

Thursday, 30 September 2021

(10.00 am)

Presentation by Counsel to the Inquiry on the Pharmaceutical Companies (continued)

MS RICHARDS: Sir, yesterday I outlined the corporate structure, as we understand it to be, and the relationships between Bayer, Cutter and Miles. Most of the documents that we're going to look at will refer to Cutter rather than Bayer but, from time to time, we'll see Bayer documents.

In terms of the issues that we're going to look at today, I'm going to start looking at material relating to the licensing history for the factor concentrates manufactured by Cutter in the US, but the licensing history in the UK, in relation to Koate, in its various incarnations, which was the Factor VIII concentrate, and Konyne, which was the Factor IX concentrate.

It's right to note that Cutter also manufactured other products, including Gaminune, an immune globulin, there is quite a lot of interesting material relating to that but I'm not going to have time to touch on that or, still less, do it justice today, so it may be that that's something we can deal with by way of a written note in due course.

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coming back to knowledge of risk and response to risk of infection in November but, in the meantime, if there are documents or issues which Core Participants or the recognised legal representatives identify that we haven't referred to, we very much hope they'll flag them up to us so that we can incorporate them either in November or by way of a further written note in due course.

So against that background, I'll start, then -- against that introduction, I'll start by looking at some material relating to the licensing history, beginning with Koate, the Factor VIII concentrate. We don't have a complete set of licensing documents in relation to Koate, and we have a partial picture. But it's enough to tell us, I think, the basics. If we begin by looking at BAYP000001_098, please, Soumik -- sorry, BAYP0000001_098, my apologies.

So we can see this is a file containing supplementary particulars in support of the product licence application for Koate, and this is an application submitted in October 1975. If we go over the page and look at the index, we'll see the range of information that was submitted. So there are supplementary particulars, and then a number of attachments including the proposed package insert, and

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Having looked at the licensing history, I'm going to then look at some material which relates to the market share in the UK for the product and product usage in the UK of the Cutter manufactured concentrates. I'll then turn to look at issues relating to donor pools, plasma supply -- and there are some particularly interesting documents in relation to prison plasma as regards Cutter -- and donor screening and selection.

Again, that wouldn't be a comprehensive narrative because we're going to come back to a number of those issues in early November.

Then, lastly, I'll look at the data sheets, product labels and package inserts. Again, we don't have a complete picture but we can get a sense of how, in broad terms, warnings were expressed over the years, or indeed were not expressed.

As I hope will have been clear, both from what Mr Hill said last week and what I said before we started with Armour on Tuesday, this is not intended to be a comprehensive, still less an exhaustive, account of the activities of the pharmaceutical companies. The aim is to give an overview and to draw out some of the most interesting issues and some of the most interesting documents. Obviously, we're

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then a second file, which I'm not going to be looking at, contains what's said to be scientific evidence, chemistry and pharmacy.

Then if we go to the next page, a third file with reports of clinical trials and studies.

So that's the kind of material that would be submitted in the 1970s in support of a product licence application.

If we go to the next page, please, just look at the basics of the application, we can see the product for which the licence was sought was anti-haemophilic factor Koate, and, at this point in time, the application was made by Bayer UK Limited. As we'll see, it was in due course, in fact, held by Speywood Limited for a period of time.

If we go to the bottom of the page we'll see the date of the application, 16 October 1975, then if we go to the next page we've got a description of the product and how it was supplied. We can see reference there to attached package inserts in relation to "Contra-indications, Precautions and Warnings".

"Method of retail sale or supply" is described as being "By direct government contract and private sale", and then we can see the manufacturers who were Cutter Laboratories Inc in California.

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1 Then if we go to page 7, please. We'll see the
2 information that was provided by the applicant
3 included copies of labels, and then reference was made
4 to applications in other countries, Koate has been
5 passed by the FDA for marketing in the USA.

6 If we go to the next page -- sorry two pages
7 further on, we can see here what was intended to be
8 the draft package insert and you'll see the heading
9 above "Description", "See sections entitled
10 'Indications' and 'Warning' for description of
11 hepatitis risk".

12 If we go over the page, there's number of matters
13 set out but, if we go towards the bottom of the page,
14 the section in capitals above the heading "Action"
15 reads:

16 "This product is prepared from units of human
17 plasma which have been tested and found non-reactive
18 for Hepatitis Associated (Australia) Antigen.
19 Unfortunately this test does not with certainty
20 preclude the presence of hepatitis virus. See
21 warning."

22 If we go to the next page, under the heading
23 "Indications", in the second paragraph, we have again
24 in capitals, the word "CAUTION":

25 "Because of the possibility that any lot of Koate

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1 Then if we go to the heading "Warning", it says:

2 "Koate concentrate is purified dried fraction of
3 pooled plasma obtained from many donors. *SINCE THE
4 PRESENCE OR ABSENCE OF HEPATITIS VIRUS IN KOATE
5 CONCENTRATE CANNOT BE PROVEN WITH ABSOLUTE CERTAINTY,
6 THE PRESENCE OF SUCH A VIRUS SHOULD BE ASSUMED* and the
7 hazard of administering Koate concentrate should be
8 weighed against the medical consequences of
9 withholding it."

10 So, again, it could be said there's a direction to
11 the clinician, or advice to the clinician, and then
12 the last paragraph:

13 "Since there is this definite risk of hepatitis,
14 we suggest that the physician give consideration to
15 explaining to the patient (or the patient's family)
16 the relative risks of giving or withholding this
17 product. Then, should the patient develop hepatitis,
18 as a result of the injection, it will not come as
19 a surprise, and there is not nearly the likelihood of
20 resentment, which will almost surely follow
21 an unexplained and unexpected infection."

22 Then, in relation to this same document, if we go
23 to page 16, we can see the heading "Warranty" and, in
24 the second paragraph, you'll see there's an italicised
25 section. I'll just read the sentences before that to

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1 might contain the causative agents of viral hepatitis,
2 its use must be considered in light of this hazard,
3 particularly in persons with few previous transfusions
4 of blood and plasma products."

5 Then if we look at the next paragraph, it reads:

6 "Kasper and Kipnis have concluded that those who
7 had little exposure to blood products had a high risk
8 of developing hepatitis after introduction of clotting
9 factor concentrates, such as this product. For those
10 patients, especially those with mild haemophilia, they
11 recommend single donor products. However, for
12 patients with moderate or severe haemophilia who have
13 received numerous infusions of blood and plasma
14 products, they feel that the risk of hepatitis is
15 small. They believe that the clotting factor
16 concentrates have so greatly improved the management
17 of severe haemophilia that these products should not
18 be denied to appropriate patients."

19 Pausing there, this in contrast, I think, with
20 what we've seen in relation to some of the other
21 package inserts or leaflets, essentially contains
22 a degree of guidance, addressed, I think, clearly to
23 the clinician rather than to the patient, about the
24 cohorts of patients for whom the product might or
25 might not be appropriate.

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1 put them in context:

2 "A number of factors beyond our control could
3 reduce the efficacy of this product or even result in
4 an ill effect following its use. These include
5 storage and handling of the product after it leaves
6 our hands, diagnosis, dosage, method of
7 administration, and biologic differences in individual
8 patients. Because of these factors, *it is important
9 that this product be stored properly and that the
10 directions be followed carefully during use ...*"

11 Then this:

12 "... *and that the risk of transmitting hepatitis
13 be carefully weighed before the product is
14 prescribed.*"

15 That's some of the material from the product
16 licence application.

17 If we look next at MHRA0009277, we can see here
18 some comments. There's a date, top right-hand corner,
19 3 November 1975. Reference is made to the
20 manufacturer, Cutter Labs Inc, in California, and then
21 we have a description of the product, Koate.

22 If we go down further, it's fairly faint but it
23 looks as though there's a box identifying which
24 committee should look at this, biological or -- I'm
25 not entirely sure what those faded words say, but

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1 I don't think it matters.
 2 Then we can see the comment which suggests
 3 consideration by the medical assessor, Dr Andrews.
 4 "It was agreed that after scrutiny by Dr Andrews,
 5 this application might be suitable for processing
 6 through the Licensing Authority. Should the
 7 application require to go to the Committees, it was
 8 noted that further copies would be required."
 9 Then there's a note:
 10 "9 Further copies required.
 11 "Requested 10.11.75."
 12 It's not entirely clear what that means. It seems
 13 there might have been a suggestion that it wouldn't
 14 need to be looked at by the Committee, but the request
 15 for further copies suggests that the intention then
 16 was that it would be looked at by the Committee.
 17 In any event, we can pick up what subsequently
 18 happens starting at BAYP0000022_97. We've got it.
 19 Thank you.
 20 This is dated 24 December 1975. It is, I think,
 21 an internal note, so internal to Bayer, but it's
 22 recording a telephone conversation with Dr Andrews of
 23 the DHSS:
 24 "The product licence application for Koate appears
 25 to be 'going through the machinery' at the Ministry

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1 Biological Sub-Committee on 9 January 1976."
 2 **SIR BRIAN LANGSTAFF:** The Kasper and Kipnis report, to
 3 which reference is made earlier, that -- I'd like to
 4 know whether that just deals with hepatitis B or with
 5 both B and non-A, non-B. I think it may do the
 6 latter, from memory, but this is working from memory.
 7 **MS RICHARDS:** I'm just checking the date. I don't have
 8 a copy of the report and I don't think it's one I've
 9 read, so I'd need to do that, but it's a 1972
 10 publication.
 11 **SIR BRIAN LANGSTAFF:** Ah.
 12 **MS RICHARDS:** I suspect it may be dealing with hepatitis B
 13 only, given the date. It's a publication, and I'm
 14 looking at the footnotes in the -- reference footnotes
 15 in the licensing application. To Kasper and Kipnis,
 16 it's hepatitis and clotting factor concentrates, it's
 17 published in JAMA221 --
 18 **SIR BRIAN LANGSTAFF:** Yes, the reference is
 19 ARCH0002893_003, for those who want to find it.
 20 **MS RICHARDS:** Thank you. And in any event it's -- the
 21 date is given as 1972, so I would anticipate
 22 hepatitis B as the subject matter of it, but we'll
 23 read and check that, sir.
 24 **SIR BRIAN LANGSTAFF:** That was one in which they said in
 25 that article that for older children and adults who

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1 and is being looked at by Dr Andrews on the medical
 2 side and Mrs Pratt on the chemistry and pharmacy side.
 3 During the course of conversation, Dr Andrews
 4 mentioned that the Minister is personally vetting all
 5 submissions on Factor VIII because there is a lot of
 6 publicity and emotional feeling about it at the
 7 moment."
 8 Pausing there, this, of course, is the month in
 9 which the World in Action documentary had been
 10 broadcast, and we saw from the documents we looked at
 11 in relation to the Armour application, which was being
 12 considered at around the same time, the direct
 13 involvement of the Minister of Health, who was
 14 Dr David Owen at the time.
 15 Then continuing with this:
 16 "Apparently the price of our product will be
 17 important and will probably affect the success of our
 18 application. Dr Andrews suggested that as soon as we
 19 are granted a licence we resubmit a tender to the
 20 supplies division of the DHSS. He mentioned that the
 21 Cutter product 'looked good' because each plasma
 22 donation is tested by RIA for hepatitis and there have
 23 been no reported cases of hepatitis since it has been
 24 introduced into the USA.
 25 "All being well, the submission will go before the

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1 had had a little exposure to blood products,
 2 especially those with mild haemophilia, single donor
 3 products were preferable. And I think that's partly
 4 reflected in the application.
 5 **MS RICHARDS:** Yes. Yes, it sounds as though it is a not
 6 unfair account that is given in the application, but
 7 we will double check that.
 8 Returning to the document onscreen, obviously it's
 9 the Bayer individual's account of the telephone
 10 conversation, and we don't know what Dr Andrews would
 11 say in relation to it. The interest of the minister
 12 is consistent with what we saw in relation to the
 13 Armour material. The suggestion that price will be
 14 important and will probably affect the success of the
 15 application is perhaps somewhat surprising, and
 16 concerning, in relation to the role of the Licensing
 17 Authority and the factors we would have expected them
 18 to be considering, as opposed to the kind of factors
 19 the Supplies Division of the Department might consider
 20 where price then might become an issue. But in any
 21 event it is what it is.
 22 **SIR BRIAN LANGSTAFF:** It's -- what you showed me earlier
 23 or what I was shown earlier in the week or last week
 24 on the 1968 Act was that of the three main criteria,
 25 cost is not one of them. But they're not the only

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1 criteria.
 2 **MS RICHARDS:** They're not, no.
 3 **SIR BRIAN LANGSTAFF:** So it was open, I suppose, to the
 4 Committee to consider cost, but it's not a primary
 5 consideration.
 6 **MS RICHARDS:** No. And certainly not when one considers
 7 matters of relative weight. One would expect that for
 8 the Committee, issues such as safety and efficacy
 9 would be the kind of considerations that would carry
 10 the greatest weight or should carry the greatest
 11 weight.
 12 If we then turn to MHRA -- no, sorry, can we go,
 13 first of all, to BAYP000020_007. This is another
 14 internal note, the date is 7 January 1976. You just
 15 need to look at the first paragraph, which is headed
 16 "Koate":
 17 "A Product Licence application was made in
 18 October 1975 and it is expected to go before the
 19 Biological Sub-Committee of the CSM this week. The
 20 Ministry have suggested that as soon as the Licence is
 21 granted we resubmit a tender to the Supplies Division
 22 of the DHSS. They say that the Cutter product 'looks
 23 good' because each plasma donation is tested for
 24 hepatitis and there have been no reported cases of
 25 hepatitis since its introduction in the USA."

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1 Then if we go further down, we can see (2) was
 2 about product labelling, (3) expiry date, and then
 3 (4):
 4 "On-going information is provided on the reasons
 5 for, and the rate of, rejection of donors or
 6 donations, centre by centre."
 7 So those are similar conditions to the conditions
 8 we saw in relation to the Armour application of
 9 Factor VIII.
 10 And then (5) is:
 11 "The applicant shall agree to the imposition of
 12 the batch release procedure ..."
 13 And then we see the deliberation of the Main
 14 Committee:
 15 "Advice
 16 "On the evidence before them the Committee advise
 17 the grant of a product licence for this preparation
 18 for the purposes indicated in the application on
 19 condition that ..."
 20 And we can see the same conditions. So the
 21 Committee effectively endorses the recommendation of
 22 the Sub-Committee on Biologicals. So we've got:
 23 "Satisfactory information ... on
 24 "a) ... number of donations in each pool ..."
 25 And over the page, (4) is:

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1 Now whether that's just a regurgitation of the
 2 previous conversation or reflects some further
 3 dialogue is not clear from the material.
 4 Then if we go to the documents we have relating to
 5 the Sub-Committee's consideration, it's at
 6 MHRA0009305. We can see here the date is
 7 January 1976, Sub-Committee on Biologicals, and we can
 8 see here the recommendation:
 9 "On the evidence before them the Sub-Committee
 10 recommend the grant of a product licence for this
 11 preparation for the purposes indicated in the
 12 application on condition that ..."
 13 Then there are number of conditions. The first is
 14 that:
 15 "1) Satisfactory information is provided on
 16 "a) the number of donations in each pool;
 17 "b) the method of assay, the standard used and its
 18 calibration;
 19 "c) batch to batch reproducibility."
 20 Now, for our purposes, obviously, it's information
 21 about number of donations in each pool that is
 22 significant. I mention the reference to assay, the
 23 standard use and its calibration because there was
 24 then quite a lot of correspondence about those issues.
 25 I'm not going to go through all of that.

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1 "On-going information is provided on the reasons
 2 for, and the rate of, rejection of donors or
 3 donations, centre by centre."
 4 Then if we just look at the last two paragraphs on
 5 that page:
 6 "It was decided that if the applicant did not
 7 agree to these conditions, a letter should be sent by
 8 the Secretary in accordance with Section 21(1) of the
 9 Medicines Act."
 10 Then this:
 11 "The Committee also advise that this product
 12 should be indicated as 'recently introduced' and
 13 should be the subject of a special directive for the
 14 reporting of adverse reactions."
 15 It's not possible to tell from the recommendations
 16 themselves precisely what prompted that.
 17 We've then got, on the next page, the assessor's
 18 report that presumably went before the Sub-Committee
 19 and the Committee. It's authored by Dr Andrews and
 20 dated 17 December 1975. That's on page 9 but we'll
 21 get to that in due course.
 22 We saw a very similar report in relation to
 23 Armour's Factorate application, so we can see it
 24 begins with a summary of the application. We don't
 25 need to look any further at that.

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1 If we go over the page, we can see, at
 2 paragraph 3.3, under the heading "Precaution and
 3 contra-indications", Dr Andrews report notes this:
 4 "The company literature includes the usual warning
 5 about the presence of hepatitis B virus [so that's how
 6 he understands it, hepatitis B] and recommends
 7 restricting its use to Factor VIII deficiency only."
 8 Then if we go to "Manufacture", we see the
 9 manufacturer identified as Cutter Laboratories Inc.
 10 And then there is a section on source material which
 11 I think is worth reading in full:
 12 "Each plasma donation is currently tested by
 13 radioimmunoassay (RIA) for hepatitis B antigen
 14 according to the mandatory FDA requirement as of
 15 15.9.75. No reports have been received attributing
 16 hepatitis to Koate since its introduction in
 17 February 1974."
 18 Then this on source material:
 19 "The raw material is supplied by no less than
 20 54 different firms, which are classified in the
 21 submission according to whether the firm is owned and
 22 operated by others or Cutter owned, whether the plasma
 23 is collected by plasmapheresis or obtained from whole
 24 blood or whether the apparatus used is owned by Cutter
 25 or the firm concerned. The list includes a number of

1 Picking it up a few lines later:
 2 "No cases of serum hepatitis were reported
 3 following treatment with Koate. In addition, no
 4 reports have been received attributing hepatitis to
 5 Koate since its introduction in the USA in
 6 February 1974. However, attached is a copy of
 7 a letter from Kasper and Kipnis ..."
 8 Then we've got the reference in the American
 9 Journal.
 10 "... regarding hepatitis and clotting factor
 11 concentrates, such as this product. It is one of the
 12 references used in the package insert."
 13 If we go down towards the bottom of the page,
 14 paragraph 14:
 15 "In conclusion, Koate has been demonstrated to be
 16 a safe and efficacious preparation for treating or
 17 preventing bleeding in haemophilic patients with
 18 factor VIII deficiency."
 19 Then we get the "Medical Comment", so this is
 20 presumably Dr Andrews' comment:
 21 "This Factor VIII preparation would appear to have
 22 been adequately appeared and to be efficacious in
 23 clinical usage. It suffers from being prepared from
 24 multi-centre donations which cannot be properly
 25 controlled by inspection. Nevertheless each

1 American State Prisons."
 2 So that fact was clearly known to the Licensing
 3 Authority at the point in time at which it considered
 4 the licence application in late 1975, early 1976.
 5 Then we are told:
 6 "The following criteria are established according
 7 to the 'Cutter system of plasmapheresis' on file with
 8 BOB."
 9 I think that says, which is presumably the Bureau
 10 of Biologics, or might be that.
 11 "1. Suitability of the donor.
 12 "2. Immunisation."
 13 Top of the next page:
 14 "Donor follow-up."
 15 Then if we turn to page 8, we can pick it up --
 16 sorry, if we go to page 7 just so we can see what
 17 sections we're dealing with.
 18 So section 7 is headed "Evidence of Efficacy",
 19 then 7.5, "Summary of cumulative clinical experience".
 20 Again, this is Dr Andrews' summary of the application
 21 material.
 22 If we go over the page, paragraph 8:
 23 "Only two side effects were reported during the
 24 clinical evaluation of Koate."
 25 Then those are then described.

1 individual donation is said to be tested by
 2 radioimmunoassay and that the control of the blood
 3 donations is in accordance with the latest FDA
 4 regulations, copies of which are not included in the
 5 submission. The information set out is superior to
 6 that originally offered by Travenol but in fairness it
 7 is believed that Travenol have improved their method
 8 of manufacture in accordance with the new FDA
 9 regulations."
 10 So Dr Andrews is there drawing attention,
 11 presumably because it is regarded as significant, to
 12 the fact that this is plasma derived from multi-centre
 13 donations, and it is presumably his own comment that
 14 those cannot be properly controlled by inspection.
 15 He then continues:
 16 "In the past the Committee have recommended that
 17 the following conditions are accepted ..."
 18 We can see (1) is -- relates to the donations.
 19 So:
 20 "Information is provided on:
 21 "(a) The number of donations from which plasma is
 22 pooled for the manufacture of the product.
 23 "(b) The reasons for, and rate of, rejection of
 24 donors or donations, centre by centre."
 25 Then various other recommendations as to

1 conditions.
 2 Then the "Recommendation" at 9:
 3 "Subject to quality control being considered
 4 satisfactory and to confining the expiry date to
 5 storage at 5°C the Committee might feel that a Product
 6 Licence could be granted."
 7 And the date is 17 December 1975.
 8 **SIR BRIAN LANGSTAFF:** Just going back to the top of that
 9 page, just as a matter of curiosity, possibly for
 10 later examination when we come to dealing with some of
 11 the blood services evidence more directly, is it to be
 12 inferred from what it says about the latest FDA
 13 regulations, that copies are not included in the
 14 submission, that the author did not know what those
 15 recommendations actually were? But he goes on to say:
 16 "... in fairness it is believed that Travenol have
 17 improved their method of manufacture in accordance
 18 with the new FDA regulations."
 19 Which is slightly odd if, indeed, there isn't
 20 a copy for him to check against. Why else mention
 21 that there's a copy missing?
 22 **MS RICHARDS:** Yes. It's -- the most natural inference,
 23 I would suggest, is the inference you suggest, sir.
 24 And we can see, and it could -- is there a note of
 25 skepticism, one might ask, in the language:

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1 early in the following month at BAYP0000001_110, this
 2 is a letter dated 2 February 1976. It's from
 3 Dr Andrews, who is described there as Senior Medical
 4 Officer, and it's to the registration officer at Bayer
 5 UK. It relates to the product licence application.
 6 We can see that from the heading:
 7 "You will be pleased to hear that the above
 8 licence application has now been considered and that
 9 the grant of a product licence has been advised for
 10 the purposes indicated in the application on condition
 11 that ..."
 12 Then we can see the letter sets out the conditions
 13 that were identified by the Sub-Committee on Biologics
 14 and endorsed by the Committee on Safety of Medicines.
 15 So, for our purposes, the relevant subparagraphs
 16 are 1(a), satisfactory information on number of
 17 donations in each pool -- it might beg the question
 18 what's meant by "satisfactory", the letter doesn't
 19 tell us, nor does the recommendation -- then paragraph
 20 4:
 21 "On-going information is provided on the reasons
 22 for, and the rate of, rejection of donors or
 23 donations, centre by centre."
 24 So not just information, such as we saw in
 25 response to the similar recommendation in the Armour

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1 "... each individual donation is said to be
 2 tested ..."
 3 **SIR BRIAN LANGSTAFF:** Yes.
 4 **MS RICHARDS:** "... by radioimmunoassay ..."
 5 It's difficult. We obviously can't ask
 6 Dr Andrews and we don't have anything further which
 7 helps us unpick what was known to him or, indeed, to
 8 others within the Licensing Authority at the time.
 9 **SIR BRIAN LANGSTAFF:** It would seem very odd if the FDA
 10 has issued regulations in this area and they weren't
 11 copied at least to the DHSS or they didn't have
 12 a copy, but it looks as though their medical assessor
 13 might not have had.
 14 **MS RICHARDS:** It does look as though that's the case. We
 15 can obviously investigate what other material we have
 16 from the Licensing Authorities and the Department,
 17 from the MHRA --
 18 **SIR BRIAN LANGSTAFF:** Yes.
 19 **MS RICHARDS:** -- which might cast some light more
 20 generally on their state of --
 21 **SIR BRIAN LANGSTAFF:** As I say, it's really a matter for
 22 later on.
 23 **MS RICHARDS:** So that was the medical assessor's
 24 recommendation. We've seen what the Sub-Committee and
 25 the Committee decided. If we then pick the matter up

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1 application, where there was, as far as we could see,
 2 a one-off response, and nothing further. This seems
 3 to suggest there's an expectation of information being
 4 submitted on an ongoing basis.
 5 There is then, if we go to BAYP0000020_008,
 6 a letter. It's from Mrs Boulton, who was to the
 7 registration officer with Bayer in the UK, to Cutter
 8 Laboratories in California. It's dated
 9 6 February 1976, and it says:
 10 "Following my telex of to-day, I am sending you
 11 a copy of the letter from the DHSS, which I refer to
 12 in that telex, together with the comments on it."
 13 So she is presumably sending the letter we've just
 14 looked at. We don't, I think, have, or at least
 15 I have not seen, what's said to be her comments on
 16 that. Again, I don't think that matters for present
 17 purposes.
 18 She continues:
 19 "The number of donations in each pool need only be
 20 given approximately, but they would like to have some
 21 idea of the size of it."
 22 Then she goes on to set out what's required in
 23 relation to some of the other conditions, in
 24 particular the assay method and the standard used, and
 25 I draw attention to that simply because that becomes

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1 the subject of some prolonged correspondence.
 2 Then the next paragraph is about labelling. Then
 3 if we go to the third paragraph.
 4 "Point 4 of the letter means that the future
 5 [I think that's probably 'in the future'], they will
 6 require records on this information from the Plasma
 7 Collection Centres. However, Dr Andrews mentioned to
 8 me on the telephone that if this information is
 9 provided on the Protocols which will be looked at by
 10 the NIB (National Institute for Biological Standards
 11 and Control), for each batch of the product which we
 12 propose to sell in the UK, this should be sufficient
 13 information."

14 **SIR BRIAN LANGSTAFF:** Does this suggest a process
 15 post-licensing of the control of distribution of
 16 a product in which the NIBSC take a look at what
 17 information has been given on pool size and decide
 18 whether it is, by whatever criteria, satisfactory?

19 **MS RICHARDS:** Well, I think in relation to "satisfactory",
 20 that is the adjective used at paragraph 1(a) of the
 21 DHSS letter --

22 **SIR BRIAN LANGSTAFF:** Yes.

23 **MS RICHARDS:** -- "number of donations in each pool" and
 24 that's what's being dealt with in the first paragraph.

25 **SIR BRIAN LANGSTAFF:** But it's "each pool", which means

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1 referring to all the information that's been
 2 mentioned.

3 **MS RICHARDS:** I don't think so because I think the
 4 reference to point 4 -- if we go back to
 5 BAYP0000001_110, so paragraph 1(a) is satisfactory
 6 information about number of donations in each pool,
 7 then we've got other matters set out, and then point 4
 8 is ongoing information on the reasons for, and rate
 9 of, rejection of donors or donations, centre by
 10 centre.

11 **SIR BRIAN LANGSTAFF:** So there's two bits of ongoing
 12 information, one is each pool, because the word is
 13 "each", and "ongoing information" identifies ongoing
 14 information as to the performance of each centre.

15 **MS RICHARDS:** Yes. I mean, certainly "ongoing" is clear
 16 from the language used in 4. I take your point, sir,
 17 in relation to point 1 that, if you're talking about
 18 each pool, the natural expectation by the use of the
 19 word "each", because that's not going to be static, is
 20 that it is provided on an ongoing basis. That doesn't
 21 appear to be then how it was understood or applied
 22 because, if we go back to Mrs Boulton's letter to Cutter
 23 Laboratories in the States, BAYP0000020_008, her
 24 understanding in the first paragraph, in relation to
 25 pool size in line 3:

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1 pool by pool.

2 **MS RICHARDS:** Yes.

3 **SIR BRIAN LANGSTAFF:** So which means that every batch made
 4 from a different pool presumably is going to go to the
 5 NIBSC, if that's why -- where records go, and what
 6 then happens? Assume for a moment, without in any
 7 sense knowing, that, in the minds of those who are
 8 medical assessors, they put a limit of 10,000
 9 donations to a pool, let's say. Beyond that, it's
 10 unreasonably unsafe, or something along those lines.
 11 What do they do about it?

12 **MS RICHARDS:** I don't know the answer to that, sir. It's
 13 a pertinent question to pose. We do hope to have, in
 14 due course, some witness evidence from or in relation
 15 to NIBSC. So it may be that, not necessarily by
 16 reference to this specific application but more
 17 generally, they can provide some information in
 18 relation to that.

19 I should just say that the reference in the third
 20 paragraph of this letter to "information being
 21 provided to Protocols that will be looked at by
 22 [NIBSC]" is in relation to point 4 of the letter, and
 23 that's not pool sizes; that's rejection of donors and
 24 donations.

25 **SIR BRIAN LANGSTAFF:** This information? I'd read that as

26

1 "The number of donations in each pool [again, we
 2 see the word 'each'] need only be given approximately,
 3 but they would like to have some idea of the size
 4 of it."

5 Well, it's a little unclear, I think, what was
 6 understood in relation to that. It's clear there's
 7 been some form of telephone discussion between
 8 Dr Andrews and Mrs Boulton, because she refers to that
 9 in the third paragraph of this letter. But we don't
 10 have any records of that.

11 If we go over the page, we can see point 5 was
 12 about the batch release procedure, and then she asks
 13 Cutter Laboratories in the States:

14 "[We will] be pleased if you could send us your
 15 answer and comments to the five points raised in the
 16 letter as soon as possible so that there will be as
 17 little delay as necessary in us being granted
 18 a Product Licence."

19 That's the internal communication. There's
 20 a response then, and we don't, I'm afraid, have all
 21 the documents but there's a response in relation to
 22 some of this information at BAYP0000020_014. So this
 23 Cutter Laboratories Inc memorandum, so it's
 24 an internal communication, dated 23 February 1976,
 25 concerning Koate registration in the UK:

28

1 "The following is in response to Mrs Boul't's telex
2 of February 18, 1976."

3 So there's clearly been some further
4 communications in the intervening period:

5 "Her requests are restated followed by our
6 answers.

7 "1. Can you confirm that on-going information
8 will be provided on the reasons for, and the rate of,
9 rejection of donors or donations, centre by centre."

10 Then this is the response internally:

11 "We do not collect information of this nature.
12 Such information would be of dubious value in
13 evaluating a plasma derivative product's safety or
14 efficacy. In the manufacture of Koate, all Source
15 Plasma (Human) used as the starting material is
16 collected and handled according to regulations
17 described in Title 21 of the US Code of Federal
18 Regulations. Similarly, all plasmapheresis donors
19 must be acceptable according to the criteria described
20 in these regulations. All plasmapheresis centers from
21 which our source material is obtained are licensed by
22 the US FDA. Thus, the FDA insures that all donors and
23 units of Source Plasma (Human) are handled according
24 to the relations. Copies of the specific US
25 regulations covering Source Plasma (Human) and

29

1 numbers 1 to 3 are contained in the appendix attached
2 to this letter. We have not yet had a confirmation
3 from Cutter that they will provide an on-going
4 information about the rejection of donors or
5 donations, centre by centre. I cannot foresee that
6 this will be a problem and will let you know further
7 about this matter as soon as possible. In addition
8 they have not yet formally agreed to the imposition of
9 the batch release procedure if necessary, but they are
10 aware that this procedure exists in the UK and they
11 have already agreed in principle to it."

12 Now, the document we just looked at, which is
13 dated four days previously to this, was an internal
14 Cutter Laboratories Inc document, so internal within
15 the US, between two employees of Cutter
16 Laboratories Inc. It may be, then, that what was said
17 in it had not yet reached Mrs Boul't when she wrote
18 this letter, or it may be it did, in which case what
19 she writes in this letter is not consistent with it,
20 and we've no particular way of knowing one way or
21 another.

22 The appendix that she refers to then is at
23 BAYP0000001_112. "Antihaemophilic Factor (Human)
24 Koate", and we've got the reference there to the
25 product licence number, "Answers to questions 1-3 of

31

1 plasmapheresis donors are attached for your reference.
2 As can be seen only [hepatitis B surface antigen]
3 negative units of Source Plasma (Human) from healthy
4 donors can be used in the manufacture of licensed
5 biological products such as Koate."

6 That's what's said internally in relation to that
7 category of information. You'll see then, that the
8 memorandum continues by dealing with a second aspect
9 of the Committee's conditions, which was the batch
10 release procedure. Again, I don't need to go to it, I
11 think, in enormous detail, but we can see the response
12 there is "We do not feel the batch release procedure
13 should be applied to Koate", and reference is made to
14 it having been licensed in the US for 10 years.

15 If we then pick matters up -- so that was
16 23 February, if we then pick matters up,
17 BAYP0000001_111.

18 Oh, I'm sorry, that's wrong reference,
19 MHRA0009298, I'm hoping you might have.

20 This is Mrs Boul't's response to Dr Andrews,
21 27 February 1976:

22 "I am now able to supply you with the information
23 requested under Section 44 of the Medicines Act in
24 your letter of 2 February 1976 [the letter from
25 Dr Andrews we looked at]. Our answers to question

30

1 your letter of 2 February 1976", and I think we need
2 only concern ourselves with the answer to question
3 1(a):

4 "Number of donations in each pool.

5 "Each pool consists of 2500 litres of plasma.
6 Each unit of Source Plasma (Human) is approximately
7 600 ml. Therefore, the pool would be comprised of
8 approximately 4000 units or more. Generally, the
9 plasma pool is such that it is comprised of
10 approximately equal donations from at least 1000
11 individual donors."

12 Note there the words "at least", which may become
13 significant when we look at some later material:

14 "A given lot of Koate is usually made up from
15 material fractionated from 3 to 5 pools, ie the AHF
16 suspension obtained from 3 to 5 separate plasma pools
17 is combined to form the final product."

18 So, notwithstanding that your suggestion, sir,
19 which may be right, at least as a matter of language,
20 that this was information to be provided on an ongoing
21 basis, the evidence we have suggests the answer was
22 given on this occasion and on this occasion alone.

23 Then if we just go over the page --

24 **SIR BRIAN LANGSTAFF:** Just going back --

25 **MS RICHARDS:** Certainly.

32

1 **SIR BRIAN LANGSTAFF:** -- when it says that the plasma
2 pool, as such, is comprised of approximately equal
3 donations from at least 1,000 individual donors,
4 that's a plasma pool. Is it then saying that the --
5 because a given lot of Koate, is a batch, if you like,
6 is made up of material fractionated from three to five
7 pools, that it would then be between 3,000 and 5,000
8 individual donors?

9 **MS RICHARDS:** At least, yes, that's how I understood it.

10 **SIR BRIAN LANGSTAFF:** So 3,000 to 5,000 donors is the
11 range?

12 **MS RICHARDS:** Yes.

13 **SIR BRIAN LANGSTAFF:** Thank you.

14 **MS RICHARDS:** But I think as a minimum, we can probably
15 read in, given the use of the phrase "at least". Then
16 if we go over the page, we've got product labelling.
17 I don't need to go through the detail of it. There's
18 a very detailed response from Bayer UK on behalf of
19 Cutter Inc.

20 If we go to the top of page 4, we'll see there
21 at the top of the page reference, and this is in the
22 context of the labelling:

23 "... package insert mentions 'obtained from many
24 donors'. See also answer 1a to your letter above."

25 If we then turn to BAYP0000001_113, we see

33

1 There's some further information about that.

2 "I trust the Licensing Authority will now be able
3 to continue the assessment of our application for
4 a product licence."

5 Pausing there, we can see that, by the time we've
6 got to early March, in response to those two
7 conditions identified by the Committee, there's
8 an answer given about pool size which was condition
9 1(a), which is a general one-off answer. Then, in
10 relation to the request for ongoing information about
11 reasons for, and rates of, rejection of donors, centre
12 by centre, the information that's provided is, simply,
13 "we don't collect that".

14 **SIR BRIAN LANGSTAFF:** "We can't comply with the
15 condition".

16 **MS RICHARDS:** Yes, yes.

17 Now, what then happens, is that there's a series
18 of further correspondence. I'm not going to go
19 through all of it. I'll just start with one letter,
20 BAYP0000001_114. It's another letter from Dr Andrews
21 to Mrs Boulton, but it's not dealing with either of the
22 matters in relation to pool size or donor rejection.
23 It's dealing with a number of the other issues that
24 have been flagged up by the Committee, by way of
25 proposed conditions.

35

1 Mrs Boulton writing again to Dr Andrews, now on
2 4 March 1976. This, I think, explains what seemed
3 curious in the earlier letter, given what we'd seen
4 from the internal Cutter memorandum. She says:

5 "Further to my letter of 27 February and my
6 telephone call to you last Monday, I am now enclosing
7 the reply which we had from Cutter in answer to
8 questions 4 & 5 of your Section 44 letter. I am
9 afraid that I rather anticipated their answer in my
10 previous letter. As you can see from the enclosed
11 ..."

12 I don't think we've got the enclosed -- I'll check
13 this, sir. I don't know at present whether she is
14 simply forwarded the internal memorandum or whether
15 that was reformulated into some other type of
16 document. But she says:

17 "As you can see from the enclosed, they do not
18 collect information about the rejection of donors, but
19 the collection of plasma is carried out according to
20 the US Code of Federal Regulations. With regard to
21 the imposition on batch release procedure, they are
22 not in complete agreement with it. However, as you
23 can see from their comments, it is only certain
24 aspects such as the provision of samples ... which
25 they object to ..."

34

1 The correspondence continues with, ultimately, if
2 we go to IPSN0000312_116. This is just -- again, by
3 way of example, we can see there's then a response.
4 There have been further telephone conversations. We
5 can see that from the opening paragraph. This is
6 Mrs Boulton, 20 April. There's then further discussion
7 about the issue of -- the use of the Cutter house
8 standard, so relating to other aspects of the
9 conditions.

10 If we go over the page, we can see that there is
11 now agreement to the imposition of the batch release
12 procedure. The correspondence that we have seen does
13 not return to the question either of pool sizes or
14 information about donor rejection. So there is no
15 response, for example, from the Department saying,
16 "Well, you can't comply with that condition", asking
17 for more information about why, or saying, "Well, I'm
18 sorry, we can't deal with the matter, we can't deal
19 with your application any further".

20 **SIR BRIAN LANGSTAFF:** Was the licence ever varied?

21 **MS RICHARDS:** Well, the slightly complicated picture is
22 Bayer withdraw their application for a licence and
23 then Speywood get the licence and we don't have
24 a complete set of documents. I'll show you what we do
25 have. But the purpose, at the moment, of showing you

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1 the correspondence is to indicate that the Licensing
2 Authority did pick up on, and press, a number of
3 matters in relation to the conditions. But the issue
4 in relation to the pool sizes, that seems to have been
5 accepted as satisfactory, and the explanation is that
6 we don't have the information in relation to rates of
7 rejection or reasons of rejections of donors. It
8 appears no further in the correspondence or
9 communications.

10 So it, effectively, appears to have been accepted.
11 There's no evidence of the matter going back to the
12 Subcommittee or the Committee, for further
13 consideration of that issue. Now, that doesn't mean
14 it didn't happen, but we've not seen any documentation
15 to suggest that it did.

16 **SIR BRIAN LANGSTAFF:** So, as far as we know, there was
17 a condition to which the licence was subject, which
18 was never fulfilled?

19 **MS RICHARDS:** Yes. But, as I say, the position is
20 complicated by the fact that Bayer UK withdraw their
21 application, Speywood make a separate application, we
22 don't have a complete set of documents but I'll show
23 you in relation to that.

24 What I think we can say is, when we look at what
25 seem to have concerned the Sub-Committee on Biologics

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1 had to be upgraded."

2 What that's a reference to, other than possibly
3 the focus brought to bear on it by the World in Action
4 documentary and the ministerial interest, is not
5 clear.

6 If we then go to BAYP0000020_039, we're now at
7 July 1976, and this is an internal Bayer/Cutter
8 communication:

9 "Mrs Boulton on holiday but have checked myself with
10 Ministry. They intend issuing a licence to us as soon
11 as possible. Any other minor difficulties they say
12 can be settled after registration. Armour have
13 received a licence and the product is therefore
14 registered. I also confirmed this with Ministry."

15 Then if we -- then the documentation becomes
16 a little confusing. If we go to MHRA0009276, this is
17 a document from the Committee on Safety of Medicines
18 to the Licensing Authority. It refers to Bayer UK's
19 licence application. We've got the name of Bayer
20 handwritten in there, and the product licence
21 application, which was PL/0010/0061, which was the
22 licence application in relation to which we've been
23 looking at the material.

24 We then -- I have somewhere got written down
25 somewhere what the translation is of the handwriting,

39

1 and the Committee on Safety of Medicines, such that
2 they wanted these to be conditions on the licence,
3 that there is nothing that addresses those concerns,
4 other than the Bayer information about pool sizes, and
5 a licence is granted, and Koate becomes a concentrate
6 distributed in the UK.

7 So it's -- what you might think the unsatisfactory
8 position that eventuates is that, for whatever reason,
9 those conditions, other than the information about
10 pool sizes, effectively fall away.

11 There is a letter from Dr Andrews at
12 BAYP0000001_119, where he refers to a letter from
13 Mrs Boulton, 23 April. Again, this is dealing with the
14 issue of calibration and use of house standard or
15 international standard, and not dealing with issues
16 relating to pool sizes or donations.

17 This shows that the Licensing Authority wasn't
18 afraid to be robust when it wanted to, so on that
19 separate issue, it's saying, "What you've told us is
20 not an adequate reply":

21 "It will be necessary for this letter to be
22 answered satisfactorily point by point in detail
23 before the licence can be reconsidered. Cutter may
24 not be aware of the extent to which control of
25 Factor VIII products imported into this country has

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1 which I can provide in due course, but we won't go
2 through that now.

3 We can then see the comment at the bottom which we
4 saw from the document we looked at which set out the
5 Committee's decision:

6 "The Committee also advised that this product
7 (should be marked as 'recently introduced' in MIMS
8 and) should be the subject of the special directive
9 for the reporting of adverse reactions."

10 Then slightly curiously the date that's given, or
11 the date upon which document is signed, is
12 29 July 1976. But that would fit with the
13 understanding in the document many just looked at, the
14 telex we just looked at, that there was an intention
15 that a licence would be issued.

16 What then happened, if we go to BAYP0000020_040,
17 is an issue arose -- if we just look at the second
18 paragraph of that -- about the role of Speywood, and
19 there was a request there that the licence would be in
20 the name of Cutter Laboratories, the logo would read
21 "Manufactured by Cutter Laboratories and distributed
22 by Speywood". I won't go into some further material
23 but it appears to have been determined that that
24 wasn't possible.

25 If we turn to MHRA0009278, we can see then that

40

1 Mrs Boulton of Bayer on 18 August 1976 wrote to the
2 Medicines Division, so the Licensing Authority,
3 saying:

4 "We confirm that when you receive an application
5 for a Product Licence for Koate from:

6 "Speywood Laboratories ...

7 "we have no objection to your taking account of
8 the data submitted to you by us in connection with our
9 Product Licence application ... for Koate.

10 "At the same time, we wish to withdraw our
11 application for a Product Licence for Koate as the
12 importation and marketing of Koate in the UK will now
13 be solely in the hands of Speywood Laboratories."

14 And there is then, if we look at BAYP0000020_048,
15 a letter from Speywood, Mr Heath of Speywood, to
16 Mrs Boulton. He thanks her for her help. And he says:

17 "My visit to the Department of Health and Social
18 Security was 'Plain Sailing' apart from the flap about
19 the 'omnibus' undertaking signed by Cutter."

20 Then, it would appear, and it may be that we can
21 cast some further light on this when we look at
22 Speywood tomorrow, that Speywood have handed over the
23 licence application that they are now making for
24 Koate, and reference is made to some earlier
25 correspondence.

41

1 "Koate concentrate is a purified dried fraction of
2 pooled plasma obtained from many donors. Since the
3 presence or absence of hepatitis virus in Koate
4 concentrate cannot be proven with absolute certainty,
5 the presence of such a virus should be assumed and the
6 hazard of administering Koate concentrate should be
7 weighed against the medical consequences of
8 withholding it."

9 Then if we go over the page, we can see various
10 provisions subject to which the licence has been
11 granted. The first is compliance with various aspects
12 of the relevant statutory regulations. (2) is about
13 the number of the licence appearing on packages,
14 package inserts and literature, et cetera. (3) is
15 about usage. (4) is consistency between the
16 specification and the finished product and the
17 information in the application. (5) is about method
18 of manufacture. (6) is essentially about the batch
19 release procedure. And (7) is a further reflection of
20 that. And then (8), again, is about withdrawal of
21 batches if informed by the licensing authority that
22 any particular batch doesn't conform with the relevant
23 requirements.

24 So there's nothing further there in relation to
25 the matters that we looked at in the context of

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1 Then we see the last paragraph Mr Heath says:

2 "Also I would like to see Dr Andrews reply to your
3 letter of the 27th February 1976, in order to judge
4 whether or not he accepted your comments re labelling,
5 particularly how he want the pool size to be
6 indicated."

7 And certainly, sir, I've not seen anything further
8 from Dr Andrews in relation to that issue, pool size,
9 either in terms of the substantive condition or in
10 relation to the issue of labelling.

11 Then if we go to -- I hope this is the right
12 reference, Soumik -- IPSN0000312_036.

13 So this is then the licence, the product licence
14 in relation to Koate, which was granted to Speywood,
15 so the product licence number is 3070/0004, because
16 Bayer's application's been withdrawn. We can see the
17 date of grant is 27 August 1976, although the product
18 licence actually signed on 1 March 1977.

19 And if we go over the page, we can then see
20 reference to the product, Koate.

21 If we go got the next page, we can see the
22 manufacturer is, as we've already seen, Cutter
23 Laboratories Inc.

24 At paragraph 7 we can see there what's said in
25 this application:

42

1 Bayer's application. We'll look tomorrow at such
2 material as we have from Speywood but I'm concerned
3 today with Bayer and Cutter, and Koate then becomes
4 distributed in the UK by Speywood for a period of
5 time. So you'll see licensed then by August of 1976,
6 but with these various issues having been initially
7 identified, at the beginning of 1976, as important,
8 and then apparently seeming to fall away.

9 I am going to come later to some Cutter materials
10 which show matters relating to the state of the market
11 over a number of years in the UK in terms of sales of
12 Koate, but before I do that, if we can just look at
13 two of the tables we looked at in relation to Armour,
14 because they also contain information at different
15 points in time about Koate.

16 So if we start with PRSE0003437, this was a table
17 showing quantities of Factor VIII concentrate used in
18 UK haemophiliacs in the years 1980 and 1981.

19 And you'll see there -- we looked at the Armour
20 figures earlier in the week, then we've got the Cutter
21 figures for Koate, because, as we'll come on to,
22 Cutter then come back into the scene by this time.
23 And we can see the figures 4.935 million international
24 units in 1980 and 3.823 million international units
25 in 1981.

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1 So not the same magnitude as, for example, the
2 Armour product, but nonetheless a significant amount
3 of the Koate concentrate being produced and
4 distributed in the UK in 1980 and 1981. And then
5 you'll see the reference there to Speywood's product,
6 Humanate, which we'll hear more about tomorrow.

7 If we then, in terms of licensing, move forward
8 to 1980, BAYP0000001_140. We can see this is a letter
9 from the Licensing Authority now to Cutter
10 Laboratories Limited, so Cutter's UK manifestation has
11 now made an application for a product licence for
12 Koate. We've got the licence number there: 1605/0004.
13 The date of this letter is 10 June 1980. It says:

14 "I refer to your application dated 24 January 1980
15 as amended by your letter of 6 March 1980."

16 And unfortunately we don't seem to have those
17 materials, in terms of the underlying application and
18 correspondence.

19 "Authority has now been given for the grant of
20 a product licence for ...Koate ..."

21 And there we've got the licence number.

22 Reference is made to the formal documents being
23 enclosed. We don't, I think, need to look at all of
24 those formal documents, but if we look at one part of
25 the enclosures at BAYP0000001_142, we can see here the

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1 says:

2 "The whole situation regarding the present
3 problems with sales of Koate was discussed
4 extensively, including the fact that it had been
5 impossible to sell Koate during the months of October
6 and November, although it was hoped that following the
7 reduction in price that it would be possible to make
8 meaningful sales starting in December 1980 and going
9 through January 1981 onwards at a price of
10 approximately 7.2p per unit."

11 Next paragraph:

12 "It was agreed that the Managing Director ...
13 would put together a full situation report regarding
14 Koate and also the Speywood parallel product known as
15 Humanate which was in fact Koate marketed under a
16 different label."

17 Again, we'll come back to that tomorrow.

18 If we look at the bottom of the page, last
19 paragraph, it says:

20 "As regards sales from January 1981 it was thought
21 that at the reduced price and with shading on seven
22 days settlement, there were good prospects for sales
23 of fairly large lots. Whilst this situation [and this
24 I think is the Speywood situation] had had an adverse
25 effect on the 1980 figures it was hoped that by

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1 licence itself, the product licence, 1605/0004, has
2 been granted to Cutter, and then if we go to the next
3 page, we can see the particulars there set out. We
4 don't need to go to any particular part of that.
5 We've got there the reference, just at 9, to
6 manufacturer, Cutter Laboratories Inc. And you'll see
7 there the reference to Cutter's facilities in
8 Berkeley, California, and Clayton, North California.

9 I mention that only because there are a number of
10 documents from Cutter in the States in which reference
11 is made to those two facilities and, from time to
12 time, to inspection of those facilities.

13 If we go to the next page, we then have "Further
14 provisions subject to which the licence has been
15 granted", and they are in the same familiar and what
16 seems to be largely standard format.

17 So that's 1980. A licence for Koate is now held
18 by Cutter Laboratories Limited. As I say, we don't,
19 I'm afraid, have the licence application, so I can't
20 assist with what information was provided.

21 We can see some of the difficulties that had
22 arisen in relation to the relationship with Speywood.
23 If we go to BAYP0000021_063, this is a board meeting
24 of Cutter Laboratories Limited, so of the UK company,
25 16 December 1980, and under the heading "Koate" it

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1 producing a realistic sale price in the UK market that
2 it would be possible to ensure that the Company had
3 adequate sales and also that it should be possible to
4 price Humanate out of the market coupled with the fact
5 that NIBSAC and Dr Duncan Thomas were very concerned
6 regarding Humanate and the impossibility of tracing
7 its manufacture back to its source."

8 Then if we go to the third page, not on the theme
9 of licensing, but so that we don't need to come back
10 to this document, there's just a couple of paragraphs
11 worth looking at.

12 Under the heading "Sales", it's said:

13 "It was confirmed that a number of credits were
14 due from the [US] in respect of products which have
15 had to be returned from both Oxford and St Thomas'
16 Hospital due to adverse reactions having been
17 obtained. At Oxford there had been 13 cases out of
18 20 patients using Koate and in the case of St Thomas'
19 two patients had contracted hepatitis and
20 Dr Richard Schwartz of Cutter Inc had authorised the
21 immediate withdrawal of the batch."

22 Then there's a suggestion that there might have
23 been some lack of proper storage by Speywood. But at
24 any rate, it is the reference there to hepatitis that
25 I wanted to flag up.

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1 Then if you go to page 5 of this document, there's
 2 a reference there to Dr Aronstam and Treloar's:
 3 "It was agreed that full investigation should go
 4 into the promises made by Carroll Jones and
 5 Sidney Pugh to the Alton Centre where Dr Aronstam had
 6 been promised some kind of financial support for
 7 a research fellowship and had put in a great deal of
 8 time and effort in putting forward a representation to
 9 the Company. However, nothing materialised and it
 10 seems that this was causing the Alton Centre to have
 11 nothing to do with Cutter whatsoever. It was agreed
 12 that this should now be looked into again with a view
 13 to the Company being in a position to offer some form
 14 of financial support for such a fellowship."

15 Again, clearly relevant when you come to consider
 16 matters such as relationships between pharmaceutical
 17 companies and Haemophilia Centre Directors.

18 Then we can just pick up the picture in terms of
 19 Cutter's marketing of Koate at BAYP00000019_080.

20 These are the minutes of a board meeting on
 21 11 August 1981 of Cutter Laboratories Limited.
 22 There's a discussion recorded in paragraph 1 about
 23 prices.

24 Then at paragraph 3 we can see:

25 "Concern [being] expressed at the period which

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1 now to Miles Laboratories Limited, trading as Cutter
 2 Laboratories (Division of Miles Laboratories Limited).
 3 So we've got there the interrelationships which
 4 I referred to yesterday afternoon.

5 We can see the date of grant is 16 August 1983.
 6 If we go over the page, we can see the detail of the
 7 product, so it's a licence for Koate. We haven't,
 8 I think, got the licence application documentation,
 9 I'm afraid, but if we go to the third page, we can see
 10 the "Warning", just over halfway down the page:

11 "Koate concentrate is a purified dried fraction of
 12 pooled plasma obtained from many paid donors. The
 13 presence of hepatitis viruses should be assumed and
 14 the hazard of administering Koate concentrate should
 15 be weighed against the medical consequence of
 16 withholding it, particularly in persons with few
 17 previous transfusions of blood or blood products."

18 I'll come back to the language of some of the
 19 warnings this afternoon, but that was the warning in
 20 relation to Koate as at the August 1983 licence grant.
 21 You'll note there no reference to AIDS at this stage.

22 If we look at BAYP00000028_038, and we'll come back
 23 to these issues later today, but we can see that back
 24 in February 1983, the manufacturer, Cutter
 25 Laboratories, is alert to the potential risk of AIDS

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1 existed in obtaining product licences due to some
 2 degree to DHSS staff shortages and possibly
 3 shortcomings in the form of presentation.

4 "It was agreed that all future Cutter submissions
 5 should go through the UK Company assisted by the
 6 experts at Bayer UK to see that future presentations
 7 complied fully with the UK requirements of the
 8 Licensing Authority both as to content and format."

9 It's not entirely clear what that's a reference to
 10 in terms of the particular licence application. As
 11 I say, there were other products. So whether it's
 12 factor concentrates or a different product that might
 13 have given rise to that concern is unclear.

14 Sir, I'm going to move next to a further product
 15 licence in 1983 for Koate, but I note the time so
 16 perhaps we could take a break at this stage.

17 **SIR BRIAN LANGSTAFF:** Yes, we'll take a break now until
 18 quarter to 12. Quarter to 12.

19 (11.15 am)

(A short break)

21 (11.45 am)

22 **MS RICHARDS:** Sir, in terms of the licensing history of
 23 Koate, we pick the matter up next in 1983. If we go
 24 to BAYP00000002_196, please, Soumik.

25 We can see here a product licence being granted

50

1 because it's beginning to take measures in relation to
 2 screening donors on the basis of it. We see from this
 3 announcement "Cutter Laboratories announces plasma
 4 donor screening programme", first paragraph, third
 5 line:

6 "... today announced it will screen plasma donors
 7 by using a confidential questionnaire designed to
 8 eliminate those in high-risk groups for [AIDS]."

9 We can see the second paragraph records:

10 "The initial investigations at [CDC] and at other
 11 research centers around the country have indicated
 12 that AIDS ... might be transmissible through blood and
 13 certain blood plasma products."

14 Then there's further details over the page --
 15 we'll look at it now so we don't need necessarily to
 16 come back to it later -- about the questionnaire. We
 17 can see it is said, in the second paragraph, that:

18 "... all donors at Cutter-owned and affiliated
 19 plasma centres [and I'll be coming on to what we know
 20 about sources of plasma for Cutter later] will be
 21 asked to read and sign a confidential questionnaire
 22 which states they are not members of any of the three
 23 high-risk groups. In addition, the medical
 24 examination given to all donors will be expanded to
 25 include all questions specifically related to

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1 AIDS-like symptoms, such as night sweats, drastic
2 unexplained weight loss and recurrent fever."
3 Then there's reference in the next paragraph to an
4 intention to:
5 "... initiate supplementary physical examinations
6 of all ... donors ..."
7 Cutter, the next paragraph tells us:
8 "... is committed to taking whatever precautionary
9 measures the company can to protect the haemophiliacs
10 who depend on our products for their lives ..."
11 Then there's a reference to the development of
12 heat treatment. So that's Cutter's position as
13 manufacturer in February 1983 but, as I say, the
14 licence granted to Miles Laboratories Limited, in
15 August of that year, contains only the warning that
16 we've seen by reference to hepatitis viruses.
17 Just sticking with 1983, for the moment, if we go
18 to BAYP0000027_074, we can see a letter of
19 29 November 1983.

20 **SIR BRIAN LANGSTAFF:** 23.

21 **MS RICHARDS:** Sorry, 23 November 1983, from a sales
22 manager, a Mr Barber, to Dr Wensley, who we know,
23 obviously both in relation to the Blood Transfusion
24 Service in Manchester and the Manchester Haemophilia
25 Centre. We can see he is providing information

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1 of the page, manufactured from plasma, so also
2 manufactured from plasma collected before
3 1 March 1983, and the price of that is, if we look at
4 the top of the next page, 5p per international unit.
5 So cheaper prices being offered in relation to
6 Koate that is manufactured from plasma collected
7 before 1 March 1983.
8 Returning, then, to the licensing process. If we
9 go to BAYP0000003_230, we've got an application for
10 a change to the licence. Again, we can see it's Miles
11 Laboratories Limited, because they're the current
12 licence holder for Koate, and then we've got the
13 changes, which simply reflects HbC antibody tests now
14 included in the Cutter system, and the date of this is
15 10 May 1984. I think, in fact, we don't have any
16 further documentation in relation to that application.
17 If we then move to later in 1984, BAYP0000025_093,
18 this is a letter addressed now to Bayer AG in Germany,
19 4 December 1984. We start to see at this point the
20 transition to heat treated Koate, and I'll come on to
21 the licensing process in relation to Koate-HT, but we
22 can see reference in the second paragraph to
23 a Koate-HT trial, and then the author of the letter
24 Mr Marzouk says:
25 "... the situation has changed dramatically within

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1 further to a meeting that he'd held with Dr Wensley
2 about Koate batches. He refers to the copy of a May
3 edition of ECHO magazine, devoted entirely to AIDS,
4 and he talks about it containing a complete list of
5 all plasma donor centres:

6 "... you will note that there are no centres in
7 San Francisco or New York."

8 Again, I'll come on to this later. But then we
9 can see, just interesting to note, the different lots
10 of Koate being offered and the prices. So the first
11 group is manufactured from plasma all collected after
12 1 March 1983, and that's described as the effective
13 date when Cutter introduced the new regulations for
14 donor acceptance at the donor centre, and the price
15 that's there recorded is 6.75p per international unit.
16 Mr Barber says this is going to increase to 8p per
17 international unit from 1 January.

18 That's the post-March plasma.

19 The second group of lots, manufactured from Plasma
20 collected before 1 March 1983, and we can see that's
21 cheaper, 6.35p per international unit, "This price
22 will remain firm to you", subject then to release by
23 NIBSC and told the product could be available in early
24 February.

25 Then there's a third lot described at the bottom

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1 the last few days. A haemophiliac has died from AIDS
2 and the death of this patient has developed into a big
3 public and press campaign in favour of Heat Treated
4 material. Because of this we are now selling Koate HT
5 [that's a separate product for which there's a
6 separate licensing process].

7 "It is apparent that all centres will be
8 completely converted to Heat Treated material without
9 the need for a study."

10 Then we can see discussion as at late 1984 within
11 Cutter/Miles of the switch to heat-treated products at
12 BAYP0000025_087, this is 30 November 1984, and we can
13 see it says:

14 "Meetings were held with Cutter UK sales and
15 marketing staff, as well as with Miles UK support
16 personnel, to discuss results to date in 1984 and make
17 strategic plans for 1985."

18 So that's what this document relates to.

19 If we go to the bottom of page 3 and pick up the
20 heading "Koate HT", so the heat-treated product:

21 "AIDS has finally come to the United Kingdom with
22 a force that has caused a virtual panic in the
23 Department of Health. For one year this department
24 has blocked every application for registration of
25 heat-treated factor VIII products and now in the space

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1 of one week they are in a panic responding to the
 2 newspaper demands for action concerning the AIDS risk
 3 to haemophiliacs. The action by the Department of
 4 Health comes after the announcement in the Sunday mail
 5 that 2 haemophiliacs have died from AIDS."

6 Then there's reference to a number of headlines.

7 "Following these headlines the Department of
 8 Health has advised Cutter that every action will be
 9 taken to grant us registration by early December. As
 10 we indicated in our last trip report ... on this
 11 subject, Marie Tatt is to make every effort to have
 12 them grant us a new registration, not a licence
 13 amendment.

14 "The Hemophilia Treatment Centers are now also
 15 responding to the newspaper stimulus and requesting
 16 heat-treated Koate on a name patient basis. Cutter UK
 17 had in inventory 1,000 vials of 500 IU Koate HT which
 18 has now been allocated and requests for other sizes
 19 have been received from the treatment centers."

20 Then, bottom of the page:

21 "The treatment centers are in some cases asking to
 22 return regular Koate [the untreated product] after
 23 they have received Koate HT. These requests are being
 24 dealt with on an account by account basis, but we
 25 intend to accept all returns where we perceive an

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1 if we go to the bottom of the page we can see
 2 a summary of the position as between the two Koate
 3 products, the licensed product, which is the unheated
 4 product, and then the heat-treated, which is currently
 5 being dealt with on named-patient basis and is
 6 unlicensed.

7 "Koate Factor VIII Concentrate has successfully
 8 reached and exceeded the end of year budget by 4%.
 9 Koate HT was forced onto the UK market place by the
 10 market's demand for heat treated Factor VIII
 11 Concentrate. Some Koate regular material was returned
 12 during December ... However ... the sale of the
 13 Koate HT has compensated and exceeded the monthly
 14 budget ..."

15 So that's a snapshot of the picture as at the end
 16 of December 1984.

17 As we'll see shortly, there's then a licensing
 18 application process for the heat-treated product, but
 19 just to complete the picture in relation to what
 20 happened to the product licence for the unheated
 21 Koate, we can pick that up at BAYP000011_090.

22 This is a later document, a Bayer document from
 23 17 May 1988. It tells us that:

24 "A reminder has been received from the DHSS that
 25 the product licence of Koate [and we have the product

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1 honest concern on the part of the transfusion center
 2 ."

3 Then we see can see the price of the heat-treated
 4 product at the top of the next page:

5 "We have established a selling price of 12 pence
 6 per unit on the Koate HT."

7 If we turn, then, to BAYP0000003_341, this is
 8 another application for a change of product licence,
 9 so this is still the original Koate product with the
 10 licence number 0055/0065 held by Miles Laboratories
 11 Limited. It's not the heat treated product, but if we
 12 see further down the page we can see what's said to be
 13 the reasons for change:

14 "The process changes were made in order to produce
 15 a product suitable for heat-treatment."

16 Then over the page we see the detail of that. So
 17 there's a change to the manufacturing process, the
 18 reason being it will enable production of the
 19 heat-treated product, and the date of this is
 20 7 December 1984.

21 If we then go to BAYP0000024_047, we can see from
 22 an internal Miles/Cutter memo dated 30 January 1985,
 23 what we have is described as a "Key Indicator Report"
 24 for December 1984.

25 We needn't go through the details of the sales but

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1 licence number there set out] expires on
 2 15 August 1988 and a renewal application should,
 3 therefore, be submitted as soon as possible.

4 "However, I think I am correct in saying that this
 5 form of Koate is no longer produced since it has been
 6 superseded by Koate HT. If you are in agreement,
 7 I will inform the DHSS that the product licence
 8 holder, Miles, will allow the licence to lapse on
 9 expiry."

10 And that is what happened.

11 So effectively Koate remained licensed until 1988,
 12 the unheated product, but was not -- so the licence
 13 was not revoked, but it then lapsed in 1988, as we see
 14 here.

15 So that completes the overview, sir, of the
 16 licensing position in relation to the unheated Koate
 17 material.

18 If we can then just look a little more at the
 19 position in relation to Koate-HT, the heat-treated
 20 product, if we turn, first of all, to BAYP0000027_078.
 21 This is a document relating to the position in the US
 22 from Cutter Laboratories to the Office of Biologic
 23 Research and Review, November 21, 1983.

24 We don't need to go through the detail of it
 25 because it is dealing with the US licensing process

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1 but we can see that, as at November 1983, Cutter was
 2 writing to the office of biologic research, and we
 3 need only look at the first paragraph, with a view to
 4 amending its product licence application to include
 5 the dry heat-treatment step. We don't need to follow
 6 through what happened in terms of US licensing.
 7 In terms of the position then in relation to the
 8 heat-treated product in the UK, if we go to
 9 BAYP0000025_019, we can see a telex, the date of which
 10 is 3 September 1984 and we can see the position in the
 11 UK as at September of 1984 is that there had been an
 12 application under the CTX procedure in relation to
 13 a clinical trial of Koate-HT, and this confirms that
 14 approval had been received from the Department of
 15 Health for the clinical trial to commence on -- "which
 16 may commence on 12 September 1984".
 17 If we then just -- I'm slightly dotting between
 18 the UK and the US here, but if we go to CGRA0000447,
 19 again, this is a document, I think, sent by the
 20 president of -- described as Cutter Biological in
 21 California, 26 October 1984, to haemophilia treaters,
 22 so haemophilia clinicians, in the States. I just draw
 23 your attention to the last paragraph on this page
 24 which explains that:
 25 "... Cutter is immediately converting manufacture

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1 from various other documents as well.
 2 If we then look at CRGA0000554, we've got
 3 a document headed "Cutter UK Year End Review and
 4 Reports", dated January 1985. And it gives us an
 5 overview of the position in relation to the
 6 introduction of heat-treated Koate in 1984. So if we
 7 pick it up at page 5, second paragraph begins:
 8 "Koate HT was launched into the UK market at the
 9 end of November, 1984."
 10 Then if we turn to page 8, we can see a little
 11 more about the background circumstances in that first
 12 paragraph.
 13 "It was anticipated that Koate HT would be
 14 launched into the UK market during the second quarter
 15 of 1985. Its appearance at the end of November, 1984,
 16 replacing all non-treated material, was somewhat
 17 hasty."
 18 And we've seen the other documents which explain
 19 the circumstances of that.
 20 "The fast response by Cutter UK and the
 21 availability of material ensured we retained all
 22 existing business and were able to supply additional
 23 sales where other commercial companies and the NHS
 24 were unable to supply heat-treated materials."
 25 There's then a reference to overall market shares,

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1 of all Koate to Koate-HT."
 2 So that was the plan in terms of manufacture as at
 3 the end of October 1984.
 4 Then if we then move chronologically back to the
 5 UK to DHSC0002251_015, we can then pick the matter up
 6 at the end of November 1984. This is a communication
 7 from Dr ME Duncan to the Supplies Division, which
 8 records that:
 9 "An abridged application has been received from
 10 Miles Laboratories to license dry heat-treated
 11 Factor VIII (... Koate-HT), and this will be handled
 12 as a matter of some urgency.
 13 "NIBSC has been informed, and their expert advice
 14 has been sought".
 15 So we've moved fairly quickly from the clinical
 16 trial process contemplated in September of 1984 to the
 17 abridged licence application for a product licence for
 18 heat-treated Koate by the end of November 1984.
 19 In the meantime, if we look at BAYP0000025_081, we
 20 see -- and this happens to be a letter from the sales
 21 development manager Linda Frith to Professor Bloom,
 22 29 November, but we can see that the heat-treated
 23 product was being offered for sale to Haemophilia
 24 Centres, and it was at that stage because it wasn't
 25 licensed on a named-patient basis. That's apparent

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1 and you'll see there Cutter's market share is
 2 described as being approximately 22%, with Armour's
 3 being 56% -- this is during 1984 -- Alpha, 17; Immuno,
 4 3; Travenol, 2%. Then there's a description of the
 5 offer of heat-treated material by some of the other
 6 commercial companies in the next paragraphs.
 7 The bottom of the page just looks forward from
 8 Cutter's perspective to 1985.
 9 "Cutter will remain one of the major suppliers in
 10 the UK for heat-treated Factor VIII concentrate during
 11 1985.
 12 "It is planned to make Cutter a household name, in
 13 the haemophilia field, promoting Koate HT's many
 14 significant advantages over the competition; improving
 15 and expanding our relationships with our users ..."
 16 As you have previously observed, sir, that's
 17 effectively a reference to those who were purchasing
 18 the product as clinicians or Health Authority
 19 officials.
 20 "... in person, by mailings and advertising
 21 literature.
 22 "The US wall poster and 'slim Jim' information
 23 sheets along with the Home Treatment Therapy film will
 24 be useful tools. Product licence registration for
 25 Koate HT is expected during the first quarter of 1985

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1 with product being supplied at present on a named
2 patient basis."
3 Then if we go to page 10, this will save coming
4 back to this document when we look shortly at Konyne,
5 this is a reference here to Konyne HT, so the
6 heat-treated Konyne product for the treatment of
7 haemophilia B:

8 "Interest in Konyne HT has prompted a product
9 licence submission to the DHSS with present supply
10 again being maintained on a named patient basis.

11 "Adequate supply of Factor IX for the UK market
12 had previously been supplied by Elstree, but
13 heat-treated Factor IX is not expected to be available
14 from this source until late 1985 or early 1986."

15 If we then go to CGRA0000559, this, again, is
16 an internal Cutter document, Cutter or Miles document.
17 If we go to the second page, we could again just pick
18 up the picture during the bottom half of the page
19 about the switchover from Koate to Koate-HT. So under
20 the heading "Koate Returned Material", the document
21 reports that:

22 "The December figures show returned Koate from
23 only two centres, but the followed centres have
24 subsequently returned or are in the process of
25 returning material."

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1 donor donating blood, and then having been diagnosed
2 as an AIDS victim; and then the position in relation
3 to Scotland.

4 "The response of the haemophilia centres covered
5 the entire spectrum from panic to no action.

6 "The Wessex regional centre at Alton changed
7 overnight from regular material to Armour heat-treated
8 material.

9 "Newcastle's transition was slower but a definite
10 replacement of regular stock to heat treated has
11 occurred. No non heat treated material is now being
12 used.

13 "Oxford, on the other hand, waited for a formal
14 discussion between the haemophilia Directors before
15 switching to heat-treated materials.

16 "Other centres like Saint George's, Birmingham,
17 the Hammersmith, and the London are still using
18 non-heat treatment material. The material may be
19 commercial or NHS product."

20 Then over the page there's a discussion of Cutter
21 Laboratories' role:

22 "We had the good fortune of 1000 vials of Koate HT
23 500 [international units] nominal potency for our
24 inventory and the almost immediate availability and
25 supply of other potencies from the US.

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1 A list of haemophilia centres are there set out.

2 Then it is recorded that:

3 "All the centres which returned Koate in December
4 and those subsequently have replaced with Koate-HT."

5 Then if we go to the next page, under the heading
6 "The Current Factor VIII Market Environment, Koate
7 heat-treated material", we see the observations from
8 the Cutter perspective about a number of haemophilia
9 clinician -- sorry, Haemophilia Centres and their
10 response. So:

11 "The intention of the UK was to launch Koate HT
12 into the market into the second quarter of 1985 with
13 an organised entry ensuring product availability and
14 a product licence.

15 "However on several occasions during November,
16 1984, the national papers flooded the media with shock
17 announcements of the deaths and the contraction of
18 AIDS through blood donations and the subsequent
19 fractions of Factor VIII concentrate.

20 "Stories included ..."

21 Then we see a number of accounts there set out.
22 We've seen reference, I think, to all of these in the
23 evidence that the Inquiry has previously heard, so
24 deaths in Australia; the death of a haemophiliac from
25 AIDS, who was a patient at Newcastle; a Bournemouth

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1 "This gave us, as we were to find out, a clear
2 selling advantage over all our competitors."

3 Then objectives and tactics are then set out.
4 Objectives:

5 "To retain all Cutter's existing Koate accounts
6 ... by direct replacement with Koate HT.

7 "To increase Cutter's market share by whatever
8 amount possible, given the situation and stocks
9 available to us."

10 Then a number of tactics there set out:

11 "... inform all Koate users of the availability of
12 Koate HT.

13 "To inform all Koate users we would be happy for
14 them to return any Koate stock and credit their
15 account.

16 "To inform all the other Factor VIII concentrate
17 users to the availability of Koate HT.

18 "To organise sufficient stocks from the US to
19 supply all current market needs ...

20 "Continual reappraisal of the situation, stocks,
21 customers and competitor activity."

22 Then if we go to the bottom of the next page, we
23 can see the licensing position is set out under the
24 heading "Koate HT Licence":

25 "A submission has been made to the DHSS for the

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1 registration of Koate HT. It is believed the licence
2 will be granted at a meeting on 26th January. It will
3 take possibly six weeks before paperwork is completed.

4 "Konyne HT

5 "A licence for Konyne HT has also been submitted."

6 Pausing there, we see from this series of internal
7 documents a perspective we haven't perhaps seen
8 before, the perspective of the pharmaceutical company
9 in the UK as to its analysis of what happened in the
10 latter part of 1984, in terms of what's described as
11 the sudden response to media reports and a sudden
12 demand for heat-treated material by some haemophilia
13 centres, if not all, and then the impact that then had
14 on the licensing process leading to the licensing
15 process being compressed and a licence being
16 submitted -- sorry, a licence application being
17 submitted rather earlier than had otherwise been
18 anticipated.

19 Before we leave this document we should perhaps
20 look at paragraph 8 -- sorry, page 8, I'm sorry,
21 Soumik -- page 8, which is a report of various
22 meetings between Cutter representatives and
23 haemophilia clinicians and other haemophilia staff.
24 Again, it's perhaps just instructive in terms of what
25 it reveals about relationships. So we've got, second

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1 somewhere in the region of three months' supply of NHS
2 material."

3 Then this:

4 "By far the most important happening this month is
5 a very successful meeting with Dr Wensley
6 (MANCHESTER), when he promised all of his business for
7 the next contract. This is the period between January
8 and April, 1985, depending on finances being
9 available."

10 Then skipping over a line:

11 "Dr Wensley was promised a £10,000 sponsorship
12 programme for research to be carried out over
13 two years. In financial terms this contract will mean
14 the sale of approximately 2.5 million [international
15 units] of Koate HT during 1985 ..."

16 So interesting to see the range of interactions
17 that were taking place between the pharmaceutical rep
18 and the various treatment centres in that critical
19 month of December 1984.

20 If we then go to BAYP0000024_034, we can pick up
21 the picture in relation to the Licensing Authority's
22 consideration of the product licence application for
23 Koate-HT. So this is dated 17 January 1985:

24 "Re Koate-HT product licence. Informal telephone
25 call received from Dr Duncan. Product licence will be

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1 paragraph, Professor Bloom was contacted:

2 "... he assured me that they will stay with

3 Cutter. He also informed me that they are switching
4 completely to Koate HT from that day, (4th December)."

5 There's then -- next paragraph talks about
6 a meeting with haemophilia staff at Lincoln, the
7 Lincoln Haemophilia Centre:

8 "Koate HT was discussed, however no decisions have
9 yet been made."

10 There's a reference to a visit from the Immuno
11 rep.

12 "Dr Mitchell (DERBY) [a meeting] her decision to
13 change to [heat-treated] material for their next
14 order."

15 There's then -- we can skip over the next
16 paragraph, because that deals with the blood bags that
17 were sold by Cutter rather than Koate. Then there's
18 a reference to a meeting at which it was learnt that:

19 "Sheffield, Nottingham and Leicester ... have
20 decided to use heat treated material only on newly
21 diagnosed severe haemophiliacs.

22 "The LEEDS region has made a decision to use only
23 [heat-treated] material from the commercial companies
24 and the likelihood of Cutter obtaining business in the
25 region is fair. At the moment, however, they have

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1 issued on receipt of written confirmation from us that
2 we will include a statement in data sheet that product
3 is 'heated at 68 degrees [centigrade] for 72 hours and
4 this is done to reduce risk of infectivity'. No need
5 to mention that dry heat is used. Please confirm that
6 this is acceptable to Cutter."

7 Then the responses at BAYP0000003_301,
8 23 January 1985, to Dr Duncan at the DHSS, confirming
9 that the data sheet for Koate-HT will include that
10 statement about the heat treatment and that the step
11 has been introduced in order to reduce the risk of
12 transmission of infectious agents.

13 Then we can see the product licence being granted
14 in relation to Koate-HT at BAYP0000003_309. So it's
15 granted as a product licence 0055/0107 to Miles
16 Laboratories Limited, trading as Cutter Laboratories
17 Division of Miles Laboratories Limited. The date is
18 18 February 1985, we see that at the bottom of the
19 page.

20 If we go over the page, we can see that the
21 product is the Koate-HT product. Then if we go to the
22 next page, we pick up the heading "Warnings", towards
23 the bottom of the page. So there's reference to:

24 "Allergic reactions including chills, fever and
25 hypersensitivity reactions ..."

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1 Then there's an issue pertinent to certain blood
2 groups.
3 Then if we go over the page -- so nothing else by
4 way of warnings of relevance for present purposes, and
5 then over the page we've got, under the heading
6 "Contra-indications, Precautions and Warnings":
7 "Koate-HT concentrate is a purified dried fraction
8 of pooled plasma obtained from many donors. The
9 presence of hepatitis viruses should be assumed and
10 the hazard of administering Koate-HT should be weighed
11 against the medical consequence of withholding it,
12 particularly in persons who have had few previous
13 transfusions of blood or blood products."
14 So, again, the reference is to hepatitis viruses,
15 no reference there in relation to HTLV-III or AIDS.
16 But, in any event, that is the licence being granted
17 for the heat-treated product on, as it were, an
18 expedited basis in February 1985.
19 If we then go to BAYP0000008_069, we can see
20 an application for a change to the licence, the date
21 of the application is 30 May 1985, we see that from
22 the bottom of the page. The top of the page tells us
23 that it's an application in relation to the licence
24 for Koate-HT, and then we see on the screen what the
25 change is. The proposed additional words relate to:

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1 a confidential questionnaire which states that they
2 are not members of any of the high risk groups for
3 AIDS."
4 Then reference to the medical examination.
5 "No plasma is collected from the metropolitan
6 areas of New York, San Francisco, Los Angeles or Miami
7 ..."
8 That's plasma source, that's what's being said:
9 "Screening of Plasma.
10 "Prior to pooling, each individual unit of plasma
11 is tested and found non-reactive for hepatitis B
12 surface antigen and antibodies to HTLVIII."
13 So we've got the longstanding hepatitis B testing,
14 the more recently introduced screening in relation to
15 HTLV-III, and then we're told that:
16 "Cutter Laboratories is also screening individual
17 donations for [ALT] levels."
18 Then that paragraph concludes:
19 "By the end of this year, all batches of Koate HT
20 will have been prepared from plasma screened for ALT
21 levels in addition to HTLVIII antibodies and
22 hepatitis B surface antigen."
23 Then details are given about the heat treatment
24 process. Over the page, under the heading "Virus
25 Inactivation Studies: HIV", there's reference --

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1 "... including testing of samples from all donors
2 for antibodies to HTLV III."
3 Then the reason that's given for that is that:
4 "The procedure for screening of donors has been
5 updated in accordance with FDA requirements."
6 As far as we understand the position to be, that
7 change was approved. If we just then look at
8 BAYP0000009_030, this takes us forward now to
9 October 1986, and this is information that's being
10 given by Cutter through its sales team to haemophilia
11 clinicians in relation to the Koate-HT product. This
12 particular letter is being sent to Dr Prentice at
13 Plymouth, Dr Lee, who was the Haemophilia Centre
14 Director at Exeter, Dr Smith and Mr Gardiner at Bath.
15 We can see that there's been some form of meeting
16 because Mrs Frith writes:
17 "It was a pleasure to speak with you last week
18 about Koate HT. I've tried to answer your questions
19 about the product as follows ..."
20 Then we can see the provision of some information
21 as at October '86 about the product.
22 "Koate HT is prepared from pooled human plasma
23 from at least 1000 healthy donors."
24 So we have that phraseology "at least 1000" again.
25 "All donors are required to read and sign

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1 I don't need to go through the details of it -- to
2 what's said to be a range of studies reporting the
3 success of the heat treatment process in eliminating
4 HTLV-III.
5 Then if we just look towards the bottom of the
6 page, the paragraph above the heading "Product
7 Integrity", it deals with non-A, non-B hepatitis, so:
8 "Further evidence of absence of non-A, non-B
9 hepatitis and HTLVIII infectivity is obtained from
10 clinical use of the product."
11 Then it's said that:
12 "Since it was first marketed in the USA in
13 February 1984 and in the UK since February 1985, no
14 reports of hepatitis non-A, non-B or HTLVIII
15 antibodies seroconversion in patients treated with
16 Koate-HT have been received from these or other
17 markets worldwide."
18 So that's the information that's being provided
19 to, it would appear, a number of clinicians who have
20 sought specific answers to -- or sought further
21 information about the safety of the product, and then,
22 if we go to the next page, we can just see, in terms
23 of the marketing of and sales of the product, last two
24 paragraphs, Mrs Frith is saying that they can deliver
25 Koate-HT and all Cutter products the next day on

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1 receipt of a phoned order; in an emergency, same day
2 courier service and we can provide free home treatment
3 packs and carrier bags if required.

4 If I just then move forward in relation to
5 Koate-HT to 1988.

6 I am hoping this is the right reference, Soumik,
7 BAYP0000015_101.

8 If we go to the next page -- that's fine. I've
9 got the document in a slightly different format but
10 this is what we need:

11 "July 1 ... Visit to Bayer UK."

12 So it's an account from someone from, I think,
13 Cutter in the US to a visit to Bayer UK dealing with
14 a number of matters, most of which I don't need to
15 trouble you with. But if we go to -- it's probably
16 page 5, Soumik, we can see, bottom of the page --
17 there's an issue there where it says:

18 "We returned Dr Thomas' call ... about the
19 hepatitis reports with [a particular lot of] Koate
20 HT ..."

21 It's said that all records have been reviewed:

22 "Every unit was tested and negative for HBsAg as
23 was the plasma pool. He asked whether we could rule
24 out human error. Of course, we could not."

25 Then there's a further discussion in relation to

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1 licensing picture, this is an application to renew the
2 product licence for the heat-treated Koate product due
3 to expire on 17 February 1990. You will recall it had
4 been granted in February 1985. And there's an
5 application to renew the licence.

6 If we just go to page 4, we can see there again
7 the terminology that's used:

8 "The source material is pooled plasma obtained
9 from at least 1,000 healthy donors."

10 So that same term that we saw back from 1976, at
11 least 1,000 is used.

12 "It is collected by plasmapheresis at centres in
13 the USA, licensed by the FDA and inspected by both the
14 FDA and Cutter Laboratories ...

15 "The plasma is collected according to the Cutter
16 System of Plasmapheresis which incorporates all the
17 current FDA requirements for Source Plasma ...
18 including testing for Hepatitis B Surface Antigen and
19 antibodies for HIV. In addition, Cutter test samples
20 from all new donors for Antibody to Hepatitis B Core
21 Antigen."

22 So that the basic information in terms of the
23 screening and testing of the donations.

24 **SIR BRIAN LANGSTAFF:** It doesn't say anything there about
25 ALT tests.

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1 this issue in relation to hepatitis B. I'm not going
2 to go through all of it.

3 If you go to the next page, we can see there's
4 then a discussion in the second paragraph about
5 whether the product would be taken off the market.
6 The response is:

7 "... no, because there are patients to whom this
8 product represents no additional risk."

9 Then it's said that the lot, the particular lot,
10 will be withdrawn, and it will be called a withdrawal
11 rather than a recall and that the lot would probably
12 be destroyed. Then there's a request for samples.
13 Then we can see it says:

14 "Dr Thomas called back later to say he is
15 releasing the lot of Koate HT being held up. For
16 future lots, he wants a sample of plasma pool ..."

17 We will be coming back I think at a later stage of
18 hearings to look in more detail about what the
19 processes were at NIBSC in terms of both batch release
20 stop orders, recall and so on, but we can just see
21 there an example of interactions between Cutter and
22 Dr Thomas at the National Institute looking at issues
23 relating to hepatitis in particular lots.

24 Then, if we go to BAYP0000005_143, we're now in
25 November of 1989, and we can see, just to complete the

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1 **MS RICHARDS:** It doesn't, no.

2 **SIR BRIAN LANGSTAFF:** Despite that being part of the
3 licence.

4 **MS RICHARDS:** Yes. You're right, it doesn't. Whether
5 there's a reason for that, sir, I don't currently
6 know. But we can ascertain that.

7 Then BAYP0000033_012, this is a memorandum,
8 25 February 1992, and it's just an update about the
9 current status of Cutter products in the UK. If we go
10 to the bottom of the page it deals with the
11 Factor VIII products. It says:

12 "We currently hold a product licence for the dry
13 heat-treated product, Koate HT. This was withdrawn
14 from the market a couple of years ago for two reasons,
15 namely, the availability of safer products and the
16 fact that it is no longer manufactured by Cutter. The
17 licence will be allowed to lapse."

18 So that was the end of the licensing history in
19 relation to the heat-treated Koate -- or the product,
20 sorry, Koate-HT.

21 "Owing to inadequate resources from Cutter, the
22 additional work required to register the next
23 generation wet heat-treated product, Koate HS, was not
24 performed and our licence application was withdrawn."

25 Top of the next page:

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1 "All effort has since been put into Cutter's
2 current product, Koate HP, a solvent detergent-treated
3 product."

4 Although it is then said that "there are no
5 current plans to market this in the UK".

6 So there is quite a lot of material relating to
7 the licensing application process in relation to
8 Koate-HS. I'm not going to spend any time on that
9 today, because there are quite a lot of documents
10 relating to other aspects of Koate, particularly in
11 the 1970s and the early 1980s that I want to
12 concentrate on. But at some point, perhaps when we
13 come back to evidence relating to licensing, from the
14 perspective of looking at what was actually done by
15 the Licensing Authority, we might want to come back to
16 it because it may be thought that the approach taken
17 by the Licensing Authority in the second half of the
18 1980s was more rigorous than the approach taken at an
19 earlier stage, and the way in which, for example, the
20 application for Koate-HS was dealt with might provide
21 some form of a mini case study in relation to that so
22 I'm not going to deal with it today, but there is an
23 issue for potential exploration about whether it shows
24 a more robust approach on the part of the Licensing
25 Authority by the second half of the eighties.

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1 was unacceptable and subsequently withdrawn. For
2 commercial reasons a re-submission of the data in the
3 correct format was not pursued."

4 Just pausing there, we do see some evidence
5 potentially of Konyne being used on a named-patient
6 basis, but we know from other material that most
7 Haemophilia Centres had NHS Factor IX available to
8 them.

9 So that may be why it refers to commercial
10 reasons, I don't know.

11 Then it's said:

12 "In 1984, following intensive work on methods
13 designed to reduce the risk of transmission of
14 potential infectious viruses in their coagulation
15 products, Cutter completed the development of
16 a heat-treated preparation of Konyne, Konyne-HT.

17 "As the clinical use of Konyne was then well
18 established worldwide and the heat-treated product had
19 been shown to be equivalent in terms of in-vivo
20 biological activity and half-life to the non-heated
21 product, no additional clinical trials were conducted
22 with Konyne-HT."

23 It then refers to the heat treatment process for
24 Konyne-HT being the same as that for Koate-HT, for
25 which there was a licence.

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1 I'm going to turn, therefore, briefly to Koate --
2 sorry, to Konyne.

3 If we start with BAYP0000004_285. We can see, top
4 of the page, "Konyne, Factor IX Complex" and the
5 licence holder is Cutter Laboratories, and the date of
6 the application, bottom of the page, is 3 July 1980.

7 We don't, I'm afraid, have either a complete set
8 of documents in relation to the licensing application
9 for Konyne or a complete set of documents which tells
10 us what happened to the licence. So at the moment
11 I can tell you based upon this that an application was
12 made in July of 1980.

13 If we go to BAYP0000008_071, there's a little bit
14 of a background here in -- I'm not sure what the
15 authorship of this document is. But in any event, it
16 purports to set out a potted history, as it were, in
17 relation to Konyne.

18 "As early as 1968 Cutter Biological introduced
19 Konyne, a preparation of factor IX complex, on to the
20 market in the USA and in many other countries around
21 the world.

22 "An application for a UK product licence for
23 Konyne was submitted by Cutter in 1982 [we've seen an
24 application from 1980] but as the format was not in
25 compliance with the DHSS guidelines, the application

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1 If we then go down a couple of further paragraphs
2 to the paragraph beginning:

3 "On the 8th May, 1985, Miles Laboratories
4 submitted an application for a product licence for
5 heat-treated Factor IX Complex, Konyne-HT ...
6 manufactured by Cutter Biological, Division of Miles
7 Laboratories Inc, USA."

8 So we can see then -- and this is really
9 a convenient shorthand rather than going to all the
10 underlying documents -- we see that an application for
11 a product licence for Konyne-HT was submitted in the
12 course of '85. And then, we're told:

13 "In October 1985, the company received
14 a Section 21 letter from the Committee on Safety of
15 Medicines informing them that, on grounds relating to
16 safety, quality and efficacy, they might be unable to
17 recommend the grant of a Product Licence."

18 And we can see that it appears that the Committee
19 on Safety of Medicines had a number of concerns about
20 the provision of inadequate evidence or information.

21 If we go over to the top of the next page, it
22 said:

23 "Inadequate evidence had been provided of virus
24 inactivation."

25 So that was one of the concerns. Then we can see

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1 in fact the origin of this document below paragraph 5:
 2 "This representation is Miles' response to the
 3 points raised by the Committee and includes additional
 4 information relevant to the grounds referred to above.
 5 "The Committee is asked to consider these
 6 documents in the knowledge that Miles Laboratories has
 7 requested a hearing."
 8 Then I don't think I need to go through the detail
 9 of it, but there's various pieces of information then
 10 provided in support of Miles's application for
 11 a product licence for the Konyne-HT.
 12 If we go to page 7, we can see that this
 13 addresses -- and we can see it from the heading -- the
 14 suggestion that had emanated from the Committee on
 15 Safety of Medicines that insufficient evidence had
 16 been provided of the clinical safety and efficacy of
 17 the product.
 18 Then there's a description, amongst other things,
 19 of matters relating to transmission of viral
 20 hepatitis. If we pick it up three paragraphs from the
 21 bottom we can see it's said that:
 22 "The transmission of viral hepatitis has always
 23 been of concern in clinical use of antihæmophilic
 24 factor VIII or IX, and the evidence to date suggests
 25 that the heating process employed in production of

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1 Then the conclusion in that final paragraph:
 2 "... although all possible steps have been and are
 3 being taken by Cutter to reduce the risk of
 4 transmission of infectious viruses, the technology
 5 presently available does not allow us to claim with
 6 certainty that the product is completely free of
 7 infectious virus. The risk to the patient must be
 8 considered carefully in each individual case and
 9 balanced against the risk of depriving the patient of
 10 treatment with the product."
 11 So that is part of the information that we can see
 12 being submitted in response to the provisional
 13 conclusions of the Committee on Safety of Medicines
 14 that there was insufficient evidence to reassure them.
 15 I don't think we have a specific date for that
 16 document, but we do know from other documents which
 17 I don't need to take you to that Konyne-HT was being
 18 supplied on a named-patient basis, to a limited extent
 19 at least. I don't think we know the full extent
 20 of it.
 21 Then we can see BAYP -- sorry, I'm going to take
 22 you to a different document. BAYP0000004_326.
 23 We can see here this is some of the underlying
 24 documents to which that background summary referred.
 25 So this is October 1985. This is a communication from

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1 Konyne-HT reduces this risk."
 2 There's then reference to a study on chimpanzees.
 3 Then, if we go over the page, top paragraph refers to
 4 there being:
 5 "No evidence of non-A, non-B hepatitis or
 6 hepatitis B ... observed in animals administered with
 7 heated Konyne ..."
 8 Then it says:
 9 "Clinical studies designed to investigate the
 10 possibility of transmission of non-A, non-B hepatitis
 11 have to be performed in patients who have not
 12 previously received blood products, that is, virgin
 13 hæmophiliacs with hæmophilia B. Quite apart from
 14 the ethics of conducting trials in these patients, the
 15 number of available patients is very small.
 16 "Cutter is currently monitoring the use of
 17 Konyne-HT in such patients but, so far, only two
 18 patients have become available for inclusion in the
 19 study and the study is not yet complete.
 20 "Although, as yet, we have no absolute evidence
 21 that the heat-treated Konyne does not transmit non-A,
 22 non-B hepatitis in hæmophiliacs, we have had no
 23 reports of non-A, non-B hepatitis in hæmophiliacs
 24 receiving our dry heat-treated factor VIII preparation
 25 ... which has been in clinical use for several years."

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1 the Committee on Safety of Medicines to Miles
 2 Laboratories in relation to the Konyne-HT product.
 3 And we can see here set out the provisional
 4 conclusions of the Committee to which that other
 5 document was responding, including, at 4:
 6 "Inadequate evidence ... provided of virus
 7 inactivation."
 8 And then at 5:
 9 "Insufficient evidence had been provided of the
 10 clinical safety and efficacy of the product or of the
 11 product on which it is based."
 12 Again, it may be that looking at how the Committee
 13 on Safety of Medicines dealt in the mid and latter
 14 part of the 1980s with applications such as this, may
 15 provide a degree of contrast with the approach taken
 16 by the Licensing Authority or Committee on Safety of
 17 Medicines in the 1970s and in the early part of the
 18 1980s.
 19 There are a range of communications then between
 20 the Licensing Authority and Miles Laboratories.
 21 I don't think we need to look at them in any great
 22 detail, but if we just pick up the picture at
 23 BAYP0000007_161, we perhaps get some insight into the
 24 approach of the Licensing Authority.
 25 So this document is dated 2 December 1985, and

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1 it's a note of a meeting held at NIBSC on
2 28 November 1985 to discuss the Committee on Safety of
3 Medicines' decision on Konyne-HT. We can see there's
4 also a discussion about Gaminune.

5 Then if we look at the second paragraph:
6 "GS said ..."

7 I think that's someone from NIBSC:
8 "... that they were tightening up on blood
9 products and required more detailed information
10 concerning screening of donors for HTLV-III ..."
11 et cetera, et cetera.

12 Towards the end of that paragraph:
13 "... wished to see results of viral inactivation
14 studies ..."

15 And, bottom of the page, we can see they also want
16 to know about elimination of viruses during
17 purification. So again, there's an insight there
18 perhaps into a more robust approach being taken from
19 a licensing perspective.

20 If we move then on to a document in 1987,
21 BAYP0000010_170, this is dated 29 September 1987.
22 It's an internal Miles and Cutter document headed
23 "Konyne-HT - Expert Report". It explains as follows:
24 "Our Konyne HT PLA [product licence application]
25 was submitted two years ago but the CSM required

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1 documents. I think it's 1988, I'll check, and confirm
2 if I've got that wrong after lunch, but the licence
3 application for Konyne-HT was withdrawn, and so it
4 didn't proceed to the grant of a licence.

5 So that's the picture in relation to licensing for
6 the factor concentrate products.

7 I just then want to turn to a handful of internal
8 documents from Cutter which show changing market
9 shares and product usage in the early part of the
10 1980s.

11 So if we start with BAYP0000021_016, this is
12 a document described as "1981 Koate Marketing Notes".
13 If we turn to page 3, there's a "Market Overview".
14 The first paragraph refers to strict control of health
15 services finances.

16 If we go to the bottom of the page we can see it's
17 said:

18 "At present, none of the three leading suppliers
19 appears to have a dominant image with Haemophilia
20 Centre staff. Cutter has an opportunity to become the
21 market leader and company identifiable with the
22 treatment of Haemophilia."

23 There's then, if we go to page 5, identification
24 of key Reference Centres and allied major users.

25 Then if we go over the page, we can see, at the

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1 further information on safety and efficacy before
2 recommending the grant of a product licence. After
3 discussion with the licensing authority it was agreed
4 that we would have to provide some long term evidence
5 of safety in clinical use with special reference to
6 the transmission of infectious viruses."

7 Then, next paragraph:

8 "After further discussion with the licensing
9 authority on the problems of generating the safety
10 data we decided to approach a haemophilia centre
11 director in the UK to obtain support for our
12 submission to the CSM. Unfortunately, we have not yet
13 been able to find anyone willing to do this, although
14 Professor Temperley [he was Irish, based in Dublin,
15 I think] had indicated to me that he would be prepared
16 to assist us.

17 "The CSM is now pressing us for a response to
18 their request ...

19 "We still wish to register Konyne HT in the UK and
20 I feel that we should be able to provide
21 a satisfactory response to the CSM with or without the
22 support of UK clinician. At least we could make
23 a stab at it."

24 Again, I'm not going to go through the full
25 picture, but -- I don't think we have all the

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1 bottom half of the page, what's said to be the
2 "Estimated Current Market", and it's not quite clear
3 what that's based on. Again, we see Armour, although
4 not by a huge margin, being identified as having the
5 largest share of the market and Cutter's as being
6 relatively modest in comparison, 7.5%.

7 We then see a list on the next page of existing
8 contracts with competitors, I don't need to go through
9 the detail there, but you'll see a list of who's got
10 contracts with Travenol, Armour, and Immuno.

11 Then if we go to page 9, we can see Cutter's
12 marketing objectives in 1981, which include
13 establishing Cutter "as a major supplier with a good
14 definable market image", whatever precisely that
15 means.

16 Then over the page we can see there what's going
17 to be the focus, it would appear, from a marketing
18 perspective:

19 "Penetration of major accounts.

20 "Nine major accounts/buying groups have been
21 selected where the objectives are to gain major volume
22 sales."

23 We can see the number of leading reference centres
24 there set out and then we're told that:

25 "Oxford have been buying Koate ... until recent

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1 product problems appeared."
 2 Thank you. The next paragraph deals with tenders
 3 for the Royal Free, to be issued in January 1981, and
 4 then expectations of an order from Cardiff and Leeds
 5 and efforts being made to repair previous damage done
 6 to business relations at Alton. So that's Treloar's.
 7 Then if we go to page 13, we can see what's said
 8 to be supporting activities. So these are some of the
 9 ancillary services or facilities being offered, it
 10 would appear, by Cutter. So "Education Programme":
 11 booklets, leaflets, posters, magazines and the like.
 12 "Service Programme", which includes home care packs,
 13 for example. And then "Meetings": hospital meetings,
 14 Haemophilia Society meetings, national and
 15 international meetings, Haemophilia Nurses
 16 Association.
 17 So an insight into the marketing strategy of
 18 Cutter in relation to Koate in 1981.
 19 I'm not going to go through all of the documents,
 20 but we can just then see to some extent whether those
 21 objectives were realised in the following years,
 22 BAYP0000019_073. This is a 1982 marketing plan. If
 23 we go to the third page, it's said that:
 24 "1981 has proved to be a difficult year for Cutter
 25 Laboratories, largely due to factors outside our

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1 described as having been:
 2 "... a year of major difficulties in all product
 3 areas ..."
 4 "The major difficulties have been ..."
 5 Then point two is a 20% fall in prices for
 6 Factor VIII concentrate. Then below that it's said:
 7 "Our successes in 1982 have been to firmly
 8 establish Koate in the Factor VIII market ..."
 9 Towards the bottom of the page, the perspective is
 10 offered that:
 11 "The National Health Service continues to be
 12 under-funded and we can foresee no fundamental changes
 13 in purchasing philosophy in 1983. Price is likely to
 14 remain the most dominant influencing factor in our
 15 market areas."
 16 Then if we just go to page 9, under the heading
 17 "Market Information", this perspective is offered:
 18 "The market is extremely competitive. Prices have
 19 fallen by 20% over the last 12 months."
 20 Then if we go to the next paragraph:
 21 "50% of the commercial market is contracted on
 22 an annual basis with most contracts being awarded
 23 during the first few months of the UK financial year.
 24 Our share of this market sector is 20%.
 25 "The market continues to demand cheap factor VIII

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1 control ..."
 2 1.3 refers to:
 3 "Koate quality problems, coupled with adverse
 4 publicity concerning quality problems with Humanate,
 5 the pirate Koate product sold by Speywood Laboratories
 6 [again, we'll come back to that tomorrow].
 7 "Continuing difficulties in obtaining sufficient
 8 Koate in required potencies ..."
 9 But it's then said:
 10 "Nevertheless, we feel that we have established
 11 the Company very firmly in the eyes of both customers
 12 and competitors and that we are now well placed to
 13 achieve our ambitious plan for 1982."
 14 Then if we go to page 18, under the heading
 15 "Market Information", there's then a table of
 16 estimated total usage of concentrate, as at July 1981,
 17 with the estimated shares being there set out: so
 18 Armour significantly increased, 41%; and Cutter there
 19 at 13.2%; and we can see the figures for the other
 20 companies, as well.
 21 So that's 1982.
 22 1983, CGRA -- sorry, that's a 1982 plan looking at
 23 the situation in 1981. If we go to CGRA0000586, this
 24 is described as a 1983 preliminary marketing plan. If
 25 we go to page 3, we can see the "Overview", 1982 is

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1 with little consideration given to purity [et cetera].
 2 "Nevertheless, we have continued to emphasise the
 3 quality of Koate compared with competitive products,
 4 and this has gained us substantial business in two
 5 major accounts, Cardiff and Liverpool."
 6 Bottom of the page:
 7 "In some major centres, eg Alton, St Thomas' and
 8 Belfast a major reason for not obtaining business has
 9 been ongoing trials with Autoplex and Feiba. Our
 10 failure to again a share of the North West Thames
 11 Regional Contract ... was due to a combination of
 12 price and doubt concerning our labelled potencies."
 13 Next page, second paragraph:
 14 "Low prices have been the major difficulty in the
 15 last 12 months. The average selling price in large
 16 centres is now below 5.5p."
 17 Then we can see a table with the market shares set
 18 out. Again, we see the figure in relation to Armour,
 19 although that's estimated to have dropped between 1981
 20 and 1982, and Cutter's market share to have increased
 21 from 13% to 20% from 1981 to 1982.
 22 I'm not going to go to it but the following two
 23 pages set out in some further detail some of the
 24 particular centres or regions that were going to be
 25 targeted by Cutter.

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1 Then if we turn to BAYP0000028_071, if we go to
2 page 7, we can see a description of the position in
3 1983. Under the heading "Koate", it's said that:

4 "1983 opened quietly for Koate, due partly to good
5 supplies of NHS product to the centres. However,
6 a good of the sales shortfall is being clawed back in
7 March due to good sales to a major new centre --
8 Alton. Encouragingly, prices are now hardening fairly
9 rapidly and have risen back above the 6 pence mark."

10 If we go on a further two pages, please, Soumik to
11 page 9, again it is said that the market is fairly
12 quiet, it is anticipated that 1983 will be a good year
13 for Koate, and I'm, again, not going to go through the
14 detail of that, but the anticipation in that final
15 paragraph is:

16 "These developments should enable us both to gain
17 market share and to command higher prices for Koate in
18 1983."

19 Then the last document I think that we need to
20 look at in this category of documents is at
21 BAYP0000028_134.

22 This is an internal memorandum described as a key
23 indicator report. It's dated 11 July 1983, and it's
24 in respect of June 1983. We can see bottom of the
25 page, under the heading "Koate", there's a paragraph

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1 getting its plasma from, collection from prisons, pool
2 sizes, and various documents relating to issues about
3 donor screening in the 1970s and 1980s.

4 **SIR BRIAN LANGSTAFF:** Thank you very much. Well, we'll
5 take a break, then, until two o'clock. Two o'clock.

6 **(1.00 pm)**

7 **(The luncheon adjournment)**

8 **(2.00 pm)**

9 **MS RICHARDS:** Sir, I'm going to move on to look at various
10 matters relating to the sources of plasma and to
11 issues relating to donor selection and screening.
12 I hope to do it thematically and then chronologically
13 within themes but, in fact, there are documents which
14 pertain to all three, and rather than go back to the
15 same documents, what we might end up doing is looking
16 at them in an order that isn't necessarily completely
17 chronological. So I hope that's okay.

18 I want to start, however, with some documents
19 which are from the first part of the 1970s and which
20 look at Cutter obtaining supplies of plasma for
21 fractionation from outside the US. So we can start
22 with BAYP0003693. This is Cutter Laboratories, the
23 date at the top is 3 December 1971, writing to the
24 Division of Biologics Standards at the National
25 Institutes of Health, referring to a purchase order

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1 at the end that says:

2 "This result was the second best ever with unit
3 sales ... and the best ever with sales revenue. Good
4 sales to all major accounts including a very large
5 order to the Royal Free Hospital achieved this
6 result."

7 Then if we go to the third page, "Record sales of
8 Koate demonstrate that no changes in treatment levels
9 because of AIDS have occurred in the UK. Information
10 required by the DHSS concerning checks on plasma
11 collection etc, was supplied with the assistance of
12 Cutter International."

13 That second sentence, sir, I think is a reference
14 to the steps we know were taken by the Department of
15 Health in around June 1983, to find out what, if
16 anything, was being done in relation to the FDA
17 recommendations and products made from plasma
18 collected before March 1983.

19 So, we do have other such documents from Cutter,
20 but don't want to go through all of them. That gives,
21 I hope, a flavour of the position in relation to the
22 first part of the 1980s.

23 What I'm going to do after lunch, then, is to turn
24 to a range of documents which look at issues of plasma
25 supply, so where Cutter Laboratories in the States was

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1 for human plasma for fractionation from Mexico and we
2 can see reference to inspection of the facility taking
3 place in September 1971, and the request is made for
4 a permit for importation of products in short supply.

5 If we go over the page, we can see a little more
6 information given:

7 "This our purchase order contract for Plasma
8 (Human) for fractionation ... collected by
9 plasmapheresis as 'Products in short supply' ... at
10 Banco de Sangre Biologico, Mexicano ..."

11 Next paragraph explains that they're authorised by
12 the terms of this order to ship up to 2,000 litres per
13 month through March 1972. If we go to the next page,
14 it records that the centre:

15 "Banco de Sangre agrees to permit inspection of
16 any facilities used in the collection of plasma under
17 this contract by Director of Control, Cutter, his
18 designee, or the Division of Biologics Standards."

19 If we then go to BAYP0003700_005, we can see from
20 this letter dated 20 March 1972, from Cutter
21 Laboratories, that the permit for importation of
22 products from Mexico was issued, and the request is
23 being made for the permit to be extended to
24 December 1972.

25 If we go to BAYP0003700_006, we can see there the

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1 permit that was indeed extended. The date of this is
2 29 March 1972, and it's permission to import human
3 plasma from Banco de Sangre Biologico Mexicano, and
4 the date is 1 April 1972 ending 31 December 1972.

5 If we then look at BAYP0003700_001, this is
6 3 March 1972, and we can see here reference to
7 a purchase order for human plasma for fractionation
8 from Hemo Caribbean in Haiti:

9 "This to serve as your notification of this source
10 of plasma ..."

11 Then the information is there given. Reference is
12 made to the facility in Port-au-Prince having been
13 inspected on 24 February 1972.

14 We can see that permission was given at
15 BAYP0003700_004. This is the permission to import
16 from Haiti human plasma for fractionation for a period
17 beginning 5 March 1972 and ending 1 September 1972.

18 If we then go to BAYP0003748, this is now
19 February 1974, and we're back to purchasing plasma
20 from Mexico. A request is being made to the FDA for a
21 permit for importation of products in short supply
22 from Plasma Mexicano.

23 **SIR BRIAN LANGSTAFF:** That's a different supplier --

24 **MS RICHARDS:** Yes, it is.

25 **SIR BRIAN LANGSTAFF:** -- because the other one was

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1 Plasmapheresis, Managua, NA.

2 If we then lastly go to BAYP0003793_002, this is
3 the same facility at the Centro Americana De
4 Plasmapheresis in Managua, but we're now 6 April 1976,
5 and this a further request for authorisation to ship
6 7,000 liters of fresh frozen plasma to Cutter
7 Laboratories. Again, the use is for manufacturing
8 purposes into human injectable materials.

9 Those are some documents which show that Cutter
10 Laboratories, in the first half of the 1970s and into
11 1976, was obtaining some plasma from various sources
12 outside of the US.

13 I'm going to ask you to look next at a couple of
14 documents, which seem to be speeches or parts of
15 speeches by people from Cutter which you may find
16 interesting in providing an insight into the thinking
17 within the organisation at the time. The first is
18 IPSN0000481_002. This is headed "Blood Transfusion
19 Business -- International", the date you'll see in the
20 top right-hand corner is July 1977.

21 It's an incomplete document. But it seems to be
22 the text of a report setting out views about the blood
23 transfusion business, and I'll just read some parts of
24 it:

25 "Although there are present problems and

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1 Banco de Sangre.

2 **MS RICHARDS:** Yes, it is a different supply. If we then
3 go to BAYP0003777, this is October 1975 and, again,
4 this is a letter directed to the Bureau of Biologics
5 at the Food and Drug Administration, and this is
6 a request for:

7 "... authorization to ship 15,434 liters of
8 Fresh Frozen (Human) Plasma, collected from normal
9 donors to, Cutter Laboratories ..."

10 We can see in the second paragraph that:

11 "The use of this plasma will be for manufacturing
12 purposes into Human Injectable Materials."

13 We can see from the third paragraph reference made
14 there to this organisation having been already
15 authorised to make the same shipment to Abbott
16 Laboratories, but it said it didn't then take place
17 because they were over stock.

18 The organisation making this application, if we
19 look at the letterhead at the top of the page --
20 sorry, the very top of -- no, actually, we can see it
21 from this. It's okay, I was going to look at the top
22 of the first page but, actually, this is probably
23 easier to read. We can see that permission is
24 granted, and this is to a source of plasma in
25 Nicaragua in Managua, Centro Americana De

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1 uncertainties in the area of blood collection systems
2 development for Cutter, we must be careful to avoid
3 being sidetracked from our central mission, which
4 I understand to be the protection of current plasma
5 fraction business and development of a stronger, more
6 secure future position in the wider enterprise which
7 constitutes the 'Blood Transfusion Business'."

8 If we look at the bottom of the page:

9 "The plasma fractionation industry, which was
10 largely built upon the Cohn process and has developed
11 since World War II, has enjoyed relatively
12 unrestricted growth and usually good profits to date.
13 Certain companies have established an enviable trading
14 record and only minor problems of raw material supply
15 and usually price-related market phenomena have served
16 to limit progress.

17 "Now, however, with the voice and interests of the
18 'Third World' ever more prevalent, and
19 a conscience-stricken 'Developed World' trying to
20 secure its future in the most socially-acceptable
21 fashion through an 'all things to all men'
22 international façade, whilst pursuing various degrees
23 of broad ranging [international] protectionism" --

24 **SIR BRIAN LANGSTAFF:** "Internal protectionism".

25 **MS RICHARDS:** Sorry:

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1 "... internal protectionism, the ability of the
2 plasma fractionation industry to continue operating as
3 in the past must be closely questioned.

4 "The philosophical and pure at heart will want to
5 sell the concept of blood as an international
6 resource, and this would generally be approved by
7 industry, but in reality blood can never be considered
8 in this light within any real world situation which
9 may reasonably be predicted today.

10 "In the first place, it is a strategic resource
11 with the obvious implications for national and area
12 security. In the second place, blood/plasma is an
13 intense social issue simmering never far below the
14 surface, and one which neither politicians, members of
15 the scientific community, nor local leaders can allow
16 to get out of control. These statements do not
17 preclude a degree of international cooperative effort,
18 especially in times of acute need and in areas of
19 technological development, but they do point to
20 certain fundamental issues which are causing the blood
21 transfusion business to evolve in ways which
22 traditional commercial enterprise may view as irksome
23 at best and disastrous at worst."

24 Then it continues:

25 "In point of fact, the future could be

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1 handling, and processing systems if two unfortunate
2 circumstances are to be avoided ..."

3 And then these unfortunate circumstances are
4 defined as:

5 "1. Market entry of major new commercial
6 competitors ...

7 "2. Self-sufficiency/active participation on the
8 part of local scientific/quasi-industrial/government
9 groups based on lack of technological growth and
10 development within the industry, allowing the
11 non-innovators to catch up."

12 It's not always easy to unpick what's being said
13 here by someone within Cutter, but it does appear to
14 be said that self-sufficiency is regarded as an
15 unfortunate circumstance to be avoided.

16 If we just pick things up in the next paragraph --
17 sorry, paragraph below that, my apologies:

18 "It goes without saying that if you cannot
19 effectively collect the raw material, no-one is in
20 business -- us, our commercial competitors, the
21 transfusionists, the doctors and nurses, and finally
22 and most importantly, the patients who need blood
23 products."

24 Then unfortunately at the end of the paragraph it
25 stops mid-sentence and we don't have the rest of it.

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1 commercially most attractive if industry can recognise
2 a need to allow local blood transfusion specialists
3 a large element of primary control of the blood
4 resource through the donor, whilst it goes ahead to
5 provide the total means, under industry control, to
6 collect, process, and deliver blood and plasma
7 fractions. The subjective and objective problems of
8 donors, and thus blood quality, associated with paid
9 donors and the bad light in which commercial
10 involvement is cast in this regard, is likely to
11 remain for some time at least, and it seems to me that
12 in placing the major responsibility for raw material
13 supply squarely on the shoulders of transfusionists,
14 they will either have to do a good job and shut up, in
15 which case we all have plenty to do in supplying the
16 patient needs, by combining our resources to
17 effectively use plasma; or they will do a bad job and
18 equally have to shut up because they would have
19 demonstrated that some financial incentive for donors
20 is the only way to get enough plasma."

21 Then if we go to the bottom of the next page, I'm
22 just going to pick it up in the last two lines on that
23 page:

24 "... in other words, there is no room for industry
25 to falter in developing new blood collection,

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1 But some insight into a perspective from I'm afraid
2 an unknown person within Cutter in 1977.

3 We then, at BAYP0003885 --

4 **SIR BRIAN LANGSTAFF:** Was there any form of response to
5 that, do we know?

6 **MS RICHARDS:** I don't know, I'm afraid, sir. I've seen it
7 only as an isolated document like this.

8 **SIR BRIAN LANGSTAFF:** What in summary is it actually
9 saying?

10 **MS RICHARDS:** Well, it appears to be pouring a degree of
11 scorn on -- these are inferences rather than what's
12 said in terms, but a degree of scorn on what's said to
13 be those stricken with conscience wanting to change
14 the way in which blood is collected and
15 commercialised, is one way of putting it.

16 Maybe we can find out more, find a complete copy
17 or ascertain what the context was within which it was
18 being articulated. Or it may be, I'm afraid, it
19 stands as it is: an incomplete picture into
20 a commercial perspective within Cutter in the
21 seventies.

22 **SIR BRIAN LANGSTAFF:** Well, it's an unknown person's
23 reflections using a lot of words to say something.

24 **MS RICHARDS:** Yes. We have got a complete text from 1979
25 by a named person within Cutter at BAYP0003885. This,

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1 we'll see it's prepared for a managers' meeting on the
2 topic of "Blood Products Industry in the US and
3 internationally", by a J Ashworth, 7 May 1979.

4 It's a document that is probably worth reading in
5 full. I am only going to alight upon a couple of
6 passages. The first is the bottom half of the third
7 page. There's a long paragraph there talking about
8 the position of fractionators, it says:

9 "In the United States the four big ones are
10 Cutter, Hyland, Armour and Alpha."

11 Then it says:

12 "Each of the fractionators has of necessity become
13 involved itself in the collection of plasma and each
14 own from 10 to 20 pheresis centres. Cutter utilises
15 the output of about 100 centers and I think at latest
16 count we own 20 of them".

17 Just pausing there, in contrast with what we were
18 looking at at a similar point in time in relation to
19 Armour, in which it said -- whether this is factually
20 correct or not, it certainly said on a number of
21 occasions it derived all its own plasma from its own
22 centres.

23 In relation to Cutter, what's being said here is
24 ownership of about a fifth them.

25 "There are about 275 centres in the US that are

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1 page, the American National Red Cross operating 58
2 centres, it said.

3 The next paragraph deals with blood bankers, and
4 refers to the American Association of Blood Banks,
5 with its multiple members.

6 Bottom of the page describes then another maverick
7 group of blood banks, dissidents from, it's suggested,
8 the American Association of Blood Banks.

9 Then, if we go on to the next page, we then have
10 the paragraph I was looking at which talks about the
11 remaining group of plasma or plasma processes.

12 **SIR BRIAN LANGSTAFF:** Yes.

13 **MS RICHARDS:** But the numbers don't entirely add up in any
14 event, in response to --

15 **SIR BRIAN LANGSTAFF:** But they are banking blood for use
16 as, on the face of it, whole blood.

17 **MS RICHARDS:** Yes. Yes. So I'm not sure, I'm afraid,
18 sir, what the answer to your question is about who the
19 other centres may be.

20 **SIR BRIAN LANGSTAFF:** It may simply be that one or other
21 of them does what Cutter does and utilises the output
22 of about 100 centres.

23 **MS RICHARDS:** Yes.

24 **SIR BRIAN LANGSTAFF:** But it does suggest that Armour is
25 an outlier so far as owning all its own is concerned.

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1 licensed to produce Source Plasma (Human) ..."

2 Then, skipping on to the next sentence:

3 "We are restricted in our raw material to plasma
4 from plasmapheresis centers or blood banks licensed or
5 otherwise registered by the US FDA."

6 **SIR BRIAN LANGSTAFF:** Just pausing there for a moment. If
7 each of the main -- the big four, own between 10 to 20
8 pheresis centres, but there are 275 centres in the US,
9 that would suggest that the maximum is 40-80, call it
10 80, or you've got about 200 centres which are taking
11 plasma and selling it somewhere. They're licensed to
12 do it for -- by plasmapheresis, and it says here it's
13 used for the principal starting material for
14 preparation of fractions. So it would be interesting
15 to know who the other 200 centres are supplying.

16 **MS RICHARDS:** Yes. We will see some examples of
17 individual organisations with whom Cutter contracted
18 for the supply of plasma in a handful of the
19 documents.

20 Just looking at this in context, it may be
21 I should have shown you the previous page. Because
22 what this article, speech or report does is identify,
23 if we look at the third paragraph on this page, four
24 groups involved in the collection of whole blood.

25 We have, in this first long paragraph on the

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1 **MS RICHARDS:** Then, in any event, picking the matter up
2 from where Mr Ashworth or Ms Ashworth is talking about
3 centres registered by the US FDA, it says this:

4 "We are restricted in our raw material to plasma
5 from plasmapheresis centers or blood banks licensed or
6 otherwise registered by the US FDA. There are none
7 licensed outside the US."

8 So this is the position now in May 1979.

9 "The last one was in Nicaragua. The turmoil down
10 there 2 or 3 years ago resulted in the burning of this
11 center."

12 Then:

13 "When I mentioned that we get plasma from blood
14 banks, I was referring to about 10% of our input.

15 This is plasma derived from whole blood which has
16 either gone outdated or has been used for the
17 preparation of components such as packed cells. For
18 completeness I should also mention that some of the
19 output of pheresis centers and blood banks goes to the
20 manufacture of clinical laboratories."

21 And so on.

22 In any event, the main purpose of referring to
23 that is what is being said by Cutter as at May 1979 is
24 now its sources of plasma are within the US.

25 Then the second passage I wanted to refer to is on

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1 the next page, bottom half of the next page, and it
 2 talks about the issue of hepatitis, and the issue of
 3 volunteer versus paid donors, in these terms:
 4 "Then there is the issue which is perhaps the most
 5 ridiculous. The highly emotional volunteer donor
 6 versus paid donor controversy has wasted more time
 7 than it is worth. Most of this derives from the basic
 8 danger of transmission of hepatitis. Studies were
 9 done supposedly with proper selection of controls
 10 which have purported to show that the incidence of
 11 hepatitis from blood or its components from donors who
 12 had received payment is significantly higher. I won't
 13 spend time relating many of the ridiculous and
 14 irrelevant issues that have been raised in the course
 15 of this controversy. If it were not such a serious
 16 issue I think it might be possible to laugh at some of
 17 the things that have been done and said.
 18 Nevertheless, we ended up having the BoB pontificate a
 19 definition of a paid donor and as you can imagine,
 20 some of the interpretations of this are peculiar.
 21 Apparently one is not a paid donor if one takes a day
 22 off from work for giving blood but you are a paid
 23 donor if you get a merchandise certificate for some
 24 item donated by a well-meaning store. This last issue
 25 of the differentiation between a volunteer and a paid

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1 prison plasma but this is a reference as at
 2 November of 1983.
 3 Just so that we don't have to come back to this
 4 document for a further purpose, if we go to the bottom
 5 of page 3, there's a heading "AIDS material", and it
 6 says:
 7 "With regard to the AIDS work in process material
 8 planned for GP production, it was decided that two
 9 lots of this material would be heat-treated for
 10 possible submission to the OB [that is, presumably,
 11 the Office of Biologics]. This would result in an
 12 indication from the OB as to what their policy would
 13 be with regard to approval of heat-treated product
 14 obtained from possibly contaminated sources."
 15 So again just flagging up there, in terms of any
 16 consideration of plasma source, what appears to be
 17 Cutter's own characterisation of this, or the use of
 18 this term, "possibly contaminated sources". But, I'm
 19 afraid, we know no more from the context of what that
 20 was specifically referring to.
 21 I mentioned that we have various documents which
 22 refer to Cutter entering into agreements with
 23 organisations for the provision of plasma. A sample
 24 agreement is at BAYP0005642. We can see this is an
 25 agreement made on 1 October 1984 between

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1 donor has worldwide ramifications also, but more on
 2 morality grounds than on safety grounds."
 3 So, again, you'll see the perspective there, from
 4 someone addressing this to a managers meeting within
 5 Cutter, is to, it would appear, disparage the view
 6 that blood collected from paid donations has any
 7 safety implications in terms of viral transmission as
 8 compared to blood from voluntary donations.
 9 If we can then look at now a document moving
 10 forwards from 1979 to November 1983, BAYP0004952.
 11 This is, again, just on the theme of sources of
 12 supply. This is a minutes of a meeting of the
 13 Biological Coordinating Committee, 14 November 1983.
 14 We can just see there are some corrections to an
 15 earlier set of minutes. This is in paragraph 1 under
 16 the heading "Review of Minutes", "Corrections", and it
 17 says this:
 18 "The balancing figure used in conclusion 4 of
 19 1,398,000 liters for Factor VIII is clarified to show
 20 that this figure includes 1,273,000 liters of source
 21 plasma, 90,000 liters of outdated and prison plasma,
 22 and 11,800 liters for RhoD and HBIG."
 23 The latter relates to immunoglobulins.
 24 It's the reference there to prison plasma. We're
 25 going to pick up on a number of further references to

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1 Cutter Biological, described there as a division of
 2 Miles Laboratories Inc, and Central Georgia Plasma
 3 Labs, that's the organisation that's going to be
 4 supplying products. And we can see from the recital
 5 that the:
 6 "Supplier [so that's Central Georgia Plasma Labs]
 7 operates three (3) plasmapheresis centers... at which
 8 Source Plasma ... is produced. Currently ... located
 9 at ..."
 10 Then we've got three locations there identified.
 11 And then it goes on to talk about the supply to
 12 Cutter of plasma from the centres. If we go to the
 13 top of page 2, we can see there, under the heading
 14 "B. Quantity of Source Plasma", what's envisaged is
 15 3,000-4,000 litres per month being purchased by
 16 Cutter.
 17 If we go to the next page, under the heading
 18 "E. Price Adjustment", we can see there examples of
 19 two other contract supplies to Cutter, so it says
 20 there:
 21 "Other contract suppliers to Cutter are Yale Blood
 22 Plasma and Atlantic Plasma Corp."
 23 So just examples, no specific information in
 24 relation to the particular plasma providers, but we
 25 can see there clear evidence through into the latter

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1 half of 1984 of Cutter obtaining plasma from this
2 range of apparently commercial sources.
3 If we then go to CGRA0000545, this is a document
4 we looked at in the context of Armour. It's one of
5 a number of industry meetings that take place around
6 this time -- this is April 1985 -- with
7 representatives from the different fractionation
8 companies. And we'll come back no doubt to this or
9 similar documents in November when we look across the
10 board at the pharmaceutical response to risk. We can
11 see there's a discussion here about ALT testing in
12 particular.

13 I just want to go to the second page and pick up
14 upon the heading "Prison Plasma". We looked, I think
15 yesterday, at what was said by Armour in relation to
16 that, which was that they will never have any.

17 The position of Cutter is different. So:
18 "This subject [elicits] even more diverse
19 viewpoints. Cutter and Alpha believe that science has
20 progressed to the point that we can screen this plasma
21 through testing (HTLV-III etc) and we now heat treat
22 the products."

23 And then the viewpoints of different companies are
24 expressed, and then it says:

25 "Nevertheless, we agreed to hang together for

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1 "No other plasma was imported for our use during
2 these years and we have never procured plasma from
3 Africa for any use including the manufacture of Cutter
4 products."

5 If we then go to CGRA0000307. This just picks up
6 upon what we saw in that meeting from April 1985, the
7 discussion about whether to use prison plasma on the
8 basis it could be tested. What's being said here, in
9 a letter dated 29 August 1985, is:

10 "Against my personal feelings, based on the
11 evidence that we can and should use screened prison
12 plasma for our heat-treated plasma products, it
13 appears we will have to abandon that idea for now."

14 Then the second part of the next paragraph:

15 "The fact that the other US manufacturers of
16 coagulation products have agreed not to use prison
17 plasma pretty well dictates our position for the
18 moment."

19 So it may be inferred from that that, from
20 Cutter's perspective, they would have been keen to be
21 using prison plasma on the basis of it being screened
22 or heat treated, but felt unable to do so as at August
23 1985, because other US fractionators were not taking
24 the same position. As I say, there's going to be some
25 more documentation in relation to the use of prison

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1 a try with the FDA. We will propose to begin using
2 prison plasma cryo and abandon our 'Gentlemen's
3 agreement' unless the FDA takes issue and threatens
4 regulatory action."

5 Now, it might be thought from reading this and
6 looking at the date, which is April 1985, that Cutter,
7 in saying, "we'll propose to begin using prison
8 plasma" that it hadn't been using prison plasma for
9 a considerable period of time, but whether that's
10 correct or not, we'll see from other documents that
11 would seem to cast some considerable doubt on that.

12 If we then go to BAYP000024_183, this is
13 an internal Cutter memorandum 22 April 1985. It says:
14 "... we have the following information on
15 importation of plasma to US during the 1970s for use
16 in the manufacture of Cutter products."

17 It's said that there were none in 1970 and 1971.
18 1972, we can see the reference to there being the
19 importation of plasma from Mexico, from Haiti, again
20 from Mexico. None, it's said in 1974 and '75. Then
21 1976, 1977 and 1978, records there of importation of
22 plasma from Nicaragua.

23 Then, obviously we've seen some of the underlying
24 documents that probably pertain to this. It then
25 said:

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1 plasma that I'll come back to.

2 The next document picks up on the theme of prison
3 plasma at a much earlier stage, CGRA0000884. This is
4 an article from 1968 praising a plasmapheresis
5 programme at Parchman State Penitentiary, and we can
6 see, if we look in the second paragraph, it's said
7 that:

8 "This program authorized by [a particular Senate
9 Bill] is conducted under contract with Cutter
10 Laboratories ..."

11 Then the next paragraph goes on to say that:

12 "Participation in the plasmapheresis program by
13 Parchman inmates is voluntary, and the present rate
14 shows that as many as 20 per cent of the 3,000 prison
15 population are offering plasma weekly."

16 So we can see there an early indication of the use
17 of prison plasma in 1968.

18 I'm moving to look more now at issues relating to
19 donor screening. We have a document from 1981 at
20 BAYP0000019_018. I'm not going to take you through
21 the detail of it, sir, because it's a long document.
22 It's entitled "Cutter System of Plasmapheresis".

23 In fact, if we go to the next page, we have, at
24 the very bottom of the page, what looks like it might
25 be a date of 27 September 1976, but on the pages that

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1 follow, and if we just look by way of example, the
 2 date is then 1981. In any event, this appears to set
 3 out effectively a standard operating manual or
 4 procedure about the kind of steps that need to be
 5 taken in the plasmapheresis centres.
 6 If we just go to the previous page, please,
 7 Soumik. We can see, if we go to the top half of the
 8 page, reference to donor health checks and
 9 record-keeping, and then there is a fairly detailed
 10 description of the various steps to be taken. If we
 11 go to the next page, we pick it up about ten lines or
 12 so down. We've got -- this is -- looking at the index
 13 is a convenient way of not going through the whole
 14 document -- 2.5.1.2, "Report of Donor Reported to Have
 15 or Have Had, Clinical Serum or Infectious Hepatitis
 16 ..."

17 So, for example, this sets out number of
 18 procedures that are supposed to be taken in the event
 19 of a donor appearing to have or being reported to have
 20 hepatitis.

21 Then if we go, just by way of example, to page 9,
 22 this is in a section of the document about donor
 23 health check, and there's a description of medical
 24 history and physical examination. So steps that are
 25 supposed to be taken in the plasmapheresis centres.

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1 requirements and if the drug use was more than six
 2 months prior to their plasma donation.
 3 "Mr McClelland felt that this procedure is not in
 4 compliance with both the State Regulations ... and
 5 [it's said there] the CFR [I think that's the Federal
 6 Regulations].

7 "This procedure is allowed by the Cutter [standard
 8 operating procedure] ..."

9 That, I think, is the document we were just
 10 looking at, which certainly has a paragraph 4.0.4(e):

11 "... so conforming to Mr McClelland's
 12 interpretation would result not only in a manual
 13 change, but would also adversely affect many plasma
 14 donors."

15 So, again, some insight into the approach being
 16 taken apparently in one of Cutter's own plasma
 17 centres.

18 If we then turn to BAYP0004282_002, this is
 19 a Cutter letter sent to the National Haemophilia
 20 Foundation. It's in response to the National
 21 Haemophilia Foundation having written to Cutter, and
 22 indeed others, concerning various resolutions about
 23 exclusion from donor groups in light of risks of AIDS.
 24 This letter is 15 November '82.

25 It picks up in the second paragraph on the issue

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1 What the status of this document is and whether it
 2 applied only to centres owned by Cutter, as opposed to
 3 those from whom it had contractual commercial
 4 arrangements for the supply of plasma, I'm afraid is
 5 unclear.

6 As I say it's a lengthy document, I'm not going to
 7 go through it, but it certainly purports to set out
 8 various steps that should be taken including in
 9 relation to the undertaking of certain forms of health
 10 screening in relation to donors.

11 As I say, I think that is dated 1981. If we go to
 12 another document from 1981, BAUM0000012. This is
 13 dated 19 May 1981. We've got the heading "Cutter
 14 Laboratories, Inc, Oakland Plasma Center", at the top
 15 of the page, and it's addressed to the Plasma
 16 Procurement Manager at Cutter Laboratories Inc.

17 It refers to an inspection by a Department of
 18 Health service examiner for the State of California,
 19 and says this:

20 "Mr McClelland [the examiner] found the center to
 21 be in compliance in all areas except for the practice
 22 of accepting donors into the programme who have a past
 23 history of illegal IV drug use. The standard
 24 operating procedure at this facility is to accept
 25 these prospective donors if they meet all other

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1 of donations from intravenous drug users. So it
 2 asserts here:

3 "All suppliers of plasma to Cutter conduct
 4 screening of their donors in accordance with written
 5 procedures to assure freedom of the arms and forearms
 6 from skin punctures or scars indicative of intravenous
 7 drug abuses. In situations where doubt exists (skin
 8 punctures claimed to be the result of previous
 9 plasmapheresis) the origin must be verified or
 10 a conservative judgement for donor rejection is made."

11 So that is what Cutter is saying, as at the end of
 12 1982, is supposed to be the approach in the centres
 13 from which it obtains its plasma, to the exclusion of
 14 drugged users from donation.

15 Then the next paragraph says this:

16 "Since the first reported incidence of AIDS was
 17 confirmed in haemophiliacs receiving plasma
 18 components, Cutter has excluded from coagulation
 19 products all plasma collected from plasma centers
 20 known to encourage donations from the homosexual
 21 population. Because of the sensitivity of the issue,
 22 we have not made overt efforts to identify the
 23 adventitious active homosexual or Haitian refugee in
 24 our normal donor population."

25 Now, just -- sorry, can we go back into that

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1 paragraph? Again, the inference that you may think
2 can be drawn from this letter, sir, is that, prior to
3 November 1982, there were plasma centres known to
4 encourage donations from the gay population from whom
5 Cutter was procuring plasma, and whether that
6 situation, in fact, came to an end, as at
7 November 1982, or not, is an issue explored in some of
8 the documents. We might look at a handful of them
9 today, but it's more likely to become an issue to come
10 back to thematically in November.

11 **SIR BRIAN LANGSTAFF:** The next sentence as well, perhaps,
12 shows what they weren't doing.

13 **MS RICHARDS:** Yes. Yes. As at that point in time, that
14 was I think, effectively, the only step being taken.
15 We will -- I think we saw a document this morning but
16 there are a number of other documents which then look
17 at the position as at February, March 1983 when there
18 is the introduction of the questionnaire and attempts
19 made to exclude others from donation.

20 **SIR BRIAN LANGSTAFF:** Well, by March the FDA were --

21 **MS RICHARDS:** Yes.

22 **SIR BRIAN LANGSTAFF:** -- introducing recommendations.

23 **MS RICHARDS:** If we then go to CGRA0000425. Again, this
24 is a document that we will probably come back to in
25 November, but it contains important information in

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1 link, and because it constituted only 2% of collected
2 plasma. The other manufacturers had no problem with
3 this suggestion, but it was pointed out that this was
4 the source of our hyperimmunized donors. Donohue then
5 suggested that we exclude this plasma from any AHF
6 production. It is my opinion that they will remain
7 relatively non-negotiable on this point. It was
8 indicated that there had been no cases of AIDS
9 reported from prison, and Donohue responded that that
10 was because of the etiology of the syndrome and
11 insufficient time had transpired."

12 Then what's written -- sorry, if we can go into
13 what's written in the handwriting, to the left of that
14 paragraph.

15 "This will be a problem at Cutter."

16 I think that's then:

17 "John Hink will want to look at the [percentage
18 and] costs", or something along those lines.

19 Anyway "This will be a problem at Cutter", I think
20 is fairly clear.

21 So, as at December 1982, documentation here
22 demonstrating Cutter obtaining plasma from prisons.
23 Then we can see:

24 "The final item of discussion related to recovered
25 plasma. Donohue pointed out that we would have

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1 relation to Cutter's approach. So dated
2 13 December 1982 and we can see it says:

3 "Dr Donohue asked for an informal meeting with the
4 four Blood Product Manufacturers following the PMA/FDA
5 Liaison Committee Meeting on Friday to explore
6 possible actions to minimise the risk of AIDS.
7 Although the transmission of AIDS via blood products
8 (and specifically AHF) has not been conclusively
9 demonstrated, there is some evidence that
10 a possibility does exist. Donohue wanted to know what
11 we manufacturers could do immediately to minimise the
12 risk of potential exposure.

13 "Donohue specifically asked if we could simply
14 exclude high risk plasma taken from areas such as
15 New York, San Francisco and Hollywood from AHF
16 production. Mike Rodell (Hyland) responded that he
17 felt a more meaningful response would be to attempt to
18 educate the high risk populations (homosexuals,
19 Haitians and drug users) and have them voluntarily
20 exclude themselves from the plasmapheresis programme."

21 Then there's further discussion about what steps
22 could be taken in that regard.

23 Then the next paragraph is this:

24 "Donohue then asked if we were willing to exclude
25 plasma collected at prisons because of the homosexual

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1 distinctly less leverage over any voluntary reduction
2 of high risk donors in recovered plasma. He said he
3 felt we should consider very carefully if we should
4 accept any recovered plasma collected from high risk
5 populations. (He indicated the Irwin Blood Bank
6 specifically.)"

7 Then, if we go over the page, we can see in the
8 last part of this memo:

9 "Dr Donohue asked that I get back to him by Friday
10 of this week ... with our company position on the
11 following:

12 "Voluntary education programme to exclude
13 high-risk donors [someone has written 'support'].

14 "Plasma collected at prisons [?].

15 "Recovered plasma [?].

16 "Financial support for butts on AHF transmission of
17 AIDS [support]."

18 Again, we'll be coming back to a number of these
19 materials in November, but useful in terms of looking
20 at source of plasma.

21 **SIR BRIAN LANGSTAFF:** Yes, recovered plasma, I take it, is
22 the plasma which is part of a blood bank donation
23 which isn't used because it's time expired?

24 **MS RICHARDS:** Yes. What's not clear to me, I'm afraid,
25 sir, and this may be my own lack of knowledge, is

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1 precisely what the concern was there about having
 2 distinctly less leverage.
 3 **SIR BRIAN LANGSTAFF:** Well, I would think it may be
 4 because it comes from blood banks who are responsible
 5 for their own collection, and haven't been scrupulous
 6 to eliminate donors whose contributions to a big pool
 7 might be particularly dangerous.
 8 **MS RICHARDS:** Yes. That may be right.
 9 **SIR BRIAN LANGSTAFF:** That's a possible interpretation.
 10 I mean, plainly, there may be others and, in due
 11 course, we can look at that.
 12 **MS RICHARDS:** Then there's a further document from Cutter
 13 dealing with these discussions with Dr Donohue, but
 14 this is, I think, a more specifically Cutter
 15 discussion. It's at BAUM000009, and this may cast
 16 some further light, sir, on the point you've just
 17 raised:
 18 "John Hink and I spoke with Dr Donohue on Tuesday
 19 [21 December 1982], regarding our proposed actions on
 20 eliminating high risk plasma from our coagulation
 21 products. We outlined our proposed education
 22 programme to attempt to identify and exclude high risk
 23 donors. Donohue commented that we should also
 24 consider a program for sources of potential recovered
 25 plasma. Once again Irwin Blood Bank (which the CDC

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1 coagulation product production."
 2 Again, that would again appear to suggest, at this
 3 point in time, end of 1982, prison derived plasma was
 4 being used by Cutter in coagulation product
 5 production.
 6 And there is, I think then a further account of,
 7 on this issue, it may be an account of the same
 8 conversation, this time from Mr Hink, I'm not sure.
 9 BAYP0004321. The first paragraph -- you can see it's
 10 from J Hink, the first paragraph refers to discussion
 11 with Dr Donohue, from the Office of Biologics.
 12 Then the second paragraph says this:
 13 "We told him that we had discontinued the
 14 manufacture of coagulation products from plasma
 15 collected from pre-dominantly homosexual donors ... We
 16 described our plan for requiring all donors to read
 17 a brochure describing AIDS and identifying what are
 18 considered 'high risk' donors (IV drug abusers,
 19 homosexuals and individuals recently living in Haiti),
 20 and then asking each donor in the confidentiality of
 21 the predonation screening booth if he/she considers
 22 himself a 'high risk' donor. If so, we would request
 23 that he voluntarily remove himself from all bleeding
 24 programs.
 25 "I described to Dr Donohue the manner in which

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1 have reported obtains 30% of their collection from the
 2 homosexual population) and border locations in Texas
 3 were specifically mentioned.
 4 "We reviewed the use of source plasma collected in
 5 prisons and Donohue stated that the actual risk was
 6 less important than the perceived risk. He felt that
 7 pressure would be applied to [insure] that this source
 8 of plasma did not end up in the manufacturing process
 9 for coagulation products. He mentioned that we should
 10 very seriously consider excluding the prison derived
 11 plasma from AHF [antihaemophilic factor] and
 12 Factor IX."
 13 There is then reference to there being a further
 14 meeting in early January and a request in the last
 15 paragraph to sending some official notification of
 16 Cutter's plans.
 17 Over the page:
 18 "Our course of action at this point would appear
 19 to be:
 20 "1. Attend CDC meeting ...
 21 "2. Continue work on education program for high
 22 risk donor.
 23 "3. Coordinate the same with the other
 24 fractionators.
 25 "4. Consider removing prison derived plasma from

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1 homosexuals are segregated within the prison and
 2 explained to him that we do not bleed known
 3 homosexuals in our two prison centers."
 4 So, again, the clear inference would appear to be
 5 from that that Cutter had, whether directly operated
 6 them, or they were regular suppliers, but two centres
 7 within prisons from which it obtained plasma.
 8 "Although I indicated that our AIDS educational
 9 program would be used at the prison, Donohue was quite
 10 clear that the explanation would not be expected to be
 11 accepted by the news media, haemophiliacs or even the
 12 scientific community. He strongly advised that all
 13 prison plasma be excluded from use in the manufacture
 14 of coagulation products.
 15 "We asked his thoughts on Recovered plasma and
 16 again he brought up Irwin Memorial and the infant who
 17 contracted AIDS following a platelet transfusion from
 18 a donor who 8 months later came down with the disease.
 19 He indicated that 30% of Irwin's donors are
 20 homosexuals (a high degree of altruism!) Donohue
 21 later made assertions about centers located on the
 22 Mexican border and in Florida."
 23 So I think that's Mr Hink's perspective on the
 24 meeting described in the earlier document.
 25 Then there's what's described as a trip report

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1 account of an AIDS meeting in January 1983 at
2 BAYP0004345. If we look at the top, again, we can see
3 it's a Cutter document. It's from JJ Peterson,
4 subject "Trip Report, AIDS Meeting - Orthopaedic
5 Hospital, [Los Angeles]", and I think the date there
6 is 3 January 1983.

7 I'm not going to go through most of the document,
8 but if we go to the fifth page -- I'm sorry, can we
9 start from the third page, just so we can see the
10 context.

11 Just below the first paragraph we can see it
12 refers to written questions from the audience and
13 responses. Then there are various questions and
14 various answers. Note, the first:

15 **"Question:** Does taking concentrate transmit AIDS?

16 **"Answer:** Presumably yes."

17 In any event, if we go then to a question that was
18 answered by Cutter on the fifth page, so it's the last
19 question and answer:

20 **"Question:** Dr Kasper to Cutter -- These centers
21 seem to be in rundown centers of town. Is there a move
22 to move them to rural towns?"

23 Then the answer isn't necessarily an answer,
24 direct answer to the question. The answer from Cutter
25 appears to be:

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1 Then the next paragraph:

2 "We anticipate our relations with them to be in
3 two phases. Phase I will start immediately and they
4 will help us prepare a company position on AIDS,
5 advise us as to training in our plasmapheresis
6 centers, and also the training of a company spokesman.
7 We expect to have this completed by February 7 or 8.
8 With this in place, then we will begin the screening
9 of our plasmapheresis donors to exclude the high risk
10 groups during the week of February 7. After this is
11 accomplished, Hill and Knowlton will supply us with a
12 longer term program of costs for our evaluation."

13 Then if we go to BAYP0004434, this a Biological
14 Management Committee meeting dated 15 February 1983.
15 If we can go to the second page, we can see
16 paragraph 10 is headed "Plasma from Prison":

17 "It was decided that we will no longer release
18 Koate from prison plasma as commercial product, thus
19 forestalling regulatory action. Instead this plasma
20 will be processed separately and the AHF produced will
21 be used internally in R&D [so research and
22 development] and technology programs."

23 This would appear to suggest that it's
24 mid-February 1983 when Cutter decide that they will no
25 longer be using -- selling Koate which has been made

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1 "Many of the centers are in smaller communities,
2 and in towns such as Ypsilanti, Seattle, Clayton ...
3 and San Diego. We do not have centres in LA or
4 San Francisco."

5 Again, there are other aspects of that meeting to
6 which we'll return in November.

7 Then if we look at BAYP0004386, this is still
8 January 1983. You'll recall, sir, that yesterday
9 I showed you a couple of documents which appear to be
10 from public relations firms, pushing forward proposals
11 for a PR strategy or initiative for the concentrate
12 manufacturers to embark upon, and I pointed out that
13 it was by no means clear whether that was a document
14 that was commissioned by or reached Armour. We can
15 see that Cutter had direct knowledge of it. It says
16 this:

17 "Bud, Carolyn and I interviewed three public
18 relations firms this week to see if it made sense to
19 select one of them to provide counsel and other
20 assistance with regard to the AIDS situation. We felt
21 that even Burson-Marsteller or Hill and Knowlton [and
22 those were the two names on the documents we looked
23 at] both could do a good job for us. Today we
24 selected Hill and Knowlton, one of the larger national
25 public relations firms."

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1 from prison plasma. But the words "thus forestalling
2 regulatory action" might be quite telling in
3 themselves as to what has driven Cutter or what might
4 be thought to have driven Cutter to taking that
5 decision.

6 If we can then -- and we're still in 1983 at this
7 point -- go to BAYP0004531, we've a letter here from
8 Mr Hink at Cutter, and we can see his job title
9 there: director of plasma procurement, dated
10 8 April 1983, to the president of the Valley Medical
11 Blood Research Institute, and we can pick it up
12 I think -- well, the first paragraph refers to what
13 I think, there, are the FDA recommendations that we
14 know were issued in late March of 1983. The second
15 paragraph then says this:

16 "It is my understanding that the plasma you supply
17 to Cutter is collected from a predominantly homosexual
18 donor population. Cutter has for some time [doesn't
19 tell us how long] excluded such plasma from use in the
20 manufacture of coagulation products. It is the
21 request of [the Office of Biologics] that all plasma
22 collected from donors suspected of being at increased
23 risk of transmitting AIDS ... be labeled in the
24 following manner to prevent its possible misuse ..."

25 Then we can see that the label is:

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1 "CAUTION: For Use in Manufacturing Albumin PPF, or
2 Globulin Only."

3 So the position that we appear to derive from this
4 as of April 1983 is that plasma acquired from centres
5 known to collect from a predominantly gay donor
6 population is no longer to be -- well, was no longer
7 being used, it is said -- not quite clear for how long
8 that had been the case -- in the manufacture of factor
9 concentrates; and now there was going to be
10 a labelling requirement in relation to such plasma,
11 presumably to assist in securing that objective.

12 If we go then to BAYP0004647, we can see in what's
13 described as a "Marketing Bulletin", July 6, 1983, a
14 description of what is, by this point, the initiatives
15 or measures that Cutter say they've put in place in
16 order to reduce the risk of donations from high risk
17 groups. So we can see the first paragraph says:

18 "Earlier this year Cutter Laboratories intensified
19 its plasma donor screening program in response to the
20 increasing medical concern over AIDS. This
21 intensification keeps the emphasis on providing
22 quality products squarely where it belongs. By
23 eliminating potentially unhealthy and hepatitis B
24 positive donors, Cutter has traditionally reduced the
25 risk of transmission of serious disease agents to the

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1 many issues concerning AIDS is the absence of
2 persuasive data ..."

3 Not quite sure what that means.
4 "... and this is complicated by the oft-times
5 sensationalist and erroneous reporting in the press.
6 We have seen recent examples in The Mail. As a
7 result, false conclusions are arrived at and patient
8 treatment as well as product supply are endangered.

9 "The facts about AIDS are very limited:

10 "1. The syndrome is quite ill-defined and cases
11 may not be fully reported outside the US. The WHO has
12 recognized it as a world-wide health problem.

13 "2. The etiological agent is unknown. It is not
14 known whether it is a virus.

15 "3. Hence, it can only be an assumption that AIDS
16 can be transmitted by certain blood products. This
17 has not been shown.

18 "4. Also, it is unclear whether the syndrome
19 contracted by hemophiliacs really is the same as the
20 AIDS syndrome contracted by other high risk groups."

21 Now, whether what's being said here by Cutter in
22 the UK to the DHSS is an accurate and fair reflection
23 of what was being said and had been said for some
24 months by now within the US is a matter that you may
25 wish to consider in due course.

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1 blood products.

2 "With the initiation on March 1, 1983 of
3 additional screening procedures to reduce the
4 possibility that AIDS may potentially be transmitted
5 through certain blood products ... Cutter has
6 reinforced its existing program of donor screening to
7 assure that the raw material for its quality plasma
8 products continues to be of high quality."

9 Then we can see towards the bottom of that page
10 reference is made to intensive work to develop and
11 refine a process to exclude both hepatitis and other
12 viruses. And it continues over the page with the
13 discussion of the attempts made to develop
14 a heat-treated product.

15 Then if we go to two documents now which show
16 interactions within the United Kingdom between the
17 Department of Health and Cutter in the UK.

18 BAYP0000002_183.

19 This is a letter dated 3 June 1983 from Cutter to
20 Dr Fowler in the Department of Health. We can see
21 this is in response to Dr Fowler's request for
22 information about measures being taken in relation to
23 AIDS.

24 What's said in the third paragraph:

25 "One of the major difficulties in dealing with the

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1 The letter continues:

2 "As medicine and the plasma suppliers (commercial
3 and NHS) struggle to find the correct actions to take
4 to exclude the elusive AIDS donor, it is imperative
5 that the supply of products (in particular
6 Factor VIII) not be reduced to levels where patients
7 can not be treated. The statement by Professor Bloom
8 in the attached communication from The Haemophilia
9 Society is particularly pertinent."

10 So we have Cutter there relying upon what
11 Professor Bloom had said.

12 "All participants in the procurement and supply of
13 Factor VIII (either cryoprecipitate or concentrate)
14 face the same dilemma. There is no test for AIDS.
15 What we (and presumably other countries, including the
16 UK) are doing is to attempt an unproven and probably
17 inadequate screening of donors by certain gross
18 definitions of high risk groups and general physical
19 examinations. Only time will tell if these checks on
20 donors are accurate.

21 "More specifically, addressing your questions" --

22 Sir, sorry, I should have said, I said I thought
23 this was from Cutter in the UK. It's not. It's from
24 Cutter Inc, so the US organisation. Mrs Tatt, from
25 the UK company, had sent the letter from Dr Fowler to

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1 them for response, so I should correct that.
 2 Then this:
 3 "More specifically, addressing your questions:
 4 "By common agreement and with the regulatory
 5 pressure of the US DHSS, all plasma donors are
 6 screened to an extent consistent with present
 7 medical-scientific knowledge. This program is spelled
 8 out in the attached Cutter documents and FDA
 9 directives which may be the same as already supplied
 10 to you by Mrs Tatt. Cutter and the other
 11 manufacturers are supplying in every detail.
 12 "2. The cases of AIDS in haemophiliacs are of
 13 course complicated to follow up but our investigations
 14 indicate that none received Koate.
 15 "3. So far, we have not had to make a decision
 16 concerning disposition of a lot of Koate from a donor
 17 who has become an AIDS victim. It is our plan that if
 18 this circumstance should occur, the decision
 19 concerning the lot would depend on many factors
 20 including, most importantly, receipt of advice from
 21 government health authorities based on the latest
 22 knowledge concerning AIDS.
 23 "Cutter intends to keep aware of progress in the
 24 world and the identification of the mechanism of the
 25 syndrome itself, of possible tests which may be

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1 "2. It is also significant, as we pointed out in
 2 our news release, that Cutter does not obtain plasma
 3 from the high risk areas where most of the AIDS cases
 4 have occurred -- San Francisco New York, Los Angeles
 5 and Miami."
 6 Of course, what is not pointed out is that Cutter
 7 had been obtaining, it appears, plasma for years from
 8 prisons.
 9 "3. Our letter of June 3 [that's the one we just
 10 looked at] ... to Dr Fowler and particularly the
 11 attached statement by Professor Bloom [so further
 12 reliance on Professor Bloom's statement] seem very
 13 pertinent.
 14 "It would appear our present stock does not
 15 qualify for DHSS arbitrary decision that something
 16 magic happened on February 23. We share whatever
 17 frustration you may feel."
 18 You may find that, sir, telling in relation to
 19 demonstrating the attitude of the author as to the
 20 enquiries that were being made from a regulatory and
 21 public health perspective from the Department of
 22 Health.
 23 **SIR BRIAN LANGSTAFF:** Yes.
 24 **MS RICHARDS:** Then, if we turn now to a letter dated
 25 23 November 1983. BAYP0004975.

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1 applicable and of methods of treatment of product
 2 designed to prevent transmission of AIDS."
 3 So that's the -- it's from J Ashworth, possibly
 4 the same J Ashworth we saw in that May 1979 speech
 5 earlier this afternoon, to Dr Fowler, June 1983.
 6 Then if we look at BAYP000028_143, there's
 7 a telex which refers to that letter. So the date,
 8 I think, is 15 July 1983. And it's from the same
 9 JN Ashworth. It says:
 10 "Obviously the pipeline from donor to recipient is
 11 long."
 12 Then there's a description of various lot numbers
 13 and earliest plasma collection dates.
 14 Then the text says this:
 15 "At the risk of being repetitious on points you
 16 are already aware of, we suggest stressing the
 17 following:
 18 "1. Cutter instituted supplemental screening and
 19 the donor form immediately after the February 23 press
 20 release. Nevertheless, a case can be made that the
 21 standard procedures before February 23 were such as to
 22 be effective in detecting what are now called AIDS
 23 symptoms. Marie [Mrs Tatt] has the before and after
 24 procedures for plasmapheresis screening on which were
 25 highlighted the additions.

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1 This is a letter written by Cutter to an
 2 American doctor. It follows, and I won't go into all
 3 the other background documents, the identification of
 4 a donor who had AIDS. The relevance of this letter
 5 for present purposes is what's said about the size of
 6 the donor pool in the third paragraph.
 7 "We have been assured by Federal Authorities and
 8 several AIDS experts, that due to the enormous
 9 dilution of his plasma in the AHF pool, it is highly
 10 unlikely that transmission of AIDS to a recipient
 11 would occur. Each AHF pool contains plasma from as
 12 many as 7,000 to 15,000 individuals. While we are not
 13 required to recall the lots involved, we felt a moral
 14 obligation to do so."
 15 You'll recall the terminology used in the
 16 licensing material and, indeed, as we'll see later, in
 17 various product sheets, uses that phrase, "at least
 18 1,000 donors", and I drew attention this morning, sir,
 19 to the phrase "at least". It's not untrue to say
 20 "at least 1,000", but this suggests it may be regarded
 21 as something of an understatement to say "at least
 22 1,000 donors".
 23 **SIR BRIAN LANGSTAFF:** Yes, and if it contains plasma from
 24 as many as 7,000 to 15,000 individuals, that will be
 25 at least 7,000 donations, assuming that each

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1 individual only gives one donation to the pool.
 2 **MS RICHARDS:** Yes.
 3 If we then just look at BAYP0005729, this is
 4 another set of minutes from the Biological
 5 Coordinating Committee. We're now in April of 1985.
 6 You'll see the heading "Update on Plasma Procurement",
 7 and we can pick it up in the fifth line:

8 "We expect 4,000 liters per month more of prison
 9 plasma by 3rd quarter. S Ojala and other
 10 manufacturers will be meeting with the FDA regarding
 11 prison plasma for AHF."

12 So apparently prison plasma is still being
 13 collected, albeit that it may be that it's not being
 14 used or hadn't been used at this point in time for
 15 factor concentrates. But what seems to be
 16 contemplated is a discussion with the FDA about now
 17 using it for the manufacture of factor concentrates.

18 Then I think the last document perhaps, before we
 19 break, then follows up on that at CGRA0000311.
 20 1 May 1985.

21 We can see from this document that Cutter remain,
 22 I think it's fair to say, keen to be able to use
 23 prison plasma in the pool but the Bureau of Biologics
 24 don't necessarily seem to agree, so it says:

25 "... I informed Charles Carman and Peter Levine of

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1 Sir, I've a handful more documents relating to
 2 donors and prisons but I can pick that up after the
 3 break.

4 **SIR BRIAN LANGSTAFF:** Yes, just before you do, was it the
 5 marketing bulletin in July 1983 that you showed me
 6 earlier which talked about the important thing being
 7 to make sure that you got the donor selection, the
 8 quality product, rather than concentrated upon
 9 treating product which you've got?

10 **MS RICHARDS:** I can't remember, I'm afraid, sir, off the
 11 top of my head. I'll check over the break.

12 **SIR BRIAN LANGSTAFF:** We might have another look at that
 13 because, on the face of it, if that's right, what was
 14 said for public consumption was not actually what
 15 Cutter were then doing in looking to use prison
 16 plasma. They were relying upon the treatment rather
 17 than the source.

18 **MS RICHARDS:** Yes. I'm just seeing if I've got the
 19 reference to hand for the document.

20 **SIR BRIAN LANGSTAFF:** It may be BAYP4647 -- 0004647. But
 21 it may not be that document.

22 **MS RICHARDS:** Yes, there's the marketing bulletin from
 23 July '83.

24 **SIR BRIAN LANGSTAFF:** Yes. That's it. It's the second
 25 paragraph:

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1 our planned efforts by the Bureau of Biologics ... to
 2 cancel the 'gentlemen's agreement' not to prepare
 3 coagulation products from prison plasma. Peter Levine
 4 spoke personally rather than as a spokesman for the
 5 NHF [National Haemophilia Foundation] but it's pretty
 6 clear to me that he believes he is correctly
 7 representing the NHF's point of view when he indicated
 8 that he did not want to see us return to prison plasma
 9 as a source for AHF. Although he accepts the HTLV-III
 10 inactivation data with heat treatment, he still feels
 11 that by returning prison plasma to the pool, we are
 12 taking risks that are not justified. Specifically,
 13 increased risks for hepatitis Non-A and Non-B, as well
 14 as hepatitis B.

15 "I told him that we would be continuing our
 16 dialogue with the BOB in an effort to use the cryo
 17 from prison plasma because we felt it was safe, and we
 18 felt our request was justified. I also said we would
 19 continue our dialogue with him. Needless to say, this
 20 matter is not resolved and Dr Levine still has to be
 21 convinced. He felt that treaters would pay up to 1c
 22 more to avoid prison plasma. Obviously, a very
 23 general comment that means nothing to us."

24 So that I think then brings the position in
 25 relation to prison plasma up to the middle of 1985.

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1 "... Cutter has reinforced its existing program
 2 of donor screening to assure that the raw material for
 3 its quality plasma products continues to be of high
 4 quality. This approach is in keeping with philosophy
 5 of Good Manufacturing Practices which holds that
 6 quality safeguards to control the quality of starting
 7 material are preferred to procedures to remove and
 8 reduce risk at a later point in manufacturing."

9 **MS RICHARDS:** Yes.

10 **SIR BRIAN LANGSTAFF:** That's an interesting contrast to
 11 the approach which it appears to be taking to prison
 12 plasma now that they can heat treat.

13 **MS RICHARDS:** Yes. And indeed, again, it may be a theme
 14 we'll be able to tease out in November, but it's not
 15 uncommon, if I can put it this way, to see a contrast
 16 between what is being said -- this is a general
 17 comment, not specific to Cutter, I should say -- for
 18 public consumption in, for example, marketing
 19 materials, and then what is said when one looks at
 20 often confidential internal memorandums recording
 21 conversations and discussions.

22 **SIR BRIAN LANGSTAFF:** Yes.

23 Yes, thank you.

24 **MS RICHARDS:** Sir, what time are we resuming?

25 **SIR BRIAN LANGSTAFF:** Sorry. Yes, we'll start again at

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1 quarter to.

2 **MS RICHARDS:** Thank you.
3 (3.19 pm)

4 (A short break)

5 (3.45 pm)

6 **MS RICHARDS:** Sir, just two or three documents in relation
7 to the dates by which Cutter introduced screening of
8 donors. First, in relation to screening for HTLV-III,
9 if we go to BAYP0000007_129, this is a Cutter/Miles
10 document dated 25 October 1985, and if we go to the
11 right-hand side you'll see one of the boxes is headed
12 "Please state methods for screening donors", and the
13 answer that's given is:

14 "Screening according to FDA requirements. Cutter
15 have tested for HTLVIII antibody from March 1985."

16 So that's the given date in relation to testing,
17 obviously that's taking place in the States and you'll
18 no doubt, in due course, want to compare that with the
19 date of introduction of screening in the UK.

20 Then there's a second date given in
21 BAYP0000007_165. This is a letter of 5 December 1985,
22 it's to the contract administrator in the South West
23 Thames Regional Health Authority, from Mrs Frith. It
24 refers to a change in price of Koate-HT:

25 "The change in price has been necessary because

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1 two lots, where it's said that they were 100 per cent
2 HTLV-III screened:

3 "The last two lots were 100% donor screened for
4 HTLVIII antibody. The previous four lots were
5 partially screened and I am waiting for information as
6 to the split of screened and non-screened plasma in
7 these lots."

8 Sir, again, that's a partial picture of the
9 position in relation to HTLV-III screening and the
10 implications in terms of the products being used in
11 the UK.

12 Then one document --

13 **SIR BRIAN LANGSTAFF:** Just reconciling those, to what does
14 the date relate? The date of supply or the date of
15 manufacture?

16 **MS RICHARDS:** That I'm not sure of, sir.

17 **SIR BRIAN LANGSTAFF:** Because if it were the date of
18 manufacture it wouldn't be consistent with either of
19 the other two comments.

20 **MS RICHARDS:** No. I'm afraid I don't know. The heading
21 says, "Product used by Oxford since the introduction
22 of Koate HT", but the date doesn't seem to correlate
23 to -- wouldn't correlate necessarily to usage. So it
24 would most obviously potentially be the date of
25 collection or manufacture but, I'm afraid, I simply

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1 the HTLV III antibody test is being performed on each
2 donor unit. Cutter were testing all donations by
3 July 1985 and this cost is now being passed on to the
4 UK from January 1986."

5 Now, there may not be any tension between the two,
6 it may have been an introduction in March 1985 and
7 then everything, all donations tested by July 1985.
8 But I just identify it so that we can -- as an issue
9 that we will hopefully be able to give a definitive
10 answer to when we come back to the response to risk in
11 early November.

12 Then still on the question of HTLV-III screening,
13 if we just go to BAYP0000008_330, this is a letter to
14 Dr Rizza, dated 1 August 1986. Again, it's from Linda
15 Frith, and it appears to be in response to a request
16 for information. We can see there that, of course,
17 whilst screening was introduced at a point in 1985,
18 there will still have been lots of produced and in
19 circulation prior to that, and this throws that into
20 so much sharp relief.

21 We can see a number of lots issued, the dates are
22 identified in terms of -- I'm not sure what the date
23 precisely pertains to there. We've got an expiry
24 date. Then 100 per cent HTLV-III screened, and the
25 vast majority of them is no, until we get to the last

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1 don't know. We may well be able to find the answer to
2 that question but I can't give it to you today.

3 **SIR BRIAN LANGSTAFF:** There may be an inference in the
4 absence of further information that, because of the
5 span of the dates, it was when the product was used or
6 supplied, as opposed to when it was made, when it was
7 released, that is, from manufacture --

8 **MS RICHARDS:** Yes.

9 **SIR BRIAN LANGSTAFF:** -- but still ...

10 **MS RICHARDS:** Yes, we will try and work out the answer to
11 that, sir.

12 Then, just finally on the question of screening,
13 ALT screening, BAYP0000008_373, this is dated
14 29 September 1986. If we just pick it up, the heading
15 is "ALT testing of donors -- Koate HT", and then the
16 second paragraph:

17 "August of this year marked the date for 100% ALT
18 screened incoming plasma from Cutter owned and
19 contracted plasma centers. However, because of
20 existing inventories of non-screened plasma, there
21 will be a phase-in period before all final product is
22 routinely prepared from 100% ALT screened plasma."

23 Then there is reference to two specific lots, and
24 what is proposed in relation to those.

25 Again, we don't, I think, know the date by which

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1 all material being used in the UK would have been
2 100 per cent ALT screened, but it would be some point
3 after this date, presumably.

4 Can I then return to the question of prison plasma
5 as a source, by reference to three documents. One I'm
6 going to take you to -- two I'm going to take you to,
7 one I'm just going to refer to. The first document is
8 JEVA0000104. If we go to the second page, what we've
9 got here is the deposition during the course of
10 litigation in the States of a Dr Shohachi Wada, who
11 worked for Cutter. If we go to, I think it's page 8,
12 Soumik -- sorry, can we go back a page. That's it.

13 Can we just pick it up in the top left quarter of
14 the page, where Dr Wada describes joining Cutter
15 Laboratories in 1964, remaining an employee of Cutter
16 until 1984. The testimony goes on to explain that,
17 largely from 1970 onwards, that was doing work in
18 relation to, I think, platelets.

19 But the first few years involved work on, amongst
20 other matters, Factor IX. If we'd go to -- can we try
21 three pages further on, please, Soumik. Yes, that's
22 it. I'm just going to pick up a handful of parts of
23 Dr Wada's testimony. So again, top left-hand corner,
24 picking it up at line 21. The question is:

25 **"Question:** Dr Wada, I want to ask you to focus with

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1 Then there's a question about whether Dr Wada was
2 aware of the risk of other viruses, and he says he
3 wasn't aware. Then if we pick it up at line 15:

4 **"Question:** Were you aware ... in the 1970 to '72
5 time frame that the plasma used by Cutter to manufacture
6 Factor IX --

7 "...

8 **"Question:** -- was in part collected from prisoners
9 in prisons? Were you aware of that?

10 **"Answer:** Yes, I knew that.

11 **"Question:** In other words, from penitentiaries
12 where individuals were incarcerated plasma was drawn
13 and, in part, plasma from those sources was used to
14 manufacture Konyne.

15 **"Answer:** Yes.

16 **"Question:** You knew that?

17 **"Answer:** Yes.

18 **"Question:** Did you have or, rather, did you take
19 any precautions to protect yourself against being
20 infected with hepatitis virus?

21 **"Answer:** Yes. Periodically, I received
22 a gammaglobulin injection at Cutter.

23 **"Question:** ... About how often did they give you
24 that, if you remember?

25 **"Answer:** I think it was once in every two to three

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1 me on the years 1970 to 1972.

2 "...

3 **"Question:** And for some time now I'm going to ask
4 questions, [so we're now on the bottom left-hand
5 quarter] with reference to the years 1970 to 1972."

6 Then we can see lines 6 to 8 reference to the
7 Factor IX products sold by Cutter called Konyne,
8 licensed in 1969, that's obviously in the States, not
9 in the UK.

10 Then the question at line 14:

11 "Doctor, in the period 1970 to '72, were you aware
12 of the fact that the plasma that was being used to
13 manufacture Factor IX --

14 "...

15 **"Question:** -- at Cutter carried a risk of
16 transmitting hepatitis virus?"

17 At line 20:

18 **"Answer:** Yes, I was aware."

19 Also the next question:

20 **"Question:** ... Also, in those years, Doctor, were
21 you aware that the plasma used to manufacture Konyne --"

22 Then we go to the top of the right-hand column:

23 **"Question:** -- was pooled from many different
24 donors?

25 **"Answer:** Yes."

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1 months or something. I don't remember the exact
2 interval."

3 If we go to the next page please Soumik, bottom
4 left-hand quarter, picking it up at line 3:

5 **"Question:** Doctor, in the period 1970 to '72, were
6 you aware of the fact that on certain occasions there
7 were reports of patients receiving Konyne --

8 **"Answer:** Yes.

9 **"Question:** -- developing hepatitis and dying? Were
10 you aware of that?

11 **"Answer:** Yes.

12 **"Question:** So my understanding, then, would be,
13 Dr Wada, that as an employee of Cutter at that time
14 working with plasma, you understand that there were
15 risks associated with the plasma and that there were
16 reports in particular of patients developing
17 hepatitis --

18 **"Answer:** Yes.

19 **"Question:** -- in association with Konyne --

20 **"Answer:** Yes.

21 **"Question:** -- and on occasion deaths occurring?

22 **"Answer:** Yes. However, I was understanding that
23 was a very rare occasion."

24 So that, I think -- the full transcript probably
25 merits being read but that is part of the evidence

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1 given in US litigation by Dr Wada.

2 The second document I wanted to refer to but not
3 ask you to look at is just to remind you of the
4 testimony of Dr Francis, again in US litigation,
5 which -- so Dr Donald Francis, which Mr Hill referred
6 to earlier in the week. The reference, for your note,
7 is CGRA0000404, I think, and Mr Hill took you to
8 various passages in which Dr Francis was giving his
9 opinion and his understanding of the practices of
10 Baxter in collecting plasma specifically from urban
11 gay men.

12 I'm not going to go back to that, but just to
13 point out that Francis's evidence also covers his
14 views in relation to -- or his understanding of the
15 position as regards Cutter, and Cutter similarly
16 obtaining plasma from those sources as well as from
17 prison sources.

18 Dr Francis's report, in fact, also refers to
19 a number of the documents that we've already looked at
20 in that regard but, again, it's probably worth reading
21 Dr Francis's report in full.

22 The final document, before I turn to questions of
23 product labelling, which is the last topic for today,
24 is at CGRA0000204_026. You'll recall, sir, as
25 I indicated I think it was yesterday, or possibly the

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1 Then he refers to Mr Longstaff. Then he says
2 this:

3 "As a journalist and documentary filmmaker, I have
4 conduct a six-year investigation into this subject.
5 That investigation uncovered a great deal of
6 information relevant to the Longstaff case,
7 demonstrating that", and then he sets out his
8 conclusions.

9 Obviously, it will be a matter for you, sir, to
10 reach your own views on these matters, but he says,
11 amongst other things:

12 "US federal regulations were violated, allowing
13 drug users, prostitutes, and sick inmates to routinely
14 donate in the prison plasma programs.

15 "Blood companies claimed prison plasma was safe
16 even though they knew it was harmful.

17 "Despite 20 years of blood industry studies
18 showing that prisoners were a high-risk population for
19 diseases, drug companies continued taking blood from
20 inmates because it was cheap.

21 "Factor concentrate products made from prison
22 plasma were exported throughout Europe and the [UK],
23 and British officials were warned of its risks."

24 Then he refers to having conducted:

25 "... in-depth interviews with former officials

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1 day before, that the primary focus of the
2 presentations had been on contemporaneous
3 documentation but I observed that there were a number
4 of other sources of information including
5 investigations, books written and, indeed,
6 documentaries produced by -- and other investigations
7 undertaken by journalists.

8 This is a letter dated November 2003 from
9 Kelly Duda, who had undertaken investigations as
10 a journalist and documentary filmmaker. I think it's,
11 perhaps -- it's his summary, you'll see the subject
12 "Peter Longstaff & US prison blood", and you'll recall
13 that Mr Longstaff was the husband of Carol Grayson
14 from whom this and a number of other documents have
15 been obtained by the Inquiry, and it is perhaps worth
16 just reading a little of this because it paints what
17 might be said to be a fairly powerful picture in
18 relation to prison sources, and ties that in with
19 Cutter.

20 So he says this:

21 "For more than three decades, the Arkansas prison
22 system profited from selling blood plasma from inmates
23 infected with viral hepatitis and AIDS. Thousands of
24 unwitting victims around the world who transfused
25 products from this blood died as a result."

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1 from the [CDC] and the [FDA], state prison officials,
2 former employees, high-ranking politicians and inmate
3 donors, all of which paint a horrifying portrait of
4 an industry with few safeguards."

5 He uses the phrase:

6 "Haemophiliacs were considered 'canaries in the
7 coalmine' for blood-borne diseases."

8 If we go over the page, we can then pick up
9 references, specifically to Cutter. He says:

10 "In the early 1960s, Cutter Labs opened its first
11 collection facilities in Oklahoma, Alabama and
12 Arkansas prisons and the 'biologics' industry was
13 born. So, too, were the problems.

14 "The prisons were plagued with viral hepatitis
15 outbreaks because of sloppy practices and the use of
16 unsterile equipment. Hundreds of infections and an
17 undetermined number of inmate deaths occurred as
18 a result. More prison operations sprang up in the
19 late 1960s and 1970s as medical journals began
20 reporting cases of viral hepatitis in users of blood
21 coalition products."

22 Then he refers to the blood letting continuing,
23 even though prisoners were labelled a 'high-risk group
24 of plasma donors' for spreading hepatitis and other
25 diseases.

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1 If we then go down a further paragraph, he says:
2 "Despite this, Cutter Biologics continued to
3 purchase plasma from this and other prison systems."

4 Then he refers specifically to Mr Longstaff being
5 treated with Koate. Then the next paragraph refers to
6 a John Andervont:

7 "... former inspector and retired director of
8 Blood Center Licensing for the FDA, remembered
9 catching inmates performing phlebotomies at the
10 Arkansas prison. [A reference then to] a former ...
11 inmate infected with hepatitis C, who sold plasma
12 regularly [stating]: 'They didn't care. If you could
13 crawl to get there you were able to give blood'."

14 Then the bottom of the page, refers to Cutter,
15 Baxter Healthcare, a division of Hyland Laboratories,
16 and Alpha Therapeutics, purchasing and using prison
17 plasma in their manufacturing of factor concentrates.

18 Now, those are obviously Mr Duda's own
19 observations, and you will yourself reach your own
20 conclusions.

21 I just then ask you to go to the next paragraph --
22 sorry, the next page, last paragraph.

23 He says this:

24 "Should the [UK] choose to hold a full and open
25 public inquiry into contaminated blood products

1 a more direct source than a letter which is written
2 summarising it.

3 **MS RICHARDS:** Yes, and I don't have the statement
4 available to display today, which is really the reason
5 for referring to the letter by way of shorthand. We
6 will have the statement available by the time we come
7 back to the issue in early November.

8 **SIR BRIAN LANGSTAFF:** Thank you.

9 **MS RICHARDS:** Sir, those are the documents in relation to
10 sources of plasma supply, prison plasma usage, and
11 donors -- approach to donor selection and screening,
12 that I want to refer to.

13 That leaves one final topic for the afternoon,
14 which is looking at product labels and data sheets.
15 I'm going to focus for these purposes on Koate and
16 Koate-HT. The Konyne, as well as the fact that we
17 have less information about Konyne, such information
18 as we have suggests that the -- where we do have
19 copies of product labels and leaflets and so on, it's
20 essentially in the same terms, similar terms, to that
21 in relation to Koate, which was the primary product
22 and the licensed product in the UK.

23 So if we start -- we've looked at some of these
24 already so I'll hopefully be able to take it fairly
25 quickly.

1 including imported plasma, I would welcome the
2 opportunity to present more information/evidence about
3 the prison plasma trade. People around the world need
4 to know what happened."

5 And I can indicate, sir, that we do have a witness
6 statement that Mr Duda has provided to the Inquiry,
7 and we will disclose that ahead of the November
8 hearings when we come back to the question of
9 knowledge of and response to risk.

10 **SIR BRIAN LANGSTAFF:** Yes, I have already read it. But
11 this is a letter to Stephen Grimes QC.

12 **MS RICHARDS:** Yes, in the context of specific litigation
13 that was taking place.

14 **SIR BRIAN LANGSTAFF:** So it doesn't say why it's been
15 written, precisely?

16 **MS RICHARDS:** No, I'm afraid I don't know the answer to
17 that. I've no doubt we can find the answer, but
18 I don't know specifically what prompted this
19 particular letter. There is more information from
20 Mr Duda in the statement that he has given to the
21 Inquiry, which will assist in understanding more about
22 what he says he uncovered about the collection of
23 plasma from prisons and its use by pharmaceutical
24 companies.

25 **SIR BRIAN LANGSTAFF:** Yes. And that's plainly probably

1 If we start with BAYP0000032_045. You can see
2 there are documents saying:

3 "We shall use the labels shown overleaf in the
4 UK ..."

5 I think we can go just to page 3.

6 So this is a draft effectively, I think, probably
7 for the purposes of the licensing application --
8 sorry, that's the wrong page. Go to the next page.
9 That's it, yes.

10 Right-hand side we've got the text of a warning --
11 sorry, I should have said the date of this I think is
12 1973 -- but the warning there, on the right-hand side:

13 "Since the presence or absence of the virus of
14 hepatitis in Koate cannot be proven with absolute
15 certainty, the presence of such virus should be
16 assumed and the hazard of administering Koate should
17 be weighed against the medical consequences of
18 withholding the use of Koate."

19 We can see there a reference to US Federal law, so
20 I think these were essentially taken from the
21 labelling used in the US and the proposal was to
22 overprint that with the name Bayer (UK) Limited.

23 As we know, Bayer (UK), as things happened,
24 withdrew their licence application and Speywood took
25 over.

1 If we go to BAYP0000022_083, we've got a document
 2 headed "October 1975" which has various forms of
 3 suggested wording for the package insert and
 4 labelling. Picking it up in the second paragraph in
 5 capitals:

6 "This product is prepared from units of human
 7 plasma which have been tested and found non-reactive
 8 for hepatitis associated (Australia) antigen.
 9 Unfortunately this test does not with certainty
 10 preclude the presence of hepatitis virus. See
 11 warning."

12 Then the wording of "Caution", and we saw
 13 effectively this wording or very similar wording in
 14 the licence application we looked at this morning,
 15 albeit we don't have then have a copy of Speywood's
 16 licence application. But.

17 "Caution: Because of the possibility that any
 18 lots of Koate might contain the causative agents of
 19 viral hepatitis, its use must be considered in light
 20 of this hazard, particularly in persons with few
 21 previous transfusions of blood and plasma products."

22 Then we've got the reference to the Kasper and
 23 Kipnis application, and then the boxed warning with
 24 the italicised -- I'll read the whole bit:

25 "Koate concentrate is a purified dried fraction of
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1 leaflet:

2 "This product is prepared from human venous
 3 plasma. Each individual unit of plasma and each lot
 4 of final product has been found non-reactive for
 5 hepatitis B surface antigen using a licensed
 6 third-generation assay. However, this test does not
 7 preclude the presence of hepatitis virus. See
 8 warning."

9 If we go over to the right-hand side there's a box
 10 headed "Warning", and we've got the American spelling
 11 of haemophilia.

12 "Antihemophilic Factor ... Koate concentrate is a
 13 purified dried fraction of pooled plasma obtained from
 14 many paid donors. The presence of hepatitis
 15 viruses ..."

16 Just pausing there, there's a point in time at
 17 which the language changes from "virus" to "viruses":
 18 "... should be assumed and the hazard of
 19 administering Koate concentrate should be weighed
 20 against the medical consequences of withholding it,
 21 particularly in persons with few previous transfusions
 22 of blood and blood products.

23 "Kasper and Kipnis have concluded that those who
 24 have had little exposure to blood products have a high
 25 risk of developing hepatitis after introduction of

1 pooled plasma obtained from many donors. Since the
 2 presence or absence of hepatitis [virus] in Koate
 3 concentrate cannot be proven with absolute certainty,
 4 the presence of such a virus should be assumed and the
 5 hazard of administering Koate concentrate should be
 6 weighed against the medical consequences of
 7 withdrawing it."

8 **SIR BRIAN LANGSTAFF:** Interestingly, did they correct the
 9 spelling of "virus" in that?

10 **MS RICHARDS:** I imagine they did. I don't think we have
 11 necessarily got a final original copy, so what we
 12 often have are copies that appear in files,
 13 photocopies that appear in files that appear to be
 14 from the actual package or the actual insert. Or
 15 they're the drafts that accompany the licence
 16 applications. So we don't have the original documents
 17 as they appeared with the lots or the vials.

18 **SIR BRIAN LANGSTAFF:** The reason I ask is whether we know
 19 that it did actually appear in italics and capitals on
 20 the label, but it follows from what you've just said
 21 you don't know.

22 **MS RICHARDS:** Certainly not at every point in time we
 23 don't know. There's a leaflet from I think it's 1981,
 24 BAYP0000019_025. This may be a US leaflet. If we
 25 look left-hand column, towards the bottom of the

1 clotting factor concentrates, such as this product.
 2 For those patients, especially those with mild
 3 haemophilia, they recommend single donor products.
 4 However, for patients with moderate or severe
 5 haemophilia who have received numerous infusions of
 6 blood and plasma products, they feel the risk of
 7 hepatitis is small. They believe that the clotting
 8 factor concentrates have so greatly improved the
 9 management of severe haemophilia that these products
 10 should not be denied to appropriate patients."

11 If we go over the page, I think it's not just the
 12 spelling of haemophilia that indicates this is a US
 13 label, but the bottom right-hand corner, if you zoom
 14 in --

15 **SIR BRIAN LANGSTAFF:** Yes.

16 **MS RICHARDS:** -- we've got the reference there:

17 "US [Government] [Licence] No. 8, Cutter
 18 Biological."

19 But if we then just zoom out again, if we look,
 20 the third column along, top of the third column, that
 21 first paragraph ends with:

22 "It is important that this product be stored
 23 properly and that the directions be followed carefully
 24 during use, and that the risk of transmitting
 25 hepatitis be carefully weighed before the product is

1 prescribed."

2 And we certainly saw that language in one of the

3 licence applications we looked at earlier.

4 If we go to BAYP0000019_012, this is a UK data

5 sheet, and we can see that not just from the spelling

6 of haemophilia but, if we go to the last page, we've

7 got the licensee as Cutter Laboratories Ltd, Guildford

8 Surrey, and the date, if we just look, is

9 January 1981.

10 If we go to the second page, bottom of the page

11 under the heading "Contra Indications", we've got

12 essentially the very similar language shown. In the

13 second paragraph we've got the reference then to "many

14 paid donors". You've got there "virus" in the

15 singular so:

16 "The presence of hepatitis virus should be assumed

17 and the hazard of administering Koate concentrate

18 should be weighed against the medical consequence of

19 withholding it, particularly in persons with few

20 previous transfusions of blood and plasma products."

21 Then there's the reference to Kasper and Kipnis

22 again which continues to over the top of the next

23 page.

24 If we look at "Adverse Reactions", partway down

25 that page, you'll see that the first paragraph refers

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1 reflect an understanding of not just hepatitis B but

2 also non-A, non-B hepatitis, I don't know, because we

3 don't have anything further by way of explanation for

4 that change.

5 Then if we go to BAYP0000026_065, this is

6 obviously a draft document. It's not a final form of

7 labelling but we can see from the heading:

8 "Koate labelling.

9 "Proposed new text complying with UK regulations."

10 I'm afraid I don't think we know the date of this.

11 Bottom of the page refers to Cutter Division of Miles

12 Laboratories Limited, Slough. So it may be that will

13 assist us in providing a date. If we go to the fourth

14 page, we can see, just over halfway down the page,

15 a "WARNING", in capitals:

16 "Koate concentrate is a purified dried fraction of

17 pooled plasma obtained from many donors. The presence

18 of hepatitis virus should be assumed and the hazard of

19 administering Koate concentrate should be weighed

20 against the medical consequence of withholding it,

21 particularly in persons with few previous transfusions

22 of blood and blood products."

23 Then, if we go to BAYP0000028_056, you'll see that

24 this is the licence application, September of 1983,

25 for a licence in the UK.

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1 to allergic reactions, and then the second to

2 a reaction that may occur in patients with blood

3 groups A, B, or AB. Then the third paragraph there

4 says:

5 "The risk of hepatitis is present with the

6 administration of AHF concentrate preparations (see

7 discussion under WARNING)."

8 So that's a UK data sheet for Koate, January 1981.

9 If we go to BAYP0000019_087, if we look at the date in

10 the top left-hand corner we've got "[Revised

11 December] 1981". This is another US Government

12 licence document. Apologies.

13 The language is the same. I think I'd been fooled

14 by the spelling of "haemophilia" into thinking it was

15 a UK document.

16 Then if we go to -- yes, BAYP0004216_002, this is

17 again a US document. BAYP0004216_002.

18 The date there, the date issued, August 24, 1982.

19 I draw attention to it only, if we look just a little

20 further down, it says:

21 "Reason for change.

22 "Change imprint to 'AHF/IU'. Update Hepatitis

23 statement. Change to 'viruses' in Warning statement."

24 So there's the change from hepatitis "virus" to

25 hepatitis "viruses". Whether that was intended to

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1 If we go over the page, we probably looked at this

2 morning, but we can see the name and address of

3 proposed licence holder there: Miles Laboratories

4 Limited. And then the text, if we go to page 12.

5 We've got the text of the warning. I won't read it

6 out again, because it's in essentially the same or

7 very similar terms to what we've previously read.

8 You'll see "viruses" in the plural in the first

9 paragraph under "Warning". We've still got the

10 reference to Kasper and Kipnis.

11 Then if we go to the next page, under the heading

12 "Adverse Reactions", we've got the allergic reactions

13 paragraph, the paragraph about the possibility of

14 complications in patients with blood groups A, B, or

15 AB, and then we've got the third paragraph about

16 hepatitis.

17 There's nothing there, as you'll see, in relation

18 to risk of AIDS. This is being submitted, as I

19 understand it, in September 1983.

20 And then ... so this is -- the next document is

21 a US label, or product insert, BAYP0000027_087. I'm

22 drawing attention to it even though it's an American

23 one because it does refer to AIDS. Sorry,

24 BAYP0000027_080.

25 Top left-hand corner tells us it's revised

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1 December 1983. Then if we go to the middle column we
 2 have the box of warnings. So:
 3 "... Koate concentrate ... purified dried fraction
 4 of pooled plasma obtained from many paid donors.
 5 Although each unit of plasma has been found
 6 non-reactive for hepatitis B surface antigen ... using
 7 a US federally approved test with third-generation
 8 sensitivity, the presence of hepatitis viruses in such
 9 pools must be assumed."
 10 Then there's the reference again to Kasper and
 11 Kipnis certainly in similar terms, it may be identical
 12 terms, to what we've seen earlier.
 13 Then the third paragraph deals expressly with
 14 AIDS:
 15 "Isolated cases of Acquired Immune Deficiency
 16 Syndrome (AIDS) have been reported in haemophiliacs
 17 who have received blood and/or coagulation factor
 18 concentrates, including Factor VIII concentrates. It
 19 is not known if the disease is due to a transmitted
 20 specific agent, secondary to multiple antigenic
 21 exposures, or to some other mechanisms. The physician
 22 and patient should consider that Factor VIII
 23 concentrates may be associated with the transmission
 24 of AIDS and weigh the benefits of therapy
 25 accordingly."

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1 "2. Educate the sales force.
 2 "3. Since MDs won't be reading the package insert
 3 in most cases, send a letter to haematology
 4 specialists informing them of the warning we are
 5 putting in the insert."
 6 **SIR BRIAN LANGSTAFF:** And who writes that?
 7 **MS RICHARDS:** I can't tell, sir --
 8 **SIR BRIAN LANGSTAFF:** I think if you scroll down to the
 9 bottom, it's Ed Cutter.
 10 **MS RICHARDS:** Yes. Yes. It looks like it's -- if we go
 11 then to the top of the page we've obviously got the
 12 left-hand side cut off, but it's being sent, it looks
 13 like, to a number of recipients within Cutter.
 14 **SIR BRIAN LANGSTAFF:** Do we know what his position was?
 15 **MS RICHARDS:** No. The name would suggest a fairly
 16 powerful one, but I don't know --
 17 **SIR BRIAN LANGSTAFF:** Well, he's part of the family, but
 18 the Cutter brand has been around for quite some time.
 19 **MS RICHARDS:** It has. And of course it could be
 20 coincidence. I don't know, I'm afraid, but I'm sure
 21 we can do some checks and find out.
 22 Whether that's what leads to what we saw in the
 23 insert revised a year later, December 1983, or whether
 24 there were some intermediate revisions to inserts,
 25 I don't know. And the extent to which this was then

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1 So an express reference there to AIDS on this
 2 American sheet.
 3 Sorry, I'm just going to check whether we've got
 4 a UK one from around that time. But I think ... no,
 5 that's American. Yes. I'm not sure in relation to
 6 Koate -- and I'll come on to Koate-HT in a moment --
 7 whether we've got any other labels or data sheets or
 8 product inserts which contain anything similar to what
 9 we see in this US document with reference to AIDS.
 10 Before I just show you what we have in relation to
 11 Koate-HT leaflets -- which isn't, I think, a huge
 12 amount -- can I ask you to look at CGRA0000434.
 13 This is a memo, 29 December 1982, in relation to
 14 AIDS, and it's a Cutter memo which says this:
 15 "It appears to me to be advisable to include an
 16 AIDS warning in our literature for Factor IX and
 17 Factor VIII. I realize that very little is known
 18 about AIDS and the relationship the products we
 19 manufacture have in causing the syndrome. However,
 20 litigation is inevitable and we must demonstrate
 21 diligence in passing along whatever we do know to the
 22 physicians who prescribe the product. In my opinion,
 23 three steps are called for, once we agree on the
 24 wording of our message.
 25 "1. Include it in the package insert.

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1 replicated in relation to the UK is unclear. We
 2 certainly haven't found anything that obviously looks
 3 like a UK package insert or label from this period, so
 4 after December 1982, which contains an equivalent form
 5 of wording.
 6 That doesn't mean it doesn't exist. And if it
 7 does, I think we're yet to identify it.
 8 There is ... we have got documents which are
 9 clearly drafts in which someone has scribbled with
 10 handwriting all over various suggested amendments, but
 11 I don't think it's particularly useful to go to that.
 12 It's both American and plainly a draft.
 13 If we look in relation to Koate-HT,
 14 BAYP0004702_002, this is a label, but it's a US label,
 15 again, I think. If we zoom in left-hand side, there's
 16 a warning. It's the language of hepatitis viruses
 17 again, in relation to that.
 18 I note that the date of this is November 1983, but
 19 at the moment I'm -- it's not clear to me where the
 20 date comes from. Just look at the bottom box, please,
 21 Soumik.
 22 **SIR BRIAN LANGSTAFF:** But there's the date.
 23 **MS RICHARDS:** Yes, we've got the date there. There's the
 24 date. 18 November 1983.
 25 So at that point in time, in the States, it

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1 doesn't look like the label in any event had a warning
2 on it, whatever the package insert may or may not have
3 contained, that related to AIDS.

4 There's an information manual, BAYP0000026_054.
5 Again, however, it's a US document. So it's headed
6 and revised January 1984, "Antihæmophilic Factor
7 (Human) Heat Treated Koate-HT".

8 Bottom of the page -- sorry, second page --
9 contains a warning in the box that we see there, if we
10 just go down the further paragraph.

11 Sir, we can see there the wording that appears to
12 have made its way into the American inserts or
13 leaflets with reference there to AIDS.

14 Then, if we turn to just a document we've already
15 looked at, but because it's a UK one, I think we
16 should perhaps go back to it. BAYP0000003_309.

17 We looked at this earlier. It's the licence
18 granted to Miles Laboratories trading as Cutter
19 Laboratories in February 1985, so long after the date
20 of that Cutter memo which talked about the need to
21 update the product inserts.

22 If we go to the second page, we've got the
23 warnings at the bottom of the page, which don't
24 address AIDS.

25 Then, if we go to the top of the fourth page,

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1 used to eliminate high risk donors", and then the heat
2 treatment step.

3 "However, testing methods presently available are
4 not sensitive enough to detect all units of
5 potentially infectious plasma, and treatment methods
6 have not been shown to be totally effective in
7 eliminating viral infectivity from this product.

8 Individuals who have not received multiple infusions
9 of blood or plasma products are very likely to develop
10 signs and/or symptoms of some viral infections,
11 especially non-A, non-B hepatitis as shown by recent
12 data."

13 Then there's a reference to the Fletcher paper,
14 and then we see reference again to the Kasper and
15 Kipnis paper, although it looks as this might be
16 a draft, and as I say, again it's a US product.

17 I don't think we have anything which shows clearly
18 what the labelling position was for Koate-HT in the
19 UK. No, we've got another one from April of 1987, but
20 again, I'll show you it briefly, but it's a US label.
21 BAYP0000010_070.

22 So this is revised April 1987, the date is in the
23 very top left-hand corner. The warnings are in the
24 third column. It looks similar to the document we
25 just looked at. So we've got reference there to the

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1 we've got the familiar language about the presence of
2 hepatitis viruses, but no reference there to AIDS or
3 to HTLV-III.

4 I'll just check one further reference, if I may.

5 I'll go to it, but again it's a US reference,
6 BAYP0000008_127. Revised March 1986. If we look at
7 the right-hand side, top of the page, the product:

8 "This product has been heated ..."

9 Then there's a couple of lines that are slightly
10 unclear but, we can see there, there is then
11 a discussion of non-A, non-B hepatitis, and reference
12 to chimpanzee studies in that regard, and then the
13 next paragraph talks about:

14 "Additional *in vitro* studies on the effect of the
15 heat treatment process and virus inactivations were
16 carried out with a number of viruses including
17 [HTLV-III] and AIDS related virus ..."

18 Then there's reference to a table.

19 Then, if we go over the page, we've got a warning
20 in a different language than previously. So there's
21 reference, then, to Koate-HT being prepared from
22 pooled units of plasma, individually tested, and found
23 non-reactive for hepatitis B surface antigen and
24 HTLV-III.

25 It then refers to "Other screening procedures ...

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1 testing for hepatitis B surface antigen, the testing
2 for HTLV-III, the other screening procedures, but the
3 testing methods not being sensitive enough to detect
4 all units of potentially infected plasma.

5 We've got reference there to the risks of non-A,
6 non-B hepatitis and the reference to Fletcher and
7 Kasper and Kipnis.

8 **SIR BRIAN LANGSTAFF:** There's also -- the way one might
9 read the warning, it does refer to HTLV-III. And in
10 part of that first paragraph, it does talk about
11 "treatment measures not been shown to be totally
12 effective in eliminating viral infectivity from this
13 product".

14 So it's open to the interpretation that it's
15 alert to a possible risk of HTLV-III transmission.

16 **MS RICHARDS:** Yes.

17 **SIR BRIAN LANGSTAFF:** It's not absolutely clear, but
18 it's --

19 **MS RICHARDS:** It's not.

20 **SIR BRIAN LANGSTAFF:** It's there if one wants to read it
21 that way.

22 **MS RICHARDS:** Yes. I should say there's also
23 correspondence, I won't take time up going to it,
24 suggesting -- and this is from Mrs Tatt in the UK --
25 suggesting that, when asking whether the warning

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1 statement could be amended for the UK, but actually,
 2 we will look at this.
 3 One last document for today, BAYP0000015_060.
 4 This is actually not about Koate-HT, but about
 5 Koate-HS. But, in any event, it's 15 September '86:
 6 "Could the 'WARNINGS' statement be amended for
 7 the UK? We would like to delete the reference to the
 8 Fletcher paper and potential transmission of non-A,
 9 non-B hepatitis."
 10 I think the answer to that might have been no.
 11 Because there's a response which says, "Any labelling
 12 being applied in the US must" -- oh, no, actually it
 13 says you can prepare your own warning in the UK. I'll
 14 just read the text of it.
 15 "Any labelling being applied in the US must
 16 contain the warning. If we send you unlabelled final
 17 containers you may prepare your own labelling", was
 18 the response in the States.
 19 So we don't therefore have, I'm afraid,
 20 a comprehensive picture of how the risks were
 21 presented, at least as we get to the 1980s go and
 22 through the 1980s, but there isn't anything at the
 23 moment in relation to any UK labelling that seems, in
 24 the first half of the 1980s, to reflect any warnings
 25 about the risk of AIDS, or non-A, non-B hepatitis.

1 The rather generic reference is to hepatitis virus or
 2 hepatitis viruses and, at the repeated reference to
 3 the Kasper and Kipnis paper.
 4 Sir, that's what I am proposing to say in relation
 5 to Bayer/Cutter/Miles. Obviously, we'll come back to
 6 some of these issues in November. Tomorrow, we move
 7 to look at Speywood, and we will hear evidence from
 8 Sarah Middleton, in relation to Speywood and its
 9 works.

10 **SIR BRIAN LANGSTAFF:** Yes. Well, tomorrow, ten o'clock.
 11 **(4.39 pm)**
 12 **(The hearing adjourned until 10.00 am the following day)**

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