

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :

- v. - :

INDICTMENT

CONSOLIDATED EDISON COMPANY :

S1 93 Cr. 1063 (JSM)

OF NEW YORK, INC., :

CONSTANTINE J. PAPAKRASAS, :

a/k/a "Gus," and :

PHILIP B. MCGIVNEY, :

Defendants. :

-----X

COUNT ONE

THE CONSPIRACY TO CONCEAL THE RELEASE OF ASBESTOS

The Grand Jury charges:

I. THE RELEVANT PARTIES AND ENTITIES

The Defendants

1. At all times relevant to this Indictment:

a. CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.

("CON EDISON"), the defendant, was a publicly-held, regulated utility which delivered electricity and gas to customers in New York City and Westchester County, and steam to the borough of Manhattan, where it was used to produce heat, air conditioning, and hot water. The division of CON EDISON in charge of operating the steam system was the "Steam Operations Division."

b. CONSTANTINE J. PAPAKRASAS, a/k/a "Gus," the defendant, was the Assistant Vice President of CON EDISON's Steam Operations Division. In that capacity, he was the highest-ranking individual in the Steam Operations Division, and had overall responsibility for its operations.

c. PHILIP B. MCGIVNEY, the defendant, was the Manager of the Steam Construction Department of CON EDISON's Steam Operations Division. In that capacity, he reported directly to CONSTANTINE J. PAPAKRASAS, a/k/a "Gus," and was responsible for, among other things, the construction and maintenance of the steam distribution system.

The Departments and Agencies of the United States

2. At all times relevant to this Indictment:

a. The National Response Center ("NRC"), which was a part of the United States Coast Guard (the "Coast Guard"), was the national communications center for handling activities relating to responses of the United States Government to pollution incidents. The NRC, which is located in Coast Guard headquarters in Washington, D.C., acted as the single point of contact for the reporting of releases of hazardous substances into the environment pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA") and its implementing orders and regulations. Under CERCLA and its implementing orders and regulations, persons in charge of a facility, including pipes and pipelines, were required to notify the NRC of the release of more than a pound of friable asbestos into the environment from a facility. After receiving such notices, it was the responsibility of the NRC to relay them immediately to any appropriate federal agency and the Governors of any affected States.

b. The Coast Guard was a part of the United States Department of Transportation. Under CERCLA and its implementing

orders and regulations, the Coast Guard was designated as the federal "on-scene coordinator" for releases of hazardous substances occurring within the borough of Manhattan, and, as such, had the authority to respond to such incidents on behalf of the United States Government. The Coast Guard also had the authority, with the assistance of other appropriate federal agencies, to respond to the scene and investigate the existence and extent of the release, the source and nature of the hazardous substance, and the extent of danger to the public health or to the environment. Additionally, the Coast Guard had the authority to issue administrative orders requiring persons in charge of facilities from which hazardous substances had been released to remove the hazardous condition, or, if necessary, to arrange for the clean-up of the contaminated area.

c. The Environmental Protection Agency (the "EPA") was an agency within the Executive Branch of the United States Government. Among the functions of the EPA were to establish and enforce federal environmental protection standards and to assist in arresting pollution of the environment. Under CERCLA and its implementing orders and regulations, the EPA had the authority to assist the Coast Guard in responding to releases of hazardous substances within the borough of Manhattan and, in consultation with the Coast Guard, to conduct removal and abatement actions.

d. The Occupational Safety and Health Administration ("OSHA") was an agency of the United States Department of Labor. Among the functions of OSHA were to establish and enforce health standards for the protection of American workers

who deal with asbestos in the work place. OSHA had the authority to investigate work sites where asbestos might be present, including the scenes of emergency asbestos releases, to advise federal, state and local government agencies which responded to such releases, and to issue citations to employers who violated OSHA's health standards in regard to such incidents.

The State and Local Government Agencies

3. At all times relevant to this Indictment:

a. Pursuant to a federal law called the Emergency Planning and Community Right-to-Know Act of 1986 ("EPCRA"), 42 U.S.C. § 11001 et seq., the owners or operators of a facility, including pipes and pipelines, at which a hazardous chemical was produced, used or stored, were required to notify immediately state and local emergency planning authorities of, among other things: (1) the release of more than a pound of friable asbestos into the environment from the facility; (2) an estimate of the quantity of the friable asbestos released; and (3) the time and duration of the release.

b. Under EPCRA, the City of New York established a local emergency planning committee whose members were drawn from various City agencies, including the New York City Police Department, the Office of Emergency Management, the Department of Environmental Protection ("DEP"), and the Department of Health ("Health Department"). It was a function of these agencies to respond to incidents involving hazardous substances which occurred within the borough of Manhattan. The City of New York designated

Police Emergency 911 and the DEP to receive EPCRA notifications concerning such incidents.

c. Under EPCRA, the State of New York established a State Emergency Planning Committee, and gave to the New York State Department of Environmental Conservation the responsibility of receiving on behalf of that committee EPCRA notifications concerning asbestos releases which occurred within the borough of Manhattan.

## II. BACKGROUND OF THE CONSPIRACY

### CON EDISON's Steam System

4. At all times relevant to this Indictment:

a. CON EDISON, the defendant, maintained approximately 100 miles of underground steam pipes, which extended from the southern tip of Manhattan to 96th Street. Steam manholes located throughout Manhattan provided access to the underground piping.

b. Piping in CON EDISON's steam system was covered with thermal insulation. The purpose of insulating the steam pipes was, in part, to reduce heat loss as steam travelled through the underground pipes, and thus to maximize the efficiency of the system.

c. CON EDISON maintained certain records from which it was able to, and from which it in fact did, determine whether or not sections of steam piping were installed with asbestos insulation. These records included maps of its underground steam pipes, known as "steam plates," and detailed

drawings of the pipes as constructed, known as "loose leafs." Both types of documents reflected the date on which the piping depicted on them was installed. The date of installation was significant because during the period from approximately the 1920's through approximately 1974, asbestos-containing thermal insulation was installed on the steam pipes. Among the types of asbestos used for this purpose was amosite asbestos.

d. In or about the middle 1980's, CON EDISON embarked upon a program to abate, that is to remove, asbestos from the piping in its steam manholes. CON EDISON maintained, within its Steam Operations Division, a document known as an "asbestos free manhole log." The log listed all manholes known not to contain asbestos, either because the manhole had been abated, or because the manhole had been installed or rebuilt after 1974, when CON EDISON stopped installing asbestos insulation in its steam system. Piping contained in manholes not listed on the "asbestos free manhole log" was considered, by CON EDISON, to be asbestos insulated.

CON EDISON's Procedures for Handling Steam Emergencies

5. At all times relevant to this Indictment:

a. CON EDISON, the defendant, had written procedures which set forth the manner in which its officers and employees were to respond in the event of an emergency in the steam system which potentially could release asbestos into the environment.

b. The procedures governing the Steam Operations

Division were contained in a document entitled "Handling and Control of Steam Incidents" as well as in CON EDISON's "Asbestos Management Manual." These procedures required CON EDISON personnel to assume that any debris resulting from a failure in the steam system contained asbestos, and to take certain precautions. Among other things, CON EDISON was required by these procedures to erect barricades to prevent pedestrian entry into the affected area, to post signs warning of asbestos danger, and to outfit workers entering the affected area with respirators and protective clothing.

c. CON EDISON's procedures further required that bulk debris be sampled and analyzed for the presence of asbestos. In accordance with government regulations, samples that contained greater than one percent asbestos would be deemed to be "positive." Positive samples would confirm the presumption that the debris was asbestos containing, and would require CON EDISON to remove the debris using proper asbestos abatement techniques.

d. CON EDISON's procedures for "Handling and Control of Steam Incidents" further required the management of the Steam Operations Division to communicate pertinent information regarding a possible asbestos release, including information regarding the asbestos test results, to CON EDISON's Central Information Group ("CIG"), for further dissemination of the information within the company.

e. Among the divisions that CIG was required to notify regarding a possible asbestos release was CON EDISON's

Environmental Affairs Division. Upon receiving this information, the Environmental Affairs Division was charged with determining whether a report of an asbestos release to the NRC, as well as to state and local government agencies, was required, and with notifying CIG of its determination. CIG, in turn, was charged with making any required notifications.

#### The Gramercy Park Explosion

6. On Saturday, August 19, 1989, at approximately 6:30 p.m., piping in a steam manhole located on East 20th Street near Third Avenue, in the vicinity of Gramercy Park in Manhattan ("the Gramercy Park manhole"), exploded. The force of the explosion shattered the street, tore the roof from the manhole, stripped the pipes of their insulation, and spewed asbestos-containing debris from the manhole over the surrounding area.

7. According to pertinent steam plates, loose leafs and other documents pertaining to the Gramercy Park manhole, the manhole and the piping in it had been installed during the period that CON EDISON, the defendant, insulated its steam pipes with asbestos-containing insulation. The Gramercy Park manhole was not listed on the "asbestos free manhole log," thus indicating that it was, at the time of the explosion, an asbestos-insulated manhole. Records being used by CON EDISON in connection with the repair of the Gramercy Park manhole following the explosion, together with other data then available to it, included information indicating that the insulation in the manhole contained approximately 200 pounds or more of asbestos.

8. On August 19 and 20, 1989, CON EDISON, the defendant, took twenty-one samples of the debris deposited in the area as a result of the explosion, and analyzed those samples in its chemical laboratory. Six of those samples contained greater than one percent amosite asbestos and thus, under pertinent government regulations, were positive for amosite asbestos. These six positive samples established a zone of asbestos contamination that spread from the point of the explosion eastward to at least the middle of Third Avenue, and westward on East 20th Street toward Gramercy Park East. Three of these samples, taken on East 20th Street, contained between 10 percent and 30 percent amosite asbestos. The remaining fifteen samples taken by CON EDISON contained less than one percent asbestos. However, twelve of those "negative" samples contained detectible levels of amosite asbestos -- a type of asbestos used in CON EDISON's steam system. CON EDISON did not sample further to determine how far the contamination had spread.

9. Defendants CONSTANTINE J. PAPAKRASAS, a/k/a "Gus," and PHILIP B. MCGIVNEY learned within several hours of the explosion, on August 19, 1989, that the Gramercy Park manhole was not listed on the "asbestos free manhole log." These defendants learned of the six positive test results, which confirmed the asbestos release, on Sunday, August 20, 1989.

10. During the period from on or about August 19, 1989 through on or about August 23, 1989, despite the facts known to the defendants and despite CON EDISON's own procedures, CON EDISON did

not report that the Gramercy Park explosion had released more than a pound of asbestos into the environment to any federal, state or city government agency, to the media or to the public. CON EDISON informed an official of the EPA, in substance, that asbestos had been found in the area of the explosion, but that CON EDISON did not believe that the asbestos had come from the Gramercy Park manhole. Additionally, CON EDISON informed officials of the New York City Health Department and DEP that there was no asbestos in the manhole at the time of the explosion and that CON EDISON's sampling revealed that there was no significant asbestos contamination at Gramercy Park.

11. As a result of the defendants' failure to disclose the asbestos release, residents of buildings contaminated with CON EDISON's asbestos, who had previously been evacuated as a result of the explosion, returned to their homes; pedestrian and vehicular traffic was permitted in contaminated areas; and CON EDISON employees worked in contaminated areas without using respirators and clothing necessary to protect them from asbestos.

12. On or about August 23, 1989, a representative of the residents of 32 Gramercy Park South, a building which had been strewn with debris as a result of the explosion, informed the media that they had conducted tests and found asbestos inside their building.

13. On or about August 24, 1989, CON EDISON, the defendant, reported to the NRC by telephone that a steam main had exploded and that "follow-up testing" revealed that the material in

a nearby building located at 32 Gramercy Park South contained asbestos. On that same day, in a written notification to the NRC, CON EDISON confirmed the report of asbestos at 32 Gramercy Park South, and stated that it had not been confirmed whether asbestos found in the building "came from the building or the steam pipe."

14. On or about August 24, 1989, CON EDISON, the defendant, notified the DEP that asbestos had been found at 32 Gramercy Park South, and stated that it had not been confirmed whether asbestos found in the building "came from the building or the steam pipe."

15. From on or about August 23 through on or about August 28, 1989, CON EDISON, the defendant, informed the media that it did not know the source of the asbestos found in the building located at 32 Gramercy Park South, that its August 20 test results were insignificant, and that the asbestos found in the building could have come either from the building, nearby construction debris, or CON EDISON's steam system.

16. After the Government and the public learned of the extensive asbestos contamination at Gramercy Park, CON EDISON, the defendant, paid over \$90 million for an asbestos cleanup, to compensate residents, and for other expenditures related to the asbestos release.

### III. THE CONSPIRACY

17. From on or about August 19, 1989, up to and including on or about August 31, 1989, in the Southern District of New York and elsewhere, CON EDISON, CONSTANTINE J. PAPAKRASAS,

a/k/a "Gus," and PHILIP B. MCGIVNEY, the defendants, and others to the Grand Jury known and unknown, unlawfully, wilfully, and knowingly did combine, conspire, confederate, and agree together and with each other: (i) to defraud the United States and its departments and agencies in connection with the performance of lawful governmental functions; and (ii) to commit offenses against the United States, to wit, violations of Title 42, United States Code, Section 9603 and 11045(b)(4) and Title 18, United States Code, Section 1001.

Objects of the Conspiracy

18. It was a part and object of the conspiracy that CON EDISON, CONSTANTINE J. PAKRASAS, a/k/a "Gus," and PHILIP B. MCGIVNEY, the defendants, and others to the Grand Jury known and unknown, would and did seek to obstruct and hinder the federal government and its departments and agencies, including the NRC, EPA, and OSHA, from learning of the release into the environment of approximately 200 pounds or more of asbestos from the Gramercy Park manhole, in order to prevent the federal government from evaluating the risk to the public health, CON EDISON's employees, and the environment resulting from the release, and from directing appropriate containment, worker protection, and clean-up procedures, and thereby to enable CON EDISON, among other things, to avoid the significant expense of legally-mandated asbestos cleanup procedures.

19. It was further a part and object of the conspiracy that CON EDISON, CONSTANTINE J. PAKRASAS, a/k/a "Gus," and PHILIP

B. MCGIVNEY, the defendants, and others to the Grand Jury known and unknown, being in charge of a facility, to wit, the piping in CON EDISON's steam system, from which a hazardous substance, to wit, friable asbestos, had been released without a federal permit in a quantity greater than that determined pursuant Title 42, United States Code, Section 9602, to wit, approximately 200 pounds or more, unlawfully, wilfully and knowingly would and did fail to notify immediately the appropriate agency of the United States Government, to wit, the NRC, as soon as they had knowledge of that release and would and did cause to be submitted, in a notification to the NRC, information which they knew to be false and misleading, in violation of Title 42, United States Code, Section 9603.

20. It was further a part and object of the conspiracy that CON EDISON, CONSTANTINE J. PAPAKRASAS, a/k/a "Gus," and PHILIP B. MCGIVNEY, the defendants, and others to the Grand Jury known and unknown, being the owners and operators of a facility, to wit, the piping in CON EDISON's steam system, at which a hazardous chemical was produced, used and stored, and from which a hazardous substance, to wit, friable asbestos, had been released in a quantity greater than that determined pursuant Title 42, United States Code, Section 9602, to wit, approximately 200 pounds or more, unlawfully, wilfully and knowingly would and did fail to make the notification required by Title 42, United States Code, Section 11004 to the community emergency coordinator for the local emergency planning committee, the state emergency planning commission, or any of their respective designees, immediately after

the release, in violation of Title 42, United States Code, Section 11045(b)(4).

21. It was further a part and object of the conspiracy that CON EDISON, CONSTANTINE J. PAPAKRASAS, a/k/a "Gus," and PHILIP B. MCGIVNEY, the defendants, and others to the Grand Jury known and unknown, in a matter within the jurisdiction of departments and agencies of the United States, to wit, the NRC and the EPA, unlawfully, wilfully and knowingly would and did falsify, conceal and cover up by trick, scheme and device a material fact, and cause to be made false, fictitious and fraudulent statements and representations, and make and use false writings and documents knowing the same to contain false, fictitious and fraudulent statements and entries, in violation of Title 18, United States Code, Section 1001.

Methods and Means of the Conspiracy

22. In order to carry out the above conspiracy to conceal the release of asbestos resulting from the explosion in the Gramercy Park manhole, and thereby to prevent city, state and federal government agencies from evaluating the public health risk and directing containment and clean-up procedures, the defendants and their co-conspirators used the following means, among others:

a. The defendants and their co-conspirators provided false, incomplete and misleading information to and withheld material facts from employees of the Environmental Affairs Division of CON EDISON, the defendant, which was investigating whether it was necessary to report to the NRC and other government

agencies that asbestos had been released as a result of the explosion in the Gramercy Park manhole.

b. The defendants and their co-conspirators provided false, incomplete and misleading information to and withheld material facts from employees of the Public Information Section of CON EDISON, which was communicating with the media and the public concerning the explosion in the Gramercy Park manhole.

c. The defendants and their co-conspirators provided false, incomplete and misleading information to and withheld material facts from employees of the Industrial Hygiene and Worker Safety Department of CON EDISON and CON EDISON employees working at the explosion site.

d. The defendants and their co-conspirators provided false, incomplete and misleading information to and withheld material facts from city, state and federal agencies which had regulatory authority over CON EDISON concerning the explosion in the Gramercy Park manhole.

e. The defendants and their co-conspirators failed to treat the debris as asbestos-containing; failed to establish a regulated area demarcated as an asbestos work area; failed to barricade the contaminated area; failed to post signs warning of asbestos danger; failed to abate the asbestos with special equipment and properly remove and dispose of it; failed to direct CON EDISON employees working in the contaminated area to use protective clothing, respirators and safety equipment; and failed to conduct personal monitoring of CON EDISON employees to ensure

that they were not exposed to impermissibly high levels of asbestos.

Overt Acts

23. In furtherance of this conspiracy and to effect its objects, the defendants and their co-conspirators committed the following overt acts, among others, in the Southern District of New York:

a. On or about August 20, 1989, PHILIP B. MCGIVNEY, the defendant, concealed from CIG that six samples of the debris from the explosion analyzed by CON EDISON, the defendant, were positive for asbestos, despite having previously informed CIG that the first four samples were negative for the presence of asbestos;

b. Between on or about August 19, 1989 and on or about August 20, 1989, CONSTANTINE J. PAKRASAS, a/k/a "Gus," the defendant, informed the director of CON EDISON's Public Information Section, in substance, that he believed that the Gramercy Park manhole probably had been abated.

c. On or about August 19 or 20, 1989, CONSTANTINE J. PAKRASAS, a/k/a "Gus," the defendant, informed an official of the New York City Department of Health, in substance, that there had been no asbestos in the Gramercy Park manhole at the time of the explosion.

d. In or about the early morning hours of August 20, 1989, CONSTANTINE J. PAKRASAS, a/k/a "Gus," the defendant, informed the vice president of CON EDISON's Corporate

Communications and Public Information Section, in substance, that it was not clear whether or not the Gramercy Park manhole had been asbestos insulated, and that he would have to check the records.

e. On or about August 20, 1989, a co-conspirator not named as a defendant herein informed officials of the New York City Department of Environmental Protection, in substance, that the asbestos in the Gramercy Park manhole had been removed prior to the explosion, and that samples of the debris taken by CON EDISON were "borderline," when in fact those samples were positive for asbestos.

f. In or about the afternoon of August 20, 1989, CONSTANTINE J. PAPAKRASAS, a/k/a "Gus," the defendant, and a co-conspirator not named as a defendant herein, knowing that the vice president of CON EDISON's Corporate Communications and Public Information Section was about to speak at a press conference, told that officer, in substance, that it was not clear whether the Gramercy Park manhole had been asbestos-insulated, and that asbestos found by CON EDISON in the debris from the explosion could have come from sources other than the manhole.

g. On or about August 20, 1989, PHILIP B. MCGIVNEY, the defendant, directed that an asbestos clean-up contractor not be called to the Gramercy Park scene.

h. On or about August 21, 1989, PHILIP B. MCGIVNEY, the defendant, misled an employee of CON EDISON's Environmental Affairs Division, who was investigating whether an asbestos release had occurred that required reporting to the NRC

and other government agencies, with respect to the asbestos insulation in the Gramercy Park manhole and with respect to the existence of records relating to that insulation.

i. On or about August 21, 1989, a co-conspirator not named as a defendant herein directed employees in CON EDISON'S Asbestos Abatement Group to prepare a plan to abate only the spots from which positive samples had been taken, rather than abating the entire contaminated zone established by CON EDISON'S sampling.

j. On or about August 22, 1989, CONSTANTINE J. PAPAKRASAS, a/k/a "Gus," and PHILIP B. MCGIVNEY, the defendants, attended a meeting with officials of the New York State Public Service Commission at which CON EDISON, the defendant, misled those officials by communicating that it considered the Gramercy Park manhole to be a "non-asbestos" manhole; that some asbestos had been found on Third Avenue, which it expected had come from a building or brake linings; and by omitting to tell those officials that high levels of asbestos also had been found on East 20th Street in the vicinity of the explosion.

k: On or about August 23, 1989, a co-conspirator not named as a defendant herein misled an employee of CON EDISON'S Environmental Affairs Division, who was investigating whether an asbestos release had occurred that required reporting to the NRC, with respect to the asbestos insulation in the Gramercy Park manhole.

(Title 18, United States Code, Section 371.)

COUNT TWO

The Grand Jury further charges:

24. The allegations of paragraphs 1 through 16, above, are repeated and realleged as though set forth in full in this Count.

25. From on or about August 19, 1989 up to and including on or about August 31, 1989, in the Southern District of New York and elsewhere, CON EDISON, CONSTANTINE J. PAPA KRASAS, a/k/a "Gus," and PHILIP B. MCGIVNEY, the defendants, and others to the Grand Jury known and unknown, being in charge of a facility, to wit, the piping in CON EDISON's steam system, from which a hazardous substance, to wit, friable asbestos, had been released without a federal permit in a quantity greater than that determined pursuant to Title 42, United States Code, Section 9602, to wit, approximately 200 pounds or more, unlawfully, wilfully and knowingly, failed to notify immediately the appropriate agency of the United States Government as soon as they had knowledge of such release.

(Title 42, United States Code, Section 9603 and Title 18, United States Code, Section 2.)

COUNT THREE

The Grand Jury further charges:

26. The allegations of paragraphs 1 through 16, above, are repeated and realleged as though set forth in full in this Count.

27. From on or about August 19, 1989 up to and including on or about August 31, 1989, in the Southern District of New York

and elsewhere, CON EDISON, CONSTANTINE J. PAPAKRASAS, a/k/a "Gus," and PHILIP B. MCGIVNEY, the defendants, and others to the Grand Jury known and unknown, being owners and operators of a facility, to wit, the piping in CON EDISON's steam system, at which a hazardous chemical was produced, used and stored, and from which a hazardous substance, to wit, friable asbestos, had been released in a quantity greater than that determined pursuant to Title 42, United States Code, Section 9602, to wit, approximately 200 pounds or more, unlawfully, wilfully and knowingly failed to make the notification required by Title 42, United States Code, Section 11002 to the community emergency coordinator for the local emergency planning committee, the state emergency planning commission, or any of their respective designees, immediately after the release.

(Title 42, United States Code, Section 11045(b)(4) and Title 18, United States Code, Section 2.)

#### COUNT FOUR

The Grand Jury further charges:

28. The allegations of paragraphs 1 through 16, above, are repeated and realleged as though set forth in full in this Count.

29. On or about August 20, 1989, in the Southern District of New York and elsewhere, CON EDISON and CONSTANTINE J. PAPAKRASAS, a/k/a "Gus," the defendants, and others to the Grand Jury known and unknown, in a matter within the jurisdiction of a department and agency of the United States, to wit, the EPA, unlawfully, wilfully and knowingly falsified, concealed and covered

up by trick, scheme, and device a material fact, and caused false, fictitious and fraudulent statements and representations to be made, to wit, the defendant CONSTANTINE J. PAKRASAS, a/k/a "Gus," falsely informed the New York City Department of Health, which was attempting to determine whether the explosion of the Gramercy Park manhole resulted in asbestos contamination, in substance, that there was no asbestos in the manhole at the time of the explosion.

(Title 18, United States Code, Sections 1001 and 2.)

COUNT FIVE

The Grand Jury further charges:

30. The allegations of paragraphs 1 through 16, above, are repeated and realleged as though set forth in full in this Count.

31. From on or about August 19, 1989 up to and including on or about August 23, 1989, in the Southern District of New York and elsewhere, CON EDISON, CONSTANTINE J. PAKRASAS, a/k/a "Gus," and PHILIP B. MCGIVNEY, the defendants, and others to the Grand Jury known and unknown, in a matter within the jurisdiction of a department and agency of the United States, to wit, the EPA, unlawfully, wilfully and knowingly falsified, concealed and covered up by trick, scheme, and device a material fact, and caused false, fictitious and fraudulent statements and representations to be made, to wit, by withholding material facts from and misleading employees of the Environmental Affairs Division of CON EDISON, the defendants and others caused CON EDISON to falsely inform the EPA, in substance, that CON EDISON did not believe that the asbestos

found in its sampling had come from the explosion in the Gramercy Park manhole.

(Title 18, United States Code, Sections 1001 and 2.)

COUNT SIX

The Grand Jury further charges:

32. The allegations of paragraphs 1 through 16, above, are repeated and realleged as though set forth in full in this Count.

33. On or about August 24, 1989, in the Southern District of New York and elsewhere, CON EDISON, CONSTANTINE J. PAPAKRASAS, a/k/a "Gus," and PHILIP B. MCGIVNEY, the defendants, and others to the Grand Jury known and unknown, in a matter within the jurisdiction of departments and agencies of the United States, to wit, the NRC and the EPA, unlawfully, wilfully and knowingly falsified, concealed and covered up by trick, scheme, and device, a material fact, and caused false, fictitious and fraudulent statements and representations to be made, to wit, after asbestos was discovered within a building located at 32 Gramercy Park South, the defendants and others caused a report to be made to the NRC which falsely suggested that CON EDISON did not have sufficient information to make a report to the NRC before August 23, 1989.

(Title 18, United States Code, Sections 1001 and 2.)

COUNT SEVEN

The Grand Jury further charges:

34. The allegations of paragraphs 1 through 16, above, are repeated and realleged as though set forth in full in this

Count.

35. On or about August 24, 1989, in the Southern District of New York and elsewhere, CON EDISON, the defendant, and others to the Grand Jury known and unknown, in a matter within the jurisdiction of departments and agencies of the United States, to wit, the NRC and the EPA, unlawfully, wilfully and knowingly falsified, concealed and covered up by trick, scheme, and device, a material fact, and caused false, fictitious and fraudulent statements and representations to be made, and made and used a false writing and document knowing the same to contain a false, fictitious and fraudulent statement and entry, to wit, after asbestos was discovered within a building located at 32 Gramercy Park South, CON EDISON made a report to the NRC which falsely stated that it had not been confirmed whether asbestos discovered in the building on August 23, 1989 had come from the building or CON EDISON's steam pipe.

(Title 18, United States Code, Sections 1001 and 2.)

COUNT EIGHT


The Grand Jury further charges:


36. The allegations of paragraphs 1 through 16, above, are repeated and realleged as though set forth in full in this Count.

37. On or about August 24, 1989, in the Southern District of New York and elsewhere, CON EDISON, the defendant, and others to the Grand Jury known and unknown, in a matter within the jurisdiction of a department and agency of the United States, to

wit, the EPA, unlawfully, wilfully and knowingly falsified, concealed and covered up by trick, scheme, and device, a material fact, and caused false, fictitious and fraudulent statements and representations to be made, and made and used a false writing and document knowing the same to contain a false, fictitious and fraudulent statement and entry, to wit, after asbestos was discovered within a building located at 32 Gramercy Park South, the defendant made a report to the DEP which falsely stated that it had not been confirmed whether asbestos discovered in the building on August 23, 1989 had come from the building or CON EDISON's steam pipe.

(Title 18, United States Code, Sections 1001 and 2.)

  
FOREPERSON

  
MARY JO WHITE  
United States Attorney