OFFICIAL TRANSCRIPT
PROCEEDINGS BEFORE

THE SUPREME COURT OF THE UNITED STATES

DKT/CASE NO. 82-958

TITLE MC DONOUGH POWER EQUIPMENT, INC., Petitioner
v. BILLY G. GREENWOOD, ET AL.

PLACE Washington, D. C.

DATE November 28, 1983

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IN THE SUPREME COURT OF THE UNITED STATES

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MC DONOUGH POWER EQUIPMENT, INC.,

Petitioner

v. : No. 82-958

BILLY G. GREENWOOD, ET AL.

- x

Washington, D.C.

Monday, November 28, 1983

The above-entitled matter came on for oral argument before the Supreme Court of the United States at 10:03 a.m.

APPEARANCES:

DONALD PATTERSON, ESQ., Topeka, Kansas; on behalf of the Petitioner.

GENE E. SCHROER, ESQ., Topeka, Kansas; on behalf of the Respondent.

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P R O C E E D I N G S

CHIEF JUSTICE BURGER: We will hear arguments first this morning in McDonough Power Equipment Company against Greenwood.

Mr. Patterson, you may proceed whenever you are ready.

ORAL ARGUMENT OF DONALD PATTERSON, ESQ.

ON BEHALF OF THE PETITIONER

MR. PATTERSON: Mr. Chief Justice, and may it please the Court:

This is an appeal from a mandate of the Tenth Circuit which ordered a new trial in a product liability personal injury suit in which the verdict and the resultant judgment were for the Defendant.

At the trial level fault was allocated to non-parties under a procedure that is governed by Kansas law and fashioned under the Federal Rules of Civil Procedure where there already was quite a tight merger between Federal Rules of Procedures and the substantive law of Kansas.

A special verdict was returned in order to accommodate that situation. There was a finding in which damages were also found under the procedure.

The ground for a new trial was what the Tenth Circuit described. It was an impairment to the use of a

peremptory challenge.

In order to focus upon the precise issue, I believe it can best be accomplished by describing very briefly what the case is not. It is not a case of juror misconduct. The Tenth Circuit found the juror, in responding to the voir dire questions, was honest and in good faith.

It is not a question of juror qualification or the lack of the statutory qualifications.

There was not a denial of a hearing to determine whether or not actual bias existed. No hearing was granted, no hearing was requested after the court permitted an interview with the juror by both counsel simultaneously over the telephone. Subsequent to that interview, there was no hearing requested.

There was no trial error that was identified. We have the unusual situation, as was described in the brief, of a wrong without a wrong-doer.

It was not a case of denial of a peremptory challenge itself. Each side was given three. It was a two-party case.

The contention and the ruling of the Circuit was that a peremptory challenge was impaired due to the lack of a level of information which counsel had at the time the peremptory challenge had to be exercised.

In order to focus upon that, I think it is necessary to subdivide and identify three more separate issues which are really the substance of my argument.

The first is what I have denominated the right-to-know argument. Is there or should there be a level of information to which counsel are entitled that is over and above that which is provided by good faith, honest answers to proper voir dire questions?

The Tenth Circuit held that there was that level of information. It was described by the Tenth Circuit as that level of information that would be provided by the "average" juror. That is the only description we have. That is the only description of the standard that we must meet.

QUESTION: You are saying then, Mr. Patterson, that the Tenth Circuit went beyond requiring the juror to in good faith answer the question as he understood it?

MR. PATTERSON: Yes, sir, that is precisely the point.

Secondly --

QUESTION: Does that theory in any way allow the counsel not to be diligent in his questions?

MR. PATTERSON: Does not prohibit counsel from asking any question, Your Honor, on a voir dire examination.

QUESTION: Does it also allow him not to ask questions?

MR. PATTERSON: As it was implemented in this case, no, sir. Rule 47, of course, gives the court leeway either way. The court can ask all questions on voir dire. He can permit counsel to ask questions on voir dire or there can be a combination of both. In this case both was done.

QUESTION: Does the duty of counsel recognize the duty to probe properly?

MR. PATTERSON: Our contention is that that is the responsibility of counsel.

QUESTION: And not of the court.

MR. PATTERSON: I am sorry, sir?

QUESTION: I mean that is the duty of the counsel.

MR. PATTERSON: We suggest that it is, sir.

QUESTION: And, now at any time -- Is it your position that counsel in this case could have asked a question which would have brought out this information?

MR. PATTERSON: I think it could have been done. It could have been responded to in the answers to the questions that were asked.

Our position is that the fact that it does not and did not does not show dishonesty on the part of the

juror and neither does it show a lack of good faith and the Tenth Circuit observed that. What the Tenth Circuit did rule was that counsel was entitled to a level of information beyond good faith, honest answers.

QUESTION: Well, it says that it was entitled to the kind of an answer that the average juror would have given.

MR. PATTERSON: Yes, sir.

QUESTION: And an average juror would have understood that he should have revealed the information that the didn't reveal.

MR. PATTERSON: That is the standard that we seek to challenge.

QUESTION: Mr. Patterson, just for a minute, may we return to the conversation, the post-trial conversation between counsel?

MR. PATTERSON: Yes, sir.

QUESTION: The judge did not participate in that, did he?

MR. PATTERSON: Yes, sir. That was granted.

QUESTION: The judge heard the telephone conversation between counsel?

MR. PATTERSON: It happened in this sequence, Your Honor. Early -- After the trial, there was a motion filed for leave to approach juror. We have a blanket rule

in the District, following the trial of the Kirkwood or the Silkwood/Kerr-McGee case which absolutely prohibits counsel from interrogating any juror after a trial without the court's permission. No juror contact was made.

Application was made by Plaintiff's counsel and initially it was denied.

Soon thereafter a second application was made in which there was an accompanying affidavit of the father of the Plaintiff. Plaintiff was a three-year old child. The father was a Navy recruiter. He could recall the name of a person in Olpe, Kansas, which I should explain is a rather small community in Kansas of about 300, who had the same surname as did the foreman of the jury.

It happened that there was an 18-year old boy who had received an injury, a broken leg, in the course of inflating a tire. We don't know much about the mechanics of the injury, how it happened, what it involved, or the seriousness of the injury.

QUESTION: I was interested in the conversation between the two counsel after the trial.

MR. PATTERSON: Thereafter, the court sustained counsel's motion, granted permission to have the telephone interview occur. It did, in fact, occur. It was off the record. No record --

QUESTION: The judge was not a party to that

conversation?

MR. PATTERSON: No, sir, he was not.

QUESTION: But, is there any difference of opinion as to what transpired in that conference?

MR. PATTERSON: Well, I would say we agreed on about 70 percent of it. In counsel's brief before the Tenth Circuit he placed what he recalled and I placed what I recalled and --

QUESTION: Can we accept what the Tenth Circuit said about the substance of the conversation?

MR. PATTERSON: The Tenth Circuit said that they gave full credence to both versions.

QUESTION: Can we accept it?

MR. PATTERSON: I believe so. I am not going to object to what was said by counsel in his brief in the Tenth Circuit.

QUESTION: May I ask right there --

MR. PATTERSON: Yes, sir.

QUESTION: I was puzzled about the extent to which that conversation was reported to the District Judge.

MR. PATTERSON: It was never reported to the District Judge, that is the point.

QUESTION: Not even on the subsequent motion for a new trial?

MR. PATTERSON: No, sir.

QUESTION: So there was information about that conversation that was made known to the Court of Appeals and the Court of Appeals thought dispositive, which had not been made known to the District Court.

MR. PATTERSON: That is the reason for my initial comment that this was a trial without error. That is true. The conversation was never reported to the trial court. He never ruled on it.

QUESTION: In the Court of Appeals, did you object to the fact that you were then arguing about the significance of a conversation that had not been disclosed to the District Court?

MR. PATTERSON: It was both orally and in the briefs. And, it was something that occurred entirely off the record. I am going to get back to that and a point further down in my argument which raises the question of whether or not there should be presumed prejudice. That point is the evidence, I believe, of the absense of prejudice; that fact that it was not reported to the trial court so that the trial court could then schedule a hearing to determine actual bias. It was not done.

QUESTION: Let me ask this because I have missed something here. You say the rule in your District is there can't be any interrogation of jurors. Did the court

consent to it here?

MR. PATTERSON: Well, yes. The rule provides, Your Honor, that there cannot be any contact of jurors post trial without the permission of the court. It was initially denied. Later it was granted but limited to one juror who was identified, Juror Payton. He happened to be the Foreman. The court outlined the method by which it was to be done and said it could be done, but both counsel had to be present and it could be done by means of a conference telephone call, which it was.

QUESTION: Nothing said about recording the call?

MR. PATTERSON: No, sir, nothing was said in the order and unfortunately it was not done. But --

QUESTION: Well, I understand what you said earlier. Nothing turns on what was said in that conversation.

MR. PATTERSON: Well, I think it does turn, Your Honor.

QUESTION: Something does?

MR. PATTERSON: Yes, I think something does turn.

QUESTION: Because there is no dispute between you about what was said in the sense that --

MR. PATTERSON: That is right.

QUESTION: -- we can rely on what the Court of Appeals said was said.

MR. PATTERSON: That is right. I believe there was no difference of opinion about what was said.

QUESTION: Mr. Patterson, didn't the District Court decide that the trial had been fair and wasn't that decision made after this discussion as to whether or not the juror should have disqualified himself?

MR. PATTERSON: In the sequence of events, that is what occurred. The motion for new trial, if I recall correctly, and I could be off a day or two, but the motion for new trial was actually filed, I believe, on the same day that the telephone conversation occurred. Impairment of a peremptory challenge was not one of the grounds for new trial urged.

Ground No. 18 comes close to it and the error identified there was the refusal of the trial court to permit inquiry among jurors to determine whether or not juror misconduct had occurred. That, the Tenth Circuit said, was broad enough to include the ground upon which a new trial was granted by the Tenth Circuit, the denial of a peremptory challenge.

QUESTION: You lost me there. Let's get our time straight. They filed a motion for new trial on approximately the same day of this telephone conversation.

MR. PATTERSON: Yes, sir.

QUESTION: And the motion for new trial made no mention of the telephone conversation.

MR. PATTERSON: That is true. It is printed in the Appendix. And, the order --

QUESTION: Can I ask you, suppose the juror had answered the question in a way that revealed the information that was later brought out about the accident to his son.

MR. PATTERSON: Yes, sir.

QUESTION: Would there have been any basis for challenging the juror for cause?

MR. PATTERSON: I doubt it. That is really --

QUESTION: I suppose counsel would have asked the judge to excuse -- might have asked the judge to excuse him for cause.

MR. PATTERSON: It might have occurred but that is a judgment call of the trial court. I really couldn't presume to answer that question, because, you see, it would be a matter of challenge for cause and under the rules that is determined by the trial judge alone. It might be requested. That is judgment call of the trial court.

QUESTION: Was there any evidence one way or another as to whether -- if the answer had been the full

answer and included the information that was later brought out, was there any evidence one way or another as to whether or not counsel would have exercised the peremptory challenge?

MR. PATTERSON: We believe there was, Your Honor, because two other jurors revealed similar type information.

QUESTION: And he did not challenge?

MR. PATTERSON: They were not challenged. They both sat.

QUESTION: But that is all there is. Certainly there couldn't have been any -- There wasn't any hearing as to whether he would or would not have exercised --

MR. PATTERSON: No, sir, there was none.

QUESTION: But, the Court of Appeals assumed that he should have had the information so as to make up his mind about using his peremptory challenge?

MR. PATTERSON: The Court of Appeals in one sentence held that bias as well as prejudice were conclusively presumed. The sentence was to the effect that if the undisclosed information is of sufficient cogency to cause us to believe counsel was entitled to know of it when peremptory challenge was exercised. That, you see, in one sentence conclusively presumes bias, conclusively presumes prejudice so as to remove the case

from the Harmless Error Rule identified in --

QUESTION: I can understand what they are saying about the prejudice, but how would they conclusively presume bias?

MR. PATTERSON: How they did it and why I cannot answer. They appeared to do so.

QUESTION: Mr. Patterson, if the situation were such that the information the juror failed to disclose was information that clearly, under anyone's view, would have constituted grounds for a challenge for cause of that juror, would you feel that a new trial would have to be granted?

MR. PATTERSON: It depends upon whether or not the information -- I would suppose whether or not the information was called for in the voir dire question that was asked. Clearly --

QUESTION: Well, let's assume it was.

MR. PATTERSON: If it was, then it would be a case of midconduct. That would be a matter of misconduct.

QUESTION: All right. What if it wasn't called for, but clearly the information would have given grounds to challenge for cause. You would say no new trial?

MR. PATTERSON: Well, that again, I think, would fall into the category of information that might have been obtainable had a question been asked but was not otherwise

obtained for the failure to ask the question.

QUESTION: So you would say that would be waived?

MR. PATTERSON: That would be waived. That would be counsel's responsibility, not misconduct on the part of the juror or any mistake of the trial court.

QUESTION: Well, it seems to me that the information might have -- Let's assume the information would have been clearly grounds for challenge for cause, but the juror didn't answer and give that information. I suppose he might honestly have thought that the question didn't call for that information and which everybody agrees in this case was the case. But, nevertheless, an average juror objectively would have given the answers.

MR. PATTERSON: That is the rule that the Tenth Circuit announced. That is the rule that we seek to challenge here, Your Honor.

QUESTION: Well, all right. Let's assume that anybody in his right mind would have given the full answer, but, nevertheless, this particular person honestly didn't give it. He was honest. He wasn't engaged in misconduct, it is just that he didn't reveal this information, although the average juror would have. Would you then say a new trial was --

MR. PATTERSON: No, sir, I would not. I would

say then that the court was adding to the qualifications of jurors beyond that which Congress authorized in 28 U.S.C. 1865(b)(2).

You see, you are announcing a standard. You are announcing a required level of performance of a juror which might be beyond and might require a comprehension and skill in the use of comprehending the English language in the first place, recalling events rapidly in the scene of a courtroom, because these questions very often have no time limits to them, recalling all of the events that passed through the bulk of their life, and, thirdly, an ability to accurately relate that information. That involves some skills in the use of the English language.

Now, the only statutory requirement is that he has to be sufficiently skilled to fill out the jury form.

We suggest this, that questions asked on voir dire are bound to be understood differently as long as you have jurors that come from all walks of society and that, indeed, is the policy. It is mandated by statute and probably by decisions that preceded the statute, 28 U.S.C. 1861 through 65.

You have a cross section of the community. You have all ages, all occupational groups, all social and economic status groups, both sexes, all races.

We suggest that that diverse group will not

comprehend all questions in exactly the same manner.

QUESTION: Would you have challenged if the Court of Appeals had sent the case back for a hearing in the District Court?

MR. PATTERSON: Very --

QUESTION: With respect to prejudice or bias?

MR. PATTERSON: Very likely not. We would have held the hearing and gone from there.

QUESTION: So you wouldn't say the fact that the juror was honest necessarily precluded the hearing with respect to whether a peremptory challenge would have been exercised or not or whether there was actual bias by the juror?

MR. PATTERSON: Well, I would have been concerned about it, Your Honor, but I would have doubted in my own mind whether the case in that posture would have been the proper vehicle to present the question here that we are presenting now.

QUESTION: What would have been the scope of the hearing if there had been such a remand with respect to bias? Would they actually get into what went on in the jury room?

MR. PATTERSON: Hopefully not, because that is absolutely prohibited by Rule 606.

QUESTION: Yes.

MR. PATTERSON: No. It would be a question of whether or not the prior events that he was inquired about had such an impact upon his attitude and his thinking that he had already prejudged this type of case.

QUESTION: Well, you would have to just decide -- Could you have called him to the stand?

MR. PATTERSON: More than likely.

QUESTION: So, you would --

MR. PATTERSON: But, avoid anything that went on in the jury room or the impact of any bit of information might have had on --

QUESTION: So, it would have had to be sort of an inferential conclusion?

MR. PATTERSON: It would have to be. We know of no other way. It was --

QUESTION: You mean the inquiry would be confined to the inquiry that could have been made at the trial, at the selection of the jury?

MR. PATTERSON: Well, the inquiry would be limited to whether or not he had a state of mind that might have come close to prejudging the issues prior to the time he heard any evidence on it. That would be it. That is what I understand by the term "actual bias." Certainly it could not involve anything that went on in the jury room. That is prohibited.

QUESTION: In your research, have you come across any case close to this one?

MR. PATTERSON: We have attempted to -- The problem has come up, Your Honor, and it has come up in mosT of the Circuits. We find that --

QUESTION: I am talking about extending the rule.

MR. PATTERSON: Circuits have held that this is not a ground for a new trial unless there is either juror misconduct or a finding of actual bias and a finding of actual prejudice.

QUESTION: That is what I said. Is there one like this?

MR. PATTERSON: We have found none, Your Honor, that does this, nor have we found any that sets up a standard which required a standard of the "average" juror which requires a minimum standard --

QUESTION: We would just be putting out a rule based on a case that is unique in its own facts.

MR. PATTERSON: Well, I wouldn't say that the facts are unique. It is really quite typical. I think the rule of the Tenth Circuit is what is unique.

QUESTION: That is what I am talking about.

MR. PATTERSON: Yes, sir.

QUESTION: But, you seem to agree or wouldn't

have objected to a remand rather than an order for a new trial. And, suppose that at that hearing, which you seem to think could be based on the fact that this juror, although he was honest, didn't give this information on voir dire, suppose at the hearing the District Judge determined, based on all the evidence, that counsel would have exercised a peremptory challenge to exclude this juror?

MR. PATTERSON: That is a finding of prejudice and we would be bound by it.

QUESTION: Then it would be a new trial?

MR. PATTERSON: Certainly.

QUESTION: Because of an interference with peremptory challenge?

MR. PATTERSON: No.

QUESTION: What?

MR. PATTERSON: Well, I think -- Let me identify the steps of our analysis first. I do not think that we get into this problem of a hearing on actual bias or actual prejudice until you first make this initial concession that there is a level of performance that the court can require.

QUESTION: I know. That is why I--

MR. PATTERSON: We object to that.

QUESTION: I know. Well, you should object--

You should say you would be here making the same kind of an argument if there had been a remand for a hearing rather than an order for a new trial.

MR. PATTERSON: I probably would have gone that route rather than raising the question with a case in that posture as being the vehicle to raise this question. But, we are not in that posture. We do raise the question of whether or not there should be that kind of a requirement.

QUESTION: The Appellee used up all of his challenges, peremptories?

MR. PATTERSON: All parties used all three challenges.

QUESTION: Well, what good would that do here? I understood you to say he would have exercised his peremptory. What peremptory?

MR. PATTERSON: No.

QUESTION: He didn't have any.

MR. PATTERSON: All three challenges were used. The contention, Your Honor, is that he used -- He was required to use his peremptory challenges at a time when he lacked information to which he was entitled.

QUESTION: That is really going.

MR. PATTERSON: Our question is or our contention is that he is entitled to that information that is provided by honest, good faith answers of voir

direment, but nothing more and nothing more should be required. That is about all you can ask.

QUESTION: To what extent is there a questionnaire available to counsel throughout the numbers of the array of prospective jurors?

MR. PATTERSON: Well, the court -- If I recall the events properly, the court asked some very general questions initially.

QUESTION: No. I am speaking of a written questionnaire. Is that in vogue in your parts?

MR. PATTERSON: Yes, it is. And, there was no question raised by either side about the ability or lack of ability --

QUESTION: Was there a question in there about accidents of people in your own family?

MR. PATTERSON: I believe not. I believe not, because not every case is a damage case. They come there to hear criminal cases, damage suits, anything that they have before them.

QUESTION: There are questionnaires which reach all of those points though.

MR. PATTERSON: I haven't looked at it for three and a half years and honestly don't recall.

QUESTION: Mr. Patterson, is it your -- Do I understand your position to be that if a juror

intentionally refuses to disclose information that is directly asked on voir dire that there should be a new trial granted?

MR. PATTERSON: That really involves a question of misconduct.

QUESTION: Yes. Let us assume an intentional refusal to disclose information that is asked. Now, does that automatically result in a new trial?

MR. PATTERSON: Not automatically, no, ma'am. I think you have the --

QUESTION: What would determine it then?

MR. PATTERSON: The additional question of whether or not there is actual bias and actual prejudice. You see, otherwise --

QUESTION: Okay. So, juror misconduct then is not really a factor here.

MR. PATTERSON: Not per se.

QUESTION: The thing that you would have us focus on is the probable bias.

MR. PATTERSON: Probable biase and also prejudice in order to get away and satisfy the Harmless Error Rule which is announced in 28 U.S.C. 2111 and also in Rule 61, Federal Rules of Civil Procedure.

Misconduct in the abstract by itself really doesn't do it unless in order to satisfy the Harmless

Error Rule.

I would say in all candor that the Fourth Circuit did in one case, in a case in which they found misconduct on the part of the juror, from that presumed prejudice. Bias was not considered. So, I don't know.

I have used more than my time and I am sorry.

CHIEF JUSTICE BURGER: Mr. Schroer?

ORAL ARGUMENT OF GENE E. SCHROER, ESQ.

ON BEHALF OF THE RESPONDENT

MR. SCHROER: May it please the Court:

Our theory is based upon the fact that there is a distinct difference between the kind of misconduct that is involved when either an outside person or a person in the jury, after the jury has been selected and heard the case, as distinguished from the kinds of right to information to which the Plaintiff is entitled or the Defendant is entitled during questions to voir direment.

In Kansas, we selected 12 jurors to sit in a panel, an array, and after all the questions were over, first by the court and then by counsel, we each exercised three peremptory challenges. It wasn't done voir direment by voir direment.

QUESTION: What is the ultimate number of the jury you end --

MR. SCHROER: Six.

QUESTION: Six.

MR. SCHROER: At that time.

So, we each, by putting 12 in the box, there were six remaining after three peremptories were exercised. We don't weigh peremptories in Kansas. And, the court asks preliminary questions, general, vague, broad questions about job, employment, where you work, where your wife works, and then allows counsel to conduct independent voir dire.

The whole point of this case -- We believe the Tenth Circuit is right and the cases that preceded our case. The fact that it is a meaningless right to have three peremptories if lawyers don't get truthful information from jurors. Other circuits --

QUESTION: When you say "truthful," Mr. Schroer, do you mean non-false information from the point of view of the person answering or kind of objectively truthful?

MR. SCHROER: Perhaps I should have said full and complete rather than suggesting truthful versus untruthful.

This is a case where, as the Tenth Circuit said, any reasonable juror would have responded. There were some five or six other questions asked by counsel for -- Well, first by the judge in the general text, can you be fair, would you be a fair juror if you were representing

the Plaintiff in this case, do you think you would be fair -- you would be the kind of juror the Defendant would want in this case.

QUESTION: Do you think that general question has any bearing on the point you are making now?

MR. SCHROER: I think it has a bearing only in the way of background, Your Honor.

QUESTION: If the man gave an affirmative response that he could be fair or was silent, would not everyone in the courtroom have a right to assume that he was stating he could be fair?

MR. SCHROER: That is the only reason I raise that point. I agree, Your Honor. The only reason I raise that point is because counsel seems to imply that we have to show a mental positive bias or prejudice on the part of that juror and we suggest that the right to know, such as in the Swain case and other cases by this Court, in the peremptory setting is totally different from misconduct involved after a jury commences to deliberate or there is outside influence or threatened. The right to know full and complete answers is important subjectively to the trial lawyer in trying to decide how to unselected three whom he might think would be the three worst jurors for him.

QUESTION: Well, how far does that go? For

instance, suppose you had a juror who simply didn't want to tell his or her true age and lied about it on voir dire. Are we going to give you a new trial because you didn't know how old that juror was?

MR. SCHROER: In that case, the Tenth Circuit said that is de minimus. It has to be of sufficient cogency and substantially affect.

See, the important thing about this case to us --

QUESTION: Counsel, before you proceed, there were other Defendants, weren't there, in addition to the --

MR. SCHROER: No.

QUESTION: None whatever?

MR. SCHROER: No other Defendants.

QUESTION: The $350,000 in damages was assessed against whom?

MR. SCHROER: Well, the mother of the little boy who lost both of his feet.

QUESTION: Was she a Defendant?

MR. SCHROER: No. But, in Kansas, we have a unique procedure whereby the Defendant can name phantom parties and blame other persons not parties to the case.

QUESTION: Wasn't it the neighbor --

MR. SCHROER: I beg your pardon?

QUESTION: Wasn't the neighbor a phantom Defendant?

MR. SCHROER: The neighbor's father and the boy driving the mower as well as the little boy's mother were all found to be at fault by the jury in some percentage.

QUESTION: The jury brought in what, $350,000 damages and --

MR. SCHROER: Three seventy-five, I believe, but that was after the jury first went out and found zero and the court sent them back and said you must find damages and they came back --

QUESTION: My question is how could there have been bias if the jury found no negligence on the part of the manufacturer of the bicycle and then found negligence on the part of other people and assessed damages?

MR. SCHROER: Because in Kansas there is no joint and several liability.

QUESTION: None whatever?

MR. SCHROER: None whatever. So, therefore --

QUESTION: Suppose it had been two manufacturers?

MR. SCHROER: I beg your pardon, sir?

QUESTION: Suppose there had been two manufacturers? Somebody had manufactured parts and somebody else had manufactured other parts.

MR. SCHROER: In Kansas, the Defendant only pays his percentage share that is found against him or it and nothing else. If a Defendant is found to be 10 percent, he pays 10 percent of the total damages award, that is if he is a party. If he is found to have 20 percent and he is a non-party, he still pays zero.

So, doing away with joint and several under Kansas substantive law has had a great effect upon these cases.

But, the significance is that this juror, had he answered, yes, I have had a son who was injured in an exploding rim case --

QUESTION: Your question was serious injury not just injury. Wasn't that your question on voir dire?

MR. SCHROER: Serious injury causing disability or prolonged pain or suffering.

Now, this becomes more important in response to Chief Justice Burger's question because other questions were asked by the court, by myself, and by counsel where people were talked about their sons getting their finger in a bike, very insignificant kinds of questions, because in my experience in 27 years, you will find jurors fully and openly resolve all doubts about answering questions in favor of responding. This is the first time in my experience as a lawyer that anybody has ever withheld

something in the general area where other jurors are responding. A lady caught her finger in a ringer washer 15 years before or 20 years before the man married her and another minor injury to a child 13, all happening many years before.

QUESTION: Of course, you really don't know, do you, unless you investigate all the jurors after their answers? You know that some respond. You are not sure the ones not responding may not have had similar experiences.

MR. SCHROER: See, this case is kind of a freak because we first -- We first filed our first motion to ask to waive the rule under just cause and say we have got just cause to talk to these jurors under the weighting of the Kansas rule. Because one jury who was an alternate did the -- had the audacity, after the case was over, to run to the Judge, talk to the defense lawyer, and come to the Plaintiff leaving the courtroom, saying how much does Schroer get paid for contingent fees in this case? How did he solicit this case, what kind of Plaintiff's lawyer is he, what is the effect upon insurance?

So, our first motion was directed at the kind of misconduct that counsel is talking about where the first juror influenced maybe. And, we said, that is just cause, judge, let us talk to the jury.

The second one came about accidentally and coincidentally because the Plaintiff was a recruiter and across his desk comes the application for the Navy from the son of the jury foreman saying that he had been injured and suffered broken bones by an exploding rim while working in a truck stop.

It is a comparable products liability case.

Now, the point as far as Plantiff's voir dire is concerned is that information would have been important to me to ask follow-up questions had he responded truthfully or fully. And, I think the Tenth Circuit said it doesn't make any difference whether it was truthful, it wasn't full. He didn't fully respond to the kind of questions an average juror would have.

QUESTION: Mr. Schroer, how long did this trial last, do you remember?

MR. SCHROER: I believe it was eight trial days. A weekend was involved.

QUESTION: Supposing it was, instead of eight trial days, it would have been eight trial months, eight trial months the trial had gone on, would you still say that an error like this described by the Court of Appeals would require a new trial and the reassembling of all the judicial machinery to take another eight months?

MR. SCHROER: I would, Your Honor, because I

think that as Justice White said in the Swain case, this is a very important right, the peremptory right, to be exercised with knowledge and with truth and arbitrarily by the -- that may not be the exact words in your opinion -- but the right of the lawyers and this Court has even held where courts have restricted that right of information or not allowed questions to be asked on peremptory or not asked questions which lawyers requested; that that affected the right of peremptory -- the use of the peremptory statute.

QUESTION: Surely no right is absolute. I mean, there must be an interest in the finality of jury verdicts to a certain extent.

MR. SCHROER: That is right and I agree, Your Honor, and that is why the Tenth Circuit said if it is de minimus, like the lady with the $100 case or the case where the lawyer didn't ask the question, it was so vague that the jury didn't understand the question, it can't be reversed on those grounds.

But, it is where it is substantial or where a reasonable jury would give this kind of information that a lawyer is entitled to know so that he might ask follow-up questions.

See, any juror, any juror who kind of says accidents are apart of life and my kids all have accidents

and has that kind of cavalier attitude isn't a good juror for a plaintiff in a products liability case. And, I would have considered that information.

QUESTION: Isn't an order for a new trial though a rather severe remedy for whatever happened here? It is just an assumption by the Court of Appeals that your peremptory challenge right was substantially interferred with. Shouldn't there have been a hearing on it before a District Court?

MR. SCHROER: We asked for two hearings. We were refused. We had filed a motion for a new trial. The court refused. We asked for argument, asked to subpoena jurors again in our motion for new trial.

QUESTION: I understand that the contents of this telephone conversation with the juror never came to the attention of the trial judge.

MR. SCHROER: Well, if Your Honor -- In the Appendix, the motion for new trial was filed -- Was mailed before. The judge got it the 5th.

QUESTION: Right.

MR. SCHROER: The same day as his order came out allowing us to make a brief and polite phone call.

QUESTION: Yes.

MR. SCHROER: Can Your Honor understand, as an officer of that court with the attitude of a strict trial

judge saying brief and polite, we had about a two-minute conversation which he said those things that are agreed to in the record which affects -- Which doesn't show basic -- I shouldn't say basic misconduct or prejudice, but it shows information that I would have liked to have considered in making my three selections.

QUESTION: Yes, but I am talking about the Court of Appeals. Do you think the Court of Appeals should have told the trial judge to hold a hearing rather than order a new trial?

MR. SCHROER: The dissent did.

QUESTION: Well, the dissent but how about the majority? The majority ordered a new trial and I suppose you are here -- Are you here defending that or not?

MR. SCHROER: I am here defending that, sir.

QUESTION: When did you tell the District Judge about this telephone conversation in relation to the motion for a new trial?

MR. SCHROER: The motion for new trial, on page 60, only informs the court, and the affidavits, the two affidavits --

QUESTION: That contained the information that you had found --

QUESTION: That was not my question.

MR. SCHROER: The specific information was not

communicated to the trial court because we believe that we were prevented from making a record by the trial court and we believe that the trial court should have let us, on motion for new trial, bring the juror in and we believe --

QUESTION: Did you ask the trial judge for that?

MR. SCHROER: Yes, yes. On page 94 of the Appendix we request oral argument and request the court subpoena the jurors. We felt at that point --

QUESTION: That does not say about the telephone conversation.

MR. SCHROER: You are correct, Your Honor. The specifics --

QUESTION: Well, why didn't you tell him about the telephone conversation? Why, w-h-y?

MR. SCHROER: All right, sir. The reason we didn't in all honesty, sir, is because we felt that that was what we were going to bring up on motion for new trial.

QUESTION: Weren't you just a guilty of withholding information from the judge as you allege the juror was withholding information from you?

MR. SCHROER: I hope not, sir. I hope not.

QUESTION: Counsel --

MR. SCHROER: The Kansas rule is kind of unique

because when we had filed our first motion for just cause, as the rule provides, the court responded there was no concrete evidence. We didn't attempt to reach a threshold and should have been required under Kansas rule to reach a threshold with no concrete evidence. We merely had to show just cause why the court should have allowed the jurors to be brought in under oath with a record and examined, not with regard to prejudice, but with regard to whether or not they withheld information necessary for the right of the exercise of the peremptory challenges.

And, I think the Circuit cases I have looked at, there is only one that I think disagrees with our premise.

QUESTION: Counsel, before you proceed, let's assume that when you had this conversation with the juror who had remained silent he said, yes, I did have a son who had an accident that hurt his leg rather badly and we did bring suit and we won a $500,000 judgment, but I thought this was just information that might prejudice one side or the other so I kept quiet. What would your position be?

MR. SCHROER: That is an excellent question. May I also assume, Your Honor, the jury went the other way and decided for the Plaintiff?

QUESTION: Well --

MR. SCHROER: See, that is the significance.

QUESTION: Yes, but I am assuming you lost the

case. What is your answer?

MR. SCHROER: My answer is, an officer of the court with Defendant there, I would have to agree with his oral integrity -- I mean, on the basis of integrity, have to agree --

QUESTION: You would still be here today?

MR. SCHROER: Would I still be here today?

QUESTION: Well, I am assuming you lost all the way around.

MR. SCHROER: The Tenth Circuit, under the previous cases, would have said, go back for a new trial and --

QUESTION: It would have? If the Tenth Circuit says you have a right to know, would the Tenth Circuit have reversed the case?

MR. SCHROER: Well, if I understand your assumption correctly, the Tenth Circuit in these three cases, two preceding this one, have all reversed cases, one for the Plaintiff, where the Defendant has appealled because somebody didn't mention about an injury case or a trial that they were involved in.

QUESTION: How could you have been prejudiced if the juror had withheld the information that his son had recovered $500,000?

MR. SCHROER: Well, I couldn't have been, that

is right. And, there are cases --

QUESTION: That kind of prejudice is immaterial, is it?

MR. SCHROER: I could have been prejudiced. There is a case in the Circuit where a Defendant -- There was a juror that had not answered questions about him being a Defendant in a case and the Plaintiff won and the Defendant then claimed error because the Defendant didn't tell about his being a Defendant in a case and the Circuit said, no, it didn't work against you so there is no error there, you see.

I don't know how I can impress an argument --

QUESTION: But, on the facts of this case, supposing you had gotten the judgment and precisely the same information was developed that has been developed here; namely, the Foreman didn't disclose the injury to his son. Would the Defendant be entitled to a new trial on these facts?

MR. SCHROER: I think so because --

QUESTION: Either side could have set aside a verdict in this case --

MR. SCHROER: Based upon our theory both lawyers have a right to know this information about a person's attitude toward bringing cases and filing suit.

QUESTION: Let me ask one other mechanical

question if I may. There were 12 people who were interrogated on the voir dire, 12 potential jurors?

MR. SCHROER: Yes, sir.

QUESTION: And, six were excused on the peremptory, each using three peremptories. No one used any challenges for cause, is that correct?

MR. SCHROER: No, sir.

QUESTION: So those 12 were the only 12 that were ever asked this question.

MR. SCHROER: Yes. This could have developed information that would have been a challenge for cause that allowed us another peremptory, but I don't know that at this point.

The significance to us, and I think the Tenth Circuit and the other Circuits are all in agreement except for one case in the Fifth, the Vezina case, I think all agree there is a distinction between misconduct of the jury and the kind of prejudice necessary after the jury becomes a jury and the kind of information that the Plaintiff or the Defendant is entitled to as a matter of right to exercise arbitrary or capricious or hunch or belief --

QUESTION: Let me ask one other question about the facts here. Where can we find out how serious this boy's injury was? I know it was a broken leg and it was

the result of a tire exploding. What more do we know about it?

MR. SCHROER: Now we get into memory again.

QUESTION: Does the record tell us.

MR. SCHROER: Counsel's memory and notes are a little different from mine.

QUESTION: What is now in writing that we could look at other than asking your personal recollection of the --

MR. SCHROER: There are our recollections that are in the record on appeal to the Tenth Circuit where counsel agrees with them.

QUESTION: By saying in the record, do you mean in the briefs?

MR. SCHROER: In the Appendix, yes, and in the briefs it is referred to. And, counsel's recollection has a couple of phrases in addition to our recollection. The important thing is we were ordered to be brief and the call was so short that I didn't feel, as an officer of the court, I could push it any further. And, I felt that the fact that he admitted that he didn't give information he knew about and was aware of, because accidents are apart of life and that kind of cavalier attitude, I thought should have been enough for the trial court to have granted a motion for a new trial or at least held a

hearing, letting us subpoena the jurors and letting us establish not bias and not prejudice --

QUESTION: Let me ask one other question. You say that should have been enough for the trial judge. Did you have an oral argument on the motion for new trial?

MR. SCHROER: He refused to allow oral argument. We asked for it and it was not allowed.

QUESTION: And you never submitted in writing to him what you thought should have been enough?

MR. SCHROER: Well, we submitted -- I didn't submit specifics of the word conversation.

QUESTION: Well, you never told him anything about the telephone conversation. You didn't have an oral argument so you didn't tell him orally and you didn't file anything in writing other than what has already been called to our attention.

MR. SCHROER: That is correct. We felt precluded from making a decent record and we didn't feel that the court wouldn't find just cause to let us examine the juror, he sure wouldn't believe oral conversations or attorneys --

QUESTION: The Court of Appeals didn't think you had been remiss at all.

MR. SCHROER: No, sir. No, sir.

QUESTION: And they gave you relief.

MR. SCHROER: That is right, sir.

QUESTION: They didn't think you had passed up any opportunity you had in the trial court.

MR. SCHROER: No, sir. That is correct, sir. And, I think that is very significant because they say that the important thing is would a reasonable juror have responded and if a reasonable juror would have responded, then the Plaintiff was entitled, under the statute, to have that kind of response from this juror and the failure of his giving that response affected my right to peremptory challenge and that right to peremptory challenge would indicate or that would also indicate implied bias.

QUESTION: Well, Mr. Schroer, you are not indicating or contending, I guess, that the information disclosed here would have entitled that the juror be excused for cause, are you?

MR. SCHROER: We didn't know. We didn't get to ask him enough --

QUESTION: Well, whether you know it or not, we know now. You are not contending that that is sufficient to have the juror excused for cause, are you?

MR. SCHROER: By itself, no.

QUESTION: Okay.

MR. SCHROER: But, the follow-up questions may

have developed an attitude by him that the court would have excused for cause. That is my point. We didn't get to follow up and say, why do you feel that accidents are apart of life and why do you feel everybody has accidents and why do you think that it is not important?

QUESTION: I guess you could have asked questions like that of all the jurors as you went along and you probably typically do, don't you?

MR. SCHROER: We ask --

QUESTION: About your attitudes.

MR. SCHROER: What we do is we ask the general question and then if you get responses as counsel -- as I did and as counsel did, then on follow-up questions -- And, in fact, counsel asked two or three follow-up questions on accidents and injuries after I finished and that is when some jurors responded to some de minimus type of events that happened many years ago.

And, what I am suggesting is had this juror had responded, both myself and skilled counsel for the Defendant would have inquired about his attitudes. You just can't ask somebody directly are you prejudiced.

QUESTION: Yes, but some of that is present in every jury selection in America. There are things that some jurors disclose and some that others do not, and if one does, you are likely to follow up, and if one doesn't,

you don't. And, you have to be very careful in fashioning the rule for a new trial that you don't go too far in presuming things. You might be wearing the other shoe at the next trial and be resisting this very thing.

MR. SCHROER: I agree. And, there is a good amicus brief in this case filed by Southern Union Company where the shoe is on the other foot.

But, the Tenth Circuit said it can be de minimus and can be unimportant. Like, for example, if someone said I have got six kids and he had seven kids or many other -- There is a Tenth Circuit case where someone forgot about a hundred dollar settlement. They said that is de minimus.

The question is whether it is substantial.

QUESTION: Well, maybe what is important is whether it indicates a probable bias.

MR. SCHROER: That is right.

QUESTION: Is that the test, whether the responses would indicate a probable bias?

MR. SCHROER: Whether a probable bias can be implied sufficient so that counsel, with the right to full information of the statute, could use a peremptory or not use a peremptory, but needs that information to exercise his right of peremptory. The basic issue --

QUESTION: Okay. But, you would agree that the

information that isn't disclosed should at least be something that would indicate probable bias?

MR. SCHROER: Subjectively, because of the rule Mr. Patterson points out. You can't go in to the jury and say, now, after -- even if you have them under oath and say are you bias? Nobody admits to bias and there is language in all your cases which say it has to be a state of mind that can't be definitively proven.

QUESTION: Mr. Schroer, how many peremptories do you have in Kansas?

MR. SCHROER: Three.

QUESTION: On page 64 of the Joint Appendix, there seems to be eight strikes. Who are the other two?

MR. SCHROER: Okay, let me mention. After the six are empaneled, the jury says, now, we are going to select two alternates and you each will be given another peremptory challenge. So, after the sixth juror was selected, two alternates were selected and we were each given another peremptory challenge just on the alternates.

QUESTION: But, it doesn't show who exercised --

MR. SCHROER: We each exercised one.

QUESTION: Yes, but it doesn't show who struck Max Frauenfelder or Albert Elser. It probably is of no significance.

MR. SCHROER: I don't remember. But, one of

those alternates was --

QUESTION: Do you just have the sheet and pass it back and forth?

MR. SCHROER: That is exactly right, sir. And, there is no such thing as only exercising two peremptories, because when you have got 12 in the box, you each have to take your three and that is the way we do it in the District of Kansas and it works. And, I want to say that the jury system works and the three --

QUESTION: I thought you said this case was a freak.

MR. SCHROER: I beg your pardon, sir.

QUESTION: I thought you said this case was a freak.

MR. SCHROER: I don't think I --

QUESTION: Now Kansas is normal.

MR. SCHROER: I don't think I said this case was a freak. If I did, I am sorry, I didn't mean to say it was a freak. I said it was unusual because the accidental way --

QUESTION: Now you are saying it is usual.

MR. SCHROER: Pardon?

QUESTION: Now you are saying it is a very good thing in Kansas, it works beautifully.

MR. SCHROER: I do think the jury system works

beautifully, but there is no such thing that works beautifully every time.

I am suggesting that the rule which keeps us from talking to jurors is one thing and it maybe a good rule, but --

QUESTION: Was the record in this case opened in the Court of Appeals?

MR. SCHROER: I beg your pardon, sir?

QUESTION: Was the record opened and this material put in it? What I want to know is how it got in the record.

MR. SCHROER: How what got in the record, sir, the --

QUESTION: The telephone conversation, etc.

MR. SCHROER: It was in the abstract agreed to by counsel and in both briefs to the Court of Appeals.

QUESTION: I said where was it in the record?

MR. SCHROER: It was not in the record.

QUESTION: How in the world can we pass on it?

MR. SCHROER: Because it has been stipulated to be correct.

QUESTION: You can't stipulate a record, can you?

MR. SCHROER: No. I guess I would only say, Your Honor, is that we feel we were prohibited from making

a proper record by the trial court.

QUESTION: And, where -- Do you want us to make the record?

MR. SCHROER: Your Honor, I don't know that I understand what you are asking me. I --

QUESTION: Well, there is no record here.

MR. SCHROER: There is a problem with the record and we believe that we were prohibited from making that record by the trial court's refusal to let us bring the jurors in and examine them on the record and under oath. We had no other alternative.

QUESTION: How do we do it other than to send it back to the District Court?

MR. SCHROER: I wanted to mention that in argument. There were several other issues in the Tenth Circuit that were not decided and they were not mentioned. And, I would cite Jackson, the Second Circuit case of 1968, where the Circuit Court stated that the view we have taken of Juror Kemper's disqualification precludes the need to deal with other points raised by the Appellant. There are serious other points in this case.

The Court has three alternatives, I suppose. One is to, I think, if you agree with counsel for the Petitioner, to send it back to the Tenth Circuit and say decide these other issues you didn't mention, because you

can't just leave them hanging.

A second choice would be to send it back to the trial court and have a hearing on whether or not this untruthful or not full or not complete response to the question affected in the trial court's mind a right to the statutory peremptory challenges and the right to have full information to base that on.

We think that those are the only two alternatives except to affirm the Circuit Court, which we respectfully suggest should be done, because the Circuit Court said in this case the kind of misinformation or non-information rises to a level that it can be judged by an Appellate Court to be so important that it affected the right to peremptory challenge by the very nature of it.

QUESTION: Mr. Schroer, how did -- Did you say how the $375,000 award was assessed? Against whom?

MR. SCHROER: It was assessed against the parties or the non-parties --

QUESTION: By name.

MR. SCHROER: -- who were not liable. The mother of the little boy, Mrs. Greenwood. The jury put 35 percent on her because the little boy was outside playing in a neighbor's -- in a dead end street. And, the boy driving the mower got 25 or something and the father of the boy who owned the mower got 45 percent. So, the

Defendant, who we contend was the defective manufacturer, zero.

QUESTION: And, what did the Court of Appeals do about that allocation?

MR. SCHROER: The new trial -- There is a new trial on all of the issues. They won't reallocate that. They have remitted it for a new trial.

QUESTION: And, agan, if there is an award, it may be allocated the same way if the jury wants to, is that it?

MR. SCHROER: It is possible that it could be.

QUESTION: I mean 35, 15, 45.

MR. SCHROER: What is interesting -- I have never seen this before, and I want to say just quickly, the Tenth Circuit said, "We emphasize that Plaintiff's cause of action is not a groundless one. The District Court found Plaintiff's evidence sufficiently substantial to justify submission on the theory of liability to the jury. We are therefore satisfied that our remand for new trial is not an exercise in futility." That is a footnote after the state reversed the remand order.

QUESTION: Which means that McDonough may be, in the new trial, assessed that.

MR. SCHROER: I think that very likely that would be the result of a new trial, Your Honor.

MR. SCHROER: Who is your client or is that --

MR. SCHROER: Billy Greenwood, a little boy who lost two feet --

QUESTION: All right.

MR. SCHROER: -- because of a defective power mower.

CHIEF JUSTICE BURGER: Do you have anything further, Mr. Patterson?

MR. PATTERSON: Very briefly, Your Honor.

ORAL ARGUMENT OF DONALD PATTERSON, ESQ.

ON BEHALF OF THE PETITIONER -- REBUTTAL

MR. PATTERSON: I have a fear that we are losing perspective on how these various issues fit together.

The purpose of a hearing, I believe, is to determine whether or not there is anything other than harmless error once you reach the conclusion that a right was denied. But, the underlying problem is whether or not there was a right denied. Was there a right to know and possess information above that which was provided by good faith, honest answers of the jurors. That, to me, is the fundamental and pivotal question.

QUESTION: But, counsel, can we be entirely sure -- Everybody assumed for the purpose of the decision it was a good faith, honest answer. But, is it not possible that a hearing would disclose that the juror, in

fact, was less than candid? I have to confess that I would have thought most people would have answered this question differently.

MR. PATTERSON: Well, I suppose that would have to be a question that would be answered by the trial court, but the standard would be misconduct. Now, that is something else.

QUESTION: You think it is the same standard of misconduct before the jury is selected as it would be after the jury is selected? He makes quite a point of the fact that you are talking about the process of selecting jurors, not what you do to jurors after they are selected.

MR. PATTERSON: Well, I don't know as it would be prior to the time the case is tried, of course. The standard is whether or not there is cause, challenge for cause. That, of course, is a judgment call of the trial court.

QUESTION: It interests me that Judge Barrett's position was that the case should have gone back and you should have had a hearing to find out a little bit more about the facts. We are all kind of troubled by our inability to know exactly what they were.

MR. PATTERSON: Judge Barrett's decision was to this effect as I comprehend it. There was a denial of a right, but was it anything other -- Was it prejudicial or

was it bias? Send it back for a hearing to determine that.

Our position here is all three. Was there a denial of a right and, if so, is it necessary to resolve the question of the consequence of that denial by a hearing by the trial judge.

QUESTION: Would you take the same position if the juror's son had a permanent injury as a result of the tire explosion?

MR. PATTERSON: That would certainly make a harder case. Our recollection -- We have very little information about it as counsel stated. I will confess that --

QUESTION: What if he was out for six months? He had to miss six months of school.

MR. PATTERSON: That would certainly come closer to a case of juror misconduct.

QUESTION: The problem is we don't know exactly what the facts are.

MR. PATTERSON: That is right. That would come far closer to a case of juror misconduct, but, you see, what makes this such a dangerous rule is that the Tenth Circuit acknowledged he was honest and in good faith, but they are still entitled to this information level but they give us no way by which this information could be

obtained.

QUESTION: I am just wondering -- I am sorry to take so much of your rebuttal time, but what is your position with respect to the soundness of Judge Barrett's position? Do you think Judge Barrett was right or wrong?

MR. PATTERSON: Part of each. On the question of whether or not a denial of a right had a consequence other than harmless error requiring a hearing, yes, he is right. It should not be concluded that it was anything other than harmless error. That is it should not be concluded that there was bias or that there was prejudice in the absence of a hearing.

But, on the initial step that there was a denial of a level of information to which he was entitled, no, we disagree. We see that the Tenth Circuit says that that right exists, but how is it obtained? They are silent on that.

If we were to try the case again, what would we do differently? What would the trial judge do differently? We are at a loss. I submit that we would have to do it exactly the same way.

Thank you.

CHIEF JUSTICE BURGER: Thank you, gentlemen, the case is submitted.

We will hear arguments next in United Building

and Construction Trades Council against the Mayor and Council of Camden.

(Whereupon, at 11:02 p.m., the case in the above-entitled matter was submitted.)

CERTIFICATION

Alderson Reporting Company, Inc., hereby certifies that the attached pages represent an accurate transcription of electronic sound recording of the oral argument before the Supreme Court of the United States in the Matter of:

#82-958 - MC DONOUGH POWER EQUIPMENT, INC., Petitioner v. BILLY G. GREENWOOD, ET AL.

and that these attached pages constitute the original transcript of the proceedings for the records of the court.

BY Pixie Hammond

(REPORTER)