

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 VS.) CASE NO. BC226593
8 PHILIP MORRIS,) VOLUME 27
INCORPORATED, A)
9 CORPORATION; INTERNATIONAL)
HOUSE OF PANCAKES)
10 INCORPORATED, A)
CORPORATION.)
11 DEFENDANTS.)
12 _____)

13 REPORTER'S DAILY TRANSCRIPT OF PROCEEDINGS
14 THURSDAY, MAY 3RD, 2001
A. M. PROCEEDINGS

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

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

25 VOLUME 27 OF
26 PAGES 4254 THROUGH 4376

27
28

1 LOS ANGELES, CALIFORNIA; THURSDAY, MAY 3RD, 2001

2 9:00 A.M

3 DEPARTMENT 308 HON. CHARLES MC COY, JUDGE

4 Q

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

8

9 THE COURT: GOOD MORNING, LADIES AND
10 GENTLEMEN. OUR JURY PANEL IS PRESENT.

11 GOOD MORNING, COUNSEL, GOOD TO SEE
12 YOU.

13 THE WITNESS IS ON THE WITNESS
14 STAND.

15 MA'AM, YOU UNDERSTAND YOU ARE STILL
16 UNDER OATH.

17 THE WITNESS: I DO.

18 THE COURT: MR. LEITER.

19

20

21 ELLEN MERLO,
22 CALLED AS A WITNESS BY THE DEFENSE, HAVING BEEN
23 PREVIOUSLY DULY SWORN, RESUMED THE WITNESS STAND
24 AND TESTIFIED FURTHER AS FOLLOWS:

25 /// /// ///

26 /// /// ///

27 /// /// ///

28 /// /// ///

1 DIRECT EXAMINATION (RESUMED)

2

3 BY MR. LEITER:

4 Q. GOOD MORNING, EVERYBODY.

5 GOOD MORNING, MS. MERLO.

6 A. GOOD MORNING, MR. LEITER.

7 Q. AT THE END OF THE DAY YESTERDAY WE
8 HAD STARTED TO TALK ABOUT PHILIP MORRIS MISSION
9 STATEMENT. DO YOU REMEMBER THAT?

10 A. YES, I DO.

11 Q. COULD YOU REMIND THE JURY WHAT A
12 MISSION STATEMENT IS.

13 A. A MISSION STATEMENT IS THE
14 STATEMENT THAT SETS THE GUIDING PRINCIPLES UNDER
15 WHICH WE OPERATE, WE ASPIRE, THE WAY WE RUN OUR
16 BUSINESS.

17 Q. AND WHY WAS IT IMPORTANT, DO YOU
18 THINK, FOR PHILIP MORRIS TO DEVELOP A MISSION
19 STATEMENT?

20 A. WELL, I THINK, AS I INDICATED IN MY
21 TESTIMONY YESTERDAY, IT BECAME CLEAR TO
22 MR. SZYMANCZYK AND OTHERS OF US AT PHILIP MORRIS
23 THAT WE WERE OUT OF ALIGNMENT WITH SOCIETY AND THAT
24 WE NEEDED TO BRING ABOUT A CULTURE CHANGE WITHIN
25 PHILIP MORRIS, U. S. A. , AND THAT BY CREATING A
26 MISSION, SET OF CORE VALUES AND SOME VERY SPECIFIC
27 MEASURABLE GOALS, IT WOULD BE EASIER FOR US TO
28 COMMUNICATE TO EVERY EMPLOYEE WHAT THE EXPECTATION

1 WAS GOING FORWARD, THE WAY WE WERE GOING TO CONDUCT
2 OUR BUSINESS.

3 Q. LET'S TAKE A LOOK AT PHILIP
4 MORRIS'S MISSION STATEMENT PUT UP DEMONSTRATIVE 25,
5 WHICH I BELIEVE GETS MARKED AS 11, 041.

6

7 * (EXHIBIT 11, 041,
8 DEMONSTRATIVE, MARKED FOR I. D.)

9

10 Q BY MR. LEITER: IS THAT THE
11 MISSION STATEMENT?

12 A. YES, IT IS.

13 Q. LET'S GO TO THE NICKS DEMONSTRATIVE
14 WHICH IS 26, 11, 042, WHICH IS THE PULL OUT OF THE
15 FIRST PARAGRAPH OF THAT MISSION STATEMENT; IS THAT
16 CORRECT?

17 A. THAT IS CORRECT.

18 Q. AND IT SAYS:

19 "OUR GOAL IS TO BE THE MOST
20 RESPONSIBLE, EFFECTIVE AND RESPECTED
21 DEVELOPER, MANUFACTURER AND MARKETER
22 OF CONSUMER PRODUCTS MADE FOR ADULTS.
23 OUR CORE BUSINESS IS MANUFACTURING AND
24 MARKETING THE BEST QUALITY TOBACCO
25 PRODUCTS AVAILABLE TO ADULTS WHO
26 CHOOSE TO USE THEM "

27 WHAT'S THE KEY WORD IN THIS
28 PARAGRAPH?

1 A. I BELIEVE IT IS "RESPONSIBLE. "

2 Q. WHY?

3 A. WELL, BECAUSE I BELIEVE THAT IF WE
4 ACT RESPONSIBLY, AS DO MY COLLEAGUES AT PHILIP
5 MORRIS, THAT THE RESPECT WILL BE EARNED AS A RESULT
6 OF ACTING RESPONSIBLY.

7 I DON'T THINK YOU CAN BE -- I THINK
8 YOU NEED TO EARN RESPECT AND YOU CAN ONLY DO THAT
9 THROUGH YOUR ACTIONS AND THE COMMITMENT TO THOSE
10 ACTIONS.

11 Q. NOW, THE PRODUCT THAT WE ARE
12 TALKING ABOUT HERE IS A DANGEROUS PRODUCT?

13 A. YES, IT IS.

14 Q. THAT CAUSES DISEASE?

15 A. THAT IS RIGHT.

16 Q. HOW DOES ONE GO ABOUT BEING A
17 RESPONSIBLE MAKER AND SELLER OF A DANGEROUS
18 PRODUCT?

19 A. WELL, BY TAKING THOSE
20 RESPONSIBILITIES VERY SERIOUSLY, BY STRIVING TO
21 IMPROVE THE PRODUCT TO REDUCE THE RISK ASSOCIATED
22 WITH THE PRODUCTS THROUGH RESEARCH AND DEVELOPMENT,
23 BY TAKING A PROACTIVE AND ACTIVE STANCE IN DEALING
24 WITH THE ISSUE OF YOUTH SMOKING PREVENTION, BY
25 REACHING OUT TO STAKEHOLDERS, INCLUDING THE PUBLIC
26 HEALTH COMMUNITY, GOVERNMENT AGENCIES, SOCIETY IN
27 GENERAL, AND THE WAY WE MAKE OUR DECISIONS, RUN OUR
28 BUSINESS, ET CETERA, I THINK YOU CAN BE

1 RESPONSIBLE.

2 Q. NOW, YESTERDAY WE TALKED ABOUT THE
3 WEB SITE AND WE TALKED ABOUT REACHING OUT TO THE
4 PUBLIC HEALTH COMMUNITY AND THE GOVERNMENT AND WE
5 TALKED ABOUT THE YOUTH SMOKING PREVENTION
6 ACTIVITIES OF PHILIP MORRIS.

7 ARE ALL OF THOSE PART OF THE
8 MISSION THAT'S DESCRIBED IN THE MISSION STATEMENT?

9 A. THEY ARE ALL PART OF THE GOALS THAT
10 YOU WOULD SEE UNDER THE MISSION. IN OTHER WORDS,
11 WE ESTABLISH SOME MEASURABLE GOALS THAT YOU SEE
12 UNDER THE MISSION STATEMENT THERE WITH THE DOTS
13 NEXT TO THEM THAT ADDRESS ALL OF THOSE ISSUES AND
14 HELP TO GUIDE US IN WAYS THAT WILL HELP US ACHIEVE
15 OUR MISSION OF RESPONSIBILITY.

16 Q. LET'S TAKE A BRIEF LOOK AT A COUPLE
17 OF THEM

18 LET'S GO TO NUMBER 27, WHICH IS
19 11, 043.

20

21 * (EXHIBIT 11, 043,
22 DEMONSTRATIVE, MARKED FOR I. D.)

23

24 Q BY MR. LEITER: WHAT IS THAT?

25 A. THAT'S, AS I SAY, ONE OF THE GOALS,
26 AND IT'S THE FIRST ONE, TO DO OUR PART TO
27 PROACTIVELY IDENTIFY AND CAPITALIZE ON
28 OPPORTUNITIES, TO DISCOURAGE UNDER-AGE USE OF OUR

1 PRODUCT.

2 Q. AND THAT'S PART OF WHAT WE WERE
3 TALKING ABOUT YESTERDAY WITH THE YOUTH SMOKING
4 PREVENTION DEPARTMENT?

5 A. THAT IS CORRECT.

6 Q. LET'S GO TO NUMBER 28, CALLING IT
7 11, 044.

8
9 * (EXHIBIT 11, 044,
10 DEMONSTRATIVE, MARKED FOR I. D.)

11

12 Q BY MR. LEITER: WHAT IS THAT?

13 A. THAT, AGAIN, IS TO MEET OR EXCEED
14 THE LEGAL REGULATORY REQUIREMENTS THAT GOVERN US,
15 TO WORK WITHIN BOTH THE LETTER AND THE SPIRIT OF
16 ALL OF THE LEGAL AND REGULATORY REQUIREMENTS OF OUR
17 INDUSTRY, OF OUR COMPANY.

18 Q. NOW, THE PRODUCT THAT WE ARE
19 TALKING ABOUT, CIGARETTES, WE TALKED ABOUT, IS A
20 DANGEROUS PRODUCT; RIGHT?

21 A. THAT IS RIGHT.

22 Q. BUT IT'S ALSO A LEGAL PRODUCT?

23 A. YES, IT IS.

24 Q. WHY IS IT IMPORTANT -- IT'S OBVIOUS
25 WHY IT IS IMPORTANT TO MEET LEGAL REQUIREMENTS, WHY
26 IS IT IMPORTANT TO EXCEED THEM?

27 A. WELL, AGAIN, IF RESPONSIBILITY IS
28 KIND OF THE OVERRIDING MISSION, TRYING TO ACT

1 RESPONSIBLY, I THINK, EXCEEDING LEGAL REQUIREMENTS,
2 GOING BEYOND JUST WHAT'S REQUIRED OF US, I THINK,
3 HELPS US TO BE, TO SHOW OUR COMMITMENT TO BEING
4 RESPONSIBLE.

5 Q. LET'S MOVE TO DEMONSTRATIVE 29,
6 WHICH IS 11, 045.

7

8 * (EXHIBIT 11, 045,
9 DEMONSTRATIVE, MARKED FOR I. D.)

10

11 Q BY MR. LEITER: WHAT IS THAT?

12 A. THAT REFERS TO OUR DESIRE TO REALLY
13 ENTER CONSTRUCTIVE DIALOGUE WITH GOVERNMENTS AND
14 PUBLIC HEALTH AUTHORITIES REGARDING OUR PRODUCTS.

15 Q. AND WE TALKED YESTERDAY ABOUT SOME
16 OF THE EFFORTS THAT PHILIP MORRIS HAS MADE TO
17 PURSUE CONSTRUCTIVE DIALOGUE WITH GOVERNMENT AND
18 PUBLIC HEALTH AUTHORITIES; IS THAT RIGHT?

19 A. THAT IS RIGHT.

20 Q. WE HAVE BEEN TALKING SINCE YOUR
21 TESTIMONY BEGAN, LARGELY, ABOUT DISEASE CAUSATION
22 AND ADDICTION AND MATTERS RELATED TO THAT.

23 HAS PHILIP MORRIS ALSO BEEN
24 PURSUING A DIALOGUE WITH THE GOVERNMENT ON FIRE
25 SAFETY?

26 A. YES, WE HAVE.

27 Q. AND BEFORE -- WHAT IS THE PROBLEM
28 WITH FIRE SAFETY THAT --

1 A. WELL, VERY OFTEN UNATTENDED OR
2 CARELESSLY DISCARDED CIGARETTES DO RESULT IN FIRES
3 AND DEVELOPING PRODUCT THAT WOULD NOT IGNITE AS
4 EASILY IF LEFT UNATTENDED HAS BEEN A GOAL OF THE
5 COMPANY FOR QUITE SOME TIME.

6 AND IN FACT, EARLIER THIS YEAR, WE
7 LAUNCHED A PRODUCT NATIONALLY ON OUR MERIT
8 CIGARETTES WITH FIRE RESISTANT PAPER ON IT THAT HAS
9 BEEN PROVEN TO REDUCE THE RISK OF UNATTENDED FIRES.

10 NOW, THERE IS NO SUCH THING AS A
11 FIRE SAFE CIGARETTE AND WE STILL CAUTION PEOPLE NOT
12 TO BE CARELESS WITH THEIR CIGARETTES. BUT IF THE
13 CIGARETTE IS LEFT UNATTENDED, IT WOULD BE LESS
14 LIKELY TO IGNITE THAN A REGULAR CIGARETTE.

15 Q. AND PHILIP MORRIS HAS STARTED TO
16 MARKET A PRODUCT WITH THIS AND HOW DOES THIS RELATE
17 TO PURSUING INSTRUCTIVE DIALOGUE WITH GOVERNMENT
18 AND PUBLIC HEALTH AUTHORITIES?

19 A. WELL, INITIALLY, NEW YORK STATE
20 RECOMMENDED THAT ALL CIGARETTES BY THE YEAR 2003 BE
21 FIRE SAFE OR REDUCE THE RISK OF UNINTENDED FIRE AND
22 LEGISLATION WAS BEING PROPOSED IN ALBANY TO DO
23 THAT.

24 AND WE MET WITH LEGISLATORS,
25 MEMBERS OF THE GOVERNOR'S STAFF AND OTHERS TO TALK
26 ABOUT THE ISSUE AND TO, ONE, SUPPORT THOSE STEPS
27 BEING TAKEN AND TO HELP TO WORK ON ESTABLISHING A
28 STANDARD THAT WOULD MAKE IT POSSIBLE FOR THAT GOAL

1 TO BE MET BY THE YEAR 2003.

2 OUR POSITION WAS THAT WE THINK IT
3 WOULD MAKE MORE SENSE IF THERE WERE A FEDERAL
4 STANDARD AND THAT FIRE SAFE CIGARETTES BE MARKETED
5 ON A NATIONAL BASIS AS OPPOSED TO STATE BY STATE
6 WITH DIFFERENT STANDARDS. BUT WE STILL WORK WITH
7 NEW YORK BECAUSE THEY WERE DETERMINED TO PASS A LAW
8 AND WE FELT THAT IT WAS A STEP IN THE RIGHT
9 DIRECTION.

10 Q. IS PHILIP MORRIS THE ONLY TOBACCO
11 COMPANY THAT'S DEVELOPED THIS FIRE RESISTANT PAPER?

12 A. THAT I AM AWARE OF, YES.

13 Q. AND WHAT ARE THE PLANS FOR THAT
14 TECHNOLOGY?

15 A. WE WILL, BOTH IN NEW YORK STATE AND
16 HOPEFULLY FEDERALLY, BECAUSE WE ARE WORKING WITH
17 THE FEDERAL GOVERNMENT, HOPEFULLY, TO HAVE A
18 FEDERAL STANDARD PASSED, WE WILL LICENSE THAT
19 TECHNOLOGY TO ALL OF OUR COMPETITORS, IF A LAW WERE
20 PASSED, SO THAT EVERYONE COULD BE COMPLIANT AND
21 MARKET CIGARETTES THAT REDUCE THE RISK OF
22 UNINTENDED FIRES.

23 Q. SO EVEN IF SMOKERS CHOOSE ONE OF
24 YOUR COMPETITORS BRANDS, THEY WOULD HAVE THE
25 BENEFIT OF THE DEVELOPMENT BY PHILIP MORRIS?

26 A. IF IT BECOMES FEDERAL LAW OR JUST A
27 LAW IN NEW YORK THAT EVERYONE HAS TO COMPLY WITH,
28 YES, WE WILL MAKE THE TECHNOLOGY AVAILABLE AND WE

1 HAVE ALREADY MET WITH MANY OF OUR COMPETITORS TO
2 OFFER IT TO THEM

3 Q. I WANT TO TURN TO THE CORE VALUES
4 THE CORE VALUES WHICH IS 30 AND WE WILL MARK THAT
5 AS 11, 046.

6

7 * (EXHIBIT 11, 046,
8 DEMONSTRATIVE, MARKED FOR I. D.)

9

10 Q BY MR. LEITER: THIS IS THE
11 STATEMENT OF PHILIP MORRIS' S CORE VALUES?

12 A. YES, THAT IS RIGHT.

13 Q. AND WHO DEVELOPS THIS STATEMENT OF
14 CORE VALUES?

15 A. WELL, IT WAS INITIALLY DEVELOPED BY
16 MIKE SZYMANCZYK AND THE SENIOR LEADERSHIP TEAM AT
17 PHILIP MORRIS, WE TALKED ABOUT, ALL MY COLLEAGUES
18 ON THE TEAM

19 THEN AFTER WE INITIALLY DEVELOPED
20 THE VALUES, WE SHARED THEM WITH PEOPLE THAT WORK
21 WITH US TO GET SOME INPUT AND FEEDBACK FROM THEM
22 AND THEN ULTIMATELY WE SHARED THEM WITH THE REST OF
23 THE ORGANIZATION.

24 Q. WHAT'S THE RELATIONSHIP BETWEEN THE
25 CORE VALUES AND THE MISSION STATEMENT THAT WE WERE
26 TALKING ABOUT A FEW MINUTES AGO?

27 A. WELL, THE MISSION STATEMENT TELLS
28 YOU WHAT YOU WANT TO DO, WHAT YOUR MISSION IS AND

1 WHAT THE GOALS ARE AND THE VALUES HELP TO GUIDE YOU
2 IN BEHAVIOR. IT'S KIND OF THE HOW YOU ACHIEVE
3 SUPPORT IN YOUR MISSION.

4 Q. I WANT TO TAKE A LOOK AT JUST A
5 COUPLE OF EXAMPLES FROM THE CORE VALUES. LET'S GO
6 TO DEMONSTRATIVE 31, MARK THAT AS 11,047.

7

8 * (EXHIBIT 11,047,
9 DEMONSTRATIVE, MARKED FOR I. D.)

10

11 Q BY MR. LEITER: THAT'S THE FIRST
12 OF THE CORE VALUES THAT ARE LISTED?

13 A. YES.

14 Q. IT SAYS:

15 "FIRST, WE BELIEVE WITH
16 OPERATING WITH INTEGRITY, TRUST AND
17 RESPECT BOTH WITH INDIVIDUALS AND AS A
18 COMPANY. THIS MEANS WE CONDUCT
19 OURSELVES WITHIN BOTH THE SPIRIT AND
20 THE LETTER OF THE LAW, REGULATIONS,
21 AGREEMENTS AND POLICIES THAT GOVERN
22 US, BE HONEST WITH ONE ANOTHER AND
23 GIVE OUR STAKEHOLDERS FULLY DISCLOSING
24 ALL APPROPRIATE INFORMATION AND NOT
25 JUST THAT WHICH SPORTS OUR POINT OF
26 VIEW WE HAVE THE COURAGE TO DO
27 WHAT'S RIGHT. "

28 WHY DID THE SENIOR MANAGEMENT TEAM

1 WHICH YOU ARE A MEMBER OF THINK IT WAS IMPORTANT TO
2 HAVE THAT CORE VALUE ARTICULATED?

3 A. WELL, I THINK IT, IT SETS A
4 STANDARD FOR HOW WE EXPECT PEOPLE TO CONDUCT
5 THEMSELVES, THAT WE WANT THEM TO BE OPEN AND
6 HONEST, THAT WE WANT TO SHARE INFORMATION, EVEN
7 THAT WHICH DOESN'T NECESSARILY AGREE WITH WHAT WE
8 HAVE TO SAY, BUT TO BE MORE TRANSPARENT IN THE WAY
9 WE DO BUSINESS, I THINK, IT WAS A WAY OF
10 COMMUNICATING TO THE ORGANIZATION THAT WE WERE
11 EXPECTING PEOPLE TO OPERATE SOMEWHAT DIFFERENTLY
12 THAN THE WAY THEY HAD IN THE PAST.

13 Q. AND, OF COURSE, THE SENIOR
14 MANAGEMENT TEAM HAS BEEN FAMILIAR WITH ALL THE
15 ACCUSATIONS THAT HAVE BEEN MADE AGAINST THE COMPANY
16 OVER THE YEARS?

17 A. YES.

18 Q. AND WAS PART OF THIS CORE VALUE
19 DESIGNED TO MAKE IT VERY, VERY CLEAR TO EVERYBODY
20 IN THE ORGANIZATION WHAT IS EXPECTED?

21 A. YES.

22 Q. HOW MANY EMPLOYEES ARE THERE IN
23 PHILIP MORRIS U. S. A. ?

24 A. JUST ABOUT 12,000.

25 Q. WHERE ARE THEY LOCATED, GENERALLY?

26 A. FOUR LOCATIONS, NEW YORK, RICHMOND,
27 VIRGINIA, CABARRUS, NORTH CAROLINA, AND WE STILL
28 HAVE A FEW EMPLOYEES IN LOUISVILLE. WE USED TO

1 HAVE A PLANT IN LOUISVILLE BUT THAT WAS CLOSED A
2 LITTLE OVER A YEAR AGO. BUT WE STILL HAVE SOME
3 EMPLOYEES THERE.

4 Q. WHY -- DID PHILIP MORRIS HAVE A
5 PLANT THAT MANUFACTURED CIGARETTES?

6 A. YES.

7 Q. WHY DID PHILIP MORRIS CLOSE THE
8 PLANT?

9 A. WELL, VOLUME DECLINED AND THEREFORE
10 WE CONSOLIDATED OUR PRODUCTION INTO OUR TWO OTHER
11 PLANTS IN RICHMOND AND CABARRUS.

12 Q. SO PHILIP MORRIS DIDN'T NEED THE
13 PLANT IN LOUISVILLE ANY MORE BECAUSE VOLUME OF
14 CIGARETTES HAS GONE DOWN, VOLUME OF CIGARETTES
15 SOLD?

16 A. THAT IS RIGHT.

17 Q. THIS CORE VALUE REFERS TO
18 STAKEHOLDERS IN THE THIRD LINE FROM THE BOTTOM
19 THERE, WHAT ARE STAKEHOLDERS?

20 A. STAKEHOLDERS ARE ANYONE THAT HAS AN
21 INTEREST IN YOUR BUSINESS THAT CAN IMPACT YOUR
22 BUSINESS IN ANY WAY. SO IT'S EITHER EMPLOYEES,
23 SOCIETY, THE COMMUNITY, CRITICS, IT'S ANYONE THAT,
24 IN ANY WAY, IS INVOLVED IN OR CAN IMPACT YOUR
25 BUSINESS FOR GOOD OR FOR BAD.

26 Q. WOULD IT INCLUDE THE GOVERNMENT FOR
27 EXAMPLE?

28 A. DEFINITELY INCLUDE THE GOVERNMENT.

1 Q. WOULD IT INCLUDE CONSUMERS, THE
2 PEOPLE THAT BUY THE CIGARETTES?

3 A. YES, IT WOULD.

4 Q. LET' S MOVE TO DEMNSTRATIVE 32, AND
5 I BELIEVE THE NEXT NUMBER IS 11, 048.

6

7 * (EXHIBIT 11, 048,
8 DEMNSTRATIVE, MARKED FOR I. D.)

9

10 Q BY MR. LEITER: THIS IS THE FOURTH
11 OF THE CORE VALUES AND IT SAYS:

12 "FOURTH, WE BELIEVE IN
13 DRIVING CREATIVITY INTO EVERYTHING WE
14 DO, RESULTING IN INNOVATION AND
15 CONTINUOUS IMPROVEMENT FOR OUR ADULT
16 CONSUMERS AND OUR BUSINESS PROCESSES.
17 THIS MEANS WE ENCOURAGE EVERYONE TO
18 THINK ABOUT THINGS DIFFERENTLY AND TO
19 THINK ABOUT DIFFERENT THINGS, BRINGING
20 VIGOROUS CHALLENGE TO EVERYTHING WE
21 DO. WE BUILD AND DEVELOP IDEAS
22 THROUGH COLLABORATIVE LEADERSHIP AND
23 BY FULLY UTILIZING THE UNIQUE TALENTS
24 WITHIN OUR COMPANY. WE ARE RECEPTIVE
25 TO NEW IDEAS AND APPLAUD THOSE WHO
26 DARE TO THINK DIFFERENTLY. "

27 THAT' S A LOT OF WORDS.

28 WHY ARE THOSE WORDS IMPORTANT?

1 A. WELL, BECAUSE I THINK, FOR ME,
2 ANYWAY, AND I THINK FOR OTHERS IN THE COMPANY,
3 INNOVATION AND CONTINUOUS IMPROVEMENT ARE REALLY
4 THE KEYS THERE TO THAT VALUE AND I THINK IT'S TO
5 CONTINUALLY LOOK AT WHAT YOU HAVE DONE, WHAT YOU
6 ARE DOING, LEARNING AS YOU GO ALONG AND INCORPORATE
7 NEW LEARNING AS YOU GO FORWARD.

8 INNOVATION, CERTAINLY, WE TALKED
9 ABOUT OUR PRODUCT. IT IS A PRODUCT THAT CAUSES
10 HARM AND TO BE INNOVATIVE IN THE WAY WE LOOK AT
11 OUR PRODUCT TO SEE IF THERE AREN'T WAYS THAT WE CAN
12 IMPROVE IT.

13 FIRE SAFE WAS ONE WAY. REDUCING
14 THE HARM ASSOCIATED WITH SMOKING IS ANOTHER WAY.

15 AND SO WE ENCOURAGE PEOPLE TO
16 CONTINUALLY SEEK NEW IDEAS TO BE MORE EFFECTIVE IN
17 THEIR JOBS.

18 Q. NOW, I KNOW YOU ARE NOT A SCIENTIST
19 AND YOU ARE NOT IN THE RESEARCH AND DEVELOPMENT
20 DEPARTMENT; RIGHT?

21 A. NO, I AM NOT.

22 Q. BUT FOR HOW LONG, TO YOUR
23 KNOWLEDGE, HAS PHILIP MORRIS BEEN WORKING TO TRY TO
24 DEVELOP WAYS TO REDUCE THE RISK OF ITS PRODUCT?

25 A. FOR AS LONG AS I HAVE BEEN WITH THE
26 COMPANY AND I WOULD ASSUME BEFORE THAT. I MEAN, WE
27 ARE ALWAYS FOCUSING ON HOW WE CAN IMPROVE THE
28 PRODUCT AND HOW WE CAN REDUCE THE HARM ASSOCIATED

1 WITH THE PRODUCT.

2 Q. IS PHILIP MORRIS STILL WORKING ON
3 THAT TODAY?

4 A. IT'S A TOP PRIORITY.

5 Q. NOW, WE HAVE TALKED ABOUT THE
6 MISSION STATEMENT AND THE CORE VALUES WHICH COULD
7 BE INTERPRETED BY SOME AS JUST A BUNCH OF WORDS ON
8 PAPER.

9 YOU MENTIONED THAT PHILIP MORRIS
10 HAS 12,000 EMPLOYEES?

11 A. THAT IS RIGHT.

12 Q. FIRST QUESTION IS, WHAT DID THE
13 COMPANY DO, WHAT HAS THE COMPANY DONE TO GET THIS
14 MESSAGE OUT TO THOSE 12,000 EMPLOYEES, THAT IS THIS
15 IS WHAT'S EXPECTED OF THEM?

16 A. WELL, WE STARTED BY HAVING
17 FUNCTIONAL MEETINGS. EVERY SENIOR VICE-PRESIDENT
18 ON THE SENIOR TEAM HAD A MEETING WITH THEIR
19 RESPECTIVE DEPARTMENTS TO SHARE THE MISSION AND
20 VALUES AND WE HAD, NOT JUST PRESENTING IT ON THE
21 CARD, BUT REALLY HAVING PEOPLE EXPERIENCE WHAT THE
22 VALUES ARE ABOUT, MEETINGS, THREE- AND FOUR-DAY
23 MEETINGS DEVOTED TO DEALING WITH THE VALUES,
24 ROLE-PLAYING, SETTING UP INSTANCES WHERE THERE
25 MIGHT BE SOME TENSION BETWEEN AN ACTION AND THE
26 VALUES AND HAVING PEOPLE THINK ABOUT THAT.

27 SO THAT WAS THE FIRST THING TO
28 INTRODUCE THE MISSION AND VALUES TO EVERYONE TO

1 MAKE SURE THAT THERE WAS AN UNDERSTANDING AND A
2 DISCUSSION AND AN INTERNALIZATION OF WHAT WE WERE
3 TRYING TO DO.

4 THEN THE SECOND STEP, AFTER WE HAD
5 FUNCTIONAL MEETINGS FOR ALL 12,000 PEOPLE, YOU
6 KNOW, PEOPLE IN THE FACTORY, OUR UNION PERSONNEL,
7 EVERY SINGLE EMPLOYEE WENT THROUGH THAT. AFTER
8 THOSE MEETINGS, WE ALSO CHANGED THE WAY WE EVALUATE
9 EMPLOYEES, OUR PERFORMANCE APPRAISAL, TO
10 INCORPORATE WHAT WE CALL THE WHAT YOU DO, THE GOALS
11 THAT YOU SET AND THE HOW AND THE HOW IS HOW WELL
12 YOU LIVE UP TO THE VALUES IN CONDUCTING YOUR
13 BUSINESS ON A DAY-TO-DAY BASIS.

14 AND I THINK I ALLUDED YESTERDAY IN
15 MY TESTIMONY THAT YOUR MERIT INCREASE, PROMOTIONAL
16 OPPORTUNITIES, ET CETERA, ARE ALL BASED ON YOUR
17 PERFORMANCE APPRAISAL.

18 SO IF YOU ARE NOT LIVING UP TO THE
19 VALUES AND IF YOU CAN'T DEMONSTRATE HOW YOU ARE
20 LIVING UP TO THE VALUES, YOUR PERFORMANCE APPRAISAL
21 WOULD NOT TEND TO BE AS GOOD AS SOMEONE WHO IS, AND
22 YOUR OPPORTUNITIES WITHIN THE COMPANY WOULD BE
23 LIMITED OR DIMINISHED.

24 Q. IF I AM AN EMPLOYEE WITHIN PHILIP
25 MORRIS AND I WANT TO GET PROMOTED, PART OF MY
26 EVALUATION IS GOING TO BE WHETHER I COMPLIED WITH
27 THE MISSION STATEMENT AND THE CORE VALUES?

28 A. THAT IS CORRECT.

1 Q. BIG PART, LITTLE PART, SIGNIFICANT
2 PART, INSIGNIFICANT PART?

3 A. VERY SIGNIFICANT PART. THAT IS THE
4 WAY WE EVALUATE PEOPLE. WE SET GOALS EVERY YEAR.
5 EVERYONE HAS TO INTERPRET HOW THEY ARE GOING TO
6 SUPPORT THOSE GOALS, HOW THEY ARE GOING TO SUPPORT
7 THE MISSION AND THEN THAT'S HOW THEY ARE ASKED TO
8 FIRST DO A SELF-EVALUATION AND THEN THEIR MANAGER
9 OR SUPERVISOR PUTS THEIR EVALUATION IN AS PART OF
10 IT AND IT'S TALKED THROUGH AND THERE'S A CLEAR
11 ESTABLISHMENT OF WHAT IS EXPECTED OF EACH EMPLOYEE.
12 AND IT IS A MAJOR PART OF THE WAY EVERYONE IS
13 JUDGED AND THE WAY THEY ARE EVALUATED AND
14 CONSIDERED FOR FUTURE --

15 Q. FOR PROMOTIONS?

16 A. ADVANCEMENT IN THE COMPANY, THAT IS
17 RIGHT.

18 Q. AND IF I WANT A PAY RAISE, SAME
19 THING?

20 A. SAME THING.

21 Q. OKAY, MISS MERLO, YOU HAVE BEEN
22 WITH THE COMPANY FOR 31, 32 YEARS?

23 A. ALMOST 32 YEARS.

24 Q. DO YOU EVER CONSIDER RETIRING?

25 A. YES, I DID.

26 Q. OBVIOUSLY, YOU DIDN'T RETIRE?

27 A. NO, I DIDN'T.

28 Q. WHY NOT?

1 A. WELL, I ACTUALLY CONSIDERED
2 RETIRING ABOUT A YEAR AGO AND I, AFTER DISCUSSIONS
3 WITH MIKE SZYMANCZYK, DECIDED THAT I WOULD STAY ON
4 LONGER.

5 ONE, I WAS -- I AM VERY COMMITTED
6 TO THE WORK THAT WE ARE DOING RIGHT NOW, VERY PROUD
7 OF WHAT WE ARE DOING RIGHT NOW WITH THE MISSION AND
8 VALUES AND I HAVE ALSO JUST ESTABLISHED A FUNCTION
9 WITHIN MY GROUP, CORPORATE AFFAIRS, TO DEAL WITH
10 THE WHOLE ISSUE OF CORPORATE RESPONSIBILITY, TO SEE
11 HOW WE CAN TAKE THE MISSION OF RESPONSIBILITY AND
12 REALLY BROADEN IT INTO EVERYTHING THAT WE DO.

13 Q. SO YOU DECIDED NOT TO RETIRE RIGHT
14 NOW. ONE OF THE REASONS WAS YOU WANTED TO CONTINUE
15 WORKING ON THIS, ON THE CORPORATE RESPONSIBILITY
16 PROJECT THAT YOU JUST STARTED TO DESCRIBE; IS THAT
17 RIGHT?

18 A. THAT IS RIGHT.

19 Q. DESCRIBE GENERALLY WHAT THAT
20 PROJECT IS AND WHAT YOU ARE DOING NOW.

21 A. YES, WHAT WE ARE DOING IS WE
22 STARTED BY CREATING A CROSS FUNCTIONAL TASK FORCE
23 OF REPRESENTATIVES THROUGHOUT PHILIP MORRIS.

24 Q. YOU WILL HAVE TO EXPLAIN WHAT A
25 CROSS FUNCTIONAL TASK FORCE IS.

26 A. I AM SORRY. EVERY AREA, EVERY
27 SENIOR VICE-PRESIDENT WITHIN PHILIP MORRIS
28 NOMINATED SOMEONE TO BE ON A TASK FORCE TO WORK ON

1 THIS WHOLE ISSUE OF CONSIDERING CORPORATE
2 RESPONSIBILITY OF MEETING WITH OTHER COMPANIES,
3 WITH THOUGHT LEADERS, AND IDENTIFY AREAS WHERE
4 PHILIP MORRIS, AS A CORPORATION, SHOULD BE FOCUSING
5 ITS EFFORTS TO MEET ITS MISSION OF RESPONSIBILITY.

6 SO OBVIOUSLY OUR PRODUCT IS THE
7 CENTER PIECE OF THAT BECAUSE THAT'S THE MOST
8 IMPORTANT THING THAT WE NEED TO DEAL WITH.

9 BUT BEYOND THE PRODUCT, HOW DO WE
10 BE A GOOD AND RESPONSIBLE CORPORATION WHEN IT COMES
11 TO THE ENVIRONMENT. HOW DO WE BE A GOOD AND
12 RESPONSIBLE CORPORATION WHEN IT COMES TO THE
13 COMMUNITIES THAT WE LIVE IN.

14 HOW DO WE HELP IMPROVE THE QUALITY
15 OF LIFE, ET CETERA.

16 SO WE ARE REALLY LOOKING AT A BROAD
17 SPECTRUM OF EVERY WAY THAT A CORPORATION TOUCHES
18 SOCIETY TO SEE HOW WE CAN ENSURE THAT WE ARE LIVING
19 UP TO OUR MISSION OF RESPONSIBILITY.

20 Q. THANK YOU, MISS MERLO.

21 I HAVE NO FURTHER QUESTIONS.

22 THE COURT: THANK YOU, MR. LEITER.

23 MR. PIUZE.

24

25 CROSS-EXAMINATION

26

27 BY MR. PIUZE:

28 Q. GOOD MORNING.

1 A. GOOD MORNING.

2 Q. DID YOU GET A CHANCE TO TALK WITH
3 PROFESSOR COBB-HOFFMAN BEFORE SHE LEFT?

4 A. VERY SUPERFICIALLY.

5 Q. YOU MET HER?

6 A. I MET HER, YES.

7 Q. DO YOU KNOW WHO SHE IS?

8 A. I DO KNOW WHO SHE IS.

9 Q. DO YOU KNOW SHE IS A HISTORY
10 PROFESSOR?

11 A. I KNOW THAT, YES.

12 Q. HAVE YOU EVER HEARD THE TERM "THE
13 PAST IS PRELUDE"?

14 A. HAVE I EVER HEARD THAT TERM, YES.

15 Q. WHAT DOES THAT MEAN TO YOU?

16 A. TO ME IT MEANS THAT WE LEARN FROM
17 THE PAST, THAT WE SHOULD BE INFORMED BY THE PAST.

18 Q. SHE THOUGHT IT MEANT THAT WHAT
19 HAPPENED IN THE PAST IS WHAT'S GOING TO HAPPEN IN
20 THE FUTURE. HAVE YOU EVER HEARD THAT?

21 A. YES, I HAVE.

22 Q. HAVE YOU EVER HEARD A PHRASE
23 SIMILAR TO "THOSE WHO FORGET THE PAST ARE DOOMED TO
24 REPEAT IT"?

25 A. I HAVE HEARD THAT PHRASE, YES.

26 Q. WHO WAS GEORGE WEISSMAN ?

27 A. GEORGE WEISSMAN WAS CHAIRMAN OF
28 PHILIP MORRIS BACK, I BELIEVE, IN THE '70' S.

1 Q. CHAIRMAN OF THE WHOLE SHEBANG AT
2 PHILIP MORRIS?

3 A. WELL, PHILIP MORRIS WAS A MUCH
4 SMALLER COMPANY WHEN HE WAS CHAIRMAN. WE DIDN'T --
5 WE HADN'T ACQUIRED SOME OF THE COMPANIES THAT WE
6 OWN TODAY.

7 SO YEAH -- BUT HE WAS CHAIRMAN OF
8 THE COMPANY AS IT EXISTED THEN, YES.

9 Q. SO PHILIP MORRIS, AS IT EXISTED
10 THEN, WAS ONLY TOBACCO, IS THAT SORT OF WHAT YOU
11 ARE SAYING?

12 A. NO, I THINK WE OWNED 7-UP AT THE
13 TIME AND I BELIEVE WE OWNED A COMPANY BACK THEN
14 CALLED PERSANO RAZOR BLADES. SO WE DID HAVE OTHER
15 ACQUISITIONS. WE WEREN'T ONLY TOBACCO BUT WE WERE
16 PRIMARILY TOBACCO.

17 Q. ANYWAY, HE WAS THE BIG BOSS?

18 A. HE WAS THE CHAIRMAN OF THE BOARD.
19 C. E. O.

20 Q. DID I HEAR YOU SAY THIS MORNING
21 THAT YOUR CIGARETTES ARE DANGEROUS PRODUCTS THAT
22 CAUSE DISEASE?

23 A. YES, YOU HEARD ME SAY THAT.

24 Q. KILL PEOPLE?

25 A. THEY CAUSE DISEASE.

26 Q. KILL PEOPLE?

27 A. THEY MAY.

28 Q. YES?

1 A. THAT'S WHAT I JUST SAID, THEY MAY,
2 YES. I SAID THEY ARE DANGEROUS PRODUCTS, THEY
3 CAUSE DISEASE.

4 Q. I KNOW I AM JUST TRYING TO GET
5 YOU TO GO THE NEXT STEP, JUST ACKNOWLEDGE THE FACT
6 THAT PHILIP MORRIS'S CIGARETTES KILL LOTS OF
7 PEOPLE.

8 A. IT CERTAINLY IS POSSIBLE THAT
9 PHILIP MORRIS'S PRODUCTS KILL PEOPLE. CIGARETTES
10 ARE DANGEROUS PRODUCTS THAT CAUSE DISEASE AND SOME
11 PEOPLE DIE FROM THAT DISEASE, YES.

12 Q. I AM NOT GOING TO BANG AWAY TO GET
13 THAT. AND I AM GOING TO WALK AWAY FROM IT. I WILL
14 GIVE YOU ONE MORE SHOT, THOUGH.

15 MR. LEITER: AND I OBJECT TO THE
16 COMMENTARY.

17 THE COURT: SUSTAINED.

18 MR. PIUZE: OKAY.

19 Q BY MR. PIUZE: WILL YOU ADMIT,
20 FLAT OUT, THAT YOUR CIGARETTES KILL LOTS OF PEOPLE?

21 A. I BELIEVE I JUST SAID THAT OUR
22 CIGARETTES DO CAUSE DISEASE AND PEOPLE DO DIE FROM
23 THAT DISEASE.

24 Q. IN 1954, THE BIG CHEESE AT PHILIP
25 MORRIS SAYS, "IF WE HAD ANY THOUGHT OR KNOWLEDGE
26 THAT IN ANY WAY WE WERE SELLING A PRODUCT HARMFUL
27 TO CONSUMERS, WE WOULD STOP BUSINESS TOMORROW "
28 DIDN'T HE?

1 A. YES, I BELIEVE HE DID SAY THAT.

2 Q. WELL, IT'S TIME TO LIVE UP TO HIS
3 PROMISE.

4 ARE YOU GOING TO STOP BUSINESS
5 TOMORROW?

6 A. NO, WE ARE NOT GOING TO STOP
7 BUSINESS TOMORROW. WE DO MAKE A RISKY PRODUCT BUT
8 WE MAKE A PRODUCT THAT SOCIETY HAS DEEMED TO BE A
9 LEGAL PRODUCT AND I BELIEVE THAT THE RESPONSIBLE
10 THING IS FOR A COMPANY LIKE PHILIP MORRIS TO STAY
11 IN THIS BUSINESS AND TO MANUFACTURE AND PRODUCE
12 THAT PRODUCT AND TO MARKET IT IN A MOST RESPONSIBLE
13 WAY. BECAUSE I DON'T BELIEVE THAT OUR GOING OUT OF
14 BUSINESS WILL MEAN THAT PEOPLE WILL STOP SMOKING
15 AND I THINK THAT, ACTUALLY, SOCIETY WANTS COMPANIES
16 THAT TAKE THE RESPONSIBILITY SERIOUSLY IN THIS
17 BUSINESS.

18 SOCIETY DOES NOT SUPPORT
19 PROHIBITION. AND THEREFORE, I THINK THAT A COMPANY
20 WHO IS COMMITTED TO CONTINUOUS IMPROVEMENT, THAT IS
21 COMMITTED TO HARM REDUCTION, AND THAT IS COMMITTED
22 TO DOING SOMETHING ABOUT THE ISSUE OF YOUTH SMOKING
23 IS THE KIND OF COMPANY THAT SHOULD BE PART OF AN
24 INDUSTRY THAT MAKES A DANGEROUS PRODUCT.

25 Q. SO WHAT MR. WEISSMAN SAID, 47 YEARS
26 AGO, IS NOW INOPERATIVE?

27 A. I CAN'T SPEAK FOR MR. WEISSMAN. I
28 CAN SPEAK FOR PHILIP MORRIS TODAY. I CAN SPEAK FOR

1 OUR COMMITMENT TO RESPONSIBILITY AND THE WAY WE ARE
2 TRYING TO RUN OUR COMPANY.

3 AS I SAID, I THINK THE WHOLE ISSUE
4 OF TOBACCO IS ONE THAT SOCIETY HAS DECIDED ABOUT.
5 IT IS A LEGAL PRODUCT AND OUR GOAL IS TO BE AS
6 RESPONSIBLE AS WE CAN IN THE WAY WE MARKET,
7 MANUFACTURE AND MARKET AND SELL IT.

8 Q. DID YOU KNOW MR. WEISSMAN
9 PERSONALLY?

10 A. I DID.

11 Q. HE NEVER BELIEVED THAT FOR A
12 QUARTER OF A SECOND, DID HE?

13 A. I DON'T KNOW. I HAVE NOT DISCUSSED
14 THAT WITH MR. WEISSMAN AND I CERTAINLY DID NOT KNOW
15 MR. WEISSMAN 47 YEARS AGO.

16 Q. HAVE YOU EVER, IN YOUR ENTIRE
17 CAREER AT PHILIP MORRIS -- FOR WHICH, BY THE WAY, I
18 APPLAUD YOU.

19 MR. LEITER: OBJECT TO THE COMMENTARY.

20 THE COURT: SUSTAINED.

21 Q. BY MR. PIUZE: -- EVER HEARD
22 ANYONE THERE SAY THAT THEY THINK PHILIP MORRIS
23 SHOULD GO OUT OF THE CIGARETTE BUSINESS, EVER?

24 A. NOT THE WAY YOU ASKED THE QUESTION,
25 BUT I CAN TELL YOU THAT THE PEOPLE THAT I WORK WITH
26 TAKE WHAT WE DO SERIOUSLY AND THINK ABOUT IT AND
27 THINK ABOUT WHAT THE MOST RESPONSIBLE WAY FOR US TO
28 ACT IS.

1 AND I CAN TELL YOU THAT MR.
2 SZYMANCZYK HAS CERTAINLY TALKED ABOUT IT AND HE TOO
3 HAS COME TO THE CONCLUSION THAT FOR US TO GO OUT OF
4 BUSINESS WOULD NOT BE RESPONSIBLE, THAT THE MOST
5 RESPONSIBLE THING FOR US TO DO IS TO CONTINUE TO
6 DEVOTE HUNDREDS OF MILLIONS OF DOLLARS TO RESEARCH
7 AND DEVELOPMENT, TO TRY AND REDUCE THE HARM
8 ASSOCIATED WITH OUR PRODUCT, AND TO BE AS
9 RESPONSIBLE AS WE CAN IN THE WAY WE MARKET WHAT IS
10 ARGUABLY A DANGEROUS PRODUCT.

11 SO --

12 Q. EXCUSE ME.

13 A. WE DON'T BELIEVE GOING OUT OF
14 BUSINESS IS RESPONSIBLE.

15 Q. WHAT IS ARGUABLY A DANGEROUS
16 PRODUCT?

17 A. WELL, IS A DANGEROUS -- NO, WHAT IS
18 A DANGEROUS --

19 Q. EXCUSE ME. AREN'T WE GOING
20 BACKWARDS HERE, NOW?

21 A. YES, I AM SORRY, WHAT IS --

22 Q. THAT WAS LAST YEAR'S STORY, WASN'T
23 IT, THAT IT WAS ARGUABLY A DANGEROUS PRODUCT. THIS
24 YEAR IT'S AN ADMISSION?

25 A. IT IS AN ADMISSION, I AM SORRY, I
26 MISSPOKE.

27 MR. LEITER: I WOULD OBJECT.

28 Q. BY MR. PIUZE: BUT LET'S TALK

1 ABOUT WHY YOU MISSPOKE.

2 LET' S SERIOUSLY TALK ABOUT WHY YOU
3 MISSPOKE.

4 WHAT DO YOU MEAN, IT' S ARGUABLY A
5 DANGEROUS PRODUCT, WAS THAT LAST YEAR' S POSITION?

6 A. NO. I THINK YOU ARE READING MORE
7 INTO WHAT I SAID THAN WHAT I MEANT. AND I HAVE
8 SAID, SINCE I HAVE BEEN ON THE STAND MORE THAN
9 ONCE, WITHOUT QUIBBLING, IT IS A DANGEROUS PRODUCT,
10 IT DOES CAUSE DISEASE, AND YOU WILL FORGIVE ME IF I
11 MISSPOKE FOR A MOMENT.

12 Q. SURE, I WILL FORGIVE YOU.

13 MR. LEITER: OBJECT TO THE COMMENTARY.

14 THE COURT: COUNSEL, PLEASE.

15 Q BY MR. PIUZE: SO THE ANSWER TO MY
16 QUESTION IS, NO, YOU HAVE NEVER HEARD ANYONE SAY
17 WE, PHILIP MORRIS, SHOULD GET OUT OF THE CIGARETTE
18 BUSINESS, IN ALL OF THE TIME YOU EVER WORKED WITH
19 THEM?

20 A. WELL, I THINK I GAVE YOU A SOMEWHAT
21 DIFFERENT ANSWER. I TOLD YOU THAT MR. SZYMANCZYK
22 CERTAINLY DEALT WITH THE ISSUE AND WE BELIEVE
23 GETTING OUT OF THE BUSINESS IS NOT A RESPONSIBLE
24 RESPONSE.

25 Q. YOU SEE, I DIDN' T ASK ABOUT WHAT
26 PHILIP MORRIS BELIEVES IS RESPONSIBLE OR NOT, I
27 ASKED A REAL EASY QUESTION.

28 IN ALL OF THE TIME YOU HAVE BEEN AT

1 PHILIP MORRIS, HAS ANYONE THERE EVER SAID, LET'S
2 GET OUT OF THE TOBACCO BUSINESS?

3 A. THE WAY YOU STATED IT, I WOULD HAVE
4 TO SAY THE ANSWER IS NO.

5 Q. SO I AM GOING TO ASK YOU AGAIN, DID
6 MR. WEISSMAN, EVEN FOR A QUARTER OF A SECOND, MEAN
7 THAT IF HE THOUGHT -- IF WE THOUGHT, IF WE HAD ANY
8 THOUGHT OR KNOWLEDGE THAT IN ANY WAY WE WERE
9 SELLING A PRODUCT HARMFUL TO CONSUMERS, WE WOULD
10 STOP BUSINESS TOMORROW, FOR A QUARTER OF A SECOND,
11 DID HE MEAN THAT?

12 A. AS I SAY, I DID NOT KNOW
13 MR. WEISSMAN 47 YEARS AGO. I CAN'T GET INTO HIS
14 MIND. I CAN ONLY TELL YOU WHERE PHILIP MORRIS
15 STANDS ON THE ISSUE TODAY.

16 Q. WELL, ANYWAY, TODAY, PHILIP MORRIS,
17 SAYS WE HAVE A DANGEROUS PRODUCT THAT CAUSES
18 DISEASE AND EVEN KILLS PEOPLE. AND I WANT YOU TO
19 JUST TELL US, PHILIP MORRIS HAS ABSOLUTELY ZERO
20 THOUGHT ABOUT STOPPING BUSINESS TOMORROW, RIGHT?

21 A. I THINK I RESPONDED TO THAT ANSWER
22 AND SHARED WITH YOU OUR PHILOSOPHY ABOUT OUR
23 BUSINESS.

24 Q. I KNOW, BUT I ALREADY SAID THAT,
25 YOU KNOW, PERSONALLY, YOUR PHILOSOPHY ABOUT YOUR
26 BUSINESS DOESN'T ANSWER MY QUESTION. IS THAT A YES
27 OR IS THAT A NO?

28 A. I THINK I ANSWERED THAT WE ARE

1 GOING TO STAY IN THIS BUSINESS AS LONG AS SOCIETY
2 DEEMS THAT CIGARETTES SHOULD BE MARKETED, WE ARE
3 GOING TO STAY IN THIS BUSINESS AND TRY TO MARKET
4 CIGARETTES AS RESPONSIBLY AS WE POSSIBLY CAN WITH A
5 COMMITMENT TO REDUCING THE HARM OF OUR PRODUCT.

6 Q. OKAY.

7 WHAT' S MARKETING?

8 A. MARKETING IS SELLING. IT' S A TERM
9 THAT IS USED IN CONJUNCTION WITH SELLING, TO MAKING
10 AVAILABLE TO PEOPLE.

11 Q. OKAY. YOU ARE THE YELLOW, CORRECT?

12 A. YES. THAT IS RIGHT.

13 Q. HOW LONG HAVE YOU BEEN IN THAT
14 YELLOW BOX?

15 A. I HAVE BEEN SENIOR VICE PRESIDENT
16 OF CORPORATE RELATIONS NOW FOR, I THINK, ABOUT FIVE
17 YEARS, AND PRIOR TO THAT WAS VICE-PRESIDENT OF
18 CORPORATE AFFAIRS.

19 Q. FOR HOW LONG?

20 A. SINCE 1992.

21 Q. BEFORE 1992 WHEN YOU WENT INTO
22 CORPORATE AFFAIRS, WHICH BOX DID YOU FIT INTO?

23 A. I DIDN' T FIT INTO ANY OF THOSE
24 BOXES, I WAS NOT A SENIOR VICE-PRESIDENT. BUT I
25 WAS IN THE MARKETING DEPARTMENT.

26 Q. WHAT WAS YOUR HIGHEST LEVEL IN THE
27 MARKETING DEPARTMENT?

28 A. VICE-PRESIDENT OF MARKETING

1 SERVICES.

2 Q. HOW LONG WERE YOU VICE-PRESIDENT OF
3 MARKETING SERVICES?

4 A. I THINK FOR ABOUT 4 YEARS OR SO.
5 PRIOR TO THAT, HOWEVER, I'D BEEN DIRECTOR OF
6 MARKETING SERVICES, SO I HAD RECEIVED A PROMOTION
7 WHEN I WAS IN THAT JOB. SO ALL TOGETHER, I WOULD
8 SAY, PROBABLY ABOUT SIX, SIX YEARS OR SO.

9 Q. YOU WERE IN CHARGE OF THE WHOLE
10 CORPORATION OF SELLING?

11 A. I WAS -- NO, I WAS IN CHARGE FOR
12 THE CORPORATION OF DEVELOPING SOME OF THE SUPPORT
13 PROGRAMS THAT WE USED TO MARKET OUR PRODUCTS.

14 Q. THAT'S WHY I ASKED WHAT MARKETING
15 WAS BECAUSE YOU KNOW WAY MORE ABOUT IT THAN I DO.

16 A. WELL, IT CERTAINLY IS THE CREATIVE
17 PROCESS, IT INCLUDES PROMOTIONAL PROGRAMS, IT
18 INCLUDES SOME OF THE SPONSORSHIPS THAT WE WERE
19 INVOLVED IN, IT INCLUDES MARKETING, INCLUDES
20 ADVERTISING, ET CETERA. IT DOES NOT INCLUDE
21 CONTACT WITH OUR RETAIL AND WHOLESALE CUSTOMERS.
22 THAT TENDS TO FALL UNDER THE AUSPICES OF SALES.

23 Q. SO FOR SIX YEARS, YOU WERE THE
24 CHIEF PERSON IN THE COMPANY WHO WAS IN CHARGE OF A
25 MARKETING STRATEGY WHICH WAS BASICALLY TO SELL AS
26 MANY CIGARETTES AS YOU COULD?

27 A. WELL, THAT'S NOT QUITE ACCURATE.

28 I WAS NOT THE HEAD OF MARKETING, I

1 WAS THE HEAD OF MARKETING SERVICES.

2 AND THERE IS A DISTINCTION THERE.

3 THE HEAD OF MARKETING IS IN CHARGE OF OVERALL
4 STRATEGY.

5 I WAS IN AN AREA OF MARKETING
6 SERVICES WHERE I WAS IN CHARGE OF SOME OF THE
7 SUPPORT SERVICES LIKE OUR DATABASE, SOME OF OUR
8 EVENT PROMTIONS, PRODUCT PROMTIONS, THINGS LIKE
9 THAT. BUT I WAS NOT IN CHARGE OF THE OVERALL
10 STRATEGY, NO.

11 Q. OKAY. SO SIX YEARS BEFORE 1992,
12 THAT WOULD BE '86, WHAT WERE YOU DOING BEFORE '86?

13 A. I WAS DIRECTOR OF COMMUNICATIONS
14 FOR SEVERAL YEARS. I HAD BEEN A BRAND MANAGER,
15 PRODUCT MANAGER, FOR SOME OF OUR PRODUCTS PRIOR TO
16 THAT.

17 Q. LET ME STOP YOU. I JUST WANT TO
18 STAY ONE STEP AT A TIME.

19 WHAT'S DIRECTOR OF COMMUNICATION,
20 WHAT DID YOU DO?

21 A. I WORKED ON DEVELOPING SOME OF OUR
22 SPONSORSHIP PROGRAMS AND COMMUNICATING ABOUT THEM

23 Q. WELL, I HAVE HEARD SPONSORSHIP BOTH
24 ON THE MARKETING, WHEN YOU WERE IN MARKETING AND
25 NOW I HAVE HEARD SPONSORSHIP AGAIN WHEN YOU WERE IN
26 COMMUNICATIONS. TELL US A BIT ABOUT THAT, WOULD
27 YOU, SPONSORSHIP, TELL US WHAT THAT MEANS. GIVE US
28 EXAMPLES OF WHAT YOU MEAN.

- 1 A. I WOULD BE HAPPY TO.
2 PHILIP MORRIS, ON BEHALF OF ITS
3 VIRGINIA SLIMS BRAND, SPONSORED WOMEN' S TENNIS, ON
4 BEHALF OF MARLBORO, SPONSORED AUTO RACING, EVENTS
5 LIKE THAT.
- 6 Q. HOW LONG HAVE YOU BEEN IN L. A. THIS
7 TRIP?
- 8 A. A FEW DAYS.
- 9 Q. HAVE YOU GONE OVER TO THE PETERSON
10 AUTO MUSEUM?
- 11 A. I, ACTUALLY, WE DIDN' T HAVE COURT
12 ON TUESDAY, I TOOK A RIDE AND I WAS UNAWARE OF THE
13 PETERSON MUSEUM BECAUSE WE DIDN' T HAVE THAT WHEN I
14 WORKED FOR THE COMPANY, AND IN FACT, WAS SURPRISED
15 TO SEE THAT THE HEADQUARTERS HAD MOVED TO WILSHIRE
16 BOULEVARD. BECAUSE IT USED TO BE ON SUNSET AND LA
17 CIENEGA WHEN I WORKED HERE.
- 18 Q. RIGHT. SO JUST FOR OLD TIME SAKE,
19 YOU WENT BACK TO YOUR OLD --
- 20 A. I WENT TO SEE WHAT WAS THERE AND IT
21 WASN' T, AND THEN AS I WAS COMING DOWN WILSHIRE I
22 SAW THAT THEY HAD MOVED AND I SAW THAT THERE WAS AN
23 AUTO MUSEUM BUT, NO, I DIDN' T GO IN.
- 24 Q. DID YOU SEE THAT BIG OLD TRUCK ON
25 THE OUTSIDE OF THE MUSEUM?
- 26 A. YES.
- 27 Q. WHAT DID YOU DO AT "MOTOR TEND"?
- 28 A. I STARTED AS PRODUCTION EDITOR,

1 WHICH MEANT THAT I WAS RESPONSIBLE FOR MAKING SURE
2 THAT THE MAGAZINE WAS PROPERLY LAID OUT, EVERYTHING
3 WAS IN ITS RIGHT ORDER, PROOF READING, COPY
4 READING, WORKING WITH THE PRINTER AND THEN, OH,
5 ABOUT A YEAR AFTER I WAS THERE, I WAS PROMOTED TO
6 MANAGING EDITOR.

7 Q. WHAT DID YOU DO?

8 A. I WAS RESPONSIBLE FOR MAKING STORY
9 ASSIGNMENTS, EDITING THE MAGAZINE, MAKING SURE IT
10 GOT TO THE PRINTER ON TIME, WRITING CAPTIONS FOR
11 THE STORIES, EVEN DOING SOME INTERVIEWS.

12 Q. SO ARE YOU, DO YOU HAVE SOME
13 INTEREST IN AUTOMOBILES STILL?

14 A. A LITTLE BIT BUT NOT A LOT.

15 Q. DO YOU HAVE ANYTHING TO DO WITH THE
16 PHILIP MORRIS'S CURRENT INVOLVEMENT IN AUTOMOBILE
17 RACING?

18 A. CURRENTLY I DON'T. BUT I DID FOR
19 SOME TIME, I WAS INVOLVED, YES.

20 Q. DO YOU KNOW WHO RUSTY WALLACE IS?

21 A. I DO KNOW WHO RUSTY WALLACE IS,
22 YES, HE'S A NASCAR DRIVER.

23 Q. FOR ONE OF YOUR BRANDS?

24 A. I BELIEVE HE DRIVES FOR MILLER
25 BREWING COMPANY.

26 Q. ISN'T THAT ONE OF YOUR BRANDS?

27 A. I DON'T WORK ON MILLER, BUT, YES,
28 IT IS ONE OF PHILIP MORRIS'S BRANDS, YES.

1 Q. HE WON ON SUNDAY OUT IN FONTANA,
2 DIDN' T HE?
3 A. I WAS UNAWARE OF THAT.
4 Q. DO YOU KNOW WHO MICHAEL SHOEMAKER
5 IS?
6 A. YES, I DO.
7 Q. SHOEMAKER?
8 A. SHOEMAKER.
9 Q. HE IS THE WORLD CHAMPION FORMULA
10 ONE, GRAND PRIX DRIVER OF THE YEAR?
11 A. THAT IS CORRECT.
12 Q. DRIVES FERRARIS?
13 A. YES.
14 Q. WITH MARLBORO PLASTERED ALL OVER
15 THEM?
16 A. THAT MAY BE SO. I AM NOT INVOLVED
17 IN AUTO RACING INTERNATIONALLY.
18 Q. DO YOU KNOW WHO ROGER PENSKE IS?
19 A. YES, I KNOW ROGER VERY WELL.
20 Q. HOW LONG HAVE YOU BEEN SPONSORING
21 ROGER PENSKE' S CART, C-A-R-T?
22 A. SINCE 19, NO, I WANT TO SAY,
23 PROBABLY THE MID TO LATE ' 80' S.
24 Q. MOST SUCCESSFUL TEAM OUT THERE,
25 ISN' T IT?
26 A. WELL, ROGER, OVERALL, YES, HAS
27 PASSED THE HUNDRED WIN MARK. MUCH OF THAT TIME
28 WITHOUT OR SPONSORSHIP BUT SOME OF IT CERTAINLY

1 WITH OUR SPONSORSHIP.

2 Q. MARLBORO PLASTERED ALL OVER HIS
3 CAR?

4 A. MARLBORO SPONSORS THE MARLBORO
5 PENSKE TEAM IN CART RACING, YES.

6 Q. DO YOU KNOW, DO YOU KNOW THAT THERE
7 WAS A PROFESSOR OF MARKETING WHO WAS THE HEAD OF
8 THE MARKETING DEPARTMENT DOWN AT PENN STATE
9 UNIVERSITY WHO TESTIFIED DURING THE TRIAL?

10 A. NO, I DID NOT KNOW THAT.

11 Q. I AM SHOWING YOU 8002. 21.

12 MR. LEITER: CAN I SEE IT, PLEASE.

13 Q BY MR. PIUZE: WHAT PERCENTAGE OF
14 THE KIDS IN TAIWAN SAW THIS?

15 MR. LEITER: OBJECTION, RELEVANCE.

16 THE COURT: OVERRULED.

17 THE WITNESS: I DON'T KNOW

18 Q BY MR. PIUZE: BEIJING?

19 A. I COULDN'T POSSIBLY ANSWER THAT
20 QUESTION FOR YOU. ONE, I HAD NOTHING TO DO WITH
21 INTERNATIONAL MARKETING BUT SECONDLY I WOULDN'T
22 KNOW WHAT PERCENTAGE.

23 Q. ISN'T MARLBORO A SECOND BEST KNOWN
24 BRAND OF ANYTHING IN THE ENTIRE WORLD?

25 A. MARLBORO'S BRAND RECOGNITION IS
26 VERY HIGH AND, YEAH, I THINK THAT MIGHT BE A VERY
27 ACCURATE STATEMENT.

28 Q. WHAT BRAND OF ANYTHING IN THE WHOLE

1 WORLD, ANYTHING, WITH NO RESTRICTION TO ANYTHING,
2 THAT YOU THINK MIGHT BE AHEAD OF MARLBORO, MAYBE
3 NOTHING, I DON'T KNOW, BUT WHAT DO YOU THINK?

4 A. I BELIEVE COCA-COLA IS.

5 Q. AND THEN AFTER COCA-COLA, FOR EVERY
6 BRAND OF EVERYTHING THAT'S MADE IN THE ENTIRE
7 WORLD, THE WHOLE PLANET EARTH, MARLBORO THE SECOND
8 BEST KNOWN?

9 A. IN SOME STUDIES THAT HAS BEEN THE
10 CASE. IN OTHER STUDIES, IT DOESN'T SHOW UP EVEN IN
11 THE TOP 10. SO IT DEPENDS ON HOW THE QUESTION IS
12 BEING ASKED AND WHO IS ASKING THE QUESTION. BUT I
13 THINK IT IS FAIR TO SAY MARLBORO THE A WELL-KNOWN
14 TRADEMARK.

15 Q. LET'S TALK ABOUT THE COMPANY AND
16 WHAT'S HAPPENED TO IT SINCE YOU HAVE BEEN THERE,
17 PLEASE.

18 A. OKAY.

19 Q. IN 1969, I HAVE HEARD SEVERAL TIMES
20 YOU OR THE LAWYER REFERRED TO IN PHILIP MORRIS AS A
21 SMALL COMPANY AT THAT TIME. DO YOU REMEMBER SAYING
22 THAT?

23 A. YES.

24 Q. WHAT DOES THAT MEAN, SMALL COMPANY?

25 A. WELL, THERE WERE FAR FEWER
26 EMPLOYEES. IT WAS, WE WERE NOT THE NUMBER 1
27 COMPANY IN THE UNITED STATES, WE WERE FOURTH AND
28 THEN THIRD. MARLBORO WAS NOT AS WELL-KNOWN

1 WORLDWIDE. IT WAS NOT THE NUMBER 1 SELLING BRAND.
2 IT WAS A DISTANT SECOND OR THIRD.

3 AND SO IT WAS A VERY DIFFERENT
4 COMPANY. IT WAS A MUCH SMALLER COMPANY, EVERYBODY
5 KNEW EVERYONE. PHILIP MORRIS NOW HAS 12,000
6 EMPLOYEES. THERE WERE FAR FEWER BACK THEN.

7 Q. HOW MANY?

8 A. PHILIP MORRIS -- I DON'T REMEMBER
9 THE EXACT NUMBER, I KNOW IN THE NEW YORK OFFICE,
10 WHICH NOW HAS ABOUT 1,200 PEOPLE, JUST IN THE
11 HEADQUARTERS OFFICE IN NEW YORK, WE WERE ABOUT 300.

12 Q. I THOUGHT IT WAS 150, DIDN'T YOU
13 SAY THERE WERE 150 PEOPLE THERE WHEN YOU FIRST WENT
14 THERE, EVERYBODY KNEW EVERYBODY'S FIRST NAMES
15 SECRETARIES, BOSSES TALKED TO SECRETARIES, EVERYONE
16 KNEW THEIR FIRST NAME?

17 A. I THINK I SAID 300. IF I SAID 150,
18 I MISPOKE.

19 Q. MAYBE I MISHEARD. IF I DID, I
20 APOLOGIZE.

21 ANYWAY, PHILIP MORRIS, WHEN YOU
22 WENT TO WORK THERE IN 1969, WAS MORE THAN A FLOOR
23 IN AN OFFICE BUILDING IN NEW YORK CITY, WASN'T IT?

24 A. YES. IT WAS ABOUT FOUR FLOORS IN
25 AN OFFICE BUILDING ACROSS THE STREET FROM WHERE OUR
26 HEADQUARTERS ARE NOW

27 Q. BAD QUESTION ON MY PART. LET'S
28 FORGET NEW YORK CITY. PHILIP MORRIS WAS MORE THAN

1 OFFICES IN NEW YORK CITY, WASN'T IT?

2 A. THAT IS RIGHT. WE HAD THE PLANT
3 THAT I ALLUDED TO IN LOUISVILLE THAT HAS SINCE BEEN
4 CLOSED DOWN EXISTED BACK THEN AND WE WERE IN THE
5 MIDST OF BUILDING OUR FACTORY IN RICHMOND,
6 VIRGINIA, AT THAT TIME.

7 WE HAD, SHORTLY AFTER I JOINED THE
8 COMPANY, I THINK WE BROKE GROUND TO START BUILDING
9 THE RICHMOND FACILITY. THERE WAS A MUCH SMALLER
10 FACILITY IN RICHMOND AT THAT TIME.

11 AND WE DID NOT HAVE THE NORTH
12 CAROLINA FACILITY AT ALL, THAT CAME WAY LATER.

13 Q. SO APPRECIATING THAT YOU CAN'T GIVE
14 US AN EXACT NUMBER OF EMPLOYEES, JUST SO -- BECAUSE
15 THIS MAY BE IMPORTANT HERE, JUST SO WE CAN GET AN
16 IDEA, IT'S 12,000 TOTAL NOW, ROUND NUMBERS, WHAT DO
17 YOU THINK IT WAS IN '69?

18 A. IF I HAD TO GUESS, I WOULD SAY
19 PROBABLY LESS THAN HALF OF THAT, MAYBE 5,000,
20 INCLUDING THE FACTORIES AND MANUFACTURING CENTERS.

21 Q. THANKS.

22 AND SO IF I COMMENTED TO THAT, YOU
23 HAVE COME A LONG WAY, WOULD THAT SOUND TO YOU LIKE
24 I AM QUOTING YOUR OWN WORDS BACK TO YOU?

25 A. SOUND LIKE YOU WERE USING A SLOGAN
26 FROM A CAMPAIGN THAT WE RAN, YES.

27 Q. DID YOU MAKE UP THAT SLOGAN, YOU
28 HAVE COME A LONG WAY?

1 A. NO, I DID NOT.

2 Q. WERE YOU THE BRAND MANAGER FOR THAT
3 SLOGAN?

4 A. AFTER THE BRAND HAD ALREADY BEEN
5 INTRODUCED, LATER ON IN MY CAREER, I BECAME THE
6 BRAND MANAGER OF THAT BRAND, YES.

7 Q. SO "YOU HAVE COME A LONG WAY"
8 REFERS TO THE REAL QUOTE, "YOU HAVE COME A LONG
9 WAY, BABY," DOESN'T IT?

10 A. THAT WAS THE ADVERTISING SLOGAN,
11 YES.

12 Q. THAT APPLIES TO PHILIP MORRIS
13 CORPORATION, DOESN'T IT?

14 A. PHILIP MORRIS CORPORATION HAS GROWN
15 OVER THE YEARS. YES, THAT IS RIGHT.

16 Q. YOU KNOW WHO MR. BIBLE IS,
17 OBVIOUSLY?

18 A. YES, I DO.

19 Q. IF THIS QUESTION SOUNDS FUNNY IN
20 ADVANCE, I WILL APOLOGIZE, BUT THERE'S A REASON FOR
21 IT.

22 DO YOU THINK MR. BIBLE HAS
23 DEVELOPMENTAL DEFICIENCIES?

24 A. NO, I DO NOT.

25 Q. IS IT MR. CAMERON WHO USED TO BE A
26 C. E. O. FOR PHILIP MORRIS?

27 A. MR. CAMPBELL.

28 Q. CAMPBELL, SORRY, MR. CAMPBELL.

1 DO YOU KNOW HIM?

2 A. YES.

3 Q. HOW LONG HAVE YOU KNOWN MR.
4 CAMPBELL?

5 A. I HAVE KNOWN MR. CAMPBELL FOR AS
6 LONG AS I HAVE BEEN AT PHILIP MORRIS. HE AND I
7 WERE BOTH IN CANADA AT THE SAME TIME.

8 Q. HE'S ONE OF THOSE GUYS; RIGHT?

9 A. YES, HE IS.

10 WELL, I THINK HE MAY BE CUT OFF IN
11 THAT PICTURE.

12 Q. ONE, TWO, THREE, FOUR, FIVE, SIX,
13 SEVEN, EIGHT. I THINK THAT'S HIM OVER THERE?

14 A. I THINK THAT'S HIM

15 Q. IN THE CORNER.

16 SAME QUESTION, YOU HAVE KNOWN HIM
17 SINCE WHEN, PLEASE.

18 A. 1969.

19 Q. DO YOU BELIEVE THAT MR. CAMPBELL
20 HAS DEVELOPMENTAL DEFICIENCIES?

21 A. NO, I DON'T.

22 Q. HERE. AT ONE TIME, THERE WAS A MAN
23 NAMED BOWLING, B-O-W-L-I-N-G, WHO WORKED FOR THE
24 CORPORATION. DO YOU REMEMBER THAT?

25 A. THAT IS CORRECT.

26 Q. DO YOU KNOW HIM?

27 A. I KNEW HIM

28 Q. DID HE OCCUPY ONE OF THOSE SPOTS?

1 A. NOT REALLY. IT WAS A DIFFERENT
2 ORGANIZATION THEN AND THERE WASN' T A SENIOR TEAM AS
3 WE SEE IT TODAY. SO NOT EXACTLY, NO.

4 Q. WHAT WAS HIS TITLE?

5 A. HE WAS, HE WAS AN EXECUTIVE -- I AM
6 NOT EXACTLY SURE OF WHAT HIS TITLE WAS, BUT HE WAS
7 IN THE CORPORATE AFFAIRS AREA. AND HE WAS THE MOST
8 SENIOR CORPORATE AFFAIRS PERSON IN THE COMPANY
9 THEN, WHEN HE WAS WITH IT.

10 Q. IN OTHER WORDS, REGARDLESS OF THE
11 EXACT STRUCTURE OF THE COMPANY AT THAT POINT, YOU
12 ARE BASICALLY SITTING IN HIS OLD SEAT?

13 A. NOT REALLY. BECAUSE, I AM IN A
14 SEAT IN PHILIP MORRIS U. S. A. AND HE WAS, HAD THAT
15 POSITION IN THE CORPORATION AS A WHOLE.

16 Q. OKAY. SO HE WAS THE TOP GUN FOR
17 CORPORATE AFFAIRS FOR THE ENTIRE PHILIP MORRIS
18 ORGANIZATION?

19 A. AS IT EXISTED BACK THEN.

20 Q. OKAY. AND HOW LONG DID YOU KNOW
21 HIM?

22 A. WELL, HE WAS THERE WHEN I JOINED
23 PHILIP MORRIS AND HE RETIRED, I DON' T REMEMBER
24 EXACTLY WHEN HE RETIRED, BUT I THINK IT WAS
25 PROBABLY, EVEN LATE '70' S OR EARLY '80' S, I AM NOT
26 SURE EXACTLY WHEN.

27 Q. SO YOU KNEW HIM OVER TEN YEARS?

28 A. APPROXIMATELY.

1 Q. AND OBVIOUSLY YOU DON'T THINK HE
2 WAS DEVELOPMENTALLY DISABLED, EITHER, DO YOU?

3 A. NO, I DON'T BELIEVE HE WAS
4 DEVELOPMENTALLY DISABLED.

5 Q. NOW, WHEN DID YOU EVER HEAR MR.
6 BOWLING, WE SAW HIM -- ARE YOU FAMILIAR WITH SOME
7 DEATH IN THE WEST, YOU KNOW WHAT THAT IS?

8 A. I KNOW WHAT IT IS, YES.

9 Q. YOU KNOW WHO HORACE WAKEHAM IS?

10 A. YES, I DO.

11 Q. WHO IS HE?

12 A. HE WAS IN RESEARCH AND DEVELOPMENT
13 YEARS AGO.

14 Q. WELL, WE SHOWED THE JURY A COUPLE
15 TIMES, I AM NOT GOING TO DO IT RIGHT NOW, I JUST
16 DECIDED, FILM CLIPS ABOUT THREE TO FIVE MINUTES
17 APIECE, ONE OF MR. BOWLING, ONE OF MR. WAKEHAM
18 TAKEN AROUND 1976. YOU HAVE SEEN THOSE, HAVEN'T
19 YOU?

20 A. I ACTUALLY, IF I HAVE SEEN THEM, I
21 HAVEN'T SEEN THEM FOR YEARS.

22 Q. ANYWAY, THEY ARE BEING INTERVIEWED
23 BY SOME BRITISH TELEVISION --

24 MR. LEITER: YOUR HONOR, I AM GOING TO
25 OBJECT TO THE COMMENTARY BUT WHAT IS GOING ON IS
26 BEYOND THE EVIDENCE IN THIS CASE. THE JURY SAW THE
27 STATEMENTS.

28 THE COURT: VERY WELL. I AM GOING TO

1 ALLOW FOUNDATION AND THEN I WILL MAKE A DECISION.

2 PROCEED.

3 Q BY MR. PIUZE: THEY ARE BEING
4 INTERVIEWED BY SOME GUY WITH A BRITISH ACCENT?

5 A. I BELIEVE THAT'S RIGHT. YES.

6 Q. ANYWAY, DURING THE ENTIRE TIME THAT
7 YOU KNEW MR. BOWLING, WHO WAS THE TOP GUN FOR
8 CORPORATE AFFAIRS FOR THE ENTIRE CORPORATION, FROM
9 '69 THROUGHOUT THE '70'S AND INTO THE EARLY '80'S
10 WHEN APPARENTLY YOU LOST TRACK OF HIM, IS THAT TRUE
11 SO FAR?

12 A. I JUST DON'T REMEMBER WHEN HE
13 RETIRED, I KNOW HE RETIRED FROM PHILIP MORRIS, I
14 DON'T REMEMBER THE EXACT DATE WHEN IT WAS.

15 Q. FINE.

16 DID YOU EVER HEAR HIM SAY, OUR
17 PRODUCT IS A DANGEROUS PRODUCT THAT CAUSES DISEASE?

18 A. I DON'T RECALL WHETHER HE SAID IT
19 OR NOT. I DON'T KNOW THAT I EVER HAD A
20 CONVERSATION LIKE THAT WITH HIM TO RECALL. I
21 DIDN'T WORK DIRECTLY WITH MR. BOWLING. I KNEW HIM
22 BUT I DIDN'T WORK WITH HIM DIRECTLY.

23 Q. WHEN -- HOW LONG HAVE YOU KNOWN MR.
24 CAMPBELL?

25 A. SINCE 1969.

26 Q. STILL KNOW HIM?

27 A. YES, I DO STILL KNOW HIM

28 Q. STILL SEE HIM?

1 A. OCCASIONALLY. I HAVEN'T SEEN HIM
2 IN PROBABLY A YEAR NOW BUT, YEAH. I HAVE BEEN IN
3 TOUCH WITH HIM

4 Q. HOW LONG HAS IT BEEN SINCE HE'S
5 BEEN GONE FROM PHILIP MORRIS?

6 A. HE LEFT IN PROBABLY ABOUT '94, '95,
7 THEREABOUTS. I DON'T KNOW THE EXACT DATE. BUT IT
8 WAS -- HE LEFT IN THE MID-90'S.

9 Q. LET ME START YOU OFF.
10 THIS PICTURE APPEARED -- YOU READ
11 THE "NEW YORK TIMES," DON'T YOU?

12 A. YES.

13 Q. THIS PICTURE APPEARED IN THE "NEW
14 YORK TIMES" ON APRIL 16, 1994, THE DAY AFTER THAT
15 CONGRESSIONAL TESTIMONY OCCURRED. OBVIOUSLY, YOU
16 ARE FAMILIAR WITH THAT CONGRESSIONAL TESTIMONY?

17 A. YES, I AM

18 Q. WAS HE GONE BY THE END OF THE YEAR?

19 A. I THOUGHT HE WAS THERE LONGER THAN
20 THAT, BUT I DON'T REMEMBER THE DATE CERTAIN, BUT HE
21 WASN'T THERE MUCH BEYOND THE END OF THAT YEAR, I
22 DON'T BELIEVE.

23 Q. ALL RIGHT. BUT FOR WHATEVER, ONE
24 WAY OR THE OTHER, YOU KNOW HIM SOCIALLY, YOU WORKED
25 WITH HIM FOR A LONG TIME AND YOU STILL SEE HIM
26 SOMETIMES; RIGHT?

27 A. I STILL SEE HIM SOMETIMES.

28 Q. SO I WANT TO START OFF MY QUESTION,

1 JUST ENDING WHEN HE LEFT THE CORPORATION, AND I
2 PERSONALLY DON'T CARE WHETHER IT WAS THE END OF
3 '94, BEGINNING OF '95, DOESN'T MATTER AT ALL.

4 UP UNTIL HE LEFT THE CORPORATION,
5 DID YOU EVER HEAR HIM SAY, WE MAKE A DANGEROUS
6 PRODUCT THAT CAUSES DISEASE?

7 A. I CERTAINLY KNOW THAT HE KNEW THAT,
8 AS WE ALL DID, THAT THERE WERE SERIOUS HEALTH RISKS
9 ASSOCIATED WITH OUR PRODUCT. MR. CAMPBELL WAS
10 AWARE OF THAT. AND MR. CAMPBELL WAS AWARE OF THAT.

11 Q. THAT'S NOT WHAT I ASKED YOU.

12 I AM NOT ASKING ABOUT RISKS. DID
13 YOU EVER HEAR HIM SAY THAT WE MAKE -- I AM JUST
14 QUOTING YOUR OWN WORDS BACK TO YOU, WE MAKE A
15 DANGEROUS PRODUCT THAT CAUSES DISEASE?

16 A. I DON'T KNOW IF HE USED THOSE EXACT
17 WORDS OR NOT. BUT I DO KNOW THAT HE CERTAINLY KNEW
18 THAT CIGARETTES WERE HARMFUL AND THAT THEY DID
19 CAUSE DISEASE. HE WAS AWARE OF THE INFORMATION
20 THAT WAS AVAILABLE ABOUT TOBACCO.

21 Q. SO THE ANSWER TO MY QUESTION IS,
22 NO?

23 A. THE ANSWER IS, I DON'T REMEMBER
24 THOSE EXACT WORDS. HE MAY HAVE, HE MAY NOT HAVE.
25 BUT HE CERTAINLY WAS AWARE THAT CIGARETTES WERE
26 RISKY AND THAT THEY, THERE WAS DISEASE ASSOCIATED
27 WITH THEM

28 Q. WHAT DISEASE?

1 A. EMPHYSEMA, HEART DISEASE, LUNG
2 CANCER.

3 Q. THAT'S WHAT I WANTED TO KNOW
4 LET'S STAY WITH LUNG CANCER.

5 DO YOU THINK HE WAS CERTAINLY AWARE
6 THAT LUNG CANCER WAS CAUSED BY SMOKING CIGARETTES?

7 A. WELL, I THINK HE WAS AWARE OF THE
8 PUBLIC HEALTH, THE CONCLUSIONS THAT WERE BEING
9 DRAWN BY THE PUBLIC HEALTH COMMUNITY ABOUT SMOKING
10 AND LUNG CANCER AND THE EPIDEMIOLOGY THAT WAS
11 AVAILABLE.

12 I THINK HE WAS ALSO AWARE OF THE
13 FACT THAT THERE WAS NO, THAT THE PUBLIC HEALTH
14 COMMUNITY AND YOUR OWN SCIENTISTS DID NOT KNOW WHAT
15 THE CONSTITUENTS WERE AND WHAT THE MECHANISM WAS
16 THAT CAUSED THE DISEASE. BUT HE CERTAINLY WAS
17 AWARE OF THE EPIDEMIOLOGY THAT WAS OUT THERE THAT
18 DREW UP A STRONG CORRELATION BETWEEN SMOKING AND
19 THOSE DISEASES.

20 Q. THAT'S NOT WHAT I ASKED.

21 DID, FROM YOUR ASSOCIATION WITH HIM
22 AND FROM TALKING WITH HIM, DON'T FORGET THIS ENDS
23 WHILE HE IS THERE, WE HAVEN'T GONE INTO WHAT'S
24 HAPPENED SINCE HE RETIRED FROM THE CORPORATION, DID
25 YOU EVER HEAR HIM SAY, TOBACCO SMOKE CAUSES LUNG
26 CANCER?

27 A. HE VERY WELL MIGHT HAVE. I MEAN,
28 IT WOULDN'T HAVE BEEN, YOU KNOW, I DON'T REMEMBER

1 AN EXACT CONVERSATION WITH HIM, SPECIFICALLY, BUT
2 AS I SAY, IT WAS CERTAINLY AN ISSUE THAT HE WAS
3 AWARE OF. BEYOND THAT, I DON'T KNOW WHAT WAS IN
4 HIS MIND, I REALLY CAN'T SPEAK FOR HIM

5 Q. RESPECTFULLY, I MEAN, OBVIOUSLY, BY
6 THE TIME HE RETIRED, HOPEFULLY HE KNEW THAT IT WAS
7 AN ISSUE THAT CIGARETTES CAUSED LUNG CANCER AND I
8 AM NOT ASKING YOU TO READ HIS MIND. I DON'T WANT
9 YOU TO DO THAT. YOU WERE THERE, YOU TALKED TO HIM,
10 YOU KNOW HIM HE IS A FRIEND OF YOURS; RIGHT?

11 A. WELL, YEAH, HE'S AN ACQUAINTANCE OF
12 MINE. I MEAN, HE WAS -- I WORKED FOR HIM, I WORKED
13 WITH HIM AND I KNOW HIM WELL. I WOULDN'T SAY HE'S
14 A CLOSE FRIEND OF MINE, BUT, YEAH, HE IS CERTAINLY
15 AN ACQUAINTANCE.

16 Q. FINE, THIS IS A SIMPLY WHAT DID HE
17 SAY QUESTION. DID YOU EVER HEAR THIS GUY SAY,
18 SMOKING CAUSES CANCER?

19 MR. LEITER: OBJECTION, ASKED AND
20 ANSWERED.

21 THE WITNESS: I DON'T RECALL A SPECIFIC
22 CONVERSATION WITH HIM, BUT I KNOW HE WAS AWARE OF
23 THE FACT THAT SMOKING DID CAUSE DISEASE. I MEAN,
24 THE EPIDEMIOLOGY WAS OUT THERE, HE DIDN'T KNOW THE
25 MECHANISM HE DIDN'T NO THE CONSTITUENTS, BUT HE
26 KNEW THAT WHAT THE PUBLIC HEALTH COMMUNITY WAS
27 SAYING, HE KNEW THE CONCLUSIONS THAT HAD BEEN
28 DRAWN. HE KNEW THE INFORMATION THAT WAS AVAILABLE

1 AND I DON'T REMEMBER SPECIFIC CONVERSATIONS WITH
2 HIM, WHICH IS WHAT YOU ARE ASKING ME. I JUST DON'T
3 REMEMBER THEM

4 Q. ALL RIGHT. DO YOU REMEMBER WHAT HE
5 TOLD CONGRESSMAN WAXMAN'S COMMITTEE OF THE UNITED
6 STATES CONGRESS ON THAT ISSUE ON APRIL 15TH, 1994?

7 A. AGAIN, I CAN'T QUOTE HIM
8 SPECIFICALLY, BUT I WOULD, I BELIEVE, HE
9 ACKNOWLEDGED THE RISKS ASSOCIATED WITH THE PRODUCT.
10 AND I THINK HE PROBABLY SAID THAT WE DIDN'T KNOW
11 THE CONSTITUENTS AND WE DIDN'T KNOW THE MECHANISM
12 BUT HE CERTAINLY DID NOT DENY THAT SMOKING CAUSED
13 DISEASE.

14 Q. DIDN'T HE SAY NO ONE KNOWS THE
15 CAUSES OF CANCER?

16 A. WELL, I THINK THAT'S WHAT I JUST
17 SAID, THAT WE DIDN'T KNOW THE MECHANISM AND WE
18 DIDN'T KNOW THE CONSTITUENTS. AND THAT WAS A STATE
19 OF THE INFORMATION THAT WAS, I THINK,
20 SCIENTIFICALLY ACCURATE AT THE TIME.

21 IT MAY HAVE BEEN INCOMPLETE BUT IT
22 WAS SCIENTIFICALLY ACCURATE THAT THE MECHANISM HAD
23 NOT BEEN IDENTIFIED AND THE ACTUAL CONSTITUENTS
24 THAT CAUSED DISEASE WERE NOT IDENTIFIED. AND I
25 BELIEVE THAT'S WHAT HE SAID TO CONGRESS.

26 Q. SINCE HE'S LEFT THE COMPANY IN THE
27 MID-1990'S, AND YOU HAVE MAINTAINED SOCIAL CONTACT
28 WITH HIM AND THERE'S NO CONGRESSMAN PEERING OVER

1 HIS SHOULDERS, HAS MR. CAMPBELL EVER SAID TO YOU,
2 OF COURSE, SMOKING CAUSES LUNG CANCER?

3 A. SINCE MR. CAMPBELL HAS LEFT THE
4 COMPANY, I HAVE NOT HAD OCCASION TO HAVE THOSE KIND
5 OF DISCUSSIONS WITH HIM I MEAN, I HAVE SEEN HIM
6 FROM TIME TO TIME, AT SOCIAL EVENTS, BUT I HAVE NOT
7 HAD DISCUSSIONS WITH HIM

8 Q. DID YOU TESTIFY IN REGARD TO THE
9 MINNESOTA TRIAL, MINNESOTA VERSUS THE TOBACCO
10 INDUSTRY?

11 A. I DID NOT.

12 Q. HAVE YOU -- AND I AM INCLUDING
13 DEPOSITIONS NOW DOES THAT CHANGE THINGS?

14 A. IT MAY. I THINK I DID GIVE A
15 DEPOSITION, I THINK I MAY HAVE GIVEN A DEPOSITION.
16 I DON'T REMEMBER SPECIFICALLY, BUT I THINK I MAY
17 HAVE.

18 Q. YOU HAVE GIVEN DEPOSITION TESTIMONY
19 IN, SOMEPLACE LIKE A HANDFUL OF CASES WHERE ONE OF
20 THE STATES OF THE UNITED STATES OF AMERICA WAS
21 SUING THE TOBACCO INDUSTRY?

22 A. YES, I HAVE.

23 Q. TELL THE JURY WHICH OF THE STATE'S
24 CASES THAT YOU CAN RECALL TESTIFYING IN.

25 MR. LEITER: YOUR HONOR, CAN I OBJECT AS
26 TO RELEVANCE AND FOUNDATION AS TO WHICH STATES.

27 THE COURT: WELL, THIS IS A FOUNDATIONAL
28 QUESTION. I WILL ALLOW IT. BUT THEN WE WILL HAVE

1 TO ESTABLISH RELEVANCE SOON THEREAFTER.

2 MR. LEITER: THANK YOU.

3 MR. PIUZE: I WILL TELL YOU WHAT, YOUR
4 HONOR, LET'S STAY WITH WITHIN MINNESOTA FOR NOW,
5 OKAY.

6 Q BY MR. PIUZE: YOU KNOW THAT MR.
7 BIBLE TESTIFIED UP IN MINNESOTA, DON'T YOU?

8 A. YES, I DO.

9 Q. HOW DO YOU KNOW THAT?

10 A. I JUST -- I MEAN, I KNOW IT. I
11 JUST KNOW THAT HE DID. I DON'T KNOW HOW I KNOW I
12 JUST KNOW IT.

13 Q. IN 1998?

14 A. THAT IS RIGHT.

15 Q. ON MARCH 2ND?

16 A. WELL, I WILL TAKE YOUR WORD FOR IT,
17 I DON'T REMEMBER THE DATE.

18 Q. HOW ABOUT THE PAGE NUMBER, 5,707?

19 A. I DON'T THINK I WOULD REMEMBER
20 THAT.

21 Q. YOU KNOW THAT -- NOW, AT THE TIME,
22 HE WAS THE TOP GUN FOR THE WHOLE CORPORATION, WHOLE
23 SHEBANG, PHILIP MORRIS, EVERYTHING?

24 A. HE WAS PRESIDENT AND C. E. O. OF
25 PHILIP MORRIS COMPANIES.

26 Q. PHILIP MORRIS COMPANIES, IS THAT
27 THE BIGGEST MARKETING COMPANY IN THE WORLD?

28 A. IT'S THE BIGGEST CONSUMER PRODUCTS

1 COMPANY IN THE WORLD. IT'S NOT A MARKETING
2 COMPANY, IT IS A CONSUMER PRODUCT COMPANY.

3 Q. IN THE ENTIRE WORLD?

4 A. I BELIEVE WE ARE NUMBER 1.

5 Q. SO THIS GUY IS THE NUMBER 1 PERSON
6 AT THE NUMBER 1 CONSUMER PRODUCTS COMPANY IN THE
7 ENTIRE WORLD; RIGHT?

8 A. THAT IS CORRECT.

9 Q. HAVE YOU EVER READ HIS TESTIMONY?

10 A. I DON'T BELIEVE I HAVE READ HIS
11 TESTIMONY.

12 Q. HAVE YOU EVER DISCUSSED HIS
13 TESTIMONY WITH HIM?

14 A. NO, I HAVE NOT.

15 Q. IN ANY CONVERSATIONS YOU EVER HAD
16 WITH MR. BIBLE, EVER, FROM THE FIRST TIME YOU EVER
17 LAID EYES ON HIM UNTIL MAYBE ON THE TELEPHONE THIS
18 MORNING, FOR ALL I KNOW, BUT EVER, EVERYTHING,
19 INCLUDED, HAS HE EVER SAID TO YOU THAT HE DOESN'T
20 THINK EVEN ONE PERSON HAS EVER DIED FROM TOBACCO
21 USE?

22 A. I HAVE NEVER HAD THAT CONVERSATION
23 WITH MR. BIBLE.

24 Q. HAS HE EVER SAID TO YOU THAT IF
25 EVEN ONE PERSON, IF IT COULD BE SHOWN TO HIM THAT
26 EVEN ONE PERSON DIED FROM TOBACCO USE, HE'D SHUT
27 DOWN THE FACTORIES TOMORROW?

28 A. HE HAS NEVER SAID THAT TO ME.

1 Q. BECAUSE WE HAVE HEARD SOME
2 TESTIMONY FROM '98 THAT IF IT COULD BE SHOWN TO MR.
3 BIBLE THAT EVEN ONE PERSON DIED OF CIGARETTE
4 SMOKING, HE'D SHUT DOWN THE FACTORY TOMORROW, THAT
5 HASN'T HAPPENED, HAS IT?

6 MR. LEITER: I AM OBJECTING TO THE
7 CHARACTERIZATION OF THE TESTIMONY.

8 THE COURT: VERY WELL, LAY THE
9 FOUNDATION, RATHER THAN THE CHARACTERIZATION.

10 Q BY MR. PIUZE: DO YOU WANT ME TO
11 READ TO IT THIS WITNESS?

12 THE COURT: PROCEED.

13 MR. PIUZE: OKAY.

14 Q BY MR. PIUZE: DO YOU KNOW WHO MR.
15 SORESI IS?

16 A. YES, HE WAS COUNSEL IN THE
17 MINNESOTA TRIAL FOR THE STATE OF MINNESOTA.

18 Q. HE WAS THE TOP TRIAL LAWYER FOR THE
19 STATE OF MINNESOTA; RIGHT?

20 A. YES.

21 Q. QUESTION BY MR. SORESI AT PAGE
22 5708:

23 "Q HOW MANY WOULD HAVE
24 TO DIE FROM SMOKING BEFORE YOU WOULD
25 REASSESS YOUR DUTIES? ONE? 100?
26 5,000? HOW MANY, SIR?

27 "A WELL, SIR, I DON'T
28 KNOW THAT ANYBODY DOES. SO I AM

1 FINDING THAT A VERY HARD ASSUMPTION TO
2 MAKE.

3 "Q I DIDN'T ASK YOU
4 THAT YET. WE WILL GET TO THAT.

5 "A OKAY.

6 "Q HOW MANY WOULD HAVE
7 TO DIE FROM YOUR PRODUCTS BEFORE YOU
8 WOULD REASSESS YOUR DUTY?

9 "A I WOULD HAVE
10 THOUGHT, IF YOU ARE FORCING ME TO SAY
11 THAT SOMEBODY, I HAVE TO ASSUME
12 SOMEBODY DIED, IF ONE PERSON DIED, I
13 WOULD REASSESS MY DUTIES.

14 "Q SO IF ONE PERSON
15 DIED FROM SMOKING, YOU WOULD REASSESS
16 YOUR DUTIES; IS THAT CORRECT?

17 "A I WOULD REASSESS MY
18 DUTIES, I WOULD LOOK AT ALL OF MY
19 DUTIES, YES.

20 "Q WOULD YOU SHUT DOWN
21 YOUR BUSINESS IF ONE PERSON DIED?

22 "A YES. WELL, THAT
23 QUESTION HAS ACTUALLY BEEN ASKED ME
24 BEFORE PUBLICLY IN A DEPOSITION. AND
25 I HAD SAID AT THE TIME THAT PERHAPS I
26 WOULD BECAUSE I WOULD LIKE TO TALK
27 WITH GOVERNMENT ABOUT THE MATTER,
28 BECAUSE OF THE WIDE IMPLICATIONS IT

1 WOULD HAVE.

2 I SUBSEQUENTLY -- I
3 SUBSEQUENTLY CONCLUDED THAT PROBABLY
4 THAT WOULDN'T BE A VERY EFFECTIVE
5 THING TO DO, BECAUSE THERE'S QUITE A
6 LARGE SUPPLY OF CIGARETTES IN THE
7 SUPPLY LINE AND THAT WOULDN'T HAVE ANY
8 IMPACT JUST CLOSING DOWN THE PLANT FOR
9 A SHORT PERIOD OF TIME. "

10 SO THAT'S WHAT THE READING IS AND
11 THERE'S MORE BUT THAT'S ALL.

12 SO NOW THAT YOU HAVE TOLD US THAT
13 YOUR PRODUCT IS DANGEROUS, IT CAUSES DISEASES AND
14 YOU HAVE SAID HERE THIS MORNING THAT, YES, INDEED,
15 IT KILLS PEOPLE, ARE THE FACTORIES STILL OPEN?

16 A. YES. WHAT I HEARD MR. BIBLE SAY
17 IS, AND I THINK, ACTUALLY, HE'S MADE GOOD ON THAT,
18 IS THAT HE WOULD REASSESS, WHICH I BELIEVE PHILIP
19 MORRIS HAS DONE, THAT HE WOULD SPEAK WITH
20 GOVERNMENT, WHICH WE ARE DOING, AND THAT WE WOULD
21 LOOK AT OUR BUSINESS SOMEWHAT DIFFERENTLY, WHICH I
22 BELIEVE WE ARE DOING, SO I THINK THAT MR. BIBLE WAS
23 VERY INTROSPECTIVE IN HIS TESTIMONY AND I BELIEVE
24 HE IS ACTING IN ACCORDANCE WITH WHAT YOU HAVE JUST
25 READ TO ME FROM THAT TESTIMONY.

26 Q. MR. BIBLE SAID PUBLICLY IN A
27 DEPOSITION THAT IF ONE PERSON DIED FROM SMOKING, HE
28 WOULD REASSESS HIS DUTIES AND CLOSE DOWN THE

1 FACTORIES BUT WHEN CONFRONTED WITH IT IN FRONT OF A
2 JURY IN MINNESOTA, HE DECIDED TO ACT RESPONSIBLY
3 INSTEAD; RIGHT?

4 MR. LEITER: I AM GOING TO OBJECT TO THE
5 CHARACTERIZATION. IT'S ARGUMENTATIVE.

6 THE COURT: IF SHE KNOWS. DO YOU KNOW
7 ONE WAY OR ANOTHER?

8 THE WITNESS: I DON'T KNOW. I AM
9 REACTING TO WHAT MR. PIUZE JUST READ TO ME IN MR.
10 BIBLE'S DEPOSITION AS TO HOW HE SAID HE WOULD ACT
11 AND --

12 THE COURT: NO, THE QUESTION WAS WHAT
13 HAPPENED IN THE TRIAL.

14 Q BY MR. PIUZE: THIS IS TRIAL
15 TESTIMONY, THIS ISN'T DEPOSITION TESTIMONY.

16 A. I UNDERSTAND. YOU READ ME THE
17 TRIAL TESTIMONY AND I WAS RESPONDING TO THAT.

18 Q. HERE'S MY QUESTION TO YOU.

19 A. ALL RIGHT.

20 Q. I APOLOGIZE IF IT'S A BAD ONE. I
21 DON'T MEAN TO ARGUE WITH YOU.

22 HE HAD SAID IN A DEPOSITION FOR THE
23 MINNESOTA TRIAL, THAT IF ONE PERSON, IF IT COULD BE
24 SHOWN TO HIM THAT ONE PERSON DIED OF SMOKING, HE
25 WOULD REASSESS HIS DUTIES AND SHUT DOWN THE
26 FACTORIES. AND IN THIS TRIAL, NOT A DEPOSITION,
27 BUT A TRIAL IN FRONT OF A JURY, HE DID BACK AWAY
28 FROM THAT, GRANTED.

1 HAVE THE FACTORIES BEEN SHUT DOWN
2 FOR A SECOND?

3 A. WELL, THE FACTORIES ARE SHUT DOWN
4 AS A MATTER OF COURSE ALL THE TIME FOR ANY NUMBER
5 OF REASONS, BUT NOT THE WAY YOU MEAN, NO.

6 Q. SO HERE'S WHERE I WAS GOING, I
7 THINK.

8 FROM 1954, WHEN THIS BIG, THIS WAS
9 THE NUMBER ONE PERSON AT THE CORPORATION; RIGHT?

10 A. AT THE TIME, WELL, HE WAS NOT. IN
11 1954, HE WAS NOT CHAIRMAN OF PHILIP MORRIS.

12 Q. SORRY.

13 YOU ARE RIGHT, IT SAYS SO RIGHT
14 THERE, VICE-PRESIDENT. HE BECAME CHAIRMAN OF
15 PHILIP MORRIS?

16 A. HE BECAME CHAIRMAN OF PHILIP
17 MORRIS.

18 Q. SO THIS MAN WHO BECAME CHAIRMAN OF
19 PHILIP MORRIS SAID, 47 YEARS AGO, IF WE HAD ANY
20 THOUGHT OR KNOWLEDGE THAT IN ANY WAY WE WERE
21 SELLING A PRODUCT HARMFUL TO CONSUMERS WE WOULD
22 STOP BUSINESS TOMORROW, AND THEN IN 1998, IN
23 MINNESOTA, 44 YEARS LATER, THE THEN CURRENT AND NOW
24 CURRENT TOP GUN SAID, AT LEAST IN A DEPOSITION, IF
25 IT COULD BE SHOWN TO ME OR IF I HAD KNOWLEDGE EVEN
26 ONE PERSON WAS KILLED BY TOBACCO, WE WOULD SHUT
27 DOWN THE FACTORIES TOMORROW, DOESN'T THAT SOUND
28 LIKE THE PAST IS PRELUDE TO YOU?

1 MR. LEITER: OBJECTION,
2 MISCHARACTERIZATION, CALLS FOR SPECULATION AND
3 ARGUMENTATIVE.

4 THE COURT: SUSTAINED.

5 Q BY MR. PIUZE: DOESN'T THAT SOUND
6 LIKE THE SAME OLD STORY?

7 MR. LEITER: SAME OBJECTION.

8 THE COURT: SUSTAINED.

9 Q BY MR. PIUZE: WHO DETERMINED
10 PHILIP MORRIS'S MISSION STATEMENT, WHO DID THAT?

11 A. PHILIP MORRIS U. S. A. , MIKE
12 SZYMANCZYK WROTE THE MISSION STATEMENT.

13 Q. WHEN?

14 A. WELL, HE BECAME CHAIRMAN IN
15 NOVEMBER OF 1997 AND VERY SHORTLY THEREAFTER,
16 WITHIN A MATTER OF THE WEEKS OF BECOMING CHAIRMAN.

17 Q. HERE'S THE 1994 -- CAN YOU SEE
18 THAT? YOU DON'T HAVE TO SEE THE SMALL PRINT, BUT
19 DO YOU SEE THE BIG PRINT?

20 A. I SEE THE "DEAR SHAREHOLDER. "

21 Q. SO YOU KNOW WHAT THIS IS; RIGHT?

22 A. I ASSUME IT'S A LETTER TO
23 SHAREHOLDERS.

24 Q. FROM 1994, BY MR. BIBLE -- IT IS
25 MR. BIBLE WHO WROTE THESE; RIGHT?

26 A. WELL, IT WOULD DEPEND ON THE YEAR,
27 WHETHER HE WAS CHAIRMAN YET OR NOT. THE CHAIRMAN,
28 WHOEVER HE IS AT ANY GIVEN TIME, WOULD WRITE THAT.

1 Q. OKAY. "OUR ONE ALL-CONSUMING
2 AMBITION IS TO CREATE WEALTH FOR THE OWNERS OF
3 PHILIP MORRIS."

4 AND I WANT TO STOP THERE.
5 ISN'T THAT THE REAL MISSION
6 STATEMENT?

7 A. NO, I DON'T BELIEVE THAT'S THE REAL
8 MISSION STATEMENT. I BELIEVE THAT THE MISSION AND
9 OUR GOALS CONCERN ALL OF OUR STAKEHOLDERS. AS I
10 EXPLAINED EARLIER THIS MORNING, I THINK THE
11 SHAREHOLDERS ARE BUT ONE STAKEHOLDER IN PHILIP
12 MORRIS. AND THIS WAS A LETTER TO SHAREHOLDERS.
13 BUT I BELIEVE WE HAVE OTHER STAKEHOLDERS AND WE
14 HAVE OBLIGATIONS AND COMMITMENTS TO THEM AND THEY
15 ARE EXPRESSED IN ANY NUMBER OF DIFFERENT WAYS.

16 Q. OKAY. LET'S CHECK OUT A COUPLE OF
17 THE WAYS IN WHICH THEY ARE EXPRESSED HERE, PLEASE.

18 CAN YOU READ THAT?

19 A. I AM AFRAID I CAN'T.

20 Q. OKAY. I WILL HELP.

21 A. THANK YOU.

22 Q. "DEFENDING OUR COMPANY."

23 AND I HAVE HIGHLIGHTED SOME OF IT.

24 WELL, I WILL READ IT ALL.

25 "PROTECTING YOUR INVESTMENT,
26 OUR BUSINESS AND EMPLOYEES, AND THE
27 RIGHTS OF CONSUMERS TO ENJOY OUR
28 PRODUCTS ARE ALL TOP PRIORITIES FOR

1 SIDE. ALTHOUGH THESE NEW CASES POST
2 DIFFICULT CHALLENGES, WE SHOULD
3 ULTIMATELY PREVAIL ON THEM, JUST AS WE
4 HAVE BEEN SUCCESSFUL IN OTHER TYPES OF
5 CASES FOR OUR 40 YEARS.

6 "IT IS IMPORTANT TO NOTE
7 HERE THAT THE TOBACCO INDUSTRY HAS
8 NEVER LOST OR PAID TO SETTLE A CASE. "

9 AND I WANT TO COME BACK
10 THERE TO.

11 "BEYOND DEFENDING OURSELVES,
12 WE ARE TURNING THE LEGAL TABLES ON
13 SOME OF THOSE WHO ATTACK US. WE ARE
14 GOING ON THE OFFENSIVE TO VINDICATE
15 OUR RIGHTS AND TO MAKE IT CLEAR THAT
16 CURRENT NOTIONS OF POLITICAL
17 CORRECTNESS CANNOT BE USED TO JUSTIFY
18 UNLAWFUL CONDUCT THAT ABRIDGES THOSE
19 RIGHTS. WE' RE SUING THE E. P. A. OVER
20 ITS MISLEADING REPORT ON SECONDHAND
21 SMOKE, SUING STATE AND LOCAL
22 GOVERNMENTS THAT HAVE UNLAWFULLY
23 RESTRICTED PUBLIC SMOKING AND SUING
24 ABC FOR FALSELY ACCUSING US OF SPIKING
25 OUR CIGARETTES WITH EXTRA NICOTINE.
26 WE' RE ALSO RUNNING ADS TO LET THE
27 PUBLIC KNOW OUR POSITION ON SUCH
28 ISSUES AS ACCOMMODATING THE RIGHTS OF

1 SMOKERS AND NON-SMOKERS AND PREVENTING
2 CIGARETTE SALES TO MINORS. WE BELIEVE
3 THAT WE ARE ABSOLUTELY RIGHT IN ALL OF
4 THE POSITIONS WE TAKE ON THESE ISSUES
5 AND WE ARE FIGHTING VERY HARD FOR WHAT
6 WE BELIEVE IN. "

7 NOW, IN THIS, YOU PLAYED A ROLE,
8 DIDN' T YOU?

9 A. WAS THAT A QUESTION?

10 Q. YES, IT WAS.

11 DIDN' T YOU PLAY A ROLE IN THIS
12 STRATEGY IN YOUR POSITION AS THE SENIOR V. P. FOR
13 CORPORATE AFFAIRS?

14 A. I AM NOT SENIOR V. P. OF CORPORATE
15 AFFAIRS FOR THE CORPORATION. IN 1994, I WAS
16 VICE-PRESIDENT OF CORPORATE AFFAIRS FOR PHILIP
17 MORRIS U. S. A. AND I AM NOW SENIOR V. P. OF
18 CORPORATE AFFAIRS FOR PHILIP MORRIS U. S. A. , NOT FOR
19 THE ENTIRE CORPORATION.

20 Q. I KNOW BUT IT' S OBVIOUS THAT HE
21 IS TALKING ABOUT DOMESTIC TOBACCO AND THAT' S YOUR
22 END OF IT; RIGHT?

23 A. I AM INVOLVED IN MANY OF THE
24 PROGRAMS THAT HAVE TO DO WITH DOMESTIC TOBACCO,
25 YES, AND PERFORMING SOME OF THE STRATEGY, AS FAR AS
26 DOMESTIC TOBACCO BUT NOT FOR THE CORPORATION.

27 Q. BUT LET' S JUST BE -- WE DON' T HAVE
28 TO DANCE AROUND THIS ISSUE HERE, HE' S NOT TALKING

1 ABOUT KRAFT FOOD, HE IS NOT TALKING ABOUT NABISCO,
2 NONE OF THIS HAS TO DO WITH THE WHOLE CORPORATION
3 KRAFT AND NABISCO OR MILLER BEER OR ANY OF THAT
4 STUFF. THIS HAS TO DO WITH TOBACCO CASES IN THE
5 UNITED STATES OF AMERICA, DOMESTIC TOBACCO; RIGHT?

6 A. SOME OF IT DOES, AS HE DESCRIBED
7 THERE. I AM NOT INVOLVED IN CREATING STRATEGIES IN
8 LITIGATION, THAT'S NOT MY JOB.

9 Q. BUT OVER HERE, YOU ARE ALSO RUNNING
10 ADS, THAT'S YOUR AREA?

11 A. THAT IS CORRECT.

12 Q. (READING)

13 "ALSO RUNNING ADS TO LET THE
14 PUBLIC KNOW OUR POSITION ON SUCH
15 ISSUES AS ACCOMMODATING THE RIGHTS OF
16 SMOKERS AND NON-SMOKERS AND PREVENTING
17 CIGARETTE SALES TO MINORS. WE BELIEVE
18 THAT WE ARE ABSOLUTELY RIGHT IN ALL
19 THE POSITIONS WE TAKE ON THESE ISSUES
20 AND WE ARE FIGHTING VERY HARD FOR WHAT
21 WE BELIEVE IN. "

22 RIGHT?

23 A. THAT'S CORRECT. I WAS INVOLVED IN
24 THE ADVERTISING ON ACCOMMODATION AND PREVENTING
25 KIDS FROM SMOKING.

26 Q. OKAY. NOW, LET'S, IF WE COULD,
27 PLEASE, LET'S JUST TALK A LITTLE BIT MORE ABOUT
28 MARKETING.

1 A. ABOUT MARKETING?

2 Q. YES.

3 I HEARD YESTERDAY AT LEAST ONCE,
4 MAYBE TWICE, THE PHRASE "TEST MARKET" OR "TEST
5 MARKETING," WORDS TO THAT EFFECT.

6 WHAT IS THAT?

7 A. TEST MARKETING IS CREATING, WHETHER
8 IT'S AN AD OR A PROGRAM OR A NEW PRODUCT OR
9 WHATEVER, AND PUTTING IT INTO A LIMITED GEOGRAPHY,
10 A TEST MARKET TO SEE WHAT RESPONSE IS.

11 Q. TO SEE IF IT FLIES?

12 A. TO SEE IF IT FLIES, YEAH, TO
13 TEST -- DEPENDING ON WHAT YOU ARE TRYING TO FIND
14 OUT, THAT IS RIGHT.

15 Q. RIGHT.

16 IN A COMPANY, IT DOESN'T HAVE TO BE
17 PHILIP MORRIS OR A TOBACCO COMPANY, BUT A CONSUMER
18 PRODUCT COMPANY, IN ORDER FOR THE PEOPLE IN THE
19 FACTORIES TO HAVE JOBS, AND IN ORDER FOR THE
20 ACCOUNTANTS AND WHOEVER ELSE DOES THE FINANCIAL
21 WORK TO HAVE JOBS, AND IN ORDER FOR THE PEOPLE THAT
22 PRODUCE THE RAW MATERIALS, WHETHER IT'S IN THE
23 TOBACCO FIELDS OR WHETHER IT'S TEA LEAVES IN CHINA,
24 IN ORDER FOR THEM TO HAVE JOBS, THAT ALL DEPENDS ON
25 SOMEONE LIKE YOU GETTING THIS PRODUCT SOLD; RIGHT?

26 A. WELL, MY JOB, AS HEAD OF CORPORATE
27 AFFAIRS, I WOULD HAVE TO SAY, NO, IT DOESN'T DEPEND
28 ON ME, BUT, OBVIOUSLY, IF YOU SELL A PRODUCT, A

1 CONSUMER PRODUCT, YOUR JOBS, OR TO HAVE HAPPY
2 EMPLOYEES IN A COMPANY, DEPENDS ON THE SUCCESS OF
3 THE COMPANY.

4 Q. I WAS TAKING YOU BACK TO YOUR
5 POSITIONS IN MARKETING.

6 A. ALL RIGHT.

7 Q. YOU HAVE GOT TO CONVINCE PEOPLE TO
8 BUY WHAT YOU ARE SELLING IN ORDER FOR ALL THE OTHER
9 PEOPLE DOWN THE LINE TO HAVE JOBS; RIGHT?

10 A. I BELIEVE THAT THE COMPANY,
11 OBVIOUSLY, NEEDS TO BE ABLE TO MARKET ITS PRODUCT
12 EFFECTIVELY, WHETHER, AS YOU SAY, WHATEVER IT IS,
13 FOR A COMPANY TO SUCCEED. THAT IS CORRECT.

14 Q. OKAY. AND THAT'S PRETTY DARN
15 OBVIOUS?

16 A. I WOULD SAY THAT'S OBVIOUS, YES.

17 Q. SO THE PEOPLE IN THE MARKETING
18 DEPARTMENT ARE PRETTY IMPORTANT PEOPLE?

19 A. I THINK THEY ARE ONE GROUP OF
20 PEOPLE THAT ARE IMPORTANT. I THINK PEOPLE IN SALES
21 ARE IMPORTANT, I THINK PEOPLE THROUGHOUT THE
22 FUNCTION, BECAUSE EVERYONE HAS A ROLE TO PLAY, ARE
23 IMPORTANT IN THE SUCCESS OF A CORPORATION.

24 Q. DO YOU KNOW WHAT A FOCUS GROUP IS?

25 A. I KNOW WHAT A FOCUS GROUP IS, YES.

26 Q. WHAT IS IT?

27 A. A FOCUS GROUP IS A SMALL GROUP OF
28 PEOPLE THAT ARE GIVEN, AGAIN, IT COULD BE

1 ADVERTISING, IT COULD BE A PRODUCT, IT COULD BE A
2 PROMOTIONAL PROGRAM ET CETERA, TO VOICE THEIR
3 OPINION ABOUT WHETHER THEY LIKE IT, FIND IT
4 ACCEPTABLE, THINK IT COMMUNICATES APPROPRIATELY, ET
5 CETERA.

6 Q. TO SEE HOW IT FLIES?

7 A. TO SEE HOW IT FLIES, TO SEE HOW
8 WELL A MESSAGE COMMUNICATES, WHAT WE TALKED
9 YESTERDAY ABOUT YOUTH SMOKING PREVENTION, WE USED
10 FOCUS GROUPS TO HELP DEVELOP THOSE ADS.

11 Q. FINE. PHILIP MORRIS BEING THE
12 WORLD'S LARGEST CONSUMER PRODUCT COMPANY, EITHER
13 USES SMALL FOCUS GROUPS OR BIGGER TEST MARKETS,
14 WHETHER IT'S SOME, YOU KNOW, MAYBE -- YOU TELL ME,
15 SOMETIMES IF YOU GOT A NEW PRODUCT OR YOU ARE
16 CHANGING SOMETHING OR YOU ARE CHANGING A MARKETING
17 STRATEGY, WOULD YOU PICK A CITY LIKE, PICK ONE OUT
18 OF THE AIR, COLUMBUS, OHIO?

19 A. YES.

20 Q. AND SAY LET'S SEE HOW THE PEOPLE
21 DOWN IN COLUMBUS LIKE THIS?

22 A. YOU ARE RIGHT. YOU CAN USE A FOCUS
23 GROUP, YOU CAN USE SOMETHING CALLED QUANTITATIVE
24 RESEARCH WHICH IS NOT PUTTING ANYTHING IN THE
25 MARKET BUT JUST ASKING MORE PEOPLE ABOUT IT, OR YOU
26 CAN ACTUALLY TAKE SOMETHING TO MARKET WHICH WOULD
27 BE A TEST MARKET.

28 Q. FINE.

1 A. THREE WAYS OF DOING IT.

2 Q. LET ME BACK UP.

3 YESTERDAY OR SOMETIME RECENTLY, ON

4 CROSS-EXAMINATION, I ASKED A HISTORY PROFESSOR,

5 COBBS-HOFFMAN, IF PHILIP MORRIS MARKETED IDEAS, AND

6 HER RESPONSE WAS, NO, IT MARKETS PRODUCT, NOT

7 IDEAS.

8 AND I'D LIKE TO ASK YOU, DOES

9 PHILIP MORRIS MARKET IDEAS?

10 A. I DON'T KNOW THAT YOU MARKET IDEAS.

11 I THINK YOU TEND TO MARKET PRODUCTS. I THINK YOU

12 PUT FORWARD IDEAS, BUT I DON'T KNOW THAT YOU MARKET

13 IDEAS. I THINK I WOULD HAVE TO AGREE WITH THE

14 PROFESSOR.

15 Q. ARE YOU MARKETING IDEAS HERE?

16 A. AM I MARKETING IDEAS HERE?

17 Q. YEAH.

18 A. NO, I DON'T BELIEVE I AM MARKETING

19 IDEAS HERE. I THINK I AM TALKING ABOUT MY COMPANY

20 HERE. I AM NOT MARKETING ANYTHING.

21 Q. YOU ARE NOT MARKETING ANYTHING

22 HERE?

23 A. I DON'T BELIEVE SO, NO.

24 Q. ALL RIGHT. NOW, DO YOU KNOW A MAN

25 NAMED STEVEN C. PARISH?

26 A. YES, I KNOW STEVEN.

27 Q. WHO IS STEVEN C. PARISH?

28 A. HE IS SENIOR VICE-PRESIDENT OF

1 CORPORATE AFFAIRS FOR PHILIP MORRIS COMPANIES.

2 Q. SO WHAT YOU ARE TO THE DOMESTIC
3 TOBACCO COMPANY, HE IS TO THE WHOLE SHEBANG?

4 A. THAT IS CORRECT.

5 Q. DO YOU KNOW WHAT THE AMERICAN
6 LEGASIS FOUNDATION IS?

7 A. LEGACY.

8 Q. LEGACY?

9 A. YES.

10 Q. WHAT' S THAT?

11 MR. LEITER: YOUR HONOR, BEFORE SHE
12 ANSWERS, I AM GOING TO OBJECT. WE ARE GETTING INTO
13 A MOTION IN LIMINE AREA AND WE MAY NEED TO TALK
14 ABOUT IT.

15 THE COURT: WELL, IT' S A GOOD TIME TO
16 TAKE A BREAK IN ANY EVENT, SO WE CAN TALK ABOUT
17 THAT OUTSIDE THE PRESENCE OF THE JURY.

18 LADIES AND GENTLEMEN, WE WILL SEE
19 YOU AT FIVE MINUTES TO 11:00, DON' T DISCUSS THE
20 CASE WITH ANYONE.

21

22 (AT THIS TIME, A RECESS
23 WAS TAKEN.)

24

25 (THE FOLLOWING PROCEEDINGS
26 WERE HELD IN OPEN COURT IN
27 THE PRESENCE OF THE JURY.)

28 /// /// ///

1 THE COURT: OUR JURY PANEL IS PRESENT,
2 COUNSEL ARE PRESENT AS WELL. THE WITNESS IS ON THE
3 STAND.

4 MA'AM, YOU UNDERSTAND YOU ARE STILL
5 UNDERSTAND OATH.

6 THE WITNESS: YES, YOUR HONOR.

7 THE COURT: YES, SIR.

8

9

10 ELLEN MERLO,
11 CALLED AS A WITNESS BY THE DEFENSE, HAVING BEEN
12 PREVIOUSLY DULY SWORN, RESUMED THE WITNESS STAND
13 AND TESTIFIED FURTHER AS FOLLOWS:

14

15 CROSS-EXAMINATION (RESUMED)

16

17 BY MR. PIUZE:

18 Q. I AM GOING TO SWITCH TOPICS FOR A
19 WHILE AND COME BACK TO THIS. OKAY?

20 A. ALL RIGHT.

21 Q. YOU TALKED ABOUT THIS YESTERDAY;
22 RIGHT?

23 A. THAT IS CORRECT.

24 Q. WHAT IS THAT?

25 A. WHO IS IT? CAROLYN LEVY, SENIOR
26 VICE-PRESIDENT OF YOUTH SMOKING PREVENTION.

27 Q. OBVIOUSLY, YOU KNOW HER WELL.

28 A. YES, I KNOW HER WELL.

1 Q. YOU HAVE WORKED WITH HER FOR HOW
2 LONG?

3 A. WELL, I HAVE WORKED WITH HER
4 PROBABLY FOR THE PAST TEN YEARS OR SO.

5 Q. AND YOU KNOW HER FOR HOW LONG?

6 A. WELL, SHE'S BEEN WITH THE COMPANY
7 FOR OVER 20 YEARS AND I HAVE KIND OF KNOWN WHO SHE
8 WAS BUT I HAVE GOTTEN TO KNOW HER WELL, I'D SAY,
9 THE LAST 10 OR 12 YEARS.

10 Q. SHE WASN'T ALWAYS HEADQUARTERED IN
11 NEW YORK CITY AT THE CORPORATE HEADQUARTERS, WAS
12 SHE?

13 A. NO, SHE WASN'T.

14 Q. WHERE WAS SHE HEADQUARTERED?

15 A. FOR PART OF HER CAREER, SHE WAS IN
16 RICHMOND, VIRGINIA.

17 Q. WE HAVE A BLOWUP OF THIS. LET ME
18 USE BOTH.

19 SO YOU KNOW OF MR. OSDENE, DON'T
20 YOU?

21 A. NO, I DON'T.

22 Q. DO YOU KNOW MR. OSDENE?

23 A. I HAVE NEVER MET MR. OSDENE.

24 Q. THAT'S WHY I STARTED WITH, YOU KNOW
25 OF HIM?

26 A. I AM SORRY, I THOUGHT YOU SAID DO I
27 KNOW HIM I HAVE HEARD OF MR. OSDENE, I DON'T KNOW
28 HIM

1 Q. AND IT'S REALLY DR. OSDENE, ISN'T
2 IT?

3 A. THAT IS RIGHT.

4 Q. PH. D. ?

5 A. I BELIEVE SO.

6 Q. ONCE THE CHIEF SCIENTIST FOR THE
7 WHOLE SHEBANG OPERATION; RIGHT?

8 A. I DON'T KNOW THAT FOR SURE. I KNOW
9 HE WAS A SCIENTIST IN RICHMOND, BUT, AS I SAY, I
10 NEVER KNEW DR. OSDENE.

11 Q. WHAT ABOUT MR. DUNN, DO YOU KNOW OF
12 MR. DUNN?

13 A. I HAVE HEARD OF MR. DUNN.

14 Q. WHOSE MR. DUNN?

15 A. I BELIEVE HE TOO WAS IN RESEARCH
16 AND DEVELOPMENT AT ONE POINT IN RICHMOND.

17 Q. AND IS HE ALSO A SCIENTIST?

18 A. I BELIEVE HE IS, BUT, AGAIN, I
19 DON'T KNOW, NEVER MET MR. DUNN AND I DON'T REALLY
20 KNOW EXACTLY WHAT HIS JOB WAS.

21 Q. AND IT'S REALLY DR. LEVY, ISN'T IT?

22 A. YES.

23 Q. BECAUSE SHE'S GOT A PH. D. , DOESN'T
24 SHE?

25 A. YES, SHE DOES.

26 Q. SHE'S A PSYCHOLOGIST, ISN'T SHE?

27 A. I BELIEVE THAT'S WHAT HER PH. D. IS
28 IN, YES.

1 Q. DIDN'T SHE USED TO WORK IN THE RAT
2 LAB DOWN AT RICHMOND, DIDN'T SHE?

3 A. SHE WORKED, CERTAINLY WORKED IN
4 RICHMOND.

5 Q. I DIDN'T MEAN THAT IN A DEROGATORY
6 WAY. WASN'T SHE DOWN THERE RESEARCHING ADDICTION?

7 A. I BELIEVE AT SOME POINT THAT SHE
8 DID DO THAT, YES.

9 Q. HAVE YOU EVER SEEN THIS MEMO
10 BEFORE?

11 I WILL TELL YOU WHAT, I DON'T WANT
12 THIS TO BE --

13 A. I DON'T KNOW THAT I HAVE EVER SEEN
14 THAT MEMO BEFORE.

15 Q. NO?

16 A. I DON'T THINK SO. I DON'T REMEMBER
17 SEEING THAT MEMO BEFORE.

18 Q. HER BACKGROUND WAS IN TESTING THE
19 EFFECTS OF NICOTINE TO SEE WHETHER OR NOT IT WAS
20 ADDICTIVE; RIGHT?

21 A. I DID NOT KNOW CAROLYN AT THAT TIME
22 AND I DON'T KNOW SPECIFICALLY WHAT HER JOB WAS, SO
23 I REALLY CAN'T SPEAK ON BEHALF OF EXACTLY WHAT SHE
24 WAS DOING.

25 Q. OKAY. DO YOU KNOW -- WELL, LET'S
26 TALK ABOUT, SINCE THE TIME THAT YOU KNOW HER, SEE
27 HER A LOT.

28 CAN YOU PUT AN APPROXIMATE YEAR ON

1 THAT?

2 A. IT WOULD HAVE BEEN IN THE LATE
3 '80'S WHEN SHE WAS IN THE NEW YORK OFFICE. I
4 REALLY, WHILE I BELIEVE I MIGHT HAVE MET HER ONCE
5 OR TWICE BEFORE SHE CAME TO NEW YORK --

6 Q. RIGHT?

7 A. I REALLY DIDN'T KNOW HER BEFORE SHE
8 CAME TO THE NEW YORK OFFICE.

9 Q. WELL, ONE OF THE WAYS YOU STARTED
10 OFF YOUR TESTIMONY, OR ONE OF THE WAYS YOUR
11 TESTIMONY WAS STARTED OFF HERE HAD TO DO WITH
12 PHILIP MORRIS'S CURRENT WEB SITE. DO YOU REMEMBER
13 THAT?

14 A. YES.

15 Q. AND PHILIP MORRIS'S CURRENT WEB
16 SITE, ONE OF THE THINGS -- TOO MUCH STUFF BY FAR.
17 ONE OF THE THINGS IT SAYS HAS TO DO
18 WITH ADDICTION; RIGHT?

19 A. THAT IS CORRECT.

20 Q. WHAT DOES IT SAY?

21 A. IT SAYS THAT WE BELIEVE THAT
22 CIGARETTE SMOKING IS ADDICTIVE.

23 Q. HAVE YOU EVER DISCUSSED THAT WITH
24 CAROLYN LEVY?

25 A. YES. I MEAN, CAROLYN BEING PART OF
26 THE SENIOR LEADERSHIP TEAM, ALONG WITH ME AND
27 OTHERS, CERTAINLY WE HAVE DISCUSSED THE CONTENT OF
28 OUR WEB SITE AND AS A SENIOR TEAM THE POSITIONS

1 THAT WE TAKE ON THE WEB SITE, SO, YES, I HAVE.

2 Q. WELL, HOW ABOUT NOT IN THE CONTEXT
3 OF THE WEB SITE, HAVE YOU EVER DISCUSSED WITH
4 DR. LEVY WHAT SHE THINKS, AS A RESEARCH SCIENTIST,
5 ABOUT WHETHER OR NOT TOBACCO SMOKE IS ADDICTIVE?

6 A. I HAVE NEVER DISCUSSED IT WITH
7 DR. LEVY IN HER CAPACITY AS A RESEARCH SCIENTIST.
8 I HAVE, AS I SAID, DISCUSSED IT WITH SHE AND OTHER
9 MEMBERS OF THE SENIOR MANAGEMENT TEAM VIS-A-VIS
10 PHILIP MORRIS'S POSITION. BUT WHEN CAROLYN WAS IN
11 HER CAREER AS A RESEARCH SCIENTIST, I REALLY HAD
12 VERY LIMITED TO ALMOST NO DEALINGS WITH HER. SO IT
13 WAS NOT A DISCUSSION I WOULD HAVE HAD WITH HER IN
14 THAT CAPACITY.

15 Q. I UNDERSTAND THAT.

16 LET ME GUIDE THIS BETTER.

17 FIRST OF ALL, WHAT'S UP ON THE WEB
18 SITE NOW, ISN'T THAT REALLY A MARKETING DECISION BY
19 PHILIP MORRIS TO PUT THAT ON THE WEB SITE NOW?

20 A. NO, IT WAS NOT A MARKETING DECISION
21 AT ALL.

22 Q. WHEN DID YOU FIGURE OUT, AND SEE, I
23 HAVE TO ASK THIS OF YOU CORPORATELY, I GUESS, WHEN
24 DID YOU FIGURE OUT THAT NICOTINE WAS ADDICTIVE?

25 A. WELL, I BELIEVE OUR POSITION ON
26 NICOTINE OVER THE YEARS HAS EVOLVED AND, AGAIN, AS
27 WITH OUR POSITION ON CAUSATION, WE WERE REALLY
28 ADHERING, I THINK, TO WHAT WAS SCIENTIFICALLY

1 ACCURATE AND CORRECT IN THE WAY WE WERE
2 INTERPRETING ADDICTION AND NOT TALKING ABOUT IT AS
3 IT WAS MORE WIDELY ACCEPTED WITHIN SOCIETY.

4 AND THEREFORE, WE TALKED MORE ABOUT
5 THE PHARMACOLOGICAL EFFECTS OF NICOTINE, ET CETERA,
6 AND ON THAT BASIS, SAID THAT NICOTINE WAS NOT
7 ADDICTIVE.

8 I THINK, AS THE PUBLIC HEALTH
9 COMMUNITY USES THAT TERM, AND AS SOCIETY ACCEPTS
10 THAT TERM OUR POSITION ON ADDICTION HAS EVOLVED AS
11 WELL.

12 Q. WHEN DID YOU FIGURE OUT NICOTINE
13 WAS ADDICTIVE?

14 A. OUR POSITION CHANGED ON ADDICTION
15 WITHIN THE LAST FEW YEARS.

16 Q. YOU SEE, I AM NOT ASKING ABOUT YOUR
17 POSITION, I AM ASKING ABOUT YOUR KNOWLEDGE, WHEN
18 DID PHILIP MORRIS, IF YOU DON'T KNOW, THAT'S OKAY,
19 BUT WHEN DID PHILIP MORRIS KNOW THAT SMOKING WAS
20 ADDICTIVE?

21 A. WELL, AGAIN, I THINK IT CAME DOWN
22 TO THE WAY YOU DEFINE THE TERM ADDICTIVE.

23 AND BY THE CLASSIC DEFINITION OF
24 THE WORD ADDICTION, WHILE I BELIEVE WE, AT PHILIP
25 MORRIS, BELIEVE THAT IT CERTAINLY WAS HABIT
26 FORMING, I THINK WE BELIEVE THAT IT WAS VERY
27 DIFFICULT FOR MANY PEOPLE TO QUIT, WE WERE NOT
28 USING THE TERM "ADDICTION" AS IT IS NOW COMMONLY

1 USED IN SOCIETY. AND WE HAVE CHANGED OUR POSITION
2 ON ADDICTION TO BRING IT MORE IN LINE WITH THE WAY
3 SOCIETY DEFINES THE TERM TODAY.

4 Q. HAVE YOU EVER HEARD OF DR. NEAL
5 BENO WITZ?

6 A. I HAVE HEARD OF HIM, YES.

7 Q. DO YOU KNOW THAT HE WROTE THE
8 SURGEON GENERAL'S REPORT ON ADDICTION IN 1988?

9 MR. LEITER: OBJECT TO THE
10 CHARACTERIZATION OF THE TESTIMONY.

11 THE COURT: FAIR ENOUGH ON THAT ONE.

12 Q BY MR. PIUZE: WHAT DO YOU KNOW
13 ABOUT DR. NEAL BENO WITZ?

14 A. WELL, I KNOW THAT HE'S A SCIENTIST
15 AND A RESPECTED ONE BUT I DON'T KNOW, I DON'T KNOW
16 DR. BENO WITZ.

17 Q. THIS IS FRIDAY, APRIL 15, 1994,
18 THAT'S YOUR AD; RIGHT?

19 A. YES.

20 Q. YOUR COMPANY, PHILIP MORRIS,
21 U. S. A. ?

22 A. THAT IS RIGHT.

23 Q. ON FRIDAY, APRIL 15TH, 1994, YOUR
24 CAPACITY WITH PHILIP MORRIS, U. S. A. , WAS WHAT?

25 A. I WAS VICE-PRESIDENT OF CORPORATE
26 AFFAIRS.

27 Q. AND I DON'T THINK I HAVE DISCUSSED
28 WITH YOU YET EXACTLY WHAT THAT MEANS. I AM GOING

1 TO DO IT LATER.

2 BUT THIS WOULD FALL UNDER THE
3 CORPORATE AFFAIRS UMBRELLA, WOULDN' T IT?

4 A. YES, IT WOULD.

5 Q. DID YOU PERSONALLY HAVE ANYTHING TO
6 DO WITH PUTTING THIS AD IN THE PAPER?

7 A. I WAS INVOLVED WITH THAT AD
8 APPEARING IN THE PAPERS, YES.

9 Q. THIS IS THE ONE I AM INTEREST IN.
10 "PHILIP MORRIS DOES NOT
11 BELIEVE CIGARETTE SMOKING IS
12 ADDICTIVE. "

13 DID YOU WRITE THAT?

14 A. DID I WRITE IT, NO, I DID NOT WRITE
15 IT.

16 Q. DID YOU OKAY IT?

17 A. YEAH, I WAS PART OF THE GROUP THAT
18 WAS RESPONSIBLE FOR THAT BEING PUT IN THE PAPERS.
19 I WAS NOT, CERTAINLY, THE ONLY PERSON THAT WAS
20 INVOLVED, BUT, YES, I WAS ONE OF THE PEOPLE THAT
21 WAS INVOLVED IN MAKING -- PLACING THAT AD.

22 Q. HOW BIG WAS THE GROUP?

23 A. WELL, PROBABLY ABOUT A DOZEN
24 DIFFERENT PEOPLE.

25 Q. AND WHERE IN THAT DOZEN, WHERE IN
26 THE HIERARCHY, WHERE IN THE PECKING ORDER WERE YOU?
27 WERE YOU THE TOP PERSON, MIDDLE PERSON?

28 A. I WAS -- WELL, I, OBVIOUSLY,

1 REPORTED TO THE SENIOR VICE-PRESIDENT AT THAT TIME
2 OF CORPORATE AFFAIRS AND THERE WERE OTHER PEOPLE
3 WITHIN THE SENIOR TEAM THAT WERE INVOLVED. I WAS
4 NOT ON THE SENIOR TEAM AT THE TIME. BUT I WAS
5 INVOLVED IN PLACING THAT AD, YES.

6 Q. WELL, HERE'S THE THING, WAS THE
7 SENIOR TEAM ALSO INVOLVED -- WHAT I AM TRYING TO --
8 I KNOW THERE WERE PEOPLE ABOVE YOU BUT MAYBE THEY
9 WEREN'T INVOLVED IN THIS. YOU SEE, WE DON'T KNOW
10 THAT, YOU DO. THAT'S WHY I AM ASKING.

11 WERE YOU THE TOP PERSON INVOLVED IN
12 PUTTING THIS IN THE PAPER?

13 A. NO, I WAS NOT.

14 Q. WHO WAS?

15 WHO WAS, OF THOSE 12 PEOPLE OR SO,
16 ROUGHLY, A DOZEN OR SO, WHO WAS THE PERSON, TOP
17 PERSON RESPONSIBLE FOR PUTTING THAT AD IN THE
18 PAPER?

19 A. I WOULD SAY THAT PROBABLY AT THE
20 TIME WOULD HAVE BEEN STEVE PARISH BECAUSE THAT'S
21 WHO I REPORTED TO.

22 Q. THAT'S THE PERSON WHO'S NAME I
23 MENTIONED EARLIER?

24 A. HE WAS THEN IN THE JOB I CURRENTLY
25 HAVE.

26 Q. "ACCORDING TO THE 1988 SURGEON
27 GENERAL'S REPORT, THERE ARE MORE THAN 40 MILLION
28 FORMER SMOKERS IN THE UNITED STATES. "

1 DO YOU KNOW ANYTHING ABOUT THAT,
2 PERSONALLY, DO YOU EVER LOOK AT THOSE NUMBERS,
3 DO YOU EVER LOOK AT THOSE REPORTS?

4 A. I HAVE CERTAINLY LOOKED AT THE
5 REPORTS. HAVE I READ THEM IN DEPTH, EVERY SINGLE
6 ONE OF THEM, THE ANSWER WOULD BE NO.

7 Q. "AND 90 PERCENT QUIT ON THEIR OWN
8 WITHOUT ANY OUTSIDE HELP." DO YOU HAVE ANY
9 PARTICULAR KNOWLEDGE ABOUT THAT?

10 A. FIRSTHAND KNOWLEDGE? NO, I DO NOT.
11 I RELIED ON PEOPLE WHO READ THE REPORT AND HAD THE
12 NUMBERS.

13 Q. I THINK WE HEARD SOMETHING THE
14 OTHER DAY THAT 90 PERCENT OF CURRENT SMOKERS
15 EXPRESS A DESIRE TO QUIT. HAVE YOU HEARD THAT?

16 A. I KNOW THAT A NUMBER OF SMOKERS
17 TODAY DO EXPRESS A DESIRE TO QUIT AND I THINK THAT
18 THOSE PEOPLE WHO DO EXPRESS A DESIRE SHOULD BE
19 ENCOURAGED TO DO SO.

20 Q. I AM TRYING TO GET PAST A NUMBER.
21 I THINK WE HEARD 90 PERCENT AND I AM JUST ASKING,
22 CAN YOU CONFIRM THAT YOU HAVE HEARD THAT TOO?

23 A. I HAVE HEARD ANY NUMBER OF
24 DIFFERENT NUMBERS. ONE OF THE NUMBERS I HAVE HEARD
25 IS 90 PERCENT. I HAVE HEARD LESS THAN 90 PERCENT.
26 I THINK IT'S HARD TO PUT AN EXACT NUMBER ON IT
27 BECAUSE I THINK WHEN PEOPLE ARE ASKED, THEY TEND TO
28 SAY, YES, BUT YOU CAN GET ANY NUMBER OF DIFFERENT

1 NUMBERS. BUT I AM NOT GOING TO QUIBBLE WITH YOU
2 ABOUT THE FACT THAT 90 PERCENT HAS BEEN A NUMBER
3 USED.

4 Q. "ACCORDING TO THE 1988 SURGEON
5 GENERAL'S REPORT," SMOKING WAS ADDICTIVE, WASN'T
6 IT?

7 A. ACCORDING TO THE 1988 SURGEON
8 GENERAL'S REPORT, THE SURGEON GENERAL BELIEVED THAT
9 SMOKING WAS ADDICTIVE. PHILIP MORRIS, AS I SAID,
10 WAS CLINGING TO A MORE TRADITIONAL DEFINITION OF
11 THE WORD ADDICTIVE AND THEREFORE WE FELT THAT BY
12 THAT VERY PRECISE DEFINITION, THAT SMOKING DID NOT
13 FALL UNDER THE DEFINITION OF ADDICTION.

14 Q. HAVE YOU EVER BEEN INVOLVED IN
15 COPYRIGHTING IN THE ADVERTISING OR MARKETING OF
16 CONSUMER GOODS?

17 A. I HAVE NEVER BEEN A COPYRIGHTER. I
18 HAVE CERTAINLY BEEN AN EDITOR. I SAID THAT, THAT I
19 WAS MANAGING EDITOR OF "MOTOR TREND" MAGAZINE BUT I
20 AM NOT A WRITER.

21 Q. SO WHEN YOU READ THAT QUICKLY, AND
22 IT SAYS "PHILIP MORRIS DOES NOT BELIEVE CIGARETTE
23 SMOKING IS ADDICTIVE." YOU SORT OF LOOK AT IT AND
24 IT SAYS "ACCORDING TO THE 1988 SURGEON GENERAL'S
25 REPORT."

26 A. ISN'T THERE AN IMPLICATION THERE
27 THAT ACCORDING TO THE SURGEON GENERAL IN 1988,
28 SMOKING ISN'T ADDICTIVE?

1 A. I DON'T BELIEVE THAT'S -- NO, I
2 DON'T THINK YOU NEED TO BE A COPYRIGHTER. I THINK
3 AS YOU READ THAT, IT'S VERY CLEAR THAT IT SAYS
4 PHILIP MORRIS DOES NOT BELIEVE. AND THEN IT SAYS
5 THAT, WHAT THE SURGEON GENERAL'S REPORT SAYS IS
6 THAT 40 MILLION FORMER SMOKERS HAVE QUIT. AND THAT
7 THE LARGE MAJORITY OF THOSE 90 PERCENT QUIT ON
8 THEIR OWN WITHOUT OUTSIDE HELP. I DON'T BELIEVE IT
9 SAYS THAT THAT'S WHAT THE SURGEON GENERAL BELIEVES.

10 Q. I KNOW IT DOESN'T SAY THAT,
11 ACTUALLY, BECAUSE THAT WOULDN'T BE A TRUE
12 STATEMENT, BUT --

13 A. IT WOULD NOT HAVE BEEN A TRUE
14 STATEMENT AND I DON'T BELIEVE IT IMPLIES THAT THE
15 SURGEON GENERAL SAID IT.

16 Q. IS THERE ANY PARTICULAR REASON WHY
17 TAKING OUT THIS AD, PHILIP MORRIS DOES NOT BELIEVE
18 CIGARETTE SMOKING IS ADDICTIVE, YOU DIDN'T SAY, BUT
19 THE SURGEON GENERAL DOES?

20 A. NO, I DON'T KNOW THAT THERE WAS,
21 AND, AS I SAY, PROBABLY IN RETROSPECT, AS WITH OUR
22 POSITION ON CAUSATION WHICH HAS EVOLVED IN PUTTING
23 MORE EMPHASIS ON WHAT THE PUBLIC HEALTH COMMUNITY
24 IS SAYING ABOUT THESE THINGS, WE PROBABLY SHOULD
25 HAVE. BUT I BELIEVE THAT IS AN ACCURATE STATEMENT
26 AND I DON'T BELIEVE IT IS MISLEADING ABOUT WHAT THE
27 SURGEON GENERAL DID SAY.

28 Q. IT'S -- WHERE IT SAYS "PHILIP

1 MRRIS DOES NOT BELIEVE SMOKING IS ADDICTIVE, " YOU
2 BELIEVE THAT'S AN ACCURATE STATEMENT?

3 A. AT THE TIME, BASED ON THE
4 DEFINITION THAT PHILIP MRRIS WAS USING OF
5 ADDICTION, I BELIEVE IT WAS AN ACCURATE STATEMENT
6 OF OUR POSITION.

7 I DON'T KNOW THAT IT WAS COMPLETE
8 AND I DON'T THINK IT WAS NECESSARILY ALIGNED WITH
9 THE WAY SOCIETY WAS THINKING ABOUT ADDICTION, BUT I
10 THINK IT WAS AN ACCURATE STATEMENT OF OUR POSITION
11 AT THE TIME, YES.

12 Q. SEE, I ASKED ONE THING AND YOU
13 ANSWER ANOTHER.

14 I AM NOT ASKING WHAT YOUR POSITION
15 WAS, I AM ASKING WHAT THE HONEST TO GOD TRUTH WAS.

16 SO I AM NOT ASKING -- I KNOW WHAT
17 PHILIP MRRIS'S POSITION IS. BUT RESPECTFULLY AND
18 YOU DON'T MEAN TO ARGUE WITH YOU, I DON'T CARE, BUT
19 WHAT I AM INTERESTED IN IS THE TRUTH.

20 WAS THAT THE TRUTH, DID PHILIP
21 MRRIS TRULY, HONEST TO GOD, BELIEVE THAT SMOKING
22 WASN'T ADDICTIVE?

23 A. AGAIN, I BELIEVE PHILIP MRRIS
24 BELIEVED, BASED ON THE CLASSIC DEFINITION OF
25 ADDICTION, THAT SMOKING DID NOT FALL UNDER THAT
26 DEFINITION. WAS IT COMPLETE? WAS IT RESPONSIVE TO
27 THE WAY THE PUBLIC HEALTH COMMUNITY AND SOCIETY WAS
28 THINKING ABOUT THE WHOLE ISSUE OF ADDICTION? I'D

1 HAVE TO SAY NO. BUT I BELIEVE IT WAS ACCURATE
2 BASED ON OUR INTERPRETATION OF THE WORD
3 "ADDICTION."

4 Q. OKAY. HERE'S EXHIBIT 207 FROM THIS
5 TRIAL HERE.

6 FOR YOUR INFORMATION, 1969, SO THIS
7 WOULD HAVE BEEN 25 YEARS BEFORE THE AD.

8 HERE'S DR. WAKEHAM, DR. DUNN. AND
9 THE HIGHLIGHTED PORTION READS:

10 "I WOULD BE MORE CAUTIOUS IN
11 USING THE PHARMIC-MEDICAL MODEL - DO
12 WE REALLY WANT TO TOUT CIGARETTE SMOKE
13 AS A DRUG. IT IS, OF COURSE. BUT
14 THERE ARE DANGEROUS F. D. A.
15 IMPLICATIONS TO HAVING SUCH
16 CONCEPTUALIZATION GO BEYOND THESE
17 WALLS."

18 DO YOU KNOW WHAT PHARMIC-MEDICAL
19 MODEL MEANS?

20 A. I BELIEVE THAT'S WHAT I WAS
21 REFERRING TO BEFORE, THE PRECISE PHARMACOLOGICAL
22 MODEL OF HOW SOMETHING IS DEFINED.

23 Q. THESE TWO SCIENTISTS, WAKEHAM AND
24 DUNN, AGREED, 25 YEARS BEFORE THAT AD, THAT
25 CIGARETTE SMOKE WAS A DRUG, BUT THAT THEY COULD
26 NEVER DISCUSS IT BEYOND THESE WALLS. DO YOU SEE
27 THAT?

28 MR. LEITER: I AM GOING TO OBJECT TO THE

1 CHARACTERIZATION.

2 THE COURT: SUSTAINED.

3 Q BY MR. PIUZE: DO YOU SEE WHAT IS
4 HIGHLIGHTED IN YELLOW?

5 A. I SEE WHAT'S HIGHLIGHT IN YELLOW,
6 YES.

7 Q. DO YOU AGREE THAT CIGARETTE
8 SMOKING, CIGARETTE SMOKE IS A DRUG?

9 A. I BELIEVE THAT, THAT NICOTINE HAS
10 CERTAINLY BEEN CLASSIFIED AS A DRUG.

11 Q. AND NICOTINE IS WHAT CIGARETTE
12 SMOKING IS ALL ABOUT; RIGHT?

13 A. WELL, I DON'T KNOW THAT THAT'S WHAT
14 CIGARETTE SMOKING IS ALL ABOUT. WHEN YOU TALK TO
15 CONSUMERS, IT'S ABOUT PLEASURE, IT'S ABOUT TASTE,
16 IT'S ABOUT SATISFACTION. BUT CIGARETTES DEFINITELY
17 DO CONTAIN NICOTINE. THERE'S NO ARGUMENT ABOUT
18 THAT.

19 Q. IS PHILIP MORRIS THE LARGEST DEALER
20 OF DRUGS IN THE WORLD?

21 A. PHILIP MORRIS IS THE LARGEST
22 CONSUMER PRODUCTS COMPANY IN THE WORLD.

23 Q. IS PHILIP MORRIS THE LARGEST DRUG
24 DEALER IN THE WORLD?

25 MR. LEITER: OBJECTION, 352.

26 THE COURT: SUSTAINED.

27 Q BY MR. PIUZE: IS A CIGARETTE A
28 NICOTINE DELIVERY DEVICE?

1 A. WELL, NICOTINE IS NATURALLY
2 OCCURRING IN TOBACCO AND WHEN ONE SMOKES, ONE
3 INGESTS NICOTINE AND SO THE SMOKER CERTAINLY DOES
4 INGEST NICOTINE IF THEY, IF THEY SMOKE.

5 Q. YES? CIGARETTE IS A NICOTINE
6 DELIVERY DEVICE?

7 A. I THINK CIGARETTES ARE A LOT OF
8 THINGS. AS I SAID, NICOTINE IS NATURALLY OCCURRING
9 IN TOBACCO AND THOSE WHO SMOKE CERTAINLY INGEST
10 NICOTINE. BUT AS I SAID, MANY PEOPLE WHO SMOKE,
11 SMOKE FOR PLEASURE, SATISFACTION, ET CETERA.

12 SO PART OF WHAT A SMOKER DOES
13 INGEST, WHEN THEY SMOKE, IS NICOTINE.

14 MR. LEITER: MAY I SEE THE CHART, PLEASE.

15 MR. PIUZE: YES.

16 Q BY MR. PIUZE: HAVE YOU EVER HEARD
17 THAT THE PLEASURE AND THE SATISFACTION -- HAVE YOU
18 EVER SMOKED?

19 A. YES.

20 Q. DO YOU?

21 A. OCCASIONALLY.

22 Q. DO YOU EVER SMOKE A LOT?

23 A. YES.

24 Q. WELL THEN IT WILL BE EASY.

25 SOMETIMES WHEN YOU ARE SMOKING A
26 LOT, AND YOU COULDN'T HAVE A CIGARETTE FOR AWHILE,
27 DID YOU SORT OF GET ANXIOUS?

28 A. NO, I DIDN'T.

1 Q. A LITTLE BIT UPTIGHT?
2 A. NO.
3 Q. A LITTLE BIT IRRITABLE?
4 A. NOT FROM NOT SMOKING.
5 Q. I AM NOT GOING TO ASK QUESTIONS OF
6 YOU.
7 YOU HAVE HEARD THAT HAPPENS TO
8 OTHER PEOPLE?
9 A. YES, I HAVE.
10 Q. HAVE YOU HEARD THAT ALL OF THESE
11 THINGS, THE PLEASURE, THE CRAVING, THE
12 SATISFACTION, THE IRRITABLENESS IF SOMEONE DOESN' T
13 HAVE IT, IS BECAUSE THE PERSON' S BODY HAS BECOME,
14 SPECIFICALLY RECEPTORS IN THE PERSON' S BRAIN, HAS
15 BECOME USED TO AND ADDICTED TO THE SUBSTANCE, AND
16 IF IT ISN' T THERE, IT EFFECTS THE WAY THE PERSON
17 FEELS?
18 A. I CERTAINLY HAVE HEARD THAT AND
19 THAT' S WHAT ADDICTION WOULD MEAN IF SOMEONE WERE
20 ADDICTED TO SOMETHING THAT THEY WOULD CRAVE IT,
21 WHETHER CIGARETTES OR SOMETHING ELSE, YES, I HAVE
22 CERTAINLY HEARD THAT.
23 Q. SO THIS LITTLE DETOUR WAS TO GET
24 BACK TO THE PERSON WHO' S IN CHARGE OF YOUR
25 ANTI-YOUTH SMOKING CAMPAIGN RIGHT NOW DR. LEVY
26 WAS DOING EXPERIMENTS FOR PHILIP MORRIS DOWN IN
27 WHERE, VIRGINIA?
28 A. SHE WAS IN RICHMOND, YES.

1 Q. IN 1977, TO FIND OUT, FOR PHILIP
2 MORRIS, WHETHER OR NOT THE TOBACCO AND THE
3 NICOTINE, IS ADDICTIVE.

4 DO YOU KNOW THAT?

5 A. I KNEW THAT HISTORICALLY. AS I
6 SAY, I WAS NOT -- I WAS NOT ACQUAINTED WITH
7 DR. LEVY BACK THEN, SO I WAS NOT AWARE OF HER WORK.

8 Q. RIGHT. BUT YOU TWO HAVE BECOME
9 FRIENDS?

10 A. WE ARE COLLEAGUES AND WE ARE CLOSE
11 COLLEAGUES.

12 Q. THAT'S FINE. YOU HAVE BECOME CLOSE
13 COLLEAGUES?

14 A. YES, WE HAVE.

15 Q. SOMETIMES YOU HAVE LUNCH TOGETHER?

16 A. YES, WE DO.

17 Q. SO DO YOU EVER TALK ABOUT THE OLD
18 DAYS WHEN YOU WERE AT "MOTOR TREND" AND SHE WAS
19 DOWN IN VIRGINIA DOING HER RAT ADDICTION STUDIES?

20 A. NOT OFTEN, NO.

21 Q. DO YOU EVER TALK ABOUT THE SUCCESS
22 THE TWO OF YOU HAVE HAD AND WHERE YOU HAVE COME
23 FROM AND HOW YOU CAME UP IN THE CORPORATION?

24 A. NO, I DON'T BELIEVE WE TALK ABOUT
25 THAT VERY MUCH.

26 Q. HAS SHE EVER DISCUSSED WITH YOU THE
27 RESULTS OF HER RESEARCH BACK IN 1977 TO TRY TO FIND
28 OUT FOR PHILIP MORRIS WHETHER OR NOT CIGARETTES

1 WERE ADDICTIVE?

2 A. SHE HAS NOT DISCUSSED THAT RESEARCH
3 WITH ME.

4 Q. NOW THAT IT IS PHILIP MORRIS' S
5 OFFICIAL POSITION, AS OF WHEN, 2001?

6 A. NO --

7 MR. LEITER: I AM GOING TO OBJECT,
8 INCOMPLETE QUESTION. POSITION AS TO WHAT?

9 MR. PIUZE: GOOD POINT. I APOLOGIZE.

10 Q BY MR. PIUZE: IT IS NOW PHILIP
11 MORRIS' S OFFICIAL POSITION THAT SMOKING IS
12 ADDICTIVE, YOU HAVE ALREADY SAID THAT; RIGHT?

13 A. YES.

14 Q. AND YOU KNEW THAT' S WHAT I WAS
15 GOING TO SAY?

16 A. I ASSUMED THAT' S WHAT YOU WERE
17 GOING TO SAY.

18 Q. RIGHT.

19 THAT' S BECOME PHILIP MORRIS' S
20 OFFICIAL POSITION SINCE 2001; RIGHT?

21 A. IT IS OUR POSITION IN 2001. AND WE
22 HAVE BEEN ACKNOWLEDGING IT, I THINK, FOR THE PAST
23 TWO YEARS.

24 Q. ACKNOWLEDGING IT BY SILENCE?

25 A. NO, WELL, THE SURGEON GENERAL' S
26 POSITION AND OUR URGING PEOPLE TO RELY ON IT HAS
27 BEEN ON OUR WEB SITE SINCE IT WENT UP. WE ADDED
28 THE WORDS "WE AGREE" MOST RECENTLY, IN, I BELIEVE,

1 IT WAS THE END OF 2000.

2 Q. OKAY. END OF 2000, LIKE WHEN?

3 A. I BELIEVE IT WAS OCTOBER OR
4 NOVEMBER WHEN WE CHANGED THE WEB SITE.

5 Q. GOOD ENOUGH.

6 DO YOU KNOW HOW LONG IT WAS BEFORE
7 PHILIP MORRIS PUT UP FOR ITS CONSUMERS AND THE
8 WORLD TO SEE THAT WE AGREE THAT SMOKING CIGARETTES,
9 AND I DON'T HAVE THE QUOTE IN FRONT OF ME, BUT IS
10 ADDICTIVE, DO YOU KNOW HOW LONG BEFORE THAT IT WAS
11 THAT AS A RESULT OF WORK DONE BY SCIENTISTS PAID BY
12 THE CORPORATION, PHILIP MORRIS KNEW THAT FOR A DARN
13 WELL FACT.

14 MR. LEITER: OBJECT TO THE ARGUMENT AND
15 CHARACTERIZATION OF TESTIMONY WITHIN THE QUESTION.

16 THE COURT: REPHRASE IT.

17 Q BY MR. PIUZE: FROM ANY SOURCE,
18 DO YOU KNOW HOW LONG PHILIP MORRIS HAD BEEN SITTING
19 ON THIS INFORMATION WITHOUT ADMITTING IT?

20 MR. LEITER: SAME OBJECTION.

21 THE COURT: OVERRULED.

22 THE WITNESS: AGAIN, I THINK, AS I
23 INDICATED IN MY TESTIMONY EARLIER, THAT PHILIP
24 MORRIS WAS RELYING ON THE PHARMACOLOGICAL
25 DEFINITION OF ADDICTION AS IT RELATED TO, AND WAS
26 USED IN CONJUNCTION WITH OTHER DRUGS IN DETERMINING
27 ITS POSITION ON ADDICTION. AND FROM THAT
28 STANDPOINT, WE BELIEVE THAT CIGARETTES DID NOT FALL

1 INTO THAT CATEGORY OF ADDICTION.

2 I BELIEVE IN MORE RECENT TIMES, AS
3 WE CAME TO UNDERSTAND THAT SOCIETY WAS, AS WAS THE
4 PUBLIC HEALTH COMMUNITY TAKING A MUCH BROADER VIEW
5 OF ADDICTION, WE CAME TO ACKNOWLEDGE THAT BY THAT
6 DEFINITION AND AS IT IS USED BY THE PUBLIC HEALTH
7 COMMUNITY, OUR PRODUCT WOULD FALL UNDER THE
8 DEFINITION OF ADDICTION.

9 Q. DID YOU HAVE A PART IN MAKING THE
10 DECISION TO ADMIT THAT?

11 A. I CERTAINLY WAS PART OF THE
12 DISCUSSION WITHIN THE COMPANY THAT IT WAS A MORE
13 INFORMED POSITION, PUBLIC POLICY POSITION TO TAKE,
14 AND SO I'D HAVE TO SAY, YES, I PLAYED A PART.

15 Q. HOW LONG HAVE YOU BEEN URGING YOUR
16 COMPANY TO BE A LITTLE CLEARER ON THIS ISSUE?

17 A. WELL, I DON'T KNOW THAT I CAN GIVE
18 YOU A DATE CERTAIN FOR ANYTHING. I MEAN, I THINK
19 THAT WHAT I HAVE TRIED TO DO IN DEALING WITH THE
20 ISSUES WITHIN THE COMPANY IS TO TRY AND LISTEN TO
21 WHERE SOCIETY IS ON ISSUES, HOW THEY ARE THINKING
22 ABOUT THINGS AND WHETHER OR NOT, UNDER THOSE
23 DEFINITIONS, WE SHOULD, WE SHOULD RETHINK OUR
24 PUBLIC STATEMENT ON SOME ISSUES.

25 SO IT'S BEEN EVOLVING. I MUST SAY
26 THAT I TOO BELIEVE THAT UNDER THE STRICT
27 DEFINITION, PHARMACOLOGICAL DEFINITION OF
28 ADDICTION, I DIDN'T THINK CIGARETTES WERE ADDICTIVE

1 EITHER SOME YEARS AGO. I THINK THAT AS THAT
2 DEFINITION HAS BROADENED IN RELATION TO ANY NUMBER
3 OF PRODUCTS, I FELT THAT CIGARETTES ALONG WITH
4 OTHER THINGS DEFINITELY DID FALL UNDER THAT
5 DEFINITION AND THAT WE SHOULD ACKNOWLEDGE IT.

6 Q. THE QUESTION, HOW LONG HAS IT BEEN
7 SINCE YOU HAVE URGED THE CORPORATION TO BECOME
8 CLEARER ON ITS POSITION REGARDING ADDICTION?

9 A. AGAIN, AS I SAY, A DATE CERTAIN
10 DOESN'T GO OFF IN MY MIND, BUT IN THE LAST COUPLE
11 OF YEARS, I BELIEVE THAT IT IS A MORE INFORMED
12 POSITION TO TAKE.

13 Q. YOU JUST SAID IN YOUR LAST LONG
14 ANSWER, AND I BELIEVE I HEARD YOU SAY A COUPLE
15 TIMES YESTERDAY, THAT YOU WERE CHANGING WHAT YOU,
16 CORPORATELY, WERE CHANGING WHAT YOU WERE SAYING AS
17 A RESULT OF WHAT SOCIETY THOUGHT. DID I GET THAT
18 RIGHT?

19 A. I THINK WHAT I SAID, IT'S CLOSE TO
20 WHAT I SAID, IS I THINK THAT WE WANTED TO BRING
21 OURSELVES MORE INTO SOCIETAL ALIGNMENT, AS A
22 COMPANY, AND, YES, THAT WE WERE CHANGING THE WAY WE
23 WERE DEALING WITH MANY ISSUES.

24 Q. WHY NOT DEAL WITH THE ISSUES BASED
25 ON SCIENCE RATHER THAN UPON WHAT SOCIETY THOUGHT?

26 A. WELL, I THINK WE HAD BEEN DEALING
27 WITH THE ISSUES BASED ON SCIENCE. I THINK WE WERE
28 BEING PRECISE AND ACCURATE AND REASONABLE AS FAR AS

1 WHAT SCIENCE TOLD US, WHICH IS, WE DIDN'T KNOW
2 MECHANISM WE DIDN'T KNOW CONSTITUENTS AND WE WERE
3 BEING VERY PRECISE IN OUR POSITION AS A RESULT OF
4 THAT.

5 BUT THAT WAS SOMEWHAT OUT OF LINE
6 WITH WHAT SOCIETY BELIEVED AND IT WAS CERTAINLY OUT
7 OF LINE WITH THE CONCLUSIONS OF THE PUBLIC HEALTH
8 COMMUNITY AND THEREFORE WE DID CHANGE OUR POSITION.
9 SO I BELIEVE WE WERE BEING VERY PRECISE IN OUR
10 POSITION.

11 Q. SCIENCE THOUGHT IN 1950 AND IN 1952
12 AND IN 1954 AND '5 AND '6 AND '7 THAT CAUSATION --
13 YOU SEE, I WAS ACTUALLY ASKING YOU ABOUT NICOTINE,
14 BUT YOU SWITCHED TO CAUSATION.

15 A. I AM SORRY, I DIDN'T REALIZE THAT.

16 Q. I WILL GO THERE, I AM FOLLOWING
17 YOUR LEAD RIGHT NOW

18 A. WELL, I WASN'T CLEAR ON YOUR
19 QUESTION.

20 Q. THAT'S ALL RIGHT.

21 SCIENCE THOUGHT, FROM '50 TO '57,
22 WHICH IS ON THIS CHART HERE, THAT, I KNOW YOU
23 WEREN'T INVOLVED WITH THE COMPANY THEN, BUT THAT
24 THE PRODUCT THAT YOU MANAGE NOW, NOT TO BE OVERLY
25 DRAMATIC, KILLED, YOU KNOW, MILLIONS OF PEOPLE, WHY
26 ARE YOU SAYING THAT YOUR COMPANY WAS GUIDED BY
27 SCIENCE AS OPPOSED TO PUBLIC OPINION IN ITS RECENT
28 CHANGE OF HEART?

1 MR. LEITER: I AM GOING TO OBJECT TO THE
2 CHARACTERIZATION OF WHAT SCIENCE THOUGHT. THAT'S
3 MR. PIUZE'S ARGUMENT.

4 THE COURT: WELL, BUT HER ANSWER IS BASED
5 ON SOME CONCEPTION THAT SHE MUST HAVE HAD AS TO
6 WHAT SCIENCE BELIEVED. SO I MUST ALLOW THE
7 QUESTION.

8 OVERRULED.

9 THE WITNESS: AGAIN, I THINK I STATED
10 YESTERDAY AND I STATED AGAIN TODAY, I JUST WANT TO
11 BE CLEAR, ARE WE TALKING NOW ABOUT CAUSATION OR
12 ADDICTION OR --

13 Q. I FOLLOWED YOUR LEAD, WE ARE ON
14 CAUSATION. WE ARE ON THIS LITTLE ISSUE OF WHETHER
15 OR NOT SMOKING CIGARETTES CAUSES LUNG CANCER.

16 A. I CAN'T SEE YOUR DEMONSTRATIVE,
17 BUT -- I AM SORRY. I CAN'T READ IT.

18 THANK YOU.

19 I READ HERE FACTORS AND SEEM TO BE
20 IMPORTANT FACTORS.

21 AGAIN, I THINK WHAT I SAID WAS THAT
22 PHILIP MORRIS'S POSITION WAS THAT THE MECHANISM AND
23 THE CONSTITUENTS HAD NOT BEEN ESTABLISHED BY THE
24 SCIENTIFIC COMMUNITY AND THAT OUR POSITION MAY HAVE
25 BEEN INCOMPLETE BUT IT WAS SCIENTIFICALLY ACCURATE
26 BASED ON WHAT THE SCIENCE WAS AT THAT TIME.

27 Q. ARE YOU, BY ANY CHANCE, FAMILIAR
28 WITH AN EDITORIAL THAT RAN IN THE "NEW ENGLAND

1 JOURNAL OF MEDICINE" IN THE YEAR 1960?

2 A. I DON'T KNOW THAT I AM OR NOT. YOU
3 WILL HAVE TO REFRESH MY MEMORY.

4 Q. LET'S HOPE I CAN.

5 DO YOU KNOW WHO DR. FEINGOLD IS?

6 A. NO, I DON'T.

7 Q. HE DISCUSSED THIS HERE AND THIS WAS
8 SHOWN PREVIOUSLY. THIS IS -- YOU KNOW WHAT THE
9 "NEW ENGLAND JOURNAL OF MEDICINE" IS?

10 A. YES, I DO.

11 Q. JUST READ THIS TO YOU, GET YOUR
12 COMMENT ON IT.

13 "AN EDITORIAL IN THE
14 DECEMBER 12 ISSUE OF THE ' JOURNAL OF
15 THE AMERICAN MEDICAL ASSOCIATION' HAS
16 APPARENTLY AND PERHAPS UNWITTINGLY,
17 RENEWED THE CONTROVERSY ON THE
18 RELATION OF SMOKING TO LUNG CANCER
19 THAT THE SURGEON GENERAL OF THE UNITED
20 STATES PUBLIC HEALTH SERVICE TRIED
21 HARD TO SETTLE IN THE NOVEMBER 28
22 ISSUE OF THE SAME JOURNAL. DOCTOR
23 BURNEY'S REPORT CAN BE REMEMBERED AS
24 AN EXCELLENT CURRENT REVIEW OF THE
25 AVAILABLE FACTS ON THE MATTER. IN
26 ADDITION, THE JOURNAL WOULD LIKE TO
27 HAZARD A FURTHER COMMENT, EVEN THOUGH
28 THE FACTS AND CENTRAL ISSUES HAVE

1 ALREADY BEEN CONCLUDED BY FAR TOO MANY
2 UNSOLICITED AND UNSUBSTANTIATED
3 OPINIONS.

4 "IT IS OVER 20 YEARS SINCE
5 DRS. HAMMOND AND DEREING, IN THESE
6 PAGES," BY THE WAY, THIS IS 1960, SO
7 20 YEARS AGO IS 1940.

8 A. I KNOW THAT'S THE YEAR I WAS BORN.

9 Q. (READING)

10 "IT IS OVER 20 YEARS SINCE
11 DOCTOR HAMMOND AND DEREING IN THESE
12 PAGES FIRST SUGGESTED AN ASSOCIATION
13 BETWEEN SMOKING AN CANCER.

14 "SINCE THAT TIME, THERE HAVE
15 BEEN OVER TWO SCORE SIMILAR STUDIES,
16 ALL OF WHICH HAVE SHOWN THE SAME
17 ASSOCIATION THAT HAVE PROGRESSIVELY
18 IMPLICATED EXCESSIVE CIGARETTE SMOKE.

19 "NO RESPONSIBLE OBSERVER CAN
20 DENY THIS ASSOCIATION. AND THE
21 EVIDENCE IS NOW SUFFICIENTLY STRONG TO
22 SUGGEST A CAUSATIVE ROLE. IN THE FACE
23 OF THIS EVIDENCE, THE RESPONSE OF THE
24 TOBACCO MANUFACTURERS AND THEIR
25 SPOKESMEN HAVE BEEN DEPLORABLE. THEY
26 HAVE DISTORTED THE FACTS BEYOND
27 RECOGNITION. A BEWILDERING ARRAY OF
28 PAPER TIPS HAS BEEN ADDED TO THEIR

1 PRODUCTS OSTENSIBLY TO FILTER OUT
2 HARMFUL SUBSTANCES, THE VERY EXISTENCE
3 OF WHICH THEY DENY. THEY HAVE BEEN
4 UNWILLING TO FOLLOW THE EXAMPLE OF THE
5 DISTILLING INDUSTRY WHICH REAPS
6 PROFITS WHILE NEVER DENYING AND
7 OCCASIONALLY CALLING ATTENTION TO THE
8 FACT THAT EXCESSIVE DRINKING LEADS TO
9 DRUNKENNESS.

10 "IT IS TRUE THAT MUCH
11 REMAINS TO BE LEARNED ABOUT THE
12 PATHOGENESIS OF LUNG CANCER. "

13 DO YOU KNOW WHAT PATHOGENESIS IS?

14 A. NOT SPECIFICALLY, NO, I DON' T.

15 Q. WHAT IS THE WORD THAT YOU HAVE BEEN
16 USING, CAUSE -- WHAT, CAUSATIVE? IS THAT THE WORD
17 YOU HAVE USED?

18 A. I HAVE USED MECHANISM AND
19 CONSTITUENTS.

20 Q. I BELIEVE PATHOGENESIS AND
21 MECHANISM ARE APPROXIMATELY THE SAME WORD. OKAY?

22 A. ALL RIGHT.

23 Q. THAT' S JUST FROM A LAWYER.

24 "IT IS TRUE THAT MUCH
25 REMAINS TO BE LEARNED ABOUT THE
26 PATHOGENESIS OF LUNG CANCER AND THAT
27 SMOKING IS CERTAINLY NOT THE ONLY
28 CAUSE. PULMONARY NEOPLASMS HAVE NOT

1 BEEN PRODUCED IN LABORATORY ANIMALS BY
2 CIGARETTE SMOKE. DESPITE THIS, IT MAY
3 PROVE THAT OBSERVATIONS OF HUMAN
4 BEINGS WILL BE AS DEFINITIVE AS
5 EXPERIMENTS ON ANIMALS.

6 "ALTHOUGH THE SEARCH SHOULD
7 CONTINUE FOR A CARCINOGEN IN CIGARETTE
8 SMOKE, THERE IS ALREADY SUFFICIENT
9 EVIDENCE ON HAND TO IMPLICATE SMOKING
10 AS THE PRINCIPLE ETIOLOGIC FACTOR IN
11 THE INCREASED INCIDENTS OF LUNG
12 CANCER. AND LIVES CAN BE SAVED IF
13 THESE FACTS ARE MADE KNOWN TO THE
14 MEDICAL PROFESSION AND TO THE SMOKING
15 PUBLIC.

16 "IT IS NOT NECESSARY TO HAVE
17 PRECISE INFORMATION ON ETIOLOGY TO
18 PREVENT DISEASE. VACCINATIONS
19 PROTECTED AGAINST SMALLPOX MORE THAN A
20 HUNDRED YEARS BEFORE THE VIRUS WAS
21 IDENTIFIED AND THE CHOLERA VIBRIO WAS
22 UNSUSPECTED AT THE TIME THAT JOHN SNOW
23 HAD THE FORESIGHT AND COURAGE TO TAKE
24 THE HANDLE OFF THE BROAD STREET PUMP.

25 "LIVES WILL CONTINUE TO BE
26 LOST IF CONTROL MEASURES MUST AWAIT
27 DEFINITIVE STUDIES. LIVES WILL BE
28 SAVED IF PHYSICIANS CAN NOW PERSUADE

1 THEIR PATIENTS TO STOP SMOKING. "

2 AND I'D JUST LIKE TO ASK YOU,
3 AS FAR AS PATHOGENESIS, AND TELL ME YOUR WORD
4 AGAIN?

5 A. MECHANISM

6 Q. MECHANISM

7 WHY IN THE WORLD -- DO YOU KNOW
8 WHAT THIS THING ABOUT THE BROAD STREET BRIDGE IS?

9 A. NO, I DON'T.

10 Q. WE HAVE HEARD TESTIMONY HERE THERE
11 WAS AN EPIDEMIC IN LONDON NEAR THE THAMES RIVER.
12 THE EPIDEMIC WAS IN ONE NEIGHBORHOOD. SOMEONE
13 FIGURED OUT EVERYONE THAT GOT SICK WAS USING THAT
14 PARTICULAR PUMP. AND NO ONE KNEW THE EXACT
15 MECHANISM NO ONE KNEW WHAT THE DISEASE LOOKED
16 LIKE. NO ONE KNEW THE NAME OF THE DISEASE. BUT
17 THEY KNEW IF YOU STOPPED USING THAT PUMP, THEY
18 WOULD STOP GETTING SICK. SO THEY STOPPED USING
19 THAT PUMP AND PEOPLE STOPPED GETTING SICK. THAT'S
20 WHAT THAT IS.

21 ANYWAY, WHY DID PHILIP MORRIS
22 THINK, TO YOUR KNOWLEDGE, DURING THE 1960'S, FROM
23 THIS TIME ON, LET'S FORGET WHAT HAPPENED BEFORE,
24 DURING THE 1970'S AND DURING THE 1980'S AND DURING
25 THE 1990'S, UP UNTIL EITHER OCTOBER OF LAST YEAR OR
26 SOMEPLACE AROUND THERE, THAT YOU HAD TO KNOW THE
27 MECHANISM WHY WAS THAT NECESSARY BEFORE YOU WOULD
28 ADMIT YOUR PRODUCT WAS DANGEROUS, INJURING PEOPLE

1 AND KILLING PEOPLE?

2 A. WELL, I THINK THAT'S A COMPLICATED
3 QUESTION AND I'D LIKE TO TRY TO ANSWER IT FOR YOU.

4 NUMBER 1, KNOWING THE MECHANISM AND
5 KNOWING THE CONSTITUENTS, TO US, IS IMPORTANT
6 BECAUSE OVER THE YEARS, WE HAVE TRIED TO MAKE OUR
7 PRODUCT BETTER TO IMPROVE IT AND ALSO TO CREATE A
8 LESS HARMFUL PRODUCT.

9 AND SO KNOWING CONSTITUENTS AND
10 KNOWING MECHANISM IS VERY IMPORTANT FROM THAT
11 STANDPOINT, BECAUSE IF YOU DON'T KNOW IT, YOU CAN'T
12 IMPROVE IT, YOU DON'T KNOW WHAT TO TAKE OUT AND YOU
13 DON'T KNOW HOW TO DEAL WITH REDUCING THE HARM OF
14 THE PRODUCT.

15 THERE IS NO DOUBT THAT IN, ALTHOUGH
16 I HAD NEVER READ THIS ARTICLE BEFORE, THIS IS THE
17 FIRST TIME I SEE IT, THAT WHAT THIS DOCTOR WAS, OR
18 SCIENTIST WAS URGING IS WHAT PHYSICIANS AND THE
19 MEDICAL COMMUNITY AND THE SURGEON GENERAL DID ACT
20 ON, BECAUSE THE SURGEON GENERAL, SHORTLY AFTER THE
21 SURGEON GENERAL'S REPORT ON CAUSATION, OF COURSE,
22 WARNINGS WERE PUT ON PACKS, PHYSICIANS WERE
23 RECOMMENDING TO THEIR PATIENTS NOT TO SMOKE, AND
24 THERE WAS A LOT OF PUBLICITY ABOUT THE DANGERS OF
25 SMOKING THAT WERE WRITTEN ABOUT.

26 OUR POSITION, WHICH I BELIEVE, AND
27 I SAID, WAS CERTAINLY ACCURATE AND REASONABLE,
28 REALLY FOCUSED ON WHAT WE DIDN'T KNOW, WHICH WAS

1 MECHANISM AND CONSTITUENCY AS OPPOSED TO WHAT THE
2 PUBLIC HEALTH COMMUNITY WAS DRAWING FROM THOSE
3 CONCLUSIONS.

4 SO I BELIEVE OUR POSITION WAS, WAS
5 TRUTHFUL, AND IT WAS ACCURATE, IT JUST WASN'T
6 COMPLETE.

7 Q. THAT'S THE REAL REASON FOR YOUR
8 COMPANY'S POSITION DURING THE '60'S, '70'S, '80'S,
9 AND ALL THE WAY THROUGH THE '90'S, ISN'T IT?

10 A. NO. I DON'T BELIEVE THAT WAS A
11 STRATEGY, NO, I DON'T AGREE TO THAT.

12 Q. DO YOU KNOW WHERE THIS COMES FROM?

13 A. IT'S JUST A SIGN THAT YOU ARE
14 SHOWING ME.

15 Q. SEEMS LIKE THE KIND OF SIGN I WOULD
16 USE FOR MY FINAL ARGUMENT. DO YOU THINK I MADE
17 THIS UP?

18 A. NO, I DON'T KNOW THAT YOU MADE IT
19 UP. YOU ASKED ME WHERE -- I KNOW WHERE IT COMES
20 FROM, I AM SAYING THAT I DON'T.

21 Q. HAVE YOU EVER SEEN THAT, HAVE YOU
22 EVER SEEN THIS BEFORE?

23 A. I HAVE NOT SEEN THAT.

24 Q. CAN YOU THINK OF, AS THE -- AS A
25 MARKETING PERSON, CAN YOU THINK OF A REASON WHY THE
26 TOBACCO INDUSTRY MIGHT WANT TO CREATE DOUBT ABOUT
27 THE HEALTH CHARGE WITHOUT ACTUALLY DENYING IT?

28 MR. LEITER: OBJECTION, CALLS FOR

1 SPECULATION AS TO WHAT IT MIGHT BE IN SOMEONE'S
2 MIND.

3 THE COURT: REPHRASE.

4 Q BY MR. PIUZE: I WILL.

5 EXCUSE ME JUST FOR A MOMENT HERE.

6 HORACE KORNEGAY, DO YOU KNOW HIM?

7 A. I KNOW WHO HE WAS, I DON'T KNOW --

8 Q. HAVE YOU EVER MET HIM?

9 A. I DON'T BELIEVE I HAVE EVER MET

10 HIM NO.

11 Q. WHO WAS HE?

12 A. I BELIEVE BACK IN THE '70'S,

13 PROBABLY, MAYBE BEFORE THAT, HE WAS HEAD OF THE

14 TOBACCO INSTITUTE.

15 Q. WHAT'S THE TOBACCO INSTITUTE?

16 A. THE TOBACCO INSTITUTE WAS A TRADE

17 ORGANIZATION THAT HAS REPRESENTED THE TOBACCO

18 INDUSTRY. MANY, MANY INDUSTRIES HAVE TRADE

19 ORGANIZATIONS. THE TOBACCO INSTITUTE WAS THE

20 TOBACCO INDUSTRY.

21 Q. THERE'S A LAWYER TRADE

22 ORGANIZATION.

23 A. RIGHT.

24 MR. LEITER: OBJECT TO THE COMMENTARY.

25 THE COURT: SUSTAINED.

26 Q BY MR. PIUZE: PHILIP MORRIS

27 DIDN'T HAVE TO BELONG TO A TRADE ORGANIZATION, THEY

28 CHOSE TO?

1 A. THAT IS RIGHT.

2 Q. SO TELL US THE NAME AGAIN, TOBACCO
3 INSTITUTE?

4 A. YES.

5 Q. DOES THAT EXIST ANY MORE?

6 A. NO, IT DOES NOT.

7 Q. WHEN DID IT STOP EXISTING?

8 A. I 'D SAY IT 'S ABOUT, WELL OVER TWO
9 YEARS, MAYBE, CLOSER TO THREE YEARS NOW

10 Q. AGO?

11 A. THAT -- YOU SAID WHEN DID IT STOP
12 EXISTING AND I SAID TWO YEARS, CLOSER TO THREE
13 YEARS AGO, YES.

14 Q. SO THE TOBACCO INSTITUTE WAS A
15 GOING CONCERN UP UNTIL SOMEPLACE IN THE VICINITY OF
16 '97, '98; RIGHT?

17 A. THAT IS CORRECT.

18 Q. AND WHEN DID IT START?

19 A. I AM SORRY.

20 Q. WHEN DID IT START?

21 A. I DON'T KNOW THE ANSWER TO THAT.

22 Q. SINCE YOU HAVE BEEN AROUND TOBACCO,
23 THE TOBACCO INSTITUTE HAS BEEN AROUND; RIGHT?

24 A. I BELIEVE IT WAS, YES.

25 Q. SO AT LEAST BEFORE '69?

26 A. I BELIEVE IT WAS IN EXISTENCE WHEN
27 I STARTED WITH PHILIP MORRIS.

28 Q. THE TOBACCO INSTITUTE SPOKE FOR THE

1 COMPANIES; CORRECT?

2 A. IT OFTEN SERVED AS A SPOKESPERSON
3 FOR THE INDUSTRY, YES.

4 Q. IF I SUGGESTED TO YOU THAT ONE OF
5 THE REASONS THE TOBACCO INSTITUTE SPOKE FOR THE
6 COMPANIES WAS SO THE COMPANIES WOULDN'T DIRECTLY
7 HAVE TO SAY ANYTHING THEMSELVES, WOULD YOU BE IN A
8 POSITION TO AGREE, DISAGREE OR JUST SAY YOU DON'T
9 KNOW ABOUT THAT?

10 A. I WOULD BE IN A POSITION TO SAY
11 THAT OFTEN, THAT -- OR THAT THE INSTITUTE DID SPEAK
12 ON BEHALF OF THE COMPANIES SOMETIMES AND WHEN THE
13 COMPANIES DID NOT SPEAK ON THEIR OWN BEHALF, YES.

14 Q. THAT ISN'T EXACTLY WHAT I ASKED,
15 THOUGH.

16 THE INSTITUTE, TOBACCO INSTITUTE
17 SPOKE SO THAT THE COMPANIES THEMSELVES WOULDN'T
18 DIRECTLY HAVE TO SAY THINGS?

19 A. I WOULD HAVE TO SAY I DON'T KNOW
20 THAT THAT WOULD BE AN ACCURATE STATEMENT.

21 I KNOW THAT THE INSTITUTE DID SPEAK
22 ON BEHALF OF THE COMPANIES FROM TIME TO TIME,
23 COMPANIES ALSO OCCASIONALLY MADE STATEMENTS ON
24 THEIR OWN. BUT THE INSTITUTE DID SPEAK ON BEHALF
25 OF THE INDUSTRY.

26 Q. SO YOU KNOW OF MR. KORNEGAY, HE WAS
27 THE TOP PERSON OVER THERE, WASN'T HE?

28 A. AT ONE POINT, I BELIEVE, HE WAS.

1 AS I SAY, I DID NOT KNOW HIM

2 Q. WHAT ABOUT MR. PANSER, DO YOU KNOW
3 HIM BY ANY CHANCE?

4 A. NO, I DID NOT.

5 Q. IN MAY OF 1972, YOU WERE ALREADY
6 WORKING IN THE TOBACCO INDUSTRY, WEREN'T YOU?

7 A. I WAS WORKING FOR PHILIP MORRIS
8 YES, BUT I WAS NOT INVOLVED WITH, NOR DID I HAVE
9 ANY DIRECT EXPOSURE TO THE TOBACCO INSTITUTE. I
10 DIDN'T UNTIL I GOT INTO THE CORPORATE AFFAIRS
11 DEPARTMENT.

12 Q. SO HAVE YOU EVER SEEN THIS MEMO
13 FROM 1972 BEFORE?

14 A. I CAN'T READ IT, I AM SORRY.

15 Q. I AM THE ONE WHO SHOULD BE SORRY.
16 HERE YOU GO.

17 A. I HAVE SEEN THAT BEFORE. BUT NOT
18 FIRSTHAND.

19 Q. WHAT DOES THAT MEAN?

20 A. I HAVE SEEN IT AFTER THE FACT, AS A
21 DOCUMENT, BUT I CERTAINLY DIDN'T SEE IT IN THE
22 COURSE OF DOING BUSINESS.

23 Q. THE INDUSTRY STRATEGY OF LITIGATION
24 POLITICS AND PUBLIC OPINION -- WELL, LET ME
25 WITHDRAW THAT.

26 DID YOU EVER, IN YOUR CAPACITIES AT
27 PHILIP MORRIS IN THE LIGHTER YEARS, HAVE DEALINGS
28 WITH THE TOBACCO INSTITUTE?

1 A. YES, I DID.

2 Q. WHAT?

3 A. I AM SORRY?

4 Q. WHAT.

5 A. WHY?

6 Q. WHAT.

7 A. WHAT? WELL, AS VICE-PRESIDENT OF
8 CORPORATE AFFAIRS, I ATTENDED TOBACCO INSTITUTE
9 MEETINGS TO TALK ABOUT ISSUES THAT CONFRONT THE
10 INDUSTRY, EXCISE TAXES, SMOKING RESTRICTIONS,
11 SMOKING BANS, ISSUES LIKE THAT.

12 Q. SO YOU WERE YOUR COMPANY'S
13 REPRESENTATIVE TO THE TOBACCO INSTITUTE ON
14 OCCASION?

15 A. I WAS ONE OF MY COMPANY'S
16 REPRESENTATIVES.

17 Q. SO THIS PART ABOUT, AGAIN, I WILL
18 JUST TELL YOU IF THIS IS '72 AND THEY ARE TALKING
19 ABOUT 20 YEARS, THEY ARE GOING BACK TO 1952 NOW,
20 "BUT FOR NEARLY 20 YEARS, THIS INDUSTRY HAS
21 EMPLOYED A SINGLE STRATEGY TO DEFEND ITSELF ON
22 THREE MAJOR FRONTS, LITIGATION, POLITICS AND PUBLIC
23 OPINION." WERE THEY TALKING ABOUT THAT WHEN YOU
24 WERE ATTENDING THESE MEETINGS?

25 A. I HAVE NEVER HEARD THAT REFERRED TO
26 AND I WAS ATTENDING THOSE MEETINGS AND I DON'T
27 BELIEVE THAT THEY WERE SPEAKING ON BEHALF OF MY
28 COMPANY. I DON'T KNOW, YOU KNOW, WHO WROTE THAT

1 AND WHAT WAS IN THEIR MIND, BUT THAT IS NOT A
2 STRATEGY THAT I AM AWARE OF.

3 Q. SO ANYWAY, PUBLIC OPINION IS YOUR
4 AREA, ISN'T IT?

5 A. I DEAL IN THE AREA OF PUBLIC
6 OPINION IN MY JOB, YES.

7 Q. AND YOU HAVE FOR HOW LONG?

8 A. WELL, AS I SAID, I BECAME PART OF
9 CORPORATE AFFAIRS IN 1992.

10 Q. BUT IN MARKETING, WEREN'T YOU
11 DEALING WITH PUBLIC OPINION BACK THEN TOO?

12 A. NO, I WAS REALLY DEALING MORE WITH
13 PRODUCT ISSUES BACK THEN THAN I WAS WITH PUBLIC
14 OPINION.

15 Q. SO WHEN YOU SAID YESTERDAY AND THIS
16 MORNING, AND I HAVE ALREADY TALKED TO YOU ABOUT IT,
17 THAT YOU ARE BASING YOUR DECISIONS ON WHAT YOU
18 PERCEIVED SOCIETY THOUGHT, REMEMBER WE WERE TALKING
19 ABOUT THAT BEFORE?

20 A. YES.

21 Q. I STARTED TALKING MEDICINE WITH
22 YOU?

23 A. YES.

24 Q. AND SCIENCE?

25 A. YES.

26 Q. YOUR COMPANY IS BASING ITS
27 DECISIONS ON WHAT SOCIETY THINKS, ISN'T THAT --

28 A. I AM SORRY.

1 Q. NO, I AM BECAUSE I DON'T WANT TO
2 BE PUTTING WORDS ON YOU THAT YOU DON'T THINK I
3 SHOULD BE. DID I SAY SOMETHING WRONG?

4 A. I SAID SOCIETY'S EXPECTATIONS.

5 Q. SO BE IT.

6 WHEN YOU HAVE TESTIFIED BOTH
7 YESTERDAY AND TODAY SEVERAL TIMES, SAYING YOUR
8 COMPANY HAS CHANGED BECAUSE YOU WANT TO BE CLOSER
9 TO SOCIETY'S EXPECTATIONS, WEREN'T YOU JUST DOING
10 THE PUBLIC OPINION THING?

11 A. NO. I THINK THAT THAT WOULD BE AN
12 OVERLY NARROW DEFINITION.

13 WHAT WE ARE TRYING TO DO IS TO RUN
14 OUR BUSINESS AS I THINK I TESTIFIED EARLIER, IN A
15 RESPONSIBLE WAY.

16 AND BEING RESPONSIBLE, ONE OF THE
17 WAYS THAT ONE IS RESPONSIBLE IS TO LISTEN. AND IN
18 LISTENING AND IN HAVING DIALOGUE WITH PEOPLE FROM
19 VARIOUS AREAS, LISTENING TO SOCIETY, TALKING TO THE
20 PUBLIC HEALTH COMMUNITY, TALKING TO GOVERNMENT, ET
21 CETERA, WE HAVE ADOPTED POSITIONS AND BE MORE OPEN
22 IN COMMUNICATING OUR POSITIONS ABOUT OUR POLICIES
23 AND OUR PROGRAMS TO SOCIETY IN ALIGNMENT WITH THEIR
24 EXPECTATIONS OF THE WAY A RESPONSIBLE COMPANY
25 SHOULD CONDUCT ITSELF.

26 Q. EXCUSE ME. I GOT MY EYE ON THE
27 CLOCK AND I WANT TO ASK ONE MORE QUESTION. I AM
28 CUTTING EVERYONE'S LUNCHTIME. IF YOU COULD ANSWER

1 THIS QUESTION TO THE POINT, I'D APPRECIATE IT.

2 HOW LONG HAS IT BEEN, NOW, THAT
3 YOUR COMPANY HAS BEEN ACTING RESPONSIBLY?

4 A. WELL, I BELIEVE WE HAVE ALWAYS
5 TRIED TO BE RESPONSIBLE. I THINK WE FELL OUT OF
6 ALIGNMENT WITH SOCIETY. I THINK WE BECAME VERY
7 DEFENSIVE ABOUT OUR INDUSTRY AND OUR COMPANY FOR
8 TOO LONG BUT I THINK WE HAVE ALWAYS TRIED TO BE A
9 RESPONSIBLE COMPANY.

10 Q. SO FOREVER?

11 A. WELL, I SAID, WE HAVE TRIED TO BE A
12 RESPONSIBLE COMPANY.

13 Q. OKAY. IT'S LUNCHTIME.

14 THE COURT: THANK YOU, COUNSEL.

15 ALL RIGHT. WE WILL TAKE OUR LUNCH
16 RECESS AND WE WILL BE BACK AT 1:30 THIS AFTERNOON.

17 LADIES AND GENTLEMEN, DON'T DISCUSS
18 THE CASE WITH ANYONE.

19 AND MR. FLORES, WOULD YOU STAY WITH
20 US, PLEASE, SIR.

21

22 (THE FOLLOWING PROCEEDINGS
23 WERE HELD IN CHAMBERS:)

24

25 THE COURT: ALL RIGHT. WE ARE BACK IN
26 CHAMBERS. I HAVE MY GOOD COUNSEL WITH ME. WE ARE
27 ON THE RECORD AND I HAVE MR. FLORES WITH ME, WHO
28 WAS KIND ENOUGH TO SEND ME A NOTE, WHICH I TOLD ALL

1 THE JURORS, IF YOU EVER HAD ANY DOUBTS WHETHER YOU
2 COULD BE COMPLETELY FAIR AND IMPARTIAL IN THE CASE,
3 TO JUST LET THE COURT KNOW ABOUT THAT. SO YOU HAVE
4 DONE EXACTLY WHAT I ASKED.

5 JUROR FLORES: I FEEL KIND OF BAD.

6 THE COURT: WELL, LET'S TALK ABOUT IT FOR
7 A SECOND.

8 BECAUSE YOU AND I BOTH, I THINK,
9 SHARE THE VALUE THAT WE KNOW IT IS IMPORTANT FOR US
10 TO KEEP AN OPEN MIND AS BEST WE CAN THROUGHOUT THE
11 ENTIRE TRIAL. AND I AM JUST, MY GUESS IS YOU HAVE
12 BEEN TRYING TO DO JUST THAT.

13 JUROR FLORES: UH-HUH, I HAVE BEEN
14 TRYING.

15 THE COURT: OKAY. SOMETIMES IN OUR MIND,
16 YOU KNOW, THAT'S A GOAL, IT'S AN IDEA, SOMETIMES
17 OUR MIND, IT SWINGS ONE WAY AND THEN SWINGS
18 ANOTHER, AND THE IMPORTANT THING IS, OPENNESS IS, I
19 AM OPEN TO EVERYTHING THAT'S BEING SAID, I AM GOING
20 TO LISTEN TO WHAT THE NEXT WITNESS SAYS, AND WEIGH
21 THAT IN THE BALANCE. AND I AM NOT GOING TO MAKE UP
22 MY MIND NOW.

23 AND FROM NOW ON, I DON'T CARE WHAT
24 ANYBODY ELSE SAYS. I AM NOT GOING TO LISTEN. EVEN
25 IF SOMETHING HAPPENS HERE IN THIS TRIAL, THAT WOULD
26 ORDINARILY COMPLETELY CHANGE MY MIND. I AM NOT
27 GOING TO PAY ANY ATTENTION TO IT ANY MORE. BECAUSE
28 I HAVE MADE UP MY MIND AND THAT'S IT, THE REST OF

1 THIS IS JUST A WASTE OF TIME AS FAR AS I AM
2 CONCERNED.

3 THAT'S WHAT CLOSED-MINDEDNESS
4 REALLY IS.

5 AND LET ME ENCOURAGE YOU HERE,
6 RATHER THAN ME GETTING INTO THE DETAILS OF THE
7 THINKING, BECAUSE YOUR OWN PRIVATE THINKING IS YOUR
8 OWN PRIVATE, ARE YOUR OWN PRIVATE THOUGHTS, AND I
9 DON'T WANT TO GET INTO THAT BUT LET ME JUST GIVE
10 YOU A LITTLE ENCOURAGEMENT AT THIS POINT AND TELL
11 YOU THAT I WILL GET BACK WITH YOU LATER, TO ASK YOU
12 AGAIN HOW YOU FEEL. ALL RIGHT?

13 BUT JUST HAVING HEARD WHAT I HAVE
14 SAID ABOUT WHAT CLOSED-MINDEDNESS REALLY IS, WOULD
15 YOU THINK ABOUT IT A LITTLE MORE AND JUST STICK
16 WITH US HERE, AND LISTEN, KEEP LISTENING TO THE
17 EVIDENCE AND MAYBE TOMORROW ABOUT THIS TIME, I WILL
18 TALK TO YOU AGAIN ABOUT IT.

19 JUROR FLORES: UH-HUH, THAT'S FINE. I
20 CAN DO THAT.

21 THE COURT: OKAY.

22 AND IN THAT PERIOD OF TIME, YOU ARE
23 GOING TO KEEP TRYING TO KEEP AN OPEN MIND?

24 JUROR FLORES: YEAH, OF COURSE.

25 THE COURT: OKAY. WE CAN'T ASK ANY MORE
26 THAN THAT, SIR.

27 THANK YOU, SO MUCH.
28 OUT YOU GO.

1 (AT 12 NOON, THE LUNCH
2 RECESS WAS TAKEN TO
3 1: 30 P. M OF THE SAME DAY.)
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1 LOS ANGELES, CALIFORNIA; THURSDAY, MAY 3RD, 2001

2 1:25 P.M

3 DEPARTMENT 308 HON. CHARLES MC COY, JUDGE

4

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

8

9 THE COURT: COUNSEL, WE ARE ON THE RECORD
10 OUTSIDE THE PRESENCE.

11 MAY I HAVE YOUR APPEARANCES.

12 MR. PIUZE: MICHAEL PIUZE, PLAINTIFF.

13 MR. LEITER: MORRIE LEITER AND JOHN
14 CARLTON, DEFENDANT.

15 MR. PIUZE: THE WITNESS HAS TESTIFIED
16 OSTENSIBLY ABOUT PHILIP MORRIS' S ANTI-SMOKING,
17 ANTI-TEEN SMOKING EFFORTS, ANTI-MINOR SMOKING
18 EFFORTS. AND THE JURY, CERTAINLY, AT THIS POINT,
19 HAS THE IDEA THAT IT WAS A VOLUNTARY THING ON
20 PHILIP MORRIS' S PART. IT WASN' T.

21 PHILIP MORRIS WAS SUED ALONG WITH
22 THE OTHER TOBACCO MANUFACTURERS, INITIALLY, IN
23 1994, AND I BELIEVE MISSISSIPPI WAS THE FIRST STATE
24 THAT FILED SUIT.

25 ULTIMATELY, THAT SUIT WAS JOINED IN
26 BY 45 OTHER STATES AND ULTIMATELY THOSE SUITS WERE
27 SETTLED RESULTING IN SOMETHING CALLED A MASTER
28 SETTLEMENT AGREEMENT WHICH HAS GOVERNED THE

1 DISSEMINATION OF INFORMATION THAT HAS BEEN STEERING
2 OUR TRIAL, AMONG OTHER THINGS.

3 BUT SEVERAL OF THE REQUIREMENTS OF
4 THE MASTER SETTLEMENT AGREEMENT HAD TO DO WITH
5 STOPPING ADVERTISING GEARED TOWARD KIDS, IN DOING
6 AFFIRMATIVE THINGS IN THE FUTURE, TO PREVENT
7 ADVERTISING GEARED TOWARD KIDS AND DOING
8 AFFIRMATIVE THINGS TO TRY TO DECREASE KID SMOKING.

9 IN ADDITION, THE MASTER SETTLEMENT
10 AGREEMENT CALLED OUT FOR THE CREATION AND FUNDING
11 OF SOMETHING CALLED LEGASIS -- AMERICAN LEGACY
12 FOUNDATION.

13 AND THAT WAS TO BE FUNDED BY THE
14 TOBACCO INDUSTRY AND IT WAS GOING TO PUT OUT AND
15 HAS PUT OUT A SERIES OF ANTI-TOBACCO ADS,
16 INFORMATIVE ADS.

17 NOW, WITH THE LITIGATION GOING ON
18 AND WITH THE LITIGATION IN SWING, PHILIP MORRIS AND
19 POSSIBLY ONE OR TWO OF THE OTHER MANUFACTURERS
20 SAID, SEEING THE HANDWRITING ON THE WALL, WELL, WE
21 ARE GOING TO PUT FORTH SOME PROPOSALS OURSELVES,
22 VOLUNTARY.

23 BUT IN THE MEANWHILE, THE UNITED
24 STATES OF AMERICA PUT FORTH SOME PROPOSALS, NOT THE
25 STATES' ATTORNEY GENERAL, BUT THE FEDERAL
26 GOVERNMENT PUT FORTH SOME PROPOSALS AND THE
27 PROPOSED LAWS AND RESTRICTIONS ON THE TOBACCO
28 INDUSTRY, INCLUDING PHILIP MORRIS, AND A MAJOR

1 FIGHT IN WHICH PHILIP MORRIS, I BELIEVE, SPENT 40
2 MILLION DOLLARS. AND I BELIEVE THIS WITNESS CAN
3 TESTIFY TO THE AMOUNT, IF ASKED, WAS SPENT TO
4 DEFEAT THIS LEGISLATION, BECAUSE PHILIP MORRIS
5 DIDN'T LIKE THE LEGISLATION AND HAD TO DO WITH THE
6 ISSUES WE ARE TALKING ABOUT HERE.

7 ULTIMATELY, THAT AGREEMENT MANDATES
8 A LOT OF THE ACTIONS WHICH THIS JURY BELIEVES
9 PHILIP MORRIS HAS VOLUNTARILY UNDERTAKEN. AND IT
10 ISN'T VOLUNTARY. IT WAS DONE WITH THIS LITIGATION
11 IN FULL SWING, IN FORCE, AND STEERING IT IN THE
12 TEETH.

13 SHE'S TESTIFIED ABOUT SOME OF THESE
14 THINGS BEFORE, SO THAT'S MY OFFER OF PROOF. I
15 THINK THE JURY SHOULD KNOW THAT.

16 MR. LEITER: WELL, WE HAVE GOT A COUPLE
17 DIFFERENT THINGS GOING ON HERE AND LET ME START
18 WITH WHAT THE MASTER SETTLEMENT AGREEMENT IS AND IS
19 NOT.

20 THE MASTER SETTLEMENT AGREEMENT
21 DOES NOT REQUIRE PHILIP MORRIS TO DO ANY OF THE
22 THINGS THAT MS. MERLO TESTIFIED ABOUT IN HER DIRECT
23 TESTIMONY. THERE IS A PROVISION IN THE MASTER
24 SETTLEMENT AGREEMENT THAT SAYS THOU SHALT NOT
25 TARGET YOUTHS, THAT'S PART OF THE AGREEMENT.

26 BUT PHILIP MORRIS'S POSITION, AS
27 YOU HEARD FROM MS. MERLO IN HER DIRECT TESTIMONY,
28 IS THAT PHILIP MORRIS DID NOT TARGET YOUTH BEFORE,

1 DURING OR AFTER THE MASTER SETTLEMENT AGREEMENT.
2 THAT'S BEEN THE POSITION OF THE COMPANY ALL ALONG.
3 CERTAINLY NOT MANDATED BY THE AGREEMENT.

4 THE YOUTH SMOKING PREVENTION
5 DEPARTMENT, AS SHE TESTIFIED ABOUT AT LENGTH, IS
6 NOT MANDATED BY THE MASTER SETTLEMENT AGREEMENT.
7 IT'S INTERESTING TO SEE THE PROVISIONS IN THE
8 AGREEMENT THAT MR. PIUZE BELIEVES DOES MANDATE IT.

9 PHILIP MORRIS IS THE ONLY TOBACCO
10 COMPANY THAT'S DOING IT. MASTER SETTLEMENT
11 AGREEMENT IS ALL THE TOBACCO COMPANIES. IT IS
12 SOMETHING PHILIP MORRIS HAS DONE VOLUNTARY.

13 THERE ARE OTHER ADVERTISING
14 RESTRICTIONS THAT ARE MANDATED BY THE MASTER
15 SETTLEMENT AGREEMENT, THEY INCLUDE, THERE ARE NO
16 MORE TOBACCO BILLBOARDS.

17 THERE IS NO TOBACCO ADVERTISING
18 ALLOWED IN CERTAIN MAGAZINES THAT HAVE A CERTAIN
19 PERCENTAGE OF YOUTH READERSHIP, ON AND ON AND ON,
20 THOSE ARE ADVERTISING CHANGES THAT ARE MANDATED BY
21 THE MASTER SETTLEMENT AGREEMENT, NOT ONE OF WHICH
22 SHE TESTIFIED ABOUT, SPECIFICALLY, BECAUSE WE WERE
23 KEEPING THE MASTER SETTLEMENT AGREEMENT OUT
24 PURSUANT TO WHAT WE DISCUSSED BEFORE THE TRIAL AND
25 THE COURT'S MOTIONS IN LIMINE.

26 SO NONE OF THE THINGS SHE TESTIFIED
27 ABOUT ARE THINGS THAT WERE MANDATED BY THE MASTER
28 SETTLEMENT AGREEMENT, THE CHANGE IN POSITION IN

1 CAUSATION AND ADDICTION, THE MISSION STATEMENT, THE
2 CORE VALUES, THE YOUTH SMOKING PREVENTION PROGRAM
3 NONE OF IT MANDATED.

4 THE AMERICAN LEGACY FOUNDATION,
5 WHICH IS WHERE WE STARTED WITH THIS, IS PART OF THE
6 MASTER SETTLEMENT AGREEMENT, THE TOBACCO COMPANIES
7 FUND THE FOUNDATION. THE FOUNDATION RUNS
8 ANTI-SMOKING ADS, COMPLETELY SEPARATE FROM WHAT SHE
9 WAS TALKING ABOUT IN HER DIRECT EXAMINATION. WE
10 DIDN'T BRING IT UP, AGAIN, BECAUSE THAT'S PART OF
11 THE MASTER SETTLEMENT AGREEMENT.

12 THAT'S THE FIRST PART OF WHAT I
13 HEARD MR. PIUZE TALK ABOUT.

14 SECOND PART, AND I BELIEVE I
15 UNDERSTAND WHAT HE'S REFERRING TO, IS ABOUT A YEAR
16 BEFORE THE MASTER SETTLEMENT AGREEMENT WAS REACHED
17 BETWEEN THE TOBACCO COMPANIES AND THE STATES'
18 ATTORNEY GENERAL, THERE WAS A PROPOSED AGREEMENT,
19 IT WAS A PROPOSED AGREEMENT THAT WAS MUCH BROADER
20 IN SCOPE. AND I DON'T REMEMBER ALL THE PROVISIONS
21 OF IT, BUT I DO REMEMBER THAT IT REQUIRED FEDERAL
22 LEGISLATION.

23 AND THE STATES' ATTORNEYS GENERAL
24 AND THE TOBACCO INDUSTRY WENT TO CONGRESS WITH
25 PROPOSED LEGISLATION THAT WOULD HAVE IMPLEMENTED A
26 SEPARATE AGREEMENT. AS THE POLITICAL PROCESS WENT
27 ON, THE AGREEMENT STARTED TO CHANGE FORM, CHANGE
28 DIMENSIONS, CHANGE DOLLAR AMOUNTS, CHANGE

1 PROVISIONS, AND ULTIMATELY THE TOBACCO INDUSTRY
2 SAID WE NO LONGER SUPPORT THAT PROPOSAL AND
3 ULTIMATELY IT WAS DEFEATED.

4 IT HAS NOTHING TO DO WITH HER
5 TESTIMONY, IT HAS NOTHING TO DO WITH THE ISSUES IN
6 THIS CASE. SUBSEQUENTLY, THE ATTORNEY GENERALS AND
7 THE TOBACCO COMPANIES WENT BACK TO THE BARGAINING
8 TABLE, REACH THE AGREEMENT THAT BECAME THE MASTER
9 SETTLEMENT AGREEMENT.

10 THOSE ARE WHAT THE FACTS ARE. I
11 DON'T SEE WHAT THAT PROPOSED AGREEMENT AND THE
12 PROPOSED LEGISLATION HAS ANYTHING TO DO WITH THIS
13 CASE AND IT OPENS UP A WHOLE BOUNTY OF ISSUES THAT
14 WE COULD START HAVING TESTIMONY ABOUT IN THIS CASE.

15 THE COURT: WELL, THE COURT IS SORT OF
16 CONFRONTED WITH THE FOLLOWING PROBLEM

17 THIS CASE HAS NOT BEEN BIFURCATED,
18 SO THE COURT HAS TO KEEP IN MIND THAT MOTIVATIONS
19 ARE VERY MUCH IN ISSUE IN THIS PHASE OF THE CASE.
20 SO THERE IS SOME JUSTIFICATION FOR WANTING TO GO IN
21 TO THIS AREA BECAUSE THERE IS NO QUESTION THAT THE
22 IMPRESSION IS BEING LEFT ON AN OBJECTIVE LISTENER
23 TO THIS TESTIMONY THAT THE COMPANY'S MOTIVATIONS
24 HAVE CHANGED SUBSTANTIALLY IN RECENT YEARS. AND A
25 VERY STRONG CASE FOR THAT HAS BEEN MADE BY THIS
26 WITNESS, BOTH ORALLY AND ALSO THROUGH THE
27 DOCUMENTARY PRESENTATIONS THAT HAVE BEEN MADE AS
28 WELL.

1 AND IT CAN BE ARGUED VERY STRONGLY
2 THAT THE IMPRESSION HAS BEEN MADE THAT THIS HAS
3 BEEN VOLUNTARY ON PHILIP MORRIS'S PART AND THAT
4 PHILIP MORRIS WOULD WANT THE CREDIT FOR THAT IF A
5 JURY WAS EVER TO FACE THE ISSUE OF PUNITIVE DAMAGES
6 IN THIS CASE.

7 ON THE OTHER HAND, THE COURT IS
8 VERY RELUCTANT AND RETICENT TO ALLOW THIS CASE TO
9 GO INTO AN EXAMINATION OF THE NEGOTIATIONS OF THE
10 SETTLEMENT AGREEMENT.

11 IF THERE ARE SPECIFIC TERMS IN THE
12 SETTLEMENT AGREEMENT THAT COUNSEL CAN POINT TO,
13 THAT DIRECTLY CONTRADICT THE TESTIMONY OF THIS
14 WITNESS, OR IF A FOUNDATION COULD BE LAID WITH THE
15 WITNESS WHERE THE WITNESS WERE TO SAY TO THE JURY
16 THAT WE HAVE DONE ALL THIS VOLUNTARY AND THAT NONE
17 OF THE THINGS THAT WE ARE DOING ARE THE RESULT OF
18 ANYTHING WE HAVE BEEN REQUIRED TO DO BY ANY
19 AGREEMENT OR GOVERNMENT ORDER, AND COULD POINT TO
20 SOME SPECIFIC CONTRADICTORY TERM IN THE SETTLEMENT
21 AGREEMENT, IT WOULD SEEM TO THE COURT THAT THE
22 COURT WOULD HAVE NO CHOICE BUT TO ALLOW THAT TO
23 COME INTO EVIDENCE, AT LEAST LIMITED TO THAT
24 PARTICULAR PROVISION. BUT THERE'S GOT TO BE SOME
25 SPECIFICITY.

26 MR. PIUZE: MAY I SEE THAT, PLEASE.

27 WELL, YOUR HONOR, JUST QUOTING OUT
28 OF THE MASTER SETTLEMENT AGREEMENT, ROMAN NUMERAL

1 III, "PERMANENT RELIEF, NO -- " THIS IS PAGE 14,
2 "NO PARTICIPATING MANUFACTURER MAY TAKE ANY ACTION
3 DIRECTLY OR INDIRECTLY TO TARGET YOUTH WITHIN ANY
4 SETTLING STATE IN THE ADVERTISING, PROMOTION OR
5 MARKETING OF TOBACCO PRODUCTS OR TAKE ANY ACTION,
6 THE PRIMARY PURPOSE OF WHICH IS TO INITIATE,
7 MAINTAIN OR INCREASE THE INCIDENTS OF YOUTH SMOKING
8 WITHIN ANY SETTLING STATE. "

9 THE COURT: ALL RIGHT, I WILL ALLOW YOU
10 TO INQUIRE AS TO WHETHER OR NOT THAT IS THE
11 COMPANY'S MOTIVATION RATHER THAN SOME SORT OF
12 VOLUNTARY MOTIVE, LIMITED TO THAT PROVISION.

13 YOU HAVE ANOTHER ONE?

14 MR. PIUZE: WELL, THERE ARE, AS THIS
15 WITNESS KNOWS FULL WELL, THERE ARE ENFORCEMENT
16 PROVISIONS IN HERE BY WHICH, JUST FOR THE COURT'S
17 KNOWLEDGE, BECAUSE THIS IS KIND OF ARCANE, THE
18 STATES' ATTORNEYS GENERAL WERE BROKEN UP INTO
19 GROUPS AND FIVE DIFFERENT, IF I AM NOT MISTAKEN, I
20 AM SAYING THIS FROM HER TESTIMONY IN SAN FRANCISCO,
21 FIVE DIFFERENT STATES' ATTORNEYS GENERAL WERE PUT
22 ON PHILIP MORRIS AS WATCH DOGS AND THEY ARE FUNDED
23 TO WATCH WHAT'S GOING ON TO MAKE SURE THAT PHILIP
24 MORRIS TOWS THE LINE.

25 AND SO THERE'S A PROVISION IN HERE
26 ABOUT AN N. A. A. G, NATIONAL ASSOCIATION OF ATTORNEYS
27 GENERAL, COMPUTER CONSULTANT, WHO IS FUNDED BY THEM
28 WHO GOES THROUGH ALL THIS STUFF REGULARLY IN ORDER

1 TO ENFORCE UNDER-AGE SMOKING BANS.

2 THEY HAVE TO PAY FOR IT.

3 I MEAN, THERE'S SOMEONE LOOKING
4 OVER THEIR SHOULDER. I DON'T KNOW HOW VOLUNTARY
5 THIS IS.

6 THE COURT: YOU CAN ASK HER ABOUT THAT.
7 ANYTHING ELSE?

8 MR. PIUZE: YES, THE CREATION OF A
9 NATIONAL FOUNDATION, THE PURPOSE OF WHICH IS TO --
10 QUOTING, "THE PURPOSE OF THE FOUNDATION WILL BE TO
11 SUPPORT, ONE, THE STUDY AND PROGRAMS TO REDUCE
12 YOUTH SMOKING, PRODUCT USAGE AND YOUTH SUBSTANCE
13 ABUSE IN THE STATES AND, TWO, THE STUDY OF AND
14 EDUCATIONAL PROGRAMS TO PREVENT DISEASES ASSOCIATED
15 WITH THE USE OF TOBACCO PRODUCTS IN THE STATES. "

16 AND IT SETS OUT THE CREATION OF THE
17 FOUNDATION. AND FINALLY, ON PAGE 35 OF THE
18 SETTLEMENT AGREEMENT, WE GET TO SUB (F), THE
19 FUNCTIONS OF THE FOUNDATION SHALL BE TO CARRY OUT A
20 NATIONWIDE SUSTAINED ADVERTISING AND EDUCATION
21 PROGRAM TO COUNTER THE USE BY YOUTH OF TOBACCO
22 PRODUCTS AND EDUCATE CONSUMERS ABOUT THE CAUSE AND
23 PREVENTION OF DISEASE ASSOCIATED WITH USE OF
24 TOBACCO PRODUCTS.

25 THE COURT: SHE DIDN'T TESTIFY AS TO ANY
26 FOUNDATION OR ANY FUNDS THAT WERE PUT INTO ANY
27 FOUNDATION.

28 MR. PIUZE: NO, BUT WHAT SHE -- I

1 APOLOGIZE, YOUR HONOR.

2 THE COURT: I DON'T SEE HOW YOU COULD USE
3 THAT TO CROSS-EXAMINE HER.

4 MR. PIUZE: WELL, I WILL JUST, RATHER
5 THAN READ THROUGH ALL THESE, WHY DON'T I JUST READ
6 THE HEADINGS.

7 ONE, CARRYING OUT NATIONWIDE
8 SUSTAINED ADVERTISING AND EDUCATION.

9 TWO, DEVELOPING AND DISSEMINATING
10 MODEL ADVERTISING AND EDUCATION.

11 THREE, DEVELOPING AND DISSEMINATING
12 MODEL CLASSROOM EDUCATION PROGRAMS.

13 FOUR, DEVELOPING AND DISSEMINATING
14 CRITERIA FOR EFFECTIVE CESSATION PROGRAMS.

15 SEVEN, PROVIDING TARGETED TRAINING
16 AND INFORMATION FOR PARENTS.

17 AND I AM GOING TO STOP THERE. I
18 JUST MAKE THIS OBSERVATION.

19 THE COURT: IS THIS THE FOUNDATION?

20 MR. PIUZE: YES. THEIR VOLUNTARY PROGRAM
21 THAT THEY ARE TAUTING HERE, AND ONE OF THE THINGS
22 THEY SHOWED IS WE ARE GOING TO THE PARENTS TO GET
23 THE PARENTS TO TELL THE KIDS TO STOP SMOKING, THIS
24 IS THE SORT OF DAMOCLES --

25 THE COURT: HOLD ON. THE ONLY WAY IT
26 WOULD BE THAT IT COULD COME IN THAT I CAN SEE RIGHT
27 NOW IS IF YOU WERE ABLE TO ESTABLISH THERE WERE
28 TESTIMONY, AND I DON'T HAVE OTHER BASIS, IT WOULD

1 HAVE TO BE THROUGH HER TESTIMONY, THAT WHAT SHE
2 TOLD US ABOUT TODAY IS, IN FACT, BEING DONE THROUGH
3 THIS FOUNDATION, AND THAT IT IS NOT REALLY PHILIP
4 MORRIS THAT IS DOING IT, AS THE IMPRESSION WAS
5 GIVEN HERE, BUT RATHER IT'S BEING DONE THROUGH THIS
6 FOUNDATION THAT WE HAVEN'T BEEN TOLD ABOUT.

7 MR. PIUZE: IT WOULD BE MY, ALTHOUGH I
8 CAN'T -- I COULDN'T SWEAR TO THIS, IF I WERE A
9 WITNESS, IT'S MY STRONG SUSPICION THAT IT IS PHILIP
10 MORRIS THAT'S DOING IT. IT IS NOT THE FOUNDATION
11 THAT'S DOING IT, BUT PHILIP MORRIS IS DOING IT AS A
12 PEREMPTORY, NOT STRIKE, BUT PEREMPTORY REACTION TO
13 WHAT WAS ON THE WALL, THE RIGHT -- THE HANDWRITING
14 WAS ON THE WALL. THEY KNEW IT WAS COMING, SO THEY
15 ARE SMART.

16 MR. LEITER: IT IS NOT AN AGREEMENT --
17 THE AGREEMENT REQUIRES THE MONEY TO GO TO THE
18 FOUNDATION TO DO THE WORK. IT'S NOT THAT THIS IS
19 PEREMPTORY IN ANY WAY. PHILIP MORRIS, WHAT WE --
20 WHAT SHE TESTIFIED ABOUT TO TODAY IS WHAT PHILIP
21 MORRIS IS DOING IS SEPARATE AND APART. AND MY
22 CONCERN, YOUR HONOR, IS ONCE WE GO DOWN THE ROAD OF
23 HE GETS TO CHERRY PICK A FEW THINGS OUT OF THAT
24 AGREEMENT, THAT HE WANTS TO CROSS-EXAMINE HER
25 ABOUT, I GOT PLENTY OF THINGS IN THAT AGREEMENT I
26 WOULD LOVE TO PUT IN FRONT OF THE JURY BECAUSE I
27 THINK THEY ARE VERY HELPFUL TO MY CLIENT.

28 AND I AM CONCERNED THAT WE ARE

1 TIP-TOWING INTO HE GETS TO PULL OUT A COUPLE THINGS
2 THAT HE LIKES AND THEN IF I GET UP ON REDIRECT AND
3 PULL OUT A FEW THINGS THAT I LIKE, NOW THE DOOR IS
4 STARTING TO SWING OPEN AND WE ARE GOING TO HAVE A
5 WHOLE LOT OF TESTIMONY ABOUT THIS AGREEMENT.

6 THE COURT: WELL, AT THIS POINT, THE
7 COURT WILL NOT ALLOW PLAINTIFF'S COUNSEL TO GO INTO
8 THE ISSUE OF THIS FOUNDATION.

9 AS TO THE OTHER TWO ITEMS, THE
10 COURT WILL ALLOW THE -- COUNSEL TO CHALLENGE THE
11 WITNESS WITH THAT INFORMATION.

12 MR. LEITER: JUST TO BE CLEAR, YOUR
13 HONOR, HE'S ALLOWED TO ASK HER WHETHER, WHEN PHILIP
14 MORRIS SAYS IT DOES NOT TARGET YOUTH, WHETHER
15 THAT'S ONLY BECAUSE OF THIS AGREEMENT AND WHETHER
16 PHILIP MORRIS IS ENGAGING IN DIFFERENT BEHAVIOR
17 TODAY BECAUSE THERE IS A WATCH DOG GROUP OF
18 ATTORNEYS GENERAL THAT'S KEEPING AN EYE ON, IS THAT
19 UNDERSTANDING CORRECT.

20 THE COURT: YES, THAT'S FAIR ENOUGH --

21 MR. LEITER: HOW ARE WE GOING TO
22 CHARACTERIZE THIS?

23 THE COURT: LOOK, IT'S NOT MY JOB TO SIT
24 UP HERE AND TELL LAWYERS HOW TO ASK THEIR
25 QUESTIONS. I HAVE TO TAKE THEM AS THEY COME. AND
26 SO FAR IN THIS CASE MY LAWYERS ON BOTH SIDES IN
27 THIS CASE HAVE OPERATED IN COMPLETE GOOD FAITH WITH
28 ME SO I AM GOING TO LET HIM TAKE HIS SHOT.

1 MR. LEITER: THANK YOU, YOUR HONOR.

2 MR. PIUZE: MAY I OPERATE TWO MINUTES OF
3 PRIVATE FAITH.

4 THE COURT: YOU MAY DO THAT AND WE WILL
5 LET OUR COURT REPORTER GET SET.

6 WHEN YOU ARE READY, BRING THE JURY
7 IN.

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