

Silkwood v. Kerr-McGee

United States District Court for the Western District of Oklahoma
1979

Bill M. SILKWOOD, Administrator of the Estate of Karen G. Silkwood, deceased, Plaintiff, v. Kerr-McGee CORPORATION et al., Defendants. Civ. A. No. 76-0888-Theis. In the United States District Court for the Western District of Oklahoma. Hon. Judge Frank G. Theis, U.S. District Judge, District of Kansas, sitting by designation. G. L. Spence of Spence, Moriarity & Schuster, Jackson Hole, Wyo., for plaintiff. William G. Paul of Crowe, Dunlevy, Thweatt, Swinford, Johnson & Burdick, Oklahoma City, Okla., for defendants.

FACTS.†

In August 1972, Karen Silkwood took a job as a technician at the Cimarron Fuel Fabrication Site in Crescent, Oklahoma, operated by Kerr-McGee Corporation. The plant produced mixed-oxide plutonium-uranium fuel for use in power-generating nuclear reactors. As a plant-worker, Silkwood became involved in the Oil, Chemical & Atomic Workers Union local and participated in a strike. Later, in the fall of 1974, Silkwood investigated health and safety issues on behalf of her union and reported serious violations to the Atomic Energy Commission.

On November 5, 1974, Silkwood was working in a glovebox in the metallography laboratory where she was grinding and polishing plutonium pellets that would be used in fuel rods. At 6:30 P.M., she decided to monitor herself for alpha activity with the detector that was mounted on the glove box. The right side of her body read 20,000 disintegrations per minute, or about 9 nanocuries, mostly on the right sleeve and shoulder of her coveralls. She was taken to the plant's Health Physics Office where she was given a test called a "nasal swipe," which measures a person's exposure to airborne plutonium, but might also measure plutonium that got on the person's nose from their hands. The swipe showed a radioactivity level of 160 disintegrations per minute ("dpm"), a modest positive result.

The two gloves in the glovebox Silkwood had been using were replaced. Strangely, the gloves were found to have plutonium on the "outside" surfaces that were in contact with Silkwood's hands; no leaks were found in the gloves. No plutonium was found on the surfaces in the room where she had been working and filter papers from the two air monitors in the room showed that there was no significant plutonium in the air. By 9:00 P.M., Silkwood's cleanup had been completed, and as a precautionary measure, Silkwood was put on a program in which her total urine and feces were collected for five days for plutonium measurements. She returned to the laboratory and worked until 1:10 A.M., but did no further work in the glove boxes. As she left the plant, she monitored herself and found nothing. Silkwood arrived at work at 7:30 A.M. on November 6. She examined metallographic prints and performed paperwork for one hour, then monitored herself as she left the laboratory to attend a meeting. Although she had not worked at the glovebox that morning, the detector registered alpha activity on her hands. Health physics staff members found further activity on her right forearm and the right side of her neck and face, and proceeded to decontaminate her. At her request, a

† All but the first and last paragraphs of the facts are taken, nearly verbatim, from *A True Measure of Exposure: The Karen Silkwood Story*, 23 LOS ALAMOS SCIENCE 252 (1995).

technician checked her locker and automobile with an alpha detector, but no activity was found.

On November 7, Silkwood reported to the Health Physics Office at about 7:50 in the morning with her bioassay kit containing four urine samples and one fecal sample. A nasal swipe was taken and significant levels of alpha activity were detected (about 45,000 disintegrations per minute (dpm) in each nostril and 40,000 dpm on and around her nose). This was especially surprising because her left nostril had been almost completely blocked since a childhood accident. Other parts of her body also showed significant alpha activity (1,000 to 4,000 dpm on her hands, arm, chest, neck, and right ear). A preliminary examination of her bioassay samples showed extremely high levels of activity (30,000 to 40,000 counts per minute in the fecal sample). Her locker and automobile were checked again, and essentially no alpha activity was found.

Following her cleanup, the Kerr-McGee health physicists accompanied her to her apartment, which she shared with another laboratory analyst, Sherri Ellis. The apartment was surveyed. Significant levels of activity were found in the bathroom and kitchen, and lower levels of activity were found in other rooms.

On November 13, 1974, when Silkwood was driving her white Honda Civic to meet a reporter from the New York Times to deliver documents concerning health and safety violations at the plant, she was killed in a suspicious accident. No other cars were involved. Many suspect that Silkwood was murdered.

MR. GERRY SPENCE, Esq., delivered the plaintiff's CLOSING ARGUMENT.

Thank you, Your Honor.

Well, here we are.

Every good closing argument has to start with "Ladies and Gentlemen of the Jury," so let me start that way with you. I actually thought we were going to grow old together. I thought we would just kind of go down to Sun City, and get us a nice complex there and sort of live out our lives. It looked like that was the way it was going to happen. I had an image in my mind with the judge at the head block, and then the six jurors with nice little houses beside each - and I hadn't made up my mind whether I was going to ask Mr. Paul [a lead lawyer for Kerr-McGee] to come down or not - but I didn't think this case was ever going to get over and I know you didn't think so, either. And, as a matter of fact, as Mr. Paul kept calling witnesses and calling witnesses, I sort of got the impression that he's fallen in love with us over here and just didn't want to quit calling witnesses.

Ladies and gentlemen, it was winter in Jackson, Wyoming, when I came here, and there was four feet of snow at Jackson. We've spent a season here together. I haven't been home to Jackson for two and a half months. And, although I'm a full-fledged Oklahoman now, and have been for over a month and a half, nevertheless I'm homesick. And I'm sure you're homesick, too. I'm sure this has been a tough one on you.

Well, I know lots of you have had to do extra work, and I know you've had to work at night, and I know you've had to drive long distances. Every morning - now, I'm a jury watcher - you watch me watching you every morning, and I'd look at you to see if my jury was all right, and see if they were feeling okay. Sometimes they weren't feeling too good, but mostly we made it through this matter together, and I'm pretty proud of that. It's the longest case in Oklahoma history, they tell me. And, before the case is over,

you will know, as you probably already know, that this is probably the most important case, as well.

Well, ladies and gentlemen, I want you to know that I don't know how - excepting because Bill Silkwood happened to want me - a country lawyer from Wyoming got out to Oklahoma. It sort of seems that if anything good comes out of this trial that it was providence, and it's the most important case of my career. I'm standing here talking to you now about the most important things that I have ever said in my life. And, I have a sense that I have spent a lifetime, fifty years, to be exact, preparing somehow for this moment with you. And, so, I'm proud to be here with you, and I'm awed, and I'm a little frightened, and I know that's hard for you to believe because I don't look frightened. But, I've been frightened from time to time throughout this trial. I've learned how to cover that up pretty well. And, what I am setting out to do today is frightening to me. I hope I have the intelligence, the insight, and the spirit, and the ability, and just the plain old guts to get to you what I have to get to you.

What I need to do is to have you understand what needs to be understood. And, I think I'll get some help from you.

My greatest fear in my whole life has been that when I would get to this important case - whatever it was - I would stand here in front of the jury and be called upon to make my final argument and suddenly you know, I'd just open my mouth and nothing would come out. I'd just sort of stand there and maybe just wet my pants, or something. But I feel the juices - they're going, and I'm going to be all right.

Well, what we're going to talk about here isn't hard. If a country lawyer from Wyoming can understand it - if I can explain it to my kids - if Mr. Paul can't understand it - and his kids - then we all can understand it. "What's going on, and who proves what?"

Well, we talked about "strict liability" at the outset, and you'll hear the court tell you about "strict liability," and it simply means: "If the lion got away, Kerr-McGee has to pay." It's that simple - that's the law.

You remember what I told you in the opening statement about strict liability? It came out of the Old English common law. Some guy brought an old lion on his ground, and he put it in a cage - and lions are dangerous - and through no negligence of his own - through no fault of his own, the lion got away. Nobody knew how - like in this case, "nobody knew how." And, the lion went out and he ate up some people - and they sued the man. And they said, you know: "Pay. It was your lion, and he got away." And, the man says: "But I did everything in my power - I had a good cage - had a good lock on the door - I did everything that I could - I had security - I had trained people watching the lion - and it isn't my fault that he got away." Why should you punish him? They said: "We have to punish him - we have to punish you - you have to pay." You have to pay because it was your lion - unless the person who was hurt let the lion out himself. That's the only defense in this case: unless in this case Karen Silkwood was the one who intentionally took the plutonium out, and "let the lion out," that is the only defense, and that is why we have heard so much about it.

Strict liability: "If the lion gets away, Kerr-McGee has to pay," unless Karen Silkwood let the lion loose. What do we have to prove? Strict liability. Now, can you see what that is? The lion gets away. We have to do that. It's already admitted. It's admitted in the evidence. They admit it was their plutonium. They admit it's in Karen Silkwood's apartment. It got away. And, we have to prove that Karen Silkwood was damaged.

That's all we have to prove. Our case has been proved long ago, and I'm not going to labor you with the facts that prove that. It's almost an admitted fact, that it got away, and that she was damaged.

Does Silkwood prove how the lion got away? You remember this – Mr. Paul walking up to you and saying, at the beginning of the trial, listen, it's important to find out how the lion got away." Well, it is important, because they have to prove how – but we don't. And the court will instruct you on that. As a matter of fact, I think you will hear the court say exactly this, and listen to the instruction: It is unnecessary for you to decide how plutonium escaped from the plant – how it entered her apartment – or how it caused her contamination, since it is a stipulated fact – stipulated between the parties – that the plutonium in Silkwood's apartment was from the defendants' plant.

So, the question is: "Who has to prove how the lion got away?" "They have to prove it." They have to prove that Karen Silkwood carried it out. If they can't prove that by a preponderance of the evidence, they've lost. Kerr-McGee has to prove that. Why? Well, it's obvious. It's their lion – not Karen Silkwood's lion. It's the law. It's that simple.

Now, I told you there was only one legal defense, didn't I? That's defense of Karen Silkwood having supposedly taken this stuff from the plant. Well, I'll tell you a bigger defense than that – and that's getting drowned in mud springs. Now, that isn't an original statement by me. One of my favorite – I guess my favorite – jurist, and one you know very well, has an old saying he has told us many times: He says if you want to clear up the water, you've got to get the hogs out of spring. And, if you can't get the hogs out of the spring, I guarantee you can't clear up the water. And I want you to know that getting jurors confused is not a proper part of jurisprudence – and getting people down in mud springs is not the way to try a case.

Somehow, somebody has, the responsibility, as an attorney, to help you understand what the issues are – to come forward and hold their hand out and say, "These are the honest issues, this is the law, this is what you can rely on," because I am reliable, and I'm not going to confuse you with irrelevancies, and number-crunching, and number games, and word games, and gobbledy-gook, and stuff, and details, and on and on and on. And the thing that I say to you is "keep out of the mud springs" in your deliberations. You are not scientists – I'm not a scientist – my only power is my common sense. Keep out of the mud springs. You'll be invited there. Use your common sense. You'll be invited to do number-crunching of your own. You'll be invited to play word games. You'll be invited to get into kinds of irrelevancies. And I only say to you that you have one hope – don't get into mud springs – keep your common sense, and take with you into the jury room.

Now, what is this case about? What is the \$70 million claim about? I want to talk about it, because my purpose here is to do some changes that has to do with stopping some things. I don't want to see workers in America cheated out of their lives. I'm going to talk to you about that a lot. It hurts me. It hurts me.

I don't want to see people deprived of the truth – the cover-ups. It's ugly. I want to stop it, with your help, the exposing of the public to the hidden dangers, and operating grossly, and negligently, and willfully, and recklessly, and callously. Those are words that you have heard from world experts that you respect – that you believe. I want to stop the misrepresentation to the workers, and to the public, and to the government, and I want to stop it to the juries, and I want to stop it having been made to you.

What is the case not about? The case is not about being against the nuclear industry. You will never hear me say that I stand here against the nuclear industry – I do not. But it is about being responsible, about responsible progress And without the truth, the progress that we all need, and want, can't be had. It is that simple – that is what the case is not about.

But it is about the power of truth, that you have to use in this case somehow, because it has been revealed to you now – you know it – and if there is only one thing that can come from this case, I will go home and sleep for two solid weeks, and rest and catch up, and I will feel that I have done my life's work in one case, and I hope that you would, too – and that if this case makes it so expensive to lie, and to cover up, and to cheat, and not to tell the truth, and to play number games, that it makes it so expensive for industry – this industry – to do that, that the biggest bargain in life, the biggest bargain for those companies is the truth.

You know, I was amazed to hear that Kerr-McGee has eleven thousand employees. That's more than most of the towns in the state that I live in – that it is in thirty-five states well, I guarantee that corporation does not speak "South," it doesn't speak "Okie", it doesn't speak "Western," it doesn't speak "New York." And it is in five states – or in five countries. It doesn't speak any foreign language. It speaks one language universally. It speaks the language of money. That is the only language that it speaks – the only language that it understands – and that is why the case becomes what it is. That's why we have to talk back to that corporation in money.

I want to talk about the design of that plant very quickly. It was designed by Mr. Utnage. He never designed any kind of a plant. He never any plant, plutonium or otherwise. And I confronted him with scores of problems – you remember those 574 reports of contaminations – they were that thick [*indicating with hands*], in two volumes – you remember them; they were paraded out in front of you a number of times. Page after page of them are based upon equipment failure, design failure, equipment failure, design failure, equipment failure, equipment went wrong, design went wrong. Look at them yourself.

I asked him about a leak detection system ... "We do not need a leak detection system," he said. "What do we need a leak detection system for? We can see it. We can see it."

Here is the man who told you that as long as you can't see it, you're safe. And we know that the amount of plutonium, a half a gram of plutonium, will contaminate the whole state of Oklahoma, and you can't see it. They let it flop down into the rooms, and Jim Smith said one time it was in the room a foot thick on the floor. Do you remember the testimony? He said he designed a safe plant. And he believed the company lie that plutonium doesn't cause cancer. He sat there on that stand under his oath and looked at every one of you under his oath, and he said plutonium has never been known to cause cancer.

Well, now either he lied, or he bought the company lie and didn't know. But he was the man who designed the plant. You wouldn't have to design a very good plant if you didn't think plutonium caused cancer, it wouldn't bother you. You wouldn't work very hard. ...

And I want to tell you something else – that it is danger – that is why we are talking about exemplary and punitive damages, to stop those kind of lies, to stop that kind of action. Right today, sitting out there at that plant are the trailers with the waste in them.

They are not covered by any kind of a vault. They are full of radioactivity. All you have to have is a good strong wind to hit one of those trailers that are sitting there today at this moment as my words come out of my mouth, and pollute the whole countryside. I talked about negligent construction of the plant – that is one of our claims. Can you imagine?

Do you remember young Apperson sitting there [*gesturing*]? You remember his open face – I liked him a lot – an open, honest boy – blond, curly hair – you remember him, two and a half months ago? He said, “Thirty percent of the pipes weren’t welded when I came, when the plant was opened. Thirty percent of the pipes were welded after the plant was in operation, and I was there and I saw those old welds.” And he wasn’t a certified welder himself, and he was teaching people in an hour or two to be welders themselves – not a certified welder on the job. “There was things leaking everywhere,” he said. You remember how he was describing how he was there welding the pipe and they jerked the oxygen out, and he had to gasp for air – the contamination – to survive the moment?

Jim Smith talked about the valves breaking up from the acid. So much for the design of the plant. What about the attitude of the management that followed? You know, you can have a gun – most of us in my country know about guns – we use guns – we use guns to go hunting, and it’s just a tradition in the West. They probably are for many of us folks. Now, a gun is safe in the hands of somebody that believes it is dangerous. If you do not believe it is dangerous, it isn’t safe – if you don’t understand a gun – if you don’t respect it. Now, what about management? The first manager out there said, “Sure, you can breathe in a pollen-size particle of plutonium and it won’t even hurt you.”

You heard the experts say that a pollen-size of plutonium is lethal. Hammock, the highway patrolman, was talking about how they shoveled up the contamination in the dirt, threw it over the fence, and how the rocks and dirt contaminated – how they played with the uranium, threw it around. One person was telling us about how they took it home and gave it to one of their children. Would \$70 million stop that? Is it enough? Is two weeks’ pay enough to dock them for that? Plowman [*one of the plant managers*] said, you could give \$500 million if you think that is right.

Plowman said that he resigned his job because of his concern for the plant operations. Here’s a quote: “The major factor was that I didn’t like the way the plant was running. I felt that the plutonium plant program was going the same way the uranium plant program was going. I just didn’t think I could take much more of it. It seems like things were going from one emergency to another. Nothing was right. I hardly knew where to begin. Contamination was everywhere. The equipment leaked. There was no real effort to control it.”

No real effort to control it. Can you hear their witness saying, “Containment is the name of the game. The men were so contaminated on their arms and hands that you couldn’t get it off without peeling their hides. They went home like this nearly every night.” And then he stopped them taking the truck to town, because they always washed it in the car wash, and it would contaminate the town, and the sewer system in the town.

Well, I look at Zitting [*a Kerr-McGee manager*]. He was the man over everybody. He was an adverse, hostile witness – and I called him in my case. Why would anybody do something that silly? Well, I wanted you to see with your own eyes and hear with your own ears what that man knew, who was in charge of this whole lashup. The buck

stopped with him. He's like the commander-in-chief, like our president. Now, the president doesn't need to know everything, but when he sends a bomb, he knows it. When he sends the troops, he knows it. When he's involved with the lives of thousands of people, he knows it, because the buck stops with him, and he's the one with all the ultimate responsibility. And so was Mr. Zitting, who didn't know a damn thing about that plant, or what was going on. He said repeatedly, "I don't recall."

I showed him 574 worker contamination reports. Five hundred seventy-four were marched up and dumped right here on this stand, and I said, "What about those?" And do you know what he said to me - you remember? "This is the first time I have ever seen those," in this courtroom. That is the kind of management, that is the kind of caring. I asked him about the truck that was leaking, that they buried parts of. He said he never heard of it before. Is there any wonder that Mr. Keppler of the AEC [Atomic Energy Commission] - poor Mr. Keppler - I probably pushed him a little further than I should have - I hope you don't hold that against me, but I wanted to shake out the last bit of information I could from him so you could see it. Poor Mr. Keppler said, "I was of the opinion I couldn't find anybody knowledgeable enough in management who knew anything about it, or who cared."

This is the man who said, when I asked him, "Were you ever" - here is an actual question - "Were you ever advised by anybody that employees were of the opinion that any amount of plutonium could be taken out of that plant?" He said, "No, I never heard of it."

Was production put over safety? What did they do with a contaminated room? Did they ever stop production? Is there any evidence that they even once stopped production? If they did stop production for a contaminated room, don't you think they would have brought somebody in, in five years? Not once. They painted it - one hundred gallons of paint, and - "It is chipping off today" - to this very day. Dr. Morgan [*plaintiff's expert witness*] called that reckless. You know why it is reckless? Because as it chips off, it comes down in a fine powder form and can be breathed into your lungs. "How big a piece do you breathe into your lungs?" "Nobody knows." "Do you know when you breathe it into your lungs?" "No. Nobody knows if you breathe it. It is too late after you breathe it, and once you get it from the air sample, by the time you get it in the air sample, it is twenty-four hours too late, or longer now."

By the time you understand you have been poisoned, the poisoning has already happened. That is why it is negligence. That is why it is callous. That is why Dr. Morgan said, "It is worse than reckless." Documented doctored X rays. They were always behind. Always behind. They denied that, but they were always behind. Finally Zitting admitted, when I took him through the monthly reports - you remember that - "Yes, they were behind." And Hammock said they were shipping defective pins. It just turns my guts. They were shipping defective pins to a breeder reactor knowing they were defective, to Washington where people - the state of Washington - where people are going to somehow be subjected to the first breeder reactor in this country. Here is the actual testimony of Hammock. Now, hear this. He said, "The rods were defective because they had a bad weld, or too large a weld sealing in the plutonium pellets." This is an exact quote. "Even though we rejected them, we would go ahead and ship them because we were too far behind in production. The workers, on orders from the supervisors, would simply sand down the welds, which weakened them."

business. Here is a picture, ladies and gentlemen, my dear workers, people that are going to give your lives to my company – here is a picture of a particle, an alpha particle – millions of those will be in your lungs if you breathe any, and we don't know how much it takes to cause cancer. You have the right to know that is the danger you're exposed to."

If you're working with electricity, nobody goes around and says, you know, "There isn't any danger in electricity if you grab that wire – it won't hurt you." If you're working with a structure where men's lives are involved, you don't tell them it is safe if it is not safe. You tell them the truth.

It was that night, ladies and gentlemen, that I woke up the next morning, after a fitful night's sleep, and decided that I was going to ask you to make this case meaningful, and I increased my request for a prayer from 10 to 70 million – two weeks' wages. I hope it is enough. I leave it to your good judgment.

How does this all tie in with Karen Silkwood? Well the court says that they're liable if the lion got away, even if they used the utmost care. If the lion got away, they have to pay – they have to pay for what happened to her.

If it is willful, wanton, and gross negligence, they have to pay such sum as you feel is correct, even if it is half a billion – even if it is 500 million. The assessment of the damages is left for you.

I want to quote an instruction that you will hear. It is the basis of punitive damages – that's the \$70 million to punish. Punitive. To exemplify. Exemplary.

So that the rest of the uranium plutonium, and the nuclear industries in this country will have to tell the truth. The basis of punitive and exemplary damages rests upon the principle that they are allowed as punishment of the offender for the general benefit of society, both as a restraint upon the transgressor – restraint upon the transgressor – that is against Kerr-McGee, so they won't do it anymore, and a meaningful warning and example – to deter the commission of like offenses in the future.

If the defendants are grossly or wantonly negligent – listen to this language in the court's instructions – you may allow exemplary or punitive damages, and you may consider the financial worth. I didn't bring that out to try to have you be prejudiced against a large corporation, I brought it out because what is fair punishment for one isn't for another. It is fair punishment to take a paper boy who makes five dollars a week, and it might be fair punishment to take away five dollars from him for not coming home when he was suppose to

If one of your children lied about something – one of your children lied about something that had to do with the life and health of a brother or sister, and he covered it up, and he lied about it, and he said that the brother and the sister were safe when he knew that he had exposed them to death – I suppose that you might not find it unreasonable to hold him responsible for two weeks, two piddling weeks, allowance in bucks, and leave fifty weeks left for him.

That is what 70 million is to this corporation two weeks – leaving 50 weeks' income.

Maybe it isn't enough, but I was afraid to ask for more. You know why I'm afraid? This case is so important that I'm afraid that if I stand here and ask you what I really think the case is entitled to, you will laugh at me, and I can't have that – I can't have you thinking that I'm silly – I can't have you thinking that I'm ridiculous, because it is

important to me, it is important for what I'm trying to do that you find me credible. And I've tried to retain my credibility with you through this trial.

Now, Dr. Karl Morgan said the plant employees themselves were deceived into entering a lion's cage – it was his language – not even meeting permissible standards. They were sent into a lion's cage – this actually quoting him – being told there were no animals in the cage. He said they had unqualified people there.

He took great exception to the fact they weren't told about cancer, and he said that is willful'.

"Is it wanton?" "Yes, it is wanton."

"Is it reckless?" "Yes, it is reckless"

"What would you call it, doctor?" He said: "I would call it callous" He said and I want to give you a quote from that great man of science – the father of health physics, who has taught the teachers and professors, and he's a fine, old, beautiful man – and if I were a little child wanting to be protected from the great exposures of plutonium I would curl up in his lap and close my eyes and put my hands and my faith in him, and I do. And, he said: "I could not imagine that such a lackadaisical attitude could be developed in an organization toward the health and safety of people. It was callous, willful, and wanton negligence."

I will be back with you after the defendants have concluded their arguments. Thank you.

MR. SPENCE delivered the plaintiff's REBUTTAL CLOSING ARGUMENT.

Thank you, Your Honor. Fellow counsel, Mr. Paul, ... ladies and gentlemen: I, during the recess, wondered about whether there is enough in all of us to do what we have to do.

I'm afraid – I'm afraid of two things: I'm afraid that you have been worn out, and that there may not be enough left in you to hear, even if you try and I know you will try but I know you are exhausted; and I've been afraid that there isn't enough left in me, that my mind isn't clear and sharp now, and that I can't say the things quickly that I need to say, and yet it has to be done, and it has to be done well.

I have asked my friends, during the recess – and they are here, I asked my father, my mother, my close friends for strength to do this. I hope that you have been able to do that yourselves, and that you can, with each other, and call upon your own strength and from your own sources, because this is the last time that we, as living, breathing humans, will talk together about this subject. And it is the last time that anybody will speak for Karen Silkwood. And when your verdict comes out, it will be the last time that anybody will have the opportunity that you have, and so it is important that we have the strength and the power to do what we need to do.

You know history has always at crucial times reached down into the masses and picked ordinary people and gave ordinary people extraordinary power. That is the way it has always been in history and I have no reason to believe that it is any different now. Ladies and gentlemen, I need to get to the issues – our time is short.

The issue that seems to be one that everyone wants to talk about is not really an issue – it is the only possible defense that Kerr-McGee has, and it is one that they have talked about. We are right back where we started from: "If the lion gets away, Kerr-McGee has to pay."

You remember Mr. Paul was critical of me for not trying to explain to you how the lion got away. Do you remember his criticalness, his sort of accusation that somehow we had failed in our obligation? It is like this – listen to the story: “My lion got away. Why is my lion on your property?” That is the question he asked me. “Why is my lion on your property?” “It is on your property.” “Tell me why my lion is on your property’ Explain it.” And, I say: “But, ah hah, ah hah, ah hah.” And, he says: “It wasn’t there two hours ago. It wasn’t there last night.” And, he says: “Wait a minute. Your kids don’t get along with my kids. That is why my lion is on your property.” And, then he says: “Why did you let my lion eat you? You let my lion on your property” he says. “I accuse you – I accuse you – I blame you, and why don’t you explain it?” And, I say: “But, it isn’t my lion it is your lion – it is your lion that got away.”

Now, the court says – and I want this – I want to put it to rest, because I don’t want you jumping in mud springs on this one – there are too many other places for you to jump into mud springs on – please hear it: It is unnecessary for you to decide how plutonium escaped from the plant, how it entered her apartment, or how it caused her contamination, since it is a stipulated fact that the plutonium in Karen Silkwood’s apartment was from the defendants’ plant.

Now, Mr. Paul, that is why we haven’t explained how your lion got on our property. The court says that is not our obligation – it is your lion, Mr. Paul – you must explain it.

Then it goes on to say that it is for the defendants to prove to you, by a preponderance of the evidence, that it was Karen Silkwood who took it. Failing their proof – please hear the word “proof” it is the word “proof” – failing which proof Kerr-McGee has to pay.

The lion got away, Karen Silkwood was damaged. Does Karen Silkwood prove how the lion got away? The court says no.

You will hear it again tomorrow. Why? Because it is their lion. So if the lion got away, and Kerr-McGee can’t prove how, then Kerr-McGee has to pay. Now, that’s the law, the law of strict liability, and it is that simple.

Now, I heard Mr. Paul say this: “My heart reaches out praying for answers based upon the evidence.” “Praying for answers based upon the evidence.”

I would think he would pray for answers based upon the evidence, because he hasn’t got any.

He doesn’t have any more now that he ever did. All that you ever heard Mr. Paul say, as he stood up here and pointed his finger toward Karen Silkwood – and I want you to stop and remember, ladies and gentlemen, please, that this is a free country – and the one thing that makes this country different from all the other countries in the world is that when somebody makes the accusation against a citizen of this country, alive or dead, they have to make the proof Mr. Paul doesn’t have the right to come into a court and say: “I think this happened.” And: “I think that happened.” And: “Maybe this happened.” And: “Isn’t it probable that that happened.” And “I think the circumstances of this, and the circumstances of that.” And to take a whole series of unrelated events and put them together and try to tell you somehow that I have the responsibility that the judge and the law doesn’t place upon me, and to mislead you in that fashion. And I’m angry about that.

I expect that when a corporation of the size of this one comes into this courtroom that they should bring to you honest, fair, documented evidence – that they shouldn't hide behind little people – and that they should bring you the facts that they know.

Now, listen: I have some problems here in being straight with you, and I want to put them right here on the table. If we want to play guess-um – that is, point the finger, the game of playing, of pointing the finger – I can play that game; but when I do that I become as bad as Mr. Paul. You want me to do that? Is that the way you want to decide the case? Tell me. If that is the way you think the case ought to be decided in a court of American jurisprudence, to see who can make the biggest accusations against the other one, then I'm willing to play that game. But, when I do it, I want you to know it isn't right, because I can't prove that any more than they can prove it. I can give you motive. What was the motive for them to do that? "She was a troublemaker. She was doing union negotiations. She was on her way – she was gathering documents – every day in that union, everybody in that company, everybody in management knew that." Nobody would admit it, but they knew it. . . . Compare the motive, just for the fun of it. Supposing that you've got to weigh those motives. Here is Karen Silkwood. The motive was she was furious. We found out that she wasn't furious. Their own witness, Mr. – what is his name – Phillip, says she was miffed, wasn't that the word? Their witness, under oath, said she was miffed. "Was she furious?" "No, she wasn't furious. She was miffed." "She was furious," he said. Did Karen Silkwood – and you have listened to her voice talking in private to Steve Wodka – did she sound like a kook to you? Did she sound nuts? Did she sound like she was acting under some kind of compulsive behavior that suggested it? There isn't any proof to that. It comes out of Mr. Paul's mouth. He says it over and over, and over, and over, and over again. Compare that motive with the motive of people to stop her. "She knew too much." What would she do had she gotten to *The New York Times*? ...

These people, if you want to talk about motives, had a motive to stop her, and she was stopped. We are not to talk about her – I won't talk about it – but she never got there with her X rays. Now, I don't think that is the way I want to defend my case. I don't think that is the way I want to present it to you. I've only brought these matters out because in the course of this trial it seems too patently unfair to continually point their finger at a woman who can't defend herself about matters that they have no proof of and never had any proof of to begin with, and knew from the beginning that they would never have any more proof of, as evidenced by Mr. McGee's initial letter: "It is not likely that the source of her contamination will ever be known." He knew that. Mr. Paul knew it. It was the only thing available to them, and I congratulate them for making a lot out of that, but it is sad to me that they didn't call the witnesses that knew – they didn't give us the information, and that is sad to me. It is sad to me that one of the mightiest – you know, in history it will go down, this case, I can see it in the history books: "One of the mightiest corporations of the United States of America, a multinational corporation, with, two billion dollars in assets, and two billion dollars in annual income, goes down in history with all that power, with all of those resources, with the only thing that they could do was to accuse, and not prove."

Well, the key – please forgive my raging, but you are listening to a man who is angry – the key, ladies and gentlemen, is simple. I will have to tell you what it is. It is proof. They have the burden of proving that she took it. The judge says they have the burden of proving it. They have to prove it by a preponderance of the evidence. Now, that is something, that phrase "preponderance of the evidence" – which you will hear His

Honor use tomorrow – isn't just a phony phrase; it means the greater weight of the evidence. There isn't any evidence here that she did it, not one iota of evidence. There are only the accusations. But, if there was any evidence, it would have to be the greatest weight of evidence, not suspicions, not the greatest weight of suspicions, not the one who can accuse the worst – but the greatest weight of the evidence. The burden of proof is on the defendant Kerr-McGee Nuclear Corporation to establish that Karen Silkwood took the plutonium from work to her apartment where she was injured. That is the court's instruction.

And then here's a quotation from Mr. Paul – I hope you heard it like I heard it: "The reason I want to embarrass you" – he's quoting Karen Silkwood. "The reason I want to embarrass you is because I did it." She never said that. There wasn't any showing she wanted to do any such thing. Why would they do that? She already had the goods on them. She really had the goods on them. And she knew it. And that isn't in the evidence. That came out of Mr. Paul's mouth. And he kept saying perhaps it was she that was testing – remember his argument to you: "Maybe she was testing to see if they were checking her samples." "Maybe she was turning in high samples to see if they would catch them." "Maybe this." "Maybe that." "It was possibly this." "She said it could have been that she was using this for leverage." All of it speculation. "I guess this." "I guess that." "Maybe this – maybe that." How would you like to have to defend yourselves, how would you like to be in my shoes trying to defend a dead woman against those kinds of accusations? No proof. All maybe – all accusations. All blame. And the motives, those are all Mr. Paul's assumptions. Not one person said she contaminated herself as a motive to get even, or to help the union. Not one from that witness stand ever established that fact – it was only Mr. Paul. They are all his theories.

You know, if all of the leaks, and all of the spills, and the incidents, and all the rest of the 500 things – if all of those violations, some 75 of them. Violations. All those weeks, from the testimony of all of those people, wouldn't somehow embarrass them enough, if the fact that they were doctoring – one of the world's great corporations doctoring? Now that wouldn't embarrass them enough?

She didn't need to embarrass them. She wasn't trying to embarrass them – she was trying to do something that was important to people. Her words were: "Something has to be done about this." ...

I think she was a heroine. I think her name will be one of the names that go down in history along with the great names of women heroines. I think she will be the woman who speaks through you, and may save this industry and this progress and may save, out of that industry hundreds of thousands of lives. But Mr. Paul calls it "despicable." I think it was the greatest service that was ever conceived. I think she was exactly what the people said she was: "A courageous woman." ...

Now, they rest their case on her emotional state. ... They accuse her. They accused her then, and they accuse her now, and they continue to accuse her. They said: "You're unstable. You've lost control." And then Mr. Paul says: "Let's be fair." I heard him say it over and over: "Let's be fair."

She thought she was going to die, and they gave her lawyers – "Let's be fair" – not doctors. They put her through a hospital sham. They said: "Let's be fair." They sent her to Los Alamos, where they put her through machines that couldn't register anything and they said: "Let's be fair." And they continued to blame her. They even blamed her

because whoever was driving the car took the wrong turn. You remember that? They are still blaming her today. ...

I would have thought a lot more of them if they had come in and said: 'Yes, we let it go. Yes, we had a sloppy operation. Yes, we did it. We're sorry. We will pay the damages. We'll pay the fiddler.' I don't think I would be nearly so angry as when they try to slander. You know what Will Rogers said about slander? Will Rogers said, "Slander is the cheapest defense going." It doesn't cost anything to slander anybody. I can slander you, and if I say it enough, somebody will start believing it. And, it is pretty hard to defend. You remember when you were a kid in high school, and somebody said you did certain things, and you didn't do it, but your mother accused you of something and you couldn't prove you didn't do it, or your daddy said you did something and you couldn't prove it. How about when people slander you like this in the most important case in the world, and base their defense upon it? Now stop and think about what I just said. How about it when the slander is in the most important case of this century – maybe of this nation's history – and all the defense is a slander? 'What about that – how do you feel? How does it make you feel? How do you feel about the kind of corporation that tells Mr. Paul this is what he has to do?

Now let me ask you this question: When we walk out of here I ain't going to be able to say another word, and you're going to have to make some decisions, and they are going to be made not just about Karen Silkwood, and not just about those people at that plant, but people involved in this industry and the public that is exposed to this industry. That is a frightening obligation. You need to trust somebody. You need not to get in mud springs. If you get in there, you're lost forever. If you get down in there and start dealing with the number crunches, and this exhibit and that exhibit, and all the other junk, you get into mud springs. But you don't need to.

You need to trust somebody. Who are you going to trust? Are you going to trust Kerr-McGee? Are you going to leave your kids to them? Do you feel safe in that? Are you going to leave your children and their futures to those people, the men in gray? Do you feel safe about that? I'm not saying they are bad men – I'm saying are you going to leave it on those arguments? Do they satisfy you? Can you do it? Is your verdict going to say something about the number-crunching game – that it's got to stop? Is it going to be heard from here around the world?

Can you do it? Do you have the power? Are you afraid? If you are, I don't blame you, because I'm afraid, too. I'm afraid that I haven't the power for you to hear me. I'm afraid that somehow I can't explain my knowledge and my feelings that are in my guts to you. I wish I had the magic to put what I feel in my gut and stomach into the pit of every one of you.

I want to tell you something about me. I have been in courtrooms in Wyoming, little old towns in Wyoming, five thousand here – I grew up in Riverton, Wyoming, five thousand people there – Dubois, Rock Springs, I've been all over. I've been the county attorney, and I've prosecuted murderers – eight years I was a prosecutor – and I prosecuted murderers and thieves, and drunk and crazy people, and I've sued careless corporations in my life, and I want to tell you that I have never seen a company who misrepresented to the workers that the workers were cheated out of their lives.

These people that were in charge knew of plutonium. They knew what alpha particles did. They hid the facts, and they confused the facts, and they tried to confuse you, and they tried to cover it, and they tried to get you in the mud springs. You know

and I know what it was all about. It was about a lousy \$3.50 an hour job. And if those people knew they were going to die from cancer twenty or forty years later, would they have gone to work? The misrepresentations stole their lives. It's sickening. It's willful, it's callous.

Nobody seriously contends Kerr-McGee told these people about cancer. No one said that they heard about cancer. ... They hid it. They hid the fact. It was a trap, surely as deadly as the worst kind of land mines, the worse kind of traps. I tell you, if you were in the army, and your officer said to you to "walk down that road, and that it was safe, and they knew it was full of land mines, and the only reason they told you it was safe was because that was the only way they could get you to go down the road, and that they blew you all to hell," what would your feelings be? It's that kind of misconduct that we are talking about in this case, and it is that kind of misconduct relative to the entire training of these people that this case is about. They blame it on something else after it is all over.

Now, I have a vision. It is not a dream – it's a nightmare. It came to me in the middle of the night, and I got up and wrote it down, and I want you to hear it because I wrote it in the middle of the night about a week ago. Twenty years from now – the men are not old, some say they're just in their prime, they're looking forward to some good things. The men that worked at that plant are good men with families who love them. They are good men, but they are dying – not all of them but they are dying like men die in a plague. Cancer they say, probably from the plutonium plant. He worked there as a young man. They didn't know much about it in those days. He isn't suffering much; but it is just a tragedy. They all loved him. Nobody in top management seemed to care. Those were the days when nobody in management in the plutonium plant could be found, even by the AEC, who knew or cared. They worked the men in respirators. The pipes leaked. The paint dropped from the walls. The stuff was everywhere. Nobody cared very much. The place was run by good money men. They were good money men – good managers. The company, well, it covered things up. ... And the information was kept from them, or they wouldn't have worked. ... The training. Well, it was as bad as telling children that the Kool-Aid, laced with poison, is good for them. A hidden danger – they never knew. Some read about plutonium and cancer in the paper for the first time during a trial – the trial called "The Silkwood Case" – but it was too late for them. Karen Silkwood was dead, the company was trying to convince an Oklahoma jury that she contaminated herself. They took two and a half months for trial. The company had an excuse for everything. Blamed it all on the union. Blamed it all on everybody else – on Karen Silkwood, on the workers, on sabotage, on the AEC. It was a sad time in the history of our country. They said the AEC was tough. Seventy-five violations later they hadn't even been fined once. It was worse than the days of slavery. It was a worse time of infamy than the days of slavery because the owners of the slaves cared about their slaves, and many of them loved their slaves. It was a time of infamy, and a time of deceit, corporate dishonesty. A time when men used men like disposable commodities – like so much expendable property. It was a time when corporations fooled the public, were more concerned with the public image than with the truth. It was a time when the government held hands with these giants, and played footsie with their greatest scientists. At the disposal of the corporation, to testify, to strike down the claims of people, and it was too late. It was a sad time, the era between '70 and '79 – they called it the Cimarron Syndrome.

What is this case about? It is about Karen Silkwood, who was a brave, ordinary woman who did care. And she risked her life, and she lost it. And she had something to tell the world, and she tried to tell the world. What was it that Karen Silkwood had to tell the world? That has been left to us to say now. It is for you, the jury to say. It is for you, the jury to say it for her. What was she trying to tell the world? Ladies and gentlemen of the jury I wish Karen Silkwood was standing here by me now and could say what she wanted to say. I think she would say, "Brothers and sisters . . ." I don't think she would say ladies and gentlemen. I think she would say, "Brothers and sisters, they were just eighteen- and nineteen-year-olds. They didn't understand. There wasn't any training. They kept the danger a secret. They covered it with word games and number games." And she would say: "Friends, it has to stop here today, here in Oklahoma City today."

Ladies and gentlemen, I've still got half an hour, and I'm not going to use it. I'm going to close my case with you right now I'm going to tell you a story a simple story about a wise old man – and a smart-aleck young boy who wanted to show up the wise old man for a fool. The boy's plan was this: He found a little bird in the forest and captured the little bird. And he had the idea he would go to the wise old man with the bird in his hand and say, "Wise old man, what have I got in my hand?" And the old man would say, "Well, you have a bird, my son." And he would say, "Wise old man, is the bird alive, or is it dead?" And the old man knew if he said, "It is dead" the little boy would open his hand and the bird would fly away. Or if he said, "It is alive," then the boy would take the bird in his hand and crunch it and crunch it, and crunch the life out of it, and then open his hand and say, "See, it is dead." And so the boy went up to the wise old man and he said, "Wise old man, what do I have in my hand?" "The old man said, "Why it is a bird, my son." He said, "Wise old man, is it alive, or is it dead?" And the wise old man said, "The bird is in your hands, my son."

Thank you very much. It's been my pleasure, my God-given pleasure, to be a part of your lives. I mean that. Thank you, Your Honor.

The jury deliberated and then came back with a \$10,505,000 verdict, including \$500,000 in compensatory damages for personal injuries, \$5,000 in compensatory damages for property, and \$10 million in punitive damages. The case was appealed. The U.S. Supreme Court granted certiorari on the question of whether federal law regulating nuclear safety preempted the awarding of punitive damages stemming from the state tort law claims. The Supreme Court held that it did not. Silkwood v. Kerr-McGee Corp., 464 U.S. 238 (1984). Issues remained as to the constitutionality of the punitive damages, and the case was remanded. Kerr-McGee and the Silkwood family eventually reached a settlement for \$1.3 million.

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