WILLIAM A. DOBROVIR
SUITE 904
1025 CONNECTICUT AVENUE, N.W.
WASHINGTON, D.C. 20036
(202) 293-1544

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Dr. Joshua Lederberg
Stanford University
Palo Alto, California

Dear Dr. Lederberg:

Your column on Sunday, referring to public interest lawyers, prompts me to write concerning a litigation involving peaticides.

First of all, I am a member of the now highly publicized, but still tiny group of "public interest lawyers" in Washington. I do a good deal of litigation for Ralph Nader and for other public-minded individuals and groups.

The case involves the herbicide 2,4,5-T. It arose out of research done by Harrison Wellford, of Nader's Center for Study of Responsive Law, into the Department of Agriculture's pesticide regulation activities. Wellford's work led him into contact with Thomas Whiteside, with the National Cancer Institute's study of pesticides' effects as carcinogens and teratogens and with later work on 2,4,5-T done by Dr. M. Jacqueline Verrett at NIH.

It became clear, by the end of 1969, that there was danger that 2,4,5-T was teratogenic. Work in the spring tended to confirm this, and at hearings in April before Senator Hart's Environment subcommittee Wellford charged Agriculture and HEW with laxity in failing to ban use of the substance. The next week a partial ban was announced; but it failed to issue an immediate suspension of use of 2,4,5-T on food crops. On Wellford's behalf, and with a number of other individuals and organizations joining, we petitioned USDA to extend the suspension. It refused, and we appealed to the Court of Appeals.

The issue is whether the use of 2,4,5-T on food creates an "imminent hazard to the public". The evidence of its

Delaney standards; S/R ?; radiation ?

danger is all based on tests in animals, and we find ourselves in the midst of a scientific debate over whether birth defects in test animals are evidence of sufficient risk of birth defects in humans to create "an imminent hazard", which is the statutory test. The court seems puzzled over how it is to resolve the scientific issues.

The scientific dispute is between Dr. Samuel Epstein of the Childrens Cancer Institute and Dr. Leon Golberg of Albany Medical School. Dr. Golberg claims that the difference between animals and man are such, and the dosages of 2,4,5-T administered to animals so high, that the results are not good evidence that tiny amounts of 2,4,5-T in food can cause birth defects in pregnant women. Epstein says that the evidence is adequate, that high dosages are necessary to show effects in small numbers of test animals. That is, that while only one in 10,000 humans might experience effects (and that of course would be tragic) a test of 50 or 100 rats must be made at dosages high enough to see if there are effects in 50 or 100.

I am enclosing with this letter relevant portions of the briefs.

There is, moreover, a general question of scientific philosophy at stake. It is where the burden of showing safety lies. Golberg would argue that when a substance represents a benefit, those who oppose using it should prove that it is unsafe. Epstein would argue that introduction of any chemical into the human food, water or air supply must be preceded by evidence that it is safe for humans and will not increase the carcinogenic, teratogenic and mutagenic burden. This debate was largely muted in the Mrak report on pesticides for HEW. Needless to say we are on the Epstein side.

The court seems troubled by this dispute and how to resolve it in a legal framework. The case raises general issues of how courts are to handle scientific matters like this; issues that will arise again in environment cases.

Would you be willing to take a look at these papers and give the question some thought?

Sincerely,

William A. Dobrovir

WAD/esa