

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable Vince Chhabria, Judge

IN RE: ROUNDUP PRODUCTS)
LIABILITY LITIGATION)
) NO. 16-md-02741 VC
)
)
)

San Francisco, California
Friday, February 15, 2019

TRANSCRIPT OF PROCEEDINGS

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Also Present:

**Sonia Chopra, Plaintiffs' Jury Consultant
Reiko Hasuike, Defense Jury Consultant**

(APPEARANCES CONTINUED ON FOLLOWING PAGE)

REPORTED BY: Jo Ann Bryce, CSR No. 3321, RMR, CRR, FCRR
Official Reporter

1 Friday - February 15, 2019

12:35 p.m.

2 P R O C E E D I N G S

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4 **THE CLERK:** Calling Case Number 16-md-2741, In Re
5 Roundup Products Liability Litigation.

6 Counsel, please state your appearances for the record.
7 And the mics at counsel table are turned off.

8 **MS. MOORE:** Good afternoon, Your Honor. Jennifer
9 Moore for the plaintiff, and with me today is Mark Burton. And
10 if the Court would so indulge, we'd ask permission that Sonia
11 Chopra, who is our jury consultant, sit at counsel table.

12 **THE COURT:** Sure. That's fine.

13 **MS. MOORE:** Okay.

14 **THE COURT:** And I think we should do this with you-all
15 at counsel table, and just speak up and make sure Jo Ann can
16 hear you.

17 **MS. MOORE:** Thank you, Your Honor.

18 **THE COURT:** Or if we can get the mics on or whatever
19 because it's a lot easier for you to do while you're sitting
20 down.

21 **MR. STEKLOFF:** Good afternoon, Your Honor. Brian
22 Stekloff on behalf of Monsanto. Along with me today are
23 Tamarra Matthews Johnson, Rakesh Kilaru, Julie Rubenstein, and
24 we also have Reiko Hasuike who is our jury consultant.

25 **THE COURT:** Hello, everybody.

1 (Discussion off the record about microphones at counsel table.)

2 **THE COURT:** Okay. So at some point I want to talk
3 about sealing today just a little bit more, so please don't let
4 me forget about that. The deadline for refiling stuff is going
5 to be Thursday of next week. By Thursday of next week I want
6 everything refiled properly.

7 I think we've already talked about what that means for the
8 plaintiffs. If you have any clarification questions or
9 anything, I'm happy to discuss it; and I'll have a little bit
10 to discuss with Monsanto.

11 **MS. MOORE:** That's fine, Your Honor.

12 **THE COURT:** So with respect to these questionnaires,
13 what I would propose to do is -- first of all, are we in
14 agreement -- you saw my order that I put out just a little bit
15 ago. Are we in agreement about the jurors that you-all have
16 stipulated to excusing on hardship grounds?

17 **MS. MOORE:** Yes, Your Honor. We had a very productive
18 meet and confer yesterday, and we came up with 27 that we would
19 agree to excuse for hardship.

20 **THE COURT:** And are those the ones that -- I correctly
21 identified them in the order?

22 **MS. MOORE:** Yes, it is, Your Honor.

23 **THE COURT:** Okay.

24 **MR. STEKLOFF:** Yes, Your Honor.

25 **THE COURT:** So those will be excused for hardship.

1 We're done with that pile.

2 Now, what I would propose that we do with the remainder is
3 we first go through the additional people who I proposed we
4 excuse for hardship, and see if you have any objections; then
5 we go through the additional people that I have proposed to
6 excuse for cause; and then after we're done doing that, then we
7 can go through any additional jurors who you want to discuss.
8 Okay?

9 **MS. MOORE:** That's fine. Thank you, Your Honor.

10 **THE COURT:** So the additional people who I proposed to
11 excuse for hardship, any objection?

12 **MS. MOORE:** Yes, Your Honor, and it's solely on the
13 grounds that the questionnaire alone, there are some questions
14 as to whether or not they do truly have a hardship.

15 And, you know, again if they come Wednesday and it's clear
16 they have a hardship, then we would likely not object. Of
17 course, we don't want to put a hardship on anyone.

18 Number 17, the first one, it appeared to us -- and we had
19 a meet-and-confer about this yesterday -- that, you know, if
20 the medical issue of Juror 17 is hearing, that that could be
21 resolved with an assistive device in the courtroom. And so if
22 that's what it is, then I don't think it would be a hardship
23 excuse.

24 **THE COURT:** Okay. I took this to mean -- reading the
25 questionnaire in its totality, I took this to be a situation

1 where the person -- Juror Number 17 has difficulty with English
2 and has difficulty understanding English just looking at his
3 responses overall and his response to Question Number 2 and
4 that he also has medical issues. And so it struck me that
5 between those two, that this person should be excused.

6 So what's Monsanto's view on that?

7 **MR. STEKLOFF:** Your Honor, we agree with what you just
8 said and would add, I know this is not a hardship issue, but
9 would add that given some of the statements made about his
10 mother's cancer, that sort of factored in for us as well, to
11 Question 17 and Question 23. And so in totality, we think this
12 is an appropriate strike.

13 **THE COURT:** Yes, I think that's a good point. You
14 know, if somebody -- if that was the only -- the kind of
15 response that he gave to Number 17, if that was the only thing,
16 I'm not sure I would excuse him on the papers at least. I
17 would want to have him in and probe that with him a little
18 more; but I think the totality of it, when you add that, and I
19 didn't notice that, I think those three issues I think are
20 enough to excuse him on the papers.

21 **MS. MOORE:** Okay. And, Your Honor, the response to
22 17d where Juror 17 says "Give me sadness if I remembered my
23 mom," that is not a hardship excuse. And if we are excusing
24 him on hardship, I want to make sure --

25 **THE COURT:** But it also helps show that he has English

1 issues.

2 **MS. MOORE:** Possibly. It would be better to see him
3 in person and hear him and see if he can articulate and
4 understand your questions, Your Honor, and counsel's questions.
5 I think an oral *voir dire* is better than just basing on how
6 someone may have answered a written response.

7 **THE COURT:** Okay. I understand the argument. I'm
8 going to excuse him for hardship and cause.

9 **MS. MOORE:** And, Your Honor, please note my objection
10 of him being excused for cause based solely on the written
11 response.

12 **THE COURT:** Okay.

13 All right. Any other objections? What about 39? Any
14 objections?

15 **MR. STEKLOFF:** I will say that we have no objections
16 to any of your hardship proposals, Your Honor.

17 **THE COURT:** Okay.

18 **MS. MOORE:** Your Honor, our objection to Juror
19 Number 39 is that he states that he's leaving on Saturday,
20 February 16th, but he doesn't state when the return date is,
21 and that's why we did not stipulate to hardship. Because if
22 he's back in time for the trial, then there's no hardship
23 there.

24 **THE COURT:** Well, jury selection is on Wednesday. I
25 think if he's going to Mexico, the overwhelming likelihood is

1 that he's still going to be in Mexico by Wednesday, which means
2 we can't even call him in to ask him how long he's going to be
3 in Mexico because he'll probably still be in Mexico. And if we
4 don't excuse him now, then we put him in this terrible position
5 where if he is scheduled to be in Mexico until Wednesday, then
6 he's going to need to violate a court order to come back.

7 **MS. MOORE:** I understand what you're saying,
8 Your Honor, and the only reason we didn't stipulate is because
9 we don't know what the return date is.

10 **THE COURT:** Okay. I'm going to excuse this person for
11 hardship. This is Juror Number 39.

12 Okay. Number 82.

13 **MS. MOORE:** Your Honor, we object on excusing for
14 hardship because in her answer Juror 82 says, "I have some
15 financial concerns." And then she does state that one employer
16 will be reimbursing her for one week of jury duty. And with
17 her having some concerns, I don't think that's sufficient on a
18 hardship excuse. I think that should be explored more by the
19 Court in person on Wednesday.

20 **THE COURT:** Okay. So she's 70 years old. She has to
21 drive from Point Reyes Station, which is kind of a harrowing
22 drive. She expressed financial concerns. And the two jobs
23 that she has is she helps adult individuals with developmental
24 disabilities and she assists a teacher and special ed students
25 at a school.

1 So I think knowing all of that, I think it would be a
2 hardship to require this person to serve on a five-week jury
3 trial in San Francisco, and I'm going to excuse her for
4 hardship.

5 And at this point we're probably getting to people who are
6 not going to be called in any way.

7 **MS. MOORE:** I understand, Your Honor.

8 **THE COURT:** So should we -- do you want to discuss
9 105, 106, and 115?

10 **MS. MOORE:** Your Honor, we won't object to 105 and we
11 won't object to -- for hardship. We won't object to 105 on the
12 basis of hardship, Your Honor, where the juror states
13 "Financial family responsibilities for the mother and
14 grandmother."

15 **THE COURT:** Okay. And 106?

16 **MS. MOORE:** 106, Your Honor, it just wasn't clear to
17 me -- when Juror 106 says "Business travel plan," it just
18 wasn't clear to me if that would actually interfere with the
19 trial.

20 **THE COURT:** I agree with you that that is a little bit
21 sketchy, but since this person is almost certainly not going to
22 be required to come in on Wednesday anyway because he's at the
23 end of the list, I'll just go ahead and excuse him for hardship
24 now.

25 **MS. MOORE:** And then the last one, Your Honor, 115, I

1 wasn't sure because they checked "No" to the answer on hardship
2 on Number 3.

3 **THE COURT:** Let me remind myself here what I was
4 thinking.

5 (Pause in proceedings.)

6 **THE COURT:** What number was it again?

7 **MS. MOORE:** 115, Your Honor.

8 **THE COURT:** I think I might have accidentally put this
9 in the hardship pile where it was meant to be in the cause
10 pile. Let me see.

11 (Pause in proceedings.)

12 **THE COURT:** Yeah, I think that's right. So let's move
13 that -- for now let's move Number 115 into the cause pile, and
14 we'll get back to them.

15 **MS. MOORE:** Okay. Thank you, Your Honor.

16 The only other issue that we had on hardship was Juror 27.

17 **THE COURT:** Okay. Give me one quick second to make
18 sure I have my own records in order here.

19 (Pause in proceedings.)

20 **THE COURT:** Okay. So we said that 105 and 106 will
21 also be excused for hardship, so let me put those aside.

22 And then you said you had one other hardship?

23 **MS. MOORE:** Yes, Your Honor. Number 27.

24 **THE COURT:** Okay. Give me one second.

25 (Pause in proceedings.)

1 put "No" to Question 3 was part of our thinking.

2 **THE COURT:** Almost as if she started to have second
3 thoughts by the time she got to --

4 **MR. STEKLOFF:** She might have even more second
5 thoughts if you bring her in on Wednesday.

6 **THE COURT:** I think we'll go ahead and excuse her for
7 hardship now.

8 **MS. MOORE:** Thank you, Your Honor.

9 **THE CLERK:** That's Juror Number 27?

10 **THE COURT:** That's Juror Number 27.

11 **MS. MOORE:** Your Honor, with your permission, I'm
12 going to move to the table.

13 **THE COURT:** What?

14 **MS. MOORE:** With your permission, I'm going to move to
15 the table.

16 **THE COURT:** Sure.

17 **MS. MOORE:** Thank you.

18 **MR. STEKLOFF:** And, Your Honor, if we're doing
19 hardship now, what I would say is I think we have some -- I
20 think at the end I will have additional jurors to raise with
21 you, and it might be sort of the totality argument where they
22 reference --

23 **THE COURT:** Oh, yeah. That's fine.

24 **MR. STEKLOFF:** Okay.

25 **THE COURT:** Why don't we do my proposed cause

1 excusals, and then we can go through the rest; and whether it's
2 hardship or cause or some combination of the two, we can do
3 those.

4 **MR. STEKLOFF:** I will flag, Your Honor, that for the
5 now 9 jurors in the cause category, we have no objections to
6 any of them. I will only say that I suspect that 66 should be
7 56 because --

8 **MS. MOORE:** 66 should be what? I'm sorry.

9 **MR. STEKLOFF:** 66 should be 56 because 66 there's
10 nothing obvious to me on its face, but 56 may have been the
11 number one candidate that we would have moved on.

12 **MS. MOORE:** Your Honor, on 66, this is the juror whose
13 husband had non-Hodgkin's lymphoma.

14 **THE COURT:** Oh, yeah. No, it was -- I meant for this
15 person to be excused.

16 **MR. STEKLOFF:** Okay. No problem. That's fine.

17 **THE COURT:** Because I think if your husband had
18 non-Hodgkin's lymphoma, that's just too close, and I think that
19 somebody in that situation should be excused for cause.

20 **MR. STEKLOFF:** I have no objection to that. There's
21 another person whose sister had non-Hodgkin's lymphoma that
22 I'll flag later, but I have no objection then to 66.

23 **THE COURT:** Okay.

24 **MR. STEKLOFF:** So I'll separately raise 56 later.

25 **THE COURT:** So what about the plaintiffs? Do the

1 plaintiffs have any objections to my additional jurors who I
2 think should be excused for cause on the papers?

3 **MS. MOORE:** Yes, Your Honor, we do.

4 **THE COURT:** Okay.

5 **MS. MOORE:** Starting with Number 4.

6 **THE COURT:** Okay.

7 **MS. MOORE:** We don't see a basis to strike her for
8 cause strictly based on the written questionnaire. As the
9 Court is likely aware of the *People versus Stewart* case, and I
10 have a copy for the Court if you would like it --

11 **THE COURT:** The what case?

12 **MS. MOORE:** *People versus Stewart*. It's a California
13 Supreme Court case. I think it is instructive on striking for
14 cause based solely on written responses, Your Honor. The cite
15 to it is 33 Cal.4th 425.

16 And in that case, Your Honor, what happened, it was a
17 death penalty case and -- let me -- may I, Your Honor?

18 **THE COURT:** Haven't you learned from Monsanto that
19 it's not a good idea to be citing criminal cases in a civil
20 jury selection?

21 **MS. MOORE:** I understand. I understand, Your Honor,
22 but I do think that the language is applicable.

23 What happened in that case was that the trial judge
24 excused five prospective jurors for cause over the defense
25 attorney's objection based solely on written responses to a

1 questionnaire, and the California Supreme Court held that that
2 was reversible error and they returned it to redo the penalty
3 phase of the trial.

4 What they found was that the answers when either ambiguous
5 or unclear to determine the state of mind of the prospective
6 juror whether they can actually follow the law or listen to the
7 judge's instructions, that what the better course was to bring
8 them in for oral *voir dire*, and that it would have just taken a
9 few minutes to clear up and determine what their state of mind
10 is.

11 And that's why the Court reversed it and sent it back. I
12 think it's instructive for those purposes. I understand it's a
13 death penalty case, Your Honor, but here --

14 **THE COURT:** And it's a state court case.

15 **MS. MOORE:** I understand, Your Honor. I understand.
16 I'm not saying --

17 **THE COURT:** I don't disagree with that general
18 proposition. It's just that this person has said that her
19 father used many chemicals in farming and gardening. She
20 believes that "Some of these chemicals contributed to his
21 cancer, and I don't know all the chemicals he used but I do
22 know that he did use Roundup."

23 So I don't know. I mean, that's --

24 **MS. MOORE:** But, Your Honor, that doesn't answer the
25 question as to whether Juror 4 would be able to serve and

1 follow this Court's instructions notwithstanding any personal
2 views that she may have with respect to cancer.

3 And so what we're asking for --

4 **THE COURT:** Well, then, she says in response to
5 Question Number 23 "Do you have any opinions or feelings about
6 Monsanto that may make it difficult for you to fairly evaluate
7 the evidence in a trial where an individual is claiming that
8 the company's product caused their cancer," and she answers
9 "Yes," and she says "Negative feelings about Roundup due to my
10 father's experience."

11 **MS. MOORE:** But, Your Honor, that does not say that
12 she would not be able to follow Your Honor's instructions and
13 follow the law in this case; and all we're asking is that we
14 bring her in on Wednesday and we be given an opportunity,
15 either by the Court or by counsel, to ask if she would still be
16 able to follow the law notwithstanding any personal views.

17 I mean, negative feelings about Roundup is not the basis
18 for a strike for cause. It doesn't say that she wouldn't be
19 able to follow the law or the Court's instructions.

20 **THE COURT:** I understand your argument. I'm going to
21 excuse her for cause.

22 Any other objections?

23 **MS. MOORE:** Your Honor, I believe I stated the
24 objections.

25 **THE COURT:** No. On any of the other jurors that I

1 identified.

2 **MS. MOORE:** Oh, I'm sorry.

3 Yes, Your Honor. The next one on Juror Number 6 --

4 **THE COURT:** Yes. So my thinking -- let me just tell
5 you my thinking here before you state your objections.

6 **MS. MOORE:** Okay.

7 **THE COURT:** To me this is kind of a combination. This
8 person says on two different occasions that she's not going to
9 be prompt because she's coming from the East Bay and there are
10 traffic and BART delays.

11 Now, the answer to that might be "Get here on time just
12 like anybody else who is coming from the East Bay, such as
13 Kristen."

14 **MS. MOORE:** For example.

15 **THE COURT:** But then you start looking at -- let me
16 see --

17 **MS. MOORE:** Your Honor, can I say one thing about
18 that?

19 **THE COURT:** Yes.

20 **MS. MOORE:** Because we have a number of prospective
21 jurors who are either going to be coming over the Golden Gate
22 Bridge or the Bay Bridge --

23 **THE COURT:** I understand that. I'm saying it's a
24 combination of that and her statement that -- she says, "I
25 won't use Roundup anymore because of the known cancer risks."

1 And then she says, you know, "Why is Roundup still on the
2 shelves? I won't buy it now."

3 I know there are -- you know, there are gradations of
4 concern that people express and if people express some level of
5 concern on the paper, we bring them in and we talk to them
6 further about the concern.

7 But this seems like such a strong level of concern and
8 this person already seems like they're going to be a problem
9 juror by virtue of the fact that they're announcing that
10 they're going to be late, that I don't think it's worth
11 bringing this person in.

12 **MS. MOORE:** But, Your Honor, we would object strongly
13 to that because it's ambiguous and unclear as to whether or not
14 she'd be able to follow the Court's instructions and follow the
15 law. It's our position that it's worth a few minutes of time
16 to bring her in on Wednesday and to really see and explore with
17 her, and that could be either by the Court or counsel, as to
18 whether or not she can follow the Court's instructions and
19 notwithstanding any type of written response she may have given
20 here. She never says that she would not follow the law in her
21 questionnaire.

22 **THE COURT:** I understand your argument. I'm excusing
23 her for cause.

24 Any other objections to any of those other jurors?

25 **MS. MOORE:** Yes, Your Honor. Number 53.

1 **THE COURT:** All right.

2 **MS. MOORE:** And if you want, Your Honor, I can wait
3 for you to review it and let me know.

4 **THE COURT:** Yes. Give me one quick sec.

5 Oh, yeah. You object to 53? "Pay the man."

6 **MS. MOORE:** Oh.

7 **THE COURT:** Three words: "Pay the man."

8 **MS. MOORE:** That is in response, Your Honor, to any
9 opinions regarding awarding money damages. Again, that doesn't
10 say that they cannot follow the law. It doesn't mean that
11 they're going to --

12 **THE COURT:** Wait. Sorry.

13 **MS. MOORE:** Sorry.

14 **THE COURT:** Six words: "Pay the man. Treble damages,
15 please."

16 **MS. MOORE:** This is in response to a question that
17 says "Do you have any opinions about awarding money damages in
18 a personal injury lawsuit to compensate someone for mental
19 suffering, emotional distress, and loss of enjoyment of life?"

20 In no way does this question ask that is this --

21 **THE COURT:** 12 more words: "Big companies like
22 Monsanto need to be held accountable for and focus on being
23 healthy, like Whole Foods."

24 **MS. MOORE:** Again, Your Honor, this is not in response
25 to any question that would ask whether the juror,

1 notwithstanding any of these statements in their written
2 questionnaire, would still not be able to follow this Court's
3 instructions, and that's why we object to any kind of excuse
4 solely based on the questionnaire.

5 **THE COURT:** Okay. I understand. This person will be
6 excused on the questionnaire for cause.

7 **MS. MOORE:** Okay. Your Honor, plaintiffs object to
8 Juror 66 being excused for cause solely based on the
9 questionnaire.

10 **THE COURT:** But --

11 **MS. MOORE:** No. I'm sorry. I've got it in the stack,
12 Your Honor. That's the -- sorry.

13 **MR. STEKLOFF:** That's the one --

14 **MS. MOORE:** That's the one we've already discussed.

15 **THE COURT:** That's the woman whose husband has
16 non-Hodgkin's lymphoma.

17 **MS. MOORE:** Yes. I'm sorry, Your Honor. I'm going
18 through my stack and I'm trying to roll through.

19 **THE COURT:** Oh, I understand.

20 **MS. MOORE:** We've already talked about that one.

21 **THE COURT:** I know it's difficult.

22 Okay. So no objection to excusing 66?

23 **MS. MOORE:** Based on the papers, no, Your Honor.

24 **THE COURT:** Okay.

25 **MS. MOORE:** Okay. All right.

1 **THE COURT:** Anyone else from that pile?

2 **MS. MOORE:** Yes, Your Honor.

3 Oh, Your Honor, I skipped 41. I apologize, Your Honor.

4 **THE COURT:** 41?

5 **MS. MOORE:** Yes.

6 **THE COURT:** All right. Let's go back to that.

7 All right. Let me see. Give me one moment here.

8 (Pause in proceedings.)

9 **THE COURT:** Okay. Number one, this person has
10 flooding on her mind and she's 68 years old, and she expresses
11 concern about driving from the town of Sonoma. I don't know if
12 that on its own would be enough, but she also talks about how
13 her father's cancer was caused by exposure to radiation and how
14 her father's decline was long, slow, and exceedingly painful.
15 I took that to mean that it would be a painful experience for
16 her to go through a trial about somebody with cancer.

17 And then she says, "I follow environmental news" -- this
18 is not a big deal, but it supports the point that I made
19 earlier about foreign regulators. She says, "I follow
20 environmental news on the Internet. I know that Roundup has
21 been banned in several European countries," which is incorrect.

22 And then she says later on, "I'm aware that Roundup is a
23 powerful herbicide that is also killing insects. I would like
24 to see its main ingredient banned in my country. Monsanto has
25 fought all attempts to regulate it."

1 So why isn't the totality of that enough to excuse her for
2 cause on the papers? And sort of a combination of cause and
3 hardship because I take what she says about her father to be a
4 hardship issue as well as potentially a cause issue.

5 **MS. MOORE:** Your Honor, if we were going to excuse
6 everyone who may have said they have some kind of cancer, we
7 might not have many left. And so -- but we object on excusing
8 her merely on the papers. Again, if we could take a few
9 minutes and explore that with her on Wednesday, I think that's
10 worth the time.

11 **THE COURT:** I understand that every objection you make
12 today is just an objection to merely excusing somebody on the
13 papers, and you want to take a few minutes to talk to them on
14 Wednesday. I understand that. That objection applies to every
15 objection you make today --

16 **MS. MOORE:** Thank you, Your Honor.

17 **THE COURT:** -- so you don't need to repeat it.

18 **MS. MOORE:** Thank you, Your Honor.

19 **THE COURT:** But do you have anything specific
20 regarding this juror that you want to say that you think I'm
21 missing?

22 **MS. MOORE:** Your Honor, again, in response to those
23 questions that you pointed out, in particular Number 23, it
24 does not address whether or not she would still be able to
25 follow this Court's instructions. And the question itself says

1 "Do you have any opinions or feelings about Monsanto or any
2 chemical company that may make it difficult?" It doesn't say
3 that you would not follow the law. That's what --

4 **THE COURT:** I'm not focusing on the question. I'm
5 focusing on the answer that she gave, which is far more
6 important, I would think, than the question.

7 **MS. MOORE:** Well, whether she wants to have it banned
8 in her county does not have anything to do with whether or not
9 she can follow the evidence in this case.

10 **THE COURT:** Oh, county, not country. I'm sorry. I
11 missed it.

12 **MS. MOORE:** But whether she wants to have it banned in
13 her county or not, that doesn't have anything to do with her
14 duties as a juror, and I think that's worth asking her those
15 questions. And it may turn out, Your Honor, that you're right
16 and I'm wrong and we'll agree on that on Wednesday, but I'd
17 like the opportunity to ask her those questions.

18 **THE COURT:** Okay. I understand, but I'm going to
19 excuse her for cause.

20 **MS. MOORE:** All right. The next --

21 **THE COURT:** I'm going to say it's a combination of
22 cause and hardship because of what I said earlier.

23 **MS. MOORE:** Okay. Thank you, Your Honor.

24 On Juror Number 67, we object on this one.

25 **THE COURT:** Okay. Let me turn to that.

1 Oh, the epidemiologist. Okay. So, let's see, so this is
2 Number 67 is an epidemiologist, and...

3 (Pause in proceedings.)

4 **THE COURT:** So one question we can discuss is whether
5 being an epidemiologist in itself disqualifies you. I'm not
6 sure that it does, but she says here, "I would use my expertise
7 in epidemiology to evaluate the quality and persuasiveness of
8 the evidence." That, I guess, raises a concern that, you know,
9 she might bring in outside knowledge, but I guess I will say
10 that alone wouldn't disqualify her on the papers because we
11 would want to have a conversation with her about that.

12 "Had a sudden reaction to a freshly opened roll of tape
13 once. My husband was exposed to Agent Orange in Vietnam as a
14 pilot and has a nodule in his lung that has been investigated
15 by the VA."

16 Then she says, "I believe they," Monsanto, "have been
17 implicated in the past for pushing ahead to develop products
18 without regard for long-term health effects. I think my
19 ex-husband did a PBS documentary about them that covered
20 Silent Spring and so forth, and I helped him sift through
21 documents for this."

22 Then she says, "I'm suspicious that Monsanto is hiding the
23 truth or suppressing research."

24 **MS. MOORE:** But then she continues, Your Honor, and
25 states, and this is in response to Question 23, "However, I

1 **MR. STEKLOFF:** We agree with Your Honor's position on
2 this. Not only is she an epidemiologist, which I think we
3 could debate whether that is enough to strike someone for
4 cause, I think it's not ideal, I think it's a macro issue.

5 I'll just flag, Your Honor, we have over 100 jurors. Even
6 with the strikes you're doing, we agree that 40 is a good
7 number to bring in on Wednesday. I mean, there are 40 sort of
8 clean slates here. I'm not saying the other ones couldn't
9 serve as jurors, but I think just practically, as a practical
10 matter, favorable -- if we can find people generally, and I'm
11 not -- I mean, I'm not going to try to overpush on cause
12 challenges.

13 **THE COURT:** Before we get to this individual, I will
14 say that I disagree with you on that general point.

15 **MR. STEKLOFF:** Okay.

16 **THE COURT:** I don't think that's the way to approach
17 jury selection. We don't say, "Eh, we have plenty of jurors
18 here and so let's resolve doubts about a particular juror in
19 favor of excusing them." I don't think that's appropriate. I
20 don't think that would be an appropriate way to conduct jury
21 selection.

22 And so I'm really looking here only to excuse people who
23 make it pretty clear that they are not going to be a fair juror
24 based on their questionnaire responses.

25 **MR. STEKLOFF:** That's fair enough, and I won't raise

1 it again, Your Honor.

2 But I think she has an epidemiology background, a
3 psychopathology and psychology background that she also
4 references later in her answers.

5 **THE COURT:** Yeah, but I don't think that --

6 **MR. STEKLOFF:** She says that she was involved in a
7 PBS -- she thinks she was involved in her ex-husband's PBS
8 documentary that covered Monsanto-related issues and that she
9 may have helped him sift through some of the documents. So she
10 maybe brings some background about Monsanto into the case.

11 **THE COURT:** And since it's a PBS documentary, we can
12 assume it was not a favorable one to Monsanto.

13 **MR. STEKLOFF:** I would think so. I don't know what it
14 was about, but it was called "Silent Spring," which also
15 doesn't sound -- just probably doesn't sound favorable.

16 **MS. MOORE:** And, Your Honor, if I may, just for that
17 Question 21, we're assuming what her relationship with her
18 ex-husband is. We're assuming that she agreed with him about
19 the PBS documentary. We're assuming that she may remember any
20 of these documents. I just don't think that's fair.

21 **THE COURT:** Yeah, but in the end -- I think we can get
22 bogged down in the details, but the bottom line is we have an
23 epidemiologist who thinks Roundup is like Agent Orange, and I
24 don't think we can have that person on our jury. So I'm going
25 to excuse her for cause.

1 Anybody else in my pile?

2 **MS. MOORE:** Yes, Your Honor. Number 71.

3 **THE COURT:** Okay.

4 **MS. MOORE:** And I wasn't sure the basis of striking
5 this person for cause on the papers only.

6 **THE COURT:** Yes. So I think it was language, but let
7 me flip through it to refresh my recollection.

8 (Pause in proceedings.)

9 **THE COURT:** Yes, it was language. And this person,
10 you know, she says, "I have trouble understanding new
11 vocabulary at times." There's going to be a lot of new
12 vocabulary in this case so I don't think -- I think somebody in
13 that situation -- you know, maybe if it's a civil case
14 involving, you know, a more accessible issue, that would be one
15 thing, but I don't think -- I think that answer disqualifies
16 her.

17 **MS. MOORE:** Okay.

18 **THE COURT:** Okay.

19 **MS. MOORE:** And then the next one, Your Honor,
20 plaintiff objects to Juror Number 84 being struck solely on the
21 papers.

22 **THE COURT:** This is the one who said "Pay the man"?
23 Did we already discuss -- oh, this is somebody different?

24 **MS. MOORE:** Yeah, this is different.

25 **THE COURT:** Okay. 84?

1 **MS. MOORE:** Yes, Your Honor.

2 **THE COURT:** Okay.

3 (Pause in proceedings.)

4 **THE COURT:** Oh, yes. This person, my -- okay. So
5 this person got a B.A. in 2015 from U.C. Berkeley on molecular
6 and cell biology with an infectious disease emphasis, is a
7 laboratory manager in an immunology lab.

8 **MS. MOORE:** And, Your Honor, as you pointed out on the
9 last juror, just simply because of that degree, where she was
10 an epidemiologist --

11 **THE COURT:** Right.

12 **MS. MOORE:** Yeah.

13 (Pause in proceedings.)

14 **THE COURT:** I guess I'm mildly surprised that you're
15 objecting to this. So I might have expected Monsanto to object
16 to excusing this person.

17 Number 84 says, "I wrote 'yes,'" saying that I wrote that
18 I can fairly evaluate the evidence, "but from my background,
19 this would require overwhelming evidence. Cancer development
20 requires many steps so saying one causative agent created the
21 cancer would be tough to prove but possible."

22 Then this is our favorite response, which is in response,
23 and it's not a reason to excuse --

24 **MS. MOORE:** Which question are you looking at,
25 Your Honor?

1 **THE COURT:** I'm looking at 18.

2 **MS. MOORE:** Okay.

3 **THE COURT:** This is not a reason to excuse the person.
4 Actually it makes me want them on the juror. It says "Have you
5 or anyone close to you experienced side effects from exposure
6 to a chemical?"

7 "Well, that is a bad question because everything is a
8 chemical so, yes." Then he says, "Personally I've worked with
9 chemically mutated mice."

10 Let's see, what else was there? Just as an aside, we may
11 end up talking about this later, but a number of jurors
12 expressed concerns about Monsanto generally as a company or
13 specifically with respect to the issue of GMOs or seed patents
14 and soybeans and the like. I did not think that those people
15 should be excused for cause --

16 **MS. MOORE:** Okay.

17 **THE COURT:** -- because I think that they should be
18 asked, at least on the papers and probably not at all, of
19 course depending on their responses to follow-up questions. So
20 that's just a side note there.

21 **MS. MOORE:** Thank you, Your Honor.

22 I guess where we were it was on 23 and, again --

23 **THE COURT:** Hold on.

24 **MS. MOORE:** Oh, I'm sorry.

25 **THE COURT:** Yes. 23 is "I'm probably biased. I have

1 a background in cancer work. I dislike the previous practices
2 from Monsanto. I believe that I could give a fair evaluation,
3 but I do have background in this sort of case."

4 So my thinking was that this person might just be too
5 close to the field. It's a combination of two things really:
6 Being too close to the field and having a bias against
7 Monsanto. Where maybe one of those things in isolation
8 wouldn't be enough, but in combination maybe it should cause
9 this person to be excused.

10 **MS. MOORE:** And our position, Your Honor, is just on
11 23 when they went back and they actually -- it looks like they
12 reread their answer and they inserted "believe that I could
13 give a fair evaluation," that, alone, we believe, justifies
14 bringing them back in and not excusing them on the papers
15 alone.

16 **THE COURT:** Okay. Any response on that one?

17 **MR. STEKLOFF:** We agree with Your Honor. I think it
18 is the combination. I think it's the expertise not only in
19 toxicology but also in 23 this juror mentions cancer work. So
20 it's a combined expertise.

21 **THE COURT:** Yes.

22 **MR. STEKLOFF:** And then I think the bias that -- the
23 bias that we see against Monsanto, it more seems like on the
24 seed side but there is a bias against Monsanto and the
25 combination.

1 **THE COURT:** I actually think that this one -- I mean,
2 particularly when you look back at his answer, the one that I
3 read at the outset about how he thinks it's hard to prove that
4 any particular thing caused cancer, I actually think, like,
5 when you consider his answers in their totality, maybe it's not
6 obvious that this person should be excused.

7 So I'm actually not going to excuse Juror Number 84 on the
8 papers for cause. I'm going to leave -- we're going to call
9 him back -- call him in. So let me put him back in a different
10 pile here.

11 **THE CLERK:** So just for clarification of my records,
12 everybody that you list in this order except for Juror
13 Number 84 in the cause challenge section is excused?

14 **THE COURT:** That's correct.

15 **THE CLERK:** Thank you.

16 **MS. MOORE:** And then, Your Honor, I believe --

17 **THE COURT:** So far.

18 **THE CLERK:** Right. Just in this.

19 **THE COURT:** Yes.

20 **MS. MOORE:** Yes.

21 And, Your Honor, I believe that you moved 115 in your
22 order from the hardship section to the cause section. So it
23 would follow 84.

24 **THE COURT:** Right.

25 **MS. MOORE:** So if we wanted to address that one now.

1 **THE COURT:** Okay.

2 **MS. MOORE:** And plaintiffs object, Your Honor, for the
3 reasons I've stated as to striking for cause based on the
4 papers.

5 **THE COURT:** Well, and this person said it's likely
6 toxic. Okay, yeah.

7 Well, first of all, I'll go ahead and excuse this person
8 for cause just as a matter of expediency because we know that
9 this person is going to get dropped off the list anyway because
10 she's Juror Number 115. We're not going to be calling her in
11 Wednesday anyway. So just so that I don't have to switch her
12 and move her to a different pile, I will go ahead and excuse
13 her for cause. But actually, for the record, I think she
14 should be excused for cause based on what she said about
15 Roundup.

16 Okay. So that's it, right, from my pile?

17 **MR. STEKLOFF:** Yes, Your Honor.

18 **MS. MOORE:** Yes, Your Honor.

19 **THE COURT:** Okay. So, then, from my pile we are
20 excusing Number 4 for cause.

21 Sorry. This will take a minute. I'm just doing my list.

22 Number 6, Number 41, Number 53, Number 66, Number 67,
23 Number 71, and Number 115.

24 Okay. So those are all the ones that I thought should be
25 excused on the papers. I assume you will have more.

1 By the way, just while it's on my mind, what we'll do is
2 we are going to ask the jury office to produce a new list --
3 Kristen, correct me if I'm wrong about this -- we're going to
4 ask the jury office to produce a new list after today's
5 proceedings are done so that everybody has a new number.
6 They're going to stay in the same order, but it's going to be 1
7 through 40; or if you think it should be more, it can be
8 1 through -- we can talk about that.

9 **MS. MOORE:** Okay. But they won't be re-randomized?
10 They'll just be shifted up?

11 **THE COURT:** They will not be re-randomized. They will
12 remain in the same order.

13 **MS. MOORE:** Thank you, Your Honor.

14 **THE CLERK:** So you want them 1 through 40 then? I was
15 going to have them move the people but still keep their
16 original number so as not to confuse the record later where
17 Juror Number 3 is now Juror Number 1.

18 **THE COURT:** Well, what I was thinking is that we're
19 going to be -- when we're doing jury selection on Wednesday, it
20 would be pretty weird to be -- I mean, we're going to need to
21 put them in their seats; right? And that's the seat for Juror
22 Number 1, and it would be pretty weird to be, like, Juror
23 Number 37, Juror Number 63. Maybe no based on the look that
24 you're giving me.

25 Well, either way. We'll do it one of those two ways, but

1 we'll --

2 **MS. MOORE:** Well, and I think Ms. Mellen's point too
3 is that later --

4 **THE COURT:** Oh, you're siding with her?

5 **MS. MOORE:** Well --

6 **THE CLERK:** That's a smart thing to do.

7 **MS. MOORE:** I can't win on this one, I really can't,
8 but probably.

9 It's just for the record today we've been referring to
10 these juror numbers, and so it could get confusing, you know,
11 if someone ends up with -- because one of the ones that you
12 struck for cause was Juror 4, Your Honor, and then there will
13 be another 4, and I don't know how we'd be able to tell which
14 one's which later.

15 **THE COURT:** Hmm. Well --

16 **MS. MOORE:** Is that what you're saying?

17 **THE COURT:** You could. I mean, it can be done either
18 way, but I'll give some more thought to --

19 **MS. MOORE:** I don't have strong feelings on it, but --

20 **THE COURT:** Yeah. I want to just -- we can certainly
21 do it either way. I want to give some more thought to what is
22 going to be easier in terms of managing the jury selection on
23 Wednesday.

24 **MS. MOORE:** I understand, Your Honor.

25 **THE COURT:** Because we can always file something that

1 gives cross-references to the numbers.

2 **MS. MOORE:** That make sense because I agree with you,
3 it would seem weird Juror 45 sitting here and --

4 **THE COURT:** Yeah. And, for example, we have somebody
5 passing around the mic, and if somebody says "Juror Number 8,"
6 you know, then you know to go to that seat --

7 **MS. MOORE:** Right.

8 **THE COURT:** -- which is where Juror Number 8 sits;
9 right? And, you know, so it doesn't make the process more
10 efficient.

11 **MS. MOORE:** Is that how you number, Your Honor? Do
12 you start Juror 1 there (indicating)?

13 **THE COURT:** Juror 1 will be in the back closest to me.

14 **MS. MOORE:** Okay.

15 **THE COURT:** 1 through 7 will go on the back row, and
16 then 8 through 14 will go on the next row, and then they start
17 in the front row on this side. All the jurors will stay on
18 this side of the courtroom. And if I recall correctly, Juror
19 Number 15 is closest to the aisle.

20 **THE CLERK:** Right.

21 **THE COURT:** And then we go down and then start again
22 on the next row closest to the aisle.

23 **MS. MOORE:** Okay.

24 **THE COURT:** It will probably be, like, two rows I'm
25 guessing.

1 **MS. MOORE:** Okay. Thank you, Your Honor.

2 Okay. So do you want to start going through other --
3 let's go in numerical order of the remaining jurors and if
4 anybody has anybody for cause or hardship, why don't we start
5 with -- why don't we start with Monsanto because I've been
6 talking to the plaintiffs for a long time. I'll take a break
7 from them and go to you.

8 **MR. STEKLOFF:** I think I will have more during this
9 portion.

10 **THE COURT:** Why don't we go through yours and then
11 we'll go through theirs.

12 **MR. STEKLOFF:** Okay. Someone will pass me up a note
13 if I miss one.

14 But the first I would like to start with, Your Honor, is
15 Number 9.

16 **THE COURT:** Okay.

17 All right. And what do you want to draw my attention to?

18 **MR. STEKLOFF:** I would like to draw your attention to
19 first sort of a combination of answers starting with Number 21.
20 This juror says, "Monsanto produces Roundup, which contains
21 chemicals that have been shown to be toxic -- I don't have a
22 reference but this is my best recollection -- to humans and/or
23 mice. As a master gardener trained through U.C., we recommend
24 less toxic methods first before using products that could harm
25 the environment."

1 So this person comes in with some beliefs about the
2 toxicology of Roundup.

3 **THE COURT:** This is a little bit ambiguous, though,
4 because it's in response to the question "Have you heard, read,
5 or seen any news reports about Monsanto?" So it's not clear
6 whether this person is saying she believes -- he or she, I
7 can't remember -- believes that Roundup contains chemicals that
8 are toxic to humans and/or mice or whether she's read reports
9 suggesting that or reports reporting those allegations.

10 **MR. STEKLOFF:** And I think we see in her further
11 answers that she might shine some light on that, Your Honor.
12 Specific to that question in Number 25, she does say that she
13 has used Roundup but she hand pulls first the table, but then
14 says, "I'm aware of some of the studies done to show Roundup's
15 toxicity." So she's saying that she's aware of -- she herself
16 is aware not through news reports but it sounds like through
17 studies. And if you look at 23, while it is caveated and
18 there's no check box on "Yes" or "No," she says she perhaps --
19 she answers "Perhaps" to that question about her opinions or
20 feelings.

21 And so -- and then, you know, her answer to 28 while
22 probably not by itself is not -- I think is, again, part of the
23 totality where she's even saying I think clearly she would
24 award money but then is expressing so much sympathy for people,
25 that she's saying, "That's not enough because how could you

1 ever give money to someone -- how could you give enough money
2 for suffering?"

3 And then in 30 she says, "As a scientist, I would do,"
4 this one is a little vague but, "I would do research on the
5 product Roundup and review what I've been taught via U.C.
6 master gardeners."

7 She does admit clearly, to be clear, that she won't look
8 up the case or other cases.

9 So this one just as a totality, given the gardening
10 backgrounds, elements of where she has looked at studies that
11 she thinks show Roundup toxicity, and her answer which I think
12 expresses a high level of sympathy for people who are harmed,
13 we would move for cause on her.

14 **THE COURT:** Yeah. I mean, I think, you know, then she
15 goes on on her explanation sheet to say that she wouldn't do --
16 "I wouldn't do further research." And she said, "In
17 conclusion, I feel I have common sense and would do best not to
18 be biased during a trial."

19 I think this is the kind of person you want in. I mean,
20 it raises kind of -- reraises the more general philosophical
21 discussion we had earlier about whether you want -- you know,
22 whether the point of jury selection is to eradicate any
23 prospective juror -- eradicate the jury pool of anyone who
24 reads the newspaper or has any knowledge about what's going on
25 in the world, and I think the answer to that question is no.

1 And if somebody has been reading articles about Monsanto
2 or Roundup or has some -- you know, or uses it in gardening, is
3 careful with it, I don't think that's enough on its own to
4 excuse somebody.

5 So I will -- I understand your objection, but I don't
6 think this person should be excused on the papers.

7 **MR. STEKLOFF:** The next one, Your Honor, is Number 18.
8 This is, I believe, a student. So starting -- I'd like to draw
9 your attention to a few answers. Again, I think most of my
10 arguments will be totality arguments to be clear, Your Honor.

11 So starting with Question 20, she notes that her --

12 **THE COURT:** She went to the seed lecture; right?

13 **MR. STEKLOFF:** Yes.

14 **THE COURT:** Oh, this is the one --

15 **MR. STEKLOFF:** Right. She's the one who went to the
16 seed -- some sort of environmental lecture.

17 **THE COURT:** Yes. Yes.

18 **MR. STEKLOFF:** But also she notes that her uncle
19 worked for Monsanto before being fired.

20 **THE COURT:** Yes.

21 **MR. STEKLOFF:** Then she went to a lecture that talks
22 about the harm that is caused by chemicals and now they've
23 tried to change countries' laws about seed patents so that
24 they can get more money --

25 **THE COURT:** I think -- I'm guessing she means seed

1 patents.

2 **MR. STEKLOFF:** I think that's right.

3 -- so that they can get more money and a monopoly.

4 And then in response to Number 23, again --

5 **THE COURT:** Which, by the way, there's nothing
6 inaccurate about that, is there?

7 **MR. STEKLOFF:** I'm not --

8 **THE COURT:** Monsanto has seed patents so that it can
9 have more money and a monopoly; right?

10 **MR. STEKLOFF:** I haven't looked into that issue to be
11 able to tell you, Your Honor.

12 Number 23, she talks about, again, this environmental
13 lecture that just happened; and then --

14 **THE COURT:** Yeah. It seemed like she's saying it
15 happened yesterday. Like, so she went on Tuesday?

16 **MR. STEKLOFF:** That is how I read it.

17 **THE COURT:** Yes.

18 **MR. STEKLOFF:** And then it seems like at that
19 environmental lecture, the *Johnson* case was discussed. She
20 goes on to say, "I have also learned about the environmental
21 effects of the chemicals in my environmental classes."

22 And so this --

23 **THE COURT:** Where is the indication that the
24 *Johnson* -- oh, "Including a trial" --

25 **MR. STEKLOFF:** -- "where someone won."

1 **THE COURT:** Okay.

2 **MR. STEKLOFF:** So, you know, again, to me this is a
3 totality issue where I think she's hearing a lot about
4 chemicals, is seeking out -- this isn't just someone who's
5 being aware of the news. She's actively going to environmental
6 lectures where these issues are being discussed, including the
7 *Johnson* trial; and is expressing in 23 that she has opinions or
8 feelings about Monsanto or chemical companies, but I think
9 she's clearly talking about Monsanto in her prior answers, that
10 may make it difficult for her to fairly evaluate the case.

11 **THE COURT:** Okay.

12 **MS. MOORE:** Your Honor, if you back up to the page
13 before, page 5, in response to 22 "Have you heard, read, or
14 seen anything about a recent trial in San Francisco involving
15 Monsanto," she checked "No." And that alone -- the plaintiffs'
16 position is that that alone, if they had heard of the trial
17 last summer, is not enough to strike someone for cause.

18 We would object to the defendant's motion to strike Juror
19 Number 18 for cause because there is nothing on the papers
20 alone that says that she will not follow the Court's
21 instruction or follow the law in this case simply because she
22 went to an environmental lecture.

23 **THE COURT:** Well, what about the fact that she checked
24 "Yes" to Question 23?

25 **MS. MOORE:** I don't think checking "Yes" to

1 Question 23 is sufficient to strike for cause.

2 **THE COURT:** For the record, to make clear for the rest
3 of our discussion, I agree with you on that, that merely
4 checking "Yes" to a question like that on its own is not
5 enough. So the question is whether that plus her substantive
6 answers in their totality should disqualify her.

7 **MS. MOORE:** I understand, Your Honor. In her answer
8 she doesn't say anything that she wouldn't be able to follow
9 the instructions of the Court. She says she's heard some
10 stories, and then she talks about the environmental lecture
11 that she attended. She doesn't say what it was. Monsanto's
12 attorney said this clearly tells us. It does not clearly tell
13 us.

14 Again, we're saying bring her in. Let's ask her some
15 follow-up questions. Then let's revisit whether or not she's
16 appropriate for a cause strike.

17 **THE COURT:** All right. I think she's -- I had her as
18 a definite maybe. I mean, this was almost strike on the
19 papers, but let's bring her in.

20 **MS. MOORE:** Thank you, Your Honor.

21 **MR. STEKLOFF:** The next one, Your Honor, is Number 25.

22 First, Number 25, Your Honor, in the hardship question
23 says that she has preplanned and paid work travel every week
24 beginning February 20th through March 30th.

25 Then in addition --

1 **THE COURT:** Oh, yeah.

2 **MR. STEKLOFF:** Then in addition to that, Juror 25, and
3 I understand the comments you made previously about seeds, but
4 in Question 21 talks about Monsanto's, in her words, "bullying
5 reputation in the agricultural world."

6 In 23 checks "Yes" and says, "I have general negative
7 feelings toward Monsanto as an agricultural monopoly that seems
8 to put profits above all else."

9 In 28 says, "Most companies" -- describes this as sort of
10 a David and Goliath situation.

11 So --

12 **MS. MOORE:** It does feel like that sometimes,
13 Your Honor, I tell you.

14 **THE COURT:** I mean, I think the only possible reason
15 we would excuse this person on the papers is because of the
16 scheduling issues. And my feeling about that was I generally
17 don't have a lot of sympathy for executives who consider
18 themselves very important and need to travel a lot, and I
19 generally do not -- you know, especially executives who work
20 for big companies that have a lot of money and can presumably
21 deal with the inconvenience of having one of their people serve
22 on a jury, and I think this person might fit that description,
23 at least it's possible. So I thought -- I didn't think that
24 was a reason to excuse her, and I don't think the other
25 comments she made are a reason to excuse her on the papers.

1 **MR. STEKLOFF:** Juror Number 30, Your Honor, is a juror
2 who, I believe, while it's in remission -- I am not -- I just
3 think based on the comment you made about a spouse earlier
4 having non-Hodgkin's lymphoma -- I believe this is a she -- her
5 sister -- in Question 17, it is in remission but her sister had
6 non-Hodgkin lymphoma.

7 So --

8 **THE COURT:** Yeah, I wouldn't -- I mean, based on the
9 comment that I made, there's a little bit of a difference
10 between a spouse and a sister but not much. I think probably
11 this person should be excused.

12 **MS. MOORE:** Your Honor, and I would just object on the
13 basis of the objections I raised earlier about excusing her
14 only on the papers. She doesn't really answer very much. Her
15 responses don't tell us very much at all about her.

16 **THE COURT:** Yeah, but you agreed that the spouse -- so
17 you're saying when your spouse has non-Hodgkin's, you should be
18 excused; but when your sister has non-Hodgkin's, they shouldn't
19 be?

20 **MS. MOORE:** The difference, Your Honor, in those two
21 papers is the one for the spouse she went in and explained on
22 17d and she had a written response on that. This woman did
23 check -- yes, it is a woman -- this woman did check, Juror 30,
24 on 17d "Yes," but -- well, and there's no reason I guess for
25 her to explain it there, but there's not much information

1 there.

2 So on the papers alone, I'm not saying she wouldn't be
3 struck for cause, you know, when we're here Wednesday, but on
4 the papers --

5 **THE COURT:** I'm going to excuse Number 30 for cause
6 based on that, based on the sister having non-Hodgkin's
7 lymphoma.

8 **MR. STEKLOFF:** I'm going to try to be very efficient
9 with these, Your Honor.

10 **THE COURT:** That's okay.

11 **MR. STEKLOFF:** 31. I've heard what you've said about
12 prior knowledge of the *Johnson* trial. In Question 22, there
13 was just a level of detail that we didn't see in any other. I
14 think this had the most level of detail as compared to any
15 other questionnaire. Not only, you know, she knows it's a
16 school custodian but what really jumped out to me was the
17 reference to PPE; and so given that --

18 **THE COURT:** PPE?

19 **MR. STEKLOFF:** That's the personal -- I might get this
20 wrong. So that's the personal protective equipment where we've
21 been talking about gloves and other things and Tyvek suits.

22 **THE COURT:** Yes.

23 **MR. STEKLOFF:** And so that level of detail --

24 **MS. MOORE:** Well, the problem is -- I'm sorry.

25 **MR. STEKLOFF:** -- that is also expressed in 24.

1 **THE COURT:** Well, that person probably knows that
2 acronym from their job. And I understand your point, but this
3 person -- the fact that this person describes what they read in
4 the paper in a more articulate way than some of the others is,
5 if anything, a reason to have them on the jury, not a reason to
6 excuse them as long as they make clear that they can be fair
7 notwithstanding what they've read in the papers.

8 **MR. STEKLOFF:** The next, Your Honor, is 35, I believe.

9 **THE COURT:** Okay.

10 **MR. STEKLOFF:** Juror Number 35, first, in the hardship
11 question says that she is the primary driver for both children
12 to and from school. Her husband just started a new position
13 with a 5:45 a.m. start time every day. So I assume that makes
14 it difficult for her.

15 **THE COURT:** And she lives in Rohnert Park, which is
16 quite a ways away.

17 **MR. STEKLOFF:** Uh-huh, yes.

18 **THE COURT:** I would be inclined to excuse that person
19 on hardship alone.

20 **MS. MOORE:** And, Your Honor, our objection is that she
21 lists that she's the primary driver so that, to me, it's
22 unclear that means there's someone else who could drive.

23 I would also note that her children -- her oldest is 16.
24 It's unclear whether or not the 16-year-old is driving to
25 school, and so that's why we would object for excusing for

1 hardship on the papers alone.

2 (Pause in proceedings.)

3 **THE COURT:** Okay. You were going to mention something
4 else about her.

5 **MR. STEKLOFF:** Yes. First of all, just they have a
6 16-year-old and a 14-year-old who go to two different high
7 schools. So whether the 16-year-old is driving, I don't -- it
8 seems clear that she is expressing that she is at least driving
9 the 14-year-old to high school every day.

10 But in Question 23, again, you know, this is in the
11 question about opinions or feelings about Monsanto or any
12 chemical company, she talks to -- about her sympathy and about
13 having worked with cancer patients. And so I think the
14 hardship is a stronger basis, but I do think that that is
15 relevant.

16 And then in 31 she also mentions Dr. Richard Turley, who
17 is one of the treating physicians for Mr. Hardeman, whose
18 testimony I expect will be played during trial. He was the
19 ear, nose, and throat doctor who biopsied Mr. Hardeman's tumor
20 which led to his diagnosis of non-Hodgkin's lymphoma, and he
21 does work at Kaiser. So I assume that's him.

22 **THE COURT:** Okay.

23 **MS. MOORE:** Your Honor, we would object to move to
24 strike -- for the cause strike for Juror 35 on the papers
25 alone.

1 Starting backwards, Dr. Turley was the ENT who performed
2 the biopsy. I believe that Mr. Hardeman saw him once and had a
3 communication with him by e-mail on the diagnosis, but he's not
4 been his treating physician. Dr. Turk is his primary care
5 physician. So I don't think that alone would be the basis to
6 strike for cause.

7 And then with respect to sympathy, sympathy is not a basis
8 to strike someone for cause, Your Honor, and so we would object
9 to that.

10 And then I believe those are the only cause arguments that
11 defense raised, and so that's why we believe it would be
12 inappropriate to strike her for cause.

13 With respect to the hardship issue, again, we would just
14 ask that she be brought in, you know, for jury selection on
15 Wednesday and we could explore that a little bit more.

16 **THE COURT:** Okay. But I see now that it's two
17 different schools and between the fact that she worked with
18 somebody who is a witness in the case, however important or
19 unimportant the witness is, and given the hardship issue, I'm
20 going to excuse her for both hardship and cause. That's Juror
21 Number 35.

22 **MS. MOORE:** Your Honor, I understand your ruling but I
23 will just point out in 31 she says "possible." So she's not
24 even sure so I don't think that should be a basis, and --

25 **THE COURT:** Yeah, but we're sure because we just

1 identified that it's the same person.

2 Okay. Next?

3 **MR. STEKLOFF:** Yes, Your Honor. Number 46.

4 Number 46 I would draw your attention, Your Honor, to
5 Question 24. This is not, I think, mere knowledge of the
6 *Johnson* trial and verdict but at the end of his description of
7 that --

8 **THE COURT:** This was the "He was just doing his job."

9 **MR. STEKLOFF:** Exclamation point.

10 **THE COURT:** Yeah. That was a definite maybe for me
11 too. I think this one was very close.

12 **MR. STEKLOFF:** And then I also would note on
13 Question 28 he checked "Yes" and then wrote "There is no amount
14 of money -- there is no amount of money can bring someone
15 back," and then crossed it out.

16 And then Question 29 goes on to, again even though it is
17 not the -- whether it's responsive or not to the question,
18 again brings up Mr. Johnson and says "He was doing his job" and
19 believes there will be no damage when using the product. So in
20 response to that question, it is again referencing the *Johnson*
21 trial.

22 **THE COURT:** And I think that this person -- you know,
23 we talked about how we might break out the group of people who
24 were exposed to the *Johnson* verdict and have a separate
25 conversation about that with them, and he would be in this

1 group and we would need to seek assurance from him that
2 regardless of what he read in the papers, that he would be able
3 to, you know, not prejudge the case and consider it based only
4 on the evidence that comes in in the courtroom, and we would
5 want to see how he answers that.

6 So I agree it's close, but I'm not going to excuse him on
7 the papers.

8 **MR. STEKLOFF:** Okay. Next, Your Honor -- sorry. I
9 need to switch binders, which means we're past 50 so that's
10 good.

11 (Pause in proceedings.)

12 **MR. STEKLOFF:** Yes. So the next one is --

13 **THE COURT:** You know what, since you switched binders,
14 maybe this is a good time to take a little break. Why don't we
15 take a -- why don't we come back at 2:00 o'clock. Take a
16 little break, come back at 2:00. Okay?

17 **MS. MOORE:** Thank you, Your Honor.

18 **MS. MATTHEWS JOHNSON:** Thank you, Your Honor.

19 **THE CLERK:** Court is in recess.

20 (Recess taken at 1:45 p.m.)

21 (Proceedings resumed at 2:03 p.m.)

22 **THE COURT:** Since you-all are now in the business of
23 resolving disputes between me and Kristen, Kristen thinks we
24 should have 10 jurors. What do you-all think?

25 **MS. MOORE:** Your Honor, we would object to that

1 number. We think that's too high.

2 **MR. STEKLOFF:** I think that's a good idea, Your Honor.

3 **MS. MOORE:** And, Your Honor, I guess, maybe -- I'm
4 sorry. I didn't hear what Defense said.

5 **THE COURT:** He said it's a good idea. So he agrees
6 with Kristen and you agree with me.

7 **MS. MOORE:** See, sometimes, Your Honor, I go back and
8 forth.

9 So I guess maybe if I could ask the Court to explain. So
10 yesterday -- or, no, two days ago when we were here, you had
11 said that you would have 9 in the box. Would that be 9 that
12 then would deliberate?

13 **THE COURT:** Absolutely. You have to do that.

14 **MS. MOORE:** Okay. Well, I just didn't know if you
15 would excuse any before deliberations or not.

16 Okay. Then we would object to 10. We have the burden of
17 proof and now that's raised us from 9 to 10. I will tell you
18 in the *Johnson* case -- of course, they had 12 jurors -- they
19 had three alternates, which it was state court, so they had 15
20 members that sat through that entire trial and no one ever, you
21 know, asked to be excused.

22 So --

23 **THE COURT:** It was the summertime, though. I mean,
24 it's wintertime now and, you know, flu has been going around
25 and all that.

1 **MS. MOORE:** Well, I understand. I think they even
2 broke because of the Fourth of July; right, Mr. Burton?

3 **MR. BURTON:** Yeah, we had sick jurors.

4 **MS. MOORE:** They had sick jurors. One of them
5 actually came and, like, coughed and sneezed throughout the --
6 I know. Well, I mean, I think they were dedicated. The point
7 is they're dedicated.

8 I mean, that would greatly increase our burden to have 10
9 unanimous jurors versus 9. So we would ask for 9 and the Court
10 stay with where it was on Wednesday.

11 **THE COURT:** Okay. I'll think about it a little bit
12 more, but assume 9 for now unless you hear otherwise.

13 **MS. MOORE:** Okay. Thank you, Your Honor.

14 **THE COURT:** Okay. Do you want to continue?

15 **MR. STEKLOFF:** Yes, Your Honor.

16 Let me just make a proposal. I have taken your guidance.
17 I'm not saying you're going to agree with me on the rest, but
18 I've taken your guidance.

19 So I have six challenges between 50 and 90, and what I
20 would propose is maybe -- I don't want to waive challenges past
21 90, but if I stop there and Ms. Moore raises any challenges she
22 has up through 90, I suspect we can count and there will be
23 enough left. Wherever you land on, whether you want to bring
24 in 40 or more, we will have enough at that point. So just for
25 purposes of efficiency.

1 **THE COURT:** That's a good idea.

2 **MS. MOORE:** That's fine, Your Honor.

3 **MR. STEKLOFF:** So the first, Your Honor, that I have
4 is Number 54.

5 **MS. MOORE:** Which number, Counsel?

6 **MR. STEKLOFF:** 54.

7 **MS. MOORE:** Thank you.

8 **THE COURT:** Okay.

9 **MR. STEKLOFF:** Juror 54 in Question 17 says, "It's
10 almost certain that the cause of cancer is linked to some
11 product exposure."

12 **THE COURT:** Okay.

13 **MR. STEKLOFF:** In Question 21 says, "I have not heard
14 positive reports regarding Monsanto. They are repeatedly
15 called out for irresponsible farming."

16 **THE COURT:** Okay.

17 **MR. STEKLOFF:** In Number 23 checks "Yes" to that
18 question we've discussed and talks about how it is chemical
19 causing -- it is more generic about chemical companies, but
20 talks about that they are responsible for causing sickness in
21 individuals who are exposed and that they pay politicians to
22 push through their agenda.

23 24 talks about Roundup being linked to negative health
24 effects from exposure.

25 And so given the totality of those answers, we think this

1 is a juror that has expressed bias that should not be brought
2 in on Wednesday.

3 **THE COURT:** Okay. I understand, but I think we'll
4 bring them in on Wednesday and see what they say.

5 **MR. STEKLOFF:** The next is 56. 56 writes in
6 Question 19, "Have you heard of Monsanto?" "Yes." And puts
7 "Evil" in all caps with an exclamation point.

8 **THE COURT:** Is there any aspect of that that you
9 dispute?

10 **MR. STEKLOFF:** That one I have researched, and I do
11 dispute that one, Your Honor.

12 She says that in 20 she boycotts their products.

13 In 21 she talks about GMO, you know, proprietary seeds.

14 In 22 when just asked about the recent trial, she says
15 "Roundup is poison that kills" with an exclamation point.

16 **THE COURT:** Okay. I get your point.

17 **MR. STEKLOFF:** Yeah.

18 **THE COURT:** I didn't look through this one, but I've
19 now looked through this whole one, and it seems pretty clear
20 that this person needs to be excused.

21 **MS. MOORE:** And, Your Honor, plaintiffs would object
22 to excusing her for cause based solely on the papers for the
23 reasons that we stated this afternoon, that these questions do
24 not ask whether they can follow the Court's instructions and
25 follow the law, and we would ask for the opportunity to ask

1 those questions of her.

2 **THE COURT:** Okay. And, by the way, all of these
3 questionnaires will be contained in the record so I don't need
4 to repeat all of her answers out loud right now, but it's very
5 obvious that this person needs to be excused for cause based on
6 her answers.

7 **MR. STEKLOFF:** Number 62, Your Honor, is my next one.
8 This one I am moving for cause but, you know, I'm only pointing
9 you to Question 23. I think there's some knowledge in
10 Question 25 and Question 21 about Roundup and the litigation,
11 and Question 22 as well.

12 And in Question 23 when you add in those --

13 **THE COURT:** Wait. I may be looking at the wrong one.
14 Which number are you pointing me to?

15 **MR. STEKLOFF:** I hope I said 62.

16 **THE COURT:** 62? I had 61 in my hand. Sorry.

17 **MR. STEKLOFF:** No problem.

18 (Pause in proceedings.)

19 **MR. STEKLOFF:** I guess I shouldn't say I'm only
20 pointing you to 23.

21 62 is a breast cancer survivor in Question 17.

22 62 is aware of the Roundup case, although not specifically
23 in Question 21.

24 But then in 22 seems to be aware of more than what is
25 expressed in Question 21 because then some details about the

1 *Johnson* case are laid out.

2 And then in Question 23 says "Yes" to that question with
3 the answer that you can read about super polluters and profits
4 over people, which actually, I would speculate, might be an
5 exact theme that we hear from plaintiffs' counsel in this case.
6 Maybe not in Phase I but in Phase II.

7 And then Question 24 goes on, Question 25.

8 So there's just a lot of questions that, again, this is a
9 totality argument we think demonstrate this is not a juror that
10 should be brought in.

11 **THE COURT:** Okay. I disagree. I think they should be
12 brought in, and I don't think -- I certainly don't think this
13 person should be excused for cause on the papers.

14 **MR. STEKLOFF:** Next is 63, Your Honor.

15 **THE COURT:** Okay.

16 **MR. STEKLOFF:** And it's really Question 24. And I'll
17 acknowledge Question 23 the answer is "No"; but then
18 Question 24 says, "I know that I read enough to know how
19 horrible it is for our environment and water and anyone who has
20 direct contact with it. I am 100 percent against the use of
21 Roundup."

22 That seems like a bias that cannot be put aside even if
23 this person says that she can listen to the evidence and follow
24 the law. And so that is the basis for our position on Question
25 Number -- on Juror Number -- sorry -- 63.

1 **THE COURT:** I think that probably disqualifies her.
2 What's your position?

3 **MS. MOORE:** Your Honor, we would object to cause
4 strike on the papers because on Number 23, "Do you have any
5 opinions or feelings about Monsanto that may make it
6 difficult," she answered "No." And so I think that the
7 difference between 23 and 24 creates ambiguity that would
8 require her to come in for *voir dire* and then we can actually
9 explore that with her.

10 **THE COURT:** It doesn't seem particularly ambiguous to
11 me. I'm going to excuse her for cause.

12 **MR. STEKLOFF:** And two to go, Your Honor, under my
13 proposal.

14 Juror 75 is next.

15 **THE COURT:** Okay.

16 **MR. STEKLOFF:** Starting at 75 -- sorry, starting at
17 Question 21, Juror 75 is an avid gardener who won't use
18 Roundup.

19 **THE COURT:** Okay.

20 **MR. STEKLOFF:** And then has talked to other people --
21 indicates in that answer that she has talked to other people
22 who won't use Roundup.

23 In Question 22 does have knowledge of the *Johnson* case,
24 although admittedly not the exact amount for the verdict, a
25 much lower number.

1 **THE COURT:** Wishful thinking on your part.

2 **MR. STEKLOFF:** Question 23 answers "Yes" and again
3 says, "I won't use Roundup or allow my gardener to use it."
4 And then talks about a friend who expresses views that -- who
5 worked for Monsanto who views them as dangerous.

6 And so based on that, again, understanding that she might
7 come in and say she could listen to the evidence, that seems
8 like a pretty strong bias against Roundup specifically, and we
9 would move for cause on her.

10 **MS. MOORE:** Your Honor, it's not clear. We would
11 object to any type of strike cause on the papers alone. The
12 language actually says "claims," and again --

13 **THE COURT:** Sorry? What? I didn't get the language.
14 What?

15 **MS. MOORE:** On Number 22 --

16 **THE COURT:** Yes.

17 **MS. MOORE:** -- he's talking about that he claims he
18 used the Roundup, causes cancer. The jury found Monsanto
19 responsible awarding him a lot of money, somewhere over a
20 million dollars. That's completely inaccurate factually.

21 So, again, you know, whether he has knowledge of the
22 *Johnson* trial, whether it's accurate or inaccurate, is not
23 grounds enough to strike him for cause. And there's several
24 people on here that have knowledge of the *Johnson* trial even if
25 they don't have it accurate.

1 (Pause in proceedings.)

2 **MS. MOORE:** And this goes back to what the Court was
3 saying earlier about generally negative feelings toward
4 Monsanto is not sufficient for a cause strike, and that's what
5 this really is.

6 I mean, I understand why they want to move to strike him
7 for cause, and I will say that almost everyone who's been
8 struck for cause today is because they have some negativity
9 toward Monsanto with the exception of the two people with the
10 experience with NHL. And so, again, striking this person for
11 cause on the papers alone, we would object.

12 **MR. STEKLOFF:** This goes beyond Monsanto, though,
13 Your Honor. It goes specifically to Roundup and --

14 **MS. MOORE:** But that is Monsanto's product.

15 **THE COURT:** Just let me peruse the questionnaire for a
16 minute.

17 (Pause in proceedings.)

18 **THE COURT:** I think the combination of saying "Yes, it
19 would be difficult for me to be fair to Monsanto" with the
20 content of the responses means that this person should be
21 excused for cause so I will excuse this person for cause on the
22 papers. That's Juror Number 75.

23 **MS. MOORE:** Your Honor, just for point of
24 clarification, where does he say that he would not be fair to
25 Monsanto? I may have missed that, but I don't see it.

1 **THE COURT:** They answered "Yes" to 23 saying it would
2 be difficult to be fair to Monsanto.

3 **MS. MOORE:** Well, the question is "may make it
4 difficult for you to fairly evaluate."

5 **THE COURT:** I said it was the combination of the
6 response to Number 23 saying "Yes" and the content of the
7 responses that I think justifies excusing that person for cause
8 on the papers. That's my final ruling on that.

9 Next?

10 **MR. STEKLOFF:** This is my last one, Your Honor.
11 Number 81.

12 Number 81, if you look, first of all, at his employment --
13 and I'm not suggesting that this alone is sufficient --
14 implements and coordinates the local Storm Water Pollution
15 Prevention Program for the city" -- for a city. I won't go
16 into specifics.

17 And then starting at Question 21 has a lot of knowledge
18 about the *Johnson* case. I mean, I will say that this is not --
19 this is not as anti-Monsanto as some of the other ones that
20 we've discussed but does seem to have a lot of knowledge both
21 about Roundup, Monsanto, chemicals, if you continue on through
22 23 where he says, "Yes"; if you look at 21, 22, and 25.

23 And so that's really our basis, is just the combination of
24 sort of unique knowledge of the product.

25 **THE COURT:** Okay. And I think that in contrast to the

1 last one, even though this person answered "Yes" to 23, the
2 content of the responses don't justify excusing this person for
3 cause on the papers.

4 So that's it for Monsanto up to Number 90?

5 **MR. STEKLOFF:** Yes, Your Honor. Thank you.

6 **THE COURT:** Okay. And then why don't we go through
7 whatever remaining ones the plaintiffs have.

8 **MS. MOORE:** Okay. Thank you, Your Honor.

9 Number 7.

10 **THE COURT:** Okay. Who is the last person we excused?
11 Was it Number 75?

12 **THE CLERK:** Yes.

13 **MR. STEKLOFF:** Yes, Your Honor.

14 **THE COURT:** Okay. I just want to make sure my records
15 were up to date.

16 All right. Number 7?

17 **MS. MOORE:** Yes, Your Honor. Juror Number 7 has a
18 personal experience where they lost their child at age 4 and
19 filed a lawsuit, and he discusses in here that --

20 **THE COURT:** Where are you?

21 **MS. MOORE:** I'm sorry.

22 If you turn, Your Honor, to the bottom of page 2.

23 **THE COURT:** Okay.

24 **MS. MOORE:** He explains the basis of the malpractice
25 lawsuit. And then if you continue over, Your Honor -- and I'll

1 note he's -- well, I won't note that.

2 If you continue over, Your Honor, to the damages question
3 on Number 28 on page 7, that is where he talks about the
4 malpractice caps in California being 250,000 and not having
5 been changed since the 1970s. And he talks about at the end
6 that life isn't fair.

7 This one to me is more personal than someone whose sister
8 has non-Hodgkin's lymphoma and would impact his ability to be
9 fair in this case given his own personal experience where he
10 believes that the system was unfair to him and his family. We
11 would move to strike him for cause based on that.

12 **THE COURT:** Yeah, I mean, I just -- I don't think I
13 can do that given that he says "Life is not fair but I can be
14 an impartial juror." You're entitled to ask him more questions
15 about it, obviously. We'll do that privately with him because
16 he marked it on his questionnaire, but I'm not excusing him on
17 the papers.

18 **MS. MOORE:** Okay. Thank you, Your Honor.

19 The next one is Number 8.

20 **THE COURT:** Okay.

21 **MS. MOORE:** And on this one if you turn, Your Honor,
22 over on page 4, Number 17d, in the last sentence there Juror 8
23 writes, "I'd be very hard-pressed to find any single causative
24 factor unless dosage" -- I think "were" -- I can't read what
25 that says -- "to extreme limits beyond normal range." So he

1 uses the word "extreme."

2 And then if you go on, Your Honor, to the next page on
3 Number 21 --

4 **THE COURT:** Wait. Hold on.

5 **MS. MOORE:** I'm sorry.

6 **THE COURT:** Let me read that whole answer.

7 **MS. MOORE:** Go ahead.

8 **THE COURT:** "There are many factors and it would be
9 very hard to attribute cancer to a single other party.
10 Additionally, food toxicology has made me keen about toxicity
11 levels; and concerning Monsanto, I'd be very hard-pressed to
12 find any single causative factor unless dosage were taken" --
13 maybe --

14 **MS. MOORE:** I believe so, Your Honor.

15 **THE COURT:** -- "to extreme limits beyond normal
16 usage."

17 Okay.

18 **MS. MOORE:** And so we think that's a bias against the
19 plaintiffs in this case, Your Honor, and would increase the
20 burden of proof that we're required to meet under the law.

21 The next page on his response to 21 is referring, I
22 believe, there to the *Johnson* case, and he says, "A man sued
23 for Roundup glyphosate as the causative agent of his cancer."
24 He said, "He won not because it was the causative factor but,
25 rather, because the jury believed it may be a contributing

1 factor," which was a lone reason, but that's --

2 **THE COURT:** Yeah. In other words, he seems clearly to
3 have prejudged this particular issue. I tend to agree that
4 this person should be excused for cause.

5 **MS. MOORE:** Absolutely, Your Honor. That's our basis
6 for our motion to strike for cause.

7 **MR. STEKLOFF:** I mean --

8 **THE COURT:** I mean, given all the people I just
9 excused for Monsanto --

10 **MR. STEKLOFF:** I will not fight it, Your Honor.

11 **THE COURT:** Okay. All right.

12 **MS. MOORE:** Okay. And next, Your Honor, is Number 42.
13 And on this one, Your Honor, plaintiffs move to strike for
14 cause. I'll first start toward the back of the questionnaire,
15 and this is on Number 29. And this juror believes that "for
16 punitive damages should be only done where conform is" -- I
17 think that that's what it says -- "is criminally negligent."

18 And so they're confounding the standard there, and so
19 they've prejudged that we would have to show that Monsanto was
20 criminally negligent in order to be awarded punitive damages.

21 **THE COURT:** Obviously the response to that is "Would
22 you be able to follow the instructions," and we don't know
23 what -- that may be their opinion, but can they follow the
24 instructions that I give them.

25 So do you have anything else in that questionnaire?

1 **MS. MOORE:** Yes, Your Honor. In response to Number 23
2 on page 6, he checked "Yes" to that question; and then he says
3 in there that "Feels that chemical exposure is difficult to
4 prove that it has no effect on humans. On the other hand, is
5 difficult to prove one human gets cancer while others don't
6 despite exposure to the same chemical and that chemical is
7 responsible."

8 So, again, it goes back to prejudging on this one.

9 **THE COURT:** Anything else on that one?

10 **MS. MOORE:** No, Your Honor. That's the basis for our
11 motion.

12 **THE COURT:** Okay. I don't think that is reason to
13 excuse this person for cause.

14 Next.

15 **MS. MOORE:** The next one, Your Honor, is Juror 70, and
16 if I could direct the Court's attention to 17d. This is
17 another person whose family member -- it's actually his wife,
18 so it's a spouse -- had Hodgkin's.

19 And then he also goes on --

20 **THE COURT:** What is the difference between Hodgkin's
21 and non-Hodgkin's lymphoma? I never actually stopped to
22 research that question.

23 **MS. MOORE:** I'm probably not the best person to
24 explain that, Your Honor, but it is -- non-Hodgkin's lymphoma
25 and Hodgkin's, it's two different things. I'm not sure, you

1 know, which one is here. I don't know if it really makes a
2 difference for our trial purposes.

3 **THE COURT:** Why not? I mean, if they're two different
4 diseases, then in one instance the person has a loved one who
5 has the actual disease that the plaintiff has and in the other
6 instance, they don't. That seems like a big difference.

7 **MS. MOORE:** I understand, Your Honor. That's not the
8 sole basis of our motion to strike for cause. If you continue
9 down to 17d, he's talking about his father-in-law and he says
10 there "He always told me how" -- I think he's supposed to say
11 "how" -- "safe Roundup is. I believe him."

12 **THE COURT:** Uh-huh.

13 **MS. MOORE:** So he has prejudged that Roundup is safe,
14 and I think the totality of that --

15 **THE COURT:** I actually think there was something else
16 in this --

17 **MS. MOORE:** It's Number 23, Your Honor.

18 **THE COURT:** -- questionnaire that said something
19 similar.

20 **MS. MOORE:** If you go to 23, he checked "Yes," and he
21 says, "I feel they," meaning Monsanto, "typically are very
22 honest and helpful to society."

23 And 25 also, and he believes it's a safe and effective
24 product when used as labeled.

25 **THE COURT:** I didn't think anyone in the Bay Area felt

1 that way about --

2 **MS. MOORE:** I didn't either, Your Honor, but
3 apparently we found him out of 100-and-something people.

4 I think the totality of that, that he thinks it's a safe
5 and effective product, he thinks they're honest and helpful to
6 society.

7 **THE COURT:** Yeah. I mean, I did take a close look at
8 this questionnaire before we came out here, and I had it marked
9 as a definite maybe, but I think it doesn't quite rise to the
10 level of excusal for cause on the papers.

11 And, you know, I'll just say that I -- you know, as with
12 every jury selection, you know, you have people with different
13 opinions and you have somebody saying that the cops are all
14 corrupt and you have somebody saying that the cops are all
15 wonderful, and we have a nice discussion about that in open
16 court; and at the end of the day, we pick a jury that's not
17 biased.

18 **MS. MOORE:** And I understand that, Your Honor, and I
19 agree with that.

20 I will note that the strikes for cause by Monsanto, which
21 typically is about, you know -- I know why they did it, it's
22 because those jurors don't particularly -- you know, there's
23 some feelings about Monsanto in there.

24 This one is definitely prejudicial against the plaintiff.
25 They've already made up their mind that Roundup is a safe and

1 effective product, and they obviously put some weight into
2 their father-in-law who's deceased and made an effort to put on
3 their questionnaire that "He always told me it's safe and I
4 believe him."

5 And so I think for those reasons that it's clear on the
6 papers that he is coming to this biased and with a prejudice.

7 (Pause in proceedings.)

8 **THE COURT:** I think this is likely somebody who will
9 have to be excused for cause, but I'm not certain enough. I
10 don't think it's quite likely enough to excuse them on the
11 papers.

12 **MS. MOORE:** Thank you, Your Honor.

13 The next one -- well, it's above 90 so I don't know if we
14 want to go there or not.

15 **THE COURT:** I don't think it's necessary.

16 **MS. MOORE:** Okay.

17 **MR. STEKLOFF:** I think -- my count might be off, but I
18 think we have approximately 50 in the first 90 who are left at
19 this point.

20 **THE COURT:** Okay. Well, why don't we count that. Let
21 me take -- let me look at my list -- take a moment to look at
22 my list here.

23 **MR. STEKLOFF:** My count is bad. I'm hearing 65,
24 Your Honor.

25 **THE COURT:** Hey, Kristen, the other -- I guess the

1 argument for keeping the numbering the way it is is that the
2 number is already attached to their questionnaire. So I'll
3 give that a little bit more thought. I want to think about the
4 mechanics of selection on Wednesday.

5 How have we been doing it in our criminal cases because
6 we've been using a questionnaire for a couple years now in our
7 criminal cases?

8 **THE REPORTER:** Do you want this on the record,
9 Your Honor?

10 **THE COURT:** No. This doesn't have to be on the
11 record.

12 (Discussion held off the record.)

13 **THE COURT:** We're going to do it Kristen's way on
14 Wednesday. So we're going to keep the same numbers.

15 **MS. MOORE:** Thank you, Your Honor.

16 I think there's 55 approximately left in the first 90. So
17 we would be fine with the first 40.

18 **THE COURT:** Do you guys both agree that the first 40
19 sounds about right?

20 **MR. STEKLOFF:** I mean --

21 **THE COURT:** We have 9 jurors, possibly 10, plus 6
22 peremptory challenges. So if that's 15, then we bring in 40,
23 that leaves us 25 people who would need to be excused for cause
24 or hardship before we have a problem. It seems very unlikely
25 that we're going to be excusing 25 people.

1 I mean, I'm fine -- do you want to call in 45 just to be
2 safe?

3 **MR. STEKLOFF:** I was going to throw out 50,
4 Your Honor, just -- I mean, I'm not trying to waste people's
5 time, but why -- you know, we all know that people come up with
6 extra hardships and then you will probably push them and say
7 "Why didn't you raise that in your questionnaire?" But I
8 just --

9 **THE COURT:** Yeah.

10 **MR. STEKLOFF:** I don't know why we would risk not
11 getting a jury on Wednesday.

12 **THE COURT:** But usually by the time we've vetted
13 people and they've done a questionnaire, we're left with a
14 group of people who are very -- almost want to serve on a jury
15 or particularly interested in it.

16 **MS. MOORE:** And we've gotten -- Your Honor, based on
17 the Court's decisions today, I mean, that's almost -- that's
18 35, roughly, people who have been struck. So I think we've
19 vetted it. I think 40 should be sufficient.

20 **MR. STEKLOFF:** To me bringing in 5 to 10 extra people,
21 Your Honor, just -- I understand that that's making them come
22 in for half to two thirds of a day, but I think I would rather
23 be safe than sorry. So, I mean, there's been a lot of planning
24 so we can go forward on the 25th, and I think that makes sense.

25 **THE COURT:** Yeah. Give me one second to just go

1 through this list here.

2 (Pause in proceedings.)

3 **THE COURT:** Let's go ahead and bring in 45 people,
4 which I think, if my math is correct, the last person who would
5 be on that list would be Juror Number 79. Even if I'm wrong
6 about that --

7 **MS. MOORE:** That's 45.

8 **THE COURT:** -- let's bring in the first 45 people on
9 the list. That will be fine. That will be plenty.

10 **MS. MOORE:** All right. Thank you, Your Honor.

11 **MR. STEKLOFF:** Okay. Thank you, Your Honor.

12 **THE COURT:** Is there anything else you want to discuss
13 regarding jury selection right now or any questions that you
14 have?

15 **MS. MOORE:** Your Honor, do you permit any type of
16 mini-opening for jury selection?

17 **THE COURT:** No.

18 **MS. MOORE:** Okay. And then we have 45. I assume,
19 then, it would be 14 here, and then starting with the remainder
20 in the gallery. And Your Honor would start with your
21 questions; is that --

22 **THE COURT:** Yeah. So --

23 **MS. MOORE:** Can you walk us through the process?

24 **THE COURT:** Yes.

25 **MS. MOORE:** Thank you.

1 **THE COURT:** Let's talk it through now and because of
2 the nature of this trial, we may tweak my normal process a
3 little bit, including separating out people who know about the
4 *Johnson* verdict.

5 Let me just say again regarding the *Johnson* verdict, I do
6 not believe it is necessary or required to separate out the
7 subset of prospective jurors who indicated on the questionnaire
8 that they had heard about the *Johnson* verdict. I do not
9 believe that's necessary.

10 I believe it would be appropriate, particularly in a civil
11 trial, for all of us to have a discussion about that in the
12 room. And I think there is an argument, even thinking about it
13 from Monsanto's standpoint, that it would be beneficial to
14 Monsanto if that discussion about how the jurors are not
15 supposed to substitute their judgment for the jury in the
16 *Johnson* case, for that discussion to be in front of all the
17 prospective jurors. I think that arguably could be beneficial
18 to Monsanto.

19 I don't think that there's a requirement to separate
20 anybody out. However, if Monsanto wants, I will do a separate
21 discussion of the *Johnson* case and I will leave it up to
22 Monsanto who the jurors are, who should be separated out, and
23 who should not be separated out.

24 But I will say that if something comes up inadvertently
25 about the *Johnson* case or if somebody makes brief mention about

1 the *Johnson* case in front of the whole group, I don't think
2 that's problematic at all.

3 And, you know, everybody will get an instruction that
4 they're not supposed to consider, once they're a member of the
5 jury, anything they heard during *voir dire* so I don't think
6 that's a big deal and I don't think it's going to be a reason
7 to stop the jury selection or anything like that.

8 But if you want, you know, Monsanto can come with a list
9 of people that we want to have a separate group discussion with
10 about the *Johnson* case. Okay?

11 So here is the way I think it will go. We'll bring the 45
12 people in. We'll welcome them. You-all can introduce
13 yourselves. I'll give them the blurb -- you know, repeat the
14 blurb on what the case is about, and then I will do hardships
15 with them. I'll ask about hardships. Presumably that will not
16 take much time at all. There may be one or two people who have
17 hardships.

18 **MS. MOORE:** Do you do that while they sit in the seat
19 or do you bring them up for that, Your Honor?

20 **THE COURT:** While they sit in the seat. We'll have
21 somebody passing a -- we'll have an intern passing a microphone
22 around to people.

23 **MS. MOORE:** Okay.

24 **THE COURT:** And -- I'm sorry. I'm going back now to
25 this issue of whether to renumber the jurors or not. Because

1 what happens is -- okay. Let's say that person over there
2 raises their hand. Okay? I usually know that that's Juror
3 Number 10.

4 **MS. MOORE:** Right.

5 **THE COURT:** And so I can quickly go to my list and I
6 can quickly pull them out -- pull their questionnaire out. But
7 when they raise their hand in this circumstance, I'm not going
8 to know what number they are so I'm going to have to wait until
9 they say their name.

10 I guess they just say their name and their jury number and
11 I'll flip to their questionnaire. That will be fine. That
12 will be fine.

13 **MS. MOORE:** Okay. We could also bring stickers,
14 Your Honor, if you want.

15 **THE COURT:** What?

16 **MS. MOORE:** They could wear a sticker that has their
17 number on it or a button or something.

18 **THE COURT:** It will be fine.

19 So I'll do hardships with them. Then I will ask each of
20 them to answer a handful of questions orally, and I'll -- and,
21 you know, we have our usual list of 10 questions that we give
22 civil jurors. I think we'll probably pare that down. For
23 example I don't think we need them to answer again whether
24 they've been on a jury before and what kind of jury. So I'll
25 take a look at that questionnaire.

1 In fact, why don't we look at it together right now and
2 figure that out so that will be good for your planning
3 purposes.

4 **MS. MOORE:** That's fine.

5 **THE COURT:** Is that questionnaire on our website,
6 Kristen?

7 **THE CLERK:** Yes.

8 **MS. MOORE:** I believe it's attached to your standing
9 order, Your Honor, on civil trials.

10 **THE COURT:** Okay. Great. Let me pull that up.

11 **MS. MOORE:** It's Appendix A.

12 (Pause in proceedings.)

13 **THE COURT:** Standing order for civil trials. It's
14 long.

15 Okay. What's your name? How old are you? What city do
16 you live in? Where were you born? Job? How long you worked
17 in it? Who's your employer?

18 Why don't we do, like -- why don't we do the first 9.

19 **MS. MOORE:** Your Honor, I do believe all those were
20 covered in the written questionnaire.

21 **THE COURT:** Oh, I know, but the point is to just give
22 people a chance to introduce themselves.

23 **MS. MOORE:** That's fine. I have no objection to that,
24 Your Honor.

25 **THE COURT:** So I was just thinking do the first 9 just

1 to give people a chance to introduce themselves a little bit.

2 **MS. MOORE:** Can we also suggest, Your Honor, Number 12
3 just with regard to English just to make sure?

4 **THE COURT:** Sure.

5 **MS. MOORE:** And then we haven't asked anyone in the
6 questionnaire about military service.

7 **THE COURT:** Do you-all want to ask that question?

8 **MR. STEKLOFF:** I'm neutral on military service,
9 Your Honor.

10 **MS. MOORE:** Sure.

11 **MR. STEKLOFF:** I actually think 11, even though we
12 have that information, just to hear from people, it's not a
13 long answer, would be helpful.

14 And I don't know -- oh, we do have -- I would be fine
15 skipping 10, but I would ask for 11 and I am neutral on 12 and
16 13.

17 **THE COURT:** Okay. So let's do 1 through 9 and 11 and
18 12 and 13.

19 **MS. MOORE:** That's fine, Your Honor.

20 **THE COURT:** And we'll have them answer those questions
21 verbally. So we'll go through and we'll do that.

22 And then what I propose we do after that --

23 **MS. MOORE:** Your Honor, would that just be for the
24 ones in the box or for all 45?

25 **THE COURT:** For everybody.

1 **MS. MOORE:** For everybody. Okay.

2 **THE COURT:** Yes, we'll do everybody at the same time.

3 **MS. MOORE:** Thank you.

4 **THE COURT:** Then what I propose we do after that is go
5 straight to the *Johnson* people probably, and I'll be
6 transparent with them about why we have separated them out.

7 **MS. MOORE:** And, Your Honor, if I could note, we
8 object to any separation of those people. I mean, in my
9 experience, what you usually can do is just say "Has anyone
10 ever heard of any other matters they believe are related to
11 this? Does anyone think they have any preconceived notions?
12 Have you read about this in the paper?" And just make it
13 really general because some people may have heard that, and
14 then we can determine that.

15 But, you know, I wouldn't want to really separate those
16 people out. That makes them -- I don't know. It seems strange
17 and we would object to that.

18 I also find that sometimes other people realize that they
19 have heard of it too when they hear other people talking about
20 it so I would rather have it be a full discussion.

21 **THE COURT:** Well, that's true and maybe that will end
22 up happening; and if it does, that's too bad. But I'm happy to
23 try to make an effort for Monsanto, if it believes that it's
24 truly in its interest, to separate out the people who have
25 heard about the *Johnson* trial and have a conversation with them

1 separately, and I don't see how that can possibly be harmful to
2 the plaintiffs in any way.

3 **MS. MOORE:** And going into that, Your Honor, it's not
4 the Court's position that those people would be automatically
5 struck for cause just because they've heard about the case? I
6 mean, right? I mean, there's just -- to me, just because
7 they've heard about the *Johnson* verdict or they think they've
8 heard about it --

9 **THE COURT:** If I thought they should automatically be
10 struck for cause, why would I be bringing them in?

11 **MS. MOORE:** I understand, Your Honor. I understand.
12 I just note our objection to separating them.

13 **THE COURT:** Okay. But if you actually have any basis
14 for asserting that it would be somehow harmful to the
15 plaintiffs to separate them, please articulate that now.

16 **MS. MOORE:** Well, again, as I stated, I think that
17 separating the jury and having some people over here and some
18 people over here, it automatically creates preconceived notions
19 that these people have different information than the other
20 people. And so if you get a mix on the jury of Group A and
21 Group B, Group B may look to Group A as experts because they
22 may know more information.

23 **THE COURT:** They have no idea what we're going to be
24 talking about.

25 **MS. MOORE:** Okay.

1 **THE COURT:** Anyway, so after everybody -- after all
2 the prospective jurors introduce themselves by answering those
3 questions, we will separate out the jurors who have heard about
4 the *Johnson* case.

5 Monsanto, why don't you file a list of people who you want
6 separated out. Why don't you file that just by juror number.

7 **MS. MOORE:** Can that be filed tomorrow so I can have a
8 chance to look at it, Your Honor? Or not tomorrow. That's
9 Saturday.

10 **THE COURT:** Tuesday.

11 **MS. MOORE:** Tuesday? Okay. Thank you.

12 **THE COURT:** Tuesday at 10:00 a.m.

13 **MS. MOORE:** Thank you, Your Honor.

14 **THE COURT:** And then we'll plan to separate out those
15 people.

16 I will spend some time with them giving them a speech
17 about how it's their -- you know, they have to exercise their
18 own judgment and it doesn't matter what happened in any other
19 case.

20 And then I will give each side a bit of time to follow-up,
21 probably like 15 minutes each. So I'll spend a little time
22 with those jurors. I'll give each side 15 minutes to follow-up
23 with each prospective juror on that specific issue, limited to
24 that issue.

25 Then we'll bring -- we'll give those people a break.

1 We'll bring everybody back in at a certain time, and then we'll
2 do regular *voir dire* and you can ask anybody anything, but
3 obviously don't ask -- you should not ask follow-up questions
4 of the separate group about any -- any further questions about
5 the *Johnson* verdict. Is that --

6 **MS. MOORE:** Okay.

7 **MR. STEKLOFF:** And do you know approximately how long
8 you'll give us for that second half?

9 **THE COURT:** I'm going to see how -- I'm going to see
10 how things are going, but I'm going to guess, I think we can
11 estimate that you'll each have another half hour to do
12 *voir dire*.

13 **MR. STEKLOFF:** And I think the parties submitted
14 proposed *voir dire* questions. Just to clarify, you will not be
15 asking any -- other than the questions we just went over in
16 your -- sort of the background questions, you will not --

17 **THE COURT:** I will probably also ask some general --
18 so I have to confess, I forgot to look at your proposed
19 *voir dire* questions. Are there any proposed *voir dire*
20 questions that you-all submitted where you're objecting to the
21 other person's?

22 **MS. MOORE:** Yes, Your Honor, there are. What we did
23 is we broke it up in the sheet where we have the joint ones and
24 then we have plaintiffs and defense, and we actually I think
25 noted what the objection was. Some of it was one of us thought

1 the other it was duplicative or --

2 **THE COURT:** Right. Right. Right.

3 **MS. MOORE:** -- but I think it's pretty
4 self-explanatory when you see it.

5 **MR. STEKLOFF:** It also was not a long list. I mean,
6 both of us I think asked -- tried to narrow it. I think it was
7 10 questions each, maybe 15, but we didn't ask a hundred
8 questions.

9 **THE COURT:** That's fine.

10 **MS. MOORE:** I'm sorry. I don't have that with me.

11 **THE COURT:** For the most part, you know, usually what
12 happens is I get a list of proposed *voir dire* questions. I
13 say, "All of these seem fine. Some of them seem dumb and I
14 can't imagine why you would want to ask those questions, but
15 it's your precious time and if you want to ask dumb questions
16 of the jury, I'm not going to stop you."

17 But I will -- before Wednesday, I will look at the
18 questions and if I have any problem with any particular
19 question that I want to prohibit you from asking, I will let
20 you know.

21 **MS. MOORE:** Like, I know one, Your Honor, on the joint
22 list is "Do you know someone who has hepatitis?" Like, that's
23 one. So it's very generic on the joint list; and then on the
24 other one I don't think it's anything -- I just don't think we
25 felt comfortable agreeing to the others on those, but I don't

1 think there's anything in particular -- well, I just can't
2 remember at this moment so I won't state -- I will just rest
3 with my objections on the paper.

4 **MR. STEKLOFF:** I have a question just to clarify. Are
5 we limited in our *voir dire* to what was submitted to you?

6 **THE COURT:** No.

7 **MR. STEKLOFF:** Okay. I didn't think so.

8 **THE COURT:** No. You can conduct your *voir dire*.
9 Obviously I will -- I'm not shy about interjecting and shutting
10 you down and, you know, scolding you in front of the jury if
11 you do something --

12 **MS. MOORE:** Oh, thank you, Your Honor.

13 **THE COURT:** -- if you do something inappropriate.

14 But what I think I was going to say, and maybe haven't
15 said yet, is that I will do a few initial, like,
16 raise-your-hand questions about following the law.

17 **MS. MOORE:** Okay.

18 **THE COURT:** Is there anything else you want to tell us
19 about your views that we might want to know? You know, like a
20 few -- I'll probably do a few raise-your-hand questions like
21 that.

22 **MS. MOORE:** Okay.

23 **THE COURT:** I think what I'll probably do is first
24 we'll focus on the *Johnson* people. And then we'll take a
25 break, we'll bring everybody back in, I'll ask a few more

1 general raise-your-hand questions of everybody, and then I'll
2 turn it over to you. So that's basically how it will go.

3 **MS. MOORE:** Okay.

4 **THE COURT:** And I would expect -- you know, I think
5 this will probably go a little bit longer than a typical civil
6 jury selection, but not a lot given the work we've done on the
7 questionnaires, and I wouldn't be surprised if we had a jury
8 by, you know, 1:00 o'clock, or something like that, or even a
9 little bit earlier.

10 **MS. MOORE:** Okay.

11 **MR. STEKLOFF:** Okay.

12 **MS. MOORE:** All right. Thank you, Your Honor.

13 (Pause in proceedings.)

14 **MS. MOORE:** Your Honor, just for planning purposes, do
15 you have any idea of how many would be in each row in the
16 gallery? I know you said we started with 15.

17 **THE CLERK:** It's tough to say. I think I've had
18 anywhere from, like, eight to ten but we can just limit it to,
19 like, seven just to be safe.

20 **MS. MOORE:** That would be great. If we could just
21 know ahead of time.

22 **THE COURT:** Planning in advance?

23 **MS. MOORE:** Yes.

24 **THE COURT:** Just seven people per row.

25 **MS. MOORE:** Okay. Thank you, Your Honor.

1 **THE COURT:** Seems like a lot of space for seven
2 people. Go eight? Let's say, what does it look like? What do
3 these people look like out here? One, two, three, four, five,
4 six, seven. I think seven is probably all right, yeah. 15,
5 22, 29. Yeah, that's fine.

6 **MS. MOORE:** Okay.

7 **THE CLERK:** Just for safe purposes, I think we should
8 probably just call out in the record who's been excused
9 specifically. While I was following along, I got to 45 jurors
10 as Juror Number 78 so I think I'm missing somebody somewhere.

11 **MS. MOORE:** That would be helpful, Your Honor, just to
12 make sure.

13 **THE COURT:** Okay. So you should stop me and interrupt
14 me if I've forgotten somebody.

15 **MS. MOORE:** Okay.

16 **THE COURT:** Okay?

17 Should I just list the numbers of the people who have not
18 been excused or have been excused?

19 **THE CLERK:** Either way.

20 **THE COURT:** Let's go not been excused. So feel free
21 to jump in, interrupt me if I'm missing something.

22 So here are the people who will be coming in, and stop me
23 also when I get to 45 if you can. Can somebody do that?

24 **MR. STEKLOFF:** Yes, Your Honor.

25 **THE COURT:** Okay.

1 1, 2, 3, 5, 7, 9, 10, 11, 13, 15, 16, 18, 20, 22, 24, 25,
2 26, 28, 29, 31, 32, 38, 40, 42, 43, 44, 45, 46, 47, 48, 52, 54,
3 58, 59, 60, 61, 62, 64, 65, 68, 70, 74, 76, 77, 78.

4 **MR. STEKLOFF:** Stop.

5 **THE COURT:** That's 45?

6 **MR. STEKLOFF:** That's what I have.

7 **THE CLERK:** Okay. Good. Then I had them all.

8 **THE COURT:** What?

9 **THE CLERK:** I had them all.

10 **THE COURT:** You had them all, okay.

11 So 78 is the last person who's coming in, which is too bad
12 because 79 is the CEO of a cannabis company. Welcome to
13 California.

14 All right. A quick note on sealing. Oh, so is that it
15 on -- is there anything else you wish to talk about for jury?

16 **MS. MOORE:** The only other question I had, Your Honor,
17 regarding process, is that --

18 **THE COURT:** Oh, yeah. I'm sorry. I didn't finish
19 going through the process. I apologize.

20 So we'll do the *Johnson*-only people if Monsanto still
21 wants that. Then we'll call people back. I'll do some general
22 raise-your-hand questions, and then turn them over to you-all.
23 You each get about half an hour. And then after that, we can
24 go back into the jury room -- maybe you should each designate a
25 limited number of people to bring back there just so it's not

1 too crowded -- and you can make your cause challenges and then
2 you can do your peremptory challenges, and we'll come back and
3 we'll have a jury.

4 And I will read -- on Wednesday, after we pick the jury,
5 I'll read them a couple of -- I'll give them a couple of the
6 instructions. They always immediately want to know if they can
7 take notes so I'll talk to them about taking notes.

8 **MS. MOORE:** What is your position on that, Your Honor?

9 **THE COURT:** Oh, I tell them that there will be a
10 notebook --

11 **MS. MOORE:** Great.

12 **THE COURT:** -- and a pen for them and that they're
13 free to take notes, but I give them a little speech about not,
14 you know, taking too many notes because it will distract them
15 from the actual evidence.

16 And I'll give them the instructions. You know, I'll
17 instruct them, obviously, on their conduct as jurors and remind
18 them that, you know, when you guys don't look at them in the
19 hallway, it's not because you're being rude to them.

20 And then on the instructions about, you know, what is
21 evidence and what is not evidence and the preponderance of the
22 evidence and all that stuff, I'll give that to them on Monday
23 morning before opening statements.

24 But if you want, we could do it one of two ways. I could
25 file something, which is a reflection of the instructions that

1 I'm going to give them, or I can just tell you right now going
2 into the Ninth Circuit Model Jury Instructions.

3 **MS. MOORE:** That would be fine, Your Honor, if you
4 could tell us.

5 **THE COURT:** All right. Let me just pull those up.

6 (Pause in proceedings.)

7 **THE COURT:** While I pull those up, did you still have
8 a question?

9 **MS. MOORE:** I did, Your Honor. It went to cause. So
10 during *voir dire* if we're asking -- for example, if I'm asking
11 questions and it's very apparent that it's someone who should
12 be struck for cause, am I correct in understanding that you
13 want us to wait and do that when we go back to the jury room
14 with counsel and Your Honor?

15 **THE COURT:** Generally speaking, yes; but if there is a
16 problem juror, if there's somebody -- you know, every once in a
17 while you get somebody who raises their hand in response to
18 every question and says something ridiculous in response to
19 every question --

20 **MS. MOORE:** Right.

21 **THE COURT:** -- and if it looks like there's going to
22 be one of those people and you want to call a sidebar or I want
23 to call a sidebar and tell you, you know.

24 And sometimes I will tell you -- even if it's not somebody
25 we need to excuse right away, sometimes I will find occasion to

1 tell you "You don't need to bother asking that person any more
2 questions." I'm not going to kick them out right now, but it's
3 obvious that that person is going to be excused for cause so
4 you don't need to spend any more of your time.

5 **MS. MOORE:** Well, and that's my concern, Your Honor,
6 because with jury selection with us only being allotted the
7 30 minutes, at what point am I going to know that I've met my
8 burden to strike that person for cause? That's my concern.

9 **THE COURT:** Well, and, you know, you should only do
10 it -- you should only assume that if it's pretty obvious.

11 **MS. MOORE:** Okay.

12 **THE COURT:** But I will also say I'm telling you
13 30 minutes, but if I think it's appropriate -- if I feel like
14 you're using your time efficiently and it would be valuable to
15 have you continue to probe jurors, I'm not going to be --

16 **MS. MOORE:** Okay.

17 **THE COURT:** -- real tight about it. Okay?

18 **MS. MOORE:** Thank you. Because if we get one of those
19 problem jurors, it could eat up some of the time.

20 **THE COURT:** Right. I understand.

21 **MS. MOORE:** Thank you, Your Honor.

22 **THE COURT:** So let me pull up model instructions.

23 (Pause in proceedings.)

24 **THE COURT:** I'm having trouble finding them.

25 (Pause in proceedings.)

1 **THE COURT:** Oh, here we go.

2 Yeah, so just from Chapter 1 and Chapter 2, you know. And
3 I give them the duty of -- you know, I give them the duty of
4 the jury instruction, of course.

5 I don't -- you know, burden of proof, preponderance of the
6 evidence, 1.9, 1.10. I don't give 1.11 at the beginning.

7 **MS. MOORE:** Is that something you do right before the
8 jury goes to -- well, I guess when you do the jury instructions
9 before closing?

10 **THE COURT:** I'm guessing at Phase I we're not going to
11 really have any evidence for a limited purpose but if we do,
12 I'll give it to them at that time or at the end.

13 **MS. MOORE:** Okay. Thank you.

14 **THE COURT:** 1.12. I usually add to 1.12 an
15 illustrative example. You know, if you wake up in the morning
16 and you see that the ground is wet, that's circumstantial
17 evidence that it was raining the night before; and if you wake
18 up in the middle of the night and you see that it's raining or
19 you hear that it's raining, that's direct evidence.

20 1.13, 1.14, 1.15.

21 Publicity during trial. Yeah, 1.16, of course.

22 **MR. STEKLOFF:** Can I pause on that one, Your Honor?

23 **THE COURT:** Yes.

24 **MR. STEKLOFF:** I will concede I don't have 1.16 in
25 front of me, but given the circumstances of this trial, I would

1 request that in your own way if you're willing to give the most
2 stern warning especially because we have a break between
3 Wednesday and Monday.

4 **THE COURT:** I would.

5 **MR. STEKLOFF:** I would ask for that every day, I mean,
6 given the publicity of this.

7 **THE COURT:** I'm happy to do that.

8 **MR. STEKLOFF:** Okay.

9 **THE COURT:** I will certainly do that on Wednesday. I
10 will do it strongly and I will do it every -- I'm happy to do
11 it every day.

12 **MR. STEKLOFF:** Thank you, Your Honor.

13 **THE COURT:** 1.17, 1.18, and that's about it. That's
14 what I'll give them at the beginning.

15 **MS. MOORE:** Okay.

16 **THE COURT:** And then -- let me see, let me look at
17 Chapter 2. Let me see if there's anything I usually give them
18 in the beginning.

19 (Pause in proceedings.)

20 **THE COURT:** No. All that stuff I'll give -- from
21 Chapter 2 I'll just give on an as-needed basis as the trial
22 goes along.

23 **MS. MOORE:** Okay.

24 Your Honor, along those same lines of 1.16 on publicity
25 and not, you know, giving weight to any of that, we did have a

1 meet-and-confer with the defense about whether we were going to
2 file a temporary restraining order to prohibit Monsanto from
3 any kind of geofencing or targeting jurors through social media
4 or pay-per-click ads. And so I would just ask that that not be
5 done. We're not doing it on our side, but I just don't want
6 any targeting of jurors, their social media or Internet means.

7 **THE COURT:** Isn't it, like -- doesn't it go without
8 saying that it would be totally inappropriate?

9 **MS. MOORE:** I agree with Your Honor. I think there
10 were --

11 **THE COURT:** 20th floor -- I mean, not even 20th floor
12 stuff, but like --

13 **MS. MOORE:** I knew you were going to say 20th floor
14 again today at some point.

15 **THE COURT:** -- but not even 20th floor, like, you
16 know, solitary-confinement-type of stuff to do that?

17 **MS. MOORE:** I agree with Your Honor. And I would
18 never accuse Mr. Stekloff of that. That is not what I'm trying
19 to do by any means. We've had extensive meet and confers about
20 this. It's more about directing that to Monsanto, to his
21 client. And I think there were some allegations by DeWayne
22 Johnson that there was some geofencing; and if you ask me to
23 explain more about geofencing, I can't. But I just want to
24 make sure it's really clear on the record. We just want to
25 make sure there's not any kind of targeting of the jurors

1 through social media or Internet.

2 **THE COURT:** Obviously nobody on either side -- nobody
3 within a hundred miles of either side may attempt to target any
4 juror or prospective juror with any sort of messaging.

5 **MS. MOORE:** Okay. Thank you, Your Honor.

6 The only other thing I had, Your Honor, is --

7 **MR. STEKLOFF:** I just only -- I apologize.

8 **MS. MOORE:** Go ahead.

9 **MR. STEKLOFF:** Only on that issue, we have had
10 discussions but no issues have been raised formally. I
11 understand that they may have allegations, but I'm not
12 accepting those allegations. So I just want to -- I mean, if I
13 didn't say that on the record, to be very clear --

14 **MS. MOORE:** I understand.

15 **MR. STEKLOFF:** -- I understand what you have said,
16 Your Honor, and of course we will abide by that, but I just
17 want to be very clear about what's happened in the past as
18 well.

19 **MS. MOORE:** I understand. And I wasn't making any
20 allegations towards Mr. Stekloff.

21 **MR. STEKLOFF:** And that is also not directed at
22 Ms. Moore in any way.

23 **MS. MOORE:** The only thing I had, Your Honor,
24 regarding the equipment that we can bring in, our tech person
25 has a conflict on the 19th, and I wanted to see if it was okay

1 with Ms. Melen's schedule if he could come the afternoon of the
2 21st to set up equipment. And I just saw the order noted the
3 19th so I just wanted to bring that to the Court's attention.

4 **THE COURT:** That's up to Kristen.

5 **MS. MOORE:** Okay.

6 **THE CLERK:** So the 21st?

7 **MS. MOORE:** Yes.

8 **THE CLERK:** In the afternoon? We have court starting
9 at 12:30 and then I have to leave by 4:00.

10 **MS. MOORE:** Okay.

11 **THE CLERK:** So you'll be extremely limited on time.
12 The reason I set the 19th is because I have unlimited time.

13 **MS. MOORE:** Okay. So -- well, we can talk about this
14 offline or something.

15 **THE CLERK:** Yeah.

16 **MS. MOORE:** Okay.

17 All right. If Your Honor doesn't have any objection, I
18 can talk to Ms. Melen and try to work it out offline.

19 **THE COURT:** Of course.

20 **MS. MOORE:** Okay. Thank you, Your Honor.

21 **THE COURT:** So sealing, what did I say? What's the
22 deadline? Thursday --

23 **MS. MOORE:** Thursday.

24 **THE COURT:** -- for fixing sealing? And you don't have
25 any questions about how -- the plaintiffs don't have any

1 questions about how they need to fix their filings?

2 **MS. MOORE:** No, Your Honor.

3 **THE COURT:** Okay. So that includes all the, like,
4 expert reports and the expert testimony and all of that.
5 Virtually all of it will be unredacted; right?

6 For Monsanto --

7 **MS. MOORE:** Your Honor, can I ask one thing? I do
8 have one question on that.

9 And, you know, again I understand there's a lot going on,
10 but it would be helpful for the purposes of determining what
11 should be unsealed, any idea on the rulings for the
12 *motions in limine* or *Daubert*? There's some --

13 **THE COURT:** You mean what --

14 **MS. MOORE:** Yes.

15 **THE COURT:** Sorry. I don't -- are you asking me when
16 the rulings will be issued?

17 **MS. MOORE:** Yes, just approximately because I think
18 some of the rulings on *motions in limine* I think we have a good
19 idea on most of them, but I think a lot of things were sealed
20 for Mr. Hardeman's medical records, which we understand how to
21 deal with that because of the rulings on three of the
22 *motions in limine*. So that's easy. But there might be some
23 other things that I'm just not thinking off the top of my head
24 and so that's why I was asking.

25 **THE COURT:** I'm having a hard time thinking of any

1 relationship between the rulings on the *motions in limine* and
2 sealing. I mean, however the ruling comes out on the
3 *motions in limine*, I think the answer is that you have to
4 unseal everything except for personal identifying -- like,
5 Social Security numbers and other personal identifying
6 information and the information about the cause of hep C.

7 **MS. MOORE:** Right.

8 **THE COURT:** And I think that's it.

9 **MS. MOORE:** Hep C and B, yeah. Okay.

10 **THE COURT:** Yeah.

11 **MS. MOORE:** Okay.

12 **THE COURT:** And then for Monsanto, let's see, there's
13 a paragraph -- I don't know how much of this affects you before
14 trial. I don't know how much of this -- I mean, any unsealing
15 needs to be done before trial, but how much of this affects
16 you. There was -- I know there was a paragraph from the
17 Benbrook report, paragraph 637 --

18 **MR. STEKLOFF:** Okay.

19 **THE COURT:** -- that cannot be sealed.

20 **MR. STEKLOFF:** Okay.

21 **THE COURT:** So you have to unseal that. And I don't
22 need to hear any argument on it.

23 There are perhaps two other categories of documents for
24 Monsanto. One is documents reflecting different formulations.
25 So, like, you know, in '92 Roundup Ready to Use had X percent

1 glyphosate, X percent water, X percent potassium hydroxide,
2 et cetera, it's not obvious to me why that needs to be sealed.

3 **MR. STEKLOFF:** I will -- I mean, I -- this is not an
4 issue I will concede I have not focused on; but just hearing
5 it, I suspect that one could argue that there's proprietary
6 information about that. At the same time I think that might
7 potentially come out in the trial related to the background of
8 Roundup.

9 **THE COURT:** Right.

10 **MR. STEKLOFF:** So if it's okay, I will check. I
11 suspect we would be willing to unseal that, but --

12 **THE COURT:** Yeah, you can check and file any
13 objections you have by Tuesday --

14 **MR. STEKLOFF:** Okay.

15 **THE COURT:** -- but the order is that you unseal all of
16 that.

17 **MR. STEKLOFF:** Yes, a presumption.

18 **THE COURT:** Presumptive order.

19 **MR. STEKLOFF:** Yes, I understand. That's fine,
20 Your Honor.

21 **THE COURT:** And then --

22 **MR. STEKLOFF:** And just -- if you don't have it, we
23 will obviously find it. Were you referring to any specific
24 document with respect to that information?

25 **THE COURT:** I mean, I think there are a number of

1 examples.

2 **MR. STEKLOFF:** Okay. We'll track it down and assuming
3 we're not challenging it, we'll make sure we find them.

4 **THE COURT:** If it's helpful, one of the examples is
5 from the Sawyer report, Table 8.

6 **MR. STEKLOFF:** Okay. Thank you, Your Honor.

7 **THE COURT:** That's on page 36, 37. It probably
8 appears elsewhere as well.

9 **MR. STEKLOFF:** Yes. We'll check that, Your Honor.

10 **THE COURT:** Let's see... Oh, yeah, there were some
11 names that were redacted, again, like, as an example from the
12 Sawyer report, based on, like -- redacted based on, like,
13 European law or something like that.

14 **MR. STEKLOFF:** Yeah. And there are European privacy
15 laws, that I think we would be violating European -- again, I
16 have not dug in on this. My understanding is that those were
17 redacted only because of European privacy laws, and that we
18 would be violating European privacy laws if we -- Monsanto
19 could get in trouble in Germany if they unredacted that
20 information here.

21 **THE COURT:** Well, it may be that that's just not a big
22 enough deal. It's so peripheral to the case that probably I'll
23 allow you to keep that under seal --

24 **MR. STEKLOFF:** Okay.

25 **THE COURT:** -- even though I question whether European

1 privacy laws could prevent me from ordering disclosure of
2 information that's relevant to a trial.

3 **MR. STEKLOFF:** I'm not suggesting it could prevent you
4 from ordering something. I'm just trying to explain the basis
5 for why it was redacted.

6 **THE COURT:** But given the relative lack of importance,
7 I think, you know, it's probably not worth putting you-all
8 through the trouble and heartache of dealing with that.

9 By the way, I should say, you know, I mentioned
10 paragraph 637, which references a consulting agreement between
11 Acquavella and Farmer, so it may be that there are other
12 references to similar consulting agreements that you've sealed
13 that need to be unsealed as well.

14 **MR. STEKLOFF:** Okay.

15 **THE COURT:** And then another example of stuff that
16 you've sealed is what I think you've described as proprietary
17 research and an example is, again from the Sawyer report,
18 page 59, discussing the Maibach study, the 1983 Maibach study.
19 It's not appropriate to seal this and it's not appropriate to
20 seal similar research, and so all of that has to be unsealed by
21 Thursday.

22 **MR. STEKLOFF:** Understood, Your Honor.

23 **THE COURT:** Okay. So you'll receive new lists with
24 the 45 people.

25 Is there anything else you want to discuss now?

1 **MS. MOORE:** I don't think so, Your Honor. Thank you
2 for your time.

3 **THE COURT:** Okay. We'll see you Wednesday morning.

4 **MR. STEKLOFF:** Thank you very much, Your Honor.

5 **MS. MOORE:** And we should be here at 8:00 a.m. on
6 Wednesday?

7 **THE COURT:** Yes. That way -- you'll be here at 8:00.
8 I'll be here at 8:00. That way if there's any last-minute
9 issues you want to discuss with me before we bring the
10 prospective jurors in, we can do that.

11 And we will expect the prospective jurors in here at about
12 8:30; is that right, Kristen?

13 **THE CLERK:** That's right.

14 **THE COURT:** Okay.

15 **MR. STEKLOFF:** The questionnaire said 7:30. So I just
16 want to make -- that was intentional so they don't -- because
17 people are always late? Okay. That's a good idea.

18 **THE COURT:** And I think they also go in there and they
19 get shown, like, a rah-rah video or something like that.

20 **MR. STEKLOFF:** Understood, Your Honor.

21 **THE CLERK:** They already got the rah-rah, but --

22 **THE COURT:** They already got the rah-rah video?

23 **THE CLERK:** Yes. It's just to make sure they're
24 actually here.

25 **MR. STEKLOFF:** Okay.

1 **MS. MOORE:** Thank you, Your Honor.

2 **THE COURT:** Thank you.

3 **MS. MATTHEWS JOHNSON:** Thank you, Your Honor.

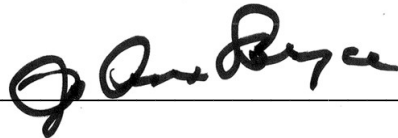
4 (Proceedings adjourned at 3:12 p.m.)

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8 **CERTIFICATE OF REPORTER**

9 I certify that the foregoing is a correct transcript
10 from the record of proceedings in the above-entitled matter.

11
12 DATE: Friday, February 15, 2019

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17 _____
18 Jo Ann Bryce, CSR No. 3321, RMR, CRR, FCRR
19 U.S. Court Reporter
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