

Defendant Opening Statement

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

DEPARTMENT 308	HON. CHARLES W. MC COY, JUDGE
RICHARD BOEKEN,)
)
PLAINTIFF,)
)
VS.) SUPERIOR COURT
) CASE NO. BC 226593
PHILIP MORRIS, INCORPORATED,)
A CORPORATION; INTERNATIONAL HOUSE)
OF PANCAKES, INCORPORATED, A)
CORPORATION,)
)
DEFENDANTS.)
)

**REPORTER'S DAILY TRANSCRIPT OF PROCEEDINGS
MONDAY, APRIL 2, 2001
P. M. SESSION
VOLUME 8-B
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APPEARANCES:
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**LINDA STALEY, CSR NO. 3359, RMR, CRR
OFFICIAL REPORTER**

Defendant Opening Statement

I N D E X

MONDAY, APRIL 2, 2001.....	2:1257:3
1:35 P.M.....	2:1257:7
OPENING STATEMENT BY MR. LEITER.....	2:1257:21

1 CASE NUMBER: BC 226593
2 CASE NAME: BOEKEN V. PHILIP MORRIS
3 LOS ANGELES, CALIFORNIA MONDAY, APRIL 2, 2001
4 DEPARTMENT 308 HON. CHARLES W MC COY, JUDGE
5 APPEARANCES: (AS NOTED ON TITLE PAGE.)
6 REPORTER: LINDA STALEY, CSR NO. 3359, RMR, CRR
7 TIME: 1:35 P.M

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11

12

THE COURT: GOOD AFTERNOON, LADIES AND GENTLEMEN.

13

COUNSEL.

14

ALL RIGHT. OUR JURY PANEL IS WITH US.

15

COUNSEL ARE PRESENT.

16

MR. LEITER.

17

MR. LEITER: THANK YOU, YOUR HONOR.

18

THE COURT: YOUR JURY, SIR.

19

MR. LEITER: THANK YOU.

20

21

OPENING STATEMENT

22

BY MR. LEITER:

23

GOOD AFTERNOON, EVERYBODY.

24

WELCOME BACK.

25

MR. CARLTON AND I HAD A CHANCE TO MEET ALL OF

26

YOU DURING THE JURY SELECTION PROCESS. AS YOU KNOW, WE

27

REPRESENT PHILIP MORRIS. PHILIP MORRIS MAKES MARLBORO

28

CIGARETTES.

1 DURING THE PLAINTIFF'S OPENING STATEMENT THIS
2 MORNING, YOU HEARD A LITTLE BIT ABOUT MR. BOEKEN, THE
3 PLAINTIFF, YOU HEARD A FAIR AMOUNT ABOUT OUR CLIENT,
4 PHILIP MORRIS. BUT YOU DIDN'T HEAR AN AWFUL LOT ABOUT A LOT
5 OF PIECES OF THE PUZZLE THAT WERE MISSING.

6 YOU DIDN'T HEAR VERY MUCH ABOUT THE WORLD THAT
7 MR. BOEKEN AND PHILIP MORRIS ALL LIVED IN OVER THE LAST 50
8 YEARS AND HOW THAT WORLD HAS CHANGED AND HOW THOSE CHANGES
9 AFFECTED THE CHOICES THAT MR. BOEKEN MADE AND THE CHOICES
10 THAT PHILIP MORRIS MADE.

11 WE'RE GOING TO TALK TO YOU ABOUT THE WHOLE
12 PICTURE, AND WE'RE GOING TO SHOW YOU THAT THE EVIDENCE IS
13 GOING TO SHOW THAT WHEN YOU SEE THE WHOLE PICTURE, IT'S GOING
14 TO BE CLEAR THAT MR. BOEKEN DID, INDEED, LEARN ABOUT THE
15 HEALTH RISKS OF SMOKING; THAT HE DID NOT RELY ON
16 PHILIP MORRIS FOR HIS INFORMATION ABOUT THE HEALTH RISKS.

17 AND THE EVIDENCE IS GOING TO BE THAT HE CHOSE
18 TO SMOKE. HE CHOSE TO TAKE THE RISK OF SMOKING.

19 NOW, LET ME TELL YOU THREE THINGS RIGHT UP
20 FRONT. HERE'S THE FIRST. SMOKING IS DANGEROUS. SOME PEOPLE
21 SMOKE FOR MANY YEARS, AND IT DOESN'T AFFECT THEIR HEALTH, BUT
22 FOR SOME SMOKERS, SMOKING CAN CAUSE LUNG CANCER AND OTHER
23 DISEASES. SMOKING IS DANGEROUS. PEOPLE WHO SMOKE ARE TAKING
24 A RISK. THERE IS NO SUCH THING AS A SAFE CIGARETTE.

25 SMOKING IS ALSO ADDICTIVE. WHAT DOES THAT
26 MEAN?

27 FOR SOME SMOKERS, IT CAN BE VERY EASY TO QUIT.
28 THEY JUST PUT DOWN THE CIGARETTES, AND THAT'S THE END OF IT.

1 BUT FOR SOME PEOPLE, QUITTING CIGARETTES CAN BE VERY, VERY
2 DIFFICULT. IS SMOKING ADDICTIVE?

3 YES. BUT EVEN ADDICTED SMOKERS CAN QUIT. THEY
4 DO IT ALL THE TIME.

5 HERE'S THE SECOND THING I WANTED TO TELL YOU
6 RIGHT UP FRONT. IT'S NOT GOING TO COME AS A BIG SURPRISE TO
7 YOU THAT OUR CLIENT, PHILIP MORRIS, IS AN UNPOPULAR COMPANY.
8 IN PART, THAT'S BECAUSE IT MAKES CIGARETTES, AND CIGARETTES
9 ARE DANGEROUS, AND CIGARETTES ARE ALSO UNPOPULAR, ESPECIALLY
10 HERE IN CALIFORNIA AND IN LOS ANGELES.

11 AND MY CLIENT IS UNPOPULAR, ALSO, BECAUSE THERE
12 HAVE BEEN A LOT OF ACCUSATIONS MADE ABOUT IT OVER THE YEARS.
13 MR. BOEKEN'S LAWYER REPEATED SOME OF THOSE ACCUSATIONS FOR
14 YOU THIS MORNING.

15 WE'RE GOING TO TALK ABOUT THE CHOICES THAT
16 PHILIP MORRIS MADE OVER THE LAST 50 YEARS. IT'S NOT GOING TO
17 SURPRISE YOU, I THINK, TO LEARN THAT OVER THE YEARS, THE
18 PEOPLE AT PHILIP MORRIS HAVE FOUGHT TO DEFEND THE COMPANY AND
19 HAVE FOUGHT TO DEFEND THEIR PRODUCT. ALONG THE WAY, THEY
20 MADE CHOICES. SOME OF THE CHOICES THEY MADE WERE GOOD
21 CHOICES, AND SOME OF THE CHOICES THEY MADE WERE NOT GOOD
22 CHOICES AT ALL.

23 PHILIP MORRIS IS RESPONSIBLE FOR ALL THE
24 CHOICES THAT WERE MADE, BOTH THE GOOD ONES AND THE BAD ONES.
25 WE'RE TALKING IN THIS TRIAL ABOUT ALL OF THOSE CHOICES, AND
26 WE'RE ALSO GOING TO TALK TO YOU ABOUT WHAT THE COMPANY IS
27 DOING TODAY. HERE'S THE THIRD THING THAT I WANT TO TELL YOU
28 RIGHT UP FRONT.

1 THIS LAWSUIT IS NOT ABOUT WHETHER CIGARETTES
2 ARE DANGEROUS OR WHETHER THEY' RE ADDICTIVE. WE ALL AGREE
3 THAT THEY ARE. AND IT' S NOT ABOUT WHETHER YOU LIKE
4 CIGARETTES, AND IT' S NOT ABOUT WHETHER YOU AGREE WITH ALL OF
5 THE CHOICES THAT PHILIP MRRIS HAS MADE OVER THE LAST 50
6 YEARS. THIS IS A LAWSUIT BROUGHT BY ONE MAN, RICHARD BOEKEN.

7 MR. BOEKEN HAS LUNG CANCER. IN THIS LAWSUIT,
8 HE CLAIMS THAT PHILIP MRRIS IS LEGALLY RESPONSIBLE FOR HIS
9 LUNG CANCER, AND HE IS ASKING YOU TO AWARD HIM MONEY.
10 MR. BOEKEN SMOKED TWO PACKS OF CIGARETTES A DAY FOR MOST OF
11 40 YEARS. HE HAD THE FREEDOM TO DO THAT. BUT IS
12 PHILIP MRRIS LEGALLY RESPONSIBLE FOR HIS 40 YEARS OF
13 SMOKING?

14 WE THINK THE EVIDENCE WILL SHOW THAT MR. BOEKEN
15 WAS NOT TRICKED OR FOOLED INTO SMOKING. HE DID, IN FACT,
16 LEARN THAT SMOKING IS DANGEROUS, THAT IT CAUSES DISEASES LIKE
17 LUNG CANCER.

18 THE EVIDENCE WILL BE THAT, AS AN ADULT,
19 MR. BOEKEN CHOSE TO TAKE THAT RISK. HE CHOSE TO SMOKE
20 CIGARETTES. NOTHING PHILIP MRRIS SAID OR DID MADE
21 MR. BOEKEN SMOKE FOR 40 YEARS. AND NOTHING PHILIP MRRIS
22 SAID OR DID TOOK AWAY FROM MR. BOEKEN HIS FREEDOM TO QUIT
23 SMOKING.

24 I WANT TO BEGIN BY TALKING ABOUT WHAT' S
25 HAPPENED TO SMOKING OVER THE LAST 40 YEARS.

26 SMOKING RATES OF THE NUMBER OF PEOPLE IN THE
27 UNITED STATES WHO SMOKE HAVE DROPPED OVER THE LAST 40 YEARS
28 DURING THE PERIOD OF THAT SUPPOSED CONSPIRACY MR. BOEKEN' S

1 LAWYER WAS ACCUSING US OF THIS MORNING.

2 IN 1965 -- AN IMPORTANT DATE, WE' LL GET BACK TO
3 IN A MINUTE -- 42.4 PERCENT OF ADULTS SMOKED. IN 1998, 33
4 YEARS LATER, ONLY 24 PERCENT OF ADULTS SMOKED. THAT'S THE
5 MOST RECENT YEAR FOR WHICH WE HAVE DATA. SINCE THE SURGEON
6 GENERAL'S REPORT IN 1964 -- WHICH I'M GOING TO TALK TO YOU
7 ABOUT IN JUST A COUPLE OF MINUTES -- THE PERCENTAGE OF
8 SMOKERS HAS DROPPED BY NEARLY HALF. THESE ARE NOT
9 PHILIP MORRIS' NUMBERS. THESE ARE NUMBERS FROM THE FEDERAL
10 GOVERNMENT. WHY?

11 WHY HAVE SMOKING RATES DROPPED SO MUCH OVER THE
12 LAST 35 YEARS?

13 IT'S BECAUSE PEOPLE HAVE GOTTEN THE MESSAGE
14 ABOUT SMOKING; THAT IT'S DANGEROUS AND IT'S ADDICTIVE.

15 WE'RE GOING TO SHOW YOU IN THIS TRIAL THAT OVER
16 THE LAST 40 YEARS, THERE HAS BEEN A BOATLOAD OF INFORMATION
17 OUT THERE ABOUT THE HEALTH RISKS OF SMOKING.

18 NOW, SMOKING CIGARETTES HAVE BEEN AROUND SINCE
19 ABOUT THE EARLY 1900'S AFTER THEY MADE THE MACHINES THAT WERE
20 ABLE TO MASS PRODUCE THE CIGARETTES. AND SMOKING TOBACCO, OF
21 COURSE, GOES ALL THE WAY BACK TO THE NATIVE AMERICANS AND
22 COLUMBUS BRINGING TOBACCO BACK WITH HIM TO THE OLD WORLD.
23 AND WELL BEFORE 1964, PEOPLE WERE SAYING THAT SMOKING IS
24 DANGEROUS, AND IT'S DIFFICULT TO QUIT. MANY OF YOU MAY
25 REMEMBER THE PHRASE, "COFFIN NAILS" OR "CANCER STICKS." "
26 THOSE PHRASES HAVE BEEN AROUND FOREVER.

27 HERE IN CALIFORNIA, THERE WERE NEWSPAPER
28 ARTICLES ABOUT THE HEALTH RISKS. THERE WERE ORGANIZATIONS

1 TRYING TO GET PEOPLE TO QUIT SMOKING WELL BEFORE THE 1950' S
2 AND 1960' S.

3 WE' RE GOING TO SHOW YOU DURING TRIAL SOME OF
4 THAT EARLY PUBLICITY ABOUT THE HEALTH RISKS OF SMOKING.

5 BUT IN THE 1950' S AND THE 1960' S -- YOU HEARD A
6 LITTLE BIT ABOUT THIS THIS MORNING -- THE SCIENTIFIC EVIDENCE
7 BEGAN TO CONFIRM WHAT A LOT OF PEOPLE BELIEVED, THAT SMOKING
8 IS DANGEROUS.

9 I WANT TO TALK A COUPLE OF MINUTES ABOUT ONE
10 REALLY IMPORTANT DAY. IT WAS IN JANUARY OF 1964. THE UNITED
11 STATES SURGEON GENERAL HAD PUT TOGETHER A LITTLE BIT EARLIER
12 A PANEL OF SCIENTISTS TO REVIEW ALL OF THE SCIENTIFIC
13 EVIDENCE ABOUT THE HEALTH RISKS OF SMOKING. AND IN
14 JANUARY -- I THINK IT WAS JANUARY 11TH OR 12TH, 1964, THE
15 SURGEON GENERAL RELEASED A REPORT. THE REPORT CONCLUDED,
16 JANUARY 1964, SMOKING CAUSES LUNG CANCER IN MEN. THE DATA ON
17 WOMEN FOLLOWED A COUPLE YEARS LATER.

18 JANUARY 1964, SMOKING CAUSES LUNG CANCER IN
19 MEN. THIS REPORT, THE SURGEON GENERAL' S REPORT, WAS HUGE
20 NEWS. LEAD STORY IN NEWSPAPERS ALL AROUND THE COUNTRY, LEAD
21 STORY IN THE TELEVISION NEWS. I WANT TO SHOW YOU JUST BY WAY
22 OF EXAMPLE ONE NEWSPAPER, THE "LOS ANGELES TIMES. "

23 WHEN THIS REPORT WAS RELEASED IN 1964,
24 MR. BOEKEN WAS LIVING IN LOS ANGELES. HE WAS 20 YEARS OLD,
25 NOT 17, AS MIGHT HAVE BEEN SUGGESTED THIS MORNING. HE WAS
26 20. AND HE TESTIFIED THAT HE READ THE NEWSPAPER REGULARLY.

27 "LOS ANGELES TIMES" FRONT PAGE NEWS STORY
28 REPORT, "SMOKING DEFINITE HEALTH PERIL" (READING):

1 "THE SURGEON GENERAL'S EXPERT
2 COMMITTEE EMPHATICALLY BLAMED CIGARETTE
3 SMOKING SATURDAY FOR CAUSING CERTAIN DISEASES
4 AND FOR CONTRIBUTING TO AN OVERALL HIGHER
5 DEATH RATE AMONG SMOKERS. "

6
7 THE "L. A. TIMES," WHICH I'M SHOWING YOU BY WAY
8 OF EXAMPLE, WAS FILLED THAT DAY WITH NEWSPAPER STORIES ABOUT
9 THE SURGEON GENERAL'S REPORT. IN FACT, EVEN BEFORE, YOU SEE
10 THE ARTICLE ON THE 11TH, "U. S. HEALTH REPORT ON SMOKING DUE
11 SATURDAY." A LOT OF PUBLICITY ABOUT THIS REPORT COMING OUT,
12 A LOT OF PUBLICITY ABOUT THE REPORT BEING OUT.

13 HERE'S SOME MORE ARTICLES ABOUT THE 1964
14 SURGEON GENERAL'S REPORT.

15 NOW, THE SURGEON GENERAL'S REPORT AT THAT TIME
16 SET OFF A CHAIN REACTION OF EVENTS IN THE UNITED STATES.
17 MASSIVE PUBLICITY ABOUT THE HEALTH RISKS OF SMOKING.
18 GOVERNMENT, AS IT ALWAYS DOES, GETS INTO THE ACT. CONGRESS
19 PASSED A LAW REQUIRING WARNING LABELS. WARNING LABELS WERE
20 REQUIRED BY LAW TO BE PUT ON EVERY PACK OF CIGARETTES
21 STARTING IN 1966.

22 SINCE 1966, EVERY PACK OF CIGARETTES SOLD IN
23 THE UNITED STATES HAD A HEALTH WARNING. MR. BOEKEN WAS 22 IN
24 1966. EVERY PACK OF CIGARETTES HE BOUGHT, EVERY PACK OF
25 CIGARETTES HE PICKED UP FROM 1966 TO TODAY HAS HAD A HEALTH
26 WARNING ON IT.

27 THE HEALTH WARNINGS CHANGED A LITTLE BIT. THEY
28 GOT STRONGER IN 1970, STRONGER AGAIN IN 1972. 1972 WAS ALSO

1 AN IMPORTANT DAY -- IMPORTANT YEAR -- EXCUSE ME -- BECAUSE IN
2 THAT YEAR, HEALTH WARNINGS STARTED TO BE REQUIRED ON ALL
3 CIGARETTE ADS. EVERY CIGARETTE AD THAT MR. BOEKEN SAW FROM
4 1972, ALMDST 30 YEARS AGO TO TODAY, HAS HAD A HEALTH WARNING
5 ON IT.

6 AND THE WARNINGS WERE STRENGTHENED IN 1984.
7 SINCE 1984, THERE HAVE BEEN A SERIES OF ROTATING WARNINGS ON
8 THE CIGARETTE PACKS, DEPENDING ON WHICH PACK YOU BUY. IT'S
9 GOING TO HAVE ONE OF THOSE FOUR WARNINGS ON IT. TAKE A LOOK
10 AT THE ONE ON THE BOTTOM

11 SURGEON GENERAL'S WARNING (READING):

12

13 "SMOKING CAUSES LUNG CANCER,
14 HEART DISEASE, EMPHYSEMA AND MAY COMPLICATE
15 PREGNANCY. "

16

17 BEEN ON PACKS BOUGHT BY MR. BOEKEN SINCE 1984.

18 CIGARETTE ADS. YOU SAW THOSE MARLBORO ADS THIS
19 MORNING, THE ONES THAT HAVE BEEN ON TV, THE MARLBORO COUNTRY
20 ADS. CIGARETTE ADS HAVE NOT BEEN ON TELEVISION SINCE 1971,
21 ALMDST 30 YEARS. CONGRESS BANNED THEM FROM THE AIRWAVES
22 30 YEARS AGO. MR. BOEKEN HASN'T SEEN ONE OF THOSE ADS ON
23 TELEVISION FOR 30 YEARS.

24 AND THERE WAS MORE. THE SURGEON GENERAL ISSUED
25 NEW REPORTS ABOUT SMOKING AND HEALTH ALMDST EVERY YEAR FROM
26 1964 ONWARD. THE PUBLIC HEALTH COMMUNITY BEGAN INTENSIVE
27 CAMPAIGNS TO WARN PEOPLE ABOUT THE HEALTH RISKS OF SMOKING
28 AND TO HELP PEOPLE WHO WANTED TO QUIT. THE AMERICAN CANCER

1 SOCIETY, THE AMERICAN HEART ASSOCIATION, THE AMERICAN LUNG
2 ASSOCIATION.

3 AND IN CALIFORNIA, AND HERE IN LOS ANGELES IN
4 PARTICULAR, THERE STARTED TO BE SMOKING REGULATIONS. NO
5 SMOKING IN PUBLIC PLACES. THE CITY OF LOS ANGELES, LATER
6 FOLLOWED BY THE COUNTY.

7 YOU REMEMBER 1988. A WHILE AGO, THE VOTERS
8 PASSED PROP. 99, WHICH RAISED THE TAXES ON CIGARETTES TO GIVE
9 MONEY FOR PUBLIC HEALTH WARNINGS, AND MANY OF YOU MAY HAVE
10 SEEN A LOT OF THOSE PUBLIC HEALTH WARNINGS OVER THE YEARS ON
11 BILLBOARDS AND ON TELEVISION AND EVERYWHERE. AND AS YOU
12 KNOW, WE NOW HAVE A BAN HERE ON SMOKING IN RESTAURANTS.

13 PUBLICITY ABOUT ALL OF THESE ANTISMOKING
14 EFFORTS HAS BEEN INTENSIVE. IT'S BEEN INTENSIVE THROUGH THE
15 1960'S, THROUGH THE 1970'S, THROUGH THE 1980'S AND INTO THE
16 1990'S AS WELL. REPORTED IN NEWSPAPERS, TELEVISION,
17 MAGAZINES, EVERYWHERE.

18 I WANT TO SHOW YOU JUST A FEW EXAMPLES, AND
19 AGAIN, I'M GOING TO USE THE "LOS ANGELES TIMES" AS AN
20 EXAMPLE. HERE ARE JUST SAMPLINGS OF HEADLINES FROM THE
21 "LOS ANGELES TIMES" ABOUT LUNG CANCER RISKS.

22 HERE'S SOME ABOUT BRONCHITIS. REMEMBER, YOU
23 HEARD THIS MORNING THAT MR. BOEKEN HAD CHRONIC BRONCHITIS.
24 THERE WERE REPORTS LINKING BRONCHITIS TO SMOKING EVEN BEFORE
25 THE 1964 SURGEON GENERAL'S REPORT.

26 ADDICTION. PUBLICITY ABOUT HOW HARD IT IS TO
27 QUIT SMOKING. AGAIN, JUST A SAMPLE OF HEADLINES FROM THE
28 "LOS ANGELES TIMES."

1 AND, OF COURSE, BEING SOUTHERN CALIFORNIA, A
2 LOT OF ARTICLES ABOUT CELEBRITIES WHO GOT SICK FROM SMOKING
3 AND A KIND OF LUNG CANCER.

4 SEE THE ONE IN THE MIDDLE. MR. TALMAN. SOME
5 OF YOU WHO WATCH OLD TV, HE WAS THE D. A. WHO LOST TO PERRY
6 MASON EVERY SINGLE TIME. HE GOT LUNG CANCER, AND JUST BEFORE
7 HE DIED, HE FILMED ANTISMOKING COMMERCIALS WHICH WERE
8 EXTENSIVELY AIRED AND GOT A LOT OF PUBLICITY.

9 NOW, DID ALL OF THESE EFFORTS BY THE
10 GOVERNMENT, THE PUBLIC HEALTH AUTHORITIES, SMOKING
11 REGULATIONS, DID THEY WORK?

12 WELL, I'VE SHOWN YOU IN THAT CHART WHAT'S
13 HAPPENED TO SMOKING RATES OVER THE LAST 40 YEARS.

14 LOOK AT WHAT THE SURGEON GENERAL SAID, 1989,
15 25 YEARS AFTER THAT 1964 REPORT. YOU CAN SEE, "25 YEARS OF
16 PROGRESS" IS THE HEADLINE OF THE SURGEON GENERAL'S REPORT
17 (READING):

18
19 "MOST IMPORTANT, THESE
20 DEVELOPMENTS HAVE CHANGED THE WAY IN WHICH
21 OUR SOCIETY VIEWS SMOKING. "

22 "THE ASHTRAY IS FOLLOWING THE
23 SPITTOON INTO OBLIVION.

24 "THESE CHANGES REPRESENT
25 NOTHING LESS THAN A REVOLUTION IN BEHAVIOR.

26 "THE ANTISMOKING CAMPAIGN HAS
27 BEEN A MAJOR PUBLIC HEALTH SUCCESS. "

28 /

1 THAT'S WHAT THE U. S. SURGEON GENERAL SAID IN
2 1989.

3 WE'VE BEEN TALKING A LITTLE BIT ABOUT THE
4 "LOS ANGELES TIMES" AND ARTICLES THAT APPEARED THERE, AND I
5 SHOWED YOU A FEW HEADLINES. HOW MANY ARTICLES WERE THERE?

6 ONE OF THE EXPERT WITNESSES YOU'RE GOING TO
7 HEAR IN THIS CASE IS A HISTORY PROFESSOR FROM SAN DIEGO
8 STATE. HER NAME IS LISA HOFFMAN. AND SHE'S GOING TO TALK
9 ABOUT A LOT OF THE INFORMATION THAT HAS BEEN AVAILABLE TO THE
10 PUBLIC ABOUT THE HEALTH RISKS OF SMOKING GOING BACK BEFORE
11 THE 1964 SURGEON GENERAL'S REPORT AND IN THE YEARS AFTER THE
12 1964 SURGEON GENERAL'S REPORT.

13 SHE DID SOMETHING ELSE. SHE WENT THROUGH THE
14 "LOS ANGELES TIMES" FROM 1950, WHEN MR. BOEKEN WAS SIX YEARS
15 OLD, TO 1994 AND COUNTED UP HOW MANY ARTICLES APPEARED JUST
16 IN THAT ONE NEWSPAPER ABOUT THE HEALTH RISKS OF SMOKING. HOW
17 MANY?

18 2,287 ARTICLES.

19 PLEASE KEEP THAT NUMBER IN MIND. WE'RE GOING
20 TO COME BACK TO THAT IN A FEW MINUTES.

21 NOW, MR. BOEKEN, AS YOU HEARD, GAVE DEPOSITION
22 IN THIS CASE. HE TESTIFIED OUTSIDE OF THE COURT IN
23 PREPARATION FOR THE TRIAL. AND HE TESTIFIED IN THAT
24 DEPOSITION THAT HE READ THE "LOS ANGELES TIMES" REGULARLY
25 OVER THE YEARS. HE ALSO WATCHED NEWS ON TV AND READ
26 MAGAZINES. HE SAID IT WAS VERY IMPORTANT TO HIM TO KEEP UP
27 WITH THE NEWS. BUT MR. BOEKEN TESTIFIED THAT HE DOES NOT
28 REMEMBER SEEING ANY OF THIS. NO NEWSPAPER ARTICLES, NO

1 MAGAZINE ARTICLES, NO STORIES ON TV, NO BILLBOARDS, NO PUBLIC
2 SERVICE ANNOUNCEMENTS. HE GENERALLY REMEMBERS THE SURGEON
3 GENERAL WANTING TO PUT WARNINGS ON THE CIGARETTE PACKS AND
4 THE TOBACCO COMPANIES RESISTING IT, BUT THAT'S IT.

5 YOU'RE GOING TO SEE A FAIR AMOUNT OF HIS
6 DEPOSITION TESTIMONY IN THIS CASE, AND I WANT YOU TO SEE WHAT
7 HE SAID ABOUT THIS. SO I'M GOING TO PLAY A FEW MINUTES OF A
8 TAPE FROM MR. BOEKEN'S DEPOSITION. THE TAPE TAKES ABOUT FOUR
9 MINUTES TO PLAY. I'M GOING TO PLAY IT STRAIGHT THROUGH SO
10 YOU'LL HEAR ALL THE UM S AND ER'S THAT HAPPEN WHEN PEOPLE
11 HAVE CONVERSATION, AND YOU'LL HEAR WHAT MR. BOEKEN SAID ABOUT
12 THE SUBJECT. IT'S MR. CARLTON ASKING THE QUESTIONS.

13 WHOOPS. MIKE, I'M GOING TO ASK FOR YOUR HELP.
14 CAN YOU START THAT TAPE, PLEASE.

15 THANK YOU.

16

17 (THE VIDEOTAPE WAS PLAYED AND REPORTED
18 AS HEARD BY THE COURT REPORTER:)

19

20 "Q. LET'S GO BACK TO THE 1960'S,
21 THE DECADE OF THE 1960'S, IF WE COULD.
22 ALL RIGHT?

23 "A. OKAY.

24 "Q. DO YOU RECALL DURING THAT
25 PERIOD SEEING ANY ARTICLES IN NEWSPAPERS OR
26 MAGAZINES ABOUT THE RISKS OF SMOKING?

27 "A. NO, I DO NOT.

28 "Q. AND AGAIN, DURING THAT TIME

1 PERIOD, DO YOU RECALL ANYTHING ON TELEVISION
2 NEWS ABOUT THE HEALTH RISKS OF SMOKING?

3 "A. I -- THIS IS DURING THE '60'S?

4 "Q. YES.

5 "A. I RECALL AT THAT TIME THERE
6 HAD BEEN -- I KNEW SOMETHING WAS GOING ON
7 BETWEEN THE ATTORNEY STATE GENERAL AND THE
8 TOBACCO COMPANIES. EXACTLY WHAT, I WASN'T
9 QUITE SURE.

10 "Q. YOU SAID THE ATTORNEY STATE
11 GENERAL.

12 "A. OH.

13 "Q. THE SURGEON GENERAL?

14 "A. THE SURGEON GENERAL.

15 "Q. I SEE. SO YOU HAD -- YOU HAD
16 SOME SENSE THAT THE SURGEON GENERAL AND THE
17 TOBACCO COMPANIES WERE IN CONFLICT.

18 "A. YES.

19 "Q. AND DO YOU HAVE ANY MORE
20 SPECIFIC RECOLLECTION THAN THAT?

21 "A. I BELIEVE I KNEW OF WARNINGS
22 ON PACKS OF CIGARETTES.

23 "Q. ALL RIGHT. SO YOU HEARD THAT
24 THE SURGEON GENERAL WAS ISSUING A WARNING.

25 "A. YES.

26 "Q. DID YOU EVER SEE ANY -- DURING
27 THIS PERIOD -- AGAIN, LIMITED TO THE
28 1960'S -- DID YOU EVER SEE ANY PUBLIC SERVICE

1 ANNOUNCEMENTS ON THE HEALTH RISKS OF SMOKING?

2 "A. NO, I DIDN' T.

3 "Q. AND BILLBOARDS OR ANYTHING
4 LIKE THAT?

5 "A. NO. THAT IS JUST --

6 "Q. LET' S MOVE UP TO THE ' 70' S.

7 "DO YOU RECALL SEEING ANY
8 ARTICLES, NEWSPAPERS OR MAGAZINES, ANY
9 REPORTS, ANYTHING AT ALL IN THE NEWSPAPERS OR
10 MAGAZINES ABOUT THE HEALTH RISKS OF SMOKING?

11 "A. I DON' T RECALL.

12 "Q. HOW ABOUT ON TELEVISION NEWS,
13 DID YOU HEAR OR SEE ANYTHING ABOUT THE HEALTH
14 RISKS OF SMOKING DURING THE ' 70' S?

15 "A. I DON' T RECALL HEARING OR
16 SEEING ANYTHING ON TELEVISION.

17 "Q. AGAIN, DURING THE ' 70' S, DO
18 YOU RECALL SEEING PUBLIC SERVICE
19 ANNOUNCEMENTS ON THE HEALTH RISKS OF SMOKING?

20 "A. NO, I HAVE NO RECOLLECTION.

21 "Q. ANY BILLBOARDS REFLECTING THE
22 DANGERS OF SMOKING IN SOME WAY OR ADDRESSING
23 IT?

24 "A. NO. NO RECOLLECTION ANY OF
25 BILLBOARD.

26 "Q. ALL RIGHT. NOW, MOVING UP
27 INTO THE ' 80' S, DID YOU SEE ANYTHING THAT YOU
28 CAN REMEMBER IN NEWSPAPERS OR MAGAZINES ABOUT

1 THE HEALTH RISKS OF SMOKING?

2 "A. NO. NOT THAT I RECALL, NO.

3 "Q. TELEVISION NEWS DURING THE
4 '80'S, DID YOU LEARN ANYTHING ABOUT THE
5 HEALTH RISKS OF SMOKING FROM TELEVISION NEWS?

6 "A. NOT TO MY RECOLLECTION.

7 "Q. OKAY. AND AGAIN, PUBLIC
8 SERVICE ANNOUNCEMENTS DURING THE '80'S, DID
9 YOU SEE ANY OF THOSE PUBLIC SERVICE
10 ANNOUNCEMENTS ABOUT THE HEALTH RISKS OF
11 SMOKING?

12 "A. TO MY RECOLLECTION, NO. "

13

14 (END OF PLAYING OF VIDEOTAPE.)

15

16 THERE'S MORE THAT MR. BOEKEN SAID ABOUT WHAT HE
17 LEARNED AND WHAT HE DIDN'T LEARN OVER THE YEARS. MR. BOEKEN
18 TESTIFIED THAT THOSE WARNINGS THAT HAVE BEEN ON EVERY
19 CIGARETTE PACK DURING 1966, HE NEVER READ THEM UNTIL AFTER HE
20 FILED THE LAWSUIT IN THIS CASE. HE TESTIFIED THAT HE READ
21 THEM OVER CHRISTMAS OF 2000, JUST LAST CHRISTMAS, BUT THAT HE
22 NEVER READ THEM BEFORE.

23 HE SAYS THAT NO FRIEND OR FAMILY MEMBER EVER
24 TOLD HIM THAT SMOKING WAS DANGEROUS. AND THAT NO DOCTOR EVER
25 ADVISED HIM TO QUIT SMOKING, EVEN THOUGH HE WENT TO THE
26 DOCTOR REGULARLY.

27 HE TESTIFIED, AS YOU JUST HEARD, THAT HE
28 RECALLS NO NEWSPAPER ARTICLES, BILLBOARDS OR PUBLIC SERVICE

1 ANNOUNCEMENTS ABOUT THE HEALTH RISKS OF SMOKING IN THE '60'S
2 OR THE '70'S OR THE '80'S, DESPITE ALL OF THAT INFORMATION
3 THAT WAS OUT THERE.

4 AND HE SAID, HE DIDN'T BELIEVE SMOKING CAUSED
5 CANCER UNTIL 1994, JUST A FEW YEARS AGO, WHEN HIS MOM, WHO
6 WAS ALSO A TWO-PACK-A-DAY LIFELONG SMOKER, DIED OF LUNG
7 CANCER.

8 IN THIS CASE, YOU'RE GOING TO HAVE TO DECIDE
9 WHETHER YOU BELIEVE MR. BOEKEN WHEN HE SAYS HE DIDN'T BELIEVE
10 SMOKING WAS DANGEROUS UNTIL HE WAS 50 YEARS OLD IN 1994.

11 HERE ARE A COUPLE OF OTHER FACTS YOU MIGHT WANT
12 TO KEEP IN MIND THAT THE EVIDENCE WILL SHOW AS WELL.

13 MR. BOEKEN'S DAD PASSED AWAY WHEN MR. BOEKEN
14 WAS YOUNG. EVEN AS A KID, MR. BOEKEN KNEW THAT HIS DAD, WHO
15 WAS ALSO A SMOKER, SMOKED AGAINST DOCTOR'S ORDERS.

16 MR. BOEKEN, YOU HEARD, STARTED SMOKING WHEN HE
17 WAS A TEENAGER, AND HE SMOKED AT SCHOOL. HE KNEW HE COULDN'T
18 SMOKE ON THE SCHOOL GROUNDS.

19 YOU HEARD THIS MORNING A LITTLE BIT ABOUT HIS
20 BRONCHITIS. HE HAD CHRONIC BRONCHITIS OVER THE YEARS, WENT
21 TO THE DOCTOR REGULARLY, AND WHEN HE HAD BRONCHITIS, HE
22 TESTIFIED, SMOKING HURT, BUT HE SAYS NO DOCTOR EVER ADVISED
23 HIM TO QUIT SMOKING.

24 HIS WIFE QUIT SMOKING DURING HER PREGNANCIES,
25 MR. BOEKEN SAID, BECAUSE HE KNEW IT WAS TO PROTECT THE FETUS.

26 AND IN 1976, MR. BOEKEN WENT IN FOR SURGERY, AS
27 IT TURNS OUT, ON HIS GALL BLADDER, AND HIS SURGEON AT THAT
28 TIME TOLD HIM SMOKING COULD CAUSE EMPHYSEMA.

1 WE THINK THE EVIDENCE WILL SHOW THAT, IN FACT,
2 MR. BOEKEN SAW THE INFORMATION THAT WAS OUT THERE ABOUT THE
3 HEALTH RISKS OF SMOKING, AND HE LEARNED THAT SMOKING WAS
4 DANGEROUS LONG BEFORE HE TURNED 50 IN 1994.

5 WE BELIEVE THE EVIDENCE WILL SHOW HE CHOSE TO
6 SMOKE ANYWAY. HE DIDN'T CHOOSE TO SMOKE JUST ONCE BACK IN
7 1957 WHEN HE WAS A TEENAGER, BUT TIME AND TIME AGAIN
8 THROUGHOUT HIS LIFE, ADULT CHOICES TO SMOKE.

9 NOW, THIS BRINGS US TO THE QUESTION OF
10 ADDICTION -- WHICH YOU HEARD A LITTLE BIT ABOUT THIS MORNING
11 AS WELL -- AND TO MR. BOEKEN'S CLAIM THAT HE SOMEHOW LOST THE
12 FREEDOM TO QUIT SMOKING BECAUSE OF SOMETHING THAT
13 PHILIP MORRIS SAID OR DID. LET'S TALK ABOUT THAT FOR A FEW
14 MINUTES.

15 EVERYBODY AGREES THAT SMOKING CAN BE DIFFICULT
16 TO QUIT. THAT HAS BEEN KNOWN FOR A VERY, VERY LONG TIME.

17 BUT TO SAY THAT SMOKING IS ADDICTIVE DOES NOT
18 MEAN THAT PEOPLE CAN'T QUIT. ACCORDING TO THE SURGEON
19 GENERAL -- AGAIN, THESE ARE NOT PHILIP MORRIS NUMBERS, THESE
20 ARE THE SURGEON GENERAL'S NUMBERS -- ALMOST 50 PERCENT OF
21 PEOPLE WHO HAVE EVER SMOKED HAVE SUCCESSFULLY QUIT SMOKING.
22 OVER 40 MILLION PEOPLE WHO HAVE EVER SMOKED HAVE QUIT. ABOUT
23 A MILLION AMERICANS QUIT SMOKING EVERY YEAR.

24 THERE ARE NOW JUST ABOUT THE SAME NUMBER OF
25 FORMER SMOKERS IN THE UNITED STATES AS THERE ARE SMOKERS.
26 THIS IS ONE REASON THAT THE SMOKING RATES HAVE GONE WAY DOWN
27 OVER THE YEARS, AS WE TALKED ABOUT BEFORE.

28 IS SMOKING ADDICTIVE?

1 YES, IT IS. BUT EVEN ADDICTED SMOKERS CAN
2 QUIT. THEY DO IT ALL THE TIME.

3 LET'S TALK ABOUT MR. BOEKEN FOR A FEW MINUTES.
4 DID MR. BOEKEN LOSE THE FREEDOM TO QUIT
5 SMOKING?

6 IT'S A VERY IMPORTANT QUESTION IN THIS LAWSUIT,
7 AND I WANT TO TALK TO YOU ABOUT A COUPLE OF MR. BOEKEN'S
8 EXPERIENCES THAT HE TOLD US ABOUT IN HIS DEPOSITION. ONE OF
9 THEM YOU HEARD A LITTLE BIT ABOUT THIS MORNING.

10 IN 1967, WHEN MR. BOEKEN WAS 22 OR 23 YEARS
11 OLD -- THE SURGEON GENERAL'S REPORT HAD COME OUT, THE
12 WARNINGS WERE ON THE PACK -- HE MET A WOMAN, AND HE LIKED
13 THIS WOMAN, AND HE WANTED TO GO OUT WITH HER. BUT SHE
14 DISAPPROVED OF SMOKING. AND SHE TOLD HIM THAT IF HE WANTED
15 TO GO OUT WITH HER, HE WAS GOING TO HAVE TO STOP SMOKING, AND
16 HE DID. COLD TURKEY. PUT DOWN THE CIGARETTES AND STOPPED.
17 STAYED OFF CIGARETTES FOR THREE TO FOUR WEEKS.

18 THREE TO FOUR WEEKS IS IMPORTANT. YOU'RE GOING
19 TO HEAR IN THIS CASE THAT WHEN SOMEBODY PUTS DOWN THE
20 CIGARETTES AND STOPS, THE NICOTINE IS OUT OF THEIR BODY IN
21 ABOUT TEN HOURS. PEOPLE GO THROUGH -- SOME PEOPLE GO THROUGH
22 CRAVINGS AND WITHDRAWALS WHEN THEY QUIT SMOKING, AND IT CAN
23 BE DIFFICULT. BUT WHAT YOU'RE ALSO GOING TO HEAR FROM THE
24 EXPERTS IN THIS CASE IS THAT THE PERIOD OF CRAVING PEAKS IN A
25 FEW DAYS, THEN IT STARTS TO SUBSIDE AND IS BASICALLY GONE IN
26 ABOUT TWO WEEKS.

27 SOME PEOPLE STILL WANT TO SMOKE. IT'S A HABIT,
28 AND THEY ASSOCIATE IT WITH DRINKING COFFEE OR HAVING

1 BREAKFAST OR WHATEVER. BUT THE PHYSICAL SYMPTOMS OF IT ARE
2 GONE.

3 IN 1967 WHEN MR. BOEKEN WAS 23 YEARS OLD AND HE
4 STOPPED SMOKING FOR THAT WOMAN FOR THREE TO FOUR WEEKS, HE
5 WAS NICOTINE FREE. HE WAS PAST THE CRAVING PERIOD. AND AT
6 THE END OF THAT, OF THAT THREE TO FOUR WEEKS, HE STARTED TO
7 SMOKE AGAIN. AN ADULT CHOICE TO START SMOKING.

8 I WANT TO JUMP AHEAD A BUNCH OF YEARS TO TELL
9 YOU ABOUT ANOTHER OF HIS QUIT ATTEMPTS. LET'S MOVE TO 1980.

10 IN 1980, MR. BOEKEN IS 36 YEARS OLD. THE
11 SURGEON GENERAL'S REPORT HAS BEEN OUT FOR SIXTEEN YEARS. THE
12 PUBLICITY IS EVERYWHERE. THE WARNINGS ARE ON THE PACK. THE
13 WARNINGS ARE ON THE ADVERTISEMENTS. CIGARETTE ADS ARE OFF
14 TV. MR. BOEKEN HAS MET HIS WIFE JUDY, ALTHOUGH I DON'T
15 REMEMBER IF THEY WERE MARRIED BY THAT POINT OR NOT. AND
16 MR. BOEKEN DECIDED AGAIN HE WANTED TO QUIT SMOKING.

17 SO HE AND HIS SISTER, JOANNA, WENT TO SEE A
18 HYPNOTIST. THEY WENT FOR ONE SESSION TO THE HYPNOTIST IN
19 1980, AND MR. BOEKEN QUIT SMOKING FOR FIVE WEEKS. AGAIN, IN
20 THAT FIVE-WEEK PERIOD, THE NICOTINE IS OUT OF HIS BODY, HE'S
21 NICOTINE FREE, HE'S PAST THE CRAVING PERIOD. AND AT THE END
22 OF THE FIVE WEEKS, DOES HE GO BACK TO THE HYPNOTIST, DOES HE
23 TRY SOMETHING ELSE?

24 NO. HE PICKS UP THE CIGARETTES, AND HE STARTS
25 TO SMOKE AGAIN. WE THINK THE EVIDENCE WILL BE NOT THAT HE
26 COULDN'T QUIT, NOT THAT HE DIDN'T EVEN TRY, BUT THAT HE DID
27 QUIT, AND THEN HE MADE CHOICES WHEN HE WAS AN ADULT IN HIS
28 '20'S AND HIS 30'S TO START SMOKING AGAIN.

1 THERE' S MORE. THERE WILL ALSO BE EVIDENCE IN
2 THE CASE THAT MR. BOEKEN IS STRONG WILLED ENOUGH TO COMMIT
3 HIMSELF AND WORK HARD AND QUIT AN ADDICTION WHEN THAT' S
4 REALLY WHAT HE WANTS TO DO. AND THIS IS A GOOD STORY THAT
5 MR. BOEKEN IS AND SHOULD BE PROUD OF. YOU HEARD A LITTLE BIT
6 ABOUT THIS THIS MORNING.

7 IN THE EARLY 1970' S, WHEN HE WAS 27 OR 28 YEARS
8 OLD, MR. BOEKEN BECAME ADDICTED TO HEROIN. TOOK IT FOR TWO
9 OR THREE MONTHS. WAS ADDICTED TO IT. HE WAS SHOOTING HEROIN
10 INTO HIS VEINS TWO OR THREE TIMES A DAY. HE DECIDED THAT
11 THIS WAS NOT AN ADDICTION HE WANTED TO CONTINUE, AND SO HE
12 COMMITTED HIMSELF TO STOPPING IT. IT' S HARD WORK. HE WANTED
13 TO GO TO A METHADONE CLINIC, BUT HE HADN' T BEEN ADDICTED LONG
14 ENOUGH, HE FELT, TO QUALIFY FOR THE CLINIC, SO HE LIED ON THE
15 FORM TO MAKE SURE HE WOULD GET IN.

16 HE WAS STARTED ON METHADONE, AND THAT WAS
17 DIFFICULT, TOO. HE TOLD US THIS IN HIS DEPOSITION. IT TOOK
18 SIX MONTHS JUST TO STABILIZE THE DOSE OF METHADONE THAT HE
19 NEEDED.

20 UNTIL THAT HAPPENED, UNTIL THE DOSE WAS
21 STABILIZED, HE' D GO INTO WITHDRAWAL SYMPTOMS, STOMACH CRAMPS,
22 SWEATS, JOINT PAINS.

23 MR. BOEKEN STUCK WITH THE METHADONE FOR THREE
24 AND A HALF YEARS, AND THEN HE WORKED HARD TO GET OFF THE
25 METHADONE. THIS WAS HARD WORK, AND IT WAS GOOD WORK. AND
26 THE PROUD AND HAPPY NEWS FOR MR. BOEKEN IS THAT HE' S BEEN OFF
27 HEROIN FOR 26 YEARS. NEVER WENT BACK.

28 I WANT TO SHOW THIS TO YOU ON A TIME LINE. I

1 HOPE. HERE'S A TIME LINE. DATES AT THE TOP AND THE BOTTOM
2 THE NUMBERS IN WHITE, WHICH ARE A LITTLE BIT HARD TO READ,
3 ARE MR. BOEKEN'S AGE. SO LET'S PUT ON THE CHART, THREE AND A
4 HALF YEARS, HE DEVOTED TO QUITTING HEROIN WHEN HE WAS IN HIS
5 LATE '20'S AND INTO HIS EARLY 30'S.

6 YOU ALSO HEARD THIS MORNING THAT MR. BOEKEN
7 BECAME ADDICTED TO ALCOHOL. IN THE MID 1970'S WHEN HE WAS IN
8 HIS '30'S, HE DECIDED HE NEEDED TO BREAK THAT ADDICTION, TOO,
9 SO HE ENROLLED IN ALCOHOLICS ANONYMOUS. THAT WASN'T EASY
10 EITHER. FOR TEN YEARS, TEN YEARS, MR. BOEKEN WENT TO AA
11 MEETINGS ALL THE TIME. SOMETIMES, THREE TIMES A DAY. BUT HE
12 STUCK TO IT. AND HE BROKE HIS ADDICTION TO ALCOHOL. BUT HE
13 KNOWS HOW DIFFICULT THAT ADDICTION CAN BE. HE HAS BEEN AN AA
14 MEMBER FOR 25 YEARS NOW, AND HAS BEEN SOBER FOR 25 YEARS.

15 NOW, LET'S TALK ABOUT MR. BOEKEN'S ATTEMPTS TO
16 QUIT SMOKING. THERE WERE A NUMBER OF THEM THE FIRST ONE,
17 1967, WHEN HE WAS 23 YEARS OLD. THAT'S THE ONE WE TALKED
18 ABOUT.

19 1974 AND 1976, HE SAYS HE QUIT AGAIN COLD
20 TURKEY, BUT HE DOESN'T REMEMBER FOR HOW LONG, SO THAT'S
21 REALLY ALL THE INFORMATION WE HAVE.

22 1980 IS THE SECOND ONE THAT I TOLD YOU ABOUT
23 WHERE HE AND HIS SISTER JOANNA WENT TO THE HYPNOTIST, AND
24 THEY QUIT FOR FIVE WEEKS -- OR HE QUIT FOR FIVE WEEKS --
25 EXCUSE ME.

26 TAKE A LOOK AT THE REST OF THE 1980'S;
27 SMOKEENDERS, SMOKERS ANONYMOUS, GOT A PRESCRIPTION FOR
28 NICORETTE, WORE THE PATCH. ON NONE OF THOSE ATTEMPTS DID HE

1 STOP SMOKING AT ALL, EXCEPT IN 1989 WHEN HE WORE THE PATCH
2 AND STOPPED SMOKING, HE SAID, FOR TEN HOURS. SEVERAL TIMES
3 TRYING TO QUIT.

4 AND BY THE WAY, AS YOU HEARD THIS MORNING, HE
5 SAYS HE WAS TRYING TO QUIT BECAUSE SMOKING AFFECTED HIS MIND,
6 NOT BECAUSE HE BELIEVED SMOKING WAS DANGEROUS.

7 1991, HE WORE THE GUM AND THE PATCH -- WELL,
8 THAT WAS REALLY JUST BECAUSE HE WAS ON A TRIP TO HAWAII, AND
9 THEY WOULDN'T LET HIM SMOKE ON THE PLANE, SO HE WORE THAT
10 DURING THE DURATION OF THE FLIGHT AND THEN STARTED SMOKING
11 AFTER HE GOT OFF THE PLANE.

12 NOW, 1994, WHEN MR. BOEKEN SAYS, FINALLY, AFTER
13 HIS MOM DIED, WHEN HE WAS 50, HE BELIEVED THAT SMOKING WAS
14 DANGEROUS. NO QUIT ATTEMPT.

15 1999, AFTER MR. BOEKEN WAS DIAGNOSED WITH
16 CANCER, HE PUT THE CIGARETTES DOWN AND STOPPED SMOKING FOR
17 TEN MONTHS.

18 MR. BOEKEN TURNED 18 WAY BACK IN 1962, NOT EVEN
19 ON THE CHART. WAS THERE NO TIME AFTER THEN, AFTER HE BECAME
20 AN ADULT, WHEN HE COULD HAVE QUIT SMOKING SUCCESSFULLY AND
21 STUCK WITH IT?

22 THAT'S A QUESTION YOU'RE GOING TO HAVE TO
23 DECIDE IN THIS LAWSUIT. THE EVIDENCE YOU'RE GOING TO SEE IS
24 THIS -- AND YOU'RE GOING TO SEE THE EVIDENCE THAT EVEN
25 ADDICTED SMOKERS CAN QUIT.

26 MR. BOEKEN, WE BELIEVE THE EVIDENCE WILL SHOW
27 NEVER COMMITTED HIMSELF TO QUITTING SMOKING THE WAY HE
28 COMMITTED HIMSELF TO QUITTING HIS OTHER ADDICTIONS.

1 I WANT TO TURN TO A DIFFERENT SUBJECT NOW,
2 BECAUSE I WANT TO RESPOND TO SOME OF THE THINGS THAT YOU
3 HEARD FROM MR. BOEKEN'S LAWYER THIS MORNING. AND THE FIRST
4 THING THAT I WANT TO RESPOND TO IS WHAT HE TOLD YOU ABOUT
5 ADVERTISING.

6 REMEMBER, HE SHOWED YOU MARLBORO MAN
7 COMMERCIALS, AND HE SHOWED YOU SOME PRINT ADS FROM MARLBORO?

8 WHAT DOES CIGARETTE ADVERTISING HAVE TO DO WITH
9 MR. BOEKEN'S LAWSUIT?

10 DID MR. BOEKEN START TO SMOKE BECAUSE OF
11 MARLBORO ADS?

12 WELL, LET'S GO BACK TO HIS TESTIMONY. WHY DOES
13 MR. BOEKEN SAY HE STARTED SMOKING?

14 HE SAYS HE STARTED SMOKING BECAUSE HIS PARENTS
15 SMOKED, BOTH OF THEM DID; HIS FRIENDS SMOKED; ALL ADULTS
16 SMOKED; IT WAS FASHIONABLE; IT WAS SOPHISTICATED; IT WAS
17 COOL.

18 MR. BOEKEN DOESN'T SAY THAT HE STARTED SMOKING
19 EVEN AS A TEENAGER BECAUSE OF MARLBORO ADS. SO WHAT DO
20 MARLBORO ADS HAVE TO DO WITH THIS LAWSUIT?

21 I DON'T KNOW. MR. BOEKEN DID SAY -- AND YOU
22 HEARD MR. BOEKEN'S LAWYER SAY IT THIS MORNING -- THAT BACK IN
23 THE '50'S, EVERYBODY SMOKED. THERE'S A LOT OF TRUTH TO THAT.
24 SMOKING WAS SOCIALLY ACCEPTABLE BACK THEN, UNLIKE TODAY.
25 LOTS OF ADULTS DID SMOKE. SEE, THAT EVEN AS LATE AS 1965,
26 FOUR OUT OF EVERY TEN ADULTS SMOKED, AND THAT NUMBER HAS
27 DROPPED DRAMATICALLY.

28 NOW, MR. BOEKEN DOES SAY THAT IN THE LATER

1 1950' S, AFTER HE HAD ALREADY DECIDED TO SMOKE, HE PICKED
2 MARLBORO AS HIS BRAND, AND HE PICKED MARLBORO AS HIS BRAND,
3 YOU HEARD, BECAUSE IT WAS THE MACHO IMAGE OF THE MARLBORO
4 MAN, THE COWBOY.

5 AND THEN MR. BOEKEN' S LAWYER SHOWED YOU THIS
6 MORNING A SERIES OF ADS, TV COMMERCIALS AND A SERIES OF PRINT
7 ADS AND SUGGESTED TO YOU THAT THESE WERE THE ADS THAT
8 INFLUENCED MR. BOEKEN.

9 LET' S GET OUR FACTS STRAIGHT.

10 AS IT TURNS OUT, IN THE 1950' S WHEN MR. BOEKEN
11 STARTED TO SMOKE, PHILIP MORRIS WAS THE SMALLEST OF THE
12 AMERICAN TOBACCO COMPANIES. MARLBORO WAS A WOMAN' S
13 CIGARETTE. IN THE MID 1950' S, IT WAS REPOSITIONED TO TRY TO
14 BE A MAN' S CIGARETTE. AND WHAT WERE THEY SELLING IN THOSE
15 ADS THAT RAN IN THE LATE 1950' S?

16 THEY WERE SELLING -- YOU HEARD SOME OF IT THIS
17 MORNING -- IT WAS A FULL-FLAVORED CIGARETTE WITH A FILTER AND
18 A FLIP-TOP BOX; FILTER, FLAVOR, FLIP-TOP BOX.

19 LET ME SHOW YOU SOME OF THE ADS THAT RAN IN THE
20 1950' S.

21 NO MARLBORO COUNTRY IN THE 1950' S. NONE OF
22 THOSE TV ADS WERE RUNNING IN THE 1950' S. THERE WERE A NUMBER
23 OF PRINT ADS, AND YOU NOTICE THAT THERE WERE SOME WITH A
24 COWBOY. BUT THERE WERE ALSO A LOT OF OTHER IMAGES BACK IN
25 THE 1950' S. I' M GOING TO SHOW YOU A CLOSE-UP OF SOME OF
26 THEM GIVE YOU A SECOND TO LOOK AT ALL OF THEM

27 THIS GUY, SORT OF A FOREIGN LEGION GUY. LOOK
28 AT THE AGE OF THE MDELS IN THE MARLBORO ADS IN THE 1950' S.

1 REPOSITIONED TO BE A MAN'S CIGARETTE. OLDER
2 MODELS. TALKING ABOUT THE FILTER AND THE FLAVOR AND THE BOX.
3 THESE WERE THE ADS THAT WERE ACTUALLY RUNNING
4 WHEN MR. BOEKEN CHOSE MARLBORO AS HIS BRAND.

5 THE MARLBORO COUNTRY ADS THAT YOU SAW THIS
6 MORNING, THEY DIDN'T ACTUALLY START ON TELEVISION UNTIL ABOUT
7 1963 OR '64 WHEN MR. BOEKEN WAS 19 AND 20 YEARS OLD, AND THEY
8 WERE OFF THE AIR, AS I TOLD YOU BEFORE, IN 1971 WHEN
9 CIGARETTE ADVERTISING ON TV AND RADIO WAS BANNED. THE RACE
10 CAR DRIVERS ALL CAME LATER, WELL INTO MR. BOEKEN'S ADULT
11 LIFE.

12 MARLBORO BECOMING THE NUMBER ONE BRAND IN THE
13 UNITED STATES. YES, IT DID. BUT NOT UNTIL WELL INTO THE
14 1970'S WHEN MR. BOEKEN WAS AN ADULT.

15 YOU'LL HAVE TO DECIDE IN THIS CASE WHETHER
16 MR. BOEKEN CONTINUED TO SMOKE IN HIS '20'S, HIS 30'S, HIS
17 '40'S AND INTO HIS '50'S BECAUSE OF MARLBORO ADVERTISING.

18 A COUPLE MORE POINTS ABOUT ADS, AND THEN I WANT
19 TO MOVE ON TO ANOTHER SUBJECT.

20 I TOLD YOU A LITTLE BIT ABOUT MR. BOEKEN
21 QUITTING CIGARETTES IN 1967 FOR THE WOMAN HE WANTED TO GO OUT
22 WITH AND THEN STARTING UP AGAIN. NO EVIDENCE ADVERTISING HAD
23 ANYTHING TO DO WITH THAT AT ALL, HIS DECISION TO START AGAIN.

24 1980, WHEN HE WENT TO THE HYPNOTIST WITH HIS
25 SISTER AND QUIT FOR FIVE WEEKS AND THEN STARTED UP AGAIN, NO
26 EVIDENCE THAT ADVERTISING MADE HIM START UP AGAIN.

27 AND CERTAINLY, NO EVIDENCE THAT ADVERTISING
28 PLAYED A ROLE WHEN MR. BOEKEN DECIDED TO TAKE OTHER RISKS IN

1 HIS LIFE.

2 OKAY. I'VE BEEN TALKING TO YOU FOR THE LAST
3 35, 45 MINUTES OR SO ABOUT MR. BOEKEN AND HIS CASE. MOST OF
4 WHAT YOU HEARD FROM THE PLAINTIFF'S LAWYER THIS MORNING WAS
5 ABOUT PHILIP MORRIS AND THE THINGS THAT PHILIP MORRIS SAID
6 AND DID OVER THE LAST 50 YEARS, AND I WANT TO TAKE SOME TIME
7 AND RESPOND TO THAT, TOO.

8 FIRST THING, THIS: MR. BOEKEN'S LAWYER THIS
9 MORNING HAD THESE BLOW-UPS LINED UP IN FRONT OF THE JURY BOX,
10 AND THEY WERE ALL PIECES OF DOCUMENTS THAT CAME OUT OF
11 PHILIP MORRIS' FILES -- A COUPLE OF THEM CAME OUT OF OTHER
12 PEOPLE'S FILES -- BUT MOST OF THEM WERE SNIPPETS OR LITTLE
13 PIECES OF DOCUMENTS THAT CAME OUT OF PHILIP MORRIS' FILES.
14 AND YOU'RE GOING TO SEE MORE OF THEM, I BELIEVE, DURING THE
15 COURSE OF THE TRIAL.

16 THOSE DOCUMENTS TAKEN TOGETHER ARE GOING TO BE
17 A SMALL STACK TAKEN FROM MILLIONS AND MILLIONS AND MILLIONS
18 OF DOCUMENTS FROM PHILIP MORRIS' FILES OVER THE LAST 50 YEARS
19 WRITTEN BY TENS OF THOUSANDS OF EMPLOYEES OVER TIME, AND
20 YOU'RE GOING TO SEE A VERY SMALL PIECE OF THEM

21 NOW, MR. BOEKEN'S LAWYER SUGGESTED TO YOU THIS
22 MORNING THAT YOU CAN LOOK AT THOSE SNIPPETS, AND YOU CAN LOOK
23 AT THOSE LITTLE PIECES FROM THE SMALL STACK OF DOCUMENTS, AND
24 THOSE TELL YOU WHAT REALLY HAPPENED OVER THE LAST 50 YEARS.
25 THOSE TELL YOU WHAT PHILIP MORRIS REALLY DID OVER THE LAST 50
26 YEARS.

27 NOT SO FAST. LET ME TELL YOU THIS FIRST.
28 MR. CARLTON AND I ARE NOT GOING TO DEFEND EVERY DOCUMENT THAT

1 MR. BOEKEN'S LAWYER SHOWS YOU. WE'RE NOT GOING TO DEFEND
2 EVERY BAD IDEA THAT SOMEBODY HAD. WE'RE NOT GOING TO DEFEND
3 EVERY BAD MEMO THAT SOMEBODY WROTE. I'M NOT EVEN GOING TO
4 DISPUTE WITH YOU THAT SOME OF THOSE DOCUMENTS CONTAIN IDEAS
5 AND SUGGESTIONS THAT ARE BAD IDEAS.

6 BUT HERE'S THE POINT. WHEN THE SUGGESTION IS
7 MADE TO YOU THAT THOSE DOCUMENTS TELL YOU WHAT THE COMPANY
8 REALLY DID OVER THE LAST 50 YEARS, WE ARE GOING TO DISPUTE
9 THAT. THOSE DOCUMENTS DO NOT TELL YOU THE WHOLE STORY.

10 I WANT TO GIVE YOU AN EXAMPLE. FROM THIS
11 MORNING, MR. BOEKEN'S LAWYER SHOWED YOU THIS MORNING THE
12 FRANK STATEMENT AD THAT THE TOBACCO COMPANIES PUT IN THE
13 NEWSPAPERS. THEY RAN IT IN A LOT OF NEWSPAPERS IN EARLY
14 1954, AND IT RAN FOR ONE DAY, BY THE WAY, JUST ONE DAY, AND
15 IN THAT, THERE WAS THE PROMISE MADE BY THE INDUSTRY THAT,
16 WE'RE GOING TO SPONSOR RESEARCH INTO SCIENTIFIC CONNECTIONS
17 BETWEEN SMOKING AND HEALTH. WE'RE GOING TO FUND RESEARCH
18 INTO SHOWING THE CONNECTION OR LACK OF IT BETWEEN SMOKING AND
19 HEALTH.

20 AND THEN MR. BOEKEN'S LAWYER SHOWED YOU A
21 DOCUMENT FROM 20 YEARS LATER, 25 YEARS LATER, IN WHICH AN
22 EMPLOYEE OF PHILIP MORRIS WROTE, "SUBJECTS TO BE AVOIDED."
23 DO YOU REMEMBER THAT ONE?

24 WE SHOULDN'T BE REACHING IN THESE AREAS. AND
25 HE SAID, AWE-HUH, THIS SHOWS YOU WHAT THEY DID. THEY REALLY
26 AVOIDED THOSE AREAS. SHOWED YOU ANOTHER DOCUMENT ABOUT THE
27 SAME KIND OF RESEARCH WHICH SUGGESTED, I'M SHOCKED TO HEAR
28 THAT CTR, THE RESEARCH ORGANIZATION, IS LOOKING AT CERTAIN

1 SUBJECTS, AND THEY SHOULDN'T BE DOING IT, THIS IS GOING TO
2 BLOW OUR COVER. YOU SAW THOSE DOCUMENTS, AND MR. BOEKEN'S
3 LAWYER SUGGESTED TO YOU, AWE-HUH, THIS REALLY TELLS YOU WHAT
4 REALLY HAPPENED WITH THAT RESEARCH ORGANIZATION.

5 WELL, WE'RE GOING TO SHOW YOU THE RESEARCH.
6 WE'RE GOING TO SHOW YOU THE RESEARCH THAT WAS FUNDED BY THAT
7 ORGANIZATION -- FUNDED BY THE TOBACCO COMPANIES THROUGH THOSE
8 ORGANIZATIONS OVER THE LAST 40 YEARS.

9 THE ORGANIZATION WAS FIRST CALLED THE TOBACCO
10 INDUSTRY RESEARCH COMMITTEE. IT LATER CHANGED ITS NAME TO
11 THE COUNSEL FOR TOBACCO RESEARCH. IT WAS A GROUP OF
12 INDEPENDENT SCIENTISTS WHO WERE SPONSORED BY THE INDUSTRY WHO
13 GOT RESEARCH GRANTS, PROPOSALS, JUST THE SAME AS THE FEDERAL
14 GOVERNMENT FUNDS RESEARCH PROPOSALS, JUST THE SAME AS
15 UNIVERSITIES FUND RESEARCH PROPOSALS.

16 THIS WAS A SOURCE OF MONEY FOR RESEARCHERS WHO
17 WANTED TO RESEARCH SOMETHING INTO SMOKING AND HEALTH TO COME
18 IN AND GET MONEY. AND IN FACT, OVER THE YEARS, THE TOBACCO
19 INDUSTRY SPONSORED, AS IT TURNED OUT, HUNDREDS OF MILLIONS OF
20 DOLLARS OF SCIENTIFIC RESEARCH. A LOT OF THE SAME RESEARCH
21 THAT WAS FUNDED BY THE TOBACCO INDUSTRY WAS FUNDED BY THE
22 FEDERAL GOVERNMENT, THE AMERICAN CANCER SOCIETY, PROMINENT
23 RESEARCH UNIVERSITIES AROUND THE COUNTRY, LIKE UCLA,
24 STANFORD, BERKELEY, USC.

25 THE RESEARCH WAS PUBLISHED -- AS LONG AS A
26 RESEARCHER WANTED TO PUBLISH IT, HE OR SHE WAS FREE TO
27 PUBLISH IT. AND A LOT OF IT HAD TO DO WITH PRECISELY THE
28 ISSUES THAT YOU'RE GOING TO HEAR ABOUT IN THIS LAWSUIT. IN

1 FACT, THE SURGEON GENERAL, IN THE SURGEON GENERAL'S REPORTS I
2 WAS TELLING YOU ABOUT, CITED RESEARCH FUNDED BY THE TOBACCO
3 INDUSTRY OVER THE YEARS MORE THAN 500 TIMES. AND WAS ALL OF
4 THAT RESEARCH FAVORABLE TO THE TOBACCO INDUSTRY'S POSITION?

5 I'LL SHOW YOU A COUPLE OF EXAMPLES. 1963,
6 RESEARCH FUNDED BY THE TOBACCO INDUSTRY THROUGH THIS
7 ORGANIZATION CONCLUDED (READING):

8
9 "HEAVY CIGARETTE SMOKERS THUS
10 APPEAR TO BE TRUE ADDICTS . . ."

11
12 DOESN'T SOUND REAL GOOD FOR THE TOBACCO
13 INDUSTRY.

14 1965, ANOTHER RESEARCH PROJECT CONCLUDED
15 (READING):

16
17 "A SIGNIFICANT DECREASE IN
18 BIRTH WEIGHTS OF INFANTS BORN TO MOTHERS WHO
19 SMOKE WAS FOUND."

20
21 BACK IN 1965, RESEARCH FUNDED BY THE TOBACCO
22 INDUSTRY.

23 NOW, WHAT ABOUT THOSE DOCUMENTS THAT YOU GOT
24 SHOWN THIS MORNING?

25 WHAT DO THEY SAY?

26 CAN WE SWITCH TO THE ELMD, PLEASE, FOR JUST A
27 MINUTE?

28 THIS IS THE FIRST ONE YOU SAW NOVEMBER 1977,

1 DR. OSDENE WRITING THIS TO DR. SELIGMAN. THEY' RE BOTH
2 PHILIP MORRIS SCIENTISTS. DR. OSDENE WRITES (READING):

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"I WAS AMAZED AT THE TREND
THAT CTR WORK IS TAKING. FOR OPENERS,
DR. DONALD H. FORD, A NEW STAFF MEMBER, MAKES
THE FOLLOWING QUOTES:

"' SOMEBODY ON CTR'S ADVISORY
BOARD WAS SAYING THE FOLLOWING:

"' OPIATES AND NICOTINE MAY BE
SIMILAR IN ACTION. WE ACCEPT THE FACT THAT
NICOTINE IS HABITUATING. THERE IS A
RELATIONSHIP BETWEEN NICOTINE AND THE
OPIATES. "

DR. OSDENE WAS CLEARLY NOT HAPPY ABOUT THIS,
AND YOU SAW THIS THIS MORNING.

(READING:)

"IT'S MY STRONG FEELING THAT
WITH THE PROGRESS THAT HAS BEEN CLAIMED, WE
ARE IN THE PROCESS OF DIGGING OUR OWN GRAVE.
I BELIEVE THAT THE PROGRAM AS SET UP HAS THE
POTENTIAL OF GREAT DAMAGE TO THE INDUSTRY,
AND I STRONGLY URGE THAT THE WHOLE
RELATIONSHIP OF OUR COMPANY TO CTR BE
CAREFULLY REVIEWED. "

DR. OSDENE SAYING TO HIS BOSS AT PHILIP MORRIS,

1 WHAT ARE WE DOING?

2 NOW, DO I WISH DR. OSDENE HAD NOT WRITTEN THIS?

3 YOU BET. ARE WE GOING TO DEFEND THE

4 CORRECTNESS OF DR. OSDENE'S OPINION?

5 NO. BUT DOES THIS MEAN THAT THESE SUGGESTIONS

6 WERE ADOPTED, THAT THIS IS ACTUALLY WHAT HAPPENED?

7 LOOK AT THE EVIDENCE. WE THINK THE ANSWER IS

8 NO.

9 LET ME SHOW YOU ONE OTHER THING. THIS WAS

10 NOVEMBER 1977. TWO AND A HALF YEARS LATER -- THIS IS THE

11 OTHER ONE YOU SAW THIS MORNING. MARCH 31, 1980. ABOUT

12 TWO AND A HALF YEARS LATER. THIS IS THE LETTER TO

13 DR. SPEARS. P. LORILLARD IS NOT A PERSON, BY THE WAY.

14 P. LORILLARD IS THE NAME OF A TOBACCO COMPANY WHERE

15 DR. SPEARS WORKED.

16 HERE'S (READING):

17

18 "MR. J. C. BOWLING OF OUR NEW

19 YORK OFFICE ASKED THAT I SEND YOU OUR

20 RECOMMENDATIONS FOR INDUSTRY RESEARCH THAT WE

21 PREPARED LAST YEAR. TO THAT END, YOU WILL

22 FIND ATTACHED A LIST ENTITLED, 'POTENTIAL

23 LONG-TERM SCIENTIFIC STUDIES,' WHICH

24 DR. OSDENE AND I GENERATED EARLY LAST YEAR. "

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26 DR. OSDENE IS STILL AT IT. HE DOESN'T WANT CTR

27 LOOKING INTO CERTAIN THINGS.

28 (READING:)

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"ADDITIONALLY, I WAS ADDED A LIST OF THREE SUBJECTS WHICH I FEEL SHOULD BE AVOIDED. "

THEN MR. BOEKEN'S LAWYER TOLD YOU THIS MORNING ABOUT THE SUBJECTS THAT SHOULD BE AVOIDED, AND THERE IS NO QUESTION. THE PEOPLE THAT DR. SELIGMAN WAS WRITING TO IN THIS MEMO WAS SUGGESTING THAT THOSE SUBJECTS BE AVOIDED. I'M NOT GOING TO DEFEND THAT. WERE THEY ACTUALLY AVOIDED?

MR. BOEKEN'S LAWYER SAYS THAT THE EVIDENCE IS GOING TO SHOW, BASED ON THIS MEMO, THAT, IN FACT, WAS AVOIDED. WE'RE GOING TO SAY, LET'S LOOK AT WHAT THE RESEARCH WAS. LET'S LOOK AT THE RESEARCH THAT WAS FUNDED. LET'S LOOK AT THE RESEARCH THAT WAS PUBLISHED. AND THEN YOU CAN DECIDE.

NOW, AGAIN, I WANT TO RESPOND TO SOME OF THE THINGS THAT MR. BOEKEN'S LAWYER TOLD YOU THIS MORNING, AND ANOTHER OF THE ACCUSATIONS THAT HE REPEATED FOR YOU THIS MORNING WERE ACCUSATIONS ABOUT WHAT PHILIP MORRIS DID IN TRYING TO MAKE CIGARETTES SAFER.

REMEMBER, I TOLD YOU BEFORE -- AND I DON'T THINK ANYBODY IS GOING TO DISPUTE IT IN THIS CASE -- THERE'S NO SUCH THING AS A SAFE CIGARETTE. BUT, MAYBE THERE ARE THINGS THAT CAN BE DONE TO MAKE CIGARETTES SAFER, TO MAKE THEM LESS RISKY, TO MAKE THEM LESS DANGEROUS. PHILIP MORRIS HAS SPENT AN AWFUL LOT OF TIME AND MONEY OVER THE YEARS TRYING TO DO JUST THAT. THE FIRST ONE THAT I WANT TO MENTION TO YOU IS LOW-TAR CIGARETTES, BECAUSE YOU HEARD A LITTLE BIT

1 ABOUT THEM THIS MORNING.

2 STANDS TO REASON THAT IF IT'S THE TARS, THE
3 STUFF THAT'S CREATED WHEN YOU TURN TOBACCO -- IF IT'S THE
4 TARS THAT CONTAIN THINGS THAT CAUSE CANCER, THEN REDUCING THE
5 AMOUNT OF TARS THAT REACH THE SMOKERS IS A GOOD THING TO DO.
6 THE FEWER, LESS OF THE BAD STUFF GETS TO THE SMOKER.
7 COMMONSENSE IDEA. IN FACT, NOT PHILIP MORRIS' IDEA. THE
8 IDEA OF THE SCIENTIFIC COMMUNITY BACK IN THE 1950'S.
9 SUGGESTED IT TO THE TOBACCO INDUSTRY. SAID, WHY DON'T YOU
10 TRY TO FIND WAYS TO MAKE LESS TAR GET TO THE SMOKERS. AND
11 THAT'S WHAT PHILIP MORRIS AND THE OTHER TOBACCO COMPANIES
12 DID.

13 OVER THE YEARS, HERE'S WHAT HAPPENED TO TAR
14 DELIVERIES TO SMOKERS. THEY'VE GONE WAY DOWN. THESE ARE, BY
15 THE WAY, JUST AVERAGE TAR DELIVERIES. YOU CAN BUY CIGARETTES
16 WITH MUCH LESS TAR DELIVERY THAN THAT. AND ON THE LEFT, YOU
17 SEE SOME OF THE DIFFERENT WAYS THAT PHILIP MORRIS AND THE
18 OTHER TOBACCO COMPANIES CAME UP WITH TO TRY TO REDUCE TAR
19 DELIVERIES TO SMOKERS. WE'RE GOING TO HAVE SCIENTISTS FROM
20 PHILIP MORRIS WHO COME TO TESTIFY IN THIS CASE AND THEY'RE
21 GOING TO TALK TO YOU ABOUT HOW THAT WAS DONE.

22 NOW, I WANT TO STOP HERE AND ADDRESS SOMETHING
23 ELSE THAT MR. BOEKEN'S LAWYER TOLD YOU THIS MORNING WHERE HE
24 TALKED ABOUT THESE NUMBERS NOT REALLY BEING AUTHENTIC,
25 BECAUSE THE MACHINE DOESN'T SMOKE THE WAY PEOPLE SMOKE.
26 REMEMBER THAT?

27 MR. BOEKEN'S LAWYER SAID TO YOU THIS MORNING
28 THAT DOWN IN THE BASEMENT AT PHILIP MORRIS, I THINK HE SAID,

1 THEY' VE GOT THIS MACHINE THAT' S SMOKING AND MEASURING TAR
2 LEVELS, AND IT DOESN' T SMOKE THE WAY PEOPLE SMOKE.

3 LET' S GET OUR FACTS STRAIGHT. THOSE MACHINES
4 WERE NOT IN THE BASEMENT OF PHILIP MORRIS. THEY WERE AT THE
5 FEDERAL TRADE COMMISSION IN WASHINGTON. IT' S THE FEDERAL
6 GOVERNMENT' S MACHINE. IT' S THE FEDERAL GOVERNMENT THAT
7 MEASURES THE TAR DELIVERIES. AND THE BUSINESS ABOUT HOW THE
8 MACHINES DON' T SMOKE THE SAME WAY PEOPLE SMOKE. THAT' S
9 EXACTLY CORRECT.

10 PHILIP MORRIS KNOWS IT, THE FEDERAL GOVERNMENT
11 KNOWS IT, AND WHEN THE FEDERAL GOVERNMENT REQUIRED THE
12 TESTING TO BE DONE, IT TOLD THE PUBLIC THAT AS WELL. THAT
13 THE TAR DELIVERY MEASUREMENTS WERE DONE BY WAY OF
14 COMPARISONS, THAT YOU COULD SEE THAT CIGARETTE A HAD MORE OR
15 LESS TAR THAN CIGARETTE B. BUT IT WAS NEVER DESIGNED TO TELL
16 ANY INDIVIDUAL SMOKERS EXACTLY HOW MUCH TAR THEY WERE GOING
17 TO GET. NO SECRET. KNOWN TO THE SCIENTIFIC COMMUNITY, KNOWN
18 TO THE PUBLIC, KNOWN TO THE TOBACCO COMPANIES AS WELL. WE' RE
19 GOING TO SHOW YOU THAT EVIDENCE, NOT SOMETHING IN THE
20 BASEMENT OF PHILIP MORRIS.

21 AND WHETHER OR NOT LOW-TAR CIGARETTES ACTUALLY
22 REDUCE THE RISK OF SMOKING. YOU' RE GOING TO SEE THAT TODAY,
23 AS WE SIT HERE TODAY, THERE' S SOME DISPUTE ABOUT THAT. WE
24 HAVE SCIENTISTS WHO BELIEVE THAT IT DOES. THERE ARE
25 SCIENTISTS IN THE PUBLIC HEALTH COMMUNITY WHO BELIEVE IT DOES
26 NOT.

27 BUT HERE' S THE POINT. THAT DEBATE IS GOING ON
28 TODAY. FOR THE LAST 45 YEARS, IT HAS BEEN GENERALLY ACCEPTED

1 IN THE SCIENTIFIC COMMUNITY THAT LOW-TAR CIGARETTES DO REDUCE
2 THE RISK, AND THAT'S THE BASIS THAT EVERYBODY WAS WORKING
3 UNDER IN REDUCING TARS FOR YEARS AND YEARS AND YEARS.

4 NICOTINE. NICOTINE IS FOUND IN TOBACCO LEAVES.
5 THAT'S WHERE IT IS. IF YOU REDUCE THE TAR LEVELS IN SMOKING,
6 THE NICOTINE LEVELS ALSO GET REDUCED AS WELL. THIS IS WHAT'S
7 HAPPENED TO NICOTINE DELIVERIES OVER THE YEARS THAT
8 MR. BOEKEN'S LAWYER SUGGESTED THAT PHILIP MORRIS IS SPICING
9 UP THE NICOTINE DELIVERY IN CIGARETTES.

10 BY THE WAY, THE BUSINESS ABOUT AMMONIA
11 INCREASING THE HIT. WE'RE GOING TO PUT ON EVIDENCE ABOUT
12 THAT AS WELL, WHICH YOU'RE GOING TO SEE, AND IT'S AN
13 INTERESTING THEORY. IT'S BEEN KICKED AROUND FOR QUITE SOME
14 TIME. DOESN'T WORK. DOESN'T WORK IN THE BURNING OF TOBACCO.
15 DOESN'T WORK IN THE BODY. THE BUSINESS OF AMMONIA GIVING
16 SMOKERS AN EXTRA HIT JUST DOESN'T WORK, AS A MATTER OF
17 CHEMISTRY AND BIOLOGY. I'M WARNING YOU NOW, YOU'RE GOING TO
18 HEAR A LITTLE CHEMISTRY AND BIOLOGY IN THIS CASE. PLEASE.
19 GOING TO BE A BORING DAY, BUT AN IMPORTANT ONE.

20 OKAY. AND I WANT TO TALK TO YOU GENERALLY
21 ABOUT PRODUCT RESEARCH, BECAUSE, AGAIN, YOU HEARD THAT
22 THERE'S SOME DR. FARONE WHO'S GOING TO COME HERE, AND HE'S
23 GOING TO TALK ABOUT LOTS OF THINGS THAT HE THINKS
24 PHILIP MORRIS MIGHT HAVE DONE THAT THEY DIDN'T DO OR SOME
25 PRODUCT THEY MIGHT HAVE PUT ON THE MARKET BUT THEY DIDN'T PUT
26 ON THE MARKET.

27 WE'RE GOING TO HAVE PEOPLE FROM PHILIP MORRIS
28 WHO COME AND TALK TO YOU ABOUT ALL THE WORK THAT

1 PHILIP MORRIS HAS DONE OVER THE YEARS. WE TALKED ABOUT
2 GENERAL REDUCTION, WHICH IS TRYING TO GET ALL OF THE TAR --
3 EXCUSE ME -- TRYING TO GET LESS TAR TO THE SMOKER, REDUCE,
4 GENERALLY, THE AMOUNT OF TAR THAT GETS TO A SMOKER.

5 SPECIFIC REDUCTION IS TRYING TO GET OUT
6 SPECIFIC CHEMICALS IN THE SMOKE THAT ARE THE BAD GUYS. WE'RE
7 GOING TO BE TALKING ABOUT WHAT PHILIP MORRIS HAS DONE OVER
8 THE YEARS WITH THAT AS WELL.

9 WE'RE ALSO GOING TO BE TALKING ABOUT
10 DEVELOPMENT OF A DENICOTINIZED CIGARETTE. I KNEW I WASN'T
11 GOING TO GET THAT RIGHT. THAT'S A CIGARETTE WITH ALMOST NO
12 NICOTINE AT ALL. YOU'RE GOING TO HEAR ABOUT THE EFFORT THAT
13 PHILIP MORRIS PUT INTO MAKING THAT KIND OF CIGARETTE AND
14 PUTTING IT ON THE MARKET.

15 YOU'RE ALSO GOING TO HEAR ABOUT PHILIP MORRIS
16 SCIENTISTS THINKING OUT OF THE BOX. YOU HEARD MR. BOEKEN'S
17 LAWYER MENTION THIS MORNING, AND HE WAS RIGHT. THAT IT'S THE
18 BURNING OF TOBACCO THAT CREATES THE TARS. AND IT'S THE TARS,
19 WHEN THEY GET TO THE SMOKERS, THAT ARE BAD. SO WHAT IF YOU
20 CAN MAKE A SMOKING PRODUCT THAT DOESN'T BURN THE TOBACCO AT
21 ALL?

22 MAYBE YOU'RE NOT GOING TO CREATE TARS. AND
23 MAYBE THAT, WHILE IT WON'T BE A SAFE CIGARETTE, WILL BE A
24 SAFER CIGARETTE. YOU'RE GOING TO HEAR ABOUT THE EFFORTS THAT
25 PHILIP MORRIS HAS PUT IN TO TRY TO DO THAT OVER THE YEARS.

26 NOW, AS I TOLD YOU RIGHT AT THE BEGINNING,
27 THERE'S NO SAFE CIGARETTE. THERE JUST ISN'T. BUT YOU'RE NOT
28 GOING TO HEAR ABOUT ANY SAFER CIGARETTE DESIGN THAT

1 PHILIP MORRIS DIDN'T PURSUE, THAT PHILIP MORRIS DIDN'T TRY TO
2 GET INTO THE MARKETPLACE. YOU'RE NOT GOING TO HEAR THAT
3 THERE'S ANY CIGARETTE DESIGN OUT THERE THAT WOULD HAVE
4 PREVENTED MR. BOEKEN FROM GETTING SICK.

5 YOUR HONOR, I'M HAPPY TO CONTINUE, OR IF THIS
6 MIGHT BE A GOOD TIME TO TAKE A BREAK.

7 THE COURT: IF YOU'D LIKE TO TAKE A BREAK RIGHT NOW,
8 COUNSEL, IT WOULD BE A PERFECT TIME.

9 THANK YOU, SIR.

10 LADIES AND GENTLEMEN, WE'RE GOING TO TAKE A
11 BREAK NOW. LET'S BE BACK HERE AT TEN MINUTES UNTIL 3:00.

12 THANK YOU.

13 THE COURT: PROCEED, MR. LEITER.

14 MR. LEITER: THANK YOU, YOUR HONOR.

15 THE COURT: YES, SIR.

16 MR. LEITER: WELCOME BACK.

17 BEFORE THE BREAK, WE WERE TALKING ABOUT SOME OF
18 THE ACCUSATIONS THAT MR. BOEKEN'S LAWYER MADE ABOUT
19 PHILIP MORRIS THIS MORNING AND OUR RESPONSES TO THEM, AND
20 DURING THE COURSE OF THE TRIAL, OR AT THE END OF THE TRIAL,
21 YOU'RE, OF COURSE, GOING TO HAVE TO DECIDE WHAT THOSE
22 ALLEGATIONS HAVE TO DO, IF ANYTHING, ABOUT MR. BOEKEN IN HIS
23 CASE.

24 I WANT TO TURN NOW TO SOMETHING A LITTLE
25 DIFFERENT. TURNING FROM WHAT PHILIP MORRIS DID OVER THE
26 YEARS TO WHAT PHILIP MORRIS SAID ABOUT SMOKING AND SMOKING
27 CAUSING DISEASE AND SMOKING BEING ADDICTIVE OVER THE YEARS.

28 HERE'S WHAT PHILIP MORRIS SAYS TODAY. THIS IS

1 FROM PHILIP MORRIS' WEBSITE. YOU'RE GOING TO HEAR ABOUT THIS
2 DURING THE COURSE OF THE TRIAL.

3 (READING:)

4

5 "WE AGREE WITH THE
6 OVERWHELMING MEDICAL AND SCIENTIFIC CONSENSUS
7 THAT CIGARETTE SMOKING CAUSES LUNG CANCER,
8 HEART DISEASE, EMPHYSEMA AND OTHER SERIOUS
9 DISEASES TO SMOKERS. "

10

11 YOU'RE GOING TO HEAR ABOUT THE EFFORTS THAT
12 PHILIP MORRIS MADE TO GET THAT OPINION OUT TO PEOPLE, AND
13 YOU'RE GOING TO SEE THAT ON THE WEBSITE, AFTER MAKING THAT
14 STATEMENT, IT REFERS ANYBODY WHO WANTS TO TO THE SURGEON
15 GENERAL'S REPORTS, TO HEALTH ORGANIZATIONS, TO WHAT THEY SAY
16 ABOUT THE HEALTH RISKS OF SMOKING. THAT'S WHAT PHILIP MORRIS
17 SAYS TODAY. SAME POSITION AS THE PUBLIC HEALTH AUTHORITIES.

18 HERE'S WHAT PHILIP MORRIS SAYS TODAY ABOUT
19 ADDICTION. AGAIN, THE SAME POSITION AS THE PUBLIC HEALTH
20 AUTHORITIES.

21 (READING:)

22

23 "WE AGREE WITH THE
24 OVERWHELMING MEDICAL AND SCIENTIFIC CONSENSUS
25 THAT CIGARETTE SMOKING IS ADDICTIVE. IT CAN
26 BE VERY DIFFICULT TO QUIT SMOKING, BUT THIS
27 SHOULD NOT DETER SMOKERS WHO WANT TO QUIT
28 FROM TRYING TO DO SO. "

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AND IF YOU CAN SEE WHAT'S IN BLUE FROM THE PICTURE OF THE WEBSITE, THERE ARE LINKS TO THE SURGEON GENERAL'S REPORT, TO THE WORLD HEALTH ORGANIZATION, AMERICAN CANCER SOCIETY, U.S. CENTERS FOR DISEASE CONTROL. THAT'S WHAT PHILIP MORRIS SAYS TODAY ABOUT CAUSATION AND ADDICTION.

BUT IT'S NOT WHAT PHILIP MORRIS ALWAYS SAID. AND I WANT TO TALK TO YOU ABOUT WHAT PHILIP MORRIS HAS SAID IN THE PAST AND TRY TO PUT SOME OF IT IN THE CONTEXT OF WHAT WAS GOING ON AT THE PARTICULAR TIME. I WANT TO BRING YOU BACK TO 1964 AND TO THE SURGEON GENERAL'S REPORT THAT I TOLD YOU ABOUT BEFORE, THE VERY FIRST SURGEON GENERAL'S REPORT IN 1964 THAT FOUND THAT SMOKING CAUSES CANCER, LUNG CANCER, IN MEN.

REMEMBER, I TOLD YOU BEFORE THAT IT WAS VERY, VERY BIG NEWS. AND IN THE REPORT ITSELF, THE SURGEON GENERAL SAID -- THIS IS FROM THE FORWARD -- (READING):

"NEW MEDICAL QUESTIONS HAVE STIRRED SUCH PUBLIC INTEREST OR HAVE CREATED MORE SCIENTIFIC DEBATE THAN THE BACK HEALTH CONTROVERSY. "

PRIOR TO 1964, THE SURGEON GENERAL WAS SAYING THERE HAD BEEN A GOOD DEAL OF DEBATE ABOUT WHETHER SCIENCE PROVED THAT SMOKING CAUSES CANCER. AND THE SURGEON GENERAL SAID (READING):

"IN FINDING THAT SMOKING DOES

1 CAUSE CANCER, WE' RE LOOKING AT THE EVIDENCE,
2 AND WE' RE FINDING THAT STATISTICAL METHODS,
3 THE FACT THAT SMOKERS GET CANCER MORE THAN
4 NON-SMOKERS DO, LUNG CANCER, DOES NOT
5 ESTABLISH PROOF OF A CAUSAL RELATIONSHIP IN
6 AN ASSOCIATION. THE CAUSAL SIGNIFICANCE OF
7 AN ASSOCIATION IS A MATTER OF JUDGMENT WHICH
8 GOES BEYOND ANY STATEMENT OF STATISTICAL
9 PROBABILITY. STATISTICAL METHODS CANNOT
10 ESTABLISH PROOF. "

11

12 WHAT THE SURGEON GENERAL DID IN 1964 IS MAKE A
13 JUDGMENT THAT, BASED ON THE SCIENTIFIC EVIDENCE AS IT WAS
14 KNOWN THEN, THERE WAS ENOUGH TO CONCLUDE THAT SMOKING CAUSES
15 LUNG CANCER IN MEN. BUT THE SURGEON GENERAL ALSO
16 ACKNOWLEDGED THAT NOT ALL THE SCIENCE POINTED THE RIGHT WAY.
17 THERE WERE STILL SOME QUESTIONS THAT HAD NOT BEEN RESOLVED.

18 FOR EXAMPLE (READING):

19

20 "THE AMOUNT OF KNOWN
21 CARCINOGENS IN CIGARETTE SMOKE IS TOO SMALL
22 TO ACCOUNT FOR THEIR CARCINOGENIC ACTIVITY
23 IS AN IMPORTANT POINT. "

24

25 SCIENTISTS KNEW ABOUT THAT. YOU SAW A
26 PHILIP MORRIS DOCUMENT THAT REFLECTED WHAT SCIENTISTS KNEW;
27 THAT THERE WERE CHEMICALS IN CIGARETTE SMOKE THAT WERE
28 CARCINOGENS THAT CAUSE CANCERS. THERE WAS A PROBLEM THEY

1 WEREN' T THERE IN SUFFICIENT QUANTITY TO ACCOUNT FOR THE
2 AMOUNT OF CANCER.

3 ALSO, ANOTHER PROBLEM BACK IN 1964 (READING):

4
5 "FEW ATTEMPTS HAVE BEEN MADE
6 TO PRODUCE BRONCHIOGENIC CARCINOMA IN
7 EXPERIMENTAL ANIMALS WITH TOBACCO EXTRACTS,
8 SMOKE OR SMOKE CONDENSATES. WITH ONE
9 POSSIBLE EXCEPTION, NONE HAS BEEN
10 SUCCESSFUL. "

11

12 WHAT DOES THAT MEAN?

13 IT MEANS, WHEN SCIENTISTS TRY TO MAKE ANIMALS
14 GET LUNG CANCER BY SHOOTING CIGARETTE SMOKE AT THEM, THEY
15 COULDN' T PRODUCE CANCER. THAT' S KNOWN AS AN ANIMAL MDEL.
16 THERE WAS NO ANIMAL MDEL IN WHICH SMOKING WAS PRODUCING LUNG
17 CANCER. THERE WAS A GAP IN THE SCIENTIFIC EVIDENCE. BUT THE
18 SURGEON GENERAL CONCLUDED THAT BASED ON ALL THE STATISTICAL
19 STUDIES AND ALL THE EVIDENCE THAT WAS THERE, THERE WAS ENOUGH
20 TO CONCLUDE THAT SMOKING CAUSED CANCER.

21 NOW, AFTER THAT REPORT IN 1964, THE SCIENTIFIC
22 COMMUNITY WAS CLEARLY IN CONSENSUS THAT SMOKING CAUSES LUNG
23 CANCER, AND THEY FOLLOWED THE SURGEON GENERAL IN MAKING THAT
24 CONCLUSION. AND WE TALKED BEFORE ABOUT ALL THE EFFORTS THAT
25 WERE MADE TO GET THE WORD OUT AND TO GET PEOPLE TO QUIT
26 SMOKING.

27 BUT PHILIP MORRIS AND THE OTHER TOBACCO
28 COMPANIES DID NOT FALL IN LINE WITH THE SURGEON GENERAL.

1 THEY FOUGHT TO DEFEND THEIR PRODUCTS. THEY FOUGHT TO DEFEND
2 THE COMPANY. THEY EMPHASIZED WHAT WASN' T PROVED. THEY
3 EMPHASIZED THAT, WE DON' T KNOW THE CHEMICALS THAT CAUSE THE
4 CANCER. WE DON' T KNOW WHY YOU CAN' T INDUCE LUNG CANCER IN
5 ANIMALS FROM SMOKING. ALL STATEMENTS THAT WERE TRUE, BUT ALL
6 STATEMENTS THAT WERE EMPHASIZING WHAT WAS NOT KNOWN INSTEAD
7 OF WHAT WAS.

8 AS THE YEARS WENT BY AND SOCIETY CHANGED AND
9 THE HEALTH RISKS OF SMOKING BECAME MORE AND MORE ACCEPTED AND
10 KNOWN BY EVERYBODY AND SMOKING RATES CONTINUED TO DROP, THE
11 TOBACCO COMPANIES FELL FURTHER OUT OF STEP. THEY CONTINUED
12 TO EMPHASIZE WHAT WAS NOT PROVED INSTEAD OF WHAT WAS.

13 AS IT TURNS OUT, FOR MANY YEARS, PHILIP MORRIS
14 AND THE OTHER TOBACCO COMPANIES HAVE SAID SMOKING IS RISKY.
15 BUT PEOPLE DIDN' T HEAR THAT BECAUSE THEY STILL HEARD THE
16 TOBACCO COMPANIES NOT FALLING IN LINE WITH THE SURGEON
17 GENERAL, NOT ADMITTING FLAT OUT THAT SMOKING CAUSES CANCER.

18 SOMETHING SIMILAR HAPPENED ON THE QUESTION OF
19 WHETHER SMOKING IS ADDICTIVE. LET' S GO BACK TO THE 1964
20 SURGEON GENERAL' S REPORT.

21 BACK IN 1964, THE SURGEON GENERAL LOOKED AT THE
22 QUESTION OF WHETHER SMOKING WAS AN ADDICTION. AND AT THAT
23 TIME, HE CONCLUDED, NO, IT' S NOT. HE SAID (READING):

24
25 "THE TOBACCO HABIT SHOULD BE
26 CHARACTERIZED AS AN HABITUATION RATHER THAN
27 AN ADDICTION, IN CONFORMITY WITH ACCEPTED
28 WORLD HEALTH ORGANIZATION DEFINITIONS . . ."

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HERE' S WHAT THAT MEANS. THE DEFINITION OF ADDICTION THAT WAS BEING USED BY SCIENTISTS DIDN' T FIT NICOTINE, DIDN' T FIT CIGARETTES. IT INCLUDED THINGS LIKE INTOXICATION. PEOPLE DON' T GET INTOXICATED FROM SMOKING CIGARETTES. PEOPLE DON' T ROB LIQUOR STORES OR CONVENIENCE STORES TO GET MNEY FOR THEIR CIGARETTE HABIT. SO CIGARETTES DIDN' T FIT THE CLASSICAL DEFINITION OF ADDICTION.

BUT AS THE YEARS WENT BY AND SOCIETY CHANGED, A DIFFERENT DEFINITION OF ADDICTION BECAME ACCEPTED IN THE SCIENTIFIC COMMUNITY, AND THAT WAS A DEFINITION THAT INCLUDES CIGARETTES. THE SCIENTIFIC COMMUNITY ADOPTED IT, BUT THE TOBACCO COMPANIES DID NOT.

THEY CLUNG TO THE OLD ONE. THEY FELL BEHIND. THEY FELL OUT OF STEP.

LOOKING BACK, THESE CHOICES BY PHILIP MORRIS AND THE TOBACCO COMPANIES WERE THE WRONG CHOICES. THEY FELL OUT OF STEP. THEY FOUGHT TOO LONG. THEY WERE STUBBORN. WHAT HAPPENED?

THEY ISOLATED THEMSELVES. THE TOBACCO COMPANIES ISOLATED THEMSELVES FROM THE SCIENTIFIC COMMUNITY, FROM THE GOVERNMENT, FROM THE PUBLIC. THEY REACTED TO ANNOUNCEMENTS OF MORE SCIENTIFIC DATA BY TRYING TO POKE HOLES IN IT. THEY DID A POOR JOB OF LISTENING. NO QUESTION.

BUT HERE' S THE QUESTION THAT' S IMPORTANT FOR THIS CASE. WERE THEY LISTENED TO?

DID PEOPLE SMOKE BECAUSE OF WHAT THE TOBACCO COMPANIES SAID?

1 AND THE ANSWER TO THAT IS NO. LOOK AT WHAT
2 HAPPENED TO SMOKING RATES OVER THE YEARS. REMEMBER THE
3 WARNINGS ON THE PACKS, THE WARNINGS ON THE ADVERTISEMENTS,
4 THE PUBLICITY, THE BILLBOARDS, THE TV NEWS, THE NEWSPAPERS.
5 SMOKING RATES WENT DOWN, PEOPLE GOT THE MESSAGE.

6 PHILIP MORRIS AND THE OTHER TOBACCO COMPANIES
7 DID NOT HELP LIKE THEY SHOULD HAVE. THEY WERE NOT THE
8 LEADERS THAT THEY COULD HAVE BEEN. BUT IT IS SIMPLY NOT TRUE
9 THAT THEY STOPPED THE PUBLIC HEALTH MESSAGE FROM GETTING
10 THROUGH.

11 NOW, ALL OF THIS LONG DISCUSSION ABOUT WHAT
12 PHILIP MORRIS DID AND WHAT PHILIP MORRIS SAID OVER THE LAST
13 40 YEARS BRINGS US BACK TO MR. BOEKEN. YOU REMEMBER WE
14 TALKED ABOUT MR. BOEKEN WHEN I FIRST STARTED TALKING TO YOU,
15 AND ABOUT HOW HE SAID HE NEVER READ THE WARNINGS ON THE
16 PACKS, AND HE NEVER SAW THE WARNINGS ON THE ADVERTISEMENTS,
17 AND HE NEVER SAW ANY NEWS ARTICLES ABOUT THE HEALTH RISKS IN
18 THE NEWSPAPER OR ON TV OR ON BILLBOARDS AT ANY TIME IN THE
19 '60'S AND THE '70'S AND THE '80'S, AND HE SAYS HE DOESN'T
20 REMEMBER ANY OF THOSE.

21 REMEMBER THE 2,287 ARTICLES IN THE "L. A.
22 TIMES"?

23 DIDN'T REMEMBER SEEING ANY OF THOSE. DIDN'T
24 HEAR, HE SAID, ABOUT THE HEALTH RISKS OF SMOKING FROM ANYBODY
25 ELSE.

26 BUT, HE SAYS, HE RECALLS IN GREAT DETAIL WHAT
27 THE TOBACCO COMPANIES SAID ABOUT THE HEALTH RISKS OF SMOKING
28 OVER THE YEARS. THAT'S HIS TESTIMONY.

1 YOU' LL HAVE TO DECIDE WHETHER YOU BELIEVE THAT
2 HE NEVER LISTENED TO ANY OF THE INFORMATION OUT THERE EXCEPT
3 WHAT THE TOBACCO COMPANIES SAID.

4 AND I WANT TO GIVE YOU A COUPLE OF EXAMPLES OF
5 THE EVIDENCE THAT YOU' RE GOING TO SEE ABOUT THAT IN THIS
6 CASE. HERE' S THE FIRST ONE.

7 MR. BOEKEN' S LAWYER SHOWED YOU THIS MORNING A
8 LITTLE CLIP OF A VIDEOTAPE OF CONGRESSIONAL HEARINGS IN 1994.
9 REMEMBER THAT?

10 AND I THINK IT WAS CONGRESSMAN WAXMAN
11 QUESTIONING AN EXECUTIVE OF PHILIP MORRIS AND SAID, I DON' T
12 BELIEVE NICOTINE IS ADDICTIVE, I DON' T BELIEVE IT' S PROVED
13 THAT SMOKING CAUSES CANCER. IN 1994. JUST A FEW YEARS AGO.
14 TALK ABOUT BEING OUT OF STEP WITH SOCIETY. 1994.

15 AND MR. BOEKEN' S LAWYER SAID THAT MR. BOEKEN
16 HEARD THAT TESTIMONY AND THAT HE HAD A NAIVETE ABOUT HIM, AND
17 HE BELIEVED IT.

18 I WANT TO READ TO YOU WHAT MR. BOEKEN SAID IN
19 HIS DEPOSITION ON THAT SUBJECT. THIS IS QUESTIONING BY
20 MR. PIUZE, HIS LAWYER; RAISED THE SUBJECT OF THE 1994
21 CONGRESSIONAL TESTIMONY AND WHAT WAS IN IT.

22 (READING:)

23
24 "Q. THE POINT I' M GETTING AT IS
25 WHEN THESE PEOPLE TESTIFIED UNDER OATH BEFORE
26 THE U. S. CONGRESS AND YOU SAW THAT ON
27 TELEVISION, DID YOU BELIEVE THEM?

28 "A. NO, I DID NOT. I KNEW THEY

1 WERE LYING. "

2

3 THEN THERE WAS A BREAK IN THE DEPOSITION. I ' M
4 GOING TO READ TO YOU WHAT HAPPENED RIGHT AFTER THE BREAK.

5 (READING:)

6

7 "Q. OKAY. YOU TOLD US BEFORE THE
8 BREAK THAT, IN YOUR MIND, YOU THINK YOU SAW
9 THE CEO' S FROM THE TOBACCO COMPANIES TESTIFY
10 BEFORE THE U. S. CONGRESS AT AROUND THAT TIME.

11 "DO YOU REMEMBER?

12 "A. YES, I DID.

13 "Q. OKAY.

14 "A. AND I KNOW FOR A FACT THAT' S
15 NOT A THOUGHT. I KNOW FOR A FACT -- I
16 BELIEVE THERE WERE SEVEN OF THESE MEN WHO I
17 BELIEVE TO BE CEO' S. WHETHER OR NOT THEY' RE
18 NOT, I DON' T KNOW. THEY ALL TESTIFIED BEFORE
19 THE CONGRESS. THEY INSINUATED -- THEY STATED
20 THAT TOBACCO WAS NOT HARMFUL, NOT ADDICTIVE,
21 NOT DESTRUCTIVE. I BELIEVE -- I BELIEVED
22 WHAT THEY SAID. I DIDN' T -- I HAVE A NAIVETE
23 ABOUT ME. "

24

25 YOU' LL HAVE TO DECIDE WHICH OF MR. BOEKEN' S
26 ANSWERS IS THE TRUE ONE.

27 AS I SAID, MR. BOEKEN' S TESTIMONY IS, HE
28 DOESN' T RECALL THE PUBLIC HEALTH SIDE OF THE STORY, DOESN' T

1 RECALL THE WARNINGS, BUT HE RECALLS WHAT THE TOBACCO INDUSTRY
2 SAID.

3 I WANT TO SHOW YOU A LITTLE BIT ABOUT HIS
4 TESTIMONY ON THAT SUBJECT. THESE ARE QUESTIONS BY HIS
5 LAWYER, MR. PIUZE.

6
7 (THE VIDEOTAPE WAS PLAYED AND REPORTED
8 AS HEARD BY THE COURT REPORTER:)

9
10 "Q. WERE YOU CLEAR THAT THE
11 CIGARETTE COMPANIES TOOK A DIFFERENT POSITION
12 REGARDING THE HEALTH AFFECTS FROM CIGARETTES
13 FROM WHAT THE ATTORNEY GENERAL HAD TO SAY?

14 "OBJECT.

15 "A. YES. THAT'S ALL I HEARD WAS
16 THE CIGARETTE -- THE FACT THAT IT WAS
17 ADDICTIVE, IT WAS DANGEROUS, THAT IT WAS
18 HARMFUL, THAT IT WAS CANCER CAUSING.

19 "RIGHT NOW, YOU KNOW, I
20 BELIEVE IN BUSINESS, I BELIEVE IN BIG
21 CORPORATIONS, AND I HAD TO BELIEVE THAT WAY.

22 "Q. I MIGHT ASK IT SEVERAL
23 DIFFERENT WAYS AGAIN, BECAUSE -- AND I WANT
24 TO MAKE SURE THAT THE JURY GETS TO HEAR YOUR
25 WORDS.

26 "DID YOU COME INTO RECEIPT OF
27 INFORMATION FROM THE TOBACCO INDUSTRY WHICH
28 ADDRESSED THE SURGEON GENERAL'S WARNING?

1 "A. YES, I DID.

2 "Q. WHAT INFORMATION DID YOU COME
3 INTO RECEIPT OF?

4 "A. THE INFORMATION I RECEIVED IS
5 THAT TOBACCO IS NOT HARMFUL, THAT IT IS NOT
6 ADDICTIVE, THAT IT DOES NOT CAUSE HEALTH
7 HAZARDS, THAT IT DOES NOT -- THERE IS NO
8 PROOF OR SCIENTIFIC FACT THAT IT CAUSES
9 CANCER, EMPHYSEMA OR ANY OTHER LUNG OR BLOOD
10 DISEASE.

11 "Q. NOW, FOR WHATEVER REASONS THAT
12 HAVE TO DO WITH YOU AS A PERSON, ARE YOU THE
13 KIND OF PERSON THAT QUICKLY IS SUSPICIOUS OF
14 BIG INDUSTRY OR GENERALLY TRUSTS BIG
15 INDUSTRY?

16 "A. I GENERALLY TRUST. "

17

18 (END OF PLAYING OF VIDEOTAPE.)

19

20 THAT LAST ANSWER, I GENERALLY TRUST BIG
21 BUSINESS, MR. CARLTON FOLLOWED UP ON DURING ANOTHER SESSION
22 OF MR. BOEKEN'S DEPOSITION.

23

24 (THE VIDEOTAPE WAS PLAYED AND REPORTED
25 AS HEARD BY THE COURT REPORTER:)

26

27 "Q. NOW, YOU TESTIFIED PREVIOUSLY
28 THAT YOU GENERALLY TRUST BIG BUSINESS; IS

1 THAT CORRECT?

2 "A. YES, SIR.

3 "Q. HAS THAT ALWAYS BEEN TRUE?

4 "A. YES, SIR.

5 "Q. AND WHY DO YOU GENERALLY HAVE
6 THAT POSITION?

7 "A. I BELIEVE I -- I THINK I
8 BELIEVE IN MAN' S" --

9

10 (END OF PLAYING OF VIDEOTAPE.)

11

12 HE BELIEVES IN "MAN' S BETTER SIDE." THE WORDS
13 GOT CHOPPED OFF A LITTLE BIT.

14 NOW, ONE MORE POINT. I'VE TALKED TO GREAT
15 LENGTHS ABOUT ALL THE INFORMATION THAT WAS OUT THERE IN THE
16 PUBLIC HEALTH COMMUNITY. MR. BOEKEN SAYS HE REMEMBERS IN
17 DETAIL WHAT THE TOBACCO INDUSTRY SAID. WE ASKED HIM WHETHER,
18 OVER TIME, HE RECALLS SEEING MORE INFORMATION OUT THERE FROM
19 THE HEALTH COMMUNITY, THE SURGEON GENERAL, THE AMERICAN
20 CANCER SOCIETY, THE PUBLIC HEALTH COMMUNITY OR WHETHER HE
21 HEARD MORE FROM THE TOBACCO COMPANIES SAYING WHAT THEY WERE
22 SAYING.

23 HERE' S WHAT HE SAID.

24

25 (THE VIDEOTAPE WAS PLAYED AND REPORTED
26 AS HEARD BY THE COURT REPORTER:)

27 /

28 "Q. LET ME RESTATE THE QUESTION.

1 THE ANSWER: 41.

2 YOU' RE GOING TO SEE A LOT OF EVIDENCE IN THIS
3 CASE, AND AT TIMES, THE EVIDENCE MIGHT BE OVERWHELMING AND,
4 GOD FORBID, AT TIMES, IT MIGHT EVEN GET A LITTLE BORING.

5 MR. BOEKEN PRESENTS HIS CASE FIRST, BECAUSE HE
6 HAS THE BURDEN OF PROVING HIS CASE TO YOU. AND HE SAYS THE
7 EVIDENCE IS GOING TO SHOW THAT PHILIP MORRIS IS LEGALLY
8 RESPONSIBLE FOR MR. BOEKEN' S 40 YEARS OF SMOKING AND FOR HIS
9 LUNG CANCER.

10 WE DISAGREE. WE BELIEVE THE EVIDENCE WILL SHOW
11 THAT MR. BOEKEN CANNOT PROVE HIS CASE. NOTHING PHILIP MORRIS
12 SAID OR DID MADE MR. BOEKEN SMOKE FOR 40 YEARS. NOTHING
13 PHILIP MORRIS SAID OR DID DROWNED OUT THE MOUNTAIN OF
14 INFORMATION OUT THERE ABOUT THE HEALTH RISKS OF SMOKING. AND
15 NOTHING PHILIP MORRIS SAID OR DID PREVENTED MR. BOEKEN FROM
16 QUITTING SMOKING, IF THAT' S WHAT HE REALLY WANTED TO DO.

17 THE EVIDENCE WILL SHOW THAT MR. BOEKEN, LIKE
18 MILLIONS AND MILLIONS OF OTHER AMERICANS, LEARNED THE RISKS
19 OF SMOKING. HE CHOSE TO SMOKE CIGARETTES, NOT JUST ONCE WHEN
20 HE WAS A TEENAGER, BUT TIME AND TIME AGAIN THROUGHOUT HIS
21 ADULT LIFE.

22 THE EVIDENCE IS GOING TO BE, WE BELIEVE, THAT
23 EVEN IF MR. BOEKEN WAS ADDICTED TO SMOKING, HE NEVER LOST THE
24 FREEDOM TO COMMIT HIMSELF TO QUITTING SMOKING. HE DID QUIT
25 DURING HIS ADULT LIFE, AND THEN HE CHOSE TO SMOKE AGAIN.

26 I WANT TO THANK YOU VERY MUCH FOR LISTENING SO
27 PATIENTLY TO BOTH OF US THIS MORNING. I KNOW YOU' LL LISTEN
28 JUST AS PATIENTLY TO THE EVIDENCE. AND AT THE CLOSE OF THE

1 EVIDENCE, WE'RE GOING TO ASK YOU TO EVALUATE THAT EVIDENCE
2 USING YOUR GOOD COMMON SENSE.

3 THANK YOU VERY MUCH.

4 THE COURT: THANK YOU, MR. LEITER.

5 THANK YOU TO MY GOOD COUNSEL ON BOTH SIDES OF
6 THIS CASE.

7 LADIES AND GENTLEMEN, THE OUTSIDE OF THE BOX
8 HAS BEEN PAINTED. AS YOU CAN SEE, THERE ARE TWO VERY
9 DIFFERENT PICTURES OF THIS, AND IT'S GOING TO BE YOUR JOB TO
10 DECIDE WHAT THE TRUE PICTURE IS.

11 WE'LL BEGIN TOMORROW MORNING TAKING EVIDENCE.
12 WE WILL CALL THE FIRST WITNESS. OF COURSE, AS DEFENSE
13 COUNSEL JUST TOLD YOU, PLAINTIFF WILL PUT ON THE PLAINTIFF'S
14 CASE FIRST AND CALL THE FIRST WITNESS.

15 TOMORROW MORNING, PROBABLY FOR ABOUT TEN
16 MINUTES, I'M GOING TO READ YOU SOME PRE-INSTRUCTIONS AND TALK
17 TO YOU A LITTLE BIT ABOUT EVALUATING WITNESSES AND HOW YOU
18 CAN DO THAT, AND THEN AFTER I FINISH MY INSTRUCTIONS TO YOU,
19 WE'LL GET INTO THE FIRST WITNESS.

20 REMEMBER, DO NOT DISCUSS THE CASE WITH ANYONE.

21 ALSO, REMEMBER WHEN WE WERE TOGETHER ON FRIDAY,
22 I WAS TALKING ABOUT PUBLICITY AND THE POSSIBILITY THAT THERE
23 MIGHT BE THINGS IN NEWSPAPERS AND SO FORTH.

24 WELL, YOU REMEMBER THAT. THERE MAY WELL BE.
25 AND IF THERE IS, YOU AND I ARE GOING TO DO EXACTLY THE SAME
26 THING. IF WE SEE A HEADLINE, ANYTHING WITH A BLACK LINE, SEE
27 SOMETHING COME ON TELEVISION -- WE KNOW HOW TO USE A MUTE
28 BUTTON, DON'T WE -- ZING. AND PAGES IN NEWSPAPERS AND SO

1 FORTH. YOU CAN SAVE IT, PUT IT AWAY. WHEN THE TRIAL'S OVER,
2 IT WILL BE INTERESTING READING. BUT RIGHT NOW, YOU DON'T
3 WANT TO LET THAT INFLUENCE YOU AT ALL.

4 ALL RIGHT. THANK YOU, LADIES AND GENTLEMEN.
5 WE'LL SEE YOU TOMORROW MORNING AT THE NORMAL
6 TIME, 8:45.

7

8 (AT 3:30 P.M., AN ADJOURNMENT WAS TAKEN
9 UNTIL TUESDAY, APRIL 3, 2001 AT 9:00 A.M.)

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