

CAUSE NO. 2000-31175

**SPRING BRANCH INDEPENDENT
SCHOOL DISTRICT,
Plaintiff,**

VS.

LEAD INDUSTRIES ASSOCIATION, INC., AMERICAN CYANAMID CO., ATLANTIC RICHFIELD CO., E.I. DuPONT deNEMOURS & CO., THE O'BRIEN CORPORATION, THE GLIDDEN CO., SCM CHEMICALS, NL INDUSTRIES, INC. and THE SHERWIN-WILLIAMS COMPANY, Defendants.

IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

11TH JUDICIAL DISTRICT

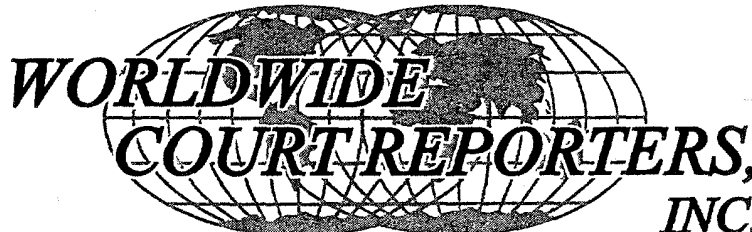
VIDEOTAPED DEPOSITION OF:

PETER REICH

JANUARY 28, 2002

**COMPRESSED COPY
WITH WORD INDEX**

N40009



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1 NO. 2000-31175
2 SPRING BRANCH INDEPENDENT) IN THE DISTRICT COURT OF
3 SCHOOL DISTRICT,)
4 Plaintiff,)
5 VS.)
6 LEAD INDUSTRIES)
7 ASSOCIATION, INC.,)
8 AMERICAN CYANAMID CO.,)
9 ATLANTIC RICHFIELD CO.,) HARRIS COUNTY, T E X A S
10 E.I. duPONT de NEMOURS &)
11 CO., THE O'BRIEN)
12 CORPORATION, THE GLIDDEN)
13 CO., SCM CHEMICALS, NL)
14 INDUSTRIES, INC., and THE)
15 SHERWIN-WILLIAMS COMPANY,)
16 Defendants.) 11TH JUDICIAL DISTRICT
17
18 ORAL AND VIDEOTAPED DEPOSITION OF
19 PETER REICH
20 JANUARY 28, 2002
21
22 ORAL AND VIDEOTAPED DEPOSITION OF PETER REICH,
23 produced as a witness at the instance of the Defendant
24 NL Industries, Inc., and duly sworn, was taken in the
25 above-styled and numbered cause on the 28th day of
January, 2002, from 9:49 a.m. to 5:06 p.m., before
Gayle Shaffer Patterson, CSR in and for the State of
Texas, reported by stenographic method, at the offices
of Kirkpatrick & Lockhart, 75 State Street, Sixth
Floor, Boston, Massachusetts, 02109, pursuant to the
Texas Rules of Civil Procedure (and the provisions
stated on the record or attached hereto.)

2
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13	REQUESTED INFORMATION/DOCUMENTS	
14	NO. DESCRIPTION PAGE	
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16	2 Copy of any of the referenced "50 articles" having anything to do with lead or lead paint	28
17	3 Copy of bibliography by Mr. Reich on childhood lead poisoning previously provided to Mr. Leifer	30
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7

1 that?

2 A At Bates College.

3 Q That was as an undergrad?

4 A It was.

5 Q And --

6 A At the University of Grenoble in France and

7 at Boston University, School of Public Health.

8 Q What sort of history training did you have

9 at Bates?

10 A European history, French history, American

11 history.

12 Q Did you have a major in history?

13 A I did not.

14 Q What did you major in?

15 A French, with a minor in geology.

16 Q What sort of history did you study at

17 Grenoble?

18 A Mostly literature.

19 Q Were these courses you were taking toward a

20 degree?

21 A They were towards a certificate.

22 Q And what is a certificate? It's probably a

23 French term.

24 A Well, it's a -- it's an official statement

25 that I have completed certain courses at the

6

1 PROCEEDINGS

2 THE VIDEOGRAPHER: On the record at

3 9:49 a.m., beginning the deposition with Tape 1.

4 THE REPORTER: By the Texas Rules?

5 MR. HARDY: Yes.

6 THE REPORTER: Signature?

7 MR. SCOTT: Yes.

8 PETER REICH,

9 having been first duly sworn, testified as follows:

10 EXAMINATION

11 BY MR. HARDY (9:49):

12 Q Good morning, Mr. Reich.

13 A Morning.

14 Q My name is Tim Hardy. I represent NL

15 Industries in this case.

16 A M-h'm.

17 Q And I'm accompanied by other lawyers who

18 represent others of the defendants in the Spring

19 Branch School case.

20 Do you have a degree in history,

21 Mr. Reich?

22 A I do not.

23 Q Have you studied history?

24 A Yes.

25 Q And where did -- where and when did you do

8

1 university.

2 Q How long were you there?

3 A One year.

4 Q And you said your, quote, history courses

5 were mostly about literature.

6 A Uh-huh.

7 Q Can you just expand on that, please.

8 A Well, it was really -- it had -- a lot of it

9 was Nineteenth Century literature and history.

10 Q Was that French literature and history?

11 A Yes, it was.

12 Q Exclusively?

13 A Pretty much, yes.

14 Q And you said you may have had some history

15 courses at Boston University. Could you tell me about

16 those, please.

17 A Those were in the area of history of public

18 health.

19 Q And how many such courses were there?

20 A Well, there was one course that I can think

21 of; but in most of my courses, I chose to develop

22 themes around the history of public health.

23 Q Are you speaking of courses you were

24 taking?

25 A I took -- I took independent studies, for

9 1 example, that allowed me to pursue the history of 2 public health. 3 Q What sort of work did you do in those 4 independent studies? 5 A One was the history of contraception, which 6 was published as a chapter in a book. Another was the 7 history of the dairy industry, which resulted in 8 numerous publications put out by the dairy industry. 9 Q Let's mark as Exhibit 178 your curriculum 10 vitae, Mr. Reich. 11 (Exhibit No. 178 marked.) 12 Q (BY MR. HARDY) Let me show you Exhibit 178 13 and ask whether, indeed, that is your CV? 14 A This is my CV. 15 Q Is it current? 16 A One thing is missing, and that is that I am 17 on the board of managers of a small Quaker boarding 18 school in Poughkeepsie, New York, and that is not on 19 there. 20 Q Anything else missing that -- 21 A I don't think so. 22 Q You mentioned the work you did on the 23 history of the dairy industry. Are any of those 24 articles listed on the CV? 25 A Well, it says "about 50 articles and news	11 1 A I was. 2 Q Was that work sponsored by the dairy 3 industry in any way? 4 A It was. 5 Q And you indicated that some of the work you 6 did was subsequently published by the dairy industry; 7 is that right? 8 A Yes, it was. 9 Q Do you recall where it was published? 10 A I do. Hoard's Dairyman, Farm Journal, and I 11 think one or two others. Sanctuary, the publication 12 of the Massachusetts Audubon Society. 13 Q Why was the milk industry publishing such 14 information? 15 A I would say there were two reasons. One is 16 that the data was interesting, and the other one was 17 that I was a good writer. 18 Q Did the publications support in some way the 19 views of the dairy industry? 20 A Not always. 21 Q When did they and when didn't they? 22 A When -- when the data and the information 23 was supportive of nutritional properties of fluid 24 milk, it was preferred. There were some issues around 25 lactose intolerance, which some people in the dairy
10 1 items in popular and trade press, 1974 to" -- they are 2 not listed. 3 Q Indeed, it does. 4 A And then the "Vitamin A and Carotenoids in 5 Human Milk" and the "Survey of Vitamin Content of 6 Fortified Milk," these were based largely on -- 7 largely on historical research and were intended to 8 confirm that. 9 Q You say they were based on historical 10 research. Am I right that these are studies of 11 analytical chemistry -- 12 A That's right. 13 Q -- findings? 14 A Yes. 15 Q And am I right in saying that your role as a 16 coauthor of these studies was to look for previously 17 published data? 18 A At the time, betacarotene was a 19 micronutrient of great interest to the nutrition 20 community, and certain breeds of dairy cows produced 21 significantly more betacarotene than others. And this 22 information had been forgotten and certain parties 23 were interested in confirming that that was, indeed, 24 the case. 25 Q And you were involved in working on that?	12 1 industry were not as pleased with. 2 Q And when you say you were sponsored in some 3 way by the dairy industry, was there a particular 4 organization that paid you money? 5 A Yes, there was. 6 Q What was it? 7 A The American Guernsey Cattle Club; Lactate, 8 Incorporated; H.P. Hood here in Boston. 9 Q For about how long did you look into these 10 milk issues? 11 A Five or six years, probably. 12 Q Which would have included, I gather, given 13 your publications, the years 1989 and 1990? 14 A Right. I think I had -- I had started 15 full-time work at Boston University by that time. 16 Q Did any of the history courses you took, 17 Mr. Reich, at Bates or Grenoble or Boston University 18 have as their subject the methodology of history? 19 A I don't remember. 20 Q Do you recall ever having taken a course in 21 the methodology of historical research? 22 A I don't think so. 23 Q Were the courses -- let's go back. 24 You indicated one course you took at 25 Boston University in the public health school was a

13 1 history course. 2 A (Moving head up and down.) 3 Q What was the scope of that course? 4 A The history of public health. 5 Q Do you recall who taught it? 6 A David Ozonoff. 7 Q And you would have taken that course in 8 1978, 1979? 9 A Between '76 and '79. And I would also 10 hasten to add that there was one and possibly two 11 independent studies as well. 12 Q Well, one of the independent studies, I 13 think you said, had to do with the issues we've been 14 discussing with the milk industry; is that right? 15 A Yes. 16 Q And the other independent study had what as 17 its general subject matter? 18 A I think that it was this publication on the 19 history of contraception. 20 Q Were any of your articles on milk published 21 in peer review journals? 22 A No. 23 Q Was the chapter on the history of 24 contraception peer reviewed as part of the publication 25 process?	15 1 Q Any of the others? 2 A I don't think so. 3 Q And your first publication here, "The Hour 4 of Lead", am I right that that is not -- that article 5 was never peer reviewed? 6 A That's correct. 7 Q Did you ever attempt to publish that 8 article? 9 A Yes. 10 Q In what journal did you seek to have it 11 published? 12 A I sought to have it published as a popular 13 press publication. 14 Q And this would have been after it was 15 printed by the Environmental Defense Fund? 16 A No. 17 Q Was the publication as a popular piece, 18 which did occur, the publication by the Environmental 19 Defense Fund? 20 A I didn't understand the question. 21 Q Yeah. I'm sorry. 22 You wrote "'The Hour of Lead'," 23 correct? 24 A Yes. 25 Q Did you write "The Hour of Lead" for the
14 1 A I'm not sure. 2 Q That -- 3 A It was subjected to scrutiny by peers, but 4 there may not have been a peer review panel. 5 Q You did provide us with that chapter. It 6 wasn't clear to me what book it's in. Can you help 7 me? 8 A The Woman Patient, Volume 1, Plenum 9 Publishers. 10 Q You got it? 11 A 19 -- it's not in here? 12 Q I don't think so. I know you gave us a copy 13 of the chapter. 14 A Yeah, Plenum, 1978. 15 Q Oh, there it is. That's right. You're 16 right. I'm sorry. Thank you. 17 Have -- on page 2 of Exhibit 178 are a 18 list of your publications. Have any of those 19 publications gone through the peer review process? 20 A I would imagine that the two on Vitamin A 21 were. 22 Q That would be the article in the Journal of 23 Agriculture and Food Chemistry and the article in the 24 Journal of Official Analytical Chemists? 25 A Yes.	16 1 Environmental Defense Fund? 2 A That's not a yes-or-no answer. 3 Q I'd be glad to let you elaborate. 4 A I wrote a manuscript that I sent to my 5 agent before I was contacted by the Environmental 6 Defense Fund and tried to have that published. At 7 that time, it was called "The Teacup and The Sponge." 8 My agent was unsuccessful in marketing this book. 9 Subsequently, I was contacted by the Environmental 10 Defense Fund, and we came up with a different title. 11 Q And then the Environmental Defense Fund in 12 1992 published? 13 A That's right. 14 Q Do you currently teach any courses at Boston 15 University, Mr. Reich? 16 A Yes and no. 17 Q I'd be glad to let you elaborate. 18 A I am a facilitator rather than a teacher, a 19 facilitator in a course for first-year medical 20 students. These are problem-based courses, and my job 21 is to guide the students rather than to teach them. 22 So some people could call it teaching. They like to 23 call it facilitating. 24 Q What is the subject matter of that course? 25 A The subject matter is the literature of

17 1 medicine. The main purpose of the course is to teach 2 students to think analytically, to ask the right 3 questions, to form hypotheses, and in my classes, to 4 go to the library and find the right paper quickly and 5 efficiently. 6 Q These would be papers on medical subjects? 7 A Yes. 8 Q You've been at Boston University since, I 9 guess, 1987; is that correct? 10 A I came as a student in 1976. 11 Q You've been on the faculty since 1987? 12 A No, since 1979, I think. Let's see. 13 Well, it says 1979 is when I started 14 the seminar as an instructor. 15 Q At the School of Public Health? 16 A Yes -- well, at the time the School of 17 Public Health was a school within a school. The 18 course that I was teaching in the medical -- I was 19 teaching medical students in the School of Medicine. 20 Q Did there come a time when you became a 21 member of the faculty at the Boston University School 22 of Public Health? 23 A Yes. 24 Q When was that? 25 A I think it was 1979.	19 1 Q Are those two different things? 2 A They are. 3 Q Could you describe the difference, sir, or 4 each, please. 5 A Medical literature -- well, you could -- I 6 guess you could maybe use them interchangeably. The 7 medical literature, I would say, is the books and 8 journal articles that document the development of peer 9 reviewed medical knowledge. The literature of 10 medicine is the way in which writers and poets have 11 dealt with medicine as a theme. 12 Q And the course you were teaching dealt with 13 both? 14 A It did. We published a paper called "A New 15 Pun on the Birth of McDuff." My coauthors are all my 16 minority students from the Atlanta University system. 17 Q In that course, did you have any particular 18 material that you used to teach the students about 19 medical literature? 20 A Yes. 21 Q What sort of materials were they? 22 A Well, by "medical literature," you're now 23 referring to the technical -- 24 Q Yes, I am indeed, right. 25 A The primary tools were "Accumulated Index
18 1 Q Since 1979, have you taught courses at the 2 School of Public Health? 3 A No. 4 Q How long have you been serving in your role 5 as a facilitator of courses at Boston University? 6 A Since 1979, with a hiatus -- with a hiatus 7 between 1989 and '98, I think. 8 Q Were the subjects of those courses in which 9 you were a facilitator throughout this period similar 10 to what you've already described you're currently 11 doing? 12 A No. 13 Q What sort of courses did you facilitate 14 prior to teaching? 15 A Prior to that, I was a teacher in a course 16 for -- especially designed for minority students that 17 was developed by Boston University to acquaint them 18 with the literature of medicine and the medical 19 literature; and in that course, we studied the history 20 of medical literature. 21 Q Those were medical students? 22 A They were. 23 Q You referred a second ago to the literature 24 of medicine and also to medical literature. 25 A That's right.	20 1 Medicus," Medline, "Science Citation Index," and most 2 importantly, the Stacks. 3 Q What -- why were the Stacks most important? 4 A I try to give my students an appreciation 5 of the history of medicine. And with almost every 6 class, we go to Countway Medical Library and go to the 7 rare books room and look at historical documents. 8 Basically, I strive to encourage my students to always 9 go back and find the sources. 10 Q Am I right that you have not published any 11 articles on the history of medicine? 12 A That's right. 13 Q Do you have tenure? 14 A Boston University School of Medicine does 15 not have tenure. 16 Q You're currently at Boston University titled 17 the assistant to the dean? 18 A Assistant -- I think that and my other title 19 is director of special projects. 20 Q And with the exception of the course you're 21 facilitating for medical students, am I right that you 22 currently have no teaching duties? 23 A Well, I'm responsible -- the Federal 24 government in 1991 required that any institution of 25 higher learning that has Federal training grants

21

1 provide formal instruction in the responsible conduct
 2 of research. For the last ten years, I have directed
 3 that program at the Boston University School of
 4 Medicine.
 5 Q Does that program include teaching students?
 6 A It includes putting on formal instruction
 7 for students.
 8 Q Are you currently considered a member of the
 9 faculty of the School of Public Health?
 10 A Yes.
 11 Q Are you in the environmental health section?
 12 A I am.
 13 Q Maybe you could just help me, then.
 14 MR. HARDY: Let's mark this as Exhibit
 15 179.
 16 (Exhibit No. 179 marked.)
 17 Q (BY MR. HARDY) I checked out the Boston
 18 University School of Public Health Environmental
 19 Health Faculty and Staff web site a week or two ago
 20 and got this list of faculty and staff.
 21 A And I'm not there, right?
 22 Q You were not there. I wondered if there's a
 23 reason for that.
 24 A There probably is. I believe the reason is
 25 that up until, what, this fall, my appointment was in

22

1 the Department of Health Services. And a few weeks
 2 ago, with the agreement of the dean of School of
 3 Public Health and the chairman of the department, my
 4 appointment was changed to the Department of
 5 Environmental Health.
 6 Q Is there a reason for that?
 7 A My interests and my activities were more in
 8 line with the Department of Environmental Health than
 9 Health Services. I do have a faculty appointment at
 10 Boston University School of Public Health.
 11 Q Do you have any expertise, Mr. Reich, in
 12 industrial hygiene?
 13 A No.
 14 Q Do you have any expertise in government
 15 regulations?
 16 A Yes -- well, I don't know what you mean by
 17 "expertise," I guess. I'm familiar with a lot of
 18 those things.
 19 Q I gather you're saying you're familiar
 20 with -- are you familiar with government regulations
 21 pertaining to lead paint --
 22 A Some --
 23 Q -- today?
 24 A Somewhat.
 25 Q Do you consider yourself an expert on EPA

23

1 and HUD and OSHA?
 2 A No.
 3 Q Do you have any expertise, Mr. Reich, in
 4 toxicology?
 5 A No.
 6 Q Do you have any expertise in the history of
 7 business in the United States?
 8 A No.
 9 Q Other than the work you've done with respect
 10 to lead paint and the article "Hour of Lead," have you
 11 ever done research or any writing on the response of
 12 any other industry to issues of toxicity?
 13 A The milk industry.
 14 Q Any other industry?
 15 A I was a member of the board of health in my
 16 community for 13 years.
 17 Q That's Leverett?
 18 A Yes. Gateway to Wendell. That's a
 19 Massachusetts joke.
 20 Q I've got to ask you to explain it.
 21 A Well, Wendell is out there.
 22 Q Okay.
 23 A And in that capacity, I had the opportunity
 24 to interact with power companies, utilities, in terms
 25 of spraying rights-of-way, things like that. So

24

1 there -- I gained some familiarity with current issues
 2 there.
 3 Q But you have not conducted research or
 4 written about --
 5 A I have not.
 6 Q -- the history of those industries?
 7 A No, I have not.
 8 Q Do you have any expertise, Mr. Reich, in
 9 architecture?
 10 A I do not.
 11 Q Building construction?
 12 A No.
 13 Q Paint technology?
 14 A Well, I don't know if I'd call it expertise,
 15 but I have some knowledge about it.
 16 Q And how have you gained knowledge about
 17 paint technology?
 18 A I've gained that knowledge by reading and
 19 talking with other people.
 20 Q What sort of things have you read?
 21 A Well, I would go to the Stacks at Sloan
 22 School of Management at Boston University, University
 23 of Massachusetts, and go to the paint technology
 24 section and sit down and read.
 25 Q And I believe you've given us some of the

25 1 articles you've read -- 2 A I believe I have. 3 Q -- by Mattiello? 4 A Mattiello. 5 Q Who was Mattiello? 6 A He was a well-known, highly regarded paint 7 technologist. People worshipped him. 8 Q And am I right that he published multiple 9 volumes written by many experts in paint technology? 10 A That's cor -- that's my recollection. 11 Q And is it your understanding that those 12 volumes were basically state-of-the-art descriptions 13 of paint technology when they were written? 14 A It does seem that way in retrospect, yes. 15 Q Do you have any expertise, Mr. Reich, in 16 chemistry? 17 A No. 18 Q Or engineering? 19 A No. 20 Q Do you have any expertise in the history of 21 warning labels used on products in the United States? 22 A I have some familiarity with that. 23 Q From what sources have you gained 24 familiarity? 25 A From legislative histories, from history	27 1 paint technology? 2 A Colleagues at my School of Public Health, 3 hardware store technicians, old-time painters. 4 Q Have you talked to any -- I'll call them 5 paint chemists, people who actually formulated paint? 6 A I have not. 7 Q Have you talked to any current or former 8 employees of paint or pigment companies about paint 9 technology? 10 A I have not. 11 Q Let me just double-check something. On 12 Exhibit 178, as you pointed out on the second page, 13 there's a reference to 50 articles and news items in 14 popular and trade press. 15 A (Moving head up and down.) 16 Q Do any of those 50 articles and news items 17 have anything to do with lead? 18 A They do. 19 Q Do you recall which of them had something to 20 do with lead? 21 A I wrote an article in 1974 for a newspaper 22 called the Soho Weekly News in New York City. 23 Q What was the subject? 24 A The subject was the risks to children of 25 lead.
26 1 books, from accounts by leaders in the paint 2 industry. 3 Q Does your knowledge of the history of 4 warning labels used on products go beyond your 5 familiarity with what you've collected with -- on that 6 subject on the paint industry? 7 A A bit. 8 Q What have you discovered on the history of 9 the use of paint -- on the use of warnings outside the 10 paint industry? 11 A Well, a lot of my colleagues were involved 12 in the tobacco warnings and saccharin, and so I've sat 13 in on discussions about those types of issues. 14 Q Anything in particular you've read on those 15 subjects? 16 A I guess not. 17 Q Would any of those discussions you had about 18 warnings on products other than paint have involved 19 warnings before World War II? 20 A I don't think so. 21 Q A minute ago you told me that some of what 22 you knew about paint technology you learned from 23 talking to people. 24 A (Moving head up and down.) 25 Q Do you recall who you've talked to about	28 1 Q Do you happen to have a copy of that? 2 A Not handy. I mean, not on me -- 3 Q No. 4 A -- but I have one at the home office, yes. 5 MR. HARDY: I request it please, Ron. 6 Q (BY MR. HARDY) Have you -- any of the other 7 50 articles and news items have anything to do with 8 lead? 9 A I don't remember. 10 Q If you should happen to recall one that has 11 to -- 12 A Sure. 13 Q -- do with lead or lead paint, I'd 14 appreciate a copy. 15 What caused you to be interested in 16 lead and children in 1974? 17 A One of the big names in lead research was 18 H.A. Schroeder. And a good friend of mine was the 19 director of his laboratory in Brattleboro, Vermont, 20 and he shared with me papers on his concerns at the 21 time. 22 Q And was your Soho Weekly News article, in 23 part, based on those papers from Mr. Schroeder? 24 A Well, yes, Mr. Schroeder and his assistant, 25 Mr. Darrell -- Dr. Schroeder.

29 1 Q Between 1974 when you wrote the Soho Weekly 2 News article and around the early 1990s when "The Hour 3 of Lead" was being written, did you write anything on 4 lead or lead paint? 5 A Between -- what was the first starting 6 year? 7 Q 1974, which was the date you said for the 8 Soho article. 9 A Right. I did not -- well, starting -- 10 starting in 1987 is when I became interested in lead 11 again. 12 Q And let me follow up on that. What caused 13 you to become interested in 1987? 14 A My mentor at the School of Public Health, 15 Dr. Ozonoff, indicated to me that some attorneys in 16 Boston were interested in developing a bibliography on 17 childhood lead poisoning, and I expressed an interest 18 and began doing that work. 19 Q Did you meet with those lawyers? 20 A I did. 21 Q Was that Neil Leifer? 22 A It was. 23 Q Were you being paid at that time by 24 Mr. Leifer's law firm? 25 A I was.	31 1 memorandum -- memoranda summarizing my thinking 2 at the time. 3 Q Do you have copies of those memoranda? 4 A Probably. 5 Q I guess I'd also request those, please. 6 A Okay. 7 Q Did Mr. Leifer and any other law firm -- or 8 any other lawyers in his firm ask you to write "The 9 Hour of Lead"? 10 A No. 11 Q What prompted you to write that document? 12 A I got my first typewriter when I was 8. I 13 write pretty much all the time. And I just started 14 writing. 15 Q And I believe you said you then provided the 16 manuscript to your agent? 17 A That's correct. 18 Q Was he trying to get it published? 19 A She. 20 Q She. Sorry. I hate -- duly corrected. 21 She was then trying to get it published 22 as a book? 23 A Yes. 24 Q And nobody bought it? 25 A That's correct.
30 1 Q Did you then serve as an expert witness for 2 Mr. Leifer in the Santiago case? 3 A I don't think so. 4 Q Do you recall -- 5 A I was -- I think I was a consultant. 6 Q Do you recall the submission of an affidavit 7 in your name in the Santiago lawsuit? 8 A I don't think so. 9 Q You don't recall writing an affidavit for 10 Mr. Leifer in probably 1989 or '90? 11 A I really don't. 12 Q Do you recall about how many times you met 13 with Mr. Leifer and other members of his firm? 14 A Less than a dozen, probably. 15 Q You said you provided him with a 16 bibliography? 17 A (Moving head up and down.) 18 Q Do you still have a copy of that 19 bibliography? 20 A I do. 21 MR. HARDY: I'd request a copy, please, 22 Ron. 23 Q (BY MR. HARDY) Did you provide Mr. Leifer 24 and his law firm with any other written materials? 25 A I provided them with occasional	32 1 Q Did you provide that manuscript to 2 Mr. Leifer or any of his cooperating lawyers? 3 A I don't think so. 4 Q Do you recall them ever providing any 5 comments on it? 6 A I think there was satisfaction with it. 7 Q Did you contact the Environmental Defense 8 Fund, or did they contact you? 9 A They contacted me. 10 Q Do you recall who it was at EDF who called 11 you? 12 A Karen Florini. 13 Q Do you know how she had heard about the 14 manuscript? 15 A I'm not sure. 16 Q When she called you, did she have a copy of 17 the manuscript? 18 A I don't know. 19 Q Do you know whether the Environmental 20 Defense Fund asked anyone else to review the 21 manuscript before they published it? 22 A I think they did. 23 Q Do you recall who? 24 A I think Ellen Silbergeld might have had a 25 look at it.

1 Q Anybody else?
 2 A I don't know.
 3 Q Do you recall receiving any comments on the
 4 manuscript from Dr. Silbergeld?
 5 A No, I don't.
 6 Q Did you change the manuscript that you had
 7 originally sent to your agent before it was published
 8 by the Environmental Defense Fund?
 9 A I really don't remember.
 10 Q Prior to the writing of the manuscript, what
 11 methodology did you use to collect the information?
 12 A What information? All the information?
 13 Q The information in the manuscript.
 14 A I'm not quite sure what you mean.
 15 Q Okay. Let's try it this way: Would I be
 16 right in assuming that prior to 1987, you had never
 17 sought to collect information on the history of
 18 companies who mine lead or companies who make lead
 19 pigment or companies who --
 20 A That's not correct.
 21 Q Good. What sort of research had you done on
 22 that subject prior to 1987?
 23 A Since 1972, I was work -- been working on a
 24 novel that takes place in the gold mines of New
 25 Mexico, and I've been collecting information about the

1 history of mining since the early Sixties.
 2 Q Had any of that research that you had done
 3 in connection with the novel included looking at
 4 information on lead paint or lead pigment companies?
 5 A Not that I can recall.
 6 Q So am I right in assuming that since there
 7 is information in "Hour of Lead" on lead paint and
 8 pigment, that that's information you started to
 9 collect in around 1987 after Mr. Leifer asked you to
 10 do some work?
 11 A No. I started collecting it in 1974 when I
 12 met this fellow from Dr. Schroeder's lab.
 13 Q Was there historic information included in
 14 your 1974 article?
 15 A Yes.
 16 Q In 1987, after Mr. Leifer asked you to help
 17 him, did he explain what he was looking for?
 18 A I think he did.
 19 Q Do you recall what he said?
 20 A No.
 21 Q Do you recall what it was that you -- that
 22 you thought you were looking for for Mr. Leifer?
 23 A I thought I was looking for the earliest
 24 references I could find to childhood lead poisoning.
 25 Q And you put together a bibliography for

1 Mr. Leifer?
 2 A I did.
 3 Q And that bibliography would indicate, at
 4 least at that time, what were the earliest references
 5 to childhood lead poisoning you could find?
 6 A That's correct.
 7 Q Were you looking for anything other than
 8 early references to childhood lead poisoning?
 9 A Yes.
 10 Q What else were you looking for?
 11 A I was looking for connections that would
 12 make themselves apparent if I kept reading and taking
 13 notes.
 14 Q Did you have a methodology for conducting
 15 this research?
 16 A The principal method was not to read a paper
 17 and look at the references and look retrospectively,
 18 but it was to try to look prospectively as to see who
 19 cited whom.
 20 Q Could -- do you recall any examples from
 21 your research of how that process worked?
 22 A One example is the -- the way in which
 23 American authors cited the Australian authors.
 24 Q Could you just elaborate a little on what
 25 that means?

1 A I was curious when the American medical
 2 writers would have known about what was happening in
 3 Australia.
 4 Q And how did you go about finding out the
 5 answer to that question?
 6 A I read a lot of footnotes.
 7 Q That would have been footnotes in American
 8 articles?
 9 A M-h'm.
 10 Q And you -- am I right, you were looking for
 11 footnotes in American articles that referenced the
 12 Gibson and other articles in Australia?
 13 A (Moving head up and down.) That's correct.
 14 Sorry.
 15 Q Were there other issues like determining
 16 whether the Americans were aware of the Australian
 17 research which you recall looking at in this 1987 to
 18 1990 period?
 19 A I guess without your being more specific, I
 20 can't answer that.
 21 Q You've already indicated that you conducted
 22 some of this research in the libraries in the Stacks
 23 here in Boston. Did you do any archival research in
 24 this period?
 25 A I did.

37

1 Q Do you recall which archives you looked at?

2 A I went to the archives at Harvard Medical

3 Library, and I dispatched research assistants to

4 archival collections in the National Archives and

5 Records Administration and in certain cities around

6 the country.

7 Q Did you maintain a collection of what you

8 found in these various archives?

9 A If there was something found, I did.

10 Q And you still have it?

11 A I do.

12 Q Did you provide copies of those findings to

13 Mr. Leifer?

14 A No, I don't think so.

15 Q Am I right in assuming that he was paying

16 for this research?

17 A No.

18 Q Did -- am I right in assuming Mr. Leifer

19 paid you to provide him with a bibliography?

20 A Yes.

21 Q But he was not paying for the entire

22 research effort?

23 A That's correct.

24 Q Did the -- since you were sending people

25 around the country, did that come out of some fund at

38

1 Boston University?

2 A No. Some of that was when I was working

3 with the Environmental Defense Fund.

4 Q Ahh. The Environmental Defense Fund

5 provided some funds to do that archival research?

6 A No. I -- the Environmental Defense Fund

7 provided funds to me. It was my choice to follow up

8 on leads. So I figure I paid for that. I could have

9 kept that money, but I paid someone to go out and look

10 for information for me.

11 Q So in this period from 1987 to 1992, you

12 received some funds from Mr. Leifer's law firm to do

13 this work?

14 A Yes.

15 Q And you received some funds from the

16 Environmental Defense Fund to do this work?

17 A (Moving head up and down.)

18 Q Did you receive funds from anyone else to do

19 this work?

20 A Myself.

21 Q Do you have any idea of how large your

22 collection of articles and archival material that you

23 collected in this period is?

24 A Hold on. 10 to 12 linear feet.

25 Q And that's in your office in one location?

39

1 A Do I have to answer that?

2 Q Well, no, I guess not, but I'd appreciate

3 it.

4 A It is.

5 Q Okay. And therefore, it would be possible

6 if we wanted to review these documents that we could

7 do so, assuming your lawyer and we all agree?

8 A Assuming we all agree.

9 Q And we'll discuss that subsequently.

10 Am I right, though, that these 10 to 12

11 linear feet are documents you've collected as opposed

12 to things you have written or -- or -- as opposed to

13 things you have written?

14 A Well, a few inches are things I've written,

15 I guess.

16 Q When you were doing this work from 1987 to

17 1992, did you also receive some documents collected in

18 litigation for Mr. Leifer to review?

19 A I did.

20 Q Do you recall what sorts of documents those

21 were?

22 A It had to do with the Santiago case.

23 Q Do you recall receiving from him minutes of

24 the Lead Industries Association?

25 A I think I did get that.

40

1 Q Do you recall receiving from him documents

2 from any of the companies who were defendants in the

3 Santiago case?

4 A Documents from the defendants. I don't

5 think so.

6 Q Did you receive any documents from

7 Sherwin-Williams' files?

8 A From him?

9 Q From him.

10 A I did not. To the best of my knowledge, I

11 did not.

12 Q At any time, either in this period or since,

13 have you received documents from Sherwin-William --

14 having to do with the Sherwin-Williams Company?

15 A I don't think so.

16 Q Have you ever reviewed advertisements that

17 are in the public literature or they might be in

18 libraries from Sherwin-Williams?

19 A Yes.

20 Q When would you have done that?

21 A In the early Nineties, I collected some

22 Saturday Evening Post materials, but I just -- I'm not

23 recollecting if Sherwin-Williams was, indeed, one of

24 the parties there -- I mean, one of the companies

25 represented.

1 Q Do you remember in that collection of
2 Saturday Evening Posts looking at advertisements by
3 the National Lead Company?
4 A Yes.
5 Q Other than those advertisements in Saturday
6 Evening Post, which, as you recall, had to do in
7 part -- some of which had to do with the National Lead
8 Company, have you ever reviewed any other documents
9 that came from the National Lead Company as -- from
10 the production in litigation?
11 A From the production in litigation? I do not
12 believe I have.
13 Q Have you read anything about the National
14 Lead Company?
15 A Yes.
16 Q And that would have been in books on -- that
17 are cited in your various publications, I gather?
18 A Books and also magazine types of things.
19 Q But that would have -- what you've seen on
20 the National Lead Company, am I right, is all what one
21 might call secondary source materials rather than
22 primary source materials?
23 A Not necessarily.
24 Q Well, I guess Saturday Evening Post ads are
25 primary materials.

1 A Are you sure?
2 Q Well, I thought you might be excepting
3 them.
4 What primary materials do you recall
5 having reviewed on the National Lead Company over the
6 years?
7 A I think there may be some materials in some
8 of the archival stuff from the National Archives, but
9 I'm not a hundred percent sure.
10 Q Perhaps some of the materials on the Federal
11 Trade Commission investigation of lead pigment
12 companies you might be recalling?
13 A Possibly.
14 Q Do you recall anything from the Harvard
15 archives having to do with the National Lead Company?
16 A I'm not a hundred percent sure. If I could
17 review the materials, I could verify that. But I
18 think that -- I think perhaps, but I just don't
19 remember exactly.
20 Q Whatever -- well, I mean, I guess what I'm
21 really interested in, I gather you recall Mr. Leifer
22 providing you with minutes of the Lead Industries
23 Association?
24 A Yes.
25 Q Has any other lawyer provided you with

1 documents like those Lead Industries Association
2 minutes that that lawyer obtained through a lawsuit?
3 A No.
4 Q And I gather Mr. Scott hasn't provided you
5 with any such documents; is that right?
6 A That's correct.
7 Q He hasn't provided you with any documents on
8 National Lead Company?
9 A No, he hasn't.
10 Q Nor the Sherwin-Williams Company?
11 A Well, what type of documents are you talking
12 about, primary documents relating to -- no.
13 Q Okay. I mean, just to make sure we
14 understand each other, in the litigation starting in
15 Santiago and continuing to this day, the companies
16 have produced from company files many, many documents
17 and they've been provided to lawyers like Mr. Leifer
18 and Mr. Scott. And the question is whether any of
19 those collections have been given to you.
20 A They have not.
21 MR. SCOTT: Object to the form.
22 MR. HARDY: I -- that's fine.
23 MR. SCOTT: You can go ahead and
24 answer.
25 MR. HARDY: I got it. I just wanted to

1 clear that up.
2 Q (BY MR. HARDY) Since 1992, when "Hour of
3 Lead" was published, have you done any further
4 archival research on the subjects covered in that
5 manuscript?
6 A I have.
7 Q What sort of archival research have you done
8 since 1992?
9 A Since 1992, I have had my research assistant
10 visit the National Archives in Washington and the
11 Hoover Archives in Iowa and the Hoover Papers in
12 Stanford, and I've had research assistants go to the
13 New York Public Library.
14 Q Are the materials found in those locations
15 included in your 10 to 12 linear feet?
16 A Yes.
17 Q Why did you send a research assistant to the
18 Hoover institute and library?
19 A I was interested in learning more about the
20 National Bureau of Standards' role in encouraging the
21 use of lead pigments.
22 Q Did you find anything in the Hoover
23 libraries relevant to that issue?
24 A Yes.
25 Q And that's included in the 10 to 12 feet?

45

1 A Yes, it is.

2 Q What did those documents tell you about the

3 National Bureau of Standards' role in recommending the

4 use of lead paint?

5 A Those documents suggested that the

6 Department of Commerce and the Bureau of Standards

7 were interested in encouraging people to use

8 lead-based paints.

9 Q Did those documents indicate why the

10 Department of Commerce was interested in encouraging

11 lead-based paint?

12 A I think they did.

13 Q What did they indicate?

14 A That lead paints were better.

15 Q Did anything in those documents indicate

16 that the Department of Commerce and the National

17 Bureau of Standards' views that lead paints were

18 better were anything other than their genuine views on

19 the subject?

20 A If -- well, if I answered that one way, it

21 would sound like they were devious people, wouldn't

22 it?

23 Q Did you -- I guess I'll ask it again. Let's

24 make it -- try and do it better.

25 A (Moving head up and down.)

46

1 Q You found documents indicating the National

2 Bureau of Standards recommended lead paint?

3 A Yes.

4 Q And those documents indicated that the

5 National Bureau of Standards believed it was the best

6 paint?

7 A Yes.

8 Q Was there any indication in any of those

9 documents other than that that was the National Bureau

10 of Standards' expert genuine view when they issued

11 such recommendations?

12 A I really -- I guess I don't quite get what

13 you're getting at.

14 Q Was the National Bureau of Standards telling

15 the world in its recommendations what it, in fact,

16 believed to be true?

17 A It appears that they were telling the world

18 what they believed to be true.

19 Q And you saw no documents indicating anything

20 to the contrary?

21 A I don't think so.

22 Q We -- we'll return after the deposition to

23 the issue of reviewing some of your files,

24 particularly these that you may have found in the

25 Hoover libraries.

47

1 This work you did with the assist --

2 with your research assistant looking for things at the

3 Hoover Library, at the New York Public Library, was

4 this done after you stopped working for Mr. Leifer and

5 before you first heard from Mr. Scott or his law

6 firm?

7 A I don't think I can answer that yes or no

8 because I just -- there's a lot of research over 15

9 years.

10 Q When was the last time you did any work for

11 Mr. Leifer?

12 A I prepared a memorandum for him last

13 summer.

14 Q Had you done anything for Mr. Leifer between

15 about 1992 when "The Hour of Lead" was published and

16 last summer?

17 A No.

18 Q What was the subject of the memo last

19 summer?

20 A It had to do with the findings at the

21 National Archives.

22 Q On what subject?

23 A National Bureau of Standards.

24 Q Do you have a copy of that memo?

25 A I do.

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1 Q You don't happen to have it with you?

2 A I don't happen to have it with me.

3 MR. HARDY: I request a copy, please.

4 Q (BY MR. HARDY) In general --

5 MR. SCOTT: Just so that we're clear on

6 this, the documents you want to request subsequent to

7 the deposition I'm going to expect to be put in

8 writing because I'm not going to take the onus of

9 keeping track of all of them, and Leifer may well have

10 objections to the production of that.

11 MR. HARDY: No problem.

12 MR. SCOTT: We may need to involve him

13 in that.

14 MR. HARDY: No problem.

15 THE WITNESS: Can I get a cup of

16 coffee?

17 MR. HARDY: Yeah, me, too. Let's take

18 a three-minute break.

19 THE VIDEOGRAPHER: Off the record,

20 10:51.

21 (Recess from 10:51 a.m. to 10:57 a.m.)

22 THE VIDEOGRAPHER: On the record,

23 10:57.

24 Q (BY MR. HARDY) You indicated, Mr. Reich,

25 that you sent a memo to Mr. Leifer last summer on your

1 finding with respect to the National Bureau of
 2 Standards. Do you recall, in general, what that memo
 3 told Mr. Leifer?
 4 MR. SCOTT: I'm going to instruct you
 5 not to answer that.
 6 MR. HARDY: Okay.
 7 MR. SCOTT: If the Court -- if the
 8 Court orders it, we'll give you a copy of that.
 9 MR. HARDY: Fine.
 10 Q (BY MR. HARDY) Between -- around 1990, when
 11 you were working for Mr. Leifer, and last summer,
 12 which could have been the summer of 2001, did you work
 13 for any other lawyers on cases having anything to do
 14 with lead paint or lead pigment?
 15 A Well, I'm not sure about that starting
 16 date. I'm not sure when I stopped working for
 17 Mr. Leifer.
 18 Q When do you recall stopping?
 19 A I don't recall. I mean, I -- it sort of
 20 petered out, I guess.
 21 Q Early 1990s?
 22 A I don't remember.
 23 Q Okay.
 24 A From time to time, I would get a phone call
 25 from a law firm asking for information and...

1 Q Did you provide such information to any
 2 lawyers?
 3 A Sometimes.
 4 Q Do you recall the names of any of the
 5 lawyers to whom you provided information?
 6 A I don't. This was years ago.
 7 Q So with the exception of Mr. Leifer and the
 8 current work you're doing for Mr. Scott --
 9 A Yes.
 10 Q -- do you recall the names of any other
 11 lawyers for whom you've provided information on lead
 12 paint?
 13 A I did -- I did provide information to the --
 14 the fellows in New York City, and that was done
 15 gratis.
 16 Q That would have been lawyers in the
 17 corporation counsel office --
 18 A Yes.
 19 Q -- in New York City?
 20 Do you recall what you provided
 21 Mr. Goldstein or --
 22 A I think it was -- I had some documents that
 23 they didn't have. I don't recall what they were.
 24 Q Did you provide anything in terms of your
 25 writings to the lawyers in the city of New York?

1 A No.
 2 Q Have you served, Mr. Reich, in the capacity
 3 of an expert in any litigation other than the work for
 4 Mr. Leifer and the work you're now doing for
 5 Mr. Scott?
 6 A No.
 7 Q Don't know, but I'd be right, I guess, in
 8 assuming this is the first time you've been deposed as
 9 an expert witness?
 10 A It is.
 11 Q And I'd be right in assuming you've never
 12 testified in court as an expert witness?
 13 A That's correct.
 14 Q When were you first contacted by Mr. Scott
 15 or other lawyers at Bracewell & Patterson or Fleming
 16 in Houston?
 17 A I believe it was last spring.
 18 Q And I believe you've provided us with a list
 19 of your time and expenses on this project. Is this
 20 the list?
 21 A That is the list.
 22 MR. HARDY: Why don't we mark it as
 23 Exhibit 180, please.
 24 (Exhibit No. 180 marked.)
 25 Q (BY MR. HARDY) Do you recall who first

1 contacted you?
 2 A I think it was Mr. Herring.
 3 Q Do you recall what he told you he was
 4 interested in?
 5 A I believe he was interested in lead paint.
 6 Q Did he tell you what sort of lawsuits he was
 7 involved in?
 8 A He did not go into a lot of detail other
 9 than it was a plaintiff situation involving a
 10 municipality.
 11 Q Did you agree to help him?
 12 A Well, not right off the bat, but eventually,
 13 yes.
 14 Q Did you need some more information from him
 15 before agreeing?
 16 A I wanted a little more, yes.
 17 Q What more did you get before you agreed?
 18 A A sense of what the -- who the parties were
 19 and where, why.
 20 Q What's your understanding of who the parties
 21 are in this case?
 22 A My understanding is that it's a school
 23 district as plaintiff.
 24 Q Uh-huh. Do you have an understanding who
 25 the defendants are?

53 1 A You guys. 2 Q Well, who are the defendants in your -- who 3 do you think these defendants are other than us guys? 4 A National Lead, Sherwin-Williams, Glidden, 5 duPont, and there may be others. 6 Q Did Mr. Herring ask you, once you agreed to 7 work for him, to do anything in particular? 8 A Yes. 9 Q What did he ask you to do? 10 A From time to time, he passed along questions 11 to which I provided responses. 12 Q And I guess I would be right in saying that 13 this collection of e-mails represents, at least in 14 part, those questions and those answers; is that 15 right? 16 A I think it represents in toto. 17 Q Did you send any letters to Mr. Herring or 18 his colleagues? 19 A I -- I sent some packages with reprints, as 20 indicated in the -- in the documents. 21 Q But you don't recall sending them any 22 letters with text from you? 23 A Mostly it was attachments. 24 Q Did Mr. Herring or his colleagues, since 25 they first talked to you in the spring of 2001, ask	55 1 Q Did I just hear you say you volunteered to 2 write this summary? 3 A I did. 4 Q And why did you feel a need or interest in 5 writing this summary? 6 A It seemed as if it would be helpful to have 7 a document that demarcated some of the areas in which 8 I possessed information. 9 Q And does this document, Exhibit 181, include 10 all of the information you've collected on the history 11 of lead paint and lead pigment since you began to look 12 at that issue? 13 A It does not. 14 Q Are there any major areas that are not 15 included in Exhibit 181? 16 A Major areas of what? 17 Q Of -- in which you've collected 18 information. 19 A I guess it would depend on your definition 20 of "major." 21 Q What do you -- how would you describe the 22 scope of what's in Exhibit 181? 23 A I would describe it as a brief history of 24 the mining, smelting, and refining industry and a 25 summary of the state of knowledge of childhood lead
54 1 you to write anything? 2 A Well, in particular, Mr. Herring was 3 interested in a time line of opposition to the 4 prohibition of lead and I prepared a document in 5 those -- in that regard. 6 Q And that's included in this stack? 7 A It is included in that stack. And in -- in 8 anticipation of this event, I offered to prepare a 9 summary of some of the issues as I saw them. 10 Q Was that offer accepted? 11 A It was. 12 Q Did you write such a summary? 13 A I did, and I -- I think you have it. 14 Q I think I do, too. Let's just make sure. 15 Is this document the summary? 16 A It is. 17 MR. HARDY: Why don't we mark that as 18 the next exhibit, please. 19 (Exhibit No. 181 marked.) 20 Q (BY MR. HARDY) We have marked as Exhibit 21 181 a document entitled "Brief History of the Mining, 22 Smelting, and Refining Industry" with a date of 23 January, 2002. Is this the summary you were just 24 referring to, Mr. Reich? 25 A It is.	56 1 poisoning and an examination of ways in which the lead 2 industry opposed regulation. 3 Q If I said that much of what's in Exhibit 181 4 was also in "Hour of Lead" -- 5 A Yes. 6 Q -- would I be correct? 7 A Yes. 8 Q And have -- to the extent issues, areas, 9 discussed in "Hour of Lead" have led you to find new 10 documents and new information in the last ten years, 11 did you add those into Exhibit 181? 12 A I did. 13 Q So would it be fair to say Exhibit 181 is an 14 updated version of "The Hour of Lead"? 15 A No. 16 Q And why wouldn't that be fair? 17 A "The Hour of Lead" also includes 18 considerably more information on what happened with 19 the Children's Bureau, some information on the zinc 20 pigments; and I think there's one or two other pieces 21 that I -- I chose to leave out of this. 22 Q Is there some reason you left the Children's 23 Bureau story out of Exhibit 181? 24 A I'm not sure. I'm just -- I'm just really 25 not sure. It just didn't seem like it was -- I think

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1 some of -- I think there's a reference to it, but I --
 2 it went on for quite a while, I think.
 3 Q Let me ask the question a different way.
 4 In --
 5 MR. SCOTT: Just a second. Peter, can
 6 you slip your microphone up a little higher?
 7 THE WITNESS: Yes (complying).
 8 MR. SCOTT: If you cross your arms
 9 there, it kind of --
 10 THE WITNESS: There we go.
 11 Q (BY MR. HARDY) In drafting Exhibit 181 --
 12 A Yes.
 13 Q -- did you discover any errors in "The Hour
 14 of Lead"?
 15 A No.
 16 Q So you have no corrections to tell me about
 17 in "The Hour of Lead" reflecting new or different
 18 information you've learned in ten years?
 19 A There's two different elements there.
 20 Q I'll let you separate them, if that -- if
 21 you can. If not, I'll ask the question again.
 22 A Ask the question again.
 23 Q Okay. Is there anything you'd like to
 24 correct in "The Hour of Lead"?
 25 A No.

58

1 Q Did anyone help you write Exhibit 181?
 2 A No.
 3 Q Since you wrote "The Hour of Lead," some
 4 other people have written books about the same
 5 subject. Have you read the book by Christopher
 6 Warren?
 7 A I have.
 8 Q Do you have a reaction to Mr. Warren's book?
 9 A I do.
 10 Q What is it?
 11 A I guess I'd like you to be more specific.
 12 Q Okay. Did you find conclusions reached by
 13 Mr. Warren with which you disagree?
 14 A I did.
 15 Q Could you tell us about them, please.
 16 A In one area, he seemed to indicate that the
 17 American writers would not have known about the Turner
 18 and Gibson pieces from Australia, and I was quite
 19 astonished at that.
 20 In another area, he seemed to waffle on
 21 the topic of meningitis versus encephalopathy in a way
 22 that was generous to you folks, I thought.
 23 I believe he also explained the,
 24 quote/unquote, decision to allow a poisonous pigment
 25 to remain in circulation in an unsatisfactory manner.

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1 Q Could you elaborate a little on that point.
 2 A I think that Mr. Warren concluded that
 3 Society -- "Society" with a capital S -- decided,
 4 quote/unquote, that it preferred, I think his wording
 5 was, a pure toxin to an adulterated pig -- poison or
 6 something to that effect, and I thought that was a
 7 little facile.
 8 Q Why did you think it was facile?
 9 A Because I don't think it was that simple.
 10 Q What was Mr. Warren failing to notice?
 11 A I don't think that Mr. Warren fully
 12 appreciated the manner in which paint industries
 13 worked to forestall regulation or legislation that
 14 might have protected the public.
 15 Q Are there particular documents or events
 16 having to do with, as you put it, lead industry
 17 forestalling regulations of which you're aware that
 18 Mr. Warren was not aware?
 19 A Well, I -- I don't know what he was aware of
 20 or not aware of. I'm just aware of what appeared in
 21 his -- in his book.
 22 Q Okay. Well, we'll ask you later about the
 23 ones you're aware of, come back to that.
 24 There's another book that's been
 25 published this year on this area called Old Paint by

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1 Peter English. Have you read that book?
 2 A I have not.
 3 Q Dr. English also provided an affidavit in
 4 the litigation on this history. Have you ever read
 5 that affidavit?
 6 A I have not.
 7 MR. SCOTT: I'm going to object to the
 8 form of that question as vague when you say "this
 9 litigation."
 10 Q (BY MR. HARDY) I'm sorry. Have you ever
 11 read an affidavit by Dr. English on lead paint
 12 history?
 13 A I have not.
 14 Q Have you ever read anything by Dr. English
 15 on lead paint history?
 16 A I don't believe so.
 17 Q Do you know who Dr. Peter English is?
 18 A No.
 19 Q Okay. Have you ever discussed these history
 20 issues with Dr. Warren?
 21 A I have not.
 22 Q Have you ever read -- I know you have. What
 23 have you read on these sorts of issues by Drs. Rosner
 24 and Markowitz?
 25 A I've -- I've read their publications in the

61 1 American Journal of Public Health. 2 Q That's the "Cater to the Children" article? 3 A Cater to -- they had an earl -- an earlier 4 one as well. 5 Q That's their article on lead in gasoline? 6 A I -- I don't recall. 7 Q Anything else that you -- have you read 8 anything else on this subject by Drs. Rosner and 9 Markowitz? 10 A I don't think so. 11 Q Have you ever read any affidavits on this 12 subject, though? 13 A I have not. 14 Q Have you ever discussed these subjects with 15 Dr. Rosner? 16 A No. 17 Q Have you ever discussed any of these 18 subjects with Dr. Markowitz? 19 A Yes. 20 Q When would that have occurred -- when did 21 that occur? 22 A In October of 2001. 23 Q Did you call Dr. Markowitz? 24 A I did not. 25 Q Did he call you?	63 1 Q Was it at a lawyer's office? 2 A No, it was not. 3 Q Who called this meeting? 4 A I don't know. 5 Q You were at the meeting, Mr. Markowitz -- 6 Dr. Markowitz -- 7 A Yes. 8 Q -- was at the meeting, some lawyers were at 9 the meeting? 10 A Yes. 11 Q Do you remember the names of any of the 12 lawyers? 13 A Neil Leifer. 14 Q Any others? 15 A I don't recall. 16 Q Where was the meeting, other than in 17 Providence? 18 A Oh, Jack McConnell was there. 19 Q Jack McConnell. 20 Was this in an office in Providence? 21 A No, it wasn't. 22 Q Hotel in Providence? 23 A Yes. 24 Q We've named about five people at the 25 meeting. How many other people were at the meeting?
62 1 A No. 2 Q How did you happen to discuss these subjects 3 with him? 4 A I met him at a meeting. 5 Q Was that in New York City? 6 A It was not. 7 Q Was he making a presentation at the meeting 8 on lead paint? 9 A He was. 10 Q Did you hear his presentation? 11 A I did. 12 Q That would have been in Atlanta? 13 A No. 14 Q Where was it? 15 A It was in Providence, Rhode Island. 16 Q And you were in attendance? 17 A I was. 18 Q Did you go because you wanted to hear what 19 Mr. Markowitz had to say about lead paint? 20 A Sure. 21 Q Was this a public meeting? 22 A No. 23 Q Was this a meeting with some lawyers? Were 24 there lawyers present? 25 A There were lawyers present.	64 1 A Couple dozen. 2 THE VIDEOGRAPHER: I've got a minute of 3 tape. 4 MR. HARDY: Okay. Stop the tape. 5 THE VIDEOGRAPHER: Off the record, 6 11:18, end of Tape 1. 7 (Recess from 11:18 a.m. to 11:20 a.m.) 8 THE VIDEOGRAPHER: All set. 9 Q (BY MR. HARDY) Mr. Reich -- 10 A Yes. 11 Q -- who invited you to the meeting in 12 Providence? 13 A Neil Leifer invited me. 14 Q Do you recall whether Mr. Leifer told you 15 what the purpose of the meeting was? 16 A It was -- it's -- it's difficult to answer 17 this because the invitation was presented in an 18 awkward manner, and I never really quite knew. That's 19 the truth. 20 Q Do you recall what Mr. Leifer said in an 21 awkward manner? 22 A He said, "There's a meeting in Providence, 23 Rhode Island, that I'd like you to come to." 24 Q He didn't tell you the purpose of the 25 meeting; is that fair?

1 A It was generally about these cases.
 2 Q And by "these cases," what was your
 3 understanding of what "these cases" were?
 4 A Well, I wasn't quite sure.
 5 Q Did you learn at the meeting what "these
 6 cases" meant?
 7 A I did.
 8 Q What did -- what did it mean to the people
 9 at the meeting?
 10 A I think it meant that there were a number of
 11 people involved in a number of cases who were there to
 12 discuss it.
 13 Q These would have been cases against lead
 14 pigment companies like the ones we represent?
 15 A Yes.
 16 Q You indicated that beyond the five or so
 17 people we identified at the meeting, there were maybe
 18 a couple of dozen other people?
 19 A (Moving head up and down.)
 20 Q Do you know who those persons were
 21 representing?
 22 A The one person whose identity and whose
 23 affiliation I'm familiar with is Eileen Quinn from
 24 the -- some -- it's a consumer organization, too. I
 25 forget the name of it. AEC --

1 Q Is she from Boston?
 2 A No, from Washington, AECLP.
 3 Q Alliance to End --
 4 A Yeah, that's --
 5 Q -- Childhood Lead Poisoning?
 6 A -- the one. Yeah, she was there. But I
 7 didn't meet and talk with other people there.
 8 Q Were there other lawyers there?
 9 A Yeah.
 10 Q Were there other historians there?
 11 A Dr. Markowitz was there.
 12 Q Right. And you?
 13 A Well, I'm flattered that you call me a
 14 historian.
 15 Q Well, correct it. Strike that.
 16 Generically, were there any other
 17 experts on lead --
 18 A I don't know.
 19 Q -- there?
 20 Did you talk at the meeting?
 21 A I did.
 22 Q Did Mr. Markowitz talk at the meeting?
 23 A He did.
 24 Q Did the lawyer --
 25 A Did -- did you mean "talk," make a

1 presentation?
 2 Q Yes.
 3 A I did not make a presentation.
 4 Q Did Dr. Markowitz make a presentation?
 5 A He did.
 6 MR. SCOTT: Can we go off and talk
 7 about this a second?
 8 MR. HARDY: We sure can.
 9 MR. SCOTT: Off the record.
 10 THE VIDEOGRAPHER: Off the record,
 11 11:23.
 12 (Discussion off the record.)
 13 THE VIDEOGRAPHER: On the record,
 14 11:23.
 15 Q (BY MR. HARDY) As far as you know,
 16 Mr. Reich, were any lawyers from the Houston law
 17 firms, Mr. Scott's law firm or Fleming or Bracewell &
 18 Patterson, at this meeting?
 19 A As far as I know, they were not.
 20 Q As a result of this meeting, have you been
 21 hired by anybody at the meeting to do anything?
 22 A I'd like to ask my attorney how to answer
 23 that, if I may. Is that allowed?
 24 Q Well, I gather -- well, we'll just -- I
 25 gather, Mr. Reich, since the meeting you have had

1 conversations with some of the people at the meeting?
 2 A Yes.
 3 MR. SCOTT: That sounds like some kind
 4 of a defense meeting there. We'll talk about it more
 5 at lunch and we'll see if we can --
 6 MR. HARDY: Okay.
 7 MR. SCOTT: Maybe we can work out some
 8 understanding where you can go deeper into that.
 9 MR. SMITH: Can I ask just one question
 10 in connection with that? Were you compensated for
 11 your attendance at this meeting?
 12 THE WITNESS: I -- I really don't know
 13 how to answer that.
 14 Q (BY MR. HARDY) Your expenses were paid?
 15 A No.
 16 MR. SMITH: Did you prepare a bill for
 17 your time at that meeting?
 18 THE WITNESS: I sure wish I could ask
 19 Mr. Scott.
 20 MR. HARDY: We'll deal with it -- we'll
 21 come back to it after lunch, why don't we.
 22 MR. SCOTT: Okay. That sounds good.
 23 Q (BY MR. HARDY) Back to the Texas lawyers.
 24 A Yes.
 25 Q Have they sent you any information on the

1 Spring Branch School District?
 2 A Yes.
 3 Q What have they sent you?
 4 A I received a -- wait a second. The -- the
 5 call for this deposition.
 6 Q The -- the notice of the deposition?
 7 A Yes.
 8 Q Have they sent you any substantive
 9 information on the school district?
 10 A No.
 11 Q Do you know how many buildings are in the
 12 school district?
 13 A No.
 14 Q How many schools?
 15 A No.
 16 Q How old the schools are?
 17 A No. I mean, I have a -- I think it's 50
 18 years, but I'm not -- I'm really not sure.
 19 Q When you --
 20 A I think in a conversation, Mr. Scott
 21 mentioned it, but I -- I don't recollect.
 22 Q So --
 23 A I haven't seen a document that --
 24 Q So you -- you don't know how many schools in
 25 the school district were constructed pre World War II?

1 A That's right.
 2 Q Or in the 1950s?
 3 A (Moving head up and down.)
 4 Q Do you know anything about whether or not
 5 there's lead-based paint in those schools?
 6 A Well, I don't think we'd be here if there
 7 wasn't.
 8 Q Do you know in how many of those schools
 9 there's lead-based paint?
 10 A I don't.
 11 Q Do you know where in those schools there's
 12 lead-based paint?
 13 A I don't.
 14 Q Let me -- let me do a detour here. I'm
 15 using the term "lead-based paint." What does that
 16 mean to you?
 17 A To me, it means paint in which a substantial
 18 portion of the pigment is lead.
 19 Q Do you have an understanding when you use
 20 the term of what substantial portion of the pigment
 21 would mean?
 22 A Well, I'm assuming it would be in excess of
 23 .06 percent.
 24 Q So when you use the term lead-base paint --
 25 "lead-based paint," am I right that you're telling me

1 that you use the term to refer to paint in which there
 2 is lead pigment where the lead content is greater than
 3 .06 percent?
 4 A I -- I'd like you to restate that, if you
 5 wouldn't mind.
 6 Q Gladly. Let's try it this way: When we --
 7 when you use the term "lead-based paint," if the lead
 8 in the paint is due to what's called a lead dryer, do
 9 you consider that lead-based paint?
 10 A I guess I'm not sure how to answer that.
 11 Q Do you know what lead dryers are, Mr. Reich?
 12 A No.
 13 Q If a paint has .5 percent lead --
 14 A .5 or .05?
 15 Q 0.5 percent, half percent lead.
 16 A Yes.
 17 Q -- and that lead is in the paint from some
 18 chemical other than a lead pigment, I gather you would
 19 not consider that lead-based paint the way you use the
 20 term?
 21 A As I recall, the -- the problem that the
 22 American Academy of Pediatrics had with the 1955 ANSI
 23 standard was that the -- it was 1 percent lead in the
 24 solids, but there was a loophole that actually allowed
 25 up to 3 percent in other media. So -- and that was a

1 problem back in 1964. So I would say that in excess
 2 of .5 percent in anything would be a danger.
 3 Q Are you aware, Mr. Reich, that the Federal
 4 government, through EPA and Department of Housing and
 5 Urban Development, have definitions of what they today
 6 consider a lead-based paint?
 7 A No.
 8 Q So you don't know what their definitions are
 9 of lead-based paints?
 10 A Not after 1978.
 11 Q And in referring to 1978, I gather you're
 12 referring to the Consumer Product Safety rule of that
 13 year?
 14 A Well, I'm referring to the lead point -- the
 15 lead -- the -- the Federal act -- Federal legislation
 16 which was given to the Consumer Product Safety
 17 Commission.
 18 Q And I gather from the questions that I was
 19 asking before, to the extent there is lead-based paint
 20 in Spring Branch buildings, in schools, you don't know
 21 where that paint is?
 22 A I do not know where that paint is.
 23 Q Do you believe -- strike that.
 24 Has anyone ever told you, Mr. Reich,
 25 that any lead-based paint in any Spring Branch schools

1 poses a hazard to children in those schools?
 2 A No.
 3 Q Do you have any reason to believe any
 4 lead-based paint in any of those schools poses a
 5 hazard to children?
 6 A I do.
 7 Q And what's your basis for that belief?
 8 A The basis for that belief is more than a
 9 hundred years of medical research which indicates that
 10 when children are near lead pigment, mineral pigment,
 11 the outcomes are not good.
 12 Q You used the term "near," Mr. Reich.
 13 A (Moving head up and down.)
 14 Q Can you cite me to any medical literature
 15 suggesting that being near lead-based paint poses a
 16 hazard?
 17 A I think the Queensland porches are a good
 18 example of that. They're environments to which kids
 19 were allowed access; and sure enough, they got
 20 poisoned. And maybe I have to use the word
 21 "exposed." Perhaps that's a better term.
 22 Q What is your understanding of the route by
 23 which lead entered the bodies of children in
 24 Queensland?
 25 A The most -- it was oral.

1 Q And what went into the children's mouth?
 2 A Dried paint that had been washed by water.
 3 Q Was it dust?
 4 A In some cases, it was dust.
 5 Q And what was it in other cases?
 6 A In other cases, as -- as poignantly
 7 recollected, I think it was by Nye, many of the
 8 1,000-plus children who died of kidney failure would
 9 go outside in rainstorms and hold their mouths open
 10 underneath the -- the rain and drink the sweet water
 11 that was going into their mouths.
 12 Q Do you know whether there's any lead dust in
 13 Spring Branch schools?
 14 A I don't.
 15 Q Do you know whether there's any water in
 16 Spring Branch schools that contains lead from paint?
 17 A I don't.
 18 Q So you don't really know, do you, Dr. Reich,
 19 whether there's --
 20 A Mister. I'm not a doctor.
 21 Q Mr. Reich. You're right.
 22 You don't really know, Mr. Reich,
 23 whether there's any exposure to lead of children
 24 currently occurring in Spring Branch schools?
 25 A I don't.

1 Q Are you aware of any evidence of any
 2 children in any school building that they're ingesting
 3 or inhaling lead at school?
 4 A Yes.
 5 Q And what evidence would you point me to on
 6 that subject?
 7 A I did a search in the National Newspaper
 8 file, which is published by Dialogue Information
 9 Services, and I found a number of school systems which
 10 were reporting lead dust and lead -- lead exposures
 11 around the nation. I believe that several years ago,
 12 I think 78 percent of California schools had
 13 potentially dangerous lead paints in them.
 14 Q Are the documents that you found in your
 15 Dialogue search included in --
 16 A There are none.
 17 Q Are they included in the --
 18 A No, they're online.
 19 Q Okay. The -- are they included in your 10
 20 to 12 feet of --
 21 A No, they're not. They're -- I figure why
 22 waste a tree if it's right there.
 23 Q Okay. What articles do you recall seeing
 24 about lead paint in schools? You mentioned
 25 California.

1 A I mentioned California.
 2 Q Do you remember what it was in California?
 3 A I beg your pardon?
 4 Q Do you remember what sort of document in
 5 California?
 6 A This -- these were newspaper articles.
 7 Q Okay. Anything you recall other than
 8 California?
 9 A I think in 1987, 50,000 school desks were
 10 recalled in Texas. I don't recall, but I remember
 11 getting a number of what they like to call "hits."
 12 Q And these were articles which you found by
 13 look -- by hits, searching for lead paint in schools?
 14 Is that how you found them?
 15 A Well, it was a little more complicated than
 16 that, but...
 17 Q Do you remember your search strategy?
 18 A I think it was: lead, question mark, open
 19 parentheses, 3 N, close parentheses, paint, question
 20 mark, open parentheses, 3 N, closed parentheses,
 21 school, question mark.
 22 Q Did any of the articles you found in that
 23 search indicate that there had ever been a child in
 24 the United States who had an elevated blood level
 25 which was determined to be due to exposure to lead in

77

1 a school?

2 A I don't remember.

3 Q Beyond the search, are you aware of any such

4 evidence anywhere?

5 A Evidence of a child with an elevated blood

6 level as a result of exposure in a school?

7 Q That's correct.

8 A I can't recall.

9 Q Are you aware of any government regulations

10 of lead paint in schools?

11 A No.

12 Q Do you have any understanding of the

13 relationship between the Consumer Product Safety

14 Commission 1978 Act, which we referred to a few

15 minutes ago, and schools?

16 A No.

17 Q I gather, Mr. Reich, that you have reviewed

18 a number of historic doc -- historical documents with

19 respect to lead-based paint?

20 A Yes.

21 Q In your research, have you discovered any

22 person, prior to 1978, who recommended that lead-based

23 paint not be used in schools?

24 A Henry Gardner, in 1914, I believe -- it

25 might have been 1917 -- warned explicitly about the

78

1 danger of lead dust from what he called as "the

2 inmates of public buildings."

3 Q And who was Mr. Gardner?

4 A Mr. Gardner was a scientist, worked for the

5 Paint Manufacturers Association and later went to

6 Washington to head up the education section of the --

7 I believe it was the Paint Manufacturers Association.

8 Not exactly sure.

9 Q Other than Mr. Gardner, are you of any --

10 aware of anyone prior to 1978 who recommended

11 lead-based paint not be used in schools?

12 A Can I think for a sec?

13 Q You certainly can.

14 A I believe that the substantial literature

15 that really began in the Nineteenth Century in Europe

16 opposing leaded paints for interiors was interpreted

17 by certain Americans to be that type of a warning.

18 Q Who would have interpreted? Who -- who are

19 you referring to by "certain Americans"?

20 A Particularly Alice Hamilton, possibly C.D.

21 Holley of the Acme White Lead Works who warned about

22 the poisonous nature of lead paint in 1909. But it

23 does appear that -- that a number of Americans -- I

24 don't know how many altogether -- attended the Milan

25 conference in 1906 and I think -- it does appear that

79

1 many people came back with concerns about using lead

2 paints on interiors at that time.

3 Q Did any of those people recommend against

4 using lead-based paint in schools prior to 1978?

5 A I believe that there were -- the -- the --

6 the alarms were about interiors, not explicitly about

7 schools.

8 Q Did any of those people recommend against

9 using lead-based paint in interiors prior to 1978?

10 A I think, but I'd have to verify it, that

11 some of the advocates for zinc pigments explicitly

12 suggested that there -- zinc would -- zinc pigments

13 would be a preferable alternative.

14 Q And by advocates of zinc pigments, are there

15 particular names in mind?

16 A Well, there was a book from 1898, I can't

17 think of the author right now, but...

18 Q Goodey?

19 A I'm sorry?

20 Q Would that have been Goodey's book?

21 A I don't -- I don't remember.

22 Q Let's restrict the persons I'm asking

23 about. Can you think of any public health officials

24 who, prior to 1978, recommended against using

25 lead-based paint in schools?

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1 A No.

2 Q Any doctors who made such recommendations?

3 A No.

4 Q Are you aware of any public health authority

5 or doctor who ever referenced Mr. Gardner's -- or

6 Dr. Gardner's 1914 statement?

7 A No.

8 Q Are you aware of any medical literature that

9 ever referenced that 1914 speech?

10 A No. Not sure it was a speech, but...

11 Q That Gardner paper --

12 A And it might have been 1917. I'm not sure.

13 Q I believe it was published twice, same

14 thing, word for word.

15 A Okay.

16 Q But that Gardner statement, do you recall

17 what kind of paint he was referring to?

18 A I do think it was in a presentation to

19 painters and I think he was trying to reassure

20 painters that -- that it -- that they were not at

21 risk.

22 Q Do you recall him referring to lead flatted

23 with turpentine?

24 A I think so, yes.

25 Q And do you recall that was his concern?

1 A Yeah, he -- the -- there was a strong
2 sentiment that turpentine was the problem.
3 Q And are you aware that shortly after 1914,
4 paint technology developed oils other than turpentine
5 to flat lead paint?
6 A Well, having used white lead myself as a boy
7 in 1950, we sure didn't know about it up in Maine. We
8 used turpentine. So it wasn't widespread.
9 Q When you -- why don't you tell me a little
10 about your experience in 1950.
11 A Okay.
12 Q What were you painting?
13 A What were we painting? I don't even
14 remember.
15 Q Do you recall how you -- what kind of paint
16 you used?
17 A I recall being flabbergasted that I couldn't
18 lift the bucket.
19 Q Do you know what was in the bucket?
20 A White lead. And I --
21 Q Do you --
22 A Go ahead.
23 Q Do you recall the company whose white lead
24 it was?
25 A I think it was Dutch Boy, but I don't know

1 for sure.
2 Q So you had this heavy can of white lead. Do
3 you recall what you did with it?
4 A Spent a long time mixing it.
5 Q And what did you mix it with?
6 A Two flat boards and you rubbed it together
7 and you rubbed and rubbed and raised it up and paddled
8 it.
9 Q Did you pour something into the can?
10 A Not in this case.
11 Q You opened the can of white lead, as you
12 recall it, and paddled and paddled and paddled?
13 A (Moving head up and down.)
14 Q And then you applied it?
15 A Well, there -- sometimes we'd use turpentine
16 to thin it.
17 Q Do you recall using linseed oil?
18 A Yes.
19 Q What was the role of linseed oil?
20 A Well, that was the oil that we -- we were
21 mixing the white lead into the linseed oil.
22 Q The white lead in the bucket, do you recall
23 what form it was when you first opened the bucket?
24 A There was a few inches of linseed oil and
25 then this heavy white stuff.

1 Q Under the linseed oil?
2 A (Moving head up and down.)
3 Q And that's what you mixed?
4 A (Moving head up and down.)
5 Q Was someone teaching you how to do all this?
6 A It was -- there was.
7 Q Who was that?
8 A An old Maine guy.
9 Q Who had been painting all his life?
10 A Yes, he'd been -- he was a woodsman and a
11 lumberjack and a handyman.
12 Q Do you recall why he was going through this
13 process which you felt was so laborious?
14 A In retrospect, I see it as a -- a time-old
15 ritual that characterized painters in the painting
16 trade.
17 Q Do you recall at all being told by this
18 woodsman what he thought of white lead paint?
19 A I don't.
20 Q Were you aware or do you remember being
21 aware then that there was also available at that time
22 in 1950 ready-mix paint that you didn't have to mix?
23 A No.
24 Q Mr. Reich, would you agree that the Spring
25 Branch School District, like other school districts,

1 is generally responsible for maintaining its
2 buildings?
3 A Yes.
4 Q And the school (sic) branch school district,
5 like other school districts, is responsible for the
6 safety of its buildings with respect to its students
7 and employees?
8 A Yes.
9 Q And do you have any reason to believe that
10 the Spring Branch School District has not, over the
11 years, responsibly maintained its buildings and
12 created safe conditions?
13 A Say -- say it one more time.
14 Q Bad -- I'll be glad to. Are you aware of
15 any evidence other than that Spring Branch school
16 district has responsibly maintained its buildings in
17 the past?
18 A I still don't quite get it. I'm sorry.
19 Q Do you know whether Spring Branch has
20 responsibly maintained its buildings in the past?
21 A I don't know whether they've responsibly
22 maintained.
23 Q Are you aware of any information that they
24 have not?
25 A No.

1 Q Do you know whether the Spring Branch
2 schools have maintained safe conditions over the
3 years?
4 A I don't know.
5 Q Are you aware of any information that they
6 have not?
7 A I am not.
8 Q Do you know, Mr. Reich, whether the Spring
9 Branch School District is currently aware of where
10 there's lead paint in its building?
11 A I don't know.
12 Q Do you know whether the Spring Branch School
13 District has taken any precautions with respect to the
14 presence of lead paint in any of its buildings?
15 A I don't know.
16 Q Have you read any of the expert reports
17 submitted by any of the other experts by the Spring
18 Branch School District in this case?
19 A I have not.
20 Q So you haven't read Mr. Burckle's cost
21 estimate for removing all the lead paint in the
22 school?
23 A I have not.
24 Q Do you have an opinion on whether all the
25 lead paint in the schools should be removed?

1 A I do not.
2 Q You're not an expert on lead paint risk
3 assessment. Am I right about that?
4 A I am not.
5 Q I guess one of the things I didn't ask you,
6 do you have any expertise, Mr. Reich, in exposure
7 assessments?
8 A No.
9 Q Do you have any understanding, how --
10 Mr. Reich, from your review of the historical medical
11 literature, as to the ages of children about whom the
12 public health authorities are concerned with respect
13 to ingestion of lead paint?
14 A No.
15 Q Do you have any understanding from your
16 reading of the historical literature on lead paint,
17 the medical literature, on what sort of surfaces in a
18 building the risk is greatest?
19 A Based on my readings, I believe that the
20 windowsill, window frames, door frames, school desks,
21 walls, ceilings, exteriors, toys are potentially
22 dangerous.
23 Q Are you aware of any reports from your
24 reading of the medical literature indicating that
25 steel beams on which there's lead paint pose a hazard

1 to children?
2 A I think so.
3 Q What do you recall in that regard?
4 A I -- on that particular regard, the
5 continuing issues around Chelsea -- there's a bridge
6 over here in Chelsea.
7 Q And what's your understanding of the nature
8 of that concern with the Chelsea bridge?
9 A My recollection is that every time they
10 start to repaint the bridge and clean off the old
11 paint, that there are problems in the children living
12 nearby.
13 Q Do you have any knowledge, Mr. Reich, about
14 the extent to which in repainting -- strike that.
15 Do you have any knowledge of the extent
16 to which in a school building there's a need either to
17 repaint or clean off steel beams?
18 A No.
19 Q I asked you before, Mr. Reich, about whether
20 you know of anyone who had recommended not using
21 lead-based paint in schools. Are you of anyone over
22 the years who has recommended using lead-based paint
23 in schools?
24 A Yes.
25 Q Who?

1 A National Bureau of Standards.
2 Q When did they do that?
3 A It was the Minneapolis School District, I
4 believe, and I don't know -- it was in the Twenties or
5 Thirties, late Twenties, Thirties.
6 Q Do you remember the context in which such a
7 recommendation was made?
8 A I believe the Minneapolis school board wrote
9 to the Bureau of Standards asking for guidance.
10 Q And the National Bureau of Standards
11 replied?
12 A They replied.
13 Q And they recommended using lead-based paint?
14 A Yes.
15 Q Do you recall why they recommended
16 lead-based paint?
17 A It's -- I do. Because in the same letter,
18 they -- as an afterthought, lithopone was recommended,
19 but they said really, white lead is better.
20 Q Did you get an understanding from that
21 letter or other National Bureau of Standards documents
22 why they thought white lead was better?
23 A It'll -- it just held up better.
24 Q Does that mean more durable?
25 A Everything. I mean, it --

1 Q The National Bureau of Standards thought it
2 was good paint?
3 A Yes.
4 Q Durable paint?
5 A Yes.
6 Q Stood up well?
7 A That's what they thought.
8 Q Did they believe it was washable? Was that
9 one of the parts of durability?
10 A Well, that was one of the selling points
11 certainly for hospitals.
12 Q Do you know whether the National Bureau of
13 Standards agreed with that selling point?
14 A I believe they did.
15 Q Do you have any evidence from any of your
16 research, Mr. Reich, to indicate that the National
17 Bureau of Standards recommendation to use lead paint
18 in schools was anything other than their expert
19 genuine opinion?
20 A No.
21 Q Do you know whether the National Bureau of
22 Standards continued to recommend lead paint for school
23 use after the 1920s?
24 A The National Bureau of Standards, to the
25 best of my recollection, recommended white lead for

1 interiors up until 1945, at least.
2 Q Do you have any reason to believe that that
3 recommendation, up until 1985 --
4 A Forty --
5 Q '45 was other than their expert genuine
6 views?
7 A What else would it be? I guess I'm
8 confused.
9 Q Was the National Bureau of Standards telling
10 the truth about what they believed was best?
11 A I really don't know.
12 Q You have no indication other than that they
13 were telling the truth; is that right?
14 A My instructions were to tell the truth. The
15 truth is, there -- it's puzzling to me why they did
16 and it remains -- so I'm not totally easy with
17 answering straight yes.
18 Q From your research on the National Bureau of
19 Standards, Mr. Reich, did you determine that the
20 persons in the National Bureau of Standards who were
21 making these recommendations were aware of the
22 toxicity of lead?
23 A I think they were.
24 Q Why do you think that?
25 A I think -- let's see. Why do I think that.

1 I think that because many of them were very familiar
2 with the occupational issues around lead pigments and
3 appreciated that any man exposed to lead would sooner
4 or later be poisoned.
5 Q And -- and it appears to you that the
6 National Bureau of Standards was aware of those
7 concerns for painters?
8 A I think they were aware of those concerns
9 for miners, painters, battery workers, and I think
10 they were aware of nonindustrial exposures as well.
11 Q What made -- leads you believe that the
12 National Bureau of Standards was aware of
13 nonoccupational cases?
14 A There is some -- there is that -- there's a
15 correspondence from 1917, and I believe it's the
16 National Bureau of Standards, from the
17 Sherwin-Williams Company about nonpoisonous paints on
18 war helmets.
19 Q Can you think of any other indications that
20 the National Bureau of Standards was aware of
21 nonoccupational cases?
22 A The -- I believe that the reports published
23 by Metropolitan Life Insurance Company and Prudential
24 Life Insurance Company were fairly well-publicized.
25 Q And therefore, you believe they would have

1 been known to the paint persons at the National Bureau
2 of Standards?
3 A Yes.
4 Q Would the National Bureau of Standards
5 persons have been aware of the activities of the
6 International Labor Organization in the 1920s on lead
7 paint?
8 A I think so.
9 Q Have you looked at all at recommendations
10 with respect to lead paint, Mr. Reich, made by the
11 United States Department of Agriculture?
12 A Yes.
13 Q Isn't it true that that part of the U.S.
14 government also recommended white lead paint?
15 A Yes.
16 Q And do you recall what part of the
17 Department of Agriculture made such recommendations?
18 A I think it was the Federal Security Agency
19 and it was -- the particular publication was
20 coauthored by the Lead Industries Association and the
21 Department of Agriculture, 1943.
22 Q Are you aware of any recommendations from
23 the Department of Agriculture's Forest Products
24 library in Madison, Wisconsin?
25 A I'm not.

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1 Q So you've never looked at those documents?

2 A Which documents?

3 Q Documents from the Forest Products library.

4 A I have not.

5 Q Does the name Dr. Browne, with an "e" on the

6 end, mean anything to you?

7 A It does not.

8 Q What -- what do you recall -- okay. I'm

9 sorry.

10 Are you aware, Mr. Reich, of the use of

11 white lead paint by the Public Works Administration of

12 the Federal government in the 1930s?

13 A Yes.

14 Q What do you know about that?

15 A I know two things about it, I guess. One is

16 that when I went to visit Dr. Julian Chisolm, he was

17 very, very upset that white lead was a requirement to

18 get Section 8 housing funds from the government, or

19 that's what -- that was his phraseology to me.

20 And then when I was at the National

21 Archives, I did find some guidelines for architects

22 which specified two coats of white lead for public

23 housing projects.

24 Q Let's take the second part first. The

25 specifications that you found at the archives, do you

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1 remember the dates?

2 A They were undated.

3 Q Do you have an understanding of when it was

4 that the Federal government was specifying white lead

5 for housing projects?

6 A Well, I believe this particular document was

7 in 1934 or 1935.

8 Q With respect to mister -- Dr. Chisolm, when

9 was it you visited him?

10 A 1987, I believe.

11 Q And could you tell me, again, what it was

12 Dr. Chisolm was unhappy about in 1987?

13 A Well, one of the -- one of the vivid

14 memories of that -- of that visit was that it was

15 his -- his rage that white lead had been a -- required

16 for public housing.

17 Q Was it your understanding he was referring

18 in 1987 to prior requirements?

19 A Yes.

20 Q Do you have any evidence, Mr. Reich,

21 suggesting that when the Federal government required

22 white lead paint for housing projects in the 1930s,

23 those requirements represented anything other than the

24 Federal government's genuine expert opinion on what

25 sort of paint should be used?

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1 MR. SCOTT: Object to the form of the

2 question.

3 You can answer.

4 THE WITNESS: Should I answer?

5 MR. SCOTT: Other than -- if you can.

6 Q (BY MR. HARDY) If you can.

7 MR. SCOTT: Yeah.

8 A I believe that the -- I believe that I've

9 seen documents which support the idea that when

10 federally subsidized housing came in, that it was seen

11 as a -- as a tremendous opportunity for profit in the

12 paint industry.

13 Q (BY MR. HARDY) But have you seen any

14 documents indicating that the Federal government was

15 recommending white lead for any reason other than its

16 belief that that was the best paint to be used?

17 A I think so.

18 Q What documents support that belief?

19 A I think the best documents are those from

20 the medical literature which warn that children near

21 woodwork, toys, and furniture that are painted with

22 lead paints tend to get sick.

23 Q Those articles, am I right, were all in the

24 publicly available medical literature?

25 A Yes.

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1 Q And those articles, am I right to say, were

2 known to public health experts in the U.S.

3 government?

4 A Maybe not.

5 Q The articles were in generally available

6 medical literature; is that right?

7 A Not all of them.

8 Q Which ones weren't?

9 A Well, for example, the review published by

10 Dr. Kehoe in 1943 omitted many of these articles from

11 the bibliography that it was -- that it published.

12 Q If I were a public health official in the

13 Federal government in the 1930s, would I have any

14 trouble finding the articles you refer -- you just

15 referred to on lead paint and woodwork?

16 A I don't know. You might.

17 Q Weren't those articles in some of the

18 leading medical journals, like the American Journal of

19 Diseases of Children?

20 A Uh-huh.

21 Q And the Journal of the American Medical

22 Association?

23 A Some of them were.

24 Q So if I were a public health official in the

25 Federal government in the 1930s, I would not need to

1 rely on some bibliography of some doctor in Cincinnati
 2 to find those articles, would I?
 3 A If that doctor, starting in 1927, reassured
 4 the American public that there is no threat to the
 5 public from lead, you might not go to those papers.
 6 Q Do you have any reason to believe that any
 7 of the public health experts in the government were
 8 prevented in any way from knowing what was in the
 9 available medical literature?
 10 A No.
 11 Q Do you have any reason to believe that the
 12 National Lead Company knew anything about the toxicity
 13 of lead that was unknown in the 1930s to the public
 14 health officials?
 15 A Say that again.
 16 Q The public health officials were quite able
 17 to know what was known about lead in children and
 18 paint by reading the medical literature, correct?
 19 A I don't -- I'm not comfortable with that.
 20 Having been a public health official for 13 years, I
 21 take word from the state agency. I don't, as a public
 22 health official, necessarily go and look up every
 23 single medical article. I think that -- that I was
 24 disagreeing with you a little bit there.
 25 Q Let's try this. Dr. McKhann --

1 A Uh-huh.
 2 Q -- wrote a series of articles in the
 3 1930s --
 4 A Uh-huh.
 5 Q -- in well-known jour -- medical journals
 6 about lead and paint and children; is that right?
 7 A Uh-huh. He did.
 8 Q And Dr. McKhann's articles were in many,
 9 many libraries available to be read by anybody who
 10 wanted to read them?
 11 A They were available in medical libraries.
 12 Q Was there any information that you're aware
 13 are of about lead and paint and children --
 14 A Yes.
 15 Q -- known to the National Lead Company that
 16 was not publicly available in libraries?
 17 A I think so.
 18 Q What do you think the National Lead Company
 19 knew that wasn't out there in the libraries for
 20 everybody to read?
 21 A About --
 22 Q Lead and children.
 23 A -- lead in general or lead and children?
 24 Q Let's do lead and children first.
 25 A I'm sorry. I'm going to have to ask you to

1 say that again.
 2 Q Are you aware of any study done by National
 3 Lead Company --
 4 A Uh-huh.
 5 Q -- having to do with lead toxicity that was
 6 not published?
 7 A Warren does cite a 1958 study on the
 8 toxicity of lead in toys that wasn't published.
 9 Q And who sponsored that study?
 10 A I believe it was the Kettering Institute.
 11 Q Are you aware of any other study of lead
 12 toxicity spon -- are you aware -- let's go back.
 13 Are you aware of any study sponsored by
 14 the National Lead Company on lead toxicity that was
 15 not published?
 16 A I believe that some of those -- some of the
 17 findings around the Bayway incident were not
 18 published.
 19 Q What do you mean by "the Bayway incident"?
 20 A When the -- when the -- the people were --
 21 were killed around the tetraethyl lead.
 22 Q Did the National Lead Company have anything
 23 to do with that?
 24 A I don't know.
 25 Q Are you aware of any study sponsored by the

1 Lead Industries Association of lead toxicity that were
 2 not published?
 3 A Some of the work that Aub did and that
 4 wasn't published, and that was on behalf of the Lead
 5 Industries Association.
 6 Q What leads you to believe that Aub was doing
 7 work for the Lead Industries Association?
 8 A The voluminous communication with Felix
 9 Wormser.
 10 Q Does any of that communication indicate that
 11 Kehoe was doing work for the Lead Industries
 12 Association?
 13 A Well, either Kehoe or Aub? Are we talking
 14 about Kehoe or --
 15 Q Kehoe.
 16 A Kehoe. Does any of that correspondence
 17 indicate --
 18 Q You indicated to me that you believe some of
 19 the Kehoe work was --
 20 A No, no, no. Some of the -- some -- yes,
 21 some of the Kehoe work -- I'm not even sure it was
 22 Kehoe. It was Kettering.
 23 Q Yes. And I'm asking you whether you -- on
 24 what you base your belief that Kettering/Kehoe studies
 25 were funded by the Lead Industries Association. Do

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1 you have an --

2 MR. SCOTT: I don't mean to interrupt.

3 I think y'all are -- I think he answered Aub and --

4 MR. HARDY: I think he --

5 THE WITNESS: Okay. Start over.

6 MR. SCOTT: Maybe you ought to start

7 over.

8 A Start over.

9 Q (BY MR. HARDY) I have asked you whether the

10 National Lead Company or the Lead Industry

11 Association --

12 A Uh-huh.

13 Q -- to your knowledge --

14 A Yeah.

15 Q -- funded any studies of lead toxicity that

16 were not published?

17 A My -- when -- when Alice Hamilton did that

18 work for the -- I believe it was the National Lead

19 Company, they may have done studies that weren't

20 published. She did a -- she -- she was doing --

21 working quite closely there around 1910, and there may

22 very well have been something that wasn't published.

23 Q You're not aware of it?

24 A I'm not aware of it.

25 Q And you're not aware of any work sponsored

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1 by the Lead Industries Association on lead toxicity

2 that wasn't published?

3 A I'm not aware of any.

4 Q And would the same thing be true with

5 respect to Sherwin-Williams' research on lead

6 toxicity?

7 A I'm not aware of any.

8 Q And would you -- are you also not aware of

9 any lead toxicity research sponsored by duPont that

10 was not published?

11 A I think I have something about duPont but

12 I'm not sure, so I'll say I don't.

13 Q How about Glidden?

14 A No.

15 Q Which means you're not aware of any toxicity

16 studies done by the companies that provided the

17 companies with any information on lead toxicity that

18 was not disclosed to the public?

19 A I guess I'm not aware of any.

20 Q At the same time, the medical literature

21 discussions of lead and paint and paint and children

22 were available for any person to read and evaluate and

23 make recommendations; isn't that right?

24 A I don't think any person really has access

25 to a medical library.

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1 Q Certainly doctors and public health offices

2 have access to a medical library?

3 A Yes.

4 MR. HARDY: Should we break for lunch?

5 Is it a good time?

6 MR. SCOTT: Yeah.

7 THE VIDEOGRAPHER: Off the record,

8 12:28.

9 (Recess from 12:28 p.m. to 1:10 p.m.)

10 THE VIDEOGRAPHER: On the record, 1:10.

11 Q (BY MR. HARDY) Mr. Reich, you published, in

12 1973, according to your CV, an autobiographical memoir

13 entitled A Book of Dreams?

14 A Yes.

15 Q By any chance, did that volume discuss your

16 experiences in Maine painting?

17 A No.

18 Q What was the nature of that book, what was

19 it about?

20 A It was about growing up with my dad, who was

21 a controversial psychoanalyst.

22 Q And you wrote that shortly after you

23 graduated from college, I gather?

24 A No. It was -- I wrote it seven years after,

25 eight years.

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1 Q I asked you this morning whether you had

2 read several books having to do with lead and lead

3 paint -- lead pigment history. There's also an

4 article that's been published on that subject by a

5 Mr. Rabin, R-a-b-i-n.

6 A Yes.

7 Q Have you ever read Mr. Rabin's article?

8 A I believe I have.

9 Q Have you ever talked to Mr. Rabin about

10 these areas of inquiry?

11 A I think we had a conversation many years

12 ago.

13 Q Do you remember anything about the nature of

14 that conversation?

15 A No.

16 Q Have you been in touch with Mr. Rabin in the

17 last five years?

18 A No.

19 Q When you did the work in the late Eighties

20 and late Nineties for Mr. Leifer, do you recall about

21 how much money you received for that work?

22 A I don't.

23 Q Do you recall whether it was more than

24 \$10,000?

25 A It was not more than \$10,000.

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1 Q In that era, you also received money, I
2 believe, from the Environmental Defense Fund?
3 A Right.
4 Q Do you recall how much money you received
5 from EDF?
6 A I think it was less than \$5,000.
7 Q Between that period and when you started
8 working for Mr. Scott and his colleagues, did you
9 receive any money from anyone to do research on lead
10 paint and lead pigment, lead history?
11 A There was a -- there was one incident where
12 someone was interested in battery workers, but I -- it
13 was several years ago, and I have no recollection.
14 Q You don't remember who it was --
15 A I don't.
16 Q -- that asked you?
17 A Huh-uh.
18 Q But you did some sort of project on battery
19 workers?
20 A Uh-huh.
21 Q We discussed this morning a meeting you
22 attended with Dr. Markowitz?
23 A Yes.
24 Q And did you indicate, you may have, when
25 that meeting occurred?

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1 A October 22nd.
2 Q 19 -- of 2001?
3 A Yes.
4 Q If you can, can you tell me what was your
5 understanding of the purpose of that meeting?
6 A I can honestly say that it was never made
7 clear to me.
8 Q How long was the meeting?
9 A Two days.
10 Q Two full days?
11 A I -- well, I was only there for the first
12 day. So I don't know how long the second day went.
13 Q And the day you were there, the first day,
14 was it a full eight-hour day?
15 A I -- pretty much. I don't know. I guess
16 I'll -- I don't remember what time it started or what
17 time it ended.
18 Q And I gather Mr. Markowitz made a
19 presentation?
20 A He did.
21 Q Did anyone else make a presentation?
22 A Yes.
23 Q Who else was --
24 MR. SCOTT: I'm going to -- I'm going
25 to stop it now, the inquiry about that. And I'm

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1 really nervous about doing it because I don't really
2 want to stop you, but I'm afraid this may involve
3 something where we're stepping into another lawsuit
4 involving other lawyers, and obviously we're not going
5 to do discovery for their case. So I think we'd best
6 stay away from this. But I understand if the Court
7 orders us to come back to it, we'll certainly bring
8 Mr. Reich back and allow you to ask the questions.
9 So with great reluctance, I think we've
10 probably done enough about this. We talked about it
11 at lunch, and it sounded to me, from what he said,
12 like some kind of a joint defense meeting. Beyond
13 that, I don't know. I'm going to talk to Mr. Leifer
14 about it, but I'm uncomfortable about going into this
15 meeting in any more detail.
16 A And I -- I was not paid for my attendance at
17 this meeting.
18 MR. SMITH: Can we just establish a
19 foundation that will allow us to take this to the
20 Court while we're here today?
21 MR. SCOTT: Yeah, and I think you
22 should. I'm not sure how far -- how far we're getting
23 afield of just pure foundation. And I was watching,
24 trying to be pretty conservative, but I only chimed in
25 on this because I do think we need a foundation for

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1 it.
2 MR. HARDY: Do you have some questions,
3 Scott? Go ahead, if that's okay with Ron.
4 MR. SMITH: May I intervene and just
5 ask some foundational questions about this meeting?
6 MR. SCOTT: Sure, sure. Absolutely,
7 as long as they are foundational.
8 MR. SMITH: I will do that. Thanks.
9 And I'll be very careful to stay away from the
10 substance of the meeting, which I gather is your
11 concern, Counsel, right?
12 MR. SCOTT: I guess it's my -- my
13 concern is that we may be taking a deposition for
14 Mr. Leifer's lawsuit -- that's my concern -- but I
15 don't know.
16 EXAMINATION
17 BY MR. SMITH (1:16):
18 Q Mr. Reich, regarding this meeting on October
19 22nd of 2001, at that time, had you been retained by
20 any law firm or lawyer for the purpose of giving
21 testimony in a case other than the Spring Branch case
22 in Mr. Scott's firm?
23 A I think I can answer that and say no.
24 Q The time that you spent at the October 22
25 meeting, were your travel expenses compensated for

109 1 that? 2 A I don't -- well, not at the time. I went 3 down there without any compensation. When I -- I had 4 not received anything from any of those people when I 5 attended that meeting. 6 Q Okay. And you had no commitment prior to 7 attending that meeting that you'd be compensated 8 either for your time or your expenses related to that 9 meeting; is that fair? 10 A I think there was a suggestion that some 11 sort of compensation might be forthcoming in the 12 future. 13 Q But that agreement had not been made at the 14 time that you attended that meeting? 15 A That's right. 16 Q And the individual that suggested that there 17 might be compensation in the future, who was that, 18 please? 19 A Jack McConnell. 20 Q At the time of that meeting, you had not 21 been retained by Mr. McConnell or his law firm in any 22 matter; is that correct? 23 A Yes. 24 Q "Yes," that is correct? 25 A I have to look at dates, but I think that	111 1 Mr. McConnell's law firm has retained you? 2 A Yes. 3 EXAMINATION 4 BY MR. SULLIVAN (1:20): 5 Q Besides Ms. Quinn, do -- and any of the 6 attorneys who were there, did you meet the other 7 people? 8 A Well, not really. I shook a couple of hands 9 and said hello. I didn't even know who they were 10 except for one of those people who works with 11 McConnell's firm. 12 Q Were any legislators present? 13 A I have no idea. 14 Q Nobody was introduced as a legislator or a 15 legislative aide? 16 A I really don't -- I don't think so, but I'm 17 not a hundred percent sure. 18 Q Was there anybody from the Attorney 19 General's office from Rhode Island? 20 A Possibly. 21 Q Do you know if there were any other -- 22 anybody present from groups that are involved in 23 childhood lead poisoning? 24 A Well, Eileen Quinn. 25 Q Besides Eileen Quinn?
110 1 the time when I was officially, quote, retained was 2 after that meeting. I'm fairly certain of that. 3 Q And I think you mentioned there was someone 4 there from the Alliance to End Childhood Lead 5 Poisoning? 6 A Uh-huh. 7 Q Who was that person, please? 8 A Eileen Quinn. 9 Q Do you know if Ms. Quinn is an attorney? 10 A I don't believe she is. 11 Q Were there any other people there that you 12 understood to be neither experts nor attorneys 13 associated with these cases? 14 A Were there other people who were not lawyers 15 and nonexperts? 16 Q Correct. 17 A I don't know. 18 Q All right. 19 MR. SMITH: I think that covers it, and 20 I thank you for allowing me to ask those questions. 21 EXAMINATION 22 BY MR. HARDY (1:19): 23 Q Just one more clarifying question to follow 24 up on Mr. Smith. I gather from your answer a minute 25 ago, Mr. Reich, that since that meeting,	112 1 A I see. I don't know. 2 Q Were there any media reporters there? 3 A I don't believe so. 4 Q Nobody from television or radio or 5 newspaper? 6 A Not -- not on the face of it. 7 Q Any journalists that you are aware of? 8 A Not that I'm aware of. 9 Q Besides yourself and Dr. Markowitz, were 10 there any people who purport to be historians on the 11 lead industry or the lead paint history or lead 12 poisoning history? 13 A I think there was one fellow who seemed to 14 be leaning in that direction. I don't know what his 15 name was. 16 Q Do you remember where he was from? 17 A I don't. 18 Q And it was a man versus a woman? 19 A It was a man. 20 Q Can you -- do you remember the states from 21 which any of the attorneys were -- 22 A I don't. 23 Q To your knowledge, were the attorneys from 24 more than the Ness Motley firm which Mr. McConnell is 25 associated with --

1 A Uh-huh.
 2 Q -- or Mr. Leifer or his firm?
 3 A Were there people above and beyond -- I
 4 think so.
 5 Q And nobody from the Texas firm?
 6 A That's correct.
 7 Q Any of the Texas firms?
 8 A (Moving head up and down.)
 9 Q Anybody from Mississippi?
 10 A I don't know.
 11 Q Anybody from Wisconsin?
 12 A I didn't -- you'd think I didn't pay much
 13 attention, but I really don't know.
 14 Q And besides Dr. Markowitz, did any -- were
 15 all the rest of the presenters lawyers?
 16 A No.
 17 Q Were you told whether this was in connection
 18 with active litigation or proposal litigation?
 19 A I think it was about propose -- proposed or
 20 ongoing.
 21 Q Did they talk about potential lawsuits in
 22 other states?
 23 A I don't --
 24 MR. SCOTT: Let's -- don't answer
 25 that.

1 That's a little afield of foundation.
 2 I understand your interest in that, but I think --
 3 MR. SMITH: One more foundational
 4 question.
 5 THE WITNESS: Okay.
 6 EXAMINATION
 7 BY MR. SMITH (1:22):
 8 Q The presenters --
 9 A Yes.
 10 Q -- who were not lawyers --
 11 A Yes.
 12 Q -- other than Dr. Markowitz, what subjects
 13 did they present on?
 14 MR. SCOTT: Don't answer that. I'll
 15 tell you what let's do. At the break -- next break,
 16 I'll try to call Leifer and see what the deal is --
 17 MR. SMITH: Okay. Great.
 18 MR. SCOTT: -- call them and see what
 19 they say. If they don't have any objection, then that
 20 will eliminate our problem.
 21 MR. SMITH: Okay. That's fine. Thanks
 22 for doing that.
 23 EXAMINATION
 24 BY MR. HARDY (Continued 1:23):
 25 Q Mr. Reich, Exhibit 180 was your list of time

1 and expenses that you have submitted to Bracewell &
 2 Patterson?
 3 A Yes.
 4 Q And I just wanted to ask you about a couple
 5 of the references here.
 6 A Sure.
 7 Q First of all, do I understand correctly from
 8 this that your billing rate is \$75 an hour?
 9 A Well, it started out that way until I got
 10 laughed out of the room by my colleagues.
 11 Q And it's now more than that?
 12 A Yeah.
 13 Q What is it now?
 14 A Well, it's -- I may be laughed out of this
 15 room, too, right? \$100 an hour for library work and
 16 250 for stuff like this.
 17 Q Depositions?
 18 A Yes.
 19 Q There's a reference here on March 25 to
 20 "retrieving and e-mailing isotope refs"?
 21 A Yes.
 22 Q What's that refer to?
 23 A It's right there. It's people who were
 24 doing work on isotopic research.
 25 Q Lead isotopes?

1 A Yes.
 2 Q That's the subject you were asked by the
 3 lawyers to look into?
 4 A Yes.
 5 Q A little farther down on April 4th, it says
 6 "ILL," in all caps, "Article (white lead)."
 7 A Interlibrary loan.
 8 Q A ways down further, there's another
 9 interlibrary loan book, Sabin's?
 10 A Yes.
 11 Q What book's that?
 12 A I believe it's the book on red lead that he
 13 published.
 14 Q By Dr. Sabin?
 15 A Yes.
 16 Q Am I right that in these memos which you've
 17 given me, there's an indication that you did some
 18 research on red lead?
 19 A Well, some bibliographic research.
 20 Q Okay. Had you ever looked into the issue of
 21 red lead prior to 2001?
 22 A I had some references to it. I hadn't
 23 sharply focused on it.
 24 Q Do I gather that in the last year, you have
 25 sharply focused on red lead?

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1 A Yes.

2 Q Why is that?

3 A Why?

4 Q Uh-huh.

5 A Mr. Scott asked me to.

6 Q Do you know why he asked you?

7 A I assumed he had good reason.

8 Q Do you know anything about red lead and the

9 Spring Branch School District?

10 A I don't.

11 Q What did you find out in your collection of

12 information on red lead?

13 A What did I find out. I found out that it

14 was usually lumped together with white lead as -- and

15 lead chromate as dangerous.

16 Q And when you say "usually lumped together as

17 dangerous," in what sort of publications did you find

18 this dangerousness of these lead compounds

19 referenced?

20 A I found it in works dealing with food

21 adulteration and cosmetics and paint.

22 Q These works on food adulteration and

23 cosmetics were written in what eras?

24 A Some of them were written hundreds of years

25 ago.

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1 Q And were these works generally available in

2 libraries?

3 A Probably not.

4 Q Where would they have been found?

5 A In rare book collections or specialized

6 libraries.

7 Q Would these books on lead in food have been

8 generally available to public health officials in the

9 Nineteenth Century?

10 A Yes.

11 Q You indicated you had also discovered red

12 lead discussed in books on the toxicity of paint.

13 A Yes.

14 Q In what era would that have been the case?

15 A Early Twentieth Century.

16 Q Do you remember any particular books in that

17 regard?

18 A Alice -- some of Alice Hamilton's work.

19 Q Which was published, among other places, by

20 the U.S. Department of Labor; is that right?

21 A That's right.

22 Q And Alice Hamilton's writings, would they

23 have not been generally available to public health

24 officials?

25 A I'm not so sure.

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1 Q Alice Hamilton's writings, as published by

2 Department of Labor, would have gone to libraries that

3 got government documents, would they not?

4 A They would have gone to U.S. government

5 depositories.

6 Q Which are?

7 A Specially designated libraries who receive

8 government documents.

9 Q Which libraries are in a number of different

10 cities in this country?

11 A That's right.

12 Q And would be available libraries, then, for

13 public health officials in those cities?

14 A Sure.

15 Q Are you aware, Mr. Reich, that Alice

16 Hamilton's writings were often cited and quoted in the

17 magazine of the Brotherhood of Painters?

18 A No.

19 Q Have you ever reviewed the Brotherhood of

20 Painters monthly magazine called at various times

21 things like "Painter and Decorator"?

22 A No.

23 Q So you're not aware of the extent to which

24 Alice Hamilton's writings and concerns about lead

25 paint toxicity were included in these painter

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1 publications?

2 A That's correct.

3 Q Have you done any research on knowledge of

4 painter unions in the United States of the toxicity of

5 lead?

6 A A little bit.

7 Q And what have you found?

8 A Some unions felt that a ban on -- or limits

9 on lead paints were a bad idea, and some thought they

10 were a good idea. There were two conflicting views, I

11 believe, presented to the ILO.

12 Q Would it be fair to say that painter union

13 group -- painter groups on both sides of that issue

14 were, nonetheless, aware of the toxicity of lead

15 paint?

16 A Not having read those journals, I don't know

17 what they would have been aware of.

18 Q Is it your understanding that the painter

19 unions who supported the ILO recommendation on

20 interior use of lead paint were aware of the toxic

21 qualities of lead paint?

22 A I'm sorry. Start from the beginning again,

23 the...

24 Q Is it your understanding that the painter

25 groups --

121 1 A Yes. 2 Q -- who supported the ILO recommendation 3 against interior use of lead paint were aware of the 4 toxicity of lead in paint? 5 A I think the unions that supported the ILO 6 propositions were aware of the toxicity. 7 Q And what's your understanding of the 8 populations, types of persons, those unions were 9 concerned about protecting in advocating a ban on the 10 interior use of lead paint? 11 A I think they were interested in protecting 12 their painters, and I'd like to think that they were 13 also interested in protecting what our friend Henry 14 Gardner referred to as "the inmates of the 15 buildings." 16 Q Have you seen any indication that any of 17 those painter union concerns went beyond protecting 18 the health of painters? 19 A I don't think so. 20 MR. HARDY: Let's cut the tape, then. 21 THE VIDEOGRAPHER: Off the record, 22 1:33, ending Tape 2. 23 (Recess from 1:33 p.m. to 1:35 p.m.) 24 THE VIDEOGRAPHER: On the record, 1:35, 25 beginning Tape 3.	123 1 Q And is that memo in the collection which you 2 gave me? 3 A I believe it is. 4 Q There is also a reference to "Ladd 5 Dissertation Research." 6 A Yes. 7 Q What's that have to do with? 8 A I was interested in the work of Dr. Ladd at 9 the Agricultural Experiment Station in North Dakota 10 and his interest in the paint labeling legislation. 11 Q Did you send one of your assistants to the 12 archives of the University of North Dakota? 13 A I did not. 14 Q But I gather you received some information 15 from the University of North Dakota? 16 A I did. 17 Q And you received a dissertation? 18 A I did. 19 Q Anything else? 20 A No. 21 Q And I believe you've given us -- Ron's given 22 us parts of that dissertation. 23 A Well, my extract of it, I think. 24 Q Right. 25 The next page, there's a reference to
122 1 Q (BY MR. HARDY) Mr. Reich, am I right that 2 the International Labor Organization recommended that 3 nations not allow the use of lead paint at a defined 4 level for interior paint? 5 A I guess I'm not sure about the "defined 6 level" part, because I think in some places it was 7 absolute and in some places it was less than 8 absolute. 9 Q And I gather you are familiar with and 10 summarized in some of the material you've given us 11 some information from a big book called White Lead 12 that was issued after that recommendation was made by 13 the International Labor Organization? 14 A Yes. 15 Q Are you aware of any indication that the 16 International Labor Organization recommendation was 17 prompted by a concern to protect any groups other than 18 painters? 19 A I guess not. 20 Q Going back to your time and expenses list, 21 there are -- there is a reference in May of last year 22 to a Hamilton memo. 23 A M-h'm. 24 Q Is that a reference to Alice Hamilton? 25 A It is.	124 1 "Hamilton, Red Lead." 2 A I think I looked specifically at Alice -- 3 Alice's references to red lead. 4 Q And that would have been in some of the 5 reports she did for the Department of Labor? 6 A Yes, and possibly some other materials. 7 Q Did you look for any information on red lead 8 other than as you've described already, articles 9 having to do with the toxicity of red lead? 10 A Yes. 11 Q What did you find? 12 A Some old Greek thing about the Temple of 13 Ephesus, I think, a lot of interesting -- reference to 14 rouge, ways in which it was -- made its way into 15 society. 16 Q I was about to ask. So what's your 17 understanding of what red lead was used for? 18 A Well, it was a remarkably beautiful red. I 19 think it was used for decorating women's cheeks and 20 churches, and it was a fabulous protector of metal. 21 Q Is that to protect metal against corrosion? 22 A Corrosion and rust. 23 Q And do you have an understanding of when it 24 was in the history of paint technology that red lead 25 was used to protect against corrosion?

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1 A I think navies used it for a long time. I
 2 don't know when they started to use it.
 3 Q Do you have any understanding of to what
 4 extent there were other nonlead materials that could
 5 be used to protect metal against corrosion?
 6 A My best recollection is that there wasn't
 7 much else.
 8 Q Would that have been true -- continue to
 9 have been true, say, in the 1950s?
 10 A Well, I think -- I think the incidence with
 11 the United States Navy in the second decade of the
 12 Twentieth Century prompted a -- at least I think they
 13 switched from red lead as a primer at that time
 14 because there was so much poisoning among sailors.
 15 Q But the Navy continued to use red lead as a
 16 topcoat? Was that your understanding?
 17 A That, I'm not sure.
 18 Q Do you know -- have you looked into the
 19 availability of substitutes for red -- for red lead in
 20 building construction --
 21 A I haven't.
 22 Q -- in, say, the 1930s or the 1940s or the
 23 1950s?
 24 A Well, the impression I had was that lead
 25 paints were just the greatest thing since sliced

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1 bread.
 2 Q All through that period?
 3 A Yeah.
 4 Q And that's an impression from reading things
 5 like Mattiello and other literature from paint
 6 companies --
 7 A Well, yeah.
 8 Q -- or paint chemists; is that right?
 9 A Yeah, and the United States Government
 10 reports. It looked as if -- when I put it in 1965, it
 11 looked as if it had really been -- because that's when
 12 they were -- I think they said it was -- white lead
 13 was mostly out of use. So there was an acknowledgment
 14 by 1965 that things had pretty much changed over.
 15 Q And that's in Federal government documents
 16 you're talking about?
 17 A M-h'm.
 18 Q Going back to your Exhibit 180, time sheets,
 19 there's a reference on July 3rd to "Big Trouble."
 20 A Yes.
 21 Q I'm curious what that is.
 22 A "Big Trouble" is the history of the
 23 incidents associated with the assassination of
 24 Governor Steunenberg, the governor of Idaho, after he
 25 had stepped down in 1905.

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1 Q Did that have anything to do with lead
 2 paint?
 3 A Well, to the extent that it had to do a
 4 little bit with protecting miners and to the extent
 5 that it put a political cast on advocacy for miners'
 6 interests, I was interested in that.
 7 Q There are three references in June to "Memo
 8 on Regulation."
 9 A M-h'm.
 10 Q What's that about?
 11 A Well, since -- since working for the
 12 Environmental Defense Fund, I've been interested in
 13 documenting, as much as I could, times, places, and
 14 events in which interests associated with lead have
 15 tried to defer regulation.
 16 Q Did you actually draft a memo on that
 17 subject last June?
 18 A If that's what it says, that's what --
 19 that's what I did.
 20 Q And that would be a different document from
 21 Exhibit 181, which I believe covers --
 22 A Yes.
 23 Q -- that subject, also?
 24 A M-h'm. M-h'm -- well, yeah.
 25 Q Do you know whether there are things in your

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1 memo from June that aren't included in Exhibit 181?
 2 A I think there are.
 3 Q We'll get back to that.
 4 There's a reference to a book from
 5 Hammond's -- with a "d" in it -- Antique. What's
 6 that?
 7 A I don't know. It's a book. I mean, I
 8 ordered a number of books from a number of antiquarian
 9 book dealers.
 10 Q You don't remember what that one is?
 11 A I don't.
 12 Q There's a reference to "The Rise of HH."
 13 A Oh, yeah. That has -- this was Herbert
 14 Hoover.
 15 Q It's a book?
 16 A It's a book.
 17 Q There's a reference to "HCH: An American
 18 Tragedy." What's that?
 19 A That's another book about Herbert Hoover.
 20 Q There's a reference to "NYPL Rebecca Neel."
 21 Is that one of your assistants --
 22 A Yes.
 23 Q -- who went to New York Public Library?
 24 There's a reference to "Dinner with
 25 Watkins."

1 A Yes.
 2 Q Who's Watkins?
 3 A Watkins is my research assistant.
 4 Q There's a reference to "Copy Affidavit and
 5 NRA Documents." What's NRA?
 6 A National Recovery Administration.
 7 Q Do you recall what was in those documents
 8 that caused you to copy them?
 9 A What was the date again?
 10 Q Recently. This month.
 11 A Oh, yeah. Okay. That was a document from
 12 the National Recovery Administration from our friend
 13 Ernest Trigg concerning the statutory definition in
 14 13 states -- or representing that the statutory
 15 definition of paint in 13 states was white lead.
 16 Q Do you remember the date of that document?
 17 A 1934.
 18 Q Do you recall why Mr. Trigg was sending that
 19 information to the NRA?
 20 A I believe he was trying to position white
 21 lead as not being subject to the same regulations as
 22 mixed paints.
 23 Q And that's because Mr. Trigg was the
 24 president of the National Paint, Varnish and Lacquer
 25 Association?

1 A At the time he wasn't, I don't think. He
 2 was -- he was the chairman of the Paint Recovery
 3 Board, I believe.
 4 Q But you don't think he was the president of
 5 NPVLA in 1933?
 6 A You know, I'm not sure that he was president
 7 at the same time that he was chairman. I don't know
 8 the exact date. I know he was president for a long
 9 time.
 10 Q And is it your understanding that NPVLA
 11 promoted the interests of mixed paint companies?
 12 A It looks to me as if there was an uneasy
 13 marriage during the Depression.
 14 Q An uneasy marriage between whom and whom?
 15 A Between the mixed -- between the mixed paint
 16 and white lead.
 17 Q And what's your understanding of what you
 18 characterize as an "uneasy marriage"?
 19 A I think Mr. Trigg's mission was to help the
 20 entire paint industry through the Depression, and that
 21 involved negotiating between the lead interests and
 22 the mixed paint interests. And I don't understand
 23 fully what was happening then, but it looks as if he
 24 was treading between the two and trying to work out
 25 arrangements that would be satisfactory to both

1 sides.
 2 Q When you refer to "negotiating," do I read
 3 you to say that there were different interests
 4 between -- *different interests held by the mixed paint*
 5 *industry and the lead industry?*
 6 A It appears that the white lead people did
 7 not want to be subject to the same provisions that the
 8 mixed paint people were held to.
 9 Q What sort of provisions?
 10 A Well, I'm not exactly sure and I'm a little
 11 uneasy going much further because I haven't looked
 12 into it that much, but it's -- this particular
 13 communication was a way of setting the white lead
 14 apart from any other coverings.
 15 Q Are you aware of, have you ever looked at
 16 communications indicating that the National Paint,
 17 Varnish and Lacquer Association was unhappy with the
 18 white lead promotion program of the Lead Industries
 19 Association?
 20 A No.
 21 Q I gather, Mr. Reich, you and your assistants
 22 have collected some documents from the Harvard -- I
 23 guess it's Countway Library.
 24 A Right.
 25 Q And am I right that some of those documents

1 have to do with research funded at Harvard, in the
 2 1920s originally, funded by various companies in the
 3 lead business and ultimately the Lead Industries
 4 Association?
 5 A Yes.
 6 Q And am I right that you've also reviewed the
 7 oral history given by Dr. Aub who was, I guess, in
 8 charge of that program of research at Harvard in the
 9 1920s?
 10 A Yes.
 11 Q And then I gather you're aware of comments
 12 made by Dr. Aub and others at Harvard that this
 13 research was funded with, quote, no strings attached?
 14 A Yes.
 15 Q And is it your understanding from your
 16 review that, in fact, this research money was given
 17 with no strings attached?
 18 A I have no idea.
 19 Q Do you have any evidence indicating that the
 20 research funds had any strings attached to them?
 21 A No.
 22 Q Are you aware -- back up. Strike that.
 23 In his oral history, Dr. Aub said --
 24 and I think you provided me with a transcript of
 25 it -- among other things, he said, "Harvard had

1 complete authority to investigate and publish its
2 findings without submitting it to a" -- "to the
3 industry for approval."

4 A That sounds like no strings, doesn't it?

5 Q Do you have any evidence to suggest that
6 that statement by Dr. Aub is inaccurate?

7 A No.

8 Q I believe in some of the other portions of
9 Dr. Aub's oral history or writings, he indicates that
10 Harvard was, as he puts it, "free to investigate
11 whatever it thought was most worth investigating about
12 lead." Are you aware of that statement by Dr. Aub?

13 A Sort of.

14 Q Do you have any reason to believe that that
15 statement, whether it be from Dr. Aub or somebody
16 else, is inaccurate?

17 A No.

18 Q And is it your understanding that all of the
19 research conducted at Harvard with grants from lead
20 companies or the Lead Industries Association was
21 published?

22 A I have no idea to know. I don't think
23 anybody could know that, really.

24 Q Are you aware of any studies they did --

25 A That weren't published?

1 Q -- that weren't published?

2 A I am not.

3 Q Okay. And it's true, is it not, that at
4 least through the Twenties and early Thirties, a large
5 number of studies were published by the Harvard
6 researchers?

7 A Yes.

8 Q And they also published a book on lead?

9 A (Moving head up and down.)

10 Q From your reading of the medical literature,
11 am I right in understanding that that book by Dr. Aub
12 and his colleagues, including Alice Hamilton, was
13 considered in the Twenties and through the 1930s as
14 the authoritative, state-of-the-art publication on
15 lead toxicity?

16 A I'm not so sure that that's entirely true.

17 Q Do you have reason to doubt that that's the
18 way it was considered in the Twenties and Thirties?

19 A I do.

20 Q And what are your doubts based on?

21 A My doubts are based on two approaches. One
22 is that a number of researchers picked up on Dr. Aub's
23 use of the word "harmless" and raised that in their
24 own papers in a way that raised questions about the
25 advisability of using that particular term, especially

1 when it applied to children.

2 And the second thing is that a number
3 of investigators at Johns Hopkins University seemed
4 particularly interested in examining and questioning
5 Dr. Aub's work.

6 Q When you refer to "harmless" --

7 A I'm sorry, to...

8 Q When you refer to the term "harmless," first
9 of all, what's your understanding of how Dr. Aub used
10 that term in his writings?

11 A I think Dr. Aub, who was a physiologist, was
12 really impressed at the human body. And his writing
13 does convey exuberance of a real scientist at
14 elucidating how the human body will excrete the lead
15 that is not absorbed and store the remaining lead in
16 the bones where it is harmless and Harriet Hardy
17 referred to this as the "Teacup Theory." And I think
18 that's -- that was the view that many people, indeed,
19 held and espoused.

20 Q Did Dr. Aub also recognize in his writings
21 that the lead stored in bones over time would come
22 back out into the other -- into the blood system and
23 other tissues of the body?

24 A I'm not sure. I sensed some concern on the
25 part of commentators that -- that, in fact, he hadn't

1 addressed the fact that some people carrying lead
2 stores in their bones could be time bombs with
3 unpredictable releases of lead that could cause a
4 problem.

5 Q So you don't recall him discussing the lead
6 coming back out of the bone and posing a risk when it
7 comes out of the bone?

8 A I don't.

9 Q Are you aware of any scientific research
10 since Dr. Aub that indicates that lead causes any
11 injurious effects when it is still in the bones?

12 A No, I'm not.

13 Q You referred to Johns Hopkins professors who
14 I think you said may have questioned some of Dr. Aub's
15 findings. Tell me about that, please.

16 A Well, there were a couple of papers in 1936
17 and 1937 by S.S. Blackman who -- whose studies of
18 brain lesions seemed to suggest that, indeed, harm was
19 occurring in the brain rather than elsewhere.

20 Q Weren't there articles -- medical articles
21 on lead toxicity predating Dr. Aub, by many decades,
22 even, talking about ill effects of lead on the brain
23 at high exposure levels?

24 A There were many articles prior to Aub
25 talking about dangers to the brain at any level.

1 Q And did Dr. Aub in any way say those
2 articles were wrong?

3 A I don't think he said they were wrong. I
4 think he shifted the focus of attention to the lining
5 of the brain rather than the brain.

6 Q And is that the issue which Dr. Blackman
7 questioned?

8 A I think that's part of the issue. As I
9 recall, Blackman also was one to demonstrate that
10 there were anatomically definable lesions.

11 Q In the brain?

12 A Yes.

13 Q Due to lead?

14 A Yes.

15 Q These differences of view with Dr. Aub in
16 the medical literature which you've referred to,
17 Harriet Hardy, Dr. Blackman, are these characteristic
18 of the way doctors and scientists communicate and
19 enhance understanding?

20 A I think so.

21 Q And am I right in believing that you have no
22 basis and found no evidence to indicate that any
23 company in the lead business or the paint business had
24 any influence over these disagreements in the medical
25 literature?

1 A Please restate that.

2 Q Did -- as I understand it from you, over
3 time there was discussion in the medical literature of
4 exactly what lead did in the body.

5 A (Moving head up and down.) Yes.

6 Q Do you have any reason to believe or any
7 evidence to demonstrate that any paint or lead
8 company --

9 A Yes.

10 Q -- interfered in any way with those medical
11 debates?

12 A Yes.

13 Q And what evidence would you point to?

14 A According to the article by Graebner -- and
15 this is a secondary source. I have not yet explored
16 it, but it's something I will explore.

17 According to Graebner, at the 1965
18 conference sponsored by the American Public Health
19 Service, a Harvard researcher raised the question that
20 most of the work for the last -- let's see, 40 years,
21 almost all the work on lead and human health, had
22 been, in fact, sponsored by the lead industry. And as
23 I read Graebner, it sounds like there was an
24 acknowledgment that that was, in fact, the case.

25 Q But you today have not checked to see

1 whether that's true or not?

2 A I have not read the transcripts of that
3 conference.

4 Q Are you aware of any information suggesting
5 that anyone, the government, some academic
6 institution, was precluded during that period, that
7 four-year period, from doing research on lead?

8 A Well, a couple of things come to mind. One
9 is that when I spoke with Dr. Chisolm, he made it
10 sound like there was some contention over some of the
11 work that had originally been sponsored by the lead
12 industry at Hopkins which didn't turn out to be quite
13 unsatisfactory. I really can't recall the nature of
14 it except that the sponsors of the research were not
15 happy with the findings.

16 And second, I do point to the -- how
17 long did it last? It must have been over almost ten
18 years of disagreement between the Children's Bureau
19 and represent -- and the lead industry and paint
20 industry people over desires to warn the public about
21 paints.

22 Q Let me go back to my question --

23 A Okay.

24 Q -- then maybe we'll follow up on those two.

25 And my question was: Are you aware of

1 any evidence that would suggest that any government
2 health agency --

3 A M-h'm.

4 Q -- or any academic institution --

5 A M-h'm.

6 Q -- or anybody else in the period from 1920
7 to 1965 was in any way prevented by industry from
8 doing research on lead toxicity?

9 A Only to the extent that Robert Kehoe in his
10 position at the American Public Health Association
11 assured the public repeatedly there was no threat. In
12 other words, why do any research if there's no
13 problem? That's a roundabout way of answering it.

14 Q But nobody prevented anybody from doing
15 research?

16 A Not that I'm aware of.

17 Q Nor are you aware, are you, of any
18 publication of any results of lead research that
19 industry prevented in that period from 1920 to 1965?

20 A Well, there was this whole thing with Caffey
21 and the X rays and I don't quite understand what
22 happened, but it does look at if there was quite a
23 to-do made by Felix Wormser to discourage those people
24 from pursuing the X-ray diagnosis, but...

25 Q That -- that fuss by Felix Wormser --

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1 A Yes.

2 Q -- you're referring to --

3 A M-h'm --

4 Q -- some of his reports in 1944, 1945?

5 A I think that Caffey and Vogt, I think they

6 were late Thirties. I don't remember the exact year.

7 But I think there was -- he was pretty upset about

8 that X-ray stuff, but I don't know if he actually

9 prevented somebody from doing further research.

10 Q You don't have any indication that he

11 prevented Caffey or Vogt from publishing anything, do

12 you?

13 A That's correct.

14 Q Actually, do you have any information or

15 evidence indicating that Felix Wormser or the Lead

16 Industries Association, for whom he worked, anytime

17 from its formation in 1928 up to 1965 prevented

18 anybody from publishing anything about lead toxicity?

19 A I guess not.

20 Q In your review of documents again at Harvard

21 in the Countway Library -- or maybe you also looked in

22 the library at Radcliffe -- I gather you looked at

23 some of the Alice Hamilton papers.

24 A (Moving head up and down.)

25 Q And did -- I gather one of the -- some of

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1 the Alice Hamilton papers you found discussed her

2 visits to white lead manufacturing plants owned by

3 National Lead; is that right?

4 A Yes.

5 Q And then I gather you're familiar with some

6 of the complimentary things Alice Hamilton said in

7 those papers and in her memoirs about the National

8 Lead Company and its efforts to prevent lead poisoning

9 in its manufacturing plants?

10 A Yes.

11 Q Do you have any reason to doubt from your

12 research that Alice Hamilton was expressing anything

13 other than her honestly held views about the National

14 Lead Company in those quotations?

15 A I do not.

16 Q You mentioned a couple minutes ago the

17 research that Julian Chisolm did. Is that the work he

18 did in the 1950s in Baltimore?

19 A I actually think he was referring to some of

20 the work that Huntington Williams had done. I don't

21 think it was actually -- I think he was a resident at

22 the time. I don't think it was Chisolm himself.

23 Q Do you recall what sort of Huntington and

24 Williams project Chisolm was talking about?

25 A I don't exactly.

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1 Q Are you familiar with the report that

2 Williams -- Baltimore Health Department did in the

3 late 1940s, sometimes referred to as the "Watts

4 report"?

5 A I'm not sure.

6 Q Have you reviewed at all the role of the

7 Lead Industries Association in assisting the Baltimore

8 Health Department in the late Forties to investigate

9 lead paint poisoning?

10 A I think Chisolm did mention that, but I

11 can't recall.

12 Q Do you recall reading about those efforts in

13 Christopher Warren's book?

14 A Not directly.

15 Q In the same context or a couple years later,

16 are you aware of who it was who first suggested that

17 the American Standards Association, now called ANSI,

18 established a standard for lead in paint?

19 A I think the LIA likes to take credit for

20 that.

21 Q Do you believe that LIA deserved credit for

22 that?

23 A No.

24 Q And why not?

25 A What I -- you asked about my methodology.

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1 Q Yes. I'd be glad to hear about it.

2 A Well, what I tried to do was not, as I said,

3 take references and go backwards, but to find sources

4 and move forward.

5 Q M-h'm.

6 A And in that context, when I -- when I found

7 out about the ANSI standard, I was flabbergasted

8 because it had followed ten years of total harassment

9 of the Children's Bureau of a bona fide effort to warn

10 the public about the dangers of lead paint. The

11 harassment of these women doctors defies the

12 imagination.

13 Furthermore, in 1953, the United States

14 Government -- the American pediatricians set up the

15 Poison Control Center. It sure looks to me like the

16 LIA leadership in formulating this standard was a nice

17 exit strategy.

18 Q Let's talk about the Children's Bureau.

19 A Sure.

20 Q And you refer to harassment --

21 A M-h'm.

22 Q -- of the Children's Bureau. What's your

23 basis for talking about harassment?

24 A The language in the letters written to the

25 women doctors, notably Dr. Marian Crane, is

145 1 harassment. Here was a woman who wanted to warn moms 2 and dads not to use poisonous paints, and they 3 wouldn't let her do it. 4 Q Who is "they"? 5 A Well, there's a long list. 6 Q You want to look at -- 7 A I don't know -- 8 Q -- any of your documents? I'd be glad to -- 9 "Hour of Lead" -- 10 A Yeah, sure. 11 Q -- or another document? Which would you 12 like to see? 13 A "Hour of Lead." 14 Q Okay. It's here. Oop, I may not have a 15 clean copy. 16 A No, that's it. 17 Q Okay. Here's my copy. 18 A No, it's not -- 19 MR. SCOTT: I've got one here. 20 A See, I think I took it because -- 21 Q (BY MR. HARDY) I don't think I have any 22 notes of significance in there. 23 A Huh? 24 Q You're welcome to... 25 A Okay. I think Karen Florini took that	147 1 Q But not everything in "The Teacup and The 2 Sponge" got into "The Hour of Lead"? 3 A That's correct. 4 MR. HARDY: And we'll get a copy of 5 this at some point, hopefully. 6 MR. SCOTT: You've got it. 7 MR. HARDY: We do? 8 MR. SCOTT: You've got a copy of "The 9 Teacup and The Sponge." 10 THE WITNESS: In the stuff I sent you. 11 MR. HARDY: No, I think you forgot. 12 MR. SCOTT: Pretty sure I did, but -- 13 MR. HARDY: I think -- I would have 14 noticed it. 15 A Here we go. Sherwin-Williams, "Generally 16 speaking, toy enamels are combinations of brilliant 17 nonpoisonous pigments or colors." 18 Glidden, "The correspondence mentions a 19 danger of poisoning years ago involving a green oil 20 stain." And then it states -- this is in the mid -- 21 Thirties -- "and then we started to manufacture 22 oil-type enamels. And of course, in manufacturing 23 these enamels, the subject of poisonous properties of 24 lead was kept in mind, and these toy enamels were made 25 lead free."
146 1 portion out of this version of "The Hour of Lead." 2 Q Okay. Is there -- 3 A I don't think it is in any of the 4 documents -- 5 THE WITNESS: Unless I might have sent 6 you, Ron, the larger version. I'd be glad to provide 7 it, but it does have extracts -- 8 MR. SCOTT: "The Teacup and The 9 Sponge"? 10 THE WITNESS: Sure. Let's have a look 11 at that. 12 MR. SCOTT: (Complying.) 13 Q (BY MR. HARDY) What is it that you're 14 looking at? 15 A The bibliography that you asked for is right 16 here. 17 Q Okay. And what is this talking about here? 18 A This is the 1980 -- 1991 version of "The 19 Teacup and The Sponge." 20 Q So that's what you sent to your agent, 21 something like that? 22 A Well, you know, something like this, yes. 23 Q And then it eventually led to "The Hour of 24 Lead"? 25 A Yes.	148 1 Schoenhut Company -- and the 2 correspondence at the Children's Bureau has volumes of 3 such correspondence with language clearly meant to 4 confuse the well-intentioned physician, in my opinion. 5 Q In the 1930s -- 6 MR. SCOTT: Go ahead -- go ahead and 7 take this. I mean, I think this has been produced to 8 you guys in the stuff we sent. We certainly meant for 9 it to. If it's not in there, it was a mistake and you 10 can take this today. 11 THE WITNESS: There are a couple 12 different versions floating around, and I'd be glad to 13 help clarify. 14 MR. HARDY: Okay. 15 MR. SULLIVAN: You want to mark that? 16 MR. SCOTT: Yeah, you can take that and 17 we'll -- 18 MR. HARDY: Yeah, maybe we'll mark that 19 later. 20 Q (BY MR. HARDY) In the 1930s, it's true, is 21 it not, that the Children's Bureau was issuing 22 guidance to parents not to use lead paint on cribs and 23 toys? 24 A I found a report that there was something 25 issued in either 1933 or 1935. I have not been able

1 to find it. The document that was published in 1945
2 which elicited these -- some of these comments I did
3 find, and that's the one that was ultimately withdrawn
4 at -- much to the -- well, it was withdrawn.

5 Q And am I right that this 1945 document --
6 A Yes.

7 Q -- is a long list of paint pigments --
8 actually, two long lists of paint pigments: Those
9 which the Children's Bureau thought was okay, and
10 those which the Children's Bureau thought was not
11 okay. Is that what you're referring to?

12 A I believe so. I wouldn't want to be --
13 well, I'd like the chance to look at it before I gave
14 an affirmative answer, but yes, I think that's right.

15 Q Okay. This document you recall that we're
16 talking about --

17 A Yes.

18 Q -- is it your recollection that it was
19 issued by the Children's Bureau, but with the
20 concurrence also of the National Public Health Service
21 and the National Bureau of Standards?

22 A I don't know about that.

23 Q But it is your recollection that this list
24 of good and bad pigment, so to speak, was, indeed,
25 issued by the Children's Bureau?

1 that the recommendations of the Children's Bureau not
2 to use lead paint on cribs and toys ever changed?

3 A I'm sorry. Say it again.

4 Q Are you aware of any evidence that the
5 recommendations of the Children's Bureau, going back
6 to the 1930s, not to use lead paint on cribs and toys,
7 ever changed?

8 A What do you mean "ever changed"? I don't
9 know what you mean.

10 Q Are you aware of anyone who ever suggested
11 to the Children's Bureau that it should alter its
12 recommendation not to use lead paint on cribs and
13 toys?

14 A I guess I can't go along with that wording.
15 It -- it was really poisonous paints that I think they
16 were interested in. So it would be wrong for me to
17 agree that it -- about lead. She was interested in
18 poisonous paints. And that --

19 Q Was -- go ahead.

20 A I would say there was active discouragement
21 from disseminating this piece of paper.

22 Q But was there any active discouragement from
23 recommending against the use of lead paint on cribs
24 and toys?

25 A I'm inclined to say yes, that she,

1 A A list was issued in 1945.

2 Q And a number of lead pigments, several, was
3 on the do-not-use list on these recommendations. Is
4 that your recollection?

5 A It is my recollection.

6 Q And nobody in industry prevented the
7 Children's Bureau from issuing that list?

8 A It appears that it was made difficult for
9 her to reissue that list.

10 Q And when would that have been?

11 A I think she was trying throughout the late
12 Forties. My recollection was that it was up until --
13 I have to -- maybe '49 is when she threw in the towel
14 and said, "Okay. Forget it."

15 Q Is it your recollection that she threw in
16 the towel or, rather, that she indicated another part
17 of the government might better be able to maintain the
18 list?

19 A It was the same thing, in my view.

20 Q Because?

21 A Because it appears that the people who were
22 going to maintain the list better, as you put it, were
23 people who had a history of limiting public knowledge
24 about the dangers of lead paint.

25 Q Was there any suggestion you saw anywhere

1 Dr. Crane, wanted to reissue the 1945 publication and
2 couldn't do it.

3 Q Did anyone suggest to her a reason for not
4 reissuing that statement was that she had lead paint
5 in the wrong column?

6 A Well, I can't find the passage I was looking
7 for, but...

8 Q What was it you were looking for?

9 A I was looking for language which -- in which
10 I can only describe as gobbledygook that was sent back
11 to Dr. Crane explaining why this might or might not or
12 possibly could be, maybe once was dangerous. I mean,
13 it was impossible. So the answer to your question is,
14 it seemed like pretty active discouragement.

15 Q Are you aware that in 1952 or '3, the
16 National Safety Council reissued this list of pigments
17 to use and not use on cribs and toys?

18 A I'm not. Something was reissued, and it
19 might have been that same list that you're talking
20 about. It's not clear that it was ever disseminated.

21 Q Are you aware of a publication called "Home
22 Safety Review" that the National Safety Council issued
23 in the 1950s?

24 A (Moving head side to side.) I am not.

25 Q And do you know to whom that publication was

1 disseminated?
 2 A I do not.
 3 Q When I asked you before about your
 4 unwillingness to give LIA credit for the ASA standard
 5 on lead paint, I believe you told me there were two
 6 sets of events that led you to be reluctant, and one
 7 was the Children's Bureau.
 8 A Right.
 9 Q What was the other?
 10 A I think the other was that, as I had
 11 mentioned this morning, the American Academy of
 12 Pediatrics soon found a loophole in it, which was
 13 described by the eminent scientist Edward Press as a
 14 loophole.
 15 Q And what document do you rely on to base
 16 Mr. Press' discussion of a loophole --
 17 A Dr. Press.
 18 Q Dr. Press. Indeed, he was.
 19 A It was a newsletter to the American Academy
 20 of Pediatrics.
 21 Q Which I believe is cited in your --
 22 A I don't -- I'm not sure it is. I'm not sure
 23 it's in there.
 24 It's not in there.
 25 Q I thought it was.

1 A I don't think so.
 2 THE WITNESS: Can I get a cup of
 3 coffee?
 4 MR. HARDY: Yes. Please, do that.
 5 THE VIDEOGRAPHER: Off the record,
 6 2:25.
 7 (Recess from 2:25 p.m. to 2:34 p.m.)
 8 THE VIDEOGRAPHER: On the record, 2:34.
 9 Q (BY MR. HARDY) Mr. Reich, I think I may
 10 have solved our question about your citation of
 11 Dr. Press' --
 12 A Yes.
 13 Q Do you recall signing an affidavit this
 14 month?
 15 A That's the one.
 16 Q In another lawsuit?
 17 A Yes.
 18 Q And what lawsuit's that?
 19 A In Mississippi, I believe.
 20 MR. HARDY: And why don't we mark that
 21 affidavit as Exhibit 182.
 22 (Exhibit No. 182 marked.)
 23 Q (BY MR. HARDY) Mr. Reich, could you just
 24 tell us briefly when you were asked to do that
 25 affidavit?

1 A The second week of January, 2002.
 2 Q Was this somebody from Mr. Scott's law firm
 3 or associated law firm that asked you to do this?
 4 A It was Mr. Herring from Fleming &
 5 Associates.
 6 Q And do you know why he asked you to do it?
 7 Did he explain what he needed?
 8 A I think he needed me to affirm that white
 9 lead was marketed up into the 1950s and to comment on
 10 the ANSI standard.
 11 MR. HARDY: Here's another copy, Ron.
 12 Q (BY MR. HARDY) Did you write this
 13 affidavit?
 14 A You bet.
 15 Q Was it edited by anyone before it was filed?
 16 A Yes.
 17 Q Would that have been Mr. Herring?
 18 A Mr. Herring and/or his associates.
 19 Q Do you recall what changes they suggested?
 20 A I think the principal changes were that I,
 21 in fact, had another page, maybe 250 or 300 words
 22 on -- more precisely, on the Children's Bureau
 23 exchange.
 24 Q And that was taken out?
 25 A Yes, it was. And then we did -- it was a --

1 for the purposes of this, it was a -- a more concise
 2 paragraph, actually, was put in.
 3 Q Any other changes you recall?
 4 A Not -- not really.
 5 Q Now that we've got this document for you to
 6 look at, your description to me of a loophole in the
 7 ASA standard, you indicated, is something you've
 8 learned about from an Academy of Pediatrics
 9 newsletter?
 10 A Yes.
 11 Q Is that the newsletter cited in footnote 26
 12 of this affidavit?
 13 A It is.
 14 Q And what's your recollection of what's
 15 stated in that newsletter?
 16 A My recollection is that Dr. Press and others
 17 were troubled that because of wording or whatever,
 18 that the word that they used as a loophole had been
 19 allowed in the 1955 version, and they were hoping to
 20 correct it in the '64 amendment.
 21 Q Did they correct it?
 22 A I believe so.
 23 Q Are you aware of any opposition from any
 24 lead or paint company to that correction?
 25 A I am not.

1 Q We started this discussion by my asking you
2 whether it was your understanding that it was the Lead
3 Industries Association that originally recommended an
4 ASA standard be developed on the lead content of
5 paint.

6 A (Moving head up and down.)

7 Q Do you have -- if I said that was my
8 understanding, would you disagree with me?

9 A No.

10 Q Do you have any reason to believe or facts
11 to show that the ASA standard which called for less
12 than 1 percent lead in paint on toys, cribs, and
13 household interiors was anything other than a good
14 faith representation of the views of the persons who
15 issued the standard?

16 A Did I think it was anything other than a
17 good faith...

18 Q Representation of the views of the people
19 who issued the standard?

20 A I think it was more than that.

21 Q What do you think it was more than that?

22 A I think more than that, it was public
23 relations, and I won't use the noun.

24 Q Whose public relations?

25 A Those with an interest in selling and

1 Q And that's on pages 37 and 38 and 39 and 40;
2 is that right?

3 A Well, if you just let me have a -- yes.

4 Q Are the episodes on these four pages an
5 inclusive list of the events that you had determined
6 were oppositioned by the lead industry to regulation?

7 A I would say there's at least one -- one
8 exception.

9 Q What's the one exception that's not included
10 here?

11 A One exception that's not included here is
12 that prior to coming to this meeting, I thumbed
13 through various books and documents that I have, and I
14 did find a comment by George B. Heckel to the effect
15 that legislation -- legislation concerning regulation
16 of paint and -- and he used -- put the word "poison"
17 in quotation marks, had come up and that they had -- I
18 think he said "successfully put down 167 pieces of
19 legislation."

20 Q Do you know what Mr. Heckel was referring to
21 there?

22 A I think probably a lot of it was labeling
23 legislation. It may also have been the type of
24 legislation that Mr. Warren referred to in 1910 where
25 I guess it became before the United States Congress,

1 marketing pigments.

2 Q And what leads you to conclude -- what
3 documents do you rely on to conclude that it was a
4 public relations effort?

5 A I rely on -- if we're talking 1955 -- on 50
6 years of opposition to any kind of regulation or
7 legislation involving lead. Out of the blue, presto,
8 there's this voluntary standard. I find that more
9 than goodwill or good faith.

10 Q Let's --

11 MR. SCOTT: May we hold a moment?

12 THE VIDEOGRAPHER: Off the record,
13 2:41.

14 (Recess from 2:41 p.m. to 2:46 p.m.)

15 THE VIDEOGRAPHER: On the record,
16 2:46.

17 Q (BY MR. HARDY) Mr. Reich, you made
18 reference a minute or two ago to opposition to
19 regulation of lead --

20 A Yes.

21 Q -- prior to 1955.

22 A Yes.

23 Q And in Exhibit 181, there is a discussion of
24 some such opposition, am I not right?

25 A Yes.

1 but I -- he just simply says that there were -- I
2 believe it was 167 pieces of legislation.

3 Q Do you know when that legislation was?

4 A I think it was -- I don't know, but judging
5 from the context, it was from 1906 up into the
6 Thirties sometime.

7 Q This is in -- in Mr. Heckel's book?

8 A Yes.

9 Q Do you remember what page he makes this
10 reference to?

11 A I don't, but I'm happy to provide it, if
12 requested.

13 Q We will ask Mr. Scott to ask you to provide
14 it.

15 The first opposition to regulation that
16 you discussed in Exhibit 181 has to do with the period
17 from 1900 to 1906.

18 A Yes.

19 Q What was being opposed by whom then?

20 A Well, the principal issue was around
21 labeling, although I've recently learned that Senator
22 Ladd, although he wasn't a senator at the time, had
23 introduced some paint legislation earlier in the
24 1890s. But principally, it was around adulteration
25 and labeling.

1 Q And by "adulteration," what do you mean?

2 A Well, it's -- it was an interesting
3 question, what it meant and what it means now.

4 Q What did it mean in the context of 1900 to
5 1906 in those legislative proposals in North Dakota
6 and elsewhere?

7 A Well, I think that the way Ladd would have
8 regulated it would have made things that didn't
9 contain lead or zinc, they would have been
10 adulterated. And the idea was that it would have
11 cramped any kind of innovation and that's why Heckel
12 and company were pretty upset with it.

13 Q Heckel and company were representing paint
14 companies or --

15 A As far as I know, everybody went out there.
16 It sounded like they got on a train and had a big old
17 time, to read his accounts of it.

18 Q And so it's your understanding that Heckel
19 and company, representing mixed paint companies, were
20 opposed to the idea that you had to have lead in your
21 paint?

22 A Well, they were opposed to labeling. I
23 think that's -- that was really what the issue was
24 because I -- well, that's enough.

25 Q Is it your understanding -- or am I right --

1 strike that.

2 Am I right that these disputes with
3 North Dakota and Dr. Ladd had to do with what
4 ingredients were in paints and not with the toxicity
5 of paints?

6 A I'm not sure about that. There's enough
7 evidence in that doctoral dissertation to suggest that
8 the toxicity of lead pigments was on the table.

9 Q In what way did you discover in the doctoral
10 dissertation it was on the table?

11 A Because I believe that lead chromate was
12 included in the -- in some of the wording of one of
13 the North Dakota statutes as an adulterant.

14 Q As an adulterant. But does that tell you
15 something about toxicity?

16 A Given the history of lead chromate, yes.

17 Q And why is that?

18 A Well, the mineral pigments were recognized
19 as poisonous a couple of thousand years ago and were
20 recognized as poisonous throughout history and crashed
21 into American history with the Baker's Buns incident
22 in 1887, which was further elucidated in the Journal
23 of Science and by Dr. Stewart, and apparently alluded
24 to by Harvey Wiley in some of his testimony about the
25 Food and Drug Act.

1 So when I see lead chromate or chrome
2 yellow, a red flag goes up, and I think it was going
3 up for Dr. Ladd. But I have not been out there and I
4 have not sent a research assistant out there either.

5 Q So you haven't really seen any documents
6 suggesting that the labeling battles in North Dakota
7 and in this era elsewhere from 1900 to 1906 had
8 anything to do with lead toxicity?

9 A That's right.

10 Q You mentioned awhile ago -- and it may not
11 be in Exhibit 181 -- something about what Congress did
12 on lead paint in 1910?

13 A That's from Warren's book. He -- Warren has
14 all that.

15 Q Have you ever looked at the primary
16 materials from that Congressional episode?

17 A Not that from that -- not from that
18 Congressional episode, I haven't.

19 Q Are you aware of any suggestion in the 1910
20 Congressional debate that lead pigment should not be
21 used in residential paint?

22 A I'm not.

23 Q The next opposition to regulation which you
24 discuss in Exhibit 181 is dated -- let me just read
25 what you say. "1921: National Paint, Oil and Varnish

1 Association protests strongly against the proposal to
2 prohibit the use of white lead in painting, (see also
3 Daily Intelligencer, Volume III, No. 23, page 721, and
4 Volume IV, No. 14, page 326)" and you cite the ILO
5 white lead --

6 A Right.

7 Q What was that all about?

8 A Well, to my understanding, that was the
9 statement of opposition to the -- better let me have a
10 look here.

11 Q (Complying.)

12 A It was the strong protest of the NPVLA
13 against the proposal to prohibit white lead.

14 Q And that was the proposal of the
15 International Labor Organization? Is that what they
16 were opposing?

17 A I believe so.

18 Q And I believe we discussed earlier today the
19 fact that there were also some painter groups who
20 opposed the ILO recommendation?

21 A And there were some that favored it.

22 Q Correct?

23 A Right.

24 Q But the proposal to prohibit use of white
25 lead in painting, which was being opposed in 1921, was

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1 not a proposal of any United States governmental
 2 agency; is that right?
 3 A That's right.
 4 Q Your next example is labeled 1930s and
 5 1940s, and you indicate: "Recent publications relying
 6 on minutes from the Lead Industry Association meetings
 7 in the 1930s document the LIA's continuing concern and
 8 aggravation over numerous flare-ups involving lead
 9 poisoning in the period 1928 through 1947, when Felix
 10 Wormser championed the lead industry's interests
 11 against negative publicity," end of paragraph.
 12 A Yes.
 13 Q Is there anything in that period, in 1930s
 14 and 1940s, of which you're aware where the Lead
 15 Industries Association opposed regulation of lead
 16 paint?
 17 A What was the time period again?
 18 Q 1930s and 1940s.
 19 A I guess I would raise the -- that Heckel
 20 item that I mentioned a few minutes ago as supporting
 21 that.
 22 Q The Heckel reference to --
 23 A 167 --
 24 Q -- the use of the word "poison"?
 25 A Yes.

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1 Q And you thought that was in the period?
 2 A Twenties, Thirties, perhaps.
 3 Q Twenties, Thirties.
 4 A He wasn't very specific.
 5 Q And you don't recall who proposed the word
 6 "poison" --
 7 A Well, Heckel -- I don't.
 8 Q -- in that era?
 9 A (Moving head side to side.)
 10 Q And we'll get that reference from you later?
 11 A Yes.
 12 Q Other than that, do you have any information
 13 which has led you to believe the Lead Industries
 14 Association opposed regulation of lead paint or
 15 pigment in the 1930s or 1940s?
 16 A I guess I'd like to say for the record that
 17 when I did send researchers to certain public
 18 collections where municipal or state regulations were
 19 under consideration, archivists reported to me that
 20 they were troubled that certain documents were missing
 21 from public collections.
 22 Q H'm. Where did that occur?
 23 A Well, it occurred in -- primarily at
 24 Philadelphia.
 25 Q At what library?

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1 A I don't recall. But I do recall a phone
 2 conversation in which this fellow was distressed that
 3 the legislative -- what do you call -- head
 4 legislative history, is what you call it, I guess, was
 5 not there.
 6 Q Do you recall which Philadelphia
 7 ordinance --
 8 A I'm sure I -- I can find it. If you'll ask
 9 Mr. Scott, I'm sure I can try to find out where that
 10 was. It may just be a note on some correspondence,
 11 but --
 12 Q But you might have that note?
 13 A I might.
 14 Q Okay. And we will ask Mr. Scott.
 15 By chance, do you recall whether it was
 16 a 1964 Philadelphia lead paint ordinance?
 17 A I really don't know.
 18 Q Do you recall any other archivists
 19 indicating a problem with missing documents?
 20 A It seems like there was, but I can't truly
 21 say that I know when and where.
 22 Q So let's go back to 1930s and 1940s.
 23 A Yes.
 24 Q With the exception of the Heckel references
 25 to poison, are you aware of any other LIA opposition

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1 to regulation of lead paint and pigment -- or
 2 pigment?
 3 A Well, yeah, there's the thing with our
 4 friend Manfred Bowditch.
 5 Q What's that thing?
 6 A Well, when Manfred Bowditch was the
 7 occupational health director in Massachusetts -- and
 8 this was in the early Thirties, I think -- he wanted
 9 to take -- adopt some kind of regulation to protect
 10 workers, I think. And Felix Wormser came up to
 11 Massachusetts and "procured a satisfactory outcome," I
 12 think, was the exact wording.
 13 Q The exact wording in what?
 14 A In Wormser's communication.
 15 Q Do you know what it was Mr. Bowditch and the
 16 Department of Labor were proposing?
 17 A No.
 18 Q Have you ever tried to determine what they
 19 were proposing?
 20 A Yeah, I have it in my files at home. I just
 21 can't remember.
 22 Q Oh, you think you may --
 23 A Oh, I have it. I just don't know what it is
 24 right now.
 25 Q You have their proposal?

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1 A I believe -- I believe I have documentation
 2 as to what was at issue.
 3 Q So we can ask you to look for that --
 4 A Sure.
 5 Q -- in your files, too, please. Then, we
 6 will do that.
 7 Anything else in the 1930s or Forties?
 8 A I guess -- I think it's important that --
 9 it's one of these situations where a negative finding
 10 is significant or potentially significant. And
 11 referring once again to that Graebner article, he
 12 makes the point that after the introduction of
 13 tetraethyl lead, there was no regulation of lead.
 14 Q Yes. Well, let me ask it this way: Are you
 15 aware of any public health or governmental official or
 16 public health or medical academic person in the United
 17 States who recommended in the 1920s that lead paint
 18 not be used to paint houses?
 19 A No.
 20 Q How about the 1930s?
 21 A You're only talking about houses, right?
 22 Q Inside or out, right. Surfaces of houses,
 23 inside or out.
 24 A Well, I do come back to that Children's
 25 Bureau thing, that there was something that they --

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1 there was an effort there to suggest not using
 2 poisonous paints on --
 3 Q On what sorts of surfaces?
 4 A I haven't ever seen that publication. I've
 5 just seen it referred to. Have you seen it?
 6 Q I think so, but I'm not on the --
 7 MR. SCOTT: We'll send you a bill for
 8 it.
 9 Q (BY MR. HARDY) I'm not testifying today.
 10 But you're not aware of any public
 11 health recommendations not to use lead paint on houses
 12 in the 1930s?
 13 A That's correct.
 14 Q You are aware, no doubt, of public health
 15 recommendations not to use lead paint on cribs or toys
 16 in the 1930s?
 17 A I'm not.
 18 Q You're not?
 19 A (Moving head side to side.)
 20 Q Have you ever looked at, for example, the
 21 radio scripts of the Baltimore Health Department
 22 through the 1930s on this subject?
 23 A I haven't.
 24 Q Are you aware of any governmental or public
 25 health or academic, medical, or public health

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1 officials who recommended that lead paint not be used
 2 on houses in the 1940s?
 3 A I believe that Huntington Williams and
 4 company probably did. I don't know that I can lay my
 5 hands on it.
 6 Q When do you believe Huntington Williams and
 7 the Baltimore Health Department first made such a
 8 recommendation?
 9 A I don't know.
 10 Q There's a reference which I could probably
 11 find in some of your writings to Baltimore's 1941
 12 Housing Ordinance.
 13 A M-h'm.
 14 Q Do you have any documents to suggest, as you
 15 do in your writings, that that ordinance had anything
 16 to do with lead paint?
 17 A I can't say without referring back.
 18 Q Do you have something you would refer back
 19 to to check out that question for me?
 20 A I think my -- my -- the information I have
 21 on Baltimore is '58. I'm not sure I have something on
 22 City stuff from the '41.
 23 Q Well, in Exhibit 181 there is a reference
 24 here where you say late Forties through 1958. It's
 25 the next paragraph.

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1 A Yeah. Yeah.
 2 Q And you say "continuous interaction between
 3 paint manufacturers and Baltimore City Health
 4 Department from first ordinance 1941" --
 5 A Yeah.
 6 Q -- "to 1958." And I guess what I'm asking
 7 you about is this reference to 1941, what it's based
 8 on?
 9 A Well, it's either a -- it's probably -- I
 10 don't know what it's based on, but I have a folder on
 11 Baltimore and I'm -- it's either some communication or
 12 publication by Williams or possibly a newspaper
 13 thing.
 14 Q So you would be able to determine if you
 15 have something tying the '41 ordinance to lead paint?
 16 A That's right.
 17 Q Because I notice here you cite an article by
 18 Rosner and Markowitz, not the primary material --
 19 A M-h'm. M-h'm.
 20 Q Okay. With the exception of Baltimore and
 21 its recommendations in the 1940s, are you aware of any
 22 other governmental or academic, public health, or
 23 medical officials who recommended against the use of
 24 lead paint in or on houses before 1950?
 25 A I guess I can't think of any.

173 1 Q How about any architect who recommended 2 against using lead paint in or on houses before 1950? 3 A I can't. 4 Q So would you agree with me that prior to 5 1950, there were no U.S. doctors or governmental 6 officials recommending against household use of lead 7 paint -- 8 A No. 9 Q -- for the Lead Industries Association to 10 disagree with? 11 A I wouldn't agree with that. 12 Q Because? 13 A I tell my students that I believe in the 14 bona fide hypothesis, and I believe that there may 15 very well be a document out there that does suggest 16 that, so I'd... 17 Q But you haven't seen it? 18 A I haven't seen it. 19 Q Okay. In "Hour of Lead," on page 2, which 20 is part of your introduction, you make the comment 21 that, quote, "U.S. policymakers have ignored evidence 22 about lead paint." And we can get the whole sentence 23 if you'd like to see it, but my question is: On what 24 basis did you reach that conclusion? 25 A Even before I read the Graebner chapter, I	175 1 beginning Tape 4. 2 Q (BY MR. HARDY) Whatever the hegemony 3 created by Dr. Kehoe -- 4 A And company. 5 Q And company. Who do you mean by "and 6 company"? 7 A Aub. 8 Q Was this a collective effort of Drs. Kehoe 9 and Aub? 10 A I don't think so. 11 Q Was this hegemony fostered by the Lead 12 Industries Association? 13 A I think it was. 14 Q How was that done? 15 A By sponsoring research that focused on 16 occupational aspects of lead poisoning, by minimizing 17 dangers of childhood lead poisoning, and by 18 maintaining an agenda to restrict or control or defer 19 regulation. 20 Q It's true, is it not, Mr. Reich, that -- 21 through the 1920s and 1930s, doctors, like Blackman 22 and Blackfan in Baltimore and McKhann in Boston, 23 published many articles on childhood lead poisoning? 24 A They published articles on childhood lead 25 poisoning.
174 1 had come to the conclusion that after 1926, there was 2 basically no debate and that -- and Robert Kehoe, by 3 his own acknowledgment, said that he issued four 4 separate warnings starting in -- not warnings, four 5 separate statements starting in 1927 that there was no 6 threat to the public. 7 Q And is it your conclusion, Mr. Reich, that 8 Dr. Kehoe spoke and everybody else kept silent? 9 A Just about. 10 THE VIDEOGRAPHER: Three more minutes 11 left. 12 Q (BY MR. HARDY) And do you have an 13 explanation of why everyone else could have, would 14 have kept silent just because Dr. Kehoe spoke? 15 A The argument would be, as -- as advanced 16 once again by our colleague Dr. Graebner, that there 17 was a medical hegemony from 1926 to 1965. And so it 18 was moot for most American physicians and public 19 health people. 20 MR. HARDY: I'll let you change your 21 tape. 22 THE VIDEOGRAPHER: Off the record, 23 3:11, ending Tape 3. 24 (Recess from 3:11 p.m. to 3:13 p.m.) 25 THE VIDEOGRAPHER: On the record, 3:13,	176 1 Q Nothing about the hegemony prevented those 2 publications; is that right? 3 A It may have influenced those publications. 4 Q To what documents would you point to show 5 that influence? 6 A I would point to a footnote in Dr. McKhann's 7 article -- I believe it may have been his last article 8 in 1933 -- in which he references a voluntary effort 9 by the industry to control paints -- lead exposures in 10 paints, toys, woodwork, and cribs, I believe. 11 Q Do you have any reason to doubt the accuracy 12 of what Dr. McKhann reports in that footnote? 13 A Only the fact that the lead industries and 14 companies decided they had to do another voluntary 15 standard in 1955. 16 Q If I told you that the lead industry's 17 efforts, as referenced in the McKhann footnote, 18 referred to cribs and toys but not house paint, would 19 that sound wrong to you? 20 A I think that's what it referred to. 21 Q And then is it therefore not possible that 22 the issue of crib and toy use of lead paint was, in 23 fact, addressed by the Lead Industries Association in 24 the 1930s and by contrast, the standard that the Lead 25 Industries Association promoted in the early 1950s had

1 to do with lead paint use on different sort of
 2 surfaces than the household surfaces?
 3 A I don't buy that. I mean, the wording -- we
 4 may have to look at the wording.
 5 Q But why wouldn't you buy that distinction?
 6 A I just -- because I don't have the wording
 7 exact in front of me.
 8 Q Okay.
 9 A But that's -- that's the answer.
 10 Q You indicate in "The Hour of Lead" that
 11 there was considerable use -- it's on page 6, footnote
 12 7 if you want to look at it -- "considerable use of
 13 lead paint in post-World War I tenements." Do you
 14 recall that statement?
 15 A I think so.
 16 Q Do you recall the basis for your
 17 understanding of that?
 18 A I believe that it was the Paint
 19 Manufacturers Association advocating interior paints
 20 as an alternative to wallpaper and as a conservation
 21 measure to protect -- to save trees, and this occurred
 22 probably prior to and after World War I.
 23 Q What leads you to connect those paint
 24 industry promotions to use paint to the use of lead
 25 paint in tenements?

1 A I have examined public health documents from
 2 state health departments during that time period, and
 3 public health warnings were distributed to public
 4 health officials warning about disease-carrying
 5 immigrants; and this was a very convenient way for
 6 landlords to put on a washable, sanitary, protective
 7 coating.
 8 Q Let me make sure I just understand that.
 9 State public health officials?
 10 A Yes.
 11 Q In what era are we talking about?
 12 A During the period of immigration when -- I
 13 don't -- I really don't even remember the exact, but
 14 it was during the late Nineteenth, early Twentieth
 15 Century.
 16 Q Continuing into the 1920s?
 17 A I don't -- I don't recall exactly, but there
 18 were --
 19 Q Certainly around 1900 --
 20 A Yes.
 21 Q -- and for some years after that.
 22 And these public state health officials
 23 were concerned about germs; is that right -- or the
 24 transmission of germs?
 25 A Well, germ theory was just barely getting

1 hold, so it was just dirt, I think. I'm not sure that
 2 they thought of it as germs. The progressive ones
 3 might have.
 4 Q When did germ theory become part of medical
 5 knowledge in this country?
 6 A I would say in the first two decades of the
 7 Twentieth Century.
 8 Q And public health officials in this country
 9 were aware of germ theory and concerned about how to
 10 do something about germs? Is that what happened?
 11 A I'd like to hope so. I mean, I don't know
 12 if the guy up in Vermont, if I told him that an
 13 invisible organism could enter his body unseen and
 14 multiply infinitely and kill him, I'm not sure he
 15 would have believed me in 1905.
 16 Q But public health departments were beginning
 17 to believe that was a serious public health problem?
 18 A Yes.
 19 Q And do I understand you to say one of the
 20 ways of addressing that problem advocated by public
 21 health departments was to have painted and, therefore,
 22 washable walls?
 23 A No, I'm -- I don't know that public health
 24 departments advocated painting and washing.
 25 Q Ahh. Did the public health departments

1 advocate having washable walls?
 2 A I don't know. Somebody did.
 3 Q But you never looked into whether public
 4 health departments recommended washable walls?
 5 A That's correct.
 6 Q You are aware, though, I gather from what
 7 you've said, that somebody was recommending washable
 8 walls?
 9 A That's right.
 10 Q In order to wash out germs?
 11 A Well, save the surface.
 12 Q But also in order to be able to wash out
 13 germs? Is that what you're indicating you've seen?
 14 A Yeah.
 15 Q But you don't remember who was advocating
 16 that?
 17 A Who was advocating save the surface?
 18 Q No, who was advocating as a public health
 19 measure having washable walls so you could wash out
 20 germs.
 21 A I don't.
 22 Q Would that have been a measure in the
 23 period, let's say, from 1900 to 1920 that was
 24 consistent with public health knowledge?
 25 A Yes.

181 1 Q And that was an era of 1900 to 1920 when, 2 prior to vaccines and antibiotics, germs were a 3 considerable public health threat? 4 A That's correct. 5 Q Am I right, Mr. Reich, that through the 6 Twentieth Century, a number of medical doctors and 7 medical associations have addressed the issue of how 8 much lead is too much lead? 9 A No. 10 Q Why would that not be a correct statement? 11 A I think it was -- it was moot, I think, 12 until 1965. 13 Q Why was that? 14 A Two reasons: One was because of the 15 medical -- you say "hej-a-mony" (phonetic), I say 16 "heg-a-mony" (phonetic), and the other was the belief 17 that childhood and adult exposures were prevalent. 18 Q Did not Dr. Oliver, for example, in his 19 writings, in Britain in the first decade of the 20 century -- 21 A Doctor who? 22 Q Oliver. 23 A Yes. 24 Q -- address the issue of how much lead is too 25 much lead?	183 1 adverse effects of lead poisoning? 2 A I think in 1935, Dr. Kehoe stated that the 3 question of long-term effects from ingestion of minute 4 quantities remained open to question. 5 Q But he, too, like Dr. Oliver and Dr. Legge, 6 were addressing all through this period the issue, 7 were they not, of how much lead is safe versus how 8 much lead causes adverse effects? 9 A In occupational settings. 10 Q Correct. 11 A (Moving head up and down.) 12 Q Are you aware of medical groups who 13 addressed that issue for children? 14 A I believe that the group at Hopkins was 15 working in that direction. 16 Q And that would have occurred in 17 Dr. Chisolm's work in the 1950s? 18 A I don't know. 19 Q Are you aware of levels of lead in the blood 20 of children which were believed by the American 21 Academy of Pediatrics in their reports over the years 22 to be safe versus unsafe? 23 A Yes. 24 Q And are you aware that in more recently 25 years, at least in the last 20 years, the United
182 1 A I'd prefer to say that he was concerned 2 about how little lead is too much. 3 Q Is it not true that Dr. Oliver and 4 Dr. Legge, L-e-g-g-e, in Britain, in working with the 5 health authorities in Britain the first two decades of 6 the century, came up with recommendations as to air 7 levels in lead plants below which it believed -- below 8 which they believed to be no adverse health effects? 9 A I believe they did. 10 Q And did not the American Public Health 11 Association address similar issues in this country 12 later in the century? 13 A I believe that -- well, I'm not sure. 14 Q Well, one of the -- because -- one of the 15 documents you gave me this morning from your 16 collection is the "1943 Report on Occupational Lead 17 Exposure and Lead Poisoning" from the American Public 18 Health Association. Isn't there a discussion of that 19 subject in that 1943 publication? 20 A "Safe Limits of Occupational Lead Exposure," 21 there it is. 22 Q And is it also not true that Dr. Kehoe, in 23 his writings, indicated what he believed were intake 24 levels of lead below which adverse effects did not 25 occur and levels above that at which he had found	184 1 States Government Centers for Disease Control has also 2 addressed this issue with respect to acceptable and 3 nonacceptable blood leads in children? 4 A Yes. 5 Q Would it be fair to say that the amounts of 6 lead considered acceptable or safe over the years both 7 for workers and for children have decreased? 8 A I'm not sure about the occupational 9 exposures, but I know that for children they have. 10 Q And am I right that, according to the 11 American Academy of Pediatrics and other knowledgeable 12 pediatricians, up until 1960 a blood lead level in 13 children 6 and under, ages, of 60 was considered 14 acceptable? 15 A I don't recall the exact level. 16 Q But it's some number considerably higher 17 than the current level of concern, which is 10; is 18 that right? 19 A Yes. 20 Q And those levels of concern have gone down 21 over the last 40 years? 22 A Yes. 23 Q And those changing levels of concern reflect 24 doctors' progressively broader concerns with types of 25 exposure that might cause too much lead to get into

1 the body?
 2 A I think it's also a reflection of what's
 3 achievable. The acceptable level of butterfat in
 4 fluid milk has gone down based on what our cows can
 5 produce. So that -- that certainly is a factor there.
 6 Q And how would that be relevant to lead?
 7 A Well, I think as -- in terms of public
 8 concern --
 9 Q Uh-huh.
 10 A -- if the dairy industry -- for example, if
 11 the standard for a woman today is 800 milligrams of
 12 milk -- of calcium and I change the standard that a
 13 woman has to have 1200 milligrams and the average
 14 consumption is 800, suddenly millions of women are at
 15 risk. And my point being that the acceptable levels
 16 are not just a reflection of scientific knowledge
 17 about what's demonstrable as a risk, but is what's
 18 achievable.
 19 Q And with respect to maintaining low blood
 20 lead levels in children, more has been attainable as
 21 the years go on. Is that what you're saying?
 22 A That's more true for ambient air levels, but
 23 not so true for kids living in public housing.
 24 Q And why do you draw the distinction?
 25 A Much of the decline in blood levels -- blood

1 lead levels has been attributed to the elimination of
 2 tetraethyl lead from fuel, but surprisingly, there are
 3 still pockets of substantial exposure and poisoning
 4 among children in public housing projects, possibly in
 5 schools.
 6 Q Well, I think I asked you earlier today
 7 whether you had any --
 8 A Yeah. Well, I mentioned those.
 9 Q -- any evidence on schools.
 10 A Yeah, and I mentioned those newspaper
 11 articles.
 12 Q Right. And newspaper articles indicating
 13 that there was lead paint in schools?
 14 A Yes.
 15 Q But not whether any child had gotten an
 16 elevated blood lead from attendance at those schools?
 17 A Well, I sure hope my kids don't go to those
 18 schools.
 19 Q You mean schools with lead paint on the
 20 steel beams --
 21 A Anywhere.
 22 Q -- in the gymnasium?
 23 A Anywhere.
 24 Q You would not want your -- let me ask you
 25 this, then, Mr. Reich: You would not want your child

1 to attend a high school that had red lead primer on
 2 the steel beams on the ceiling; is that right?
 3 A I'd feel uncomfortable about that.
 4 Q And you would feel uncomfortable despite the
 5 fact there's no evidence that the lead under six
 6 layers of new paint, nonlead paint --
 7 A M-h'm.
 8 Q -- is very unlikely -- in fact, I can't even
 9 see how -- to ever get into the nose or mouth of your
 10 children?
 11 MR. SCOTT: Object to the form of the
 12 question.
 13 Q (BY MR. HARDY) You can answer if you --
 14 MR. SCOTT: You may answer it.
 15 A I'll answer it by saying what one of my very
 16 best public health teachers told me, which is, rare
 17 events occur.
 18 Q (BY MR. HARDY) Given that lack of comfort,
 19 would you encourage your local Leverett school board
 20 to remove the lead paint on those steel beams in the
 21 high school gymnasium?
 22 A I'm not -- I guess I'm not -- I'm longer a
 23 public health official in that town, and I'm not sure
 24 what I would recommend if they found it there.
 25 Q As a parent, would you recommend that?

1 A I'd prefer that they did.
 2 Q And you would, am I right in assuming -- and
 3 I may not be -- that you would prefer that whatever
 4 monies it would cost to remove the lead paint from the
 5 steel beams in the gymnasium be spent to do that as
 6 opposed to buying new books for the library?
 7 A Can I object to a question?
 8 Q You can say you can't answer it.
 9 A I can't answer that.
 10 Q Okay. We've just discussed, and I think
 11 you've agreed, that the amount of lead considered
 12 acceptable by the scientific community has declined
 13 over the last hundred years; is that right?
 14 A The amount of lead considered acceptable has
 15 declined. I would say the amount of lead considered
 16 dangerous has declined.
 17 Q It's true, is it not, though, that the
 18 various scientific committees and individual
 19 scientists, like Oliver or Legge or Kehoe, who have
 20 addressed that issue have generally addressed it as we
 21 saw in that American Public Health Association report
 22 in terms of both what's dangerous and, conversely,
 23 what's safe?
 24 A I'm not sure about the "safe" part.
 25 Q Did doctors in the 1950s believe that any

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1 risk was posed to children whose blood lead level was
 2 below 60?
 3 A Ask it again, please.
 4 Q Did doctors in the 1960s believe that any
 5 harm had occurred to children 6 and under whose blood
 6 lead level was always below 60 micrograms per
 7 deciliter?
 8 A I don't -- I don't -- there's too -- first
 9 of all, I don't think they were -- they were still
 10 doing milligrams, I think, then and a lot of people
 11 were concerned that zero would have been a preferable
 12 level. Harriet Hardy was adamant about that. She
 13 really wanted the level to be zero in paint. But
 14 that --
 15 Q Right. Regardless, my question was whether,
 16 in fact, public health doctors, groups like the
 17 American Public Health Association, the American
 18 Academy of Pediatrics, had over the years developed
 19 levels of lead in the air or in the water or in blood
 20 in adults or in children which, on the one hand, they
 21 considered unsafe versus, on the other hand, lower
 22 than that level, safe?
 23 A I really feel like there's enough of a voice
 24 out there that's questioning whether any level is
 25 safe.

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1 Q Well --
 2 A Like I say, I can't give you a citation, but
 3 I'm unfortunately disagreeing with that statement.
 4 Q Do you have an idea of where you might find
 5 a citation of a scientist or scientific committee
 6 suggesting earlier at any point over the period from
 7 1900 to 1980, let's say, that the only safe level was
 8 zero?
 9 A Well, what comes to mind is the 1944 book by
 10 Canterow and Trumper, I think, in which he quotes the
 11 Melliar statement, which I think is in the first
 12 decade of the century, and restates that concern, that
 13 the task should be not to find out what level is
 14 dangerous but to what -- to find out what level is
 15 harmless. And that -- that was put forward early in
 16 the Twentieth Century, restated in 1944, and I imagine
 17 it has some adherence -- or had some adherence.
 18 In other words, there were people after
 19 1944 who were concerned to find out the level that was
 20 truly harmless as a...
 21 Q I guess my question was whether anybody in
 22 the literature -- the medical literature from 1900 to
 23 1980 suggested that the only harmless level was zero?
 24 A I don't know.
 25 Q Dr. Kehoe, in his hegemony -- are you

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1 familiar, Mr. Reich, with Dr. Kehoe's public
 2 pronouncements in the 1930s -- the first half of the
 3 1930s on children and lead paint?
 4 A I believe that he did express some words of
 5 caution and some uncertainty and left the door open
 6 for himself.
 7 Q And he did that publicly?
 8 A I believe he did.
 9 Q And as far as you know, isn't it true that
 10 in that period from 1930 to 1935, Dr. Kehoe expressed
 11 no disagreement with the findings and recommendations
 12 of, for example, Dr. McKhann with respect to children
 13 and lead paint?
 14 A I think Dr. McKhann went off the radar after
 15 1933.
 16 Q You indicate in one of your writings that
 17 Dr. McKhann, quote, softened his views?
 18 A Well, by -- I think --
 19 Q Am I quoting you correctly? I can find the
 20 quote, but I think you do say that. Does that sound
 21 familiar?
 22 A I think he seemed to think that this
 23 voluntary -- voluntary activity by paint manufacturers
 24 was a step in the right direction and he was perhaps
 25 less strident.

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1 Q And am I right that the "step" that we're
 2 referring to is keeping lead paint off of cribs and
 3 toys?
 4 A I'm not sure but what woodwork was in
 5 there. But it was not interior walls, if that's what
 6 you're getting at.
 7 Q And I gather what you're telling me is that
 8 it may be that Dr. McKhann, believing, in fact, lead
 9 paint was being taken out of cribs and toys, was less
 10 concerned about the problems he had found in his
 11 published articles on children because the source of
 12 lead in those published articles was no longer going
 13 to be increased?
 14 A I can't conjecture as to what he thought.
 15 Q But you're certainly not aware of any
 16 statements by Dr. McKhann suggesting that lead paint
 17 shouldn't be used on household surfaces?
 18 A I'm not aware of any.
 19 Q I believe in "The Hour of Lead" and again in
 20 Exhibit 181, you have a few references to medical
 21 articles from many years ago like those of Dr. Oliver
 22 where he referred to, in his words, quote, "small
 23 amounts of lead."
 24 Have you ever attempted, Mr. Reich, to
 25 quantify the amount of lead that Dr. Oliver was

1 referring to in, say, 1910 as a small amount of lead?

2 A I think I did spend some time looking at
3 what was considered the dangerous dose by the people
4 early in the century. And it looks like if it was
5 around -- between -- at least for Kehoe and others, a
6 quarter of a milligram per kilo per day was considered
7 normal, between a quarter and a third of a milligram.

8 Q And would you agree, Mr. Reich, that to a
9 current doctor for either adults or pediatricians,
10 that amount of lead would be considered a large amount
11 of lead?

12 A I would.

13 Q And so over the century, the concept of
14 what's a small amount of lead is a concept of
15 decreasing quantities?

16 A No. No.

17 Q I didn't mean to have that backwards.
18 People are concerned today, wouldn't you agree,
19 Mr. Reich, with much smaller amounts of lead than they
20 were concerned about in 1910?

21 A I'm not so sure. After reading Dana's
22 translation of Tanquerel and his commentary at the end
23 of it, it sure seems like --

24 THE WITNESS: Do you need to go ahead
25 and interrupt?

1 uncertainty about the cerebral effects that I feel
2 that question was open, but it wasn't, "Well, this is
3 how much is safe for workers and therefore it's safe
4 for everybody else." I believe that Tanquerel and --
5 and Oliver really weren't sure. And so I'm not sure I
6 agree with your statement.

7 What's notable about Tanquerel is the
8 fact that he did say that we are limited by our --
9 what we know, and he basically acknowledged in 1848 --
10 1838 that there was a lot more to be known.

11 Q Is medical technology, Mr. Reich, one of the
12 reasons why we're limited in what we know? Let me ask
13 that the other way around.

14 Isn't it true, Mr. Reich, that as
15 medical technology improves, we are able to know more
16 about the questions we were just talking about?

17 A I think it's a little different. I think
18 it's as medical knowledge expands that technology
19 follows due to where the questions lie.

20 Q With respect to lead and health, isn't it
21 true that as of 1920, there really was no capability
22 to even measure lead in blood?

23 A I think that's accurate.

24 Q And over the following 30, 40, 50 years,
25 isn't it true that the technology was developed and

1 MS. FUHR: I think you pulled your mike
2 off, Tim.

3 (Brief discussion.)

4 A Anyway, to read Dana's commentary following
5 his translation of Tanquerel, he refers to minute
6 quantities, as does Oliver. So I do think there
7 was -- from 1948 on -- I'm sorry, 1848 on, it wasn't
8 clear what "minute" meant. It was very small amounts,
9 and it might have been -- to Samuel Dana, it might
10 have been smaller than a quarter of a milligram per
11 kilo.

12 Q (BY MR. HARDY) But Oliver did try to
13 determine what amount of lead caused harm in workers
14 he was studying?

15 A He did -- he was very active in that.

16 Q And we can go back and look at those numbers
17 of what he found was the amount that caused harm?

18 A We can do that.

19 Q And we could compare that to the numbers
20 that doctors today think causes harm?

21 A (Moving head up and down.)

22 Q And would you believe that the amount
23 doctors today say causes harm is a smaller amount than
24 Dr. Oliver thought caused harm?

25 A I don't know. There's enough -- enough

1 was improved?

2 A Principally in Baltimore.

3 Q And in the 1930s, Baltimore began measuring
4 blood leads of both adults and children; isn't that
5 right?

6 A Believe so.

7 Q But no other city was doing such routine
8 measurements at that time; isn't that right?

9 A Yeah. Isn't that odd?

10 Q The allegations against the defendants in
11 the Spring Branch lawsuit include claims that the Lead
12 Industries Association and the companies, National
13 Lead, Glidden, duPont, were part of a conspiracy. Are
14 you aware, Mr. Reich, of any evidence indicating that
15 the companies or Lead Industries Association
16 conspired?

17 A Would you define "conspiracy" for me?

18 Q How about this: I will ask the question
19 differently. We'll avoid the legal term.

20 A Okay.

21 Q Are you aware of any evidence that the
22 companies we've just named and the Lead Industries
23 Association in any way agreed what to put on the
24 labels of cans of lead paint?

25 A It would look to me that they agreed what

1 not to put on.
 2 Q What documents would you point to to show
 3 that agreement?
 4 A I'd refer to the good Mr. Heckel once again
 5 who indicated continued opposition to such labeling.
 6 Q Was Mr. Heckel referring to the Lead
 7 Industries Association?
 8 A He was referring, I think, to anybody who
 9 produced protective coatings in cans or barrels, but I
 10 don't know that for a fact.
 11 Q And we're going to dig out his reference --
 12 A Yes.
 13 Q -- and we'll see if he makes any
 14 reference --
 15 A That's right.
 16 Q -- to any agreement.
 17 A Oh, yeah, agreement. Well, it seems to me
 18 that if I can pick up a phone and call somebody in
 19 almost every state and encourage them to oppose or
 20 support certain legislation, that's some kind of
 21 agreement. And that's what it sounds to me that
 22 George B. Heckel was bragging about.
 23 Q But is that an agreement among the
 24 companies, whatever it is that Heckel is referring to,
 25 with respect to what they decided to put on their cans

1 or not put on their cans?
 2 A I guess it's not an agreement, but I
 3 would -- the ornery side of me just wants to share
 4 something here.
 5 Q Please do.
 6 A I know I'm using up the clock here.
 7 MR. SULLIVAN: When you find it, would
 8 you just identify what it is you're reading from
 9 because --
 10 THE WITNESS: I will.
 11 MR. SULLIVAN: -- we haven't marked
 12 that as an exhibit yet.
 13 A Well, I guess -- I can't find it.
 14 Q (BY MR. HARDY) What are you looking for?
 15 A Well, it was the fellow from the toy company
 16 that said, "If we used a poisonous paint on our toys,
 17 we sure as hell wouldn't tell anybody."
 18 Q That was a toy company that said that?
 19 A Yeah, uh-huh.
 20 Q Not a lead company or a paint company?
 21 A I think it was a toy company.
 22 Q And you were referring, Mr. Reich, to what
 23 we will mark as Exhibit 183 which is copyright 1991 by
 24 you, "The Teacup and The Sponge."
 25 A That's correct.

1 (Exhibit No. 183 marked.)
 2 A And by the way, that does have the
 3 bibliography that you asked for this morning.
 4 Q (BY MR. HARDY) Okay. That's the
 5 bibliography you provided Mr. Leifer --
 6 A Yes.
 7 Q -- back then?
 8 A That's right.
 9 Q Okay. We were, awhile ago, going through
 10 what you would point to, Mr. Reich, as opposition by
 11 lead companies or paint companies to regulation of
 12 lead pigment, and I think we talked about the 1930s
 13 and 1940s and we talked about Baltimore and the
 14 1940s. I guess I didn't get to ask you what
 15 opposition you discovered in your research in the
 16 1950s.
 17 A In the 1950s, it was the -- I believe
 18 there's a reference there to opposition to the
 19 Baltimore -- and I'm not sure if it was a city or
 20 state regulation, but there was -- it was something in
 21 1958.
 22 Q And I believe you gave us a newspaper
 23 article about what happened --
 24 A Yes.
 25 Q -- in Baltimore --

1 A That's right.
 2 Q -- in 1958 --
 3 A That's right.
 4 Q -- and that's what you're referring to?
 5 A That's right.
 6 Q And is it your understanding that what had
 7 happened there is Baltimore had passed an ordinance
 8 requiring the specific label on paint containing more
 9 than 1 percent lead?
 10 A I don't remember exactly what it was.
 11 Q What do you remember about the nature of the
 12 opposition of somebody to that ordinance?
 13 A What I remember is that they opposed it.
 14 Q Was that before it was enacted or after?
 15 A Well, I think it was a continuing saga. It
 16 was not a one-shot deal.
 17 Q And when you say "they," who is "they"?
 18 A I believe it was the Maryland Paint and
 19 Varnish Association.
 20 Q And do you recall why they opposed it?
 21 A I don't.
 22 Q Do you recall whether they were opposing the
 23 use of warning language or whether, instead, they were
 24 opposing the particular warning language that
 25 Baltimore had chosen?

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1 A I don't recall.

2 Q And do you know what happened after that

3 opposition was voiced?

4 A I don't.

5 Q And so as far as you know, the paint

6 industry agreed to start using the language in the

7 Baltimore ordinance?

8 A I don't know.

9 Q How about the 1960s? Are you aware of any

10 opposition by lead companies or paint companies to

11 regulation of lead paint or lead pigment in the

12 1960s?

13 A What I think was important in the 1960s was

14 the opposition and controversy over the Patterson

15 article.

16 Q Are you aware of any activities or actions

17 taken by any manufacturers of lead pigment or lead

18 paint with respect to the Patterson article?

19 A I believe that -- I believe that someone

20 from the Lead Industries Association wrote a letter to

21 the Archives of Environmental Health.

22 Q About the Patterson work?

23 A Yes.

24 Q Are you aware of any such correspondence

25 from National Lead or Glidden or duPont or

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1 Sherwin-Williams?

2 A I'm not.

3 Q What was the nature of Dr. Patterson's

4 findings?

5 A I would say that Dr. Patterson's contention

6 was that the estimates of what was -- what were normal

7 and safe levels of exposure to lead were off possibly

8 by an order of magnitude or more.

9 Q Did Dr. Patterson ever express any views one

10 way or the other with respect to lead pigment or lead

11 paint use, as far as you know?

12 A I don't recall.

13 Q How about the 1970s? Any opposition by the

14 Lead Industries Association or paint companies or lead

15 companies to regulation of lead paint or lead pigment

16 in the Seventies?

17 A I am not aware of any. I'm sure there was

18 some.

19 Q But you're not aware of any?

20 A I'm not.

21 Q Are you aware that the Lead Industries

22 Association, for example, supported passage of the

23 Federal Lead-Based Paint Poisoning Prevention Act in

24 the 1970s?

25 A I'm not surprised.

203

1 Q And why would you have not been surprised

2 that they supported this Federal legislation?

3 A As Julian Chisolm said to me, when it's all

4 gone, they'll outlaw it.

5 Q Was -- and just for my benefit, elaborate on

6 what that means.

7 A Well, it appears that after -- as of 1965,

8 the transition, at least for interior paints, to zinc

9 and titaniums was pretty much complete. So it's a

10 no-brainer.

11 Q What's your understanding, if any, of the

12 extent to which lead pigment was still used in

13 exterior paint, house paint, as of 1970?

14 A I think it was still common.

15 Q And is it your understanding that the

16 Federal legislation addressed both interior and

17 exterior?

18 A I'm afraid I don't -- I think it did.

19 Q But you're not sure?

20 A I'm not sure. I remember that President

21 Bush's dog got lead poisoning, remember that, from

22 lead paint on the White House.

23 Q Probably exterior paint?

24 A Probably, but you never know, do you?

25 Q This affidavit that you prepared for the

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1 Jefferson County School District case?

2 A Yes.

3 Q Do you know anything about the buildings in

4 Jefferson County schools?

5 A Not a lot.

6 Q What do you know?

7 A Nothing.

8 Q So you don't know the age of those school

9 buildings?

10 A That's correct.

11 Q Do you know how many school buildings there

12 are in that district?

13 A No.

14 MR. SCOTT: We're not going to take a

15 deposition about Jefferson County. You can ask him

16 about the contents of the affidavit.

17 MR. HARDY: I will be glad to. No

18 problem.

19 Q (BY MR. HARDY) Page 4 of that affidavit --

20 and it's there if you'd like to look at it -- the next

21 to last -- yeah, the last full paragraph, the last

22 sentence which is just before footnote 20 --

23 A Yes.

24 Q -- says: In 1955, Dutch Boy published an

25 advertisement in National Painters Magazine stating,

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1 quote, "Today Dutch Boy has the inside track with
 2 painters on both exterior and interior jobs," end
 3 quote.
 4 A Yes.
 5 Q Do you know if the paint advertised in that
 6 advertisement contains lead?
 7 A At this very minute, I don't.
 8 Q I gather that you've collected that ad in
 9 your --
 10 A Yes.
 11 Q And we could get it and --
 12 A Yes.
 13 Q -- we could look?
 14 A That's right.
 15 Q Are you aware, Mr. Reich, that the company
 16 that made Dutch Boy, at least until 1976, National
 17 Lead, over the years developed titanium pigment?
 18 A I -- yes. And in fact, I think that they
 19 had it and I think it was licensed to duPont for a
 20 long time.
 21 Q Are you aware, for example, that the
 22 production capability of National Lead to make
 23 titanium pigment for paint increased substantially
 24 from 1920 through the 1950s?
 25 A I've seen -- I've seen the data on the

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1 increased use of zinc and titanium pigments.
 2 Q And in looking at National Lead
 3 advertisements, have you seen that National Lead
 4 promoted titanium pigment?
 5 A No.
 6 Q You haven't seen such ads?
 7 A No. I've looked.
 8 Q Where have you looked?
 9 A Dutch Boy Quarterly, National Painters
 10 Magazine, Dutch Boy Painter.
 11 Q Have you looked in the paint industry trade
 12 press to see whether National Lead promoted titanium
 13 pigment to paint companies?
 14 A I have not.
 15 Q Have you looked at National Lead
 16 advertisements after World War II for their interior
 17 paint?
 18 A Yes.
 19 Q And do you know whether that interior paint
 20 did or did not contain lead?
 21 A I would say it's hard to tell, but it sure
 22 looks like it's white lead.
 23 Q Do the ads indicate that it's white lead?
 24 A Well, it's funny. There's one ad that
 25 shows interior paints over here and exterior paints

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1 over there and it does look as if they're saying white
 2 lead on both of them, but it does get a little
 3 fuzzier.
 4 Q The ads don't indicate which of the paints
 5 have lead in them?
 6 A That's right.
 7 Q And you haven't gone behind the ads to look
 8 at company catalogs to determine --
 9 A That's correct.
 10 Q Are you aware from your research in
 11 Mattiello or elsewhere that other companies who were
 12 defendants here, like Glidden, also manufactured and
 13 promoted titanium pigment?
 14 A I was not aware of that.
 15 Q Are you aware that Glidden promoted in the
 16 1920s nonlead zinc pigment paints?
 17 A No.
 18 Q Were you aware that in such promotions for
 19 zinc nonlead house paint, Glidden put in the
 20 advertisements, "Buy this zinc-containing paint to
 21 avoid poisonous lead paint"?
 22 A Hallelujah.
 23 Q You weren't aware of those ads?
 24 A I was not.
 25 Q Nobody has ever shown them to you?

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1 A (Moving head side to side.)
 2 Q Are you aware that duPont had similar ads in
 3 the 1920s?
 4 A I am not.
 5 Q Are you aware that Sherwin-Williams was one
 6 of the primary manufacturers or promoters of lithopone
 7 pigment paint in the 1920s?
 8 A I'm not.
 9 Q Have you ever looked into the extent to
 10 which these companies, Sherwin-Williams, Glidden,
 11 National Lead, duPont, promoted after 1920 nonlead
 12 paint?
 13 A Yes.
 14 Q What have you found?
 15 A I found that Sherwin-Williams, for example,
 16 I think it was in 1947, developed a -- I believe it
 17 was the first water-based paint and was -- I think it
 18 was promoting it actively. I think from the point of
 19 view of the public, Mom and Dad still wanted a hard,
 20 shiny surface on the woodwork. And so I think that my
 21 conjecture is that despite the availability of some of
 22 these water-based paints for walls and ceilings, that
 23 the guy down at the paint store would still hand you
 24 this lead-based paint for your woodwork. That's --
 25 this is conjecture, but it's where I think -- I think

209 1 it fills in the gap a little bit. 2 Q And why would the guy down at the paint 3 store do that? 4 A Because he knew what was the best paint. 5 Q And to him, the best paint for woodwork was 6 lead paint? 7 A I think so. 8 Q And that's because it was durable? 9 A Well, there are a lot of qualities. 10 Q Washable? 11 A Go ahead. Keep going. You're doing great. 12 Q Is that right? 13 A Yes. 14 Q Bright colors? 15 A (Moving head up and down.) 16 Q And as of 1947, I think we're talking about, 17 was there any public health or governmental official 18 who was telling the guy down at the paint store or 19 anybody else, "You shouldn't be recommending lead 20 paint for woodwork"? 21 A Not that I'm aware of. 22 Q Just -- just to clarify things, without 23 having the Jefferson County deposition, I guess it's 24 fair to say, Mr. Reich, that Mr. Herring and probably 25 Mr. Scott, too, have asked you to help them in a	211 1 THE REPORTER: 184. 2 MR. HARDY: 184. 3 (Exhibit No. 184 marked.) 4 Q (BY MR. HARDY) This is a page from a letter 5 that either Mr. Scott or Mr. Herring sent us -- I 6 forget which -- 7 A M-h'm. 8 Q -- listing the experts they were going to 9 use in this case, and that's the page with a couple of 10 paragraphs describing the subjects you would be 11 testifying about. 12 A Okay. 13 Q This document, Exhibit 184, says you will 14 testify on the history of the lead paint industry, the 15 history of legislation in the United States and 16 various other countries restricting or banning the use 17 of lead-based paint, and knowledge of the dangers of 18 lead-based paint from a historical perspective. I 19 guess that's three things, lead paint industry, 20 legislation in the U.S. and elsewhere, medical 21 knowledge of dangers of lead-based paint. 22 Are there any other subjects on which 23 you've been asked to testify? 24 A Is this a trick question? 25 Q No. I want to know if there's something
210 1 second lawsuit in addition to Spring Branch, namely, 2 the Jefferson suit? 3 A That's correct. 4 Q Have they asked you to be involved in any 5 other lawsuits involving lead paint? 6 A Not specifically, no. 7 Q Have they told you they have a case on 8 behalf of the Houston School District? 9 A Yes. 10 Q Have they told you anything about the 11 Houston School District? 12 A Not much. 13 Q How about -- 14 A Nothing at all. Nothing at all. 15 Q And I'm not going to ask you -- have they 16 told you they have a case in Harris County? 17 A I don't believe so. 18 Q Okay. 19 A As a rule, you lawyers don't say much to 20 any -- about anything to anybody as far as I can 21 tell. 22 Q Let's go back to the very beginning, and 23 let me show you, Mr. Reich, what we will mark as 24 Exhibit -- 25 MR. HARDY: 189?	212 1 that I'm missing. 2 A I -- I don't think so. I'd be glad to tell 3 you about milk. 4 Q No. I'm just more interested in whether 5 there's something that I should be asking you 6 about -- 7 A I see. 8 Q -- that -- because you might testify 9 about -- 10 A I see. 11 Q -- that I haven't touched on. And I think 12 those three things we've talked about today. 13 A Right. 14 Q Have you reviewed any documents, minutes of 15 meetings of the National Paint, Varnish and Lacquer 16 Association? 17 A I don't believe I have. 18 Q Do you have any views on the role of the 19 National Paint, Varnish and Lacquer Association in 20 these things we've been discussing today? 21 A I believe there was a sense of solidarity, 22 at least in the mid Twenties, in opposing the ILO 23 situation and combating concerns about the lead 24 pigments. 25 Q And when you say "combating concern about

1 the lead pigments," what sort of activities are you
 2 referring to?
 3 A I believe it's principally whatever it takes
 4 to preserve the mandate of the association to make
 5 sure that paint is distributed widely in the American
 6 population.
 7 Q And with respect to the history of the
 8 lead paint industry, legislation, and the danger of
 9 the lead-based paint, would it be fair for me to
 10 believe that the opinions you have reached on those
 11 subjects are expressed in "The Hour of Lead", "The
 12 Teacup and The Sponge", and in your Brief History
 13 document?
 14 A I think so.
 15 Q Are there any opinions you've reached on
 16 those subjects which aren't in one of those three
 17 documents?
 18 A I -- I can't think of any right now.
 19 Q Previously you talked about some research
 20 you did on red lead.
 21 A I'm sorry?
 22 Q On red lead.
 23 A Yes.
 24 Q And you also talked about some research you
 25 had done in the past year on Herbert Hoover.

1 A Yes.
 2 Q Are there any current subjects that you're
 3 researching in connection with all of this?
 4 A I'm trying to think.
 5 I'm still interested in -- in zinc as
 6 an alternative in...
 7 Q From a paint technology standpoint?
 8 A Yes.
 9 Q And so you're collecting information on
 10 that?
 11 A M-h'm.
 12 Q Any other areas that you're currently
 13 researching?
 14 A Not that I can think of.
 15 Q Any other areas that Mr. Scott or
 16 Mr. Herring have asked you to look into that you
 17 haven't completed the research?
 18 A No.
 19 MR. HARDY: I will let my brethren ask
 20 you some questions.
 21 MR. SULLIVAN: Do you want to take a
 22 quick break or do you want to just keep going?
 23 MR. SMITH: We can go because I'm --
 24 MR. SCOTT: Are y'all going to be a
 25 little while?

1 MR. SMITH: I'm going to be quick. I
 2 suspect Mark may have a few more. I have maybe ten
 3 minutes. You want to just take a quick break?
 4 MR. HARDY: You want to make a plane?
 5 MR. SMITH: You and I are in the same
 6 boat. Why don't we both take a -- why don't we take a
 7 very short break.
 8 MR. HARDY: Take a break.
 9 THE VIDEOGRAPHER: Off the record,
 10 4:21 p.m.
 11 (Recess from 4:21 p.m. to 4:27 p.m.)
 12 THE VIDEOGRAPHER: On the record, 4:27.
 13 EXAMINATION
 14 BY MR. SMITH (4:27):
 15 Q Mr. Reich, my name is Scott Smith. We met
 16 earlier this morning, and I think I indicated to you
 17 during a break that my client in this case is the
 18 Glidden Company. Before I told you that this morning
 19 when we were off the record, did you know that Glidden
 20 was a party in this lawsuit?
 21 A I believe I did know that.
 22 Q And how did you know that?
 23 A I think that came through in communication
 24 with Mr. Scott or Mr. Herring.
 25 Q Have you read the complaint in this case?

1 A I haven't.
 2 Q Have you seen the complaint in this case?
 3 A I don't believe I have.
 4 Q According to your CV -- and I raise this on
 5 account of some comments you made in response to
 6 Mr. Hardy's questioning about your kids in schools --
 7 you have two kids, if I'm guessing right, who are 22
 8 or 23 and 18 or 19 about now?
 9 A That's right.
 10 Q Where does the 20 -- where does the older
 11 child go to school?
 12 A He just graduated from Carlton College.
 13 Q In Minnesota. Good for him. How about the
 14 younger child?
 15 A He's at Amherst Regional High School.
 16 Q Okay. And where did the older child go to
 17 high school?
 18 A Amherst Regional High School.
 19 Q Same high school?
 20 A Yes.
 21 Q Do you know whether or not there's any
 22 lead-based paint in Amherst Central High School?
 23 A I do not know.
 24 Q Did you make any inquiry to the school board
 25 or the administration of that school to find out

1 whether or not there's any lead-based paint in that
 2 school?
 3 A I did not.
 4 Q Have you ever recommended to the officials
 5 of Amherst Central High School that they needed to
 6 make an investigation or take other steps to ascertain
 7 whether or not there is lead-based paint in that
 8 school?
 9 A I did not.
 10 Q Mr. Hardy asked you a question and in his
 11 question, he mentioned the fact -- this is later in
 12 the afternoon -- that my client, Glidden, had, in some
 13 promotions in the 1920s, advertised certain of its
 14 paints as lead free. And I think your answer to that
 15 was "hallelujah," if I caught what you said correctly.
 16 Do you recall that testimony, that question and your
 17 answer?
 18 A I do.
 19 Q Why did you say that?
 20 A Because I was gratified that some people
 21 were acknowledging that it was important to give
 22 consumers a choice about nonpoisonous lead-free
 23 paints.
 24 Q Wouldn't that suggest to you -- let's just
 25 hang on for a second here until the commotion goes

1 away.
 2 You weren't aware of that promotion, I
 3 take it, until today?
 4 A That's correct.
 5 Q And wouldn't that promotion illustrate to
 6 you, sir, that if there were -- I underscore the word
 7 "if" -- some sort of hypothetical common plan or
 8 common agreement to hide the hazards or the alleged
 9 hazards of lead-based paint, my client, Glidden,
 10 wasn't part of that?
 11 MR. SCOTT: Object to the form.
 12 A I wouldn't agree with that.
 13 Q (BY MR. SMITH) Why not?
 14 A Because what comes to mind is the response
 15 from the National Bureau of Standards to inquiries,
 16 and it does appear consistently that at least from
 17 the -- from the Bureau of Standards and, I'm sure,
 18 from the local paint fellow that they would recommend
 19 white -- white lead or leaded paints; and then at the
 20 very end, they'd say, "You could also use lithopone,
 21 but it isn't quite as good." And so I believe that
 22 for the consumer, there was an ambivalent message that
 23 came out.
 24 Q What do you know regarding Glidden's
 25 promotion of titanium dioxide paints?

1 A I don't know anything about it.
 2 Q What do you know regarding Glidden's
 3 promotion of lithopone paints?
 4 A I don't know anything about it.
 5 Q What do you know regarding Glidden's
 6 promotion of combination lithopone and zinc pigment
 7 paints?
 8 A I don't know anything.
 9 Q But what was important to you, if I
 10 understand your earlier testimony relating to the 1924
 11 promotion that Glidden did do, was that it was
 12 important that consumers have a choice, correct?
 13 A M-h'm. Yes.
 14 Q Have you reviewed any documents, Mr. Reich,
 15 that would show an agreement between Glidden and any
 16 other entity to commit any illegal act with regard to
 17 lead paint or lead pig -- lead pigment? Excuse me.
 18 A I have not.
 19 Q Are you aware of any documents, sir, that
 20 would show any sort of agreement between Glidden and
 21 any other entity to commit a tortious act of some sort
 22 with regard to lead paint or lead pigment?
 23 A I have not.
 24 Q Well, I have to come back to your milk work
 25 just for a second. You mentioned before that the work

1 you did was in connection with some sort of
 2 industry-wide toxicological issue pertaining to milk,
 3 if I understand what you said. What was that?
 4 A Well, can you be more specific?
 5 Q Sure, sure. I mean, here's the context
 6 which it came -- that my notes tell me, and if I've
 7 heard it wrong, please tell me.
 8 Mr. Hardy asked you if you were
 9 involved in any industry-wide toxicological review
 10 other than lead, and you said milk. And I took it
 11 from that, perhaps incorrectly, that there was
 12 something of a toxicological nature --
 13 A Yes.
 14 Q -- related to your --
 15 A Yes.
 16 Q -- work on the milk product.
 17 A I see. In 1848, which was the time of sort
 18 of the second wave of concern about food and drug
 19 adulterants and toxicity, a book was published in the
 20 United States that was -- it really anticipated
 21 Sinclair Lewis' *Jungle* by 60 years in what it revealed
 22 about how the milk supply was produced. And the
 23 efforts to improve the quality of the milk supply in
 24 1848 linked with the introduction of pasteurization
 25 early in the Twentieth Century represent the way in

221 1 which an industry dealt with hazards, dangers from its 2 product. 3 Q Does that complete your answer? 4 A I think so. 5 Q Okay. What I'm interested in is this: Was 6 there a particular toxin or substance in the milk 7 supply that you were concerned about that you did your 8 research on? 9 A I guess the answer is no. 10 Q Have you reviewed any documents produced in 11 the Santiago case which purport to be documents 12 produced by my client, the Glidden Company? 13 MR. SCOTT: Don't -- 14 A No. 15 THE WITNESS: Don't answer that? 16 MR. SCOTT: Don't answer that. 17 MR. SMITH: I believe those are all the 18 questions I have. Thank you. 19 THE VIDEOGRAPHER: Off the record, 20 4:37, ending Tape 4. 21 (Recess from 4:37 p.m. to 4:39 p.m.) 22 THE VIDEOGRAPHER: On the record, 4:39. 23 EXAMINATION 24 BY MR. SULLIVAN (4:39): 25 Q My name is Mark Sullivan, and I represent	223 1 Q Have you looked at trade associations 2 generally, then, for this period, from the Twenties up 3 through the end of the second World War? 4 A Yes. 5 Q And of this material that you've talked 6 about, a 10 or 12 feet of material, is the information 7 that you've developed on trade associations in that 8 material? 9 A It is. 10 Q And how much of that 10 or 12 feet of 11 material would you estimate represents your work on 12 trade associations? 13 A 5 or 6 inches, maybe. 14 Q And is that 5 or 6 inches devoted to the 15 trade associations involved with the lead industry or 16 a broader based -- 17 A Mostly the lead industry. 18 Q Okay. And of that 5 or 6 inches, would 19 almost all of it be related to the trade associations 20 involved in the lead industry? 21 A Maybe half. 22 Q Approximately how many -- now, you've 23 indicated you've reviewed documents and minutes of the 24 LIA; is that correct? 25 A Small portions. I have not looked at a
222 1 the Lead Industries Association. 2 Have you done any historical work in 3 regard to trade associations? 4 A A little bit. 5 Q And what is the work that you have done in 6 regard to trade associations? 7 A The work has been mostly in the area of the 8 revitalization of trade associations led by Herbert 9 Hoover. 10 Q And what have you learned in your research? 11 MR. SCOTT: Objection, form. 12 A I believe that he -- his work and his 13 presence in the Department of Commerce gave trade 14 associations more influence in the marketplace. 15 Q (BY MR. SULLIVAN) And this would have been 16 at what period of time, then? 17 A Starting in 1921. 18 Q And going through when, approximately? 19 A Through the depression, anyway, possibly up 20 until the Forties. 21 Q And what type of research have you done in 22 regard to trade associations? 23 A I've looked -- read works about Hoover's 24 activities as Secretary of Commerce, some archival 25 material from the National Archives.	224 1 complete dossier by any means. 2 Q Well, you're going to where I was headed, 3 and that is: Approximately how many pages of 4 documents, if you could estimate that, or by inches, 5 of material have you reviewed that relates to LIA's 6 minutes or documents? 7 A 15 or 20, maybe. 8 Q 15 to 20 pages? 9 A Yes. 10 Q And that's not a very large amount. Do 11 you -- can you tell me what those 15 to 20 pages 12 comprise in the way of LIA's minutes or records? 13 A I believe that it included some 14 communication about Manfred Bowditch coming up to -- 15 you know, dealing with the proposed legislation in 16 Massachusetts. 17 Q That would be in the 1930s? 18 A Yeah. The summaries of some of the work 19 done by Dr. Aub, some accounts of reports of lead 20 poisoning, or purported lead poisoning. That's about 21 it. It was not a lot of stuff. 22 Q Okay. And besides the material on Manfred 23 Bowditch in the 1930s legislation, Dr. Aub's summaries 24 that you referred to, what time period does that 25 entail?

1 A I'm not exactly -- I think it was into the
2 late Thirties. I don't recall.
3 Q Are you aware that LIA was created in 1928?
4 A Yes.
5 Q Okay. And the accounts or the reports of
6 lead poisoning, what periods of time would those
7 cover?
8 A From these minutes?
9 Q Yes.
10 A I really think it's principally in the
11 Thirties. It's -- it's not a large holding.
12 Q Would it be fair to say, then, that you have
13 not looked at LIA's records as it relates to LIA's
14 activities in the 1940s?
15 A I think that's accurate.
16 Q And also in the 1950s, you've not looked at
17 those?
18 A That's correct.
19 Q And in the 1960s, you've not looked at
20 those?
21 A That's correct.
22 Q And in the 1970s, you've not looked at
23 those?
24 A That's correct.
25 Q And anything else -- you haven't seen

1 anything else on LIA; is that correct?
2 A That's correct.
3 Q Okay. Do you intend to render any opinions
4 as to whether anyone in the LIA was a racist?
5 A I hadn't intended to.
6 Q Okay. Do you have an opinion as to whether
7 anybody in the LIA was a racist?
8 A I probably do have an opinion about that.
9 Q And what is your opinion?
10 A My opinion is that that was a factor in some
11 ways in dealing with the problem.
12 Q Is that your answer?
13 A I think so.
14 Q And what is the problem you just referenced?
15 A There -- there may have been -- there appear
16 to have been concern -- not -- there appear to have
17 been awareness -- there appears to have been awareness
18 that blacks were more vulnerable to the effects of
19 lead.
20 Q And that's the problem?
21 A That's -- I would say that was probably part
22 of the problem.
23 Q Okay. And how did that play in anything
24 that you say that the LIA did or did not do, what the
25 LIA --

1 A I'm not sure it manifested itself in
2 behavior or activities that the LIA did or didn't do.
3 Q Okay. How did it manifest itself?
4 A It may have manifested itself in lower
5 levels of concern if black children were being
6 exposed.
7 Q You said it "may" have manifested itself.
8 A That's right.
9 Q Do you have any evidence from the documents
10 you've reviewed in connection with your research that
11 it did manifest itself?
12 A That it did?
13 Q Yes.
14 A The only evidence I have -- and it's not
15 directly related to the Lead Industries Association --
16 relates to milk. As Dr. Aub pointed out, lead follows
17 calcium to the bones where it's harmless. So you give
18 kids a lot of milk, they're going to have some
19 protection.
20 In an address to the International --
21 Dairy Conference in 1926, Herbert Hoover said that
22 milk was going to be the saviour of the white race,
23 which suggests that white kids had an advantage.
24 Q Because they drank more milk?
25 A Yes.

1 Q Any other indication or studies you have
2 that black children during -- what period of time?
3 We're now talking the Twenties and Thirties -- drank
4 less milk than white children?
5 A There's some pretty solid evidence also
6 from Johns Hopkins University that blacks are
7 about 70 percent lactose intolerant and don't drink
8 milk.
9 Q And do you have any indication that any of
10 this was known to the L -- anybody at the LIA?
11 A I have no documents to show that.
12 Q Okay. And do you have any indication that
13 this affected in any way what LIA did in regard to its
14 promotion or lobbying in regard to lead paint?
15 A No.
16 Q Do you intend to render an opinion or is it
17 your opinion that Felix Wormser was a racist?
18 A I have no idea.
19 MR. SCOTT: I'm going to object to the
20 form of the question.
21 Q (BY MR. SULLIVAN) Okay. Do you have any
22 opinion or do you intend to render any opinion that
23 Manfred Bowditch was a racist?
24 MR. SCOTT: Objection, form.
25 You can go ahead and answer.

229 1 A I don't have any idea. 2 Q (BY MR. SULLIVAN) Have you looked at any of 3 LIA's documents as it relates to lead? 4 A No, I haven't. 5 Q When you were growing up, do you know if you 6 grew up in a house that had lead paint in it, when you 7 were growing up as a child? 8 A We had wood walls in our house. 9 Q They were not painted? 10 A They were not painted. 11 Q How about the exterior of your house? 12 A Asphalt shingles. 13 Q And you indicated there was -- was it a 14 cabin you painted with lead paint? 15 A Well, it was some radiators. 16 Q You painted some radiators? 17 A Radiators that -- radiators. 18 Q And this was in Maine, correct? 19 A Yes. 20 Q And that was at your home or a cabin in 21 Maine? 22 A It was in a related building. 23 Q And your children, as they grew up, did they 24 grow up in houses or in a house that had lead-based 25 paint, as best you know?	231 1 to the FTC documents. How did those references wind 2 up in there? 3 A I think I saw one or two pages that were 4 passed along to me. 5 Q And was that from your original research or 6 something that was given to you by -- 7 A Something that was given to me. 8 Q By the EDF? 9 A No. 10 Q By whom? 11 A At this point, I'm not sure anymore. 12 Q The documents that you have concerning LIA, 13 were they given to you by Neil Leifer? 14 A They were. 15 Q Did you acquire them from any other source 16 other than Neil Leifer? 17 A It's possible that the New York people might 18 have sent something along. 19 Q Did you have any choice in selecting the LIA 20 documents that you have reviewed? 21 A I did not. 22 Q In other words, whatever the lawyers gave 23 you? 24 A Yes. 25 Q What is the Paint Recovery Board?
230 1 A To the best of my knowledge, they did not. 2 Q Have you ever had your children tested for 3 presence of lead? 4 A I have not. 5 Q Have you ever been tested for the presence 6 of lead? 7 A I have not. 8 Q Are you aware from your review of LIA's 9 documents or any documents as to whether LIA engaged 10 in any illegal activity in connection with its 11 lobbying activities in any state or with any federal 12 government -- with the Federal government? 13 A I'm not aware of that. 14 Q Are you aware from your research as to 15 whether LIA ever engaged in any illegal or improper 16 or -- let's say illegal activity in regard to its 17 promotion of lead pigments or lead paints? 18 A I'd sure like to see those FTC documents, 19 but that's all I know. There's something out there 20 that happened with the FTC, but I... 21 Q Have you ever looked at the -- 22 A I have not. 23 Q -- FTC documents? 24 A I have not. 25 Q There are references in "The Hour of Lead"	232 1 A It looks as if it was established under the 2 NRA to negotiate these pricing schemes to keep people 3 happy in the Depression. 4 Q That was to create some minimum amount of 5 price so you would be able to create a market for the 6 goods; is that correct? 7 A That's what they did with milk. So that's 8 probably what they did, was add it. 9 Q Okay. And do you know if LIA participated 10 with the government in that activity? 11 A I don't. 12 Q When you said you attempted to have your -- 13 "The Teacup and The Sponge" published in what I 14 believe you called the general press? 15 A Trade press, I think it's called. 16 Q Trade press. I'm sorry. What -- what do 17 you mean by "trade press"? 18 A I mean publishers that published books that 19 you get in a bookstore as opposed to an academic 20 press. 21 Q Okay. This is not a trade like a specific 22 painters journal or a trade -- 23 A No. Trade means what you get at the 24 Barnes & Noble. 25 Q Okay. And that proved unsuccessful?

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1 A Yes, it did.
 2 Q Were you told why?
 3 A I don't think it was written very well.
 4 That's why.
 5 Q Oh, okay. Are you aware from anything
 6 you've reviewed regarding LIA as -- or have you seen
 7 anything in what you have reviewed regarding LIA and
 8 its activities that it at any time engaged in any
 9 tortious activity with any other paint company or
 10 pigment company?
 11 A I don't believe so.
 12 Q Are you aware of any intentional
 13 misstatement that was ever made by LIA regarding lead
 14 pigment or lead paint?
 15 A I think some of the things that Wormser said
 16 were a little questionable sometimes.
 17 Q All right. Do you -- are you aware as to
 18 whether when he said them he believed them to be true?
 19 A I think he did believe them to be true.
 20 Q And would it be fair to say that there has
 21 been a public debate throughout this century,
 22 throughout the entire 1900s, as to the health effects
 23 of lead pigments and lead paint?
 24 A No.
 25 Q There has not been a public debate?

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1 A No.
 2 Q And why do you say that?
 3 A I say that because I believe the mineral
 4 pigments were understood to be taboo for public use
 5 early in the Twentieth Century, that there was a
 6 flare-up of childhood lead poisoning soon after the
 7 lead pigments made their way into interiors, and that
 8 as I stated earlier, after 1926 until 1965, there was
 9 essentially no debate about it.
 10 Q After 1965? I'm sorry, 19 --
 11 A 19 -- well, from '26 to '65 was pretty
 12 quiet.
 13 Q But to the extent that there was material,
 14 there were articles written and material in the
 15 journals that were published either for the public
 16 health profession or for the medical profession, is
 17 that correct, regarding lead pigment and lead paint's
 18 health issues?
 19 A There were -- there were some articles that
 20 were published, yes, but I'm not sure that there was a
 21 debate.
 22 Q Okay. Are there any other opinions or views
 23 that we have not addressed today that you intend to
 24 express if you're asked to testify at trial on the
 25 issues that have been outlined today?

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1 A I don't believe there are. That's not to
 2 say there won't be, though, right?
 3 Q Well, this is your chance to speak --
 4 A I see.
 5 Q -- because this is the only chance we get to
 6 talk to you --
 7 A Right.
 8 Q -- before trial comes up. So if you have
 9 something, we're entitled to find out now and not as a
 10 surprise.
 11 A Right. I don't think there are.
 12 MR. SULLIVAN: Okay. Thank you very
 13 much.
 14 MR. SCOTT: Anybody want a second bite,
 15 or are we through?
 16 EXAMINATION
 17 BY MS. FUHR (5:00):
 18 Q With regard to duPont --
 19 MR. HARDY: She still has first bite.
 20 MR. SCOTT: Sorry. I forgot about
 21 duPont.
 22 MR. HARDY: We've had so many bites
 23 that you forgot duPont.
 24 Q (BY MS. FUHR) With regard to duPont, do you
 25 have any --

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1 MS. FUHR: Whoops. I'm sorry.
 2 Q (BY MS. FUHR) With regard to duPont, do you
 3 have any particular information concerning duPont with
 4 regard to whether it ever engaged in any tortious
 5 activity with regard to lead paint or pigment?
 6 A I don't.
 7 Q Okay. Have you got any information or
 8 looked at any documentation that would indicate that
 9 duPont ever agreed to commit any sort of illegal
 10 action with regard to lead paint or pigment?
 11 A I don't.
 12 Q Do you have any information as to whether
 13 duPont ever agreed with regard to any other paint or
 14 pigment manufacturer on any issue?
 15 A Agreed?
 16 Q Made any -- entered into any agreement with
 17 any --
 18 A Well, yeah, I do have some -- and I haven't
 19 looked at it in a while, but I believe duPont had the
 20 rights to the titanox.
 21 Q Okay. But that's the only thing you're
 22 aware of with regard to duPont?
 23 A Yes.
 24 MS. FUHR: Okay. I don't have any
 25 other questions.

1 THE WITNESS: I just want to tell you,
2 though, that in doing this research, I found some old
3 documents at the University of Massachusetts Library
4 where duPont was advertising its dynamite; and there
5 was one, "Farming with Dynamite," that really merits
6 looking at it. It's the funniest thing.
7 MS. FUHR: I'll keep that in mind.
8 MR. HARDY: One follow-up.
9 MR. SCOTT: Okay.
10 EXAMINATION
11 BY MR. HARDY (5:02):
12 Q In response to Mr. Sullivan, you indicated
13 Mr. Reich, that the 30 or 40 pages of LIA minutes you
14 have reviewed --
15 A No, I didn't say that. I think it was more
16 like 15 to 20 pages.
17 MR. SULLIVAN: 15 -- 15 to 20.
18 Q (BY MR. HARDY) You have reviewed about 15
19 or 20 pages of LIA documents?
20 A Yeah. I'd err on the lower side. It's been
21 a long time since I've looked at this, but I do think
22 we're talking maybe a dozen or 15.
23 Q And those dozen or 15 were selected and
24 collected and sent to you by Mr. Leifer?
25 A Yes.

1 Q Did Mr. Leifer send you any other collection
2 of documents on lead or lead paint?
3 A It was just those -- some of the material
4 from Santiago, as we discussed earlier.
5 Q I gather Mr. Leifer also sent you documents
6 from the Federal Trade Commission proceeding on the
7 lead pigment companies?
8 A It was really -- I think what I saw there
9 was someone else's digest of it. It wasn't the actual
10 documents.
11 Q Exhibit 183 includes, as you've indicated, a
12 lead paint bibliography.
13 A That's correct.
14 Q Who compiled that bibliography?
15 A I did.
16 Q Therefore, that bibliography is different
17 from the LIA documents in the sense that you collected
18 it?
19 A I think the answer to your question is yes.
20 Q Did anyone give you a collection of medical
21 articles on lead?
22 A I think somebody did years ago send me
23 something that they had kept, but I don't think it was
24 of consequence to this case or these cases.
25 MR. HARDY: I have no further

1 questions.
2 MR. SULLIVAN: I have just a couple
3 questions.
4 MR. SCOTT: You need the mike,
5 probably.
6 MR. SULLIVAN: Yes, thank you.
7 EXAMINATION
8 BY MR. SULLIVAN (5:04):
9 Q Are you aware of any activity by the LIA in
10 Texas?
11 A I am not.
12 Q Are you aware of any activity that the LIA
13 took in regard to any properties or any entities in
14 Houston, Houston, Texas?
15 A I am not.
16 MR. SULLIVAN: I had one other
17 brilliant question, but it slipped my mind so I'm
18 going to let it go. Thank you very much.
19 THE WITNESS: Okay.
20 MR. SCOTT: Anybody else? --
21 MR. SMITH: No. I just want to say for
22 the record that --
23 MS. FUHR: You want the mike?
24 MR. SMITH: No, that's all right. I
25 talk loud.

1 I mean, to the extent that we need to
2 revisit Mr. Reich with -- in connection with this
3 October 22 meeting that we have intentionally not gone
4 into the substance of about the concerns of privileged
5 material, we reserve that right.
6 MR. SCOTT: And by my watch, you have
7 seven minutes to do that.
8 MR. SMITH: I understand.
9 MR. SCOTT: Okay.
10 THE VIDEOGRAPHER: Off the record,
11 5:05, ending the deposition with Tape 5 --
12 MR. SCOTT: Wait. Before we go off the
13 record, do we agree on that, that that's the amount of
14 time we have left just so we don't have to argue about
15 it later. I was looking at my watch. Is that right?
16 MR. SULLIVAN: Well, within a minute of
17 one another so that --
18 THE WITNESS: What's happening, now?
19 MR. SCOTT: Nothing. We're just
20 agreeing how much time they have left.
21 THE VIDEOGRAPHER: Off the record,
22 5:06, ending the deposition with Tape 5.
23 (Proceedings concluded at 5:06 p.m.)
24
25

241 1 CHANGES AND SIGNATURE TO THE 2 DEPOSITION OF PETER REICH 3 JANUARY 28, 2002 4 PAGE LINE CHANGE REASON 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	243 1 NO. 2000-31175 2 SPRING BRANCH INDEPENDENT) IN THE DISTRICT COURT OF 3 SCHOOL DISTRICT,) 4 Plaintiff,) 5) 6 VS.) 7) 8 LEAD INDUSTRIES) 9 ASSOCIATION, INC.,) 10 AMERICAN CYANAMID CO.,) 11 ATLANTIC RICHFIELD CO.,) HARRIS COUNTY, T E X A S 12 E.I. duPont de NEMOURS &) 13 CO., THE O'BRIEN) 14 CORPORATION, THE GLIDDEN) 15 CO., SCM CHEMICALS, NL) 16 INDUSTRIES, INC., and THE) 17 SHERWIN-WILLIAMS COMPANY,) 18 Defendants.) 11TH JUDICIAL DISTRICT 19 REPORTER'S CERTIFICATION 20 DEPOSITION OF PETER REICH 21 JANUARY 28, 2002 22 I, Gayle Shaffer Patterson, Certified Shorthand 23 Reporter in and for the State of Texas, hereby certify 24 to the following: 25 That the witness, PETER REICH, was duly sworn by the officer and that the transcript of the oral deposition is a true record of the testimony given by the witness; That the deposition transcript was submitted on to the witness or to the attorney for the witness for examination, signature and return to me by That the amount of time used by each party at the deposition is as follows:
242 1 I, PETER REICH, have read the foregoing 2 deposition and hereby affix my signature that same is 3 true and correct, except as noted above. 4 5 6 PETER REICH 7 8 9 THE STATE OF) 10 11 COUNTY OF) 12 13 Before me, , on this day 14 personally appeared PETER REICH, known to me (or 15 proved to me under oath or through 16) (description of identity 17 card or other document) to be the person whose name is 18 subscribed to the foregoing instrument and 19 acknowledged to me that they executed the same for the 20 purposes and consideration therein expressed. 21 22 Given under my hand and seal of office this 23 day of , . 24 25 NOTARY PUBLIC IN AND FOR THE STATE OF My Commission Expires:	244 1 Mr. Timothy S. Hardy - 5 hrs: 24 min 2 Mr. Mark L. Sullivan - 0 hrs: 22 min 3 Ms. Joy C. Fuhr - 0 hrs: 2 min 4 Mr. Scott A. Smith - 0 hrs: 13 min 5 Mr. Ronald Scott - 0 hrs: 0 min 6 That pursuant to information given to the 7 deposition officer at the time said testimony was 8 taken, the following includes counsel for all parties 9 of record: 10 Mr. Ronald Scott, Attorney for the 11 Plaintiff; 12 Mr. Timothy S. Hardy, Attorney for Defendant 13 NL Industries, Inc.; 14 Mr. Mark L. Sullivan, Attorney for Defendant 15 Lead Industries Association, Inc.; 16 Ms. Joy C. Fuhr, Attorney for Defendant 17 E.I. duPont de Nemours & Co.; 18 Mr. Scott A. Smith, Attorney for Defendants 19 SCM Chemicals and The Glidden Company; 20 I further certify that I am neither counsel for, 21 related to, nor employed by any of the parties or 22 attorneys in the action in which this proceeding was 23 taken, and further that I am not financially or 24 otherwise interested in the outcome of the action. 25

1 Further certification requirements pursuant to
2 Rule 203 of TRCP will be certified to after they have
3 occurred.

4 Certified to by me this 1st day of February,
5 2002.

6

7

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1 FURTHER CERTIFICATION UNDER RULE 203 TRCP

2 The original deposition was/was not returned to
3 the deposition officer on ;

4 If returned, the attached Changes and Signature
5 page contains any changes and the reasons therefor;

6 If returned, the original deposition was
7 delivered to Mr. Timothy S. Hardy, Attorney for
8 Defendant NL Industries, Inc., Custodial Attorney;

9 That \$ is the deposition officer's
10 charges to ,

11 Bar No. , Attorney for Defendant

12 NL Industries, Inc., for preparing the original
13 deposition transcript and any copies of exhibits;

14 That the deposition was delivered in accordance
15 with Rule 203.3, and that a copy of this certificate
16 was served on all parties shown herein and filed with
17 the Clerk.

18 Certified to by me this day of ,
19 2002.

20

21

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