

IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS
STATE OF MISSOURI
The Honorable Timothy J. Boyer

JOHN L. DURNELL,)
)
Plaintiff,)
)
vs.) Cause No. 1922-CC00221
)
MONSANTO COMPANY,)
)
Defendant.)

TRIAL TRANSCRIPT

Tuesday, October 3, 2023

Volume 2A

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PLAINTIFF'S OPENING STATEMENT

MR. FRAZER: Still trying to gather everything together, your Honor.

THE COURT: Take your time.

MR. FRAZER: May it please the Court.

THE COURT: When you're ready, Mr. Frazer.

MR. FRAZER: Good morning, your Honor.

1 THE COURT: Good morning.

2 MR. FRAZER: Good morning, ladies and
3 gentlemen of the jury.

4 Mr. Conner introduced me briefly before. My
5 name is Roe, R-o-e, Frazer, F-r-a-z-e-r, and I have
6 the privilege to represent John Durnell. John,
7 would you stand up again, please. John is the
8 plaintiff in this case. You all met him yesterday.
9 And John's husband is Richard Roe, R-o-e, Eaton.
10 We have the same middle name. I go by Roe; he goes
11 by Richard. Who would have thought that?

12 I want to echo what Mr. Conner said yesterday.
13 Thank you for your service. I've been doing this
14 too long. My 39th year. And I've been doing what
15 I'm doing here in this courtroom for that long, and
16 I never ever fail to get excited about a trial.

17 It's exciting even though we, as lawyers, have
18 gone back and forth for a few years on the case.
19 You just never know what's going to happen in a
20 jury trial. You never what the Court's going to
21 do.

22 You never know what the proof's going to be.
23 We know a lot, but not all. It makes it a little
24 exciting. I actually get a little tingle, quite
25 frankly. It's kind of fun, even at my age. I'm

1 almost 65.

2 My -- I have the distinct honor of my son, who
3 is back here, he practices law with me. First time
4 he was in a courtroom -- raise your hand Trey.
5 First time he was in a courtroom, we tried the
6 case, I thought I did really good that day. We got
7 home, he's about eight years old, asked him around
8 the dinner table, "How do you think that went?"

9 And his only question was, "How high is that
10 judge's chair?" We've come a long way since then.

11 The lawyers you'll see at our table this whole
12 trial. Mr. Wiley Blair who's from right here in
13 St. Louis. He lives in downtown St. Louis.
14 Mr. Isaac Conner. You met Isaac yesterday. And
15 myself. We'll be the three at the table.

16 You may see some other people helping us.
17 Grant LaBar. As you can tell, he's a real young
18 lawyer. He's barely shaving. Elizabeth, my
19 paralegal, and there are others that will help us
20 throughout the trial to try to bring this case to
21 you in a meaningful, understanding, rich kind of
22 way. It's what we want to do. We want you to
23 understand that evidence.

24 Because you're going to hear stuff that no
25 other jury's heard before. You're going to hear a

1 lot of evidence, a lot of medical talk, scientific
2 literature, internal Monsanto documents, and you're
3 going to make a decision, when we get there, as his
4 Honor said, when we get to do closing arguments.

5 I can't argue anything in my opening. I can
6 only tell you what I expect the evidence to show.
7 We save the arguments until the end of the case,
8 just like his Honor has told you. So I really
9 can't argue. I want to argue things right now, but
10 I can't.

11 This is a civil court system. I've tried
12 cases in probably 22 states in a lot of courthouses
13 across the country. I'm from Nashville. You can
14 tell I have a bigger twang than Isaac has because I
15 grew up in Western Kentucky, not too far from here.
16 Was a Cardinals fan growing up, KMOX Radio.

17 But every time I'm in a courtroom, a new
18 courtroom -- this is the first time I've been in
19 the City of St. Louis courtroom. And it's a civil
20 court system. You walk in, and even outside, you
21 see symbols of justice; right?

22 And you see things. I took pictures of all of
23 them. I wrote this one down. Right there carved
24 in the limestone, "Let justice be done though the
25 heavens fall." Let justice be down though the

1 heavens fall.

2 Then I walked in the courtroom and I looked
3 right over the door right there, you see the scales
4 of justice. And as Mr. Conner told you in a civil
5 case, and as the judge will instruct you at the end
6 of this case, we have to prove to you our case by
7 what's called a preponderance of the evidence. Not
8 beyond a reasonable doubt.

9 And Mr. Conner told you, you know, the scales
10 are equal, and we put another piece of paper or
11 something else on the scale that tips in our favor
12 slightly to 51 percent, then you're duty bound, in
13 your opinion, to render a verdict for the
14 plaintiff.

15 Tips the other way, you're duty bound to
16 render a verdict in favor of the defendant.
17 Everybody said they're comfortable with that
18 burden. I certainly am. I've been doing it for 39
19 years.

20 We think the evidence is not going to tip
21 those scales. We think they're going to be slammed
22 to the bottom on our side.

23 The other thing when I walked in this
24 courtroom, I saw these -- if you look up at the
25 ceiling here, you see the crown molding? You see

1 the beads that kind of look like an egg? Well, in
2 a courtroom, those are what are called rice beads.
3 What that means is you're supposed to render a
4 verdict for bountiful justice. There are all kinds
5 of these justice symbols in the courtroom. Quite
6 frankly, it's exciting to see that. A lot of
7 modern courtrooms don't have those kind of symbols.
8 That's what we've got here in St. Louis.

9 One thing I want you to know is John Durnell,
10 this is his only time he ever gets to bat. He just
11 gets to bat one time. If he wins, he wins. If he
12 loses, he loses. If he hits a home run, he hits a
13 home run. If he strikes out, he strikes out.
14 That's it.

15 And I want you to know that Mr. John Durnell
16 has put his trust in this whole civil justice
17 system by having the guts to do what he's doing.

18 Now, as you all heard yesterday, John Durnell
19 has got a lot of guts. He's a tough guy, quite
20 frankly. His life has been one of choices. And if
21 you think about this case when you're hearing the
22 proof, that's what the case is about. It's about
23 choices, choices were made right here in St. Louis.

24 And it's also about another word, freedom.
25 Choices and freedom. That's what our proof is

1 going to be about.

2 Mr. Durnell, John, made choices. Monsanto
3 made choices. John Durnell's choice to use
4 Roundup, we believe the evidence is going to show,
5 caused or contributed to cause his non-Hodgkin's
6 lymphoma cancer.

7 Monsanto's choice to not do what they should
8 have done, to not follow the do-right rule, to not
9 follow their own code of conduct -- you're going to
10 see what they said they were going to do --
11 resulted in billions of dollars. Choices.
12 Freedom.

13 John Durnell made certain decisions that
14 arguably were against his own personal freedom. He
15 chose to fall in love with Richard Eaton at a time
16 long ago where that was looked down at, just like
17 other things in our society are looked down at
18 because they came up too early.

19 But he made a choice to do that. He fought
20 everything. He fought against the tide on that
21 forever to the point where he also made a choice to
22 move into the Soulard neighborhood before it was
23 really a neighborhood even. He made that choice.

24 He chose to join the Soulard beautification
25 committee. They're all volunteers. He made that

1 choice.

2 He chose to join the United Methodist Church
3 where he and his husband are members today.
4 Richard is a layman in the church. Go right there
5 to the United Methodist Church in Lafayette Park,
6 not too far from where they live.

7 And one day, John Durnell was having some pain
8 in his groin, felt a knot. He went to the doctor.
9 He got the news: Cancer. He had -- he thought he
10 had a hernia is what it felt like it was in his
11 groin.

12 He goes to his doctor. You'll hear him
13 testify about it. He -- and everybody that gets a
14 diagnosis of cancer remembers it all their life.
15 The first words that ring out true is: I'm sorry
16 to tell you this, but you've got cancer.

17 So he made another choice. He chose to do
18 everything his doctor told him to do. And not all
19 patients do that.

20 He minded his doctor, which seems like an easy
21 choice, but it's not always an easy choice to
22 people. He minded his doctor. He went through
23 chemotherapy. And because he minded his doctor and
24 made a choice to follow his doctor's instructions,
25 he got to ring the bell when he finished his last

1 chemotherapy.

2 Now, I don't know if any of you all been in a
3 chemotherapy situation, but when it's your last
4 day, you get to ring a bell that you're done, at
5 least with that course.

6 And that's designed so that that choice or
7 anything in your mind about that day you got
8 cancer, you now have a new bell rung in your head.
9 You go forward.

10 John Durnell is currently in what's called
11 remission. Okay. Remission doesn't mean cure.
12 There's no cure for non-Hodgkin's lymphoma. None.
13 Zero.

14 He's got to go to the doctor every six months.
15 His veins have become so depressed that he has to
16 have a port, he chose, he made another choice, he
17 chose to have a port put in permanently so his
18 blood could be taken easily, so he wouldn't get
19 stuck four or five times while trying to find the
20 vein. He made that choice.

21 He chose to use Roundup. You're going to hear
22 about that. We've got his old Roundup bottles. We
23 know where he bought it from. We know where he
24 sprayed it. We know when he started.

25 About 1996, '97, he started in that

1 neighborhood. He started taking it back, because
2 there were weeds everywhere.

3 Imagine going to a neighborhood that's been
4 derelict for years, and then he made a decision, he
5 made a choice to keep that beautified because he
6 wanted the neighborhood to grow, and it did. It's
7 been brought back to life. It's like a crocus in
8 the wilderness that has bloomed in the dessert.
9 It's amazing, really, what's gone on. And it's a
10 lot because of this man here. And his husband,
11 Richard, is also active in the Soulard district.

12 Those are some of the choices he made.

13 You might say, well, why did he choose to use
14 Roundup? Why use Roundup?

15 Well, he was told by somebody, he's going to
16 testify, he doesn't remember who, that was he was
17 out there pulling weeds. He said somebody came up
18 and say, "Hey, man, you might want to try this
19 Roundup stuff so you don't have to pull weeds."

20 So he goes to the store, Ace Hardware, right
21 there where he lives, starts buying Roundup. Sure
22 enough, it works. It works.

23 We don't contest that Roundup kills weeds.
24 It's a lethal weed killer. From a weed-killing
25 perspective, Monsanto made an outstanding product.

1 From a human exposure standpoint, they also made a
2 lethal product. That's what this evidence is going
3 to show.

4 Choices. Monsanto, they started right here in
5 St. Louis. Monsanto actually means holy mountain.
6 They had their corporate headquarters here in St.
7 Louis City until about 1957. They moved out to
8 Creve Coeur. They put most of their industrial
9 production across the river over there in East St.
10 Louis. Sauget.

11 In fact, Sauget used to be called Monsanto,
12 used to be called Monsanto Township, till the mayor
13 of Sauget, whose name was Sauget, changed it to
14 Sauget, like politicians will do.

15 They made decisions to make this stuff,
16 Roundup. You're going to see documents that start
17 in the 1970s, okay, when I was in -- how old was I
18 back then? When I was in 6th, 7th, 8th grade.
19 You'll see them, because they got the funny-looking
20 Courier font that nobody of uses anymore. That
21 started back in the '70s.

22 So they get to market with Roundup in 1974,
23 '75, somewhere around that frame. And they use
24 a -- they use a study.

25 You can't just put a weed killer on the

1 market, even though the EPA had just come into
2 existence. You all got to think back. The EPA
3 didn't come into existence until the Richard Nixon
4 Administration. All right.

5 It wasn't like today's EPA that's everywhere
6 and has regional offices and all that kind of
7 stuff. But they had to show the EPA that this new
8 product, called Roundup, that had an effective
9 ingredient called glyphosate was okay to use.

10 And what do you do to figure that out? You'll
11 learn that they can't do human studies. Because
12 pesticides and herbicides and fungicides shouldn't
13 ever be sprayed on a human being.

14 So the government won't even let you test
15 living human beings, like they do in a
16 pharmaceutical drug study. No. For a
17 pharmaceutical drug to get on the market, the FDA
18 requires a pharmaceutical company to do a clinical
19 trial, multiple clinical trials on real human
20 beings before that can ever go to market. Two
21 different things here.

22 So the EPA, on the basis of a study that
23 Monsanto contracted out to a lab called Industrial
24 Bio-Test, IBT -- remember that, IBT. And when you
25 hear that you're thinking 1971, '2, all the way to

1 1983, '84. This product's been out there a long
2 time. We got to talk about a lot of stuff.

3 So they get on the market because their IBT
4 chronic carcinogenicity -- I can't say that word
5 very well -- study on mice said, hey, it doesn't
6 get in and harm mice, so you all put it on the
7 market. Prove it doesn't harm humans. If you
8 prove it doesn't harm mice on a long-term basis,
9 that's where they're looking for any evidence of
10 tumors, cancer, that sort of thing. Not short
11 thing. That's called acute. Got a lot of acute
12 studies to talk about. Don't worry about that.
13 We're not talking about acute. We're talking about
14 chronic, something that happens over a long period
15 of time.

16 So on the basis of that one mouse study that
17 IBT did, boom, Roundup's on the market. And, man,
18 it takes off. It's a heck of a product. And it
19 takes Monsanto to places it's never been before,
20 from an economic standpoint, very quickly.

21 But in 1983, because of an investigation of
22 IBT, every study that IBT did, including that one,
23 was thrown out. They not only did studies for the
24 EPA products, they had done studies for the FDA.
25 And men went to jail at IBT.

1 So now Monsanto doesn't have that study. So
2 what do they do? Golly, we've been selling this
3 stuff for almost ten years and now we don't have a
4 study. We can't show that it has no chronic
5 long-term carcinogenic effects on mice or tumors.
6 What are we going to do? Well, let's hire another
7 lab to do a study. So they do.

8 And the study comes out. It's given to
9 Monsanto privately first. These studies go to
10 Monsanto first. They look at them. If they like
11 them, great. If they don't, they do something else
12 with them.

13 So they look at the study from two men called
14 Knezevich -- starts with a K, you'll see that --
15 and Hogan. And the study that they got shows -- so
16 they exposed the rodents to glyphosate only, not
17 Roundup. That's an important point.

18 And they do a control group. So some of
19 the -- as you all probably know, some of the
20 rodents don't get glyphosate. They get a placebo
21 with water, whatever. And in a control group, no
22 tumors over this long study.

23 In the noncontrol group, they see tumors. 640
24 percent increase in tumors in the exposed rodents.
25 640.

1 What does Monsanto do? They can't -- they
2 can't -- they've got that study. They know that
3 the first study has been thrown out, that the
4 product has been on the market for ten years. They
5 start scrambling. They hire a guy named Dr. Marvin
6 Kuschner. His name may not be Marvin, by the way,
7 that's just what I remember. But his name is
8 Kuschner, K-u-s-c-h-n-e-r. He's a pathologist.
9 They hired other pathologists too.

10 But they liked what Dr. Kuschner said, because
11 guess what Dr. Kuschner did? He went back and
12 looked at the pathology, and guess what he found?
13 What would you have to find to invalidate the
14 study? You would have to have someone find a tumor
15 in the control group, the placebo group. And
16 that's what Dr. Kuschner did.

17 So Monsanto, very proudly, took Dr. Kuschner's
18 work back to the EPA and said: Look what we got.

19 The EPA scientists looked at it, they
20 re-examined the tissue slide and said: We don't
21 see what Dr. Kuschner sees.

22 And EPA ordered another study to be repeated,
23 and for whatever reason, we don't know, Monsanto
24 never did it. To this day. To this day.

25 Well, it takes cancer a long time to manifest

1 itself. You can put a product on the market in the
2 '70s. You can probably expect that nothing bad's
3 going to happen for a long time.

4 Think about cigarettes. You can't get cancer
5 from smoking one cigarette one day or even a pack
6 in a day. You got to smoke them over time. You
7 got to be exposed over time. You've got -- your
8 body has to react to the toxin that you're taking
9 in every day. Your cells have to change. Your DNA
10 changes. You're going to hear a lot of talk about
11 that.

12 So you can put a product on the market and
13 say, hey, we don't see anything here, and then wait
14 a long time and cross your fingers. That's what
15 Monsanto basically did. They crossed their
16 fingers. They made that choice.

17 Well, independent scientists started seeing
18 cancer. And some independent scientists --
19 Monsanto calls these free studies, the ones they
20 don't have to pay for. The independent scientists
21 started seeing cancer. And they saw it in animals
22 that they were doing their own independent studies
23 on when they were exposed to glyphosate, that
24 active ingredient in Roundup.

25 They saw it in human beings, instant rates

1 over time. You'll hear about some of those
2 studies. I'm not going to bore you, going through
3 them all. You'll hear that from our epidemiologist
4 expert Dr. Kristan Aronson, epidemiologist from
5 Toronto, Canada, who served on the International
6 Agency for the Research of Cancer.

7 All these scientific studies started coming
8 out. But the thing that Monsanto was concerned
9 about the most was what was going on in a cellular
10 level inside a human being, because that's how
11 cancer starts.

12 So you get exposed to any kind of toxin,
13 whatever it is, whatever it is, and you don't, you
14 don't get cancer on day one; right? You get cancer
15 over time as you keep getting exposed to it.

16 But what's going on inside your body at a
17 subcellular level that you can't see, feel, doesn't
18 hurt you, it doesn't show up in your groin, your
19 lymph nodes don't get bigger, none of that you
20 stuff. What's going on is your cells are getting
21 damaged.

22 When the toxin gets into the blood,
23 glyphosate, and it starts going into your cellular
24 structure, the DNA -- ever seen a DNA strand?
25 They're going to show it to you on one of their

1 slides.

2 They're like little ladders, and when the rung
3 gets broken off, what happens when you're on a real
4 ladder, right, you got to skip that step or you're
5 going to hit that step and you're going to fall.
6 And a lot of rungs start getting broken, you can't
7 use that ladder.

8 And a wooden leader, it will start chipping
9 away. Look at the jury box here. This stuff will
10 start chipping away at the bottom of the ladder of
11 that DNA strand. A lot of things are going on
12 inside your body that you don't know about because
13 you got to have a DNA test to tell you.

14 So Monsanto is worried about it and these
15 studies start coming out. So they hire a guy by
16 the name of Dr. Parry. Kind of like a parrot,
17 P-A-R-R-Y. This guy is the top geneticist in the
18 world.

19 Because if you think -- if you're making a
20 product and you think people's chromosomes and
21 people's DNA are being destroyed, hey, maybe we can
22 get a geneticist to look at this. Got to have
23 something to say it wasn't our product.

24 So they hire this guy Parry and they say --
25 they give him like a test. They don't want him to

1 do too much work because they want to find out what
2 he might say first.

3 So they give him a little test packet of four
4 studies to review, some of these studies that have
5 been coming out, thinking he's going to criticize
6 the studies and, guess what, he agrees with the
7 studies.

8 They start scrambling again. You're going to
9 see. They say, "We got to turn this guy around."
10 Turn him around. That's what we call a 180. Turn
11 him around.

12 So they give him a little bit more to do and
13 try to cajole him a little bit. They're paying
14 him. Dr. Parry hangs in there.

15 He also gives them some recommendations that
16 they have not followed to this day, and he made
17 those in the year 2000. 23 years ago. You'll see
18 all that.

19 More studies come out. More and more. And,
20 then all of a sudden, the International Research --
21 International Agency for the Research of Cancer
22 decides they're going to have a meeting and look at
23 glyphosate, among a couple other chemicals. That's
24 in the year 2015. Okay.

25 This is a really important year. Still

1 talking about choices here. This is Monsanto's
2 choices.

3 Before they even meet, Monsanto puts together
4 a team on how we're going to orchestrate, quote,
5 orchestrate outcry when they come out with a bad
6 decision. They were predicting doom and gloom.

7 And in 2015, of course, the International
8 Agency for the Research on Cancer, which is funded
9 primarily by the United States of America, met and
10 they found glyphosate, the effective ingredient in
11 Roundup, to be a probable human carcinogen.

12 Probable human carcinogen. Based upon animal
13 studies, based upon cellular studies, and based
14 upon epidemiology. 2015.

15 Well, why was that so important? Because in
16 2016, Monsanto announced that it's selling itself
17 to Bayer. That sale wasn't consummated until 2018
18 because they have to get regulatory authority all
19 over the world to do it.

20 They're going to attack IARC like you can't
21 even imagine. After IARC, 96 scientists write an
22 article and say: We agree with everything they
23 said.

24 By the way, IARC is not a nameless, faceless
25 creature out there. It's 17 people that go to a

1 meeting. They get every study that's out in the
2 public. They figure out which ones are credible,
3 which ones aren't. Then they come to a logical
4 conclusion based on the weight of the evidence.
5 That's what they do.

6 And they don't do it in secret. They do it
7 out in the open like in this courtroom. They meet.
8 They talk.

9 Monsanto had a representative there who
10 participated. He couldn't vote, but he
11 participated. He wrote emails back saying, "Hey,
12 look at what I got done today." His name is Tom
13 Sawyer.

14 The U.S. EPA had a person there, a guy named
15 Jess Rowland. Don't forget his name. You pay his
16 salary. He wrote an email later to Monsanto
17 saying, "If I could kill this thing, I ought to get
18 the gold medal." If I can kill this thing, I ought
19 to get the gold medal. That's a government
20 employee for the EPA.

21 So those are the choices that were made.
22 What's happened since IARC? You'll hear this.
23 There have been multiple studies that come out that
24 confirm everything that they've decided. And as
25 you might imagine, there are mixed studies out

1 there.

2 But as you'll see, some of them aren't exactly
3 what they appear to be. Be vigilant.

4 So that's where we are. We're going to have
5 a -- we're going to have Dr. Aronson come in here
6 and talk about epidemiology. She's going to lay it
7 out there for you and she's going to get
8 cross-examined by these lawyers over there. You'll
9 get to judge her credibility.

10 We're going to have Dr. Richard Degrandchamp.
11 He's a toxicologist from Denver. He's going to
12 tell you how -- what animal and what cellular
13 studies are out there and what they mean. He's a
14 toxicologist. That's his job. He teaches.

15 We're going to bring Dr. Kenneth Spaeth in
16 here. And they're going to put a slide up here in
17 a moment, if they do it, and they're going to say,
18 Dr. Spaeth, he's not an oncologist. He's not.
19 He's not an expert on non-Hodgkin's lymphoma. He's
20 not. He admits that. They know that. They've
21 taken his deposition, multiple times. They're
22 going to try to say he's not qualified. That's the
23 inference they want you to get.

24 He's the guy that does all the occupational
25 disease causation work for workers' comp claims for

1 the 9/11 disaster. If he's not qualified to give
2 opinions on what causes cancer or disease, there's
3 nobody in the United States that's qualified. He's
4 picked by the government to do that. You'll hear
5 him testify.

6 You're going to hear from John Durnell.
7 You're going to hear from Richard Eaton. And maybe
8 a few others.

9 But one you're going to hear from, and that's
10 going to be this afternoon, going to start with
11 her, is a lady by the name of Donna Farmer. She's
12 very charming. She's very well-spoken. She's
13 going to be a difficult witness for me. But we're
14 starting with her because we're trying to get the
15 truth to you as fast as we can. And that's my goal
16 is to get this case over sooner rather than later,
17 not bore you with videos and things like that to
18 the extent we can avoid that.

19 So she's going to be the first witness. What
20 you're going to hear, she was a spokesperson for
21 Monsanto. She got picked to go on a TV show after
22 the IARC probable human carcinogen went out. She
23 went on a TV show to talk about Roundup.

24 She's been a spokesperson at many things.
25 She's given deposition testimony. A deposition is

1 where you get sworn in, you're in a room, it's just
2 the lawyers, not the Court, but can be used in a
3 courtroom. You might see some of that. She's been
4 deposed multiple times as a company representative
5 for Monsanto. She sat at counsel table a few times
6 at trials as a corporate representative.

7 She's definitely written a lot of stuff to the
8 public, to the scientists. She's interfaced with
9 other scientists, telling the Monsanto stories.
10 She's been that kind of spokesperson. She spoke at
11 conferences all over for Monsanto.

12 She's talked to the EPA for Monsanto. She
13 talked internally to all the scientists for
14 Monsanto.

15 But you know what? Before they ever let her
16 go out to the public, they put her through
17 something called media training. I don't know if
18 anybody knows what media training is. I didn't
19 know what it was. Media training is where you get
20 taught how to speak, testify, make your case. I
21 actually should take it probably; right? Might
22 have helped me in this courtroom.

23 She's taken a media training course from
24 professionals. She made handwritten notes all over
25 her document of what to do. And we'll go through

1 some of those with her when she's on the stand this
2 afternoon.

3 But one of the things I want you to think
4 about is she did what's called blocking and
5 bridging. She learned how to block and bridge.

6 Now, I'm going to ask her if she'll agree not
7 to do that today here in this courtroom. But when
8 she starts blocking and bridging, I want you to
9 remember that media training she got. She's good.

10 She's also going to tell you something about
11 Monsanto's freedom -- remember, I said this case is
12 about choice and freedom -- freedom to operate.
13 That's what they call it.

14 And I was talking with my good friend here
15 Isaac about that. He played college basketball.
16 He was a good college basketball player at UTC
17 Chattanooga, or UT Chattanooga. I was the worst
18 player on a terrible team in a little NAIE school.
19 So we always try to put things in basketball terms.

20 And I said -- he said, "Blocking and
21 bridging?" He said, "Blocking?" He said, "It
22 sounds to me like when you have the ball, you don't
23 have any more dribbles left, you get your elbows
24 out and you're going to start pivoting and start
25 moving them around and swinging them and that sort

1 of thing."

2 A light went off in my head. That's what
3 Monsanto's been doing since 1974, blocking and
4 bridging. Block out the bad stuff. Put those
5 elbows out, protect the ball and bridge it to
6 somewhere else. Move the message to somewhere
7 else. That's what that is.

8 You know, I have a slide show. I'm not going
9 to even show it, I think. I want to respect your
10 time. You'll see the documents anyway. It's a
11 pretty good slide show anyway. But one thing
12 you're going to hear that no jury's ever heard,
13 you're going to hear what's really in the bottle of
14 Roundup.

15 On the label they put glyphosate -- and you'll
16 see what Mr. Durnell used. We've got the bottles.
17 He used a lot of different kind of glyphosate,
18 Roundup products.

19 By the way, a user never uses pure glyphosate.
20 Right? There's no such thing as you're spraying
21 pure glyphosate. You're spraying the formulated
22 product, which is called Roundup. It's got other
23 stuff in it. That's why I said: What's in the
24 bottle?

25 And here's what he sprayed. Roundup

1 Ready-to-Use Plus. That means you go in the store,
2 you buy that bottle, it's ready to go. You don't
3 have to mix anything in it, you start spraying.

4 Roundup Ready-to-Use Extended Control. That
5 means it's got a little more of something in there
6 to make it last a little bit longer. Extended
7 control.

8 Roundup Super Concentrate. Exactly what you
9 think it is. It's a big concentrate made of
10 Roundup. Because he bought a sprayer and started
11 mixing the concentrate with water because it's less
12 expensive. Remember, he's a volunteer. He's
13 buying this stuff.

14 And then there's a Roundup Concentrate Plus he
15 used. It's got even more glyphosate in it.

16 But you know what he never saw on the label?
17 He never saw what else was in the bottle, because
18 Monsanto doesn't put it on there.

19 They call it inert ingredients. They call it
20 other ingredients. They call it glyphosate the
21 effective ingredient. They'll try to tell you it's
22 all water. And let's just start with water.

23 Where do they get their water? The place they
24 manufacture it is called Luling, Louisiana.
25 There's another one called Muscatine, Iowa. You

1 get the water where you are; right? Luling,
2 Louisiana, is on the Mississippi River, except it's
3 a lot more downstream than we are here in St.
4 Louis.

5 You all know, growing up here, what goes on
6 this area in the Mississippi River. You can
7 imagine what it's like when it makes it down near
8 New Orleans. So what's in the water?

9 Then you say, well, how do you get this stuff
10 to spread over a leaf? Glyphosate is very
11 effective at killing plants. You spray it on
12 anything, it's going to kill it, get enough on it.
13 It's effective at that, but Monsanto realized to
14 make it more effective we need to add something so
15 it will spread over the whole leaf, the whole skin.

16 Believe it or not, a plant has skin, kind of
17 like we do. It has a protective waxy layer so when
18 something hits it, it tends to be repelled, kind of
19 like our skin the.

20 So they added what's called a surfactant,
21 s-u-r-f-a-c-t-a-n-t. Surfactant. They're going to
22 tell you all, oh, that stuff, it's like baby
23 shampoo. No, no, no, no.

24 The surfactant they used had a chemical in it
25 called 1,4-dioxane. It's a known human carcinogen.

1 Roundup has arsenic in it. I don't think I have to
2 tell anybody what arsenic is. You know it's a
3 poison. It's also a carcinogen.

4 When it was exposed to water, let's say you're
5 using a super concentrate or concentrate, if the
6 water has sulfites in it, which we're in St. Louis,
7 sulfites combine with what's in the Roundup bottle
8 make a chemical called NNG. Guess what? It's a
9 human carcinogen.

10 We'll look at other things, about seven or
11 eight other carcinogens in a bottle of Roundup.
12 What's in your bottle? It's not on the label. And
13 they're going to say, "We only put a little bit in
14 there, just a teeny-weeny bit."

15 Well, if you only put a teeny-weeny bit, why
16 didn't you tell everybody you only put teeny-weeny
17 bit of seven or eight carcinogens in there so John
18 Durnell could make an intelligent choice?

19 You know, a company should not be allowed to
20 make choices for consumers. That's what happened
21 here.

22 They're going to put a little slide up in a
23 while, if they do -- the Court makes us show our
24 slide shows before we give them so the Court can
25 make rulings on it. Even though the judge allowed

1 most of them, I made a choice here to just talk to
2 you.

3 But they're going to put up a slide just from
4 a little tiny deposition clip of a Dr. Hu, H-u. He
5 is John Durnell's treating oncologist. So an
6 oncologist, as you may know, if you have cancer
7 experience, are doctors who treat cancer. And
8 that's what Dr. Hu did for John Durnell, treated
9 his cancer. Great doctor.

10 They're going to put a little snippet up there
11 to try to make you think that Dr. Hu doesn't think
12 that Roundup caused his cancer. You're going to
13 hear the rest of the story when you hear Dr. Hu's
14 entire testimony, where he said he never read
15 anything about glyphosate. He's never read any
16 epidemiology studies. He's just going on what he
17 heard from somebody else. He doesn't know.

18 And he'll tell you his job isn't to determine
19 cause, it's to treat. But they're going to make a
20 big deal out of that because they think that
21 somebody on this jury might think that that has
22 some kind were persuasive effect.

23 They're going to bring in a guy named
24 Tomasetti and put him right here on the stand. And
25 he is a smart guy, well-credentialed, impressive.

1 But you know what he is, he's a mathematician.

2 Now, I will admit I'm not very good at math.
3 All right. So he's going to get me on math every
4 time. But there's such thing, you all know there's
5 such thing as voodoo math and math. Voodoo
6 economics and economics. And what you're going to
7 hear from him is voodoo.

8 If you accept his testimony, we might as well
9 shut down -- just shut down the EPA, because his
10 testimony is basically, you know, everybody's
11 cancer is only caused by replication errors in your
12 DNA. That sounds pretty -- that's what -- so let's
13 just shut everything down. Let's go take a bath in
14 Roundup.

15 It's really foolish, what he says.

16 MS. COOK: Your Honor, excuse me.
17 Argumentative.

18 THE COURT: I'll sustain it.

19 Let's get to what the facts will show,
20 Mr. Frazer.

21 MR. FRAZER: Sorry, your Honor, getting a
22 little excited.

23 THE COURT: I understand.

24 MR. FRAZER: Thank you, Counsel.

25 So Dr. Tomasetti is a Ph.D. mathematician,

1 applied mathematics, you can imagine that companies
2 that make stuff that harm people love what he's
3 saying. You're going to hear that he's testified
4 for baby powder, talc companies, where women come
5 in and claim they have uterine cancer from use of
6 baby powder by Johnson & Johnson. You're going to
7 hear that. He gets hired in those cases too.

8 I predict he's going to get hired in every
9 cancer case in the United States at some point
10 because, if it was all about the money to me,
11 that's what I would do is hire that guy. I might
12 even bring him in as an employee.

13 His testimony is just not credible. He's just
14 not credible. And you'll see that. Don't let him
15 pull the wool over your eyes.

16 But look. Think about what he does say.
17 Let's accept that it's replication error. Let's
18 just accept it. How do to ignore all the cellular
19 DNA damage studies that are out there that shows
20 when you're exposed to Roundup at a DNA cellular
21 level you have replication error, your DNA gets
22 damaged?

23 Choices. Freedom. That's really what this
24 case boils down to.

25 Your Honor, one second. Indulge me, please.

1 You're going to hear at least one video in
2 this case that we are going to play at some point.
3 And videos are kind of boring. It's hard to pay
4 attention to them. You got to look at that screen
5 way over there. If your eyesight is not good, you
6 might want to think about, you know, getting some
7 glasses or something. I got progressives, so if
8 I'm not focused right I can't see it myself.

9 But that they'll play from there. The audio
10 in a big courtroom is hard to hear, so we
11 apologize.

12 But you're going to hear from a guy that
13 worked at Monsanto named Kirk Azevedo.
14 A-z-e-v-e-d-o I think is how you spell it. Kirk
15 Azevedo. He said he was excited about working at
16 Monsanto because he felt Monsanto was about the
17 future. Because in some respects it is because,
18 you know what, they have to have it to make the
19 genetically modified seeds Roundup resistant so
20 farmers can go spray crops all day long if they
21 wanted with Roundup and it's not going to kill one
22 single blade of grass on that plant that's growing.
23 It will kill everything else, but it won't kill
24 that crop that's growing.

25 So they can broadcast spray right in the

1 tractors. You probably see them if you've gone
2 over to -- anywhere in the country, either west or
3 east.

4 That seed is made to be Roundup resistant
5 so -- it's genetically modified seed that they sell
6 to farms everywhere is dependent upon Roundup.

7 So this guy, Azevedo, he's kind of excited.
8 That's pretty interesting stuff. Laboratory stuff.
9 Future.

10 He comes to a meeting, I think it was here in
11 St. Louis, at Monsanto. He talks to a guy that was
12 then the vice president of the company, a guy named
13 Brett Begemann. He became the chief operating
14 officer of Monsanto. And his comment to
15 Mr. Begemann was, "When are we going to start
16 talking about the future?"

17 And Begemann said something to this effect,
18 "It's all about the money."

19 At the end of this case I want to ask you to
20 bring back a verdict on behalf of John Durnell for
21 compensatory damages to compensate him for what
22 he's gone through, his cancer, his chemo, his
23 recovery, the fact that he lives with the idea of
24 remission on his mind every day.

25 He's going to testify what it's like when

1 you're driving to the doctor's office for your
2 six-month visit and just hoping that they're not
3 going to find anything, living with that and all
4 the effect it's had on him.

5 Now, he's a strong man. I'm telling you.
6 I've seen a lot of cancer victims. This man is
7 strong. So he's going to come across strong on the
8 stand, but you're going to hear the effect it's had
9 on his life. You're going to hear a lot of that
10 from his husband, Richard. Just listen.

11 You're going to have to evaluate that and come
12 back with a verdict that's for reasonable and fair
13 compensation for John Durnell.

14 If the judge lets us ask you for punitive
15 damages, which his Honor controls that issue
16 completely, and I respect his Honor 100 percent,
17 then we're going to ask you to punish Monsanto for
18 what they've done to John Durnell and to deter them
19 and others from doing this kind of stuff in the
20 future and to stop it now.

21 What I'm going to ask you to do is to ring the
22 bell for John Durnell. Ring the bell for John
23 Durnell. Thank you for your attention and
24 listening today.

25 THE COURT: Thank you, Mr. Frazer.

1 We've been going for just a little bit over an
2 hour. The next thing you're going to hear is the
3 opening from the defense side from Ms. Cook. Let's
4 take ten minutes to let everybody stretch their
5 legs, use the bathroom, get a drink of water.

6 You know what I'm going to say. Once again,
7 I'm going to remind you not to form or express any
8 opinions about the case until it's finally given to
9 you to decide. Don't do your own independent
10 research about the case, any information regarding
11 the case, or any of the attorneys or other
12 witnesses involved. Don't follow any news programs
13 or do any research about with coverage of the case.

14 I'll let you go upstairs, get a drink of
15 water, bring you back in about ten minutes for the
16 defense opening statement.

17 (Recess taken.)