the -- if Monsanto's English operation was doing
20 what it was supposed to be doing, which was supplying
21 technical literature like Document 18731 through 18737
22 to the customers it sold to, if this Swedish plant
23 bought Monsanto PCBs, then they should have also gotten
24 a copy of this document?

25 A I would believe that they would have gotten a

1 copy of that document.

2 Q Okay. And when you observed this Swedish plant
3 in the 1970's, you didn't find anything about their work
4 practices that you thought needed to be changed.

5 Correct?

6 A That's right.

7 Q Okay. Now, with regard to --

8 A May I add a comment? My observation included
9 visual handling of the capacitors, again going into a
10 drying oven and being removed, and -- and ventilation
11 was being supplied. I don't know that they were wearing
12 gloves; I don't know that they were protective clothing,
13 or barrier creams, or any of the other procedures that
14 would help reduce exposure.

15 Q But whatever it was you saw was not sufficient
16 that caused you, as an industrial hygienist for
17 Monsanto, to recommend changes in the work procedures?

18 A That's correct.

19 Q What other plants -- you mentioned there are
20 other plants you visited. What other plants have you
21 visited?

22 A I -- I mentioned plants originally, sir. I
23 visited one other plant. I visited a total of three
24 plants.

25 Q Okay. We've discussed the Wisconsin capacitor

1 plant --

2 A Yes, sir.

3 Q -- for -- for somebody other than Westinghouse
4 or GE?

5 A Yes, sir.

6 Q We've discussed the Swedish plant?

7 A Yes, sir.

8 Q Which was the third plant?

9 A The third plant was the plant of Mobil Oil
10 Company in New Jersey.

11 Q And when did you visit that plant?

12 A I don't recall the date, sir.

13 Q Do you recall even the decade that the visit
14 took place?

15 A I believe it would have been maybe mid-'60's.

16 Q By the way, I don't think I asked you, and I
17 need to do that: What date, approximately, was it that
18 you visited this capacitor plant in Wisconsin?

19 A I would say in the '60's sometime.

20 Q And -- and what was it that this Mobil Oil
21 Company plant in New Jersey was doing?

22 A The plant was making catalyst for cracking oil
23 to produce the desired fractions. And I think from
24 Texas you know what cracking is.

25 Q I have a -- I have an understanding of what's

1 involved in that.

2 A Probably better than mine. But, anyway, the
3 operation involved making small pellets of material, and
4 I don't recall what it was. The pellets, for want of a
5 better description, looked like frog's eggs or tapioca.

6 Q Okay.

7 A Perhaps a little larger in size, but not bigger
8 than a small dried pea.

9 The formation apparently was at -- at elevated
10 temperatures and -- to permit the catalyst to become
11 solid and -- and strong and -- I don't know that I saw
12 any of the finished ones, but let me say probably as
13 hard as a -- as a dried pea.

14 They were put in large tanks or vats that may
15 have been six to seven feet in diameter and eight to ten
16 feet in depth. And one of the Aroclors -- I believe it
17 was 1242 -- was used as a fluid in these open tanks to
18 allow these particles to become firm and -- and hard.

19 I was asked to look at the operation because
20 they had had several cases -- two or three cases, I
21 believe -- of chloracne or skin rash, and I can't recall
22 that it was necessarily chloracne. But they did have
23 skin problems on the arms and hands and in the groin
24 area.

25 This was not typical of most chloracne cases.

1 Most chloracne, I think, from other causes, from other
2 materials, developed around the neck and face and caused
3 blackhead-type eruptions, rather than other types of
4 skin reactions.

5 In any case, it turned out that the -- one of
6 the steps in determining how the pellets were
7 solidifying or setting up was to dip the bare hands into
8 the Aroclor to feel of them, and then perhaps wipe their
9 hands on a rag or wipe their hands on their trousers in
10 the groin area. And the -- the few cases, and I
11 don't -- I'm not sure; there weren't more than four or
12 five at the most -- had developed this skin problem.

13 Well, it was obvious in this case that that
14 plant was not avoiding prolonged and repeated skin
15 contact. And when they went to whatever changes in
16 processing that they did, the -- the problem ceased to
17 exist.

18 Q Did you recommend changes there?

19 A I pointed out on the label, and -- and I've
20 forgotten whether they had a Technical Bulletin or not.
21 I believe they did, because I knew the industrial
22 hygienist from Mobil, a fellow named Arthur Pabst,
23 P-a-b-s-t. I told you yesterday that their Medical
24 Director had been a former employee of Monsanto, a
25 former -- that they had to find some other method of

1 avoiding skin contact.

2 Q And again, I take it, just like the Wisconsin
3 plant, it was your view that the information previously
4 supplied by Monsanto before you arrived should have been
5 adequate to have them avoid the type of conduct that was
6 taking place?

7 A That's right.

8 Q But for some reason, it was not?

9 A For some reason, their system broke down.

10 Q Yeah. Did it occur to you that maybe the
11 workmen were under the understanding that simply dipping
12 their hand in to feel the pellets and then wiping it off
13 was not prolonged contact?

14 A I -- I can't express an opinion on -- on the
15 reaction of the individual workers.

16 Q Well, to you, when you used the word -- and I'm
17 talking about the Monsanto Medical Department, you and
18 Dr. Kelly -- used the word, "Avoid prolonged contact,"
19 did you intend to say, "Don't allow any skin contact at
20 all"?

21 A No, sir.

22 Q Well, the workmen at this Mobil plant -- they
23 simply dipped their hand in, felt the pellets briefly,
24 pulled it back out, and wiped it off immediately on a
25 rag, didn't they?

1 A I can't even guess at how complete the removal
2 by a rag was.

3 Q But their process was to dip it in for a few
4 seconds, feel the pellet, pull it back out, and then
5 attempt to wipe it off?

6 A Yes, sir.

7 Q Was that more than -- or was that, in your
8 definition, prolonged skin contact?

9 A I would think so, if the hands were not washed
10 afterwards.

11 Q Well, setting aside the washing of the hands
12 for a moment --

13 MR. SHOEBOTHAM: Mr. Wheeler also
14 testified the label said, "Avoid prolonged
15 or repeated skin contact."

16 MR. LACEY: I see.

17 BY MR. LACEY:

18 Q Well, how often did an individual workman dip
19 his hands in that vat?

20 A I don't recall.

21 Q Was the problem -- the real problem was
22 allowing them to put their hands in the vat at all,
23 wasn't it?

24 A That's my belief, yes.

25 Q And your recommendation was that they change

1 their practice so the hands never came into contact with
2 the PCBs?

3 A Or use appropriate gloves to avoid the skin
4 contact.

5 Q Exactly. So your real recommendation was,
6 "Don't allow any skin contact, and that will solve the
7 problem."

8 A That's right.

9 Q Okay. And your labels and your Technical
10 Bulletins certainly did not say, "Avoid any skin
11 contact," did they?

12 A No, sir.

13 Q They just said, "Avoid repeated and prolonged
14 skin contact."

15 A That's right.

16 Q And that, I guess, was a matter or is a matter
17 that reasonable people could differ in their
18 understanding of what you meant.

19 A I don't think so, sir, in the context of use of
20 industrial chemicals.

21 Q I see.

22 A I would not hesitate today to take and wash my
23 hands in Aroclor 1242.

24 Q I see.

25 A I wouldn't do it every day of my working life.

1 I would not anticipate that industry would -- other
2 industrial hygienists and people in industry would
3 review -- would regard the action and exposure of a
4 motor mechanic in a garage who has repeated and
5 prolonged skin contact, if you will, with lubricating
6 oil.

7 Q In the case of this Mobil plant, do you think
8 the problem that allowed this to take place was a
9 breakdown in the Mobil organization?

10 A I think so, yes. And I'm not certain that this
11 wasn't a brand-new application that had been -- just
12 been developed by their research and engineering group.

13 Q Are you aware that there was a study performed
14 at a Mobil plant in the 1970's which indicated workers
15 seemed to have higher-than-normal problems because of
16 exposure to PCBs?

17 A I don't recall it, sir.

18 Q You don't know if this -- then you wouldn't
19 know if this was the Mobil plant that was involved in
20 that study?

21 A Obviously not.

22 Q Okay.

23 You don't recall visiting any other facilities
24 besides -- besides the three we've just described where
25 customers were making use of PCBs. Is that correct?

1 A That's correct.

2 MR. SHOEBOTHAM: At a convenient
3 point in here, why don't we give
4 Mr. Wheeler a lunch break?

5 MR. LACEY: Surely. Let me ask just
6 a couple more questions, and we'll be
7 coming to a convenient point.

8 BY MR. LACEY:

9 Q Do you know whether other people in the Medical
10 Department who reported to you or to whom you reported
11 visited any other customers' plants where PCBs were
12 being used?

13 A I have a vague recollection that Dr. Kelly
14 visited a -- a die-casting plant that was using a PCB
15 formulation.

16 Q Do you recall whose die-casting plant it was?

17 A No, sir.

18 Q Do you recall approximately when the visit took
19 place?

20 A No, sir.

21 Q Do you recall whether Dr. Kelly observed any
22 problems in the handling of PCBs at that plant?

23 A No, sir.

24 Q You don't recall whether he did, or he did not
25 observe any?

1 A I don't -- I -- I don't recall what his report
2 was, sir, or -- I'm sure we subsequently discussed it,
3 but I don't recall it.

4 Q And that's --

5 A To my recollection, it was a West Coast plant,
6 but -- after 20 years, that's the best I can do.

7 Q That's fine. And is that the only incident
8 that you can recall where someone else in the Medical
9 Department visited a customer plant where PCBs were
10 being used?

11 A I recall one instance where there was a use in
12 in the Kansas City area in a Department of Defense
13 application. And although I had Atomic Energy clearance
14 and could examine top-secret information and data and
15 visit installations, there was a separate clearance for
16 the DOD.

17 Am I missing something?

18 There was -- there was a -- as you probably are
19 aware, there was a different type of clearance for
20 visiting DOD establishments where there were classified
21 operations going on.

22 And I don't recall -- I -- I believe, again,
23 this was a -- well, I know it was the use of a Pydraul
24 fluid, not PCB alone. And it was a question of what
25 the -- this important defense operation could do if

1 Monsanto withdrew from producing the PCB material that
2 they were using.

3 BY MR. LACEY:

4 Q Did somebody go to that plant and --

5 A Jack Garrett went, because he had Defense -- he
6 had DOD clearance.

7 Q And do you know whether Mr. Garrett found any
8 way in which the fluid was being used that he thought
9 was inappropriate vis-a-vis worker safety?

10 A Oh, because of the DOD confidential secret
11 aspects of the plant and the use, I -- I don't remember
12 that Jack ever told me what they were doing --

13 Q Okay.

14 A -- and what he found.

15 Q So there's -- we'd have to ask Mr. Garrett
16 whether or not there was a problem with their use. You
17 don't know.

18 A That's right, sir.

19 Q Do you know of anybody else in the Medical
20 Department who visited any plant where PCB-containing
21 products were being used?

22 A No, sir.

23 Q Okay.

24 MR. LACEY: I think that would be a
25 good spot for a lunch break.

1 Mr. Shoebbotham can go out and walk by
2 the pool and see what's going on.

3 THE VIDEOTECHNICIAN: We're off the
4 record.

5
6 (Luncheon recess)

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AFTERNOON SESSION

THE VIDEOTECHNICIAN: Okay. We've been off the record for a lunch break, and we're now back on the record. The time is 2:15 p.m.

CONTINUED EXAMINATION

QUESTIONS BY MR. LACEY:

Q Mr. Wheeler, shortly before the lunch break we were discussing the toxicity and safe-handling material prepared by the English Monsanto group regarding PCBs. Do you recall that document?

A Yes, sir.

Q And I believe you told me you don't recall having anything to do with the preparation of the material in that document. Is that --

A That's right, sir.

Q Okay. You did from time to time work with the English group on problems in selling Monsanto products in England, did you not, with regard to toxicity and

1 safe handling?

2 A I don't recall any, sir --

3 Q Well, let me --

4 A -- until the -- until the environmental aspects
5 came up.

6 Q Let me hand you a memo from you to Mr. C. B.
7 Ammons dated November 12th, 1962, regarding toxicity and
8 safe handling of Pydraul, Document 24959 (tendering),
9 and see if that refreshes your recollection.

10 A (Reviews document.)

11 I don't remember the document, sir.

12 Q Do you remember being involved in the process
13 of trying to convince the National Coal Board in Britain
14 that Pydraul would be safe for use in mines in England?

15 A I recall only the question of the use of
16 Pydraul in coal mines in Great Britain did arise.

17 Q Having reviewed the letter, can you tell that
18 you were involved in that process of providing
19 information to the British group on toxicity and safe
20 handling of that PCB-containing material?

21 A As I indicated, I don't recall the -- the
22 correspondence. But it is over my name; yes, sir.

23 Q And did -- were you involved in what the
24 corporation says you were involved in?

25 A To the extent indicated in that -- that letter,

1 yes, sir (tendering).

2 Q All right.

3 MR. SHOEBOTHAM: What is that number,
4 please?

5 MR. LACEY: 24959.

6 BY MR. LACEY:

7 Q Would you -- you came to Monsanto in 1947?

8 A Yes, sir.

9 Q And you were involved from that time forward in
10 matters of industrial hygiene?

11 A Yes, sir.

12 Q Let me show you a document, 21457 through
13 21459. That's the first three pages of five pages that
14 are stapled together here, which is a Report No. 2215
15 from the Research Department in Anniston, Alabama, dated
16 April 27th, 1948. I will ask you if you've ever seen
17 that report before (tendering).

18 A (Reviews document.)

19 THE WITNESS: Can you see it over my
20 shoulder, John?

21 MR. SHOEBOTHAM: Sure. Thank you.

22 MR. LACEY: John, you can get closer,
23 if you want, and take a look at it.

24 A 1948.

25

1 BY MR. LACEY:

2 Q That report was generated after you came to
3 Monsanto, was it not?

4 A Yes, sir. I joined the company in July of '47.

5 Q And it deals with matters that relate to
6 industrial hygiene, does it not?

7 A I haven't read that much of it yet, sir. I'm
8 sorry.

9 Q Okay.

10 A (Reviews document.)

11 THE WITNESS: Are you ready to turn?

12 MR. SHOEBOTHAM: Certainly. You just
13 read it at your speed.

14 A I. G. Consider. What's I. G.?

15 BY MR. LACEY:

16 Q I'm sorry?

17 A There's -- there's a reference here, sir, to
18 I. G., and I don't know what that is.

19 Q Uh-huh. Have you had a chance to review
20 those --

21 A I -- I've only gone through, I think, the first
22 page.

23 I don't recall ever seeing this document, sir.

24 Q Okay. Why would somebody -- that document does
25 deal with matters that relate to industrial hygiene,

1 does it not?

2 A Yes, sir.

3 Q Why would somebody other than you be preparing
4 a report on matters related to industrial hygiene after
5 you'd joined the company?

6 I believe those last two pages relate to -- are
7 a different document. They're -- they were all stapled
8 together for some reason.

9 A My only explanation is that this was April of
10 '27. I joined the company in July 29, or something like
11 that, of '47. I'm sorry. It's April '48.

12 I'm not sure I'd even visited the plant at that
13 point.

14 Q All right. Now, let's see the report.

15 A Would you like me to --

16 Q Oh, yeah; I --

17 A -- to finish reading?

18 Q Yeah; I'm sorry. I thought you had finished
19 reading that part.

20 A Oh, I -- I've only read the --

21 Q You've read the cover page and --

22 A The next page. I've read Pages 1 and 2.

23 Q Okay. I think that -- that is -- is the
24 report. The last two pages are a different document.
25 Those -- that's from some other source. You can feel

1 free to look at them, but I -- I don't have any
2 questions about that, per se.

3 A You do not have questions about --

4 Q About those last two pages. They -- they
5 appear to be a different document. They were just all
6 stapled together for some reason.

7 A (Reviews document.)

8 I know what the addition refers to, sir.

9 MR. SHOEBOTHAM: Could I take a look
10 at it?

11 MR. LACEY: Real quickly. I -- I was
12 going to ask some questions about it,
13 but --

14 MR. SHOEBOTHAM: Okay. Let me take a
15 quick look at it, if I could.

16 MR. LACEY: Sure.

17 MR. SHOEBOTHAM: If we need to go off
18 camera to do that, that's fine.

19 MR. LACEY: Just let the tape run, I
20 guess.

21 MR. SHOEBOTHAM: (Reviews document.)

22 Okay. Thank you (tendering).

23 BY MR. LACEY:

24 Q This report that you have reviewed deals with
25 the Aroclors or PCB products at the Anniston, Alabama,

1 plant, does it not?

2 A Yes, sir.

3 Q Do you know who R. R. Knight is, the person who
4 prepared it?

5 A R. R. Knight, K-n-i-g-h-t?

6 Q Yes, K-n-i-g-h-t (tendering).

7 A No, sir (tendering)

8 Q Do you know who A. M. Ellenburg is?

9 A Yes, sir.

10 Q Who is Mr. Ellenburg?

11 A I believe he was a chemist in the control, and,
12 I believe, some research activities in the laboratory at
13 that plant.

14 Q The report refers to the use of barrier creams
15 to protect employees, does it not?

16 A Yes, sir.

17 Q Now, was that something you approved of or did
18 not approve of? I -- I know we discussed it yesterday.
19 I can't remember if you were in favor of barrier creams
20 or opposed to them.

21 A As an industrial hygienist, I was -- I did not
22 feel that the use of barrier creams were always the best
23 solution, because I think they gave a false sense of
24 security.

25 Many of the barrier creams that were available

1 at that time were not necessarily protective against
2 specific materials; and the users were less inclined to
3 wash their hands, if there had been any exposure, and
4 then reapply another coat of the barrier cream.

5 The barrier creams, as -- as far as I know, are
6 not effective prevention for probably even the -- the --
7 the PCBs.

8 Q So not only were they not effective prevention;
9 but, in your opinion, they also gave a false sense of
10 security.

11 A I think I said, sir, they could.

12 Q They could. Well --

13 A I-- I -- I prefaced that, sir, with the comment
14 that I was speaking in general; my -- my general
15 reaction to the use of barrier creams.

16 Q And your general reaction would be not to favor
17 their use, because they didn't --

18 A Under very -- except under perhaps some
19 circumstances -- circumstances that I can't think of at
20 the moment, but --

21 Q All right.

22 A -- if there were operations, for example, where
23 they used some -- gloves couldn't be used because of
24 fine technical work that required manipulation of the
25 fingers, then -- and there was no way to limit contact

1 with the hands, then frequent use of barrier creams,
2 with removal if there had been -- if the hands had been
3 washed, let me say, for lunch or for what purpose;
4 and -- again, some recognition of the limitation of the
5 effectiveness of barrier creams.

6 Q When you talk about a fine operation, that use
7 that those workers at Mobil were making of feeling those
8 pellets to see how hard they were: Would that be the
9 type of fine use you're talking about, where gloves may
10 interfere with the --

11 A No, sir.

12 Q I see. Would barrier creams have been a good
13 things for those Mobil workers to use if they weren't
14 going to use gloves? Would that have improved their
15 skin protection?

16 A I would not have recommended it for that, no.

17 Q Well, that's not my question.

18 Had they applied barrier creams before putting
19 their hands into the PCBs, would that have helped to
20 keep them from having as much absorbed through the skin?

21 A I -- I can't answer that.

22 Q Okay.

23 When you made your your first plant inspection
24 to Anniston, Alabama, did you recommend that barrier
25 creams be removed from the PCB Department?

1 A I can't recall.

2 Q Did you ever recommend that barrier creams be
3 removed from the PCB Department in Anniston, Alabama?

4 A I can't recall.

5 Q Did you ever recommend that barrier creams be
6 removed from the PC- -- PCB Department in the Illinois
7 plant?

8 A I can't recall.

9 Q To your knowledge, were -- did barrier creams
10 remain available in both PCB Departments as long as you
11 worked for Monsanto?

12 A In the PCB operation?

13 Q Yes.

14 A I can't recall.

15 Q I see.

16 Do you recall learning -- strike that.

17 This report indicates that there were severe
18 attacks of chloracne and internal sickness in the early
19 years at Anniston, Alabama. Is that correct?

20 A Not to my knowledge, in terms of serious
21 illness.

22 Q Well, did you see the report that referenced
23 that?

24 A I ref- -- I see that, and I don't know the --
25 I don't know the background for that reference.

1 Q When you first went to the Anniston, Alabama,
2 plant, did you attempt to determine what the work
3 history had been?

4 A Yes.

5 Q And weren't you advised that there had been
6 serious chloracne problems in the early years of the
7 plant operation?

8 A There had been chloracne cases in the late
9 '30's at that plant. I can't describe them as serious.

10 Q I see. You would not use the word "severe"
11 attacks of chloracne?

12 A To my knowledge, they were not so described in
13 any other -- I've never seen them described in that
14 fashion, other than in that memo.

15 Q What about internal sickness? Were you advised
16 of problems of internal sickness?

17 A I never heard of any internal sicknesses at the
18 Anniston plant in the people exposed to or working with
19 the PCBs.

20 Q I see. Are you aware of any internal
21 sicknesses that might be caused by exposure to PCBs?

22 A Are you saying, sir, internal in the
23 individual, or internal in Monsanto?

24 Q Internal in the individual.

25 A I'm aware of the publications in the '30's, in

1 the late '30's, of the work done by Dr. Drinkard at
2 Harvard sponsored by Monsanto, Union Carbide, and one or
3 two other people that included PCBs with chlorinated
4 materials and chlorinated naphthalene, specifically.

5 Q My question is: Are you aware of any internal
6 sicknesses that can be caused by PCBs; and if so, what
7 they are?

8 A That can be caused?

9 Q Yes.

10 A I think, sir, we've said that the -- there
11 is -- there is the possibility of liver injury.

12 Q Okay. Are you aware of anything, other than
13 liver injury, that can be caused by PCBs that might be
14 characterized as an internal sickness?

15 A I -- I can't recall any, sir.

16 Q Okay.

17 Would you agree that certain people, notably
18 those with fair skin or who show distinct allergies, are
19 best diverted to other work not involving contact with
20 PCBs?

21 A May I see that?

22 Q Certainly; the second paragraph on the page
23 numbered 21459 (tendering).

24 A (Reviews document.)

25 That is a general statement I think is correct.

1 I'm not sure that there was any basis for it in relation
2 to the PCBs.

3 Q Well, would you agree that people with fair
4 skin should be diverted to work not involving PCBs?

5 A No, sir.

6 Q Will you agree that people who show distinct
7 allergies should be diverted to work not involving PCBs?

8 A I've never heard of any indication that there
9 were people who were allergic to PCBs.

10 Q What about people who were generally allergic
11 to other matters? Would you agree that those people
12 should be diverted to other work not involving PCBs?

13 A I -- I'm sorry. Your -- your voice dropped,
14 and --

15 Q Okay. I'm sorry. I'll try to keep my voice
16 up.

17 Would you agree that people who show allergies,
18 distinct allergies, other than to PCBs, should be
19 diverted to work not involving PCBs?

20 A I see no reason for it.

21 Q Okay. Would you agree that scrupulous
22 cleanliness of the skin -- including the face, neck, and
23 arms -- and of the clothing, especially undergarments,
24 is essential and needs strict enforcement in PCB areas?

25 A No, sir.

1 Q That is what these people recommended in this
2 Monsanto report, is it not?

3 A As I read it, yes, sir.

4 Q Okay. And, of course, you would not agree with
5 the recommendation that barrier creams should be used on
6 those parts of the skin which come into contact with
7 solid or liquid PCBs.

8 A No, sir.

9 Q No, you would not agree?

10 A I would not agree that they should be used.
11 I'd rather --

12 Q Okay.

13 A -- see them avoid this contact.

14 Q Okay. Would you agree that in case the
15 precautions recommended in this report are being evaded,
16 monthly medical inspections would be desirable
17 (tendering)? The very last paragraph.

18 A (Reviews document.)

19 I -- I'm not a physician. I can't answer
20 the --

21 Q Well, let me ask you from an industrial hygiene
22 standpoint. Would you agree that it's possible for
23 workers in a plant to potentially evade precautions?

24 A I beg your pardon?

25 Q Would you agree with me that it's possible for

1 workers in the plant to evade precautions?

2 A Is it possible?

3 Q Surely.

4 A Oh, yes, sir.

5 Q In fact, the authors of this report were
6 concerned that Monsanto's own PCB workers in Anniston,
7 Alabama, might try to evade the precautions recommended
8 in this report. Isn't that correct?

9 MR. SHOEBOOTHAM: I object to the form
10 of the question to the extent you're
11 asking him what the authors of this
12 document that he testified he hadn't seen
13 until today were intending to do.

14 BY MR. LACEY:

15 Q You can answer the question.

16 A His comment struck my thought.

17 Q I'm sorry for that.

18 A I -- I -- I don't agree with the conclusion
19 that I think you drew from that last paragraph.

20 Q I see. Well, what conclusion should be drawn
21 from that last paragraph?

22 A I think, sir, you indicated that it might
23 indicate that the precautions were being evaded. It
24 doesn't say that. It says, "In case the precautions are
25 being evaded," or these -- or less --

1 Q "Lest," I think it is, isn't it?

2 A L-e-s-t; "or lest" -- "or lest there shall be
3 some idiosyncrasy" -- I don't know what they were
4 referring to there -- "monthly medical inspection is
5 desirable."

6 Q There -- there is the possibility, isn't there,
7 that workers may not follow recommended precautions
8 thoroughly?

9 A Yes, sir.

10 Q That's something industrial hygienists
11 recognize, isn't it?

12 A Yes, sir.

13 Q And that's something you need to take into
14 account as you design your program, isn't it?

15 A Yes, sir.

16 Q There are also some workers who are more
17 sensitive than others to particular problems, aren't
18 there?

19 A Yes, sir.

20 Q And that's what they're talking about when they
21 talk about idiosyncrasies; some people may be more
22 susceptible to problems than others. Isn't that
23 correct?

24 A I don't know what they were referring to, sir.

25 Q But that is a reality; that some people --

1 A My -- my answer to your question was more based
2 on the fact that in the case of skin reaction, there's
3 some evidence that people with dark, oily skins are more
4 or less sensitive to skin reactions, and vice-versa;
5 blondes are more or less sensitive to irritation or skin
6 problems. I thought that's what you were referring to.

7 Q Well, that -- that makes the point that some
8 people people are more sensitive than others to
9 particular problems from skin exposures. Correct?

10 A That's right.

11 Q And that's a reality that industrial hygienists
12 and occupational physicians are aware of, is it not?

13 A Yes, sir.

14 Q And that's something that one needs to take
15 into account as they try to advise people of the hazards
16 of any particular chemical.

17 A Only when there's reason to doubt that -- that
18 the exposure is such that it could have that effect and
19 where there is some evidence that that effect has
20 occurred.

21 Q I see. Basically, then, an industrial
22 hygienist doesn't take precautions against what might
23 happen, but waits for the problem to appear and then
24 tries to remedy it.

25 MR. SHOEBOOTHAM: I --

1 BY MR. LACEY:

2 Q Is that what you're saying?

3 MR. SHOEBOTHAM: I object to the form
4 of the question as being argumentative,
5 misstating his testimony, and
6 mischaracterizing his testimony.

7 BY MR. LACEY:

8 Q You can answer the question.

9 A I don't think that premise is correct, sir,
10 because the good industrial hygienist, like all
11 scientists, likes to have data to support a decision.
12 And the -- the -- I've forgotten now how you phrased the
13 question, so --

14 Q Well --

15 A Can you rephrase the question?

16 Q Yeah. Let me try to ask it again.

17 An industrial hygienist doesn't just try to fix
18 the problems that crop up, do they?

19 A Oh, no, sir.

20 Q They try to anticipate problems and take steps
21 to keep them from ever showing up in the first place.

22 A Depending on available data to make them --
23 to -- to satisfy them that there is or is not a problem.

24 Q And available data may not -- may not involve
25 their own plant workers; it might involve information on

1 what's happened at other employers' plants? Correct?

2 A To the extent that the industrial hygienist --
3 hygienist should ensure that labeling and -- and
4 bulletins indicate the precautions that the industrial
5 hygienist agrees are -- are -- are appropriate.

6 Q I'm sorry. I didn't get my idea across
7 clearly.

8 For example, if you at Monsanto were -- had
9 chemicals that -- or workers who were working with the
10 Chemical X and you had never had any problems with those
11 workers as a result of exposure to Chemical X, but you
12 learned from another company -- let's say Du Pont --
13 that some of their workers who had been exposed to
14 Chemical X had had problems, and they were therefore
15 recommending precautions, you would take those
16 recommendations from another chemical company into
17 account in preparing your own precautions, would you
18 not?

19 A After determining the circumstances of the
20 complaints.

21 Q You wouldn't wait for one of your own workers
22 to get sick before you did something, would you?

23 A No, sir.

24 Q Okay. That's the point I was trying to
25 understand. And in considering all available

1 information, an industrial hygienist would also look to
2 studies with animals to give some indication of what
3 problems there might be, would there not?

4 A That's right.

5 Q Would you agree that the toxicity of Aroclors,
6 both from the standpoints of absorption from the air and
7 from contact with the skin, has been repeatedly
8 demonstrate?

9 A Would you rephrase that?

10 Q Yes. Would you agree that the toxicity of
11 Aroclors resulting from breathing them in the air and
12 getting them on the skin has been repeatedly
13 demonstrated?

14 A Not repeatedly, sir.

15 Q I see.

16 MR. SHOEBOOTHAM: Mr. Lacey, you have
17 a document there that you're reading from.
18 Do you want to show that to Mr. Wheeler?

19 MR. LACEY: Surely. I -- I'd be
20 happy to.

21 BY MR. LACEY:

22 Q Let me show you a document numbered 993. This
23 is a report entitled "On the Toxicity of the 'Arochlors'
24 (sic)" by Robert M. Brown, Chief, Industrial Hygiene
25 Section, the Division of Health, the Department of

1 Public Welfare, the City of St. Louis (tendering).

2 Do you know Dr. Brown?

3 A City of St. Louis? Oh, yes. I knew Bob Brown.

4 Q This paragraph right here (indicating): Would
5 you just look over that paragraph?

6 A (Reviews document.)

7 I've read it, sir.

8 Q Dr. Brown -- is it Dr. Brown?

9 A No, sir; Mr. Brown.

10 Q Mr. Brown. Mr. Brown indicates there's a need
11 to give a warning about Aroclors, is there not? Is that
12 what he says?

13 A Yes, sir.

14 Q And he says, "the toxicity of these compounds."
15 And he's talking about Aroclors, isn't he?

16 A Yes, sir.

17 Q "The toxicity of these compounds has been
18 repeatedly demonstrated, both from the standpoints of
19 their absorption from the inspired air, as well as from
20 their effects in producing a serious and disfiguring
21 dermatitis when allowed to remain in contact with the
22 skin."

23 Is that what Mr. Brown observes?

24 A Mr. Brown says that, but it's incorrect.

25 Q I see.

1 The sole manufacturer of PCBs in the United
2 States was Monsanto?

3 A Yes, sir.

4 Q Monsanto was headquartered in St. Louis, was it
5 not?

6 A Yes, sir.

7 Q Do you have any idea where Mr. Brown would have
8 gotten this misinformation?

9 A Yes, sir.

10 Q Where did he get this misinformation?

11 A There were reports published in the late
12 '30's -- I think I referred to the date on -- excuse
13 me -- earlier by the Drinkard group at the University
14 of -- well, Harvard School of Public Hygiene and part of
15 the medical school at Harvard, concerning
16 polychlorinated biphenyls, mixtures of polychlorinated
17 biphenyls and chlorinated naphthalenes; and some of
18 them, if not all of them, had chlorinated benzenes with
19 them. Those reports were -- and included animal
20 toxicity studies that that group had -- had done.

21 The literature that Mr. Brown undoubtedly saw
22 at that time, which I probably hadn't seen, since that's
23 September of 1947, included references by the --
24 certainly, by the State Labor Department in New York,
25 State Health Department in Connecticut -- those were the

1 two that come to mind -- in bulletins that Mr. Brown
2 would have seen. And they related -- they reported the
3 effects of chloracne, plus serious effects of the liver
4 to people.

5 It was pointed out then and by the industrial
6 hygienists who had any association with the PCBs that
7 the operation in question was -- did not adequately
8 control exposure.

9 My understanding is -- I never saw it, but my
10 understanding is that this was a question of taking
11 copper wire; drawing it through a bath of fabric of some
12 kind; and then through a bath of a waxy material, which
13 was called Halo wax, which was not a Monsanto product,
14 but which did contain Monsanto's PCBs. These baths
15 contained this mixture of materials that elevated
16 temperatures.

17 Initially there was no control of the vapors
18 escaping from the heated -- the heated combination of
19 materials; and, undoubtedly, again, there were -- there
20 was subsequent skin contact handling the cable. I -- it
21 may well be that this was the first time that the term
22 "chloracne" was developed. I don't know.

23 But I believe that it's these reports that
24 Mr. Brown is referring to, and I don't agree with his
25 use of the word or words "repeatedly demonstrated."

1 Q You believe he just was not able to correctly
2 interpret the reports?

3 A I don't know why he used the word "repeatedly."
4 I would not have, because I don't think the number of
5 instances deserve that adjective description. They were
6 repeatedly in that one State department would take the
7 bulletin that had been issued by the original authors in
8 the New York bulletin and distribute it as perhaps one
9 of their own. And these references showed up again and
10 again and again, although the actual instances were not
11 all that repeated as he's indicated there.

12 Q Well, interestingly enough, this discussion
13 that we've just looked at by Dr. -- or I'm sorry --
14 Mr. Brown is contained in a 1955 Monsanto document that
15 talks about the hazards of PCBs, Document 990 through
16 997 (tendering). Is that correct?

17 A Let me, if I may, refer back to this other one
18 first, sir. Wait a minute. What are we looking at now?

19 Q Well --

20 A We're back to the Anniston?

21 Q Well, Mr. Brown's comments are a part of that
22 entire document.

23 A Okay.

24 Q And I simply wanted to show you that that --
25 those -- that information by Mr. Brown is a part of and

1 put into a larger Monsanto document put out in 1955.

2 That is correct, is it not?

3 A I'll -- I'll have to read it, sir.

4 Q Well, you can look at the front page, I think,
5 and you can see how it was put together. And you've
6 still got the front page --

7 A Oh --

8 Q -- under your hand.

9 A -- I'm sorry. I -- I read something here that
10 I thought you were referring back to the Anniston
11 document. You showed me first just Mr. Brown's letter.

12 Q Yes. I showed you --

13 A You didn't show me the cover page.

14 Q That's right. And now I'm asking you to look
15 at the entirety of that document.

16 A Oh, I believe my comments may have been out
17 of -- excuse me -- out of context.

18 Q Well, your comments were about what Mr. Brown
19 observed and the correctness of his observations. Is
20 that right?

21 A Yes, sir.

22 Q And I -- I guess my question to you is: His
23 comments were part of this larger 1955 document talking
24 about the hazards of Aroclors. Correct?

25 MR. SHOEBOOTHAM: If you know,

1 Mr. Wheeler; but I don't see your name
2 anywhere on that document, or any
3 indication that you reviewed or assisted
4 in its preparation, or any indication that
5 you've seen it before Mr. Lacey just
6 handed it to you. So you're not required
7 to speculate on what material was
8 contained where.

9 A I -- I -- I -- I don't remember ever seeing it.
10 I -- I can't place who -- who I presume is the author,
11 Mr. Mather, except that I think I may have said earlier
12 he was a -- a chemist at the Anniston plant, sir.

13 BY MR. LACEY:

14 Q Well, my question really is: That is a 1955
15 document by Mr. Mather dealing with the hazards of
16 Aroclors, is it not?

17 A According to the title, yes, sir.

18 Q And that is clearly a Monsanto document, is it
19 not?

20 MR. SHOEBOOTHAM: If you know,
21 Mr. Wheeler; but, again, you're not
22 required to speculate as to something you
23 don't have personal knowledge of.

24 A I -- I would characterize it as a -- a plant --
25 a Monsanto plant document.

1 BY MR. LACEY:

2 Q Okay. And I guess what I'm trying to find out
3 is why, if Mr. Brown's comments about PCBs were
4 inaccurate, they were still part of Monsanto documents
5 on the hazards of PCBs that were being put out by the
6 plant in 1955. That's several years after you and
7 Dr. Kelly are responsible for telling the plants what
8 the hazards of PCBs are, is it not?

9 A I think we discussed yesterday, sir, that the
10 interpretation of toxicity data varied, particularly
11 among people who were not familiar with the field of
12 toxicity. And I -- I can't comment on Mr. Mather's
13 statement here. I recognize some of his references.

14 Q Is this just another example of disagreement
15 within Monsanto about the hazards of PCBs?

16 A I don't agree with that expression, sir.

17 Q I see. Well, Mr. Mather clearly didn't agree
18 with what you thought about the hazards of PCBs.

19 MR. SHOEBOTHAM: Let me object to the
20 form of the question. You're asking him
21 to speculate as to Mr. Mather's opinions
22 in the 1950's. I don't think this witness
23 can speculate on that.

24 BY MR. LACEY:

25 Q Well, let me ask it this way: Mr. Mather wrote

1 this document, 990 through 997, in April of 1955 at the
2 Anniston, Alabama, plant and at the Krummrich plant
3 talking about PCBs, did he not?

4 MR. SHOEBOTHAM: Again, the question
5 calls upon this witness to speculate as to
6 a document he told you he just saw.

7 BY MR. LACEY:

8 Q This document was written in April of 1955 by
9 Mr. Mather, was it not?

10 A The title page indicates that, sir.

11 Q And it deals with the production of Aroclors
12 and other PCB products at the two Monsanto plants that
13 made it, does it not?

14 A That's what the title says, sir.

15 Q Do you have reason to believe that these
16 documents aren't genuine; that they were put in the file
17 and given to me as plants, or something about that that
18 makes them --

19 A Oh, absolutely not, sir.

20 Q Okay. So what the title page indicates is what
21 it is?

22 A All right, sir.

23 Q You agree with me with that?

24 A Yes, sir.

25 Q Okay. Now, Mr. Mather in April of 1955,

1 talking about the hazards of PCB, sites some things
2 about the hazards of PCBs with which you do not agree.
3 Is that correct?

4 A I -- I don't think I said that, sir.

5 Q Well, he includes in it discussion by
6 Mr. Brown, who is the Chief, Industrial Hygiene Section
7 for the Division of the Health Department of Public
8 Welfare, the City of St. Louis; and you've previously
9 told me you don't agree with Mr. Brown. Isn't that
10 correct?

11 A With that one phrase.

12 Q Okay.

13 A And I -- I'm -- I'm sorry I didn't look at this
14 carefully enough, as I should have, to see that
15 Mr. Mather cited Mr. Brown as a reference.

16 Q Well, whether or not Mr. Mather cited Mr. Brown
17 or not really isn't relevant to the issue of whether you
18 think Mr. Mather's opinions are correct, though. And
19 what you've told me is you don't share Mr. Brown's
20 opinions about the hazards of PCBs. Correct?

21 A I -- I think you -- I think, sir, you said
22 that -- you referred to Mr. Mather's use of Mr. Brown's
23 opinion. And I can't answer that, because --

24 Q He included it in his document, didn't he?

25 A Well, I just saw the document today, so I -- I

1 can't see how I can possibly answer a question that
2 related to --

3 Q Well, let me ask you --

4 MR. SHOEBOTHAM: Let's let the
5 witness finish his answer, please.

6 A -- a document that was prepared in April '55.
7 BY MR. LACEY:

8 Q Well, let me see if I can address it this way:
9 Mr. Mather included in his document what Mr. Brown had
10 to say about PCBs, did he not?

11 The internal documents, the page number are up
12 in the upper right-hand corner. They're Roman numerals,
13 I think.

14 A (Reviews document.)

15 I do not see in this -- if these are the
16 references in Mr. Mather's report, I do not see
17 reference to Mr. Brown's letter.

18 Q Let me -- let me see if I can help you.
19 Mr. Mather's report is Roman numeral XI on Hazards
20 (indicating).

21 A Correct.

22 Q And he numbers the pages by the upper
23 right-hand corner, Roman numeral XI - 1, - 2, - 3,
24 - 4, - 5, - 6, and - 7. And if you go to Page Roman
25 numeral XI - 3, you find him citing and quoting

1 Mr. Brown, do you not?

2 A You confused me, sir, because you've shown me
3 Mr. Brown's report before you showed me that it was an
4 inclusion.

5 Q Well -- but it is now clear that Mr. Mather
6 does include Mr. Brown's work in this report?

7 A Yes, sir.

8 Q Okay. And you, had you been preparing an
9 article on the hazards and toxicity of PCBs, would not
10 have relied on what Mr. Brown said, because it was
11 erroneous. Correct?

12 A As I have told you, in terms of using the word
13 "repeatedly," yes, sir.

14 Q So we do have here another evidence of some
15 disagreement among people in Monsanto about what
16 information ought to be included on the hazards of PCBs,
17 do we not?

18 MR. SHOEBOTHAM: I object to the
19 question.

20 The question is argumentative.

21 The question also assumes something
22 that's not in evidence, which is some
23 disagreement between people in Monsanto
24 about the handling of PCBs.

25 You've shown Mr. Wheeler a document

1 for the first time today. You've shown
2 him a part of it first before you showed
3 him the full document.

4 You've gotten Mr. Wheeler confused.

5 You're asking him to interpret what
6 this Mr. Mather thought in 1955 about a
7 document that he's never seen before.

8 The question is argumentative and
9 unfair.

10 MR. LACEY: I don't think it's unfair
11 to ask this witness, who was the head of
12 Industrial Hygiene, the Assistant Director
13 of the Medical Department, about the
14 opinions expressed in Monsanto on PCBs and
15 to comment on the fact that obviously not
16 all people held the same opinions.

17 MR. SHOEBOTHAM: Well, you've asked
18 him about things like that for about a day
19 and a half now.

20 But my objection is showing this
21 witness a document -- part of the document
22 in the middle of the document first, and
23 asking him to interpret a document that he
24 hasn't seen before today, and asking him
25 to tell you what people in 1955 thought,

1 on the face of the document. And I do
2 object to that, and I don't think it's
3 fair to Mr. Wheeler.

4 MR. LACEY: I see.

5 BY MR. LACEY:

6 Q I handed you the entirety of this document when
7 we started talking about Mr. Brown, didn't I?

8 A I think you had it open to Mr. Brown's letter.

9 Q Yes, I had it open to the portion of it I
10 wanted to ask you about; because I was inquiring about
11 who Mr. Brown was, whether you knew him, and about what
12 he had to say. But I handed you the entirety of this
13 document, did I not?

14 A You did.

15 Q At every point you've asked to review a
16 document today or yesterday, I've given you the time to
17 review it before you testified about it, haven't you?

18 MR. SHOEBOTHAM: Well, Mr. Lacey,
19 this is about a seven- or eight-page --

20 MR. LACEY: No. I'd like to have the
21 answer to the question.

22 MR. SHOEBOTHAM: No, sir. This is
23 about a seven- or eight-page document.
24 We're trying to be cooperative and move
25 the deposition along. If you want us to

1 take long, lengthy breaks and review
2 seven- or eight-page documents that this
3 witness hasn't seen before, then we'll do
4 that.

5 BY MR. LACEY:

6 Q My question to you is: At every point that you
7 wanted to stop and review a document, I've given you an
8 opportunity to do that, have I not?

9 A Yes, sir.

10 Q Okay.

11 MR. LACEY: Would you mark that as
12 the next exhibit, please.

13 MR. SHOEBOOTHAM: I don't know why
14 you're smiling, Mr. Lacey. I don't think
15 your questions were fair to Mr. Wheeler.

16 MR. LACEY: May I not be happy? You
17 want me to frown?

18 MR. SHOEBOOTHAM: Well, you're sitting
19 over there smiling about what you've just
20 done --

21 MR. LACEY: No.

22 MR. SHOEBOOTHAM: -- which is ask some
23 unfair questions to Mr. Wheeler.

24 MR. LACEY: No. I guess what I'm
25 really smiling about, Jon, is I've got

1 another document I acquired independently
2 that Monsanto didn't produce to me that
3 they should have.

4 MR. SHOEBOTHAM: Well, which document
5 is that, Mr. Lacey?

6 MR. LACEY: The one we're going to
7 mark as an exhibit if you'll be quiet long
8 enough for me to get it --

9 MR. SHOEBOTHAM: Well, why don't we
10 look at it, then?

11 MR. LACEY: Well, if you'll let the
12 reporter mark it, we will.

13 MR. SHOEBOTHAM: You're the one
14 talking.

15
16 (Deposition Exhibit Wheeler 2 marked
17 for identification)

18
19 THE VIDEOTECHNICIAN: I need to go
20 off the record for just a moment.

21
22 (Discussion off the record, and
23 recess)

24
25 MR. SHOEBOTHAM: With regard to the

1 production of the documents, I think it's
2 clear that Monsanto has had outstanding
3 since January of 1985 a very comprehensive
4 Request for Production of Documents,
5 Mr. Lacey, so you also have not produced
6 these documents to me.

7 And this is the first time that -- as
8 you have just acknowledged, that I have
9 seen some of these documents.

10 BY MR. LACEY:

11 Q Mr. Wheeler, let me show you what's been marked
12 as Wheeler Deposition Exhibit No. 2 (tendering). That
13 is a bibliography of articles and sources on PCBs, is it
14 not?

15 A It appears to be, sir.

16 Q Did the Medical Department maintain articles on
17 PCBs?

18 A Yes, sir.

19 Q Who within the Medical Department was
20 responsible for preparing bibliographies like that
21 marked as Wheeler Deposition Exhibit No. 2?

22 A I don't see any evidence that we in the Medical
23 Department prepared this document.

24 Q Well, who within Monsanto other than the
25 Medical Department would have been preparing

1 bibliographies on PCBs?

2 A These appear to re- -- relate to the
3 environmental contamination; and any such articles that
4 I reviewed, I sent copies to Mr. Papageorge as well as
5 to Bob Keller and Scott Tucker in Research.

6 Q Was it a research group, then, that was
7 responsible for developing --

8 A I -- I -- I don't know whether it was a
9 research group or Mr. Papageorge's responsibility.

10 Q Was he a part of a research group, or what --
11 how did he function?

12 A I -- I thought we'd already discussed, sir,
13 that he was the former plant manager from Anniston who
14 was put in charge of the phasing-out program of Monsanto
15 of the PCBs.

16 Q Yeah. I -- I'm trying to find out what he
17 reported to; whether he was in a research group, or a
18 medical group, or --

19 A No, no. He probably reported to the product
20 manager -- the product manager for PCBs.

21 Q Okay.

22 A I don't remember seeing this, sir.

23 Q Okay.

24 A A lot of these references are late '72. Do you
25 want me to go through it carefully?

1 Q No. If you can tell me that you're not
2 familiar with it --

3 A I'm not familiar with it.

4 Q -- and you don't --

5 A I don't -- I don't know who prepared it.

6 Q And you don't think it was prepared by the
7 Medical Department, however?

8 A No, sir.

9 Q I see. Okay.

10 A (Tendering.)

11 Q Let me ask you a little bit about Monsanto's
12 use of independent testing laboratories. And when I
13 talk about independent testing laboratories, are you
14 familiar with what I'm talking about?

15 A We used a number of them.

16 Q And these were groups that tested products that
17 were being manufactured were or contemplated for
18 manufacture by Monsanto?

19 A Yes, sir.

20 Q These are the people who might do acute or
21 chronic toxicity studies?

22 A Yes, sir; or human skin studies, in one
23 instance.

24 Q Okay. Now, why did Monsanto use independent
25 testing laboratories for those purposes?

1 A Well, to begin with, it didn't have its own
2 testing facilities.

3 And we found it more convenient to contract
4 with such institutions as the Kettering Laboratories at
5 the University of Cincinnati Medical School. Some work
6 was done -- a limited amount of work was done at the
7 Washington University Medical School in St. Louis.
8 Haleson Laboratories in Washington did a number of
9 studies for Monsanto. The human patch test work was
10 done by a dermatologist in Philadelphia. The acute
11 toxicity studies were primarily done by a small
12 independent research lab in St. Louis.

13 And then we eventually ended up having most
14 of the subacute and chronic toxicity studies done by
15 Industrial Bio-Test Laboratories in -- well, suburbs of
16 Chicago.

17 Q In the cases of some products, the studies were
18 necessary or desired for the purpose of submitting
19 information to various Government agencies. Is that
20 correct?

21 A Yes, sir.

22 Q In the case of PCBs, information obtained in
23 particular from the studies done at IBT were submitted
24 to various Government groups looking into the hazards of
25 PCBs, were they not?

1 A The hazards of PCB in the environment; yes,
2 sir.

3 Q Well, the hazards of PCBs to -- to people who
4 might be exposed to them.

5 A But from an environmental contamination.

6 Q Well, however people might be contaminated, the
7 hazards would be the same, would it not?

8 A I don't think so, sir. The environmental
9 problem related more to ingestion of -- or the possible
10 ingestion of wildlife that had become contaminated with
11 PCBs. The -- the type of exposure was -- the type of
12 possible exposure was quite different than any
13 industrial exposure.

14 Q Well, now, let me just make sure I'm clear on
15 this. Monsanto used Industrial Bio-Test to study
16 chronic exposure effects from PCBs? Is that right?

17 A Yes, sir.

18 Q And previous to that, Monsanto had not done any
19 chronic exposure tests at all. Correct?

20 A That's not correct.

21 Q What chronic exposure tests had Monsanto done
22 on PCBs prior to using Industrial Bio-Test?

23 A The inhalation studies with the University of
24 Cincinnati by Dr. Treon, which were published and which
25 led to the Government-accepted threshold limit values

1 for an eight-hour day exposure 40 hours a week.

2 Q Which Government group accepted those?

3 A The American Conference of Governmental
4 Industrial Hygienists.

5 Q That's not a Government agency, though.

6 A It's made up of Government agency
7 representatives.

8 Q But it -- it's not a body that had the power to
9 make or set any regulations, is it?

10 A Its levels were accepted as -- as if they were
11 Government regulations. I would not, nor would any
12 other industrial hygienist, argue with a -- a -- a --
13 a -- a Government industrial hygienist that these levels
14 were not acceptable.

15 Q You -- you're not aware of anybody who ever
16 thought those levels were not appropriate?

17 A I don't recall any that applied to any products
18 that I was interested in.

19 Q You weren't aware of the fact that when NIOSH
20 performed a study, they recommended levels of exposure
21 1,000 times lower than those recommended by the
22 Governmental Hygienists Association?

23 A For what material?

24 Q PCBs.

25 A I -- I wasn't aware that they ever established

1 a level.

2 Q I see. Would that be surprising to you to find
3 out that the level that the National Institutes for
4 Occupational Safety and Health recommended was a
5 thousand times lower?

6 A This is a very minor point, but the number was
7 at a thousandth of the other level, not a thousand times
8 lower.

9 Q Well, one-thousandth -- if I divide it into a
10 thousand parts, I'd have -- and I took one of them, then
11 I'd have one-thousandth of it, wouldn't I?

12 A Yes, sir, but that's -- it's a small point, but
13 a thousand times lower, I don't think --

14 Q I see. Well, it was one-thousandth --

15 A I'm not a grammarian, and I'm sorry.

16 Q Well, I -- I will confess to not being very
17 good in grammar. I -- I think my eighth-grade --

18 A I was not, sir, aware that NIOSH had
19 established a level.

20 Q All right.

21 A When was it, sir?

22 Q 1977.

23 A I had retired.

24 Q I see. But in -- you weren't aware of what
25 happened in that area?

1 A I had not heard that before in any other
2 discussion of PCBs that I've had since I retired.

3 Q I see. Mr. Shoebottom didn't share that with
4 you in the --

5 A No, sir.

6 Q -- day or so you met with him?

7 A I just said, sir, I never heard of it.

8 Q Okay.

9 So it's your testimony that the chronic studies
10 that were done by Monsanto through Industrial Bio-Test
11 related only to the -- the possibilities of
12 environmental exposure, not occupational exposure.

13 A That's right, sir.

14 Q I see. Did Monsanto ever perform a chronic
15 study related to the effects of skin exposure to PCBs?

16 A I can recall -- I -- I'm under the impression
17 there were repeated skin contact done on rabbits at
18 Kettering and possibly at IBT, but I can't recall.

19 Q You're just not sure about that?

20 A That's right, sir.

21 Q The only occupationally-related exposure that
22 you're sure that was done was a -- atmospheric or air?

23 A That's right, sir.

24 Q Okay.

25 Now, the work that was done by IBT on chronic

1 exposure to PCBs and the hazards of it was submitted to
2 various Governmental agencies, was it not?

3 A Yes, sir.

4 Q And it was submitted to those agencies as part
5 of Monsanto's presentation concerning how they thought
6 PCBs ought to be handled. Correct?

7 A Handled in what way, sir?

8 Q Well, let me -- let me make it plainer.

9 Monsanto was not in favor of Congressman Ryan's
10 proposal that PCB manufacture, sale, and distribution be
11 banned. Correct?

12 A The IBT studies were under way -- may have been
13 half-done by the time Congressman Ryan -- there was no
14 relationship between Congressman Ryan and the IBT
15 studies.

16 Q Well, just answer my question. Monsanto did
17 oppose Congressman Ryan's proposals regarding complete
18 banning of the use of PCBs, did they not?

19 A Yes.

20 Q And one of the things that Monsanto submitted
21 to Governmental agencies to show that in Monsanto's
22 opinion there was no need to ban the complete use of
23 PCBs were the results of the IBT chronic studies. Isn't
24 that correct?

25 MR. SHOEBOOTHAM: Objection. The

1 question is argumentative. Mr. Wheeler
2 just told you there's no relationship
3 between the IBT work and Congressman
4 Ryan's position, and that the IBT work was
5 begun long before Congressman Ryan took
6 his position.

7 BY MR. LACEY:

8 Q And I'm asking about whether the results of
9 those studies which came in were then submitted to
10 Governmental agencies in support of Monsanto's position
11 that there should not be a total ban on PCBs.

12 A I think you used the word "complete," and you
13 said "total." The -- there was submitted to the
14 Government agencies to indicate that there were data
15 that would put -- which would permit them to evaluate
16 the potential of the PCBs getting in the food chain.

17 Now, in connection with the complete ban, they
18 were used to indicate that, as I said earlier today, the
19 complete ban of PCB use would have caused a terrible
20 economic turmoil.

21 And a subsequent Government task force -- and I
22 don't know what -- who the representatives were on that
23 task force -- agreed that the dielectric and -- well,
24 the dielectric, transformer, and capacitor uses should
25 continue until there were suitable substitutes

1 available. Now, to that extent, I would say the ID- --
2 the IBT studies may well have been used by the
3 appropriate Government agencies to indicate that this
4 was not a -- a crisis situation, but what the -- uses in
5 the dielectric area could continue.

6 Q Simply, though, if I understand your answer,
7 the short answer is the studies were submitted by
8 Monsanto to various Government agencies in connection
9 with their position on what ought to be done with PCBs.

10 Correct?

11 A Yes, sir.

12 Q Okay.

13 It's important that a reputable testing
14 laboratory be selected, is it not, for independent
15 testing?

16 A Oh, yes, sir.

17 Q And it's important that the tests that are
18 conducted be very thorough and very accurate, is it not?

19 A Yes, sir.

20 Q It's important, in fact, to be very careful in
21 deciding exactly how to conduct the tests, and what
22 products to test, and for what duration?

23 A Yes, sir.

24 Q It's important that each particular test be
25 properly managed throughout the course of the test?

1 A Yes, sir.

2 Q It's important that the results be reported
3 accurately and precisely?

4 A Yes, sir.

5 Q In the case of IBT, were efforts made to
6 monitor their work?

7 A The progress of the work was monitored; yes,
8 sir.

9 Q Were you personally involved in that progress
10 monitoring?

11 A On occasion, I either visited their labs or
12 their people came to St. Louis to update us on the
13 status of the reports. As you recall, some were 90-day
14 studies, some were three months, et cetera.

15 Q And some went on out to two years?

16 A Beg your pardon?

17 Q Some went on out to two years, did they not?

18 A Oh, yes, sir.

19 Q When you went to IBT to monitor the progress of
20 the studies, did you go and physically view the research
21 animals?

22 A Not in all cases. I did in some cases.

23 Q I see. Did you attempt to determine if they
24 were being properly fed, properly cared for, so forth?

25 A It occurred to me they were.

1 Q When you say it occurred to you, did you go to
2 look for that?

3 A I -- I shouldn't have worded the -- my
4 observation would indicate that they were.

5 Q Okay.

6 A I'm sorry I said "occurred." I don't know what
7 word I meant.

8 Q Okay. Well, you -- you did go and look, then?

9 A Yes, sir.

10 Q All right. And in many cases after these
11 studies were done, Monsanto would actually keep parts of
12 the animals that might have been prepared on slides or
13 things like that, would they not?

14 A They did for purposes of the work our
15 laboratory was doing in determining the levels of the
16 PCBs in the various tissues and in the various species
17 of animals.

18 When you say "slides" --

19 Q Maybe that's not the right word, but --

20 A No.

21 Q Tissue samples? Is that --

22 A "Tissue samples" would be a better word, sir.

23 Q Okay. They're not all mounted on little bitty
24 microscope slides?

25 A That -- that's a slide.

1 Q Okay. And -- and a tissue sample is --

2 A Is a tissue that's frozen. It can be a liver,
3 or a whole bird, or --

4 Q Or it could be a big piece?

5 A Oh, yes; or --

6 Q Okay.

7 A -- or a feather, or --

8 Q Okay. I understand now. Somehow I -- I had
9 the picture they were all in little bitty slides, but it
10 could be in bigger hunks somehow.

11 A Well, we had hunks, I guess, that required
12 refrigerators that might cover a quarter of this room.

13 Q A walk-in type refrigerator?

14 A I think they may not have used walk-in, but
15 they had enough of them to fill this kind of an area.

16 Q Okay. And for the review that Monsanto did,
17 they would carefully inventory and keep up with those
18 body parts, or tissues, or whatever they were?

19 A Until there could be some agreement that they
20 had looked at enough samples that were representative.

21 Q In connection with that, Monsanto would --
22 Monsanto would have available to itself materials with
23 which they could verify readings of what the materials
24 showed? I mean, if you'd look at it and say, "This
25 shows a cancer," or, "This doesn't show a cancer"?

1 A Monsanto didn't have that capability.

2 Q Did not have that capability?

3 A No. You're talking now about histopathology,
4 and we did not have that capability.

5 Q I see.

6 A We -- I say "we." I'm -- I'm not even sure
7 that Dr. Kelly would agree that he's a pathologist.

8 Q Okay. Did Monsanto have the materials that a
9 person who was qualified could look at and try to
10 evaluate these different body parts they got?

11 A The body parts? Yes, sir.

12 Q I mean, that's what you -- that's what you
13 could get one of those specialized people to look at and
14 tell you what it is?

15 A Yes, sir.

16 Q Okay.

17 A Although I -- I -- I can't answer that
18 correctly, sir, because I don't know whether the tissues
19 to be examined histopathologically should be taken --
20 perhaps frozen, but taken directly after removal from
21 the animal and not after the tissue has been stored for
22 several months.

23 Q Okay. And so you don't know whether or not it
24 would be acceptable to take a slice of a material and --

25 A I don't know, sir.

1 Q Okay. In addition to actually looking at
2 tissue samples, some of these studies would involve
3 counting the number of animals that got sick at what
4 point in time and that sort of thing, would it not?

5 A Yes, sir.

6 Q Figuring out how much they weighed, and how
7 much they ate, and all that type of --

8 A Yes, sir.

9 Q And it is very important that all that data be
10 accurate for the study to be meaningful, is it not?

11 A Yes, sir.

12 Q As a practical matter, for a study of the sort
13 that was done with PCBs on chronic matters, it's
14 important that the laboratory's employees be accurately
15 well-trained to do their jobs well?

16 A Yes, sir.

17 Q That the testing procedures be correct and
18 accurate and without fault or problem?

19 A Yes, and in this case preapproved by the
20 toxicologists of the Food and Drug Administration and
21 the -- I think the toxicologists in the Agricultural
22 Department who are interested in fish and wildlife.

23 Q Okay. So the PCBs study, then, were of
24 interest to both the Agriculture Department and the FDA?

25 A Yes, and we consulted completely with them with

1 the appropriate protocols after we had consulted with
2 Industrial Bio-Test about what the studies should be;
3 and we added some additional studies at the request of
4 the Food and Drug Administration and/or the Fish and
5 Wildlife people. And they knew from the beginning that
6 the Industrial Bio-Test Laboratory was doing the work.

7 Q And it -- it would be important to you and to
8 the Government and even to the public that it be done
9 right, because different people are going to rely on
10 these results.

11 A That's right.

12 Q It's important that when the studies are
13 discussed or reported upon in literature -- for example,
14 to the extent studies were reported in Technical
15 Bulletins -- that the reports be accurate about what the
16 results of the studies were?

17 A Yes, sir.

18 Q A study that was a 24-month study should run
19 the entire 24 months --

20 A Yes, sir.

21 Q -- and so on and so forth. Correct?

22 A I beg your pardon?

23 Q And -- and if it were an 18-month study, it
24 should run 18 months? I mean, each study should run its
25 stated term?

1 A Yes, sir.

2 Q There shouldn't be any replacement of animals
3 during the course of the study. If one dies, you
4 shouldn't just substitute another one in, should you?

5 A No, sir, because that would not represent
6 the -- a 24-month feeding for that particular animal.

7 Q Data on matters like body weights, blood test
8 results, urine test results, et cetera, should only be
9 reported as what was actually measured, not anything
10 else. Correct?

11 A Not anything else?

12 Q Yes. It should be only be what was actually
13 measured or sampled.

14 A If that's what they were reporting, yes, sir.

15 Q I mean, one should not just estimate
16 material --

17 A No. No, sir.

18 Q Okay.

19 A We're talking about scientific data.

20 Q And it's important that what's -- what's
21 reported be done accurately?

22 A Yes, sir.

23 Q And, for example, just to make my point clear,
24 if we had a lab technician who accidentally failed to
25 take a blood sample from one of the animals when they

1 were supposed to, and they recognized that two weeks
2 later, it wouldn't be appropriate to go back and just
3 estimate a number and put it in?

4 A Oh, no, sir.

5 Q Yeah. If there was data -- I guess to be
6 gramatically correct, if there were data -- I'll do the
7 best I can.

8 A I was about to correct you, sir.

9 Q Okay. If -- if there were data --

10 A Yes.

11 Q -- that was accidentally omitted, it would be
12 totally inappropriate at a later date to put it in; and
13 if you did, it might affect the reliability of the
14 outcome of the test. Isn't that correct?

15 A If -- if I understand your -- I don't
16 understand your question --

17 Q Let me ask it another way.

18 A Please do.

19 Q I asked you before whether it would be
20 appropriate to fill in or estimate data if you didn't
21 measure it, and you said, "No."

22 A Yeah, that's right, sir.

23 Q If someone were to fill in data because they
24 didn't measure it, that could affect the reliability or
25 the results of the test, since it wasn't actually

1 measured data, and --

2 A Definitely. I'm glad you rephrased the
3 question, because I had a different answer that --

4 Q Okay.

5 A -- wouldn't have been appropriate.

6 Q Okay.

7 MR. SHOEBOOTHAM: Let's look for a
8 place to give Mr. Wheeler a break in here
9 at some point. We've now been at it for
10 about an hour and 15 minutes.

11 MR. LACEY: I'm real close to the
12 conclusion of this --

13 MR. SHOEBOOTHAM: Okay.

14 MR. LACEY: -- series of questions
15 right here.

16 BY MR. LACEY:

17 Q I believe you previously told me that
18 Mr. Wright was at IBT, and then came back to Monsanto
19 and had some sort of difficulty as a result of his work
20 at IBT? Is that correct?

21 A Yes, sir.

22 Q Did that difficulty or any possibility of it
23 arise before you left Monsanto?

24 A Not to my recollection.

25 Q Okay. Prior to your leaving Monsanto, were

1 there any reservations in anyone's mind at Monsanto
2 about the reliability of the IBT work?

3 A Not that I know of.

4 Q Okay. Did Monsanto make any changes in the way
5 it operated or worked with IBT after Paul Wright came to
6 Monsanto as the Manager of Toxicology?

7 A Not that I'm aware of.

8 Q Do you know what particular responsibilities
9 Mr. Wright had in the long-term studies that were being
10 done by IBT for Monsanto? And I mean in particular
11 whether he was working with dogs or with chickens or
12 with rats or anything like that.

13 A No, sir.

14 Q Okay.

15 MR. LACEY: Why don't we just take a
16 break right there.

17 THE VIDEOTECHNICIAN: We're off the
18 record.

19

20 (Recess)

21

22 THE VIDEOTECHNICIAN: We've been off
23 the record for a short break. We're now
24 back on the record. The time is 3:49 p.m.

25

1 BY MR. LACEY:

2 Q Mr. Wheeler, are you familiar with what
3 impurities were contained within Monsanto's Aroclors?

4 A I don't recall knowing of any impurities until
5 the question of the environmental contamination came up.

6 Q What impurities were discovered in PCBs when
7 that question came up?

8 A I don't recall the numbers. There were --
9 there were -- was, I think, a report that I did see from
10 our analytical group that there was one or two parts per
11 million of the furans.

12 Q What about dioxins? I know you mentioned that
13 in 2,4,5-T dioxin was a contaminant. Was dioxin a
14 contaminant in the PCB products?

15 A I've never seen any reference that it was.

16 One other point I might mention: I -- I do
17 recall there was some work in Utrecht that indicated the
18 German and French production had some furans in --
19 again, in the few parts per million range; but there was
20 none in the Monsanto product.

21 Q Well, I guess I'm confused. Are you telling me
22 you think Monsanto's PCBs did or did not have furans in
23 them?

24 A According to the data that was published by
25 them, it did not.

1 Q And according to your own in-house data?

2 A As the methods of definition became more
3 specific, I think there was one or two parts per million
4 that may have been found.

5 Q Okay. PCBs were known as Aroclor. That's a
6 known name that Monsanto used for them?

7 A It was a Monsanto trademark name; yes, sir.

8 Q The name Askarel was used as a generic name for
9 PCBs that were used in dielectric uses, were -- was it
10 not?

11 A That's my understanding, sir.

12 Q Would the users, people like Westinghouse and
13 General Electric, have as good of information as
14 Monsanto about what the impurities in PCBs used as
15 dielectrics were?

16 A I have -- I don't know that there were any
17 impurities that we knew of or that that knew of -- that
18 they knew of.

19 Q Well, that's really not my question. My
20 question is: Would -- would people like Westinghouse
21 and General Electric and TVA and Ford and other
22 customers be in as good a position as Monsanto to know
23 about the impurities in PCB products supplied by
24 Monsanto?

25 A To my knowledge, there were no impurities.

1 Q No. You're missing my question. My -- my
2 question deals with their -- with the ability of
3 customers to be knowledgeable about impurities, if there
4 were any. And I'm trying to find out who's in a better
5 position to be knowledgeable about impurities; whether
6 it's Monsanto as the manufacturer/seller, or these
7 people who were customers.

8 A I don't know what their capabilities were.

9 Q So it's possible they may have been as capable
10 as Monsanto of determining impurities?

11 A Or perhaps more so.

12 Q Was it ever a matter of importance to Monsanto
13 to provide customers with information on the impurities,
14 if any, in PCBs?

15 A I would think it was Monsanto's responsibility
16 to pro- -- to provide materials that fit definite
17 specifications. And if there were impurities, then that
18 would not be within the specifications.

19 Q Did Monsanto undertake to advise its customers
20 when it discovered that there were furans in its PCBs
21 present as impurities?

22 A I don't know, sir.

23 Q But you're telling me you think that Monsanto
24 should have.

25 A I don't know, because they -- again, my

1 recollection is that the concentrations were so
2 insignificant that they were meaningless.

3 Q Let me show you a letter marked 23565 from you
4 to Otis Fancher dated May 25th, 1970. And I want to
5 direct your attention to the second paragraph
6 (tendering).

7 A (Reviews document.)

8 Yes, sir.

9 Q There's a reference in that document to
10 providing a sample of Aroclor that has been "cleaned
11 up." What does that mean?

12 A I don't have any knowledge, sir, at this point.

13 Q You wrote the letter, but you don't now
14 remember what it means?

15 A No, because I don't remember the letter.

16 Q I see. Do you recall whether at any point in
17 time Monsanto tried to start removing the impurities
18 that had previously been in its PCBs?

19 A I wasn't aware, sir, that there were
20 impurities. The -- any efforts I -- my -- my thought is
21 that any efforts -- and maybe the word "cleaned up" is
22 not correct -- was to narrow the presence of the various
23 isomers so that a 1242 was a 1242 with smaller
24 percentages of the other isomers.

25 Q And that's what you think you meant by "cleaned

1 up," or that's just a guess at this point? Do you know?

2 A That's -- that's just a guess --

3 Q Okay.

4 A -- or a speculation.

5 Q Let me show you a letter dated September 9th,
6 1968, to you from Otis Fancher with an attachment, the
7 group being numbered 22769 through 22791 (tendering).

8 I don't really have any detailed questions
9 about the document. I just want to confirm that that --
10 you were the person who was communicating with IBT in
11 that time frame about performing studies for Monsanto.

12 A It would appear that that's so; yes, sir.

13 Q And before --

14 A It's my recollection that I was.

15 Q And before studies were done, you obtained bids
16 on what the cost would be?

17 A Yes, sir.

18 Q And had established protocols; and I believe
19 that's what the attachment document is.

20 A Yes, sir.

21 Q Were you the one who was actually reviewing and
22 approving the protocols?

23 A No, sir.

24 Q Who in Monsanto was responsible for reviewing
25 and approving the protocols for the IBT studies?

1 A One individual would be Dr. Kelly. But, as I
2 told you earlier, sir, we cleared these protocols with
3 the Food and Drug Administration and other agencies.

4 Q Were you the one who was sending these matters
5 to the Food and Drug Administration and receiving their
6 comments and incorporating them into the protocols?

7 A It's more my recollection that I -- I visited
8 the agencies either with Dr. Kelly or with someone from
9 Industrial Bio-Test Laboratories for personal
10 discussions so that we could agree to make additions if
11 they thought they were advisable, or to change the
12 levels that were being used, et cetera.

13 Q By the way, "protocol" is just a description of
14 the steps by which the study is going to be carried out,
15 is it not?

16 A Yes, sir.

17 Q Okay.

18 Let me show you a letter, Document 23544, from
19 you to Dr. Calandra dated December 6th, 1968. And this
20 indicates the sharing of information between yourself
21 and Dr. Calandra with regard to potential problems of
22 PCBs and the studies of them, does it not (tendering)?

23 A (Reviews document.)

24 Yes, sir.

25 Q Okay.

1 A (Tendering.)

2 Q Let me show you a letter dated December 20th,
3 1968, from you to Dr. Calandra, Document 22833-34,
4 showing where you authorized some specific studies and
5 discussed pricing considerations. Is that correct
6 (tendering)?

7 A (Reviews document.)

8 Yes, sir.

9 Q I'm sorry?

10 A Yes, sir.

11 Q Okay. And you would actually take part in
12 trying to analyze whether a particular level of doses or
13 number of doses was appropriate. And I want to show you
14 in reference to that a letter of December 20, 1968, from
15 you to Dr. Calandra, Document 23545-46, and ask you if
16 that's correct (tendering).

17 A (Reviews document.)

18 A Yes, sir (tendering).

19 Q Okay. And from time to time Industrial
20 Bio-Test would make suggestions to Monsanto about how to
21 proceed with a study; and, in particular, I'm going to
22 direct your attention to a January 17th, 1969, letter
23 from Otis Fancher to you, Document 23548-549
24 (tendering).

25 A (Reviews document.)

1 Yes, sir (tendering).

2 Q In January of 1969, you suggested to
3 Dr. Fancher of IBT the -- an inclusion of controls in
4 one of their tests. I want to direct your attention to
5 Document 22831 (tendering). Is that correct?

6 A (Reviews document.)

7 Yes, sir (tendering).

8 Q Okay. You even invited Dr. Calandra of
9 Industrial Bio-Test to join you on some trips to Europe,
10 or on a trip to Europe, along with others, to meet with
11 various people about PCBs. I direct your attention to a
12 letter of April 8th, 1969, to Dr. Calandra, Document
13 22830, and ask if that's correct (tendering).

14 A I sure don't remember that. I don't remember
15 ever asking Dr. Calandra to -- to accompany us to
16 Europe.

17 Q Why don't you take a look at that.

18 A (Reviews document.)

19 Oh, I see. I -- apparently he was planning a
20 trip to Europe at about the same time.

21 Q And -- and you invited him to join you in
22 meeting --

23 A I -- I think I said it would be fortunate if we
24 could combine our meetings, did I not, at the last
25 paragraph (tendering)?

1 Q Yes. You actually indicate you would like for
2 him to join you on the calls, or for the whole
3 itinerary. That meant the entire trip, didn't it
4 (tendering)?

5 A (Reviews document.)

6 I said, "It sure would be fortunate and very
7 pleasant if your proposed trip to Europe would allow you
8 to join us on any of the calls or for the whole
9 itinerary." I -- I wouldn't designate that as an
10 invitation, which I think was the word you used
11 (tendering).

12 Q I see. In fact, Dr. Calandra was invited on a
13 number of occasions to assist Monsanto in making
14 presentations about PCBs and their hazard to various
15 groups, both scientific and Governmental, wasn't he?

16 A Yes, sir.

17 Q One of the things that you always had to try to
18 control in doing the tests through IBT was the budgeting
19 of those tests. And I direct your attention to a letter
20 of April 15th, 1969, to Dr. Calandra, Document
21 22571-752, and ask you if that's not correct
22 (tendering).

23 A (Reviews document.)

24 Yes, sir (tendering).

25 Q In fact, your budget constraints on performing

1 testing were relatively stringent, were they not?

2 A I wouldn't classify them as stringent; no, sir.

3 Q Let me show you a letter dated June 12th, 1969,
4 from yourself to Dr. Fancher, Document 22765 through
5 22766 (tendering), and ask you if it isn't true you even
6 suggested the specific billing schedule so you could
7 time when the bills came in, in accordance with whatever
8 amount of money you'd been allocated for the study.

9 A (Reviews document.)

10 If you are implying that there were constraints
11 as to when the money would be paid, I -- these letters
12 would say yes, there were constraints that did not have
13 any bearing on the completeness of the studies.

14 Q Well, there were constraints on how much money
15 you could even spend on these toxicity studies, were
16 there not?

17 A There were monies that were agreed on when the
18 original protocols were developed, and these were not
19 set in stone.

20 Q No. I -- I didn't ask my question very well, I
21 see. What I mean is not -- not that you and Industrial
22 Bio-Test agreed upon a price for the study at the outset
23 of the study. We've already established that.

24 What I mean is that within Monsanto, the amount
25 of money that your department had to spend on studies

1 generally was limited, was it not?

2 A Limited only by the type of data that needed to
3 be developed.

4 Q Well, isn't it a fact that you had to schedule
5 tests in part based on whether you could get budget
6 money for the testing?

7 A Not in connection with the PCBs, no, sir.

8 Q In -- in connection with other products, but
9 not PCBs? That's the way it worked?

10 A We may have had to apply a little more
11 persuasion on some other materials than we did with the
12 PCBs.

13 Q Well, why did PCBs get such special treatment?

14 A Because we had recognized, as did management,
15 that this was a series of compounds that deserved
16 expenditures of money to get the appropriate answers.

17 THE WITNESS: There's a fly in here.

18 Come fly with me.

19 BY MR. LACEY:

20 Q The studies that Industrial Bio-Test did with
21 regard to rats indicated problems with liver effects,
22 did they not? And I direct your attention to Otis
23 Fancher's letter of October 10th, 1969, to you, Document
24 22531 through -533 (tendering).

25 A (Reviews document.)

1 Excuse me. And what was your question, sir?

2 Q The rat study work done by IBT for Monsanto
3 showed liver problems, did it not?

4 A At some levels of feedings, yes, sir.

5 Q In fact, Monsanto was both surprised at the
6 apparent toxicity of -- or it was surprised at the
7 apparent toxicity of PCBs in rats, dogs, and chickens,
8 was it not? And I direct your attention to a letter of
9 March 4th, 1970, from yourself to Dr. Calandra, Document
10 23534-35 (tendering), in particular to Paragraph No. 2
11 that talks about that topic.

12 A (Reviews document.)

13 I've read the paragraph, sir.

14 Q And you and Monsanto were surprised at the
15 toxicity that showed up for your Aroclor products in all
16 of the animals being studied, were you not?

17 A I don't think that's quite correct. I think we
18 were surprised to find effects at some of the lower
19 levels that we had not -- that we would not have
20 anticipated from the -- any earlier work done on the
21 PCBs.

22 Q And what that indicated that -- was that PCBs
23 were more toxic than you had previously thought, wasn't
24 it?

25 A This data?

1 Q Yes.

2 A These data? It indicated that by the ingestion
3 route in animals, these materials were more toxic than
4 we would have expected.

5 Q And, of course, this is information that's
6 first coming to light in March of 1970. Correct?

7 A Yes, sir.

8 Q And the reason the information is not coming to
9 light before March of 1970 is that Monsanto had not
10 commissioned any chronic toxicity studies for PCBs of
11 the type it was doing here earlier?

12 A We had not conducted ingestion studies earlier.
13 That's correct.

14 Q Had you done that, you would have had this
15 information about the higher-than-anticipated toxicity
16 earlier, would you not?

17 A From the standpoint of possible ingestion, yes,
18 sir.

19 Q And you could have then taken that information
20 into account in providing information on the safe
21 handling and toxicity. Correct?

22 A I'm not sure that's the case.

23 Q Don't you think you would have taken that
24 information into account?

25 A We would have evaluated it, and I think we

1 would have had to decide whether the -- there were data
2 available that we needed to obtain to show whether the
3 metabolic pathway was the same regardless of whether the
4 entry to the body was inhalation, skin absorption, or
5 ingestion.

6 Q Well, workmen in the workplace can ingest PCBs,
7 can they not?

8 A I beg your pardon?

9 Q I said, workmen in the workplace can ingest
10 PCBs, can they not?

11 A Workmen, I guess, in any -- in any environment
12 can ingest what they're working with, if they're so
13 inclined.

14 Q Well, I don't mean to intentionally.

15 One can get it on their hands, and in smoking a
16 cigarette have it come in through that route, get it in
17 the mouth. One can, through the hands, in handling food
18 and in other ways, putting the hands to the face and
19 mouth, ingest PCBs, can they not?

20 A Very limited quantities, yes, sir.

21 Q And what these tests were showing is that PCBs
22 were having toxic effects by the ingestion route at
23 lower levels than Monsanto had anticipated. Isn't that
24 correct?

25 A Yes, sir.

1 Q Okay.

2 THE WITNESS: Should we stop, Jon, so
3 you can get on another airplane?

4 MR. SHOEBOTHAM: That's -- it's up to
5 Mr. Lacey at this point.

6 MR. LACEY: What -- what time's your
7 flight, Jon?

8 MR. SHOEBOTHAM: I have a 5:49
9 flight. I think I probably need to leave
10 here about 4:30 to make that, but I don't
11 want to interfere with you in any way.

12 MR. LACEY: Can we agree that the
13 documents that have his name but not his
14 signature, that came out of Monsanto's
15 files with the SCM numbers, were written
16 by him and sent out?

17 MR. SHOEBOTHAM: Why don't you just
18 ask him? It won't take but a minute.

19 MR. LACEY: Okay.

20 MR. SHOEBOTHAM: I'd be --

21 THE WITNESS: Could I --

22 MR. SHOEBOTHAM: I'd be --

23 THE WITNESS: Could I go ahead and
24 read through them quickly for you?

25 MR. SHOEBOTHAM: Yeah. I'd be afraid

1 to do it that the other --

2 MR. LACEY: Okay.

3 MR. SHOEBOTHAM: -- just as a
4 blanket --

5 MR. LACEY: Okay.

6 BY MR. LACEY:

7 Q This is -- this is a document that you -- a
8 letter that you prepared and sent to Dr. Fancher, is it
9 not? And I'm referring to Document 23521 through 23523.
10 Is that correct?

11 MR. SHOEBOTHAM: Mr. Wheeler, I want
12 to take your time, and don't -- in looking
13 through these, and --

14 THE WITNESS: Okay.

15 MR. SHOEBOTHAM: -- don't be
16 concerned about my schedule.

17 THE WITNESS: Okay. I -- I just
18 posed the question.

19 MR. SHOEBOTHAM: All right. I
20 appreciate your concern, but I -- I think
21 it's more important that you take your
22 time and look at these documents.

23 A (Reviews documents.)

24 THE WITNESS: Do you want to read
25 this (indicating)? It relates to Public

1 Relations, and --

2 MR. SHOEBOTHAM: I've seen that one.

3 A I don't remember that the New York Times gave
4 us such nice coverage.

5 BY MR. LACEY:

6 Q You -- you did send that out?

7 A Obviously, sir. It was an attachment to a
8 letter that I sent out (tendering).

9 Q Okay.

10 MR. SHOEBOTHAM: Could we get the
11 document number?

12 MR. LACEY: It was 23521 through
13 23523.

14 Are you all packed so you can just
15 hit the road?

16 MR. SHOEBOTHAM: Uh-huh.

17 I have a series of about ten
18 questions to ask him. If you want me to
19 go on ahead and do that while you look
20 through the documents --

21 MR. LACEY: Let me just --

22 MR. SHOEBOTHAM: -- I'll be
23 glad to, or --

24 MR. LACEY: Let me just finish --

25 MR. SHOEBOTHAM: -- or at your

1 convenience.

2 MR. LACEY: I've got about six left
3 here.

4 BY MR. LACEY:

5 Q Was it customary for IBT to provide you and
6 Monsanto with drafts of their proposed results for your
7 comment and review before they were finalized?

8 A Not for any of the interim reports. I believe
9 the final reports were sent to us.

10 Q Let me show you a letter dated April 28th,
11 1972, from you to Dr. Otis Fancher, Document 23589
12 through 23590 (tendering), in which you make
13 recommendations regarding what you would like to see in
14 the final study. Is that correct?

15 A I'll have to read it, sir.

16 (Reviews document.)

17 Yes, sir.

18 Q And let me show you another document, 23591,
19 which is a handwritten letter apparently from Otis
20 Fancher to you (tendering), transmitting draft studies.
21 And I don't know if that letter came before the one you
22 just looked at or after; but that is a letter from
23 Dr. Fancher to you, submitting draft studies for your
24 comments, review, and proposed changes. Correct?

25 A (Reviews document.)

1 Yes, sir.

2 Q And -- and that was a customary practice as
3 between Monsanto and IBT, was it not, for you as the
4 recipient of the study to see the drafts of the studies
5 for your comments, review, and proposed changes before
6 the final studies were actually submitted to you?

7 A To pick up such items as are mentioned here,
8 reference to other published data; no -- no intent to --
9 and no indication that we suggested the -- their
10 discussion and the meaning of their results.

11 Q Did you retain copies in the permanent files of
12 those draft studies that were sent to you, along with
13 whatever proposed changes you suggested?

14 A I don't recall (tendering).

15 Q Did you have a practice of destroying the
16 drafts?

17 A I expect we did.

18 Q I see. So that all that you would then have in
19 your files are the final studies that would incorporate
20 whatever changes you had suggested?

21 A Yes, sir.

22 Q Now, I believe you had told me in February of
23 1975 you were assigned to a specific -- this laboratory
24 work task or whatever?

25 A Yes, sir.

1 Q And let me show you a letter dated April 18th,
2 1975, from Dr. Calandra to Dr. Roush with a notation of
3 a copy to you. It's Document 22745, with attachments
4 22746 through 22750 (tendering). I would just ask if
5 that's something that by the time it got to you was
6 still within your area of interest, or whether that
7 wasn't something that was of concern to you by that time
8 because of your reassignment.

9 A (Reviews document.)

10 I -- I would not have the expertise to
11 participate in a discussion which he refers to here as
12 to the carcinogenic properties (tendering).

13 Q Okay. So that was sort of a courtesy copy that
14 came to you; not for any --

15 A Yes, sir.

16 Q -- real consideration or comment by you?

17 A That's right, sir.

18 MR. LACEY: Jon, I -- I've got more
19 questions that I could ask. But let me
20 let you get your questions in, so we can,
21 in view of the time, try to --

22 MR. SHOEBOOTHAM: Okay.

23 MR. LACEY: -- get this completed.

24 MR. SHOEBOOTHAM: I'd like to see just
25 one document, the English document. I

1 think it's 17- -- or 18731. And I have
2 just a few questions for Mr. Wheeler about
3 that document.

4 MR. LACEY: (Tendering.)

5 MR. SHOEBOOTHAM: Great. Thank you.

6
7
8 EXAMINATION

9
10 QUESTIONS BY MR. SHOEBOOTHAM:

11 Q Mr. Wheeler, obviously I'm Jon Shoebotham, and
12 we've met before; and I represent Monsanto here today.

13 Let me hand you now a document that you talked
14 with Mr. Lacey about. It's SCM 018731 (tendering), and
15 let me ask you to examine that.

16 Why don't you do this: You've talked with
17 Mr. Lacey about that document. Why don't you hold it up
18 to the camera so the Jury can see the front cover of
19 that document and will know what document we're talking
20 about?

21 A (Complying.)

22 Q Okay. My question to you is: Did you have any
23 involvement at all in the preparation of that document?

24 A No, sir.

25 Q Do you know who prepared it, what individuals

1 prepared it?

2 A No, sir.

3 Q Do you know when that document was prepared?

4 A I don't see any indication of a date, sir.

5 Q Do you know of your own personal knowledge when
6 it was prepared?

7 A No, sir.

8 Q Have you ever seen that document before
9 Mr. Lacey handed it to you at the deposition here
10 earlier today?

11 A No, sir.

12 Q Do you know what the purpose of the preparation
13 of that document was? Do you know why it was prepared?

14 A No, sir.

15 Q Do you know to whom that document was sent?

16 A No, sir.

17 Q Do you know what customers that document might
18 have -- might or might not have been sent to?

19 A No, sir.

20 Q Do you know whether or not it was sent to
21 customers in one particular country or part of the
22 world, even?

23 A No, sir.

24 Q Do you know, for example, whether or not that
25 document was sent to Monsanto customers in Sweden?

1 A No, sir.

2 Q Do you know whether or not it was sent to
3 particular plants in Sweden?

4 A No, sir.

5 Q Mr. Wheeler, do you -- do you know whether or
6 not this document was sent to the plant in Sweden that
7 you testified earlier in the day that you visited?

8 A I -- I don't understand the question.

9 Q All right. Do you know whether or not this
10 document that you have in your hands here -- do you know
11 whether or not that was sent to the plant in Sweden that
12 you visited?

13 A No, sir.

14 Q Okay. Thank you.

15 MR. SHOEBOTHAM: No further questions
16 at this time.

17

18

19 RE-EXAMINATION

20

21 QUESTIONS BY MR. LACEY:

22 Q I have just a couple of follow-up questions on
23 that, Mr. Wheeler.

24 Would you just hold that document up again so
25 that we can get it on camera?

1 A Can I do this (complying)?

2 Q That's fine, if you wish. I don't really care.

3 There is no doubt in your mind that document

4 was prepared by Monsanto employees, is there?

5 A No, sir.

6 Q That's got the big "M" and "Monsanto" right

7 down there on the front of it, doesn't it?

8 A Yes, sir.

9 Q There is no doubt that document was prepared in

10 connection with and to advise people of the toxicology

11 and safe handling of Monsanto's Aroclors, is there?

12 A Prepared by the people of Monsanto in Great

13 Britain.

14 Q Well, I thought you testified you didn't know

15 who prepared it.

16 A I don't, sir, but -- I -- I'm sorry. I -- I --

17 again, I -- I'm trying to be responsive. I -- I don't

18 want to speculate, and I do not know.

19 Q Okay. But the one thing we can be sure of is

20 it was prepared by Monsanto employees about Monsanto's

21 PCB products?

22 A Yes, sir.

23 Q And there wasn't any substantive difference

24 between Aroclor 1242 produced in England and Aroclor

25 1242 produced in Illinois and Aroclor 1242 produced in

1 Anniston, Alabama, was there?

2 A Not to my knowledge, sir.

3 Q The proper information for the toxicology and
4 safe handling of Monsanto Aroclors would be the same
5 wherever the products were being produced and wherever
6 they were being sold, wouldn't they?

7 A Yes, sir.

8 Q The standards don't vary from country to
9 country or business to business, do they?

10 A No, sir.

11 Q And the desire of Monsanto to provide effective
12 information to all of its customers about PCB products,
13 their toxicology, and their safe handling doesn't vary
14 from country to country or customer to customer, does
15 it?

16 A The policy?

17 Q The desire of Monsanto to provide all of their
18 customers with appropriate information on toxicology and
19 safe handling of PCBs does not vary from country to
20 country or customer to customer, does it?

21 A I don't know what the policy was in -- in Great
22 Britain. I can only speak for the U. S.

23 Q I'm not talking about the policy, and let me
24 ask --

25 A I beg your pardon, sir. I think you said

1 "policy."

2 Q Well, let me -- let me ask it -- what I mean,
3 then.

4 The desire of Monsanto and, in particular, the
5 desire of the Medical Department of Monsanto, which was
6 charged with providing customers with information on
7 toxicology and safe handling worldwide, including Great
8 Britain -- isn't that correct?

9 A The -- the -- again, I think you've gotten --

10 Q Well, let -- let me try -- let me try --

11 A -- a question that I can't answer "yes" or
12 "no."

13 Q Fine. Well, let me make it where you can
14 answer "yes" or "no."

15 It was the obligation and the charge of the
16 Monsanto Medical Department that resided in St. Louis,
17 Missouri, to determine what was told to customers
18 worldwide about the safe handling and toxicology of
19 PCBs. Correct?

20 A I'm not sure that's correct, sir.

21 Q I see. Well, who was it, then, to your
22 knowledge, that was responsible for advising customers
23 in Great Britain about the toxicology and safe handling
24 of PCBs?

25 A The people in Great Britain, sir.

1 Q And they were not subject to review by the
2 Medical Department in St. Louis?

3 A That's right, sir.

4 MR. LACEY: No further questions.

5 THE VIDEOTECHNICIAN: Okay. That
6 concludes the deposition of Mr. Elmer P.
7 Wheeler. The time is 4:31 p.m.

8
9 (The deposition was concluded
10 at 4:31 p.m.)
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1 THE STATE OF *

2 *

3 COUNTY OF *

4

5 I, ELMER P. WHEELER, hereby certify that I
6 have read the foregoing transcript of Volume II of my
7 testimony given in the foregoing numbered and styled
8 case, and that same is true and correct to the best of
9 my knowledge and belief.

10 I further certify that any and all
11 corrections have been made on a separate page and
12 attached hereto.

13 SIGNED on this the _____ day of _____,
14 1987.

15

16

ELMER P. WHEELER

17

18 SWORN TO AND SUBSCRIBED BEFORE ME on this
19 the _____ day of _____, 1987.

20

21

22

Notary Public

23

24

25

1 THE STATE OF TEXAS *

2 COUNTY OF HARRIS *

3
4 I, LINDA C. BAKER, a Certified Shorthand
5 Reporter, hereby certify that the foregoing testimony
6 was given before me after the Witness had been first
7 duly sworn.

8 I certify that I prepared this transcript
9 and that the foregoing 199 pages constitute a complete
10 and correct copy of the transcript of the proceedings
11 (Volume II), and that the original is being given to the
12 attorney taking same, to be filed by him if necessary.

13 I further certify that I am neither attorney
14 for, related to, nor employed by any of the parties to
15 the lawsuit in which this deposition was taken; further,
16 I am neither related to nor employed by any attorney of
17 record in this cause, nor do I have a financial interest
18 in the matter.

19 GIVEN UNDER MY HAND AND SEAL OF OFFICE in
20 Houston, Texas, on this the 16th day of May, 1987.

21
22 
LINDA C. BAKER, CSR, RPR

23 Certification Number: 505
24 Date of Expiration: December 31, 1988
25 Address: 2900 Smith Street, Suite 104
Houston, Texas 77006
Phone: 713/523-3767

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St. Louis, Missouri

August 19, 1999

LABELING

ANODOLERS - PYRANOLS - FIFTEENS

C. B. Sigler, 3-2-11

Ref : C. R. Sigo memo Aug. 1., [REDACTED]
P. E. Reisluer memo Aug. 17, 1999

Clarence Sweet
D/M-00085
J. Benignus, 3-2-3
G. Gibson, 3-2-3
E. Reisluer, 3-2-3
H. E. Kelly, A-209-3
J. W. Newcomb, 3-2-3
R. A. Pohl, Assistant
E. H. Patter, 3-2-3
S. E. Sancey, 3-2-3

Exhibit #

5

Sales have agreed (Mr. Paul Benignus) to use of the same caution statement for all ANODOL, PYRANOL, and FIFTEEN containers. This statement is as follows:

CAUTION! CONTAINS CHLORINATED HYDROCARBONS

Avoid prolonged breathing of vapor or mists.

Avoid contact with eyes or prolonged contact with skin.

If skin contact occurs, remove by washing with soap and water. Following eye contact flush with water.

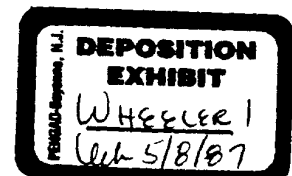
If clothing becomes soaked with fluid, launder before wearing again.

Where product labels are used this complete statement may be on the label. Current plant practice is to stencil the drums and in these cases standard 3 x 5 white pressure sensitive labels with black printing are available.

Please initiate this procedure immediately.

CRS:ce

C. Robert Sigo
Labeling Supervisor



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Monsanto

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BM-00098

Exh Pt 1 of 7

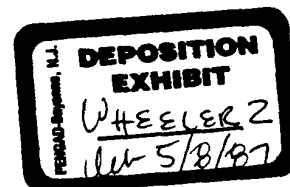
MONSANTO INDUSTRIAL CHEMICALS CO.
800 N. Lindbergh Boulevard
St. Louis, Missouri 63166
Phone: (314) 694-1000

THE POLYCHLORINATED BIPHENYLS

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