

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 )  
) CASE NO. BC226593  
7 VS. )  
)  
8 PHILIP MRRIS, )  
INCORPORATED, A )  
9 CORPORATION; INTERNATIONAL )  
HOUSE OF PANCAKES )  
10 INCORPORATED, A )  
CORPORATION. )  
11 )  
DEFENDANTS. )  
12 )

13 REPORTER' S DAILY TRANSCRIPT OF PROCEEDINGS  
14 TUESDAY, APRIL 10TH, 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.  
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17  
18  
19 (FOR DEFENDANTS)  
20  
21  
22 LISA C. RIDLEY  
23 OFFICIAL REPORTER  
600 S. COMMONWEALTH AVE.  
24 ROOM 308  
LOS ANGELES, CA 90005

25 VOLUME 14 OF  
26 PAGES 2155 THROUGH 2280/1

27  
28

1 LOS ANGELES, CALIFORNIA; TUESDAY, APRIL 10TH, 2001

2 8:00 A.M

3 DEPARTMENT 308 HON. CHARLES MC COY, JUDGE

4

5 (THE FOLLOWING PROCEEDINGS  
6 WERE HELD IN OPEN COURT OUT  
7 OF THE PRESENCE OF THE JURY:)

8

9 THE COURT: GOOD MORNING, COUNSEL. GOOD  
10 TO SEE ALL OF YOU.

11 WE ARE HERE ON THE RECORD OUTSIDE  
12 THE PRESENCE OF THE JURY TO DEAL WITH CERTAIN  
13 EXHIBITS THAT THE WITNESS WANTS TO USE, NOT  
14 NECESSARILY TO ADMIT INTO EVIDENCE AS EXHIBITS, BUT  
15 TO USE DURING THE COURSE OF HIS TESTIMONY.

16 AND YESTERDAY EVENING WE LEFT THIS,  
17 IN THE PLAINTIFF'S COURT AND WE WILL RETURN THERE.

18 MR. PIUZE: THANK YOU.

19 I PUT SOME DOCUMENTS RIGHT ON THE  
20 LEDGE. AND IN ORDER, THAT'S A COPY OF CARTER  
21 VERSUS BROWN & WILLIAMSON. AND THEN BELOW THAT IS  
22 A COPY OF DARTEZ VERSUS FIBERBOARD. AND THEN BELOW  
23 THAT ARE THE WELCOMES TO THE -- FOR THE LITIGATION  
24 WEB SITES OF PHILIP MORRIS TOBACCO INSTITUTE, RJ  
25 REYNOLDS, BROWN & WILLIAMSON.

26 AND I'D LIKE TO START AS FOLLOWS:  
27 THE CARTER CASE, THE PART WE ARE INTERESTED IN  
28 STARTS AT PAGE 22.

1                   AND WHAT THE CARTER CASE REALLY  
2 TRULY BOILS DOWN TO IS THAT FOR STRICT LIABILITY  
3 PURPOSES, MANUFACTURERS, IN THIS CASE, PHILIP  
4 MORRIS, SHOULD BE HELD TO THE STANDARDS AND  
5 KNOWLEDGE THAT EXISTED IN THE INDUSTRY AT THE TIME  
6 OF MANUFACTURE. AND IN ORDER TO PROVE WHAT EXISTED  
7 IN THE INDUSTRY AT THE TIME OF MANUFACTURE, OTHER  
8 COMPETITOR MANUFACTURERS' KNOWLEDGE CAN BE SHOWN.

9                   IN CALIFORNIA, WE HAVE A SIMILAR  
10 CASE, AND OUR CASE IS CALLED ANDERSON VERSUS  
11 OWENS-CORNING, 53 CAL 3RD, 987. AND WE ARE  
12 INTERESTED IN PAGE 1003. THIS IS A 1991 CASE.

13                   AND AROUND PAGE 1003, THE SUPREME  
14 COURT SAYS THAT UNDER A STRICT LIABILITY THEORY, AS  
15 OPPOSED TO A NEGLIGENCE THEORY, THE MANUFACTURER IS  
16 LIABLE IF IT FAILED TO GIVE WARNINGS OF DANGERS  
17 KNOWN TO THE SCIENTIFIC COMMUNITY AT THE TIME OF  
18 MANUFACTURE.

19                   NOW, SOME OF THE DOCUMENTS THAT  
20 DR. FEINGOLD PROPOSES TO SHOW HERE THIS MORNING,  
21 NOT TO BE ADMITTED INTO EVIDENCE, BY THE WAY, AND I  
22 WANT TO EMPHASIZE THAT, ARE REYNOLDS DOCUMENTS AND  
23 THEN MAYBE ONE OR TWO BROWN & WILLIAMSON DOCUMENTS.

24                   AND WHAT THESE SHOW IS THAT THE  
25 INDUSTRY, AT CERTAIN POINTS, HAD TREMENDOUS  
26 KNOWLEDGE, INTERNAL KNOWLEDGE, WHICH THEY, OF  
27 COURSE, KEPT SECRET FROM THE PUBLIC, ABOUT THE FACT  
28 THAT TOBACCO CAUSES LUNG CANCER AND THEIR

1 TREMENDOUS CONCERNS OVER THAT AND THE OVERWHELMING  
2 EVIDENCE OF THAT.

3 SO THAT'S ONE WAY THAT I BELIEVE  
4 THIS INFORMATION SHOULD BE GIVEN TO THE JURY.

5 IT'S POSSIBLE THAT SUCH A RATIONALE  
6 WOULD BE THE BASIS FOR ADMITTING THE EVIDENCE.

7 BUT, AGAIN, I AM NOT SEEKING TO ADMIT THESE  
8 DOCUMENTS FROM THE OTHER COMPANIES, SIMPLY SHOW  
9 THEM AND DISCUSS THEM AND NOT ADMIT THEM

10 NOW, THE SECOND THING WE TALKED  
11 ABOUT, THE SECOND RATIONALE HAD TO DO WITH THE  
12 CONSPIRACY THEORY AND WHERE WE REALLY GO, I  
13 BELIEVE, THAT I AM GOING TO BE ABLE TO SHOW THERE  
14 WAS A CONSPIRACY AND THAT THE TOBACCO INSTITUTE AND  
15 ITS PREDECESSOR WERE A MOUTHPIECE FOR THE  
16 ORGANIZATION, FOR ALL OF THE TOBACCO COMPANIES  
17 WHICH JOINED IT, MR. CARLTON COUNTERED YESTERDAY,  
18 PROPERLY, WITH THE FACT THAT, OKAY, SO WHAT, IF  
19 IT'S NOT IN FURTHERANCE OF A CONSPIRACY, IT DOESN'T  
20 REALLY GET YOU ANYTHING.

21 THE COURT: AND THAT IS A QUESTION OF  
22 ADMISSIBILITY AND THE COURT MUST MAKE A PRELIMINARY  
23 FACT FINDING ON.

24 MR. PIUZE: YES.

25 SO I AM BRINGING THIS UP SECOND  
26 BECAUSE I DON'T WANT TO BE WHERE I SHOULDN'T BE,  
27 FOR REASONS THAT I HAVE ALLUDED TO AND SAID FLAT  
28 OUT ON THE RECORD AT VARIOUS TIMES.

1                   AND ALTHOUGH, AS AN ADVOCATE I  
2 THINK THIS STUFF IS IN FURTHERANCE OF A CONSPIRACY,  
3 IF I STEP ONE STEP BACK FROM MY ADVOCATE ROLE, IT'S  
4 A CLOSER CALL. SO I SAY THAT, FRANKLY, FOR THE  
5 COURT, SO I AM NOT MESSING AROUND HERE.

6                   SO AS TO THE REASONS THE JURY  
7 SHOULD SEE THESE DOCUMENTS, THOSE ARE THE TWO  
8 THEORIES UNDER WHICH THE DOCUMENTS COME IN.

9                   NEW THOUGHT: AS TO THE FOUNDATION  
10 FOR THE DOCUMENTS, SOME OF THEM, MANY OF THEM, I  
11 HAVE THE TRADITIONAL FOUNDATION, WHICH I DISCUSSED  
12 YESTERDAY, AND WHICH I HAVE THE DEPOSITION OF  
13 SOMEONE, MERRYMAN, FOR INSTANCE, WHO SWEARS UNDER  
14 OATH THAT THIS WAS HIS DOCUMENT, HE PREPARED IT AND  
15 IT IS A COPY OF A DOCUMENT ATTACHED. AND I WILL  
16 SHOW THOSE TO COUNSEL IN A SECOND.

17                  BUT ON A BROADER SENSE, BECAUSE  
18 THIS IS GOING TO BE A RECURRING THEME LATER ON AS  
19 THIS TRIAL GOES ON, ONE OF MY LEGAL GURUS, WHO I  
20 PAY TO WHISPER IN MY EAR, HAS ASKED ME TO TAKE THIS  
21 OPPORTUNITY, BECAUSE HE THINKS I HAVE LET IT GO TOO  
22 FAR ALREADY, TO SAY THE FOLLOWING TO THE COURT:  
23 THESE WEB SITES FROM PHILIP MORRIS AND THE TOBACCO  
24 INSTITUTE AND RJ REYNOLDS AND BROWN & WILLIAMSON,  
25 ALL CONTAIN INTRODUCTORY LANGUAGE IN WHICH,  
26 BASICALLY, EACH ENTITY SAYS, THESE ARE OUR  
27 DOCUMENTS. AND IT'S NOT A CUSTODIAN OF RECORDS  
28 DECLARATION. BUT IT SERVES THE EXACT SAME PURPOSE.

1                   THEY ARE SAYING, THERE HAS BEEN, IN  
2 VARIOUS FORMS, THERE'S BEEN SOME LITIGATION WITH  
3 THE STATES' ATTORNEY GENERAL. AS PART OF A MASTER  
4 SETTLEMENT, WE ARE POSTING ALL OF THESE DOCUMENTS  
5 WHICH ARE NON-COMPETITIVE. WE ARE GOING TO KEEP  
6 SOME TRADE SECRET STUFF AND SOME PERSONNEL RECORDS.  
7 BUT WE ARE GOING TO BE POSTING ALL THESE OTHER  
8 DOCUMENTS WHICH ARE OUR DOCUMENTS FROM OUR FILES ON  
9 THE WEB SITE.

10                   AND SO I'D SAY TO THE COURT --

11                   THE COURT: COULD YOU GIVE ME THE  
12 SPECIFIC LANGUAGE?

13                   MR. PIUZE: WELL, IT VARIES BUT --

14                   THE COURT: LET'S LOOK AT THE PHILIP  
15 MORRIS --

16                   MR. PIUZE: LET'S LOOK AT THE PHILIP  
17 MORRIS ONE. THIS MAY BE THE BIGGEST, THE MOST  
18 EXPLICIT ONE.

19                   RIGHT FROM THE TOP, THE WEB SITE IS  
20 DESIGNED TO PROVIDE THE PUBLIC WITH ACCESS TO  
21 DOCUMENTS PRODUCED BY PHILIP MORRIS IN ATTORNEY  
22 GENERAL REIMBURSEMENT LAWSUITS AND OTHER SPECIFIED  
23 CIVIL LAWSUITS.

24                   SKIP A FEW WORDS "AND SMOKING AND  
25 HEALTH ACTIONS AND INCLUDES ENHANCEMENTS ALL AS  
26 PROVIDED BY PARAGRAPH 4 OF THE ATTORNEY'S GENERAL  
27 MASTER SETTLEMENT AGREEMENT. "

28                   AND IT GOES THROUGH HERE TELLING

1 HOW TO FIND THEM, WHAT' S INCLUDED, AND NOW WE ARE  
2 OVER TO ABOUT THE THIRD PAGE WHERE IT SAYS "M S. A.  
3 PROVISIONS REGARDING INTERNET DOCUMENTS. "

4 AND IT DISCUSSES, IT DISCUSSES WHY,  
5 WHAT PARTS OF THE SETTLEMENT ARE IN EFFECT HERE AND  
6 WHY THIS STUFF IS BEING POSTED.

7 THIS IS MUCH MORE ELABORATE, THE  
8 PHILIP MORRIS ONE, IS MUCH MORE ELABORATE THAN SOME  
9 OF THE OTHERS. AND THE TOBACCO INSTITUTE IS THE  
10 NEXT MOST ELABORATE.

11 BUT LET' S TO GO RJR AND JUST PICK  
12 IT UP, AND FEEL, IT' S THINNER --

13 THE COURT: HOLD ON. LET' S FOCUS ON  
14 PHILIP MORRIS.

15 IT SAYS THIS WEB SITE IS DESIGNED  
16 BY THE PUBLIC WITH ACCESS TO DOCUMENTS PRODUCED BY  
17 PHILIP MORRIS, INCORPORATED.

18 THAT DOESN' T AUTHENTICATE THE  
19 DOCUMENT. IT JUST SAYS THEY PRODUCED IT IN THE  
20 COURSE OF, APPARENTLY, LAWSUITS.

21 MR. PIUZE: WELL, LET' S KEEP GOING THEN.

22 MR. LEITER: YOUR HONOR, ALL OF THE WEB  
23 SITES HAVE THAT LANGUAGE. THESE ARE DOCUMENTS  
24 PRODUCED BY THE RESPECTIVE COMPANIES IN OTHER  
25 LAWSUITS. THAT' S ALL THEY ARE.

26 MR. PIUZE: WELL, LET' S LOOK IN THE  
27 PHILIP MORRIS ONE. AS AN EXAMPLE, LET' S LOOK AT  
28 THE FIFTH PAGE, AND IT STARTS WITH C: "THE

1 ORIGINAL PARTICIPATING MANUFACTURERS." THIS  
2 LANGUAGE APPLIES TO ALL. "WILL MAINTAIN -- " I  
3 DON'T KNOW IF I SHOULD BE READING IT OUT LOUD, YOUR  
4 HONOR, BECAUSE YOU CAN READ FASTER TO YOURSELF.

5 THE COURT: I HAVE GOT IT.

6 LET ME JUST COMMENT THAT DOESN'T  
7 SEEM TO ADD TO THE ANALYSIS.

8 MR. PIUZE: WELL THEN I WILL COME OUT OF  
9 THOSE SPECIFIC DOCUMENTS AND GIVE YOU MY LEGAL  
10 ANALYSIS.

11 1410, LET'S GO TO 1410.

12 "NOTHING IN THIS ARTICLE SHALL BE  
13 CONSTRUED TO LIMIT THE MEANS BY WHICH A WRITING MAY  
14 BE AUTHENTICATED OR PROVED."

15 FIRST CASE I AM GOING TO SITE FOR  
16 IS PEOPLE VERSUS OLQUIN, O-L-Q-U-I-N, 94, 31 CAL  
17 APP 4TH, 1355 AT 1372.

18 "CALIFORNIA COURTS HAVE  
19 NEVER CONSIDERED THE LIST SET FORTH IN  
20 EVIDENCE CODES 1410 THROUGH 12 AS  
21 PRECLUDING RELIANCE UPON OTHER MEANS  
22 OF AUTHENTICATION.

23 "CIRCUMSTANTIAL EVIDENCE  
24 CONSISTING OF CONTENT AND LOCATION OF  
25 SONG LYRICS FOUND IN A SUSPECT'S HOME  
26 SUFFICIENT FOR IDENTIFICATION."

27 WHAT THIS CASE IS SAYING IS THAT  
28 YOU DON'T NEED DIRECT EVIDENCE. YOU CAN USE

1 CIRCUMSTANTIAL EVIDENCE IN ORDER TO SHOW  
2 AUTHENTICITY.

3                   NOW, THE FACT, THE CIRCUMSTANTIAL  
4 EVIDENCE IN THIS CASE, OF COURSE, IS THIS: THESE  
5 COMPANIES ARE POSTING THEIR DOCUMENTS WITH THEIR  
6 NAMES ON IT ON THEIR WEB SITE, PURSUANT TO THIS  
7 ATTORNEY'S GENERAL ORDER.

8                   ANOTHER CASE THAT FALLS ALONG THESE  
9 LINES IS YOUNG VERSUS SORENSON, 75, 47 CAL APP 3RD,  
10 911, AT 915, AGAIN, CIRCUMSTANTIAL EVIDENCE MAY BE  
11 USED FOR AUTHENTICATION.

12                   NOW, I SAY, IF THE WEB SITE  
13 PROVIDES SOME DISCLAIMERS, AND I DON'T THINK THEY  
14 DO, THE CONTENT AND LOCATION, MEANING, THE  
15 DESCRIPTION OF THE INDUSTRY AND THE FACT THAT THEY  
16 WERE POSTED THERE IS STRONG CIRCUMSTANTIAL EVIDENCE  
17 OF AUTHENTICITY.

18                   THIS DISCUSSION SO FAR DOES NOT  
19 APPLY TO PHILIP MORRIS. SO FAR, IT DOESN'T APPLY  
20 SO MUCH TO THE TOBACCO INSTITUTE BECAUSE PHILIP  
21 MORRIS HAS MADE CONCESSIONS TO US REGARDING THOSE  
22 DOCUMENTS.

23                   BUT THIS APPLIES TO RJ REYNOLDS AND  
24 THIS MORNING BROWN & WILLIAMSON. AND SO I SAY THE  
25 FACT THAT THESE DOCUMENTS ARE COMING OFF OF THE  
26 INTERNET, OFF OF RJ REYNOLDS WEB SITE, UNDER THE  
27 CIRCUMSTANCES STATED THERE, THAT THEY WERE POSTED  
28 THERE AS PART OF A SETTLEMENT WITH THE STATES

1 ATTORNEY'S GENERAL IS CIRCUMSTANTIAL EVIDENCE OF  
2 THEIR AUTHENTICITY.

3 THE FACT -- NOW, PERIOD.

4 I AM PUTTING THIS OUT NOT AS MY  
5 STRONG STATEMENT BUT AS A SORT OF A THEORY.

6 THE FACT THAT I DON'T SEEK TO  
7 INTRODUCE THESE, AND THE FACT -- AND I WANT TO SHOW  
8 THEM TO THE JURY BUT NOT INTRODUCE THEM AND THE  
9 FACT THAT THEY ARE NOT USED DIRECTLY AGAINST PHILIP  
10 MORRIS, IF ANYTHING, SHOULD SOFTEN THE  
11 REQUIREMENTS.

12 IN OTHER WORDS, IF THERE'S SOME  
13 SORT OF -- AN INTERNAL BALANCE, AND I DON'T KNOW  
14 THAT THERE IS, BUT IF THAT'S ONE OF THE THOUGHTS,  
15 THOSE THINGS SHOULD WEIGH TOWARDS MY VIEW TO USE  
16 THEM

17 SO THAT'S WHAT I HAVE GOT TO SAY AS  
18 FAR AS THE WEB IS CONCERNED. AND I WILL REMIND THE  
19 COURT THAT FOR SOME OF THESE DOCUMENTS, I HAVE THE  
20 DIRECT, TRADITIONAL, FROM THE DEPOS WE PULLED OFF  
21 OF.

22 THE COURT: LET'S DO THAT. IF YOU DON'T  
23 MIND, THERE'S ONE DOCUMENT I WOULD LIKE TO FOCUS ON  
24 QUICKLY. AND THEN WE CAN START AT THE TOP. AND  
25 THAT IS THE DOCUMENT WITH THE DOUBLE HEARSAY IN IT.

26 MR. PIUZE: DOUBLE HEARSAY, I WAS  
27 WATCHING THE DISCUSSION YESTERDAY WHEN I HEARD  
28 DOUBLE HEARSAY.

1 THE COURT: DAVIES.

2 MR. PIUZE: I ABANDONED THE DOCUMENT.

3 THE COURT: OKAY.

4 DOCUMENT NUMBER 14 WILL NOT BE  
5 UTILIZED.

6 NOW, LET'S START WITH DOCUMENT  
7 NUMBER 6, CLAUDE TEAGUE. THIS IS 6789 AND 10,  
8 DATED FEBRUARY 2ND, 1953.

9 WHAT IS THE FOUNDATION FOR THIS  
10 DOCUMENT?

11 MR. PIUZE: YOUR HONOR, I AM HANDING THE  
12 COURT -- I DON'T KNOW IF WE WILL DO THIS WITH ALL  
13 OF THEM, BUT WE WILL IF YOU WOULD LIKE, THIS IS  
14 FROM THE DEPOSITION OF MR. TEAGUE THAT WAS TAKEN IN  
15 THE MINNESOTA CASE AND --

16 MR. LEITER: FOR THE RECORD, YOUR HONOR,  
17 WE ARE JUST BEING HANDED THIS FOR THE FIRST TIME  
18 RIGHT NOW AS WELL. SO WE NEED A MINUTE TO LOOK AT  
19 IT.

20 MR. PIUZE: SO THIS WOULD BE EXHIBIT 1090  
21 IN THIS DEPOSITION. THE DEPOSITION GOES THROUGH  
22 WHOSE ATTENDING, AND THEN THERE'S AN EXHIBIT LIST.

23 ON PAGE 54, UPPER RIGHT-HAND  
24 CORNER, THEY ARE TALKING ABOUT EXHIBIT 1090, WHICH  
25 IS IDENTIFIED BY THIS WITNESS, AND THE EXHIBIT IS  
26 ATTACHED AT THE BACK.

27 SO MR. TEAGUE, UNDER OATH, HAS  
28 SAID, I WROTE THIS DOCUMENT.

1 THE COURT: FOR EXAMPLE, ON PAGE 56, THE  
2 QUESTION, "YOU STATE IN THE SECOND PARAGRAPH -- "  
3 AND THE PERSON ASKING THE QUESTION GOES ON.

4 THE WITNESS ANSWERS "YES," AS IF TO  
5 ADOPT THAT IT IS HIS DOCUMENT THAT HE PREPARED.

6 ALL RIGHT. FROM THE DEFENSE ON  
7 THIS.

8 MR. LEITER: YOUR HONOR, HERE'S THE  
9 PROBLEM CLEARLY DR. TEAGUE IS AUTHENTICATING THIS  
10 DOCUMENT. BUT WE ARE BEING HANDED THIS HALF AN  
11 HOUR BEFORE THE WITNESS HITS THE STAND, A THIRD  
12 PARTY, TO TALK ABOUT THIS DOCUMENT.

13 WE DON'T KNOW WHAT HE SAID ABOUT  
14 THE DOCUMENT. WE DON'T KNOW WHETHER HE HAS  
15 TESTIFIED THAT THE DOCUMENT MEANS SOMETHING  
16 DIFFERENT, SAYS SOMETHING DIFFERENT. AND  
17 BASICALLY, TO PUT IT BLUNTLY, WE ARE BEING  
18 SANDBAGGED.

19 WE ARE NOT GOING TO HAVE AN  
20 OPPORTUNITY TO CROSS-EXAMINE THIS WITNESS ABOUT  
21 WHAT DR. TEAGUE MIGHT HAVE SAID ABOUT THE DOCUMENT.

22 WE GET THE LITTLE PORTION OF THE  
23 TRANSCRIPT ON THE MORNING THAT DOCUMENT IS GOING TO  
24 HIT THE STAND, WHERE IT IS AUTHENTICATED AND  
25 NOTHING MORE.

26 I DON'T KNOW WHETHER, ON THE NEXT  
27 FIVE PAGES, DR. TEAGUE HAS AN EXPLANATION ABOUT  
28 THIS DOCUMENT THAT THE JURY MIGHT HEAR.

1 THE FACT THAT IT IS NOT BEING  
2 OFFERED INTO EVIDENCE, DOESN'T GIVE US MUCH  
3 COMFORT, IT'S GOING TO BE FLASHED IN FRONT OF THE  
4 SCREEN AND DISCUSSED BY A THIRD PARTY EXPERT  
5 WITNESS.

6 THE FACT THAT IT IS NOT BEING USED  
7 DIRECTLY AGAINST PHILIP MORRIS SOMEWHAT MYSTIFIES  
8 ME. WE ARE THE ONLY DEFENDANT HERE.

9 SO WHILE WE DO CONCEDE THAT  
10 DR. TEAGUE DOES SEEM TO AUTHENTICATE THIS DOCUMENT  
11 BASED ON THE MATERIALS JUST HANDED TO US, WE ARE  
12 BEING PUT AT VERY MUCH OF A DISADVANTAGE IN DEALING  
13 WITH THIS DOCUMENT, PARTICULARLY WITH THIS WITNESS  
14 WHO IS GOING TO HAVE SOMETHING TO SAY ABOUT IT.

15 THE COURT: WAS THIS WITNESS DEPOSED?

16 MR. LEITER: THIS WITNESS WAS DEPOSED.

17 THE COURT: WERE THESE -- WAS THIS  
18 PRESENTATION MADE AVAILABLE AT THAT TIME?

19 MR. LEITER: WE DID HAVE COPIES OF THE  
20 SLIDES.

21 MR. PIUZE: I JUST RESPOND TO A LITTLE  
22 PART OF THAT.

23 DR. FEINGOLD IS NOT GOING TO  
24 DISCUSS WHAT TEAGUE SAYS IN THE DEPO.

25 SO THERE'S NO SANDBAG HERE BECAUSE  
26 THIS DOCUMENT HAS BEEN OUT THERE FOR A LONG TIME.

27 IT'S THE DEPO THEY ARE BEING SHOWN  
28 THIS MORNING TO AUTHENTICATE IT AND THERE WILL BE

1 NO DISCUSSION ABOUT THAT. THAT'S FOR THE COURT,  
2 SIMPLY TO AUTHENTICATE IT.

3 THE COURT: DOCUMENT NUMBER 11, THE FRANK  
4 STATEMENT -- WE WENT OVER THAT, WE DON'T NEED TO.

5 MR. LEITER: THAT'S NOT AN ISSUE.

6 THE COURT: THE NEXT ONE IS THE ALLAN  
7 RODGMAN CHEMICAL RESEARCH DIVISION DOCUMENT,  
8 SEPTEMBER 28TH, 1956.

9 MR. PIUZE: THIS ONE IS SLIGHTLY  
10 DIFFERENT, YOUR HONOR, AND I AM GOING TO HAND THE  
11 COURT SOME DOCUMENTS. AND THE DOCUMENT ON TOP IS  
12 WHAT MY TECHNICAL GURU CALLS A BETTING SHEET.

13 IS IT OKAY, YOUR HONOR, HERE  
14 WITHOUT A JURY, FOR THESE PURPOSES, IF I ALLOW MR.  
15 GOLDSTEIN TO TALK DIRECTLY TO THE COURT ON THIS?

16 THE COURT: THAT WOULD BE FINE.

17 MR. LEITER: IS MR. GOLDSTEIN AN  
18 ATTORNEY?

19 MR. PIUZE: NO, HE IS NOT.

20 THE COURT: IT DOESN'T HAVE TO BE UNDER  
21 OATH FOR THESE PURPOSES.

22 YES, SIR.

23 MR. GOLDSTEIN: YOUR HONOR, WHEN YOU  
24 SEARCH FOR THESE DOCUMENTS ON THE INTERNET, YOU  
25 TYPE IN YOUR SEARCH TERM INTO A BLANK FIELD AND THE  
26 DATABASE PROGRAM THAT IS PROVIDED BY THE WEB SITE  
27 SEARCHES THROUGH THE MILLIONS OF DOCUMENTS AND  
28 COMES UP WITH HITS THAT CORRESPOND TO THE SEARCH

1 TERMS.

2                               THESE HITS ARE DISPLAYED ON THE  
3 SCREEN IN THE FORM THAT YOU SEE, THAT WE ARE  
4 INTERESTED IN NUMBER 3 AT THE BOTTOM IN THE  
5 MID-PART OF THE PAGE.

6                               THIS BETTING SHEET OR PEDIGREE  
7 DESCRIBES THE DOCUMENT IN GREAT DETAIL.

8                               IT TELLS US THE TITLE, VARIOUS  
9 OTHER MANDATED FIELDS OF INFORMATION, SUCH AS THE  
10 AUTHOR, RECIPIENTS, COPIES AND SO FORTH. IT GIVES  
11 US A BATE PAGE RANGE TO DESCRIBE THE DOCUMENT AND  
12 THEN THE DATE AND ADDITIONAL INFORMATION ON THE  
13 REQUESTS FOR DOCUMENTS THAT THE DOCUMENT RESPONDED  
14 TO AND SO FORTH.

15                              THIS CONTINUES ON TO THE NEXT PAGE.

16                              THEN YOU CLICK ON THE TITLE OF THE  
17 DOCUMENT, WHICH IS UNDERLINED, AND THE SYSTEM TAKES  
18 YOU TO THE IMAGE OF THE DOCUMENT ITSELF, WHICH CAN  
19 THEN BE DOWN-LOADED, WHICH I HAVE DONE IN THIS  
20 CASE. I HAVE DOWN-LOADED THE DOCUMENT AND YOU CAN  
21 SEE THE BATE PAGE NUMBERS ON THE DOCUMENT  
22 CORRESPOND TO THE BATE PAGE RANGE ON THE COVER  
23 SHEET AND THIS IS THE PROCEDURE THAT I USE TO  
24 ACQUIRE THESE DOCUMENTS FROM THE INTERNET.

25                              THE COURT: ALL RIGHT.

26                              MR. PIUZE: HAVING SAID THAT THEN, I WILL  
27 ADD THAT, FOR THIS PARTICULAR DOCUMENT, IT WAS  
28 ACQUIRED THAT WAY. I DO NOT HAVE A DEPOSITION BACK

1 UP AS I SHOWED THE COURT FOR THE FIRST ONE.

2 THE COURT: I THINK THEN YOU HAVE A  
3 PROBLEM FOR AUTHENTICITY.

4 MR. PIUZE: I HAVE SAID MY PEACE, YOUR  
5 HONOR.

6 THE COURT: ALL RIGHT.

7 THEN THIS DOCUMENT WOULD NOT BE  
8 USED IN THIS PRESENTATION. THIS IS ITEM NUMBER --  
9 PAGES 16, 17, 18 AND 19.

10 MR. PIUZE: SO DR. FEINGOLD, THOSE CANNOT  
11 BE USED.

12 THE COURT: ALL RIGHT. NUMBER 21, THIS  
13 IS THE BENTLEY FELTON REED BAT DOCUMENT, I BELIEVE,  
14 DESCRIBING A VISIT TO T. C. S.

15 MR. PIUZE: SO, YOUR HONOR, I AM HANDING  
16 THE COURT EXCERPTS FROM THE DEPOSITION OF  
17 MR. MERRYMAN. IN THIS PARTICULAR CASE, MERRYMAN  
18 IDENTIFIES THE DOCUMENT AS ONE THAT HE KNOWS BUT HE  
19 IS NOT THE AUTHOR OF BUT HE IDENTIFIES IT.

20 THE COURT: CAN I HAVE SOME PAGE AND LINE  
21 CITATION, HERE.

22 MR. GOLDSTEIN: PAGE 162, LINE 15 AND  
23 FOLLOWING.

24 MR. LEITER: YOUR HONOR, MR. MERRYMAN --  
25 THIS IS A DOCUMENT AUTHORIZED BY THE BRITISH  
26 AMERICAN TOBACCO COMPANY IN 1958.

27 MR. MERRYMAN IS NOT WITH THE  
28 BRITISH AMERICAN TOBACCO COMPANY. MR. MERRYMAN IS

1 WITH THE TOBACCO INSTITUTE AND HE CAME TO WORK  
2 THERE MANY YEARS LATER.

3 ALL THAT WE SEE IN THIS DEPOSITION  
4 IS THEY SHOWED HIM THIS DOCUMENT AND HE SAYS I HAVE  
5 SEEN IT BEFORE. BECAUSE HE HAS SEEN IT IN  
6 LITIGATION, THAT DOESN'T AUTHENTICATE THIS  
7 DOCUMENT, HE IS NOT A PROPER CUSTODIAN TO  
8 AUTHENTICATE BRITISH AMERICAN TOBACCO'S DOCUMENTS.

9 THE COURT: AND HE DOESN'T PURPORT TO  
10 HAVE PERSONAL KNOWLEDGE.

11 PAGE 163, LINE 14 THROUGH 16,  
12 THERE'S A QUESTION.

13 MR. LEITER: RIGHT. THAT'S AN OBJECTION  
14 AND ALL HE IS ASKED IS DOES IT APPEAR THAT THIS WAS  
15 PREPARED BY MR. BENTLEY. AND HE SAYS THE FIRST  
16 PAGE CONTAINS THOSE NAMES. HE HAS NO PERSONAL  
17 KNOWLEDGE OF THIS DOCUMENT.

18 THE COURT: MR. GOULD, IN THIS, IS  
19 REPEATEDLY OBJECTING TO A LACK OF FOUNDATION. AND  
20 IT DOESN'T APPEAR, UNLESS I AM INCORRECT, THAT A  
21 FOUNDATION IS ACTUALLY ATTEMPTED TO BE LAID.

22 MR. PIUZE: I SUBMIT ON THAT, YOUR HONOR.

23 THE COURT: ALL RIGHT. THAT DOCUMENT  
24 WILL NOT BE USED.

25 ITEM NUMBER 24 AND 25.

26 MR. PIUZE: WHICH ARE THOSE?

27 THE COURT: THESE ARE THE ALLAN RODGMAN,  
28 RJR DOCUMENTS DATED NOVEMBER 2ND, 1959, OPTIMUM

1 COMPOSITION OF TOBACCO AND ITS SMOKE.

2 MR. PIUZE: HERE IS MR. RODGMAN'S  
3 DEPOSITION.

4 THE COURT: ALL RIGHT. PAGE 85.

5 TESTIMONY?

6 MR. GOLDSTEIN: YOUR HONOR, THERE WAS  
7 TESTIMONY, PAGE 86.

8 MR. CARLTON: YOUR HONOR, WE WILL CONCEDE  
9 ON AUTHENTICITY HERE.

10 THE COURT: VERY WELL.

11 MR. GOLDSTEIN: THERE IS A SECOND  
12 DOCUMENT IN THIS SHEET, YOUR HONOR. THERE'S  
13 TESTIMONY AT PAGE 10 TOO THAT AUTHENTICATES ANOTHER  
14 DOCUMENT CALLED "THE SMOKING AND HEALTH PROBLEM A  
15 CRITICAL AND OBJECTIVE APPRAISAL," WHICH IS  
16 ATTACHED TO THE BACK OF THE DOCUMENT. BOTH OF  
17 THESE ARE EXHIBITS TO THIS DEPOSITION.

18 THE COURT: OKAY. THAT WILL BE ADMITTED  
19 THEN, OR IT WON'T BE ADMITTED, BUT IT WILL BE  
20 USABLE.

21 MR. CARLTON: WE HAVEN'T TALKED ABOUT  
22 OTHER ISSUES.

23 THE COURT: VERY WELL.

24 I UNDERSTAND AS TO FURTHERANCE --

25 MR. CARLTON: WELL, UNFORTUNATELY, I  
26 DON'T HAVE A COPY OF THIS. BUT, IT APPEARS TO ME,  
27 YOUR HONOR, THAT WHAT WE HAVE GOT HERE, AND JUST  
28 LOOKING AT THE QUOTES THAT APPEAR IN THE PAGES THAT

1 DR. FEINGOLD PROPOSES, IS A REVIEW, AND THIS IS  
2 TRUE OF MUCH OF THE RODGMAN DOCUMENTS. WHAT WE  
3 HAVE IS DR. RODGMAN REVIEWING OUTSIDE LITERATURE  
4 RATHER THAN CONDUCTING ANY RESEARCH OF HIS OWN.

5 NOW, THAT KIND OF A REVIEW, FIRST  
6 OF ALL, I CAN'T REALLY FATHOM HOW AN INTERNAL  
7 REVIEW OF OUTSIDE LITERATURE AVAILABLE TO THE WHOLE  
8 WORLD CAN BE, (A), IN FURTHERANCE OF ANY CONSPIRACY  
9 OR, (B), REPRESENT SOME SORT OF EVIDENCE OF STATE  
10 OF THE ART THAT ISN'T ESSENTIALLY DUPLICATIVE AND  
11 REMOVED FROM THE PUBLICLY AVAILABLE RESEARCH AND  
12 DATA ITSELF.

13 TO FLASH UP OTHER COMPANY DOCUMENTS  
14 TO THE JURY ON THAT BASIS SEEMS TO US TO BE  
15 UNWARRANTED AND SHOULDN'T BE PERMITTED.

16 AND AS FAR AS THAT'S CONCERNED, I  
17 WOULD RAISE THIS ISSUE: MR. PIUZE PROPOSES TO HAVE  
18 DR. FEINGOLD TESTIFY ABOUT DOCUMENTS BUT NOT TO  
19 ADMIT THEM

20 HE WANTS TO PUT THE DOCUMENTS UP ON  
21 THE SCREEN AND SHOW THEM TO THE JURY WITHOUT THEIR  
22 BEING ADMITTED.

23 AND WHILE AN EXPERT MIGHT TESTIFY,  
24 FOR INSTANCE, ABOUT AN OPINION, NORMALLY AN EXPERT  
25 DOESN'T TESTIFY ABOUT THE ACTUAL DOCUMENTS AND SHOW  
26 THE DOCUMENTS THAT SUPPORT HIS OPINION TO THE JURY  
27 UNLESS THEY ARE ADMITTED IN SOME FASHION.

28 SO I THINK THAT ENTIRE PROCEDURE IS

1 QUESTIONABLE.

2 THE COURT: DO YOU WISH TO HAVE THE  
3 DOCUMENTS ADMITTED?

4 SOMETIMES ONE SIDE WILL NOT MOVE  
5 THE ADMISSION, BUT THE OTHER SIDE MAY MOVE THE  
6 ADMISSION.

7 MR. CARLTON: WE'D HAVE TO CONSIDER THAT.  
8 BUT AS I SAID HERE, I DON'T THINK IT IS ADMISSIBLE  
9 EITHER UNDER THE FURTHERANCE OF THE CONSPIRACY  
10 RATIONALE OR UNDER STATE OF THE ART.

11 ALL HE IS DOING IS SUMMARIZING --  
12 AS FAR AS I CAN TELL FROM THE INFORMATION THAT'S  
13 AVAILABLE TO ME, IS SUMMARIZING OUTSIDE LITERATURE  
14 ON SCIENTIFIC ISSUES THAT WAS PUBLICLY AVAILABLE.

15 THE COURT: PLAINTIFF?

16 MR. PIUZE: THERE'S MUCH MORE TO IT THAN  
17 THAT. THAT'S PART OF IT. BUT IT STARTS BY SAYING  
18 SOMETHING ALONG THESE LINES.

19 "BECAUSE OF THE POSSIBLE  
20 CONNECTION BETWEEN TOBACCO SMOKING AND  
21 CANCER OF THE RESPIRATORY SYSTEM, IT  
22 IS WELL FOR MANUFACTURERS," PLURAL,  
23 "OF TOBACCO PRODUCTS TO BE AWARE OF  
24 THE PAST AND PRESENT RESEARCH."

25 HE THEN GOES THROUGH SOME OF THE  
26 RESEARCH. AND AS A CONCLUSION, AFTER GOING THROUGH  
27 THE RESEARCH, STATES AMONG OTHER THINGS THE  
28 FOLLOWING:

1                   "STUDIES OF CLINICAL DATA  
2           TEND TO CONFIRM THE RELATIONSHIP  
3           BETWEEN HEAVY AND PROLONGED TOBACCO  
4           SMOKING AND THE INCIDENTS OF CANCER OF  
5           THE LUNG, EXTENSIVE THOUGH  
6           INCONCLUSIVE TESTING OF TOBACCO  
7           SUBSTANCES ON MAMMALS INDICATES THE  
8           PROBABLE PRESENCE OF CARCINOGENIC  
9           AGENTS IN THOSE SUBSTANCES.   COMPOUNDS  
10          ARE PRESENT IN TOBACCO WHICH, ON  
11          PYROLYSIS, COULD THEORETICALLY GIVE  
12          RISE TO COMPOUNDS SIMILAR TO KNOWN  
13          CARCINOGENS.   THE POSSIBLE ROLE OF  
14          TOBACCO ADDITIVES IN CIGARETTE PAPER  
15          AND THE PRODUCTION OF CARCINOGENS  
16          CANNOT BE DETERMINED.   IT IS  
17          RECOMMENDED THAT ALL TOBACCO  
18          ADDITIVES, FLAVORANTS AND HUMECTANTS  
19          USED BY THIS COMPANY BE EXAMINED  
20          CAREFULLY WITH RESPECT TO THEIR  
21          POSSIBLE ROLES AS CARCINOGENS OR  
22          CARCINOGEN PRODUCING AGENTS.   IN VIEW  
23          OF THE FACTS PRESENTED IN THIS REPORT,  
24          IT IS RECOMMENDED THAT MANAGEMENT TAKE  
25          COGNIZANCE OF THE PROBLEM AND IT'S  
26          IMPLICATIONS TO OUR INDUSTRY AND THAT  
27          POSITIVE RESEARCH ACTION BE PLANNED  
28          AND INITIATED WITHOUT DELAY. "

1           MR. CARLTON:  EXCUSE ME.  ARE YOU LOOKING  
2 AT THIS DOCUMENT?

3                   ALL RIGHT.

4           MR. PIUZE:  ANYWAY.  THIS IS REAL STUFF.

5           MR. CARLTON:  AGAIN, YOUR HONOR, WHAT HE  
6 IS DOING IS GOING THROUGH, EVALUATING THE RESEARCH.  
7 THAT'S NOTHING NEW THERE.  AND HE IS MAKING  
8 RECOMMENDATIONS TO RJ REYNOLDS, NOT TO PHILIP  
9 MORRIS, ABOUT WHAT THEY SHOULD DO IN RELATION TO  
10 THIS RESEARCH.  HE IS MAKING A RESEARCH  
11 RECOMMENDATION.

12                   NOW, DOES THAT REFLECT STATE OF THE  
13 ART, DOES IT REFLECT ANYTHING OTHER THAN PASSING  
14 ALONG TO MANAGEMENT WHAT IS PUBLICLY AVAILABLE TO  
15 EVERYBODY?

16                   WE DON'T THINK IT IS ANYTHING MORE  
17 THAN THAT.

18           THE COURT:  ALL RIGHT.

19                   LET'S PASS ON THIS AT THIS TIME.  
20 LET ME GO ON WITH THE REST OF THESE DOCUMENTS.

21                   ITEM NUMBER 27.

22           MR. LEITER:  THAT'S A PHILIP MORRIS  
23 DOCUMENT, YOUR HONOR, FROM DR. WAKEHAM  THAT'S NOT  
24 IN DISPUTE.

25           THE COURT:  OKAY.

26                   ITEM NUMBER 32, 33, 34, 35, 36?

27           MR. LEITER:  YOUR HONOR, I THINK THERE'S  
28 ALSO ITEM 31 WHICH IS A LIGGITT DOCUMENT.

1 THE COURT: OKAY, I JUST DIDN'T MARK  
2 THAT.

3 MR. PIUZE: PASS ON THAT, YOUR HONOR. I  
4 AM WITHDRAWING THAT FROM CONSIDERATION.

5 THE COURT: THAT IS WITHDRAWN, WILL NOT  
6 BE USED.

7 32 THROUGH 36, ANOTHER RODGMAN  
8 DOCUMENT.

9 MR. CARLTON: I WOULD POINT OUT, YOUR  
10 HONOR, THAT THIS IS VERY, VERY SIMILAR TO THE LAST  
11 DOCUMENT WE TALKED ABOUT EXCEPT IT IS A FEW YEARS  
12 LATER AND IT IS A DRAFT, AT LEAST IT APPEARS TO BE  
13 A DRAFT.

14 THERE'S ALL SORTS OF MARGINALIA ON  
15 THIS.

16 AND IF YOU LOOK THROUGH IT, WHAT HE  
17 IS DOING HERE IS, AGAIN, EVALUATING AND BASICALLY  
18 SETTING FORTH WHAT THE LITERATURE ON THESE VARIOUS  
19 ISSUES HAS TO SAY, NOT IN FINAL FORM, AS I  
20 REITERATED.

21 IT TALKS ABOUT WHAT THE EVIDENCE TO  
22 DATE IS, SETS IT FORTH WITHOUT MUCH COMMENT AND  
23 CONCLUDES WITH STATEMENTS SUCH AS THE FINDINGS --  
24 WELL, SUCH AS RECOMMENDING BRINGING THE RESEARCH  
25 IN-HOUSE AND PUBLISHING IT.

26 THERE'S NO INDICATION IN THIS  
27 DOCUMENT THAT THERE IS ANY RESEARCH AVAILABLE TO  
28 RJR THAT WASN'T AVAILABLE TO EVERYBODY.

1                   THERE IS NO INDICATION IN THIS  
2 DOCUMENT THAT THIS WAS IN FURTHERANCE OF SOME  
3 CONSPIRACY OF ANY SORT AND WE JUST DON'T SEE HOW  
4 THIS CROSSES THE THRESHOLD FOR ADMISSIBILITY.

5                   THE COURT: ANYTHING?

6                   MR. PIUZE: AS FAR AS THE DRAFT IS  
7 CONCERNED, THAT IS WHAT WAS IDENTIFIED IN THE  
8 DEPOSITION.

9                   THIS IS THE DOCUMENT, EXACTLY AS IT  
10 WAS IDENTIFIED --

11                  THE COURT: THE BASIS OF THE OBJECTION,  
12 PRIMARILY, IS NOT AUTHENTICITY BUT RATHER THE  
13 DEEPER QUESTION OF IN FURTHERANCE OF.

14                  MR. PIUZE: I AM JUST LOOKING AT PAGE 2,  
15 JUST FOR OPENERS, AND AFTER STATING ALL THE BAD  
16 NEWS THAT'S OUT THERE FOR HIS COMPANY, HE SAYS:  
17 "THE STATISTICAL DATA FROM THE SMOKING HEALTH  
18 STUDIES ARE ALMOST UNIVERSALLY ACCEPTED AFTER MORE  
19 THAN 10 YEARS' CRITICISMS OF STUDIES HAVE BEEN  
20 REDUCED TO THE DICTUM A STATISTICAL STUDY CANNOT  
21 PROVE A CAUSE AND EFFECT RELATIONSHIP BETWEEN TWO  
22 FACTORS. "

23                  AND SO NOW HE GOES ON, ON PAGE 3 TO  
24 TALK ABOUT, "BECAUSE WE DON'T KNOW EXACTLY HOW THIS  
25 HAPPENS, WE CAN CRITICIZE THE STUDIES BECAUSE WE  
26 DON'T KNOW EXACTLY HOW THIS HAPPENS. "

27                  I MEAN, THIS IS BASICALLY A  
28 BLUEPRINT FOR UNDERMINING THE PUBLIC HEALTH

1 STUDIES. AND I JUST GO TO THE BOTTOM LINE HERE --

2 MR. CARLTON: WHERE ARE YOU? I DON'T SEE  
3 THAT.

4 MR. PIUZE: WHICH DON'T YOU SEE?

5 MR. CARLTON: THE STATISTICAL DATA THAT  
6 YOU REFERRED TO FIRST IS ON MY PAGE 3.

7 MR. PIUZE: PAGE 2.

8 MR. CARLTON: I THINK WE ARE TALKING  
9 ABOUT TWO DIFFERENT DOCUMENTS.

10 MR. PIUZE: SO YOUR HONOR, AT PAGE 6  
11 UNDER "RECOMMENDATIONS," THIS MAN RECOMMENDS THAT  
12 FACILITIES BE SET UP -- IN ORDER TO PROTECT THE  
13 COMPANY'S OBLIGATION TO ITS CUSTOMERS, STOCKHOLDERS  
14 AND EMPLOYEES, HE RECOMMENDS THAT FACILITIES BE SET  
15 UP TO DO BIOLOGICAL TESTING OF THE TOBACCO AND  
16 THAT -- AGAIN, THE COURT CAN READ IT JUST AS I CAN  
17 READ IT OUT LOUD.

18 THE COURT: ALL RIGHT. AS TO DOCUMENT  
19 NUMBER 38, T. I. R. C.

20 MR. LEITER: THAT'S A PRESS RELEASE AND  
21 WE ARE NOT CONTESTING THE AUTHENTICITY OF THAT.

22 THE COURT: THEN THE JANET BROWN  
23 DOCUMENT, IT'S 39.

24 MR. PIUZE: WITHDRAW FROM CONSIDERATION.

25 THE COURT: IS WITHDRAWN.

26 AND THAT'S IT?

27 SO WE ARE BASICALLY DOWN TO THE  
28 QUESTION OF THE TWO RODGMAN DOCUMENTS.

1 MR. CARLTON: AND THE TEAGUE MEMO.

2 THE COURT: AND THE TEAGUE MEMO.

3 MR. CARLTON: YOUR HONOR, I'D LIKE TO, AS  
4 SOON AS I CAN GET BACK TO THE TEAGUE MEMO, POINT  
5 OUT THE DATE OF THIS TEAGUE MEMO, FEBRUARY 2ND,  
6 1953.

7 WE DON'T HAVE, AT THIS POINT, ANY  
8 INDICATION FROM THE PLAINTIFF AS TO WHEN THEY  
9 BELIEVE THIS CONSPIRACY BEGAN. BUT I CAN REPRESENT  
10 TO THE COURT THAT IN MOST OF THESE CASES, THE DATE  
11 WHEN THE CONSPIRACY BEGAN IS NORMALLY PUT IN  
12 DECEMBER OF 1953 AT A MEETING IN THE PLAZA HOTEL,  
13 WHICH ULTIMATELY RESULTED, ACCORDING TO, WELL, IN  
14 THE FRANK STATEMENT.

15 WHAT WE HAVE GOT HERE IS AN RJR  
16 DOCUMENT FEBRUARY 1953, THAT CAN HARDLY BE IN  
17 FURTHERANCE OF A CONSPIRACY IF THE CONSPIRACY  
18 WASN'T IN EXISTENCE AT THE TIME AND WE HAVEN'T SEEN  
19 ANY EVIDENCE OR INDICATION FROM THE PLAINTIFF AS TO  
20 WHETHER IT WAS OR WHAT EVIDENCE THEY MIGHT HAVE TO  
21 SUGGEST THAT THERE WAS A CONSPIRACY AT THIS EARLY  
22 DATE.

23 MR. PIUZE: I CONCEDE ON THAT POINT AND  
24 GO ON THE OTHER PRONG THAT I GAVE THE COURT, WHICH  
25 WAS THE, WHAT BOILED DOWN TO THE CALIFORNIA  
26 ANDERSON VERSUS OWENS-CORNING CASE.

27 MR. CARLTON: WELL, AGAIN, YOUR HONOR,  
28 THIS IS SIMPLY A SURVEY, AS I SAID, A SURVEY OF

1 CANCER RESEARCH. IT'S NOT A SURVEY OF RJR CANCER  
2 RESEARCH, IT'S JUST A SURVEY OF CANCER RESEARCH.

3                   WHAT DO THEY NEED AN RJR DOCUMENT  
4 TO ESTABLISH WHAT THE CANCER RESEARCH, PUBLICLY  
5 AVAILABLE CANCER RESEARCH WAS?

6                   THIS IS ONE FURTHER STEP REMOVED  
7 FROM EVIDENCE ABOUT THAT ACTUAL CANCER RESEARCH.

8                   THE COURT: BUT WHAT THIS COULD BE IS  
9 THIS COULD BE IN THE INCIPIENCY AND WHAT IT COULD  
10 BE IS AN INDICATION OF THE KNOWLEDGE, LEADING TO  
11 THE ULTIMATE FORMATION OF THE ALLEGED CONSPIRACY,  
12 WHICH WAS FORMED FOR THE PURPOSE OF --

13                  MR. CARLTON: AGAIN, WE DON'T KNOW

14                  THE COURT: -- ALLEGEDLY FOR THE PURPOSES  
15 OF SUPPRESSING AND MISLEADING AS TO THAT  
16 INFORMATION.

17                  MR. CARLTON: WELL, ONE THING WE HAVEN'T  
18 REALLY HEARD, MAYBE WE HAVE HEARD IT AND I AM JUST  
19 NOT REMEMBERING IT, SPECIFICALLY, BUT WE HAVEN'T  
20 HEARD WHAT THE PARAMETERS OF THE CONSPIRACY ARE.

21                  AND IF IT IS -- IT WOULD BE HELPFUL  
22 TO HEAR FROM MR. PIUZE EXACTLY WHAT THE OBJECT OF  
23 THE CONSPIRACY WAS SO WE COULD EVALUATE WHETHER  
24 THIS PERTAINS TO IT.

25                  THE COURT: MR. PIUZE.

26                  MR. PIUZE: IT'S VERY SIMPLE.

27                  AN EXTREMELY WEALTHY, POWERFUL  
28 INDUSTRY LEARNED THAT ITS PRODUCT KILLED PEOPLE.

1 AND THE INDUSTRY HAD SEVERAL CHOICES THAT WERE  
2 AVAILABLE TO IT. ONE, IT COULD WITHDRAW ITS  
3 PRODUCT FROM THE MARKET AND START SELLING CRAFT  
4 MAYONNAISE AND CHEESE.

5 TWO, IT COULD TRY TO DO SOME  
6 RESEARCH TO FIX ITS PRODUCT SO IT WOULDN'T HURT  
7 ANYONE.

8 THREE, IT COULD CERTAINLY GO OUT  
9 THERE AND PROCLAIM TO ALL OF THE PEOPLE WHO ARE  
10 USING ITS PRODUCT THAT THIS IS EXTREMELY DANGEROUS  
11 AND THEY SHOULD DO SO AT YOUR OWN RISK WHILE WE TRY  
12 TO FIX THIS PRODUCT.

13 INSTEAD OF CHOOSING ANY OF THOSE  
14 ALTERNATIVES OR ANYTHING REMOTELY CLOSE TO ANY OF  
15 THOSE ALTERNATIVES, THE TOBACCO MANUFACTURERS GOT  
16 TOGETHER, FORMED AN INDUSTRY GROUP, HIRED A PUBLIC  
17 RELATIONS FIRM, HILL & KNOWLTON, FOR A WHILE, THEIR  
18 TRADE ORGANIZATION, HILL & KNOWLTON WERE IN THE  
19 SAME HEADQUARTERS, IF I AM NOT MISTAKEN, CERTAINLY  
20 THE SAME BUILDING, AND INSTEAD OF WITHDRAWING THE  
21 PRODUCT, FIXING THE PRODUCT, WARNING ABOUT THE  
22 PRODUCT, WHAT HAPPENED WAS THE INDUSTRY DENIED  
23 VOCIFEROUSLY THAT THERE WAS ANYTHING WRONG WITH ITS  
24 PRODUCT.

25 AND THEN AFTER A PERIOD OF DENIAL,  
26 THE INDUSTRY, IN ITS OWN WORDS, CREATED DOUBT ABOUT  
27 THE HEALTH ISSUE WITHOUT ACTUALLY DENYING IT, SO  
28 THAT, IN THIS -- THE CASE OF THIS PARTICULAR

1 DEFENDANT, MR. OSDENE TOLD MR. -- DR. OSDENE TOLD  
2 DR. FARONE THAT WAS MY PRIME JOB, TO CREATE THAT SO  
3 PEOPLE KEEP BUYING OUR PRODUCT. THAT'S THE  
4 CONSPIRACY. IT'S PRETTY WELL-KNOWN.

5 THE COURT: BEGINNING WHEN?

6 MR. PIUZE: I BELIEVE THAT LATE 1953 IS  
7 PROBABLY CORRECT. THE MEETING IN NEW YORK WAS, AT  
8 THAT TIME, THE FRANK STATEMENT CAME OUT, I BELIEVE,  
9 ON THE FOURTH DAY OF JANUARY 1954.

10 EVIDENCE THAT IS TYPICALLY  
11 PRESENTED IN THESE CASES SEEMS TO INDICATE THAT THE  
12 FRANK STATEMENT WAS THE FIRST OVERT ACT THAT WE SEE  
13 IN PUBLIC.

14 AND THAT'S WHY WHEN MR. CARLTON  
15 MADE A POINT ABOUT THE TEAGUE DOCUMENT BEING  
16 FEBRUARY '53, I CONCEDED ON THAT POINT.

17 I DON'T KNOW THE REAL BEGINNINGS,  
18 BUT I CAN'T SHOW THAT IT GOES BACK THERE. I CAN'T  
19 DO ANYTHING DIFFERENT THAN, AS MR. CARLTON STATED  
20 HAS DONE IN THESE TRIALS, TYPICALLY.

21 MR. LEITER: LET ME JUST ADD ONE POINT,  
22 AND WITHOUT, OBVIOUSLY, RESPONDING TO THE  
23 ALLEGATIONS ABOUT THE CONSPIRACY WHICH WE WILL DO  
24 IN DUE COURSE.

25 YESTERDAY, DR. FEINGOLD SPENT A  
26 GREAT DEAL OF TIME TALKING ABOUT PUBLICLY AVAILABLE  
27 SCIENTIFIC LITERATURE AND PRESUMABLY THE ARGUMENT  
28 IS GOING TO BE THAT PHILIP MORRIS WAS ON

1 CONSTRUCTIVE KNOWLEDGE AFTER IT WAS IN THE  
2 SCIENTIFIC JOURNALS.

3                   FILTERING THAT ARGUMENT THROUGH A  
4 SCIENTIST AT REYNOLDS TO SHOW ONLY THAT A SCIENTIST  
5 AT REYNOLDS HAD READ THE SCIENTIFIC JOURNALS AND  
6 SUMMARIZED IT FOR HIS BOSSES DOESN'T ADD ANYTHING.  
7 IT DOESN'T -- IT DOESN'T SHOW A CONSPIRACY. IT  
8 DOESN'T SHOW SOMETHING IN FURTHERANCE OF  
9 CONSPIRACY. IT DOESN'T SHOW STATE OF THE ART.

10                   IT IS SIMPLY DR. TEAGUE TAKING SOME  
11 OF THE SCIENTIFIC STUDIES THAT DR. FEINGOLD SHOWED  
12 THE JURY YESTERDAY AND REPORTING ABOUT THEM TO HIS  
13 BOSSES.

14                   THE COURT: BUT IT MIGHT EXPLAIN THE  
15 CONDUCT OF HIS BOSSES.

16                   MR. LEITER: ALL IT DOES -- IT DOESN'T  
17 EXPLAIN THE CONDUCT OF HIS BOSSES, EVEN IN THE  
18 PLAINTIFFS VERSION. ALL IT DOES IS SHOW THAT  
19 REYNOLDS HAD KNOWLEDGE OF WHAT WAS IN THE  
20 SCIENTIFIC LITERATURE AND THAT THAT WAS PASSED ON  
21 TO REYNOLDS' BOSSES.

22                   PRESUMABLY, MR. PIUZE IS GOING TO  
23 MAKE THE ARGUMENT THAT PHILIP MORRIS WAS ON  
24 CONSTRUCTIVE KNOWLEDGE OF WHAT WAS IN THE  
25 SCIENTIFIC LITERATURE. AND SHOWING THAT SOMEBODY  
26 IN REYNOLDS WROTE A MEMO TO HIS BOSSES ABOUT IT,  
27 DOESN'T SHOW ACTIONS BY THE COMPANY, IT DOESN'T  
28 SHOW --

1 THE COURT: DOES IT EXPLAIN ACTIONS OF  
2 THE COMPANY?

3 ISN'T THAT A NECESSARY BASIS, THE  
4 EXISTENCE OF THAT KNOWLEDGE, WHICH I UNDERSTAND IS  
5 DISPUTED BY THE DEFENSE AND THE DEFENSE HAS ALREADY  
6 BEGUN TO REPRESENT THAT TO THE JURY THROUGH ITS  
7 CROSS-EXAMINATION AS TO THE QUESTION OF WHETHER OR  
8 NOT IT WAS AN OPEN QUESTION.

9 MR. LEITER: IN 1953.

10 THE COURT: YES, VERY MUCH SO. I  
11 UNDERSTAND THAT THEME CLEARLY.

12 BUT THIS KIND OF INFORMATION WOULD  
13 BE NECESSARY TO SHOW THE REASONS FOR WHICH THE  
14 ALLEGED CONSPIRACY WAS FOLLOWED. IT'S JUST A  
15 NECESSARY ELEMENT OF SHOWING THE EXISTENCE OF THE  
16 CONSPIRACY, IT SEEMS TO ME.

17 MR. LEITER: BUT THE PROBLEM, OF COURSE,  
18 IS, THIS DOCUMENT, AT MOST, MIGHT SHOW THE STATE OF  
19 MIND OF REYNOLDS. IT MIGHT, AT MOST, SHOW WHAT  
20 REYNOLDS WAS THINKING ABOUT AT A PERIOD BEFORE  
21 THERE'S EVEN AN ALLEGATION OF A CONSPIRACY.

22 THE COURT: BUT CLOSE TO IT, MR. LEITER,  
23 I MEAN, YOU KNOW, WITHIN A FEW MONTHS.

24 MR. LEITER: BUT TO THE EXTENT THAT THE  
25 POINT OF THIS DOCUMENT IS TO IMPUTE MOTIVES TO  
26 PHILIP MORRIS, THEN PRECISELY WHAT HE IS TRYING TO  
27 DO IS TURN THIS DOCUMENT INTO A DOCUMENT IN  
28 FURTHERANCE OF A CONSPIRACY, A DOCUMENT ABOUT THE

1 CONSPIRACY.

2 THE COURT: I THINK THERE'S NO QUESTION  
3 ABOUT THAT.

4 I HAVE HEARD THE ARGUMENTS ABOUT  
5 PRODUCT LIABILITY POINTS, AND THERE MAY BE VALIDITY  
6 TO IT. FRANKLY, THIS CASE WAS JUST HANDED TO ME.

7 BUT I THINK THE REAL ARGUMENT AND  
8 THE REAL FOCUS HERE IS THE CONSPIRACY QUESTION.  
9 THERE'S NO DOUBT ABOUT IT AND IT'S THE CENTRAL  
10 THEME OF THE PLAINTIFFS' CASE.

11 MR. LEITER: AND OUR POINT IS SIMPLY,  
12 WHAT HE SAYS ABOUT STATE OF THE ART, WHAT HE IS  
13 REALLY USING THIS DOCUMENT FOR IS BECAUSE IT IS IN  
14 FURTHERANCE OF THE CONSPIRACY AND THAT BRINGS US  
15 RIGHT BACK TO THIS DOCUMENT WAS AUTHORED 10, 11  
16 MONTHS, BY ANOTHER COMPANY, NOT MY CLIENT, BEFORE  
17 EVEN PLAINTIFF ALLEGES THE CONSPIRACY WAS FORMED.

18 AND PERHAPS IF REYNOLDS WAS HERE,  
19 HE'D HAVE A STRONGER ARGUMENT.

20 BUT TO IMPUTE THIS REYNOLDS  
21 DOCUMENT TO PHILIP MORRIS, 10, 11 MONTHS BEFORE HE  
22 EVEN ALLEGES THEY MET FOR THE FIRST TIME TO TALK  
23 ABOUT THIS SUPPOSED CONSPIRACY, THAT DOESN'T MAKE  
24 IT ADMISSIBLE AND IT DOESN'T MAKE IT PROPER TO SHOW  
25 TO THE JURY.

26 THE COURT: ALL RIGHT. THE COURT, I  
27 THINK, IS PRETTY MUCH CONVINCED THAT IT HAS WHAT IT  
28 NEEDS TO MAKE A CORRECT RULING ON THIS.

1 DR. FARONE TESTIFIED AS TO THE  
2 SO-CALLED, QUOTE, UNQUOTE, GENTLEMEN'S AGREEMENT  
3 WHICH HE WAS INFORMED ABOUT.

4 AND DR. FARONE, AS I UNDERSTAND IT,  
5 WAS AN EMPLOYEE OF PHILIP MORRIS AND HE TESTIFIED  
6 THAT WHEN HE FIRST BECAME AN EMPLOYEE OF PHILIP  
7 MORRIS, HE WAS INFORMED AT THE BEGINNING OF THE  
8 EXISTENCE OF THE SO-CALLED GENTLEMEN'S AGREEMENT  
9 AND THAT IT REACHED BACK A COUPLE OF DECADES PRIOR  
10 TO THE TIME WHEN HE WAS FIRST EMPLOYED THERE, AND  
11 THE, AS HE DESCRIBED IT, I AM ONLY TAKING IT FROM  
12 HIS TESTIMONY, EXPRESSING NO OPINION ONE WAY OR  
13 ANOTHER AS TO THE TRUTH OF THAT TESTIMONY, BECAUSE  
14 THAT'S NOT MY JOB, BUT AS HE DESCRIBED IT, THIS WAS  
15 AN AGREEMENT NOT TO CONDUCT PRODUCT SAFETY TESTING  
16 FOR CARCINOGENS AND NOT TO COMPETE ON THE BASIS OF  
17 THOSE KINDS OF MATTERS.

18 FURTHERMORE, WE DO HAVE THE 1953  
19 ALLEGED MEETING IN LATE 1953 WHICH HAS BEEN  
20 PRESENTED TO THE COURT. IT'S NOT IN EVIDENCE TO  
21 ANY GREAT EXTENT AT THIS POINT, BUT THE COURT WOULD  
22 MAKE ITS RULING ON THE ASSUMPTION THAT THERE IS  
23 GOING TO BE SOME EVIDENCE OF THIS AS THE INCEPTION  
24 OF THE ALLEGED CONSPIRACY.

25 AND IN MAKING DECISIONS AS TO  
26 WHETHER OR NOT CERTAIN DOCUMENTS WOULD COME IN AND  
27 CERTAIN EVIDENCE WILL COME IN ON THE QUESTION OF  
28 CONSPIRACY AND IN FURTHERANCE OF IT, NO MEETING OF

1 THE MIND IS ACTUALLY REQUIRED IN THE FORMATION OF A  
2 CONSPIRACY, AND EACH PARTY, BY HIS OWN ACTIONS, CAN  
3 EVIDENCE AN INTENT TO PURSUE A COMMON OBJECTIVE.

4 SO IN THE PROOF OF THE CONSPIRACY,  
5 CIRCUMSTANTIAL EVIDENCE OF THE COMMON PLAN CAN BE  
6 USED AND THAT AGREEMENT CAN, COULD BE EXPRESSED,  
7 COULD ALSO BE TACIT, BUT EVIDENCE OF STATEMENTS AND  
8 CONDUCT BY ALLEGED CONSPIRATORS THAT IS, PARALLEL  
9 TO AND CONSISTENT WITH THE ALLEGED CONSPIRACY CAN  
10 BE ADMISSIBLE FOR THE PURPOSES OF SHOWING THE  
11 COMMON ALLEGED PLAN OR SCHEME.

12 WHETHER SOMETHING IS ULTIMATELY IN  
13 FURTHERANCE OF A CONSPIRACY IS A QUESTION OF FACT  
14 THAT ULTIMATELY THE JURY HAS TO DECIDE. THIS COURT  
15 IS ONLY MAKING A PRELIMINARY DETERMINATION OF THAT.

16 AND QUITE FRANKLY, EVEN AMBIGUOUS,  
17 AT THE POINT OF -- ON THE QUESTION OF  
18 ADMISSIBILITY, EVEN AMBIGUOUS STATEMENTS THAT  
19 ARGUABLY CAN MEAN ONE THING OR ANOTHER CAN BE  
20 ADMISSIBLE TO SHOW IN FURTHERANCE OF, FOR THE  
21 PURPOSES OF MAKING A DECISION OF ADMISSIBILITY.

22 OBVIOUSLY, A MORE REFINED  
23 DETERMINATION HAS TO BE MADE BY THE JURY.

24 ULTIMATELY, WHAT THE COURT HAS TO  
25 DO IS STEP BACK AND LOOK AT THIS EVIDENCE AND ASK  
26 ITSELF WHETHER OR NOT, FROM AN EVIDENTIARY  
27 PERSPECTIVE, AND ONLY FOR THE PURPOSE OF  
28 ADMISSIBILITY, WHETHER THERE APPEARS TO BE A

1 COMMUNITY OF INTEREST INVOLVED HERE AND WHETHER OR  
2 NOT THE EVIDENCE THAT IS OFFERED SEEMS TO SUPPORT  
3 THAT COMMUNITY OF INTEREST AND MOVE IN THE  
4 DIRECTION ALLEGED BY THE PARTY WHO IS BRINGING THE  
5 CASE TO CONSTITUTE THE CONSPIRACY.

6 THE COURT IS CONVINCED FROM AN  
7 EVIDENTIARY PERSPECTIVE, AND I EMPHASIZE THAT, AND  
8 ONLY FOR THE PURPOSE OF MAKING THE PRELIMINARY  
9 DETERMINATION REQUIRED HERE, THAT THE THREE  
10 DOCUMENTS THAT ARE NOW AT ISSUE BEFORE THE COURT,  
11 WOULD BE ALLOWED TO BE USED IN COURT FOR THE  
12 PURPOSES FOR WHICH THEY ARE OFFERED.

13 IT IS NOT UNDERSTOOD BY THE COURT,  
14 AT THIS TIME, THAT THE PLAINTIFF IS ENDEAVORING TO  
15 OFFER THEM INTO EVIDENCE; NONETHELESS, THE COURT IS  
16 NOT DRAWING ANY GREAT DISTINCTION BETWEEN SHOWING  
17 IT TO THE JURY AND ULTIMATELY MOVING IT INTO  
18 EVIDENCE FOR THE PURPOSES OF THIS ANALYSIS AND ALSO  
19 WOULD INDICATE TO THE DEFENSE THAT IF THE DEFENSE  
20 WERE TO ASK TO HAVE THESE DOCUMENTS ADMITTED INTO  
21 EVIDENCE, THE ULTIMATE DECISION OF THE COURT WOULD,  
22 IN ALL LIKELIHOOD, BE THAT THEY WOULD BE ADMITTED  
23 INTO EVIDENCE UPON THE DEFENSE REQUEST.

24 ALL RIGHT. THAT HAVING BEEN SAID,  
25 I THINK WE KNOW THE PARAMETERS OF OUR RULING THIS  
26 MORNING. IF THERE ISN'T ANYTHING FURTHER WE NEED  
27 TO DO, IT'S TIME TO MAYBE TAKE ABOUT TWO MINUTES TO  
28 BREATHE AND THEN BRING OUR JURY IN.

1           MR. PIUZE:  YES, I'D LIKE -- COULD WE  
2 HAVE FIVE JUST SO I CAN BE SURE THAT THE DOCUMENTS  
3 THAT AREN'T TO BE SHOWN WILL BE SHOWN.

4           THE COURT:  THAT MIGHT BE A VERY GOOD  
5 IDEA.

6

7                           (AT THIS TIME, A RECESS WAS  
8 TAKEN.)

9

10                           (THE FOLLOWING PROCEEDINGS  
11 WERE HELD IN OPEN COURT IN  
12 THE PRESENCE OF THE JURY.)

13

14           THE COURT:  OUR JURY PANEL IS WITH US,  
15 COUNSEL ARE PRESENT AS WELL.

16                           THE WITNESS IS STILL ON THE WITNESS  
17 STAND.

18

19

20                           ALLAN FEINGOLD,  
21 CALLED AS A WITNESS BY THE PLAINTIFF, HAVING BEEN  
22 PREVIOUSLY DULY SWORN, RESUMED THE WITNESS STAND  
23 AND TESTIFIED FURTHER AS FOLLOWS:

24           THE COURT:  SIR, YOU UNDERSTAND YOU ARE  
25 STILL UNDER OATH.

26           THE WITNESS:  YES, YOUR HONOR.

27           THE COURT:  PLEASE BE SEATED.

28                           COUNSEL.

1 DIRECT EXAMINATION (RESUMED)

2

3 BY MR. PIUZE:

4 Q. GOOD MORNING. YESTERDAY, TOWARD  
5 THE END OF THE DAY, WE SWITCHED FROM YOUR TOPIC OF  
6 NUMBER 1 TO YOUR TOPIC NUMBER 2. JUST REMIND US,  
7 WHAT DO YOU SEE, JUST GIVE US A CAPTION.

8 A. I HAD IDENTIFIED TOPIC NUMBER 2 AS  
9 THE PATIENT HIMSELF, HIS ILLNESS, WHAT HAPPENED TO  
10 HIM, THE EVOLUTION OF HIS ILLNESS AND THE CLINICAL  
11 AND RADIOLOGICAL AND PATHOLOGICAL FEATURES OF HIS  
12 ILLNESS.

13 Q. THE LAST THING WE DID YESTERDAY WAS  
14 TO SHOW A MEDICAL ILLUSTRATION OF A LUNG.

15 DO YOU REMEMBER THAT?

16 A. YES, SIR, I DO.

17 AND I SAID, I BELIEVE, IT WAS AN  
18 ARTISTIC RENDITION OF WHAT WAS REVEALED BY A  
19 SPECIAL KIND OF X-RAY CALLED A CT SCAN OF THE CHEST  
20 DONE IN OCTOBER 1999.

21 Q. OKAY. CAN THE CT SCAN TELL IF THE  
22 TUMOR IS MALIGNANT?

23 A. IT CANNOT TELL IT. IT CANNOT  
24 REVEAL FOR SURE THAT SOMETHING THAT IS SEEN IN AN  
25 X-RAY IS MALIGNANT. BUT IT CERTAINLY CAN GIVE THAT  
26 IMPRESSION, IN OTHER WORDS, IT'S NOT ENOUGH BASIS  
27 TO TREAT THE PATIENT, TO SEND THEM TO THE OPERATING  
28 ROOM, BUT IT'S VERY STRONG INFORMATION THAT DOCTORS

1 CONSIDER VERY CAREFULLY.

2 Q. WELL, WHAT HAS TO BE DONE BEFORE  
3 SURGERY OR CHEM THERAPY OR RADIATION THERAPY FOR  
4 CANCER IS WARRANTED?

5 A. WHAT TYPICALLY IS DONE IS THAT  
6 EITHER THE PATIENT IS SUBMITTED TO BIOPSY OR TAKEN  
7 DIRECTLY TO SURGERY.

8 AND IN FACT, IN THIS PATIENT'S  
9 CASE, ON OCTOBER 27, 1999, HE HAD A SERIES OF  
10 BIOPSIES THAT WERE DONE IN THE OPERATING ROOM

11 Q. SO LET'S HEAR, I GUESS WE HAVE ALL  
12 HEARD THE TERM "BIOPSY," BUT LET'S HEAR FROM YOU,  
13 NOT IN MR. BOEKEN'S CASE. WHAT'S A BIOPSY?

14 A. A BIOPSY IS A SURGICAL PROCEDURE  
15 WHERE A PIECE OF THE TUMOR OR A PIECE OF LYMPH  
16 NODES IS ACTUALLY TAKEN.

17 IN THIS PERSON'S CASE, THE BIOPSY  
18 WAS DONE REALLY AS PART OF THE SURGERY. IT WAS  
19 DONE IMMEDIATELY. IT WAS DONE AT THE SAME TIME AND  
20 FROZEN SECTION EXAMINATION WAS LOOKED AT. THAT'S  
21 LOOKING AT THE CELLS UNDER THE MICROSCOPE WHILE THE  
22 PATIENT IS STILL ASLEEP UNDER ANESTHESIA, ON THE  
23 OPERATING ROOM TABLE.

24 Q. HOW WAS TISSUE TAKEN FROM  
25 MR. BOEKEN'S LUNG IN ORDER TO DO THE BIOPSY?

26 A. WELL, THERE WERE A COUPLE THINGS  
27 THAT WERE DONE.

28 HE HAD A BRONCHOSCOPY AND HE ALSO

1 HAD A MEDIASTINOSCOPY,  
2 M-E-D-I-A-S-T-I-N-O-S--O-P-Y.

3 Q. SO IT IS NOT A GOOD INDICATION FOR  
4 THE DAY WHEN YOU HAVE TO START SPELLING.

5 WHAT ARE THOSE TWO THINGS, PLEASE?

6 A. THESE WERE WAYS TO VISUALIZE THE  
7 TUMOR, TO ACTUALLY LOOK INSIDE THE PATIENT'S LUNG  
8 AND DETERMINE WHETHER THERE WERE CANCER CELLS  
9 PRESENT.

10 Q. AND BECAUSE I AM HEARING THE WORD  
11 "SCOPY" IN THERE, I AM ASSUMING, TELL ME IF I AM  
12 WRONG, THAT MEANS THE PATIENT WASN'T CUT OPEN BUT  
13 SOME SORT OF A FIBEROPTIC SCOPE IS USED TO LOOK  
14 INSIDE OF HIS BODY?

15 A. CORRECT. NOT AT FIRST WAS HE CUT  
16 OPEN BUT HE WAS PROMPTLY THEREAFTER CUT OPEN  
17 BECAUSE MALIGNANT CELLS WERE SEEN AND A RIGHT UPPER  
18 LOBE, LOBECTOMY, WAS PERFORMED, MEANING HIS CHEST  
19 WAS THEN OPENED AND THE RIGHT UPPER PORTION OF HIS  
20 LUNG WAS REMOVED SURGICALLY.

21 ALSO, LYMPH NODES WERE REMOVED. SO  
22 THESE ARE LYMPH NODES, WHICH WE ACTUALLY SAW ON THE  
23 ARTIST'S REPRODUCTION YESTERDAY, THOSE IN THE GREEN,  
24 THEY ARE DEMONSTRATED IN GREEN.

25 Q. HERE, WE ARE BACK AGAIN. THIS IS  
26 8050.00, SO SOME OF THE LYMPH NODES WERE REMOVED?

27 A. YES, SIR.

28 IN FACT, BY DIRECT EXAMINATION,

1 THEY WERE LOOKED AT, WHEN THE PATIENT'S CHEST WAS  
2 OPENED, SOME OF THEM LOOKED TO CONTAIN CANCER  
3 CELLS. THIS, EVENTUALLY, WAS PROVEN TO BE TRUE.

4 SO WHAT HAPPENED WAS THE PATIENT  
5 WAS HAS A BRONCHOSCOPY MEDIASTINOSCOPY. THERE'S  
6 EVIDENCE THAT THE SURGERY SHOULD PROCEED BECAUSE  
7 THERE WAS BELIEF THAT THE TUMOR WAS CANCEROUS,  
8 WHICH WAS PROVEN TO BE CORRECT. THERE WAS BELIEF  
9 THAT IT COULD BE REMOVED IN ITS ENTIRETY, WHICH WAS  
10 PROVEN TO NOT BE CORRECT. SO THE CHEST WAS OPENED  
11 IN AN ATTEMPT TO REMOVE THE CANCER COMPLETELY.

12 THE RIGHT UPPER LOBE WAS REMOVED,  
13 LYMPH NODES WERE REMOVED, AND UNFORTUNATELY, UPON  
14 THE REMOVAL OF ALL THIS MATERIAL, IT WAS ACTUALLY  
15 DISCOVERED THAT THE CANCER HAD SPREAD INTO THE  
16 LYMPHATIC SYSTEM

17 Q. THAT'S A WHOLE BUNCH.

18 THE BRONCHOSCOPY, IN ORDER TO DO  
19 THE BIOPSY, DOES THAT GO IN THROUGH THE NOSE OR THE  
20 THROAT OR SOMETHING?

21 A. YES. IN THIS CASE, THE PATIENT WAS  
22 ASLEEP, SO IT GOES THROUGH THE PLASTIC TUBE THAT'S  
23 PUT IN THE WINDPIPE.

24 Q. AND WHAT ABOUT A MEDIA -- SAY IT  
25 AGAIN.

26 A. MEDIASTINOSCOPY.

27 THAT'S A SPECIAL SCOPE THAT IS PUT  
28 IN THROUGH AN INCISION AT THE BASE OF THE NECK,

1 UNDERNEATH THE SKIN, BEHIND THE BREAST BONE.

2 Q. ONCE THIS TISSUE WAS TAKEN OUT, HE  
3 WAS STILL ASLEEP, I HEARD YOU SAY, FROZEN SECTION?

4 A. CORRECT.

5 Q. THAT'S A TERM A LOT OF US HAVE  
6 PROBABLY HEARD BUT DON'T KNOW EXACTLY WHAT IT IS.  
7 WHAT IS THAT?

8 A. IT MEANS THAT THE CELLS ARE FLASH  
9 FROZEN IN THE PATHOLOGY LABORATORY AND LOOKED AT BY  
10 THE PATHOLOGIST IMMEDIATELY AND THE PATHOLOGIST  
11 THEN CALLS INTO THE OPERATING ROOM TO SAY, LOOK, I  
12 DON'T SEE CANCER CELLS HERE, YOU CAN PROCEED TO  
13 TAKE OUT THE LOBE OF THE LUNG, ASSUMING THAT YOU  
14 WILL BE ABLE TO REMOVE THE WHOLE CANCER.

15 Q. SO ONE DOCTOR IN ONE PART OF THE  
16 HOSPITAL IS LOOKING AT SOMETHING UNDER A SCOPE AND  
17 MR. BOEKEN IS STILL ON THE TABLE UNCONSCIOUS?

18 A. EXACTLY.

19 Q. AND AN OPERATING TEAM IS STANDING  
20 BY?

21 A. THAT IS EXACTLY CORRECT.

22 Q. WHAT ARE LYMPH NODES, PLEASE?

23 A. LYMPH NODES ARE A COLLECTION OF  
24 LYMPH TISSUE, MOST PEOPLE KNOW IF THEY CUT  
25 THEMSELVES AND GET AN INFECTION, THEY CAN GET  
26 SWELLING OF THE LYMPH NODES UNDER THEIR ARM MOST  
27 PEOPLE HAVE HAD THAT EXPERIENCE.

28 THEY ARE BASICALLY COLLECTIONS OF

1 WHITE CELLS IN SPECIAL AREAS THAT PROTECT THE BODY  
2 AGAINST INFECTION OR CANCER.

3 Q. IS LYMPH NODE INVOLVEMENT BAD?

4 A. IT'S A VERY BAD THING.

5 BECAUSE AS FAR AS INFECTION IS  
6 CONCERNED, THE LYMPH NODES DO A VERY GOOD JOB, THEY  
7 CAN TYPICALLY ISOLATE BACTERIA AND KILL THEM THERE.

8 BUT AS FAR AS CANCER CELLS ARE  
9 CONCERNED, IT'S VERY BAD, BECAUSE LYMPH NODES  
10 CANNOT KILL CANCER CELLS. AND IT DEMONSTRATES THAT  
11 CANCER CELLS HAVE BROKEN AWAY FROM THE ORIGINAL  
12 SITE OF THE CANCER, HAVE GOTTEN TO THE LYMPH NODES,  
13 AND FROM THERE, WILL GO THROUGHOUT THE BODY.

14 I ACTUALLY SAW THE CANCER CELLS IN  
15 THIS PATIENT'S LYMPH CHANNELS. WHEN I LOOKED AT  
16 THE PATHOLOGY, I SAW THE CANCER CELLS IN THE LYMPH  
17 CHANNELS THAT WERE REMOVED AT THE TIME OF THE  
18 PATIENT'S SURGERY. AND I KNEW, OF COURSE, I KNEW  
19 RETROSPECTIVELY, MEANING I KNEW BECAUSE I LOOKED  
20 BACKWARDS, BUT I KNEW, AS SOON AS I SAW THOSE  
21 CELLS, FLOATING FREE IN THE LYMPH CHANNELS, THAT  
22 THE PATIENT WAS DOOMED. IT IS DEFINITELY A  
23 HARBINGER OF DEATH.

24 Q. LUNG CANCER SPREAD TO THE LYMPH  
25 NODES IS A HARBINGER OF DEATH?

26 A. IT ALMOST ALWAYS, VIRTUALLY 100  
27 PERCENT, KILLS THE PATIENT.

28 Q. NOW, YOU SAY RETROSPECTIVELY.

1 RETROSPECTIVELY MEANS LOOKING BACK ON THE WHOLE  
2 IDEA; CORRECT?

3 A. EXACTLY.

4 Q. AND WHAT HAPPENED, ASIDE FROM A  
5 FROZEN SECTION IN THE PATHOLOGY LAB, PLEASE?

6 A. WELL, THE PATHOLOGY THEN GETS  
7 LOOKED AT CAREFULLY AND, YOU KNOW, NOT JUST THE  
8 FROZEN SECTION, BUT THEN THE TISSUE, THE LUNG  
9 TISSUE, AND THE LYMPH NODES ARE FIXED IN A SPECIAL  
10 CHEMICAL, MEANING THEY ARE SOAKED IN A SPECIAL  
11 CHEMICAL TO, SO THAT THEY DON'T CHANGE THEIR  
12 APPEARANCE. THEY ARE THEN COLORED WITH A SPECIAL  
13 DYE AND THEN THEY ARE SLICED EXTREMELY THIN AND  
14 EXTREMELY MICROSCOPICALLY THIN SECTIONS BY A  
15 SPECIAL KNIFE, A KIND OF COMPUTERIZED KNIFE.

16 AND THOSE TINY LITTLE SECTIONS OF  
17 THE TUMOR AND THE LYMPH GLANDS ARE PUT INTO GLASS  
18 SLIDES AND COVERED WITH ANOTHER KIND OF GLASS AND  
19 THEN THE PATHOLOGIST CAN LOOK AT IT UNDER THE  
20 MICROSCOPE.

21 Q. IS THIS ALSO DONE WHILE THE PATIENT  
22 IS ASLEEP ON THE TABLE?

23 A. NO. THAT TAKES ABOUT 24 TO 48  
24 HOURS AFTER THE SURGERY.

25 Q. WAS THE PATHOLOGIST WHO EXAMINED  
26 THESE SLIDES A DR. STEVEN GELLER, G-E-L-L-E-R?

27 A. CORRECT, AT THE CEDARS-SINAI  
28 MEDICAL CENTER.

1 Q. IS THAT WHERE THE OPERATION  
2 OCCURRED?

3 A. YES.

4 Q. AND WHAT WERE THE RESULTS OF THE  
5 PATHOLOGY EXAMINATION?

6 A. THE EXAMINATION REVEALED THAT THE  
7 CANCER WAS A SPECIAL KIND OF LUNG CANCER, IN FACT,  
8 THE MOST COMMON KIND OF LUNG CANCER. THIS KIND OF  
9 LUNG CANCER IS CALLED ADENOCARCINOMA.

10 NOW, ALL LUNG CANCERS HAVE CERTAIN  
11 FEATURES, CERTAIN APPEARANCES, JUST LIKE YOU CAN  
12 TELL A PERSON IS A TALL MAN OR A SHORT MAN BUT HE  
13 IS A MAN.

14 LUNG CANCERS CAN HAVE CERTAIN  
15 APPEARANCES THAT FOR THE TRAINED EYE ARE  
16 DISTINCTIVE. AND THEY ARE VERY DISTINCTIVE. THEY  
17 ARE NOT LIKE A LITTLE DISTINCTIVE, THEY ARE SO  
18 DISTINCTIVE, THAT AS SOON AS YOU LOOK THROUGH THE  
19 MICROSCOPE, YOU SAY, I KNOW WHAT THAT IS, I HAVE  
20 SEEN IT THROUGH THE MICROSCOPE TOO MANY TIMES.

21 Q. AS PART OF YOUR CONSULTATION WITH  
22 ME IN THIS CASE, DID YOU ASK FOR THE PATHOLOGY  
23 SLIDES?

24 A. I DID.

25 Q. AND DID YOU GET THE PATHOLOGY  
26 SLIDES SENT DOWN TO MIAMI --

27 A. THEY WERE.

28 Q. DID YOU GET THE PATHOLOGY SLIDES

1 SENT TO MIAMI?

2 A. YES.

3 Q. WHY DID YOU WANT TO SEE THEM?

4 A. WELL, I NORMALLY LOOK AT THE  
5 PATHOLOGY OF LUNG CANCER OF MY PATIENTS, IN OTHER  
6 WORDS, IT IS MY USUAL AND CUSTOMARY PROCEDURE TO  
7 LOOK AT PATHOLOGY. THAT'S ONE REASON.

8 ANOTHER REASON IS, I AM USED TO, I  
9 AM IN THE BUSINESS OF MAKING LIFE AND DEATH  
10 DECISIONS, AND BECAUSE THAT'S TRUE, MY USUAL AND  
11 CUSTOMARY PROCEDURE IS TO SEE THINGS WITH MY EYES.

12 SO I TRUST AND RESPECT THE  
13 PATHOLOGISTS AT CEDARS-SINAI, WHICH IS GREAT, BUT I  
14 NEED TO KNOW, FOR SURE, BY SEEING IT, THAT'S THE  
15 WAY I DO IT, THAT'S PULMONARY MEDICINE. IT'S NOT  
16 UNCOMMON. IT'S TYPICAL.

17 Q. LET ME TAKE THE QUESTION AWAY FROM  
18 YOU FOR A SECOND AND PUT YOUR MEDICAL ILLUSTRATION  
19 BACK UP.

20 THIS ILLUSTRATION, THE CAPTION  
21 ISN'T JUST ADENOCARCINOMA, IT'S PAPILLARY  
22 ADENOCARCINOMA.

23 WAS THAT DR. GELLER'S DIAGNOSIS?

24 A. IT WAS. THAT WAS THE DIAGNOSIS AT  
25 CEDARS-SINAI MEDICAL CENTER. IN OTHER WORDS, IT'S  
26 AN ADENOCARCINOMA WHICH IS THE TYPE OF LUNG CANCER  
27 AND THEN PAPILLARY IS THE APPEARANCE, SORT OF LIKE  
28 SAYING, THERE'S A MAN, AND NOW WE WILL TALK ABOUT A

1 TALL MAN OR A FAT MAN, OR THAT SORT OF THING.

2 IT'S A SPECIAL KIND OF APPEARANCE  
3 BUT IT'S NOT JUST SPECIFIC -- TO LUNG CANCER, IT IS  
4 SPECIFIC FOR A TYPE OF PULMONARY ADENOCARCINOMAS,  
5 PAPILLARY ADENOCARCINOMA. AND WHEN I LOOK THROUGH  
6 THE SLIDES WITH THE PATHOLOGIST THAT I WORK WITH,  
7 THERE COULD BE NO QUESTION AT ALL.

8 Q. SO PAPILLARY IS THE EQUIVALENT OF  
9 TALL OR HEAVY?

10 A. IT ACTUALLY WOULD BE EQUIVALENT OF  
11 TALL, TALL AND FINGER-LIKE. PAPILLARY STANDS FOR  
12 FINGER-LIKE PROJECTIONS AND THAT'S WHAT THIS WAS.

13 Q. NOW, WHO WAS THE PATHOLOGIST IN  
14 MIAMI WITH WHOM YOU VIEWED THE SLIDE?

15 A. HE'S A PROFESSOR OF PATHOLOGY AT  
16 THE UNIVERSITY OF MIAMI. HIS NAME IS DR. MARIO  
17 SALDANA.

18 Q. YOU WORK WITH HIM REGULARLY?

19 A. EVERY WEEK, SOMETIMES TWO OR THREE  
20 DAYS A WEEK. SOMETIMES ONE DAY A WEEK. SOMETIMES  
21 WE SKIP A WEEK. BUT WE SPEND A LOT OF TIME  
22 TOGETHER, YES.

23 Q. SO THE TWO OF YOU LOOK AT THE  
24 SLIDES?

25 A. WE DO CLINICAL PATHOLOGICAL  
26 RADIOLOGICAL CONFERENCES. THAT MEANS I PRESENT TO  
27 HIM THE CLINICAL AND X-RAY STORY. DR. SALDANA  
28 PRESENTS TO ME THE PATHOLOGY.

1 WE HAVE THE PICTURES -- HE TAKES  
2 THE PICTURES, WE HAVE THEM PUT ON A CD AND I AM THE  
3 ONE WHO PREPARES THE PHOTO MICROGRAPHS. THERE'S A  
4 SPECIAL COMPUTER WAY TO DO THIS, WHICH IS A  
5 SPECIALTY AND SKILL THAT I HAVE DEVELOPED.

6 HE AND I PLAN TO WORK ON A NEW  
7 VERSION OF THIS TEXTBOOK.

8 MY ROLL WILL BE, AMONG OTHER  
9 THINGS, TO PREPARE THE IMAGES.

10 SO WE WORK TOGETHER BOTH FROM THE  
11 INTELLECTUAL POINT OF VIEW AND THE IMAGING POINT OF  
12 VIEW

13 Q. THANKS.

14 I WAS GOING FOR, WITH THE QUESTION,  
15 THESE SLIDES, MR. BOEKEN'S SLIDES, DID THE TWO OF  
16 YOU BOTH EXAMINE MR. BOEKEN'S SLIDES?

17 A. WE DID, TOGETHER, SITTING NEXT TO  
18 EACH OTHER.

19 Q. NOW, YOU USED THE TERM PHOTO  
20 MICRO --

21 A. PHOTO MICROGRAPHS.

22 Q. WHAT IS THAT?

23 A. THAT MEANS TAKING THE IMAGE FROM  
24 THE MICROSCOPE, SHOOTING A PICTURE THROUGH THE  
25 MICROSCOPE, TAKING THAT PICTURE, SCANNING IT INTO A  
26 COMPUTER READABLE LANGUAGE, TAKING THAT COMPUTER  
27 IMAGE AND THEN MANIPULATING IT TO ENHANCE IT TO  
28 MAKE IT PERFECTLY CLEAR, WHICH IS A SKILL, SORT OF

1 AN ART, RATHER THAN -- IT'S LIKE ADJUSTING THE  
2 MICROSCOPE.

3 AND THEN SAVING IT IN AN IMAGE THAT  
4 CAN BE REPRODUCED, PRINTED, WHICH I DID, IN THIS  
5 CASE, OR USED IN COMPUTER PROGRAMS.

6 Q. DO YOU HAVE THOSE?

7 A. I DO.

8 Q. DO YOU HAVE THEM ON THE COMPUTER?

9 A. I DO.

10 Q. WHEN IT WAS -- AND I ASK YOU TO  
11 SHOW THEM AND DISCUSS THEM TO SOME EXTENT, WHEN IT  
12 WAS ALL SAID AND DONE, WAS DR. STEVEN GELLER OVER  
13 AT CEDARS-SINAI HOSPITAL RIGHT ON, THAT IT WAS  
14 PAPILLARY ADENOCARCINOMA?

15 A. HE WAS RIGHT ON. NOT A SURPRISE.  
16 BUT HE WAS EXACTLY CORRECT.

17 Q. NOW, I JUST WANT TO SWITCH GEARS A  
18 LITTLE BIT HERE.

19 AS PART OF THE MATERIALS THAT I  
20 HAVE PRESENTED TO YOU, HAVE THEY INCLUDED A REPORT  
21 FROM A DR. HAMMER?

22 A. CORRECT, THEY DID.

23 Q. NOW, I DON'T, RIGHT NOW, I DON'T  
24 WANT YOU TO BE DISCUSSING THE CONTENTS OF DR.  
25 HAMMER'S REPORT; OKAY.

26 A. OKAY.

27 Q. NOW, WHOSE DR. HAMMER?

28 A. I WOULD DESCRIBE HIM AS ONE OF THE

1 MOST FAMOUS PULMONARY PATHOLOGISTS IN THE WORLD.

2                   THERE ARE A HANDFUL OF ELITE LUNG  
3 PATHOLOGISTS.

4           MR. CARLTON: OBJECT, YOUR HONOR, TO  
5 BOLSTERING.

6           THE COURT: OVERRULED. GO AHEAD.

7           THE WITNESS: MY OPINION IS, AS A LUNG  
8 SPECIALIST, IS THAT THERE'S A HANDFUL OF ELITE LUNG  
9 PATHOLOGISTS IN THE WORLD. MOST OF THEM ARE IN THE  
10 UNITED STATES. THERE ARE A COUPLE IN CANADA, SOME  
11 IN JAPAN.

12                   THESE PEOPLE LEAD THE WHOLE WORLD  
13 IN THE STUDY OF LUNG PATHOLOGY.

14                   SAM HAMMER, WHO HAS WRITTEN A  
15 SINGLE BEST KNOWN TEXTBOOK -- MARIO SALDANA WROTE A  
16 VERY GOOD TEXTBOOK ALSO, BUT HAMMER'S IS WORLD  
17 FAMOUS. I WOULD SAY SAM HAMMER IS THE BEST KNOWN  
18 LUNG PATHOLOGIST IN THE WORLD.

19           Q. WHEN YOU ARE TALKING PULMONARY  
20 PATHOLOGIST OR LUNG PATHOLOGIST, YOU ARE TALKING  
21 ABOUT A PATHOLOGIST WHO DOESN'T SPEND PART OF HIS  
22 TIME LOOKING AT WARTS OR MOLES OR SOMETHING?

23           A. OR BRAIN TUMORS OR SYSTEMATIC  
24 ULCERS OR SOMETHING ELSE. WHAT HAMMER DOES IS LOOK  
25 AT LUNG PATHOLOGY.

26           Q. FAIR ENOUGH.

27                   DID I PROVIDE YOU WITH A REPORT  
28 THAT DR. HAMMER FILLED OUT FOR ME IN RICHARD

1 BOEKEN' S CASE?

2 A. YES. I DON' T REMEMBER IT BECAUSE I  
3 DON' T THINK I HAD PUT IT IN MY REPORT. BUT I SAW  
4 HIS DEPOSITION AND I THINK HIS REPORT.

5 Q. AND NOW YOU HAVE TAKEN THE NEXT  
6 QUESTION.

7 YOU SAY DR. HAMMER' S DEPOSITION?

8 A. I DID, YES. I READ IT.

9 Q. IN THIS CASE?

10 A. IN THIS CASE, I READ DR. HAMMER' S  
11 DEPOSITION.

12 Q. FINE.

13 NOW, HAVING ESTABLISHED THAT, AS TO  
14 WHAT, FROM A PULMINARY POINT OF VIEW, WE WILL LET  
15 THE PATHOLOGIST, DR. HAMMER SPEAK FOR HIMSELF, FROM  
16 A PULMINARY POINT OF VIEW, DID MR. BOEKEN HAVE  
17 PAPILLARY ADENOCARCINOMA OF THE RIGHT LUNG?

18 A. WITHOUT QUESTION, SIR.

19 Q. AND DID THE PAPILLARY  
20 ADENOCARCINOMA OF THE RIGHT LUNG METASTASIZE TO THE  
21 LYMPH NODES?

22 A. IT DID, WITHOUT QUESTION.

23 Q. AND SUBSEQUENTLY, DID IT  
24 METASTASIZE TO HIS BRAIN?

25 A. BOTH TO HIS SPINE AND TO HIS BRAIN,  
26 YES, WITHOUT QUESTION.

27 Q. WHAT IS METASTASIZE, PLEASE?

28 A. IT MEANS SPREAD OF THE CANCER

1 CELLS.

2                   CANCER IS AN INVADER BY ITS NATURE.  
3                   THE CELLS DO NOT STOP GROWING.  
4                   THEY GROW AND TAKE OVER OTHER AREAS  
5 OF THE BODY AND ONE VERY BAD FEATURE ABOUT CANCER  
6 IS THAT THEY GO TO OTHER PARTS OF THE BODY DISTANT,  
7 FAR AWAY FROM THE ORIGINAL CANCER.

8                   SO HERE THE PATIENT HAD A CANCER IN  
9 THE RIGHT UPPER LOBE. THE CANCER CELLS BROKE OUT  
10 OF THE LUNG, WENT INTO THE LYMPH CHANNELS. I SAW  
11 THEM WITH MY OWN EYES.

12                   FROM THE LYMPH CHANNELS THEY SPREAD  
13 TO THE REST OF THE BODY BECAUSE THE LYMPH CHANNELS  
14 ARE CONNECTED THROUGHOUT THE BODY.

15                   THE CANCER CELLS LODGED IN VARIOUS  
16 PLACES IN THIS MAN'S BODY, INCLUDING HIS SPINE AND  
17 EVENTUALLY, SOME MONTHS AFTER HIS ORIGINAL SURGERY,  
18 X-RAYS BEGAN TO DEMONSTRATE THAT HE HAD METASTASIS  
19 IN HIS SPINE, CANCER CELLS IN THE SPINE, GROWING  
20 AND DESTROYING THE BONE.

21                   AND ALSO THEY LODGED IN THE  
22 CEREBELLUM, WHICH IS A POSTERIOR PORTION OF THE  
23 BRAIN THAT CONTROLS BALANCE.

24                   AND IN THE CEREBRUM SO THEY  
25 LODGED IN VARIOUS PORTIONS OF HIS BRAIN THAT COULD  
26 BE SEEN BY X-RAY AND M R. I. , THAT'S A SPECIAL KIND  
27 OF IMAGING.

28                   THERE'S ONE THING I HAVE TO SAY

1 ABOUT THIS, IN THE CONTEXT OF ADENOCARCINOMA, AS A  
2 LUNG SPECIALIST, ADENOCARCINOMA IS A VERY  
3 AGGRESSIVE AND DANGEROUS ENEMY BECAUSE IT LIKES TO  
4 SPREAD.

5 AND IT ACTUALLY TYPICALLY SPREADS  
6 INTO THE BRAIN.

7 SO IT'S ONE OF THE WORST THINGS  
8 ABOUT BEING A LUNG SPECIALIST IS SEEING PATIENTS  
9 DEVELOP THE BRAIN METASTASIS, WHICH YOU KNOW ARE  
10 COMING. AND THEY CAN'T BE STOPPED.

11 Q. THANKS.

12 LET'S SEE SOME PHOTO MICRO -- IS IT  
13 GRAPHS?

14 A. YES, SIR.

15 OKAY, THIS IS IMAGE NUMBER 6.

16 Q. WHAT IS IT?

17 A. WHAT WE SEE HERE ARE MULTIPLE AREAS  
18 OF ABNORMAL CELLS.

19 THESE CELLS, RIGHT OVER HERE, I AM  
20 SHOWING THEM, ARE LARGE, SHOWING ABNORMAL  
21 VESICULATED NUCLEI.

22 NUCLEI ARE THE INDIVIDUAL LITTLE  
23 DARK CIRCLES IN THE CENTER OF EACH CELL.

24 THESE CELLS ARE VERY ABNORMAL AND  
25 ARE NOT SUPPOSED TO LOOK LIKE THIS AT ALL.

26 THEY HAVE REPLACED THE NORMAL LUNG  
27 ARCHITECTURE.

28 THE NUCLEI THEMSELVES CONTAIN

1 VESICLES BECAUSE THE VESICLES ARE LIKE LITTLE  
2 CYSTS. AND THE CYSTS CONTAIN THE PRODUCTS OF THE  
3 CELLS THAT HAVE GONE MAD.

4 SOME OF THE CELLS ARE IN THE  
5 PROCESS OF DIVIDING.

6 HERE, I THINK YOU CAN SEE THAT THE  
7 LITTLE HAND SHOWING, THAT IS A MITOTIC FIGURE.  
8 HERE IS ANOTHER MITOTIC FIGURE. THEY ARE ACTUALLY  
9 DIVIDING. AND HERE IS A THIRD MITOTIC FIGURE, ALL  
10 IN THE SAME ONE IMAGE.

11 Q. YOU MAY BE USING "MITOTIC" IN YOUR  
12 DAILY LANGUAGE BUT MOST OF US DON'T. WHAT DOES  
13 THAT MEAN?

14 A. THAT MEANS THE CELL THAT IS  
15 ACTUALLY IN THE PROCESS OF SEPARATING, REPRODUCING  
16 ITS DNA AND SEPARATING INTO TWO CELLS. IT IS  
17 COMPLETELY ABNORMAL TO SEE CELLS DOING THIS IN SUCH  
18 A HIGH NUMBER AND TO FIND THEM SO EASILY.

19 THEY DO IT VERY -- NORMALLY, VERY  
20 FEW TIMES.

21 THEY DO IT, BUT THEY DON'T DO IT --  
22 YOU WOULD NEVER BE ABLE TO SEE THREE MITOTIC  
23 FIGURES IN A SINGLE FIELD, THAT COULDN'T BE.

24 SO THIS BASICALLY LOOKS LIKE  
25 PULMONARY ADENOCARCINOMA AND SOME OF IT IS  
26 PAPILLARY-LIKE. AND I'LL SHOW A LOWER POWER VIEW  
27 OF IT BECAUSE IT IS A LITTLE EASIER TO SEE THE  
28 FINGER-LIKE PROJECTIONS.

1                   THERE YOU GO. THESE ARE  
2 FINGER-LIKE PROJECTIONS. YOU CAN SEE, IT LOOKS  
3 ALMOST LIKE A FINGER OF HAND STICKING UP. AND  
4 THESE ARE DIFFERENT FINGERS.

5                   EVEN A CROOKED FINGER, FOR EXAMPLE.  
6 AND HERE IS ANOTHER ONE POINTING DOWN. HERE IS  
7 ANOTHER ONE AND HERE IS ANOTHER ONE.

8                   THIS IS A LOWER POWER IMAGE. THERE  
9 CAN BE NO QUESTION AS TO WHAT THIS IS. AS MUCH AS  
10 I RECOGNIZE YOUR FACE, INSTANTLY, UPON LOOKING AT  
11 YOUR FACE, I RECOGNIZE THIS.

12                  THERE ARE CERTAIN QUESTIONS THAT  
13 COME UP. TYPICALLY, COULD THIS BE ANOTHER KIND OF  
14 CANCER CALLED BRONCHIOLOALVEOLAR CARCINOMA OR  
15 B. A. C. , THAT SOMETIMES BECOMES A CONFUSING ISSUE IN  
16 THE DIAGNOSIS OF SMALL ADENOCARCINOMA. BUT THIS IS  
17 NOT B. A. C. , BY ANYWAY, SHAPE OR FORM IN EXACTLY  
18 THE SAME WAY AS YOU ARE NOT ME.

19                  Q. I CAN PROVE I AM NOT YOU BECAUSE I  
20 AM OVER HERE.

21                  A. CORRECT.

22                  Q. WHAT' S B. A. C. ?

23                  A. B. A. C. IS A KIND OF ADENOCARCINOMA.  
24 IT' S -- IT' S A BAD DISEASE. BUT IT IS A LOWER  
25 DEGREE OF CARCINOGENICITY. IT' S LESS AGGRESSIVE  
26 AND SPREADS LOCALLY. IT NEVER OR ALMOST NEVER  
27 SPREADS TO BONE OR BRAIN. IT HAS A SPECIAL  
28 APPEARANCE WHERE THE NORMAL ARCHITECTURE, THE

1 NORMAL DESIGN OF THE LUNG IS PRESERVED AND THE  
2 CANCER CELLS ARE SORT OF STUCK ON THE INNER LINING  
3 OF THE NORMAL LUNG.

4                   IMAGINE THIS ROOM BEING STUDED ON  
5 THE INSIDE WALLS OF THE ROOM WITH SOME APPLICATION,  
6 SOME APPLIQUE, SOME, LET'S SAY, WE WILL TAKE  
7 BALLOONS, LIKE IN A CHILD'S PARTY. YOU KNOW HOW  
8 YOU TAKE THE BALLOONS AND YOU RUB THEM ON YOUR HAIR  
9 AND YOU STICK THEM ON TO THE WALLS IN A PARTY ROOM  
10 OR YOU TAKE SCOTCH TAPE AND YOU STICK THE BALLOONS  
11 ON TO THE WALLS OF THE PARTY ROOM

12                   THAT'S WHAT B. A. C. LOOKS LIKE WHEN  
13 YOU LOOK UNDER THE MICROSCOPE.

14                   QUITE DISTINCTLY, THE NORMAL WALLS  
15 OF THE ROOM CAN STILL BE SEEN. BUT THE NORMAL  
16 WALLS OF THE ALVEOLI CAN STILL BE SEEN.

17                   BUT THE CELLS, THE CANCER CELLS CAN  
18 BE SEEN LINING THE NORMAL ARCHITECTURE.

19           Q.     SO LET ME JUST STOP YOU FOR A  
20 SECOND.

21                   FROZEN SECTION, REMEMBER FROZEN  
22 SECTION?

23           A.     SURE.

24           Q.     DESPITE THE FACT THAT DR. GELLER'S,  
25 I SHOULDN'T SAY DESPITE, I SHOULD SAY, IN ADDITION  
26 TO THE FACT THAT DR. GELLER'S PATHOLOGICAL  
27 DIAGNOSIS WAS PAPILLARY ADENOCARCINOMA, DIDN'T THE  
28 FROZEN SECTION THAT WAS TAKEN JUST IMMEDIATELY

1 PRIOR TO THE SURGERY SHOW SOME B. A. C. ,  
2 BRONCHIOLOALVEOLAR CARCINOMA?

3 A. YES, IT DID.

4 FIRST OF ALL, THAT'S NOT UNUSUAL  
5 BECAUSE SOME AREAS OF B. A. C. LIKE APPEARANCE WILL  
6 OCCUR MOST TYPICALLY ON THE FRINGES OF A PULMONARY  
7 ADENOCARCINOMA.

8 SO AS THE CANCER GROWS OUTWARD  
9 WITHIN THE LUNG, SOME OF THE AREAS MAY HAVE AN  
10 APPEARANCE OF B. A. C.

11 BUT EVEN WITHIN THE TUMOR, THERE  
12 CAN BE SOME AREAS OF THE LUNG NOT QUITE AS  
13 VICIOUSLY ATTACKED AND SO THE CANCER SORT OF LIES  
14 MORE NORMAL ARCHITECTURE AND PRESERVES IT, DOESN'T  
15 OBLITERATE IT.

16 BUT THE FINDING OF SUCH AREAS,  
17 ABSOLUTELY DOES NOT CONSTITUTE B. A. C.

18 IN FACT, THE RULE IS THAT IN ORDER  
19 TO MAKE THE DIAGNOSIS OF B. A. C. , ONLY B. A. C. CAN BE  
20 SEEN.

21 AREAS LIKE I AM SHOWING ON THE  
22 IMAGE RIGHT NOW, THAT'S COMPLETELY PROHIBITIVE. IF  
23 THAT IS SEEN IN A LUNG TUMOR, IT EXCLUDES THE  
24 PATHOLOGICAL DIAGNOSIS OF B. A. C. FROM A LUNG  
25 SPECIALIST'S POINT OF VIEW, IF YOU FIND METASTASIS  
26 TO BONE AND BRAIN, WHICH NOT ONLY IN MY 25 YEARS OF  
27 EXPERIENCE I HAVE NEVER SEEN, BUT WHICH THE MEDICAL  
28 LITERATURE SAYS DOES NOT OCCUR, WELL, B. A. C. IS

1 EXCLUDED.

2 BUT FROM THE PATHOLOGIST'S POINT OF  
3 VIEW, THE FACT THAT HE SAW SOME AREAS OF B. A. C. IS  
4 FINE.

5 Q. LET ME STOP YOU FOR A SECOND.  
6 YOU SAID SOMETHING THAT WAS IN  
7 SHORT HAPPENED, I UNDERSTOOD IT BUT I AM NOT SURE  
8 PEOPLE WHO HAVEN'T BEEN TALKING TO YOU FOR A WHILE  
9 UNDERSTOOD.

10 DID YOU JUST SAY YOU HAVE NEVER  
11 SEEN CANCER METASTASIZE TO THE BRAIN FROM THE LUNG?

12 A. OH, I SEE IT ALL THE TIME, BUT NOT  
13 FROM B. A. C.

14 Q. AND THAT'S THE POINT I AM TRYING TO  
15 MAKE.

16 A. SURE. ACTUALLY, LUNG CANCER  
17 METASTASIZES TO THE BRAIN COMMONLY. AND LUNG  
18 CANCER IS THE NUMBER 1 MOST COMMON SITE FOR  
19 METASTATIC CANCER TO THE BRAIN.

20 NOT ONLY THAT, BUT THE MOST COMMON  
21 SOURCE OF A CANCER, WHEN A PERSON PRESENTS TO AN  
22 EMERGENCY ROOM WITH A NEW TUMOR IN THE BRAIN IS  
23 LUNG CANCER. BUT NOT B. A. C.

24 Q. LUNG CANCER METASTASIZES TO THE  
25 BRAIN BUT THE SUBTYPE B. A. C. , IN YOUR 25 YEARS OF  
26 EXPERIENCE, DOES NOT METASTASIZE TO THE BRAIN?

27 A. I HAVE NEVER SEEN IT. I HAVE  
28 ACTUALLY LOOKED FOR IT IN THE MEDICAL LITERATURE

1 AND CANNOT FINE AN EXAMPLE.

2                   THERE MAYBE ONE OR TWO, ESPECIALLY  
3 IN THE OLDER LITERATURE, BECAUSE THERE' S A  
4 DEFINITION PROBLEM

5                   IF A DOCTOR SEES JUST A FROZEN  
6 SECTION ON THE PERIPHERY, THE OUTER PORTION OF THE  
7 LUNG AND SAYS, WELL, THIS IS B. A. C. AND THAT' S THE  
8 END OF THE DIAGNOSIS, THREE MONTHS OR SIX MONTHS  
9 LATER, LIKE IN THIS PATIENT' S CASE, IT SHOWS UP IN  
10 THE BRAIN, IT CAN GET REPORTED, ESPECIALLY IN THE  
11 OLDER MEDICAL LITERATURE, AS A B. A. C. THAT WENT TO  
12 THE BRAIN. AND I CAN' T EVEN FIND THOSE.

13                   SO I WOULDN' T BE SURPRISED IF  
14 SOMEBODY COULD FIND ONE CASE. I USED THE NATIONAL  
15 LIBRARY OF MEDICINE SEARCH ENGINE, AND THIS IS NOT  
16 THE FIRST TIME I HAVE DONE IT, I HAVE DONE IT  
17 MULTIPLE TIMES, TO LOOK FOR B. A. C. THAT GOES TO THE  
18 BRAIN AND I CAN' T FIND IT.

19                   Q.     BEFORE WE GO TO THE NEXT SLIDE  
20 HERE, I JUST WANT TO WRAP UP THIS LITTLE DISCUSSION  
21 AS FAR AS WE ARE AWARE THAT A FROZEN SECTION  
22 SHOWED -- SAY THE WORDS AGAIN, BRONCHIAL?

23                   A.     BRONCHIOLOALVOLAR CARCINOMA, THAT' S  
24 THE CORRECT NAME, BRONCHIOLOALVEOLAR CARCINOMA.

25                   Q.     SOMETIMES CALLED B. A. C. ?

26                   A.     THAT' S THE SHORTHAND IS B. A. C.

27                   Q.     AND IT IS DR. GELLER THAT DIAGNOSED  
28 THAT FROM THE FROZEN SECTION PATHOLOGIES?

1           A.     HE DID, YES.

2           Q.     AND THEN WHEN THE WHOLE, ALL OF THE  
3 PATHOLOGY CAME IN FOLLOWING THE OPERATION, AND HE  
4 DID HIS FINAL DIAGNOSIS AND FINAL REPORT, IT WAS  
5 DR. GELLER THAT DIAGNOSED PAPILLARY ADENOCARCINOMA?

6           A.     HE DID.

7                     AND HERE, ON THE SCREEN, IS ANOTHER  
8 IMAGE. ONE OF THE REASONS WHY THE DIAGNOSIS OF  
9 PAPILLARY ADENOCARCINOMA HAS TO BE MADE AND B. A. C.  
10 CANNOT BE MADE. THIS IS A DIFFERENT IMAGE.

11          Q.     WHY IS THAT?

12          A.     EXCUSE ME.

13          MR. CARLTON: MAY I KNOW WHAT IMAGE.

14          THE WITNESS: THIS IS IMAGE NUMBER 30, ON  
15 PAGE 35 OF OUR REPORT.

16          Q     BY MR. PIUZE: YOU KNOW, DOCTOR,  
17 YOU CAN LOOK AT THIS HERE, AND YOU CAN GO, BOY,  
18 THAT LOOKS JUST LIKE SOMEONE'S FACE. TO US, THIS  
19 IS TOTAL GREEK.

20          A.     I UNDERSTAND. BUT IF YOU LOOK AT  
21 IT FOR MANY YEARS, YOU START TO SEE THINGS THAT ARE  
22 DEFINITELY THERE. THE CELLS -- I KNOW THESE  
23 CELLS. I KNOW EXACTLY THESE CELLS. I RECOGNIZE  
24 THESE CELLS.

25                     LET ME SHOW YOU THESE.

26                     THESE ARE THE ENEMY, RIGHT HERE.

27                     NOW, LET ME JUST TELL YOU THAT THIS  
28 IS LYMPHATIC, IT'S IN THE LUNG.

1                   WHAT IS THE LYMPHATIC?

2                   IT IS A LYMPH CHANNELS, IT'S A  
3 CHANNEL THAT CARRIES LYMPH MATERIALS. IT TRAVELS  
4 THROUGH THE LUNG. THIS ONE ACTUALLY IS NEXT TO A  
5 LYMPH NODE AND IT BRINGS ALL THE LYMPHATIC MATERIAL  
6 TO THE CENTRAL PORTION OF THE CHEST WHERE IT'S  
7 DISPERSED THROUGHOUT THE BODY.

8                   THERE ARE VERY GOOD REASONS FOR,  
9 THIS IS A WAY OF THE BODY DEFENDING ITSELF.

10                  BUT UNFORTUNATELY, THE BODY CANNOT  
11 DEFEND ITSELF FROM THE CELLS THAT ARE TRAVELING IN  
12 THIS LYMPHATIC.

13                  NOW, UNDERSTAND, THIS IS THE TUBE,  
14 PLEASE OBSERVE, THIS IS THE BORDER OF THE TUBE.  
15 IT'S INTERESTING, THE TUBE IS MUSCULAR. THIS  
16 MATERIAL IS MUSCLE AND THE TUBE IS INTERRUPTED.  
17 YOU SEE, THERE ARE INDENTATIONS.

18                  THAT'S ONE REASON WHY YOU KNOW IT'S  
19 NOT A VEIN, BECAUSE -- OR AN ARTERY, BECAUSE AN  
20 ARTERY IS SURROUNDED BY MUSCLE BUT IS NEVER  
21 INTERRUPTED OR ELSE BLOOD WOULD LEAK OUT.

22                  SO THIS IS LYMPHATIC, DEFINITELY.  
23                  AND THESE ARE CANCER CELLS FLOATING  
24 IN A GROUP, DEFINITELY.

25                  THIS IS LIKE, THIS IS LIKE A SMALL  
26 FORWARD GROUP OF INVADERS ON A RAFT, LIKE OUT ON A  
27 RUBBER RAFT, GOING DOWN THE RIVER TO ATTACK ANOTHER  
28 AREA.

1 OBSERVE THIS LITTLE SECTION RIGHT  
2 UNDERNEATH THE HAND. THAT IS A COLLECTION OF  
3 MUCUS, WHICH IS THE ABNORMAL PRODUCTION OF THESE  
4 MUCUS PRODUCING CELLS.

5 THESE MUCUS PRODUCING CELLS ARE  
6 ADENOCARCINOMA CELLS. THEY NEVER, EVER, WOULD BE  
7 B. A. C. CELLS. B. A. C. NEVER, EVER LOOKS LIKE THIS.

8 AND THIS MUCUS IS THE ABNORMAL  
9 PRODUCT OF THESE ABNORMAL CRAZY CELLS.

10 TOGETHER, AS A GROUP, THEY ARE A  
11 LITTLE CLUSTER, A METASTATIC CLUSTER LOOKING FOR A  
12 HOME.

13 AND UNFORTUNATELY, THE HOME WAS THE  
14 BRAIN AND THE SPINE OF THIS PATIENT.

15 NOW, THIS WAS FROM HIS ORIGINAL  
16 SURGERY. SO WHEN THE ORIGINAL SURGERY WAS  
17 PERFORMED, IT COULD BE ANTICIPATED THAT THE CANCER  
18 WOULD SPREAD.

19 AND IT WAS ANTICIPATED. SO THE  
20 PATIENT WAS GIVEN CHEMOTHERAPY AND RADIATION  
21 THERAPY, WHICH MAY, INDEED, HAVE PROLONGED HIS LIFE  
22 BUT COULDN'T SAVE HIM

23 Q. OKAY. THANKS.

24 NOW, I KNOW YOU HAVE GOT A WHOLE  
25 BUNCH OF THESE THINGS, THESE PHOTO MICROGRAPHS.  
26 AND IT IS PRETTY HARD WORK TO GET THEM DONE?

27 A. YEAH. IT TAKES HOURS AND HOURS TO  
28 DO IT. I PROBABLY SPENT TEN HOURS ON THIS.

1 Q. I DON'T WANT TO GO THROUGH ALL OF  
2 THEM BECAUSE WE ARE WAY PAST DIMINISHING RETURNS  
3 HERE.

4 MR. CARLTON: OBJECT TO THE COMMENT, YOUR  
5 HONOR.

6 THE COURT: SUSTAINED.

7 Q BY MR. PIUZE: I DON'T WANT TO GO  
8 THROUGH ALL OF THEM

9 BUT IF YOU PICK MAYBE ONE, TWO AT  
10 THE MDST, OF THE MDST DRAMATIC, IF YOU HAVEN'T  
11 ALREADY DONE SO, WE CAN TALK ABOUT IT, IF NOT, WE  
12 WILL MDVE ON AND WE WON'T BE LOOKING AT THE SLIDES.

13 A. I THINK, TO ME, I HAVE SHOWN ENOUGH  
14 MATERIAL THAT WOULD CONVINCEN ANY LUNG SPECIALIST --

15 MR. CARLTON: OBJECT TO THE OPINION.

16 THE COURT: IF YOU WANT TO SELECT SOME  
17 MDRE MATERIAL, GO AHEAD AND DO IT, OTHERWISE,  
18 WTHOUT COMMENT.

19 THE WITNESS: I DON'T THINK IT'S  
20 NECESSARY.

21 MR. PIUZE: FINE.

22 Q BY MR. PIUZE: BASED UPON THE  
23 SLIDES YOU HAVE SHOWN US AND EMPHASIZING, AGAIN,  
24 FROM A PULMDNARY POINT OF VIEW, BUT FROM A  
25 PULMDNARY POINT OF VIEW, DO YOU HAVE ANY, ANY DOUBT  
26 WHATSOEVER, THAT WE ARE DEALING HERE WTH A  
27 PAPILLARY ADENOCARCINOMA?

28 A. NO.

1 Q. THEN WHY DON'T WE TAKE THAT SLIDE  
2 OFF, PLEASE, AND TALK ABOUT THE CAUSE OF PAPILLARY  
3 ADENOCARCINOMA.

4 CAN YOU DO THAT?

5 A. YES.

6 Q. PLEASE.

7 A. ALMOST ALL LUNG CANCERS ARE CAUSED  
8 BY CIGARETTE SMOKING, NOT ALL.

9 IN MEN, THE PERCENTAGE OF LUNG  
10 CANCERS THAT ARE CAUSED BY CIGARETTE SMOKING IS  
11 APPROXIMATELY 90 PERCENT. IT MAY BE A LITTLE BIT  
12 MORE OR A LITTLE BIT LESS.

13 SOME OF LUNG CANCERS OCCUR RELATED  
14 TO OTHER THINGS, PARTICULARLY IN RELATION TO  
15 CIGARETTE SMOKING, FOR EXAMPLE, CERTAIN RADIATION  
16 THERAPY OR ASBESTOS DISEASE, ASBESTOSIS.

17 BUT EVEN IN THOSE PATIENTS,  
18 CIGARETTE SMOKING IS THE CAUSE OF ALMOST ALL CASES.

19 WE KNOW HOW IT HAPPENS TODAY. BUT  
20 WE ALSO KNOW STATISTICALLY THAT FOR PEOPLE WHO  
21 SMOKE CIGARETTES, AND I WILL SAY, FOR MEN, AT  
22 LEAST, WHO SMOKE CIGARETTES, THE RISK OF GETTING  
23 PULMONARY ADENOCARCINOMA IS APPROXIMATELY 2,000  
24 PERCENT GREATER THAN FOR PEOPLE WHO DON'T SMOKE OR  
25 20 FOLD, 20 FOLD MEANS 2000 PERCENT.

26 Q. THAT'S THE STATISTICS.

27 A. THE BIOLOGICAL COHERENCE IS THAT WE  
28 KNOW WHAT IT IS IN CIGARETTES THAT DO THIS.

1                   WE KNOW THAT THE SPECIFIC GROUP OF  
2 SUBSTANCES IN CIGARETTE SMOKE CALLED THE TOBACCO  
3 SPECIFIC NITROSAMINES, WHICH ARE KIND OF ORGANIC  
4 CHEMICALS, PRODUCE ADENOCARCINOMA, NOT JUST IN THE  
5 LUNG BUT IN OTHER PARTS OF THE BODY.

6                   SO WE KNOW WHAT IT IS. WE KNOW HOW  
7 OFTEN IT IS AND WE KNOW THAT IT OCCURS IN MEN  
8 ALMOST ONLY IN CIGARETTE SMOKERS.

9                   Q.     THANKS.

10                  RICHARD BOEKEN SMOKED CIGARETTES?

11                  A.     YES, HE DID.

12                  Q.     HOW DO YOU KNOW?

13                  A.     WELL, THE MEDICAL RECORDS SAY HE  
14 DID AND HE SAID SO IN HIS SWORN DEPOSITION. I READ  
15 IT.

16                  Q.     LET'S REMIND -- EITHER REMIND THE  
17 JURY OF WHAT YOU READ OR ELSE FINISH TELLING THEM  
18 WHAT YOU READ.

19                  A.     WELL, I -- THE BOTTOM LINE IS THAT  
20 I KNOW THE PATIENT EXPERIMENTED WITH SMOKING IN  
21 CHILDHOOD AT AROUND THE AGE OF 10 AND THAT BY THE  
22 AGE OF 14, THE PATIENT WAS SMOKING TWO PACKAGES OF  
23 CIGARETTES A DAY EVERY DAY.

24                  HE CONTINUED TO DO THAT FOR VERY  
25 MANY YEARS.

26                  Q.     DO YOU KNOW WHAT THE CONCEPT "A  
27 PACK YEAR" IS?

28                  A.     YES.

1 Q. TELL THE JURY WHAT A PACK YEAR IS?

2 A. DOCTORS SAY THAT SMOKING A PACK A  
3 DAY FOR A YEAR IS A PACK YEAR.

4 SO IF THE PATIENT STARTED TO SMOKE  
5 AROUND 14 AND STOPPED SMOKING AT AROUND 54, SO WE  
6 ARE TALKING ABOUT 40 YEARS OF SMOKING, TWO PACKAGES  
7 OF CIGARETTES A DAY, THAT GIVES YOU 80 PACK YEARS,  
8 MAKING ADJUSTMENT FOR THE FACT THAT HE MAY NOT HAVE  
9 SMOKED TWO PACKS A DAY EVERY DAY. BUT HE DID SMOKE  
10 MORE THAN TWO PACKS OF CIGARETTES A DAY SOME DAYS.  
11 IT'S APPROXIMATELY 80 PACK YEARS OF SMOKING.

12 Q. JUST TO GIVE A COUPLE OTHER  
13 EXAMPLES, LET'S COME AWAY FROM MR. BOEKEN FOR A  
14 SECOND. AND I JUST ASK YOU TO ASSUME THAT THERE'S  
15 A PERSON OUT THERE SOMEWHERE THAT SMOKES FIVE  
16 CIGARETTES A DAY, NOT A PACK, BUT FIVE. SO IT'S A  
17 QUARTER OF A PACK?

18 A. RIGHT, BECAUSE PACKAGES TYPICALLY  
19 CONTAIN 20 CIGARETTES.

20 Q. SO SOMEONE SMOKES FIVE A DAY,  
21 SMOKING A QUARTER OF A PACK DAY, HOW LONG WOULD IT  
22 TAKE THAT PERSON TO HAVE ONE PACK YEAR OF SMOKING?

23 A. FOUR YEARS. IF THEY SMOKED, FOR  
24 EXAMPLE, TEN YEARS, THEY WOULD HAVE 2.5 PACKS --  
25 PACK YEARS, 2.5 PACK YEARS BECAUSE IT WOULD BE TEN  
26 TIMES A QUARTER, SO THAT'S 2.5.

27 Q. THANK YOU.

28 IN MR. BOEKEN'S CASE, SMOKING

1 ROUGHLY TWO PACKS OF CIGARETTES A DAY FOR 40 YEARS,  
2 DID HE HAVE 80 PACK YEARS OF SMOKING HISTORY BEHIND  
3 HIM?

4 A. YES. WHEN HIS CANCER WAS  
5 DISCOVERED.

6 Q. NOW, PUTTING THAT INTO MY QUESTION,  
7 THAT MR. BOEKEN HAD 80 PACK YEARS OF CIGARETTE  
8 SMOKING BEHIND HIM WHEN HE WAS DIAGNOSED WITH  
9 PAPILLARY ADENOCARCINOMA, DO YOU HAVE AN OPINION OF  
10 WHETHER OR NOT THE CIGARETTE SMOKING CAUSED THE  
11 ADENOCARCINOMA?

12 A. I HAVE AN OPINION, FOR SURE. MY  
13 OPINION IS THAT CIGARETTE SMOKING WAS DEFINITELY  
14 THE CAUSE, WITHOUT QUESTION, WAS THE CAUSE OF THE  
15 PATIENT'S LUNG CANCER.

16 Q. I AM STILL IN THE TREATMENT AREA.  
17 BEFORE I MOVE ON TO YOUR EARLIER AREA, I'D LIKE TO  
18 DISCUSS THE FOLLOWING: DO YOU KNOW WHAT DECLINING  
19 RISK IS?

20 A. YES, I DO.

21 Q. TELL US.

22 A. THERE'S A CONCEPT THAT IF YOU ARE  
23 REMOVED FROM DANGER, THAT THE CHANCES THAT YOU GET  
24 A CERTAIN BAD RESULT GO DOWN, DIMINISHING RISK.

25 THERE ARE MANY THINGS LIKE THIS IN  
26 MEDICINE. SO FOR EXAMPLE, BEING -- DR. HAMMOND  
27 SHOWED THIS, BEING IN THE CENTER OF THE, OR -- I  
28 SHOULDN'T SAY "CENTER," BUT IN A CENTRAL AREA NEAR

1 A NUCLEAR EXPLOSION RESULTED IN CANCER, FOR  
2 EXAMPLE, VERY HIGH PERCENTAGE OF THE PEOPLE.

3                   NOW, OF COURSE, THE PEOPLE WHO WERE  
4 CENTRAL IN HIROSHIMA DIED. THEY WERE VAPORIZED.

5                   BUT AS YOU GO FURTHER AND FURTHER  
6 FROM THE CENTER OF THE EXPLOSION, THE RISK OF THE  
7 CANCER DIMINISHES.

8                   SO PEOPLE WHO WERE CLOSE TO THE  
9 CENTER OF THE EXPLOSION BUT WEREN'T KILLED HAD A  
10 CERTAIN INCIDENCE OF CANCER SOME YEARS LATER. AS  
11 THEY GOT FURTHER AND FURTHER OUT, IT WAS LESS AND  
12 LESS. THAT'S DIMINISHING RISK RELATED TO DISTANCE.

13                   THERE'S A DIFFERENT KIND OF  
14 CONCEPT, THAT IS THAT CERTAIN THINGS RESULT IN  
15 INCREASED RISK THROUGHOUT LIFE, FOREVER.

16                   SOME OF THESE RISKS DO NOT CONTINUE  
17 TO INCREASE, IF YOU ARE REMOVED FROM THE EXPOSURE.

18                   IN THE CASE OF CIGARETTE SMOKING,  
19 THERE'S ACTUALLY NO DECLINING RISK. SO WHEN PEOPLE  
20 STOP SMOKING, THEIR RISK DOES NOT DECLINE, IT WAS  
21 PREVIOUSLY THOUGHT SO, BUT IT DOES NOT.

22                   WHAT ACTUALLY HAPPENS IS THEIR RISK  
23 STOPS GOING UP.

24                   SO IF PEOPLE, FOR EXAMPLE, SMOKE  
25 CIGARETTES FROM CHILDHOOD, AS THIS MAN DID, AND  
26 CONTINUE TO SMOKE ALL THEIR LIVES, THE RISK  
27 CONTINUES TO RISE ALL THEIR LIVES.

28                   THIS, I SHOULD ACTUALLY EITHER SHOW

1 ON THE BOARD OR SHOW ON THE COMPUTER. I EITHER  
2 SHOULD DRAW IT, BECAUSE IT IS HARD TO UNDERSTAND --  
3 IS THERE SOME WAY I COULD DRAW IT?

4 Q. WHAT WOULD YOU RATHER DO, DOCTOR?

5 A. I WOULD RATHER DRAW IT, PERSONALLY,  
6 IF THAT'S POSSIBLE.

7 Q. WE GOT ALL THESE COMPUTERS, BUT I  
8 DON'T KNOW THAT WE HAVE ANYTHING TO DRAW WITH?

9 A. I WILL SHOW IT THEN, IT'S OKAY.

10 Q. WAIT A SECOND.

11 THIS IS REALLY LOW TECH, BUT WE CAN  
12 DO THIS. YOU CAN DRAW ON THIS.

13 THE COURT: YOU MAY STEP DOWN.

14 I HOPE YOU BROUGHT A PENCIL.

15 MR. PIUZE: ALL THESE PEOPLE ARE PART OF  
16 OUR JURY.

17 THE WITNESS: I AM GOING TO SHOW YOU ONE  
18 WAY THAT SCIENTISTS AND DOCTORS DEMONSTRATE RISK AS  
19 LIFE GOES ON.

20 LET'S SAY A PERSON IS BORN HERE AT  
21 AGE ZERO AND LIVES TO AGE 75.

22 SO LIFE IS REPRESENTED BY THE  
23 MOVEMENT ALONG WHAT WE CALL THE "X" AXIS. THIS IS  
24 THE "X" AXIS. AND THIS IS THE "Y" AXIS, SO LIFE IS  
25 SHOWN THIS WAY, AS THE YEARS GO BY.

26 LET'S SAY THAT ON THE "Y" AXIS, WE  
27 ARE GOING TO DEMONSTRATE THE RISK OF DYING OF LUNG  
28 CANCER, WITH THE UNDERSTANDING THAT EVERYBODY DIES

1 OF SOMETHING, AT LEAST UNTIL TODAY.

2 IF A PERSON STARTS SMOKING EARLY IN  
3 LIFE, SAY, AT THE AGE OF 10 OR 14, THEIR RISK OF  
4 GETTING LUNG CANCER AND DYING OF IT IS PRACTICALLY  
5 NOTHING, BECAUSE ON THE FIRST DAY AFTER HE SMOKES,  
6 THE RISK IS VERY SMALL.

7 IF WE ARE GOING TO TALK ABOUT,  
8 LET'S SAY, 10 PERCENT OVER HERE OR SOME NUMBER,  
9 THIS WOULD BE A PERCENTAGE.

10 AND I AM NOT GOING TO STICK EXACTLY  
11 TO THE PERCENTAGES BUT I AM GOING TO USE A ROUGH.

12 SO THE PERCENT OF GETTING LUNG  
13 CANCER AND DYING AT THE AGE HAVE 14, THE DAY AFTER  
14 A PERSON STARTS SMOKING CIGARETTES, IS NOTHING.  
15 THERE IS NO RISK.

16 THE RISK AT AGE 15 IS STILL  
17 NOTHING. IT'S PRACTICALLY ZERO.

18 BUT AS A PERSON GOES THROUGH LIFE,  
19 AND STARTS GETTING INTO THE 40'S AND 50'S, THEIR  
20 RISK DOES THIS (INDICATING). SO THAT BY THE AGE OF  
21 75, AND I HAVEN'T DRAWN IT EXACTLY CORRECT, I COULD  
22 SHOW IT BETTER. THAT'S REALLY NOT PERFECT, BUT BY  
23 THE AGE OF 75, THE RISK OF GETTING LUNG CANCER AND  
24 DYING EVERY PARTICULAR YEAR, STARTS TO BE ENORMOUS.

25 IF A PERSON SMOKES CIGARETTES,  
26 STARTS AT THE SAME AGE, ABOUT 14, BUT STOPS  
27 SMOKING, AND IN, LET'S SAY, 60, THEY DON'T MAKE IT  
28 TO 75, THEY DON'T CONTINUE TO SMOKE UNTIL 75, THEY

1 STOP, ACTUALLY, AT AGE 60, WHAT HAPPENS TO THE  
2 RISK?

3 THE RISK LOOKS SOMETHING LIKE THAT.  
4 NOW, WHAT THIS MEANS IS, THAT BY  
5 THE TIME YOU GET TO THE AGE 75, THE TIME YOU GET TO  
6 THE AGE 75, THE RISK IS SIGNIFICANTLY LESS THAN IT  
7 WOULD HAVE BEEN IF A PERSON HAD CONTINUED TO SMOKE  
8 TO 75.

9 SO WE HAVE TWO PEOPLE, ONE PERSON  
10 STOPPED AT AGE 60 AND ONE PERSON WHO NEVER STOPPED.

11 THE PERSON WHO'S CONTINUED TO SMOKE  
12 TO AGE 75 IS HUGE, THE CHANCES OF GETTING LUNG  
13 CANCER AND DYING OF IT ARE BIG. THE PERSON WHO  
14 STOPPED SMOKING AT AGE 60, THE RISK OF LUNG CANCER  
15 IS STILL VERY BIG, BUT IT IS LESS THAN FROM THE  
16 PERSON WHO CONTINUED TO SMOKE TO 75.

17 WHY DO WE SAY IT IS STILL VERY BIG?  
18 BECAUSE FOR THE PERSON WHO NEVER SMOKED, THE RISK  
19 IS ALMOST ZERO THROUGHOUT LIFE. IT ISN'T ZERO BUT  
20 IT IS CLOSE TO IT.

21 SO, REMEMBER, I SAID ALMOST  
22 EVERYBODY WHO GETS LUNG CANCER IS A MAN, IS A  
23 CIGARETTE SMOKER. IT'S NOT A HUNDRED PERCENT.  
24 IT'S 95 PERCENT, 92 PERCENT. IT DEPENDS ON WHICH  
25 STUDY YOU LOOK AT.

26 SO SOME OF THESE LUNG CANCERS IN  
27 NON-SMOKERS ARE DOWN HERE IN THIS GROUP THAT HAD A  
28 SMALL RISK IN LIFE.

1                    BUT THE RISK FOR PERSONS WHO  
2 STOPPED SMOKING AT 60 OR WHO NEVER STOPPED, OR FOR  
3 THAT MATTER, THE PERSON WHO STOPPED SMOKING AT 50  
4 OR 40, THE RISK NEVER GOES AWAY.

5                    IT JUST DOESN'T CONTINUE TO RISE.

6                    Q.     SO WHEN WE SAY, WHEN I SAID "NO  
7 DECLINING RISK, " THAT'S ANOTHER WAY OF SAYING, ONCE  
8 YOU STOP, IT NEVER GOES AWAY?

9                    A.     RIGHT. BECAUSE, SEE, THE CONCEPT  
10 IN THE PAST -- AND THE MATHEMATICS ARE A LITTLE  
11 COMPLICATED -- BUT THE CONCEPT IN THE PAST WAS THAT  
12 THIS IS UPSIDE DOWN.

13                    THE PEOPLE USED TO REVERSE THE  
14 CHART AND THEY THOUGHT THAT THE RISK WAS  
15 DIMINISHING, SEE, BUT IT DOESN'T. IT'S NOT THAT IT  
16 DIMINISHES, IT JUST DOESN'T CLIMB AT THE SAME RATE  
17 OF INCLINE.

18                    SO WHAT ACTUALLY IS HAPPENING IS  
19 THAT WHEN A PERSON STOPS AT 60 OR 50 OR 40, THEIR  
20 RISK IS FROZEN AND THE SCIENTISTS CALL THIS A  
21 FAMILY OF CURVES.

22                    THIS IS LIKE FATHER AND MOTHER AND  
23 THE SON AND THE DAUGHTER. THAT'S WHAT THEY CALL A  
24 FAMILY OF CURVES RISING ALONG PARALLEL WITH EACH  
25 OTHER, BUT SOME ARE A LOT WORSE THAN OTHERS.

26                    SO THERE'S NO DIMINISHING RISK.  
27 THE RISK DOES NOT ACTUALLY DECLINE. THE RISK IS  
28 FROZEN. IT JUST DOESN'T RISE AS BADLY AS IT WOULD

1 IF THE PERSON CONTINUED TO SMOKE.

2 Q. THANK YOU.

3 YOUR HONOR, I AM GOING TO MARK THIS  
4 PAPER HERE, 8050.02.

5 THE COURT: MARKED.

6

7 (EXHIBIT 8050.02, DIAGRAM  
8 DRAWN BY DR. FEINGOLD,  
9 MARKED FOR I. D.)

10

11 Q BY MR. PIUZE: NOW, YOU KNOW THE  
12 NAME PETO?

13 A. I DO.

14 Q. HALPERN?

15 A. YES.

16 Q. ARE THEY SCIENTISTS WHO HAVE GIVEN  
17 YOU OR US OR THE WORLD THIS INFORMATION THAT YOU  
18 JUST RELAYED TO THE JURY?

19 A. YES, SIR. IT WAS REALLY FIRST  
20 PUBLISHED BY DR. HALPERN IN THE JOURNAL OF THE  
21 NATIONAL CANCER INSTITUTE IN 1993. IF YOU PERMIT  
22 ME TO SHOW WHAT HE SHOWED, THERE IS -- REMEMBER,  
23 THAT'S WHAT I WAS TALKING ABOUT, THE FAMILY OF  
24 CURVES. THIS IS ACTUALLY FROM A PAPER BY DR. PETO.  
25 AND LET ME JUST CHANGE THE SIZE A LITTLE BIT SO YOU  
26 CAN SEE THE WHOLE THING.

27 Q. AS YOU ARE CHANGING THE SIZE, TELL  
28 US, DR. PETO AND DR. DOLL WORKED TOGETHER?

1           A.     YES, THEY DID. DOLL COLLABORATED  
2 ON THIS PARTICULAR STUDY.

3                     WHAT YOU SEE HERE IS THE FAMILY OF  
4 CURVES, THE RED LINE RISING TO ABOUT A 16 PERCENT  
5 CUMULATIVE RISK BY AGE 75, AND AS YOU CAN SEE THIS  
6 IS THE NEXT ONE, FOR AGE 60, THIS IS THE NEXT ONE  
7 FOR AGE 50. AND THE NEXT ONE FOR AGE 40 AND THE  
8 NEXT ONE FOR AGE 30 AND THE LOWEST ONE IS FOR  
9 LIFE-LONG NON-SMOKERS.

10                    SO THIS COMES FROM, ACTUALLY, FROM  
11 A CULMINATION OF DATA FROM GREAT BRITON AND THE  
12 UNITED STATES.

13                    DR. PETO USED THE DATA FROM THE  
14 AMERICAN CANCER SOCIETY AND DATA FROM GREAT BRITON.  
15 THE AMERICAN CANCER SOCIETY DATA LOOKS VIRTUALLY  
16 IDENTICAL.

17                    AND THE AMERICAN CANCER SOCIETY  
18 DATA WAS PUBLISHED IN 1993 AND THIS PAPER BY PETO  
19 WAS PUBLISHED IN THE YEAR 2000.

20           Q.     THANK YOU.

21                    ARE WE DONE TALKING ABOUT YOUR  
22 OPINIONS REGARDING MR. BOEKEN'S DISEASE, HOW IT  
23 HAPPENED, HOW IT SPREAD, HOW IT --

24           A.     YES.

25           Q.     REMIND US, THE THIRD AREA OF YOUR  
26 TESTIMONY WAS WHAT, PLEASE?

27           A.     I IDENTIFIED ANOTHER AREA WHICH I  
28 SAID WAS THE TOBACCO INDUSTRY INTERNAL DOCUMENTS

1 COMPARED TO PUBLIC STATEMENTS MADE BY THE TOBACCO  
2 INDUSTRY. AND I FLASHED ON THE BOARD THE POSTER,  
3 THE INTRODUCTORY POSTER ENTITLED "TOBACCO, INDUSTRY  
4 INTERNAL DOCUMENTS COMPARED TO PUBLIC STATEMENTS. "

5 THIS FIRST PAGE IS ACTUALLY FROM  
6 LECTURES THAT I HAVE GIVEN ALONG THESE LINES.

7 Q. NOW, YOU TOLD US YESTERDAY WHERE  
8 YOU GOT THE PUBLIC DOCUMENTS WHICH WE WERE  
9 DISCUSSING. LET'S HEAR ABOUT THE INTERNAL  
10 DOCUMENTS THAT WE ARE ABOUT TO DISCUSS, PLEASE.

11 A. I HAVE OBTAINED THESE DOCUMENTS  
12 FROM A VARIETY OF SOURCES. AT FIRST, I OBTAINED  
13 THEM FROM THE WEB SITE, THAT IS, AN INTERNET WEB  
14 SITE AND CD FROM THE UNIVERSITY OF CALIFORNIA AT  
15 BERKELEY. THAT WAS ONE SET OF DOCUMENTS THAT  
16 BECAME AVAILABLE IN 1994 OR 5, I THINK IT WAS.

17 THIS WAS FROM ONE PARTICULAR  
18 TOBACCO COMPANY CALLED BROWN & WILLIAMSON AND  
19 CONTAINED MULTIPLE DOCUMENTS PERTAINING TO OTHER  
20 COMPANIES.

21 AFTER I READ THOSE DOCUMENTS AND  
22 THE "JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION"  
23 REPORT ABOUT THOSE DOCUMENTS --

24 Q. REMIND US WHAT YEAR THAT WAS,  
25 PLEASE.

26 A. 1995.

27 Q. SO IN '95 THE JOURNAL OF THE  
28 AMERICAN MEDICAL ASSOCIATION --

1 MR. CARLTON: OBJECTION TO RESTATING THE  
2 TESTIMONY.

3 THE COURT: SUSTAINED.

4 Q BY MR. PIUZE: OKAY, WHAT ELSE,  
5 NEXT?

6 THE COURT: ONE AT A TIME.

7 MR. LEITER: SORRY.

8 THE WITNESS: THEN I BEGAN TO RECEIVE,  
9 BECAUSE I WAS WORKING TO ISSUES OF TOBACCO INDUSTRY  
10 SCIENTIFIC KNOWLEDGE, AND I SAID, YESTERDAY, PEOPLE  
11 SENT ME MEDICAL DOCUMENTS OR SCIENTIFIC DOCUMENTS  
12 FROM WITHIN THE TOBACCO INDUSTRY THAT HAD NEVER  
13 PREVIOUSLY SEEN --

14 MR. CARLTON: OBJECTION TO THE  
15 CHARACTERIZATION AND LACK OF FOUNDATION.

16 THE COURT: OVERRULED.

17 PEOPLE SENT DOCUMENTS TO YOU, THE  
18 CHARACTERIZATION OF WHETHER OR NOT THEY SAW THEM  
19 MAY BE A PROBLEM, SIR.

20 THE WITNESS: YES, YOUR HONOR.

21 DOCUMENTS WERE SENT TO ME BY  
22 ATTORNEYS. DOCUMENTS WERE SENT TO ME BY ATTORNEYS  
23 REPRESENTING VARIOUS STATES.

24 I RECEIVED DOCUMENTS THAT WERE PART  
25 OF LITIGATION IN MINNESOTA.

26 I SUBSEQUENTLY, EVENTUALLY, BEGAN  
27 TO RECEIVE DOCUMENTS DIRECTLY FROM A VARIETY OF  
28 INTERNET WESTBOUND PAGES THAT FIRST CREATED, FOR

1 EXAMPLE, BY BLUE CROSS, BLUE SHIELD OF MINNESOTA,  
2 SUBSEQUENTLY BY A VARIETY OF THE TOBACCO COMPANIES  
3 THEMSELVES.

4 I SAW THE DOCUMENTS. I UNDERSTOOD  
5 WHERE THEY CAME FROM, WHO'S DOCUMENTS THEY WERE. I  
6 READ THEM, STUDIED THEM AND COMMENTED UPON THEM FOR  
7 A VARIETY OF ENTITIES.

8 Q. AND THE VARIETY OF ENTITIES WOULD  
9 BE ---YESTERDAY YOU MENTIONED THE U. S. DEPARTMENT  
10 OF JUSTICE AND THE F. B. I. ARE THEY INCLUDED IN  
11 THIS LIST OF ENTITIES TO WHOM YOU COMMENTED?

12 A. I SPENT QUITE SOMETIME PRESENTING  
13 MY UNDERSTANDING OF THESE DOCUMENTS IN WASHINGTON  
14 TO THE SPECIAL MEETING --

15 MR. CARLTON: OBJECT, YOUR HONOR, LACK OF  
16 RELEVANCE.

17 THE COURT: THE ANSWER IS THAT YOU -- DID  
18 YOU MAKE PRESENTATIONS TO THESE ENTITIES, YES OR  
19 NO?

20 THE WITNESS: YES, YOUR HONOR, I DID.

21 THE COURT: THANK YOU.

22 Q BY MR. PIUZE: NOW, BEFORE WE SHOW  
23 ANY DOCUMENTS OR I ASK YOU QUESTIONS ABOUT  
24 DOCUMENTS, WHY DID YOU SAY "COMPARED TO," WHAT'S  
25 THE IDEA, PLEASE?

26 A. THE CONTRAST, IN MY OPINION, AS AN  
27 OVERALL VIEW OF THIS MASS OF MATERIAL THAT I HAVE  
28 STUDIED FOR ALL THESE YEARS, MY OPINION IS THAT,

1 THE TOBACCO INDUSTRY INTERNALLY HAD VERY PRECISE  
2 KNOWLEDGE THAT THERE WERE SUBSTANCES WITHIN THEIR  
3 PRODUCTS THAT CAUSED LUNG CANCER.

4 AND AT THE VERY SAME TIME, IN THE  
5 VERY SAME ERAS, PUBLICLY MADE STATEMENTS THAT THIS  
6 WAS NOT TRUE, PUBLICLY MADE STATEMENTS THAT THE  
7 CAUSE OF LUNG CANCER WAS UNKNOWN AND THAT CIGARETTE  
8 SMOKING DID NOT CAUSE LUNG CANCER.

9 THEY MADE THESE STATEMENTS IN THE  
10 FORM OF ADVERTISEMENTS, OF PRESS RELEASES, AND OF  
11 SWORN TESTIMONY TO CONGRESS.

12 Q. WELL, I HAVE GOT -- YOU HAVE GOT  
13 YOUR COMPUTER AND I HAVE GOT MY WAY. AND THEY  
14 DON'T ALWAYS OVERLAP. SO I AM GOING TO ASK YOU TO  
15 SHOW SOME OF THE THINGS FROM THE COMPUTER. BUT I  
16 WILL GIVE YOU AND EVERYONE FAIR WARNING. I MAY  
17 INTERRUPT TO SHOW SOME IN A MORE OLD-FASHIONED  
18 MANNER, THE DOCUMENTS HERE AND ASK YOU YOUR  
19 OPINIONS ON THAT.

20 ARE YOU READY?

21 A. YES, SIR.

22 Q. SO WHAT WOULD YOU LIKE TO SHOW US  
23 HERE, PLEASE.

24 A. THIS IS THE INTRODUCTORY PAGE OF  
25 ONE OF THE FIRST DOCUMENTS I EVER READ, FROM A  
26 STORY.

27 IT WAS WRITTEN BY A MAN NAMED  
28 CLAUDE TEAGUE WHO WAS, AND THESE ARE MY WORDS ON

1 THE SIDE. I KNOW HE WAS THE MANAGER OF THE  
2 CHEMICAL RESEARCH DIVISION OF THE TOBACCO COMPANY  
3 NAMED RJR REYNOLDS TOBACCO.

4 AND ON FEBRUARY 2ND, 1953, HE  
5 PRODUCED AN INTERNAL DOCUMENT WHICH WAS NOT  
6 PUBLICLY PUBLISHED.

7 THAT DOCUMENT WAS CALLED SURVEY OF  
8 CANCER RESEARCH WITH EMPHASIS UPON POSSIBLE  
9 CARCINOGENS FROM TOBACCO.

10 AND HE BEGINS THE DOCUMENT BY  
11 SAYING "BECAUSE OF THE POSSIBLE CONNECTION BETWEEN  
12 TOBACCO SMOKING AND CANCER OF THE RESPIRATORY  
13 SYSTEM," THAT MEANS LUNG, "IT IS WELL FOR  
14 MANUFACTURERS OF TOBACCO PRODUCTS TO BE AWARE OF  
15 PAST AND PRESENT CANCER RESEARCH."

16 HE STARTS, THAT'S HIS WAY OF  
17 BECOMING -- AND HE GOES OVER THE ISSUE OF CANCER  
18 RESEARCH.

19 NOW, I JUST WANT TO EMPHASIZE THAT  
20 THIS WAS NOT A CASUAL REVIEW.

21 HERE, FOR EXAMPLE, ARE THE ACTUAL  
22 STRUCTURES OF A VARIETY OF CHEMICALS THAT TEAGUE  
23 STATED WERE PRESENT IN CIGARETTE SMOKE.

24 THE NUMBER 2 IS 3,4-BENZOPYRENE,  
25 WHICH IS ONE OF THE MOST CARCINOGENIC, MOST  
26 POWERFUL CANCER-CAUSING CHEMICALS KNOWN TO MAN.

27 AND TEAGUE KNEW THAT THIS  
28 CANCER-CAUSING PRESENCE WAS PRESENT IN CIGARETTE

1 SMOKE.

2                   HERE HE DISCUSSES IT. THIS IS ON  
3 PAGE 12 OF HIS REPORT. HE TALKS ABOUT DIFFERENT  
4 PEOPLE INCLUDING ROFFO, R-O-F-F-O.

5                   ROFFO WAS A SCIENTIST WHO USED  
6 ANIMALS TO DO RESEARCH IN THE 1940'S. AND THAT WAS  
7 ACTUALLY REVIEWED BY VARIOUS PEOPLE INCLUDING  
8 OSCHNER AND DEBAKEY.

9                   HE SAID THAT THERE WERE POLYNUCLEAR  
10 AROMATIC COMPOUNDS.

11                   NOW, AN AROMATIC COMPOUND IS A KIND  
12 OF ORGANIC CHEMICAL. AND I DON'T WANT TO GO TOO  
13 MUCH INTO ORGANIC CHEMISTRY, WHICH IS A WHOLE  
14 STORY, BUT AN ORGANIC CHEMICAL IS A CHEMICAL  
15 CONTAINING CARBON ATOMS. AND MORE SPECIFICALLY,  
16 AROMATIC COMPOUNDS ARE CHEMICALS THAT CONTAIN  
17 MULTIPLE BENZENE RINGS. AND BENZENE RING IS THIS.  
18 YOU SEE THE RINGS?

19                   THESE ARE GROUPS OF ZINC CARBON  
20 ATOMS HOLDING HANDS, IF YOU WISH. AND THERE MAY BE  
21 SUBSTITUTIONS WHERE THAT'S A SUBSTITUTED  
22 HYDROCARBON.

23                   SO CERTAIN CHEMICALS LIKE HYDROGEN  
24 OR NITROGEN MAY BE IN THE RUNNING.

25                   SO POLYNUCLEAR AROMATIC COMPOUNDS  
26 OCCUR IN THE PYROLYTIC PRODUCTS OF TOBACCO.

27                   THE PYROLYTIC PRODUCTS, WHEN YOU  
28 BURN TOBACCO, SMOKE IT, THESE CHEMICALS ARE PRESENT

1 IN THAT MATERIAL.

2                   HERE IS FROM HIS 1953 REPORT, THE  
3 SAME REPORT, AND IT COMES TO HIS CONCLUSIONS.  
4 THAT'S THE ACTUAL PAGE. AND I HAVE ACTUALLY MADE  
5 IT EASIER TO READ BY SHOWING IT ON THESE SLIDES BUT  
6 IT IS THE SAME THING, EXACTLY.

7                   YOU SEE THE INCREASED INCIDENCE OF  
8 CANCER OF THE LUNG. THAT'S HOW IT STARTS. AND  
9 HERE IT IS, THE INCREASED INCIDENCE OF CANCER OF  
10 THE LUNG IN MAN, WHICH HAS OCCURRED DURING THE LAST  
11 HALF CENTURY.

12                   REMEMBER, HE IS WRITING IN '52 --  
13 ACTUALLY, '53. SO IT IS EXACTLY THE LAST HALF  
14 CENTURY.

15                   HE SAID, "LUNG CANCER WAS VIRTUALLY  
16 UNKNOWN IN THE UNITED STATES IN THE 1800'S," SO HE  
17 IS RIGHT HERE, "IS PROBABLY DUE TO NEW OR INCREASED  
18 CONTACT WITH CARCINOGENIC STIMULI," IT SAYS  
19 "ARCINOGENIC," IT SHOULD BE "CARCINOGENIC." IT'S A  
20 MISTAKE.

21                   "THE CLOSELY PARALLEL INCREASE,"  
22 LET ME JUST GO BACK TO SHOW THAT THAT'S WHERE HE  
23 REALLY SAYS THIS.

24                   YOU SEE, THE SECOND SENTENCE, "THE  
25 CLOSELY PARALLEL INCREASE IN CIGARETTE SMOKING --  
26 THE CLOSELY PARALLEL INCREASE IN CIGARETTE SMOKING  
27 HAS LED TO THE SUSPICION THAT TOBACCO SMOKING IS AN  
28 IMPORTANT ETIOLOGIC FACTOR IN INDUCTION OF PRIMARY

1 CANCER OF THE LUNG. "

2 THAT'S EXACTLY WHAT THE OTHER  
3 SCIENTISTS WERE SAYING PUBLICLY, THIS IS THE ISSUE  
4 OF PARALLELISM

5 SO INSIDE THE TOBACCO COMPANY, RJR,  
6 CLAUDE TEAGUE WAS THE MANAGER OF RESEARCH, CHEMICAL  
7 RESEARCH FOR RJR, KNOWS THAT CIGARETTE SMOKING HAS  
8 INCREASED, THAT THERE IS A PARALLEL BETWEEN THE  
9 LUNG CANCER INCIDENTS AND RAISES THE ISSUE OF THE  
10 POLYNUCLEAR AROMATIC HYDROCARBONS THAT ARE PRESENT  
11 IN CIGARETTE SMOKE.

12 NOW, THERE WERE MULTIPLE OTHER  
13 ARTICLES OF THIS TYPE. BUT I HAVEN'T INCLUDED  
14 EVERY SINGLE ONE.

15 THE COURT: HANG ON A SECOND HERE.

16 PLEASE, LET'S GO BACK TO MR.  
17 TEAGUE.

18 THE WITNESS: YES.

19 Q BY MR. PIUZE: I HAVE THE LAST  
20 PAGE OF HIS REPORT, PAGE 15.

21 A. YES, I AM FAMILIAR WITH IT.

22 Q. SO HERE WE HAVE THE COVER, SURVEY  
23 OF CANCER RESEARCH, POSSIBLE CARCINOGEN -- SAY IT  
24 FOR ME?

25 A. IT'S POSSIBLE -- WITH EMPHASIS UPON  
26 POSSIBLE CARCINOGENS FROM TOBACCO. THAT MEANS WITH  
27 SPECIAL ATTENTION TO THE POSSIBILITY OF  
28 CANCER-CAUSING SUBSTANCES IN TOBACCO.

1 Q. I AM JUST SHOWING THIS AS THE SAME  
2 DOCUMENT, BECAUSE THIS IS 2 FEBRUARY 1953, CLAUDE  
3 TEAGUE?

4 A. IT IS THE SAME DOCUMENT.

5 Q. WHICH GETS ME TO WHERE I AM GOING  
6 NOW, THE LAST PAGE.

7 A. WHICH IS MY HIGHLIGHT.

8 Q. WHICH IS YOUR HIGHLIGHT.

9 AND I AM GOING TO READ THIS,  
10 BECAUSE IT ISN'T ALL THAT CLEAR AND THEN ASK YOU TO  
11 COMMENT.

12 (C), IT SAYS UNDER  
13 "RECOMMENDATIONS. "

14 "IT IS RECOMMENDED THAT ALL  
15 TOBACCO ADDITIVES, I. E. , FLAVORANTS,  
16 AND HUMECTANTS, USED BY THIS COMPANY  
17 BE EXAMINED CAREFULLY WITH RESPECT TO  
18 THEIR POSSIBLE ROLES AS CARCINOGENS OR  
19 CARCINOGEN PRODUCING AGENTS. "

20 LET ME STOP THERE.

21 GOOD IDEA?

22 A. YES. HE COMPLAINED IN THE BODY OF  
23 HIS REPORT, SEVERAL PAGES BEFORE THAT, HE  
24 COMPLAINED THAT NOBODY HAD GIVEN HIM THE LIST OF  
25 THE ADDITIVES IN THEIR, HIS OWN PRODUCT, HIS OWN  
26 COMPANY'S PRODUCT. HE WASN'T SURE ABOUT THE  
27 POTENTIAL POTENCY OF THE ADDITIVES, OF COURSE, SO  
28 THIS WAS ANOTHER ASPECT THAT HE WANTED TO KNOW

1 ABOUT.

2 Q. (READING)

3 (D) "IN VIEW OF THE FACTS  
4 PRESENTED IN THIS REPORT, IT IS  
5 RECOMMENDED THAT MANAGEMENT TAKE  
6 COGNISANCE OF THE PROBLEM AND ITS  
7 IMPLICATIONS TO OUR INDUSTRY AND THAT  
8 POSITIVE RESEARCH ACTION BE PLANNED  
9 AND INITIATED ATE WITHOUT DELAY. "

10 GOOD IDEA?

11 A. IT CERTAINLY WAS AT THE TIME. AND  
12 I THOUGHT THAT IT WAS ALSO THAT THERE WERE  
13 IMPLICATIONS FOR THE CUSTOMERS. IT WASN'T JUST  
14 IMPLICATIONS FOR THE CONSUMER -- FOR THE COMPANY.  
15 BUT WHAT HE WAS SAYING IS, THE CANCER CAUSING  
16 SUBSTANCES --

17 MR. CARLTON: OBJECTION, YOUR HONOR, THE  
18 DOCUMENT SPEAKS FOR ITSELF.

19 THE COURT: SUSTAINED.

20 Q BY MR. PIUZE: SO WHEN HE SAYS,  
21 LET'S DO SOME RESEARCH HERE, GOOD IDEA?

22 A. I THINK SO. I WOULD HAVE ADVISED  
23 IT.

24 Q. NOW, WHAT IS THE NEXT DOCUMENT THAT  
25 YOU WANT TO SHOW US, THE FRANK STATEMENT?

26 A. YES.

27 I WAS GOING TO COMPARE THIS  
28 KNOWLEDGE FROM 1953 BY A LEAD SCIENTIST IN RJR WITH

1 WHAT WAS ACTUALLY PUBLICLY STATED IN 1954.

2 Q. NOW, BEFORE YOU DO THAT, GIVE ME A  
3 MINUTE HERE.

4 RJR IS NOT HERE. RJR DOESN'T MAKE  
5 MARLBOROS. RJR ISN'T BEING SUED.

6 SEE, HERE IS THE FRANK STATEMENT  
7 AND WE HAVE A SMALLER VERSION OF THIS WITH A  
8 PLAINTIFF'S NUMBER ON IT, BUT I DON'T KNOW WHAT IT  
9 IS RIGHT NOW AND HERE'S THE FRANK STATEMENT.

10 AND THE REASON I AM INTERRUPTING  
11 YOU HERE, THE FRANK STATEMENT WAS PUBLISHED ON  
12 JANUARY 4, '54, AT THE BOTTOM HERE, IT TELLS WHO  
13 PUBLISHES IT.

14 WHO PUBLISHES IT?

15 A. ALL THE DIFFERENT TOBACCO  
16 COMPANIES, INCLUDING PHILIP MORRIS.

17 Q. IT'S PUBLISHED BY, I AM LOOKING AT  
18 SOMETHING CALLED THE TOBACCO INDUSTRY RESEARCH  
19 COMMITTEE.

20 A. THE NEWLY FORMED ORGANIZATION FOR  
21 THOSE COMPANIES. IN OTHER WORDS, THE TOBACCO  
22 PRODUCING COMPANIES CREATED THE TOBACCO INDUSTRY  
23 RESEARCH COMMITTEE, WHICH, EXACTLY, I SHOULD HAVE  
24 SAID, IT WAS A T. I. R. C. THAT PUBLISHED IT FOR  
25 THE TOBACCO INDUSTRY.

26 Q. SO LET'S JUST STOP THERE FOR A  
27 SECOND.

28 THE T. I. R. C. WAS FORMED BY THE

1 INDIVIDUAL TOBACCO COMPANIES AND YOU SAY THAT  
2 BECAUSE YOU ARE A PULMONOLOGIST?

3 A. NO, BECAUSE I HAVE SEEN THE LETTERS  
4 AND THE TELEGRAMS THAT DESCRIBE THE PLAN TO CREATE  
5 THE ORGANIZATION AND THEN THE ACTUAL CREATION OF  
6 THE ORGANIZATION PLUS PUBLIC STATEMENTS OF THE  
7 TOBACCO INDUSTRY SAYING THAT THE T. I. R. C. EXISTED.  
8 PEOPLE CALL IT THE T. I. R. C.

9 Q. WHEN DID THE T. I. R. C. TOBACCO  
10 INDUSTRY RESEARCH COMMITTEE COME INTO BEING?

11 A. THAT WAS THE STATEMENT OF THEIR  
12 CREATION, THE FRANK STATEMENT.

13 Q. ANYWAY, COMING, BEFORE WE GET TO  
14 THE MEAT OF IT, COMING BACK TO THIS, "TOBACCO  
15 RESEARCH COMMITTEE, 5400 EMPIRE STATE BUILDING, NEW  
16 YORK, NEW YORK, AND THEN IT TALKS ABOUT THE  
17 SPONSORS.

18 AND COULD YOU JUST READ IT ONCE,  
19 PLEASE. IF YOU HAVE GOT IT ON THE COMPUTER YOU CAN  
20 READ IT OFF THERE.

21 A. I CAN'T READ IT. IT'S TOO SMALL.  
22 I CAN'T READ ALL THE DIFFERENT COMPANIES.

23 Q. HERE YOU GO.

24 A. THE AMERICAN TOBACCO COMPANY, I  
25 CAN'T QUITE SEE IT, I AM SORRY, THE VARIOUS TOBACCO  
26 PRODUCERS, BURLEY TOBACCO COOPERATIVE, THOSE ARE  
27 PEOPLE WHO MADE THE TOBACCO, LORILLARD COMPANY,  
28 PHILIP MORRIS, RJR, TOBACCO ASSOCIATES, UNITED

1 STATES TOBACCO, BURLEY AUCTION WAREHOUSE  
2 ASSOCIATION, BROWN & WILLIAMSON.

3 Q. IS THAT IT?

4 A. THERE ARE A COUPLE OTHERS I CAN'T  
5 QUITE READ.

6 Q. SO THE FRANK STATEMENT FROM EARLY  
7 JANUARY 1954, YOU CALLED IT AN ANNOUNCEMENT OF THE  
8 CREATION OF THE T. I. R. C. ?

9 A. YES.

10 Q. AND WHY DON'T YOU -- THANK YOU.  
11 WHY DON'T I SHOW YOU WHAT YOU WERE  
12 GOING TO SHOW

13 A. WELL, THIS IS THE ACTUAL PICTURE OF  
14 WHAT YOU JUST SAW

15 AND I HAD VARIOUS, YOU KNOW, THERE  
16 WERE VARIOUS PARTS OF THIS STATEMENT. IT COULD BE  
17 READ IN ITS ENTIRETY. I EMPHASIZED ONE OF THE  
18 INTRODUCTORY SENTENCES WHICH SAYS "WE," MEANING ALL  
19 THESE TOBACCO COMPANIES, "ACCEPT AN INTEREST IN  
20 PEOPLE'S HEALTH AS A BASIC RESPONSIBILITY PARAMOUNT  
21 TO EVERY OTHER CONSIDERATION IN OUR BUSINESS. "

22 THIS IS ANOTHER STATEMENT FROM THE  
23 REPORT ITSELF. "RECENT REPORTS ON EXPERIMENTS WITH  
24 MICE," THIS PERTAINS TO THE WYNDER GRAHAM CRONINGER  
25 MICE SKIN PAINTING REPORT FROM 1953, "HAVE GIVEN  
26 WIDE PUBLICITY TO A THEORY THAT CIGARETTE SMOKE IS  
27 IN SOME WAY LINKED WITH LUNG CANCER IN HUMAN  
28 BEINGS. "

1 AND THIS IS MORE FROM THEIR REPORT,

2 1954:

3 "THE MEDICAL RESEARCH OF  
4 RECENT YEARS INDICATES MANY POSSIBLE  
5 CAUSES OF LUNG CANCER. THERE IS NO  
6 AGREEMENT AMONG THE AUTHORITIES  
7 REGARDING WHAT THE CAUSE IS. "

8 I THINK THAT THAT WAS AN ACCURATE  
9 REPRESENTATION OF REALITY.

10 Q. HERE, LET ME SHOW YOU THE FRANK  
11 STATEMENT AGAIN.

12 I HAVE EXPLODED OUT, IN MY LOW TECH  
13 WAY, ANOTHER PARAGRAPH, AND IT SAYS "STATISTICS  
14 PURPORTING TO LINK THE DISEASE, " MEANING LUNG  
15 CANCER, "COULD APPLY WITH EQUAL FORCE TO ANY ONE OF  
16 MANY OTHER ASPECTS OF MODERN LIFE. INDEED, THE  
17 VALIDITY OF THE STATISTICS THEMSELVES IS QUESTIONED  
18 BY NUMEROUS SCIENTISTS. "

19 NOW, YOU MADE A COMMENT ON WHAT'S  
20 UP ON THE BOARD.

21 THIS IS TRUE?

22 A. NO, SIR, IT WAS NOT TRUE.

23 AND THERE WAS ABUNDANT INFORMATION,  
24 BOTH IN THE PUBLISHED LITERATURE TO PROVE THAT IT  
25 WASN'T TRUE TO ANY RESPONSIBLE OBSERVER. THAT WAS  
26 THE LANGUAGE USED BY THE "NEW ENGLAND JOURNAL OF  
27 MEDICINE. "

28 IF ONE WAS TO LOOK AT THE

1 STATISTICS AND THEN TAKE THE BIOLOGICAL COHERENCE  
2 INFORMATION FROM THE ANIMAL SKIN PAINTING  
3 EXPERIMENTS AND FROM OTHER EXPERIMENTS THAT HAD  
4 BEEN DONE PRIOR TO THAT AND PUBLISHED PRIOR TO  
5 THAT, NOT ALL OF WHICH WAS SHOWED, ONE COULD NEVER,  
6 HONESTLY, MAKE THAT STATEMENT. IT'S -- IT  
7 CONSTITUTES A FALSEHOOD. IT'S UNTRUE.

8 Q. OKAY. WELL, I AM DONE WITH THE  
9 FRANK STATEMENT, IF YOU ARE.

10 A. SO AM I.

11 THE COURT: THEN LET'S TAKE A BREAK, IT'S  
12 10:30, LADIES AND GENTLEMEN. WE WILL SEE YOU AT  
13 QUARTER TILL.

14

15 (AT THIS TIME, A RECESS  
16 WAS TAKEN.)

17

18 (THE FOLLOWING PROCEEDINGS  
19 WERE HELD IN OPEN COURT IN  
20 THE PRESENCE OF THE JURY.)

21

22 THE COURT: OUR JURY PANEL IS WITH US,  
23 COUNSEL ARE PRESENT AS WELL. THE WITNESS IS ON THE  
24 STAND.

25

26

27

28 **ALLAN FEINGOLD,**  
**CALLED AS A WITNESS BY THE PLAINTIFF, HAVING BEEN**

1 PREVIOUSLY DULY SWORN, RESUMED THE WITNESS STAND  
2 AND TESTIFIED FURTHER AS FOLLOWS:

3 THE COURT: SIR, YOU UNDERSTAND YOU ARE  
4 STILL UNDER OATH.

5 THE WITNESS: YES, I DO.

6 THE COURT: MR. PIUZE.

7 MR. PIUZE: THANK YOU.

8

9 DIRECT EXAMINATION (RESUMED)

10

11 BY MR. PIUZE:

12 Q. READY?

13 A. I AM

14 Q. NEXT DOCUMENT, PLEASE.

15 A. THIS IS A DOCUMENT DATED APRIL  
16 23RD, 1958. IT'S FROM A DOCUMENT, ACTUALLY BY  
17 JETSON LINCOLN WHO WAS -- WHO HAD VARIOUS POSITIONS  
18 AT PHILIP MORRIS. HE WORKED THERE FOR VERY MANY  
19 YEARS. AMONG OTHER THINGS, HE WAS MANAGER OR  
20 ASSISTANT MANAGER OF MARKETING RESEARCH.

21 HE IS TALKING IN 1958 ABOUT  
22 BENZOPYRENE, WHICH IS -- WHICH WAS IDENTIFIED, FOR  
23 EXAMPLE, IN THE CLAUDE TEAGUE RJR DOCUMENT.  
24 BENZO(A)PYRENE, OR BENZOPYRENE IS A VERY STRONG,  
25 VERY POWERFUL CANCER-CAUSING SUBSTANCE WHICH  
26 TEAGUE, FOR EXAMPLE, AND OTHERS, HAD IDENTIFIED AS  
27 BEING PRESENT IN CIGARETTE SMOKE AND HERE YOU SEE  
28 HOW FAR LINCOLN SAYS IN A LETTER TO SOMEBODY AT

1 PHILIP MORRIS, INCLUDING GEORGE WEISSMAN WHO IS THE  
2 PRESIDENT OF PHILIP MORRIS, AND THE INDUSTRY SAID  
3 THAT BENZOPYRENE MUST BE REMOVED FROM MARLBORO AND  
4 PARLIAMENT OR SHARPLY REDUCED.

5 HE SAYS WE MUST DO THIS NOT BECAUSE  
6 WE THINK IT IS HARMFUL BUT SIMPLY BECAUSE THOSE WHO  
7 ARE IN A BETTER POSITION TO KNOW THAT, OURSELVES,  
8 SUSPECT THAT IT MAY BE HARMFUL.

9 THIS IS THE NEXT YEAR, BACK TO RJR  
10 FROM PHILIP MORRIS. THIS IS A DOCUMENT PRODUCED BY  
11 ANOTHER RJR SCIENTIST IN THE CHEMICAL RESEARCH  
12 DIVISION. HIS NAME IS ALAN RODGMAN.

13 THE TITLE OF THIS PREVIOUSLY SECRET  
14 DOCUMENT WAS THE OPTIMUM, MEANING THE BEST,  
15 COMPOSITION OF TOBACCO AND ITS SMOKE. IT IS DATED  
16 NOVEMBER 2ND, 1959.

17 RODGMAN BEGINS BY DESCRIBING THE  
18 HISTORY OF THE PRESENCE OF CANCER-PRODUCING  
19 SUBSTANCES IN CIGARETTE SMOKE. YOU SEE IT SAYS IN  
20 1954, THERE WAS THE FIRST REPORT OF POLYCYCLIC  
21 HYDROCARBON. THAT'S ANOTHER WAY OF SAYING  
22 POLYCYCLIC AROMATIC HYDROCARBON, 3,4-BENZOPYRENE IN  
23 CIGARETTE SMOKE.

24 AND SINCE THEN HE RECOGNIZED THAT  
25 THERE HAD BEEN VARIOUS OTHER COMPOUNDS WHICH WERE  
26 SIMILAR, SIMILARLY CANCER-CAUSING IDENTIFIED IN THE  
27 SMOKE OF CIGARETTES.

28 HE COMMENTS THAT EXPERIENCED --

1 MEDICAL EXPERIENCE HAS SHOWN THAT HUMAN BEINGS  
2 RESPOND TO SUCH CANCER-CAUSING SUBSTANCES IN THE  
3 SAME WAY THAT ANIMALS DO.

4 SO IF, FOR EXAMPLE, IN 1953, YOU  
5 PUT ONTO THE BACKS OF MICE A CANCER-CAUSING  
6 SUBSTANCE, AND THE MOUSE GETS A CANCER --

7 MR. CARLTON: OBJECTION, YOUR HONOR, CAN  
8 WE HAVE THE WITNESS CLARIFY WHEN HE IS STATING HIS  
9 OPINION.

10 THE COURT: FAIR ENOUGH. LET'S JUST BE  
11 CLEAR ABOUT THAT.

12 THE WITNESS: YES. THIS OPINION IS BEING  
13 STATED AS IT IS SHOWN IN THE TOP OF THE POSTER,  
14 11/2/59.

15 BUT RODGMAN IS DISCUSSING VARIOUS  
16 ARTICLES THAT SHOW THAT CANCER CAN BE PRODUCED IN  
17 ANIMALS WITH THE MATERIAL THAT WAS TAKEN FROM  
18 CIGARETTES, THAT CONTAINS, FOR EXAMPLE, BENZPYRENE,  
19 A POWERFUL CANCER-CAUSING SUBSTANCE.

20 SO IF YOU TAKE MATERIAL FROM  
21 CIGARETTES, WHICH, HE SAYS, WE ARE BACK HERE, HE  
22 SAYS, IS PRESENT IN CIGARETTE SMOKE, AND THERE ARE  
23 60 OTHER COMPOUNDS PRESENT IN CIGARETTE SMOKE THAT  
24 CAUSE CANCER, OR SIMILAR TO BENZPYRENE, IF YOU TAKE  
25 THAT MATERIAL AND PUT IT ON AN ANIMAL, AND THE  
26 ANIMAL GETS A TUMOR, THEN, BECAUSE MEDICAL  
27 EXPERIENCE HAS SHOWN THAT MAN RESPONDS FOR VARIOUS  
28 CHEMICAL SUBSTANCES IN THE SAME WAY THAT ANIMALS

1 DO, MORE OR LESS, NOT EXACTLY, BUT JUST THE  
2 GENERAL --

3 THE COURT: SIR, THE PROBLEM HERE IS YOU  
4 ARE JUST ADDING WORDS -- LET'S HAVE WHAT --

5 THE WITNESS: WHAT IT SAYS.

6 THE COURT: THANK YOU.

7 THE WITNESS: "IT FOLLOWS, THEREFORE,  
8 THAT IT WOULD BE BETTER FOR THE CONSUMER IF  
9 CIGARETTE SMOKE WERE DEVOID OF SUCH COMPONENTS."

10 Q BY MR. PIUZE: LET ME STOP YOU  
11 THERE.

12 LET'S JUST GO FROM THEIR OWN WORDS,  
13 AND IF I WANT TO ASK YOU TO COMMENT ON THEM OR WHAT  
14 YOU FIND TO BE SIGNIFICANT, I WILL.

15 A. GOOD.

16 Q. BUT IT WILL MOVE FASTER IF WE JUST  
17 CONCENTRATE ON THEIR WORDS.

18 BUT THE POINT ABOUT THIS DOCUMENT  
19 IS, 1959 IN-HOUSE, IT'S ABSOLUTELY NO SECRET THAT  
20 THERE'S ALL KINDS OF STUFF IN TOBACCO SMOKE THAT  
21 CAUSES CANCER?

22 A. IT'S NO SECRET TO RJR.

23 Q. OKAY. LET'S SEE THE NEXT ONE,  
24 PLEASE.

25 A. THIS IS BACK TO PHILIP MORRIS.

26 HELMUT WAKEHAM WAS THE  
27 VICE-PRESIDENT OF RESEARCH FOR PHILIP MORRIS. AND  
28 THIS IS THE COVER PAGE OF A PAPER, OF A SPECIAL

1 PRESENTATION. IT'S ENTITLED: "PRESENTATION TO  
2 RESEARCH AND DEVELOPMENT COMMITTEE OF PHILIP MORRIS  
3 BY DR. H. WAKEHAM, HELMUT WAKEHAM, AND IT WAS HELD  
4 IN THE PHILIP MORRIS NEW YORK OFFICE ON NOVEMBER  
5 15, 1961.

6 Q. NOW, LET ME STOP YOU FOR A SECOND.  
7 FOR THE RECORD, YOUR HONOR, THIS  
8 STUDY IS PLAINTIFF'S 130 -- EXCUSE ME, IS  
9 PLAINTIFF'S 35.00 AND THE BLOWUP IS 8056.00.

10

11 \* (EXHIBIT 35.00, STUDY AND  
12 EXHIBIT 8056.00, BLOWUP,  
13 MARKED FOR I. D., RESPECTIVELY)

14

15 Q BY MR. PIUZE: GO AHEAD, PLEASE.

16 A. SO THAT'S THE COVER PAGE AND HERE  
17 IS FROM THE DOCUMENT ITSELF.

18 DR. WAKEHAM PROVIDES A LIST AS OF  
19 1961 OF SUBSTANCES IN CIGARETTE SMOKE. YOU SEE, IT  
20 SAYS "PARTIAL LIST OF COMPOUNDS IN CIGARETTE SMOKE  
21 ALSO IDENTIFIED AS CARCINOGENS."

22 SO THESE ARE SUBSTANCES THAT HE,  
23 HELMUT WAKEHAM, LISTS AS CANCER-CAUSING THAT ARE  
24 PRESENT IN CIGARETTE SMOKE AND AMONG THE VARIOUS  
25 THINGS, ARE, FOR EXAMPLE, THE BENZOPYRENES AND THAT  
26 GROUP OF POLYCYCLIC AROMATIC HYDROCARBONS PLUS  
27 OTHER THINGS.

28 Q. SO NOW LET ME USE MY EXHIBIT HERE.

1 DO THE OTHER THINGS INCLUDE  
2 PHENOLS, LIQUID PARAFFIN HYDROCARBONS, ORGANIC ACID  
3 ESTERS, FATS, OLEATES, CHOLESTEROL, BENZENE -- DO  
4 YOU WANT TO HELP ME OUT WITH THAT NEXT ONE.

5 A. YES, IODOACETIC ACID,  
6 CHLORACETOPHENONE.

7 Q. PROFLAVINE, ETHANOLAMINE, AND THE  
8 LAST ONE IS TURPENTINE?

9 A. TURPENTINE.

10 Q. SO ALL THIS STUFF, INCLUDING  
11 TURPENTINE, IS IN CIGARETTE SMOKE?

12 A. YES. ALTHOUGH THIS IS A LIST OF  
13 CANCER-PROMTING AGENTS.

14 YOU SEE, THE FIRST LIST WAS A LIST  
15 OF CANCER-CAUSING SUBSTANCES. THESE ARE  
16 CARCINOGENS THAT ACTUALLY CAUSE CANCER.

17 Q. GOT IT.

18 A. THE SECOND LIST, WHICH YOU JUST  
19 SHOWED, IS THE LIST OF CANCER-PROMTING AGENTS.  
20 THAT MEANS, IF THERE'S A CANCER-CAUSING SUBSTANCE,  
21 THESE CHEMICALS MAKE THE CANCER CAUSING SUBSTANCE  
22 WORSE AND NOTICE THIS PARTICULAR LIST IS TAKEN FROM  
23 A PUBLICLY PUBLISHED ARTICLE, THAT IS THE CANCER  
24 PROMTING LIST.

25 Q. LET ME STOP YOU FOR A SECOND.  
26 LET ME JUST HEAR THAT AGAIN.  
27 CANCER-CAUSING SPEAKS FOR ITSELF.  
28 CANCER-PROMTING, YOU ARE SAYING

1 THAT THAT ACTS WITH CANCER CAUSING, IT MAKES IT  
2 EVEN WORSE?

3 A. EXACTLY. THAT'S EXACTLY WHAT IT  
4 MEANS, IT MEANS IT POTENTIATES, THAT'S THE  
5 SCIENTIFIC TERM

6 SO IF ONE THING CAUSES CANCER LIKE  
7 CIGARETTE SMOKE, THEN THE PRESENCE OF ANOTHER THING  
8 MIGHT MAKE IT WORSE.

9 NOW, THE OTHER THING MAY COME FROM  
10 SOMEWHERE ELSE LIKE ASBESTOS OR IT MAY COME FROM  
11 CIGARETTES, THEMSELVES. AND WAKEHAM SHOWED THAT  
12 SOME CANCER-PROMPTING OR POTENTIATING CHEMICALS  
13 COME FROM CIGARETTES THEMSELVES.

14 AND THAT'S IN HIS INTERNAL REPORT  
15 TO HIS OWN COMPANY, IN 1961.

16 AND HERE IS A SECTION FROM THIS  
17 REPORT THAT SAYS, IT'S UNDER THE DESCRIPTION OF HOW  
18 IT MIGHT BE POSSIBLE TO REDUCE THE CANCER-CAUSING  
19 SUBSTANCES IN CIGARETTE SMOKE.

20 WAKEHAM SUGGESTS THAT THE PROBLEM  
21 WITH THAT OBJECTIVE, WHICH WOULD REQUIRE MAJOR  
22 RESEARCH EFFORT, THE PROBLEM WITH THAT OBJECTIVE,  
23 YOU CAN SEE IT IN HIS OWN WORDS, CARCINOGENS ARE  
24 FOUND IN PRACTICALLY EVERY CLASS OF COMPOUNDS IN  
25 SMOKE. THIS FACT PROHIBITS COMPLETE SOLUTION OF  
26 THE PROBLEM BY ELIMINATING ONE OR TWO CLASSES OF  
27 COMPOUNDS. AND THE BEST WE CAN HOPE FOR IS TO  
28 REDUCE A PARTICULARLY BAD CLASS, I. E., THE

1 POLYNUCLEAR HYDROCARBONS OR PHENOLS.

2 Q. OKAY, THANK YOU.

3 LET ME USE ANOTHER ONE OF THE NEW  
4 EXHIBITS HERE.

5 AND BACK UP TO SEPTEMBER 22, 1959.

6 THIS IS ALSO A PHILIP MORRIS,  
7 AGAIN, WE SEE MR. WAKEHAM'S NAME, DO YOU SEE THAT?

8 A. YES, IT IS.

9 Q. IT'S ALSO A PHILIP MORRIS DOCUMENT.

10 A. YES.

11 Q. WOULD YOU LIKE TO READ THAT.

12 A. (READING)

13 "IN LABORATORY EXPERIMENTS,  
14 IT HAS BEEN FOUND THAT THE TAR  
15 FRACTION AND/OR CERTAIN COMPOUNDS  
16 EXTRACTED FROM CIGARETTE SMOKE GIVES  
17 RISE TO CANCEROUS TUMORS IN MICE.  
18 WHETHER OR NOT CIGARETTE SMOKING IS A  
19 CAUSE OF LUNG CANCER IS A MATTER OF  
20 DEFINITION."

21 Q. SO THAT WAS TRUE, WASN'T IT, IT WAS  
22 A MATTER OF DEFINITION?

23 A. NO. IT WASN'T A MATTER OF  
24 DEFINITION. THAT TO SAY IT IS A MATTER OF  
25 DEFINITION IS A MATTER OF SEMANTICS. BUT THE FACT  
26 IS THAT THERE WERE CANCER-CAUSING SUBSTANCES IN  
27 CIGARETTE SMOKE AND WAKEHAM KNEW IT. AND THE ONLY  
28 PEOPLE WHO GOT LUNG CANCER SMOKED CIGARETTES.

1 Q. LET'S GO TO THE NEXT ONE, PLEASE.

2 A. THIS IS BACK TO RJR, SO WE JUST  
3 FINISHED WITH PHILIP MORRIS AND NOW WE ARE BACK TO  
4 RJR, ALAN RODGMAN, A RESEARCH SCIENTIST AT RJR  
5 TOBACCO.

6 1962. THIS IS A DOCUMENT TITLED "A  
7 CRITICAL AND OBJECTIVE APPRAISAL OF THE SMOKING AND  
8 HEALTH PROBLEM "

9 DR. RODGMAN BEGINS BY A REVIEW OF  
10 THE TOPIC. THIS IS A SECRET DOCUMENT THAT WAS NOT  
11 PUBLISHED.

12 HE SAYS THAT OVER THE PRECEDING TWO  
13 DECADES, BECAUSE HE IS NOW IN 1962 AND HE IS  
14 EXACTLY RIGHT, IT STARTS ABOUT 1940, DURING THE  
15 PAST TWO DECADES, CIGARETTE SMOKE HAS BEEN THE  
16 TARGET OF A HOST OF STUDIES RELATING IT TO  
17 ILL-HEALTH AND PARTICULARLY TO LUNG CANCER. THE  
18 MAJORITY OF THESE STUDIES INCRIMINATE CIGARETTE  
19 SMOKE FROM A HEALTH VIEWPOINT.

20 AGAIN, READING HIS EXACT WORDS.  
21 "THE STATISTICAL DATA FROM THE LUNG CANCER SMOKING  
22 STUDIES ARE ALMOST UNIVERSALLY ACCEPTED. THE  
23 MAJORITY OF SCIENTISTS ACCEPT THESE DATA AS  
24 INDICATIVE OF EITHER A HIGH DEGREE OF ASSOCIATION  
25 OR A CAUSE AND EFFECT RELATIONSHIP BETWEEN LUNG  
26 CANCER AND SMOKING. "

27 STILL FROM HIS DOCUMENT, AND IT'S  
28 IMPORTANT TO UNDERSTAND, THIS IS THE STATISTICAL

1 DATA.

2 HE HAS VARIOUS OBSERVATIONS. ONE,  
3 THIS IS THE PARALLELISM YOU KNOW, THIS ISSUE OF  
4 NOTICING THAT IT'S BEEN A PROBLEM WITH LUNG CANCER.  
5 THIS IS THE STATISTICS THAT CAUSE AND EFFECT  
6 RELATIONSHIP SUGGESTS THE STATISTICS. AND HERE'S  
7 THE BIOLOGICAL PLAUSIBILITY, AGAIN, FOLLOWING A  
8 STANDARD APPROACH IN SCIENCE AND MEDICINE TO PROVE  
9 CAUSATION, NOT RELYING ONLY ON STATISTICS BUT GOING  
10 BEYOND STATISTICS. AND HERE'S A SECTION CALLED  
11 "PATHOLOGICAL DATA."

12 "THE FOLLOWING OBSERVATIONS  
13 HAVE BEEN MADE. CIGARETTE SMOKERS'  
14 LUNGS SHOW PROFOUND CELLULAR CHANGES,"  
15 AND HE NAMES THEM, SQUAMOUS,  
16 METAPLASIA -- I WILL JUST TELL YOU  
17 THAT THESE THINGS ARE PATHOLOGICAL  
18 TERMS FOR CANCER FORMATION, "WHICH ARE  
19 PROPORTIONAL TO CIGARETTE  
20 CONSUMPTION."

21 THAT'S IMPORTANT. THAT MEANS DOSE.  
22 REMEMBER, I SHOWED AUERBACH'S WORK. THIS IS THE  
23 DOSE ISSUE OR THE HAMMOND AND HORN. THIS IS 1962.  
24 HAMMOND HAS ALREADY PUBLISHED IN  
25 1958, THE DOSE. I SHOWED YESTERDAY THE RED BARS  
26 MARCHING UP WITH THE GREAT, GREATER DOSE OF  
27 CIGARETTES. SO HERE RODGMAN, IN INTERNAL DOCUMENT  
28 IN 62, RECOGNIZES THAT RISK IS PROPORTIONAL TO

1 CIGARETTE CONSUMPTION.

2                   THESE CHANGES DECREASE  
3 PROGRESSIVELY IN THE LUNGS OF EX-CIGARETTE SMOKERS  
4 IN PROPORTION TO THE TIME INTERVAL.

5                   THAT'S ANOTHER DOSE BIOLOGICAL  
6 PLAUSIBILITY ISSUE.

7                   HE CONCLUDES BY SAYING THE EVIDENCE  
8 TO DATE.

9                   "OBVIOUSLY," HE SAYS, "THE  
10 AMOUNT OF EVIDENCE ACCUMULATED TO  
11 INDICT CIGARETTE SMOKE AS A HEALTH  
12 HAZARD IS OVERWHELMING. THE EVIDENCE  
13 CHALLENGING SUCH AN INDICTMENT IS  
14 SCANT. "

15                Q.     WELL, IT SEEMS LIKE, LET'S BE FAIR  
16 TO HIM HERE, IT SEEMS LIKE --

17                MR. CARLTON: OBJECT TO THE  
18 CHARACTERIZATION.

19                THE COURT: SUSTAINED.

20                Q     BY MR. PIUZE: IT SEEMS LIKE  
21 THAT'S CHOPPED OFF IN MID-SENTENCE HERE.

22                   "OBVIOUSLY THE AMOUNT OF  
23 EVIDENCE ACCUMULATED TO INDICT  
24 CIGARETTE SMOKE AS A HEALTH HAZARD IS  
25 OVERWHELMING. THE EVIDENCE  
26 CHALLENGING THIS INDICTMENT IS SCANT.  
27 ATTEMPTS TO SHIFT THE BLAME TO OTHER  
28 FACTORS, E. G. , AIR POLLUTION,

1           NECESSITATES ACCEPTANCE OF DATA  
2           SIMILAR TO THOSE DENIED IN THE  
3           CIGARETTE SMOKE CASE. "

4           MR. CARLTON:  EXCUSE ME, YOUR HONOR, AND  
5 MR. PIUZE, I THINK WE ARE TALKING ABOUT TWO  
6 DIFFERENT DOCUMENTS HERE AND I THINK WE SHOULD  
7 CLARIFY THAT FACT.

8           THE COURT:  ALL RIGHT.

9           THE WITNESS:  I COULD HELP.

10           THE DOCUMENT THAT I WAS SHOWING WAS  
11 FROM THE ORIGINAL DRAFT OF THIS.  I THINK THAT THE  
12 DOCUMENT THAT MR. PIUZE HAS IS A SLIGHTLY DIFFERENT  
13 VERSION.  THEY SAY ALMOST THE SAME THING.  I DON'T  
14 REMEMBER THE WORDS, AFTER, HOWEVER.  I COULD FIND  
15 IT.

16           THE COURT:  WOULD YOU LIKE THAT?

17           MAY I CONFER WITH COUNSEL HERE FOR  
18 A SECOND, YOUR HONOR.

19           Q     BY MR. PIUZE:  SO WHAT I AM  
20 SHOWING THE JURY IS THE FINAL VERSION.  THAT'S THE  
21 DRAFT VERSION?

22           A.    I BELIEVE SO.

23           Q.    WHAT'S THE NEXT DOCUMENT, PLEASE?

24           A.    I CHOSE STATEMENTS THAT WERE MADE  
25 BY BOWMAN GRAY, AS PART OF SWORN TESTIMONY TO  
26 CONGRESSIONAL COMMITTEE.

27                    I ACTUALLY TOOK IT FROM A TOBACCO  
28 INDUSTRY RESEARCH COMMITTEE PRESS RELEASE.

1                   SO THIS IS A T. I. R. C. PRESS RELEASE  
2 OF MARCH 24TH, 1965. BUT IT PERTAINS TO TESTIMONY  
3 THAT GRAY GAVE TO CONGRESS AND I HAVE THAT  
4 TESTIMONY ALSO. I HAVE THE FULL BODY OF THE  
5 TESTIMONY TO CONGRESS.

6                   Q.     WELL, LET ME JUST SAY, I HAVE GOT  
7 ONE, TWO, THREE, FOUR EARLIER PRESS RELEASES FROM  
8 T. I. R. C. TO THE WORLD STARTING IN ' 57.

9                   A.     OKAY.

10                  Q.     NOW, I WILL JUST ASK YOU, DO YOU  
11 WANT TO DO THAT FIRST OR DO YOU WANT TO GO  
12 CHRONOLOGICAL?

13                  A.     WELL, I WOULD SUGGEST JUMPING TO  
14 THIS FIRST, BECAUSE I CHOSE IT, THE TESTIMONY, TO  
15 CONGRESS.

16                  MR. CARLTON: OBJECTION AS TO THE REASONS  
17 AS FAR AS "TESTIMONY."

18                  THE COURT: SUSTAINED.

19                  Q     BY MR. PIUZE: YOU WANT TO GO  
20 THROUGH THAT ONE FIRST?

21                  A.     I DO.

22                  Q.     SHOOT.

23                  A.     OKAY.

24                         THE STATEMENTS MR. GRAY HAD MADE,  
25 AND HE SAYS CLEARLY IN HIS TESTIMONY THAT HE IS  
26 SPEAKING FOR ALL OF THE TOBACCO COMPANIES,  
27 INCLUDING PHILIP MORRIS, THAT'S VERY CLEAR IN THE  
28 PREAMBLE OF HIS TESTIMONY.

1 HE SAID, THAT IT WAS HIS OPINION  
2 THAT IT HAS NOT BEEN ESTABLISHED THAT SMOKING  
3 CAUSES LUNG CANCER OR ANY OTHER DISEASE. THERE IS  
4 A VERY HIGH DEGREE OF UNCERTAINTY. A GREAT DEAL  
5 MORE RESEARCH IS NECESSARY BEFORE DEFINITIVE  
6 ANSWERS CAN BE GIVEN.

7 NOW, THAT IS A PUBLIC STATEMENT  
8 THAT BOWMAN GRAY MADE. BOWMAN GRAY WAS THE C. E. O.  
9 OF RJR, AND ON THAT PARTICULAR DAY, WAS SPEAKING,  
10 AS HE SAID, FOR THE ENTIRE TOBACCO INDUSTRY.

11 CONTRAST THAT WITH WHAT RODGMAN  
12 SAID, FROM RJR, GRAY'S EMPLOYEE. OBVIOUSLY THE  
13 AMOUNT OF EVIDENCE ACCUMULATED TO INDICT CIGARETTE  
14 SMOKE AS A HEALTH HAZARD IS OVERWHELMING.

15 AND ALL OF THE PREVIOUS, MORE  
16 SPECIFIC STATEMENTS, THAT RODGMAN AND TEAGUE MADE,  
17 THE STATISTICAL DATA IN THE LUNG CANCER SMOKING  
18 STUDIES ARE ALMOST UNIVERSALLY ACCEPTED FOR A CAUSE  
19 AND EFFECT RELATIONSHIP.

20 AND 62, SECRETLY, INTERNALLY, AT  
21 RJR, AND THIS IS PUBLICLY TO CONGRESS, AND QUOTED  
22 BY THE T. I. R. C. PRESS RELEASE.

23 Q. NOW, IT'S MY TURN.

24 HERE'S PLAINTIFF'S EXHIBIT 54.

25 THIS IS THE PRESS RELEASE, MARCH  
26 24, 1965. LET'S MAKE THIS AN EYE TEST. CAN YOU  
27 READ WHO IT IS FROM AT THE TOP?

28 A. I CAN'T QUITE SEE IT FROM HERE.

1 THIS LOOKS LIKE THE PRESS RELEASE I JUST QUOTED  
2 FROM

3 IN FACT, THE HIGHLIGHTING IS MINE  
4 AND I -- IT SHOWS BOWMAN GRAY OF WINSTON SALEM  
5 NORTH CAROLINA, CHAIRMAN OF THE RJ REYNOLDS TOBACCO  
6 COMPANY, APPEARING BEFORE THE, I CAN'T QUITE --  
7 SENATE CONGRESS COMMITTEE, AS SPOKE MAN FOR NINE  
8 CIGARETTE MANUFACTURING COMPANIES WHO PRODUCE  
9 VIRTUALLY ALL CIGARETTES IN THIS COUNTRY.

10 Q. I AM GOING TO HAND YOUR EYE TEST IN  
11 BECAUSE I AM A LOT CLOSER.

12 YOU HAD TOLD THE JURY THAT WHEN THE  
13 BOSS FROM RJR STOOD UP BEFORE CONGRESS IN 1965, HE  
14 WASN'T JUST TALKING FOR THIS COMPANY, BUT HE WAS  
15 TALKING FOR THE WHOLE INDUSTRY.

16 FROM THEIR OWN, T. I. R. C. 'S OWN  
17 PRESS RELEASE HERE, THAT'S EXACTLY WHAT THEY SAID,  
18 HE WAS THERE TO SPEAK FOR THE WHOLE INDUSTRY?

19 A. YES, THAT'S WHAT THEY SAY.

20 Q. FOR THE WHOLE INDUSTRY NOW, HE  
21 SAID, "MANY SCIENTISTS," MR. GRAY SAID, "ARE OF THE  
22 OPINION THAT," QUOTE, "IT HAS NOT BEEN ESTABLISHED  
23 THAT SMOKING CAUSES LUNG CANCER OR OTHER --

24 A. "OR ANY."

25 Q. "OR ANY OTHER DISEASE. NEARLY  
26 EVERYONE FAMILIAR WITH THESE DIFFICULT PROBLEMS  
27 WILL AGREE THAT THERE ARE LARGE AND BASIC AREAS  
28 WHERE KNOWLEDGE IS LACKING, THAT THERE IS A VERY

1 HIGH DEGREE OF UNCERTAINTY, AND THAT A GREAT DEAL  
2 MORE RESEARCH IS NECESSARY BEFORE DEFINITIVE  
3 ANSWERS CAN BE GIVEN. "

4 HAVE I READ THAT CORRECTLY?

5 A. YES, SIR.

6 Q. I AM NOT GOING TO ASK YOU TO  
7 COMMENT ON THE VERACITY OF THAT. BUT I WILL ASK  
8 YOU, IN ORDER TO SAY THAT, DID HE HAVE TO DISREGARD  
9 THE TOP SCIENTISTS IN HIS OWN COMPANY, WHO HAD BEEN  
10 TELLING HIM IN BLACK AND WHITE THE EXACT OPPOSITE  
11 FOR YEARS AND YEARS?

12 A. EXACTLY, THAT'S IT.

13 Q. HERE'S THE END OF THIS, PAGE 4, MR.  
14 GRAY'S STATEMENT WAS MADE ON BEHALF OF THE  
15 FOLLOWING CIGARETTE MANUFACTURERS, AND IT GOES  
16 THROUGH THEM AND I HAVE HIGHLIGHTED OR YOU HAVE  
17 HIGHLIGHTED, PHILIP MORRIS, INC.

18 A. CORRECT.

19 Q. OKAY. SO THAT'S 1965.

20 NOW, BEAR WITH ME. I WANT TO GO  
21 BACK TO THE TOBACCO INDUSTRY RESEARCH COMMITTEE  
22 PRESS RELEASES GOING BACK TO DECEMBER 16, 1957.

23 AND THIS DOCUMENT THAT I AM SHOWING  
24 IS EXHIBIT 270.

25 "NO SUBSTANCE HAS BEEN FOUND IN  
26 TOBACCO -- " CAN I INTERRUPT FOR ONE SECOND, YOUR  
27 HONOR?

28 THE COURT: YES.

1 Q BY MR. PIUZE: (READING)

2 "NO SUBSTANCE HAS BEEN FOUND  
3 IN TOBACCO SMOKE KNOWN TO CAUSE CANCER  
4 IN HUMAN BEINGS NOR IS ANY SPECIFIC  
5 MUSE CARCINOGEN FOUND THAT ACCOUNTS  
6 FOR BIOLOGIC ACTIVITY REPORTED ON THE  
7 SKINS OF SOME LABORATORY MICE. "

8 WHEN THAT WAS RELEASED TO THE  
9 PUBLIC, WAS THAT AT ODDS WITH THE INDUSTRY'S OWN  
10 RESEARCH?

11 A. YES.

12 PLEASE UNDERSTAND THIS IS A  
13 STATEMENT BY CLARENCE COOK LITTLE WHO WAS THE  
14 CHAIRMAN OF THE T. I. R. C. AND IT'S REPORTED BY HILL  
15 & KNOWLTON. THAT'S HILL & KNOWLTON LETTERHEAD FOR  
16 THE TOBACCO INDUSTRY RESEARCH COMMITTEE. HILL &  
17 KNOWLTON WAS A NEW YORK CITY PUBLIC RELATIONS FIRM

18 Q. SO THERE'S DR. CLARENCE COOK  
19 LITTLE, SCIENTIFIC DIRECTOR OF THE T. I. R. C.

20 A. CORRECT. (

21 Q. AND OVER HERE --

22 A. THAT SAYS HILL & KNOWLTON IN THE  
23 BLACK.

24 Q. FROM HILL & KNOWLTON.

25 HERE'S PLAINTIFF'S 405.00 AND THIS  
26 IS, EXCUSE ME FOR ONE SECOND -- I AM GOING TO  
27 JUMP -- WHILE THEY ARE CHECKING ON THAT, I AM GOING  
28 TO JUMP TO EXHIBIT 340. AND THIS IS THE TOBACCO

1 INSTITUTE.

2 WHAT' S THE TOBACCO INSTITUTE?

3 A. THAT WAS A PUBLIC RELATIONS  
4 ORGANIZATION DIFFERENT THAN THE T. I. R. C. T. I. R. C.  
5 WAS CALLED THE TOBACCO INDUSTRY RESEARCH COMMITTEE  
6 AND T. I. OR TOBACCO INSTITUTE WAS PUBLICLY  
7 DESCRIBED AS A PUBLIC RELATIONS OUTFIT FOR THE  
8 TOBACCO INDUSTRY.

9 Q. AGAIN, YOU SEE OVER ON THE SIDE  
10 WHERE IT SAYS HILL & KNOWLTON, INC.

11 A. RIGHT, THAT WAS A PUBLIC RELATIONS  
12 FIRM THAT WORKED FOR T. I. , JUST LIKE IT WORKED FOR  
13 T. I. R. C.

14 Q. SO IN 1961, THE REPETITION BY  
15 DR. WYNDER OF HIS FIRM OPINIONS WAS NOT, DOES NOT  
16 ALTER THE FACT THAT THE CAUSE OR CAUSES OF LUNG  
17 CANCER CONTINUE TO BE UNKNOWN AND ARE SUBJECT TO  
18 CONTINUING EXTENSIVE SCIENTIFIC RESEARCH BY MANY  
19 AGENCIES.

20 LET' S TAKE THE FIRST ONE, THE CAUSE  
21 OR CAUSES OF LUNG CANCER CONTINUE TO BE UNKNOWN,  
22 1961.

23 IS THAT JUST FALSE?

24 A. IT' S JUST FALSE. BUT IT' S FALSE  
25 BECAUSE THE WORD "CAUSE" IS BEING USED TO MEAN  
26 MECHANISM

27 SEE, THE MECHANISM HOW IT WAS THAT  
28 CIGARETTE SMOKE CAUSED LUNG CANCER WAS UNKNOWN.

1 BUT THE CAUSE WAS KNOWN.

2 Q. SO YOU ARE BACK TO THE RIVER IN  
3 LONDON AND THE CHOLERA AND THE PUMP?

4 A. YES, A LITTLE BIT FANCIER THAN THAT  
5 BECAUSE THERE WAS A HUGE AMOUNT OF PROSPECTIVE  
6 STATISTICAL DATA AT THAT TIME AND BIOLOGICAL  
7 PLAUSIBILITY DATA. SO CAUSE AND EFFECT HAD BEEN  
8 PROVEN BEYOND A SHADOW OF A DOUBT. BUT WHAT HAD  
9 NOT BEEN PROVEN WAS MECHANISM

10 SO THIS IS A SUBTLE MISSTATEMENT IN  
11 MY VIEW IT'S SUBTLE BECAUSE, WHILE IT IS TRUE  
12 THAT THE MECHANISM WAS NOT KNOWN, THE CAUSE WAS  
13 KNOWN.

14 Q. DO YOU KNOW WHO KENNETH HOOVER IS?

15 A. I CAN'T HEAR YOU.

16 Q. DO YOU KNOW WHO KENNETH HOOVER IS?

17 A. NO. DON'T REMEMBER.

18 Q. HERE IS PLAINTIFF'S 342. THIS IS A  
19 PRESS RELEASE FROM THE TOBACCO INSTITUTE, SEPTEMBER  
20 19, 1962.

21 IT STARTS OFF SAYING "TOBACCO  
22 INSTITUTE PRESIDENT CHALLENGES C. E. S. REPORTS  
23 SHOWN. "

24 ARE YOU FAMILIAR WITH THIS  
25 DOCUMENT?

26 A. I AM I HAVE SEEN IT MANY TIMES.

27 Q. LET ME JUST READ PART OF IT.

28 "GEORGE ALLAN, PRESIDENT OF

1 THE TOBACCO INSTITUTE, INC., TODAY  
2 SENT THE FOLLOWING TELEGRAM TO FRANK  
3 STANTON, PRESIDENT OF COLUMBIA  
4 BROADCASTING SYSTEM

5 "I HAVE JUST REVIEWED A  
6 FIRSTHAND DETAILED ACCOUNT OF A  
7 PREVIEW OF C. B. S. REPORTS ON 'THE  
8 TEENAGE SMOKER.' AND THIS WAS  
9 SCHEDULED FOR RELEASE WEDNESDAY NIGHT,  
10 SEPTEMBER 19. THIS INFORMATION  
11 COMPELS ME TO PROTEST VIGOROUSLY  
12 AGAINST THE PROGRAM WHICH IS A  
13 ONE-SIDED PRESENTATION AGAINST  
14 TOBACCO. MY OWN PARTICIPATION WAS  
15 OBTAINED BY MISREPRESENTATION, BOTH AS  
16 TO THE PURPOSE AND CONTENT OF THE  
17 SHOW

18 "WE WERE TOLD THAT THE  
19 PROGRAM WOULD BE AN OBJECTIVE REPORT  
20 ON SMOKING AND HEALTH. INSTEAD, IT  
21 AFFORDS A VEHICLE FOR VENTING OF  
22 EXTREME OPINIONS AND PREJUDICES  
23 WITHOUT ANY REAL EFFORT TO EXPLORE THE  
24 FACTS AND TO DETERMINE THE MERITS OF  
25 THESE POSITIONS.

26 "THE SHOW FAILS TO COME TO  
27 GRIPS WITH ONE BASIC POINT, THAT THE  
28 CAUSES OF LUNG CANCER ARE STILL

1 UNKNOWN AND THAT EVERY EFFORT SHOULD  
2 BE DIRECTED TOWARD FINDING THESE  
3 CAUSES. "

4 1962 -- AND I HAVE ENDED MY  
5 READING.

6 IN 1962, THIS ONE BASIC POINT THAT  
7 THE CAUSES OF LUNG CANCER ARE STILL UNKNOWN; TRUE  
8 OR FALSE?

9 A. AGAIN, ABSOLUTELY FALSE.  
10 IN SORT OF A SUBTLE WAY.  
11 THE CAUSE WAS UNDOUBTEDLY,  
12 UNQUESTIONABLY, DEFINITELY KNOWN, WAS KNOWN THEN,  
13 AND IS STILL KNOWN TODAY. THEY WERE RIGHT THEN,  
14 AND THEY ARE RIGHT TODAY.

15 BUT THE MECHANISM WASN' T KNOWN.  
16 THIS WAS THE -- THIS SPOKE EXACTLY  
17 TO THE "NEW ENGLAND JOURNAL OF MEDICINE" EDITORIAL  
18 OF 1960 WHERE IT SAYS, "LIVES CAN BE SAVED IF THE  
19 FACT OF CAUSATION IS DISTRIBUTED TO DOCTORS AND  
20 PUBLIC. LIVES WILL BE LOST, " THEY SAID, 1960, "IF  
21 WE MUST AWAIT DEFINITIVE STUDIES. "

22 THE "NEW ENGLAND JOURNAL OF  
23 MEDICINE" SAYS LIVES WILL BE LOST IF IT IS  
24 NECESSARY TO AWAIT MECHANISM

25 AND THIS PUBLIC RELATIONS STATEMENT  
26 WAS THE SAME THING, INSISTING ON THE MECHANISM WHEN  
27 THE CAUSE WAS ALREADY KNOWN.

28 Q. WHAT YEAR DID THE "NEW ENGLAND

1 JOURNAL OF MEDICINE" SAY "LIVES WILL BE LOST IF WE  
2 INSIST ON -- "

3 A. 1960.

4 Q. TWO YEARS BEFORE THIS?

5 A. YES, SIR.

6 Q. HERE IS MAYBE THE LAST ONE I AM  
7 GOING TO SHOW FOR A WHILE. AND THIS IS, AGAIN, THE  
8 TOBACCO INSTITUTE, INC. AND THE DATE IS DECEMBER  
9 29, 1965. AND IT IS A YEAR END STATEMENT BY THE  
10 PRESIDENT OF THE TOBACCO INSTITUTE.

11 THIS IS NUMBER 648.

12 AND I JUST WANT TO DIRECT YOUR  
13 ATTENTION TO THE FOLLOWING.

14 "FOR EXAMPLE, A RECENT  
15 ARTICLE IN THE ' JOURNAL OF AMERICAN  
16 STATISTICAL ASSOCIATION' DECLARES THAT  
17 THE CASE AGAINST SMOKING HAS NOT BEEN  
18 ESTABLISHED.

19 "IN THIS ARTICLE, PROFESSOR  
20 K. A. BROWNLEE OF THE UNIVERSITY OF  
21 CHICAGO SAYS THAT THE STATISTICAL DATA  
22 SUPPORT VARIOUS THEORIES. ONE IS, OF  
23 COURSE, THE SMOKING THEORY. ANOTHER  
24 THEORY, WHICH HE BELIEVES IS THE MAIN  
25 ALTERNATIVE TO THE SMOKING THEORY, IS  
26 CALLED THE GENETIC THEORY. SMOKING  
27 MAY BE A SYMPTOM OF A TYPE OF PERSON  
28 RATHER THAN A CAUSAL FACTOR. AS OF

1           NOW, WE DON'T KNOW WHICH, IF EITHER,  
2           OF THESE THEORIES IS CORRECT,  
3           ACCORDING TO DR. BROWN LEE.

4           Q       BY MR. PIUZE: SO HAVING READ THAT  
5 TO YOU AND SORT OF CHALLENGING YOU THAT IN 1965, AT  
6 YEAR END, THERE WAS A DEBATE, THERE WAS AN ISSUE,  
7 BECAUSE THERE WAS AN ALTERNATIVE THEORY ABOUT WHAT  
8 CAUSED LUNG CANCER.

9                       RIGHT?

10           A.     WRONG.

11           Q.     WHY WRONG?

12           A.     WELL, THE SO-CALLED GENETIC THEORY  
13 WAS ACTUALLY CALLED THE CONSTITUTIONAL THEORY. IT  
14 WAS DESCRIBED AT LENGTH AND OBLITERATED AND  
15 RIDICULED NOT JUST BECAUSE IT WAS FUNDAMENTALLY  
16 RACIST AND COMES FROM RACISM, IT ACTUALLY CAME FROM  
17 A GROUP OF SCIENTISTS WHO WERE WORKING PRIOR TO  
18 WORLD WAR II AND SUGGESTED THAT CERTAIN PEOPLE BY  
19 VIRTUE OF THEIR RACE ARE DEFECTIVE.

20                       WE KNOW WHERE THAT ENDED.

21                       IT WAS EXACTLY THOSE KINDS OF  
22 PEOPLE WHO SUGGESTED THAT CERTAIN KINDS OF PEOPLE  
23 WERE DEFECTIVE AND THEREFORE SMOKED AND GOT CANCER.

24                       THE SURGEON GENERAL OF THE UNITED  
25 STATES IN THE 1964 REPORT RIDICULED THE THEORY, IF  
26 ONLY ON SCIENTIFIC GROUNDS, BECAUSE THESE KINDS OF  
27 DEFECTIVE PEOPLE DID NOT ALL OF A SUDDEN APPEAR IN  
28 THE 20TH CENTURY. WHERE WERE THEY DEFECTIVE AS

1 THEY ARE IN THE 19TH CENTURY?

2 AND THESE SO-CALLED DEFECTIVE  
3 PEOPLE BECAME LESS DEFECTIVE WHEN THEY STOPPED  
4 SMOKING.

5 THE THEORY WAS NONSENSE. IT HAS  
6 ITS FOUNDATION IN RACISM AND WAS REPUDIATED  
7 REPEATEDLY BUT CERTAINLY WAS DEFINITELY  
8 REPUDIATED THE PRECEDING YEAR IN THE SURGEON  
9 GENERAL'S REPORT OF THE UNITED STATES.

10 Q. THE NEXT DOCUMENT THAT I HAVE GOT  
11 HERE IS AROUND '72. SO IF YOU HAVE GOT SOME UP  
12 THERE, CHRONOLOGICALLY --

13 A. I DON'T. I DON'T HAVE ANY FURTHER.

14 Q. SO NOW IT'S -- YOU HAVE SHOWN THE  
15 ONES YOU WANT TO SHOW?

16 A. I HAVE, YES, SIR.

17 Q. NOW IT IS MY DOCUMENTS?

18 A. YES, SIR.

19 Q. THIS IS THE SMALL VERSION OF THIS  
20 IS 330. AND THE BLOWUP IS 8057.

21 ARE YOU FAMILIAR WITH THIS  
22 DOCUMENT?

23 A. I AM, YES.

24 Q. THIS COMES FROM WHERE?

25 A. FROM PHILIP MORRIS. ACTUALLY,  
26 EXCUSE ME, FROM T. I., TOBACCO INSTITUTE. KORNEGAY  
27 HIMSELF, WHO WAS THE HEAD OF T. I.

28 Q. NOW, HERE'S WHAT I WANT TO DRAW

1 YOUR ATTENTION TO.

2 A. I APOLOGIZE, IT'S ACTUALLY PANSER  
3 TO KORNEGAY, THE INTERNAL -- I AM SORRY, FROM  
4 PANSER TO KORNEGAY, AS I RECALL.

5 Q. READY?

6 A. YES.

7 Q. MAY 1972.

8 "FOR NEARLY 20 YEARS THIS  
9 INDUSTRY HAS EMPLOYED A SINGLE  
10 STRATEGY TO DEFEND ITSELF ON THREE  
11 MAJOR FRONTS; LITIGATION, POLITICS AND  
12 PUBLIC OPINION.

13 "WHILE THE STRATEGY WAS  
14 BRILLIANTLY CONCEIVED AND EXECUTED  
15 OVER THE YEARS HELPING US TO WIN  
16 IMPORTANT BATTLES, IT IS ONLY FAIR TO  
17 SAY THAT IT IS NOT, NOR WAS IT  
18 INTENDED TO BE A VEHICLE FOR VICTORY.

19 "ON THE CONTRARY, IT HAS  
20 ALWAYS BEEN A HOLDING STRATEGY  
21 CONSISTING OF CREATING DOUBT ABOUT THE  
22 HEALTH CHARGE WITHOUT ACTUALLY DENYING  
23 IT. "

24 NOW, WHAT MR. PANSER CALLS THE  
25 HEALTH CHARGE WAS WHAT?

26 A. THAT CIGARETTE SMOKING CAUSED LUNG  
27 CANCER AND OTHER DISEASES.

28 Q. INTERNALLY, FROM THE DOCUMENTS YOU

1 HAVE SHOWN THE JURY, DO YOU, IN YOUR VIEW, AND THIS  
2 IS AN OPINION QUESTION, IN YOUR VIEW, IS THERE ANY  
3 DOUBT THAT THE TOBACCO INDUSTRY UNDERSTOOD THAT  
4 WHAT THEY WERE SELLING WAS KILLING PEOPLE?

5 MR. CARLTON: OBJECTION, YOUR HONOR,  
6 ARGUMENT.

7 THE COURT: SUSTAINED IN THAT FORM

8 MR. PIUZE: OKAY.

9 Q BY MR. PIUZE: IN YOUR VIEW, FROM  
10 THE INTERNAL DOCUMENTS WHICH YOU HAVE SHOWN HERE,  
11 IS THERE ANY DOUBT THAT THE TOBACCO INDUSTRY KNEW  
12 THAT ITS PRODUCT HAD EXTREMELY SIGNIFICANT HEALTH  
13 CONSEQUENCES TO THE PEOPLE WHO USED THE PRODUCT?

14 MR. CARLTON: SAME OBJECTION.

15 THE COURT: SUSTAINED. IT HAS TO BE  
16 REPHRASED. KNOWLEDGE IS THE PROBLEM

17 HE CAN EVALUATE THE STATEMENTS AND  
18 THEIR IMPORT BUT HE CAN'T READ SOMEBODY'S MIND.

19 MR. PIUZE: OKAY. I WILL WITHDRAW THE  
20 QUESTION.

21 THE COURT: FAIR ENOUGH.

22 Q BY MR. PIUZE: CONTRASTING THE  
23 INTERNAL DOCUMENTS WHICH YOU HAVE SHOWN TO THE JURY  
24 WITH THE PRESS RELEASES WHICH THE TOBACCO INDUSTRY  
25 LET OUT FOR THE PEOPLE OF AMERICA TO HEAR, READ,  
26 SEE, IS THERE ANY DOUBT THAT CREATING DOUBT ABOUT  
27 THE HEALTH CHARGE WAS EXACTLY WHAT WAS GOING ON?

28 MR. CARLTON: AGAIN, OBJECTION, YOUR

1 HONOR, AS CALLING FOR INTENT AND --

2 THE COURT: NO, IT DOESN'T GO TO THE  
3 ISSUE OF INTENT, THIS TIME, BUT RATHER CONDUCT. I  
4 WILL ALLOW IT.

5 THE WITNESS: MY OPINION, AS A DOCTOR, IS  
6 THAT THE STATEMENTS CREATE DOUBT ABOUT THE ACCURACY  
7 OF THE SCIENCE, WITHOUT ACTUALLY SHOWING THAT THE  
8 SCIENCE WAS WRONG.

9 Q BY MR. PIUZE: AS A DOCTOR, WAS  
10 THE DOUBT CREATED -- I CAN DO BETTER THAN THAT.  
11 LET ME WITHDRAW THAT.

12 IN YOUR VIEW, HAVING REVIEWED ALL  
13 OF THE LITERATURE, DID THIS CAMPAIGN CREATE DOUBT  
14 IN THE MEDICAL COMMUNITY?

15 A. NO. IT DID NOT.

16 ALTHOUGH SOME PEOPLE IN THE MEDICAL  
17 COMMUNITY DID NOT BELIEVE THE SIGNIFICANCE OF THE  
18 DATA TO BEGIN WITH.

19 THEN, AS TIME WENT ON, AND I  
20 SHOWED, FOR EXAMPLE, CAMERON, AS THE DATA BECAME  
21 MORE AND MORE OVERWHELMING, THE SCIENTISTS CAME TO  
22 A CONSISTENT CONCLUSION AS TO WHETHER OR NOT PUBLIC  
23 STATEMENTS HAD ANY IMPACT ON AN INDIVIDUAL  
24 PHYSICIAN, OF COURSE, I DON'T KNOW, BUT AS FAR AS  
25 THE MEDICAL OPINION IS REFLECTED, FOR EXAMPLE, BY  
26 EDITORIALS IN THE MAJOR JOURNALS, NO, IT DIDN'T, NO  
27 EFFECT.

28 Q. SO THIS DOUBT -- CREATING DOUBT

1 ABOUT THE HEALTH CHARGE DIDN' T STICK WITH THE  
2 MEDICAL PROFESSION?

3 A. AT LEAST NOT WITH THAT PART OF THE  
4 MEDICAL PROFESSION THAT WAS DEALING WITH THE DATA  
5 AT HAND.

6 Q. WITH THE POPULOUS --

7 MR. CARLTON: OBJECTION, YOUR HONOR,  
8 SPECULATION.

9 THE COURT: SUSTAINED.

10 Q BY MR. PIUZE: BASED ON THE  
11 DOCUMENTS THAT YOU HAVE REVIEWED AND MR. PANSER  
12 TELLS MR. KORNEGAY THAT THEIR STRATEGY IS TO CREATE  
13 DOUBT ABOUT THE HEALTH CHARGE, WITHOUT ACTUALLY  
14 DENYING IT, DO YOU HAVE AN OPINION WHETHER THEY  
15 WERE TRYING TO CREATE DOUBT FOR THE PEOPLE WHO WERE  
16 USING THE PRODUCT OR FOR THE MEDICAL COMMUNITY?

17 MR. CARLTON: OBJECTION.

18 THE COURT: SUSTAINED, ARGUMENT.

19 Q BY MR. PIUZE: OKAY. I HAVE GOT  
20 TWO MORE, I THINK. HERE'S A 1980, MEMO,  
21 INTER-OFFICE MEMO, OF PHILIP MORRIS, U. S. A. , FROM  
22 T. S. OSDENE. YOU KNOW WHO THAT IS?

23 A. I DO.

24 Q. TO R. B. SELIGMAN AND DIRECTORS.

25 AND THIS IS PLAINTIFF'S 148. AND  
26 I'D LIKE TO JUST DRAW YOUR ATTENTION TO THE  
27 FOLLOWING IN YELLOW

28 "THE PROGRAM INCLUDES, " THIS

1 IS THE NICOTINE PROGRAM "THE PROGRAM  
2 INCLUDES BOTH BEHAVIORAL EFFECTS AS  
3 WELL AS CHEMICAL INVESTIGATION. MY  
4 REASON FOR THIS HIGH PRIORITY IS THAT  
5 I BELIEVE THE THING WE SELL MOST IS  
6 NICOTINE. "

7 NOW, DO YOU AGREE WITH HIS  
8 STATEMENT?

9 A. I DO AGREE THAT THAT'S WHAT  
10 CIGARETTES ACTUALLY DELIVER, PRIMARILY, THAT'S WHY  
11 PEOPLE SMOKE THEM AND THIS WAS THE DIRECTOR OF  
12 RESEARCH FOR PHILIP MORRIS, OSDENE.

13 Q. AND THE LAST DOCUMENT THAT I WILL  
14 SHOW IS PLAINTIFF'S 456. AND THIS WAS FROM A  
15 PRESENTATION OF THE TOBACCO INSTITUTE TO THE UNITED  
16 STATES CONGRESSIONAL COMMITTEES IN 1984.

17 A. THAT'S '84.

18 Q. FIRST, I JUST WANT TO SHOW THAT  
19 THIS IS FROM KORNEGAY, THE CHAIRMAN OF THE TOBACCO  
20 INSTITUTE. AND SECOND, ON THIS PAGE, I WOULD JUST  
21 LIKE TO READ THE FOLLOWING. THIS IS THEIR  
22 INTRODUCTION TO CONGRESS.

23 "THE WORLDWIDE CAMPAIGN  
24 BEING WAGED AGAINST CIGARETTE SMOKING  
25 CONTINUES. THERE ARE CALLS IN MANY  
26 COUNTRIES FOR FURTHER RESTRICTIONS ON  
27 THE GROWING MANUFACTURE, MARKETING AND  
28 USE OF TOBACCO. IN THE UNITED STATES,

1           BILLS TO PUT STRONGER WARNING LABELS  
2           ON CIGARETTE PACKETS AND IN  
3           ADVERTISEMENTS WERE INTRODUCED IN THE  
4           HOUSE OF REPRESENTATIVES AND SENATE IN  
5           1982 AND 1983. LENGTHY HEARINGS WERE  
6           HELD IN BOTH HOUSES OF CONGRESS. SUCH  
7           LEGISLATIVE PROPOSALS ARE BASED ON THE  
8           PREMISE THERE IS SUFFICIENT EVIDENCE  
9           TO PROVE CIGARETTE SMOKING CAUSES OR  
10          IS THE MAIN CAUSE OF A NUMBER OF  
11          DISEASES. "

12                         AND I WANT TO FLIP TO PAGE  
13          2, WHERE IT STARTS OFF:

14                         "THE CIGARETTE CONTROVERSY.  
15          THERE IS," AND THAT'S IN ITALICS,  
16          "THE CIGARETTE CONTROVERSY.  
17          THE CAUSAL THEORY THAT CIGARETTE  
18          SMOKING CAUSES OR IS THE CAUSE OF  
19          VARIOUS DISEASES WHICH IT IS REPORTED  
20          TO BE RELATED STATISTICALLY IS JUST  
21          THAT, A THEORY. "

22                         AND I AM JUMPING UP TOWARD  
23          SOMETHING CALLED "PSYCHOLOGICAL FACTORS. "

24                         MR. LEITER: "PHYSIOLOGICAL. "

25                         MR. PIUZE: EXCUSE ME. THANK YOU VERY  
26          MUCH.

27                         "IN SUMMARY, THESE EXPERTS  
28          TOOK THE POSITION THAT IT IS NOT

1           SCIENTIFICALLY POSSIBLE TO STATE THAT  
2           CIGARETTE SMOKING CAUSES LUNG CANCER. "

3           Q       BY MR. PIUZE: LET' S STOP. 1984,  
4 TO THE CONGRESS OF THE UNITED STATES, WAS THAT  
5 FALSE?

6           A.     THAT, I WOULD DESCRIBE, AS A  
7 COMPLETE FALSEHOOD, YES.

8           Q.     (READING)  
9                   "IT IS NOT SCIENTIFICALLY  
10           POSSIBLE TO INDICATE THAT CIGARETTE  
11           SMOKING CAUSES LUNG CANCER BECAUSE OF  
12           APPARENT FLAWS IN THE BASIC  
13           EPIDEMIOLOGIC STUDIES. THE FAILURE OF  
14           ANIMAL STUDIES TO REPRODUCE LUNG  
15           CANCER IN ANIMALS WITH WHOLE SMOKE AND  
16           RECENT WORK THAT HAS REPORTED OTHER  
17           FACTORS INVOLVED IN THE DISEASE, THE  
18           SCIENTIFIC WITNESSES AGREE THAT FAR  
19           MORE RESEARCH IS NEEDED TO FIND THE  
20           CAUSE OR CAUSES OF LUNG CANCER AND THE  
21           MECHANISM OF THE DISEASE. "

22                   SO THAT WAS A MOUTHFUL.  
23                   DID SCIENTIFIC WITNESSES AGREE THAT  
24 FAR MORE RESEARCH IS NECESSARY TO FIND THE CAUSE OR  
25 CAUSES OF LUNG CANCER?

26           A.     THIS WAS A REPORT OF SOME OF THE  
27 WITNESSES THAT HAD TO BE MARTIALLED TO GIVE  
28 TESTIMONY BY THE TOBACCO INDUSTRY AND, INDEED, THEY

1 AGREED THAT MORE RESEARCH WAS NECESSARY, WHICH WAS  
2 TRUE.

3 AND THERE MAY NEVER BE ENOUGH  
4 RESEARCH TO UNDERSTAND PARTICULARLY THE MECHANISMS  
5 OF CANCER.

6 BUT IN 1984, OR 1974 OR 1964, OR  
7 1954, FOR THAT MATTER, THE CAUSE OF LUNG CANCER HAD  
8 BEEN DEFINITELY PROVEN. AND IN 1984, TO SAY,  
9 THAT THE CAUSE OF LUNG CANCER WAS UNKNOWN, IS  
10 SCIENTIFICALLY OUTRAGEOUS. IT'S FALSE. IT'S  
11 MISLEADING, MISREPRESENTATION OF SCIENCE. IT IS  
12 UNTRUE.

13 Q. WELL, I WILL BET YOU IF IT WAS  
14 UNTRUE IN 1954 AND '64, AND '74, AND '84 --

15 MR. CARLTON: OBJECTION, ARGUMENTATIVE.

16 THE COURT: DEFINITELY. SUSTAINED.

17 Q BY MR. PIUZE: WERE THEY STILL  
18 LYING --

19 MR. CARLTON: OBJECTION, YOUR HONOR.

20 THE COURT: SUSTAINED.

21 THE JURY WILL DECIDE WHO IS LYING  
22 AND WHO IS TELLING THE TRUTH.

23 Q BY MR. PIUZE: WAS IT STILL FALSE  
24 IN 1994 WHEN THE SEVEN C. E. O. 'S OF THE MAJOR  
25 COMPANIES GOT UP BEFORE THE UNITED STATES CONGRESS  
26 AND SAID, THEY DIDN'T THINK --

27 MR. CARLTON: OBJECTION, ARGUMENTATIVE,  
28 YOUR HONOR.

1 THE COURT: AND SAID, WHAT, SIR?

2 MR. PIUZE: THEY DIDN' T KNOW THE CAUSE OF  
3 LUNG CANCER.

4 THE WITNESS: IF THAT' S WHAT THEY SAID,  
5 THOSE WERE THE WORDS THAT THEY SAID, IT WOULD HAVE  
6 BEEN A FALSEHOOD.

7 Q BY MR. PIUZE: WHAT IF IT WAS "THE  
8 CAUSE OF CANCER IS UNKNOWN"?

9 A. THAT WOULD HAVE BEEN A FALSEHOOD.

10 Q. I AM JUMPING BACK TO THIS PART, THE  
11 CIGARETTE CONTROVERSY.

12 "THERE IS A CIGARETTE  
13 CONTROVERSY. "

14 NOW, WAS THERE A CIGARETTE  
15 CONTROVERSY?

16 A. THERE WAS NO CONTROVERSY ABOUT THE  
17 FACTS. PEOPLE CAN SAY WHATEVER THEY WISH TO SAY.  
18 THEY CAN SAY THAT THE EARTH IS FLAT, IT' S NOT  
19 ROUND. THERE CAN BE DISCUSSION ABOUT THAT.

20 IN SCIENCE AND MEDICINE, WE DO NOT  
21 CALL DISCUSSION ABOUT FACTS CONTROVERSY.  
22 CONTROVERSY EXISTS BEFORE THE FACTS OR IMPLICATION  
23 OF FACTS ARE UNDERSTOOD.

24 WHEN FACTS ARE PRESENTED TO  
25 SCIENTISTS, IT BECOMES IRRESPONSIBLE TO DENY THEM  
26 JUST LIKE THE "NEW ENGLAND JOURNAL OF MEDICINE"  
27 SAID, WHEN YOU LOOK AT FACTS, PARTICULARLY THOSE  
28 THAT HAD IMPLICATIONS FOR YOUR PATIENTS OR FOR YOUR

1 TOWN OR FOR YOUR CITY, FOR YOUR HOSPITAL, FOR YOUR  
2 COUNTRY, WHEN YOU LOOK AT THOSE FACTS AND THEY ARE  
3 STARING AT YOU IN THE FACE, IT'S EXACTLY THE SAME  
4 AS WHEN I LOOKED ON THE MICROSCOPE AND SEE THE  
5 CANCER CELLS, OR I LOOK AT THE X-RAY AND I SEE THE  
6 CANCER. FOR ME TO IGNORE THE FACT IS IRRESPONSIBLE  
7 BECAUSE I HAVE A CERTAIN JOB. THAT DOESN'T PERMIT  
8 ME TO DENY THE FACTS TO MYSELF.

9 Q. THIS WILL BE THE LAST TIME I ASK,  
10 BUT THAT "NEW ENGLAND JOURNAL OF MEDICINE" ARTICLE  
11 WAS 1960?

12 A. YES, SIR.  
13 SO THERE WAS DISCUSSION AND, IN  
14 FACT, SOME PROMINENT DOCTORS AND ORGANIZATIONS  
15 LOOKED AT THE FACTS AND MADE IRRESPONSIBLE  
16 STATEMENTS. SOME OF THEM PUBLISHED, BUT A NUMBER  
17 OF THEM PUBLISHED WITH DATA. THERE WAS NEVER  
18 EVIDENCE THAT HAMMOND WAS WRONG IN 1954. THERE WAS  
19 NEVER EVIDENCE THAT HAMMOND WAS WRONG IN 1958.  
20 THERE WAS NEVER EVIDENCE THAT WYNDER AND GRAHAM  
21 WERE WRONG IN 1950. ALL THAT HAPPENED WAS THAT  
22 THEY WERE PROVEN RIGHT AGAIN AND AGAIN AND AGAIN.

23 MR. CARLTON: I WILL OBJECT TO THE  
24 NARRATIVE, YOUR HONOR, THIS IS WAY OFF.

25 THE COURT: IT WAS A NARRATIVE.

26 THE WITNESS: I AM SORRY.

27 Q BY MR. PIUZE: "THE CAUSAL THEORY  
28 THAT CIGARETTE SMOKING CAUSES OR IS THE CAUSE OF

1 VARIOUS DISEASES WITH WHICH IT IS REPORTED TO BE  
2 RELATED STATISTICALLY IS JUST THAT, A THEORY"; TRUE  
3 OR FALSE, 1984?

4 A. AN OUTRAGEOUS FALSEHOOD.

5 Q. '74?

6 A. ABSOLUTELY, INCONTROVERTIBLY A  
7 FALSEHOOD.

8 Q. '64?

9 A. A FALSEHOOD.

10 Q. '54?

11 A. A FALSEHOOD.

12 Q. HOW MANY PEOPLE, THIS IS, IT MAY  
13 WELL BE VARIED, BUT HOW MANY PEOPLE IN AMERICA DIE  
14 FROM CIGARETTE-RELATED ILLNESSES EACH YEAR?

15 A. CURRENTLY APPROXIMATELY 400,000  
16 PEOPLE EACH YEAR.

17 Q. HOW LONG HAS THAT BEEN THE CASE?

18 A. YEARS. NOT EXACTLY THE SAME  
19 NUMBER, BECAUSE, ACTUALLY, MALE LUNG CANCER DEATHS  
20 HAVE DECREASED. FEMALE LUNG CANCER DEATHS HAVE  
21 INCREASED. THE POPULATION HAS INCREASED. SO  
22 THERE'S MORE THAN ONE FACTOR GOING ON. BUT IT'S  
23 HUNDREDS OF THOUSANDS OF PEOPLE FOR MANY YEARS.

24 Q. HOW MANY YEARS?

25 A. SINCE AT LEAST THE 1950'S.  
26 MILLIONS OF PEOPLE HAVE DIED IN THIS COUNTRY  
27 BECAUSE OF CIGARETTE RELATED DISEASE.

28 Q. WELL, IF THE NUMBER 400,000 WAS A

1 NUMBER THAT STOOD DURING THE '80'S, '70'S, '60'S,  
2 TO THE '50'S, IF THAT WAS TRUE --

3 MR. CARLTON: OBJECTION, YOUR HONOR,  
4 THERE'S BEEN NO TESTIMONY THAT THAT WAS TRUE.

5 Q BY MR. PIUZE: AND I AM NOT DONE  
6 WITH MY QUESTIONING. I COULD USE -- OR SOME  
7 MULTIPLICATION RIGHT NOW, BUT THAT'S WHY I STARTED  
8 BY SAYING, IT'S VARIABLE. AND I WANT TO GET FROM  
9 YOU, ROUGHLY, HOW FAR BACK IT IS THAT THE DEATHS  
10 ARE AT ABOUT 400,000 A YEAR.

11 A. PROBABLY ABOUT A DECADE AND  
12 SOMEWHAT LESS THE DECADE BEFORE AND SO ON.

13 I WOULD SAY THAT IN EXCESS OF THE  
14 MILLION PEOPLE, WELL IN EXCESS OF A MILLION PEOPLE,  
15 PROBABLY IN EXCESS OF THREE OR FOUR MILLION PEOPLE  
16 HAVE DIED IN THIS COUNTRY AS A RESULT OF CIGARETTE  
17 SMOKING.

18 THE EXACT NUMBER IS HARD TO  
19 CALCULATE BECAUSE THE POPULATION WAS DIFFERENT OVER  
20 ALL THE YEARS. BUT CLEARLY IT'S IN EXCESS OF A  
21 MILLION PEOPLE. AND MOST LIKELY IT'S IN EXCESS OF  
22 TWO MILLION PEOPLE, SINCE CIGARETTES ARE SOLD IN  
23 THIS COUNTRY, BEGINNING, COMMERCIALY SOLD, I MEAN,  
24 AS COMMERCIAL, PRE-ROLLED CIGARETTES, BEGINNING IN  
25 ABOUT 1913.

26 Q. WELL, IF -- AND I AM GOING TO  
27 CHALLENGE YOU ON NUMBERS, IF THE 400,000 DEATHS A  
28 YEAR FIGURE DOES GO BACK A DECADE, THERE'S FOUR

1 MILLION PEOPLE JUST IN THE '90'S.

2 A. OF COURSE, I KNOW IT'S MILLIONS  
3 OF PEOPLE. THE DEGREE OF CERTAINTY, WITH THE  
4 MILLIONS, I AM NOT SURE. I DON'T, AS A SCIENTIST,  
5 I STOPPED COUNTING. I MEAN --

6 Q. THAT'S FAIR ENOUGH.

7 A. I SAID, WELL, IT'S 400,000 THIS  
8 YEAR, I KNOW IT'S 400 THOUSAND LAST YEAR. I KNOW  
9 IT'S 400,000 FOR PROBABLY 10 YEARS. I KNOW THAT'S  
10 FOUR MILLION PEOPLE, I UNDERSTAND.

11 BUT AS A DOCTOR, IT CEASES TO  
12 MATTER AFTER A CERTAIN POINT. HOW MANY MILLIONS OF  
13 PEOPLE DOES IT TAKE --

14 MR. CARLTON: OBJECTION, YOUR HONOR.

15 THE COURT: SUSTAINED.

16 Q BY MR. PIUZE: SO I CHALLENGE YOU  
17 ON THE NUMBERS AND YOU GAVE A LITTLE BIT. NOW  
18 LET'S SWITCH FOCUS.

19 THAT 400,000 FIGURE ISN'T JUST FROM  
20 LUNG CANCER, IS IT?

21 A. NO, IT IS NOT.

22 Q. WOULD THAT INCLUDE EMPHYSEMA AND  
23 HEART PROBLEMS TOO?

24 A. APPROXIMATELY 100,000 PEOPLE DIE OF  
25 EMPHYSEMA A YEAR, CAUSED BY CIGARETTE SMOKING.  
26 APPROXIMATELY 200 OR 300,000 PEOPLE DIE OF CORONARY  
27 ARTERY DISEASE RELATED TO CIGARETTE SMOKING.

28 THE EXACT NUMBERS, YOU KNOW, I

1 DON'T KNOW IF YOU SAY APPROXIMATELY 100 FOR  
2 EMPHYSEMA, 200,000 FOR CORONARY ARTERY DISEASE AND  
3 A HUNDRED THOUSAND FROM CIGARETTE SMOKING, IT COMES  
4 TO 400. IT'S A LITTLE BIT MORE FOR LUNG CANCER --  
5 EXCUSE ME -- APPROXIMATELY A HUNDRED THOUSAND FOR  
6 LUNG CANCER, IT'S A LITTLE BIT MORE FOR LUNG CANCER  
7 AND PROBABLY A LITTLE BIT LESS FOR EMPHYSEMA, MAYBE  
8 70 OR 80. IT'S PROBABLY 200,000, AT LEAST FROM  
9 CORONARY ARTERY DISEASE.

10 THE EXACT BREAKDOWN IS GIVEN IN  
11 VARIOUS ARTICLES AND CURRENTLY HAS BEEN ESTIMATED  
12 TO BE RELIABLY AT JUST ABOUT 400,000.

13 Q. THANKS.

14 NOW, I AM GOING TO END RIGHT ABOUT  
15 WITH THIS:

16 ALL OF THESE NUMBERS WE HAVE BEEN  
17 DISCUSSING ARE IN THE UNITED STATES OF AMERICA?

18 A. CORRECT.

19 Q. EARLIER, MUCH EARLIER IN YOUR  
20 TESTIMONY, I BELIEVE YOU SAID SOMETHING ABOUT HOW  
21 MUCH LUNG CANCER DEATHS THERE ARE PER YEAR IN THE  
22 WORLD.

23 DO YOU REMEMBER THAT?

24 A. YES, SIR.

25 Q. WHAT'S THE NUMBER?

26 A. LET ME JUST, I DON'T WANT TO MAKE A  
27 MISTAKE ON THAT. THE ESTIMATE IS THAT 21 MILLION  
28 SMOKING-ATTRIBUTABLE DEATHS OCCURRED WORLDWIDE IN

1 THE DEVELOPED WORLD IN THE DECADE OF THE 1990' S  
2 FROM ALL CAUSES. AT LEAST A QUARTER OF THEM  
3 PERHAPS MORE, WERE CAUSED BY LUNG CANCER.

4 SO IN THE 1990' S, FROM 1990 TO  
5 1999, IT HAS BEEN RELIABLY ESTIMATED THAT IN THE  
6 DEVELOPED WORLD, INCLUDING THE UNITED STATES, AND  
7 WHEN WE SAY "DEVELOPED WORLD," WE SPEAK OF PLACES  
8 WHERE NUMBERS ARE AVAILABLE, WHERE THE NUMBER OF  
9 DEATHS ARE COUNTED UP RELIABLY, LIKE IN ENGLAND,  
10 FOR EXAMPLE, OR FRANCE OR ITALY, IT' S ESTIMATED  
11 THAT 21 MILLION SMOKING ATTRIBUTABLE DEATHS  
12 OCCURRED IN THAT DECADE. AND IT' S PROBABLY IN THE  
13 RANGE OF SIX OR SEVEN OR EIGHT MILLION LUNG CANCER  
14 DEATHS OCCURRED IN THAT DECADE WORLD-WIDE.

15 IT IS ALSO ESTIMATED THAT OF THE  
16 PEOPLE WHO CURRENTLY LIVE IN THE DEVELOPED WORLD,  
17 THE UNITED STATES, CANADA, IN EUROPE, PARTS OF ASIA  
18 WHERE NUMBERS ARE AVAILABLE, LIKE JAPAN,  
19 APPROXIMATELY 250 MILLION PEOPLE WILL DIE OF A  
20 CIGARETTE-RELATED DISEASE, PRINCIPALLY LUNG CANCER,  
21 BUT OTHERS.

22 Q. AND NONE OF THAT INCLUDES THE  
23 PLACES FOR WHICH STATISTICS ARE NOT AVAILABLE?

24 A. LIKE IN CHINA WHERE THERE' S VAST  
25 SMOKING, THE DATA IS NOT COUNTED AND NOT CONSIDERED  
26 RELIABLE.

27 Q. OKAY.

28 I AM DONE, THANK YOU.

1                                   THANK YOU, YOUR HONOR.  
2                                   THE COURT:  THANK YOU, COUNSEL.  IT'S NOW  
3 NOON, LADIES AND GENTLEMEN, WE WILL TAKE OUR LUNCH  
4 BREAK.  WE WILL BE BACK AT 1:30 THIS AFTERNOON,  
5 DON'T DISCUSS THE CASE WITH ANYONE.

6

7                                   (AT 12 NOON, THE LUNCH  
8 RECESS WAS TAKEN TO  
9 1:30 P. M OF THE SAME DAY.)

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