

FILE NAME: Texaco (TEX)

DATE: 2003 Aug 19

DOC#: TEX002

DOCUMENT DESCRIPTION: Legal - Deposition of Ronald Richards with
Barry Castleman Notes

Ronald Richards

- 19 he's an IH joined Texaco 1967
- 20 he was preceded at Texaco by Alan Dooley, 1947-71
- 21 Dooley was co-author of 1935 A'sis study (Fulton et al.);
earlier noted Dooley w/ state of PA in 1930's (20)
- 28 studied w/ Hatch in 1963-64, worked for state of PA 1961-69
- 33 opines that no consensus on asb. + Ca until 1970s (L+P '67)
- 34 he was on FLV committee in 1968-69
- 367 one of Eisenstadt + Wilson's cases from Texaco, Wilson was w/ Texaco
when 1960 rept. published and later in 1960s (see refs to 1960 pgs)
- 53 APL study begins 1/65, Dr. Bayler of Texaco involved, insulators.
- 54 Texaco resp. say study never completed
- 57 70 insulators at Port Arthur
- 59 at least one retiree found to have died from peritoneal M.
- 62 no changes at plant after discovery of the 2 (or 3) mesos (wetting; A. substrate)
- 67 1949 study by A. Dooley noted that A causes A'sis
- 70 claims only concern of Dooley was A handling inside a shed
- 86 Texaco policy non A on new plants in 1972 (OSHA)
- 87 6/72 RR memo: LA plant AF for "a number of years" by then
- 89-92 RR ast. samples 5/72 of insulator exposure were > 5 f/cc (15 min)
for 4/5 samples of manual cutting, sawing + fitting insulation
- 92 $\Rightarrow$ resp. prot. needed for insulation + stripping
seems to say test data were for fire damaged insulation
- 99 Texaco had contract for IH sampling + analyses w/ Kettering Labs in 1970's.
- 118 says it was not widely accepted that A $\rightarrow$ Ca shortly after J.S. publ. (mid 1960s)
- 122-24 Texaco seems to have gotten abstracts in advance of 1964 NYAS Conf
- 129-132 memo attached 3/65 Phil. Eng. story on meso-risk at low exposure
- 141-145 4/17/72 Tex. memo describes w/ OSHA priorities and coming OSHA A. reg.
- 152 ref. that Dr. Newquist was on IHF medical committee in 1955
- 154-55 Texaco stopped using A. insulation on new construction, phasing out use
in existing refineries 8/72 (ref. 8/72 memo)
- 159 Bechtel told to use only A-free insulation
- 165 Dr. Murguist on APL subc. carcinogenicity 11/11/78
- 166 Dooley also listed " " " "
- 175 RR drafted docs. re implementing med. mon. reg.'s of OSHA est. 3rd. 1972
- 176-77 Some periodic med. exams of some workers before reg. by OSHA
- 184-87 Medical procedures not applicable to retirees (informing them) 1982.
- 197 testimony quoted of Drummond who became a safety supervisor
in 1967 that respirators were then available to workers upon request
- 207 he's and reportedly earlier RR says 195's insulators sprayed A in enclosed areas
- 215 1949 Dooley memo says crushing + bagging A insulation > 5 mppcf

VIRGINIA JAMESON, individually
and as Personal Representative
of the Estate of RAY JAMESON,

Plaintiffs,

vs.

SABERHAGEN HOLDINGS, INC.,
et al.,

Defendants.

No. 02-2-01069-8

Videotaped Deposition Upon Oral Examination
of

RONALD RICHARDS

8:37 a.m.

August 19, 2003

1420 Fifth Street

Suite 4100

Seattle, Washington

Cheryl Macdonald, CCR
Court Reporter

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1 RONALD RICHARDS, witness herein, having been first
2 duly sworn by the Notary, deposed
3 and said as follows:

4 (Marked Deposition Exhibit 1-4.)

5 EXAMINATION

6 BY MR. FROCKT:

7 Q. Morning, Mr. Richards.

8 A. Morning.

9 Q. My name is David Frockt. We've met before?

10 A. That's correct.

11 Q. I wanted to ask you first, can you tell me what
12 you've done in preparation for your deposition testimony
13 here today?

14 A. I've gone through several documents that were
15 sent to me back in Surprise, Arizona, and we met with Barry
16 on Sunday afternoon, and then we met with both Steve
17 and Barry yesterday for the better part of the day.

18 Q. And by "we" I assume you mean your attorneys and
19 yourself?

20 A. That's correct, myself.

21 Q. What documents did you look at?

22 A. Oh, we had several binders about that thick
23 (indicating) that we went through, paged through. There
24 were some API documents, American Petroleum Institute
25 documents. There were some documents regarding some

1 industrial hygiene surveys that were done back in the '70s
2 at Anacortes. Let's see. There were other memorandums and
3 things of that particular assortment, but it was a big thick
4 list, and I can't remember everything we looked at. I guess
5 my earlier deposition that we took in, what, February, I
6 guess it was.

7 Q. It was in February, yeah.

8 A. We looked at that, too.

9 Q. What API documents did you look at?

10 A. Oh, there were some from the '40s, and I don't
11 remember the exact context of them. Perhaps some from the
12 '50s.

13 Q. Any particular documents that you recall sitting
14 here right now that you looked at?

15 A. No. They were ones I had not seen before.

16 Q. Were they meeting minutes?

17 A. Yes, they were. They were minutes of certain
18 meetings, that's correct.

19 Q. Sir, can you tell me was Texaco -- was Texaco a
20 member of the American Petroleum Institute?

21 A. All I know is that I guess the attorneys have
22 traced back a membership as far as 1949 or 1948, something
23 in that particular time frame. I don't know anything beyond
24 that. I don't know anything before that. They were
25 certainly a member when I arrived at Texaco in 1969.

1 MR. FROCKT: Sir, I'm going to hand you what
2 we'll mark as Exhibit 5.

3 (Marked Deposition Exhibit 5.)

4 Q. Sir, is that a document that you looked at in
5 preparation for your deposition testimony here today? I'm
6 sorry, please take a few minutes to look through it. I
7 don't want to -- I want you to look at the document,
8 obviously.

9 A. I think we looked at something similar to this.
10 It could have been this document. I did not go through in
11 complete detail. I don't recognize this particular cover
12 page, and I don't remember this cover page. I think maybe
13 the first couple of pages are either a document I looked at
14 yesterday or something similar to a document I looked at
15 yesterday.

16 MR. MARKS: What exhibit number is this?

17 MR. FROCKT: This is No. 5.

18 Q. Sir, you stated that Texaco -- it was Texaco's
19 understanding that they were a member of the API beginning
20 in 1948 or '49. That's what you just said a minute ago; is
21 that right?

22 A. That's what I think the attorneys have
23 determined.

24 Q. Sir, can you take a look at the top of that
25 document. Do you see the name M. N. Newquist there under

1 members?

2 A. Yes, Dr. Newquist.

3 Q. What's the date of that document?

4 A. May 7 or 8, 1945.

5 Q. And that is the minutes of a meeting of the
6 Medical Advisory Committee of the American Petroleum
7 Institute, isn't it?

8 A. That's correct.

9 Q. So what was -- do you know who Mr. Newquist was?

10 A. I had never met Dr. Newquist, but he was the -- I
11 think his title was chief medical officer prior to Dr.
12 Curtis Baylor, and we've talked about Dr. Baylor before.

13 Q. Who did Mr. Newquist -- who did Dr. Newquist work
14 for?

15 A. I have no idea.

16 Q. Was he a Texaco employee?

17 A. Oh, yes. But I thought you meant who he reported
18 to. He was a Texaco employee, and I think his title was
19 chief medical officer at the time.

20 Q. That document would seem to indicate that Dr.
21 Newquist was a -- was on this Medical Advisory Committee in
22 1945, doesn't it?

23 A. Yes.

24 Q. And Dr. Newquist was the medical director for
25 Texaco at that time; is that correct?

9
1 A. Or chief medical officer, whatever the title was.
2 Q. Chief medical officer for Texaco; is that
3 correct?
4 A. Yes.
5 Q. I believe there's another individual from the
6 Texas Company that's listed there, H. R. Warrick, do you see
7 that?
8 A. Yes.
9 Q. And is it designated there that he's also from
10 the Texaco company? Texas Company, I apologize.
11 A. The Texas Company, New York, uh-huh. I don't
12 recognize that name at all.
13 Q. So, would you agree with me that that document
14 would seem to indicate that Texaco was, in fact, a member of
15 the American Petroleum Institute at least as early 1945?
16 A. Not necessarily. I know that I've been a member
17 of certain committees and associations without being an
18 actual -- without the company being a member of that
19 particular firm. So again, all I know is what I was told,
20 and that was that they can trace back their membership
21 to 1948 or 1949.
22 Q. So you're saying that it's the official
23 membership of the Texas Company in the American Petroleum
24 Institute beginning in 1948 or '49?
25 A. Well, that's what they can trace back.

10
1 Q. So are you saying, then, it's your belief that
2 Dr. Newquist was a member in his individual capacity, a
3 nonmember -- as a representative of the Texas Company at
4 that time?
5 A. I think what I'm saying is that this document
6 doesn't necessarily demonstrate to me that in fact since Dr.
7 Newquist was on this particular committee that in fact the
8 corporation was a member of the API, in the absence of other
9 documentation that we have that indicates that we can trace
10 back a membership as far as 1948 or 1949. That's all I'm
11 saying.
12 Q. You believe that -- is it normal for -- when you
13 were working for Texaco as an industrial hygienist, was it
14 normal for you to be a member -- in an organization
15 individually and not in your capacity as a representative of
16 the Texas Company?
17 A. Yes.
18 Q. What organizations were you a member of?
19 A. Well, that's the American Industrial Hygiene
20 Association. I was a member and secretary/treasurer of the
21 New York chapter, and Texaco was not a corporate member of
22 the AIHA. So, I mean, another one that comes to mind is the
23 Manufacturing Chemist's Association.
24 Q. So is it Texaco's position then they were not a
25 member of the American Petroleum Institute in 1945?

11
1 A. No. What I'm saying is you asked me a question
2 as to whether this demonstrates that Texaco was, in fact, a
3 member of the API in 1945. And what I'm saying is that thi
4 document to me does not necessarily demonstrate that Texaco
5 was a member of the API or not in 1945 in that the
6 documentation we can find only goes back as far as '48 or
7 '49. That's all I'm saying.
8 Q. And sir, would you agree with me, however, that
9 certainly from the face of that document it would appear
10 that Dr. Newquist was a participating member of the Medical
11 Advisory Committee insofar as he was listed there as a
12 member who attended a meeting for the --
13 A. Yes. I have no dispute about that.
14 Q. Can I take a look at the document?
15 A. Sure.
16 Q. Sir, I'm going to direct your attention to the
17 third page of the document. If you could read there, down
18 at the bottom, No. 1, or actually that bottom paragraph,
19 please.
20 A. "Contribution and dissemination of information,"
21 is that the one?
22 Q. Yes, sir.
23 A. Contribution of the literature reviews were
24 contributed to the committee by the following: Library of
25 the Technical and Research Division of Texas Company, "The

12
1 Carcinogenicity of Bituminous Compounds." April 30, 1945.
2 Two of the chemical divisions, Socony-Vacuum Oil Company,
3 Inc. Carcinogenic hydrocarbons, April 27, 1945. Would you
4 like me to go on? Oh, that's it.
5 Q. That's it right there. Sir, that paragraph that
6 you just read would seem to indicate that there was a
7 contribution by the Texas Company to this organization to a
8 literature review that they were undertaking. Would that be
9 a fair statement?
10 A. That's what the document seems to say, yes.
11 Q. Would it be normal for the Texas Company to
12 contribute literature reviews of various subjects relating
13 to industrial health to organizations that they were not a
14 member of in 1945?
15 A. Oh, yes.
16 Q. It would?
17 A. Uh-huh.
18 Q. What makes you say that?
19 A. Well, on many occasions I'm familiar with some of
20 the work in the committees I was on where companies have
21 contributed literature information data, and they were not a
22 corporate member of that particular organization.
23 Q. All right.
24 A. I mean, to me in my profession this is not
25 unusual.

13

15

14

16

17

1 appear to be.

2 Q. Sure, right. Could you go ahead and read into

3 the record, please, the text of the No. 48 there.

4 A. "Owing"? Is that what you --

5 Q. Yes, "owing."

6 A. Owing to industrial developments, the general

7 population of factory workers in particular are exposed to

8 many new environmental factors, many of which are

9 disease-producing. Occupational cancers are caused by

10 numerous chemicals and physical agents. Among them are the

11 heavy metals, nitrates, aromatic ammonia compounds --

12 pardon me -- aromatic amino compounds, benzol, asbestos,

13 mineral oil, soot, radioactive substances, ultraviolet

14 radiation and x-rays. The author cites statistics taken

15 mainly from the records of industrial concerns but points

16 out their shortcomings.

17 Q. So certainly the summary here that you just read

18 is indicating that this text by Dr. Hueper, by W. C. Hueper,

19 points to asbestos as a carcinogen. Would you agree with

20 that?

21 A. It points out that he has some data that would

22 indicate that, and it looks like it's an article from a

23 journal, not a text. But it says what it says.

24 Q. Sure. And this was a bibliographic reference to

25 a document that the Texas Company contributed to the

18

1 American Petroleum Institute and Medical Advisory Committee,

2 is it not?

3 A. That's what it appears to be.

4 Q. We'll come back to the API a little bit later,

5 sir, thank you.

6 Sir, did you review Texaco's answers to

7 interrogatories in this case as part of your preparation?

8 A. I certainly glanced through them, but not that I

9 studied them, no.

10 Q. Sir, was Texaco a member of the -- or the Texas

11 Company a member of the National Safety Council?

12 A. Personally I don't know.

13 Q. Would you be interested to know that Texaco has

14 admitted in their answers to interrogatories that they were

15 a member of the National Safety Council?

16 A. I think I remember it now that you mention it,

17 yeah.

18 Q. But there was no date or time frame given in

19 their answers to interrogatories to that question.

20 A. Unless you remember something, I don't know.

21 Q. I don't remember seeing anything like that.

22 A. No, I don't know. I was never involved with the

23 National Safety Council during my tenure with the company.

24 Q. It's true that Texas Company was a member of the

25 National Safety Council in the 1930s; isn't that correct?

19

1 A. Well, again, you said that it was in the

2 interrogatories that we admitted to that but we gave no

3 date, so...

4 Q. Do you have any information that would allow you

5 to deny that the Texas Company was a member of the National

6 Safety Council in the 1930s?

7 A. No.

8 Q. Do you have any information that would allow you

9 to deny the Texas Company was a member of the National

10 Safety Council in the 1940s?

11 A. No.

12 Q. And same question with regard to the National

13 Safety Council in the 1950s.

14 A. No.

15 Q. Sir, when you were -- when you joined the company

16 in, I think it was, 1969 --

17 A. Correct.

18 Q. -- do you ever recall seeing any documents from

19 the National Safety Council?

20 A. Not really.

21 Q. Did you ever attend any meetings?

22 A. No.

23 Q. Anyone, to your knowledge, in the Texas Company

24 ever attend any meetings?

25 A. It could be Safety was a separate entity within

20

1 the corporation during the full time I was there. So, they

2 certainly could have. I just don't know personally one way

3 or the other whether they did or not or who it would have

4 been.

5 Q. Sir, who was Allan Dooley?

6 A. Allan Dooley was my predecessor. Do you want a

7 bibliography?

8 Q. Go ahead, if you could give us a little

9 something.

10 A. Basically from my recollection, Allan started in

11 industrial hygiene with the state of Pennsylvania in the

12 30s. He moved on to the -- he worked in the Medical corps.

13 They had an industrial hygiene division during World War II.

14 He worked on tanks and aircraft exposures.

15 In 1947 he joined Texaco, Inc. as, I guess,

16 supervisor of industrial hygiene and toxicology. That was

17 later changed to manager of industrial hygiene and

18 toxicology. He retired from Texaco in the fall of 1971 with

19 that particular title. That's his background as far as I

20 can remember.

21 Q. Did you ever talk to him about -- you worked with

22 him for three or four years?

23 A. I knew Allan before I joined the company, and

24 then obviously we spent a lot of time together between '69,

25 July of '69, when I joined the company and when he retired

1 in the fall of '71. 21

2 Q. Did he ever talk to you about his background

3 prior to coming to Texaco?

4 A. Prior to coming to Texaco?

5 Q. Yes, sir.

6 A. I think it was more of a social meetings,

7 get-togethers, gatherings. Not a lot of detail.

8 Q. Now, were you aware that Mr. Dooley was a

9 co-author when he was working for the state of Pennsylvania

10 on a study that pertained to asbestos hazards in textile

11 mills in the state of Pennsylvania?

12 A. Yeah. I've heard that at some point in time.

13 Q. Have you ever seen that study?

14 A. No.

15 Q. Did he ever refer to that study? Did he ever

16 discuss that study that he participated in with you?

17 A. Not that I recall one way or the other.

18 Q. Were you aware that that study reported that 25

19 percent of the workers that were surveyed in those textile

20 plants had clinical evidence of asbestosis?

21 A. Again, I never read the study. I don't recall

22 discussing with him, but I mean, if that's what it says,

23 that's what it says.

24 Q. You have no reason to believe that that's not

25 accurate, do you?

1 A. No. And I've been in some of those locations. 22 I

2 can just understand that there could be some asbestos

3 exposure in that type of setting.

4 Q. Do you believe that that study -- well, you've

5 never looked at that study?

6 A. No.

7 Q. Do you think information in a study like that

8 would be relevant to an industrial hygienist coming into an

9 organization, insofar as they were trying to evaluate what

10 potential industrial health hazards might be in existence in

11 the workplaces that they were supposed to be responsible

12 for?

13 A. I guess I don't -- well, could you maybe either

14 repeat that or break that up a little bit? Seemed to be

15 rather convoluted.

16 Q. Do you think that a study such as the one that

17 Mr. Dooley --

18 A. Such as that one particular study?

19 Q. Yes.

20 -- such as the one that Mr. Dooley participated

21 in, or co-authored, I should say, in the 1930s, is something

22 that should be relevant to an industrial hygienist when they

23 were evaluating industrial health hazards at, for example, a

24 new work environment?

25 A. Well, what time frame?

1 Q. 1947 to 1971. 23

2 A. In other words -- I guess I don't understand the

3 question. Let me try and break it up and see if I do

4 understand it. Are you asking me if that one particular

5 study, knowledge of the one particular study, would be

6 relevant to a brand-new industrial hygienist starting with

7 new company in 1947, is that your question?

8 Q. Well, not a brand-new industrial hygienist, one

9 who has already worked in industrial hygiene.

10 A. In a brand-new location in 1947.

11 Q. Uh-huh.

12 A. And if we're referring to Allan Dooley?

13 Q. Yeah.

14 A. He certainly was familiar with it since he

15 authored it in the 30s, when he joined the company in '47.

16 Q. Well, let me ask you, if you had been the author

17 of a study such as the one, just based on what I represented

18 to you, is that something that you would take into a new

19 environment or a new job and be concerned about that,

20 asbestos is an industrial health hazard?

21 A. Well, knowing Allan as I did --

22 Q. What about you? I'm talking about you.

23 A. Talking about me?

24 Q. Yeah.

25 A. Now, are you talking about if I was aware of an

1 article in '33 if I joined the company in '47, or are you 24

2 talking about an article in the 30s when I joined the

3 company in '69? I guess that's the part I don't understand,

4 because by 1969 I had gotten a graduate degree. I studied

5 under the experts in pneumoconiosis-producing dust. A study

6 back in '33, a particular study, may have lost its relevance

7 in compiling all the other types of data about asbestos, and

8 I studied under Mr. Hatch in '63, '64. I also had

9 experience in the state of Pennsylvania, '61 through '69. I

10 had been through asbestos plants. I was part of the BOSH

11 study of asbestos plants.

12 So I don't know that that one particular study in

13 '33 would have been particularly relevant to my background

14 when I joined the company in '69, because I think I would

15 have covered that and much more. If that's your question.

16 Q. Let me ask you this: If a study that you

17 participated in concluded that 25 percent of workers who

18 were exposed to asbestos had clinical evidence of

19 asbestosis, would that lead you to think that asbestos was a

20 health hazard?

21 A. Well, when I joined the company in 1969 I had no

22 doubt that asbestos was a health hazard from the standpoint

23 of asbestosis, and again, we're talking about a difference

24 in settings. We're talking about a textile type of setting

25 in Pennsylvania, similar to the textile types of settings in

25

1 England where there were a lot of studies made, and these
2 were enclosed environments where they were weaving asbestos
3 fibers, taken from the actual fiber to a thread type of
4 material and then weaving the thread into a narrow fabric.
5 So we're not talking about an outdoor
6 environment. We're talking about an enclosed environment
7 with -- in the 30s I'm sure with little if no ventilation.
8 Q. The issue, the industrial health issue -- hazard,
9 I should say -- in asbestos textile plants would be in
10 asbestos dust; isn't that correct?
11 A. That's correct.
12 Q. And asbestos dust can be present in other
13 environments; isn't that correct?
14 A. That's correct. But they are other environments.
15 And so there are other factors to be considered.
16 Q. Sure, right. Sir, I want to ask you a question.
17 You stated in your last deposition that you were aware that
18 the Texas Company had been a member -- strike that. Let me
19 just start over with this.
20 Was Texaco a member of the Industrial Health
21 Foundation, the Industrial Hygiene Foundation, I should say?
22 A. I don't know that for a fact one way or the
23 other. I mean, all this was covered in the interrogatories
24 at some point in time, but I don't recall that.
25 Q. Sir, I'm going to read to you from page 126 of

26

1 your previous deposition. Question was -- sorry, starting
2 on page 125. My question to you was:
3 "So Mr. Dooley was at a meeting of the Industrial
4 Hygiene Foundation sometime in the 1960s when you were
5 working for the state of Pennsylvania?
6 "ANSWER: I sort of recall that, you know, seeing
7 him there. Yeah.
8 "QUESTION: Okay. And he was working for Texaco
9 at that time?
10 "ANSWER: Absolutely.
11 "QUESTION: And were there other Texaco officials
12 at that meeting?
13 "ANSWER: I don't know.
14 "QUESTION: Okay. And at that particular meeting
15 that you recall seeing him, what were the topics that the
16 Industrial Hygiene Foundation were discussing?
17 "We're going back to '63 and '64 and I just
18 --
19 "Well, I understand.
20 "ANSWER: Too far in the background."
21 And I said, "Fair enough. And do you know if
22 Texaco was involved how far back Texaco's involvement with
23 the Industrial Hygiene Foundation went?"
24 Your answer was not I don't know that they were
25 even in it. Your answer was: "I don't know when it

27

1 started, no."
2 A. Well, okay.
3 Q. And so I guess my question to you is -- I'll ask
4 you again -- was Texaco a member of the Industrial Hygiene
5 Foundation at any time, to your knowledge?
6 A. The answer is the same: I don't know, because
7 you're talking about involvement, and now you asked me a
8 question about membership. So we're going back to the point
9 I had earlier in the deposition. There are all sorts of
10 instances where Texaco was involved with these types of
11 organizations and the corporation was not a formal member.
12 And I don't want to quibble, but I'm trying to answer the
13 question you just asked me versus the question you asked me
14 in February, which I had a different answer because you
15 asked me a different question.
16 MR. FROCKT: Let's mark this as Exhibit 6, please
17 (Marked Deposition Exhibit 6.)
18 MR. MARKS: What are the Bates numbers?
19 MR. FRENKEL: JAM 022172.
20 MR. MARKS: Through?
21 MR. FRENKEL: I don't know if it's complete or
22 not.
23 MR. FROCKT: Through 022245.
24 MR. MESHER: Are these consecutive numbers,
25 because the last document wasn't consecutive?

28

1 MR. FROCKT: These are consecutive.
2 MR. MARKS: Thank you.
3 Q. Sir, this is an exhibit --
4 A. I don't have it in front of me.
5 Q. Oh, I'm sorry. Sir, I'm going to represent to
6 you that this is an exhibit from a deposition of a woman
7 named Sally Wilkie who was a records custodian for the
8 Industrial Health Foundation, the successor to the
9 Industrial Hygiene Foundation.
10 A. Okay.
11 Q. The deposition was given in the year 2000, and
12 this was an exhibit that she produced, or I should say
13 authenticated, whatever it might be, in response to the
14 requests in the deposition.
15 A. Okay.
16 Q. If you could turn to page 022231.
17 A. 022 -
18 Q. 231.
19 A. It has "Foundation Facts" at the top there?
20 Q. Yes. Could you go ahead and just read the title
21 there and the first part of that paragraph, the first
22 paragraph there?
23 A. Foundation facts. John F. McMahon, I guess it
24 is, managing director, Industrial Hygiene Foundation.
25 Membership. "The following companies and organizations

29

1 affiliated or re-affiliated with Industrial Hygiene
 2 Foundation during 1949." Deere and Company, Socony-Vacuum,
 3 Texas Company, Sylvania Electric Products Company,
 4 Doehler-Jarvis Corporation, Lever Brothers Company, Jeffrey
 5 Manufacturing Company, Rome Cable Company, Metal and Thermit
 6 Corporation, South Mica Company, West Virginia Manufacturers
 7 Association, East India Railroad. So I guess in 1949 the
 8 Texas Company was a member of the Industrial Hygiene
 9 Foundation.

10 Q. Certainly according to this document that the
 11 Industrial Hygiene foundation, I'll represent to you,
 12 produced in a deposition?

13 A. Yes.

14 Q. Do you have any idea for how long the Texas
 15 Company was a member of the Industrial Hygiene Foundation?

16 A. No, I do not. This is brand-new information to
 17 me.

18 Q. Sir, are you aware that in response to some
 19 requests for admissions in this case the Texas Company
 20 answered 18 times that they had no information that would
 21 allow them to determine if they were even a member of the
 22 Industrial Hygiene Foundation between 1949 and 1966? Were
 23 you aware of that?

24 A. I think I vaguely recall that, but I'm sure they
 25 did a diligent search and were not able to determine

30

1 anything other.

2 Q. Sir, in fact, the Industrial Health Foundation,
 3 or the Industrial Hygiene Foundation, I should say, has
 4 produced documents in other depositions that indicate that
 5 the Texas Company was a member, at least, of the Industrial
 6 Hygiene Foundation from 1949 to 1959. Were you aware of
 7 that?

8 A. No.

9 Q. Do you have any information, as you sit here
 10 today, that would allow you to deny that the Texas Company
 11 was a member of the Industrial Hygiene Foundation during
 12 that period 1949 to '59?

13 A. No, I do not.

14 MR. FROCKT: Let's take a break for a minute.
 15 THE WITNESS: Sure.
 16 THE VIDEOGRAPHER: The time is 9:14 a.m. We'll
 17 be taking a break in testimony.
 18 (Recess.)
 19 THE VIDEOGRAPHER: The time is 9:28 a.m. and
 20 we're now back on the record.
 21 BY MR. FROCKT:
 22 Q. Sir, you're aware that there were studies going
 23 as far back as 1898 that showed asbestos to be a health
 24 hazard to its workers? Do you agree with that?

25 A. Well, I don't know that for a fact particularly

31

1 but -- I just don't know.

2 Q. What's your understanding of the development of
 3 the body of knowledge about the hazards of asbestos,
 4 beginning, let's say, from the turn of the century.

5 A. Well, when I started in industrial hygiene, I
 6 think the association between asbestos and asbestosis was
 7 clearly established. Certainly I was given instructions
 8 along those lines. That was reaffirmed when I was at the
 9 University of Pittsburgh in graduate school. In the mid
 10 '60s there were indications about concerns over asbestos and
 11 incidents of cancer, primarily in the insulating -- I guess
 12 Dr. Selikoff was starting to do some studies with the
 13 insulators in New York City, and there were various
 14 permutations of that.

15 I met with Dr. Selikoff in the early '70s. A
 16 group of us went out to Mount Sinai and had an open
 17 discussion with him in his laboratory. And the particular
 18 emphasis was on the fact that these insulators he was
 19 dealing with early on were in an enclosed type of setting.
 20 They were spraying insulating on steel beams, girders, in
 21 skyscrapers, and they had closed down the ends of the
 22 building, which was not yet finished, and so the spraying
 23 was going on in an enclosed area. And the workers were
 24 highly exposed to asbestos fiber spray on insulation.

25 But there were various permutations during the

32

1 '60s. Initially they thought it was a combination, a
 2 definite combination of the exposure to the fiber along with
 3 cigarette smoking. If you recall, there was, I guess, a Mr.
 4 Hammond or Dr. Hammond -- I don't recall what his title was
 5 -- associated with Selikoff, and he had been working on the
 6 smoking issue for a number of years. And so they thought
 7 there was a definite tie-in, that the asbestos fiber
 8 actually was absorbing some of the, I guess, carcinogenic
 9 materials of the smoke. And it was only this combination of
 10 the fiber absorbing this carcinogenic properties of the
 11 smoke caused the cancer.

12 But I guess later they were moving to other
 13 theories. As we moved along through the '60s and getting
 14 into the '70s, they were moving along to the theory that it
 15 was perhaps some of the trace metal contents of the fiber,
 16 nickels and things of that particular sort, but I think they
 17 disproved that.

18 The only thing I can remember -- and of course
 19 I've been out of this since the '80s -- is that it is the
 20 physical size, length, and aspect ratio, diameter, of the
 21 fiber and its physical capabilities of reaching certain
 22 parts of the lungs that may be causing the -- may have
 23 caused the carcinogenicity.

24 But until the '70s, I think, at least in my mind,
 25 and going through some papers we saw the other day, it

33

1 wasn't until the '70s until you had some sort of consensus
 2 that, in fact, there was an association between asbestos
 3 fiber exposure and cancer.

4 Q. So is it Texaco's position that there was no
 5 association between asbestos and cancer until the 1970s?

6 A. No. I think the -- there were case reports. In
 7 fact, I guess one of our physicians had published a case
 8 report, a Dr. Wilson. I guess that was around '60 or
 9 something like that. But you had a series of case reports,
 10 and it wasn't until, let's say, in my mind, just beyond 1970
 11 where you had sort of some consensus or, if you will,
 12 demonstrable proof that, in fact, there was an association.
 13 Prior to that time you had case reports, but they were not
 14 able to prove.

15 Q. So --

16 A. In fact one of the -- I think the API was -- and
 17 I just learned this -- I think the API was pretty
 18 straightforward in going out and looking at their workers,
 19 in, I guess, the mid '60s, and were not able to find a
 20 statistical association between the two.

21 Q. Now, you stated that -- when did you get your
 22 industrial health training?

23 A. You mean my formal master's degree or --

24 Q. Yes.

25 A. That was '63, '64.

34

1 Q. And so what you're saying, then, is it was your
 2 understanding at that time that there was an association
 3 between asbestos and asbestosis; is that right?

4 A. Clear association, yes.

5 Q. And it's not your belief, then, that there was
 6 any association between asbestos and lung cancer prior to
 7 that time?

8 A. There was not any proven association. There were
 9 case reports. There may be research studies, but I mean,
 10 you're also looking at the fact that in 1968 and '69 I was
 11 on the ACG's TLV committee, and we reviewed every substance
 12 on that list annually, and we did not see fit to change the
 13 standard because of any particular concerns at that
 14 particular point.

15 Q. Now --

16 MR. FRENKEL: I don't know if he's finished his
 17 answer.

18 MR. MESHER: You have a right to finish your
 19 answer.

20 A. I want to clearly differentiate between case
 21 reports and a proven association or causation. I think you
 22 had case reports in the '60s, maybe prior to the '60s, but
 23 they were merely case reports. A case report is an item
 24 that you build an hypothesis around, and then you take that
 25 hypothesis, and you go through statistical studies to try

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1 and prove it or disprove it. And what I'm saying is you ha
 2 case reports, you developed a hypothesis, which Selikoff di
 3 in the '60s, but you had no statistical proof until you
 4 reach the '70s.

5 Q. So is it your belief that Selikoff studies in th
 6 1960s -- specifically I think it was 1963 or '64 -- that he
 7 reported to the Mount Sinai conference -- are you familiar
 8 with that conference?

9 A. No.

10 Q. Well, you mentioned Selikoff studies in the
 11 1960s. Is it your belief that the Selikoff studies in the
 12 1960s were merely case reports?

13 A. Well, I think he was dealing with a specific
 14 industry also, and a specific association. And again, the
 15 theories were, well, it's smoking and asbestos. It's not
 16 asbestos. It's smoking and asbestos. And it took that
 17 decade to work through these particular permutations until
 18 you reached a, to me, a state where you could say there's an
 19 association or causation effect.

20 Q. Now, you're aware that Dr. Wilson and Dr.
 21 Eisenstadt in that 1960 study that you referred to a minute
 22 ago, they stated at the end of the study that they knew that
 23 there was an association between asbestos and mesothelioma,
 24 and that alerted them to the issue with respect to the one
 25 insulator, the refinery foreman who was a Texaco employee,

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1 that they were reporting on.

2 So, I mean, are you saying that Dr. Wilson was
 3 not correct, that there was no association between asbestos
 4 and mesothelioma in 1960 when he participated in that
 5 article?

6 A. Okay. I think we have to agree that, first of
 7 all, you said study, and I think we agreed it's an article.
 8 It was a paper. He and Dr. Eisenstadt wrote a paper and
 9 they had two case reports, I gather an employee from Texaco
 10 and an employee from Gulf, and that was merely a case
 11 report. I spent many a time after that with Dr. Wilson, and
 12 he knew my particular area of expertise and background, and
 13 this was not -- nothing that he felt important enough to
 14 discuss in a refinery setting.

15 So you're dealing with case reports, you're
 16 dealing with a hypothesis. You're dealing with statistical
 17 proof, and then you are dealing with association of
 18 causation at the end of that particular set of procedures.

19 Q. Dr. Wilson was the -- was a medical doctor for
 20 Texaco at the Port Arthur plant; isn't that correct?

21 A. Well, he was at the Port Arthur plant, and then
 22 when I met him in '69 he had moved over to the Houston
 23 office.

24 Q. But in 1960, when he and Dr. Eisenstadt published
 25 this article entitled "Primary Malignant Mesothelioma of the

37
 1 Pleura" in the Journal Lancet, November 1960, I believe it
 2 was, he was a Texaco employee; is that correct?
 3 A. That's correct.
 4 Q. Now, I'm going to read to you a quote from the
 5 end of the article and then ask you a question about it.
 6 Says here, "The etiologic association of asbestos and
 7 malignant mesothelioma has been repeatedly discussed in the
 8 literature." Then it says, "Not all investigators agree
 9 that exposure to asbestos predisposes to malignancy of the
 10 pleura. However, such history alerted the suspicion of the
 11 authors in the second case."

12 Do you recall reading that sentence, those
 13 sentences from the article? You said you reviewed it.
 14 A. No. I reviewed it with -- what I said was Dr.
 15 Wilson and I have sat down on many occasions and discussed
 16 items of mutual interest. I don't know the last time I
 17 specifically sat down and read that chapter and word verse.
 18 But I'm familiar with the paper, and I'm familiar with the
 19 fact that to me that is a case report.

20 And from what you read, it continues to convince
 21 me that we have another in a series of case reports that
 22 have to go through the procedure of generating hypothesis,
 23 conduct your statistical analysis, and at the end of that
 24 particular thing you either have a causation or you don't
 25 have a causation.

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 1 Q. What was the role of the industrial hygiene
 2 department at Texaco in the 1950s and '60s? What was the
 3 purpose of it?
 4 A. I think it had many purposes. One was going out
 5 to looking at the different types of operations that Texaco
 6 had, in the United States primarily, and reviewing that from
 7 the standpoint of industrial hygiene, let's say proper
 8 process procedure. I guess -- let me back up a minute.
 9 Industrial hygiene is basically observation, evaluation and
 10 control. I think those sort of put it into a short summary
 11 statement.

12 So in the case of Allan Dooley in the '50s and
 13 the '60s, he would have gone out to the different plants,
 14 and the '40s, I think we have some surveys by Allan in the
 15 '40s. He would have gone out to the different plants
 16 looking at the different operations, observed them. Based
 17 on his knowledge of industrial hygiene, his background and
 18 experience, he would either decide, based on the materials
 19 present, whether it needed further evaluation by
 20 instrumentation, or whether he could recommend control
 21 measures or needed control measures at that point. But then
 22 after a formal evaluation process he might recommend certain
 23 control measures. And they could take a wide range of
 24 primers from respiratory protection to ventilation to
 25 different sorts of control measures you might want to apply.

39
 1 Also in the '50s and the '60s, Allan took on the
 2 role of looking at certain product safety aspects, the
 3 composition of the products, how they were being made, and
 4 the proper warnings and labels that would go on those
 5 particular products. So Allan had a broad range of
 6 responsibilities in the '50s and the '60s.

7 Q. Was one of the purposes of the industrial hygiene
 8 department at Texaco in the '50s and '60s the promulgation
 9 of the health and safety of Texaco's workers?

10 A. The promulgation?

11 Q. Yeah. Promote the promotion of health and safety
 12 of Texaco workers. Isn't that the ultimate goal of the
 13 industrial hygiene department?

14 A. In a general sense, yes.

15 Q. And certainly there's probably other departments
 16 at Texaco that that was the goal as well, right, the safety
 17 department?

18 A. Sure.

19 Q. Now, Dr. Wilson states in this article, "The
 20 etiologic association of asbestos and malignant mesothelioma
 21 has been repeatedly discussed in the literature." At what
 22 point does it become incumbent upon the industrial hygiene
 23 department of a company like Texaco to take an association
 24 like that that he's reporting on in his own article into
 25 consideration in terms of in order to promote the health and

40
 1 safety of their workers?

2 A. Let's go back to my earlier discussion. We have
 3 case reports. The API -- and I've only recently become
 4 familiar with this in some detail -- the API went out and
 5 looked at a broad range of their insulators. They gathered
 6 data, and they found that there was insignificant or
 7 insufficient, pardon me, insufficient data to prove the
 8 hypothesis one way or the other.

9 And at that particular point -- but the API
 10 looked within its operations, looked at the health of their
 11 employees and were not able to prove an association at that
 12 particular point, and that was probably, what, '65, '66.

13 Q. But Dr. Wilson is reporting on an association in
 14 this literature right here. So you're saying the API study
 15 that you're -- is this the API study in '65/'66 that you're
 16 referring to?

17 A. Yes.

18 Q. So you're saying that after Dr. Wilson, Texaco's
 19 own doctor, reports in 1960 and states in his article that
 20 he co-authored that there was an association between
 21 malignant mesothelioma and asbestos, you're saying that the
 22 API went out and did a study that disproved the exact
 23 association that Texaco's own doctor reported on?

24 A. I don't recall that article in sufficient detail
 25 to remember whether he used the word association or not. I

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1 think he talks about -- to me that is a case report, plain
 2 and simple.

3 Q. But he's -- well, let me --

4 A. If you'd like me -- if you want to go through and
 5 read certain items, I'd like to read the article and make
 6 sure we're not taking things out of context.

7 Q. Sure. Let's take a look at the article.
 8 (Marked Deposition Exhibit 7.)

9 MR. FRENKEL: Do you have an extra copy?

10 MR. FROCKT: Yeah, I do. We'll get back to the
 11 API '65/66 study in a bit.

12 MR. MESHER: Do you want him to read the article?

13 MR. FROCKT: Sure. Read the article.

14 MR. MESHER: Do you want him to read the entire
 15 article?

16 MR. FROCKT: Go ahead and read it.

17 MR. FRENKEL: I don't know if he wanted to read
 18 it. He was just commenting.

19 MR. MESHER: He wanted it in front of him when
 20 questions --

21 MR. BENINGER: He didn't want to do any of that.
 22 We can read the record back and get his exact words. I
 23 recall his exact words: If you're going to ask him more
 24 questions I'd like to see it so I make sure things weren't
 25 taken out of context. And I said to David, let him see it.

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1 That's fine.

2 MR. MESHER: I'm just trying to find out --

3 A. You want me to read it in its entirety or discuss
 4 --

5 MR. FRENKEL: It's your deposition. We'll do
 6 whatever you want.

7 A. -- certain items that I can read in context?

8 Q. Have you read the article before?

9 A. It's perhaps been a very long time.

10 Q. You didn't read it directly in preparation for
 11 your testimony today?

12 A. No, I did not.

13 Q. Well, I don't have a problem. Go ahead and read
 14 it. Read the article. Take five minutes and read the
 15 article.

16 MR. BENINGER: Whatever you want to do. Let
 17 David know when you're finished.

18 A. Whatever you'd like me to do. Do you want to
 19 discuss --

20 Q. No, no, I want you to read the article. Go ahead
 21 and read the article.

22 A. I'm going to run through this clinical stuff
 23 because I'm not a medical doctor.

24 Q. Do whatever you need to do.

25 A. Okay. I've been through the article, and I do

43

1 note in opening up this discussion that he clearly
 2 identifies these two as case reports.

3 Q. Do you think I took something out of context as
 4 was referring to it?

5 A. No. You were discussing certain things about
 6 association.

7 Q. Sure.

8 A. I didn't recall that. I did recall the case
 9 reports aspect of it. So you were talking about
 10 association. I wanted to look at where you were reading and
 11 read that for myself.

12 Q. Right. And I was reading from the end of the
 13 article, page 514. Maybe you could read that, that last
 14 paragraph on the first column, the last complete paragraph.

15 A. You mean the summary?

16 Q. No, no, not the summary. In the left column
 17 where it starts "Our second case."

18 A. Okay. Our second case is particularly
 19 interesting because of the history of long-term exposure to
 20 asbestos and the discovery of asbestos bodies in the lung
 21 biopsies -- pardon me -- the discovery of asbestos bodies in
 22 the lung biopsy specimen. The etiologic association of
 23 asbestos and malignant mesothelioma has been repeatedly
 24 discussed in the literature. Not all investigators agree
 25 that exposure to asbestos predisposes to malignancy of the

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1 pleura. However, such history alerted the suspicions of the
 2 authors in the second case.

3 Q. Now, you would agree with me that he's not
 4 referring -- he's referring to the studies that associate
 5 asbestos with mesothelioma in that paragraph, wouldn't you
 6 agree with that?

7 A. It says, "The etiologic association of asbestos
 8 and malignant mesothelioma has been repeatedly discussed."
 9 I don't see association. "...repeatedly discussed in the
 10 literature. Not all investigators agree that exposure to
 11 asbestos predisposes to malignancy of the pleura." I don't
 12 see the word association.

13 Q. There's a number of -- do you see there's some
 14 citations 11 to 15 --

15 A. Sure.

16 Q. -- that were cited there?

17 A. Okay.

18 Q. And sir, I don't know if you're aware of this,
 19 but Dr. Baylor in his testimony in, I think, 1990 stated
 20 that the etiologic association of asbestos and mesothelioma
 21 was known prior to his writing, contributing to this
 22 article. Were you aware of that?

23 A. No.

24 Q. Now, here we have an article that Dr. Wilson, a
 25 Texaco employee, co-authored?

1 A. Correct.

2 Q. And my question to you is: What actions did

3 Texaco take, if any, after this report was published in a

4 very reputable journal, the Lancet, in terms of protecting

5 its workers from asbestos hazards?

6 A. I know I'm here as a Texaco witness, but I was

7 not at Texaco between 1960 and the start of the API

8 investigation study. I don't know what specifically was

9 done. I have discussed in general with Dr. Wilson

10 industrial hygiene concerns and matters when he was in the

11 Houston office. I am aware that we had two case reports.

12 I'm also aware that Dr. Wilson was involved in the gathering

13 of the data for the API study. So as to what happened

14 between '60 and '63, '64, '65, I don't have any specific

15 knowledge.

16 Q. Are you aware of whether Texaco did any testing

17 of air -- any testing of air sampling at all for asbestos

18 dust in the their various work environments in their

19 refineries in response to this study?

20 A. I'm not aware one way or the other.

21 Q. Have you ever seen any report or any survey from

22 the early 1960s that would indicate that Texaco did any kind

23 of studies pertaining to asbestos dust hazards that might be

24 in the air in the 1960s --

25 A. Yeah.

1 Q. -- in response to this report?

2 A. No. I think in an earlier discussions we talked

3 about I am aware of some contractor studies that were

4 conducted for Texaco, but I don't recall the time frame and

5 I don't recall the substances. I just don't remember those

6 in any kind of detail.

7 Q. Who conducted those studies?

8 A. Again, they were done by a doctor -- well, they

9 were done out of the Kettering Laboratories in Cincinnati

10 contracted for Texaco.

11 Q. And these were --

12 A. These were not API studies. These were Texaco-

13 contracted studies, but I don't remember the time frame. I

14 don't remember the location, and I don't remember the

15 substances. I remember seeing them.

16 Q. When did you see them?

17 A. Oh, going through the files, probably in the '70s

18 sometimes.

19 Q. Did those studies deal with asbestos in any way?

20 A. I don't recall.

21 Q. We've never had any of those documents produced

22 to us in this case. I don't know if you knew that.

23 A. I am aware of that, yes.

24 Q. Do you recall when the studies took place?

25 A. No, I don't recall the time frame. All I know is

1 that there was a contract between Texaco and Kettering Labs

2 to do the studies. They had a chief investigator there,

3 several individuals who went out and did studies in Texaco

4 locations. I don't remember the time frame. I don't

5 remember the substances, I don't remember the exact

6 location. But I remember they were done. And beyond that

7 can't...

8 Q. I think you mentioned something a few minutes ago

9 in your testimony about developing a hypothesis.

10 A. Correct.

11 Q. Can you repeat that again to me, what you were

12 referring to?

13 A. Basically -- and I'm not an epidemiologist

14 either. I don't want to hold out myself as an

15 epidemiologist, but basically to go from -- first of all,

16 you'll have case reports. In this case you have a case

17 report that seems to show, seems to show -- I want to be

18 very clear in my words -- seems to show some possibility of

19 an association between asbestos and mesothelioma.

20 Based on these case reports -- and it could be

21 one, two, three, four, any number -- you will develop a

22 hypothesis. That hypothesis would be, let's say in this

23 particular case, is there or is there not an association

24 between asbestos and mesothelioma. That's your hypothesis.

25 Then you'll go to some statistical study where

1 you will attempt to prove that one way or the other. In

2 some cases you will have sufficient data to either prove or

3 disprove it. In other cases you may not have sufficient

4 data because you're dealing with a comparison between your

5 population in the case reports and some other population

6 that perhaps is not exposed at all so you can get some

7 comparison.

8 But a case report develops a hypothesis, and then

9 you have to go the next step to either prove or disprove it.

10 Q. And what hypothesis did Texaco develop, if any,

11 after Dr. Wilson's report in 1960 in regards to asbestos

12 hazard?

13 A. I don't know one way or the other, but the

14 hypothesis in the group out there is, let's see if we can

15 prove or disprove that this is the case in a refinery

16 setting.

17 Q. And so it's Texaco's position that there was no

18 evidence, no body of knowledge at all, that proved that

19 asbestos was a hazard, was a cancer hazard at all, prior to

20 when?

21 A. I guess I don't know understand your question.

22 Q. When did Texaco develop any hypothesis at all, or

23 any understanding at all, that asbestos was a cancer hazard

24 to its -- for its workers?

25 MR. FRENKEL: Are you asking in a refinery

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1 setting or in general?

2 MR. BENINGER: He's got the question.

3 Q. In general.

4 A. In general I think the '70s.

5 Q. You understand there's a distinction between lung

6 cancer and mesothelioma, don't you?

7 A. Yes.

8 Q. They're different diseases, would you agree with

9 that?

10 A. I'm not a clinician, but sure, yes, they're

11 different diseases.

12 Q. And sir, were you aware that in 1949 the Journal

13 of the American Medical Association published an editorial

14 that stated that the studies of the day concluded that

15 asbestos was related to lung cancer?

16 A. I am not aware of that.

17 Q. And were you aware that that study or that

18 editorial, or I should say a synopsis of that editorial, was

19 reprinted in the Industrial Hygiene Digest in 1949?

20 A. I'm not aware of that, no. Again, I'm dealing

21 with what I was taught in graduate school by the experts in

22 the field, and to me an editorial could be another case

23 report.

24 Q. The Journal of the American Medical Association

25 is not a very respected journal, is it?

50

1 A. I didn't say that. I said an editorial could be

2 another case report.

3 Q. But you don't believe that if a journal like the

4 -- the journal of the American Medical Association publishes

5 statements saying that asbestos is related to lung cancer

6 that that should have any bearing on what a company like

7 Texaco should do in response to their industrial hygiene

8 practices?

9 A. I have not read the article. I'm not familiar

10 with the article, and it could be related to another case

11 report. I don't know what they're basing their statement

12 on.

13 Q. Well, let me ask you this: what statistical

14 analysis of its workers did Texaco do in response to Dr.

15 Wilson's report in 1960 in terms of their asbestos hazards?

16 A. Well, when you're doing an epidemiology study,

17 when you're trying to prove or disprove a hypothesis, you

18 need a large enough population group. And I think they, in

19 conjunction with the other members of the API, tried to put

20 together a large enough population group.

21 Texaco, if I can recall correctly, in looking at

22 the data recently, was one of the first companies to

23 contribute to the API a long list, over 100 I think, or

24 close to 100 different individuals who have been identified

25 as insulators. And they submitted the histories, the

1 medical histories, of these individuals to the API for

2 analysis.

3 So I think Texaco acted very promptly in trying

4 to work together to get a large enough population to either

5 prove or disprove the hypothesis.

6 Q. What years did Texaco conduct that -- gather that

7 information?

8 A. I think it was either '63 or '64. I don't recall

9 exactly.

10 Q. Did any of the data that they gathered show that

11 any of their workers had either had or died of mesothelioma?

12 A. I don't recall. I would have to go through the

13 entire document. It was a long list.

14 MR. FROCK: Let me see if I can find a couple of

15 documents.

16 (Marked Deposition Exhibit 8.)

17 Q. Now, just so you know, Mr. Richards, the person

18 at issue in this case, Ray Jameson, worked at the Texaco

19 Anacortes refinery between 1958 and 1966. I don't know if

20 you knew that.

21 A. That's correct.

22 Q. Can you identify this document for me?

23 A. Yes. It's a letter of Lucien Renes to the

24 members of the central committee on medicine and health and

25 technical advisors. It looks like a January '65 letter.

52

1 Q. What does the letter communicate?

2 A. Would you like me to read it or paraphrase it?

3 Q. Paraphrase it.

4 A. Let's see. Lucien, who was with Phillips

5 Petroleum, has been asked to contribute data regarding the

6 use of asbestos in petroleum industry, environmental health

7 experience, and they can send the data to Lucien, and he was

8 going to be gathering the data. And he says unless two or

9 more companies can offer some definite data on information

10 the survey will consist of review of the literature.

11 Q. So this is a -- correct me if I'm wrong. This is

12 sort of an opening letter from Mr. Renes, who was, as I

13 understand it, industrial hygienist for Phillips --

14 A. That's correct.

15 Q. -- to members of this API committee on medicine

16 and health. And it's copied, it would appear, to the

17 initials AED. That would appear to be the Health Division,

18 New York, Allan E. Dooley?

19 A. That was the health division stamp, New York.

20 Q. Right. So AED, we can agree that that's Allan

21 Dooley who was copied?

22 A. That's Allan Dooley, yes.

23 Q. So this is a letter communicating what the API is

24 proposing to study; is that correct?

25 A. That's correct. And this looks like '65 instead

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1 of '63.

2 Q. So the API begins a study between January 15 and

3 January 1965?

4 A. Uh-huh, formally begins it, right.

5 Q. Are you aware of what precipitated the API

6 beginning this study, what reasons they decided to do it?

7 A. No, I'm not.

8 Q. So between the case report in 1960 and the

9 beginning of the study in 1965, that's roughly a five-year

10 span, right?

11 A. Could be.

12 Q. Roughly.

13 A. Roughly, yeah.

14 Q. What did Texaco do as part of this study?

15 A. Dr. Baylor went out to the doctors, the plant

16 physicians at the different locations, and solicited data to

17 be returned to him, and then forwarded to the API listing

18 the experience that they saw in their insulators at the

19 different locations.

20 Q. So Dr. Baylor was at the head of the study,

21 essentially, for Texaco, right? He was the one gathering

22 all the data, correct?

23 A. Yes.

24 Q. And he was relying on his --

25 A. Plant physicians.

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1 Q. -- plant physicians and associates out at the

2 various refineries to supply him with the data?

3 A. That's correct.

4 Q. And there was a man named Howard Tigh who was

5 involved in this gathering some of the data; is that

6 correct?

7 A. Well, the way it worked with the refinery

8 department is that requests for information would be

9 coordinated through the refinery department Houston, and so

10 he would be the gathering point for the refinery department

11 Houston. And then he would relay that data back to -- I

12 don't know how it went -- to Dr. Baylor or -- but it would

13 go through the plant managers, and that was just a normal

14 procedure for Texaco.

15 Q. So Mr. Tigh, then, was sort of gathering this

16 data as a point person and was going to relay it to Dr.

17 Baylor, correct?

18 A. He was the point person within the refinery

19 department. This would probably be a very good description

20 of his role in this case.

21 Q. Okay. Incidentally, the interrogatory answers in

22 this case state that the study was never completed. Were

23 you aware of that?

24 A. That's as much as I know, too.

25 Q. Do you have any knowledge about why --

1 A. No.

2 Q. -- they were not completed, because in the

3 subsequent interrogatories it was stated -- I should refer

4 to your deposition testimony, but I don't think you've ever

5 been asked the question.

6 A. Well, actually, I just learned about this study,

7 I guess, in depth recently. I didn't see this

8 correspondence before, I think, our earlier conversations in

9 February, and I guess I heard about the study back in the

10 '90s at some point in time, but I don't have any more

11 information than what we had available.

12 Q. Now, we can agree that while this study, while

13 this data that Texaco is gathering is going on -- at the

14 same time that Texaco is gathering this data in 1965, that's

15 contemporaneous to the period that Ray Jameson was working

16 for Texaco. Do you agree with me on that?

17 A. I think that's correct.

18 Q. And how many years did the study go on?

19 A. How many years?

20 Q. Yeah. How long did it take?

21 A. Oh, well, we don't know what the conclusion was

22 or when it was stopped, but it looks like it was '65/'66 time

23 frame. I mean, as best as I can recall. I'm off a date

24 here already.

25 Q. Sure. Well, let's mark this one, this document,

1 No. 9.

2 (Marked Deposition Exhibit 9.)

3 A. Do you want me to read through the whole thing?

4 Q. Why don't you just go ahead and take a look at

5 it, and I'm going to ask you to identify the document and

6 the attachments. And it is document WA-TEX 3844 to 3857.

7 A. Yes. I've seen this document recently.

8 Q. When did you last see it?

9 A. I think in our review yesterday we might have

10 gone through it. Sometime, you know, in the last...

11 Q. Can you tell me what the document is?

12 A. Well, it appears to be a memorandum of

13 correspondence between E. W. McNealy -- Ed is McNealy who

14 was at the Port Arthur plant -- and Harold Tigh, who was in

15 the Houston office, transmitting the information that Dr.

16 Baylor had requested. And I guess it's -- it looks like

17 there was a tabulation broken down into two of the following

18 parts. One was insulators and services on 3-1-65 and

19 insulators retired during the past five years.

20 And apparently this was reviewed with Dr. Wilson

21 who made some comments regarding the data, and then there's

22 a tabulation of, I guess, might be described as a summary of

23 the medical history or findings of certain individuals who

24 were identified as insulators in the Port Arthur plant.

25 Q. So these are insulators, their data is being

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1 gathered in respect to insulators at the Port Arthur plant
 2 in just -- this document is just insulators at the Port
 3 Arthur plant?
 4 A. That's correct. There would be similar documents
 5 for the different other plants, right.
 6 Q. And do you know about how many people's medical
 7 records, how many insulators were surveyed here?
 8 A. No. I didn't do a count.
 9 Q. I counted it at about 70. Does that sound about
 10 right to you?
 11 A. That could be. There's no uniform number per
 12 page.
 13 Q. Right. We'd have to just go in and recount.
 14 A. 70 is good enough for me.
 15 Q. I think that's accurate.
 16 MR. FROCKT: I'm sure your counsel will correct
 17 me if I'm wrong.
 18 MR. MESHER: Do you want me to count them and
 19 correct you or do you want to go on?
 20 MR. FROCKT: I'll tell you what. Let me go on
 21 and if you feel the need to go ahead and count and if I have
 22 68 or 69 or 71, let me know. Thank you.
 23 Q. Now, what I'd like you to do is read into the
 24 record the last -- so let me go back for a second. This is
 25 a letter from E. W. McNealy to Mr. Tigh who is gathering the

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1 data that's then going to be transmitted to Dr. Baylor?
 2 A. That's correct.
 3 Q. Do you know who Mr. McNealy was?
 4 A. Ed McNealy was -- he was either the plant manager
 5 or probably an operations manager at the plant. I don't
 6 recall his exact title. I ran into Ed at the Bayonne
 7 refinery in, I think, '69 or '70.
 8 Q. I appreciate you telling me that because we asked
 9 Texaco in our interrogatories last August, about a year ago,
 10 who he was, and I don't think we ever got a response.
 11 A. I can picture him.
 12 Q. So he was an official at the Port Arthur plant?
 13 A. Yeah. He was somewhere in management and then he
 14 went on to Bayonne.
 15 Q. Now, can you read into the record, please, the
 16 last two paragraphs on the first page?
 17 A. You mean the comments by Dr. Wilson?
 18 Q. Yeah. And the quotes. Let's start with "After
 19 reviewing." Go ahead.
 20 A. "After reviewing the entire data Dr. F. W. Wilson
 21 made the following comments: 'You will note that the
 22 majority of them show few specific changes. A few show
 23 calcific pleural plaques and/or pleural adhesions. Several
 24 show varying severity of diffuse pulmonary fibrosis.
 25 However, we find this type of fibrosis to be frequent in

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1 this area and consider it to be a nonspecific in etiology.
 2 'For additional follow-up we have included those
 3 who have retired during the past five years. In the
 4 combined group two malignancy deaths have occurred. L. A.
 5 Broussard died 7-29-63 of a gastrointestinal tract carcinoma
 6 associated with chronic regional ileitis. Peter Cappadonna,
 7 a foreman who had been an insulator for many years, died May
 8 10, 1960 of widespread malignancy secondary to mesothelioma
 9 of the pleura. I should mention a third individual Joe" --
 10 I can't pronounce his name -- Pecorino or Junior or
 11 something.
 12 MR. FRENKEL: Pecorino.
 13 A. "Pecorino, Jr., who is in terminal malignancy
 14 state. He was found to have widespread seeding of the
 15 peritoneum with a highly anaplastic neoplasm suspected of
 16 being mesothelioma."
 17 Q. So, in this report, Dr. Wilson is reporting two
 18 additional insulators at Texaco?
 19 A. I don't know that they're additional.
 20 Q. Is one of them the same guy that was reported in
 21 1960?
 22 A. I don't know.
 23 Q. Is it possible that that's who it is?
 24 A. It's possible.
 25 Q. So is it -- if that was correct, that would seem

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1 to be --
 2 A. If which was correct?
 3 Q. If it is correct that one of these people is the
 4 guy who was reported in the 1960 article, that would
 5 probably be Peter Cappadonna because he died in 1960?
 6 A. All right. I've heard that name.
 7 Q. Is it Texaco's position that -- what is Texaco's
 8 view of these reports of two mesotheliomas among the
 9 insulating crew at Port Arthur?
 10 A. Again, I wasn't there at that particular point in
 11 time.
 12 Q. I'm asking you as Texaco's representative here
 13 today.
 14 A. I'm trying to answer that question.
 15 Q. Sure.
 16 A. In other words, I can't speak firsthand, but I
 17 guess what we have here is another case report, possible
 18 case report seems to be, and we are right in the middle of
 19 getting this study going to either prove or disprove the
 20 hypothesis.
 21 Q. Do you think two out of 70-or-so insulators
 22 having mesothelioma at the Port Arthur plant, would you
 23 characterize that as statistically significant or
 24 statistically insignificant?
 25 A. I have no idea. I mean, I'm not a statistician.

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1 Q. You would agree with me that mesothelioma is a
2 pretty rare disease, right?

3 A. I think we saw earlier Dr. Wilson's statement
4 that it was uncommon but maybe not as uncommon as people
5 thought. I think that's what he said.

6 Q. What did Texaco do in response to this, this
7 report of two mesotheliomas among its insulating crew at
8 Port Arthur, to provide any protection for its workers who
9 might have been exposed to asbestos after this report was
10 provided to Dr. Baylor?

11 A. I don't know.

12 Q. Did you ever find any indication -- you've
13 testified roughly 100 times, right, for Texaco?

14 A. Well, maybe that needs a little clarification.
15 We sat down after that deposition, and I guess we tried to
16 count the number of depositions I've actually been involved
17 in. I think that's closer to six, but there's probably been
18 100 different involvements like requests for information,
19 answering interrogatories, and I probably --

20 Q. Well, I appreciate that, because when you said
21 100 times I thought, my Lord, that's a lot of depositions
22 and I know you were tired.

23 A. But anyways, in clarification it was probably a
24 half a dozen, but go ahead, I'm sorry.

25 Q. And some of those were asbestos cases, right,

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1 that you testified on?

2 A. That's correct, right.

3 Q. And I assume in some of those cases you had to
4 review documents, you were asked to review documents so you
5 could be prepared to testify?

6 A. That's correct.

7 Q. Did you ever see any document in anything that
8 you've ever reviewed for Texaco as a testifying witness that
9 indicated any specific response that Texaco took as a result
10 of a report of two mesotheliomas among insulators at Port
11 Arthur plant in the mid 1960s?

12 A. And I don't recall seeing anything, but, you
13 know, again, we are trying to test a hypothesis. I think
14 we're also dealing with expertise that did not feel we were
15 dealing with a particular problem based on their experience
16 and knowledge, but we were going to try and prove it to the
17 best of our ability by gathering a large enough body of data
18 to look at this thing one way or the other.

19 But as far as specific changes at the plant
20 level, other than the protection against asbestosis, which
21 we were already doing -- I think, you know, some of these
22 medical findings were a part of our medical monitoring
23 program. Other than that, I don't think we made any other
24 changes at that particular point in time.

25 Q. So in 1965 Texaco didn't do anything like advise

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1 insulators to start wetting down insulation before they wer
2 going to strip it off of pipelines, right?

3 A. No, that wasn't until later.

4 Q. And Texaco didn't do anything in response to thi
5 API study in 1965 that would specifically call for the use
6 of substitute materials instead of asbestos-containing
7 materials; is that right?

8 A. That's correct. But again, we're dealing with a
9 situation where we're putting together the data to take a
10 look at this particular situation.

11 Q. Did you advise your plant safety managers that
12 the study was even going on?

13 A. All the plant managers knew about it because they
14 participated in gathering the data.

15 Q. What about the safety supervisors at the
16 particular plants?

17 A. I don't know. I don't know how the individual
18 plant manager would have handled this with the company
19 doctor.

20 Q. We deposed a man named Jack Drummond. Do you
21 remember Jack Drummond?

22 A. Yeah.

23 Q. Jack was the safety supervisor at Texaco
24 beginning in 1967.

25 A. I think I met with him when I was up in the '70s,

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1 that's correct.

2 Q. And he testified in his deposition couple of
3 months ago that he recalls seeing nothing in any files that
4 he reviewed or any -- that would indicate that there was
5 even any such study like this going on at all prior to the
6 time that he got there. Does that surprise you?

7 A. It doesn't necessarily surprise me.

8 Q. Do you think it would be, you know, important for
9 a guy like that, the safety supervisor, to know that Texaco
10 had had some reports of mesothelioma among its workers?

11 A. Well, all I can say is the documents speak for
12 themselves. I mean, essentially we had the case reports, we
13 took the opportunity along with the API to look at a large
14 enough database to try and make some determination one way
15 or the other. Apparently we did not have sufficient
16 statistical data to make any association one way or the
17 other, and we went on from there.

18 MR. FRENKEL: David, when it's appropriate I need
19 to have a break.

20 MR. FROCKT: Absolutely. Take one right now.

21 THE VIDEOGRAPHER: The time is 10:19 a.m. This
22 concludes tape No. 1 in the deposition of Ronald Richards.

23 (Recess.)

24 MR. MESHER: Would you note on the record Mr.
25 Beninger has left.

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1 (Recess.)

2 THE VIDEOGRAPHER: The time is 10:39 a.m. We're

3 now back on the record. This begins tape No. 2 in the

4 deposition of Ronald Richards.

5 Q. Mr. Richards, you said a few minutes ago that one

6 of the things you would do in response to information that

7 -- in response to what you would want to be good industrial

8 hygiene practice would be to observe, evaluate and control

9 exposures to the harmful substances; is that right?

10 A. Well, I think I said that as a summary of what a

11 role of an industrial hygienist would do.

12 Q. Okay.

13 A. And observe is the wrong word.

14 Q. Well, what's the right word?

15 A. I can't remember.

16 Q. Are you getting that from part of your training

17 or something?

18 A. Yes. It's in the preface of some books or

19 something. Evaluation, control, or recognition. I'm sorry.

20 Recognition, evaluation and control.

21 Q. Recognition, evaluation and control.

22 A. Just snapped back in there.

23 Q. Would you characterize that as being sort of a

24 method of operations that is generally thought to be how

25 industrial hygienists should evaluate particular workplace

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1 hazards?

2 A. It's pretty much standard, generalized procedure,

3 right. You go in and you see if you can recognize any

4 potential hazard, evaluate those that you think may be

5 causing a problem, and then if you find a problem, then

6 control it further.

7 Q. When, in your mind, does a potential hazard

8 become a hazard?

9 A. Potential hazard become a hazard?

10 Q. Yeah, become an actual hazard.

11 A. I guess there's just too many variables that

12 would pertain to a particular situation. Let's take a

13 substance that could be airborne. Well, you can measure an

14 airborne concentration and compare it with a -- I may use an

15 old term, a TLV, threshold limit value. I guess now it

16 would be an OSHA standard, but, you know, a TLV. You'd also

17 have to look at it from the standpoint is that material

18 also going to be absorbed through the skin.

19 And so I mean, there's so many variables in

20 trying to evaluate a potential hazard that you'd have to

21 take a lot of things into consideration. I couldn't just

22 give you a nice, quick, simple answer.

23 Q. Right. Now, you're aware and were aware of a

24 study or, I should say, an industrial hygiene survey that

25 Allan Dooley did at the Port Arthur works in 1949?

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1 A. Yeah.

2 Q. You're familiar with that study I'm referring to?

3 A. Generally, but I'd have to look at it again to

4 make sure we're talking about the same ones.

5 Q. Now, this is a quote from the study, and this was

6 written by Allan Dooley, correct, from the survey?

7 MR. MESHER: Do you want to show him that?

8 Q. Well, I'm just saying Allan Dooley did a survey

9 in 1949, correct?

10 A. That's correct.

11 Q. What he wrote was, "Asbestos dust, if inhaled in

12 sufficient amounts and for a prolonged period, will cause a

13 lung fibrosis termed asbestosis." Now, my question to you

14 is: Does that statement connote a recognition of an actual

15 hazard or a potential hazard by Mr. Dooley?

16 A. Actually, that paraphrases the preamble of the

17 threshold of limit values. So in other words, I think you

18 have to have a recognized hazard. You have to have exposure

19 for a prolonged period of time at excessive concentrations.

20 So he's merely paraphrasing what I think a lot of

21 (inaudible) would do, because in looking at it from a

22 standpoint of a threshold limit value, and I'm sure the OSHA

23 standards, is that these are not fine lines that when you

24 immediately go beyond the line by small measure you have a

25 hazard, because most of them have very large safety factors

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1 built into them, at least when I was on the TLV committee in

2 '68, '69. And so you're looking at excessive exposures for

3 a very prolonged period of time.

4 Q. And so to determine if an exposure is excessive

5 you would have to do some sort of evaluation of what the

6 exposure was, do you agree with that?

7 A. Well, evaluation could take many different forms.

8 I mean, you could -- if there's instrumentation available,

9 you could measure it. You could look at what sort of

10 ventilation has been applied to a particular type of

11 operation and evaluate the ventilation that goes in there.

12 For instance, natural ventilation, outdoor ventilation, many

13 times can be a very sufficient control measure for materials

14 that might generate a dust, because it doesn't accumulate,

15 it doesn't gather. It's not confined to a particular space.

16 So, I mean, there's a lot of different ways to

17 control and evaluate a hazard. So there's a lot of

18 expertise and experience that goes into this thing, the type

19 of expertise and experience that Allan had and brought to

20 the company when he came there in '47.

21 Q. What methods to evaluate the hazard of asbestos

22 dust did Texaco undertake after Allan Dooley wrote this --

23 that statement in this industrial hygiene survey that you're

24 aware of?

25 A. You mean -- let me see if I understand the

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1 question. What methods of evaluation did Texaco -- maybe we
2 should repeat the question. I sort of didn't follow it.

3 Q. Let me rephrase it. After Allan Dooley wrote in
4 1949 that asbestos dust, if inhaled in sufficient amounts
5 and for a prolonged period, will cause a lung fibrosis
6 caused asbestosis, what, if anything, did Texaco do to
7 evaluate the hazard that asbestos dust might cause to its
8 workers who were working with or around it?

9 A. Well, now, we're talking about a particular
10 survey and a particular -- I think that was a Port Arthur
11 survey, and he was looking at all of the aspects of
12 operations in Port Arthur. In this particular case, if I
13 remember correctly, he was in a shed or an enclosure that
14 was used to do something with asbestos piping. Don't
15 remember the exact details. And so he would have visualized
16 what the insulators were doing, and I guess he had a concern
17 at that particular point in time whereas, based on his
18 experience and training and expertise, that was the only
19 point in the insulation process of Port Arthur that we
20 thought there could have been a problem.

21 I mean, you have a person here who is very
22 familiar with asbestos and asbestosis in the '30s,
23 apparently wrote a paper, detailed paper. Comes to the
24 company, goes out and looks at their largest, most complex
25 plant, and in looking at those operations, including

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1 insulation, he decides that the only area that needs further
2 work is an area inside an enclosed area where I think they
3 were grinding up asbestos piping to make cement.

4 Q. Do you believe that when Allan Dooley wrote the
5 sentence that I've been quoting that he recognized that
6 asbestosis was a hazard of workers who were working a --
7 strike that. Do you believe that Allan Dooley -- let me try
8 and rephrase that one more time.

9 Does the fact that Allan Dooley wrote that
10 asbestos dust, if inhaled admittedly for sufficient -- in
11 sufficient amounts and for a prolonged period will cause a
12 lung fibrosis termed asbestosis, do you believe that
13 connotes a recognized hazard that Texaco would have to take
14 into consideration to protect the health and safety of its
15 workers from that point forward?

16 A. Well, not only do I think that that was the case,
17 but I think Allan did that. I think what Allan was doing
18 was quoting chapter and verse his real beliefs that asbestos
19 under certain conditions with excessive exposure can cause
20 asbestosis, and that looking at the insulation operations of
21 Port Arthur plant, the only area he had any kind of concern
22 about was inside a small shed.

23 So looking at -- based on his expertise, his
24 experience, his knowledge in the industry, the fact he wrote
25 a paper, he went down there and looked at Port Arthur,

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1 looked at the insulation operations, and said the only thing
2 I have a problem with in this type of setting is inside that
3 shed. Everything else is fine as far as I'm concerned.

4 Q. So you don't think that he had any concern at all
5 for workers who were out insulating, stripping off asbestos
6 insulation perhaps from a pipeline or from pipes around a
7 boiler in a particular refinery, he would have no concern at
8 all for those workers breathing dust from those operations,
9 would he?

10 A. I think he would have -- and again, we're really
11 second-guessing Allan at that point because neither one of
12 us were there, but knowing Allan's method of operation, I
13 think he would have looked at these processes, as I would
14 have looked at them when I got there, and said this is
15 outdoor ventilation. This is intermittent. We're not going
16 to have a problem here, but the only problem I have is
17 inside that shed and I want you to correct it.

18 Q. So the only problem --

19 A. That he saw at Port Arthur.

20 Q. Well, did he ever do any kind of observation of
21 asbestos hazards at any other refinery that you're aware of?

22 A. Sure.

23 Q. When?

24 A. Well, he may not have documented it but when I go
25 out to a plant --

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1 Q. I'm asking what he did not what you did.

2 A. I'm going to tell you. When I go out to a plant
3 it's the same thing Allan did and the same thing that people
4 work for me. You look at everything, because there could be
5 something different at one plant versus another. Typically
6 not. I mean, a process is a process, and it runs pretty
7 much the same from one plant to the other, but Port Arthur
8 being the most complex operation in the United States for
9 Texaco, if he goes there and he says I've looked at this
10 insulation procedure and I don't think it's a problem
11 because you're working outside -- I think he looked at that
12 at other locations. He went around to make sure there
13 wasn't some material difference, and he said I don't think,
14 based on my experience, based on my knowledge, based on my
15 contacts with other people in the industry and beyond, I
16 don't think we have a problem with insulators in Texaco,
17 other than that shed at Port Arthur, doing that operation,
18 and I want you to correct it.

19 Q. And can you give me a time frame from which he
20 must have thought that -- he thought that there was no
21 problem? Was that from 1949 until he retired in 1972 or was
22 it more limited than that?

23 A. Well, I think you have to look at the checks and
24 balances, okay. I think that's what he thought in '49. I
25 think that's what he felt through the '50s. When they got

1 to the '60s and said, all right, you know, let's take a look
2 at this thing in a broader aspect, let's take a look at this
3 thing epidemiologically, I don't think there's a problem
4 there, because what we're seeing in the way of problem areas
5 are far different than this type of exposure. We're seeing
6 it -- maybe Selikoff has seen it in these enclosed areas
7 where they're spraying asbestos all over the place. But I
8 don't think we have a problem there because we have an
9 outdoor environment. It's done very intermittently, we have
10 good natural ventilation, the wind is blowing through, okay.
11 But we'll take a look at it from another aspect. Let's take
12 a look at it from the medical aspect.

13 And in essence, I think the summary of the
14 information that we just put in there -- we had one
15 mesothelioma that was reported as case report in '60. We
16 had one suspected mesothelioma, and this was in 65 out of 70
17 people. And I still don't see a problem, because I think
18 visually we don't have a problem there, but we're going to
19 keep looking. We're not just going to let this thing go
20 away. And Allan is not jumping up and down about this.
21 Frank Wilson is not jumping up and down about this and
22 Curtis Baylor is not jumping up and down about this.

23 Q. What did Mr. Dooley do to ever determine if a
24 work environment for an insulator was -- if that insulator
25 was inhaling asbestos dust in sufficient amounts for a

1 prolonged period? What specifically did he ever do to make
2 that determination between 1949 and 1972?
3 A. I don't know whether we did any actual -- Allan
4 did any actual measurements. I'd have to go back and look
5 at all the reports and whatever we have. I know we did some
6 measurements in some locations, and I don't recall in '49 if
7 he did a measurement there at that location or not. It
8 could have been visual and he said I don't like what I see.
9 But I think having -- I don't know if he made any physical
10 measurements with the limitations at the time in measuring
11 things.

12 I think you had a midget impinger, you had a
13 midget impinger with a liquid in it that you can't attach to
14 anybody because it's going to spill. You needed a vacuum
15 source. It wasn't a breathing zone sample and it was only
16 -- it was really the late '60s when you started getting
17 portable pumps. And in '70, '71 you had the Monitair
18 filter which allowed you to do personal monitoring.

19 So I don't recall any specific monitoring that he
20 did, but I think based on his expertise, skills and
21 experience he didn't think there was a problem. He may not
22 have measured it, but he didn't think it was a problem.

23 Q. How could he possibly know if it was a problem if
24 he didn't ever measure it?

25 A. Well --

1 Q. Let me ask the question this way. How can any
2 industrial hygienist ever know if a situation or environmen
3 is excessively dusty so as to be hazardous if they don't
4 actually measure the dust in the air?

5 A. I've done it all the time.

6 Q. Okay. How do you do that?

7 A. Experience, knowledge, look at the ingredients.
8 Look at the way they're doing things. I was trying to thin
9 of an analogy in a law firm, but I can't come up with
10 anything right now.

11 Q. Do you think that's the most effective way to
12 measure -- to determine if a work environment is excessively
13 dusty so as to be hazardous to one's health?

14 A. Well, I think you have to look at the proper,
15 efficient use of resources. And I could have taken a sample
16 at every place I went in my 38 years in industrial hygiene
17 and related jobs, but I think based on my training and
18 experience I could do a very, very good job of evaluating or
19 recognizing where there was a potential, evaluating that
20 particular operation, either by looking at the ventilation
21 applied, by actually taking measurements if they were
22 appropriate, and I think you get a good feel for it.

23 Q. I mean, it would have -- you said something about
24 efficient use of resources. What do you mean by that?

25 A. Well, when I was with the state of Pennsylvania,

1 and I'd take a sample -- taken a sample at every place I
2 went, and every location within that place that I went, I
3 think the state would have been out of patience. So you are
4 trained to go through visually, try to recognize a potential
5 hazard, evaluate those areas that you will have any kind of
6 concern about, and then, based on that evaluation, recommend
7 adequate controls if they are necessary.

8 Q. The fact is, Mr. Richards, in your work for
9 Texaco, and in your several times you've testified for
10 Texaco, you've never seen a single document that
11 demonstrates that Allan Dooley did any dust sampling
12 whatsoever to determine if a work environment was
13 excessively dusty so as to be hazardous to a worker's
14 health; isn't that right?

15 A. You're talking about all dust?

16 Q. Let's make it asbestos dust.

17 A. Well, I don't recall any specific samples that
18 Allan did for asbestos dust, but I know he measured other
19 kinds of dust.

20 Q. But you're not denying that there are no such
21 sampling reports that Allan Dooley ever did?

22 A. Well, I guess I'm not denying or I'm not being in
23 the affirmative either. I just don't recall of any.

24 Q. You don't have any information that would allow
25 you to deny that there are any such reports?

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1 A. Not at my fingertips certainly.

2 Q. Have you ever seen any such information?

3 A. I mean, we're going back 30 years, more than 30

4 years.

5 Q. Sure. I mean, when we deposed Jack Drummond he

6 indicated that at Anacortes, when he came in in 1967, there

7 were no such reports at all about dust counts or anything

8 like that in place. I mean, would that be consistent with

9 what you're telling me about Mr. Dooley's efforts to take

10 dust counts?

11 A. Well, in fact, Allan did visit the Anacortes

12 plant I think on more than one occasion. He evaluated noise

13 exposures there, and Allan wasn't the type of guy to say,

14 all right, let's go in and look -- let's look at that little

15 point there where you want to look at. He would have walked

16 through the whole plant, and I think if he would have saw a

17 problem, he would have come back and evaluated it. That's

18 the kind of person Allan was.

19 And so yes, I can understand where Jack says,

20 Jack Drummond says, I can't find any dust samples, but I

21 mean, he didn't start there until '67. Could have been done

22 before then. Maybe there wasn't in the files. Or Allan may

23 have not felt they were necessary at Anacortes based on his

24 walk-through of the plant and his background and knowledge

25 at the other locations that he visited in the course of his

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1 career with the company.

2 Q. Do you think that's good industrial hygiene

3 practice to make an evaluation that a situation is not

4 excessively dusty so as to be hazardous to one's health

5 without actually taking a dust count?

6 A. I've done it many times.

7 Q. Do you think that would be the consensus view

8 among industrial hygienists?

9 A. Absolutely. I guess to clarify, I'm not saying

10 that it's required at every particular point in time. By

11 training and experience you can look at an area and make a

12 determination as to whether you need sampling or not.

13 (Marked Deposition Exhibit 10.)

14 Q. Let's turn back to the document No. 10. Can you

15 identify this document?

16 A. I think I saw it before, but there was a

17 different aspect to it. Maybe it was turned differently or

18 photocopied differently or something like that. I don't

19 know if I recognize this particular one.

20 Q. Well, this was produced to us by Texaco.

21 A. Yeah.

22 THE WITNESS: I'm looking to my -- was this --

23 did we see this printed in a different fashion?

24 MR. FRENKEL: I haven't been sworn in.

25 A. I'm sorry, I don't recognize it this way.

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1 MR. FROCKT: If you want to go off the record we

2 can.

3 MR. FRENKEL: I don't want to interrupt your

4 deposition.

5 MR. MESHER: If we want to go off the record we

6 have to go off the tape.

7 MR. FROCKT: Let's go off the record and off the

8 tape.

9 THE VIDEOGRAPHER: The time is 11:01 a.m. We'll

10 be taking a break.

11 (Recess.)

12 THE VIDEOGRAPHER: The time is 11:03 a.m. We're

13 now back on the record.

14 MR. MESHER: Do you want to look at a copy that

15 has a better top to the page?

16 THE VIDEOGRAPHER: The time is 11:03. We're off

17 the record.

18 (Discussion off the record.)

19 THE VIDEOGRAPHER: The time is 11:04 a.m. We're

20 now back on record.

21 Q. Mr. Richards, this is Exhibit 10?

22 A. 10.

23 Q. And the cover page is -- it says, "Safety and

24 Industrial Hygiene Asbestos Study 1965."

25 A. That's correct.

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1 Q. And the number on the bottom is WA-TEX 013774,

2 and the documents run consecutively to 013785. Do you see

3 that?

4 MR. MESHER: Excuse me, counsel. At the break

5 you may have part of our -- I think an exhibit you gave to

6 us. From page 779 to the end. Do you have an extra copy of

7 those pages over there?

8 MR. FROCKT: I don't think so, Barry.

9 MR. MESHER: That's fine. That's fine.

10 MR. FROCKT: Do you want to use one of their

11 copies?

12 MR. MESHER: Go ahead.

13 A. In answer to your question, I have that document,

14 yes. And it goes from 74 -- 774 to 785.

15 Q. Now, sir, can you describe for me what your

16 understanding of what this document appears to be?

17 A. Well, I really don't know. The printing is very,

18 very, fuzzy. It seems to be some sort of compilation, and I

19 guess it was produced as something from our files, but I

20 really don't know anything beyond that. It's some sort of

21 compilation.

22 Q. Sir, do you think this document has anything to

23 do with the 1965 API study that we've been talking about at

24 some length today?

25 A. It certainly may have, but I -- this is illegible

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1 in certain spots for me to say that one way or the other.
 2 But it could be. It could not be. I don't know. I just
 3 don't know.
 4 Q. Now, if you could turn to page 013781.
 5 A. 781?
 6 Q. Yeah.
 7 A. Okay.
 8 Q. Now, it says in the middle of the page there,
 9 "nonnegative as of March 1965."
 10 A. I see that.
 11 Q. And sir, would you agree with me that this
 12 document appears to be a handwritten compilation of some of
 13 the data from the 1965 Texaco asbestos study?
 14 A. This is just Texaco or is it -- it's certainly a
 15 compilation of some of the data that could have gone into
 16 that API '65 study. And I see some Texaco plant names on
 17 here, but some I can't identify, so I don't know if it goes
 18 beyond Texaco or is strictly Texaco.
 19 Q. Do you have any idea whose handwriting this is?
 20 A. No, I do not. No.
 21 Q. The document lists a number of -- and there's an
 22 age column and then a -- looks like something that looks
 23 like a year, YRS. Do you see that?
 24 A. We're still on 81, right?
 25 Q. Yeah. Two columns.

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1 A. I see age, years.
 2 Q. Medical status?
 3 A. Medical status, right, correct.
 4 Q. And wouldn't you agree with me that this would
 5 appear to be some indication of nonnegative -- of a
 6 nonnegative medical status as it relates to the 1965 API
 7 study?
 8 A. Well, I guess, yes, and -- yes, but maybe with a
 9 clarification. There may be some positive findings or
 10 something different than the usual findings, but not
 11 necessarily tied to asbestos exposure, I mean, but I have
 12 not read this and some of this I can't read, but it says
 13 nonnegative as of March '65, but I don't know nonnegative of
 14 what.
 15 Q. But Texaco was conducting their -- was gathering
 16 their data for the API study in March of 1965, right?
 17 A. That's correct.
 18 Q. I mean, do you have any information that would
 19 indicate that this is not part of that data that was
 20 gathered in 1965?
 21 A. I don't have any indication one way or the other.
 22 I know it was produced by the company, and it seems to have
 23 some association, but beyond that I don't know.
 24 Q. Sir, do you think that insulators for the company
 25 --

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1 A. Are we done with this?
 2 Q. Yes. Do you think that in 1965 insulators for
 3 Texaco would have been interested to know that Texaco had
 4 data that at least two insulators had contracted
 5 mesothelioma?
 6 A. Perhaps. I don't know that for a fact one way or
 7 the other, but I don't know what someone would do with it.
 8 Q. Now, Mr. Richards, when in 19 -- you came out of
 9 the company in 1969, right?
 10 A. Correct. In July.
 11 Q. Some of the documents that were produced in this
 12 case seem to indicate that there was sort of -- and you can
 13 characterize this differently if you'd like, but in my
 14 review of them there was a more systemic testing process for
 15 dust hazards after you came on board in the 1970s; is that
 16 right?
 17 A. There was an expansion of staff and there was
 18 more sampling. We added staff primarily because of the --
 19 well, the OSHA standard required periodic monitoring at
 20 certain locations, and we've certainly had to comply with
 21 those particular requirements, among other reasons we added
 22 to the staff.
 23 Q. And what was -- can you describe for me -- I
 24 mean, did you leave the efforts to take more dust samples so
 25 you could determine exactly what would -- what people were

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1 and were not being exposed to in the work environment there?
 2 A. That might be a fair characterization, yeah. I
 3 managed the program at that particular point in time.
 4 Q. Can you describe for us what you did?
 5 A. Regarding --
 6 Q. In regards to that program that I asked you
 7 about.
 8 A. Just the dust monitoring?
 9 Q. Well, just in general. Can you just kind of give
 10 us a description of what you did?
 11 A. When Dooley retired in November of '71, shortly
 12 after that we added a second industrial hygienist of Jim
 13 Licata. He was a trained industrial hygienist. Came to us
 14 from Liberty Mutual Insurance Company, and I think Jim was
 15 the first person on my staff to visit the Anacortes plant.
 16 In '73 we added Herschel Hobson in the Houston office, and I
 17 think he was the second person to visit the Anacortes plant.
 18 He went in there, I think, '73, '74, something like that.
 19 But as we added staff beyond Herschel, we got
 20 into a more definitive monitoring program at the different
 21 locations. We added to the sampling capability of the
 22 company with regard to -- I mean, at that particular point
 23 in time they had these personal monitoring pumps. They had
 24 more media where you could take personal monitoring samples,
 25 breathing zone samples. And we started computerizing the

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1 data developing a sampling data sheet, and went from there,
 2 I guess. I could go on, but I don't know if you want me to
 3 go on.

4 Q. What did you find with respect to the exposures
 5 to asbestos the workers were having at that time?

6 A. Well, the earliest exposures that we measured, we
 7 were doing two sorts of things. We were training personnel
 8 at the Port Arthur plant. Those were, I think, the first
 9 couple of ones we did, and, although we collected those
 10 samples for experience for those particular individuals, I
 11 think we treated that more as a training experience than a
 12 true measuring experience. We also tried to pick out the
 13 worst case areas.

14 In other words, I think one of the first areas we
 15 went to had been fire-damaged, and so the insulation had
 16 been damaged in the course of the heat and the fire, and we
 17 were measuring what happened when you stripped at that
 18 particular type of insulation, which was -- I would
 19 characterize it as far dustier than what you might find in a
 20 normal stripping operation, but in essence I think we found,
 21 for the most part, the normal stripping operation for
 22 asbestos pipe was within OSHA standards, and again, the
 23 worst cases may have been somewhat different.

24 We found that in a lot of cases the personnel
 25 were using respiratory protection. We developed standards

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1 to reduce, minimize those exposures by developing a
 2 procedure to wet down the insulation before it was removed,
 3 barricade off the area with tape. There were certain
 4 disposal situations that we had to take care of. Certain
 5 bags, labeling things of that particular sort.

6 Q. How about substituting with nonasbestos-
 7 containing products?

8 A. You picked up the one I missed, and that was in
 9 1972 we adopted a policy where we would only use
 10 nonasbestos-containing insulation for new construction, and
 11 did go out to the contractors who were constructing units
 12 for us that we were insisting only on nonasbestos-containing
 13 insulation on that new construction. And the policy was
 14 also adopted where we would only purchase nonasbestos-
 15 containing insulation for maintenance operations, and that
 16 in all instances we did not immediately have available
 17 substitutes, but for most things, for the pipe, preset
 18 length of pipe, we could get substitutes pretty shortly, and
 19 so we adopted that particular policy and carried through
 20 with it.

21 Q. Isn't it true that the policies that you've just
 22 described were adopted specifically in response to OSHA
 23 regulations that came out in the early 1970s?

24 A. I think there were two situations there, not
 25 necessarily OSHA, but also you now had the association

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1 between asbestos and mesothelioma, and so we were taking th
 2 extra steps. One of the techniques for control in
 3 industrial hygiene is substituting a less hazardous
 4 material.

5 Q. Now, there were some Texaco plants that prior to
 6 1972 were using nonasbestos-containing materials for their
 7 insulation; is that right?

8 A. I think in many of the installations, depending
 9 on the temperature requirements, they could have been using
 10 things like mineral wool, fiberglass, but that was not true
 11 in all particular type of situations because asbestos was
 12 required pretty much by the contractor to maintain heat
 13 balance in certain areas.

14 Q. I'm looking for a document here.
 15 (Marked Deposition Exhibit 11.)

16 Q. Can you identify this document, sir?

17 A. Yes. It's a memorandum I wrote in June of '72.

18 Q. And it states, "Of special note should be the
 19 fact that no asbestos-containing insulation material has
 20 been used at LAP for a number of years." Did LAP refer to
 21 the Los Angeles plant?

22 A. That's correct.

23 Q. So according to this memo that you wrote in 1972,
 24 the Los Angeles plant had converted to nonasbestos
 25 insulation for several years before; isn't that right?

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1 A. Let me read the whole thing.

2 Q. Sure.

3 A. That seems to indicate that they had been able to
 4 use nonasbestos-containing insulation for a number of years,
 5 that's correct.

6 Q. Why?

7 A. I don't know why. I'm not a control engineer,
 8 process control engineer.

9 Q. Certainly the document would seem to indicate
 10 that at least somebody in the Texaco system knew that
 11 nonasbestos-containing insulation material was available for
 12 use. Would you agree with that?

13 A. Oh, on this particular instance it may have fit
 14 their particular operating parameters. I don't know that,
 15 beyond that.

16 Q. Do you know if their operating parameters
 17 differed significantly from other --

18 A. I'm not a process engineer.

19 Q. Certainly the document indicates that there were
 20 asbestos substitutes available for at least some operations
 21 and refinery operations; isn't that correct?

22 A. That's correct.

23 Q. Do you have any idea how far back it was that the
 24 Los Angeles plant had converted to nonasbestos-containing
 25 insulation cement?

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1 A. No, I do not.

2 Q. Or materials, I should say.

3 A. No, I do not.

4 Q. Was there a safety man down there that you recall

5 working with?

6 A. There was certainly a safety supervisor down

7 there, but I don't remember his name.

8 Q. But clearly, according to this document at least

9 that you wrote in 1972, Los Angeles plant was using

10 nonasbestos materials prior to the passage or the effect of

11 OSHA, and the asbestos regulations that went into effect

12 with OSHA; isn't that right?

13 A. The document says that they've been using it for

14 a number of years.

15 (Marked Deposition Exhibit 12.)

16 Q. Mr. Richards, have you had a chance to take a

17 look at Exhibit No. 12?

18 A. Yes, I have.

19 Q. And can you identify the document for me?

20 A. It's a memorandum from me dated May 9, 1972 to

21 F. D. Dorr who was the plant manager at the Port Arthur

22 plant.

23 Q. Now, can you describe for me what this document

24 is?

25 A. This is a report of a -- we started numbering

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1 samples. We didn't go back and number anything previous to

2 that that might have been taken but we started -- and this

3 is A1 through A10 would have been the first 10 asbestos

4 samples we would have taken, and these are the ones I'm

5 referring to earlier. These were training samples we were

6 using, safety personnel, and I was trying to train them to

7 use the sampling pumps, the sampling techniques, make many

8 notes and things of that sort. Also here we have this fire

9 damage insulation that was being stripped as a worst case

10 type of situation.

11 Q. Well, that's part of the document, isn't it? I

12 mean, there was something else that was tested as well,

13 isn't that right, the manual cutting, sawing and fitting

14 preformed insulation?

15 A. Yeah, A1 through 5, and then the worst case, 6

16 through 10.

17 Q. And so the manual sawing, cutting and fitting

18 preformed insulation, that did not refer to fire-damaged

19 insulation?

20 A. No. It was 6 through 10.

21 Q. So 1 to 5 was preformed insulation, correct? I

22 just want to -- so I understand it.

23 A. Well, it's also mudding with nonasbestos mud.

24 Q. Well, I assume if you were testing for asbestos

25 dust that the preformed insulation had asbestos in it; is

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1 that correct?

2 A. That would be a logical conclusion, right. We

3 would have been counting fibers.

4 Q. Well, you're testing for asbestos fibers?

5 A. Yeah, right.

6 Q. Now, manual -- do you agree with me that manual

7 sawing, cutting and fitting preformed insulation was an

8 activity that was undertaken by insulators at refineries all

9 over the Texaco system?

10 A. Correct.

11 Q. Do you think that was something that was done at

12 Anacortes, for example?

13 A. It could have been done at Anacortes, correct.

14 Q. Do you have any reason to believe that that was

15 not done at Anacortes?

16 A. No. But we'd have to go back to the sampling

17 data sheets to know.

18 Q. If I could ask the question, I'm sorry. Now, the

19 document goes on and says, "Except for A4, all samples were

20 at or exceeded the acceptable OSHA limits for asbestos

21 fibers of five fibers per milliliter for an eight-hour

22 exposure. All the above samples represent exposure during a

23 15-minute period. The 15-minute sampling period should be

24 continued.

25 "Based on the above, use of respiratory

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1 protection during insulation and insulation stripping will

2 have to continue. More definitive recommendations will

3 await collection and analysis of further samples." Do you

4 see that?

5 A. Yes.

6 Q. Did I read that correctly?

7 A. Yes.

8 Q. Now, the -- so there's no question, according to

9 this document -- and you've distinguished fire-damaged

10 insulation as being more prone to give off asbestos dust

11 than, say, just regular insulation. Is that what you're

12 saying?

13 A. That was general in asbestos dust, right, it's

14 fire damaged.

15 Q. Do you think that when you strip off asbestos

16 insulation that's not fire-damaged, did you have any

17 information one way or another whether the dust that was

18 released exceeded acceptable OSHA limits at that time?

19 A. At this time when I took these samples?

20 Q. Yeah.

21 A. I didn't have any definitive data, but visually

22 it looked that way, and I think later we proved that was the

23 case. Fire-damaged, it actually damaged the matrix that

24 holds the fibers together.

25 Q. You didn't understand my question. My question

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 1 was, when you stripped off nonfire-damaged insulation -- did
 2 you ever undertake that kind of activity?
 3 A. Yes. I --
 4 Q. And that was --
 5 MR. MESHER: Let him answer, and then you're
 6 going -- you're trying to answer when he's asking the next
 7 question.
 8 A. I don't know that I personally was involved in
 9 that sampling, but yes, that sampling was done.
 10 Q. Now, are you aware of any results that stated
 11 that the stripping off of nonfire-damaged insulation,
 12 asbestos insulation, exceeded OSHA dust limits that were in
 13 place at that time?
 14 A. That seems to be a negative question.
 15 Q. Probably is.
 16 A. A backwards question.
 17 MR. FROCKT: Can you repeat the question? I
 18 didn't think it was that backwards.
 19 (Record read as requested.)
 20 A. In other words, are you asking me if when we
 21 sampled nonfire-damaged asbestos insulation that that also
 22 exceeded the standards?
 23 Q. Yeah.
 24 A. Okay. I don't know specifically because it's
 25 been a long time, but in the course of the last several

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 1 months I remember seeing a chart that sort of summarized
 2 asbestos sampling, and the vast majority did not exceed the
 3 OSHA standard in place at that particular point in time.
 4 Q. Now, with regard to the preformed insulation that
 5 was not fire-damaged --
 6 A. Correct.
 7 Q. -- that is reflected in this document --
 8 A. 1 through 5.
 9 Q. -- it would appear that A1, A2 and A3 all were at
 10 or exceeded the acceptable or the OSHA limits that were in
 11 place in 1972; is that right?
 12 A. Well, the number appears to do that, yes, but,
 13 again, as I mentioned earlier before we saw this document,
 14 we were trying to train safety personnel in doing air
 15 sampling. And I would characterize this as the very first
 16 samples they ever took, and to me would be somewhat suspect
 17 in its exact accuracy. I've seen these many times since
 18 that. And I think we are -- you know, when we get down to
 19 numbers in the 40s I'd have more faith in their reliability
 20 of the actual number.
 21 Q. Well, certainly, according to this document, you
 22 believed that this sample had some reliability because you
 23 advised whoever you were advising that use of respiratory
 24 protection during insulation and insulation stripping would
 25 have to continue?

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 1 A. That's right. I have no doubts about that. I'm
 2 just saying that when we sit here in 2003 and go back to
 3 1973 or '72, I think it was, you know, I think we're putting
 4 a lot of reliability in something that happened 30 years ago
 5 that is not there. But I don't dispute the recommendation
 6 made to continue respiratory protection during stripping,
 7 right.
 8 Q. But as far as we know, there's not a single other
 9 sample that was taken for manual sawing, cutting and fitting
 10 preformed insulation at any time prior to this?
 11 A. Prior to that?
 12 Q. Yeah.
 13 A. Other than what might have happened with those
 14 contractor samples that I don't know where they did and what
 15 they did, you know. I mean, certainly with this technique,
 16 which was the Monitaire pumps and the Millipore filters,
 17 these were the first samples taken using that technique.
 18 Any other technique would have been the midget impinger, and
 19 these also would have been breathing zone samples, and the
 20 other ones would have been aerated samples.
 21 Q. Are you saying that you don't think this is a
 22 particularly reliable sample?
 23 A. I think we're putting a lot of faith in the first
 24 40 samples, now, 30 years later than really should be.
 25 Q. So do you think that these -- taking samples like

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 1 this, like the one you took here, A1 through 10, provides
 2 more specific information in regards to the hazard as
 3 opposed to just observing an operation in a given
 4 environment where you're taking no such samples?
 5 A. I don't think you can compare the two.
 6 Q. Why is that?
 7 A. Well, again, based on experience, based on other
 8 factors, I don't think this is representative of the true
 9 nature of this particular type of job that visually appeared
 10 to Dooley and others in the '50s, '60s, whatever those
 11 particular time frames -- felt about this particular type of
 12 operation.
 13 What I'm saying is we'd have to go down to a
 14 lower number of samples, in my estimation, to get something
 15 a little more representative of that type of operation.
 16 Q. So are you saying that the manual sawing, cutting
 17 and fitting preformed insulation that you observed -- and
 18 you took this sample, right?
 19 A. I was there while the other people took the
 20 sample.
 21 Q. Are you saying that the manual sawing, cutting
 22 and fitting preformed insulation that you observed in May of
 23 1972 at Port Arthur differed materially from what you
 24 believe Allan Dooley would have been observing. Is that
 25 what you're saying?

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1 A. No. What I'm saying is these numbers represent
 2 something that may or may not have been a true
 3 representative case when we go down to a later, lower number
 4 in the asbestos sampling, because I remember that curve
 5 regarding the fiber counts and samples, and the vast
 6 majority are much lower than this.

7 Q. So --

8 A. I'm saying these may not be representative
 9 samples of the true case going back in hindsight 30 years.

10 Q. So you don't think this is an accurate
 11 representation of what an insulation worker in a Texaco
 12 refinery would have been doing when they were manually
 13 sawing, cutting and fitting preformed insulation?

14 A. These numbers are not a true representation,
 15 that's what I'm saying.

16 Q. But of course we have no data prior to 1972 that
 17 would indicate one way or another whether or not this number
 18 is accurate; is that right?

19 A. Well, we have no data that we can produce, that's
 20 correct.

21 Q. You have no data that you can produce?

22 A. That we can produce.

23 Q. What data do you have that you couldn't produce?

24 A. Well, like I said, we had sampling done by
 25 contractors at certain -- at locations I can't remember. I

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1 remember seeing the reports. They did samples. I don't
 2 remember what they sampled for, I don't know where they
 3 sampled at, but apparently those reports can't be found
 4 after diligent search of the files in Tulsa, and so we can't
 5 produce them. I remember seeing them. I don't remember
 6 what they said, but we can't produce them.

7 Q. Were those -- so, and is it your belief that
 8 those -- well, what inspired Texaco to do those samples with
 9 the contractors that you're referring to?

10 A. Inspired? I don't have any idea.

11 Q. What was the reason for it?

12 A. I don't know.

13 Q. How do you know about it?

14 A. Because I read them.

15 Q. When did you read them?

16 A. In the '70s.

17 Q. So you just saw these samples, these studies,
 18 that were done by some contractor, may have been Dr. Kehoe
 19 from the University of Cincinnati?

20 A. It may have been him, right, or his associates,
 21 that's correct. We had these industrial hygiene files by
 22 plant in a particular file drawer, and in going through
 23 those in the '70s I remember running across those particular
 24 reports.

25 Q. What did the reports indicate with regards to

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1 asbestos dust?

2 A. I don't remember.

3 Q. So you can't say one way or the other that those
 4 reports indicated that there was no hazard from asbestos
 5 dust in Texaco operations, right?

6 A. That's correct. I can't say one way or the
 7 other.

8 Q. Sir, is it possible that study was done by the
 9 Industrial Hygiene Foundation and not Dr. Kehoe, or would I
 10 be mistaken?

11 A. That's not my recollection. My recollection is
 12 clearly it was a contract between Kettering and Texaco.

13 MR. FROCKT: Do you guys want to break for about
 14 an hour for lunch?

15 MR. MESHER: How long --

16 MR. FROCKT: I'm going to get done today.

17 MR. MESHER: We can go off the record.

18 THE VIDEOGRAPHER: The time is 11:36 a.m. We'll
 19 be taking a break.

20 (Lunch recess.)

21 THE VIDEOGRAPHER: The time is 12:32 p.m. We're
 22 now back on the record.

23 BY MR. FROCKT:

24 Q. Mr. Richards, I want to turn back to the API
 25 study that we've been talking about, we were talking about

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1 at some length, in 1965 or so and that Texaco participated
 2 in. And hand you what's been marked as 13.

3 (Marked Deposition Exhibit 13.)

4 Q. If you could take a look at that document and the
 5 attachment.

6 A. Okay. Do you want me to read the attachment
 7 detail or just --

8 Q. Let me ask you, have you seen this document
 9 before?

10 A. Only in connection with studying -- or reviewing
 11 documents for the case. First time I ever saw it.

12 Q. That was the first time you ever saw it?

13 A. Yeah, sometime this year, I think maybe the first
 14 time we were -- in February, but I reviewed it this year for
 15 the first time.

16 Q. Did you review it in preparation for coming here
 17 today in giving your testimony again?

18 A. Yes, again.

19 Q. So you did look at it again. Can you identify
 20 the document for me?

21 A. It appears to be a letter, no letterhead on it,
 22 but from Lucian Renes, who was with Phillips 66, to Van
 23 Hendricks, who was with Standard Oil, New Jersey, and
 24 apparently it's a correspondence that Lucian was gathering
 25 this information. You saw that in an earlier exhibit. He

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1 was going out to gather the information, but for some reason
2 or another at the spring committee meeting that they decided
3 to turn all this -- decided to turn this survey over to a
4 subcommittee.

5 Q. Okay. And who is it copied to?

6 A. Allan Dooley and Art Pabst.

7 Q. And Allan Dooley, that would be Allan E. Dooley,
8 the same Allan Dooley who we've been talking about at some
9 length who was the industrial hygienist for Texaco in the
10 1960s?

11 A. That's right.

12 Q. And this document, cover, letter has a stamp on
13 it, Health Division New York?

14 A. That's correct.

15 Q. And I think you indicated earlier that was the
16 Health Division stamp, that was the stamp for incoming mail
17 for the Health Division at Texaco in New York; is that
18 right?

19 A. That's correct.

20 Q. And this seems to be a checkmark there for AED?

21 A. Which is Allan Dooley.

22 Q. Are there any other initials there that you
23 recognize? It's a little bit hard to see.

24 A. Well, the first one is CHB. That's Baylor.

25 Q. So that would be Curtis Baylor, correct?

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1 A. Yeah, that's Curtis.

2 Q. Who was Curtis Baylor?

3 A. He was at the time the chief medical officer of
4 the company. He had taken over for Newquist. And then the
5 next one down is Gene Staten, E. R. Staten, and he became
6 the chief medical officer, I guess, I'm thinking, '74-ish
7 until he retired in the -- in, I think, the late '70s. I
8 don't recognize the other two. I don't recognize the last
9 one.

10 Q. So the stamp indicates that the Health Division,
11 at least insofar as the markings on the letter, incorporated
12 both the medical department and the industrial hygiene
13 department; is that right?

14 A. That's correct.

15 Q. And would you characterize the industrial hygiene
16 department as having a close working relationship with the
17 medical department or not?

18 A. They work within the same section of the
19 building, and structurally it was Curtis Baylor's office,
20 the secretary's office for Curtis, and Allan, and then
21 Allan's office.

22 Q. Now, did you have a chance to or have you
23 reviewed the attachment?

24 A. Not in any kind of detail.

25 Q. Have you seen it before?

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1 A. I've glanced at it before.

2 Q. Do you feel comfortable giving me an analysis of
3 what you understand the attachment to be or would you like
4 to take a look through it in detail again?

5 A. I more or less focused on the summary, but -- are
6 these out of order? I don't know. Let's see. No, they
7 don't seem to be out of order. We got a summary up front.

8 MR. FRENKEL: Summary on page 2 and a conclusion
9 on page 3.

10 A. I'm more or less focused on the conclusion, but
11 more than that, I'd have to take a real close look at it.

12 Q. Why don't we go ahead and look at some of it.

13 Why don't you start with the first sentence there.

14 A. "Recent reports describing a high incidence of
15 pulmonary neoplasms among asbestos workers has focused
16 attention on the health of refinery craftsmen engaged in
17 insulation activities."

18 Q. Now, it says going down to the second -- so that
19 would be sort of a general statement of what the API study
20 was about; is that right?

21 A. The reason for it.

22 Q. Reason for it?

23 A. Yeah, sure.

24 Q. Now, looking at the second paragraph where it
25 says "historical." Can you read that paragraph for me?

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1 A. You want me to read the first paragraph?

2 Q. Sure.

3 A. For 50 years or longer asbestos has been
4 recognized in the United States as form of pneumoconiosis
5 resulting from exposure to asbestos dust. However, it was
6 not until joint medical and environmental studies were
7 conducted by official health agencies in the mills of
8 Pennsylvania and North Carolina about 30 years ago that the
9 relationship between dust concentrations, particle size,
10 years of exposure and definitive chest x-ray markings were
11 established -- was established. The lung field markings
12 were also shown to correlate well with certain subjective
13 reactions related to pulmonary function.

14 Q. Now, that paragraph references some medical and
15 environmental studies from the mills of Pennsylvania, North
16 Carolina?

17 A. Correct.

18 Q. Sir, do you have an opinion as to whether or not
19 those studies were -- included the study that Allan Dooley
20 participated in in 1930, in the mid 1930s, when he was
21 working for the state of Pennsylvania?

22 A. I think he would have been involved in that
23 particular aspect, not North Carolina certainly.

24 Q. Certainly. So this document is referencing
25 studies that Allan Dooley himself participated in

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1 Pennsylvania; is that correct?

2 A. Could have. I mean, I don't know for sure, but

3 it could have.

4 Q. Well, we know the document references studies

5 about 30 years ago, which would be about the time that Allan

6 Dooley was participating and co-authoring a study on

7 asbestos dust, correct?

8 A. Correct.

9 Q. In Pennsylvania.

10 A. In Pennsylvania.

11 Q. Now, why don't you go ahead and read the next

12 couple of paragraphs for me, down to the summary of

13 findings.

14 MR. FRENKEL: Out loud?

15 MR. FROCKT: Please.

16 A. Important facts concerning the physical character

17 of the dust associated with the asbestosis were revealed in

18 these studies. Although asbestos fibers ranging in media

19 length from 7 to 16 microns were found in the air, these

20 long fibers were relatively few in number. The bulk of

21 suspended dust range from about 0.5 to 3 microns in length

22 and varied in concentration from as little as 1 or 2

23 millions of particles per cubic foot of air (MPPCF) to 20 or

24 more MPPCF, depending on the mechanical operations involved.

25 The correlations also showed that after 15 or more years of

1 other insulating materials, such as magnesite, calcium

2 silicate insulating block and insulation cements containing

3 10 to 15 percent asbestos. No free silica was present and

4 asbestos appears to be the own biologically active material

5 in the exposure. This report seems to be free of the

6 statistical weakness and other valid criticisms of the

7 earlier reports. Since the date of that report, at least

8 three additional publications by other investigators confirm

9 in part, if not all, the findings of Selikoff and his

10 associates. An important finding in these reports are that

11 these cancers are found some 20 to 40 years after initial

12 exposure to asbestos, frequently after retirement from

13 active employment.

14 Q. Now, you testified previously a little bit about

15 your understanding of the Selikoff reports in the mid '60s;

16 is that correct?

17 A. Correct.

18 Q. And remind me of what your understanding was of

19 the Selikoff reports.

20 A. Well, again, the time frame is sort of

21 compressed, but my understanding of the Selikoff reports

22 were that the focus was on construction workers in the New

23 York City area, the high rise buildings, and that when we

24 had some discussions at Mount Sinai in early '70s, he was

25 discussing the enclosure of the floor. As they were

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1 exposure the dust reached about the same degree of

2 advancement -- I'm sorry, I misread that. That after 15 or

3 more years of exposure the disease reached about the same

4 degree of advancement, as evidenced by chest x-ray markings,

5 regardless of the dust intensity.

6 Continue?

7 Q. Yes, please.

8 A. In these studies there seemed to be no evidence

9 of pulmonary or other thoracic neoplasms and no suggestions

10 of such findings. Subsequently, reports of the occurrence

11 of lung cancer and other malignancies associated with

12 asbestos employment began to appear in the literature.

13 Although the number of such cases appeared large, some

14 investigators felt that the observations did not establish

15 an increased incidence of cancer and the association was

16 unproved. Many valid weaknesses were shown to exist in the

17 reports claiming lung cancer as a specific industrial hazard

18 of asbestos workers. However, in 1963, a report published

19 by Selikoff, Churg -- I guess it's Churg -- and Hammond, the

20 latter of the cigarette fame, described a significant

21 incidence of lung cancer and other pleural tumors as well as

22 cancer of the stomach, colon and rectum, among asbestos

23 insulators in the construction industry. These insulators

24 were exposed to a variety of materials including fibrous

25 glass, cork, and hair felts which contained no asbestos;

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1 constructing the different floors in the high rise, they

2 would move up with the steel construction, put in some sort

3 of flooring, and then spray all the structures before they

4 enclosed the outside with cement blocks or whatever,

5 construction zone.

6 But in order to prevent the asbestos from going

7 out over the city, they would enclose the area around that

8 particular floor in tarps or plastic or whatever, and then

9 spray the asbestos on the construction of steel as

10 fireproofing.

11 Q. Now, did you understand this -- is it your belief

12 that Selikoff reports of the mid 1960s did not prove that

13 asbestos causes cancer? Is that Texaco's position?

14 A. I think Texaco's position is that we had these

15 reports. They were coming out initially. They were not

16 particularly conclusive, but between the time frame of the

17 '60s, this was more or less confirmed in more settings than

18 just the type of settings that Selikoff was investigating.

19 Q. Now, here in this document, Mr. Renes, who was an

20 industrial hygienist for an oil company --

21 Correct?

22 A. Correct.

23 Q. -- he is essentially commenting on the Selikoff

24 studies. Would you agree with that?

25 A. This may be his opinion, yes.

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1 Q. Sure. And he's saying Selikoff studies in the
2 1960s were free of some of the statistical weaknesses in
3 previous reports that he says, you know, maybe didn't prove
4 that there was a conclusive link between cancer and
5 asbestos. Do you agree with that, that that's what he's
6 saying?
7 A. That seems to be what he's saying.
8 Q. And he is advising Allan Dooley by his
9 circulation to Allan Dooley of this document that that's his
10 opinion, isn't he?
11 A. It seems to be. I think we better characterize
12 this as this is a transmission -- because Allan became the
13 subcommittee chairman and so this is transmission to Allan
14 as the subcommittee chairman who is going to take this and
15 pursue it further.
16 Q. But at least according to Mr. Renes, who was also
17 involved in the refining industry, he seems to think that
18 the Selikoff studies are persuasive in terms of proving a
19 link between asbestos and cancer. Don't you agree with me
20 on that?
21 A. Let me go back and review that. I was reading
22 out loud and not necessarily following.
23 Q. If you could answer my -- do you want to review
24 it and then answer my question? We'll wait.
25 A. It says this report seemed to be free of the

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1 statistical weaknesses and other valid criticisms of the
2 earlier report. So "seems" I think is the operating word
3 there.
4 Q. So you don't think he's actually saying here that
5 he thinks it's a solid report, do you?
6 A. No. I think the words are this report seems or
7 seemed to be free of statistical weaknesses.
8 Q. And then he also says, he goes on to say, that
9 since the date of that report three additional publications
10 by other investigators confirm in part, if not all, the
11 finding of Selikoff and his associates?
12 A. So they confirmed that it seems to be free of
13 statistical weakness.
14 Q. Well, no. Don't you think that sentence says
15 that they're confirming the findings of Dr. Selikoff?
16 A. I don't know what it says. I think it's there,
17 it says what it says. The document says what it says, and I
18 think it's open to a different interpretation, but to me it
19 says that this confirms that the earlier report seemed to be
20 free of the statistical weaknesses and other valid
21 criticisms of earlier reports.
22 Q. So you think this document is open to different
23 interpretations?
24 A. I think any written document is open to different
25 interpretations.

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1 Q. But in particular in regards to this document, do
2 you agree that it's --
3 MR. FRENKEL: Are you talking about this
4 paragraph or the whole document?
5 Q. Well, how about just the paragraph? Do you think
6 the paragraph is open to different interpretations?
7 A. Well, there's no way to confirm what Lucian was
8 writing, but to me it's open to different interpretations.
9 Q. So one person might look at this paragraph and
10 say, well, I think this means that he's saying that this is
11 a very strong study, and it seems to point that there's a
12 link between asbestos and cancer and someone else might say
13 that looking at that paragraph that, well, no, it's not
14 really proven; is that right?
15 A. The only thing I can do is go back, this report
16 seems, seemed to be free. It seems to be free.
17 Q. I guess I'm asking you if you think this report
18 is open to different interpretations --
19 A. Absolutely.
20 Q. -- that paragraph?
21 A. Yeah.
22 Q. Now, we'll note here, the last part of that
23 paragraph says, "An important finding in these reports is
24 that the cancers are found some 20 to 40 years after initial
25 exposure to asbestos, frequently after retirement from

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1 active employment." Do you see that?
2 A. Yes, I do.
3 Q. Now, you understand that Mr. Jameson had left
4 Texaco and actually had retired and then developed
5 mesothelioma. Did you know that?
6 A. If I recall. I don't recall his specific
7 diagnosis, but yeah.
8 Q. I mean, would you agree with me that essentially
9 what Mr. Renes is saying in that last sentence is pretty
10 much exactly what happened to Ray Jameson, do you think?
11 A. Well, I think the sentence speaks for itself.
12 There's a latency period of 20 to 40 years after initial
13 exposure to asbestos and that the disease, the cancers, are
14 found frequently after retirement from active employment.
15 Q. Sir, so Allan Dooley is given this interim
16 report, can we agree on that, that presumably he received it
17 because it was copied to him?
18 A. Yeah. I think -- wasn't there a title on here?
19 A preliminary audit, right, is what Lucian titled it.
20 Q. Now, do you think that this document constitutes
21 recognition of a known hazard, that being asbestos, for
22 industrial -- for insulators who are working with asbestos
23 in refineries?
24 A. From the stand of asbestosis, certainly.
25 Q. From the standpoint of just it being a hazard to

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1 refinery insulators. Do you think it would qualify as a
 2 document that would discuss an important study that seems to
 3 say that there's a recognition that asbestos is a hazard to
 4 refinery insulators? Do you disagree with that or do you
 5 agree with it?

6 MR. FRENKEL: Do you want him to read the whole
 7 document? I don't think he's read the whole document.

8 MR. FROCKT: Sure. Absolutely. I certainly did
 9 not mean to -- it was my understanding that he had read it
 10 at one time.

11 Q. Go ahead and read the whole thing.

12 A. In the context -- I want to go over your question
 13 again so I know what I'm reading for. So could we have the
 14 court reporter read the whole question?

15 (Record read as requested.)

16 MR. FROCKT: Now that we're all clear on what my
 17 question is, why don't you go ahead and read the document,
 18 and maybe I'll rephrase the question to make it a little bit
 19 clearer. Would that be all right?

20 MR. FRENKEL: Read the document so you can read
 21 it all and have an understanding, and then Mr. Frockt will
 22 ask you questions.

23 MR. MESHER: Do you want him to read it while the
 24 camera is going?

25 MR. FROCKT: I don't care. Just leave it on,

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1 it's fine.

2 A. Okay. Now can we have the question again?

3 Q. Yeah. Do you think that this document would
 4 constitute a recognition of a known hazard for refinery
 5 insulators?

6 A. I think it demonstrates that there is a potential
 7 for hazards to refinery workers, and this is the first stage
 8 in outlining the literature prior to conducting the more
 9 formal survey to either prove or disprove the hypothesis.

10 Q. But so you think that this document only
 11 constitutes recognition of a potential hazard to insulators?

12 A. Potential from the standpoint of any association
 13 with cancer, yeah. I don't think it constitutes any
 14 question that asbestos under excessive concentrations for a
 15 prolonged period of time can cause asbestosis, which, you
 16 know, we knew before.

17 Q. Now, you're familiar, I assume, from your work
 18 in the general kinds of things that refinery insulators do.
 19 Is that a fair statement?

20 A. Generally, yes.

21 Q. Do you have any belief as to differences between
 22 the work that refinery insulators did and differences in
 23 what the insulators that Dr. Selikoff was referring to?

24 A. Oh, clearly.

25 Q. What were they?

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1 A. Well, again -- and these are based on
 2 discussions, plus review of Dr. Selikoff's update. Used to
 3 publish, I think it was called, an update thing. But the
 4 situation for his construction workers was much more
 5 confined. They were very excessive exposures in that they
 6 were spraying this asbestos fiber onto steel structures, and
 7 the exposures to me were much more excessive than what we
 8 would find in a refinery setting where you had more -- more
 9 units are open to the outside air, and you don't run into
 10 the confinement problems that he had.

11 Q. But of course Texaco has no information
 12 specifically on how much dust was in the air during those
 13 outside operations that you're referring to because you
 14 never tested, did you?

15 A. Well, now, wait. Let's go back to the fact that
 16 we had contractors testing for substances at some point in
 17 time at some plant, and I don't know what those substances
 18 are.

19 Q. But we don't know even know what the results of
 20 those tests were, do we?

21 A. No, but we don't know what -- they could have
 22 been for asbestos. I mean, I don't know.

23 Q. So Texaco has no knowledge one way or the other
 24 of whether it did any testing for asbestos prior to the
 25 early '70s, right?

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1 A. It has no knowledge that it can produce, but
 2 again, I don't know what they did and did not do. I just
 3 know they had studies done.

4 Q. But so in your view this document really doesn't
 5 mean -- let me ask you this: Do you think what Mr. Renes is
 6 conveying to Mr. Dooley in this document should have caused
 7 Allan Dooley or any industrial hygiene department to sit up
 8 and take notice and say, hey, we may be exposing our
 9 refinery insulators to something that's bad for them? Do
 10 you think that's a reasonable interpretation of this
 11 document?

12 A. Well, I think -- let me paraphrase what I think
 13 you said. I think this document says that, hey guys, we've
 14 seen a problem over here in this type of exposure setting.
 15 So let's come over here, let's look at our medical data, our
 16 medical monitoring programs, and let's see if we have any of
 17 this going on in our population, but so we're going to
 18 generate this hypothesis, we're going to take all the
 19 statistical data we can and bring it over here in a pot and
 20 look at it. And I think that's what it says.

21 Q. So we're just going to keep on exposing our
 22 workers, let them be sort of the proverbial guinea pigs to
 23 see if they get sick. Is that what you're saying?

24 A. No, I disagree with that. I think this is a very
 25 proactive approach to look at the refinery department

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1 workers knowing that people with expertise, knowledge and
2 experience have been out in the refineries and generally
3 feel that it's not a problem. So this is one way to look
4 and see if you have a problem. This is probably even better
5 than -- to me it's better than measurements because you're
6 looking at a history of what the employees have been
7 developing or not developing.

8 Q. But we already know that Allan Dooley recognized
9 that asbestos, if you inhale it in sufficient quantities,
10 could be a hazard. We know for a fact, because he wrote it
11 in one of his reports, and we know that Mr. -- that Dr.
12 Wilson had reported on a mesothelioma case from a Texaco
13 refinery worker in 1960. Don't we know those things for
14 facts?

15 A. Well, again, if I may paraphrase what you're
16 saying.

17 Q. Sure.

18 A. We had a case report in one Texaco worker. We
19 have Dooley who has said, and even, I guess, in the 1949 or
20 '52, whatever survey it was, that asbestos exposure --
21 excessive asbestos exposure for prolonged periods of time
22 can cause asbestosis. And based on his long-term
23 experience, in all types of industries, he didn't feel that
24 the refinery department, as apparently from this article,
25 many other companies in the refining area didn't feel they

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1 had a problem in that particular type of setting, and so
2 they're going to go out and take a medical monitoring data
3 and look at it.

4 Q. Do you think that it was known at the time that
5 this -- Mr. Renes sent this report to Mr. Dooley, do you
6 think it was widely accepted in the medical and industrial
7 hygiene community that asbestos was a carcinogen?

8 A. No, sir.

9 Q. Yes or no?

10 A. No.

11 Q. So it's your contention that the Selikoff reports
12 that were written prior to this memo being sent to Mr.
13 Dooley did not lead the medical and industrial hygiene
14 community to conclude that asbestos was a carcinogen. Is
15 that your testimony?

16 A. That's my testimony.

17 Q. Do you think that's a majority view among
18 industrial hygiene professionals or do you think that's a
19 minority view?

20 A. I think -- and my testimony has been very
21 consistent in this regard.

22 Q. Sure, and I'm not saying it's not.

23 A. Oh, no.

24 Q. I'm not saying that at all.

25 A. But, and I think we saw a document just the other

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1 day that confirmed that consistency, that during the '60s,
2 '63 on, you had a lot of information coming out from
3 different people, pros and cons, controversial. You come
4 into 1968 and 1969, the TLV committee, filled with the
5 people a lot smarter than me, looking at these substances
6 every year, chooses not to change the standard, to keep the
7 standard exactly where it's been since 1942. And these are
8 medical people, these are industrial hygienists.

9 And so in 1970, '71 when OSHA comes out, I think
10 that's the point I feel is recognition on a consensus basis
11 that there is a problem, and there is an association between
12 cancer and asbestos, and they changed the standard and the
13 technique in the OSHA, I guess it was 1971 or something I
14 guess.

15 Q. Well, the threshold limit value didn't change,
16 did it, from 1971? Wasn't it 5 million particles?

17 A. No. The OSHA standard came out. We're talking
18 about the TLV versus the OSHA, okay. The OSHA standard was
19 five fibers per CC of air greater than five microns in
20 length. And you could not use that standard with the old
21 sampling technique, so they changed techniques and they
22 changed standards, the OSHA did. They had the temporary
23 emergency standard and then they had the permanent standard.

24 Q. Maybe you can answer this question for me. Why
25 is it that you seem to believe that health reports from one

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1 industry that clearly state that asbestos is a hazard,
2 either in terms of giving persons asbestosis or having them
3 develop asbestosis or cancer, has very little application to
4 refinery insulators when they, too, are creating asbestos
5 dust?

6 A. I don't think I was saying that. What I was
7 saying is that during the '60s you had -- the Selikoff
8 report come out in, what, '63 and '64, and the information
9 highway wasn't nearly as fast as it is today. So you have
10 this report coming out. You have other controversy back and
11 forth, and so the TLV committee in '68, which is not
12 concerned with the petroleum industry necessarily, concerned
13 with all industries, feels there's sufficient controversy
14 about that in '68/69 to not change the standards.

15 So I'm not just talking about one industry versus
16 another. I'm talking about all industries. And then when
17 OSHA comes out in '71 with the emergency temporary standard
18 -- and I don't know when the permanent one was passed, '71,
19 '72, then you have a sea change, if you will, that covers
20 all industries.

21 Q. Now, at the end of this document, it says here,
22 Mr. Renes writes: Based on some personal observations of
23 insulating activities, it is his opinion that the inhalation
24 exposure to asbestos among refinery insulators is neither
25 minimal or insignificant, and I urge the medical and health

1 committee to continue to study on this potential for health
2 problems. Do you see that?
3 A. Yes, I do.
4 Q. So certainly this document would seem to be --
5 Mr. Renes would seem to have a different opinion as to what
6 you believed, or what you've stated you thought Allan Dooley
7 must have believed, in that Mr. Renes seems to think that
8 the inhalation exposure to asbestos among refinery
9 insulators is neither minimal nor insignificant, and yet
10 you've testified that Mr. Dooley looked at insulating
11 operations and didn't think there was any problem. Isn't
12 that right?
13 A. You know I don't like to get into the
14 hypothetical --
15 Q. Go ahead.
16 A. -- but let me approach it.
17 Q. Sure.
18 A. And neither one of us can go back to Lucian and
19 see what he meant. But it's interesting to say that Lucian
20 says that we should continue to study. It doesn't say we
21 should go out and sample. It says we should continue this
22 epidemiology study. So that's the point I'm going to make.
23 And again, neither one of us know exactly what he meant.
24 Q. But sometime between this study and 1972 your Los
25 Angeles plant went completely asbestos free; isn't that

1 right?
2 A. And again we discussed the fact that their
3 processes could have been different, their engineering could
4 have been different, and I'm not an expert to tell you why
5 there was a difference between the LA plant and the other
6 locations.
7 Q. So do you have any information that would allow
8 you to sit here today and deny that the LA plant converted
9 to asbestos-free insulation solely because of process issues
10 and not for health concerns?
11 A. I can neither deny it nor make it affirmative. I
12 don't know. I'm not a process engineer.
13 Q. Sure, okay. Let's get away from that document
14 for a while. You would agree -- let me ask you this: Did
15 Texaco receive copies of the abstracts from the symposium on
16 asbestos that Dr. Selikoff was participating in in 1964? I
17 think a good way to phrase it would be the Asbestos
18 Symposium, New York Academy of sciences, summer of 1964.
19 A. I don't know.
20 Q. I'm going to give you a document that was
21 produced to us by Texaco in this case.
22 (Marked Deposition Exhibit 14.)
23 A. I'll just page through the attachments.
24 Q. That's fine. Can you identify what that document
25 is?

1 A. It appears to be a compilation -- abstracts, I
2 guess, might be another way to put it -- of presentations
3 that were made before the New York Academy of Sciences
4 Section of Biological and Medical Sciences, Two East 63rd
5 Street New York, New York, in October of '64.
6 Q. Okay. And so what does it say up at the top
7 there? It says --
8 A. From L. E. Anderson, MD, American Petroleum
9 Institute, for your information.
10 Q. So that would appear to be a stamp that it was
11 circulated by the American Petroleum Institute. Do you
12 agree with that?
13 A. It would appear to be.
14 Q. And Texaco was a member of the American Petroleum
15 Institute at that time, was it not?
16 A. From '48, '49 on, yes.
17 Q. Do you have any reason to believe --
18 MR. MESHER: Excuse me. Could you read back that
19 last question, please.
20 (Record read as requested.)
21 MR. FRENKEL: The one before that.
22 (Record read as requested.)
23 Q. It was the practice of the American Petroleum
24 Institute to circulate documents like this to its members,
25 wasn't it?

1 A. I think yes and no. I mean, it's not out of the
2 ordinary for them to circulate documents. I don't know, you
3 know, exactly where they drew the line or didn't draw the
4 line.
5 Q. You don't have any information to believe that
6 this document was not circulated to Texaco, do you?
7 A. No, I do not. However, I don't know the date it
8 was received by Texaco.
9 Q. Sure. And do you recall receiving it when you
10 got to the company in 1967?
11 A. You mean receiving it or having it in the file or
12 --
13 Q. Well, either. Do you recall receiving it when
14 you got there and, if not, do you recall seeing it in the
15 file when you got there?
16 A. Neither.
17 Q. So you don't recall it one way or the other?
18 A. That's correct.
19 Q. But of course it was produced to us by Texaco in
20 this case?
21 A. That's correct.
22 Q. You're aware that Allan Dooley and Curtis Baylor
23 were on the distribution list for documents and circulars
24 from the Medical Advisory Committee of the American
25 Petroleum Institute, aren't you?

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1 A. Certain documents, correct.

2 Q. What certain documents were they?

3 A. Well, I was not a member of those associations.

4 Q. Sure.

5 A. I mean, yes, it would be circulated. You might

6 have selected circulation. They might have had limitations

7 on -- I just don't know the exact method of circulation in

8 1964. But yes, they would have gotten some documents from

9 the API.

10 MR. FROCKT: Let's make this No. 15.

11 (Marked Deposition Exhibit 15.)

12 Q. Mr. Richards, I'll represent to you that Exhibit

13 15 is supplemental responses from Chevron USA in an asbestos

14 case in Texas, and they've attached a number of documents.

15 Do you see that?

16 A. Yes.

17 Q. If you turn to page Chevron 88 015798 and 99?

18 A. 015798 and 99.

19 Q. Can you read, as best you can, from the top what

20 No. 98 says?

21 A. Well, I can't read the very top. Looks like

22 department of maybe technical something. Mailing list for

23 mimeographed communications and circulars of the Medical

24 Advisory Committee.

25 Q. Turn to the next page.

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1 A. Okay.

2 Q. Says here -- identifies Curtis Baylor, Allan

3 Dooley, L. C. Kemp and F. E. Rosenstiehl as being on the

4 circulation list for the mimeographed communications and

5 circulars from this particular committee?

6 A. Correct.

7 Q. Do you agree with me that that's what it says?

8 A. Yes, I do.

9 Q. Do you think this -- do you have any opinion as

10 to whether or not this document would seem to indicate that

11 Texaco was on the members -- persons at Texaco were on the

12 circulation list for documents circulated by the Medical

13 Advisory Committee of the API?

14 MR. FRENKEL: In 1959?

15 MR. FROCKT: Understand that.

16 A. Do we have a date? No. '59 is down here. Well,

17 it seems that in 1-29-59 we have a mimeographed

18 communications and circulars listing that lists Curtis

19 Baylor and Allan Dooley, and I think it was Les Kemp, and I

20 don't remember who Rosenstiehl was, but then in 1964 we have

21 --

22 Q. I didn't ask you anything about the 1964

23 document. I just asked you if that's what it says.

24 A. That's what this says, correct.

25 Q. So certainly this document would seem to indicate

1 that Texaco was on this receiving list for certain

2 documents from the API?

3 A. Certain mimeographed communications and

4 circulars.

5 Q. Do you think that only was true for 1959 or do

6 you think that was likely true for other periods that Texaco

7 was in the API?

8 A. Well, I don't know. We only have a document that

9 says '59, and we're talking about mimeographed

10 communications and circulars.

11 Q. Well, if you had to -- do you have an opinion one

12 way or the other? What do you think?

13 A. Well, I think that this indicates there was

14 certain communications, because at this day and age we

15 didn't have all the nice copying machines and all of this

16 kind of stuff, and so you mimeographed it. So the API would

17 mimeograph certain typed documents they would type,

18 communications, and send it out to this particular mailing

19 list. Now, what I'm saying is, the document here in '64 is

20 not mimeographed, it's photocopied. So I don't necessarily

21 tie this thing in '59 to this document in '64.

22 Q. But I didn't ask you to tie the documents.

23 A. I know you didn't.

24 Q. I just asked you if you thought they were on the

25 circulation list.

1 A. I know you didn't ask me. I'm merely making an

2 observation.

3 MR. MESHER: Counsel, I'd appreciate it if you

4 let him finish his answer before you interrupt.

5 MR. FROCKT: Sure.

6 Q. Do you have any information that would lead you

7 to the conclusion that Texaco did not regularly receive

8 documents pertaining to industrial health that were

9 circulated from the Medical Advisory Committee of the

10 American Petroleum Institute?

11 A. Again, I don't know whatever limitations might

12 have been on that circulation, but, yes, I know they would

13 have received documents.

14 Q. Thank you.

15 (Marked Deposition Exhibit 16.)

16 MR. MARKS: Before you ask, may I ask a

17 procedural point? The notice of deposition for today

18 incorporated the order from Judge Cook about this being

19 objection-free. I'm not sure at the beginning of this

20 deposition today you stated that, but I've been operating

21 under that assumption based on your notice. Is that

22 correct?

23 MR. FROCKT: Yes.

24 MR. FRENKEL: Do you think we'd be so quiet?

25 MR. PHILIP: Just wanted to make sure.

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1 Q. Can you identify what the first two pages of this
2 document are?

3 A. What they seem to be is a note from somebody. We
4 had these memo pads. So it was a G44 memo pad. And this is
5 a note from somebody with the initials, I think, VTC to
6 Harold Tigh. We saw his name before. He was in the Houston
7 department, I mean the refinery department in Houston, and
8 it's a note attaching some newspaper article, apparently
9 dated in '65. At least that's the date stamp they used in
10 the refinery department, and the Inquirer staff. I don't
11 know what newspaper it's from. Oh, Philadelphia Inquirer,
12 March of '65.

13 Q. Sir, I'll represent to you that third page is a
14 copy that we obtained from the Philadelphia Inquirer of the
15 same article that's reflected in the second -- on the second
16 page. It's just a better copy so that you can read it.

17 A. Okay.

18 Q. So that's why I have that attached. Now, the
19 memo says: In view of Dr. Baylor's recent inquiry, I
20 thought the attached article from Sunday's edition might
21 interest you. I know it will be noted by our union boys.

22 Do you see that?

23 A. Correct.

24 Q. You don't know who VTC would stand for, do you?

25 A. I have no idea.

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1 Q. And the date on the memo is March of 1965?

2 A. Correct.

3 Q. And March of 1965 was approximately the same time
4 that Texaco was -- that Dr. Baylor had sent out a request
5 asking for Texaco officials to start compiling this health
6 data for their refinery insulators; isn't that right?

7 A. That's correct. That's about the same time
8 frame.

9 Q. So it would be reasonable to infer that what was
10 being referred to here in this memo was pertaining to Dr.
11 Baylor's inquiry at that time as it regarded asbestos.
12 Would you agree with that?

13 A. At least VTC seems to think there was some
14 relationship, yes.

15 Q. Sure. And that memo went to Mr. Tigh?

16 A. Correct.

17 Q. And Mr. Tigh was the person whom Dr. Baylor was
18 counting on to accumulate all this data and provide him with
19 the data on the health reports that pertain to refinery
20 insulators in the Texaco system, right?

21 A. I think we said earlier that Tigh seemed to be
22 the point person in the refining department to gather all
23 this data together, correct.

24 Q. And certainly there's a stamp on the second page?

25 A. Refinery department, Houston.

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1 Q. And that Texaco had a refining department in
2 Houston in March of 1965, didn't it?

3 A. Correct.

4 Q. So -- and I'll represent to you, sir, that in
5 Texaco's interrogatory answers they stated that these two
6 documents seem to go together.

7 A. Okay.

8 MR. FROCKT: What's that?

9 MR. FRENKEL: I just don't recall it.

10 MR. FROCKT: I can read it to you and show it to
11 you if you want. I mean, that's an accurate statement.

12 MR. FRENKEL: It's your deposition.

13 Q. And the article itself includes a report on an
14 asbestos study that was being done in New York and New
15 Jersey at the time concerning mesothelioma; is that correct?

16 A. Right.

17 Q. And it states: In another report, a New Jersey
18 medical team reported evidence that exposure to asbestos,
19 even in fairly small amounts, is making a rare type of
20 cancer more common. The cancer is mesothelioma which
21 affects the lining of the abdomen and chest. The high
22 incidence of the cancer is found in asbestos insulation
23 workers employed in the construction industry, New Jersey,
24 New York. However, the doctors said it is possible that
25 even mild exposures to asbestos could cause an increase in

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1 the cancer among the general public.

2 Do you see that?

3 A. Yes.

4 Q. Do you know if Texaco incorporated this report
5 into any efforts that it took to protect its insulators from
6 smaller amounts of asbestos exposure?

7 A. I don't get that connection. I mean, this looks
8 like a newspaper article that is paraphrasing some of the
9 information coming out of Selikoff's studies, and I know
10 Selikoff at one point in time was concerned about
11 environmental exposure to people surrounding these
12 sprayed-on asbestos type of insulations.

13 Q. Certainly the report, as it's conveyed in the
14 popular press here, says that the -- that even small amounts
15 of asbestos exposure could make a rare type of cancer more
16 common, and that cancer is mesothelioma, correct?

17 A. Well, you're tying the two together. Now, what
18 do they mean by fairly small? I mean, it's undefined.

19 Q. Sure. Well, it's a newspaper article.

20 A. It's a newspaper article.

21 Q. That's just how every day people would get their
22 information perhaps about things that might be hazardous to
23 them; is that correct?

24 A. They may. But it is a newspaper article.

25 THE VIDEOGRAPHER: Excuse me. The time is 1:24

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1 p.m. This concludes tape No. 2 in the deposition of Ronald
2 Richards.

3 (Recess.)

4 THE VIDEOGRAPHER: The time is 1:32 p.m. This
5 begins tape No. 3 in the deposition of Ron arrested
6 Richards.

7 MR. FROCKT: I want to go back and just clarify
8 one thing. I think I indicated to you, Mr. Richards, that
9 the document WA-TEX 013571 and 013570 were appended were --
10 produced in conjunction together when Texaco produced those
11 documents to the plaintiffs in this case about a month ago.
12 And, in fact, I want to be clear so that there's no mix-up,
13 what's indicated in the interrogatories -- I should say the
14 production log -- from Texaco on page 33 -- this is on July
15 16 -- it says March 10, 1965 memorandum from VTC to Tigh
16 presumably enclosing document 013570. So I just want to
17 clarify that so that there's no misunderstanding about what
18 I understood the scope of production to be in this case.

19 Q. Mr. Richards, have you ever heard of something
20 called the asbestos counting red -- round robin?

21 A. If sounds vaguely familiar, but maybe you have to
22 give me a few more details.

23 Q. Well, let me give you a document. It's from
24 1972.

25 (Marked Deposition Exhibit 17.)

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1 Q. Have you had a chance to look at that document,
2 sir?

3 A. Yes, I just started.

4 Q. Okay, I'm sorry, go ahead.

5 A. Okay.

6 Q. Can you identify the document for me?

7 A. Yes. This is a memorandum from me to F. M.
8 Roberts, who was at Beacon, New York. And at this
9 particular point in time our asbestos samples were being
10 sent to Beacon, New York for counting. He was in the phase
11 contrast microscope. Beacon had been or was in the process
12 of being certified by the -- I believe it was the AIHA had a
13 laboratory certification program with the ACGIH, and we
14 wanted to be certified to make sure our counts were
15 accurate.

16 But apparently -- and this brings more back to
17 mind as I read it. Since the counting technique has
18 considerable art, not just science attached to it, we were
19 going through our round robin of prepared samples, fixed
20 samples by Esso Research. And we would come up with our
21 numbers and compare them and see if we could perhaps better
22 refine the counting method, because it was a lot of art. I
23 mean, you're sitting there with a microscope and looking
24 over lots of samples and trying to count the fibers and
25 determine their length and the diameter and all the other

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1 kind of things, and if you had two fibers clumped together
2 you wouldn't count them at all. And it was very much art
3 attached to the counting technique.

4 Q. So, I mean, it sounds to me like you're saying
5 that fiber counting is a fairly technical endeavor; is that
6 right?

7 A. Well, it's art as well as science. In other
8 words, knowing how to prepare the slides and then count the
9 slides, what you count, what you don't count.

10 Q. And you mentioned the word round robin. Can you
11 explain again what that referred to?

12 A. Okay. Well you'd have, in this case, one, two,
13 three, four, five, six, seven companies, and you would have
14 the samples fixed. In other words, rather than taking a
15 slice -- couple of slices of samples, Esso Research was
16 going to fix nine samples exactly the same. And then we'd
17 send these samples around to the seven companies
18 participating and see what kind of count each laboratory had
19 gotten, and then look at the variability between the
20 counting and see if we could tighten it down a little bit,
21 if in fact it needed it.

22 Q. Well, here's another document that would appear
23 to be related to that first one.

24 (Marked Deposition Exhibit 18.)

25 A. Uh-huh.

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1 Q. This is a document dated February 19, 1975.

2 A. Correct.

3 Q. Asbestos counting round robin. Can you explain
4 to me what this document is referring to?

5 A. Well, looks like we're going to have another
6 round of -- another round of round robin counting.
7 Apparently Texaco did not fare as well as the other
8 companies. They were more of an outlier than the other
9 companies during the first round.

10 Q. Well, when you say not fare as well, what do you
11 mean by that?

12 A. Well, you have variabilities. In other words --
13 and again, I don't remember how they analyzed this stuff,
14 particularly going back 30 years, but you would have had a
15 media or median established by the seven companies, and then
16 you would have the variance from the median for the
17 different counts, and apparently Texaco had more variance
18 than the other companies.

19 Q. A median for what? What were you counting?

20 A. Well, you were counting fibers.

21 Q. And where were the fibers taken from?

22 A. In this case it was a fixed sample prepared by
23 Esso Research and Engineering.

24 Q. What was the sample of?

25 A. It could have been asbestos. It could have been

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1 some sort of fiber that -- in other words, they had to be
 2 able to reproduce a particular sample, and I don't know what
 3 they might have used, but this was in connection with
 4 counting asbestos fibers, the technique for counting
 5 asbestos fibers. So they could have used asbestos fibers as
 6 long as they would appear and as long as they have something
 7 that was fixed and wouldn't move around.

8 Q. Well, what it says, "If you recall, Texaco's
 9 counts in the first round robin were the worst of all who
 10 cooperated in the study." I guess what I don't understand
 11 and what I'm trying to find out is worst is sort of a
 12 normative term. Is it the most inaccurate? Is that what
 13 they're saying or what is it saying?

14 A. Oh, no. To me it's they had the most variance
 15 from the norm, from the median.

16 Q. Who set the median?

17 A. The median was set by all the counts. In other
 18 words, you'd have the seven companies or eight companies,
 19 whatever it was, seven companies do the counts, and then you
 20 would develop a median, or mean, whichever the case may be.
 21 I don't know how this was analyzed. And then you would look
 22 at the variance of the various companies from the particular
 23 mean of all -- in this case nine samples. Texaco had the
 24 highest variance.

25 Q. What was the purpose of participating in this

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1 round robin?

2 A. The second or the first?

3 Q. Either.

4 A. Well, the second was to look at the program and
 5 maybe we could close the variance.

6 Q. Why would that be important?

7 A. Well, again, consistency.

8 Q. Consistency of what?

9 A. Of counting.

10 Q. Counting dust fibers?

11 A. Correct.

12 Q. So did you have a concern at this time that your
 13 methods that Texaco was using for counting dust fibers was
 14 not accurate or consistent?

15 A. You mean '75?

16 Q. Yeah.

17 A. No. I think what we saw was based on the results
 18 of '72, we had the highest variance in the round robin. So
 19 we took steps at that particular point in time to tighten
 20 things down, and so we're going to go through the second
 21 round. Now, I don't know if you have the results of the
 22 second round, but I guess personally I would be interested.

23 Q. I just have what I was given in the documents. I
 24 don't recall seeing anything else.

25 Sir, when was the first time that Texaco

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1 undertook a company-wide policy to take precautions,
 2 specific precautions, for asbestos hazards that were in the
 3 workplace at the refineries?

4 A. A company-wide policy?

5 Q. Yes.

6 A. Maybe you could better define that for me.

7 Q. A policy that the company was instituting from
 8 the top down from corporate management that was to go out to
 9 all of the plant managers and supervisors and so forth that
 10 instructed them to take precautions in regards to the use of
 11 asbestos.

12 A. I guess you're not giving me enough information
 13 to come up with an approximate date. I mean, in Texaco
 14 there were certain groups that could issue policies and
 15 certain groups that could issue standards, and I'm not
 16 trying to mince words, but the nomenclature for these
 17 particular things were somewhat specific within Texaco.

18 And so I can't really come up with a time frame
 19 without more information. You're asking for a company-wide
 20 policy, but also you're talking about refineries. So are we
 21 talking about a company-wide policy in the refining
 22 department, which would be a refining department policy, or
 23 are we talking about a company-wide policy for the whole
 24 company? And I really can't answer your question without
 25 more information.

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1 Q. In the early 1970s, did Texaco undertake any kind
 2 of policy that was directed from corporate management down
 3 for its refinery managers and plant supervisors to take
 4 precaution in regards to the use of asbestos insulation?

5 A. I'm sure there was something done in the '70s. I
 6 can't pinpoint a date.

7 Q. Were you involved in the development of that
 8 policy?

9 A. More than likely.

10 Q. You don't have any recollection of it as you sit
 11 here today?

12 A. Not any specific dates and not any specific
 13 details. I mean, it could have been fairly broad. Could
 14 have been fairly narrow. You're taxing my memory, 31 years.

15 Q. Sir, I want you to take a look at this document,
 16 and we'll see if this kind of provides any recollection for
 17 you.

18 (Marked Deposition Exhibit 19.)

19 A. Is this the complete document? Seems to be the
 20 first page of --

21 Q. That's what I have right now.

22 A. I've read what you've handed me.

23 Q. Does this trigger your memory at all in terms of
 24 when Texaco began a company-wide policy that made asbestos,
 25 quote, a target health hazard?

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1 MR. MESHER: Excuse me, counsel. Document
2 013022 was produced along with 013023.
3 MR. FROCKT: Okay. And you've only -- do you
4 have a copy of 237
5 MR. MESHER: Well, not with me here, but if you
6 want to take a break, you will see that that document was --
7 at least two pages were produced. If you'd like me to get
8 you a copy of that second page at the next break, I'd be
9 more than happy to.
10 MR. FROCKT: Let me just look in my stuff, and
11 hopefully I have it. What's the date on it?
12 THE WITNESS: April 17th.
13 MR. FRENKEL: '72.
14 MR. FROCKT: Are there any other pages with it?
15 MR. MESHER: Those were the only pages that --
16 THE WITNESS: I've focused on the asbestos.
17 MR. FROCKT: I only have what you guys gave me.
18 MR. MESHER: I understand. That's the
19 production, that's all that we --
20 MR. FROCKT: Let me just take a look at the
21 second page.
22 THE WITNESS: I mean, I've only focused on the
23 asbestos.
24 MR. FROCKT: Understand.
25 Q. Sir, do these two documents reflect any kind of

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1 company-wide policy in regards to asbestos hazards in 1972?
2 A. These two documents do not.
3 Q. Oh, they don't?
4 A. No.
5 Q. Let me ask you this: What do they do in regards
6 to the subject of asbestos? What do they indicate?
7 A. On many occasions Texaco would bring together key
8 individuals from the different operating departments to
9 review pending legislation, pending regulation, things of
10 that particular sort. And we would review those from the
11 standpoint of industrial hygiene, health, other matters,
12 labor relations matters, and look to see how that might
13 impact certain operations so we could anticipate, get ready,
14 go for them.
15 So this is not a policy letter. This is a
16 memorandum regarding this interdivisional meeting that was
17 held in Houston on April 6th and 7th of 1972, and the topics
18 were NIOSH. NIOSH had identified asbestos as a target
19 health hazard. Also noise and personal protection.
20 Q. So this document, though, is advising plant
21 managers and superintendents in the refining department of
22 Texaco that asbestos was a target health hazard, according
23 to NIOSH at least, and that there were certain measures that
24 Texaco wanted its plant managers and superintendents to take
25 to -- in regards to that target health hazard; isn't that

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1 correct?
2 A. No, I don't believe that. To me the -- the way :
3 would interpret this document is that, yes, the author of
4 this particular document, and that's not identified, is
5 going on to plant managers, superintendents, refining
6 department U.S., reporting on the results of this particular
7 two-day interdivisional meeting.
8 And they're pointing out that based on the
9 pending regulations and -- OSHA generally sends out a
10 proposed regulation and then goes through a period of, I
11 guess, comment would be the best way to describe it. And
12 they are defining that there -- basically the choices for
13 compliance will include the following. So, I mean, as we
14 moved ahead the choices for compliance could include any one
15 of those particular three.
16 Now, I think there are other documents that go to
17 your particular question, but these are not the documents
18 that establish policy.
19 Q. Certainly this document seems to say that one of
20 the things a company like Texaco can do to help ensure the
21 safety of its workers in regards to asbestos is to
22 substitute a nonasbestos-containing product; isn't that
23 correct?
24 A. Well, it says basically your choices for
25 compliance will include the following.

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1 Q. What was the point of compliance? What do you
2 think the point of compliance with these guidelines was? I
3 mean, isn't the point of compliance to help ensure the
4 safety of workers?
5 A. I thought your questions went to the purpose of
6 this document.
7 Q. I just asked you a question. Answer that
8 question, please.
9 THE WITNESS: Let's have the court reporter read
10 it back.
11 (Record read as requested.)
12 A. This document points out that there are pending
13 regulations or soon to be pending regulations regarding
14 asbestos to be proposed by OSHA, and that, among other
15 things, the plant managers should be alerted to the fact
16 that there would be choices allowed for a compliance with
17 these pending regulations, which we don't know what they're
18 going to exactly be at this particular point in time, but
19 they should be alerted that the choices will include
20 substitute with a nonasbestos-containing product, provide
21 engineering controls for employer protection where
22 substitutes are impractical, and provide respiratory
23 protection for all affected employees.
24 Q. Those would be good things to do from an
25 industrial hygiene point of view, wouldn't they, in order to

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1 help prevent asbestos-related illnesses?

2 A. You're going to have to give me more parameters

3 than that. I mean, these are some of the many steps one

4 could take to control exposures.

5 Q. What are some of the other things you could do

6 besides these three?

7 A. Ventilation. Other types of engineering

8 controls.

9 Q. How about wetting down insulation before you

10 remove it?

11 A. Sure. I mean, like I said, this is the choices,

12 some of the choices. That's all I read into this particular

13 document. But I say the document you're looking for was

14 about the same time frame, but it was not these two pages.

15 Q. Does Texaco's policy they developed in regards to

16 asbestos hazard incorporate any of these advisories, these

17 choices for compliance that are indicated here?

18 A. Around the same time frame I can -- and again,

19 we're going back 31 years, but I recall reviewing some

20 documents that clearly used these particular types of

21 control measures in the documents that did convey the

22 corporate policy.

23 Q. What document was that?

24 A. Well, like I said, there was a document around

25 this time, and I don't know if it was slightly before,

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1 slightly after. Licata alludes to it in his '72 survey

2 report in Anacortes. And then there was a -- there was a

3 document from the Health Division which essentially

4 established policy in this regard.

5 Q. Certainly by 1972 it's your view that Texaco was

6 taking steps on a company-wide basis to prevent their

7 employees from being exposed to asbestos dust; is that

8 correct?

9 A. Well, to certainly control exposures below the

10 allowable standards, that's correct.

11 Q. Well, below the allowable standards would be, in

12 your view, to a safe level, right?

13 A. At that time, yes, that's correct.

14 Q. So it was at that time that Texaco was trying to

15 prevent asbestos hazards to its workers that might cause

16 them to become ill; isn't that correct?

17 A. I disagree in that Texaco prevented before then.

18 Q. What did Texaco do before that?

19 A. Well, there were certain locations where you have

20 respiratory protection in use on a consistent basis. You

21 have your medical monitoring program, which also allows you

22 to minimize and prevent disease. So there were many

23 methods, and of course you have Allan Dooley going around

24 and inspecting particular locations and making

25 recommendations where he thought it was appropriate. So all

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1 of these are preventive measures, along with the contractor

2 who could have been out doing monitoring for us.

3 Q. And Allan Dooley is making recommendations and

4 industrial hygiene surveys that nobody has at this point in

5 time, right?

6 A. We have the '49 document.

7 Q. But we don't have any other documents after that,

8 right?

9 A. '52. There's other -- there's a '60 in

10 Anacortes.

11 Q. That's a noise survey. That has nothing to do

12 with dust, right?

13 A. No, but you talked about all these monitoring

14 documents.

15 Q. In that 1960 survey he didn't do anything in

16 respect to --

17 A. I didn't say that.

18 Q. You said as a general statement he was going

19 around making --

20 A. You said where are all these other documents, and

21 I'm pointing out there are other survey documents that we

22 have provided. That's all.

23 Q. Well, I'll represent to you that there's not a

24 single other survey, industrial hygiene survey, that the

25 plaintiffs have been provided in this case that's dated

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1 prior to 1972 that have anything to do with asbestos dust

2 other than the one in 1949, and I'm not even sure that the

3 one in 1952 mentions the word asbestos. I'm not saying they

4 were withheld. I'm just saying there's no other documents

5 that would indicate, at least that I've seen in this case,

6 that would indicate there was anything done in terms of

7 evaluating asbestos dust hazards prior to 1972. Is that an

8 incorrect statement?

9 A. Yes.

10 Q. Okay.

11 A. Allan's practice, my practice, Licata's practice,

12 Herschel and right on down the line, when you went to a

13 location where you did an evaluation, you reviewed the

14 previous report. So what I see is Allan in '49 evaluating

15 the insulation situation in Port Arthur, making a

16 recommendation regarding one particular location. I see him

17 going back in '52 and reviewing the insulation in that

18 particular location to make sure things were complied with,

19 and I see Allan when he's there for other particular

20 purposes reviewing all aspects of what's going on at that

21 particular plant.

22 Q. Now, you said a minute ago that Texaco was at

23 certain locations -- you used the word certain locations --

24 taking measures that involved respiratory protection; is

25 that right?

1 A. At least the ones I was aware of, yes. I mean, I
 2 didn't get to all of them when I first joined the company.
 3 Q. Now, sir, in this case, Jack Drummond has
 4 testified that when he got there in 1967, as the incoming
 5 safety supervisor at Texaco, that insulators and men working
 6 around insulators were not using any respiratory protection
 7 whatsoever. Were you aware of that?
 8 A. I'm not aware of his deposition, no.
 9 Q. And you don't have any information that would
 10 contradict Mr. Drummond, do you?
 11 A. I can neither deny nor affirm what he said, no.
 12 Q. But you don't have any information that you're
 13 privy to that would allow you to deny what Mr. Drummond was
 14 saying?
 15 A. No.
 16 Q. So it would appear, at least according to Mr.
 17 Drummond, that the Anacortes location was one of the
 18 locations where, at least in 1967, there was no respiratory
 19 protection being taken?
 20 A. For asbestos?
 21 Q. For asbestos, right.
 22 A. And I guess all we had to go on is Jack
 23 Drummond's deposition. I mean, I observed respiratory
 24 protection in other locations. That's why I said a certain
 25 location. I didn't observe them in all locations because I

1 wasn't around at that particular time.
 2 Q. You weren't working for the company in 1967?
 3 A. That's correct.
 4 Q. So you would have never observed respiratory
 5 protection at the Anacortes refinery, say, between 1958 and
 6 1967, right?
 7 A. It would have been impossible.
 8 Q. Because you weren't working for the company?
 9 A. Correct.
 10 Q. Sir, I'm going to hand you another document here.
 11 (Marked Deposition Exhibit 20.)
 12 A. Is there any particular area you want me to focus
 13 on?
 14 Q. I just want to ask you a little bit about the
 15 document. Have you ever seen it before?
 16 A. Absolutely not.
 17 Q. Never seen it before today?
 18 A. Never seen it before today.
 19 Q. This document was produced to us by Texaco in
 20 this case?
 21 A. Okay. That's indicated.
 22 Q. It appears to be issued by the U.S. Department of
 23 Labor?
 24 A. Uh-huh, in 1947.
 25 Q. 1947. Sir, does the stamp on the front of the

1 document reflect a stamp that would have been placed on it
 2 by Texaco?
 3 A. I don't know. It says "received maintenance" and
 4 there's no other indication.
 5 Q. Do you have any reason to believe that Texaco did
 6 not receive this document?
 7 A. Well, at some point in time it could have been
 8 received, but I certainly don't know when or where.
 9 Q. But you're not privy to any information that
 10 would allow you to deny that Texaco received this document,
 11 right?
 12 A. No.
 13 Q. And you don't have any information to say that
 14 Texaco didn't receive this document in the 1940s or '50s, do
 15 you?
 16 A. There's nothing to say it was received at some
 17 other point in time. I mean, it's just not there.
 18 Q. But you don't have any information that would
 19 allow you to deny that it was received at that time?
 20 A. Or affirm.
 21 Q. Now, sir, I want to turn back to the Industrial
 22 Hygiene Foundation for a minute.
 23 A. Okay.
 24 Q. Were you aware that Dr. Melvin Newquist was at
 25 one point in time appointed to the medical committee of the

1 Industrial Hygiene Foundation?
 2 A. We glanced at some documents yesterday, but I
 3 don't recall in detail what they said.
 4 (Marked Deposition Exhibit 21.)
 5 MR. MESHER: I don't see our stamp number on it.
 6 Is it on there?
 7 MR. FROCKT: This is a document that we provided
 8 to you on the disks back in March.
 9 MR. MESHER: But I just wanted to confirm that
 10 this wasn't part of our production to you.
 11 MR. FROCKT: No, it was not part of your
 12 production, that's correct, counsel.
 13 Q. Mr. Richards, are you done looking at it?
 14 A. Yeah.
 15 Q. Sir, did you ever meet Dr. Newquist?
 16 A. No.
 17 Q. Was he -- had he died by the time that you got to
 18 the company?
 19 A. I don't really remember. I just don't remember
 20 ever meeting him.
 21 Q. Now, would you agree with me that this document
 22 seems to indicate that Dr. Newquist became a member of the
 23 medical committee of the Industrial Hygiene Foundation in
 24 July of 1955?
 25 A. It indicates that, yes.

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1 Q. And when he joined that company or joined that
2 committee, some other members of the committee included Dr.
3 Norbert Roberts, medical director of the Pennsylvania
4 Railroad; and Dr. Kenneth Smith, medical director of the
5 Johns-Manville Corporation?
6 A. That's what it said.
7 Q. Sir, in anything you've ever reviewed have you
8 ever seen any documents from the Industrial Hygiene
9 Foundation that related at all to Dr. Newquist's service on
10 this medical committee?
11 A. No.
12 Q. Do you have any idea what I'm talking about in
13 terms of the documents? I mean, do you even know what this
14 is?
15 A. This document here?
16 Q. No, no, just in general. Do you know what the
17 Industrial Hygiene Foundation is?
18 A. Yes.
19 MR. FROCKT: Let's take a break for about 10
20 minutes.
21 THE VIDEOGRAPHER: The time is 2:09 p.m. We'll
22 be taking a break in testimony.
23 (Recess.)
24 THE VIDEOGRAPHER: The time is 2:25. We're now
25 back on the record.

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1 (Marked Deposition Exhibit 22.)
2 MR. FROCKT: I know it's hard to read.
3 MR. MESHER: Do you have another?
4 MR. FROCKT: Yeah, I'm sorry.
5 THE WITNESS: Okay.
6 Q. Sir, can you identify what this document is from
7 the top? I know it isn't a very good copy.
8 A. It's a memorandum from D. L. Chase. He was in
9 the refining department -- I think he was in the refining
10 department in Houston, but he could have been at the Port
11 Arthur plant. I guess he was. It's memorandum, plant
12 managers and superintendents, refining department U.S., and
13 it's dated August 7, 1972.
14 Q. And Mr. Chase, was he a plant manager at Port
15 Arthur?
16 A. No. Actually, as it's becoming more clear, he
17 was in Houston, and he's writing to the different
18 refineries, and this happens to be Port Arthur's copy.
19 That's what it is.
20 Q. And as I understand this document, am I correct
21 that he is advising plant managers and superintendents to
22 begin phasing out remaining stocks of insulation-containing
23 asbestos fibers; is that right?
24 A. That's correct.
25 Q. Now, he's not saying here just throw it away.

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1 He's saying phase them out; is that right?
2 A. He's saying phase them out, right.
3 Q. And at this time, in August of '72, did Texaco
4 have in place a policy that only nonasbestos insulation was
5 to be used?
6 A. On new construction, I'm sure that was in place
7 on new construction at this particular point. He points out
8 that Bechtel has been advised, as will all other contractors
9 henceforth doing work for Texaco, to install only asbestos-
10 free installation, but I think the word was let's not --
11 let's phase out any remaining stock of insulation that might
12 contain asbestos. In some cases they could go immediately
13 to nonasbestos-containing insulation depending on delivery
14 times, but he points out that the demand time for this
15 insulation has extended the delivery times considerably, so
16 it wasn't always available the next day.
17 Q. And that's the reason that this was termed as a
18 phase-out?
19 A. Correct. It wasn't readily available in all
20 cases.
21 Q. So in all -- so Texaco would just continue
22 phasing out and using certain stocks of asbestos insulation
23 simply because they didn't have a nonasbestos-containing
24 readily available for the operations they needed; is that
25 correct?

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1 A. In some cases it was two different things. One
2 case they had some very intricate pieces that fit certain
3 parts, and they were not readily available, but in general
4 the standard pipe insulation -- I guess it's four feet long
5 or three-foot-long lengths, whatever it happened to be --
6 that they had extended some of the delivery times, and so
7 that was more of a phase-out.
8 Q. Certainly by 19 -- by August of '72, Texaco was
9 aware that asbestos caused cancer, right?
10 A. I think by that time that's correct.
11 Q. And yet this document does not reflect a
12 directive to plant management/superintendents to just stop
13 using it, period. It says phase it out, right?
14 A. Well, you have to be realistic. Do you want to
15 stop the operations or do you want to phase it out? Now,
16 there are companion documents to this that talk about
17 wetting, talk about respiratory protection, talk about
18 barricading, and this is only one document of a series of
19 documents that go to the same issue.
20 Q. Well, this is certainly a memorandum that stands
21 alone. I mean, it's a letter essentially, isn't it?
22 A. Yeah. But what I'm saying is it has to be read
23 in conjunction with other documents.
24 Q. And so if there were other documents that
25 indicated that it was okay for persons of various -- plant

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1 managers and so forth to use up their existing stocks of
2 asbestos-containing cements and insulation, in your view
3 that would be an acceptable thing to do even though it was
4 known at this time that asbestos caused cancer, according to
5 your testimony?

6 A. I didn't say that. What I said was there are
7 other documents that talk about going as soon as possible to
8 asbestos-containing -- nonasbestos-containing insulation,
9 where at all possible. What this is coming back to point
10 out is that, yes, you are to go to that as soon as possible,
11 but because of extended delivery times you may have to phase
12 out what you have.

13 Q. Why not just stop doing any insulating activities
14 until all the stock of asbestos-containing insulation could
15 be replaced?

16 A. In other words, turn off all the refineries in
17 the United States and have a big gas shortage?

18 Q. I'm not asking you -- that's the logical --
19 because of the insulating work; is that correct?

20 A. Refineries run on temperature control,
21 temperature balance. You cannot make the insuline out of
22 crude oil without heating it and distilling it, and you need
23 proper temperature control and balance to do that. So if
24 you had -- let's say you had a leak in a steam line and you
25 had to change out the insulation, you're telling me that we

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1 should stop that whole unit down because we didn't have
2 nonasbestos-containing insulation in stock for that one
3 particular piece, when, in fact, using proper respiratory
4 protection, using proper labeling and disposal techniques,
5 it could be safely worked with at that particular point in
6 time, but the ultimate goal was let's get rid of it.

7 Q. So certainly the safest, the absolutely safest,
8 thing that could be done would be to just not use it at all,
9 right?

10 A. When?

11 Q. I'm asking you, the number one thing -- I mean,
12 there would be no chance of anyone having exposure from new
13 insulation if you just didn't use asbestos insulation at
14 all, right?

15 A. That was the ideal situation, sure.

16 Q. Right. And in your view, if there had been an
17 instruction like that, that would have caused a gas shortage
18 in the United States?

19 A. Well, you're saying if we would have stopped --

20 Q. Yeah.

21 A. -- all the units should some steam lines spring a
22 leak, I think that would have been radical and beyond
23 practicality because you could safely work with it under
24 proper conditions.

25 Q. You don't think there's ways to isolate a

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1 particular line when it has a leak and sort of work around
2 the problem?

3 A. No way.

4 Q. No engineer would ever testify that there's ways
5 to do that, right?

6 A. Well, I'm not a process engineer. I don't know
7 where every steam line goes. I'm giving you example as best
8 I can why you cannot say, all right, no more insulation work
9 until six months from now, period.

10 Q. But you're not a process engineer and yet you're
11 offering the opinion to cause -- to go completely
12 asbestos-free and just not -- just hold off doing insulation
13 work until you could get the asbestos-free insulation, that
14 would cause everything in the country to shut down in terms
15 of gas?

16 A. Could.

17 Q. Could?

18 A. Could.

19 Q. But you're not an engineer, you're an industrial
20 hygienist, right?

21 A. I'm not an engineer.

22 Q. Now, it says here that Bechtel has been advised,
23 as will all other contractors henceforth doing work for
24 Texaco, to install only asbestos-free insulation. Do you
25 see that?

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1 A. That's correct.

2 Q. What is your understanding of the role of Bechtel
3 in supplying insulation to Texaco?

4 A. When this particular document was written Bechtel
5 was involved in building a unit, I think, at Lawrenceville
6 or some location. They were already to start, and so we
7 advised Bechtel ahead of time, since they were just already
8 to start new construction that, all right, that
9 construction, all asbestos-free insulation, period.

10 And we were advising the other contractors that
11 as they came into new construction they would also be
12 required to use nonasbestos-containing insulation for
13 construction of new units.

14 Q. When was the Los Angeles plant constructed?

15 A. That goes back quite a number of years, and
16 there's been some major modifications to LA. I just don't
17 remember when all the units were put together.

18 Q. According to that document we looked at
19 previously, the Los Angeles plant was not using asbestos-
20 containing insulation for some number of years prior to
21 1972; is that correct?

22 A. That's correct. That's what the memo said.

23 Q. And that was not new construction, right?

24 A. In some cases it was, in some cases it wasn't.

25 Q. What was being constructed that was new there?

1 A. There was some new units that went on line about ¹⁶¹
2 this time. There was a major expansion on the one side. I
3 don't remember what the particular units were.
4 Q. Do you know if Los Angeles plant converted to
5 asbestos-free insulation for repair work on its pipelines
6 and steam lines and so forth?
7 A. I don't know.
8 Q. So you don't know for sure if the asbestos-free
9 insulation was used either for new construction or for just
10 repair and maintenance, do you?
11 A. At what location?
12 Q. At Los Angeles.
13 THE WITNESS: Would the court reporter repeat
14 that?
15 (Record read as requested.)
16 A. No, I don't.
17 Q. Sir, let me ask you this. I want you to assume
18 that in the usage of some of this asbestos insulation that
19 was to be phased out but not just completely eliminated, I
20 want you to assume that there was some worker that was
21 exposed to asbestos in 1972, asbestos dust, and breathed in
22 enough to cause him harm by having him develop cancer some
23 20 to 40 years later. Can you assume that for me?
24 A. No.
25 Q. Why not?

1 A. Because at this particular point in time we would ¹⁶²
2 have taken -- we would have assured the steps would have
3 been in place to minimize any type of exposure of that sort.
4 Q. So there's no way that someone who was working in
5 1972 at one of these refineries could possibly have been
6 exposed, is that what you're telling me?
7 A. When I'm saying is that I, sitting here, cannot
8 assure you that 100 percent because I could not be in all
9 refineries at the same time. What I'm saying is there were
10 instructions out by this particular point in time that to me
11 would have given very good assurances that that would have
12 happened at those locations.
13 Q. Assuming that was being conveyed to all the
14 refineries, right?
15 A. Yes.
16 Q. And you're certain that it was at that time; is
17 that right?
18 A. Again, we're compressing '72 very, very tightly
19 here, and if we had the other document when it was issued, I
20 could give you even better assurances.
21 Q. Well, I don't have the other document with me, so
22 I'm not sure what you're talking about, but I'm just asking
23 you to -- let's just do this. Let's assume that those
24 instructions to take the other precautionary measures that
25 you identified were not taken for this hypothetical worker

1 that we're talking about. And do you think that it would be ¹⁶³
2 an acceptable risk for Texaco to phase out its insulation
3 while exposing this worker to potentially a very harmful
4 substance?
5 A. I think that's so hypothetical I don't want to
6 assume that. To me, the way the company worked, when you
7 get memos like this from the top of the house in Houston
8 refinery, they were followed.
9 Q. 100 percent down the line?
10 A. I wasn't at every refinery at every day in my
11 life to assure that, but knowing the way the refinery
12 department worked, these guys were very, very high on the
13 list, and if you violated what they were telling you, you
14 went down the chain.
15 Q. Was it your understanding that Bechtel was a
16 supplier of asbestos-containing insulation to Texaco?
17 A. My basic understanding was that they were a
18 contractor who would be used in making new construction.
19 That was my understanding, put it that way.
20 Q. Certainly this memo reflects somebody's idea that
21 Bechtel had something to do with what was the type of
22 insulation that was supplied to Texaco, right?
23 A. No. What this memo represents is that Bechtel
24 had already had a contract to build this new unit in
25 Lawrenceville, and they were going to be instructed very

1 specifically that the new unit was to be constructed with ¹⁶⁴
2 asbestos-free insulation.
3 Q. So I'm correct in the premise of my question,
4 which was, Bechtel had something to do with the type of
5 insulation that was being supplied, for example, at this new
6 construction in Lawrenceville?
7 A. But you didn't add the new construction until
8 later. Yeah, they had something to do with the new
9 construction.
10 Q. I think you're parsing my words out, and I really
11 didn't mean it to be a question that had to be parsed so
12 cleanly.
13 A. I like to be as accurate as I can.
14 Q. I'm sure Mr. Marks appreciates that. Bechtel's
15 lawyer.
16 I'm going to hand you a series of documents that
17 are clipped together.
18 (Marked Deposition Exhibit 23.)
19 MR. FROCKT: Do you have a question? I just want
20 to give Mr. Richards a chance to look through it.
21 A. There's some duplicates in here, but that's okay.
22 Q. Sir, have you ever seen these documents before?
23 A. I've looked at a lot of API documents -- I'm sure
24 it's an API document -- yesterday. We looked at so many I
25 don't know one from the other.

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1 Q. Well, I'll represent to you that this is an API
2 document, and it appears to be from November 11, 1948,
3 minutes from the subcommittee on carcinogenicity. Am I
4 reading that correctly?
5 A. That's correct.
6 Q. And Dr. Newquist, M. N. Newquist and H. R.
7 Warrick are identified as members present at the meeting; is
8 that correct?
9 A. That's correct.
10 Q. And Dr. Newquist or M. N. Newquist was, as we've
11 talked about before, was a medical official for Texaco at
12 that time?
13 A. Chief medical officer, medical director, whatever
14 they called them at that time.
15 Q. Certainly this document would seem to reflect the
16 fact that he was a participating member on the subcommittee
17 on carcinogenicity?
18 A. In 1948.
19 Q. In 1948. Is that correct?
20 A. That's what it would seem to indicate.
21 Q. Do you have any information that would lead you
22 to believe that he was not participating a member?
23 A. No.
24 Q. Do you know any of the other names that are
25 listed there on the front first page?

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1 A. Well, Dooley's name is there.
2 Q. Oh, yes, you're correct. And so there were three
3 members listed there from the Texas Company, right?
4 A. I recognize the name Kehoe --
5 Q. Sure.
6 A. -- but I don't really recognize the other names
7 as I go through them quickly.
8 Q. I'd like you to turn to document that's attached,
9 JAM 016578.
10 A. Okay.
11 Q. Have you ever read this, those two pages, 78 and
12 79 before? Have you ever seen this that document?
13 A. I don't believe so.
14 Q. Why don't you take a look at it.
15 A. Okay.
16 Q. Have you had a chance to read that part of the
17 document?
18 A. This looks like a memo from Clyde Berry to Dr.
19 Woody.
20 Q. Sir, do you know who Dr. Clyde Berry was?
21 A. I remember the name. I don't think I ever met
22 the gentleman.
23 Q. Do you know who Dr. Woody was?
24 A. No.
25 Q. Sir, Dr. Woody, I'll represent to you, was the

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1 chairman of the subcommittee on carcinogenicity of the API
2 Medical Advisory Committee in 1948.
3 A. Is he listed on the front?
4 Q. He's listed at the end of the minutes there as
5 chairman.
6 A. Okay. Okay.
7 Q. Now, in this memo, Mr. Berry is reporting to Dr.
8 Woody on a paper that was presented by Dr. Hueper, chief of
9 the environmental cancer section, cancer control branch,
10 National Cancer Institute, Bethesda, Maryland before the
11 industrial hygiene section and subcommittee of medical care
12 in the American Public Health Association. The National
13 Cancer Institute is a fairly important institute, is it not,
14 in terms of studying causes and treatment of cancer?
15 A. Cancer research, things of that sort.
16 Q. It's associated with the federal government; is
17 that right?
18 A. Yeah.
19 Q. Have you heard of it before?
20 A. Yes.
21 Q. Now, this document would seem to indicate, or I
22 should read from it: "In his preliminary remarks" -- second
23 paragraph -- "Dr. Hueper indicated that research on the
24 etiology of cancer indicated a strong link between
25 environment and cancer incidence. Recent evidence has

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1 pointed out a definite correlation between cancer incidence
2 and exposures to ultraviolet radiation, asbestos, benzol,
3 certain organic amines, paraffin oils, as well as heavy
4 petroleum distillates and degradation products such as tars,
5 cokes and pitches."
6 So according to this document, Dr. Hueper
7 believes that there is a definite correlation between cancer
8 -- strike that -- a strong link between environment and
9 cancer incidence, including a definite correlation between
10 cancer incidence and asbestos.
11 Do you agree with me that that's what this
12 document would seem to be indicating?
13 A. That's what this document states.
14 Q. Now, I believe you've stated previously that it's
15 your opinion, as Texaco's corporate representative, that
16 there was no link between cancer and asbestos exposures
17 until the 1970s; is that right?
18 A. That's correct.
19 Q. So I take it, then, that Texaco would disagree
20 with the conclusions of Dr. Hueper, at least as represented
21 in this memorandum, correct?
22 A. Well, again, not being around much in 1948, I
23 don't know what Texaco believed or didn't believe, but we
24 were talking about my opinion.
25 Q. Well, it was Texaco's opinion. You're Texaco's

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1 representative, right?

2 A. That's correct. But my opinion that the
3 causation link was not proven until the 1970s.

4 Q. Clearly, Dr. Hueper would probably disagree with
5 that if he were here today talking to us?

6 A. He could. He might have gotten more information
7 that indicated it was or it wasn't. I don't know.

8 Q. The document then goes on to state, "He then
9 discussed an idealized approach to the control of the
10 problem which would involve the following points." And it
11 goes on and it lists a number of things that should be done
12 to evaluate the problem of environment and cancer.

13 Do you agree with that, that that's essentially
14 what the document says?

15 A. Well, I think to me the governing points here are
16 an idealized approach.

17 Q. Let me ask you about what's listed there under
18 No. 5.

19 A. Okay.

20 Q. Can you read that part of it, please.

21 A. "Initiate preventive measures as soon as possible
22 since the identification of the offending agent is not
23 necessary. Industrially the approach would be as follows:
24 Through technical control aim at the complete elimination of
25 the exposure; or, minimize the exposure by seeking improved

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1 industrial apparatus such as leak-proof equipment, closed
2 systems, et cetera. Provide suitable personal protective
3 equipment such as gloves, boots, impervious clothing, et
4 cetera. Provide adequate sanitary facilities. This would
5 require an expansion of the locker facilities in most
6 existing plants. Instruct the workers on the proper use of
7 the protective measures provided and tell them why their
8 cooperation is required. For certain operations in industry
9 exposure may be minimized by the use of teams trained to
10 perform their duties with a minimum of exposure and provided
11 with special safeguards."

12 Q. Sir, as an industrial hygienist here testifying
13 for Texaco, is there anything in that list that you've just
14 read from No. 5 that you disagree with that would -- in
15 terms of using those measures to help prevent exposure to a
16 hazardous substance like asbestos?

17 A. As an idealized approach, as he puts it, I don't
18 particularly quibble with any of them, but again, it is an
19 idealized approach. I do have a difference with him where
20 he points out initiate preventive measures as soon as
21 possible since identification of the offending agent is not
22 necessary.

23 Q. What's your quibble with Dr. Hueper?

24 A. Well, I think identification of the offending
25 agent is necessary at some point in time. You could be

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1 eliminating something that is, in fact, helpful. If you
2 throw out the whole ball of wax there might be something in
3 the ball of wax that actually is not detrimental.

4 Q. That's helpful to your health?

5 A. Could be.

6 Q. Like what?

7 A. Trace -- well, let's take chromium. Chromium in
8 large concentrations in the proper radical size, I think
9 hexavalent chrome can cause cancer. Chromium is very
10 important for metabolism in your body of fats.

11 Q. You think there's a distinction between you
12 taking like a chromium pill to help you metabolize fats --
13 do you think there's a distinction between that and the use
14 of chromium in heavy industry? I mean, don't you think
15 they're two totally different things?

16 A. Well, I'm quibbling with the fact that
17 identification of the offending agent is not necessary. I
18 think the identification of the offending agent is necessary
19 before you start going through all of these idealized
20 approaches to perform whatever goals he's trying to reach.

21 Q. So you don't think that -- at least according to
22 Dr. Hueper, you would disagree with his approach which might
23 call for the complete elimination of asbestos from a
24 refinery, from use in a refinery?

25 A. No, I didn't say that. What I'm pointing out is

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1 that this idealized approach, at least in this sentence
2 about identification of the offending agent is not
3 necessary, is swatting the fly with a sledgehammer, at least
4 in today's -- now, you know, back in 1948 they didn't have
5 the chemical ability to isolate certain things, and so maybe
6 back in '48 that was an idealized approach. But I think now
7 with all that of our fancy instrumentation, we don't have to
8 take that sledgehammer approach. We can identify offending
9 agents.

10 Q. Did they have respirators in 1948 that would
11 have, for example, helped control the dust that someone
12 breathed in when they were working with asbestos insulation?

13 A. Yes.

14 Q. Did they have water hoses that someone could take
15 and wet down a piece of insulation before they cut into it
16 to help control the dust that was created when they cut into
17 the insulation?

18 A. They wore hoses, yes.

19 Q. Sure. Would there have been an ability to, for
20 example, isolate a particular part of an insulation at a
21 refinery so as to, you know, wrap it in sort of a plastic
22 tent or something like that to help prevent dust from
23 leaking out?

24 A. I don't know how much of the nice, flexible,
25 plastic tarps they had available in '48.

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1 Q. Was there an ability to take -- touche. Was
2 there an ability to take dust counts in 1948 so that you
3 could determine how much dust was in the air where someone
4 was cutting into asbestos insulation?
5 A. I really don't know the industrial hygiene
6 expertise in '48 capabilities.
7 Q. Was there a threshold limit value in place in
8 1948?
9 A. I think that started in '42, so could have been.
10 Q. I'm sorry, go ahead. I didn't mean to cut you
11 off.
12 A. It could have been that they had a technique
13 available. I'm just not familiar with what they had
14 available in '48.
15 Q. So there was a threshold limit value in place in
16 1942, right?
17 A. I think the first one was '42.
18 Q. So the fact that there was a threshold limit
19 value in place would seem to indicate that there was some
20 way to count the number of dust particles in the air at that
21 time; is that right?
22 A. It would seem to indicate that. I'm just saying
23 I'm not familiar with what they had available in '48.
24 Q. But at least as early in 1942 -- I'm sorry, did
25 you want to complete your sentence?

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1 A. At least in 1942 apparently there was a threshold
2 limit value, right.
3 Q. That had to be determined by somebody somewhere
4 taking some kind of dust count to find out how much dust was
5 in the air, right?
6 A. Yes.
7 Q. Any reason to think that that technology would
8 not have been available to Texaco at that time?
9 A. In '48?
10 Q. Yeah.
11 A. No. But again, let's get back to the expertise,
12 experience and knowledge of Allan Dooley, who came with the
13 knowledge that asbestos can cause asbestosis. Visited the
14 plants starting in 1949, viewed these operations, and
15 determined that it was not a perceived problem.
16 Q. Based on his observations, right?
17 A. Based on his observations and experience.
18 Q. Which, of course, you weren't there in 1948 with
19 him, right?
20 A. No, I was not.
21 Q. You didn't even know Mr. Dooley until 1960
22 something, right?
23 A. Early '60s. But I did know he was a caring,
24 conscientious individual.
25 Q. Ask you a few questions about this document.

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1 A. A different one?
2 Q. Yeah.
3 (Marked Deposition Exhibit 24.)
4 A. Okay.
5 Q. Sir, have you had a chance to review the document
6 dated July 19, 1972 and the attachments?
7 A. Correct.
8 Q. Can you identify -- can you tell me a little bit
9 about what this document is?
10 A. Well, these are documents that I authored for Dr.
11 Baylor's signature and distribution and including the
12 attached form. And it concerned medical monitoring
13 requirements as per the standard for exposure to asbestos
14 dust, as published in Federal Register, Wednesday, June the
15 7th, 1972. And becoming effective July 7, 1972.
16 Q. So you actually helped draft these documents, is
17 that what you're saying?
18 A. Yeah.
19 Q. And so -- and as I understand it, then, and these
20 documents relate to the medical examination guidelines that
21 Texaco was putting in place for asbestos workers beginning
22 in 1972; is that right?
23 A. That's correct.
24 Q. What was in place for asbestos workers prior to
25 1972 when you drafted this document?

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1 A. Except for the lung function testing part, I
2 think many of these items were in place. The pre-placement
3 certainly was in place at most locations that I can attest
4 to. It could have been at all locations, but there was a
5 pre-placement. First of all, with Texaco everyone took a
6 pre-employment. So everyone was examined prior to
7 employment.
8 Q. When did that begin?
9 A. Way back when. It goes back further than I can
10 remember. So you had the pre-employment. Then if they were
11 placed in certain jobs, job classifications, certain job
12 titles, they would get a pre-placement examination before
13 going into that particular function. And then, depending on
14 that job title, they would get an annual or a periodic
15 examination that could or could not include a chest x-ray.
16 Q. Now, are you referring to the program that was
17 put in place as a result of this memo or what was in place
18 prior to this memo?
19 A. That was in place prior.
20 Q. So there was some workers, then, who had their
21 chest x-rays regularly taken at Texaco's direction?
22 A. On some periodic basis, yes.
23 Q. What kind of individuals -- what kind of job
24 classifications would those individuals have had?
25 A. You'd have to go back to some of that earlier --

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1 Q. Well, can you give me your best recollection?

2 MR. MESHER: Excuse me. He didn't finish his
3 answer.

4 A. Well, we'd have to go back to some of the other
5 deposition information if we wanted to be exact in all the
6 particular job titles, because the job titles varied from
7 place to place as to what somebody did at one place versus
8 another place. In general, sandblasting, insulation, an
9 insulator would be in place like that. There could have
10 been other classifications that got chest x-rays. There
11 were other classifications that got other pre-employment
12 rather than pre-placement and other periodics, but let's not
13 go into that.

14 Q. Why were sandblasters and insulators being
15 directed to have chest x-rays prior to the initiation of
16 this program?

17 A. Again, I think we saw it in the medical
18 monitoring results that were provided to Dr. Baylor as
19 results of that API request. There were chest x-rays listed
20 there at some of the particular locations. Sandblasting had
21 exposure, well, potential exposure to silica dust. They
22 didn't do sandblasting at all of the plants. That was
23 somewhat unique to the larger facilities.

24 Q. Why were insulators included in that category of
25 workers who should have their chest x-rayed?

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1 A. Again, it was a medical monitoring technique that
2 one would apply to minimize ill health because of asbestos.

3 Q. And but you can't give me a date that that
4 medical monitoring program began precisely; isn't that
5 right?

6 A. Some of those chest x-rays went back into the
7 '50s. Could have gone beyond that. I just don't have an
8 exact date for when that started.

9 Q. Does the fact that Texaco was conducting chest
10 x-rays of its insulators who were working with asbestos
11 insulation indicate to you that there was at least a
12 recognition of some possible deleterious health effects
13 among that population of workers from having been exposed to
14 asbestos?

15 A. No. It indicates to me a concern about the
16 workers and another evaluation technique to minimize
17 disease.

18 Q. Well, what were you -- why were you concerned
19 about the workers?

20 A. Well, with exposure to asbestos dust that could
21 cause asbestosis, we wanted to monitor the workers to see if
22 there were any undue exposures that we might have been
23 missing by other techniques. And it's a very typical type
24 of industrial health procedure and technique, medical
25 monitoring.

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1 Q. Now, were there any changes that went into place
2 as a result of this policy that you initiated in 1972 that
3 you helped author?

4 A. Certainly the lung function testing went into
5 effect, and that was new to most locations. Some places had
6 the smaller lung function tests. There's the portable type;
7 you might have used in your own periodic physicals, but this
8 was a more elaborate piece of equipment. A Jones
9 pulmonometer that was eventually provided to all the
10 locations.

11 And there could have been some other things here.
12 I have to go through this in detail to decide what was --
13 try and ascertain what was new. I think No. 1, pre-
14 placement, other than the forced expiratory volume, that was
15 all primarily in place. And then, again, I think item No.
16 2, other than the forced expiratory volume, the pulmonary
17 function test was in place. The termination of employment
18 physical I think probably was in place for the most part,
19 except for the pulmonary function tests. So I think that --
20 pulmonary function tests seems to be the key additional
21 thing that was added.

22 Q. Did this medical program encompass any
23 information that Texaco would be providing to workers who
24 were -- asbestos workers who were terminating their
25 employment that they might have had exposure to something

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1 that could cause them problems down the road?

2 A. Not specifically, but it was my finding in
3 visiting with the plant physicians that certainly during the
4 pre-placement and the annual physicals, there was discussion
5 of, you know, I mean, breathe into this machine or take this
6 x-ray. Well, they've explained to them why they were doing
7 it. So to me this was part of the hazard warning system is
8 that the doctors or the nurses who were conducting these
9 particular tests would discuss with individual why he was in
10 there getting tested.

11 Q. So a plant physician who was in there getting
12 tested, pulmonary function tests or x-ray, would be advised
13 -- would advise a worker that they might have been -- might
14 have exposure to something that could be harmful to them
15 like asbestos, right?

16 A. Well, they'd advise them that they might have
17 some exposure to asbestos, and this is why we're doing this
18 medical monitoring program.

19 Q. And would those physicians be in a position to
20 advise those workers to take any precautions in terms of
21 respiratory protection, things of that nature?

22 A. I think the nurses did a lot of that particular
23 work. The doctor did the overview, but the nurses were key
24 to the x-rays and the lung function testing program. I've
25 met many nurses that were familiar with that and would have

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 1 discussed that with the employees as to why they were doing
 2 these particular things.
 3 Q. Did you ever meet any of the nurses who worked up
 4 at Anacortes?
 5 A. Oh, yeah. It was my policy and the policy of
 6 other IHS that when you went to a plant you visited the
 7 medical department. You stopped and you talked to the
 8 doctor, if he was there that particular day, or you met him
 9 for dinner at night and you talked with the nurses.
 10 Q. Have you talked to any of those nurses recently?
 11 A. No.
 12 Q. Now, it says here, "Since Dr. Wilson has
 13 initiated some work in this area, he is requested to
 14 complete a canvass of all plant doctors to determine how
 15 many lung function testing units will be required." Do you
 16 see that?
 17 A. Yes.
 18 Q. Did you write that sentence for Dr. Baylor or was
 19 that Dr. Baylor's sentence?
 20 A. No, that was mine. I think by this particular
 21 time Dr. Wilson was over --
 22 Q. I just want to ask you who wrote the sentence.
 23 MR. FRENKEL: I think he's finishing his answer
 24 to your question, so if he may.
 25 A. Dr. Wilson was over in Houston and worked very

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 1 closely with the refining department and was asked to make
 2 this particular determination, and my recollection is we
 3 bought them for all locations.
 4 Q. What work are you referring to that Dr. Wilson
 5 had initiated?
 6 A. I don't remember.
 7 Q. So you have no idea what work you're referring
 8 to?
 9 A. No.
 10 Q. We know that Dr. Wilson authored an article that
 11 went into the Lancet in 1960, right?
 12 A. Yeah, 12 years prior to this time.
 13 Q. Is it plausible that that's part of the work
 14 that you were referring to?
 15 A. I don't believe so.
 16 Q. Why not?
 17 A. I just don't believe so. I believe that he
 18 conducted some work in determining how many employees might
 19 need lung function testing at what locations, and so he was
 20 to advise at what locations we were going to buy equipment,
 21 what locations would use outside equipment like in a
 22 hospital, but my recollection 30 years back is that we wound
 23 up buying lung function testing and training the nurses at
 24 all locations.
 25 Q. But these documents deal specifically with

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 1 medical examinations for asbestos workers; is that right?
 2 A. That's correct.
 3 Q. So are you saying, then, that Dr. Wilson had
 4 initiated some work solely in lung function testing or in
 5 -- as it related to asbestos and health?
 6 A. No. I think he was surveying the lung function
 7 testing capabilities in the different areas of where you had
 8 a refinery, and was asked to make the determination of buy
 9 it for Port Arthur, buy it for LA and Eagle Point, which was
 10 near Philadelphia, that was a definite. But he was asked to
 11 determine the capabilities at the other locations working
 12 with the local hospitals and clinics and the plant
 13 physicians, and my recollection was he came back and said,
 14 well, buy them in all the places, and that's what we did.
 15 Q. So the work that Dr. Wilson supposedly initiated
 16 had nothing to do with asbestos, is that what you're saying
 17 in regards to this document?
 18 A. That's correct. His work -- the work I was
 19 referring to here, as best as I can remember 31 years ago,
 20 is that he was lining up how we were going to -- to make
 21 sure we had capabilities for 14 by 17 x-rays, and to make
 22 sure we had capabilities for the forced expiratory volume
 23 requirements.
 24 THE WITNESS: When we reach a break point --
 25 MR. FROCKT: Let's take a break. Go ahead.

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 1 THE VIDEOGRAPHER: The time is 3:12 p.m. We'll
 2 be taking a break in testimony.
 3 (Recess.)
 4 THE VIDEOGRAPHER: Time is 3:19 p.m. We're now
 5 back on the record.
 6 Q. Mr. Richards, we were talking a little bit about
 7 the medical monitoring program that was put in place in
 8 1972. Now, did that medical monitoring program extend to
 9 recently retired employees from Texaco?
 10 A. I don't have the document any more. Recently
 11 retired?
 12 Q. Yeah.
 13 A. No. I think it talks about a termination
 14 physical, but not retired personnel.
 15 Q. In fact, Texaco had no program in place at all to
 16 advise workers who had left Texaco after their employment
 17 period to advise those workers that they might have had
 18 some exposure to asbestos dust; isn't that correct?
 19 A. I believe that's correct.
 20 Q. Is there any particular reason why Texaco did not
 21 have any such program like that?
 22 A. No, not that I know of.
 23 Q. Sir, were you aware that in 1981 the Eagle Point
 24 plant was required by OSHA to contact retired employees,
 25 whose chest x-rays were included in some group that OSHA was

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1 reviewing, because we were uncertain -- because they were
2 uncertain whether or not the results were previously made
3 known to those employees. And Dr. Stanton, apparently,
4 proposed to advise them using a letter, a draft letter, that
5 they had had some exposure to asbestos and that they might
6 have some problem in their chest x-rays?

7 A. I'm not familiar with -- I may be once I see it.

8 (Marked Deposition Exhibit 25.)

9 A. Okay.

10 Q. Have you ever seen that document before?

11 A. I don't recall that I have, no.

12 Q. Did I sort of summarize what it seemed to -- what
13 it seems to reflect correctly in my question?

14 A. Maybe if we could have the court reporter read it
15 back.

16 Q. We can do that or I can just ask you a few
17 questions about it.

18 A. Whatever you prefer.

19 Q. Let's do it that way. So you've looked at the
20 document. Can you identify what it appears to be?

21 A. It appears to be a memorandum from Gene Stanton
22 to Fischbach, I think was the plant manager at the time.
23 Jack Grant, I think, was employee relations. I don't recall
24 the other -- John Tuohy was employee relations. I don't
25 recall the other two guys. And apparently in the response

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1 to a settlement agreement with OSHA concerning certain
2 chest x-ray findings. And I really have no feel for that at
3 all. I don't recall anything like that. And the possible
4 relation to past asbestos exposures. I guess within the
5 settlement agreement Texaco agreed to advise certain
6 employees of their chest x-ray findings for the previous
7 five years or something like that. I may not be
8 paraphrasing that right.

9 Q. Is there anything, to your knowledge, in Texaco's
10 procedures or policies that would have prevented Texaco from
11 writing a letter to someone, for example, like Ray Jameson
12 in this case who had left Texaco's employment in 1966, and
13 advised that person that, you know, you may have had some
14 exposure to asbestos. You ought to get your lungs checked
15 every year. Just be advised that this is a hazardous
16 substance. Is there anything that would have prevented
17 Texaco from undertaking that sort of activity?

18 A. Do you have any time frame?

19 Q. Sure. Say from 1972 on.

20 A. Well, certainly one of the potential problems
21 with something like that is that people move and you don't
22 get forwarding addresses. I mean, that's always a blip
23 there, but there wouldn't be any -- I can't think of any
24 reason why you couldn't do that.

25 Q. Certainly Texaco could have made an effort to do

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1 that even if they couldn't find the forwarding address for
2 that person. For example, they might have been able to look
3 up someone like Mr. Jameson's address in the phone book,
4 couldn't they?

5 A. Well, you know, you're dealing with an issue that
6 I don't know how you locate people. I know how you can get
7 on the Internet and find almost anybody.

8 Q. Well, I mean, sure.

9 MR. MESHER: Did you finish your answer?

10 A. I don't know that that's practical in all cases.
11 It is now. It maybe wasn't then. The other thing is that
12 in 1966, at the time frame you're talking about, Texaco did
13 not consider those individuals to be at risk, and, in fact,
14 I don't think Mr. Jameson was identified as someone with
15 asbestos exposure as an insulator.

16 Q. Actually the time frame I was talking --

17 MR. MESHER: Excuse me. He didn't --

18 A. Well, I mean, you said from when he retired on,
19 so I'm talking about even in 1966 when he left employment,
20 Texaco did not consider him a person at risk.

21 Q. Actually, the time frame I referred to was from
22 1972 on. I didn't say advise him from 1966 on. I said
23 after Texaco recognized -- and you've acknowledged that
24 Texaco recognized that asbestos was a cancer hazard in 1972,
25 by 1972, and that's the period I was referring to.

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1 A. Okay.

2 Q. So does that change your answer at all?

3 A. No. Other than the problems of trying to locate
4 people.

5 Q. You're not aware of any such efforts that Texaco
6 ever made in that regard to any of its employees who were
7 exposed to asbestos?

8 A. Well, we moved out of the Health Division in '79,
9 and so they certainly could have taken place, and I would
10 not have been aware of it, particularly in 1982 when I left
11 industrial hygiene and moved on to environmental. So, I
12 mean, they could be. I just am not aware of them one way or
13 the other.

14 Q. But certainly, according to this document, it
15 would appear that the Eagle Point plant was -- had the
16 capacity to contact retired insulators; isn't that right?

17 A. Looks like there were four.

18 Q. Sure.

19 A. Four individuals.

20 Q. Could be a handful of people or it could be 10 or
21 20 people that might have left Texaco's employment at
22 Anacortes between say 1966 and '72, right?

23 A. It could be.

24 Q. Could be 100?

25 A. Could be.

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1 Q. Or it could be five?
 2 A. Could be.
 3 Q. And, of course, there could be even a lesser
 4 number of men who worked in the maintenance department at
 5 Anacortes in 1966, right?
 6 A. I'm not familiar with the employment numbers back
 7 then.
 8 (Marked Deposition Exhibit 26.)
 9 A. Okay.
 10 Q. Sir, have you had a chance to look at this
 11 document?
 12 A. Yes, I have.
 13 Q. Can you identify it for me?
 14 A. Yes. It's a memorandum from me to W. R.
 15 Sorenson, who was probably the plant manager at the Port
 16 Arthur chemical plant that was within the Port Arthur
 17 complex but a different unit, and dated May 19, 1971.
 18 Q. And it states in the second paragraph: with the
 19 Federal Occupational Safety and Health Act of 1970 now in
 20 force, we should be prepared to prove that adequate control
 21 of employees' exposures to potentially hazardous substances
 22 is provided. Part of this proof can be obtained in
 23 developing data on airborne concentrations of contaminants
 24 in the workplace to demonstrate that exposures are less than
 25 the permissible limits. Further proof can be demonstrated

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1 by maintaining adequate housekeeping standards for spillage
 2 of potentially hazardous substances. Do you see that?
 3 A. Yes.
 4 Q. Is that a general statement of what you felt at
 5 that time to be a necessary thing that Texaco needed to do
 6 to make sure that they were in compliance with the OSHA act
 7 or the federal Occupation and Safety Health Act of 1970?
 8 A. No. Actually, I got there and the housekeeping
 9 program was less than adequate, and so I thought I would put
 10 Mr. Sorenson on notice that part of the techniques in IHS,
 11 if you're going around and looking at different units, poor
 12 housekeeping is usually a sign of perhaps some other
 13 potential problems. And so I put him on notice that let's
 14 get adequate housekeeping standards for the spillage, and
 15 you may have to be prepared as part of the proof of -- by
 16 doing air measurements --
 17 Q. So --
 18 A. -- or at least exposure measurement.
 19 Q. So when you say, "we should be prepared to prove
 20 that adequate control of employees' exposures to potentially
 21 hazardous substances is provided," are you saying
 22 that there was already adequate control in place at that
 23 time?
 24 A. There could have been.
 25 Q. Well, were there?

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1 A. For me, a key, in my walk-around inspections was
 2 if I saw poor housekeeping, I would look more closely at th
 3 control measures in place, and you might have to go the
 4 extra mile to satisfy me and the other IHS that might come
 5 around by doing air sampling that control measures were in
 6 place. I didn't mean to imply that they weren't in place a
 7 this particular point, but the housekeeping needed
 8 improvement.
 9 Q. Now, did you have any proof that adequate contro
 10 of employees' exposures to asbestos was being provided at
 11 that time?
 12 A. In 1971?
 13 Q. Yes.
 14 A. I think in 1971 and 1972 we started initiating
 15 the program to measure those exposures.
 16 Q. How about prior to 1971?
 17 A. We'd have to go back and rely on Allan's
 18 experience, expertise, knowledge, caring to make that
 19 determination.
 20 Q. So is that -- is your answer, then, that you
 21 can't think of any specific controls that were in place at
 22 that time?
 23 A. For which location? Are we talking about the
 24 petrochemical plant?
 25 Q. Throughout the Texaco refinery system.

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1 A. All substances? I mean --
 2 Q. Asbestos. We're talking about asbestos today.
 3 A. Well, you generalize and then you go back to the
 4 specifics, so maybe we could repeat the question or focus on
 5 asbestos.
 6 Q. As I understand your answer, you're saying that
 7 the adequate control measures were whatever Allan Dooley had
 8 in place in regards to asbestos; is that right?
 9 A. Allan felt that in the refining setting that the
 10 control measures that were in place, primarily respiratory
 11 protection at that particular point in time, were adequate
 12 for the control of exposure to asbestos.
 13 Q. But there was no overall policy that Texaco had
 14 in place in 1971, correct, to require respiratory protection
 15 for workers being exposed to asbestos, right?
 16 A. I found in making my visits -- and now we're
 17 talking about in '71, '72 -- that respirators were being
 18 used at those locations.
 19 Q. Why would you need to prove that you had adequate
 20 controls in place at that time?
 21 A. Well, you're dealing with the Occupational Safety
 22 and Health Act. They're OSHA inspectors. OSHA inspector
 23 comes around and he sees poor housekeeping, like I
 24 observed, he's going to say: I don't know if your control
 25 measures are adequate, so get your housekeeping up to date,

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1 and if necessary we'll take air samples, but the burden of
2 proof could be on you. I think your control measures may be
3 okay, but let's get things up to snuff.
4 Q. Mr. Richards, Texaco acknowledges that there were
5 reports about the hazards of asbestos dust having some
6 harmful effect on the lungs that dated all the way back to
7 the early 1900s. Is that true?
8 MR. FRENKEL: Where are you getting this from?
9 MR. FROCKT: I'm just asking him the question.
10 A. Well, would you like to show me that?
11 Q. Well, I don't have any particular documents. I'm
12 just talking about general industrial hygiene, industrial
13 health.
14 A. Well, maybe let's go over the question again,
15 then. Maybe I didn't understand it.
16 Q. Well, let me ask it this way. When was the first
17 time -- do you have any idea the first time that asbestos
18 was acknowledged to be harmful to human lungs?
19 A. In any situation?
20 Q. Sure.
21 A. First time I had personal knowledge?
22 Q. No. Well, you as -- you're Texaco's corporate
23 representative.
24 A. Well, I mean, I can specifically point to Allan
25 Dooley's coming to Texaco in '47 and the knowledge he

1 A. No, I do not.
2 Q. And you don't have any specific knowledge,
3 personal specific knowledge, about any asbestos material
4 required by Bechtel, if any, correct?
5 A. No.
6 Q. I threw in a "correct" there at the end, and
7 probably threw off my question. At the Texaco facility here
8 in Anacortes, the subject of this case, you don't have any
9 personal information about any asbestos materials that were
10 required by Bechtel, correct?
11 A. No, I do not.
12 Q. One other point here. You talked about a
13 contractors that had done -- had done testing for asbestos.
14 You were referring to industrial hygienists that had been
15 contracted by Texaco, correct?
16 A. Industrial hygiene contractor services. Texaco
17 contracted to bring the IHS in from Kettering, that's
18 correct.
19 Q. You weren't talking about any construction
20 contractors at the Anacortes facility, correct?
21 A. Not involving that particular point, no.
22 MR. MARKS: That's all the questions I have.
23 Thank you, sir.
24
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1 brought with him. I mean, it could be earlier, but I mean,
2 that would be at least one point in time that I could focus
3 on.
4 MR. FROCKT: Let's take a about a five-minute
5 break, and then I'll see if there's anything else I have.
6 THE VIDEOGRAPHER: I'm going to bring this tape
7 to a close. The time now is 3:37 a.m. This concludes tape
8 No. 3 in the deposition of Ronald Richards.
9 (Recess.)
10 THE VIDEOGRAPHER: The time is 3:55 p.m. This
11 begins tape No. 4 in the deposition of Ronald Richards.
12
13 EXAMINATION
14 BY MR. MARKS:
15 Q. Hi, sir, Christopher Marks. I introduced myself
16 at the beginning of the deposition. I represent Sequoia
17 Ventures in this matter. Couple of questions to clarify
18 some points that were brought up by Mr. Frockt.
19 You testified, if I understood you correctly,
20 earlier today that you believed that some asbestos may have
21 been required by contractors as part of the maintenance for
22 heat balance. You don't have any particular -- strike that.
23 You don't have any personal knowledge, do you,
24 about any contractor-supplied insulation, including asbestos
25 insulation, at the Anacortes facility in this case?

1
2 EXAMINATION
3 BY MR. MESHER:
4 Q. Mr. Richards, do you feel like answering a few
5 more questions before we finish?
6 A. I'm ready.
7 Q. Great. Mr. Frockt made certain representations
8 about what Jack Drummond said or didn't say in his
9 deposition. Do you recall in general terms that, that Mr.
10 Frockt raised the subject of Mr. Drummond's deposition with
11 you? I'm sorry, not the deposition, what Mr. Drummond
12 testified to concerning respirators. Do you recall that
13 just in general terms?
14 A. In general terms, yes, I do.
15 Q. Did Mr. Frockt tell you when he was asking you
16 questions that Mr. Drummond testified in response to
17 questions from Mr. Frockt on page 39 of his deposition
18 starting on line 8:
19 "Sir, are you familiar with what a respirator is?
20 "ANSWER: Yes.
21 "QUESTION: How is it you became familiar with
22 what a respirator is?
23 "ANSWER: Well, through training and through my
24 job as safety supervisor respirators were used throughout
25 the refinery considerably, in a considerable amount."

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1 Mr. Frockt never told you that that's part of
 2 what Mr. Drummond said, is it?
 3 A. No, it's not.
 4 Q. Did Mr. Frockt tell you that Mr. Drummond also
 5 testified when Mr. Frockt asked him a question on page 39,
 6 starting on line 15:
 7 "Were they" -- being the respirators -- "were
 8 they in use in 1967 when you took over as safety supervisor?"
 9 "ANSWER: Yes.
 10 "QUESTION: What were the respirators used for in
 11 1967?"
 12 Again, this is Mr. Frockt asking Mr. Drummond
 13 these questions.
 14 And Mr. Drummond responded on page 39, lines 19
 15 through 22:
 16 "We had several different types there. You had
 17 respirators that were used for dust. You had respirators
 18 that were used for gaseous situations. You had Scott air
 19 packs that were used in extreme gaseous situations."
 20 Did Mr. Frockt ever tell you that that's what Mr.
 21 Drummond responded in questions that Mr. Frockt asked him in
 22 the deposition?
 23 A. No, he did not.
 24 Q. Now, also in the deposition Mr. Frockt asked Mr.
 25 Drummond if he had a recollection as to whether or not

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1 respirators were used specifically with asbestos as opposed
 2 to dust in general, and Mr. Drummond in his deposition
 3 testified that he didn't recall, he didn't recall one way or
 4 another, as to whether or not they were used. Did Mr.
 5 Frockt tell you that as to part of the deposition testimony
 6 of Mr. Drummond?
 7 A. No, he did not.
 8 Q. Now, in response to some questions by PM
 9 Northwest's attorney, Mr. Lester, did Mr. Frockt tell you
 10 that in response to questions from Mr. Lester that Mr.
 11 Drummond responded as follows to questions concerning
 12 respirators starting on page 64, line 18:
 13 "QUESTION: During your tenure as safety
 14 supervisor were safety equipment items such as respirators
 15 readily available to most employees?
 16 "ANSWER: Yes.
 17 "were employees encouraged or discouraged from
 18 the use of any of these safety equipment items?
 19 "ANSWER: They were instructed to use them.
 20 "QUESTION: I believe Mr. Frockt asked you about
 21 when they were instructed or when they were merely
 22 available, and my question relates to when they were just
 23 merely available: were there sufficient respirators on site
 24 in the different departments so that if somebody wanted to
 25 use one or have access they could get one, basically from

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1 your beginning 1967 forward?
 2 "ANSWER: Yes."
 3 Did Mr. Frockt tell you that?
 4 A. No, he did not.
 5 Q. Did Mr. Frockt also tell you that Mr. Drummond
 6 testified as follows in his deposition on page 65 starting
 7 on line 8. These are again questions from Mr. Lester, PM
 8 Northwest's attorney.
 9 "Did you take that as one of your personal
 10 concerns to make sure that all the safety equipment was
 11 available if somebody wished to use it.
 12 "ANSWER: Yes.
 13 "why would that be important?
 14 "The instructions at that period of time that
 15 you're talking about, the instructions were there on the
 16 usage of these respirators, and that it was my
 17 responsibility to oversee the whole program."
 18 Did Mr. Frockt tell you that that's part of what
 19 Mr. Drummond testified to in his deposition?
 20 A. No, he did not.
 21 Q. No. And there was also -- Mr. Drummond went on
 22 to say that the person -- supervisor who was supervising the
 23 men also had some responsibility along with the safety
 24 department. Did Mr. Frockt tell you that?
 25 A. No, he did not.

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1 Q. And did Mr. Frockt also tell you that Mr.
 2 Drummond testified in his deposition in response to a
 3 question from me on page 71, starting on line 7:
 4 Now, you were asked some questions about the
 5 respiratory -- respirators at the refinery, and I believe
 6 that you indicated that respirators were generally available
 7 to all employees. Do you recall that?
 8 "ANSWER: I recall, yes."
 9 Mr. Frockt never told you about that in his
 10 questioning, did he?
 11 A. No, he did not.
 12 Q. In fact, Mr. Frockt made certain representations
 13 that Mr. Drummond said that there weren't respirators,
 14 respirators were not available. Do you recall that?
 15 A. That's what I recall, yes.
 16 Q. Now, let's talk about another area of questioning
 17 that Mr. Frockt asked you about. Has to do with questions
 18 concerning asbestos exposure and asbestosis, and he asked
 19 you some questions about when was it clearly established or
 20 words to that effect. In what type of settings were you
 21 referring to when you were talking about any type of
 22 association between asbestos or asbestos exposure and
 23 asbestosis?
 24 A. Well, I was referring to the refinery type
 25 setting where you had a very open environment.

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1 Q. Now, at one point you had a discussion about
2 threshold limit values. Do you recall that?
3 A. Yes, I do.
4 Q. How does the threshold limit value come into play
5 with any association between asbestos exposure and
6 asbestosis?
7 A. Well, generally, the preamble for the TLV
8 committee indicated that this was for 40-hour week exposure,
9 day after day, for a prolonged period of time. So you had
10 to have excessive exposures the full 40-hour week, in other
11 words, a continuous type of exposure over the TLV for many,
12 many years in order to be at the threat, the mere threat of
13 developing some disease. That doesn't mean that everyone in
14 that particular category -- in fact, we've seen with some of
15 the medical data that people exposed as insulators worked
16 30, 40 years with no ill effects.
17 Q. Now, you mentioned the TLV committee. What
18 group or association are you referring to with the TLV
19 committee?
20 A. This was the American Conference of Governmental
21 Industrial Hygienists, the TLV committee. It carried a lot
22 of stature because it was made up of strictly of people from
23 universities and government. So there was no threat of
24 influence from industries to try and change the standard to
25 improve their working capabilities, but, in other words, the

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1 input was from and the data was solicited from research
2 personnel, university personnel, and governmental personnel.
3 Q. How do you know that, that there was no threat
4 from industry because --
5 A. Well, I served on the committee for a year and a
6 half. I saw none of that. And Herb Stokinger, who was the
7 secretary to the committee at the time, was very strict in
8 how he would solicit data, and then how that committee would
9 interpret data. And they looked at the heat substance every
10 year, in a review process, and decided in '68, '69, that
11 there was no need to change the TLV for asbestos at that
12 time.
13 Q. In fact, that was the same TLV standard that was
14 implemented in what year, what was it, in the '40s?
15 A. I think it was in the '40s, correct.
16 Q. Now, Mr. Frockt asked you certain questions about
17 the API, and in particular, if you could turn to Exhibit 8,
18 please. And I believe that is the letter from Renes to the
19 members of a certain committee. If you could pull out --
20 A. I'm getting close, I think.
21 Q. I'd be more than happy to provide you with my
22 copy if that would assist.
23 MR. MESHER: Counsel, do you have an objection
24 with that if I show him my copy?
25 MR. FROCKT: No.

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1 Q. Here is my copy of Exhibit 8, and could you just
2 identify that for the record?
3 A. Again, this is a letter from Lucian Renes to the
4 members of the central committee on medicine and health and
5 technical advisors on Phillips Petroleum department
6 letterhead dated January, and I can't make out the
7 year. Can't make out the exact day of January, but 1965.
8 Date stamped into the Health Division, New York City,
9 Texaco, January 15, 1965.
10 Q. Now, would Mr. Renes have sent out such a letter
11 requesting certain information without there having been any
12 type of discussion of the committee?
13 A. Well, my experience with the committee -- and I
14 started serving on the committee in '71 -- is that there
15 would have been some long, serious discussion about
16 particularly how to do it, not necessarily why to do it but
17 how to do it, and that would have taken at least probably a
18 year for the API to make some decision about how to go ahead
19 with this particular type of survey so they could get an
20 accurate result and an accurate representation.
21 Q. And Mr. Frockt asked you certain questions about
22 the Wilson and Eisenstadt article. Do you recall when that
23 was published in the Lancet?
24 A. Well, it was '60 but I don't recall the exact
25 day.

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1 Q. Exhibit 7, and I'll just show you my copy.
2 MR. MESHER: If that's all right, counsel? Do
3 you have an objection?
4 MR. FROCKT: No, go ahead.
5 Q. Exhibit 7 makes reference to a reprint from the
6 journal Lancet November 1960.
7 A. November of 1960, right.
8 Q. So the period involved between -- well, strike
9 that.
10 Now, Mr. Frockt asked you certain questions in
11 response to what Mr. Renes sent out on Exhibit 8, asked you
12 certain questions about the Exhibit 9, which is a letter
13 from E. W. McNealy to Mr. H. G. Tigh, T-I-G-H, dated March
14 11, 1965. And again, I'll hand you my copy. Do you have
15 that in front of you?
16 A. Yes, I do.
17 Q. Could you just read the document number on the
18 first page at the bottom?
19 A. W A-T E X 003844.
20 Q. Mr. Frockt made numerous -- asked numerous
21 questions indicating that there were two cases of
22 mesothelioma that were reported in Exhibit 9. Did you find
23 that there were two cases of mesothelioma or was it one case
24 and a reference to a suspected mesothelioma?
25 A. Well, I think the second one was a suspected

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1 case. And the first case, a Peter Cappadonna was a
2 confirmed case, but the second case he referred to was a
3 suspected case.

4 Q. Okay. Now, Mr. Frockt asked you a series of
5 questions concerning Mr. Dooley and Mr. Dooley didn't sample
6 asbestos dust. In the time that Mr. Dooley was associated
7 with the Texaco, Texaco -- the TLVs, did they talk about
8 asbestos dust or total dust concentrations?

9 A. No. You actually sample for total dust, and the
10 method that you used and the comparison that you used
11 eliminated counting of any fibers, so you were sampling
12 total dust in the environment. You were not sampling
13 asbestos fibers in the environment.

14 Q. Now, Mr. Frockt asked you a series of questions
15 asking you to assume if Texaco knew that two insulators had
16 mesothelioma. And let me ask a question to you this way,
17 that if Texaco knew that two of its -- two insulators had
18 mesothelioma or one insulator had mesothelioma and one
19 insulator was suspected of having mesothelioma, as Mr.
20 McNealy was reporting in the March 11, 1965 memorandum to
21 Mr. Tigh, how would Texaco have treated that?

22 A. Well, again, this was part of a process where you
23 had generated a hypothesis, and so now you were going into
24 the study stage to review the data and either confirm or not
25 confirm or disprove the hypothesis that was being generated.

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1 So Texaco participated very early on in that study and
2 provided all the data that they had to that API study.

3 Q. Mr. Frockt asked you certain questions about
4 that, the 1965 and on, API study. Do you recall that in
5 general terms?

6 A. In general terms, yes.

7 Q. Exhibit 13, if you have that in front of you, I'd
8 appreciate you pulling it out. Otherwise I'd be more than
9 happy to share mine.

10 A. 14, 15.

11 MR. FRENKEL: Check on the bottom of the other
12 pile.

13 Q. Exhibit 13 is a letter from Lucian Renes to --
14 what is it -- Nathan Hendricks?

15 A. It was Van Hendricks. He went by Van Hendricks,
16 V-A-N Hendricks.

17 Q. April 13, 1965; is that correct?

18 A. Correct.

19 Q. And you and Mr. Frockt went over certain portions
20 of the enclosure to this document, but if you could turn to
21 that, please, and the conclusion on page 3, what are the
22 conclusions stated on the middle of page 3?

23 A. You want me to read the two paragraphs?

24 Q. No, no, just the first sentence.

25 A. "The data obtained to date from the medical and

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1 health committee is inadequate to resolve the question as to

2 the degree of hazard which asbestos poses to refinery

3 insulators."

4 Q. And Mr. Renes was, what, urging the medical
5 committee because of that opinion to continue studying this
6 potential health problem, what he reported on page 4 of this
7 document; is that correct?

8 A. Yeah. Continue studying this potential health
9 problem, that's correct.

10 Q. Potential health problem, was that what he
11 reported?

12 A. That's the words he used were this potential
13 health problem.

14 Q. Now, Mr. Frockt asked you a series of questions
15 concerning the use of asbestos and asbestos products after
16 1972. Do you recall questions along those lines?

17 A. Along those lines, correct.

18 Q. Are you familiar with a gasket that is used on,
19 what, on pipes?

20 A. Well, the flanges where they bring two pipes
21 together will have a flange, and they use a gasket in
22 between to seal the pipes when they put the bolts together.

23 Q. Are you familiar with how long that those gaskets
24 were sold in the open market without a warning on them?

25 A. Well, I think it was perhaps into the '80s.

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1 Q. Do you know whether or not our United States
2 government after 1972 and, say, up to 1980 required any type
3 of warning on a product such as an asbestos-containing
4 gasket?

5 A. I don't believe they did, no.

6 Q. And those gaskets -- well, strike that. Now,
7 let's talk a minute about -- you were asked certain
8 questions about Dr. Selikoff's findings in your discussion
9 with Dr. Selikoff and refinery workers. Were you actually
10 at the refinery in Anacortes?

11 A. Yes, I was.

12 Q. When were you there?

13 A. I believe it was '75.

14 Q. Would you tell us, please, how you believe --
15 well, first, do you believe that there were differences
16 between the exposures that Dr. Selikoff was reporting as
17 opposed to what you saw in the refinery in Anacortes for,
18 say, insulation workers?

19 A. Oh, to me very clearly. I mean, Dr. Selikoff
20 referred to the enclosed type of situation that the workers
21 in his study were exposed to, the fact that they were
22 spraying insulation material containing asbestos, and were
23 really creating quite a cloud in that confined, enclosed
24 area. When you compare that with Anacortes, which is
25 sitting on the point up there, my experience, although it

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1 was very short, is that that was a quite airy, windy, open
2 situation. Most new refineries are built in a very open
3 pattern, and allows for a lot of air circulation. That
4 particular point up there probably is fairly windy most
5 days.

6 Q. You actually met with Dr. Selikoff; is that
7 correct?

8 A. That's correct. We had a group that visited him
9 in his laboratory at Mount Sinai Hospital.

10 Q. Okay. And what group was this that met with Dr.
11 Selikoff?

12 A. It was the metropolitan section of the American
13 Industrial Hygiene Association, and we went up to spend an
14 afternoon with him, in probably about 1970, I would judge,
15 and he went -- he reviewed -- he introduced us to his
16 associates, and we reviewed his facilities there, and then
17 he spent several hours discussing his findings with us
18 regarding his studies and the insulating -- the construction
19 insulating workers that he was looking at.

20 Q. Now, I note that you indicated that you have a
21 master's degree; is that correct?

22 A. That's correct.

23 Q. And who were some of your professors in that
24 program?

25 A. Well, the lead professor in my particular program

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1 was Ted Hatch, and he had written many books and articles,
2 world renowned in the area of pneumoconiosis-producing dust.
3 I think he was one of the experts in the field about that
4 particular matter.

5 One of the other professors was a Dr. Paul Gross,
6 and he was also interested in the field of pneumoconiosis-
7 producing dust. There was a professor Horace Belding, and
8 he was more in the physiology area than in the actual
9 industrial engineering area. But there were other
10 professors that come to mind. Emil Pfitzer was another one,
11 but there were several.

12 Q. And your knowledge of asbestos and any -- the
13 asbestosis that you talked about in response to Mr. Frockt
14 and any other diseases that may or may not be associated
15 with asbestos exposure, did that come in part from Mr.
16 Hatch?

17 A. Belding discussed the physiology of the lung and
18 how that worked, and then Hatch would concentrate on
19 particle size in the case of fiber length, aspect ratios,
20 how a fiber would or how a particle would come into the
21 lungs and then either leave or stay, and he was the
22 engineering side and clearly the expert on pneumoconiosis-
23 producing dusts of all types.

24 Q. Do you have Exhibit 20, and if you could just
25 turn to that for a moment, please. Could you turn to page

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1 012414?

2 A. 021 --

3 Q. 02414.

4 A. Okay. Okay, I have that.

5 Q. This is something that Mr. Frockt showed you; is
6 that correct?

7 A. That's correct.

8 Q. And I think you indicated in response to Mr.
9 Frockt that this is the first time that you saw this was
10 today; is that correct?

11 A. That's correct.

12 Q. Now, there's a section on -- that talks about
13 asbestosis. Do you see that about the middle of the column
14 on the right?

15 A. Yes, I do.

16 Q. Can you just read that first sentence, please.

17 A. "Asbestosis -- confined to a limited and
18 specialized group of industries -- is due to the inhalation
19 of dust of a fibrous mineral, chiefly chrysotile, in the
20 manufacture of nonflammable textiles, insulation materials,
21 brake and clutch linings, asbestos-cement sheets, tiles,
22 electric conductors, cables, and molded goods."

23 Q. Any of those areas cover a refinery that you've
24 just read?

25 A. No.

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1 Q. Now, could you turn to the next page, please.

2 012415.

3 A. Okay.

4 Q. And I know the writing is small, but if you look
5 at footnote -- and I think it might be 12. There's a
6 reference to Drinker and Hatch. Do you see that?

7 A. Yes.

8 Q. Was that the Hatch that you were referring to?

9 A. Yes, it was.

10 Q. That's someone that you received some instruction
11 from in graduate school; is that correct?

12 A. Oh, quite a bit of instruction.

13 Q. Now, I apologize for going back, but when we were
14 talking about the differences between with what Dr. Selikoff
15 had discussed concerning the exposures there as opposed to
16 Anacortes, were you also, for example, at the Texaco's Port
17 Arthur refinery?

18 A. Yes, I was.

19 Q. Could you just tell us, please, and describe the
20 differences that you recall concerning the type of facility
21 and in the setup at Port Arthur as opposed to Anacortes,
22 just in general terms?

23 A. Sure. And actually I'd like to throw in two
24 plants. Convent, Louisiana and Anacortes were the last two
25 refineries built for Texaco. The concept was much more

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1 different than that at Port Arthur. The units were very
2 open. You had long runs to the cooling towers so you
3 weren't confined in by those, but it was just a very open,
4 airy concept that you didn't find at Port Arthur, which was
5 built in sections, many, many years before that. Not that
6 the Port Arthur refinery wasn't closed, but the units could
7 have been closer together, and you didn't get the same
8 openness that you got in some of the units like was more
9 typical in Anacortes.

10 Q. Now, Mr. Frockt asked you some certain questions
11 about Texaco's awareness that asbestos caused cancer, and I
12 think he asked you some questions about that. Was there a
13 threshold limit value that was in place in 1972? Did OSHA
14 have a TLV?

15 A. Yeah. Actually, I think they promulgated a
16 emergency temporary standard, which was probably good for
17 six months, and then they would have promulgated a permanent
18 standard for asbestos, and I think that was somewhere around
19 '72. Could have been beginning, end, but somewhere in that
20 time frame.

21 Q. How do those levels of exposure through the TLV
22 affect any statements that you've given concerning any
23 awareness that asbestos might cause cancer?

24 A. Maybe could you repeat that.

25 Q. Sure. Mr. Frockt asked you certain questions

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1 concerning when Texaco was aware or might have been aware
2 that asbestos caused or may cause cancer, and what type of
3 levels or exposures or does the TLV take -- come into play
4 when you were responding to Mr. Frockt's questions?

5 A. Okay. To me you had a sea change with regard to
6 the concerns about asbestos in 1970, '71, '72, and that sea
7 change went from a concern over asbestosis looking at the
8 TLV, the ACGIH's TLV, which was the total dust, five
9 millions of particles per cubic foot of air where you did
10 not measure fibers, to the OSHA standards, which I think
11 went to two fibers per CC or five fibers per CC greater than
12 five microns in length initially.

13 And in that case you were looking to protect both
14 from asbestosis and from any potential causes of cancer. So
15 there was a dramatic difference in the standard that was
16 applied, and the technique that you would use to measure
17 that particular -- those types of exposures.

18 Q. Now, Mr. Frockt asked you certain questions
19 concerning Mr. Jameson and his work at the refinery. And
20 you've reviewed certain records that we produced to the
21 plaintiffs, part of his personnel files; is that correct?

22 A. That's correct, yes.

23 Q. Do you recall whether or not Mr. Jameson was
24 classified as an insulator?

25 A. I don't recall that he was ever classified as an

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1 insulator through his eight years with the company.

2 Q. Now, Mr. Frockt read to you a portion of Mr.
3 Dooley's 1949 industrial hygiene study. Do you recall him
4 reading to you part of it?

5 A. Generally.

6 Q. Okay. Generally, he read to you a portion that
7 stated in part: Asbestos dust, if inhaled in sufficient
8 amounts and for a prolonged period, will cause a lung
9 fibrosis termed, quote, asbestosis, close quote. The max --
10 I'm not sure if he read this or not. The maximum allowable
11 concentration of asbestos dust in the breathing zone of
12 workers has been set at 5 million particles per cubic feet
13 of air. Naturally, the percentage of asbestos in the dust
14 to which the employee was exposed during crushing and
15 bagging of insulation would be low because of the high
16 magnesia content of the material. Even so, assuming that
17 the dust contained 15 percent asbestos, the exposure during
18 the crushing and bagging of insulation were in excess of the
19 maximum allowable concentration.

20 A. Okay. He did not read that whole statement, no,
21 he did not.

22 Q. Now there was a research to 5 million particles
23 per cubic feet of air. Was that the TLV that we've been
24 talking about?

25 A. That's correct.

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1 Q. Now, Mr. Dooley also initiated another report
2 after 1959; is that correct -- I'm sorry, '49.

3 A. '49, report in 1952, that's correct.

4 Q. And in '52, you're familiar with that in general
5 terms; is that right?

6 A. That's correct.

7 Q. And in general terms did that '52 report -- what,
8 if anything, did that say concerning asbestos or asbestos
9 exposure?

10 A. It did not address asbestos, which to me
11 indicated very clearly, based on Allan's practices, my
12 practices, and subsequent IHS in the Texaco program
13 practices -- when you went to a plant you pulled that
14 previous report or reports, and you specifically looked at
15 those particular areas to make sure that compliance had been
16 achieved with your recommendations. So in the absence of
17 saying anything about asbestos, I'm sure that particular
18 location was corrected to Allan's satisfaction.

19 Q. Now, Mr. Frockt asked certain other questions
20 about what Mr. Dooley knew or did or didn't do at the
21 refinery in Anacortes, and I don't recall if he showed you
22 today the response from the Anacortes refinery to the API
23 requests for information on insulators. Do you recall?

24 A. No. We only looked at the Port Arthur response.

25 Q. Do you recall that there was a response from the

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1 Anacortes refinery?

2 A. Yes, I do.

3 Q. Who was it? Dr. Noble?

4 A. Dr. Noble put that report together, correct.

5 Q. Was Mr. Jameson listed in that, do you recall?

6 A. No. No, he was not.

7 Q. Do you recall generally what those findings were?

8 A. They were negative. I think they reported on two
9 employees who had been involved in insulation for a number
10 of years, and other than some short-term absences there was
11 no -- there are no unique findings regarding those two
12 employees.

13 Q. At the Anacortes?

14 A. At the Anacortes refinery, correct.

15 Q. Now, do you know whether or not Mr. Drummond ever
16 spoke with Dr. Noble about Dr. Noble's findings?

17 A. It would not be unusual for that conversation to
18 take place. The safety supervisor worked very closely with
19 the doctors and the medical department, and conversations
20 would have taken place almost on a daily basis.

21 Q. When you were at the refinery, do you recall
22 meeting with the medical personnel?

23 A. Yes, I do.

24 Q. When you had a -- your meeting in the refinery,
25 that's the Anacortes refinery?

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1 A. That's correct.

2 Q. Do you recall being advised, or what if anything
3 did the medical personnel up in Anacortes tell you about
4 asbestos in the refinery?

5 A. Well, by 1975 we were fairly along in the
6 program, and we would have discussed lung function testing
7 findings. We probably would have discussed x-ray findings
8 in a general sense. We were not privy to personal medical
9 records, but it would have been a general sense of how is
10 the program working, how is the medical monitoring going,
11 and are things in place and calibrated and the way they
12 should be. So these were typical topics, particularly
13 around that time frame when we got to those different
14 plants.

15 Q. Were you advised by any of the doctors at
16 Anacortes that there was any problem related to the health
17 of any of the workers at that refinery associated at all
18 with asbestos or asbestos exposure?

19 A. As best I can recall, absolutely not. And I
20 think in that time frame I would have remembered something
21 that if it would have been of some concern.

22 MR. MESHER: Let me just take a break. I think
23 Mr. Frenkel has a question. We'll go off the record.

24 THE VIDEOGRAPHER: Certainly. The time is 4:32.
25 We're taking a break in the testimony.

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1 (Recess.)

2 THE VIDEOGRAPHER: The time is 4:38 p.m. We're
3 now back on the record.

4 BY MR. MESHER:

5 Q. Mr. Richards, just a few follow-up questions. We
6 had talked about -- you had talked about Mr. Dooley. Are
7 you aware that in 1960 that there was a potential noise
8 issue at the refinery in Anacortes in certain correspondence
9 with Mr. Dooley?

10 A. I recall that he had scheduled a visit, yes.

11 Q. How did that letter affect Mr. Dooley's scheduled
12 visit to the refinery?

13 A. Well, actually, I guess his -- he initially
14 scheduled it, I think, for early '61, but he found an
15 opening several months prior to that time and went out there
16 sooner than he originally planned to address the issue.

17 Q. Did that surprise you at all that Mr. Dooley
18 altered his schedule in response to this correspondence from
19 the Anacortes refinery indicating a potential noise problem?

20 A. No. In fact, I saw Allan do that on other
21 occasions where we advanced our particular schedule to visit
22 something because of someone expressing a concern. And so
23 this didn't surprise me at all. He was a very conscientious
24 guy, and if he thought that someone had a concern, he would
25 try to address it as soon as possible.

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1 Q. Not just a noise concern but --

2 A. No. And of course when he was there it's not
3 unusual to walk around the whole plant, and I'm sure if he
4 had seen something else that would have concerned him at all
5 he would have mentioned it in his report. You don't go
6 there for one thing. I mean, while you're there, take a
7 walk around.

8 Q. Is that part of training as an industrial
9 hygienist to look around and see what's there to be seen?

10 A. Well, it seems -- I was trained that way. I'm
11 sure Dooley was trained that way. The other people with
12 other backgrounds, whether it was Jim Licata or Herschel
13 Hobson, all seemed to follow the same sort of procedures.
14 So when you were there you took a look at everything, and if
15 something perked your interest you'd stay a little while
16 extra or come back and take a look at it.

17 Q. Now, Mr. Frock asked you certain questions about
18 sampling and words to the effect or questions, why was there
19 more sampling in 1971 or '72 or that time frame or
20 thereafter. What, if anything, did the evolution of
21 knowledge in the field of asbestos have to do with this
22 sampling or change in the frequency of sampling?

23 A. Well, certainly you had developed a much simpler
24 technique where you could really get in there and take
25 breathing zone samples so you could evaluate the individual

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1 not only in his breathing zone where he was exposed to for
2 short terms, long terms, but also now you were actually
3 evaluating the asbestos concentration. You weren't dealing
4 with total dust.

5 So I think there was an interest in getting many
6 samples after that technique changed and the TLV or the OSHA
7 standard was changed to allow you to use that different
8 technique. So, there was a, I'd characterize it, a flurry
9 of sampling by many in the early '70s.

10 Q. Now, Mr. Jameson testified in his deposition and
11 in responses to interrogatories that starting in about
12 September of 1972 through June of 1995 that he worked as a
13 high school teacher in the Eatonville School District. Let
14 me have you just assume that.

15 A. Okay. I think I sort of remember something along
16 those lines.

17 Q. And that prior to that time he was an instructor,
18 at least starting from January of '71 through June of '71
19 and June of '71 through June of '72 with Skagit Valley
20 College in Mount Vernon, Washington. Do you recall
21 reading that?

22 A. Well, I sort of remember it, yes.

23 Q. You also recall at a period of time that there
24 were certain governmental regulations or certain regulations
25 that pertained to asbestos in the schools?

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1 A. Well, certainly the EPA got involved in the
2 situation, and they tore out a lot of acoustical tile. Some
3 schools from the standpoint weren't able to open on time
4 because of the replacement of acoustical tile that may have
5 contained some asbestos. So I'm sure there was a lot of
6 public knowledge going on at that time about the concerns
7 over asbestos.

8 Q. So the EPA had indicated that there was a concern
9 about asbestos exposure from people who were in the schools;
10 is that correct?

11 A. That's correct, yes.

12 Q. Not just from ceiling tiles but from --

13 A. From other materials that might be used, yeah.
14 Made a lot of press in our papers.

15 MR. MESHER: I have no additional questions at
16 this time.

17 MR. FRENKEL: He asked my questions.

18 MR. FROCKT: You're not going to ask any?

19 MR. FRENKEL: No, he asked mine.

20 MR. FROCKT: I have a couple.

21
22 EXAMINATION

23 BY MR. FROCKT:

24 Q. Sir, I want to clarify something. In response to
25 -- Mr. Marks asked you a couple of questions about the

223
1 contractor studies, and you referred to it, I believe, as
2 the Kettering studies that some contractors did for Texaco?
3 A. Oh, well, the studies I remember reading, Texaco
4 contracted with Kettering Laboratories in Cincinnati to do
5 studies within the Texaco refineries. Again, I don't
6 remember the exact locations, the substances or the time
7 frame. It would have been sometime probably in the '60s,
8 but that was a specific contract between Texaco and
9 Kettering.

10 Q. So you're not aware -- you said the substances.
11 You're not aware if the contracting, the contracts in that
12 -- from those studies called for Kettering to evaluate
13 asbestos exposures at Texaco; is that right?

14 A. I'm not aware either way, so I can neither deny
15 it nor affirm it, but I know they did studies, I think in
16 several locations, and for several substances.

17 Q. But you're not aware if they did any testing for
18 asbestosis specifically? You just don't know; is that
19 correct?

20 A. I'm not aware either way, that's correct.

21 Q. Now, Mr. Mesher asked you about the two
22 insulators that were reported in the API study from -- that
23 were from Anacortes. Do you recall that?

24 A. Correct.

25 Q. Certainly you would not agree that -- I mean, you

224
1 I don't believe that two insulators is a statistically
2 significant sample from which you can make a determination
3 one way or the other that a particular activity in regards
4 to insulation at Anacortes was safe or not, do you?

5 A. Well, that's why you were joining all of the
6 Texaco locations and, in fact, the other petroleum companies
7 into a study where you could reach, if it was there, some
8 statistical significance. No, I would not draw any
9 conclusion from two individuals. I would not draw
10 conclusions from two case studies of any type, but you
11 gather these -- the cohort, if you will -- that's what it's
12 called -- together to test the hypothesis that you want to
13 test.

14 Q. And I think we talked about this before, but that
15 the API 1965 study that Texaco participated in was never
16 completed; is that right?

17 A. Not to my knowledge, no.

18 Q. So there were no conclusions drawn, is that what
19 you're saying?

20 A. The only conclusion I can think of is, even with
21 the additional data that was drawn in on the second request,
22 it was, I guess, inconclusive one way or the other.

23 Q. But I thought you said it was never completed.

24 A. Well, I never saw a formal report of the
25 completion of the study.

225

1 Q. What leads you to believe that it was
2 inconclusive?

3 A. I think knowing Les Levin, who was on the
4 subcommittee, knowing Bob Diakun, and even before he left --
5 he left the state of Pennsylvania to go to Exxon. Those are
6 the kind of people that would finish something if they had
7 some results to report. And in the absence of some sort of
8 formal report -- and this is hypothetical -- I feel they did
9 not have sufficient data to reach some sort of conclusion.

10 Q. So you're sort of speculating?

11 A. I'm speculating on that, yes, I am.

12 Q. You don't know for a fact what the reason the
13 study was not completed?

14 A. No, I didn't.

15 Q. Because I asked you that previously and you said
16 you didn't know?

17 A. That's right. I did not know.

18 Q. Now, did you read Mr. Jameson's deposition?

19 A. I don't recall. I could have looked at excerpts,
20 but I don't recall it in any kind of detail.

21 Q. Am I incorrect? I thought Mr. Mesher just asked
22 you if you recalled certain things from Mr. Jameson's
23 deposition.

24 A. I recall certain things, but, you know, I
25 couldn't quote chapter and verse what he said.

226

1 Q. So you didn't read all the deposition, right?

2 A. I read some, but it was a while ago.

3 Q. Did you read the part where he talked about him
4 personally working with asbestos insulation as a craft
5 helper?

6 A. I could have read it. I don't recall in detail
7 what it said.

8 Q. And even though he may not have ever been
9 classified formally by Texaco as an insulator, you're not
10 saying, to your knowledge, that he didn't work as a craft
11 helper, are you, based upon what you reviewed?

12 A. Well, his job title in the personnel files was
13 craft helper. Now, what that encompassed could have varied
14 from location to location. I'm not specifically
15 knowledgeable about what his duties were at Anacortes.

16 Q. So you would certainly concede that it would be
17 possible for a craft helper to work directly handling,
18 cutting, knocking off asbestos insulation from a flange or
19 pipe with a wrench, which are some of the things I recall
20 that Mr. Jameson testified about. You're not saying that
21 that's impossible for somebody who is classified as he was
22 to do, are you?

23 A. It's not impossible, but I think the plant looked
24 at someone who was doing insulation on more or less a
25 full-time type of basis classified as an insulator.

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1 Q. Are you aware of the fact that insulators had
2 craft helpers specifically assigned to help them? Did you
3 know that that was how they were structured at Anacortes?

4 A. No, I don't recall that.

5 Q. Well, let me show you a document.

6 MR. FROCKT: And I apologize. I only have one
7 copy of this.

8 (Marked Deposition Exhibit 27.)

9 MR. MESHER: Let me just take a look at it. Do
10 you mind if we take a quick look at it, counsel?

11 MR. FROCKT: No, of course.

12 MR. MESHER: Thank you.

13 Q. Do you want to take a look through it, Mr.
14 Richards?

15 A. (Complying.)

16 Q. Mr. Richards, I realize it's a very long
17 document, and --

18 A. Just paging through.

19 Q. Let me see if I can kind of shorten this up. If
20 your counsel wants to ask you some questions about it after
21 I'm done he will certainly have an opportunity to do that.

22 A. Sure.

23 Q. See, this document, No. 27 --

24 A. Exhibit 27.

25 Q. Exhibit 27.

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1 -- would you agree with me that it appears to be
2 a training manual for insulators from the Puget Sound plant?

3 A. Insulator, insulator trainee in parentheses.

4 Q. And it's dated June 18, 1973; is that correct?

5 A. That's correct.

6 Q. And as you go in after the basic training index,
7 beginning on page No. 5 there's a date there that says April
8 3, 1973?

9 A. Correct.

10 Q. Now, I'm just giving you this document just as it
11 was produced to us in this case. These are all in sequence
12 as far as I know. Turn to page 6. Says there, on the last
13 paragraph: "since the insulator's work may involve other
14 crafts or affect several operating departments, it is
15 essential that he closely coordinate his work and cooperate
16 with others in order to do a safe, workmanlike job."

17 Clearly, that sentence would seem to imply that
18 insulators had work that would involve any number of crafts
19 that were working at the Anacortes refinery. Would you
20 agree with me on that?

21 A. Well, to me I read that as other crafts could be
22 in the area where he's particularly working.

23 Q. So we can agree, then, that other craftsmen could
24 be in the area where an insulator would be working?

25 A. Could be. Again, I don't know at which time

229

1 frame.

2 Q. Well, this document -- that paragraph I read you

3 certainly doesn't say anything about time frame.

4 A. By time frame I mean if the insulator was at that

5 point stripping or adding new stuff or just putting some

6 metal lath on. You know, it may involve other crafts in the

7 area to me at selected times.

8 Q. Now, it says if you turn to the next page, page

9 7, it says at No. 6: "It is an insulator's responsibility

10 to see that his job progresses in a safe, working manner,

11 keep his helpers lined up and working, and to know where his

12 helpers are at all times."

13 A. I'm on page 7. Where are you at?

14 Q. Page 7, No. 6.

15 A. Okay.

16 Q. Would you agree with me that that statement right

17 there certainly implies that an insulator is going to be

18 working very closely with his helper, an insulator helper;

19 isn't that correct?

20 A. It may or may not imply that.

21 Q. You don't think that that's what that statement

22 implies?

23 A. I don't know what that statement says. The

24 statement is in this document, and I think it's open to

25 interpretation whether he's doing a supervisory type of

230

1 situation where he has his helpers lined up in some area in

2 making sure they're going ahead or whatever.

3 Q. Now, at No. 8 it says, "Instruct his helpers of

4 proper tool handling and work procedures on the job."

5 Certainly you would agree with me there that that would seem

6 to imply that an insulator would have some close contact

7 with his own helper? I mean the helper is there to help the

8 insulator; isn't that right?

9 A. Again, I don't see that as necessarily the

10 situation. It talks about instructing his helpers in the

11 proper handling of tools and work procedures.

12 Q. So you think that you could -- that this document

13 may mean that the insulator might be instructing the helper,

14 but he really wouldn't have any close contact with the

15 helper?

16 A. I mean, it could imply other things, but the

17 document speaks for itself and is open to interpretation.

18 Q. Well, I'm asking what your views of the document

19 are --

20 A. Well, okay.

21 Q. -- since we had some questions about what Mr.

22 Jameson did.

23 Now, on page 8, No. 13, states there that "It is

24 an insulator's responsibility to train and instruct a craft

25 helper or trainee in the methods and procedures of his trade

231

1 whenever so assigned by his supervisor." Do you see that?

2 A. Yes, I do.

3 Q. Certainly it would seem, according to that

4 paragraph, that it would be specifically contemplated that

5 a craft helper who was assigned to an insulator might end up

6 doing some of the exact same things that an insulator did.

7 Do you agree with that?

8 A. That could imply that because it talks about his

9 trade. I mean, the words "his trade" could imply to the

10 trades that the craft helper does or the trainee does, or it

11 could apply to the insulator's trade.

12 Q. Well, there's a lot to go through in this

13 document, but I'm not going to do it today. I would note,

14 however, Mr. Richards, that the date of April 3, 1973, am I

15 correct that that's after Texaco came out with its directive

16 for refineries to try to convert to asbestos-free materials?

17 A. That would be after the date, yes.

18 MR. MESHER: Can I just take a look, counsel?

19 You don't mind if we look at this, do you?

20 MR. FROCKT: No, of course not.

21 Q. Mr. Mesher asked you some questions about the

22 testimony of Jack Drummond and some of my questions

23 pertaining to that testimony. You recall that, I assume,

24 because he raised his voice quite loudly when he was asking

25 you those questions.

232

1 A. Well, I think he was just speaking for emphasis.

2 Q. Okay, speaking for emphasis, fine. Now, sir, I

3 will say to you, I certainly was not -- had no intention to

4 misstate something that was in Mr. Drummond's testimony.

5 His testimony will speak for itself, obviously.

6 A. That's correct.

7 MR. FRENKEL: Is that a question?

8 MR. FROCKT: Can I just do my thing here?

9 A. Okay.

10 Q. So if for some reason you feel that I misstated

11 something or if I did misstate something, it certainly was

12 not intentional, so I want to apologize for that if I did

13 misstate something.

14 Having said that -- I want to point out a couple

15 of things that Mr. Mesher did not ask you.

16 On page 42, Mr. Mesher did not read to you the

17 question that I asked Mr. Drummond where I asked him: "what

18 about with respect to insulating activities? Were there

19 regulations that respirators needed to be used during

20 insulating activities?"

21 After his objection the answer from Mr. Drummond

22 was: "I don't recall in 1967 that there were."

23 Next question: Was there -- were there any point

24 in time, in any time specifically with regard to insulating

25 activities during your tenure as safety supervisor?

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1 "ANSWER: Yes.
 2 "When did those come into play?
 3 "ANSWER: Those came into play after the asbestos
 4 problem came to light and specific instructions were given
 5 at that time.
 6 Question was: "Can you tell me what year that
 7 was, sir?
 8 "ANSWER: I can't recall the year. Again, this
 9 is sometime in the mid 1970s, as I recall."
 10 Mr. Mesher didn't advise you that those were some
 11 of the questions that I asked Mr. Drummond either, did he?
 12 A. No, but it's interesting to note that Jack
 13 Drummond said he didn't recall. To me that's one way or
 14 the other.
 15 Q. Then on page 56, I asked Mr. Drummond: "Sir, in
 16 1967, are you aware of any safety measures whatsoever that
 17 were in place that pertained to asbestos hazards at the
 18 Anacortes refinery? His answer was, "No, I don't."
 19 Did Mr. Mesher advise you that Mr. Drummond had
 20 answered in that way?
 21 A. No, he did not.
 22 MR. FROCKT: No further questions.
 23 MR. MESHER: Just a couple of follow-up.
 24
 25

234

1
 2 EXAMINATION
 3 BY MR. MESHER:
 4 Q. The document that Mr. Frockt was --
 5 MR. MESHER: I'm sorry, did you guys have any
 6 questions? Just a couple of follow-up questions.
 7 Q. The document that Mr. Frockt was referring to,
 8 Exhibit 27, that's dated June 18, 1973; is that correct?
 9 A. That's correct.
 10 Q. And it's your understanding that Mr. Jameson
 11 resigned from Texaco in September of 1966; is that correct?
 12 A. I recall that, yes.
 13 Q. So do you know whether or not what is contained
 14 in Exhibit 27 was in effect back in 1966?
 15 A. I don't know one way or the other, but it might
 16 be unlikely.
 17 Q. Now, prior to 1972, was there -- the threshold
 18 limit values, did they have an emphasis on asbestos dust or
 19 total dust?
 20 A. Prior to 1972 the TLV -- the ACGIH TLV, the
 21 emphasis was total dust, control of total dust, and more
 22 than likely you will control the asbestos dust.
 23 Q. And the refinery in Mr. Drummond's deposition
 24 made respirators available for persons who were exposed to
 25 dust of any type; is that correct?

235

1 A. That's what I recall, yes.
 2 Q. And so whether or not there were -- there was an
 3 emphasis on asbestos dust, the TLVs didn't address asbestos
 4 dust in 1966, did they?
 5 A. No. They talk about total dust.
 6 Q. So if the Texaco refinery in Anacortes through
 7 Mr. Drummond and otherwise were making respirators available
 8 for all of their own employees for all dusts, was that in
 9 compliance with what was the thinking of the time concerning
 10 the TLVs and dust?
 11 A. It certainly could have been. It could have been
 12 one of the control measures that was applied.
 13 Q. So that when Mr. -- when Mr. Drummond responded
 14 to certain questions -- and frankly, I thought I did ask the
 15 one question when Mr. Drummond said "I don't recall," and he
 16 didn't recall one way or another on a threshold limit for
 17 asbestos in 1967. Mr. Drummond in fact, if you recall, in
 18 his deposition said that respirators were used for dust in
 19 1967. Do you recall that?
 20 A. Yes, I do.
 21 Q. And when respirators were used for dust, that
 22 would include asbestos dust; is that correct?
 23 A. That's correct.
 24 MR. MESHER: Thank you. I have no additional
 25 questions.

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1 EXAMINATION
 2 BY MR. FROCKT:
 3 Q. Is it your testimony that there was no -- that
 4 prior to 1972 there were no threshold limit values in place
 5 whatsoever that pertained specifically to asbestos dust?
 6 A. The TLV in place prior to 1972 was a measurement
 7 of the total dust, and the feeling was -- the collective
 8 expertise was if you controlled the total dust that you were
 9 measuring to 5 millions of particles per cubic feet of air,
 10 you would in fact control the asbestos dust within that
 11 overall picture, because what you measured in the midget
 12 impinger was you measured total dust. You specifically did
 13 not count any fibers that were present in that sample. So
 14 you were measuring total dust using that as a surrogate to
 15 control the asbestos dust.
 16 Q. So if the Industrial Hygiene Digest routinely
 17 published threshold limit values that specifically said
 18 asbestos dust, that what the TLV was for asbestos dust, say
 19 in the 1950s, is it your opinion that that's not stating an
 20 accurate TLV?
 21 A. That certainly was the TLV for asbestos dust, but
 22 what I'm saying is you measured total dust, and you
 23 specifically did not count the asbestos fibers that were
 24 present.
 25 MR. FROCKT: No further questions.

1 MR. MESHER: I have no further questions. For 237
2 the record, all objections including to the form of the
3 question and the response and anything having to do with any
4 of the exhibits are specifically not to be interjected into
5 this deposition. Anyone reading this deposition or the use
6 in any other case or any other time should be aware of the
7 fact that there have been no objections based on court
8 order, and that if anyone intends to use this deposition at
9 any time in any location in any jurisdiction that they need
10 to be aware that all of the objections need to be asserted
11 prior to such use. Thank you.

12 THE VIDEOGRAPHER: If there are no further
13 questions, I'll bring this tape to a close and we'll go off
14 the record. The number of tapes used in today's deposition
15 were four. This concludes today's deposition of Ronald
16 Richards. We are going off the record. The time is 5:06
17 p.m.

18 (Deposition concluded at 5:06 p.m.)
19
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25

C E R T I F I C A T E

1
2
3 STATE OF WASHINGTON)
4) ss.
5 COUNTY OF KING)
6

7 I, the undersigned Notary Public in and for the
8 State of Washington, do hereby certify:

9 That the annexed and foregoing deposition of each
10 witness named herein was taken stenographically before
11 me and reduced to typewriting under my direction;

12 I further certify that the deposition was
13 submitted to each said witness for examination, reading
14 and signature after the same was transcribed, unless
15 indicated in the record that the parties and each
16 witness waive the signing;

17 I further certify that all objections made at the
18 time of said examination to my qualifications or the
19 manner of taking the deposition, or to the conduct of
20 any party, have been noted by me upon said deposition;

21 I further certify that I am not a relative or
22 employee or attorney or counsel of any of the parties
23 to said action, or a relative or employee of any such
24 attorney or counsel;

25 I further testify that I am not in any way

A F F I D A V I T

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1
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5 COUNTY OF KING)
6
7 I declare under penalty of perjury that I have
8 read my within deposition, and the same is true and
9 accurate, save and except for changes and/or
10 corrections, if any, as indicated by me on the
11 correction sheet hereof.

12
13 _____
14 RONALD RICHARDS
15
16
17
18
19

20 Dated this _____ day of _____, 2003.
21
22
23
24
25

1 financially interested in the said action or the outcome 240
2 thereof;

3 I further certify that each witness before
4 examination was by me duly sworn to testify the truth,
5 the whole truth and nothing but the truth;

6 I further certify that the deposition, as
7 transcribed, is a full, true and correct transcript of
8 the testimony, including questions and answers, and all
9 objections, motions, and exceptions of counsel made and
10 taken at the time of the foregoing examination.

11
12 IN WITNESS WHEREOF, I have hereunto set my
13 hand and affixed my official seal this _____ day of
14 _____, 2003.
15
16
17
18

19 _____
20 CHERYL MACDONALD
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23 the State of Washington,
24 residing at Seattle.
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DATE: August 26, 2003

TO: BARRY MESHER
1420 Fifth Avenue
Suite 4100
Seattle, WA 98101

IN RE: JAMESON VS. SABERHAGEN, ET AL.

DEPOSITION(S) OF: RONALD RICHARDS

DATE OF DEPOSITION: August 19, 2003

Enclosed is your copy of the deposition of the above-named
deponent plus a correction sheet and signature page. Please
have the deponent read the deposition, sign the correction
sheet and signature page. The signed correction sheet and
signature page should then, within 30 (thirty) days be
forwarded to:

DAVID FROCKT
17530 Vashon Hwy SW
Vashon, WA 98070

who is retaining the original of the deposition.

Sincerely,
MOBURG & ASSOCIATES

BY: CHERYL MACDONALD, CCR

CC: David Frockt
Christopher Marks

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