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UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

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 ANNE ANDERSON, et al.
 vs
 CRYOVAC, Division of W. R. Grace & Co.,
 et al.

Civil Action
 No. 82-1672-S

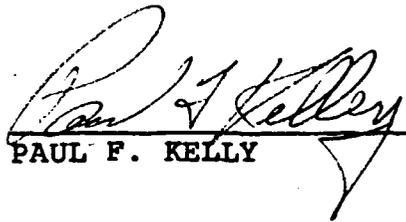
Deposition of PAUL F. KELLY, taken on behalf of the Plaintiffs, pursuant to the applicable provisions of the Federal Rules of Civil Procedure, before Valerie T. Wong, Notary Public within and for the Commonwealth of Massachusetts, at the offices of Schlichtmann, Conway & Crowley, 171 Milk Street, Boston, Massachusetts, commencing at 10:50 o'clock A.M. on Friday, May 24, 1985.

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I, PAUL F. KELLY, have read the foregoing transcript of testimony and the same contains a true and accurate recording of my answers given to the questions therein set forth.

Signed under the pains and penalties of perjury this 11th day of Feb, ~~1985~~ 1986



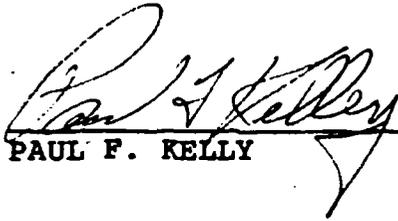
PAUL F. KELLY

J U R A T

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PAUL F. KELLY

Appearances:

Kevin P. Conway, Esq.
Schlichtmann, Conway & Crowley
171 Milk Street
Boston, Massachusetts
for the Plaintiffs.

William J. Cheeseman, Esq.
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Donald R. Frederico, Esq.
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60 State Street
Boston, Massachusetts
for the Defendant Beatrice Foods Co.

Roberta K. Schnoor, Esq.
Goodwin, Procter & Hoar
28 State Street
Boston, Massachusetts
for the Defendant Unifirst Corporation.

Present:

James Gordon

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I N D E X

<u>Deposition of:</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
Paul F. Kelly	4	51	57 60 62	60 60

EXHIBITS

<u>Number:</u>		<u>Page:</u>
1	Diagram.	30

1
2 MR. CONWAY: We will reserve all objections,
3 except as to form, and motions to strike to the time
4 of trial.

5 Would you like him to read and sign?

6 MR. CHEESEMAN: Yes.

7 I think the record should correctly reflect
8 I reserve all objections, except as to form, to the
9 time of trial, including motions to strike.

10 I do want the witness to read and sign the
11 transcript. I understand it is stipulated he may sign
12 under the pains and penalties of perjury rather than
13 before a notary, and that it can be presented to him
14 for signature through me rather than having the
15 stenographer do that. Is that agreeable?

16 MR. CONWAY: Fine.

17 Waive the filing?

18 MR. CHEESEMAN: Yes.

19
20 PAUL F. KELLY,

21 a witness called by the Plaintiffs, first having been
22 duly sworn, on oath deposes and says as follows:

23 Direct Examination

24
25 Q (By Mr. Conway) Would you state your name, please?

1

2 A Paul F. Kelly.

3 Q Where do you live, Paul?

4 A 54 Marlborough Street, Stoneham.

5 Q What is your date of birth?

6 A 10/24/53.

7 Q Can you give us your educational background briefly?

8 A I graduated from Somerville High, went to Franklin
9 Institute nights.

10 Q What year did you graduate from Somerville High
11 School?

12 A '72.

13 Q You went to Franklin Institute following that?

14 A When I graduated I went to work at Cryovac and I went
15 to school nights.

16 Q What year did you begin work with Cryovac - in 1972?

17 A Yes; '72 until '73.

18 I left for a short period for another
19 company, ADMS Labs, which closed down. They were in
20 Medford. When they closed I went back to Cryovac.

21 Q What did you do for Cryovac during the years 1972 and
22 1973?

23 A Could you repeat that?

24 Q Were you a full-time employee from 1972 to 1973?

25 A (Pause).

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Q Was it a regular 40-hour week?

A Uh-huh.

Q What was your job? What were your duties?

A I was a -- It was an entry-level position. I was an assembly mechanic C, I guess.

Q Where have you worked in Cryovac?

A In the shop.

Q In the machine shop?

A No; in the assembly department.

Q Then you say you left and went to another company?

A Yeah. I went to ADMS Labs.

Q Where are they located?

A Medford.

Q What did you do for ADMS Labs?

A Assembly mechanic there.

It was a machine Cryovac designed originally to automatically make doughnuts for Dunkin' Donuts.

Q This was a machine you were familiar with?

A Yes.

So someone bought the machine and started to make them on their own. It was an entry-level position there for me. I left to go with them. And then when they went bankrupt and closed the doors, I

1
2 went back to Cryovac.

3 Q Did you start for Cryovac immediately upon graduation
4 in 1972? Did you say it was June of 1972?

5 A October.

6 Q Had you ever worked for Cryovac prior to that time on
7 any basis?

8 A No.

9 Q Never part-time while you were in school, or that was
10 the first time you ever worked there?

11 A Yes.

12 Q Do you recall what month in 1973 you left to go to
13 work for --

14 MR. CHEESEMAN: Let me interrupt. You
15 asked two questions which I don't think he answered.
16 I didn't see him nod. I don't know what the status of
17 the record is.

18 MR. CONWAY: Which question are you
19 referring to?

20 MR. CHEESEMAN: You asked him if he ever
21 worked part-time, and then you asked if he worked
22 after graduation. If he nodded yes or no, I don't
23 know which question he was answering.

24 Q Did you ever work for Cryovac on any basis, part-time
25 or full-time, prior to October of 1972?

1
2 A No.

3 MR. CHEESEMAN: Thank you.

4 Q Now, do you recall what month in 1973 you left
5 Cryovac?

6 A I couldn't be sure.

7 Q You believe you were there about a year?

8 A Yeah; if I started in October -- I really don't recall.

9 Q But you recall coming back to Cryovac sometime in
10 1973?

11 A Yeah. It was October. I know it was October of '73.
12 I know -- It could have been '73 or '74. I am just
13 trying to figure out how many years I been at
14 Cryovac now.

15 Q Now, have you worked for Cryovac full-time since 1974
16 or since you returned from the other job?

17 A Yes.

18 Q When you came back after working for the other
19 company for a year, what were your duties then?

20 A Same. I came back in the same position, as an
21 assembly mechanic C.

22 MR. CHEESEMAN: I would note he didn't
23 necessarily indicate that he worked for the other
24 company for one year.

25 Q Approximately how long did you work for the other

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company before they went bankrupt?

A It was less than a year, a little less than a year, about nine months.

Q Now, who was your supervisor when you came back?

A Eddie Orazine.

Q Was he your supervisor the first time you began in 1972?

A Yes, he was.

Q Could you tell me your duties in 1974 when you returned?

A Same.

Q What were they specifically?

A Mechanic, rebuild equipment. I, more or less, took care of returned goods. Someone would return a piece of equipment that was not working properly or traded it in for a better piece of equipment, and they would tell me what to do with it. Someone would tell me to rebuild it new, used or whatever.

Q How long did you perform this function at Cryovac?

A I would be guessing; about five years.

Q Until about 1979?

A Yeah; about '79.

Q Then your duties changed?

A Yes. I became production control scheduler, in which

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time I worked in the office.

Q How long were you production control scheduler?

A About two years.

And then I was production control supervisor.

Q Until about 1981, you became a supervisor?

A I became a supervisor about '81.

Q This is a production control supervisor?

A Right.

Q How long did you have that position?

A About six months.

Q This would have been approximately 1982?

A Yeah.

Q Then what happened then?

A I went in customer service as a customer service representative. After about a year I became customer service supervisor.

Q That is sales?

A That is customer service, answering the phone and stuff like that.

Q Do you work for Cryovac today?

A Yes.

Q What is your position today?

A Distributor manager.

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Q What is a distributor manager?

A Where you sell films, shrink film, through distribution, through distributors. You have a territory. My territory is all over New England and upper-state New York out to Syracuse and Canada.

Q How long have you been doing this?

A It was -- I left the Woburn plant a year ago last November.

Q That would have been November of 1983?

A Uh-huh.

Q Do you work out of your home now?

A Yes. I work out of my home in Stoneham. My office is -- My regional or district office is in Chatham, New Jersey. My headquarters is in South Carolina.

Q Do you have occasion to go to the Cryovac plant in Woburn anymore?

A Yes, I do.

Q What would that occasion be?

A We sell equipment. I still sell equipment. We may bring a customer in there for customer demonstration of a piece of equipment. I may go down there and have a girl do some typing for me if I need a letter typed in a hurry, rather than send it down to New Jersey or have my wife do it.

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2 Q Now, when you began working for Cryovac in 1972 just
3 after you got out of high school, your father was also
4 employed by Cryovac; is that correct?

5 A That is right.

6 Q What was his name?

7 A Francis Paul Kelly.

8 Q Were any other relatives of yours working for Cryovac
9 at that time?

10 A No.

11 Q Or since that time?

12 A No.

13 Q What was your father's position in 1972 when you first
14 began working there?

15 A Shipping and receiving foreman.

16 Q When did your father leave Cryovac?

17 A He passed away a year ago this -- Well, it was May 19th
18 of last year.

19 Q Was he still working for Cryovac when he passed away?

20 A Yes.

21 Q He was?

22 A Uh-huh.

23 Q Paul, you were working for Cryovac since March of --
24 since 1974?

25 A Yes.

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2 Q That is the year you returned, to the best of your
3 knowledge, from this company that went bankrupt?

4 A Could you repeat it?

5 Q The company that went bankrupt, what was the name of
6 that company?

7 A ADMS Labs.

8 Q They went bankrupt and you returned to Cryovac?

9 A Right.

10 Q That would have been, to the best of your knowledge,
11 in 1974?

12 A Uh-huh.

13 MR. CHEESEMAN: We can verify that with
14 personnel records.

15 Q And when you returned to Cryovac was there construc-
16 tion going on at the site?

17 A They were putting on a new addition. I don't know
18 whether it was -- It had not started when I first
19 went back there.

20 Q They had not started actually constructing the new
21 addition when you went back?

22 A Yes.

23 Q Contractors were there? There was some work being
24 done?

25 A I don't believe so.

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- 2 Q So nothing had begun at the time you returned in 1974?
- 3 A Right.
- 4 Q So you were able to observe the construction as it
- 5 progressed?
- 6 A As it started.
- 7 Q Did your duties take you to the rear of the plant or
- 8 the area where they were putting in the addition?
- 9 A That is the section I worked in.
- 10 Q Now, where did you work precisely?
- 11 A The very back of the building. It would be the corner
- 12 of the building, not as it is known now because it was
- 13 before the addition. It was the corner of the
- 14 building closest to the warehouse.
- 15 Q That would have been in the first addition?
- 16 A The first addition.
- 17 Q The first addition of the building?
- 18 A Yes.
- 19 Q You worked inside?
- 20 A Right.
- 21 Q Now, in 1974, Paul, did you observe any barrels stored
- 22 to the rear of the plant, 55-gallon drums?
- 23 A Yes; there were some.
- 24 Q Approximately how many were there?
- 25 A Different times it would accumulate. It was a

1
2 maximum of probably -- I would say a maximum of six
3 or seven.

4 Q And to --

5 A In that area.

6 Q To your knowledge, Paul, were drums stored at any
7 place else on the Cryovac property?

8 A No.

9 Q In the warehouse?

10 A No.

11 Q In the main building?

12 A No.

13 Q In the paint shop?

14 A There was one drum in the paint shop.

15 Q How about the machine shop?

16 MR. CHEESEMAN: May I ask you to clarify?
17 Do you mean drums stored? The plant has active drums
18 of cutting oil and what-not located at various points.
19 I suspect the witness is confused about whether
20 you're talking about drums of waste material or any
21 kind of drum.

22 Q Were there any drums at all in the warehouse?

23 A No.

24 Q Were there any drums in the paint shop?

25 A Yes; one.

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Q Just one drum?

A Yeah.

Q Do you know what was in that one drum?

A Probably some sort of a cleaning solution.

Q Were there any drums in the machine shop?

A Yes. There was a drum of regular oil, transmission -- not transmission fluid -- but oil for the machines in the machine shop.

Q Cutting oil?

MR. CHEESEMAN: You're talking about lubricating oil?

A Lubricating, if I recall.

Q Do you recall any place else inside the main building where drums were present?

A I don't recall.

Q Were there any racks in the inside of the building, the main building, for the storage of drums, wooden racks?

A No.

Q Now, in 1974, did you at sometime participate in disposing of some of these drums to the rear of the plant?

A Yes, I did.

Q Do you recall the date?

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A No.

Q Do you recall the month?

A It was in good weather.

Q Do you think it was summer?

A Yes; I would think it would be summer. I couldn't be sure.

Q Do you recall the status of the construction to the addition at that point? Was the building up? Was the addition completed?

A No.

Q Had it begun yet?

A No.

Q Had not begun?

A No.

Q Do you recall what day of the week it was?

A No.

Q Do you recall if it was a weekday?

A I'm sure it was a weekday.

Q You're sure it was not a weekend?

A Right.

Q Did someone from Cryovac assist you in disposing of these drums?

A Yes. There were probably ten of us in the yard all together.

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Q Who were these other Cryovac employees?

A I don't remember them all.

Q Who do you remember?

A Frank Kelly was out there, myself. I think there was a Billy Lloyd. That is really all I can -- It would be entry --

Q Tom Barbas?

A Yes.

Q How about Ed Orazine?

A He was supervisor of assembly. He was in a high-level position. He would not be out there sweeping and stuff like that.

MR. CHEESEMAN: Did you say yes when he asked if Tom Barbas was out there as part of that? I didn't hear your answer.

THE WITNESS: Yes.

Q Was Paul Shalline there at anytime?

MR. CHEESEMAN: When you say "there", you mean out where the disposal was taking place?

MR. CONWAY: Correct.

A I have no idea.

Q You don't remember?

A I don't remember.

He worked inside the office. He may have

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walked out there or something.

Q You don't recall?

A I don't recall.

Q How about Vin Forte?

A I would doubt it. I can't be sure.

Q Now, what was your assignment with respect to those drums?

A Clean the yard.

Q Who gave you the assignment?

A I would guess Eddie Orazine. I worked for him directly. He was supervisor.

Q Do you know who told Ed Orazine to dispose of the drums?

A I have no idea.

Q Did you ever ask Ed who told him to dispose of the drums?

A No.

I am not saying Eddie told me not to --
to get rid of the drums or told us to get rid of the drums. Whoever in command might have said, "Clean up the yard." Cleaning the yard might have meant getting rid of sheet metal, in which case the sheet metal was taken off in a truck; and get rid of the wood, in which case it was thrown in the dumpster; sweep the

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yard and other things, and they were buried.

Q Who else besides Ed Orazine would be in a position to instruct people to clean the yard?

A Well, it would be right down the chain of command: Vin Forte, Paul Shalline, Eddie Orazine and Frank Kelly.

Q Now, tell me what you did with the drums.

A They were put in a hole.

Q Where were these drums located before they were put in a hole?

A Along the fence as you come out the rear door, overhead door.

Q Approximately how many drums were there?

A I would venture to say probably seven.

Q What color were they?

A Probably blue, red, black.

Q Were they different colors?

A I can't be sure.

Q You have no memory as to what color they were?

A No.

Q Were they full?

A Some may have been.

Q Were any empty?

A I couldn't be sure. I didn't, you know, pick them up

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2 and throw them in.

3 Q How did you move them from the rear of the plant?

4 A I don't remember, other than the fact that I know a
5 forklift -- a fork truck couldn't have taken them
6 because the fork truck would sink in the hot top
7 section there. In the summertime if you leave the
8 fork truck there without any weight on it, just the
9 weight of the fork truck with small tires would go.
10 So there must have been a two-wheeler, I would venture
11 to say.

12 Q I'm sorry?

13 A May have been a two-wheeler, a hand cart.

14 Q You think --

15 MR. CHEESEMAN: Can we be careful to try to
16 distinguish between what he remembers and what he
17 thinks might have happened?

18 MR. CONWAY: Okay.

19 Q Do you remember that a two-wheeler was used?

20 A No; I don't remember that.

21 Q So you don't recall how they were moved?

22 A Right.

23 Q You do recall that approximately ten people were
24 involved in the clean-up of the yard?

25 A The whole clean-up of the yard, I'm talking sweeping

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and the whole bit.

Q Do you recall how many people were involved in the disposal of the barrels?

A Probably five.

Q Was Tom Barbas one of those five people?

A I can't be sure.

Q Do you recall any of the five people other than yourself?

A No.

Q Now, can you tell me where you put these drums?

A In a ditch.

Q Where was the ditch?

A Behind the building, you know, straight back from the -- almost about the middle of the building straight back.

Q Now, the second addition was not up at this time?

A Right.

Q How many feet was it from the end of the first addition, approximately, out in the back of the yard?

MR. CHEESEMAN: You're asking him to estimate from his visual observations?

MR. CONWAY: Okay.

A It was quite a ways back.

Q A hundred yards?

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A I would say a good 200 feet, anyhow.

Q You said it was put in a ditch?

A Right.

Q And could you tell me the approximate dimensions of this ditch?

A About three to four feet wide, 30 to 40 feet long.

Q Depth?

A About waste high, three feet.

Q Now, do you know how long that ditch had been there?

A It was dug that morning.

Q Do you know who dug it?

A Who was driving the -- There was a front-end loader, a backhoe. Who was driving it, I don't know.

Q Was it an employee of Cryovac?

A No.

Q An employee of the contractor that was building the second addition?

MR. CHEESEMAN: If you know.

A The second addition was not being, was not being done. This was a --

Q This was prior to that time?

A It was, you know, just for the purpose of digging that hole.

Q Do you know if Cryovac owned the backhoe?

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A They don't.

Q So you assumed this was someone who was hired for the purpose of digging this ditch?

A Right.

Q And the first time that ditch appeared was that morning?

A Yeah. They dug it that morning.

Q If I understand you correctly, you and approximately four other people transported somehow this group of barrels from the back of the building to this ditch area about 200 feet straight out in the backyard?

MR. CHEESEMAN: You're asking him now if all five people were involved in the transport of the drums?

Q Were they?

A Like I said, I am not sure how those drums got from the back of the building into the ditch. It was my job to shovel the stuff back in, the dirt back in.

Q Were you there when the drums were placed in the ditch?

A Uh-huh.

Q Were all seven drums placed in the ditch?

A Yeah.

MR. CHEESEMAN: As opposed to being poured

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in?

Q As opposed to being poured in?

A Just thrown in.

Q Were any drums poured in?

A Not that I recall.

Q And it was your job to shovel the dirt in on top of the drums once they were placed in the ditch?

A Right.

Q So am I correct in my understanding that the ditch was dug, the drums were placed in and it was all covered up in a period of one day?

A Correct.

Q How long a period would it have been all together from the time the ditch was dug until it was closed over?

A Within an eight-hour period.

Q Did you ever see what was in those barrels?

A No.

Q Do you know what was in those barrels?

A No.

Q They were all covered?

A I can't be sure of that.

Q Do you recall any that weren't covered?

A They were all, you know, not an open drum. None of

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2 them were -- One or two of them may have the caps off
3 them; I don't know.

4 Q You weren't able to see what was in the drum?

5 A Right.

6 Q Nothing spilled out as you were dropping it in or was
7 it was being dropped in?

8 A Not that I recall.

9 Q Do you know who dropped, physically dropped, the drums
10 in the ditch?

11 A No.

12 Q You shoveled dirt on top of them once they were placed
13 in?

14 A (Witness nods in affirmative).

15 MR. CHEESEMAN: He is not answering out
16 loud. I want to clear the status of the record.
17 You asked if he personally put them in the ditch.
18 What was the answer to that?

19 THE WITNESS: No.

20 MR. CHEESEMAN: I didn't catch the next
21 question.

22 Q Was it your job to shovel dirt on it after they were
23 placed in?

24 A That is right.

25 MR. CHEESEMAN: Thank you.

- 1
- 2 Q What was your best estimate as to the number of drums
- 3 that were placed in that ditch?
- 4 A Seven.
- 5 Q Was your father, Frank Kelly, involved in putting
- 6 these drums in the ditch?
- 7 A I don't recall.
- 8 Q Would it have been the type of thing he would be
- 9 involved in?
- 10 A No. He didn't really have much to do with physical
- 11 labor. He was one of the older people in Cryovac.
- 12 He was, you know, in charge of keeping the backyard
- 13 clean, getting rid of crating materials, sheet metal
- 14 materials, conveyors that were returned and stuff
- 15 like that. At best, he would have driven a fork
- 16 truck to load up the dumpster with the crating
- 17 material.
- 18 Q Were you involved in the disposal or burial of any
- 19 other drums in 1974?
- 20 A No.
- 21 Q In 1975?
- 22 A No.
- 23 Q At any other time?
- 24 A No.
- 25 Q Do you have any knowledge of the burial of any other

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2 drums on the Cryovac property?

3 A No..

4 Q That was the only incident you're aware of?

5 A Right.

6 Q I would ask you to take a look at a photograph that
7 was --

8 MR. CHEESEMAN: Stewart Exhibit 1?

9 MR. CONWAY: Right.

10 Q Paul, do you recognize that as the Grace plant?

11 A Yes.

12 Q Do you recognize that as the Grace plant as it
13 appeared in 1974 prior to the second addition?

14 MR. CHEESEMAN: Wait a second. This is
15 after the second addition. You can see both
16 additions there. I believe the photograph --

17 MR. CONWAY: Excuse me.

18 Q I will show you another photograph.

19 MR. CONWAY: They all look the same after
20 a while.

21 MR. CHEESEMAN: I know.

22 Q Would you take a look at that one, please?

23 A That is before the addition.

24 MR. CHEESEMAN: Before the second
25 addition?

1
2 THE WITNESS: Right.

3 Q Now, is this, to the best of your knowledge, how the
4 plant appeared in 1974 on the day you shoveled in
5 the dirt on the drums?

6 MR. CHEESEMAN: Let me interrupt at this
7 point. I don't mind you asking him when he thinks
8 this photograph might have been taken. But if you're
9 asking him if that is the way it looked on a
10 particular day, I think we're entitled to know what
11 you know about what day it was taken.

12 MR. CONWAY: It says on the back it was
13 taken on 3/15/74.

14 A It looks like it.

15 Q Now, Paul, I will put a blue pen beside you. Could
16 you indicate for me where the drums were prior to
17 the drums being moved?

18 A (Witness complies).

19 MR. CHEESEMAN: Let the record show he has
20 marked a line along the, near the southeast corner of
21 the building, running in an east-west direction along
22 the fence at one end of the fenced-in area, the south
23 end.

24 Q Now, to the best of your memory, Paul, were there
25 any other drums out back in addition to those?

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A No.

Q Now, can you indicate with that blue pen where that ditch is?

A I would say in there (Indication).

MR. CHEESEMAN: Perhaps for the sake of clarity we can ask the witness to place the letter A near the first line he drew where the barrels were before they were buried.

MR. CONWAY: Okay.

MR. CHEESEMAN: And the letter B near the line he just drew where he believes they were buried.

MR. CONWAY: Let's have this marked Exhibit 1.

(Diagram, marked Exhibit No. 1.)

Q Let me show you a second photograph, which is actually the first one I showed you.

MR. CHEESEMAN: Stewart Exhibit 1?

MR. CONWAY: Yes.

Q Would you look at that, please?

A Uh-huh.

Q Do you recognize this as the Grace plant after the addition had been constructed?

A Yes.

Q I would like to direct your attention to a light

1
2 square in the northeast corner of the property.

3 A Uh-huh.

4 Q Do you know what that is?

5 A I have no idea.

6 Q Do you know why that is different from the rest of
7 the terrain?

8 A No idea.

9 Q I would like you to compare this with the photograph
10 of the Cryovac plant just prior to the addition.

11 A Uh-huh.

12 MR. CHEESEMAN: You're referring to Kelly
13 Exhibit 1?

14 MR. CONWAY: Yes.

15 Q I direct your attention to the northeast corner of
16 both photographs.

17 A Uh-huh.

18 Q Do you see the area of the 1975 photograph is a lot
19 lighter than the area in the 1974 photograph?

20 A Yeah. It is apparent.

21 Q Do you have any idea why that is?

22 A I have no idea.

23 Q Directing your attention to Kelly Exhibit 1, and
24 directing your attention to the drainage ditch on
25 the southern end of the property that runs alongside

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the warehouse --

A Right here (Indication)?

Q Correct.

-- were you present, Paul, when any part of
the drainage ditch was filled in?

A No.

Q Are you aware that any portion of the ditch was filled
in during the construction of the second addition?

A I don't believe it was. I have -- I don't know.

Q Well, if you compare the 1975 photograph after the
addition --

A Uh-huh.

Q -- to the 1974 photograph --

A I didn't see it.

Q -- prior to the addition, can you observe that the
ditch had been filled in, or a portion of the ditch
in front of the warehouse had been filled in?

A Yes.

Q Do you know the material in front of the warehouse,
in front of the --

MR. CHEESEMAN: You're referring to
Stewart Exhibit 1?

A I believe gravel.

Q Keystone?

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A Roofing gravel, whatever.

Q Did you ever see any barrels placed in that ditch?

A No.

Q Did you ever see any waste disposed of in that ditch?

A No.

Q Did you ever see any waste disposed of in the ditch on the northern side of the property?

A No.

Q Directing your attention again to Kelly Exhibit 1, this 1974 photograph, to your knowledge, Paul, was there a manhole in back of the plant, in back of the first addition?

A I don't recall ever seeing one.

Q I direct your attention to Stewart Exhibit 1, the 1975 photograph, do you ever recall seeing a manhole in back of the second addition?

A I have never seen one.

Q Have you ever seen a manhole in back of the Cryovac property --

A No.

Q -- at anytime?

A Not that I can recall.

Q How much occasion did you have to go to the rear of the plant?

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2 MR. CHEESEMAN: What do you mean by the
3 rear of the plant?

4 MR. CONWAY: Outdoors.

5 MR. CHEESEMAN: Right at the back of the
6 plant?

7 MR. CONWAY: In the back of the plant.

8 A Lunch and stuff like that.

9 Q Would you go out there for coffee breaks?

10 A Sometimes, sure.

11 Q Lunch?

12 A Yeah.

13 Q Did you observe people playing golf out there?

14 A Some of the guys used to hit the golf balls.

15 Q Archery?

16 A Yes.

17 Q Bow and arrow?

18 A Yeah.

19 Q What else did you observe throughout there as far as
20 activity went?

21 A We had a basketball hoop and picnic table in the
22 back. Some of the guys had summer gardens out there.

23 Q Did you ever see anyone pour waste in the back of the
24 plant?

25 A No.

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2 Q Did you ever see Tom Barbas pour waste in the back of
3 the plant?

4 A Nope.

5 Q Did you ever see Joe Meola pour waste in the back of
6 the plant?

7 A Nope.

8 Q Do you know Joe Meola?

9 A Yes, I do.

10 Q Did you ever see Al Love pour waste in the back of the
11 plant?

12 A No.

13 Q In the north ditch?

14 A Nowhere. I never seen Al Love pouring anything.

15 Q So you never have seen anyone pour waste at anytime in
16 the back of the plant?

17 A No, I haven't.

18 Q Have --

19 A Well, just to correct that, you change your oil in the
20 car or something. You know, you just dump it; that
21 was it. As far as anything else, I have never seen
22 it.

23 Q Now, after you buried these drums in 1974, did you
24 ever have occasion to have conversation with Grace
25 employees about the fact that you had participated

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in the burial of drums?

A No, I haven't.

Q Did you ever discuss that with Frank Cummings?

A No.

Q Did you ever discuss it with your father?

A No.

Q You never had a conversation with your father about the burial of drums in the rear of the plant?

A No. He was a pretty quiet guy. We talked about cleaning the yard and stuff like that, but that is it. When those drums were buried, there was just nothing thought of them, you know. We had no idea.

Q Now, where were you working at Grace in January of 1982? Were you in the office at that time?

A 1982?

Q Yes.

A Yeah.

Q Were you aware that Cryovac received a request from the EPA requesting certain information?

A Uh-huh.

Q How were you made aware of that?

A I believe I read it in the paper. There was a lot of talk through the company, you know, that Cryovac was named such and such.

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Q Did anyone from Cryovac ask you about the burial of the drums in the pit?

A No.

Q No one asked you?

A No.

Q Did Paul Shalline ever ask you?

A No.

Q Did your father ever ask you?

A No.

He was there. He knew what happened.

There was no sense discussing anything.

Q He was where?

A He was at the plant the day that the drums were buried.

Q Was he present at the burial of the drums?

A Frank Kelly, yes.

Q To your knowledge, Paul, is there a septic system at the Grace plant?

A I have no idea.

Q Did you ever see any chemical wastes disposed of by any means at the Grace plant?

A Other than the burial of the drums, no.

Q Did you ever see barrels taken off by some trucking firm?

A Scrap chips and stuff like that from the machine shop,

1
2 stainless steel chips, they would be sold to the
3 junkie for, you know, so much a pound.

4 Q How about liquid waste?

5 A No.

6 Q Did you ever see waste disposed of into the sewer
7 system?

8 A No.

9 Q Did you ever use chemicals during your employment?

10 A There are cleaning solvents, you know, just to wipe
11 down a piece of equipment or something like this.

12 Q What department would use that?

13 A Assembly department.

14 Q How many years were you in the assembly department?

15 A A good five years, maybe.

16 Q Which five years would those have been?

17 A The first five years of employment.

18 Q From 1972 through 1977, except for that period you
19 went to work for another company?

20 A Right.

21 Q Do you know what solvents you used to wipe down the
22 metal?

23 A Stainless steel polish. It was in a spray can.

24 MR. CHEESEMAN: I think he testified
25 earlier he had been in the assembly department to

1
2 about 1979, or perhaps he agreed to your characteriza-
3 tion it was about 1979.

4 THE WITNESS: I don't know the exact dates.
5 I moved around. I was -- I went in from an entry-
6 level position and in a matter of eight years - I
7 guess it's ten years - I went to -- I left the plant
8 and gone to distributor manager. I moved from
9 position to position in the plant.

10 Q Have you ever seen any other pits dug in the property?

11 A No.

12 Q At no time?

13 A At no time.

14 Q After these drums were disposed of, Paul, in 1974,
15 did other drums accumulate in the rear of the plant?

16 A Not that I recall. There may be a drum here and
17 there at the back of the building.

18 Q How many?

19 A Normally empty drums.

20 Q How many?

21 A One or two.

22 Q One or two?

23 A Uh-huh.

24 Q So from 1974, when you buried these drums, until you
25 left the Cryovac plant, the most drums you ever saw

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out back was one or two?

A Yes; maybe three. I can't be sure.

Q Were these drums ever removed, the one or two you would see at the back of the plant?

A Were they ever removed?

Q Did you ever see them moved?

A No.

Q Was it the same one or two drums the entire time you were at Cryovac, would you assume?

MR. CHEESEMAN: I would object to the form of the question. I don't know how he could know unless he watched 24 hours a day.

Q Was it the same one or two drums?

A I can't be sure. You know, it is something you don't -- If you asked me how many panes of glass were on that building across the street, it is something you see every day but you don't take notice of it.

Q You never saw anyone move those barrels?

A No.

Q Do you know what was in those barrels?

A I have no idea.

Q Did your father ever tell you that there were drums buried on the Cryovac property other than those drums that you buried?

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A No.

Q Did he ever say to you that there are 21 drums buried in some other location?

A No.

Q Do you have any knowledge of drums buried in any other location?

A I have no knowledge.

MR. CONWAY: Quick recess, Bill?

MR. CHEESEMAN: Sure.

(Recess)

Q The day that you participated in the disposal of the drums, how long was that backhoe there?

A How long was it there?

Q How long was it there that day?

A As I recall, it was there for less than eight hours. It was gone when -- We had to hand throw the dirt back in.

Q Was it there the day before?

A No.

Q Was it there the day after?

A No.

Q Now, you have indicated on Kelly Exhibit 1 where the drums were located prior to them being moved?

A Yes.

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Q Do you know who put those drums there?

A No.

Q Do you know how long they had been there at that location?

A They always seem to be there, you know. It is like afterward they get one or two. They used to have one or two afterward. They always seem to be there, you know.

Q Always at that location?

A Yes.

It is a cement area there. I explained to you the fork truck would go through the hot top, so this is a cement area out there so you can -- you know, so they won't go through. It was kept, more or less, on the cement so it wouldn't sink in through the hot top.

Q You never saw any drums out back that weren't in that area, that were in some other area?

A Not that I recall.

Q Do you know where the new drums would go when they were received by Cryovac, when they were coming in?

A Yes. You have the receiving area and then they have a move man. It was the job of the move man to move everything.

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Q Who is the move man?

A I can't recall who the man was.

Q Were there different move men?

A One or two.

His job was to take the received goods, whether they were office supplies or something, and he would bring it to the designated area. If it was office stuff, it would go there. If it was something for the paint shop, it would go there. If it was something for the machine shop, it would go in there.

Q You don't recall who the move man was?

A No.

Q When you and these other Cryovac employees were putting the drums into the ditch, was there any conversation among you?

A Well, I don't recall. I didn't say who put them in because I don't recall who put them in. We were burying them.

Q Is this an unusual event?

A Yes.

Q Were you talking about the fact this was an unusual event?

A We talked about how nice the weather was. We had our shirts off and we're getting the sun.

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2 Q It didn't strike you as unusual that you were burying
3 these drums?

4 A Yes. It was something that we had never done before.
5 It was nice to get out in the yard for a day.

6 Q How often were there general yard clean-ups?

7 A This was the biggest one we ever had. They normally
8 just concentrate on the sheet metal stuff, you know,
9 have the guy come in and pick up any junk.

10 Q How frequently would there be any yard clean-up?

11 A Once a year, you know, sweep out the backyard and
12 stuff.

13 Q Did you participate in these other yard clean-ups?

14 A Yeah; a few of us.

15 Q Do you recall cleaning up any drums?

16 A No.

17 Q This is the only time?

18 A Yes.

19 Q Do you recall how long it was after this one ditch
20 was dug that the construction began on the second
21 addition?

22 A I can't -- No. I would only be guessing.

23 Q Would it have been more than a month?

24 A Yeah.

25 Q More than three months?

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2 A Yes. If I were to guess, I would say at least six
3 months.

4 Q Six months after?

5 A Uh-huh.

6 Q Now, you mentioned a Billy Lloyd was with you that
7 day?

8 A Uh-huh.

9 Q Now, what was Billy Lloyd's position at Cryovac?

10 A He was a mechanic.

11 Q Is he still there?

12 A No.

13 Q Do you know where he is now?

14 A I have no idea.

15 Q Do you know when he left Cryovac?

16 A Probably a good four or five years ago.

17 Q Do you know where he went?

18 A No.

19 Q Do you have any knowledge as to why the ditch was
20 dug where you indicated it was on Kelly Exhibit 1?

21 A Why was it dug there?

22 Q Yes.

23 A Well, you can see that this is -- This was all grass
24 that was mowed. That is where the guys would shoot
25 archery and stuff.

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Q Do you have any knowledge why the --

MR. CHEESEMAN: I think he was trying to give you an answer.

A It is on -- They took -- They weren't going to dig up the grass that was all mowed and everything. This here was a section that was mowed (Indication).

MR. CHEESEMAN: He is pointing to an area that runs across the property from a north to south direction, approximately the width of the side of the warehouse in back of the paved area. He is describing that as the mowed area.

Q So this was --

A This here was like bushes in here (Indication). It was after the mowed section.

Q It was an unused area?

A Yes; just bushes.

Q Do you know why the drums weren't just put in the ditch in front of the warehouse?

A I have no idea.

Q Do you know who decided where the ditch would be dug?

A No.

Q Can I direct your attention, Paul, to Kelly Exhibit 1, this 1974 photograph?

A Yeah.

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2 Q Would you look along the back of the first addition?

3 A Uh-huh.

4 Q Can you identify what any of that material is?

5 A Yes. If you consider these bays here, okay --

6 MR. CHEESEMAN: Starting at the left, the
7 south end of the building?

8 THE WITNESS: -- this whole section here
9 was crating materials, skids, crates, wooden crates.

10 MR. CHEESEMAN: You're talking about the
11 first three bays?

12 THE WITNESS: Yes; the first three bays.

13 And from here on (Indication), it was
14 machinery that had been returned, just storage for
15 some already fabricated stainless steel parts that
16 wouldn't run or anything because they were stainless
17 steel. They would just store this stuff out there
18 for later use.

19 Q Now, if you would look now at Stewart Exhibit 1, one
20 year later after the second addition was put on,
21 would you look at the material adjacent to that
22 addition and see if you can identify that?

23 A That is basically the same, the first three -- looks
24 like it goes over to four bays.

25 Q This is the south corner of the building?

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2 A From here to here is crating material (Indication).
3 This is stacks of skids and crates (Indication). The
4 rest is used equipment.

5 Q One more question about that picture, Paul. You said
6 that on occasion people would change the oil in their
7 car?

8 A Uh-huh.

9 Q Can you indicate to us on Exhibit 1 where they change
10 the oil?

11 MR. CHEESEMAN: That is Kelly Exhibit 1.

12 Q Would you mark where the oil would be changed?

13 A Well, you change it either at -- You bring the car in
14 the building here (Indication) or into the warehouse.

15 Q You actually bring the car inside one of those
16 buildings?

17 A On occasion, yes. That way there you can use the fork-
18 lift and get under the car without, you know -- Guys
19 used to fix their brakes and stuff like that rather
20 than do it out there. You have all the tools out
21 there, your air, wrenches.

22 Q Was the oil ever changed outside?

23 A Oh, yeah. I mean, if a guy wanted to change his oil
24 in -- if his car was over here and he wanted to change
25 his oil, he would change it there.

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2 MR. CHEESEMAN: He is pointing to the
3 middle of the parking lot.

4 THE WITNESS: Anywhere you park your car
5 you could change the oil. You don't have to bring it
6 inside.

7 Q There was not one particular spot where they would
8 change it?

9 A No.

10 Q Do you ever recall a backhoe digging any other ditches
11 besides the one you have indicated to us today?

12 A No.

13 Q That was the only time, to your knowledge, a ditch was
14 dug by a backhoe?

15 A Uh-huh, yes.

16 Q Is there a bathroom in the warehouse?

17 A No.

18 MR. CONWAY: Can we have one more minute?

19 MR. CHEESEMAN: Sure.

20 (Recess)

21 Q Paul, could you indicate where the picnic table was
22 on Kelly Exhibit 1?

23 MR. CHEESEMAN: Before the second addition.

24 A About here (Indication).

25 MR. CHEESEMAN: Why don't you put the

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2 letter C by the line you just drew?

3 THE WITNESS: (Witness complies).

4 Q Where did the men congregate out there when they went
5 for lunch or coffee breaks?

6 A Also at C.

7 Q Could you draw a line around the mowed area?

8 A (Witness complies).

9 Q And this is the area, am I correct, where the men
10 would hit golf balls?

11 A Yeah.

12 Q Shoot archery?

13 A Yeah.

14 Q Play with a football machine?

15 A Not a football machine, frisbee.

16 Q Did you ever see a football machine out there?

17 MR. CHEESEMAN: Do you mean a throwing
18 machine?

19 A No.

20 Q The northeast corner of the first addition --

21 A Uh-huh.

22 Q -- do you know what is stored there?

23 A Used equipment, stuff that is no good, you know, and
24 will probably be used some day.

25 Q In Stewart Exhibit 1 along the northeast corner --

1 A Yes.

2 Q -- can you tell us what is stored along there?

3 A Same thing, except now we have a partition so that --
4 In fact, they built a partition so the guys could
5 park their motorcycles and they wouldn't get them wet
6 and have to bring them in the building.

7 Q When is the last time you spoke to Billy Lloyd?

8 A Maybe four or five years ago.

9 Q Have you talked to him since he left Cryovac?

10 A Yeah. He fixed my oil burner for me.

11 Q When was that?

12 A Four, five years ago.

13 Q Just after he left?

14 A Yeah.

15 Q Do you know where he lives?

16 A Yes. He lives in Woburn.

17 Q In Woburn?

18 A Yes.

19 MR. CONWAY: No more questions.

20 MR. FREDERICO: No questions.

21 MS. SCHNOOR: No questions.

22 Cross Examination

23 Q (By Mr. Cheeseman) Mr. Kelly, was there a particular
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2 area on the property that the men favored for
3 disposing of the used oil after they changed the oil
4 in their cars?

5 A Yeah. It would be right outside. It would be the
6 shortest distance you could walk to get rid of it.
7 If you changed your oil in this door here (Indication),
8 or in the warehouse or anywhere else, you have to
9 throw the oil away, and so you would go to the end of
10 the hot top and dump it right at the end of the hot
11 top.

12 Q You're referring to the area immediately on the north
13 side of the warehouse?

14 A Uh-huh.

15 Q You were looking at Stewart Exhibit 1 when you said
16 that.

17 Let me show you Kelly Exhibit 1. I believe
18 you mentioned previously the drainage ditch runs in
19 an east-west direction on the side of the warehouse?

20 A Right.

21 Q Did you ever see people dispose of used motor oil in
22 that drainage ditch?

23 A No, not really. Like I said, there is gravel here.
24 You only throw away three or four quarts of oil and
25 it is just absorbed. You walk to the edge of the hot

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top and drop it.

Q Let me ask you a few questions about the pit where the drums were disposed of that you marked as B on Kelly Exhibit 1.

A Uh-huh.

Q As you remember the activities that day, is it possible that there were six drums rather than seven put into that pit?

A Oh, yeah.

Q Did you personally help to move the drums from the area that you marked A on Kelly Exhibit 1 out to the area marked B on Kelly Exhibit 1?

A No.

Q Did you see the drums being moved out to that area?

A Yes. I didn't really pay any attention. I really can't -- It is a vague part of my mind. I can't remember how they got it out there. I imagine they used a hand cart because the forklift can't take them out there.

Q You don't specifically recall seeing a hand cart used?

A I don't. It is vague.

Q Do you recall a truck being used?

A No. I think I would recall a truck.

Q Can you describe the kind of hand carts that you know

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were used at the plant at that time?

A Just a two-wheeler, a regular -- I don't know how they call them. Is it a two-wheeler truck?

Q With two hand holds?

A Yes.

Q And two wheels at the bottom?

A Yes.

Q A little shelf sticking out the front to get under a drum?

A Yes.

Q How wide would you say the wheels on those hand carts were?

A Fairly narrow, maybe an inch or two inches.

Q Do you have any idea how much a full 55-gallon drum weighs?

A Probably 200 pounds, if I were guessing.

Q Do you have any idea how a full 55-gallon drum on one of those two-wheelers could have been taken across the hot top area, across the mowed area without sinking into the ground?

A That is why I said -- It is vague. I would tend to think it would sink in.

Q You don't remember how they were moved?

A Right.

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Q Did you personally participate in pushing or tipping the 55-gallon drums off the ground and into the pit?

A No, I didn't.

Q Did you see that happening?

A I don't think I did. I don't believe I did.

Q You might have been on some other part of the property at that time?

A I was assigned to cleaning the yard that day. Once they dug the pit, we weren't waiting for them to come along and, you know, fill up the hole, put the stuff in the hole. We would be in another section of the yard raking or sweeping or something.

Q At one point you got down in the pit yourself, didn't you?

A Yes; to cross over to the other side.

Q At that point were there any drums in?

A Uh-huh.

Q You walked between the drums or in the area that didn't have a drum?

A Probably hopped over, jumped over the drum to get over to the other side. There was dirt on both sides. When you finish digging on one side, you went over to the other side.

Q Did you see any pooled liquid?

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A No.

Q At the bottom of the trench?

A No.

Q Did you see with your own eyes any liquid inside of the drums, or did they have tops on them?

A They had tops on them from what I recall. There may have been one or two that didn't have a top on them. I wouldn't even know if they were full or empty.

Q At the time that the drums were moved from Area A on Kelly Exhibit 1 to Area B, do you know one way or the other whether they were full or empty at that time?

A I couldn't be sure.

Q So as far as you remember or know, they might have been empty?

A It is possible. They were sitting there for years. I have no idea. You never go over and shake them to see if they're full or not.

Q During the few days before the day that these drums were buried, you didn't have your eyes on those drums 24 hours a day, did you?

A No.

Q So you don't know one way or the other whether someone actually emptied anything that might have been in those drums sometime before they were thrown into

1
2 the pit; is that right?

3 A That is right.

4 Q For that matter, you don't know one way or the other
5 whether there was anything in those drums to start
6 with; is that right?

7 A That is right.

8 MR. CHEESEMAN: I have no further
9 questions.

10
11 Redirect Examination

12 Q (By Mr. Conway) Do you recall whether or not the back-
13 hoe that dug the ditch might have been used to trans-
14 port the barrels from the building to the ditch?

15 A I don't recall.

16 Q Could that have happened?

17 A You know, possible. I just don't recall. I don't
18 remember.

19 Q Would you be able to move yourself one empty drum?

20 A With a cart.

21 Q With a cart?

22 A Yeah.

23 Q Could you move a full drum with a cart by yourself?

24 A I think I could.

25 Q But you didn't move any of these drums?

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A No.

Q And you don't remember any conversation as to whether these drums were full or partially full or empty?

A No, I don't.

Q And you have no way of knowing from the weight of these drums whether they were full, partially full or empty?

A Like I said, I didn't move them. I don't know how much they weighed.

Q You don't recall how they were moved?

A Right.

Q Who would hire a backhoe?

A I really don't know. It was the first one that was ever done. I don't know who would have done that.

Q Would your father have done it?

A Possibility.

Q Who is the person, to the best of your knowledge, that was in charge of the clean-up of the yard that day?

A Frank Kelly.

Q Do you recall the purpose for the clean-up?

A No; other than Vin Forte liked to clean -- like to keep a clean house. He was proud of Cryovac and took good care of it.

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2 Q Is it your understanding Vin Forte ordered the clean-
3 up of the backyard?

4 MR. CHEESEMAN: Do you have an understanding
5 of what he is asking you now?

6 A I would venture to say he was the type of guy -- Well,
7 he would walk in the warehouse, saw the warehouse was
8 a mess or the floor was dirty, and he would say to
9 clean it up. He'd find out who was responsible and
10 get that person to clean up.

11 Q Do you remember a clean-up after the addition was
12 built?

13 A A normal clean-up, you know, straightening out crates
14 and stuff like that.

15 Q Do you remember a major clean-up of construction
16 material?

17 A No.

18 Q Was there excess construction material left after the
19 second addition was built?

20 A I don't recall any.

21 Q You don't recall any construction material?

22 A No.

23 Q You don't recall the disposal of construction
24 material?

25 A No.

MR. CONWAY: Okay.

Recross Examination

Q (By Mr. Cheeseman) Mr. Kelly, did you personally hear or observe Mr. Forte give any order to clean up the yard the day the drums were disposed of in the pit?

A No.

Q Did anyone tell you Mr. Forte had given that order?

A No. That was just a guess.

MR. CHEESEMAN: No further questions.

Redirect Examination

Q (By Mr. Conway) Did you see Mr. Shalline out there that day?

A I don't recall seeing him.

MR. CONWAY: Okay.

Recross Examination

Q (By Mr. Cheeseman) Did you observe or hear Mr. Shalline give the order to clean up the yard that day?

A No.

Q Did anyone tell you that Mr. Shalline had given the order to clean up the yard that day?

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A No.

Q Did you hear anyone give the order to clean up the yard that day other than the person who told you to go out and help?

A No.

Q Who was that person?

A Eddie Orazine.

Q You do remember Mr. Orazine telling you to go out and clean up the yard?

A I said that Eddie was my immediate supervisor. He didn't -- He would just go -- You had a supervisor; you didn't do what you wanted to do. He would tell you what to do.

Q As you sit here today, do you specifically remember Mr. Orazine telling you to do that?

A Right.

Q Or are you assuming it was him because he was your boss and that is who you took orders from?

A That is right.

Q You're assuming it was him?

A Yes.

MR. CHEESEMAN: Thank you.

Redirect Examination

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4 Q (By Mr. Conway) A lot has happened since that day.
5 You're aware wells G and H were closed in Woburn?

6 A I haven't followed the story. I don't live in
7 Woburn.

8 Q You're aware there was an EPA investigation?

9 A Uh-huh.

10 Q You're aware of this lawsuit?

11 A Right.

12 Q Now, Mr. Kelly, at any time, including up to today,
13 have you become aware of who at Cryovac made the
14 decision to bury those drums?

15 A I have no idea.

16 MR. CONWAY: Okay.

17 MR. CHEESEMAN: We're done.

18 (Whereupon the deposition was
19 adjourned at 12:15 P.M.)
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J U R A T

I, PAUL F. KELLY, have read the foregoing transcript of testimony and the same contains a true and accurate recording of my answers given to the questions therein set forth.

Signed under the pains and penalties of perjury this _____ day of _____, 1985.

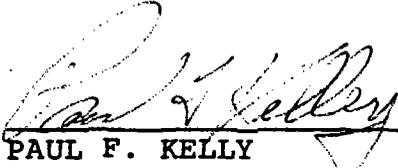
PAUL F. KELLY

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J U R A T

I, PAUL F. KELLY, have read the foregoing transcript of testimony and the same contains a true and accurate recording of my answers given to the questions therein set forth.

Signed under the pains and penalties of perjury this 11th day of July, ~~1985~~ 1986


PAUL F. KELLY

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