

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 FOR THE COUNTY OF LOS ANGELES
3 DEPARTMENT 308 HON. CHARLES MC COY, JUDGE
4 RICHARD BOEKEN,)
5 PLAINTIFF,)
6)
7) CASE NO. BC226593
8 VS.)
9 PHILIP MORRIS,) VOLUME 26
10 INCORPORATED, A)
11 CORPORATION; INTERNATIONAL)
12 HOUSE OF PANCAKES)
13 INCORPORATED, A)
14 CORPORATION.)
15)
16 DEFENDANTS.)
17 _____)

13 REPORTER'S DAILY TRANSCRIPT OF PROCEEDINGS
14 TUESDAY, MAY 1ST, 2001
15 WEDNESDAY, MAY 2ND, 2001 (A. M.)

16 APPEARANCES:
17 (FOR PLAINTIFF) LAW OFFICES OF
MICHAEL J. PIUZE
18 11755 WILSHIRE BLVD.
SUITE 1170
19 LOS ANGELES, CA 90025
20 (FOR DEFENDANTS) ARNOLD & PORTER
BY: MAURICE A. LEITER
21 JOHN CARLTON
777 S. FIGUEROA ST.
22 44TH FLOOR
LOS ANGELES, CA 90017

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

26 VOLUME 26 OF
27 PAGES 4051 THROUGH 4170
28

1 LOS ANGELES, CALIFORNIA; TUESDAY, MAY 1ST, 2001

2 9:10 A.M

3 DEPARTMENT 308 HON. CHARLES MC COY, JUDGE

4

5

6 (THE FOLLOWING PROCEEDINGS

7 WERE HELD IN OPEN COURT IN

8 THE PRESENCE OF THE JURY.)

9

10 THE COURT: OUR JURY PANEL IS WITH US,

11 WITH ONE EXCEPTION, IS HERE.

12 COUNSEL IS HERE.

13 LADIES AND GENTLEMEN, WE ARE NOT

14 GOING TO BE ABLE TO PROCEED THIS MORNING. THE

15 REASON FOR THAT IS THAT I THINK MOST OF YOU MAY

16 HAVE NOTICED, ONE OF OUR JURORS IS -- SHE CAME HERE

17 TODAY, BUT SHE IS JUST NOT IN ANY CONDITION AT ALL

18 TO CONTINUE. SHE THINKS SHE HAS ONE OF THOSE

19 24-HOUR THINGS. SO WE ARE GOING TO CROSS OUR

20 FINGERS THAT THAT'S WHAT IT IS AND WE WILL GET IN

21 CONTACT WITH HER LATER TODAY TO TRY TO CONFIRM

22 THAT.

23 IN THE MEAN TIME, I HAVE HAD A

24 DISCUSSION WITH OUR GOOD COUNSEL ABOUT THE PROGRESS

25 OF THE CASE. IT IS ESTIMATED THAT THE DEFENSE MAY

26 REST THEIR CASE AT THE END OF NEXT WEEK.

27 IT MIGHT SPILL OVER, SAY, A DAY,

28 THE FOLLOWING WEEK. BUT ABOUT THE END OF NEXT WEEK

1 WOULD BE THE DEFENSE RESTING. THERE MAY BE SOME
2 REBUTTAL FOLLOWING THAT FROM THE PLAINTIFF AND THEN
3 I WOULD BE INSTRUCTING THE JURY.

4 SO END OF NEXT WEEK, THEN THAT
5 FOLLOWING WEEK YOU WOULD ANTICIPATE THAT THE CASE
6 WILL BE GIVEN TO YOU AND YOU WILL GO INTO THE JURY
7 ROOM AND BEGIN DECIDING HOW YOU WANT TO DECIDE THIS
8 CASE.

9 ALL RIGHT, THAT HAVING BEEN SAID,
10 WE ARE NOT GOING TO BE ABLE TO PROCEED THIS MORNING
11 AND I AM GOING TO LET ALL YOU GO. WE WILL SEE YOU
12 AT 8:45 TOMORROW MORNING.

13 THANK YOU, LADIES AND GENTLEMEN.

14

15

16 (AT THIS TIME, THE PROCEEDINGS
17 IN THE ABOVE-ENTITLED MATTER
18 WERE CONTINUED TO WEDNESDAY, MAY
19 2, 2001 AT 8:45 A.M.)

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1 LOS ANGELES, CALIFORNIA; WEDNESDAY, MAY 2ND, 2001

2 9:10 A.M

3 DEPARTMENT 308 HON. CHARLES MC COY, JUDGE

4

5

6 (THE FOLLOWING PROCEEDINGS

7 WERE HELD IN OPEN COURT IN

8 THE PRESENCE OF THE JURY.)

9

10 THE COURT: OUR JURY PANEL IS WITH US.

11 OUR GOOD COUNSEL IS PRESENT AS WELL.

12 GOOD MORNING, COUNSEL. GOOD TO SEE

13 YOU.

14 THE WITNESS IS ON THE WITNESS

15 STAND.

16 MA'AM, YOU UNDERSTAND YOU ARE STILL

17 UNDER OATH.

18 THE WITNESS: YES, I DO, SIR.

19 THE COURT: MR. PIUZE.

20

21 CROSS-EXAMINATION (RESUMED)

22

23 BY MR. PIUZE:

24 Q. HERE'S WHERE WE WERE. I WAS

25 QUESTIONING YOU ON SOME OF OUR RECENT HISTORY THAT

26 MR. BOEKEN WENT THROUGH, '50'S, '60'S, SOME OF THE

27 '70'S, AND ONE OF THE ISSUES I WAS TRYING TO FRAME

28 FOR THE JURY, THROUGH YOU, GET YOUR OPINIONS ON IT,

1 WAS WHETHER OR NOT, GEE, MAYBE THE PUBLIC DIDN' T
2 JUST THINK THE TOBACCO COMPANIES MIGHT HAVE BEEN
3 FULL OF BALONEY BUT THE PUBLIC MIGHT NOT HAVE HAD
4 FULL CONFIDENCE IN THE GOVERNMENT TOO. THAT' S SORT
5 OF WHERE WE WERE.

6 DO YOU REMEMBER THAT?

7 A. YES, I DO.

8 Q. DID I SHARE WITH YOU THIS MORNING,
9 BRIEFLY, MY PRIZED COPY OF CONRAD' S EDITORIAL
10 CARTOONS ABOUT WATERGATE?

11 A. YES, YOU DID.

12 Q. YOU DO KNOW WHO CONRAD IS, DON' T
13 YOU?

14 A. YES, I DO.

15 Q. WHO IS CONRAD?

16 A. HE IS A POLITICAL CARTOONIST. HE
17 WAS ON THE ENEMY LIST OF RICHARD NIXON IN HIS
18 ADMINISTRATION. THERE WERE PEOPLE HE DIDN' T LIKE
19 AND THAT HE USED THE OFFICES OF THE GOVERNMENT LIKE
20 THE F. B. I. TO GET BACK AT THESE PEOPLE. AND A LOT
21 OF THEM WERE PROMINENT JOURNALISTS.

22 Q. PAUL CONRAD WAS A POLITICAL
23 CARTOONIST WITH THE "LOS ANGELES TIMES" WHO WON
24 PULITZER PRIZES ON MORE THAN ONE OCCASION, DIDN' T
25 HE?

26 A. THAT IS RIGHT.

27 Q. ONE OF THE GIANTS OF HIS PROFESSION
28 IN OUR TIME?

1 A. THAT IS RIGHT.

2 Q. ANYWAY, I JUST WANT TO SHOW YOU, I
3 AM NOT GOING TO GO THROUGH THESE CARTOONS, ALTHOUGH
4 THEY ARE ENTERTAINING FROM THIS PERSPECTIVE, AS A
5 HISTORIAN, WHAT DO YOU THINK SOMEONE WHO IS IN
6 THEIR 20' S, FOR EXAMPLE, DO YOU THINK THEY KNOW
7 MUCH ABOUT WATERGATE?

8 A. SOMEONE WHO IS IN THEIR 20' S TODAY,
9 NECESSARILY?

10 Q. YES.

11 A. NO.

12 Q. 30' S, DO YOU THINK THEY KNOW MUCH
13 ABOUT WATERGATE?

14 A. PROBABLY NOT.

15 Q. 40' S?

16 A. WE ARE GETTING CLOSER.

17 Q. SOMEONE REALLY OLD LIKE ME
18 REMEMBERS IT THEN; RIGHT?

19 A. I GUESS SO.

20 Q. HERE. BECAUSE I DON'T HAVE THE
21 TIME TO GIVE A HISTORY LESSON, I'D JUST LIKE TO
22 LOOK AT SOME CHAPTER HEADINGS HERE, SOME CHAPTER
23 HEADINGS, JUST SO WE CAN TALK TO THE JURY A BIT.

24 OKAY?

25 A. ALL RIGHT.

26 Q. NOW, YOUR HONOR, IS IT OKAY IF I
27 SWING OVER BESIDE HER AND SORT OF LOOK OVER HER
28 SHOULDER?

1 A. YES.

2 Q. FIRST PART OF THE BOOK IS CALLED

3 WHAT?

4 A. "WATERGATE. "

5 Q. AND WATERGATE WAS THE HOTEL WHERE A

6 BURGLARY OCCURRED WHERE THE DEMOCRATIC NATIONAL

7 SOMETHING OR OTHER GOT BURGLARIZED AND SOME

8 BURGLARS WENT IN THERE AND TOOK SOME STUFF IN THE

9 MIDDLE OF THE NIGHT; RIGHT?

10 A. THEY WERE TRYING TO SET UP A

11 BUGGING OPERATION.

12 Q. ORIGINALLY, WHEN THERE WAS SOME

13 LINK TO THE WHITE HOUSE OR TO THE REPUBLICAN PARTY,

14 IT WAS ABSOLUTELY VIGOROUSLY 100 PERCENT DENIED;

15 RIGHT?

16 A. THAT IS RIGHT.

17 Q. WHAT'S THE NEXT CHAPTER CALLED

18 HERE?

19 A. IT'S CALLED "THE COVER UP. "

20 Q. WHAT WAS THE COVER UP?

21 A. THIS WAS THIS PROLONGED PERIOD OF

22 TIME IN WHICH THE NIXON ADMINISTRATION DIDN'T WANT

23 THIS INFORMATION TO GET OUT, THAT THEY HAD HIRED

24 THESE GUYS TO BUG THE DEMOCRATIC PARTY AND

25 BASICALLY TO GET INFORMATION TO TRY TO DISCREDIT

26 THEM AND SO THE ADMINISTRATION COVERED UP WHAT THEY

27 HAD DONE.

28 Q. LIED?

1 A. YES, THAT IS RIGHT.

2 Q. CONCEALED THE TRUTH FROM THE
3 PEOPLE?

4 A. THAT IS RIGHT.

5 Q. BECAUSE THEY THOUGHT IT WOULD HURT
6 THEM?

7 A. WELL, NIXON WAS AFRAID OF LOSING
8 THE ELECTION AND BEING BROUGHT DOWN, WHICH, OF
9 COURSE, HE ULTIMATELY WAS.

10 Q. DO YOU SEE A PARALLEL BETWEEN THIS
11 AND WHAT WE HAVE HEARD, YOU HAVE ACKNOWLEDGED YOU
12 DON'T BELIEVE IT ALL FOR A SECOND, FROM THE TOBACCO
13 INDUSTRY IN THE '50'S AND '60'S, WHERE THE
14 EXECUTIVES OF THE TOBACCO INDUSTRY LIED IN ORDER TO
15 PROTECT THEIR PROFITS?

16 MR. LEITER: OBJECTION, ARGUMENTATIVE.

17 THE COURT: OVERRULED.

18 THE WITNESS: I DON'T SEE A PARALLEL.
19 BUT I ALSO HAVE NOT STUDIED THE INTERNAL WORKINGS
20 OF THE TOBACCO INDUSTRY SINCE THAT'S NOT WHAT I WAS
21 ASKED TO STUDY.

22 Q BY MR. PIUZE: OKAY. THEN THE
23 NEXT CHAPTER IN HERE IS CALLED WHAT?

24 A. "THE COVER UP OF THE COVER UP. "

25 Q. WHAT DOES THAT MEAN, "THE COVER UP
26 OF THE COVER UP"?

27 A. WELL, THE PROCESS WENT ON LONGER
28 AND LONGER, YOU KNOW, THEY, FOR EXAMPLE, JOHN DEAN

1 WAS THE ATTORNEY FOR THE PRESIDENT AND SO THEY GOT
2 RID OF JOHN DEAN. JOHN DEAN WAS ORIGINALLY
3 COVERING IT UP SO THEY THOUGHT THEY COULD GET RID
4 OF HIM SO IT WENT ON FOR A NUMBER OF MONTHS WHERE
5 THEY WERE SORT OF GOING ON DOWN THE LINE TRYING TO
6 GET RID OF THESE GUYS WHO KNEW ANYTHING.

7 Q. I WANT TO STAND ON THIS TABLE, I
8 PROBABLY CAN'T ANYWAY, THERE'S NO ROOM
9 THE GUYS UP HERE AT THE TOP, TO CUT
10 THEIR LOSSES, STARTED GETTING RID OF THE GUYS DOWN
11 HERE; RIGHT?

12 A. THAT IS RIGHT.

13 Q. AND THEN WHEN THE GUYS DOWN HERE
14 STARTED TO SQUEAL OR RAT OR TATTLE A LITTLE BIT,
15 THEN THEY GOT RID OF GUYS IN THE MIDDLE HERE?

16 A. THAT IS CORRECT.

17 Q. AND THEN AS IT GOT HIGHER, THEY
18 STARTED GETTING RID OF THE GUYS UP HERE?

19 A. THAT IS RIGHT.

20 Q. AND ULTIMATELY, THERE WAS A SPECIAL
21 PROSECUTOR ON THAT CASE; RIGHT?

22 A. THAT IS RIGHT.

23 Q. A HARVARD LAW SCHOOL PROFESSOR?

24 A. THAT IS RIGHT.

25 Q. AND THE PRESIDENT OF THE UNITED
26 STATES TOLD HIS ATTORNEY GENERAL, FIRE THAT GUY,
27 HE'S AFTER ME, FIRE HIM; RIGHT?

28 AND THE ATTORNEY GENERAL SAID, I

1 CAN' T.

2 A. THAT IS RIGHT.

3 Q. SO THE PRESIDENT FIRED THE ATTORNEY
4 GENERAL INSTEAD?

5 A. THAT IS RIGHT.

6 Q. ANYWAY, THERE WAS THE CRIME AND
7 THERE WAS THE COVER UP AND THEN THERE WAS THE COVER
8 UP OF THE COVER UP, AND IT SORT OF WENT ON FOR HOW
9 LONG?

10 A. WELL, ALMOST TWO YEARS.

11 Q. THAT GOT PRETTY BIG NEWS COVERAGE,
12 DIDN' T IT?

13 A. YES, IT DID.

14 Q. AND THE "L. A. TIMES" WAS ONE OF THE
15 LEADERS IN GOING AFTER THAT WHOLE THING, WASN' T IT?

16 A. WELL, THE "WASHINGTON POST" USUALLY
17 CLAIMS THE CREDIT, FAIRLY RIGHTLY.

18 Q. I SAID "ONE OF. "

19 A. OKAY.

20 Q. THE "WASHINGTON POST" WAS
21 ABSOLUTELY IN FIRST PLACE; RIGHT?

22 A. THAT IS CORRECT.

23 Q. DEEP THROAT TALKED TO THE
24 "WASHINGTON POST"?

25 A. THAT IS RIGHT.

26 Q. ANYWAY, ANYWAY, OVER TWO YEARS,
27 THIS WAS HEADLINE NEWS, DAY AFTER DAY AFTER DAY
28 AFTER DAY AFTER DAY AFTER WEEK AFTER WEEK AFTER

1 MONTH AFTER MONTH AFTER MONTH IN THE "LOS ANGELES
2 TIMES, " WASN' T IT?

3 A. YES, IT WAS.

4 Q. AND FINALLY, A PRESIDENT OF THE
5 UNITED STATES RESIGNED FACING SERIOUS IMPEACHMENT
6 CHARGES?

7 A. FOR THE FIRST TIME IN AMERICAN
8 HISTORY.

9 Q. MEANING, MEANING, THESE PARTICULAR
10 IMPEACHMENT CHARGES, IT LOOKED LIKE HE WAS FOR SURE
11 GOING TO GET CONVICTED?

12 A. THAT IS RIGHT.

13 Q. SO YOU SAID, LAST TIME WE TALKED,
14 THAT YOU DIDN' T THINK THAT REALLY SHOOK PEOPLE' S
15 CONFIDENCE IN WHAT THE GOVERNMENT HAD TO SAY, DID I
16 HEAR YOU RIGHT?

17 A. NO, THAT' S NOT WHAT I SAID.

18 Q. WHAT DID YOU SAY?

19 A. YOU WERE CHARACTERIZING IT AT THAT
20 TIME, AND YOUR QUESTION, THE WHOLE PERIOD BETWEEN
21 1964 AND 1980, AS A PERIOD OF TIME IN WHICH PEOPLE
22 DID NOT TRUST THEIR GOVERNMENT, YOU KNOW.

23 AND I THINK, ACTUALLY, YOU EVEN
24 KIND OF WENT FARTHER BACK THAN THAT BECAUSE OF
25 ROOSEVELT BEING HANDICAPPED AND THE PEOPLE NOT
26 KNOWING ABOUT THAT AND THEN LYNDON JOHNSON SAYING
27 WE WON' T GO INTO WAR AND THEN WE DID.

28 SO, YES, WATERGATE WAS, YOU KNOW, A

1 TERRIBLY -- SUCH AN INTERESTING EVENT BECAUSE I
2 THINK IT DID TWO THINGS: IT REALLY, FIRST OF ALL,
3 IT REVEALED THAT PRESIDENT NIXON WAS AN ABSOLUTE
4 LIAR AND HEAD OF A CORRUPT ADMINISTRATION, THAT'S
5 WHAT IT TURNED OUT TO BE.

6 BUT THEN THE OTHER THING I THINK
7 WAS TRULY REMARKABLE IS THAT THE GOVERNMENT TOOK
8 HIM TO TASK. THERE WERE HONORABLE PEOPLE IN
9 GOVERNMENT. AND SO WHEN I TEACH THIS SUBJECT TO
10 STUDENTS I THINK THAT FOR A LOT OF STUDENTS THEY
11 TAKE AWAY BOTH MESSAGES, THAT THE AMERICAN SYSTEM
12 WORKED.

13 IN OTHER WORDS, I AM TRYING TO SAY,
14 I DON'T THINK IT WAS A TOTAL ROUT. PEOPLE THOUGHT
15 THAT GOVERNMENT, YOU CAN NEVER BELIEVE ANYTHING THE
16 GOVERNMENT SAID OR DID BECAUSE THE GOVERNMENT ALSO
17 BROUGHT RICHARD NIXON DOWN.

18 Q. SO AS A HISTORIAN, YOU ARE HERE TO
19 GIVE EXPERT OPINIONS ON HISTORY.

20 YOU ARE NOT REALLY INTO READING
21 MOTIVATION INTO PEOPLE'S MINDS, ARE YOU? OR ARE
22 YOU?

23 A. NOT IN A PSYCHOLOGICAL SENSE OF THE
24 PRINCIPLES OF HUMAN MOTIVATION. CERTAINLY
25 SOMETHING YOU ANALYZE, FOR EXAMPLE, WHAT WAS
26 RICHARD NIXON'S MOTIVATION IN COVERING UP OR
27 OCCASIONALLY YOU WILL GET INTO POLITICAL
28 MOTIVATIONS.

1 Q. BECAUSE THE OTHER DAY YOU
2 SPECIFICALLY SAID YOU DIDN' T WANT TO GET INTO THE
3 MINDS OF WHAT WAS GOING ON IN TOBACCO EXECUTIVES'
4 MINDS, YOU SAID THAT ON MONDAY, DIDN' T YOU, MONDAY
5 AFTERNOON?

6 A. WELL, I SAID THAT MY RESEARCH WAS
7 NOT CONCERNING WHAT THE TOBACCO COMPANIES WERE
8 DOING AND WHAT THEIR INTERNAL THINKING PROCESS WAS,
9 SO I HAVEN' T STUDIED THAT AT ALL. I COULD NOT
10 COMMENT ON IT.

11 Q. YOU HAVEN' T STUDIED WHAT GOES ON IN
12 MY MIND, HAVE YOU?

13 A. NO.

14 Q. BECAUSE I THINK THE POINTS YOU WERE
15 JUST TRYING TO PUT ON ME MAYBE DIDN' T BELONG THERE.

16 WITH FRANKLIN ROOSEVELT, I THINK
17 THE POINT WAS THAT ALTHOUGH NO ONE KNEW HE WAS IN A
18 WHEELCHAIR, EVERYONE KNEW HE SMOKED. SMOKING WAS
19 OPEN, OBVIOUS. THERE WAS NO PROHIBITION. THERE
20 WAS NO BAD FEELINGS. THERE WAS NO BAD EFFECT.
21 THERE WAS NOTHING TO HIDE.

22 AS A MATTER OF FACT, THIS ROLE
23 MODEL FOR ALL OF AMERICA WAS SMOKING SO MUCH THAT
24 MAYBE IT GOT SOME OTHER AMERICANS TO SMOKE, THAT' S
25 WHY I MENTIONED FRANKLIN ROOSEVELT.

26 DID YOU KNOW THAT?

27 A. NO, I DIDN' T KNOW WHAT YOUR
28 MOTIVATION WAS IN MENTIONING IT.

1 Q. AND AS FAR AS LYNDON JOHNSON, I
2 THINK YOU MENTIONED SOMETHING THE OTHER DAY -- I
3 HAPPENED TO LIKE LYNDON JOHNSON.

4 MR. LEITER: OBJECT TO THE COMMENTARY.

5 THE COURT: COUNSEL, LET'S NOT GET TOO
6 FAR INTO COUNSEL'S FEELING.

7 MR. PIUZE: SORRY.

8 THE COURT: THEY ARE IRRELEVANT.

9 Q BY MR. PIUZE: THE OTHER DAY YOU
10 PUT SOMETHING ON ME, I THOUGHT, ABOUT LYNDON
11 JOHNSON, AGAIN, AND I AM JUST WONDERING HOW DO YOU
12 KNOW WHAT GOES ON IN MY MIND?

13 A. I AM SORRY, SIR, I DON'T KNOW WHAT
14 YOU ARE REFERRING TO.

15 Q. OKAY. HERE'S THE COVER UP I AM
16 INTERESTED IN. NOT WITH FRANKLIN ROOSEVELT. AND I
17 AM NOT INTERESTED UNTIL AROUND 1954 AND 1957 AND
18 1960 AND, YOU KNOW, YOU KNOW WHY I AM SAYING THESE
19 TIMES, '57, '60, THAT'S WHEN RICHARD DOLL,
20 DR. DOLL, SAID EVERY REASONABLE SCIENTIST SHOULD
21 HAVE KNOWN THAT SMOKING CAUSED LUNG CANCER. I AM
22 INTERESTED IN '64 WHEN THE SURGEON GENERAL SAID IT.
23 AND I AM INTERESTED IN THAT ALL THE WAY FORWARD AS
24 THESE DENIALS WENT ON AND ON AND ON AND ON, AND
25 THAT'S THE PERIOD OF TIME I AM INTERESTED IN.

26 OKAY.

27 MR. LEITER: OBJECTION, ARGUMENTATIVE.

28 THE COURT: OVERRULED.

1 CROSS-EXAMINATION.

2 Q BY MR. PIUZE: JUST LOOK AT THIS
3 FOR A SECOND, PLEASE. THIS IS EXHIBIT 207.00, AND
4 THIS IS A PHILIP MORRIS DOCUMENT. AND THIS IS FROM
5 1969, FEBRUARY 1969, AND MR. WAKEHAM, MR. DUNN,
6 CORRESPONDED IN WRITING. AND MR. WAKEHAM SAYS:

7 "I WOULD BE MORE CAUTIOUS IN
8 USING THE PHARMTEC-MEDICAL MODEL. DO
9 WE REALLY WANT TO TAUT CIGARETTE SMOKE
10 AS A DRUG? IT IS, OF COURSE." AND I
11 AM GOING TO STOP RIGHT THERE.

12 "BUT THERE ARE DANGEROUS
13 F. D. A. IMPLICATIONS TO HAVING SUCH
14 CONCEPTUALIZATION GO BEYOND THESE
15 WALLS."

16 BUT SEEING THAT IT IS BEYOND THE
17 WALLS, HERE'S WHAT I AM INTERESTED IN ASKING YOU
18 ABOUT.

19 "DO WE REALLY WANT TO TAUT
20 CIGARETTE SMOKE IS A DRUG," IT IS, OF COURSE, NOW
21 WHO IS THE BIGGEST DRUG DEALER IN
22 THE WORLD?

23 A. I DON'T --

24 MR. LEITER: OBJECTION.

25 THE COURT: SUSTAINED. COUNSEL, WE ARE
26 NOT GOING TO GO FOR THIS.

27 Q BY MR. PIUZE: WAS ONE OF THE
28 PROBLEMS OF THE 20TH CENTURY THAT YOU WERE TALKING

1 ABOUT IN YOUR HISTORICAL BOOK, DOES IT MENTION AT
2 ALL DRUGS IN OUR SOCIETY?

3 A. I THINK IN THE CHAPTER ON THE
4 '60'S, THERE ARE REFERENCES TO DRUGS.

5 Q. DO YOU HAVE ANY MENTION AT ALL ANY
6 PLACE TO THE COLUMBIAN DRUG CARTEL?

7 A. NO.

8 Q. HERE'S SOME MDRE. AND I AM GOING
9 TO DO THESE QUICKLY. I HAVE GOT TIME ON MY MIND.

10 BUT HERE'S SOME -- MOST OF THESE
11 THINGS THAT CAME OUT OF THE "L. A. TIMES" THAT I WAS
12 GIVEN THAT YOU MIGHT USE. AND I AM NOT SURE
13 WHETHER THEY WERE OR WEREN'T SHOWN TO THE JURY, ALL
14 OF THEM

15 1988, IN THE "LOS ANGELES TIMES."
16 NOW, I WASN'T, OBVIOUSLY, RESPONSIBLE FOR PULLING
17 THESE THINGS OUT. YOU OR YOUR ASSISTANTS WERE. BY
18 THE WAY, WHO WAS IT, WAS IT YOU OR YOUR ASSISTANTS
19 THAT WAS RESPONSIBLE FOR DECIDING WHICH ONES TO GET
20 PUT ON THESE PIECES OF PAPER TO BE SHOWN?

21 A. I PICKED THEM ALL.

22 Q. YOU PICKED THEM ALL. OKAY.

23 SO WHY DID YOU PICK THAT ONE?

24 A. WELL, THIS AND OTHER, A COUPLE
25 OTHER ON THE SAME PAGE. I THINK WE SHOWED THIS TO
26 YOU ALL THE OTHER DAY. I WANTED TO SHOW HOW THE
27 TOBACCO INDUSTRY HAS BEEN SEEN AND VIEWED, WHAT ITS
28 POPULAR REPUTATION HAS BEEN AND SO, YOU KNOW,

1 BECAUSE PARTS OF WHAT I WAS TRYING TO SHOW IS HOW
2 OVER THIS PERIOD OF TIME, THE INDUSTRY BECAME SEEN
3 AS THIS, YOU KNOW, THE BAD GUYS AND SMOKERS AS BAD
4 GUYS.

5 AND SO THIS WAS ONE OF THE ONES
6 FROM THE "L. A. TIMES" THAT I THINK, YOU KNOW, SAYS
7 IT PRETTY MUCH.

8 Q. WHAT DOES THAT SAY TO YOU,
9 HISTORICALLY SPEAKING?

10 A. IT SAYS, "THIS LEADER HEADS A
11 GOVERNMENT THAT SUPPORTS THE GROWING AND SELLING OF
12 ADDICTIVE NARCOTICS TO AMERICANS. "

13 AND THE IMPLICATION IS THAT
14 NORIEGA, I THINK, RIGHT THERE ON THE LEFT, AND THE
15 ONE ON THE RIGHT SAYS "SO DOES THIS ONE" IS
16 PRESIDENT REGAN EMBRACING THE TOBACCO INDUSTRY.

17 Q. WHY -- YOU ARE A HISTORIAN, YOU
18 WERE THERE, WHAT'S THE SIGNIFICANCE OF PRESIDENT
19 REGAN EMBRACING THE TOBACCO INDUSTRY?

20 A. WELL, BECAUSE REGAN WAS SEEN AS PRO
21 INDUSTRY. HE WAS A CONSERVATIVE REPUBLICAN AND SO,
22 YOU KNOW, THE IDEA OF TOBACCO INTERESTS AND THE
23 TOBACCO SUBSIDIES AND ALL THAT. AND THEN NORIEGA
24 ON THE LEFT WAS BECAUSE WE WERE, YOU KNOW, SOME OF
25 YOU MAY REMEMBER THIS, WE BROUGHT HIM TO THE UNITED
26 STATES TO TRY HIM ON DRUG CHARGES AND SO THEY ARE
27 POINTING OUT HYPOCRISY.

28 Q. DEPENDING ON YOUR POINT OF VIEW, IT

1 WASN' T QUITE A MATTER OF BRINGING HIM TO THE UNITED
2 STATES, THIS GUY, WASN' T HE THE RULER OF THE
3 COUNTRY OF PANAMA? IS THAT RIGHT?

4 A. OH, OF COURSE.

5 Q. DIDN' T WE GO DOWN TO THE COUNTRY OF
6 PANAMA WITH REAL MUSCLE?

7 A. THAT IS RIGHT.

8 Q. AND TAKE THE LEADER OF THE COUNTRY
9 OF PANAMA OUT OF THE COUNTRY OF PANAMA INTO THE
10 UNITED STATES AND PUT HIM IN JAIL AND PROSECUTE HIM
11 AND HE IS IN JAIL RIGHT NOW?

12 A. YES.

13 Q. WHAT ABOUT THAT GUY OVER ON THE
14 OTHER SIDE REGAN HAS HIS ARM AROUND, WHAT DID WE DO
15 TO HIM?

16 MR. LEITER: OBJECTION, ARGUMENTATIVE.

17 THE COURT: CONTINUE. OVERRULED.

18 THE WITNESS: WELL, THERE ARE STILL
19 TOBACCO SUBSIDIES AND FARMING SUBSIDIES THAT GO
20 BACK TO THE NEW DEAL, TO THE TIME WHEN FARMERS WENT
21 BANKRUPT. SO THAT' S HOW FAR BACK THOSE GO AND THEY
22 ARE STILL IN EFFECT.

23 Q. I GUESS THE ANSWER IS "NOTHING. "

24 A. WELL, NO, THAT IS NOT THE ANSWER.

25 MR. LEITER: OBJECTION, YOUR HONOR, WE
26 ARE GOING INTO MOTION IN LIMINE AREAS WITH OTHER
27 MATTERS.

28 THE COURT: WE ARE NOT THERE YET. WE ARE

1 ON THE EDGE.

2 Q BY MR. PIUZE: I AM GOING TO
3 ANOTHER CARTOON ON THE SAME PAGE.

4 YOU CHOSE THIS ONE ALSO; RIGHT?

5 A. YES, I DID.

6 Q. WHY?

7 A. WELL, BECAUSE, AGAIN, I WANTED TO
8 CONVEY HOW THE TOBACCO INDUSTRY IS SEEN AS A
9 POPULAR PHENOMENON, SO THAT WE COULD, FOR EXAMPLE,
10 UNDERSTAND JOKES. AS I SAID BEFORE, THE JOKES OF A
11 CULTURE REVEAL A LOT ABOUT PEOPLE'S ATTITUDES AND
12 WHAT THEY THINK.

13 SO THIS IMPLIES, QUITE CLEARLY,
14 ALTHOUGH YOU HAVE TO SORT OF STEP BACK AND SAY WHY
15 DO I KNOW THIS, "THIS," IMPLYING THAT IF YOU SMOKE
16 YOU WILL END UP IN A CEMETERY, SO YOU ONLY GET THE
17 JOKE IF YOU KNOW THAT SMOKING IS BAD FOR YOU.

18 OTHERWISE, YOU WOULDN'T GET THE
19 JOKE AS TO WHY IS THE TOBACCO INDUSTRY STANDING
20 THERE.

21 Q. WHAT DOES THAT SAY? THAT DOESN'T
22 SAY "TOBACCO INDUSTRY," DOES IT?

23 A. YOU KNOW, I THINK IT DOES --
24 "TOBACCO INSTITUTE," I AM SORRY. IT'S VERY FUZZY
25 FROM BACK HERE.

26 Q. WHAT'S THE TOBACCO INSTITUTE?

27 A. THE TOBACCO INSTITUTE IS A LOBBYING
28 ORGANIZATION FOR THE TOBACCO INDUSTRY.

1 Q. INCLUDING PHILIP MRRIS?

2 A. I BELIEVE SO. I DON' T KNOW THE
3 EXACT MEMBERSHIP ROSTER BUT, YES, THAT' S MY
4 ASSUMPTION.

5 Q. YOU CHOSE THIS CARTOON TO SHOW THE
6 JURY THAT PHILIP MRRIS' S TRADE UMBRELLA, TRADE
7 ORGANIZATION REPRESENTATIVE, WAS THANKFUL THAT ALL
8 THOSE PEOPLE WERE PLANTED UNDERGROUND, YOU CHOSE
9 THAT?

10 A. BUT NOT FOR THE REASONS YOU JUST
11 STATED.

12 Q. WELL, I DIDN' T STATE ANY REASONS.

13 A. YES, I BELIEVE YOU DID. YOU SAID
14 I -- I WISH YOU COULD -- COULD YOU REPEAT IT. THE
15 WAY YOU SAID IT, IT SOUNDED TO ME THAT YOU WERE
16 SAYING I SHOWED THIS BECAUSE THEY WERE THANKFUL
17 THAT THESE PEOPLE ARE UNDERGROUND AND THAT THIS
18 INSTITUTE IS THANKFUL. AND THAT' S NOT WHY I SHOWED
19 IT AT ALL.

20 Q. OH, I UNDERSTAND --

21 A. THE REASON I SHOWED IT IS I WANTED
22 TO -- PEOPLE TO SEE HOW THE INDUSTRY IS PERCEIVED,
23 RIGHTLY OR WRONGLY.

24 Q. I GOT --

25 A. BECAUSE I DID STUDY THAT AND THAT' S
26 WHY I WANTED YOU ALL, THE JURY TO HAVE A LOOK AT
27 IT.

28 Q. I GOT THAT BOOK.

1 HOWEVER, LET' S LOOK AT WHAT IT
2 SAYS.

3 THE PART YOU DIDN' T STUDY, THE PART
4 YOU DIDN' T STUDY SHOWS PHILIP MORRIS' S
5 REPRESENTATIVE, I MEAN, THAT' S THE TOBACCO
6 INSTITUTE, THEY REPRESENT PHILIP MORRIS AND ALL THE
7 REST OF THEM AND THAT GUY STANDING THERE BEING
8 THANKFUL THAT ALL THOSE PEOPLE ARE DEAD, COLD,
9 UNDERGROUND, ISN' T THAT WHAT THAT SAYS?

10 MR. LEITER: ARGUMENT, BEYOND OF SCOPE OF
11 HER TESTIMONY.

12 THE COURT: SUSTAINED.

13 Q BY MR. PIUZE: WHY DO YOU THINK
14 THAT GUY IS THANKING ALL THOSE --

15 THE COURT: SUSTAINED. COUNSEL, MOVE ON.

16 Q BY MR. PIUZE: HERE' S ANOTHER ONE.
17 THIS IS FROM 1981. REMEMBER, WE TALKED ABOUT ELLEN
18 GOODMAN?

19 A. YES.

20 Q. YOU SHOWED THIS IN A DIFFERENT
21 FASHION. THERE WAS SOME YELLOW ARROWS ON IT. DO
22 YOU REMEMBER THAT?

23 A. I THINK THAT I SUGGESTED
24 HIGHLIGHTING THE OPENING PARAGRAPH.

25 Q. OKAY. WELL, I DECIDED TO HIGHLIGHT
26 SOME OTHERS.

27 DO YOU WANT TO TAKE A LOOK AT THIS.

28 A. SURE.

1 Q. (READING)
2 "THIS STUDY, LIKE OTHERS,
3 WILL BE FOLLOWED BY A WORD FROM OUR
4 FAVORITE SPONSOR, THOSE WONDERFUL
5 PEOPLE DOWN -- THOSE WONDERFUL PEOPLE
6 DOWN AT THE TOBACCO INSTITUTE. THE
7 TOBACCO INSTITUTE APPARENTLY EMPLOYS
8 LEGIONS OF GNOMES WHO SPEND THEIR DAYS
9 DEVISING BAROQUE REBUTTALS TO
10 SCIENTIFIC RESEARCH. ONCE THEY
11 ASCRIBED THE RISE IN LUNG CANCER TO
12 ENHANCED DETECTION CAPABILITY. "
13 JUMPING DOWN, "WE EVEN HAVE A
14 PRESIDENT WHO SWITCHED TO JELLY BEANS. "
15 LET' S STOP THERE FOR A SECOND.
16 PRESIDENT REGAN; RIGHT?
17 A. THAT' S RIGHT.
18 Q. ANOTHER SMOKER?
19 A. I -- YES, I ASSUME SO.
20 Q. "AND 90 PERCENT OF THE SMOKERS IN
21 THIS COUNTRY WANT TO QUIT. " DO YOU SEE THAT?
22 A. YES, I DO.
23 Q. "90 PERCENT OF THE SMOKERS IN THE
24 COUNTRY WANT TO QUIT. "
25 THE IMPLICATION IS 90 PERCENT WANT
26 TO QUIT BUT THEY HAVEN' T; RIGHT?
27 A. RIGHT, THEY HAVE NOT.
28 Q. (READING)

1 "THE HOOKING OF YOU -- OF
2 THE YOUNG, IS CRUCIAL TO THE TOBACCO
3 BUSINESS BECAUSE 75 PERCENT OF THE
4 SMOKERS IN THE COUNTRY WERE REGULARS
5 BY 21, AND VIRTUALLY ALL OF THEM
6 SMOKERS BY 25. THE PEOPLE WHO FREAK
7 OUT WHEN KIDS SMOKE POT, LOOK THE
8 OTHER WAY WHEN THEY SMOKE CIGARETTES.
9 THE SAME SENATOR, JESSE HELMS, WHO
10 LEADS THE FIGHT AGAINST THE, ' KILLING
11 OF BABIES, ' SUPPORTS PUBLIC SUBSIDIES
12 OF A SUBSTANCE THAT KILLS ADULTS.
13 THERE WAS SOMETHING SYMBOLIC IN THE
14 FLAP THIS YEAR OVER USING BROOK
15 SHIELDS IN A GOVERNMENT ANTI-SMOKING
16 AD. THE GOVERNMENT MORE WORRIED ABOUT
17 TEENAGE SEX THAN TEENAGE SMOKING
18 REFUSED TO HARNESS HER POPULARITY EVEN
19 FOR THE CAMPAIGN AGAINST CIGARETTES.

20 "PROBABLY THE BEST
21 EXPLANATION OF THE WHOLE TOBACCO
22 SCENARIO CAN BE SEEN IN FORMER H. E. W.
23 SECRETARY CALAFANO'S NEW BOOK,
24 ' GOVERNING AMERICA. ' IN FEWER THAN
25 TWO DOZEN PAGES, HE DESCRIBES THE
26 POWER OF THE TOBACCO LOBBY, THE
27 POLITICAL SMOKESCREEN THAT SHROUDS OUR
28 HEALTH. IN A WONDERFUL MOMENT HE

1 DESCRIBES TRYING, MISCHIEVOUSLY, I
2 SUSPECT, TO ENLIST THE TOBACCO
3 INDUSTRY IN A PUBLIC SERVICE CAMPAIGN
4 URGING KIDS NOT TO SMOKE.

5 "HE RECEIVED ONE LETTER FROM
6 THE HEAD OF THE COMPANY THAT MAKES
7 L&M S AND CHESTERFIELDS, RAYMOND
8 MULGAN, RIGHTEOUSLY REFUSED BECAUSE,
9 'THE MOTHERS AND FATHERS OF THE
10 NATION, WHETHER SMOKERS OR
11 NON-SMOKERS, SHOULD CONTINUE TO HAVE
12 FREEDOM OF CHOICE IN THE EDUCATION AND
13 TRAINING OF THEIR CHILDREN. ' "

14 THAT'S THE END OF THE QUOTE.

15 "THIS IS A CYNICAL RESPONSE
16 OF AN INDUSTRY THAT HIDES BEHIND
17 AMERICAN VALUES AND PRO FAMILY
18 RHETORIC WHILE IT DESTROYS THE HEALTH
19 OF ANOTHER GENERATION. IT IS HARD TO
20 GET EXERCISED ABOUT WHAT WE ALREADY
21 KNOW IT IS EASY TO BECOME IMMUNE TO
22 THE BAD NEWS. CALAFONO DESCRIBES IT
23 SIMPLY, CIGARETTES HAVE KILLED MORE
24 AMERICANS THROUGH HEART DISEASE, LUNG
25 CANCER AND EMPHYSEMA THAN ALL OUR WARS
26 AND ALL OUR TRAFFIC ACCIDENTS
27 COMBINED. ANYONE WHO IGNORES THIS IS
28 ALSO NUTS. "

1 I READ ALL THAT RIGHT; RIGHT?

2 A. YES.

3 Q. SO I AM TALKING JUST ABOUT
4 MOTIVATION AND WHAT IS ON PEOPLE'S MINDS, HOW COME
5 YOU CHOSE TO HIGHLIGHT WHAT YOU CHOSE TO HIGHLIGHT,
6 PLEASE.

7 A. WELL, I CHOSE PART OF WHAT YOU
8 CHOSE TOO, THAT FIRST -- I AM SORRY -- YOU JUST
9 PULLED IT OFF SO I CAN'T SEE IT.

10 Q. I APOLOGIZE.

11 A. IF YOU MOVE IT OVER TO THE LEFT,
12 THE PART ABOUT THE GNOMES, I THINK I READ THAT OUT
13 LOUD TO THE JURY, I THOUGHT. I REMEMBERED DOING
14 SO. I TOOK THE FIRST, BECAUSE I WANT TO SHOW
15 PEOPLE HOW IT OPENS UP, "YET ANOTHER STUDY," AND
16 SHE SORT OF SAYS THAT AT THE END. THE STUFF WE
17 ALREADY KNOW

18 AND I WANTED TO SHOW THIS BECAUSE
19 IT SORT OF SHOWS THE CONTEMPT AND RIDICULE IN WHICH
20 PEOPLE LIKE ELLEN GOODMAN HELD THE TOBACCO INDUSTRY
21 THAT SHE EVEN USES A WORD LIKE GNOMES. THEY ARE
22 TOTALLY RIDICULOUS, ALMOST MYTHICAL CHARACTERS.

23 SO I THINK -- I WANTED YOU TO SEE
24 THIS ARTICLE, AND THAT'S WHY WE PROPPED IT, BECAUSE
25 I THINK IT KIND OF SAYS IT.

26 Q. WHO IS PAYING THE GNOMES?

27 A. WHO IS PAYING THE GNOMES?

28 MR. LEITER: OBJECTION, BEYOND THE SCOPE

1 OF HER TESTIMONY.

2 MR. PIUZE: I WILL WITHDRAW THAT
3 QUESTION.

4 Q BY MR. PIUZE: THE GNOMES WERE THE
5 TOBACCO INSTITUTE. IT DOESN'T MATTER WHO IS
6 PAYING.

7 THEY WERE LYING, WEREN'T THEY?

8 MR. LEITER: OBJECTION, CALLS FOR
9 SPECULATION, BEYOND THE SCOPE OF HER TESTIMONY.

10 THE COURT: WELL, SHE CAN'T MAKE THAT
11 JUDGMENT.

12 MR. PIUZE: I WILL WITHDRAW THAT QUESTION
13 TOO. BAD QUESTION. I APOLOGIZE.

14 Q BY MR. PIUZE: MS. GOODMAN WAS
15 CLEARLY SAYING, THOSE GNOMES WHO WORK FOR THE
16 TOBACCO INSTITUTE, WHO WORK FOR PHILIP MORRIS, WERE
17 LYING; RIGHT?

18 A. I THINK SO. VERY CLEARLY, THAT'S
19 HER IMPLICATION. SHE DID NOT LIKE THEM AT ALL.

20 Q. HERE'S ANOTHER ONE. NOVEMBER 10,
21 1982, DANIEL GREENBERG. IT'S GOT A CARTOON IN
22 THERE --

23 MR. LEITER: COULD WE FOCUS IT OUT SO
24 WE CAN SEE WHAT THE ARTICLE IS BEFORE YOU FOCUS IN.

25 MR. PIUZE: SORRY.

26 MR. LEITER: THANK YOU.

27 OKAY. THANK YOU.

28 Q BY MR. PIUZE: "TOBACCO PUFFS OUT

1 A SCIENTIFIC SMOKESCREEN." WHAT IN THE WORLD DO
2 YOU THINK THAT MEANS?

3 A. I THINK IT MEANS JUST WHAT IT SAYS
4 RIGHT THERE IN THE HEADLINE.

5 Q. WHAT?

6 A. A SMOKESCREEN IMPLIES HIDING
7 SOMETHING, THAT YOU PUT UP SMOKE AND IT IS A PUN
8 HERE BECAUSE IT IS SMOKE.

9 Q. COVER UP?

10 A. WELL, YEAH, I THINK THAT THERE'S A
11 PARALLEL. THEY COVER UP AND SMOKE SCREEN WOULD BE
12 TWO WAYS OF SAYING SOMETHING SIMILAR.

13 Q. HOW ABOUT SCIENTIFIC SMOKE SCREEN,
14 WHAT IN THE WORLD DO YOU THINK THAT MEANS?

15 A. WELL, I THINK THEIR IMPLICATION
16 THERE IS THAT SCIENTIFIC INFORMATION WHICH IS BEING
17 USED IN SOME SMOKE SCREEN.

18 Q. SO THE TOBACCO INDUSTRY WAS, I
19 WASN'T GOING TO SHOW THE HEADLINE, BUT WHAT THE
20 HECK, WHAT YOU TAKE OUT OF THAT, BEFORE READING ANY
21 TEXT IN THERE, IS THAT THE TOBACCO INDUSTRY IS
22 USING SCIENCE TO B. S. THE PEOPLE; RIGHT?

23 A. WELL, NO. WHAT I TAKE AWAY FROM
24 THIS IS -- SORRY, I AM SQUINTING. A LITTLE BIT OF
25 STIGMATISM -- 1982 I THINK IS THE DATE ON THE TOP
26 THERE.

27 WHAT I TAKE AWAY IS THAT BY THE
28 EARLY '80'S, THAT THIS, THAT THE INDUSTRY WAS BEING

1 SEEN AS KIND OF A PARIAH, AS A ROGUE INDUSTRY,
2 HOW -- ONE OF THE REASONS WHY I PICKED THIS ONE, IN
3 ADDITION TO ELLEN GOODMAN, IS THAT IT'S A DIFFERENT
4 EDITORIALIST FROM THE "LOS ANGELES TIMES" IN THIS
5 CASE AND IS SHOWING THESE ATTITUDES, COMMON
6 AWARENESS.

7 Q. BUT FOR THE PEOPLE WHO LOOKED AT
8 THIS, IF THEY ARE AS SMART AS YOU, OR CLOSE, AND
9 THEY JUST LOOK AT THE HEADLINE, THE HEADLINE WOULD
10 SAY TO THE PEOPLE THAT THE TOBACCO INDUSTRY IS
11 USING SCIENCE TO COVER UP THE HONEST TO GOD TRUTH;
12 RIGHT?

13 A. TO PEOPLE LIKE MR. BOEKEN AND
14 EVERYONE ELSE WHO IS READING THE "L. A. TIMES," YES,
15 IT WOULD SAY THAT THE INDUSTRY WAS NOT TRUSTWORTHY.

16 Q. AND THAT, BY THE WAY, JUST SO
17 WE CAN GET THIS OFFICIAL, IS SOMETHING THAT YOU
18 BELIEVE?

19 A. THE TOBACCO INDUSTRY IS NOT
20 TRUSTWORTHY?

21 MR. LEITER: OBJECTION, RELEVANCE, BEYOND
22 THE SCOPE OF HER TESTIMONY.

23 THE COURT: OVERRULED.

24 THE WITNESS: WELL, I AGREE, THAT'S NOT
25 SOMETHING THAT I HAVE STUDIED. WHAT I AM STUDYING
26 ARE THE COMMON ATTITUDES AND I BELIEVE THAT THIS IS
27 HOW THEY WERE PERCEIVED.

28 Q BY MR. PIUZE: DO YOU HAVE AN

1 OPINION AS TO WHETHER OR NOT THE TOBACCO INDUSTRY
2 IS TRUSTWORTHY?

3 A. SO YOU ARE NOT ASKING ME AS A
4 HISTORIAN? I DON'T THINK THAT THIS IS SOMETHING
5 THAT'S WITHIN MY SCOPE.

6 I HAVE BEEN ASKED TO TESTIFY TO
7 WHAT PEOPLE THOUGHT, WHAT WAS COMMON AWARENESS AND,
8 YOU KNOW, THAT'S WHAT I FEEL LIKE I CAN TESTIFY TO.

9 Q. OKAY. THAT'S FINE.

10 SO LET ME JUST, JUST SO WE CAN GET
11 THIS REALLY STRAIGHT HERE, IT WAS OUT THERE FOR
12 PEOPLE WHO CARED TO READ THE PAPERS, THAT SOME
13 EDITORIAL PEOPLE AND NEWSPAPER PEOPLE AND
14 GOVERNMENT PEOPLE ALL THOUGHT THE TOBACCO INDUSTRY
15 WAS FULL OF IT. RIGHT SO FAR?

16 A. THAT IS RIGHT.

17 Q. BUT YOU'RE NOT GOING TO TAKE A
18 POSITION ON WHETHER OR NOT THAT WAS CORRECT?

19 MR. LEITER: OBJECTION, RELEVANCE.
20 MISSTATES TESTIMONY.

21 THE COURT: OVERRULED. BIAS, INTEREST OR
22 OTHER MOTIVE.

23 Q BY MR. PIUZE: I HAVE THAT RIGHT
24 SO FAR?

25 A. YES.

26 Q. OKAY. THERE'S ANOTHER STEP.

27 A. SURE.

28 Q. BECAUSE WE ALREADY GOT THAT FAR.

1 HERE' S THE NEXT STEP.

2 BUT WHEN MR. BOEKEN DIDN' T GO ON
3 THE SIDE OF THE EDITORIALISTS AND THE WRITERS, YOU
4 CRITICIZE HIM FOR THAT.

5 MR. LEITER: OBJECTION, ARGUMENTATIVE.
6 ASSUMES FACTS. MISSTATES HER TESTIMONY.

7 THE COURT: OVERRULED.

8 THE WITNESS: I AM NOT CRITICIZING
9 MR. BOEKEN.

10 Q BY MR. PIUZE: BECAUSE SO FAR,
11 THERE' S SORT OF A PARALLEL, HE' S PRETTY BRIGHT, YOU
12 ARE PRETTY BRIGHT; HE WAS READING THE NEWSPAPERS,
13 WERE YOU READING THE NEWSPAPERS; THAT WAS THERE FOR
14 HIM TO SEE, THAT WAS THERE FOR YOU TO SEE. YOU
15 DON' T TAKE A POSITION ON IT AND HE DIDN' T TAKE A
16 POSITION AGAINST THE TOBACCO INDUSTRY?

17 MR. LEITER: OBJECTION.

18 Q BY MR. PIUZE: AND YOU ARE NOT
19 EITHER, ARE YOU?

20 MR. LEITER: ARGUMENTATIVE.

21 THE COURT: OVERRULED. YOU HAVE A
22 CONTINUING OBJECTION.

23 MR. LEITER: THANK YOU, YOUR HONOR.

24 Q BY MR. PIUZE: THAT' S A TRUE
25 STATEMENT, WHAT I JUST SAID?

26 A. I THINK YOU ARE MAKING A PARALLEL
27 BETWEEN ME AND MR. BOEKEN, WHICH IS NOT APT.

28 Q. I WAS MAKING A PARALLEL BETWEEN YOU

1 AND MR. BOEKEN.

2 A. YES, I KNOW I AM DISAGREEING WITH
3 IT.

4 Q. (READING)

5 "WITH THE PERSISTENCE OF A
6 CHAIN SMOKER'S WHEEZE, THE TOBACCO
7 INDUSTRY CONTENDS THAT THE CASE IS NOT
8 PROVED, THAT THERE IS NO SCIENTIFIC
9 PROOF BEHIND THE U. S. SURGEON
10 GENERAL'S DECLARATION THAT, 'CIGARETTE
11 SMOKING IS THE SINGLE MOST PREVENTABLE
12 CAUSE OF DEATH.' IF THAT'S WHAT THE
13 CIGARETTE MAKERS REALLY BELIEVE, WHY
14 ARE THEY STONEWALLING DR. ELIZABETH
15 WHELAN, A GRADUATE OF HARVARD SCHOOL
16 OF PUBLIC HEALTH, WHO HEADS A WIDELY
17 SUPPORTED PUBLIC INTEREST ORGANIZATION
18 CALLED THE AMERICAN COUNCIL ON SCIENCE
19 AND HEALTH.

20 "WHELAN SENT AN INQUIRY LAST
21 AUGUST TO HORACE KORNEGAY, PRESIDENT
22 OF THE WASHINGTON BASED TOBACCO
23 INSTITUTE, THE LOBBYING ARM OF THE
24 INDUSTRY."

25 AND I CHOOSE NOT TO READ ALL THIS
26 AND I CAN'T. I HAVE TIME CONSTRAINTS. BUT HERE WE
27 GO TO ANOTHER PART.

28 "THE MANUFACTURERS ARE NOT

1 PERMITTED TO ADVERTISE THAT CIGARETTES
2 ARE SAFE. BUT THERE'S NOTHING TO
3 PREVENT THEM FROM ATTACKING EVERY
4 ANTI-TOBACCO HEALTH STUDY AS
5 SCIENTIFICALLY INADEQUATE, EVEN WHEN
6 THE ACCUMULATED EVIDENCE IS
7 OVERWHELMING AND ACCEPTED BY MEDICAL
8 AUTHORITIES AND VIRTUALLY EVERY MAJOR
9 NATURE. "

10 LET'S STOP THERE FOR A SECOND.
11 WHY DO YOU THINK THE TOBACCO
12 INDUSTRY, INCLUDING THIS DEFENDANT, PHILIP MORRIS,
13 ATTACKED EVERY ANTI-TOBACCO HEALTH STUDY AS
14 SCIENTIFICALLY INADEQUATE?

15 MR. LEITER: OBJECTION. CALLS FOR
16 SPECULATION. BEYOND THE SCOPE OF THE TESTIMONY.
17 THE COURT: OVERRULED.

18 THE WITNESS: WELL, IT WOULD CALL FOR
19 SPECULATION BECAUSE I DON'T KNOW WHY THEY PURSUED
20 THE STRATEGIES THAT THEY DID.

21 AND I, YOU KNOW, I THINK YOU
22 PROBABLY WOULD HAVE TO UNDERTAKE A SUSTAINED STUDY
23 OF THE COMPANIES TO UNDERSTAND THAT AND I DIDN'T DO
24 THAT. SO I CAN'T ANSWER YOUR QUESTION.

25 Q BY MR. PIUZE: THAT'S YOUR BEST
26 ANSWER?

27 A. YES, THAT IS MY BEST ANSWER.

28 Q. OKAY. DO YOU THINK THERE WERE SOME

1 LISTENERS WHEN PHILIP MORRIS ATTACKED EVERY
2 ANTI-TOBACCO HEALTH STUDY AS SCIENTIFICALLY
3 INADEQUATE, DO YOU THINK THERE WERE SOME LISTENERS
4 OUT THERE?

5 MR. LEITER: OBJECTION, ASSUMING FACTS
6 AND CALLS FOR SPECULATION.

7 THE COURT: OVERRULED. IF IT OCCURRED.

8 THE WITNESS: THEY GOT VERY LITTLE
9 COVERAGE OF THEIR POSITION, RELATIVELY MINIMAL
10 COVERAGE.

11 SO, YES, THERE WOULD HAVE BEEN
12 PEOPLE WHO WOULD HAVE READ IT, TO THE EXTENT THAT
13 IT WAS AVAILABLE, BUT IT WAS NOT WIDELY AVAILABLE.

14 Q BY MR. PIUZE: SO THAT'S A YES?

15 A. I DIDN'T THINK IT WAS A YES OR NO
16 QUESTION.

17 Q. WHEN PHILIP MORRIS ATTACKED EVERY
18 ANTI-TOBACCO HEALTH STUDY AS SCIENTIFICALLY
19 INADEQUATE, DO YOU THINK THERE WERE ANY LISTENERS
20 OUT THERE? THAT WAS MY QUESTION.

21 MR. LEITER: OBJECTION.

22 THE COURT: THE SAME BASIS, IF, IN FACT
23 THAT, OCCURRED.

24 THE WITNESS: THAT'S THE IF, IN FACT, IS
25 THE DIFFICULT PROBLEM BECAUSE IT IS A HYPOTHETICAL
26 QUESTION. IF THEY ATTACKED --

27 THE COURT: I AM SORRY. EXCUSE ME. YOU
28 MUST ANSWER HYPOTHETICAL QUESTIONS POSED TO YOU, IF

1 I ALLOW THEM

2 THE WITNESS: OH, I AM SORRY, YOUR HONOR.

3 THE COURT: THANK YOU.

4 THE WITNESS: YES, THERE WERE LISTENERS.

5 THERE WOULD BE LISTENERS IN THAT SITUATION.

6 Q BY MR. PIUZE: BY THE WAY,
7 PROFESSOR, WHAT ABOUT MY QUESTION DO YOU THINK IS
8 HYPOTHETICAL, YOU, PERSONALLY?

9 A. WELL, I THINK YOU USED THE WORD
10 "IF" AT SOME POINT, AND YOU SAID "IF THEY ATTACKED
11 EVERY ANTI-TOBACCO HEALTH STUDY," AND I THINK THAT
12 THAT'S NOT LIKELY, BECAUSE THERE WERE 3,000 STUDIES
13 JUST IN THE PERIOD BETWEEN 1950 AND 1963, BEFORE
14 THE SURGEON GENERAL'S REPORT.

15 THE SURGEON GENERAL TOOK THESE
16 3,000 STUDIES THAT HAPPENED IN THAT 13-YEAR-PERIOD
17 OF TIME SO I CANNOT IMAGINE THAT THEY WOULD HAVE
18 BEEN, HAD ENOUGH PEOPLE TO ATTACK EVERY STUDY.

19 SO IT'S KIND OF HYPERBOLE. IT'S AN
20 EXAGGERATION.

21 Q. I GUESS DANIEL GREENBERG WAS
22 PUFFING TOO, WASN'T HE?

23 A. WAS HE A SMOKER?

24 Q. NO. HE WAS PUFFING HIS STORY. IT
25 WAS HYPERBOLE. HE WAS PUFFING HIS STORY, WASN'T
26 HE?

27 A. DID HE SAY IT OR DID YOU SAY IT?

28 Q. HE SAID IT.

1 A. THERE' S NOTHING TO PREVENT -- OH,
2 NO, NO. HE SAYS THERE' S NOTHING TO PREVENT THEM
3 FROM ATTACKING. THAT' S NOT SAYING THAT THEY DID
4 ATTACK. THERE' S NOTHING TO PREVENT THEM I
5 THOUGHT THAT YOU SAID IN YOUR HYPOTHETICAL "IF THEY
6 ATTACKED EVERY STUDY," WHICH IS DIFFERENT FROM WHAT
7 YOU SAID.

8 Q. OKAY. I GUESS I WAS WRONG.

9 HOW ABOUT THIS:

10 "SHAMEFULLY, THE TOBACCO
11 INSTITUTE REFUSED TO REPLY TO THE
12 OBVIOUS REASON THAT BY ANY ACCEPTED
13 DEFINITION OF SCIENTIFIC CRITERIA, THE
14 HEALTH CASE AGAINST CIGARETTES HAS
15 BEEN OVERWHELMINGLY ESTABLISHED. "

16 ANYWAY, THAT' S ONE -- THIS WAS ONE
17 THAT YOU CHOSE; RIGHT?

18 A. YES, IT WAS.

19 Q. HERE, LET' S -- ALMDST DONE. I AM
20 ALMDST READY TO GO TO SOMETHING ELSE. LET' S LOOK
21 AT ANOTHER.

22 DO YOU SEE THAT DATE THERE?

23 A. UH-HUH, YES, I DO.

24 Q. SAY IT OUT LOUD, PLEASE.

25 A. IT IS JANUARY 7TH, 1993.

26 Q. (READING)

27 "E. P. A. REPORT SCHEDULED FOR
28 RELEASE TODAY CONCLUDES THAT CIGARETTE

1 SMOKE KILLS ANNUALLY 3,000 AMERICANS
2 WHO DON'T EVEN SMOKE. THESE
3 NON-SMOKERS WHOSE DEATHS TYPICALLY ARE
4 CAUSED BY LUNG CANCER FALL VICTIM TO
5 SECONDHAND OR PASSIVE SMOKE PRODUCED
6 BY NEARBY CIGARETTE USERS.

7 "THE TOBACCO INSTITUTE, AN
8 INDUSTRY LOBBYING GROUP, SAYS THE
9 CONCLUSIONS ARE UNSUPPORTED BY
10 EXISTING SCIENTIFIC DATA AND THAT THE
11 E. P. A. HAS MISCHARACTERIZED AND
12 MANIPULATED THE DATA. AND IN SO
13 DOING, THE INDUSTRY MAINTAINS ITS
14 UNBLEMISHED 30 YEAR RECORD OF DENYING
15 THAT THERE'S ANY SCIENTIFIC PROOF
16 LINKING CANCER AND SMOKING.

17 "ASSEMBLYMAN TERRY FRIEDMAN,
18 DEMOCRAT, ENCINO, WOULD BAN SMOKING IN
19 ALL ENCLOSED PLACES OF EMPLOYMENT.
20 FRIEDMAN SPONSORED AN IDENTICAL
21 MEASURE LAST YEAR THAT DIED IN
22 COMMITTEE.

23 "IF HIS BILL SUCCEEDS,
24 CALIFORNIA WOULD BE THE FIRST STATE TO
25 ADOPT A BLANKET BAN ON WORKPLACE
26 SMOKING." WHICH HADN'T OCCURRED AS OF
27 JANUARY 1993.

28 A. THAT'S RIGHT.

1 Q. AND THE LAST. THE YEAR, PLEASE.

2 A. THIS ONE IS NOVEMBER 21ST, 19 -- I
3 THINK, I CAN'T READ -- 83?

4 Q. YES.

5 A. '83.

6 Q. I DON'T MEAN THIS TO BE A READING
7 TEST. JUST WORKING WITH THE DOCUMENTS I WAS GIVEN
8 HERE.

9 "THE TOBACCO INSTITUTE
10 DISMISSED THE REPORT, AS A BRIEF FOR
11 THE PROSECUTION. SMOKERS WILL BELIEVE
12 THE INSTITUTE AT THEIR OWN PERIL. A
13 LOT OF PEOPLE SEEM TO PREFER THE
14 COUNSEL OF THE SURGEON GENERAL. THE
15 PERCENTAGE OF PEOPLE SMOKING
16 CIGARETTES IS DECLINING-NOW LESS THAN
17 ONE-THIRD OF THE POPULATION COMPARED
18 TO 41.7 PERCENT IN 1965, THE RECORD
19 SAYS."

20 DID I READ THAT RIGHT?

21 A. YES, YOU DID.

22 Q. "SMOKERS WILL BELIEVE THE INSTITUTE
23 AT THEIR OWN PERIL."

24 IS THERE SOME SORT OF IMPLICATION
25 THERE THAT SOME SMOKERS WILL BELIEVE WHATEVER THE
26 TOBACCO INDUSTRY WAS PUTTING OUT?

27 A. I THINK THAT THEY ARE TRYING TO SAY
28 THAT SMOKERS SHOULD BEWARE AND I THINK IT'S KIND OF

1 A SARCASTIC THING. THEY SAY A LOT OF PEOPLE PREFER
2 THE COUNSEL OF THE SURGEON GENERAL, MEANING, YOU
3 KNOW, BETWEEN THESE TWO EXTREMES, YOU KNOW, WHO
4 WOULD WE NOT REALLY PREFER, THE ADVICE OF A DOCTOR
5 OR THE ADVICE OF SOMEBODY WHO IS TRYING TO SELL US
6 THIS. SO, YEAH, I THINK THAT THAT IS THE
7 IMPLICATION THERE.

8 AND I CHOSE THIS ONE BECAUSE,
9 AGAIN, I THINK IT'S, IT REFLECTS THIS BELIEF THAT
10 THE INDUSTRY IS NOT CREDIBLE, THAT YOU SHOULD NOT
11 SMOKE, THAT IF YOU DO EITHER SMOKE OR BELIEVE THE
12 INSTITUTE, IT'S AT YOUR OWN PERIL AND THAT MOST
13 PEOPLE DON'T BELIEVE IT, BECAUSE THEY PREFER THE
14 COUNSEL OF THE SURGEON GENERAL AND THE CONSEQUENCE
15 IS THAT SMOKING IS GOING DOWN.

16 Q. THERE'S NO QUESTION THAT MOST
17 PEOPLE TRUST THE SURGEON GENERAL OVER THE TOBACCO
18 INDUSTRY; RIGHT?

19 A. THE SURGEON GENERAL AND EVERYONE
20 ELSE WHO IS TELLING THEM THAT SMOKING IS BAD FOR
21 THEM

22 Q. SO THAT'S A YES TO MY QUESTION?

23 A. THAT IS A YES.

24 Q. AND THERE IS NO QUESTION THAT
25 SMOKING HAS GONE DOWN AS MORE AND MORE AND MORE
26 STUFF HAS COME OUT; RIGHT?

27 A. IT'S GONE DOWN, YES.

28 Q. AND THERE'S NO QUESTION THAT THE

1 TOBACCO INDUSTRY TRIED TO B. S. THE PEOPLE ALONG
2 THE WAY TO HOLD ON TO AS MANY SMOKERS AS THEY COULD
3 WITH SMOKESCREENS AND AN UNBLEMISHED RECORD OF
4 FIGHTING SCIENCE OVER 30 YEARS?

5 MR. LEITER: OBJECTION. ARGUMENTATIVE,
6 CALLS FOR SPECULATION, BEYOND THE SCOPE OF HER
7 TESTIMONY.

8 THE COURT: OVERRULED.

9 THE WITNESS: I THINK YOU MIGHT BE
10 GETTING BACK TO THEIR MOTIVATIONS AGAIN. AND THAT,
11 AS I SAID, I CAN TESTIFY TO.

12 BUT AS, WHEN I MADE THOSE PILES, I
13 REALLY WANTED TO INCLUDE THINGS WHICH WOULD LET THE
14 JURORS SEE HOW THE INDUSTRY DOWN-PLAYED THE DANGER
15 AND SO, YES, THAT WAS AN IMPORTANT PART OF IT.

16 Q. WELL, I AM JUST READING RIGHT OFF
17 OF THE VERY, VERY EDITORIALS AND STORIES THAT YOU
18 CHOSE TO HAVE THE JURY SEE.

19 A. YES.

20 Q. ACCORDING TO THE VERY STORIES THAT
21 YOU CHOSE TO HAVE THE JURY SEE, THE TOBACCO
22 INDUSTRY, PHILIP MORRIS AMONG THEM, HAD AN
23 UNBLEMISHED RECORD FOR 30 YEARS OF PUTTING UP A
24 SMOKESCREEN, A SCIENTIFIC SMOKESCREEN AND A
25 COVER-UP TO HOLD ONTO AS MANY HOOKED SMOKERS AS
26 THEY COULD?

27 MR. LEITER: SAME OBJECTION.

28 Q BY MR. PIUZE: RIGHT?

1 THE COURT: OVERRULED.

2 THE WITNESS: I AM NOT SAYING THAT THEY
3 DID IT. I AM SAYING THAT THAT'S HOW IT WAS
4 PERCEIVED.

5 Q BY MR. PIUZE: I ASKED SOMETHING
6 THAT I THINK YOU COULD TRY "YES" OR "NO" ON.

7 A. I HONESTLY DON'T THINK IT WAS A YES
8 OR NO QUESTION. BUT MAYBE YOU SHOULD ASK IT AGAIN.

9 Q. I WILL.

10 A. OKAY.

11 Q. THANK YOU.

12 USING THE VERY ARTICLES THAT YOU
13 CHOSE FOR THIS JURY TO SEE FOR WHATEVER PURPOSES,
14 WE SEE THAT, ACCORDING TO THESE ARTICLES, THE
15 TOBACCO INDUSTRY, INCLUDING PHILIP MORRIS, FOR 30
16 YEARS, HAD AN UNBLEMISHED RECORD OF DENYING, THAT
17 THERE WERE MAJOR HEALTH RISKS LIKE CANCER, HEART
18 DISEASE AND EMPHYSEMA, CAUSED BY SMOKING AND THAT
19 THEY PUT UP A SCIENTIFIC SMOKE SCREEN IN ORDER TO
20 HOLD ONTO AS MANY, AND YOU HAVE ALREADY TOLD US,
21 ADDICTED SMOKERS AS THEY COULD; RIGHT?

22 MR. LEITER: SAME OBJECTION, ALSO
23 MISSTATES THE TESTIMONY.

24 THE COURT: OVERRULED.

25 THE WITNESS: YES, ACCORDING TO THE
26 ARTICLES.

27 MR. PIUZE: THANKS.

28 THE WITNESS: IT'S A VERY LONG QUESTION,

1 SIR. SOMETIME IT'S HARD TO GET EXACTLY THE TURNING
2 POINT IN THE QUESTION.

3 MR. PIUZE: WELL, I ASK QUESTIONS FOR A
4 LIVING.

5 THE COURT: ALL RIGHT, ENOUGH COLLOQUY.

6 MR. PIUZE: I AM SORRY.

7 THE COURT: ON BOTH SIDES, THE WITNESS
8 AND THE ATTORNEY.

9 MR. PIUZE: YOUR HONOR, I SHOULD KNOW
10 BETTER. I APOLOGIZE.

11 Q BY MR. PIUZE: DID YOU EVER HEAR
12 SOMETHING LIKE "THE PAST IS PRELUDE"?

13 A. YES, I HAVE HEARD THAT.

14 Q. WHAT DOES THAT MEAN, "THE PAST IS
15 PRELUDE"?

16 A. WELL, THAT MEANS THAT KIND OF
17 COMMON SENSE, THAT WHAT GOES BEFORE HELPS TO
18 DETERMINE WHAT COMES AFTERWARDS.

19 Q. WHAT HAS ALREADY HAPPENED IS AN
20 INDICATOR OF WHAT'S GOING TO HAPPEN?

21 A. THAT WOULD BE ANOTHER WAY OF SAYING
22 IT.

23 Q. THE BURGLARY, THE COVER UP, THE
24 COVER UP OF THE COVER UP.

25 NOW, THE PAST IS PRELUDE.

26 HOW ABOUT, I ALWAYS MANGLE THIS
27 QUOTE, BUT I KNOW YOU WILL GET IT FOR ME, "THOSE
28 WHO DO NOT REMEMBER THE PAST ARE DOOMED TO REPEAT

1 IT. "

2 IS THAT CLOSE?

3 A. GEORGE SANTANA. THAT'S FAIRLY
4 CLOSE.

5 Q. I KNEW IT WAS SANTANA. BUT CAN YOU
6 SAY IT PROPERLY, BECAUSE I DIDN'T SAY IT PROPERLY.

7 A. NO, I COULDN'T GET THE EXACT PROPER
8 WORDS IN THE EXACT SPOT. BUT IT SOUNDED ABOUT
9 RIGHT.

10 Q. SO BETWEEN THE TWO OF US, THE BEST
11 WE CAN COME UP WITH, THOSE THAT DON'T LISTEN TO THE
12 PAST AND WHAT'S ALREADY HAPPENED ARE DOOMED TO GO
13 THROUGH IT AGAIN; RIGHT?

14 A. MUCH LONGER. BUT, I THINK IT
15 CONVEYS THE SENTIMENT.

16 Q. THAT'S THE SAME AS "PAST IS
17 PRELUDE," IT'S ALREADY HAPPENED. IT MAY BE
18 HAPPENING AGAIN?

19 A. YES.

20 Q. HAVE YOU EVER READ THE SURGEON
21 GENERAL'S REPORT, EVER?

22 A. I HAVE READ A NUMBER OF THEM, YES.

23 Q. WHICH YEARS?

24 A. 1964 CERTAINLY. AND I HAVE READ
25 PARTS OF SOME FROM THE '70'S AND '80'S. READ SOME
26 FROM THE '90'S, YEAR 2000, 2001.

27 Q. THE SURGEON GENERAL, GOING ALL THE
28 WAY BACK TO 1964, WAS PUTTING A YEARLY TOLL ON HOW

1 MANY PEOPLE WERE DYING FROM THE EFFECTS OF TOBACCO;
2 RIGHT?

3 A. I DON'T RECALL THAT AS BEING AN END
4 OF THE REPORT SUMMARY. BUT THEY MENTION IN IT
5 DIFFERENT REPORTS.

6 Q. TELL ME A NUMBER, PLEASE.

7 A. WELL, WE CAN USE THE NUMBER THAT
8 YOU HAVE BEEN USING, SIR, WHICH WOULD BE 400,000.

9 Q. I CAN DO THAT BUT I WANT A NUMBER
10 THAT YOU ARE RELATIVELY COMFORTABLE WITH. YOU HAVE
11 LOOKED AT THESE REPORTS AND I DON'T WANT TO MAKE
12 ANY PERSONAL COMMENTS. IT'S A NO-NO FROM ME. YOU
13 ARE THE WITNESS.

14 A. I HAVE SEEN REPORTS BETWEEN 300 AND
15 400,000.

16 Q. JUST FOR THE SAKE OF ARGUMENT, AND
17 REMINDING YOU THAT YOU HAVE INTRODUCED THE NUMBER
18 500,000 ON YOUR OWN HERE OFF OF A BILLBOARD
19 SOMEPLACE, CAN WE USE -- WILL YOU FEEL COMFORTABLE
20 USING THE 400,000 NUMBER?

21 A. YES.

22 Q. IS 43 YEARS, 400,000 A YEAR, FOUR
23 TIMES FOUR IS 16, THERE'S 16 MILLION, FOUR TIMES
24 THREE IS 12, THAT'S 12 MILLION PEOPLE. OKAY?

25 MR. LEITER: YOUR HONOR, I AM GOING TO
26 OBJECT TO THIS AS BEYOND THE SCOPE OF THE
27 TESTIMONY. MISSTATES THE PRIOR TESTIMONY.

28 THE COURT: OVERRULED.

1 Q BY MR. PIUZE: NOW, YOU REMEMBER
2 ONE OF THOSE EDITORIALS THAT YOU CHOSE THAT I
3 SHOWED WITH SOMEONE, I THINK IT WAS THE SECRETARY
4 OF THE H. E. W. , CALAFANO, WHO WAS A JOHNSON
5 APPOINTEE; RIGHT?

6 A. YES, PREVIOUSLY, AT THAT TIME, HE
7 WAS A CARTER APPOINTEE.

8 Q. SAID, THAT MORE PEOPLE HAD DIED
9 FROM TOBACCO THAN ALL THE FOREIGN WARS AND ALL THE
10 TRAFFIC ACCIDENTS AND ALL THE ALL. DO YOU REMEMBER
11 THAT? WE JUST READ THAT?

12 A. YES, I DO.

13 Q. I 'D LIKE TO DO SOMETHING SLIGHTLY
14 DIFFERENT THEN, IF I COULD.

15 THERE WAS A WITNESS HERE, THE
16 SECOND WITNESS IN THIS TRIAL, NAMED DR. FARONE,
17 DO YOU KNOW, HAVE YOU EVER HEARD OF HIM?

18 A. NO.

19 Q. I 'D LIKE YOU TO JUST ASSUME THE
20 FOLLOWING.

21 DR. FARONE WAS ONE OF THE HIGHEST
22 RANKING SCIENTISTS AT PHILIP MORRIS FOR THE PERIOD
23 BETWEEN 1976, 1984. AND WHEN ASKED BY THE DEFENSE,
24 I BELIEVE, I AM NOT SURE, IT MIGHT HAVE BEEN ME ON
25 REDIRECT, ABOUT WHY HE WAS TESTIFYING, USUALLY FOR
26 FREE, IN ALL THESE TOBACCO CASES, HIS ANSWER WAS
27 THAT SINCE HE LEFT, SO WE ARE TALKING 1984, SINCE
28 HE LEFT PHILIP MORRIS, MORE PEOPLE HAD DIED IN THIS

1 COUNTRY OF TOBACCO-RELATED ILLNESSES THAN DIED IN
2 THE HOLOCAUST AND HE HAD A SENSE OF SOME PERSONAL
3 RESPONSIBILITY FOR THAT.

4 SO I WANT YOU TO JUST ASSUME THAT'S
5 TRUE FOR NOW WOULD YOU PLEASE.

6 MR. LEITER: I AM GOING TO OBJECT TO THE
7 CHARACTERIZATION, CERTAINLY BEYOND THE SCOPE OF THE
8 WITNESS'S TESTIMONY.

9 THE COURT: OVERRULED.

10 Q BY MR. PIUZE: OKAY.

11 A. I HEAR YOU.

12 Q. OKAY, NOW, YOU KNOW WHAT THE
13 HOLOCAUST IS, OBVIOUSLY?

14 A. YES, I DO.

15 Q. THAT REFERS TO HITLER GASSING,
16 WHAT'S THE USUAL ACCEPTED NUMBER, SIX MILLION?

17 A. SEVEN.

18 Q. SEVEN MILLION JEWS IN EUROPE;
19 RIGHT?

20 A. THAT IS RIGHT.

21 Q. KILLING THEM ALL?

22 A. THAT IS RIGHT.

23 MR. LEITER: OBJECT, THIS IS ALL
24 ARGUMENT.

25 THE COURT: OVERRULED. CAUTION, COUNSEL.

26 MR. PIUZE: YES.

27 Q BY MR. PIUZE: I AM JUST TRYING TO
28 PUT THIS NUMBER IN PERSPECTIVE HERE AND I AM

1 POINTING AT 17, 200, 000 PEOPLE.

2 IN THE 20TH CENTURY, THE ENTIRE
3 20TH CENTURY, HAVE THERE BEEN, LIKE, MAYBE FOUR
4 MAJOR WELL-REPORTED GENOCIDES?

5 MR. LEITER: YOUR HONOR, OBJECTION, 352,
6 ARGUMENT.

7 THE COURT: 352, COUNSEL, ON THIS ONE.

8 MR. PIUZE: OKAY.

9 THANK YOU. I AM OFF OF THAT
10 SUBJECT.

11 THE COURT: THANK YOU.

12 Q BY MR. PIUZE: YOU SAID, I
13 BELIEVE, THAT THERE WERE SOME ANTI-SMOKING FILM
14 CLIPS DONE HERE IN CALIFORNIA SOMETIME AGO AND YOU
15 ALLUDED TO ONE WHERE PEOPLE WERE SURVEYED AFTER THE
16 FACT, A COUPLE YEARS AFTER THE FACT, AND THEY
17 REMEMBERED A PARTICULAR COMMERCIAL.

18 DO YOU REMEMBER YOUR TESTIMONY?

19 A. YES, I DO.

20 Q. WHICH COMMERCIAL?

21 A. THE COMMERCIAL I WAS REFERRING TO
22 WAS THE SORT OF FLAGSHIP, FIRST COMMERCIAL THAT WAS
23 PRODUCED UNDER PROPOSITION 99. AND IT WAS A
24 COMMERCIAL WHERE ACTORS WERE HIRED TO PORTRAY
25 TOBACCO COMPANY EXECUTIVES AND THEY SAY, "WE ARE
26 NOT IN THIS FOR OUR HEALTH," AND THEN THEY LAUGH
27 AND THEY SHOWED IT FOR ABOUT SIX YEARS.

28 Q. LET'S SEE IF WE CAN REMEMBER THAT

1 COMMERCIAL.
2 THESE TOBACCO COMPANY EXECUTIVES
3 WERE ALL IN A SMOKE-FILLED ROOM, RIGHT?
4 A. THAT IS RIGHT.
5 Q. SMOKING?
6 A. THAT IS RIGHT.
7 Q. CONFIDENT?
8 A. I DON'T REMEMBER IF THEY WERE
9 CONFIDENT.
10 Q. THAT'S A QUESTION, NOT A STATEMENT.
11 A QUESTION, WERE THEY COUGHING?
12 A. WERE THEY COUGHING? I DON'T KNOW
13 Q. AND THESE TOBACCO EXECUTIVES WERE
14 IN THIS SMOKE-FILLED ROOM AND IS THAT THE QUOTE,
15 "WE ARE NOT IN THIS FOR OUR HEALTH"?
16 A. I BELIEVE SO. I THINK THAT WAS THE
17 PUNCH LINE.
18 Q. SO WHAT DID THAT MEAN?
19 A. WELL, THE IMPLICATION, CLEARLY, IS
20 THAT THEY ARE IN IT FOR THE MONEY.
21 THAT'S WHAT USUALLY IS MEANT WHEN
22 YOU SAY I AM NOT DOING THIS FOR MY HEALTH. IT WAS
23 LIKE THE J. R. EWING ONE THAT THE AMERICAN CANCER
24 SOCIETY SHOWED YOU THE OTHER DAY WHERE THE ACTOR,
25 LARRY HAGMAN SAYS, "I AM DOING THIS FOR THE
26 AMERICAN CANCER SOCIETY, I AM NOT DOING IT FOR MY
27 HEALTH, BECAUSE I AM SUCH A NICE GUY." AND WE KNOW
28 HE IS NOT A NICE GUY.

1 Q. WASN' T -- LET ME JUST TRY THIS.
2 BECAUSE THEY WERE ALL IN A
3 SMOKE-FILLED ROOM, BECAUSE THEY WERE ALL SMOKING,
4 WASN' T THE IMPLICATION BEYOND THE FACT THAT WE ARE
5 IN IT FOR THE MONEY, WASN' T THE MESSAGE, WE ARE IN
6 IT FOR THE MONEY AT THE EXPENSE OF HEALTH?

7 A. YES, I THINK IT WAS.

8 Q. YES. SO IN OTHER WORDS, YOU KNOW,
9 NOT TO FLOG IT TOO MUCH, BUT THAT PARTICULAR
10 COMMERCIAL -- BY THE WAY, PROPOSITION 99, WHAT
11 YEAR?

12 A. 1988.

13 Q. WHO SPONSORED THOSE ADS?

14 A. THE ADS WE ARE JUST DISCUSSING?

15 Q. YES.

16 A. CALIFORNIA DEPARTMENT OF PUBLIC
17 HEALTH.

18 Q. WHERE DID CALIFORNIA DEPARTMENT OF
19 PUBLIC HEALTH GET THE MONEY TO DO THAT?

20 A. WELL, THEY GOT IT FROM THE TOBACCO
21 INDUSTRY.

22 Q. HOW DID THEY GET IT?

23 A. THEY DID IT BY RAISING THE TAXES ON
24 TOBACCO, ON CIGARETTE SALES, SO THEY GOT MILLIONS
25 AND MILLIONS OF DOLLARS.

26 Q. IN THE LATE 1980' S, THIS STATE, AS
27 A FORERUNNER, PUT EXTRA TAX ON CIGARETTES AND USED
28 THE MONEY TO WARN THE PEOPLE; RIGHT?

1 A. CALIFORNIA WAS A LEADER.

2 Q. AND IS?

3 A. AND STILL IS.

4 Q. AND IT'S ONE OF THE REASONS THAT
5 THE SMOKING RATE HAS DECLINED MORE IN CALIFORNIA
6 THAN AROUND THE COUNTRY?

7 A. YES, THAT'S TRUE SINCE 1958. WE
8 HAVE SEEN THAT CALIFORNIA WAS A LEADER, REALLY,
9 SINCE THE LATE '40'S.

10 Q. SO THE MESSAGE WAS, WE, THE LEADERS
11 OF THE TOBACCO INDUSTRY, SMOKING IN THE
12 SMOKE-FILLED ROOM, ARE DOING WHAT WE DO TO MAKE A
13 PROFIT AT THE KNOWING EXPENSE OF THE HEALTH OF THE
14 VERY PEOPLE WE COUNT AS CUSTOMERS WHO GIVE US THEIR
15 MONEY; RIGHT?

16 A. YES, THAT'S WHAT CALIFORNIA WAS
17 SAYING.

18 Q. AND YOU KNOW, SO FAR, I HAVE ASKED
19 NOT TO HAVE YOUR PERSONAL BELIEFS, AND SO LET'S
20 STICK WITH THAT.

21 HISTORICALLY SPEAKING, DO YOU WANT
22 TO SIGN ONTO THAT, THAT AFTER REVIEWING THE HISTORY
23 OF WHAT YOU REVIEWED AND SEEING ALL THE STUFF THAT
24 YOU SAW, THAT HISTORICALLY SPEAKING, IT'S PRETTY
25 DARN CLEAR THAT THE TOBACCO INDUSTRY WAS TRULY
26 MAKING A PROFIT AT THE -- KNOWINGLY MAKING A
27 PROFIT, PROFIT KNOWINGLY AT THE EXPENSE OF THE
28 HEALTH OF THEIR CUSTOMERS?

1 MR. LEITER: OBJECTION, ARGUMENTATIVE,
2 CALLS FOR SPECULATION, BEYOND OF SCOPE OF THIS
3 WITNESS' S TESTIMONY.

4 THE COURT: OVERRULED.

5 THE WITNESS: YOU KNOW, YOU GET BACK TO
6 THE KNOWINGLY, YOU KNOW, AND YOU ARE ASKING ME TO
7 LOOK AT WHAT THEY KNEW AND WHAT THEY WERE THINKING
8 AS THEY WERE DOING IT. AND I DON'T -- I DON'T
9 THINK THAT, IN FAIRNESS, THAT I CAN SIT IN HERE IN
10 JUDGMENT AND SAYING THAT NOT BECAUSE I AM LOATH TO
11 TELL YOU MY PERSONAL OPINIONS BUT BECAUSE I
12 WOULDN'T WANT TO EXPRESS THE JUDGMENT WITHOUT
13 HAVING RESEARCHED IT, WITHOUT KNOWING IT.

14 Q. THAT'S OKAY. THANK YOU. I AM
15 ALMOST THERE.

16 WHEN YOU WERE TALKING ABOUT THE
17 1994 CONGRESSIONAL HEARINGS ON YOUR DIRECT
18 EXAMINATION, I THINK YOU SAID THE FOLLOWING, PLEASE
19 CORRECT ME IF I AM WRONG, THIS IS NOT MEANT TO BE A
20 QUOTE, THE TOBACCO INDUSTRY EXECUTIVES SAID THAT IF
21 NICOTINE LEVELS WERE BEING SWITCHED AROUND OR
22 CHANGED AROUND IN CIGARETTES, THE REASON THAT IT
23 WAS BEING DONE WAS NOT FOR ADDICTION PURPOSES, IN
24 OTHER WORDS, TO HOOK THEIR CUSTOMERS WORSE, BUT WAS
25 BEING DONE FOR FLAVOR PURPOSES. REMEMBER
26 DISCUSSING THAT, ON DIRECT?

27 A. NO, I DON'T BELIEVE I EVER SAID
28 ANYTHING LIKE THAT.

1 Q. OKAY.

2 DO YOU REMEMBER SAYING THAT PEOPLE
3 DID NOT BELIEVE WHAT THE TOBACCO INDUSTRY
4 EXECUTIVES SAID?

5 A. YES, I DO REMEMBER SAYING THAT.

6 Q. IN REGARD TO ADDICTION?

7 A. RIGHT.

8 Q. DO YOU HAVE -- WHAT DID THEY SAY
9 ABOUT ADDICTION, OTHER THAN NO, NO, NO -- WE KNOW
10 IT WAS NO, NO, NO, NO, NO. WE KNOW THAT PART. BUT
11 SEEING THAT YOU HAVE READ -- YOU HAVE READ THE
12 STUFF; RIGHT?

13 A. YES, I READ THOSE HEARINGS.

14 Q. DIDN'T THEY SAY THAT IF NICOTINE
15 LEVELS WERE BEING CHANGED INSIDE THE CIGARETTES,
16 ARTIFICIALLY, IT WAS DONE FOR FLAVOR PURPOSES, NOT
17 TO HOOK YOU?

18 MR. LEITER: OBJECTION, WELL BEYOND THE
19 SCOPE OF HER TESTIMONY.

20 THE COURT: OVERRULED.

21 THE WITNESS: YOU KNOW, THE PART THAT I
22 AM REMEMBERING RIGHT NOW IS THE PART ABOUT NICOTINE
23 WHERE THEY SAID, WE DON'T THINK IT IS ADDICTIVE.
24 AND I READ THAT PART VERY, VERY CLOSELY. AND WHAT
25 THEY WERE SAYING WAS SORT OF A COMBINATION OF
26 THINGS. IT'S ACTUALLY, VERY INTERESTING TO READ
27 THE WHOLE HEARINGS BECAUSE WHAT THEY ARE TALKING
28 ABOUT ARE THESE DIFFERENT MEDICAL DEFINITIONS,

1 COMPETING MEDICAL DEFINITIONS OF WHAT MAKES
2 SOMETHING ADDICTIVE, NOT THAT IT IS HARD TO BREAK
3 THE HABIT. BECAUSE SOME PEOPLE WERE ARGUING AND
4 EVEN EDITORIALISTS, SOME ARGUED AFTERWARDS, THAT
5 ONE WAY OF THINKING OF ADDICTION IS THAT IT MAKES
6 YOU -- SOMETHING MAKES YOU LIKE DRUNK, THAT YOU
7 CAN'T COPE OR SOMETHING THAT GIVES YOU
8 HALLUCINATIONS OR CONVULSIONS IF YOU CEASE USING
9 IT.

10 AND SO THAT WAS THE DEFINITION THAT
11 THE TOBACCO INDUSTRY WAS CLINGING TO AT THAT TIME.

12 AND THEN WAXMAN SAID, NO, NO, I
13 DON'T WANT TO HEAR THOSE RATIONALIZATIONS. I JUST
14 WANT TO HEAR YES OR NO, IS IT ADDICTIVE. SO THEY
15 SAID, NO, IT IS NOT ADDICTIVE. AND THEN, OF
16 COURSE, THEY WEREN'T ABLE TO ADD BASED ON THIS
17 DEFINITION. BUT IN ANY CASE, THE PUBLIC DIDN'T
18 BELIEVE THEM ONCE IT WAS SAID BECAUSE OF THE WAY IT
19 WAS FRAMED.

20 Q. THAT'S NOT WHAT I ASKED.

21 WHAT I ASKED WAS, IN READING
22 THROUGH ALL OF THAT STUFF, DID YOU SEE A
23 DISCUSSION, QUESTIONS AND ANSWERS, WITH THE BOTTOM
24 LINE THAT IF NICOTINE LEVELS WERE BEING CHANGED
25 INSIDE OF THE CIGARETTES ON PURPOSE -- LET'S STOP
26 FOR A SECOND.

27 YOU KNOW THAT IF YOU GO TO A
28 TOBACCO FIELD AND YOU JUST PLUCK A LEAF OUT OF THE

1 GROUND AND SOMEHOW YOU SMOKE THE LEAF, THERE IS
2 SOME ADDICTIVE QUALITIES TO THAT LEAF, YOU KNOW
3 THAT; RIGHT?

4 MR. LEITER: OBJECTION, BEYOND THE SCOPE.

5 THE COURT: SUSTAINED.

6 Q BY MR. PIUZE: WELL, THAT'S WHAT
7 THE INDIANS --

8 THE COURT: HOLD ON.

9 ALL RIGHT. DO YOU KNOW ANYTHING
10 ABOUT THAT?

11 THE WITNESS: NO.

12 MR. PIUZE: I CAN DO IT BETTER. I WILL
13 WITHDRAW THE QUESTION. SO THE COURT -- IS THAT
14 OKAY?

15 THE COURT: FAIR ENOUGH.

16 MR. PIUZE: JUST KILL IT. BAD QUESTION.

17 Q BY MR. PIUZE: THE WHOLE IDEA OF
18 SHOWING THE 1492 COLUMBUS SAILED THE OCEAN BLUE WAS
19 THAT WHEN THE INDIANS TOOK THE TOBACCO -- THEY
20 DIDN'T HAVE FACTORIES IN WINSTON, SALEM, DID THEY,
21 THE INDIANS?

22 A. NO, THEY DIDN'T.

23 Q. THEY COULDN'T MANIPULATE NICOTINE
24 LEVELS, COULD THEY?

25 MR. LEITER: OBJECTION, ARGUMENTATIVE.

26 THE COURT: SUSTAINED.

27 Q BY MR. PIUZE: WHEN THE INDIANS
28 TOOK A LEAF OF TOBACCO RIGHT OUT OF THE FIELD, JUST

1 EXACTLY THE WAY IT WAS GROWN NATURALLY, BACK IN
2 1492, THE IDEA WAS PEOPLE KNEW THAT THEY HAD SOME
3 ADDICTIVE PROPERTIES TO IT; RIGHT?

4 A. BARTOLOME DE LAS CASAS SAYS SO,
5 YES. I DON'T KNOW WHAT THE INDIANS SAID.

6 Q. NOW I AM JUMPING ALL THE WAY
7 FORWARD INTO THE 1990'S. YOU KNOW FROM
8 READING THAT CONGRESSIONAL RECORD STUFF IN 1994,
9 THERE WERE ALLEGATIONS THAT THE TOBACCO INDUSTRY
10 PURPOSELY MANIPULATES THE LEVEL OF NICOTINE WITHIN
11 THE CIGARETTES; RIGHT?

12 A. YES, I WAS AWARE, AM AWARE THERE
13 WERE ALLEGATIONS.

14 Q. FINE. AND WITHIN THOSE HEARINGS, I
15 AM ASKING YOU, DID YOU SEE A DISCUSSION ABOUT THE
16 FACT, FROM THE INDUSTRY, IF WE CHANGE THE NICOTINE
17 LEVELS WITHIN THE CIGARETTE, IT'S FOR FLAVOR
18 PURPOSES, IS IT NOT, NOT FOR ADDICTION PURPOSES TO
19 HOOK PEOPLE WORSE?

20 IF YOU DON'T REMEMBER THAT JUST
21 TELL ME YOU DON'T.

22 A. THAT'S WHAT I WAS GOING TO SEE. I
23 DON'T REMEMBER READING IT IN THOSE HEARINGS. I
24 HAVE HEARD THE ALLEGATIONS BUT I DON'T REMEMBER IT
25 FROM THERE.

26 THE COURT: I THINK WE ARE BEYOND THE
27 SCOPE HERE, COUNSEL.

28 MR. PIUZE: OKAY.

1 Q BY MR. PIUZE: NOW, YOU MENTIONED
2 TOWARD THE END OF YOUR DIRECT EXAMINATION,
3 SOMETHING TO THE EFFECT THAT KIDS SMOKE BECAUSE
4 THEIR PARENTS SMOKE, ADVERTISING HAS NOTHING TO DO
5 WITH IT. REMEMBER THAT?

6 A. I DON'T THINK I SAID IT THAT WAY.

7 Q. TELL US HOW YOU SAID IT.

8 A. I SAID THAT THE STUDIES THAT WERE
9 DONE, THAT I AM FAMILIAR WITH IN THE LATE '50'S AND
10 IN THE '60'S, MOSTLY, ALTHOUGH I HAVE HEARD
11 REFERENCE TO STUDIES SINCE THAT SAY THE STRONGEST
12 PREDICTOR OF WHETHER SOMEBODY WILL SMOKE IS WHETHER
13 OR NOT THEIR PARENTS SMOKE, WHETHER SMOKING IS A
14 PART OF THEIR FAMILY.

15 SO THAT'S WHAT I SAID.

16 Q. DIDN'T YOU ALSO SAY THAT
17 ADVERTISING HAS NOTHING TO DO WITH IT, DIDN'T YOU
18 SAY THAT ON YOUR DIRECT EXAMINATION?

19 A. I DON'T REMEMBER USING THOSE WORDS.

20 Q. LET'S HEAR THE WORDS THAT YOU
21 REMEMBER USING, PLEASE.

22 A. I DON'T REMEMBER SAYING ANYTHING TO
23 THAT EFFECT.

24 Q. YOU DON'T REMEMBER SAYING ANYTHING
25 ABOUT ADVERTISING DURING YOUR DIRECT EXAMINATION?

26 A. WELL, I TALKED ABOUT ADVERTISING,
27 YES.

28 Q. LET'S HEAR IT.

1 A. OH, OKAY.

2 WELL, WHAT I REMEMBER SAYING WAS
3 THAT I LOOKED AT ADVERTISING BECAUSE ADVERTISING IS
4 PART OF WHAT PEOPLE SEE. IT'S PART OF PEOPLE'S
5 CULTURE. AND THAT IN TERMS OF ITS EFFECT, MAYBE
6 THIS IS WHAT YOU ARE REMEMBERING, THAT I DON'T
7 THINK IT IS A -- HAS A POWERFUL EFFECT IN THE SENSE
8 THAT WHAT WE OFTEN SEE, HISTORICALLY, IS THAT FIRST
9 OF ALL BEHAVIOR PRECEDES ADVERTISING. WOMEN
10 SMOKING IS A GOOD EXAMPLE, HISTORICALLY, OF THIS,
11 THAT WOMEN STARTED SMOKING IN THE '20'S. AND
12 STUDIES SHOWED THAT BY 1925, HALF OF ALL COLLEGE
13 WOMEN WERE SMOKING. AND THIS WAS BEFORE THERE WERE
14 ANY ADS AT ALL THAT WERE DIRECTED TOWARDS WOMEN
15 WHICH CAME LATER, ABOUT THREE OR FOUR YEARS LATER
16 IN THE LATE 1920'S.

17 SO IT WASN'T -- SO BEHAVIOR SEEMED
18 TO COME BEFORE. AND THEN I THINK I ALSO SAID AT
19 THAT TIME THAT PEOPLE, I THINK, WERE SORT OF
20 INUNDATED WITH ADVERTISING.

21 IT'S INTERESTING, SINCE THEN, I
22 JUST RECENTLY READ AN ARTICLE IN THE "L. A. TIMES"
23 THAT SAID THAT CHILDREN SEE 20,000 T. V. COMMERCIALS
24 A YEAR ON AVERAGE IN AMERICA. BY THE WAY, NOT ONE
25 OF THOSE IS FOR CIGARETTES BECAUSE THEY ARE OFF THE
26 AIR.

27 BUT PEOPLE SEE SO MANY ADS THAT I
28 THINK THAT THEY ARE OVERWHELMED BY IT. AND

1 CIGARETTES ARE ACTUALLY A FAIRLY SMALL PERCENTAGE
2 OF THE ADS.

3 IN THE "L. A. TIMES," I DID A
4 STUDY, THAT I HAD MY RESEARCH ASSISTANT PULL IT FOR
5 ME, AND WE SCRUTINIZED THEM, IT WAS LESS THAN ONE
6 PERCENT.

7 SO I THINK THAT THAT'S THE POINT
8 THAT I WAS MAKING THE OTHER DAY.

9 Q. WELL, I WAS WONDERING, BECAUSE I
10 HADN'T HEARD YOU QUALIFIED AS AN EXPERT ON
11 ADVERTISING.

12 WHAT DO YOU MEAN BY ADVERTISING?

13 A. WELL, ADVERTISING IS A PART OF THE
14 HISTORICAL PICTURE, YOU KNOW YOU STUDY
15 ADVERTISING AS -- IT'S A PART OF A MODERN AMERICAN
16 PHENOMENON. IT'S A 20TH CENTURY PHENOMENON. SO AS
17 ANYONE WHO WORKS A LOT IN THE 20TH CENTURY, IT
18 CERTAINLY HAS ALWAYS COME ACROSS MY DESK. IT'S NOT
19 AN AREA OF SPECIALIZATION AND I WOULDN'T KNOW HOW
20 TO WRITE ADVERTISING OR THAT KIND OF THING.

21 Q. DON'T YOU THINK THIS SORT OF COMES
22 BACK TO MR. BOEKEN NOW AND ALL OF US, DON'T YOU
23 THINK THAT SOME PEOPLE, WHEN THEY READ THE
24 NEWSPAPERS, DEPENDING UPON THEIR THOUGHTS AND IDEAS
25 AND IDEALS AND BELIEFS, SORT OF CONCENTRATE ON WHAT
26 THEY THINK AND WHAT THEY ARE INTERESTED IN AND SORT
27 OF GO PAST WHAT THEY DON'T BELIEVE IN AND WHAT THEY
28 ARE NOT INTERESTED IN?

1 A. YES, I THINK PEOPLE READ THE PAPER
2 SELECTIVELY.

3 Q. AND SO, I GUESS WE COULD USE AN
4 OBVIOUS EXAMPLE, YOU ARE NOT INTO AUTOMOBILE
5 RACING; RIGHT?

6 A. MY BROTHER IS, BUT OTHER THAN THAT,
7 I DON'T PAY ATTENTION.

8 Q. JUST A GUESS.

9 AND SO IF I ASKED YOU WHETHER OR
10 NOT A PHILIP MORRIS SPONSORED CAR WON THE 500 MILE
11 RACE OUT OF FONTANA THE OTHER DAY, WOULD YOU KNOW
12 THAT?

13 A. I WOULDN'T KNOW THAT.

14 Q. SOMEONE WHO WAS IN, LET'S SAY,
15 RELIGION, MIGHT SPEND MORE TIME ON THE RELIGION
16 PAGES; RIGHT?

17 A. YES.

18 Q. AND SOMEONE WHO DIDN'T REALLY
19 BELIEVE, SOMEONE WHO DIDN'T REALLY BELIEVE THE
20 TOBACCO INDUSTRY MIGHT NOT REALLY READ WHAT THEY
21 HAD TO PUT OUT; RIGHT?

22 A. YES.

23 Q. AND SOMEONE WHO WAS PRONE TO
24 BELIEVE THE TOBACCO INDUSTRY, MIGHT NOT REALLY
25 SPEND TOO MUCH TIME CONCENTRATING ON THE OTHER SIDE
26 OF THE COIN; RIGHT?

27 A. YES, ALTHOUGH IN THIS CASE IT WOULD
28 BE DIFFERENT BECAUSE IT'S IN SO MANY ARTICLES WHERE

1 IT'S NOT IN THE HEADLINE AND YOU DON'T EXPECT IT,
2 YOU KNOW YOU MIGHT READ AN ARTICLE ON STOCKS OR
3 YOU MIGHT READ AN EDITORIAL OR YOU MIGHT READ, YOU
4 KNOW, AS I WAS SAYING, A DOCTOR COLUMN OR DEAR
5 ABBEY SO THERE'S LOTS OF PLACES WHERE IT JUST KIND
6 OF AMBUSHES YOU.

7 I WAS WATCHING A MOVIE THE OTHER
8 DAY NOT EXPECTING TO HAVE ANYTHING ABOUT SMOKING
9 AND SUDDENLY THERE IT WAS.

10 Q. A LOT OF THE STUFF THAT YOU LOOK AT
11 WAS CHOSEN FOR YOU BY PHILIP MORRIS'S LAW FIRM BACK
12 IN WASHINGTON D. C. ; RIGHT?

13 A. WRONG.

14 Q. DIDN'T ALL OF THE "L. A. TIMES"
15 COME FROM THEIR WASHINGTON D. C. LAW FIRM GOING
16 THROUGH A MICROFILM READER IN WASHINGTON D. C. ?

17 A. NO.

18 Q. WHAT DID?

19 A. MOST OF IT DID.

20 Q. MOST --

21 A. YES. BUT YOU SAID "ALL. "

22 WHAT I DID WAS I ASKED THEIR HELP
23 IN FINDING ME RESEARCH ASSISTANTS IN WASHINGTON WHO
24 WOULD GO THROUGH THE LIBRARY OF CONGRESS. I MET
25 WITH ALL OF THOSE PEOPLE AHEAD OF TIME BECAUSE I
26 WANTED TO GET TO KNOW THEM I WANTED TO MAKE SURE
27 THAT THEY WOULD FOLLOW THE SAME PROCESS THAT I
28 WOULD. AND I VERY CAREFULLY SUPERVISED THEM

1 AND THEN IN SAN DIEGO, SINCE I HAVE
2 EVEN MORE CONTROL HERE, I HAD MY OWN RESEARCH
3 ASSISTANT GO THROUGH AND PULL OUT, RANDOMLY, SO
4 THAT PEOPLE WHO HAD WORKED, DONE THE WORK IN
5 WASHINGTON WOULDN'T KNOW WHICH DATES, WHICH DATES
6 WE ARE SELECTING. AND WE DID AN AUDIT OF THOSE
7 BECAUSE I WANT TO SEE IF THEY WERE NOT CATCHING
8 THINGS THAT WE MIGHT CATCH AND SO I WAS VERY, VERY
9 CAREFUL TO MAKE SURE THAT THEY WEREN'T MISSING
10 THINGS.

11 Q. WHO TOLD YOU ABOUT "THE SHIELD"?

12 A. A PROFESSOR I KNOW IN ARIZONA.

13 Q. WHO TOLD YOU TO GO TO THE P. T. A. IN
14 LOS ANGELES?

15 A. I THOUGHT THAT.

16 Q. YOU DID?

17 A. I AM A PARENT, SO I THOUGHT THE
18 P. T. A. IS A GOOD SOURCE.

19 Q. OKAY. WHO TOLD YOU ABOUT PHILIP
20 MORRIS'S CAMPAIGN TO DISSUADE UNDER-AGE SMOKERS?

21 A. CAMPAIGN TO DISSUADE UNDER-AGE --

22 Q. YES.

23 A. WELL, I SAW SOMETHING ABOUT IT ON
24 T. V.

25 Q. THAT'S ONE OF THE THINGS THAT YOU
26 TESTIFIED TO IN YOUR DEPOSITION HERE, I THINK, IS
27 THAT, IN THE LAST COUPLE YEARS, THERE HAVE BEEN
28 ATTEMPTS BY THE COMPANIES TO MAKE CLEAR THE MESSAGE

1 TO YOUNG PEOPLE THAT SMOKING IS NOT FOR KIDS;
2 RIGHT?

3 A. YES.

4 Q. AND THAT'S SOMETHING THAT YOU
5 BELIEVE HAS HAPPENED; RIGHT?

6 A. YES.

7 Q. NOW, I AM GOING TO USE YOU TO MAKE
8 A POINT THAT GETS BACK TO MR. BOEKEN. OKAY?

9 A. OKAY.

10 Q. YOU BELIEVE THAT THE CIGARETTE
11 INDUSTRY, OVER THE COURSE OF THE LAST FEW YEARS,
12 HAS MADE ATTEMPTS TO DISSUADE TEENAGE SMOKING?

13 MR. LEITER: OBJECTION, BEYOND THE SCOPE
14 OF HER TESTIMONY.

15 Q BY MR. PIUZE: AND --

16 THE COURT: OVERRULED.

17 Q BY MR. PIUZE: AND WE KNOW THAT
18 YOU READ THE NEWSPAPERS; RIGHT?

19 A. THAT IS RIGHT.

20 Q. HERE, THIS WAS LAST THURSDAY IN THE
21 "L. A. TIMES," I STARTED TO ASK YOU ABOUT THAT AND I
22 TOLD YOU I WOULD GET BACK TO IT AND HERE I AM
23 REMEMBER WHEN YOU STARTED YOUR
24 CROSS-EXAMINATION, I ASKED YOU WHAT WAS IN THE
25 PAPER LAST THURSDAY, AND YOU SAID, YEAH, YOU HAD
26 SEEN SOME TOBACCO THINGS BUT YOU REALLY HADN'T PAID
27 ANY ATTENTION TO IT. DO YOU REMEMBER THAT?

28 A. YES, BUT I DON'T THINK THAT'S THE

1 ARTICLE I SAW

2 Q. HAVE YOU SEEN THIS ONE?

3 A. NO, I DIDN'T SEE THIS ONE.

4 Q. OKAY. THAT'S LAST THURSDAY.

5 HOW ABOUT FROM NOVEMBER 29, 2000,
6 THIS IS THE "L. A. TIMES," NOVEMBER 29, 2000. DID
7 YOU SEE THIS?

8 MR. LEITER: WE ARE BEYOND THE TIME
9 PERIOD. WE ARE BEYOND THE SCOPE.

10 THE COURT: WELL, THE DOOR IS WIDE OPEN
11 ON THE "LOS ANGELES TIMES."

12 Q BY MR. PIUZE: PROFESSOR?

13 A. YES.

14 Q. DID YOU SEE THIS?

15 A. I AM SORRY, DID YOU SAY THIS WAS
16 FROM THE OTHER DAY? NO.

17 Q. NO. I SAID THIS IS FROM NOVEMBER
18 29, 2000 FROM THE "LOS ANGELES TIMES"?

19 A. NO. I STUDIED THE "L. A. TIMES" UP
20 TO 1984, IN JUNE, WHEN MR. BOEKEN SAYS THAT HE
21 FINALLY LEARNED THAT IT WOULD CAUSE LUNG CANCER AND
22 MY OWN DAILY PAPER I TAKE IS THE "SAN DIEGO UNION."

23 Q. YOU KNEW THAT.

24 WELL, HOW ABOUT THIS.

25 DO YOU KNOW HOW MANY RESEARCH
26 ASSISTANTS I HAD FOR THIS?

27 MR. LEITER: OBJECT TO THE COMMENTARY.

28 THE COURT: SUSTAINED.

1 MR. LEITER: SAME OBJECTION.

2 Q BY MR. PIUZE: SAN DIEGO UNION
3 TRIBUNE, THAT IS YOUR NEWSPAPER THAT YOU DO READ?

4 A. YES, IT IS.

5 Q. SAN DIEGO, CALIFORNIA, OCTOBER 31,
6 1999. BIG TOBACCO.

7 "IN A T. V. AD, A GROCER
8 ASSURES US THAT, WHEN IT COMES TO
9 SEEKING SMOKES, KIDS ARE CUNNING AND
10 INSISTENT. LIFE BECAME A LOT EASIER,
11 HE SAYS, EVER SINCE HIS STORES POSTED
12 A SIGN SAYING, 'WE CARD.'

13 "THE AD'S SPONSOR AND SIGNS'
14 SUPPLIER, PHILIP MORRIS, MAKER OF
15 MARLBORO, THE NUMBER 1 BRAND AMONG
16 TEENS. "

17 DID YOU SEE THIS ARTICLE?

18 A. I COULD HAVE SEEN THAT ONE. I AM
19 FAMILIAR WITH DR. PIERCE AND I AM FAMILIAR WITH THE
20 AD.

21 Q. TAKE MY COMMENTARY OFF OF HERE.

22 "PIERCE -- " YOU SAY YOU ARE
23 FAMILIAR WITH HIM, HEAD OF CANCER PREVENTION AT
24 UNIVERSITY OF CALIFORNIA, SAN DIEGO, CANCER CENTER.
25 IS THAT HOW YOU ARE FAMILIAR WITH HIM?

26 A. YES, BASICALLY.

27 Q. DO YOU KNOW HIM?

28 A. NO, I DON'T KNOW HIM PERSONALLY.

1 Q. (READING)
2 " -- IS AS BRIGHT AS A
3 HALOGEN BULB AND BLUNT AS A HAMMER.
4 IF THE TOBACCO INDUSTRY EVER HIRES A
5 METEOROLOGIST, THEY'RE SURE TO START
6 THIS TURBULENCE CHURNING UP ON THEIR
7 RADAR SCREEN. HE IS OUR HURRICANE
8 JOHN.

9 "IN THE EARLY 1990'S, PIERCE
10 SURVEYED 3,536 NON-SMOKING TEENS TO
11 LEARN WHAT MIGHT MAKE THEM SMOKE. THE
12 MOST POPULAR RESPONSE BY A MARGIN OF
13 BETTER THAN TWO TO ONE: CIGARETTE
14 ADS. "

15 NOW, CONTINUING, "THESE
16 ANTI-SMOKING ADS, PIERCE ARGUES, ARE
17 MERELY HIGH-PROFILE -- " WOULD YOU
18 BELIEVE IT, "SMOKE SCREENS, PROBABLY
19 INTENDED TO SHIELD BIG TOBACCO FROM
20 LAWSUITS. PRO-SMOKING ADS, AFTER ALL,
21 COST THE INDUSTRY MORE THAN FIVE
22 BILLION DOLLARS A YEAR. THEY SEEM TO
23 WORK. "

24 YOU DON'T RECALL SEEING THIS, DO
25 YOU?

26 A. NO, I DON'T RECALL THAT PARTICULAR
27 ARTICLE.

28 Q. THIS DISAGREES WITH TWO OF THE

1 PERSONAL THOUGHTS THAT YOU HOLD?

2 THE COURT: SHE DIDN'T SEE IT.

3 MR. PIUZE: I UNDERSTAND THAT.

4 Q BY MR. PIUZE: THE POINT I AM
5 TRYING TO MAKE HERE IS, IF A PERSON HAS SOME
6 PERSONAL THOUGHTS AND SEES A NEWSPAPER ARTICLE THAT
7 IS IN DIRECT CONFLICT WITH THE PERSON'S PERSONAL
8 THOUGHTS, TEEN SMOKING, THE FACT THAT ADVERTISING
9 DOESN'T PLAY A ROLE, MIGHT A PERSON JUST JUMP RIGHT
10 OVER THAT, NOT READ IT VERY CAREFULLY?

11 A. ARE YOU ASKING, DID I NOT READ THIS
12 ARTICLE BECAUSE I WOULD DISAGREE WITH IT? I THINK
13 THAT'S WHAT YOU ARE SAYING. AND THE ANSWER IS
14 ABSOLUTELY NOT.

15 Q. OKAY. I DON'T THINK THAT'S EXACTLY
16 WHAT I WAS ASKING, BUT OKAY.

17 HERE'S THE "SAN DIEGO UNION" FOR
18 MARCH 13TH, 2000.

19 MR. LEITER: I AM GOING TO OBJECT, YOUR
20 HONOR. WE ARE WELL BEYOND THE SCOPE OF TESTIMONY,
21 TIME PERIOD, RELEVANCE TO THIS WITNESS.

22 THE COURT: ALL RIGHT. THIS GOES TO
23 BIAS, INTEREST OR OTHER MOTIVE ONLY AT THIS POINT.

24 Q BY MR. PIUZE: NATIONAL CITY,
25 WHERE IS THAT?

26 A. IT'S A SUBURB OF SAN DIEGO, KIND OF
27 THE SOUTHERN PART OF TOWN, NEARER TO THE BORDER.

28 Q. (READING)

1 "THE CITY COUNCIL IS
2 CONSIDERING AN ORDINANCE REQUIRING
3 MERCHANTS TO KEEP CIGARETTES AND OTHER
4 TOBACCO PRODUCTS BEHIND THE COUNTER
5 AND IN STORES WITHIN 1,000 FEET OF
6 SCHOOLS, PLAYGROUNDS OR CITY
7 RECREATIONAL FACILITIES, AWAY FROM
8 PRODUCTS THAT APPEAL TO YOUTH. THE
9 LAW ALSO REQUIRES THAT STORES NEAR
10 SCHOOLS KEEP TOBACCO ADVERTISEMENTS
11 AWAY FROM PRODUCTS LIKE CANDY, SODA
12 AND SNACKS. WE KNOW THAT THE TOBACCO
13 INDUSTRY STRATEGICALLY PLACES THEIR
14 PRODUCT NEXT TO PRODUCTS THAT APPEAL
15 TO CHILDREN, PARTICULARLY IN STORES
16 NEAR SCHOOLS, SAID DEBRA KELLY,
17 AMERICAN LUNG ASSOCIATION
18 VICE-PRESIDENT OF GOVERNMENT
19 RELATIONS. THAT'S WHY WE FEEL THAT
20 THERE HAS TO BE SOME VISUAL SEPARATION
21 TO KIND OF SEVER THE CONNECTION
22 BETWEEN THE THREE MUSKETEERS AND THE
23 MARLBORO MAN. "

24 DID YOU READ THAT?

25 A. I HAVE READ A LOT OF ARTICLES ABOUT
26 THE NATIONAL CITY SITUATION. I DON'T REMEMBER IF I
27 READ THAT PARTICULAR ONE. I AM CERTAINLY FAMILIAR
28 WITH IT.

1 Q. WELL, LET ME GO TO THE REMAINDER OF
2 THE ARTICLE HERE.

3 I AM SORRY, THIS IS A DIFFERENT
4 ONE. I APOLOGIZE. HERE'S A NEW ONE. "SAN DIEGO
5 TRIBUNE," MAY 18, 2000.

6 MR. LEITER: SAME OBJECTION, BEYOND THE
7 SCOPE AND RELEVANCE TO THIS WITNESS.

8 THE COURT: COUNSEL, I THINK THE POINT
9 HAS BEEN MADE.

10 Q BY MR. PIUZE: I WON'T SHOW YOU
11 ANY MORE SAN DIEGO ARTICLES.

12 ARE YOU AWARE THAT THERE IS A
13 CONTROVERSY DOWN IN SAN DIEGO AND PROBABLY
14 THROUGHOUT THE STATE OVER THE FACT THAT PHILIP
15 MORRIS WAS PUTTING ITS NAME ON BOOK COVERS GIVEN TO
16 CHILDREN IN PUBLIC SCHOOLS?

17 MR. LEITER: OBJECTION, RELEVANCE TO THIS
18 WITNESS, TIME PERIOD BEYOND THE SCOPE OF HER
19 TESTIMONY.

20 THE COURT: OVERRULED.

21 THE WITNESS: I HAVE HEARD THERE WAS A
22 CONTROVERSY ABOUT BOOK COVERS.

23 Q BY MR. PIUZE: AND THE CONTROVERSY
24 IS THAT, ACCORDING TO SOME PEOPLE, PHILIP MORRIS IS
25 TRYING TO SLIP IN A SUBLIMINAL -- WHAT IS
26 SUBLIMINAL?

27 A. THAT MEANS SOMETHING YOU CAN'T SEE,
28 LIKE SOMETHING THAT MIGHT FLASH ON A SCREEN SO FAST

1 THAT YOU CAN'T SEE IT KIND OF LIKE MAGIC OR
2 SOMETHING.

3 Q. SO I AM INTERRUPTING MY OWN
4 QUESTION, BUT REMEMBER THE LAST PRESIDENTIAL
5 ELECTION IN THE EARLIER STAGES, ONE OF THE ISSUES
6 WAS THAT IF YOU SLOWED DOWN A CAMPAIGN AD FILM
7 FRAME FOR FRAME FOR FRAME, REALLY SLOWLY, THE WORD
8 "RATS" SHOWED UP ON THE FRAME. DO YOU REMEMBER
9 THAT?

10 A. I SURE DO.

11 Q. AND SO EVEN THOUGH AS PEOPLE
12 WEREN'T AWARE, ACTUALLY, OF SEEING IT, THEY
13 COULDN'T SAY, I SAW THE WORD "RATS," THERE WAS A
14 SUBLIMINAL MESSAGE BEING FLASHED, "RATS."

15 DO YOU REMEMBER THAT ALLEGATION?

16 A. YES, I REMEMBER THE ALLEGATION.

17 Q. ANYWAY, BACK TO PHILIP MORRIS. YOU
18 KNOW THAT RIGHT NOW IN THIS STATE IN SAN DIEGO
19 COUNTY, THERE'S SOMETHING BREWING AND IT'S GETTING
20 PRESS ABOUT THE FACT THAT CRITICS THINK PHILIP
21 MORRIS IS PUTTING A SUBLIMINAL MESSAGE BEFORE THE
22 KIDS WHEN THEY PUT OUT THESE BOOK COVERS WITH THE
23 NAMES ON IT; RIGHT?

24 A. I ACTUALLY DON'T THINK IT'S BEEN IN
25 THE NEWS LATELY, BUT I HAVE HEARD OF IT.

26 Q. AND DESPITE THE FACT THAT YOU HAVE
27 HEARD OF IT, BECAUSE OF YOUR, WHATEVER, BACKGROUND,
28 BELIEFS, THOUGHTS, WHICH YOU ARE ENTITLED TO, YOU

1 PERSONALLY BELIEVE THAT THE TOBACCO INDUSTRY HAS
2 TAKEN STEPS TO DECREASE TEEN SMOKING; RIGHT?

3 MR. LEITER: OBJECTION, RELEVANCE, WELL
4 BEYOND THE SCOPE.

5 THE COURT: OVERRULED.

6 THE WITNESS: WELL, I JUST POINT TO THE
7 AD THAT YOU WERE TALKING ABOUT, EARLY ON, THAT
8 NEWSPAPER ARTICLE ABOUT THAT AD WHICH SAYS, YOU
9 KNOW, "WE CARD," SO, YEAH, THOSE ARE THE KINDS OF
10 THINGS THAT I THINK THAT THEY HAVE DONE, THAT I AM
11 FAMILIAR WITH.

12 ALTHOUGH, AGAIN, I HAVEN'T STUDIED
13 ALL OF THEIR CORPORATE PROGRAM, SO I DON'T KNOW
14 WHAT THEY ALL ARE. I JUST HAPPEN TO BE AWARE OF
15 THAT ONE AND I HAVE HEARD REFERENCES TO OTHERS.

16 MR. PIUZE: YOUR HONOR, I JUST NEED SOME
17 GUIDANCE FROM THE COURT. I HAVE OTHER STUFF ALONG
18 THESE LINES THAT I CAN SHOW HER -- I COULD JUST
19 SHOW HER WITHOUT SHOWING THE JURY IF YOU PREFER.

20 THE COURT: NO, I THINK YOU NEED TO MOVE
21 ON.

22 MR. PIUZE: OKAY.

23 Q BY MR. PIUZE: PEOPLE SORT OF
24 BELIEVE WHAT THEY ARE ALREADY BELIEVING. WOULD YOU
25 AGREE WITH THAT?

26 A. NO, I DON'T.

27 Q. YOU BELIEVE -- YOUR ALREADY BELIEF
28 RIGHT NOW, YOUR ALREADY BELIEF IS THAT TOBACCO IS

1 TRYING TO PROHIBIT KIDS FROM SMOKING; RIGHT?

2 A. I THINK THEY HAVE A CAMPAIGN TO DO
3 THAT.

4 Q. ALL RIGHT.

5 NOW, THIS IS GOING TO BE LAST.

6 THIS WAS THE THURSDAY ONE THAT I
7 ASKED YOU ABOUT?

8 A. OKAY. THE SAME ONE YOU SHOWED ON
9 THE SCREEN.

10 Q. NO.

11 MR. LEITER: MAY I SEE IT, PLEASE.

12 MR. PIUZE: YES, "LOS ANGELES TIMES,"
13 LAST THURSDAY, SAME ISSUE WE WERE TALKING ABOUT,
14 SAME ISSUE, RIGHT AND WRONG.

15 MR. LEITER: YOUR HONOR, I HAVE AN
16 OBJECTION.

17 IF I MAY ADD, YOUR HONOR, ALSO OUR
18 MOTION IN LIMINE ABOUT LITIGATION.

19 THE COURT: I WOULD TEND TO QUESTION THE
20 RELEVANCY OF IT.

21 MR. PIUZE: THEN WITH THAT IN MIND, YOUR
22 HONOR, I WOULD RESPECTFULLY TEND TO SAY I HAVE NO
23 FURTHER QUESTIONS OF THIS WITNESS.

24 THE COURT: THANK YOU VERY MUCH, COUNSEL.

25 MR. PIUZE: THANK YOU.

26 MR. LEITER: GOOD MORNING, LADIES AND
27 GENTLEMEN.

28 /// /// ///

1 REDIRECT EXAMINATION

2

3 BY MR. LEITER:

4 Q. GOOD MORNING DR. HOFFMAN.

5 A. GOOD MORNING.

6 Q. I NOTICE THAT THE CLOCK THAT'S
7 BEHIND YOU NOW HAS A SPOTLIGHT ON IT, WHICH I TAKE
8 AS A MESSAGE.

9 THE COURT: LET ME TELL YOU -- THANK YOU
10 FOR --

11 MR. LEITER: IT MUST BE TIME TO TAKE OUR
12 BREAK.

13 THE COURT: THANK YOU FOR NOTICING THAT,
14 BECAUSE I AM VERY PROUD OF IT. I HAVE TO TELL THE
15 JURY A STORY.

16 MY DAUGHTER IS IN COLLEGE AND SHE
17 BABYSITS TO MAKE MONEY FROM TIME TO TIME IN
18 COLLEGE. AND ONE OF THE PEOPLE THAT SHE BABYSAT
19 FOR SAID, I HAVE THIS BOX OF THINGS THAT I AM GOING
20 TO GIVE A WAY TO GOODWILL AND I THOUGHT MAYBE YOU
21 WOULD LIKE TO HAVE IT.

22 AND MY DAUGHTER SAID, GEE, A
23 GOODWILL BOX. SHE DIDN'T KNOW WHAT TO SAY. SHE
24 COULDN'T SAY NO, FROM THE KINDNESS OF THE LADY, SO
25 SHE TOOK THE BOX AND THEN SHE DROVE HOME AND SHE
26 GAVE THE BOX TO ME. SO I GOT A GOODWILL BOX. AND
27 INSIDE MY GOODWILL BOX WAS THAT ANSEL ADAMS RIGHT
28 THERE AND ONE OVER HERE.

1 AND I THINK THEY FIT PERFECTLY IN
2 MY COURTROOM SO I PUT THEM UP AND I MOVED THE
3 CLOCK UP THERE. I THOUGHT, WELL, THAT WOULD BE A
4 GOOD PLACE TO PUT THE CLOCK.

5 THANK YOU FOR NOTICING, MR. LEITER.
6 ALL RIGHT, LADIES AND GENTLEMEN, WE
7 WILL BE BACK AT TEN MINUTES TO 11:00.

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

11
12 (THE FOLLOWING PROCEEDINGS
13 WERE HELD IN OPEN COURT OUT
14 OF THE PRESENCE OF THE JURY:)

15
16 THE COURT: WE ARE ON THE RECORD OUTSIDE
17 THE PRESENCE.

18 MR. PIUZE: I ASKED TO BE ON THE RECORD,
19 YOUR HONOR. I TAKE MY CUES, TO THE BEST I POSSIBLY
20 CAN, FROM THE COURT AND I TRY TO KEEP MOVING TO THE
21 BEST I CAN.

22 THE COURT: YOU DID A GOOD JOB.

23 MR. PIUZE: SO HERE'S WHAT I WANTED TO
24 SAY WITHOUT THE JURY HERE.

25 I HAVE, PERHAPS, TEN OR A DOZEN
26 ARTICLES EITHER FROM THE SAN DIEGO CALIFORNIA UNION
27 TRIBUNE OR THE "LOS ANGELES TIMES," AND ALL OF THEM
28 WERE CHOSEN FROM THE TIMEFRAME AFTER THIS WITNESS

1 WAS HIRED UNTIL THE PRESENT. AND ALL OF THESE DEAL
2 WITH THE ISSUE OF TEEN SMOKING AND MARKETING TO
3 TEENS.

4 THE COURT WAS OBVIOUSLY AWARE OF
5 WHAT I WAS DOING, WHICH IS THAT PEOPLE SEE WHAT
6 THEY WANT TO SEE AND DON'T SEE WHAT THEY DON'T WANT
7 TO SEE.

8 THE COURT: RIGHT. I LET IT IN FOR THAT
9 LIMITED PURPOSE AND NOT FOR THE SUBSTANTIVE
10 MATTER --

11 MR. PIUZE: OF COURSE.

12 THE COURT: -- CONTAINED IN THE ARTICLE.

13 MR. PIUZE: I UNDERSTAND THAT.

14 THE COURT: BUT IF I LET IT CONTINUE TOO
15 FAR, IT WOULD GET FAR MORE SUBSTANTIVE THAN THE
16 COURT WAS WILLING TO ALLOW AND THAT'S WHY THE
17 COURT INTERVENED.

18 MR. PIUZE: ALL RIGHT. SO ANYWAY, HERE
19 WE ARE WITHOUT THE JURY AND I AM ASKING THE COURT
20 NOW, BECAUSE I DIDN'T WANT TO INTERRUPT BEFORE, I
21 AM ASKING THE COURT, I THINK THIS STUFF -- I KNOW I
22 DON'T WANT TO OVER KILL IT, I UNDERSTAND THE
23 COURT'S POSITION, BUT I THINK THIS STUFF IS
24 RELEVANT FOR THE PURPOSE ON WHICH I AM QUESTIONING
25 THIS WITNESS, AND IF THE COURT DOESN'T WANT ME TO
26 GO FORWARD WITH QUESTIONING HER ON THIS, WHICH THE
27 COURT SAYS IT DIDN'T, THEN I WOULD LIKE TO HAVE
28 THEM IN EVIDENCE, MARK THEM AND ACTUALLY HAVE THEM

1 IN EVIDENCE WITH AN INSTRUCTION FOR THE LIMITED
2 PURPOSE OF SUCH AND SUCH. BECAUSE CLEARLY IT SHOWS
3 THAT SHE HAS SELECTIVELY JUST OVERLOOKED ALL OF
4 THIS STUFF.

5 MR. LEITER: WELL, FIRST OF ALL, THE
6 PERIOD THAT SHE STUDIED ENDED IN 1994. SO SHE
7 DIDN'T SELECTIVELY OVERLOOK ANYTHING. THEY ARE
8 WELL BEYOND THE PERIOD THAT SHE CAME TO TESTIFY
9 ABOUT AND THAT SHE STUDIED.

10 SO ANY RELEVANCE THAT SHE
11 SELECTIVELY OVERLOOKED THEM IS JUST NOT SUBJECT TO
12 THIS.

13 THE COURT: THE ANSWER TO THAT IS SHE
14 PICKED THE PERIOD. HE'S NOT BOUND BY THE PERIOD
15 THAT SHE PICKED. HE CAN QUIBBLE WITH HER SELECTION
16 PERIOD.

17 MR. LEITER: OKAY. BUT MY POINT IS
18 SIMPLY, FOR HIM TO PUT THESE IN ON THE NOTION THAT
19 SHE SOMEHOW SELECTIVELY OVERLOOKED THEM, HE CAN
20 SAY, WHY DID YOU STOP IN 1994, BUT TO THEN PULL OUT
21 A COUPLE ARTICLES THAT HE BELIEVES ARE FAVORABLE TO
22 HIM AND SAY SHE SELECTIVELY OVERLOOKED THEM IS
23 COMPLETELY INAPPROPRIATE AND MISSTATEMENT OF BOTH
24 WHERE WE ARE.

25 SECOND POINT, THE SUBSTANCE OF
26 THESE ARTICLES, PHILIP MORRIS'S EFFORTS TO
27 DISCOURAGE TEEN SMOKING, HAS NOTHING TO DO WITH
28 THIS WITNESS.

1 IT HAS NOTHING TO DO WITH THE
2 SUBSTANCE OF HER TESTIMONY, BOTH BY SUBJECT MATTER
3 AND BY TIME PERIOD.

4 AND I MIGHT ADD, YOUR HONOR, THAT
5 THE NEXT WITNESS WHO'S WAITING OUTSIDE TO TESTIFY
6 IS AN EXECUTIVE FROM PHILIP MORRIS WHOSE GOING TO
7 TESTIFY ON THESE SUBJECTS.

8 AND I CAN'T SPECULATE AS TO WHAT
9 COUNSEL'S STRATEGIC MOTIVES MIGHT BE, BUT THOSE
10 ARTICLES DON'T HAVE ANYTHING TO DO WITH THIS
11 WITNESS OR HER TESTIMONY, EITHER BY SUBJECT MATTER
12 OR TIME PERIOD. AND THEY DON'T GO TO BIAS.

13 THE POINT OF PEOPLE READ WHAT THEY
14 WANT TO READ IS A POINT THAT COUNSEL HAS MADE OVER
15 AND OVER AGAIN FOR SEVERAL DAYS NOW WITH THIS
16 WITNESS, THAT I HAVE A VERY DIFFICULT TIME --

17 THE COURT: MAY I INTERRUPT.

18 THANK YOU. YOUR ARGUMENT IS
19 WELL-TAKEN.

20 HERE'S MY POINT. I THINK THIS
21 REALLY IS A 352 ISSUE BECAUSE I THINK WHAT HAPPENS,
22 IF WE GO MUCH FURTHER WITH THIS IN FRONT OF THE
23 JURY IS THEY ARE GOING TO START THINKING TEEN
24 SMOKING AND THOSE SORTS OF THINGS. THE COURT WAS.
25 I WAS -- I STARTED READING THEM FOR THE INTEREST OF
26 TEEN SMOKING. AND MY MIND FLIPPED AWAY FROM THE
27 POINT THAT COUNSEL WAS TRYING TO MAKE. AND AS SOON
28 AS I START DOING THAT, I START WORRYING ABOUT

1 WHETHER OR NOT THE JURY IS DOING IT AS WELL.

2 MR. PIUZE: THANK YOU.

3 THE COURT: AND I DON'T THINK YOU CAN
4 REALLY GET THEM INTO EVIDENCE.

5 MR. LEITER: LET ME SUGGEST, MAYBE THIS
6 IS NOT THE WITNESS TO GET THEM INTO EVIDENCE.
7 COUNSEL AND I HAVE AGREED THAT DURING THE REDIRECT
8 WE ARE GOING TO OFFER INTO EVIDENCE THE BIG PILE
9 AND THE LITTLE PILE AND ALL THE ARTICLES IN. THEY
10 ARE NOT BEING OFFERED, OBVIOUSLY, FOR THE TRUTH OF
11 THE MATTERS CONTAINED BUT FOR THE NOTICE AND THE
12 INFORMATION BEING OUT THERE.

13 SO WE ARE OFFERING THOSE ARTICLES
14 FOR THAT PURPOSE. I DON'T KNOW THE PURPOSE FOR
15 OFFERING THESE ARTICLES. BUT I WANTED THE COURT TO
16 BE CLEAR ON WHERE COUNSEL WAS ON THE ISSUE.

17 THE COURT: WELL, THE PURPOSE FOR
18 OFFERING THE ARTICLES IS THAT IT KIND OF GOES TO
19 WHAT SHE WAS DOING AND WHO SHE IS WORKING FOR AND
20 WHAT HER MOTIVES ARE, WHAT SHE WAS UP HERE TO SAY
21 AND WHO HER FRIENDS ARE AND SHE DOESN'T
22 PARTICULARLY CONSIDER TO BE FRIENDS IN THE
23 COURTROOM AND THAT'S A MESSAGE THAT COUNSEL HAS
24 EVERY RIGHT TO EXPLORE.

25 MR. LEITER: AND IT WOULD BE OUR POSITION
26 THAT THOSE ARTICLES DON'T REALLY GO TO ANY OF THOSE
27 ISSUES AS TO THIS WITNESS.

28 WHAT I WOULD SUGGEST, GIVEN THAT WE

1 ARE ABOUT TO HAVE A WITNESS WHO'S COMING OUT AND TO
2 TALK ABOUT THESE ISSUES, THAT MAYBE WE DEFER ON
3 THESE ARTICLES. AND I DON'T KNOW WHAT USE COUNSEL
4 MIGHT PLAN TO MAKE OF THEM, BUT IT MIGHT BE A
5 LITTLE MORE APPARENT TO ALL OF US WHEN WE HAVE THE
6 WITNESS ON THE STAND WHO'S ACTUALLY GOING TO TALK
7 ABOUT THESE ISSUES.

8 MR. PIUZE: I HAVE MADE A BAD OFFER OF
9 PROOF, APPARENTLY. THESE WEREN'T TO BE USED TO
10 SHOW STRAIGHT BIAS AT ALL.

11 THESE WERE USED DEMONSTRATING WITH
12 A VERY BRIGHT WITNESS THAT HER HUMAN TENDENCIES ARE
13 THE SAME AS MR. BOEKEN'S.

14 THE COURT: I GOT THAT ONE AS WELL. I
15 JUST DIDN'T ARTICULATE THAT. I PICKED UP ON THAT
16 COMPLETELY AND I BELIEVE THAT POINT HAS BEEN MADE.

17 MR. PIUZE: FINE. SO WHAT MR. LEITER
18 JUST SAID, BECAUSE HE'S GUARDING HIS TERRITORY AS
19 HE SHOULD, SEE, ALL THIS STUFF HERE, 22 THOUSAND,
20 929 MILLION, BILLION, JILLION ANTI-SMOKING ARTICLES
21 FROM THE "L. A. TIMES," HE WANTS THEM ALL IN
22 EVIDENCE BUT NOT FOR THE TRUTH OF THE MATTER. BUT
23 OF COURSE HE DISAGREES WITH IT. WELL, WHAT'S GOOD
24 FOR THE GOOSE SHOULD BE GOOD FOR GANDER. AND
25 THAT'S WHAT HE WAS ALERTING THE COURT TO. WHAT IS
26 GOOD FOR THE GOOSE IS GOOD FOR THE GANDER.

27 THE COURT: BUT WHAT THE GANDER WANTS TO
28 DO, SHOW, IS BRING IN A LITTLE PIECE OF, FROM WHAT,

1 1994 ON?

2 MR. PIUZE: NO, YOUR HONOR. ACTUALLY, TO
3 BE VERY CLEAR, I CHOSE THIS FROM THE TIME SHE WAS
4 HIRED ON. THESE STARTED AT THE END OF 1990 --
5 THESE STARTED IN 1993. IN OTHER WORDS, SINCE SHE
6 HAS BEEN --

7 THE COURT: THINGS SHE SHOULD HAVE READ?

8 MR. PIUZE: SINCE SHE HAS BEEN
9 INTERESTED.

10 THE COURT: AND IN HER MIND, SHE JUST
11 DIDN'T FOCUS ON THEM

12 MR. PIUZE: SINCE SHE HAS BEEN INTERESTED
13 IN THIS SUBJECT -- YOU KNOW, THERE'S NO JURY HERE,
14 SO I AM NOT PERFORMING TO THE JURY NOW. A PH.D.
15 FROM STANFORD INTERESTED IN THIS SUBJECT, SMART
16 PERSON, READING THIS STUFF, AND IT'S JUST GONE
17 RIGHT THROUGH HER.

18 THE COURT: MR. PIUZE, HOLD ON.

19 MR. PIUZE, THE JURY GOT THE POINT.
20 I CAN ASSURE YOU THAT.

21 MR. PIUZE: I KNOW

22 THE COURT: AND THE COURT DID TOO. SO AT
23 THIS POINT, WE ARE JUST SORT OF ADDING ON AND I
24 DON'T SEE THE NECESSITY OF IT.

25 MR. PIUZE: I KNEW YOU WERE GOING TO SAY
26 THAT, YOUR HONOR.

27 THE COURT: I THOUGHT YOU MIGHT.

28 MR. PIUZE: BECAUSE BEFORE THE COURT CAME

1 OUT, I SAID TO SOMEONE IN HERE, THE JUDGES ARE
2 OFTEN MUCH SMARTER THAN THE LAWYERS AND KNOW MORE
3 ABOUT WHAT'S GOING ON.

4 THE COURT: WE ARE NOT ANY SMARTER THAN
5 THE LAWYERS. WE HAVE TO KIND OF KEEP UP WITH YOU
6 SOMETIMES.

7 MR. LEITER: IF HE SAYS NOTHING FURTHER,
8 WE ARE READY TO PROCEED.

9 MR. PIUZE: THANK YOU FOR LISTENING TO
10 THESE. MAY I HAVE THESE MARKED FOR POSTERITY.

11 THE COURT: YOU CAN, ABSOLUTELY, SIR.

12 ONE STACK WOULD BE, 10,000 WHAT?

13 THE CLERK: 10,014 AND 10,015?

14 MR. PIUZE: SO THE "L. A. TIMES" GROUP IS
15 10,014, THE "SAN DIEGO UNION TRIBUNE" IS 10,015.
16 THANK YOU.

17

18 * (EXHIBITS 10,014 AND 10,015,
19 NEWSPAPER ARTICLES, MARKED FOR
20 I. D.)

21

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

25

26 THE COURT: THANK YOU, MA'AM
27 ALL RIGHT, PLEASE BE SEATED.
28 OUR JURY PANEL IS WITH US. COUNSEL

1 ARE PRESENT.

2 WE RAN OVER JUST A LITTLE BIT. AS
3 YOU CAN SEE, I WAS ON THE BENCH AND WE HAD SOME
4 THINGS WE HAD TO DO OUTSIDE OF YOUR PRESENCE.

5 THE WITNESS IS ON THE STAND.

6 MA'AM, YOU UNDERSTAND YOU ARE STILL
7 UNDER OATH?

8 THE WITNESS: YES, I DO.

9 THE COURT: MR. LEITER.

10

11

12 ELIZABETH HOFFMAN,
13 CALLED AS A WITNESS BY THE DEFENSE, HAVING BEEN
14 PREVIOUSLY DULY SWORN, RESUMED THE WITNESS STAND
15 AND TESTIFIED FURTHER AS FOLLOWS:

16

17 REDIRECT EXAMINATION (RESUMED)

18

19 BY MR. LEITER:

20 Q. DR. HOFFMAN, I WANT TO TAKE A
21 LITTLE MORE OF YOUR TIME AND FOLLOWUP ON SOME OF
22 THE QUESTIONS THAT MR. PIUZE HAS ASKED YOU ABOUT
23 PLAINTIFF, MR. BOEKEN.

24 YOU HAVE TESTIFIED THAT YOU READ
25 MR. BOEKEN'S DEPOSITION IN THIS CASE; RIGHT?

26 A. YES.

27 Q. AND DO YOU RECALL FROM HIS
28 DEPOSITION WHAT HE SAID ABOUT REGULARLY FOLLOWING

1 THE NEWS OVER THE YEARS?

2 A. YES, I DO.

3 Q. WHAT DID HE SAY?

4 A. HE SAID, "I AM A REAL ADVOCATE OF
5 FOLLOWING THE NEWS. "

6 Q. I 'D LIKE TO SHOW YOU JUST A COUPLE
7 PORTIONS FROM HIS DEPOSITION. THE FIRST IS
8 DECEMBER 18, 2000. THIS IS PAGE 80. THIS IS MR.
9 PIUZE ASKING THE QUESTIONS. AND IF YOU WOULD,
10 PLEASE, READ FOR THE JURY JUST THE HIGHLIGHTED
11 QUESTIONS AND ANSWERS.

12 A. (READING)
13 "DID YOU GET INFORMATION
14 FROM THE TOBACCO COMPANIES THAT THEY
15 THOUGHT THE SURGEON GENERAL WAS ALL
16 WET AND THERE WAS NO PROOF WHATSOEVER
17 THAT CIGARETTES CAUSE ANY ILL EFFECTS
18 TO YOUR HEALTH?

19 "A YES, YES, I DID.

20 "Q WHERE DID YOU GET
21 THAT INFORMATION?

22 "A FROM THE NEWS. I
23 AM I AM A REAL ADVOCATE OF FOLLOWING
24 THE NEWS. THE NATIONAL AND, AND,
25 INTERNATIONAL NEWS. "

26 Q. SO THAT WAS MR. BOEKEN TESTIFYING
27 ABOUT WHERE HE HEARD INFORMATION ABOUT THE TOBACCO
28 COMPANIES' POSITION AND HE SAID HE HEARD IT FROM

1 THE NEWS. HE IS A BIG FOLLOWER OF THE NEWS; IS
2 THAT RIGHT?

3 A. THAT IS RIGHT.

4 Q. OKAY. I'D LIKE TO SHOW YOU A
5 SECOND SECTION, WHICH IS A FEW DAYS LATER, DECEMBER
6 27, 2000. THIS IS PAGE 179 GOING OVER INTO 180.
7 THIS IS MR. CARLTON ASKING THE QUESTIONS AND IF YOU
8 COULD PLEASE READ THAT QUESTION AND ANSWER.

9 THE COURT: STARTING AT LINE?

10 MR. LEITER: I AM SORRY, STARTING AT LINE
11 20, AND WE ARE READING ONTO PAGE 180 TO LINE 9.

12 THE WITNESS: (READING)

13 "Q NOW, DURING ONE OF
14 THE FIRST SESSIONS OF YOUR
15 DEPOSITIONS, THE DIRECT DEPOSITION
16 CONDUCTED BY YOUR ATTORNEY, YOU SAID
17 THAT YOU WERE A BIG ADVOCATE OF
18 KEEPING UP WITH THE NEWS. DO YOU
19 RECALL THAT?

20 "A YES, I DO.

21 "Q WAS THERE SOME
22 PERIOD OF TIME WHERE YOU STARTED DOING
23 THAT WHEN YOU STARTED KEEPING UP WITH
24 THE NEWS?

25 "A YES.

26 "Q WHEN WAS THAT?

27 "A I RECALL THAT FROM
28 THE FIRST TIME I WENT TO THE PICTURE

1 SHOWS AS A YOUNG BOY I ENJOYED THE
2 INTERNATIONAL NEWS WHICH WAS SHOWN
3 DURING OR IN BETWEEN THE MOVIES. AND
4 THAT HAS PRETTY WELL STUCK WITH ME. "

5 Q. SO MR. BOEKEN STARTED FOLLOWING THE
6 NEWS AS A CHILD AND CONTINUED FOLLOWING IT OVER
7 TIME; IS THAT CORRECT?

8 A. THAT'S WHAT IT SAYS.

9 Q. THAT'S WHAT HE TESTIFIED TO.

10 AND I'D LIKE TO SHOW YOU JUST ONE
11 MORE PORTION OF HIS DEPOSITION FROM THE SAME DAY.
12 THIS IS PAGE 186, LINES 12 THROUGH 16, WHICH IS
13 EVEN TALKING ABOUT THE TIME THAT MR. BOEKEN WAS
14 LIVING IN THE VAN, WHICH I BELIEVE WAS THE LATE
15 1960'S, HE TESTIFIED?

16 A. LATE '60'S, EARLY '70'S.

17 Q. IF YOU COULD READ THOSE FEW
18 HIGHLIGHTED LINES?

19 A. YES. THE QUESTION IS "DURING THIS
20 TIME PERIOD THAT YOU WERE LIVING IN THE VAN, DID
21 YOU TRY TO KEEP UP WITH THE NEWS IN ANY WAY?

22 "A I AM SURE, IN
23 SOMEONE FASHION OR ANOTHER. "

24 Q. THANK YOU.

25 NOW, AS YOU HAVE BEEN TESTIFYING
26 OVER THE LAST SEVERAL DAYS, I GUESS, YOU HAVE DONE
27 A LOT OF LOOKING AS TO WHAT INFORMATION WAS
28 AVAILABLE TO MR. BOEKEN AND TO THE PUBLIC IN

1 GENERAL ABOUT THE HEALTH RISKS OF SMOKING; IS THAT
2 CORRECT?

3 A. THAT IS RIGHT.

4 Q. AND YOU TESTIFIED ABOUT THE VOLUME
5 OF INFORMATION; CORRECT?

6 A. THAT IS RIGHT.

7 Q. AND YOU TESTIFIED ABOUT THE SOURCES
8 OF INFORMATION?

9 A. THAT IS CORRECT.

10 Q. AND I REMEMBER YOU HAD YOUR CHART
11 UP THERE WHICH YOU WROTE ABOUT COMMON KNOWLEDGE
12 COMING FROM MANY, MANY SOURCES; IS THAT CORRECT?

13 A. THAT IS RIGHT.

14 Q. I'D LIKE TO PLAY FOR THE JURY A
15 SHORT PIECE OF VIDEO TAPE OF MR. BOEKEN'S
16 DEPOSITION FROM FEBRUARY 10.

17

18 (AT THIS TIME, THE VIDEO
19 WAS PLAYED)

20

21 Q BY MR. LEITER: MY APOLOGIES, IT
22 LOOKS LIKE WE GOT THE SOUND OUT OF SYNC WITH THE
23 PICTURE.

24 NOW, DR. HOFFMAN, YOU AREN'T HERE
25 TO OFFER AN OPINION AS TO WHAT IS GOING ON INSIDE
26 OF MR. BOEKEN'S HEAD AT ANY POINT IN TIME; CORRECT?

27 A. NO, I AM NOT.

28 Q. YOU ARE NOT HERE TO OFFER AN

1 OPINION ABOUT WHAT MR. BOEKEN WAS THINKING AT ANY
2 PARTICULAR POINT IN TIME, ARE YOU?

3 A. NO, I COULDN'T.

4 Q. BUT THIS TESTIMONY WAS ABOUT WHAT
5 MR. BOEKEN SAW OVER THE '60'S AND THE '70'S AND THE
6 '80'S.

7 IS THAT OPINION, WHEN HE SAYS --
8 EXCUSE ME -- IS THAT TESTIMONY WHEN HE SAYS HE
9 DIDN'T SEE ALL OF THOSE THINGS OR ANY OF THOSE
10 THINGS DURING THOSE DECADES, IS THAT TESTIMONY
11 CONSISTENT WITH YOUR OPINION ABOUT THE VOLUME OF
12 INFORMATION THAT WAS AVAILABLE?

13 A. NO, IT IS NOT.

14 Q. IS IT CONSISTENT WITH YOUR OPINION
15 ABOUT ANY SOURCES OF INFORMATION THAT WERE
16 AVAILABLE DURING THOSE TIME PERIODS?

17 A. NO, IT ISN'T.

18 Q. NOW, I WANT TO SHOW YOU A QUICK
19 SECOND PIECE OF MR. BOEKEN'S TESTIMONY. BEFORE
20 THAT, I WANT TO GO BACK TO A PERIOD WHERE HE WAS
21 LIVING IN THE VAN, THAT WE TALKED ABOUT JUST A FEW
22 MOMENTS AGO.

23 DO YOU REMEMBER MR. BOEKEN
24 TESTIFYING THAT HE WAS IN A HIPPIY PERIOD?

25 A. YEAH, I REMEMBER THAT GENERAL
26 DESCRIPTION.

27 Q. BASED ON YOUR WORK AS A HISTORIAN,
28 WAS IT COMMONPLACE FOR HIPPIES IN THE LATE '60'S OR

1 EARLY '70'S TO BELIEVE IN BIG BUSINESS?

2 A. NO, NOT AT ALL.

3 Q. EXPLAIN WHAT YOU MEAN BY THAT.

4 A. WELL, THE HIPPIES WERE PART OF WHAT
5 WAS CALLED THE COUNTER-CULTURE AND PROBABLY SOME OF
6 YOU HAVE HEARD OF THAT.

7 IT WAS -- THE IDEA WAS TO, IN FACT,
8 REALLY REJECT THE VALUES OF THE DOMINANT CULTURE.
9 THAT'S WHY IT WAS CALLED THE COUNTER-CULTURE. AND
10 PARTICULARLY, THERE'S A GREAT CRITIQUE OVER
11 PHONINESS AND THE PHONINESS OF PEOPLE WHO, THEY
12 WERE CALLED THE ESTABLISHMENT. AND THE
13 ESTABLISHMENT COULD BE LOTS OF DIFFERENT PEOPLE,
14 BUT CERTAINLY BIG BUSINESS WAS A BIG PART OF THAT
15 NOTION OF THE ESTABLISHMENT.

16 ONE OF THE GREAT LINES FROM THE
17 DECADE WAS IN A MOVIE CALLED "THE GRADUATE" WHICH
18 WAS DUSTIN HOFFMAN'S FIRST BIG MOVIE. A KIND OF
19 EXECUTIVE GUY COMES UP TO DUSTIN HOFFMAN AND SAYS,
20 "I HAVE ONLY ONE WORD FOR YOU, PLASTICS." AND
21 THAT'S A BIG LINE BECAUSE THE WHOLE IDEA THAT THESE
22 PEOPLE WERE, THEMSELVES, PLASTIC.

23 SEE, HIPPIES WERE INTENDING TO BE
24 MORE NATURAL, GO BACK TO NATURE AND GO BACK TO ALL
25 THOSE VALUES.

26 Q. I WANT TO GO BACK TO SOMETHING
27 MENTIONED BY MR. BOEKEN IN THAT LAST CLIP THAT WE
28 SAW

1 HE TALKED ABOUT HAVING A
2 RECOLLECTION IN THE '60'S THAT THERE WAS SOME
3 DISPUTES OVER PUTTING WARNING LABELS ON THE PACKS
4 OF CIGARETTES.

5 DO YOU RECALL THAT?

6 A. YES, I SAW HIM SAY THAT.

7 Q. NOW, WHEN MR. PIUZE WAS QUESTIONING
8 YOU, HE ASKED YOU A LARGE NUMBER OF QUESTIONS IN
9 WHICH HE CHARACTERIZED THE SURGEON GENERAL SQUARING
10 OFF AGAINST THE TOBACCO INDUSTRY. DO YOU REMEMBER
11 THOSE QUESTIONS?

12 A. YES.

13 Q. IS THAT A FAIR CHARACTERIZATION OF
14 WHAT WAS GOING ON?

15 A. NO, I DON'T THINK SO.

16 Q. WHY NOT?

17 A. WELL, FOR A COUPLE OF REASONS. ONE
18 IS YOU HAVE TO LOOK AT THE PARTICULAR PERIOD OF
19 TIME WHEN THE FIRST SURGEON GENERAL'S REPORT CAME
20 OUT, THE REALLY BIG ONE, THE 1964 REPORT. INDUSTRY
21 WAS ALLOWED TO VETO PEOPLE WHO WOULD BE ON THAT
22 COMMITTEE. THERE WAS A BIG COMMITTEE. AND SO THE
23 TOBACCO INDUSTRY COOPERATED WITH THE SURGEON
24 GENERAL IN PUTTING THE COMMITTEE TOGETHER.

25 SO I THINK AT THE TIME, I MEAN,
26 THAT'S ONE OF THE THINGS THAT MADE IT SO IMPRESSIVE
27 TO PEOPLE WAS THAT THIS WAS A COMMITTEE THAT THE
28 TOBACCO INDUSTRY DID NOT OBJECT TO, YOU KNOW, THE

1 MEMBERS OF THE COMMITTEE.

2 AND SO THAT MADE IT SEEM VERY
3 IMPARTIAL AND VERY BIPARTISAN AND THAT KIND OF
4 THING. SO I DON'T THINK IT WAS CHARACTERIZED AS
5 THEY WERE SQUARED OFF.

6 BUT THE OTHER THING I THINK IS
7 MORE -- MORE FUNDAMENTAL AND IMPORTANT IS THAT THE
8 SURGEON GENERAL WAS, BY NO MEANS, THE SOLE
9 SPOKESPERSON FOR THE HEALTH PROBLEMS AND THE RISKS
10 THAT YOU TOOK.

11 AND IN FACT, CERTAINLY IN THE
12 '50'S, THE BIG VOICES WERE, YOU KNOW, DOLL AND HILL
13 AND HAMMOND AND HORN AND ERNST, WYNDER AND THE
14 AMERICAN CANCER SOCIETY AND ALL THE GROUPS I HAVE
15 TRIED TO TELL YOU ABOUT. AMERICAN LUNG
16 ASSOCIATION, YOU KNOW, WHAT WAS THEIR BIG SLOGAN,
17 "IT'S A MATTER OF LIFE AND BREATH."

18 SO THESE WERE THE BIG GROUPS AND
19 THEN THAT WAS TRUE THROUGHOUT THE '60'S AS WELL AND
20 THE '70'S AND THEN I HAVE MENTIONED IN THE '60'S
21 AND '70'S YOU BEGIN TO GET OTHER KINDS OF FOLKS WHO
22 ARE TALKING ABOUT IT AS WELL, PEOPLE LIKE -- THERE
23 ARE MORE KIND OF LIKE ON THE LEFT, POLITICALLY,
24 RALPH NADER AND GROUPS LIKE THAT.

25 SO THERE'S JUST LOTS AND LOTS OF
26 DIFFERENT ANGLES FROM WHEN YOU WOULD HEAR THIS
27 INCLUDING FROM CHURCHES. SO THIS THING OF IT AS
28 THE SURGEON GENERAL VERSUS THE TOBACCO INDUSTRY

1 WOULD BE TO STRIP THE HISTORICAL CONTEXT OF MUCH OF
2 WHAT'S IN IT.

3 Q. NOW, YOU HAVE HEARD OR YOU RECALL
4 FROM HIS DEPOSITION THAT MR. BOEKEN HAS TESTIFIED
5 THAT HE THOUGHT THE SURGEON GENERAL WAS ON A
6 VENDETTA AGAINST THE TOBACCO INDUSTRY, DO YOU
7 REMEMBER THAT TESTIMONY?

8 A. YES, I REMEMBER THAT.

9 Q. I WANT YOU TO ASSUME FOR THE MOMENT
10 THAT MR. BOEKEN ACCURATELY TESTIFIED ABOUT WHAT HE
11 WAS THINKING AND THAT HE ACTUALLY BELIEVED THAT THE
12 SURGEON GENERAL WAS ON A VENDETTA. I WANTS YOU TO
13 ASSUME THAT'S A TRUE TESTIMONY. OKAY?

14 A. OKAY.

15 Q. ASSUMING THAT'S TRUE TESTIMONY AND
16 THIS QUESTION REALLY GOES OVER TIME, WAS THE
17 SURGEON GENERAL THE ONLY SOURCE OF INFORMATION FOR
18 MR. BOEKEN ABOUT THE HEALTH RISK OF SMOKING?

19 A. NO, NOT AT ALL.

20 Q. WAS THE GOVERNMENT OF THE UNITED
21 STATES THE ONLY SOURCE OF INFORMATION ABOUT THE
22 HEALTH RISKS OF SMOKING TO MR. BOEKEN?

23 A. NO, NOT AT ALL.

24 Q. SO I WANT YOU TO ASSUME EVEN
25 BROADER, FOLLOWING UP ON MR. PIUZE'S QUESTIONS,
26 THAT WE DON'T KNOW WHAT MR. BOEKEN THOUGHT ABOUT
27 WATERGATE OR VIETNAM OR GARY POWERS OR DWIGHT
28 EISENHOWER OR ANY OF THE OTHER PEOPLE, DO WE?

1 A. NO, I DON' T KNOW WHAT HIS POLITICAL
2 VIEWS WERE AT THE TIME.

3 Q. SUPPOSE, HYPOTHETICALLY, THAT
4 MR. BOEKEN DECIDED, WE DON' T KNOW THIS FROM HIS
5 TESTIMONY, BUT SUPPOSE HE DECIDED I DON' T BELIEVE
6 ANYTHING I EVER HEAR FROM THE GOVERNMENT, WOULD IT
7 CHANGE YOUR OPINION AS TO WHETHER THERE WAS COMMON
8 KNOWLEDGE FOR HIM ABOUT THE HEALTH RISKS OF SMOKING
9 OUT THERE?

10 A. ABSOLUTELY NOT. BECAUSE MOST OF
11 IT, I THINK, PROBABLY DIDN' T COME FROM GOVERNMENT.
12 IT WAS JUST LOTS FROM ALL KINDS OF ANGLES.

13 Q. I WANT TO SHOW YOU -- I AM SORRY,
14 ARE YOU FINISHED?

15 A. NO, I CAN ELABORATE, BUT I THINK
16 YOU WANT, PERHAPS, A SHORT ANSWER.

17 Q. I WANT TO SHOW YOU ONE OTHER VERY
18 SHORT CLIP FROM MR. BOEKEN' S DEPOSITION.

19

20 (AT THIS TIME THE VIDEO
21 WAS PLAYED)

22

23 Q BY MR. LEITER: MR. BOEKEN
24 TESTIFIES THAT HE HEARD MORE INFORMATION FROM THE
25 TOBACCO COMPANIES ARTICULATING THEIR POSITION ABOUT
26 THE HEALTH RISKS THAN HE HEARD FROM THE OTHER SIDE
27 OF THE STORY. IS THAT WHAT HE SAID?

28 A. YES, THAT' S WHAT HE SAID.

1 Q. THAT IS CONSISTENT WITH THE
2 RESEARCH YOU HAVE DONE?

3 A. NO, IT IS COMPLETELY INCONSISTENT.

4 Q. CAN YOU BRIEFLY REMIND US AS TO WHY
5 IT IS INCONSISTENT?

6 A. BECAUSE THERE WAS SUCH AN ENORMOUS
7 VOLUME, AND YOU MAY REMEMBER, I WAS LOOKING AT NOT
8 ONLY ALL THE DIFFERENT EXAMPLES, THE WAYS THAT
9 PEOPLE COULD HEAR FROM THEIR FAMILY AND FROM YOU
10 KNOW, THEIR CHURCHES, FROM YOU KNOW, GOVERNMENT
11 LAW, POPULAR SLANG, ALL THE DIFFERENT WAYS, BUT I
12 ALSO DID THIS STUDY WHICH WAS QUANTITATIVE.
13 BECAUSE I DID THINK THAT VOLUME, TO REALLY KNOW
14 VOLUME, YOU HAVE TO COUNT THINGS. OTHERWISE YOU
15 ARE SORT OF MORE GUESSING IN AN IMPRESSIONISTIC
16 WAY.

17 SO I DID THE ANALYSIS OF THE "LOS
18 ANGELES TIMES" AND WAS OVERWHELMED BY THE SHEER
19 VOLUME, THE INCREDIBLE WEIGHT OF ARTICLES THAT
20 EVERY DAY SENT ME HOME SAYING TO MYSELF, MY GOD,
21 SMOKING IS REALLY BAD FOR YOU. BECAUSE IT'S
22 JUST -- IT'S AN INCREDIBLE NUMBER, COMPARED TO THE
23 VERY SMALL NUMBER THAT I FOUND WHICH EMPHASIZED THE
24 INDUSTRY'S POSITION, YOU KNOW, FEWER THAN ONE A
25 YEAR.

26 Q. AND I BORROWED A CORNER OF
27 COUNSEL'S TABLE TO, AGAIN, PUT OUT THE LARGE STACK
28 OF 2,287 "LOS ANGELES TIMES" ARTICLES AND THE SMALL

1 STACK OF 41.

2 NOW, YOU USED THE "LOS ANGELES
3 TIMES" AS AN EXAMPLE AT THIS POINT; RIGHT?

4 A. THAT'S RIGHT.

5 Q. AND THAT'S BECAUSE IT IS A
6 NEWSPAPER THAT MR. BOEKEN READ REGULARLY OVER TIME;
7 IS THAT CORRECT?

8 A. IT WAS THE LOGICAL EXAMPLE.

9 Q. DO YOU HAVE ANY REASON TO BELIEVE
10 THAT IF IT USED A DIFFERENT NEWSPAPER OR MAGAZINE,
11 YOU WOULD HAVE COME UP WITH RADICALLY DIFFERENT
12 NUMBERS?

13 A. NO, I DON'T. I WOULD NOT HAVE.

14 Q. YOU DON'T BELIEVE THE 2,287
15 REPRESENT ARTICLES THAT ARE PREDOMINANTLY ABOUT THE
16 HEALTH RISKS?

17 A. YES, THAT IS RIGHT.

18 Q. WHAT DO THE 41 REPRESENT?

19 A. THEY ARE ARTICLES WHERE THE FOCUS
20 OF THE ARTICLE IS ON THE INDUSTRY'S POSITION AND
21 THE INDUSTRY'S POSITION IN SOME WAY DOWNPLAYS THE
22 DANGER OF SMOKING.

23 Q. AND THIS IS FOR BOTH PILES, 1950 TO
24 1994; IS THAT CORRECT?

25 A. THAT IS RIGHT.

26 MR. LEITER: YOUR HONOR, WE HAVE PREPARED
27 A CHART WITH THE EXHIBIT NUMBERS OF ALL OF THESE
28 NUMBERS, ALL OF THESE EXHIBITS, IN BOTH PILES, AND

1 WE ARE OFFERING THEM INTO EVIDENCE.

2 MR. PIUZE: WELL, AT THIS TIME, I CAN'T
3 AGREE FOR PARODY REASONS THAT WE DISCUSSED
4 PREVIOUSLY.

5 THE COURT: WE WILL TAKE IT UP LATER.

6 Q BY MR. LEITER: NOW, IN MY DIRECT
7 EXAMINATION OF YOU, DR. HOFFMAN, WE TALKED ABOUT
8 THIS CHART. REMEMBER THIS CHART?

9 A. YES, I DO.

10 Q. AND WHAT DOES THIS CHART REFLECT
11 AGAIN?

12 A. I THINK IT REFLECTS THE CAMPAIGN,
13 THE SUCCESS OF WHAT WAS DONE, THE REMEDIAL ACTION
14 THAT WAS TAKEN AND THE GREAT COMMITMENT OF PEOPLE
15 WHO GET FOLKS TO STOP SMOKING.

16 Q. AND IT SHOWS THAT AS A PERCENTAGE
17 OF THE POPULATION, A LARGER PERCENTAGE, OVER 40
18 PERCENT, 42 PERCENT SMOKED IN 1965, AND THAT NUMBER
19 DROPPED DRAMATICALLY TO ABOUT 24 PERCENT IN 1998,
20 IS THAT ACCURATE?

21 A. THAT'S ACCURATE.

22 Q. NOW, YOU WERE ASKED ON
23 CROSS-EXAMINATION ABOUT THERE BEING MORE PEOPLE NOW
24 THAN THERE USED TO BE?

25 A. THAT IS RIGHT.

26 Q. HOW DOES THAT EFFECT YOUR OPINION,
27 IF IT DOES AT ALL, ABOUT THE SUCCESS OF THE PUBLIC
28 HEALTH CAMPAIGN?

1 A. IT DOESN'T EFFECT MY OPINION AT
2 ALL.

3 Q. CAN YOU EXPLAIN WHY?

4 A. WELL, BECAUSE YOU ARE LOOKING AT
5 THE RATE OF ANYTHING, WHEN YOU SAY WHAT'S THE
6 PREVALENCE OF SOMETHING, IF YOU WERE TRYING TO SAY
7 WHAT'S THE PREVALENCE OF ANY, YOU KNOW, IF YOU ARE
8 LOOKING AT THE PREVALENCE OF BIRTHS OVER DEATHS OR
9 SMOKING OR COFFEE DRINKING, AS THE NUMBERS OF
10 PEOPLE WILL GO UP, THEN THERE WILL BE MORE ABSOLUTE
11 NUMBERS. BUT IN TERMS OF SOCIAL TRENDS, WHAT'S
12 REALLY REMARKABLE IS THE PERCENTAGE THAT CHANGES
13 OVER TIME.

14 Q. NOW, YOUR OPINION OF THE PUBLIC
15 HEALTH CAMPAIGN IS A CAMPAIGN REALLY THAT COMES
16 FROM ALL OF THE SOURCES OF COMMON KNOWLEDGE, IS
17 THAT FAIR?

18 A. YES, ALL OF THE SOURCES, INCLUDING
19 FAMILY.

20 Q. AND YOUR OPINION THAT THAT CAMPAIGN
21 HAS BEEN EFFECTIVE IN MAKING THE RISKS OF SMOKING
22 COMMON KNOWLEDGE, ARE YOU THE ONLY ONE THAT HOLDS
23 THAT OPINION?

24 A. NO, NOT AT ALL.

25 Q. CAN YOU GIVE SOME EXAMPLES OF
26 OTHERS WHO HOLD THAT OPINION AS WELL?

27 A. WELL, I MEAN, THE AMERICAN MEDICAL
28 ASSOCIATION HAS SAID IT, THE AMERICAN CANCER

1 SOCIETY HAS SAID IT AT DIFFERENT POINTS IN HISTORY.
2 JAMES PATTERSON WROTE A MARVELOUS
3 BOOK ON THE HISTORY OF CANCER WHO IS ALSO WINNER OF
4 THE PULITZER PRIZE TALKS ABOUT THIS BEING
5 WIDE-SPREAD KNOWLEDGE.

6 Q. AND THE SURGEON GENERAL?

7 A. AND THE SURGEON GENERAL, YES, ONE
8 OF THE REPORTS THAT WE SHOWED YOU WAS WHERE THEY
9 TALKED ABOUT 25 YEARS OF PROGRESS.

10 MR. LEITER: I HAVE NOTHING FURTHER, YOUR
11 HONOR.

12 THE COURT: ALL RIGHT.

13 MAY I HAVE A SIDE BAR, PLEASE, WITH
14 COUNSEL.

15

16 (A DISCUSSION WAS HELD IN
17 CHAMBERS, NOT REPORTED.)

18

19 THE COURT: THANK YOU, LADIES AND
20 GENTLEMEN. WE DON'T DO THAT VERY OFTEN, DO WE.

21 ALL RIGHT, THANK YOU MR. LIGHTER.

22 MR. PIUZE.

23

24 RE-CROSS-EXAMINATION

25

26 BY MR. PIUZE:

27 Q. HAD YOU EVER SEEN MR. BOEKEN'S
28 VIDEO TAPED DEPO BEFORE JUST NOW?

1 A. NO.

2 Q. YOU HAVE ONLY READ WORDS ON A PIECE
3 OF PAPER; RIGHT?

4 A. YES.

5 Q. DO YOU HAVE ANY IDEA HOW MR.
6 BOEKEN'S APPEARANCE ON FEBRUARY 10TH, DIFFERED FROM
7 WHAT HE LOOKED LIKE AT THE END OF DECEMBER?

8 A. NO.

9 Q. DO YOU HAVE ANY IDEA THAT MR.
10 BOEKEN'S ABILITY TO RESPOND TO QUESTIONS WAS ANY
11 DIFFERENT ON FEBRUARY 10TH THAN IT WAS AT THE END
12 OF DECEMBER?

13 A. NO.

14 Q. DO YOU HAVE ANY IDEA WHETHER OR NOT
15 EVEN DURING THE END OF DECEMBER HIS ABILITY TO
16 ANSWER QUESTIONS WAS CHANGING ON A DAY-TO-DAY
17 BASIS?

18 A. NO.

19 Q. JUST AS A GENERAL PROPOSITION, I
20 WILL BET YOU'D AGREE THAT TAKING SELECTIVE LITTLE
21 BITES OUT OF A MASS OF INFORMATION PROBABLY ISN'T A
22 GOOD IDEA?

23 A. YOU SHOULD ONLY USE ILLUSTRATIVE
24 EXAMPLES IF THEY REPRESENT THE WHOLE.

25 Q. SO IS THAT A YES?

26 A. IT'S, TO ME, IT'S NOT A YES OR NO
27 QUESTION. SOMETIMES YOU DO HAVE TO TAKE A SMALL
28 EXAMPLE BECAUSE YOU CAN'T SHOW EVERYTHING. BUT YOU

1 NEED TO BE SURE THAT IT'S A REPRESENTATIVE EXAMPLE.
2 SO THAT'S A YES OR NO, I DON'T KNOW

3 Q. DO YOU KNOW THE DIFFERENCE BETWEEN
4 HEARING SOMETHING AND BELIEVING SOMETHING?

5 A. YES.

6 Q. IF YOU READ MR. BOEKEN'S
7 DEPOSITION, YOU CERTAINLY KNOW THAT HE WAS AWARE
8 THAT THERE WERE CLAIMS THAT SMOKING CAUSED CANCER,
9 HE HEARD THAT, BUT HE DIDN'T BELIEVE THAT. YOU ARE
10 AWARE OF THAT, AREN'T YOU?

11 A. I NEVER SAW HIM SAY THAT HE HEARD
12 IT, I HEARD -- I HEARD, I HEARD, I READ, RATHER,
13 THAT THE FIRST TIME HE EVER HEARD THAT IT COULD
14 CAUSE ANYTHING WAS IN 1976 AND IT WAS EMPHYSEMA AND
15 THEN HE NEVER SAID HE HEARD THAT IT COULD CAUSE
16 LUNG CANCER UNTIL HIS MOTHER DIED IN 1994.

17 Q. NO. WHAT HE SAID, WASN'T IT, WAS
18 THAT IN 1994, HE KNEW, HE THEN KNEW SMOKING CAUSED
19 LUNG CANCER, ISN'T THAT WHAT HE SAID?

20 A. HE SAID THAT AT ALL THESE
21 ANTI-SMOKING GROUPS THAT HE ATTENDED, INCLUDING ONE
22 OF THE SEVENTH DAY ADVENTIST CHURCHES THAT HE NEVER
23 HEARD ANY EXPLANATION AS TO WHY SOMEONE WOULD WANT
24 TO STOP SMOKING, THAT'S WHAT I READ.

25 Q. HERE'S WHAT MY QUESTION WAS. YOU
26 BROUGHT UP HIS MOTHER. I AM READY TO TALK ABOUT
27 HIS MOTHER.

28 DIDN'T HE TESTIFY IN THAT

1 DEPOSITION THAT WHEN HIS MOTHER DIED IN JUNE OF
2 1994, HE KNEW THEN THAT SMOKING CAUSED LUNG CANCER?

3 A. YES.

4 Q. HEARING AND BELIEVING AREN'T
5 NECESSARILY THE SAME, ARE THEY?

6 A. THAT'S TRUE.

7 Q. YOU MENTIONED, FOR INSTANCE, A
8 SCHOLASTIC SURVEY OF SOME SORT, REMEMBER THAT?

9 A. YES, I DO.

10 Q. WHERE DID YOU GET THAT FROM?

11 A. FROM SCHOLASTIC. IT WAS PART OF AN
12 ARTICLE THAT THEY PUBLISHED IN 1960.

13 Q. YOUR RESEARCH ASSISTANTS FROM
14 PHILIP MORRIS'S WASHINGTON D. C. LAW FIRM GAVE YOU
15 THIS SCHOLASTIC SURVEY, DIDN'T THEY?

16 A. NO. THAT'S NOT TRUE. MY ASSISTANT
17 IN SAN DIEGO GAVE THAT TO ME.

18 Q. THE SCHOLASTIC SURVEY TALKED ABOUT
19 WHAT KIDS HEARD, NOT WHAT THEY BELIEVED?

20 A. YES. IT TALKED ABOUT THAT THEY
21 KNEW THAT THERE HAD BEEN A LINK MADE BETWEEN THE
22 TWO, BETWEEN LUNG CANCER AND SMOKING CIGARETTES.

23 Q. THEY HEARD THAT?

24 A. RIGHT.

25 Q. LET ME ASK YOU SOMETHING. ABOUT, I
26 DON'T KNOW, I FORGET THE EXACT DATE, EIGHT YEARS
27 AGO OR SOMETHING, DID YOU EVER HEAR THAT A FAMOUS
28 ATHLETE HERE IN LOS ANGELES KILLED HIS EX-WIFE?

1 A. YES.

2 Q. HAVE YOU HEARD THAT?

3 A. YES.

4 Q. DID THE FACT THAT YOU HEARD IT MAKE
5 IT TRUE?

6 A. NO.

7 Q. IS THERE A DIFFERENCE BETWEEN
8 HEARING AND BELIEVING?

9 A. I THINK YOU JUST ANSWERED THAT
10 QUESTION -- ASKED THE QUESTION I ANSWERED. YES,
11 THERE IS A DIFFERENCE.

12 Q. SO MR. BOEKEN WAS A HIPPIY IN THE
13 LATE '60'S, WAS HE?

14 A. THAT'S WHAT HE SAID.

15 Q. AND I GUESS YOU DIDN'T SEE THE
16 PICTURE OF HIM WITH THE LONG HAIR?

17 A. NO, I DIDN'T.

18 Q. YOU TOLD THE JURY THAT HIPPIES
19 WEREN'T NECESSARILY PRO BUSINESS?

20 A. THAT IS RIGHT.

21 Q. THAT'S SORT OF AN UNDERSTATEMENT,
22 ISN'T IT?

23 A. WELL, YES.

24 Q. HIPPIES WERE ANTI-ESTABLISHMENT,
25 ANTI-BUSINESS, ANTI-BIG BUSINESS?

26 A. THEY WERE THE COUNTER-CULTURE.

27 Q. HIPPIES DIDN'T READ THE "WALL
28 STREET JOURNAL"?

1 A. I DON'T KNOW, BUT PROBABLY NOT.

2 Q. THINK ABOUT THAT FOR A SECOND.

3 YOU DON'T KNOW WHETHER OR NOT

4 HIPPIES READ THE "WALL STREET JOURNAL"?

5 A. IF A PERSON IS INTERESTED IN

6 FOLLOWING THE NEWS, THE "WALL STREET JOURNAL" IS

7 ACTUALLY KNOWN AS ONE OF THE BETTER NEWSPAPERS IN

8 THE COUNTRY.

9 WOULD A HIPPY HAVE INVESTMENT THAT

10 HE MIGHT FOLLOW, ACTUALLY, SOME DID. YOU KNOW,

11 SOME PEOPLE HAVE MONEY AND THEY FOLLOW THE NEWS FOR

12 THAT REASON.

13 SO I MEAN, I THINK IT IS ENTIRELY

14 POSSIBLE SOMEBODY COULD HAVE BEEN A HIPPY AND READ

15 THE "WALL STREET JOURNAL. "

16 Q. LET'S PUT ASIDE ENTIRELY POSSIBLE.

17 MOST LIKELY, MOST HIPPIES NEVER GOT

18 ANY PLACE NEAR THE "WALL STREET JOURNAL"?

19 A. I THINK THAT'S PROBABLY RIGHT.

20 Q. THEY PROBABLY GOT NEAR "ROLLING

21 STONE"?

22 A. IF THEY FOLLOWED MUSIC.

23 Q. SO ANYWAY, I GUESS THE POINT I AM

24 TRYING TO MAKE HERE IS, HE HAD LONG HAIR, HE WAS A

25 HIPPY, THAT WAS THE LATE '60'S, THAT WAS THE EARLY

26 '70'S; RIGHT?

27 A. HE HAD LONG HAIR. HE WAS A HIPPY

28 AND IT WAS THE EARLY '70'S, YES.

1 Q. AND HE GREW UP, CUT HIS HAIR OR GOT
2 A JOB OR GOT THE "WALL STREET JOURNAL" OR BECAME A
3 BUSINESS MAN, THAT'S ALL RIGHT TOO, ISN'T IT?

4 A. YES. I THINK HE WAS VERY
5 CULTURALLY SENSITIVE AT ALL POINTS IN HIS LIFE. HE
6 SEEMED TO BE DOING WHAT THE GOING THING WAS.

7 Q. SPEAKING OF CULTURALLY SENSITIVE,
8 DUSTIN HOFFMAN, DO YOU KNOW THE YEAR THAT MOVIE
9 CAME OUT?

10 A. '68 OR '69.

11 Q. NOT BAD.

12 AND THE GUY WHO WHISPERED IN DUSTIN
13 HOFFMAN'S EAR, "PLASTIC," WHAT WAS HIS NAME?

14 A. I DON'T REMEMBER THE ACTOR.

15 Q. NO. THE NAME OF THE CHARACTER.

16 A. WAS HE MRS. ROBINSON'S HUSBAND? I
17 DON'T REMEMBER. I JUST REMEMBER IT WAS A SCENE AT
18 THE BEGINNING OF THE MOVIE, A PARTY SCENE AND ONE
19 OF HIS DAD'S FRIENDS COMES UP TO HIM AND SAYS,
20 "YOUNG MAN, YOU HAVE JUST GRADUATED, I HAVE ONE
21 WORD FOR YOU, PLASTIC."

22 Q. THAT WAS MR. ROBINSON, WASN'T IT?

23 A. I DON'T REMEMBER. IT MAY HAVE BEEN
24 MR. ROBINSON.

25 Q. TO PAY MR. ROBINSON BACK FOR HIS
26 GOOD IDEA ABOUT PLASTIC, WHAT DID DUSTIN HOFFMAN DO
27 WITH MRS. ROBINSON?

28 A. MR. -- MRS. ROBINSON AND DUSTIN

1 HOFFMAN HAD AN AFFAIR INTO WHICH SHE SEDUCED HIM

2 Q. AND MR. ROBINSON'S DAUGHTER?

3 A. DUSTIN HOFFMAN FELL IN LOVE WITH
4 MRS. ROBINSON'S DAUGHTER AND -- WHO WAS A STUDENT
5 AT BERKELEY AND HE SPIRITS HER AWAY AT THE END OF
6 THE FILM TO MARRY HER.

7 Q. NOW, I AM GOING TO -- THANK YOU FOR
8 THAT.

9 AND MOVE INTO A NEWER AREA AND I
10 WANT TO CAUTION YOU THAT WE ARE GOING TO PLAY THIS
11 BY EAR. AND I WANT YOU TO BE CAREFUL ABOUT QUOTING
12 THE CONTENT ABOUT WHAT I AM GOING TO SHOW YOU;
13 OKAY?

14 A. OKAY.

15 Q. OKAY.

16 YOU, LET'S TALK ABOUT YOU FOR A
17 MINUTE.

18 A. OKAY.

19 Q. YOU ARE A WELL-INFORMED PERSON IN
20 TODAY'S SOCIETY.

21 A. I THINK THAT'S PROBABLY GENERALLY
22 TRUE. DEPENDING UPON THE AREA OF INFORMATION, OF
23 COURSE.

24 Q. WELL, ONE AREA OF INFORMATION YOU
25 HAVE BEEN CONCENTRATING ON FOR THE LAST YEAR AND A
26 HALF, TWO YEARS OR SO, IS TOBACCO; RIGHT?

27 A. THAT IS RIGHT.

28 Q. SO YOU THINK YOU ARE A PRETTY

1 WELL-INFORMED PERSON IN TODAY'S SOCIETY WHEN IT
2 COMES TO TOBACCO ISSUES?

3 A. WHEN IT COMES TO THE HISTORY OF THE
4 OPPOSITION TO THE USE OF TOBACCO.

5 Q. THAT'S NOT WHAT I AM ASKING.

6 A. NO, THEN I CAN'T SAY I AM NOT A
7 SCIENTIST, I WOULDN'T HAVE FOLLOWED JOURNALS, FOR
8 EXAMPLE, WHICH TALK ABOUT IN MEDICAL CONSEQUENCES
9 OR, YOU KNOW, THE MANUFACTURING AND THAT KIND OF
10 THING OR THE -- SO I WOULDN'T WANT TO SAY I AM AN
11 EXPERT ON EVERYTHING HAVING TO DO WITH TOBACCO
12 BECAUSE I AM HONESTLY NOT.

13 Q. I AM NOT ASKING IF YOU ARE AN
14 EXPERT. I AGREE WITH YOU. I DON'T THINK YOU ARE
15 AN EXPERT ON THOSE THINGS HAVING TO DO WITH
16 TOBACCO. HERE'S THE QUESTION.

17 MR. LEITER: OBJECT TO THE COMMENTARY.

18 THE COURT: SUSTAINED.

19 MR. PIUZE: I AM AGREEING WITH IT.

20 THE COURT: WELL, SUSTAINED. WE DON'T
21 NEED YOUR AGREEMENTS BECAUSE IT IS IRRELEVANT.

22 THANK YOU.

23 MR. PIUZE: OKAY, SORRY.

24 Q BY MR. PIUZE: NOT AS AN EXPERT,
25 AS A PERSON, IN SOCIETY, RIGHT NOW, WHO HAPPENS TO
26 HAVE AN INTEREST IN TOBACCO THAT GOES WAY BEYOND
27 THE INTEREST OF ANYONE IN THIS ROOM BEFORE FIVE OR
28 SIX OR SEVEN WEEKS AGO, THAT WOULD BE YOU; CORRECT?

1 A. ON THE HISTORY OF THE SUBJECT.

2 Q. BUT I DON'T WANT TO JUST COMPRESS

3 IT TO THE HISTORY OF THE SUBJECT IN A NEAT LITTLE

4 BOX. I AM SAYING, BECAUSE YOU GOT HIRED BY ONE OF

5 PHILIP MORRIS' S LAW FIRMS, HOW LONG AGO?

6 A. ABOUT 18 MONTHS AGO.

7 Q. HOW MUCH TIME HAVE YOU SPENT ON

8 THIS IN THE LAST 18 MONTHS?

9 A. I -- IT WOULD BE VERY HARD FOR ME

10 TO ESTIMATE THE EXACT NUMBER OF HOURS. IT HAS

11 RANGED FROM 10 HOURS TO 50 HOURS IN A MONTH.

12 Q. YOU ARE NOT DOING THIS FOR FREE?

13 A. NO, I AM NOT.

14 Q. YOU ARE GOING TO HAVE TO ESTIMATE

15 THE EXACT NUMBER OF HOURS IN ORDER TO GET

16 COMPENSATED, AREN'T YOU?

17 A. WELL, YES.

18 Q. HOW MANY HOURS HAVE YOU SPENT?

19 A. THIS WEEK?

20 Q. NO.

21 A. I HAVE BEEN COMPENSATED ALL ALONG,

22 SO I DON'T REMEMBER, HONESTLY, MONTH TO MONTH,

23 WHICH ARE -- OR HOW MANY HOURS THAT I WOULD HAVE

24 SPENT, MONTH TO MONTH.

25 Q. WELL, HOW MUCH -- I CAN HELP YOU.

26 HOW MUCH HAVE THEY PAID YOU?

27 A. THAT'S AN EASIER WAY OF FIGURING

28 IT. ABOUT \$100,000 OVER THE COURSE, I HAVE EARNED,

1 IN THE LAST 18 MONTHS.

2 Q. SO HOW MUCH DO YOU CHARGE AN HOUR?

3 A. I CHARGE \$200 AN HOUR, AS A

4 HISTORIAN.

5 Q. SO THAT'S GOING TO BE EASY. 200?

6 A. RIGHT. THAT'S WHY I SAID IT IS

7 EASIER TO WORK BACKWARDS.

8 Q. TIMES HOW MANY HOURS GETS YOU

9 100,000 BUCKS?

10 A. WHERE'S MY PIECE OF PAPER. 500

11 HOURS, SOMETHING LIKE THAT.

12 Q. LET'S TRY 200 TIMES 5 HOURS IS A

13 THOUSAND?

14 A. RIGHT.

15 Q. TIMES 50 HOURS IS 10,000, TIMES 500

16 HOURS IS A HUNDRED THOUSAND BUCKS. SO 500 IS THE

17 NUMBER. ALL RIGHT?

18 A. ALL RIGHT, YEAH.

19 Q. SO YOU SPENT, THAT'S WHAT YOU

20 BILLED SO FAR?

21 A. THAT IS RIGHT.

22 Q. HOW MUCH IS OUTSTANDING IN ROUND

23 NUMBERS?

24 A. I THINK ABOUT 19,000.

25 Q. SO 120,000 BUCKS.

26 ANYWAY, YOU SPENT A LOT OF HOURS

27 OVER THE COURSE OF THE LAST 18 MONTHS THINKING

28 ABOUT TOBACCO; CORRECT?

1 A. THINKING ABOUT THE HISTORY OF
2 TOBACCO.

3 Q. OKAY. THINKING ABOUT THE HISTORY
4 OF TOBACCO.

5 BUT WHEN YOU OPEN YOUR DAILY
6 NEWSPAPER DOWN THERE IN SAN DIEGO, DON' T TOBACCO
7 STORIES CATCH YOUR EYE?

8 A. YEAH, THEY USUALLY DO.

9 Q. I MEAN, THEY SHOULD BE CATCHING
10 YOUR EYE WAY MORE THAN THEY ARE CATCHING THE EYE OF
11 SALLY SMITH OR JOE JONES WHO IS PUNCHING THEIR
12 CLOCK AND THEY ARE NOT INVOLVED IN TOBACCO AT ALL,
13 DON' T YOU THINK?

14 A. YES, BUT I HAVE TWO CHILDREN AND I
15 DON' T SPEND AS MUCH TIME READING THE NEWSPAPER AS
16 SOMEBODY ELSE MIGHT. WHEN I DO SEE IT, WHEN I DO
17 OPEN IT UP, AND IF THAT' S A HEADLINE, I CERTAINLY
18 WOULD TAKE NOTES OF IT.

19 Q. DON' T YOU THINK THAT MAYBE BECAUSE
20 OF YOUR UNIQUE INTEREST IN THIS SUBJECT MATTER OVER
21 THE LAST 18 MONTHS, THAT THE STORIES THAT YOU SEE
22 DOWN THERE IN SAN DIEGO IN THE UNION TRIBUNE OR IN
23 "L. A. TIMES" MAYBE SHOULD BE CATCHING YOUR EYE AT
24 LEAST AS MUCH AS WHAT WAS CATCHING MR. BOEKEN' S
25 EYE?

26 A. I WOULD THINK SO.

27 Q. LET ME CAUTION YOU AGAIN, LET' S NOT
28 BE QUOTING OUT OF THIS. OKAY?

1 MR. LEITER: MAY I HAVE A STANDING
2 OBJECTION TO THE LINE OF QUESTIONING.
3 THE COURT: YOU DO.
4 Q BY MR. PIUZE: LET'S START WITH
5 SAN DIEGO. MAY I.
6 A. SURE.
7 Q. LET'S GO BACK, PLEASE, TO OCTOBER
8 31, 1999. GOT THAT?
9 A. YES.
10 Q. THAT'S THE ONE I ALREADY SHOWED YOU
11 AND THE JURY HAS ALREADY SEEN UP ON THE ELMO;
12 CORRECT?
13 A. YES. THAT WAS THE FIRST ONE.
14 Q. AND THIS IS THE ONE WHERE THE
15 PERSON YOU KNOW FROM U. C. SAN DIEGO CANCER CENTER
16 WAS SAYING --
17 A. SAYING SOMETHING.
18 Q. WE HAVE ALREADY SEEN THIS ONE.
19 SAYING THAT, FOR INSTANCE, IN HIS
20 SURVEY, TWO OUT OF THREE KIDS SAID THEY'D START
21 SMOKING BECAUSE OF ADS, TOBACCO ADS; RIGHT?
22 A. RIGHT. DR. PIERCE HAS MADE A
23 NUMBER OF STUDIES ABOUT TOBACCO.
24 Q. AND THIS IS THE ONE WHERE HE SAID,
25 AND WE HAVE ALREADY HEARD THIS ONE HERE, SO WE
26 TALKED ABOUT IT, THAT THE ANTI-SMOKING ADS PUT OUT
27 BY THE TOBACCO INDUSTRY WERE A HIGH PROFILE SMOKE
28 SCREEN?

1 MR. LEITER: YOUR HONOR, I AM GOING TO
2 OBJECT TO THE READING.

3 THE COURT: OVERRULED. IT'S IN EVIDENCE.

4 Q BY MR. PIUZE: RIGHT?

5 A. RIGHT.

6 Q. NOW, SO THAT ONE WE READ AND THAT'S
7 WHY THAT WAS AN EXCEPTION, BUT, NOW, AGAIN, LET'S
8 NOT BE QUOTING HERE, OKAY.

9 IN THE "SAN DIEGO TRIBUNE," IN
10 FEBRUARY OF 2000, DO YOU RECALL SEEING ANY TYPE OF
11 STORY ABOUT WHY PEOPLE IN CALIFORNIA HAVE A WAY
12 BETTER, WHY THE PEOPLE IN THE STATE ARE DOING
13 BETTER AT QUITTING SMOKING?

14 A. YES, I REMEMBER THIS ARTICLE VERY
15 WELL.

16 Q. IT HAS TO DO WITH THE FUNDING
17 THAT'S AVAILABLE THAT WE ALREADY TALKED ABOUT?

18 A. NO. IT HAS TO DO WITH CALIFORNIA
19 SMOKING HABITS.

20 I SEE. ALL RIGHT, THE ARTICLE IS
21 ABOUT THE TOBACCO TAX INCREASE, PROP 99, YEAH.

22 Q. YOU REMEMBER THAT ONE?

23 A. YES, I DO.

24 Q. HOW ABOUT ON MARCH 13TH, 2000, IN
25 THE "SAN DIEGO UNION TRIBUNE," DO YOU RECALL SEEING
26 A STORY THAT HAD TO DO WITH CONCERNS, LET'S LEAVE
27 IT AT THAT, CONCERNS ABOUT WHAT KIDS MAY SEE,
28 TOBACCO AD-WISE, NEAR SCHOOLS?

1 A. YES, I REMEMBER THIS STORY.

2 Q. AND DO YOU REMEMBER ON MAY 18TH,
3 2000, ABOUT WHAT HAD HAPPENED TO TOBACCO
4 ADVERTISING AS FAR AS IT GOING UP, DOWN OR STAYING
5 THE SAME IN THE LAST COUPLE OF YEARS?

6 A. YOU KNOW, THIS IS ABOUT TWO LINES,
7 THREE LINES. I DON'T REMEMBER IT IN PARTICULAR.

8 Q. THANKS.

9 AND HOW ABOUT ON NOVEMBER 30, 2000,
10 IN THE SAN DIEGO UNION TRIBUNE, DO YOU REMEMBER
11 SEEING A VERY LONG ARTICLE ABOUT WHAT THE STATE OF
12 CALIFORNIA SCHOOLS SUPERINTENDENT HAD TO SAY ABOUT
13 PHILIP MORRIS AND SCHOOLS?

14 A. YES, I REMEMBER THIS ONE VERY WELL,
15 BECAUSE IT HAD A LOT OF SCHOOL NEWS IN IT. SO I
16 TEND TO FOLLOW SCHOOL NEWS.

17 Q. AND AGAIN, WITHOUT QUOTING THIS,
18 YOU TOLD US THAT YOU SORT OF HAVE THE PERSONAL
19 IDEA, OR YOU ARE OF THE IDEA THAT THE TOBACCO
20 INDUSTRY HAS TAKEN SOME EFFORTS TO TRY TO CURB TEEN
21 SMOKING OVER THE COURSE OF THE LAST THREE YEARS OR
22 SO, YOU HAVE ALREADY TOLD US THAT; RIGHT?

23 A. YES, ONE OF THOSE ARTICLES,
24 CONCERNS THAT --

25 Q. WELL, YOU WOULD CERTAINLY AGREE
26 THAT WHAT'S WRITTEN IN THAT RATHER LARGE, LONG
27 ARTICLE I AM PUTTING IN FRONT OF YOU FROM NOVEMBER
28 30, 2000, WOULD DISAGREE, WOULD TAKE THE OPPOSITE

1 SIDE OF THE ISSUE ABOUT MAYBE THAT THE TOBACCO
2 INDUSTRIES ARE TRYING TO -- INDUSTRY, IS TYING TO
3 PREVENT TEEN SMOKING?

4 THE COURT: WE ARE GETTING TOO MUCH INTO
5 THE SUBSTANCE, COUNSEL.

6 MR. PIUZE: OKAY, I WILL BACK OFF OF IT.

7 I WILL WITHDRAW THE QUESTION THEN,
8 YOUR HONOR.

9 THE COURT: ALL RIGHT.

10 Q BY MR. PIUZE: DID THAT ARTICLE
11 MAKE ANY KIND OF AN IMPACT ON YOU IN REGARD TO YOUR
12 THOUGHTS ABOUT WHETHER OR NOT PHILIP MORRIS
13 SPECIFICALLY WAS TRYING TO CURB TEEN SMOKING?

14 A. WELL, THE ARTICLE IS ABOUT THEIR
15 ATTEMPTS TO DO THAT, SO, YES, IT EXPANDED MY
16 INFORMATION, MY KNOWLEDGE.

17 MR. PIUZE: YOUR HONOR, I THINK IN LIGHT
18 OF THAT ANSWER, I SHOULD BE ABLE TO KEEP GOING WITH
19 THIS ONE.

20 THE COURT: I AM GOING TO HAVE TO -- GO
21 AHEAD. I WILL GIVE YOU SOME LATITUDE.

22 Q BY MR. PIUZE: (READING)

23 "STATE SCHOOL
24 SUPERINTENDENT, DELAINE EASTON, FROM
25 THE LOCAL AMERICAN LUNG ASSOCIATION,
26 URGING SCHOOLS TO REJECT FREE TEXTBOOK
27 COVERS FROM CIGARETTE MAKER PHILIP
28 MORRIS FOR FEAR THEY PROMOTE SMOKING.

1 OPPONENTS CRITICIZE THE COVERS ON
2 SEVERAL GROUNDS. SURGEON GENERAL'S
3 WARNING IS ON THE RIGHT EDGE OF THE
4 COVER BUT IT GETS FOLDED AND TUCKED
5 INTO THE INSIDE, OUT OF SIGHT.

6 "THE JOURNAL ADVERTISING
7 SAYS WHAT WE HAVE GOT IS A BOOK COVER
8 THAT LOOKS ALARMINGLY LIKE A COLORFUL
9 PACK OF CIGARETTES. "

10 AND HERE'S MORE, BUT I AM NOT GOING
11 TO KEEP GOING.

12 DID YOU REJECT THAT OR DID YOU JUST
13 NOT TAKE IT INTO CONSIDERATION OR DID IT JUST SORT
14 OF NOT LAND WITH YOU IN REGARD TO PHILIP MORRIS'S
15 EFFORTS TO CURB TEEN SMOKING AND WHAT YOU THINK
16 ABOUT IT?

17 A. NO, I THOUGHT IT WAS VERY
18 INTERESTING AND, IN FACT, WHAT I WAS -- THIS IS
19 PART OF A STORY ABOUT TAKING ANY MONEY FROM PHILIP
20 MORRIS TO PROMOTE, TO CURB TEENAGE SMOKING, YOU
21 KNOW, PUBLICIZING INFORMATION ABOUT, LIKE THE AD,
22 YOU KNOW, "WE CARD," YOU KNOW, YOU CAN'T BUY
23 CIGARETTES HERE, THIS KIND OF THING.

24 SO THE CITY SCHOOLS WERE, YOU KNOW,
25 BEING OFFERED MONEY BY PHILIP MORRIS, I THINK, AT
26 THIS TIME, TO, YOU KNOW, FOR CAMPAIGNS AGAINST
27 SMOKING, AND I THOUGHT ACTUALLY WAS INTERESTING
28 BECAUSE IT WAS LIKE -- ANYTHING THEY DID WOULD HAVE

1 BEEN SEEN IN THIS NEGATIVE LIGHT.

2 IN OTHER WORDS, SO A BOOK COVER,
3 BECAUSE IT IS SQUARE AND IT HAS A BRIGHT COLOR ON
4 IT, THAT IT BECOMES LIKE A CIGARETTE PACKAGE WHICH,
5 TO ME, SOUNDED KIND OF, IT DIDN'T SOUND RIGHT.

6 BUT I UNDERSTAND THAT THE
7 SUSPICIONS OF THE INDUSTRY WERE SO HIGH THAT, TO
8 ME, IT WAS VERY CONSISTENT WITH THIS OVERALL
9 PATTERN OF, YOU KNOW, PRETTY MUCH ANYTHING THAT
10 THEY WOULD DO WOULD BE VIEWED WITH ALARM, OR VIEWED
11 WITH SUSPICION.

12 Q. I GUESS THE WAY STUFF LANDS AND THE
13 WAY WE PROCESS IT, WHETHER IT BE MR. BOEKEN OR YOU,
14 SORT OF DEPENDS UPON OUR VIEWPOINT GOING IN?

15 A. NO, I REALLY DISAGREE WITH THAT.
16 IT WOULD DEPEND ON, IF YOU ARE
17 SITTING AROUND CASUALLY OR IF YOU ARE A SCIENTIST
18 OR, IN MY CASE, A HISTORIAN, IT'S REALLY IMPORTANT
19 WHEN YOU EVALUATE EVIDENCE TO BE THOROUGH IN WHAT
20 YOU LOOK AT, TO EVALUATE THE SOURCES THAT IT COMES
21 FROM, TO FIT IT, YOU KNOW, WITHIN THE TRENDS THAT
22 YOU SEE EMERGING FROM THE EVIDENCE. AND THIS HAS
23 BEEN A FOUNDATION OF MY CAREER AS A HISTORIAN, TO
24 TELL THE TRUTH AND TO FOLLOW THE EVIDENCE WHERE IT
25 GOES, WHETHER I WANT IT TO GO THERE OR NOT. AND
26 THAT'S WHAT I HAVE DONE IN ALL THE WORK THAT I HAVE
27 DONE OVER THE PAST 15 YEARS.

28 Q. AND SO WHEN THE STATE SCHOOL

1 SUPERINTENDENT IS SUSPICIOUS OF THE PHILIP MORRIS
2 MOTIVES, YOU LOOK AT IT IN SUCH A WAY, ISN'T THAT
3 INTERESTING, THE SCHOOL SUPERINTENDENT KIND OF
4 PARANOID BECAUSE PHILIP MORRIS IS REALLY TRYING TO
5 DO A GOOD THING HERE; RIGHT?

6 A. NO.

7 Q. OKAY.

8 A. I DON'T JUDGE THAT HE IS PARANOID,
9 I JUST LOOK AT IT AS PART OF THE SOCIAL TREND.

10 Q. WELL, OKAY. HOW ABOUT WHEN THE
11 ATTORNEY GENERAL OF THE STATE OF CALIFORNIA SAID
12 THE SAME THING, DID YOU OVERLOOK THAT TOO?

13 A. I AM SORRY, SIR, I DON'T KNOW WHERE
14 THIS IS FROM IT DOESN'T HAVE ANY MARKING ON IT.

15 Q. "L. A. TIMES," APRIL 17 -- APRIL
16 17, 2001, DURING THIS TRIAL?

17 A. OKAY. THAT'S NOT AN 11, BY THE
18 WAY, IS IT.

19 Q. IT CAN'T BE, BECAUSE IT IS 2001.

20 A. 2001, I AM SORRY. WHAT WAS YOUR
21 QUESTION AGAIN?

22 Q. DID YOU HAPPEN TO SEE WHERE THE
23 ATTORNEY GENERAL, LOCKYER, OF THE STATE OF
24 CALIFORNIA, GOT ON THE EXACT SAME BAND WAGON THAT
25 THE STATE SCHOOL SUPERINTENDENT DID THAT YOU WERE
26 JUST DISCUSSING IN FRONT OF THE JURY?

27 MR. LEITER: OBJECTION TO THE
28 CHARACTERIZATION.

1 THE COURT: WE ARE INTO BIAS, INTEREST OR
2 OTHER MOTIVE NOW WE ARE DEEPLY INTO IT.

3 THE WITNESS: WELL, IT SAYS HERE, THAT
4 THING, DON'T SMOKE, THESE BOOK COVERS HAVE ON THE
5 FRONT OF THEM APPARENTLY, AND THEN IT SAYS THE
6 COVERS ARE AN ATTEMPT TO PROMOTE CORPORATE
7 IDENTITY.

8 Q BY MR. PIUZE: EXCUSE ME FOR A
9 SECOND. IF YOU ARE READING IT, WHY DON'T YOU READ
10 IT.

11 A. WELL, I AM DO YOU WANT ME TO
12 START AT THE VERY BEGINNING?

13 Q. NO. I WANT YOU TO RIDE THOSE TWO
14 WORDS THAT YOU JUST SKIPPED.

15 A. "CORPORATE IDENTITY."

16 Q. "AN ATTEMPT BY PHILIP MORRIS."

17 THE COURT: HOLD ON.

18 MR. PIUZE: EXCUSE ME.

19 THE COURT: I THINK WHAT WE ARE GOING TO
20 HAVE TO DO IS SEPARATE THIS. IF YOU WANT TO SHOW
21 THAT TO THE JURY, PUT IT UP ON THE SCREEN. I WILL
22 ALLOW YOU TO DO IT BUT LET'S SEPARATE COUNSEL AND
23 WITNESS.

24 MR. PIUZE: I APOLOGIZE.

25 THE COURT: THAT'S ALL RIGHT.

26 Q BY MR. PIUZE: MAY I TAKE THIS
27 WITH ME?

28 A. CERTAINLY.

1 Q. APRIL 17, 2001:
2 "THE COVERS WERE 'AN ATTEMPT
3 BY PHILIP MORRIS TO PROMOTE ITS
4 CORPORATE IDENTITY AND CONSEQUENTLY
5 ITS CIGARETTES TO CHILDREN THROUGH
6 ILLUSTRATED BOOK COVERS,' SAID A
7 LETTER BY STATE SCHOOL SUPERINTENDENT
8 DELAINE EASTON AND ATTORNEY GENERAL
9 BILL LOCKYER, BEING SENT TO THE
10 SCHOOLS THIS WEEK.
11 I DID GET THAT RIGHT, DIDN'T I?
12 A. YES, OF COURSE, DID YOU.
13 Q. SO THE POINT YOU WERE TRYING TO
14 MAKE WAS WHAT, PLEASE.
15 A. I AM SORRY, I DON'T KNOW WHAT YOUR
16 QUESTION IS, SIR.
17 Q. MY QUESTION WAS, DID YOU OVERLOOK
18 THIS NEWS-WORTHY STUFF IN COMING TO YOUR OWN --
19 NOW, I AM WITH YOU, PERSONALLY. NOW, THIS ISN'T AN
20 EXPERT ANYMORE, BECAUSE I AM COMPARING YOU TO
21 MR. BOEKEN. IN COMING TO YOUR PERSONAL THOUGHTS
22 THAT PHILIP MORRIS TRIES TO DECREASE YOUTH SMOKING,
23 AND THIS SEEMS TO SAY, FROM THE SCHOOL
24 SUPERINTENDENT AND THE ATTORNEY GENERAL AND THE
25 STATE OF CALIFORNIA, THE OPPOSITE, DID THIS LAND
26 WITH YOU, DID THIS REGISTER WITH YOU OR BECAUSE YOU
27 HAD THOUGHT SOMETHING ELSE IN ADVANCE, DID THIS
28 JUST NOT MAKE THE CUT?

1 A. FIRST OF ALL, THIS IS FROM THE
2 "L. A. TIMES." I DIDN'T READ THAT ARTICLE. I, YOU
3 KNOW, I DON'T READ THE "L. A. TIMES." I HAVE
4 ALREADY TOLD YOU.

5 I CERTAINLY NOTED THE SAME ISSUE
6 THAT WAS IN THE SAN DIEGO UNION AND SO I READ ABOUT
7 IT THERE.

8 NO, OF COURSE NOT. WHEN YOU HAD
9 ASKED ME EARLIER, YOU WERE ASKING ME, DID I KNOW
10 THAT THE PROGRAMS TO DISSUADE YOUNGSTERS FROM
11 SMOKING, AND THAT'S WHAT I SAID YES, I AM AWARE
12 THAT THERE ARE PROGRAMS.

13 AM I SAYING IT TO MY PERSONAL
14 BELIEF THAT THEY ARE TRYING TO DISSUADE, THAT
15 WASN'T THE QUESTION AT THE TIME. IT WAS SIMPLY, DO
16 YOU KNOW ABOUT THESE PROGRAMS AND I THINK I
17 ANSWERED YES.

18 SO, NO, I DIDN'T IGNORE THAT AND I
19 DIDN'T IGNORE THIS.

20 Q. I AM SORRY. I THOUGHT THAT THAT
21 WAS A PERSONAL KIND OF THING THAT YOU THOUGHT
22 PHILIP MORRIS WAS TRYING TO DISSUADE YOUNG PEOPLE
23 FROM SMOKING.

24 A. NO. I THINK I WAS OFFERING THAT AS
25 INFORMATION BASED ON THE QUESTION THAT WAS ASKED AT
26 THE TIME.

27 Q. AND THE DEPOSITION?

28 A. NO, I DON'T REMEMBER WHICH THING

1 YOU ARE QUOTING FROM NOW

2 Q. THE REST OF THESE I HAVE GOT ARE
3 FROM THE "LOS ANGELES TIMES." I WON'T ASK YOU
4 THESE QUESTIONS, BECAUSE I HAVE GOT A BUNCH OF
5 THEM I WON'T ASK YOU THESE QUESTIONS IF YOU WILL
6 TELL ME NOW THAT YOU HAVEN'T BEEN READING THE "LOS
7 ANGELES TIMES" IN 1988 OR 1999 OR 2000 OR 2001.

8 A. NO, I DON'T READ THE "L. A. TIMES,"
9 1998 TO 2001?

10 Q. YES.

11 A. I HAVE PICKED IT UP ONCE OR TWICE
12 SINCE I HAVE BEEN UP HERE BECAUSE ITS HERE. BUT
13 NO, I DON'T READ THE "L. A. TIMES."

14 MR. PIUZE: YOUR HONOR, I AM GOING TO
15 TAKE THAT AS MY CUE TO END MY QUESTIONING ON THIS
16 LINE. I HAVE GOT ONE LAST VERY SHORT AREA. AND
17 THEN I WILL BE DONE DONE.

18 THE COURT: CAN YOU DO IT IN TWO MINUTES?

19 MR. PIUZE: YES.

20 MR. LEITER: AND I HAVE ONE MINUTE.

21 THE COURT: I WILL GIVE IT TO YOU,

22 MR. LEITER, I PROMISE YOU.

23 MR. PIUZE: I WON'T TAKE THE TWO MINUTES.

24 Q BY MR. PIUZE: ARE YOU FAMILIAR
25 WITH A FABLE ABOUT THE SCORPION AND THE FROG? HAVE
26 YOU EVER HEARD THAT?

27 A. I DON'T REMEMBER THAT ONE.

28 MR. PIUZE: OKAY. THEN THAT'S ALL THE

1 TIME I HAVE.

2 THANK YOU.

3 MR. LEITER: THANK YOU, YOUR HONOR. I
4 JUST HAVE A COUPLE QUESTIONS.

5

6 FURTHER REDIRECT EXAMINATION

7

8 BY MR. LEITER:

9 Q. DR. HOFFMAN, LET ME SNEAK AROUND
10 BACK HERE. WE HAVE TALKED EXTENSIVELY ABOUT COMMON
11 KNOWLEDGE; RIGHT?

12 A. THAT IS RIGHT.

13 Q. MR. PIUZE JUST SHOWED YOU A SERIES
14 OF NEWSPAPER ARTICLES AND I DON'T WANT TO ASK YOU
15 ABOUT THE SUBSTANCE OF THE ARTICLES.

16 BUT IS IT YOUR TESTIMONY THAT
17 COMMON KNOWLEDGE ARISES FROM RECOLLECTION OF ANY
18 PARTICULAR NEWSPAPER ARTICLE?

19 A. NO. IN FACT, YOU MAY NOT EVEN KNOW
20 HOW YOU KNOW IT. WHEN SOMETHING IS REALLY COMMON
21 KNOWLEDGE BECAUSE IT IS SO THOROUGHLY THERE THAT
22 YOU THINK, HOW DID I KNOW THAT.

23 BUT YOU KNOW IT FROM LOTS OF
24 PLACES.

25 MR. LEITER: NOTHING FURTHER, YOUR HONOR.

26 MR. PIUZE: THANK YOU.

27 THE COURT: THANK YOU, COUNSEL.

28 THE WITNESS IS EXCUSED.

1 YOU MAY STEP DOWN.

2 LADIES AND GENTLEMEN OF THE JURY,
3 WE WILL SEE YOU AT 1:30 THIS AFTERNOON. AND WE
4 WILL TAKE OUR NEXT WITNESS.

5

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

9

10 THE COURT: ALL RIGHT. WE ARE ON THE
11 RECORD OUTSIDE THE PRESENCE.

12 MR. LEITER: JUST ONE HOUSEKEEPING
13 MATTER. I HAD OFFERED ALL OF THE NEWSPAPER
14 ARTICLES IN THE LARGE STACK AND THE SMALL STACK. I
15 THOUGHT I HAD AN AGREEMENT WITH COUNSEL AS TO THEIR
16 ADMISSIBILITY INTO EVIDENCE.

17 THERE SEEMS TO BE SOME QUESTION
18 ABOUT THAT AND WE GOT INTO THE -- OVER THESE OTHER
19 ARTICLES. SO BEFORE WE MOVE ON AND FORGET ABOUT
20 IT, I WANTED TO RESOLVE THE ADMISSIBILITY ABOUT
21 WHETHER THERE IS AN OBJECTION AND WHAT THE
22 OBJECTION WOULD BE.

23 MR. PIUZE: WE DID HAVE AN AGREEMENT AND
24 I HAD AGREED WITH MR. LEITER THAT THESE DOCUMENTS
25 COULD GO IN, I AM SURE, NOT FOR THE TRUTH OF THE
26 MATTER STATED. AND THEN AS I HAVE ALREADY STATED
27 ON THE RECORD, I THINK WHAT SHOULD BE GOOD FOR THE
28 GOOSE IS GOOD FOR THE GANDER, AND THIS SMALL GROUP

1 OF DOCUMENTS I HAVE GOT SHOULD BE ADMITTED FOR THE
2 SAME REASON AND THAT'S SORT OF WHERE YOU REALLY
3 LEFT ME.

4 THE COURT: BUT YOU GOT TO EXPLAIN, FIRST
5 OF ALL, THE DOCUMENTS THAT THE TWO STACKS WOULD BE
6 ADMITTED INTO EVIDENCE NOT FOR THE PURPOSE OF THEIR
7 SUBSTANCE BUT RATHER FOR THE DEMONSTRATIVE PURPOSE
8 WHICH MEANS THAT, AND COUNSEL WILL HAVE TO BEAR
9 WITH ME, REMEMBER THIS, IF THE JURY ASKS TO SEE
10 THOSE DOCUMENTS, THEY WILL BE SEEN. BUT I WILL NOT
11 ALLOW THE JURY TO BREAK THEM OUT INTO PIECES AND
12 START SORTING THROUGH THEM

13 MR. LEITER: AND IT WOULD BE APPROPRIATE
14 TO INSTRUCT THE JURY THEY ARE NOT BEING OFFERED FOR
15 THE TRUTH OF WHAT IS CONTAINED BUT SIMPLY FOR THE
16 FACT THAT THAT INFORMATION WAS IN THE NEWSPAPER.

17 THE COURT: FAIR ENOUGH. I AM NOT SURE I
18 NEED TO INSTRUCT THE JURY AS TO THAT BUT I WILL SAY
19 THIS, THAT THEY WILL NOT BE BROKEN OUT IN PIECES
20 AND SENT TO THE JURY.

21 ALL RIGHT. NOW, THAT HAVING BEEN
22 SAID, MR. PIUZE, WHAT DO YOU WANT TO DO WITH YOUR
23 STACK?

24 MR. PIUZE: WELL, I WOULDN'T WANT THEM IN
25 EVIDENCE NOT FOR THE TRUTH, BUT BECAUSE IT IS SUCH
26 A MUCH MORE MANAGEABLE STACK. I DON'T KNOW WHY --

27 THE COURT: I WILL LET YOUR STACK IN BUT
28 FOR THE SAME PURPOSES, AND WE UNDERSTAND THAT THEY

1 ARE NOT GOING TO BE BROKEN OUT FOR THE JURY.

2 MR. LEITER: SO WE CAN HAVE THEM ALL
3 ADMITTED INTO EVIDENCE.

4 MR. PIUZE: LET THE RECORD REFLECT THAT
5 WE ARE ALL SAYING SOLOMNIC.

6 THE CLERK: I NEED TO ALSO SAY ON THE
7 RECORD THAT DEFENSE EXHIBITS WHICH WERE PREVIOUSLY
8 UNMARKED ARE 11, 028, THAT'S THE BOX, AND 11, 029,
9 WHICH IS THE PACKAGE OF NEWSPAPER ARTICLES.

10

11 * (EXHIBITS 11, 028 AND 11, 029,
12 MARKED FOR I. D.)

13

14 (AT 12 NOON, THE LUNCH
15 RECESS WAS TAKEN TO
16 1: 30 P. M OF THE SAME DAY.)

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