

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 FOR THE COUNTY OF LOS ANGELES
3 DEPARTMENT 308 HON. CHARLES MC COY, JUDGE
4 RICHARD BOEKEN,)
5 PLAINTIFF,)
6)
7) CASE NO. BC226593
8 VS.)
9 PHILIP MRRIS,)
10 INCORPORATED, A)
11 CORPORATION; INTERNATIONAL)
12 HOUSE OF PANCAKES)
13 INCORPORATED, A)
14 CORPORATION.)
15 DEFENDANTS.)
16 _____)

13 REPORTER'S DAILY TRANSCRIPT OF PROCEEDINGS
14 MONDAY, APRIL 9TH, 2001

15 APPEARANCES:

16 (FOR PLAINTIFF)

LAW OFFICES OF
MICHAEL J. PIUZE
11755 WILSHIRE BLVD.
SUITE 1170
LOS ANGELES, CA 90025
ARNOLD & PORTER
BY: MAURICE A. LEITER
JOHN CARLTON
777 S. FIGUEROA ST.
44TH FLOOR
LOS ANGELES, CA 90017

17

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19 (FOR DEFENDANTS)

20

21

22

LISA C. RIDLEY
23 OFFICIAL REPORTER
24 600 S. COMMONWEALTH AVE.
25 ROOM 308
LOS ANGELES, CA 90005

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1 LOS ANGELES, CALIFORNIA; MONDAY, APRIL 9TH, 2001

2 1:30 P.M

3 DEPARTMENT 308 HON. CHARLES MC COY, JUDGE

4

5 (THE FOLLOWING PROCEEDINGS WERE

6 HELD IN OPEN COURT:)

7

8 THE COURT: GOOD AFTERNOON, LADIES AND

9 GENTLEMEN.

10 OUR JURY PANEL IS WITH US. COUNSEL

11 ARE PRESENT AS WELL.

12 YOU KNOW, IN MY OLD COURTROOM

13 BEFORE I MOVED OVER HERE, MY BENCH WAS A LITTLE BIT

14 HIGHER THAN THIS AND THEN THE AMERICAN FLAG WAS

15 OVER IN THE CORNER AND IT -- IF YOU TAKE THE FLAG

16 AND PUT IT ON A NORMAL POLL, IT KIND OF SITS DOWN A

17 LITTLE BIT LOWER. IT IS STILL HIGHER THAN WE ARE.

18 AND WHAT I WOULD DO IS I WOULD WALK INTO THE

19 COURTROOM AND I WOULD GET UP ON MY BENCH AND I

20 WOULD STAND THERE AND WE WOULD DO THE SALUTE. AND

21 I DID THAT MAYBE FOR ABOUT A COUPLE WEEKS AND

22 SUDDENLY I REALIZED THERE'S SOMETHING REALLY WRONG

23 WITH THIS BECAUSE ME STANDING THERE, I STAND ABOUT

24 SIX FEET OR SO, ME STANDING UP THERE, I WAS SORT OF

25 AT THE SAME LEVEL WITH THE FLAG, SO THAT THE EAGLE

26 ON THE FLAG AND SO FORTH WAS JUST KIND OF RIGHT AT

27 MY EYE LEVEL AND I REALLY DON'T BELONG THERE. I

28 BELONG DOWN HERE, THE SAME PLACE YOU ARE, DOWN

1 BELOW THE FLAG.

2 THE REASON FOR THAT AND EVERY TIME
3 I STAND DOWN HERE NOW AND LOOK UP AT THE FLAG, I
4 UNDERSTAND WHY THE FLAG IS ABOVE ME, BECAUSE IT
5 REMINDS ME THAT ALL OF US IN LIFE, AS MEMBERS OF
6 THIS NATIONAL, MUST ANSWER TO HIGHER AUTHORITY, ALL
7 OF US. AND IN A COURT OF LAW, THAT HIGHER
8 AUTHORITY IS THAT PRECIOUS THING WE CALL THE RULE
9 OF LAW

10 THAT HAVING BEEN SAID, I THINK WE
11 HAVE A NEW WITNESS ON THE WITNESS STAND.

12

13

14 NEAL ALLAN FEINGOLD M.D.,
15 CALLED AS A WITNESS BY THE PLAINTIFF, WAS SWORN
16 AND TESTIFIED AS FOLLOWS:

17 THE CLERK: YOU DO SOLEMNLY STATE THE
18 TESTIMONY YOU MAY GIVE IN THE CAUSE NOW PENDING
19 BEFORE THIS COURT, SHALL BE THE TRUTH, THE WHOLE
20 TRUTH AND NOTHING BUT THE TRUTH, SO HELP YOU GOD.

21 THE WITNESS: I DO.

22 THE CLERK: BE SEATED, SIR.

23 SIR, FOR THE RECORD, IF YOU COULD
24 STATE YOUR FIRST AND LAST NAME, SPELL YOUR LAST
25 NAME PLEASE.

26 THE WITNESS: ALLAN FEINGOLD,
27 F-E-I-N-G-O-L-D.

28 THE CLERK: THANK YOU.

1 MR. PIUZE: YOUR HONOR, WITH PERMISSION
2 OF COUNSEL AND THE COURT, I AM GOING TO INTERRUPT
3 THE CROSS-EXAMINATION OF DR. BENOWITZ, WHICH WILL
4 RESUME, IN ORDER TO CALL DR. FEINGOLD.

5 THE COURT: THANK YOU, SIR.

6 MR. PIUZE: THANK YOU.

7 THE COURT: LADIES AND GENTLEMEN, YOU
8 UNDERSTAND WHAT HE JUST SAID?

9 HE SAID, IN A VERY COURTEOUS WAY,
10 AS COUNSEL OFTEN TALKS TO THE COURT, WHAT HE WAS
11 SAYING IS THAT THE WITNESS THAT WE HAD ON FRIDAY,
12 WE ARE GOING TO INTERRUPT HIS TESTIMONY FOR A SHORT
13 PERIOD OF TIME, TAKE A WITNESS OUT OF ORDER AND
14 THEN WE WILL GO BACK AND PICK UP THE REMAINDER OF
15 THAT TESTIMONY LATER. AND THAT SHOULD BE FAIRLY
16 SOON?

17 MR. PIUZE: TOMORROW

18 THE COURT: TOMORROW, VERY WELL.

19 PROCEED, SIR.

20

21 DIRECT EXAMINATION

22

23 BY MR. PIUZE:

24 Q. HOW ARE YOU DOING?

25 A. VERY GOOD. GOOD AFTERNOON.

26 Q. THIS MORNING WHEN YOU WOKE UP,
27 WHERE WERE YOU?

28 A. MAM.

1 Q. WAS IT WARMER THERE?
2 A. IT WAS. IT WAS LOVELY.
3 Q. WHAT DO YOU DO IN MIAMI?
4 A. I AM A LUNG SPECIALIST. I AM A
5 DOCTOR WHO TAKES CARE OF PEOPLE WITH DISEASES OF
6 THE LUNG.
7 Q. WHAT'S THAT CALLED?
8 A. A PULMONOLOGIST OR A
9 PNEUMOLOGIST.
10 Q. HOW DID YOU GET TO BE A
11 PULMONOLOGIST, PLEASE?
12 A. IT WAS A LONG RODE. I GREW UP IN
13 MONTREAL, CANADA, WHERE I WENT TO SCHOOL AND TO
14 COLLEGE, MCGILL, UNIVERSITY.
15 ALONG THE WAY, I BECAME FASCINATED
16 BY MEDICINE, BIOLOGY AND, PARTICULARLY, SOME
17 SPECIAL ASPECT OF MEDICINE AND WENT TO MEDICAL
18 SCHOOL.
19 I WENT TO MEDICAL SCHOOL IN A CITY
20 CALLED HAMILTON, ONTARIO, WHICH IS NEAR TORONTO,
21 NEAR BUFFALO, NEW YORK.
22 AND I GRADUATED AS A DOCTOR AND
23 BECAME AN M.D. IN 1975.
24 I THEN --
25 Q. LET ME STOP YOU FOR A SECOND.
26 COLLEGE, MCGILL UNIVERSITY, THAT'S
27 IN MONTREAL; RIGHT?
28 A. IT IS.

1 Q. AND MED. SCHOOL?

2 A. MCMASTER UNIVERSITY, HAMILTON,
3 ONTARIO.

4 Q. MONTREAL, ENGLISH AND FRENCH
5 SPEAKING? ONTARIO ENGLISH SPEAKING?

6 A. CORRECT. QUEBECERS THEN AND NOW
7 SEE THEMSELVES A LITTLE BIT SEPARATE. I ENDED UP
8 BECOMING VERY BI-CULTURAL. I SPOKE ENGLISH AND
9 FRENCH, WORKED IN BOTH.

10 Q. SO MEDICAL SCHOOL, YOU GRADUATED
11 WHAT YEAR, PLEASE?

12 A. 1975.

13 Q. NOW, TRACE YOUR EDUCATIONAL
14 BACKGROUND SINCE 1975 WHEN YOU GOT OUT OF MED.
15 SCHOOL?

16 A. I WENT BACK TO MCGILL, MCGILL
17 UNIVERSITY IN MONTREAL AFTER MEDICAL SCHOOL TO DO
18 WHAT WAS THEN CALLED AN INTERNSHIP AND A RESIDENCY,
19 FELLOWSHIP AND RESEARCH.

20 I STARTED OFF IN 1975 AS AN INTERN,
21 AND I WAS ADVANCED, I WAS ACCELERATED, DIDN'T
22 REMAIN AN INTERN FOR LONG, BECAME A RESIDENT IN
23 INTERNAL MEDICINE.

24 THAT MEANS I WAS FUNCTIONING IN THE
25 LOOP AS A PHYSICIAN, AS ALL YOUNG DOCTORS DO UNDER
26 THE TRAINING AND SUPERVISION OF PROFESSORS, AND
27 ALSO MORE SENIOR PEOPLE. THE EDUCATIONAL SYSTEM IN
28 THE HOSPITAL IS A PYRAMID WHERE THE INTERNS ARE AT

1 THIS BOTTOM AND AS YOU GO UP, THERE'S GREATER AND
2 GREATER DEGREE OF EXPERIENCE AND YOU ANSWER TO
3 THESE DIFFERENT EXPERIENCED PEOPLE.

4 Q. WE ALL GET TO WATCH THAT ON
5 TELEVISION. THE INTERNS ARE AT THE BOTTOM OF THE
6 HEAP, THE RESIDENTS ARE A LITTLE BIT HIGHER. WHERE
7 IS A FELLOW, WHAT'S THE FELLOW?

8 A. THE FELLOW IS THE PERSON WHO IS
9 DOING THE SPECIALTY TRAINING IN ONE OF THE
10 PARTICULAR FIELDS, FOR EXAMPLE, PULMONARY MEDICINE,
11 WHICH I DID.

12 SO I DID AN INTERNSHIP AND THEN
13 RESIDENCY IN PULMONARY MEDICINE. IT'S CALLED
14 RESIDENCY BECAUSE IN THE PAST, ANYWAY, YOU USED TO
15 LIVE IN THE HOSPITAL, WHICH WE PARTICULARLY DID,
16 FOR YEARS.

17 AND THEN I BECAME A FELLOW, WHICH
18 MEANT ALL I WAS DOING WAS LUNG MEDICINE, WITHIN THE
19 CONTEXT OF INTERNAL MEDICINE, BECAUSE PULMONARY
20 MEDICINE, LUNG MEDICINE IS A PART OF INTERNAL
21 MEDICINE.

22 Q. SO I GUESS WE ALL KNOW WHERE THE
23 LUNGS ARE.

24 WHAT DO LUNG MEDICINE DOCTORS
25 TREAT, TYPICALLY?

26 A. THEY MAKE A DIAGNOSIS, MOST
27 IMPORTANT PART OF LUNG MEDICINE OR PULMONARY
28 MEDICINE IS THE DIAGNOSTIC PART.

1 THE TREATMENT IS OFTEN DONE BY
2 OTHERS. FOR EXAMPLE, INFECTIOUS DISEASE SPECIALIST
3 WHO WOULD TREAT A PNEUMONIA OR TUBERCULOSIS OR
4 CANCER SURGEONS WHO MIGHT CUT OUT A PIECE OF THE
5 DISEASE OF THE LUNG OR ONCOLOGISTS WHO GIVE CHEM
6 THERAPY, BUT THE LUNG SPECIALIST IS PRIMARILY A
7 DIAGNOSTICIAN, A PERSON WHO MAKES THE DIAGNOSIS AND
8 SECONDLY A KIND OF CAPTAIN OF THE SHIP WHO SELECTS
9 AND DIRECTS THE COURSE OF THERAPY FOR THE PERSON,
10 FOR THE PATIENT.

11 NOW, THE SURGEON MAY BE ACTUALLY
12 DOING THE THERAPY, THE LUNG SPECIALIST IS SUPPOSED
13 TO BE COORDINATING ALL OF THIS THERAPY.

14 Q. GOT IT.

15 LET ME TALK ABOUT A COUPLE THINGS,
16 A COUPLE ISSUES THAT ARE IN OUR CASE, AND JUST
17 THROW THEM AT YOU, AND YOU CAN DISCUSS WHY THIS IS
18 PULMONARY AND WHAT PULMONARY DOCTORS DO WITH THESE
19 TYPES OF PROBLEMS.

20 ARE YOU READY?

21 A. YES.

22 Q. BRONCHITIS, THAT'S A TERM THAT MOST
23 OF US HAVE HEARD SINCE WE WERE LITTLE KIDS. WHAT'S
24 BRONCHITIS?

25 A. IT MEANS AN INFLAMMATION OF THE
26 BRONCHIAL TUBES.

27 THE LUNGS CONTAIN LUNG TISSUE WHERE
28 THE GAS EXCHANGE OCCURS, WHERE OXYGEN IS TAKEN FROM

1 THE AIR, CARBON DIOXIDE COMES OUT OF THE BODY INTO
2 THE AIR.

3 BUT TO GET THE GAS DOWN THERE,
4 THERE' S A LIVING SYSTEM OF TUBES, THESE TUBES ARE
5 CALLED BRONCHI, THE BRONCHIAL TUBES.

6 THE BIGGEST ONE IS THE TRACHEA.
7 PEOPLE KNOW IT' S THERE, THE WIND PIPE.

8 BUT IT DIVIDES INTO TWO PARTS IN
9 THE CHEST, THE RIGHT MAIN STEM BRONCHUS, LEFT MAIN
10 STEM BRONCHUS AND EACH OF THOSE BRONCHI GIVE OFF
11 MUCH MORE BRONCHI SO THAT THERE ARE MILLIONS OF
12 THEM

13 IF THERE' S AN INFECTION LIKE A
14 VIRAL INFECTION OR A BACTERIAL INFECTION THAT
15 CAUSES INJURY TO THE SURFACE OF THE BRONCHIAL TUBES
16 THAT CAUSES BRONCHITIS.

17 PEOPLE KNOW WHAT IT FEELS LIKE
18 BECAUSE THEY COUGH, THEY HAVE SOME SPUTUM OR
19 PHLEGM OFTENTIMES THEY WILL HAVE FEVER, MAYBE
20 WHEEZE.

21 THAT' S NOT UNUSUAL.

22 BUT SOME PATIENTS, SOME PEOPLE HAVE
23 BRONCHITIS EVERY DAY OF THEIR LIVES.

24 Q. OKAY.

25 NOW, WHERE WERE YOU LAST WEEK WHEN
26 I NEEDED YOU?

27 A. I WAS ACTUALLY DOING A COLLEGE
28 TRIP, AND I WAS IN WASHINGTON, D. C. MY DAUGHTER

1 CHOSE GEORGE WASHINGTON TO GO TO COLLEGE. THAT'S
2 WHERE I WAS. I WAS WITH MY DAUGHTER AND MY WIFE
3 LOOKING AT COLLEGES.

4 Q. THANK YOU.

5 NOW, FOR THE JURY, THIS IS LIKE A
6 RIVER, RIGHT HERE?

7 A. YES.

8 Q. AND IT SPLITS IN TWO HERE, ONE INTO
9 EACH LUNG. AS IT SUBDIVIDES AND SUBDIVIDES, ISN'T
10 IT LIKE A BUNCH OF LITTLE TRIBUTARIES OR RIVERS?

11 A. CORRECT. AND I KNOW YOU HAVE BEEN
12 FEELING THESE TRIBUTARIES FULL. I UNDERSTAND THAT
13 YOU HAD A BRONCHITIS, AND THEY --

14 Q. WELL, I DIDN'T SAY THAT.

15 A. I MADE THAT DIAGNOSIS BY LISTENING
16 TO YOUR COUGH.

17 Q. OKAY.

18 A. EVERY COUGH SOUNDS DIFFERENT TO A
19 TRAINED EAR.

20 Q. ALL RIGHT.

21 ANYWAY, A BUNCH OF LITTLE
22 TRIBUTARIES, A BUNCH OF LITTLE STREAMS THAT COME
23 OUT; RIGHT?

24 A. YES, SIR.

25 Q. AND THE SOLE PURPOSE OF THESE
26 THINGS IS TO, WHAT, GET OXYGEN?

27 A. BRING AIR, WHICH CARRIES OXYGEN,
28 CONTAINS OXYGEN. BRING AIR FROM THE ENVIRONMENT TO

1 THE LUNGS AND TAKE THAT AIR, WHICH IS USED UP AND
2 CONTINUES NOW CARBON DIOXIDE, AFTER THE CARBON
3 DIOXIDE COMES OUT OF THE BODY, GOES INTO THE AIR
4 AND GET IT OUT OF THE BODY, BACK AND FORTH.

5 Q. OKAY. SO THAT'S WHAT BRONCHITIS
6 IS.

7 NOW, WHAT ABOUT JUST ONE MORE
8 COMMON ONE THEN WE HAVE; PNEUMONIA?

9 A. THAT'S A MORE SERIOUS INFECTION
10 WHERE BACTERIA ACTUALLY ATTACK THE MEAT OF THE
11 LUNG, IF YOU WISH, THE LUNG TISSUE, AND PUS FILLS
12 UP THE AIR SPACES. NORMALLY THE AIR SPACES ARE
13 THESE TINY LITTLE HOLES CALLED ALVEOLI, TINY, TINY,
14 LITTLE SACKS WHERE THE GAS EXCHANGE ACTUALLY
15 OCCURS.

16 WELL, IF AN INFECTION IS BAD
17 ENOUGH, BACTERIA ATTACK THE WALLS OF THESE ALVEOLI,
18 PUS FILLS THESE ALVEOLI AND IF THE LUNG BECOMES
19 SOLID IN AN AREA, THAT'S CALLED PNEUMONIA.

20 Q. EMPHYSEMA?

21 A. DESTRUCTION OF THOSE LITTLE AIR
22 SACKS. THE AIR SACKS ARE LIKE OUTPOUCHINGS OR
23 BUDS AT THE END OF THE BRANCHES OF THE TREE. AND
24 EACH OF THESE LITTLE BUDS IS CIRCLED BY BLOOD
25 VESSELS. SO THAT'S WHERE THE GAS EXCHANGE OCCURS.

26 THE WALLS OF EACH LITTLE ALVEOLUS,
27 AND THERE ARE MANY MILLIONS OF THEM IN THE LUNG,
28 THE WALLS ARE DELICATE. THEY ARE ONLY A CELL

1 THICK. AND THEY ARE EASILY DAMAGED BY CERTAIN
2 THINGS.

3 ESSENTIALLY, ALL CASES OF
4 EMPHYSEMA, VIRTUALLY, 99 PERCENT OF THE CASES OF
5 EMPHYSEMA ARE CAUSED BY CHEMICALS IN CIGARETTE
6 SMOKE THAT DAMAGE THE WALLS OF THESE DELICATE
7 ALVEOLI WHICH THEN BREAK DOWN AND FORM ABNORMALLY
8 LARGE SACKS.

9 THE LARGE SACKS DON'T DO THE GAS
10 EXCHANGE PROPERLY. AND THEY GET BIGGER AND BIGGER
11 AND BIGGER. AND THOSE BIG AIR SACKS CAN BE SEEN ON
12 X-RAY, CAN BE SEEN UNDER THE MICROSCOPE. THAT'S
13 CALLED EMPHYSEMA.

14 Q. LUNG CANCER?

15 A. LUNG CANCER IS A DISEASE WHERE
16 CERTAIN CELLS IN THE BRONCHIAL TUBES OR THE WALLS
17 OF THE ALVEOLI LOSE THEIR SELF CONTROL, BECOME
18 INVADERS OF THEIR NEIGHBORS, DON'T BEHAVE PROPERLY.

19 ALL CELLS IN THE BODY, VIRTUALLY,
20 AND CERTAINLY LUNG CELLS, HAVE TO REPRODUCE. THEY
21 DON'T LIVE FOREVER.

22 THE CELLS HAVE TO DIVIDE AND
23 REPLACE THEMSELVES BECAUSE THEY HAVE A CERTAIN
24 LIFESPAN.

25 WHEN THEY DIVIDE AND REPLACE
26 THEMSELVES, THAT'S A NORMAL PROCESS, BUT THEY DON'T
27 KEEP ON DIVIDING FOREVER.

28 CELLS THAT LOSE THEIR SENSE OF

1 SELF-CONTROL AND GONE CRAZY AND DIVIDE WITHOUT
2 LIMIT, THOSE CELLS ARE CALLED CANCER CELLS.

3 THAT'S A DESCRIPTIVE WAY OF, YOU
4 KNOW, DESCRIPTIVE DEFINITION.

5 THE CHEMICAL DEFINITION IS THAT
6 THERE'S A SPECIFIC THING WRONG WITH THE BLUEPRINT.
7 AND INCREASINGLY TODAY, WE KNOW WHAT, EXACTLY, IN
8 THE BLUEPRINT THAT CONTROLS THE CELL, ALL OF ITS
9 ACTIVITIES AND ITS DIVISIONS. WE KNOW EXACTLY WHAT
10 WENT WRONG WITH THE BLUEPRINT AND WHEN THAT
11 PARTICULAR KIND OF THING GOES WRONG WITH THE
12 BLUEPRINT, IN OTHER WORDS, DNA, SOMETHING IN THE
13 CENTRAL PORTION OF THE CELL LOSES CONTROL. THE
14 CELL WILL NOW REPRODUCE WITHOUT CONTROL AND THAT
15 IS, IN FACT, THE DEFINITION OF CANCER.

16 TODAY, CANCER IS DEFINED NOT BY THE
17 CELLS DIVIDING AND GROWING, IT'S NOT DEFINED BY THE
18 MISERY OR THE SICKNESS OR THE PAIN OR THE DEATH,
19 BUT IT REALLY IS DEFINED AS A MISTAKE IN THE
20 BLUEPRINT OR DEFINED AS A MISTAKE IN THE DNA.

21 Q. THANK YOU.

22 NOW, I AM GOING TO HAVE TO BE
23 COMING BACK TO YOUR QUALIFICATIONS HERE. BUT WE
24 ARE STILL ON WHAT A PULMONOLOGIST, A LUNG
25 SPECIALIST, DOES. AND SO LUNG SPECIALIST SEE
26 PEOPLE WITH BRONCHITIS SOMETIMES?

27 A. YES, SIR.

28 Q. PNEUMONIA, SOMETIMES?

1 A. OFTEN.

2 Q. EMPHYSEMA SOMETIMES?

3 A. EVERY DAY.

4 Q. LUNG CANCER SOMETIMES?

5 A. VERY OFTEN.

6 Q. WHAT ELSE?

7 A. ASTHMA, SUCH A NICE DISEASE TO

8 TREAT MOST OF THE TIME.

9 OCCUPATIONAL LUNG DISEASES, MANY OF

10 THEM, PEOPLE WHO WORK IN FACTORIES AND MINES, WHO

11 ARE EXPOSED TO VARIOUS ENVIRONMENTAL HAZARDS CAN

12 DEVELOP A DISEASE OF THE LUNG. THERE ARE VARIOUS

13 KINDS LIKE COAL WORKERS, PNEUMCONIOSIS, WHICH IS

14 CALLED BLACK LUNG OR OTHER DISEASES CAUSED BY

15 EXPOSURE FROM THE ENVIRONMENT. THAT'S A SPECIAL

16 KIND OF DISEASE CALLED OCCUPATIONAL LUNG DISEASE.

17 Q. PEOPLE WHO HAVE BAD ILLNESSES FROM

18 ASBESTOS, IS THAT A TYPE OF OCCUPATIONAL LUNG

19 DISEASE?

20 A. PRECISELY. ASBESTOSIS IS A KIND OF

21 OCCUPATIONAL LUNG DISEASE LIKE COAL WORKERS,

22 PNEUMCONIOSIS OR SILICOSIS OR MANY OTHERS.

23 Q. THANK YOU.

24 LET'S GO BACK TO MONTREAL TO MCGILL

25 UNIVERSITY.

26 YOU ARE A FELLOW THERE.

27 AS A FELLOW, YOU ARE LEARNING, YOU

28 ARE GETTING BUFFED UP ON LUNG DISEASE; IS THAT

1 RIGHT?

2 A. CORRECT.

3 Q. HOW LONG DID YOU SPEND BEING A
4 FELLOW AT MCGILL?

5 A. I WAS AN INTERN AND RESIDENT FOR
6 TWO YEARS AND A FELLOW, I THINK, FOR THREE, OR THE
7 REVERSE, THREE AND TWO. I DON'T REMEMBER. THE
8 TOTAL WAS FIVE YEARS.

9 Q. THANKS.

10 WHEN YOU WERE DONE WITH YOUR
11 SCHOOLING AT MCGILL, WHAT DID YOU DO THEN?

12 A. WELL, ALONG THE WAY, I TOOK BOARD
13 CERTIFICATION EXAMINATIONS. SO BY THE TIME I WAS
14 FINISHED, WHICH WAS 1980, I WAS, I HAD MULTIPLE
15 BOARD CERTIFICATIONS. I HAD FIVE BOARD
16 CERTIFICATIONS FOR THE U.S. AND CANADA AND QUEBEC.

17 I WAS A LUNG SPECIALIST IN QUEBEC
18 AND THE UNITED STATES.

19 I OPENED A PRACTICE. I WAS IN -- I
20 BECAME A CONSULTANT. I WAS A CONSULTANT ATTACHED
21 TO A VARIETY OF HOSPITALS IN MONTREAL, SOME OF THEM
22 TEACHING HOSPITALS, SOME OF THEM NOT.

23 AND I SAW PATIENTS IN MY OFFICE AND
24 IN THE HOSPITALS.

25 Q. OKAY. HOW LONG DID YOU STAY UP IN
26 THE MONTREAL AREA?

27 A. TWO YEARS.

28 I PRACTICED UNTIL 1982. I

1 RESPONDED TO AN ADVERTISEMENT IN A MEDICAL JOURNAL
2 FOR A HOSPITAL IN MIAMI. I WENT THERE. THEY
3 ACTIVELY RECRUITED ME. IT WAS A LOT OF FUN. WE
4 ENDED UP GOING TO FLORIDA VERY QUICKLY. I SOLD
5 EVERYTHING AND JUST MOVED WITH MY WIFE AND THE TWO
6 OF US SET UP HOUSE IN MIAMI.

7 Q. WELL, DID THEY RECRUIT YOU DURING
8 THE WINTER, IS THAT IT?

9 A. YEAH. ACTUALLY, MIAMI WAS A LOT
10 NICER.

11 Q. HAVE YOU BEEN A PRACTICING
12 PHYSICIAN DOWN IN THE MIAMI AREA FOR THE LAST,
13 ROUGHLY, WHAT, 18 YEARS OR SO?

14 A. YES. THE DAY I LEFT MONTREAL,
15 THERE WAS A SNOW STORM THERE. IT WAS APRIL 5TH, I
16 THINK IT WAS. AND WE ARRIVED IN MIAMI AND I WENT
17 TO WORK THAT VERY NEXT DAY. AND I HAVE BEEN THERE
18 EVER SINCE.

19 IN 1987, I BECAME CHIEF OF THE
20 DIVISION OF PULMONARY MEDICINE THERE. I HAVE BEEN
21 THERE EVER SINCE.

22 Q. AT WHAT HOSPITAL, PLEASE?

23 A. SOUTH MIAMI HOSPITAL, WHICH IS PART
24 OF THE BAPTIST HEALTH SYSTEM IT'S THE BIGGEST NOT
25 FOR PROFIT, INDEPENDENT HOSPITAL IN SOUTH FLORIDA,
26 SYSTEM

27 Q. GOT IT.

28 SO FOR THE LAST 13 YEARS, YOU HAVE

1 BEEN AT THAT HOSPITAL, THE CHIEF OF PULMONOLOGY?

2 A. CHIEF OF LUNG DISEASE, CORRECT.

3 Q. LUNG DISEASE.

4 NOW, LET'S TALK ABOUT THIS CASE.

5 DID I ASK YOU TO CONSULT WITH ME IN THIS CASE

6 INVOLVING RICHARD BOEKEN?

7 A. YES, SIR.

8 Q. APPROXIMATELY WHEN?

9 A. I THINK IN FEBRUARY, SOMETIME.

10 Q. AND ARE YOU READY TO DO THAT NOW,

11 AFTER HAVING REVIEWED A BUNCH OF DOCUMENTS AND

12 BASED UPON A LOT OF EXPERIENCE YOU HAVE HAD IN THE

13 PAST WHICH WE ARE GOING TO GET TO, ARE YOU READY TO

14 GIVE THE JURY SOME OPINIONS HERE?

15 A. YES, SIR, I AM

16 Q. DO THESE OPINIONS FALL INTO THREE

17 GENERAL AREAS?

18 A. THEY DO.

19 Q. WHAT ARE THOSE GENERAL AREAS,

20 PLEASE?

21 A. THE FIRST I WOULD DESCRIBE AS THE

22 HISTORY OF EPIDEMIOLOGY OF LUNG CANCER. THE

23 HISTORY OF KNOWLEDGE ABOUT LUNG CANCER. MOSTLY IN

24 THE LAST CENTURY, THAT IS, THE 1900'S.

25 Q. THAT'S TOPIC NUMBER 1?

26 A. YES, SIR.

27 Q. YOU ARE AWARE THAT DR. RICHARD DOLL

28 WAS HERE TO TELL THE JURY SOME OF THIS?

1 A. I AM AWARE. I AM ONLY SORRY THAT I
2 COULDN' T SEE HIM BUT, YES, I KNOW HE WAS HERE.

3 Q. WE ARE GOING TO BE TALKING ABOUT
4 THINGS, NOT THE THINGS HE DID, BUT AROUND OTHER
5 THINGS?

6 A. YES.

7 Q. I SHOULD JUST STAY HERE FOR ONE
8 SECOND.

9 AS PART OF THE HISTORY OF LUNG
10 CANCER, THE HISTORY OF THE ETIOLOGY OF LUNG
11 CANCERS, IS IT POSSIBLE TO TELL THAT STORY WITHOUT
12 MENTIONING DR. DOLL?

13 A. NO. IN MY OPINION, SIR RICHARD
14 DOLL IS ONE OF THE HEROES OF MODERN MEDICINE.
15 HE PROVIDED PIVOTAL OR CRUCIAL
16 INFORMATION WHICH I, FOR EXAMPLE, AS A LUNG
17 SPECIALIST, USE VIRTUALLY EVERY DAY.

18 Q. THANKS.
19 THE HISTORY OF THE -- THE HISTORY
20 OF LUNG CANCER, THE ETIOLOGY OF LUNG CANCER, WHERE
21 DOES THAT END, WHERE DOES THAT END?

22 A. IT HASN' T ENDED YET. REALLY,
23 BECAUSE OF -- WE COULDN' T, AS SCIENTISTS AND
24 DOCTORS, TO LEARN MORE AND MORE ABOUT THE EXACT
25 DETAILS OF HOW LUNG CANCER FORMS AND WHY IT FORMS.

26 BUT THE GREAT AMOUNT OF
27 INFORMATION, IN TERMS OF EPIDEMIOLOGY, WAS ACHIEVED
28 BY ABOUT 1965. THERE WAS A VAST BODY OF

1 INFORMATION THAT WAS ACHIEVED, AND AS FAR AS
2 CAUSATION MECHANISM, THAT WAS IN THE '70'S AND
3 '80'S AND '90'S.

4 Q. OKAY, CAUSATION MECHANISM, THAT'S A
5 MOUTHFUL. WHAT DOES THAT MEAN?

6 A. TWO DIFFERENT THINGS.
7 MEDICINE OFTEN, HISTORICALLY, WE
8 LOOK BACK AND KNOW THIS, MEDICINE OFTEN HAS KNOWN
9 THAT ONE THING CAUSES ANOTHER BEFORE WE KNOW HOW IT
10 HAPPENS.

11 THE RELATIONSHIP, CAUSAL, WHAT
12 SCIENTISTS CALL CAUSAL RELATIONSHIP THAT ONE THING
13 CAUSES ANOTHER THING, USUALLY PRECEDES MECHANISTIC
14 UNDERSTANDING, EXACTLY HOW THE THING IS CAUSED.

15 SO ANCIENT MEN NEW THAT BABIES CAME
16 FROM THAT SPECIAL ACT BETWEEN MEN AND WOMEN. THEY
17 HAD NO IDEA HOW THAT HAPPENED, UNTIL TODAY. WE
18 DON'T KNOW EVERY STEP OF THE DNA JOINING BETWEEN
19 SPERM AND EGG. SO THE KNOWLEDGE OF WHERE BABIES
20 CAME FROM LONG PRECEDED THE UNDERSTANDING OF DNA BY
21 THOUSANDS OF YEARS.

22 Q. AND THE ANALOGY HERE WOULD BE THE
23 KNOWLEDGE OF WHAT CAUSED LUNG CANCER WAS OUT THERE
24 BEFORE THE EVOLVING KNOWLEDGE OF HOW,
25 SCIENTIFICALLY, THIS ALL COMES TOGETHER?

26 A. PRECISELY.

27 Q. GOT IT.

28 OKAY, SO THAT'S NUMBER 1.

1 WHAT' S THE SECOND AREA YOU ARE
2 GOING TO TALK ABOUT?

3 A. THE PATIENT, MR. BOEKEN. THE
4 DETAILS OF HIS CASE, HOW IT EVOLVED, WHAT I
5 UNDERSTAND ABOUT IT, HIS X-RAYS, HIS CLINICAL
6 SYMPTOMS, HOW HE GOT WORSE.

7 Q. THANKS.
8 NUMBER 3?

9 A. MY KNOWLEDGE AND UNDERSTANDING AND
10 STUDY OF SPECIFIC DOCUMENTS, SCIENTIFIC PAPERS
11 WRITTEN BY VARIOUS PEOPLE WHO WORKED FOR TOBACCO
12 COMPANIES IN THE 1950' S, ' 60' S, 1970' S.

13 Q. ALL RIGHT.
14 LET' S JUST STAY THERE FOR A SECOND.
15 I DON' T WANT TO TALK ABOUT THE
16 CONTENT AT ALL RIGHT NOW BUT JUST TO GIVE THE
17 JURY A LITTLE IDEA OF WHAT' S COMING, HOW IS IT THAT
18 YOU, AS A PULMNOLOGIST, PRACTICING IN MIAMI, HAVE
19 KNOWLEDGE OF WHAT WENT ON IN THE TOBACCO INDUSTRY
20 AT CERTAIN TIMES REGARDING LUNG CANCER AND TOBACCO
21 AND ASSOCIATED ISSUES?

22 A. THIS HAS BEEN A TOPIC OF SCIENTIFIC
23 INQUIRY FOR YEARS, SINCE AT LEAST THE JOURNAL OF
24 AMERICAN MEDICAL ASSOCIATION PUBLISHED A SPECIAL
25 REPORT ON DOCUMENTS THAT WERE PREVIOUSLY SECRET
26 FROM INSIDE THE TOBACCO INDUSTRY, ABOUT THE
27 MID-PORTION OF THE 1990' S.

28 I WAS PROVIDED, IN ADDITION TO THIS

1 PUBLICATION, MAJOR PUBLICATION BY THE JOURNAL OF
2 AMERICAN MEDICAL ASSOCIATION, I WAS PROVIDED WITH
3 NUMEROUS DOCUMENTS, ACTUALLY, THOUSANDS OF
4 DOCUMENTS, MAKING UP TENS OF THOUSANDS OF PAGES BY
5 VARIOUS PEOPLE, ENTITIES AND PEOPLE WHO CAME TO ME
6 TO EXPLAIN THE PULMONARY MEDICINE IMPLICATIONS OF
7 THESE DOCUMENTS.

8 SO, FOR EXAMPLE, ATTORNEYS, SOME
9 REPRESENTING INDIVIDUALS, SOME REPRESENTING STATES
10 LIKE FLORIDA, THE DEPARTMENT OF JUSTICE OF THE
11 UNITED STATES, THE FEDERAL BUREAU OF INVESTIGATION,
12 CAME TO ME AND ASKED ME TO EXPLAIN CERTAIN
13 DOCUMENTS WITHIN A MEDICAL CONTEXT, PULMONARY
14 MEDICINE CONTEXT.

15 THESE DOCUMENTS WERE GIVEN TO ME OR
16 I ALREADY HAD THEM AND THEY WANTED MY UNDERSTANDING
17 OF SOME OF THEM

18 Q. GOT IT.

19 OKAY. SO THAT WAS NUMBER 3.

20 NOW WE ARE GETTING A LITTLE PREVIEW
21 OF WHAT'S TO COME. LET'S TALK ABOUT NUMBER 1 FOR
22 OPENERS.

23 ARE YOU READY TO DO THAT?

24 A. I AM PREPARED.

25 Q. THE JURY CERTAINLY, BECAUSE
26 DR. DOLL TESTIFIED, THE JURY HAS HEARD ABOUT
27 EPIDEMIOLOGY.

28 WHAT I WOULD LIKE YOU TO START OFF

1 WITH BY JUST GIVING US YOUR DEFINITION OF
2 EPIDEMIOLOGY, PLEASE.

3 A. EPIDEMIOLOGY IS THE STUDY OF HOW
4 DISEASE EFFECTS LARGE GROUPS OF PEOPLE OR HOW
5 DISEASES MOVE THROUGH A POPULATION.

6 SO IT'S NOT THE STUDY OF LUNG
7 CANCER IN ONE INDIVIDUAL PATIENT BUT RATHER THE
8 STUDY OF HOW LUNG CANCER AFFLICTED AMERICA, HOW IT
9 CAME TO PASS THAT LUNG CANCER BECAME A DISEASE
10 COMMON IN AMERICA WHEREAS BEFORE THE 1900'S IT WAS
11 VIRTUALLY UNKNOWN.

12 THAT'S A SCIENCE OF EPIDEMIOLOGY.

13 THERE'S MATH AND STATISTICS.

14 THERE'S BIOLOGY. THERE IS PULMONARY MEDICINE.

15 BECAUSE SO MUCH OF EPIDEMIOLOGY, HISTORICALLY IS
16 PULMONARY, THERE'S COMMON SENSE, THERE ARE ALL OF
17 THESE THINGS PUT TOGETHER IN THE STUDY OF
18 EPIDEMIOLOGY.

19 Q. OKAY. NOW, I HAVE MADE A
20 CONFESSION HERE THAT, TECHNOLOGICALLY, I AM ABOUT
21 SICK LIGHT YEARS BEHIND WHERE YOU ARE.

22 YOU GOT A COMPUTER SITTING UP IN
23 FRONT OF YOU THERE AND YOU ARE THE FIRST WITNESS TO
24 HAVE A COMPUTER SITTING IN FRONT OF YOU THERE.

25 WHY IS IT THERE?

26 A. FIRST OF ALL, I SHOULD EXPLAIN THAT
27 COMPUTERS HAVE BEEN PART OF MY STUDY OF MEDICINE
28 AND MY PRACTICE OF MEDICINE BECAUSE MY RESEARCH WAS

1 DONE ABOUT COMPUTER APPLICATIONS TO THE DIAGNOSIS
2 OF LUNG DISEASE. THAT WAS BACK BEFORE P. C. 'S,
3 BEFORE ANYTHING LIKE THIS EXISTED.

4 AND COMPUTERS -- AND I AM
5 RESPONSIBLE FOR A LOT OF COMPUTER WORK OR MOST OF
6 THE COMPUTER WORK THAT IS DONE IN OUR HOSPITAL FOR
7 LUNG MEDICINE, FOR EXAMPLE.

8 HAVING SAID THAT, I ALSO USE
9 COMPUTERS TO DISPLAY OR DEMONSTRATE SOME OF THE
10 MEDICAL JOURNAL ARTICLES THAT I RELY ON, OR THE
11 STORY LINE, THE SEQUENCE OF EVENTS.

12 SO I HAVE PREPARED SOMETHING CALLED
13 A POWER POINT PRESENTATION, WHICH IS BASICALLY A
14 SERIES OF POSTURES, IF YOU WISH, THAT, INSTEAD OF
15 HAVING THEM ON PAPER, THEY ARE ON MY COMPUTER.

16 Q. AND SO WHEN WE ARE SHOWING THINGS
17 TO THE JURY, AS YOU GO ALONG, TALKING ABOUT THE
18 HISTORY OF LUNG CANCER HERE IN THIS COUNTRY, IN
19 THIS CENTURY, YOU ARE GOING TO DO SOMETHING WITH
20 THE COMPUTER AND WE ARE GOING TO SEE IT UP ON THE
21 SCREEN; RIGHT?

22 A. YES, SIR.

23 Q. AND FOR ME, HAVE YOU PROVIDED ME
24 SOME SORT OF A HARD COPY SO I GOT A LITTLE CLUE AS
25 TO WHAT IS COMING AND BE ABLE TO ASK YOU THE RIGHT
26 QUESTIONS?

27 A. EXACTLY, YES, SIR.

28 Q. BEFORE YOU DISPLAY ANYTHING, WHY IS

1 IT THAT YOU SAY, I FORGET YOUR EXACT WORDS, BUT
2 LUNG CANCER WAS HARDLY KNOWN OR UNKNOWN OR VERY
3 RARE, WHATEVER IT WAS YOU SAID, LET' S HEAR WHY YOU
4 SAY THAT, GO OVER IT.

5 A. WELL, IN THE 1800' S, DOCTORS AND
6 PATHOLOGISTS -- PATHOLOGISTS ARE DOCTORS WHO LOOK
7 AT A TISSUE TAKEN OUT OF THE BODY OR WHO DO
8 AUTOPSIES TO FIGURE OUT WHY PEOPLE DIE.

9 IN THE 1800' S, DOCTORS AND
10 PATHOLOGISTS HAD A VERY GOOD UNDERSTANDING OF WHY
11 PEOPLE DIED. THE DIAGNOSIS OF MANY DISEASES HAD
12 BEEN ACHIEVED. DOCTORS COULDN' T DO A LOT ABOUT
13 MANY DISEASES, BUT THEY KNEW WHY PEOPLE WERE DYING.

14 AND LUNG CANCER, IN CONTRAST TO
15 SOME OTHER KINDS OF CANCER, LIKE BREAST CANCER,
16 LUNG CANCER WAS A VERY RARE ITEM IT WAS SEEN
17 ALMOST NEVER. IT WAS CONSIDERED A PECULIAR DISEASE
18 BECAUSE IT WAS NOT KNOWN.

19 SO DOCTORS KNEW, WOULD HAVE KNOWN
20 IF PEOPLE WERE DYING OF LUNG CANCER, BUT IT WAS NOT
21 OCCURRING PRIOR TO ABOUT 1920.

22 Q. EVEN THOUGH WE ARE TALKING HISTORY,
23 I AM GOING TO PULL YOU FORWARD HERE, IF I CAN, TO
24 PUT IT IN CONTEXT.

25 WE HAVE HEARD HERE THAT THERE' S
26 SOMETHING LIKE, I DON' T KNOW, 400, 000 --

27 MR. LEITER: OBJECTION, YOUR HONOR, TO
28 RESTATING THE TESTIMONY.

1 THE COURT: FAIR ENOUGH.
2 SOME OF THAT CAN BE DONE WITH
3 EXPERTS BUT LET'S LIMIT IT.
4 MR. PIUZE: I'LL LIMIT IT FOR HIM
5 Q BY MR. PIUZE: SO I WON'T PULL YOU
6 FORWARD. LET'S GO ON BACK.
7 A. OKAY.
8 Q. SO BEFORE THE 1920'S, LUNG CANCER
9 WASN'T VERY WELL-KNOWN HERE IN AMERICA; TRUE
10 STATEMENT?
11 A. TRUE STATEMENT. PRACTICALLY DID
12 NOT EXIST.
13 I ACTUALLY HAVE A SLIDE THAT SHOWS
14 THAT. IT'S THIS.
15 Q. THIS IS IT?
16 A. YES, SIR.
17 Q. EXPLAIN IT, PLEASE.
18 A. THE RED BARS ARE THE NUMBER OF LUNG
19 CANCER DEATHS -- THIS IS IN MALES. THERE IS
20 ANOTHER CURVE FOR FEMALES BUT THE PATIENTS, THE
21 REDS BARS ARE MALE DEATHS PER 100,000. THAT'S A
22 STANDARD TOOL. WE DON'T LOOK AT A NUMBER OF DEATHS
23 IN LOS ANGELES AND COMPARE THEM TO SAN FRANCISCO,
24 WE COMPARE THEM IN TERMS OF HUNDRED THOUSAND
25 POPULATION.
26 AND AS YOU CAN SEE, THE NUMBER OF
27 LUNG CANCER DEATHS PER HUNDRED THOUSAND ROSE
28 ABRUPTLY AT AROUND 1930. THOSE ARE THE RED BARS,

1 AND STARTED TO MARCH UP AND ROSE PRECIPITOUSLY
2 AFTER THAT TO THE POINT THAT THIS IS THE MOST
3 SEVERE CANCER EPIDEMIC THAT HAS EVER BEEN SEEN.

4 THERE IS NO OTHER EXAMPLE IN
5 MEDICINE OF A RAPID INCREASE IN CANCER OF ANY TYPE
6 IN THE BODY GREATER THAN THIS.

7 Q. LET' S STAY DOWN AT THE BOTTOM, WITH
8 BASICS.

9 WAY OVER AT 1900, WHAT DOES THAT
10 SHOW, HOW MANY LUNG CANCER DEATHS ARE THERE?

11 A. WELL, THERE WERE SO FEW THAT IT
12 DOESN' T EVEN PRODUCE A BLIP ON THE CHART HERE.
13 THERE WERE PRACTICALLY NONE.

14 Q. SO I CHALLENGE YOU, WITH AN IDEA
15 THAT IT WAS AROUND THAT DOCTORS AND MEDICINE
16 WEREN' T GOOD ENOUGH TO PICK IT UP AND DIAGNOSE IT,
17 THAT WAS THERE, THERE WASN' T A NAME FOR IT, NO ONE
18 KNEW WHAT IT WAS YET?

19 A. THERE WAS A NAME FOR IT AND PEOPLE
20 KNEW WHAT CANCER WAS. WHEN THEY LOOKED UNDER THE
21 MICROSCOPE IN 1850 OR 1870, THEY KNEW EXACTLY THAT
22 SOMETHING WAS A CANCER. ALSO, THEY OPENED UP THE
23 DEAD PERSON AND THE CANCER HAD SPREAD AND DESTROYED
24 ALL THE ORGANS.

25 SO IT WASN' T HARD FOR DOCTORS TO
26 KNOW WHAT THE CANCER WAS PRESENT.

27 THE ANSWER IS THAT THERE WERE
28 PERHAPS SOME LUNG CANCERS MISSED IN THE 1900' S BUT

1 NOTHING LIKE THAT.

2 SO WHEN LUNG CANCER BECAME COMMON,
3 IT BECAME NOT ONLY COMMON BUT IT BECAME RAPIDLY
4 MORE COMMON EVERY YEAR, DOCTORS REPORTS, THERE ARE
5 ARTICLES THAT DESCRIBE THIS, BEING CALLED DOWN TO
6 THE AUTOPSY ROOM TO LOOK AT A LUNG CANCER BECAUSE
7 THEY -- NOBODY HAD EVER SEEN IT BEFORE AND THEN THE
8 NEXT YEAR THERE WERE FIVE AND THE NEXT YEAR IN THE
9 SAME HOSPITAL THERE WERE 50.

10 SO NOBODY -- THIS WAS A SHOCK, A
11 SHOCKING EVENT. AND THERE'S, ON THIS GRAPHIC,
12 SUPERIMPOSED, ANOTHER LINE, NOT THE BARS, BUT THE
13 LINE, AND THE LINE REPRESENTS THE CIGARETTES
14 CONSUMED PER CAPITA.

15 THAT IS, PER U.S. POPULATION, 18
16 AND OLDER, MALES, A CERTAIN NUMBER OF CIGARETTES
17 WERE CONSUMED PER YEAR OVER THE YEARS.

18 1913 WAS THE INTRODUCTION OF THE
19 FIRST COMMERCIAL CIGARETTE IN THE UNITED STATES.

20 AS YOU CAN SEE, THE LINES RISE
21 SHARPLY, THAT IS, THE LINE OF CONSUMPTION. SO THAT
22 IN THE 1960'S, THERE WERE MORE THAN 4,000
23 CIGARETTES CONSUMED PER YEAR FOR 18-YEAR-OLD PER
24 MALE.

25 SO OF ALL OF THE 18-YEAR-OLDS IN
26 THE UNITED STATES, THEY WERE SMOKING A GREAT NUMBER
27 OF CIGARETTES.

28 BUT MORE IMPORTANT THAN THAT RISE,

1 AND THAT LINE, IS THE PARALLELISM SO THERE'S A
2 LINK, A STATISTICAL MATHEMATICAL LINK WHICH
3 ESSENTIALLY IS PROVEN AND THAT'S WHAT I -- THIS IS
4 THE INTRODUCTION.

5 THIS LINE JUST INTRODUCES WHAT
6 EVENTUALLY GETS PROVEN.

7 WHAT'S PROVEN IS THAT THERE'S A
8 RELATIONSHIP BETWEEN THAT LINE, WHICH RISES
9 SHARPLY, THAT'S THE NUMBER OF CIGARETTES CONSUMED,
10 WITH THE BARS THAT RISE SHARPLY, THAT'S THE NUMBER
11 OF LUNG CANCERS THAT OCCUR, AND THE LINK -- FOLLOWS
12 BY A LAG TIME OR A LATENCY OF APPROXIMATELY 20 TO
13 30 YEARS.

14 Q. STOP FOR A SECOND.

15 DEFINE LATENCY.

16 A. LATENCY, DOCTORS USE THAT TERM WHEN
17 THEY MEAN THE PERIOD OF TIME BETWEEN EXPOSURE TO AN
18 ILLNESS AND THE MANIFESTATION OF THE ILLNESS, WHEN
19 THE DISEASE SHOWS UP.

20 SO PEOPLE KNOW IF THEY TAKE THEIR
21 KID TO A HOUSE TO PLAY WITH A PLAY MATE AND THE
22 PLAY MATE HAS CHICKEN POX, ALMOST EXACTLY 14 DAYS
23 LATER, YOUR CHILD HAS CHICKEN POX.

24 YOUR CHILD WASN'T SICK A WEEK AGO
25 BUT THE VIRUS WAS ALREADY IN THAT CHILD.

26 THE PERIOD OF TIME BETWEEN PLAYING
27 TOGETHER AND THE APPEARANCE OF THE ILLNESS IN THE
28 SECOND CHILD, THAT'S LATENCY.

1 SO IT'S BETWEEN EXPOSURE AND
2 DISEASE.

3 Q. OKAY?

4 A. SO HERE WHAT WE ARE SEEING, IN A
5 BROAD SENSE OF THE WHOLE COUNTRY, THE WHOLE UNITED
6 STATES, IS THE PERIOD OF TIME BETWEEN INCREASING
7 CONSUMPTION OF CIGARETTES AND INCREASING INCIDENTS
8 OF LUNG CANCER DEATH.

9 NOW, THIS DOESN'T PROVE IT BY
10 ITSELF, THAT THERE IS A CAUSATIVE EFFECT. THAT'S
11 TO COME LATER.

12 Q. ALL RIGHT, THANK YOU.

13 THE QUESTION I HAD ASKED, IT DIDN'T
14 HAVE TO DO WITH CIGARETTES AT ALL, IT ONLY HAD TO
15 DO WITH LUNG CANCER. REMEMBER THAT?

16 A. YES, SIR.

17 Q. SO THE RED BARS ARE LUNG CANCER.

18 A. CORRECT.

19 Q. AND THE RED BARS SHOW US, THAT FROM
20 BEING VIRTUALLY UNKNOWN IN 1900, VIRTUALLY UNKNOWN
21 IN 19 -- HOW LATE CAN WE GO WHEN IT IS VIRTUALLY
22 UNKNOWN?

23 A. 1930, APPROXIMATELY.

24 Q. IT BECOMES VERY WELL KNOWN?

25 A. WELL, THIS YEAR, APPROXIMATELY
26 170,000 AMERICANS WILL DIE OF LUNG CANCER.

27 Q. WHAT ABOUT IN THE WORLD?

28 A. IT WILL BE IN EXCESS OF TWO MILLION

1 PEOPLE.

2 Q. THAT'S ANOTHER POINT. LET'S COME
3 ON DOWN. LET'S TRAIL BACK.

4 WHATEVER YOU HAVE SAID SO FAR ABOUT
5 THE DISEASE BEING VIRTUALLY UNKNOWN IN 1900, 1910,
6 1915, HOWEVER FAR, THAT IS TRUE OF JUST HERE IN THE
7 UNITED STATES OR IS THAT TRUE OF EVERYWHERE?

8 A. IT WAS TRUE EVERYWHERE.

9 Q. THANKS.

10 SO BEFORE -- EXCUSE ME.

11 BEFORE THIS SLIDE WENT UP, I GUESS
12 THE SLIDE IS AN OLD-FASHIONED WORD, BEFORE THIS
13 POSTER WENT UP, YOU SEEM TO HAVE SKIMMED PAST ONE
14 THAT SHOWED SOME -- YEAH, THAT.

15 WHY IS THIS UP HERE?

16 A. BECAUSE I THINK MOST PEOPLE WHO ARE
17 NOT DOCTORS DON'T KNOW WHAT A MEDICAL JOURNAL IS.

18 AND DOCTORS TALK ALL THE TIME ABOUT
19 MEDICAL JOURNALS OF THE LITERATURE, QUOTE, UNQUOTE,
20 THE LITERATURE, BUT THEY NEVER EXPLAIN WHAT IT IS.

21 AND THE LITERATURE MEANS SOMETHING
22 VERY SPECIAL.

23 Q. WELL, WE HAVE HEARD ABOUT NAMES OF
24 SOME OF THE LITERATURE, LIKE "LANCET" AND THE "NEW
25 ENGLAND JOURNAL OF MEDICINE," THOSE ARE MEDICAL
26 JOURNALS?

27 A. THEY ARE.

28 Q. WHY DON'T YOU TELL US, IF YOU THINK

1 IT'S IMPORTANT TO THE UNDERSTANDING OF THIS
2 PRESENTATION, EXPLAIN TO THE JURY WHAT A MEDICAL
3 JOURNAL IS?

4 A. I THINK IT'S IMPORTANT TO
5 UNDERSTAND THE STORY, THE STORY IS HOW IT IS THAT
6 WE CAME TO UNDERSTAND THAT CIGARETTE SMOKING WAS
7 THE CAUSE OF LUNG CANCER.

8 AND THAT STORY WAS TOLD IN MANY
9 CHAPTERS, IN MANY JOURNALS.

10 MEDICAL JOURNALS ARE SPECIAL
11 MAGAZINES THAT ARE PRODUCED TYPICALLY BY
12 ORGANIZATIONS.

13 SO FOR EXAMPLE, "CHEST" IS PRODUCED
14 BY THE AMERICAN COLLEGE OF CHEST PHYSICIANS. OR
15 "JAMA," THE "JOURNAL OF AMERICAN MEDICAL
16 ASSOCIATION" IS PRODUCED BY THE ORGANIZATION,
17 AMERICAN MEDICAL ASSOCIATION.

18 THERE ARE EDITORIAL BOARDS. THERE
19 ARE PEOPLE WHO LOOK AT ARTICLES THAT ARE PROPOSED.

20 THE ARTICLES ARE WRITTEN BY
21 SCIENTISTS AND DOCTORS, WHERE SPECIAL TOPICS ARE
22 STUDIED AND IDEAS ARE PUT FORTH, USUALLY SUPPORTED
23 BY A SPECIAL SCIENCE WHICH IS CALLED STATISTICS.

24 I WENT -- WHEN A SPECIAL REPORT OR
25 ANALYSIS IS PREPARED, IT'S PROPOSED FOR
26 PUBLICATION. IT'S A GREAT HONOR TO HAVE ONE'S WORK
27 ACCEPTED IN ONE OF THESE JOURNALS AND PUBLISHED.

28 THE ARTICLE IS THEN PUBLISHED AND

1 SENT OUT TO UNIVERSITIES, MEDICAL SCHOOLS, DOCTORS
2 INDIVIDUAL DOCTORS, WHO SUBSCRIBED AND ALL KINDS OF
3 OTHER ENTITIES, GOVERNMENT AND OTHERWISE, SO SOME
4 OF THESE JOURNALS HAVE CIRCULATIONS OF HUNDREDS OF
5 THOUSANDS. SOME ARE MUCH SMALLER.

6 Q. ALL RIGHT. IS THERE SUCH A THING
7 IN A MEDICAL JOURNAL AS AN EDITORIAL AS OPPOSED TO
8 AN ARTICLE?

9 A. THERE CERTAINLY IS.

10 Q. THE DIFFERENCE, PLEASE.

11 A. THE ARTICLE IS A PRESENTATION OF
12 FACTS, AS BEST AS THEY CAN BE EXPLAINED AND
13 PRESENTED, OFTENTIMES ALL THE FACTS ARE NOT KNOWN,
14 BUT AT LEAST THE FACTS THAT CAN BE STUDIED AND
15 REPORTED AND PROVEN BY STATISTICS.

16 EDITORIALS ARE OPINIONS BUT THEY
17 ARE NOT THE KINDS OF OPINIONS THAT PEOPLE NOT IN
18 SCIENCE TYPICALLY ARE USED TO.

19 IT IS NOT AN OPINION ABOUT WHETHER
20 YOU LIKE MUSIC OR DON'T LIKE MUSIC OR YOU LIKE A
21 PIECE OF ART. IT'S NOT THAT KIND OF OPINION.

22 EDITORIALS ARE LEARNED OPINIONS.
23 THEY ARE OPINIONS BASED ON STATISTICS, FACTS, AND A
24 BROAD NUMBER OF ARTICLES THAT MAY HAVE BEEN
25 PUBLISHED IN THAT JOURNAL AND OTHERS.

26 Q. OKAY.

27 SO NOW WE HAVE GOT MEDICAL JOURNALS
28 AND WE ARE GOING TO -- ARE YOU GOING TO BE SHOWING

1 THE JURY SORT OF, IN A TRIAL SEQUENCE, ARTICLES OR
2 EDITORIALS OR BOTH THAT APPEARED IN MEDICAL
3 JOURNALS WITH THE PASSAGE OF TIME REGARDING LUNG
4 CANCER?

5 A. YES. BECAUSE WHAT I DID WAS I
6 LOOKED AT EACH YEAR AS THE YEARS WENT BY, AND
7 LOOKED AT A HUGE NUMBER OF THE ARTICLES, READ THEM
8 MYSELF, AND REREAD THEM AND LOOKED AT THEM AGAIN
9 AND STUDIED THEM AND CHECKED SOME OF THE STATISTICS
10 AND LOOKED AT HOW THEY RELATED TO OTHER ARTICLES.
11 THIS IS A PROCESS THAT TOOK ME MANY YEARS. BUT
12 WHAT I WANT TO SHOW IS JUST SOME OF THE ARTICLES
13 THAT I HAVE CHOSEN, ADMITTEDLY NOT ALL OF THEM
14 BECAUSE THERE'S NO WAY YOU WOULD SIT HERE FOR THE
15 MONTHS THAT IT WOULD TAKE TO LOOK AT ALL OF THEM
16 BUT I HAVE CHOSEN ARTICLES THAT OTHER DOCTORS AND
17 SCIENTISTS POINT TO AND SAY, LOOK, LOOK HOW
18 IMPORTANT THAT WAS IN RETROSPECT.

19 Q. START US OFF, PLEASE.

20 A. 1927. "LANCET", ONE OF THE FOUR
21 MOST PROMINENT JOURNALS OF THE WORLD, "LANCET" IS
22 PUBLISHED IN ENGLAND. THE BRITISH MEDICAL JOURNAL
23 IS AS WELL, IT'S A DIFFERENT JOURNAL.

24 JAMA, "JOURNAL OF AMERICAN MEDICAL
25 ASSOCIATION" AND "NEW ENGLAND JOURNAL OF MEDICINE,"
26 THOSE ARE THE FOUR BIGGIES, IF YOU WISH.

27 PEOPLE READ THOSE JOURNALS ALL OVER
28 THE WORLD.

1 THIS IS 1927, THERE WERE LEARNED
2 PEOPLE PUBLISHING AT THIS TIME. THIS PARTICULAR
3 DOCTOR, TYLECOTE, SAID I DIDN'T HAVE STATISTICS BUT
4 EVERY LUNG CANCER CASE, BECAUSE THEY ARE STARTING
5 TO SEE LUNG CANCER CASES SINCE 1927, EVERY CASE I
6 HAVE EVER SEEN, THE PATIENT HAS BEEN A REGULAR
7 SMOKER, GENERALLY, OF CIGARETTES.

8 IT'S INTERESTING TO GO BACK AND SEE
9 THAT TYLECOTE WAS RIGHT, IT WASN'T KNOWN THAT HE
10 WAS RIGHT THERE. BUT THIS IS WHAT IS CALLED A CASE
11 REPORT.

12 IT'S LIKE A RED LIGHT. IT'S A
13 WARNING. CASE REPORTS GET PUBLISHED UNTIL TODAY.
14 SO THERE ARE ALL KINDS OF CASE REPORTS, SOMETIMES
15 THEY PAN OUT, SOMETIMES THEY DON'T.

16 THIS WAS THE OBSERVATION OF ONE
17 DOCTOR.

18 Q. OKAY.

19 A. HERE'S ANOTHER, A LITTLE BIT MORE
20 COMPLICATED OBSERVATION OF TWO DOCTORS.

21 NOW WE ARE TALKING LEAD ARTICLE,
22 "JOURNAL OF AMERICAN MEDICAL ASSOCIATION."

23 BY THE WAY, IT'S INCREDIBLE TO HAVE
24 AN ARTICLE PUBLISHED IN JAMA, EVEN MORE INCREDIBLE
25 TO BE PUBLISHED AS THE LEAD ARTICLE. IT'S A BIG
26 HONOR.

27 HERE IT IS, PUBLISHED FEBRUARY
28 22ND, 1936, FROM COOK COUNTY HOSPITAL, WHERE

1 DOCTORS ARKIN AND WAGNER REPORT THAT THERE ARE NOW
2 THESE NEW CASES OF LUNG CANCER NOT PREVIOUSLY
3 DESCRIBED REALLY.

4 THERE'S A BIG HOSPITAL FOR COUNTY
5 IN CHICAGO, AND 90 PERCENT OF THEIR PATIENTS WHO
6 DID HAVE LUNG CANCER WERE CIGARETTE SMOKERS.

7 NOW, THIS ISN'T PROOF OF CAUSE AND
8 EFFECT YET, THIS IS ANOTHER KIND OF CASE REPORT.

9 THE DOCTOR'S, IN A SENSE, SAYING,
10 LOOKOUT, WHAT'S GOING ON HERE, WE HAVE OBSERVED
11 THIS. THIS IS OUR OBSERVATION. MAYBE THERE'S AN
12 EXPLANATION.

13 Q. LET ME JUST STOP YOU FOR A SECOND.

14 A LOT OF THESE MEDICAL JOURNALS,
15 YOU TALKED ABOUT THE FOUR, WHAT YOU CALL BIGGIES,
16 FOR THE JURY. BUT THERE ARE ALL KIND OF JOURNALS
17 THAT GO DOWN INTO SUBSPECIALTIES LIKE THE JOURNAL
18 OF -- I AM GOING TO MAKE THIS UP -- THE JOURNAL OF
19 LEFT LITTLE FINGER SURGERY FOR ALL I KNOW

20 A. YES.

21 Q. AND IT GETS VERY, VERY SPECIALIZED?

22 A. IT DOES, YES.

23 Q. WHEN YOU GET -- AND SOMETIMES, AND
24 I AM NOT BELITTLING ANY DOCTORS DOING ANYTHING, BUT
25 SOMETIMES THAT STUFF ISN'T OF INTEREST TO ANYBODY,
26 ONLY ONE DOCTOR IN 1,000. WOULD THAT BE TRUE?

27 A. ABSOLUTELY CORRECT.

28 Q. WHEN YOU ARE TALKING ABOUT LEAD

1 STORY IN ONE OF THESE FOUR MOST PRESTIGIOUS MEDICAL
2 JOURNALS IN THE WORLD, YOU ARE TYPICALLY TALKING
3 ABOUT SOMETHING THAT EFFECTS NOT JUST DOCTORS IN
4 YOUR PRACTICE BUT SOCIETY?

5 A. THAT'S WHY THE EDITORIAL BOARD OF
6 THE JOURNAL, IN THIS EXAMPLE, "JOURNAL OF AMERICAN
7 MEDICAL ASSOCIATION" CHOOSES THE ARTICLE TO RUN IT
8 AS A LEAD ARTICLE.

9 Q. BECAUSE IT'S A SIGNIFICANCE TO MORE
10 THAN JUST A COUPLE DOCTORS?

11 A. BECAUSE IT IS SIGNIFICANT TO PUBLIC
12 HEALTH, IT EFFECTS THE COUNTRY.

13 Q. NOW, WE HAVE HEARD THE TERM, AND --
14 WE HAVE HEARD THE TERM, BUT YOU SAY PUBLIC HEALTH,
15 WHAT DOES "PUBLIC HEALTH" MEAN?

16 A. THE DEGREE OF ILLNESS OR LACK OF
17 ILLNESS OF THE ENTIRE POPULATION OF THE COUNTRY.

18 Q. OKAY. THANKS A LOT.

19 SO YOU HAVE SHOWN US 1927, 1936,
20 WHERE DO WE GO NEXT?

21 A. WELL, BETWEEN 1936 AND 1941,
22 MULTIPLE ARTICLES GET PUBLISHED WHICH I AM SHOWING
23 ABOUT ANIMALS.

24 SCIENTISTS START TO EXPOSE ANIMALS
25 TO MATERIAL TAKEN FROM CIGARETTES.

26 AND THEY BEGIN TO FIND THAT CANCERS
27 OR CANCER LIKE TUMORS CAN BE FORMED IN ANIMALS UPON
28 EXPOSURE TO MATERIAL FROM CIGARETTES.

1 AROUND, AFTER THAT, AFTER ALL THAT
2 WORK ON BIOLOGY IN THE LABORATORY WITH ANIMALS, IN
3 THESE INDIVIDUAL CASE REPORTS, BY ABOUT 1940, TWO
4 VERY IMPORTANT DOCTORS PUBLISHED A MAJOR REPORT.
5 ALTON OSCHNER WAS ONE OF THEM AND THE OTHER ONE WAS
6 DEBAKEY, MICHAEL DEBAKEY.

7 THESE TWO PEOPLE WERE CHEST
8 SURGEONS. AND THEY WERE AMONG THE PIONEERS BECAUSE
9 IT WAS VERY DANGEROUS IN THOSE DAYS TO OPEN UP A
10 PERSON'S CHEST AND TAKE OUT A LUNG. THAT WAS VERY
11 UNLIKELY TO WORK.

12 IN FACT, WHEN THEY WERE DOING THIS,
13 IT HAD JUST BEEN SUCCESSFUL FOR A FEW YEARS.

14 AND THEY WERE DOING IT BECAUSE BY
15 1941 THERE WERE LOTS OF LUNG CANCER CASES.

16 THEY REVIEWED THEIR DATA, OSCHNER,
17 OF THE OSCHNER CLINIC IN NEW ORLEANS, FOR THOSE OF
18 YOU WHO KNOW IT. AND DEBAKEY IS A SURGEON WHO
19 STILL OPERATES. AND I THINK HE IS 90 YEARS OLD
20 NOW

21 THESE TWO PEOPLE REPORTED THAT ALL
22 OF THEIR PATIENTS WHO HAD LUNG CANCERS WITH THE
23 EXCEPTION OF TWO PEOPLE HAD BEEN SMOKERS. AND
24 THEIR OPINION WAS THAT THIS NEW INCIDENTS OF LUNG
25 CANCER WAS DUE TO CIGARETTE SMOKING.

26 Q. SO THAT'S RIGHT AT THE BEGINNING OF
27 WORLD WAR II?

28 A. CORRECT.

1 Q. NOW, SEVERAL ARTICLES WERE
2 PUBLISHED IN THE '40'S BY THESE SAME PEOPLE AND BY
3 OTHERS. AND THERE WAS SOME DISCUSSION IN THE
4 MEDICAL LITERATURE MEANING THE DIFFERENT ARTICLES
5 AS TO WHETHER THIS COULD POSSIBLY BE TRUE.

6 I SHOULD JUST GO BACK FOR A SECOND
7 AND SAY OSCHNER AND DEBAKEY, THAT'S DR. OSCHNER
8 HOLDING A LUNG, ACTUALLY, IN HIS HAND.

9 OSCHNER AND DEBAKEY REVIEWED ALL THE
10 LITERATURE THAT HAD BEEN PUBLISHED UP UNTIL THAT
11 TIME. THIS WASN'T JUST AN OPINION PIECE. THIS WAS
12 ANOTHER KIND OF ARTICLE CALLED A REVIEW ARTICLE.

13 THEY CONSIDERED ALL THE DIFFERENT
14 THINGS THAT WERE PUBLISHED AND THEY CAME TO THIS
15 CONCLUSION. BUT STILL IT WASN'T PROVEN. THIS WAS
16 THEIR IDEA. BUT IT WAS LEFT TO OTHERS TO PROVE THE
17 RELATIONSHIP BETWEEN CIGARETTE SMOKING AND LUNG
18 CANCER. AND THE BIG EVENT, EVENTS OCCURRED IN
19 1950.

20 NOW, TWO SCIENTISTS WORKING ON THIS
21 SIDE OF THE ATLANTIC AND TWO SCIENTISTS IN ENGLAND
22 DEMONSTRATED THAT, IN FACT, CIGARETTE SMOKING WAS
23 THE CAUSE OF LUNG CANCER.

24 THE AMERICAN STORY IS GRAHAM AND
25 WYNDER, ACTUALLY THE PAPER WAS PUBLISHED, HERE IT
26 IS, "JOURNAL OF AMERICAN MEDICAL ASSOCIATION," LEAD
27 ARTICLE, 1950.

28 THERE IS A LITTLE BIT OF STORY

1 WHICH IS THAT WYNDER AT THE TIME WAS A MEDICAL
2 STUDENT, HE WASN' T EVEN A DOCTOR.

3 HE HAD TAKEN -- HE HAD HAD THE
4 AUDACITY TO APPROACH GRAHAM GRAHAM WAS THE OLD
5 MAN OF CHEST SURGERY. HE WAS THE ONE WHO ACTUALLY
6 PERFORMED THE FIRST SUCCESSFUL LUNG OPERATION TO
7 REMOVE A LUNG OF A -- A CANCEROUS LUNG. ACTUALLY,
8 IT WAS A DOCTOR WHO HAD THE CANCER. AND IT WAS
9 SUCCESSFUL IN THE SENSE THAT THE PATIENT DIDN' T DIE
10 ON THE TABLE. SO THIS WAS EVARTS GRAHAM

11 THERE WAS ANOTHER THING, HE DIDN' T
12 BELIEVE THAT CIGARETTE SMOKING WAS THE CAUSE OF
13 LUNG CANCER. HE WAS A HEAVY SMOKER HIMSELF AND HE
14 RIDICULED OSCHNER PUBLICLY IN MEDICAL MEETINGS FOR
15 SUGGESTING THAT CIGARETTE SMOKING WAS THE CAUSE OF
16 LUNG CANCER.

17 DESPITE THE FACT THAT HE WAS SUCH A
18 BOSS, IF YOU WISH, SUCH A PROMINENT PERSON, WYNDER,
19 WHO WAS A MEDICAL STUDENT, APPROACHED HIM AND SAID,
20 I WANT TO LOOK AT ALL OF YOUR CASES. I WANT TO
21 LOOK AT THE PATIENTS WHO YOU HAVE ACTUALLY OPERATED
22 ON, AND I WANT TO SEE WHICH ONES OF THEM GOT LUNG
23 CANCER AND WHICH ONES DIDN' T. AND THIS IS WHAT HE
24 FOUND.

25 WHEN WYNDER AND GRAHAM LOOKED AT
26 THE DATA OF DR. GRAHAM GRAHAM S SURGICAL RECORDS
27 IN SAINT LOUIS, MISSOURI, THEY FOUND THAT LOTS OF
28 PEOPLE WHO SMOKED CIGARETTES DIDN' T GET LUNG

1 CANCER, BUT OF THE PEOPLE WHO DID GET LUNG CANCER,
2 THEY WERE ALL SMOKERS, VIRTUALLY.

3 Q. ALL?

4 A. VIRTUALLY, ALMOST ALL, 99 POINT
5 SOMETHING PERCENT.

6 THAT IS, IT WAS POSSIBLE TO SMOKE
7 IF YOU ARE 20 YEARS OLD, YOU CAN SMOKE AND NOT HAVE
8 LUNG CANCER. BUT IF YOU HAD LUNG CANCER, IT WAS
9 LIKELY THAT WHEN YOU WERE ASKED, YOU HAD BEEN A
10 CIGARETTE SMOKER. THAT'S CALLED A RETROSPECTIVE
11 STUDY, LOOKING BACKWARD.

12 THEY STARTED OFF WITH THE PEOPLE
13 WHO DID HAVE LUNG CANCER. GRAHAM TOOK OUT THE LUNG
14 AND THEY ASKED THEM WHETHER THEY SMOKED OR DIDN'T
15 SMOKE. AND THEY FOUND THAT ALMOST ALL, 90 ODD
16 PERCENT OF THE PEOPLE WHO DID HAVE LUNG CANCER HAD
17 BEEN SMOKERS. OF THE PEOPLE WHO DID NOT HAVE LUNG
18 CANCER, THEY WERE ALL NON-SMOKERS.

19 AS YOU CAN SEE, VERY FEW LUNG
20 CANCER PATIENTS HAD BEEN NON-SMOKERS.

21 THEY RECORDED 1.3 PERCENT. THERE
22 WERE A FEW OTHERS THAT WERE IN BETWEEN, SMOKERS OR
23 THEY WEREN'T SURE AND THAT KIND OF THING.

24 Q. SO THIS INFORMATION THAT YOU ARE
25 SHOWING TO THE JURY RIGHT NOW IS 51 YEARS OLD?

26 A. CORRECT.

27 THIS WAS PUBLISHED IN 1950 BY THE
28 MEDICAL STUDENT WHOSE NAME, BY THE WAY, APPEARS

1 FIRST, BECAUSE GRAHAM IN AN ACT OF CONTRITION,
2 PUBLICLY APOLOGIZED FOR HAVING RIDICULED OSCHNER.

3 GRAHAM SAID, I WAS WRONG --

4 MR. LEITER: OBJECT TO THE NARRATIVE,
5 YOUR HONOR, AND THE RELEVANCE.

6 THE COURT: SUSTAINED.

7 THE WITNESS: WYNDER' S NAME APPEARS
8 FIRST.

9 THE COURT: OKAY.

10 Q BY MR. PIUZE: ANYWAY, BEFORE WE
11 MOVE ON HERE, A YOUNG KID, WITHOUT A MEDICAL
12 DEGREE, GOT TO BE WORLD FAMOUS IN THE MEDICAL FIELD
13 BECAUSE OF THIS?

14 A. THAT IS CORRECT.

15 Q. NEXT, PLEASE.

16 A. THEY SAID SOMETHING VERY IMPORTANT,
17 WHICH WAS, PARALLELISM WYNDER AND GRAHAM
18 IDENTIFIED THE PARALLEL BETWEEN THE INCREASE IN THE
19 SALE OF CIGARETTES AND THE INCREASE IN BRONCHOGENIC
20 CARCINOMA.

21 AND THIS CONCEPT IS A THEME THAT
22 GETS CARRIED THROUGH THE MEDICAL LITERATURE FOR
23 YEARS.

24 HERE' S THE NEXT STEP. ACTUALLY,
25 ALMOST AT THE SAME TIME, THIS IS A PICTURE OF SIR
26 RICHARD DOLL TAKEN NOT TOO LONG AGO.

27 Q. WE RECOGNIZE HIM

28 A. HE WAS HERE, I KNOW

1 SIR RICHARD DOLL PUBLISHED AN
2 ARTICLE WITH HIS COLLEAGUE --

3 Q. LET ME INTERRUPT FOR A SECOND.
4 I KNOW HOW IMPORTANT THIS IS ON THE
5 STORY HERE. BUT WE HAVE GOT IT FIRSTHAND.

6 A. OKAY, RIGHT.

7 Q. BECAUSE WE GOT IT FIRSTHAND, FROM
8 DR. DOLL, LET'S GO PAST IT.

9 A. I WILL SKIP TO IT.

10 I WILL GO THROUGH IT QUICKLY BUT
11 WITH APPROPRIATE RESPECT, I MEAN, THAT I HAVE FOR
12 HIM

13 MR. LEITER: OBJECT TO THE COMMENTARY,
14 YOUR HONOR.

15 THE COURT: SUSTAINED. BUT YOU CAN GO
16 AHEAD AND TELL US THE STORY AGAIN.

17 THE WITNESS: YES, SIR, BRIEFLY.

18 BASICALLY, DR. DOLL, WITH HIS
19 ASSOCIATE, BRADFORD HILL, DEMONSTRATED THAT IN
20 ENGLAND, THE SAME THING WAS HAPPENING, THEY LOOKED
21 AT 709 LUNG CANCER PATIENTS WHO WERE HOSPITALIZED,
22 THEY COMPARED THEM TO PEOPLE WHO WERE HOSPITALIZED
23 BUT WHO DIDN'T HAVE LUNG CANCER. AND THEY FOUND
24 THAT OF ALL THESE PEOPLE, TWO LUNG CANCER PATIENTS
25 WERE NON-SMOKERS BUT 647 WERE SMOKERS.

26 SO, HERE'S THE NEXT PART OF THE
27 STORY, AGAIN, PARALLELISM DOLL IDENTIFIES, JUST
28 LIKE WYNDER AND GRAHAM IDENTIFIED AND JUST LIKE

1 OSCHNER AND DEBAKEY IDENTIFIED, THE PARALLEL
2 BETWEEN INCREASED CONSUMPTION OF CIGARETTES, THOSE
3 ARE THE YELLOW BOXES, AND INCREASED INCIDENTS OF
4 FATAL LUNG CANCER OF THE RED BOXES.

5 NOW, THIS GOES ON, BECAUSE DOLL
6 ENLARGES THE STUDY AND PUBLISHES AGAIN IN '52 AND
7 BASICALLY SHOWS THE SAME THING BUT HE HAD TO A
8 GREATER DEGREE OR GREATER DEGREE OF CERTAINTY.

9 BY 1953, DOLL PUBLISHES AGAIN AND
10 THIS IS IN THE "BRITISH MEDICAL JOURNAL," HE
11 CONCLUDES, IN '53 THAT SUFFICIENT EVIDENCE HAD BEEN
12 PRESENTED IN THE MEDICAL ARTICLES TO PROVE THAT
13 CIGARETTE SMOKING WAS THE CAUSE OF LUNG CANCER.

14 Q. WAY BACK THEN, WE ARE TALKING JUST
15 LIKE 48 YEARS AGO, HE WASN'T SIR RICHARD DOLL AND
16 HE WASN'T FAMOUS AND HE WAS JUST ANOTHER DOCTOR;
17 RIGHT?

18 A. CORRECT.

19 Q. NOT EVERYONE IN THE WORLD DID --
20 DID EVERYONE IN THE WORLD AGREE WITH WHAT HE HAD TO
21 SAY?

22 A. NO. CERTAINLY NOT AT FIRST.

23 Q. LET ME STOP YOU.

24 AS OF 1953, LOOKING AT IT FROM NOW
25 GOING BACK, THERE'S ONE THING, BUT PUTTING
26 OURSELVES IN 1953, A MEDICAL STUDENT IN AMERICA,
27 WYNDER, AND A YOUNG DOCTOR IN LONDON, DOLL, SAID
28 THESE THINGS. BUT THE WHOLE WORLD DID OR DID NOT

1 FOLLOW BEHIND THEM AT THAT TIME?

2 A. WELL, THE ANSWER, FROM MY VIEW AS A
3 DOCTOR AND AS A PERSON WHO STUDIES THESE ARTICLES,
4 AND I TRIED TO PUT MYSELF BACK IN THOSE DAYS, THE
5 ANSWER IS THAT FIRST OF ALL, NO, NOT EVERYBODY
6 AGREED. SECONDLY, THE PEOPLE WHO WERE DOING THIS
7 RESEARCH, AND THE PEOPLE WHO THEN STUDIED THIS
8 RESEARCH AND PUBLISHED IT, WHO WERE LEADING
9 MEDICINE IN THE UNITED STATES AND GREAT BRITON,
10 THEY DID AGREE.

11 THERE WAS NO CONTROVERSY ABOUT THE
12 FACTS. BUT THERE WAS CONTROVERSY BECAUSE PEOPLE
13 HAD TROUBLE ACCEPTING IT AND ONE OTHER, I AM ABOUT
14 TO SHOW ONE OTHER SET OF FACTS THAT SORT OF
15 CONFIRMED THIS KNOWLEDGE TO A POINT THAT THE
16 SCIENTISTS WHO KNEW ABOUT THIS SAID, THERE'S NO
17 MORE DISCUSSION. THIS IS DONE. WE KNOW WHAT
18 CAUSES LUNG CANCER.

19 Q. BUT BEFORE YOU SHOW THE NEXT POSTER
20 UP THERE NOW, LET'S JUST FREEZE THIS IN TIME. AS
21 OF 1953, THIS WAS NOT A DONE DEAL?

22 A. IT WAS NOT A DONE DEAL PUBLICLY.
23 IT WAS CERTAINLY NOT IN THE PUBLIC. IT WAS NOT A
24 DONE DEAL IN TERMS OF THE DOCTORS, THE AVERAGE
25 DOCTOR. BUT IN TERMS OF THE SCIENTISTS WHO WERE
26 WORKING ON IT, IT WAS A DONE DEAL.

27 Q. LET'S GO FORWARD.

28 A. AND HERE'S THE NEXT PART OF THE

1 DONE DEAL.

2 WYNDER, THE SAME WYNDER, GRAHAM
3 AND CRONINGER FROM TORONTO, THEY DO SOMETHING
4 SPECIAL. THEY ACTUALLY TOOK MICE AND THEY EXPOSED
5 THEM TO TAR FROM CIGARETTES.

6 DR. GRAHAM INVENTED THE MACHINE.
7 IT WAS A MACHINE THAT HE USED TO SMOKE CIGARETTES
8 ARTIFICIALLY AND OBTAIN THE RESIDUE FROM THE
9 CIGARETTE SMOKING.

10 AND THAT RESIDUE WAS PUT ON TO THE
11 BACKS OF SHAVED MICE.

12 THE PURPOSE WAS NOT TO CREATE LUNG
13 CANCER. BECAUSE THEY COULDN'T GET THE MICE TO
14 SMOKE ANYWAY. THEY TRIED, BUT IT WASN'T POSSIBLE.

15 THE PURPOSE WAS TO DETERMINE
16 WHETHER A KIND OF CANCER, ANY MALIGNANCIES WOULD
17 OCCUR.

18 AND IN FACT, THEY DID DEMONSTRATE
19 THIS.

20 SO THAT HERE YOU SEE, OF THE MICE
21 THAT WERE EXPOSED TO THIS CIGARETTE MATERIAL, 44
22 PERCENT OF THEM ACTUALLY DEVELOPED A KIND OF
23 CANCER.

24 OF THE ONES THAT WERE NOT EXPOSED,
25 THE LIGHT BLUE BARS, NONE OF THEM GOT THE CANCER.

26 ALSO, SURVIVAL, SURVIVAL TO 20
27 MONTHS, SURVIVAL TO 20 MONTHS FOR A MOUSE IS LIKE
28 SURVIVAL TO A HUNDRED YEARS FOR A PERSON.

1 20 MONTHS IS A RIPE OLD AGE FOR A
2 MOUSE. 53 PERCENT OF THE MICE THAT DIDN'T HAVE
3 EXPOSURE TO THE CIGARETTES GOT TO BE OLD MICE.

4 BUT ONLY ABOUT TEN PERCENT OF THE
5 MICE THAT HAD THE EXPOSURE TO THE CIGARETTE
6 MATERIAL GOT TO BE OLD MICE.

7 SO IN TERMS OF SURVIVAL OF THE
8 MICE, IN TERMS OF THE CANCER DEVELOPING, IT WAS
9 CLEAR THAT SOMETHING IN CIGARETTE TAR WAS HURTING
10 THE MICE VERY BADLY.

11 THE DOCTORS DIDN'T KNOW WHAT THE
12 SOMETHING WAS. AND THEY WEREN'T TRYING TO PROVE
13 LUNG CANCER. THEY WERE MERELY TRYING TO
14 DEMONSTRATE SOMETHING THAT SCIENTISTS CALL
15 BIOLOGICAL PLAUSIBILITY. IT'S A CONCEPT.

16 Q. BIOLOGICAL PLAUSIBILITY?

17 A. YES, SIR.

18 Q. DEFINE THAT.

19 A. IF THERE'S AN ASSOCIATION THAT HAS
20 BEEN SUGGESTED OF A CAUSE AND EFFECT RELATIONSHIP
21 BETWEEN CIGARETTE SMOKING AND LUNG CANCER, IT IS
22 NECESSARY IN ORDER TO BE CONFIDENT THAT THE
23 ASSOCIATION IS REAL, TO SAY, LOOK, THERE'S A
24 BIOLOGICAL EXPLANATION FOR THIS. IT MAKES
25 BIOLOGICAL SENSE. WHEN WE GO LOOK UNDER THE
26 MICROSCOPE, WE FOUND WHY THIS IS HAPPENING.

27 IT'S NOT NECESSARY TO HAVE THE
28 EXACT STEPS, ALL THE STEPS, BUT AT LEAST WE KNOW

1 THAT IT DOES MAKE SENSE, IT'S NOT AN IMPOSSIBILITY
2 FROM A SCIENTIFIC POINT OF VIEW

3 SO IT'S THIS LINK BETWEEN NUMBERS,
4 WHICH ARE STATISTICS AND BIOLOGY, WHICH IS THE REAL
5 LIFE, IN THIS CASE, ANIMALS.

6 Q. SO THIS MOUSE SKIN PAINTING SHOWS
7 BIOLOGICAL PLAUSIBILITY?

8 A. RIGHT. AND FOR DOCTORS AND
9 SCIENTISTS WHO ARE IN THE BUSINESS OF THINKING
10 ABOUT CAUSE AND EFFECT, WHICH IS WHAT RESEARCH IS
11 ABOUT, THIS WAS A REAL EXPLOSIVE FINDING. BECAUSE
12 UP UNTIL THEN, IMPORTANT STATISTICS HAD BEEN
13 PUBLISHED, BUT THE INTRODUCTION OF BIOLOGICAL
14 PLAUSIBILITY SORT OF CLINCHED IT.

15 AND AT THAT POINT, IT REALLY HAD
16 BEEN PROVEN.

17 Q. OKAY.

18 A. AND IN FACT, HERE IS AN EDITORIAL
19 FROM THE NEW ENGLAND JOURNAL OF MEDICINE.

20 THIS WAS PUBLISHED IN 1953 AND IS
21 TALKING ABOUT THE DOLL AND HILL STUDIES AND OTHERS,
22 BECAUSE THEY ARE TALKING ABOUT ALL KINDS OF OTHER
23 STUDIES.

24 AND IT CONCLUDED THAT THE EVIDENCE
25 OF AN ASSOCIATION BETWEEN CIGARETTE SMOKING AND
26 LUNG CANCER WAS SO STRONG THAT IT REPRESENTED PROOF
27 OF CAUSATION, PROOF AS PEOPLE NORMALLY USE THE
28 WORD. PROOF WITHIN THE EVERY DAY MEANING OF THE

1 WORLD.

2 Q. LET ME STOP YOU THERE TOO.

3 WE JUST HAPPEN TO BE IN A FORUM
4 HERE WHERE WHEN THIS IS ALL OVER, THE JUDGE TELLS
5 THE JURY WHAT'S PROOF AND WHAT ISN'T PROOF.

6 BUT WHY -- THIS ISN'T A COURTROOM
7 OUT THERE AND WE WEREN'T DEALING WITH LAW
8 WHY THE EMPHASIS ON PROOF?

9 A. BECAUSE DOCTORS AND SCIENTISTS ARE
10 EXPECTED TO TAKE CERTAIN ACTIONS WHEN THERE'S
11 PROOF, AND SPECIFICALLY, DOCTORS ARE SUPPOSED TO
12 TAKE CERTAIN ACTIONS TO PROTECT THEIR PATIENTS.

13 SO IF SOMETHING IS PROVEN, IT GIVES
14 DOCTORS A CERTAIN BURDEN OF RESPONSIBILITY. THEY
15 MUST ACT.

16 Q. WHY PROOF WITHIN THE EVERY DAY
17 MEANING OF THE WORD? THAT'S KIND OF -- WHAT'S
18 THE --

19 A. IT WASN'T, FROM THE EDITORIAL
20 WRITER'S POINT OF VIEW, THE REASON THEY SAID THAT
21 IS --

22 MR. LEITER: I WILL OBJECT TO THE
23 SPECULATION, YOUR HONOR.

24 THE COURT: FROM A MEDICAL PERSPECTIVE,
25 NOT READING THE MINDS OF THESE INDIVIDUALS, SIR.

26 THE WITNESS: YES, YOUR HONOR.

27 I UNDERSTAND FROM THE MEDICAL
28 PERSPECTIVE WHAT THEY MEANT. THEY MEANT THAT THERE

1 WAS NO DISPUTE AS TO WHETHER THIS WAS STATISTICALLY
2 LIKELY TO BE TRUE, AS PEOPLE OFTEN SAY SOMETHING IS
3 PROVEN MATHEMATICALLY, YOU SEE, IS PROVEN TO A
4 REASONABLE DEGREE OF CERTAINTY. BECAUSE THE
5 P-VALUE, THE STATISTICAL VALUE IS LESS THAN .005.

6 THAT'S NOT WHAT THEY WERE TALKING
7 ABOUT AND THEY MADE THE DISTINCTION BECAUSE THEY
8 KNEW THAT DOCTORS AND SCIENTISTS USUALLY SPEAK OF
9 PROOF WITHIN STATISTICS.

10 THESE DOCTORS MEANT PROOF LIKE WE
11 MEAN PROOF, THAT THIS TABLE IS STANDING HERE. IT'S
12 PROOF WITHIN THE EVERY DAY MEANING OF THE WORD.

13 Q. SO I SUGGEST THIS, AND I DON'T CARE
14 WHICH WAY THE ANSWER GOES AT ALL. BUT WHEN WE ARE
15 SAYING PROOF WITHIN THE EVERY DAY MEANING OF THE
16 WORD, ARE WE TALKING ABOUT PROOF FOR THE EVERY DAY
17 REGULAR PEOPLE?

18 A. YES, SIR. CORRECT.

19 Q. THANK YOU.

20 A. NOW, THE PROOF DOESN'T STOP THERE,
21 OF COURSE, BECAUSE PEOPLE ARE NOT SATISFIED AND
22 OTHER SCIENTISTS HAD TO MAKE CONTRIBUTIONS.

23 THIS, IN FACT, IS A VERY FAMOUS
24 CONTRIBUTION FROM A DOCTOR NAMED BRESLOW HERE IN
25 CALIFORNIA.

26 HE WORKED, HE WAS, IN FACT, THE
27 HEAD OF THE CALIFORNIA DEPARTMENT OF PUBLIC HEALTH
28 AND HE PUBLISHED AN ARTICLE IN 1954 ABOUT SOMETHING

1 THAT HE CALLED A SPECTACULAR DISEASE PHENOMENA. HE
2 DIDN'T MEAN "SPECTACULAR" GOOD, HE MEANT
3 "SPECTACULAR," BAD.

4 HE SAID THAT FROM THERE HAD NEVER
5 BEEN A DISEASE PHENOMENA LIKE THIS BEFORE.

6 HE LOOKED AT 513 LUNG CANCER
7 PATIENTS, ADMITTED TO 11 HOSPITALS IN CALIFORNIA,
8 94 PERCENT OF THE LUNG CANCER PATIENTS WERE
9 SMOKERS.

10 THEY SAID, THAT IS, BRESLOW SAID,
11 THAT THE DATA IN THIS STUDY WAS SO STRONG THAT IT
12 CONSTITUTED STILL ANOTHER LINK IN THE CHAIN OF
13 EVIDENCE CONNECTING LUNG CANCER WITH CIGARETTE
14 SMOKING.

15 SO IT WAS AFTER '53, I THINK, AND
16 THE "NEW ENGLAND JOURNAL OF MEDICINE" THINKS THAT
17 AS FAR AS THE DATA WAS CONCERNED, AS FAR AS THE
18 STATISTICS AND THE NUMBERS AND THE BIOLOGICAL
19 PLAUSIBILITY WAS CONCERNED, IT WAS A DONE DEAL,
20 THERE WAS KNOWLEDGE.

21 BUT '54 AND ONWARD, PEOPLE
22 CONTINUED TO PROVE IT.

23 Q. DO YOU EVER WATCH FOOTBALL?

24 A. YES.

25 Q. HAVE YOU EVER HEARD THE TERM
26 "PILING ON"?

27 A. YES.

28 Q. AFTER -- I DON'T MEAN THIS IN A

1 NEGATIVE SENSE HERE, BUT AFTER 1953 OR '54,
2 WHICHEVER, AS EACH NEW STUDY CAME AND EACH NEW
3 STUDY CAME, THAT IS BASICALLY PILING ON?

4 MR. CARLTON: OBJECT TO THE ARGUMENTATIVE
5 AND LEADING QUESTION.

6 THE COURT: ALL RIGHT. I THINK -- USING
7 "PILING ON" THE IN THE GENERIC SENSE, NOT THE
8 SPORTS SENSE.

9 SIR, WHAT DO YOU MEAN BY "PILING
10 ON"?

11 MR. PIUZE: I AM GUILTY OF ASKING A
12 CRUMMY QUESTION.

13 THE COURT: SUSTAINED.

14 MR. PIUZE: CAN I HAVE LENIENCY?

15 THE COURT: YOU MAY. I AM SURE YOU CAN
16 PHRASE IT WELL.

17 Q BY MR. PIUZE: AFTER WHAT HAD GONE
18 ON UP UNTIL 1953 WITH THE STATISTICS, AND
19 CULMINATING IN THE MOUSE, DID STUDIES LIKE THIS ONE
20 IN CALIFORNIA WITH BRESLOW ADD ANYTHING KNEW, IN
21 YOUR VIEW, OR ONLY CONFIRM AND NAIL DOWN WHAT WAS
22 ALREADY ESTABLISHED?

23 A. IN SCIENCE AND MEDICINE, THERE'S A
24 CONCEPT CALLED "CONSISTENCY OF THE ASSOCIATION."
25 IT'S A BRADFORD HILL CRITERIA. IT'S ACTUALLY
26 CRITERIA NUMBER 1. I HAVE SLIDES THAT SHOW IT
27 LATER, BUT THE POINT IS --

28 Q. WAS I JUMPING THE GUN WITH THIS

1 QUESTION?

2 A. I DIDN'T THINK SO. NO, I WOULD
3 HAVE USED "PILING ON," PERSONALLY, BECAUSE --
4 CONSISTENCY -- THE SECOND ANYBODY CALLS MEDICAL
5 TERM --

6 THE COURT: OVERRULED. GO AHEAD, YOU CAN
7 USE IT.

8 THE WITNESS: -- CONSISTENCY OF
9 ASSOCIATION IS A MEDICAL CONCEPT, THAT IN ORDER TO
10 PROVE SOMETHING, THERE HAS TO BE SOME CONSISTENCY
11 OF THE FINDING, THAT IT ISN'T JUST A ONE TIME
12 EVENT, THAT WHEN SCIENTISTS ALL OVER THE WORLD LOOK
13 AT IT A LITTLE BIT DIFFERENTLY EVERY TIME BECAUSE,
14 AFTER ALL, THE POPULATION IS A LITTLE BIT DIFFERENT
15 THAN CALIFORNIA THAN IT IS IN NEW JERSEY, WHEN
16 PEOPLE LOOK AT IT AGAIN AND AGAIN, THEY KEEP ON
17 FINDING THE SAME THING AND THAT SORT OF ADDS TO THE
18 EVIDENCE, ADDS TO THE PILE OF EVIDENCE, THAT
19 SCIENTISTS CALL THAT CONSISTENCY OF THE
20 ASSOCIATION.

21 Q BY MR. PIUZE: ALL RIGHT, THANKS.
22 LET'S SEE THE NEXT POSTER.

23 A. THIS IS THE NEXT BIG EVENT WHICH
24 ACTUALLY GETS PRESENTED IN TWO STEPS. THERE IS AN
25 ORGANIZATION CALLED THE AMERICAN CANCER SOCIETY.
26 IT'S BASED IN ATLANTA.

27 IN THE 1950'S, IT CHOSE, "IT,"
28 MEANING THE AMERICAN CANCER SOCIETY THROUGH A MAN

1 NAMED CHARLES CAMERON, WHO WAS THE HEAD, CHOSE
2 ANOTHER MAN NAMED E. CUYLER HAMMOND.

3 HAMMOND WAS FAMOUS FOR DOING
4 EPIDEMIOLOGICAL RESEARCH IN HIROSHIMA AFTER THE
5 BOMB.

6 HAMMOND WAS CHOSEN TO REVIEW A VERY
7 LARGE NUMBER OF AMERICANS AND FOLLOW THEM FORWARD,
8 NOT RETROSPECTIVE, TO LOOK BACKWARD, BUT TO GO
9 FORWARD IN TIME AND SEE WHAT HAPPENED TO THEM
10 DEPENDING ON WHETHER THEY SMOKED OR DIDN'T SMOKE.

11 THE FIRST REPORT WAS PUBLISHED OR
12 PRESENTED, I SHOULD SAY, IN A CONFERENCE IN
13 SAN FRANCISCO. IT WAS THE AMERICAN MEDICAL
14 ASSOCIATION CONFERENCE. IT WAS JUNE 21, 1954.

15 AND HAMMOND AND HORN, WHO WAS HIS
16 ASSOCIATE, SHOWED THAT CIGARETTE SMOKING AND DEATH
17 RATE WERE STRIKINGLY ASSOCIATE.

18 SO THEY DEMONSTRATED THAT THERE WAS
19 WHAT THEY CALLED A STRIKING FINDING THAT MEN WITH A
20 HISTORY OF REGULAR CIGARETTE SMOKING HAD A MUCH
21 HIGHER DEATH RATE THAN MEN WHO HAD NEVER SMOKED.

22 NOW, THIS WAS A PROSPECTIVE STUDY
23 AND IT DIDN'T JUST END IN 1954. YOU SEE, I STARTED
24 IN '52 AND WENT ON FOR 20 MONTHS BUT IT ACTUALLY
25 CONTINUED PAST THAT.

26 NOW, SORRY -- I WILL SHOW 58, WHICH
27 IS THE NEXT TIME IT WAS PRESENTED.

28 THIS WAS PUBLISHED AND PRESENTED IN

1 SAN FRANCISCO. NOT EVERYBODY AGREED WITH THIS, IN
2 FACT, NOT EVEN THE HEAD OF THE AMERICAN CANCER
3 SOCIETY.

4 SO PEOPLE MADE STATEMENTS ABOUT
5 THESE FACTS, BUT THEY COULDN'T DISPUTE THE FACTS
6 THEMSELVES.

7 SO I ACTUALLY CHOSE SOME STATEMENTS
8 BY CHARLES CAMERON TO SHOW THAT THERE WERE PEOPLE
9 WHO WERE SHOCKED AND COULDN'T ACCEPT THE REALITY OF
10 THE NUMBERS BUT NOBODY EVER PRESENTED OTHER
11 NUMBERS.

12 Q. LET'S JUST STOP FOR A SECOND.
13 DR. CAMERON IS WHAT?

14 A. CHARLES CAMERON WAS THE MEDICAL
15 DIRECTOR OF THE AMERICAN CANCER SOCIETY.

16 Q. SO IN THE MIDDLE OF 1954, THE
17 MEDICAL DIRECTOR OF THE AMERICAN CANCER SOCIETY
18 HERE IN THE UNITED STATES OF AMERICA WAS NOT
19 CONVINCED THAT THERE WAS A CAUSAL RELATIONSHIP.

20 A. NOT ON THE FIRST DAY.

21 Q. BUT I WANT TO STAY WITH THIS. BUT
22 THE HEAD MEDICAL GUY AT THE AMERICAN CANCER SOCIETY
23 WAS NOT CONVINCED THAT THERE WAS A CAUSAL
24 RELATIONSHIP BETWEEN CIGARETTE SMOKING AND LUNG
25 CANCER?

26 A. THAT IS CORRECT.

27 HE, IN FACT, SAID, PERSONALLY, I AM
28 NOT CONVINCED THAT THE HAMMOND-HORN THEORY OF CAUSE

1 AND EFFECT RELATIONSHIP IS AS YET ENTIRELY PROVED.

2 Q. OKAY.

3 A. THAT WAS FROM AN INTERVIEW OF HIM
4 BEFORE HAMMOND AND HORN PRESENTED THEIR FINDING IN
5 SAN FRANCISCO ON JUNE 21.

6 BUT AFTER THEY PRESENTED THEIR
7 FINDING, THIS IS JUNE 23RD, CHARLES CAMERON STARTS
8 TO SING A DIFFERENT TUNE.

9 HE SAYS, WELL, THE SITUATION IS A
10 LITTLE BIT COMPLICATED. ORIGINALLY I THOUGHT THERE
11 MIGHT BE CERTAIN INDIVIDUALS DISPOSED BY VIRTUE OF
12 THEIR GLANDULAR MAKEUP TO DEVELOP BOTH CANCERS AND
13 ADDICTION TO HEAVY SMOKING. THIS WAS CALLED THE
14 CONSTITUTIONAL HYPOTHESIS. IT'S AN OLD IDEA, SINCE
15 DISCREDITED.

16 BUT CAMERON SAID, WELL, GEE, I
17 THOUGHT THAT SOME PEOPLE, AT FIRST, I THOUGHT THAT
18 SOME PEOPLE WERE DIFFERENT AND THEY TENDED TO BOTH
19 SMOKE MORE AND GET CANCER. BUT NOW I THINK THE
20 SITUATION IS COMPLICATED.

21 AND THEN A LITTLE BIT LATER,
22 CAMERON SAYS, NOW IT SEEMS TO ME THAT THIS REPORT,
23 WITH ITS SPECIFIC REFERENCES, MAKES IT SEEM MUCH
24 MORE LIKELY THAT THE RELATIONSHIP IS ONE OF CAUSE
25 AND EFFECT.

26 SO WHEN PEOPLE LOOKED AT THE DATA,
27 THE NUMBERS, NOT THE SHOCKING NATURE OF IT, BUT THE
28 NUMBERS THEMSELVES, THE EVIDENCE, THE SCIENTISTS

1 CAME TO THE INEVITABLE CONCLUSION THAT THERE WAS A
2 CAUSE AND EFFECT RELATIONSHIP.

3 Q. PLEASE SHOW THE JURY, JUMP BACK ONE
4 OR TWO AND LET'S SEE THE DATE WHEN DR. CAMERON
5 FIRST EXPRESSED SKEPTICISM, JUNE 17, '54.

6 A. YES, SIR.

7 Q. AND THEN WHEN HE CHANGED HIS MIND
8 THE DATE WAS WHEN?

9 A. JUNE 23RD AND THEN MORE SO AGAIN,
10 ANOTHER REPORT JUNE 23RD.

11 Q. SO WE ARE TALKING ABOUT THOSE --
12 THAT'S A PERIOD OF SIX DAYS?

13 A. YES, SIR.

14 Q. AND THE DIFFERENCE WAS THE
15 PUBLICATION OF THE HAMMOND AND HORN STUDY WHICH WAS
16 THE PROSPECTIVE STUDY OF MORE THAN A HUNDRED
17 THOUSAND AMERICANS.

18 SO THAT'S 1954.

19 A. NEXT BIG EVENT IS 1957.

20 THIS IS JANUARY 1957, AND WHAT
21 HAPPENS IS THERE'S THIS MAJOR STATISTICAL
22 BLOCKBUSTER THAT WAS IN '54, HAMMOND AND HORN
23 REPORT, AND NOW THERE'S A MAJOR BIOLOGICAL
24 BLOCKBUSTER, ANOTHER ONE OF THESE BIOLOGICAL
25 COHERENT STUDIES. AND THIS IS BY OSCAR AUERBACH.
26 OSCAR AUERBACH ALSO RECENTLY DIED, CONTINUED TO
27 PRACTICE INTO HIS 90'S.

28 THIS MAN, OSCAR AUERBACH, LOOKED AT

1 150 PATIENTS WHO DIED AT A VETERAN'S ADMINISTRATION
2 HOSPITAL IN NEW JERSEY.

3 THEY HAD AUTOPSIES, THEY LOOKED AT
4 SLIDES OF THE LUNG TISSUE AND MORE SPECIFICALLY OF
5 THE BRONCHIAL TUBES.

6 THEY DIVIDED THE BRONCHIAL TUBES
7 INTO HUNDREDS OF LOCATIONS.

8 WHAT YOU SEE HERE IS TAKEN STRAIGHT
9 FROM HIS ARTICLES PUBLISHED IN THE NEW ENGLAND
10 JOURNAL OF MEDICINE IN 1957 AND IT LOOKS LIKE A
11 TREE UPSIDE DOWN.

12 AND THAT'S THE BRONCHIAL TREE AND
13 IT SHOWS WHERE DR. AUERBACH TOOK THE SLICES FROM
14 THE BRONCHIAL TUBES OF THESE 150 MEN WHO DIED AND
15 PRODUCED 28,000 GLASS SLIDES AND UNDERTOOK 80,000
16 EXAMINATIONS.

17 WHAT THEY DEMONSTRATED WAS THAT IN
18 PEOPLE WHO DID NOT SMOKE CIGARETTES THE INNER
19 LINING OF THE BRONCHIAL TUBES WERE NORMAL. BUT IN
20 PEOPLE WHO DID SMOKE CIGARETTES, OR WHO DID SMOKE
21 CIGARETTES AND ALSO GOT LUNG CANCER, THE INNER
22 LINING OF THE BRONCHIAL TUBES WERE ABNORMAL BUT NOT
23 JUST ABNORMAL, ABNORMAL IN A WAY THAT LED
24 INEVITABLY TO CANCER.

25 AND THE DATA IS SUMMARIZED IN THIS
26 SLIDE.

27 AUERBACH SHOWS THAT IF PEOPLE
28 DIDN'T SMOKE, THE NUMBER OF SLIDES THAT

1 DEMONSTRATED SOMETHING CALLED CARCINOMA-IN-SITU
2 WHICH IS A VERY EARLY STAGE OF CANCER, WAS VERY
3 SMALL, ABOUT ONE PERCENT.

4 BUT WITH INCREASING SMOKING, THE
5 NUMBER OF SLIDES THAT WOULD SHOW THAT WENT UP AND
6 UP. AND AS YOU CAN SEE THE RED BARS ARE SIMILAR TO
7 OTHER KINDS OF OBSERVATIONS IN THE STORY.

8 THIS DEMONSTRATED SOMETHING ELSE
9 CALLED DOSE RELATIONSHIP.

10 AND IT'S A VERY IMPORTANT CONCEPT
11 IN MEDICINE, AND IT COMES UP IN 1958 AND A COUPLE
12 YEARS AFTERWARDS.

13 DOSE RELATIONSHIP IS PART OF
14 BIOLOGICAL COHERENCE. AND IT MEANS THE MORE OF
15 SOMETHING YOU ARE EXPOSED TO, THE MORE YOU ARE
16 LIKELY TO GET A DISEASE.

17 Q. STOP FOR A SECOND, PLEASE.

18 YOU HAVE GIVEN THIS KIND OF
19 PRESENTATION BEFORE?

20 A. YES, SIR.

21 Q. YOU KNOW THIS, IF NOT BY HEART, YOU
22 KNOW IT REALLY, REALLY, WELL?

23 A. I KNOW IT REALLY, REALLY, WELL.

24 Q. SOME OF THE WORDS YOU USED AND THE
25 PHRASES YOU USED THAT SLIP OFF OF YOUR TONGUE ARE
26 STUFF THAT WE NEVER HEAR IN THE REAL WORLD AND
27 EVERY DAY LIKE "BIOLOGICAL COHERENCE," I THINK YOU
28 HAVE ALREADY SAID ONCE. PLEASE REMIND US WHAT IS,

1 "BIOLOGICAL COHERENCE. "

2 A. IT MEANS THAT THE STATISTICS MAKE
3 SENSE, WHEN WE LOOK AT A RISE IN CIGARETTE SMOKING
4 CONSUMPTION AND 20 OR 30 YEARS, WE SEE A RISE IN
5 THE AMOUNT OF LUNG CANCER DEATHS. THAT MAKES SENSE
6 BIOLOGICALLY.

7 WE KNOW IT'S TRUE MATHEMATICALLY.
8 BUT THAT'S NOT ENOUGH. WE HAVE TO KNOW IT TO BE
9 TRUE BIOLOGICALLY.

10 AND AT THIS POINT, THEY START
11 KNOWING IT TO BE TRUE. TODAY WE KNOW IT IS TRUE
12 BUT IN 1957 THEY KNEW IT TO BE TRUE, BIOLOGICALLY.

13 WHAT HAPPENS HERE IS AUERBACH, IN
14 NEW JERSEY, THAT IS HE PROVIDES AN EXPLANATION FOR
15 WHY THAT HAPPENED, WHY THERE'S AN INCREASED RISK OF
16 LUNG CANCER, AN INCREASED DEATH FROM LUNG CANCER
17 AFTER CERTAIN NUMBER OF YEARS OF CIGARETTE SMOKING.

18 HE LOOKS INSIDE THE LUNGS OF THE
19 PEOPLE AND HE FINDS THAT THE MORE THEY SMOKED,
20 THAT'S DOSE, AND THE LONGER THEY SMOKED, THAT'S
21 STILL DOSE, THE MORE LIKELY THEY WERE TO GET THESE
22 CHANGES IN THE CELLS THAT LED TO CANCER. THAT'S
23 BIOLOGICAL COHERENCE.

24 SO MORE DOSE, MORE CANCER.

25 AND THAT EXPLAINS THE STATISTICS.

26 SO DOSE RELATIONSHIP IS A VERY
27 IMPORTANT PART OF PROVING CAUSE AND EFFECT.

28 IN MEDICINE, IN GENERAL, SCIENCE IN

1 GENERAL, IF ONE THING CAUSES ANOTHER THING, MORE OF
2 THAT THING IS LIKELY TO CAUSE MORE OF THE RESULTS.

3 Q. OKAY. SO THIS IS THE FIRST TIME, I
4 THINK, THAT I HEARD YOU TALK ABOUT DOSE.

5 A. DOSE.

6 Q. DOSE RELATIONSHIP, IS IT?

7 A. YES, SIR. AND DOSE IS A CRUCIAL
8 PART OF PROVING CAUSE.

9 Q. 1957?

10 A. YES, SIR.

11 THE COURT: ALL RIGHT. WITH THAT, WE ARE
12 GOING TO TAKE YOUR AFTERNOON BREAK. IT'S NOW TEN
13 MINUTES UNTIL 3:00. WE WILL BE BACK AT TEN MINUTES
14 AFTER 3:00.

15 LADIES AND GENTLEMEN, DON'T DISCUSS
16 THE CASE WITH ANYONE.

17 SIR, YOU MAY STEP DOWN.

18

19 (AT THIS TIME, A RECESS
20 WAS TAKEN.)

21

22 (THE FOLLOWING PROCEEDINGS
23 WERE HELD IN OPEN COURT IN
24 THE PRESENCE OF THE JURY.)

25

26 THE COURT: OUR JURY PANEL IS WITH US.
27 COUNSEL IS PRESENT AS WELL.

28 THE WITNESS IS ON THE STAND. YOU

1 UNDERSTAND, SIR, YOU ARE STILL UNDER OATH.

2 THE WITNESS: YES, YOUR HONOR.

3 THE COURT: PROCEED.

4

5

6

ALLAN FEINGOLD, M D. ,
7 CALLED AS A WITNESS BY THE PLAINTIFF, HAVING BEEN
8 PREVIOUSLY DULY SWORN, RESUMED THE WITNESS STAND
9 AND TESTIFIED FURTHER AS FOLLOWS:

10

11 DIRECT EXAMINATION (RESUMED)

12

13 BY MR. PIUZE:

14 Q. DR. FEINGOLD, SINCE THE JURY LEFT
15 AND BEFORE THEY CAME BACK, ANOTHER POSTER WENT UP,
16 1958, PROSPECTIVE STUDY. WHY IS IT SIGNIFICANT?

17 A. THIS WAS THE SIGNIFICANCE OF THE
18 HAMMOND-HORN STUDY, THE BIG PROSPECTIVE STUDY WHERE
19 187,783 MEN WERE FOLLOWED, THAT IS, THEY WERE -- A
20 HISTORY WAS TAKEN FROM THEM IN 1952 AND
21 CONTINUOUSLY UNTIL 1955.

22 THIS WAS UNDER THE SUPERVISION OF
23 THE AMERICAN CANCER SOCIETY.

24 AND IT WAS PUBLISHED, THE RESULTS
25 WERE FIRST PUBLISHED IN '54 WHICH I ALREADY TOLD
26 YOU ABOUT, THOSE WERE THE PRELIMINARY STUDIES, AND
27 THEN BY 1958 --

28 Q. BACK UP A SECOND.

1 A. THAT'S 1958 AGAIN. THE TOTAL HUMAN
2 EXPERIENCE WAS EQUIVALENT TO MORE THAN HALF A
3 MILLION YEARS OF HUMAN LIFE, 667,000 YEARS OF HUMAN
4 LIFE.

5 Q. CAN YOU JUMP TO THE -- THAT'S ONE I
6 WAS INTERESTED IN.

7 A. THAT'S THE FINDING.

8 Q. LET'S STAY WITH THE FIRST ONE.

9 "RURAL AREAS AS WELL AS LARGE
10 CITIES," IS THAT SIGNIFICANT?

11 A. IT WAS THEN.

12 Q. WHY WAS IT THEN?

13 A. BECAUSE IT WAS THOUGHT THAT PERHAPS
14 SOMETHING IN THE CITIES OR PERHAPS SOMETHING IN
15 FARMING WAS THE CAUSE OF THIS NEW OUTBREAK OF LUNG
16 CANCER.

17 BY THAT POINT, IT WAS THOUGHT NOT
18 TO BE, THAT THERE WAS NO REAL DIFFERENCE BETWEEN
19 CITY AND COUNTRY AND THAT WAS SHOWN HERE.

20 Q. SO WHETHER YOU ARE BREATHING IN
21 ASPHALT AND FUMES AND CAR EXHAUST, WHETHER YOU WERE
22 LUCKY AND YOU GOT TO BREATHE IN WHAT THE COWS AND
23 PIGS LAUGH OVER, SAME LUNG CANCER?

24 A. CORRECT.

25 Q. BECAUSE IF YOU WERE BREATHING THE
26 CAR EXHAUST IN LOS ANGELES AND YOU DIDN'T SMOKE,
27 YOU DIDN'T GET LUNG CANCER.

28 IF YOU WERE BREATHING FRESH AIR IN

1 THE COUNTRYSIDE AND YOU DID SMOKE, YOU DID GET LUNG
2 CANCER.

3 IT WASN' T RELATED TO WHERE YOU WERE
4 SMOKING; IT WAS A MATTER OF WHETHER YOU WERE
5 SMOKING OR NOT.

6 A. AND THIS IS WHAT THEY SHOWED.

7 THIS IS SOMETHING, AGAIN, THE DOSE
8 RELATIONSHIP, IT WAS VERY IMPORTANT, THIS
9 PARTICULAR FINDING, BECAUSE THIS IS THE FIRST TIME
10 IN 1958, THE BIOLOGICAL PLAUSIBILITY IS INTEGRATED
11 WITH THE STATISTICS. SO BOTH ARE BEING DONE AT THE
12 SAME TIME.

13 BECAUSE DOSE RELATIONSHIP IS PART
14 OF BIOLOGICAL PLAUSIBILITY.

15 WHAT HAMMOND AND HORN DID WAS THEY
16 SHOWED NOT ONLY WAS THERE A STATISTICAL ASSOCIATION
17 BETWEEN SMOKING AND GETTING LUNG CANCER, AND NO
18 ASSOCIATION BETWEEN NON-SMOKING AND GETTING LUNG
19 CANCER.

20 YOU SEE, DOWN HERE IN THE CORNER,
21 THE 3.4, NEXT TO THE ZERO, THOSE ARE THE NEVER
22 SMOKERS.

23 THE LUNG CANCER DEATH RATE PER
24 HUNDRED THOUSAND PER YEAR WAS EXTREMELY SMALL, 3.4
25 PER HUNDRED THOUSAND PER YEAR.

26 SO IF YOU DIDN' T SMOKE, SOME PEOPLE
27 ARE UNLUCKY, BUT THE VAST MAJORITY OF NON-SMOKERS
28 NEVER GOT LUNG CANCER.

1 AND AS YOU SMOKED MORE AND MORE,
2 THE RISK WENT UP AND UP. AND THIS LINEARITY, THIS
3 STRAIGHT LINE UPWARDS, THAT'S A DOSE RELATIONSHIP,
4 CAUSE AND EFFECT, CLASSICAL IN MEDICINE. THAT'S
5 WHAT DOCTORS AND SCIENTISTS ARE LOOKING FOR.

6 Q. SO TWO PLUS MEANS TWO PLUS PACKS A
7 DAY?

8 A. YES.

9 Q. YOU ARE SMOKING TWO PLUS PACKS A
10 DAY, IT LOOKS LIKE?

11 A. 217 PER HUNDRED THOUSAND PER YEAR,
12 EVERY YEAR.

13 Q. YOU GOT THE NUMBER, I AM JUST
14 TRYING TO FIND WHERE ONE PACK A DAY WOULD BE. WHAT
15 WOULD BE THE NUMBER FOR ONE PACK A DAY, WHAT WOULD
16 BE THE CLOSEST NUMBER?

17 A. SOMETHING AROUND 120.

18 Q. SO IT'S ALMOST A DIRECT DOUBLE
19 CORRELATION?

20 A. CORRECT. IT'S LINEAR. THE TERM
21 THAT'S USED FOR THIS IS LINEAR DOSE RELATIONSHIP.

22 YOU KNOW, FOR EVERY ADDITIONAL
23 CIGARETTE YOU SMOKE, THERE'S A CERTAIN LINEAR
24 INCREASE. IT'S LIKE 20 CIGARETTES IS 120TH MORE
25 THAN 19 CIGARETTES IN TERMS OF CAUSE OF CANCER.

26 Q. SO I GUESS THIS IS A BIG YAWN IN
27 THE YEAR 2001 MAYBE?

28 MR. LEITER: OBJECT TO THE COMMENTARY,

1 YOUR HONOR.

2 THE COURT: SUSTAINED.

3 MR. PIUZE: I APOLOGIZE.

4 Q BY MR. PIUZE: BACK THEN, WAS THIS
5 THE FIRST TIME SOMEONE HAD SHOWN THERE WAS A
6 DIRECT, THE MORE YOU SMOKED, THE MORE YOUR CHANCES
7 ARE?

8 A. YES.

9 Q. CAN WE SEE THE NEXT ONE.

10 A. NOW, BY 1958, THERE'S ALL THIS
11 PILED ON INFORMATION, EDITORIALS START TO APPEAR.
12 THIS IS AN EDITORIAL FROM THE "NEW
13 ENGLAND JOURNAL OF MEDICINE," 1960, PERTAINING TO
14 ALL OF THESE DIFFERENT ARTICLES THAT HAVE BEEN
15 PUBLISHED BETWEEN 1941 AND 1960, OVER 19-YEAR
16 PERIOD.

17 THE EDITORIAL WRITER, AND YOU CAN
18 SEE THAT THIS IS THE LEAD EDITORIAL OF THE "NEW
19 ENGLAND JOURNAL OF MEDICINE" ON THAT PARTICULAR
20 DAY, THE EDITORIAL WRITER SAID THAT NO RESPONSIBLE
21 OBSERVER CAN DENY THE ASSOCIATION. THAT'S THE
22 ASSOCIATION BETWEEN CAUSE AND EFFECT OR BETWEEN
23 CIGARETTE SMOKING AND LUNG CANCER.

24 THE EVIDENCE WAS STRONG ENOUGH TO
25 PROVE CAUSATION OR TO SUGGEST, NOT TO MISSTATE WHAT
26 THEY SAID, TO SUGGEST CAUSATION.

27 Q. SO THAT WAS 1960?

28 A. YES, SIR.

1 Q. LET ME SHOW YOU SOMETHING THAT WE
2 HAVE ALL SEEN BEFORE. AND THIS WAS DISCUSSED WITH
3 DR. DOLL WHEN HE WAS HERE. WE CALL IT "DEVELOPMENT
4 OF KNOWLEDGE ABOUT THE EFFECTS OF SMOKING. "

5 AND THE ARTICLES STOP IN THIS
6 PARTICULAR ONE, I THINK, IN 1957. ANYWAY, RIGHT AT
7 THE END OF THIS BOARD, IF I WERE TO PUT A 1960
8 THERE AT THE END OF THE BOARD, WE'D BE WHERE THAT
9 EDITORIAL IS?

10 A. CORRECT.

11 Q. WHAT IS THE -- YOU CAN TELL US THIS
12 FROM A HISTORICAL PERSPECTIVE. WHAT IS THE
13 EMPHASIS ON "RESPONSIBLE," WHY EVEN HAVE THAT WORD
14 THIS THERE?

15 A. BECAUSE --

16 MR. LEITER: OBJECTION, CALLS FOR
17 SPECULATION.

18 THE COURT: IN THE MEDICAL COMMUNITY, AS
19 IT APPEARS IN ARTICLES OF THIS NATURE.

20 THE WITNESS: SHOULD I ANSWER?

21 THE COURT: IN THAT CONTEXT, NOT READING
22 THE MIND OF THE PARTICULAR WRITER.

23 THE WITNESS: YES, SIR.

24 THIS, AGAIN, PERTAINS TO SOMETHING
25 VERY SPECIFIC IN SCIENCE. THE WORD "RESPONSIBLE" I
26 DON'T THINK IS USED HERE IN A NON-SCIENTIFIC
27 CONTEXT OR THE WAY PEOPLE TALK ABOUT PERSONAL
28 RESPONSIBILITY.

1 THEY ARE TALKING ABOUT THE
2 RESPONSIBILITY TO OBSERVE THE FACTS. SO WHEN A
3 SCIENTIST LOOKS AT FACTS, HE OR SHE IS REQUIRED TO
4 DEAL WITH THE FACTS, WITH THE NUMBERS.

5 IF YOU ARE RESPONSIBLE, YOU ARE
6 FACING THE FACTS. SO IT'S FROM THAT CONTEXT.

7 BUT THE EDITORIAL WRITERS DID SPEAK
8 OF THE RESPONSIBILITY OF THE INDUSTRY THAT WAS
9 PRODUCING THE PRODUCT, FROM A PUBLIC HEALTH POINT
10 OF VIEW, AND THEY SPECIFICALLY COMMENTED ON THAT.

11 Q BY MR. PIUZE: WHAT ARE YOU
12 SHOWING RIGHT HERE?

13 A. THIS IS STILL FROM THE EDITORIAL.
14 AND IT WAS THE OPINION OF THE
15 EDITORIAL WRITER THAT IN THE FACE OF THE EVIDENCE,
16 THAT CIGARETTE SMOKING CAUSED LUNG CANCER, THAT
17 TOBACCO MANUFACTURERS AND THEIR SPOKESMEN HAD ACTED
18 IN A DEPLORABLE MANNER, AND MORE SPECIFICALLY, FROM
19 A SCIENTIFIC POINT OF VIEW, HAD ACTUALLY DISTORTED
20 THE FACTS, THAT SAID THAT THE FACTS WERE NOT TRUE.

21 THEY, THE EDITORIAL WRITERS WENT ON
22 TO, TO EMPHASIZE THAT THEY DID NOT KNOW EXACTLY
23 WHAT WAS CAUSING LUNG CANCER IN CIGARETTES, THEY
24 KNEW THAT CIGARETTES CAUSED LUNG CANCER BUT THEY
25 DIDN'T KNOW EXACT WHAT IT WAS, THE MECHANISM, AND
26 IT WAS NECESSARY TO CONTINUE TO LOOK FOR MECHANISM

27 BUT THE EVIDENCE WAS SUFFICIENT AND
28 NOW THEY QUOTE DOLL, YOU SEE, THE PRINCIPLE

1 ETIOLOGIC FACTOR IN THE INCREASED INCIDENCE OF LUNG
2 CANCER WITH CIGARETTE SMOKING, THEY KNEW THAT, AND
3 THEY SAID, "LIVES CAN BE SAVED IF THESE FACTS ARE
4 KNOWN -- ARE MADE KNOWN TO THE MEDICAL PROFESSION
5 AND THE SMOKING PUBLIC. LIVES WILL CONTINUE TO BE
6 LOST IF CONTROLLED MEASURES MUST AWAIT DEFINITIVE
7 STUDIES. "

8 Q. WHAT IS A CONTROLLED MEASURE?

9 A. TO GET PEOPLE TO STOP SMOKING.

10 Q. WHAT IS A DEFINITIVE STATEMENT?

11 A. TO EXPLAIN HOW IT IS THAT
12 CIGARETTES CAUSED LUNG CANCER.

13 SO THEY KNEW THAT CIGARETTES DID
14 CAUSE LUNG CANCER. THEY WEREN' T SURE HOW THEY
15 SAID THAT IF WE HAVE TO WAIT TO FIGURE OUT HOW,
16 THEN PEOPLE ARE GOING TO DIE IN THE MEANTIME.

17 Q. EARLIER, WAY EARLIER IN YOUR
18 TESTIMONY, WHEN I ASKED YOU TO GIVE AN OVERVIEW OF
19 THE THREE AREAS OF TESTIMONY, YOU MENTIONED
20 SOMETHING ABOUT ONCE UPON A TIME PEOPLE NEW THAT IF
21 YOU HAD SEX, A BABY WOULD COME AND THEY KNEW THERE
22 WAS A LINK, BUT THEY DIDN' T KNOW HOW IT HAPPENED.

23 IS THAT WHAT WE ARE TALKING ABOUT?

24 MR. LEITER: OBJECT TO THE
25 RECHARACTERIZATION OF PRIOR TESTIMONY.

26 THE COURT: ALL RIGHT. I UNDERSTAND THAT
27 BUT THE HYPOTHETICAL IS UNDERSTOOD, BUT THE CONTEXT
28 IS UNDERSTOOD.

1 PROCEED.

2 THE WITNESS: I AGREE WITH YOU EXACTLY.

3 THIS IS THE EXAMPLE.

4 IN FACT, WE GO ON TO SAY, WE GIVE
5 THE MORE PRECISE OR EXAMPLE OR ANOTHER EXAMPLE, YOU
6 SEE THE SMALL POX EXAMPLE AND CHOLERA EXAMPLE, LOOK
7 AT WHAT THEY SAY ABOUT JOHN SNOW.

8 THEY SPEAK OF A FAMOUS STORY IN
9 MEDICINE, JOHN SNOW SO IT SAYS THE CHOLERA
10 VIBRIO.

11 CHOLERA VIBRIO IS THE NAME OF THE
12 VIRUS THAT CAUSES CHOLERA. YOU DON'T SEE IT IN
13 AMERICA VERY MUCH, NOWADAYS. IT WAS TERRIBLE IN
14 THE PAST. IT WOULD KILL PEOPLE, MOSTLY CHILDREN,
15 AND IT WAS FROM CONTAMINATED WATER, WATER THAT
16 CONTAINED BACTERIA.

17 THEY SAID CHOLERA VIBRIO WAS
18 UNSUSPECTED AT THE TIME THAT JOHN SNOW HAD THE
19 FORESIGHT TO TAKE THE HANDLE OFF THE BROAD STREET
20 PUMP. THIS WAS JOHN SNOW.

21 JOHN SNOW STUDIED AN OUTBREAK OF
22 CHOLERA IN LONDON IN 1855.

23 MR. CARLTON: OBJECT TO THE RELEVANCE,
24 YOUR HONOR.

25 THE COURT: OVERRULED. PROCEED.

26 THE WITNESS: WHAT HE IDENTIFIED WAS THAT
27 THE CASES OF CHOLERA IN LONDON WERE BREAKING OUT
28 AROUND THE BROAD STREET PUMP, WHICH WAS A PUMP THAT

1 PROVIDED TO LONDONERS, OR AT LEAST TO SOME
2 LONDONERS, WATER STRAIGHT FROM THE THAMES RIVER.
3 IT WAS FROM A PORTION OF THE THAMES RIVER BELOW A
4 SEWAGE ENTRY INTO THE RIVER.

5 WHAT HAPPENED WAS, THIS IS A VERY
6 LONG QUOTE, BUT BASICALLY IT SAYS THAT HE WAS A
7 STRANGER. HE ASKED FOR A BRIEF HEARING, SPEAKING
8 TO THE LEADERS OF THE CITY OF LONDON. A STRANGER
9 CAME FORWARD AND EXPLAINED HIS VIEW OF THE HEAD AND
10 FRONT OF THE OFFENSE. HE HAD FIXED HIS ATTENTION
11 ON THE BROAD STREET PUMP AS THE SOURCE AND CENTER
12 OF THE CALAMITY. HE ADVISED THE REMOVAL OF THE
13 PUMP HANDLE AS THE GRAND PRESCRIPTION. THE VESTRY
14 WAS INCREDULOUS BUT HAD THE GOOD SENSE TO CARRY OUT
15 THE ADVISE. THE PUMP HANDLE WAS REMOVED AND THE
16 PLAGUE WAS STAYED. THERE AROSE HEREUPON MUCH
17 DISCUSSION AMONG THE LEARNED BUT IT MATTERS LITTLE
18 FOR THE PLAGUE WAS STAYED.

19 SO IT DIDN'T MATTER THAT THEY
20 DIDN'T UNDERSTAND WHAT ABOUT CHOLERA, IT DIDN'T
21 MATTER THAT THEY COULDN'T SEE THE BACTERIA THAT,
22 WOULD TAKE A HUNDRED YEARS TO SEE THE BACTERIA, BUT
23 THEY KNEW WHAT WAS CAUSING THE DISEASE. THEY KNEW
24 THE DISEASE WAS AROUND THE BROAD STREET PUMP AND
25 THE FACT THAT THEY DIDN'T KNOW ABOUT THE BACTERIA
26 DIDN'T MATTER BECAUSE PEOPLE'S LIVES WERE SAVED,
27 THE PLAGUE WAS SAVED.

28 Q. LET'S GO BACK --

1 A. THAT WAS THE "NEW ENGLAND JOURNAL
2 OF MEDICINE." THIS IS THE "NEW ENGLAND JOURNAL OF
3 MEDICINE" QUOTING THE ISSUE OF JOHN SNOW RIGHT
4 THERE.

5 Q. SO THE "NEW ENGLAND JOURNAL OF
6 MEDICINE" IS SAYING, IT DOESN'T MATTER, WE CAN'T
7 TELL --

8 MR. LEITER: OBJECTION, YOUR HONOR, THE
9 DOCUMENT SPEAKS FOR ITSELF.

10 THE COURT: NOT WITH AN EXPERT. IT IS
11 PERMITTED.

12 PROCEED.

13 MR. PIUZE: THANKS.

14 Q. BY MR. PIUZE: I WILL TELL YOU
15 WHAT. WHY DON'T YOU JUST TELL US THE PARALLEL
16 BETWEEN TOBACCO AND CANCER AND CHOLERA AND BROAD
17 STREET.

18 THE WITNESS: IN 1960, 105 YEARS AFTER
19 THE CALAMITY, AFTER THE DISASTER OF CHOLERA THAT
20 AFFLICTED LONDON AND CARRIED AWAY ITS CHILDREN, THE
21 "NEW ENGLAND JOURNAL OF MEDICINE" SAID WE DON'T
22 NEED TO KNOW WHAT IT IS IN CIGARETTES THAT IS
23 KILLING PEOPLE AND CAUSING LUNG CANCER, WE JUST
24 NEED TO KNOW THAT IT IS IN THE CIGARETTES AND WE
25 HAVE TO TAKE ACTION. IT'S NECESSARY TO TAKE
26 ACTION, OTHERWISE LIVES WILL BE LOST. AND THAT'S
27 EXACTLY EQUIVALENT TO WHAT HAPPENED IN LONDON.

28 Q. OKAY. SO WE HAVE ALREADY SEEN THE

1 NEXT COUPLE OF POSTERS THERE.

2 A. I WILL JUST GO THROUGH IT.

3 Q. OKAY. SO YOU ARE SHOWING UP ON THE
4 BOARD NEW, THE SURGEON GENERAL'S REPORT, '64?

5 A. CORRECT, WHICH I CHARACTERIZE AS
6 THE END OF THE HISTORICAL DESCRIPTION OF THE
7 KNOWLEDGE OF THE LUNG CANCER IN CIGARETTE SMOKE.

8 Q. WHY DID YOU CHARACTERIZE THOSE?

9 A. WELL, BECAUSE IT WAS AS IF A
10 SUMMARY. PRESIDENT KENNEDY ESTABLISHED THE SURGEON
11 GENERAL ADVISORY COMMITTEE. IT WAS UNDER THE
12 SUPERVISION OF THE UNITED STATES SURGEON GENERAL
13 LUTHER TERRY.

14 KENNEDY CHARGED TERRY WITH THE
15 RESPONSIBILITY OF REVIEWING THE ENTIRE SCIENCE OF
16 CIGARETTE SMOKING AND LUNG CANCER AND REPORTING TO
17 THE NATION.

18 AT THAT POINT, THERE WAS ABUNDANT
19 INFORMATION. THE SURGEON GENERAL ADVISORY
20 COMMITTEE CONSIDERED ALL OF THE MATERIAL AND
21 PUBLISHED A REPORT IN THE BEGINNING OF 1964 AND
22 THEY SUMMARIZED IT.

23 EVERYTHING THAT HAPPENED AFTER THIS
24 REPORT PROVIDES AN EXPLANATION FOR WHY CIGARETTE
25 SMOKING CAUSES LUNG CANCER. EVERYTHING UP TO THIS
26 REPORT IS THE PROOF THAT CIGARETTE SMOKING CAUSES
27 LUNG CANCER AND THE PILING ON OF MORE AND MORE
28 EVIDENCE THAT IT DOES SO.

1 SO THE SURGEON GENERAL AND THE
2 COMMITTEE DETERMINED THAT CIGARETTE SMOKING IS
3 CAUSALLY RELATED TO LUNG CANCER IN MEN. THAT MEANS
4 THAT CIGARETTE SMOKING CAUSES LUNG CANCER. AND
5 THAT THE MAGNITUDE OF THE EFFECT, IN OTHER WORDS,
6 HOW BIG THIS RISK IS, IS MUCH MORE, MUCH GREATER
7 THAN ANYTHING ELSE. THE MAGNITUDE FAR OUTWEIGHS
8 ALL OTHER FACTORS.

9 THEY POINT OUT, ABOUT THIS
10 DISASTROUS EPIDEMIC, LESS THAN 3,000 CASES IN 1930,
11 18,000 IN 1950, AND IT GOES ON AND ON, IN 1962,
12 41,000 CASES, THEY COULD HAVE PREDICTED AND THEY
13 DID PREDICT.

14 TODAY, WE ARE TALKING 170,000 CASES
15 OF LUNG CANCER DEATHS. AND THEY THEN GIVE, IN THIS
16 THICK SURGEON GENERAL REPORT, AFTER CONSIDERING ALL
17 THESE DIFFERENT ISSUES, THE ANSWERS TO THE BRADFORD
18 HILL CRITERIA FOR CAUSE AND EFFECT.

19 Q. LET'S JUST STOP FOR A SECOND.

20 BRADFORD HILL IS DR. DOLL'S

21 PARTNER?

22 A. CORRECT.

23 Q. AND HIS CRITERIA FOR CAUSE AND
24 EFFECT, WHEN DID HE SET THOSE CRITERIA?

25 A. A LONG TIME AGO. I DON'T REMEMBER
26 THE YEAR, BUT THEY ARE UNIVERSALLY ADHERED TO, I
27 MEAN, THEY ARE SPOKEN OF TODAY IN MODERN ARTICLES,
28 JUST LIKE THEY WERE BACK THEN.

1 AND THEY ARE THESE THINGS, I HAVE
2 TALKED ABOUT CONSISTENCY OF THE ASSOCIATION.

3 REMEMBER, I SAID THAT'S NUMBER 1 ON
4 THE LIST. THOUSANDS OF STUDIES SHOW THE SAME
5 THING, CIGARETTE SMOKING CAUSES LUNG CANCER.

6 STRENGTH OF THE ASSOCIATION, THE
7 RISK OF LUNG CANCER IS NOT DOUBLE, IT'S 2,000
8 PERCENT.

9 SO FOR EXAMPLE, OF THE TYPE OF LUNG
10 CANCER THAT MR. BOEKEN HAD, THE RISK OF CURRENT
11 STATISTICS FOR MEN WHO SPOKE IS 1,900 PERCENT
12 GREATER THAN FOR MEN WHO DON'T SMOKE.

13 SO IT'S A BIG STRENGTH OF THE
14 ASSOCIATION.

15 SPECIFICITY OF THE ASSOCIATION.
16 THIS MEANS THAT ALMOST ALL CASES OF LUNG CANCER
17 OCCUR IN SMOKERS.

18 NOW, IT IS NOT TRUE THAT EVERY
19 SINGLE CASE OCCURS IN A SMOKER.

20 SOME THINGS, SOME CANCERS OF THE
21 LUNG, NOT MANY, BUT SOME, OCCUR IN NON-SMOKERS.
22 BUT THE SPECIFICITY CRITERIA IS MET, BECAUSE ALMOST
23 ALL, NOT ALL, BUT ALMOST ALL OF THE CASES OCCUR IN
24 SMOKERS.

25 THE FOURTH CRITERIA IS TEMPORAL
26 RELATIONSHIP, AND THAT WAS IDENTIFIED EARLY ON BY
27 OSCHNER, DEBAKEY AND BY OTHERS, WYNDER AND GRAHAM
28 DOLL AND HILL, THAT LATENCY, IT IS ALWAYS THE SAME

1 LATENCY AGAIN AND AGAIN IN THE HISTORY OF MEDICINE
2 OF THE 20TH CENTURY. THE 20 TO 30 YEAR LATENCY WAS
3 IDENTIFIED.

4 AND FINALLY, THE FIFTH CRITERIA WAS
5 THE COHERENCE OF THE ASSOCIATION. I SPOKE ABOUT
6 THAT A LITTLE BIT, CONSISTENT WITH GENETIC,
7 BIOLOGICAL, CLINICAL AND PATHOLOGICAL EVIDENCE IN
8 HUMANS AND ANIMALS, THAT WAS AUERBACH, OSCAR
9 AUERBACH, WITH HIS 80,000 SLIDES FROM THE MEN IN
10 NEW JERSEY WHO DIED; THAT WAS WYNDER AND GRAHAM AND
11 CRONINGER FROM THE MOUSE SKIN PAINTING EXPERIMENTS,
12 AND AS IT TURNS OUT, MANY, MANY MORE MOUSE SKIN
13 PAINTING EXPERIMENTS DONE SECRETLY IN LABORATORIES
14 OF THE TOBACCO INDUSTRY.

15 THAT WAS ALL KINDS OF OTHER
16 BIOLOGICAL STUDIES THAT WOULD COME LATER AS TO THE
17 EXACT MECHANISM

18 WE NOW KNOW TODAY IN THE 1990'S
19 WHAT IT IS, IN CIGARETTE SMOKE, THAT CAUSES LUNG
20 CANCER.

21 THE STUFF THAT THEY DIDN'T KNOW IN
22 1960, WE DO KNOW TODAY.

23 SO ALL THESE THINGS, CONSISTENCY,
24 STRENGTH, SPECIFICITY, TEMPORAL RELATIONSHIP AND
25 COHERENCE PROVE CAUSE AND EFFECT. THEY PROVED IT,
26 ACTUALLY, BY 1953.

27 THEY CERTAINLY PROVED IT WITHOUT
28 ANY DISPUTE BY 1960, AND HERE, BY 1964, THE SURGEON

1 GENERAL ADVISORY COMMITTEE REVIEWS THE PROOF.

2 Q. LET'S JUST STOP FOR A SECOND.

3 YOU CHOSE TWO DIFFERENT YEARS AND
4 SAID ALMOST THE SAME THING; HAD PROVED IT IN '53
5 AND THEN SAY HAD PROVED IT, YOU ARE SURE OF THE
6 CERTAINTY OR SOMETHING, 1960. WHY DO YOU PICK
7 THOSE TWO YEARS?

8 A. WELL, BASED ON THE MEDICAL JOURNAL
9 ARTICLES AND THE EDITORIALS, I THINK THAT WHEN THE
10 EDITORIAL WRITER OF THE "NEW ENGLAND JOURNAL OF
11 MEDICINE" PUBLISHED IN 1953 THAT THERE WAS EVIDENCE
12 OF A CAUSE AND EFFECT RELATIONSHIP THAT
13 DEMONSTRATED PROOF IN THE USUAL MEANING OF THE
14 WORD, THE EVERY-DAY MEANING OF THE WORD "PROOF," IN
15 MY OPINION, THEY WEREN'T JUST KIDDING. THEY MEANT
16 IT WAS PROVEN. NOW, NOT EVERYBODY UNDERSTOOD IT.
17 FOR ONE THING, NOT EVERYBODY HAD READ THE
18 EDITORIAL.

19 JUST BECAUSE THE "NEW ENGLAND
20 JOURNAL OF MEDICINE" IS THE MOST IMPORTANT MEDICAL
21 JOURNAL IN THE WORLD AND JUST BECAUSE THE DATA
22 PRESENTED BY WYNDER AND GRAHAM AND DOLL AND HILL
23 COULD NOT BE REFUTED AND WAS NEVER REFUTED, THAT
24 DOESN'T MEAN THAT EVERYBODY READS IT.

25 IN MY OPINION, LOOKING BACK, I HAVE
26 BEEN A DOCTOR FOR 25 YEARS. I HAVEN'T BEEN A
27 DOCTOR FOR A VERY SHORT TIME; I HAVE BEEN A DOCTOR
28 FOR 25 YEARS. AND I HAVE A SENSE OF THE PASSAGE OF

1 TIME IN MEDICINE.

2 LOOKING BACK, I WOULD SAY THAT
3 THERE IS NO QUESTION AT ALL THAT THE ISSUE WAS
4 PROVEN BY 1953, SCIENTIFICALLY, THERE WERE PEOPLE
5 WHO DIDN'T WANT TO ACT RESPONSIBLY, THAT IS,
6 RESPONSIBLE IN A SCIENTIFIC WAY, WHEN IT WAS
7 PROVEN.

8 BY 1960, IT WAS RIDICULOUS TO
9 DISPUTE IT.

10 BY 1964, THE GOVERNMENT OF THE
11 UNITED STATES GETS IN -- OKAY, THEY ARE A LITTLE
12 BIT LATE -- ON THE MEDICAL AND SCIENTIFIC ISSUES,
13 BUT THAT'S FINE.

14 SO I WOULD SAY '50, THERE'S DATA.

15 '53, IT'S PROVEN.

16 '60 IT'S ALMOST FOOLISH TO DISPUTE
17 IT, ALTHOUGH SOME PEOPLE DID.

18 '64, THE SURGEON GENERAL WEIGHS IN
19 ON THE ISSUE.

20 Q. DOES THAT MEAN THIS IS THE LAST
21 POSTER?

22 A. ACTUALLY, FOR THIS SERIES, YOU
23 COULD STOP THERE, ALTHOUGH I DO HAVE AUERBACH'S
24 BIOLOGICAL COHERENCE, 1970. BUT I DON'T THINK IT'S
25 NECESSARY. IT IS LIKE NOW WE ARE REALLY PILING ON
26 TOO MANY.

27 Q. I HAVE TO FLAG YOU.

28 A. THAT IS RIGHT.

1 Q. I FLAG THAT OFF THE SCREEN.
2 YOU HAD SAID THAT YOU HAD THREE
3 DIFFERENT AREAS THAT YOU ARE GOING TO TESTIFY
4 ABOUT.
5 HAVE WE JUST FINISHED NUMBER 1?
6 A. YES, SIR.
7 Q. LET' S TALK ABOUT NUMBER 2.
8 FIRST OF ALL, WHAT IS NUMBER 2,
9 AGAIN, PLEASE.
10 A. MR. BOEKEN, MR. RICHARD BOEKEN.
11 Q. OKAY.
12 YOU HAVE NEVER MET MR. RICHARD
13 BOEKEN?
14 A. I HAVE NOT.
15 Q. HOW DO YOU KNOW ABOUT HIM?
16 A. I KNOW ABOUT HIM THE WAY I KNOW
17 ABOUT MANY THOUSANDS OF OTHER PEOPLE, BY READING
18 THE MEDICAL RECORDS THAT DESCRIBE HIM
19 I DON' T KNOW ABOUT HIM AS A PERSON,
20 PERSONALLY, I KNOW WHAT HAPPENED TO HIM
21 I KNOW ABOUT HIS, ABOUT THE FACTS
22 THAT PERTAIN TO HIS ILLNESS.
23 Q. WHERE DID YOU GET HIS MEDICAL
24 RECORDS?
25 A. YOU SENT THAT TO ME OR YOUR OFFICE
26 SENT THEM TO ME.
27 Q. LET' S HEAR WHAT ELSE MY OFFICE HAS
28 SENT TO YOU DOWN IN MIAMI.

1 A. I RECEIVED A BUNCH OF DOCUMENTS AND
2 OTHER MATERIALS.

3 IN ADDITION TO THE MEDICAL RECORDS,
4 I RECEIVED CERTAIN LEGAL DOCUMENTS, FOR EXAMPLE,
5 DEPOSITION TESTIMONY, MR. BOEKEN'S SWORN
6 STATEMENTS. AND I ALSO RECEIVED VARIOUS ANSWERS TO
7 INTERROGATORIES, IS WHAT IT'S CALLED. THESE ARE
8 LEGAL DOCUMENTS THAT CARRY A SWORN STATEMENT KIND
9 OF THING.

10 I CONSIDER THEM TO BE TRUE.

11 I SAW THE PATIENT'S X-RAYS AND CT
12 SCANS, THE FILMS THEMSELVES PLUS THE REPORTS.

13 AND I SAW THE PATIENT'S SLIDES,
14 THAT IS, THE GLASS SLIDES, THE PATHOLOGY SLIDES
15 FROM HIS LUNG CANCER, FROM THE TUMOR ITSELF AND
16 FROM THE LYMPH NODES TO WHICH THE TUMOR HAD SPREAD.

17 Q. DO YOU KNOW WHAT A RADIOLOGIST IS?

18 A. OF COURSE.

19 Q. AND I KNEW THE ANSWER WAS YES.

20 WHAT'S A RADIOLOGIST?

21 A. A RADIOLOGIST IS A DOCTOR WHO IS
22 SPECIALLY TRAINED IN THE INTERPRETATION OF X-RAYS,
23 IMAGES.

24 Q. YOU ARE NOT A RADIOLOGIST?

25 A. I AM NOT.

26 Q. YOU ARE LOOKING AT X-RAYS?

27 A. I LOOK AT X-RAYS ALL DAY,
28 PRACTICALLY EVERY DAY.

1 Q. SO I TAKE IT THAT'S A YES, YOU WERE
2 LOOKING AT MR. BOEKEN'S X-RAYS?

3 A. I HAVE SEEN HIS X-RAYS AND CT
4 SCANS.

5 IN PULMONARY MEDICINE AS OPPOSED
6 TO, SAY, CARDIOLOGY, CARDIOLOGY IS THE STUDY OF THE
7 HEART, BUT TO CONTRAST CARDIOLOGY WITH LUNG
8 MEDICINE.

9 IN LUNG MEDICINE, CHEST X-RAYS OR
10 X-RAYS IN GENERAL AND CT SCANS ARE A FUNDAMENTAL
11 PART OF THE PRACTICE.

12 SO PULMONARY MEDICINE ACTUALLY SITS
13 ON SOME FOUNDATIONS, RADIOLOGY IS ON PATHOLOGY
14 WHICH IS THE LOOKING AT TISSUE, AT SLIDES, IS
15 ANOTHER, AND EPIDEMIOLOGY, WHICH I HAVE BEEN
16 TALKING ABOUT TODAY, IS THE THIRD.

17 SO PULMONARY MEDICINE IS REALLY
18 BASED ON RADIOLOGY, PATHOLOGY AND EPIDEMIOLOGY, AND
19 INTERESTINGLY, EPIDEMIOLOGY ACTUALLY COMES FROM
20 PULMONARY MEDICINE.

21 IT IS LARGELY DERIVED FROM THE
22 STUDY OF LUNG DISEASES.

23 Q. SO YOU TREAT PATIENTS?

24 A. YES. GENERALLY VERY SICK PEOPLE.

25 Q. TREAT PATIENTS WITH LUNG CANCER?

26 A. I DO.

27 Q. AS PART OF YOUR TREATMENT OF PEOPLE
28 WITH LUNG CANCER DO YOU LOOK AT THEIR X-RAYS?

1 A. YES, EXACTLY, A LOT.

2 Q. SO THAT'S ONE DOWN.

3 NEXT, WHAT'S A PATHOLOGIST?

4 A. A PATHOLOGIST IS A SPECIAL KIND OF
5 DOCTOR WHO SPENDS HIS OR HER TIME LOOKING AT CELLS
6 FROM BIOPSIES OR FROM REMOVED PORTIONS OF A
7 DECEASED ORGAN OR DOING AUTOPSIES, ALTHOUGH NOT
8 VERY MANY AUTOPSIES ARE DONE ANY MORE.

9 A CORONER, FOR EXAMPLE, IS A KIND
10 OF PATHOLOGIST WHO'S HIRED BY THE CITY OR COUNTY TO
11 LOOK AT PEOPLE WHO DIE UNDER UNUSUAL CIRCUMSTANCES
12 AND WHERE THERE'S FOUL PLAY, TO DETERMINE A CAUSE
13 OF DEATH.

14 Q. LET'S STAY WITH PEOPLE WHO ARE
15 ALIVE FOR NOW

16 SO YOU HAVE TOLD US WHAT A
17 PATHOLOGIST IS. AND I SAY TO YOU, AGAIN, JUST LIKE
18 I SAID WITH RADIOLOGISTS, YOU ARE NOT A
19 PATHOLOGIST?

20 A. I AM NOT.

21 Q. WHY ARE YOU LOOKING AT PATHOLOGY
22 SLIDES?

23 A. A COUPLE OF REASONS.

24 FIRST OF ALL, IN MY TRAINING, WHERE
25 I WAS TAUGHT TO BE A LUNG SPECIALIST, PATHOLOGY WAS
26 PART OF PULMONARY MEDICINE.

27 SO THAT WE HAD AN INTIMATE
28 RELATIONSHIP BETWEEN THE DOCTORS WHO ARE DOING THE

1 CLINICAL PRACTICING, PULMONARY MEDICINE, AND THE
2 DOCTORS WHO ARE THE X-RAY DOCTORS AND THE
3 PATHOLOGIST.

4 AND WE MET AND WE HAD THIS
5 TOGETHER, WE WORKED IN A TEAM APPROACH. SO THAT
6 WAS PART OF MY TAKE.

7 MCGILL IS NOT THE ONLY PLACE THAT
8 DOES THAT, BUT MCGILL IS ONE OF THE FAMOUS PLACES
9 FOR DOING THAT.

10 Q. I GUESS I SHOULD GIVE YOU A MINUTE
11 HERE FOR THOSE OF US WHO AREN'T FROM CANADA, IS
12 MCGILL UNIVERSITY OFTEN REFERRED TO AS THE HARVARD
13 OF CANADA?

14 A. IT IS. IT IS CALLED THAT. IT
15 CERTAINLY WAS A WONDERFUL PLACE TO BECOME TRAINED
16 AS A DOCTOR. IT WAS FANTASTIC.

17 AND ONE OF THE THINGS THAT WAS
18 FANTASTIC WAS I HAD PETER PERRY AS MY PROFESSOR,
19 WHO IS ARGUABLY THE MOST FAMOUS LUNG SPECIALIST IN
20 THE WORLD.

21 DR. FRAZIER, WHO IS THE
22 RADIOLOGIST, NOW IN BIRMINGHAM, PERHAPS THE MOST
23 FAMOUS RADIOLOGIST IN THE WORLD, AND A SERIES OF
24 PATHOLOGISTS, INCLUDING FRAZIER'S SON.

25 SO THIS WAS A VERY INTIMATE AND
26 VERY REAL RELATIONSHIP BETWEEN LUNG DOCTORS,
27 PATHOLOGISTS, RADIOLOGISTS. THAT'S HOW I WAS
28 TRAINED AND I HAVE CONTINUED THAT EVER SINCE.

1 NOW, PATHOLOGY IS PART OF THE
2 EXAMINATION, IF YOU TAKE AN EXAM IN LUNG MEDICINE,
3 YOU HAVE TO KNOW PATHOLOGY BECAUSE THERE ARE ALL
4 THESE QUESTIONS ON THE EXAMINATION.

5 A PULMONARY SPECIALIST, WHEN
6 SITTING FOR THE PULMONARY EXAM, EXPECTS PATHOLOGY
7 QUESTIONS, INCLUDING SLIDES.

8 Q. HOW MANY PEOPLE DO YOU THINK YOU
9 HAVE TREATED WHO HAVE HAD LUNG CANCER?

10 A. A LOT. I DON'T REMEMBER. I HAVE
11 BEEN A DOCTOR FOR 25 YEARS AND LUNG CANCER IS THE
12 MOST COMMON SERIOUS ILLNESS I TREAT.

13 Q. LET'S SEE. I DON'T WANT YOU TO BE
14 GUESSING NOW. IN A WEEK OR A MONTH, SOMETHING LIKE
15 THAT, HOW OFTEN?

16 A. IT WILL DEPEND. I SOMETIMES WILL
17 BE VERY UNHAPPY BECAUSE I HAVE A NEW LUNG CANCER
18 CASE EVERY WEEK. THAT MIGHT OCCUR.

19 THERE ARE 170,000 LUNG CANCERS IN
20 THE UNITED STATES A YEAR, DEATHS. SO PRACTICALLY
21 THE SAME NUMBER OF NEW CASES.

22 THERE ARE ABOUT 6,000 LUNG
23 SPECIALISTS. THEY END UP SEEING ONE A WEEK OR ONE
24 A MONTH, NEW CASE, TEN NEW CASES A YEAR, DEPENDING
25 ON HOW MANY CLINICAL CASES THEY ARE DOING.

26 I WILL SEE, IN TERMS OF LUNG
27 CANCER, OF PATIENTS WHO I SEE, PHYSICALLY EXAMINE,
28 AND SEE IN TERMS OF MEDICAL RECORDS, I WILL VERY

1 COMMONLY SEE FIVE A WEEK OR TEN A WEEK.

2 BUT THAT WOULD INCLUDE A LOT OF
3 PEOPLE WHO ARE SENT TO ME JUST AS MEDICAL RECORDS,
4 NOT THEIR ACTUAL PERSON COMING IN.

5 Q. WHY IS THAT?

6 A. WELL, CASES OF ALL DIFFERENT KINDS
7 ARE SENT TO ME FROM ALL OVER THE COUNTRY, BY ALL
8 KINDS OF DIFFERENT ENTITIES.

9 Q. SO YOU ARE NOT TREATING ALL THESE
10 PEOPLE?

11 A. SOME OF THEM I TREAT. SOME OF THEM
12 I JUST GIVE OPINIONS, SOME OF THEM ARE DECEASED
13 ALREADY, THE QUESTION IS WHAT CAUSED THE DEATH.

14 BUT OF THE PATIENTS WHO WALK IN OR
15 WHO ARE ACTUALLY SENT TO ME, IT IS VERY VARIABLE.

16 I KNOW YOU ASKED FOR THE NUMBER, I
17 DON'T KNOW THE NUMBER.

18 I CAN'T TELL YOU THE EXACT NUMBER
19 OF ADENOCARCINOMA CASES I HAVE DEALT WITH, FOR
20 EXAMPLE. I DON'T KNOW

21 Q. LET'S PUT IT THIS WAY. HOWEVER
22 MANY THE NUMBER IS, WHEN YOU ARE TREATING PEOPLE
23 WITH LUNG CANCER, DO YOU GET INVOLVED IN PATHOLOGY,
24 IN RADIOLOGY, THE WAY YOU GOT INVOLVED HERE?

25 A. EXACTLY. ABSOLUTELY, I DO.

26 IF I BIOPSY A PATIENT, IF I DO THE
27 BRONCHOSCOPY, WHICH IS THE DIAGNOSTIC BIOPSY, OR IF
28 I SEND A PATIENT TO THE OPERATING ROOM FOR ONE OF

1 MY COLLEAGUES TO TAKE OUT A LOBE OR A LUNG, I WILL,
2 INEVITABLY, GO LOOK AT THE PATHOLOGY, SEE IT WITH
3 MY OWN EYES, UNDER THE MICROSCOPE WITH MY EYES.

4 Q. SO LET'S COME ON BACK TO
5 MR. BOEKEN.

6 WERE YOU TELLING THE JURY WHAT MY
7 OFFICE SENT YOU AND WHAT I HAVE HEARD SO FAR IS
8 MEDICAL RECORDS, X-RAYS, PATHOLOGY SLIDES,
9 DEPOSITION, WRITTEN ANSWERS TO INTERROGATORIES,
10 DOES THAT COVER IT OR IS THERE MORE?

11 A. NO, I THINK THAT'S IT.

12 Q. I GUESS THIS WOULD BE A GOOD TIME.
13 HERE'S A MEDICAL ILLUSTRATION THAT
14 I HAVE SHOWN TO YOU AND TO THE LAWYERS.

15 IS THIS -- THIS IS DONE BY AN
16 ARTIST, OF COURSE, AND IT IS NOT A REAL X-RAY.

17 IS THIS AN ACCURATE MEDICAL -- LET
18 ME SAY THAT DIFFERENT.

19 IS THIS AN ACCURATE PICTURE FOR US
20 LAY PEOPLE TO SEE OF WHAT THE X-RAYS AND/OR CT
21 SCANS SHOW OF MR. BOEKEN'S LUNG?

22 A. YES. AS IT PERTAINS TO A CT SCAN
23 OF THE CHEST DONE AT U. C. L. A. MEDICAL CENTER ON
24 OCTOBER 7TH, 1999.

25 Q. OKAY.

26 A. SO THAT'S AN ARTIST'S RENDITION OF
27 WHAT I KNOW WAS SEEN RADIOLOGICALLY, BY X-RAY.

28 Q. ON X-RAY, BECAUSE OF WHAT AN X-RAY

1 DOES, WOULDN' T SHOW ALL OF THESE FEATURES; RIGHT?

2 A. CERTAINLY NOT IN COLOR. IT WOULD
3 SHOW THOSE FEATURES IF ONE KNEW EXACTLY WHAT ONE
4 WAS LOOKING AT.

5 THERE ARE SHADOWS THAT REPRESENT
6 THOSE THINGS.

7 MR. PIUZE: YOUR HONOR, CAN I ENTICE --
8 IS IT OKAY TO ENTICE THE WITNESS TO COME DOWN HERE.

9 THE COURT: PLEASE, SIR, YOU MAY STEP
10 DOWN.

11 COUNSEL, JUST TO REMIND YOU OF THE
12 TEN MINUTE SITUATION TODAY.

13 MR. PIUZE: YES.

14 MR. CLERK, DO WE HAVE SOME SORT OF
15 A POINTER IN HERE, SOMEWHERE, DO YOU KNOW?

16 THE CLERK: I AM NOT SURE BUT LET ME
17 CHECK IN THE BACK.

18 MR. PIUZE: YOU DON' T HAVE TO DO THAT.

19 THE CLERK: WE MAY NEED IT FOR LATER.

20 MR. PIUZE: I AM JUST AFRAID IF YOU USE
21 THAT PEN, YOU ARE GOING TO BE ACING OUT AT LEAST A
22 THIRD OF THE JURY.

23 Q BY MR. PIUZE: WHILE HE IS
24 LOOKING, THIS IS THE TREE WE WERE TALKING ABOUT;
25 RIGHT?

26 A. YES. THAT IS CORRECT. UPSIDE DOWN
27 TREE.

28 Q. GO AHEAD AND USE YOUR PEN. THAT' S

1 A GOOD IDEA.

2 A. WE ARE LOOKING AT THE PERSON AS IF
3 THEY ARE STANDING THERE FACING US AND IT IS ALL THE
4 SAME WITH AN X-RAY. AN X-RAY IS TAKEN, YOU LOOK AT
5 THE X-RAY, THE PERSON'S RIGHT IS YOUR LEFT, AS IF
6 YOU ARE FACING ME.

7 OBVIOUSLY, WHAT YOU WON'T SEE IN AN
8 X-RAY, THERE'S SHOULDERS AND SKIN AND NECK AND WHAT
9 YOU CAN'T SEE, CANNOT SEE WHEN YOU LOOK AT THE
10 PERSON, IS INSIDE. THIS IS THE TRACHEA, THE
11 WINDPIPE, WHICH YOU CAN FEEL. YOU CAN FEEL THE
12 RINGS IN YOUR NECK, THE RINGS OF THE BRONCHIAL
13 TUBES AND THE TRACHEA. AND MID-CHEST DIVIDES INTO
14 TWO MAIN PARTS. THIS IS THE RIGHT MAIN STEM
15 BRONCHUS AND THE LEFT MAIN STEM BRONCHUS.

16 THE GREEN LITTLE BUMPS ARE OUR
17 LYMPH NODES. THEY NORMALLY PROTECT THE LUNG
18 AGAINST BACTERIA AND INVASION AND CANCERS AND THEY
19 CONTAIN SPECIAL WHITE CELLS THAT ATTACK INVADERS.

20 Q. EXCUSE ME ONE SECOND. CAN YOU ALL
21 SEE?

22 A. WHAT IS DEMONSTRATED HERE IS THAT
23 THERE IS, IN FACT, THE FOREIGN INVADER. THIS WHITE
24 AREA IN THE DISTRIBUTION OF THE RIGHT UPPER LOBE --
25 LET ME JUST BACK UP HERE.

26 TRACHEA, RIGHT MAIN STEM BRONCHUS,
27 RIGHT UPPER LOBE BRONCHUS, RIGHT MID-LOBE BRONCHUS,
28 RIGHT LOWER LOBE BRONCHUS.

1 AND THE DOCTORS NORMALLY KNOW WHAT
2 THESE LOOK LIKE ON X-RAY. AND WHEN YOU LOOK
3 INSIDE, YOU KNOW WHAT THEY LOOK LIKE. THEY LOOK
4 DIFFERENT.

5 THIS WHITE IRREGULAR DENSITY CLOSE
6 TO THE SURFACE OF THE LUNG, BUT NOT REACHING IT,
7 AND SORT OF ABOUT HALFWAY BETWEEN THE INNER LINING
8 OF THE LUNG AND THE SURFACE OF THE LUNG, THIS
9 IRREGULAR WHITEISH DENSITY IS THE ARTIST'S GOOD AND
10 ACCURATE REPRESENTATION OF WHAT THE CANCER LOOKED
11 LIKE INSIDE MR. BOEKEN IN OCTOBER 1999.

12 Q. UP THERE ON THE BOARD, IT SAYS "2
13 C. M.," C. M MEANS CENTIMETERS, CENTIMETER?

14 A. YES.

15 Q. DID SOME OF THE MEDICAL RECORDS
16 CALL THAT 1.5 CENTIMETERS?

17 A. IT'S ABOUT THE SAME THING. WITH
18 X-RAY, YOU COULDN'T MEASURE IT PRECISELY BECAUSE
19 THERE IS MORE ONE PLANE. IF YOU ARE LOOKING AT IT
20 AT DIFFERENT ANGLES, IT IS GOING TO BE SLIGHTLY
21 DIFFERENT SIZE. 1.5 AND 2 CENTIMETERS FOR MEDICAL
22 PURPOSES, THAT'S THE SAME.

23 EVEN WHEN YOU OPEN IT AND CUT IT
24 OUT YOU CAN'T MEASURE IT EXACTLY, BECAUSE IT IS NOT
25 ALL THE SAME SHAPE.

26 MR. PIUZE: THAT'S MY LAST QUESTION.

27 THE COURT: LADIES AND GENTLEMEN, WE ARE
28 GOING TO LEAVE TEN MINUTES EARLIER THIS MORNING

1 BECAUSE OF A SITUATION GOING ON WITH ONE OF OUR
2 JURORS.

3 WE WILL BE BACK AT 8:45 A.M DON'T
4 DISCUSS THE CASE WITH ANYONE. SEE YOU THEN.

5
6 (AT THIS TIME, THE PROCEEDINGS
7 IN THE ABOVE-ENTITLED MATTER
8 WERE CONTINUED TO TUESDAY, APRIL
9 10TH, 2001 AT 9:00 A.M)

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1 (THE FOLLOWING PROCEEDINGS
2 WERE HELD IN OPEN COURT OUT
3 OF THE PRESENCE OF THE JURY:)

4

5 THE COURT: ALL RIGHT, WE ARE ON THE
6 RECORD OUTSIDE THE PRESENCE AT REQUEST OF COUNSEL,
7 PRESENT.

8 MR. CARLTON: YES. I WANTED TO RAISE AN
9 ISSUE LIKELY TO BE PRESENTED TOMORROW

10 DR. FEINGOLD HAS HIS THIRD, I
11 GUESS, PORTION OF THIS PRESENTATION TO WHICH,
12 TITLED "TOBACCO INDUSTRY INTERNAL DOCUMENTS
13 COMPARED TO PUBLIC STATEMENT. "

14 AND AS I UNDERSTAND IT, HE WILL GO
15 THROUGH A POWER POINT PRESENTATION SUCH AS THE ONE
16 THAT HE HAS BEEN PRESENTING SO FAR, LAYING OUT
17 SLIDE AFTER SLIDE CONTAINING VISUAL IMAGES AND
18 QUOTES FROM VARIOUS TOBACCO INDUSTRY DOCUMENTS.

19 NOW, FROM MY UNDERSTANDING, FROM
20 WHAT I UNDERSTAND AT THIS POINT, MOST OF THESE
21 DOCUMENTS, UNLESS HE HAS COMPLETELY REWRITTEN THIS
22 POWER POINT PRESENTATION, ARE NON-PHILIP MORRIS
23 DOCUMENTS. AS FAR AS I KNOW, MOST OF THEM AREN'T
24 EVEN MARKED AS EXHIBITS IN THIS CASE.

25 AND I THINK THERE'S AN ISSUE IN
26 TERMS OF HIS PUBLISHING THEM TO THE JURY AND SO
27 THAT THEY CAN SEE THE DOCUMENT, OR TESTIFYING AS TO
28 THE SUBSTANCE OF THE DOCUMENT OR QUOTING FROM THE

1 DOCUMENT WHEN IT HASN' T BEEN AUTHENTICATED OR WHEN
2 A FOUNDATION HASN' T BEEN LAID.

3 SO I THINK THAT' S A SERIOUS ISSUE
4 HERE, WHERE IT' S BASICALLY LAID OUT IN A
5 COMPUTERIZED FORMAT ALREADY AND WILL JUST START
6 MOVING ALONG. I THINK WE NEED TO ADDRESS THIS
7 ISSUE UPFRONT.

8 THE COURT: FAIR ENOUGH.

9 MR. PIUZE: WE SHOULD. HE IS NOT GOING
10 TO SHOW ANYTHING WITHOUT US SQUARING IT AWAY IN
11 ADVANCE PER HOUR RULES, OF COURSE.

12 THE COURT: IT WAS JUST REPRESENTED TO ME
13 THAT SOME OF THESE DOCUMENTS ARE GOING TO BE
14 NON-PHILIP MORRIS DOCUMENTS.

15 MR. PIUZE: SOME ARE NON-PHILIP MORRIS
16 DOCUMENTS.

17 I SAY TO THE COURT, JUST TO START
18 WITH, THAT WE HAVE ALREADY SHOWN THE JURY, AND WE
19 HAVE IN EVIDENCE NON-PHILIP MORRIS DOCUMENTS FROM
20 THE TOBACCO INSTITUTE, AS AN EXAMPLE.

21 THE COURT: BUT THOSE CAN BE ATTRIBUTED
22 TO PHILIP MORRIS BECAUSE OF ITS FINANCIAL ROLE IN
23 THAT ORGANIZATION.

24 MR. PIUZE: THAT IS CORRECT. AND IT CAN
25 ALSO BE ATTRIBUTED TO PHILIP MORRIS, I BELIEVE,
26 BECAUSE THAT ORGANIZATION WAS PART OF WHAT I CLAIM,
27 AS PART OF MY CASE, TO BE A CONSPIRACY HERE. SO I
28 HAVE GOT A LONG LINE OF CASES THAT SAY, ENDING IN

1 1999, WITH PEOPLE V. MORANTE, M-O-R-A-N-T-E, 20 CAL
2 4TH, 403, 416, THEY TALK ABOUT A CONSPIRACY, AND
3 WHAT IS ATTRIBUTABLE TO ONE MEMBER OF THE
4 CONSPIRACY IS ATTRIBUTABLE TO ANOTHER MEMBER OF THE
5 CONSPIRACY.

6 I JUST -- I HAVEN'T PROVIDED THE
7 COURT WITH A BRIEF ON THIS, BUT --

8 THE COURT: YOU DON'T NEED TO, I
9 UNDERSTAND THE PRINCIPLES, BUT CERTAIN FOUNDATIONS
10 HAVE TO BE LAID OR THERE HAS TO BE A SHOWING TO THE
11 COURT THAT THAT FOUNDATION WILL BE FOLLOWING.

12 MR. PIUZE: AND WHEN THE COURT TALKS
13 FOUNDATION IN THIS CONTEXT, I AM NOT SURE WHAT THE
14 COURT HAS IN MIND.

15 THE COURT: WELL, YOU WILL HAVE TO LINK
16 THE INDIVIDUALS OR ENTITIES WHO ARE MAKING THE
17 STATEMENTS TO THE CONSPIRACY BEFORE YOU CAN JUST --
18 YOU JUST CAN'T ASSUME THAT THEY ARE LINKED.

19 MR. CARLTON: CAN I MAKE A POINT, YOUR
20 HONOR?

21 THE COURT: YES, SIR.

22 MR. CARLTON: I JUST WANT TO SORT OF
23 CLARIFY FOR A MOMENT. WE THINK THAT THERE ARE AT
24 LEAST TWO ISSUES HERE, ONE ISSUE, OF COURSE, IS
25 WHETHER A STATEMENT IS ATTRIBUTABLE TO A
26 CONSPIRATOR AND IS IN MADE IN FURTHERANCE OF THE
27 CONSPIRACY AND THAT DEALS WITH THE HEARSAY ISSUE,
28 BUT BEFORE YOU EVEN GET TO HEARSAY, YOU HAVE GOT AN

1 AUTHENTICATION ISSUE, THAT IS A GENUINE DOCUMENT OF
2 REYNOLDS TOBACCO COMPANY. THAT IS A GENUINE
3 DOCUMENT OF BROWN & WILLIAMSON TOBACCO. IS IT AN
4 ACCURATE COPY OF ONE. HOW DO WE KNOW THAT?

5 THE COURT: FAIR ENOUGH.

6 MR. CARLTON: THERE'S TWO SIDES TO THIS
7 ISSUE.

8 MR. PIUZE: THAT, WHAT HE JUST RAISED,
9 WAS ASSUMED THAT I CAN HANDLE, AS I HAVE DONE THUS
10 FAR. AND YOUR HONOR, I HAVE SHOWED THEM MY
11 FOUNDATION ON THE DOCUMENTS THAT THEY QUESTION
12 FOUNDATION ON. WE PROVIDED FOUNDATION. WE MOVED
13 ALONG VERY SMOOTHLY, NO PROBLEMS IN FRONT OF THE
14 JURY. MY INTENT IS TO CONTINUE THAT.

15 IF I CAN'T SHOW FOUNDATION FOR ONE
16 OF THESE DOCUMENTS, IT IS NOT GOING TO HAPPEN.

17 THE COURT: ALL RIGHT.

18 MR. PIUZE: THEN THE SECOND PART HAS TO
19 DO WITH THE ISSUE OF CONSPIRACY. AND IT IS PRETTY
20 MUCH THIS SIMPLE, YOUR HONOR, IN 1954 AND
21 IMMEDIATELY BEFORE, THE MAJOR TOBACCO COMPANIES OF
22 THIS COUNTRY, CERTAINLY INCLUDING RJ REYNOLD, BROWN
23 & WILLIAMSON, LORILLARD, PHILIP MORRIS, ALL, RATHER
24 THAN FIX A PROBLEM, THE EVIDENCE IS GOING TO SHOW,
25 HIRED A PUBLIC RELATIONS FIRM CALLED HILL &
26 KNOWLTON. AND WHEAT THEY DECIDED TO DO WAS ATTACK
27 THIS EPIDEMIC WITH PUBLIC RELATIONS AND THAT WAS
28 THE BEGINNING OF THE COMMITTEE -- OF THE

1 COMMITTEES. AND THE FIRST TANGIBLE EFFORT WAS THE
2 FRANK STATEMENT.

3 SO THAT'S WHAT I INTEND TO PROVE
4 HERE.

5 THE COURT: MAY I ASK YOU, WHAT IS GOING
6 TO BE THE EVIDENCE OF THAT, THOUGH? THAT THIS
7 PUBLIC RELATIONS FIRM WAS HIRED AND THAT IT HAD
8 THIS PURPOSE IN MIND AND THAT THE FRANK STATEMENT
9 WAS THE FIRST EVIDENCE OF ITS CONDUCT, WHAT IS
10 GOING TO BE THE EVIDENCE OF THAT?

11 MR. PIUZE: I BELIEVE WE ARE GOING TO
12 HEAR THAT FROM MR. MERRYMAN, FOR ONE. AND THE
13 OTHER IS MR. DUNN.

14 THE COURT: MR. MERRYMAN IS?

15 MR. PIUZE: MERRYMAN.

16 THE COURT: HE IS WHO?

17 MR. GOLDSTEIN: THE EXECUTIVE
18 VICE-PRESIDENT OF THE TOBACCO --

19 THE COURT: ALL RIGHT.

20 WHO ELSE, MR. DUNN?

21 MR. GOLDSTEIN: MR. DUNN IS A SCIENTIST
22 FROM THE, HE WAS AT PHILIP MORRIS, BUT HE IS REALLY
23 NOT --

24 MR. PIUZE: IF I MAY.

25 MR. GOLDSTEIN: MERRYMAN IS A PRIMARY
26 WITNESS IN THE TOBACCO INSTITUTE.

27 THE COURT: AND HE IS GOING TO TESTIFY AS
28 TO THE KNOWLTON CONNECTION?

1 MR. GOLDSTEIN: YES. I BELIEVE SO. AND
2 BY WAY OF THE DOCUMENTS THAT ARE, THAT WE HAVE
3 PROVIDED IN OUR DOCUMENT SET, IN OUR HILL KNOWLTON
4 DOCUMENTS.

5 MR. PIUZE: I DON'T WANT TO GET MYSELF
6 OUT ON A LIMB HERE. THE KNOWLTON CONNECTION, I
7 THINK I WILL BE ABLE TO SHOW, BUT I DON'T THINK
8 IT'S REALLY GERMANE TO WHAT WE ARE TALKING ABOUT
9 HERE. IT IS ONE STEP TOO FAR. IT ISN'T NECESSARY.

10 BUT WE CAN SHOW THAT ALL OF THESE
11 MAJOR TOBACCO COMPANIES GOT TOGETHER AND PUT
12 TOGETHER THIS GROUP AND THE SUCCESSOR GROUPS AND
13 THIS WAS THEIR RESPONSE TO THE SO-CALLED -- TO THE
14 HEALTH CARE, TO THE HEALTH ISSUES. AND IT
15 CONTINUED, FOR WHATEVER IT IS WORTH, I DON'T KNOW
16 THAT THE JURY HEARS THIS, YOUR HONOR. BUT FOR
17 WHATEVER IT IS WORTH, THE ULTIMATE END ORGANIZATION
18 THAT HAD COME DOWN THROUGH THE YEARS WAS ABOLISHED
19 AS A RESULT OF THE ATTORNEYS GENERALS' ACTIONS.
20 THAT'S WHAT FINALLY DID IT.

21 THE COURT: WELL, IT SEEMS TO ME THAT
22 THERE'S AT LEAST THE MINIMAL REQUIRED OFFER OF
23 PROOF TO SUPPORT THE THEORY THAT COUNSEL WISHES TO
24 ADVANCE IN FRONT OF THE JURY. WHAT WE WILL DO, IF
25 THAT THEORY WERE NOT SUSTAINED BY SUFFICIENT
26 EVIDENCE SUCH THAT IT CAN GO TO THE JURY WOULD BE A
27 DIFFERENT ISSUE.

28 AS TO AUTHENTICATION, COUNSEL IS

1 BOUND BY THE RULES OF AUTHENTICATION AND WILL HAVE
2 TO FOLLOW THEM HERE.

3 AND HAS COUNSEL FOR THE DEFENSE HAD
4 AN OPPORTUNITY TO DISCUSS THESE ISSUES WITH
5 PLAINTIFF'S COUNSEL, THESE AUTHENTICATION ISSUES?

6 MR. CARLTON: WELL, AUTHENTICATION ISSUES
7 HAVE BEEN DISCUSSED GOING WAY BACK.

8 THE COURT: AS TO THE DOCUMENTS THAT THIS
9 PARTICULAR WITNESS IS GOING TO BE OFFERING
10 TOMORROW?

11 MR. CARLTON: NO. I STILL, AT THIS
12 POINT, DON'T KNOW WHAT IT IS HE IS GOING TO BE
13 PRESENTING, DEPENDS WHAT HIS CURRENT VERSION OF HIS
14 POWER POINT SLIDE PRESENTATION IS.

15 NOW, AS I SAID, I HAVE A COPY OF
16 THE POWER POINT SLIDE PRESENTATION AS IT EXISTED A
17 MONTH AGO OR SO. AND MANY OF THE DOCUMENTS THERE
18 ARE NOT LISTED AS EXHIBITS. SO I DON'T KNOW
19 WHETHER HE PLANS TO PRESENT THEM OR HOW TO IDENTIFY
20 THEM

21 THE NON-PHILIP MORRIS DOCUMENTS --
22 THE COURT: I ASSUME THAT CAN BE
23 PRESENTED TO COUNSEL NOW

24 MR. PIUZE: TO THE BEST -- I AM GOING TO
25 GET THIS CONFIRMED HERE FIRSTHAND. BUT TO THE BEST
26 OF MY KNOWLEDGE, MR. CARLTON HAS WHAT I HAVE, WHICH
27 IS THE LATEST VERSION.

28 IN OTHER WORDS, THE LAST THING I

1 WANT TO DO IS TO CREATE SOMETHING ON THIS RECORD SO
2 I GOT TO COME BACK HERE AND DO THIS ALL OVER AGAIN.
3 AND I THINK I MADE MY THOUGHT CLEAR STARTING IN
4 LIMINE AND MOVING ON.

5 SO THE LAST THING I WANT TO DO IS
6 TRY TO BE SLIPPING SOMETHING IN THAT MR. CARLTON
7 HASN'T SEEN IN ADVANCE.

8 NOW, DR. FEINGOLD JUST WALKED INTO
9 THE ROOM DURING THE LAST 15 OR 20 SECONDS HERE, AND
10 I'D LIKE TO ASK, DR. FEINGOLD, THE MATERIALS THAT
11 YOU GAVE TO MR. CARLTON, ARE THOSE THE SAME AS WHAT
12 YOU HAVE ON YOUR COMPUTER?

13 THE WITNESS: SHOULD I GO OVER THERE?

14 MR. PIUZE: AS FAR AS I AM CONCERNED --

15 THE WITNESS: YES, SIR, THEY ARE THE
16 SAME -- RIGHT. I TRANSMITTED TO MR. CARLTON THE
17 ENTIRE POWER POINT PRESENTATION ON STATE OF THE
18 ART. ACTUALLY, I WAS GOING TO USE LESS.

19 MR. PIUZE: LET ME SAY IT DIFFERENTLY. I
20 WANT TO BE, FOR ALL OF OUR SAKES, ABSOLUTELY SURE
21 THAT THERE IS NO STUFF ON YOUR COMPUTER
22 PRESENTATION THAT YOU HAVEN'T ALREADY GIVEN TO MR.
23 CARLTON.

24 THE WITNESS: THAT IS CORRECT.

25 MR. CARLTON: THAT STILL DOESN'T DEAL
26 WITH THE AUTHENTICATION ISSUE. THERE'S A PICTURE
27 OF A DOCUMENT ON A BLACK AND WHITE THING LIKE THIS.
28 HOW DOES THAT TELL US IT IS AUTHENTIC?

1 MR. PIUZE: I DON'T DISPUTE THAT. WE ARE
2 TAKING IT ONE STEP AT A TIME. YOU ASKED, YOU HAVE
3 THE LATEST VERSION. WE TALKED ABOUT WHY, THROUGH A
4 CONSPIRACY THEORY, WHY THERE IS A FOUNDATION FOR
5 SOME NON-PHILIP MORRIS DOCUMENTS.

6 THE COURT: CERTAINLY.

7 MR. PIUZE: AND THE LAST ISSUE HAS TO DO
8 WITH AUTHENTICATING EACH INDIVIDUAL DOCUMENT AND I
9 UNDERSTAND MY RESPONSIBILITIES, AND IF I CAN'T LIVE
10 UP TO THEM, THE JURY WON'T SEE THEM

11 THE COURT: FAIR ENOUGH.

12 MR. CARLTON: ONE LAST ISSUE, PRIMA FACIE
13 CASE OF CONSPIRACY, OF COURSE, IS ONE ISSUE.
14 AUTHENTICATION IS ANOTHER. BUT MY UNDERSTANDING IS
15 ALSO THAT A CO-CONSPIRATOR'S STATEMENT, IN ORDER TO
16 BE ADMISSIBLE AGAINST ONE OF THE OTHER
17 CONSPIRATORS, HAS TO BE IN FURTHERANCE OF THE
18 CONSPIRACY. SO THAT'S ANOTHER ISSUE THAT NEEDS TO
19 BE RESOLVED.

20 THE COURT: I WILL JUST TAKE THEM ONE AT
21 A TIME. I WILL JUST TAKE THEM AS THEY COME.

22 MR. CARLTON: JUST SO I UNDERSTAND THEN,
23 IS IT THE COURT'S INTENTION TOMORROW, AS WE GET TO
24 THIS, HOW DO YOU WANT TO ADDRESS EACH OF THESE
25 DOCUMENTS, SINCE --

26 THE COURT: HERE'S WHAT I HAVE BEEN TOLD
27 AND WHAT I WOULD EXPECT, AND THAT IS THAT A
28 DOCUMENT WILL NOT BE SHOWN TO THE JURY UNTIL IT IS

1 AUTHENTICATED.

2 A STATEMENT MADE IN FURTHERANCE OF
3 THE CONSPIRACY, IS THERE A WAY THAT I CAN -- CAN I
4 HAVE THE PRESENTATION OF THESE DOCUMENTS SO THAT
5 BEFORE THEY ARE ACTUALLY FLASHED UP, I CAN TAKE A
6 LOOK AT THE DOCUMENT.

7 MR. PIUZE: WE CAN DO THAT RIGHT NOW, IF
8 YOU LIKE.

9 THE COURT: AT THE MOMENT WHEN --

10 MR. PIUZE: WE CAN DO IT ELECTRONICALLY
11 RIGHT NOW IF YOU WOULD LIKE TO SEE THEM

12 THE COURT: ALL RIGHT, LET'S TAKE THE
13 TIME.

14 MR. LEITER: AND YOUR HONOR, IT WOULD BE
15 HELPFUL IF EITHER DR. FEINGOLD OR PLAINTIFF HAS THE
16 ACTUAL DOCUMENTS. BECAUSE WE SEE A PAGE, WE SEE A
17 SNIPPET. WE DON'T HAVE THOSE DOCUMENTS. THEY ARE
18 NOT MARKED AS EXHIBITS IN THIS CASE SO IT IS HARD
19 FOR US TO DO ANYTHING WITH THEM

20 MR. PIUZE: I THINK THE ANSWER IS THAT I
21 HAVE GOT MANY OF THEM RIGHT HERE FOR YOU.

22 MR. LEITER: CAN I RAISE A SEPARATE
23 ISSUE, JUST BY WAY OF HOUSEKEEPING, I DON'T KNOW
24 WHERE WE ARE IN PLAINTIFFS' CASE IN TERMS OF
25 BEGINNING, MIDDLE OR END.

26 EVENTUALLY WE ARE GOING TO GET, I
27 ASSUME, TO A DAMAGES CASE FROM THE PLAINTIFF. AS
28 OF TODAY, WE STILL HAVE NOT SEEN REPORTS FROM

1 PLAINTIFF'S EXPERTS ON THEIR DAMAGE CASE.

2 THE COURT: FORMUZIS.

3 MR. LEITER: FORMUZIS, LUDWIG, WE STILL
4 HAVE NOT HAD ANY OF THESE PEOPLE MADE AVAILABLE TO
5 US FOR DEPOSITION. AND I DON'T KNOW WHEN PLAINTIFF
6 PLANS TO WRAP UP HIS CASE, BUT I DON'T WANT US TO
7 GET INTO A SITUATION WHERE WE ARE UNABLE TO DO
8 DISCOVERY, RESPOND TO DISCOVERY, AND BE PREPARED TO
9 CROSS-EXAMINE WITNESSES ON THE STAND.

10 MR. PIUZE: UNDERSTOOD.

11 MR. LEITER: WELL, CAN YOU GIVE ME A
12 SENSE --

13 THE COURT: WHEN WILL WE GET TO THE
14 DAMAGE PHASE?

15 MR. PIUZE: IT WILL NOT BE -- I KIND OF
16 DOUBT IT WILL BE THIS WEEK AT ALL. BUT EVEN IF IT
17 WOULD HAVE BEEN THIS WEEK, IT WON'T BE UNTIL YOU
18 HAVE HAD A CHANCE TO DO WHAT YOU WANT.

19 AND JUST FOR THE COURT'S BENEFIT,
20 WORKING BACKWARDS, IT'S SORT OF LIKE THIS: I GAVE
21 MAYBE EIGHT, NINE YEARS' WORTH OF INCOME TAX
22 RETURNS TO MY ECONOMIST, FORMUIS, AND SAID, GO
23 AHEAD, FIGURE OUT PRESENT CASH VALUE, FUTURE WAGE
24 LOSS.

25 IT CAME TO MY ATTENTION, THERE WAS
26 ONE YEAR WHEN WE DIDN'T HAVE A FINAL RETURN. AND A
27 DEPOSITION OF NOT AN ACCOUNTANT BUT A BOOKKEEPER
28 WAS TAKEN, I DON'T WANT TO BORE THE COURT WITH

1 DETAILS.

2 MR. BOEKEN'S ACCOUNTANT DIED. WHEN
3 HIS ACCOUNTANT DIED A BOOKKEEPER TOOK OVER THE TASK
4 OF DOING THIS. THE BOOKKEEPER WAS DEPOSED. NOT
5 ONLY WAS SHE A HORRIBLE WITNESS, BUT HER WORK WAS
6 HORRIBLE.

7 AT THAT POINT, I COULDN'T GIVE IT
8 TO FORMUZIS AND I TOOK MY PERSONAL C. P. A. AND
9 TWISTED HIS ARM AND SAID, MAKE SOME SENSE OF THIS.

10 HE'S BEEN TRYING TO DO SO. AND AS
11 OF YESTERDAY AFTERNOON, I THINK, HE WAS READY,
12 FINALLY TO SAY, I NOW HAVE ENOUGH, I NOW HAVE
13 ENOUGH.

14 AND SO I AM GOING TO CONFIRM THAT
15 WHEN WE WALK OUT OF HERE. AND I AM GOING TO MAKE
16 HIM AVAILABLE FOR DEPOSITION.

17 FORMUZIS IS AN EASY DEPOSITION
18 BECAUSE HE JUST DOES THE NUMBERS AND THAT'S IT,
19 THAT'S WHERE WE STAND.

20 THE COURT: SO YOU ARE GOING TO MAKE THE
21 C. P. A. AVAILABLE AS SOON AS POSSIBLE AND FORMUZIS,
22 OF COURSE, BEFORE HE TESTIFIES, JUST PRIOR TO.
23 LET'S GET IT DONE IN A COUPLE DAYS BEFORE COUNSEL
24 HAS TO CROSS-EXAMINE.

25 MR. PIUZE: OF COURSE, I UNDERSTAND THAT.
26 AND I HAVE BEEN FLOGGING AWAY AT THIS. AND AS THE
27 COURT WILL HEAR WHEN THE TESTIMONY UNFOLDS,
28 MR. BOEKEN, THE GUY IS IN ROUGH SHAPE. AND IT'S

1 HARD FOR HIM TO HELP OUT TO THE EXTENT HE SHOULD
2 BE. HE HAS BEEN TRYING.

3 THE COURT: WE WILL KEEP YOU POSTED.

4 MR. LEITER: THANK YOU.

5 THE COURT: ALL RIGHT. WHAT ARE THE
6 DOCUMENTS HERE THAT WE ARE GOING TO BE SEEING
7 TOMORROW THAT ARE IN ISSUE?

8 MR. PIUZE: DR. FEINGOLD, YOU ARE UP.

9 THE WITNESS: I KNOW I TRIED TO START
10 THE MACHINE BUT IT WASN'T COOPERATING. BUT I DO
11 HAVE THEM I HAVE THE DOCUMENTS THEMSELVES, I HAVE
12 A PRINTOUT OF THE DOCUMENTS -- I DID GIVE IT TO
13 YOU. I HAVE A HARD COPY AND AS SOON AS THE
14 COMPUTER STARTS PROPERLY, I WILL HAVE THE
15 ELECTRONIC VERSION.

16 HERE'S THE HARD COPY. BUT IT
17 INCLUDES SLIDES THAT I WOULD HAVE TAKEN OUT,
18 BECAUSE I DIDN'T -- I SENT THEM ALL, BUT I WASN'T
19 ANTICIPATING USING THEM

20 THE COURT: I UNDERSTAND.

21 MR. LEITER: THE ONES YOU ARE GOING TO
22 USE ARE THE ONES I AM INTERESTED IN.

23 THE COURT: YOU SAY YOU HAVE THE
24 UNDERLYING DOCUMENTS, COPIES OF THE UNDERLYING
25 DOCUMENTS?

26 THE WITNESS: I, MYSELF, HAVE THEM

27 THE COURT: HE HAS THEM THEN YOU CAN
28 GIVE THEM TO DEFENSE, TO MAKE SURE THEY HAVE

1 COMPLETE COPIES OF THE UNDERLYING DOCUMENTS
2 INVOLVED HERE.

3 COUNSEL, IF YOU WOULD MAKE A NOTE
4 OF WHAT WE SEE HERE SO THAT YOU CAN GET THEM

5 MR. LEITER: THIS MIGHT SPEED IT UP. WE
6 HAVE AN EXTRA COPY OF THE PRINTOUT OF THE POWER
7 POINT SLIDES.

8 THE COURT: THANK YOU, SIR.

9 MR. PIUZE: YOUR HONOR, I AM NOT SURE
10 WHAT YOU WANT US TO BE DOING.

11 THE COURT: WELL, WHAT DOCUMENTS ARE
12 GOING TO BE USED, ACTUALLY USED?

13 MR. PIUZE: DR. FEINGOLD.

14 THE WITNESS: 1953.

15 MR. LEITER: DO YOU HAVE A SLIDE NUMBER?

16 THE WITNESS: SLIDE NUMBER 2 THROUGH 6.

17 MR. CARLTON: THE OLD.

18 THE WITNESS: I WILL USE THE OLD ONE,
19 THAT WOULD BE NUMBERS 6 THROUGH 10.

20 THEN THE NEXT DOCUMENT WOULD BE THE
21 FRANK STATEMENT, 1954.

22 THE COURT: ALL RIGHT.

23 THE WITNESS: WHICH IS 11 AND 12 AND 13.

24 THE COURT: NEXT?

25 THE WITNESS: WOULD BE NUMBER 14.

26 MR. CARLTON: WHICH IS WHAT?

27 THE WITNESS: DR. DAVIES' AMERICAN CANCER
28 SOCIETY DISCUSSING BOB DUPRE, DIRECTOR OF PHILIP

1 MORRIS, RESEARCH DIRECTOR OF PHILIP MORRIS.
2 THAT' S NUMBER 14.
3 MR. GOLDSTEIN: DR. FEINGOLD, IS THERE A
4 DATE?
5 THE WITNESS: JULY 25, 1955.
6 NEXT WOULD BE TURNER COMPRESSOR
7 RELEASE WHICH IS 15, SLIDE 15.
8 MR. CARLTON: AND THE DATE OF THE
9 DOCUMENT, PLEASE.
10 THE WITNESS: 8/2/56.
11 NEXT, ARE YOU PREPARED?
12 MR. CARLTON: YES.
13 THE WITNESS: NEXT WOULD BE DOCUMENT
14 SHOWN IN SLIDE 16 THROUGH 19, ALLAN RODGMAN,
15 9/28/56, RJR.
16 NEXT ONE IS SLIDE 20 FROM PHILIP
17 MORRIS, JEFF LINCOLN, 4/23/58.
18 NEXT WOULD BE SLIDES 21 THROUGH 23,
19 BENTLY FELTON REED, THE BAT, B-A-T, VISIT TO
20 TOBACCO COMPANIES INCLUDING PHILIP MORRIS, 4/17 TO
21 5/12/58.
22 NEXT IS RODGMAN OF RJR. 11/2/59,
23 SHOWN ON SLIDES 24 AND 25.
24 I WAS GOING TO SKIP 26.
25 SLIDE 27 IS HELMUT WAKEHAM, PHILIP
26 MORRIS, V. P., 11/15/61, SHOWN ON SLIDES 27 THROUGH
27 30.
28 NEXT, SHOWN ON SLIDES 31, LIGGETT,

1 MEYERS, ARTHUR D. LITTLE COMPANY, 3/15/61.

2 NEXT IS SHOWN IN SLIDES 32 THROUGH
3 36, RODGMAN, RJR, 1962.

4 MR. PIUZE: EXCUSE ME, IS THAT A
5 CRITICAL, AN OBJECTIVE APPRAISER?

6 MR. GOLDSTEIN: YES, THAT IS CORRECT.

7 THE WITNESS: I WAS GOING TO SKIP THE
8 NEXT ONE, 37.

9 38 IS A T. I. R. C. PRESS RELEASE,
10 3/24/65.

11 39 THROUGH 42, JANET BROWN, TO
12 HEADSCO AMERICAN TOBACCO, 8/25/65.

13 I WAS GOING TO STOP THERE.

14 MR. CARLTON: ARE YOU GOING TO USE ALL
15 FOUR SLIDES FROM THAT DOCUMENT, FIVE SLIDES?

16 THE WITNESS: THE JANET BROWN?

17 MR. CARLTON: YES, CORRECT.

18 THE COURT: FROM THE DEFENSE, WHICH ONES
19 ARE IN ISSUE.

20 MR. CARLTON: LET ME JUST GO BACK HERE,
21 YOUR HONOR. WE'D SAY THE CLAUDE TEAGUE MEMO,
22 CLAUDE TEAGUE BEING A SCIENTIST AT RJ REYNOLD,
23 2/2/53.

24 AND THE FRANK STATEMENT IS OKAY.

25 THE DAVIES AMERICAN CANCER SOCIETY
26 SLIDE, THE NEXT ONE IS THE 9/28/56, ALLAN RODGMAN
27 MEMO, CHEMICAL RESEARCH DIVISION.

28 THERE IS, THE NEXT ONE, WOULD BE,

1 AND I THINK IT WAS SLIDE 21, THE -- STARTS WITH
2 SLIDE 21, THE BAT SCIENTIST REPORT ON VISIT TO THE
3 U. S. A. , 1958. AND THAT' S 21, 22, 23, WE WOULD ALSO
4 CHALLENGE. THE ALLAN, THE NEXT ONE, ALLEN RODGMAN,
5 11/2/59, AND THAT CONTINUES ON FOR A PERIOD OF
6 TIME.

7 ARTHUR D. LITTLE WOULD BE THE NEXT
8 ONE, 3/15/61, ARTHUR D. LITTLE TO LIGGETT AND
9 MEYERS.

10 THE COURT: WHAT NUMBER IS THAT?

11 MR. CARLTON: 31.

12 THE NEXT ONE AFTER THAT WOULD BE
13 ALLAN RODGMAN OF RJR, 1962. IT' S THE NEXT ONE
14 AFTER THE ARTHUR D. LITTLE SLIDE.

15 MR. LEITER: 32 THROUGH 36.

16 MR. CARLTON: AND THEN THE LAST ONE WOULD
17 BE THE JANET BROWN MEMORANDUM TO AMERICAN TOBACCO.

18 MR. LEITER: 39 TO 42.

19 THE COURT: STARTING WITH CLAUDE TEAGUE,
20 WHAT WOULD BE THE BASIS OF SLIDES 6, THE FOUNDATION
21 FOR 6 THROUGH 10?

22 MR. PIUZE: MR. GOLDSTEIN, WHO IS MY
23 DOCUMENT GURU, WILL GO AND GET THE FOUNDATION FROM
24 THESE WEB SITES, BUT JUST SO THE COURT KNOWS WHAT
25 WE HAVE BEEN DOING, THERE ARE SEVERAL OF THESE
26 HIGH-RANKING INSIDERS WHO HAVE GIVEN DEPOSITIONS IN
27 VARIOUS CASES. SOMETIMES ATTORNEYS GENERAL CASES,
28 SOMETIMES NOT. AND IT' S FROM THOSE DEPOSITIONS

1 WHICH I PULL DOWN OFF OF THE WEB SITE FROM A PAGE
2 WHERE THEY IDENTIFY A DOCUMENT AND AUTHENTICATE IT,
3 THAT DOCUMENT WAS ATTACHED AS AN EXHIBIT AND WE PUT
4 THE TWO TOGETHER, YOU SEE THE FOUNDATION.

5 THE COURT: HOW ABOUT WE START EARLY
6 TOMORROW MORNING AND I WILL GIVE YOU THE EVENING TO
7 DO THIS, SO THAT YOU CAN MAKE IT MORE FOCUSED.

8 MR. PIUZE: SURE.

9 THE COURT: THE PRESENTATION TO THE
10 COURT.

11 8 O' CLOCK.

12 THAT'S OKAY?

13 MR. LEITER: JUST TO CLARIFY, ONE
14 OBJECTION, THERE IS ONE OF OUR OBJECTIONS THAT IS
15 NOT FOUNDATION, AND THAT'S NUMBER 14, THE AMERICAN
16 CANCER SOCIETY, WHICH IS ESSENTIALLY DR. DAVES OF
17 THE AMERICAN CANCER SOCIETY TALKING ABOUT WHAT BOB
18 DUPRE DID. THAT'S A HEARSAY OBJECTION.

19 THE COURT: DOUBLE HEARSAY.

20 MR. CARLTON: THAT'S A DOUBLE HEARSAY
21 OBJECTION. THAT'S NOT AN AUTHENTICATION OBJECTION.

22 THE COURT: I UNDERSTAND.

23 MR. PIUZE: IF I COULD SAY ONE LAST THING
24 FOR YOUR HONOR.

25 THE COURT: YES, SIR.

26 MR. PIUZE: THERE'S A FLORIDA CASE, IT'S
27 ACTUALLY A FIFTH CIRCUIT CASE, ARISING OUT OF
28 FLORIDA COURT DARTEZ, D-A-R-T-E-Z, VERSUS

1 FIBERBOARD CORPS, 765 F. 2ND, 456, 461, FIFTH
2 CIRCUIT, 1985.

3 THIS CASE WAS RECENTLY, MEANING IN
4 THE YEAR 2000, CITED BY THE FLORIDA SUPREME COURT
5 IN CARTER VERSUS BROWN & WILLIAMSON, CARTER BEING A
6 TOBACCO CASE. THE FIRST PERSON THAT'S EVER BEEN,
7 ACTUALLY BEEN PAID MONEY BY A TOBACCO COMPANY.

8 ANYWAY, THE ISSUE WAS, THE ISSUE
9 HAD TO DO WITH DOCUMENTS FROM OTHER COMPANIES AND
10 THE APPROACH WAS, THE APPROACH WAS TOTALLY
11 DIFFERENT THAN CONSPIRACY.

12 I DON'T BACK OFF OF CONSPIRACY FOR
13 A SECOND. BUT I WILL GIVE THE COURT A SECOND AND
14 THE DEFENSE A SECOND APPROACH.

15 IN DARTEZ, ONCE AGAIN, RECENTLY,
16 DECIDED BY THE FLORIDA SUPREME COURT, THE ISSUE HAD
17 TO DO WITH WHY ONE ASBESTOS MANUFACTURER SHOULD BE
18 ON TRIAL WHEN PROOF OF WHAT OTHER ASBESTOS
19 MANUFACTURERS KNEW, BUT NOT DIRECT PROOF OF WHAT
20 THE DEFENDANT KNEW, WAS PUT BEFORE THE JURY AND WHY
21 THAT DEFENDANT SHOULD BE SUBJECT TO THAT.

22 AND THE BOTTOM LINE RULING WAS THAT
23 IT'S A PRODUCTS LIABILITY CASE. THE STATE OF THE
24 ART IS A MEASURE IN A PRODUCT LIABILITY CASE, AND
25 WHAT ALL THESE OTHER TOBACCO COMPANIES -- EXCUSE
26 ME -- WHAT ALL THESE OTHER ASBESTOS CASES KNEW IN
27 THE DARTEZ CASE WAS FAIR GAME TO SHOW THE COMMON
28 STORE OF KNOWLEDGE.

1 I AM USING THE TERM STATE OF ART
2 BUT THAT'S WHAT IT AMOUNTS TO.

3 SIMILARLY, IN THE GRADY CASE, THE
4 FLORIDA SUPREME COURT TOOK THIS RATIONALE AND SAID,
5 WELL, YOU KNOW WHAT, BROWN & WILLIAMSON, EVEN
6 THOUGH THE JURY WAS SHOWN DOCUMENTS WHICH WEREN'T
7 YOUR DOCUMENTS, IT'S RELEVANT, AND IT'S GOOD
8 EVIDENCE. AND THE REASON IS, AS IN DARTEZ, IF YOUR
9 COMPETITORS KNEW THESE THINGS ABOUT HOW BAD TOBACCO
10 WAS FOR PEOPLE, YOU SHOULD HAVE KNOWN TOO, OR AT
11 LEAST THE JURY COULD CONCLUDE THAT YOU SHOULD HAVE
12 KNOWN TOO. AND THIS IS LIVE EVIDENCE TO BE GIVEN
13 TO THE JURY TO HELP THEM MAKE THAT DETERMINATION.

14 SO THAT'S A SECOND PRONG AND A
15 SECOND APPROACH BUT IT IS A SECOND APPROACH.

16 THE COURT: DO YOU HAVE THE CASE?

17 MR. PIUZE: I HAVE GOT PARTS OF IT,
18 UNLESS -- I WILL TRY TO GET THE WHOLE THING PRINTED
19 OUT AND ON THE COURT'S DESK EARLY IN THE MORNING OR
20 LATER THIS AFTERNOON. I DON'T WANT TO IMPOSE ON
21 THE COURT HERE.

22 THE COURT: I WILL BE HERE A LITTLE BIT
23 BEFORE 8:00.

24 WHAT IS THE CITATION TO IT?

25 MR. PIUZE: DARTEZ IS 765 F. SECOND, 456,
26 461, FIFTH CIRCUIT, 1985. THE GRADY CARTER CASE,
27 EXCUSE ME WHILE I CONFER FOR A SECOND, THE GRADY
28 CARTER CASE IS CARTER VERSUS BROWN & WILLIAMSON

1 TOBACCO. IT WAS DECIDED ON NOVEMBER 22, 2000 BY
2 THE FLORIDA SUPREME COURT. AND I WILL HAVE A
3 PRINTOUT OF THAT. NUMBER SC94797. ALTHOUGH I HAVE
4 GOT PARTS OF IT HERE, I DON'T HAVE A COMPLETE CASE.
5 I WILL HAVE IT FOR THE COURT, AND THE DEFENSE, IF
6 THEY WANT IT, BUT I AM SURE THEY HAVE ALREADY GOT
7 IT, IN THE MORNING.

8 MR. LEITER: WE DON'T HAVE IT, BUT WE
9 WILL FIND IT.

10 THE COURT: WE WILL START HERE AT 8
11 O' CLOCK IN THE MORNING.

12

13 (AT THIS TIME, THE PROCEEDINGS
14 IN THE ABOVE-ENTITLED MATTER
15 WERE CONTINUED TO TUESDAY, APRIL
16 10, 2001 AT 8:00 A.M.)

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