

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

THE CITY OF BLOOMINGTON, INDIANA;)
THE UTILITIES SERVICE BOARD OF)
BLOOMINGTON, INDIANA; and MONROE)
COUNTY, INDIANA,)

Plaintiffs,)

vs.)

Civ No.
IP 83-9-C

WESTINGHOUSE ELECTRIC CORPORATION,)
a Pennsylvania corporation; and)
MONSANTO COMPANY, a Delaware)
corporation,)

-----Defendants.-----)

The deposition of PAUL G. BENIGNUS,

called for examination by the Plaintiffs, pursuant
to notice and pursuant to the provisions of the
Federal Rules of Civil Procedure of the United
States District Courts, pertaining to the taking
of depositions for the purpose of discovery, taken
before Jesse A. Longoria, a Notary Public and
Certified Shorthand Reporter within and for the
County of Cook and State of Illinois, at 216 North
Meramec, Clayton, Missouri 63105, commencing on
September 4, 1986, at the hour of nine o'clock
p.m.

Longoria & Goldstine

236 1030

Chicago

1
[]
2 APPEARANCES:

3 Mr. Joseph V. Karaganis and
4 Mr. James G. McConnell
5 Bell, Boyd & Lloyd
6 Three First National Plaza
7 70 West Madison Street
8 Suite 3200
9 Chicago, Illinois 60602

10 -and-

11 Mr. Geoffrey M. Grodner
12 Law Offices of Geoffrey M. Grodner
13 One City Centre
14 Suite 100
15 Bloomington, Indiana 47401

16 appeared on behalf of the Plaintiffs;

17
18 Mr. Michael R. Fruehwald
19 Barnes & Thornburg
20 1313 Merchants Bank Building
21 Indianapolis, Indiana 46204

22 appeared on behalf of Defendant
23 Monsanto Company.
24

I-N-D-E-X

DEPONENT:

PAUL G. BENIGNUS

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1 MR. MC CONNELL: Would you swear the witness,
2 please.

3 (Witness sworn.)

4 PAUL G. BENIGNUS,
5 being first duly sworn, was examined and testified
6 as follows:

7 DIRECT EXAMINATION

8 By Mr. McConnell:

9 Q Would you state your full name, sir, and
10 spell your last name for the court reporter.

11 A Paul George Benignus, B-e-n-i-g-n-u-s.

12 MR. MC CONNELL: Let the record show that this
13 is the deposition of Mr. Paul George Benignus
14 taken pursuant to the notice and the applicable
15 provisions of the Federal Rules of Civil Procedure
16 and the local rules of the United States District
17 Court for the Southern District of Indiana,
18 continued from time to time to today's date, time
19 and place by agreement of counsel.

20 Mr. Benignus, this is Mr. Grodner, by the
21 way. He is the one from Bloomington.

22 THE WITNESS: Glad to know you.

23 MR. MC CONNELL: My name is Jim Mc Connell,
24 and I represent the City of Bloomington, Indiana,

1 in this case. I am going to ask you a series of
2 questions about your career at Monsanto and in
3 particular your involvement with the group of
4 products known as PCBs.

5 If at any time I ask you a question you
6 don't understand, please don't answer the
7 question. Tell me you didn't understand it, and I
8 will rephrase the question.

9 Will you do that for me?

10 A Yes.

11 Q And I am sure that Mr. Fruehwald has told
12 you you have to make all your answers spoken
13 answers because the court reporter, as qualified
14 as he is, can't record gestures of your head or
15 nods of your head. Do you understand that?

16 A Yes.

17 Q What is your present address?

18 A 47 Metcalf Drive, Belleville, Illinois.

19 Q Are you presently employed?

20 A I am retired.

21 Q When did you retire?

22 A 1974.

23 Q That was from Monsanto Company?

24 A From Monsanto.

1 Q Do you have any present plans to move?

2 A No.

3 Q What is the extent of your formal
4 education?

5 A I have a Bachelor's from Illinois
6 College, Jacksonville, Illinois, 1933; Bachelor of
7 Arts and Master of Science from Washington
8 University here at St. Louis, in 1934, in organic
9 chemistry.

10 Q 1934, you said?

11 A '34.

12 Q What was the first job you had after you
13 graduated from the Master's program at Washington
14 University?

15 A The first job I had was at Western
16 Cartridge at East Alton, Illinois, manufacturing a
17 detonator.

18 Q What were your responsibilities at the
19 Western Cartridge Company?

20 A I was managing the process, what we were
21 making down there. I was there only six months.

22 Q What was the next job you had?

23 A Monsanto.

24 Q What were your first duties at Monsanto?

1 A Well, like most of us who came there from
2 college, we were first assigned to the analytical
3 laboratory to analyze the chemicals.

4 Q And how long did you work in the
5 laboratory?

6 A In the analytical lab?

7 Q Yes.

8 A Well, in this particular lab, I worked
9 there about a year and half.

10 Q And this was in St. Louis?

11 A This was at St. Louis.

12 Q What was your next responsibility?

13 A Well, next responsibility was also in the
14 analytical area, in analytical research, or
15 advanced analysis.

16 Q This was analysis of organic chemicals?

17 A This is correct.

18 Q How long were you in advanced analysis?

19 A Oh, about a year.

20 Q What was the next thing you did after
21 that?

22 A Well, then I was in a plant laboratory.
23 It was again doing analytical work on the plant
24 operation and process, at the same location.

1 Q How long were you in that job?

2 A About a year.

3 Q That was more directly related to the
4 manufacturing process that was going on at the
5 plant?

6 A Yes.

7 But it wasn't on PCBs.

8 Q Okay. After that, what job did you have?

9 A Well, after that I went into the research
10 department of the Organic Chemicals Division, more
11 strictly speaking it was application research.

12 Q How long were you in that job?

13 A I was there, I would say, two years.

14 Q Did that research involve PCBs?

15 A Not to any great extent. However, we did
16 a lot of work on plasticizers, and I was familiar
17 with what we called Aroclor, which was our trade
18 name. You call it PCB. Yes, I was familiar with
19 the materials at that point in time. It is a very
20 large family of chemicals, PCBs.

21 Q Right, I understand.

22 All right. What was the next job you had
23 after the research department in the Organic
24 Chemicals Department?

1 A Then I went into what they call the
2 Development Department, Organic Chemicals Division
3 Development Department.

4 Q What did you do there?

5 A Well, there I did some work with PCBs. I
6 did some work on the specifications of PCBs. They
7 have a very comprehensive list of physical and
8 electrical constants, and I handled that, although
9 the Organic Division didn't make them. That was
10 handled by the Inorganic Division at Anniston; but
11 other than that, my main job was in this
12 development department.

13 It got to be in the field of mycology.

14 Q What is that?

15 A Well, I didn't mean it this way. That is
16 a study of fungus. You got yourself into a
17 question, now.

18 Q Was there some particular reason that
19 you --

20 A Yes, the war was coming along, and this
21 was before the advent of synthetic fiber, nylon
22 and others, and our military equipage was made of
23 cotton. So my interest -- mycology is the study
24 of fungus. This has to do with the preservation

1 of cellulosic material, wood and cellulosic
2 fibers. Do you want a comprehensive answer on
3 this?

4 Q Well, let me see if I can take a --

5 A I don't know that you would want this in
6 there.

7 Q The work was directed towards finding a
8 way to preserve fiber-based military equipment in
9 the field?

10 A This is correct, because it was rotting,
11 the tents and everything else, in the South
12 Pacific, and they had some horrible preservatives,
13 like we were preserving cellulosic materials,
14 which is military equipage, things made of cotton,
15 and a lot of the military, Air Force, and so on,
16 so forth, tents, and all kinds of things used
17 cotton material, and this rotted, especially in
18 the South Pacific.

19 The war was on, that was one of the
20 reasons I wasn't allowed to go into the military
21 service. I was a cavalry officer from Fort
22 Sheridan, but because of this need on behalf of
23 the government, why, that is all I was allowed to
24 work on, was this preservation of military

1 equipage for the war effort which was in these
2 years.

3 Q Right, I understand.

4 How long were you in the development
5 department?

6 A Oh, I was there for about four years, I
7 guess.

8 Q How long were you in the research
9 department -- two years, you said?

10 A Two years of that.

11 Q Okay. What was the next job you had
12 after that?

13 A Sales Development.

14 Q Also in the Organic Chemicals Division?

15 A The Organic Chemicals Division.

16 Q Did that involve PCBs?

17 A No. It involved what I developed for the
18 military during the war. The war by now was over,
19 and the reason I went into the sales department
20 was to develop a commercial product for what I
21 developed for the military. That was the only
22 reason.

23 Q How long did you have that job?

24 A Until 1947.

1 Q What was your next position?

2 A The next position was to leave this
3 organic chemicals division where I made these
4 inventions, and so forth; and I joined the
5 Inorganic Division, and specifically was assigned
6 there to develop market use for non-electrical
7 application of PCBs. That was my assignment.
8 That was in October of 1947.

9 Q Would it be fair to say that that job was
10 your first serious involvement with PCBs?

11 A Right, correct.

12 Q How long were you -- what was your title
13 when you first moved over into the Inorganic
14 Division?

15 A This is neither here nor there, but my
16 title, if anybody knew it, but this is correct, I
17 was the Assistant Director of Development. Never
18 used the title.

19 Q How long did you have that particular
20 designation?

21 A Well, that continued until the early
22 1950's.

23 Q And what job did you change to in the
24 early fifties?

1 A I went back to the Organic Chemicals
2 Division, not because I arranged this myself, but
3 because, you see, the PCBs, as you call them, they
4 were made at Anniston, Alabama, and that was
5 Monsanto's Inorganic Division. This was the
6 organic chemical part of the Inorganic Division at
7 Anniston.

8 Well, in 1935 Monsanto bought Swan
9 Chemical, which is this installation at Anniston,
10 Alabama, so Monsanto had acquired Swan in 1935
11 which was, well, right after I came to work for
12 Monsanto in '34. Now we are coming up to, as I
13 told you early, I think it was in 1951 and the
14 company's reorganization, and this organic
15 chemicals operation, the organic part of the
16 Inorganic Division, was moved into the Organic
17 Division on a piece of paper, this sort of makes
18 sense, and I went with it.

19 As I told you, in 1947 my assignment was
20 to handle the development of markets for
21 non-electrical. Now you are asking what came
22 after this.

23 Well, when this move came about into the
24 Organic Division, I then was confronted with

1 handling both the non-electrical and the
2 electrical. So I handled both. That went on for
3 some years.

4 Then, finally, I specialized entirely in
5 the electrical.

6 Q When did that take place?

7 A We are looking at going from, say, '51 to
8 about, oh, let's call it '53, something like that.

9 Q How long were you in the electrical?

10 A For the rest, until retirement.

11 Q Until you retired?

12 A Yes.

13 Q When you were sent to the Inorganic
14 Division in October of 1947, did you relocate to
15 Anniston?

16 A No, I stayed at St. Louis.

17 Q So you were in St. Louis throughout, then?

18 A I was in St. Louis throughout, and I have
19 lived at home in Belleville throughout, although
20 my work was world market manager. I worked all
21 over the world but always lived in Illinois.

22 Q Okay. When you took over the
23 responsibility for developing non-electrical
24 applications for PCBs, in about October of 1947,

1 did someone in Monsanto brief you on what was then
2 known about the toxicology of PCBs?

3 A Not on my arrival, no. But I appreciate
4 what you are asking, really not specifically, no,
5 not specifically.

6 Q Did you become aware at some time after
7 October of 1947 that Monsanto had at one time
8 performed some patch tests on volunteers?

9 A Yes, I reported that in the literature
10 that I wrote.

11 Q Okay.

12 A This was work on skin patch tests using a
13 synthesizer, that came from our medical
14 department.

15 Q When did they first tell you about that
16 work, if you can remember?

17 A I don't remember the exact date. But I
18 was informed about this, and we wrote brochures on
19 the Aroclors, as we call them, and I incorporated
20 that into my writings.

21 There was always a chapter on toxicology
22 and toxicity.

23 Q Did the medical department also supply
24 you with copies of the medical literature on

1 chloracne that had been observed in heat transfer
2 applications of PCBs?

3 A Not on heat transfer, no, not
4 specifically heat transfer. I was the one who
5 developed heat transfer in 1949, specifically heat
6 transfer.

7 Q That was one of the non-electrical
8 applications that you created, so to speak?

9 A Right, correct, fire resistant nominal
10 pressure heat transfer, indirect heat.

11 Q Who were the primary users in the
12 beginning period 1947 through 1951 of PCBs as a
13 heat transfer medium, what industries?

14 A Well, there are a lot of government
15 industries. Do you want a comprehensive answer on
16 this?

17 Q Yes.

18 A You do. Well, during the war our plant
19 at Anniston had to manufacture a product for the
20 government that was quite flammable and dangerous
21 to handle, and they wanted an indirect heat
22 transfer medium to heat this stuff with, and PCBs
23 are very, or known to be very stable thermally,
24 very stable materials, and they don't boil until

1 about three hundred degrees Centigrade, which is
2 quite high. That is about 572 degrees Fahrenheit,
3 and a suitable thing is hard to find. But they
4 found this out in their own plant. They made
5 PCBs, and this looked to them as though this would
6 be a safe thing to use, and they used it, and it
7 worked out very well.

8 And the reason I got interested in it, I
9 thought if it worked that well for ourselves, why
10 not let other people share in this.

11 So I published a brochure on the Aroclors
12 1248 as an indirect fire resistant heat transfer
13 medium. That is what started it.

14 Well, now, this can get into all kinds of
15 applications. But, excuse me.

16 Q I was going to say what I am interested
17 in is what types of processes were customers
18 buying this for use as a heat transfer?

19 A Well, there were a number of government
20 applications where they were making airplane
21 wings, and things like that, that required
22 heating, and that was one industry that used this,
23 because they were resinous materials, and another
24 industry would be in the paint and resin business.

1 Then it was used around airports and
2 things like that as an indirect heating medium.

3 What this was doing was potentially -- it
4 was a replacement for high temperature heating
5 with steam where you required by law a licensed
6 engineer; but because PCB was used to nominal
7 pressure, the expense of a licensed engineer was
8 not required. In other words, the normal
9 maintenance man could handle this situation; and
10 it went into quite a number of different types of
11 things.

12 Q Did it go into the food processing
13 industry?

14 A Yes, it did.

15 Q Did it go into the pharmaceutical
16 manufacturing industry?

17 A I do not know this specifically, but it
18 could have.

19 Q When was the first time that you can
20 remember sales of PCBs or Aroclors by Monsanto on
21 a commercial scale to any customer in the food
22 processing industry?

23 A I can't give you the definite date, but
24 definitely got into food processing. When you

3

1 can foods, for example, they are heated in the
2 cans, and it was used as an indirect heat-transfer
3 medium there, and it was also used in potato chip
4 making as an indirect-heating medium. The
5 potatoes aren't cooked in PCBs, you understand.

6 Q I understand.

7 A You understand. But as an indirect --
8 and you are understand the reason for using an
9 indirect medium here, I presume?

10 Q So the cooking oil doesn't catch fire?

11 A So the cooking oil does not overheat,
12 yes, correct.

13 Q I am trying to pin down as best I can a
14 year when sales for canning or potato chip
15 production first occurred on a commercial basis.

16 A Well, I don't remember the exact date,
17 no. But I told you I wrote a paper on this
18 subject in 1949. So it wasn't prior to that. It
19 was after that.

20 Q Early fifties?

21 A I would say in there.

22 Now, I also told you, to put this in
23 context, I told you that around 1953, or
24 thereabouts, I was going more into the electrical

1 end of the business.

2 Q Right.

3 A So it is somewhere in that time frame.

4 Q '51 to '53, somewhere in there?

5 A Somewhere in there, and that is when
6 Monsanto had a whole department on heat transfer,
7 and so forth.

8 Q When you switched over into the
9 electrical applications in about 1953, who took
10 over the --

11 A I just told you; but I will expand on
12 this, if you want.

13 Q I am looking for the name of a person.

14 A Name of a person?

15 Q Who took over the non-electrical sales.

16 A Well, that was spread out quite widely
17 through the Organic Chemicals Division. They had
18 people specializing in plasticizers, in resins and
19 in hydraulic fluid and heat transfer, and so on
20 and so forth.

21 Q There wasn't one person who replaced you?

22 A There wasn't one person. When I was
23 there, it was in the hands of myself. There was
24 one reason, I told you facetiously, it looked good

1 on paper, but I would say this is one sensible
2 thing, the Organic Division was active in all
3 these areas, and the business was growing.

4 Q At the time that Monsanto introduced
5 Aroclors for heat transfer applications in the
6 food processing industry, to your knowledge did
7 the company do any additional toxicology testing
8 on the product?

9 A No, not to my knowledge. I don't know
10 why they should. It wasn't to enter the food
11 product.

12 Q It might, in the event of a leak, though,
13 might it not?

14 A It could, in the event of a leak, this is
15 correct.

16 Q In fact, there were some incidents in the
17 Far East and in this country where this happened?

18 A I would like to bring this up, now you
19 are not talking about PCBs, are you aware of this?

20 Q What am I talking about?

21 A What you are talking about now is rather
22 severely pyrolyzed PCB, which is not normal PCB.
23 Now you are getting into a different area.

24 Q But it was a heat transfer application

1 that used PCB as the fluid?

2 A As it started out, this is correct, and
3 then it got damaged partially, pyrolyzed, and then
4 you run into toxicology of things that simply are
5 not PCBs.

6 Q The result of overheating the fluid?

7 A Under certain conditions, yes,
8 overheating the fluid, this is correct.

9 Q That is what you mean when you say
10 pyrolyzed?

11 A This is correct.

12 Q In any event, it wasn't only a
13 theoretical possibility that this type of leak
14 could occur, it did actually happen eventually?

15 A Oh, that happened in Yusho, in Japan,
16 this is true.

17 Q All right. In addition to the heat
18 transfer application, the plasticizer application,
19 what other non-electrical applications were
20 developed by you in the early fifties, or the late
21 forties and early fifties, for Monsanto's Aroclor
22 products?

23 A Well, I don't know exactly what you mean
24 by I personally developed these because it was --

1 Q Let me rephrase the question, then. Your
2 job during that period of time, as I understand
3 it, was not to develop the application
4 necessarily, but to develop the market?

5 A Yes, right; pursue, yes.

6 Q So you pursued the heat transfer
7 possibilities and the plasticizer possibilities,
8 and what others?

9 A Well, PCBs, as you just said,
10 plasticizers, they were used as standard
11 plasticizers in rubber-based paints,
12 styrene-butadiene and chlorinated rubber. Are you
13 familiar with rubber-based paints? Okay.

14 They were used as an ingredient and as a
15 plasticizer, certainly, in lacquers in the early
16 days, in natural cellulose. They were used as a
17 plasticizer in natural cellulose, lacquer used for
18 such things as the liner of straw hats would be
19 one application. One perspires, you know, and
20 PCBs are very stable. They are not water soluble.

21 So you have a very good stable
22 non-reactive inert plasticizer in natural
23 cellulose. I just mention one use.

24 But on wood, lacquers and varnishes, it

1 is used for other things than straw hats, one
2 would say they are used as coatings for furniture
3 woods, like we are sitting on, and metal coatings,
4 automobile finishers, and so on and so forth.

5 Q When was the first time that Aroclors
6 were used as a solvent in the carbonless paper?

7 A The first time -- that thing was under
8 investigation for at least ten years, it was being
9 studied, not by us. We merely made the material.
10 And the first time -- all right. I am trying to
11 answer your question. I can't give you the exact
12 date.

13 Q I understand. When, approximately, was
14 Aroclor first sold on a commercial scale for
15 carbonless paper production?

16 A At that time I would say I was still in
17 the Inorganic Division, so it was prior to 1951.

18 Q Okay.

19 A Somewhere in there.

20 Q Other than heat transfer, plasticizers
21 and solvent in NCR paper, is there any other group
22 of applications for which Aroclors were used
23 outside the electrical industry?

24 A Well, don't you have a copy of our

1 literature?

2 Q Some of it that still exists.

3 A Well, that presents the applications.

4 Q I have seen it mentioned that the
5 Aroclors were used at one time as what is referred
6 to as a pesticide extender. Can you describe for
7 me what that is?

8 A Well, now you are not talking about PCB.

9 Q What are we talking about?

10 A You are talking about -- well, in this
11 kind of terminology, I guess I would have to call
12 it PCT. In other words, what I am getting at,
13 PCT, the P means biphenyl; T, terphenyl, three
14 benzene rings, which is not polychlorinated
15 biphenyls. It polychlorinated terphenyl. That
16 was the material used. It was a resin binder.

17 This use never amounted to anything, as
18 far as I know.

19 Q That was an Aroclor product, but it
20 wasn't a PCB?

21 A It had the name Aroclor. It was a
22 resinless Aroclor. It wasn't a PCB. It never got
23 into any commercial -- I never got involved with
24 it. But I was aware of this. Somebody had

1 looked at it. They call these things fixer, a
2 resin binder.

3 Q It keeps the pesticide on the surface for
4 a long period of time?

5 A Yes, but it was never used that I know of
6 that amounted to anything, at least.

7 Q PCBs were also used as hydraulic fluid,
8 is that correct?

9 A Right.

10 Q When was that use first developed on a
11 commercial scale?

12 A This was involved early on as a fire
13 resistant hydraulic fluid for die casting
14 machinery.

15 Q Was that one of the markets that you
16 pursued?

17 A One would say this, yes. It was in
18 existence before I arrived in marketing.

19 Q To your knowledge, was PCB Aroclor
20 material ever sold by Monsanto for use as a
21 cutting oil?

22 A Yes.

23 Q And how significant of a market was that?

24 A I would say it was used in what they

[1 called the soluble-type cutting oil. Do you know
2 the difference between soluble and nonsoluble?

3 Q No.

4 A Well, it is simple. Soluble means that
5 it is used with water, soluble-type cutting oil,
6 and it was used as an extreme pressure lubricant,
7 that is why it is used, the PCBs were recognized
8 as EP lubricants, extreme pressure lubricants.

9 Q Meaning they wouldn't break down
10 physically under high pressure?

11 A Correct, they could withstand extreme
12 pressure. That was the interest there.

13 Q To your knowledge, was Aroclor PCB ever
14 sold for medicinal, dental or cosmetic uses by
15 Monsanto?

16 A Well, I don't know what you mean by
17 medicinal, dental. What do you mean? Is it --

18 Q I don't know. I am reading off a
19 Monsanto document, and that's all it says.

20 A Well, I think I can enlighten you on
21 this. I don't want you to think it was sold as a
22 medicinal product.

23 Q I had hoped not. I am trying to find out
24 what this means.

1 A Well, I am sure you are sincere about
2 this, so I will try to answer it. PCB -- wait a
3 minute. This, again, is the terphenyl. It is not
4 polychlorinated biphenyl. It is not PCB. It was
5 resinless material, and it was based on the
6 terphenyl. It was polychlorinated terphenyl.

7 Q What was it used for?

8 A Making false teeth.

9 Q Okay.

10 A Are you familiar with the process?

11 Q Only in a general way.

12 A Well, all right.

13 Q But that is sufficient.

14 A It is your lost wax casting process, and
15 it was used because of being compatible with
16 carnauba wax, with very clear definition, and the
17 margins, when you make false teeth, you want them
18 to fit right, as with a gear that you are casting,
19 it has to be precision. These are the properties
20 for it.

21 And then when it is lost, when it is
22 melted, burned out, it doesn't leave a lot of
23 carbonaceous stuff.

24 Q So this was part of the wax material?

1 A Part of the wax, yes. It is used in lost
2 wax casting processes.

3 Q Now it makes sense.

4 A I am glad to help you out.

5 Q That is why we are here.

6 Did that represent any kind of
7 significant sales volume?

8 A No, not large. Compared to the overall
9 business it was quite small. Dental labs bought
10 it.

11 Q Okay. In about 1953 you began to
12 specialize in the electrical applications of
13 Aroclors, is that correct

14 A That is correct.

15 Q And what did that include besides use in
16 transformers and capacitors, if anything?

17 A Almost nothing. But it did get into
18 electromagnets, and a few other things. It didn't
19 amount to much.

20 Q Were you the person who was in charge of
21 the sales of Aroclors and PCBs for electrical uses
22 when the Westinghouse capacitor plant in
23 Bloomington, Indiana, was first built?

24 A I think I know what you are asking. So I

1 will say -- well, you asked this question in a
2 strange way. You know, you couldn't buy this
3 stuff anywhere else. So I don't know what you
4 mean "in charge of sales." You didn't go out and
5 sell it.

6 Q Were you the guy they would call to get a
7 supply of PCBs when they started up the plant?

8 A No, they called our purchasing man.

9 Q Who was that?

10 A Well, whoever was in the district. Now,
11 you are asking about Bloomington, I think that
12 would be -- it changed several times. I think it
13 was the Cincinnati office at that time.

14 Q Were you the person that Westinghouse
15 Bloomington Management would turn to for technical
16 information about Monsanto's PCB products?

17 A For electrical use, yes.

18 I knew Ralph Marberry. He was the one in
19 charge of capacitors at Westinghouse back in East
20 Pittsburgh, and I knew Tom Dakin very well. He
21 was the research head. You are talking about
22 Bloomington. I knew Bob Ennis. He was the head
23 engineer, and Don McClain. These were all
24 technical people. That is what I say. When you

1 ask about selling or marketing, it was handled on
2 a technical basis.

3 Q All right. And you were the technical
4 person, so to speak?

5 A Yes.

6 Q Do you recall when it was that the
7 Bloomington Westinghouse facility first went into
8 production of capacitors?

9 A I don't recall this exactly, the exact
10 date, no. But if I dwelled on it I could probably
11 sort it out. They had moved from East Pittsburgh
12 to Bloomington. It was a new plant. I remember
13 having gone by that way.

14 Marberry was quite proud of that plant.
15 He had designed -- I think I was in it one time
16 early on. That is the only time I was ever in it.
17 He set up a manifold impregnation. He wanted me
18 to see it.

19 Q I am not sure. Is that in the fifties?

20 A Well, isn't it in the early fifties? You
21 ought to know this, I think.

22 Q I should, but I am trying to find out
23 what you recall.

24 A Well, I will do my best for you.

1 Q That's all we ask.

2 MR. MC CONNELL: Would you mark this -- we are
3 going to show you some documents now to see if
4 that will help refresh your recollection -- as
5 178.

6 (The document above referred to
7 was marked Deposition Exhibit
8 No. 178. For Identification.)

9 MR. MC CONNELL: For the record, the reporter
10 has marked as Exhibit 178 a one-page letter dated
11 July 17, 1956 from Elmer Wheeler to H.W.
12 Speicher ---

13 THE WITNESS: Right.

14 MR. MC CONNELL: -- of Westinghouse.

15 THE WITNESS: I remember that.

16 By Mr. McConnell:

17 Q Would you take a look at that.

18 A Yes, I remember this.

19 Q According to the letter that has been
20 marked as 178 Mr. Wheeler of Monsanto asked you to
21 telephone Mr. Speicher and give him some
22 information as to the toxicity of Aroclor
23 products, is that correct?

24 A This is correct.

1 Q Why was it that he asked you to do that
2 by phone, rather than in writing, if you recall?

3 A I don't know. It is not a big deal, is
4 it?

5 Q Well, I don't know. That is what I am
6 trying to find out.

7 A Well, I was going to pass on what
8 information I could or had.

9 Q Do you recall what information it was you
10 passed on about the disposal of Aroclors?

11 A Well, now, here, for instance, this, if
12 you are referring to this document specifically,
13 "Disposal of unusable Aroclors and the return for
14 credit of some Aroclor 1254 presently on hand."

15 Why would they have 1254 on hand? For a
16 very simple reason. Aroclor 1254, which is
17 pentachlorobiphenyl, had been used all through the
18 years up to approximately this time as the
19 impregnant for power capacitors, which is what
20 Westinghouse made.

21 Now, Marberry, who I referred to,
22 switched out of 1254 and adopted
23 trichlorobiphenyl, which is Aroclor 1242. So they
24 had some perfectly good 1254 on hand that they

1 wanted to return, and I don't blame them for
2 asking would we take it back, and we certainly
3 did.

4 Q I am interested in the other part of that
5 sentence which refers to disposal of product that
6 was not usable.

7 A Well, disposal of something that -- what
8 were they asking about this? Will you enlarge on
9 this?

10 Q Well, it is my understanding they wanted
11 to know what they should do with their waste
12 Aroclor and that you were supposed to give them
13 some information about that.

14 A Well, isn't there --

15 MR. FRUEHWALD: Is there a basis for that
16 understanding, Jim?

17 Or is that speculation on your part?

18 MR. MC CONNELL: Well, it is the testimony of
19 the Westinghouse witnesses.

20 MR. FRUEHWALD: Wait a minute. Now, Mr.
21 Speicher or who? This is '56. No Westinghouse
22 witness has spoken about events in '56 before
23 Bloomington was set up.

24 MR. MC CONNELL: Let's take a break for about

1 a minute and a half.

2 (Whereupon, a recess was had.)

3 MR. MC CONNELL: Do you want to mark this 179.

4 (The document above referred to
5 was marked Deposition Exhibit
6 No. 179 for Identification.)

7 MR. MC CONNELL: For the record, I have marked
8 as Exhibit 179 a one-page letter from Mr. Speicher
9 to Elmer Wheeler dated July 16, 1956. I will
10 acknowledge that it isn't the greatest copy, but
11 it is the only one we have got right here today.

12 Q Ask you to take a look at that document.

13 MR. FRUEHWALD: Off the record.

14 (Discussion had off the record.)

15 THE WITNESS: Here, this is the same thing I
16 was saying, 1254, they had discontinued using, and
17 they had a thousand gallons of perfectly good
18 stuff they wanted to return, since they are now
19 using Aroclor 1242, we, I am sure, would have
20 taken that back.

21 Q Exhibit 179 is the letter of July 16,
22 which Exhibit 178 refers to. "Thank you for your
23 letter of July 16." Is that correct?

24 A Well, it reads that way. He is writing

1 to Wheeler.

2 Q Now, Exhibit 179 in the first paragraph
3 refers to both scrap Inerteen and high temperature
4 Aroclor 1254 for disposal. "The question has
5 arisen as to how it can be safely disposed in
6 several of our plants. Our opinion is that if it
7 is poured on a dump or on the ground it can
8 penetrate sufficiently to contaminate a water
9 source for drinking purposes."

10 My question to you is: What was your
11 response to Mr. Speicher with respect to that
12 concern about possible contamination of water
13 sources?

14 A Well, first of all, the Aroclor 1254
15 wasn't going to go anywhere except back to us. So
16 you are eliminating that.

17 Q I am talking only about the scrap
18 Inerteen.

19 A What we would call scrap. Well, his
20 letter goes on here. It says, "but the odor and
21 taste may be objectionable."

22 If he is talking about PCB, it has no
23 odor.

24 If it is scrap PCB, scrap polychlorinated

1 biphenyl, either the 1254 scrap or the 1242 scrap
2 polychlorinated biphenyl, I would be amazed if it
3 had any odor, for one thing.

4 The next thing, taste, well, I have
5 worked with this thing through the years, have had
6 it on my hands and I am sure tasted it. It is
7 tasteless.

8 Q My question to you is what did you tell
9 Mr. Speicher about the possibility that if it was
10 poured on the ground it could get into the water?

11 A I don't know. I don't recall myself
12 telling him and answering this thing. I would
13 have thought that -- Wheeler handled this thing, I
14 guess.

15 Now, I may have talked to him over the
16 phone and said, yes, we will take back this
17 Aroclor 1254. I would have handled that part of
18 it, I am sure. If it was perfectly good 1254, we
19 would analyze it, and if we found it okay we would
20 certainly accept that back because we were well
21 aware they converted to 1242 Aroclor.

22 I would have certainly commented if it
23 had come up later and anybody asked me about the
24 odor and taste, well, I would say it doesn't have

1 an odor or taste.

2 Q What would you say to a person who asked
3 how to dispose of the scrap?

4 A I don't know how they disposed of their
5 scrap up there. I surely didn't tell them what to
6 do.

7 Q They are asking you for advice or
8 suggestions?

9 A Well, I wouldn't give them any.

10 Q You didn't give them any suggestions at
11 all?

12 A No, not to my knowledge.

13 Q Did you ever give Westinghouse any
14 suggestions as to how they should properly dispose
15 of scrap Inerteen, as they call it?

16 A No.

17 Q Did you ever tell them it was all right
18 to put it in a landfill?

19 A No.

20 Q In your opinion, is that a proper way to
21 dispose of PCBs?

22 A Depends on when you are talking about.
23 That's what they did.

24 Q Right now we are talking about 1956.

1 A Well, I wasn't involved with this
2 disposal. I think maybe I ought to explain to
3 you, I spent my years concerned with protecting
4 PCBs from the environment, from this pure air that
5 we have in this room here, for getting into the
6 capacitor Aroclor.

7 Capacitor Aroclor -- the winding, which
8 was craft paper, which is very pure paper, only
9 three companies supplied it, it is not ordinary
10 paper by any means, this wasn't made with ordinary
11 mill water. It was made with distilled water, and
12 then in the room where the windings would be made
13 the air wasn't only conditioned, it was filtered,
14 and then the temperature adjusted usually to 72
15 and the humidity at 50 percent.

16 But in addition to that, the room would
17 be under positive pressure to keep any dust
18 particles from --

19 MR. FRUEHWALD: I don't know if this is
20 responsive to the question, Paul. I think the
21 question is whether you told them anything about
22 disposal or not.

23 THE WITNESS: I didn't, and I don't know.
24

6

1 By Mr. Mc Connell:

2 Q Okay.

3 A I was never asked to answer that. I
4 didn't tell them to put it on a landfill or
5 anything. I told them we would take back the
6 1254.

7 Q You didn't tell them anything at all
8 about the scrap?

9 A No, no; and they never told me what they
10 did with their scrap, and I don't know what they
11 did with it.

12 Q Did you write a manual, an internal memo,
13 for Monsanto's use with respect to the question of
14 how to dispose of PCB liquid scrap?

15 A Not in 1956.

16 Q At one time, at a later time, did you do
17 that?

18 A Well, after the PCB problem came up,
19 objection from the environmentalists, this was
20 very much to the point of our entire posture and
21 program, at ANSI, to write such a manual; this is
22 the ANSI, American National Standards Institute,
23 report on this whole subject.

24 Q Were you involved in that?

1 A I was Chairman of the Steering Committee
2 setting up the committees as ANSI.

3 Q Did you do any work before that,
4 internally, at Monsanto with respect to --

5 A I personally didn't, no.

6 MR. MC CONNELL: Do you want to mark this as
7 180.

8 (The document above referred to
9 was marked Deposition Exhibit
10 No. 180 for Identification.)

11 MR. MC CONNELL: The court reporter has marked
12 as Exhibit 180 a one-page memo dated July 22,
13 1971, from Mr. Benignus to C.L. Curtis.

14 Q I will ask you if you recognize that
15 document.

16 MR. FRUEHWALD: Just for the record, that
17 document is also Exhibit 136.

18 MR. KARAGANIS: For the record, we have
19 previously requested from you clean copies of all
20 the additions of the document entitled Askarel
21 Inspection and Maintenance Guide.

22 THE WITNESS: I recall this type of thing.

23 By Mr. Mc Connell:

24 Q Who was Mr. Curtis?

1 A Well, he was somebody, a salesman or
2 somebody, out in the field in our sales department
3 or marketing department.

4 Q Exhibit 180 refers in the subject line to
5 a publication called the Askarel Inspection and
6 Maintenance Guide. Was that a Monsanto
7 publication?

8 A Yes.

9 Q When was that guide first produced, to
10 your knowledge?

11 A I think that was produced around 1958 or
12 '59, and I think it was also printed in 1960, I
13 think. Do you have the dates on that? Something
14 in that period of time.

15 Q Did you write it?

16 A Yes, I wrote that.

17 Q Did that guide, in its first edition, did
18 it have any information in it about proper
19 disposal practices for scrap Aroclors?

20 A I doubt it very much that it would have
21 at that point in time, because that was long
22 before this environmental thing came up, and I was
23 not concerned or involved with telling anybody
24 about scrap.

1 Now, this, you see, you are coming up
2 here, this is dated 1971. That was after the ANSI
3 and all of that business, and the pollution
4 problem came out. So it was looked at
5 differently.

6 Q According to this memorandum, the then
7 current edition in July of 1971 had a reference in
8 it to "Discard by dumping or burying where it will
9 not contaminate a water supply."

10 Do you know when that statement was first
11 inserted into the Askarel Inspection and
12 Maintenance Guide?

13 A I don't remember the exact date. But I
14 would say that this statement is appropriate; and
15 after the environmental objections came about it
16 would have been incorporated, and I guess it was.
17 But the dating on that, I don't know.

18 Q In any event, whether or not that
19 statement was in the manual from the time it was
20 first written and before that, that would be a
21 proper consideration in disposing of scrap
22 Aroclor, that is, that it should not be buried
23 where it could get into a water supply, is that
24 correct?

1 A I would say so, that certainly is a fair
2 statement.

3 Q And that would apply not only to scrap
4 liquid, but also to solid waste that was
5 contaminated with Aroclor, is that correct?

6 A Yes, I would say don't throw it in your
7 well where you are going to drink the water.

8 Q According to this memorandum, on July 22,
9 1971, you are asking that Mr. Curtis make a change
10 to supply some more detail with respect to
11 disposal of at least the liquid scrap, is that
12 correct?

13 A That's what it says here.

14 Q And the change was that the scrap liquid
15 should be destroyed by incineration?

16 A That would be ideal, yes.

17 Q And you further go on to advise Mr.
18 Curtis that the material can be returned to
19 Monsanto for appropriate incineration?

20 A This was the program involved, yes, that
21 was the purpose of this, at three cents a pound.

22 Q When was that program put into effect?

23 A Well, it was put into effect, about the
24 return of this, was put into effect before July

1 22, 1971. Now, I don't know -- I didn't do that.
2 I was merely passing this information along.

3 Q Who set up that program for the return?
4 Was that Mr. Papageorge?

5 A I really don't know who specifically set
6 this up. I specifically wasn't even involved with
7 setting it up. I knew about it. It was an effort
8 by the plant people and everybody. I don't know
9 specifically.

10 MR. MC CONNELL: Do you want to mark that as
11 181, please.

12 (The document above referred to
13 was marked Deposition Exhibit
14 No. 181 for Identification.)

15 MR. MC CONNELL: Exhibit 181 is a two-page
16 memorandum dated April 14, 1969 to Mr. Benignus
17 from W.R. Richard, subject, Disposal and
18 Incineration of Aroclor.

19 Q I will ask you if you recognize that
20 document.

21 A Yes, I recognize it.

22 Q Was that the first suggestion to you that
23 a program should be established at Monsanto for
24 the incineration of scrap PCBs?

1 A Probably it was, I suppose.

2 Q What does Mr. Richard mean, what did you
3 understand him to mean, in the first paragraph
4 where he makes reference to the statement, "To
5 defend the Aroclor position, it seems that we
6 should provide for disposal of and incineration of
7 off-grade fluid"?

8 A Well, that is to help the situation
9 because by this time there was criticism about the
10 PCBs from the environmental people, so what he is
11 saying there is what it means.

12 Q To defend the product from --

13 A To assist, right.

14 Q To defend it from the accusations that it
15 was an environmental contaminant?

16 A I guess if you want to put it that way,
17 to assist with the handling of the material, yes.

18 Q Was there any reason before 1969 why
19 Monsanto couldn't have had a program for the
20 return and incineration of scrap liquid PCBs from
21 its customer?

22 A Well, I have my own personal view on
23 this. If you are asking for the company's
24 position on that, I think you ought to ask

1 that from some other people.

2 Q There was no technical reason before 1969
3 why it couldn't be done, was there?

4 A Was there a reason why it needed to be
5 done or should be done? I don't know what you are
6 getting at. We didn't have an incinerator,
7 neither did anybody else that I know of.

8 Q When did the Rollins-Purle incinerator
9 first go into operation?

10 A I don't know. I wasn't in this area.
11 You are sort of asking these questions to the
12 wrong person.

13 Q If you weren't in the area, why did he
14 send that memo to you?

15 A All right. I will have to explain this a
16 little bit.

17 This is logical for you to ask. This is
18 a sensible question for you to ask.

19 I was in this Aroclor area for many
20 years, and when things like this would come up
21 there was a tendency to address things to me, not
22 that I was the one handling it, not that I was the
23 one that was going to do anything, not that I was
24 the one responsible for this, because I was, as I

1 told you, on the other side of the fence,
2 protecting PCBs from the environment. All right.

3 Q As opposed to protecting the environment
4 from PCBs?

5 A Right, this is correct.

6 Q All right, go ahead.

7 A So sort of keep that in mind when you are
8 talking to me, please.

9 Now, there is a distribution list here,
10 you see. So here is Bill Richard, Dr. Richard in
11 research, in the research department, who is he
12 supposed to address this thing to?

13 Well, Paul Benignus is a convenient one
14 to address it to. But you will see copies to
15 these other people.

16 Now, you get into people that are more
17 directly concerned with this than I. It was a way
18 of bringing this thing to people's attention. So
19 it was addressed to me.

20 Q Well, he is asking you, for you to do
21 something in that memorandum, is he not?

22 A Yes. But he knows that I am not the one
23 that is going to do it. I am telling you this. I
24 am not going to set up an incinerator.

1 Q No. But he is asking for some figures
2 from you?

3 A Yes. The figures, now, this comes under
4 marketing history. This is marketing information
5 and data, which I am sure Bryant compiled, and it
6 was addressed to me. But Jim Bryant got these
7 numbers and figures together. So he wanted
8 background of the capacitor industry at present
9 and what kind of amount of stuff is disposable now
10 and what is the future, what does this encompass,
11 and this is information of interest to these
12 people.

13 Kountz was in engineering. This was the
14 purpose of this.

15 Q Isn't he asking you for figures on
16 transformers to add to those figures on
17 capacitors?

18 A He could have. Does he say this? Here
19 it says something about figures for capacitors,
20 "Add any disposal Aroclor from transformers."

21 Yes, this is as it says, capacitors, and
22 he wants to know if there is any information on
23 transformers.

24 Q Did you give him the information on

1 transformers?

2 A Well, I certainly would have if I had it.
3 I don't remember exactly what I gave him. Now,
4 this doesn't involve capacitors. It doesn't
5 involve Westinghouse at Bloomington.

6 Q Did you support the idea of Monsanto
7 creating its own incinerator to dispose of scrap
8 returned from customers?

9 A Sounded good to me.

10 Q In fact, you thought the company was
11 moving too slowly in that direction, didn't you?

12 A I would think so, yes. But I would have
13 been glad if that had been overnight.

14 MR. MC CONNELL: Would you mark this as
15 Exhibit 182.

16 (The document above referred to
17 was marked Deposition Exhibit
18 No. 182 for Identification.)

19 MR. MC CONNELL: The court reporter has marked
20 as Exhibit 182 a one-page memo from Benignus to
21 Olson, December 5, 1969.

22 THE WITNESS: That is subsequent to this, is
23 it?

24

1 By Mr. Mc Connell:
2 Q Yes.
3 A Yes.
4 Q That is April 14.
5 A Yes, okay; yes, six months.
6 Q Do you recognize that memorandum?
7 A Yes, right.
8 Q The first sentence of the memo says,
9 "Over six months ago we pointed out impending need
10 for Monsanto to provide an incinerator."
11 Is that the Royal "we"? You mean "we,
12 Paul Benignus," or was there somebody else
13 included in that?
14 A The Royal "we"? Come on, now.
15 Q Well, the Queen always talks about "we"
16 instead of "I." That is why they call it the
17 "Royal we."
18 Who else did you mean by the "we"?
19 A Well, in general, the idea was they had
20 talked about an incinerator. I even heard about
21 it -- even "we" had heard about it.
22 Q Who are "we"? That is what I am trying
23 to get at.
24 A Who are "we"? Well, I don't know who all

1 "we" are. But "we" is the people in the area, the
2 general people in the area.

3 Q Tell me as many of them as you can
4 remember. It would include you, would it not?

5 A Not actively, no. I was not in pursuit
6 of this thing. But I am not trying to sidestep
7 this by merely saying that.

8 Here again I was called on to bring it to
9 the attention of Olson, who was supposed to be
10 the -- who was the marketing manager under Bergen.
11 Here I am writing to Olson. I am writing to his
12 boss. I am writing to Kuhn, who was in the
13 engineering department, and Kountz -- or Kuhn was
14 in the plant, I think. Munch was in research.
15 Richard -- Munch reported to Richard; and Bryant
16 was the technical marketing man. So they called
17 on me to pass this along.

18 Q Who called on you, the people on that
19 distribution list?

20 A I would think so. I didn't originate it.

21 Q Well, you are the author of the memo, is
22 that right?

23 A Yes. Well, I told you, they used me that
24 way.

1 Q Who are "they," the ones who are using
2 you that way?

3 A Well, I would say people in general
4 there.

5 Q Bergen was your boss, was he not, at this
6 time?

7 A Well, Bergen was the marketing director.

8 Q Did you report to him either directly or
9 indirectly?

10 A I didn't report -- wait a minute. Leave
11 this off of your book here.

12 MR. FRUEHWALD: Well, we can't do that. If he
13 has a question that you can answer, go ahead.

14 THE WITNESS: No, I didn't report directly to
15 Bergen.

16 By Mr. Mc Connell:

17 Q Did you report through somebody else to
18 him in 1969, December?

19 A Well, what do you mean by report through
20 someone else to him?

21 Q Was he your boss's boss?

22 A He was the boss of the department. He
23 was the director of the department. I am not
24 trying to confuse you. I have no reason to be

1 confusing you on this.

2 Q I understand. Who was your boss in
3 December of --

4 A This is what I am trying to say, and I
5 just don't know. They had some organizational
6 changes. I was sort of set off to the side as a
7 technical person.

8 Q You had a staff function, rather than a
9 line function?

10 A If you like to put it that way, yes.
11 Maybe that is the best way to do this. I was a
12 technical person involved with this marketing
13 organization.

14 Q Anybody in the marketing organization
15 could call on you for your technical knowledge?

16 A They did, and they would ask me to write
17 such things. I was handy for that.

18 Q The last paragraph of Exhibit 182 says,
19 "At the present time our only means for disposal
20 is to a landfill."

21 Was Monsanto disposing of scrap liquid
22 Aroclor to a landfill in December of '69?

23 A Well, as I told you, I was not directly
24 involved with what Monsanto or anybody else was

1 doing.

2 Q Where did you get that information?

3 A If I said this statement here, somebody
4 must have told me this, and I merely repeated it,
5 "At the present time our only means for disposal
6 is to a landfill." So somebody must have told me
7 this.

8 Q Who?

9 A Who? Somebody from the plant.

10 Q The Krummrich plant?

11 A The Krummrich plant, or Anniston, or
12 maybe research knew this. I wasn't involved in
13 this. I am sorry. You don't have quite the right
14 person here.

15 Q What I don't understand is if all of this
16 information in this memo came from other people,
17 how come the other people didn't write the memo
18 themselves?

19 A Well, they used me. I was handy to carry
20 it on. I can ask the same question. I wondered
21 sometimes myself.

22 Q You had no personal knowledge of anything
23 that is contained in this exhibit, is that what
24 you are telling me?

1 A Well, now, what is all in the exhibit? I
2 don't want to be -- now, this "meeting last
3 Wednesday," I was not at that meeting. So that
4 was passed on to me. I do know that Bryant did
5 write that report there supplying Richard with the
6 marketing information he wanted on capacitors, and
7 this says about three hundred thousand pounds
8 needs to be incinerated.

9 Q Was that a number that you knew, or did
10 somebody tell you that?

11 A Somebody told me that. I didn't generate
12 this number. Bryant would have generated that
13 number, as was indicated in those numbers, he
14 generated those numbers.

15 Q Who told you that arrangements for
16 distillation remain unprovided?

17 A I don't know who told me that. Somebody
18 must have told me that.

19 MR. KARAGANIS: I would just indicate for the
20 record at this time, Mr. Benignus, and this is no
21 characterization of your testimony, but simply
22 that up until today Mr. Papageorge has given us
23 testimony regarding the program upon his arrival
24 at St. Louis, which was in 1970.

1 THE WITNESS: Yes. And this is '69.

2 MR. KARAGANIS: '69. What we are looking for
3 is people having information about what the
4 program was prior to Mr. Papageorge's arrival. If
5 it turns out that you were not involved except to
6 the extent you have so testified, Mike, we are
7 going to need to find out who is making the
8 decisions and have that witness supplied.

9 MR. FRUEHWALD: There is substance to what you
10 are saying, and I am trying to clarify this. I
11 know it is difficult for Jim here, but that's the
12 way it is. I understand what you are saying, but
13 we are talking about fifteen years ago, and it may
14 not be able to be reconstructed at this time. We
15 are giving you the document which indicates Mr.
16 Bryant did most of this stuff, and Mr. Bryant is
17 perhaps the person you want.

18 MR. KARAGANIS: I would just tell you with
19 respect to decisions being made on bringing the
20 stuff back, on distillation, of Findett, and all
21 the things that Mr. Papageorge said took place
22 before his arrival, we are looking to Mr. Benignus
23 to provide the details. Now, he has testified
24 this morning that he was out of the loop, really.

1 THE WITNESS: You are absolutely right.

2 MR. KARAGANIS: And if that is the case, we
3 want to find out who was in the loop, and we want
4 documentation with respect to that.

5 MR. FRUEHWALD: I understand, and we have
6 provided the documention that exists.

7 MR. KARAGANIS: I am not sure you have.

8 MR. FRUEHWALD: If we can't reconstruct it, we
9 can't reconstruct it. This is fifteen years ago,
10 and it may be something that is lost.

11 MR. MC CONNEL: Instead of talking about what
12 we can or cannot do, let's proceed.

13 THE WITNESS: And I am trying to help you,
14 believe me.

15 MR. MC CONNELL: I understand. But I have to
16 ask all the questions even if your answer is "I
17 don't know." I still have to ask the question.
18 So that is my job. Your job is to give us the
19 best recollection that you have.

20 THE WITNESS: Well, I am sure doing that.

21 MR. MC CONNELL: I understand.

22 Let's get back into some kind of
23 chronological sequence here.

24 MR. FRUEHWALD: Off the record.

1 (Discussion had off the record.)

2 MR. KARAGANIS: For the record, let's just
3 indicate that we were handed today four documents,
4 the first document being a memorandum dated April
5 11, 1969, by J.G. Bryant, subject: Scrap Arcelor
6 Disposal Plan.

7 The second document is dated March 24,
8 1970. It is a call report for the Westinghouse
9 Electric Bloomington, Indiana, plant. It is
10 prepared by R. Graham. It refers to a visit to
11 the Bloomington plant, and it is addressed to P.G.
12 Benignus.

13 Next is a document dated April 2, 1970,
14 and it is by P.G. Benignus to D.A. Olson, subject:
15 Westinghouse PCB Problem.

16 The fourth document is a document dated
17 9-3-71 by P.G. Benignus entitled Askarel PCB
18 Dielectric Fluids.

19 May I just ask for purpose of inquiry,
20 these documents turned up in light of a subsequent
21 search for documents?

22 MR. FRUEHWALD: Yes. We are continuing to
23 search. We have been continuing to search for a
24 long time in response to things you asked for in

1 Papageorge's deposition, and we have continued
2 searching, and if we find things we will produce
3 them.

4 Those are the things we found, and they
5 relate to Mr. Benignus, and we wanted to be sure
6 you got them before today. But we are continuing
7 to search all the time.

8 By Mr. Mc Connell:

9 Q Let's go back and finish with 182 before
10 we forget.

11 The last paragraph, the second sentence
12 of Exhibit 182, says, "We are warned that this
13 will no longer be acceptable" -- "this" referring
14 to disposal in a landfill.

15 Who was it, if you remember, that gave
16 you that information?

17 A I don't know, specifically, who gave it
18 to me. But that was the general tenor of things.

19 Q Was there a reason why landfilling would
20 no longer be acceptable, as you understood it?

21 A Well, I keep having to tell you, I was not
22 directly conversant with this. Now, you say as I
23 understood it, I guess we were running out of
24 landfills. Would that be a logical answer?

1 A I don't know. I am just trying to find
2 out what you understood as of the time you wrote
3 this memo, where you say, "We are warned that this
4 will no longer be acceptable."

5 Was it lack of space, or environmental
6 contamination if the material was buried, if you
7 recall?

8 A I don't recall, no, I don't.

9 MR. MC CONNELL: Would you mark this as 183.

10 (The document above referred to
11 was marked Deposition Exhibit
12 No. 183 for Identification.)

13 MR. MC CONNELL: Exhibit 183 is a letter from
14 Mr. Speicher of Westinghouse to Dr. -- is it Dr.
15 Wheeler?

16 A No. Elmer Wheeler. He was the head of
17 our industrial hygiene.

18 Q Kelly is the one --

19 A Dr. Kelly was medical director, and
20 Wheeler reported to Kelly, right.

21 Q The date of the letter is July 19, 1956.
22 According to this letter, by the time Speicher
23 wrote that letter, he had already had his phone
24 conversation with you?

1 A Yes, he said he did.

2 Q And he is asking for some additional
3 information on the toxicity of Aroclors. Do you
4 see that reference in the first paragraph?

5 A Right.

6 Q Do you know whether that was ever
7 provided?

8 A I don't know. But I don't know why it
9 wouldn't have been. That was published
10 information he is asking for. I would have to
11 assume we would have provided it. That is why it
12 was available.

13 MR. MC CONNELL: Would you mark this as 184.

14 (The document above referred to
15 was marked Deposition Exhibit
16 No. 184 for Identification.)

17 MR. MC CONNELL: Exhibit 184 is a two-page
18 letter to Speicher from Wheeler dated July 25,
19 1956.

20 Would you take a look at that.

21 A Yes, this is what we are sending him.

22 Q In the second paragraph, the "Two
23 detailed reports published by personnel at
24 Kettering Laboratories," is that the publication

1 you referred to in your last answer?

2 A Right, "The Toxicity of the Vapors of
3 Aroclors 1242 and 1254," exactly.

4 Q Do you know whether there are in
5 existence any copies of those documents today?

6 A I don't know that, no.

7 MR. FRUEHWALD: There should be some in your
8 production stack.

9 THE WITNESS: Ask the people here. They would
10 be able to tell you that.

11 By Mr. Mc Connell:

12 Q Can you tell whose handwritten notes
13 these are in the margin of this letter?

14 A No, I can't. It is hard to read this,
15 even.

16 Q I appreciate that. We are all laboring
17 under the same handicap.

18 A In fact, I don't know that I saw this.

19 Q I think you got a copy of that.

20 A I did. Oh, yes, okay. But there is
21 nothing in here that is different from what I
22 would have....

23 Q The last two big paragraphs of the letter
24 refer to the skin patch studies and the chloracne

1 problem. Was there ever a published report to
2 your knowledge of those skin patch tests?

3 A I think there was. I would think so,
4 surely. The work was done. I don't know why
5 it wouldn't have been reported and published; and
6 that is where I got my guidance from.

7 Q There were published reports on the
8 chloracne experience, is that correct?

9 A That's correct.

10 Q Do you know why those weren't forwarded
11 with this letter?

12 A No, I didn't forward -- I am not sure. I
13 don't know. Weren't they forwarded?

14 Q Well, it indicates --

15 A Maybe Speicher had it. There were
16 telephone conversations with Speicher, and this,
17 what you are talking about, was published in the
18 literature. I don't know that we would have had
19 to have sent it. I would think Speicher at
20 Westinghouse would have had that information. I
21 really do.

22 Q Other than what is mentioned in that
23 letter with respect to the possibility of skin
24 irritation and the possibility of chloracne, were

1 you aware at the time that letter was written in
2 1956 of any other human health problems that had
3 been associated with coming in contact with PCBs

4 A Well, in the literature that I wrote,
5 there are two things that you will read in
6 anything I ever wrote and published. One is this,
7 what you are talking about, is the skin patch test
8 and the assessment or judgment that normal skin
9 contact isn't really a problem. If it gets on the
10 hands you should wash with ordinary soap and
11 water.

12 Another thing I published is if Aroclor,
13 even hot Aroclor, gets in contact with the eye,
14 don't get all upset that you are going blind.
15 What you should do is wash with copious amounts of
16 water and then your eye will be irritated as it
17 would be with most any foreign substance. Go to
18 the eye doctor and get a soothing salve for this.

19 Other than that problem, there is no harm
20 to the eye.

21 Now, the thing that I have always
22 emphasized, and this is in answer to your
23 question, do not breathe the vapors continuously
24 emitted from PCBs at elevated temperatures.

1 Now, these vapors on long-term exposure,
2 and this is why I am answering your question, it
3 says the amount for the eight-hour work room
4 atmosphere, you can hardly read it here, but it is
5 a tenth of a milligram per cubic meter of air.

6 Now, that is the maximum safe working
7 level.

8 We have often -- not often, but I was
9 involved with this business, analyzed the vapor in
10 our plants, and so on and so forth, and
11 Westinghouse did this, too, I think. These
12 vapors, if they are in excess of this, will sound
13 really their own warning. They will smart the
14 mucous membranes and the eyes, and one will
15 normally withdraw from this.

16 But what is being said, and what I always
17 emphasize, is do not breathe the fumes of the
18 vapors at elevated temperatures.

19 Now, if we had it sitting here in an open
20 bottle, you wouldn't smell anything at normal
21 temperature. The vapor pressure is low. The
22 boiling point is 300 C. But if you heat it well
23 over the temperature of boiling water chances are
24 you will smell something here. Do not breathe

1 those fumes.

2 Now, that is what I always published in
3 the literature.

4 Q And the reason is that that is what
5 caused the chloracne, is that correct?

6 A Well, now you are getting into how it is
7 transmitted with chloracne. Is it ingested, or is
8 it --

9 Q Let me ask the question in a different
10 way. Why was it that you cautioned so strictly
11 against breathing the vapors for a long period of
12 time?

13 A The reason this is cautioned is because
14 of the tests run by the Kettering Laboratories,
15 reported by our medical director Wheeler, and this
16 is all published in the literature.

17 This is what you are asking about, this
18 toxicity publication, where it was exposed to the
19 normal kind of test animals, rats and guinea pigs,
20 and so on and so forth.

21 There was evidence that prolonged
22 exposure to these vapors would cause, or could
23 cause, in certain test animals, tumors, and that
24 it would be injurious in long-term exposure based

11

1 on these animal studies to the liver and maybe the
2 kidney. That is what it is based on.

3 Q Are we talking about malignant tumors?

4 A No. Well, you are asking me the medical
5 question. I am telling you --

6 Q Your best understanding, that is all we
7 can ask for.

8 A God, I was with this stuff all my life,
9 you know. I am still around, if you want to know
10 how old I am.

11 MR. KARAGANIS: 37.

12 THE WITNESS: You got part of this right. Add
13 forty to it and you will be on the button, as of
14 August 30, and this is what, September the 4th.

15 MR. MC CONNELL: Would you mark this as 185.

16 (The document above referred to
17 was marked Deposition Exhibit
18 No. 185 for Identification.)

19 By Mr. Mc Connell:

20 Q Take a look at the one-page memorandum
21 dated September 21, 1967, from Benignus to Harvey
22 Pickett and Jim McNally, which has been marked as
23 Exhibit 185. Do you recognize that?

24 MR. FRUEHWALD: It is not addressed to Pickett

1 and McNally. It is addressed to Mr. Miller at
2 Anniston.

3 THE WITNESS: It is addressed to Miller at
4 Anniston.

5 By Mr. Mc Connell:

6 Q Re Pickett and McNally?

7 A Re Pickett and McNally, who I didn't
8 really know.

9 Q They were Westinghouse people, were they?

10 A Yes, at Bloomington. I had not known
11 these people.

12 Q According to this memorandum the two
13 Westinghouse representatives, Pickett and McNally,
14 wanted to visit Monsanto to discuss methods of
15 handling 1242 to avoid problems of dermatitis and
16 toxicology, is that correct?

17 A Yes, that is the premises here.

18 Q And when you wrote dermatitis and
19 toxicology is the reference to toxicology what you
20 just testified to about breathing the vapors and
21 the animal tests that showed tumors?

22 A I would say so, toxicology, yes.

23 Q The next paragraph, the first sentence
24 says, "Westinghouse admit to not being as careful

1 as they should be."

2 Who at Westinghouse admitted that?

3 A Well, I told you, I didn't know Pickett
4 and McNally to begin with. Somebody there must
5 have told that to our salesman, and Bryant may
6 have been calling there, or Graham, they must have
7 told that to somebody.

8 Q The paragraph goes on to say, "Frankly, I
9 believe there are elements of 'sloppiness,' such
10 as allowing the Inerteen to spill and soak into
11 workmen's shoes and clothing without then changing
12 the shoes and/or clothing."

13 Is that information that was related to
14 you by someone else at Monsanto?

15 A That is correct.

16 Q Do you know who it was that told you
17 about that?

18 A No, I don't.

19 Q Do you know whether the salesman that
20 called on Westinghouse Bloomington visited the
21 manufacturing area of the plant when they made
22 those calls?

23 A This I don't know either. I wouldn't
24 have had to. Somebody could have told him. I

1 don't know that. He was out in the plant.

2 Q Who is Gerald Miller?

3 A He was in charge of the analytical
4 laboratory at Anniston.

5 Q And the memo says that they should
6 contact him in your absence, is that with respect
7 to the reference to upgrading 1242 with Porocel?

8 A No, that would have been Bryant. You
9 see, Bryant was at Anniston at this time, and he
10 is the one that did all of that work. He
11 developed the Porocel. Are you familiar with
12 this, and so forth?

13 Q Generally.

14 A Yes, okay. That is really all -- it is
15 just a method of refining, rather than using the
16 batch and a sparkler filter. This is a continuous
17 column. And Bryant developed that.

18 We felt that we would like to show this
19 to Westinghouse. We were happy with it and had
20 shown it to others. It was patented, and we were
21 willing to give it to anyone.

22 Q What was it that Miller -- what area of
23 the meeting would Miller be filling in for you
24 with respect to the toxicology?

1 A Well, no, no, here again Miller is the
2 head of the analytical lab. I am addressing this
3 to him because I know he is there. And then I am
4 sending a copy to these other people, even the
5 Cincinnati people, so they would know about this.

6 And here is Cresce. He is the plant
7 manager, and Carder, I used him as a means of
8 disseminating that we wanted to have these
9 Westinghouse people as guests and get going and
10 set it up. That's it.

11 Q Did you go to the meeting that finally
12 took place?

13 A I wasn't there. But I did arrange this.

14 Q You set it up?

15 A Yes, I set it up. They used me for this
16 in many ways. It says here, "If I am out of
17 town...."

18 Q That would have been out of town in
19 connection with your other duties?

20 A Yes. Well, I was worldwide in my
21 activities. I could have been anywhere in the
22 world when these things were going on. I didn't
23 attend a lot of these things.

24 Q Do you know whether there was any, as a

1 result of the meeting which took place according
2 to the notation on here, October 3, was there any
3 improvement? Did you learn of any improvement in
4 the housekeeping practices at Westinghouse
5 following that meeting?

6 A I wasn't there, and I don't know. I may
7 or may not have gotten a report. I wouldn't have
8 followed it myself if I did get a report on it.
9 Somebody else would have, if there was anything to
10 follow.

11 MR. MC CONNELL: Would you mark this as 186.

12 (The document above referred to
13 was marked Deposition Exhibit
14 No. 186 for Identification.)

15 MR. MC CONNELL: Exhibit 186 is a two-page
16 memo from Mr. Kountz to Johnson, Benignus and
17 Fallon, subject Aroclor Waste Disposal, dated
18 December 8, 1969. I will ask you if you recognize
19 that.

20 A I would recall this, yes.

21 Q And that is on the subject of the
22 possibility of building an incinerator at
23 Monsanto, is that correct?

24 A Yes; we already talked about that.

1 Q This precedes the one that we discussed
2 earlier, I think.

3 A Oh, does it? I should think it might
4 have followed it. This is December 3.

5 Q Okay. There is one that was before it.

6 A Yes, that preceded it.

7 Q And this is immediately before it on
8 December 5.

9 A Yes, this follows these things, right,
10 that is Kountz's response to this.

11 Q To the concern that was expressed in your
12 memo that six months has passed and nobody has
13 done anything about it, is that correct?

14 A Well, yes. Well, now, wait a minute.
15 Let's be fair about this.

16 You say nothing was done. People didn't
17 just sit there on their duffs and do nothing.
18 This was not an easy thing to approach. And if
19 you have been in the business of chemicals, or an
20 operation like this, it takes some doing to
21 proceed and set up these kinds of operations.

22 So I just want to be fair to our people
23 and ourselves here. It is not that nothing was
24 done. The whole end point had not been

12

1 attained. I believe you believe this.

2 Q You are right. It is not that nothing
3 has been done. Your memo of December 5, the
4 concern that you expressed was that it hadn't
5 received support, isn't that what it says?

6 A I could have said that --

7 Q This request has not received support?

8 A You read what it says, now?

9 I am passing this along. Somebody felt
10 this, and it is a pretty strong way to put it.
11 That doesn't mean that it didn't receive
12 attention, you know. People do use words that at
13 times are a little bit severe. I do this.

14 Q You were trying to give somebody a kick
15 in the pants?

16 A Exactly.

17 MR. MC CONNELL: If you would mark this as
18 187.

19 (The document above referred to
20 was marked Deposition Exhibit
21 No. 187 for Identification.)

22 THE WITNESS: I wish the world were simple,
23 but it isn't.

24 MR. MC CONNELL: Exhibit 187 is a memo from

1 Mr. Kountz to H.A. Vodden, also dated December 8,
2 1969.

3 MR. FRUEHWALD: That one, I believe, is a
4 prior exhibit.

5 MR. MC CONNELL: All right.

6 MR. FRUEHWALD: Just so we all know it, it is
7 Exhibit 104.

8 MR. KARAGANIS: What is the date on it?

9 MR. MC CONNELL: Also December 8, 1969.

10 Q Now, I don't see you listed on there as
11 having received a copy on it.

12 A Don't tell me they missed me on one of
13 these things? Well, I know who Vodden was. He
14 was over in England. That is Ruabon. That is not
15 even in this country. All right. What is your
16 question?

17 Q Did you get a copy of that, if you
18 remember?

19 A I will have to read the darn thing. Did
20 Rollins-Purle ever build twenty industrial waste
21 collection treatment plants?

22 Q I haven't the foggiest notion. I believe
23 they built one.

24 A Yes.

1 Well, I don't remember getting this.

2 There is no reason why I would have gotten it.

3 But he is trying to be helpful and pass this to

4 England. That is Ruabon. That is England. He

5 had a plant there. And he is trying to be as

6 helpful as he can.

7 Q He is giving them, in 187, essentially
8 the same information that he provided to you and
9 others in 186, is that a fair statement?

10 A I would think so.

11 Q It is worded a little differently, but it
12 is basically the same information?

13 A Not that he gave it to me, but he gave it
14 to the concerned people.

15 Q A whole list of people?

16 A Correct. I see Kuhn. He is in the
17 States. He is writing over there to our people.
18 I wondered how come the guy in England knew so
19 much. But it is Kountz writing to England, okay.

20 Q You also produced PCBs in England?

21 A Correct.

22 Q In fact, it was in Europe that the first
23 reports of environmental contamination arose?

24 A From Sweden, right.

1 MR. MC CONNELL: Would you mark that as 188,
2 and 189.

3 (The documents above referred to
4 were marked Deposition Exhibit
5 Nos. 188 and 189 for
6 Identification.)

7 MR. MC CONNELL: All right. I have marked two
8 exhibits here, 188, which is dated February 2,
9 1970. It is a four-page memo from Bryant to
10 Papageorge. And then I marked 189, which is one
11 of the documents that you brought us this morning,
12 a five-page memo from Bryant to Benignus and a
13 long list of others, dated April 11, 1969.

14 MR. FRUEHWALD: I think that first one, 183,
15 is already an exhibit. It is going to happen,
16 inevitably. But I think that is already 102.

17 MR. MC CONNELL: 102.

18 MR. FRUEHWALD: Obviously, that was something
19 you asked Papageorge about.

20 MR. MC CONNELL: Yes, everything with his name
21 on it.

22 Q Okay. Take a look at, let's start with
23 189, since that is the earlier in time, I will ask
24 you if you recognize that memorandum.

1 A Well, I am sure I would. I got a copy.

2 Q Do you know why it was that Mr. Bryant
3 was asked to prepare that scrap Aroclor disposal
4 plan?

5 A No, I don't.

6 Q Was that one of the early documents in
7 connection with what ultimately developed into the
8 incineration program for returned scrap?

9 A Well, this seems to be a summation as to
10 where we are.

11 Q As of the date -- it is a statement of,
12 yes, as of April 1969, this is the situation.
13 This is where we are, and this is what is being
14 done. Here he says the present situation.

15 This is a summary report, a review of
16 this thing. So people were really very actively
17 concerned with trying to be helpful.

18 Q And by trying to be helpful, you mean
19 helping your customers with the problem of
20 disposing of their scrap liquid?

21 A Yes.

22 Q And the reason for that was in order to
23 reduce or prevent contamination in the
24 environment, is that correct?

1 A Yes, to get rid of it.

2 This involved not only Bloomington,
3 although here under No. 2 it talks about
4 Meyer/Garcia. These are salesmen out in the area
5 that called at Bloomington, Indiana, asked them to
6 work out a shipment system. And it goes --

7 MR. FRUEHWALD: What is the question being asked?

8 MR. MC CONNELL: I don't know that there was
9 one.

10 Q I guess the question is is that an
11 accurate -- to the best of your knowledge, is that
12 an accurate description of what the situation was
13 as of the date of that memo?

14 A Yes, I would say so.

15 Q Take a look at Exhibit 183, which is
16 dated February 2, 1970, also from Mr. Bryant to
17 Mr. Papageorge.

18 Sometime between April of '69 and
19 February of '70, was when Mr. Papageorge became
20 the PCB coordinator, or whatever his official
21 designation was, is that correct?

22 A PCB coordinator, yes, I guess that's what
23 he would be called. He had been plant manager at
24 Anniston, that is, Papageorge was.

1 Q And he was assigned to handle all of the
2 dealings with customers in government agencies
3 with respect to PCB environmental problems?

4 A Well, I appreciate what you said. He was
5 not everything. But, yes, he was the central
6 point.

7 Q He was the coordinator?

8 A Yes, exactly; and a lot of agencies,
9 government agencies, EPA, and people got involved,
10 and, yes, he was the coordinator, yes, this is
11 correct.

12 Q Exhibit 188 talks about an effort to make
13 the waste disposal program pay for itself, is that
14 a fair statement?

15 A Well, it surely is a fair statement
16 because this was expensive for Monsanto to do all
17 of this. This is a very costly thing here that
18 was undertaken, and this is another progress
19 thing.

20 Q It describes the various alternatives for
21 either reprocessing or disposing of the liquid
22 scrap, is that correct?

23 A I would think so. Here it mentions
24 having disposed of some liquid in a landfill, and

1 so on and so forth.

2 Q According to the last page of that
3 exhibit, 188, the reprocessing alternative was
4 inadequate to handle the material that was
5 returned from Westinghouse?

6 A This probably would have been true, yes,
7 as he thinks, in 1970, February of 1970, and they
8 want out of the -- if I remember right,
9 non-electrical was terminated in 1970.

10 Q So there would have been no place to use
11 the reprocessed product?

12 A That's how I would interpret it, yes. So
13 it made the problem more difficult, exacerbated
14 the problem.

15 Q You have given depositions before?

16 A Not to know about.

17 Q One time?

18 A Yes.

19 Q Was that in a PCB lawsuit or in some
20 other kind of a case?

21 A One was I think PCB. One was -- they
22 were talking about that, yes.

23 Q Do you know where that case was pending?

24 A Well, I don't know. Ask him.

13

1 MR. MC CONNELL: All right, we will do that.

2 Would you mark this as 190.

3 (The document above referred to
4 was marked Deposition Exhibit
5 No. 190 for Identification.)

6 MR. MC CONNELL: Exhibit 190 is a two-page
7 call report, Organic Division, dated March 24,
8 1970, from Graham to Benignus.

9 Do you recognize that Exhibit 190?

10 A Yes. Graham was a salesman -- he was a
11 little bit above a salesman. He was a specialist
12 salesman, and he had called at Bloomington, and he
13 wrote a standard sales report on his call.

14 I would have gotten a copy -- well, it
15 was addressed to me, yes. I remember this.

16 Q This had to do with a price increase on
17 the Aroclors that you sold to the Bloomington
18 plant?

19 A To everybody. We were not
20 discriminatory.

21 Q Well, according to the report some of the
22 other Westinghouse facilities had a year long, no
23 price increase deal, but Bloomington did not, is
24 that correct?

1 A Now, hold off a minute. Don't write this
2 down.

3 MR. FRUEHWALD: Paul, we can't do that.

4 THE WITNESS: What was the question, please?

5 By Mr. Mc Connell:

6 Q Isn't it reflected in Exhibit 190 that
7 two other Westinghouse facilities had contracts
8 under which Monsanto couldn't increase the price
9 for a year because Westinghouse didn't have that
10 type of a contract, or Bloomington didn't have it?

11 A This could be. Now, you are talking
12 about two other Westinghouse places. You are not
13 talking about capacitor making at Westinghouse.
14 You are talking about transformer places, which
15 are altogether different; and this can be. I
16 don't know if it was. But if it says so, it
17 probably was.

18 There was a different price on the
19 transformer stuff than on the capacitor stuff.
20 This is semantics in the commercial part of it,
21 all of which was sold on a very economical basis.
22 This is why we are the only supplier of this, one
23 of the reasons, that and technology.

24 Q I am not attacking your pricing policies.

1 A Well, don't.

2 Q One of the problems that arose at about
3 this time, in March of 1970, in the dealings
4 between Monsanto and Westinghouse at Bloomington,
5 was the problem that Bloomington was going to have
6 to suffer a mid-year price increase, and some
7 other Westinghouse facilities were not, and they
8 got upset about that.

9 A I wouldn't blame them if they found this
10 out. I am surprised they ran across it. But I
11 wouldn't blame them.

12 But, remember, the other places are in a
13 different part of the country, and they deal with
14 transformer fluid.

15 I wasn't handling that detail. I am not
16 the one, best one to be asking about it.

17 Q One of the suggested actions on the
18 second page of the memo is that Monsanto should
19 attempt to assist Westinghouse Bloomington in
20 reducing the losses of scrap to help make up for
21 the increase in price.

22 Am I interpreting that correctly?

23 A That's what it says.

24 Q Did anybody ask you for technical

1 assistance in trying to help Westinghouse within
2 their process?

3 A No.

4 Q Did you know from talking to any of the
5 Monsanto people who dealt with the Westinghouse
6 Bloomington facility that they were literally
7 using boxcar loads of sawdust to soak up the PCB
8 liquid that spilled on their plant floor?

9 A I have read this in connection with some
10 of these things here, but I was not aware of this,
11 that they are using boxloads.

12 Q You didn't know about it at the time?

13 A No.

14 Q Did anybody ask you to contribute
15 technical information in an effort to cut down on
16 the losses of scrap liquid at the Bloomington
17 plant?

18 A No.

19 MR. MC CONNELL: Do you want to mark this as
20 191.

21 (The document above referred to
22 was marked Deposition Exhibit
23 No. 191 for Identification.)
24

1 By Mr. Mc Connell:

2 Q Take a look at a one-page memo dated
3 April 2, 1970, from you to Olson. That is marked
4 as Exhibit 191. I will ask you if you recall
5 sending that.

6 A Yes, exactly.

7 Q What did you mean by the reference in the
8 last sentence to "Saving the electrical use of
9 Aroclor and not to discontinue it, as may be the
10 immediate and simple thought entertained by
11 purchasing people"?

12 A Well, this was written in April 1970, and
13 it also refers to having brought General Electric
14 people into St. Louis, and the purpose of this
15 whole thing is to accord the same visit for the
16 people at Westinghouse.

17 Now, this is the purpose of the whole
18 thing.

19 Q My question is was there some concern on
20 the part of you and on the part of Monsanto in
21 April of 1970 that as a result of environmental
22 problems that the Aroclor, electrical uses of
23 Aroclor would be discontinued?

24 A That wasn't up to me, no.

1 Q I understand it wasn't up to you, but was
2 the company concerned about that possibility, they
3 wouldn't be able to sell it any more to their
4 electrical customers?

5 A GE was concerned about it.

6 Q Was Westinghouse concerned about it?

7 A I should think they should have been. I
8 imagine they were, if they heard.

9 Q Was Monsanto concerned about it?

10 A Well, this is what the whole thing was
11 about.

12 Q To keep that product alive?

13 A Well, now you are putting -- I don't know
14 if that is the way I interpret it.

15 Q Well, how did you interpret it in April
16 of 1970?

17 A I was aware of the complaints against it,
18 from the environment, obviously, and by 1970
19 Monsanto had decided to discontinue the open
20 systems, and I am aware that a capacitor and a
21 transformer is a hermetically sealed system. So
22 there is some difference there.

23 Q I understand you had already discontinued
24 the non-electrical uses at about this time?

14

1 A Because an open system, they are not
2 closed, hermetically sealed systems, that is one
3 factor in the technical consideration of this.

4 Q I understand that. And my question is
5 was there some concern on your part that even
6 though the electrical uses were closed that the
7 government might decide that PCBs could no longer
8 be sold for that use as well as for electrical
9 use?

10 A You see, this is 1970. Now, at this
11 point in time not only GE and Westinghouse, and
12 the electrical industry, everybody, the
13 government, the EPA, the Bureau of Standards, what
14 have you, all these government agencies were being
15 solicited to form a judgment and a consensus about
16 this whole thing and be appraised of it.

17 Q And one thing they might do is shut down
18 the electrical use of PCBs?

19 A This would have been one option, and they
20 were certainly -- do you know what would have
21 happened?

22 Q I understand. But I am just asking
23 whether that is what you are referring to in the
24 last paragraph of that memo.

1 A I don't know. At this particular point
2 in time, take it however you wish. This is no
3 great statement on my part. When I say "simple
4 thought entertained by purchasing people," I hope
5 they didn't read this. No, I don't know....

6 Q My question is: What did you mean by
7 "saving the electrical use of Aroclor," saving it
8 from what?

9 A Well, saving it from not having it, that
10 is how one would interpret this.

11 Q And did you ultimately have the meeting
12 that you recommended in Exhibit 191?

13 A Yes, right.

14 MR. MC CONNELL: Do you want to mark this as
15 192.

16 (The document above referred to
17 was marked Deposition Exhibit
18 No. 192 for Identification.)

19 MR. MC CONNELL: Exhibit 192 is a one-page
20 memo from Benignus to Olson dated April 17, 1970,
21 subject: Westinghouse - PCB Problem Discussion.

22 Q I will ask you if you recognize that
23 memo?

24 A I wrote it, yes, I recognize this, sure.

1 This was this meeting.

2 Q That was a schedule for the meeting that
3 you requested in Exhibit 191?

4 A Correct, sure.

5 Q Did that meeting actually take place as
6 scheduled?

7 A Oh, sure it did, yes.

8 Q And was that agenda that is shown on
9 Exhibit 192 essentially the same agenda that you
10 used in the meeting with GE?

11 A Yes, essentially the same sort of a
12 thing.

13 Q Different people would have been
14 involved, but the same subjects discussed?

15 A Yes, right.

16 Q Other than Westinghouse and General
17 Electric, were there other significant electrical
18 industry purchasers of Aroclors from Monsanto in
19 1970?

20 A Oh, sure.

21 Q Did you have similar meetings with those
22 other customers?

23 A All right, I will answer this. This is
24 why this whole program was extended to these

[1 technical committees, ASTM and IEEE, and these
2 technical organizations, where not only people
3 from Westinghouse, as on here, and people from GE
4 who did come to St. Louis, everybody couldn't
5 come. It was too broad. This is why this thing
6 was fit into these technical organizations so that
7 not only Westinghouse and GE would be conversant
8 and know what this whole thing is, where we are,
9 and put in their input to get a consensus, but
10 everybody, so that we were passing it along to
11 everybody, not only to our customers, but all
12 their customers, which is very extensive.

13 So what I want to explain is these
14 meetings with Westinghouse and GE were the
15 forerunners to incorporating this at the national
16 technical organizations. The end point was
17 Committee C-107, American National Standards
18 Institute, which disseminated this for all our
19 customers, all their customers, all industry,
20 steel mills, paper mills, what have you, on behalf
21 of the government.

22 Q So I take your answer to mean that you
23 didn't have individual meetings like this with
24 other customers?

1 A Not with everyone. But to the extent and
2 where we could, we sure did, surely. We were
3 disseminating this information.

4 MR. MC CONNELL: Let's mark one more exhibit
5 and then we can break for lunch.

6 (The document above referred to
7 was marked Deposition Exhibit
8 No. 193 for Identification.)

9 By Mr. Mc Connell:

10 Q Exhibit 193 is a one-page document
11 entitled PCB Meeting, St. Louis, 4-21-70.

12 Now, I will just show this to you and ask
13 you if this is a list of the people from
14 Westinghouse and from Monsanto who attended the
15 meeting that was the subject of Exhibit 192?

16 A Yes, I think so, yes.

17 Q So you were at that meeting?

18 A Yes, I participated in this meeting.

19 Q Did the meeting actually follow the
20 agenda that is shown in 192 pretty closely?

21 A Yes, yes.

22 Q What was the reaction of the Westinghouse
23 people to your presentation, if you can remember?

24 A I am sure they appreciated our effort to

1 be helpful in any way that we could and to pass on
2 and disseminate whatever knowledge and information
3 there was available.

4 Q Did they have questions about what they
5 could do to reduce their losses of PCB to the
6 environment?

7 A Now you are asking a specific thing. I
8 don't really know. They didn't ask me anything.
9 Mainly, they sat and listened to this. And
10 another part of this whole thing was to solicit
11 input from these people. It is their material.
12 They are the ones using it.

13 Q And the meeting obviously then was
14 followed up with further communication back and
15 forth between Monsanto and Westinghouse?

16 A Yes. I would say the whole environmental
17 thing stimulated communication along the line.
18 Sure it did, obviously.

19 MR. MC CONNELL: This is a good place to break
20 for lunch.

21 MR. FRUEHWALD: Okay.

22 (Whereupon the deposition was
23 recessed until 1:00 o'clock p.m.

24

15

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

THE CITY OF BLOOMINGTON, INDIANA;)
THE UTILITIES SERVICE BOARD OF)
BLOOMINGTON, INDIANA; and MONROE)
COUNTY, INDIANA,)

Plaintiffs,)

vs.)

Civ No.
IP 83-9-C

WESTINGHOUSE ELECTRIC CORPORATION,)
a Pennsylvania corporation; and)
MONSANTO COMPANY, a Delaware)
corporation,)

-----Defendants.-----)

The continued deposition of PAUL G.

BENIGNUS, called for examination by the
Plaintiffs, pursuant to notice and pursuant to the
provisions of the Federal Rules of Civil
Procedure of the United States District Courts,
pertaining to the taking of depositions for the
purpose of discovery, taken before Jesse A.
Longoria, a Notary Public and Certified Shorthand
Reporter within and for the County of Cook and
State of Illinois, at 216 North Meramec, Clayton,
Missouri 63105, commencing on September 4, 1986,
at the hour of one o'clock p.m.

1
2 APPEARANCES:

3 Mr. Joseph V. Karaganis and
4 Mr. James G. McConnell
5 Bell, Boyd & Lloyd
6 Three First National Plaza
7 70 West Madison Street
8 Suite 3200
9 Chicago, Illinois 60602

10 -and-

11 Mr. Geoffrey M. Grodner
12 Law Offices of Geoffrey M. Grodner
13 One City Centre
14 Suite 100
15 Bloomington, Indiana 47401

16 appeared on behalf of the Plaintiffs;

17 Mr. Michael R. Fruehwald
18 Barnes & Thornburg
19 1313 Merchants Bank Building
20 Indianapolis, Indiana 46204

21 appeared on behalf of Defendant
22 Monsanto Company.
23
24

1 PAUL G. BENIGNUS,
2 being previously sworn, was examined and testified
3 further as follows:

4 DIRECT EXAMINATION (Continued)

5 By Mr. Mc Connell:

6 Q I will show you what has been marked
7 previously as Exhibit 10A, which is a two-page
8 letter from Mr. Bryant to Mr. Shoaff of
9 Westinghouse, dated April 24, 1970, which purports
10 to summarize the April 21 meeting. I will ask you
11 to take your time and look that over and if that
12 to your recollection is an accurate summary of
13 what took place at that meeting.

14 Is that an accurate summary?

15 A That's right.

16 Q In the second paragraph under Mr.
17 Wheeler's name on the first page it refers to
18 studies on rats and dogs using Aroclors 1242, 1254
19 and 1250.

20 Is that a reference to the studies that
21 were done for Monsanto by Industrial Biotech?

22 A I don't know. I really don't know. But
23 such tests were done.

24 Q Do you know --

1 A I don't know this Industrial Biotech.

2 Q Is that name familiar to you?

3 A No, it isn't.

4 Q Do you know whether there was more than
5 one outside laboratory that Monsanto used for
6 animal tests on Aroclor PCB products?

7 A I don't, no. I think you better ask the
8 medical people on this.

9 Q That would be under Dr. Kelly's
10 jurisdiction?

11 A Under Kelly's jurisdiction and Wheeler.
12 He is not around. He would know.

13 Q The last sentence on the first page,
14 coming over to the top of the second page, refers
15 to the Ryan report and the Monsanto reply.

16 A I heard of that.

17 Q Is that Congressman Ryan?

18 A Right.

19 Q And he had to release some kind of
20 statement to the press about the environmental
21 problems with PCBs?

22 A I assume so.

23 Q Do you know who it was that replied on
24 behalf of Monsanto? Was that John Mason?

[] 1 A I specifically do not know. It could
2 have been.

3 Q In formulating Monsanto's reply to
4 Congressman Ryan, did anybody come to you for
5 technical information on PCBs?

6 A No.

7 Q Under W. Richard there is a sentence that
8 says, "He discussed complete control for water,
9 land and air."

10 A Are you laughing?

11 Q What does that mean?

12 A I don't know. Jim Bryant wrote this.

13 Q Is that the closed system concept that
14 you mentioned this morning?

15 A No.

16 Q Something different from that?

17 A It must be. Sometimes people say things
18 that they don't understand what they are saying, I
19 guess.

20 Q The last sentence of the letter refers to
21 "Also please advise when you plan to go to bulk
22 shipments of scrap."

23 Is that a reference to the return of
24 scrap liquid for incineration?

17

1 A Yes, that is.

2 Q And they originally were shipping it in
3 drums?

4 A That is correct.

5 Q And then some time after this letter was
6 written they were going to switch over to tank
7 cars, is that what bulk shipment refers to?

8 A At our insistence, yes.

9 Q Because it was easier for you to handle
10 at the incinerator that way?

11 A Well, the drum situation was pretty sad.

12 Q How do you mean?

13 A Well, I mean it that way. It was not a
14 satisfactory way for transporting it and handling
15 this thing.

16 Q The drums were shipped by truck?

17 A Yes, you would ship drums by truck. This
18 is correct.

19 Q And that was in your -- in the estimation
20 of Monsanto that wasn't appropriate?

21 A It was better to ship in a tank car in
22 bulk, and drums are a problem. We would have to
23 store these drums. We received them. And we had
24 a lot of drums on hand.

1 Q Is there a greater problem with spillage
2 en route, from drums, if you know, or was it just
3 the storage problem?

4 A Well, I think that is obvious. One would
5 have to assume this, I would think.

6 Q Do you know if there was ever a situation
7 where --

8 A There is another important thing here.
9 If you have this stuff in drums, and every drum is
10 different, you can have in one truck shipment all
11 these analytical problems. Whereas if you have
12 the --

13 Q You have to check every drum, in other
14 words?

15 A Sure. Whereas if you have it in one
16 container you have a greater opportunity to assume
17 this stuff is uniform; whereas if somebody sends
18 you a drum you are not going to be sure of what is
19 in one drum versus the other. This was so-called
20 "scrap," and it would vary, obviously.

21 Q Well, if you are going to incinerate it,
22 why did you have to know what was in it?

23 A Why don't you ask somebody who was at
24 that end of it?

1 Q That wasn't your bailiwick?

2 A It was not my concern, no, it wasn't.

3 Q To your knowledge was there ever
4 instances where railroad tank cars either going to
5 Bloomington, or coming from Bloomington, leaked
6 PCBs?

7 A Would you expand on what you mean by
8 "leaked"? What do you mean by "leaked"?

9 Q Well, in such a way that PCBs were
10 spilled from the tank car onto the ground
11 someplace other than the loading or unloading
12 place.

13 A To my knowledge, no.

14 MR. MC CONNELL: Do you want to mark this as
15 194. It is Benignus to McClain, May 26, 1970.

16 MR. FRUEHWALD: It is Exhibit 79.

17 MR. MC CONNELL: All right, it is right on
18 there, the No. 79 appears on it, so that must be
19 right.

20 Q Take a look at the letter, one-page
21 letter, and a one-page attachment that was
22 previously marked as Exhibit 79, from you to Don
23 McClain, dated May 26, 1970. I will ask you if
24 you recognize that.

1 A Yes.

2 Q You were transmitting to him some
3 information on the comparative biodegradability of
4 two different products, is that correct?

5 A Yes, this was indicating that we had this
6 approach to 1016 which involved taking out the
7 slower to biodegrade higher chlorinated biphenyls,
8 PCBs, and that was the purpose of 1016. The other
9 reason being in contact with McClain, he was a
10 technical man there, and he had to demonstrate for
11 himself that electrically and physically there was
12 essentially no change in this that would involve
13 or require any change in their capacitor designs.
14 That was the other part of this equation.

15 So it was information I was passing to
16 him.

17 Q The letter refers to 1242B, is that the
18 same product that ultimately was 1016?

19 A Yes, right. In fact, there is a note
20 here to that effect.

21 Q And they ultimately, they being
22 Westinghouse, ultimately switched over to the 1016
23 product for most of their capacitor applications,
24 did they not?

1 A I would say for all. In fact, the whole
2 industry did, right. That was a big effort on the
3 part of Monsanto to satisfy the environmental
4 people with something that was more biodegradable.

5 MR. MC CONNELL: Okay. This will be 194.

6 (The document above referred to
7 was marked Deposition Exhibit
8 No. 194 for Identification.)

9 By Mr. Mc Connell:

10 Q Exhibit 194 has been marked. This is a
11 one page letter dated June 2, 1972, to you, Mr.
12 Benignus, from F.R. Viland, Senior Buyer at
13 Westinghouse Transformer Division at Sharon,
14 Pennsylvania. I ask you if you recall receiving
15 that letter.

16 A Yes, I recall this.

17 Q Did Monsanto ever agree to the change
18 that is being requested in the shipment material?

19 A I don't know. Is there something
20 subsequent?

21 A I have no record that they ever did agree
22 to it. That is why I am asking.

23 A I really don't know.

24 Q The issue is who is responsible for what

1 happens between your place and their place.

2 A In transit, this is correct.

3 Q All right. Here is a letter from Mr.
4 Papageorge to Carlington Wilburn, dated July 6,
5 1970, previously marked as Exhibit 121. It shows
6 a blind copy to you. I will ask you if you recall
7 receiving a copy of that document.

8 Do you know who it was that requested
9 that Monsanto have the opportunity to review
10 Westinghouse's process specification on
11 disposition of scrap Inerdeen?

12 A No.

13 MR. FRUEHWALD: Assuming that was done. I
14 don't know that -- is there some specification
15 number?

16 MR. MC CONNELL: It says, "I have read your
17 Process Specification 89140GA."

18 MR. FRUEHWALD: Your question was whether
19 Monsanto --

20 MR. MC CONNELL: Asked for it.

21 MR. FRUEHWALD: Right.

22 By Mr. Connell:

23 Q I suppose the other possibility is that
24 they sent it to you voluntarily?

1 A I would think so.

2 Q In any event, Mr. Papageorge reviewed it
3 according to that letter?

4 A And he did, so correctly this is true.

5 Q Did you see that document --

6 A This?

7 Q Let me finish the question.

8 A Oh.

9 Q Did you see the process specification in
10 July of 1970?

11 A Westinghouse's, no, I don't recall that
12 at all.

13 Q In other words, Papageorge didn't ask you
14 for any technical input on his review of that
15 specification?

16 A No, and he was acquainted with this
17 requirement.

18 Q Referring to the incineration
19 temperature?

20 A Yes, right.

21 Q Did you ever discuss with Mr. Papageorge
22 around July of 1970 procedures that were in effect
23 at Bloomington Westinghouse for disposing of scrap
24 PCB?

1 A No, I didn't know what they were, either.

2 MR. MC CONNELL: Let's mark this as 195.

3 (The document above referred to
4 was marked Deposition Exhibit
5 No. 195 for Identification.)

6 By Mr. Mc Connell:

7 Q We have marked as Exhibit 195 a two-page
8 form letter bearing your signature -- excuse me,
9 dated August 6, 1970, subject: MCS 1016. I will
10 ask you if you recall that letter.

11 A Yes, I do.

12 Q Was a copy of that sent to Westinghouse
13 Bloomington?

14 A Well, this ties into this prior thing
15 that you showed me and asked -- you know, the
16 1016? You asked me --

17 Q Right.

18 A This ties in with that.

19 Q You are sending them a sample for their
20 use in product testing?

21 A Correct.

22 Q And ultimately it was successfully put
23 into their production?

24 A This is correct.

1 Q It is my understanding that in the 1200
2 series of products the last two digits of the
3 number, 42, 54 or 60, is the percentage by weight
4 of chlorine in the mixture?

5 A Correct.

6 Q It is also my understanding that this was
7 not the case with 1016, that is, 1016 was not 16
8 percent chlorine, is that also correct?

9 A That's correct. This No. 1016 is out of
10 the framework of the normal nomenclature. 1016
11 doesn't fit the 1200 things.

12 Q 1016 was actually, also, about 42
13 percent, was it not?

14 A Correct. What it was was 1242, and some
15 of these documents indicate that, whatever was
16 feasible to remove from the higher chlorinated
17 isomers.

18 Q Some of the lower chlorinated would also
19 have to be removed to retain the same overall
20 percentage by weight, isn't that correct?

21 A This would be true, yes.

22 Q Do you know why the No. 1016 was chosen
23 for that product?

24 A That has to do with our research

18

[1 department, just like MC, you know, what is that,
2 Monsanto Chemical. I don't know. It is a
3 research notebook number, or number; and
4 commercially it got to be known as 1016.

5 Q Westinghouse, of course, had a different
6 name for it?

7 A Yes, they had a number of their own.

8 MR. KARAGANIS: For the record, Mike, I am
9 going to give you a copy of a memo written by one
10 of our associates on the question of required
11 production of documents, or documents shown to a
12 witness, which cites appropriate Seventh Circuit
13 authority.

14 If you have any contrary authority, I
15 would appreciate it if you would share it with me
16 because if there is a contrary authority and if
17 those cases are what we believe them to be, we
18 will be moving for a motion to compel; and we have
19 an obligation to try to resolve our differences
20 short of bringing it to the attention of the
21 court.

22 MR. FRUEHWALD: All right, I will read these
23 cases, which I think I recognize, and reply to you
24 before we get into it further.

1 By Mr. Mc Connell:

2 Q Mr. Benignus, I am handing you a memo
3 from Mr. Graham dated October 16, 1970, which was
4 previously marked as Exhibit 113, and it has some
5 attachment including two pages of address lists
6 and two form letters. I will ask you if you
7 recall that document.

8 A Yes, I recall this was done. Yes, I
9 remember this was done, letter 1 and letter 2,
10 they are different size customers.

11 Q Mr. Graham was one of the sales
12 representatives, was he not?

13 A Yes. He was a technical -- called a
14 technical sales specialist. He specialized in
15 this area.

16 Q In PCBs and other so-called functional
17 fluids?

18 A Yes. He got into that, too, correct.

19 Q The last page of this exhibit, which is
20 marked in handwriting Letter No. 2, has a
21 paragraph in it that reads as follows, the second
22 paragraph: The significance of this information
23 is no longer can we dump scrap Aroclor or spent
24 transformer Askarel down the sewer.

1 Does that indicate to you that at least
2 as of October 5, 1970, Monsanto was aware that
3 some of its customers were in fact dumping PCBs
4 into the sewer?

5 A I personally didn't know what they did
6 with it. Now, it could be that others may have
7 had more input or information. The implication
8 here by Graham is that he seemed to feel this was
9 the case.

10 Q In any event, he is telling them to stop
11 that, is that correct?

12 A Yes, that's essentially what it says.
13 Now, who he talked to, I don't know.

14 Q In your own understanding, during the
15 period of time from October of 1947, when you
16 first became involved significantly with PCBs, was
17 there ever a time when you understood it was
18 proper disposal technique to dump scrap Aroclor
19 down the sewer?

20 A Not to my knowledge, no.

21 Q So the idea that "We can't dump it down
22 the sewer" wasn't something that was new in
23 October of '70, was it? You have to answer out
24 loud.

1 A I am sorry. I agree.

2 Q I am going to hand you a document
3 consisting of three pages, which was previously
4 marked as Exhibit 61, dated October 23, 1970, from
5 J.G. Bryant to M.F. Baber, subject Westinghouse
6 Electric Visit. I will ask you if you recall
7 the meeting to which that document refers.

8 A Yes, I remember this. It was a
9 meeting --

10 Q Did you go to the meeting?

11 A I think I probably did.

12 Q The third page is a list, I guess, of
13 people who attended, and your name is on there.

14 A Yes. Okay.

15 Q This is another in the series of meetings
16 between Monsanto and Westinghouse to discuss the
17 environmental problems of PCB pollution, is that a
18 fair statement?

19 A Right. Now, who was there?

20 Does it say who from Westinghouse was
21 there?

22 Q I think the first paragraph says who was
23 expected.

24 A Yes, it was Kelly, Tyson and McClain.

1 Q Kelly and Tyson were in the purchasing
2 function, and McClain was the engineer, is that
3 correct?

4 A Correct.

5 Q What was the purpose of that meeting?

6 A Well, again, to discuss this entire
7 subject, to the best of the information that was
8 at hand, and that we knew about, and to be sure
9 that Westinghouse had it, which they probably did
10 have.

11 I don't know if they had it, or exactly
12 who had it.

13 Q Just to bring them up to date on what you
14 were doing with respect to developing alternative
15 fluids?

16 A Well, that, too. It discusses new
17 dielectric. It brings them up to date. It
18 discusses 1016.

19 Q Take a look at a one-page letter that
20 previously has been marked Exhibit 67, dated
21 February 16, 1971. I will ask you if you recall
22 receiving a copy of that.

23 A Yes, I remember this.

24 Q Do you agree with Mr. Bryant's statement

1 in that letter that it is not necessary to isolate
2 paper towels, et cetera, "where you wipe your
3 hands when handling Aroclor"?

4 A Oh, I would have agreed with this, yes.

5 Q Do you still agree with that today?

6 A Yes.

7 Q Let's take a look at a letter that has
8 previously been marked as Exhibit 78, dated
9 February 22, 1971, from Mr. Tyson to you, and I
10 will ask you if you recall receiving that letter.
11 Do you recall that?

12 A Yes.

13 Q In the next to the last paragraph Mr.
14 Tyson suggests the establishment of periodic
15 report on the industry's progress in containing
16 PCBs.

17 Do you know whether such a periodic
18 report was ultimately established?

19 A No, I don't.

20 Q Was this C-107 committee operating as
21 early as February of '71, if you remember?

22 A I don't recall specifically. This is
23 February. That is early '71. It was in the mill
24 by then to get going, I would think.

1 Q You can't say for sure?

2 A I can't say for sure. But I think if it
3 wasn't, the plans were in effect towards this end.

4 Q Take a look at a one-page letter dated
5 April 5, 1971 that has previously been marked as
6 Exhibit 63. Do you know what is referred to in
7 the second paragraph of this letter by the
8 reference to some new internal policies and
9 procedures for environmental compatibility?

10 A No. I am a bit confused with that.

11 Q You don't know what specific document
12 that refers to, the internal draft that is
13 enclosed?

14 A I would have to see it.

15 Q If I knew what it was, I would show it to
16 you.

17 MR. FRUEHWALD: If we knew what it was, we
18 would have produced it.

19 MR. MC CONNELL: None of us have been able to
20 identify what it might be.

21 Q Let me ask you to take a look at, this is
22 Exhibit 189, which is dated April 11, 1969, or
23 almost two years before that letter, but is that
24 the document that is referred to, or possibly some

1 later version of that same draft?

2 A No, I don't think this ties in with this
3 thing at all. No, I don't think so at all.

4 Q Do you know of -- well, let me ask you
5 this. Was it a common phenomenon at Monsanto for
6 the company to share confidential internal
7 preliminary drafts of policy documents with its
8 customers?

9 A Not overall, if it is a confidential
10 thing; but I don't see where this is confidential
11 to begin with. In fact, it seems as though we
12 were planning this, and we certainly were telling
13 them we are willing to share it.

14 Q But you are asking them not to share it
15 with anybody else?

16 MR. FRUEHWALD: This is Mr. Bergen's letter.

17 THE WITNESS: I can only guess.

18 MR. MC CONNELL: I am just trying to find out
19 if in the opinion of the witness, Mr. Benignus, if
20 that was an unusual thing for the company to have
21 done.

22 MR. FRUEHWALD: Okay, that is a different
23 question, then, than Mr. Bergen's intention by
24 this letter.

19

1 By Mr. Mc Connell:

2 Q My question is as you, Mr. Benignus,
3 review this letter, does that strike you as being
4 something out of the ordinary at Monsanto?

5 A I don't think it is anything critical. I
6 think the thing was in a state of intended
7 formation, and this was sort of premature
8 announcement, is how I interpret this thing.

9 Q My question isn't whether it was
10 critical, but whether it was unusual to make such
11 an advance disclosure of a proposed and not final
12 policy to a customer.

13 A I don't know what Bergen was thinking
14 about.

15 Q My question is to you was that unusual?

16 A I didn't see many of these, no. So I
17 guess my answer is, yes, it is unusual.

18 MR. FRUEHWALD: Of course, I don't think Mr.
19 Benignus knew what Mr. Bergen did all the time,
20 seeing as how he was too rungs above on the
21 ladder. I am not sure if he knew what Mr.
22 Bergen's usual procedure was.

23 MR. MC CONNELL: I am sure that is true.

24 Q I am going to show you a two-page memo

1 dated June 1, 1971, marked yesterday as Exhibit
2 166 from you to Bergen and others. I will ask you
3 if you recognize that.

4 A Yes, I remember this.

5 Q Were you the one who contacted the
6 persons listed opposite the designation persons
7 contacted?

8 A Right.

9 Q I assume that was by telephone. Well,
10 maybe not.

11 A No, I wouldn't think so.

12 Q Either they went to see you, or you came
13 to see them?

14 A I would say I went to see them.

15 Q Okay. By "them" we are talking about Mr.
16 McClain and Mr. Kelly?

17 A Right.

18 Q In Bloomington.

19 The second paragraph of the summary says,
20 "Kelly appreciates and thanks for revision of
21 unrealistic contract clause."

22 To your recollection is that referring to
23 the termination clause whereby Monsanto reserved
24 the right to stop shipping Aroclors if it couldn't

1 be controlled in the environment?

2 A I am not sure. I know that there was
3 something going on between Kelly and I believe
4 Gossage or Bergen, or somebody about something. I
5 wasn't in on that. There was something in the
6 back of that.

7 Q Did you ask Mr. McClain to join the ANSI
8 PCB Pollution Committee?

9 A I certainly would have, yes.

10 Q And he said he would do that?

11 A This is correct.

12 Q Did you ask representatives of customers
13 other than Westinghouse also to join that
14 committee?

15 A Oh, yes. We asked all of our customers
16 to join and participate.

17 Q All of your PCB customers?

18 A Yes.

19 Q What was the reason for that?

20 A We wanted the input from everybody, and
21 all Monsanto did here was make the material and
22 supply it. The electrical industry was the one
23 that governed this whole thing. They were the
24 ones using it, and that's it.

1 Q Well, it is not entirely accurate, is it,
2 to say that all Monsanto did was make it and
3 supply it. You also took back scrap and
4 incinerated it, or for a while incinerated it?

5 A Originally, that was Monsanto's only
6 function, was to produce this in accordance with
7 very strict specifications, refined to a very high
8 degree of purity, and essentially that's all we
9 did until this environmental thing came along.

10 Then we stepped in to do what we could to
11 give guidance and help to these people who were
12 greatly concerned.

13 Q Is the committee that you referred to in
14 Exhibit, whatever it was, 166, as the ANSI-PCB
15 Pollution Committee, is that the committee that
16 was ultimately designated as C-107?

17 A This is right.

18 Q Okay. And one of the purposes of that
19 committee, in any event, was to attempt to
20 establish an industry standard for the handling
21 and disposal of PCBs?

22 A This is correct, the American National
23 Standards Institute, that covered the entire
24 industry of the electrical manufacturers and their

[1 entire mode of customers, steel mills, utilities.
2 It was on behalf -- it is sponsored by our
3 government, the ANSI.

4 Q And if ANSI promulgates an industry
5 standard, it is not uncommon, is it, for
6 government regulatory agencies to adopt that as
7 their own regulatory standard, is that correct?

8 A Right, this is correct.

9 Q So if Monsanto can control the process
10 and get a standard that is written the way
11 Monsanto would like it to be, that gives you a
12 greater influence on what the government does, is
13 that a fair statement?

14 A That is unfair.

15 Q Why is it unfair?

16 A Because it wasn't done this way at all.

17 Q How was it done?

18 A It was done in collaboration with the
19 entire electrical industry, with government
20 agencies that run all the way from the Health, the
21 Army, the Military, the Navy, EPA, and what not,
22 in collaboration with their own consensus and
23 their views, and this was set up -- you have this
24 ANSI report, that is the ANSI guide.

1 Q Who was the Chairman of the Committee?

2 A All right. I was Chairman of the
3 Steering Committee. Now, the reason for this is I
4 knew the people at these other technical
5 organizations who should participate. I knew who
6 the users that we shipped the dielectric to were,
7 and that I would know who to contact there and
8 invite them to participate.

9 I either knew or would know others who
10 would invite people from the government, EPA,
11 Environmental Protection Agency people.
12 Ruckelhaus was invited. He didn't attend, but
13 they did send their representatives, and so on
14 down the line.

15 So I was there sort of as a benchmarker
16 point to get this thing together and get it
17 established.

18 Now, at ANSI there were two prime
19 committees. One was on capacitors and one was on
20 transformers, and those were called, then, the
21 working committees that these people did their
22 work on.

23 Q Did Papageorge ultimately take over the
24 chairmanship of that committee? Was he ever

1 Chairman?

2 A ANSI, no. But he was very active. He
3 was there.

4 Q Was he the reporter, so to speak?

5 A I think that is probably a fair way -- he
6 would have reported things back to Monsanto, this
7 is correct, as would Westinghouse and GE
8 participants report to their respective companies.

9 Q That is not how I meant to use the term.
10 Every committee needs somebody to keep a record of
11 what was discussed and what actions were taken,
12 and then when a proposed standard was prepared
13 somebody had to write up the first draft of that.
14 In the legal arena that person is often referred
15 to as a reporter or as a recorder.

16 MR. FRUEHWALD: Or secretary.

17 THE WITNESS: This definitely was the reason
18 this thing went to ANSI to begin with, because
19 they carried out this function.

20 They had the finances, the government
21 backing, and they are responsible to the
22 government, and everything else, they had the
23 facilities to do this.

24 Monsanto didn't do this. ANSI did on

20

1 on behalf of everyone. This was not a, per se,
2 Monsanto thing. We helped organize it.

3 By Mr. McConnell: /

4 Q And run it?

5 A What?

6 Q And run it, did you not? Were you the
7 chairman of the group?

8 A Oh, well, thank you. No, I wasn't
9 chairman of the group. In fact, to be honest with
10 you, I was Chairman of the Steering Committee.
11 Personally, I was on my way. I retired in 1974.
12 So now that you are asking in this tenor, I was on
13 my way out. I wasn't even a member on the sub --
14 on these committees that did the actual work.

15 I was there when they were doing things
16 and working, but I wasn't a member of the
17 Capacitor Committee, or was I am member of the
18 Transformer Committee.

19 Q Who from Monsanto was on those
20 committees?

21 A Papageorge attended these meetings, and
22 Bill Papageorge was active there, but he wasn't on
23 the Capacitor Committee or Transformer
24 Committee -- well, I shouldn't say he wasn't. He

1 was there more in terms of -- because I don't
2 know. He was there more in terms of an
3 environmental person.

4 Q That was his job at Monsanto at that
5 time?

6 A That's correct. But the people who
7 established the manual and the guide at ANSI were
8 the same people who previously had established,
9 for instance, the Askarel transformer guide at the
10 Institute of Electrical and Electronic Engineers.

11 So the framework of that committee was
12 the same people who worked on the transformer
13 guide at ANSI. This work at ANSI was essentially
14 the incorporation of what had been developed,
15 information and knowledge regarding the
16 environmental thing. It was the incorporation of
17 that information and knowledge into the previous
18 existing Transformer Guide at IEEE and/or similar
19 guide in the capacitor area. It was NEMA, the
20 National Electrical Manufacturers Association.
21 They had their guide.

22 Q For capacitors?

23 A For capacitors, yes. This is why there
24 were the two committees, separate committees, at

1 ANSI, because the capacitor man isn't the man who
2 makes transformers.

3 Q I understand that. Was there ever an
4 ANSI standard promulgated as a result of the C-107
5 Committee work?

6 A Well, I would assume that ANSI, American
7 National Standards Institute, is the official
8 standard and guide, yes.

9 Q My question is did such a thing actually
10 ever come to completion as a result of this
11 process that you organized and launched?

12 A Now, I retired in '74, okay. I am not
13 supposed to ask questions, right?

14 Q If you don't know, say you don't know.

15 MR. FRUEHWALD: They have a copy of it, but
16 they are asking if there is such a thing.

17 By Mr. Mc Connell:

18 Q Do you know about it?

19 A Do I know anything other than ANSI 107?
20 The answer is no.

21 Q Do you know what the final result of that
22 process was, that's the question, or was it not
23 completed until after you retired?

24 A I can't speak to what happened after I

1 retired. I retired in '74. This ANSI was
2 completed, I think, in '73, if I am not mistaken.
3 I personally have nothing subsequent to that from
4 ANSI.

5 Q Did you initiate the organization of the
6 C-107 Committee on your own initiative, or did
7 somebody higher up in the Monsanto organization
8 suggest that that be done?

9 A I think the latter.

10 Q Who was it?

11 A Higher up in Monsanto, and also outside
12 of Monsanto, GE and Westinghouse, and so forth,
13 the industry people. I didn't do this personally,
14 no; and I didn't initiate it.

15 Q And I take it in the position that you
16 were in in Monsanto you wouldn't have done that
17 without checking with your boss, in any event, you
18 just wouldn't go out on your own and say let's get
19 an ANSI committee going on this subject of PCBs?

20 A No. In fact, I don't think the thing
21 originated at Monsanto. It originated with
22 people, I would say very much so, people at
23 General Electric and Westinghouse.

24 Q But they asked you, Mr. Benignus, to

1 organize it?

2 A I was picked as a matter of convenience
3 to tie this down somewhere and was given this
4 title Chairman of the Steering Committee, which
5 really says I wasn't active on the committees.
6 The Steering Committee isn't the active committee.
7 The people who wanted this are the people from the
8 electrical industries. I told you, it is General
9 Electric, Westinghouse and others who are active
10 people in the Transformer Committees and the
11 Capacitor Committees. They are the ones that
12 wanted this.

13 Q Well, who was it that made you the
14 Chairman of the Steering Committee?

15 A I really don't know. It could have been
16 any one of a number of people. I would say this,
17 to try to answer your question. I don't think
18 this originated at Monsanto, if that is what you
19 are asking.

20 Q Well, that is one question. But the
21 other question is, without regard to where it
22 originated, at some point Paul Benignus was the
23 Chairman of the Steering Committee. That didn't
24 come down from heaven. How did it happen?

[1 A I don't know. Now, this sounds rather --
2 I am a bit embarrassed to answer this. I am not
3 being evasive. I hope you understand this.

4 Now, the thing had to be started
5 somewhere, and I am telling you it was started, to
6 my knowledge, in the industry by GE and
7 Westinghouse, and the electrical industry
8 initiated this, and they picked me at Monsanto
9 because I was active, particularly at ASTM and at
10 the IEC, International Electrotechnical
11 Commission. So I was just a convenient place,
12 where somebody wanted to do something, and they
13 would address it to Paul Benignus. That was a
14 convenient place to drop it. And then everybody
15 is informed as to what is wanted, and then the
16 committee members were selected.

17 These weren't selected by Monsanto.

18 Q By whom were they selected?

19 A By the people in the electrical industry,
20 are the people who selected these people, they
21 themselves.

22 Q People just volunteered to be on this
23 Steering Committee?

24 A No. You had to ask them. This is why I

1 was selected on the Steering Committee, to
2 facilitate --

3 Q To ask the other people?

4 A To help ask the other people.

5 Q What human being came to you, either over
6 the phone or in a letter, or in person, and said,
7 "Paul Benignus, we want you to be Chairman of the
8 ANSI-PCB Pollution Steering Committee"?

9 A I will do my best to answer this for you,
10 and I would say it was Al Salazar who was the
11 secretary at American National Standards Institute
12 in Washington. I think it was Al Salazar. And
13 then who at Monsanto? It could be, and I am not
14 sure it is, it could be the first one I heard
15 about this at Monsanto, that this had been done,
16 was perhaps Papageorge.

17 Q So Al Salazar didn't contact you. He
18 contacted Papageorge, and he said, "We want
19 somebody from Monsanto to be Chairman of this
20 Committee"?

21 A I don't know. I answered your question.

22 Q But he didn't contact you directly?

23 A Not to my knowledge. He may have. But
24 to my knowledge -- there is no great significance

1 to this, that I was Chairman of the Steering
2 Committee.

3 Q I am just trying to understand the fact of
4 what happened and how it came to be. In my life's
5 experience people who become chairmen of
6 committees usually get there by campaigning for
7 the job, just like the President of the United
8 States. You get tapped on the shoulder. Or if
9 you don't show up --

10 A I never campaigned for a damn thing. I
11 assure you. This was another way of getting the
12 ball rolling. As I told you, I was being retired,
13 on my way out. You should ask me who the active
14 chairmen were.

15 Q Well, I will get to that.

16 A Okay.

17 Q I am trying to find out how you got the
18 job in the first place. To the best of your
19 recollection it was Papageorge who asked you to be
20 Chairman of the Steering Committee?

21 A I would think. I don't really know. It
22 is not of any importance to me.

23 Q If he did that, that is kind of a
24 request, but it is not a request. At that point

1 you can --

2 A I could have said no.

3 Q You could have said no?

4 A Sure.

5 Q But you didn't?

6 A No, I had no reason to say no.

7 Q Who were the individuals that were in
8 charge of the two working committees, as you
9 described them?

10 A All right. It is documented in these
11 things, and I will give it to you as I thought it
12 was. There was Ed Raab from General Electric, and
13 he was with General Electric at Pittsfield,
14 Massachusetts, which is a transformer plant. He
15 was a Chairman. And Dr. Sloat of Westinghouse may
16 have been a Chairman; and in the capacitor area
17 maybe Ray Clark from, what's the name there, they
18 make capacitors in Connecticut. He may have been
19 a Chairman.

20 These things are documented. The
21 composition on these committees is given. .

22 MR. MC CONNELL: Well, let's mark this. This
23 is a memo of five pages dated September 15, 1971,
24 subject: ANSI C-107, PCB Environmental Pollution,

1 to Brittain from McClain.

2 (The document above referred to
3 was marked Deposition Exhibit
4 No. 196 for Identification.)

5 By Mr. Mc Connell:

6 Q Take a look at Exhibit 196, which I
7 recognize is not a Monsanto document, rather it is
8 a Westinghouse document.

9 A Yes, that was the first meeting, that's
10 correct, 1971.

11 Q The meeting that was referred to in
12 Gaithersburg, Maryland, was the first meeting?

13 A Yes, that was the first meeting.

14 Q According to that exhibit, 196,
15 Papageorge was elected permanent chairman. Does
16 that agree with your recollection?

17 A Well, this is what it says.

18 Q Well, that is different from what you
19 testified to earlier. I am trying to find out who
20 is right here. Does that refresh your
21 recollection?

22 A Well, this agrees with what I thought I
23 told you. The chairman was authorized to appoint
24 a Steering Committee, that was me, and appropriate

1 subcommittees. These are the important people,
2 the subcommittees, to deal with establishing
3 recommended procedures for PCB control and
4 disposal in the capacitor and transformer
5 industry.

6 The important committees are the working
7 committees, and the subcommittees, that is what
8 you want to look for. That is where the gut of
9 this thing is.

10 The fact that I was nominated Chairman of
11 the Steering Committee is neither here nor there.
12 And Papageorge was elected permanent chairman --
13 well, that tells you I wasn't the permanent
14 chairman, he was.

15 MR. FRUENWALD: Okay. The question is what?

16 By Mr. Mc Connell:

17 Q The question is that is the fact. Was
18 Papageorge elected chairman?

19 A Yes.

20 Q Permanent chairman?

21 A Yes, this says so, and I have no reason
22 to refute that.

23 Q Were you at that meeting in Gaithersburg?

24 A I was at that meeting, yes.

1 Q I have got another exhibit that has a
2 roster, which I will go over with you.

3 A Yes, that's what you want to look at.
4 What was the date of that meeting?

5 MR. FRUEHWALD: 9-14-71.

6 THE WITNESS: September 14, '71.

7 MR. MC CONNELL: Would you mark this as 197.

8 (The document above referred to
9 was marked Deposition Exhibit
10 No. 197 for Identification.)

11 By Mr. Mc Connell:

12 Q I have marked as Exhibit 197 a document
13 dated November 18, 1971, of three pages with
14 attachment 1 of 2 additional pages and attachment
15 1 of 5 additional -- 4 additional pages, and
16 attachment 3 of one page.

17 So there is a total of ten pages. I will
18 ask you if you recognize that.

19 A Right, these are the committees. The two
20 committees --

21 Q The exhibit itself is the minutes of --
22 well, I guess it is more of an agenda for a
23 forthcoming meeting?

24 A Well, by this time it lists the

1 composition of the committees respectively for the
2 Transformer Committee, which was headed by Raab of
3 GE, and the Capacitor Committee which was headed
4 by Al Pozefsky of GE, as chairman.

5 Q And you were on both committees according
6 to that list?

7 A Well, it says ex officio.

8 Q By virtue of being Chairman of the
9 Steering Committee, you were on both committees?

10 A It carried through.

11 Q And by virtue of being permanent chairman
12 of the C-107 Committee Mr. Papageorge was on both
13 of those working groups?

14 A Yes.

15 Q Did you go to the meetings of those
16 working groups?

17 A Oh, yes.

18 Q Did Mr. Papageorge also attend?

19 A I would have hoped so.

20 Q Well, when you were there was he there,
21 or did you take turns?

22 A No. We didn't take turns. I am sure I
23 would have attended every ANSI meeting, and he I
24 am sure would have.

1 Q All right. How many meetings were there
2 all together?

3 A I don't know the exact number, but there
4 were several meetings. It started out there at
5 Gaithersburg, and then they were held in various
6 parts of the country. One was in Cincinnati, I
7 remember. One was in Canada, I think in Toronto.

8 Q When you would attend those meetings, did
9 Monsanto pay your expenses?

10 A Well, I was an employee of the company,
11 sure.

12 Q Part of your job was to go to those
13 meetings?

14 A I would think so; I would hope so.

15 Q I mean, if you were at one of those
16 meetings, as far as Monsanto was concerned, you
17 were working for Monsanto on the day you were at
18 the meeting?

19 A I was working on behalf of the whole
20 industry. I have been accused of working for
21 Westinghouse and GE, more than I did for Monsanto.

22 Q Well, Monsanto --

23 A Paid my expenses.

24 Q They paid your expenses, and they paid

1 your salary, too, for being there? It wasn't a
2 vacation day.

3 A It wasn't a vacation day, no.

4 Q And there wasn't anybody else paying you
5 for the work you did in connection with these two
6 committees?

7 A No.

8 Q And the same, I take it, is true of Mr.
9 Papageorge?

10 A He was a Monsanto employee.

11 MR. MC CONNELL: Let's mark this as whatever
12 it is.

13 (The document above referred to
14 was marked Deposition Exhibit
15 No. 198 for Identification.)

16 By Mr. Mc Connell:

17 Q Take a look for a moment at an exhibit
18 that has been marked as 198, which is dated on the
19 last page September 3, 1971, entitled Askarel
20 (PCB) Dielectric Fluids. I will ask you if you
21 recognize that document.

22 A Yes, I wrote this.

23 Q You are the author of that, is that
24 correct?

1 A That's correct.

2 Q For what purpose was it written?

3 A Well, what is the date on this? It must
4 be --

5 Q September 3, '71.

6 A Yes, all right. This, again, is a
7 summation of the overall situation, and it brings
8 in all the people that have gotten involved in
9 this thing.

10 Well, here is Ruckelhaus. He was the
11 Administrator of EPA. And here is the
12 Commissioner of Food and Drugs, and all these
13 people.

14 Q Was this the document that you prepared
15 in getting ready for the first meeting of the
16 C-107 Committee, kind of a background document for
17 yourself and perhaps for Mr. Papageorge as well?

18 A What is the question?

19 Q Did you prepare Exhibit 198 in the course
20 of getting ready for the first ANSI C-107 meeting?

21 A This could very well be. As it says
22 here, Composition of ANSI - C-107. It indicates
23 the people who have been invited to participate.
24 So it was either in preparation for it, or it was

1 in response to the first meeting. I don't know
2 which.

3 Q Well, the first meeting wasn't until
4 September 14.

5 A When was this written?

6 Q September 3.

7 A Well, then, obviously it wasn't before.
8 This was written after, was it?

9 A No. It was written before the first
10 meeting. I am suggesting that that was part of
11 the work you did to get ready for that first
12 meeting.

13 A Right, I would agree, you are right.

14 Q Okay. And you had been in touch with the
15 people that are listed in Exhibit 198 and invited
16 them also to participate in the first meeting?

17 A I was in touch with many of them, some,
18 not all of them. But others then in turn were in
19 touch with people here.

20 Q If you didn't know somebody on the list
21 you might ask somebody else, "Do you know so and
22 so? Why don't you call him up."

23 A Like Rollins-Purle, I never talked to
24 anyone at Rollins-Purle. Tennessee Valley

1 Authority, there is a whole list of people here.
2 I don't know them all, no.

3 Q You knew a lot of them, didn't you?

4 A I knew a lot of these people, or how to
5 get in touch with them, or I would know to call on
6 someone and request them to get in touch with
7 them. This was one reason for taking this up at
8 ANSI. They knew most of these people. And they
9 were the ones that really proceeded to get in
10 touch with them. Salazar, the secretary there.

11 Q Let's go back to Exhibit 197, in
12 particular Attachment 2 to that exhibit. Is that
13 minutes or a summary that you prepared?

14 A Did I write it?

15 Q You signed it at the end, 11-10-71.

16 A Did I what?

17 Q It is not a signature, but it has got
18 your name typed down there. The question is did
19 you prepare that?

20 A Well, that is an ANSI letterhead.

21 Q This is an attachment. I just want to
22 know if you prepared the attachment beginning on
23 that page. It is labeled as Attachment 2.

24 A No, I don't think I wrote this.

1 I don't think so.

2 Q Do you know who did?

3 A Yes, I am sure I didn't write this. This
4 I can't read.

5 Q Why would somebody else write it and
6 attribute it to you?

7 A I don't know.

8 Q As you have had an opportunity to look it
9 over, does it accurately reflect what transpired
10 at that first meeting?

11 A I would say so, yes.

12 MR. FRUEHWALD: Wait a minute. Are you
13 representing this is supposed to be something that
14 transpired at a meeting? It appears to be a
15 statement, and probably the transmittal letter
16 describes what it is.

17 MR. MC CONNELL: This describes it as "Brief
18 session on the items of information listed in
19 Attachment No. 2."

20 I guess that was prepared in anticipation
21 of a meeting. This is on Page 2 of the letter
22 portion of the exhibit.

23 THE WITNESS: Yes, this was preparatory to the
24 meeting.

1 By Mr. Mc Connell:

2 Q "Members are urged to review Attachment
3 No. 2 in advance of the meeting and be prepared to
4 discuss any questions at the meeting."

5 A Now, what you have just now read was
6 written by Salazar, I gather, right?

7 Q Yes.

8 A Okay. Now, that is this. He did that.
9 Now, this is supposed to be --

10 MR. FRUEHWALD: That is Attachment No. 2.

11 THE WITNESS: This is Attachment No. 2. Well,
12 since he is writing this, and this comes from
13 ANSI, he must have had knowledge of Attachment No.
14 2, and I don't remember writing Attachment No. 2.
15 I don't think -- I don't recall writing this. No,
16 I don't recall that.

17 Q Do you know whether someone else at
18 Monsanto wrote it?

19 A I don't know. I can speculate, but I am
20 not being asked to speculate.

21 Q You have testified earlier that you wrote
22 some other memos over your signature which
23 contained information that you were given by other
24 people that you didn't have any personal knowledge

1 of.

2 Could this be another instance of that
3 same phenonemon?

4 A It could be, yes. I am not in
5 disagreement with what it says. Did I tell you
6 that earlier?

7 Q No. But that would have been my next
8 question.

9 A Oh.

10 Q You have answered it.

11 MR. FRUEHWALD: Except for Page 3, that can't
12 be read. I don't know that you can say you agree
13 with that.

14 MR. MC CONNELL: Well, if we had a better one,
15 I am sure we would use it.

16 Q Did Monsanto ever take the position
17 publicly that its 1016 Aroclor product was in fact
18 biodegradable, or did it rather take the position
19 that it was relatively more biodegradable than
20 1242?

21 A The latter.

22 Q To your knowledge, has Monsanto ever done
23 soil migration studies of its PCB fluids?

24 A I think in research, yes.

1 Q Do you know when that work was done?

2 A Not exactly, no. But it is in this time
3 frame.

4 Q Forties, fifties, seventies?

5 A No, it was after this environmental
6 thing.

7 Q Did it ever come to your attention that
8 there was a plot of land somewhere where in the
9 course of some early product development
10 experiments PCBs had been spread on the land and
11 it was suggested at one point that somebody ought
12 to go back and take a look and see if it was still
13 out there?

14 A No. Why would somebody spread it on the
15 land?

16 Q Well, that would be my next question, if
17 you knew about that.

18 A No, this doesn't make sense to me.

19 Q It was done in connection with the
20 pesticide extender application?

21 A I don't know.

22 Q You don't know about that?

23 A That wouldn't have been PCB in this case.
24 That would have been terphenyl Aroclor.

1 MR. MC CONNELL: Let's mark this the next
2 exhibit, 199.

3 (The document above referred to
4 was marked Deposition Exhibit
5 No. 199 for Identification.)

6 By Mr. Mc Connell:

7 Q Take a look at what has been marked as
8 Exhibit 199. I will ask you if you recognize that
9 as being the minutes of one of the ANSI C-107
10 meetings.

11 A Correct.

12 Q Were you at that meeting?

13 A Yes, I would say so. This was Chicago,
14 wasn't it? It says Chicago.

15 Q That's what it says.

16 A Yes, that is another place where we met.
17 Yes, I remember this meeting.

18 Q And one of the things that took place at
19 that meeting, according to the minutes, is that
20 Mr. Papageorge made a presentation on the latest
21 government action?

22 A I would think so.

23 Q Was that one of the principal concerns of
24 the C-107 Committee, to keep up with what the

1 government was doing about PCBs?

2 A Oh, sure. We sought to have full
3 government participation on these, on this
4 committee.

5 Q So that industry could exercise some kind
6 of influence over what the government ultimately
7 did about the problem?

8 A No

9 Q You are not serious about that answer,
10 are you?

11 A Pardon me?

12 Q I withdraw the question.

13 A Yes, I would think you would.

14 Q There were representatives of all of the
15 affected government agencies -- that is inartfully
16 phrased.

17 The C-107 Committee included
18 representatives from all of the government
19 agencies that were concerned about PCB in the
20 environment, is that correct?

21 A To the best of our ability; they were all
22 invited, and we sought to have their attendance
23 for their input so they could express their views
24 and say what should be done.

1 Q So they could hear your views and what
2 you thought should be done?

3 A No.

4 Q You didn't care whether they listened to
5 you at all?

6 A Well, you are not asking me personally.
7 All right.

8 Q Well, you personally, and them Monsanto.

9 A All right. No, I would differ with you
10 on this. What they were to listen to primarily
11 was the people from the industry, number one; but
12 that does not exclude Monsanto. Monsanto would be
13 included. But this is not a unilateral Monsanto
14 thing here.

15 Q No, I understand that. You enlisted the
16 cooperation and participation --

17 A Of everybody.

18 Q -- of all of your customers as well, did
19 you not?

20 A Yes.

21 Q Okay. And everybody in the United States
22 who used PCB in any manufacturing process was a
23 customer of Monsanto because you were the sole
24 source?

1 A Yes.

2 Q Okay. And then the government
3 representatives were involved, so there could be
4 an exchange of views between government and
5 industry, and industry and government, is that a
6 fair statement?

7 A I think that is a fair statement, yes.

8 Q Okay. And the idea being that whatever
9 the government ultimately did with respect to
10 regulation of PCBs the industry could live with
11 it?

12 A They would follow this, yes, what
13 Congress finally decreed, yes. That was up to
14 Congress.

15 Q You don't mean to tell me that there was
16 no intention of the various industry members of
17 the C107 Committee to exercise any influence over
18 what Congress ultimately did?

19 A Oh, I can't say that, no.

20 Q During the period of time between late,
21 mid-1971, when the ANSI C-107 Committee was first
22 being formed and getting started in 1974, when the
23 standard was finally issued, there were meetings
24 between Monsanto and Monsanto customers outside

1 the context of the C-107 Committee as well as at
2 the C-107 meetings, is that a fair statement?

3 A I would think so; I would think so.

4 Q And in fact, when proposed regulations
5 were issued by one or another federal agency,
6 Monsanto often shared with its customers the
7 comment that Monsanto proposed to make in response
8 to those regulations and invited its customers
9 also to submit comments on the proposed
10 regulations, is that a fair statement?

11 A I would think that's a fair statement.

12 Q Once again, in an effort to have the
13 industries' views presented to the regulatory
14 agencies before their action became final?

15 A Correct.

16 Q Did you have any kind of coordinating
17 role in that communication effort outside the
18 C-107 process?

19 A No, I didn't, because by this time I was
20 on the way to retirement.

21 Q Do you recall a meeting in December of
22 1971, here in St. Louis, with various Westinghouse
23 representatives?

24 A If I saw it, I think I would recall it.

1 Q Let's mark this, I guess it is 200 now.
2 The document I have is headed Meeting with
3 Monsanto on Inerteen. It is apparently a
4 Westinghouse document. But there is really no
5 indication here who the author is.

6 (The document above referred to
7 was marked Deposition Exhibit
8 No. 200 for Identification.)

9 By Mr. Mc Connell:

10 Q Do you recall that meeting?

11 A Yes. I think we covered this meeting
12 before, although this is written up differently.
13 I think we are covering the same meeting.

14 MR. FRUEHWALD: It is a different meeting.

15 THE WITNESS: This is different?

16 MR. FRUEHWALD: Yes.

17 MR. MC CONNELL: This is --

18 MR. FRUEHWALD: '71.

19 MR. MC CONNELL: -- a 1971 meeting.

20 Q We talked about one in '70.

21 A Oh, all right.

22 Q This meeting that is referred to Exhibit
23 200 was after the ANSI C-107 was organized and
24 under way?

1 A Oh, well, then this is another meeting
2 where we tried to keep Westinghouse in this case
3 informed and posted and knowledgeable of
4 everything we knew.

5 Q And you were one of the presenters at
6 that meeting, is that correct?

7 A Yes, I was there and introduced speakers,
8 and so forth.

9 Q Take your time and look that over because
10 I am going to ask you if, to the best of your
11 knowledge, that is an accurate reflection of what
12 took place at that meeting.

13 A Well, why don't you ask. I can pick it
14 up.

15 Q I want to give you a chance to read all
16 of it.

17 A Read all of it?

18 Q The whole thing.

19 A Someone from Westinghouse wrote this. Is
20 that the idea?

21 A Yes.

22 A Okay.

23 Q My question is whether there is anything
24 in there that you disagree with.

1 MR. FRUEHWALD: As having occurred at the
2 meeting?

3 MR. MC CONNELL: Anything that they say took
4 place at the meeting that you either say didn't
5 take place, or you don't remember it taking place.

6 THE WITNESS: All right. I have read it.

7 By Mr. Mc Connell:

8 Q That is an accurate summary of the
9 meeting?

10 A Yes.

11 Q Okay. In the course of the work that the
12 ANSI C-107 Committee did, various members of the
13 two working groups were assigned to prepare drafts
14 of the different parts of the document that
15 ultimately came out of that committee, is that
16 correct?

17 A Correct.

18 Q To your knowledge as any of the initial
19 drafting work done by any of the government
20 representatives?

21 A Other than serving on the committee and
22 being a part of the process of the committee,
23 knowing what the committee is doing, knowing what
24 the committee intends to establish, and giving

1 concurrence with this, or objection to it, I would
2 have to say that was a role government people
3 played.

4 Q In other words, all of the actual initial
5 drafting work was done by the industry members?

6 A I would have to say yes, with the
7 concurrence and approval of the government people.

8 Q After the drafts were presented and they
9 were worked over by the committee?

10 A Pardon me, after what?

11 Q One person prepares a draft, then it is
12 presented to the committee, and it is circulated,
13 and everybody gets a chance to look at it?

14 A No, this is backwards. The committee
15 prepares the draft, the committee, like we people
16 here, paragraph by paragraph, establish the draft.
17 This is how it is done.

18 Q Well, let me show you another document.

19 A To my knowledge this is how it was done,
20 not one person prepares a draft and then the
21 committee either approves it or disapproves it,
22 no.

23 Q Let's look at the minutes, Mr. Benignus.
24 I am going to show you another document.

1 (The document above referred to
2 was marked Deposition Exhibit
3 No. 201 for Identification.)

4 By Mr. Mc Connell:

5 Q Take a look at what has been marked as
6 Exhibit 201, which is a marginally legible
7 document of two pages, authored by Robert D.
8 McClain, and I really don't see a date on it
9 anywhere, according to this, which appears to me
10 to be minutes of one of these working group
11 meetings.

12 It says assignments for first drafts by
13 mid-January were made by the Chairman, and there
14 is a list of subjects and the name of an
15 individual opposite certain subjects as being the
16 one who is supposed to prepare the initial draft.

17 A Yes. I can understand that one person
18 wasn't assigned the whole thing.

19 Q Each person had a little section?

20 A Yes, I agree with this. It would have
21 been asking too much for -- I misunderstood.

22 You said one person prepared a section,
23 and then the committee met, and then they all
24 passed judgment on this section. Oh, that's

1 absolutely correct. I am sorry.

2 Q But the real point is that each of the
3 draftsmen of each one of those sections was an
4 industry member and not a government member, is
5 that correct?

6 A From what I see here, that would pertain,
7 yes.

8 Q Okay.

9 MR. MC CONNELL: Mark this as 202.

10 (The document above referred to
11 was marked Deposition Exhibit
12 No. 202 for Identification.)

13 By Mr. Mc Connell:

14 Q Marked as Exhibit 202 is a document
15 consisting of three pages dated March 22, 1972,
16 subject: PCB in Japan, to Benignus from T.
17 Katayama, ask you if you recognize that.

18 A I sure do.

19 Q Who is Mr. Katayama?

20 A Katayama was the head of Monsanto's
21 marketing effort in Japan on PCBs.

22 Q The company name at the top of the first
23 page of that exhibit says Mitsubishi Monsanto?

24 A Correct.

1 Q Is that a joint venture with the Japanese
2 company?

3 A This is correct.

4 Q In the period we are talking about, in
5 '71, that is the only way you could do business in
6 Japan?

7 A Oh, that's right, there was this joint
8 company.

9 Q Did Monsanto sell PCBs in Japan?

10 A Monsanto built the plant in Japan to sell
11 PCBs. We built a plant in Japan.

12 Q Okay. And it was operating as of the
13 date of this exhibit?

14 A It didn't operate long. I don't know
15 exactly whether the plant was in operation. I
16 haven't read the memo. Maybe I should read it.
17 Should I?

18 Q Please, take your time.

19 A Okay. Yes, I remember this.

20 Q That Exhibit 202 is a response to you in
21 response to an inquiry you made about the status
22 of the PCBs in Japan, is that a fair statement?

23 A Yes.

24 Q Was that a written inquiry or a phone

1 call?

2 A I think it was written. It was not that
3 urgent that I would have phoned to Japan; must
4 have been written.

5 Q What was the reason you wanted to know
6 what was going on in Japan with respect to PCBs?

7 A Well, certainly a logical thing to want
8 to know about, I wanted to know about it.

9 Q Was that in connection with the C-107
10 committee?

11 A Well, to the extent that the people
12 working at C-107 certainly ought to know about it,
13 yes.

14 Q One way to find out was to contact
15 Monsanto, which was a company that also was
16 involved with that product in Japan, and that
17 would be a quick way to find out what was going
18 on?

19 A Sure, it would be, because we had people
20 in Japan that could inform -- I was asked to write
21 this to Katayama and find out what does he know,
22 but I assure you I wasn't the only one that was
23 looking into it.

24 Q Now, this was about the time of, or

1 within a short period after, the so-called Yusho
2 incident?

3 A I would say so. This was after the Yusho
4 incident, correct.

5 Q Exhibit 202 refers on Page 3 to a company
6 called Kaneka.

7 A It is Kaneka Foods, that is an
8 abbreviation for Kaneka Fuchi.

9 Q They were also producers of PCBs in
10 Japan, were they not?

11 A They produced it.

12 Q Under the name of Kanechlor?

13 A Kanechlor, yes. And we built a plant and
14 looked at the market, we really never got the
15 thing going.

16 Q They banned PCBs in Japan before your
17 venture went commercial?

18 A Essentially this is correct, essentially,
19 yes.

20 Q In fact, it was a Kanechlor product that
21 was involved in the Yusho incident in Japan, was
22 it not?

23 A This is correct.

24 Q Now, the next to the last full paragraph

1 on Page 3 of Exhibit 202 says, "The grand funeral
2 of PCB in Japan is close at hand."

3 Was there some concern at Monsanto and
4 Monsanto's customers, and other members of the
5 ANSI C-107 Committee, that the grand funeral of
6 PCBs in the United States might also be close at
7 hand?

8 A Would you mind repeating that? He is
9 making a conjecture in Japan.

10 Q He turned out to be right, didn't he?

11 A He turned out to be right. Now, this was
12 of no commercial import to us because, as I told
13 you, we were really not selling any commercially
14 in Japan. We hadn't gotten that far. And then
15 this thing came along. We had introduced material
16 to the capacitor people. Japanese people are not
17 easy to sell to, you know, and it took quite a
18 while for someone from America to try to do
19 business there, so on and so forth.

20 MR. FRUEHWALD: The question deals with --

21 By Mr. Mc Connell:

22 Q My question is having received this
23 exhibit which says shortly it is going to be all
24 over in Japan, did that raise a concern in your

1 mind that the United States Government might do
2 the same thing in this country?

3 A I didn't know what the U.S. Government
4 would do. But it certainly is something to bring
5 to the attention of everyone who was interested in
6 this thing, and it certainly was, yes.

7 Q The fact that some other country banned
8 PCBs might increase the political pressure for the
9 United States Government to do the same thing?

10 A Well, one would assume so. One would
11 want to know what is going on here, and at this
12 point it was very clear that this was pyrolyzed
13 PCB to begin with, rather than normal PCB, which
14 is a different ballgame.

15 MR. MC CONNELL: Let's mark this as 203.

16 (The document above referred to
17 was marked Deposition Exhibit
18 No. 203 for Identification.)

19 By Mr. Mc Connell:

20 Q We have marked as Exhibit 203 a document
21 consisting of 13 pages, including the cover
22 letter, which is dated April 12, 1972, from
23 Pozefsky of General Electric to Benignus, among
24 others, and I will ask you to take a look at that

1 document, and I will point out to you it appears
2 to me that although the production stamp numbers
3 that are on there are in sequence, the page number
4 of the document attached to the letter appears to
5 be missing pages 1 and 2, just so you don't get
6 any more confused than I am about it.

7 A Yes. Pozefsky was the Chairman of the
8 Capacitor Committee. So this is correct.

9 Q And he is circulating his proposed --

10 A Yes.

11 Q -- draft as of that date to the people
12 who are listed as addressees?

13 A Yes. He is circulating this in
14 accordance with what evolved from discussions at
15 ANSI meetings prior to this, this is correct.

16 This evolved into a final -- well, it
17 wasn't necessarily final, it may not have been
18 final, but this evolved into whatever it was at
19 this point in time, and then evolved from prior
20 consideration, discussion of the subject matter,
21 at these various ANSI meetings, yes.

22 Q One of the things that Mr. Pozefsky
23 suggests in his letter is that the guideline,
24 which the full title of it, I guess, is Guideline

1 for the Capacitor Group on Askarel Disposal, that
2 the guideline be promulgated by either the
3 National Electrical Manufacturers Association, or
4 the Electrical Industry Association, pending
5 formal action by ANSI?

6 A I would say that's correct.

7 Q In other words, that would be a way to
8 get it on the street faster while the ANSI
9 bureaucracy is grinding its way through the
10 process?

11 A The ANSI bureaucracy worked very rapidly
12 on this thing. I wouldn't use those terms when I
13 would refer to what was done at ANSI.

14 If you will look at the timetable at
15 ANSI, they got this out in a hurry, with dispatch,
16 nobody fiddled around.

17 Q I understand what he is suggesting is a
18 way to move it along faster?

19 A Yes, I don't quarrel with that, yes.

20 Q Okay.

21 The last paragraph of the letter says
22 that "The full ANSI committee should be meeting
23 within about a month to finally approve the
24 guidelines for review by government and other

1 members of the committee"?

2 A Yes.

3 Q I notice that on the address list of
4 people to whom that was sent, none of the
5 government members received a copy of that, is
6 that correct? Those are all industry people on
7 that list.

8 A These are all industry people, this is
9 correct.

10 Q Why is it that the industry people were
11 working over the draft before they showed it to
12 the government side?

13 A Why was it that the industry people
14 worked this over before --

15 Q Before they showed it to the government
16 members of the committee?

17 A All right. Let's start from the
18 beginning, in answering this.

19 First of all, as we have said, the
20 government agencies were all invited to
21 participate in this thing. Everyone would have
22 been most grateful if they had diligently attended
23 each and every meeting that was held.

24 Q But they didn't do that?

1 A It varied. We were dissatisfied with EPA
2 that they didn't have more representation at all
3 meetings, and so on and so forth. So I guess they
4 were waiting for the final thing to go over it.

5 Q Isn't it a fact that the industry members
6 wanted to iron out all their differences so they
7 could present a united front before they presented
8 the draft to the government?

9 A No, absolutely not. I don't understand
10 your question, really I don't, and I am sincere
11 about this.

12 There was nothing along the implication
13 lines, if I interpret your question right, believe
14 me, and I hope you will, nothing.

15 It keeps coming out here that you seem to
16 think that the industry was trying to railroad
17 something along the line here. This is absolutely
18 incorrect. It is not true, in any respect.

19 Q I am asking what the document reflects,
20 that is, that all of the industry input was
21 solicited before it was shown to the government.

22 A All I can say is this is an interim, this
23 is not the final thing. This is interim, along
24 the road to arriving at the final thing.

1 I assure you if anyone from the
2 government would have participated, this was all
3 open to the government people as we went along.
4 Now, Pozefsky wrote this out, you see.

5 Q He could just as well have circulated the
6 draft at that point to the government
7 representatives?

8 A He could have sent it to every government
9 agency in the country, but he didn't do this. But
10 it is not along the implication here, I assure
11 you.

12 MR. FRUEHWALD: Well, it is Mr. Pozesfky's
13 letter, of Mr. Pozefsky's activities. You are
14 assuming he didn't send it to the government, so
15 it is a matter of pure speculation as to why he
16 did what he did.

17 MR. MC CONNELL: Certainly, but that wasn't my
18 question. I think he has answered my question.

19 MR. FRUEHWALD: He has answered your question.
20 Your implication is wrong.

21 THE WITNESS: The list here is, in answer to
22 Jim's question, it is industry people, that's
23 true, but there is nothing surreptitious about
24 this whole thing, I assure you.

1 By Mr. Mc Connell:

2 Q I am not suggesting that there is
3 anything surreptitious.

4 A Well, it sounds that way to me, Jim.
5 Now, you are a lawyer.

6 Q Only that the industry members wanted to
7 present a united front with respect to what they
8 anticipated the government might do, which was ban
9 PCBs altogether.

10 A Excuse me. On this list here, Salazar is
11 not the capacitor industry, which these other
12 people are. Salazar is a government agency, NEMA,
13 National Electrical Manufacturers Association.

14 Q Wait, I beg to differ with you. NEMA is
15 not an agency of the government of the United
16 States. It is an industry trade association.

17 A ANSI is. Excuse me. Here he has
18 Salazar, NEMA, which is National Electrical
19 Manufacturers Association.

20 Now, Salazar, as I remember, was
21 connected with NEMA, also, and had responsibility.
22 But what I am getting at is this, Salazar was
23 ANSI, American National Standards Institute, and
24 it sure is my understanding this is government

[1 sponsored, and Salazar had the liberty to pursue
2 anything that he felt should be done.

3 Q Okay.

4 MR. FRUEHWALD: I think the question has been
5 answered. We don't have to beat this letter to
6 death.

7 THE WITNESS: Well, I didn't write it.

8 MR. FRUEHWALD: I know.

9 By Mr. Mc Connell:

10 Q No, you received it, that is all I was
11 trying to find out.

12 A Yes, I received it.

13 MR. MC CONNELL: Did we mark this before? I
14 don't think so. May 2, 1972, Papageorge to
15 Benignus, and a lot of other people.

16 MR. FRUEHWALD: No, I don't have that listed.

17 MR. MC CONNELL: All right, let's make this
18 204.

19 (The document above referred to
20 was marked Deposition Exhibit
21 No. 204 for Identification.)

22 By Mr. Mc Connell:

23 Q Exhibit 204 is a three-page memo dated
24 May 2, 1972 from Papageorge to Benignus, Bergen

1 and others, subject: PCB Task Force Presentation.

2 Was the PCB Task Force an internal group
3 of people within Monsanto?

4 A Yes. It was a group of Monsanto people,
5 and Warren Easley, who was in Washington as a
6 Monsanto representative, in Washington. He was
7 apprised of this.

8 Office of Science and Technology, New
9 Executive Office Building, Washington, D.C., well,
10 this was the government.

11 Q Okay.

12 A Monsanto went to the government,
13 Executive Office of the President, Office of
14 Science and Technology, Washington, D.C., so this
15 was a presentation to the government.

16 Q Okay. And as I understand it, the
17 complete title, which is shorthanded there as PCB
18 Task Force, was the interdepartmental task force
19 on PCBs, is that correct?

20 A Yes, this is correct, interdepartmental.

21 Q And there was to be a meeting in
22 Washington on May 15?

23 A I assume so. Papageorge handled this.

24 Q And did Papageorge make the Monsanto

1 presentation?

2 A I would assume so. I wasn't there.

3 Q Okay. And the memo refers to putting
4 together the presentation and rehearsal to be held
5 on May 8, is that correct?

6 A That is correct.

7 Q Did you have any part in preparing the
8 document that was ultimately the written
9 presentation of Monsanto?

10 A No.

11 Q All right. There was a written
12 presentation?

13 A Right.

14 Q Did you ever see that?

15 A Yes, I saw that.

16 A Okay.

17 MR. MC CONNELL: Let's mark this as 205.

18 (The document above referred to
19 was marked Deposition Exhibit
20 No. 205 for Identification.)

21 By Mr. Mc Connell:

22 Q Let me show you a multi-page document
23 that has been marked as Exhibit 205 and the title
24 page says, "Presentation to the Interdepartmental

1 Task Force on PCBs, May 15, 1972."

2 Take your time and look that over and
3 tell me if you recognize that to be the written
4 presentation by Monsanto at that meeting.

5 A Yes, right.

6 Q Did you attend the rehearsal?

7 A No. Yes, this is it.

8 Q Okay. I think what I am going to do,
9 let's put that aside for now. There are some
10 other things I want to go through that we can
11 finish up today, and then we will come back and go
12 through this in detail in the morning.

13 MR. FRUEHWALD: Are you sure you want to go
14 into it in detail by this witness? He was not one
15 of the presenters, Mr. Papageorge being one.

16 MR. MC CONNELL: He was not a presenter. I
17 want to find out what was in there. It won't take
18 long. Let's go through this and spend some time
19 on that, if we have time.

20 By Mr. Mc Connell:

21 Q Take a look at what has previously been
22 marked as Exhibit 153, which is a three-page memo
23 from you to Cumming Paton, dated September 8,
24 1972. Do you recognize that?

1 A Yes.

2 Q This is a visit to Westinghouse
3 Bloomington?

4 A Right.

5 Q And Exhibit 153 is your report on that
6 visit?

7 A Yes.

8 Q And Mr. Shimley went with you on this
9 occasion?

10 A Yes.

11 Q Who is Shimley?

12 A Well, he was in the marketing department.

13 Q The first paragraph of your summary in
14 Exhibit 153 refers to Monsanto's studies and
15 actions were portrayed using ample slides.

16 Do you know whether those were the same
17 slides that were part of the interdepartmental
18 task force presentation?

19 A I would think so. I wouldn't know that
20 we had any others than that. Yes, I would think
21 so.

22 MR. FRUEHWALD: We have a separate exhibit, do
23 we not, of those slides?

24 MR. MC CONNELL: I thought so. But I don't

1 think I have it here. Maybe if you can take your
2 book out to 153, maybe they are attached to the
3 memo.

4 This document was previously marked as
5 Exhibit 64, and although this says September 1972,
6 you are reporting that the call was in August.

7 But we have kind of determined that this
8 is probably the presentation that went with that
9 meeting, and my question to you is does that agree
10 with your understanding?

11 THE WITNESS: I would say so, yes.

12 MR. FRUEHWALD: Well, Mr. Shimley's call
13 report of the same meeting indicates that the call
14 occurred on September 7, '72, instead of August 7,
15 as indicated in your memo.

16 It appears to be a typographical error,
17 secretarial error, that the meeting actually
18 occurred in September.

19 THE WITNESS: We have human secretaries.

20 MR. FRUEHWALD: That's right. That is why
21 this would match up with the September '72
22 presentation.

23 THE WITNESS: Good enough.

24

1 By Mr. Mc Connell:

2 Q Now, can you tell whether the slides in
3 this presentation that was previously marked as
4 Exhibit 64 are some of the same ones in 205?

5 A We can look at them. I would think so.
6 Where do we start?

7 Yes, it is the same thing.

8 Q The second item in Exhibit 153 refers to
9 leaky tank cars. Was this meeting that you had in
10 September of 1972 at Westinghouse the first time
11 that you learned about problems with leaky tank
12 cars?

13 A No. I think I would have learned about
14 this prior to it and said something about it. I
15 only hope the subject of leaky tank cars isn't
16 taken out of context, though.

17 Q Well, I assume we are not talking about
18 loss of the whole carload of material.

19 A We are talking about a little bit of
20 weeping, and we are not talking about the material
21 at all.

22 What we are talking about is this weeping
23 around the dome of the car. That indicates that
24 the dome gasket was not sealed properly.

1 Now, when one observes this, and as I
2 already told you, my concern was protecting this
3 very highly refined PCBs from this environment we
4 live in.

5 My concern on this thing is that these
6 cars will breathe because when it is filled the
7 car is usually warm, and if this weeping is noted
8 at the dome, when that happened, air, and the
9 concern here is moist air, can be sucked into this
10 car.

11 So it is a matter of contamination of the
12 PCB, not environmental contamination. I just
13 wanted to clarify that.

14 Q So that would cause a problem in
15 Westinghouse's use of the product once they
16 received it?

17 A It could, yes; because they expect us to
18 supply it under these very critical electrical
19 quality specifications and, yes, this could affect
20 this.

21 Q Did you know that Westinghouse had a
22 process at the Bloomington plant whereby they
23 purified the PCBs in their plant with the Fuller's
24 earth process?

1 A This is correct. But they expected to
2 receive it from us in perfect condition so they
3 wouldn't have to analyze it, go through all this
4 comprehensive analysis.

5 In other words, they trusted us
6 implicitly on the quality that we were delivering
7 to them.

8 And I am questioning a situation like
9 this, not from the standpoint of Westinghouse,
10 from the standpoint of your own people, and I said
11 I want to know about this.

12 Q And your request of Westinghouse was that
13 if they observed that, that they should leave it
14 alone and call you?

15 A Right, this is correct.

16 Q The final item that was taken up in the
17 call report is the need by Westinghouse for some
18 lead time in changes in their prices and
19 availability of the product so they can make
20 whatever adjustments they had to do?

21 A That is correct, they didn't want any
22 surprise coming.

23 Q It seems to be a reasonable position?

24 A Well, it sure is. In fact, that is why

1 we are here.

2 Q Today?

3 A Yes. Well, now, maybe you misunderstood
4 what I said. This is an economic thing, right?
5 All right.

6 I started to answer. I will continue.
7 Price per pound kind of thing, let's not have any
8 surprises without forewarning.

9 Q In other words, their product prices
10 depend on, among other things, the cost of their
11 raw materials?

12 A That is correct, and whether or not they
13 stay in business depends on whether they are going
14 to get this stuff or not, which is highly
15 important to these people.

16 MR. MC CONNELL: Take a look, Mike, at
17 September 29, 1972, Ray Luzar to Scott Tucker.

18 MR. FRUEHWALD: No, we haven't marked that.

19 MR. MC CONNELL: Let's mark this 206.

20 (The document above referred to
21 was marked Deposition Exhibit
22 No. 206 for Identification.)

23 By Mr. Mc Connell:

24 Q Exhibit 206 is a one-page letter from Ray

1 Luzar of Westinghouse to Scott Tucker of Monsanto,
2 dated September 29, 1972, with a copy to you. Do
3 you recall Mr. Luzar sending some water samples
4 for analysis?

5 A Yes.

6 Q What was the reason for that?

7 A That was for analyzing them.

8 Q Analyzing them for PCBs, I take it?

9 A They wanted us to analyze these. They
10 didn't do it themselves, no, at this stage. That
11 is why they sent the samples.

12 Q Was it because they couldn't do it or
13 because they wanted to check on their own
14 laboratories, if you recall?

15 A No. My understanding is it was beyond
16 what they had. Now, they are talking about parts
17 per million, which is a very small amount.

18 Q Did you perform such water sample
19 analysis on more than one occasion for
20 Westinghouse Bloomington?

21 A I think maybe it was more than once,
22 maybe twice, I am not sure. But I know we did it
23 as a request from them to sample to determine the
24 amount of PCB in this effluent, or whatever it

1 was.

2 Q In the sewer discharge from their plant?

3 A I think this was it. What I did here was
4 merely -- again, I was called on, I was the
5 convenient one to use to arrange for Scott Tucker
6 and Monsanto to do this.

7 Q You were the person that Westinghouse
8 knew to contact, in other words?

9 A Yes, and I didn't do this, but I passed
10 it along. I set it in motion.

11 Q They called you because they didn't know
12 who Scott Tucker was?

13 A You are getting onto it.

14 Q So you said I will get in touch with our
15 analytical people?

16 A I will get in touch with Paul as to some
17 of these things here.

18 Q Was there any charge for the analytical
19 services, as far as you recall?

20 A Not that I recall. There were only about
21 three samples.

22 Q And, as I understand it, this is done by
23 gas chromatography?

24 A Yes.

1 Q It is more or less an automated
2 procedure?

3 A It is not standard analytical procedure;
4 and it required having -- see, Tucker is in
5 research. He is not in our analytical lab. It is
6 an extra procedure and it took somebody to say,
7 well, now I will do this for these people. It was
8 not a routine thing.

9 Q So the research lab was where the
10 equipment with the appropriate degree of
11 sensitivity was located, rather than at a standard
12 analytical lab?

13 A Exactly.

14 Q Where in the production process you would
15 be analyzing comparatively pure product, here you
16 are looking for a much smaller amount?

17 A Well, this is not a standard analysis at
18 all.

19 Q While we are on the subject of analytical
20 methods, you were involved in the American Society
21 for Testing of Materials?

22 A Surely.

23 MR. MC CONNELL: Let's mark this as 207.

24

1 (The document above referred to
2 was marked Deposition Exhibit
3 No. 207 for Identification.)

4 By Mr. Mc Connell:

5 Q Marked as Exhibit 207 is a form letter of
6 three pages with a fourth page containing a list
7 of addressees dated January 23, 1976, signed by a
8 James Mieuse, M-i-e-u-r-e.

9 A I have heard of him, yes.

10 Q And if you look at this, it refers to a
11 round robin testing of certain analytical
12 procedures regarding PCBs. Did you have anything
13 to do with that?

14 A Well, I was retired by 1976, but I knew
15 about this, and so on and so forth.

16 Q The idea of the round robin, I take, is
17 to come up with an analytical procedure that will
18 produce consistent results from one laboratory to
19 the next?

20 A The reliability and the reproducibility,
21 both are to be established statistically on these
22 methods. I was chairman of this committee, D-27,
23 before I retired. So I am familiar with all of
24 this, yes, and you do this with a round robin.

1 Q In other words, you take a sample and
2 divide it into the relevant number of parts and
3 send the same material to all the laboratories,
4 and they turned their results in?

5 A Yes. Then you run a statistical
6 analysis, which is what this is.

7 Well, there is a deviation, and so forth.
8 And through this process you establish some idea
9 of the reproduceability and reliability of this
10 methodology, so you can set a spec against it and
11 know where you are.

12 Q You are determining that if you have a
13 particular report according to this procedure,
14 then you know what the margin of error is?

15 A Right.

16 Q Around that reported value?

17 A And all through the years this was very
18 much a part of my work, was this type of thing.

19 Q Not only with respect to PCBs, but other
20 materials as well?

21 A No. I am talking with respect to PCBs
22 and dielectric at ASTM, American Society for
23 Testing of Materials, and also world-wide at the
24 International Electrotechnical Commission, which

1 was an extension of this NEMA, IEEE, and ANSI,
2 from this country world-wide to all countries
3 interested in using PCBs, so that the methodology
4 would be disseminated.

5 Q The particular methodology that is
6 discussed in Exhibit 207, is that for analysis of
7 the pure product or for water sample analysis?

8 A Well, it says here water, round robin
9 testing of the water portion of ASTM. This had to
10 do with analysis of environmental material for
11 polychlorinated biphenyls. So it wasn't only the
12 pure PCBs. It was a sample, evidently, from the
13 environment.

14 Q This is the same sort of analysis that
15 you did for Westinghouse in Exhibit 206 that we
16 discussed?

17 A Yes, it would be the same sort of a
18 thing.

19 Q Marked as Exhibit 157 are two letters
20 identical except for the addressee, dated March 7,
21 1974, from Cumming Paton. One of them is to H.
22 Sheppard of Westinghouse, and the other one is to
23 N.H. Smith of Westinghouse, and then attached to
24 the two letters is a multipage document entitled

1 Minutes of Meeting on Proposed PCB Effluent
2 Standards, and Mr. Benignus is shown as the
3 recipient of a blind copy of this.

4 I will ask you if you recognize that
5 document.

6 This is before you retired, was it not?

7 A Shortly before I retired, yes.

8 Q And I take it the PCB effluent standards
9 meeting that is referred to there is something
10 other than the ANSI C-107?

11 A Yes, oh, yes, yes.

12 Q Was that meeting done in response to the
13 EPA proposed standards that were published in late
14 1973, if you know?

15 A I don't know, but it sounds reasonable.
16 I don't know. I wasn't active at this stage any
17 more.

18 Q Okay. To your knowledge did Monsanto
19 respond to the EPA's proposed effluent standards?

20 A I don't quite understand. What is it you
21 are asking?

22 Q Well, as I understand the process, the
23 EPA publishes a proposed standard in the Federal
24 Register and they give you 90 days or so in which

1 to submit a written comment, or some other kind of
2 appropriate response.

3 A Oh, to what is in the Federal Register?

4 Q To what is in the Federal Register, and
5 then they either decide to adopt what they
6 published before, or they revise it in response to
7 the comments received, or they give up on the idea
8 altogether after the comment period has expired.

9 My question is when the proposed
10 standards were published, first published in the
11 Federal Register, did Monsanto submit some kind of
12 a response to the EPA, if you know?

13 A I don't know. I wasn't active in this.
14 I really don't know.

15 Q Okay. Other than as a person who was, I
16 forgot how you described it, the technical
17 resource person with respect to PCBs -- is that a
18 fair statement?

19 A Fair enough.

20 Q -- did you have any active role in
21 preparing of the PCB labeling that went on
22 Monsanto's products?

23 A I didn't prepare the label, but I knew
24 what the labeling was about and what was being

1 done. I was cognizant of that.

2 Q Did anybody ask for your input in the
3 preparation of those?

4 A No.

5 Q Okay. But they kept you advised of
6 revisions, and so forth?

7 A Sure; I was cognizant of that.

8 Q Did you ever have anything to do with the
9 Monsanto Corporate Management Committee, the CMC,
10 so to speak?

11 A No.

12 Q That is probably a blessing, based on
13 what we heard from the witness yesterday.

14 We talked a little bit this morning about
15 closed systems, capacitors and transformers being
16 closed systems, and during the time that you were
17 involved with PCBs at Monsanto did you ever come
18 in contact with the term closed loop or closing
19 the loop, as a way of controlling PCB
20 environmental discharges?

21 A Well, I have heard this term used, yes.

22 Q What did it mean to you?

23 A I think to me it meant beyond the fact
24 that a capacitor is indeed a hermetically sealed

1 closed system, and a transformer is a sealed
2 closed system. I think closing a loop would
3 indicate that the material be confined within the
4 manufacturing process and procedure. That is how
5 I would interpret it.

6 Q Let me show you diagram No. 4 to Exhibit
7 176, which we marked earlier, and I would ask you
8 if you have ever seen that diagram before.

9 A No. Did this come after I retired?

10 Q No. It came at a level that probably was
11 above you in the organization. This is the CMC
12 that I was talking about.

13 Is there anything else I ought to ask you
14 about that I haven't mentioned?

15 A Well, yes, this was up there a bit.

16 Q By the time you retired, was Monsanto out
17 of the PCB business altogether?

18 A I retired in '74 and, no, they were still
19 supplying the electrical industry.

20 Q But that was the only purpose for which
21 they were selling the product at the time you
22 retired, is that right?

23 A This is correct.

24 Q Everything else had been dropped, or

1 there was some substitute product?

2 A There wasn't any substitute product.

3 Q For some of the other uses, for some of
4 the other non-electrical uses?

5 A Oh, well, God, there is no problem there.
6 The problem is here. There was no substitute.

7 Q To your knowledge, did Monsanto ever
8 develop a substitute?

9 A Not that got commercial, and neither did
10 anybody else; although for thirty years we tried
11 to find what other kind of a system might be
12 useful. We were not successful, neither were any
13 of the other people world-wide.

14 Q What do they make capacitors with now, if
15 you know?

16 A Yes, I know what they make them with.
17 You want me to answer that?

18 Q Yes.

19 A Well, all right. I will start this by
20 saying the capacitor uses -- the types of
21 capacitors that PCBs were used for exclusively are
22 essentially three kinds. One was power factor
23 correction capacitors. This is what Westinghouse
24 made at Bloomington.

1 Those were the large ones that are on the
2 utility lines and lines serving factories and
3 those sort of things. Those are the large
4 capacitors.

5 Then there are the motor run type
6 capacitors. They are used for appliances, large
7 appliances. This is again to relieve the stress
8 and strain on the power line so they don't burn
9 out.

10 Then finally the small capacitor is the
11 lighting, the ballast lighting capacitor.

12 Now, what is being used in the ballast
13 and motor run, like a washing machine, or some
14 other motor in a factory, is diethyl phthalate,
15 and as I recall, Westinghouse was probing and
16 trying to pursue, and I think have pursued the use
17 of isopropyl biphenyl, which is a hydrocarbon.

18 Q In the power capacitors

19 A In the power capacitors. As far as I
20 know, that is what they are using now. And these
21 weren't easy things to come by in this industry.
22 It is a very involved and in fact critical thing
23 to probe out and establish that something
24 different can be used, how strong a dielectric do

1 we have here, because in the event of failure this
2 can be a very costly, in fact dangerous
3 experience. So this requires very thorough
4 testing and probing.

5 Q In fact, they did that when they switched
6 from 1242 to 1016?

7 A Well, this was not a critical -- those
8 materials were so similar, you know. In fact, we
9 said you can switch here, no problem at all, which
10 made it easy for these people. We as much told
11 them this is one on one interchangeable. You have
12 no design problem. But when you switch to some of
13 these other things you run into a difference in
14 capacitance, difference in stability, altogether
15 difference in handling characteristics.

16 MR. MC CONNELL: Okay, that's all I have.

17 MR. FRUEHWALD: Okay.

18

19

20

21 DEPOSITION CONCLUDED

22

23

24

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

THE CITY OF BLOOMINGTON, INDIANA;)
THE UTILITIES SERVICE BOARD OF)
BLOOMINGTON, INDIANA; and MONROE)
COUNTY, INDIANA,)

Plaintiffs,)

vs.)

Civ No.)
IP 83-9-C)

WESTINGHOUSE ELECTRIC CORPORATION,))
a Pennsylvania corporation; and)
MONSANTO COMPANY, a Delaware)
corporation,)

-----Defendants.-----)

I hereby certify that I have read the
foregoing transcript of my deposition given at the
time and place aforesaid, consisting of Pages 1
through 190, inclusive, and I do again subscribe
and make oath that the same is a true, correct and
complete transcript of my deposition so given as
aforesaid, as it now appears.

PAUL G. BENIGNUS

SUBSCRIBED AND SWORN TO
before me this_____day
of_____, 198____.

NOTARY PUBLIC

Longoria & Goldstine

236 1030

Chicago

1 UNITED STATES OF AMERICA)
 NORTHERN DISTRICT OF ILLINOIS)
 2 EASTERN DIVISION) SS:
 STATE OF ILLINOIS)
 3 COUNTY OF C O O K)

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8 I, Jesse A. Longoria, a notary public and
 9 Certified Shorthand Reporter in and for the County
 10 of Cook and State of Illinois, do hereby certify
 11 that the aforesaid deponent was by me first duly
 12 sworn to testify the whole truth, and that the
 13 foregoing deposition was recorded stenographically
 14 me and was reduced to typewriting by
 15 computer-aided transcription under my personal
 16 direction and supervision; and, that the said
 17 deposition constitutes a true and accurate record
 18 of the testimony given by said deponent.

19

20 I further certify that the reading and
 21 signing of said deposition was not waived by the
 22 deponent or counsel.

23

24

Longoria & Goldstine

236 1030

Chicago

1 I further certify that we I am not a
2 relative or employee or attorney or counsel of any
3 of the parties, or a relative or employee of such
4 attorney or counsel, or financially interested
5 directly or indirectly in this action.
6

7 IN WITNESS WHEREOF, I have hereunto set
8 my hand and affixed my seal of office at Chicago,
9 Illinois, this 26th day of September A.D.
10 1986.
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23 Jesse C. Longoria
24 Notary Public/Certified Shorthand Reporter