

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

CECIL SCOTT, ET AL

VS.

MONSANTO COMPANY

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CIVIL ACTION
NO. B-84-1103-CA

SEPTEMBER 2, 1987
VOLUME XIII

BEFORE THE HONORABLE JOE J. FISHER
UNITED STATES DISTRICT JUDGE, AND A JURY

REPORTED BY:

C. FRANK MCMILLAN
FEDERAL COURT REPORTING CO.
P. O. BOX 2664
BEAUMONT, TEXAS 77006
(409) 839-2518

A P P E A R A N C E S

ATTORNEYS FOR PLAINTIFFS:

MR. DAVID M. LACEY
MR. MICHAEL A. POHL
MS. SUSAN BAKER
GILPIN, POHL & BENNETT
1300 POST OAK BOULEVARD
HOUSTON, TEXAS 77056

MR. THOMAS HENDERSON
MR. ANTONIO PYLE
HENDERSON & GOLDBERG
1030 FIFTH AVENUE
PITTSBURGH, PENNSYLVANIA 15219

MR. BENTON MUSSLEWHITE
609 FANNIN, SUITE 517
HOUSTON, TEXAS 77002

ATTORNEYS FOR DEFENDANT:

MR. ROBERT A. HALL
MR. ROBERT A. JONES
MR. JONATHAN SHOEBOOTHAM
WOODARD, HALL & PRIMM
4700 TEXAS COMMERCE TOWER
HOUSTON, TEXAS 77002

MR. TANNER T. HUNT, JR.
MS. CHERYL D. OLESEN
MR. WALTER CRAWFORD
MR. MARK FREEMAN
WELLS, PEYTON, BEARD, GREENBERG,
HUNT & CRAWFORD
P. O. BOX 3708
BEAUMONT, TEXAS 77056

ALSO PRESENT:

MR. WILLIAM PAPAGEORGE, CORPORATE
REPRESENTATIVE FOR THE MONSANTO
CHEMICAL COMPANY.

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1 of Dr. George J. Levisksas.

2 THE COURT: Who do you have next?

3 MR. JONES: Your Honor, the defendant
4 will make its offer in its case in chief.

5 THE COURT: Thank you. Who do you have
6 next?

7 MR. POHL: With that, Your Honor, at
8 this time we call Dr. Paul L. Wright by
9 video deposition.

10 THE COURT: Do you have additional
11 objections to make or do you make the same
12 objections?

13 MR. JONES: Yes, Your Honor, we do.

14 Yesterday you stated, Your Honor, that
15 if we had additional objections other than
16 those running objections to make them at the
17 appropriate time and this is one of those
18 times, Your Honor.

19 We would object to the testimony of
20 Paul Wright to the extent that he seeks or
21 seeks to invoke his Fifth Amendment rights
22 under the constitution of the United States
23 on the ground that such testimony is
24 irrelevant, it's immaterial, it's
25 inflammatory and its prejudice outweighs its

1 probative value.

2 Monsanto specifically objects for the
3 reason that there is no adverse inference
4 that can be drawn from such invocation of
5 the Fifth Amendment, rights to the Defendant
6 Monsanto. And, therefore, the testimony is
7 irrelevant.

8 No adverse inference can be drawn for a
9 couple of reasons, Your Honor. Number one,
10 the witness was not an employee of Monsanto
11 at the time of the deposition. Monsanto did
12 not control or influence him or could
13 influence him in any way. He was
14 represented by counsel at the deposition.

15 And, in fact, I as counsel for Monsanto
16 Company specifically objected to his taking
17 the Fifth Amendment and requested that he
18 answer the questions.

19 THE COURT: Let's not argue your
20 objections. Just make them.

21 MR. JONES: All right, Your Honor.
22 That's the first objection, Your Honor.

23 The second objection that we have to
24 the testimony is that there is no
25 substantial independent evidence to support

1 the inference which the plaintiffs seek to
2 draw; that being, that the invocation of the
3 Fifth Amendment by Paul Wright, which they
4 are seeking to draw, is not that he may have
5 committed a crime but the fact that Monsanto
6 knew that he committed a crime or alleged or
7 knew of the alleged deficiencies of IBT.

8 Your Honor, since there is no
9 independent corroborating evidence on that
10 point under the authority of the United
11 States versus James, that testimony should
12 be excluded.

13 But even if they did have corroborating
14 evidence, Your Honor, they have got to also
15 show that the inference that they draw is
16 more probable than any other inference and
17 that they haven't done.

18 We would also object to the testimony
19 on the ground that Paul Wright's knowledge,
20 whatever it may be, cannot be imputed to
21 Monsanto because if, in fact, there were
22 deficiencies at IBT and if, in fact, he knew
23 of those deficiencies, he didn't tell them
24 to Monsanto. And under case law, Your
25 Honor, if an employee acts adverse to the

1 interest of its employer --

2 THE COURT: Let's not argue.

3 MR. JONES: Okay, Your Honor.

4 Your Honor, we'd also in that case,
5 what we would like to do is just refer to
6 the Court the brief that we filed in support
7 of the motion in limine which contains many
8 of these objections. And we would request
9 that the deposition testimony be excluded.

10 MS. BAKER: Could I be heard just for
11 the record?

12 THE COURT: Yes.

13 MS. BAKER: And rely for our part on
14 our briefs filed with the Court and on the
15 fact that a lot of cases represented by
16 United States versus James has been
17 overruled by the United States Supreme
18 Court. Thank you.

19 THE COURT: The Court overrules the
20 additional objections as well as the
21 original objections and gives counsel a
22 running objection to all of these matters
23 and deny the request.

24 All right. Let's proceed.

25 MR. JONES: Your Honor, may I state one

1 additional thing and then we can go on with
2 the deposition.

3 May we request an instruction from the
4 Court to the jury that no adverse inference
5 may be drawn against Monsanto Company as a
6 result of this testimony for the reasons
7 that we stated earlier?

8 MR. POHL: Your Honor, I would like to
9 be heard on that.

10 THE COURT: Yes.

11 MR. POHL: Your Honor, I don't want to
12 engage in argument, but the fact, the
13 evidence already shows from Monsanto's
14 witnesses that Dr. Wright was hired back by
15 Monsanto at Monsanto's request.

16 He came back in a high management
17 position, that after he came back, he
18 continued to coordinate with IBT. We have
19 read to the jury this very morning documents
20 that Paul Wright had knowledge of and even
21 Manual Rhame, one of Monsanto's current
22 employees, testified that he personally told
23 Dr. Wright about these deficiencies that
24 we're going to detail a little bit later in
25 this case.

1 THE COURT: All right. The Court will
2 instruct the jury that this testimony is
3 being offered for the purpose of showing the
4 knowledge, if any, on the part of Monsanto.

5 And Monsanto, being a corporation, of
6 course, it acts through agents, servants and
7 employees. And the jury may give such
8 circumstantial weight or value to the
9 evidence as they consider it is entitled to.
10 Now, on the question of knowledge of
11 Monsanto.

12 All right. You may proceed.

13 MR. POHL: We are ready to proceed,
14 Your Honor.

15 THE COURT: All right.

16
17 (WHEREUPON THE FOLLOWING PORTIONS OF THE
18 VIDEO DEPOSITION WERE SHOWN TO THE JURY.)
19

20 Raise your right hand. Do you solemnly
21 swear that the testimony you are about to give
22 will be the truth, the whole truth and nothing
23 but the truth so help you God?

24 A I do.

25 Q Dr. Wright, my name is Mike Pohl. As you

1 have just heard, I'm one of the attorneys for the
2 plaintiffs; that is, the parties who have brought
3 this civil lawsuit.

4 We are here today to ask you a number of
5 questions. Before we start those questions, let
6 me say first that the plaintiffs are calling you
7 as an adverse witness in that you were employed
8 by both by IBT and Monsanto.

9 Let me begin your deposition by asking you
10 to state for the Court and jury your full name.

11 A I am Paul Lee Wright.

12 Q If at any time during the course of the
13 deposition you don't understand one of my
14 questions because I speak too softly, because I'm
15 not careful in the way I worded the question,
16 because it is somehow confusing to you or because
17 there is some distraction in the room, I would
18 appreciate your stopping me and asking me to
19 repeat the question or to rephrase the question
20 so that we can be very clear that you understand
21 each and every question.

22 Can we have that agreement?

23 A I will do my best.

24 Q And you understand, Dr. Wright, that this
25 deposition, even though we are here in rather

1 informal proceedings, can be used at the time of
2 trial; that is, we can show this videotape or
3 read the question and answers or any part thereof
4 to the Court and jury?

5 A That's my understanding.

6 Q And you understand that you have just been
7 sworn by the court reporter?

8 A Yes, I do.

9 Q And you understand that that means that you
10 have been sworn to tell the truth and the whole
11 truth just as if you were sworn on the witness
12 stand in the courtroom before the jury?

13 A I understand that.

14 Q And in response to each of my questions, I
15 would like you to give me the full and complete
16 and truthful answer to each question, okay?

17 A All right.

18 Q And in what year did you obtain your Ph.D.?

19 A In 1961.

20 Q When were you first employed by Monsanto?

21 A In 1965.

22 Q When were you first employed by Industrial
23 Biotest Laboratories, Inc.?

24 A In 1971.

25 Q When you were employed by IBT, what was your

1 job title?

2 A I believe it was manager of toxicology.

3 Q And when did your employment with IBT
4 terminate?

5 A In November of 1972.

6 Q Did you then return to employment with
7 Monsanto?

8 A Yes, I did.

9 Q And what was the first day that you
10 recommenced your employment with Monsanto?

11 A I believe it was November 1, 1972.

12 Q What was your job title at Monsanto when you
13 became re-employed by Monsanto?

14 A It, again, was manager of toxicology.

15 Q And you worked here in St. Louis in the
16 offices of Monsanto?

17 A Yes, I did.

18 Q You were criminally indicted; is that
19 correct?

20 A That's correct.

21 Q All right. And do you recall when you were
22 indicted?

23 A No, I don't. I believe it was in 1982.

24 Q After the indictment was handed down, you
25 ultimately went through a criminal trial, did you

1 So, in the process of diagnosing a slide, a
2 pathologist is comparing the tissue against
3 pictures that are retained. So, those of us who
4 are good pathologist have very good skills of
5 retaining pictures of what we have seen
6 previously.

7 Q And I think you indicated a moment ago that
8 you could recall at this point rather vividly
9 what you saw under the microscope when you looked
10 at Dr. Kimbrough's slides?

11 A Yes.

12 Q First of all, so the jury will have some
13 understanding of this, in order to make your own
14 independent determination as to whether or not
15 Dr. Kimbrough's slides displayed cancer, what
16 were you looking for in terms of the shape of the
17 cells, the color, or anything else that might
18 appear to the naked eye under the microscope?

19 A There are series of factors that are
20 involved in making that diagnosis. The lesions
21 that were found in the liver were focal areas in
22 which the liver cells were enlarged and some of
23 the liver cells were dividing and producing a
24 nodule or a little focal area of abnormal cells
25 that were surrounded by normal liver tissue. And

1 not?

2 A Yes, I did.

3 Q And did you have an attorney representing
4 you in that criminal trial?

5 A Yes, I did.

6 Q What was that lawyer's name?

7 A The lead lawyer was Mr. James Robertson of
8 the Wilmer, Cutler & Pickering firm.

9 Q How many other attorneys, if any, assisted
10 in your representation during the course of those
11 criminal proceedings?

12 A There were two.

13 Q Were all three of those lawyers with the
14 Wilmer, Cutler & Pickering law firm?

15 A Yes, they were, as far as I know.

16 Q And you understood that law firm to be out
17 of Washington, D.C.?

18 A Yes, it was.

19 Q The criminal trial took place in Chicago,
20 did it not?

21 A Yes, it did.

22 Q Did you also have local attorneys
23 representing you in Chicago?

24 A Well, there was a firm Hapfin & Hapfin and
25 apparently was involved in the firm but they did

1 not represent me personally, as far as I know.

2 Q How long did the trial last?

3 A I believe about seven months.

4 Q And you were tried along with Dr. Keplinger
5 and a man named James Plant?

6 A That's correct.

7 Q And a Dr. Joe Keplinger did not complete the
8 trial because of physical illness; is that
9 correct?

10 A That's correct.

11 Q And so far as you understand, the trial as
12 to Dr. Keplinger has never been completed; is
13 that correct?

14 A I have no knowledge.

15 Q At the conclusion of the trial, were you
16 convicted?

17 A Yes, I was.

18 Q And were you sentenced by the judge?

19 A Yes, I was.

20 Q Did you take an appeal from that conviction?

21 A Yes, I did.

22 Q And was the conviction affirmed?

23 A Yes, it was.

24 Q I want to show you a document which I have
25 obtained from the district courts of Chicago

1 which is your indictment and ask you first, if
2 you have ever before looked at the grand jury's
3 indictment as it pertains to you, have you?
4

5 (Whereupon the video deposition was interrupted.)
6

7 THE COURT: Do you need to go into this
8 much detail?
9

10 (Video resumed.)

11 A Yes, I have seen the indictment. I don't
12 know the document you have.
13

14 (Whereupon the video deposition was interrupted.)
15

16 THE COURT: Is it necessary to go into
17 this much detail?

18 MR. MUSSLEWHITE: We can stop, Your
19 Honor --

20 THE COURT: Can you offer the rest of
21 it by Q&A?

22 MR. MUSSLEWHITE: Just want to go over
23 one question, Your Honor.

24 MR. POHL: If we can have about two
25 more minutes then we are going to offer it

1 by Q&A.

2 THE COURT: All right. Make it roll
3 then.

4
5 (Video deposition resumed.)

6 Q Let me show this to you and your lawyer.

7 This is a certified copy which we obtained from
8 the United States District, the Northern District
9 of Illinois and pass it to you. Take a moment to
10 look at it and just identify it for the record as
11 to whether or not it's the indictment?

12 Does that appear to be the indictment?

13 A It appears to be, but I cannot -- am not
14 totally certain that that's the document at this
15 point in time.

16 Q But to the best of your knowledge today,
17 that appears to you to be a true and accurate
18 copy of the indictment that you were faced with?

19 A That is my assumption.

20 Q I want to ask you a few questions, Dr.
21 Wright, about the attorneys' fees associated with
22 your criminal trial --

23
24 (Whereupon the video deposition was interrupted.)

25 THE COURT: Let's don't go back into

1 that. Let's don't go back into the attorney
2 fees. Just go into details that are just,
3 thread bare, you've just worn it thread
4 bare. Get to the testimony that you want to
5 ask him about concerning his test, I suppose
6 and -- see if you can do that.

7 MR. MUSSLEWHITE: Can you do it to the
8 first question on there -- okay.

9
10 (Video deposition resumed.)

11
12 Q There was a manager of toxicology for IBT
13 and also there is a manager for toxicology for
14 Monsanto at a later point in time. You knew that
15 the United States Government and possibly others
16 might receive copies of the conclusions of the
17 studies that were being conducted at IBT, on
18 Monsanto's Aroclor products, did you not?

19 A On my attorney's advice, I hereby invoke the
20 right secured to me by the Fifth and Fourteenth
21 Amendments to the U.S. Constitution and
22 respectively refuse to answer that question on
23 the grounds that any information --
24

25 (Whereupon the video deposition was concluded.)

1 THE COURT: What is the necessity of
2 offering this?

3 MR. MUSSLEWHITE: Your Honor, there's
4 about only eight questions that we have that
5 go into the --

6 THE COURT: Well, let's get to the
7 eight questions then.

8 MR. MUSSLEWHITE: We will stop that and
9 read them.

10 THE COURT: All right.

11 MR. POHL: If you will turn to Page 31,
12 line 19, I will ask the question. You can
13 give the answer.

14 MR. MUSSLEWHITE: Okay.
15

16 (Reading from video deposition)

17 Q Dr. Wright, is it true that the result of
18 IBT's high mortality rate in connection with
19 Monsanto's Aroclor study and the practice of
20 substituting animals during the course of such
21 studies cause the toxic effects of Monsanto's
22 Aroclor studies to be seriously understated?

23 A On my attorney's advice, I hereby invoke the
24 rights secured to me by the Fifth and Fourteenth
25 Amendments to the U.S. Constitution and

1 respectfully refuse to answer that question on
2 the grounds that any information I give in
3 response may tend to incriminate me.

4 (End of reading)

5
6 MR. POHL: Page 33, line 12.

7
8 (Reading from video deposition)

9 Q Dr. Wright, is it true that the reports of
10 the conclusions reached in connection with the
11 IBT Aroclor studies were altered several times at
12 Monsanto's request?

13 A On my attorney's advice I hereby invoke the
14 rights secured to me by the Fifth and the --

15 (End of reading)

16
17 THE COURT: If he is going to invoke
18 the Fifth Amendment, all of these will --
19 there's no need of offering them.

20 MR. MUSSLEWHITE: Your Honor, our
21 purpose, if I may say so, is to show the
22 questions -- the information we tried to get
23 from this witness and if you will -- I'll --
24 we'll stop reading the Fifth Amendment and
25 just read the questions.

1 THE COURT: Did you not get the
2 information from other witnesses?

3 MR. POHL: Your Honor, this is the
4 witness that has the most direct knowledge
5 both from the point of view of IBT and
6 Monsanto.

7 THE COURT: Don't you think the Court
8 knows that? It's absolutely a waste of time
9 to ask a question and then to have him
10 invoke his Fifth Amendment right. That
11 doesn't add anything to the testimony.

12 MR. POHL: We want to show the jury,
13 Your Honor, that we attempted to go to the
14 one person from both Monsanto and IBT who
15 had the most --

16 THE COURT: The Court is reversing its
17 rulings. We will sustain the defendant's
18 objection and we will grant his request to
19 suppress this deposition of Mr. Wright's.
20 All right.

21 MR. JONES: Your Honor, in light of the
22 Court's recent ruling here, we would request
23 that the jury be instructed to disregard the
24 previous testimony.

25 THE COURT: Yes, the Court will request

1 the jury to disregard any portion of Mr.
2 Wright's testimony that has been read. All
3 right.

4 MR. POHL: Your Honor, at this time we
5 would --

6 THE COURT: Do not give it any
7 consideration or affect to Dr. Wright's
8 deposition in regard to your deliberation as
9 a jury in this case. Do not give it any
10 affect or consideration in your rulings.
11 All right.

12 MR. POHL: Your Honor, we would read
13 from the deposition and offer a summary of
14 Dan R. Bishop taken June 29, 1987. And I
15 will read a summary and there are some
16 questions and answers and I would ask Mr.
17 Musslewhite to respond to the questions.

18 THE COURT: All right. What witness is
19 this?

20 MR. MUSSLEWHITE: This is the last one
21 that I mentioned to Your Honor of the last
22 witness we have that was Monsanto's --
23 public relations man. It's a short offer.

24 THE COURT: You may proceed.

25 MR. POHL: Your Honor, in order to show

1 you worked with at Monsanto back in the mid-70's
2 would provide you information that you asked for?

3 A Yes.

4 Q And was there ever an occasion when you went
5 to the technical people at Monsanto and asked
6 them for a question concerning PCBs that they
7 didn't provide you with the information that you
8 asked for?

9 A No, never.

10 Q Did you find that the technical people that
11 you worked with concerning PCBs were cooperative
12 with you?

13 A Yes.

14 Q And did you find that the technical people
15 that you worked with at Monsanto back in the
16 mid-70's provided you with accurate information?

17 A To my knowledge, yes.

18 (End of reading)

19

20 MR. SHOEBOOTHAM: That concludes our
21 offer, Your Honor.

22 THE COURT: All right. What does the
23 plaintiff have next?

24 MR. POHL: Your Honor, at this time we
25 would summarize from the deposition of Dr.

1 Ward R. Richter, an independent pathologist
2 from the University of Chicago. We would
3 show, approximately, 20 minutes, correct, of
4 his video and then we would conclude with an
5 offer of some question and answers.

6 And I would ask Mr. Musslewhite to read
7 the question and answers if he would take
8 the stand.

9 THE COURT: Is it necessary to make
10 this offer? Is it not repetitious?

11 MR. MUSSLEWHITE: No, sir, it's not,
12 Your Honor. This is not a Monsanto witness.
13 This is a totally independent witness that
14 verified the studies on carcinogens.

15 MR. POHL: This not an employee, Your
16 Honor.

17 THE COURT: You have already offered
18 some four or five doctors. What does this
19 doctor purport to testify to?

20 MR. POHL: This doctor accompanied Dr.
21 Levinskass to Washington, D.C. to look at
22 certain slides of Dr. Kimbrough. He
23 contradicts Dr. Levinskass' testimony. He
24 says that he personally showed Dr.
25 Levinskass cancer through the microscope.

1 He testifies that he warned Monsanto
2 about the cancerous nature of the product.
3 He concludes that back then and now it's
4 cancer-causing and so forth.

5 THE COURT: All right. How long will
6 it take to --

7 MR. POHL: The video offer is 20
8 minutes. I can summarize the first part
9 with his background in two or three minutes
10 and then we would offer -- I have it listed.
11 I don't know how long it would take to read
12 it, but some question and answers from his
13 deposition and we will try to be as brief as
14 possible, Your Honor.

15 THE COURT: All right. Let's proceed.

16 MR. POHL: If you are ready on the
17 video, I will do a short summary to start
18 with --

19 Ward R. Richter, Ph.D., married, three
20 children; son, Robert; son, David; daughter,
21 Pamela. He is 57 years of age. He is a
22 veterinary pathologist. He has been a
23 professor at the University of Chicago and
24 other places.

25 He is in charge of all toxicology for

1 Chevron Company. He has received quite a
2 number of awards. He has published quite a
3 number of papers. We won't detail what any
4 of them are. He is familiar with the proper
5 procedures for running a toxicology test
6 such as that that was conducted on the
7 Aroclor product for Monsanto at IBT.

8 He looked at the slides at IBT on the
9 Monsanto test and studied them. He also
10 looked at Dr. Kimbrough's slides and studied
11 them.

12 If we could start the video.
13
14

15 (WHEREUPON THE FOLLOWING PORTIONS OF THE
16 VIDEO DEPOSITION WERE SHOWN TO THE JURY.)

17 Q You traveled to Washington, D.C. to look at
18 Dr. Renate Kimbrough's liver slides. Had you
19 already looked at certain slides prepared by IBT
20 in connection with its Aroclor studies?

21 A I believe I, to the best of my knowledge, I
22 had looked at a study of IBT slides on Aroclor in
23 the 19 -- about 1971.

24 Q Why was it that IBT and Dr. Levinskias
25 wanted you to review Dr. Kimbrough's slides?

1 What were they concerned about?

2 A The results of the two studies were
3 different in that Dr. Kimbrough's study
4 demonstrated a large number of animals that had
5 liver tumors, both benign tumors and malignant
6 tumors and the IBT results were less severe than
7 that.

8 Q And by "malignant liver tumors," do you mean
9 cancerous?

10 A Yes, carcinomas.

11 Q Carcinomas. And so that the jury will
12 understand, when you talk about carcinomas, that
13 means the same thing as cancer, doesn't it?

14 A Yes.

15 Q Who was it that was concerned about Dr.
16 Kimbrough's finding of cancer in the livers of
17 the rats to whom she had fed Aroclor products?

18 A I don't have direct knowledge of who all was
19 concerned. Dr. Levinskis was concerned. That's
20 the reason I was asked to go look at the slides.

21 Q Did he indicate to you any expectations that
22 he had with regard to either your or Dr. Gordon's
23 review of Dr. Kimbrough's slides?

24 A At that time during our discussions on the
25 way to Washington, he was making the assumption

1 that Dr. Kimbrough's examinations were not valid.

2 And in fairness, I had the same impression.
3 I did not know Dr. Kimbrough very well at the
4 time and she was not trained directly as a
5 veterinary pathologist and both of us had some
6 doubts as to whether she had made a qualified
7 analysis of the slides.

8 Q And, so, when you went to Washington, D.C.
9 to review Dr. Kimbrough's slides, you and Dr.
10 Levinskass at least had some doubt as to the
11 validity of her findings?

12 A That's correct.

13 Q And your mind at the time was that more
14 likely than not she possibly overstated the
15 adverse reaction of rodents to the Aroclor
16 products?

17 A That's correct.

18 Q In summary then, what was your mind set, Dr.
19 Richter, at the time that you and Dr. Levinskass
20 were traveling to Washington, D.C. to review Dr.
21 Kimbrough's slides?

22 A I expected to find that she had overstated
23 the case and that I would disagree with at least
24 a number of her diagnoses.

25 Q Where physically did you go to commence your

1 review of Dr. Kimbrough's slides?

2 A It was on the campus of the National Cancer
3 Insitute.

4 Q And that's in Washington, D.C.?

5 A Yes.

6 Q And you went to whose office?

7 A Dr. Squire's laboratory.

8 A That's Dr. Robert Squire?

9 A Yes.

10 Q The gentleman you described earlier?

11 A Yes.

12 Q Dr. Squire was physically present there?

13 A That's correct.

14 Q And tell us how the room and slides were
15 arranged that you and the others could conduct
16 your review?

17 A They have a microscope out for us with a
18 table that we could sit down at and the slides
19 were in slide boxes out in order on a laboratory
20 bench such that they could quickly find specific
21 animals and specific slides for us to look at.

22 Q Did they in any way try to prevent you from
23 looking at any slides that you wanted to look at?

24 A No. We had access to all of the slides.

25 Q Were Drs. Kimbrough and Squire there when

1 you looked at the slides?

2 A Yes, they were.

3 Q Did you look at every slide, or did you just
4 select random slides that you wanted to review?

5 A We did do two things as best as I can
6 recall. I looked at all of the slides that were
7 diagnosed as carcinoma, and I believe that was 26
8 animals. I looked at representative samples of
9 neoplastic nodules and I looked at representative
10 samples of lesser degrees of toxicity that were
11 selected by Dr. Squire and Dr. Kimbrough to show
12 us as examples. And then I randomly selected
13 other animals to look at that were not selected
14 by them. And I don't remember how many animals I
15 looked at totally.

16 Q Were you satisfied that your examination of
17 the Kimbrough slides were complete and thorough?

18 A Yes. It was thorough in -- it was complete
19 in relationship to the animals that had a
20 diagnosis of carcinoma.

21 Q Did either Dr. Kimbrough or Dr. Squire try
22 to suggest to you the results that you should
23 find upon your review of their slides?

24 A No. We had a preliminary discussion of the
25 terminology that they were using in diagnosng the

1 tumors and some preliminary discussions of what
2 criteria we each used for our diagnostic terms.
3 And there was a difference in diagnostic terms
4 between the two groups.

5 Q Whose terminology was more conservative:
6 yours or that of Dr. Kimbrough and Dr. Squire?

7 A The terminology wasn't more or less
8 conservative. The terminology was -- I was using
9 what had been the standard classical terminology
10 until that time; and at that period of time, Dr.
11 Squire was evolving and ultimately published a
12 new set of diagnostic terms to use for rat liver
13 tumors that subsequently was adopted by most
14 pathologists.

15 Q In addition to your looking at all of the
16 slides you just told the Court and jury about,
17 did Dr. Gordon look at some or all of those same
18 slides?

19 A He -- to the best of my recollection, he
20 looked at every slide that I looked at.

21 Q Did Dr. Levinskas look at any of the
22 slides?

23 A He looked at a few, while Dr. Levinskas is
24 not a pathologist but Dr. Gordon and I selected
25 slides that illustrated various points,

1 particularly the slides of tumors that we felt
2 were carcinomas and showed Dr. Levinskis the
3 structures that we were referring to and the
4 reasons why we were calling them carcinomas.

5 Q Can you remember in your mind, Doctor, what
6 you saw under the microscope when you looked Dr.
7 Kimbrough's slides?

8 A Yes. It stands out rather vividly.
9 Pathologists --

10 Q Well, let me stop you there.

11 As part of your training as a pathologist
12 and part of your professional development, have
13 you been required to develop a skill for
14 recalling what you have seen in potentially
15 different studies?

16 A Yes. That's what I was really going to do
17 as a preliminary statement to the answer to that.

18 Pathologists, when they are diagnosing
19 tissues and tumors, are looking at slides of
20 cells, whether it's liver or muscle or whatever;
21 and we are looking at the structure and the shape
22 and the color and arrangement of those cells in
23 comparing that to normals and in comparing that
24 to everything else that we had seen and learned
25 in our career.

1 So, in the process of diagnosing a slide, a
2 pathologist is comparing the tissue against
3 pictures that are retained. So, those of us who
4 are good pathologist have very good skills of
5 retaining pictures of what we have seen
6 previously.

7 Q And I think you indicated a moment ago that
8 you could recall at this point rather vividly
9 what you saw under the microscope when you looked
10 at Dr. Kimbrough's slides?

11 A Yes.

12 Q First of all, so the jury will have some
13 understanding of this, in order to make your own
14 independent determination as to whether or not
15 Dr. Kimbrough's slides displayed cancer, what
16 were you looking for in terms of the shape of the
17 cells, the color, or anything else that might
18 appear to the naked eye under the microscope?

19 A There are series of factors that are
20 involved in making that diagnosis. The lesions
21 that were found in the liver were focal areas in
22 which the liver cells were enlarged and some of
23 the liver cells were dividing and producing a
24 nodule or a little focal area of abnormal cells
25 that were surrounded by normal liver tissue. And

1 depending on the severity of the lesion, this
2 might be a small focus with just a few abnormal
3 cells or a large focus with a lot of abnormal
4 cells.

5 Benign tumors are (inaudible) like that that
6 are large and they compress the surrounding liver
7 tissue and the cells within that focus are fairly
8 uniform in their structure and shape even though
9 they are abnormal.

10 Carcinomas are characterized by the fact
11 that there is a great deal of variation in those
12 cells, both in their size and their color, in
13 their shape and their arrangement. This is
14 because they are losing some of the controls that
15 control their growth patterns, and they are able
16 to grow more freely. And so, it gives them the
17 characteristic to spread throughout the body.

18 So, when you are looking to make a diagnosis
19 of carcinoma, you are looking for variations in
20 cell size and shape and variations in cell size
21 and color. There are other characteristics where
22 inside of a benign tumor is a small focus of
23 malignant cells that may develop that are very
24 small and very dark blue indicating that they
25 have developed a difficult series of growth

1 characteristics.

2 The carcinomas, as they become more severe,
3 will loss all organizational structure to them;
4 and that's sort of a simplistic review of what
5 you look for to make a determination of
6 carcinoma. But there are a series of factors
7 that are present to make that decision.

8 Q And Dr. Richter, did you have an
9 understanding of whether or not Dr. Kimbrough's
10 test animals had been fed the same Monsanto
11 Aroclor product as the IBT test animals?

12 A I have no direct knowledge of it but I
13 was -- the information that I was presented with
14 indicated that.

15 Q In connection with your review, you were
16 presented with information which would lead you
17 to conclude that both the IBT and the Kimbrough
18 test animals were fed the same Monsanto Aroclor
19 product?

20 A Yes.

21 Q Dr. Richter, when you reviewed the slides of
22 Dr. Renate Kimbrough, did you find cancer?

23 A Yes, I did.

24 Q You are convinced of that today?

25 A Yes, I am.

1 Q And did you communicate that to Dr.
2 Levinsksas at the time?

3 A Yes, I did.

4 Q And did Dr. Gordon look at those same
5 slides?

6 A Yes, he did.

7 Q Did he also find cancer?

8 A Yes, he did.

9 Q Did he, in your presence, communicate that
10 to Dr. Levinsksas?

11 A Yes, he did.

12 Q When you left Dr. Kimbrough's and Dr.
13 Squire's offices, where did you travel?

14 A I traveled back to -- well, to the airport
15 and then flew back to Chicago.

16 Q Did you fly on the plane with Dr.
17 Levinsksas?

18 A Yes, I did.

19 Q And did you travel in a car from Dr.
20 Kimbrough's and Dr. Squire's office with Dr.
21 Levinsksas?

22 A Yes, I did.

23 Q Did he act any differently on your return
24 trip from the way he did on the way out?

25 A He was very upset and didn't speak to me for

1 the rest of the trip.

2 Q So, the entire time, from the time you left
3 Washington, D.C., drove by car to the airport and
4 flew to Chicago, Dr. Levinskys would not speak
5 to you?

6 A That's correct.

7 Q Okay. While you were reviewing the slides
8 at the offices of the National Cancer Institute,
9 how long did you spend there?

10 A As best as I can recall, it was three to
11 four hours.

12 Q Was that sufficient time in order to conduct
13 a thorough and professional review of Dr.
14 Kimbrough's slides?

15 A Yes.

16 Q Let me ask you to compare for the Court and
17 jury what you saw when you looked at Dr.
18 Kimbrough's slides and what you saw when you
19 looked at the IBT slides.

20 First, in looking at the IBT slides, did you
21 find lesions in the livers of the animals to whom
22 the Aroclor products had been fed?

23 A Yes, I did find lesions.

24 Q And would you describe the -- how would you
25 describe the toxic effect on the livers of the

1 animals that you saw?

2 A The changes that were present were toxic
3 injury. There was necrosis and cellular
4 degeneration, along with (inaudible) and
5 hyperplasia. And most of these changes were
6 focal so that the hyperplasia was focal or
7 nodular hyperplasia. And in two of the animals,
8 I diagnosed benign tumor, hepatoma.

9 Q That's in the IBT animals?

10 A Yes.

11 Q When you diagnosed benign tumors and
12 other --

13
14 (WHEREUPON THE VIDEO DEPOSITION WAS INTERRUPTED)

15 THE COURT: Let's finish the rest of it
16 with Q&A, please.

17 MR. POHL: Your Honor, that is fine.
18 The only point I would make is that shortly
19 in the deposition, he draws a chart. Maybe
20 I can just explain the chart.

21 THE COURT: All right.

22 MR. POHL: He gets up on a board and he
23 draws for the jury a comparison of what IBT
24 found and what Kimbrough found and explains
25 why --

1 THE COURT: We will permit you to show
2 that.

3 MR. POHL: Could you pull out the chart
4 from the back of the original --

5 THE COURT: We will permit the
6 videotape to show it.

7 MR. POHL: Oh, you will?

8 THE COURT: Yes, if it's eminent.

9 MR. POHL: I can just explain it
10 because it's in a couple of different parts.
11 When he gets up, when he stands up on a
12 board, and it would take a while for him to
13 find it on the video, I'm afraid. We would
14 just be sitting here waiting.

15 THE COURT: All right.

16 MR. POHL: In connection with that,
17 Your Honor, there is a chart which is drawn
18 by the witness in which he shows the effect
19 of the various tests, both by IBT and by Dr.
20 Kimbrough.

21 The point which he makes is that in one
22 end of the spectrum the result is what is
23 called normal. At the other end of the
24 spectrum -- at the other end of the spectrum
25 is cancer.

1 He testifies that he looked at the
2 original IBT slides and the Kimbrough slides
3 and testified that the Kimbrough slides
4 showed cancer. It was at the far extreme of
5 the spectrum.

6 He testified that the original IBT
7 studies, before they were ever even changed
8 by Dr. Levinskis, purported to state that
9 the results were normal.

10 After Dr. Kimbrough came out with the
11 first study, they changed it to fall
12 somewhere in the middle to show slightly
13 tumorigenic. He says that both of those
14 were incorrect. It was always a severe
15 toxic effect, which was in the latter
16 category and that the original
17 characterization of "normal" misstated the
18 results and the subsequent characterization
19 of "slightly tumorigenic" also misstated the
20 results by understating them.

21 We would offer that in evidence and it
22 is marked as Richter Exhibit 1. We will
23 assign it the next number in this trial,
24 which is 3679.

25 Your Honor, we would offer that

1 document.

2 THE COURT: All right.

3 MR. POHL: Your Honor, with regard to
4 the deposition, we would offer some question
5 and answers. And I'm just going to flip
6 over some of the pages and not offer it in
7 order to shorten it.

8 The witness says on Pages 66 and 67
9 that he concurs with the deposition portion
10 of Dr. Roush, a Monsanto employee that was
11 read here in the courtroom the other day
12 where Dr. Roush said that he looked at the
13 IBT slides and when he saw them, they showed
14 severe liver damage. And Dr. Richter says
15 that when he saw the IBT slides, they also
16 showed severe liver damage. And that is
17 what he draws in approximately the
18 right-hand quadrant of the chart.

19 Dr. Richter goes on to state -- let me
20 turn to Page 75 and start with line 17, read
21 the question.

22
23 (Reading from video deposition)

24 Q Now, after you reviewed Dr. Kimbrough's
25 slides and told Dr. Levinskys that you concurred

1 in her finding of cancer, when did you next meet
2 with any representatives of Monsanto in
3 connection with either the IBT rodent study or
4 the Kimbrough rodent study?

5 A I had very little contact with Monsanto
6 after that period of time. But I did have a
7 meeting at some point after Dr. Pour issued his
8 report which was issued in 1975. I had a meeting
9 at IBT with a group of representatives of
10 Monsanto.

11 Q And were these lawyers from Monsanto?

12 A I do not know if they were lawyers. They
13 were not scientists, so --

14 Q What did you say: you participated in a
15 meeting at the offices of IBT? Was that in
16 Northbrook?

17 A Yes.

18 Q Who else was in attendance besides you and
19 the representatives of Monsanto?

20 A I can't recall totally everyone that was
21 there but Dr. Calandra was there. Dr. Gordon was
22 there and I believe an IBT attorney was there.

23 Q And how many representatives were present
24 for Monsanto?

25 A As best I can recall, there were four.

1 Q Did anyone say anything during the meeting
2 that would give you an understanding or an idea
3 of what type of representatives Monsanto had sent
4 to this meeting?

5 (End of reading)

6
7 MR. POHL: Page 77, line 11.

8 MR. MUSSLEWHITE: Oh, excuse me. I
9 didn't know you had skipped.

10
11 (Reading from video deposition)

12 A I got the impression and this is a long time
13 ago so I can't remember all of the details that
14 they were not technical people. They were not
15 scientists or toxicologists. These were either
16 business representatives or attorneys looking at
17 the issue of the various tests that had been
18 done.

19 Q And what was the purpose of this meeting,
20 Dr. Richter?

21 A The purpose that I saw, I was not given an
22 exact purpose, it was a confrontational meeting.
23 The group from Monsanto was unhappy with IBT and
24 were challenging the procedures that had gone on.
25 And there was concern over differences in

1 findings from Kimbrough's report and IBT's
2 report. And the meeting was, I assume and got
3 the impression, was called to look at the reasons
4 for these differences.

5 Q So, the meeting concerned the variances
6 between Dr. Kimbrough's findings of cancer and
7 IBT's report; is that correct?

8 A Yes.

9 Q And the representatives of Monsanto appeared
10 to be somewhat confrontational?

11 A Yes.

12 Q What was their specific concern?

13 A I am not certain what their specific concern
14 was because they looked at -- it looked to me as
15 if it was an investigational meeting to find out
16 why there was a difference and they were looking
17 at all the possibilities.

18 Q And did they ask you questions?

19 A Yes, they did.

20 Q And did you -- and did they ask you whether
21 or not you still agreed with Dr. Kimbrough's
22 findings of cancer?

23 A Yes, they did.

24 Q And did you -- and did they ask you whether
25 or not you thought PCBs were a carcinogen?

1 A I don't recall whether they asked it that
2 specifically.

3 Q And if they had of asked it, what would you
4 have told them?

5 A I would have told them that I thought it was
6 carcinogenic.

7 Q And did they ask you anything else other
8 than questions pertaining to the differences
9 between the IBT Aroclor study and the Kimbrough
10 Aroclor study?

11 A I can't recall the exact questions but there
12 were discussions of various IBT reports and
13 changes that were made in the reports and the
14 language that was in the reports.

15 They asked me if I knew Paul Wright, asked
16 me how much I interacted with him and various
17 probing questions to find out what my involvement
18 in the study was.

19 Q Was there some concern expressed by the
20 business people and/or lawyers for Monsanto about
21 changes that were to be made or had been made in
22 connection with IBT's Aroclor studies?

23 A I don't think concern is a correct word.
24 They were investigating, looking at, gathering
25 facts at what -- what had been done, and the

1 reasons for it.

2 Q This was after Dr. Pour had come out with
3 his report wherein he indicated that the IBT
4 studies did not demonstrate carcinogenicity?

5 A Yes.

6 Q And by the time that you had participated in
7 this meeting with four people from Monsanto at
8 IBT's headquarters, had you had a chance to read
9 Dr. Pour's report?

10 A No. I believe I was shown his report at
11 that meeting.

12 Q And were you asked at that meeting whether
13 you agreed or disagreed with Dr. Pour's report?

14 A I don't specifically recall that.

15 Q You have no recollection one way or the
16 other?

17 A I don't have, no.

18 Q Did they give you a copy of Dr. Pour's
19 report to take with you when you left the
20 meeting?

21 A As best I can recall, I did not get a copy
22 of it to take with me.

23 Q They just showed you a copy of it and they
24 took it back?

25 A Yes.

1 Q How long did the meeting last?

2 A It was three to four hours.

3 (End of reading)

4
5 MR. POHL: I will skip over some of the
6 remainder about that meeting.

7 And in summary, moving forward, the
8 witness testifies that his next meeting with
9 Monsanto occurred in December of 1986 where
10 he was flown to St. Louis, Missouri by
11 Monsanto and he was questioned by attorneys
12 and others from Monsanto, names of all of
13 which he can't remember regarding the IBT
14 studies, changes in the studies and other
15 facts that we talked about in the trial
16 today.

17 The witness also testifies that his
18 signature appeared on the original IBT
19 Aroclor reports, but after the reports were
20 changed the changes were made and a Xerox
21 copy of his signature was used.

22 It is his signature but he was never
23 asked to resign the documents. He doesn't
24 know who used his signature.

25 The witness next talks about errors in

1 the numbering of the rodents. I asked the
2 witness questions about the mixing of
3 animals, about the substitution of animals
4 and about the letter which has been
5 identified in evidence as 3678 wherein Dr.
6 Levinskis refers to the fact that a number
7 of the animals were used apparently in
8 different study groups.

9 A number of the animals appeared, at
10 one time to be a male and some time later in
11 the test reappeared as a female and things
12 of that nature.

13 The witness testifies in connection
14 with that -- if you would like, I will be
15 happy to read the question and answer.

16 MR. JONES: Your Honor, I believe we
17 are getting in pure argument at this point
18 and I would object to that.

19 MR. POHL: I will be happy to read it.
20 It's not that long. If you will turn, Mr.
21 Musslewhite to Page 103.

22 MR. MUSSLEWHITE: All right.

23 MR. POHL: Line 23.

24 MR. MUSSLEWHITE: All right.
25

(Reading from video deposition)

Q The letter indicates that some of the animals that were identified as control male rats were also later identified in the Aroclor report as having been test animals; is that correct?

A That is what this states.

Q And if you look at the second page, you can see that some of the same animals like Animal 46, 47, 48 and several others were shown on the first page to have been male rats, on the second page of the letter to have been female rats; is that correct?

A State that again.

Q Sure. If you will look on the first page, you will see, for example, it says male rats one and two.

A Yes.

Q And that, let's focus on the first page first, male rats one and two are first to be shown as a control animal; is that correct?

A Yes.

Q What is a control animal in regards to a rodent study?

A It's an animal that has not been treated with the test compound.

1 Q Under normal testing procedures are control
2 animals to be comingled with test animals?

3 A No.

4 Q If you go on across to the right of the
5 first page you see that Dr. Levinskias is noting
6 that those control animals were later shown to
7 have been test animals in both the one parts per
8 million and 10 parts per million test categories;
9 is that correct? Is it correct?

10 A Yes, I can see that.

11 Q And the point that I'm getting to, Dr.
12 Richter, is that if you received a letter on a
13 study which you were supervising and it showed
14 that there was this type of discrepancy with
15 regard to the rodents used in the study, what
16 would that -- what message would that communicate
17 to you?

18 A It would raise concern about the study.
19 There are possible explanations for this, but it
20 would raise enough concern if this were a study
21 that I was supervising to go back in detail to
22 find out if these were typos, what the raw data
23 looked like and whether that supported the
24 findings as presented here. But it would raise
25 concern.

Q What kind of concern? How serious would that concern be?

A That's a relative sort of thing, but in my language, a serious concern.

Q Would you rely on the results of a test that had such possible errors without first making a thorough and complete investigation?

(End of reading)

MR. POHL: Page 107, line 15.

(Reading from video deposition)

A No.

Q Now, you mentioned something earlier in the deposition. I will try to be as brief about this as possible. That you indicated that you and Dr. Squire looked at Dr. Kimbrough's liver slides; is that correct?

A Yes.

Q And later on that you became aware that Dr. Pour had also looked at those, looked at the IBT liver slides; is that correct?

A Yes.

Q And that Dr. Pour disagreed with your interpretation of the Kimbrough slides?

1 A Yes.

2 Q Let me represent to you that Monsanto
3 Document 058195 and subsequent pages, that there
4 is a report by Dr. Pete Pour which refers to his
5 review of the Dr. Renate Kimbrough study on
6 Aroclor products. Okay?

7 A Yes.

8 Q Now, with regard to the findings that were
9 made by you and Dr. Squire on the one hand and
10 the findings that were made by Dr. Pour on the
11 other, let me get you to focus on those for a
12 minute. Okay?

13 (End of reading)

14
15 MR. POHL: 110, line 17.

16 MR. MUSSLEWHITE: Okay.

17
18 (Reading from video deposition)

19 A Yes.

20 Q Now, and I know that, that you'd want to
21 attempt to be modest in your responsive and I
22 understand that. I'm sorry if I put you in in an
23 awkward position but I would like to ask you
24 questions which would give the jury an idea of
25 the relative qualifications that you and Dr.

1 Squire on the one hand to review slides and Dr.
2 Pour on the other.

3 You are familiar with Dr. Squire's
4 qualifications, are you not?

5 A Yes, I am.

6 Q And I think you indicated to us earlier in
7 the deposition he was a leading animal
8 pathologist; is that correct?

9 A That's correct.

10 Q Do you consider yourself to be a pathologist
11 of equal standing with Dr. Squire?

12 A Yes, I do. I think my record and experience
13 I have had speak to that.

14 Q So, when IBT and/or Monsanto had several
15 people review the Kimbrough slides including you
16 and Dr. Squire, would it be fair to say, Doctor,
17 that at least two of the leading animal
18 pathologists reviewed the Kimbrough slides?

19 A I think that would be true, yes.

20 Q And that would be you and Dr. Squire?

21 A Yes.

22 Q Now, let's focus on Dr. Pour for just a
23 moment. Are you familiar with the people who are
24 recognized in this country and throughout the
25 world as the leading animal pathologists?

1 A I am familiar with most of them.

2 Q Is he one of them?

3 A I do not know who Dr. Pour is. I've never
4 met the man and have had no other contact with
5 the name other than this, reports which are on
6 the table.

7 Q And you don't recognize Dr. Pour as being
8 one of the leading animal pathologists such as
9 yourself and Dr. Squire, do you?

10 A No, I don't.

11 Q Now, you are not being paid for your
12 testimony, are you?

13 A No, I'm not.

14 Q And you are not being paid either by the
15 plaintiffs in this case or by Monsanto for that
16 matter?

17 A No, I'm not.

18 Q And you have made no arrangements with me to
19 compensate you for your time whatsoever, have
20 you?

21 A That's correct, I haven't.

22 Q And the opinions that you have given today
23 and both factually and on matters dealing with
24 your area of expertise have been purely those of
25 your own?

1 A Yes.

2 (End of reading)

3
4 THE COURT: You think that is all?

5 MR. POHL: I'm just thumbing through
6 the rest of the pages trying to delete them,
7 Your Honor.

8 MR. POHL: Your Honor, we will pass the
9 witness.

10 THE COURT: All right. Any portion of
11 it?

12 MR. JONES: Very small portion, Your
13 Honor. In fact, Your Honor, it's only one
14 question.

15 Question at Page 134, beginning at line
16 12.

17
18 (Reading from video deposition)

19 Q You wouldn't say that Aroclors or PCBs are
20 carcinogenic in humans or man, would you?

21 A There is no established proof for that.

22 (End of reading)

23
24 MR. JONES: This concludes our offer,
25 Your Honor.

1 MR. POHL: Your Honor, in response I
2 asked the witness if Aroclors or PCBs were
3 the kind of product that he would want
4 himself, his wife or his children to ever be
5 exposed to and he said he would not.

6 MR. JONES: Your Honor, I would object
7 to that argument there. I mean, he could
8 read the deposition if he wanted to.

9 MR. POHL: Will be more than happy to.

10 THE COURT: If this -- if this is a
11 correct statement, the witness made in his
12 deposition, the Court will accept it.

13 MR. POHL: Yes, and Mr. Jones was
14 there.

15 THE COURT: If Counsel says it isn't,
16 why you may show in the deposition that it
17 is correct.

18 MR. POHL: Can we call our next
19 witness?

20 THE COURT: Ladies and gentlemen, we
21 are going to stand recess for 15 minutes.
22 It might stretch into 20, but try to be back
23 in 15.
24

25 (WHEREUPON AT 3:00 P.M., COURT WAS IN RECESS

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF TEXAS
3 OFFICIAL REPORTER'S CERTIFICATE
4
5

6 I, FRANK MCMILLAN, OFFICIAL COURT REPORTER FOR
7 THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN
8 DISTRICT OF TEXAS, DO HEREBY CERTIFY THAT THE ABOVE AND
9 FOREGOING PAGES CONSTITUTE A TRUE, CORRECT AND COMPLETE
10 TRANSCRIPT OF THE PROCEEDINGS IN THE ABOVE STYLED AND
11 NUMBERED CAUSE.

12 WITNESS MY OFFICIAL SIGNATURE IN THE CITY OF
13 BEAUMONT, TEXAS, ON THE 8th DAY OF October 1987.
14
15
16

17 
18 C. FRANK MCMILLAN
19 OFFICIAL COURT REPORTER
20 UNITED STATES DISTRICT COURT
21 EASTERN DISTRICT OF TEXAS
22
23
24
25