

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

13           REPORTER' S DAILY TRANSCRIPT OF PROCEEDINGS  
14                   TUESDAY, APRIL 17TH, 2001  
15 APPEARANCES:  
16 (FOR PLAINTIFF)                   LAW OFFICES OF  
  MICHAEL J. PIUZE  
17   11755 WILSHIRE BLVD.  
  SUITE 1170  
18   LOS ANGELES, CA 90025  
19 (FOR DEFENDANTS)                 ARNOLD & PORTER  
  BY: MAURICE A. LEITER  
20   JOHN CARLTON  
  777 S. FIGUEROA ST.  
21   44TH FLOOR  
  LOS ANGELES, CA 90017  
22  
23 LISA C. RIDLEY  
24 OFFICIAL REPORTER  
   600 S. COMMONWEALTH AVE.  
25 ROOM 308  
   LOS ANGELES, CA 90005  
26 VOLUME 18B OF  
27 PAGES 2674 THROUGH  
28

1 LOS ANGELES, CALIFORNIA; TUESDAY, APRIL 17TH, 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 IN

7 THE PRESENCE OF THE JURY. )

8

9 THE COURT: MR. PIUZE.

10

11

12 MARVIN GOLDBERG, PH. D. ,

13 CALLED AS A WITNESS BY THE PLAINTIFF, HAVING BEEN

14 PREVIOUSLY DULY SWORN, RESUMED THE WITNESS STAND

15 AND TESTIFIED FURTHER AS FOLLOWS:

16

17 DIRECT EXAMINATION (RESUMED)

18

19 BY MR. PIUZE:

20 Q. I AM VIRTUALLY READY TO SWITCH TO A

21 NEW TOPIC, BUT I HAVE ONE EMPTY SPACE UP HERE. BUT

22 FOR THE RECORD CAN YOU IDENTIFY 8002. 89.

23 A. IT'S A MARLBORO AD FROM 1976 ON THE

24 SAME TYPE AS THE EARLIER TYPE.

25

26 \* (EXHIBIT 8002. 89, AD,

27 MARKED FOR I. D. )

28 /// /// ///

- 1 Q BY MR. PIUZE: ALONG THE SAME  
2 LINES OF INDEPENDENT AND --
- 3 A. SAME CAMPAIGN, SAME, TYPE  
4 CHARACTERISTICS HIGHLIGHTED IN THE END.
- 5 Q. SO HERE'S A NEW SUBJECT.  
6 WHAT'S THAT?
- 7 A. THIS IS A CHART FROM THE NEW  
8 ZEELAND REPORT, I BELIEVE I REFERRED TO YESTERDAY,  
9 THAT COVERS -- I THINK IT WAS PUBLISHED IN 1986.  
10 IT COVERS A STUDY OF 33 COUNTRIES AND SMOKING  
11 BEHAVIOR IN THOSE COUNTRIES IN RELATIONSHIP TO  
12 CIGARETTE PROMOTION ACTIVITIES IN THOSE COUNTRIES.
- 13 Q. I SEE ABOVE THE LINE AND BELOW THE  
14 LINE, WHAT'S THE SIGNIFICANCE OF THE ABOVE THE LINE  
15 AND THE BELOW THE LINE, PLEASE.
- 16 A. ABOVE THE LINE MEANS, ON AVERAGE  
17 BASIS, ACROSS THE YEARS, '70 TO '86, 1970 TO '86.  
18 AND THIS INCLUDES DATA FOR 18 OF THE 33 COUNTRIES,  
19 FROM 1970 TO '86, THOSE COUNTRIES BELONGING IN THAT  
20 SET ON THE FAR RIGHT HAVE AN AVERAGE INCREASE IN  
21 CIGARETTE CONSUMPTION OF POINT FOUR, POINT 41.
- 22 Q. SO THAT'S HERE?
- 23 A. THAT IS RIGHT.
- 24 Q. THOSE COUNTRIES, MORE SMOKING?
- 25 A. THAT IS RIGHT. PER YEAR, AND A  
26 GROWTH RATE OF ABOUT POINT FOUR PER YEAR.
- 27 Q. THE OTHERS ALL WENT DOWN?
- 28 A. THAT IS RIGHT.

1 Q. WHAT'S THE DIFFERENCE IN THOSE  
2 GROUPS OF COUNTRIES?

3 A. THE ONES ON THE RIGHT ARE THE ONLY  
4 SET OF COUNTRIES FOR WHICH THERE WERE NO  
5 RESTRICTIONS AT ALL ON PROMOTION, NOTHING. YOU  
6 COULD ADVERTISE ANY MEDIUM, ANY TIME, DISTRIBUTE  
7 ANY KIND OF PROMOTIONAL ITEMS ANYWHERE.

8 Q. TELL US THE TIMEFRAME AGAIN FOR  
9 THIS.

10 A. 1970 TO 1986.

11 Q. SO WHAT ABOUT THESE GUYS HERE?

12 A. THOSE COUNTRIES ARE A SET, AGAIN,  
13 OF COUNTRIES THAT HAD SOME RESTRICTIONS ON  
14 PROMOTION. AND THE UNITED STATES IS ONE OF THOSE.  
15 SO FROM ABOUT 1970, 1971, I BELIEVE, ON, THERE WAS  
16 NO ADVERTISING ALLOWED ON T. V. AND RADIO.

17 SO THE UNITED STATES IS ONE OF THE  
18 SUBSET COUNTRIES IN THERE.

19 THE PARTIAL CURTAILMENT OF  
20 PROMOTION IS CLEARLY ASSOCIATED WITH A DECREASE PER  
21 YEAR IN SMOKING CONSUMPTION, CIGARETTE CONSUMPTION.

22 Q. THESE COUNTRIES HERE?

23 A. WELL, LESS AND LESS ADVERTISING AND  
24 PROMOTION IS PERMITTED ON THE LEFT. THE WORD IS  
25 NONE. SO THESE ARE COUNTRIES ON THE LEFT THAT HAVE  
26 ABSOLUTELY NO ADVERTISING OR PROMOTION FOR  
27 CIGARETTES THAT ARE PERMITTED, THAT'S PERMITTED.

28 AND HERE'S THE GREATEST DECLINE PER

1 YEAR AT THE LEFT, 1 POINT -- IS IT 1.7, MINUS 1.7.  
2 SO ALMOST 2 PERCENT PER YEAR ACROSS THESE YEARS  
3 DECLINE, EACH YEAR IN CIGARETTE CONSUMPTION, WHEN  
4 THERE IS -- 4, I AM SORRY, 4.1.

5 Q. I BELIEVE IT SAYS MINUS 2.7.

6 A. MINUS 2.7. I CAN'T PICK IT UP  
7 HERE.

8 SO THAT MEANS 2.7 PERCENT DECREASE  
9 IN CIGARETTE CONSUMPTION EACH YEAR ON AVERAGE  
10 ACROSS THE YEARS FROM 1970 TO '86. AND THE LEFT  
11 MOST BAR, AGAIN, IS THOSE COUNTRIES IN WHICH THERE  
12 IS NO PROMOTION FOR CIGARETTES PERMITTED AT ALL.

13 Q. ADVERTISING, EQUALS SALES?

14 A. THERE CERTAINLY IS A STRONG  
15 CORRESPONDENCE IN THIS SET OF DATA.

16 Q. AND HERE'S MY LAST --

17 A. INCIDENTALLY, I CAN TELL YOU WHICH  
18 COUNTRIES ARE IN THESE, IF THAT'S OF RELEVANCE.

19 Q. WELL, WOULD YOU LIKE TO?

20 A. WELL, I THINK IT'S OF SOME  
21 SUBSTANCE HERE.

22 BECAUSE, IN FACT, WHEN YOU GET INTO  
23 COUNTRY BY COUNTRY, THERE'S EVEN CLEARER DATA.

24 ON THE LEFT -- I AM SORRY, DO YOU  
25 WANT A LIST OF THE COUNTRIES OR DO YOU WANT TO TALK  
26 ABOUT THEM?

27 Q. EITHER WAY. WE CAN PUT THEM ON, IF  
28 YOU LIKE.

1           A.     THIS HAS A SET, MATCHES INTO THE  
2 BAR GRAPHS. IT IS QUITE INTERESTING BECAUSE  
3 THERE' S TWO DIFFERENT SETS QUITE REDUCED LEVELS OF  
4 ADVERTISING.

5                     ONE IS THE SCANDINAVIAN COUNTRIES,  
6 ICELAND AND FINLAND, NORWAY, AS WELL AS A COUPLE OF  
7 OTHERS.

8                     AND THEN THERE IS -- THIS IS NOT  
9 THE TABLE I WAS LOOKING FOR.

10           Q.     I AM SORRY.

11           A.     I DON' T SHOW THIS AS THE TABLE I AM  
12 LOOKING FOR, BUT WE CAN USE IT NONETHELESS.

13           Q.     EXCUSE ME FOR ONE SECOND. I  
14 APOLOGIZE.

15           A.     SO THE CLEAREST EXAMPLES ARE ON THE  
16 TOP, THE SCANDINAVIAN COUNTRIES, ICELAND, FINLAND,  
17 NORWAY, PORTUGAL.

18                     THERE' S A GOOD DEAL OF WORK DONE IN  
19 NORWAY THAT IT' S VERY CLEAR THAT EVEN AMONG YOUNG  
20 PEOPLE, VERY SPECIFICALLY AMONG YOUNG PEOPLE,  
21 BEFORE AND AFTER THE LAW THEY SAW A CONSIDERABLE  
22 DECLINE IN THE SMOKING LEVELS OF YOUNG PEOPLE IN  
23 NORWAY, ABOUT AN 8 OR 9 PERCENT DECLINE FOR BOYS  
24 AND GIRLS, BEFORE AND AFTER THE LAW WAS PASSED THAT  
25 ELIMINATED ADVERTISING.

26                     THERE' S AN INTERESTING GROUP OF  
27 COUNTRIES THERE. THAT' S WHY I THOUGHT THIS WOULD  
28 BE OF INTEREST.

1                   ADVERTISING NEVER PERMITTED FOR  
2 POLITICAL REASONS.

3                   THIS IS WHILE THE SOVIET UNION  
4 STILL EXISTED, AND THESE COUNTRIES, THERE WAS JUST  
5 NO ADVERTISING PERMITTED, PERIOD. AND AT THE TIME,  
6 WHAT YOU SEE IS A SMALL DECLINE, YEAR-TO-YEAR,  
7 WITHOUT THE ADVERTISING. AND IN THIS CASE, IT IS  
8 BECAUSE IT WAS POLITICALLY PREVENTED IN THE SOVIET  
9 UNION AND RELATED COUNTRIES, THERE WAS STILL A  
10 SMALL DECLINE PER YEAR.

11                  THEN THERE'S A SERIES OF COUNTRIES  
12 THAT WE ARE MORE USED TO, WHERE TOBACCO IS  
13 PROMOTED, PROMOTION IS ALLOWED IN EITHER A FEW  
14 MEDIA OR MOST MEDIUM AND WE SAW THE BAR GRAPH  
15 THERE ALONG TO THE COUNTRIES LIKE GREECE AND JAPAN  
16 THAT ALLOW PROMOTION IN ALL MEDIUM

17                  Q.     SO THE FIRST THING WE ARE DOING  
18 AFTER LUNCH HERE IS HAVING A GEOGRAPHY LESSON.  
19 WHAT DOES IT ALL MEAN?

20                  A.     IT MEANS THAT WHERE YOU GO OUT OF  
21 YOUR WAY TO SAY NO, WE ARE NOT GOING TO ALLOW  
22 ADVERTISING FOR CIGARETTES AND PROMOTION FOR  
23 CIGARETTES, CIGARETTE CONSUMPTION DECLINES.

24                  Q.     OKAY. SO THIS IS MY LAST SUBJECT  
25 AND IT'S A BIG ONE.

26                  MR. LEITER: OBJECT TO THE COMMENTARY.

27                  MR. PIUZE: I APOLOGIZE.

28                  THE COURT: THE WORD "BIG. "

1 Q BY MR. PIUZE: THIS IS MY LAST  
2 SUBJECT.

3 YOU HAVE TALKED ABOUT MARKETING AND  
4 YOU TALKED ABOUT ADVERTISING, AND WE SPENT A LONG  
5 TIME DOING THAT.

6 YESTERDAY SORT OF AS AN  
7 INTRODUCTORY, I MENTIONED THE TERM "PUBLIC  
8 RELATIONS" TO YOU.

9 REMEMBER THAT?

10 A. YES.

11 Q. COMPARE, JUST TO START WITH,  
12 ADVERTISING AND MARKETING ON THE ONE HAND TO PUBLIC  
13 RELATIONS ON THE OTHER, FROM YOUR VIEWPOINT AS A  
14 GUY WHO TEACHES THE STUFF, PLEASE.

15 A. WELL, I THINK THERE ARE TWO KEY  
16 DIFFERENCES. I MENTIONED ONE YESTERDAY, AND THAT  
17 IS THAT PUBLIC RELATIONS, TYPICALLY, THERE'S ONE  
18 GREAT SIMILARITY, THEY ARE ALL GUIDED TO HELP THE  
19 COMPANY ENHANCE ITS BOTTOM LINE.

20 THE ONE THAT I MENTIONED YESTERDAY  
21 IS THAT PUBLIC RELATIONS IS TYPICALLY EMPLOYED IN  
22 THE GOAL OF CREATING A MORE BROADER OR MORE  
23 UMBRELLA VIEW ON THE PART OF THE PUBLIC OR SPECIFIC  
24 PUBLICS, THAT IS TO SAY, TO ENHANCE THE CORPORATE  
25 REPUTATION, ENHANCE PEOPLE'S UNDERSTANDING OF WHAT  
26 THE CORPORATION STANDS FOR, ET CETERA, AS OPPOSED  
27 TO NARROWLY BRAND BY BRAND EMPHASIS.

28 WHAT I DIDN'T MENTION YESTERDAY WAS

1 THAT MOST TYPICALLY, PUBLIC RELATIONS RELIES ON A  
2 MUCH BROADER EXPANSE OF STRATEGIES. AND BY THAT, I  
3 MEAN, IT WILL EMPLOY MUCH MORE OF A  
4 PERSON-TO-PERSON INTERPERSONAL RELATIONSHIP, AMONG  
5 OTHER THINGS. IT WILL ALSO USE THE MASS MEDIA BUT  
6 WILL USE MUCH MORE TAILORED APPROACHES AS WELL.

7 SO OFTEN, THERE'S A FEELING THAT  
8 ADVERTISING WILL NOT BE SUFFICIENT, WILL NOT BE  
9 BELIEVABLE ENOUGH, WILL BE TOO SMOTHERED BY THE  
10 CLUTTER AROUND IT, NO MATTER HOW GOOD ONE AD MAY  
11 BE, IF IT FALLS WITHIN MANY, WELL, THAT MAY FALL ON  
12 DEAF EARS. AND SO THERE'S AN EFFORT TO DRAW BACK  
13 AND SAY, WHAT CAN WE DO INTERPERSONALLY AS WELL AS  
14 IN A BROADER SENSE.

15 Q. I AM GOING TO SHOW YOU EXHIBIT 295.

16

17 \* (EXHIBIT 295, HILL & KNOWLTON  
18 DOCUMENT, MARKED FOR I. D.)

19

20 Q BY MR. PIUZE: THE DATE ON THIS  
21 DOCUMENT IS DECEMBER 15, 1953.

22 DO YOU KNOW WHAT THIS IS?

23 A. THIS IS ONE OF THE HILL & KNOWLTON  
24 DOCUMENTS, I BELIEVE, FROM JOHN HILL'S FILES THAT  
25 WERE IN THE ARCHIVES OF THE UNIVERSITY OF  
26 WISCONSIN.

27 Q. HILL & KNOWLTON, REMIND US, HILL &  
28 KNOWLTON IS?

1           A.     HILL & KNOWLTON WAS AND IS THE  
2 LARGEST PUBLIC RELATIONS FIRM IN THE COUNTRY.

3           Q.     JOHN HILL WAS?

4           A.     THE PRESIDENT AND, I BELIEVE,  
5 FOUNDER OF THAT COMPANY.

6           Q.     AND JOHN HILL, HOW DID HIS  
7 DOCUMENTS -- HE DONATED THEM TO THE UNIVERSITY OF  
8 WISCONSIN; IS THAT RIGHT?

9           A.     YES, HE GAVE THEM TO THE UNIVERSITY  
10 OF WISCONSIN.

11          Q.     WHAT DOES THIS, HISTORICALLY,  
12 DECEMBER 15, 1953, WHERE DOES THAT FIT AS FAR AS IF  
13 I TOLD YOU FRANK STATEMENT, WOULD YOU KNOW WHAT A  
14 FRANK STATEMENT IS?

15          A.     YES. THAT WAS THE FULL PAGE AD  
16 THAT WAS DISSEMINATED IN OVER 400 CITIES, ANYTHING  
17 ABOVE 50,000 POPULATION, THAT --

18          MR. LEITER: OBJECT TO THE NARRATIVE.

19          THE COURT: WELL, THE QUESTION WAS DOES  
20 HE KNOW WHAT IT IS.

21                   DO YOU KNOW WHAT IT IS?

22          THE WITNESS: YES.

23          THE COURT: THANK YOU.

24          Q     BY MR. PIUZE: DO YOU KNOW WHEN IT  
25 WAS PUBLISHED?

26          A.     IN 1954.

27          Q.     I AM GOING TO FLASH THIS AT YOU  
28 HERE. DO YOU SEE THE DATE THERE?

1           A.     JANUARY 4, 1954.

2           Q.     THAT SOUND ABOUT RIGHT TO YOU?

3           A.     YES.

4           Q.     SO WHAT I AM SHOWING YOU HERE, JUST  
5 TO PUT IT IN A TIME PERSPECTIVE, IS ABOUT TWO AND A  
6 HALF WEEKS BEFORE THE FRANK STATEMENT IS PUBLISHED;  
7 OKAY?

8           A.     OKAY.

9           Q.     I WANT TO POINT THAT OUT TO YOU.  
10                    HOW MANY DOCUMENTS HAVE YOU  
11 REVIEWED, ROUGHLY, FROM THE STATE HISTORICAL  
12 SOCIETY OF WISCONSIN, DEALING WITH JOHN HILL'S  
13 TOBACCO DOCUMENTS, PLEASE.

14           A.     SOMEWHERE ON THE ORDER OF 20,  
15 ROUGHLY, GIVE OR TAKE, 25.

16           Q.     I'D LIKE TO DRAW YOUR ATTENTION TO  
17 THIS PARAGRAPH THAT'S BEEN YELLOWED HERE.

18                    WOULD YOU READ THAT, PLEASE.

19           A.     (READING)

20                    "THE GROUP WAS CALLED  
21 TOGETHER BY MR. PAUL HAHN, PRESIDENT  
22 OF THE AMERICAN TOBACCO COMPANY. THE  
23 CHIEF EXECUTIVE OFFICERS OF ALL THE  
24 LEADING COMPANIES - RJ REYNOLDS,  
25 PHILIP MORRIS, BENSON & HEDGES, U. S.  
26 TOBACCO COMPANY AND BROWN & WILLIAMSON  
27 HAVE AGREED TO GO ALONG WITH A PUBLIC  
28 RELATIONS PROGRAM ON THE HEALTH

1           ISSUE. "

2           Q.     WE HAVE LOTS OF OTHER WITNESSES  
3 HERE TO DISCUSS THIS FROM A MARKETING STANDPOINT.  
4                   WHAT DO YOU UNDERSTAND TO BE THE  
5 HEALTH ISSUE?

6           A.     THERE WERE REPORTS LINKING -- THERE  
7 WERE REPORTS LINKING CANCER IN CIGARETTE SMOKING  
8 AND THE CONCERN WAS THAT THIS WOULD HAVE AN ADVERSE  
9 EFFECT ON SALES AND I BELIEVE SALES STARTED TO  
10 SLIP.

11          Q.     GIVE ME ONE SECOND OR GIVE ME A  
12 COUPLE SECOND, PLEASE.

13                   I AM GOING TO SHOW YOU A DOCUMENT  
14 FROM 1953. I AM GOING TO MARK THIS TO 95. 01.

15

16                   \* (EXHIBIT 95. 01, 1953 DOCUMENT,  
17                    MARKED FOR I. D. )

18

19          Q     BY MR. PIUZE: SO JUST FROM A  
20 HISTORICAL PERSPECTIVE, EARLIER IN 1953, THERE WAS  
21 A HEALTH SCARE CONCERNING CIGARETTES?

22          A.     THAT WAS THE FIRST OF THE RECORDED  
23 LINKAGES BETWEEN TAR AND CIGARETTE SMOKE -- TAR AND  
24 CANCER AND ARTICLES IN "DOCTORS DIGEST" AND SOME IN  
25 THE "NEW YORK TIMES" THAT STARTED TALKING IN A  
26 SERIOUS WAY ABOUT POTENTIAL HEALTH RISKS OF  
27 CIGARETTE SMOKING. AND THIS HEADLINE, IN FACT,  
28 TAKES THE ONE WORD, I GUESS, THAT WAS PREVALENT AT

1 THE TIME, "FEAR," AND PLAYS TO THAT.

2 Q. OKAY. WELL, YOU SAY "HEADLINE,"  
3 BUT THIS IS AN AD, THIS ISN'T A HEADLINE?

4 A. YES. WELL, IT'S A HEADLINE IN THE  
5 AD.

6 Q. SO LET ME COME BACK HERE. 1953,  
7 AND I HAD YOU, SO FAR, AT THIS PARAGRAPH HERE,  
8 "AGREE TO GO ALONG WITH THE PUBLIC RELATION PROGRAM  
9 ON THE HEALTH ISSUE. "

10 OKAY?

11 A. YES.

12 Q. SO WE ARE PLUGGED BACK IN.  
13 CAN YOU READ THAT.

14 A. YES.

15 "INSTEAD THEY PREFER  
16 STRONGLY THE ORGANIZATION OF AN  
17 INFORMAL COMMITTEE WHICH WILL BE  
18 SPECIFICALLY CHARGED WITH THE PUBLIC  
19 RELATION FUNCTION AND READILY  
20 IDENTIFIED AS SUCH. "

21 Q. KEEP GOING, PLEASE.

22 A. (READING)

23 "FOR EXAMPLE, MR. HAHN  
24 REPORTED THAT ONE NAME THEY HAD  
25 CONSIDERED WAS THE TOBACCO INDUSTRY  
26 COMMITTEE FOR PUBLIC INFORMATION.  
27 JOHN HILL SUGGESTED THAT HE FELT THE  
28 WORD 'RESEARCH' SHOULD APPEAR ALONG

1 WITH 'INFORMATION' IN THE TITLE OF THE  
2 COMMITTEE.

3 "NEVERTHELESS, THEY REALIZE  
4 THAT THE INDUSTRY SHOULD NOT ENGAGE  
5 MERELY IN THE DEFENSIVE CAMPAIGN  
6 REPLYING TO AND ANSWERING INDIVIDUAL  
7 RESEARCH PAPERS OR MAGAZINE ARTICLES.

8 "THEY FEEL THAT THEY SHOULD  
9 SPONSOR A PUBLIC RELATION CAMPAIGN  
10 WHICH IS POSITIVE IN NATURE AND IS  
11 ENTIRELY PRO CIGARETTES. THEY ARE  
12 CONFIDENT THAT THEY CAN SUPPLY US WITH  
13 COMPREHENSIVE AND AUTHORITATIVE  
14 SCIENTIFIC MATERIAL WHICH COMPLETELY  
15 REFUTES THE HEALTH CHARGES.

16 "THEY ARE ALSO EMPHATIC IN  
17 SAYING THAT THE ENTIRE ACTIVITY IS A  
18 LONG-TERM CONTINUING PROGRAM --

19 Q. KEEP GOING, EVEN IF THERE IS NO  
20 YELLOW THERE.

21 A. (READING)

22 "SINCE THEY FEEL THE PROBLEM  
23 IS ONE OF PROMTING CIGARETTES AND  
24 PROTECTING THEM, THESE AND OTHER  
25 ATTACKS MAY BE EXPOSED IN THE FUTURE.  
26 EACH OF THE COMPANY PRESIDENTS  
27 ATTENDING EMPHASIZED THE FACT THAT  
28 THEY CONSIDER THE PROGRAM TO BE A

1 LONG-TERM ONE. "

2 Q. I AM GOING TO JUMP YOU DOWN TO  
3 HERE.

4 HERE' S A QUESTION. CAN YOU READ  
5 THAT QUESTION?

6 A. (READING)  
7 "WILL THE COMPANIES AGREE TO  
8 SPONSOR NEW RESEARCH WHICH WILL  
9 PROVIDE DEFINITE ANSWERS TO THE  
10 CHARGES?"

11 Q. HOW ABOUT "DEFINITIVE ANSWERS"?

12 A. "DEFINITIVE ANSWERS. "

13 MR. LEITER: IT IS "DEFINITE. "

14 Q. EXCUSE ME. MR. LEITER, I  
15 APOLOGIZE.

16 A. (READING)  
17 "A CLEAR-CUT ANSWER TO THIS  
18 QUESTION WAS DEFERRED FOR THE TIME  
19 BEING. THE COMPANIES ALL SAY THAT  
20 THEY ARE CARRYING OUT MUCH MORE  
21 RESEARCH IN THEIR OWN LABORATORIES AND  
22 ARE SPONSORING MORE RESEARCH IN  
23 HOSPITALS, UNIVERSITIES THAN IS  
24 GENERALLY RECOGNIZED. THEY BELIEVE  
25 THAT WHEN WE ARE ACQUAINTED WITH ALL  
26 OF THE SCIENTIFIC AND FACTUAL MATERIAL  
27 IN THE HANDS OF THE COMPANIES, WE WILL  
28 AGREE THAT THE MAJOR PROBLEM IS TO

1 DISSEMINATE INFORMATION ON HAND RATHER  
2 THAN TO CONDUCT NEW RESEARCH. "

3 Q. AND COULD YOU READ THAT PART UP AT  
4 THE TOP, PLEASE, IN YELLOW?

5 A. (READING)  
6 "AS ANOTHER INDICATION OF  
7 HOW SERIOUS THE PROBLEM IS, THE  
8 OFFICIALS STATED THAT SALESMAN IN THE  
9 INDUSTRY ARE FRANTICALLY ALARMED. "

10 Q. KEEP GOING.

11 A. (READING)  
12 "AND THAT THE DECLINE IN  
13 TOBACCO STOCKS ON THE STOCK EXCHANGE  
14 MARKET HAS CAUSED GRAVE CONCERNS,  
15 ESPECIALLY SINCE TOBACCO EARNINGS WILL  
16 BE MUCH HIGHER NEXT YEAR BECAUSE OF  
17 THE TERMINATION OF EXCESS PROFITS  
18 TAXES. "

19 Q. I WANT TO JUMP YOU DOWN TO WHERE IT  
20 SAYS "OTHER INFORMATION. " WOULD YOU READ THAT  
21 ALSO.

22 A. (READING)  
23 "THE CURRENT PLANS ARE FOR  
24 HILL & KNOWLTON TO SERVE AS THE  
25 OPERATING AGENCY OF THE COMPANIES  
26 HIRING ALL THE STAFF AND DISBURSING  
27 ALL FUNDS.

28 "THE CHAIRMAN -- "

1 Q. I AM SORRY, GO AHEAD.

2 A. (READING)

3 "THE CHAIRMAN WILL PROBABLY  
4 BE MR. HAHN OR THE HEAD OF ONE OF THE  
5 OTHER COMPANIES RESIDENT IN NEW YORK.  
6 THERE WILL BE A STRONG SUBCOMMITTEE OF  
7 THE CHIEF EXECUTIVES ALL RESIDENT IN  
8 NEW YORK. "

9 Q. SO I WANT TO STOP YOU THERE,  
10 MOMENTARILY.

11 HILL & KNOWLTON, A PUBLIC RELATIONS  
12 FIRM, WAS GOING TO BE THE OPERATING AGENCIES FOR  
13 THE TOBACCO INDUSTRY IN REGARD TO THE HEALTH CARE?

14 A. YES.

15 Q. THIS IS, I KNOW -- 363, DO YOU SEE  
16 THAT?

17 A. YES.

18

19 \* (EXHIBIT 363, DOCUMENT,  
20 MARKED FOR I. D.)

21

22 Q BY MR. PIUZE: WAS THIS THE RESULT  
23 OF THE PUBLIC RELATIONS MEETING IN DECEMBER OF  
24 1953?

25 MR. LEITER: OBJECTION AS TO WHAT --  
26 THE COURT: FOUNDATION, PERSONAL  
27 KNOWLEDGE, WHATEVER.

28 Q BY MR. PIUZE: FROM THE PAPERS

1 THAT YOU HAVE REVIEWED, IS THIS THE NEXT DOCUMENT  
2 THAT EXISTS FOLLOWING THE DECEMBER 15, 1953 MEETING  
3 IN NEW YORK CITY?

4 MR. LEITER: OBJECTION, HE IS A MARKETING  
5 EXPERT. HE IS TESTIFYING NOW AS TO WHAT THE FACTS  
6 ARE.

7 THE COURT: WELL, THE QUESTION IS, AND  
8 LET'S NOT HAVE A LOT OF COLLOQUY ON OBJECTIONS.

9 THE QUESTION IS FROM JUST THE  
10 DOCUMENTS THAT YOU HAVE EXAMINED. IT'S NOT TO SAY  
11 THERE MIGHT BE OTHERS. BUT FOR THE ONES YOU HAVE  
12 EXAMINED. AND THE QUESTION.

13 THE WITNESS: YES, THE MEETING ON  
14 DECEMBER 15TH, LED TO THE FRANK STATEMENT.

15 MR. LEITER: OBJECTION, MOVE TO STRIKE.

16 THE COURT: OVERRULED.

17 Q BY MR. PIUZE: OKAY. I THINK I  
18 MAY HAVE ONE OTHER VERSION.

19 HERE'S THE NEXT DOCUMENT I WANT TO  
20 SHOW YOU. THIS IS 305.

21

22 \* (EXHIBIT 305, 8/17/54  
23 DOCUMENT, MARKED FOR I. D.)

24

25 Q BY MR. PIUZE: I WANT TO POINT OUT  
26 THE DATE.

27 CAN YOU READ THAT FROM WHERE YOU  
28 ARE?

1 A. YES, I BELIEVE SO.

2 Q. AUGUST 17, 1954.

3 CAN YOU READ THIS, FIRST PARAGRAPH.

4 A. I THINK SO.

5 Q. PLEASE.

6 A. (READING)

7 "THE ATTACHED REPORT  
8 CONTAINS MATERIAL THAT, AS YOU WILL  
9 SEE, SHOULD BE CONSIDERED HIGHLY  
10 CONFIDENTIAL AND RECEIVE THE MINIMUM  
11 OF CIRCULATION. HOWEVER, YOU MAY WANT  
12 SOME OF THE OTHER PRINCIPALS OF THE  
13 TOBACCO INDUSTRY RESEARCH COMMITTEE TO  
14 SEE OR HAVE A COPY.

15 "WOULD YOU DESIRE TO MAKE --  
16 SHOULD YOU DESIRE TO MAKE COPIES  
17 AVAILABLE TO A FEW, IT IS SUGGESTED  
18 THAT YOU APPEND A NOTE TO THE FRONT OF  
19 THE REPORT TO THIS EFFECT, THE  
20 ATTACHED REPORT IS HIGHLY  
21 CONFIDENTIAL, IT IS REQUESTED THAT YOU  
22 RETAIN IT ONLY FOR YOUR PERSONAL  
23 CONSIDERATION AND FOR THAT OF YOUR  
24 IMMEDIATE ASSOCIATES. ALSO THAT NO  
25 ADDITIONAL COPIES BE MADE AND THAT  
26 THIS COPY NOT BE PLACED IN FILES. "

27 Q. IN AUGUST OF 1954, WERE THERE COPY  
28 MACHINES THEN?

1 A. I BELIEVE SO.

2 Q. SORRY.

3 A. I BELIEVE SO. NOT AS MANY AS NOW

4 Q. JUMPING OVER TO PAGE 3 OF THIS  
5 DOCUMENT, CAN YOU READ THAT, PLEASE.

6 A. (READING)

7 "SINCE THE COMMITTEE HAD NO  
8 HEADQUARTERS AND NO STAFF, HILL &  
9 KNOWLTON, INC., WAS ASKED TO PROVIDE A  
10 WORKING STAFF AND TEMPORARY OFFICE  
11 SPACE AS A FIRST ORGANIZATIONAL STEP.  
12 PUBLIC RELATIONS COUNSEL ASSIGNED ONE  
13 OF ITS EXPERIENCED EXECUTIVES, W. T.  
14 HOYT TO SERVE AS ACCOUNT EXECUTIVE AND  
15 HANDLE, AS ONE OF HIS FUNCTIONS, THE  
16 DUTY OF EXECUTIVE SECRETARY FOR THE  
17 TOBACCO INDUSTRY RESEARCH COMMITTEE."

18 Q. SO AS OF THIS TIME, THE TOBACCO  
19 INDUSTRY RESEARCH COMMITTEE WAS HOUSED IN A PUBLIC  
20 RELATIONS FIRM?

21 MR. LEITER: OBJECTION, FOUNDATION AS TO  
22 HIS KNOWLEDGE.

23 THE COURT: AS TO WHAT THE -- WELL, FAIR  
24 ENOUGH, FOUNDATION ON THAT ONE.

25 Q BY MR. PIUZE: WELL, I GUESS THE  
26 FOUNDATION, IS THAT YOUR INTERPRETATION OF THIS  
27 DOCUMENT?

28 MR. LEITER: OBJECTION.

1 THE COURT: I AM GOING TO SUSTAIN IT.

2 Q BY MR. PIUZE: LET'S TAKE A LOOK  
3 AT THIS HEADING HERE. CAN YOU READ THROUGH HERE,  
4 PLEASE, AND THEN I WILL FLIP IT OVER.

5 A. (READING)

6 "FINAL STEP IN THE FORMAL  
7 ORGANIZATION OF THE TOBACCO INDUSTRY  
8 RESEARCH COMMITTEE WAS THE SELECTION  
9 OF TIMOTHY HARTMANN, RETIRING  
10 PRESIDENT OF BROWN & WILLIAMSON  
11 TOBACCO CORPORATION AS FULL TIME  
12 CHAIRMAN RATHER THAN TO CONTINUE  
13 ROTATING THE CHAIRMANSHIP, HE WILL  
14 ASSUME HIS DUTY ON JULY 1 WITH  
15 APPROPRIATE PUBLIC ANNOUNCEMENT."

16 Q. AND I AM GOING TO JUMP YOU OVER TO  
17 PAGE 9.

18 MR. LEITER: OBJECT TO THE READING, YOUR  
19 HONOR. THERE IS NO QUESTION.

20 THE COURT: WELL, HE JUST SAID HE IS  
21 GOING TO PAGE 9, FOR HEAVEN'S SAKE.

22 MR. PIUZE: I TELL YOU WHAT, I AM GOING  
23 TO READ SOME OF THIS AND ASK YOU SOME QUESTIONS  
24 ABOUT IT.

25 Q BY MR. PIUZE: IN PARAGRAPH 8:  
26 "ALTHOUGH MANY OF THE  
27 WRITERS COVERING THE SAO PAULO MEETING  
28 FAILED TO MENTION THAT HUEPER TALK IN

1           THEIR DISPATCHES, IT IS SIGNIFICANT  
2           THAT AS A RESULT OF DISTRIBUTION IN  
3           THE U. S. A. , STORIES QUESTIONING A LINK  
4           BETWEEN SMOKING AND CANCER WERE GIVEN  
5           WIDE ATTENTION, BOTH IN HEADLINES AND  
6           STORIES. IN SOME PRESS ACCOUNTS, THE  
7           HEUPER STORY TOOK PRECEDENCE OVER THE  
8           REPORTS OF DRS. HAMMOND AND WYNDER,  
9           EVEN THOUGH THE LATTER WERE MADE  
10          AVAILABLE TO THE PRESS IN ADVANCE OF  
11          THEIR DELIVERY ON A HOLD FOR RELEASE  
12          BASIS. "

13                           NOW, I WANT TO SHOW YOU THIS  
14 SUBHEADING 3 HERE.

15                           "SPECIAL ASSISTANCE TO  
16 PRESS, RADIO, MAGAZINES AND OTHERS. "

17                           DO YOU SEE THAT?

18           A.     YES.

19           Q.     IN THE CONTEXT HERE, YOU HAVE READ  
20 THIS DOCUMENT, WHAT'S THE CONTEXT OF THIS?

21           MR. LEITER: OBJECTION, FOUNDATION.

22           THE COURT: HE WAS NOT THERE.

23           MR. PIUZE: NO, HE WASN' T.

24           THE COURT: SO THE CONTEXT IS JUST  
25 GENERALLY, IN GENERAL PRACTICES OF PUBLIC RELATION  
26 ORGANIZATIONS.

27           THE WITNESS: THE EFFORT IS, AS I STARTED  
28 SAYING EARLIER, OFTEN QUITE AN INTENSIVE

1 INTERPERSONAL ONE WITH REPRESENTATIVES OF THE  
2 PUBLIC RELATIONS FIRM REACHING OUT TO THOSE WHO  
3 SHAPE PUBLIC OPINION. AND THAT WOULD BE MEMBERS OF  
4 THE PRESS, MIGHT BE OPINION LEADERS LIKE DOCTORS,  
5 EDITORIAL BOARDS OF NEWSPAPERS, OF BROADCAST  
6 NETWORKS AND SENIOR EXECUTIVES OF BROADCAST  
7 NETWORKS. IT'S A WAY, THE INTENT OF PUBLIC  
8 RELATIONS AND THE ACTIVITIES ARE FOCUSED ON SHAPING  
9 PUBLIC OPINION AND REACHING PEOPLE WHO ARE  
10 EFFECTIVE, INTERMEDIARIES IN DOING SO.

11 Q. HERE, LET ME BACK UP TO PAGE 5  
12 HERE. I AM JUST GOING TO GO THROUGH ONE AT A TIME  
13 SO YOU CAN JUST MENTION THEM AND I WILL PICK UP THE  
14 COMMENTS ABOUT EACH OF THOSE PROPOSED THINGS.

15 "OTHER PUBLIC RELATIONS  
16 ACTIVITIES. "

17 "ONE, T. I. R. C. AS  
18 INFORMATION SOURCE. "

19 OKAY?

20 A. RIGHT.

21 Q. "TWO, GENERAL NEWS RELEASES. "  
22 TELL -- WELL, LET'S STAY WITH THAT FOR A SECOND.

23 SEE THIS:

24 "ELEVEN GENERAL NEWS STORIES  
25 HAVE BEEN DISTRIBUTED SINCE THE  
26 FORMATION OF THE COMMITTEE. IN EACH  
27 INSTANT, DIRECT PERSONAL CONTACT WAS  
28 MADE WITH MAJOR NEWS OUTLETS IN THE

1 PRESS, RADIO, AND MAGAZINE FIELDS  
2 THROUGH STAFF MEMBERS IN THE NEW YORK  
3 FIELD OFFICES. AN INDICATION OF THE  
4 RESULTS HAS BEEN INCLUDED IN THE  
5 PHOTOSTATIC NEWS SUMMARIES THAT HAVE  
6 BEEN SENT REGULARLY TO COMMITTEE  
7 MEMBERS. "

8 AND IT LISTS, AND I AM GOING TO  
9 PASS BY THAT.

10 "NUMBER 3, SPECIAL  
11 ASSISTANCE TO PRESS, RADIO, MAGAZINES,  
12 AND OTHERS, " AND THAT'S WHERE I WANT  
13 TO GO NOW

14 "NUMBER 3, THROUGH PERSONAL  
15 CONTACTS, ADVANCE INFORMATION WAS  
16 OBTAINED THAT A PROMINENT MAGAZINE  
17 INTENDED TO REPORT A GROWING LACK OF  
18 INTEREST IN THE TOBACCO INDUSTRY  
19 RESEARCH COMMITTEE PROGRAM AND --  
20 EXCUSE ME -- ON THE PART OF  
21 PARTICIPATING COMPANIES. "

22 "THIS REFERENCE WAS REMOVED  
23 FROM THE STORY WHEN THE FACTS WERE  
24 BROUGHT BEFORE THE MAGAZINE EDITORS. "

25 NOW, LET'S JUST TALK PUBLIC  
26 RELATIONS FOR A SECOND.

27 THAT INCLUDES WHAT GOES BEFORE THE  
28 PUBLIC?

1           A.     THIS -- I AM NOT SURE I UNDERSTAND  
2 THE QUESTION.

3           Q.     WELL, WHEN YOU ARE TALKING PUBLIC  
4 RELATIONS, DOES THAT INCLUDE FUNNELING INFORMATION,  
5 WHAT THE PUBLIC GETS TO SEE AND HEAR?

6           A.     THAT IS DONE QUITE OFTEN IN A  
7 VARIETY OF WAYS.

8                     FOR ONE THING, PRODUCING STORIES IS  
9 A JOB. IT'S WORK. AND SO PEOPLE IN THE MEDIA ARE  
10 OFTEN QUITE APPRECIATIVE OF PUBLIC RELATIONS FIRMS  
11 WHEN THEY DO THEIR WORK FOR THEM SO THEY SAY,  
12 HERE, WE HAVE WRITTEN SOME PIECE, YOU CAN TAKE IT  
13 IF YOU LIKE. SO THAT'S HELPING SOMEBODY WITH THEIR  
14 JOB IN A WAY.

15                    IN THIS CASE, IT'S A LITTLE MORE  
16 REACTIVE SAYING, WE SEE WHAT YOU HAVE DONE AND WE  
17 ARE GOING TO TRY AND SET YOU STRAIGHT FROM THE  
18 POINT OF VIEW THAT WE HAVE.

19                    NOW, THIS IS A PUBLIC RELATIONS  
20 FIRM REPRESENTING A MAJOR ADVERTISER.

21           MR. LEITER:   OBJECT TO THE NARRATIVE.

22           THE COURT:   SUSTAINED.

23           Q     BY MR. PIUZE:   LET'S GO ON TO  
24 NUMBER 4. THIS IS A NEW ONE.

25                    "BY PERSONAL CONTRACT,  
26 ADVANCE KNOWLEDGE WAS OBTAINED OF A  
27 STORY ON SMOKING BY BOB CONSIDINE FOR  
28 "COSMOPOLITAN" MAGAZINE. INFORMATION

1 WAS SUPPLIED RESULTING IN SEVEN  
2 REVISIONS AND FIVE QUALIFYING  
3 ADDITIONS TO THE STORY WHICH WAS  
4 ALREADY IN TYPE. "

5 SO DOES PUBLIC RELATIONS INCLUDE  
6 GETTING PEOPLE TO CHANGE THE STORIES THAT ARE  
7 ALREADY WRITTEN --

8 MR. LEITER: OBJECTION.

9 Q BY MR. PIUZE: -- 12 DIFFERENT  
10 WAYS AFTER IT IS ALREADY SET IN TYPE AND READY TO  
11 GO BEFORE THE PUBLIC?

12 MR. LEITER: OBJECT.

13 THE COURT: WHAT'S THE OBJECTION?

14 MR. LEITER: MISCHARACTERIZING,  
15 ARGUMENTATIVE.

16 THE COURT: OVERRULED.

17 THE WITNESS: THIS SOUNDS HIGHLY UNUSUAL.  
18 THIS IS NOT TYPICALLY A PROCESS OF PUBLIC  
19 RELATIONS. SOUNDS LIKE MORE A PROCESS OF PRESSURE.

20 Q BY MR. PIUZE: DO YOU DRAW --  
21 WITHDRAW THAT.

22 "COSMOPOLITAN" MAGAZINE, HAS ADS IN  
23 IT?

24 A. YES, IT DOES.

25 Q. IN THE REAL WORLD, OF REAL  
26 MARKETING, WHEN A BIG ADVERTISER CALLS UP AND SAYS,  
27 YOU ARE RUNNING A STORY ABOUT ME AND MAYBE I DON'T  
28 LIKE IT TOO MUCH, AND MAYBE YOU SHOULD TAKE A LOOK

1 AT IT MORE CAREFULLY, FIRST OF ALL, IS THAT  
2 SOMETHING THAT'S IMAGINED OR IS THAT SOMETHING THAT  
3 HAPPENS?

4 A. NO, IT CERTAINLY HAPPENS. IT  
5 HAPPENED IN MANY OF THESE INSTANCES.

6 MR. LEITER: OBJECTION.

7 THE COURT: OVERRULED.

8 Q BY MR. PIUZE: I AM GOING TO JUMP  
9 DOWN TO NUMBER 7.

10 "PERSONAL DISCUSSIONS WITH  
11 EDITORIAL WRITERS AND THE SUPPLYING OF  
12 MATERIAL PROCEEDED THE APPEARANCE OF  
13 SEVERAL POSITIVE EDITORIALS IN THE  
14 'NEW YORK DAILY NEWS.' "

15 SO I WILL STOP THERE AGAIN.

16 PUBLIC RELATIONS, DOES THAT INCLUDE  
17 TRYING TO INFLUENCE THE PEOPLE WHO WRITE THE NEWS  
18 AS WELL AS THE PEOPLE WHO READ THE NEWS?

19 A. YES. YOU CAN GO DIRECTLY TO THE  
20 PUBLIC, AS THEY DID WITH THE FRANK STATEMENT, OR  
21 YOU CAN WORK, AS I SAID, THROUGH OPINION LEADERS,  
22 OPINION SHAPERS, AND THAT WOULD CERTAINLY INCLUDE  
23 EDITORIAL WRITERS.

24 Q. (READING)

25 "TEN, THROUGH PERSONAL  
26 CONTACTS, RADIO AND T. V. NEWSMEN AND  
27 COMMENTATORS RECEIVE FREQUENT  
28 INFORMATION CONCERNING TOBACCO

1           INDUSTRY RESEARCH COMMITTEE  
2           ACTIVITIES.  
3                         "SOME OF THE RESULTS OF SUCH  
4           EFFORTS SHOW IN THE PRESS, RADIO, T. V.  
5           REPORTS. FOR EXAMPLE, DR. LITTLE'S  
6           PRESS CONFERENCE WAS REPORTED ON FILM  
7           ON, " I AM NOT GOING TO READS IT ALL.  
8           IT GOES THROUGH ALL KINDS OF SHOWS.  
9           PICKING UP AT THE END, "KNX LOS  
10          ANGELES, KABC LOS ANGELES, AND THE  
11          REGIONAL ABC WEST COAST NETWORK. AT  
12          OTHER TIMES, MANY PROGRAMS WHICH  
13          INDICATED AN INTEREST IN PRESENTING  
14          TOBACCO INDUSTRY RESEARCH COMMITTEE  
15          FACTS, SOUGHT AN INTERVIEW OR  
16          APPEARANCE BY TOBACCO INDUSTRY  
17          RESEARCH COMMITTEE SPOKESMEN BUT THESE  
18          REQUESTS COULD NOT BE FILLED. "

19                         AGAIN, REACHING OUT TO THE PEOPLE  
20          WHO GIVE THE NEWS TO THE PEOPLE IS PART OF PUBLIC  
21          RELATIONS?

22                         A.       THAT IS RIGHT. AND PEOPLE IN THE  
23          MEDIA NEED A PRODUCT, AS IT WERE, THEY NEED  
24          SOMETHING TO FILL AIR TIME. AND TO THE EXTENT AN  
25          INSTITUTION LIKE THE TOBACCO INSTITUTE -- TOBACCO  
26          INDUSTRY RESEARCH COMMITTEE COULD PROVIDE PEOPLE,  
27          IT FILLED THE GAP. SO THERE THEY WERE, THEY NEED  
28          PRODUCTS, FILLED TIME, AND THEY WERE THERE.

1 AND IN A SENSE, CROWDS THAT OUT.

2 Q. (READING)

3 "NUMBER 11, ONE NEGATIVELY  
4 AIMED PROGRAM, WNBC, WHICH WAS  
5 SCHEDULED ON THE CIGARETTE CONTROVERSY  
6 WAS POSTPONED AFTER DISCUSSION OF  
7 TOBACCO INDUSTRY RESEARCH COMMITTEE  
8 FACTS.

9 "12, ANOTHER T. V. PROGRAM  
10 ABC T. V. , MARTIN AGRONSKY, WHICH DID  
11 DEAL WITH THE CIGARETTE CONTROVERSY,  
12 ENDED ON A FAVORABLE NOTE AFTER  
13 CONFERENCES WITH PRODUCERS AND  
14 PRESENTATION OF FACTS. "

15 AGAIN, THAT'S INFLUENCING THE  
16 PEOPLE WHO GIVE THE NEWS?

17 A. IT'S, IN THE SECOND CASE, SHAPING  
18 WHAT GOES OUT. IN THE FIRST CASE, HALTING WHAT  
19 GOES OUT.

20 THAT'S PRETTY POWERFUL PUBLIC  
21 RELATIONS EFFORT.

22 Q. TELL ME HOW MANY PAGES THIS  
23 DOCUMENT IS?

24 A. TWENTY-FOUR.

25 Q. THANKS.

26 LET'S GO FORWARD TO 1958. I AM  
27 INTERESTED IN THIS PART DOWN HERE.

28 THIS IS DISCUSSING THE TOBACCO

1 INSTITUTE.

2 DO YOU SEE THAT?

3 A. YES.

4 Q. DIFFERENT THAN THE TOBACCO INDUSTRY  
5 INFORMATION RESEARCH COMMITTEE?

6 A. YES, IT IS. RELATED BUT DIFFERENT.

7 Q. (READING)

8 "WHAT IS THE AREA OF  
9 ACTIVITIES FOR THE INSTITUTE AND WHAT  
10 ARE ITS MAJOR OBJECTIVES?

11 "IN MY OPINION, THE  
12 INSTITUTE'S MAJOR AREA OF ACTIVITY AND  
13 MAJOR OBJECTIVES SHOULD BE TO DEFEND  
14 THE TOBACCO INDUSTRY AGAINST ATTACKS  
15 FROM WHATEVER SOURCE ON TOBACCO AS AN  
16 ALLEGED HEALTH HAZARD, INCLUDING  
17 EFFORTS TO IMPOSE LABELING  
18 REQUIREMENTS ON TOBACCO PRODUCTS BASED  
19 DIRECTLY OR INDIRECTLY ON THE CHARGE  
20 THAT TOBACCO IS A HAZARD TO HEALTH. "

21 AND I WANT TO JUMP YOU TO PAGE 3.

22 "IN THE PRESENT STATE OF  
23 EVIDENCE, THE POSITION OF THE  
24 INSTITUTE SHOULD BE COMPATIBLE WITH  
25 THAT OF THE TOBACCO -- " WHAT'S  
26 T. I. R. C. ?

27 A. INDUSTRY RESEARCH COMMITTEE, AND  
28 THE SCIENTIFIC ADVISORY BOARD.

1           Q.     S. A. B. , SCIENTIFIC ADVISORY BOARD.  
2                     "TO THE SAME DEGREE OF  
3           COMPATIBILITY AS IS REPRESENTED BY THE  
4           PUBLICATION 'TOBACCO AND HEALTH. '  
5                     "THE POSITION OF THE  
6           SCIENTIFIC ADVISORY BOARD TO DATE IS  
7           THAT SCIENCE DOES NOT YET KNOW THE  
8           ANSWER TO THE QUESTION WHETHER TOBACCO  
9           IS A HEALTH HAZARD, WHETHER FURTHER  
10          RESEARCH IS NEEDED.  
11                    "THE POSITION OF THE TOBACCO  
12          INDUSTRY RESEARCH COUNSEL IS MORE  
13          AFFIRMATIVE IN THE DIRECTION OF  
14          DISPUTING THE VALIDITY OF THE CHARGES  
15          MADE, BUT NEVERTHELESS, LIMITED AND  
16          RESTRAINED BY ITS ASSOCIATION WITH THE  
17          SCIENTIFIC ADVISORY BOARD WHICH IS  
18          PART OF T. I. R. C. .  
19                    "THE POSITION OF THE TOBACCO  
20          INFORMATION COMMITTEE, REPRESENTING  
21          THE INTERESTS THAT SUPPORT T. I. R. C. ,  
22          BUT NOT SPEAKING FOR T. I. R. C. , AS  
23          SUCH, IS AN AFFIRMATIVE PRESENTATION  
24          OF MATERIAL WHICH REBUTS AND  
25          DISCREDITS THE CHARGES. "  
26                    LET ME STOP THERE FOR A SECOND.  
27                    IN REGARD TO THE, WHAT THEY HAVE  
28          REFERRED TO SOMETIMES AS THE HEALTH ISSUE OR THE

1 HEALTH CHARGE OR WHATEVER, DO THESE DOCUMENTS, FROM  
2 YOUR POINT OF VIEW, SHOW DENIAL OF THE CHARGES  
3 OR --

4 MR. LEITER: OBJECTION.

5 THE COURT: SUSTAINED.

6 MR. PIUZE: NO PERSONAL INTERPRETATION.

7 THE COURT: NOT OF THIS, NO.

8 MR. PIUZE: OKAY. I WITHDRAW THE  
9 QUESTION, I APOLOGIZE, YOUR HONOR.

10 THE COURT: THANK YOU.

11 Q BY MR. PIUZE: LET ME JUST KEEP  
12 READING THEN.

13 "SIX, SHOULD THE INSTITUTE  
14 HAVE A POLICY REGARDING MODERATION IN  
15 SMOKING FOR RESPONDING TO REQUESTS ON  
16 THIS MATTER?

17 "IN MY VIEW, THE POLICY OF  
18 THE INSTITUTE REGARDING INQUIRIES AS  
19 TO MODERATION IN SMOKING SHOULD BE  
20 THAT WE BELIEVE THAT SMOKING IS NOT  
21 HARMFUL TO NORMAL INDIVIDUALS, THAT  
22 OVER INDULGENCE AND EXCESS IN ANYTHING  
23 MAY BE HARMFUL, THAT WHAT IS OVER  
24 INDULGENCE OR EXCESS VARIES WITH THE  
25 PARTICULAR INDIVIDUAL, WHO SHOULD BE  
26 GUIDED BY THE ADVICE OF A PHYSICIAN. "

27 AND JUMPING DOWN TO THIS LAST  
28 HIGHLIGHT IN THE DOCUMENT:

1                   "WHAT IS THE INSTITUTE' S  
2           POSITION ON SUCH SPECIFIC MATTERS AS  
3           LABELING, CONTENTS OF CIGARETTES,  
4           PUTTING ON WARNING LABELS, ADDING  
5           PUNITIVE TAXES TO DISCOURAGE  
6           CONSUMPTION?

7                   "THE INSTITUTE' S POSITION ON  
8           ALL SUCH MATTERS SHOULD BE THAT IT HAS  
9           NOT BEEN PROVED THAT TOBACCO IS A  
10          HEALTH HAZARD, THAT ITS USE AS A  
11          UNIVERSAL PLEASURE IN RELAXATION, THAT  
12          MANY HUNDREDS OF THOUSANDS OF PEOPLE  
13          DEPEND ON IT FOR THEIR LIVELIHOOD AND  
14          THAT ANY STEP IN THE DIRECTION OF  
15          DISCOURAGING CONSUMPTION OF TOBACCO IS  
16          UNJUSTIFIED AND HARMFUL. "

17                   NOW, YOU DISCUSSED PUBLIC RELATIONS  
18          GENERALLY WHEN I READ ONE OF THE LAST DOCUMENTS.  
19          THERE WAS AN INSTANT WHEN YOU SAID THAT' S NOT THE  
20          TYPICAL KIND OF PUBLIC RELATIONS YOU SEE.

21                   IS THIS THE KIND OF TYPICAL PUBLIC  
22          RELATIONS THAT YOU SEE OUT THERE IN THE INDUSTRY?

23                   A.       WELL, IT IS CERTAINLY PUBLIC  
24          RELATIONS, INSOFAR AS THEY ARE TALKING ABOUT A  
25          CORPORATE POSITION THAT SHOULD BE A STANCE, A POINT  
26          OF VIEW THAT SHOULD BE CRYSTALLIZED, PROMULGATED  
27          AND DISTRIBUTED. I HAVE BEEN INVOLVED IN PUBLIC  
28          RELATIONS CAMPAIGNS THAT ARE QUITE DIFFERENT, THAT

1 IS TO SAY, WHERE THEY ARE A GOOD DEAL MORE OPEN TO  
2 FEEDBACK FIRST WITH AN 800 NUMBER, PERHAPS, GETTING  
3 FEEDBACK, AND THEN TAKING PUBLIC INPUT FAR MORE  
4 INTO ACCOUNT. THAT DOESN'T SEEM TO BE THE CASE  
5 HERE.

6                   THEY REALLY ARE, AS I SEE IT,  
7 SHAPING A POINT OF VIEW INTERNALLY AND THEN  
8 PROMULGATING IT. IN A SENSE, THAT'S, IN A LONG  
9 RUN, NOT VERY GOOD PUBLIC RELATIONS.

10                Q.    WELL, I AM NOT ASKING FOR THE  
11 QUALITY OF IT, ACTUALLY. I AM JUST ASKING WHETHER  
12 OR NOT THAT'S A TYPICAL KIND OF PUBLIC RELATIONS  
13 OPERATION.

14                A.    WELL, TYPICAL RANGES FROM GOOD AND  
15 BAD. AND THIS IS CERTAINLY A TYPE OF PUBLIC  
16 RELATIONS, YES.

17                Q.    FINE.

18                   FOR THE RECORD, THE DOCUMENT I JUST  
19 READ FROM IS PLAINTIFF'S 404, THAT'S THE FEBRUARY  
20 5, '58 DOCUMENT.

21

22                   \* (EXHIBIT 404, 2/5/58 DOCUMENT,  
23                    MARKED FOR I. D.)

24

25                Q    BY MR. PIUZE: AND I JUST WANT TO  
26 BACK UP JUST FOR A SECOND, BECAUSE WE SHOWED THIS  
27 EARLIER THIS MORNING.

28                   THIS IS MAY 5, 1970. THIS IS

1 DOCUMENT NUMBER 85. AND THIS COMES FROM H.  
2 WAKEHAM THE VICE-PRESIDENT FOR CORPORATE RESEARCH  
3 AND DEVELOPMENT OF PHILIP MORRIS TO THE TOBACCO  
4 INSTITUTE.

5 YOU DON'T HAVE TO READ THAT OUT  
6 LOUD, BUT CAN YOU READ IT TO YOURSELF.

7 HAVE YOU WORKED IN A PUBLIC  
8 RELATIONS OR MARKETING ADVISORY CAPACITY FOR  
9 PRIVATE CONSUMER GOODS, COMPANIES?

10 A. YES, I HAVE.

11 Q. SUCH AS?

12 A. BASKIN ROBBINS ICE CREAM

13 Q. HAVE YOU WORKED AS A CONSULTANT IN  
14 A MARKETING OR ADVERTISING CAPACITY FOR  
15 GOVERNMENTAL ORGANIZATIONS?

16 A. YES, I HAVE.

17 Q. SUCH AS?

18 A. A RANGE OF THEM, THE HEALTH AND  
19 WELFARE DEPARTMENT OF THE CANADIAN GOVERNMENT. I  
20 WOULD HAVE TO LOOK AT MY VITAE BECAUSE THERE IS A  
21 LONG LIST OF GOVERNMENTAL AGENCIES.

22 Q. IN THIS YELLOWED OUT PARAGRAPH  
23 HERE, IS THE RATIO OF PUBLIC RELATIONS SPENDING TO  
24 HEALTH RESEARCH SPENDING A HUNDRED FOR PUBLIC  
25 RELATIONS TO ONE FOR HEALTH RESEARCH?

26 MR. LEITER: OBJECTION, FOUNDATION.

27 THE COURT: OVERRULED, AS STATED IN THE  
28 DOCUMENT ONLY.

1 THE WITNESS: THIS IS FAIRLY EXTREME  
2 LEVEL OF --

3 THE COURT: SIR, THE QUESTION IS -- YOU  
4 HAVE TO ANSWER THE QUESTION.

5 THE WITNESS: CAN YOU POSE IT --

6 THE COURT: IS IT A HUNDRED TO ONE, YES  
7 OR NO?

8 THE WITNESS: OH, YES.

9 THE COURT: THANK YOU.

10 MR. PIUZE: THAT'S ALL I WANT.

11 Q BY MR. PIUZE: 100 CENTS FOR  
12 PUBLIC RELATION AND MARKETING, 1 CENT FOR HEALTH  
13 RESEARCH?

14 A. CORRECT.

15 Q. THIS IS THE ROPER PROPOSAL. HAVE  
16 YOU HEARD THE ROPER PROPOSAL BEFORE?

17 A. YES.

18 Q. IS ROPER THE SAME OBJECTION WE WERE  
19 TALKING ABOUT, SAME ROPER?

20 A. YES, MARKETING RESEARCH, PUBLIC  
21 OPINION POLLING GROUP.

22 Q. I AM SHOWING DOCUMENT 330.00.

23

24 \* (EXHIBIT 330.00, 1972  
25 DOCUMENT, MARKED FOR I. D.)

26

27 Q BY MR. PIUZE: YOU CAN SEE THAT UP  
28 ON THE SCREEN, CAN'T YOU?

1 A. YES.

2 Q. HERE'S WHAT I HAVE GOT HIGHLIGHTED  
3 UP HERE, "FOR NEARLY 20 YEARS, THIS INDUSTRY HAS  
4 EMPLOYED A SINGLE STRATEGY --"

5 BY THE WAY, LET ME STOP THIS. THIS  
6 IS AS 1972 DOCUMENT?

7 A. YES.

8 Q. THE PUBLIC RELATIONS EFFORT STARTED  
9 IN LATE '53?

10 A. YES.

11 Q. (READING)

12 "FOR NEARLY 20 YEARS THIS  
13 INDUSTRY HAS EMPLOYED A SINGLE  
14 STRATEGY TO DEFEND ITSELF ON THREE  
15 MAJOR FRONTS; LITIGATION, POLITICS,  
16 AND PUBLIC OPINION. "

17 LET'S FORGET LITIGATION, YOU FORGET  
18 LITIGATION AND POLITICS. PUBLIC OPINION, THAT'S  
19 THE MARKETING AND THE PUBLIC RELATIONS; RIGHT?

20 A. YES.

21 Q. (READING)

22 "WHILE THE STRATEGY WAS  
23 BRILLIANTLY CONCEIVED AND EXECUTED  
24 OVER THE YEARS, HELPING US WIN  
25 IMPORTANT BATTLES, IT IS ONLY FAIR TO  
26 SAY THAT IT IS NOT NOR WAS IT INTENDED  
27 TO BE A VEHICLE FOR VICTORY. ON THE  
28 CONTRARY, IT HAS ALWAYS BEEN A HOLDING

1 STRATEGY CONSISTING OF, ONE, CREATING  
2 DOUBT ABOUT THE HEALTH CHARGE WITHOUT  
3 ACTUALLY DENYING IT; TWO, ADVOCATING  
4 THE PUBLIC'S RIGHT TO SMOKE WITHOUT  
5 ACTUALLY URGING THEM TO TAKE UP THE  
6 PRACTICE. "

7 AND I WILL ASK YOU ABOUT THAT IN A  
8 MINUTE.

9 "THREE, ENCOURAGING  
10 OBJECTIVE SCIENTIFIC RESEARCH AS THE  
11 ONLY WAY TO RESOLVE THE QUESTION OF  
12 HEALTH HAZARD. "

13 NOW, WE JUST TALKED ABOUT HOW MUCH  
14 IS SPENT ON RESEARCH VERSUS HOW MUCH WAS SPENT ON  
15 MARKETING. SO LET'S GO TO NUMBER 2.

16 YOU SAW THOSE ADS, OBVIOUSLY, THAT  
17 I SHOWED THE JURY ALL MORNING?

18 A. YES.

19 Q. WHEN IT SAYS "ADVOCATING THE  
20 PUBLIC'S RIGHT TO SMOKE WITHOUT ACTUALLY URGING  
21 THEM TO TAKE UP THE PRACTICE, " IN YOUR VIEW, WAS  
22 PHILIP MORRIS'S MONEY SPENT FOR ALL OF THOSE  
23 MARLBORO ADS AND COMMERCIALS, ALL OF THOSE YEARS,  
24 STARTING WAY BACK IN '55 OR SO, URGING THE PUBLIC  
25 TO TAKE UP THE PRACTICE OF SMOKING?

26 A. WELL, I THINK THEY ARE TALKING  
27 ABOUT TWO HANDS. THE ADVERTISING HAND, I DON'T  
28 THINK IS REFERRED TO HERE, THIS IS THE PUBLIC

1 RELATIONS HAND.

2 THE ADVERTISING HAND WE LOOKED AT  
3 ALL MORNING AND THERE'S BILLIONS OF DOLLARS SPENT  
4 URGING PEOPLE TO TAKE UP THE PRACTICE.

5 THIS CONVENIENTLY OMITTS THAT BUT  
6 FOCUSES ON, I BELIEVE, THE PUBLIC RELATIONS SIDE OF  
7 THINGS WHICH ADVOCATES THE PUBLIC'S RIGHT TO SMOKE  
8 WITHOUT ACTUALLY URGING IT TO TAKE UP THE PRACTICE.

9 Q. NOW, SORT OF AS A WRAP HERE, 2001,  
10 NOW, FOR THE LAST COUPLE OF YEARS GOING UP TO 2001,  
11 WITH ALL OF WHAT YOU SAY, BILLIONS OF DOLLARS THAT  
12 IS SPENT ON TOBACCO MARKETING AND ADVERTISING, ARE  
13 THE PUBLIC, IS THE PUBLIC STILL BEING URGED TO  
14 SMOKE?

15 A. MOST DEFINITELY.

16 Q. DOES THAT INCLUDE KIDS?

17 A. MOST DEFINITELY.

18 Q. IS IT EFFECTIVE?

19 A. I BELIEVE IT IS HIGHLY EFFECTIVE,  
20 NOTWITHSTANDING SOME CURTAILMENT DUE TO THE MASTER  
21 SETTLEMENT OF 1998, THERE IS A CONSTRAINT WITH  
22 REGARD TO GOING INTO SOME MAGAZINES THAT CHILDREN  
23 ARE EXPOSED TO, BUT FAR FROM ALL.

24 AND EFFORTS HAVE SHIFTED TO MANY  
25 OTHER STRATEGIES, IN-STORE SIGNAGE, FOR EXAMPLE.  
26 SO THAT THERE STILL IS NO MAGIC CURTAIN TO BE DRAWN  
27 AROUND THESE EFFORTS THAT CHILDREN ARE PROTECTED  
28 FROM PROTECTED A LITTLE MORE THAN IN THE PAST BUT

1 FAR FROM SUFFICIENTLY.

2 AS LONG AS ADULTS ARE URGED TO  
3 SMOKE WITH THESE KIND OF VERY EFFECTIVE ADS AND  
4 IN-STORE STRATEGIES AND THE LIKE, CHILDREN WILL NOT  
5 BE SAFE FROM THAT INFLUENCE.

6 Q. ALL RIGHT. I HAVE HAD YOU UP ON  
7 THE WITNESS STAND FOR A LONG TIME AND I AM DONE.

8 THANK YOU.

9 THE COURT: ALL RIGHT.

10 ARE WE FINISHED?

11 MR. PIUZE: I AM

12 THE COURT: THANK YOU, SIR.

13 DO YOU WISH A BREAK OR DO YOU WANT  
14 TO START?

15 MR. LEITER: I NEED ABOUT TWO MINUTES TO  
16 SET UP. SO IT MIGHT BE A GOOD TIME TO TAKE A  
17 BREAK.

18 THE COURT: ALL RIGHT, LADIES AND  
19 GENTLEMEN, WE ARE GOING TO TAKE OUR AFTERNOON  
20 BREAK. BE BACK AT FIVE MINUTES TO 3:00. DON'T  
21 DISCUSS THE CASE WITH ANYONE.

22 YOU MAY STEP DOWN.

23

24 (AT THIS TIME, A RECESS  
25 WAS TAKEN.)

26 /// /// ///

27 /// /// ///

28 /// /// ///

1 (THE FOLLOWING PROCEEDINGS  
2 WERE HELD IN OPEN COURT IN  
3 THE PRESENCE OF THE JURY.)  
4  
5  
6

7 MARVIN GOLDBERG, PH. D. ,  
8 CALLED AS A WITNESS BY THE PLAINTIFF, HAVING BEEN  
9 PREVIOUSLY DULY SWORN, RESUMED THE WITNESS STAND  
10 AND TESTIFIED FURTHER AS FOLLOWS:

11 THE COURT: OUR JURY PANEL IS WITH US,  
12 COUNSEL IS PRESENT AS WELL.

13 THE WITNESS IS ON THE STAND.

14 SIR, YOU MAY TAKE A SEAT.

15 YOU UNDERSTAND YOU ARE STILL UNDER  
16 OATH?

17 THE WITNESS: YES.

18 THE COURT: MR. LEITER, YOUR WITNESS,  
19 SIR.

20 MR. LEITER: THANK YOU, YOUR HONOR.

21 THE COURT: YES, SIR.  
22

23 CROSS-EXAMINATION  
24

25 BY MR. LEITER:

26 Q. GOOD AFTERNOON, LADIES AND  
27 GENTLEMEN.

28 GOOD AFTERNOON, DR. GOLDBERG.

1 A. GOOD AFTERNOON.

2 Q. DR. GOLDBERG, YOU TESTIFIED DURING  
3 YOUR DIRECT EXAMINATION THAT YOU READ MR. BOEKEN'S  
4 DEPOSITION; IS THAT CORRECT?

5 A. PARTS OF IT.

6 Q. WHAT PARTS OF IT?

7 A. THE PARTS THAT PRIMARILY REFER TO  
8 ADVERTISING AS WELL AS HIS GENERAL BACKGROUND AND  
9 SMOKING HISTORY.

10 Q. WERE YOU SENT THE WHOLE DEPOSITION?

11 A. NO.

12 Q. YOU WERE JUST SENT PARTS?

13 A. YES.

14 Q. AND YOU RELIED ON THOSE PARTS OF  
15 THE DEPOSITION THAT YOU READ IN FORMING SOME OF  
16 YOUR OPINIONS IN THIS CASE; RIGHT?

17 A. YES.

18 Q. LET'S TALK FOR A FEW MINUTES ABOUT  
19 WHAT MR. BOEKEN SAID IN HIS DEPOSITION. AND I AM  
20 GOING TRY TO WRITE. I APOLOGIZE. I AM A LEFTY AND  
21 I WILL PROBABLY DRAG MY HAND ACROSS, BUT I WILL DO  
22 MY BEST.

23 MR. BOEKEN, YOU REMEMBER, DOCTOR,  
24 CHOSE TO SMOKE CIGARETTES; RIGHT?

25 A. YES.

26 Q. AND HE WAS ABOUT TEN YEARS OLD WHEN  
27 HE FIRST PICKED UP A CIGARETTE BUTT; IS THAT RIGHT?

28 A. YES.

1 Q. AND HE WAS ABOUT 13 WHEN HE SAYS HE  
2 BECAME A REGULAR SMOKER?

3 A. 13, 14.

4 Q. AND HE WAS ASKED WHY HE STARTED TO  
5 SMOKE, ISN'T THAT RIGHT?

6 A. YES.

7 Q. AND HE SAID HIS FRIENDS SMOKED;  
8 RIGHT?

9 A. THAT'S ONE OF THE THINGS HE SAID,  
10 YES.

11 Q. YEP. AND HE SAID HIS PARENTS  
12 SMOKED; RIGHT?

13 A. YES.

14 Q. AND HE SAID EVERYONE SMOKED; RIGHT?

15 A. YES.

16 Q. AND HE ALSO SAID SMOKING WAS  
17 FASHIONABLE, SOPHISTICATED, COOL AND ADULT; RIGHT?

18 A. YES.

19 Q. RATHER THAN WRITE ALL OF THAT DOWN,  
20 CAN I WRITE "COOL" OR "ADULT"?

21 A. OKAY.

22 Q. I WILL WRITE BOTH.

23 NOW, MR. BOEKEN DID NOT SAY THAT HE  
24 STARTED SMOKING BECAUSE OF ADVERTISING, ISN'T THAT  
25 RIGHT?

26 A. NOT THAT I RECALL DIRECTLY.

27 Q. OKAY. HE DIDN'T SAY, "I STARTED  
28 SMOKING BECAUSE OF CIGARETTE ADS"; RIGHT?

1 A. NOT THAT I RECALL DIRECTLY.

2 Q. AND HE DIDN'T SAY, "I STARTED  
3 SMOKING BECAUSE OF MARLBORO ADS"; IS THAT RIGHT?

4 A. NOT DIRECTLY.

5 Q. BUT IT IS YOUR OPINION THAT EVEN  
6 THOUGH HE DOESN'T SAY HE STARTED SMOKING BECAUSE OF  
7 ADVERTISING, HE REALLY DID; IS THAT CORRECT?

8 A. IT WAS A FORMIDABLE INFLUENCE IN  
9 LEADING HIM TO SMOKE, YES.

10 Q. A FORMIDABLE INFLUENCE?

11 A. YES.

12 Q. IN YOUR DEPOSITION, YOU SAID THAT  
13 ADVERTISING IS THE MAIN FACTOR INDUCING PEOPLE TO  
14 START SMOKING; RIGHT?

15 A. THAT IS RIGHT.

16 Q. AND YOU STILL BELIEVE THAT; RIGHT?

17 A. YES.

18 Q. SO IT IS YOUR OPINION THAT  
19 ADVERTISING WAS THE MAIN FACTOR IN WHY MR. BOEKEN  
20 BEGAN TO SMOKE; IS THAT RIGHT?

21 A. YES.

22 Q. MR. BOEKEN ALSO CHOSE TO USE  
23 ALCOHOL, ISN'T THAT RIGHT?

24 A. YES.

25 Q. AND HE STARTED TO USE ALCOHOL, HE  
26 SAID, WHEN HE WAS 14 OR 15 YEARS OLD; RIGHT?

27 A. I DON'T RECALL. BUT I WILL GRANT  
28 YOU THAT.

1 Q. OKAY. AND HE WAS ASKED WHY HE  
2 STARTED TO DRINK. AND HE SAID ALL ADULTS DID;  
3 RIGHT? RIGHT?

4 A. I DON'T RECALL, BUT I WILL GRANT  
5 YOU THAT.

6 Q. DO YOU WANT TO LOOK AT HIS  
7 DEPOSITION?

8 A. PERHAPS.

9 Q. OKAY.

10 A. CAN YOU POINT OUT WHERE --

11 Q. YES, I CAN.  
12 BUT LOOK AT WHAT'S MARKED AS TAB  
13 NUMBER 1.

14 A. OKAY.

15 Q. LOOK AT TAB 1 WHICH IS THE DECEMBER  
16 21ST TRANSCRIPT, AT PAGE 137, IT'S MY HANDWRITTEN  
17 TAB.

18 A. I SEE 2 AND 3 BUT NOT 5.

19 Q. IT'S RIGHT HERE.  
20 AND HE TALKS ABOUT STARTING WHEN HE  
21 WAS 14 OR 15. AND I AM TURNING YOU TO THE NEXT  
22 PAGE AND HE SAID ALL ADULTS SMOKED; RIGHT?

23 EXCUSE ME. YES?

24 A. YES.

25 Q. AND HE SAID HE DRANK WITH HIS  
26 FRIENDS; IS THAT RIGHT?

27 A. YES.

28 Q. NOW, MR. BOEKEN DIDN'T TESTIFY THAT

1 HE STARTED DRINKING ALCOHOL BECAUSE OF ALCOHOL ADS,  
2 DID HE?

3 A. I DON'T KNOW I'D HAVE TO READ  
4 THROUGH IT.

5 Q. WELL, YOU HAVE READ PARTS OF HIS  
6 DEPOSITION, DO YOU RECALL ANY TESTIMONY FROM  
7 MR. BOEKEN THAT HE STARTED DRINKING ALCOHOL BECAUSE  
8 OF ALCOHOL ADS?

9 A. I BELIEVE I WAS SENT THE PARTS THAT  
10 RELATED TO CIGARETTES AND CIGARETTE SMOKING.

11 Q. DO YOU HAVE AN OPINION AS TO  
12 WHETHER MR. BOEKEN STARTED DRINKING ALCOHOL BECAUSE  
13 OF ALCOHOL ADS?

14 A. I BELIEVE THAT ALCOHOL ADS ARE ALSO  
15 INFLUENTIAL.

16 Q. SO YOU THINK PROBABLY, YES; RIGHT?

17 A. IT WOULD BE AN INFLUENCE, A  
18 FORMIDABLE INFLUENCE.

19 Q. AS STRONG AN INFLUENCE AS CIGARETTE  
20 ADS ARE FOR SMOKING?

21 A. I DON'T CARE TO MATCH THEM UP. I  
22 THINK THEY ARE BOTH INFLUENTIAL. I THINK IT'S HARD  
23 TO SAY.

24 Q. MR. BOEKEN ALSO CHOSE TO USE  
25 MARIJUANA, DIDN'T HE?

26 A. YES.

27 Q. AND HE STARTED TO DO THAT WHEN HE  
28 WAS ABOUT 23 OR 24 YEARS OLD; RIGHT?

1 A. YES.

2 Q. AND HE WAS ASKED WHY HE STARTED  
3 USING MARIJUANA; RIGHT?

4 A. YES.

5 Q. AND HE SAID, HE SHARED MARIJUANA  
6 WITH HIS FRIENDS AT PARTIES. REMEMBER THAT?

7 A. YES.

8 Q. NOW, IT IS NOT YOUR OPINION THAT  
9 MR. BOEKEN STARTED USING MARIJUANA BECAUSE OF ALL  
10 THE ADS FROM THE BIG MARIJUANA COMPANIES, IS IT?

11 A. NO. NOT YET.

12 Q. AND WE KNOW THAT MR. BOEKEN ALSO  
13 CHOSE TO USE HEROIN, DIDN'T HE?

14 A. YES.

15 Q. AND HE DID THAT WHEN HE WAS ABOUT  
16 26 YEARS OLD; RIGHT?

17 A. I BELIEVE SO.

18 Q. OKAY. AND MR. BOEKEN WAS ASKED WHY  
19 HE STARTED TO USE HEROIN, WASN'T HE?

20 A. YES.

21 Q. AND HE SAID HE RAN INTO A CROWD  
22 THAT WAS USING HEAVY DRUGS?

23 A. I DON'T RECALL THAT.

24 Q. DO YOU WANT TO CHECK HIS  
25 DEPOSITION?

26 A. WHERE IS IT?

27 Q. THE TAB THAT'S NUMBER 4.  
28 DO YOU SEE IT?

1                    THAT IS WHAT HE SAID?

2            A.    YES.

3            Q.    LET' S SAY "CROWD. "    BECAUSE HE  
4 DOESN' T SPECIFICALLY SAY THAT THOSE WERE HIS  
5 FRIENDS.

6                    NOW, IT' S NOT YOUR OPINION THAT  
7 MR. BOEKEN STARTED USING HEROIN BECAUSE OF ALL THE  
8 ADS FROM THE BIG HEROIN COMPANIES; RIGHT?

9            A.    NO, IT IS ISN' T.

10           Q.    OKAY.    YOU SEE A COMMON THEME  
11 RUNNING THROUGH ALL FOUR OF MR. BOEKEN' S CHOICES?

12           A.    YES, I DO.

13           Q.    WHAT' S THAT THEME?

14           A.    AT LEAST ONE THEME THAT YOU HAVE  
15 CHOSEN TO FOCUS ON IS FRIENDS.

16           Q.    NOW, IN THE LITERATURE, FRIENDS ARE  
17 CALLED OFTEN PEER GROUPS?

18           A.    YES.

19           Q.    NOW, YOU MENTIONED THIS MORNING OR  
20 YESTERDAY THAT THERE' S A LOT OF LITERATURE IN THE  
21 SOCIAL SCIENCE JOURNALS AND OTHER JOURNALS ABOUT  
22 WHY KIDS START TO SMOKE, ISN' T THERE?

23           A.    YES.

24           Q.    AND ISN' T IT TRUE THAT ONE OF THE  
25 THEMES THAT RUNS THROUGH ALL THAT LITERATURE IS THE  
26 IMPORTANCE OF FRIENDS AS BEING THE PREDOMINANT  
27 INFLUENCE, THE MAIN INFLUENCE THAT CAUSES PEOPLE TO  
28 SMOKE, ISN' T THAT RIGHT?

1           A.     NO.  I THINK IT'S COLORED BY  
2  WHETHER WE ARE TALKING ABOUT FRIENDS AS A FIRST  
3  ORDER INFLUENCE OR A SECOND ORDER OF INFLUENCE.  
4  ARE THEY THE DIRECT INFLUENCE OR ARE THEY, AS IT  
5  WERE, A PASS-THROUGH INFLUENCE.

6           Q.     AND IT'S YOUR OPINION, ISN'T IT,  
7  THAT FRIENDS ARE ONLY IMPORTANT BECAUSE THEY ARE  
8  BEING INFLUENCED BY THE ADVERTISING TOO; RIGHT?

9           A.     FRIENDS ARE IMPORTANT, PRIMARILY,  
10  AND I THINK THE CLEAREST ASPECT OF THE LITERATURE,  
11  INSOFAR AS THEY DO NOT DISCOURAGE SMOKING.  BUT  
12  THEY ARE NOT THE MOTIVATING FORCE TO ENCOURAGE  
13  SMOKING.

14          Q.     AND IT'S YOUR OPINION THAT THE  
15  PREDOMINANT INFLUENCE IN THE LITERATURE, IS  
16  ADVERTISING?  YES?

17          A.     THE CONSENSUS REPORTS, THREE OF  
18  WHICH I HAVE BROUGHT IN HERE, CERTAINLY CONCLUDE  
19  THAT ADVERTISING IS THE PRIMARY AND PREDOMINANT, IS  
20  A PRIMARY AND PREDOMINANT INFLUENCE.

21          Q.     ADVERTISING IS A PRIMARY --

22          A.     I CAN QUOTE FROM WHAT WAS SAID THIS  
23  MORNING.  IT'S A POWERFUL FORCE IN LEADING YOUNG  
24  PEOPLE TO SMOKE.

25          Q.     WELL, LET'S TAKE A LOOK AT A COUPLE  
26  OF THOSE THINGS WHICH YOU SHOWED THE JURY THIS  
27  MORNING.  ONE OF THEM WAS THE 1994 SURGEON  
28  GENERAL'S REPORT, ISN'T THAT RIGHT?

1           A.     YES.

2           Q.     THAT THE BEGINNING OF THE CHAPTER  
3 THAT YOU WERE LOOKING AT THIS MORNING?

4           A.     I CAN'T SEE IT.

5           Q.     LET ME SEE IF I CAN --

6           A.     IT'S THE PAD THAT'S BLOCKING.

7           Q.     OH, I AM SORRY, WRONG MECHANICAL  
8 PROBLEM

9                     I PROMISED EVERYBODY I WAS GOING TO  
10 MOVE THIS OVER AND THEN I FORGOT.

11                    YES, MR. PIUZE HAS SUGGESTED THAT I  
12 GIVE YOU YOUR COPY SO THAT YOU CAN FOLLOW ALONG.

13                    NOW, MY QUESTION WAS, IS THAT THE  
14 CHAPTER, BEGINNING OF THE CHAPTER THAT YOU WERE  
15 REFERRING TO, THAT YOU SHOWED THE JURY THIS  
16 MORNING?

17           A.     I CAN'T READ IT TOO WELL FROM  
18 THERE, SIR. I BELIEVE IT IS.

19           Q.     THIS IS PAGE 159.

20           A.     I JUST WANT TO SEE IF THERE'S AN  
21 ADDITIONAL -- YES, THAT'S THE CURRENT ONE.

22           Q.     AND LET'S FLIP OVER TO PAGE 188.  
23 DO YOU HAVE THAT IN FRONT OF YOU?

24           A.     YES.

25           Q.     NOW, RIGHT UNDER INTRODUCTION,  
26 ISN'T THAT THE QUOTE THAT YOU SHOWED THE JURY THIS  
27 MORNING?

28           A.     YES.

1 Q. AND LET' S READ IT AGAIN.

2 "A SUBSTANTIAL AND GROWING  
3 BODY OF SCIENTIFIC LITERATURE HAS  
4 REPORTED ON YOUNG PEOPLE' S AWARENESS  
5 OF AND ATTITUDES ABOUT CIGARETTE  
6 ADVERTISING AND PROMOTIONAL  
7 ACTIVITIES. "

8 YOU READ THAT PART; RIGHT?

9 A. YES.

10 Q. (READING)

11 "RESEARCH HAS ALSO FOCUSED  
12 ON THE EFFECTS OF THESE ACTIVITIES AND  
13 PSYCHOSOCIAL RISK FACTORS FOR  
14 BEGINNING TO SMOKE.

15 "CONSIDERED TOGETHER, THESE  
16 STUDIES OFFER A COMPELLING ARGUMENT  
17 FOR THE MEDIATED RELATIONSHIP OF  
18 CIGARETTE ADVERTISING IN ADOLESCENT  
19 SMOKING. "

20 AND THEN YOU DISCUSSED WHAT  
21 MEDIATED RELATIONSHIP MEANS; RIGHT?

22 A. UH-HUH.

23 Q. LET' S READ THE NEXT SENTENCE.

24 "TO DATE, HOWEVER, NO  
25 LONGITUDINAL STUDY OF THE DIRECT  
26 RELATIONSHIP OF CIGARETTE ADVERTISING  
27 TO SMOKING INITIATION HAS BEEN  
28 REPORTED IN THE LITERATURE. "

1                    ISN' T THAT WHAT THAT SAYS?

2                    A.    THAT' S WHAT IT SAYS.

3                    Q.    YOU DIDN' T READ THAT TO THE JURY,  
4 DID YOU?

5                    A.    NO, BECAUSE I THINK IT ACTUALLY, I  
6 DON' T EVEN THINK IT IS RIGHT BECAUSE I THINK THAT  
7 WHEN WE LOOKED AT THE CROSS-COUNTRY STUDIES, WE SAW  
8 THAT, FOR EXAMPLE, IN NORWAY, OVER TIME, VERY  
9 CLEARLY, WHEN YOU CURTAIL ADVERTISING, YOU CURTAIL  
10 SMOKING.

11                   Q.    SO YOU DIDN' T READ THAT LAST  
12 SENTENCE, BECAUSE YOU DIDN' T AGREE WITH IT?

13                   A.    I DIDN' T READ IT BECAUSE I DON' T  
14 THINK IT WAS -- FIRST OF ALL, I DON' T KNOW IF I  
15 READ IT OR MR. PIUZE READ IT. BUT I DIDN' T READ IT  
16 BECAUSE WE WERE TRYING TO BE SUCCINCT IN THE  
17 SUMMARY. THERE' S MUCH, MUCH MORE THAT WE CAN  
18 ELUCIDATE ON.

19                   Q.    DO YOU DISAGREE WITH THAT SENTENCE,  
20 THAT IS WHY YOU DIDN' T READ IT?

21                   A.    WE STOPPED BECAUSE THAT WAS THE  
22 CORE OF THE SUMMARY JUDGMENT. THIS IS THE -- AFTER  
23 THAT IT BEGINS TO TRAIL OFF INTO LOTS OF DIFFERENT  
24 THINGS.

25                   Q.    I AM DONE WITH THAT DOCUMENT.

26                            ACTUALLY, I WANT TO GO BACK AND  
27 FOLLOWUP, EXCUSE ME, ON THE ANSWER THAT YOU JUST  
28 GAVE.

1                   IS IT YOUR OPINION, DOCTOR, THAT  
2 WHEN THE SURGEON GENERAL WRITES "TO DATE, HOWEVER,  
3 NO LONGITUDINAL STUDY OF THE DIRECT RELATIONSHIP OF  
4 CIGARETTE ADVERTISING TO SMOKING INITIATION HAS  
5 BEEN REPORTED IN THE LITERATURE," THAT THAT WAS  
6 JUST KIND OF A TRAIL-OFF?

7                   A.     TRAIL-OFF IS A FUNNY WORD.

8                   Q.     THAT' S YOUR WORD.

9                   A.     BUT THE SUCCINCT NATURE OF THE  
10 FIRST COUPLE LINES IS WHAT GUIDED US TO FOCUS ON  
11 THOSE. I DO THINK THAT, FOR EXAMPLE, THAT NORWAY  
12 STUDY, IF NOT FULLY ADDRESSES THAT ISSUE, CERTAINLY  
13 PARTIALLY ADDRESSES IT. AND I AM NOT CLEAR WHY  
14 THAT WOULD BE.

15                  Q.     WELL, WE WILL GET TO THE NORWAY  
16 STUDY.

17                   YOU SHOWED THE JURY THIS THIS  
18 MORNING, DIDN' T YOU?

19                  A.     YES.

20                  Q.     AND YOU READ OR MR. PIUZE READ ON  
21 YOUR BEHALF SOME QUOTES ON THAT; RIGHT?

22                  A.     YES.

23                  Q.     LET' S TURN TO PAGE 123. AND I  
24 BELIEVE I SEE THE BOOK RIGHT HERE SO IF YOU DON' T  
25 MIND, I WILL HAND IT TO YOU.

26                  A.     WHAT PAGE AGAIN?

27                  Q.     123.

28                   DO YOU HAVE IT?

1 A. YES.

2 Q. OKAY. LET'S LOOK UNDER THE HEADING  
3 "STUDIES OF ADVERTISING RECALL."

4 YOU TALKED ABOUT ADVERTISING RECALL  
5 SOMEWHAT THIS MORNING, DIDN'T YOU?

6 A. YES.

7 Q. AND THAT'S THE NOTION THAT SOME  
8 PEOPLE ARE MORE LIKELY THAN OTHERS TO RECALL  
9 CIGARETTE ADVERTISING, ISN'T THAT RIGHT?

10 A. THAT IS RIGHT.

11 Q. AND YOU TOLD THE JURY THIS MORNING  
12 THAT THERE IS A RELATIONSHIP BETWEEN THE PEOPLE WHO  
13 ARE MORE LIKELY TO RECALL CIGARETTE ADVERTISING AND  
14 PEOPLE WHO SMOKE?

15 A. A KEY PART OF THAT WAS A  
16 PROSPECTIVE NATURAL, THE FUTURE-ORIENTED NATURE OF  
17 THE STUDY THAT I CITED, THAT IS TO SAY, WE STARTED  
18 WITH CHILDREN OR 11- OR 12-YEAR-OLDS THAT SAID, NO,  
19 WE DO NOT INTEND TO SMOKE, AND THEN WE -- THE STUDY  
20 LOOKED AT WHETHER THEY WERE COGNIZANT OF  
21 ADVERTISING OR NOT.

22 THEY WENT BACK A YEAR LATER AND  
23 ONLY THEN, IN A FORWARD-LOOKING SENSE, SAW THAT  
24 THERE WAS A RELATIONSHIP, OVER TIME, WITH THOSE  
25 THAT WERE AWARE, INITIALLY SAID, NO, I AM NOT GOING  
26 TO SMOKE, AND THEN SAID, YES, I AM GOING TO SMOKE.

27 Q. I WILL HAND THAT TO YOU. THAT WAS  
28 PART OF THE EVIDENCE THAT YOU POINTED TO THIS

1 MORNING WHICH FORMED THE BASIS FOR YOUR CONCLUSION  
2 THAT ADVERTISING CAUSES PEOPLE TO SMOKE; RIGHT?

3 A. THAT WAS ONE OF MANY STUDIES. WE  
4 DIDN'T HAVE TIME TO GET TO SOME OTHERS.

5 Q. LET'S LOOK AT WHAT THE DOCUMENT  
6 THAT YOU SHOWED THE JURY THIS MORNING HAS TO SAY  
7 ABOUT THAT.

8 "SEVERAL STUDIES HAVE SHOWN  
9 A POSITIVE CORRELATION BETWEEN  
10 ADOLESCENCE ABILITY TO RECALL A  
11 PARTICULAR ADVERTISEMENT, LOGO OR  
12 BRAND INSIGNIA OR SMOKING INTENT,  
13 INITIATION OR LEVEL OF SMOKING."

14 THAT'S WHAT YOU WERE JUST SAYING,  
15 ISN'T IT, THAT THERE'S A POSITIVE RELATIONSHIP  
16 BETWEEN THE TWO? YES?

17 A. YES. AND IN PARTICULAR, IN A  
18 PROSPECTIVE SENSE IS WHAT I POINTED TO.

19 Q. AND SKIP DOWN TO THE NEXT PART THAT  
20 I HAVE HIGHLIGHTED.

21 "ADVERTISEMENT RECALL  
22 STUDIES HAVE CONSISTENTLY FOUND THAT  
23 YOUNG PEOPLE WHO MAINTAIN AN INTEREST  
24 IN SMOKING RETAIN MORE INFORMATION  
25 FROM CIGARETTE ADS. IN SOME CASES,  
26 THIS CORRELATION HAS BEEN USED TO  
27 IMPLY THAT THERE IS A CAUSAL LINK  
28 BETWEEN CONSUMPTION AND EXPOSURE TO

1           ADVERTISING AS WELL AS BETWEEN  
2           RECOGNITION OF ADS AND SMOKING  
3           BEHAVIOR. "

4                            THAT' S WHAT YOU JUST TOLD US ABOUT,  
5 ISN' T IT?

6           A.     UH-HUH.

7           Q.     LET' S GO TO NEXT SENTENCE.  
8                            "THIS LEAP IN THE  
9           INTERPRETATION OF THE DATA IS  
10          QUESTIONABLE. "

11                           SKIP DOWN TO THE NEXT PART THAT' S  
12 HIGHLIGHTED.

13                           "WHAT IS NOT KNOWN AT  
14          PRESENT IS WHETHER YOUTHS ALREADY  
15          INTERESTED IN SMOKING BECOME MORE  
16          ATTENTIVE TO ADVERTISEMENTS OR WHETHER  
17          ADVERTISEMENTS LEAD YOUTHS TO BECOME  
18          MORE INTERESTED IN SMOKING. "

19                           IN OTHER WORDS, WHAT THIS AUTHOR IS  
20 SAYING IS YOU CAN' T TELL WHICH WAY THE ARROW IS  
21 POINTING, ISN' T THAT RIGHT?

22          A.     WELL, THE LANGUAGE TO THAT  
23 QUESTION --

24          Q.     MY QUESTION WAS WHAT THE AUTHOR IS  
25 SAYING HERE.

26          A.     WELL, SOMEHOW THE AUTHORS OF THIS  
27 BOOK, NOTWITHSTANDING YOURS EXCERPT, HAVE CONCLUDED  
28 THAT ADVERTISING IS AN OVERWHELMING FORCE ON

1 CHILDREN.

2 SO YOU ARE ISOLATING SOMETHING.

3 NOW, WHAT ARE YOU ISOLATING?

4 I WILL AGAIN GO BACK TO THE  
5 PROSPECTUS, ONLY TO THE FACTS AS TO WHEN THOSE  
6 RESEARCHERS FIRST WENT TO THE KIDS THEY SAID, NO,  
7 WE I DON'T INTEND TO SMOKE, IT WAS ONLY A YEAR  
8 LATER THEY SAID, YEAH, WE WOULD.

9 THAT INITIAL INTEREST, YES, THAT  
10 INITIAL INTEREST, LED THEM TO BE MORE INTERESTED IN  
11 FOLLOWING THE ADS AND THEY WERE MORE AWARE LATER.

12 SO, WHAT IS THE STORY, YES, CAN WE  
13 TAKE AN ISOLATED GROUP OF CHILDREN AND RAISE THEM  
14 SEPARATELY AND NOT HAVE THEM EXPOSED TO ADS AND  
15 THEN ANOTHER GROUP OF CHILDREN AND HAVE THEM  
16 EXPOSED TO ADS AND HAVE A PERFECT EXPERIMENT? NO.

17 WHAT WE HAVE IN EACH OF THESE  
18 CONSENSUS REPORTS IS A VARIETY OF SCIENTIFIC  
19 APPROACHES, NO ONE OF WHICH IS PERFECT. BUT THE  
20 SUM TOTAL OF THESE LEADS THEM TO THE CONCLUSION  
21 THAT THEY HAVE DRAWN THAT ADVERTISING, INDEED, DOES  
22 EFFECT SIGNIFICANTLY CIGARETTE INTAKE OR START-UP  
23 BY YOUNG PEOPLE.

24 THE FACT IS THAT RESEARCH IS  
25 INTENDED, RESEARCH INDUSTRY, RESEARCH IN THIS  
26 FIELD, RESEARCH IS INTENDED TO REDUCE UNCERTAINTY.

27 THERE IS NO RESEARCH THAT STARTED  
28 THAT INTENDS TO PROOF POSITIVE -- MAYBE IN MEDICINE

1 IF YOU INJECT ONE GROUP WITH SOMETHING AND ANOTHER  
2 GROUP YOU DON'T INJECT AND YOU LOOK AT THE ONE  
3 GROUP GETS HEALTHY AND THE OTHER DOESN'T, THAT  
4 MEDICAL MODEL IS REALLY THE CASE IN SOCIAL  
5 SCIENCES.

6                   BUT WHAT WE DO HAVE IN THIS CASE,  
7 BOOKFULS, HUNDREDS AND HUNDREDS OF STUDIES USING  
8 DIFFERENT APPROACHES SO WE GO TO DIFFERENT  
9 COUNTRIES AND WE LOOK AT WHAT HAPPENED, WE GO TO,  
10 HISTORICALLY, AND SAY WHAT HAPPENED WHEN THEY  
11 ADVERTISED FOR VIRGINIA SLIMS OR JOE CAMELS OR  
12 LIGHT CIGARETTES, WAS THERE AN EFFECT THERE,  
13 HISTORICALLY, WHAT HAPPENED IN DIFFERENT COUNTRIES,  
14 WHAT HAPPENED IN ONE COUNTRY OVER TIME WITH A GIVEN  
15 GROUP OF CHILDREN?

16                   WHAT HAPPENS IN A LABORATORY WHEN  
17 WE BRING CHILDREN IN AND WE DON'T WANT TO SHOW THEM  
18 CIGARETTE ADS AND SEE IF THEY SMOKE SO WE TURN IT  
19 AROUND AND SHOW THEM ANTI-CIGARETTE ADS AND SEE IF  
20 WE CAN GET THEM TO STOP, AND LO AND BEHOLD, IT HAS  
21 AN EFFECT.

22                   SO THE CONVERGENCE OF THESE  
23 DIFFERENT APPROACHES, EACH LESS THAN PERFECT, EACH  
24 SERVES TO REDUCE UNCERTAINTY, AND YOU END UP WITH  
25 THE CONSENSUS REPORTS, THREE CONSENSUS REPORTS,  
26 REFLECTING HUNDREDS AND HUNDREDS OF STUDIES AND  
27 HUNDREDS OF EXPERTS.

28                   Q.     HAVE YOU COMPLETED YOUR ANSWER?

1 A. I THINK SO.

2 Q. HERE WAS MY QUESTION.

3 WHEN THE AUTHORS OF THIS CONSENSUS  
4 STUDY THAT YOU SHOWED THE JURY THIS MORNING SAID,  
5 "THE LEAP IN THE INTERPRETATION OF THE DATA IS  
6 QUESTIONABLE," AND WHEN THEY SAID, "WHAT IS NOT  
7 KNOWN AT PRESENT IS WHETHER YOUTHS ALREADY  
8 INTERESTED IN SMOKING BECOME MORE ATTENTIVE TO  
9 ADVERTISEMENTS OR WHETHER ADVERTISEMENTS LEAD  
10 YOUTHS TO BECOME INTERESTED IN SMOKING," WHAT THEY  
11 ARE SAYING IS, YOU CAN'T TELL WHICH WAY THE ARROW  
12 IS POINTING?

13 A. AND IT MAY BE 50-50.

14 Q. RIGHT.

15 LET'S READ THE LAST SENTENCE.

16 "STUDIES OF ADVERTISING  
17 RECALL ASSESSED INDEPENDENTLY OF OTHER  
18 DATA ON SMOKING BEHAVIOR ARE  
19 INSUFFICIENT TO DETERMINE THE  
20 DIRECTION OF INFLUENCE."

21 NOW, DR. GOLDBERG, THIS IS ONE OF  
22 THE CONSENSUS DOCUMENTS YOU SHOWED THE JURY TODAY,  
23 ISN'T IT?

24 A. YES.

25 Q. LET'S TALK ABOUT SOME OF THE  
26 RESEARCH YOU DIDN'T SHOW THE JURY.

27 UNITED STATES DEPARTMENT OF HEALTH,  
28 EDUCATION AND WELFARE, TEENAGE SMOKING, NATIONAL

1 PATTERNS OF CIGARETTE SMOKING AGES 12 TO 18, IN  
2 1968 AND 1970. SO THIS ONE GOES BACK A BIT,  
3 DOESN' T IT?

4 A. IT GOES WAY BACK.

5 Q. LET' S LOOK AT WHAT THEY SAID  
6 BACK --

7 A. WHEN WAS THAT PUBLISHED?

8 Q. LET' S TAKE A LOOK. IT DOESN' T GIVE  
9 A PUBLICATION DATE BUT IT SAYS, "THE SURVEYS  
10 DESCRIBED IN THIS REPORT WERE CONDUCTED FOR THE  
11 NATIONAL CLEARINGHOUSE FOR SMOKING AND HEALTH. "  
12 THAT' S A GOVERNMENT ORGANIZATION, ISN' T IT?

13 A. YES.

14 Q. IN DECEMBER 1968 AND JANUARY 1970  
15 BY THE CHILTON RESEARCH SERVICES OF PHILADELPHIA  
16 UNDER A CONTRACT. THE PRESENT REPORT HAS BEEN  
17 PREPARED BY THE PROGRAM RESEARCH BRANCH OF THE  
18 NATIONAL CLEARINGHOUSE FOR SMOKING AND HEALTH OF  
19 WHICH DOROTHY GREEN, DOROTHY E. GREEN, PH. D. IS  
20 CHIEF.

21 AND IT IS SIGNED BY DANIEL HORN,  
22 DIRECTOR OF THE NATIONAL CLEARINGHOUSE OF SMOKING  
23 AND HEALTH.

24 A. THAT STUDY IS PROBABLY 30 YEARS  
25 OLD. I QUESTION WHY THERE IS NOTHING MORE RECENT.

26 Q. WELL, WE ARE GOING TO LOOK AT SOME  
27 THINGS MORE RECENT, BUT LET' S START HERE.

28 "WHILE THERE ARE MANY

1 FACTORS IN THE ENVIRONMENT OF A CHILD  
2 THAT INFLUENCE HIS TAKING UP OR NOT  
3 TAKING UP SMOKING HABIT, THE ONE THAT  
4 HAS, BY FAR, THE MOST INFLUENCE IS THE  
5 SMOKING BEHAVIOR OF THOSE AROUND HIM "  
6 THAT WOULD BE PEERS AND FAMILY;  
7 RIGHT?

8 A. YES.

9 Q. (READING)

10 "THIS IS NOT SURPRISING.  
11 WHEN WE CONSIDER HOW MOST MEMBERS OF  
12 THE FAMILY ADOPT THE FAMILY PATTERNS.  
13 IF PARENTS AND OLDER BROTHERS AND  
14 SISTERS ARE AVID READERS, THE CHILD  
15 GROWS UP IN AN ATMOSPHERE WHERE  
16 READING IS THE THING TO DO, WHERE  
17 BOOKS ARE READILY AVAILABLE AND WE CAN  
18 EXPECT HIM, AT LEAST, TO TRY READING.  
19 THE SAME PHENOMENON IS OPERATING IN  
20 THE AREA OF SMOKING BEHAVIOR. "

21 A. THE PROBLEM WITH USING A STUDY  
22 THAT'S 30 YEARS OLD IS THAT YOU DON'T HAVE A STUDY  
23 THAT I CAN TELL YOU ABOUT THAT REFUTES THIS FROM  
24 JUST A FEW YEARS AGO RIGHT HERE IN CALIFORNIA.

25 THESE ARE CALIFORNIA RESEARCHERS  
26 THAT COMPARE THE EFFECT OF ADVERTISING AND THE  
27 EFFECT OF PEERS AND FAMILY.

28 THE BOTTOM LINE IS THAT PEERS WILL

1 HAVE, PEER AND FAMILIAR, WHERE YOUR FRIENDS SMOKE  
2 AND YOUR PARENTS SMOKE, WILL DOUBLE THE RATE OF  
3 SMOKING.

4 SUSCEPTIBILITY TO ADVERTISING, WHEN  
5 PEOPLE KNOW ABOUT ADVERTISING, WHEN PEOPLE CAN TELL  
6 YOU WHAT THEIR FAVORITE BRAND WOULD BE IF THEY  
7 SMOKED AND IF THEY OWN A PROMOTIONAL ITEM THAT  
8 INCREASES SMOKING INITIATION BY FOUR TIMES, FOUR  
9 TIMES.

10 AND I WOULD ARGUE WITH YOU, AGAIN,  
11 THAT THE INCREASE BY TWICE ON THE PART OF PEERS AND  
12 PARENTS IS A REFLECTION AND A WORKING THROUGH OF  
13 ADVERTISING.

14 SO IT'S NOT TWICE VERSUS FOUR  
15 TIMES, IT'S FOUR TIMES VERSUS AN INFLUENCE FROM  
16 ADVERTISING THAT WORKS THROUGH PARENTS AND PEERS,  
17 BUT PARTICULARLY PEERS.

18 THE SMOKING OF PARENTS AND THE  
19 SMOKING OF PEERS REPRESENTS THE ABSENCE OF A BREAK,  
20 THE ABSENCE OF SOMEBODY SAYING STOP. IT DOESN'T  
21 SAY, IT'S NOT A KICK-START, NOBODY SMOKES BECAUSE  
22 THEY WANT TO EMULATE THEIR PARENTS. AND SO FAR AS  
23 I KNOW, MOST KIDS, FRIENDS, DON'T LOOK LIKE THOSE  
24 IN THE MODELS. THEY ARE NOT LOOKING TO BECOME  
25 MASCULINE LIKE HARRY OR JOE NEXT TO THEM THAT'S  
26 NOT WHAT KICK-STARTS THEM THE PARENTS AND PEERS  
27 SMOKING IS THE ABSENCE OF A BREAK, NOT WHAT  
28 MOTIVATES THEM POSITIVELY.

1 Q. HAVE YOU COMPLETED YOUR ANSWER?  
2 A. YES.  
3 Q. DO YOU TEACH?  
4 A. YES.  
5 Q. DO YOU TEACH MARKETING?  
6 A. YES.  
7 Q. ADVERTISING?  
8 A. YES.  
9 Q. AND DO YOU TEACH AS PART OF YOUR  
10 COURSES THE SCIENTIFIC LITERATURE?  
11 A. I DON'T UNDERSTAND WHAT YOU MEAN BY  
12 THE QUESTION.  
13 Q. YOU TALK TO YOUR STUDENT ABOUT  
14 SCIENTIFIC STUDIES, STUDIES IN SOCIAL SCIENCE  
15 JOURNALS, DON'T YOU?  
16 A. PART OF WHAT GOES INTO ANY TEXTBOOK  
17 OR THAT'S WHAT SOME OF FORMS THE BODY OF KNOWLEDGE,  
18 YES.  
19 Q. YOU DON'T ONLY TELL YOUR STUDENTS  
20 ABOUT THE STUDIES YOU AGREE WITH, DO YOU?  
21 A. ABSOLUTELY NOT.  
22 Q. LET'S MOVE AHEAD IN TIME.  
23 1985, ARE YOU FAMILIAR WITH THE  
24 FEDERAL TRADE COMMISSION?  
25 A. YES. I CONSULTED WITH THEM ONCE.  
26 Q. RIGHT.  
27 HERE ARE RECOMMENDATIONS OF THE  
28 STAFF OF THE FEDERAL TRADE COMMISSION.

1           A.    I AM SORRY, WHAT YEAR DID YOU SAY  
2 THIS WAS?

3           Q.    THIS IS MARCH, 1985.  MOVING  
4 FORWARD IN TIME.

5           A.    15 YEARS, YES.  OKAY.

6           Q.    BE PATIENT, DOCTOR.  WE WILL GET  
7 THERE.

8                         AND THIS WAS THE RECOMMENDATIONS OF  
9 THE F. T. C. STAFF ON A PETITION TO REGULATE ALCOHOL  
10 ADVERTISING.

11                        DO YOU SEE THAT?

12          A.    YES.

13          Q.    AND AS PART OF EVALUATING WHETHER  
14 RESTRICTIONS ON ALCOHOL ADVERTISING WOULD BE  
15 APPROPRIATE, THEY LOOK AT THE CIGARETTE INDUSTRY.  
16 AND THE FEDERAL TRADE COMMISSION STAFF CONCLUDED,  
17 WHEN IT COMES TO CIGARETTE INDUSTRY IN PARTICULAR,  
18 STUDIES AGAIN FIND THAT ADVERTISING HAS LITTLE  
19 IMPACT ON INDUSTRY SALES?

20          A.    FIRST OF ALL, I AM NOT CLEAR, IS  
21 THIS A STAFF REPORT, WHAT IS THIS?  I AM NOT CLEAR.

22                        OF THE STAFF -- WELL, NO, I DON'T  
23 KNOW WHAT STUDIES WENT INTO THAT AND HOW FULL OR  
24 INCOMPLETE OR COMPLETE THEIR SURVEY OF THE  
25 LITERATURE WAS, AND IT CERTAINLY MISSES ABOUT 15 OR  
26 16 YEARS OF VERY RELEVANT DATA.

27          Q.    SO YOU DISAGREE WITH IT?

28          A.    YES.

1 Q. OKAY.  
2 1987, AMERICAN JOURNAL OF PUBLIC  
3 HEALTH, PREDICTING EXPERIMENTATION WITH CIGARETTES.  
4 THE CHILDHOOD ANTECEDENTS OF SMOKING STUDY,  
5 C. A. S. S.

6 ARE YOU FAMILIAR WITH THIS STUDY?

7 A. I AM NOT SURE.

8

9 Q. (READING)  
10 "TWO-YEAR INVESTIGATION OF  
11 CIGARETTE SMOKING INCIDENTS IN A  
12 POPULATION OF MINNESOTA ADOLESCENTS.  
13 THE PERCEIVED SMOKING BEHAVIOR OF  
14 FRIENDS AT BASELINE WAS A STRONG  
15 PREDICTOR OF SMOKING ONSET.  
16 ADDITIONAL PREDICTORS INCLUDED SIBLING  
17 SMOKING BEHAVIOR, PARENTS' EDUCATIONAL  
18 LEVEL, AND SEVEN PSYCHOSOCIAL SCALES  
19 INCLUDING INDEPENDENCE AND  
20 REBELLIOUSNESS. "

21 AND THEN IT TALKS ABOUT WHAT THIS  
22 TELLS US ABOUT THE BEST WAYS TO DISSUADE CHILDREN  
23 FROM SMOKING.

24 THEY DON'T INCLUDE ADVERTISING AS  
25 ONE OF THE PREDICTORS, DO THEY?

26 A. THEY DO, INDIRECTLY. FIRST THEY DO  
27 INDIRECTLY BY VIRTUE OF HOW AND WHY PEERS INFLUENCE  
28 YOU.

1 PEERS DON' T -- THE ANSWER ABOUT  
2 CIGARETTES DOESN' T -- WHY DO PEERS WANT TO  
3 INFLUENCE A GIVEN INDIVIDUAL? THEY WANT TO  
4 INFLUENCE A GIVEN INDIVIDUAL BECAUSE THEY HAVE BEEN  
5 INFLUENCED.

6 AND I REMIND YOU AGAIN THAT THE  
7 NATURE OF THE INFLUENCE IS NOT FIVE INDIVIDUALS  
8 TWISTING A SIXTH INDIVIDUAL' S ARM

9 IT' S FIVE INDIVIDUALS AT A DISTANCE  
10 USING A CIGARETTE AS A PROP AND THE SIXTH ONE  
11 SAYING, YEAH, IT' S A GOOD PROP, MAYBE I WILL USE IT  
12 TOO, I AM KIND OF SHAKY ON WHO I AM AND I WANT TO  
13 FIT IN.

14 WHERE DOES THIS PROP COME FROM?  
15 HOW DO THEY COME TO CHOOSE IT?  
16 IT DIDN' T FALL FROM THE SKY, IT GOT  
17 SHAPED.

18 AND WHY ARE THOSE WORDS REBELLIOUS  
19 AND, WHAT ELSE IS THERE, COULD YOU MOVE IT OVER,  
20 REBELLIOUS AND INDEPENDENT. IT' S PRECISELY WHAT WE  
21 WERE TALKING ABOUT THIS MORNING, EXACTLY THE SAME  
22 WORDS.

23 YOU PICK THOSE INDIVIDUALS, THOSE  
24 VULNERABLE KIDS THAT ARE LOOKING TO UNDERSTAND WHO  
25 THEY ARE, UNDERSTANDING, THINKING THEY ARE ON A  
26 STAGE WHERE EVERYONE IS LOOKING AT THEM AND YOU  
27 SAY, WE HAVE A WAY FOR YOU TO SECURE YOURSELF, HEY,  
28 YOU CAN BE REBELLIOUS AND INDEPENDENT, YOU HANG

1 ONTO THAT CIGARETTE, YOU WILL THINK OF YOURSELF,  
2 AND MAYBE OTHERS WILL TOO, JUST THE WAY THAT IS  
3 PORTRAYED IN THOSE MARLBORO ADS.

4 Q. HAVE YOU FINISHED YOUR ANSWER?

5 A. I BELIEVE SO.

6 Q. SHOW ME WHERE IN THIS ARTICLE THEY  
7 TALK ABOUT ADVERTISING, DOCTOR?

8 A. THEY DON'T HAVE TO USE THE WORD  
9 "ADVERTISING." AND I IMAGINE THE WORD  
10 "ADVERTISING" IS NOT THERE. SO I PROBABLY WON'T  
11 TAKE MY TIME TO LOOK FOR IT.

12 IT IS A MEDIATED EFFECT. I REMIND  
13 YOU THAT IT IS CALLED A MEDIATED EFFECT. IT IS  
14 MEDIATED BY THE SOCIAL ENVIRONMENT WE ARE IN. WE  
15 ARE NOT ROBOTS. PEOPLE DON'T LOOK AT A T.V. OR  
16 MAGAZINES AND SAY, UH-HUH, THAT'S WHAT I AM GOING  
17 TO DO NOW

18 IT'S A MUCH MORE SUBTLE AND  
19 SOPHISTICATED INFLUENCE WITH FIVE OR SIX OTHER KIDS  
20 OUT THERE AT A DISTANCE ALSO BEING INFLUENCED AND  
21 THOSE POOR VULNERABLE KIDS SAYING, YEAH, I NEED TO  
22 BE REBELLIOUS, I WILL USE THE SAME PROP AS THEY  
23 ARE.

24 Q. YOU ARE NOT GOING TO LOOK THROUGH  
25 THAT ARTICLE?

26 A. I AM SURE THAT THE WORD  
27 "ADVERTISING" IS NOT GOING TO BE THERE.

28 Q. SO AM I.

- 1                   1989 ADOLESCENCE MAGAZINE.
- 2           A.     12 YEARS.
- 3           Q.     "PEER GROUP INFLUENCE AS A FACTOR
- 4 IN SMOKING BEHAVIOR OF ADOLESCENTS. "
- 5                   ARE YOU FAMILIAR WITH THIS ONE?
- 6           A.     NO.
- 7           Q.     (READING)
- 8                   "PEER GROUPS ARE CRUCIALLY
- 9           IMPORTANT IN THE INITIATION OF SMOKING
- 10          AMONG YOUNG ADOLESCENTS, PARTICULARLY
- 11          FEMALES.  THE PATTERNS OF INDIRECT
- 12          PEER INFLUENCE ON GIRLS IS SUCH THAT
- 13          GIRLS ARE LESS LIKELY TO STOP SMOKING
- 14          ONCE THEY HAVE BEGUN THAN BOYS. "
- 15          A.     "INDIRECT, " THAT' S A GOOD WORD,
- 16 "INDIRECT. "
- 17          Q.     ARE YOU TALKING ABOUT ADVERTISING?
- 18          A.     YES, THEY ARE, IN THE MEDIATED
- 19 SENSE, THE THREE CONSENSUS REPORTS REFER TO.
- 20          Q.     IS THIS ANOTHER ONE OF THOSE
- 21 ARTICLES WHERE THEY TALK ABOUT ADVERTISING, EVEN
- 22 THOUGH THEY NEVER USE THE WORD?
- 23          A.     THEY ARE TALKING ABOUT PEERS
- 24 DECIDING, PEERS ARE A FORCE IN GUIDING YOUNG PEOPLE
- 25 TO SMOKE BUT WHERE DO THE PEERS GET THE IDEA?
- 26          Q.     A. J. D. C. , WHAT' S THAT?
- 27          A.     I DON' T KNOW
- 28          Q.     NOVEMBER 1990.

1 "RISK FACTORS FOR ADOLESCENT  
2 SMOKING. "

3 ARE YOU FAMILIAR WITH THIS ONE?

4 A. THERE MUST BE 20 ARTICLES ENTITLED  
5 THAT.

6 Q. WELL, LET' S LOOK AT THIS ONE.  
7 "WE EXAMINED THE LONITUDINAL  
8 INFLUENCES OF SEVERAL BEHAVIORS AND  
9 SOCIAL VARIABLES ON THE SMOKING STATUS  
10 OF 443 STUDENTS FOLLOWED FROM EARLY TO  
11 LATE ADOLESCENCE. "

12 WHAT' S THE LONITUDINAL INFLUENCE?

13 A. OVER TIME.

14 Q. OKAY.  
15 "THE MDST CONSISTENT  
16 INFLUENCE ON ADOLESCENT CIGARETTE USE  
17 IS THE ASSOCIATION WITH FRIENDS WHO  
18 SMOKE. "

19 IS THIS ANOTHER ARTICLE WHERE THEY  
20 MEAN ADVERTISING BUT THEY NEVER SAY IT?

21 A. WELL, NUMBER 1, MY ANSWER STILL  
22 STANDS. AND I SUPPOSE I SHOULD BE LOOKING AT, YOU  
23 KNOW, A WONDERFUL FEATURE IN SOME OF THESE STUDIES  
24 IS IF YOU NEVER ASK THE QUESTION, YOU NEVER GET THE  
25 ANSWER. DID THEY ASK THE QUESTION ABOUT  
26 ADVERTISING?

27 MANY OF THESE JUST FOCUS ON PEERS.

28 Q. "JOURNAL OF ADOLESCENT HEALTH, "

1 1995.

2 ARE YOU FAMILIAR WITH THAT JOURNAL?

3 A. YES.

4 Q. "FAMILY AND PEER INFLUENCES ON  
5 SMOKING BEHAVIOR AMONG AMERICAN ADOLESCENTS AND AGE  
6 TREND."

7 A. SEE, THE TITLE SUGGESTS THAT THEY  
8 DIDN'T LOOK AT ADVERTISING IN JUXTAPOSITION AS THE  
9 STUDY THAT I CITED DID.

10 Q. AT THIS POINT, IT IS NOT GOING TO  
11 SURPRISE YOU TO KNOW THAT THEIR CONCLUSION IS THE  
12 SMOKING BEHAVIOR OF BEST FRIENDS TURNED OUT TO BE  
13 THE STRONGEST SOCIAL ENVIRONMENTAL RISK FACTOR FOR  
14 BOTH MALE AND FEMALE ADOLESCENT SMOKING.

15 A. ABSOLUTELY. IT'S THE WAY  
16 ADVERTISING IS MEDIATED.

17 Q. (READING)  
18 "THESE FINDINGS REINFORCE  
19 PREVIOUS LITERATURE IN WHICH PEER  
20 SMOKING BEHAVIOR IS GENERALLY  
21 CONSIDERED TO BE THE MAJOR SOCIAL  
22 ENVIRONMENTAL FACTOR, INCLUDING  
23 ADOLESCENT SMOKING"

24 A. DID THEY JUXTAPOSE IT WITH  
25 ADVERTISING?

26 Q. AGAIN, THIS IS ANOTHER ARTICLE  
27 WHERE THEY MEAN TO BE SAYING ADVERTISING?

28 A. WELL, I DON'T KNOW IF THEY LOOK AT

1 THE QUESTION OF ADVERTISING.

2 Q. ARE YOU FAMILIAR WITH THIS BOOK,  
3 "ADVERTISING AND MARKETS, A COLLECTION OF SEMINAL  
4 PAPERS"?

5 A. I DON'T KNOW WHO IS THE AUTHOR?

6 Q. WHAT ARE SEMINAL PAPERS?

7 A. WELL, ACCORDING TO LUIK AND  
8 WATERSON, AT LEAST THEM, IMPORTANT PAPERS.

9 Q. (READING)

10 "PLACED AGAINST THE CRITERIA  
11 OF THE LEGITIMATE PUBLIC POLICY, IT IS  
12 CLEAR THAT TOBACCO ADVERTISING BANS  
13 ARE NOT REASONABLE AND COHERENT  
14 REACTIONS TO THE PROBLEM OF TOBACCO IN  
15 CONTEMPORARY SOCIETY. FOR ONE THING,  
16 THERE IS NO OBJECTIVE AND SUBSTANTIAL  
17 EVIDENCE THAT TOBACCO ADVERTISING  
18 LEADS TO JUVENILE SMOKING INITIATION.  
19 SECONDLY, THERE IS NO OBJECTIVE AND  
20 SUBSTANTIAL EVIDENCE THAT TOBACCO  
21 ADVERTISING LEADS TO INCREASED TOBACCO  
22 CONSUMPTION. "

23 NOW, THEY DIDN'T FORGET TO TALK  
24 ABOUT ADVERTISING IN THIS ONE DID, THEY?

25 A. NO, BUT IT SEEMS TO ME THIS IS ONE  
26 OR TWO PEOPLE'S OPINIONS WHERE YOU HAVE THE  
27 CONSENSUS OPINION OF HUNDREDS 12 YEARS LATER. I  
28 DIDN'T GET THE DATE ON THIS.

1 Q. 1996.

2 A. FIVE YEARS LATER. BUT THIS IS A  
3 CHAPTER IN THAT BOOK?

4 Q. UH-HUH.

5 A. BY HOW MANY AUTHORS?

6 Q. WELL, LET'S TAKE A LOOK.

7 A. AND WHO ARE THEY?

8 Q. DO YOU KNOW ANY OF THESE PEOPLE?

9 A. WHICH IS THE CHAPTER THAT YOU WERE  
10 POINTING TO?

11 Q. WHAT I READ CAME FROM THE  
12 INTRODUCTION.

13 A. JOHN LUIK, I HAVE NO IDEA. I HAVE  
14 NO IDEA WHO HE IS.

15 Q. DO YOU RECOGNIZE ANY OF THE OTHER  
16 PEOPLE?

17 A. NO. IT SOUNDS LIKE IT MAY BE A  
18 EUROPEAN BOOK.  
19 WHERE IS IT PUBLISHED?

20 Q. DO YOU RECOGNIZE ANY OF THE PEOPLE?

21 A. NO.

22 Q. DO YOU RECOGNIZE ANY OF THESE  
23 PEOPLE?

24 A. ATTKEN, YES.  
25 KATHY WILCOX, THAT'S ABOUT IT.

26 Q. THEY GOT IT WRONG?

27 A. I DON'T KNOW, SIR, WHAT THE BASIS  
28 FOR THAT CONCLUSION WAS. BUT I PUT MY HANDS, PUT

1 MY FAITH IF THE HANDS OF THREE CONSENSUS REPORTS  
2 RATHER THAN ONE OR TWO ISOLATED INDIVIDUALS.

3 Q. FEDERAL TRADE COMMISSION DID A  
4 WHOLE REPORT, DIDN' T THEY, ON THE EFFECT OF  
5 ADVERTISING ON THE LEVEL AND COMPOSITIONS OF  
6 CIGARETTE CONSUMPTION, DIDN' T THEY, 1989?

7 A. YES.

8 Q. ARE YOU FAMILIAR WITH THIS REPORT?

9 A. THERE WERE A COUPLE, ACTUALLY. SO  
10 I WOULD HAVE TO BE REMINDED OF EXACTLY.

11 Q. IT' S THIS ONE.

12 A. YES.

13 Q. FEDERAL TRADE COMMISSION, 1989.

14 "THE AVAILABLE RESEARCH HAS  
15 NOT IDENTIFIED ADVERTISING AS A  
16 SIGNIFICANT STIMULANT TO THE AGGREGATE  
17 DEMAND FOR CIGARETTES. THIS FINDING  
18 IS BASED ON AN ANALYSIS OF  
19 SOPHISTICATED STATISTICAL STUDIES OF  
20 ANNUAL CONSUMPTION PATTERNS,  
21 COMPARATIVE STUDIES OF THE  
22 INTERNATIONAL EXPERIENCE WITH AD  
23 BANS, " YOU TALKED ABOUT THAT TODAY,  
24 DIDN' T YOU?

25 "AND BEHAVIORAL RESEARCH  
26 INTO THE REASONS WHY KIDS SMOKE. THE  
27 LACK OF A SIGNIFICANT EFFECT IS  
28 CONSISTENT WITH THE VIEW THAT

1           ADVERTISING IN THE CIGARETTE INDUSTRY  
2           SERVES MAINLY TO REALLOCATE DEMAND  
3           AMONG BRANDS RATHER THAN TO INCREASE  
4           AGGREGATE DEMAND. "

5           A.     I BELIEVE THAT IN THE END THIS WAS  
6           A HIGHLY CHARGED POLITICAL ISSUE THAT WAS A TWO TO  
7           ONE DECISION IN THE FEDERAL TRADE COMMISSION.

8           Q.     SO IN THE EARLIER ARTICLES, THE  
9           AUTHORS FORGOT TO ASK THE RIGHT QUESTION OR GOT IT  
10          WRONG.   AND THIS ONE IS POLITICS?

11          A.     I BELIEVE IT WAS SURROUNDED BY  
12          QUITE A BIT OF POLITICS AT THE TIME.

13          Q.     OKAY.   LET'S TAKE A LOOK AT THIS  
14          ONE WHICH IS WRONG BECAUSE IT IS POLITICAL.

15                         "BEHAVIORAL RESEARCH ON THE  
16          DETERMINANTS OF SMOKING BY YOUTHS HAS  
17          NOT IDENTIFIED ADVERTISING AS AN  
18          IMPORTANT INFLUENCE.   INVESTIGATIONS  
19          OF THE DECISION-MAKING PROCESS SUGGEST  
20          THAT SOCIOECONOMIC BACKGROUND AND  
21          PERSONALITY PLAY THE MOST IMPORTANT  
22          ROLE IN DECIDING WHETHER AN ADOLESCENT  
23          WILL EXPERIMENT AND EVENTUALLY BECOME  
24          A REGULAR SMOKER.   ALTHOUGH IT IS  
25          POSSIBLE THAT ADVERTISING MAY HELP  
26          FORM FAVORABLE ATTITUDES TOWARDS  
27          SMOKING, AMONG PARTICULAR  
28          SOCIOECONOMIC AND PERSONALITY CLASSES,

1 NO SUCH LINK HAS BEEN DEMONSTRATED. "

2 A. WELL, I BEG TO DIFFER. I THINK WE  
3 HAVE SHOWN SOME CLOSE LINKS.

4 Q. SO THE F. T. C. GOT IT WRONG TOO?

5 A. THAT PARTICULAR REPORT DID, YES.

6 Q. WELL, LET'S TAKE A LOOK AT YOUR OWN  
7 RESEARCH. IN 1995, YOU PARTICIPATED ON AN EXPERT  
8 PANEL AT THE REQUEST OF HEALTH CANADA, DIDN'T YOU?

9 A. YES, I THINK THE IMPORTANT WORD IS  
10 "PARTICIPATED," I WAS NOT A FREE AGENT THERE.

11 Q. "WHEN PACKAGES CAN'T SPEAK,  
12 POSSIBLE IMPACTS OF PLAIN AND GENERIC PACKAGING OF  
13 TOBACCO PRODUCT," IS THAT WHAT IT IS CALLED?

14 A. YES.

15 Q. WHAT WAS THE MISSION OF THIS EXPERT  
16 PANEL?

17 A. TO LOOK AT THE POTENTIAL STRATEGY  
18 ON THE PART OF THE CANADIAN GOVERNMENT OF MANDATING  
19 PLAIN WHITE, PLAIN PACKAGES AND TO SIMPLIFY THE  
20 PACKAGING, IN A SENSE, REMOVE THAT AS A MARKETING  
21 TOOL.

22 Q. AND YOU PARTICIPATE IN THAT PANEL?

23 A. PARTICIPATED, YES.

24 Q. THAT IS YOUR NAME?

25 A. THAT'S IT.

26 Q. THAT IS YOUR SIGNATURE?

27 A. YES.

28 Q. I SEE THAT EVERYBODY IS LISTED

1 ALPHABETICALLY, BUT IT DOESN'T LIST YOU AS SOME  
2 SORT OF A SUBSIDIARY MEMBER, DOES IT?

3 A. I CAN TELL YOU HOW THIS WAS DIVIDED  
4 UP. I WAS RESPONSIBLE FOR TWO PARTS. OTHERS WERE  
5 RESPONSIBLE FOR ONE PART EACH, ONE STUDY EACH. I  
6 WAS RESPONSIBLE FOR TWO STUDIES.

7 BECAUSE OF THAT, I DESISTED ON THE  
8 SUMMARY REPORT. I HAD NO TIME FOR THAT, AND SO THE  
9 SUMMARY IS LARGELY, IN FACT, THE WORK OF ONE OF  
10 THESE OTHER INDIVIDUALS. AND CERTAINLY I HAD TO  
11 CONCUR. THERE WAS NO WAY THAT I COULD DESIST FROM  
12 THE OVERALL REPORT.

13 Q. IF I SHOW YOU THERE WAS A PORTION  
14 OF THIS REPORT THAT CONTRADICTS WHAT YOU TOLD THE  
15 JURY TODAY, IT IS BECAUSE YOU KIND OF WALKED AWAY  
16 FROM THIS REPORT?

17 A. NO, BECAUSE I PARTIALLY BELIEVE IT,  
18 BUT THAT I, AS ONE OF SIX OR SEVEN, WITH THE TIGHT  
19 DEADLINES, I COULD ONLY EXERT SO MUCH INFLUENCE IN  
20 ALTERING ITS COURSE.

21 Q. I HAVEN'T EVEN SHOWN YOU THE  
22 SECTION YET.

23 A. I THINK I KNOW WHAT'S COMING.

24 Q. BY THE WAY, DO YOU REMEMBER THE  
25 PREAMBLE TO THIS REPORT?

26 A. PROBABLY NOT.

27 Q. WELL, LET ME REFRESH YOUR  
28 RECOLLECTION. I THINK IT ADDRESSES WHAT YOU JUST

1 MENTIONED.

2 "MEMBERS PREPARED INITIAL  
3 DRAFTS OF ONE OR MORE PORTIONS OF THE  
4 REPORT ACCORDING TO THEIR INDIVIDUAL  
5 AREAS OF EXPERTISE. BUT THE EXPERT  
6 PANEL, AS A WHOLE, WAS RESPONSIBLE FOR  
7 THE CONTENT OF ALL SECTIONS AND FOR  
8 INTEGRATING THEM INTO THE FINAL  
9 REPORT. "

10 A. I AM TELLING YOU THAT THE  
11 DYNAMIC --

12 Q. SO THIS IS WRONG TOO?

13 A. IT IS NOT WRONG, IT JUST SHAVES THE  
14 ACTUAL EVIDENCE.

15 Q. I DON'T WANT TO SHAVE THE EVIDENCE.  
16 LET'S TAKE A LOOK AT PAGE 26, THIS  
17 SECTION CALLED "THE RULE OF REFERENCE GROUPS IN  
18 ADOLESCENT CONSUMER BEHAVIOR. "

19 WHAT'S A REFERENCE GROUP?

20 A. A REFERENCE GROUP IS A GROUP, REAL  
21 OR IMAGINED THAT IS REFERRED TO BY WAY OF GUIDING  
22 ONE'S OPINIONS AND ATTITUDES AND POTENTIAL  
23 BEHAVIOR.

24 Q. IN THIS REPORT THAT YOU SIGNED, IT  
25 SAYS AT THE BOTTOM "FOR ADOLESCENTS, THE MOST  
26 IMPORTANT REFERENCE GROUPS ARE PEER GROUPS AND  
27 FAMILY. "

28 ISN'T THAT WHAT IT SAYS?

1 A. THAT'S RIGHT.

2 Q. CITING TO THE LITERATURE?

3 A. I WOULD -- I THINK THAT THAT IS A  
4 SLIGHTLY LIMITED VIEW. I THINK THAT IN THIS REPORT  
5 THE THOUGHT WAS THAT THESE ARE REAL, REAL GROUPS.  
6 PEER GROUPS DO NOT HAVE TO BE REAL.  
7 THEY COULD BE PEOPLE THAT ARE LONG GONE. I USED TO  
8 HAVE A COLLEAGUE THAT WOULD WALK AROUND WITH A TEA  
9 CUP AND TALK ABOUT RIDING ON A TRAIN AND SAID HE  
10 SHOULD HAVE LIVED IN VICTORIAN ENGLAND. HIS  
11 REFERENCE GROUP WAS THOSE WHO LIVED IN VICTORIAN  
12 ENGLAND. IT COULD BE AN IMAGINED GROUP. IT COULD  
13 BE THOSE COWBOYS OUT THERE.

14 Q. WHEN YOU INCLUDED THAT SECTION IN  
15 THIS REPORT, WERE YOU TALKING ABOUT COWBOYS?

16 A. AS I SAID, I THINK I HAVE GROWN  
17 SINCE, AND I THINK IT WAS A LIMITED PERSPECTIVE AT  
18 THAT TIME.

19 Q. SO YOUR OWN REPORT IS WRONG?

20 A. NO, IT IS LIMITED.

21 Q. LET'S LOOK AT A COUPLE MORE  
22 SECTIONS.

23 AGAIN, TALKING ABOUT THE  
24 LITERATURE, REPORTED, YOUR GROUP REPORT, FOXMEN, ET  
25 AL, AND THIS IS AN ARTICLE, I ASSUME, FROM '89,  
26 OBSERVED THAT PARENTAL INFLUENCE IS HIGHER WITH  
27 HIGH RISK PRODUCTS THAN WITH BENIGN PRODUCTS.  
28 WITHIN FAMILIES, THE PROBABILITY ADOLESCENTS WILL

1 SMOKE, THE FREQUENCY AND VOLUME OF THEIR SMOKING  
2 AND THE BRAND THAT THEY SMOKE IS CLOSELY RELATED TO  
3 THE SMOKING BEHAVIOR OF OLDER ADULTS IN THE FAMILY.

4 IS THAT SOMETHING ELSE YOU NOW  
5 DISAGREE WITH?

6 A. NO. AS I SAID, WHETHER OR NOT  
7 PARENTS SMOKE OPERATES AS A BREAK. THE ABSENCE OF  
8 A BREAK OR THE PRESENCE OF A BREAK, IT IS NOT THE  
9 KICK-START INFLUENCE. AND YOU PULLED IT AWAY, OF  
10 COURSE, WHAT YOU PULLED AWAY, THE REST OF THE  
11 STUDY, CERTAINLY THE REST OF THAT PAGE WAS THE  
12 MARKETING MIX, THE ADVERTISING COMPONENTS THERE.

13 MY JOB WAS TO LOOK AT HOW THE  
14 PACKAGING REPRESENTS A FORM OF ADVERTISING AND HOW  
15 INFLUENTIAL THAT WAS.

16 Q. WHAT WOULD HAPPEN IF THERE WERE  
17 PACKAGES THAT DID NOT HAVE COLOR AND LOGOS AND  
18 THINGS LIKE THAT; RIGHT?

19 A. VERY POWERFUL INFLUENCE, AT LEAST  
20 AS I DEMONSTRATED.

21 Q. AND AFTER LOOKING AT THE  
22 LITERATURE, YOUR EXPERT PANEL IN 1995 CONDUCTED  
23 SOME FOCUS GROUPS, DIDN'T THEY?

24 A. I AM SORRY.

25 Q. AFTER STUDYING THE LITERATURE, AS  
26 WE JUST TALKED ABOUT, YOUR 1995 EXPERT PANEL WENT  
27 OUT AND CONDUCTED FOCUS GROUPS; RIGHT?

28 A. YES, THEY DID.

1 Q. HOW MANY FOCUS GROUPS?

2 A. I DON'T REMEMBER.

3 Q. YOU TALKED THIS MORNING ABOUT FOCUS  
4 GROUPS. COULD YOU TELL THE JURY, AGAIN, WHAT A  
5 FOCUS GROUP IS?

6 A. DISCUSSION GROUP WITH A MODERATOR,  
7 DISCUSSING VIEWS OF A CERTAIN ISSUE.

8 Q. AND THE REASON FOR CONDUCTING FOCUS  
9 GROUPS AS PART OF YOUR STUDY WAS YOU THOUGHT THAT  
10 WHAT THEY HAD TO TELL YOU MIGHT BE IMPORTANT;  
11 RIGHT?

12 A. FOCUS GROUPS ARE INTENDED AS A VERY  
13 PRELIMINARY START TO RESEARCH. IT'S A VERY RISKY  
14 PROPOSITION TO RELY ON THOSE FINDINGS BECAUSE VERY  
15 SMALL GROUPS OF PEOPLE AND ONE OR TWO THAT ARE  
16 OUT-SPOKEN CAN USUALLY DOMINATE THE OTHERS.

17 Q. WAIT A MINUTE.  
18 THIS MORNING, YOU WERE ASKED ABOUT  
19 FOCUS GROUPS IN CONNECTION WITH YOUR LOW TAR AD,  
20 PULLED IT OUT OF YOUR POCKET, YOU READ IT TO THE  
21 JURY.

22 TOLD THE JURY THOSE FOCUS GROUPS  
23 WERE PRETTY DARN IMPORTANT, DIDN'T YOU?

24 A. IN GUIDING US TO THE RESEARCH THAT  
25 WE ACCIDENTALLY DO, WE WOULD NEVER HAVE STOPPED IT  
26 THEN AND SAID, OKAY, THAT'S DEFINITIVE, THAT WAS  
27 MEANT AS A VERY EARLY STEP IN A MUCH LARGER PIECE  
28 OF RESEARCH, THE IMPORTANCE OF WHICH WAS THE

1 DEVELOPMENT OF THE AD WITH HUNDREDS AND HUNDREDS OF  
2 PEOPLE IN A NATIONAL SAMPLE.

3 Q. LET'S LOOK AT THESE FOCUS GROUPS  
4 THAT YOU CONDUCT AS PART OF YOUR EXPERT PANEL IN  
5 1995?

6 A. THAT WAS A VERY PRELIMINARY STEP TO  
7 FIVE LARGE SCALE STUDIES.

8 Q. TEN FOCUS GROUPS WITH TEENAGERS,  
9 SIX IN TORONTO IN ENGLISH AND FOUR IN MONTREAL IN  
10 FRENCH.

11 "RESPONDENTS WERE RECRUITED  
12 TO INSURE A BALANCE OF EARLY TEEN  
13 GRADE 6 AND TEEN GRADE 8 LEVEL, GENDER  
14 AND SMOKING STATUS, SMOKERS AND  
15 NON-SMOKERS. "

16 DO YOU REMEMBER THE FOCUS GROUPS?

17 A. DO I REMEMBER THEM? I THINK I WAS  
18 AT ONE OR TWO OF THEM, NOT ALL OF THEM

19 Q. LET'S LOOK AT THIS WHICH IS UNDER  
20 THE HEADING, "WHAT THE EXPERT PANEL LEARNED. " THAT  
21 IS THE EXPERT PANEL YOU WERE ON; RIGHT?

22 A. YES.

23 Q. LET'S LOOK AT WHAT YOU LEARNED.

24 "THESE TEENAGERS, " YOUR  
25 FOCUS GROUPS, "VIEW THE PROCESS OF  
26 STARTING TO SMOKE AS BEING LARGELY  
27 UNAFFECTED BY THE BRAND PACKAGE OR  
28 PROMOTIONAL ACTIVITIES OF CIGARETTE

1           SELLERS.  THE ISSUE TO THEM IS TO  
2           SMOKE OR NOT TO SMOKE, WHICH, IN TURN,  
3           IS DOMINATED BY PEER INFLUENCE AND  
4           PARENTAL ACCEPTANCE OR REJECTION.  THE  
5           PARTICULAR BRAND IS NOT INVOLVED WITH  
6           THE INITIATION OF SMOKING.  IN FACT,  
7           MANY OF THEM HAVE NO IDEA OF THE BRAND  
8           WHICH THEY FIRST SMOKED.  THE FIRST  
9           INSTANCES OF SMOKING OCCUR WHEN  
10          SOMEONE ELSE PROVIDES THE CIGARETTES,  
11          A FRIEND, A SIBLING, A PARENT,  
12          RELATIVE, ET CETERA.  THE ISSUE OF  
13          BRAND OBVIOUSLY BECOMES INVOLVED LATER  
14          WHEN THE TEENS FIRST ATTEMPT TO BUY  
15          CIGARETTES.  THEN THEY HAVE TO SPECIFY  
16          A BRAND.  SO THEY NAME ONE THEY HAVE  
17          HEARD OF.

18                           "IT SUGGESTS BELOW THAT  
19          BRAND SPECIFICATION IS DRIVEN BY BRAND  
20          AWARENESS. "

21           A.       CAN I COMMENT ON THAT?

22           Q.       LET ME ASK YOU A QUESTION.

23                           DO YOU REMEMBER MR. BOEKEN' S STORY?

24           A.       DO I REMEMBER, YES.  IT FITS THIS  
25   VERY WELL.

26           Q.       DOESN' T IT?  STARTED SMOKING --

27           A.       HE VERY BRIEFLY SMOKED A FEW OTHER  
28   THINGS AND THEN QUICKLY FIXED ON MARLBORO AND

1 STAYED THERE FOR REST OF HIS LIFE.

2 Q. STARTED PICKING UP BUT WHEN HE WAS  
3 10 YEARS OLD, BECAUSE THEY WERE IN HIS PARENTS  
4 ASHTRAY.

5 DO YOU KNOW WHAT HIS PARENT SMOKED?

6 A. SOMETHING OTHER THAN MARLBORO.

7 AND HE WAS INDIVIDUATING FROM THEM  
8 BY SAYING, I AM NOT GOING TO SMOKE WHAT THEY DO.

9 CAN I RESPOND TO SOME OF THE ISSUES  
10 THAT YOU PUT UP THERE.

11 Q. SURE.

12 A. LET ME REMIND YOU THAT, THANK  
13 GOODNESS, WE WENT ON, BECAUSE WHAT WE FOUND IN TWO  
14 OR THREE OF THE STUDIES IS THAT PROMOTION WAS VERY  
15 IMPORTANT. ADVERTISING THROUGH THE PACKAGE WAS A  
16 POWERFUL INFLUENCE.

17 THESE VERY LIMITED NUMBER OF KIDS  
18 WERE HARDLY PREDICTIVE OF WHAT HAVE WE FOUND. AND  
19 I REMIND YOU, IN FACT, AT THIS VERY MOMENT, THE  
20 CANADIAN GOVERNMENT HAS ADOPTED WHAT OUR  
21 SUGGESTIONS WERE, THEY HAVE NOT -- THEY HAVE GONE  
22 EVEN FURTHER, WE NOT ONLY STUDIED BLANK, BLANK  
23 PACKAGES, WHITE, BUT, IN FACT, AT MY INSISTENCE, WE  
24 PUT IN A PICTURE OF CIGARETTES GOING INTO TWO LUNGS  
25 THAT WERE KIND OF DISSIPATED. AND THAT WAS THE  
26 MOST POWERFUL EFFECT. AND THAT'S WHAT THE CANADIAN  
27 GOVERNMENT HAS GONE ON TO PROMULGATE. THAT'S NOW  
28 WHAT IS BEING SOLD IN CANADA. ALL THESE, THEY HAVE

1 REMOVED THE ADVERTISING FROM THE PACKAGING. THEY  
2 FOLLOWED -- THEY TOOK A LITTLE WHILE, BUT THEY  
3 FOLLOW THE GUIDELINES OF THIS. THEY UNDERSTOOD  
4 THAT ADVERTISING WAS IMPORTANT.

5 THESE FEW PEER GROUPS, THESE FEW  
6 FOCUS GROUPS, THESE ARE MEANT AS VERY QUICK ENTRY  
7 LEVEL THINGS TO VAST STUDIES.

8 SO WHEN YOU FOCUS ON THESE FOCUS  
9 GROUPS AND NOT ON THE STUDIES, YOU ARE REALLY DOING  
10 AN INJUSTICE TO THIS BODY OF RESEARCH.

11 Q. SO THE FOCUS GROUPS WERE  
12 MEANINGLESS?

13 A. I DIDN'T SAY THEY ARE MEANINGLESS.  
14 THEY ARE MEANT AS A QUICK CURSORY LOOK. AND  
15 NOBODY, NOBODY, ANY GOOD MARKETING RESEARCHER, ANY  
16 GOOD MARKETER TAKES ALL OF IT WITH A HUGE GRAIN OF  
17 SALT AND SAYS, THESE ARE A LIMITED SET OF PEOPLE.  
18 I GAINED A LITTLE BIT OF INSIGHT BUT I HAVE TO GO  
19 FORWARD AND DO THE MAIN STUDIES.

20 IF YOU WANT TO TALK ABOUT THE MAIN  
21 STUDIES, THE ONES THAT GUIDED THE GOVERNMENT IN  
22 CANADA TO DEVELOP POLICY, WE CAN DO THAT.

23 Q. THE LITERATURE REVIEW OF YOUR  
24 REPORT YOU DON'T THINK IS AN ACCURATE PORTRAYAL?

25 A. I THINK IT IS A REPORT PUT TOGETHER  
26 BY A COMMITTEE OF --

27 Q. OF WHICH YOU WERE A MEMBER?

28 A. AND THE DEGREE TO WHICH I COULD

1 SHAPE IT WAS LIMITED.

2 Q. AND ALL THE OTHER STUDIES THAT I  
3 SHOWED YOU OVER THE LAST 45 MINUTES WERE FLAWED OR  
4 WRONG IN SOME WAY; IS THAT CORRECT?

5 A. NO. I DIDN'T SAY THAT. I THINK  
6 SOME OF THEM ARE QUITE ACCURATE. NUMBER ONE, THEY  
7 NEVER ASKED A QUESTION ABOUT ADVERTISING AND THEY  
8 POINTED TO PEERS. PEERS ARE HOW ADVERTISING IS  
9 MEDIATED AND EFFECT THE INDIVIDUAL. SO SOME OF  
10 THEM ARE QUITE ACCURATE IN THAT SENSE.

11 Q. AND THE ONES THAT SAY THAT  
12 ADVERTISING IS NOT A STRONG INFLUENCE ARE WRONG, IS  
13 THAT YOUR TESTIMONY?

14 A. I AM NOT SURE WHICH ONES YOU ARE  
15 POINTING TO. THERE'S A COUPLE, NOT VERY MANY.  
16 SOME OF THEM ARE QUITE OLD.

17 MR. LEITER: THIS MIGHT BE A GOOD TIME TO  
18 STOP, YOUR HONOR.

19 THE COURT: ALL RIGHT. THANK YOU  
20 MR. LEITER.

21 LADIES AND GENTLEMEN, WE WILL TAKE  
22 OUR EVENING BREAK AND BE BACK AT 8:45 TOMORROW  
23 MORNING.

24 MS. KEY, STAY WITH US AND LET ME  
25 JUST CHECK ON HOW YOU ARE DOING. OKAY.

26 THE REST OF YOU MAY GO.

27 /// /// ///

28 /// /// ///

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

4  
5 THE COURT: ALL RIGHT, OUR JURY PANEL IS  
6 NO LONGER WITH US OTHER THAN MS. KEY.

7 MY COURT ATTENDANT TELLS ME THAT  
8 YOU HAVEN'T BEEN FEELING TOO WELL TODAY.

9 WHAT I AM WORRIED ABOUT IS ARE WE  
10 JUST -- IS SOMETHING JUST STARTING WITH YOU RIGHT  
11 NOW

12 JUROR KEY: YEAH, JUST STARTING TODAY,  
13 THIS MORNING, IT'S IN MY THROAT.

14 THE COURT: OKAY, AND YOU HAVE --

15 JUROR KEY: I AM OKAY.

16 THE COURT: YOU ARE OKAY. SO BUT HEAR  
17 WHAT I WANT TO SAY TO YOU IS, IF THIS INTERFERES IN  
18 ANY WAY WITH YOUR PARTICIPATION HERE, YOU BE SURE  
19 AND LET ME KNOW I WANT TO HEAR ABOUT THAT.

20 AND TRY TO MAKE SOME ACCOMMODATION  
21 OR SOMETHING FOR YOUR HEALTH. THAT'S VERY  
22 IMPORTANT TO THE JUDGE. OKAY.

23 JUROR KEY: OKAY.

24 THE COURT: THANK YOU, MA'AM

25 (AT THIS TIME, THE PROCEEDINGS  
26 IN THE ABOVE-ENTITLED MATTER  
27 WERE CONTINUED TO WEDNESDAY,  
28 APRIL 18, 2001 AT 9:00 A.M.)

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E X H I B I T S

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