

## 8. INTERVIEW WITH PROSECUTOR RAFFAELE GUARINIELLO<sup>1</sup>

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*What makes this trial special?*

The Eternit case is special because of the sheer size and numbers: the number of plants involved, the number of injured parties. Nevertheless, it is only one of the many cases concerning work-related and asbestos-related cancers we have dealt with over the years. The Eternit case is part of a far reaching legal action we have been pursuing for over 15 years with the creation of an Observatory on occupational cancers. We have already studied over 25,000 cancers and have unsurprisingly found asbestos-related occupational tumours associated with several companies, including Eternit.

*What has the role of the victims' organizations been in commencing proceedings?*

The contribution being made by the victims and their organizations is essential as they provide information and knowledge. However, we proceeded because, in accordance with the law, we had to.

Occupational exposure to asbestos, it is often said, has not been subject to legislation in Italy, as is the case for many other countries. This is not completely true: we have an Act which dates back to the early 1900s, mandating health and safety rules to be applied to teenagers and women working with asbestos. Legislation was not lacking: there were regulations; and in Italy we have had general rules on industrial health since 1927, revised in 1956.

In the 1940s there was a law which decreed compulsory insurance to compensate workers for asbestos-related diseases, especially for asbestosis; the law included an obligation to monitor asbestos workers' health.

*What is the charge against the defendants?*

The criminal case against the Eternit executives includes the following charges: manslaughter, actual bodily harm, causing a disaster, failure to comply with safety rules and negligence. The choice to proceed with the accusations of “disaster” and “failure to comply with safety rules and negligence” was made because the length of time it would have taken to obtain medical ex-

pert reports for the huge number of injured parties and victims involved might have had statute of limitations consequences. Consequently, we decided to proceed with the most serious offences.

*At first the proceedings against Eternit involved local and national Italian managers, why?*

Because we had not realized there was a connection between the Italian plants and individuals who had worked abroad. When informed that some workers who had worked in Switzerland had come back to Italy to die, we widened our accusations to include foreigners. Starting from these cases, we found out that Eternit had plants in Switzerland; and that's where the owners were. Consequently, we started asking questions about the relationship between the plants and the ownership; gathering data and elements that, according to the prosecution, would prove the soundness of our charges; no longer against the national managers but also against the owners and the majority shareholders of the company.

*How long did the preliminary investigations last?*

The preliminary investigations took some years because we had to collect rogatories in Switzerland and that was hard; in some cases it took up to 4 years. These are the procedures that our Swiss colleagues evidently have to follow. There have been some appeals presented by the concerned parties against the admission of the rogatories, I understand.

Our experience in asbestos-related cancer cases dates back many years. Currently there is a vast amount of case law (jurisprudence): it was very innovative when we started but today it is well known, there are issues and problems which have already been addressed by jurisprudence. So we just have to follow this path.

There are two specific problems associated with the case. Firstly, the huge number of injured parties; not only workers but people, members of the community, who have never entered an asbestos plant. Secondly, the offences involve defendants who live and work abroad, and are linked to several different plants. This implies

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Photo from documentary: Dust - the Great Asbestos Trial

Chief Prosecutor Raffaele Guariniello pictured during the trial, December 2010.

the need to explore what we call the company's industrial policy; in order to demonstrate the prosecution's charges we need to reconstruct a clear picture of this policy.

*And what is the prosecution's hypothesis?*

Let's say that key decisions were not made in Italy but at the Company's headquarters, and therefore they applied to their global asbestos empire, not just to Italian plants but to all interests under the control of the majority shareholders.

The fact that there were meetings of managers from several different plants who met to discuss problems made us realize what was going on; we could actually "see" the industrial policy of the corporation in its entirety.

*How do you think you will demonstrate this thesis?*

Evidence is very important, but even more important are the documents we acquired: what moves us is truth, the pursuit of truth, so we are open to any truth.

One aim of this trial, an objective we pursue in all trials of this type, is to obtain a ruling which may lead to compensation of all the asbestos victims. It is clearly not the main objective in a criminal proceeding but it's something we care about. It is an objective for any industrial accident, for any occupational disease. Compensation won't save anyone's life, but it can be a relief for the family and this is an important result.

Then of course there is the problem of criminal liability. We have many laws on occupational health. They are excellent on paper, but very often they are totally ignored and very little is done to have them enacted. What does this mean? It means that many companies think they can ignore them; the feeling is that, even if you break the law, you will never be held responsible.

Well, I think we have a precise duty, we have to fight this feeling of impunity when disregarding, even flaunting the law. We must make it understood that there are laws and that one can be held criminally liable if you disregard them.

Corporate social responsibility is very important and I can say that after many years of work in this field, much progress has been made since the 1970s and the awareness of health and safety has evolved. However, what I find very negative in Italy, indeed anywhere, is apathy, the passiveness displayed by institutional monitoring agencies (watchdogs).

I think it is inevitable that if the institutions of a country fail to make their presence felt, this or that company may think that they can break the law without suffering the consequences. That, in essence, is the situation we have to deal with. In this trial, as in many others, we are brought to the realization that the watchdogs have failed in their surveillance, very often they have simply forgotten to follow things up. That this is still happening is one message this trial is sending to the establishment.

Once there was an asbestos problem in Italy, there is still an asbestos problem in many countries. When you fail to deal with a problem, when you stop monitoring – this one as well as others for the future, such as electromagnetic fields, which we still know very little about – then you can't complain 20 or 30 years later, asking yourself “Why all these deaths, why are all these people sick?”

The history of asbestos is emblematic because it is the story of a lack of prevention which could have been implemented.

First of all there is the regulatory aspect: asbestos has been banned in some countries, not in others. This lack of consistency puzzles us. I think it is clear that organizations such as the International Labour Organization (ILO), of which most countries are members, do not condone the use of asbestos that continues in many states. Either those who have banned it or those who haven't banned it are wrong; the patchwork picture of regulation we see is unacceptable.

Instinctively, we now consider the banning of asbestos as normal. So when we learn of a country where asbestos is still employed we are surprised and ask ourselves: “How is this possible?”

Of course, we face judicial as well as regularity inconsistencies. We are holding a criminal trial involving a company that has asbestos plants in many other countries. I am not aware that any of these countries have started proceedings apart from France, where they are encountering serious difficulties. Again a confused picture which is unacceptable. Why do we have these proceedings going ahead only in Italy and not elsewhere?

*What's your personal interest in following these cases?*

Just this morning I learned of a new case of pleural mesothelioma in a worker who used to work for haulage contractors: well, that alone was enough to make me think: “Why was there no prevention?” It's not the huge number of cases which astonishes me but the fact that there was no prevention, with very serious consequences. We have cases of people who have never

worked with asbestos but who worked in plants where asbestos was present. It's these depressing stories in which one person is brought down by the actions of another that I see as dramatic and upsetting, in addition to the huge number of cases.

Certainly, in this case the main focus is on the disaster caused (hence the charge), not only in the work environment but also in the community.

An expert from the Piedmont Region told us that every year 50 people die, of which 10 would have worked at the plant, but not the remainder.

*What do you think of the defendants?*

It's difficult. Generally I form an opinion of people, especially of defendants, when I cross-question them, which hasn't happened so far. I am waiting for the chance to do so. It will be really interesting to hear what they have to say, in order to shed light on the facts and achieve a just outcome. We mustn't have prejudices; it's important to listen to all sides to be able to reach a balanced judgment.

However, defendants have the right not to answer questions. Whether to answer or not is a defensive strategic choice.

*Don't you feel you are a minority when compared to the defence, so numerous and well equipped?*

No, we have a solid organization. In fact, I wish the Turin Public Prosecutor's office could serve as a national prosecutor's office, since elsewhere in the country there is no comparable organization.

*Is the length of the trial foreseeable?*

No, although when we started we thought it might last years; now [seven months into the trial], thanks to the very balanced and fair guidelines given by the court, we can envisage a reasonable length for the proceedings.

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