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DATE: 1994

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DOCUMENT DESCRIPTION: Dr. Abrams RE Intimidation; Direct Testimony
by Mr. Motley

05814

IN THE CIRCUIT COURT OF KANAWHA COUNTY
WEST VIRGINIA

pec end

IN RE: ASBESTOS

Civil Action
No. 92-C-8888

VOLUME XXII

Transcript of the proceedings had and
testimony taken in the trial in the above-
styled action before the Honorable Andrew
MacQueen, Judge, and a jury, commencing on
Thursday, the 12th day of May, 1994.

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Abrams*

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I-N-D-E-X

Volume XXII

EXAMINATION

WITNESS:

PAGE:

SAMUEL LISH

1 relative to the health hazards of insulation
2 products. At the committee's first meeting they
3 should establish a policy, establish a program to
4 implement the policy, and establish a budget.

5 BY MR. MOTLEY:

6 Q. Now, Doctor, I want to turn to a
7 totally different area.

8 MR. GARRARD: Mr. Motley, am I
9 correct that at this point --

10 MR. MOTLEY: Yes. I'm sorry.

11 Ladies and gentlemen of the jury,
12 from now until I say otherwise, or the Judge says
13 otherwise, I'm going to be discussing the case
14 against Metropolitan Life and not these other
15 folks.

16 BY MR. MOTLEY:

17 Q. Doctor, what did I just hand
18 you?

19 A. I didn't catch that.

20 Q. What did I just hand you?

21 A. You handed me what is called,
22 Diatomaceous earth, pneumoconiosis, California,
23 1952, a brief summary of some items of public

1 health interest.

2 Q. Tell the ladies and gentlemen of the
3 jury who generated that document, who put it
4 together.

5 A. I did.

6 Q. You did?

7 MR. McKENNA: Excuse me. Could I
8 see the document?

9 MR. MOTLEY: Plaintiffs' Exhibit
10 5309.

11 MR. McKENNA: Judge, may we approach.
12 (Bench conference.)

13 MR. McKENNA: Judge, this is a
14 document that purports to summarize many of the
15 same claims he put in his article. And before
16 Mr. Motley gets going too much with it, I would
17 object to the document going into evidence if he
18 plans on moving it into evidence.

19 I object to it going into evidence
20 if he is going to move it into evidence. I also
21 would object to the witness reading from the
22 document.

23 Now, if he wants to use it to refresh

1 (Open court.)

2 BY MR. MOTLEY:

3 Q. You were the chief of the Bureau of
4 Adult Health from 1947 through 1952; is that
5 correct?

6 A. Correct.

7 Q. Now, how did the document in front
8 of you, Plaintiffs' Exhibit 5309, come into
9 being? How was it created, for what purpose?

10 A. I put it together. I wrote parts of
11 it, put other items together, simply to put
12 together all the salient facts about the
13 diatomaceous earth situation.

14 Q. What did you do with it once you
15 finished it?

16 A. Well, I left it with the Bureau of
17 Adult Health, and I gave it to my superior at the
18 time, Dr. Dyar, and I believe that was it.

19 Q. Was it in the nature of a report?

20 A. Yes, it was. It was a summary of
21 the whole thing putting together all the major
22 events of that period.

23 Q. Who was your superior?

1 A. Robert Dyar, who was -- D-Y-A-R --
2 he was the chief of the division of preventive
3 medical services of the California State Health
4 Department, and my bureau was a bureau under him.

5 Q. Why did you prepare a report and
6 give it to Mr. Dyar?

7 A. I simply wanted him to know about it
8 and transmit it to whoever needed to take action
9 on it. If action were, if further action was
10 necessary, I simply wanted to put the facts on
11 record.

12 Q. And did you prepare that in the
13 course of your official business as chief of the
14 Bureau of Public Health?

15 A. Oh, yes, yes, of course. It was all
16 typed there in my office, or in our headquarters
17 there.

18 Q. You left California in 1952;
19 correct?

20 A. That's right, yes.

21 Q. And you said you wanted to leave
22 some history of what had occurred. Why did you do
23 that? Why did you want to leave a history of what

1 had occurred?

2 A. I thought it important that people
3 should know it.

4 Q. And you mentioned something about
5 action that was about to be taken or was being
6 taken. What did you mean by that?

7 A. Well, of course, by that time -- we
8 had, of course, up to this point we had been
9 discussing what further action to take on the
10 situation since the diatomaceous earth silicosis
11 episode had gotten into the public press and was
12 causing a lot of concern.

13 And one of the proposals that we
14 were discussing was to do a definitive
15 industry-wide study of the health problems of the
16 diatomaceous earth industry. That was the main
17 action that came out of this, actually, and that
18 study was done subsequently.

19 Q. I hand you a copy of an article,
20 entitled "Diatomaceous Earth, Pneumoconiosis,"
21 1954.

22 A. Yes. All right.

23 Q. Did you prepare that?

1 A. I did. And this was a paper I
2 delivered at the National Convention of the
3 American Public Health Association in 1953 and
4 then was printed in May of 1954 in the American
5 Journal of Public Health.

6 MR. McKENNA: Your Honor, can we
7 approach the bench?

8 (Bench conference.)

9 MR. McKENNA: This is another
10 rendition of what happened at California. We
11 seem to be having a lot of other renditions and
12 aren't getting to what he has got to say, but
13 this is another article he has published about
14 this subject matter.

15 MR. MOTLEY: Judge, I should be
16 allowed to present the fact that this man
17 memorialized at or about the time of these events
18 these matters to show his credibility.

19 JUDGE MacQUEEN: I'm not sure that
20 your objection is not with some foundation. I
21 think at this point it's premature. Let me hear
22 the background.

23 MR. McKENNA: But they are putting

1 it up on the TV screens.

2 MR. MOTLEY: Judge, if the man had
3 written an article on asbestos disease, I could
4 show the jury the fact that he had written an
5 article on asbestos disease.

6 MR. McKENNA: I don't mind you
7 asking him whether he wrote an article about it;
8 but then to flash it up in front of the jury or
9 try to show it to them, I think, is
10 improper.

11 JUDGE MacQUEEN: Get it qualified
12 before you put it up. It's admissibility is
13 there.

14 MR. MOTLEY: I am not trying to
15 admit it.

16 JUDGE MacQUEEN: Okay.

17 (Open court.)

18 BY MR. MOTLEY:

19 Q. Dr. Abrams, in addition to this
20 article "Diatomaceous Earth, Pneumoconiosis"?

21 A. Yes.

22 Q. And your report, Exhibit 5309, have
23 you in more modern years also published articles

1 in the literature that restate part of your
2 experiences with Johns-Manville and Metropolitan
3 Life in California from 1947 to 1952?

4 A. Yes. Some years later I wrote an
5 account of the episode somewhat differently, but
6 basically an account of that episode for the
7 American Journal of Industrial Medicine.
8 They were publishing at that time a series of
9 items in the history of occupational medicine, and
10 I was invited to write up that history for that
11 journal. I forget what year it was, but it is in
12 my curriculum vitae.

13 Q. I want you to -- so you have, in
14 addition to testifying here today --

15 A. Yes.

16 Q. -- in 1952 you wrote down what
17 happened; correct?

18 A. Yes.

19 Q. In 1954 you published in the
20 scientific literature what happened?

21 A. Yes.

22 Q. And you have recently published part
23 of what happened; correct?

1 A. Yes. Well, the history item I
2 published two years ago, and then, of course,
3 more recently the publication that you referred
4 to earlier, the hidden history.

5 Q. Who was Anthony J. Lanza?

6 A. Well, Dr. Lanza was a physician who,
7 when I met him for the first time, I think was in
8 1947, was at that time, I believe, medical
9 director, or words, title to that effect with the
10 Metropolitan Life Insurance Company. And he was
11 an authority in occupational medicine, had
12 written one or more books and many articles.
13 And, of course, I had read much of his material
14 and had known about him before I met him.

15 Q. Who was William Shephard?

16 A. William Shephard was a physician in
17 California with offices in San Francisco whom I
18 met when I arrived there to start the job as
19 chief of the Bureau of Adult Health, about the
20 summer of 1947, and he was introduced to me in
21 more than one capacity; that is, he was a
22 prominent physician in occupational health
23 matters. He was also a vice-president of Met

1 Life, and he was also an officially appointed
2 consultant to my bureau, to the State Health
3 Department and my bureau. So that from that time
4 on I had many encounters with him.

5 Q. Describe for the ladies and
6 gentlemen of the jury the nature of the
7 Johns-Manville operations at Lompoc, L-O-M-P-O-C,
8 California.

9 A. Yes. Lompoc is located in Santa
10 Barbara County, and there they have what at that
11 time was, perhaps even today, the largest deposit
12 of diatomaceous earth in the world. And the
13 production facility was essentially a mine and a
14 mill for obtaining diatomaceous earth out of the
15 earth and making it into various products for the
16 market.

17 Q. When did you first learn that there
18 was such a facility at -- Lompoc?

19 A. Lompoc, yes.

20 Q. Like cowpoke?

21 A. L-O-M-P-O-C.

22 Q. When did you first learn of the
23 existence of the Johns-Manville facility at

1 Lompoc?

2 A. When I arrived in California in the
3 summer of 1947.

4 Q. Did you make any effort to find out
5 anything about the operations at Lompoc?

6 A. Yes. Early on, not long after I
7 reported for work, people on my staff first told
8 me about this interesting operation. I frankly
9 had not known of diatomaceous earth. I may have
10 heard something about it, but I really didn't
11 knowing about it until I got there, and it was a
12 very interesting situation, one that I was not up
13 to that time acquainted with.

14 And I shortly thereafter made a trip
15 down with members of my staff to visit. We were
16 on very friendly terms.

17 The Johns-Manville company had a
18 part-time medical physician there at the plant,
19 he was half-time, Dr. Anderson.

20 And, of course, Dr. Reginald Smart,
21 whom I met later, was a pulmonary or lung
22 specialist in Los Angeles, who was a consultant
23 to the Manville company as well as to other

1 companies making diatomaceous earth products.
2 And I met him shortly thereafter as well and had a
3 friendly relationship with both of them over a
4 period of years.

5 Q. Would you look at page two of your
6 report, please, the report that you said you
7 prepared, left with your boss?

8 A. Yes.

9 Q. In August 1947, a combined medical
10 engineering study of the industry was proposed by
11 the Bureau of Adult Health --

12 MR. McKENNA: Excuse me, Your Honor.
13 May we approach?

14 JUDGE MacQUEEN: Yes.

15 (Bench conference.)

16 MR. McKENNA: What are you reading?
17 Are you reading from this?

18 MR. MOTLEY: Yes. When you were
19 just last up here you said I could use it to
20 refresh his recollection. I haven't offered it
21 yet.

22 MR. McKENNA: Judge, I never heard
23 somebody refresh somebody's recollection by

1 reading them something. You usually ask them
2 about the events, and then if they have trouble
3 recalling it -- I mean, is he just going to read
4 this document?

5 JUDGE MacQUEEN: Yeah. That's a
6 fair objection. Just ask him.

7 MR. MOTLEY: I move the admission of
8 it, Your Honor. He said it was an official
9 report prepared in the course and conduct of his
10 business, and he left it there for the purpose of
11 allowing a recitation of the history for the
12 purpose of guiding those who come behind him.

13 JUDGE MacQUEEN: If you want to
14 build this history based on what he knew, why
15 don't you just ask him those questions?

16 MR. MOTLEY: Because I want to put
17 the report in evidence, Judge.

18 JUDGE MacQUEEN: Let's assume that I
19 receive the report. I'm not sure that I will let
20 it go to the jury when they deliberate this case
21 anyway, because it is not unlike any other
22 report. But if the witness is present, why don't
23 you just ask him what he knows?

1 MR. MOTLEY: I would be glad to,
2 Judge. Why don't we just plod right along.

3 I would like Your Honor to --

4 Are you keeping time?

5 JUDGE MacQUEEN: Yes.

6 (Open court.)

7 BY MR. MOTLEY:

8 Q. Dr. Abrams, do you recall whether in
9 1947 any study of the diatomaceous earth industry,
10 and particularly Lompoc, was proposed by you and
11 others in the Bureau of Adult Health?

12 A. Yes. In about 1947, shortly after I
13 came and learned about the situation, I proposed
14 a definitive study be done, and members of my
15 staff who had already been in touch, had been
16 there before, told me that Dr. Lanza had assured
17 them that --

18 MR. McKENNA: Excuse me, Your Honor.
19 Hearsay.

20 JUDGE MacQUEEN: I am going to allow
21 it, not for the truth, but to show why he went
22 about the process of doing whatever it was he was
23 going to do.

1 BY MR. MOTLEY:

2 Q. Will you repeat what you said,
3 please, sir?

4 A. That I was assured by Dr. Lanza
5 through members of my staff that no study was
6 necessary, that they had adequate staff
7 themselves, they had their own industrial
8 hygienists, their own physicians, and that the
9 situation was well under control. Essentially
10 that was the message I got.

11 I should add, if I may, I had one
12 other comment to that, and that is that I was
13 told at the very same time by Drs. Anderson and
14 Smart that they were going to write this up for
15 publication because it was a fascinating story,
16 as anybody who has ever encountered this would
17 agree, and that they had autopsy material and
18 Saranac Lake had done studies on it, and so on,
19 and they were soon going to write it up for the
20 medical literature.

21 Q. Write it up meaning publish it?

22 A. Publish it in the medical
23 literature, yes.

1 Q. At some point in time, sir, did you
2 have a meeting at the Mark Hopkins Hotel in San
3 Francisco?

4 A. Yes, I did. It was around that
5 time. I would have to check it to be sure. I
6 think I mentioned it in here somewhere.

7 Do you want me to describe that?

8 Q. Yes, on page two, I believe. But you
9 can't read it. Just refresh your memory.

10 MR. McKENNA: Your Honor, they're
11 doing it again.

12 JUDGE MacQUEEN: He can look at it
13 to refresh his recollection.

14 MR. McKENNA: I don't mind him
15 refreshing his recollection, but I would like to
16 hear his recollection first and have him say he
17 can't recall the event.

18 JUDGE MacQUEEN: He said he needed
19 to recheck for the date. He can do that.

20 MR. McKENNA: I don't mind him doing
21 that either, but I would like his recollection.
22 He seems to be reading the document.

23 JUDGE MacQUEEN: Go ahead, Doctor.

1 You can tell us when this was.

2 THE WITNESS: It is almost a half a
3 century old, and I need to refer to my notes on
4 these things.

5 JUDGE MacQUEEN: Go right ahead.

6 THE WITNESS: Thank you.

7 A. Well, I can quote this. During the
8 same period we and, I and others had been led to
9 believe that the situation was under control,
10 there were no new cases arising.

11 Q. Why no new cases?

12 A. All the cases we had heard about
13 were old cases, people who had died or were still
14 perhaps living but had contracted the disease
15 years ago.

16 And I was invited to a meeting which
17 occurred at the Mark Hopkins Hotel in San
18 Francisco.

19 Q. Is that where they have that
20 world-famous Sunday brunch?

21 A. I think so. They had a beautiful
22 rug in the lobby and all of that. It was a very
23 nice hotel on top of a hill.

1 Q. What did you have to eat that day,
2 by the way?

3 A. I will have to look at my notes to
4 find out.

5 Q. I thought maybe you had some eggs.

6 A. Anyway, it was on an occasion when
7 Dr. Lanza was visiting with management
8 representatives and they were talking about
9 promoting a therapy or a treatment for
10 pneumoconiosis, silicosis, of aluminum powder,
11 which was an idea that was being promulgated
12 during those times. It turned out to be not
13 effective, but, anyway, they were talking about
14 it then.

15 And I asked the management people at
16 the lunch table there --

17 Q. You mean Manville?

18 A. Yes, the Johns-Manville management
19 people -- whether they had ever had a
20 compensation claim for the disease in California
21 and whether any such claim had been paid.

22 And the Johns-Manville man said no
23 compensation award had ever been made by his

1 company.

2 There was also a Great Lakes Carbon
3 Corporation man, they were the second leading
4 company producing diatomaceous earth, and he said
5 that only one claim had been paid recently, and he
6 felt that this was an unjust claim.

7 MR. McKENNA: Your Honor, can we
8 approach again?

9 JUDGE MacQUEEN: Yes.

10 (Bench conference.)

11 MR. McKENNA: He is reading the
12 document to the jury. We were following, and he
13 is almost reading it verbatim. Why can't he
14 testify to his recollection, and then if he says
15 I forgot a date, then he can refer to the
16 document. Why just --

17 JUDGE MacQUEEN: He said it is
18 almost a half a century ago, I need to refer to
19 my notes to give the testimony. That's enough,
20 isn't it?

21 MR. McKENNA: I don't think it is.

22 JUDGE MacQUEEN: Does he have to
23 make a mistake first?

1 MR. McKENNA: No. They are putting
2 him up here to testify about these events, and I
3 would like to hear his testimony. Now, if he
4 says I forgot what happened at that meeting, okay
5 --

6 JUDGE MacQUEEN: That is what he said
7 essentially.

8 MR. McKENNA: Let him read the thing
9 and then testify about it. He is reading the
10 words to the jury.

11 MR. MOTLEY: I have never in my life
12 anywhere, anywhere in 37 states where I have tried
13 cases heard such a ridiculous objection. You
14 wouldn't allow an orthopedist to come up here and
15 read from his medical records to refresh his
16 recollection?

17 JUDGE MacQUEEN: I am going to allow
18 it.

19 MR. McKENNA: If you want to
20 stipulate that he can't recall anything and he is
21 just going to read the document, let's do that.

22 (Open court.)

23 THE COURT: Go ahead.

1 MR. MOTLEY: This is Plaintiff's
2 Exhibit No. 5301. I move its admission,
3 Your Honor. It's the one I showed you.

4 THE COURT: This is not a
5 preadmitted document?

6 MR. MOTLEY: It was not
7 preadmitted. I believe it was produced by
8 Metropolitan. We didn't want to get into these
9 diatomaceous exhibits until Your Honor had a
10 foundation from the witness.

11 MR. McKENNA: Since Mr. Motley made
12 the statement in front of the jury, that was not
13 produced by Met Life.

14 THE COURT: Is your question about
15 its authenticity?

16 MR. McKENNA: No, Your Honor.

17 THE COURT: Okay. It will be
18 received.

19 MR. MOTLEY: Mr. Parker is still
20 here if there is.

21 MR. McKENNA: I reserve my objection
22 on relevance and hearsay and 403?

23 THE COURT: Absolutely.

1 BY MR. MOTLEY:

2
3 Q. Now, Doctor, this is an old letter
4 on Metropolitan Life Insurance Company
5 letterhead, February 7th, 1952.

6 Show who it is to: Dr. Lanza,
7 chairman, Institute of Industrial Medicine,
8 New York University.

9 Show who wrote it: W. P. Shepard,
10 third vice president, signed Bill.

11 Are those the folks you were talking
12 about earlier?

13 A. Bill Shepard, yes. William Shepard.

14 Q. Now, up, please. Had you ever seen
15 this until last year or two?

16 A. That's right, I never saw this until
17 many, many years later after the whole thing was
18 over.

19 Q. All right. And this is about the
20 diatomaceous earth situation we have been talking
21 about; correct?

22 A. Exactly.

23 Q. "Unfortunately, we shall have to do

1 without Halverson's skilled guidance." Who is
2 Halverson, do you remember?

3 A. Yes. Wilton Halverson was the
4 director of the California Department of Health
5 Services. He was the top person. And I think he
6 was sick at the time. So he was not available.

7 Q. All right. "Until after the
8 February 26th meeting. However, Malcolm
9 Merrill" -- who is that?

10 A. Malcolm Merrill was deputy director.

11 Q. "Is still acting director and he is
12 not only able but perhaps even more discerning
13 than" --

14 A. Hal Halverson.

15 Q. -- "than Hal in a situation of this
16 kind. I am going over to see him this afternoon
17 to be sure he is fully aware of the nuances of
18 the situation so that he can keep Abrams in
19 line."

20 A. Very flattering to me.

21 Q. Would you be the Abrams they wanted
22 to keep in line?

23 A. I'm the one, apparently.

1 Q. Boy, you old trouble maker you, what
2 were you up to back then? What was going on in
3 February of 1952 that would cause Mr. Shepherd to
4 want to keep you in line?

5 MR. McKENNA: Judge, could we have
6 one other paragraph read of it?

7 MR. MOTLEY: I'll read the whole
8 thing. Which one?

9 MR. McKENNA: The third one.

10 MR. MOTLEY: The third one.

11 MR. McKENNA: Yep.

12 MR. MOTLEY: Focus in on that one.

13 "Abrams just telephoned to say that
14 if the industry insists" --

15 A. He would be willing.

16 Q. -- "he would be willing to do the
17 survey jointly with the Industrial Hygiene
18 Institute. I ran across him at lunch at Stanford
19 yesterday and subtly put a bug in his ear. It
20 might not" -- I can't read that --

21 A. I can't make that out.

22 MR. McKENNA: That he might not be
23 able to get the full and willing cooperation

1 of --

2 Q. -- "he might not be able to get the
3 full and willing cooperation of the industry on
4 his own." Is that what it says? You have a
5 better copy.

6 MR. McKENNA: I can't read that
7 part.

8 BY MR. MOTLEY:

9 Q. Okay. Next, please.

10 "He blustered a bit and maintained
11 that it was his legal prerogative, but apparently
12 after thinking it over and talking with Merrill,
13 he changed his mind." Okay.

14 Now, generally what was going on
15 back in the early winter of 1952 that would cause
16 Mr. Shepard to want to keep you in line?

17 A. Yes. Well, what was happening was
18 simply, you see, the whole diatomaceous earth
19 situation exploded in the media, it was in the
20 newspapers and radio and so on and, of course, it
21 had been set off by the original article in
22 Search Magazine, which was the publication of the
23 California Tuberculosis and Health Association.

1 That was the old name for what is today called
2 the California Lung Association, the Christmas
3 Seal people.

4 Anyway, so this was in the public
5 media at the time, was causing a furor, and we in
6 the health department along with Dr. Shepard, so
7 on, were talking about what should be done.

8 And we were mainly talking about the
9 necessity of doing a definitive study of this
10 problem so as to establish all the facts and get
11 all of the facts on the table for the public, the
12 working people, the industry and so forth.

13 And that's what we were talking
14 about at that time.

15 Q. Now, you say there had been an
16 article written about this Johns-Manville
17 facility?

18 A. What was that question?

19 Q. You said before this "keep you in
20 line" letter was written, there had been an
21 article published?

22 A. Oh, yes. Well, quite a few
23 articles.

1 Q. I'm going to hand you something.
2 Tell me if this is from your original files?

3 A. This is what started it off. This
4 was the Search -- the cover of Search Magazine,
5 and the title of the article was "Death By Dust,"
6 and this is an aerial picture of the
7 Johns-Manville diatomaceous earth deposits.

8 Q. And is that what, as you say, caused
9 a furor?

10 A. Yes, that's what started it.
11 Then, of course, the newspapers and
12 all picked it up from that article, and it kept
13 going for quite a while.

14 Q. Now, are you familiar, personally
15 familiar with this "Death By Dust" study article?

16 A. Oh, yes.

17 Q. Tell us how you personally are
18 familiar with it?

19 A. Well, the writer of the article at
20 that time, a young man named Robert Goe, G-o-e,
21 came to me in his role as a writer for the
22 magazine, which was the publication of the
23 California Tuberculosis and Health Association.

1 And he was interested in writing things about
2 problems of interest having to do with the
3 lungs.

4 Since they were a lung association
5 and tuberculosis at that time was declining in
6 incidence -- it had been, of course, the No. 1
7 cause of death in the U.S. in the early part of
8 the century, but it was beginning to decline --
9 they were looking for other ideas.

10 So I told him about this very
11 interesting industry in California, the
12 diatomaceous earth industry, which even today
13 most people have never heard about. And he was
14 very interested.

15 And I suggested who he might call
16 on, go visit the plant and so on. I had been
17 there a number of times, I knew all the people, I
18 gave him an introduction to those people.

19 And so then he subsequently did pay
20 a visit down there to get information about a
21 foreign article. And he -- shall I --

22 Q. Well, let me ask you this.

23 A. -- talk further about it or what?

1 Q. Well, why did this article, "Death
2 By Dust," cause a furor?

3 A. Well, of course, the headline alone
4 is enough to disturb people, I think. But I
5 think the evolution of it was interesting, and I
6 have to go into that to really --

7 Q. Are you personally knowledgeable
8 about the evolution of this article?

9 A. Oh, yes. Yes.

10 Q. All right. Please tell us.

11 A. Well, I'll try to make it brief. My
12 thought in referring him to that subject was that
13 essentially it was an interesting problem, it was
14 a dust that used to cause silicosis.

15 Remember that in 1932, there had
16 been a big survey done and published by
17 Dr. Leggie and others in California in which they
18 examined all the workers and found an incidence
19 of silicosis. But that was many years early.

20 Q. 1932?

21 A. '32, right.

22 Q. Twenty years earlier.

23 A. Right.

1 Q. In the meantime, Lanza told you no
2 new cases and the Manville people told you no
3 Workers' Compensation.

4 A. Exactly. When I came, I became
5 aware --

6 MR. McKENNA: Objection, Your Honor.

7 THE COURT: Sustained.

8 BY MR. MOTLEY:

9 Q. Excuse me, it was sustained.
10 Who told you there were no new cases
11 of silicosis out of that Manville plant?

12 MR. McKENNA: Objection. Leading,
13 asked and answered.

14 THE COURT: Yeah. He's already
15 answered that.

16 A. Well, my information on no new cases
17 occurring came from Drs. Anderson and Smart who
18 were on the scene there --

19 MR. McKENNA: Asked and answered.

20 A. Anderson was plant division, and
21 Smart was a consultant.

22 THE COURT: Which is what he
23 testified to.

1 A. And of course, when Dr. Lanza came
2 out, he simply supported that and repeated that.
3 So that I was given the definite impression that
4 it was a problem that they used to have, but was
5 well under control. Manville being a huge
6 company, they had their own industrial hygienist
7 who did dust counts, they had their own doctors
8 and so forth, they had all the resources to
9 control it.

10 I'm trying to remember where I was
11 now. Talking about --

12 Q. I'm just trying to not take all day
13 to do this.

14 A. I understand.

15 Well, very quickly, the evolution of
16 this, Goe -- I then told Goe about it, I said,
17 Look, it's an interesting story you ought to
18 write up because in essence it's a success story,
19 it's a story of how a serious occupational
20 disease was controlled, and it was a disease
21 affecting mainly the lungs and all that. So it
22 fitted in with their interest.

23 Q. Why did you tell him it had been

1 controlled and was a success story?

2 A. Because I was given that impression
3 by the authorities of Manville including their
4 consultants and all that.

5 Q. Go ahead.

6 A. He went down there, and he was
7 impressed with an atmosphere of secrecy.

8 He didn't get past the front
9 office. They didn't allow him to see the plant,
10 all that.

11 And he began to hear that there were
12 cases of silicosis and silicotuberculosis in the
13 local hospital and so on.

14 MR. McKENNA: Hearsay.

15 THE COURT: Sustained.

16 BY MR. MOTLEY:

17 Q. Excuse me, Doctor, you can't tell
18 the jury what somebody else told you. But let me
19 ask you this. Is all of this in this magazine
20 article?

21 A. I think so essentially.

22 MR. McKENNA: I don't believe it is,
23 Your Honor.

1 A. That's in there. I would have to
2 reread it to make sure of every word.

3 Q. Is it in your report?

4 A. Yes, I believe so. It's in there.

5 Q. All right.

6 A. But the main point I'm getting at is
7 when he got back, he did write an article -- and
8 I have the galley proof of it somewhere. He did
9 write an article which was innocuous, not this
10 article. He wrote an article which was
11 innocuous.

12 He told the interesting story of how
13 diatomaceous earth originated from these
14 one-celled animals and the skeletal remains and
15 all that business, and the useful uses of
16 diatomaceous earth and all of that.

17 And when he came back, he read that
18 article to Dr. Shepard.

19 Q. Of Met Life?

20 A. Of Met Life, yes. And Shepard
21 persuaded him not to write it saying --

22 MR. McKENNA: Objection, hearsay.

23 THE COURT: Sustained.

1 A. Now, that story is in here too.

2 Saying to him essentially why don't you write --

3 MR. McKENNA: Judge, can we approach
4 the bench?

5 MR. MOTLEY: Your Honor, this is in
6 a magazine that was published. He can rely on
7 the magazine.

8 (At sidebar:)

9 MR. MOTLEY: It's all in his
10 report.

11 MR. McKENNA: Judge, the bottom line
12 is he's obviously testifying about hearsay
13 matters. The fact they are in his report doesn't
14 remove the fact that they are hearsay.

15 And I haven't read this article in a
16 while, but it's my recollection that it doesn't
17 recite all of these matters.

18 THE COURT: It does not?

19 MR. McKENNA: It does not. Now, if
20 it does, I would like Mr. Motley, who is offering
21 the testimony, to show me where it says it.

22 THE COURT: The fact it was printed
23 in a magazine, what difference does that make?

1 MR. MOTLEY: Okay.

2 BY MR. MOTLEY:

3 Q. Doctor, it's getting late in the
4 day. The jury has been patient with us.

5 A. Sure.

6 Q. Let's get to the bottom line; okay?

7 A. All right.

8 Q. As a result of what was published in
9 this article, did you come to understand or learn
10 that what you were told that there were no new
11 cases was true or false?

12 MR. McKENNA: Leading, Judge.

13 THE COURT: Overruled.

14 A. I came to learn it was false.

15 Q. You were a public health official
16 and you were told this, and it was false?

17 A. That's right. This article was an
18 eye-opener to me, and others on my staff as well,
19 just as it was to the public.

20 Q. Did you come to understand that what
21 you were told by the Manville employees, that
22 there were no Workers' Compensation awards made,
23 was that true or false?

1 A. False, false.

2 Q. Did you, Herbert Abrams, personally
3 verify, try to verify some of what was in this
4 article?

5 A. I did. Subsequently I went down to
6 the Industrial Accident Commission files and
7 painstakingly found something over 30 cases,
8 records of Workers' Comp claims.

9 Q. So instead of zero, it should have
10 been 30?

11 A. More than that actually.

12 Q. Was there a law in California,
13 Doctor, at the time that required the employer to
14 report the existence of Workers' Comp claims?

15 A. Yes, that was another thing. The
16 law was simply that any injury on the job which
17 caused absence from work beyond one day had to be
18 reported to the State Department of Industrial
19 Relations, Division of Labor Statistics, by both
20 the employer and the physician attending the
21 worker.

22 And up to that point, there had
23 been, I think, only one or two cases. But after

1 the article came out and the publicity, two or
2 three more were reported.

3 Q. Now, Doctor, did you make a proposal
4 to anyone after you found out these matters that
5 you have said you found out that any kind of
6 study be done in 1952?

7 A. Oh, yes. As I mentioned earlier, I
8 proposed that a definitive study of the industry
9 be made.

10 Then there was discussion as to who
11 should do it. And as I think we mentioned,
12 Dr. Shepard at one point suggested the Industrial
13 Hygiene Foundation. But since they are an
14 industry-supported organization, there was
15 objection to that.

16 Q. By whom?

17 A. Well, not only I objected, but
18 Dr. Malcolm Merrill, the deputy director, State
19 Health Department, objected. We felt it had to
20 be an unbiased study. While we were casting no
21 aspersions on the Industrial Hygiene Foundation,
22 since they were totally supported by industry, we
23 didn't think it would be appropriate.

1 Then the question came up of, well,
2 could they participate in it partly along with
3 the State Health Department, and various
4 combinations were proposed.

5 And finally I myself suggested we
6 call in the United States Public Health Service
7 as an impartial governmental agency to do the
8 study, and that ultimately was done and a report
9 on that was made some years later.

10 Q. You told the jury earlier that you
11 had been led to believe that an article by
12 Dr. Smart and Dr. Anderson was going to be
13 published on their experience at the Lompoc
14 plant?

15 A. Yes. They told me a number of times
16 that they were working on it, and one of these
17 days, months, they would report because they had
18 a lot of clinical and pathological material on
19 the cases that they had seen.

20 Q. When, if ever, was that published?

21 A. I think that was published
22 finally -- I have forgotten. 1953, perhaps. I
23 don't remember. We have the article somewhere

1 here. I believe I mentioned it in here too.

2 No. It wouldn't be in here. It was
3 published, though, around that time.

4 Q. Would you look at your report again,
5 sir.

6 A. Yes.

7 Q. Do you see "VI"?

8 A. Okay.

9 Q. What is that called?

10 MR. McKENNA: Objection, Your Honor,
11 can we approach?

12 (At sidebar:)

13 THE COURT: Is that the conspiracy?

14 MR. MOTLEY: Fraudulent concealment.

15 He went and looked at the records and found the
16 testimony. I can lay a further foundation. But
17 I ain't asking him the question. The question
18 I'm asking is what the name of it was.

19 MR. McKENNA: Judge, the only reason
20 why he's asking this question is to get this man
21 to say "fraudulent concealment" in front of this
22 jury.

23 He's not an expert on fraud, he's

1 appropriate foundation, what conclusions he
2 reached about it.

3 MR. MOTLEY: Okay.

4 (End of sidebar.)

5 BY MR. MOTLEY:

6 Q. Do you have the page that begins
7 with paragraph "VI"?

8 A. Yes.

9 Q. Let me make sure we are on the same
10 page.

11 A. "VI"?

12 Q. Yes. Now, sir, did you undertake to
13 look at the records of Workers' Compensation
14 claims arising out of the diatomaceous earth
15 facilities?

16 A. I did.

17 Q. Okay. And tell us what was there?
18 I particularly refer you to the claim of
19 Manuel Gonzalez?

20 A. Okay. Well, this is written up in
21 here.

22 Q. Don't quote from what's written up.
23 Just tell us what you did, first.

1 A. Oh, all right. It's an excerpt from
2 the claim.

3 In those days, there was a
4 stenographic report of every claim before the
5 Industrial Accident Commission that was
6 contested.

7 Q. You mean like what these folks are
8 doing?

9 A. Yes, a court reporter, and they were
10 typed up. Of course, this was long before
11 computers and all. And they were filed by card
12 file, and you had to go through it manually in
13 the offices of the Industrial Accident Commission
14 in Los Angeles.

15 And I found something like 30-some
16 cases having to do with diatomaceous earth
17 claims. And this was one of them.

18 And in this particular one, the
19 interesting point was -- did you want me to
20 describe them, what I found in that case?

21 Q. Let me ask it this way. This was
22 out of the diatomaceous earth facility; correct?

23 A. Yes.

1 Q. And this was the testimony of
2 Dr. Smart?

3 A. Dr. Smart had been the examining
4 doctor in this particular case.

5 Q. Okay.

6 A. For the company. For the insurance
7 company, I should say.

8 Q. And you remember we talked earlier
9 about the public health principle of telling a
10 worker that something he works with can hurt him?

11 A. Yes.

12 Q. And you also said that as a public
13 health principle, if he's got a disease, you
14 should tell him that too?

15 MR. McKENNA: Leading, Your Honor.

16 MR. MOTLEY: I'll rephrase it.

17 THE COURT: All right.

18 BY MR. MOTLEY:

19 Q. Is there a public health policy,
20 sir, if a man is diagnosed with asbestosis or
21 silicosis, what is the public health policy in
22 regard to telling him?

23 A. Well, it's not only a public health

1 policy, it's a good -- it's just a health policy,
2 a medical policy that if you diagnose something
3 in a patient, you should tell the patient what it
4 is. There is no question about that. It goes
5 back to antiquity.

6 Q. Now, as a result of what you found,
7 did you determine whether or not Dr. Smart,
8 Johns-Manville's consultant, exercised good
9 public health policy if he found silicosis in
10 those workers or bad public health policy?

11 A. No. In that transcript of that
12 case, Dr. Smart is quoted as saying that he as a
13 matter of policy did not tell a worker what he
14 found on his examination, which was a physical
15 exam with a chest x-ray and so forth, he just did
16 not inform them, but he did inform the company in
17 this case, you see. He informed the company what
18 he found, but did not inform the worker.

19 Q. Now, Doctor, in addition, when you
20 were looking at this particular claim or other
21 claims, did you find that Dr. Smart's policy had
22 stirred up some interest by others?

23 MR. McKENNA: Leading, Judge.

1 A. No question about it --

2 THE COURT: I'll sustain the
3 objection.

4 Q. Did you find anything else of
5 interest in that file, sir?

6 A. Well, the other thing of interest
7 was the insurance carriers who were present at
8 this hearing, the insurance companies, I have
9 forgotten their names, they then accused the
10 Dicalite or the Great Lakes Carbon Company, in
11 this case they were the defendants -- there were
12 two defendants actually, Great Lakes Carbon and
13 Johns-Manville. These are insurance carriers.

14 MR. McKENNA: I'm sorry to
15 interrupt.

16 THE COURT: Just a second.

17 MR. McKENNA: I'm sorry to interrupt
18 the witness. Can we approach on this since he's
19 talking about another company now?

20 MR. MOTLEY: He just said and
21 Johns-Manville.

22 MR. McKENNA: Can we approach?

23 (At sidebar:)

1 MR. McKENNA: Here is the paragraph
2 that is apropos. It involves Dicalite apparently
3 and other companies where the insurance carrier
4 and Workers' Comp carrier claimed there was
5 fraudulent concealment from them because they
6 hadn't disclosed to them the condition when the
7 guy had this condition from 1940 or something and
8 went on coverage. That has nothing to do with
9 us. It has nothing to do with the issues in this
10 case.

11 MR. MOTLEY: Excuse me, I'm agreeing
12 with you.

13 MR. McKENNA: Excuse me. Can I
14 finish?

15 MR. MOTLEY: I can link it up with
16 them.

17 (End of sidebar.)

18 BY MR. MOTLEY:

19 Q. Doctor, how many more of these
20 reports did you say you found? Did you say 37 or
21 30? I can't remember exactly how many you said.

22 A. I would have to refer to my own
23 report to get the exact number. I don't have

1 that here, but you may have a copy of it. My
2 publication, the American -- oh, here it is. I
3 have a copy of it right here. I will show you in
4 a minute.

5 I was able to find 32 claims for
6 compensation for alleged diatomite
7 pneumoconiosis -- diatomite is an abbreviation
8 for diatomaceous earth -- which came before the
9 commission between 1930 and 1951 inclusive.
10 Now --

11 Q. I want to be sure that we are not
12 misleading anybody here. There was a study done
13 of the diatomaceous earth facilities in the early
14 '30s; correct?

15 A. That's right.

16 Q. And what you found to be untrue was
17 the assertion that they had everything under
18 control in 1950?

19 A. Yes. That's right.

20 Q. All right. And in fact, there were
21 cases continuing to occur?

22 A. Yes, that's right.

23 MR. MOTLEY: Your Honor, did you say

1 you wanted to reserve so we don't take up the
2 jury's time the admission of this report?

3 THE COURT: Yes.

4 BY MR. MOTLEY:

5 Q. Doctor, explain to the jury how you
6 reacted to -- personally to Dr. Shepard's --
7 first of all, how would you describe
8 Dr. Shepard's reaction to that "Death By Dust"
9 article?

10 A. Well, he was very angry. He accused
11 the writers of yellow journalism. He threatened
12 to fire -- have them fired, and he told me that
13 over the telephone.

14 Q. This is Bill Shepard of Met Life?

15 A. Of Met Life, yes. That he would
16 have the editor of the journal fired, it was
17 yellow journalism and that kind of thing.

18 Q. In fact, sir, is there not a copy of
19 a letter he wrote -- Mr. Shepard wrote to the
20 Tuberculosis Society in your report?

21 A. Yes. That's in there too.
22 Everything is in there.

23 Q. After the article, "Death By Dust,"

1 what is the newspaper called in San Francisco?
2 There are two of them, I think.

3 A. Well, the San Francisco Chronicle is
4 the morning paper, and I have forgotten the name
5 of the afternoon paper.

6 Q. Were there any articles published by
7 the San Francisco Chronicle?

8 A. Oh, yes. Nathan Hale, who was a
9 reporter for the Chronicle, wrote a series of
10 articles, the heading of which was a story of a
11 dangerous dust, something like that. I have
12 clippings of it somewhere. I'm not sure if they
13 are in here or not.

14 Q. Let's turn to Dr. Lanza for a
15 moment.

16 A. Sure.

17 Q. Did you ever have conversations with
18 Dr. Lanza about your calling the disease at
19 Lompoc silicosis?

20 A. Yes. On one of his trips, he and I
21 and half a dozen other professionals in the field
22 were sitting around sort of casually, socially
23 discussing this. And I referred to the disease

1 as diatomaceous earth silicosis.

2 And he became suddenly very angry,
3 pounded the table and in very loud voice said,
4 That's not silicosis. That's pneumoconiosis.

5 And I could only infer one thing
6 from that explosion, because silicosis is exactly
7 what it is, it's silica, and it's called that
8 today as well as those days.

9 But he insisted on my avoiding the
10 use of the term silicosis.

11 Q. As a result of the newspaper
12 articles and the San Francisco Chronicle article,
13 did things kind of get activated at the Lompoc
14 plant?

15 A. Oh, yes.

16 Q. Tell the jury what happened.

17 A. Well, everybody was disturbed by it
18 and feeling that something should be done, and
19 then we began to have meetings about developing a
20 definitive study, as I mentioned.

21 Q. And in your report, do you outline
22 in some detail what you proposed be done to try
23 to help the workers at Lompoc?

1 A. Oh, one other important thing was
2 that the union there went out on strike, and
3 health protection was one of their major issues.
4 They had some wage issues as well, but health
5 protection became a major issue at the same
6 time. So that also was a part of that picture.
7 It was quite a stormy period for a while.

8 Q. My question, sir, is did you make a
9 recommendation to your officials, your superiors,
10 and detail how you thought a study should be
11 done?

12 A. Yes.

13 Q. And is it contained in your report?

14 A. I think it is, if I --

15 Q. I know it is.

16 A. Here it is. "VII, Prospectus for a
17 Fundamental Industry-Wide Study on the Health
18 Aspects of Diatomaceous Earth." And I outlined
19 what should be in the study and all that, and I
20 gave a little history of the disease and so on.

21 MR. MOTLEY: Your Honor, you
22 admitted earlier today Exhibit 199.

23 MR. McKENNA: Judge, can we

1 approach?

2 (At sidebar:)

3 MR. McKENNA: Judge, this is a
4 document of January 15, 1935, this is before the
5 man got out of medical school. He has nothing to
6 do with this, to my knowledge. I don't
7 understand where he's going with this.

8 MR. MOTLEY: Your Honor admitted
9 it. I think I am entitled to ask him his
10 opinions as a public health specialist about
11 that, of the statements made in there.

12 THE COURT: Like?

13 MR. MOTLEY: Oh, I would ask him to
14 pick out the two statements, because somehow my
15 copy I looked at last night has gotten yanked
16 from my notes.

17 MR. McKENNA: "The menace of
18 ambulance-chasing lawyers in combination with
19 unscrupulous doctors."

20 MR. MOTLEY: That's not one of them.

21 MR. McKENNA: That's not one of
22 them?

23 THE COURT: Go ahead. I'm going to

1 allow it.

2 (End of sidebar.)

3 BY MR. MOTLEY:

4 Q. Doctor, I want to turn your
5 attention to the Industrial Hygiene Foundation
6 for a moment. Exhibit 199 you have in front of
7 you there -- can you show the first page,
8 please? -- is dated January the 15th, 1935.

9 Now, can you show who was in
10 attendance? Johns-Manville was there. Dr. Lanza
11 from Met Life was there.

12 MR. McKENNA: Mr. Motley, why don't
13 you read the second paragraph on page one and
14 then read everybody who was there?

15 MR. MOTLEY: Your Honor, I'm glad to
16 read the whole thing, but every time I try to
17 read something, we run up to the bench, so I'm
18 kind of afraid to read anything. I'm getting
19 winded running up to the bench.

20 THE COURT: Go ahead.

21 MR. McKENNA: Well, maybe if you did
22 it right.

23 BY MR. MOTLEY:

1 Q. Do you see that, sir, that
2 Dr. Lanza, and there were all kinds of other
3 people there?

4 A. Yes, I see it. Yeah.

5 Q. And it says, "For example, only two
6 forms of dust, namely, free silica and asbestos,
7 are definitely known to produce disabling
8 fibrosis of the lung." When you began practicing
9 in California in 1947, was that true?

10 A. Well, there are and there were other
11 dusts, but they were not as prominent. Asbestos
12 and silica were considered the most important.
13 But there is cotton dust, byssinosis and coal
14 dust, of course, coal workers pneumoconiosis.
15 That was known at that time too, but it wasn't --
16 didn't receive as much publicity in the
17 United States at the time.

18 Q. Are you familiar, sir, with the
19 history behind the Industrial Hygiene Foundation?

20 A. Somewhat. This is part of it, of
21 course, sure.

22 Q. Do you know what caused the
23 formation of the Industrial Hygiene Foundation?

1 A. It was concern about the lawsuits
2 that they were beginning to get for
3 pneumoconiosis, silicosis, asbestos disease and
4 so on, and they thought they ought to get
5 together and do something about it.

6 MR. McKENNA: Objection, hearsay,
7 Your Honor. He's reciting the contents of the
8 documents in a summary fashion that's
9 inaccurate.

10 MR. MOTLEY: Your Honor, that is
11 contained in that document.

12 THE WITNESS: That's just history.

13 THE COURT: Overruled.

14 BY MR. MOTLEY:

15 Q. In fact, it's in this document,
16 isn't it, the 1935?

17 A. Yes.

18 Well, this meeting was convened on
19 December 12th or a letter was sent out December
20 12, 1934.

21 Q. Worried about lawsuits and menaces,
22 what does the next page show? Expert testimony,
23 and they suggested eliminating the jury?

1 MR. McKENNA: Judge, if I could
2 request that if we are going to read from the
3 document, we read from it rather than have
4 Mr. Motley just pick out a few words here and
5 there. I think under the rule of completeness,
6 he ought to be reading the document to the jury.

7 MR. MOTLEY: Let's read the whole
8 document, now.

9 MR. McKENNA: He doesn't have to
10 read the whole document.

11 MR. MOTLEY: I'll flip you for which
12 you want me to do.

13 THE COURT: Hold on. If there is
14 some matters that you want read for completeness,
15 you need to tell him what they specifically are.

16 MR. McKENNA: All I'm objecting to,
17 Your Honor, he can read any part of it he wants,
18 but what I want him to do is if there is a
19 sentence he wants to read, let's read the whole
20 sentence, let's not take two words out, flash
21 them in front of the jury and --

22 THE COURT: It's a fair request.

23 MR. MOTLEY: The reason I didn't, he

1 came up a minute ago and objected to me reading
2 that part.

3 THE COURT: You don't have to argue
4 your case now. Instead of picking out words,
5 read a whole sentence.

6 MR. MOTLEY: I got permission to
7 read the whole thing.

8 Doctor, look on page two that they
9 were worried about.

10 "It appeared that among the problems
11 common to all industries were the following:

12 "The menace of ambulance-chasing
13 lawyers in combination with unscrupulous
14 doctors. The uncertainties surrounding diagnosis
15 of any of the various forms of pneumoconiosis are
16 so many that a question of facts is presented in
17 every case. Expert testimony can be produced by
18 both plaintiff and defendant and it is for the
19 jury to decide whose experts are correct in their
20 interpretations. In making this decision, the
21 jury is not likely to favor the opinion of the
22 experts produced by the employer.

23 "The desirability of making various

1 dust diseases compensable under properly drawn
2 Workers' Compensation laws. One of the speakers
3 stated that 'the strongest bulwark against future
4 disaster for industry is the enactment of
5 properly-drawn occupational disease legislation.'
6 Such legislation would eliminate the jury and
7 empower a medical board to pass upon the
8 existence of the disease and the extent of the
9 disability; eliminate the shyster lawyer and the
10 quack doctor since fees would be strictly limited
11 by the law; and permit the correcting of initial
12 mistakes in the making of awards by providing for
13 hearings to reduce or eliminate awards if proof
14 could be adduced that the claimant was not
15 disabled or that the extent of his disability had
16 been overestimated.

17 "Problems of ventilation, dust
18 collecting and elimination, and respiratory
19 devices.

20 "The establishing of standards for
21 dust counting and particle size determination,
22 for the taking of x-rays for diagnostic use, and
23 for the interpretation of the markings on the

1 films so produced.

2 "At the close of the discussion, a
3 Mr. Kurtz, vice president of the American
4 Refractories Corporation, made a motion that
5 Mr. William P. Yant, chairman of the meeting,
6 appoint a nominating committee who would nominate
7 a group of individuals to serve as a committee
8 for the formulation of ways and means to bring
9 about effective cooperation of some character
10 between the various industries for seeing and
11 combatting those" --

12 MR. McKENNA: Meeting.

13 MR. MOTLEY: -- "meeting and
14 combatting those" --

15 MR. McCONNELL: Phases.

16 MR. MOTLEY: "Phases"?

17 MR. McKENNA: Phases.

18 MR. MOTLEY: -- "of the dust problem
19 common to all. This motion was carried and a
20 nominating committee appointed which retired, and
21 upon returning presented to the meeting the names
22 of seven individuals to act as such committee.

23 "No other names having been placed

1 in nomination, the following were elected to act
2 as the committee and report back to the various
3 industries and groups represented at the meeting
4 or to whom the invitation had been originally
5 extended."

6 Then it's got the list of names. I
7 can't pronounce that name, no way. Why don't you
8 look at the names.

9 MR. McKENNA: Vandiver Brown.

10 MR. MOTLEY: Vandiver Brown
11 representing asbestos.

12 "I explained to the other members of
13 the committee that I had been sent to the meeting
14 solely as an observer" --

15 MR. McKENNA: Could you read the
16 names you skipped over, please?

17 THE COURT: He left it up there long
18 enough for the jury to do that. It's all right.
19 Go on.

20 MR. MOTLEY: "I explained to the
21 other members of the committee that I had been
22 sent to the meeting solely as an observer and had
23 no authority from Johns-Manville Corporation to

1 accept membership on the committee and certainly
2 none from the asbestos industry as a whole.

3 "I was urged, however, to meet with
4 the committee, and agreed to do so on the
5 condition that I might withdraw if approval of my
6 serving in that capacity should not be
7 forthcoming.

8 "I pointed out that members of the
9 asbestosis industry did not care to be associated
10 in the minds of the public or of employees with
11 those industries whose problem was silicosis, and
12 that for this reason I felt there might be some
13 opposition to having a representative of the
14 asbestos industry working with them.

15 "I did indicate, however, that I
16 realized numerous aspects of our problem were the
17 same and that if cooperation could be worked out
18 without an undue amount of publicity,
19 Johns-Manville Corporation and perhaps the
20 asbestos industry as a whole would in all
21 likelihood be willing to cooperate. It was the
22 opinion of the committee that this condition
23 would not present any insuperable difficulty.

1 "Mr. Roger Hitchins, president of
2 American Refractories Institute, was made
3 chairman of the committee, which held a meeting
4 Tuesday evening after the close of the
5 symposium. Mr. Hitchins was designated to meet
6 with Mr. Weidlein of the Mellon Institute and ask
7 him to make a proposal in definite and concrete
8 form as to the manner in which the Mellon
9 Institute might be able to assist the various
10 industries for a fee of" -- is that \$125,000 or
11 \$25,000?

12 MR. McCONNELL: \$25,000.

13 MR. McKENNA: \$25,000.

14 MR. MOTLEY: -- "\$25,000. When this
15 proposal has been received and approved by the
16 members of the committee, it will be submitted to
17 the various industries with the recommendation
18 that it be accepted and that the various
19 industries or individual corporations agree to
20 stand good for a proportionate amount of the fee
21 not in excess of a definite specified sum.

22 "I gathered that the proposal which
23 would be made by the Mellon Institute would

1 include, among others, the following:

2 "The compiling of a comprehensive
3 bibliography of books, treatises, publications
4 dealing with any aspect of the dust problem, and
5 the evaluation thereof.

6 "The compiling, digesting and
7 correlating of data and information from various
8 subscribing industries relative to their
9 particular experiences.

10 "The drafting of approved Workers'
11 Compensation legislation covering
12 pneumoconiosis.

13 "The digesting of the laws of the
14 various states which might affect the operations
15 of industries presenting a dust hazard.

16 "The outlining of problems requiring
17 research or the establishment of fixed standards
18 and the prevention of duplication of efforts and
19 expenses along these lines.

20 "The interest with which the
21 discussions were followed and the enthusiasm
22 which greeted the proposal for a unified effort
23 lead me to believe that the necessary support

1 will be found for some sort of program along the
2 above lines. Vandiver Brown."

3 Do you know, sir, from your
4 experience who Vandiver Brown was?

5 A. He was an executive of the Manville
6 Company, if I recall.

7 Q. Did you see anywhere in that
8 document where they said, Let's tell the workers
9 they are getting sick?

10 A. No, I didn't see that, no.

11 MR. MOTLEY: Your Honor, I'm getting
12 ready to go into another area. I don't know what
13 your pleasure is? Should I go into it now?

14 THE COURT: Go ahead.

15 MR. MOTLEY: Okay.

16 BY MR. MOTLEY:

17 Q. Doctor, this is 4672.

18 MR. MOTLEY: Your Honor, it was
19 preadmitted.

20 BY MR. MOTLEY:

21 Q. Doctor, the title of this is "Report
22 of the Physical Examinations and X-ray
23 Examinations of Asbestos Workers in Asbestos and

1 Thetford Mines, Quebec."

2 Okay. Did I ask you to review that
3 document for me?

4 A. Yes.

5 Q. And do you see the signature of
6 Dr. Frank Pedley?

7 A. I do, yes.

8 Q. And the date is 1930?

9 A. Yes.

10 Q. Doctor, to this day, this is --
11 MR. McCONNELL: Sixty-four years.

12 MR. RION: 1994.

13 MR. MOTLEY: Thank you, I knew
14 that. What is today's date?

15 MR. McCONNELL: April 19th.

16 A JUROR: April 19th.

17 BY MR. MOTLEY:

18 Q. From 1930 until April the 19th,
19 1994, have you ever seen that report?

20 A. Sixty-two years ago, huh?

21 Q. Sixty-four years ago.

22 A. Sixty-four, yes.

23 Q. Have you ever seen that report in

1 that form published in the medical literature?

2 A. No, I have not.

3 Q. It says, "The report herewith
4 presented deals with the examination of 141
5 employees of the Canadian Johns-Manville Company,
6 Asbestos, Quebec, and 54 employees of the
7 Asbestosis Corporation of Canada, the
8 Keesby-Mattison Company and Johnson's Mine, all
9 of Thetford Mines, Quebec."

10 Now, Doctor, generally were any
11 cases of asbestosis found by Dr. Pedley in these
12 workers?

13 A. Oh, yes. Yes.

14 Q. What page would we find that?

15 A. What was your question?

16 Q. What page would we find that on?

17 A. Oh, it's near the end here.

18 Q. To save some time, look on page
19 nine.

20 A. Yes, let's see.

21 Q. Nine under "Lungs." They did a
22 complete physical including hearing, vision, so
23 on, and including the examination of lungs.

1 By the way, have I shown you
2 documents to indicate who paid for this?

3 A. I don't recall, but it seems to me I
4 did see that.

5 MR. McKENNA: Objection, Your Honor,
6 unless he's going to show the jury the
7 documents.

8 MR. MOTLEY: Glad to.

9 This is preadmitted, Your Honor.
10 January 7th, 1932. Plaintiff's Exhibit 5187.

11 January 7th, 1926. Excuse me. The
12 medical director of Metropolitan Life, I'm going
13 to read only this clause here. "That the board
14 of directors pass a resolution at their meeting
15 yesterday that" -- I just can't read that. That
16 what?

17 MR. RION: Authorized.

18 MR. MOTLEY: -- "authorized the
19 officers of the company to appropriate five
20 thousand dollars a year for five years for the
21 proposed survey to be made under the terms and
22 conditions approved by the medical division of
23 the Metropolitan."

1 Does that refresh your recollection
2 that Metropolitan Life paid for this?

3 A. Yes.

4 MR. McKENNA: Objection. There is
5 no proof the survey they are talking about in
6 1926 has anything to do with this study in 1930.
7 It calls for speculation and conclusion.

8 MR. MOTLEY: Well, let's see about
9 that. What's this next one?

10 MR. McCONNELL: 5190.

11 MR. MOTLEY: Exhibit 5190. Report
12 of the Activities of the Industrial Clinic,
13 Montreal General Hospital, for the year September
14 1st, 1929, through September 30th.

15 "The asbestos study is nearing
16 completion. 102 individuals were examined
17 clinically and by x-ray at the plant of the
18 Johns-Manville Company and Asbestos, Quebec, in
19 July 1930. Other groups were examined at
20 Thetford Mines in September 1930."

21 Does this report I gave you make
22 reference to those two locations, the Thetford
23 Mines?

1 A. Yes, it does. There were two, two
2 groups of workers.

3 MR. RION: There is some more here.

4 MR. MOTLEY: "This study is being
5 carried on with the cooperation of" -- guess
6 who? -- "the Metropolitan Life Insurance
7 Company, and it is expected that valuable
8 information on the subject of asbestosis will be
9 forthcoming. It is hoped that permission to
10 publish the results will be obtained."

11 Now, Doctor, again, have you ever
12 seen this study published in the medical
13 literature?

14 A. No, it was not published.

15 Q. Do you know, sir, whether or not
16 Dr. Pedley -- this is Exhibit 5193 -- asked Met
17 Life for permission to publish it?

18 MR. McKENNA: Objection,
19 Your Honor. Calls for conclusion, speculation.
20 The document speaks for itself.

21 THE COURT: I'm going to let him
22 review the document and respond to the question.

23 A. This is a letter from Dr. Frank

1 Pedley, assistant professor, industrial hygiene,
2 Department of Public Health and Preventive
3 Medicine, McGill University, Montreal. The
4 letter is to Mr. N. L. Burnette, Esquire,
5 Metropolitan Life Insurance Company, Ottawa,
6 Ontario.

7 Q. Page two, sir.

8 A. What's that?

9 Q. It says "Study of Asbestosis."

10 A. Yes. Well, here, on the second
11 page -- it's a long letter -- he says, "In
12 cooperation with the Metropolitan Life Insurance
13 Company, a survey of two companies mining and
14 milling asbestos was made in July and September
15 of 1930. Physical examination of some 150 men
16 was made, together with chest x-rays, and an
17 interesting state of affairs was disclosed, which
18 was reported to Dr. A. J. Lanza of the
19 Metropolitan Life Insurance Company, but to date
20 permission has not been secured to publish the
21 results of the study."

22 Q. Now that we clarified that, let's go
23 back to the report. Go back to page nine do you

1 see page nine now, sir?

2 A. Yes, I have it here in front of me.

3 Q. Okay. Can you tell us, sir, whether
4 or not any cases of asbestosis were found in this
5 examination by Dr. Pedley paid for by Met Life?

6 A. Yes. Well, he says, "Of the 101 men
7 examined by me at Asbestos, only four suffered
8 from definite first stage pneumoconiosis." Then
9 he says, "These will not be considered on account
10 of the doubtful diagnosis.

11 "Of the 40 men examined by Drs.
12 Stevenson and Wyatt, 14 were diagnosed as first
13 stage pneumoconiosis. I am including the 17 men
14 examined by Drs. Stevenson and Wyatt and
15 subsequently reexamined by me in my group of
16 101."

17 Then he discusses why in one group
18 there was less -- a lower incidence of
19 pneumoconiosis than the other.

20 And it says, "Of the 54 men examined
21 at Thetford Mines, 24 were diagnosed by x-ray as
22 suffering from pneumoconiosis. Of these, four
23 were diagnosed as probably first stage

1 asbestosis."

2 MR. McKENNA: Could we read the full
3 paragraph?

4 THE COURT: I'm sorry?

5 A. Then he gives the table or details
6 of those diagnoses.

7 THE COURT: Go ahead and read the
8 remainder of the first paragraph. Mr. Motley,
9 why don't you do it?

10 MR. MOTLEY: Your Honor, what does
11 he want me to read?

12 THE COURT: The remainder of the
13 first paragraph.

14 THE WITNESS: The remainder of the
15 first page?

16 MR. MOTLEY: "The much lesser
17 incidence of pneumoconiosis".

18 THE WITNESS: Well, it's the
19 second. "Of the 40 men examined," is that it?

20 MR. MOTLEY: You read that. He
21 wants you to read the next paragraph.

22 THE COURT: Next couple of
23 sentences.

1 THE WITNESS: "The much lesser
2 incidence of pneumoconiosis in my group of men
3 may seem surprising, but it must be remembered
4 that the x-ray negatives were not read by the same
5 man. In my group, the x-ray diagnoses were made
6 by Dr. Meriwether of Pitcher, Oklahoma, and in
7 other group the interpretations were by Drs.
8 Wyatt and" -- is that Meriwether? I can't quite
9 read it.

10 "Further, the group, crossed out,
11 examined by Drs. Stevenson and Wyatt were in
12 general older than those in my group."

13 BY MR. MOTLEY:

14 Q. Now, if you would turn to page 13,
15 sir -- the problem is these are obliterated.
16 Down at the bottom of the page, sir, is bigger
17 numbers, 1076. Can you look at page 1076?

18 A. Yes, I have that.

19 Q. I believe they total up the cases on
20 that page, do they not?

21 A. Yes. In the table, are you
22 referring to that number?

23 Q. No. Just read the first sentence.

1 A. As to occupations of 41 drillers --

2 Q. No. You are on the wrong page.

3 A. 1076 I thought you said.

4 Q. I did. The first sentence.

5 A. "It will be noted that of the 141
6 men examined at Asbestos, 17 were diagnosed as
7 first stage asbestosis, while of the 54 examined
8 at Thetford Mines, 21 were diagnosed as first
9 stage asbestosis and three as second stage
10 asbestosis."

11 Q. Go ahead.

12 A. "This is not to be interpreted as
13 indicating an excess hazard in Thetford Mines.
14 The increased incidence of pneumoconiosis in
15 Thetford Mines is simply a reflection of the
16 different distribution with respect to age and
17 length of service. Reference to Tables 1 and 2
18 will recall the great differences in these two
19 things."

20 Of course, the number of years of
21 exposure is important.

22 Q. Now, would you look at the bottom of
23 the page as to occupation.

1 A. Yes. "As to occupations of 41
2 drillers, 13 were cases of asbestosis. Of 109
3 mill workers, 27 were cases of asbestosis. And
4 of 40 workers in the factory, only one case
5 showed x-ray evidence of the disease. Evidently
6 there is little difference in the hazard in mill
7 workers and drillers. The mill workers appear to
8 be exposed to far greater dust concentrations
9 than the drillers, and it's rather difficult to
10 understand the high incidence of asbestosis among
11 the drillers. However, it may or may not be of
12 interest to note that the drillers are
13 occasionally exposed to granite dust."

14 Do you want further reading or --

15 Q. No, sir.

16 MR. McKENNA: Could you read the
17 next paragraph, next two sentences.

18 Q. Yes, sir.

19 A. The next one. "None of the cases of
20 asbestosis appeared to suffer from disabling
21 symptoms. Programs the most common symptom was
22 shortness of breath, but less than half the cases
23 complained of this symptom." 11 of the 41 cases

1 complained of shortness of breath.

2 Q. Now, Doctor, look at page 1073.

3 A. Okay.

4 Q. This is where they give the
5 occupational histories. Do you see that?

6 A. Yes.

7 Q. Would you look at the last case of
8 stage one asbestosis.

9 A. Yes. The last worker listed here is
10 a pipecoverer working in a factory for four
11 years.

12 Q. How old was he when he got sick?

13 A. He was 22. Age 22 at that point.

14 Q. Now, Doctor, as a public health
15 specialist, is there any particular -- by the
16 way, what is a pipecoverer? Is it sometimes
17 called what?

18 A. An insulator, a person applying
19 insulation materials.

20 Q. Based on your knowledge of the
21 literature, had this been published, would this
22 have been one of the earliest cases of asbestosis
23 in an insulator?

1 A. Probably it would have been, yes.
2 Uh-huh.

3 Q. Doctor, do you draw -- is there any
4 significance in the finding of asbestosis in the
5 mines and mills where the asbestos is taken out
6 of the ground?

7 A. Yes. This was, of course, done in
8 1930, a long time ago, and if it had been
9 published, it would have been a valuable addition
10 to the literature that went to the doctors and
11 the industry and so on. It would have helped add
12 to our knowledge and, therefore, accelerated the
13 control of this condition.

14 Q. Now, if the numbers work out to 18
15 out of 141 is 13 percent -- I would just ask to
16 you assume this -- and at Thetford, 21 out of 54
17 equals 44 percent, can you comment on that attack
18 rate?

19 A. Well, they are both a high attack
20 rate.

21 Q. How many cases of asbestosis should
22 you have?

23 A. You should have none. It's a

1 totally preventable disease.

2 Q. Now, Doctor, have you looked at some
3 of the publications of Dr. Lanza where he
4 discussed whether there was asbestosis? You saw
5 where they had asked Lanza if they could publish
6 in that one document; right?

7 A. Yes. Uh-huh.

8 Q. I'm handing you a document which we
9 have marked as Exhibit 4762. Do you see, this is
10 by Dr. Lanza?

11 A. Yes. I see here that there is a few
12 paragraphs on asbestos here.

13 Q. He says, "Asbestosis, however, is
14 not found among asbestos miners."

15 A. Yes. I see that.

16 Q. How do you square that with this?

17 A. And this is, what, 1940? It's ten
18 years after Dr. Pedley reported that significant
19 number of the miners got asbestosis.

20 Q. Well, how do you square these
21 numbers with saying it don't happen?

22 A. You don't square it. It's not
23 square.

1 Q. Would you like to take a look at the
2 last page, sir, of Dr. Pedley's report. 1078 at
3 the bottom.

4 A. Yes. In general --

5 Q. No, down at the bottom, sir. 1078.

6 A. Yes. I'm on 1078 here.

7 Q. Where it starts, "Conversation" --

8 A. Oh, "Conversation." "Conversation
9 with physicians and mine managers in the asbestos
10 regions indicated that no hazard to health was
11 suspected in connection with work in the asbestos
12 mining and milling industry."

13 Then he goes on to --

14 Q. In other words, the people working
15 with it didn't know it was hazardous?

16 A. Apparently so. But he demonstrated
17 that it was.

18 Q. Then what did he say?

19 A. He says, "In general, it may be said
20 that the hazard of pneumoconiosis in the asbestos
21 mining and milling industry has been
22 demonstrated."

23 Q. Okay. "But evidently the disease

1 does not incapacitate to any great degree and
2 apparently it is not particularly associated with
3 tuberculosis." That was the conclusion of
4 Dr. Pedley?

5 A. Correct, yes.

6 Q. Now, this is Plaintiff's Exhibit
7 4772, Your Honor. Now, this is Dr. Lanza writing
8 to the government.

9 MR. McKENNA: Could you give us the
10 description of the document?

11 MR. MOTLEY: 4772, from Dr. Lanza to
12 Mr. Manfred Borditch, February 10th, 1942.

13 BY MR. MOTLEY:

14 Q. This is 12 years after Dr. Pedley
15 just said he had demonstrated asbestosis in the
16 mines; correct?

17 A. That's right. That's right.

18 Q. And here we have Mr. Lanza writing
19 the government in Massachusetts -- show them
20 Lanza signed it, Dr. Lanza. Show the date,
21 please, February the 16th, 1942, on Metropolitan
22 Life's stationery.

23 "I have your letter of the 13th. I

1 think it is possible that this man may have
2 asbestosis. As you know, we find our cases of
3 asbestosis in those who fabricate asbestos and
4 not in those who mine it."

5 MR. McKENNA: Could we read the next
6 sentence too.

7 MR. MOTLEY: Sure.

8 "We have found evidence of it in men
9 who trim asbestos pipe moldings, shingles and
10 other material of this nature with a power saw."

11 BY MR. MOTLEY:

12 Q. Now, how do you square Dr. Lanza
13 twelve years after he gets this Pedley report
14 saying we don't find it in the mines?

15 A. It's impossible to square it. It's
16 hard to understand it.

17 MR. MOTLEY: Your Honor, I'm going
18 to a different subject. Would this be an
19 appropriate time to quit for the day?

20 THE COURT: It will be. I remind
21 you, please don't watch any news accounts or
22 listen to any news accounts of this trial. Do
23 not discuss the case among yourselves, do not

1 (In open court with a
2 jury present at 9:20 a.m.:)

3 THE COURT: Okay. Mr. Motley, do
4 you want to pick up where you left off.

5 HERBERT ABRAMS, WITNESS, PREVIOUSLY SWORN

6 DIRECT EXAMINATION (Continued)

7 BY MR. MOTLEY:

8 Q. Good morning, Doctor. Good morning,
9 ladies and gentlemen of the jury, counsel.

10 A. Good morning.

11 Q. Doctor, I want to come back to a
12 subject very briefly. You recall yesterday we
13 were talking about Dr. Pedley who did the study
14 of miners --

15 A. Yes.

16 Q. -- in Canada.

17 And I asked you whether you had ever
18 seen the study of Dr. Pedley that we handed you
19 yesterday. --

20 A. Yes.

21 Q. -- published in the medical
22 literature in that form. Do you recall that?

23 A. Yes, I do recall that. I had not

1 seen it.

2 Q. Okay. Now, I want to show you --

3 MR. MOTLEY: Your Honor, this is
4 Exhibit 4778.

5 BY MR. MOTLEY:

6 Q. It's by a gentleman named Wheatley
7 dated 1944, Dr. Wheatley from Metropolitan Life.
8 Have you seen that before I showed it to you?

9 A. No, I have not.

10 Q. Would you look at page two.

11 A. Yes.

12 Q. The title of this is "A 1944 Study
13 Metropolitan Life." You see the name Wheatley?

14 A. I see that, yes.

15 Q. Assistant medical director. And
16 it's called "Tuberculosis and Asbestosis." And I
17 think that says, "A Brief Review of Current
18 Knowledge and Analysis of Tuberculosis Mortality
19 in the Asbestos Mining Community of Thetford
20 Mines, P. Q." I think that means Quebec
21 Province, Canada; okay?

22 Had you ever seen that before?

23 A. No, I had not.

1 Q. Okay. It says on page two, Canadian
2 observations. "In 1930, Pedley and his
3 associates examined physically and by x-ray 195
4 asbestos workers in the towns of Asbestos and
5 Thetford Mines." Now, that's what we showed the
6 jury yesterday; right?

7 A. Yes, I recall that.

8 Q. Okay. And then they have a table.
9 Do you see that?

10 A. Yes.

11 Q. That's the same table we showed the
12 jury yesterday, isn't it?

13 A. Yes, I see that.

14 Q. Okay. On page two, he says, "There
15 have been no published reports among asbestos
16 workers in Canada with respect to the prevalence
17 of tuberculosis in the asbestos industry. In
18 1930, Pedley and his associates examined
19 physically and by x-ray 195 asbestos workers in
20 the towns of asbestos and Thetford Mines." Do
21 you see that?

22 A. I see it, uh-huh.

23 Q. Okay. Then he shows that table, if

1 you look on page ten.

2 He's lost page ten.

3 A. I have page ten.

4 Q. No. Mr. McConnell has lost it.

5 A. Oh, I see.

6 Q. I will read it to you so the jury
7 can see it and I will read it to you.

8 "Dr. A. J. Lanza, assistant medical
9 director, has very generously permitted us to use
10 his unpublished data --"

11 What's that next word?

12 MR. McCONNELL: Secured.

13 Q. -- "secured by Pedley in 1930 on
14 asbestosis and tuberculosis in miners of Thetford
15 and Asbestos. Dr. Lanza has also advised on the
16 preparation of the final report."

17 Now, sir, does that confirm what you
18 said yesterday that that Pedley study was not
19 published?

20 A. Exactly.

21 Q. Did you ever see that Wheatley
22 report published in the American literature?

23 A. No, I had not. I have never seen

1 it.

2 Q. Do you have any idea -- give me the
3 Lanza book.

4 There has been a lot mentioned about
5 this dog-eared book of mine called Silicosis and
6 Asbestosis by Dr. Lanza in 1938.

7 A. Yes. I see that.

8 Q. Do you know whether or not Dr. Lanza
9 bothered to put the Pedley report in this
10 textbook?

11 A. I don't think he did.

12 Q. Now, let's turn to another subject,
13 sir. Have you ever heard of a place called
14 Manville, New Jersey?

15 A. I have heard of it, yes.

16 Q. And what have you heard about it? I
17 don't mean whether it's a good place to live or
18 anything.

19 A. Well, they had a Manville plant
20 there at one time anyway. I don't know what the
21 situation is today.

22 Q. That might explain why it's called
23 Manville, New Jersey; right?

1 A. Could be.

2 Q. Okay.

3 MR. MOTLEY: Your Honor, we move,
4 pursuant to Your Honor's ruling yesterday, into
5 evidence Exhibit 5345. This is the 1932 study
6 you ruled on yesterday.

7 MR. McKENNA: May I see it?

8 THE COURT: All right.

9 BY MR. MOTLEY:

10 Q. Now, sir, I want to show you another
11 document that accompanies this. We retyped this
12 so it would be clearer.

13 A. Sure.

14 Q. It says "Physical Examinations at
15 Manville Plant, Manville, New Jersey."

16 "At a conference of general
17 headquarters, it was decided to" -- what's that
18 word?

19 A. To conduct chest --

20 Q. -- "chest examinations on 600
21 employees taken at random for" --

22 MR. McCONNELL: From different
23 parts.

1 Q. -- "from different parts of the
2 factory. It was recommended by Dr. Fellows of
3 the Metropolitan Life Insurance Company that
4 examinations be made by x-ray and fluoroscope.
5 It was later decided that this examination
6 include all employees at the Manville factory."

7 Up a little built, please.

8 "On recommendation" --

9 MR. McKENNA: Could we read the
10 entire paragraph down to the next highlighting?

11 MR. MOTLEY: Sure.

12 BY MR. MOTLEY:

13 Q. "An x-ray and fluoroscope were
14 installed on February 22nd, 1932. Active work on
15 employees was started on February 24th. The
16 services of Dr. P. K. Sabotelle, on
17 recommendation of Dr. Fellows of Met Life, were
18 obtained for the fluoroscopic examinations and
19 supervision of the general examinations of the
20 employees, which also included x-rays, some
21 physical examinations of chests, and histories.

22 "Dr. Sabotelle was assisted by a
23 Mr. Fetkenhouer, who acted as technician and took

1 all the x-rays of employees' chests. The
2 histories were taken by Miss Meirs, who was
3 thought best fitted for the task because of her
4 intimate connection with most of the families of
5 the employees and her knowledge of most of their
6 past histories. No specific reason was given to
7 employees for the examination except the general
8 understanding that it was a 'general health
9 survey.'

10 "On recommendation of Dr. Lanza of
11 Metropolitan Life Insurance Company, contact was
12 made with Dr. Meriwether, surgeon in charge, U.S.
13 Bureau of Mines, Picher, Oklahoma, to interpret
14 the x-rays taken."

15 MR. MOTLEY: Do you want me to read
16 the rest of it?

17 MR. McKENNA: I think you probably
18 ought to read the next paragraph and the next
19 paragraph in view of your claim.

20 BY MR. MOTLEY:

21 Q. "An examination card was made up to
22 include fluoroscopic record, history record, as
23 well as standard physical examination for

1 employment in order to make one complete physical
2 record. An x-ray card was made up to send with
3 each x-ray film to Dr. Meriwether for him to
4 record his interpretations. This was done for
5 the purpose of having only one record of the
6 x-ray interpretations.

7 "Employees to be examined were
8 selected by the personnel department. Each
9 employee was summoned to appear at the plant
10 dispensary by appointment. On arrival, his
11 complete record of employment, injuries and
12 illnesses, past and present, were obtained by
13 Miss Meirs by means of leading questions
14 appearing on the examination card.

15 "The employee was then prepared for
16 examination and an x-ray and fluoroscopic
17 examination made. On the x-ray film was included
18 the employee's clock number for the purposes of
19 identification.

20 "Physical examination of cases with
21 positive fluoroscopic findings were made by
22 Dr. Sabotelle. The fluoroscopic findings were
23 recorded directly on the card by Dr. Sabotelle.

1 The positive cases that had a previous employment
2 history of a dust occupation were called" -- I
3 can't read that word.

4 THE COURT: Pneumoconiosis?

5 A. Pneumoconiosis.

6 Q. -- "'pneumoconiosis', which is the
7 general, nonspecific term for a dust infection of
8 the lungs. The positive cases that had no
9 previous dust history was called 'asbestosis.'"

10 MR. McKENNA: Why don't you just
11 read the next three and that will do it.

12 MR. MOTLEY: Why don't I read four
13 of them?

14 MR. McKENNA: Okay, four is fine.
15 Whatever you want to do.

16 BY MR. MOTLEY:

17 Q. "The x-rays with a card attached
18 bearing only the employee's clock number, and not
19 his name, were sent direct to Dr. Meriwether.
20 This card also contained the past dust history of
21 the employee.

22 "It was originally intended that
23 only six hundred of the employees be examined,

1 but the results of the first five hundred
2 examined were so impressive that it was decided
3 to examine all factory employees, the total
4 examined being 1140."

5 MR. McKENNA: Just read the next
6 sentence and that's it.

7 Q. "The examination period was from
8 February 24th to May the 19th, 1932, and an
9 average of 100 employees a week was examined."

10 Now, is there anything significant,
11 sir, about 1140 people being investigated for
12 asbestosis in 1932?

13 A. Yes. Very significant. The fact
14 that it was a large number, perhaps the largest
15 group examined for asbestosis up to that point in
16 the United States, at least by 1932, and it would
17 have been quite useful to have those results.

18 Q. Now, sir, in the results it showed
19 28.6 percent had positive findings, did it not?

20 A. I believe so, yes. I have it here,
21 yes. Uh-huh.

22 Q. Is that significant?

23 A. Yes. That shows a high attack rate

1 for asbestosis in that group, uh-huh.

2 Q. What kind of worker was examined at
3 that Manville plant; that is, what type of
4 occupation?

5 A. Well, they were, as I understand it,
6 they were manufacturing workers, fabricating
7 insulation materials.

8 Q. Well, this table shows the
9 different --

10 A. Different occupations.

11 Q. Yes, sir. People in the shipping
12 department?

13 A. Let's see.

14 Q. Do you have the right page? Let me
15 give you the retyped one so you can see that.

16 A. Yes, I have -- the departments are
17 listed, yes.

18 Q. Shipping department?

19 A. Pipe maker, electrician, so forth.

20 Q. Electrician, glove department?

21 A. Yes. Brake lining, machinist, paper
22 mill, packing, so forth.

23 Q. Watchman?

1 A. Yes.

2 Q. Now, Dr. Abrams, have you heard the
3 term "bystander" used before?

4 A. The term "bystander," is that what
5 you said?

6 Q. In connection with asbestos
7 disease.

8 A. Yes, I have.

9 Q. What does that mean?

10 A. Well, it has been demonstrated in a
11 number of studies that so-called bystanders --
12 that is, people who are not actually working with
13 the material -- can get asbestosis and other
14 asbestos diseases simply because they are in the
15 vicinity and they are inhaling the dust.

16 Q. Does this study in 1932 demonstrate
17 that bystanders, people not working actually in
18 the factory, could get sick?

19 A. Yes. Well, watchman, for example,
20 is a good example of that.

21 Q. Now --

22 A. Perhaps others.

23 Q. To your knowledge, was that study we

1 have been talking about ever published in the
2 scientific literature for doctors like yours to
3 review?

4 A. No, it was not published.

5 Q. Now, Doctor, I want to show you a
6 document by Dr. Lanza.

7 MR. MOTLEY: This is Exhibit 5199,
8 Your Honor.

9 BY MR. MOTLEY:

10 Q. Show who wrote it.

11 I'm sorry, can you come down?

12 A. I can see that, yes.

13 Q. You can see that a lot better than I
14 can.

15 A. I can read it. Oh, not the last
16 line.

17 Q. This is a letter by Dr. Lanza?

18 A. Yes, I see that.

19 Q. And it was written to a Dr. Donald
20 Cummings, assistant director, Saranac
21 Laboratory. Do you know who Dr. Cummings was?

22 A. Well, he worked at Saranac. I don't
23 recall his position. It's indicated there.

1 Q. What was Saranac?

2 A. Saranac started out as tuberculosis
3 facility in the days when people had a very high
4 rate.

5 Q. You have to keep your voice up.

6 The jury heard testimony that there
7 was a Saranac Laboratory that studied a product
8 called Kaylo?

9 A. Oh, yes. Yes.

10 Q. Did animal studies, is that the same
11 Saranac?

12 A. Same organization, sure.

13 Q. This is dated April 11th -- 1933,
14 1932? -- April 11th, 1933, from Dr. Lanza. It
15 says, "I found your letter of April the 8th on my
16 return from Pittsburgh. I am very much afraid
17 that I have not much of comfort to you. I talked
18 it over with Sayers, and he feels very strongly
19 that if you and the Saranac Laboratory are going
20 to stay in the consulting business with respect
21 to the mining industry, it will not be possible
22 for you to publish these papers at least at the
23 present time. I myself somewhat reluctantly feel

1 inclined to agree with him.

2 "At the same time we must recognize
3 that the" -- what's that word?

4 MR. McCONNELL: Present.

5 MR. McKENNA: Can you read the
6 entire letter, please?

7 BY MR. MOTLEY:

8 Q. -- "the mining companies in Michigan
9 with whom you have been in contact have interest
10 in the Picher district. If these papers are
11 published against the wishes against the Tristate
12 Associates, you will undoubtedly promptly feel
13 the repercussions elsewhere.

14 "As I said before, I feel the whole
15 situation is unfortunate, but it is one of those
16 things that cannot be helped.

17 "I think it is important that the
18 Saranac Laboratory establish and maintain contact
19 with asbestos firms because it is going to be
20 increasingly necessary for industry to have
21 available a thoroughly scientific and impersonal
22 establishment with which it can do business.

23 "At the same time, we must recognize

1 that the recent disturbing condition of affairs
2 with the extraordinary multiplicity of damage
3 suits for silicosis is not only very disturbing,
4 but necessitates that all of us who are in
5 contact with industrial firms proceed with a
6 great deal of caution.

7 "I understand that shyster lawyers
8 are beginning to stir things up in Picher and
9 Miami, which makes the situation with respect to
10 the Tristate Associates still more difficult.

11 "On the other hand, I feel fairly
12 certain that when the industrial situation starts
13 to clear up, you will be able to bring your
14 reports up-to-date and have them published. In
15 that respect, as I pointed out, you are in the
16 same position as we are with the investigations
17 we have made in the asbestos industry."

18 Doctor, do you have an opinion as to
19 whether it is consistent with good public health
20 policy that laboratories and scientific
21 investigations not be allowed to publish papers
22 because of lawsuits?

23 A. Well, I would say it's a

1 reprehensible, terrible attitude, and it just
2 deals fast and loose with human life. It's a
3 cynical approach to the situation, because it
4 should be open. That's the only way to protect
5 human beings.

6 Q. Sir, I'm now going to go to another
7 subject.

8 MR. MOTLEY: Your Honor, we move
9 pursuant to Your Honor's ruling yesterday the
10 admission of Exhibit 3977, questions and
11 answers.

12 BY MR. MOTLEY:

13 Q. Doctor, at my request, did you
14 review Exhibit 3977, which is dated August the
15 29th, 1933?

16 A. I don't recall this one.

17 Q. It's questions and answers of
18 Dr. Lanza.

19 A. Oh, yes. Now I recall it, yeah.

20 Q. "Questions asked Dr. A. J. Lanza and
21 His Answers Verbatim."

22 A. Yes.

23 Q. "Attached is a copy made by

1 Mr. Kottcamp's office of questions asked
2 Dr. A. J. Lanza by our local physician at
3 Waukegan and his answers; also the
4 recommendations by our plant physician.

5 "I would like to have you turn this
6 over to someone who could review this
7 correspondence, and then go over it yourself and
8 write me your opinion of it. S. A. Williams,
9 vice president." And then a copy to
10 Mr. Kottcamp, Waukegan Factory.

11 Are you familiar with the existence
12 of a Johns-Manville plant in Waukegan, Illinois?

13 A. Yes.

14 Q. That was near Chicago, wasn't it?

15 A. That's right.

16 Q. "Questions Asked Dr. A. J. Lanza and
17 His Answers Verbatim." I'm not going to go over
18 all of them.

19 "Question No. 2: Do you agree with
20 my recommendation that employees definitely be
21 made aware of the fact" --

22 MR. McKENNA: Excuse me,
23 Mr. Motley. Do you want to read one and two?

1 MR. MOTLEY: Your Honor, I don't
2 think I should have to read everything he wants
3 me to read. We will be here all morning.

4 MR. MCKENNA: That's fine. If he
5 doesn't want to read it, that's fine.

6 THE COURT: Go ahead.

7 BY MR. MOTLEY:

8 Q. "Do you agree with my recommendation
9 that employees definitely be made aware of the
10 fact that asbestos dust is hazardous to their
11 health? My idea is that a poster be placed at
12 one or more conspicuous places in the department,
13 signed by the physician, stating that the dust is
14 injurious, advising the continuous use of
15 respirators while at work and cleansing of hands
16 before heating lunch and after work.

17 "Your comment on this please, and
18 particularly is there any additional advice that
19 should be given?"

20 Answer by Dr. Lanza: "This is
21 partially answered by No. 1." I may have to go
22 back and read number one.

23 MR. MCKENNA: That's why I wanted it

1 read in the beginning.

2 MR. MOTLEY: Well, you are kind to
3 bring it to my attention.

4 Q. "I doubt if the hazard is sufficient
5 to justify warning posters as might be used where
6 lead, benzol or carbon monoxide are concerned.
7 This is especially true in view of the
8 extraordinary legal situation."

9 There we go again worried about
10 lawsuits; right?

11 A. Right.

12 Q. "If anything is said at all, it
13 would be better to make a general statement that
14 the company is taking steps to control the amount
15 of dust in the air for general health purposes.
16 Any action contemplated in Waukegan would
17 probably be influenced by the experience at other
18 plants of the company."

19 Go down and read No. 1. It refers
20 to No. 1.

21 "Among 11 employees in the textile
22 department, all exposed to asbestos dust, one
23 only wears a respirator, several on being

1 questioned claim they cannot wear them
2 continuously, especially in hot weather.

3 "Should all employees be forced to
4 wear these respirators whether subjected to much
5 or little asbestos dust? If any such difficulty
6 experienced at the Manville, New Jersey, J-M
7 plant or other places of which you have
8 knowledge?"

9 Answer by Dr. Lanza. "Respirators
10 are not satisfactory. It is possible to
11 construct a respirator which will filter out fine
12 dust, but it would offer so much resistance to
13 respiration that it could not be worn
14 continuously on an eight-hour shift.

15 "There are on the market small face
16 mask respirators which are equipped with positive
17 pressure, and these are both satisfactory,
18 efficient and comfortable, but they cannot be
19 worn except by a person who stands in one place
20 as they have to be hooked up with a rubber tube
21 to an air line. I doubt if they would be
22 practical in a textile plant."

23 Now let me get back to Question No.

1 2 again.

2 A. Yes.

3 Q. Do you remember, we showed the jury
4 what Dr. Meriwether said in 1930 yesterday?

5 A. Yes. I'm trying to remember
6 specifically what you are referring to.

7 Q. Do you remember the term sane
8 appreciation of hazard?

9 A. Yes. I recall that, yes.

10 Q. Is the advice given here by
11 Dr. Lanza not to put up posters consistent with
12 good public health practice as it existed in the
13 1930s?

14 A. No. It was bad practice then as it
15 is today, because it's so important, we are
16 dealing here with a disease that is totally
17 preventable, but not curable.

18 So that the only sane measures are
19 to try to prevent the disease. And to put legal
20 considerations in front of human life is really,
21 really sad.

22 Q. Particularly in light of the fact
23 that they are worried about lawsuits?

1 A. Exactly. That's what I'm saying.

2 Q. Page three.

3 "I have made a diagnosis of
4 asbestosis on an employee who has been working in
5 the card room of the textile department six
6 years. This place is extremely dusty. He is not
7 disabled.

8 "In my judgment, the best
9 disposition of such a case is to remove him from
10 the dust and give him a job in some other part of
11 the plant. From your remarks in Chicago, I
12 believe this was your advice as to the
13 disposition of such cases.

14 Dr. Lanza says: "It is difficult to
15 answer this question. I think it would depend
16 upon the man's age, the nature of his work, his
17 length of service, and other considerations which
18 might have some bearing. If he is well along in
19 years and shows no disability, it may be just as
20 well to leave him alone. One of the difficulties
21 and vexations in trying to deal with the problems
22 of pneumoconiosis is that economic as well as
23 production factors must be balanced against the

1 medical factors."

2 Now, Doctor, in the 1930s, if a man
3 had asbestosis, was it a sound public health
4 policy to leave him where he got it?

5 A. No. Again, it's a cynical attitude
6 that you must balance economic factors against a
7 man's life.

8 We are dealing with human lives, and
9 I think that this was terrible policy then as it
10 would be today. And simply because it was some
11 years earlier doesn't excuse it. We are dealing
12 with human beings then as we are today.

13 Q. Give me one second. I'm looking
14 this up.

15 "Recommendations of Plant Physician
16 Following Examination of Employees in Textile
17 Department and Comment by Dr. A. J. Lanza."

18 "Employees in the textile department
19 should tactfully but definitely be made aware of
20 the fact that work in asbestos dust is hazardous
21 to their health. Every reasonable effort should
22 be made to induce them to wear respirators. They
23 should be instructed in the necessity of

1 thoroughly cleansing their hands before eating
2 lunch and after work, and provided adequate
3 facilities for doing this.

4 "Comment: I think this is out, at
5 least for the present. Personal cleanliness does
6 not enter into this problem."

7 A. Well, it's the same answer,
8 obviously. Dr. Lanza isn't thinking first of the
9 employees here. He's thinking of the plant and
10 production and economics.

11 But the questions are very good. It
12 indicates the plant's physician was conscientious
13 by raising good questions, but the answers were
14 pretty terrible.

15 Q. And when you refer to the answer,
16 you are talking about Dr. Lanza?

17 A. Dr. Lanza's answers, sure.

18 Q. This is the same Dr. Lanza that came
19 out --

20 A. And pounded on the table when I met
21 him, yeah. When I mentioned the odious word
22 "silicosis," he didn't like that.

23 Q. How many times did you meet

1 Dr. Lanza?

2 A. Oh, I would say probably two or
3 three times. I don't recall exactly.

4 Q. This policy of not telling people
5 they are sick, is that what you found from
6 Dr. Smart yesterday and showed the jury?

7 A. Oh, yes.

8 Q. Same policy?

9 MR. McKENNA: Objection,
10 Your Honor.

11 A. That was by Dr. Smart's own
12 admission --

13 THE COURT: You said what?

14 MR. McKENNA: Objection.

15 THE COURT: I'll sustain that.

16 A. -- what they had.

17 Q. Did you find out, sir, from your own
18 experience twenty years later whether
19 Johns-Manville was following the same policies?

20 MR. McKENNA: Objection,
21 Your Honor.

22 A. They were following the same pattern
23 essentially all through that period.

1 THE COURT: I'll let the answer
2 stand.

3 BY MR. MOTLEY:

4 Q. They were following the same policy?

5 A. That's correct, yes.

6 Q. I want to show you another document,
7 sir.

8 MR. MOTLEY: Your Honor, we move the
9 admission of Exhibit No. 8 pursuant to your
10 ruling yesterday.

11 THE COURT: It will be received.

12 MR. MOTLEY: Your Honor, we are
13 going to substitute -- there was a page missing
14 and counsel found it. We are going to substitute
15 it, but so as not to delay the jury, we will go
16 ahead.

17 BY MR. MOTLEY:

18 Q. Now, this is a Johns-Manville report
19 dated February 3rd, 1949, "Industrial Hygiene,
20 Survey of Men in Dusty Areas." Did you ever meet
21 Mr. Woodard of --

22 A. No, I don't recall that I ever met
23 him.

1 Q. But you heard the name Vandiver
2 Brown, haven't you?

3 A. Oh, yes.

4 Q. He was a lawyer for Johns-Manville?

5 A. Exactly.

6 Q. Okay. Look down at the bottom. Do
7 you see any initials down there?

8 A. A.J.L.

9 Q. And H.M.J.,

10 A. H.M.J.

11 Q. What was Dr. Lanza's name?

12 A. Anthony J. Lanza, yes.

13 Q. Now, I want to show you, sir, on
14 page three. This is by Dr. Kenneth Smith it
15 shows at the end. Did you ever meet Dr. Smith?

16 A. Yes.

17 Q. Tell the jury who he was?

18 A. Well, I met Dr. Smith after the
19 expose of the diatomaceous earth silicosis in
20 California. He was then appointed by the
21 Johns-Manville Corporation as their corporate
22 medical director.

23 As a matter of fact, he was their

1 first corporate medical director up until that
2 time. They had part-time doctors in their
3 various plants. And he came out to California at
4 one point shortly after that, and I met with him.

5 Q. Okay. Now, this 1949 report by
6 Dr. Smith working up in the mines in Canada, it
7 says, "Of the 708 men, 7 have x-ray evidence of
8 early asbestosis. All have had at least twenty
9 years of exposure to the dust. It must be
10 remembered that, although these men have the
11 x-ray evidence of asbestosis, they are working
12 today and definitely are not disabled from
13 asbestosis.

14 "They have not been told of this
15 diagnosis, for it is felt that as long as the man
16 feels well, is happy at home and at work, and his
17 physical condition remains good, nothing should
18 be said. When he becomes disabled and sick, then
19 the diagnosis should be made and the claim
20 submitted by the company.

21 "The fibrosis" -- what's that mean,
22 scarring?

23 A. The scarring, yes, uh-huh.

1 Q. -- "of this disease is irreversible
2 and permanent so that eventually compensation
3 will be paid to each of these men. But as long
4 as the man is not disabled, it is felt that he
5 should not be told of his condition so that he
6 can live and work in peace and the company can
7 benefit by his many years of experience. Should
8 the man be told of his condition today, there is
9 a very definite possibility that he would become
10 mentally and physically ill, simply through the
11 knowledge that he has asbestosis."

12 A. Yes.

13 Q. Doctor, would you --

14 MR. McKENNA: Could we read the next
15 sentence, please?

16 MR. MOTLEY: Glad to.

17 Q. "The advisability of transferring
18 these men is discussed later in this report."

19 Then they go on to talk about
20 whether they ought to transfer them.

21 A. Yes.

22 Q. Dr. Abrams, as a public health
23 expert, what is your opinion about this policy of

1 not telling a man he has a disease which the
2 doctor says is going to get worse and worse and
3 worse?

4 A. I don't need to be a public health
5 expert to condemn that policy. I just -- just
6 any human being would know that that policy is
7 terrible.

8 A human being has a right to know
9 whether he's endangered and should be able to
10 take steps to protect himself.

11 We are dealing here, of course, with
12 a disease, as I mentioned before, that is totally
13 preventable but not curable, and asbestosis tends
14 to be progressive. So that once it starts, it
15 will continue.

16 And to condemn a man like this -- if
17 a man is found to have something like that, he
18 should be taken out of the dust and not kept in
19 the dust because it will only get worse.

20 Q. Well, even assuming they moved him
21 out of the dust, do you still think he should be
22 told?

23 A. Absolutely. Absolutely. It is his

1 life and his family, they should know, so that
2 anything necessary to make his life more
3 comfortable and protection against superimposing
4 pneumonias and other conditions can be protected
5 against.

6 Q. Doctor, even people with early
7 asbestosis, aren't there things that, while they
8 can't cure the disease, aren't there ways they
9 can try to protect themselves from colds and the
10 flu, get flu shots?

11 A. Of course, of course. It's very
12 important to protect oneself against infections
13 in a condition like that, when the lungs are
14 already weakened.

15 Q. Now, Doctor, I want to go to a
16 different subject.

17 By the way, let me ask you this,
18 just as a general matter. Have you ever heard in
19 a scientific meeting a reputable doctor stand up
20 and say, The less said about asbestosis, the
21 better off we are?

22 A. I hope I never hear that.

23 Q. I want to go to 1943. Tell the

1 ladies and gentlemen of the jury if you know who
2 Leroy Gardner was?

3 A. Leroy Gardner for a number of years
4 was the medical director of the Saranac
5 Laboratories in New York state, and he was an
6 authority and a researcher in the field of
7 pneumoconiosis, silicosis, asbestosis
8 particularly.

9 Q. He's deceased; correct?

10 A. Yes. He died in 1946. I think, in
11 October of 1946.

12 Q. Unfortunately, Doctor, a lot of
13 these people are dead, aren't they?

14 A. Yes, unfortunately.

15 Q. Have there been publications in the
16 medical and scientific literature by people of
17 your age about the goings on at the Saranac
18 Laboratory?

19 MR. McKENNA: Objection,
20 Your Honor.

21 MR. MOTLEY: I'll rephrase it.

22 BY MR. MOTLEY:

23 Q. Do you know whether other doctors

1 have written about what happened at the Saranac
2 Laboratory with Metropolitan Life and
3 Johns-Manville?

4 MR. McKENNA: Objection.

5 THE COURT: I'll allow him to answer
6 that.

7 A. Yes, there have been some
8 publications.

9 Q. Describing what we are about to talk
10 about; correct?

11 MR. McKENNA: Objection, Your Honor.

12 A. I believe so, yes.

13 THE COURT: I'll overrule the
14 objection. Go ahead.

15 BY MR. MOTLEY:

16 Q. When Dr. Gardner died, who succeeded
17 him, do you know?

18 A. Dr. Vorwald, I believe, was the next
19 director.

20 Q. Generally, sir, can you describe
21 from your personal knowledge the kind of -- I
22 want to focus in on asbestos, now; okay?

23 A. Yes.

1 Q. Although, to your knowledge, did
2 Saranac also do investigations about diatomaceous
3 earth?

4 A. Oh, yes, sure.

5 Q. In your personal file, do you have
6 letters and things, if they would like to see
7 them, that talks about the investigations they
8 did on diatomaceous earth?

9 A. Oh, yes. I knew that firsthand,
10 their work on diatomaceous earth.

11 Q. Are you aware of any work Saranac
12 did on asbestos?

13 A. Oh, yes. Oh, yes.

14 Q. Describe generally the type of work
15 they did, without any detail?

16 A. Well, in about 1936, the major
17 corporations that were manufacturing asbestos
18 products contracted with Saranac Lake Laboratory
19 and Dr. Gardner to do experimental work,
20 investigative work on asbestosis.

21 And Dr. Gardner carried that on for
22 a number of years until his death, as a matter of
23 fact.

1 MR. MOTLEY: Your Honor, I believe
2 you preadmitted 213.

3 BY MR. MOTLEY:

4 Q. I have a letter here that the Judge
5 has admitted from the president of one asbestos
6 company to the president of another one. And
7 it's dated November 10th, 1936.

8 A. Yes.

9 Q. We retyped it so it would be easier
10 for me to read and the jury to see.

11 A. Yes.

12 Q. November 10th, 1936. Mr. Schluter
13 of the Thermoid Rubber Company.

14 "My Dear Mr. Schluter: The writer
15 and Mr. Vandiver Brown of Johns-Manville had a
16 conference with Dr. Leroy Gardner of Saranac,
17 New York, and Dr. Lanza and Dr. McConnell" --
18 Jack's father. No relation -- "of the
19 Metropolitan Life Insurance Company."

20 Do you know who Dr. McConnell was?

21 A. Well, he was also, as indicated,
22 associated with Dr. Lanza and Met Life. I think
23 I once met McConnell also, uh-huh.

1 Q. -- "with reference to the asbestosis
2 situation in the asbestos industry.

3 "As you no doubt know,
4 Johns-Manville and ourselves have been doing
5 considerable work in conjunction with the
6 Metropolitan Life Insurance Company in the way of
7 eliminating asbestos dust in our factories, and
8 we have made a very satisfactory job of it."

9 "I think the compensation laws in
10 the various states will become more rigid in the
11 next few years, and no doubt asbestos on account
12 of the advertising it has had lately will become
13 one of the compensation cases, and we should have
14 all the information we can possibly get to submit
15 to the compensation commissions of the various
16 states when the question of asbestosis comes up."

17 Then they discuss Dr. Gardner having
18 a dust chamber.

19 MR. McKENNA: Your Honor, may we
20 approach for a moment?

21 (At sidebar:)

22 MR. McKENNA: Mr. Fox doesn't think
23 it was preadmitted.

1 THE COURT: Which was the number?

2 MR. McCONNELL: 213.

3 MR. FOX: Do you know if it was?

4 MR. McKENNA: Do you know if it was
5 preadmitted?

6 MR. McCONNELL: I will check.

7 THE COURT: Can I see it?

8 MR. MOTLEY: This is a retyped
9 version so you can read it better.

10 MR. McCONNELL: It was. I mean, my
11 notes reflect this is preadmitted, Judge.

12 THE COURT: Okay.

13 MR. McKENNA: All right.

14 (End of sidebar.)

15 BY MR. MOTLEY:

16 Q. He's talking about experimenting
17 with asbestosis and dust chambers with animals,
18 do you see that?

19 A. Yes.

20 Q. They say, "The idea of Mr. Brown and
21 myself would be to have four or five, or even
22 more if we could get them, asbestos manufacturers
23 take over the study by subscribing an equal

1 amount per year for three years, and then we
2 could determine from time to time after the
3 findings are made whether we wish any publication
4 or not.

5 "My own idea is it would be a good
6 thing to distribute the information among the
7 medical fraternity, providing it is of the right
8 type and would not injure our companies."

9 Now, Doctor, from a public health
10 standpoint, in the '30s, '40s, '50s and today, is
11 it proper to leave with a company who funds
12 research the right to decide whether to publish
13 it or not, depending on whether or not the
14 results help them or hurt them?

15 A. Well, it speaks for itself. It's
16 obviously not in the interest of the public
17 health. It's obviously in the interest of the
18 companies.

19 MR. MOTLEY: Excuse me.

20 BY MR. MOTLEY:

21 Q. Doctor, from this letter, can you
22 reach a conclusion as to whether or not the
23 Saranac Laboratory was free on its own to publish

1 the results of its studies without first getting
2 approval from the industry?

3 A. No, obviously they were not free.
4 They were restricted by the restraints imposed
5 upon them by the industries involved.

6 Q. I have Plaintiff's Exhibit 1905,
7 Your Honor. It's been preadmitted.

8 MR. McKENNA: Your Honor, can we
9 approach again?

10 THE COURT: Uh-huh.

11 (At sidebar:)

12 THE COURT: Can I see it? Is there
13 a question about whether it was preadmitted?

14 MR. McKENNA: Well, apparently that
15 was deferred, and the last document was
16 deferred. But I didn't want to come up again,
17 having interfered with the process again.

18 MR. McCONNELL: I missed that.

19 MR. McKENNA: The last document was
20 deferred according to our records, and this one
21 was deferred.

22 MR. McCONNELL: I don't have the
23 backup with me, but I personally went through the

1 transcript after we had our conference and I
2 produced this list, and that's all I have got to
3 go on. And it's free and clear of any footnote,
4 which means it was admitted.

5 MR. FOX: We did the same thing, and
6 it's indicated it was deferred.

7 MR. McCONNELL: I mean, if --

8 THE COURT: Do you recall why we
9 deferred it?

10 MR. FOX: Your Honor --

11 MR. McKENNA: The only point, I just
12 need a ruling on it, that's all.

13 MR. MOTLEY: Your Honor, this
14 document was admitted against Raybestos, against
15 H. K. Porter. I don't know why it would have
16 been deferred.

17 THE COURT: I remember it, I just
18 don't remember -- I have no specific
19 recollection. Do you know what the objections to
20 it are?

21 MR. McKENNA: I assume the
22 objections are -- do we have an authenticity
23 objection to this? Is it a summary?

1 MR. FOX: Yes, I think so.

2 MR. McKENNA: I think we object to
3 this on hearsay, relevance and 403. As I gather
4 from the prior rulings of the Sumner Simpson
5 deposition with regard to authenticity, if you
6 want to overrule that --

7 THE COURT: Right. I will admit
8 it.

9 MR. McCONNELL: Thank you,
10 Your Honor.

11 MR. McKENNA: Could I ask a favor?
12 Could you give us a list of the exhibits you are
13 using? We could avoid a lot of this if we have
14 it in advance.

15 MR. McCONNELL: This is on a wing
16 and a prayer, to be honest. I will try to make a
17 good faith effort of giving you the ones that are
18 coming up, if that's all right with Your Honor?

19 THE COURT: All right.

20 (End of sidebar.)

21 BY MR. MOTLEY:

22 Q. Do you have this? Did I take your
23 copy?

1 A. The November 20th? I have it.

2 Q. This is a document, ladies and
3 gentlemen, in 1936, again, relating to Saranac,
4 November 20th, 1936, to Dr. Gardner. It's from
5 Vandiver Brown, the general attorney,
6 Johns-Manville Corporation.

7 "At a meeting yesterday attended by
8 certain brake lining manufacturers, Mr. Simpson
9 and I were able to present to a fairly large
10 group of interested corporations the proposal
11 that one of your dusting chambers be engaged for
12 further experimentation with asbestos dust.

13 "The proposal was very well
14 received, and it appears that not less than
15 eight, and perhaps ten or more, corporations will
16 participate in financing these further
17 experiments along the lines discussed when we met
18 with Dr. Lanza and Dr. McConnell a few days ago.

19 "Accordingly, you may consider this
20 letter as an authorization for you to commence
21 the contemplated experiments with asbestos dust
22 for the purpose of determining more definitely
23 the causes and effects of asbestosis. It is my

1 understanding that, among other questions which
2 it is anticipated these experiments will answer,
3 are the following:

4 "That concentration of dust is
5 necessary -- what concentration of dust is
6 necessary to produce the fibrosis of the lungs
7 which is designated as asbestosis."

8 Now, is that the concept we have
9 been talking about, TLV?

10 A. Yes, that's it, uh-huh.

11 Q. Okay. "Whether exposure to asbestos
12 dust will produce asbestosis without the
13 existence of previous infection and whether the
14 x-ray changes found in advanced human asbestosis
15 can be reproduced in animals without infection.

16 "Whether the fibrosis produced by
17 asbestos is of the progressive type; that is,
18 will the fibrosis increase, once it has started,
19 after exposure to the dust is ceased."

20 What does that mean?

21 A. Well, that's an important aspect.
22 They wanted to know if once asbestos or fibrosis
23 starts, will it progress even if the animal is

1 removed from the dust exposure.

2 Q. And he talks about how much does it
3 cost. "It is our further understanding that the
4 results obtained will be considered the property
5 of those who are advancing the required funds,
6 who will determine whether, to what extent and in
7 what manner they should be made public. In the
8 event it is deemed desirable that the results be
9 made public, the manuscript of your study will be
10 submitted to us for approval prior to
11 publication."

12 What does that mean?

13 A. Well, that speaks for itself.
14 Obviously, any results will be subject to
15 censorship, essentially.

16 MR. McKENNA: Objection,
17 Your Honor. Move to strike. That's his
18 speculation about what may occur. It's not the
19 facts.

20 MR. MOTLEY: Let me ask a foundation
21 again, if I might?

22 THE COURT: Go ahead.

23 BY MR. MOTLEY:

1 Q. In fact, Doctor, were the results of
2 this study censored?

3 A. In fact, they were, of course. That
4 we know.

5 Q. And did Dr. Lanza participate in the
6 censorship?

7 MR. McKENNA: Objection,
8 Your Honor. If he's having this witness
9 summarize a bunch of documents, he ought to put
10 the documents in evidence.

11 MR. MOTLEY: Your Honor, he objected
12 to the Doctor making a comment. Now he's
13 objecting to the bottom line.

14 THE COURT: I'm going to sustain
15 that objection.

16 BY MR. MOTLEY:

17 Q. Have you looked at, Doctor, a report
18 dated February 1943 by Dr. Gardner to Mr. Brown
19 of the Johns-Manville Corporation outlining
20 certain findings they made seven years after this
21 study was funded?

22 A. I think so. I would have to see it,
23 though, to make sure. It sounds familiar.

1 MR. MOTLEY: I move Exhibit 1148
2 into evidence, Your Honor.

3 THE COURT: It will be received.
4 Was this preadmitted?

5 MR. McCONNELL: Yes, it was,
6 Your Honor.

7 THE COURT: Okay.

8 A. Yes.

9 Q. Yes, what?

10 A. What is your question about it?

11 Q. Well, I asked you if you had looked
12 at a report of Dr. Gardner to the sponsors of the
13 study?

14 A. Yes, I have seen that before, yes.

15 MR. McKENNA: Excuse me,
16 Mr. Motley. Could I see a copy of it?

17 Thank you.

18 BY MR. MOTLEY:

19 Q. All right, sir. Would you describe
20 in general terms for the jury -- I'm not talking
21 about the letter, but the outline --

22 MR. McKENNA: Your Honor, I object
23 to him summarizing a document and telling what

1 the document says. The document speaks for
2 itself.

3 MR. MOTLEY: Your Honor, a
4 scientific document does not speak for itself.
5 It needs expert interpretation.

6 THE COURT: Go ahead, you may
7 inquire of the witness.

8 MR. McKENNA: Judge, could I ask the
9 document be read and then he comment on it?

10 THE COURT: Okay.

11 THE WITNESS: Well, there is a
12 letter here --

13 THE COURT: Go ahead and -- well,
14 wait a minute. Let me see this one.

15 MR. MOTLEY: It's 25 pages long.
16 What does he want me to do, read the whole 25
17 pages?

18 MR. McKENNA: I just want the jury
19 to have all the facts.

20 MR. MOTLEY: Right.

21 THE COURT: Okay. What is your
22 question?

23 MR. MOTLEY: Your Honor, I have

1 given him a copy of this and a copy of what was
2 subsequently published in the literature and
3 other documents that Your Honor has preadmitted.
4 And I would ask him to interpret the differences,
5 if any.

6 THE COURT: Okay. I'll permit
7 that.

8 MR. MOTLEY: Thank you.

9 MR. McKENNA: Excuse me,
10 Your Honor. You are going to permit him, without
11 reading the documents to the jury, the parts he's
12 complaining about, you are going to allow him
13 just to summarize them for the jury?

14 THE COURT: I'm going to allow him
15 to tell the jury what the difference between the
16 two documents is.

17 MR. McKENNA: Without showing them
18 the documents?

19 THE COURT: Yes.

20 MR. McKENNA: I just object to
21 that.

22 MR. MOTLEY: Your Honor, the jury
23 will have these documents in evidence.

1 THE COURT: Go ahead, do it.

2 BY MR. MOTLEY:

3 Q. Doctor, what I'm trying to get you
4 to do is generally summarize what is contained in
5 Exhibit 1148, which is dated February 1943.

6 MR. McKENNA: Objection.

7 A. Right. This is a report written by
8 Dr. Gardner of his work with asbestos, and it is
9 transmitted to Mr. Vandiver Brown of the
10 Johns-Manville Corporation and so on.

11 And it's an outline of his
12 observations and findings that's divided into two
13 main parts, one is on human asbestosis, and the
14 other is on experimental asbestosis with
15 experimental animals.

16 And he describes in the human
17 asbestosis, the fact that he has studied 25
18 autopsy cases and is impressed with the fact that
19 ten of them are autopsies of workers with
20 asbestosis, and he's impressed with the fact that
21 ten of the 25 also have lung cancer.

22 And he mentions in the outline under
23 complications of asbestosis, both susceptibility

1 of infection and cancer of the lung.

2 On the experimental side of the
3 program, he describes various aspects of
4 asbestos, and then points out that he has
5 observed cancer of the lung in the experimental
6 animals. He says experimental data suggestive
7 but not proven.

8 He also -- excuse me just a minute.
9 I'm looking to see whether he gives the numbers
10 of the lung cancers in this. I think it's later
11 on. But he also comments on recommendations for
12 a new standard of safe atmospheric
13 concentrations, and he raises a question about
14 the threshold limit value which was recommended
15 at that time. He thinks that probably it needs
16 revision.

17 Then further on, under human
18 asbestosis, again there is more detail. And I
19 think it's important perhaps to quote --

20 Q. What page are you on, sir?

21 A. This is page "I." It's several
22 pages in from the beginning here.

23 Q. Let me see where you are.

1 A. It's page one. And under the
2 caption "Complication of Asbestosis" --

3 Q. You have to slow down a little bit,
4 Doctor.

5 A. Sure.

6 Q. Under "Complication of Asbestosis,"
7 is this where you are?

8 A. Yes. He mentions cancer of the lung
9 and he says --

10 MR. McKENNA: Judge, could we have
11 the whole section read here starting with
12 "Complication of Asbestosis," if that's --

13 MR. MOTLEY: I will be glad to do
14 that.

15 THE WITNESS: Sure.

16 MR. MOTLEY: "Susceptibility to
17 infection.

18 "Tuberculosis. High incidence in
19 English experience not duplicated in surveys of
20 American plants. Available autopsy statistics
21 deceiving because of selection of material.

22 "Nontuberculous. The same reason
23 probably applies. Should be checked by analysis

1 of absenteeism among asbestos workers.

2 "Cancer of lung. Ditto, but there
3 are now on record ten cases of lung cancer in
4 asbestos workers. Compared to the total number
5 of autopsies on asbestosis, this incidence is
6 excessive. No such frequency has been discovered
7 in silicosis or other forms of pneumoconiosis
8 except the Schneeberg mines of radioactive
9 ores."

10 What does that mean?

11 A. Well, those were famous in our
12 occupational health history. Those are mines in
13 central Europe of uranium, radioactive minerals.
14 And those miners had a very high rate of lung
15 cancer.

16 Q. "The evidence is suggestive but not
17 conclusive that asbestosis may precipitate the
18 development of cancer in susceptible
19 individuals."

20 A. Yes.

21 Q. Let me ask you a few questions about
22 that, Doctor.

23 A. Sure.

1 Q. You have published you told us
2 yesterday in 1948 that asbestos caused cancer,
3 and you again published that in 1953.

4 A. That's right.

5 Q. And you told us yesterday about
6 Dr. Meriwether. Will you tell the jury again who
7 he was?

8 A. Well, Dr. Meriwether was the chief
9 inspector of factories in England, His Majesty's
10 chief inspector, which is equivalent to sort of
11 the head of OSHA here.

12 Q. Okay. Did Dr. Meriwether at any
13 time in the late '40s make any findings about
14 asbestosis and lung cancer?

15 A. Yes. He pointed out that there was
16 a high rate of lung cancer found in workers with
17 asbestos. Asbestosis, I should say.

18 Q. Did he compare the finding of lung
19 cancer and asbestosis with --

20 A. Oh, yes.

21 Q. Explain that, please.

22 A. He also differentiated. He pointed
23 out there is a high rate of lung cancer with

1 workers with asbestosis, but not a high rate of
2 lung cancer in workers with silicosis.

3 In other words, the inference was
4 that asbestos leads to lung cancer, but not
5 silica.

6 Q. Is that the same thing essentially
7 that Dr. Gardner is saying right here?

8 A. Yes, essentially that, uh-huh.

9 Q. Now, Doctor, did this whole first
10 part on human asbestosis that you have been
11 referring to ever get published in the medical
12 literature?

13 A. No, unfortunately, it was not
14 published. It was deleted.

15 MR. MOTLEY: Your Honor, I believe
16 this is preadmitted, 3949.

17 MR. McKENNA: Excuse me, could I see
18 the document?

19 Could we approach for a second.

20 (At sidebar:)

21 MR. McKENNA: Mr. Fox tells me that
22 you tentatively preadmitted this document, so if
23 you can just admit it, that would take care of

1 our objection.

2 MR. McCONNELL: I didn't hear you,
3 Peter.

4 MR. McKENNA: Tom says that he
5 believes it was tentatively preadmitted.

6 THE COURT: Is this one of the ones
7 I was waiting for some document that showed the
8 conspiracy or made the prima facie conspiracy?

9 MR. MOTLEY: Yes.

10 MR. FOX: You indicated some
11 reservations about it and we might well --

12 MR. McCONNELL: I want to check that
13 because their track record up here has proved
14 wrong. We have gone back to the transcript. I'm
15 going to get the transcript.

16 THE COURT: I'll admit it, if it
17 hasn't been done.

18 (End of sidebar.)

19 BY MR. MOTLEY:

20 Q. Have you had a chance to review this
21 document, Doctor?

22 A. Yes, I have.

23 MR. MOTLEY: Mr. McConnell, have you

1 had a chance to get to the screen?

2 BY MR. MOTLEY:

3 Q. The date is October 22nd, 1948. Who
4 is it from? Mr. Brown of Johns-Manville to
5 Mr. Muehleck and Mr. Rohrbeck and it's on "Report
6 of Asbestos Experiments."

7 "You will note in the memorandum I
8 suggest eliminating reference to tumors" --

9 MR. MCKENNA: Excuse me,
10 Mr. Motley. Can we start at the beginning of the
11 document?

12 BY MR. MOTLEY:

13 Q. "What purports to be 'Part I' of a
14 report by the Saranac Laboratory entitled
15 'Asbestos Pneumoconiosis' has been received. My
16 comments after a preliminary study are contained
17 in the memorandum attached.

18 "I solicit your views with respect
19 to the report and my comments and also your
20 advice as to how we should proceed from this
21 point.

22 "My comments are based on a study
23 of the text of the report only. I have not

1 studied the tables. I have not reread
2 Dr. Gardner's various interim reports for the
3 purpose of comparing them with this one.

4 "In the event further comments are
5 suggested by study of the tables and interim
6 reports, I will write you next Monday.

7 "You will note in the memorandum I
8 suggest eliminating reference to tumors and also
9 to pneumonia. I also suggest that this report be
10 confined to the results of the experiments with
11 animals and not considered as the first part of a
12 study of the effect of asbestos dust on both
13 animals and human beings.

14 "I suggest this segregation because
15 I believe Dr. Vorwald, who has succeeded
16 Dr. Gardner at Saranac, will be difficult to deal
17 with" --

18 What's the rest of that say, Jack?

19 A. If it comes to --

20 Q. -- "suggesting the elimination of
21 anything that he" --

22 A. Believes.

23 Q. -- "believes is even remotely

1 covered by Dr. Gardner's notes. My information
2 from" --

3 A. Derives from.

4 Q. -- "Johns-Manville's experience with
5 him in" -- there is the diatomaceous earth
6 experiments.

7 A. Yes.

8 Q. In fact, you got a letter in your
9 satchel about this, don't you?

10 A. Yes, I have.

11 Q. Maybe we will get a chance to show
12 that later.

13 "If the report is limited to the
14 animal experiments, our right to criticize and
15 suggest changes before publication, or even to
16 forbid publication, is unquestionable. If we
17 permit it to be made part of a report covering
18 more than the animal experiments, our position is
19 not so strong.

20 "A situation is developing with the
21 miners in Quebec that urgently requires that some
22 report based on Dr. Gardner's experiments be made
23 available as a counter-agent to opinions being

1 expressed and conclusions arrived at by Quebec
2 physicians and officials upon the basis of
3 surmise, social ideology, and inadequate
4 information.

5 "Time, therefore, is of the essence
6 and your prompt consideration of the report and
7 your advice as to procedure will be
8 appreciated."

9 Do you recall Dr. Pedley in 1930
10 saying that?

11 A. Yes, the same thing.

12 Q. Same thing, okay.

13 Now, sir, to your knowledge, did the
14 human asbestosis section ever appear anywhere in
15 the American literature as Dr. Gardner wrote it?

16 A. No, it did not.

17 Q. Let me ask you this. Did the
18 section saying we need a new TLV ever appear in
19 the American literature?

20 A. That did not either. It would have
21 been very helpful if it had.

22 MR. MOTLEY: Your Honor, I believe
23 3965 has been preadmitted.

1 BY MR. MOTLEY:

2 Q. This is dated two months later,
3 December the 14th, 1948, it's on the stationery
4 of the New York University and signed by
5 Tony Lanza. And who is it written to?
6 Dr. Vorwald, who succeeded Dr. Gardner; correct?

7 A. Yes.

8 Q. "With respect to the asbestos
9 report, Part I, September 30th, 1948, a meeting
10 of the representatives of the underwriting
11 companies was held in New York. The report was
12 favorably received and it was the general feeling
13 that it was a most satisfactory and excellent
14 job.

15 "It was the feeling of this group
16 that all references to cancer or tumors should be
17 omitted -- Paragraph 75, Page 31, the
18 introductory paragraphs under 'Complications,'
19 Paragraph 92, Page 39. This request would
20 likewise call for the elimination of any tables
21 relating to this subject matter.

22 "The group felt that there might be
23 included under 'Conclusions' a reference to the

1 nonprogressive character of the fibrosis produced
2 by the asbestos."

3 Next page. "It was decided after
4 these revisions have been concluded, the report
5 of these experimental studies should be published
6 as promptly as possible, preferably in the
7 Journal of Industrial Medicine. Any report on
8 human asbestosis should be separate and not a
9 part of this report."

10 MR. McKENNA: Could you read the
11 last paragraph?

12 BY MR. MOTLEY:

13 Q. "The above comprises the various
14 comments and suggestions which I do not think
15 involves any material change in the report.
16 Please let me know if you wish any further
17 information or discussions of the points raised
18 in this letter."

19 Now, sir, Dr. Lanza says what he
20 suggests being eliminated doesn't involve any
21 material change.

22 A. I don't know what he means by that.
23 Obviously the changes have been very significant,

1 very material, because they have eliminated
2 reference to the human aspects of the disease
3 and, of course, the reference to cancer. And
4 that was the most serious omission in the report.

5 Q. Now, in the -- we have been talking
6 about the human asbestosis part.

7 A. Yeah.

8 Q. Do you have -- can you find the
9 experimental part, sir?

10 A. Yes, uh-huh.

11 Q. Page seven, I believe it is.

12 A. I think I have it here, yes.

13 Q. "Complications"?

14 A. Yes. Uh-huh.

15 Q. Now, this is a section that's
16 talking about the animal experiments, not humans;
17 right?

18 A. Yes, that's right.

19 Q. You see under "Complications,"
20 "Cancer of Lungs"?

21 A. Yes. I see that.

22 Q. Now, if you look over on the next
23 page, sir, do they call it neoplasm or cancer?

1 A. Yes. Well, neoplasm --

2 Q. No. Does he call it cancer or what?

3 A. Well, let me see what he calls it
4 here. Well, in this item, he refers to it as
5 malignant tumors, which is the same as cancer.

6 Q. Well, turn back on the other page
7 and tell us what the section is.

8 A. You mean the previous page?

9 Q. Yes.

10 A. "Cancer of Lungs," yes.

11 MR. McKENNA: Mr. Motley, are you
12 going to read this to the jury at some point,
13 this section?

14 MR. MOTLEY: Your Honor, I object to
15 Mr. McKenna repeatedly interrupting the way I
16 conduct my examination.

17 THE COURT: Go ahead.

18 MR. McKENNA: Your Honor, I think
19 it's improper for him to allow his witness to
20 summarize the documents and select --

21 THE COURT: I don't understand that
22 that's what he's doing. But I think it's
23 perfectly appropriate to have a person who is an

1 expert summarize the content of the document.

2 BY MR. MOTLEY:

3 Q. Doctor, my question very simply is
4 what did Dr. Gardner call it? Did he call it
5 benign or cancer?

6 A. He called it cancer, no question
7 about that.

8 Q. Is a benign tumor the same thing as
9 a malignant tumor?

10 A. No. A malignant tumor is cancer. A
11 benign tumor is a growth which is not a cancer,
12 but it's also not good to have it either.

13 Q. Turn to page eight, please.

14 A. Sure. Yes, I have page eight.

15 Q. All right. Let's look at what his
16 conclusions were. Up, please.

17 Dr. Gardner says, "These
18 observations are suggestive but not conclusive
19 evidence of a cancer stimulating action by
20 asbestos dust. They are open to several
21 criticisms. The strain of mice was not the same
22 in the asbestos experiment as in many of the
23 others cited. Apparently, the former were

1 unusually susceptible. Not enough animals
2 survived in the dust for longer than the 15
3 months apparently necessary to produce many
4 tumors. There were no unexposed controls of the
5 same strain and age and no similar controls
6 exposed to other dusts.

7 "It is hoped that this experiment
8 can be repeated under properly controlled
9 conditions to determine whether asbestos actually
10 favors cancer of the lung."

11 And in Paragraph 5 -- can you look
12 up a little bit, sir?

13 A. Yes, okay.

14 Q. "Of eleven mice inhaling long fiber
15 asbestos for 15 to 24 months, eight developed
16 malignant tumors." Malignant means cancer?

17 A. Right.

18 Q. "And six of them had tumors in other
19 organs. The incidence rate of 81.8 percent is
20 excessive."

21 MR. McKENNA: Your Honor, I would
22 request paragraphs three to four be read also.

23 THE COURT: Go ahead. I think

1 that's fair.

2 BY MR. MOTLEY:

3 Q. "Some strains of white mice do
4 develop tumors without apparent cause.

5 "Such a strain of white mice was
6 unintentionally used in three inhalation
7 experiments with asbestos."

8 And let's look at 7. "As
9 controls" -- what does that mean?

10 A. A control in an experiment, a
11 control is simply a way of making a comparison.
12 For example, you administer a given drug to a
13 group of patients for disease, and then you have
14 another group of patients with the same disease,
15 let's say, but you give them a sugar pill. It's
16 not a drug. They are a control, you see.

17 It's a way of comparing, in this
18 case, you have mice who are exposed to the
19 asbestos dust, and another group of mice that are
20 controls that are not exposed, and you then
21 examine them and see what happens to them.

22 Q. "As controls, we have only the
23 experience with mice in other dust experiments."

1 And then he mentions pure quartz?

2 A. Yes.

3 Q. What disease does pure quartz cause?

4 A. Quartz, of course, causes silicosis.

5 Q. So in the animal experiments, he was
6 comparing the lung cancer from asbestos with the
7 lung cancer from silica; right?

8 A. Exactly, yes.

9 Q. The same thing he was doing with the
10 humans; right?

11 A. Exactly, yes. And similar to the
12 observations of Dr. Meriwether, whom we referred
13 to earlier, where he found that those people
14 exposed to asbestos got excessive lung cancer but
15 those with silicosis did not. And apparently
16 Dr. Gardner got similar results with the mice.

17 MR. MOTLEY: Your Honor, what time
18 did you want to take a morning recess?

19 THE COURT: Now would be fine if
20 it's appropriate?

21 MR. MOTLEY: Yes, sir.

22 THE COURT: We will take a recess,
23 folks, for about ten minutes.

1 (A recess is taken.)

2 (In open court with a jury present:)

3 THE COURT: Members of the jury,
4 Mr. Motley indicated yesterday -- folks, can we
5 get settled, please?

6 Mr. Motley indicated yesterday when
7 he began this line of questioning with Dr. Abrams
8 that this evidence is applicable only to
9 Metropolitan Life. You should understand it has
10 no application to any of the other defendants.

11 BY MR. MOTLEY:

12 Q. Dr. Abrams, have you reviewed
13 correspondence between and among the sponsors and
14 Dr. Lanza prior to the publication of the version
15 of Dr. Gardner's original work which I'm going to
16 show you in a moment in 1951?

17 A. Yes. Yes, I have seen that
18 correspondence.

19 Q. What was the companies' and
20 Dr. Lanza's reaction in general terms, and then I
21 will show you a document to the section on
22 cancer?

23 A. Well, they very definitely

1 recommended that it be excluded, that no word
2 about cancer be mentioned in the report.

3 Q. 3868 is already in evidence. It's
4 November 12th, 1948, it's from Vandiver Brown of
5 Johns-Manville, and I want to just concentrate on
6 this. "It was the unanimous opinion, however,
7 that the reference to cancer and tumors should be
8 deleted, and this is a point we will insist upon
9 for the following reasons.

10 "The experiments were not directed
11 toward determining the incidence, if any, of
12 cancer as a result of asbestos dust exposure.

13 "Dr. Gardner indicated prior to his
14 death that he believed this aspect should be made
15 the subject of a separate study, which would take
16 from two to three years.

17 "Dr. Gardner also indicated that he
18 believed the question of cancer susceptibility
19 should be omitted from the report. This
20 statement is contained in his letter to me of
21 February 24, 1943, with which he enclosed his
22 outline of a proposed monograph on asbestosis.

23 "It also appears from Dr. Gardner's

1 outline that certain strains of white mice
2 develop tumors without apparent cause and that
3 'such a strain of white mice was unintentionally
4 used in three inhalation experiments with
5 asbestos.' "

6 MR. McKENNA: Excuse me. Could you
7 read the next paragraph.

8 BY MR. MOTLEY:

9 Q. "A considerable number of other
10 changes in the report will be suggested to
11 Saranac, but they relate to form and to emphasis
12 rather than to substance, and I believe there is
13 no necessity of detailing them in this report to
14 you."

15 I'm glad you asked me to do that.
16 Do you think eliminating the whole section on
17 human asbestosis related to form rather than
18 substance?

19 A. Do I think that it's related -- it
20 certainly related to substance, not form, yes.

21 Q. Do you think that the suggestion
22 that TLV wasn't any good is related to form and
23 not substance?

1 A. It's related to substance, of
2 course, yeah.

3 Q. Is that something as a public health
4 expert you would have liked to have known?

5 MR. McKENNA: Your Honor, I object.
6 Because this letter is referring to a report
7 Mr. Motley has not shown the witness, and the
8 question he is asking is trying to relate this
9 letter to the other document, the outline.

10 MR. MOTLEY: Your Honor, the Doctor
11 has seen the report. That's a misstatement of
12 fact by Mr. McKenna. We move to introduce it
13 right now, Plaintiff's Exhibit 4170.1.

14 BY MR. MOTLEY:

15 Q. Do you think, Doctor, that ten
16 people who died of asbestosis and also had lung
17 cancer relates to form or substance?

18 A. Substance, of course. It's
19 unfortunate it wasn't reported or wasn't
20 published, I should say.

21 Q. Now, this is Exhibit 4170. Have you
22 looked at that for us, too?

23 A. Yes, I have seen that.

1 Q. Exhibit 3963 has been preadmitted,
2 sir, and it's a letter dated September 30th --
3 excuse me, November 30th, 1948, from Mr. Woodard
4 of Johns-Manville to Mr. Gatke with a copy to

5 A. J. Lanza, Metropolitan Life Insurance
6 Company.

7 "As requested at the meeting, I have
8 discussed with Dr. Lanza his taking up with
9 Saranac the matter of revising the report and
10 putting it in the shape that we agreed upon.
11 Dr. Lanza as agreed to do this for us. I might
12 add that this is just another instance where
13 Dr. Lanza is freely giving his time and effort in
14 helping us along on this program, and I think he
15 deserves the thanks of all of us."

16 Now, let's see what Dr. Lanza did
17 for him. I want to show you the section, sir --
18 I don't have but one copy -- it says revised,
19 January 31st, 1949, and over on the section on
20 cancer, let's see what Dr. Lanza did for them.

21 MR. McKENNA: Your Honor, I object
22 to Mr. Motley repeatedly testifying. He says
23 this is Dr. Lanza's handwriting when it's

1 Dr. Vorwald's.

2 THE COURT: Stop. Absent a witness
3 to testify to that, then the jury is going to
4 have to draw whatever conclusions it can. But I
5 don't think editorial comment is appropriate
6 about the evidence by either counsel.

7 BY MR. MOTLEY:

8 Q. Since he said what he said, "I might
9 add that this is just another instance where
10 Dr. Lanza is freely giving his time and effort in
11 helping us along on this program, and I think he
12 deserves the thanks of all of us."

13 Did I read that right?

14 A. That's correct, yes.

15 Q. "I have discussed with Dr. Lanza his
16 taking up with Saranac the matter of revising the
17 report and putting it in the shape that we agreed
18 upon. Dr. Lanza has agreed to do this for us."

19 Did I read that right?

20 A. Yes, uh-huh.

21 Q. I want to show you the cancer
22 section.

23 MR. McKENNA: Objection, Your Honor.

1 The section is not labeled cancer. Mr. Motley is
2 testifying again.

3 THE COURT: My recollection, it's
4 labeled neoplasm or something.

5 MR. MOTLEY: Neoplasm.

6 THE COURT: Go ahead. You may ask
7 the question.

8 BY MR. MOTLEY:

9 Q. What does neoplasm mean to you, sir?

10 A. Well, neoplasm is a fancy word that
11 literally means new growth, but in medical terms
12 we usually think of it as cancer. Neoplasm is a
13 term that doctors often use to refer to cancer.

14 Q. What did Dr. Gardner call that
15 section we looked at earlier?

16 A. Well, I can't read it from here or
17 see it, but I think he used the term cancer, if I
18 recall.

19 Q. Section III, what did he call it?

20 A. He called it "Cancer of the Lungs."

21 Q. Do you see this, sir. Neoplasm,
22 Paragraph 92?

23 A. Yes, I see it now.

1 Q. Okay. Do you see anything -- what
2 is that, an X out?

3 A. You mean scrawled across it? Yes.
4 I think it says "Out," yes, that's right.

5 MR. McKENNA: Your Honor, I would
6 request that the section be read to the jury now
7 that they have been directed to the big "Out." I
8 think we should read the text.

9 THE COURT: Go ahead.

10 MR. MOTLEY: It's in evidence,
11 Your Honor. It's our only copy. It's hard to
12 read. I will do the best I can. Do you have a
13 copy?

14 MR. McKENNA: Here is a clean copy.

15 MR. MOTLEY: It's retyped?

16 MR. McKENNA: No. That's an
17 original document.

18 MR. MOTLEY: Where is the X?

19 MR. McKENNA: It's not there.

20 MR. MOTLEY: I'm just asking him.
21 He said it was the original one, and I want to
22 know where the X was.

23 "No specific experiment was

1 conducted to determine where the inhalation of
2 asbestos favors the development of neoplastic
3 disease, but certain observations on the subject
4 were recorded in the outline of the proposed
5 monograph on asbestosis submitted by the late
6 Dr. Gardner in February 1943.

7 "In it he called attention to the
8 high incidence of lung cancer among mice inhaling
9 lung fiber asbestos. In his experimental notes,
10 however, he referred to these lesions as
11 adenomas. There is an important distinction
12 between adenoma and cancer which should be made
13 clear. A cancer is a tumor."

14 Do you agree with that?

15 A. Yes, a cancer is a tumor, yes.

16 Q. "Or neoplasm"?

17 A. That's right. Yes.

18 Q. "Capable of local invasion and
19 destruction of tissue which can distribute cells
20 through the lymphatics or blood stream to produce
21 isolated foci from which new tumors develop.
22 This phenomenon of dissemination is known as
23 metastasis."

1 What does metastasis mean?

2 A. It simply means spreading of the
3 cancer.

4 Q. "And any tumor which exhibits it is
5 a malignant growth of which cancer is one type.
6 And adenoma, on the other hand, is a so-called
7 benign or nonmalignant tumor, neoplasm, which may
8 or may not be capable of local invasion but which
9 does not metastasize.

10 "In order to clarify the exact
11 nature of these lesions, the pathological
12 material is being carefully examined. Since it
13 is felt desirable to have the benefit of
14 Dr. Vorwald's judgment, a review of the data on
15 this subject is being postponed until after his
16 return from Europe rather than delay the entire
17 report.

18 "Further discussions will be
19 reserved for a supplement to be issued later."

20 MR. McKENNA: Thank you.

21 BY MR. MOTLEY:

22 Q. Now, I have a document here that --
23 are you familiar with that, sir?

1 A. Yes, I am.

2 Q. What is that?

3 A. It is entitled, "Experimental
4 Studies of Asbestosis," by Arthur Vorwald, Thomas
5 Durkin, Philip Pratt in the A.M.A. Archives of
6 Industrial Hygiene and Occupational Medicine,
7 January 1951.

8 Q. Is this what eventually was
9 published in the literature?

10 A. Yes. This is a publication, yes.

11 Q. And this was what was published for
12 the doctors to see; right?

13 A. That's correct.

14 Q. Have you looked at that to see
15 whether or not there is anything about cancer in
16 there?

17 A. Cancer has been carefully omitted
18 from that report.

19 Q. Anything about the TLV not any good?

20 A. That also has been deleted from it.

21 Q. Anything in there about human
22 asbestosis?

23 A. Also deleted.

1 Q. Anything in there about
2 Dr. Gardner's conclusions about lung cancer with
3 asbestosis?

4 A. Also omitted.

5 Q. Now, this is at the bottom of what
6 they published for the world to see. "Although
7 partial reports and informal reviews of some the
8 experiments had been given from time to time by
9 Dr. Gardner, this paper presents for the first
10 time a complete survey of the entire experimental
11 investigation."

12 Is that true?

13 A. Obviously it was not complete
14 because they omitted these important aspects that
15 we just mentioned.

16 Q. And so to be clear, Doctor, the
17 experimental part of this he called part two.
18 Part one was human asbestosis?

19 A. That's right.

20 Q. And part two was experimental
21 asbestosis?

22 A. Correct.

23 Q. Correct? Where in the paper, part

1 one, human asbestosis, or part two, experimental
2 asbestosis, did he recommend that the TLV was no
3 good?

4 A. Well, he recommended it in his --

5 Q. In part two?

6 A. -- in his material that he left on
7 his death, yes. But of course, it was not
8 published.

9 Q. But was it in part two?

10 A. Oh, yes, I think that was part two.

11 Q. And part two was entitled
12 experimental asbestosis?

13 A. That's right, uh-huh.

14 Q. Part two, experimental asbestosis,
15 recommendation of a new standard of safe
16 atmospheric concentrations of asbestos dust?

17 A. Yes.

18 Q. Now, Doctor, you are not a mouse
19 specialist, are you?

20 A. No, not particularly. I haven't
21 studied that particularly.

22 Q. Have you set a few traps for mice in
23 your life?

1 A. That I have.

2 Q. There are doctors who are mice
3 specialists; right?

4 A. Well, those who use them in
5 experimentation, sure.

6 Q. And you are not telling this jury
7 you are one of those, are you?

8 A. That's right, I'm not that kind of
9 an investigator.

10 Q. Why -- you have told this jury that
11 I think the human asbestosis and human cancer,
12 animal cancer and TLV is no good, should have all
13 been published. Will you explain your answer in
14 light of the fact you are not a mouse expert?

15 A. Well, your question is why would it
16 have been important?

17 Q. No, sir. Let me --

18 A. Yes.

19 Q. You have already told the jury that
20 the human asbestosis section should have been
21 published including the part about cancer in
22 humans; correct?

23 A. Right.

1 Q. You have told the jury that the
2 experimental animal study that mentioned cancer
3 should have been published?

4 A. Yes, that's right.

5 Q. And you told them that this part
6 about the TLV wasn't any good should have been
7 published; correct?

8 A. Correct.

9 Q. Now, I want you to explain to the
10 jury why you think it's important, since you are
11 not a mouse doctor, for all of that to have been
12 published?

13 A. Well, I think it would have been
14 vital to have published that particularly at that
15 time in history because it would have accelerated
16 our knowledge and would have prevented a lot of
17 loss of life and misery which have occurred since
18 by people being exposed to asbestosis.

19 So if we had had that knowledge at
20 that time, we would have been able to develop
21 preventive measures, would have been able to
22 control it and prevent a lot of human suffering.

23 MR. McKENNA: Your Honor, I move to

1 strike the answer as speculative. There is no
2 basis for the answer at all.

3 THE COURT: Overruled.

4 MR. MOTLEY: Your Honor, I didn't
5 hear the ruling.

6 THE COURT: I said overruled.

7 MR. MOTLEY: The answer stands,
8 thank you.

9 BY MR. MOTLEY:

10 Q. Now, Doctor, in the '40s and '50s
11 and up until Dr. Selikoff in 1964, did some
12 doctors still claim asbestos didn't cause cancer?

13 A. Oh, yes. That was debated over a
14 number of years, that's true.

15 Q. I'm going to hand you --

16 A. That's why it would have been
17 important to have published this material,
18 because it would have helped to resolve that
19 question.

20 Q. I've handed you an article by
21 Dr. Richard Doll.

22 A. Yes.

23 Q. Tell the jury about Dr. Doll?

1 A. Dr. Doll is -- I think he's still
2 living -- is a famous scientist in England, and
3 well known in this country as well, and he's done
4 a number of studies on asbestos as well as other
5 health issues. And he published some of the
6 important studies of asbestos workers. This one
7 is entitled "Mortality from Lung Cancer in
8 Asbestos Workers" published in the British
9 Journal of Industrial Medicine in 1955.

10 Q. Now, if you look at the second, the
11 bottom of the first column, do you see a
12 discussion by Dr. Doll of people who disbelieved
13 or still wrote that asbestos didn't cause cancer
14 in 1955?

15 A. Yes, I see that. Shall I read that?

16 Q. Yes, sir, please do.

17 A. Well, I'll start with, "The majority
18 of workers, parentheses, cited by Hueper, 1952."

19 Hueper, incidently, was an American
20 scientist.

21 "The majority of workers, cited by
22 Hueper in 1952, consider that a causal
23 relationship between asbestosis and lung cancer

1 is either proved or is highly probable, and that
2 the reality of the relationship was agreed at the
3 recent International Symposium on the Endemiology
4 of Lung Cancer, Council of the International
5 Organizations of Medical Sciences in 1953. A
6 minority, however, remains skeptical."

7 And in parentheses, he names
8 Cartier --

9 Q. Cartier was with the Quebec Asbestos
10 Mining Association, wasn't he?

11 A. That's right. Cartier, a Warren,
12 and according to Hueper, Lanza and Vorwald.

13 Q. We know who Lanza is. We know who
14 Vorwald is.

15 A. That's right.

16 Q. We know who Cartier is.

17 Do you know who this guy Warren is?

18 A. I don't recall offhand who Warren
19 was.

20 Q. Do you know how long Dr. Lanza and
21 Dr. Vorwald and Dr. Cartier and other people
22 associated with the asbestos industry claimed
23 that asbestos didn't cause cancer?

1 A. How long?

2 MR. McKENNA: Objection, Your Honor.

3 A. I don't recall now.

4 MR. McKENNA: It misstates the
5 document.

6 THE COURT: Okay. He doesn't know
7 the answer anyway.

8 BY MR. MOTLEY:

9 Q. All right. I want to move to
10 another section, Your Honor. I hope I don't have
11 more than about fifteen minutes left. 4813.

12 Now, I want to refresh the record
13 here. When you were talking yesterday about
14 diatomaceous earth and you first started going to
15 the Johns-Manville facility, you told the jury
16 that you were reassured by the company. And what
17 did they tell you exactly?

18 MR. McKENNA: Objection,
19 Your Honor. This has been gone over yesterday in
20 great -- several times.

21 MR. MOTLEY: I want to tie it in to
22 something.

23 THE COURT: Go ahead.

1 BY MR. MOTLEY:

2 Q. What were the words you used?

3 A. Well, they tried to show me that
4 there were no new cases developing, that in
5 essence the hazard was under control.
6 Essentially that's what they told me.

7 MR. MOTLEY: Your Honor, this is
8 preadmitted Exhibit 4813.

9 BY MR. MOTLEY:

10 Q. This is the annual report, ladies
11 and gentlemen, of the Metropolitan Life
12 Industrial Health Section, 1945. I want to
13 publish this part.

14 "Mr. W. G. Hazard, director of the
15 Industrial Hygiene Division of the Department of
16 Health of New Jersey, was ordered by the War
17 Production Board." What was that?

18 A. Well, that was a board or an agency
19 set up by the federal government during World War
20 II, War Production Board.

21 Q. "To make an investigation of the
22 plant of the Johns-Manville Corporation at
23 Manville on the basis that there were a number of

1 unhealthy working conditions in the plant
2 accounting for a large labor turnover.

3 "Due to the fact that we have
4 periodically been surveying this plant,
5 Mr. Hazard asked that we make the survey. Our
6 investigations indicated that the asbestosis
7 hazard was adequately controlled and had been for
8 a number of years. Mr. Hazard accepted our
9 findings and made his report to the War
10 Production Board. The case was closed."

11 Okay. That's essentially the same
12 thing they told you; right?

13 A. Same thing.

14 Q. Well, let's look at what was really
15 happening in that plant. Exhibit 510.

16 MR. MOTLEY: It's been preadmitted,
17 Your Honor.

18 BY MR. MOTLEY:

19 Q. Here is the Industrial Hygiene
20 Foundation of America. Do you see that, sir?

21 A. Yes.

22 Q. Is that the same group that Met Life
23 and Johns-Manville tried to get you to go along

1 with the study?

2 A. Exactly.

3 Q. Report of Preliminary Dust
4 Investigation for the Asbestos Textile Institute,
5 June 1947; okay?

6 Page 15, sir. Will you look at
7 that?

8 A. Okay.

9 Q. "Plant J has counted potential cases
10 of asbestosis amounting in number to about 20
11 percent."

12 A. I see that.

13 Q. Does that sound like that plant was
14 under control?

15 A. Hardly. That's quite a high
16 percentage.

17 Q. Guess what Plant J was? Do you know
18 what Plant J was, sir?

19 A. I don't recall Plant J.

20 MR. McKENNA: I don't think he
21 should be able to speculate.

22 THE COURT: Correct.

23 MR. MOTLEY: Well, I have got the

1 full report. I will put it in evidence.

2 BY MR. MOTLEY:

3 Q. Assume that Plant J was Manville,
4 New Jersey.

5 MR. McKENNA: Objection, Your Honor.

6 A. Yes. I didn't know what you were
7 referring to. Plant J is --

8 THE COURT: Sustained.

9 THE WITNESS: It's the same plant
10 that is referred to in this recommendation by the
11 War Production Board.

12 MR. MOTLEY: Thank you.

13 MR. McKENNA: Move to strike the
14 response.

15 MR. MOTLEY: Your Honor, it's in
16 evidence. It says Plant J.

17 MR. McKENNA: Your Honor --

18 THE COURT: Where does it say that?

19 MR. McKENNA: Where does it say
20 that?

21 MR. MOTLEY: It's in evidence. I
22 will have to get the original over here after
23 lunch.

1 MR. McKENNA: Can you give it to
2 us?

3 MR. MOTLEY: I will give it to you.

4 MR. McKENNA: I think it's improper
5 for the witness --

6 THE COURT: If he doesn't know
7 independently, I think the objection is well
8 founded.

9 MR. MOTLEY: I can ask him
10 hypothetically, can't I?

11 THE COURT: If you can connect it
12 up.

13 MR. McKENNA: He's not asking an
14 expert opinion.

15 THE COURT: Let's hear whether he is
16 asking him an expert opinion.

17 MR. McKENNA: The question he posed
18 wasn't.

19 BY MR. MOTLEY:

20 Q. Dr. Abrams, did I show you a
21 document last night that showed what Plant J was?

22 A. Yes, you did. When you asked me the
23 question, I didn't remember the alphabetical

1 designation, but I recall that you showed me that
2 data.

3 Q. Let me ask you to assume that Plant
4 J was Johns-Manville.

5 A. Manville, yes.

6 Q. Does that indicate to you, sir,
7 whether or not that plant was under control?

8 A. Well, obviously it was not under
9 control. They had a 20.percent attack rate of
10 asbestosis in their workers, so that it was
11 contradictory to the statement earlier that it
12 was adequately controlled.

13 Q. Finally, sir, you have told this
14 jury that you, Herbert Abrams, knew that asbestos
15 caused disease in the '40s, have you not?

16 A. Oh, yes. That's correct.

17 Q. And you have testified here and on
18 previous occasions there was sufficient
19 information in the literature to establish that
20 asbestos was a hazard to human beings at least in
21 the '40s?

22 A. No question. By 1930 it was very
23 well established.

1 Q. Who were the only people that didn't
2 know that asbestos would kill you?

3 A. Well, the only people --
4 MR. McKENNA: Objection,
5 Your Honor.

6 A. -- were the most important people,
7 the working people who were exposed to --

8 THE COURT: Overruled.

9 A. -- to asbestos. They were not given
10 the information, unfortunately.

11 Q. You yourself wrote articles in 1948;
12 correct?

13 A. That's correct.

14 Q. 1953?

15 A. Yes.

16 Q. Here is one you wrote in 1961;
17 correct?

18 A. Yes, that's right.

19 Q. Did you make presentations at
20 medical groups?

21 A. Yes. Well, this one I believe was a
22 presentation I made to the National Safety
23 Council in that year, I believe it was 1961.

1 National Safety Congress, yes.

2 MR. MOTLEY: I will pass the
3 witness, Your Honor. Thank you, Doctor.

4 Oops, excuse me.

5 BY MR. MOTLEY:

6 Q. Doctor, every expert who takes the
7 witness stand is asked this question. Have you
8 testified before?

9 A. I have, yes.

10 Q. On numerous occasions?

11 A. More or less, yes.

12 Q. And you charge a fee for your time?

13 A. I do.

14 Q. And you expect and hope to be paid?

15 A. I hope so.

16 MR. MOTLEY: I don't see Mr. Segal
17 in here. I was able to blame him the other day.
18 I hope you get paid too, sir. Thank you.

19 MR. McKENNA: Your Honor, it may
20 take a few minutes to get set up.

21 THE COURT: Why don't we do the
22 general questioning by the other defendants
23 first. Can we do that?