

The Case for Criminal Sanctions in Preventing Occupational Diseases.

Exhibit A: Asbestos

(Rewritten from the STATEMENT BEFORE THE
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Regulation of the marketplace has eliminated some
of the worst threats in the workplace and the envi-
ronment. But those of us who hoped for more substantial
preventive action through the process of regulation have
been disappointed. Every OSHA regulation is contested
by industry, and in Congress it is a continuing struggle to
just preserve the protective laws we have and provide
regulatory agencies with some funds to develop stan-
dards and enforce them.

With the regulatory approach continuously impeded,
those of us concerned with preventing industrially-re-
lated diseases have been learning about indirect paths,
like compensation. We find that the state laws of worker's
compensation are full of problems for victims of oc-
cupational disease: short statutes of limitations for filing
claims, long delays in scheduling hearings, arbitrary
limits of medical coverage and poverty levels of disability
compensation have made workers' compensation a na-
tional disgrace. Over the years, 1966-1977, an average of
only five people per year received compensation in the
state of New York for occupational cancer: this despite

the prominent presence of Mt. Sinai and other renowned
medical institutions in that state.

Another form of compensation is in many places still
in good shape, however, and it is increasingly used by
injured working people and the general public. This is
product liability particularly, and damage suits in gen-
eral, over the harm caused by reckless or negligent busi-
ness practices. The mounting litigation over asbestosis,
Ford Pintos, Firestone tires, Kepone devastation of the
James River, pesticide sterility, Love Canal, and PBB
poisoning of the dairy industry in Michigan, involves
mortal danger to millions of lives and billions of dollars
in liabilities.

As a result, business interests in every state are
mounting an effort to avert liabilities under the existing
laws. This is being done by the erection of new legal
defenses and statutes of limitations to bar suits for inju-
ries and disease arising more than ten years or so after the
sale of a product. Since 1977, the product liability laws in
about twelve states have been rigged with these insidious
lapses in the right to redress. Such statutes of limitations
have withstood court challenges in cases involving
products with long-latent effects.

At the national level, asbestos manufacturers col-
laborated in the development of a bill for asbestos
"compensation." This bill, H.R. 2740, introduced
originally in 1977 and reintroduced by Congresswoman
Millicent Fenwick in the current session of Congress,
would bar all damage suits against asbestos manufac-
turers and the government. Compensation for asbestos
diseases would be solely available through a federal bu-
reaucracy using an expert medical board to evaluate
causation. The disability compensation would be limited
to something like \$13,000 a year, and would be paid by
both the taxpayer and the asbestos industry.

Congressman George Miller and others have in-
troduced legislation that would, under federal criminal
law, add the spectres of humiliation and incarceration to
regulation and compensation. The idea is to personally

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confront business managers who conceal harmful business practices with jail, and the resources of the U.S. Attorney's Office in trying the case.

In the past three years, research and legal discovery have revealed many details showing what was known, by whom, and what was done about that knowledge in the asbestos industry. The inside story is vital in evaluating the role of "company men" in failing to prevent the sacrifice of one million of their fellow citizens, their children, and their children's children. Society has failed to prevent a great deal of human suffering through conscience and civil sanctions in the past. The asbestos example illustrates the case for criminal sanctions against business executives who profit by concealing knowledge of mortal dangers from their employees and customers.

ASBESTOSIS

The founder of the modern U.S. asbestos industry was Henry Ward Johns. He patented asbestos roofing products, bought asbestos mines, started making fireproof textiles and insulation, and then something happened that he didn't expect. He got asbestosis and died in a few years, one bleak day in February 1898. We have no way of knowing whether Mr. Johns walked through his factories and noticed his longtime employees suffering the same emaciation, coughing fits, wheezing, and acute shortness of breath that was gripping him. We have no way of knowing what he said and thought when he attended the funerals of foremen of his factories who had died from the dust. We don't even know what his doctors told the sixty-one year old industry magnate he was dying from. We know only that his death certificate lists the cause as "dust phthisis pneumonitis" (dust disease of the lungs with pneumonia as the immediate cause of death).

In 1906, Dr. Montague Murray in England reported the death of a patient from asbestos fibrosis of the lungs to a parliamentary committee on industrial disease compensation. Murray's report was cited in a 1918 Bulletin from the U.S. Department of Labor Statistics, which urgently called for the investigation of asbestos dust hazards. The Bulletin expressed concern over the industry's growth, noting that insurance companies were already refusing to sell life insurance to asbestos workers. The first case of asbestosis described pathologically in the literature was reported in the British Medical Journal by W. E. Cooke in 1924. As this was followed by other reports, the British Factory Inspectorate decided to survey the industry. The survey, completed in 1930 and reported both in a government report and the (U.S.) Journal of Industrial Hygiene found asbestosis in one third of all the employees who had been with the industry for more than five years. Regulations for the control of asbestos dust went into effect in England in 1933.

In this country, case reports of fatal asbestosis began to appear in 1930. Even earlier, in 1927, a foreman in a

Massachusetts asbestos factory received disability compensation for asbestosis. In the 1930's, compensation was taken up at the top levels in the industry. The Board of Directors of the Johns-Manville Corporation settled eleven asbestosis cases in 1933 for "\$30,000 provided written assurance were obtained from the attorney for the various plaintiffs that he would not directly or indirectly participate in the bringing of new actions against the company."

That same year, Dr. Merewether of the British Factory Inspectorate published a report showing that workers dying with asbestosis had an average survival time of only fifteen years past the start of asbestos work, compared with a figure of forty years for those dying with silicosis. Merewether reiterated more bad news first reported at a conference in Los Angeles by the British radiologist Sparks: the asbestosis often gets worse, even after people showing the disease are removed from dust exposure. Merewether thoroughly described the disease, and its awful prognosis in light of his many cases, who had died at an average of forty-one.

From North Carolina, Dr. Donnelly reported asbestosis in asbestos textile mills and warned that, "the protective devices now in use in many plants are most inadequate." And in 1934 the Supreme Court of North Carolina declared that asbestosis was compensable under the Workmen's Compensation Act as an injury "by accident."

Oddly enough, there were no such problems reported from the region of Canada where asbestos had been mined since the 1870's. Pedley, writing in the Canadian Public Health Journal in 1930 said:

"(To) our knowledge, however, no case of pneumoconiosis has ever been reported from asbestos in Canada, and the general impression among the miners is that the dust is not hazardous."

He concluded:

"From the public health standpoint, however, it seems hardly likely that asbestosis will become of importance either from the standpoint of morbidity or mortality."

What Pedley did not mention is that there was plenty of asbestosis in those mines, and he had seen it. A 1944 confidential report of the Metropolitan Life Insurance Company contains a table of data referenced merely as unpublished work of Pedley and Lanza, 1930. It shows that 195 men were examined in Thetford Mines and in Asbestos, Quebec. At least two mining companies there were insured by Metropolitan Life. Among the 195 miners examined, 42 had asbestosis; there were only 76 men in this group with more than 10 years in the industry, and so apparently around half of these men had asbestosis.

Pedley's publication, read in the light of what he and Lanza concealed, strongly implies that the examining physicians did not tell any of the Quebec miners they had asbestosis. Forty five years later, in 1975, the Thetford Mines clinic was exposed in the Montreal Star for telling miners they were in good health, when some had such severe asbestosis they died within the following two-year period. The clinic has served four U.S. owned asbestos companies' mines since 1940.

In 1929, the U.S. asbestos industry arranged for a survey of workers with three years or more of employment, "selected at random," as it was reported. The survey was completed in 1931 by Dr. Anthony Lanza of the Metropolitan Life Insurance Company and his coworkers, but it was not submitted for publication until late in 1934. The survey found that fifty-three percent of the asbestos factory workers examined had asbestosis by a conservative reading of their chest x-rays, and many others showed clinical symptoms. The galley proofs of the article were sent to the Johns-Manville Corporation and Raybestos Manhattan Corporation by Dr. Lanza. J-M attorney Vandiver Brown sent the galleys on to his legal specialist, George Hobart, in Newark, New Jersey. Mr. Hobart noted that the company was in danger of having asbestosis recognized as a compensable occupational disease in the 1935 session of the New Jersey Legislative Commission. He reported that the company's principal defense against negligence suits was the dearth of published medical knowledge on asbestosis. Now that the state where J-M had its largest manufacturing plant (in Manville) was thinking of compensating silicosis, asbestosis might be joined in.

Wrote Hobart:

"I, therefore, dislike to have this report suggest that asbestosis might be assumed to be 'similar' to silicosis, either as to the period of time within which it might develop, or as to the dosage received by the lungs, or as to the quantity of dust, etc."

Attorney Vandiver Brown sent Dr. Lanza Hobart's three-page letter suggesting detailed changes, and a cover note of his own specifically requesting that Lanza insert a sentence he had deleted from the original report sent years earlier to the company lawyers. The sentence appeared, word for word, as the main conclusion of the medical report published in *Public Health Reports* in January 1935:

"Clinically, from this study, it (asbestosis) appeared to be a type (of disease) milder than silicosis."

Brown explained to Lanza that "all we ask is that all of the favorable aspects of the survey be included and that none of the unfavorable be pictured in darker tones than the circumstances justify." Lanza made a number of the suggested changes, and asbestosis (and silicosis) did not

become compensable in New Jersey until 1945.

Asbestosis became compensable in New York in 1935, and an insurance company lawyer wrote that even at top rates some firms were unable to obtain insurance and were moving hazardous work out of the state. It was late that year that the trade magazine *Asbestos* had the temerity to write to Raybestos-Manhattan President Sumner Simpson for permission to run a first story on asbestosis and modern methods of dust control. The subject had been raised earlier, of course:

"Always you have requested that for certain obvious reasons we publish nothing, and, naturally your wishes have been respected."

Simpson sent it right on to Vandiver Brown at J-M, commenting that the magazine had been "very decent about not reprinting the British articles." Vandiver Brown replied:

"I quite agree with you that our interests are best served by having asbestosis receive the minimum of publicity."

The editor of *Asbestos* magazine wrote again some years later about publishing the results of industry-sponsored animal inhalation tests. Still acknowledging that the information was confidential and "nothing should be published about asbestosis in '*Asbestos*' at present." This letter is dated March 1939, one week after Dr. E. W. Baader reported in the literature that state insurance carriers in Nazi Germany were compensating lung cancer with even slight asbestosis as a compensable disease.

The industry experiments on animals were conducted at the Trudeau Institute's Saranac Laboratory in Saranac Lake, New York. The lab had started with tuberculosis research and moved on to dust inhalation studies in the 1920's. In 1936, an invitation was sent out to five other companies by Sumner Simpson, Raybestos' President, offering the suggestion of Vandiver Brown and himself that the industry support some research:

"(We) could determine from time to time after the findings are made whether we wish any publication or not. My own idea is that it would be a good thing to distribute the information among the medical fraternity, providing it is of the right type and would not injure our companies."

Saranac chief and pathologist, Dr. Leroy Gardner, promptly accepted the industry's offer of \$5,000, assuring Van Brown that "the results of these studies shall become the property of the contributors and that the manuscripts of any reports shall be submitted for approval of the contributors before publication."

In 1939 and 1940, Brown wrote to Simpson, alarmed

that Dr. Gardner was publicly referring to his findings without obtaining the prior consent of his sponsors. A draft version of a 1949 confidential report to Johns-Manville referred to the "outline of a proposed monograph on asbestosis submitted by the late Dr. L. U. Gardner in February 1943. In it he called attention to the high incidence of lung cancer among mice inhaling long-fiber asbestos." Apparently, this outline was submitted to someone who did not wish its publication. (All mention of cancer was deleted from the confidential 1949 report sent to Johns-Manville.)

Owens-Illinois Glass Company got into the asbestos insulation business in 1943, and came to Saranac to test the dust from "Kaylo" insulation for its potential respiratory hazards. Five years later the tests had gone on long enough to produce extensive asbestosis in the test animals. Wrote Gardner's successor, Dr. Arthur Vorwald, to Owens-Illinois research chief Bowes:

"I realize that our findings regarding Kaylo are less favorable than anticipated, it is better to discover it now in animals rather than later in industrial workers. Thus the company, being forewarned, will be in a better position to institute adequate control measures for safe-guarding exposed employees and protecting its own interests." (November 16, 1948).

In 1950, Owens-Illinois safety specialist William Hazard wrote to Dr. Vorwald about his department's plan to issue a brochure on the "health aspects of Kaylo dust," but no such brochure was ever produced. The company hired a team from Saranac to conduct an industrial hygiene survey, completed in the beginning of 1951.

In light of the company's proprietary knowledge, it is interesting to read an April 1952 "exclusive" in *The Petroleum Engineer* extolling the virtues of Kaylo. The piece, written by Kaylo Division Director of Research, E. C. Shuman, begins with a photo of a refinery in Port Arthur, Texas, where Ivan Johnson and Clarence Borel worked as insulators.

"The story of how this company researched and developed the non-glass insulating material is interesting. It is also an inspiring example of the American Way. Without the vision, resources, and technical know-how of 'big business,' this material would not be on the market today."

The article boasts that applicators appreciate "the fact that (Kaylo) is non-toxic." It also has a photo of a smiling workman sawing up a piece of pipe covering using a just-covered Kaylo box as a makeshift work bench. The box bears the advice, "Handle with Care," obviously intended to protect the product against breakage in transit.

Owens-Illinois continued testing Kaylo at Saranac,

where the director in 1954, Dr. G.W. Schepers again told company officials that the tests showed Kaylo dust was harmful. But after 1953 the largest customer for Kaylo was Owens-Corning, and in 1958 Owens-Illinois sold the Kaylo business to Owens-Corning. The new owner, which had long manufactured fiberglass insulation, a competitive product, had known about the hazards of asbestos insulation even before the product, Kaylo, came on the market.

Back in 1942, Owens-Corning was having trouble breaking into the insulation business with a fiberglass product. Asbestos Workers union members complained of skin irritation and demanded extra pay for their discomfort in handling fiberglass. Saranac Lab had tested fiberglass dust for Owens-Corning and reported that it caused no significant lung pathology. So as articles by Dr. Gardner and another researcher were going to press, the company decided to "take the offense in telling the health story of fiberglass where it would do the most good." The plan was to buy product liability coverage as a means of assuring the union that the product's safety was guaranteed. If this failed to impress, a "weapon in reserve" on the hazards of asbestos versus fiberglass would be used. This 500-page compendium on asbestosis would be used if the union leadership refused to budge on fiberglass, and it would be spread among the union locals. In this way, the company hoped to use the health issue to cut in on asbestos in the marketplace, while at the same time promoting dissension in the union, possibly even bringing about "the overthrow of the present union leadership."

Though the company unfortunately never unloaded the asbestosis issue on the union, Owens-Corning did print up a brochure for employers. This was full of endorsements for fiberglass as a raw material that carried lower workers' compensation premiums than competitive products like asbestos.

So when Owens-Corning went into insulation contracting and then bought the Kaylo business in the 1950's, it should have been no surprise that one immediate result was the filing of workers' compensation claims by insulation workers with asbestosis. Owens was not the only company that both manufactured asbestos insulation and was fighting compensation claims by (contracting division) insulation installers.

One insulation worker in southern California filed a claim for permanent total disability, listing as defendants, thirty-two companies he had worked for over the years 1920-1957. Mr. James W. Riley and his widow spent the next four years wrestling disability and death benefits from Johns-Manville, Owens-Corning, Armstrong Cork, Philip Carey, and Fibreboard, all of whom were manufacturing products that had caused Mr. Riley to die from asbestosis. The claim file on Mr. Riley at the state's office is nine inches thick and even includes one notice of a 1961 hearing on "penalty for willful failure to pay compensation and death benefits."

A large number of claims have been found against Armstrong Cork, a company that admits to having been served disability claims for asbestosis before starting to manufacture an asbestos insulation product used by its contracting units, in 1956. One of the earliest claims was filed by Mr. Richard Rothwell in 1952. Dr. Harriet Hardy, a respected industrial disease expert, asserted at compensation hearings in Massachusetts that Mr. Rothwell's lung cancer was caused by asbestos insulation dust. On the 1953 claim of Floyd Hyatt, Armstrong went all the way to Florida Supreme Court to avoid paying compensation for asbestosis on a technicality.

Though few compensation records from before 1960 have been preserved, medical reports of insulation installers being compensated for asbestosis date from the 1930's in the U.S., Germany, and Finland.

In the 1940's Johns-Manville periodically sent lung sections and chest X-ray films to Saranac Lab in hopes of getting reports to evaluate compensation claims by asbestos workers. Rose Bertogliat, a widow of Johns-Manville plant foreman in Illinois, approached the company seeking compensation for the occupation-related death of her husband. Sections from Dominic Bertogliat's lungs were then sent by the company to Dr. Vorwald, who concluded that Mr. Bertogliat must have suffered "considerable respiratory difficulty" with his asbestos-torn lungs. Johns-Manville headquarters safety engineer Hugh Jackson, who had worked with Mr. Bertogliat at the Waukegan plant, wrote back that he was "particularly concerned that the type of exposure to which Mr. Bertogliat was subjected should produce the evident results." He continued:

"To our way of thinking, although he had worked in the general area for a number of years, the degree of exposure was relatively slight. That is, he was subjected not to a concentrated exposure of any particular part of the process but rather only to that of the general atmosphere. Since there are numerous others who also have this type of exposure, I would appreciate your opinion as to whether Mr. Bertogliat might have had some individual susceptibility to the asbestos irritation and/or whether we should anticipate others with similar exposures to be similarly affected."

Dr. Vorwald replied on August 13, 1948, that "I can see no other alternative than to anticipate others with similar exposures to be similarly affected."

It must have been clear to Dr. Vorwald that the company was most pleased with negative findings. In all of Dr. Vorwald's archives, there is only one letter signed by Vandiver Brown, who was by 1949 ensconced in Johns-Manville's Executive Offices. The letter included payment of \$90 for evaluation of two workers' chest X-rays, in 1949.

"I was pleased to note your findings confirm our own

belief that these men were not afflicted with any occupational dust diseases."

CANCER

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In 1948, Czechoslovakia followed Germany by recognizing lung cancer as a compensable occupational disease when accompanied by even slight asbestosis. Dr. Hilton Lewisohn, the present medical director of Raybestos-Manhattan has written,

"Merewether (1949) first demonstrated a clear-cut association between asbestosis and lung carcinoma."

Dr. Merewether's data was quickly picked up in an editorial in the *Journal of the American Medical Association*. And Merewether himself also published a paper in the *Canadian Medical Association Journal*.

This last item was immediately spotted by Dr. Kenneth Smith of Johns-Manville, who would later become corporate medical director. He expressed his concern in a note to Dr. Vorwald, who was on his way to an international pneumoconiosis conference in Australia. Vorwald said he'd have a word with Dr. Merewether in Sydney. Merewether's Canadian article included his statistic that, of 235 people dying in the U. K. with asbestosis, 31 (13.2%) also had cancer of the lung and pleura. This was contrasted with a 1.32% lung cancer rate with silicosis, and a 1.0% rate in the general population. In addition Merewether wrote:

"It can be said with certainty, however, that a few months exposure to silica or asbestos dust in gross ... concentrations will inevitably cause death."

Vorwald wrote to Smith that the article was a "dilly and, as you do, I take strong exception to some of his statements." But Vorwald's real pitch was for further study funds.

"Paul (Cartier, physician who was in charge at the Thetford Mines clinic) tells of another storm which is brewing, this time concerning a case of asbestosis with cancer. I am most anxious to get in with the survey of all data available on the subject before the storm really breaks. *As you know, fishing is always best just before rather than immediately after the storm.*" (emphasis added)

Johns-Manville plant worker Vernon Hall died later that month with lung cancer, and Hugh Jackson at corporate headquarters was apprised of the possibility that a compensation claim might be brought against the company.

In 1949, the same year as the famous asbestos mines strike in Quebec, Dr. Kenneth Smith at Asbestos reported to A. R. Fisher and Vandiver Brown at headquarters the results of his industrial hygiene survey of 708 mine and mill workers. Dr. Smith reported that seven

would definitely be entitled to disability compensation and another 52 "should be considered as possible compensation claim cases," but the decent thing is not to tell them they're sick. "It must be remembered that although these men have the X-ray evidence of asbestosis, they are working today and definitely are not disabled from asbestosis. They have not been told of this diagnosis, for it is felt that as long as the man feels well, is happy at home and at work, and his physical condition remains good, nothing should be said. When he becomes disabled and sick, then the diagnosis should be made and the claim submitted by the Company. The fibrosis of this disease is irreversible and permanent so that eventually compensation will be paid to each of these men. But as long as the man is not disabled it is felt that he should not be told of his condition so he can live and work in peace and the Company can benefit by his many years of experience. Should the man be told of his condition today there is a very definite possibility that he would become mentally and physically ill, simply through the knowledge that he has asbestosis."

In November, 1950 the Quebec Asbestos Mining Association approved a request from Saranac for funds to do both epidemiological and animal inhalation investigations to see if asbestos caused cancer of the lungs. The animal tests cost \$36,000 for two years of work. Approval was granted in a meeting attended by QAMA lawyer Ivan Sabourin and longtime Johns-Manville consultant, Dr. Anthony Lanza. The only trace of the animal study is an interim confidential report in 1952, in which Vorwald reported an excess of pulmonary cancer in mice exposed to asbestos dust for 14 months. No final report has ever been found. There was similar concealment of the epidemiological findings.

Dr. Cartier in Thetford Mines, Quebec had autopsied 53 asbestos miners, among whom 10 had had lung cancer. He presented this table of results at the Seventh Saranac Symposium in 1952, proceedings of which were never published.

Comparative Incidence of Pulmonary Cancer in 2 groups of 53 Autopsied asbestos workers			
	Group 1	Group 2	Total
	Employees	Employees	
	with	without	
	Asbestosis	Asbestosis	
Number	34	19	53
Autopsied	34	19	53
Number of Pulmonary Cancers	4	6	10
Percent in Each Group	11.7%	31.5%	

From these results, one might think there was a high risk of cancer in the asbestos industry, a risk that extended to the employees with moderate as well as heavy

exposure. But rather than consider this obvious point, Cartier concluded.

"(T)his table does not reveal a statistical evidence of a causal relationship between asbestosis and cancer." (emphasis added)

In a paper presented in 1953 and published in 1955, Cartier reported that, of 40 miners with asbestosis that he had autopsied, 6 had had cancer of the lung. Without publishing a figure for the number of non-asbestotic workers autopsied, he said there were 7 other lung cancers among non-asbestotics. He alluded to a general industry survey, never published, which did not seem to indicate "a causal relationship." Playing a semantic game he described the role of the "asbestotic fibrosis" as "questionable" in the causation of cancer. Again, he walked wide around the frightening implications of his data, which showed that Canadian asbestos was quite a carcinogenic substance. This would have been clear if Cartier had revealed the proportion of lung cancer among non-asbestotics, which we now know was on the order of 30 percent.

No one in the industry was fooled by Cartier's published conclusions, least of all the lawyer of the Quebec Asbestos Mining Association. Minutes of his September, 1955, presentation to members of the Asbestos Textile Institute, were recorded by Johns-Manville's Hugh Jackson:

"Mr. Sabourin stated that the present major health problems of the industry pertained to the relationship of heart difficulties and cancer to asbestos exposure." Sabourin was accompanied by Dr. Cartier, himself, at the meeting. Cartier's 1953 presentation on asbestos miners was hosted by Professor Anthony Lanza at New York University. One of Lanza's young associates, Dr. William E. Smith, approached Lanza about that time to test inhaled asbestos on rats for its cancer properties. Shortly before he was fired, Dr. Smith was told by Lanza that scientists looking for "industrial causes of cancer were 'trouble makers.'"

Having supported studies on men and mice that both yielded evidence of the carcinogenic effects of asbestos, industry enthusiasm for further research dissipated. Dr. Vorwald was fired by the Saranac Laboratory. He was replaced by Dr. Gerrit Schepers, who did not know of Vorwald's cancer study on asbestos. Dr. Schepers proposed that the Asbestos Textile Institute support carcinogenicity tests on asbestos and was turned down. In 1957 the laboratory folded.

There was still one place left for conducting confidential studies: The Industrial Hygiene Foundation, originally the Air Hygiene Foundation. It was set up by a cross-section of representatives of American industry. (In the words of Vandiver Brown of Johns-Man-

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ville "(It is ... the creature of industry and is the one institution upon which employers can rely completely for a sympathetic appreciation of their viewpoint.") In 1947, IHF did a medical and industrial hygiene survey for the members of the Asbestos Textile Institute (ATI) in 1947. The study found a continuing incidence of asbestosis and dust levels exceeding the lax guidelines recommended by the Public Health Service in 1938. (The textile mill owners had fired 150 workers, most with asbestosis, just before the Service showed up.) The author recommended that the industry assemble the best possible medical brains in a major effort to bring the asbestosis problem under control. Though the author called this industry-wide, confidential survey a "preliminary dust investigation", IHF was never invited back to those plants.

After Saranac's cancer study proposal was rejected by the industry ("ill-advised ... due to its implication that a relationship existed between asbestos and carcinogenic development, a condition which has not been established although it has been given rather widespread publicity in the press"), IHF decided to approach two asbestos company associations, ATI and Quebec Asbestos Mining Association, on a cancer epidemiology study. IHF Director Daniel Braun sent excellent summaries of the cancer literature to Johns-Manville safety chief Hugh Jackson, as well as more lengthy reviews to the trade associations. The ATI members, thus informed that a recent study in England showed a very high lung cancer rate in asbestos textile workers, rejected the study proposal by a 6-2 vote. From ATI's minutes in 1957:

"There is a feeling among certain members that such an investigation would stir up a hornet's nest and put the whole industry under suspicion."

However, the National Cancer Institute of Canada was by now planning to conduct an epidemiological study, and only an offer by the Quebec Asbestos Mining Association to do its own research instead, averted a government investigation of the industry.

After assuring a study design and method of analysis most likely to produce negative results, the Asbestos Mining group bought the idea of a cancer study to be done by IHF. As usual, the survey report was sent back to its sponsors for final review. Johns-Manville's Medical Director Kenneth Smith reviewed the draft with Hugh Jackson, and sent on recommended changes via Quebec attorney Sabourin. The study was published in 1958, and in the introduction it noted, "Perhaps no one has written so extensively on the subject as Hueper." Dr. Wilhelm Hueper at the U.S. National Cancer Institute, who had written about the carcinogenicity of asbestos since 1943, denounced the IHF report as "statistical acrobatics which tend to obscure incriminating evidence."

We can only wonder what Mr. A. R. Fisher, the President of Johns-Manville had in mind when he addressed his fellow industrialists at a 1955 meeting of the Indus-

trial Hygiene Foundation with these words:

"Years ago industrial research was unconcerned about problems of health and safety that might be involved in a product. When the product was developed, it was put on the market. Today our industrial research organizations probe into every health hazard. And every safeguard is insisted upon before the product is marketed to the consumer. A number of companies have established research organizations and laboratories for the sole purpose of eliminating health hazards that might injure the consumer. Some companies have granted fellowships for this specific purpose. And industry has inspired, to a very great extent, the movement to label properly certain types of products that might harm the consumer if he were not forewarned."

Johns-Manville did not put caution labels on sacks of asbestos until 1968. No asbestos products are alleged by manufacturers to have carried warning labels until 1964 and later.

By the late 1950's there were regular meetings of the compensation committee at Johns-Manville's huge New Jersey plant. At these meetings were Medical Director Ken Smith, plant engineer Cliff Sheckler, Nurse Hahn, and a couple of others. Some excerpts of their notes:

Sigmund Skirzenski, age 52, advanced pneumoconiosis

Sheckler: Should we change him.

Smith: Won't make any difference. Do not transfer, retire if necessary.

Alphonso Desantis, age 50

Hahn: Should these men be advised?

Sheckler: We can put transite pipe out of business from this list alone.

John Hudak, 58, moderately advanced pneumoconiosis

Smith: Has he been counseled?

No.

Smith: I see no reason to bring in a man like this it is dangerous.

Anna Blanik, 49, moderately advanced asbestosis

DuBow: She is very nervous. If she is called in, she will get hysterical and I am sure you will have a claim on your hands.

Hahn: If she is transferred to another job, wouldn't that also precipitate something?

DuBow: Mrs. Blanik is working with no complaints. It is one year since she was (health counseled).

Smith: As a doctor, you can't leave her where she is today.

DuBow: Taking her off the job will not change things. The damage has been done.

Stella Krzesewski, 41, moderate to advanced asbestosis

Scheckler: No health counseling
Patsy Infante 53, 33 years in asbestos
Getter: Records indicate asbestosis in 2/51. Man
was advised about dust in his lung in 1/55

Workers at Manville describe the conditions in the 1950's as extremely dusty. Ted Kowalski, who is a leader of this community's victims of asbestos, used to saw the butt ends off of molded pipe insulation. The dust was so thick he couldn't see across the room. The air pollution from the factory blanketed the town with asbestos dust and solid wastes were dumped in a wanton manner. The Manville asbestos workers' group is still struggling to bring New Jersey's compensation laws up to a minimum level of decency. These plant workers may have no alternative to workers' compensation, and their employer's failure to tell them when their examinations showed occupational disease may not even be able to be litigated, let alone used to demand punitive damages.

At the January, 1960 meeting of the National Insulation Manufacturers Association somebody raised the idea of a health program. By this time, the industry leaders were busily fighting compensation claims from insulation workers in their contracting divisions. The idea was dropped at the Manufacturers' meeting that May, at a Florida beach resort. Of all the asbestos products ever marketed, the one that accounts for the greatest toll in exposure and disease is undoubtedly insulation, dust from which was daily breathed by millions of shipyard and construction workers.

A major producer of asbestos insulation was Philip Carey Manufacturing Company. In 1962, at the recommendation of consulting actuaries, Carey hired Dr. Thomas Mancuso for a medical survey of their manufacturing plant. It was initially hoped that:

"From the claims standpoint, Dr. Mancuso, as a nationally accredited expert, can help us differentiate an expensive asbestosis or silicosis case from non-occupational illnesses such as cancer and bronchitis, and make the defense stand up."

The author of this prediction was Louis A. Pechstein, Assistant Secretary of the company. Mr. Pechstein is now an official with the company that bought Carey in the early 1970's, Celotex Corporation.

Dr. Mancuso did a thorough survey of conditions at the plant and recommended extensive changes, not only inside the plant but involving consumer warnings and air pollution control. These recommendations were couched in terms of promoting public and consumer relations while avoiding lawsuits and compensation claims. By mid-1963, Dr. Mancuso presented the company with the first report of Dr. Selikoff, showing the very high death rate from cancer and asbestosis among insulation workers. He advised that the officers and managers of an enterprise might even be sued by their own employees

for not providing a safe place to work.

Reporting the results of a conference with Mr. Pechstein and others, Dr. Mancuso submitted a confidential report to management on September 23, 1963. The report was full of specific recommendations to clean up the plant, control air pollution, and provide advisory services to product users. By this time, Mancuso appears to have realized that his advice would be rejected.

"Internally, within the company, the question has been raised as to why medical problems, particularly relating to cancer and asbestos, were not recognized before. Actually, they were recognized, but the asbestos industry chose to ignore and deny their existence."

This company continued manufacturing asbestos insulation products without even attaching warning labels, until 1971.

Dr. Kenneth Smith testified in 1976, shortly before his death, that he'd recommended the use of warning labels on Johns-Manville asbestos way back in 1952:

"The reason why the caution labels were not implemented immediately, it was a business decision as far as I could understand. Here was a recommendation, the corporation is in business to make, to provide jobs for people and make money for stockholders and they had to take into consideration the effects of everything they did and if the application of a caution label identifying a product as hazardous would cut into sales, there would be serious financial implications. And the powers of be had to make some effort to judge the necessity of the label versus the consequences of placing the label on the product."

It would appear that the company's decision had been made some years before. Starting in 1947, and continuously until the insurance carriers hauled out on Johns-Manville in 1976, the corporation purchased a total of \$364,000,000.00 in product liability insurance coverage.

What can we conclude from all this?

1. The entire asbestos problem of today is man made.
2. The concealment of medical facts and reckless indifference to the growing threat represented by the rising use of asbestos involved every major firm in the industry.

SPECIFICALLY

- a) The concealment by several asbestos companies mining asbestos in Canada and Metropolitan Life Insurance Company of a 1930 survey by Lanza and Pedley - showing 42 cases of asbestosis in a population of workers only 76 of which had had more than 10 years of exposure. Pedley reported publicly only that the miners felt the dust was not

- harmful, and that no cases of pneumoconiosis from asbestos mining had been reported in Canada.
- b) The delayed publication of Lanza's 1935 industry-sponsored medical survey, critically weakened by editorial changes requested by Johns-Manville attorney Vandiver Brown representing his firm and Raybestos-Manhattan Corporation President Sumner Simpson.
 - c) The suppression of any mention of asbestosis in the U. S. trade journal, *Asbestos*, throughout the 1920's and 1930's, at the direction of Brown and Simpson.
 - d) Five asbestos companies, including Johns-Manville and Raybestos-Manhattan, contributed to inhalation experiments on animals with asbestos dust, but the scientists at Saranac were not allowed to publish any of their findings unless approved by Vandiver Brown. Studies implicating asbestos as a carcinogen were suppressed.
 - e) Even after receiving a report (1948) that Kaylo dust caused asbestosis, and having Saranac personnel conduct industrial hygiene surveys of the Ohio plant where Kaylo was produced (1951), Owens-Illinois continued to push the product as "non-toxic" in trade magazines (1952). At the same time, Owen-Illinois patented asbestos-free calcium silicate pipe covering materials.
 - f) Owens-Corning, which had used the health issue against asbestos in the 1940's went into asbestos insulation contracting in the 1950's and bought the Kaylo business in 1958. Despite the longstanding knowledge of asbestos insulation dangers both in Owens-Corning and its new subsidiary, and despite mounting compensation claims by insulation installers in the 1950's, the company made no effort to inform insulators of the dangers and the measures to take to reduce exposure to the deadly dust.
 - g) Johns-Manville top management rejected the proposal by Dr. Kenneth Smith to affix warning labels to asbestos in 1952. This despite the company's discovery in 1948 that one employee died of asbestosis from just breathing the general atmosphere inside their Waukegan, Illinois plant.
 - h) Johns-Manville's management held regular meetings at the large Manville, New Jersey plant, to consider health problems and avert workers' compensation claims (1957-1958). Their notes show that the workers were routinely kept in the dark about the company doctors' diagnoses of asbestosis. A John-Manville plant manager in California, Wilber Ruff, has testified that the company had a "hush-hush" policy until 1971 of not telling workers if their biennial company physical showed signs of dust disease.
 - i) The Quebec Asbestos Mining Association sponsored an inhalation test of asbestos on mice, at Saranac in 1951-52. The preliminary findings of these tests, never published, were positive, in a 1952 report to QAMA. The same year that industry doctor Paul Cartier published figures purporting to show no cancer hazard in asbestos mines, QAMA's lawyer informed the (9/55) meeting of the Asbestos Textile Institute that cancer was a major problem in the industry.
 - j) ATI's members rejected proposed cancer studies from Saranac Lab and Industrial Hygiene Foundation in 1956-57. QAMA supported a short-term follow-up, mortality study of asbestos miners, published by IHF researchers and roundly denounced for design biases by Dr. Wilhelm Hueper and Dr. Thomas Mancuso.
 - k) Armstrong Cork had a large number of compensation claims (for asbestosis and cancer, starting 1952) from insulation workers hired by its contracting division. Yet Armstrong had long been repackaging asbestos insulation and then manufactured its own starting in 1956, with no warning labels and no attempts to advise workers of safest work practices.
 - l) Compensation claims by insulators were also being paid by Johns-Manville and Philip Carey Manufacturing Company in the 1950's. They continued to manufacture asbestos insulation with no attempts to warn of the danger, or conduct studies on the exposure and fate of insulation workers.
 - m) The National Insulation Manufacturers Association rejected the idea of setting up a health program in 1960. Member firms included major producers of asbestos insulation. The corresponding British manufacturers group (Thermal Insulation Contractors Association) had requested 70 copies of government warning on the health hazard of asbestos in shipyards in 1945.
 - n) Dr. Thomas Mancuso, whose study of asbestos workers published in 1963 showed an excess of cancer, was hired by the Philip Carey Manufacturing Company to conduct an industrial hygiene and medical survey of the Carey plant making asbestos insulation. He recommended continuous industrial hygiene oversight for the plant workers, the compilation of health and autopsy data for studies, and the development of a multi-faceted customer advisory effort on the health hazards. The responsible company officials, including Louis Pechstein, who had hired Dr. Mancuso, apparently disregarded much of this advice. Carey asbestos insulation was sold for the next 7 years without warning labels.
 - o) Thetford Mines clinic, which served Carey Canadian, Lake Asbestos, Bell Asbestos, and Asbestos Corporation in Quebec, run from 1940 - 1974 under the direction of Dr. Paul Cartier, admittedly had a policy of telling workers they were healthy even when medical examinations revealed disabling asbestosis. In nearby Asbestos, Quebec, Dr.

Kenneth Smith examined 708 Johns-Manville asbestos mining employees in 1949, and did not tell one that he had symptoms of asbestosis.

STATUS OF REMEDIAL CRIMINAL SANCTIONS LEGISLATION

There are several attempts afoot in Congress to amend the U.S. Criminal Code by providing jail penalties for certain practices by business managers. The least extensive proposals would deal with concealment only; other bills would contain complementary lesser penalties for reckless endangerment. Using the example of asbestos, the payment of workmen's compensation to sick insulators by officials of a company who did nothing about the firm's continued manufacture of asbestos insulation without warning labels--this might be handled as reckless endangerment, if not concealment.

In the House, Congressman George Miller (California) has offered H.R. 7040, and a print of the hearings on this bill should be available soon from the House Judiciary Committee, Subcommittee on Crime.

No Senate version of this bill has appeared, although similar provisions may be incorporated into the overall revised Criminal Code wending its way through both Houses of Congress. The Administration has no official position on the Miller bill: which is to say that various Departments have very strong positions that point in opposite directions. Business interests have generally refrained from taking public positions on the Miller bill, but are lobbying fiercely against its passage.

The fact that this is an election year not only for the President but also many Members of Congress, who must all raise campaign funds largely from business contributors, militates against favorable consideration of this legislation in 1980. However, if it does not come up this year, renewed efforts will be made in 1981, based on the hearing record and whatever else comes up in the next few months, to provide criminal sanctions in the U.S. Code where they are most needed. This legislation is definitely an area where individuals and professional organizations can help by making their views known to Congress and the Administration. 

JOHN MANVILLE
ASBESTOS
MINE
EMPLOYEES
1949
KENNETH SMITH
SYMPTOMS OF ASBESTOSIS
H.R. 7040
GEORGE MILLER
CALIFORNIA
HOUSE JUDICIARY COMMITTEE
SUBCOMMITTEE ON CRIME
HEARINGS
PRINT
1980

APC 003585

ENVIRONMENT

By Ronald L. Motley

The Lid Comes Off

The asbestos industry's reaction historically to mounting evidence that the magic mineral was grossly destructive to human life exemplifies the "keep the lid on" philosophy practiced by some industries. Through evolution the industry's tactics progressed by degrees from denial of a health problem to active solicitation of favorable evidence.

As Dr. Wilhelm Hueper so prophetically stated in 1943:

"Industrial concerns are in general not particularly anxious to have the occurrence of occupational cancers among their employees or of environmental cancers among the consumers of their products made a matter of public records. Such publicity might reflect unfavorably upon their business activities, and oblige them to undertake extensive and expensive technical and sanitary changes in their production methods and in the types of products manufactured.

"There is, moreover, the distinct possibility of becoming involved in compensation suits with extravagant financial claims by the injured parties. It is, therefore, not an uncommon practice that some pressure is exerted by the parties financially interested in such matters to keep information on the occurrence of industrial cancer well under cover. It is for these reasons that the statistical data to be presented here concerning the incidence of occupational cancers as caused by the different industrial agents represent only those made public."

A.R. Fisher, President of Johns-Manville in 1955, spoke in glowing terms of his company's dedication to research and its responsibility to the consuming public:

"As with the rest of industry, we

are also aware of our responsibilities to the consuming public. Today, the products of industry are designed to promote the health and comfort of the public. Industry is constantly striving to bring about more pleasant living through improved products at better values to the consumer. Moreover, every effort is made nowadays to protect the consumer with safer products and better methods of handling them.

"Years ago industrial research was unconcerned about problems of health and safety that might be involved in a product. When the product was developed, it was put on the market. Today our industrial research organizations probe into every health hazard. And every safeguard is insisted upon before the product is marketed to the consumer."

In fulfillment of Hueper's prediction and in stark contrast to Fisher's pontifications are historical corporate documents evincing a pattern of suppression of information, denial of a problem, and solicitation of unfounded scientific support for their position and manipulation of data.

By 1932, the British had fully documented, through the classic Mereweather and Price study, the occupational hazard of asbestos dust inhalation. On September 25, 1935, the editor of *Asbestos*, a trade journal, wrote Sumner Simpson, president of Raybestos-Manhattan, requesting permission to publish an article about the hazards of asbestos. The editor referred to the magazine's past acquiescence to the American industry's desires that this dirty linen not be publicly aired: "Always you have requested that for certain obvious reasons we publish nothing and naturally your wishes have been respected." Dangling the tempting carrot of a favorable forum, the editor suggested that a "discussion of it (the alleged asbestos hazard) in *Asbestos* along the right lines would serve to combat the rather undesirable publicity given to it in current newspapers."

Ronald L. Motley is associated with the Barnwell, South Carolina firm of Blatt and Fales.

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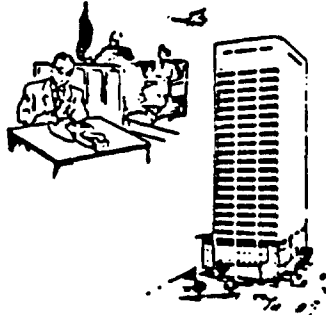
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'...the less said...'

While Simpson was unpersuaded by the editor's entreaties, in a letter to Vandiver Brown, secretary of Johns-Manville, he praised the magazine for "not reprinting the English articles" and pointedly observed that "the less said about asbestos the better off we are...."⁴

Brown hastened to agree and suggested that if an article on asbestosis had to be published, it should reflect "American data rather than English."⁵

The American data referred to was obtained from a study conducted by Dr. Anthony Lanza, *et al.*, on behalf of Raybestos-Manhattan and Johns-Manville and the Metropolitan Life Insurance Company, the insurance carrier for both manufacturers. The Lanza study was begun in 1929 and completed in late 1931, but the results remained unpublished until 1935.

Brown's confidence in the American (Lanza) data was well-founded as he and other industry officials and lawyers were to serve in an editorial capacity prior to its publication. Lanza dutifully submitted his galley proof to Brown on December 7, 1934. Brown returned the galley on December 10, 1934, with, among other suggestions, the comment that Lanza had omitted from this final draft a sentence which appeared in an earlier draft that: "Clinically from this study, it (asbestosis) appeared to be of a type milder than silicosis."⁶

Further suggestions were rendered by Mr. Hobart, Johns-Manville's New Jersey attorney who forcefully explained why Johns-Manville wished to portray asbestosis as a disease milder than silicosis. Referring to the pendency of legislation in New Jersey to schedule asbestosis under the Workmen's Compensation Act, Hobart stated that Johns-Manville opposed the inclusion of asbestosis as a compensable disease and observed that "it would be very helpful to have an official report to show that there is a substantial difference between asbestosis and silicosis: and by the same token, would be troublesome if an official report should appear from which the conclusion might be drawn that there is very little, if any difference, between the two diseases."⁷

On December 21, 1934, Brown forwarded Hobart's suggestions to Lanza and wrote that while he did not intend to suggest that scientific facts or

inevitable conclusions be changed, he nevertheless asked that "all the favorable aspects of the survey be included and that none of the unfavorable be unintentionally pictured in darker tones than the comments justify."⁸

Lanza acceded to many of the industry lawyers' requests including the conclusion that asbestosis was milder than silicosis. Lanza's study entailed taking x-rays of 126 workers with three years' or more asbestos exposure who were selected "more or less at random" with physical examinations being performed on 121 of the workers. The results were startling: 67 of 126 (53 percent) were classified as positive asbestotics and only 20 (17 percent) were asymptomatic,⁹ but these statistical conclusions were not presented in Lanza's report.

The quest for helpful scientific "facts" did not end with the publication of Lanza's study. Seeking ammunition for courtroom use against "ambulance chasing attorneys and unscrupulous doctors,"¹⁰ certain asbestos manufacturers banded together to fund asbestos dust research at the prestigious Saranac Laboratories (Trudeau Foundation).

Simpson wrote F.H. Schuler, President of Thermoid Rubber Co., on November 10, 1936, suggesting that several of the manufacturers jointly fund asbestos experiments at Saranac. Simpson allowed that the benefactors "could determine from time to time after the findings are made whether we wish any publication or not" — the decision to publish, of course, being a function of the nature of the results of the study. "It would be a good idea to distribute the information to the medical fraternity providing it is of the right type and would not injure our companies."¹¹

Conferences between industry and Saranac representatives culminated in a deal being struck whereby certain laudable experiments would be conducted with the decision whether or not to publish the scientific results being reposed entirely with the sponsors.

"It is our further understanding that the results obtained will be considered the property of those who are advancing the required funds, who will determine whether, to what extent and in what manner they shall be made public. In the event it is deemed desirable that the results be made

APC 003587

April 1950 TPIA1

public, the manuscript of your study will be submitted to us for approval prior to publication."¹²

Shortly thereafter, Gardner agreed to anoint the industry sponsors as the sole arbiters of publication of the results of the experiments:

"The Saranac Laboratories agrees that the results of these studies shall become the property of the contributors and that the manuscripts of any reports shall be submitted for approval of the contributors before publication."¹³

Even this marriage was not without strife. Carped Simpson in 1939 upon learning that Gardner was presenting papers which incorporated reference to his preliminary asbestos findings: "The reports may be so favorable to us that they would cause us no trouble but they might be just the opposite which could be very embarrassing."¹⁴

Predictable Reaction

The mid-1940s brought increasing concern about the relationship between asbestos and cancer. The asbestos industry was not ignorant of the early reports suggesting a causal relationship. Its reaction was predictable. An article which appeared in 1949 in the *Scientific American* indicting asbestos as a carcinogen prompted swift reaction from the membership of the Asbestos Textile Institute (ATI), a trade association of asbestos textile manufacturers. Crying foul the industry sought solace from Dr. Lanza. Correspondence was exchanged between industry officials and Lanza,¹⁵ but to date the writings have not surfaced.

Asbestos-cancer reared its ugly head again in 1954. Saranac officials appeared before the ATI and, citing German and English data on the association supporting a causal relation, urged that animal studies be undertaken to explore the association.

The ATI pondered the proposal for eight months before rejecting it in June 1955, on the grounds that such a study was "ill-advised due to its implication that a relationship existed between asbestos and carcinogenic development, a condition which to date has not been established although it has been given widespread publicity in the press."¹⁶

Sir Richard Doll's study,¹⁷ which clearly linked asbestos to lung cancer,

had, of course, been published prior to the rejection of Saranac's proposal.

'...derogatory literature...'

The mid-1950s found the asbestos industry embroiled in Workmen's Compensation litigation with asbestos workers who were lung cancer victims. The escalating cancer claims moved Dr. Kenneth W. Smith, medical director of Johns-Manville in March 1956, to implore the ATI to retain its friend, the Industrial Health Foundation (IHF), to conduct a cancer study which could enable the ATI to "procure information which would combat current derogatory literature."

Smith suggested an alliance with the Quebec Asbestos Mining Association (QAMA) which was conducting a similar study. He alarmingly related that one company had recently suffered an award in favor of a cancer victim.

Smith carefully reviewed a 1955 publication of Dr. Wilhelm Hueper and reported to the ATI that Hueper had opined that all asbestos workers as well as those environmentally exposed were at risk to contract asbestos-induced cancer.

Smith's revelations prompted the ATI General Meeting on March 18, 1956, to appropriate \$1000 to initiate a "preliminary survey to investigate the possibility of more concerted action designed to refute the work of Dr. Hueper." After agonizing over an IHF cancer study proposal for almost a year, the ATI Air Hygiene Committee rejected the plan on March 7, 1957, assigning the following reasons:

- QAMA has a similar program.
- There is a feeling among certain members that such an investigation would stir up a hornets nest and put the whole industry under suspicion.
- We do not believe there is enough evidence of cancer or asbestosis or cancer and asbestosis in this industry to warrant this survey.¹⁸

With the toll in human life from asbestos-induced cancer increasing, the issue would not die. In June 1963, ATI members obtained copies of Dr. I.J. Selikoff's epic cancer study of insulation workers and braced itself for the 1964 New York Academy of Sciences Symposia on Asbestos by discussing the retention of a "public relations man to get accurate publici-

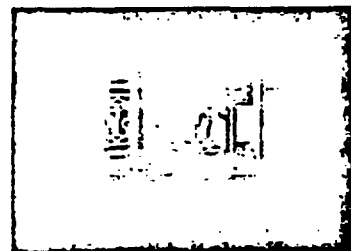
ty to the public."¹⁹ As late as 1971, an industry medical consultant labelled Selikoff a "dangerous man;" and to the question as to whether the American Medical Association might be able to control Selikoff, the consultant replied that "pressure" on Selikoff's hospital, Mt. Sinai, might be "effective."²⁰

One asbestos insulation manufacturer, when advised in 1963 by its well-respected medical consultant that the asbestos-cancer relationship was beyond cavil and that the company should take steps to warn consumers, responded by declining to renew the consultant's contract and failing ever to disseminate warnings to its customers.

Perhaps the corporation was miffed because its consultant had the temerity to observe: "Internally within the company the question has been raised as to why medical problems, particularly relating to cancer and asbestos, were not recognized before. Actually, they were recognized, but the asbestos industry chose to ignore and deny their existence."²¹

Johns-Manville "led" the industry in its efforts to keep workers and consumers in the dark. Asbestosis by

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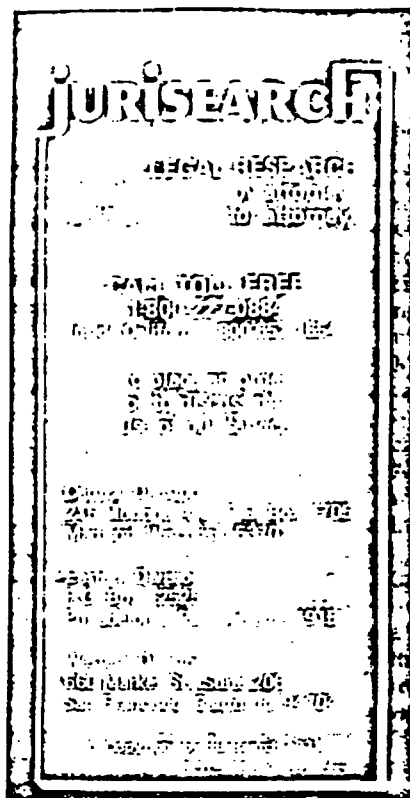


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1949 was acknowledged to be a progressively debilitating disease. Yet Dr. Kenneth Smith, in a 1949 survey of dust conditions in a Canadian Johns-Manville mining and milling facility, deemed it inadvisable to apprise seven asbestotics of their peril:

"It must be remembered that although these men have the x-ray evidence of asbestosis, they are working today and definitely are not disabled from asbestosis. They have not been told of this diagnosis for it is felt that as long as the man feels well, is happy at home and at work, and his physical condition remains good, nothing should be said. When he becomes disabled and sick, then the diagnosis should be made and the claim submitted by the Company. The fibrosis of this disease is irreversible and permanent so that eventually compensation will be paid to each of these men. But as long as the man is not disabled it is felt that he should not be told of his condition so that he can live and work in peace and the Company can benefit by his many years of experience. Should the man be told of his condition today there is a very definite possibility that he would become mentally and physically ill, simply through the knowledge that he has asbestosis."²²

The Johns-Manville policy of refusing to advise workers of early evidence of asbestosis was characterized in court testimony by a former plant manager as a "hush-hush policy" and one which, horrifyingly, persisted until the late 1960s.²³

Time Bomb

The most graphic illustration of Johns-Manville's disinclination to alert the unwary of the asbestos time bomb is the following colloquy taken from the court testimony of Dr. Smith before he died in 1977. When asked whether he had ever advised Johns-Manville officials to place warning labels on asbestos-containing insulation products, Smith's response is both illuminating and shocking:

Q: "What was the reason, when the responses which you were getting, as to why the asbestos containing products were not labelled with a caution label back in 1952 when you first recommended that while compared to the diatomaceous earth product known as Celite?"

A: "The reasons why the caution labels were not implemented immediately, it was a business decision

as far as I could understand. Here was a recommendation, the corporation is in business to make [money], provide jobs for people and make money for stockholders and they had to take into consideration the effects of everything they did and if the application of a caution label identifying a product as hazardous would cut out sales, there would be serious financial implications. And the powers [that] be had to make some effort to judge the necessity of the label vs. the consequences of placing the label on the product."²⁴

Stung by mounting public criticism of industry's research activities, Johns-Manville, through its executive vice president, Francis H. May, offered the following riposte:

"I do know that the entire record makes it abundantly clear that Johns-Manville and Raybestos-Manhattan went forward with the first medical research done in this country; I do know that such research was published for all the world to see in the public health reports of the United States Health Service; I do know that industry continued to finance research; I do know that the findings of such research were consistent with other developing medical information; I do know that these actions were voluntary; I do know that industry's efforts antedated by several years any action by the Federal government; I do know that Johns-Manville was promoting and has continued to promote basic medical research; and I do know that but for industry's efforts, which I suspect were unparalleled in the 1930s, the state of medical knowledge in this country would have lagged for years. I don't understand the contention that manipulation and suppression and total lack of concern for individuals were basic motives of industry. If that were so, why did industry bother to do anything at all? And yet, the record is clear this was not the path chosen."²⁵

To the extent that its research activities contrast with the distinct "ostrich-like attitude"²⁶ of many of the asbestos manufacturers, May's long-arm pat on the Johns-Manville back is partially justified. The conclusion is inescapable, however, that Johns-Manville was moved to engage in partisan research by goals less lofty than humanitarianism and corporate rectitude.²⁷

(see References, p.60)

APC 003589

Mrs. Joan Santer
Joan,

for info this
is the result
of our recent
survey of
Mrs. Septs.

Dr. B.

<u>Location</u>	<u>No. of Employees Being Medically Screened Periodically for Past and/or Present Asbestos Exposure</u>
Addy Works	0
Arkansas Operations	0
Alcoa Technical Center	0
Badin Works	81
Cleveland Works	0
Corona Operations	0
Davenport Works	20
Lafayette Works	23
Lancaster Works	0
Lebanon Works	40
Massena Operations	20
Pittsburgh Office	0
Point Comfort Operations	40
Richmond Works	3
Rockdale Works	521
Tennessee Operations	16
Vancouver Operations	80
Vernon Works	0
Warrick Operations	144
Wenatchee Works	12

Notes:

Lebanon

This number will decrease with the elimination of certain asbestos-based material.

Pittsburgh

26 employees of the William Penn Hotel were screened to see if they could use a respirator last year, but there has been no follow-up.

Pt. Comfort

Total of 40 = 35 Active and 5 Inactive

Richmond

This number is for x-rays of 3 people in 1983.

Tennessee

6 of the total number given are now retired.

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