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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

IN RE: VIOXX PRODUCTS                   \*    Docket MDL 1657-L  
      LIABILITY LITIGATION               \*  
  \*    May 31, 2007  
  \*  
  \*    9:30 a.m.  
\* \* \* \* \*

STATUS CONFERENCE BEFORE THE  
HONORABLE ELDON E. FALLON  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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produced by computer.



1 Los Angeles County for a case to be selected from a pool of  
2 five cases. The Crandall case is set in Washoe County, Nevada,  
3 on October 1. The Zajicek case is set on October 22 in Jackson  
4 County, Texas. The Donohoo case is set for October 29 in  
5 Madison County, Illinois.

6 **THE COURT:** I feel that it's helpful to interface  
7 with the states to see if the MDL federal proceeding can be of  
8 assistance to them. I have been fortunate to have at each  
9 meeting a liaison for the states. Anything, Ms. Barrios?

10 **MS. BARRIOS:** Your Honor, would you like me to give  
11 my report now?

12 **THE COURT:** Sure.

13 **MS. BARRIOS:** Good morning, Your Honor. Dawn Barrios  
14 for the state liaison committee. I want to begin my report to  
15 the Court by thanking Ms. Dorothy Wimberly. She has been  
16 extremely cooperative with one particular state attorney in  
17 getting his plaintiff profile forms filed on a timely basis.  
18 We have also been working with the PSC on some remand issues,  
19 and I have some gratitude for the PSC reaching out to us.

20 I prepared for Your Honor again today two  
21 CD-ROMs of all the cases that have pending motions for remand  
22 as well as remand orders. At our last status conference,  
23 Your Honor, we discussed the issue of cases that have been  
24 removed twice and are now here on a second remand. We have two  
25 such cases, and I have that on a CD-ROM for Your Honor. I have

1 also given it to the defense and the plaintiffs' steering  
2 committee.

3 **THE COURT:** If you can, highlight those two cases.  
4 Just make sure I spot those two cases.

5 **MS. BARRIOS:** Yes, Your Honor. I put them on a  
6 separate CD-ROM and I will give them to your law clerk. The  
7 only other issue, Your Honor, that I have been contacted about  
8 is in the case William Jeffries v. Merck. It's your number  
9 06-01987. The attorney for the doctor contacted me and asked  
10 if you could look at that case on a remand motion. What's  
11 happening is the doctor has to continually report. I know you  
12 have that issue before you in another case, but this case,  
13 Your Honor, in November you had quashed the plaintiff's  
14 deposition. The doctor had moved to take the plaintiff's  
15 deposition. The plaintiff had moved to quash and you had  
16 granted that. The attorney for the doctor asked me to raise  
17 the issue with Your Honor and let you know that the doctor is  
18 in a trick bag. He is continually having to report this and  
19 yet he can't move forward on the case.

20 **THE COURT:** Okay.

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

22 **THE COURT:** Thank you very much. Any further  
23 proceedings in the early trial cases? That is the next item on  
24 the agenda. I have before me motions in the Barnett case. I  
25 have ruled on the Irvin/Plunkett case. I hope to get the

1 Barnett case out next week.

2 **MR. HERMAN:** No other matters, Your Honor.

3 **THE COURT:** The next item is the class actions.

4 **MR. HERMAN:** Yes, Your Honor. It has been briefed,  
5 and there's no hearing date yet for oral argument.

6 **THE COURT:** The next item is the discovery directed  
7 to Merck. Anything from the parties first?

8 **MR. WITTMANN:** Well, your Honor, as you know, that is  
9 proceeding now, with respect to the privilege documents, with  
10 the help of Special Master Rice and Special Counsel Barriere.  
11 I think the parties are working well together. Professor Rice  
12 has been helpful in moving the process along. We plan to meet  
13 with him again today after this hearing to plan our further  
14 procedures.

15 **THE COURT:** Let me say at the outset that this matter  
16 comes before the Court in the following fashion. I received  
17 some 84 boxes of documents that I ordered the defendant to give  
18 in camera to the Court on which they claimed privilege. I  
19 looked through the documents. The circuit asked me to look  
20 through them again. I elicited the help this time of two  
21 eminently qualified individuals. I have designated Mr. Brent  
22 Barriere from the New Orleans bar as special counsel to the  
23 special master, Professor Paul Rice, a Yale Law School graduate  
24 who is a professor at the American University Law School. He  
25 has written a number of books on evidence, specifically a

1 series of books on the law of privilege. He is here today. He  
2 has been giving yeoman's service to this case as well as to the  
3 Court. I will ask the professor if he has any comments at this  
4 time.

5           **PROFESSOR RICE:** Thank you, Your Honor. Good  
6 morning. We are proud to be able to report to the Court and to  
7 the parties, as we had promised that we would try to do, we  
8 have finished our initial review of all of the sample documents  
9 that Merck submitted and the sample documents that the  
10 plaintiffs had requested be reviewed for the depositions that  
11 have been postponed. We will be getting decisions out on the  
12 remaining boxes of documents by the middle of next week. We  
13 hope to have all the decisions out by the 13th. Merck will  
14 have a chance to respond to those under the procedures that  
15 have been established. We are going to attempt to have a  
16 written report to the Court by June 27 so that this whole  
17 matter can proceed forward and we can proceed on with the  
18 gargantuan task of ruling on 60,000 claims that are still  
19 waiting for us.

20           **THE COURT:** Fine. I appreciate your help, Professor.  
21 It's been great working with you, and I look forward to a rapid  
22 resolution of this matter.

23           As I said, there are some 84 boxes. There are  
24 approximately 500,000 pages of documents that I know I looked  
25 through. This time Merck has been asked to get a

1 representative group of those documents in a smaller number.  
2 They were able to cull out 2,000 documents, some 10 boxes from  
3 the 84 boxes, which they feel are representative of the entire  
4 84 boxes.

5           The professor has gone through those 2,000  
6 documents, those 10 boxes, and has made some rulings that he  
7 has given to the parties. The parties have an opportunity to  
8 respond. He will look at their responses and then give me a  
9 report and recommendation on the final rulings, which I will  
10 review and when appropriate adopt them and put them out as the  
11 Court's orders. Hopefully we can get through this.

12           I have asked Merck, when they look through the  
13 rulings that the professor and Mr. Barriere have made, to see  
14 whether or not they can rethink their positions. Those  
15 documents to which they have no objection, we'll take those off  
16 the table, and hopefully we'll have a smaller number.

17           My hope is that we can utilize the rulings on  
18 those 2,000 to deal with the other 500,000 or thereabouts. If  
19 not, then the professor is going to have to look through all of  
20 those. It's a very expensive process, and hopefully everybody  
21 can keep that in mind when we are dealing with it. Thanks  
22 again, Professor.

23           **PROFESSOR RICE:** Your Honor, if I might add, today  
24 when we meet with the parties after this hearing, I am going to  
25 provide to them the guidelines that we have come up with for

1 ourselves to ensure consistency, which they are having to  
2 extrapolate from our proposed decisions. We are going to  
3 provide them to them in a narrative format so that they know  
4 precisely why the decisions are being rendered the way they are  
5 and can make some informed decisions about whether they want to  
6 proceed with asserting privilege or withdraw claims and perhaps  
7 we will know more accurately what has to be filed to  
8 substantiate them.

9 **THE COURT:** Okay. Thank you very much.

10 Ms. Barrios, I have been in touch with many of  
11 the judges throughout the states. They are aware of this  
12 process. Hopefully we will just have to do it one time as  
13 opposed to some 50 times with the states.

14 The next item.

15 **MR. HERMAN:** May it please the Court. One comment on  
16 behalf of plaintiffs. We will reserve anything for the meeting  
17 after Court recesses. However, I do want to recognize for the  
18 plaintiffs Mr. Tisi, Mr. Longer, Mr. Grand, and Mr. Davis have  
19 been involved, and quite often it's folks who aren't on the PSC  
20 who do yeoman's work. I particularly want to signal out  
21 Mr. Irpino on the record and to the Court for the outstanding  
22 work he has done for the plaintiff community in relation to  
23 privilege issues.

24 **THE COURT:** I am aware of the work that many of the  
25 attorneys have been doing. I do appreciate that and you have

1 the thanks of the Court as well.

2 The next item on the agenda is discovery  
3 directed to third parties. Anything on that?

4 **MR. WITTMANN:** No, Your Honor. You have that matter  
5 under submission.

6 **THE COURT:** The next item is deposition scheduling.  
7 We have talked about that before. The defendants recognize  
8 that they're in a situation in the states where they have a  
9 number of cases coming up for trial and there are many of the  
10 same witnesses who will appear throughout those trials. They  
11 seek to take the depositions to perpetuate the testimony of  
12 those individuals much like the plaintiffs have done in their  
13 cases and present evidence by way of depositions.

14 The plaintiffs' problem with that is that most  
15 of them are doctors who are designated as being the witnesses  
16 whose depositions will be taken. There's some documents in the  
17 privileged assortment that they would plan to use with these  
18 doctors and they have designated some 600 or so of those  
19 documents. The professor and Mr. Barriere are looking through  
20 those and will get those out in the immediate future.

21 It seems to me that the best course is for the  
22 plaintiffs to have rulings on those documents so that they can  
23 cross-examine those witnesses. Otherwise, the depositions are  
24 going to have to be retaken in toto because it's hard to  
25 supplement and it's hard to piece together. Juries, when they

1 look at depositions, they are conscious of the fact that the  
2 person's clothes are different at this time or their hairdo is  
3 different at this time and so they begin then to focus on that  
4 as opposed to the testimony that they are getting. I don't  
5 want to have these witnesses subjected to two and three times  
6 the same depositions. It's not good for the parties and it's  
7 not good for them.

8           The last time I visited this matter, the  
9 plaintiffs sought to stop the depositions from taking place. I  
10 stopped the depositions from taking place until this meeting.  
11 I talked with the professor, and he feels he can get this  
12 material out sometime by the end of June. There's one  
13 deposition that's scheduled before then. I asked the parties  
14 to meet, confer, and reschedule that deposition. The other  
15 depositions are scheduled for sometime in July and August.  
16 Hopefully these will be able to proceed without any problem.  
17 It looks like that the documents that are not privileged will  
18 be forthcoming before then. If either party has a problem when  
19 they get the documents, get it to the Court and I will revisit  
20 the issue. I'm going to let those depositions, other than the  
21 one in June, proceed presently as scheduled.

22           The next item is the plaintiff profile form and  
23 the Merck profile form. Anything on that?

24           **MR. WITTMANN:** I think you may want to defer this to  
25 the end, Your Honor.

1           **THE COURT:** I'll do that. The next item on the  
2 agenda is state/federal coordination. We have had that  
3 discussion with state liaison counsel already.

4           **MR. HERMAN:** Your Honor, if I might revisit item VI  
5 very briefly, Lifetime Medical Link and Lifetime Medical  
6 Center, third parties, have requested dismissals of plaintiff  
7 cases for failure to submit what they contend is an inadequate  
8 or incomplete plaintiff profile form. They don't have  
9 standing.

10          **THE COURT:** I agree with that. I'll deny those  
11 motions for lack of standing. Merck has the opportunity, the  
12 right, the duty, the responsibility of doing that, but third  
13 parties don't.

14          **MR. HERMAN:** One other matter, Your Honor.  
15 Plaintiffs and defendants have met and proposed a PTO setting a  
16 deadline for submission of PPFs on Louisiana plaintiffs, and  
17 we'll submit that to Your Honor on or about June 8.

18          **THE COURT:** All right. The next item on the agenda  
19 is pro se claims.

20          **MR. HERMAN:** I'm sorry. Just one other matter. In  
21 the Trahan case, I was advised by defense counsel that  
22 attorneys Lancaster, Nutt, and Welsh of Mississippi have a  
23 consortium of cases and they have refused to file plaintiff  
24 profile claims on the basis that this Court has no  
25 jurisdiction, irrespective of the fact that those cases are

1 here. The defense will file a motion without opposition by the  
2 PSC in respect to the failure to submit plaintiff profile forms  
3 in the Trahan case.

4 **THE COURT:** The way I see it, if the case is here,  
5 it's here and I have jurisdiction over it. I have jurisdiction  
6 over it until I remand the case -- if, in fact, I do remand the  
7 case. While the case is here, I take the position that I have  
8 jurisdiction over it and will assert that jurisdiction. Get me  
9 an order and I'll sign it. Anything further on that issue?

10 **MR. HERMAN:** No, Your Honor.

11 **THE COURT:** Pro se claimants is the next item.

12 **MR. HERMAN:** Yes, Your Honor. We will be submitting  
13 an order on or about June 18 regarding pro se plaintiffs' use  
14 of PSC documents in hard copy and expenses associated  
15 therewith. That would apply so far to Mr. Harrison and  
16 Mr. Reed and we assume to any other pro se claimant.

17 **THE COURT:** I'm sensitive to the fact that there are  
18 some folks who are unable to get an attorney or unwilling to  
19 get an attorney and wish to represent themselves. In our  
20 system of justice, we all have a right to represent ourselves.  
21 It's probably not the best way of proceeding, but you do have a  
22 right to do that. I have tried to make the discovery available  
23 to them, but they also have some responsibility. They have the  
24 responsibility to pay for the discovery, to incur whatever  
25 costs are required.

1           Also, I have a problem because I have imposed  
2 some restrictions on the people who receive the documentation.  
3 I have power over those individuals who are lawyers who violate  
4 the Court's order. I can take serious action against them.  
5 It's a problem when a person is not a lawyer and is appearing  
6 before me pro se and I do not have as much leverage over that  
7 individual. I'm conscious of the fact that there's certain  
8 disclosure issues that present themselves with pro se  
9 claimants.

10           The next item on the agenda is IMS data.

11           **MR. HERMAN:** There are concurrent discussions  
12 regarding that. There's no issue at this time before the  
13 Court.

14           **THE COURT:** Any issue on the next item, Merck's  
15 motion for summary judgment?

16           **MR. WITTMANN:** No, Your Honor. I think that's been  
17 fully briefed. You have had several notices of supplemental  
18 authority served by plaintiffs and we have responded to them.  
19 I think that's under submission.

20           **THE COURT:** The next item is the tolling agreements.  
21 Any report on the tolling agreements?

22           **MR. WITTMANN:** We have been working with plaintiffs'  
23 counsel to provide a Pretrial Order which will let those who  
24 have filed tolling agreements convert their claimant profile  
25 form to a plaintiff profile form by means of an addendum

1 without having to file a whole new form. We hope to have that  
2 completed shortly.

3 We do have an issue with respect to those  
4 plaintiffs who filed tolling agreements after the statute of  
5 limitations had run in the states in which they reside. We are  
6 working on a letter of how to treat those with Mr. Davis and  
7 Mr. Herman and hope to have something to submit to the Court  
8 later this week.

9 **THE COURT:** I'll just give the parties a heads up on  
10 it. I have before me some 8,400 cases that have been filed and  
11 approximately 13,700 claims that are on tolling agreements.  
12 I'm getting to the point in the case where I'm beginning to  
13 look toward the endgame, and that involves remanding and  
14 sending cases back either to the state or federal courts. With  
15 the tolling, it seems to me that those claims that wish to be  
16 filed have to be filed, because I'm not going to be able to  
17 remand or send any cases back to other jurisdictions if I don't  
18 have them before me. The parties ought to meet and confer and  
19 think about some mechanism for doing that.

20 Issues relating to Pretrial Order 9, anything on  
21 that?

22 **MR. HERMAN:** We still are proceeding to get some  
23 agreements with cross noticing of expert depositions. I was  
24 advised recently that some orders have been issued in  
25 New Jersey and I'm waiting to receive those. When I do,

1 Your Honor, we'll be meeting and conferring with defense  
2 counsel on how to handle this issue.

3 **THE COURT:** Okay. I understand that there's been an  
4 agreement in the Texas litigation. I do think that it's easier  
5 if there are some agreements with the states so that you don't  
6 have to start at round one, or zero, and retake each deposition  
7 again. You can deal with the use of the depositions in the  
8 state trials.

9 When the MDL notices a deposition, I'm not in a  
10 position to have 50 lawyers, one from each state, participate  
11 in a deposition. It would just be unwieldy and unworkable.  
12 What I have tried to do is suggest that they get together and  
13 agree that the depositions noticed in the MDL can be noticed in  
14 the state and that they can be used and if there's a problem  
15 with certain evidentiary issues it can be dealt with, but we  
16 don't have the same deposition taken 50 times or 100 times.  
17 That's just not workable. So I would suggest to the states  
18 that they try to work something out. I think it's to the  
19 advantage of their litigation as well as to the MDL.

20 **MR. HERMAN:** Mr. Seeger and Mr. Buchanan are going to  
21 provide us with the New Jersey issues. We had a PSC meeting  
22 yesterday and Mr. Robinson is going to give us the material  
23 from California. Hopefully they will follow Texas procedure.

24 **THE COURT:** Anything on the Vioxx statistics?

25 **MR. WITTMANN:** Judge, as of March 31, Merck had been

1 named as a defendant in approximately 27,250 lawsuits, of which  
2 8,400 of those suits were pending in the federal MDL. The  
3 balance were in state court. The great majority of the state  
4 court actions were in New Jersey, where there were 16,550  
5 lawsuits pending. The remaining 2,250 lawsuits, roughly, were  
6 pending in other states around the country, including Texas and  
7 California primarily.

8 **THE COURT:** The next item is Merck's insurance. Any  
9 report on that?

10 **MR. HERMAN:** Mr. Ranier for the PSC took the 30(b)(6)  
11 deposition of Merck's designee on May 23, 2007. There are a  
12 couple of issues growing out of that. On or before June 28  
13 Mr. Ranier, on behalf of the PSC, will meet and confer with  
14 defense counsel on those two issues.

15 **THE COURT:** Motion to compel return of attorney work  
16 product, I ruled on that. It was a motion by the plaintiff to  
17 get certain work product material. As I mentioned in my  
18 ruling, I have no question that it's a work product which was  
19 given to an expert, who then either reviewed it or could review  
20 it and had it available. The issue there is whether or not the  
21 work product doctrine stops an adverse party from getting the  
22 material.

23 In this particular instance, the material had  
24 been received by the defendant and it was in the defendant's  
25 possession for over a year. It was also received by the

1 experts, reviewed by the experts, or was available for review  
2 by the experts. I held that it was not privileged and the  
3 defendant had a right to the material and so ruled.

4 The next item is the motion to withdraw as  
5 counsel of record.

6 **MR. WITTMANN:** That may be a part of the motions we  
7 are going to take up at the conclusion of the general docket,  
8 Your Honor.

9 **THE COURT:** Okay. Motion to conduct case-specific  
10 discovery.

11 **MR. HERMAN:** Your Honor, we just filed that.  
12 Mr. Wittmann, I believe, wasn't served with that until  
13 yesterday. We need to meet and confer on that. There's no  
14 action for the Court to take at this time. We should be able  
15 to further advise the Court before June 28 as to the defense  
16 and plaintiff positions.

17 We recently withdrew a motion on a specific case  
18 remand on the basis that the trial package is not complete. We  
19 have accelerated that. The trial package committee is meeting  
20 in our offices on June 8 and again on Saturday, June 9.  
21 Mr. Meunier and Mr. Kaufman have advised that they're  
22 proceeding very rapidly. When the trial package is suitable to  
23 have Your Honor review it in camera and ex parte, we'll meet.  
24 At that time, Your Honor, we will advise as to the remand  
25 issues.

1           **THE COURT:** Okay. As I mentioned several times, I do  
2 feel that an MDL renders a service to a particular case. I do,  
3 however, recognize that an MDL, if not carefully handled, can  
4 turn into a black hole or a warehouse for cases. They just sit  
5 and they sit and nothing gets done. I work hard to try to  
6 prevent that. I've had the case now a little over two years.  
7 We have had actually six trials and five cases were finished,  
8 but I'm getting to the point where I have given you about as  
9 much as I can give you. I've made countless number of rulings.  
10 You have taken hundreds of depositions. We have had millions  
11 of copies of exhibits distributed.

12                   As I said, I've ruled on about 50 or 60 issues,  
13 rendered opinions on them, but I'm getting to the point now  
14 where I'm beginning to look to the endgame. That involves some  
15 issues such as preemption. That involves such issues as  
16 remand. That involves such issues as class action  
17 certification on medical monitoring and a couple of matters  
18 that I have before me that I'm beginning now to focus on.  
19 Hopefully I can deal with this matter and complete it in the  
20 near future. I don't want to put a date on it, but I'm  
21 beginning to focus now on the endgame in this particular  
22 matter.

23                   In that connection, we have some motions on  
24 plaintiff profile forms. Do you want to deal with that first?

25           **MR. WITTMANN:** Yes, Your Honor. Set for hearing

1 today are six motions to dismiss. Five of those relate to  
2 cases that should be dismissed for providing grossly deficient  
3 plaintiff profile forms, for example, completing only two of  
4 the ten pages in the form. The sixth rule deals with cases  
5 where the plaintiff didn't take Vioxx. Those are the non-Vioxx  
6 plaintiffs, as we refer to them.

7           The first rules were filed on April 23, 2007.  
8 Those rules relate to the Hillard case, the Charpentier case,  
9 the Rester case, the Meunier and Walls cases, and the Acosta  
10 case. That's the first five.

11           Then on April 24 of this year we filed a rule  
12 and incorporated memorandum to show why cases should not be  
13 dismissed for having plaintiffs who fail to allege a  
14 Vioxx-related injury. That rule was filed in a consolidated  
15 pleading in the Hillard case, the Charpentier case, the Meunier  
16 case, the Walls case, the Acosta case, the Bailey case, and the  
17 Williamson case.

18           We have received no opposition to our rule,  
19 Your Honor. We are prepared to introduce into evidence as  
20 Merck Exhibit 1 in globo the materials reflecting the signed  
21 orders from the Court setting briefing deadlines and this  
22 hearing date. Those were served on April 30, 2007. The proof  
23 of service is part of our in globo Exhibit 1.

24           Notwithstanding service, no response has been  
25 filed to any of those six rules, so we ask the Court to dismiss

1 the claims of each for the 134 plaintiffs involved in these  
2 rules. For each rule, Your Honor, I can take you through the  
3 exhibits that we have here, but I would suggest it is going to  
4 take a while to do it. We simply offer them in globo since we  
5 have received no response.

6 **MR. HERMAN:** May it please the Court. Your Honor, on  
7 behalf of the plaintiffs, the plaintiffs' steering committee  
8 objects to dismissals with prejudice.

9 **THE COURT:** Anyone else speaking for those matters?

10 As I have mentioned several times now, the most  
11 efficient way of dealing with an MDL is to have plaintiff  
12 profile forms and defendant profile forms rather than have  
13 interrogatories filed and all of the delays involved with  
14 interrogatories. It is shortcut by having profile forms. This  
15 requires the plaintiffs to produce certain information and then  
16 it requires the defendants to produce certain information.  
17 They get the information from each side and they're able then  
18 to go forward and take depositions.

19 I take it seriously when the party doesn't  
20 respond. They are noticed. They are ruled into court to show  
21 cause why they haven't responded. I don't want to dismiss any  
22 case willy-nilly, but at the same time there are cases that are  
23 filed and sometimes the cases are abandoned. They can't be  
24 allowed to hold up any other cases who wish to proceed. I'm  
25 satisfied, after reviewing the documentation, that the proper

1 notice was given to the parties and they failed to respond, so  
2 I'm going to dismiss the claims.

3 In dismissing these claims, I have considered  
4 the public interest in an expeditious resolution of the  
5 litigation. I have also considered the Court's need to manage  
6 its docket, particularly significant in MDL litigation matters.  
7 I have also considered the risk of prejudice to the defendants.  
8 I have given the plaintiffs every opportunity to respond both  
9 to the Court's urgings as well as the various letters. They  
10 have not responded. Also, during the pretrial conferences, I  
11 have said in open court many times and I have taken the  
12 opportunity to focus everyone's attention on these profile  
13 forms and the significance and importance of them. I have  
14 taken all of this into consideration and I will dismiss the  
15 claims with prejudice.

16 **MR. WITTMANN:** Thank you, Your Honor.

17 **THE COURT:** The next meeting is June 28. Before  
18 completing today, I will hear from the parties. We have in  
19 this bar and in this country lost a giant among us, Mr. Jack  
20 Martzell. I'll hear from the parties on Mr. Martzell.

21 **MR. HERMAN:** May it please the Court. Jack Martzell  
22 was an exceptional human being, an exceptional lawyer, and set  
23 a standard for the practice and professionalism in our federal  
24 and state courts. In the play *Julius Caesar*, Mark Antony, in  
25 talking about Caesar, says that the good is often interred with

1 the bones. The good that Jack Martzell has done for society,  
2 for his clients, and for those of us who practice in these  
3 courts is going to live a long time afterwards. Most of us  
4 were mentored or we tried cases with or cases against Jack, and  
5 the bar feels this loss greatly. We appreciate the opportunity  
6 to address our feelings on the record.

7 **MR. WITTMANN:** I would simply join with Mr. Herman,  
8 Your Honor. As you know, Jack was a very close personal friend  
9 of mine and we go back some 40 years together. He tried cases  
10 in all the courts of our state. Most of the clientele was  
11 remarkable in terms of the prestigious folks he represented,  
12 including governors, politicians, Muhammad Ali, but mainly his  
13 style was something that was to be emulated by all the young  
14 lawyers that come into the bar today.

15 Jack never had to raise his voice to be heard.  
16 He presented his case in a logical, rational matter. As I said  
17 at the funeral, his main attribute was his thoughtfulness, the  
18 fact that he thought before he spoke. When he was thinking,  
19 you could almost hear the wheels in his mind turning around as  
20 he ground out the answer to whatever question he was  
21 considering. We have lost a great lawyer and a true giant in  
22 the legal profession not just locally, but nationally, and we  
23 all mourn the loss. Thank you for the opportunity to have us  
24 put this on the record, Your Honor.

25 **THE COURT:** I agree with those comments. I have

1 known Jack since he was a law clerk first with J. Skelly Wright  
2 and then later Judge Ellis. I have tried cases with him as a  
3 lawyer and I have seen him try cases while I was a judge. He  
4 had a special style and was a real giant at the trial bar.  
5 This Court will miss him, as I know many of you in the audience  
6 will and the whole bar will. Thank you very much for your  
7 comments.

8           **MR. WITTMANN:** We passed one matter, Your Honor, on  
9 the agenda. There was a motion to withdraw by Mr. Hingle, who  
10 is counsel of record in those cases that were dismissed. I  
11 don't see Mr. Hingle here.

12           **THE COURT:** I denied the motion to withdraw because I  
13 did want at least an attorney representing these individuals  
14 when I dismissed the cases, but someone stood up. I'll hear  
15 from that individual.

16           **UNIDENTIFIED SPEAKER:** I'm with the Hingle law firm  
17 and the motion was denied, so I think that's moot.

18           **THE COURT:** The motion was denied. Mr. Hingle was  
19 representing the parties, so officially he was representing  
20 them. They were not unrepresented when I dismissed their  
21 cases. Thank you very much. Court is in recess.

22           **THE DEPUTY CLERK:** Everyone rise.

23           (WHEREUPON the Court was in recess.)

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CERTIFICATE

I, Toni Doyle Tusa, CCR, FCRR, Official Court Reporter for the United States District Court, Eastern District of Louisiana, do hereby certify that the foregoing is a true and correct transcript, to the best of my ability and understanding, from the record of the proceedings in the above-entitled and numbered matter.

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Toni Doyle Tusa, CCR, FCRR  
Official Court Reporter