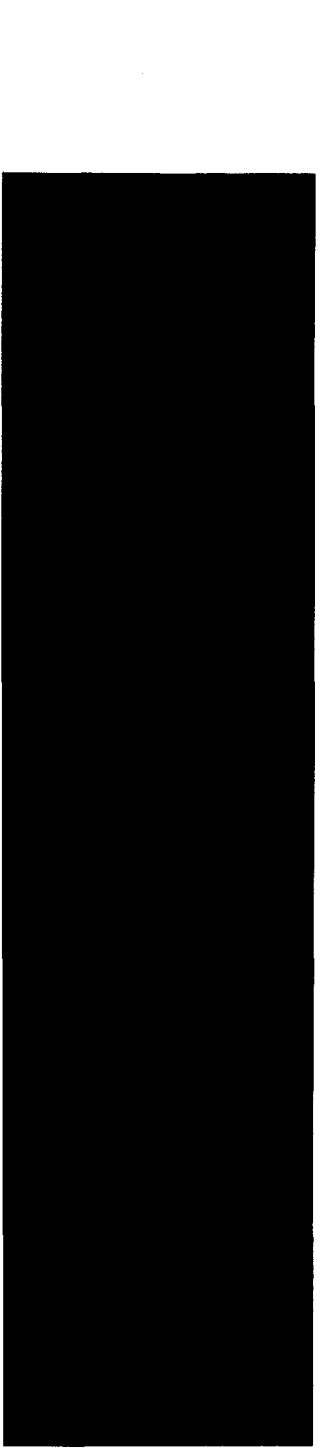
ALSO BY DENNIS LOVE



MY CITY WAS GONE



DENNIS LOVE

WILLIAM MORROW
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Everybody's go
Something tha
Some folks spe
They carry it u
Till some day
Cut it loose or
Where no one
Or looks too l
In the darkne
—BRUCE SPRIN

Without chem
—FROM A 197

can't find any documented results of effects from environmental contact." The bottom line, according to AWIC's Crockett, was that no action was planned as a result of the FDA findings. "I can't say that they would necessarily require action," he said. "The value of PCB in my opinion is something that has yet to be decided."

Johnson's story prompted little public reaction, and essentially went away. The following week, a memo was routed from the Anniston plant to Monsanto's corporate headquarters in St. Louis:

> *The* Anniston Star *somehow obtained figures from the FDA which showed unusually high levels of PCB in fish samples taken from Choccolocco Creek. A* Star *reporter contacted the Anniston plant for comments on the data and information about our PCB production operations there. Public relations prepared replies to specific questions.*
>
> *Plant management convinced the reporter to visit the plant for a firsthand view of what the plant was doing to eliminate PCB escape to the environment. A factual front-page feature appeared in the* Star*'s Sunday, November 22, edition reflecting the value of cooperating with news media planning PCB stories.*
>
> *Quoting both plant management and the Alabama Water Improvement Commission, the feature emphasized the PCB problem was relatively new, was being solved by Monsanto and, at this point, was no cause for public alarm.*

The Southern Manganese Corporation opened for business in West Anniston in 1917, its chief product being shell casings for artillery used during World War I. After the war, however, its founder and owner, Theodore Swann of Birmingham, began to shift the company's focus to the burgeoning chemical industry that was taking

hold across the country. By 1925, when the plant's name was changed to the Swann Chemical Company, researchers were well on their way to making Swann the first site in the world to produce polychlorinated biphenyls, to be used in industrial coolants that came to be known by the brand name of Aroclors. These had gigantic potential in an era when the use of electrical equipment was revolutionizing not only American industry but the daily lives of ordinary Americans. Production of PCBs officially began in 1929 and immediately proved to be an immensely profitable venture, even amid the stock market crash of that year and the ensuing Great Depression.

In 1935 the Monsanto Chemical Corporation—recognizing the enormous value of the Swann-produced PCBs—bought the company at an undisclosed price. Whatever Monsanto paid for the Swann Chemical Company, it was money well spent. Already a wealthy multinational concern and battle-tested in the ways of large-scale marketing, Monsanto was singularly well positioned to make the utmost use of PCB technology. By the time Johnson's article appeared in the *Star* in 1970, Aroclors-related products were responsible for twenty-two million dollars in annual worldwide sales to clients such as Westinghouse, General Electric, and the U.S. Navy—and a very impressive ten million dollars in profits.

Long before then, however, some thirty years before Gene Jessee assured the *Star* that public health was not at risk and that, indeed, Monsanto's understanding of PCBs was only germinating, the company had begun to grapple with the negative, even deadly implications of PCB exposure. In a series of internal memorandums and other documents that would come to light years later, Monsanto showed itself to be keenly aware of the toxic effects of PCBs and aggressively working to keep that information under wraps so as not to affect the substantial profits that flowed from Aroclors products.

As early as 1937, a memo warned of "systemic toxic effects," including an "acne-form skin eruption," from exposure to PCBs. The following year, a researcher named Dr. Cecil Drinkard forwarded a study to Monsanto reporting that test animals exposed to PCBs developed liver damage. Drinkard published his findings in 1939 in the *Journal of Industrial Hygiene and Toxicology*. Eight years later, in response to an inquiry from one of its customers about possible liver damage to its workers from PCB exposure, Monsanto referred the customer to Drinkard's study and praised it as "the best published information about the toxicity of Aroclors vapors. . . . Based on our practical experience in the manufacture and sale of millions of pounds of Aroclors annually, the point that we would emphasize is that workers should not be exposed to Aroclors vapors and that the men working with Aroclors should observe 'good housekeeping' rules about keeping their clothing and skins free of the material and avoid ingestion of it."

A 1950 document outlining the use of Aroclors at the Anniston Monsanto plant and at the company's William G. Krummrich plant in Sauget, Illinois—the only other U.S. facility that produced PCBs—noted that "from the start of Aroclor manufacture at the Krummrich plant the operators have been supplied a clean change of clothes every day, and time has been allowed at the end of the shift for bathing. Operators are advised to wash hands and face before eating. The Anniston operators do not have the same issue of clean clothes. . . . At Anniston, no special protective clothing is provided for the Diphenyl and Aroclors operators. A daily change of clothing was provided in the past but this practice ceased before the war . . . the men are expected to take a bath, on their own time, at the end of the shift." One Aroclors manual reported that in the "early days of development," workers at the Anniston plant had developed chloracne and liver problems.

A 1952 memo regarding an agreement between Monsanto and

the U.S. Public Health Service about the labeling requirements for Aroclors revealed not only one disturbing use of the product during its inception period but also knowledge that deaths had resulted from exposure:

> *Back in 1938 or thereabouts, when the Aroclor applications were relatively few and the customers about equally few, there was indeed the prize application of using Aroclor 1254 as a chewing gum platisticizer. The wording of our label would not be compatible with this sort of thing.*
>
> *While the toxicity hazard of Aroclor's fumes is well established and should be thoroughly understood by all, yet, as we go along we find that we are always confronted with one violation or another, and indeed, regard keeping in touch with these things to be a major responsibility in the promotion of Aroclors.*
>
> *Referring to the few deaths and the relatively large number of acne or dermatitis cases arising during the war, in connection with fabricators of Navy cable coating materials using a mixture of Aroclors 4465 and Halowax, there are two things to keep in mind. One is that this combination of chlorinated hydrocarbons is more toxic than the chlorinated biphenyls or terphenyls alone; and secondly, in this program of operations, proper working facilities and cleanliness were overlooked. In fact, the workers' wives at home even acquired acne and dermatitis which was traced back to the halogenated hydrocarbon compounds.*
>
> *In light of the immediate above, it is interesting to keep in mind that we are currently selling at least two and one-half million pounds a year of, particularly, Aroclor 5460; but also some Aroclor 4465 for hot melt impregnation of asbestos wound wire, and also as impregnating agents used in the construction of Navy cable.*
>
> *In the past, when the toxicology of Aroclors may not have been*

particularly well understood, this factor certainly was a heavy load in the development of these products. The subject . . . is not the easiest one in the world to understand, but in view of the large stake that we now have in the rather widespread commercial use of Aroclors, we constantly strive to learn more about this subject of Aroclor toxicology and to safeguard against any possible hazards.

In 1955 Dr. J. W. Barrett, a Monsanto researcher stationed in London, suggested that further research be conducted into the toxic effects of Aroclors. He was countermanded in a memo from Dr. Emmet Kelly, a high-ranking official at Monsanto headquarters in St. Louis:

I don't know how you would get any particular advantage to doing more work. What is it that you want to prove? I believe your work should be directed towards finding out what the concentrations are of Aroclors during different operations whether it is industrial or painting. . . . MCC's position can be summarized in this fashion. We know Aroclors are toxic but the actual limit has not been precisely defined. It does not make much difference, it seems to me, because our main worry is what will happen if an individual develops any type of liver disease and gives a history of Aroclors exposure. I am sure the juries would not pay a great deal of attention to MACs (maximum allowable concentrations).

During the next few years, concern began to grow within Monsanto over a series of independent tests the Navy was conducting over Pydraul 150, an Aroclors product used in submarines. Despite the reality that Monsanto had long been aware that Aroclors fumes posed a variety of health issues in poorly ventilated spaces,

the company appeared eager to convince the Navy, a vital customer, to discount its own studies and accept Monsanto's data at face value. In December 1956, Monsanto official Elmer P. Wheeler wrote:

Dr. Kelly and I have discussed Commander Siegel's position on Pydraul 150 with several of the people getting a copy of this memo. I believe there is general agreement among us here in St. Louis that this is about the last straw in our relationship with the Bureau of Medicine.

Without a knowledge of the details of the experiments [being conducted] for Siegel, we can only conclude from your description of the tests that Siegel is drawing conclusions from data obtained by exposures to animals which have no practical significance insofar as potential human exposure aboard a submarine is concerned. We can do nothing to influence the type of tests which he wants done. . . . Apparently we can do nothing about influencing his conclusions based on such tests.

Our only approach would appear to be to make all data which we have available to the Toxicological Committee of the National Research Council (which we have done) and let them decide about the validity of any conclusions which Siegel reaches based on a comparison of our data and the [Navy] data. At the moment none of us here feel like approaching Dr. Hodge's committee requesting an opinion from that group.

In the first place, I don't know if we at Monsanto could ethically make such a proposal to Dr. Hodge and secondly, I don't know how the Hodge committee could force any action out of Siegel if they wanted to. In the third place, of course, if we received a favorable recommendation from the committee over Siegel's objections, it would not improve our "friendly" relationship with him.

Out of all of this it appears quite certain that we will not spend one nickel to develop toxicity data on hydraulic fuels for the Navy. We will continue to get information to satisfy ourselves that use of our fluids is safe under any normal foreseeable conditions. This is generally enough to satisfy our non-military customers.

If the Navy has interest in any of these fluids and wishes to accept them toxicity wise on the information available, then they are welcome to do so. If the fluids are not acceptable on the basis of such data, then perhaps we can save a lot of time and effort by advising the Navy to look elsewhere for their requirements.

A month later, Dr. Emmet Kelley reported on another meeting during which Navy officials shared some of their Pydraul research findings:

Skin applications of Pydraul 150 caused the death in all of the rabbits tested. . . . The inhalation of 10 milligrams of Pydraul 150 per cubic meter or approximately two tenths of a part of the Aroclor component per million for 24 hours a day for 50 days caused definite liver damage. No matter how we discussed the situation, it was impossible to change their thinking that Pydraul 150 is just too toxic for use on a submarine. It may be that such concentrations would never be reached in the submarine but the Navy does not appear willing to even put the material in a trial run to see if it will work.

It would appear, therefore, that we should discontinue to sell Pydraul 150 for this particular application and try to develop a hydraulic fluid without Aroclors as one of its components. . . .

In 1958, as more accountable labeling laws were enacted across the United States, the subject of Pydraul products was raised again within Monsanto:

In order to comply with recent changes in labeling laws enacted by several state legislatures, the subject of correct labeling has been of great concern to us.

This situation was brought forcibly to our attention by a specific request from Socony Mobil that a caution stamp be affixed to all Pydraul which they purchase from Monsanto for resale. We believe the wording which they use on this stamp is not in the best interest of Pydraul sales, and is such that our competition could use to great advantage. . . .

It is our desire to comply with the necessary regulations, but to comply with the minimum and not to give any unnecessary information which could very well damage our sales position in the synthetic hydraulic fuel field.

Other Monsanto customers began to voice their concerns about the use of Aroclors products in the workplace. In a typical communication, the chief engineer of New York–based Hexagon Laboratories wrote to Emmet Kelly in 1961:

In reference to our recent telephone conversation, I would like to further discuss the incident wherein two of our plant personnel were exposed to hot Aroclor 1248 vapors generated by a broken pipe connection. For your information and records the two men developed symptoms of hepatitis as you predicted and were confined to a hospital for approximately two weeks.

In view of the above experience which has given me considerable concern I felt that the matter should be brought to your attention. Since we are dealing with a highly toxic material at high temperatures and since these failures cannot be prevented, it is felt that a more thorough and clearly written description of the hazards be described under Safety of Handling. Also the antidote or first aid

treatment if any be included. I certainly would be interested in this information if available.

I trust that this matter will be given your serious consideration so that other or new users are fully aware of the problem. . . .

Despite Monsanto's efforts "to comply with the minimum" and despite mounting evidence of Aroclors toxicity, a letter in 1962 from Emmet Kelly to Dr. Marcus Key of the U.S. Public Health Service sought to downplay concerns:

As I told you on the telephone, our experience, and the experience of our customers over a period of nearly 25 years, has been singularly free of difficulties. . . . We have not in any case attempted to minimize potential hazards.

In 1965 an internal memo from Elmer Wheeler to Monsanto colleague Richard Davis discussed a festering situation with the Reliance Electric and Engineering Company of Cleveland:

As I told you on the telephone Mr. Haredos called me earlier this week quite disturbed as a result of my letter of August 27. This letter apparently alerted him somewhat to the potential toxic hazards of the use of Aroclor 1242 at elevated temperatures. He told me that the Monsanto literature furnished him had been more reassuring in terms of what problems might arise in their application. I guess what really shook him was when I mentioned that with temperatures greater than 150 [degrees] mechanical exhaust ventilation should be provided to remove vapors.

For the record Mr. Haredos' application involves the use of Aroclor 1242 as a coolant in electrical motors. . . . He told me there had been some complaints in mines where the motors were being used. He wasn't specific but I understood that the complaints were of odor and irritation. Whether or not the levels are actually irritating I don't know. It may be that the miners have just recognized that there is something in the air now that wasn't there before. Mr. Haredos went on to say that in his own plant hot Aroclors spills on the floor were common and that his own employees had complained of discomfort. I was brutally frank and told him that this had to stop before he killed somebody with liver or kidney damage—not because of a single exposure necessarily but only to emphasize that 8-hour daily exposure of this type would be completely unsafe. . . .

Eighteen months later, with news reports beginning to circulate in Europe, particularly in Sweden, about the possible widespread impact of PCBs on human health, Emmet Kelly issued a memo about rising concern within Monsanto:

We have had a rather extensive meeting, which included the St. Louis individuals receiving copies of this memorandum, on Aroclor in the air and in various fish and other living reservoirs. . . .

We are very worried about what is liable to happen in the states when the various technical and lay media pick up the subject. This is especially critical at this time because air pollution is getting a tremendous amount of publicity in the United States.

We have been receiving quite a few communications from our customers, but the most critical one is NCR [National Cash Register], who are very much involved with their carbonless carbon paper. . . .

The consensus in St. Louis is that while Monsanto would like to stay in the background in this problem, we don't see how we will be able to in the United States. We feel our customers, especially NCR, may ask us for some sort of data concerning the safety of these residues in humans. This obviously might be opening the door to an

extensive and quite expensive toxicological/pharmacological investigation. . . .

Despite these concerns, the Monsanto board of directors in November 1967 by unanimous vote approved a $2.9 million expansion of its Aroclors program in Anniston and Sauget. A year later, internal memos began to circulate about the well-publicized discovery of PCBs in California wildlife. "It only seems a matter of time before the regulatory agencies will be looking down our throats," one memo warned. A consultant advised Monsanto to stop denying the problems and start cleaning up: "The evidence regarding PCB effects on environmental quality is sufficiently substantial, widespread and alarming to require immediate corrective action." A subsequent Monsanto memo suggested that "We should begin to protect ourselves."

In August 1969, Monsanto formed an Aroclors Ad Hoc Committee charged with assessing the PCB situation and making recommendations on how to protect the company's global Aroclors market. The committee issued its first report two months later, and listed its priorities:

1. Protect continued sales and profits of Aroclors;
2. Permit continued development of new uses and sales;
3. Protect the image of the Organic Division and the Corporation as members of the business community recognizing their responsibilities to prevent and/or control contamination of the global ecosystem.

The committee reported:

> As the alarm concerning the contamination of the environment grows it is almost certain that a number of our customers and or their products will be incriminated. The company could be considered derelict, morally if not legally, if it fails to notify all customers of the potential implication.

"Subject is snowballing," one committee member wrote in his notes. "Where do we go from here?" Graphs were produced charting Aroclors profits versus liability over time, and committee members urged that studies be generated that might poke holes in government findings about PCBs.

Also in 1969, Monsanto found fish in an Anniston creek with 7,500 times the allowable PCB levels. A subsequent memo declared that "there is little object in going to expensive extremes in limiting discharges." Later that same year, the committee chairman reported that Monsanto's own tests on rats, chickens, and dogs "are exhibiting a greater degree of toxicity than we had anticipated." Fish test results were worse: "Doses which were believed to be OK produced 100 percent kill." The Monsanto consultant who conducted the tests was encouraged by the committee to produce friendlier results but replied, "We are very sorry that we can't paint a brighter picture at this time."

The consultant also found "ominous" concentrations of PCBs in the streams and sediment in and around Choccolocco Creek in Anniston. "It is apparent to us that there is a cause-and-effect relationship," he wrote. After discussing the report, the Aroclors committee proposed that Monsanto reduce PCB emissions in Anniston to "an absolute minimum," then struck out the word *absolute.*

By May 1970, with members of Congress calling for PCB hearings ("This would shut us down depending on what plants or animals they choose to find harmed," the committee had warned), Monsanto decided to inform the Alabama Water Improvement Commission that PCBs were entering Snow Creek. A May 7 memo

reported on a meeting between three Monsanto officials and Joe Crockett of the AWIC in Montgomery:

Mr. Crockett and the AWIC staff were totally unaware of the published information regarding Aroclors. . . . Mr. Crockett was most appreciative of Monsanto's approach to the problem and the fact that Monsanto came to him. He alluded that our action would produce a situation that was beneficial to the protection of both Monsanto and AWIC positions. His recommendations were as follows: (1) Supply the AWIC with a general process description detailing potential loss sources. (2) Continue to develop information and as major items develop inform the AWIC. (3) Give no statements or publications which would bring the situation to the public's attention. . . .

In summary, Mr. Crockett was noticeably unexcited at our disclosure and all his remarks were directed toward a careful evaluation followed by actions as required by data. The full cooperation of the AWIC to reach the above objective on a confidential basis can be anticipated.

By August of the same year, the FDA had notified Monsanto of its findings of high levels of PCBs in fish downstream from its Anniston plant—the same study that would result in Judy Johnson's November article in the *Star*. A memo with the heading "CONFIDENTIAL—F.Y.I. AND DESTROY" noted:

Joe Crockett, Secretary of the Alabama Water Improvement Commission, will try to handle the problem quietly without release of information to the public at this time. He believes that the FDA will not [act] precipitately in this matter (he did not advise how the FWQA [Federal Water Quality Agency] might react). . . .

Ten days later, a memo to J. C. Landwehr of the Anniston plant from Jack T. Garrett of Monsanto's medical department revealed that Crockett was beginning to feel heat from federal authorities and that he had asked Monsanto to provide the AWIC with a paper trail regarding the company's PCB discharges:

[Crockett] suggested that our control program should be written up and submitted to the state as a report covering our past efforts, present status and our future plans in connection with limiting PCB in the Snow Creek effluent. . . .

Crockett told me that if this PCB issue hits the Alabama press, the Alabama Water Improvement Commission would be forced to close Choccolocco Creek and the Logan-Martin Reservoir to commercial and sport fishing unless we can prove that the contamination level does not reach the reservoir. The State of Alabama has no choice but to follow the guide lines of the FDA which calls for no more than 5 ppm in fish.

On September 18, 1970, two months before the *Star* article appeared, a "confidential" memo from corporate offices in St. Louis to an Anniston plant official expressed concern that PCB levels in Snow Creek were not improving, and wondered how to present that data to Crockett in a new report that was being prepared:

There is extreme reluctance to report even the relatively low emission figures because the information could be subpoenaed and used against us in legal actions. Obviously, having to report these gross losses multiplies, enormously, our problems because the figures would appear to indicate lack of control.

In August 1971 Monsanto quietly ceased production of PCBs at its Anniston plant, shifting its entire Aroclors operation to the

Sauget plant. The federal government, faced with mounting evidence of the carcinogenic effects of PCBs, banned production of the compounds in 1977. There appears to be no instance in which Monsanto ever issued any public warning in Anniston (or elsewhere) about the widespread toxic effects of the some two million pounds of PCBs the company had dumped in Anniston's water and soil for some forty years, or any evidence that any such warning was ever considered.



CHAPTER FIVE

CONFRONTING THE HYDRA

By the time Chip Howell became mayor of Anniston in 2000, he had done his homework on chemical weapons. What he had learned was that he had learned more than he really wanted to know.

He had gleaned quite a bit before he ever cracked a book in earnest on the topic. Despite the secrecy that had draped the arrival of chemical weapons at the Anniston Army Depot in the early 1960s, the presence of those weapons had become fairly common knowledge around town by the time Chip entered high school. Too many civilians worked at the Depot to keep things hush-hush for very long. And just in case any doubters remained, a spectacle of an event occurred in 1970 that precisely demonstrated the strategic position held by Anniston, Alabama, in the midst of the Cold War.

In August of that year, a forty-six-car, half-mile-long munitions train pulled away from the rail yard at the Depot loaded with 305 steel and concrete vaults, each encased in quarter-inch-thick armor plating, each containing nerve gas rockets. The train also included a guard car and cars containing fire trucks and decontamination mate-

between Kasowitz and Lightfoot, Stewart read that Kasowitz was a winner who was ready to knock heads for all four quarters and then overtime if that's what it took—and he took huge comfort in that knowledge.

The final evidence came some two years into the proceedings. A trial date still seemed far away. Stewart had steadily built his case, and the defense had upped its settlement offer to thirty million dollars. It was an offer that had to be considered, if for no other reason than because by that juncture it had become clear that the *Abernathy* case was going to be no mere one-million-dollar investment by Kasowitz, Benson. Things were getting tense; the Mississippi lawyer Dan Barrett, for one, was pushing to accept the offer. Stewart was opposed. The offer, in his view, didn't serve his clients well, in the first place. Beyond that, he was feeling good about the case. The evidence seemed to be coalescing in their favor. Stewart felt confident that the defense was growing more concerned, that it was likely that much larger settlement offers were ahead if they could just ride it out. And if that didn't happen, Stewart liked his chances in the courtroom. As Stewart was prone to remind everybody, including the defense team, he had "whipped Warren Lightfoot's ass" every time they had squared off on a case. He saw no reason why he should lose the upper hand now. But Stewart also knew that the case had probably reached a pivotal stage for Kasowitz and Benson. Thirty million dollars wasn't all the money in the world in a case like *Abernathy,* but it was certainly a decent sum. It was enough to put a good face on things and get away clean. It was enough money, in other words, to put the lie to tough talk of "going the distance," if the lie was there.

One Monday morning, with the thirty million dollars newly on the table, Stewart placed a call to Barrett in Mississippi. Barrett's

secretary reported that Barrett was out of town, "meeting with Mark and Dan in New York." *Oh shit,* Stewart muttered to himself. Barrett had said nothing about going to New York, nothing about a meeting with Kasowitz and Benson. What was happening was easy to see: Barrett was making an end run. He was pushing settlement, and by all appearances Kasowitz and Benson were listening to what he had to say. And why wouldn't they? *They know Dan Barrett one hell of a lot better than they know me.*

Stewart's intercom buzzed shortly. "Mark and Dan on the phone from New York," his secretary said. *Here we go,* he thought.

"Dan Barrett came up here," Kasowitz said. "He didn't have your permission to do that, did he?"

"No, he didn't," Stewart said.

"Well, Dan's out," Kasowitz said. "He's not involved anymore. All you've ever done is exactly what you said you would do. We see no reason why that won't continue."

End of conversation. It would be the last time Stewart ever had even a glimmer of doubt about the New York firm's commitment to the *Abernathy* case, or to him. He would take that commitment and ride it toward the kind of battlefield glory that most lawyers only dream about.

It was like picking up the faintest of radio waves from across space and time, faint yet intelligible signals emitted from some now-extinct source buried within a swirl of stars in some distant galaxy, evidence of . . . well, evidence of something that couldn't be fathomed, even guessed at, unless the signals were tracked all the way back to the source.

Stewart kept picking up radio waves about the documents. The

waves were just a murmur, an ebbing, a soft disturbance in the atmosphere. He wasn't even conscious of receiving them at first. But they were there, pulsating ever so delicately, waiting to be noticed. It was like monitoring those big SETI receivers, the gargantuan satellite dishes the government maintained out in the desert somewhere, attuned to any extraterrestrial message beamed our way. Probably a useless exercise; but you keep the listening post up and running all the same because who knows when the sign may come that provides the key to everything?

The one saving grace about litigation is that those who engage in it aren't necessarily required to reinvent the wheel every time out. Every case is unique in its way, but every case is also like countless cases that have played out during the vast history of jurisprudence. Part of the game of law is dredging from the past, to apply to the present, long-ago court rulings that may help today's judge see it your way, legal arguments from some mothballed proceeding that just might open a fruitful line of questioning. Evidence—especially evidence. One clear advantage of the plaintiffs in the *Abernathy* case was that Monsanto had been sued many times before. Witnesses in other cases had been deposed, experts queried, documents subpoenaed. In a case like *Abernathy,* it was crucial that the plaintiffs avail themselves of what had transpired before. Which is how a Kasowitz, Benson attorney named Ellen Mallow found herself in Texas, sifting through the documents from a previous case against Monsanto. She ran across some documents—some internal Monsanto memos—that indicated that the company's knowledge and concern about PCBs and their impact on the environment went back substantially further than the company had admitted. There were only a couple of them, but they were about as titillating as a set of corporate documents could

be. "Donald, you won't believe this stuff," she told Stewart over the phone.

Stewart was intrigued and told her to keep digging. He had believed all along that over the years, somewhere in the labyrinthine bowels of Monsanto's corporate headquarters in St. Louis, there were those who had known about the deadly effects of PCBs long before they became general scientific news in the 1970s and 1980s. Moreover, he was confident that some Monsanto officials were aware of the pervasiveness of PCB contamination in Anniston and had managed to keep it quiet. But intuiting something and proving it in a court of law are different matters. The documents unearthed by Mallow alone wouldn't do the job, but it stood to reason that more documents existed where those came from. Human nature dictated as much. In his experience as a lawyer and politician, it seemed to Stewart that people had a compulsion to document the most damaging evidence imaginable against themselves, the Nixon White House being a monumental example. Monsanto was a huge, carefully controlled corporation populated by scientists and others who liked to do things by the book. It was reasonable to imagine that somewhere in the annals of time, uncomfortable information had been committed to paper in the name of proper information flow. The question was whether those papers still existed. If so, it was also very likely that somebody at Monsanto knew where they were. As many times as Monsanto had faced litigation, Stewart figured that any smoking-gun documents had been secreted away by now. It was a long shot, but what the hell.

The truth was that at this phase of the case, some three years in, Stewart believed things were going quite well for the plaintiffs. The case was inching toward trial in fits and starts. The first order of business was to establish that damage had been inflicted on the commu-

nity and specifically on the plaintiffs whose cases would be heard first in a series of test cases when the trial began. Then the task would be to prove that Monsanto bore liability for that damage. Evidence that PCBs had saturated the community was mounting. Soil tests commissioned by Stewart showed conclusively that PCB levels in residential and commercial soils in and about West Anniston posed a public health hazard. Blood sampling data from three thousand West Anniston residents coordinated by David Baker's CAP organization and financed by an EPA grant showed that about half the people tested had detectable levels (greater than 3 parts per billion) in their blood; about 15 percent showed blood PCB levels that indicated "elevated environmental exposure" (greater than 20 parts per billion). Depositions of Monsanto officials and the geographic evidence made it clear to Stewart that he would be able to prove that it was Monsanto that had launched the PCBs into the environment, sometimes recklessly, and therefore should be held responsible for the subsequent damage.

It was easy to anticipate what the counterargument from the defense would be: No one has ever definitively proved that PCBs harm human health. Monsanto would argue that PCBs are everywhere, present in the bodies of every person on earth, and yet the human race has not come to an end. It is simply a part of life. Monsanto did not fully understand how PCBs affected the environment when they were discharged. Some forty million dollars has been spent in a good-faith remediation effort. The suit is just a blatant money grab by opportunistic plaintiffs under the influence of a greedy trial lawyer. Stewart could hear it all now. But Stewart felt that the evidence was too vivid to ignore, and would not be easily shrugged off by any fair-minded jury. He believed that he could convince that jury of his version of what had happened, especially against any lawyer that Lightfoot, Franklin could prop up there.

The historical record concerning the monitoring of Monsanto's PCB releases by regulatory agencies had also come into focus. As far back as 1985, the Alabama attorney general had notified the EPA that PCBs existed in Snow Creek, the waterway that ran past the Monsanto plant and into the Choccolocco Creek watershed area that furnished Anniston with its water supply. The EPA deferred the matter to the Alabama Department of Environmental Management, or ADEM. The low-profile process essentially resulted in Monsanto being allowed over the next several years to police itself and develop its own programs for groundwater monitoring and sediment removal from Snow Creek. But in 1993, an official from the U.S. Soil Conservation Service snagged a fish from Snow Creek that was horribly deformed; he submitted the fish for testing, which determined that the fish contained PCB levels in its fatty tissue that were off the charts.

This development would prove to be the beginning of a new and certainly more public phase of the PCB saga in Anniston. ADEM officials became more aggressively involved and later that same year issued a "no consumption" advisory for fish caught in Choccolocco Creek between Snow Creek and Lake Logan Martin. The advisory sparked a round of media attention, although the warning and subsequent news accounts were widely ignored by residents who had fished from the creek for generations. ADEM in 1994 also launched an assessment of Monsanto's unlined dump, which sat across Highway 202 from the plant and the Mars Hill Church. That resulted in a consent order negotiated between ADEM and Monsanto—again, all handled very quietly—that led to Monsanto initiating the buyout and relocation program in which the company ultimately purchased some one hundred residential, commercial, and vacant properties near the plant site, not to mention two churches—including the Mars Hill Baptist Church, which was

where Donald Stewart had entered the picture. It was that under-the-radar buyout program that had led to the ghost-town tableau Stewart witnessed on that fateful afternoon when he drove to the Mars Hill church for his first meeting with the deacons.

It was a sorry accounting of things, in Stewart's mind. It seemed to him that every regulatory official charged with protecting the public had managed to drop the ball at virtually every step along the way, dating back nearly fifteen years. When the time came, he intended to make sure the jury understood that apparent neglect of duty—and he intended to argue that it was the jury's responsibility to right those historical wrongs. As for what Monsanto knew about PCBs and what it didn't—that could very possibly be the deciding factor in the case. The documents Mallow had uncovered would help, but they needed more.

Another significant event occurred during the pretrial portion of the case. In 1997, one year after Stewart filed the *Abernathy* case, the Monsanto Corporation announced that it was spinning off its chemical operations into a new, independent, self-contained entity. The new company would, like Monsanto, be headquartered in St. Louis. Its new name would be Solutia ("Applied Chemistry. Creative Solutions."), and under its corporate charter it would assume the defense and liabilities involved with the litigation against Monsanto's Anniston plant. *Creative solutions, indeed,* Stewart thought. Although Monsanto officials denied it, the spin-off was widely seen as a transparent attempt by Monsanto to indemnify itself against the growing litigation and to insulate itself against the inevitable public relations trauma the litigation promised to create, win or lose. ("I think they just changed the name," U.S. Senator Richard Shelby would say later.)

As if by magic, Monsanto was now technically out of the chemicals business, its primary meal ticket since its inception in 1901. Now it would concentrate on its burgeoning biotech operations, including its foray into genetically engineered crops, and attempt to distance itself from the Anniston mess. Meanwhile, Solutia officials were now free to claim that their shiny new company had had nothing to do with Monsanto's increasingly blemished past. "We never produced PCBs," Solutia CEO John Hunter became fond of saying. Stewart often wished he could see the billing statements for the marketing and PR operatives who dreamed up this galling new organizational constellation. But he managed to win a number of rulings in the months and years to come that would force Monsanto to stand behind Solutia and make good on any damages and cleanup costs that Solutia was deemed unable to pay.

Other machinations had to be dealt with. One involved an inevitable change of venue. As the *Abernathy* case had progressed and media interest had grown, it became clear that the trial would have to be conducted outside of Anniston. Publicity surrounding the case wasn't the only issue. With thirty-five hundred plaintiffs, approximately one of every nine Anniston residents was part of the lawsuit. Finding jurors who were not related to or acquainted with at least one plaintiff would be a nearly impossible task. So the trial would be moved—but where? Stewart argued for Etowah County, which sat adjacent to Calhoun County to the northwest. Its county seat was Gadsden, a city of about sixty thousand that, much like Anniston, had an economy traditionally anchored by heavy industry. (A Goodyear tire factory had long been the city's primary employer.) Etowah County also had similar demographics to Calhoun County—that is, a substantial black population. Stewart argued before Judge Joel Laird that it was essential that the trial draw from a jury pool that reflected the socioeconomic and ethnic

characteristics of the plaintiffs themselves. The defense team argued for relocation of the trial to Blount, DeKalb, or Marshall counties, smaller, more distant, and more rural counties that were virtually all white. In a terse decision, Laird ruled that the trial would be held in Gadsden in Etowah County and wrote that he "certainly hopes that Defendants aren't attempting to inject issues of race into this case." Defense attorney Adam Peck took exception to Laird's comment: "This is the first time race has come up, and it wasn't by us, it was by the court," he told the *Anniston Star*. Stewart, having won the argument, could afford to be gracious. "He's the judge, so we'll do what he says," he told the *Star*.

The reality was that Judge Laird and the defense weren't getting along. Stewart obviously viewed this development as yet another arrow in his quiver. Not that he and Laird were close friends by any means—he knew Laird, but everybody knew everybody in Anniston. Stewart also knew Laird's father, Richard Laird, a longtime legislator from nearby Randolph County, and had served with him, but they weren't close. Joel Laird was one of the less experienced judges on the Calhoun-Cleburne County circuit, and Stewart had butted heads with Laird in the past. But the judge had always impressed him as evenhanded and thorough, which was all you could ask from a judge, and so Stewart had been generally satisfied when he learned that Laird would be presiding over *Abernathy*.

But Laird and the defense team seemed to have clashed out of the gate. The case had barely started when the defense, led by Franklin, Lightfoot partner Jere White, attempted to go over Laird's head on a jury selection matter and filed a petition with the Alabama Supreme Court to direct Laird to rule a certain way. To petition for a writ of mandamus is a drastic step, and one that the Monsanto

lawyers employed on four different occasions during the course of *Abernathy*—including one very late going attempt to have Laird removed from the case. Stewart wasn't the only one who saw the petitions to the supreme court as attempts to intimidate Laird and to delay the start of the trial, nor was he alone in believing that White and the other defense lawyers were following a terrible strategy. (There was also speculation around the courthouse that the defense was laying the groundwork for an appeal in the event that they lost the case.) Stewart didn't know Laird well, but he knew him well enough to understand that the judge was a prideful man who took his service on the bench very seriously—and would fight like hell before he allowed a group of hardball-playing Birmingham lawyers to take over his courtroom.

One such petition filed by the defense tied up the case for nearly two years. It was time that Stewart and his allies used wisely. Had they been forced to go to trial in 1999 or 2000, which had been their original expectation, Stewart believed that he could have mounted a good case but probably not his strongest one. Such was business as usual for a trial lawyer—rarely was there enough preparation time. Usually there were other cases to worry about, other deadlines and demands, and you simply tried to hang on and do an adequate job. Even though Stewart was devoting all his time and attention to *Abernathy,* the work load was enormous. The material was voluminous and extremely complicated. The extra two years were a godsend. By the time a concrete trial date of January 2002 was set, Stewart felt that he had mastered every aspect of the case, felt in total command, like an athlete at the peak of his training. He had memorized every deposition, knew the contents of every file, had probably become one of the world's leading authorities on PCBs, their manufacture, and their consequences. For the first time in his

some thirty-five years as an attorney, he believed he was as prepared for a case as he could be.

Which was a good thing, because everything was on the line. The plaintiffs had been dragged around for years now. The Kasowitz, Benson firm was in so deep financially that Stewart could hardly bear to consider it. Stewart's own financial situation had become perilous again as well. He was sixty-two years old now and had essentially worked on nothing but *Abernathy* for six years. All his eggs were in one basket, and if they lost this case Stewart feared he would have to declare bankruptcy. It would be damned hard to start over again at his age. He would have no idea how to begin. His wife, Lulu, had read *A Civil Action,* the bestseller about a Massachusetts lawyer who spent himself into oblivion pressing a similar case against the W. R. Grace Company, and it had shaken her more than any Stephen King novel. Stewart swore to himself he would never read it.

So yes, the additional two years had been welcome. But the extra time had served another purpose as well: it allowed Stewart to tune in to those radio waves, to remember what he had been trying to remember about the documents.

It finally reoccurred to Stewart, amid the crush of preparing for trial, that years back, Monsanto's in-house attorney had casually mentioned in a deposition in St. Louis that a cache of documents had been stored in a library in the North Carolina law offices of a Monsanto defense attorney. For some reason the issue had gone unremarked upon, although Stewart had made a mental note of it. Now, as the memory finally floated back to him through the ether, he wondered if that had been Monsanto's method of disclosing the

existence of important documents during the discovery phase without drawing attention to them. At his first opportunity during a subsequent hearing, Stewart quizzed the in-house attorney on the subject, who reiterated that the documents existed but said that most of them were protected from discovery because they had been classified as attorney work product. How many pages of documents? Stewart wanted to know. About five hundred thousand, came the reply. Half a million pages of attorney work product? Bullshit, Stewart said.

He dispatched a representative to North Carolina to examine the documents at the law firm, where a vicious argument developed. The Monsanto lawyers insisted that Stewart could only properly examine documents selected as relevant by the Monsanto team. The hell you say, Stewart said, and appeared before Laird to request that he be allowed to depose the in-house counsel yet again on the matter. The defense raised objections to the heavens, but Laird agreed with Stewart. Stewart spent a month preparing for the deposition. He went to St. Louis and, as one witness would describe it later, "pinned his butt to the wall." He successfully established that the index of the documents prepared by the attorneys could well have been attorney work product, but the documents themselves were not. Stewart returned to Anniston and argued before Laird that he was entitled to the documents. The defense filed a motion which revealed that other plaintiffs in other cases had attempted to obtain the same documents, but each time, a judge had ruled that the documents were protected.

Laird ruled again for Stewart, a decision that plainly staggered the defense. *This stuff must be dynamite,* Stewart thought, and immediately put a Kasowitz attorney on a plane to North Carolina to start picking documents that the law firm there was now obliged

to copy at the plaintiffs' expense. It soon became apparent that a wealth of damning information lay hidden in the rows and rows of files in North Carolina. Documents were found that seemed to clearly establish that Monsanto had known for decades that PCBs were harmful to the environment and to humans, and had taken steps to keep that information under wraps and maintain its very profitable market position vis-à-vis PCB products. Documents were found showing that as early as the 1960s, Monsanto officials had convinced at least one Alabama state health official to suppress the critical information that the waterways in and around Anniston were contaminated with PCBs and that fish in those areas were saturated with them. It was revelation after revelation, and finally Stewart called Dan Benson in New York and recommended that they have all the documents copied, every page, and have them shipped to Anniston. It would cost a small fortune, but these documents could very well be worth one, Stewart told him.

Benson sighed deeply. "Do it," he said.

Eventually the documents arrived, and Stewart and anyone he could recruit pored over them until their eyes bled. There were to be no shortcuts. Stewart demanded that every last page of every last document in every last file in every last box be examined. It was tedious labor but was an approach that paid dividend after dividend. It soon became apparent that the order of the documents had in some instances been significantly altered. There would be a file of invoices, for example, containing invoice after invoice after invoice—and then, abruptly, an internal memo marked CONFIDENTIAL that might discuss the results of fish tests in Snow Creek. Then the invoices would pick up again, in order. A score like that could keep someone going for hours. Stewart and the other paper chasers kept at their search until every page had been eyeballed—and in the end they had quite a haul.

Absorbed in their entirety, the documents told the story of a dispassionate corporation that clearly understood the implications of its actions and consistently rejected its moral obligation to inform the public in Anniston and elsewhere of the dangers of the PCBs it had produced for forty years. There was simply no other way to interpret them. Stewart and Benson shared their conclusions with the defense team and suggested they find a way to settle the case. Surely, Stewart figured, the defendants would do anything other than try to explain the documents in court.

The defense team came back with their response to Stewart's entreaty for a settlement: an offer *lower* than the figure already on the table. The defense was basically suggesting that Stewart take the documents and shove them.

Stewart was flabbergasted. He had truly believed that the documents would force Solutia to the negotiating table. He certainly believed that if *he* were in the defense's shoes, he would have pushed his clients like hell for settlement—he would have *made* them listen to the facts of life—the documents were that powerful. Stewart just couldn't understand why the defense conducted business the way they did, angering the judge, big-timing the opposing lawyers, not dealing realistically with devastating evidence.

Well then, Stewart thought, so be it. He would take the documents and flog the defendants with them like some recalcitrant mule back on his daddy's farm in Munford. With the Monsanto memos, Stewart could very well start to fantasize about the two most popular words in the vocabulary of every plaintiff lawyer on earth: *outrage verdict*.

David Byrne was getting to know Anniston very well. Sometimes that familiarity could be a grim business.