

1 Dr. Roush?

2 A I don't know.

3 Q Do you have any knowledge that they have been told that,
4 sir?

5 A It is my impression that some of them have been.

6 Q What you know is that a policy started in 1984-85 you
7 have been telling them about tetrathol, haven't you, sir?

8 A I know that has been--

9 Q Yes, but that's just a policy that you started with tetra-
10 thol. You didn't tell any of your customers before that, did
11 you, sir?

12 A I don't know.

13 Q You had no knowledge that you did?

14 A That's not in my, would be coming across my desk.

15 Q Oh, Doctor, indeed it would. You get requests all the
16 time. It is your function, you are to consult with your
17 marketing and tell them what they should tell the customers as
18 to the toxicity of your products, that is your function, is it
19 not, sir?

20 A Yes, sir.

21 MR. CARR: Your Honor, I'm at four o'clock.

22 THE COURT: Ladies and gentlemen, we will adjourn for
23 now. We will start up tomorrow morning. As I told you earlier,
24 at 10:30 instead of 9:00. I would remind you as I do for any

1 overnight break that you are not to read, listen to, or watch
2 anything about this case in particular or subject matter in
3 general in any of the media, print or electronic. Thank you
4 for your attention and cooperation. Court is adjourned.

5 (At this time Court adjourned for the day and
6 the following proceedings were held in chambers.)

7 THE COURT: You want to make a motion?

8 MR. HEINEMAN: Yes, your Honor. The Monsanto Company
9 would like to move at this time for a mistrial of this cause on
10 the grounds that Mr. Carr has inserted this Rush City information
11 in front of the jury. Dr. Roush never mentioned Rush City.
12 Mr. Carr knows that Rush City, there is a suit outstanding against
13 Monsanto Company out of the Rush City incident, that members of
14 the jury are very likely to know about the suit, very likely
15 know people that are representatives of the class that's bringing
16 the suit. The sole purpose of bringing that information in front
17 of the jury was for inflammatory and prejudicial purposes. It
18 has no probative value whatsoever, and to the extent even if
19 it could be argued that it did have any probative value, the
20 inflammatory and prejudicial nature of it far outweighs any
21 probative value that could possibly result from it. And
22 therefore it was clearly improper to bring it out in front of
23 the jury, and we objected to it at the time and now that the
24 jury's heard it, there is no way to erase it from their minds

1 and we move for a mistrial based on it.

2 MR. CARR: My response is, first of all, I didn't
3 remember. I probably knew once upon a time that there was a
4 suit, but I didn't have it in my mind until Mr. Heineman just
5 mentioned it, and I wasn't aware that it was a class action
6 suit, in any event, and I didn't have it in my mind when I was
7 asking the question, and I of course didn't refer to any suit,
8 because I didn't have it in my mind. But nevertheless, the
9 Rush City was an analogy. Jurors are aware of the fact that
10 Rush City and other communities are next to, well, there is no
11 other community next to Monsanto other than Rush City, but in
12 immediate proximity, and it was a parallel with the Nitro plant,
13 and simply for the purpose to show the witness was insisting
14 that these people that live in the Kanawha Valley don't have
15 exposure whereas I knew that in the Monsanto, Saugat incident
16 that the people did live next to it, and did have some reason to
17 be subjected to the harmful effect of those chemicals just like
18 the people in Kanawha Valley, and I used that as an example that
19 I knew about and that I knew the witness would know about in
20 order to attempt to destroy his position that living next to
21 a chemical plant or living in a valley where there are chemical
22 plants that are not going to cause any problem.

23 MR. HEINEMAN: Well, your Honor, there have been
24 newspaper articles all over the place about the Rush City

1 incident, the Rush City lawsuit, and I can't imagine that
2 Mr. Carr didn't have any idea that there was such a Rush City
3 lawsuit.

4 MR. CARR: Well, imagine it, because I didn't.

5 THE COURT: Well, I don't think it makes any difference.
6 I think it was an appropriate analogy. It was not brought up
7 in a prejudicial manner. The fact that a lawsuit exists does
8 not bar it from being used as an analogy, just as I have
9 previously ruled that the plaintiff and the defendant could use
10 matters from the Nitro situation and the Agent Orange situation
11 besides, regardless of the fact that there were lawsuits in
12 existence and that were in existence in fact prior to the
13 institution of this trial, and therefore the Rush City lawsuit,
14 if my memory serves me correctly, was filed by an attorney not
15 in Mr. Carr's firm after the beginning of this litigation and
16 during the time in which the jurors have been admonished not to
17 read anything in any of the media about the subject matter in
18 general or this case in particular. Just as it's not
19 prejudicial to refer to these other matters, it was not
20 prejudicial and was in fact proper to refer to the Rush City
21 situation as an analogous situation. So on all those bases
22 and incorporating all my reasons on the Nitro litigation and the
23 Agent Orange litigation, I am denying your motion for a
24 mistrial.

1 MR. CARR: Has there been a class action filed?

2 THE COURT: There's been a class action filed by
3 Jack Norton on behalf of some residents down there, I don't know
4 if it is a class action or not.

5 MR. NASSIF: It is a class action.

6 MR. CARR: Filed on behalf of everybody in Rush City?

7 MR. NASSIF: He put 435, 435 people.

8 MR. CARR: But named as plaintiffs per se?

9 MR. NASSIF: Named a large group of people to be
10 representatives of that class, and it was filed on behalf of
11 several ministers.

12 MR. HEINEMAN: You do want this on the record?

13 MR. CARR: I want to know, you said it was a class
14 action and I want to know whether it was.

15 MR. NASSIF: It is. I don't know if it still is today,
16 but it was when it came in.

17 THE COURT: I haven't even seen the Complaint, I really
18 don't know.

19 MR. NASSIF: I think there is two groups, two attorneys.

20 MR. CARR: You mean two separate lawsuits filed?

21 MR. NASSIF: Maybe, but there is at least two attorneys,
22 two attorney groups. I think it was farmed out from the
23 attorney that initially filed it with another attorney.

24 THE COURT: I know Norton filed it, and that was the

1 one that was mentioned in the papers.

2 MR. HEINEMAN: That's the one I know, that's the only
3 one I know.

4 MR. NASSIF: I think there might be somebody else
5 involved.

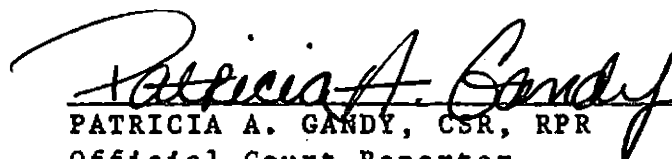
6 THE COURT: He may have co-counsel on it. Okay.

7 (At this time the in-chambers conference
8 adjourned.)
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1 STATE OF ILLINOIS)
2) SS.
3 COUNTY OF ST. CLAIR)
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7 I, Patricia A. Gandy, CSR, RPR, Official Court
8 Reporter in and for the Twentieth Judicial Circuit, and the
9 Official Court Reporter who transcribed the above-styled cause
10 had on July 25, 1985, do hereby certify that the foregoing
11 transcript of proceedings is a true, correct and complete
12 transcript of the proceedings had on said date.

13 DATED this 2nd day of August, 1985.
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17 PATRICIA A. GANDY, CSR, RPR
18 Official Court Reporter
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STATE OF ILLINOIS)
) SS.
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 July 25, 1985.

DATED this 2nd day of August, 1985.

ENTER:

Richard P. Goldenherch
RICHARD P. GOLDENHERSH, Circuit Judge