



Deposition of:
Trial Volume 1

October 21, 2019

In the Matter of:
Partlow, Ashley v. Mayo, Ruth Marie

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ASHLEY PARTLOW,) IN THE
)
) CIRCUIT COURT
Plaintiff)
) FOR
vs.)
) BALTIMORE CITY
RUTH MARIE MAYO,)
et al.,) Case No. 24-C-09008243
)
Defendants)
-----)

The Trial in the above-entitled matter
was commenced on Monday, October 21, 2019, at
12:09 p.m., at the Circuit Court for Baltimore
City, 100 N. Calvert Street, Room 113,
Baltimore, Maryland 21202 before the Honorable
Lawrence Fletcher-Hill.

REPORTED BY:
Bonnie L. Russo

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1 opportunity to wrap up and sum up the case for
2 you.

3 All right. Do any of you have any
4 questions?

5 I think I've already told you about
6 breaks. So if you need a break, if you need a
7 rest, just tell me. You're able to stand right
8 where you are if that would refresh you during
9 the case.

10 All right. Counsel, is there
11 anything else preliminarily that you want them
12 instructed on?

13 MR. BRIAN BROWN: No, Your Honor.

14 MR. MICHAEL BROWN: No, Your Honor.

15 THE COURT: All right. Then we're
16 ready for opening statements.

17 Mr. Brown, when you're ready, you
18 may proceed.

19 MR. BRIAN BROWN: Thank you very
20 much.

21 MR. BRIAN BROWN: Good afternoon,
22 everybody.

23 Ladies and gentlemen, this case, I
24 think, is going to disturb you with the
25 evidence you're going to hear. I think it's

1 going to disappoint you. And, ladies and
2 gentlemen, I think the evidence you're going to
3 hear in this case is going to shock you.

4 This case is about whether Kennedy
5 Krieger Institute, KKI, can use children like
6 my client, Ashley Partlow, as a human research
7 test subject in a dangerous experiment about
8 lead.

9 The evidence in this case is going
10 to tell you that Ashley, who was only five
11 years old then, and is here now, who didn't
12 have a voice for herself, was placed into
13 harm's way by Kennedy Krieger Institute.

14 Ashley was placed into a house that
15 Kennedy Krieger Institute, KKI, knew had lead.
16 They knew that she was going to be exposed to
17 dangerous lead paint and dangerous lead dust in
18 that house. They knew it, and they put it --
19 they put her there anyway.

20 And what is the evidence going to
21 show you about why they put her in there? To
22 find a cheap way for landlords to fix their
23 houses. That's what the evidence in this case
24 is going to show you.

25 Kennedy Krieger. Ashley was a

1 little girl, and they knew that, and in the
2 design of a study -- which I'll talk to you in
3 a little bit about -- put her into a leaded
4 house full of lead paint, full of lead dust,
5 and then said, "Let's figure out how much lead
6 dust Ashley is going to be exposed to. Let's
7 look at her blood lead levels and compare it to
8 the repairs that we did and see how it worked."
9 That's what the evidence is going to show you
10 in this case.

11 Now, I'm Brian Brown. Mr. Mike
12 Brown is over there. People get us confused a
13 lot.

14 But Mr. Mike Brown is going to stand
15 up, and he's going to tell you that Kennedy is
16 a good institution. He is going to tell you
17 that Kennedy was named after President Kennedy;
18 and that's a nonprofit organization here in
19 Baltimore; and that they have done good things,
20 good things even with lead paint. You'll hear
21 that.

22 And you're going to hear that they
23 employ lots of people here in the city. And
24 you know what? Every single word of that is
25 true. Kennedy has done good things.

1 But in this case, ladies and
2 gentlemen, with this experiment, when they used
3 kids like Ashley as a test subject, Kennedy
4 made bad choices. Kennedy lost its way. And
5 that's what we're going to show you in this
6 case. That's what we're going to show you.

7 Now, remember I said a second ago
8 how do I know? How do I know that Kennedy was
9 concerned not about fixing the houses so they
10 had no lead and they were safe for kids? How
11 do I know they were finding a cheaper way?
12 Because the evidence is going to show you that.

13 Kennedy's own documents over and
14 over and over again, they talk about the
15 purpose of the study. Less costly, more cost
16 effective. Cost, cost, cost. It's all about
17 the money. That's what this case is going to
18 show you.

19 It is imperative that we investigate
20 low-cost methods. Low cost. Kennedy's own
21 documents. What is the rationale of their
22 study? And look at this, their own documents.
23 We already showed that comprehensive abatement,
24 taking the lead out of the house, is associated
25 with substantial reductions in PbD.

1 And by the way, ladies and
2 gentlemen, Pb is the chemical abbreviation for
3 lead. And D stands for dust.

4 So they know that if you do a good
5 job and get it all out, it results in
6 substantial reductions in lead dust in the
7 house.

8 But the evidence will show you that,
9 in this study, the R&M study that we're here
10 for today, that's not what KKI did.

11 Again, all over their own documents.
12 Lower cost, lower cost. Another word for
13 cheap. That's what they were looking for.

14 Now, we're here in this courtroom
15 today, and we're on this side of the table.
16 And the defendants are over there on that side
17 of the table. But just because we're on the
18 opposite side of the table and opposite side,
19 opposite sides of the room, doesn't mean we
20 don't agree on some things. We do agree on
21 some things.

22 We agree that lead is a poison. And
23 in a little while, during my opening, I'll give
24 you a little lesson about lead. And you'll
25 hear it during the trial as well.

1 We agree that, back in the early
2 '90s when this study was going on, lead in the
3 city was a big problem. And we agree that lead
4 dust from lead paint -- and just so you know,
5 ladies and gentlemen, what happens is, when
6 lead paint frictions in window and door frames
7 and things like that, or if it chips and peels,
8 it all turns into dust.

9 And we agree that lead dust is the
10 most common way that kids get exposed to lead.
11 And we agree that children living in homes with
12 lead paint dust are likely to become poisoned
13 and permanently injured. Both sides agree to
14 that.

15 But you all know that, if we agreed
16 on everything, we wouldn't be standing here
17 before you today.

18 We disagree on a lot of things. We
19 disagree that it was okay to place families in
20 a house that Kennedy knew would expose children
21 to poisonous lead dust. And I am telling you
22 right now my promise to you, ladies and
23 gentlemen, is that I will show you that, when
24 Kennedy designed the study in this case, they
25 knew, they knew that Ashley and children like

1 her, children without a voice to make a
2 decision for themselves, they knew that she was
3 going to be exposed to poison.

4 They think it was okay not to tell
5 Ashley's mom and children -- parents of other
6 kids like Ashley what was going on with the
7 study. The evidence in this case will show you
8 that they didn't even bother to tell Ashley's
9 mom what was going on, that Ashley was going to
10 be living in a house full of poison and that
11 she was going to be a test subject.

12 They're going to tell you that
13 Ashley and the kids like her would have been
14 poisoned anyway. So we fixed these houses up a
15 little bit. No harm, no foul. It's up in East
16 Baltimore. It's our turf. We can do what we
17 want. We can use kids like Ashley as test
18 subjects.

19 They're going to say that's okay.
20 They're going to be poisoned anyway, so what's
21 the big deal? They're going to tell you the
22 end justifies the means. And the evidence will
23 show you, ladies and gentlemen, and we already
24 know, that's not true.

25 They're going to come into court and

1 tell you, "We acted just like a reasonable
2 researcher would have. We did what any
3 responsible researcher like us would have
4 done."

5 We have witnesses coming in -- and
6 I'll tell you about them in a minute -- who are
7 going to come in and tell you that's not true.
8 Kennedy failed to follow the rules. The rules
9 are designed to keep kids like Ashley and all
10 of us safe.

11 That's what the evidence is going to
12 show you in this case.

13 Let me stop before I continue for
14 one second. Don't want to seem like I'm rude.
15 I want to introduce myself, my co-counsel.

16 My name is Brian Brown. And
17 together with Kristin Hosseinzadeh, we are
18 going to be representing, and you'll be seeing
19 a lot of us throughout this trial.

20 And I want to thank you. And His
21 Honor already did a really good job with
22 something that I was going to say anyway, but
23 I'm going to say it myself.

24 You all are making a big sacrifice.
25 And it might just sound like lawyer talk, but

1 it's not. And I want to tell you a little bit
2 about why I say that.

3 I've been around a while. And you
4 can tell from my gray hair and my little
5 58-year-old paunch, that I've been doing this a
6 while. And I can't talk to you again until the
7 trial is over.

8 At the end of the trial -- except to
9 say "Good morning." I can tell you, "Good
10 morning."

11 But if it's -- at the end of the
12 trial, His Honor, whichever way it turns out,
13 will say to you all, "If you would like to, you
14 can talk to the lawyers, if you want to."

15 And every single time I've talked to
16 a jury after a trial, every person to a person
17 has said, "I can't believe I got picked. I was
18 so pissed at the beginning. I got picked."

19 But then, at the end, you know what
20 people tell me? "I learned something about an
21 area of science," or medicine or whatever the
22 trail that I'm doing that day is about, "that I
23 would have never have known before. I learned
24 about how our system works. That was really
25 interesting to me. And" -- and to me, this is

1 the best part, "I met people from other walks
2 of life that I would have never have seen in a
3 million years unless I got called for jury
4 duty."

5 So I know that this is a long trial,
6 and you're sitting in our box, and you're
7 listening to us. Keep that in mind. Because I
8 really think, at the end of this trial, you're
9 going to see this as a valuable experience.

10 And on behalf of Ashley and Ms.
11 Hosseinzadeh, the Court -- I think maybe I can
12 even speak for the defendants in this one
13 instance -- we want to say thank you very much
14 for your time and the effort and attention we
15 all know you're going to put into this case.

16 So you've heard this is about lead.
17 Part of this case is about lead. So what is
18 lead? What exactly is lead? Why is lead bad?

19 We all hear -- you know, we all
20 generally -- some of you told us, when you
21 answered the questions, you've heard generally
22 things about lead and lead paint and lead
23 poisoning. But let me tell you a little bit,
24 please, about what lead is.

25 Lead is a poison. It's toxic.

1 There is nothing good about having lead in the
2 human body. Period. End of discussion.

3 It's a heavy metal. But why is that
4 important? Lead and calcium and iron are very
5 similar chemically. If you look at the -- if
6 you remember from high school or college -- the
7 periodic table of elements, all right, lead and
8 iron and calcium are alike. But the difference
9 is you're going to hear evidence that of course
10 our bodies love iron and calcium. Our bodies
11 need iron and calcium. But lead is a poison.

12 But the problem is, when our body
13 takes in lead, when our body takes in lead, it
14 can't tell the difference. It thinks it's
15 getting iron and calcium. But it's getting
16 poison. But it takes it in, and it says,
17 "Awesome. I'm getting iron. I'm getting
18 calcium."

19 And we have something, all of us, up
20 in our brains called the blood-brain barrier.
21 And normally, normally, when something bad gets
22 into our system, and it get up into the brain,
23 the blood-brain barrier says, "Nope. Can't
24 come in." And then we excrete it through our
25 normal bodily functions.

1 When lead gets into our bodies, it's
2 thinking iron, calcium, and it goes right into
3 our brains. And why is that bad? Because lead
4 attacks the brain. Lead attacks the nervous
5 system.

6 From age zero to age seven or eight
7 or so, when our brains are developing the
8 fastest, when all the connections are being
9 made in our brains, the things called synapses
10 that you'll hear one of our experts come in and
11 tell us about the developing brain, it messes
12 that up and makes it so our brains don't
13 develop correctly. And when that happens, it
14 causes permanent brain damage and learning
15 problems. And that's what happened to Ashley.

16 And children are more at risk to
17 lead injury than adults are because that's when
18 our brains are developing, when we're little.
19 As we get older, and our brains aren't
20 developing as quickly, when they're finished
21 developing, that's the end of the story. And
22 lead is still dangerous at very, very, very
23 high levels, but not like you're child when
24 there is no safe level of lead.

25 And here's one of the things about

1 lead that's tough. You see Ashley here. She's
2 30 now. She was only 5 when she was injured.
3 But the thing is, if we -- all of us, if we see
4 a person on the street or in this building, and
5 they're in a wheelchair or on crutches or with
6 a cane or using a -- blind and using a cane
7 like a blind person would use, we stop, we open
8 the door, we ask them if they need help.

9 But a person who has an injury from
10 lead poisoning, like Ashley did, you can't see
11 that. Ashley looks fine today. She's not.

12 And that's something that lead does
13 that's very, very tough to handle for people
14 because, just looking at them, you're saying,
15 "Why is this person having a problem?" And you
16 wouldn't know just by looking. And the
17 evidence is going to show you that's what
18 happen with Ashley.

19 So how does lead get into a child's
20 body? Well, we all have kids or no kids or a
21 grandkid. And we all know that everything goes
22 into the child's mouth. They play on the
23 floor. They get on the floor. They crawl
24 around. Their fingers are in their mouth.
25 Their toys get into their mouth. It all

1 happens.

2 And why is that tough? Why is that
3 hard? Because that's the most common way that
4 kids get lead. That's the most common way, by
5 ingesting the lead dust that their normal
6 childhood behavior causes them to do. And
7 that's what the evidence is going to show you
8 what happened in this case.

9 And I'll show you how I know that in
10 one second. But I have to be honest, I forgot
11 to mention something here a second ago about
12 Ashley.

13 You might be think to yourself why
14 is Ashley sitting here now? She's 30 years
15 old. This happened when she was five years
16 old.

17 I will tell you that there's legal
18 reasons for that that really aren't concerning
19 about the issue in this case that you're going
20 to decide. Okay? That's -- so we're here for
21 Ashley's case that happened when she is five.
22 The fact that she's older now really does
23 not -- it will not go into your decision making
24 process at all.

25 So how do we know with Ashley that

1 lead got into her by dust? Okay. How do we
2 know that she had this problem? And we'll get
3 to the hows in a little bit.

4 But we have records in this case
5 from Kennedy back in November of '94, after she
6 had moved into the house that I'll tell you
7 about in a little bit, she went to Kennedy
8 because of her lead.

9 And what do we know? That Jackie
10 Martin -- Jackie Martin, by the way, you will
11 meet her. She's Ashley's mom. She's going to
12 testify in this case. She took her to Kennedy
13 when she was 1906 East Federal Street, the
14 address in this house.

15 And what did mom say to Kennedy
16 Krieger when she was there? Way before there
17 was any lawsuit, by the way. She said,
18 "Constant finger sucking. Constant finger
19 sucking," right when she was living at 1906
20 East Federal Street.

21 And what did Kennedy tell us about
22 Ms. Martin, Ashley's mom? What kind of
23 reporting was she? Was she reliable? Was she
24 a good reporter? She was a great informant.
25 And this was way, way back in 1994.

1 Really quickly I want to run this.
2 You're going to hear a term during our trial
3 called micrograms per deciliter, microgram per
4 deciliter. That's a unit of measurement. It's
5 how lead is measured in our blood.

6 When you hear us saying numbers,
7 Ashley had a certain lead level and had another
8 lead level, it's always in terms of micrograms
9 per deciliter. Always.

10 And this is the best way to describe
11 it. A penny weighs about two grams. Two
12 grams. If a penny is cut into two million
13 pieces, two million pieces, that would be 1
14 microgram per deciliter. Very, very, very
15 small amount to get lead into your blood.

16 So I gave you a brief description
17 before about how lead affects kids. Lead
18 lowers IQ, causes attention problems. It makes
19 you not the person who you could have been. It
20 causes problems with memory, something called
21 processing speed.

22 And you will hear Dr. Pearl, our
23 psychologist, a neuropsychologist, come into
24 court probably tomorrow to tell you about the
25 testing that he did on Ashley and the deficits

1 that he found.

2 It causes problem with coordination
3 and motor skills, the ability to express
4 yourself verbally, and a whole -- this is a
5 fancy word -- a whole constellation, a whole
6 grouping of cognitive problems.

7 And the evidence in this case is
8 going to show you that Ashley was poisoned by
9 lead at 1906 East Federal Street because of
10 this study, the R&M study that we're here today
11 to talk about.

12 The most important thing, ladies and
13 gentlemen, there is no such thing as a safe
14 level of lead. It doesn't exist.

15 So you've been hearing me talk about
16 this study. The study, the study, the study.
17 Well, now I'm going to talk to you about what
18 the evidence is going to show you, ladies and
19 gentlemen, about the study.

20 What Kennedy did was they came to a
21 conclusion -- they came -- they observed lead
22 poisoning in Baltimore is a big problem. We
23 know that. And I said that's one of the
24 things, you know, we live on. Back in the '90s
25 when this study was done, lead poisoning in

1 Baltimore was a big problem. The question is
2 what are you going to do about it?

3 What Kennedy decided to do is take
4 houses that they knew had lead paint and that
5 they knew had lead dust, and then they said,
6 "Here's what we're going to do. We're going to
7 do different levels of repairs in three levels
8 of houses. And then we're going to put the
9 kids into these houses and see, by measuring
10 their blood level and by measuring the mere
11 accumulation of dust lead in the house, then
12 the blood, then the house, and we're going to
13 compare them. And we're going to see which is
14 the cheapest, most cost effective way to see
15 how to do these repairs."

16 They used the kids as test subjects.
17 And how do we know this? Well, this is no
18 dispute. There was three levels of repair.
19 The first grouping of houses had \$1,650 worth
20 of repair. The second level, the level at
21 issue in this case, 1906 East Federal Street,
22 had \$3,500 worth of repairs. The third level
23 had almost double and in some cases double that
24 amount, of 6,000 to \$7000 worth of repairs.

25 They left lead in the house -- those

1 houses, each of those three levels, on purpose.
2 They put the kids into these houses on purpose
3 knowing that these houses had lead and knowing
4 that the lead dust in the house, which is the
5 most common way for kids to get exposed, would
6 reaccumulate in the houses after they did that
7 level of repair. That's what they knew.
8 That's what they did. That's what the evidence
9 in this case is going to show you.

10 And that's why I said I think this
11 evidence is going to disappoint and shock you
12 coming from an institution like Kennedy.

13 You know what else? There were
14 houses in the study, ladies and gentlemen, that
15 had no lead. A level 4 house had a
16 comprehensive abatement. They got all the lead
17 out. And some of the houses in the City of
18 Baltimore had no lead in them at all because
19 they were new. And those two groups are what
20 you call -- you'll hear about -- it's called a
21 control group.

22 Ashley wasn't in a control group,
23 ladies and gentlemen. Ashley was a human test
24 subject. That's what the evidence is going to
25 show you in this case.

1 So now you may be thinking, even
2 before I got to it, well, how did Ashley end up
3 in the study to begin with?

4 Here's what the evidence is going to
5 show you. 1906 East Federal Street was a
6 boarded-up, vacant house owned by a company --
7 by a man -- owned by a man named Mr. Lawrence
8 Polakoff, Lawrence Polakoff. Mr. Polakoff is
9 going to be here tomorrow, and you'll hear him
10 testify.

11 And there's what happened. His
12 house was boarded up, it was vacant, it was not
13 making money for his company. And Kennedy
14 Krieger went out to the landlords of Baltimore
15 City, to the property owners of Baltimore City,
16 and said, "Hey, guys, we're doing this study.
17 And if you agree to put your property into the
18 study" -- some of which were vacant, just like
19 Mr. Polikoff's property at 1906 East Federal
20 Street -- "if you agree to put your property in
21 the study, we will get you a loan that you will
22 never have to pay back. We will decide how
23 much repair is going to be done to the property
24 though. And here is the contract. You must
25 use our company called Environmental

1 Restoration, Inc., to do the repairs."

2 So the evidence is going to show you
3 they solicit him to come in, they told him how
4 much repairs were going to be done, they told
5 him who was going to do it, and they got him a
6 free loan.

7 But the condition of the loan being
8 free, that it would never have to pay back, is
9 that he had to promise that he would only rent
10 the property to families who had kids in the
11 study. That's what the evidence is going to
12 show you. That's what the evidence is going to
13 show.

14 And shocking you all, Mr. Polakoff
15 is going to come into court tomorrow and tell
16 you that, on top of all that, on top of the
17 free repairs, on top of the never-paid-back
18 loan, on top of telling him, "To get that loan,
19 you have to put a child -- a family with a
20 child in the study who qualifies to be in the
21 study into the house," on top of all, "Your
22 property is going to be lead safe." That's
23 what they told Mr. Polakoff.

24 And the evidence will show you that
25 that certainly was not, in fact, true.

1 So I anticipate that Mr. Brown is
2 going to come to you, when he has a chance to
3 talk, to say, "We weren't the landlord. We had
4 anything to do with it. Mr. Polakoff signed
5 the lease with Jackie Martin."

6 And by the way, you'll hear about a
7 woman named Katina Higgins. Ms. Higgins and
8 Jackie were friends. They moved into the
9 property together. Katina had a child who was
10 in the study, Myron. And Ashley's sister
11 Charnice, who was then known as Anquenette --
12 she changed her name -- but was then known as
13 Anquenette, she qualified for the study.

14 So Mr. Polakoff rented the property
15 to Jackie and her family, solicited by KKI. He
16 said, "This is awesome. We're doing the
17 repairs for \$3,500." And that was going to be
18 lead-safe. That's what Kennedy told them.
19 That's what the evidence is going to show you
20 in this case. So when you hear Mr. Brown say
21 Mr. Polakoff was the landlord, remember when
22 you hear the evidence that Kennedy solicited
23 Mr. Polakoff to put his property into the
24 study. Kennedy told Mr. Polakoff how much
25 repairs were to be done. And Kennedy said,

1 "You only get that free loan if you put a
2 family with children into the study." Kennedy
3 got Ashley and her family into that house. And
4 that's what the evidence is going to show you.

5 And here's something that's
6 incredible. Because Kennedy knew that the
7 house at 1906 East Federal Street was full of
8 lead when Ashley moved in. And they knew that
9 in two ways. The first way -- I don't have a
10 slide up here for it -- they did dust testing
11 of the house. And they tested the house for
12 lead dust, lead dust.

13 And in order for the property to
14 qualify for this study, it had to have at least
15 two infants in excess of the then Maryland
16 standard for clearance of lead dust. And it
17 met that standard.

18 It also had to have lead by then XRF
19 testing. And that machine there is called an
20 XRF device. It looks like a radar gun that a
21 police officer would point at you to see if
22 you're speeding.

23 But what you do is you can they put
24 it on a surface, they pull the trigger, and
25 then they see if there's lead on the surface.

1 And this is testing that Kennedy itself did
2 throughout the house.

3 And as -- I'm not going to go
4 through each single room. But as you see, they
5 went through the whole house. And every single
6 room in the house, every single hallway,
7 bathrooms, hallway, bedrooms, kitchen, every
8 single room in the house had lead-based paint.
9 And that was true even after, even after,
10 Kennedy did their \$3,500 worth of repairs.
11 Every single surface that was tested had lead
12 all over the place in the house, but they let
13 Ashley move in anyway. 3,500 bucks, ladies and
14 gentlemen. That's what the evidence is going
15 to show you.

16 So they test the property. They do
17 the repairs. What happens next in May of 1994?
18 Mr. Polakoff, just like he promised, just like
19 he promised, put an ad in the paper. And he
20 was looking for people to move into his newly
21 repaired property.

22 Now, Mr. Polakoff didn't say, "This
23 house is part of a study." Kennedy didn't have
24 him do that. He just advertised it like it was
25 a -- like a regular house. And Jackie and

1 Katina saw the ad, and they went to Chase
2 Management. That's Mr. Polikoff's company.
3 And they had to pay \$25 for a key deposit.
4 They got the key. They went. And you know
5 what? They looked at the house, and they moved
6 in.

7 Why did they move in? Because it
8 did look nice. They had just done this \$3,500
9 of repairs. There wasn't any chipping paint.
10 The surfaces seemed smooth. It had the amount
11 of bedrooms that they wanted. It looked good
12 to them.

13 But the evidence is going to show
14 you, ladies and gentlemen, that -- you've all
15 heard the expression the lipstick on a pig.
16 That's exactly what this was. It was covering
17 up a house full of poison.

18 And Mr. Polakoff, on behalf of
19 Kennedy, who solicited him into this study with
20 his properties, never let Ashley's mom Jackie
21 know that this was a study house before they
22 moved in.

23 But what happened next? A few days
24 later, five days after they moved in, Kennedy
25 comes knocking. Kennedy comes knocking. And

1 they said, "Hey, can we come in? We want to
2 talk to you. We want to tell you about
3 something that we're doing."

4 Oh, by the way, this is the rental
5 application for when they moved into the
6 property. Here's Ashley's name. And -- the
7 people that are living in the property are
8 listed, and there's Ashley's name.

9 So what happened next? Kennedy
10 comes in, and they say, "We're doing a study.
11 Can you tell us about yourselves?"

12 And what do we know here? We know
13 that Kennedy interviewed mom in May of '94.
14 And how did they know that Ashley was there?
15 Ashley is listed as a person in the study in
16 that house.

17 But Ashley was too old to be in the
18 study. Her little sister was in the study, but
19 Ashley was too old. And that 2 and the 5
20 there, 2 means female, 5 means her age. Okay?

21 So from the very beginning when
22 Kennedy came knocking after they moved in,
23 after Jackie was there, before Jackie knew that
24 this house was some kind of experiment to
25 compare blood lead levels to dust levels, then

1 Kennedy came knocking.

2 And they had mom, Ms. Martin, sign
3 something called a consent form. And you're
4 going to hear evidence in this case that, when
5 a study happens, when people are doing
6 research, they have to tell people what's going
7 on.

8 And the evidence in this case is
9 going to show you that Kennedy was not
10 transparent. Kennedy did not tell Ms. Martin
11 what was going on. And Kennedy went around
12 Ashley, who at five years old had no voice of
13 her own, who couldn't speak for herself, they
14 presented mom with this form.

15 And here's something that's
16 unbelievable to me, as long as I've been
17 working on this case. In the consent form,
18 what does it say? "We understand that your
19 house is going to have some special repairs."
20 Going to have. Not has already had. Not that
21 we made your house so you'll be lead safe. But
22 we're going to do something more. It's going
23 have special repairs.

24 The evidence is going to show you in
25 this case that, except to come in and take

1 their dust lead swipes -- dust lead vacuum
2 samples for this case, they didn't lay a finger
3 in this house after Ashley moved in. Not one
4 bit of repairs.

5 To his credit, Mr. Polakoff, the
6 landlord, when he had a complaint about a leaky
7 faucet for a light switch that didn't work or
8 something like that, he came in and fixed that
9 stuff.

10 But Kennedy, "We understand your
11 house is going to have special repairs," never
12 happened. Never happened. That's what the
13 evidence is going to show you in this case.

14 And there's not one word about
15 what -- the risk of living in a house full of
16 lead and a house full of lead dust about risks.
17 And you're going to hear experts testify in
18 this case. You're going to hear Dr. Spriggs
19 and Mr. Goebel.

20 And I want to get something out of
21 the way right now. Dr. Spriggs, Dr. Merle
22 Spriggs, is an expert in bioethics. She has a
23 Ph.D. She's that kind of doctor, not an M.D.
24 doctor. She's a Ph.D. doctor. And she also
25 has studied the R&M study itself as part of her

1 research.

2 But here is the thing. I'm sure Mr.
3 Brown is going to stand up and tell you that
4 Mr. Brian Brown had to get an expert to come in
5 and testify all the way from Australia. And
6 it's true. Dr. Spriggs is from Australia. And
7 she has flown in -- I think she's arrived. I'm
8 not sure. But she's going to be here, and she's
9 going to testify.

10 But you know what? I want the best
11 expert when presenting my case for my clients.
12 And if it's the closest expert or the furthest
13 away expert, that's what I'm going to use.

14 And Dr. Spriggs is going to come to
15 court and tell you about this study and how it
16 was poorly designed, how it didn't inform
17 Ashley and her mom of the risks, how it was
18 unethical to use children like Ashley as human
19 test subjects.

20 And Mr. Goebel, he worked for the
21 United States Government for years and years
22 and reviewed and approved thousands of consent
23 forms. And by the way, he's only from
24 Frederick. So -- and he's going to tell you
25 about why the consent form was inappropriate

1 and not correct.

2 And what do we know, number one?

3 That risk warnings do not appear on the form.

4 Nowhere on the consent form does it tell Ashley

5 and her mom "You are living in a house full of

6 lead and lead dust." Not there. And that's

7 what the evidence is going to show you.

8 What did the consent form say? And

9 this is what you're going to hear from the

10 experts. You're going to hear that it doesn't

11 say "This house has lead paint and lead dust."

12 Nowhere on the form does it say that.

13 You're going to hear what is on the

14 form. Doesn't even tell her that repairs were

15 done before. And it doesn't say, "And in this

16 particular area, watch out. There's lots of

17 lead there." Doesn't tell her that.

18 It doesn't tell her that there were

19 absolutely no repairs done to the basement

20 whatsoever. And ladies and gentlemen, the

21 evidence is going to show you that the basement

22 was full of lead and full of lead dust and that

23 Ashley's mom kept her toys down there and

24 brought them up so she could play.

25 It didn't tell you -- didn't tell

1 Ashley's mom that the purpose of the study was
2 to look at partial clean-ups on the children's
3 blood. Didn't tell her that.

4 Didn't tell her that there were
5 other houses in the study that had more repairs
6 and that, in fact, there were other houses in
7 the study that didn't have any lead in it
8 whatsoever.

9 And it didn't say "You're signing
10 this consent form for Charnice," Anquetette
11 back then. We're not even dealing with Ashley.
12 She's too old for the study.

13 His Honor is going to tell you that
14 Kennedy owed the same responsibilities to
15 Ashley as it owed to any child who was in the
16 study.

17 And that's because the evidence is
18 going show you that Kennedy decided what house
19 was going to be in the study, Kennedy decided
20 how much lead -- how much of lead repairs were
21 going to be in the study, Kennedy decided who
22 was going to do the work, Kennedy decided --
23 excuse me -- Kennedy knew there was a consent
24 form.

25 Kennedy owed the same

1 responsibilities to Ashley as they owed to
2 anyone else in the study. They knew that she
3 was only five years old. They knew that she
4 could get injured and damaged permanently
5 because of lead poisoning.

6 But they're going to come in and
7 say, "Oh, Ashley wasn't in the study. We
8 didn't have to pay attention to her." They
9 didn't give any warnings about Ashley in that
10 consent form, even though, if you remember, the
11 questionnaire listed Ashley's name. That's
12 what the evidence is going to show you. And I
13 already told you it doesn't say that other
14 houses have no lead whatsoever.

15 And they didn't say the most
16 important thing. "Living in this house can
17 poison your child. Living in this house can
18 cause brain damage to your child." It's not
19 there.

20 So let's look at this. This is a
21 diagram of Ashley's blood lead levels.

22 And I want to start by saying this:
23 Ashley moved into that house, as you saw, in
24 May of 1994. I couldn't have credibility with
25 you, I don't think you would trust anything

1 that I say, if I didn't tell you something that
2 was obvious in the case.

3 Ashley had lead exposure before she
4 ever moved into 1906 East Federal Street.
5 You'll see that, in September of '93, before
6 she moved in, she had a blood lead level --
7 remember that word, microgram per deciliter?
8 She had a blood lead level of 18 micrograms per
9 deciliter.

10 Then she moved into the property on
11 May 19, 1994. And her blood lead level goes up
12 to 21 in August. Why is that so important?
13 They did the clean-up.

14 And I'm going to see if this thing
15 -- oops. Go back one.

16 You see these dots here. These dots
17 represent what's call the dust lead loadings.
18 That's how they measure lead dust in a house.
19 Don't get confused with lead in the blood.
20 This is how they measure lead dust in a house.

21 And before they moved in, when they
22 had done their \$3,500 worth of repairs, the
23 lead dust in the house was pretty low, pretty
24 low.

25 But two months later, many areas of

1 the house the dust lead in the house went up,
2 just like Kennedy expected it to do. Because
3 remember, the whole purpose of the study was to
4 see how lead reaccumulates in the houses versus
5 how it affects the child's blood lead level.

6 So just as they expected it to do,
7 the dust lead levels in the house went up. Why
8 is that important? Because watch. As the dust
9 lead went up, what else went up? Ashley's
10 blood lead levels.

11 So the evidence is going to show
12 you, it's going to show you, ladies and
13 gentlemen, that exactly what Kennedy wanted to
14 happen happened. They were trying to do a
15 comparison study. And they were right, as dust
16 reaccumulates, kids get exposed to lead.

17 Now, you're going to hear, I expect,
18 while Ashley was already poisoned when she got
19 there, her blood lead only, only, went up 3
20 micrograms per deciliter when she moved in. No
21 harm, no foul. She was already poisoned when
22 she got there. Dig deal.

23 You're to hear evidence it is a big
24 deal. It's a big, big deal. Because the
25 longer you are exposed to lead, the more

1 damaged that it does. And you're going to hear
2 from Dr. Klein, a pediatrician, come into court
3 and tell you, sort of in doctor words, the
4 lesson I gave you in lead before and tell you
5 that, the more you're exposed to lead, not just
6 with the lead levels but also the length of time
7 that you are exposed to a poison like lead
8 continues to cause damage. And that's what
9 happened in this case.

10 I want to say one more thing about
11 this 21. You see the 21 there on August 30th,
12 1994? This is the blood lead slip. And I
13 didn't have this highlighted, but you'll see
14 right there it's August the 30th, 1994.

15 I expect Kennedy to come into court
16 and try to tell you that Ashley had a blood
17 lead level of 21 before she moved into the
18 property and that therefore her blood lead was
19 the same at both places.

20 Ladies and gentlemen, I will tell
21 you right now I give you my word that you will
22 not believe that. You will believe that that
23 entry of the 21 before she moved in is a
24 mistake.

25 And the reason I'm showing you this

1 is because this is a blood lead slip. There is
2 no blood lead slip from the lab from March of
3 1994 before she moved in.

4 You will see within the document
5 they show you themselves that it's a
6 contradiction, that it can't have been in March
7 of 1994. It's a mistake. Ashley's only level
8 of 21 was in August of 1994, right when the
9 dust lead was reaccumulating in her house,
10 right when she was continuing to be poisoned in
11 this house.

12 So why is this important? Part of
13 the so-called consent form is "We're going to
14 send you information about what we find out in
15 your house. We're going to tell you what your
16 kid's blood lead levels are. And we're going
17 to tell you about the dust levels in the
18 house."

19 Never happened or at least never
20 timely happened. How do I know this? Based on
21 a letter in September of 1994 about a dust
22 swipe -- a dust collection cyclone test they
23 did in July of 1994.

24 Now, remember when Ashley's blood
25 lead level was? August of '94. The evidence

1 is going to show you that, even though they did
2 testing in July, they didn't tell her until
3 September.

4 And what did they tell her? They
5 say, "Okay. We did the test in July. It's
6 almost two months later. And the chart below
7 is going to tell you some areas where dust was
8 collected in your homes. And we put an
9 asterisk in areas where lead was higher than
10 might be found in a completely renovated
11 house."

12 So remember, they know there's
13 renovated houses, completely renovated. And
14 they're telling her, "Look, on the floor, of
15 all places, lead is high, lead dust is high
16 there."

17 What did we learn about lead and how
18 kids get exposed earlier? Because kids are
19 down on the floor playing. And then they put
20 everything into their mouths.

21 And the evidence is going to show
22 you that what do they say? "You clean it up.
23 You clean it up."

24 I told you that the evidence in this
25 case was going to shock you and disappoint you.

1 And the same thing happened later.
2 November test, February notification. And what
3 do they say? There is the outcome. Clean it
4 yourself. Clean it yourself.

5 Dust from repairs, and what do we
6 know? What do we know? Two years after Ashley
7 moved out of the house in 1997, the house was
8 tested for lead again with the same kind of XRF
9 device, the same kind of radar gun machine that
10 I showed you earlier.

11 And what do we know about that?
12 Remember, they told Ashley's mom, "We're going
13 to do special repairs." That's what the
14 evidence is going to show you.

15 But two years later, lead all over
16 the house, including the basement. All over
17 the house in virtually all the same places that
18 were tested by KKI the first time.

19 What special repairs? The evidence
20 is going to show you there were no special
21 repairs done after Ashley moved into the
22 property. Everywhere is lighting up red. Lead
23 was everywhere just like before. 1993, before
24 Ashley moved into the property. 1997, after
25 she moved out.

1 Now, you might be thinking, well,
2 they could have put that lead in there after
3 Ashley moved out. So how do we know this? I'm
4 going to tell you right now the evidence will
5 show you that the application of new lead-based
6 paint in Baltimore City was banned in the late
7 '50s, early '60s.

8 So if it was there in 1997, it was
9 there when Ashley was living there back in
10 1995. Because it couldn't have been placed
11 there in between, the application of new
12 lead-based paint.

13 And, look, the evidence speaks for
14 itself anyway, ladies and gentlemen. It's
15 going to show you that it's virtually the same
16 places before and after. Except this time the
17 testing that my office had done actually
18 included the basement. But Kennedy didn't even
19 bother to do that.

20 That's what the evidence is going to
21 show you in this case. There were no special
22 repairs.

23 Now, one of the things that a study
24 has to do when a studier or researcher comes
25 in, they have to come in, and they have to tell

1 you, as I said, the risks. And there's no
2 section called "Risks."

3 They also have to tell you what they
4 think the benefits are of the study. And the
5 reason for that, the evidence will show you, is
6 that a person has the right to make an
7 intelligent choice, to weigh the risks and
8 weigh the benefits.

9 Do you know what they said the
10 benefit is? \$5. Five bucks. They said,
11 "We'll give you \$5 if you answer this
12 questionnaire. And then, oh, boy, if we come
13 in again and answer another questionnaire when
14 we come back, we'll give you 15 bucks."

15 That's the so-called benefit of the
16 study. We'll mail you a check for \$15. We'll
17 provide you with the blood level lead results
18 for your kids.

19 You know what, ladies and gentlemen?
20 That's not a benefit. The evidence is going to
21 show you that it was the normal standard in
22 pediatric care to have lead testing done at
23 certain times. They would have had the lead
24 testing done anyway.

25 "We'll contact you to discuss a

1 summary of the dust lead test, and we'll reduce
2 the risk of exposure." You saw that, a letter
3 two months later with an asterisk that said
4 "Clean it yourself."

5 The evidence will show that's not a
6 benefit. The so-called benefit to Ashley.
7 They're saying, "This is a benefit to you
8 because you were doomed anyway."

9 They're going to show you all kinds
10 of statistics that says how many houses had
11 lead and how many kids had lead. And it's
12 true. But you know what? Not every house in
13 the city had lead like 1906 East Federal
14 Street. And not every kid in the city had
15 blood lead levels way up at 21 micrograms per
16 deciliter like Ashley did.

17 They're going to try to say, "It's
18 okay that we use your children as human test
19 subjects because no harm, no foul. Its east
20 Baltimore. It's our turf. That's who we are.
21 We can do whatever we want." That's what the
22 evidence in this case is going to show you.

23 So -- excuse me for one second.

24 As I told you, lead causes a brain
25 injury. It causes permanent brain damage. And

1 part of my job in this case is to show you what
2 we're going to prove about what happened to
3 Ashley.

4 So Ashley did graduate high school.
5 And she even went to a school down on the
6 Eastern Shore. And she was able to get her
7 nursing assistant license. And you might
8 think, well, that's great. She's doing okay.
9 But she's not doing okay. She's never held a
10 job as a nursing assistant.

11 You're going to hear from our expert
12 Mark Lieberman, who's going to tell you about
13 the vocational process, what kind of jobs that
14 Ashley can actually do based on the problems
15 that she has, based upon the deficits that she
16 has.

17 Today she is -- drives a van for an
18 adult care facility. She doesn't use her
19 nursing certificate. And she doesn't use the
20 abilities that a high school graduate should
21 really have. Because she doesn't have those
22 abilities.

23 And you'll hear from Mark Lieberman,
24 who's a vocational counselor, come in and talk
25 to you about all of the records that he

1 reviewed and the problems that Ashley has and
2 how she is limited on the kinds of work that
3 she's going to be able to do.

4 You're going to hear that Ashley
5 sustained IQ loss as a result of her exposure
6 to lead. And as I told earlier, you she was
7 exposed before she got to 1906 East Federal
8 Street. And for sure some of that IQ loss came
9 from exposure before she ever got there.

10 But what you're going to hear from
11 Dr. Klein is that lead continues to do harm.
12 Even if you're hurt before, it doesn't mean
13 that you can't continue to be hurt. One pack a
14 day versus two packs a day. Look at it that
15 way if that helps you.

16 Lead continues to do injury the
17 longer you are exposed. And remember, in
18 Ashley's case, in Ashley's case, her highest
19 blood lead level was when she was living at
20 this supposedly lead-safe house at 1906 East
21 Federal Street.

22 And Dr. Klein -- remember I told you
23 about Dr. Hurwitz. Dr. Klein is our
24 pediatrician. Dr. Klein practiced medicine in
25 Baltimore for 30 years. He was a pediatrician

1 here in Baltimore.

2 And you'll hear that he wrote the
3 curriculum that new doctors are taught about
4 lead poisoning at Sinai and at University of
5 Maryland Hospital. You will hear that he
6 treated and monitored hundreds and hundreds of
7 hundreds of kids here in Baltimore for lead
8 paint.

9 But just like Dr. Spriggs, I have to
10 tell you now that Dr. Klein is coming from far
11 away. Dr. Klein decided back in 2004 -- back
12 in 2004, Dr. Klein decided to live out his
13 lifelong dream and move to Israel. And that
14 was after 30 years of practice here in
15 Baltimore. So he moved to Israel. He is still
16 practicing medicine over there. And he still
17 knows all about lead poisoning here in
18 Baltimore.

19 And he's going to come to court.
20 He's coming in, just like Dr. Spriggs, and he's
21 going to come into court and tell you about
22 lead, what it did to Ashley, and how it
23 affected her ability to be the person she could
24 have been if not for exposure to lead.

25 So, ladies and gentlemen, we're

1 going to prove some things to you. We're going
2 to prove to you that Ashley was poisoned by
3 lead. And we're going to prove to you that she
4 was poisoned by lead at 1906 East Federal
5 Street, that she was poisoned because KKI was
6 negligent in the way they designed and the way
7 they conducted this study by putting children
8 in harm's way to use them as test subjects.

9 If KKI had acted reasonably, had
10 they followed the rules that researchers are
11 supposed to follow, she would not have been
12 poisoned at 1906 East Federal Street. And
13 because of that, Ashley is never going to be
14 who she could have been. She has permanent
15 brain damage, very disable -- varied
16 disabilities and behavior problems, all because
17 KKI was negligent.

18 I want to talk to you about one more
19 thing. His Honor is going to give you some
20 instructions on the law -- actually a few more
21 things.

22 As I told you, Ashley was exposed to
23 lead before she got there. But we don't have
24 to show you what damage came from what house or
25 what source of exposure and what came from

1 another. All we have to show you is that
2 Ashley's exposure to lead at 1906 East Federal
3 Street was what's called a, not the,
4 substantial factor in her injuries. And to be
5 substantial, it had to be enough to contribute.
6 That's it.

7 So think about that when you're
8 listening to the evidence. Even if Ashley was
9 exposed before, it doesn't mean that Kennedy is
10 not responsible. And His Honor is going to
11 tell you not to ferret out, not to figure out
12 how much damage came from one house and how
13 much came from another house. That's not your
14 job.

15 So before I get to my last little
16 part of the discussion, I want to tell you a
17 little bit about the trial. So this is -- as
18 you know, it's going to be a pretty long trial.
19 And sometime I wish I could present I case that
20 went straight from point A to Z.

21 But because of witnesses' schedule
22 and people coming from out of town, things are
23 not going to go in the exact order. So I might
24 put somebody up to talk about Ashley's injuries
25 before you even found out about the property

1 and the house and all that to begin with. It's
2 not going to be what we call linear.

3 And also you might hear me introduce
4 Exhibit No. 17, for example, before Exhibit No.
5 2 or Exhibit No. 1 ever got into evidence.
6 They're all premarked most of the time. And
7 they don't always come in in the exact same
8 order. So that's a little procedural stuff.

9 The last thing I want to talk to you
10 about is something called the burden of proof.
11 And I've been doing this more in our trials
12 lately because of TV, and every show you see on
13 TV is a crime show. Every time is a crime
14 show.

15 You saw -- if you all came back to
16 the chambers when we were doing jury selection,
17 and if you had been on a jury before, His Honor
18 will always ask you, "Was this a criminal case
19 that you sat on before or a civil case that you
20 sat on before?"

21 This is a civil case. A civil case
22 has a burden or proof that's different from a
23 criminal case. A criminal case you have to
24 prove your case beyond a reasonable doubt.
25 You've heard that term, "beyond a reasonable

1 doubt." Why is it such a high, high, high
2 burden? Because you're talking about people's
3 freedom. Okay?

4 This is not a criminal case. This
5 is a civil case. And in a civil case, it's
6 what's called a preponderance of the evidence.
7 And all that means is what we are trying to
8 show more likely so than not so, more likely
9 than not. Literally it's 50.00001 percent, and
10 we've met our burden.

11 And you'll see all we have to do is
12 slightly tip that scale with a feather, and the
13 plaintiff, Ashley, has met her burden of proof.

14 But I want to tell you something
15 else before I sit down and say thank you for
16 listening to me and ask you to give the same
17 kind of attention you gave to me to Mr. Brown.

18 I want to tell to you that we're not
19 going to just prove it with a feather. We're
20 going to prove it with lead, ladies and
21 gentlemen. We are going to prove our case and
22 then some.

23 Thank you very, very much for
24 listening to me so attentively. I really
25 appreciate it. Ashley appreciates it.

1 I look forward to talking to you at
2 the end of this case when I'll ask you to
3 return a verdict in favor of the plaintiff.

4 Thank you.

5 THE COURT: Thank you, Mr. Brown.

6 All right. Members of the jury,
7 we're going to take a short break before the
8 defense opening just so you have a few minutes
9 to refresh yourselves. And let's take about
10 ten minutes. And that should give you all a
11 chance to use the restroom.

12 Leave your notebooks here on the
13 chairs. Please don't discuss the case in the
14 jury room during the break. And we'll see you
15 again in about ten minutes.

16 THE CLERK: All rise for the jury,
17 please.

18 THE COURT: And, Counsel, about ten
19 minutes.

20 (A short recess was taken.)

21 THE CLERK: All rise, please.

22 THE COURT: Counsel, you can come
23 up.

24 Everyone else may be seated. Thank
25 you.