

1 over there and say that Dr. Suskind was examined for weeks
2 in West Virginia when it was two weeks, when he's been
3 under stress here for two months, and suggest that this is
4 somehow lesser of a strain than that--and who is going to
5 talk about Gobles? Now, Judge, this witness is no longer
6 able to endure this. It's time to do something about it.
7 Now, talking about the suggesting that Mr. Carr always
8 wins. That's not a question of anything except count.
9 I've been back here, and we have not won anything when Mr.
10 Carr opposed us. That's a fact. I've sat in that court-
11 room and I have not heard any objections sustained. I did
12 hear one the other day. We are endeavoring to count them,
13 for whatever use it will be made in the future, we are
14 counting, just doing a count. But, the only thing we are
15 suggesting is that this witness be given a chance to rest,
16 get out from under the stress of this thing which Mr. Carr
17 is intentionally doing. And to say that he's cross exam-
18 ining a witness that was on the stand in direct for two and
19 a half days, or certainly less than three days, and he's
20 now getting ready to start his twentieth day of cross
21 examination by making the witness read exhibits that
22 weren't even touched in direct examination--and I'm not the
23 world's greatest trial lawyer, Rex, and I don't purport to
24 be, and I haven't had a tremendous amount of trial experi-

1 ences, as you suggest; but, I've had enough to know that
2 cross examination was always limited to the scope of the
3 direct. And I found that out a long time ago. But, he's
4 doing this deliberately. This is a deliberate ploy to
5 abuse this witness, because he wants this witness to bend
6 to his will. This is just a deliberate ploy, and the
7 witness is showing the stress. As a matter of fact, I
8 assume that maybe some of Mr. Carr's remarks indicate that
9 he's showing the stress. We want this witness off the
10 stand so that he can recoup, and he'll be back.

11 THE COURT: Okay. I am denying the Motion, and I
12 am denying it for a number of grounds--number of reasons.
13 First of all, this--the first part of your Motion. He's
14 been on the stand a long time. I don't know how long he
15 was on the stand in West Virginia at Nitro, and I don't know
16 how long he was on the stand at Comp hearings in '56, and I
17 don't really care, because that's not relevant to what we
18 are doing here. The length of time on the witness stand is
19 something that is dependant on a number of things. The
20 main thing it's dependant upon in this particular case, and
21 it's the thing over which he has control, is compliance
22 with the rules of Court, the rules that I've articulated,
23 the rules that I've admonished him about, the rules that
24 Mr. Heineman as an officer of the Court on numerous times

1 has explained to him, both all of them in general and at my
2 request with emphasis on particular ones such as responding
3 only to the question and how to handle assumptions. And
4 really the length of time that this witness is on the stand
5 is something that's within his control. Now, he has so far
6 by his actions extended the length of that variable, and he
7 appears willing to do that, and he appears intent on doing
8 it. And I really am not going to allow this Court to be
9 put in the position of a witness who is deliberately trying
10 to evade the rules of this Court and warp the rules of this
11 Court and obstruct the operation of this trial and then
12 claim that he has become exhausted thereby and needs a
13 break from it. That is an absurdity which I am not going
14 to allow. I have--I was advised earlier as to this wit-
15 ness' age, I think by you Mr. Nassif, back here in chambers
16 I think at the time when we had the argument and we talked
17 about his hearing aid that he doesn't--that he didn't want
18 to wear up to that point in time. You also advised me that
19 he seemed to be getting tired in the afternoon and perhaps
20 we could do something about that. And there have been a
21 number of times such as one day this week when I've allowed
22 a very long break in the afternoon. And I've kept an eye
23 on him both in the morning and afternoon. And I don't
24 agree with your observation based on my observations

1 looking at him and listening to him and watching him pretty
2 intently. When he has seemed a little slow in the after-
3 noon, we've taken some breaks. You've noticed, if you kept
4 track of the time as well as you claim to have kept track
5 of the objections, you'll notice that there have been some
6 times when we've even taken some long breaks in the
7 afternoon. There have also been some times when--have been
8 some times when we have gone for a shorter period and then
9 taken a break in the afternoon. This witness is in good
10 shape; this witness is in control of himself; he is in
11 control of his faculties. I don't see what you claim to
12 see as far as this witness. And if, for the sake of
13 argument, it were there, he has within his power the
14 ability to shorten his tenure on the witness stand and that
15 is by a simple basic compliance with what this Court has
16 repeatedly requested him to do. As far as your insinu-
17 ations on the rulings, I don't keep count of who wins how
18 many Motions, because I try to avoid meaningless actions.
19 I try to look at the quality of what I do and not the
20 quantity. And my advice when anyone has complained about
21 rulings going against them in this trial as well as others
22 have been that I advise them to look at the quality of the
23 Motions and the objections they make and not the quantity.
24 And I think that advice applies here also. I am denying

1 your Motion. I'm denying it for the grounds stated. And I
2 think that takes care of what your Motion included.

3 MR. CRAVEN: Mr. Carr conceded the question on
4 the Doctor's certificate.

5 MR. CARR: I did not concede to the Doctor's cer-
6 tificate.

7 MR. CRAVEN: All right. Does the Court want--I
8 mean, Mr. Carr is trying to diagnose his condition, and if
9 we give to the Court a certificate by a doctor that his
10 continuation on this stand under these circumstances
11 without a break can be dangerous, injurious, to his
12 health, is the Court still going to persist in His ruling?

13 THE COURT: I don't rule on things before I see
14 it. If you want to submit something to me, you are free to
15 do so at any time. But, I'm not going to be making
16 advisory rulings on this or anything else. And I'm not--
17 wait a second because I haven't fully addressed it yet--

18 MR. CRAVEN: I'm sorry.

19 THE COURT: I am not going to rule on something
20 that I have not yet seen. It just--I'll take the same
21 position on that as I have on the affidavit. If you want
22 to submit something, you know, file a copy with the clerk,
23 xerox a copy for me, and I will take a look at it. The
24 only thing I am going to tell you is I will read whatever

1 you submit. I'm not going to pre-judge anything; I'm not
2 going to make an advisory ruling; I'm not going to pre-rule
3 on something that I have not seen or not heard. So, you
4 know, if you want to submit something on this or on the
5 affidavit, or anything else for that matter, go right
6 ahead.

7 MR. CRAVEN: There's the chronology problem. We
8 probably will have to go to Cincinnati to get his doctor
9 and get the affidavit and get it back. He's going home
10 tonight. Do we offend against the affidavit and bring him
11 back again here Monday morning and when we are giving you
12 the affidavit? I don't know why we have to do that,
13 assuming that the affidavit is as strong as I think it can
14 be.

15 THE COURT: Well, you are asking me again to make
16 a judgment and a ruling on something that I have not seen,
17 and I'm not going to do that. Now, the--I've ruled on your
18 Motion. And by my ruling, we start court at 9:30 Monday
19 morning.

20 MR. CRAVEN: Well, is the Court going to rule on
21 the voir dire--the request for voir dire? Because we are
22 going ahead--

23 THE COURT: I'm working on both of the Motions
24 that you have submitted to me, and when I feel that I have

1 an Order that properly resolves either and both, I will
2 file them and you'll get copies of it.

3 MR. CRAVEN: Where can we get this affidavit to
4 you tomorrow?

5 THE COURT: What? Of what? His doctor?

6 MR. CRAVEN: Of the doctor.

7 THE COURT: Drop it off at my house if you want.
8 Leave it in the door if I'm not home. I've had a number
9 of--

10 MR. CARR: You are not saying that the Court
11 would rule ex parte on the affidavit without hearing from
12 us?

13 MR. CRAVEN: I don't do business that way.

14 THE COURT: I'm sorry, I didn't hear what you
15 said.

16 MR. CRAVEN: I said, "Rex, I don't do business
17 that way."

18 THE COURT: You know, you've dropped things off
19 at my house before. If you want to drop off an affidavit--

20 MR. CRAVEN: We won't be able to file it tomor-
21 row, but we will have it ready for filing. We will send a
22 copy to your house and we will send a copy to Counsel, if
23 that's agreed.

24 THE COURT: You can do whatever you want.

1 MR. CRAVEN: I'm asking for directions as to--

2 THE COURT: I've allowed--I have a very very
3 liberal policy. If you want to drop something off at my
4 house on any of these Motions for me to read, drop it off
5 and I will read it. And that includes affidavits; I've
6 received responses that way; I've received briefs that way.
7 You know, I'm in the book; drop it off. Sheila knows where
8 I live, so do a couple of the others, so just drop it off.

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10 (Thus concludes the proceedings had on April 4, 1986.)

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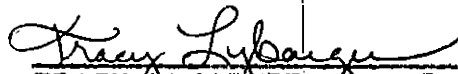
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STATE OF ILLINOIS)
) SS.
COUNTY OF ST. CLAIR)

I, TRACY LYBARGER, C.S.R., an Official Court Reporter for the Twentieth Judicial Circuit of the State of Illinois, do hereby certify that I reported in shorthand the proceedings had on the hearing in the above-entitled cause; that thereafter I caused the foregoing to be transcribed into typewriting, which I hereby certify to be a true and accurate transcript of the proceedings had before the Honorable Richard P. Goldenhersh, Judge of said Court.

DATED this 18th day of April 1986.


TRACY LYBARGER, C.S.R.

STATE OF ILLINOIS)
)
COUNTY OF ST. CLAIR)

I, RICHARD P. GOLDENHERSH, Circuit Judge in
and for the Twentieth Judicial Circuit, hereby certify
that the above is a true and correct transcript of the
proceedings had in the case captioned: FRANCES E.
KEMNER, ET AL v. MONSANTO COMPANY, Cause No. 80-L-970,
heard on April 4, 1986.

DATED this _____ day of April, 1986.

RICHARD P. GOLDENHERSH, Circuit Judge