

I N D E X

WEDNESDAY, APRIL 4, 2001..... 2: 1590: 3
1: 35 P.M..... 2: 1590: 7

WITNESSES

WILLIAM FARONE

DIRECT EXAMINATION (RESUMED) BY MR. PIUZE..... 2: 1590: 22
CROSS-EXAMINATION BY MR. LEITER..... 2: 1591: 18

EXHIBITS

I. D. 5522 - 6-26-84 LETTER..... 2: 1622: 27
EVID. - 5522..... 2: 1623: 10

1 CASE NUMBER: BC 226593
2 CASE NAME: BOEKEN V. PHILIP MORRIS
3 LOS ANGELES, CALIFORNIA WEDNESDAY, APRIL 4, 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

WILLIAM FARONE,

12

WITNESS, RESUMED THE STAND AND TESTIFIED FURTHER AS FOLLOWS:

13

14

THE COURT: GOOD AFTERNOON, LADIES AND GENTLEMEN.

15

GOOD TO HAVE YOU ALL BACK HERE.

16

COUNSEL, GOOD TO SEE ALL OF YOU.

17

SIR, YOU UNDERSTAND YOU ARE STILL UNDER OATH.

18

THE WITNESS: YES, I DO.

19

THE COURT: THANK YOU.

20

PROCEED.

21

22

DIRECT EXAMINATION (RESUMED)

23

BY MR. PIUZE:

24

Q. I THINK WE MIGHT HAVE HAD A LITTLE CONFUSION

25

HERE.

26

ARE THERE SMOKING MACHINES AT PHILIP MORRIS?

27

A. YES.

28

Q. ALWAYS HAVE BEEN?

1 A. WELL, UNLESS THEY DID AWAY WITH THEM ALL THE
2 TIME THAT I WAS THERE -- AND I'VE SEEN NUMBERS AND REPORTS UP
3 THROUGH THE LATE 90' S. THERE' S A QUARTERLY REPORT CALLED
4 THE CI REPORT WHERE THEY COMPARE THE NUMBERS THEY GET WITH
5 THE FEDERAL TRADE COMMISSION NUMBERS.

6 THE FEDERAL TRADE COMMISSION HAS MACHINES,
7 PHILIP MORRIS HAS MACHINES, AND GENERALLY, THEY BOTH TEST,
8 AND PHILIP MORRIS LIKES TO CHECK THEIR FIGURES AGAINST THE
9 FEDERAL TRADE COMMISSION NUMBERS.

10 MR. PIUZE: I HAVE GOT NO FURTHER QUESTIONS.

11 THANK YOU VERY MUCH.

12 THE COURT: THANK YOU, COUNSEL.

13 CROSS-EXAMINATION.

14 MR. LEITER: YES, YOUR HONOR.

15 THE COURT: YOUR WITNESS, SIR.

16 MR. LEITER: GOOD AFTERNOON, LADIES AND GENTLEMEN.

17
18 CROSS-EXAMINATION

19 BY MR. LEITER:

20 Q. GOOD AFTERNOON, DR. FARONE.

21 A. GOOD AFTERNOON.

22 Q. DR. FARONE, THIS IS THE TWELFTH TRIAL AT WHICH
23 YOU'VE TESTIFIED AGAINST PHILIP MORRIS OR ANOTHER TOBACCO
24 COMPANY; IS THAT CORRECT?

25 A. I HAVEN'T REALLY KEPT TRACK, BUT IT'S ABOUT
26 THAT, YES.

27 Q. ABOUT TWELVE TRIALS.

28 NOW, YOUR COMPANY IS JUST DOWN THE ROAD IN

1 ANAHEIM, ISN'T THAT RIGHT?

2 A. THAT'S CORRECT.

3 Q. AND YOU LIVE HERE IN SOUTHERN CALIFORNIA; IS
4 THAT RIGHT?

5 A. THAT'S CORRECT.

6 Q. BUT YOU TRAVEL ALL OVER THE COUNTRY TO TESTIFY
7 AGAINST PHILIP MORRIS AND THE TOBACCO COMPANIES, CORRECT?

8 A. THAT'S CORRECT.

9 Q. AND IN ADDITION TO THE TWELVE TRIALS, YOU'VE
10 TESTIFIED BY DEPOSITION IN OVER 20 DIFFERENT LAWSUITS ON
11 BEHALF OF PLAINTIFFS SUING THE TOBACCO INDUSTRY; ISN'T THAT
12 RIGHT?

13 A. PROBABLY. I'M NOT GOING TO DISPUTE THE NUMBER.
14 I DON'T KEEP TRACK OF IT THAT CLOSELY.

15 Q. AND THOSE LAWSUITS ARE ALL OVER THE COUNTRY;
16 ISN'T THAT RIGHT?

17 A. THAT'S CORRECT.

18 Q. AND WHEN YOU'RE DONE HERE, YOU'RE GOING TO
19 CATCH A PLANE TO NEW YORK TO TESTIFY IN ANOTHER TRIAL NEXT
20 WEEK?

21 A. THAT'S TRUE.

22 Q. AND AFTER THAT, YOU'RE SLATED TO TESTIFY IN
23 ANOTHER TRIAL IN NEW JERSEY; ISN'T THAT RIGHT?

24 A. THAT'S CORRECT.

25 Q. AND YOU'VE GOT OTHERS COMING DOWN THE ROAD;
26 ISN'T THAT RIGHT?

27 A. YES.

28 Q. NOW, YOU USED TO DO ALL THIS TESTIFYING FOR

1 FREE, RIGHT?

2 A. FROM 1994 UNTIL THE END OF THE YEAR 2000, YES.

3 Q. NOW, YOU GET PAID?

4 A. WELL, I GET PAID BY MY COMPANY. MY COMPANY
5 GETS REIMBURSED FOR MY EXPENSES BY THE PEOPLE USING MY
6 TESTIMONY.

7 Q. YOUR COMPANY GETS MONEY FOR YOUR TESTIMONY?

8 A. THAT'S CORRECT.

9 Q. AND YOU OWN 50 PERCENT OF THAT COMPANY; ISN'T
10 THAT RIGHT?

11 A. THAT'S CORRECT.

12 Q. DO YOU CAREFULLY SELECT THE TRIALS YOU'RE GOING
13 TO TESTIFY IN?

14 A. IN A MANNER OF SPEAKING. I ONLY DO -- I CAN
15 ONLY DO THE NUMBER THAT DON'T CONFLICT WITH THE OTHER
16 COMMITMENTS I HAVE WITHIN MY COMPANY.

17 Q. YOU STILL MANAGE TO FIND TIME TO TESTIFY PRETTY
18 REGULARLY, IS THAT FAIR?

19 A. OH, YES, THAT'S TRUE.

20 Q. AND YOU GIVE PRETTY MUCH THE SAME TESTIMONY IN
21 EVERY CASE?

22 A. THAT'S -- YES.

23 Q. WHAT'S THE NAME OF THE PLAINTIFF IN THIS CASE?

24 A. BOEKEN. RICHARD BOEKEN.

25 Q. HOW MANY YEARS HAS HE SMOKED?

26 A. I'M NOT -- I DON'T RECALL EXACTLY.

27 Q. HOW MANY PACKS A DAY DID HE SMOKE?

28 A. I DON'T KNOW EXACTLY.

1 Q. YOU WOULD AGREE THAT THERE'S NO SUCH THING AS A
2 SAFE CIGARETTE; ISN'T THAT RIGHT?

3 A. WELL, I THINK I'VE TESTIFIED IN THE PAST --
4 I'VE GIVEN PARAMETERS OF HOW WE COULD STATE THAT A CIGARETTE
5 COULD BE SAFE WHERE YOU COULDN'T, EPIDEMIOLOGICALLY, TELL THE
6 DIFFERENCE BETWEEN THE USE OF THAT CIGARETTE AND NON-SMOKERS;
7 BUT I MEAN, IN TERMS OF A NORMAL CIGARETTE, THERE'S NO SUCH
8 THING AS A CIGARETTE, A NORMAL CIGARETTE ON THE MARKET RIGHT
9 NOW THAT IS ABSOLUTELY SAFE.

10 Q. AND IS IT YOUR TESTIMONY THAT THERE COULD BE A
11 SAFE CIGARETTE ON THE MARKET TODAY?

12 A. OH, YES.

13 Q. WE'RE GOING TO COME BACK TO THAT.

14 NOW, YOU WORKED AT PHILIP MORRIS FOR EIGHT
15 YEARS FROM 1976 TO 1984; IS THAT RIGHT?

16 A. THAT'S CORRECT.

17 Q. YOU WERE HIRED BY PHILIP MORRIS TO DEVELOP
18 SAFER CIGARETTES?

19 A. ONE OF THE TWO MAJOR MISSIONS, YES.

20 Q. AND YOU WERE WORKING TO FIND WAYS TO REDUCE THE
21 RISKS OF SMOKING, RIGHT?

22 A. CORRECT.

23 Q. AND THAT WAS ONE OF YOUR PRINCIPAL MISSIONS AT
24 PHILIP MORRIS?

25 A. CORRECT.

26 Q. NOW, AT THE TIME THAT YOU CAME TO PHILIP MORRIS
27 IN 1976, THE COMPANY WAS ALREADY WORKING IN THE RESEARCH AND
28 DEVELOPMENT DEPARTMENT ON TECHNIQUES OR METHODS TO MAKE SAFER

1 CIGARETTES, RIGHT?

2 A. THAT'S CORRECT.

3 Q. AND DURING THE EIGHT YEARS THAT YOU WORKED AT
4 PHILIP MORRIS, YOU SPENT 80 PERCENT OF YOUR TIME WORKING TO
5 DEVELOP SAFER CIGARETTES?

6 A. ABOUT THAT, THAT'S CORRECT.

7 Q. YOU WERE PAID BY PHILIP MORRIS TO PURSUE THAT
8 OBJECTIVE?

9 A. I WAS.

10 Q. AND YOU WORKED HARD ON MAKING SAFER CIGARETTES
11 UNTIL YOU LEFT?

12 A. THAT'S CORRECT.

13 Q. NOW, IN ORDER TO WORK ON MAKING SAFER
14 CIGARETTES, YOU HAVE TO START WITH THE ASSUMPTION THAT
15 THERE'S SOMETHING UNSAFE ABOUT EXISTING CIGARETTES, RIGHT?

16 A. YOU HAVE TO UNDERSTAND WHAT THE REASONS -- WHY
17 CIGARETTES ARE UNSAFE BECAUSE, OTHERWISE, IF YOU DON'T
18 UNDERSTAND THE PROBLEM, YOU CAN'T FIGURE OUT HOW TO FIX IT.

19 Q. AND IF YOU DON'T BELIEVE CIGARETTES ARE UNSAFE,
20 THERE'S NO PARTICULAR POINT IN TRYING TO MAKE THEM SAFER, IS
21 THERE?

22 A. THAT'S CORRECT.

23 Q. NOW, WHEN YOU STARTED IN YOUR POSITION AT
24 PHILIP MORRIS, THERE WERE 40 OR 50 PEOPLE IN THE APPLIED
25 RESEARCH DIRECTORATE?

26 A. THAT'S CORRECT.

27 Q. AND THAT GREW OVER YOUR TIME IN THE COMPANY TO
28 ABOUT 200 PEOPLE IN YOUR DIRECTORATE ALONE, RIGHT?

1 A. WELL, THAT NUMBER KEEPS COMING UP. BUT I THINK
2 IT' S CLOSER TO 250. BUT SOMETHING IN THAT RANGE.

3 Q. 250. OKAY.

4 AND THEY WERE WORKING WITH PHILIP MORRIS AS
5 WELL TO HELP COME UP WITH SAFER PRODUCTS?

6 A. MOST OF THEM, NOT ALL OF THEM, BUT MOST OF THEM
7 WERE, YES.

8 Q. WHEN YOU LEFT PHILIP MORRIS IN 1984, THERE WERE
9 ABOUT 600 PEOPLE IN THE RESEARCH AND DEVELOPMENT PART?

10 A. THAT' S CORRECT.

11 Q. AND THE PEOPLE WORKING FOR YOU SPENT
12 100 PERCENT OF THEIR TIME TRYING TO DEVELOP SAFER CIGARETTES,
13 CORRECT?

14 A. THAT' S CORRECT.

15 Q. AND ALL OF THOSE PEOPLE WERE PAID BY
16 PHILIP MORRIS TO DO RESEARCH THAT WOULD PROVIDE PHILIP MORRIS
17 WITH TECHNOLOGY TO DEVELOP SAFER CIGARETTES; IS THAT RIGHT?

18 A. THAT' S CORRECT.

19 Q. AND THERE WERE EVEN MORE PEOPLE IN OTHER
20 DIRECTORATES OF THE RESEARCH AND DEVELOPMENT DEPARTMENT WHO
21 WERE ALSO WORKING HARD TO DEVELOP SAFER CIGARETTES; IS THAT
22 RIGHT?

23 A. THAT' S RIGHT.

24 Q. YOU' RE PROUD OF THE WORK THAT YOU DID AT
25 PHILIP MORRIS, AREN' T YOU?

26 A. THAT' S CORRECT.

27 Q. YOU PUBLISHED SOME OF IT, RIGHT?

28 A. YES.

1 Q. PROUD TO TALK TO OTHER PEOPLE ABOUT IT?

2 A. YES.

3 Q. AND YOU' RE PROUD OF THE WORK DONE BY THE
4 SCIENTISTS WHO WORKED FOR NEW APPLIED RESEARCH TO TRY TO
5 DEVELOP SAFER CIGARETTES?

6 A. YES.

7 Q. IT WAS AN OBJECTIVE YOU BELIEVED IN, RIGHT?

8 A. THAT' S CORRECT.

9 Q. YOU BELIEVED IT WAS A WORTHWHILE OBJECTIVE FOR
10 PHILIP MORRIS TO BE ENGAGED IN, RIGHT?

11 A. VERY MUCH SO.

12 Q. YOU BELIEVED THAT THE WORK YOU WERE DOING AT
13 PHILIP MORRIS WAS IN THE BEST INTERESTS OF PHILIP MORRIS
14 CUSTOMERS, RIGHT?

15 A. YES.

16 Q. AND YOU BELIEVED THE WORK THAT YOU WERE DOING
17 SERVED THE INTERESTS OF THE MEDICAL COMMUNITY AND THE
18 SCIENTIFIC COMMUNITY, RIGHT?

19 A. THE WORK ON SAFER CIGARETTES, YES.

20 Q. YOU BELIEVED THAT THE WORK -- THE WORK THAT YOU
21 WERE DOING TO TRY TO REDUCE THE HAZARDS OF SMOKING SERVED THE
22 PUBLIC HEALTH?

23 A. THAT' S CORRECT.

24 Q. AND AT THE TIME YOU LEFT THE COMPANY IN JULY OF
25 1984, THE COMPANY WAS STILL WORKING TO DEVELOP SAFER
26 CIGARETTES, WASN' T IT?

27 A. THAT' S CORRECT.

28 Q. AND YOU HAVE BECOME AWARE THROUGH SOME OF THE

1 DOCUMENTS THAT YOU'VE LOOKED AT THAT THERE HAS BEEN
2 CONTINUING EFFORTS TO DEVELOP LESS HAZARDOUS CIGARETTES RIGHT
3 UP UNTIL TODAY AT PHILIP MORRIS, CORRECT?

4 A. YES. THE RESEARCH THAT PROVIDES TECHNOLOGY TO
5 MAKE CIGARETTES SAFER, YES.

6 Q. PHILIP MORRIS HAS DONE A LOT OF GOOD RESEARCH
7 TOWARDS DEVELOPING A SAFER CIGARETTE, RIGHT?

8 A. RESEARCH, YES.

9 Q. NOW, ONE OF THE THINGS THAT PHILIP MORRIS
10 WORKED TO DO WAS TO BRING DOWN TAR AND NICOTINE LEVELS,
11 RIGHT?

12 A. YES.

13 Q. THAT'S SOMETHING THAT THE PUBLIC HEALTH
14 COMMUNITY WAS URGING YOU AND YOUR FELLOW SCIENTISTS AT
15 PHILIP MORRIS TO DO, RIGHT?

16 A. TAR LEVELS. I'M NOT SO SURE THEY WERE URGING
17 US TO BRING DOWN NICOTINE LEVELS.

18 Q. THROUGH THE 1950'S AND THE 1960'S AND THE
19 1970'S, THE GOVERNMENT, THE PUBLIC HEALTH COMMUNITY AND
20 SCIENTISTS URGED THE TOBACCO COMPANIES TO REDUCE TAR LEVELS,
21 RIGHT?

22 A. THAT'S CORRECT.

23 Q. AND IT WAS ALSO THE POSITION OF THE GOVERNMENT
24 AND THE PUBLIC HEALTH COMMUNITY THROUGH THE '50'S AND THE
25 '60'S AND THE '70'S THAT PEOPLE SHOULD QUIT SMOKING, BUT IF
26 THEY WEREN'T GOING TO QUIT, THEY SHOULD SWITCH TO A LOW-TAR
27 CIGARETTE; IS THAT RIGHT?

28 A. THAT, I THINK, SHOWED UP IN ONE OR TWO OF THE

1 SURGEON GENERAL'S REPORTS. THAT DIDN'T REALLY ADVISE THEM TO
2 KEEP SMOKING, BUT AS AN ALTERNATIVE TO THE ADVICE WAS TO NOT
3 SMOKE, REALLY; AND THEN IT WAS SAYING, HOWEVER, THERE MIGHT
4 BE SOME BENEFIT TO GOING TO LOWER TAR CIGARETTES.

5 Q. AND I'M NOT SUGGESTING THAT THE SURGEON GENERAL
6 WAS ADVISING PEOPLE TO CONTINUE SMOKING. BUT THE SURGEON
7 GENERAL DID SAY THAT FOR THOSE PEOPLE WHO AREN'T QUITTING OR
8 AREN'T PREPARED TO QUIT, THEY'RE ADVISED TO SWITCH TO A LOWER
9 TAR CIGARETTE, RIGHT?

10 A. YEAH. UP TO, I THINK, ABOUT '79 OR SO, I
11 THINK.

12 Q. RIGHT. I'M GOING TO TALK TO YOU ABOUT 1979.
13 AND YOU THOUGHT, WHEN YOU WERE AT
14 PHILIP MORRIS, THAT LOWERING TAR LEVELS WAS A GOOD IDEA?

15 A. YES, I DID.

16 Q. BY THE TIME YOU GOT TO PHILIP MORRIS IN 1976,
17 YOU WERE IMPRESSED BY ALL THE RESEARCH AND DEVELOPMENT THAT
18 HAD BEEN DONE TO REDUCE TAR LEVELS, RIGHT?

19 A. YES, I WAS.

20 Q. NOW, IT'S YOUR OPINION TODAY THAT LOW-TAR
21 CIGARETTES DON'T REDUCE THE RISK OF DISEASE; IS THAT CORRECT?

22 A. THAT'S -- YES, TODAY, THAT'S CORRECT.

23 Q. OKAY. BUT AT THE TIME YOU WERE AT
24 PHILIP MORRIS, YOU BELIEVED THAT DECREASING TAR LEVELS WAS A
25 GOOD THING TO DO?

26 A. BELIEVED IT WAS A GOOD THING TO DO, BUT THAT IT
27 NEEDED TO BE TESTED TO FIND OUT WHETHER OR NOT IT ACTUALLY
28 WAS DECREASING THE RISK.

1 Q. YOU THOUGHT IT WAS A GOOD THING THAT
2 PHILIP MORRIS SPENT LOTS OF TIME AND LOTS OF MONEY TO REDUCE
3 TAR LEVELS, RIGHT?

4 A. FELT IT WAS ESSENTIAL TO REMOVE THE CARCINOGENS
5 FROM THE PRODUCT, YES.

6 Q. RIGHT. AND YOU FELT THAT WAS A GOOD THING
7 BECAUSE CONCERNS FOR HEALTH WERE ASSOCIATED WITH COMPOUNDS
8 THAT ARE FOUND IN CIGARETTE TARS, RIGHT?

9 A. THAT'S CORRECT.

10 Q. SO LESS IS BETTER?

11 A. LESS IS BETTER, PROVIDING IT'S LESS ENOUGH.
12 YOU HAVE TO MAKE SURE -- SOMETIMES, IF YOU CUT SOMETHING IN
13 HALF, THAT'S NOT GOOD ENOUGH. SO YOU HAVE TO CUT -- YOU HAVE
14 TO KNOW WHAT THE DOSE IS THAT YOU CAN HAVE TO NOT HAVE THE
15 RESPONSE -- HOW LOW DOES IT HAVE TO BE BEFORE IT'S NO LONGER
16 EFFECTIVE AT CAUSING PROBLEMS.

17 Q. AND IF YOU COMPARE THE MODERN CIGARETTE WITH
18 THE CIGARETTE OF THE 1950'S, THERE'S BEEN ABOUT 75 PERCENT
19 REDUCTION IN TAR AS FAR AS SALES-WEIGHTED AVERAGE?

20 A. WELL, DEPENDS ON WHEN YOU TAKE YOUR START AND
21 STOP DATES. I'VE SEEN NUMBERS BETWEEN 60 AND 75, BUT
22 SOMETHING BETWEEN THAT RANGE.

23 Q. YOU'RE PROUD OF PHILIP MORRIS' EFFORTS TO
24 REDUCE TAR LEVELS?

25 A. AT THE TIME. I DON'T KNOW ABOUT TODAY, BUT AT
26 THE TIME I WORKED, I WAS.

27 Q. WHILE YOU WERE AT PHILIP MORRIS, YES?

28 A. WELL, I'M SAYING -- I'M ANSWERING YOUR QUESTION

1 SPECIFICALLY AS I CAN. IN OTHER WORDS, AT THE TIME I WAS
2 THERE, I WAS OF THE OPINION THAT IF THE TEST RESULTS SHOWED
3 IT TO BE BENEFICIAL, THAT WOULD HAVE BEEN A GREAT THING TO
4 DO. TODAY, WE KNOW THAT IT DIDN'T MAKE ANY DIFFERENCE AND,
5 THEREFORE, I'M NOT SURE TODAY THAT IT WAS SUCH A GREAT THING
6 TO DO.

7 Q. WHILE YOU WERE AT PHILIP MORRIS, YOU THOUGHT IT
8 WAS A GOOD THING TO DO?

9 A. YES.

10 Q. YOU WERE PROUD OF THE WORK THAT HAD BEEN DONE
11 TO LOWER TAR LEVELS?

12 A. THAT'S CORRECT.

13 Q. LET'S TALK ABOUT WHAT PHILIP MORRIS DID TO
14 REDUCE TAR LEVELS.

15 A LOT OF DIFFERENT WAYS YOU CAN AFFECT TAR AND
16 NICOTINE LEVELS. YOU TALKED ABOUT SOME OF THEM THIS MORNING;
17 IS THAT RIGHT?

18 A. THAT'S CORRECT.

19 Q. IS IT FAIR TO SAY THAT WHILE YOU WERE WORKING
20 AT PHILIP MORRIS, THERE WERE SEVEN PRIMARY METHODS USED TO
21 REDUCE TAR LEVELS IN CIGARETTES?

22 A. OH, I CAN'T DISAGREE WITH THAT. BECAUSE I KNOW
23 IT'S SEVEN THAT YOU HAVE IN MIND, BUT THERE ARE -- I PROBABLY
24 DO, BECAUSE I THINK I'VE HEARD THIS ALL BEFORE. BUT I THINK
25 THERE'S MORE THAN SEVEN. I'VE NAMED ABOUT 57 THAT I CAN
26 THINK OF THAT MIGHT WORK. BUT I WON'T DISAGREE WITH SEVEN.

27 Q. LET'S TALK ABOUT FILTERS.

28 PHILIP MORRIS WORKED WITH FILTERS TO HELP MAKE

1 A SAFER CIGARETTE?

2 A. YES.

3 Q. FILTERS HAD ALREADY BEEN ON CIGARETTES A LONG
4 TIME BY THE TIME YOU GOT TO PHILIP MORRIS, RIGHT?

5 A. YES.

6 Q. FILTER WAS A MAJOR ADVANCE IN THE DESIGN OF
7 CIGARETTES, WASN' T IT?

8 A. WELL, NOT INITIALLY, BUT IT WAS TURNED INTO A
9 MAJOR ADVANCE BY MAKING THE FILTERS EFFICIENT. INITIALLY,
10 FILTERS WEREN' T REALLY THAT EFFICIENT, BUT THEY MADE THEM
11 MORE EFFICIENT AS TIME --

12 Q. IN TIME?

13 A. YES.

14 Q. THEY GOT BETTER AT IT?

15 A. YES.

16 Q. BACK IN THE 50' S, THEY WERE UNFILTERED?

17 A. YES.

18 Q. TODAY, THEY' RE MOSTLY FILTERED?

19 A. CORRECT.

20 Q. YOU WORKED ON FILTERS WHILE YOU WERE AT
21 PHILIP MORRIS, DIDN' T YOU?

22 A. YES.

23 Q. A LOT OF HARD-WORKING, WELL-QUALIFIED PEOPLE
24 ALSO WORKED ON FILTERS WHILE YOU WERE AT PHILIP MORRIS,
25 RIGHT?

26 A. THAT' S TRUE.

27 Q. YOU HAD A DIVISION WITHIN YOUR DIRECTORATE THAT
28 SPECIFICALLY FOCUSED ON WORKING WITH FILTERS, RIGHT?

1 A. CORRECT.

2 Q. PHILIP MORRIS' RESEARCH DIVISION FOCUSED ON
3 FILTERS?

4 A. YES.

5 Q. SCIENTISTS IN THAT DIVISION SPENT ABOUT
6 80 PERCENT, 90 PERCENT OF THEIR TIME WORKING ON FILTERS?

7 A. WELL, IT CHANGED THROUGH THE YEARS, BUT I WOULD
8 SAY, ON AVERAGE, IT WAS -- SOME YEARS, IT WAS, LIKE,
9 50 PERCENT, BUT IT WAS AS HIGH AS 80, 90 PERCENT IN SOME
10 YEARS.

11 Q. THEY WERE GOOD SCIENTISTS?

12 A. YES.

13 Q. IN YOUR OPINION, TRYING TO DO THE RIGHT THING?

14 A. YES.

15 Q. AND YOU AGREE THAT FILTERS REDUCED THE AMOUNT
16 OF TAR IN CIGARETTES?

17 A. YES.

18 Q. LET'S TALK ABOUT PAPER POROSITY.
19 WHAT'S PAPER POROSITY?

20 A. PAPER POROSITY IS THE PAPER THAT WRAPS THE
21 TOBACCO IN THE ROD HAVING LITTLE TINY HOLES, MICROSCOPIC
22 HOLES IN IT DUE TO THE WEAVE OF THE PAPER SO THAT GASES CAN
23 ESCAPE INSIDE THE ROD.

24 SO, FOR EXAMPLE, CARBON DIOXIDE CAN GO OUT SO
25 THAT LESS GOES TO THE SMOKER.

26 Q. AND THAT HELPS REDUCE TAR LEVELS AND MAKES
27 SMOKING SAFER, RIGHT?

28 A. WELL, IT HELPS REDUCE TAR LEVELS. DOESN'T LOOK

1 LIKE IT DOES THAT IN TERMS OF MAKING IT SAFER. BUT AT THE
2 TIME, WE THOUGHT THAT IT COULD.

3 Q. ANOTHER SIGNIFICANT ADVANCE IN CIGARETTE DESIGN
4 TECHNOLOGY?

5 A. YES.

6 Q. REDUCES TAR, REDUCES CARBON DIOXIDE?

7 A. YES.

8 Q. ONE OF THE THINGS THAT YOU DID TO BRING TAR
9 LEVELS DOWN IN CIGARETTES AT PHILIP MORRIS?

10 A. WELL, PHILIP MORRIS DID.

11 Q. RECONSTITUTED TOBACCO, YOU TALKED A LITTLE BIT
12 ABOUT THIS MORNING.

13 NOW, RECONSTITUTED TOBACCO -- AND CORRECT ME IF
14 I GET IT WRONG -- INVOLVES TAKING TOBACCO STEMS AND OTHER
15 SCRAPS OF TOBACCO AND MAKING THEM INTO SOMETHING THAT'S
16 USABLE IN A CIGARETTE, RIGHT?

17 A. MAKE THEM INTO SOMETHING THAT LOOKS A LOT LIKE
18 PAPER MADE OUT OF CIGARETTE PARTS, YES, OR TOBACCO PARTS.

19 Q. AND YOU WORKED ON RECONSTITUTED TOBACCO WHILE
20 YOU WERE AT PHILIP MORRIS?

21 A. YES, I DID.

22 Q. RECONSTITUTED TOBACCO HAS LESS TAR AND LESS
23 NICOTINE THAN REGULAR TOBACCO, DOESN'T IT?

24 A. THAT'S CORRECT.

25 Q. IT WASN'T A SECRET THAT PHILIP MORRIS WAS OUT
26 THERE DEVELOPING METHODS OF MAKING RECONSTITUTED TOBACCO, WAS
27 IT?

28 A. NO.

1 Q. THE SURGEON GENERAL HAS RECOGNIZED THAT THE USE
2 OF RECONSTITUTED TOBACCO HAS CONTRIBUTED TO THE DECREASE OF
3 TAR AND NICOTINE LEVELS, RIGHT?

4 A. THAT'S CORRECT.

5 Q. FILTER VENTILATION.

6 PHILIP MORRIS ALSO DID WORK ON VENTILATION
7 WHILE YOU WERE AT THE COMPANY?

8 A. YES.

9 Q. IT'S ACTUALLY ONE OF THE AREAS WHERE YOU WORKED
10 VERY HARD, ISN'T IT?

11 A. YES.

12 Q. VENTILATION HOLES ARE THE HOLES THAT GO AROUND
13 THE FILTER; YOU TALKED ABOUT THEM THIS MORNING?

14 A. THAT'S CORRECT.

15 Q. HELPS MAKE A LOWER TAR, LOWER NICOTINE
16 CIGARETTE?

17 A. YES.

18 Q. REDUCES TAR RAPIDLY, DOESN'T IT?

19 A. EXCUSE ME?

20 Q. REDUCES TAR RAPIDLY?

21 A. I DON'T UNDERSTAND WHAT YOU MEAN BY THAT. BUT
22 IF YOU MEAN THAT IT ACTS QUICKLY -- IS THAT WHAT YOU MEAN?

23 Q. ONE OF THE MOST EFFECTIVE WAYS TO REDUCE TARS?

24 A. OF THE 57 WAYS, IT'S PROBABLY THE MOST
25 EFFECTIVE WAY, YES.

26 Q. IT DECREASES ALL OF THE GAS COMPOUNDS IN THE
27 SMOKE, RIGHT?

28 A. IT DECREASES EVERYTHING.

1 Q. IT'S A GOOD THING?

2 A. YES.

3 Q. AND YOU ACTUALLY HELPED MAKE -- HELPED DEVELOP
4 THE MOST MODERN WAY OF MAKING THOSE VENTILATION HOLES, RIGHT?

5 A. THAT'S CORRECT.

6 Q. YOU TALKED THIS MORNING ABOUT HOW PHILIP MORRIS
7 HAD THE ABILITY TO DO IT WITH LASERS, CORRECT?

8 A. THAT IS CORRECT.

9 Q. IT'S ONE OF THE THINGS YOU WORKED ON, ISN'T IT?

10 A. YES.

11 Q. NOW, YOU TALKED ABOUT THIS MORNING THE
12 POSSIBILITY OF PEOPLE BLOCKING THE VENTILATION HOLES WITH
13 THEIR FINGERS OR THEIR LIPS.

14 DO YOU REMEMBER MENTIONING THAT THIS MORNING?

15 A. YES.

16 Q. YOU WERE ACTUALLY INVOLVED IN DECIDING WHERE
17 THE VENTILATION HOLES WOULD GO, WEREN'T YOU?

18 A. YES.

19 Q. YOU WERE TRYING TO PUT THOSE HOLES IN THE BEST
20 PLACE POSSIBLE, WEREN'T YOU?

21 A. AWAY FROM EITHER THE FINGERS OR THE LIPS, YES.

22 Q. YOU WEREN'T INVOLVED IN THE RESEARCH BECAUSE --
23 LET ME START OVER.

24 YOU WERE INVOLVED IN THE RESEARCH BECAUSE YOU
25 DIDN'T WANT PEOPLE TO COVER UP THE HOLES, RIGHT?

26 A. THAT'S CORRECT.

27 Q. YOU WERE SATISFIED THAT YOU HAD THE HOLES IN
28 THE RIGHT PLACE?

1 A. WELL, THE BEST WE COULD. WE STILL FOUND SOME
2 INCLUSION OF THE HOLES. AS I'VE TESTIFIED BEFORE, IT WOULD
3 HAVE BEEN NICE TO TELL PEOPLE, MAKE SURE THEY'RE THERE AND
4 WATCH OUT WHERE YOU PUT YOUR FINGERS, BUT WE TRIED OUR BEST.

5 Q. YOU THOUGHT YOU HAD THEM IN THE RIGHT PLACE,
6 AND YOU DID THE BEST THAT YOU COULD, CORRECT?

7 A. YES.

8 Q. YOU'RE PROUD OF THE WORK THAT YOU DID ON
9 VENTILATION HOLES, RIGHT?

10 A. YES.

11 Q. YOU WEREN'T PART OF ANY EFFORT BY PHILIP MORRIS
12 TO PUT THE HOLES IN A PLACE WHERE THEY WOULD BE COVERED UP BY
13 SMOKERS, WERE YOU?

14 A. I WAS NOT.

15 Q. YOU DIDN'T TRY TO ENGAGE IN SOME KIND OF
16 DECEPTION OF THE SMOKING PUBLIC -- IN YOUR WORK, YOU WEREN'T
17 TRYING TO ENGAGE IN SOME SORT OF DECEPTION OF THE PUBLIC WHEN
18 YOU WERE WORKING ON VENTILATION HOLES, WERE YOU?

19 A. ME, PERSONALLY?

20 I'M SORRY. I DON'T UNDERSTAND. WAS I
21 PERSONALLY INVOLVED IN SUCH A DECEPTION?

22 Q. (NODS HEAD UP AND DOWN.)

23 A. NO. I PERSONALLY WAS NOT.

24 Q. OKAY.

25 EXPANDED TOBACCO. WHAT'S THAT?

26 A. AS I TESTIFIED EARLIER, EXPANDED TOBACCO IS
27 TAKING TOBACCO, WHICH, WHEN IT DRIED UP, IT SHRIVELED. WE
28 COULD INCREASE ITS VOLUME BACK TO THE ORIGINAL SHAPE.

1 Q. UH-HUH.

2 A. BUT AT PHILIP MORRIS, WE HAD SEVERAL WAYS OF
3 DOING IT. THE MOST RECENT ONE, WHILE I WAS THERE, USED
4 CARBON DIOXIDE. YOU IMPREGNATE THE TOBACCO WITH CARBON
5 DIOXIDE. YOU HEAT IT. THE CARBON DIOXIDE SORT OF EXPANDS
6 THE TOBACCO BACK TO ITS ORIGINAL SHAPE.

7 Q. AND YOU'RE A QUESTION AHEAD OF ME.
8 THIS MORNING, YOU HAD SPRAYED CHEMICALS ON IT.
9 THIS AFTERNOON, YOU SAID IT'S CARBON DIOXIDE?

10 A. ORIGINALLY, IT WAS AMMONIUM CARBAMATE, SO IT
11 CHANGED.

12 Q. WHAT'S CARBON DIOXIDE?

13 A. IT'S A GAS FORMED AS A PRODUCT OF COMBUSTION.

14 Q. THE BUBBLES IN SODA POP, ISN'T IT?

15 A. YES.

16 Q. YOU TALKED ALSO THIS MORNING ABOUT THE
17 TEMPERATURE AT WHICH CIGARETTES BURN, RIGHT?

18 A. CORRECT.

19 Q. AND IT'S THE INTENSE HEAT OF THE BURNING OF THE
20 TOBACCO THAT HELPS FORM THE TARS, RIGHT?

21 A. THAT IS CORRECT.

22 Q. AND IT'S THE TARS THAT CONTAIN THE BAD
23 SUBSTANCES, RIGHT?

24 A. CORRECT.

25 Q. NOW, YOU'VE SAID IN THE PAST THAT THE
26 COMBUSTION TEMPERATURE OF THE CIGARETTES SHOULD BE ADJUSTED,
27 IF POSSIBLE?

28 A. YES.

1 Q. BECAUSE IF YOU REDUCE THE TEMPERATURE AT WHICH
2 THE TOBACCO BURNS, YOU MAY CREATE LESS TAR AND LESS -- FEWER
3 BAD CHEMICALS GETTING TO THE SMOKER, RIGHT?

4 A. YES. ESPECIALLY OF THE CLASS OF CHEMICALS
5 CALLED POLYNUCLEAR AROMATIC HYDROCARBONS WHICH ARE KNOWN TO
6 CAUSE CANCER.

7 Q. YOU ARE AWARE THAT PHILIP MORRIS HAS ATTEMPTED
8 TO MODIFY THE WAY IN WHICH TOBACCO IS HEATED SO THERE IS THAT
9 REDUCTION, RIGHT?

10 A. YES.

11 Q. WHILE YOU WERE AT PHILIP MORRIS, DID YOU DO
12 SOME WORK WITH WHAT'S CALLED NONCONVENTIONAL CIGARETTES?

13 A. YES.

14 Q. THESE WERE PROJECTS IN WHICH PHILIP MORRIS WAS
15 TRYING TO RETHINK CIGARETTES TO COME UP WITH NEW WAYS OF
16 PRODUCING SMOKE THAT MIGHT BE LESS HARMFUL, RIGHT?

17 A. THAT'S CORRECT.

18 Q. AND ONE OF THOSE IDEAS, AS WE JUST TALKED
19 ABOUT, WAS TO GENERATE SMOKE BY HEATING TOBACCO AT LOWER
20 TEMPERATURES, RIGHT?

21 A. BY HEATING IT RATHER THAN BURNING IT, RIGHT.

22 Q. RIGHT. RIGHT. YOU DID SCIENTIFIC WORK ON THIS
23 IDEA WHILE YOU WERE AT PHILIP MORRIS?

24 A. I DID.

25 Q. NOW, THE IDEA OF HEATING THE CIGARETTE, AS YOU
26 JUST SAID, IS THAT YOU WOULDN'T ACTUALLY LIGHT A MATCH TO IT,
27 BUT THERE WOULD BE SOME KIND OF HEATER AROUND THE CIGARETTE?

28 A. YES.

1 Q. AND IT USED THE HEATER TO GENERATE SMOKE AT A
2 LOWER TEMPERATURE, RIGHT?

3 A. WELL, WE DIDN'T CALL IT SMOKE, BUT WE USED THE
4 HEATER TO DISTILL OFF THE NICOTINE AND SOME OF THE OTHER
5 FLAVOR CHEMICALS, AND THE OBJECTIVE WAS TO REDUCE THE AMOUNT
6 OF SMOKE, ACTUALLY.

7 Q. AND THE IDEA, OF COURSE, WAS TO GENERATE LESS
8 OF THE COMPOUNDS IN SMOKE THAT MIGHT BE HARMFUL?

9 A. THAT'S CORRECT.

10 Q. OKAY. FOR EXAMPLE, THERE WAS A PROJECT CALLED
11 DELTA, YES?

12 A. YES.

13 Q. DELTA WAS A NONCONVENTIONAL CIGARETTE PROJECT
14 THAT INVOLVED TRYING TO HEAT THE TOBACCO INSTEAD OF BURNING
15 IT, RIGHT?

16 A. YES.

17 Q. AND YOU THOUGHT THAT WAS A GOOD PROJECT TO BE
18 WORKING ON, YES?

19 A. YES.

20 Q. YOU THOUGHT IT WAS A STEP IN THE RIGHT
21 DIRECTION TOWARDS A SAFER CIGARETTE?

22 A. YES.

23 Q. AND THE PROJECT EVOLVED OVER TIME AND
24 EVENTUALLY BECAME KNOWN AS DELTA II; IS THAT RIGHT?

25 A. THEY HAD MORE ACRONYMS THAT I CAN REALLY
26 REMEMBER. TABLE -- THERE WAS A WHOLE BUNCH OF ACRONYMS.

27 Q. A LONG-TERM PROJECT?

28 A. IT TOOK -- THE WAY I SEE IT, IT TOOK 24 YEARS

1 BEFORE THE PRODUCT GOT TO MARKET.

2 Q. RAN INTO A LOT OF DIFFICULTIES; A LOT OF
3 TECHNOLOGICAL THINGS NEEDED TO BE CHANGED?

4 A. WELL, THAT'S NOT MY OPINION, BUT --

5 Q. DID YOU WORK ON EITHER OF THE DELTA PROJECTS?

6 A. THE PEOPLE WORKING FOR ME WORKED ON IT.

7 Q. PHILIP MORRIS WAS WORKING ON THE PROJECT UP
8 UNTIL THE TIME YOU LEFT, RIGHT?

9 A. THAT'S CORRECT. AND BEYOND.

10 Q. AND THEY CONTINUED TO WORK ON IT FOR MANY YEARS
11 AFTER YOU LEFT, RIGHT?

12 A. YES.

13 Q. YOU DON'T HAVE ANY FIRST-HAND KNOWLEDGE ABOUT
14 WHAT HAPPENED TO THE PROGRAM AFTER YOU WERE FIRED, RIGHT?

15 A. NO. ONLY FROM READING THE DOCUMENTS.

16 Q. OKAY. NOW, AT THE TIME YOU WERE AT
17 PHILIP MORRIS --

18 A. WAIT A MINUTE. I TAKE THAT BACK.

19 I HAVE SEEN AND USED IT IN ACCORD, SO THAT'S
20 FIRST-HAND KNOWLEDGE.

21 Q. WHAT'S ACCORD?

22 A. THAT IS THE PRODUCT THAT PHILIP MORRIS HAS
23 TESTED, OR IT'S IN THE TEST MARKET. I DON'T KNOW IF IT'S
24 BEING SOLD NATIONALLY OR WHATEVER YET, BUT I'VE SEEN A MODEL
25 OF THAT IN TERMS OF HOW IT WORKS.

26 IT'S A DEVICE THAT YOU PUT A -- SOMETHING THAT
27 LOOKS LIKE A CIGARETTE INTO IT. IT'S GOT A LITTLE HEATER IN
28 IT, A LITTLE COMPUTER, AND IT WARMS UP THE TOBACCO AND LETS

1 OFF SOME TAR AND SOME NICOTINE.

2 Q. BUT MUCH LESS TAR THAN CONVENTIONAL CIGARETTES,
3 RIGHT?

4 A. NOT LESS THAN THE CAMBRIDGE.

5 Q. AND IT'S A DEVICE TO TRY TO GET LESS TAR TO THE
6 SMOKER, RIGHT?

7 A. YES.

8 Q. AND THAT'S IN THE TEST MARKETS TODAY, RIGHT?

9 A. YES.

10 Q. HAS A LITTLE COMPUTER CHIP IN IT?

11 A. MY UNDERSTANDING, YES.

12 Q. NOW, PHILIP MORRIS, AT THE TIME YOU WERE THERE,
13 1976 TO 1984, WAS ALSO WORKING ON A CIGARETTE THAT WOULD HAVE
14 ESSENTIALLY NO NICOTINE IN IT, RIGHT?

15 A. YES.

16 Q. AND THEY WERE WORKING ON A TECHNOLOGY THAT
17 REMOVES JUST ABOUT ALL OF THE NICOTINE FROM THE CIGARETTE,
18 RIGHT, FROM THE TOBACCO, RIGHT?

19 A. THAT'S CORRECT.

20 Q. THE PROJECT ULTIMATELY BECAME KNOWN AS THE NEXT
21 CIGARETTE?

22 A. THAT'S CORRECT.

23 Q. AFTER YOU LEFT, PHILIP MORRIS WENT AHEAD AND
24 DEVELOPED THAT NEXT CIGARETTE, DIDN'T IT?

25 A. THEY DID.

26 Q. DID YOU EVER SMOKE A NEXT CIGARETTE?

27 A. NO.

28 Q. PHILIP MORRIS PUT THE NEXT CIGARETTE OUT ON THE

1 MARKET, DIDN'T IT?

2 A. TEST MARKET, I BELIEVE -- I'M NOT SURE IF IT
3 WAS MARKETED NATIONALLY.

4 Q. IT WAS CRITICIZED BY THE SMOKING COMMUNITY, WAS
5 IT NOT?

6 A. I'M NOT SURE ABOUT THAT.

7 Q. CRITICIZED BY THE GOVERNMENT?

8 A. THE NEXT CIGARETTE WAS CRITICIZED BY THE
9 GOVERNMENT?

10 Q. UH-HUH.

11 A. I HAVE NOT SEEN ANY SPECIFIC REFERENCES TO
12 NEXT. I'VE SEEN A LOT OF THE NEW PRODUCTS, LIKE PREMIERE AND
13 ECLIPSE. I'VE SEEN A LOT OF CRITICISM BEING MADE OF THE
14 INDUSTRY OF PRETENDING SOMETHING WAS SAFER, THAT REALLY
15 WASN'T BECAUSE THEY NEVER TESTED IT, SO I DON'T KNOW IF
16 THAT'S WHAT YOU'RE REFERRING TO.

17 AS FAR AS I KNOW, THE NEXT CIGARETTE WAS NEVER
18 TESTED FOR ITS CARCINOGENIC POTENTIAL, SO IF IT WASN'T
19 TESTED, I CAN UNDERSTAND THE GOVERNMENT CRITICIZES IT WITH OR
20 WITHOUT NICOTINE.

21 Q. THE IDEA OF NEXT WAS A NO-TAR CIGARETTE AND IT
22 WAS A NO-NICOTINE CIGARETTE, CORRECT?

23 A. THAT'S CORRECT.

24 Q. IS IT FAIR TO SAY THAT PRETTY MUCH EVERY MAJOR
25 ADVANCE IN CIGARETTE DESIGN HAS COME FROM PHILIP MORRIS AND
26 THE OTHER AMERICAN TOBACCO COMPANIES?

27 A. I'M NOT SURE I UNDERSTAND THE QUESTION. AS
28 OPPOSED TO?

1 Q. OTHER COMPANIES AROUND THE WORLD.

2 A. WELL, I THINK JAPAN TOBACCO AND SALT MONOPOLY,
3 AND NOW JAPAN TOBACCO, HAS PROBABLY THE LARGEST SHARE OF
4 PATENTS IN CIGARETTE DESIGN OF ANYBODY.

5 SO I THINK -- I DIDN'T DO A COUNT, BUT THAT'S
6 MY RECOLLECTION, THAT THE JAPANESE TOBACCO MANUFACTURER,
7 WHICH IS A STATE MONOPOLY, ACTUALLY, HAS MORE PATENTED
8 TECHNOLOGY IN CIGARETTES THAN THE U. S. COMPANIES. THAT MAY
9 NOT BE TRUE TODAY, BUT THEY WERE -- THEY HAVE A VERY HIGH
10 PERCENTAGE.

11 Q. IS HIGH TECHNOLOGY THE SAME AS ADVANCE IN
12 CIGARETTE DESIGN?

13 A. THAT'S USUALLY WHERE YOU LOOK TO FIND OUT WHAT
14 THE ADVANCES ARE. IF THEY'RE NOT PUBLISHED, YOU REALLY CAN'T
15 MAKE A DETERMINATION OF WHETHER IT'S AN ADVANCE. SO EITHER
16 YOU PUBLISH A PAPER OR YOU FILE A PATENT. THAT'S THE BASIS
17 ON WHICH YOU CAN JUDGE WHETHER IT'S AN ADVANCE, AND THEY
18 PUBLISH A LOT, AND THEY HAVE A LOT OF PATENTS.

19 I'M NOT INDICATING THAT I'M DISPLEASED WITH
20 WHAT THE AMERICAN TOBACCO COMPANIES HAVE DONE. I'M JUST
21 POINTING OUT THAT THE JAPANESE HAVE PLAYED A SIGNIFICANT ROLE
22 IN TOBACCO TECHNOLOGY.

23 Q. IS IT FAIR TO SAY THAT ONE CAN GET A PATENT FOR
24 A POSSIBLE DEVICE, BUT THE DEVICE NEVER ACTUALLY MAKES IT OUT
25 ONTO THE MARKET; IS THAT FAIR?

26 A. THAT CAN HAPPEN, YES.

27 Q. BECAUSE THE PATENT -- THE TECHNOLOGY DOESN'T
28 PAN OUT, FOR EXAMPLE?

1 A. WELL, USUALLY, IT'S BECAUSE OF ECONOMIC
2 REASONS, COSTS TOO MUCH.

3 Q. POSSIBLE TO GET A PATENT ON A TECHNOLOGY, BUT
4 IT'S NEVER ACTUALLY ABLE TO BE PUT INTO A COMMERCIALIZED
5 PRODUCT, THAT HAPPENS?

6 A. USUALLY BECAUSE OF COST, YES.

7 Q. ONLY BECAUSE OF COST?

8 A. I SAID USUALLY. NO. SOMETIMES, IT DOESN'T
9 WORK IN LARGER SCALE. BUT THE MOST SERIOUS OBJECTIONS I'VE
10 HEARD FOR MUCH OF THE PATENTED TECHNOLOGY IS ON THE BASIS OF
11 COST.

12 Q. BUT SOMETIMES, PATENT TECHNOLOGY JUST DOESN'T
13 WORK OUT; IS THAT RIGHT?

14 A. THAT'S TRUE.

15 Q. SOMETIMES, IT IS DEVELOPED INTO A PRODUCT
16 THAT'S NOT ACCEPTABLE TO CONSUMERS, RIGHT?

17 A. THAT CAN HAPPEN.

18 Q. AND IF ONE MAKES A PRODUCT THAT NOBODY BUYS, IT
19 HASN'T REALLY BEEN A SUCCESSFUL ENDEAVOR, HAS IT?

20 A. THAT'S CORRECT.

21 Q. YOU LEFT PHILIP MORRIS, YOU TOLD PLAINTIFF'S
22 LAWYER THIS MORNING, IN JULY 1984, RIGHT?

23 A. THAT'S CORRECT.

24 Q. AND AT THE TIME, THE APPLIED RESEARCH
25 DEPARTMENT WAS WORKING TO DEVELOP A SAFER CIGARETTE?

26 A. YES.

27 Q. AT THE TIME, YOU BELIEVED THE COMPANY WAS
28 WORKING ON TECHNOLOGIES THAT WOULD HELP REDUCE THE NEGATIVE

1 EFFECTS OF SMOKING, RIGHT?

2 A. I DID.

3 Q. YOU DIDN'T LEAVE PHILIP MORRIS OUT OF SOME
4 SENSE OF DISGUST, DID YOU?

5 A. NO.

6 Q. YOU WERE FIRED?

7 A. THAT'S CORRECT.

8 Q. LET'S TALK ABOUT YOUR FIRING.

9 BACK IN DECEMBER 1983, IT HAD BEEN ANNOUNCED TO
10 THE PHILIP MORRIS RESEARCH AND DEVELOPMENT DEPARTMENT THAT
11 YOU WERE GOING TO BE PROMOTED, RIGHT?

12 A. THAT'S CORRECT.

13 Q. YOU WERE GOING TO BE PROMOTED AS VICE-PRESIDENT
14 OF RESEARCH AND DEVELOPMENT AT PHILIP MORRIS, RIGHT?

15 A. CORRECT.

16 Q. AND AT THE TIME, THE VICE-PRESIDENT OF RESEARCH
17 AND DEVELOPMENT WAS DR. HAUSERMANN?

18 A. MAX HAUSERMANN, THAT'S CORRECT.

19 Q. HE WAS YOUR BOSS?

20 A. THAT'S CORRECT.

21 Q. HE WAS FROM SWITZERLAND, RIGHT?

22 A. YES.

23 Q. AND HE WAS GOING TO GO BACK TO EUROPE?

24 A. IT WAS MY UNDERSTANDING, YES.

25 Q. OKAY. AND YOU WERE GOING TO TAKE HIS PLACE?

26 A. THAT'S CORRECT.

27 Q. YOU WERE HAPPY ABOUT THAT, RIGHT?

28 A. I THINK I'VE MENTIONED BEFORE, AND I'LL MENTION

1 NOW, THAT I HAD LOOKED FOR OTHER OPPORTUNITIES, OTHER
2 COMPANIES, BUT, YES, I THOUGHT IT WOULD BE AN OPPORTUNITY TO
3 PUSH FORWARD SOME OF THE PROGRAMS WE WERE WORKING ON. I
4 WOULD HAVE MORE CLOUT.

5 Q. WELL, DR. FARONE, YOU DIDN'T START LOOKING FOR
6 A NEW JOB AFTER YOU WERE TOLD YOU WEREN'T GOING TO BE
7 PROMOTED; ISN'T THAT RIGHT?

8 A. NO, I THINK I TESTIFIED. I ACTUALLY HAVE -- I
9 SENT OUT LETTERS TO GENERAL FOODS. I REMEMBER A RESUME THAT
10 I SENT OUT. THAT WAS BEFORE I WAS TOLD. I LOOKED AFTER,
11 TOO. BUT THERE WAS A LETTER THAT I SENT TO GENERAL FOODS IN,
12 ACTUALLY, 1983.

13 Q. OKAY. YOU, IF YOU HAD GOTTEN THE PROMOTION,
14 WERE GOING TO BE THE NUMBER ONE PERSON IN ALL OF
15 PHILIP MORRIS, USA FOR RESEARCH AND DEVELOPMENT, RIGHT?

16 A. I WASN'T CLEAR OF THE STRUCTURE AT THAT POINT.
17 I GUESS THAT IF YOU'RE SAYING PHILIP MORRIS, USA, AS OPPOSED
18 TO PHILIP MORRIS, INCORPORATED, WE HAD SENIOR VICE-PRESIDENTS
19 OF TECHNOLOGY.

20 Q. WITHIN PHILIP MORRIS USA, IS THAT CORRECT?

21 A. YES.

22 Q. MAJOR PROMOTION FOR YOU?

23 A. YES.

24 Q. MAJOR DEVELOPMENT IN YOUR CAREER?

25 A. YES.

26 Q. STEP UP IN PRESTIGE?

27 A. YES.

28 Q. YOU WOULD HAVE BEEN IN CHARGE OF ABOUT 600

1 PEOPLE?

2 A. THAT'S CORRECT.

3 Q. YOU WOULD HAVE BEEN IN CHARGE OF FIVE DIVISIONS
4 INSTEAD OF ONE, RIGHT?

5 A. FIVE DIRECTORATES.

6 Q. DIRECTORATES?

7 A. YES.

8 Q. AND YOU BELIEVED, OF COURSE, THAT IT WOULD HAVE
9 BEEN AN INCREASE IN PAY?

10 A. YES.

11 Q. YOU EXPECTED TO GET THE PROMOTION?

12 A. I WASN'T EXPECTED. I WAS TOLD THAT I WAS GOING
13 TO BE PROMOTED.

14 Q. YOU WOULD HAVE ACCEPTED IT, RIGHT?

15 A. YES.

16 Q. NOTHING THAT HAD HAPPENED AT PHILIP MORRIS
17 DURING YOUR EIGHT YEARS YOU FELT WAS SO HORRIBLE THAT IT
18 WOULD CAUSE YOU NOT TO ACCEPT THIS PROMOTION, RIGHT?

19 A. I FELT THAT I COULD OPERATE FROM WITHIN THE
20 SYSTEM AND TRY TO MAKE CHANGES, AND AS FAR AS I KNEW, THERE
21 WAS NO -- THERE WAS NOTHING THAT WAS -- LET'S PUT IT THIS
22 WAY -- I'M NOT AN ATTORNEY, BUT -- YOU KNOW, ILLEGAL THAT WAS
23 DONE THAT WOULD CAUSE ME TO SAY THAT IT COULDN'T BE
24 CORRECTED.

25 THERE WERE THINGS THAT I DIDN'T AGREE WITH,
26 THERE WERE THINGS I DIDN'T LIKE. THE BUSINESS OF TESTING,
27 WE'VE TALKED ABOUT AND SO ON. BUT I THOUGHT THOSE WERE ALL
28 THINGS THAT COULD BE OVERCOME WITH PERSISTENCE, AND IF YOU

1 HAD MORE CLOUT, YOU COULD CHANGE THE WAY THINGS WERE BEING
2 DONE.

3 Q. YOU WERE GOING TO TAKE THE PROMOTION?

4 A. YES.

5 Q. YOUR WIFE ALSO WORKED AT PHILIP MORRIS?

6 A. CORRECT.

7 Q. SHE WAS EXPECTING A PROMOTION, TOO?

8 A. THAT'S CORRECT.

9 Q. SOMETIME AFTER YOU WERE TOLD YOU WERE GOING TO
10 BE PROMOTED, YOUR WIFE PUT IN AN OFFER ON A BIG HOUSE IN
11 RICHMOND, RIGHT?

12 A. YES.

13 Q. YOU WERE GOING TO LIVE IN THE HOUSE TOGETHER?

14 A. I THINK YOU MAY HAVE MISSTATED, AFTER SHE WAS
15 TOLD I WAS GOING TO BE PROMOTED. BECAUSE I THINK I'VE
16 EXPLAINED BEFORE, SHE OWNS THE HOUSES, SO EVERYTHING HAS TO
17 BE DONE ON THE BASIS OF HER SALARY. IT'S PART OF OUR
18 PRENUPTIAL AGREEMENT.

19 Q. SHE NEVER PURCHASED THE HOUSE, DID SHE?

20 A. NO.

21 Q. NOW, A FEW MONTHS LATER, 1984, YOU LEARNED THAT
22 THERE HAD BEEN A CHANGE IN PLANS WITH RESPECT TO YOUR
23 PROMOTION, RIGHT?

24 A. A FEW MONTHS LATER. IN JUNE, JUNE OF 1984. I
25 LEARNED THAT THERE HAD BEEN A CHANGE IN PLANS, YES.

26 Q. YOU WEREN'T GOING TO BE PROMOTED?

27 A. THAT'S CORRECT.

28 Q. YOU HAD BEEN TOLD YOU WERE GOING TO BE

1 PROMOTED, YOUR COLLEAGUES HAD BEEN TOLD YOU WERE GOING TO BE
2 PROMOTED, AND NOW, YOU WEREN' T GOING TO BE PROMOTED, RIGHT?

3 A. THAT' S CORRECT.

4 Q. EMBARRASSED YOU?

5 A. NO. I ASKED AT THAT POINT WHETHER I SHOULD
6 FIND ANOTHER JOB.

7 Q. DIDN' T EMBARRASS YOU?

8 A. NOT -- IT WASN' T AN EMBARRASSMENT THING. I
9 MEAN, PEOPLE LEAVE POSITIONS ALL THE TIME. AND EVEN UP --
10 EVEN AFTER I WAS TERMINATED, WE HAD A BIG MEETING WHERE WE
11 TOLD EVERYBODY THAT I HAD RESIGNED AS OPPOSED TO BEING FIRED
12 SO WE WOULDN' T GET PEOPLE UPSET, OKAY. SO I DON' T CONSIDER
13 IT BEING A CAUSE OF EMBARRASSMENT.

14 Q. WERE YOU UPSET?

15 A. YES. BECAUSE MY WIFE HAD BEEN TOLD SHE WASN' T
16 GOING TO GET PROMOTED. SHE HAD FILED AN EEOC COMPLAINT
17 AGAINST THE COMPANY, AND NOW I' M TOLD THAT I' M NOT GOING TO
18 GET PROMOTED, AND I' M WONDERING, ARE THOSE TWO THINGS LINKED,
19 YOU KNOW. WAS I TOLD THAT I WASN' T GOING TO GET PROMOTED
20 BECAUSE SHE HAD FILED A COMPLAINT. SO THAT' S WHY I WAS
21 UPSET.

22 Q. WERE YOU ANGRY?

23 A. NOT -- I DON' T THINK ANGER WAS, YOU KNOW, A BIG
24 DEAL. FRUSTRATED, UPSET, BECAUSE, YOU KNOW, DO I FIND
25 ANOTHER JOB; AND SHE GOES AHEAD WITH HER COMPLAINT, WHAT DO I
26 DO?

27 SO I CONSULTED MY BOSS, AS I INDICATED BEFORE,
28 AND HE ADVISED ME TO FIND AN ATTORNEY TO HELP ANSWER THAT

1 QUESTION.

2 Q. DIDN'T MAKE YOU ANGRY YOU WOULDN'T GET THE
3 PRESTIGE AND THE PROMOTION AND THE PAY?

4 A. I DON'T KNOW I'M NOT A PERSON GIVEN TO ANGER
5 VERY EASILY. IN OTHER WORDS, I'VE HAD SEVERAL JOBS IN MY
6 CAREER. WHEN I LEFT, I COULD IMMEDIATELY START MY OWN
7 COMPANY. I HAVE A BIG, LONG SET OF SKILLS I HAD, PEOPLE THAT
8 I KNEW IT TOOK ME LESS THAN A WEEK TO FORM THE NEW COMPANY
9 AND GET A CLIENT. I WAS NOT CONCERNED ABOUT LOSING MY JOB.

10 Q. I DIDN'T ASK YOU THAT. I ASKED YOU IF IT MADE
11 YOU ANGRY THAT YOU WEREN'T GOING TO GET A PROMOTION.

12 A. NO.

13 Q. JUST ANOTHER DAY AT THE OFFICE?

14 A. THINGS CHANGE ALL THE TIME. THE THING THAT I
15 WAS ANGRY ABOUT WASN'T THE PROMOTION. IT WAS SIMPLY THE
16 MANNER WHICH THE TERMINATION WAS CARRIED OUT, BECAUSE I
17 DIDN'T THINK IT WAS NECESSARY TO DO IT THE WAY IT WAS DONE.
18 WE COULD HAVE JUST SAT DOWN AND TALKED ABOUT IT, AND I COULD
19 HAVE FOUND ANOTHER JOB.

20 IN OTHER WORDS, I BELIEVED THAT THIS ENTIRE
21 THING WAS DONE TO PUT PRESSURE ON MY WIFE TO DROP HER EEOC
22 COMPLAINT.

23 Q. BUT THE FACT THAT YOU WEREN'T GOING TO GET THIS
24 PROMOTION DIDN'T MAKE YOU ANGRY, DIDN'T MAKE YOU UNHAPPY?

25 A. I WASN'T HAPPY ABOUT IT, BUT I'M -- YOU KNOW,
26 ANGER IS A -- IT'S SOMETHING THAT, I THINK, YOU KNOW, IS NOT
27 SOMETHING THAT COMES INTO PLAY IN THAT KIND OF SITUATION.
28 YOU HAVE TO FIGURE OUT WHAT TO DO NEXT.

1 Q. WELL, LET'S TALK ABOUT WHAT YOU DID NEXT.
2 YOU TALKED, YOU MENTIONED, TO YOUR BOSS,
3 DR. HAUSERMANN, YES?

4 A. YES.

5 Q. HE TOLD YOU HE COULDN'T GIVE YOU ANY ADVICE,
6 RIGHT?

7 A. HE TOLD ME TO GO GET A LAWYER.

8 Q. HE TOLD YOU IF YOU WERE LOOKING FOR ADVICE, GO
9 GET A LAWYER, RIGHT?

10 A. RIGHT.

11 Q. DID HE TELL YOU THAT YOU SHOULD THREATEN TO SUE
12 PHILIP MORRIS?

13 A. YOU KNOW VERY WELL I DIDN'T THREATEN TO SUE
14 PHILIP MORRIS. PHILIP MORRIS THREATENED TO SUE ME IN APRIL.
15 I THREATENED TO FILE AN EEOC COMPLAINT -- SAYS COMPLAINT. I
16 KNOW TO AN ATTORNEY THAT MAY BE A LAWSUIT, BUT IT WAS VERY
17 SPECIFIC THAT I INTENDED TO JOIN MY WIFE'S COMPLAINT ON THE
18 BASIS THAT I WAS BEING TERMINATED ONLY BECAUSE SHE HAD FILED
19 A COMPLAINT. GETTING RID OF ME SO THAT THEY WOULD GET HER TO
20 COME TO TERMS.

21 Q. WELL, LET'S TAKE A LOOK. THIS IS DEFENSE
22 EXHIBIT 5522.

23 MAY I APPROACH?

24 THE COURT: YOU MAY.

25 THE WITNESS: THANK YOU.

26

27 (I. D. 5522 - 6-26-84 LETTER)

28

1 Q. BY MR. LEITER: DO YOU RECOGNIZE THAT?

2 A. YES. I WROTE IT TO DR. HAUSERMANN,

3 JUNE 26TH, 1984.

4 Q. YOUR SIGNATURE AT THE BOTTOM?

5 A. YES, IT IS.

6 MR. LEITER: OFFER DEFENDANTS 5522.

7 THE COURT: ANY OBJECTION?

8 MR. PIUZE: NO.

9

10 (EVID. - 5522)

11

12 Q. BY MR. LEITER: LET'S READ IT.

13 (READING:)

14

15 "TO: M HAUSERMANN

16 "FROM W A. FARONE.

17 "JUNE 26TH, 1984

18 "THIS IS TO ADVISE YOU THAT ON

19 JUNE 25, 1984, I RETAINED AN ATTORNEY FOR THE

20 PURPOSE OF TAKING WHATEVER LEGAL ACTIONS ARE

21 NECESSARY TO PROTECT MY CAREER FROM WHAT I

22 PERCEIVE AS DISCRIMINATORY TREATMENT. AS WE

23 DISCUSSED, I BELIEVE THAT PROMISES MADE TO ME

24 BY SENIOR MANAGEMENT WERE NOT KEPT AND THAT

25 THE MAJOR REASON FOR THIS WAS MY WIFE'S

26 COMPLAINT AGAINST THE COMPANY. AS WE KNOW,

27 OUR SENIOR MANAGEMENT BUYS MILLIONS OF

28 DOLLARS OF EQUIPMENT AND TOBACCO ON A

1 "HANDSHAKE" BASIS, AND THUS, I SAW NO REASON
2 TO DOUBT THE AUTHORITY OF THE COMMITMENTS
3 MADE TO ME AND SEE NO REASON WHY THOSE
4 COMMITMENTS HAVE NOT BEEN CONTINUED OTHER
5 THAN MY WIFE'S PROBLEMS WITH HER MANAGEMENT.
6 IN ALL, OTHER AREAS OF BUSINESS COMMITMENTS
7 OF SUCH A NATURE DO NOT REQUIRE" -- SORRY, I
8 THINK THAT I GOT THAT WRONG. "IN ALL OTHER
9 AREAS, BUSINESS COMMITMENTS OF SUCH A NATURE
10 DO NOT CHANGE WITH MANAGEMENT. SINCE THE
11 PROMISES WERE WITNESSED BY AND STATED IN
12 FRONT OF MY PEERS AND GREATLY AFFECTED MY
13 CAREER, THE FUTURE NEEDS TO BE CLARIFIED.

14 "I HAVE INSTRUCTED MY ATTORNEY
15 TO PREPARE TO FILE A COMPLAINT BUT NOT TO
16 FILE IT PENDING YOUR RETURN FROM VACATION AND
17 YOUR ADVICE ON HOW TO PROCEED, I. E., YOUR
18 DETERMINATION WITH SENIOR MANAGEMENT ON OUR
19 ABILITY TO NEGOTIATE A MUTUALLY SATISFACTORY
20 SOLUTION.

21 "I HAVE WORKED HARD, AND I
22 BELIEVE MY REVIEWS, SUCCESSFULLY, BUT THE
23 DEVELOPMENTS OF THIS YEAR HAVE BEEN EIGHT
24 YEARS OF HARD WORK IN JEOPARDY. "

25

26 IS THAT THE LETTER YOU WROTE TO DR. HAUSERMANN?

27 A. YES.

28 Q. YOU HANDED THE LETTER TO DR. HAUSERMANN AS HE

1 WAS ON THE WAY OUT THE DOOR FOR VACATION, RIGHT?

2 A. THROUGH HIS SECRETARY, YES, WHO HANDED IT TO
3 HIM GAVE IT TO HIM AND HE HAD ASKED ME TO DO THIS, AND SO
4 I DID IT.

5 Q. HE HAD ASKED YOU TO WRITE A LETTER SAYING THAT
6 YOU WERE GOING TO TAKE WHATEVER LEGAL ACTIONS ARE NECESSARY?

7 A. HE SAID THAT I SHOULD RETAIN AN ATTORNEY, GET
8 ADVICE OF THE ATTORNEY. THE ATTORNEY ADVISED ME TO FILE WITH
9 THE EEOC RIGHT AWAY, AND I SAID, NO, THAT'S NOT FAIR. I WANT
10 TO LET MAX KNOW THAT I'VE RETAINED YOU, LIKE HE SUGGESTED,
11 AND THAT WE PREPARE TO DO IT, BUT I DON'T WANT TO DO IT,
12 BECAUSE I WANT TO TALK IT OVER WITH HIM TO MAKE SURE THAT WE
13 JUST CAN'T GET TOGETHER AND SORT IT OUT, YOU KNOW, THAT WOULD
14 GIVE ME SOME KIND OF TERMINATION PACKAGE, I WOULD LEAVE, MY
15 WIFE WOULD DROP HER SUIT, WE'D GET SOME KIND OF FUNDS
16 FOR -- UNTIL WE FOUND ANOTHER JOB, OR I SET UP MY COMPANY OR
17 DO WHATEVER.

18 SO THE IDEA HERE WAS THAT THINGS WERE DONE, THE
19 DIE WAS CAST, SO TO SPEAK, AND LET'S GET ON WITH LIFE, BOTH
20 OF US, AND LET'S GET THIS AND RESOLVE IT IN A MUTUALLY
21 SATISFACTORY MANNER.

22 Q. SO YOU WERE DOING THIS AS A FAVOR TO
23 PHILIP MORRIS?

24 A. NO. I WAS DOING IT AS A FAVOR TO MAX. MAX AND
25 I WERE FAIRLY CLOSE. AND EVEN AFTER THE TERMINATION, HE
26 WISHED ME WELL. HE CALLED ME UP. HE WAS A VERY, VERY NICE
27 PERSON. AND SO I WAS TRYING TO DO WHAT WOULD GET MAX OUT OF
28 THIS NASTY LITTLE SITUATION IN AS COMFORTABLE A MANNER AS

1 POSSIBLE FOR ALL OF US.

2 Q. SO YOUR LETTER IN WHICH YOU SAID YOU WERE GOING
3 TO TAKE "WHATEVER LEGAL ACTION IS NECESSARY TO PROTECT MY
4 CAREER" WAS A LETTER WRITTEN AS A FAVOR TO DR. HAUSERMANN?

5 A. NO. I SAID, THE LETTER WAS WRITTEN TO HIM TO
6 LET HIM KNOW WHAT I WAS GOING TO DO. AND I WAS GOING TO
7 DISCUSS IT WITH DR. HAUSERMANN BEFORE IT BECAME -- IN OTHER
8 WORDS, THE ONLY REASON PHILIP MORRIS HAS THIS LETTER --
9 NOTICE, IT'S PERSONAL AND CONFIDENTIAL. THIS WAS WRITTEN TO
10 MAX. MAX TOOK THE LETTER, AND RATHER THAN KEEP IT PERSONAL
11 AND CONFIDENTIAL, HE GAVE IT TO SOMEBODY, AND THAT BECAME THE
12 LINCHPIN FOR THE TERMINATION.

13 Q. THE FACT THAT DR. HAUSERMANN GAVE THAT LETTER
14 TO SOMEBODY?

15 A. YES.

16 Q. WELL --

17 A. I THINK -- I THINK THAT DR. HAUSERMANN WAS
18 ADVISED TO GIVE ME THAT ADVICE, AND I THINK THAT THIS WAS
19 DONE IN SUCH A MANNER SO THAT RATHER THAN -- SEE, THERE WAS
20 NO QUESTION ABOUT MY PERFORMANCE WHILE I WAS THERE, AS FAR AS
21 I CAN SEE. NO ONE EVER MADE ANY QUESTIONS ABOUT THAT. SO MY
22 WIFE HAD FILED A COMPLAINT. THEY NEEDED TO GET RID OF ME TO
23 GET RID OF HER AND SO WERE TRYING TO FIND A WAY TO DO THAT,
24 TO GET THIS PROBLEM OVER WITH.

25 Q. WELL, ISN'T IT TRUE, DR. FARONE, THAT IN
26 ADDITION TO SENDING THE LETTER TO YOUR BOSS, YOU ALSO TOLD
27 SOME OF YOUR SUBORDINATES THAT YOU HAD BEEN TO SEE AN
28 ATTORNEY AND ABOUT THE SITUATION YOU WERE IN?

1 A. THAT KEEPS COMING UP. I THINK I MENTIONED IT
2 TO ONE SUBORDINATE, THAT, SO THEY SHOULDN'T BE SURPRISED
3 THAT, YOU KNOW, I WOULD BE LEAVING, BECAUSE MY RESOLUTION OF
4 THIS ISSUE, WHICH IS WHAT HAPPENED, IS THAT WE WOULD
5 NEGOTIATE A SETTLEMENT, AND I WOULD LEAVE. BECAUSE WHEN YOU
6 GET TO THIS POINT, YOU KNOW YOU'RE NOT GOING TO BE AROUND AND
7 FRIENDLY AND THE REST OF IT. BUT THERE WAS NO -- AS I SAY,
8 BETWEEN MAX AND I OR BETWEEN ANY OF THE PEOPLE THAT WORKED
9 FOR ME, THERE WAS NO ANGER OR ANIMOSITY. NONE OF THAT.

10 Q. YOU TESTIFIED IN THE FALISE CASE A FEW MONTHS
11 AGO IN NEW YORK?

12 A. YES.

13 Q. AND YOU ANSWERED THIS QUESTION BY SAYING
14 (READING):

15
16 "I MENTIONED TO THEM THAT I
17 HAD VISITED AN ATTORNEY CONCERNING THE
18 SITUATION, YES. I DIDN'T TELL THEM WE WERE
19 GOING TO FILE A LAWSUIT."

20
21 ONE SUBORDINATE OR MORE THAN ONE SUBORDINATE?

22 A. I'M TRYING TO REMEMBER. I THINK IT MIGHT HAVE
23 BEEN TWO. MIGHT HAVE BEEN FRANK WATSON AND BILL KUHN. BUT
24 THAT'S WHY I SAID THAT. BUT I'M NOT SURE.

25 Q. NO MORE THAN TWO?

26 A. NOT THAT I CAN RECALL -- I ONLY HAD FIVE PEOPLE
27 REPORTING TO ME DIRECTLY, ONLY A FEW OF WHICH I CONSIDERED
28 CLOSE ENOUGH TO BE CONCERNED ABOUT SHOULD I EMINENTLY DEPART.

1 AND IN FACT, ONE OF THEM, I REMEMBER TALKING TO
2 FOR THE PURPOSE OF LETTING HIM KNOW THAT, SHOULD I DEPART, HE
3 WAS ON MY -- I HAD MADE A RECOMMENDATION THAT HE BE PROMOTED
4 TO MY PLACE.

5 PHILIP MORRIS HAD A SYSTEM OF CAREER
6 DEVELOPMENT WHERE YOU PUT DOWN WHO YOU THINK YOUR SUCCESSOR
7 SHOULD BE. SO I THOUGHT IT WOULD BE FAIR TO HIM, IF I WERE
8 TO LEAVE, THAT THAT PERSON KNEW THAT HE WAS DESIGNATED AS MY
9 SUCCESSOR.

10 Q. LET'S JUMP AHEAD TO JULY 6, 1984.

11 THAT'S THE DAY YOU WERE FIRED, RIGHT?

12 A. RIGHT.

13 Q. YOU WERE ASKED TO COME TO THE OFFICE OF
14 BARRY CASE?

15 A. YES.

16 Q. WHO'S MR. CASE?

17 A. MR. CASE AT THE TIME WAS DIRECTOR -- I FORGET
18 WHETHER THEY CALL IT HUMAN RESOURCES OR SOMETHING LIKE THAT.

19 Q. GOT TO MR. CASE'S OFFICE, DR. HAUSERMANN WAS
20 ALREADY IN THERE, RIGHT?

21 A. THAT'S CORRECT.

22 Q. IT SURPRISED YOU TO SEE DR. HAUSERMANN IN
23 THERE, DIDN'T IT?

24 A. YES. HE WAS SUPPOSED TO BE ON VACATION IN
25 CANADA.

26 Q. MR. CASE TOLD YOU YOU WERE BEING TERMINATED FOR
27 INSUBORDINATION, CORRECT?

28 A. THAT'S CORRECT.

1 Q. AND HE READ THAT TO YOU FROM A PIECE OF PAPER,
2 CORRECT?

3 A. THAT' S CORRECT.

4 Q. DID YOU EVER SEE THE DOCUMENT?

5 A. I SAW IT ONLY -- I DIDN' T SEE IT ON THAT DAY.
6 IT WAS NOT GIVEN TO ME AS PART OF ANY OF THE SETTLEMENT
7 DISCUSSIONS. I' VE SEEN IT ONLY AS PART OF THESE LAWSUITS.

8 Q. OKAY. YOU WERE (READING):

9

10 . . . "BEING TERMINATED FROM
11 EMPLOYMENT DUE TO IRRECONCILABLE DIFFERENCES
12 WITH MANAGEMENT AND AN ATTITUDE OF
13 INSUBORDINATION DEMONSTRATED BY STATEMENTS
14 MADE TO OTHER EMPLOYEES REGARDING THREATENED
15 LITIGATION. "

16

17 THAT SOUNDS FAMILIAR?

18 A. THAT SOUNDS FAMILIAR, BUT I DIDN' T THREATEN ANY
19 LITIGATION, SO THAT' S THE FUNNY PART.

20 Q. (READING:)

21

22 "THIS IS NOT A REFLECTION UPON
23 YOUR PERFORMANCE OR ABILITIES. RATHER, IT IS
24 A QUESTION OF THE COMPANY' S ABILITY TO
25 MAINTAIN ORDER. THIS DECISION IS FINAL AND
26 HAS BEEN REVIEWED BY APPROPRIATE MEMBERS OF
27 MANAGEMENT. "

28

1 THAT' S PART OF WHAT WAS READ TO YOU?

2 A. AS FAR AS I CAN RECALL, YES.

3 Q. AND THEN IT REMINDED YOU (READING):

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"THE TERMS OF THE
CONFIDENTIALITY AND PATENT AGREEMENT SIGNED
BY YOU ON APRIL 6, 1976, THAT YOU MAY NOT
TAKE PROPRIETARY INFORMATION OR PERSONAL
NOTES FROM YOUR FILES," CORRECT?

A. CORRECT.

Q. YOU HAD A CONFIDENTIALITY AGREEMENT --
CONFIDENTIALITY AND PATENT AGREEMENT, RIGHT?

A. YES. AND IT WAS FOR THE DURATION OF MY
EMPLOYMENT, YES.

Q. UNCOMMON IN A BIG CORPORATION FOR EMPLOYEES TO
HAVE CONFIDENTIALITY AND PATENT AGREEMENTS?

A. NO.

Q. IT' S TO PROTECT THE PROPRIETARY INFORMATION OF
THE COMPANY AFTER YOU LEAVE?

A. YES.

Q. AND THAT AGREEMENT REMAINED, IN EFFECT, EVEN
AFTER YOU LEFT, RIGHT?

A. THAT' S CORRECT. YOU CAN' T TAKE PROPRIETARY
INFORMATION.

Q. LET ME ASK YOU TO TAKE A SECOND, AND LET' S LOOK
AT THIS SITUATION FROM PHILIP MORRIS' POINT OF VIEW

YOU WOULD AGREE, WOULD YOU NOT, THAT IT WOULD

1 BE UNDESIRABLE TO HAVE SOMEONE LEADING A DEPARTMENT OR A
2 DIRECTORATE THAT WAS TALKING WITH HIS SUBORDINATES ABOUT
3 INITIATING LEGAL ACTION AGAINST THE COMPANY?

4 A. NO. I DON'T AGREE WITH THAT STATEMENT.

5 Q. GIVE ME JUST A MINUTE, PLEASE.

6 A. SURE.

7 Q. AGAIN, YOUR TESTIMONY IN THE FALISE CASE --

8 A. COULD I SEE IT?

9 Q. YES.

10 PAGE 1899.

11 A. OKAY.

12 Q. WOULD YOU READ THE QUESTION AND THE ANSWER,
13 PLEASE?

14 A. LET'S SEE. WHERE DO I START IT?

15 Q. I'M SORRY. LET ME SHOW YOU.
16 RIGHT HERE. QUESTION.

17 A. "MY ONLY QUESTION" -- THIS IS THE ATTORNEY
18 ASKING ME.

19 Q. YES.

20 A. (READING:)

21

22 "MY ONLY QUESTION, SIR, IS, IF
23 YOU LOOK AT IT FROM PHILIP MORRIS' POINT OF
24 VIEW, CAN YOU SEE -- CAN YOU SEE THAT MAYBE
25 THEY DIDN'T WANT ANYBODY TO LEAD A DEPARTMENT
26 OR A DIRECTORATE AT PHILIP MORRIS WHO WAS
27 TALKING ABOUT ACTIONS HE WAS GOING TO
28 INITIATE WITH THE GOVERNMENT WITH HIS

1 SUBORDINATES?

2 "I CAN SEE HOW THIS WOULD BE
3 UNDESIRABLE. YES, IS MY ANSWER."

4
5 BUT NOW, I ASK YOU TO READ BACK YOUR
6 QUESTION.

7 Q. I DON'T HAVE TO READ BACK MY QUESTION. LET'S
8 MOVE ON.

9 A. I ANSWERED YOUR QUESTION, WHICH WAS A DIFFERENT
10 QUESTION. YOU ASKED ME WHETHER, IN MY OPINION, IT WAS
11 UNDESIRABLE, NOT IN PHILIP MORRIS'S OPINION.

12 AND IN MY OPINION, IF SOMEBODY FEELS STRONGLY
13 ENOUGH IN MY COMPANY, FOR EXAMPLE, TO THREATEN LEGAL ACTION,
14 YOU WANT TO UNDERSTAND THE FULL DETAILS OF WHY AND MAKE SURE
15 THAT YOU UNDERSTAND THE RAMIFICATIONS OF WHY THE PERSON MIGHT
16 FEEL THAT WAY BECAUSE MAYBE, JUST MAYBE, YOU'RE WRONG AND
17 SHOULD DO SOMETHING ABOUT IT.

18 SO THOSE ARE TWO DIFFERENT QUESTIONS. I WAS
19 ANSWERING FROM PHILIP MORRIS' POINT OF VIEW. I CAN SEE WHY
20 THEY WOULD NOT HAVE SOMEBODY AROUND THREATENING LEGAL ACTION,
21 BUT I THINK YOU ASKED ME MY OPINION OF WHETHER IT WAS A GOOD
22 THING TO HAVE PEOPLE THREATEN LEGAL ACTION.

23 Q. HOW DID YOU REACT WHEN YOU WERE FIRED THAT DAY?

24 A. I WAS UPSET. I WAS SURPRISED AT THE WAY I WAS
25 TERMINATED, TO BE CALLED IN, MY BOSS CALLED BACK FROM A
26 VACATION 3,000 MILES AWAY AND FIND HIM THERE SITTING IN AN
27 OFFICE WHERE WE COULD HAVE EASILY TALKED ABOUT THIS EITHER
28 BEFORE HE LEFT OR AFTER HE CAME BACK.

1 Q. UPSET, WEREN' T YOU?

2 A. YES.

3 Q. SHOCKED?

4 A. YES.

5 Q. THOUGHT YOU' D BEEN TREATED RUDELY?

6 A. I THOUGHT THAT THE TERMINATION PROCEDURE WAS
7 NOT VERY PROFESSIONAL, YES.

8 Q. ANGRY?

9 A. ANGER IS NOT, YOU KNOW, ONE OF THE THINGS THAT
10 COMES INTO PLAY IN A SITUATION LIKE THAT.

11 Q. NOT ANGRY?

12 A. I DIDN' T -- I DON' T RECALL FEELING ANGRY.

13 Q. INTERRUPTED MR. CASE, TOLD HIM HE WAS MAKING A
14 BIG MISTAKE?

15 A. THAT, I DID. BECAUSE THE MISTAKE -- HE WAS
16 SAYING THAT I WAS THREATENING LIT -- IF YOU READ THE
17 STATEMENT AGAIN, HE SAYS I THREATENED LITIGATION, AND I
18 DIDN' T THREATEN LITIGATION. I THREATENED TO FILE AN EEOC
19 COMPLAINT.

20 IN MY VERNACULAR, THAT' S NOT SUING SOMEBODY.
21 YOU' RE GOING TO AN ARBITRATOR, A GOVERNMENT BODY SET UP TO
22 ARBITRATE DISPUTES. SO IT' S NOT A LAWSUIT. NOW, MAYBE,
23 LEGALLY, IT IS A LAWSUIT. I DON' T KNOW BUT THAT WAS THE
24 WAY I LOOKED AT IT, THAT YOU HAVE THIS GROUP OF PEOPLE THAT
25 IS SET UP TO HELP EMPLOYEES RESOLVE THOSE KINDS OF DISPUTES.
26 WAS I BEING TERMINATED BECAUSE MY WIFE HAD FILED A COMPLAINT?

27 AND NOTHING IN MR. CASE' S RESPONSE AND IN
28 NOTHING THAT I' VE EVER HEARD FROM PHILIP MORRIS ANSWERS THAT

1 QUESTION.

2 Q. PHILIP MORRIS PROMISED TO HELP YOU FIND ANOTHER
3 JOB?

4 A. PHILIP MORRIS SAID THEY WOULD HELP ME FIND
5 ANOTHER JOB, YES.

6 Q. SET UP AN INTERVIEW FOR YOU?

7 A. AND WHEN I ARRIVED AT THE INTERVIEW, I FOUND
8 OUT THAT THE PEOPLE HAD ALREADY -- THEY KNEW THAT I HAD
9 ALREADY BEEN TERMINATED FROM PHILIP MORRIS FOR
10 INSUBORDINATION.

11 Q. HOW DID THAT MAKE YOU FEEL?

12 A. WELL, I REALIZED THAT I COULDN'T RELY ON
13 PHILIP MORRIS FOR HELP, AND I DIDN'T NEED ANY -- ACTUALLY, I
14 DID IT JUST BECAUSE THEY WERE NICE ENOUGH TO OFFER IT IN THE
15 FIRST PLACE. SO I SAID, OKAY, I'LL GO TALK. IT WAS AT
16 A. H. ROBBINS IN RICHMOND, BUT I HAD ALREADY SET UP MY OWN
17 COMPANY, OR STARTED TO.

18 Q. I WANT TO MOVE ON TO ANOTHER SUBJECT.

19 A. SURE.

20 Q. LET'S GO BACK --

21 YOUR HONOR, I DON'T KNOW IF YOU'RE READY FOR A
22 BREAK NOW OR --

23 THE COURT: WOULD THIS BE A GOOD TIME?

24 MR. LEITER: THIS WOULD BE A GOOD POINT.

25 THE COURT: THANK YOU.

26 LADIES AND GENTLEMEN, WE'RE GOING TO TAKE A
27 BREAK. LET'S BE BACK HERE AT A QUARTER 'TILL.

28

1 (RECESS.)

2

3 THE COURT: ALL RIGHT. OUR JURY PANEL IS WITH US.

4 COUNSEL.

5 WITNESS IS ON THE WITNESS STAND.

6 SIR, YOU STILL UNDERSTAND YOU' RE STILL UNDER

7 OATH?

8 THE WITNESS: I DO.

9 THE COURT: MR. LEITER.

10 MR. LEITER: THANK YOU, YOUR HONOR.

11 Q. DR. FARONE, YOU TOLD THE JURY THIS MORNING
12 ABOUT THE CAMBRIDGE CIGARETTE.

13 A. YES.

14 Q. AND THAT WAS THE CIGARETTE THAT YOU TOLD THE
15 JURY WAS DIFFICULT TO LIGHT, RIGHT?

16 A. THAT' S CORRECT.

17 Q. WHY WAS IT DIFFICULT TO LIGHT?

18 A. BECAUSE THE REDUCTION IN TAR WAS ACHIEVED BY A
19 VERY HIGH AMOUNT OF DILUTION; MEANING, THAT WE HAD LOTS OF
20 HOLES IN THE FILTER. SO WHEN YOU SUCK ON IT, MOST OF THE AIR
21 COMES THROUGH THE FILTER. VERY LITTLE AIR COMES THROUGH THE
22 ROD, SO YOU HAVE TO HOLD A MATCH THERE A LITTLE BIT LONGER TO
23 GET IT GOING.

24 Q. SO DIFFICULT TO LIGHT. THERE WAS A LOT OF
25 TALK, AS YOU TOLD THE JURY, ABOUT PUTTING INSTRUCTIONS IN
26 THERE ABOUT HOW TO LIGHT THE THING, RIGHT?

27 A. THAT' S CORRECT.

28 Q. NOT A LOT OF PEOPLE WERE GOING TO STICK WITH

1 THAT AS THEIR REGULAR BRAND, DON'T YOU THINK?

2 A. IF THEY KNEW IT DIDN'T CAUSE CANCER, THEY
3 MIGHT.

4 Q. WERE THERE OTHER ULTRALIGHT CIGARETTES ON THE
5 MARKET AT THE TIME?

6 A. NO. IT WAS THE LOWEST. THAT WAS THE
7 ADVERTISING CLAIM MADE BY PHILIP MORRIS.

8 CARLTON WAS LOW, BUT IT WAS LOWER, AND
9 LATER -- RECENTLY, FOR EXAMPLE, CARLTON'S COME OUT WITH AN
10 ULTIMA. THERE ARE OTHER CIGARETTES IN THAT RANGE RIGHT NOW
11 BUT AT THE TIME, THERE WAS NOTHING ANY LOWER.

12 Q. AT THE TIME, CARLTON WAS IN THE MARKET, AND
13 THAT WAS VERY, VERY LOW, AND NOW -- WHICH WAS A REYNOLDS
14 BRAND -- WAS ALSO ON THE MARKET, RIGHT?

15 A. THAT'S CORRECT.

16 Q. AND TODAY, PHILIP MORRIS HAS MERIT ULTRALIGHTS
17 ON THE MARKET; ISN'T THAT RIGHT?

18 A. THAT'S CORRECT.

19 Q. AND THERE ARE OTHER ULTRA ULTRALIGHT PRODUCTS
20 ON THE MARKET, RIGHT?

21 A. THERE ARE, BUT I DON'T KNOW OF ANY THAT ARE --
22 WELL, MAYBE THE CARLTON ULTIMA, WHICH I'VE SEEN NUMBERS OF
23 0.01 MILLIGRAMS OF TAR IS EQUIVALENT TO THE CAMBRIDGE 1980
24 PRODUCT, BUT THE OTHER ONES ARE A LITTLE BIT HIGHER THAN
25 THAT.

26 Q. HAS THE SCIENTIFIC COMMUNITY, OTHER THAN
27 YOURSELF, DECLARED THAT CAMBRIDGE WAS SAFE?

28 A. I DIDN'T DECLARE IT WAS SAFE. WHAT I SAID WAS,

1 THAT IF YOU TESTED IT, THE WAY YOU SHOULD, THESE PRODUCTS.
2 THAT BECAUSE IT'S NOT DELIVERING ANY CARCINOGENS, BECAUSE
3 THEY'RE NOT DELIVERING ANY TAR, THAT THE PROBABILITY IS
4 HIGHLY -- VERY HIGH PROBABILITY THAT IT WOULD SHOW A MUCH,
5 MUCH LOWER SCORE IN ANY INBIFO ANIMAL-TYPE CANCER TESTING.

6 AND DR. BURNS, WHO IS A MEMBER OF THE
7 PUBLIC HEALTH COMMUNITY, QUITE RESPECTED, HAS INDICATED THAT
8 HE FEELS THAT THOSE TYPES OF PRODUCTS, IF USED REGULARLY BY
9 SMOKERS WITHOUT COMPENSATION, WOULD DRAMATICALLY REDUCE THE
10 RISK OF LUNG CANCER.

11 Q. AND DR. BURNS IS ANOTHER FREQUENT PLAINTIFF'S
12 EXPERT IN THESE CASES?

13 A. THAT'S MY UNDERSTANDING.

14 MR. LEITER: I DON'T HAVE ANYTHING FURTHER.

15 THE COURT: THANK YOU, COUNSEL.

16 REDIRECT.

17 MR. PIUZE: NO. THANK YOU.

18 THE COURT: THANK YOU, SIR. NO REDIRECT.

19 THE WITNESS MAY STEP DOWN, SIR. YOU ARE
20 EXCUSED.

21 MR. PIUZE: CAN WE APPROACH?

22 THE COURT: SURE. OVER HERE, PLEASE.

23
24 (A CONFERENCE WAS HELD BEHIND THE BENCH,
25 WHICH WAS NOT REPORTED.)

26
27 (THE FOLLOWING PROCEEDINGS WERE HELD
28 IN OPEN COURT IN THE PRESENCE

1 OF THE JURY:)

2

3 THE COURT: LADIES AND GENTLEMEN, WE HAD THOUGHT THAT
4 THIS WITNESS WAS GOING TO TAKE THE REMAINDER OF THE DAY. IT
5 TURNS OUT THE WITNESS DIDN'T. WE'RE ON TRACK FOR OUR
6 SCHEDULE. WE GOT THROUGH A LITTLE BIT EARLIER TODAY.

7 YOU CAN GO HOME. WE'LL SEE YOU TOMORROW
8 MORNING AT 8:45.

9 THANK YOU, LADIES AND GENTLEMEN.

10

11 (AT 2:53 P.M., AN ADJOURNMENT WAS TAKEN
12 UNTIL THURSDAY, APRIL 5, 2001 AT 9:00 A.M.)

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