



1 LOS ANGELES, CALIFORNIA; WEDNESDAY, APRIL 11TH, 2001

2 9:00 A.M

3 DEPARTMENT 308 HON. CHARLES MC COY, JUDGE

4

5 (THE FOLLOWING PROCEEDINGS

6 WERE HELD IN OPEN COURT IN

7 THE PRESENCE OF THE JURY.)

8

9 THE COURT: THANK YOU, MA'AM

10 LADIES AND GENTLEMEN, AS I WAS

11 RIDING IN THIS MORNING, I THINK WE HAVE ALL HEARD

12 ON THE NEWS THAT THERE'S BEEN SOME DEVELOPMENTS

13 OVERSEAS IN CONNECTION WITH THE SERVICE PEOPLE THAT

14 HAVE BEEN DETAINED.

15 THE THINGS THAT INTERESTED ME,

16 THOUGH, IS THAT AS WE SALUTE OUR FLAG THIS MORNING,

17 IT REMINDED ME OF A TIME IN MY OWN LIFE WHEN I WAS

18 OVERSEAS WHERE THIS FLAG BECAME A VERY IMPORTANT

19 SYMBOL OF A MEMORY, 10,000 MILES AWAY, IN MY OWN

20 LIFE. AND IT'S NOT JUST FOR ME, BUT IT IS FOR ALL

21 OF US. AND I IMAGINE THOSE 28 -- WAS IT 28 OR 24?

22 JUROR: 24.

23 THE COURT: I IMAGINE THAT THEY THOUGHT

24 ABOUT THE FLAG AS WELL. WHAT A PRIVILEGE IT IS FOR

25 US TO SALUTE THE FLAG EVERY MORNING.

26 ALL RIGHT, GOOD MORNING, GOOD

27 COUNSEL.

28 OUR JURY PANEL IS HERE WITH US AS

1 WELL.

2 SIR, YOU UNDERSTAND YOU ARE STILL  
3 UNDER OATH.

4 THE WITNESS: YES, YOUR HONOR.

5 THE COURT: VERY WELL.

6 MR. CARLTON.

7 MR. CARLTON: THANK YOU, YOUR HONOR.

8 THE COURT: PROCEED.

9 MR. CARLTON: GOOD MORNING, DR. FEINGOLD.

10 THE WITNESS: GOOD MORNING, MR. CARLTON.

11

12

13 ALLAN FEINGOLD,  
14 CALLED AS A WITNESS BY THE PLAINTIFF, HAVING BEEN  
15 PREVIOUSLY DULY SWORN, RESUMED THE WITNESS STAND  
16 AND TESTIFIED FURTHER AS FOLLOWS:

17

18 CROSS-EXAMINATION (RESUMED)

19

20 BY MR. CARLTON:

21 Q. I WILL RESUME WHERE WE LEFT OFF

22 YESTERDAY.

23 YOU MAKE SEVERAL TIMES MORE ON YOUR  
24 LEGAL WORK THAN YOU DO ON YOUR MEDICAL PRACTICE,  
25 DON'T YOU?

26 A. MONEY, YES.

27 Q. AND I'D LIKE TO LOOK AT THE BOOK

28 THAT YOU WROTE, "ASBESTOS MEDICINE ON TRIAL. "

1 I HAVE GOT A COPY OF IT HERE.  
2 BUT YOU TALKED IN THAT BOOK, I  
3 BELIEVE, ABOUT SOMETHING YOU CALLED A PURCHASED  
4 DIAGNOSIS?  
5 A. CORRECT. YES, SIR. I SPEAK  
6 AGAINST IT.  
7 I SEE YOU HAVE A PIRATED COPY.  
8 Q. WELL, I COULDN'T FIND --  
9 A. IT IS AVAILABLE ON AMAZON DOT COM  
10 SIR.  
11 Q. LET'S LOOK HERE.  
12 THERE WE HAVE IT DOWN AT THE  
13 BOTTOM DO YOU SEE RIGHT THERE?  
14 A. YES.  
15 Q. "PURCHASED DIAGNOSIS"?  
16 A. YES, I WROTE THAT.  
17 Q. AND I BELIEVE YOU WROTE: "SOME  
18 DOCTORS -- " AGAIN, THIS IS THE BOOK YOU WROTE IN  
19 WHICH YOU DISCUSSED TESTIFYING IN ASBESTOS CASES;  
20 CORRECT?  
21 A. EXACTLY.  
22 Q. (READING)  
23 "SOME DOCTORS MAKE GOOD  
24 MONEY DIAGNOSING ASBESTOS CLAIMS. A  
25 CLASS OF PHYSICIAN HAS ARISEN THAT  
26 MORE OR LESS SPECIALIZES IN MEDICAL/  
27 LEGAL REFERRALS. "  
28 THAT'S SOMETHING THAT YOU

1           WROTE?

2           A.     I DID, YES.

3           Q.     AND WOULD IT BE FAIR TO SAY THAT  
4 YOU ARE A MEMBER OF THIS CLASS OF PHYSICIANS?

5           A.     TO SOME EXTENT, YES. I THINK THAT  
6 I CERTAINLY AM A MEDICAL/LEGAL EXPERT.

7                     BUT THIS SECTION THAT I WROTE WAS  
8 DISCUSSING THE NEGATIVE ASPECT OF SOME PHYSICIANS  
9 WHO PERFORM MEDICAL/LEGAL WORK MERELY FOR MONEY AND  
10 WILL REPORT ANYTHING DEPENDING ON WHO IS PAYING FOR  
11 IT. SO I SPOKE AGAINST THAT.

12          Q.     ALL RIGHT.

13                     ARE YOU SAYING THAT THE 14,000  
14 ASBESTOS REFERRALS THAT YOU, THAT YOU HAD, DON'T  
15 PUT YOU IN THIS CLASS?

16          A.     OH, I THINK THAT THEY CERTAINLY  
17 MAKE ME A MEMBER OF A SMALL GROUP OF PHYSICIANS IN  
18 THE UNITED STATES WHO ARE MEDICAL/LEGAL EXPERTS,  
19 ABSOLUTELY.

20                     AS TO WHETHER OR NOT BEING PAID OR  
21 NOT BEING PAID FOR AN ASBESTOS CASE OR A TOBACCO  
22 CASE OR A CRIMINAL CASE OR A CARBON MONOXIDE CASE  
23 EFFECTS MY TESTIMONY, I CAN TELL YOU WITH AN EASY  
24 HEART, THAT IT NEVER WOULD.

25                     WHETHER I AM PAID OR NOT DOES NOT  
26 EFFECT MY TESTIMONY.

27          Q.     WELL, LET'S CONTINUE WITH WHAT YOU  
28 HAVE WRITTEN.

1                   IT SAYS:  
2                   "AT THE LEAST, MANY  
3           PHYSICIANS DEPEND UPON THESE REFERRALS  
4           FOR A SIZEABLE FRACTION OF THEIR  
5           GROSS. "  
6           A.       CERTAINLY.  
7           Q.       THAT'S ALSO TRUE FOR YOU, ISN'T IT?  
8           A.       IT IS ABSOLUTELY TRUE.  
9           Q.       THEN IT CONTINUES:  
10                  "THE PRESSURE EXISTS TO  
11           RETURN A CONSIDERABLE NUMBER OF  
12           FAVORABLE, " LET ME GET THE NEXT PAGE,  
13           "DIAGNOSES. WITH POSITIVE  
14           REINFORCEMENT IN PLACE FOR POSITIVE  
15           DIAGNOSES AND NO CENTRIPETAL COUNTER  
16           FORCE, DIAGNOSTIC STANDARDS PRECESS,  
17           THE DIAGNOSTIC INSTRUMENT LOSES  
18           CALIBRATION. "  
19           A.       THAT'S AVIATION TALK, I AM SORRY.  
20                  DO YOU WANT ME TO EXPLAIN?  
21           Q.       I THINK IT NEEDS EXPLANATION.  
22           A.       IT IS BORROWING FROM AVIATION  
23           TECHNOLOGY AND TALK TO EXPLAIN THAT IF PEOPLE ARE  
24           BEING PAID TO EVALUATE A MEDICAL/LEGAL CASE, THERE  
25           CERTAINLY IS PRESSURE ON THEM TO SATISFY THEIR  
26           CLIENT BECAUSE IT IS NOT A DOCTOR/PATIENT  
27           RELATIONSHIP. IT'S A RELATIONSHIP BETWEEN THE  
28           DOCTOR AND THE FIRM, LET'S SAY, THAT HIRES THE

1 DOCTOR.

2 SO THIS SECTION I AM DESCRIBING IS  
3 TO MAKE PHYSICIANS WHO BECOME INVOLVED WITH  
4 MEDICAL/LEGAL PROCESS AWARE AND ON GUARD SO THAT  
5 THEY DO NOT SUCCUMB TO THE PRESSURE OR TO THE  
6 TENDENCY TO GIVE A DIAGNOSIS THAT WILL FAVOR THE  
7 CLIENT OR THE ATTORNEY WHO RETAINED THEM IT'S  
8 VERY SIMPLE IN MY MIND.

9 ANY HUMAN BEING IS AT RISK FOR  
10 BIAS, AND IF YOU KNOW ABOUT THE BIAS AND YOU  
11 PROTECT YOURSELF AGAINST THE BIAS AND YOU SWEAR TO  
12 YOURSELF THAT YOU WILL NOT RENDER A BIASED OPINION,  
13 YOU ARE MORE LIKELY TO GIVE AN HONEST AND TRUTHFUL  
14 ANSWER THAN IF YOU DON'T THINK ABOUT IT.

15 Q. SO WHEN YOU REFER HERE TO POSITIVE  
16 REINFORCEMENT --

17 A. MONEY, THAT'S MONEY. IF PEOPLE ARE  
18 PAID, THERE IS SOME RISK THAT THEY WILL TELL AN  
19 UNTRUTH. AND I THINK THAT'S THE PURPOSE OF THE  
20 UNDERLYING QUESTION. AND I WILL TELL YOU, I WILL  
21 ANSWER TO YOU THAT THERE IS NO AMOUNT OF MONEY IN  
22 THE WORLD THAT WOULD GET ME TO SAY OR UTTER AN  
23 UNTRUTH. I AM PERSONALLY, FUNDAMENTALLY AND FOR  
24 RELIGIOUS REASONS, ABSOLUTELY NOT WILLING TO LIE.  
25 I FIND IT --

26 Q. YOU WOULD AGREE, DR. FEINGOLD, THAT  
27 THE FIVE MILLION DOLLARS YOU HAVE RECEIVED IN  
28 ASBESTOS CASES, OVER THE LAST 20 YEARS, IS A LARGE

1 AMOUNT OF POSITIVE REINFORCEMENT?

2           A.     I THINK IT'S A LARGE AMOUNT OF  
3 MONEY WHICH I WORKED VERY, VERY HARD FOR AND WHICH  
4 PEOPLE ALL OVER THE WORLD SEND ME CASES FOR. I  
5 MEAN, IT'S NOT MONEY FOR GIVING A DIAGNOSIS, IT'S  
6 MONEY FOR WORKING.

7                   NOW, I WILL ADMIT TO YOU THAT IT IS  
8 A PRESSURE TO SATISFY THE CLIENT. AND THAT'S WHY I  
9 WROTE AGAINST IT. THOSE ARE MY WORDS, NOT SOMEBODY  
10 ELSE'S WORDS.

11           Q.     SO WHAT YOU ARE REALLY SAYING HERE,  
12 ISN'T IT, THAT A DOCTOR'S INTENTIONS DON'T  
13 NECESSARILY PROTECT AGAINST THE FINANCIAL INCENTIVE  
14 TO TESTIFY FAVORABLY FOR THE LAWYERS WHO HIRE THE  
15 DOCTOR?

16           A.     I GRANT YOU, THAT'S A GOOD  
17 QUESTION.

18                   I THINK INTENTIONS ARE NOT ENOUGH.  
19 PURE INTENTIONS ARE NOT ENOUGH. A DOCTOR HAS TO --  
20 A DOCTOR INVOLVED IN THE MEDICAL/LEGAL PROCESS,  
21 THEY COME INTO COURT AND SWEARING TO GIVE TRUTHFUL  
22 TESTIMONY, HAS TO BE ON GUARD, NOT TO BE BIASED  
23 ABOUT THE FACTS THAT HE OR SHE STATES.

24                   GOOD INTENTIONS ARE NOT ENOUGH, YOU  
25 HAVE TO BE CONSTANTLY WATCHING THE WORDS THAT YOU  
26 SAY.

27           Q.     NOW, IN YOUR BOOK, YOU ALSO PROVIDE  
28 SOME EXAMPLES OF QUESTIONS AND ANSWERS, DON'T YOU?

1           A.     SURE, I DO.

2           Q.     LET ME SEE IF I CAN FIND ONE OF  
3 THOSE.

4                     HERE' S AN EXAMPLE OF  
5 CROSS-EXAMINATION; RIGHT?

6           A.     YES.

7           Q.     AND THIS LINE OF QUESTIONING GOES  
8 INTO HOW MUCH THE DOCTOR BEING EXAMINED MAKES.  
9 THERE' S A QUESTION HERE, FOR INSTANCE, "AND  
10 YOU HAVE MADE \$150,000 DOING THESE TESTS THEN?"

11          A.     YES.

12          Q.     AND THE ANSWER THAT YOU PROVIDED IN  
13 YOUR SAMPLE HERE, "OVER SEVERAL YEARS, YES. AND I  
14 WOULD ADD THAT IT IS JUST A SMALL FRACTION OF MY  
15 TOTAL INCOME FROM SEEING PATIENTS, TEACHING AND  
16 RECEIVING ROYALTIES FROM MY TEXTBOOK. "

17          A.     YES.

18          Q.     THAT' S THE SAMPLE YOU PROVIDED.  
19                     YOU, YOURSELF, COULD NOT GIVE THAT  
20 ANSWER, COULD YOU?

21          A.     I COULD NOT. THAT IS AN EXAMPLE OF  
22 AN ANSWER THAT AN ACADEMIC, YOU KNOW, UNIVERSITY  
23 PROFESSOR MIGHT GIVE.

24                     THESE ARE NOT MY ANSWERS, THESE ARE  
25 EXAMPLES OF TRUTHFUL ANSWERS.

26          Q.     AND YOU DON' T DO ANY TEACHING, SO  
27 THIS WOULDN' T APPLY TO YOU; RIGHT?

28          A.     I DO TEACH, BUT NOT AT THE

1 UNIVERSITY. OCCASIONALLY I AM INVITED, I WAS JUST  
2 RECENTLY INVITED TO THE UNIVERSITY OF MIAMI TO GIVE  
3 GRAND ROUNDS ON TOBACCO, BUT I DON'T TEACH THERE  
4 AS -- WITH A POSITION AS PROFESSOR.

5 Q. YOU HAVEN'T WRITTEN A TEXTBOOK SO  
6 YOU DON'T RECEIVE ROYALTIES FROM A TEXTBOOK?

7 A. ACTUALLY, I DO RECEIVE ROYALTIES  
8 FROM THIS BOOK, THAT IS, IF PEOPLE PURCHASE IT AND  
9 NOT PHOTOCOPY IT. BUT I DO RECEIVE SOME ROYALTIES.

10 IT'S NOT VERY MUCH, THOUGH, I  
11 FORGET HOW MUCH IT IS A YEAR.

12 IT CONTINUES TO SELL VERY WELL,  
13 THIS BOOK.

14 Q. BUT IT IS NOT A TEXTBOOK, IS IT?

15 A. DEPENDS WHAT YOU CALL IT. WE CALL  
16 IT A TEXTBOOK. ACTUALLY, IT'S A MEDICAL/LEGAL TEXT  
17 AND IT IS DESIGNED FOR CERTAIN PEOPLE. IT'S NOT A  
18 CASUAL READ. IT'S A BORING READ. I WOULDN'T  
19 RECOMMEND IT.

20 Q. IT'S NOT --

21 A. UNLESS YOU HAVE TO READ IT.

22 Q. IT IS NOT USED IN A UNIVERSITY, IS  
23 IT, IN MEDICAL SCHOOLS?

24 A. THAT, I DON'T KNOW, SIR. I DON'T  
25 KNOW ALL THE PLACES WHERE IT IS USED.

26 IT MAY WELL BE USED IN A  
27 UNIVERSITY. I THINK IT IS PROBABLY IN UNIVERSITY  
28 LIBRARIES.

1 Q. DO YOU THINK YOU ARE IMMUNE FROM  
2 THE PRESSURES THAT YOU DESCRIBED IN YOUR BOOK?

3 A. I AM A MAN, I AM A NORMAL PERSON.  
4 I DON'T THINK I AM IMMUNE. THAT'S WHY I HAVE TO,  
5 TO CHECK EVERY ANSWER BEFORE I SAY IT.

6 I HAVE A CERTAIN ADVANTAGE, THOUGH,  
7 AND THAT IS THAT I HAVE A VERY STRONG BELIEF THAT  
8 ANY UNTRUTHFUL UTTERANCE IS SPECIFICALLY FORBIDDEN  
9 BY GOD. THAT'S MY PERSONAL BELIEF AND IT GETS ME  
10 INTO ALL KINDS OF SOCIAL TROUBLE BECAUSE I CANNOT  
11 SPEAK UNTRUTHS, EVEN CASUAL ONES, IN SOCIAL  
12 CONVERSATION.

13 SO IF MY WIFE ASKS ME IF I LIKE THE  
14 DRESS, IT'S A PROBLEM BECAUSE, YOU KNOW, SOMETIMES  
15 I WILL ANSWER.

16 BUT I AM STUCK THERE. I AM SORRY.  
17 THAT'S ME. THAT I WILL NOT LIE.

18 SO THEN THE ISSUE IS, AM I BIASED,  
19 BECAUSE MAYBE I DON'T THINK I AM LYING, BUT I  
20 ACTUALLY AM SAYING SOMETHING UNTRUE BECAUSE I AM  
21 BIASED.

22 YOU KNOW, I AM A VERY METICULOUS  
23 PERSON, AND MAYBE NOT IN SOME PERSONAL MATTERS OR  
24 SOCIAL ENGAGEMENTS, SOMETIMES FORGET THOSE, BUT I  
25 AM VERY METICULOUS ON SCIENCE AND MEDICINE.

26 SO I STUDY ALL THE TIME AND I  
27 CONSIDER BOTH SIDES OF AN ISSUE. AND I AM VERY  
28 CAREFUL BEFORE I SAY SOMETHING.

1                   AND IF I DON'T KNOW OR IF I AM NOT  
2 AN EXPERT, I MAKE THAT PERFECTLY CLEAR.

3                   SO ONE OF MY MOST COMMON STATEMENTS  
4 WHEN PEOPLE ASK ME IS, WELL, I AM NOT AN EXPERT ON  
5 THAT.

6                   BECAUSE PEOPLE ASK ME DIFFERENT  
7 THINGS. IF I KNOW IT, AND I HAVE A BASIS FOR  
8 GIVING A TRUTHFUL ANSWER, I SAY IT TRUTHFULLY AND I  
9 AM VERY CAREFUL TO CALCULATE AND DETERMINE WHETHER  
10 I KNOW WHAT I AM TALKING ABOUT.

11                Q.     SO IN YOUR MIND, OTHER DOCTORS ARE  
12 NOT IMMUNE?

13                A.     I DON'T THINK ANYBODY IS IMMUNE  
14 BECAUSE PEOPLE ARE PEOPLE. SOME PEOPLE DO A BETTER  
15 JOB OF WATCHING WHAT THEY SAY THAN OTHERS.

16                Q.     YOU HAVE BEEN WORKING ON TOBACCO  
17 CASES FOR HOW MANY YEARS?

18                A.     IT DEPENDS ON HOW YOU DEFINE IT.  
19 BUT I WAS THE EXPERT IN THE VERY FIRST SUCCESSFUL  
20 TOBACCO CASE IN THE UNITED STATES, AFTER SEVEN  
21 LONG -- WHICH WAS IN '82. THE CASE THAT I WAS  
22 INVOLVED WITH WAS CARTER, WHICH CAME TO TRIAL --

23                Q.     DR. FEINGOLD, ALL I NEEDED TO KNOW  
24 WAS THE NUMBER OF YEARS. THAT WAS THE QUESTION.

25                A.     I AM JUST CALCULATING.

26                         '96 WAS THE TRIAL. '95 WE STARTED.  
27 I THINK WE STARTED PREPARATION IN '94, '95. I  
28 BELIEVE IT WAS '95 BUT I AM NOT SURE.

1 Q. AND DURING THE TIME THAT YOU HAVE  
2 BEEN INVOLVED IN TOBACCO CASES, YOU HAVE MADE ABOUT  
3 \$200,000 A YEAR ON THOSE CASES, HAVEN'T YOU?

4 DO YOU KNOW THE TOTAL AMOUNT OF  
5 MONEY YOU HAVE MADE ON TOBACCO CASES THEN IN THE  
6 LAST SEVERAL YEARS, THREE YEARS?

7 A. I DON'T KNOW, SIR.

8 THE FIRST COUPLE YEARS, ACTUALLY,  
9 TO GO BACK ON MY ANSWER A SECOND, THE FIRST COUPLE  
10 YEARS, '95, '96, '97, I THINK I MADE VERY LITTLE  
11 OR, YOU KNOW, CLOSE TO NOTHING. JUST THAT WHICH I  
12 WAS PAID IN DEPOSITIONS BY THE TOBACCO INDUSTRY.  
13 BECAUSE THE ATTORNEYS RETAINING ME HAD NO MONEY  
14 WHATSOEVER AND NEVER PAID ME, AND IN FACT, I STATED  
15 PUBLICLY I WOULD NOT CHARGE.

16 SO I THINK FOR THE FIRST, ABOUT 10  
17 OR 15 TOBACCO CASES THAT I BECAME INVOLVED WITH, I  
18 RECEIVED NOTHING, EXCEPT DEPOSITION BILLS.

19 Q. THE QUESTION WAS, WHAT'S THE TOTAL  
20 AMOUNT THAT YOU HAVE RECEIVED, NOT WHAT YOU HAVEN'T  
21 RECEIVED?

22 A. YOU SAID -- WELL, I RECEIVED ABOUT  
23 200, \$200,000, AND THE ANSWER IS IT IS NOT PER  
24 YEAR.

25 IT HAS NOT BEEN PER YEAR. IT HAS  
26 BEEN, PERHAPS, IN THE LAST TWO OR THREE YEARS.

27 Q. DR. FEINGOLD, I ASKED FOR THE TOTAL  
28 AMOUNT THAT YOU RECEIVED.

1           A.     YES.  I AM TRYING -- IT' S PROBABLY  
2 \$500,000, \$400,000, SOMETHING LIKE THAT.  \$300,000.  
3 I AM SORRY, I DON' T KNOW EXACTLY.

4           Q.     SO THERE COULD BE A \$200,000  
5 DIFFERENCE AND YOU WOULDN' T BE AWARE OF IT?

6           A.     NOT OVER SIX YEARS, NO.  I JUST  
7 DON' T KNOW THE NUMBER AND I DON' T WANT TO MISSTATE  
8 IT.

9           Q.     NOW, YOU ARE ASKED THIS QUESTION IN  
10 JUST ABOUT EVERY CASE YOU TESTIFY IN, ISN' T THAT  
11 RIGHT?

12          A.     IT' S TRUE.  I JUST DON' T KNOW THE  
13 NUMBER, I AM SORRY.

14          Q.     HAVEN' T BOTHERED TO LOOK AT IT?

15          A.     WELL, IT' S NOT A QUESTION OF  
16 BOTHER.  IT' S JUST NOT THE PRIMARY THING ON MY  
17 MIND.

18                   I CERTAINLY GET PAID AND I, IN THE  
19 LAST COUPLE YEARS, I PROBABLY MADE MORE THAN  
20 \$100,000 A YEAR ON TOBACCO CASES.

21          Q.     I WANT TO CHANGE SUBJECTS A LITTLE  
22 BIT.

23                   YOU ARE A SPECIALIST IN PULMONARY  
24 MEDICINE?

25          A.     YES, SIR.

26          Q.     RIGHT?

27          A.     AND INTERNAL MEDICINE.  I AM BOARD  
28 CERTIFIED IN INTERNAL MEDICINE AND PULMONARY

1 MEDICINE AND I HAVE OTHER CERTIFICATIONS IN  
2 OCCUPATIONAL LUNG DISEASE.

3 Q. PULMONARY MEDICINE BEING A  
4 SUBSPECIALTY OF INTERNAL MEDICINE?

5 A. PRECISELY.

6 Q. RELATING TO THE LUNGS?

7 A. YES, SIR.

8 Q. BUT YOU ARE NOT A SURGEON?

9 A. NO, I AM NOT.

10 Q. YOU ARE NOT AN ONCOLOGIST?

11 A. I AM NOT.

12 PLEASE UNDERSTAND, I PERFORM  
13 SURGICAL ACTS, ALTHOUGH I AM NOT A SURGEON. THERE  
14 ARE CERTAIN SURGICAL ACTS THAT I PERFORM I AM NOT  
15 AN ONCOLOGIST BUT I TREATED A GREAT MANY LUNG  
16 CANCER PATIENTS AND MAKE DECISIONS ABOUT  
17 CHEMOTHERAPY OR RADIATION THERAPY OR WHETHER OR NOT  
18 PEOPLE SHOULD HAVE THERAPY, BUT I AM NOT AN  
19 ONCOLOGIST.

20 Q. NOR ARE YOU BOARD CERTIFIED IN  
21 PATHOLOGY?

22 A. CERTAINLY NOT. I AM BOARD  
23 CERTIFIED IN PULMONARY.

24 Q. YOU HAVEN'T TAKEN A RESIDENCE IN  
25 PATHOLOGY, HAVE YOU?

26 A. NO, SIR, I HAVE NOT.

27 Q. YOU DON'T RECEIVE -- WHEN PEOPLE AT  
28 YOUR HOSPITAL NEED TO HAVE A DIAGNOSIS MADE FROM

1 PATHOLOGY SPECIMENS, THEY ARE NOT SENT TO YOU, ARE  
2 THEY?

3 A. NO, SIR. THEY ARE SENT TO THE  
4 PATHOLOGY DEPARTMENT. FOR EXAMPLE, I WOULD SEND  
5 THEM TO THE PATHOLOGY DEPARTMENT.

6 Q. BECAUSE YOUR HOSPITAL HAS  
7 PATHOLOGISTS WHO ARE LICENSED AND CERTIFIED TO  
8 PRACTICE IN THAT AREA?

9 A. WE HAVE TWO PARALLEL DEPARTMENTS,  
10 ONE IS THE CLINICAL PATHOLOGY DEPARTMENT WHICH SEES  
11 VIRTUALLY ALL OF THE WORK AND THEN THERE'S THE  
12 FORENSIC PULMONARY PATHOLOGY, WHICH IS A SUBSET  
13 WITHIN MY DEPARTMENT. AND WE, IN THAT PATHOLOGY  
14 DEPARTMENT, I WORK WITH PERSONALLY, INDIVIDUALLY.

15 Q. BUT YOU DON'T -- YOU HAVE  
16 PATHOLOGISTS WHO CERTIFY THE WORK?

17 A. IN BOTH, IN BOTH DEPARTMENTS,  
18 CORRECT.

19 Q. AND YOU ARE NOT, AND I THINK YOU  
20 JUST TESTIFIED TO THIS, BUT LET ME BE CLEAR, YOU  
21 ARE NOT ON THE MEDICAL FACULTY OF ANY UNIVERSITY OR  
22 TEACHING HOSPITAL, ARE YOU?

23 A. NOT CURRENTLY, NO. NO, SIR. I  
24 WAS, BUT NOT CURRENTLY.

25 Q. AND YOU HAVE NEVER PUBLISHED ANY  
26 WORK IN A PEER REVIEWED JOURNAL, HAVE YOU?

27 A. CORRECT. THERE WERE A COUPLE MINOR  
28 THINGS, BUT I HAVE NOT BEEN AN ACADEMIC. IT HAS

1 NOT BEEN MY LIFE'S WORK TO PUBLISH LEARNED PAPERS,  
2 THAT IS CORRECT.

3 Q. EVEN IN YOUR SPECIALTY OF PULMONARY  
4 MEDICINE?

5 A. EVEN IN THAT SPECIALTY, THAT IS  
6 CORRECT.

7 Q. SO YOU HAVEN'T PUBLISHED ANYTHING  
8 IN A PEER REVIEWED JOURNAL ABOUT CIGARETTE SMOKING  
9 OR NICOTINE, HAVE YOU?

10 A. CORRECT, I HAVE NOT, NOT IN A PEER  
11 REVIEWED. I HAVE PUBLISHED BUT NOT IN PEER  
12 REVIEWED JOURNALS THAT PUBLISH ORIGINAL WORK LIKE  
13 THE WYNDER GRAHAM PAPERS AND THAT KIND OF THING,  
14 NO, I HAVE NOT DONE THAT.

15 Q. NOTHING IN PEER REVIEWED JOURNALS  
16 REGARDING SMOKING AND HEALTH ISSUES; RIGHT?

17 A. OR SMOKING AND DISEASE, THAT IS  
18 CORRECT, NEITHER.

19 Q. YOU HAVEN'T PUBLISHED ANYTHING IN  
20 PEER REVIEWED JOURNALS THEN ABOUT EPIDEMIOLOGY?

21 A. AGAIN, CORRECT.

22 Q. YOU ARE NOT ON THE -- LET ME ASK  
23 YOU. YOU ARE NOT ON THE EDITORIAL BOARD OF ANY  
24 JOURNAL THAT ACCEPTS ARTICLES ON THE ISSUE OF  
25 CIGARETTE SMOKING OR NICOTINE OR DEPENDENCE OR  
26 ADDICTION?

27 A. NO, SIR. I AM NOT ON AN EDITORIAL  
28 BOARD.

1 Q. AND YOU HAVE NEVER PUBLISHED ANY  
2 ARTICLE OR PORTION IN A MEDICAL TEXTBOOK, ISN' T  
3 THAT RIGHT?

4 A. WITH THE EXCEPTION OF ASBESTOS  
5 MEDICINE ON TRIAL AND WITH THE EXCEPTION OF THE  
6 FACT THAT I AM SUPPOSED TO BE WORKING ON A NEW  
7 TEXTBOOK WITH DR. SALDANA, THE ANSWER IS, NO. I  
8 AGREE WITH YOU, IN OTHER WORDS.

9 Q. I BELIEVE YOU TESTIFIED YESTERDAY  
10 YOUR WORK ON THIS YET TO BE PUBLISHED TEXTBOOK WITH  
11 DR. SALDANA HAS TO DO WITH THE PHOTO MICROGRAPHS?

12 A. NO, ABSOLUTELY NOT.

13 DR. SALDANA, BECAUSE THE QUESTION  
14 WASN' T ASKED OF ME YESTERDAY, NOW THAT YOU HAVE  
15 ASKED ME THE QUESTION, DR. SALDANA ASKED ME TO  
16 WRITE A CHAPTER IN A TEXTBOOK ON CIGARETTE RELATED  
17 LUNG DISEASE. AND ALSO DR. SALDANA, OR PROFESSOR  
18 SALDANA ASKED ME TO WRITE A CHAPTER ON MEDICAL  
19 LEGAL PULMONARY MEDICINE OR FORENSIC PULMONARY  
20 PATHOLOGY.

21 I AM SUPPOSED TO WRITE THOSE  
22 THINGS.

23 IN ADDITION, I AM WORKING WITH HIM  
24 ON AN ONGOING BASIS, IN TERMS OF THE IMAGES THAT  
25 WILL BE USED IN THE NEW TEXTBOOK. THIS IS A NEW  
26 EDITION OF A CURRENTLY EXISTING TEXTBOOK.

27 Q. ISN' T IT TRUE, DOCTOR, THAT WHEN  
28 YOU TESTIFIED ON BEHALF OF THE ASBESTOS COMPANIES

1 AND YOU WERE ASKED ABOUT YOUR PUBLICATIONS, YOU  
2 RESPONDED THAT YOU WERE ABOUT TO PUBLISH ARTICLES  
3 ABOUT ASBESTOS DISEASES?

4 A. TRUE. THERE WAS, I THINK, ONE OR  
5 TO ARTICLES THAT WERE SUPPOSED TO BE PUBLISHED AND  
6 WERE NEVER DONE.

7 Q. YOU HAVE NEVER CONDUCTED YOUR OWN  
8 EPIDEMIOLOGICAL STUDY ON CIGARETTE SMOKING, HAVE  
9 YOU?

10 A. NO, SIR, I HAVE NOT.

11 Q. YOU DON'T HOLD YOURSELF OUT AS AN  
12 EXPERT IN MOLECULAR BIOLOGY, DO YOU?

13 A. ONLY AS A LUNG SPECIALIST. AND  
14 UNDER THAT, MOLECULAR BIOLOGY ARTICLES HAVE BEEN  
15 AND ARE REGULARLY PUBLISHED IN PULMONARY MEDICINE  
16 JOURNALS LIKE THE JOURNAL OF "CHEST. "

17 BUT ASIDE FROM THE UNDERSTANDING  
18 NECESSARY, UNDERSTANDING OF MOLECULAR BIOLOGY, TO  
19 WHAT EXTENT I UNDERSTAND IT, IT'S THE UNDERSTANDING  
20 OF A LUNG SPECIALIST.

21 Q. AND YOU HAVE NEVER DONE ANY  
22 ORIGINAL RESEARCH INTO ANY ASPECT OF THE CAUSE OR  
23 CAUSES OF CANCER, HAVE YOU?

24 A. THE ONLY RESEARCH I HAVE DONE, SIR,  
25 IS IN THE CLASS OF MEDICAL LITERATURE RESEARCH, NOT  
26 BENCH RESEARCH OF THE TYPE THAT I SPOKE OF  
27 YESTERDAY WHERE IN THE LAST -- IN THE PRECEDING  
28 DECADE, IN THE 1990'S, SPECIFIC MOLECULAR BIOLOGY,

1 UNDERSTANDING OF THE CAUSES AND MECHANISMS OF LUNG  
2 CANCER BECAME PUBLISHED. I DIDN'T DO ANY OF THAT,  
3 WHAT DOCTORS CALL BENCH RESEARCH, WORKING AT THE  
4 MICROSCOPE OR WITH ANIMALS, NO.

5 Q. THE PLAINTIFF IN THIS CASE, RICHARD  
6 BOEKEN, IS NOT ONE OF YOUR PATIENTS, IS HE?

7 A. NO, SIR. ONLY IN THE MEDICAL/LEGAL  
8 SENSE. BUT I HAVE NEVER SEEN THE MAN OR SPOKEN TO  
9 HIM

10 Q. AND YOU ONLY BECAME INVOLVED IN  
11 THIS CASE AFTER THE LAWSUIT WAS FILED?

12 A. YES, SIR, THAT IS CORRECT.

13 Q. AT MR. PIUZE'S REQUEST?

14 A. YES, SIR.

15 Q. NOW, YOU SHOWED US ON YOUR POWER  
16 POINT PRESENTATION YESTERDAY SOME OF THE PHOTO  
17 MICROGRAPHS, DIDN'T YOU?

18 A. I DID, SIR, YES.

19 Q. AND I'D LIKE TO PUT ONE OF THOSE  
20 UP.

21 A. WHICH NUMBER?

22 Q. THIS IS IMAGE 5. ISN'T THAT ONE  
23 YOU SHOWED US YESTERDAY?

24 A. I THINK I SHOWED 5, YES. THAT'S  
25 IT.

26 Q. AND THIS IS THE COPY THAT YOU  
27 PROVIDED ME, ISN'T THAT TRUE?

28 A. YES, SIR.

1 Q. NOW, UNLIKE THE VERSION THAT YOU  
2 SHOWED YESTERDAY ON THE POWER POINT, THIS HAS SOME  
3 WRITING DOWN AT THE BOTTOM, DOESN' T IT?

4 A. YES, SIR.

5 IN FACT, I SHOWED THE SAME VERSION,  
6 I BELIEVE. I JUST DIDN' T SHOW THE WRITING, I  
7 DIDN' T KNOW THAT I WAS EVEN SUPPOSED TO.

8 Q. AND IT SAYS HERE, PATHOLOGY REVIEW  
9 BY PROFESSOR MARIO SALDANA AND DR. ALLAN FEINGOLD,  
10 2/17/2001?

11 A. YES, SIR.

12 Q. AND IT SAYS THAT, BECAUSE YOU SAT  
13 NEXT TO DR. SALDANA AS THIS IMAGE WAS REVIEWED?

14 A. CORRECT. HE AND I REVIEWED IT  
15 TOGETHER.

16 Q. AND THAT' S BECAUSE DR. SALDANA IS A  
17 LICENSED PATHOLOGIST, ISN' T THAT RIGHT?

18 A. NO. THAT IS NOT CORRECT. THAT' S  
19 NOT WHY WE DO IT. BUT THAT' S -- WE BRING TO BEAR  
20 IN THE FORENSIC PULMONARY MEDICINE DEPARTMENT THE  
21 POWER OF THE CLINICIAN, ME, RADIOLOGY, BECAUSE I AM  
22 AN EXPERT IN RADIOLOGY, PATHOLOGY, BECAUSE SALDANA  
23 IS AN EXPERT IN PATHOLOGY AND WE SIT THERE TOGETHER  
24 AND WE LOOK AT THESE IMAGES TOGETHER. IT IS A  
25 TYPICAL OR CLASSICAL MEETING OF THE MINDS.

26 MY CONTRIBUTION AND HIS  
27 CONTRIBUTION OVERLAP AND THE WORDS THAT YOU SEE ON  
28 THE BOTTOM ARE MY WORDS AND I ACTUALLY WRITE THOSE.

1 BUT SOME OF THEM COME FROM HIS MOUTH.

2 I MEAN, IT IS HE -- HE AND I ARE  
3 TALKING ABOUT IT, THE CASE, TOGETHER. SO HE MAY  
4 USE CERTAIN WORDS AND I MAY USE CERTAIN WORDS AND  
5 WHAT I ACTUALLY END UP PUTTING DOWN ARE THE SUM OF  
6 OUR THOUGHTS.

7 Q. LOOKING AT PHOTO MICROGRAPHS OR  
8 ACTUALLY LOOKING AT SLIDES, LIKE THIS, THIS IS A  
9 PICTURE OF A SLIDE OR A PORTION OF A SLIDE; RIGHT?

10 A. YES, SIR, IT IS.

11 Q. LOOKING AT SLIDES AND ANALYZING  
12 WHAT IS SEEN IN THOSE SLIDES IS THE BUSINESS OF A  
13 PATHOLOGIST, IS IT NOT?

14 A. IN A LIMITED SENSE, YES. IN A MORE  
15 COMPLETE PULMONARY MEDICINE SENSE, NO. NOT  
16 CLASSICALLY, NOT IN UNIVERSITY, NOT IN THE  
17 EXAMINATION, BUT IN A LIMITED SENSE, YOU ARE RIGHT.  
18 WHAT PATHOLOGISTS DO IS LOOK AT PATHOLOGY AND WHAT  
19 PULMONARY DOCTORS DO IS EXAMINE PATIENTS AND LOOK  
20 AT X-RAYS AND MAKE A DIAGNOSIS.

21 BUT THE WAY YOU ARE SUPPOSED TO DO  
22 IT IS TO CROSS OVER, SO IN MY CLINICAL PRACTICE,  
23 WHERE I TAKE CARE OF SICK PEOPLE WITH LUNG CANCER,  
24 I GO TO THE MICROSCOPE, I LOOK AT THE TISSUE THAT  
25 HAS BEEN REMOVED WITH THE PATHOLOGIST.

26 Q. DR. FEINGOLD, WHAT I ASKED YOU WAS,  
27 IS IT THE BUSINESS OF A PATHOLOGIST TO EXAMINE  
28 SLIDES?

1           A.     YES, SIR.  SIMPLE ANSWER IS IN A  
2 LIMITED SENSE, YES, IT IS, SIR.

3           Q.     AND WHEN THE PATHOLOGY OF MATERIAL  
4 CONTAINED ON A SLIDE IS NEEDED IN THE COURSE OF  
5 TREATING A PATIENT, THAT SLIDE IS SENT TO A  
6 LICENSED PATHOLOGIST FOR REVIEW?

7           A.     ABSOLUTELY.  FIRST THE MATERIAL IS  
8 OBTAINED BY SOMEBODY LIKE ME AND THEN THE MATERIAL  
9 IS SUBMITTED TO THE LABORATORY.  IT'S HANDLED BY  
10 TECHNICIANS AND LOOKED AT BY A LICENSED  
11 PATHOLOGIST.

12          Q.     AND THE LICENSED PATHOLOGIST THEN  
13 PROVIDES INFORMATION REGARDING THE CELL TYPE AND  
14 DIAGNOSIS OF WHATEVER IS REVEALED IN THIS SLIDE;  
15 CORRECT?

16          A.     IDEALLY, WITH THE PULMONOLOGIST.  
17 AND NOT ONLY IS THAT IDEAL, IT'S THE BEST WAY TO  
18 TREAT PATIENTS AND THAT IS EXACTLY WHAT I DO.

19          Q.     YOU REVIEWED MEDICAL RECORDS IN  
20 THIS CASE, DIDN'T YOU?

21          A.     YES, SIR, I DID.

22          Q.     AND THAT WOULD INCLUDE THE  
23 PATHOLOGY SLIDES.  I THINK YOU TESTIFIED TO THAT.

24          A.     THE PATHOLOGY REPORT FROM THE  
25 CEDARS-SINAI PATHOLOGIST, YES, SIR, THAT'S TRUE.

26          Q.     YOU REVIEWED THE PATHOLOGY REPORT  
27 AND YOU AND DR. SALDANA REVIEWED THE PATHOLOGY  
28 SLIDES; RIGHT?

1           A.     AND THE REPORT, ACTUALLY, WE LOOKED  
2 AT THE CEDARS-SINAI REPORT AS WELL.

3           Q.     THAT'S WHAT I MEAN WHEN I SAID THE  
4 PATHOLOGY REPORT.

5           A.     YOU SAID "SLIDES," BUT, OKAY, YES,  
6 SIR.

7           Q.     LET'S JUST BE CLEAR THEN.  
8                 YOU REVIEWED THE SLIDES, ONE?

9           A.     CORRECT.

10          Q.     AND TWO, YOU REVIEWED THE PATHOLOGY  
11 REPORT FROM CEDARS-SINAI?

12          A.     OH, YES, WE DID, SURE.

13          Q.     AND THOSE SLIDES WERE PREPARED BY  
14 DR. GELLER AT CEDARS-SINAI, ISN'T THAT RIGHT?

15          A.     TO BE PRECISE, THE SLIDES I AM SURE  
16 WERE PREPARED BY A TECHNICIAN, BUT THE  
17 INTERPRETATION OF THE SLIDES WAS PREPARED BY  
18 DR. GELLER; CORRECT.

19          Q.     AND THERE WERE 16 OF THOSE SLIDES?

20          A.     I BELIEVE, YES.

21          Q.     LABELED A THROUGH P?

22          A.     YES.

23          Q.     AND OF THOSE, OF THOSE 16 SLIDES,  
24 FOUR OF THE SLIDES, AND I BELIEVE THAT'S D, E, F,  
25 AND G, DEALT WITH OR WERE TAKEN FROM PLAINTIFF'S 2,  
26 ISN'T THAT RIGHT?

27          A.     YES, SIR.

28                 AS I RECALL, I'D HAVE TO LOOK, BUT

1 ON THE IMAGE YOU JUST SHOWED, I MARKED IT AS FROM  
2 SLIDE D.

3 Q. ISN'T THIS A COPY OF THE PATHOLOGY  
4 REPORT OF DR. GELLER?

5 A. YES. I RECOGNIZE IT.

6 Q. AND IT IS, HIS NAME APPEARS ON THE  
7 LAST PAGE; RIGHT?

8 A. YES, SIR, IT DOES.

9 Q. THERE'S NO REFERENCE IN THIS --  
10 THERE'S NO PARTICIPATION IN THIS REPORT BY ANY  
11 PULMONOLOGIST, IS THERE?

12 A. THERE WOULD NOT NORMALLY BE, THAT  
13 IS CORRECT.

14 Q. PATHOLOGIST, DR. GELLER, PREPARED  
15 THIS REPORT BY HIMSELF, DIDN'T HE?

16 A. I DON'T KNOW

17 Q. NOW, YOU HAVE ALSO REVIEWED  
18 DR. HAMMER'S REPORT, ISN'T THAT CORRECT?

19 A. YES. AS I SAID YESTERDAY, I CAN'T  
20 QUITE REMEMBER THE REPORT ITSELF. I REMEMBER THE  
21 DEPOSITION. I THINK I SAW THE HAMMER'S REPORT. I  
22 AM NOT SURE.

23 IF YOU SHOW IT TO ME, MAYBE I WILL  
24 REMEMBER.

25 Q. DOES THIS LOOK FAMILIAR?

26 A. THAT'S WHAT ALL HIS REPORTS LOOK  
27 LIKE, SO THAT'S THE SAME HEADING THAT HE HAS.

28 Q. SO AS YOU SIT HERE TODAY, YOU CAN'T

1 REMEMBER WHETHER YOU HAVE READ THIS?

2 A. I AM SORRY, I CAN'T.

3 AS I SAY, I READ HIS DEPOSITION

4 WHICH REFERS TO HIS REPORT.

5 Q. SO YOU REVIEWED DR. GELLER'S REPORT

6 AND YOU READ DR. HAMMER'S DEPOSITION WHICH REFERS

7 TO HIS REPORT?

8 A. YES, SIR.

9 Q. SO YOU WOULD KNOW THAT IN

10 EVALUATING MR. BOEKEN'S TUMOR, DR. HAMMER DISCUSSED

11 THE FOUR SLIDES THAT PERTAINED TO THE TUMOR, D, E,

12 F AND G?

13 A. I CAN'T RECALL EXACTLY, BUT I AM

14 SURE HE DID.

15 Q. SLIDE G WAS THE FROZEN SECTION;

16 RIGHT?

17 A. I ACCEPT YOUR STATEMENT. I CAN'T

18 REMEMBER THE LETTER DESIGNATION. I AM SURE YOU ARE

19 TELLING ME THE CORRECT THING.

20 Q. LET'S LOOK AT DOCTOR GELLER'S

21 REPORT.

22 SECTION THREE OR THE THIRD SECTION

23 OF HIS REPORT DEALS WITH RIGHT UPPER LOBE WITH

24 FROZEN SECTION.

25 DO YOU SEE THAT?

26 A. YES, I DO.

27 Q. DO YOU RECALL READING THAT?

28 A. I DO.

1 Q. AND THIS IS WHERE HE TALKS ABOUT  
2 THE SLIDES THAT HE MADE FROM THAT PORTION OF THE  
3 PATHOLOGY MATERIALS?

4 A. CORRECT.

5 Q. HE REFERS TO D AND E, SLIDES D AND  
6 E, DO YOU SEE THAT?

7 A. I DO. AND I USED THAT EXACT  
8 LANGUAGE IN MY PHOTO MICROGRAPHS, CORRECT.

9 Q. "TUMOR WITH OVERLYING INKED  
10 PLEURA?"

11 A. YES.

12 Q. AND YOU TALKED ABOUT SLIDE D;  
13 RIGHT?

14 A. I THINK I SLOWED MORE THAN ONE  
15 SLIDE BUT CERTAINLY SLIDE D, I DID, YES.

16 Q. F, "RANDOM GROSSLY NORMAL LUNG"?

17 A. CORRECT.

18 Q. AND SLIDE G, FROZEN SECTION  
19 CONTROL"?

20 A. YES.

21 Q. THOSE ARE THE FOUR?

22 A. YES. I DIDN'T UNDERSTAND THE WORD  
23 "CONTROL" IN THAT, ON THAT TEXT.

24 Q. YOU UNDERSTAND THAT IT WAS THE  
25 FROZEN SECTION?

26 A. I THOUGHT SO BUT THE WORD "CONTROL"  
27 SHOULDN'T HAVE BEEN USED THERE. I UNDERSTOOD IT TO  
28 BE THE FROZEN SECTION.

1 Q. AND JUST TO SORT OF REVISIT THE  
2 ISSUE OF WHAT A FROZEN SECTION IS, ISN'T IT TRUE  
3 THAT A FROZEN SECTION IS A FLASH-FROZEN PIECE OF  
4 THE TUMOR THAT IS ANALYZED WHILE THE PATIENT IS IN  
5 THE OPERATING ROOM?

6 A. JUST AS I SAID, YESTERDAY, THAT IS  
7 TRUE.

8 Q. AND THEN THE PATHOLOGIST WHO DOES  
9 THAT ANALYSIS COMMUNICATES WITH THE SURGEON, SO ANY  
10 INFORMATION DERIVED FROM THE PATHOLOGY REVIEW CAN  
11 BE INCORPORATED IN THE SURGICAL PROCEDURE?

12 A. CORRECT.  
13 TYPICALLY, AND IT WAS IN THIS CASE,  
14 USED TO DETERMINE WHETHER THE PATIENT IS  
15 RESECTABLE.

16 SO THAT THE WHOLE POINT HERE WAS TO  
17 DETERMINE WHETHER THE TUMOR COULD BE REMOVED  
18 SUCCESSFULLY.

19 Q. NOW, DR. GELLER FOUND THAT SLIDE G  
20 HAD A B. A. C. GROWTH PATTERN?

21 A. HE DID, ON THE FROZEN SECTION  
22 ANALYSIS, CORRECT.

23 Q. IT SAYS RIGHT HERE, "F. S. 3, PART  
24 3, BRONCHIAL ALVEOLAR CARCINOMA"; RIGHT?

25 A. RIGHT. HE, OF COURSE, CONTRADICTED  
26 THAT SUBSEQUENTLY, BUT HE DID SAY THAT AND I DO  
27 UNDERSTAND WHY HE SAID IT.

28 Q. AND IT'S TRUE ALSO, HAVING READ

1 DR. HAMMER' S DEPOSITION, ISN' T IT TRUE THAT HE ALSO  
2 FOUND A B. A. C. GROWTH PATTERN IN SLIDE G?

3 A. YES, THAT IS CORRECT. AND AS I  
4 SAID, THAT' S NOT UNUSUAL IN ADENOCARCINOMA.

5 Q. YOU DIDN' T SHOW US SLIDE G  
6 YESTERDAY, DID YOU?

7 A. I DIDN' T SHOW YOU MANY OTHER SLIDES  
8 AS WELL, SIR.

9 Q. YOU SHOWED US YESTERDAY AN ARTICLE  
10 FROM "U. S. NEWS AND WORLD REPORT. " DO YOU REMEMBER  
11 THAT?

12 A. I DO. WELL, AN EXCERPT.

13 Q. AN EXCERPT FROM IT.

14 AND I JUST WANT TO FOCUS YOUR  
15 ATTENTION RIGHT NOW ON THE STUDIES REGARDING THE  
16 ASSOCIATION BETWEEN SMOKING AND CANCER THAT CAME  
17 OUT IN THE 1950' S.

18 A. OKAY.

19 Q. YOU HAVE OBVIOUSLY READ THOSE  
20 STUDIES?

21 A. I DID.

22 Q. YOU CONDUCTED A REVIEW OF THE  
23 LITERATURE ADDRESSING THOSE STUDIES, HAVEN' T YOU?

24 A. THIS IS TRUE.

25 Q. AND YOU ARE FAMILIAR WITH THE  
26 COVERAGE IN THE POPULAR PRESS OF THOSE STUDIES.  
27 WOULD THAT BE FAIR TO SAY?

28 A. THAT' S FAIR. I AM NOT AN EXPERT IN

1 POPULAR COVERAGE, LIKE IN "TIME" MAGAZINE OR "LIFE"  
2 MAGAZINE, BUT I HAVE SEEN SOME OF THOSE ARTICLES.

3 Q. SO YOU ARE AWARE THAT THOSE  
4 STUDIES, WYNDER AND GRAHAM, DOLL AND HILL, HAMMOND  
5 AND HORN, THE ONES YOU MENTIONED, RECEIVED QUITE A  
6 BIT OF COVERAGE THIS THE POPULAR PRESS?

7 A. I THINK YOU CHARACTERIZED IT  
8 CORRECTLY. I AM AWARE OF THAT, YES, SIR.

9 Q. BUT YOU ALSO KNOW THEY WERE  
10 EXTENSIVELY COVERED IN MEDICAL JOURNALS AT THE  
11 TIME, ISN'T THAT RIGHT?

12 A. THAT IS TRUE. ALSO CORRECT.

13 Q. AND AMONG THEM WERE SOME JOURNALS  
14 THAT YOU CHARACTERIZED AS BEING THE PREMIER  
15 JOURNAL?

16 A. TRUE.

17 Q. THAT WOULD BE JOURNAL OF AMERICAN  
18 MEDICAL ASSOCIATION?

19 A. I MENTIONED FOUR, "JAMA," "NEW  
20 ENGLAND JOURNAL OF MEDICINE" ON OUR SIDE OF THE  
21 OCEAN, THE ATLANTIC OCEAN, THE "BRITISH MEDICAL  
22 JOURNAL" AND "LANCET."

23 NOW, THERE ARE MANY OTHER VERY  
24 IMPORTANT AND PREMIER JOURNALS. BUT THOSE ARE THE  
25 FOUR THAT ARE KNOWN BEST ALL OVER THE WORLD.

26 Q. SO CLEARLY, THE RESULTS OF THOSE  
27 STUDIES WEREN'T ANY SECRET?

28 A. ON THE CONTRARY. THEY WERE NOT A

1 SECRET.

2 Q. WIDELY KNOWN IN SCIENTIFIC AND  
3 MEDICAL CIRCLES?

4 A. YES, SIR, I AGREE.

5 Q. EVEN AMONG THE PUBLIC?

6 A. WELL, TO WHAT EXTENT THE PUBLIC  
7 KNEW ABOUT IT OR UNDERSTOOD THE IMPLICATION IS  
8 ANOTHER MATTER. REALLY NOT MY AREA OF EXPERTISE,  
9 EXCEPT INsofar AS WHAT I KNOW PATIENTS KNOW  
10 BUT I CERTAINLY AGREE THAT IT WAS  
11 NOT A SECRET AND THERE WAS PUBLIC COVERAGE OF THESE  
12 REPORTS.

13 Q. NOW, YOU TOLD US YESTERDAY THAT,  
14 ESSENTIALLY, THE FACT THAT SMOKING CAUSES LUNG  
15 CANCER WAS PROVED BY 1953?

16 A. YES, SIR.

17 Q. NOT EVERYONE AGREED AT THAT TIME  
18 THAT THE CAUSALITY, CAUSATION HAD BEEN PROVED,  
19 ISN'T THAT TRUE?

20 A. I SAID THAT ALSO, YES. I SAID THAT  
21 THE PEOPLE WHO KNEW, THE EXPERTS WHO HAD PRODUCED  
22 THE LITERATURE AND WHO HAD REVIEWED THE RESULTS  
23 KNEW, DEFINITELY, THAT CAUSATION HAD BEEN PROVEN.  
24 BUT I ALSO SAID THAT PEOPLE SAID, NON-EXPERT  
25 PEOPLE, OR PEOPLE WHO DIDN'T RIDE THE LITERATURE OR  
26 WHO DID NOT, AT THE "NEW ENGLAND JOURNAL OF  
27 MEDICINE" SAID, RESPONSIBLY LOOK AT THE FACTS, MADE  
28 VARIOUS STATEMENTS, I AGREE.

1 Q. AND I THINK YOU SAID, YES, THAT  
2 PEOPLE WHO BASICALLY DISAGREED, AND I AM TALKING  
3 ABOUT MEDICAL PEOPLE, PEOPLE WHO DISAGREED WITH  
4 THAT ASSESSMENT FROM 1953 ONWARD, ARE BASICALLY  
5 IRRESPONSIBLE, USING THE TERM IN THE WAY THAT YOU  
6 DID?

7 A. NO, SIR, I DON'T THINK I SAID THAT.  
8 I THINK WHAT I SAID OR MEANT TO SAY  
9 OR MEANT TO EXPLAIN WAS THAT A RESPONSIBLE  
10 EXAMINATION OF THE FACTS LED TO ONE SCIENTIFIC  
11 CONCLUSION AS TO WHETHER OR NOT THEY DISAGREED  
12 WASN'T REALLY THE ISSUE FOR ME.

13 THE ISSUE WAS WHEN SCIENTISTS LOOK  
14 AT A SET OF FACTS THAT LEAD TO AN UNAVOIDABLE  
15 CONCLUSION, IT'S IRRESPONSIBLE TO AVOID THE  
16 CONCLUSION.

17 Q. OKAY.  
18 NOW, ONE OF THE THINGS YOU TOLD US  
19 ABOUT WAS THE WYNDER AND GRAHAM EXPERIMENT ON MOUSE  
20 SKIN PAINTING.

21 A. WYNDER, GRAHAM CRONINGER IN 1953,  
22 THAT IS RIGHT. I WANT TO REMEMBER DR. CRONINGER AS  
23 WELL.

24 Q. NOW, DR. WYNDER HIMSELF  
25 ACKNOWLEDGED THAT THE MOUSE SKIN TEST DID NOT PROVE  
26 THAT SMOKING CAUSED LUNG CANCER IN PEOPLE, ISN'T  
27 THAT RIGHT?

28 A. OF COURSE. AND I ARGUED THAT IT

1 DID NOT EITHER. IT MERELY REPRESENTED BIOLOGICAL  
2 PLAUSIBILITY. IT WAS NOT INTENDED AND COULD NOT  
3 HAVE DEMONSTRATED LUNG CANCER CAUSATION, BECAUSE  
4 THERE WAS NO EXPOSURE TO THE LUNGS.

5 Q. ARE YOU FAMILIAR WITH DR. WYNDER'S  
6 ARTICLE IN THE APRIL 1954 VOLUME OF THE  
7 "CONNECTICUT STATE MEDICAL JOURNAL"?

8 A. I BELIEVE I HAVE SEEN THIS BEFORE.

9 Q. IT SAYS, "THE PLACE OF TOBACCO AND  
10 ETIOLOGY OF LUNG CANCER"?

11 A. YES, SIR.

12 Q. AND IN THIS ARTICLE HE TALKED ABOUT  
13 THE SIGNIFICANCE OF HIS MOUSE SKIN PAINTING  
14 EXPERIMENTS, DIDN'T HE?

15 A. AS I RECALL, YES, SIR.

16 Q. AND HE SAYS HERE:

17 "THE PRESENT MOUSE DATA DO  
18 NOT INFLUENCE THE PROOF AT HAND  
19 LINKING SMOKING TO LUNG CANCER IN  
20 MAN," AND HE CONTINUES, DOESN'T HE,  
21 "THE MOUSE SKIN IS NOT LIKE THE  
22 BRONCHIAL EPITHELIUM "  
23 EPITHELIUM IS WHERE CANCER --

24 A. BRONCHIAL EPITHELIUM IS THE  
25 DELICATE INNER LINING OF BRONCHIAL TUBES.

26 Q. AND THAT'S GENERALLY WHERE THE  
27 CANCER STARTS, ESPECIALLY THOSE KINDS OF CANCERS,  
28 NOT THE KIND THAT MR. BOEKEN HAD?

1           A.     BUT THE KIND OF CANCER THAT DR.  
2 WYNDER WAS SPEAKING OF, YES.

3           Q.     (READING)

4                     "THE MOUSE SKIN IS NOT LIKE  
5 THE BRONCHIAL EPITHELIUM THOUGH THEY  
6 BOTH REPRESENT EPITHELIAL TISSUE.

7                     "THE MOUSE SKIN TEST CANNOT  
8 GIVE DEFINITIVE PROOF FOR A HUMAN  
9 CARCINOGEN, ALTHOUGH IT HAS LONG BEEN  
10 USED AS A RELIABLE TOOL FOR TESTING OF  
11 CARCINOGENIC MATERIALS, AND ALTHOUGH,  
12 HISTORICALLY, AS IN THE COAL TAR AND  
13 PETROLEUM STUDIES, A CLOSE CORRELATION  
14 BETWEEN ANIMAL AND HUMAN DATA HAS BEEN  
15 ESTABLISHED IN REGARD TO EPIDERMID  
16 CARCINOGENESIS, " EPIDERMID BEING  
17 SKIN?

18          A.     YES, CORRECT.

19          Q.     (READING)

20                    "IN VIEW OF THIS BACKGROUND,  
21 AND IN VIEW OF THE HUMAN DATA ALREADY  
22 AVAILABLE, THE ANIMAL DATA MUST BE  
23 CONSIDERED NOT AS A PROOF FOR THE  
24 HUMAN EXPERIENCE BUT AS A TOOL WITH  
25 WHICH TO WORK TOWARDS THE ISOLATION  
26 AND IDENTIFICATION OF CARCINOGENIC  
27 AGENTS.

28                    "AT THIS TIME, WE CAN ONLY

1           ASSUME ON THE BASIS OF THE COMBINED  
2           HUMAN AND ANIMAL DATA, THAT IS THESE  
3           CARCINOGENS ARE THE SAME FOR MAN AND  
4           FOR MICE. "

5                         IT WASN'T KNOWN AT THE TIME, WAS  
6 IT, IT WAS ASSUMED?

7           A.       THE CANCER-CAUSING SUBSTANCES. BUT  
8 I THINK THAT HE SPOKE VERY WELL IN THAT PIECE, AND  
9 I DON'T KNOW IF IT REQUIRES ANY COMMENT.

10                        I HAVE ALREADY EXPLAINED EXACTLY  
11 WHAT HE SAID THERE, THE MOUSE SKIN PAINTING WAS A  
12 TOOL TO DEMONSTRATE BIOLOGICAL PLAUSIBILITY, IN  
13 ITSELF, IT WAS NOT A PROOF. AND, YOU KNOW, HE SAID  
14 IT PRETTY WELL.

15           Q.       NOW, THE NATIONAL CANCER INSTITUTE  
16 IS A REPUTABLE AND AUTHORITATIVE ORGANIZATION,  
17 ISN'T IT?

18           A.       VERY.

19           Q.       CERTAINLY IN THE FIELD OF CANCER  
20 STUDY, IT WOULD BE?

21           A.       ABSOLUTELY. AND IN FACT, THEY  
22 PRODUCE A JOURNAL CALLED THE "JOURNAL OF THE  
23 NATIONAL CANCER INSTITUTE" THAT IS EXTREMELY  
24 IMPORTANT.

25           Q.       BY THE WAY, JUST FOR THE RECORD,  
26 THE WYNDER ARTICLE THAT WE JUST REFERRED TO IS  
27 DEFENDANT'S EXHIBIT 5134.

28                                 ///       ///       ///



1           CANCER INSTITUTE AS OF A YEAR AGO THAT  
2           THERE IS UNMISTAKABLY A CORRELATION  
3           BETWEEN THE OCCURRENCE OF LUNG CANCER  
4           AND SMOKING, PARTICULARLY CIGARETTE  
5           SMOKING. BUT SO FAR, IT IS NOT  
6           BELIEVED THAT A CAUSATION HAS BEEN  
7           DEMONSTRATED. THAT IS, A CAUSE AND  
8           EFFECT RELATIONSHIP. "

9                            THAT'S WHAT HE SAID, ISN'T THAT  
10       TRUE?

11           A.       YES, HE DID SAY THAT.

12           Q.       AND HE GOES ON TO SAY, DOWN HERE:

13                            "MAN Y INDIVIDUALS BELIEVE  
14           THAT AIR POLLUTION, EXPOSURE TO  
15           CERTAIN OCCUPATIONAL AND ENVIRONMENTAL  
16           CONDITIONS MAYBE ANOTHER ITEM IN THE  
17           CAUSATION OF LUNG CANCER. THESE MAYBE  
18           IN TANDEM WITH OR RELATED TO HEAVY  
19           CIGARETTE SMOKING. "

20                            DIDN'T HE TESTIFY TO THAT?

21           A.       HE DID SAY THAT; YES, SIR.

22           Q.       NOW, THIS WAS AN ARTICLE OR A  
23       STATEMENT THAT YOU DIDN'T TELL US ABOUT YESTERDAY?

24           A.       THERE ARE MANY STATEMENTS THAT I  
25       DIDN'T TELL YOU ABOUT, SIR. THERE HAVE BEEN  
26       THOUSANDS, PROBABLY TENS OF THOUSANDS OF  
27       STATEMENTS, SOME OF WHICH BY HIGH OFFICIALS,  
28       ORGANIZATIONS, AND NOT SURPRISINGLY, SOME OF THEM

1 WERE POORLY INFORMED. I DON'T THINK THAT'S THE  
2 VERY FIRST TIME THAT A HIGH OFFICIAL IN OUR COUNTRY  
3 MADE AN ILLOGICAL STATEMENT.

4 Q. WAS DR. HELLER IRRESPONSIBLE IN  
5 MAKING THAT STATEMENT?

6 A. I DON'T KNOW. I AM NOT SURE IF I  
7 WOULD CHARACTERIZE IT AS SUCH. SOME OF WHAT HE  
8 SAID WAS PRETTY CLEAR THAT THERE IS A VERY HIGH  
9 CORRELATION BETWEEN CIGARETTE SMOKING AND LUNG  
10 CANCER. AND I THINK A REASONABLE PERSON WOULD LOOK  
11 AT THAT AND SAY, THERE'S A PRETTY HIGH CORRELATION,  
12 IT'S ABOUT, YOU KNOW, IT'S ABOUT 1,000 PERCENT  
13 INCREASED RISK, AND, GEE, MAYBE CAUSE AND EFFECT  
14 HAS ALREADY BEEN DEMONSTRATED, WHICH, IN FACT, THE  
15 LEARNED PEOPLE WHO WERE PUBLISHING WERE SAYING.

16 WHETHER HE WAS IRRESPONSIBLE OR  
17 NOT, I AM NOT SURE. BUT I THINK IT WAS FOOLISH TO  
18 QUOTE SOME INDIVIDUAL. THE DOCTOR THERE WAS BEING  
19 ASKED TO GIVE A SCIENTIFIC OPINION, NOT  
20 OFF-THE-CUFF, CASUAL OPINION FOR THE MAN ON THE  
21 STREET.

22 IT DIDN'T MATTER WHAT THE MAN ON  
23 THE STREET THOUGHT OR WHAT HE THOUGHT IF HE HADN'T  
24 READ, FOR EXAMPLE, THE HAMMOND PAPER THAT HAD  
25 ALREADY BEEN PUBLISHED IN 1954.

26 SO IF HE DIDN'T READ THAT AND HE  
27 WAS GIVING TESTIMONY BEFORE CONGRESS, AS A DOCTOR,  
28 HOW WOULD YOU CHARACTERIZE IT?

1 I WAS CHARACTERIZE IT AS FOOLISH IF  
2 NOT IRRESPONSIBLE.

3 Q. HE WAS THE DIRECTOR OF THE NATIONAL  
4 CANCER INSTITUTE, WASN' T HE?

5 A. SIR, I TELL YOU, THERE HAVE BEEN  
6 DIRECTORS OF IMPORTANT ORGANIZATIONS, BOTH  
7 GOVERNMENT AND PRIVATE, IN THIS COUNTY THAT HAVE  
8 MADE FOOLISH STATEMENTS IN THE HISTORY OF THIS  
9 COUNTRY. THAT' S NOT A SHOCK. IT HAS OCCURRED.

10 Q. AND BY 1959, IT WAS STILL TRUE THAT  
11 NOT EVERYONE IN THE SCIENTIFIC COMMUNITY AGREED  
12 THAT SMOKING CAUSED LUNG CANCER, WASN' T IT?

13 A. YES, BUT DR. RODGMAN KNEW THAT  
14 THERE WAS A CAUSE AND EFFECT. THE "NEW ENGLAND  
15 JOURNAL OF MEDICINE" KNEW THERE WAS A CAUSE AND  
16 EFFECT.

17 THE "BRITISH MEDICAL JOURNAL" KNEW  
18 THAT THERE WAS A CAUSE AND EFFECT.

19 SO, SURE, THERE WERE PEOPLE WHO  
20 THOUGHT THAT THE EARTH WAS FLAT, ABSOLUTELY. THERE  
21 ARE TODAY.

22 Q. I' D LIKE TO SHOW YOU THE "JOURNAL  
23 OF THE AMERICAN MEDICAL ASSOCIATION, " DECEMBER 12,  
24 1959.

25 ARE YOU FAMILIAR WITH THIS?

26 A. JUST REMIND ME, I HAVE SEEN MOST OF  
27 THESE ARTICLES THAT HAVE BEEN DISCOVERED TO SHOW  
28 THAT NOT EVERYBODY THOUGHT LUNG CANCER WAS CAUSED

1 BY CIGARETTE SMOKING.

2 Q. WELL, THE "JOURNAL OF THE AMERICAN  
3 MEDICAL ASSOCIATION," WAS ONE OF THE BIG FOUR  
4 JOURNALS?

5 A. OH, ABSOLUTELY. ABSOLUTELY. AND  
6 NOT EVERYTHING THAT THEY PUBLISHED WAS CORRECT.  
7 BUT PLEASE SHOW IT TO ME, I WILL TELL YOU, IF I  
8 REMEMBER.

9 OH, YES, I REMEMBER THIS.

10 Q. IT WAS AN EDITORIAL?

11 A. YES, A LITTLE EDITORIAL PIECE.

12 Q. ON SMOKING AND LUNG CANCER.

13 LET ME JUST READ IT HERE.

14 "A SUMMARY OF PERTINENT DATA  
15 RELATING TO SMOKING AND LUNG CANCER  
16 APPEARED IN THE JOURNAL. "

17 THIS JOURNAL; RIGHT?

18 A. YES, UH-HUH.

19 Q. AND THEY GIVE A SITE HERE.

20 "WRITTEN BY DR. LEROY BIRNEY, SURGEON GENERAL OF  
21 THE PUBLIC HEALTH SERVICE, " WHO REPORT DOCUMENTS,  
22 THE MAJOR RESEARCHES, AND IDENTIFIES THE PUBLIC  
23 HEALTH SERVICES WITH THOSE WHO CONSIDER THAT THE  
24 EVIDENCE TO DATE IMPLICATES SMOKING AS THE  
25 PRINCIPLE ETIOLOGICAL FACTOR IN THE INCREASE IN  
26 LUNG CANCER. A NUMBER OF AUTHORITIES WHO HAVE  
27 EXAMINED THE SAME EVIDENCE CITED BY DR. BIRNEY DO  
28 NOT AGREE WITH HIS CONCLUSIONS.

1           A.     YEP, THEY DIDN' T AGREE WTH THE  
2 SURGEON GENERAL OF THE UNITED STATES, THAT IS  
3 RIGHT.

4           Q.     (READING)  
5                   "ALTHOUGH, THE STUDIES  
6 REVEAL A RELATIONSHIP BETWEEN  
7 CIGARETTE SMOKING AND CANCER THAT  
8 SEEMS MORE THAN COINCIDENTAL, THEY DO  
9 NOT EXPLAIN WHY, EVEN WHEN SMOKING  
10 PATTERNS ARE THE SAME, CASE RATES ARE  
11 HIGHER AMONG MEN THAN AMONG WOMEN AND  
12 AMONG URBAN MEN THAN RURAL  
13 POPULATIONS. NEITHER THE PROPONENTS  
14 NOR THE OPPONENTS OF THE SMOKING  
15 THEORY HAVE SUFFICIENT EVIDENCE TO  
16 WARRANT THE ASSUMPTION OF AN ALL OR  
17 NONE AUTHORITATIVE POSITION. "

18                   THAT' S WHAT THE EDITORIAL BOARD OF  
19 THE "JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION"  
20 SAID IN 1959; RIGHT?

21           A.     YES. THAT PARTICULAR WRITER,  
22 CORRECT.

23           Q.     FOR THE RECORD, THIS DOCUMENT, THE  
24 EDITORIAL FOR THE "JOURNAL OF THE AMERICAN MEDICAL  
25 ASSOCIATION, " DECEMBER 12, 1959 HAS NOT YET BEEN  
26 MARKED FOR IDENTIFICATION BUT WE WILL DO SO.

27           THE COURT: VERY WELL.

28           MR. PIUZE: JUDGE, CAN I JUST HAVE A

1 SECOND -- YOUR HONOR, CAN I HAVE 30 SECONDS TO  
2 CONFER HERE.

3 THE COURT: PLEASE.

4 MR. PIUZE: THANKS.

5 THE COURT: YES, SIR.

6 Q BY MR. CARLTON: THEN WE GET TO  
7 THE SURGEON GENERAL'S REPORT IN 1964. I HAVE TO  
8 DIRECT YOUR ATTENTION TO THAT, IF WE COULD.

9 Q BY MR. PIUZE: YOU ARE ALL  
10 FAMILIAR WITH THE SURGEON GENERAL'S REPORT OF THAT  
11 YEAR?

12 A. I AM

13 Q. THAT WAS THE RESULT OF SEVERAL  
14 YEARS OF EFFORT BY A COMMITTEE PUT TOGETHER BY THE  
15 SURGEON GENERAL, WASN'T IT?

16 A. CORRECT.

17 Q. AND THE REASON THE SURGEON GENERAL  
18 APPOINTED THAT COMMITTEE WAS TO COME UP TO REACH  
19 SOME DEFINITIVE CONCLUSION AS TO THE RELATIONSHIP  
20 BETWEEN SMOKING AND HEALTH; RIGHT?

21 A. I AM NOT SURE.

22 THAT IS ONE OF THE EFFECTS OR ONE  
23 OF THE ACHIEVEMENTS, BUT EXACTLY THE REASON, I  
24 THINK, COULD BE CHARACTERIZED IN MORE THAN ONE WAY.

25 Q. LET ME SHOW YOU A FORWARD TO THE  
26 SURGEON GENERAL'S REPORT. THIS IS DEFENDANT'S  
27 EXHIBIT 5634.

28 "ACCORDINGLY, I APPOINTED A

1 COMMITTEE DRAWN FROM ALL THE PERTINENT  
2 SCIENTIFIC DISCIPLINES TO REVIEW AND  
3 EVALUATE BOTH THIS NEW AND OLDER DATA,  
4 AND IT IS POSSIBLE TO REACH SOME  
5 DEFINITIVE CONCLUSIONS ON THE  
6 RELATIONSHIP BETWEEN SMOKING AND  
7 HEALTH IN GENERAL. "

8 A. BETTER SAID. THE REVIEW OF THE ONE  
9 I LOOKED AT.

10

11 \* (EXHIBIT 5634, SURGEON  
12 GENERAL' S REPORT,  
13 MARKED FOR I. D. )

14

15 Q BY MR. CARLTON: AND THE SURGEON  
16 GENERAL ALSO NOTED IN HIS FORWARD:

17 "FEW MEDICAL QUESTIONS HAVE  
18 STIRRED SUCH PUBLIC INTEREST OR  
19 CREATED MORE SCIENTIFIC DEBATE THAN  
20 THE TOBACCO HEALTH CONTROVERSY. THE  
21 INTERRELATIONSHIPS OF SMOKING AND  
22 HEALTH UNDOUBTEDLY ARE COMPLEX. THE  
23 SUBJECT DOES NOT LEND ITSELF TO EASY  
24 ANSWERS; NEVERTHELESS, IT HAS BEEN  
25 INCREASINGLY APPARENT THAT ANSWERS  
26 MUST BE FOUND. "

27 DID HE WRITE THAT?

28 A. THAT, I CERTAINLY AGREE WITH IT. I

1 WOULD HAVE AGREED AT THAT TIME.

2 Q. THE COMMITTEE WORKED FOR TWO YEARS  
3 ON THIS PROJECT?

4 A. IT DID.

5 Q. AND YOU WOULD AGREE IT REPRESENTS  
6 THE CONSIDERED JUDGMENT OF A GREAT NUMBER OF  
7 EMINENT SCIENTISTS?

8 A. I AGREE.

9 Q. THE CONCLUSION, AS FAR AS LUNG  
10 CANCER WAS CONCERNED, IS THAT IN THE JUDGMENT OF  
11 THE SURGEON GENERAL, CIGARETTE SMOKING IS CAUSALLY  
12 RELATED TO CANCER IN MEN; RIGHT?

13 A. THE SPECIFIC STATEMENT WAS  
14 "CIGARETTE SMOKING IS CAUSALLY RELATED TO LUNG  
15 CANCER IN MEN. THE MAGNITUDE OF THE EFFECT OF  
16 CIGARETTE SMOKING FAR OUTWEIGHS ALL OTHER FACTORS. "

17 AND THERE'S A SPECIAL SECTION IN  
18 THAT REPORT REGARDING CAUSE. THERE'S A VERY CLEAR  
19 EXPLANATION OF WHAT THE WORD "CAUSE" MEANS.

20 IT DOES NOT MEAN THAT OBVIOUSLY A  
21 SINGLE ONLY CAUSE, BUT TO CAUSE, AN EVERY DAY  
22 MEANING OF THE WORD, WITHOUT THE ARGUMENT THAT  
23 CAUSE IMPLIES THAT EVERY SINGLE CASE IS CAUSED BY  
24 THAT EXPOSURE.

25 Q. IT SAYS, "THE RISK OF DEVELOPING  
26 LUNG CANCER INCREASES WITH DURATION OF SMOKING AND  
27 THE NUMBER OF CIGARETTES SMOKED PER DAY AND  
28 DIMINISHED BY DISCONTINUING SMOKING. "

1           A.     CORRECT.

2           Q.     THAT WAS ONE OF THE FINDINGS OF THE  
3 SURGEON GENERAL?

4           A.     WELL, THAT' S DOSE RELATIONSHIP.

5           Q.     AND AMONG THE OTHER THINGS THAT THE  
6 COMMITTEE STATED, WAS THAT STATISTICAL METHODS  
7 CANNOT ESTABLISH PROOF OF A CAUSAL RELATIONSHIP IN  
8 AN ASSOCIATION; RIGHT?

9           A.     YES, SIR.

10                    YOU ARE STATING THIS, HOWEVER, IT  
11 HAS TO BE PLACED IN A CONTEXT.  REMEMBER THAT THE  
12 SURGEON GENERAL SPECIFICALLY SAYS THAT THE BRADFORD  
13 HILL CRITERIA ARE MET.  THIS WAS 1964, THE  
14 CONSISTENCY OF THE ASSOCIATION, MEANING THOUSANDS  
15 OF EPIDEMIOLOGICAL STUDIES SHOWING THE SAME THING  
16 BUT THAT, IN ITSELF, WAS NOT ENOUGH.  THE STRENGTH  
17 OF THE ASSOCIATION, THE SPECIFICITY OF THE  
18 ASSOCIATION, THE TEMPORAL RELATIONSHIP OF THE  
19 ASSOCIATION, ALL THAT WAS STATISTICS, AND THE  
20 COHERENCE OF THE ASSOCIATION.

21                    SO THE SURGEON GENERAL SAID THAT  
22 WHILE STATISTICS WERE NOT ENOUGH, THEY WERE  
23 SUFFICIENT TO PROVE BEYOND A REASONABLE DOUBT,  
24 PARTICULARLY IN THE FACE OF COHERENCE OF THE  
25 ASSOCIATION, WHICH IS THE BIOLOGICAL THING.

26                    YOU POINT OUT THE DOSE  
27 RELATIONSHIP -- THERE' S A METHOD TO ALL THIS.  THE  
28 SURGEON GENERAL MARCHES THROUGH EACH OF THE STEPS.

1 HE MARCHES THROUGH THE CONSISTENCY, STRENGTH OF THE  
2 ASSOCIATION AND SPECIFICITY AND TEMPORAL  
3 RELATIONSHIP; MARCHES THROUGH ALL THOSE AND THEN  
4 PRESENTS THE COHERENCE OF THE ASSOCIATION, WHICH IS  
5 INCLUDED IN THAT DOSE RELATIONSHIP. AND CONCLUDES  
6 THAT ALL CRITERIA, BOTH STATISTICAL AND SUPPORTIVE,  
7 PROVE BEYOND ANY DOUBT THAT CIGARETTE SMOKING IS  
8 THE CAUSE OF LUNG CANCER.

9 Q. THE SURGEON GENERAL SAYS THAT THE  
10 CAUSAL SIGNIFICANCE OF AN ASSOCIATION IS A MATTER  
11 OF JUDGMENT WHICH GOES BEYOND ANY STATEMENT OF  
12 STATISTICAL PROBABILITY. YOU AGREE WITH THAT?

13 A. OH, ABSOLUTELY, SURE I DO.

14 Q. AND IN THE SURGEON GENERAL'S  
15 JUDGMENT, CAUSE WAS SHOWN?

16 A. OF COURSE.

17 Q. WHAT ARE YOU LOOKING AT ON THE  
18 COMPUTER?

19 A. OH, JUST MY SLIDES, THE -- YOU JUST  
20 SHOWED IT, IN FACT, YOURSELF, THE BRADFORD HILL  
21 CRITERIA.

22 Q. SO YOU HAVE THE -- YOU HAVE THE  
23 ENTIRE 1964 SURGEON GENERAL'S REPORT ON YOUR  
24 COMPUTER?

25 A. NO, I DON'T. I SHOULD, BUT I DON'T  
26 HAVE IT. WE HAVE TO SCAN IT.

27 Q. ONE OF THE THINGS YOU TALKED ABOUT  
28 YESTERDAY, JUST GIVE ME HALF A MINUTE, IF YOU

1 WOULD.

2 ONE OF THE THINGS YOU TALKED ABOUT  
3 YESTERDAY WAS THE CONSTITUTIONAL HYPOTHESIS.

4 A. YES, SIR.

5 Q. ISN'T THAT RIGHT?

6 A. YES, I DID.

7 Q. AND YOU SAID THAT THE  
8 CONSTITUTIONAL HYPOTHESIS WAS ADDRESSED AND  
9 REJECTED IN THE 1964 SURGEON GENERAL'S REPORT?

10 A. CORRECT, SIR.

11 Q. NOW, YOU ALSO SAID THAT THE  
12 CONSTITUTIONAL HYPOTHESIS WAS RACE BASED?

13 A. YES, IT COMES FROM THE EUGENICS,  
14 E-U-G-E-N-I-C-S, MOVEMENT. THIS WAS A PRE-WORLD  
15 WAR II MOVEMENT IN THE UNITED STATES AND OTHER  
16 PLACES DESIGNED TO KEEP FOREIGNERS OUT OF THE  
17 COUNTRY, AND OTHER THINGS. ITS THESIS WAS THAT  
18 PEOPLE OF COLOR AND CERTAIN OTHER NATIONALITIES  
19 WERE DEFECTIVE.

20 Q. THERE'S ABSOLUTELY NO MENTION OF  
21 RACE IN THE SURGEON GENERAL'S DISCUSSION OF THIS  
22 HYPOTHESIS, IS THERE?

23 A. YOU ARE PRECISELY RIGHT. I THINK  
24 IT WAS PROBABLY THOUGHT TO BE DISTASTEFUL. THE  
25 EUGENICS MOVEMENT, SCIENTIFICALLY, HOWEVER, IN THE  
26 LITERATURE, IS CLEARLY THE SOURCE OF THE  
27 CONSTITUTIONAL HYPOTHESIS. AND THERE ARE ARTICLES  
28 WRITTEN ABOUT THAT.

1 Q. WELL, YOU WOULD AGREE, DOCTOR,  
2 WOULDN' T YOU, THAT CERTAIN CANCERS HAVE A GENETIC  
3 COMPOUND?

4 A. ABSOLUTELY. BUT I WOULDN' T,  
5 THEREFORE, SAY THAT PEOPLE WHO ARE MORE SUSCEPTIBLE  
6 TO THOSE CANCERS BY VIRTUE OF RACE ARE DEFECTIVE OR  
7 THAT THEIR RACE IS DEFECTIVE.

8 Q. THE CONSTITUTIONAL HYPOTHESIS, BY  
9 ITSELF, HAS ABSOLUTELY NO RELATIONSHIP TO RACE,  
10 DOES IT?

11 A. FALSE, SIR. INCORRECT.

12 Q. THE CONSTITUTIONAL HYPOTHESIS,  
13 MERELY POSITS THAT THERE IS A GENE OR SOME GENETIC  
14 COMPONENT THAT WOULD LEAD PEOPLE TO SMOKE THAT  
15 MIGHT ALSO LEAD THEM TO GET DISEASE; RIGHT?

16 A. IT CERTAINLY DOES POSIT THAT, BUT  
17 IT DOES NOT MERELY POSIT THAT.

18 Q. AND THE SURGEON GENERAL, IN  
19 ADDRESSING THE CONSTITUTIONAL HYPOTHESIS, SAW  
20 ABSOLUTELY NO NEED AND DID NOT ADDRESS RACE AS  
21 BEING A FACTOR AT ALL?

22 A. I THINK THE SURGEON GENERAL' S  
23 COMMITTEE SAW NO NEED TO DESCRIBE THE RACIST  
24 HISTORICAL BASIS OF THE EUGENICS MOVEMENT BECAUSE  
25 THE CONSTITUTIONAL HYPOTHESIS, AS APPLIED TO  
26 CANCER, WAS SO OBVIOUSLY INCORRECT.

27 IT BEING SO RIDICULOUS AND  
28 CHAMPIONED ONLY BY ADVOCATES OF THE TOBACCO

1 INDUSTRY, I THINK THAT THE SURGEON GENERAL'S  
2 COMMITTEE MERELY -- OR LIMITED ITS REPUTATION, ITS  
3 RIDICULE OF THE THEORY TO THE SCIENTIFIC ISSUES,  
4 WHICH WAS, IN FACT, SUFFICIENT TO REFUTE IT. IT  
5 WAS NOT NECESSARY TO DESCRIBE THE HISTORICAL  
6 EUGENICS MOVEMENT SOURCE.

7 Q. ARE YOU FAMILIAR WITH DR. FISHER?

8 A. OH, YES. STATISTICIAN.

9 Q. AND HE PUBLISHED IN THE "BRITISH  
10 MEDICAL JOURNAL," DIDN'T HE?

11 A. HE DID.

12 Q. AND THE SURGEON GENERAL'S COMMITTEE  
13 POINTED OUT FISHER HAS BEEN FOREMOST IN CALLING  
14 ATTENTION TO THE POSSIBILITY THAT CANCER OF THE  
15 LUNG AND THE HABIT OF SMOKING MAY BE DUE TO A  
16 COMMON GENOTYPE?

17 A. YES. HE WAS FIXATED ON THAT,  
18 DR. FISHER. SUBSEQUENTLY DR. FISHER'S WORK HAS --

19 Q. I HAVE NOT ASKED YOU ABOUT  
20 DR. FISHER'S LATER WORK.

21 THE COURT: NO QUESTION PENDING.

22 THE WITNESS: YOU ARE RIGHT.

23 THE COURT: SIR, HOLD ON. NO QUESTION  
24 PENDING.

25 THE WITNESS: OKAY.

26 Q BY MR. CARLTON: AND THE SURGEON  
27 GENERAL'S COMMITTEE CONCLUDED:

28 "CURRENT EVIDENCE IS

1 COMPATIBLE WITH THE OPINION THAT  
2 GENETIC FACTORS PLAY A MINOR ROLE  
3 COMPARED TO THE CONTRIBUTION OF THE  
4 SMOKING HABIT IN THE ETIOLOGY OF LUNG  
5 CANCER TODAY?

6 A. CORRECT.

7 Q. THAT'S THE RIDICULE YOU SPOKE OF?

8 A. NO, SIR. THAT'S NOT. THERE'S A  
9 WHOLE SECTION ON THE CONSTITUTIONAL HYPOTHESIS IN  
10 THE SURGEON GENERAL --

11 Q. I WANT TO TALK A BIT ABOUT  
12 CARCINOGENS.

13 A. VERY GOOD.

14 Q. DURING THE '50'S AND '60'S, A  
15 NUMBER OF INVESTIGATORS CARRIED OUT ANALYTICAL  
16 INVESTIGATIONS ON TOBACCO SMOKE?

17 A. TRUE.

18 Q. ISN'T THAT RIGHT?

19 AND THEY PUBLISHED THE RESULTS OF  
20 THAT WORK?

21 A. CORRECT.

22 Q. AND BY 1962, THERE WERE A LARGE  
23 NUMBER OF ORGANIC COMPOUNDS, INCLUDING SUSPECTED  
24 CARCINOGENS OBSERVED BY INVESTIGATORS IN TOBACCO  
25 SMOKE, ISN'T THAT RIGHT?

26 A. THAT IS TRUE.

27 Q. AND SOME OF THE DATA THAT WAS  
28 PUBLISHED ON THIS SUBJECT WAS PRODUCED BY PEOPLE

1 WORKING FOR TOBACCO COMPANIES, WASN' T IT?

2 A. EXACTLY, BOTH PUBLICLY AND  
3 SECRETLY.

4 Q. I ASKED ABOUT PUBLISHED.

5 A. PUBLISHED, THEY WERE PUBLISHED  
6 INTERNALLY AND PUBLISHED EXTERNALLY.

7 Q. THE RESULTS OF THOSE EXPERIMENTS  
8 WERE PUBLISHED IN BOOKS THAT COULD BE READ BY  
9 SCIENTISTS, GOVERNMENT OFFICIALS OR REPORTERS  
10 WRITING STORIES FOR THE POPULAR PRESS, ISN' T THAT  
11 RIGHT?

12 A. ABSOLUTELY.

13 Q. ARE YOU FAMILIAR WITH THE REPORT  
14 PUBLISHED BY THE CONSUMERS' UNION IN 1963 ON  
15 SMOKING AND PUBLIC INTEREST?

16 A. I HAVE IT IN MY LIBRARY, YES.

17 Q. SO YOU KNOW THAT CONSUMERS' UNION  
18 REPORTED MORE THAN 270 DISTINGUISHABLE COMPOUNDS  
19 HAD BEEN IDENTIFIED IN SMOKE AT THAT POINT?

20 A. I DON' T REMEMBER THAT STATEMENT BUT  
21 I SUSPECT YOU ARE RIGHT. I THINK THAT THAT' S  
22 PROBABLY TRUE.

23 Q. AND THAT A NUMBER OF THEM WERE  
24 KNOWN CARCINOGENS?

25 A. YES, SIR. AS I SAID, I DON' T  
26 REMEMBER EXACTLY WHAT THE CONSUMERS' UNION SAID. I  
27 HAVE LOOKED AT THAT DOCUMENT. I DO HAVE IT.

28 Q. DO YOU RECALL THAT THEY

1 SPECIFICALLY IDENTIFIED POLYCYCLIC AROMATIC  
2 HYDROCARBONS AS CONTAINING CARCINOGENS; RIGHT?

3 A. AGAIN, I DON'T DOUBT THAT'S TRUE,  
4 AND I CAN'T QUITE RECALL IT, BUT I ACCEPT, IF YOU  
5 SAY IT WAS THERE, I AM NOT SURPRISED. I THINK I  
6 CAN REMEMBER THAT BEING IN THERE.

7 Q. IT SAYS IN PARTICULAR:  
8 "CONTAINS ADDITIONAL  
9 CHEMICALS OF THE CLASS KNOWN AS  
10 POLYCYCLIC AROMATIC HYDROCARBONS, SOME  
11 CHEMICALS OF THIS CLASS ARE KNOWN  
12 CARCINOGENS AND THE REMAINDER ARE  
13 ACCORDINGLY SUSPECT"?

14 A. CORRECT.

15 Q. THEY ALSO IDENTIFIED PHENOL, A  
16 POWERFUL CO-CARCINOGEN, AS BEING IN TOBACCO SMOKE,  
17 DIDN'T THEY?

18 A. THAT IS TRUE.

19 Q. AND THIS WAS ALL PUBLISHED BY THE  
20 CONSUMERS' UNION?

21 A. YES, SIR, YOU ARE RIGHT.

22 MR. CARLTON: THIS WILL BE MARKED FOR  
23 IDENTIFICATION AT A LATER DATE.

24 THE COURT: VERY WELL, THANK YOU.

25 Q BY MR. CARLTON: THE SURGEON  
26 GENERAL'S REPORT ALSO IDENTIFIED A NUMBER OF THESE  
27 CARCINOGENS, DIDN'T IT?

28 A. YES, SIR, IT DID. VERY

1 SPECIFICALLY 19 -- I THINK 1964.

2 Q. YES.

3 A. BECAUSE IT DID SUBSEQUENTLY AS  
4 WELL.

5 Q. BUT IN 1964, THEY KNEW ABOUT  
6 PHENOLS?

7 A. THEY DID, SIR, YES.

8 Q. BENZOPYRENE?

9 A. EXACTLY.

10 Q. OTHER POLYCYCLIC AROMATIC  
11 HYDROCARBONS?

12 A. THEY DESCRIBE THEM THEY EVEN GIVE  
13 THEIR CHEMICAL STRUCTURE ON THE PAGES OF THE  
14 SURGEON GENERAL'S REPORT.

15 Q. IN FACT, PHILIP MORRIS SUBMITTED A  
16 LENGTHY LIST OF SUBSTANCES IN CIGARETTE SMOKE TO  
17 THE SURGEON GENERAL'S COMMITTEE BEFORE THE  
18 PUBLICATION OF THE 1964 SURGEON GENERAL'S REPORT,  
19 DIDN'T THEY?

20 A. I ACCEPT THIS TO BE TRUE. I DON'T  
21 RECALL IT SPECIFICALLY.

22 Q. THIS IS DEFENDANT'S EXHIBIT 5449,  
23 "CHEMICAL CONSTITUENTS IN TOBACCO SMOKE, A  
24 COMPILATION OF PUBLIC INFORMATION" PREPARED BY  
25 PHILIP MORRIS, INC.

26 /// /// ///

27 /// /// ///

28 /// /// ///

1                   \* (EXHIBIT 5449, PHILIP MORRIS  
2                   DOCUMENT, MARKED FOR I. D.)

3  
4                   Q       BY MR. CARLTON: THIS IS ADDRESSED  
5 TO DR. JAMES HUNDLY, ASSISTANT SURGEON GENERAL FOR  
6 OPERATION U. S. PUBLIC HEALTH SERVICE, MAY 20TH,  
7 1963.

8                   HAVE YOU SEEN THIS, BEFORE?

9                   A.     I DON' T REMEMBER.

10                  Q.     BUT THIS CONTAINS A VERY LONG LIST,  
11 DOES IT, OF CONSTITUENTS IN SMOKE?

12                  A.     ON ITS FACE. I DON' T REMEMBER THE  
13 DOCUMENT.

14                  Q.     ONE OF THE DOCUMENTS THAT YOU  
15 TALKED ABOUT YESTERDAY -- SO IT WASN' T A SECRET IN  
16 1964 THAT TOBACCO SMOKE CONTAINED CARCINOGENS?

17                  A.     IT CERTAINLY WAS NOT.

18                  Q.     AND OF THE CARCINOGENS KNOWN IN  
19 1964 TO BE PRESENT IN CIGARETTE SMOKE, BENZOPYRENE  
20 WAS THE MOST POTENT, ISN' T THAT RIGHT?

21                  A.     MOST POTENT KNOWN, CORRECT.

22                  Q.     AND THE PRESENCE OF BENZOPYRENE IN  
23 CIGARETTE SMOKE HAS BEEN KNOWN, HAD BEEN KNOWN FOR  
24 DECADES, EVEN BEFORE 1964?

25                  A.     CORRECT, YES.

26                  Q.     I THINK YESTERDAY YOU SHOWED OR  
27 REFERRED TO A ROFFO, A PERSON NAMED ROFFO?

28                  A.     CORRECT.

1 Q. HE DISCOVERED BENZOPYRENE IN  
2 CIGARETTE SMOKE, I THINK, BACK IN THE '30'S?

3 A. CORRECT.

4 Q. AND BENZOPYRENE IS, IS ALMOST A  
5 UBIQUITOUS COMPOUND, IN ORGANIC MATTER, IS IT NOT?

6 A. INCOMPLETE COMBUSTION -- INCOMPLETE  
7 BURNING OF ORGANIC MATTER, YES.

8 Q. SO INCOMPLETE BURNING OF TOBACCO  
9 WOOD, GASOLINE, WOULD RESULT IN BENZOPYRENE?

10 A. CORRECT.

11 Q. NOW, BY THE LATE 1950'S, IT WAS  
12 GENERALLY AGREED, WASN'T IT, THAT THE  
13 CONCENTRATIONS IN WHICH BENZOPYRENE AND OTHER  
14 POLYCYCLIC AROMATIC COMPOUNDS EXIST IN CIGARETTE  
15 SMOKE WERE NOT SUFFICIENT TO ACCOUNT FOR THE  
16 CARCINOGENIC ACTIVITY OF CIGARETTE SMOKE?

17 A. BY ITSELF, I THINK THAT'S TRUE.

18 Q. AND THERE ARE 1,000 TIMES MORE  
19 BENZOPYRENE PRESENT IN DIESEL FUMES THAN ARE PRESENT  
20 IN CIGARETTE SMOKE, ISN'T THAT RIGHT?

21 A. THAT'S PROBABLY CORRECT. HOWEVER,  
22 DIESEL FUMES ARE NOT DIRECTLY INHALED, NOR ARE THEY  
23 INHALED 20 TIMES A DAY FOR 10 PUFFS A CIGARETTE.

24 IT TURNS OUT THAT THE POLYCYCLIC  
25 AROMATIC HYDROCARBONS, AS A GROUP, AND BENZOPYRENE,  
26 SPECIFICALLY, CAUSE TREMENDOUS HAVOC, EVEN IN THE  
27 VERY SMALL QUANTITIES THAT ARE PRESENT AS A MEMBER  
28 OF 55 CARCINOGENS IN CIGARETTE SMOKE. THEY ARE

1 VERY POTENT.

2 Q. DR. WYNDER, WHOM YOU HAVE TALKED  
3 ABOUT, DIDN'T BELIEVE THAT THE AMOUNT OF BENZOPYRENE  
4 IN CIGARETTE SMOKE WAS LIKELY TO HAVE ANY  
5 CARCINOGENIC EFFECT ON HUMANS, DID HE?

6 A. AT A CERTAIN POINT. WE KNOW  
7 DIFFERENT TODAY.

8 Q. BUT IN 1964, THE SURGEON GENERAL'S  
9 COMMITTEE COULDN'T ACCOUNT FOR THE CARCINOMA OF  
10 TOBACCO SMOKE BY THE AMOUNT OF BENZOPYRENE IN IT,  
11 COULD IT?

12 A. I AGREE. THIS IS, AGAIN, IN THE  
13 MECHANISM AS OPPOSED TO THE CAUSE. SO THE EXACT  
14 CHEMICALS THAT WERE ACTUALLY CAUSING THE LUNG  
15 CANCER THAT WAS UNDERSTOOD TO BE CAUSED BY  
16 CIGARETTE SMOKE WERE NOT SUFFICIENTLY IDENTIFIED BY  
17 1964.

18 Q. AND THE SURGEON GENERAL'S COMMITTEE  
19 IN 1964 THEN DIDN'T IDENTIFY ANY PARTICULAR  
20 COMPOUNDS THAT WERE RESPONSIBLE; ALTHOUGH, THEY  
21 KNEW OF A NUMBER OF CARCINOGENS IN THE SMOKE?

22 A. I WOULDN'T -- I DON'T THINK YOUR  
23 CHARACTERIZATION IS CORRECT. THEY IDENTIFIED  
24 MULTIPLE CARCINOGENS, WHICH TAKEN TOGETHER, AS A  
25 GROUP, WERE THOUGHT TO BE THE SUFFICIENT  
26 EXPLANATION FOR THE CAUSAL RELATIONSHIP THAT WAS  
27 DISCOVERED.

28 PLEASE UNDERSTAND THERE'S A

1 DIFFERENCE BETWEEN CAUSE AND MECHANISM

2 SO THAT A SURGEON GENERAL CLEARLY  
3 KNEW AND OTHERS NEW BEFORE THE SURGEON GENERAL'S  
4 COMMITTEE THAT CIGARETTE SMOKING WAS THE CAUSE OF  
5 LUNG CANCER.

6 THEY KNEW THAT THERE WERE MULTIPLE  
7 CANCER-CAUSING SUBSTANCES IN CIGARETTE SMOKE. THEY  
8 THOUGHT THAT AS A GROUP THAT WAS SUFFICIENT TO BE  
9 THE CAUSE. THEY DIDN'T KNOW, FOR EXAMPLE, THAT  
10 BENZOPYRENE STICKS -- IT SHORTENS THE ARM OF THE  
11 17TH CHROMOSOME AND CAUSES A CHANGE IN THE P-53  
12 GENE BECAUSE THE P-53 GENE WAS NOT IDENTIFIED AT  
13 THAT TIME.

14 Q. THEY DIDN'T KNOW IT?

15 A. THEY DIDN'T KNOW IT. THE  
16 TECHNOLOGY IS VERY NEW IT'S ONLY A FEW YEARS OLD,  
17 ACTUALLY.

18 Q. YOU TALKED ALSO, YESTERDAY, I  
19 THINK, ABOUT NITROSAMINES?

20 A. YES, SIR, I DID, TOBACCO-SPECIFIC  
21 NITROSAMINES.

22 Q. ISN'T IT TRUE THAT NITROSAMINES  
23 HAVE BEEN REDUCED 85 PERCENT IN U.S. CIGARETTES BY  
24 THE USE OF LOW NITRATE TOBACCO AND CELLULOSE  
25 ACETATE FILTERS?

26 A. I AM NOT CERTAIN AS TO THE  
27 REDUCTION, THE TOTAL REDUCTION.

28 THE DATA THAT I SAW IS THAT

1 NITROSAMINES OR TOBACCO-SPECIFIC NITROSAMINES  
2 INCREASED IN COMPARISON TO BENZO(A)PYRENE WHICH  
3 ALSO IS DECREASED.

4 I WOULD NOT BE SURPRISED IF, IF THE  
5 TOBACCO SPECIFIC NITROSAMINES HAVE BEEN DECREASED  
6 TO SOME EXTENT, BUT, OF COURSE, THE CIGARETTES THAT  
7 ARE PRODUCED TODAY ARE STILL THOUGHT BY SCIENTISTS  
8 TO HAVE MORE THAN SUFFICIENT TOBACCO-SPECIFIC  
9 NITROSAMINES TO RESULT IN ADENOCARCINOMA.

10 AS TO THE CIGARETTES THAT BOEKEN  
11 SMOKED IN THE PAST, FOR SURE, THEY CONTINUED ENOUGH  
12 NITROSAMINES TO CAUSE ADENOCARCINOMA.

13 Q. OVER THE YEARS, THE AMOUNTS OF  
14 NITROSAMINES OF BEEN SUBSTANTIALLY REDUCED;  
15 CORRECT?

16 A. I AM NOT SURE ABOUT THAT. I DON'T  
17 KNOW

18 I THINK THAT THERE MAY HAVE BEEN  
19 SOME REDUCTION. I KNOW, INITIALLY, THERE WAS AN  
20 INCREASE.

21 Q. I WANT TO TURN NOW TO A DOCUMENT  
22 THAT YOU DISCUSSED YESTERDAY. AND THIS IS THE  
23 TOBACCO AND HEALTH R&D APPROACH, PRESENTATION TO  
24 R&D COMMITTEE BY DR. WAKEHAM

25 A. YES, SIR.

26 Q. DO YOU REMEMBER THAT?

27 A. OF COURSE.

28 Q. THIS WAS A DOCUMENT FROM 1961?

1           A.     CORRECT.

2           Q.     AND YOU POINTED OUT ONE OR TWO  
3 PAGES IN THIS DOCUMENT.

4                     YOU POINTED OUT THIS PAGE, I  
5 BELIEVE.

6           A.     I DID.

7           Q.     PARTIAL LIST OF COMPOUNDS IN  
8 CIGARETTE SMOKE, ALSO IDENTIFIED AS CARCINOGENS?

9           A.     CORRECT.

10          Q.     NOW, THIS INFORMATION WAS COMPILED  
11 FROM THE PUBLISHED LITERATURE, WASN' T IT?

12          A.     YES, SIR, IT WAS.

13          Q.     SO THIS WAS NOT SOME SORT OF SECRET  
14 LIST THAT PHILIP MORRIS HAD?

15          A.     NO, BUT THE REPORT TO ITS MEMBERS  
16 WAS SECRET.

17          Q.     YOU ALSO, I THINK, POINTED ON THIS  
18 PAGE, CANCER-PROMOTING AGENTS IN CIGARETTE SMOKE?

19          A.     I DID.

20          Q.     AGAIN, IT SAYS RIGHT HERE, THIS  
21 CAME FROM THE "BRITISH JOURNAL OF CANCER"?

22          A.     EXACTLY AS I HIGHLIGHTED YESTERDAY.

23          Q.     THAT IS RIGHT.  AND AGAIN, THOUGH,  
24 THIS WAS NOT SOME SORT OF SECRET LIST COMPILED  
25 WITHIN PHILIP MORRIS, ISN' T THAT RIGHT?

26          A.     NO, SECRECY OF THIS DOCUMENT, SIR,  
27 DID NOT PERTAIN TO THE LIST.  IT PERTAINS TO THE  
28 CONCLUSIONS AND TO THE ISSUANCE OF THE DOCUMENT

1 ITSELF, TO THE R&D DEPARTMENT MEETING HELD IN THE  
2 NEW YORK CITY OFFICE ON NOVEMBER 15TH, 1961.

3 Q. ONE OF THE PAGES YOU DIDN' T TALK  
4 ABOUT WAS THIS ONE, FOR DR. WAKEHAM DISCUSSES THE  
5 PROBLEM OF CARCINOGEN IDENTIFICATION.

6 A. CORRECT.

7 Q. AND IT SAYS HERE, "MANY FACTORS  
8 NEED TO BE CONSIDERED IN STUDYING CARCINOGENESIS. "

9 AND THEN IT GOES ON TO QUOTE FROM  
10 GREENSTEIN, BIOCHEMISTRY OF CANCER.

11 "THE CARCINOGENIC POTENCY OF  
12 AN AGENT DOES NOT RESIDE IN THE NATURE  
13 OF THE AGENT ALONE BUT IS A FUNCTION  
14 OF THE FOLLOWING FACTORS:

15 "THE DOSAGE, THE NATURE OF  
16 THE VEHICLE, THE MODE AND LENGTH OF  
17 TIME OF ADMINISTRATION OF THE AGENT;

18 "THE STRAIN, THE SPECIES,  
19 THE SEX AND THE AGE OF THE TEST  
20 ANIMALS;

21 "THE SITE OF APPLICATION,  
22 THE PRESENCE OF CONCOMITANT FACTORS  
23 SUCH AS THE LEVEL OF ESSENTIAL DIETARY  
24 CONSTITUENTS AND THE NUMBER OF ANIMALS  
25 KEPT IN A CAGE. "

26 AND THEN DR. WAKEHAM GOES ON TO  
27 POINT OUT ANOTHER FACTOR.

28 "ONE IN FIVE OF ALL RANDOMLY

1 PERFORMED CHRONIC TOXICITY TESTS  
2 REVEALS THE PRESENCE OF A CARCINOGEN. "  
3 AND THAT COMES FROM HARTWELL, ISN' T  
4 THAT TRUE?

5 A. YES, SIR.

6 Q. AND WHEN HE SAYS "ONE IN FIVE OF  
7 THESE CHRONIC TOXICITY TESTS," HE IS REFERRING TO  
8 ALL TESTS PERFORMED ON ALL SUBSTANCES, NOT JUST  
9 TOBACCO SMOKE?

10 A. SURE.

11 Q. AND ANOTHER PAGE THAT WE DIDN' T SEE  
12 YESTERDAY FROM THIS DOCUMENT HAS TO DO WITH AN R&D  
13 PROGRAM LEADING TO A MEDICALLY ACCEPTABLE  
14 CIGARETTE.

15 DR. WAKEHAM WRITES HERE:

16 "PRESENT KNOWLEDGE AND  
17 CURRENT RESEARCH INDICATE THREE MAIN  
18 APPROACHES:  
19 ONE, REDUCTION OF IRRITATING  
20 FACTORS IN SMOKE. THIS INVOLVES  
21 EXTENSION OF CURRENT WORK IN TOBACCO  
22 CHEMISTRY, FLAVOR AND IRRITATION  
23 STUDIES AND SELECTIVE GAS PHASE  
24 FILTRATION," AND GIVES A GUESSTIMATE  
25 FOR THE COST OF DOING THAT; RIGHT?

26 A. CORRECT.

27 Q. AND THEN HE GOES INTO CONTROLLED  
28 NICOTINE.

1                   "THIS PROBLEM IS PARTIALLY  
2           COMPLETE AND COULD BE FINISHED IN 18  
3           TO 24 MONTHS." AGAIN, AN ESTIMATE FOR  
4           DEALING WITH THAT.

5           A.     YES.

6           Q.     AND THEN:

7                   "A REDUCTION OF GENERAL  
8           LEVEL OF CARCINOGENIC SUBSTANCES IN  
9           SMOKE BUT WITHOUT CONCLUDING  
10          ELIMINATION OF MORE THAN A FEW  
11          SPECIFIC COMPOUNDS. "

12                   AND AGAIN, AN ESTIMATE AND A  
13          TIME -- MONEY AND TIME ESTIMATE THERE?

14          A.     SURE. I SHOWED YESTERDAY THAT THIS  
15          WOULD BE VERY DIFFICULT TO ACHIEVE. THE BEST  
16          WE CAN HOPE FOR IS TO REDUCE A PARTICULARLY BAD  
17          CLASS. ALL THAT IS CORRECT.

18                   THAT'S WHAT HE SAID, "THE BEST  
19          WE CAN HOPE FOR IS TO REDUCE A PARTICULARLY BAD  
20          CLASS. "

21          Q.     AND THEN HE GOES ON TO SUMMARIZE.

22                   "LOW IRRITATION AND LOW  
23          NICOTINE CIGARETTES FOR COMMERCIAL  
24          EXPLOITATION WILL BE DEVELOPED IN THE  
25          COURSE OF OUR PRESENT R&D PROGRAM  
26          DURING THE NEXT TWO TO FIVE YEARS WITH  
27          AN EXPENDITURE OF NOT MORE THAN 25  
28          PERCENT OF THE R&D BUDGETS DURING THIS

1 PERIOD.

2 "A MEDICALLY ACCEPTABLE LOW  
3 CARCINOGEN CIGARETTE MAY BE POSSIBLE.  
4 ITS DEVELOPMENT WOULD REQUIRE TIME,  
5 MONEY, AND UNFALTERING DETERMINATION. "

6 THAT'S WHAT DR. WAKEHAM WROTE?

7 A. HE DID.

8 Q. THAT WAS HIS PROPOSAL?

9 A. IT WAS.

10 MR. CARLTON: WOULD THIS BE A GOOD TIME,  
11 YOUR HONOR.

12 THE COURT: IT WOULD BE. I WAS JUST  
13 ABOUT TO DID IT.

14 THANK YOU VERY MUCH, MR. CARLTON.

15 LADIES AND GENTLEMEN, IT'S NOW

16 10:30. WE WILL TAKE OUR BREAK UNTIL TEN MINUTES TO  
17 11:00.

18

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

21

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

25

26 /// /// ///

27 /// /// ///

28 /// /// ///

1                                   ALLAN FEINGOLD,  
2 CALLED AS A WITNESS BY THE PLAINTIFF, HAVING BEEN  
3 PREVIOUSLY DULY SWORN, RESUMED THE WITNESS STAND  
4 AND TESTIFIED FURTHER AS FOLLOWS:

5                   THE COURT: SIR, YOU UNDERSTAND YOU ARE  
6 STILL UNDER OATH.

7                   THE WITNESS: YES, SIR, YOUR HONOR.

8                   THE COURT: VERY WELL.

9                   MR. CARLTON.

10

11                                   CROSS-EXAMINATION (RESUMED)

12

13 BY MR. CARLTON:

14                   Q. DOCTOR, I KNOW YOU HAVE A PLANE TO  
15 CATCH, SO I JUST HAVE A FEW MORE QUESTIONS.

16                   A. YES, SIR.

17                   Q. ONE OF THE DOCUMENTS THAT YOU  
18 TALKED ABOUT YESTERDAY WAS CALLED "SURVEY OF CANCER  
19 RESEARCH WITH EMPHASIS UPON POSSIBLE CARCINOGENS  
20 FROM TOBACCO"?

21                   A. YES, SIR.

22                   Q. DO YOU RECALL THAT?

23                   A. YES, SIR.

24                   Q. THAT WAS BY CLAUDE TEAGUE OF THE  
25 REYNOLDS TOBACCO COMPANY?

26                   A. CORRECT.

27                   Q. FEBRUARY 2ND OF 1953. REMEMBER  
28 THAT?

1           A.     YES, OF COURSE.

2           Q.     AND THIS IS WHAT IT LOOKS LIKE.

3                     NOW, THAT DOCUMENT WAS A SUMMARY OF

4 THE PUBLICLY AVAILABLE CANCER RESEARCH, WASN'T IT?

5           A.     YOU ARE EXACTLY RIGHT.

6           Q.     AND AGAIN, THE INFORMATION IN THAT

7 DOCUMENT WAS NO SECRET WITHIN THE TOBACCO

8 COMPANIES?

9           A.     THAT'S TRUE.

10          Q.     AND YESTERDAY YOU REFERRED TO THE

11 LAST PAGE OF THIS DOCUMENT AS BEING PAGE 15?

12          A.     I DON'T KNOW IF I STATED A PAGE

13 NUMBER, I AM SORRY. I DON'T THINK I DID.

14                     IN FACT, I DON'T THINK I REFERRED

15 TO THE LAST PAGE AT ALL, MAYBE COUNSEL DID, ASKING

16 ME QUESTIONS.

17          Q.     WELL, THE RECORD WILL REFLECT

18 WHETHER A REFERENCE WAS MADE TO THE LAST PAGE.

19                     BUT ISN'T IT TRUE THAT THE LAST

20 PAGES OF THIS DOCUMENT ARE REALLY THE

21 BIBLIOGRAPHY --

22          A.     OH, ABSOLUTELY.

23          Q.     -- OF MATERIALS?

24          A.     AND THE CITATIONS.

25          Q.     CITATIONS OF MATERIALS THAT

26 DR. TEAGUE WAS RELYING UPON? THERE'S FOUR PAGES OF

27 BIBLIOGRAPHY THERE; CORRECT?

28          A.     I DON'T WANT TO BE TOO PICKY BUT

1 THE LAST PAGE OF THE DOCUMENT, OF A LEARNED  
2 DOCUMENT, IS THE LAST PAGE OF TEXT. THE CITATIONS  
3 ARE CONSIDERED AN ADDENDUM BUT THERE IS CERTAINLY  
4 A LONG LIST OF CITATIONS, BOTH TO INTERNAL COMPANY  
5 DOCUMENTS AND PUBLICLY PUBLISHED DOCUMENTS.

6 Q. NOW, DR. FEINGOLD, ANOTHER DOCUMENT  
7 THAT YOU REFERRED TO WAS A DOCUMENT BY ALAN  
8 RODGMAN?

9 A. YES.

10 Q. FROM 1962?

11 A. CORRECT.

12 Q. I THINK ITS CALLED "THE SMOKING AND  
13 HEALTH PROBLEM, A CRITICAL AND OBJECTIVE  
14 APPRAISAL." DO YOU REMEMBER THAT?

15 A. YES, OF COURSE.

16 Q. YOU TALKED ABOUT A COUPLE, A COUPLE  
17 PAGES IN THIS. I'D LIKE TO SHOW YOU ONE.

18 HERE IT TALKS ABOUT THE EVIDENCE TO  
19 DATE.

20 DO YOU SEE THAT?

21 A. YES, SIR, I DO.

22 Q. AND ONE OF THE THINGS YOU POINT OUT  
23 WAS IT SAYS HERE, "OBVIOUSLY THE AMOUNT OF EVIDENCE  
24 ACCUMULATED TO INDICT CIGARETTE SMOKE AS A HEALTH  
25 HAZARD IS OVERWHELMING. THE EVIDENCE CHALLENGING  
26 SUCH AN INDICTMENT IS SCANT."

27 DO YOU REMEMBER POINTING THAT OUT?

28 A. YES, SIR.

1 Q. WHAT WAS NOT POINTED OUT, HOWEVER,  
2 WAS THE FOLLOWING:

3 "HOWEVER, THE EVIDENCE FROM  
4 EPIDEMIOLOGICAL PATHOLOGICAL AND  
5 BIOLOGICAL AND CHEMICAL STUDIES  
6 SUPPORTING THE PROPOSITION THAT LUNG  
7 CANCER IS CAUSED BY OR ASSOCIATED WITH  
8 CIGARETTE SMOKE IS PARALLELED BY  
9 SIMILAR EVIDENCE SUPPORTING THE  
10 PROPOSITION THAT LUNG CANCER IS CAUSED  
11 BY OR ASSOCIATED WITH AIR POLLUTANTS. "

12 A. I THINK THIS WAS ACTUALLY READ  
13 YESTERDAY, BUT I DON'T RECALL FOR SURE.

14 Q. (READING)  
15 "IN SOME INSTANCES," IT  
16 CONTINUES, "THE EVIDENCE SEEMS TO BE  
17 STRONGER IN SUPPORT OF THE CIGARETTE  
18 SMOKE AS A CAUSATIVE OR ASSOCIATED  
19 FACTOR. IN OTHER INSTANCES, THE  
20 EVIDENCE SEEMS TO BE STRONGER IN  
21 SUPPORT OF AIR POLLUTANTS AS A  
22 CAUSATIVE OR ASSOCIATED FACTOR. "

23 ISN'T THAT WHAT DR. RODGMAN WROTE?

24 A. YES, OF COURSE.

25 Q. NOW, ANOTHER THING -- WHAT HE IS  
26 DOING HERE, ISN'T HE, IS MAKING A PROPOSAL TO BRING  
27 RESEARCH, TO DO RESEARCH, IN THE IN-HOUSE RESEARCH  
28 DEPARTMENT OF RJ REYNOLDS?

1           A.     CORRECT.  THIS IS A SECRET PROPOSAL  
2 TO DO JUST THAT.

3           Q.     WELL, WHEN YOU SAY IT'S A SECRET  
4 PROPOSAL, THIS WAS A PROPOSAL MADE TO HIS BOSS;  
5 RIGHT? THIS WAS MADE TO THE PEOPLE HE WORKED FOR?

6           A.     WELL, I BELIEVE, AS I RECALL, IT  
7 WAS STAMPED "CONFIDENTIAL." IT WAS A SECRET  
8 DOCUMENT. IT WAS NEVER SHOWN PRIOR TO BEING  
9 PRODUCED AS PART OF LITIGATION. TO MY  
10 UNDERSTANDING, IT WAS SECRET.

11          Q.     I DON'T SEE ANY "CONFIDENTIAL"  
12 STAMP ON THERE.

13                         WHAT HE SAYS IS, IT'S NOT MY INTENT  
14 TO SUGGEST THAT THIS COMPANY ACCEPT THE CIGARETTE  
15 SMOKE HEALTH DATA AT FACE VALUE, BUT I DO SUGGEST  
16 THAT THIS COMPANY, THROUGH ITS RESEARCH DEPARTMENT,  
17 ACTIVELY PARTICIPATE IN CIGARETTE SMOKE HEALTH  
18 STUDIES?

19          A.     HE HAS A WHOLE DISCUSSION ABOUT  
20 GUILTY AND NOT GUILTY IN THE PRECEDING PARAGRAPH.

21           MR. CARLTON: THAT IS NONRESPONSIVE.

22           THE COURT: SUSTAINED.

23           MR. CARLTON: MOVE TO STRIKE.

24           THE COURT: STRICKEN.

25           THE WITNESS: SORRY.

26           THE COURT: LADIES AND GENTLEMEN OF THE  
27 JURY, DISREGARD THE LAST ANSWER.

28           THE WITNESS: SORRY.

1                   YOU ARE RIGHT.

2                   THE COURT: SIR, HOLD ON. NO QUESTION  
3 PENDING.

4                   Q       BY MR. CARLTON: AND THEN HE GOES  
5 ON, DOESN'T HE, HE TALKS IN HERE ABOUT THE RESEARCH  
6 THAT'S BEING DONE BY T. I. R. C. ?

7                   A.       CORRECT.

8                   Q.       HE SAYS, TALKING ABOUT BRINGING  
9 SOME OF THE WORK IN-HOUSE, IF COORDINATED CHEMICAL  
10 BIOCHEMICAL AND BIOLOGICAL RESEARCH PROGRAM ON THE  
11 TOBACCO HEALTH PROBLEM WERE UNDERTAKEN BY THE  
12 MEMBERS OF THIS COMPANY'S RESEARCH DEPARTMENT, THE  
13 FINDINGS MADE COULD NOT HAVE ANY MORE ADVERSE  
14 EFFECT ON THE TOBACCO INDUSTRY IN GENERAL OR ON  
15 THIS COMPANY IN PARTICULAR THAN THOSE REPORTED BY  
16 T. I. R. C. GRANTEES OR ASSOCIATES.

17                   AND HE CITES TO SEVERAL OF THEM  
18 COATIN AND FALK -- REGARDING COATIN AND FALK,  
19 F-A-L-K. AND THEN HE TALKS ABOUT PARALYSIS OF  
20 CILIA WITH CIGARETTE SMOKE AND SMOKE COMPONENTS.  
21 LEUCHTENBERGER, CELLULAR CHANGES PRODUCED IN THE  
22 LUNGS OF MICE EXPOSED TO CIGARETTE SMOKE. BARR,  
23 MOORE AND HOMBERGER, TUMOR PRODUCTION WITH  
24 CIGARETTE SMOKE.

25                   KOSAK, ISOLATION OF CARCINOGENIC  
26 COMPOUNDS FROM CIGARETTE SMOKE, ET CETERA.

27                   HE IS REFERRING TO RESEARCH THAT  
28 WAS DONE BY THE INDUSTRY FUNDED T. I. R. C. , WASN'T

1 HE?

2 A. HE WAS. BUT I DON'T AGREE WITH HIS  
3 CONCLUSION.

4 Q. AND THE RESEARCH THAT HE WAS  
5 REFERRING TO REINFORCED A LINK BETWEEN SMOKING AND  
6 DISEASE, DIDN'T IT?

7 A. SURE. HE SAID, IF WE DO THE  
8 RESEARCH IT CAN'T POSSIBLY BE WORSE THAN WHAT'S  
9 ALREADY BEEN DONE. BUT, OF COURSE, HE WAS WRONG.

10 BUT, IF THEY HAD, IN FACT, DONE THE  
11 RESEARCH, IT WOULD HAVE BEEN MUCH WORSE FOR THE  
12 COMPANY.

13 Q. THERE'S NO WAY FOR YOU TO KNOW  
14 THAT, IS THERE?

15 A. OF COURSE, SIR, THERE IS A WAY FOR  
16 ME TO KNOW IT.

17 Q. I AM GOING TO REFER YOU TO A STUDY  
18 THAT YOU REFERRED TO YESTERDAY BY DR. DOLL. DO YOU  
19 REMEMBER THAT?

20 A. I REFERRED TO MORE THAN ONE. WHICH  
21 ONE ARE YOU TALKING ABOUT?

22 Q. LET'S REFER TO A PAPER THAT HE PUT  
23 TOGETHER CALLED "SMOKING CESSATION AND LUNG CANCER  
24 IN THE U. K. SINCE 1950, COMBINATION OF NATIONAL  
25 STATISTICS WITH TWO CASE CONTROL STUDIES. "

26 ARE YOU FAMILIAR WITH THAT?

27 A. THAT'S NOT ACTUALLY THE DOLL PAPER.  
28 IT'S CALLED THE PETO PAPER, BUT DOLL IS ONE OF THE

1 AUTHORS, YES.

2 Q. ARE YOU FAMILIAR WITH THIS?

3 A. OF COURSE. I HAVE IT RIGHT HERE  
4 BEFORE ME.

5 Q. SO YOU WOULD AGREE THEN THAT THIS  
6 PAPER STATES THE FOLLOWING:

7 "STOPPING SMOKE CONFERS  
8 SUBSTANTIAL BENEFIT. FIGURE 3, BEING  
9 A FIGURE IN THE PAPER, "INDICATED THAT  
10 EVEN PEOPLE WHO STOP SMOKING AT 50 OR  
11 60 YEARS OF AGE AVOID MOST OF THEIR  
12 SUBSEQUENT RISK OF DEVELOPING LUNG  
13 CANCER AND THAT THOSE WHO STOP AT 30  
14 YEARS OF AGE AVOID MORE THAN 90  
15 PERCENT OF THE RISK ATTRIBUTABLE TO  
16 TOBACCO OF THOSE WHO CONTINUE TO  
17 SMOKE. "

18 A. IT CERTAINLY SAYS THAT. I  
19 CERTAINLY EXPLAINED IT AND I EXPLAINED EXACTLY THAT  
20 TO MY PATIENTS.

21 MR. CARLTON: NOTHING FURTHER.

22 THE COURT: THANK YOU, COUNSEL.

23

24 REDIRECT EXAMINATION

25

26 BY MR. PIUZE:

27 Q. SO WHEN YOU STARTED DOING TOBACCO  
28 LITIGATION CASES, HOW COME YOU DID THEM FOR FREE?

1           A.     I DO LOTS OF THINGS FOR FREE.  I  
2 SEE MANY PATIENTS FOR FREE.  VERY SIGNIFICANT  
3 PERCENTAGE OF MY PRACTICE I DO FOR NO MONEY AT ALL  
4 BECAUSE PATIENTS DON'T HAVE MONEY.

5                     IN THIS CASE, THE ATTORNEYS DIDN'T  
6 HAVE MONEY, BUT I THOUGHT IT WAS A SOCIAL  
7 RESPONSIBILITY AND A DUTY, SO I DID IT FOR FREE.

8                     I DID.  WHAT I DID WAS I SPENT A  
9 COUPLE YEARS OF MY LIFE DOING IT FOR FREE.

10           Q.     SO HOW COME YOU ARE NOT DOING IT  
11 FOR FREE ANY MORE?

12           A.     WELL, MANY PEOPLE WANT ME TO  
13 CONSULT ON THESE MATTERS IN THE UNITED STATES AND  
14 ELSEWHERE IN THE WORLD.  I HAVE A FAMILY, I HAVE  
15 CHILDREN, I HAVE FINANCIAL RESPONSIBILITIES.  I  
16 CAN'T GIVE MY TIME ALL FOR FREE.  I DO SUBSTANTIAL  
17 AMOUNT OF FREE WORK AS CHARITY.

18           Q.     SO I DIDN'T GET INTO THE CHARITY  
19 COLUMN.

20           A.     YOU DIDN'T.  MY PATIENTS WHO HAVE  
21 NO HEALTH INSURANCE ARE STILL IMPORTANT.

22           Q.     WHAT WAS YOUR FEELING OF SOCIAL  
23 RESPONSIBILITY, AS IT RELATED TO TOBACCO  
24 LITIGATION?

25           A.     AS A LUNG SPECIALIST, I THOUGHT  
26 THAT I WAS SEEING A MAJOR HEALTH PROBLEM BOTH  
27 INDIVIDUALLY IN THE EXAMINING ROOM AND SOCIALLY  
28 FROM MY STUDY OF THE EPIDEMIOLOGY.

1                    WITH THAT UNDERSTANDING, AND WHEN  
2 THE JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION  
3 PUBLISHED PREVIOUSLY SECRET DOCUMENTS FROM INSIDE  
4 THE TOBACCO INDUSTRY, AND CALLED FOR DOCTORS TO  
5 PARTICIPATE IN ALL ACTIONS POSSIBLE, ALL LEGAL  
6 ACTIONS POSSIBLE AGAINST THE TOBACCO INDUSTRY, I  
7 FELT COMPELLED TO DO WHAT THE EDITORIAL BOARD AND  
8 THE GOVERNING BOARD OF THE AMERICAN MEDICAL  
9 ASSOCIATION SAID TO DO, WHICH WAS TO PARTICIPATE IN  
10 ANYTHING THAT WAS POSSIBLE TO STOP THE SALE OF  
11 CIGARETTES AND TO ADDRESS THE WRONG THAT HAD  
12 OCCURRED IN THIS COUNTRY OVER A HUNDRED YEARS.

13            Q.        HERE, TAKE A LOOK AT THIS JUST FOR  
14 A SECOND.

15                    YOU WERE SHOWN, I DON'T KNOW, I  
16 GUESS A PIECE OF DR. GELLER -- REMEMBER DR. GELLER?

17            A.        YES.

18            Q.        PATHOLOGIST?

19            A.        PATHOLOGIST, CEDARS-SINAI.

20            Q.        WERE YOU GETTING SHOWN A LITTLE  
21 PIECE OF HIS REPORT UP THERE ON THE BOARD?

22            A.        I WAS, YES.

23            Q.        DR. GELLER'S -- JUST TAKE A  
24 SECOND -- FROZEN SECTION, LITTLE PEEK. WHAT'S A  
25 FROZEN SECTION?

26            A.        THAT'S THE INITIAL PEEK, THE  
27 SLIDES, THE TISSUE IS REMOVED BEFORE IT IS FIXED  
28 AND PERMANENTLY STAINED AND CAN BE PROPERLY

1 EXAMINED. IT'S SORT OF THE INITIAL LOOK, A FAST  
2 LOOK TO DETERMINE IF SOMETHING IS CANCER OR NOT.

3 ACTUALLY, MOST, THE REASON FOR IT  
4 TO BE DONE AND THE REASON IT WAS DONE IN THIS CASE,  
5 WAS NOT TO MAKE A CELL DIAGNOSIS, THAT'S NOT THE  
6 PURPOSE.

7 BECAUSE A CELL DIAGNOSIS IS NOT  
8 RELIABLE FROM THE FROZEN SECTION. THE REASON THE  
9 FROZEN SECTION WAS DONE WAS TO DETERMINE IF LYMPH  
10 NODES WERE INVOLVED BY CANCER BECAUSE THAT WOULD  
11 PROHIBIT A SUCCESSFUL SURGERY.

12 THIS PATIENT HAD THORACOSCOPY  
13 SURGERY.

14 I ACTUALLY MISSPOKE YESTERDAY. I  
15 SAID HIS CHEST WAS OPENED. IT WAS OPENED, BUT IT  
16 WAS OPENED IN A SMALLER INCISION THAN WAS USUAL  
17 BECAUSE HE HAD BRONCHOSCOPY, NOT THORACOSCOPY. THE  
18 THORACOSCOPY WAS SUFFICIENT TO REMOVE THE RIGHT  
19 UPPER LOBE.

20 THE FROZEN SECTION SUGGESTED THAT  
21 IT COULD BE SUCCESSFUL. UNFORTUNATELY, WHEN THE  
22 SLIDES WERE LOOKED AT COMPLETELY, PERMANENTLY,  
23 THERE WAS EVIDENCE THAT THERE HAD ACTUALLY BEEN NO  
24 POINT IN TAKING OUT THE RIGHT UPPER LOBE.

25 Q. ANYWAY, PATIENT ON THE TABLE,  
26 SURGEON THERE WITH A KNIFE OR WHATEVER THE SURGEONS  
27 USE NOWADAYS --

28 A. IT'S SCOPES AND KNIVES, YES.

1 Q. -- SCOPES, KNIVES, RUSH A FROZEN  
2 SECTION DOWN TO THE PATH LAB?  
3 A. YES.  
4 Q. WAIT TO HEAR FROM THE PATHOLOGIST?  
5 A. WITHIN MINUTES, YES.  
6 Q. THAT'S THE FROZEN SECTION?  
7 A. CORRECT.  
8 Q. AND THEN THE FINAL, THE MAIN THING  
9 FOR ALL TIME SAKE, THAT GETS DIAGNOSED LATER?  
10 A. YES, THAT'S CALLED A PERMANENT  
11 SECTION.  
12 Q. PERMANENT SECTION.  
13 DR. GELLER, THE PATHOLOGIST AT  
14 CEDARS-SINAI HOSPITAL WHO DID THE PERMANENT AND  
15 FROZEN SECTION, THIS FINAL DIAGNOSIS OF THIS TUMOR  
16 WAS?  
17 A. PAPILLARY ADENOCARCINOMA, WHICH IT  
18 CERTAINLY WAS.  
19 Q. JUST LIKE WE WROTE ON THAT CHART  
20 THAT WE SHOWED TO THE JURY?  
21 A. THERE'S NO QUESTION WHAT THIS WAS,  
22 SIR.  
23 Q. SO THERE WAS A MINUTE OR TWO TAKEN  
24 THIS MORNING WHEN SOMETHING WAS PUT UP ON THE BOARD  
25 AND IT SAYS -- SAY THE WORDS.  
26 A. B. A. C. , BRONCHIOLO ALVEOLAR  
27 CARCINOMA.  
28 Q. THAT WAS IN THE FROZEN SECTION?

1 A. CORRECT.

2 Q. TRACES OF IT?

3 A. YES.

4 Q. AND THE MAJOR PERMANENT PATH SLIDES

5 THAT WERE DIAGNOSED THE NEXT DAY, IT WAS?

6 A. PAPILLARY ADENOCARCINOMA.

7 Q. WHICH HAPPENS TO BE YOUR DIAGNOSIS?

8 A. IT IS FOR SURE MY DIAGNOSIS.

9 Q. DR. SALDANA'S DIAGNOSIS?

10 A. DEFINITELY.

11 Q. STAY WITH DR. SALDANA FOR A SECOND

12 HERE.

13 HE IS'S A PROFESSOR OF PATHOLOGY?

14 A. AT THE UNIVERSITY OF MIAMI, WORLD

15 FAMOUS.

16 Q. WORLD FAMOUS. HE HAS WRITTEN A

17 TEXTBOOK?

18 A. A BEAUTIFUL TEXTBOOK, YES.

19 Q. I AM SURE.

20 A. TO THOSE OF US WHO LIKE THOSE SORT

21 OF THINGS.

22 Q. AND HE WANTS YOU TO HELP MAKE HIS

23 NEXT TEXTBOOK EVEN MORE BEAUTIFUL?

24 A. YES, SIR. FAIRLY CERTAIN.

25 Q. DR. HAMMER -- SOMETHING WAS PUT UP

26 ON THE BOARD FROM DR. HAMMER, AND I JUST WANT TO

27 DRAW YOUR ATTENTION TO THE BOTTOM LINE, AS WE SAY,

28 NUMBER 13.

1           MR. CARLTON: OBJECTION, THE WITNESS  
2 TESTIFIED HE DIDN' T REMEMBER SEEING THIS DOCUMENT.  
3           MR. PIUZE: I CAN LET THE COURT KNOW --  
4           THE COURT: BRING IT ON RECROSS, COUNSEL.  
5           PROCEED.  
6           Q     BY MR. PIUZE: YOU READ HIS  
7 DEPOSITION?  
8           A.    I DID.  
9           Q.    THERE WERE CERTAIN DOCUMENTS AND  
10 EXHIBITS IN THE DEPOSITION?  
11          A.    THERE WERE AND THIS WAS ATTACHED TO  
12 IT BUT I CANNOT -- I JUST DON' T REMEMBER THE WORDS,  
13 THAT' S ALL.  
14          Q.    THAT' S ALL RIGHT.  
15          A.    I DON' T REMEMBER ALL DOCUMENTS.  
16          Q.    I AM NOT ASKING YOU TO REMEMBER THE  
17 WORDS, BECAUSE I AM GOING TO READ IT.  
18                   BEFORE I READ THEM, THOUGH,  
19 DR. HAMMER, EVEN MORE FAMOUS THAN DR. SALDANA?  
20          A.    ARGUABLY, YES.  
21          Q.    HIS BOOK IS, IF IT IS NOT PRETTIER,  
22 IT' S A WORKERS' COMP CLAIM PICKING IT UP?  
23          A.    IT' S VERY HEAVY, IT' S AN INCREDIBLE  
24 CONTRIBUTION TO MEDICINE AND SCIENCE, VERY  
25 IMPORTANT.  
26          Q.    PATHOLOGIST WHO ONLY LOOKS AT  
27 LOBES?  
28          A.    HE IS A PATHOLOGIST WHO ONLY LOOKS

1 AT LOBES, YES.

2 Q. HE HAS SOMETHING TO DO WITH THE  
3 WORLD HEALTH ORGANIZATION CLASSIFICATION OF THESE  
4 VERY TUMDRS THAT WE ARE TALKING ABOUT?

5 A. YES, HE DOES.

6 Q. AFTER HAVING SAID ALL THAT, HERE' S  
7 THE BOTTOM LINE. NUMBER 13. "BASED ON MR.  
8 BOEKEN' S HISTORY OF CIGARETTE SMOKING, 82 TO 123  
9 PACK YEARS, I CONCLUDE HIS METASTATIC  
10 ADENOCARCINOMA OF THE LUNG WAS CAUSED BY CIGARETTE  
11 SMOKE. "

12 AGREE?

13 A. YES. THAT IS CORRECT.

14 Q. MR. BOEKEN HAD METASTATIC  
15 ADENOCARCINOMA OF THE LUNG?

16 A. YES. "METASTATIC" MERELY MEANS  
17 THAT THE ADENOCARCINOMA HAD SPREAD TO OTHER PARTS  
18 OF THE HIS BODY, SPECIFICALLY, THE SPINE AND THE  
19 BRAIN.

20 Q. JUMP UP TO EIGHT HERE FOR A SECOND,  
21 BECAUSE THIS IS SORT OF WHERE THE CONVERSATION WAS  
22 HEADED, REALLY.

23 NUMBER 8, I AM JUST SHOWING YOU  
24 WHAT HAS BEEN UNDERLINED IN YELLOW

25 "HISTOLOGICALLY, " TELL THE JURY  
26 WHAT "HISTOLOGICALLY" MEANS.

27 A. "HISTOLOGICALLY" MEANS THE  
28 APPEARANCE OF THE CELLS.

- 1 Q. (READING)  
2 "HISTOLOGICALLY, THE TUMOR  
3 HAD THE FEATURES OF AN ADENOCARCINOMA  
4 WITH VARIABLE TYPE DIFFERENTIATION,  
5 INCLUDING A BRONCHIOALVEOLAR AND  
6 ACINAR-TYPE GROWTH PATTERN. "
- 7 Q. TRUE?  
8 A. TRUE. ABSOLUTELY. I SAW IT  
9 MYSELF.
- 10 Q. ANYWAY, AS FAR AS DR. GELLER,  
11 DR. SALDANA, DR. HAMMER, YOU ARE CONCERNED,  
12 ADENOCARCINOMA OF THE CHEST?  
13 A. OF THE LUNG, YES. RIGHT UPPER  
14 LOBE, ORIGINATED IN THE RIGHT UPPER LOBE, WITHOUT  
15 QUESTION.
- 16 Q. DEPENDING ON WHOSE LITERATURE YOU  
17 ARE LOOKING AT, 92 TO 95 PERCENT OF ADENOCARCINOMA  
18 OF THE LUNG IN MALES ARE CAUSED BY?  
19 A. CIGARETTE SMOKING.  
20 AGAIN, THE LITERATURE REPORTS MORE  
21 THAN ONE THING. IT'S 85, SOME CASES 97 PERCENT --  
22 97 PERCENT, DIFFERENT REPORTS. IT'S AROUND THE 90  
23 PERCENT NUMBER.
- 24 Q. ARE YOU FAMILIAR WITH THE WHO,  
25 W-H-O, WORLD HEALTH ORGANIZATION CLASSIFICATION OF  
26 TUMORS OF THE LUNG?  
27 A. YES, VERY.  
28 Q. ACCORDING TO THE WHO, WORLD HEALTH

1 ORGANIZATION CLASSIFICATION OF LUNG TUMORS, IS THIS  
2 B. A. C. ?

3 A. ABSOLUTELY NOT.

4 Q. IS THIS ADENOCARCINOMA OF THE LUNG?

5 A. ABSOLUTELY YES.

6 Q. OKAY. NEXT.

7 THE TERM "IRRESPONSIBLE" WAS USED  
8 THIS MORNING. AND I'D LIKE TO GO BACK TO ITS  
9 ORIGINS.

10 "IRRESPONSIBLE," DID THAT APPEAR IN  
11 THE "NEW ENGLAND JOURNAL OF MEDICINE"?

12 A. YES, SIR, IT DID, IN AN EDITORIAL.

13 Q. WHAT YEAR?

14 A. 1960.

15 Q. SO THE USE OF THE WORD  
16 "IRRESPONSIBLE" YESTERDAY WASN'T YOU, IT WAS YOU  
17 QUOTING THE "NEW ENGLAND JOURNAL OF MEDICINE"?

18 A. CORRECT.

19 Q. ACCORDING -- AND I WILL TOUCH ON  
20 THIS ONE MORE TIME AND LEAVE IT FOR THE DAY, ONE OF  
21 THE FOREMOST PRESTIGIOUS MEDICAL JOURNALS ON THE  
22 PLANET EARTH?

23 A. CORRECT, WITHOUT QUESTION.

24 PROBABLY THE BEST ONE OF THEM ALL.

25 Q. IN DEFERENCE TO OUR FIRST BRITISH  
26 WITNESS, I WILL LET THAT SLIDE.

27 ACCORDING TO THE "NEW ENGLAND  
28 JOURNAL OF MEDICINE," IN 1960, WHAT WAS

1 IRRESPONSIBLE?

2 A. TO LOOK AT THE DATA ABOUT CIGARETTE  
3 SMOKING AND TO CONCLUDE THAT IT DID NOT REPRESENT  
4 CAUSATION.

5 WHAT THEY SAID, EXACTLY, WAS NO  
6 RESPONSIBLE OBSERVER CAN DENY THIS ASSOCIATION AND  
7 THE EVIDENCE IS NOW SUFFICIENTLY STRONG TO SUGGEST  
8 A CAUSATIVE ROLE.

9 THE POINT WAS, YOU CAN'T LOOK AT  
10 THE DATA, IF YOU ARE RESPONSIBLE, AS A SCIENTIST,  
11 YOU CAN'T LOOK AT THE DATA AND DENY IT. IT'S  
12 IRRESPONSIBLE TO DENY FACTS AS THEY PERTAIN TO LIFE  
13 AND DEATH ISSUES.

14 Q. I DON'T THINK YOU SAID WHAT IT WAS  
15 IRRESPONSIBLE TO DENY. CAUSATION WHAT?

16 A. THAT CIGARETTE SMOKING CAUSES LUNG  
17 CANCER. OR WE ACTUALLY SAID THE ASSOCIATION  
18 BETWEEN CIGARETTE SMOKING AND LUNG CANCER. AND THE  
19 ASSOCIATION WAS THEN PART OF THE PROOF THAT  
20 CIGARETTE SMOKING CAUSED LUNG CANCER.

21 Q. LET ME SHOW YOU SOMETHING HERE. I  
22 DID IT ON DIRECT, BUT LET ME SHOW IT TO YOU AGAIN.

23 GENTLEMEN, SORRY.

24 YOU CAN SEE THAT FROM YOUR ANGLE?

25 A. YES.

26 Q. IT'S MORE IMPORTANT TO ME THAT  
27 THESE PEOPLE SEE.

28 A. YES.

1 Q. BY 1960, IT WAS, ACCORDING TO THE  
2 "NEW ENGLAND JOURNAL OF MEDICINE," IRRESPONSIBLE TO  
3 DENY THE FACT THAT CIGARETTE SMOKE CAUSED LUNG  
4 CANCER?

5 A. YES, BECAUSE LIVES WOULD BE LOST IF  
6 IT WOULD BE IGNORED.

7 Q. THOSE WERE YOUR WORDS OR THE  
8 EDITORIAL'S WORDS?

9 A. THE EDITORIAL SPECIFICALLY SAID  
10 "THERE IS ALREADY SUFFICIENT EVIDENCE ON HAND TO  
11 IMPLICATE SMOKING AS THE PRINCIPLE ETIOLOGIC FACTOR  
12 IN THE INCREASED INCIDENCE OF LUNG CANCER AND LIVES  
13 CAN BE SAVED IF THESE FACTS ARE MADE KNOWN TO THE  
14 MEDICAL PROFESSION AND THE SMOKING PUBLIC. LIVES  
15 WILL CONTINUE TO BE LOST IF CONTROL MEASURES MUST  
16 AWAIT DEFINITIVE STUDIES. "

17 Q. NOW, TAKE A LOOK AT THAT, BECAUSE I  
18 AM GOING TO TURN IT TO THE JURY AGAIN.

19 A. I AM FAMILIAR WITH IT.

20 Q. IN 1972, ONE OF THE TWO INDUSTRY  
21 GROUPS SAYS THAT THEIR STRATEGY HAS ALWAYS BEEN A  
22 HOLDING STRATEGY CONSISTING OF CREATING DOUBT ABOUT  
23 THE HEALTH CHARGE WITHOUT ACTUALLY DENYING IT.  
24 OKAY?

25 A. YES.

26 Q. NOW, JUST BEFORE THE BREAK, YOU  
27 WERE ASKED, ISN'T IT TRUE, THAT IN 1964, THE  
28 SURGEON GENERAL COULD NOT ACCOUNT FOR THE

1 CARCINOGENICITY OF CIGARETTE DUE TO BENZPYRENE,  
2 REMEMBER THAT?

3 A. YES, SIR.

4 Q. WHO CARES? YOU?

5 A. IT DIDN'T MATTER AT ALL, AS FAR AS  
6 WHAT THE CAUSE WAS. IT WAS STILL INTERESTING TO  
7 KNOW THE MECHANISM BUT THE ANSWER IS, NO, I DON'T  
8 CARE. I WOULDN'T HAVE CARED.

9 Q. BUT I AM CHALLENGING YOU, YOU ARE  
10 SAYING THE CIGARETTE INDUSTRY SHOULD HAVE KNOWN  
11 THIS EARLIER, AND I AM CHALLENGING YOU THAT IN  
12 1964, THE SURGEON GENERAL COULD NOT ACCOUNT FOR  
13 CARCINOGENICITY OF CIGARETTE SMOKE DUE TO  
14 BENZPYRENE. SO THAT IT MEANS --

15 A. THAT MERELY MEANS THAT THE SURGEON  
16 GENERAL COMMITTEE COULD NOT EXPLAIN THE EXACT  
17 STEPS, EXACTLY HOW THE CELLS WERE TRANSFORMED INTO  
18 CANCER CELLS.

19 BUT THEY KNEW FOR SURE, BECAUSE THE  
20 INFORMATION HAD BEEN AVAILABLE FOR QUITE SOMETIME,  
21 THEY KNEW FOR SURE THAT CIGARETTE SMOKING WAS THE  
22 CAUSE OF LUNG CANCER, THEY JUST DIDN'T KNOW EXACTLY  
23 WHICH PART OF THE CIGARETTE SMOKE AND HOW IT WORKED  
24 INSIDE THE CELLS.

25 Q. IF I WANTED TO DISCUSS WITH YOU FOR  
26 A YEAR OR FIVE YEARS, OR TEN YEARS, WHETHER OR NOT  
27 I COULD ACCOUNT OR YOU COULD ACCOUNT OR THE SURGEON  
28 GENERAL COULD ACCOUNT FOR THE FACT THAT

1 CARCINOGENICITY OF CIGARETTE SMOKE MAY OR MAY NOT  
2 BE DUE TO BENZOPYRENE, WOULD THAT ALTER THE FACT  
3 THAT THE 400,000 PEOPLE A YEAR WERE DYING OF  
4 TOBACCO SMOKE?

5 MR. CARLTON: OBJECTION, ARGUMENTATIVE.

6 THE COURT: SUSTAINED.

7 Q BY MR. PIUZE: WOULD THAT ALTER  
8 THE FACT THAT TOBACCO SMOKE CAUSED CANCER?

9 THE COURT: ALL RIGHT, LET'S REPHRASE  
10 THIS QUESTION.

11 TAKE THE ARGUMENTATIVE LANGUAGE OUT  
12 OF IT AND I WILL ALLOW IT.

13 Q BY MR. PIUZE: DOES THE FACT THAT  
14 THE SURGEON GENERAL, IN 1964, COULD NOT ACCOUNT FOR  
15 CARCINOGENICITY OF CIGARETTE SMOKE DUE TO  
16 BENZOPYRENE CHANGE THE FACT THAT CIGARETTE SMOKE WAS  
17 CAUSING LUNG CANCER IN A LARGE NUMBER OF PEOPLE?

18 A. IT DIDN'T CHANGE THE FACT AT ALL,  
19 NOR THE FACT THAT IT WAS PROVEN THAT CIGARETTE  
20 SMOKING WAS CAUSING LUNG CANCER.

21 Q. YOU MENTIONED, YOU WERE BEING  
22 CROSS-EXAMINED THIS MORNING, THE DISCUSSION HAD TO  
23 DO WITH TEAGUE. TEAGUE IS A PERSON THAT WORKED AT  
24 RJR, DISCUSSION HAD TO DO WITH THE '63 PAPER, AND  
25 YOU MENTIONED SOMETHING ABOUT GUILTY OR NOT GUILTY,  
26 WHICH WAS EARLIER IN A PASSAGE -- EXCUSE ME --  
27 EARLIER IN A PAPER, JUST BEFORE A PASSAGE THAT YOU  
28 WERE BEING CROSS-EXAMINED ON.

1 DO YOU RECALL THAT?

2 A. IT WAS ACTUALLY A RODGMAN PAPER.

3 Q. EXCUSE ME, I APOLOGIZE, RODGMAN.

4 SEE, I DON'T HAVE A COMPUTER.

5 EXPLAIN, PLEASE.

6 A. I DON'T REMEMBER RODGMAN'S EXACT

7 WORDS BUT THERE WAS A DISCUSSION AS TO WHETHER

8 CIGARETTE SMOKE WAS GUILTY OR NOT GUILTY AS

9 CHARGED. I CAN'T REMEMBER EXACTLY -- I WOULDN'T BE

10 ABLE TO REPEAT IT VERBATIM

11 Q. IF, IN 1953, AND I AM NOT GOING TO

12 PUT THIS UP ON THE SCREEN, BUT IF, IN 1953, MR.

13 TEAGUE, I AM PRETTY SURE I AM RIGHT, MR. TEAGUE AT

14 RJR WAS SAYING IN THE DOCUMENT ALL OF THIS STUFF

15 ABOUT, BOTTOM LINE, TOBACCO CAUSES LUNG CANCER --

16 A. HE DID SAY THAT, YES.

17 Q. TAKE A LOOK AT THIS, PLEASE.

18 A. YES, SIR.

19 Q. THAT WAS UP ON THE BOARD THIS

20 MORNING?

21 A. YES.

22 Q. AND IF, IN 1961, PHILIP MORRIS,

23 IN-HOUSE, IS DISCUSSING ON ONE PAGE, WHATEVER IT

24 IS, 50, 70, WHATEVER, THINGS IN CIGARETTE SMOKE

25 THAT CAUSE LUNG CANCER, AND ANOTHER GROUP OF

26 PROMTING AGENTS -- TELL US AGAIN, PROMTING

27 AGENTS?

28 A. THAT MAKE THE CANCER-CAUSING

1 SUBSTANCE STRONGER.

2 Q. LIKE A TURBO CHARGER?

3 A. LIKE A TURBO CHARGER IN A CAR. IT  
4 MAKES THE ENGINE EVEN FASTER.

5 Q. SO IF RJR AND PHILIP MORRIS WERE  
6 DISCUSSING THESE ARE THE THINGS THAT WE KNOW IT  
7 DOES, I AM SAYING TO YOU, BUT SO WHAT, BECAUSE ALL  
8 THEY WERE DOING IS REPORTING ON PUBLICLY AVAILABLE  
9 DOCUMENTS, AS YOU WERE SHOWN, THAT WERE PUBLISHED  
10 IN A MEDICAL PRESS.

11 MR. CARLTON: I WILL OBJECT TO THE FORM  
12 OF THE QUESTION.

13 THE COURT: SUSTAINED. AND IT IS NOT  
14 CROSS-EXAMINATION, IT IS DIRECT.

15 THANK YOU, SIR.

16 MR. PIUZE: SORRY.

17 Q BY MR. PIUZE: IF THEY WERE ONLY  
18 REPORTING ON WHAT THE MEDICAL JOURNALS HAD SAID,  
19 WHAT IS THE SIGNIFICANCE OF THAT?

20 MR. CARLTON: OBJECTION.

21 THE COURT: OVERRULED.

22 THE WITNESS: FROM A MEDICAL POINT OF  
23 VIEW, I THINK THE SIGNIFICANCE IS ENORMOUS.  
24 BECAUSE THE PRODUCER OF THE PRODUCT, WHICH IS  
25 INTENDED FOR HUMAN CONSUMPTION, RECOGNIZES ITSELF  
26 THAT THE PRODUCT IS DANGEROUS, THAT LEADS TO  
27 CERTAIN OTHER CONCLUSIONS, AS A PHYSICIAN.

28 Q BY MR. PIUZE: WELL, WHILE PHILIP

1 MORRIS IN '61, THROUGH THIS DOCUMENT, RJR IN '53  
2 THROUGH THE OTHER DOCUMENT WE WERE DISCUSSING,  
3 WHILE THEY WERE AGREEING, IN-HOUSE, THERE IS  
4 OVERWHELMING EVIDENCE THAT TOBACCO CAUSES LUNG  
5 CANCER, I WANT TO KNOW THIS FROM A PUBLIC HEALTH  
6 STANDPOINT -- I AM GOING TO WITHDRAW THE QUESTION.

7                   HERE, THIS IS THE FRANK STATEMENT.  
8 YOU OBVIOUSLY RECOGNIZE THIS; RIGHT?

9                   A.     YES, SIR.

10                  Q.     "WE ACCEPT AN INTEREST IN PEOPLE'S  
11 HEALTH AS A BASIC RESPONSIBILITY PARAMOUNT -- "  
12 WHAT DOES "PARAMOUNT" MEAN?

13                  A.     MOST IMPORTANT.

14                  Q.     MOST IMPORTANT -- " TO EVERY OTHER  
15 CONSIDERATION IN OUR BUSINESS. "

16                         NOW, FROM A PUBLIC HEALTH  
17 STANDPOINT, THE MANUFACTURER OF A CONSUMER PRODUCT  
18 WHICH PEOPLE ARE GOING TO USE, SWALLOW, INHALE, PUT  
19 ON THEIR SKIN, DO YOU THINK THAT'S A GOOD THING  
20 THAT PEOPLE'S HEALTH SHOULD BE THE PARAMOUNT, MOST  
21 IMPORTANT THING?

22                  A.     YES. IT HAS TO BE, FOR A PRODUCT  
23 INTENDED FOR HUMAN CONSUMPTION.

24                  Q.     "WE BELIEVE THAT THE PRODUCTS WE  
25 MAKE ARE NOT INJURIOUS TO HEALTH. "

26                         DO YOU BELIEVE IT'S A GOOD THING  
27 FOR A MANUFACTURER OF CONSUMER PRODUCTS TO MAKE  
28 PRODUCTS THAT ARE NOT INJURIOUS TO CONSUMER HEALTH?

1           A.     YES, SIR. FROM A DOCTOR'S POINT OF  
2 VIEW, YES.

3           Q.     NOW, DO YOU THINK -- SEE THAT?

4           A.     YES.

5           Q.     FROM A PUBLIC HEALTH STANDPOINT, DO  
6 YOU THINK THAT MR. WEISSMAN, THE VICE-PRESIDENT OF  
7 PHILIP MORRIS & COMPANY, LIMITED, INC., WAS SAYING  
8 A GOOD THING IN 1954 IN MARCH --

9           MR. CARLTON: I WILL OBJECT TO THIS AS  
10 ARGUMENTATIVE.

11          THE COURT: SUSTAINED.

12          Q     BY MR. PIUZE: WOULD YOU AGREE  
13 WITH THE CONCEPT THAT IF THE MANUFACTURER OF A  
14 CONSUMER PRODUCT HAD ANY THOUGHT --

15          MR. CARLTON: SAME OBJECTION.

16          THE COURT: THIS WITNESS WAS NOT CALLED  
17 AS AN EXPERT ON THESE PARTICULAR ISSUES. WE ARE  
18 BEYOND THE SCOPE HERE.

19          Q     BY MR. PIUZE: BACK TO THE '53  
20 TEAGUE RJR DOCUMENTS, THE '61 PHILIP MORRIS  
21 DOCUMENTS THAT WE WERE JUST DISCUSSING, WHERE THEY  
22 ARE SAYING ALL THESE THINGS CAUSE CANCER.

23                 OKAY. ARE YOU WITH ME SO FAR?

24          A.     YES.

25          Q.     NOW, FROM A PUBLIC HEALTH  
26 STANDPOINT, IN 1984, WHICH IS 30 YEARS AFTER TEAGUE  
27 AND 23 YEARS AFTER THE PHILIP MORRIS DOCUMENT --

28          MR. CARLTON: OBJECT TO THE FORM OF THE

1 QUESTION.

2 THE COURT: GO AHEAD AND ASK THE  
3 QUESTION.

4 Q BY MR. PIUZE: IN 1984, FROM A  
5 PUBLIC HEALTH STANDPOINT, WAS IT A GOOD IDEA TO  
6 SAY, "IT IS NOT KNOWN WHETHER SMOKING HAS A ROLE IN  
7 THE DEVELOPMENT OF VARIOUS DISEASES"?

8 MR. CARLTON: OBJECT --

9 THE COURT: SUSTAINED. SIDE BAR,  
10 COUNSEL, PLEASE.

11 JUST ONE SECOND. LADIES AND  
12 GENTLEMEN, YOU NOTICE I DON'T DO THIS VERY OFTEN,  
13 AND THAT'S NOT FOR ME TO COMMENT ONE WAY OR ANOTHER  
14 ON THE QUESTIONS THAT ARE BEING ASKED, BUT IT IS  
15 THE FORM OF THE QUESTION. THAT'S ALL I WANT TO  
16 TALK ABOUT.

17

18 (A DISCUSSION WAS HELD IN  
19 CHAMBERS, NOT REPORTED)

20

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

24

25 THE COURT: THANK YOU, LADIES AND  
26 GENTLEMEN, FOR YOUR PATIENCE.

27 Q BY MR. PIUZE: IN YOUR DIRECT  
28 EXAMINATION, THE FIRST THING YOU SHOWED WAS ALL THE

1 MEDICAL RESEARCH AND THE JOURNALS AND THE ARTICLES  
2 THAT BASICALLY SHOW THE LINK BETWEEN SMOKE AND LUNG  
3 CANCER. DO YOU REMEMBER THAT?

4 A. YES, OF COURSE.

5 Q. AND THE THIRD PART OF YOUR  
6 TESTIMONY, YOU SHOWED SOME OF THE INTERNAL  
7 DOCUMENTS THAT SHOWED THAT THEY KNEW IT?

8 A. YES.

9 Q. FROM A HISTORICAL PERSPECTIVE, WHEN  
10 THIS WAS STATED, ON BEHALF OF ALL THE COMPANIES TO  
11 THE U. S. CONGRESS IN 1984, WAS THAT A KNOWINGLY  
12 FALSE STATEMENT?

13 MR. CARLTON: OBJECTION, SPECULATION.

14 THE COURT: THE "KNOWINGLY."

15 Q BY MR. PIUZE: WAS THAT A FALSE  
16 STATEMENT?

17 A. IT WAS, ABSOLUTELY, FALSE.

18 Q. HAD THAT BEEN A FALSE STATEMENT FOR  
19 AT LEAST 30 YEARS?

20 A. YES.

21 Q. I AM NOT GOING TO KEEP YOU FROM  
22 YOUR A PLANE. THANK YOU.

23 MR. CARLTON: MAY I JUST HAVE A MOMENT,  
24 YOUR HONOR.

25 THE COURT: YOU MAY.

26 MR. CARLTON: NOTHING FURTHER.

27 THE COURT: THANK YOU, COUNSEL.

28 SIR, YOU MAY STEP DOWN.

1 THE WITNESS IS EXCUSED.

2 MR. PIUZE: YOUR HONOR, WE ARE GOING TO  
3 SET UP SOME VIDEO EQUIPMENT AND IT WILL TAKE, I AM  
4 TOLD, IT WILL TAKE LESS THAN FIVE MINUTES.

5 THE COURT: WHY DON'T WE GO AHEAD AND  
6 GIVE THE JURY A BREAK. THERE'S SOMETHING I NEED TO  
7 TALK TO COUNSEL ABOUT IN ANY EVENT.

8 LADIES AND GENTLEMEN, WE ARE GOING  
9 TO BE RUNNING SOME VIDEO TAPE NEXT FOR YOU AND WE  
10 NEED TO SET UP THE EQUIPMENT. SO IF YOU WOULD JUST  
11 GO OUT IN THE HALLWAY AND TAKE A SHORT BREAK, WE  
12 WILL CALL YOU BACK AS SOON AS WE ARE READY,  
13 APPROXIMATELY FIVE MINUTE, PERHAPS 10.

14

15 (THE FOLLOWING PROCEEDINGS  
16 WERE HELD IN OPEN COURT OUT  
17 OF THE PRESENCE OF THE JURY:)

18

19 THE COURT: WE ARE OUTSIDE THE PRESENCE.  
20 COUNSEL.

21 MR. PIUZE: YOUR HONOR, I ASKED FOR ONE  
22 MINUTE OF YOUR TIME. I'D LIKE, WHEN THE COURT GETS  
23 A CHANCE, THAT IT LOOK AT C. C. P. 2025(U)3(C) WHICH  
24 I BELIEVE TAKES THIS DEPOSITION OUT OF THE CATEGORY  
25 OF DEPOSITIONS THAT WOULD REQUIRE A FINDING OF  
26 UNAVAILABILITY, AND THEREFORE, WOULD ALSO TAKE THE  
27 ISSUE OF MR. BOEKEN'S BRIEF OR RELATIVELY BRIEF  
28 PERSONAL APPEARANCE OUT OF CONTENTION ALSO.

1                   (U)3(C), BASICALLY SAYS THAT THIS  
2 COURT HAS THE RIGHT TO USE ANY DEPOSITION OF ANYONE  
3 IF EXCEPTIONAL CIRCUMSTANCES EXIST IN THE INTEREST  
4 OF JUSTICE WITHOUT MAKING A FINDING OF  
5 UNAVAILABILITY.

6                   AND YOUR HONOR, IN THIS UNUSUAL  
7 CIRCUMSTANCE IN WHICH WE FIND OURSELVES, I BELIEVE  
8 THIS IS AN EXCEPTIONAL CIRCUMSTANCE THAT EXISTS,  
9 AND IN THE INTEREST OF JUSTICE, THIS PARTICULAR  
10 SUBSECTION CAN BE UTILIZED BY THE COURT.

11                   SO JUST GIVING THE COURT A HEADS  
12 UP.

13                   THE COURT: HEADS UP. LET'S NOT ARGUE AT  
14 THIS POINT. LET'S TAKE IT UP AT ANOTHER POINT.

15                   ARE WE READY TO BRING THE JURY BACK  
16 IN?

17                   WOULD COUNSEL STIPULATE THAT THIS  
18 NOT BE TAKEN DOWN INTO THE REPORTER'S NOTES; THAT  
19 THE VIDEO TAPE WILL STAND, JUST MARK IT.

20                   MR. PIUZE: YES.

21                   MR. LEITER: SO STIPULATED.

22                   THE COURT: STIPULATED.

23                   MR. PIUZE: STIPULATED.

24                   THE COURT: ALL RIGHT.

25                   OKAY, JURY, PLEASE.

26                   ///       ///       ///

27                   ///       ///       ///

28                   ///       ///       ///

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

4  
5 THE COURT: OUR JANUARY PANEL IS WITH US.  
6 COUNSEL ARE PRESENT AS WELL.

7 PLEASE BE SEATED.

8 NEXT WITNESS, PLEASE.

9 MR. PIUZE: YOUR HONOR, I'D LIKE TO CALL  
10 THE PLAINTIFF, RICHARD BOEKEN, BY WAY OF VIDEO  
11 TAPED DEPOSITION.

12 THE COURT: VERY WELL.

13 LADIES AND GENTLEMEN, A DEPOSITION  
14 WAS TAKEN OF THE PLAINTIFF, MR. BOEKEN -- WHAT ARE  
15 THE DATES OF THE DEPOSITION?

16 MR. PIUZE: DECEMBER 18, DECEMBER 19,  
17 2000.

18 THE COURT: THE DEPOSITION WAS TAKEN  
19 UNDER OATH AND IT'S DONE IN A PROCESS WHERE THERE  
20 IS A COURT REPORTER PRESENT AND ALSO THERE'S A  
21 VIDEOGRAPHER PRESENT. IF I HAVE IT RIGHT, IN THIS  
22 SITUATION, THERE WERE TWO DIFFERENT PEOPLE AND THEY  
23 SET UP A VIDEO TAPE MACHINE, ACROSS THE TABLE FROM  
24 THE PERSON WHO'S BEING VIDEO TAPED OR WHOSE  
25 DEPOSITION IS BEING TAKEN. COUNSEL ARE SITTING  
26 OUTSIDE OF THE VIEW OF THE CAMERA. SO YOU JUST  
27 HAVE A VIEW OF THE PERSON WHO IS BEING DEPOSED.  
28 BUT COUNSEL ARE THERE. THEY ASK QUESTIONS. THEY

1 CAN ALSO STATE OBJECTIONS FOR THE RECORD WHICH THE  
2 COURT WOULD LATER RULE ON, ALTHOUGH THOSE  
3 OBJECTIONS ARE REMOVED FROM THE VIDEO TAPE, IF  
4 THERE ARE ANY OBJECTIONS, THEY ARE REMOVED FROM THE  
5 VIDEO TAPE THAT YOU WILL SEE. HAVE THEY BEEN  
6 REMOVED, COUNSEL?

7 MR. PIUZE: YES. WHAT'S GOING TO HAPPEN,  
8 YOUR HONOR, IS WE ARE GOING TO HIT THE MUTE BUTTON.

9 THE COURT: SO THEY WILL BE REMOVED  
10 MECHANICALLY AS WE GO THROUGH THIS.

11 THE THING THAT YOU MUST REMEMBER  
12 HERE IS THAT THE WITNESS WAS SWORN AND IS UNDER  
13 EXACTLY THE SAME OATH AS EVERY OTHER WITNESS WHO  
14 HAS TO COME INTO THE COURTROOM TO TESTIFY.

15 VERY WELL, YOU MAY PROCEED,  
16 COUNSEL.

17 (VIDEO PLAYED)

18

19 (AT 12 NOON, THE LUNCH  
20 RECESS WAS TAKEN TO

21 1:30 P. M. OF THE SAME DAY.)

22

23

24

25

26

27

28

1 LOS ANGELES, CALIFORNIA; WEDNESDAY, APRIL 11TH, 2001

2 1:30 P. 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 AFTERNOON, COUNSEL.

10 ALL RIGHT. WE ARE ON THE RECORD  
11 OUTSIDE THE PRESENCE OF THE JURY.

12 COUNSEL ARE PRESENT. THE COURT HAS  
13 RECEIVED A RULE 980 REQUEST TO PHOTOGRAPH, RECORD  
14 OR BROADCAST THESE PROCEEDINGS. AND AS THE COURT  
15 UNDERSTANDS THE REQUEST, IT IS TO HAVE A T. V.  
16 CAMERA OR RECORDER IN THE COURTROOM FOR THE PORTION  
17 OF OUR PROCEEDINGS HAVING TO DO WITH THE VIDEO  
18 TAPED DEPOSITION OF THE PLAINTIFF, MR. BOEKEN.

19 OVER THE LUNCH HOUR, THE COURT  
20 THOUGHT ABOUT THE VARIOUS FACTORS INVOLVED THAT THE  
21 COURT MUST BALANCE IN ITS OWN MIND IN CONNECTION  
22 WITH A 980 REQUEST, AND AFTER SOME RATHER DETAILED  
23 INTROSPECTION OF THE NATURE OF THIS CASE AND THESE  
24 PROCEEDINGS, FEELS THAT THE MOTION SHOULD BE DENIED  
25 AND WILL DENY THE MOTION.

26 OF COURSE, THE MEDIA IS WELCOME TO  
27 COME IN AND SIT AND LISTEN TO PROCEEDINGS AND TAKE  
28 NOTES OF THE PROCEEDINGS BUT THERE WILL BE NO

1 TELEVISION RECORDING OR AUDIO REPORTING OF WHAT IS  
2 PROCEEDING IN THE COURTROOM AT THIS TIME.

3 ALL RIGHT, COUNSEL, IF WE COULD  
4 PLEASE CALL THE JURY IN AND PROCEED.

5

6

7 (THE FOLLOWING PROCEEDINGS  
8 WERE HELD IN OPEN COURT IN  
9 THE PRESENCE OF THE JURY.)

10

11 (VIDEO PLAYED)

12

13 (AT THIS TIME, THE PROCEEDINGS  
14 WERE CONTINUED TO THURSDAY,  
15 APRIL 12, 2001 AT 9:00 A.M.)

16

17

18

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