

FAX COVER SHEET

To:

Paul Merrell & Carol Van Strum
Bradley & Merrell

From:

Peter Montague
Environmental Research Foundation
(410) 263-1584 (voice)
(410) 263-8944 (fax)

4 pages (including this cover sheet)

Sent on 30-Oct-93 at 17:57

Comment:

Dear Gerson, Paul & Carroll-- I have
sent the attached FAX to John Michener.
I have not sent it to Mary Ann because I
don't want her working on this any more,
though I haven't formally told her this
(I'm waiting to see if we can find a
replacement). --Peter

Sent via FaxWorks CS 2

Environmental Research Foundation 30-Oct-93 17:57 page 2 of 4

ENVIRONMENTAL RESEARCH FOUNDATION

~~~~~

P.O. Box 5036 Annapolis, MD 21403-7036 Telephone (410) 263-1584  
Econet: erf Internet: erf@igc.apc.org Fax (410) 263-8944

October 30, 1993

Dear John,

Yesterday you should have received a big box of documents from us. It represents my

## **ENVIRONMENTAL RESEARCH FOUNDATION**

P.O. Box 5036 Annapolis, MD 21403-7036 Telephone (410) 263-1584  
Econet: erf Internet: erf@igc.apc.org Fax (410) 263-8944

October 30, 1993

Dear John,

Yesterday you should have received a big box of documents from us. It represents my entire file on the Gaffey case, which I put together for a member of my board of directors who wanted to see everything in my files.

In the judge's order and memorandum of May 26, 1993 (Document 137), I am particularly struck by the judge's denial of privilege to my sources because "The court is unconvinced that the EPA memorandum constitutes an official action."

I note the following facts:

- a) The Jenkins memo DID DIRECTLY CAUSE a criminal investigation of Monsanto's studies to be opened by EPA's criminal investigations unit.
- b) I am attaching a copy of a letter from Sylvia K. Lowrance, Director of EPA's Office of Solid Waste to Congressperson Carroll Hubbard dated May 30, 1991, in which Ms. Lowrance admits EPA directed Cate to take the action that she did.
- c) In document 158 of the stack of documents I sent you, Cate's situation was adjudicated and it was found that EPA had no legal reason to demote Cate for what she did because she was required to do it by EPA's regulations (she has a duty to report evidence of fraud), and in doing it she was protected as an EPA employee under several federal statutes.

Is there not some legal action that we can take to REQUIRE Judge Hamilton to take notice of these facts? She is quite obviously making an error in her May 26 Order, and I am very concerned that this will make it impossible for me to get a fair trial.

Thanks for considering these matters.

Sincerely,



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

MAY 30 1991

JUN 01 1991

**COPY**  
OFFICE  
SOLID WASTE AND EMERGENCY RESPONSE

Honorable Carroll Hubbard  
House of Representatives  
Washington, D.C. 20515

Dear Mr. Hubbard:

Thank you for your letter of May 6, 1991, regarding John Lyons's concerns about exposure to dioxin.

The memorandum Mr. Lyons referred to was written by Cate Jenkins, a chemist in the Environmental Protection Agency's (EPA's) Regulatory Development Branch. Ms. Jenkins claimed to have information concerning certain data submitted to EPA by the Monsanto Corporation. EPA directed her to provide this information to John West and Kevin Guarino, whom she mentioned in her letter. The memorandum of January 24, 1991, that Mr. Lyons sent you was part of this information transmittal. However, the allegations and conclusions are Ms. Jenkins's personal conclusions, not EPA's.

EPA is currently reassessing the toxicological data on dioxin compounds to make sure that we are using the most accurate information in developing regulations and taking other actions that involve dioxin compounds (e.g., site cleanups).

The Department of Veterans Affairs has revised certain policies to allow veterans compensation for Agent Orange exposures that result in soft tissue sarcoma. You may wish to have your staff contact the Secretary of Veterans Affairs for the latest information in this area.

Thank you for sharing Mr. Lyons's concerns with us.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "Sylvia K. Lowrance", is written over the typed name.

Sylvia K. Lowrance, Director  
Office of Solid Waste

CARROLL HUBBARD  
CONGRESSMAN  
1ST DISTRICT, KENTUCKY

2288 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515  
(202) 225-3115

# Congress of the United States

## House of Representatives

Washington, DC 20515

June 3, 1991

REGIONAL WHIP  
COMMITTEES:  
BANKING, FINANCE AND  
URBAN AFFAIRS  
MERCHANT MARINE  
AND FISHERIES  
CHAIRMAN, SUBCOMMITTEE ON  
GENERAL OVERSIGHT  
AND INVESTIGATIONS OF THE  
BANKING COMMITTEE

John L. Lyons  
139 Walnut Court  
Benton, KY 42025

Dear John:

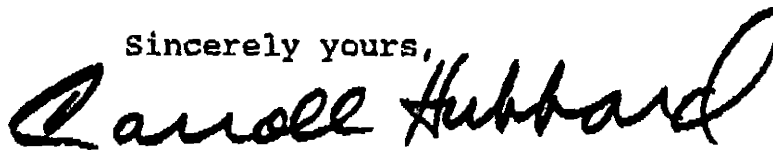
I want to share with you a copy of the response I have recently received from Sylvia K. Lowrance, Director of the Office of Solid Waste with the U.S. Environmental Protection Agency.

John, I am hopeful that the response adequately answers all your questions concerning this important matter. However, if you believe I can be of further assistance to you, please contact me again.

Thank you for providing me with the opportunity to be of assistance to you.

With best wishes for you, I am

Sincerely yours,



Carroll Hubbard  
Member of Congress

CH/jl  
Enclosure

red 300

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

FILED

SEP 15 1993

SENT TO: Attorneys of record

RE: Case Name William R. Gaffey  
v.  
Peter Montague, et al.

Case No. 91-1938C(7)

This action is set for a NON-JURY trial on January 3, 1994,  
at 9:30 a.m. This docket is set as a three week docket.

ANY REQUEST FOR A CONTINUANCE MUST BE MADE UPON NOTICE TO OPPOSING  
COUNSEL WITHIN 7 DAYS AFTER RECEIPT OF THIS NOTICE OR ANY  
SUBSEQUENT NOTICE RESETTING.

ORDER OF COURT RELATING TO TRIAL

In this case, unless otherwise ordered by the Court, the  
attorneys shall, not less than 10 days prior to the date set for  
trial:

1. Stipulation: Meet and jointly prepare and file with the Clerk  
a JOINT stipulation of all uncontested facts, which may be read  
into evidence subject to any objections of any party specified  
in said stipulation.

2. Witnesses:

(a) Deliver to opposing counsel and to the Clerk a list of all  
proposed witnesses, specifying those that will be called to  
testify and those that may be called.

(b) Except for good cause shown, no party will be permitted to  
call any witness not listed in compliance with this Order.

3. Exhibits:

(a) Mark for identification all exhibits to be offered in  
evidence at the trial (plaintiffs to use Arabic numerals  
and defendants to use letters, e.g. Pltf-1, Deft-A, or  
Pltf Jones-1, Deft Smith-A, if there is more than one  
plaintiff or defendant), and deliver to opposing counsel  
and to the Clerk a list of such exhibits, specifying  
those that will be introduced into evidence and those that  
may be introduced.

(b) Submit said exhibits or true copies thereof to opposing  
counsel for examination. Prior to trial, the parties  
shall stipulate as to which exhibits may be introduced

without objection or preliminary identification, and shall file written objections to all other exhibits.

- (c) Except for good cause shown, no party will be permitted to offer any exhibit not listed or not submitted by said party in compliance with this Order. Any objections not made in writing at least five (5) days prior to trial may be considered waived.

4. Depositions, Interrogatory Answers and Requests for Admissions:

- (a) Deliver to opposing counsel and to the Clerk a list of all interrogatory answers or parts thereof and depositions or parts thereof (specified by page and line numbers), and answers to requests for admissions proposed to be offered in evidence. At least five (5) days before trial, opposing counsel shall specify in writing any objections to the receipt of such testimony and shall list any additional portions of such depositions not listed by the offering party which opposing counsel proposes to offer.

- (b) Except for good cause shown, no party will be permitted to offer any interrogatory answer or deposition or part thereof, or answer to requests for admissions not listed in compliance with this order. Any objections not made as above required may be considered waived.

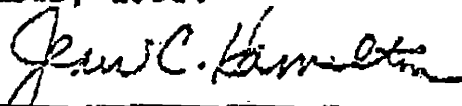
5. Submit to the court and to opposing counsel full, complete, and specific findings of fact and conclusions of law, together with a trial brief, citing authorities, in support of said party's legal theories and discussing any anticipated substantive or procedural problems.

6. Motions In Limine: Shall file all motions in limine to exclude evidence at least five (5) days before trial.

Failure to comply with any part of this order may result in the imposition of sanctions as set forth in Local Rule 13 of this Court.

This Order shall be followed by all District Judges and Magistrates in this district. However, by a "Supplemental Order of Court", any District Judge or Magistrate may add such other requirements as shall be deemed proper in any given case.

Dated this 16th day of September, 1993.



UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

WILLIAM R. GAFFEY,

Plaintiff,

v.

PETER MONTAGUE, et al.,

Defendants.

Cause No. 91-1938C(7)

ORDER

IT IS HEREBY ORDERED that the following scheduling deadlines are imposed in this cause:

1. All discovery requests (i.e., deposition notices, document requests, interrogatories, etc.) are to be made by 60 days prior to trial. However, all discovery pertaining to expert witnesses shall be governed by the time limits set forth in Local Rule 33.

2. All discovery is to be completed on or before 30 days prior to trial.

3. All motions to dismiss or for summary judgment shall be filed not later than 70 days prior to trial.

4. The attorneys, not less than ten days prior to the date set for trial, shall jointly submit to the Court a brief description of the case to be read to the jury panel during the voir dire examination.

IT IS FURTHER ORDERED that the above schedule shall not be modified except by leave of Court upon a showing of good cause. The filing of a motion (including a discovery motion, motion for summary judgment, motion to dismiss, etc) does not excuse the

EVANS & DIXON  
Attorneys at Law  
1200 Saint Louis Place  
200 North Broadway  
St. Louis, Missouri 63102-2749  
Telephone No. 314/621-7755  
Fax No. 314/621-3136

NOTE: PRIVATE AND PRIVILEGED INFORMATION. THIS TRANSMISSION IS DIRECTED ONLY TO THE PERSON OR PERSONS NAMED BELOW FOR THEIR USE. IT MAY CONTAIN INFORMATION OR MATERIALS WHICH ARE PERSONAL, PRIVATE AND/OR CONFIDENTIAL AND WHICH ARE NOT INTENDED TO, AND MAY NOT, BE DISCLOSED TO ANY OTHER PERSON. IF YOU ARE NOT THE PERSON TO WHOM THIS TRANSMISSION IS DIRECTED, YOU ARE HEREBY NOTIFIED THAT ANY DISCLOSURE, DISTRIBUTION, COPYING OR USE OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, DO NOT READ ANY PART OF IT. IMMEDIATELY CONTACT US BY TELEPHONE AND RETURN THE ORIGINAL COMMUNICATION TO US AT THE ABOVE ADDRESS VIA THE U.S. POSTAL SERVICE. THANK YOU VERY MUCH FOR YOUR COOPERATION AND UNDERSTANDING.

FAX TRANSMISSION COVER SHEET

FAX # 241-4245

DATE: 9-17-93

PLEASE DELIVER TO THE FOLLOWING:

Name: Mr. Gerald Ortbals

Company: Greensfelder, Hemker & Gale

DOCUMENT FROM:

Name: John A. Michener

SPECIAL INSTRUCTIONS:

TO RECEIVING OPERATOR:

Total number of pages 5 including cover sheet.

Call 314/621-7755, Ext. 131, if you do not receive complete transmittal.

OFFICE USE ONLY:

Client No. 40

Matter No. 758

Atty. No. 15

Matter Name: Gaffey v. Montague

(e) the author or authors of the document;

(f) such other information as is sufficient to identify the document.

3. The following definitions apply herein:

(a) The words "document" and "documents" are used herein in a broad sense and include, but are not limited to, the following items whether such items are recorded, reproduced by any mechanical process, copies or written by hand; letters, memoranda, contracts, drafts of contracts, reports, records, settlement checks, studies, handwritten notes, working papers, charts, papers, graphs, indexes, tapes, disks, electronic recording, data sheets or data processing cards, drafts of any of the foregoing, or any other written, recorded, transcribed, punched, taped, filmed or graphic matter, however produced or reproduced.

(b) "Defendants" shall refer to defendants Peter Montague and Environmental Research Foundation, jointly and/or severally, and any officer, director, shareholder, employee, representative, agent or other person or entity acting or purporting to act for or on behalf of said defendants;

(c) "Plaintiff" refers to William Gaffey;

(d) "Newsletter" refers to Rachel's Hazardous Waste News.

(e) "Article" refers to the article appearing in the Number 171 edition of Rachel's Hazardous Waste News entitled "Dioxins and Cancer: Fraudulent Studies".

6. Any and all documents concerning Peter Montague's education and credentials, including but not limited to his curriculum vitae.

7. Any and all documents concerning any articles, stories, published writing, papers, peer reviewed scientific journals, etc., which were authored, co-authored, or edited by Peter Montague.

8. Any and all documents concerning any editing performed and/or suggested prior to the publication of the article.

9. Any and all documents concerning a review of the article by anyone claiming to be an epidemiologist either prior or subsequent to its publication.

10. Any and all documents concerning the source materials, interviews, field notes, etc., taken during the course of Defendants' work on the article.

11. Any and all documents concerning the sources of the article .

12. Any and all documents concerning any and all efforts made by Defendants to verify the authenticity of each and every source used in writing the article.

13. Any and all documents concerning any and all efforts made by Defendants to verify the authenticity of the contents of the article.

14. Any and all documents concerning any claim or complaint filed against Defendants for printing defamatory statements or implications.

Certificate of Service

The undersigned hereby certifies that a true copy of the foregoing Request for Production of Documents was served by first class U.S. Mail, postage prepaid, the 5<sup>th</sup> day of OCTOBER, 1993, to John A. Michener, EVANS & DIXON, 1200 Saint Louis Place, 200 North Broadway, St. Louis, MO 63102 and Gerald Ortbals, GREENSFELDER, HEMKER & GALE, 1800 Equitable Building, 100 North Broadway, St. Louis, MO 63102.

Andrea M. Kerton

ANSWER:

e. Beginning and ending dates of the position.

ANSWER:

f. Why you left that position.

ANSWER:

2. State the names and addresses of any people you intend to call as expert witnesses, and state the general nature of the subject matter on which they will testify. Further, state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.

ANSWER:

3. Are you aware of any statements made by defendants (other than the article in question) pertaining to plaintiff or Zack, or to any studies done by plaintiff or Zack, or to any other matter referred to in plaintiff's petition? If that statement was oral, please repeat it as exactly as you can. If the statement was written, recorded or transcribed, state the name and address of the person having custody of the statement

and attach a copy of it to your answers.

ANSWER:

4. Does plaintiff claim any financial loss as a result of the article mentioned in plaintiff's petition (herein after "the article")? If so, for each different kind of financial loss, please state the following:

a. The amount of the loss.

ANSWER:

b. Describe the nature of the loss, and how it was incurred.

ANSWER:

c. Show exactly how you calculated the amount of the loss.

ANSWER:

d. State during what period of time the loss was incurred.

ANSWER:

5. Other than as set out in answer to the preceding interrogatory, do you claim that you have or will suffer any loss as a result of the article? If so, fully describe the nature of the loss, the amount, how you calculated the amount, and the

period when incurred.

ANSWER:

6. Please state the names and addresses of all persons who have a lower opinion of plaintiff's integrity, honesty, or professional competence as a result of reading the article. For each of those persons, please state:

ANSWER:

a. How you know that that person has a lower opinion of you.

ANSWER:

b. Whether you have explained your position to that person and, if so, whether that explanation was accepted.

ANSWER:

7. In regard to your professional background, please state the following:

a. List all professional organizations to which you have belonged, including the years which you have belonged to them.

ANSWER:

b. If you have been an officer or director of any of the organizations listed in answer to subsection (a), please state the name of the office and the years held.

ANSWER:

c. Describe any special honors or awards you have received, including the name and address of the entity giving the award, and the year.

ANSWER:

d. List all articles, studies, letters, or other material that have been published in any form, including the title, name and address of publisher, date of publication, and general nature of the subject matter of your work.

ANSWER:

e. Describe any teaching you have done, including name and address of the institution where you taught; the years in which you taught; and the name and description of the courses you taught.

ANSWER:

f. List all speeches, presentations, or papers you have given or issued, including the title of the speech or presentation, describe its general nature, when and where given, and the name and address of the organization connected with the presentation.

ANSWER:

8. Did you conduct, author, or participate in a study of the effects of Dioxin, as mentioned in the article (hereinafter "the study")? If so, please state:

ANSWER:

a. Why you undertook the study, including the name, address, position and employer of the person who ordered or suggested that you undertake the study.

ANSWER:

b. Was the study undertaken as part of your job duties with Monsanto?

ANSWER:

c. Describe fully the data and documents on which the study was based.

ANSWER:

d. State the name and address of all present custodians of that data and the documents, and describe any of the sources which are no longer in existence.

ANSWER:

9. List the names, addresses, positions, and employers of all persons who participated or worked on the study, and describe the role of each.

ANSWER:

10. For purposes of the study, describe fully and exactly on what basis you determined that a worker had been "exposed" or not exposed to Dioxin. Further, state the rationale for that determination. If that determination was based upon any scientific authority, cite the authority fully.

ANSWER:

11. State the names and addresses of all persons with personal knowledge that the statements of which plaintiff complains were made by defendants with knowledge that they were false, or with reckless disregard as to the truth of those statements. For each such person, please state:

ANSWER:

a. Describe the basis for that person's knowledge.

ANSWER:

b. State when and how you first became aware of this

person's knowledge.

ANSWER:

12. State the names and addresses of any Monsanto employees or consultants who disagreed with or questioned the methodology or results of your study.

ANSWER:

13. State the names and addresses of any other persons or entities who disagreed with or questioned the methodology or results of your study. If that was expressed in an article or publication, fully cite it.

ANSWER:

14. Are you aware of any studies of the effects of Dioxin (other than the one referred to in interrogatory number 8) which were in any way devised or conducted by any persons connected with Monsanto? If so, for each such study, please state:

ANSWER:

a. When it was conducted; the title of the study; and fully

cite any publication of it.

ANSWER:

b. State the names and addresses of the persons who devised or conducted the study, and describe the role of each.

ANSWER:

c. Describe fully the data and documents on which the study was based.

ANSWER:

d. State the name and address of all present custodians of the study, the data and the documents, and describe any of the sources which are no longer in existence.

ANSWER:

e. Describe fully and exactly on what basis it was determined that a subject of that study had been "exposed" or not exposed to Dioxin. Further, state the rationale for that determination. If that determination was based on a scientific authority, cite the authority fully.

ANSWER:

15. State the names and addresses of any persons or entities who disagreed with or questioned the methodology or

results of the studies referred to in interrogatory number 14.

ANSWER:

EVANS & DIXON

BY: John A. Michener  
John A. Michener #22509  
Co-Counsel for Defendants  
1200 Saint Louis Place  
200 North Broadway  
St. Louis, MO 63102  
621-7755

GREENSFELDER, HEMKER & GALE

BY: Gerald Ortals  
Gerald Ortals  
Attorney for Defendants  
1800 Equitable Building  
10 South Broadway  
St. Louis, MO 63102  
241-9090

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

WILLIAM R. GAFFEY,

Plaintiff,

vs.

PETER MONTAGUE, et al.,

Defendants.

Cause No. 91-1938-C-7/JCH

PLAINTIFF'S FIRST INTERROGATORIES  
DIRECTED TO DEFENDANTS

COMES NOW plaintiff, William R. Gaffey, pursuant to Rule 33 of the Federal Rules of Civil Procedure, and propounds the following interrogatories to defendants Peter Montague and Environmental Research Foundation, to be answered under oath in accordance with the Federal Rules of Civil Procedure.

GENERAL INSTRUCTIONS

1. You are requested to furnish all information that is available to you or subject to your reasonable inquiry, including information in the possession of your attorneys, accountants, advisors or other persons directly or indirectly employed by, or connected with, you or your attorneys and anyone else otherwise subject to your control.

2. If an interrogatory has subparts, answer each subpart separately and in full, and do not limit your answer to the interrogatory as a whole. If an interrogatory cannot be answered in full, answer to the extent possible and specify the reason for your inability to answer the remainder and state whatever

information and knowledge you have regarding the unanswered portion.

3. If the information requested is not reasonably available to you, state what efforts have been made to obtain the information, if any, and from what source such information might be obtained, if known.

4. If the information requested is not available in precisely the form requested but can be supplied in a slightly modified form, state whatever information is available to you concerning the subject of the interrogatory.

5. If an interrogatory calls for information which may be derived from records of documents available to you, you may answer the interrogatory by specifically referring to any such records of documents in which the precise information may be found, and by furnishing the documents or copies thereof to Plaintiff.

6. If any information is withheld because of a claim of privilege, state the general nature of the information and describe in detail the nature of the privilege claimed.

7. The interrogatories are to be deemed as continuing, and any additional information which you acquire subsequent to the date of answering these interrogatories, up to and including the date of trial, which is different from that set forth in your answers to these interrogatories, up to and including the date of trial, which is different from that set forth in your answers to these interrogatories shall be furnished to Plaintiff's attorneys promptly after it is acquired by you.

#### DEFINITIONS

1. "Identify", when referring to any person, means to set forth the name, present or last known address of each person and, if an individual, his or her employer and title of business position during the period referred to. Once a person has been thus identified in an answer to an interrogatory, it shall be sufficient thereafter when identifying that person to simply state his or her full name.

2. "Identify", when referring to a document, means to identify its author, date, each addressee of any copy, a brief description of the subject matter of the document, and the present custodian of the original and each copy thereof bearing any marking or notation not found on the original or other identified copy.

3. "Person" or "persons" mean any natural individual, firm, partnership, association, joint venture, corporation, governmental agency or subdivision, or other organization, or legal business entity, including without limitation, any party to this litigation.

4. "Plaintiff" shall refer to plaintiff William R. Gaffey.

5. "You", "your" or "defendants" shall refer to Peter Montague and Environmental Research Foundation, jointly and/or severally, and any officer, director, shareholder, employee, representative, agent or other person or entity acting or purporting to act for or on behalf of said defendants.

6. The term "newsletter" shall refer to Rachel's Hazardous Waste News.

7. The term "article" shall refer to an article titled "Dioxins and Cancer: Fraudulent Studies" published in Rachel's Hazardous Waste News.

8. "State" means to provide a detailed explanation including all information you have with regard to the particular interrogatory.

9. The term "concerning" means and includes referring to, alluding to, responding to, relating, connected with, commenting on, in respect of, about, regarding, discussing, involving, showing, describing, reflecting, analyzing and constituting.

INTERROGATORIES

1. Identify the geographical area (hereinafter referred to as the "reading area") over which Defendants distribute and/or sell the newsletter and the population of the reading area, and include the following:

(a) Identify the percentage of those persons in the total population that reside in Missouri; and

(b) Identify the percentage of those persons in the total population that reside in the midwestern part of the United States.

ANSWERS:

Part (a): [GET]

Part (b): I cannot respond to this because the term "midwestern" is vague. Webster's Third New International Dictionary of the English Language Unabridged (Springfield, Mass.: Merriam-Webster, Inc., 1986), pg. 1431, says "midwest" means "regions lying somewhat to the west of a specified or implied point of origin." What states does Mr. Gaffey consider to be included in the "midwest"?

2. Identify how many newsletters are delivered to the reading area population by subscription, and include the following:

(a) Identify each and every citizen group the newsletter is provided to and/or made available to;

(b) Identify each and every government agency the newsletter is provided to and/or made available to;

(c) Identify each and every business the newsletter is provided to and/or made available to;

(d) Identify each and every institute of higher learning (i.e. colleges, universities, etc.) the newsletter is made available to; and

(e) Identify any other group the newsletter is provided to and/or made available to not identified in response to 2.(a) - (d).

ANSWER:

[GET]

3. State how many copies of the Number 171 edition of the newsletter were printed and identify how many people in the reading area, according to Defendants' figures, read the Number 171 edition of the newsletter, providing a break down of the total by state.

ANSWER:

We do not know how many of #171 were printed; we know how many we mailed via U.S. postal service to subscribers. [GET]

4. Identify whether Defendants have a manual or other instructional material which provide journalists' standards to be

observed in investigating, gathering and publishing news, and include the following:

(a) Identify the complete titles and authors of any such manual or instructional material;

(b) Identify how reporters are trained in the use of any such manual or instructional material; and

(c) Identify how editors are trained in the use of any such manual or instructional material.

ANSWER:

(a) Stephen Elias. *Legal Research. How to Find and Understand the Law.* Second Edition. Berkeley, Calif: Nolo Press, 1990.

Louis J. Rose. *How to Investigate Your Friends and Enemies.* St. Louis, Mo.: Albion Press, 1983.

M. Harry. *Muckraker's Manual; Handbook for Investigative Reporters.* Port Townsend, Wash.: Loompanics Press, 1984.

Leonard N. Fuld. *Competitor Intelligence; How to Get It; How to Use It.* New York: Wiley, 1985.

Mona McCormick. *The New York Times Guide to Reference Materials.* Revised Edition. New York: Dorset Press, 1985.

John Ullmann and Steve Honeyman, editors. *The Reporter's Handbook; An Investigator's Guide to Documents and Techniques.* New York: St. Martin's Press, 1983.

Christopher W. French, editor. *The Associated Press Stylebook and Libel Manual.* Revised Edition. Reading, Mass.: Addison-Wesley, 1987.

Victor Cohn. *News and Numbers; A Guide to Reporting Statistical Claims and Controversies in Health and Related Fields.*

Ames, Iowa: Iowa State University Press, 1989.

Philip B. Gove, editor. *Webster's Third New International Dictionary of the English Language Unabridged*. Springfield, Mass.: Merriam-Webster, Inc., 1986).

(b) Peter Montague is the only reporter on our staff. He writes the newsletter single-handedly. He trains himself by reading, as needed.

(c) Peter Montague is the only editor who makes decisions regarding content of our newsletter. He writes the newsletter single-handedly. He trains himself by reading, as needed.

5. Identify all individuals, reporter, editors or other employees of Defendants who worked in the field or in the office on the story in the Number 171 edition of the newsletter which is the subject of this litigation, and include the following:

(a) State whether these individuals are still in Defendants' employ, and if not, state why;

(b) State whether any of these individuals ever had a claim or complaint filed against them in conjunction with Defendants' printing defamatory statements or implications, and if so include the following;

(i) The name and address of the person or entity who filed such charges or complaint;

(ii) A description of the defamatory statements or implications printed that caused said claim or complaint;

(iii) If applicable, the name and address of the tribunals where such a claim was filed, the title of the cause and the number assigned by the tribunal to such claim;

OCT-27-1993 15:15 FROM E.R.F.

TO

2638944 P.08

(iv) The amount of money paid, if any, to settle or otherwise satisfy said claim or complaint;

(v) Whether a retraction was offered or printed by Defendants; and

(vi) The final judgment of the court for those cases not settled.

and

(c) State whether any person named above has ever been previously admonished or reprimanded.

**ANSWER:**

Peter Montague wrote and edited #171 single-handedly; no one else participated in the writing or editing.

(a) He is employed by Environmental Research Foundation.

(b) Peter Montague has never had a claim or complaint filed against him in conjunction with Defendants' printing defamatory statements or implications, prior to the present action against him by Mr. Gaffey.

(c) I can't answer this question; it is too vague. Admonished or reprimanded by whom?

6. With respect to defendant Peter Montague, please state the following:

(a) Identify all colleges, universities or other institutions attended;

(b) Identify all professors who taught Peter Montague courses pertaining to journalism, writing or related areas;

(c) Identify all textbooks used by Peter Montague pertaining to journalism, writing or related areas and/or

epidemiology and toxicology;

(d) Identify five journalism texts with which Peter Montague is familiar;

(f) Identify all articles, stories, published writing paper, peer reviewed scientific journals, etc., which Peter Montague has authored or co-authored;

(g) Identify the extent of Peter Montague's journalism experience; and

(h) state by whom Peter Montague is employed and identify all titles or positions held by Peter Montague.

**ANSWERS:**

(a) Peter Montague attended:

(1) University of Virginia during 1958-1959;

(2) Antioch College during 1959-1960;

(3) Mexico City College during 1960-1961;

(4) Indiana University during 1965-1967;

(5) University of New Mexico during 1967-1971.

(b) I cannot remember the names of any journalism or writing professors who taught me (32 to 36 years ago); I have written to the colleges I attended, to ask for transcripts, and will provide the answers if and when the transcripts are received.

(c) I assume this question pertains to my years in college; the names of textbooks that I can remember are Strunk and White's *Elements of Style* and Darrell Huff's *How to Lie With Statistics*. I also remember that during those years I read *I.F. Stone's Weekly* on a regular basis.

(d) I am not familiar with the contents of any journalism

textbooks.

(f) A list of my written work is attached.

(g) My journalism experience:

I was a reporter and editorial editor for my high school newspaper in 1956 and 1957. I held my first newspaper job in 1956 (when I was 17) as a reporter for the *Westport (Ct.) Town Crier* and the *Fairfield (Ct.) News*. At Antioch College I was editor of the college newspaper for a time; at Mexico City College I edited an independent newspaper called *The Gadfly*, and I was a reporter for a monthly magazine called *Mexico Today*. At Indiana University I worked as a reporter for an independent newspaper called the *Bloomington Spectator*. From 1971 to about 1974 I was a reporter, then associate editor for the *New Mexico Review and Legislative Journal* in Santa Fe, N.M. In 1972 I founded a monthly magazine in Albuquerque, N.M., called *The Workbook*, which still appears (now quarterly) though since 1979 I have only written for it occasionally and I have not participated in its editing. In 1981 I founded *New Jersey Hazardous Waste News* in Lawrenceville, N.J., of which I was the editor, and which in 1986 became the weekly *Rachel's Hazardous Waste News* in Princeton, N.J., which I still edit today, though our offices have since moved to Annapolis, Md.

(h) Peter Montague is employed as director of Environmental Research Foundation. It is his only job. One of his duties is to edit the weekly *Rachel's Hazardous Waste News*.

7. Identify the names and titles of the persons who wrote, edited or worked on the article appearing in the Number 171 edition of the newsletter which is the subject of this litigation prior to

publication, and include the following;

(a) State whether these people are still in Defendants' employ and if not, state why and an address or telephone number where they may be reached;

(b) State whether any attorneys were consulted concerning said article and provide the identities of each; and

(c) State whether anyone claiming to be an epidemiologist was consulted concerning said article and provide the identities of any such persons.

**ANSWER:**

I was the only person involved in writing and editing #171.

(a) I am employed by Environmental Research Foundation.

(b) No attorneys were consulted.

(c) No one claiming to be an epidemiologist was consulted.

8. State whether Defendants possess the source materials, interviews, field notes, etc., taken during the course of Defendants' work on the article which is the subject of this litigation, and include the following;

(a) Identify where said documents are located; and

(b) Identify who has custody of said documents

**ANSWER:**

The source documents exist in the files of Environmental Research Foundation. No interviews were conducted; no field notes were taken.

9. Identify each and every source of the article which is the subject of this litigation, and include the following:

(a) Identify the name, address and telephone number of each said source;

(b) Identify each and every effort made by Defendants to verify the authenticity of each said source;

(c) Identify each and effort made by Defendants to verify the authenticity of the contents of said article; and

(d) State whether Defendants had in their possession any of the studies referred to in the article.

**ANSWER:**

The sources were all documents, not people.

(a) Naturally, documents do not have names, addresses or telephone numbers.

(b) I reviewed in my mind the history of dioxin science and the issues involved; I evaluated (based on my own knowledge and experience and files), and made a judgment about, the reliability of the individuals who provided me with the source documents; I evaluated (based on my own knowledge and experience and files), and made a judgment about, the reliability of Cate Jenkins and the likelihood that an appellate brief might contain false claims; I reviewed numerous documents from my files on the issues of dioxin and human and animal health; I conducted a computer search on the National Library of Medicine's on-line system; and I made a trip to the Rutgers University Library of Science and Medicine to acquire and photocopy documents, which I then read.

After Mr. Gaffey wrote me a letter, dated April 23, 1990 [Document 4], I then wrote a letter to Rex Carr [which I mistakenly dated April 23, 1990; I actually finished writing it, and mailed

it, April 29, 1990--see Document 5], whose appellate brief I had quoted as one of the sources for my article in #171, asking him for clarification about whom he was referring to in his reference to "Zack/Gaffey." His reply to me was dated May 10, 1990 [see Document 8] and it included two documents that had been exhibits in the Kemner trial [Document 6 and Document 7].

I wrote to Mr. Gaffey on April 29, 1990 [Document 9]. He responded to me in a letter dated May 11, 1990 [Document 13]; he sent three enclosures [Document 10; Document 11; and Document 12]. I read his letter and these documents carefully.

Before publishing #171, I had spent 20 years collecting and reading news articles, medical articles, and scientific articles about 2,4,5-T, other phenoxy herbicides, and dioxin(s); since publishing #171, I have continued collecting and reading articles on the same subjects. In reading these materials, I have continued to look for evidence that confirms or refutes the correctness of the allegations and statements in #171.

(c) When I wrote the story I had not seen the text of the Zack/Gaffey study or of the Zack/Suskind study; I had read all of the other documents referred to in the footnotes of the article in #171. Before I published the article, I had obtained and had read copies of all the documents cited in the footnotes, including the Zack/Gaffey study and the Zack/Suskind study. After reading these studies, I made the judgment that my article was substantially correct, and I authorized its printing and distribution.

10. State whether Defendants ever had a claim or complaint filed against them for printing defamatory statements of

implications, and include the following:

(a) Identify the name and address of each person or entity who filed such charges or complaint;

(b) Provide a description of the defamatory statements or implications printed that caused such claim or complaint;

(c) If applicable, identify the tribunal where such claim was filed, the title of the cause and the number assigned by the tribunal to such claim or complaint;

(d) State the amount of money paid, if any, to settle or otherwise satisfy said claim or complaint;

(e) State the final judgment of the court for those cases not settled; and

(f) State whether a retraction was offered or printed by Defendants.

**ANSWER:**

Neither Environmental Research Foundation nor I have ever had a claim or complaint filed against us for printing defamatory statements of implications, prior to Mr. Gaffey's present action.

11. Identify the date of initial publication of the newsletter, and include the following:

(a) Identify each and every publisher of the newsletter from the date of inception;

(b) Identify each and every editor of the newsletter from the date of inception;

(c) Identify all sources of donations and/or gifts used to finance the newsletter from the date in inception, and include

the following:

(i) Provide the date of each said donation and/or gift;

(ii) Provide the amount of each said donation and/or gift; and

(iii) Provide the name and place of employment of each person making said donation and/or gift.

and

(d) Identify any and all financial institutions providing loans to launch the newsletter, and include the following;

(i) State the principal amount of each and every loan;

(ii) State the balance due on each and every loan; and

(iii) Identify all signers on each and every loan.

**ANSWER:**

(a) Environmental Research Foundation has always been the only publisher.

(b) Peter Montague has always been the editor.

(c) Sources of donations or gifts: See attached Tax Forms (990s) for Environmental Research Foundation. These constitute a complete record of all our income during the period in question

(d) Environmental Research Foundation has never received a loan from any person or institution.

12. State the net worth of defendants Environmental Research Foundation and Peter Montague, and include the following:

(a) Identify the basis for this figure, including but not limited to the gross value of Environmental Research Foundation's total assets and liabilities together with the gross and net earnings and/or donations for the last five years;

(b) Identify what percentage of Environmental Research Foundation's earnings and/or donations are attributable to business in Missouri;

(c) Identify what percentage of Environmental Research Foundation's earnings and/or donations are attributable to business in the midwestern part of the United States; and

(d) Identify all benefactors of donations and/or gifts in the last five years, and include the following;

(i) Identify the profession or business of each entity making said donations and/or gifts; and

(ii) State the percentage of the entities or persons identified above either performing or utilizing epidemiologist services; and

(e) Provide the information requested in items 12.(a) - (d) for Peter Montague.

**ANSWER:**

(a) I have attached Environmental Research Foundation's latest balance sheet which shows our current assets and liabilities.

Peter Montague owns no automobiles, no real estate, no stocks, no bonds, nor any other tangible assets; he has no savings account(s). He has a TIAA/CREF retirement account worth

approximately \$60,000. He owns half the furnishing of the two-bedroom house where he resides, but most of the furniture was in used condition when it was purchased and it has little or no value today. His TV set is 18 years old.

His liabilities include roughly \$1600 in credit card debt; he pays \$600 each month toward his children's educational loans; he pays \$256 per month to lease an automobile.

13. Identify each and every step involved in the process of preparing an issue of the newsletter for publication, and include the average amount of time this process takes.

**ANSWER:**

**Steps in newsletter production:**

(1) Constantly scan publications for new documents and story ideas; keep my "ear to the ground" for important events occurring or about to occur in the field of "chemicals and health" or "environment."

(1) Acquire new documents;

(2) Read them, including the footnotes;

(3) Acquire some or all of the cited documents;

(5) Loop through steps 2 and 3 as many times as necessary;

(6) Conduct interviews, if needed.

(7) Write the newsletter.

(8) Send it to the printer, along with this week's list of subscribers; the printer then prints and mails it.

(9) We then publish the free electronic version on the Internet, a practise we began in July, 1993.

15. State whether Defendants have received any correspondence or other written communication from any person and/or entity concerning the statements contained in the article which is the subject of this litigation, and include the following:

- (a) Identify any such persons and/or entities;
- (b) Identify the affiliations of any such persons and/or entities;
- (c) Identify the purpose(s) of any such correspondence or other written communication; and
- (d) State in detail what, if any, response was provided by Defendants to any of the correspondence or other written communication.

**ANSWER:**

(a) William Gaffey wrote to me on two occasions and a person named Monnye R. Gross, who claimed to be a lawyer representing William Gaffey, wrote to me twice.

(b) Monnye R. Gross is supposedly an independent attorney in Clayton, Mo.; I have no idea who he is, really.

(c) Mr. Gaffey wrote to say (1) that he had never studied "any aspect of the health risks of the people involved in the 1949 Monsanto accident and cleanup" and (2) that he had "never calculated any mortality rates for any workers exposed to dioxin or not exposed to dioxin at the Monsanto plant where the accident took place" and (3) the appellate brief by Carr (in the Kemner case) had mistakenly assumed he had done both of these things; and (4) threatening to sue me if I didn't print a "formal retraction, containing the 3 points I mentioned above."

**REQUEST THREE:** On March 7, 1990, Defendants in the Number 171 edition of said newsletter published an article titled "Dioxins and Cancer: Fraudulent Studies" (herein after referred to as the "Article").

**RESPONSE:**

~~Correct.~~ *Admitted*

**REQUEST FOUR:** In said newsletter, Defendants published of and concerning Plaintiff the following false and defamatory statements of fact:

"In fact, excess cancer have occurred, but it appears that the data have been manipulated to hide the facts" (emphasis in original); "Now there is mounting evidence that such claims rely heavily on studies that are fraudulent"; "other studies of this same accident were also fraudulent"; and "'Gaffey deliberately and knowingly omitted 5 deaths from the exposed group and took four other workers who had been exposed and put these workers in the unexposed group, serving, of course, to decrease the death rate in the exposed group and increase the death rate in the unexposed group.'"

**RESPONSE:**

~~Incorrect.~~ *Denied.*

**REQUEST FIVE:** By said words published in said newsletter, Defendants intended to impeach Plaintiff's professional skill, knowledge and conduct.

**RESPONSE:**

~~Incorrect.~~ *Denied.*

**REQUEST SIX:** By said words published in said newsletter, Defendants impeached Plaintiff's professional skill, knowledge and

conduct.

**RESPONSE:**

Incorrect. *hatched*

**REQUEST SEVEN:** Defendants made no attempt to contact anyone claiming to be an epidemiologist to confirm and/or refute the statements quoted in Request Four prior to publishing said statements.

**RESPONSE:**

*correct. denied.*

*> Peter - you didn't  
do ever the work  
you say epidemiologists do  
a long time  
before  
publishing?*

**REQUEST EIGHT:** Defendants relied solely on their interpretation of their source materials in their writing of said Article and their untrue and libelous statements concerning Plaintiff.

**RESPONSE:**

Incorrect. *denied.*

**REQUEST NINE:** Defendants never performed or were involved in the type of study described in said Article.

**RESPONSE:**

*correct. Objected to as vague, ambiguous, and uncertain as to what is meant by performed or involved in, as well as study.*

**RESPONSE TEN:** As Defendants were inexperienced and unfamiliar with the type of study described in the Article, their printing of the untrue and libelous statements concerning Plaintiff without any attempts to verify and/or refute said statement

constitutes malicious, unwarranted and outrageous conduct.

**RESPONSE:**

*Incorrect. Revised.*

**REQUEST ELEVEN:** Readers of said newsletter generally read the published words as being true, accurate and factual.

**RESPONSE:**

*Unknown. Revised, as defendants cannot know what is in the minds of Mrs.*

**REQUEST TWELVE:** By not verifying the results of the study described in the Article, Defendants have breached their moral and ethical obligations to publish true, accurate and factual articles.

**RESPONSE:**

*Incorrect. Revised*

**REQUEST THIRTEEN:** By not verifying the results of the study described in the Article, Defendants have inflicted irreparable harm upon Plaintiff, including but not limited to great embarrassment, humiliation and impairment of Plaintiff's honesty, integrity and standing in his profession.

**RESPONSE:**

*Incorrect. Revised.*

LEWIS, RICE & FINGERSCH

By \_\_\_\_\_  
Richard A. Wunderlich  
Daniel D. Zegura

8182 Maryland Avenue, Suite 400  
Clayton, Missouri 63105