

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 FOR THE COUNTY OF LOS ANGELES
3 DEPARTMENT 308 HON. CHARLES MC COY, JUDGE
4 RICHARD BOEKEN,)
5 PLAINTIFF,)
6)
) CASE NO. BC226593
7 VS.)
)
8 PHILIP MORRIS,) VOLUME 28
 INCORPORATED, A)
9 CORPORATION; INTERNATIONAL)
 HOUSE OF PANCAKES)
10 INCORPORATED, A)
 CORPORATION.)
11)
 DEFENDANTS.)
12 _____)

13 REPORTER'S DAILY TRANSCRIPT OF PROCEEDINGS
14 FRIDAY, MAY 4TH, 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
23 LISA C. RIDLEY
 OFFICIAL REPORTER
 600 S. COMMONWEALTH AVE.
24 ROOM 308
 LOS ANGELES, CA 90005
25
26 VOLUME 28 OF
 PAGES 4444 THROUGH 4545
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1 LOS ANGELES, CALIFORNIA; FRIDAY, MAY 4TH, 2001
2 9:00 A.M.
3 DEPARTMENT 308 HON. CHARLES MC COY, JUDGE

4
5 (THE FOLLOWING PROCEEDINGS
6 WERE HELD IN OPEN COURT IN
7 THE PRESENCE OF THE JURY.)
8

9 THE COURT: OUR JURY PANEL IS WITH US.
10 GOOD MORNING, LADIES AND GENTLEMEN.
11 GOOD MORNING, GOOD COUNSEL.
12 GOOD MORNING TO OUR WITNESS.
13 YOU UNDERSTAND YOU ARE STILL
14 UNDERSTAND OATH.

15 THE WITNESS: I DO, YOUR HONOR.

16 THE COURT: THANK YOU, MA'AM
17

18
19 ELLEN MERLO,
20 CALLED AS A WITNESS BY THE DEFENSE, HAVING BEEN
21 PREVIOUSLY DULY SWORN, RESUMED THE WITNESS STAND
22 AND TESTIFIED FURTHER AS FOLLOWS:

23
24 CROSS-EXAMINATION (RESUMED)
25

26 BY MR. PIUZE:

27 Q. AS PART OF YOUR AGREEMENT,
28 CORPORATELY, WITH THE STATES' ATTORNEYS GENERAL,

1 YOU HAD TO CUT DOWN ON ADVERTISING; RIGHT?

2 A. THERE WAS NO -- WELL, YES, OUTDOOR
3 ADVERTISING, SOME FORMS OF ADVERTISING WERE
4 ELIMINATED AS A RESULT OF THAT, THAT IS CORRECT.

5 Q. FINE. AND BECAUSE SOME FORMS OF
6 ADVERTISING WERE ELIMINATED AS A RESULT OF YOUR
7 AGREEMENT, AND POSSIBLY FOR OTHER REASONS, SINCE
8 YOUR AGREEMENT WITH THE STATES' ATTORNEYS GENERAL,
9 YOUR ADVERTISING IN THE, IN THE BOX, IN THE COLUMN,
10 QUOTE, ADVERTISING, EXPENDITURES HAVE GONE DOWN;
11 CORRECT?

12 A. THAT IS CORRECT.

13 Q. WHEN YOU TAKE INTO ACCOUNT THE
14 OTHER TYPES OF SPENDING THAT YOU DO ON MARKETING,
15 BESIDES ADVERTISING, WHAT YOU HAVE SPENT, SINCE
16 YOUR AGREEMENT WITH THE ATTORNEYS' GENERAL, HAS
17 GONE UP?

18 A. SOME OF THE SPENDING HAS GONE UP,
19 MAINLY ON PRICE PROMOTION, PRICE REDUCTION ON OUR
20 PRODUCT AND MERCHANDISING ALLOWANCES TO RETAILERS,
21 YES.

22 Q. WHAT HAS BEEN REPORTED TO THE
23 GOVERNMENT, I THINK, TO THE GOVERNMENT, IS THAT
24 YOUR TOTAL EXPENDITURES ON MARKETING CIGARETTES
25 HAVE GONE UP SINCE YOUR AGREEMENT WITH THE STATES'
26 ATTORNEY GENERAL; CORRECT?

27 A. CORRECT. BASED ON THE WAY THE
28 REPORT IS FILED, IT INDICATES AN INCREASE. BUT AS

1 I SAY, THERE HAS BEEN A DECREASE ON WHAT WE WOULD
2 CALL ADVERTISING, WHICH IS MAGAZINES, POINT OF SALE
3 SIGNAGE, AND THE ADDITIONAL FUNDS THAT HAVE BEEN
4 SPENT HAVE BEEN ON PRICE REDUCTIONS AT POINT OF
5 SALE AND MERCHANDISING ALLOWANCES TO RETAILERS.

6 Q. OKAY. SO WHEN I ASKED ABOUT ADS
7 YESTERDAY, ADS HAVE GONE DOWN, MONEY SPENT ON ADS
8 HAVE GONE DOWN, THE MONEY SPENT ON MARKETING HAS
9 GONE UP?

10 A. THAT WOULD BE AN ACCURATE
11 STATEMENT, YES.

12 Q. I WANT TO DO THAT.
13 AND THE AMOUNT OF MONEY THAT'S BEEN
14 SPENT ON ADVERTISING, GOING DOWN, WAS NOT
15 VOLUNTARY, IT WAS AS A RESULT OF YOUR AGREEMENT
16 WITH THE STATES' ATTORNEYS GENERAL?

17 A. NOT TOTALLY. THAT'S NOT TOTALLY
18 ACCURATE.

19 Q. PARTIALLY?

20 A. PART OF IT WAS DUE TO THE
21 AGREEMENT. BUT PHILIP MORRIS WENT BEYOND THE
22 AGREEMENT IN DROPPING BACK COVERS OF MAGAZINES,
23 REDUCING OUR ADVERTISING IN OVER 50 NATIONAL
24 PUBLICATIONS AND ALSO LESS SIGNAGE AT POINT OF
25 SALE.

26 Q. SO BE IT.

27 A. ALL RIGHT.

28 Q. AS FAR AS MY QUESTION WAS

1 CONCERNED, WHAT I SAID WAS RIGHT?

2 A. IN TOTALITY, YOU ARE RIGHT. I WAS
3 TRYING TO MAKE A DISTINCTION BETWEEN ADVERTISING,
4 WHICH YOU ASKED ME ABOUT, AND WHAT WE WERE SPENDING
5 ON PRICE REDUCTION AT RETAIL AND WHAT WE WERE PAID
6 TO RETAILERS FOR MERCHANDISING THE PRODUCT.

7 Q. SO BEFORE I LEAVE THIS NOT SO
8 TREMENDOUSLY INTERESTING TOPIC, WHAT YOU HAVE SPENT
9 AT YOUR AGREEMENT WITH THE STATES' ATTORNEYS
10 GENERAL ON MARKETING TOBACCO HAS GONE UP?

11 A. THAT WOULD BE ACCURATE.

12 Q. OKAY. WHY DON'T YOU THINK THAT
13 GROUPS -- WHAT'S THE OFFICIAL NAME FOR THE KIDS, NO
14 SMOKING KIDS GROUP?

15 A. OH, THE COALITION FOR TOBACCO FREE
16 KIDS?

17 Q. WHY DO YOU THINK THEY DON'T TRUST
18 YOU ANY FURTHER THAN THEY CAN THROW YOU?

19 MR. LEITER: OBJECTION, CALLS FOR
20 SPECULATION.

21 THE COURT: SUSTAINED.

22 IF SHE HAS ANY INFORMATION.

23 Q BY MR. PIUZE: WHEN MR. -- WHEN IS
24 THE LAST TIME YOU SAW MR. PARRISH?

25 A. I AM SORRY, I DIDN'T HEAR YOU.

26 Q. PARRISH.

27 A. LAST WEEK.

28 Q. DID YOU HAVE ANYTHING AT ALL TO DO

1 WITH PUTTING OUT THE PRESS RELEASE THAT PRECEDED
2 THE ANNOUNCEMENT THAT PHILIP MORRIS WAS PUTTING ON
3 A NEW PUBLIC FACE, WAS GOING TO HAVE A WEB SITE,
4 WAS GOING TO DO THINGS DIFFERENTLY, ALL OF WHICH WE
5 AGREED YESTERDAY OCCURRED IN OCTOBER OF 1999?

6 A. YES, I DID.

7 Q. WHAT DID YOU HAVE TO DO?

8 A. AS PART OF THE CORPORATE AFFAIRS
9 GROUP THAT MEETS WITH SOME REGULARITY, I REVIEWED
10 THE RELEASE AND KNEW ABOUT IT AND PROBABLY EVEN DID
11 SOME EDITING TO IT.

12 Q. NOW, THAT RELEASE WAS MADE BY THE
13 PARENT CORPORATION, WASN'T IT?

14 A. YES, IT WAS.

15 Q. AND YOU HAVE TOLD THE JURY THAT MR.
16 PARRISH HOLDS YOUR POSITION AT THE PARENT
17 CORPORATION?

18 A. WELL, IT'S NOT EXACTLY MY POSITION,
19 HIS IS BECAUSE IT IS FOR THE WHOLE COMPANY. HE HAS
20 A HIGHER POSITION THAN I DID, BUT THE TITLES ARE
21 SIMILAR, YES.

22 Q. SORRY ABOUT THAT. SAME TITLE IN
23 THE BIG COMPANY; RIGHT?

24 A. THAT IS RIGHT.

25 Q. HOW COME YOU WERE GETTING TO LOOK
26 AT AND EDIT THIS PRESS RELEASE TELLING EVERYONE
27 ABOUT THE NEW PHILIP MORRIS IF THIS RELEASE WAS
28 COMING FROM THE PARENT COMPANY?

1 A. HE SHARED IT WITH ME.

2 Q. ALL RIGHT. SO YOU EDITED WHOSE
3 WORK, HIS?

4 A. I DON'T KNOW THAT HE DID THE
5 WRITING. PROBABLY SOMEONE ON HIS STAFF DID THE
6 WRITING. BUT YES, THE RELEASE WAS FROM HIM

7 Q. AND AFTER THAT RELEASE WENT OUT,
8 NEWSPAPERS AROUND THE COUNTRY PUBLISHED STORIES
9 ABOUT PHILIP MORRIS AND ITS WEB SITE AND THE FACT
10 THAT PHILIP MORRIS WANTED TO HAVE A NEW PUBLIC
11 IMAGE; RIGHT?

12 A. THAT IS CORRECT.

13 Q. ARE YOU FAMILIAR WITH WHAT WAS
14 PUBLISHED OUT HERE BY ANY CHANCE?

15 A. I DON'T REMEMBER SPECIFICALLY WHAT
16 WAS PUBLISHED OUT HERE, NO.

17 Q. DO YOU GET, IN YOUR JOB, NEWSPAPERS
18 FROM THE MAJOR MARKETS AROUND THE COUNTRY TO TAKE A
19 LOOK TO SEE WHAT'S GOING ON?

20 A. I GET NEWSPAPERS FROM SEVERAL
21 MARKETS AND ALSO WE OBVIOUSLY SUBSCRIBE TO A
22 CLIPPING SERVICE SO I DO GET VARIOUS ARTICLES THAT
23 MIGHT BE PUBLISHED.

24 Q. THIS IS THE SECOND BIGGEST MARKET
25 IN THE COUNTRY, ISN'T IT?

26 A. IT'S A VERY -- YES, IT IS A VERY
27 LARGE MARKET.

28 Q. IT'S THE SECOND LARGEST?

1 A. OKAY.

2 Q. NEW YORK FIRST, L. A. SECOND?

3 A. I THINK THAT'S PROBABLY CORRECT,

4 YES.

5 Q. DO YOU GET THE "L. A. TIMES" WITH

6 ANY REGULARITY TO LOOK TO SEE WHAT'S BEING WRITTEN

7 THERE?

8 A. I GET CLIPPINGS FROM THE "L. A.

9 TIMES," I DON'T GET THE "L. A. TIMES" FULL

10 NEWSPAPER, NO.

11 Q. WHO DOES THE CLIPPINGS FOR YOU?

12 A. WE HAVE A SERVICE.

13 Q. WHAT DO THEY CLIP, DO THEY CLIP

14 LAKERS' SCORES?

15 A. NO, THEY CLIP ANYTHING THAT HAS TO

16 DO WITH OUR VARIOUS BUSINESSES OR THE INDUSTRIES

17 THAT WE PARTICIPATE IN.

18 Q. I HAVE GOT ONE I'D LIKE TO SHOW YOU

19 FROM THE "L. A. TIMES" ON OCTOBER 13, 1999.

20 YOU LET ME KNOW, PLEASE, WHEN YOU

21 ARE COMFORTABLE WITH ME ASKING YOU QUESTIONS. I AM

22 READY TO GO WHENEVER YOU ARE.

23 A. OKAY.

24 Q. OKAY?

25 A. YES.

26 Q. LET'S START WITH THIS: DO YOU

27 REMEMBER SEEING THAT AT THE TIME FROM YOUR CLIPPING

28 SERVICE?

1 A. I AM POSITIVE I SAW IT. I MEAN, I
2 SEE A LOT OF CLIPPINGS EVERY DAY AND A LOT OF
3 STORIES EVERY DAY BUT THIS DOES SEEM TO BE
4 FAMILIAR.

5 Q. NOW, LET'S JUST TAKE A COUPLE
6 MINUTES TO EXPLAIN WHY.

7 THIS WAS A BIG -- THIS WASN'T JUST
8 THE NEXT PRESS RELEASE THAT YOU GUYS WERE DOING,
9 THIS WAS A BIG, BIG DEAL HERE; RIGHT?

10 A. WELL, IT WAS, IT WAS AN
11 ANNOUNCEMENT AND IT GOT A LOT OF NEWS COVERAGE.
12 THERE WERE -- THE "L. A. TIMES" WAS NOT THE ONLY
13 PAPERS THAT WROTE ABOUT IT. THERE WAS COVERAGE IN
14 A LOT OF PAPERS ACROSS THE COUNTRY.

15 Q. OF COURSE. I THINK WE UNDERSTAND
16 THAT.

17 THE POINT I AM TRYING TO MAKE IS,
18 PHILIP MORRIS, IN YOUR END OF PHILIP MORRIS, MAKES
19 PUBLIC ANNOUNCEMENTS AT DIFFERENT TIMES ABOUT
20 DIFFERENT THINGS AS A MATTER OF COURSE AND
21 BUSINESS; RIGHT?

22 A. FROM TIME TO TIME, YES, WE DO.
23 SOMETIMES WE DON'T.

24 Q. RIGHT. I KNOW, SOMETIMES YOU DO,
25 SOMETIMES YOU DON'T?

26 A. RIGHT.

27 Q. AND SOME OF THE ANNOUNCEMENTS YOU
28 MAKE ARE BIGGER AND MORE IMPORTANT THAN OTHERS?

1 A. CORRECT. BUT THIS WAS A PRESS
2 RELEASE, IT WAS NOT A PRESS CONFERENCE. IT WASN'T
3 A BIG EVENT. WE DID SEND OUT A PRESS RELEASE AND
4 IT WAS PICKED UP AND PEOPLE CALLED FOR INTERVIEWS.

5 Q. ANYWAY, YOU DIDN'T CONSIDER THIS TO
6 BE A BIG EVENT?

7 A. I THINK IT WAS NOT SO MUCH AN
8 EVENT, BECAUSE I SAY, NORMALLY WHEN THERE'S AN
9 EVENT YOU TEND TO HAVE A PRESS CONFERENCE, WE SENT
10 OUT A PRESS RELEASE, WE WERE LAUNCHING A NEW WEB
11 SITE WHICH WE THOUGHT WAS PRETTY IMPORTANT. WE
12 WANTED PEOPLE TO KNOW ABOUT THE WEB SITE, AND
13 SECONDARILY, WE WERE STARTING TO WRITE COMMERCIALS
14 AND WE WANTED PEOPLE TO KNOW ABOUT THAT AS WELL.

15 Q. BY MAY CHANCE, DO YOU KNOW MYRON
16 LEVINE THE AUTHOR OF THIS PARTICULAR PIECE?

17 A. I DON'T KNOW HIM PERSONALLY, I KNOW
18 WHO HE IS.

19 Q. AND YOU KNOW WHO HE IS HOW?

20 A. WELL, HE HAS BEEN WRITING FOR THE
21 "L. A. TIMES" FOR MANY YEARS. HE HAS CALLED OUR
22 OFFICES FOR COMMENTS ON ANY NUMBER OF STORIES. I
23 DON'T KNOW THAT I HAVE EVER ACTUALLY SPOKEN TO HIM
24 DIRECTLY, BUT OTHER PEOPLE AT PHILIP MORRIS HAVE
25 DONE, HAVE GIVEN HIM STATEMENTS, COMMENTS ON
26 STORIES THAT HE HAS WRITTEN. SO, I MEAN, I AM
27 AWARE OF HIM

28 Q. YESTERDAY MORNING WHEN YOU WERE

1 DONE WITH YOUR DIRECT AT THE END OF YOUR DIRECT
2 EXAMINATION, YOU SAID THAT SMOKING WAS DANGEROUS.
3 DO YOU REMEMBER THAT?
4 A. YES.
5 Q. YOU SAID IT CAUSED DISEASE;
6 REMEMBER THAT?
7 A. YES.
8 Q. AND THEN WITH A LITTLE PRODDING
9 FROM ME YOU SAID IT CAUSED DEATH. DO YOU REMEMBER
10 THAT?
11 A. YES, I DO.
12 Q. THAT HAS NOT BEEN PHILIP MORRIS'S
13 OFFICIAL POSITION UNTIL VERY, VERY, VERY RECENTLY;
14 CORRECT?
15 A. WELL, OUR POSITION HAS EVOLVED. I
16 THINK I DESCRIBED WHERE OUR POSITION WAS YEARS AGO
17 AND HOW IT HAS EVOLVED WITH OUR PUBLIC STATEMENTS
18 OVER THE YEARS.
19 Q. THIS IS THE KIND OF QUESTION IF YOU
20 SAID YES AND NO YOU COULD HAVE GOTTEN YOUR PLANE
21 YESTERDAY.
22 MR. LEITER: OBJECT TO THE COMMENTARY.
23 THE COURT: SUSTAINED.
24 Q BY MR. PIUZE: THIS IS A NEW
25 POSITION FOR PHILIP MORRIS, ISN'T IT?
26 A. THIS IS A MORE OPEN PUBLIC STANCE
27 THAT WE ARE TALKING, YES, THAT'S TRUE. AND WE
28 ACKNOWLEDGE THAT IN PRESS RELEASES.

1 Q. ARE YOU SAYING THAT, PRIVATELY,
2 PHILIP MORRIS KNEW DANGER, ILLNESS, DEATH, BUT FOR
3 ITS PUBLIC STANCE, IT FORGOT TO SAY THOSE THINGS.

4 A. NO, I AM SAYING THAT PHILIP MORRIS
5 FOCUSED ON WHAT WE THOUGHT WAS THE ACCURATE
6 SCIENTIFIC EVIDENCE THAT WAS CLEAR THAT THERE WAS
7 RISK ASSOCIATED WITH THE PRODUCT BUT THAT THE
8 MECHANISM AND THE CONSTITUENT HAD NOT BEEN PROVEN
9 AND THAT WAS WHAT OUR PUBLIC STATEMENT WAS OVER THE
10 YEARS.

11 IN THE MID-1980'S WE STARTED
12 TALKING ABOUT RISK FACTORS AND THE MID-1990'S, WE
13 DEFERRED TOTALLY AND ENCOURAGED PEOPLE TO RELY ON
14 THE INFORMATION FROM THE PUBLIC HEALTH COMMUNITY.
15 AND MOST RECENTLY WE HAVE POSTED THAT INFORMATION
16 ON THE WEB SITE AND INDICATED OUR AGREEMENT WITH
17 THAT INFORMATION.

18 Q. DO YOU SEE THE CAPTION THAT THIS
19 PARTICULAR WRITER PUTS ON HIS STORY THERE, FALLS
20 UNDER "ADVERTISING AND MARKETING"?

21 A. WELL, THAT'S WHAT HE WRITES ABOUT.
22 I MEAN, THAT'S HIS TOPIC.

23 Q. SO THAT'S A YES.
24 ADVERTISING AND MARKETING?

25 A. THAT'S WHAT IT SAYS, EXACTLY.

26 Q. IS HIS SUMMARY HERE, I AM GOING TO
27 READ IT, I AM GOING TO ASK YOU IF YOU THINK IT'S
28 ACCURATE.

1 "PHILIP MORRIS' S PUBLIC
2 POSITIONS AND THOSE OF INDUSTRY RIVALS
3 HAVE BEEN EVOLVING OVER TIME FROM THE
4 ABSOLUTE DENIALS AND SCATHING ATTACKS
5 ON THE U. S. SURGEON GENERAL THAT MADE
6 THEM AN OBJECT OF WIDE SPREAD
7 DERISION. IN RECENT YEARS, FOR
8 EXAMPLE, THE COMPANIES AND THEIR
9 LAWYERS HAVE ACKNOWLEDGED THAT SMOKING
10 IS A 'RISK FACTOR' FOR CANCER AND
11 OTHER AILMENTS, WHILE STOPPING SHORT
12 OF CALLING IT A CAUSE. "

13 FROM YOUR VIEWPOINT AS THE FORMER
14 HEAD OF MARKETING FOR PHILIP MORRIS DOMESTIC
15 TOBACCO, WOULD YOU AGREE THAT THAT' S AN ACCURATE
16 STATEMENT THAT HE WROTE THERE?

17 A. FIRST OF ALL, I WAS NEVER A FORMER
18 HEAD OF MARKETING FOR THE PHILIP MORRIS DOMESTIC
19 TOBACCO COMPANY. I WAS A PRODUCT MANAGER. BUT I
20 WAS NEVER THE HEAD OF MARKETING FOR PHILIP MORRIS.

21 Q. I KEEP TRYING TO GIVE YOU A
22 PROMOTION, I' M SORRY.

23 A. WELL --

24 Q. ACCURATE?

25 A. I THINK HE BRINGS SOME OF HIS OWN
26 INTERPRETATION TO SOME OF THE WORDS THAT HE USES.

27 I THINK IT' S ACCURATE THAT OUR --
28 AS I JUST DESCRIBED, THAT OUR POSITION EVOLVED. I

1 THINK IT'S ACCURATE THAT WE WERE THE OBJECT OF
2 WIDE-SPREAD DERISION. BUT I DON'T KNOW THAT I
3 WOULD AGREE WITH ABSOLUTE DENIALS OR SCATHING
4 ATTACKS ON THE U. S. SURGEON GENERAL.

5 Q. THAT'S THE PART, OF COURSE, I WAS
6 GOING FOR, SO LET'S GET YOUR RECOLLECTION OF THAT.
7 WHEN YOU WENT TO WORK AT PHILIP
8 MORRIS, JUST FOR TIMING PURPOSES, IN '69, THE
9 SURGEON GENERAL'S REPORT HAD BEEN OUT FOR FIVE
10 YEARS; RIGHT?

11 A. THAT'S CORRECT.

12 Q. THE FIRST WARNINGS ON CIGARETTES
13 THAT SAID SMOKING MAY BE HAZARDOUS TO YOUR HEALTH
14 HAD BEEN OUT FOR THREE YEARS AT THAT TIME?

15 A. I BELIEVE THAT'S CORRECT.

16 Q. 1969 WAS JUST ABOUT THE TIME RIGHT
17 ON THE MONEY WHEN THE WARNINGS GOT CHANGED TO MAKE
18 THEM STRONGER TO SAY SMOKING IS DANGEROUS; RIGHT?

19 A. CORRECT.

20 Q. AND 1969 WAS STILL A COUPLE OF
21 YEARS SHORT OF THE TIME WHEN THE MARLBORO MAN AND
22 HIS HORSE AND THE WIDE OPEN SKY DISAPPEARED FROM
23 TELEVISION SETS ACROSS THE COUNTRY; CORRECT?

24 A. IT WAS ABOUT A YEAR LATER. IT WAS
25 JANUARY OF '71. SO IT WAS JUST A LITTLE OVER A
26 YEAR AFTER I STARTED WITH THE COMPANY THAT
27 TELEVISION ADVERTISING DISAPPEARED.

28 Q. SO JUST TO GET IT IN TIMING

1 PERSPECTIVE, ANYWAY, AS FAR AS ABSOLUTE DENIALS,
2 YOUR COMPANY'S ABSOLUTE, 100 PERCENT DENIAL THAT
3 SMOKING CAUSED SERIOUS DISEASE OR LUNG CANCER, THAT
4 IS SOMETHING THAT EITHER HAPPENED WHEN YOU WEREN'T
5 THERE OR SOMETHING YOU DON'T REMEMBER; CORRECT?

6 A. WELL --

7 MR. LEITER: OBJECTION TO THE
8 ARGUMENTATIVE QUESTION.

9 THE WITNESS: AS I SAID YESTERDAY IN MY
10 TESTIMONY, AND I THINK I SAID IT THE DAY BEFORE IN
11 MY DIRECT, I THINK THAT OUR PUBLIC STATEMENTS ARE
12 CERTAINLY INCOMPLETE. BUT THEY WERE NOT DENIALS.
13 THEY WERE FOCUSING ON WHAT WE DIDN'T KNOW, WHICH
14 WAS MECHANISM AND CONSTITUENT AS OPPOSED TO THE
15 CONCLUSIONS THAT WERE BEING DRAWN BY THE PUBLIC
16 HEALTH COMMUNITY.

17 SO WE DIDN'T SAY IT DOESN'T, WE
18 JUST DIDN'T SAY IT DOES. AND WE WERE FOCUSING ON,
19 AS I SAY, WHAT WE DIDN'T KNOW AND THE PUBLIC
20 HEALTH COMMUNITY DIDN'T KNOW AT THAT TIME WHICH WAS
21 MECHANISM AND CONSTITUENTS.

22 Q. AND AS FAR AS THE SCATHING ATTACK
23 ON THE U. S. SURGEON GENERAL IS CONCERNED BY YOUR
24 COMPANY, IS THAT SOMETHING THAT EITHER OCCURRED
25 WHEN YOU WEREN'T THERE OR YOU CAN'T RECALL?

26 A. I DO NOT RECALL ANY SCATHING ATTACK
27 ON THE U. S. SURGEON GENERAL.

28 Q. OKAY. WE HAVE A WHOLE FOLDER OF

1 DOCUMENTS IN THIS CASE THE JURY HAS SEEN, HAVE YOU
2 BEEN SHOWN THOSE DOCUMENTS, BY ANY CHANCE?

3 A. NO, I HAVE NOT.

4 Q. (READING)

5 "ALSO BEING LAUNCHED TODAY
6 IS A 100 MILLION DOLLAR A YEAR
7 ADVERTISING BLITZ AIMED AT PUTTING A
8 HUMAN FACE ON THE CIGARETTE MAKER BY
9 SPOTLIGHTING ITS CHARITABLE ENDEAVORS
10 IN COMMERCIALS SET TO AIR DURING TOP
11 RATED SHOWS, INCLUDING THE WORLD
12 SERIES, 'MONDAY NIGHT FOOTBALL, ' " IT
13 GOES ON.

14 "PHILIP MORRIS WILL
15 HIGHLIGHT THE PROBLEMS OF HUNGER,
16 DOMESTIC VIOLENCE, NATURAL DISASTERS
17 AND TEEN SMOKING AND ITS EFFORTS TO
18 COMBAT THEM EACH AD WILL END WITH A
19 TAG LINE: WORKING TO MAKE A
20 DIFFERENCE, THE PEOPLE OF PHILIP
21 MORRIS. "

22 NOW, THAT WAS RIGHT OFF YOUR PRESS
23 RELEASE, WASN'T IT?

24 A. I DON'T THINK WE USED THE WORD
25 ADVERTISING BLITZ, BUT, YES, THE DESCRIPTION OF THE
26 CAMPAIGN AND WHERE IT WOULD RUN AND WHAT THE
27 CONTENT OF THE ADS WAS IS ACCURATE.

28 Q. HERE'S MR. PARRISH:

1 "WE HAVE NOT BEEN AS OPEN
2 AND ACCESSIBLE TO PEOPLE, TO THE MEDIA
3 AND THE PUBLIC AS WE NEED TO BE.
4 STEVEN C. PARRISH, SENIOR
5 VICE-PRESIDENT OF PHILIP MORRIS SAID
6 IN AN INTERVIEW TUESDAY. THE IDEA IS
7 TO OPEN A DIALOGUE WITH A LOT OF
8 PEOPLE WHO, OVER THE YEARS, HAVE BEEN
9 CRITICS OF OURS, PARRISH SAID. "

10 SO LET ME STOP THERE, AS THERE'S
11 ABOUT TO BE A CRITIQUE.

12 THAT'S VERY CLOSE TO SOME OF THE
13 TESTIMONY YOU HAVE GIVEN HERE TODAY, OR YESTERDAY,
14 IS IT NOT?

15 A. YES, IT IS.

16 Q. I AM GOING TO CONTINUE READING.

17 "BUT THE CAMPAIGN IN
18 PARTICULAR IS FOCUSED ON UNDER-AGED
19 SMOKING, DREW ANGRY BLASTS FROM
20 TOBACCO PATROL GROUPS. "

21 AND HERE'S A QUOTE FROM TOBACCO
22 FREE KIDS.

23 "IT'S A BRILLIANT PUBLIC
24 RELATIONS GESTURE DESIGNED TO GIVE
25 PHILIP MORRIS COVER TO AVOID
26 GOVERNMENT REGULATION AND TO CONTINUE
27 THE MARLBORO CAMPAIGN WHICH HAS MADE
28 MARLBORO NUMBER 1 AMONG OUR NATIONS

1 CHILDREN, COMPLAINED MATTHEW MEYERS,
2 GENERAL COUNSEL FOR THE NATIONAL
3 CENTER FOR TOBACCO FREE KIDS. PHILIP
4 MRRIS SAYING THEY DON' T WANT KIDS TO
5 SMOKE IS THE HEIGHT OF HYPOCRISY. "

6 Q. DO YOU KNOW THAT MAN?

7 A. I HAVE MET MR. MEYERS, YES.

8 Q. UNDER WHAT CIRCUMSTANCES?

9 A. I MET HIM ONCE WHEN I ACCOMPANIED
10 MR. PARRISH TO AN INTERVIEW THAT BOTH OF THEM
11 PARTICIPATED IN, SO I MET HIM AT THE, WHAT THEY
12 CALL THE GREEN ROOM BEFORE THE INTERVIEW TOOK
13 PLACE. AND I HAVE MET HIM AGAIN IN ANOTHER EVENT,
14 I DON' T REMEMBER EXACTLY WHERE IT WAS, BUT I HAVE
15 MET HIM TWICE.

16 Q. (READING)

17 "AND WHILE MEYERS SAYS IT
18 WAS GOOD THAT THE FIRM IS
19 ACKNOWLEDGING THE RISKS OF ITS
20 PRODUCTS, HE SAID IT WOULD -- IT WAS
21 NOT ATTEMPTING TO ATONE FOR ITS
22 DECADE-LONG CAMPAIGN TO 'SOW DOUBT
23 ABOUT THE HEALTH EFFECTS' OF SMOKING.

24 "PARRISH SAID THE WEB SITE
25 SMOKING AND HEALTH STATEMENTS DO NOT
26 REQUIRE THE COMPANY TO ABANDON CERTAIN
27 OF ITS STANDARD COURTROOM DEFENSES.
28 HE ACKNOWLEDGED THAT IN LAWSUITS FILED

1 BY SMOKERS, PHILIP MORRIS CAN STILL
2 ARGUE THAT PLAINTIFFS PROBABLY
3 CONTRACTED DISEASE FROM ANOTHER CAUSE,
4 WERE ADEQUATELY WARNED OF THE DANGERS,
5 AND SHOULD HAVE TRIED HARDER TO QUIT. "

6 NOW, YOU WROTE OFF ON THAT VERY
7 STATEMENT, DIDN' T YOU?

8 A. I' M SORRY?

9 Q. THAT VERY STATEMENT PASSED UNDER
10 YOUR PEN BEFORE YOU GAVE APPROVAL FOR THE PRESS
11 RELEASE, DIDN' T IT?

12 A. I WAS NOT IN A POSITION TO GIVE
13 APPROVAL. AS I SAID, MR. PARRISH SHARED THE PRESS
14 RELEASE WITH ME AND I WAS ABLE TO HAVE SOME INPUT
15 INTO THE CONTENT OF THE PRESS RELEASES.

16 AS FAR AS OUR LITIGATION STRATEGY,
17 NO ONE LOOKS TO ME FOR APPROVAL OF LITIGATION
18 STRATEGY.

19 Q. NOR DID I ASK THAT.

20 A. BUT I THINK THAT' S WHAT THAT IS
21 TALKING ABOUT. SO I WOULD NOT HAVE HAD ANY INPUT
22 OR APPROVAL AS TO WHAT WOULD OR WOULD NOT IMPACT
23 LITIGATION STRATEGY. THAT' S NOT MY AREA OF
24 EXPERTISE OR RESPONSIBILITY.

25 Q. THERE' S STUFF IN HERE ABOUT F. D. A.
26 AND THE L. A. CITY ATTORNEY IN THERE AND I WILL GO
27 PAST THAT AND COME TO HERE.

28 "PHILIP MORRIS SAYS IT

1 MONEY THAT WE SPENT ON ADVERTISING AS COMPARED TO
2 THE AMOUNT OF MONEY THAT WE GIVE TO CHARITIES,
3 THERE IS NO COMPARISON.

4 Q. SO LET ME ASK A DIFFERENT QUESTION
5 THEN.

6 IS IT CORRECT THAT NOW, ON A YEARLY
7 BASIS, PHILIP MORRIS SPENDS MORE MONEY PUFFING ITS
8 CHARITABLE CONTRIBUTIONS THAN IT ACTUALLY GIVES TO
9 THE CHARITY?

10 A. AND THE POINT I WAS MAKING WAS THAT
11 NOW THAT THIS CAMPAIGN IS RUNNING, IT'S ABOUT
12 COMPARABLE, BECAUSE WE ARE GIVING MORE IN ACTUAL --
13 BEYOND MONEY, IN FOOD, WATER AND OTHER IN KIND
14 CONTRIBUTIONS TO CHARITY THAT, IN THE PAST YEAR,
15 PHILIP MORRIS WAS LISTED AS ONE OF THE TOP FIVE
16 CHARITABLE GIVERS IN THIS COUNTRY.

17 Q. IS THAT A YES?

18 A. I THINK IT WAS AN EXPLANATION OF
19 THE FACT THAT IT'S ABOUT COMPARABLE IN ADVERTISING
20 AND IN CHARITABLE GIVING AND THAT WE HAVE -- THEY
21 ARE IN ALIGNMENT. BUT WHEN YOU LOOK AT THE BODY OF
22 THE CHARITABLE WORK THAT PHILIP MORRIS HAS DONE AND
23 THE AMOUNT OF MONEY IT'S GIVEN, IT'S BILLIONS AS
24 COMPARED TO 200 -- 200 MILLION DOLLARS IN
25 ADVERTISING OVER TWO YEARS.

26 Q. LET ME TRY ONE LAST SHOT ON THIS
27 TOPIC.

28 MR. LEITER: OBJECT TO THE COMMENTARY.

1 THE COURT: SUSTAINED. THIS WILL BE THE
2 LAST APPROACH AT THIS.

3 MR. PIUZE: YES, SIR.

4 THE COURT: THANK YOU, SIR.

5 Q BY MR. PIUZE: ACCORDING TO YOUR
6 OWN PRESS RELEASE, YOUR OWN FIGURES, PHILIP
7 MORRIS'S OWN FIGURES, YOU ARE SPENDING MORE MONEY
8 PUFFING HOW MUCH YOU GIVE TO CHARITY THAN YOU ARE
9 GIVING TO CHARITY; RIGHT?

10 A. WHEN THAT WAS LUNCHED, THAT NUMBER
11 WAS CORRECT. YOU WERE ASKING ME ABOUT MOST
12 RECENTLY AND I WAS EXPLAINING TO YOU WHAT'S
13 HAPPENED IN THE PAST YEAR.

14 Q. AND THEN THE LAST PART OF THIS
15 PARTICULAR RELEASE, I JUST WANTED TO DRAW YOUR
16 ATTENTION TO, THIS IS MR. MEYERS, HE IS ASSOCIATED
17 WITH THE KIDS ANTI-SMOKING GROUP; RIGHT?

18 A. THAT IS CORRECT.

19 Q. (READING)

20 "BUT MEYERS OF THE NATIONAL
21 CENTER FOR TOBACCO-FREE KIDS SAYS THE
22 MESSAGE RINGS HALLOW IF PHILIP
23 MORRIS TELLS YOU THEY ARE A GOOD
24 NEIGHBOR, GO TO YOUR NEAREST
25 CONVENIENCE STORE AND TAKE A LOOK AT
26 THE ADVERTISING FOR MARLBORO IN AND
27 AROUND THE CANDY COUNTER AND OTHER
28 LOCATIONS FREQUENTED BY CHILDREN, HE

1 SAID. "

2 NOW, WE KNOW THAT YOU GIVE THE
3 STORES A BONUS FOR KEEPING THE CIGARETTES BEHIND
4 THE COUNTER. THOSE AREN'T YOUR WORDS BUT THAT'S
5 THE IMPORT OF IT, RIGHT, THEY GET EXTRA INCENTIVES
6 IF THE CIGARETTES ARE UP OFF OF THE COUNTER OR
7 BEHIND THE COUNTER WHERE ONLY THE STORE KEEPER CAN
8 GET HIS OR HER HANDS ON THEM?

9 A. HE GETS THE HIGHEST LEVEL OF
10 INCENTIVE BY KEEPING IT BEHIND THE COUNTER.

11 Q. BUT WHAT ABOUT THE SIGNS THAT THIS
12 GUY IS TALKING ABOUT, THE PROMOTION SIGNS, BEING
13 RIGHT NEXT TO WHERE THE KIDS ARE GOING TO BE IN THE
14 CANDY AREAS, ET CETERA, DOES PHILIP MORRIS DO
15 ANYTHING ABOUT THAT, HAVE ANY CONTROL OVER THAT, OR
16 HAVE ANY COMMENT ON THAT?

17 A. YES, ALL OF THE ABOVE. WE HAVE
18 CONTROL OVER IT. AND OUR SALES REPRESENTATIVES ARE
19 SPECIFICALLY INSTRUCTED NOT TO PUT ANY SIGNAGE
20 BELOW THE COUNTER LEVEL AND THAT THE SIGNAGE WITH
21 OUR DISPLAYS IS SUPPOSED TO BE LIMITED TO THE
22 TOBACCO SELLING AREA, WHICH WOULD BE BEHIND THE
23 COUNTER, ON THE DISPLAY.

24 WE DON'T WANT OUR SIGNS THERE. WE
25 DON'T PLACE THEM THERE. AND WE DON'T LEAVE SIGNS
26 BEHIND FOR RETAILERS TO PLACE ON THEIR OWN.

27 SO I THINK THAT MR. MEYERS IS
28 MISTAKEN IN WHAT HE SAYS IN THIS ARTICLE.

1 Q. OKAY. BUT A POINT IN THERE THAT
2 I'LL TAKE ONE MINUTE ON HERE IS PHILIP MORRIS DOES
3 HAVE CONTROL OVER WHERE ITS ADVERTISING GOES IN THE
4 STORE?

5 A. OUR SALES REPS DO PLACE SIGNAGE IN
6 THE STORE AND, YES, WE WOULD HAVE CONTROL OVERALL.

7 NOW, THAT DOESN'T MEAN THAT A
8 RETAILER CAN'T MOVE A SIGN, BUT WE DO PLACE IT.

9 Q. REMEMBER, I READ YOU --

10 MR. LEITER: I HAVE OBJECTION TO THESE.

11 Q BY MR. PIUZE: REMEMBER, I ASKED
12 YOU -- REMEMBER, I ASKED YOU YESTERDAY, ONE OF THE
13 QUOTES I READ TO YOU YESTERDAY OUT OF THE
14 "SAN DIEGO UNION TRIBUNE," IT MIGHT HAVE BEEN UP ON
15 THE ELMD, I DON'T KNOW, HAD TO DO WITH MARLBORO
16 NEXT TO THE THREE MUSKETEERS, REMEMBER THAT?

17 A. I DO REMEMBER THAT, YES.

18 Q. AND THAT WASN'T MR. MYERS SAYING
19 THAT, THAT WAS SOMEONE ELSE, SOME OTHER PLACE, SOME
20 OTHER TIME; RIGHT?

21 A. I BELIEVE YOU QUOTED SOMEONE FROM
22 THE AMERICAN LUNG ASSOCIATION SAYING THAT.

23 Q. YOU ARE RIGHT.

24 AND SHE WAS WRONG TOO ON THAT?

25 A. I CAN TELL YOU IT IS NOT OUR
26 POLICY, I CAN SHOW YOU DOCUMENT AFTER DOCUMENT THAT
27 GOES OUT TO OUR SALES FORCE INSTRUCTING THEM NOT TO
28 PLACE ANYTHING IN THOSE POSITIONS.

1 Q. OKAY.

2 DOES YOUR AD CLIPPING SERVICE ALSO
3 GIVE YOU STUFF THAT'S ON RADIO AND TELEVISION?

4 A. YES.

5 Q. SO YOU ARE FAMILIAR WITH -- YOU ARE
6 FAMILIAR WITH THE KIND OF THINGS THAT WE MIGHT HEAR
7 ON THE RADIO ON THE WAY TO COURT OR ON THE WAY HOME
8 FROM OUR MARKET?

9 A. I CERTAINLY DON'T SEE AND HEAR
10 EVERYTHING, BUT I THINK I GET A GOOD REPRESENTATIVE
11 AMOUNT OF WHAT'S OUT THERE.

12 Q. AND OBVIOUSLY YOU KNOW THAT FOR
13 PEOPLE LIVING IN THIS COUNTRY TODAY, LIVING IN A
14 MAJOR METROPOLITAN MARKET TODAY, THERE'S ALL KINDS
15 OF ANTI-TOBACCO MESSAGES, ALL THE TIME, ALL THE
16 TIME, TO HEAR AND TO HEAR AND TO HEAR AND TO SEE
17 SOMETIMES; RIGHT?

18 A. YES.

19 Q. YOU KEEP TRACK OF THOSE?

20 A. SOME OF THEM I MEAN, CERTAINLY
21 NOT ALL OF THEM BUT, YEAH, SOME OF THEM WE
22 CERTAINLY SEE OR HEAR. WE HAVE, WE HAVE EMPLOYEES
23 IN EVERY STATE ACROSS THE UNION WITH OUR SALES
24 FORCE, ET CETERA. SO I MEAN, WE ARE MEMBERS OF
25 JUST ABOUT EVERY COMMUNITY IN THE UNITED STATES.
26 SO, YES, WE SEE THOSE THINGS.

27 Q. UNDOUBTEDLY, PHILIP MORRIS HAS A
28 MAJOR PRESENCE HERE IN LOS ANGELES; RIGHT?

1 A. WELL, WE HAVE -- PHILIP MORRIS
2 U. S. A. HAS A SALES OFFICE HERE IN LOS ANGELES AND
3 WE HAVE SALES REPRESENTATIVES. WE DON'T HAVE ANY
4 OTHER REPRESENTATION IN THE STATE.

5 Q. RECENTLY, HAVE THERE BEEN
6 ANTI-SMOKING ADS THAT AREN'T JUST ANTI-SMOKING,
7 GENERALLY, BUT HAVE ANY COME TO YOUR ATTENTION THAT
8 ARE SPECIFICALLY ANTI-PHILIP MORRIS?

9 A. THERE HAVE BEEN ANY NUMBER OF
10 ANTI-INDUSTRY AND ANTI-PHILIP MORRIS ADS AND
11 ANTI-TOBACCO EXECUTIVE. AND CALIFORNIA DEFINITELY
12 HAS BEEN ONE OF THE STATES THAT'S BEEN PROMINENT IN
13 THOSE KINDS OF ADS.

14 Q. WELL, LET ME SEPARATE OUT THE
15 ANTI-TOBACCO ADS AND LET ME SEPARATE OUT THE
16 ANTI-TOBACCO EXECUTIVE ADS -- WHICH WOULD INCLUDE
17 YOU?

18 A. I HOPE NOT BY NAME, BUT, YES, I
19 GUESS AS AN EXECUTIVE WITH PHILIP MORRIS, YES, IT
20 WOULD INCLUDE ME.

21 Q. AND JUST CONCENTRATE ON ONES THAT
22 GO DIRECTLY AFTER PHILIP MORRIS. YOU ARE AWARE OF
23 SUCH ADS, AREN'T YOU?

24 A. I AM NOT SURE EXACTLY WHAT YOU ARE
25 REFERRING TO. I AM SORRY. I DON'T KNOW EXACTLY
26 WHAT ADS YOU MIGHT BE REFERRING TO.

27 Q. LET'S JUST STAY WITH, DO YOU HAVE A
28 PERSONAL, BECAUSE IT'S BEEN REPORTED BACK TO YOU,

1 KNOWLEDGE, THAT RIGHT NOW IN CALIFORNIA, THERE ARE
2 ADS SINGLING YOUR COMPANY OUT, NOT THE TOBACCO
3 INDUSTRY, NOT TOBACCO EXECUTIVES, BUT YOUR COMPANY
4 OUT, RIGHT NOW, PLAYING NOW?

5 A. NO, I AM NOT.

6 MR. LEITER: I AM GOING TO OBJECT TO THE
7 RELEVANCE OF THIS LINE OF QUESTIONING.

8 THE COURT: IN A COUPLE WORDS, SIR.

9 MR. PIUZE: EXCUSE ME?

10 THE COURT: RELEVANCE IN A COUPLE WORDS.

11 MR. PIUZE: IF SHE DOESN'T KNOW IT, I
12 CAN'T ASK HER ABOUT IT.

13 THE COURT: FOUNDATION ONLY AT THIS TIME.

14 MR. PIUZE: WELL, I MISSED IT. SHE
15 DOESN'T KNOW IT, SO I AM GONE.

16 THE COURT: ALL RIGHT, MOVE ON.

17 Q BY MR. PIUZE: QUESTION NUMBER 1:
18 WHAT TOOK YOU SO LONG?

19 A. WELL, THAT'S A GOOD QUESTION.

20 I THINK, FOR A LONG TIME, AS I
21 SAID, WE WERE FOCUSED ON WHAT WE DIDN'T KNOW, WHAT
22 THE PUBLIC HEALTH COMMUNITY DIDN'T KNOW

23 IN TALKING ABOUT OUR PRODUCT, I
24 THINK THAT AS THE RHETORIC TURNED IN THE '80'S AND
25 REALLY STARTED TO ATTACK MUCH MORE PERSONALLY THE
26 INDUSTRY AND OUR CONSUMERS, PHILIP MORRIS GOT VERY
27 DEFENSIVE AND I THINK WE, WE STARTED TO APPROACH
28 THE PROBLEM BY NOT COMMENTING VERY MUCH. WE DIDN'T

1 DO A LOT OF INTERVIEWS. I THINK, AS MR. PARRISH
2 INDICATED, WE WERE NOT ACCESSIBLE TO THE MEDIA. WE
3 WERE NOT ACCESSIBLE TO OUR CRITICS. WE JUST
4 WEREN' T TALKING VERY MUCH. AND WE DEVELOPED
5 SOMEWHAT OF A BUNKER MENTALITY AT PHILIP MORRIS AND
6 IT TOOK US AWHILE TILL, I THINK, WE REALIZED THAT
7 WE WERE SERIOUSLY OUT OF STEP. AND WHEN WE DID, WE
8 STARTED TO LOOK INTERNALLY AND WE STARTED TO CHANGE
9 OUR POSITION.

10 Q. WHAT' S CHANGED?

11 A. WELL, WE ARE OUT. WE ARE TALKING.
12 WE HAVE POSTED INFORMATION ON OUR WEB SITE. WE
13 CREATED THE WEB SITE. WE PUT THE WEB SITE ADDRESS
14 ON ALL OF OUR MATERIALS. WE ARE OUT TALKING TO THE
15 PUBLIC HEALTH COMMUNITY. WE ARE OUT TALKING TO
16 GOVERNMENT OFFICIALS. WE ARE OUT TRYING TO HAVE
17 DIALOGUE WITH OUR CRITICS.

18 AS I TOLD YOU, WE SPEAK WITH PEOPLE
19 AT THE C. D. C. , GET UP TO MASSACHUSETTS TO SPEAK TO
20 DR. CONNOLLY. WE ARE MEETING WITH PEOPLE WHO ARE
21 CRITICAL. IN FACT, DR. LEVY, CAROLYN LEVY, HAS
22 ACTUALLY GONE TO MEET WITH MAT MEYERS.

23 SO WE ARE TRYING TO REACH OUT, WE
24 ARE TRYING TO LISTEN MORE THAN WE EVER DID AND TO
25 ENTER INTO DIALOGUE.

26 Q. LET' S TALK ABOUT WHAT HASN' T
27 CHANGED THEN.

28 THE SCIENCE HASN' T CHANGED?

1 A. SCIENCE HASN' T CHANGED BUT FROM THE
2 STANDPOINT OF THE PUBLIC HEALTH, WE BELIEVE THAT AS
3 THEY, I BELIEVE, HAVE FOR MANY YEARS, PEOPLE SHOULD
4 RELY ON THE CONCLUSIONS THAT ARE DRAWN BY THE
5 PUBLIC HEALTH COMMUNITY AND RELY ON THE
6 EPIDEMIOLOGY WHICH CERTAINLY INDICATES THAT THERE
7 IS VERY STRONG RELATIONSHIP BETWEEN SMOKING AND
8 DISEASE.

9 Q. BECAUSE THAT SCIENCE EXISTED IN
10 1913?

11 A. IT DID. AND THE FACT IS, TO THIS
12 DAY, WE STILL DON' T KNOW MECHANISM, WE DON' T KNOW
13 CONSTITUENTS. AND FOR PHILIP MORRIS, THAT' S VERY
14 IMPORTANT, BECAUSE OUR PRIMARY GOAL IS TO
15 CONTINUALLY IMPROVE OUR PRODUCT, TO TRY TO REDUCE
16 AS MUCH AS POSSIBLE THE HEALTH RISKS ASSOCIATED
17 WITH THE PRODUCT. THERE IS NO SUCH THING AS A SAFE
18 CIGARETTE. I DON' T KNOW THAT THERE EVER WILL BE A
19 SAFE CIGARETTE. BUT OUR GOAL IS TO REDUCE THE HARM
20 ASSOCIATED WITH THE PRODUCT AS MUCH AS WE CAN.

21 SO WE NEED TO KNOW THAT
22 INFORMATION, BUT FROM THE STANDPOINT OF THE PUBLIC
23 HEALTH OF SOCIETY, THEY NEED TO KNOW THAT IF THEY
24 SMOKE, THAT THEY ARE INCREASING THEIR RISK OF
25 GETTING DISEASE, WHICH I THINK IS SOMETHING THAT
26 THEY HAVE KNOWN FOR A LONG TIME, BASED ON THE
27 OVERWHELMING EVIDENCE THAT IS OUT THERE.

28 Q. SO THE ANSWER TO MY QUESTION IS,

1 MR. PIUZE, YOU ARE RIGHT, SCIENCE HASN'T CHANGED,
2 EPIDEMIOLOGY HASN'T CHANGED, WE HAVE KNOWN THIS
3 SINCE 1950, WE STILL KNOW IT, BUT ALL OF THE SMOKE
4 SCREENS WE THREW UP OVER THE YEARS HAVING TO DO
5 WITH CAUSE AND MECHANISM OF THINGS WE ARE GOING TO
6 NOW ABANDON; RIGHT?

7 MR. LEITER: OBJECTION, ARGUMENTATIVE AND
8 IT CALLS FOR TESTIMONY OF AN EXPERT.

9 THE COURT: OVERRULED.
10 CROSS-EXAMINATION.

11 THE WITNESS: I DON'T BELIEVE WE THREW
12 OUT A SMOKE SCREEN AS YOU SAY. I THINK, AS I SAY,
13 WE WERE CLINGING TO AN ACCURATE AND SCIENTIFICALLY
14 ACCURATE DESCRIPTION. BUT WE DID NOT SEEK TO
15 DECEIVE ANYBODY AND WE DID NOT DENY THAT THERE WERE
16 HEALTH IMPACTS ASSOCIATED WITH SMOKING OUR PRODUCT.

17 AND THERE WAS OVERWHELMING
18 INFORMATION FROM THE PUBLIC HEALTH COMMUNITY FOR
19 MANY, MANY YEARS THAT WERE OUT THERE.

20 I MEAN, EVEN THE ARTICLE THAT YOU
21 JUST SHOWED ME SAID THAT THE PEOPLE THAT WERE
BEING
22 MOST HURT BY THE POSITION WE WERE TAKING WAS THE
23 TOBACCO COMPANIES THEMSELVES.

24 Q. SAY THAT SIGN.

25 A. WE WERE DERIDED. WE WERE THOUGHT
26 TO BE OUT OF TOUCH. WE WERE THOUGHT TO BE PART OF
27 THE FLAT EARTH SOCIETY.

28 Q. DO YOU SEE THAT SIGN?

1 A. I SEE THE SIGN. BUT I ALSO KNOW
2 THAT THERE WAS NO SUCH STRATEGY.

3 Q. DIDN'T YOU JUST SAY WE NEVER DENIED
4 IT. DIDN'T YOU JUST SAY THAT IN YOUR ANSWER, WE
5 NEVER ACTUALLY DENIED IT?

6 A. I DON'T KNOW WHAT YOU ARE GETTING
7 AT, MR. PIUZE. I SAID WE DIDN'T DENY THE HEALTH
8 EFFECTS OF CIGARETTES.

9 WE CLUNG TO A PUBLIC POLICY THAT
10 FOCUSED ON WHAT WE DIDN'T KNOW BUT WE DIDN'T SAY
11 THAT THERE WERE NOT HEALTH IMPACTS FROM CIGARETTES.

12 AND THERE WAS A LOT OF INFORMATION
13 OUT THERE FROM THE PUBLIC HEALTH COMMUNITY. THERE
14 WERE WARNINGS ON THE PACKS, THERE WERE, THERE WAS
15 INFORMATION FROM THE AMERICAN LUNG ASSOCIATION,
16 AMERICAN CANCER SOCIETY, THE SURGEON GENERAL, IT
17 WAS OVERWHELMING BY THE VERY ARTICLES YOU HAVE JUST
18 BEEN SHOWING ME.

19 Q. SO AS PART OF YOUR NEXT TO LAST
20 ANSWER, ONE OF THE THINGS YOU SAID, I THINK, WAS,
21 GEE WHO WAS GETTING HURT BY THIS, IT WAS US, THE
22 TOBACCO INDUSTRY. AFTER ALL, WE WERE BEING
23 DERIDED. REMEMBER SAYING THAT?

24 A. I SAID, I THINK WE MISSED AN
25 OPPORTUNITY TO TAKE A LEADERSHIP ROLE. I DO THINK
26 THAT ULTIMATELY, SOCIETY LOOKED AT US AND THOUGHT
27 WE WERE MEMBERS OF THE FLAT EARTH SOCIETY.

28 Q. FINE. DO YOU REMEMBER JUST SAYING

1 TO ME, AFTER ALL, WHO WAS GETTING HURT BY THIS, IT
2 WAS US, BECAUSE WE WERE BEING DERIDED. DO YOU
3 REMEMBER THAT?

4 A. I DO REMEMBER THAT, YES.

5 Q. WELL, AS FAR AS BEING DERIDED IS
6 CONCERNED, WHILE YOU WERE BEING DERIDED, AND AGAIN,
7 I WON'T PERSONALIZE THIS, BUT YOUR COMPANY AND YOUR
8 INDUSTRY WERE MAKING FORTUNES, SO THAT SOOTHED YOUR
9 HURT FEELINGS, DIDN'T IT?

10 A. WELL, LOOK, IT DOESN'T NECESSARILY
11 TAKE THE STING OUT OF THE ATTACKS.

12 Q. OKAY.

13 AND LET'S GO TO THE OTHER PART OF
14 IT.

15 WHO WAS BEING HURT BY THIS, HOW
16 ABOUT 400,000 DEAD PEOPLE A YEAR IN THIS COUNTRY,
17 WERE THEY BEING HURT BY THIS?

18 A. PEOPLE WERE HURT BY MAKING THE
19 CHOICE TO SMOKE. WE ADMIT THE FACT THAT SMOKING
20 DOES CAUSE DISEASE. BUT THE INFORMATION WAS OUT
21 THERE AND PEOPLE, UNFORTUNATELY, MAKE DECISIONS
22 EVERY DAY IN THEIR LIVES THAT ARE HARMFUL.

23 Q. YOU ADMIT SMOKING CAUSES DISEASE AS
24 OF YESTERDAY. THAT'S WHEN YOU ADMITTED IT, 2001,
25 IN THE SPRING TIME; RIGHT?

26 A. WELL, I DON'T THINK THAT'S
27 ACCURATE. I DON'T THINK THAT'S WHAT I HAVE
28 TESTIFIED TO IN THE TWO DAYS THAT I HAVE BEEN HERE.

1 Q. OKAY. I SHOWED YOU THIS ONE THE
2 END OF YESTERDAY ALSO. I PUT IT UP THERE SO YOU
3 HAVE TIME TO THINK ABOUT IT. THIS IS ON ADDICTION.

4 WHAT TOOK YOU SO LONG?

5 A. I WOULD SAY THE SAME THING THAT I
6 JUST SAID ABOUT CAUSATION. IT WAS VERY MUCH THE
7 SAME SITUATION.

8 Q. WHY, THERE IS NOTHING ABOUT
9 MECHANISM?

10 A. WELL, I THINK AS I DESCRIBED
11 YESTERDAY, THERE WAS A PHARMACOLOGICAL DEFINITION
12 THAT WAS MOST WIDELY HELD ON ADDICTION, THAT WE DID
13 NOT THINK AT THE TIME WAS AN ACCURATE DESCRIPTION
14 OF SMOKING, AND THE DEPENDENCE THAT PEOPLE HAD ON
15 SMOKING. AS WE HAVE COME TO REALIZE THAT ADDICTION
16 IS USED IN A MUCH BROADER SENSE AND THAT THE
17 DEFINITION IS ACCEPTED IN A MUCH BROADER SENSE, WE
18 BELIEVE THAT OUR PRODUCT CERTAINLY FITS THAT
19 DESCRIPTION, AND THEREFORE, WE CHANGED OUR
20 POSITION.

21 Q. SO THE SECOND QUESTION IS WHAT'S
22 CHANGED?

23 A. WELL, I THINK -- I THINK A MUCH
24 BROADER UNDERSTANDING OF THE QUALITIES THAT COULD
25 BE DESCRIBED AS ADDICTIVE. AND I THINK THAT EVEN
26 SOCIETY HAS CHANGED ITS OPINION OF WHAT THINGS ARE
27 ADDICTIVE AND I THINK THAT PRIOR TO THAT CHANGE, WE
28 WERE THINKING MORE IN TERMS OF THE PHARMACOLOGICAL

1 EFFECTS THAT YOU WOULD GET FROM USING HARD DRUGS
2 AND THE DEPENDENCE, ET CETERA.

3 WE DIDN'T THINK THAT THAT WAS AN
4 APPROPRIATE DESCRIPTION OF SMOKING. AS I SAY, I
5 THINK THAT TODAY, GIVEN THE DEFINITION THAT IS MOST
6 COMMONLY ACCEPTED BY SOCIETY, BY THE PUBLIC HEALTH
7 COMMUNITY, ET CETERA, OUR PRODUCT FALLS UNDER THAT
8 DEFINITION.

9 Q. SO, AGAIN, SCIENCE HAS NOT CHANGED;
10 RIGHT?

11 A. SCIENCE HAS NOT CHANGED, BUT I DO
12 BELIEVE THAT THE COMMONLY UNDERSTOOD OR ACCEPTED
13 DEFINITION OF ADDICTION HAS CHANGED OVER THE YEARS.
14 EVEN THE SURGEON GENERAL CAME TO IT LATER THAN HE
15 DID ON CAUSATION, ET CETERA.

16 Q. 1988?

17 A. YES.

18 Q. SIX YEARS BEFORE YOUR MAN GOT UP
19 BEFORE CONGRESS AND SAID THE OPPOSITE; RIGHT?

20 A. WELL, AGAIN, AS I SAID, WE WERE --
21 WE WERE USING A DEFINITION THAT WAS A TECHNICAL
22 DEFINITION OF ADDICTION AND WE HAVE REALIZED THAT
23 THERE IS A MORE COMMONLY ACCEPTED DEFINITION AND WE
24 BELIEVE THAT OUR PRODUCT DEFINITELY FALLS UNDER IT.

25 Q. AS TO BOTH OF THESE AREAS THAT YOU
26 NOW ADMIT ON YOUR WEB SITE IN 2001 THAT YOUR
27 PRODUCT CAUSES LUNG CANCER AND THAT YOUR PRODUCT IS
28 ADDICTIVE, IN BOTH SITUATIONS, YOUR ANSWERS HAVE

1 BEEN THAT YOU DIDN'T CHANGE YOUR POSITION DUE TO
2 SCIENCE, YOU CHANGED YOUR POSITION TO BE IN TUNE
3 WITH THE PEOPLE, IS THAT A PRETTY GOOD PARAPHRASE
4 OF WHAT YOU ARE SAYING?

5 A. I BELIEVE IT IS A MORE REASONABLE
6 POSITION TO TAKE ABOUT OUR PRODUCT, YES.

7 Q. FINE.

8 DO YOU BELIEVE THE POSITION YOU
9 WERE TAKING ABOUT YOUR PRODUCT AS FAR AS CAUSING
10 SERIOUS DISEASE, LUNG CANCER AND DEATH IS
11 UNREASONABLE?

12 A. I AM NOT --

13 Q. DO YOU BELIEVE THAT THE POSITION
14 YOUR COMPANY WAS TAKING ABOUT YOUR PRODUCT CAUSING
15 SERIOUS DISEASE, LUNG CANCER AND DEATH WAS
16 UNREASONABLE?

17 A. THE POSITION THAT WE ARE TALKING
18 THAT IT DOES --

19 Q. FORMER?

20 A. DO I WISH, I GUESS, DO I WISH THAT
21 WE CHANGED OUR POSITION SOONER? THE ANSWER IS YES.

22 Q. NO. DO YOU BELIEVE THAT YOUR
23 FORMER POSITION THAT YOUR COMPANY TOOK THAT YOUR
24 PRODUCT CAUSED SERIOUS DISEASE, LUNG CANCER AND
25 DEATH WAS UNREASONABLE?

26 A. I THINK IT WAS INCOMPLETE.

27 Q. WAS IT UNREASONABLE?

28 A. I DON'T KNOW IF IT WAS

1 UNREASONABLE. I THINK IT WAS ACCURATE. BUT IT WAS
2 INCOMPLETE. AND I WISH THAT WE HAD CHANGED OUR
3 POSITION MUCH SOONER.

4 Q. DO YOU BELIEVE THAT THE POSITION
5 YOUR COMPANY TOOK WITH REGARD TO ITS PRODUCT BEING
6 ADDICTIVE WAS UNREASONABLE?

7 A. I WON'T SAY THAT IT WAS
8 UNREASONABLE. I THINK WE COULD HAVE CHANGED OUR
9 POSITION TO ACKNOWLEDGE THE BROADER DEFINITION OF
10 ADDICTION SOONER THAN WE DID, BUT I WOULD NOT SAY
11 IT WAS UNREASONABLE BASED ON WHAT WAS THE MOST
12 COMMONLY HELD DEFINITION OF THE WORD ADDICTION.

13 Q. IF YOUR POSITION WAS INCOMPLETE AND
14 IF WHAT YOU WERE TELLING THE PUBLIC WAS INCOMPLETE,
15 DON'T YOU THINK THE PUBLIC, BEFORE BUYING YOUR
16 PRODUCT, HAS A RIGHT TO COMPLETE INFORMATION?

17 A. YES, AND I BELIEVE THE PUBLIC WAS
18 GETTING COMPLETE INFORMATION FROM THE WARNINGS THAT
19 APPEARED ON ALL OF OUR PRODUCTS.

20 I THINK THAT THE PUBLIC WAS GETTING
21 COMPLETE INFORMATION FROM THE SURGEON GENERAL, FROM
22 THE PUBLIC HEALTH COMMUNITY, FROM THE AMERICAN
23 CANCER SOCIETY, FROM THE AMERICAN LUNG ASSOCIATION,
24 FROM ANY NUMBER OF PUBLIC HEALTH AND GOVERNMENT
25 SOURCES ON THE PRODUCT. AND, IN FACT, IN
26 CALIFORNIA, AS YOU WELL KNOW, YOU ALLUDED TO, THERE
27 HAVE BEEN ANTI-SMOKING MESSAGES FOR YEARS THAT HAVE
28 BEEN VERY AGGRESSIVE ON THE PRODUCT.

1 Q. AND SO DON'T YOU THINK, JUST IN
2 CASE MYRON LEVINE HAS IT RIGHT HERE, DON'T YOU
3 THINK THAT JUST IN CASE HE HAS IT RIGHT, THAT YOUR
4 COMPANY'S ABSOLUTE DENIALS OF THE ILL-EFFECTS OF
5 SMOKING, THE SCATHING ATTACKS ON THE SURGEON
6 GENERAL, MIGHT HAVE SOWN A LITTLE CONFUSION WITH
7 SOME MEMBERS OF THE CONSUMING PUBLIC?

8 MR. LEITER: OBJECTION, ASSUMING FACTS,
9 AND IT CALLS FOR SPECULATION.

10 THE COURT: ON THE ASSUMING, SUSTAINED.

11 MR. PIUZE: WELL, YOUR HONOR, GIVEN --

12 THE COURT: SHE DOESN'T AGREE WITH THE
13 CHARACTERIZATION.

14 MR. PIUZE: OKAY. FAIR ENOUGH.

15 Q BY MR. PIUZE: SO BACK TO THAT
16 SIGN THERE. I GOT YOU AT A DISADVANTAGE, IT SAYS
17 "CREATING DOUBT ABOUT -- "

18 A. I KNOW WHAT IT SAYS.

19 Q. AND MR. LEVINE ALLUDED TO THIS VERY
20 QUOTATION IN HIS ARTICLE, TOO, DIDN'T HE?

21 MR. LEITER: OBJECTION, CALLS FOR
22 SPECULATION.

23 MR. PIUZE: WELL, HERE, I WILL SHOW YOU.

24 Q BY MR. PIUZE: HERE, RIGHT DOWN
25 HERE BETWEEN THE YELLOW:

26 "AND WHILE MEYERS SAYS IT
27 WAS GOOD THAT THE FIRM IS
28 ACKNOWLEDGING THE RISK OF ITS PRODUCT,

1 HE SAID HE WAS NOT ATTEMPTING TO ATONE
2 FOR ITS DECADES-LONG CAMPAIGN, 'TO SOW
3 DOUBT ABOUT THE HEALTH EFFECTS, ' OF
4 SMOKING. "

5 ANYWAY, DO YOU THINK THAT YOUR
6 COMPANY HAS AN OBLIGATION TO PROVIDE ITS BEST
7 INFORMATION ABOUT THE RISKS OF ITS PRODUCTS TO ITS
8 CONSUMERS?

9 MR. LEITER: OBJECTION, MOTION IN LIMINE
10 AREA.

11 MR. PIUZE: I AM GOING TO WITHDRAW THAT
12 QUESTION.

13 THE COURT: NO, YOU CAN ASK IT. YOU CAN
14 WITHDRAW IT IF YOU WANT TO.

15 MR. PIUZE: I AM

16 THE COURT: I DID NOT RULE YOU CAN'T ASK
17 IT.

18 MR. PIUZE: THANK YOU, YOUR HONOR.

19 Q BY MR. PIUZE: PRIOR TO 1970, SO
20 THIS GIVES YOU ONLY ONE YEAR ON THE JOB, PRIOR TO
21 1970, DO YOU THINK YOUR COMPANY, PHILIP MORRIS, HAD
22 AN OBLIGATION TO WARN ITS CUSTOMERS ABOUT THE RISKS
23 OF WHICH IT HAD KNOWLEDGE?

24 A. WELL, I THINK THAT MY COMPANY WE
25 SAW THE INFORMATION, AS I SAY, IN AN INCOMPLETE
26 WAY, AS IT UNDERSTOOD THE SCIENCE AT THE TIME.
27 THERE WERE ALREADY WARNINGS ON THE PACKS, SO I
28 BELIEVE THAT THERE WAS WARNING TO THE PUBLIC, AND

1 CERTAINLY BY THE TIME I CAME TO WORK FOR PHILIP
2 MRRIS, THROUGH WARNINGS, THROUGH THE SURGEON
3 GENERAL'S REPORT, WHICH WAS A VERY BIG DEAL, I
4 WASN'T AT PHILIP MRRIS AT THE TIME, BUT I WAS
5 AWARE OF IT WHEN IT CAME OUT.

6 SO I BELIEVE THAT WHAT IS SAID
7 ABOUT THE PRODUCT SHOULD BE DETERMINED BY THE
8 GOVERNMENT, BY THE PUBLIC HEALTH COMMUNITY WHICH IS
9 WHAT THOSE WARNINGS REPRESENT.

10 Q. THE QUESTION WAS, DO YOU BELIEVE
11 YOUR COMPANY, PRIOR TO 1970, HAD A DUTY TO WARN ITS
12 CUSTOMERS ABOUT THE RISKS OF WHICH IT WAS AWARE?

13 A. WHAT I BELIEVE --

14 MR. LEITER: YOUR HONOR, I AM SORRY, I
15 WANT TO OBJECT AND CLARIFY WE ARE NOT ASKING FOR A
16 LEGAL CONCLUSION FROM THIS WITNESS.

17 THE COURT: WELL, IT IS NOT BEING ASKED
18 IN A LEGAL SENSE AND IT GOES TO --

19 THE WITNESS: I AM SORRY.

20 Q BY MR. PIUZE: DO YOU BELIEVE THAT
21 YOUR COMPANY, PRIOR TO 1970, HAD A DUTY TO WARN ITS
22 CUSTOMERS OF THE HEALTH RISKS OF WHICH IT WAS
23 AWARE?

24 A. I DON'T KNOW THAT I CAN MAKE THAT
25 STATEMENT. I THINK THAT MY COMPANY SHARED
26 INFORMATION ABOUT THE PRODUCT BASED ON THE
27 KNOWLEDGE THAT IT HAD AT THAT TIME AND ALSO WAS
28 PART OF WHAT WAS OUT THERE IN THE PUBLIC FROM THE

1 SURGEON GENERAL AND OTHERS. SO THERE WAS A LOT OF
2 INFORMATION ABOUT THE HEALTH RISKS ASSOCIATED WITH
3 OUR PRODUCT.

4 Q. OKAY. THANK YOU.

5 THIS IS THE LIFE SKILLS TRAINING,
6 L. S. T. EVALUATION FACT SHEET. WE TALKED ABOUT
7 THAT; RIGHT?

8 A. YES.

9 Q. WE TALKED ABOUT SOME SORT OF
10 FOLLOW-UP'S THEY DO HERE; RIGHT?

11 A. FOLLOWUP, I AM SORRY, I AM NOT
12 UNDERSTANDING WHAT YOU MEAN.

13 Q. WHAT IS THIS?

14 A. WELL, I CAN'T READ THAT PARAGRAPH.

15 Q. YOU DON'T HAVE TO READ IT.

16 WHAT IS LIFE SKILLS TRAINING?

17 A. LIFE SKILLS TRAINING, AS WE
18 DISCUSSED YESTERDAY, IS A SCHOOL-BASED CURRICULUM
19 THAT WAS DEVELOPED BY A PROFESSOR FROM STANFORD
20 UNIVERSITY THAT IS IN THE PUBLIC SCHOOLS USUALLY
21 FROM GRADE SIX THROUGH NINE. IT'S A THREE-YEAR
22 PROGRAM THAT FOCUSES ON HELPING KIDS TO MAKE GOOD
23 DECISIONS AND TO AVOID RISKY BEHAVIORS LIKE
24 SMOKING, DRINKING, TAKING DRUGS, ET CETERA.

25 Q. OKAY.

26 AND IN ORDER FOR THEM TO GET THEIR
27 RESULTS, THEY HAVE TO FOLLOWUP WITH THE SAME GROUP
28 OF KIDS TO SEE HOW THINGS ARE GOING; RIGHT?

1 A. THEY HAVE -- THE C. D. C. HAS
2 EVALUATED THIS PROGRAM, THE CENTERS FOR DISEASE
3 CONTROL, AND THIS IS THEIR REPORT.

4 Q. AND PART OF THE PROGRAM IS THEY
5 FOLLOWUP WITH THESE KIDS TO SEE WHAT IMPACT THESE
6 MESSAGES ARE HAVING?

7 A. YES.

8 Q. ANYWAY, THAT GETS ME TO BACK IN
9 1954, AND I WILL TELL YOU NOW, I KNOW YOU WEREN'T
10 THERE IN '54 AND I KNOW YOU ARE IN MARKETING. SO
11 IF YOU WOULD GIVE -- THIS WAS JUST MY SCRAWL, IF
12 YOU FEEL UNCOMFORTABLE WITH THIS AREA OF
13 QUESTIONING, I WILL JUST MOVE RIGHT ON. BUT WHY
14 NOT DO, WHY NOT PHILIP MORRIS DO CONTINUING STUDIES
15 OF ITS CUSTOMERS, STARTING BACK AROUND 1954, TO SEE
16 WHETHER OR NOT THERE WAS SOMETHING TO THIS LUNG
17 CANCER BEING CAUSED BY CIGARETTES ACCUSATION OR
18 NOT?

19 MR. LEITER: OBJECTION, CALLS FOR
20 SPECULATION, CALLS FOR EXPERT TESTIMONY ABOUT
21 SCIENTIFIC MATTERS.

22 MR. PIUZE: HE IS RIGHT. I WITHDRAW IT.
23 I APOLOGIZE.

24 THE COURT: ALL RIGHT.

25 Q BY MR. PIUZE: CAN YOU SEE THE
26 YELLOW, CAN YOU READ THAT "12 MAJOR EVALUATION
27 STUDIES HAVE BEEN CONDUCTED WITH A VARIETY OF
28 PROVIDERS AND POPULATIONS TO TEST THE EFFECTIVENESS

1 OF L. S. T. FINDINGS FROM THESE STUDIES INDICATE
2 THAT L. S. T. CAN REDUCE SMOKED TOBACCO USE, " AS
3 OPPOSED TO CHEWED TOBACCO?

4 A. I BELIEVE THAT'S WHAT IT MEANS,
5 YES.

6 Q. "BY UP TO 87 PERCENT AND THE USE OF
7 ALCOHOL AND OTHER DRUGS BY UP TO 80 PERCENT. "

8 NOW, GIVEN THE FACT THAT YOUR
9 SMOKING CUSTOMERS, WHETHER IT IS 80 PERCENT OF THEM
10 OR 90 PERCENT OF THEM OR JUST A WHOLE HECK OF A LOT
11 OF THEM START OUT SMOKING AS TEENAGERS, AND THAT IF
12 THEY DON'T START SMOKING AS TEENAGERS THEY DON'T
13 START SMOKING, IF THIS PROGRAM IS AS GOOD AS IT
14 SAYS IT IS, AND IF THIS PROGRAM BECOMES
15 WIDE-SPREAD, WHAT NEW BUSINESS IS PHILIP MORRIS
16 GOING TO GO INTO?

17 MR. LEITER: I AM GOING TO OBJECT TO THE
18 CHARACTERIZATION OF WHAT IS A FACT.

19 THE COURT: SUSTAINED.

20 Q BY MR. PIUZE: WHAT NEW BUSINESS
21 WILL PHILIP MORRIS GO INTO?

22 THE COURT: SUSTAINED. SPECULATIVE.

23 Q BY MR. PIUZE: WHEN YOU -- LET'S
24 JUST BRIEFLY, JUST RETRACE WHAT'S HAPPENED TO
25 PHILIP MORRIS SINCE YOU HAVE BEEN THERE. OKAY.

26 A. OKAY.

27 Q. HERE WE GO.

28 1969, IF I REMEMBER CORRECTLY, YOU

1 ARRIVED IN MONTREAL, WITHIN A YEAR, YOU ARE IN NEW
2 YORK CITY, AT THAT TIME, PHILIP MORRIS OWNS TOBACCO
3 COMPANY, MAYBE 7-UP?

4 A. NOT 7-UP YET, NO. WE ACQUIRED 7-UP
5 IN THE MID-70'S. WE OWNED A RAZOR BLADE, PERSONA
6 BLADES AND CLARKE GUM AND PERMA-SHAVE, A FEW OTHER
7 SMALL COMPANIES AT THAT TIME.

8 Q. I AM GOING TO BE MAKING A POINT
9 HERE ON HOW IT HAS GROWN SO THIS IS YOUR
10 OPPORTUNITY TO TELL US EVERYTHING IT HAD AS OF '69.

11 A. AS I RECALL, THAT'S WHAT IT HAD.

12 MR. LEITER: I AM GOING TO OBJECT.

13 THE COURT: VERY WELL, JUST ASK THE
14 QUESTIONS.

15 Q BY MR. PIUZE: RAZOR BLADES,
16 PERMA-SHAVE AND CLARKE GUM AND TOBACCO; RIGHT?

17 MR. LEITER: AND I AM ALSO GOING TO
18 OBJECT, THIS WHOLE AREA HAS BEEN ASKED AND ANSWERED
19 REPEATEDLY.

20 THE COURT: OVERRULED.

21 Q BY MR. PIUZE: RIGHT?

22 A. THAT'S MY RECOLLECTION, YES.

23 Q. SINCE YOU HAVE BEEN THERE, WHAT HAS
24 IT BOUGHT?

25 A. WELL, AS I SAID, WE ACQUIRED 7-UP,
26 ALTHOUGH WE HAVE SINCE SOLD IT. WE ACQUIRED MILLER
27 BREWING COMPANY, WHICH WE STILL OWN. WE ACQUIRED
28 GENERAL FOODS. WE ACQUIRED KRAFT FOODS, A COMPANY

1 CALLED JACOBSUCHARD, J-A-C-O-B-S-U-C-H-A-R-D, WHICH
2 IS A CONFECTIONARY, THEY MAKE TOBLRIONE (PHONETIC)
3 AND OTHER CONFECTIONARY PRODUCTS. AND MOST
4 RECENTLY WE ACQUIRED NABISCO.

5 Q. NOW, THIS IS -- TELL ME AGAIN WHAT
6 THIS DOCUMENT IS.

7 A. IT'S OUR MISSION, OUR MISSION
8 STATEMENT.

9 Q. I AM ON THE NEXT TO LAST ONE.
10 SINCE WHEN?

11 A. WELL, OVER THE YEARS, PHILIP MORRIS
12 HAS MET WITH GOVERNMENT OFFICIALS, THAT'S NOT
13 ANYTHING NEW TO US.

14 WE HAVE ALWAYS BEEN INVOLVED IN
15 CIVIC, IN GOVERNMENT RELATIONS AND WE HAD DIALOGUE,
16 I THINK, THAT THE TONE OF THAT DIALOGUE, OVER THE
17 PAST FIVE, SIX, YEARS, MAYBE A LITTLE BIT LONGER,
18 HAS STARTED TO CHANGE. AND I THINK IT'S BECOME
19 SOMEWHAT MORE COLLABORATIVE. FOR INSTANCE, RIGHT
20 NOW, WE ARE ADVOCATING F. D. A. REGULATION OF OUR
21 INDUSTRY AND WE ARE MEETING WITH PEOPLE TO TALK
22 ABOUT THAT AND TO ADVOCATE MORE REGULATION OF THE
23 INDUSTRY.

24 Q. PHILIP MORRIS NOW WANTS TO BE
25 REGULATED; IS THAT CORRECT?

26 A. WELL, WE ARE REGULATED. WE ALREADY
27 ARE REGULATED. THERE ARE AGREEMENTS THAT WE HAVE,
28 AS WE TALKED EARLIER WITH THE STATES' ATTORNEYS

1 GENERAL, THERE HAS ALWAYS BEEN REGULATION THROUGH
2 THE F. T. C. AND OTHER GOVERNMENT AGENCIES OF OUR
3 BUSINESS. BUT, YES, WE WOULD LIKE TO SEE EVEN MORE
4 REGULATION.

5 Q. I ASKED A BAD QUESTION AND I
6 APOLOGIZE.

7 PHILIP MORRIS NOW WANTS F. D. A.
8 REGULATION?

9 A. WE ARE ADVOCATING F. D. A.
10 REGULATION, YES.

11 Q. AND THIS IS A 180-DEGREE EXACT
12 OPPOSITE CHANGE OF POSITION PHILIP MORRIS HAS?

13 A. WELL, NOT EXACTLY. IN FACT, BACK
14 IN 1996, PHILIP MORRIS, TOGETHER WITH U. S. T. ,
15 CHEWING, U. S. TOBACCO, CHEWING TOBACCO COMPANY,
16 SUBMITTED SOMETHING CALLED A BLUEPRINT FOR FEDERAL
17 REGULATION WHERE WE WERE ADVOCATING BACK THEN THAT
18 THERE BE A REGULATORY SCHEME TO REGULATE THE
19 INDUSTRY.

20 SO THAT IS NOT NEW AT ALL.

21 Q. WELL, IT'S NOT NEW SINCE 1966, BUT
22 I ASKED ANOTHER BAD QUESTION.

23 THAT'S 180-DEGREE EXACT OPPOSITE
24 CHANGE OF PHILIP MORRIS'S POSITION BEFORE THE
25 1990'S; RIGHT?

26 A. LOOK, WE AGREED, YOU KNOW, BACK IN
27 1970 TO TAKE OUR ADS OFF TELEVISION. WE HAVE
28 AGREED TO A LOT OF THINGS OVER THE YEARS.

1 IS THIS LEVEL OF REGULATION A
2 CHANGE, I WOULD SAY, YES.

3 Q. I APOLOGIZE FOR WALKING AWAY FROM
4 YOU. JUST GIVE ME ONE MINUTE TO FIND ONE DOCUMENT.
5 HERE, THIS IS 207. WE TALKED ABOUT
6 IT ALREADY. AND LET' S JUST TALK ABOUT IT IN A
7 SLIGHTLY DIFFERENT LIGHT HERE.

8 PHILIP MORRIS TRADITIONALLY,
9 MEANING UP UNTIL RECENTLY, WAS CONCERNED ABOUT THE
10 DANGEROUS F. D. A. IMPLICATIONS OF REGULATION BECAUSE
11 IT WAS SELLING A DRUG; RIGHT?

12 A. OBJECT TO THE CHARACTERIZATION OF
13 THE DOCUMENT.

14 THE COURT: OVERRULED. HE HAS JUST GOT
15 IT UP THERE. HE IS ASKING HER QUESTIONS.

16 THE WITNESS: PHILIP MORRIS HAS, LET ME
17 BE ACCURATE IN WHAT I AM SAYING HERE. PHILIP
18 MORRIS IS ADVOCATING F. D. A. REGULATION. BUT WE
19 BELIEVE THAT OUR PRODUCT SHOULD BE REGULATED AS
20 WHAT IT IS, WHICH IS A TOBACCO PRODUCT, AN
21 AGRICULTURALLY BASED PRODUCT AND NOT BE REGULATED
22 AS A MEDICAL DEVICE, WHICH IS SOMETHING THAT F. D. A.
23 HAS INDICATED THEY WANT TO DO IN THE PAST BECAUSE
24 WE BELIEVE THAT THAT IS UNREALISTIC AND
25 UNATTAINABLE AND IS NOT AN APPROPRIATE WAY TO
26 REGULATE OUR PRODUCT.

27 SO IN TERMS OF REGULATING THE
28 PRODUCT AS A CIGARETTE OR AS A TOBACCO PRODUCT OR

1 AN AGRICULTURALLY BASED PRODUCT, WE ARE ADVOCATING.

2 HAVE WE ALWAYS, THE ANSWER IS NO.

3 Q. THANK YOU.

4 SO YOUR CHANGE IN POSITION IS
5 ANOTHER MID-90'S THING; RIGHT?

6 A. I THINK EARLY TO MID-90'S WOULD BE
7 ACCURATE.

8 Q. THAT'S THE LAST ONE I AM GOING TO
9 SHOW

10 SO THIS IS CORE VALUES. WHAT'S THE
11 DIFFERENCE BETWEEN MISSION AND CORE VALUES?

12 A. WELL, MISSION IS WHAT YOU WANT TO
13 ACHIEVE, KIND OF WHAT YOUR OVERRIDING GOAL IS AND
14 THEN THERE ARE, ON THE OTHER SIDE OF THAT, YOU SAW
15 SOME SUBGOALS AS HOW WE THINK WE CAN ATTAIN WHAT WE
16 CALL OUR MISSION OF RESPONSIBILITY AND YOUR CORE
17 VALUES IS HOW YOU DO IT. HOW YOU ACT, HOW YOU
18 CONDUCT YOURSELF, SO THE MISSION IS THE WHAT AND
19 THE CORE VALUES IS THE HOW

20 Q. OKAY. SO WHEN DID THE CORE VALUES
21 COME INTO BEING?

22 A. WELL, MANY OF THE VALUES WERE
23 VALUES THAT PHILIP MORRIS HAD ALWAYS HAD AS A
24 CORPORATION.

25 Q. SUCH AS?

26 A. WELL, I THINK WE ALWAYS WERE
27 A COMPANY THAT OPERATED WITH INTEGRITY.

28 I THINK WE WERE ALWAYS A COMPANY

1 THAT TRIED TO DEMONSTRATE A PASSION TO SUCCEED,
2 THAT BELIEVED IN EXECUTING WITH QUALITY, SHARING
3 WHAT WE TRIED TO DO WAS TO CAPTURE ALL OF THE
4 VALUES THAT WE FELT PEOPLE HAD TO UNDERSTAND OR THE
5 EXPECTATION AND TO CAPTURE THEM IN ONE PLACE THAT
6 PEOPLE COULD UNDERSTAND EXACTLY WHAT WAS EXPECTED
7 OF THEM AND NOTHING WAS LEFT TO INTERPRETATION.

8 Q. INTEGRITY; ALWAYS HAD THAT?

9 A. I BELIEVE WE OPERATED WITH
10 INTEGRITY, YES.

11 Q. TRUST?

12 A. I AM NOT SURE WE ALWAYS HAD TRUST.
13 I THINK THAT PROBABLY WAS PART OF THE PROBLEM THAT
14 WE DIDN'T TRUST ENOUGH.

15 Q. THAT YOU DIDN'T TRUST ENOUGH?

16 A. YES, THAT WE WERE NOT TRUSTING,
17 THAT WE WERE INWARD-LOOKING, THAT WE WERE
18 DEFENSIVE.

19 I THINK, IN ORDER TO TRUST, YOU
20 CAN'T BE DEFENSIVE AND WE WERE DEFENSIVE AND WE
21 WERE CLOSED OFF. SO I WOULD SAY THAT TRUST WASN'T
22 ONE OF OUR CORE VALUES.

23 Q. SO ALWAYS HAD INTEGRITY, HAVEN'T
24 ALWAYS HAD TRUST. WHAT ABOUT RESPECT?

25 A. I BELIEVE WE HAVE ALWAYS TRIED TO
26 BE RESPECTFUL OF INDIVIDUALS. IN THE WAY WE DID
27 OUR BUSINESS, RESPECTFUL OF THE LAWS THAT WE NEEDED
28 TO OBEY. I BELIEVE THERE WAS A MUTUAL RESPECT

1 AMONG US. I AM NOT SURE THAT'S ALL THAT NEW

2 Q. WHAT'S -- WHAT DO YOU MEAN BY
3 MUTUAL RESPECT?

4 A. WELL, MUTUAL RESPECT IS RESPECTING
5 EACH OTHER, RESPECTING OTHER PEOPLE, RESPECTING
6 PEOPLE'S RIGHTS, RESPECTING DIVERSITY, RESPECTING A
7 BROAD RANGE OF TOPICS IN SOCIETY.

8 IT'S JUST A GENERAL RESPECT FOR
9 OTHER PEOPLE, OTHER THOUGHTS.

10 Q. LET ME NARROW IT DOWN.
11 HOW ABOUT RESPECT FOR YOUR
12 CUSTOMERS, DO YOU THINK YOU ALWAYS HAD RESPECT FOR
13 YOUR CUSTOMERS, THE PEOPLE THAT WERE PAYING THE
14 MONEY THAT WERE BUILDING THE EMPIRE?

15 A. I THINK WE RESPECTED OUR CUSTOMERS,
16 YES.

17 Q. DO YOU THINK THAT THERE WAS A
18 MUTUAL RESPECT?

19 A. I CAN'T SPEAK FOR HOW OUR CUSTOMERS
20 FELT ABOUT US. I CAN ONLY TALK ABOUT HOW I BELIEVE
21 WE FELT ABOUT OUR CUSTOMERS.

22 Q. OKAY. TELL US. HOW DID YOU FEEL?
23 THIS IS SMOKING ONLY, MARLBOROS -- WELL, FORGET
24 MARLBOROS. THIS IS SMOKING ONLY, TOBACCO ONLY.
25 HOW DID YOU FEEL ABOUT YOUR CUSTOMERS?

26 A. COULD YOU BE MORE -- I MEAN, MORE
27 SPECIFIC. WE VALUED OUR CUSTOMERS. WE RESPECTED
28 THEIR CHOICE.

1 Q. YOU USED THE TERM "MUTUAL RESPECT,"
2 IF I TOLD YOU SOME OF YOUR CUSTOMERS TRULY
3 RESPECTED YOUR ORGANIZATION, YOU WOULDN'T DOUBT
4 THAT, WOULD YOU?

5 A. NO.

6 Q. IF I TOLD YOU THAT SOME OF YOUR
7 CUSTOMERS TRULY RESPECTED THE FACT THAT IF YOUR
8 LEADER, LET'S SAY, CAMPBELL, FOR THE SAKE OF
9 ARGUMENT, SAID SOMETHING, THAT BECAUSE OF HIS
10 POSITION IN SOCIETY, AS THE C. E. O. OF A GIGANTIC
11 CORPORATION, THAT HE SHOULD BE RESPECTED BACK, THAT
12 WOULDN'T SURPRISE YOU, WOULD IT?

13 A. THAT HE SHOULD BE RESPECTED, NO.

14 Q. IF I TOLD YOU THAT AT LEAST ONE OF
15 YOUR CUSTOMERS SOMEPLACE HERE IN THE UNITED STATES
16 ACTUALLY TRUSTED WHAT YOUR LEADERS HAD TO SAY, THAT
17 WOULDN'T SURPRISE YOU, WOULD IT?

18 A. I CAN'T GET INTO THE MIND OF EVERY
19 ONE OF OUR CUSTOMERS TO KNOW WHAT THEY RESPECT AND
20 WHAT THEY DON'T RESPECT. I CAN SPEAK ON BEHALF OF
21 WHAT I BELIEVE THAT PEOPLE KNOW BUT I CAN'T SPEAK
22 ON BEHALF OF HOW OTHERS FEEL AND HOW THEY RESPOND
23 TO THINGS.

24 Q. YOU WERE TALKING ABOUT MUTUAL
25 RESPECT AND THAT'S WHERE I AM

26 A. WELL, I WAS ALSO TALKING ABOUT
27 MUTUAL RESPECT FOR EACH OTHER AND THE COMPANY,
28 RESPECT FOR DIVERSITY, RESPECT FOR CHOICE.

1 Q. LET'S TALK ABOUT RESPECT FOR YOUR
2 CUSTOMER, AND MAYBE YOUR CUSTOMER'S RESPECT BACK.

3 IF I TOLD YOU THAT THERE WAS AT
4 LEAST ONE CUSTOMER HERE IN AMERICA WHO LISTENED TO
5 WHAT YOUR C. E. O. SAID AND BELIEVED IT, WOULD THAT
6 SURPRISE YOU?

7 A. AGAIN, I CAN'T SPEAK ON WHAT
8 SOMEONE BELIEVED AND DIDN'T BELIEVE BECAUSE THERE
9 WAS A LOT -- LOOK, THERE WAS A LOT OF INFORMATION
10 OUT THERE THAT NEEDS TO BE WEIGHED AND CONSIDERED
11 AND I CAN'T, I CAN'T GET INTO SOMEBODY ELSE'S MIND
12 AND SAY THIS IS WHAT THEY DID OR DID NOT BELIEVE OR
13 ACCEPT OR TRUST. I MEAN, YOU ARE ASKING ME TO
14 SPECULATE, I CAN'T.

15 Q. NO. I AM NOT ASKING YOU TO
16 SPECULATE ABOUT ANY GIVEN INDIVIDUAL. I HAVEN'T
17 NAMED ANY NAMES. I HAVEN'T EVEN TOLD YOU WHAT THEY
18 LISTENED TO. I AM JUST SAYING, WOULD IT SURPRISE
19 YOU, ON THE ISSUE OF MUTUAL RESPECT, THAT SEEING
20 THAT YOU RESPECTED YOUR CUSTOMERS, AS YOU SAID YOU
21 DID?

22 A. YES.

23 Q. WOULD IT SURPRISE YOU THAT YOUR
24 CUSTOMERS RESPECTED YOU BACK ENOUGH TO ACTUALLY
25 LISTEN TO WHAT THE CHIEF EXECUTIVE OFFICER OF YOUR
26 CORPORATION WAS SAYING?

27 A. NO, IT WOULDN'T SURPRISE ME.

28 Q. OKAY. SO THE INTEGRITY HAS BEEN

1 THERE, THE RESPECT HAS BEEN THERE BUT THE TRUST
2 MAYBE HASN' T; RIGHT?

3 A. YEAH, I THINK THAT' S AN ACCURATE
4 THING TO SAY.

5 Q. DO YOU KNOW WHO DR. OSDENE IS?

6 A. I KNOW WHO HE IS, I DON' T KNOW
7 DR. OSDENE.

8 Q. CERTAINLY YOU ARE AWARE OF THE FACT
9 THAT HE' S WRITTEN MEMOS THAT ARE IN EVIDENCE IN
10 THIS VERY TRIAL ABOUT DESTROYING DOCUMENTS?

11 A. I HAVEN' T READ THE TRANSCRIPT OF
12 THIS TRIAL. BUT I KNOW THAT DR. OSDENE HAS WRITTEN
13 MEMOS, YES.

14 Q. WELL, ONE OF THEM WAS TO CAROLYN
15 LEVY, WE JUST SHOWED IT YESTERDAY?

16 MR. LEITER: OBJECTION, MISCHARACTERIZES
17 THE DOCUMENT.

18 Q BY MR. PIUZE: THAT' S TRUE. ONE
19 OF THEM CONCERNED CAROLYN LEVY' S STUDY -- I
20 APOLOGIZE -- AND WE JUST TALKED ABOUT IT YESTERDAY;
21 RIGHT?

22 A. YES.

23 Q. IF THE STUDY TURNS OUT WRONG, BURY
24 IT; RIGHT?

25 A. THAT' S WHAT THAT SAYS. BUT THAT
26 WAS NOT OUR DOCUMENT RETENTION POLICY, NEVER HAS
27 BEEN, ISN' T TODAY AND THERE IS A REPOSITORY IN
28 MINNESOTA WITH HUNDREDS OF MILLIONS OF DOCUMENTS

1 THAT GOES RIGHT TO THAT POINT, THAT PHILIP MORRIS
2 HAS A VERY STRICT DOCUMENT RETENTION POLICY.

3 Q. THAT DEPOSITORY IN MINNESOTA WITH
4 HUNDREDS OF MILLIONS OF DOCUMENTS WAS FORCED UPON
5 YOU BY THE STATES' ATTORNEY GENERAL, WASN'T IT?

6 A. YES. BUT THE FACT IS THE DOCUMENTS
7 EXIST BECAUSE WE RETAINED THEM NO ONE HAD TO GO
8 ANYWHERE TO FIND THE DOCUMENTS. THEY WERE ALL IN
9 OUR FILES. WE DO RETAIN YOUR DOCUMENTS AND WE HAVE
10 A VERY STRICT DOCUMENT RETENTION POLICY.

11 Q. YES. THE ONLY DOCUMENTS THAT CAN
12 BE LINED UP IN MINNESOTA ARE THE ONES THAT ARE
13 ACTUALLY FOUND; RIGHT?

14 A. WELL, AS I SAY, THERE WERE HUNDREDS
15 OF MILLIONS OF THEM

16 Q. DR. OSDENE --

17 A. INCLUDING THAT ONE.

18 Q. I KNOW

19 "THERE ARE ONLY TWO COPIES OF THIS
20 MEMO, THE ONE ATTACHED AND THE ORIGINAL. "

21 A. AND AT LEAST ONE OF THEM WAS IN THE
22 FILE, BECAUSE IT'S THERE AND IT WAS, IT'S BEEN
23 PRODUCED.

24 SO IT WAS KEPT. AS IS OUR POLICY
25 TO KEEP AT LEAST ONE COPY OF EVERY ORIGINAL
26 DOCUMENT THAT WE CREATE.

27 Q. DR. OSDENE WAS THE CHIEF SCIENTIST
28 FOR YOUR OPERATION, WASN'T HE?

1 A. I DON'T KNOW IF HE WAS THE CHIEF
2 SCIENTIST OF THE WHOLE OPERATION.

3 AS I SAY, I DIDN'T KNOW DR. OSDENE
4 SO I DON'T KNOW EXACTLY WHAT HIS POSITION WAS, BUT
5 HE MAY HAVE BEEN.

6 MR. LEITER: CAN WE HAVE A FOUNDATION FOR
7 THIS DOCUMENT AS TO THIS WITNESS.

8 MR. PIUZE: ALL RIGHT, YEAH.

9 Q BY MR. PIUZE: THIS ONE IS IN
10 EVIDENCE. HAVE YOU SEEN THIS ONE TOO IN THE PAST?
11 WE ARE ON THE ISSUE OF INTEGRITY.

12 A. YES. YOU REALLY DON'T NEED TO
13 REMIND ME ABOUT BEING TRUTHFUL. THANK YOU.

14 Q. NO, NO, NO. EXCUSE ME. I WASN'T
15 SAYING ANYTHING ABOUT YOU. I AM SIMPLY SAYING THE
16 REASON I AM SHOWING YOU THIS IS WE ARE TALKING
17 ABOUT THE INTEGRITY OF YOUR COMPANY, THAT YOU SAY
18 ALWAYS EXISTED.

19 A. WELL --

20 Q. ARE YOU FAMILIAR WITH, HAVE YOU
21 SEEN --

22 A. I AM TALKING ABOUT INTEGRITY OF A
23 COMPANY AND I AM TALKING ABOUT A CORPORATE CULTURE.
24 I AM NOT TALKING ABOUT EVERY INDIVIDUAL THAT WORKS
25 IN THAT COMPANY.

26 CERTAINLY THERE ARE PEOPLE THAT
27 WORK FOR MANY COMPANIES THAT SHOW BAD JUDGMENT.
28 THE IMPORTANT THING IS WHAT WAS OUR POLICY. AND BY

1 THE VERY FACT THAT YOU HAVE ALL OF THESE DOCUMENTS,
2 IT'S VERY CLEAR THAT OUR POLICY WAS TO RETAIN THEM

3 Q. HAVE YOU SEEN THIS DOCUMENT BEFORE?

4 A. I THINK I MAY HAVE. I THINK I MAY
5 HAVE.

6 I BELIEVE I HAVE SEEN IT BEFORE,
7 YES.

8 Q. THIS IS THE ONE WHERE SECRET
9 BIOLOGICAL TESTING IS BEING DONE IN COLOGNE,
10 GERMANY.

11 MR. LEITER: I AM GOING TO OBJECT TO THE
12 CHARACTERIZATION OF IT.

13 MR. PIUZE: EXCUSE ME.

14 Q BY MR. PIUZE: THIS IS ONE WHERE
15 RESEARCH IS BEING DONE OUT OF THE UNITED STATES,
16 AND THAT ANY CORRESPONDENCE NOT BE SENT TO PHILIP
17 MORRIS HEADQUARTERS BUT BE SENT TO DR. OSDENE'S
18 HOME WHERE HE WILL ACT ON THEM AND DESTROY THEM

19 A. WELL --

20 Q. RIGHT. WELL, LET'S START WITH,
21 THAT'S WHAT THIS IS ABOUT; RIGHT?

22 A. WELL, FIRST OF ALL, YES, WE HAVE A
23 RESEARCH FACILITY OUTSIDE THE UNITED STATES, BUT
24 IT'S BEEN WELL KNOWN FOR YEARS AND THERE'S NOTHING
25 SECRET ABOUT IT. WE ARE AN INTERNATIONAL COMPANY
26 AND ONE OF OUR SITES IS OUTSIDE OF THE UNITED
27 STATES.

28 THAT'S A HANDWRITTEN DOCUMENT, AS

1 YOU CAN SEE, AND, AGAIN, IS ABSOLUTELY NOT
2 REFLECTIVE OF PHILIP MORRIS'S POLICY WHEN IT COMES
3 TO DOCUMENTS AND WHEN IT COMES TO THE WAY WE DEAL
4 WITH INFORMATION. IF WE HAD SOMEONE WORKING FOR US
5 WHO SHOWED POOR JUDGMENT IN THE WAY HE CONDUCTED
6 HIS BUSINESS, I AM SORRY ABOUT THAT. AND IT'S TOO
7 BAD THAT WE HAD SOMEONE WITH BAD JUDGMENT.

8 I DON'T THINK IT'S REFLECTIVE OF
9 THE CULTURE AND I DON'T THINK IT'S REFLECTIVE OF
10 OUR COMPANY.

11 Q. SO ALTHOUGH IT'S WELL-KNOWN THAT
12 INBIFO IS ONE OF YOUR LABS THAT EXIST NOW, IT SURE
13 AS HECK WASN'T WELL-KNOWN BOOK IN 1978, WAS IT?

14 A. I DON'T KNOW HOW WELL-KNOWN IT WAS
15 OR IT WASN'T.

16 Q. YOU SURE DIDN'T KNOW ABOUT IT IN
17 1978?

18 A. I DIDN'T KNOW THAT I KNEW ABOUT IT
19 IN 1978. BUT I DIDN'T KNOW -- YOU KNOW, I WAS NOT
20 INVOLVED IN RESEARCH AND DEVELOPMENT. I DIDN'T GO
21 TALK TO DR. OSDENE, DIDN'T KNOW DR. LEVY AT THE
22 TIME. I DIDN'T KNOW A LOT OF THE PEOPLE THAT WERE
23 WORKING FOR THE COMPANY BECAUSE IT WASN'T MY AREA
24 THAT I WAS INVOLVED IN.

25 Q. SO WHEN YOU --
26 THE COURT: SLOW DOWN.

27 Q BY MR. PIUZE: I PROMISED MYSELF
28 NOT TO GET EXCITED. I HAVE DONE SUCH A GOOD JOB,

1 I'M PUTTING MYSELF TO SLEEP.

2 MR. LEITER: OBJECT.

3 THE COURT: SUSTAINED.

4 Q BY MR. PIUZE: BUT WHEN YOU SAY TO
5 THIS JURY NOW, IT'S WELL-KNOWN, IT IS NO SECRET, WE
6 ARE AN INTERNATIONAL CORPORATION, THAT'S NOW AFTER
7 THE SHROUDS WERE TAKEN OFF, EVEN DR. FARONE, ONE OF
8 CHIEF SCIENTISTS IN YOUR ORGANIZATION DIDN'T KNOW
9 THAT WAS THERE IN 1978, DID HE?

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

12 THE COURT: DO YOU KNOW ONE WAY OR THE
13 OTHER ABOUT THAT?

14 THE WITNESS: NO, I ABSOLUTELY DON'T.

15 Q BY MR. PIUZE: WHEN I WAS
16 CROSS-EXAMINING YOU YESTERDAY, YOU DISTANCED YOUR
17 COMPANY FROM THE TOBACCO INSTITUTE. DO YOU
18 REMEMBER THAT?

19 A. I THINK THAT'S YOUR
20 CHARACTERIZATION. WE WERE A MEMBER OF THE TOBACCO
21 INSTITUTE. BUT I MADE SOME COMMENTS ABOUT THE
22 TOBACCO INSTITUTE, YES.

23 Q. I SHOWED YOU THIS DOCUMENT,
24 INDUSTRY STRATEGY, CREATING DOUBT ABOUT THE HEALTH
25 CHARGE WITHOUT ACTUALLY DENYING IT.

26 AND WASN'T YOUR REACTION SOMETHING
27 LIKE, WELL, THAT WAS THEM, THAT WASN'T US, WE
28 DIDN'T REALLY THINK THAT WAY?

1 A. THAT WAS SOMETHING THAT WAS WRITTEN
2 BY SOMEONE IN THE TOBACCO INSTITUTE THAT I DO NOT
3 BELIEVE REFLECTS ANY POSITION THAT I AM AWARE OF AT
4 PHILIP MORRIS.

5 Q. FINE. AND SO LIKE I JUST SAID
6 YESTERDAY, YOU TRIED TO DISTANCE YOURSELF FROM
7 THIS; RIGHT?

8 A. I THINK THAT'S YOUR
9 CHARACTERIZATION. BUT FINE.

10 Q. AND YESTERDAY I SHOWED YOU SEVERAL
11 PHILIP MORRIS DOCUMENTS YESTERDAY AFTERNOON WHERE
12 PHILIP MORRIS IS TRACKING THE PERCENTAGE OF KIDS
13 WHO ARE 12 YEARS OLD IN THIS COUNTRY WHO ARE
14 SMOKING YOUR BEST PRODUCT, MARLBORO, AND THAT
15 WASN'T REFLECTIVE OF YOUR COMPANY EITHER, WAS IT?

16 A. I DID NOT DENY THAT THOSE WERE
17 DOCUMENTS THAT WERE IN OUR FILES.

18 WHAT I SAID WAS THAT THOSE
19 DOCUMENTS DID NOT REFLECT OUR MARKETING PRACTICES
20 AND HOW WE BUILT OUR BRAND PLANS TO DEAL WITH OUR
21 PRODUCT, THAT THOSE DOCUMENTS WERE DONE BY A
22 DEMOGRAPHER.

23 Q. THAT'S JUST WHAT I JUST SAID BUT
24 YOU EXPLAINED YESTERDAY IT WASN'T REFLECTIVE OF
25 YOUR COMPANY, YOUR OWN WORDS; RIGHT? RIGHT?

26 A. OF OUR PRACTICES, THAT'S WHAT I
27 SAID.

28 Q. THIS ISN'T REFLECTIVE OF YOUR

1 COMPANY, DESTROYING MEMOS, WRITE ONLY TWO MEMOS, IS
2 IT?

3 A. IT IS NOT REFLECTIVE OF OUR POLICY.
4 AND AS I SAY, OBVIOUSLY, WE DON'T DESTROY
5 DOCUMENTS, BECAUSE YOU HAVE ALL THOSE DOCUMENTS.

6 Q. THIS ISN'T REFLECTIVE OF YOUR
7 COMPANY. BUT IF CAROLYN LEVY'S -- YOUR NEW CHILD
8 SMOKING, ANTI-SMOKING PERSON -- STUDIES TURN OUT
9 THE WRONG WAY, BURY THEM, THAT'S NOT REFLECTIVE OF
10 YOUR COMPANY, IS IT?

11 A. NO, IT IS NOT.

12 Q. SO ANYWAY, BACK TO INTEGRITY, YOUR
13 CORE VALUES, YOU BELIEVE IN OPERATING WITH
14 INTEGRITY, TRUST, RESPECT.

15 SO THE ONE THAT YOU SAID HASN'T
16 BEEN THERE IS THE TRUST. SO SINCE WHEN HAS THAT
17 BEEN THE CORE VALUE, YOU TRUSTING THE OUTSIDE WORLD
18 AND WANTING THE OUTSIDE WORLD TO TRUST YOU BACK?

19 A. WELL, I THINK WE INDICATED THAT THE
20 MISSION AND VALUES WERE ESTABLISHED BY MR.
21 SZYMANCZYK, AND THAT WAS IN LATE 1997, EARLY 1998.

22 Q. WHY CHANGE?

23 A. WELL, WHEN MR. SZYMANCZYK TOOK OVER
24 AS PRESIDENT OF PHILIP MORRIS U. S. A. , HE FELT THAT
25 OBVIOUSLY WE WERE OUT OF STEP, THAT THERE NEEDED TO
26 BE SOME CHANGES, THAT WE WERE BEING REVILED AND
27 CRITICIZED AND DEMONIZED, AND SO HE SET OUT TO TRY
28 AND CHANGE THE CULTURE AT PHILIP MORRIS U. S. A. BY

1 CREATING A MISSION THAT MADE IT VERY CLEAR AS TO
2 WHAT THE EXPECTATION FROM EVERY EMPLOYEE WAS AS FAR
3 AS WHAT WE WANT TO ACCOMPLISH, WHAT OUR GOALS WERE.
4 AND THEN WE LOOKED AT THE VALUES THAT EXISTED AND
5 FELT THAT THERE WERE SOME GOOD CORE VALUES AT
6 PHILIP MORRIS BUT THAT, AS WE WENT FORWARD IN THIS
7 ENVIRONMENT, AND AS WE TRIED TO BECOME MORE OPEN IN
8 OUR DEALINGS WITH SOCIETY, THAT WE SHOULD TAKE A
9 LOOK AT ALL OF OUR VALUES AND SEE WHERE WE MIGHT BE
10 LACKING. AND THE MISSION AND VALUES WERE CREATED
11 AND THEN SHARED WITH THE ENTIRE ORGANIZATION.

12 Q. I AM ON TRUST ONLY, BECAUSE THAT'S
13 THE ONLY ONE THAT YOU SAID HAD TO BE CHANGED.

14 SO WHY CHANGE -- IF I WAS LISTENING
15 RIGHT, IT WAS YOUR TRUST FOR THE OUTSIDE WORLD AND
16 THE OUTSIDE WORLD'S TRUST FOR YOU?

17 A. THAT IS RIGHT.

18 Q. THAT'S WHAT YOU SAID; RIGHT?

19 A. WELL, IN GOING FORWARD, IF YOU ARE
20 GOING TO BE MORE OPEN, IF YOU ARE GOING TO RESPOND
21 TO WHAT PEOPLE EXPECT OF YOU, IF YOU ARE GOING TO
22 SUPPORT YOUR MISSION OF RESPONSIBILITY, IT CALLS
23 FOR TRUST. IT CALLS FOR BEING MORE OPEN, IT MEANS
24 THAT YOU ARE LISTENING MORE, THAT YOU ARE ENTERING
25 INTO DIALOGUE, THAT YOU ARE NOT BEING DEFENSIVE,
26 AND I THINK THAT NOT BEING DEFENSIVE ALL LEADS YOU
27 TO SAY THAT THERE NEEDS TO BE TRUST.

28 Q. WHY DIDN'T YOU, CORPORATELY, TRUST

1 THE WORLD, THE OUTSIDE WORLD?

2 A. WELL, I THINK I TALKED ABOUT THAT
3 AT SOME LENGTH IN MY TESTIMONY. I THINK WE BECAME
4 VERY DEFENSIVE. WE WERE BEING ATTACKED. WE WERE
5 BEING DEMONIZED. AND YOU CALLED ATTENTION,
6 ALTHOUGH I HAVEN'T SEEN EXACTLY WHAT YOU ARE
7 TALKING ABOUT, YOU HAVE CALLED ATTENTION TO IT
8 YOURSELF, THAT THERE IS A LOT OF MISTRUST OF US.
9 THERE IS A LOT OF SKEPTICISM THERE IS A LOT OF
10 CRITICISM WE HAVE SEEN SOME OF THE DOCUMENTS HERE
11 IN THIS COURTROOM

12 SO ESTABLISHING TRUST AND
13 ESTABLISHING DIALOG AND ESTABLISHING COMMUNICATION
14 AND OPENNESS AND LISTENING WAS ABSOLUTELY
15 IMPERATIVE IF WE WERE GOING TO REACH OUR MISSION OF
16 RESPONSIBILITY.

17 Q. YOU HAVE USED THE WORD ON MANY
18 OCCASIONS, ON AT LEAST THREE TIMES HERE RECENTLY,
19 "DEMONIZED."

20 YOUR MARKETING GROUPS, YOUR TEST
21 MARKETS, YOUR FOCUS GROUPS, AND ALL OF THE THINGS
22 THAT YOUR COMPANY CAN DO, HAS ALSO BEEN USED TO GO
23 OUT IN THE COMMUNITY AND SAY, WHAT DO YOU THINK
24 ABOUT US; RIGHT?

25 A. YES.

26 Q. AND ARE YOU USING THE WORD
27 "DEMONIZED" BECAUSE SOME PEOPLE HAVE LITERALLY SAID
28 THEY BELIEVE THAT PHILIP MORRIS CORPORATION IS THE

1 DEVIL INCARNATE?

2 A. CERTAINLY HEARD THAT. YES. I HAVE
3 CERTAINLY HEARD THAT.

4 Q. OKAY. "FOURTH: WE BELIEVE IN
5 DRIVING CREATIVITY INTO EVERYTHING WE DO, RESULTING
6 IN INNOVATION AND CONTINUOUS IMPROVEMENT FOR OUR
7 ADULT CUSTOMERS AND OUR BUSINESS PROCESS."

8 SO I AM INTERESTED ABOUT THE
9 DRIVING CREATIVITY. DO YOU BELIEVE IN DRIVING
10 CREATIVITY IN REGARD TO PUBLIC RELATIONS?

11 A. WE BELIEF IN DRIVING CREATIVITY AND
12 CONTINUOUS IMPROVEMENT IN EVERYTHING THAT WE DO.
13 AND I THINK THAT'S VERY CLEAR. IT'S IN OUR
14 RELATIONSHIPS. IN THE DIALOGUES THAT WE HAVE IN
15 OUR PRODUCT DEVELOPMENT, THROUGHOUT THE
16 ORGANIZATION. WE KEEP -- WE ASK PEOPLE TO BE OPEN
17 AND INNOVATIVE AND TO FOCUS ON CONTINUOUS
18 IMPROVEMENT.

19 Q. HERE, I GOT YOU AT A DISADVANTAGE
20 BECAUSE OF THE ANGLE. THIS IS MR. WEISSMAN IN 1954
21 AGAIN. WE TALKED ABOUT THIS YESTERDAY?

22 A. YES, WE DID.

23 Q. THIS IS FROM YOUR TESTIMONY
24 YESTERDAY. AND HERE'S WHAT I WANT TO ASK YOU
25 ABOUT.

26 DO YOU THINK, AS THE COMPANY
27 REPRESENTATIVE HERE, THAT LOOKING AT THE COMPANY'S
28 PAST BEHAVIOR IS A FAIR THING TO DO?

1 A. YES, I HAVE NO ISSUE WITH YOU
2 LOOKING AT THE COMPANY'S PAST BEHAVIOR.

3 Q. DO YOU THINK THAT JUDGING THE
4 COMPANY'S FUTURE BEHAVIOR, BASED, IN PART, ON ITS
5 PAST BEHAVIOR IS A FAIR THING TO DO?

6 MR. LEITER: OBJECTION, VAGUE QUESTION.

7 THE COURT: I WILL SUSTAIN IT.

8 MR. PIUZE: I WILL WITHDRAW IT, SORRY.

9 Q BY MR. PIUZE: YOU TOLD THE JURY
10 YESTERDAY THAT AS LONG AS ONE KID SMOKES, THERE
11 WILL ALWAYS BE A YOUTH PREVENTION, A YOUTH SMOKING
12 PREVENTION DEPARTMENT.

13 A. THAT IS RIGHT.

14 Q. WITH THE PASSAGE OF TIME, AND THE
15 REALITIES OF BUSINESS, MR. WEISSMAN'S DECLARATION,
16 THAT IF WE, IF WE, PHILIP MORRIS, HAD ANY THOUGHT
17 OR KNOWLEDGE THAT IN ANY WAY WE WERE SELLING A
18 PRODUCT HARMFUL TO CONSUMERS, WE WOULD STOP
19 BUSINESS TOMORROW, WE ALREADY ACKNOWLEDGED THAT
20 BECAME INOPERATIVE AND THAT'S NOT GOING TO HAPPEN,
21 AND YESTERDAY WE TALKED ABOUT MR. BIBLE'S TESTIMONY
22 TO A JURY IN MINNESOTA THREE YEARS AGO ABOUT
23 CLOSING DOWN THE FACTORIES IF EVEN ONE PERSON DIED,
24 SO I WOULD LIKE TO ASK YOU, WHY, GIVEN THE PROMISES
25 THAT HAVE BEEN MADE AND THE STATEMENTS THAT HAVE
26 BEEN MADE BY PEOPLE IN THE ORGANIZATION HIGHER THAN
27 YOU, THAT ALL BECOME INOPERATIVE, WHY SHOULD WE
28 TRUST THIS?

1 MR. LEITER: OBJECTION, THIS IS ARGUMENT.

2 THE COURT: OVERRULED.

3 THE WITNESS: I AM SORRY?

4 THE COURT: I OVERRULED THE OBJECTION,
5 YOU NEED TO ANSWER THE QUESTION.

6 THE WITNESS: OKAY. I HOPE THAT THE JURY
7 BELIEVES ME, BUT THEY ARE GOING TO HAVE TO JUDGE BY
8 WHAT WE DO. THIS IS A COMMITMENT THAT I MAKE ON
9 BEHALF OF OUR COMPANY. IT'S REAL. IT'S SINCERE.
10 AND OVER TIME, PEOPLE ARE GOING TO HAVE TO JUDGE
11 WHETHER WE LIVE UP TO IT.

12 Q BY MR. PIUZE: WE ARE JUST GOING
13 TO HAVE TO TAKE YOUR WORD, WAIT AND SEE?

14 A. I CAN ONLY GIVE YOU MY WORD AND I
15 CAN GIVE YOU THE COMMITMENT OF THE COMPANY. I CAN
16 DO NOTHING ELSE BUT I INVITE EVERYBODY TO MONITOR
17 US AND TO TRACK WHAT WE DO. AND IF WE DON'T LIVE
18 UP TO THIS COMMITMENT, THEN PEOPLE SHOULD DO
19 SOMETHING ABOUT IT. BUT I AM TELLING YOU THIS IS A
20 VERY, VERY FIRM COMMITMENT. IT'S PART OF OUR
21 MISSION. IT'S WHAT WE ARE ABOUT. AND THAT IS AS
22 ACCURATE A STATEMENT AS I CAN GIVE YOU ABOUT OUR
23 INTENT.

24 Q. SO MS. MERLO, YOU JUST SAID, THIS
25 ISN'T AN EXACT QUOTE, BUT YOU JUST SAID, IF WE
26 DON'T LIVE UP TO OUR WORD, PEOPLE SHOULD DO
27 SOMETHING ABOUT IT?

28 A. ON THIS?

1 Q. NO -- OKAY, ON THIS.

2 A. I AM TALKING ABOUT THIS. I AM
3 MAKING A COMMITMENT HERE, TODAY, TO THIS JURY,
4 ABOUT OUR COMMITMENT TO YOUTH SMOKING PREVENTION.

5 Q. OKAY, HOW ABOUT --

6 A. I CAN'T SPEAK FOR ANYONE ELSE.

7 Q. HOW ABOUT THIS THEN, IF YOU DON'T
8 LIVE UP TO YOUR WORD ON THIS, SHOULD PEOPLE DO
9 SOMETHING ABOUT IT?

10 A. WELL, I CAN'T JUDGE WHAT
11 MR. WEISSMAN SAID, WHAT, 40-SOME-ODD YEARS AGO, 50
12 YEARS AGO. I THINK IT WAS BASED ON WHAT HE THOUGHT
13 WE KNEW AND UNDERSTOOD AT THE TIME. I HAVE TRIED
14 TO EXPLAIN TO YOU THAT IN THINKING ABOUT THE WHOLE
15 ISSUE OF WHAT IS RESPONSIBLE, AND WHAT IS NOT
16 RESPONSIBLE, WE ARE REACTING TO SOCIETY'S
17 DETERMINATION THAT SMOKING IS AND SHOULD REMAIN
18 LEGAL.

19 AND THEREFORE, WE BELIEVE THAT THE
20 MOST RESPONSIBLE THING TO DO IS TO CONTINUE TO
21 MARKET AND MANUFACTURE OUR PRODUCT IN THE MOST
22 RESPONSIBLE WAY POSSIBLE.

23 I DON'T THINK SOCIETY WANTS PEOPLE
24 WHO DON'T CARE ABOUT RESEARCH AND DEVELOPMENT, WHO
25 DON'T CARE ABOUT YOUTH SMOKING PREVENTION, WHO
26 DON'T CARE WHETHER OR NOT UNREGULATED CIGARETTES
27 COME INTO THIS MARKET AND ARE SOLD ON THE BLACK
28 MARKET.

1 I THINK YOU WANT THE MOST
2 RESPONSIBLE COMPANIES IN THIS BUSINESS. AND THAT'S
3 WHAT WE HAVE DEEMED TO DO.

4 Q. WHEN I HAVE BEEN ASKING QUESTIONS
5 OF YOU, MANY TIMES TRIED TO SAY CORPORATELY, I AM
6 NOT TRYING TO PERSONALIZE THIS. I WANT TO SAY,
7 AGAIN, I AM NOT TRYING TO PERSONALIZE THIS. BUT
8 ANYWAY, PHILIP MORRIS'S LAWYER BROUGHT OUT
9 YESTERDAY, THAT, YOU WANTED TO RETIRE BUT YOU
10 DECIDED, BECAUSE YOU WERE REQUESTED TO, YOU ARE
11 GOING TO STICK AROUND FOR A LITTLE LONGER; RIGHT?

12 A. WELL, NOT JUST SINCE I WAS
13 REQUESTED TO BECAUSE I FEEL STRONGLY ABOUT WHAT I
14 AM DOING.

15 Q. OKAY. HOW LONG ARE YOU GOING TO
16 STICK AROUND?

17 A. I HAVEN'T MADE THAT DETERMINATION.
18 A COUPLE YEARS.

19 Q. OKAY.

20 A. YOU KNOW

21 Q. LET'S GIVE YOU A COUPLE YEARS.

22 A. YOU GET TO AN AGE WHEN KIND OF THE
23 DECISION IS MADE FOR YOU.

24 Q. DON'T LOOK AT ME SO HARD WHEN YOU
25 SAY THAT.

26 A. I AM NOT LOOKING AT YOU.

27 Q. I AM NOT TRYING TO PERSONALIZE
28 THIS, SERIOUSLY, I AM TRYING TO MAKE A POINT.

1 YOU RETIRED THIS WEEK, NEXT WEEK,
2 NEXT YEAR --
3 A. IT WON'T BE THAT SOON.
4 Q. -- A COUPLE YEARS, ONE WAY OR THE
5 OTHER, I WISH YOU A NICE RETIREMENT.
6 A. THANK YOU.
7 Q. YOU ARE GONE. SO I AM NOT TRYING
8 TO PERSONALIZE THIS. JUST LIKE THIS GUY IS GONE.
9 YOU CAN'T SPEAK FOR HIM IS THE -- WAIT, I HAVEN'T
10 ASKED A QUESTION YET.
11 THE COURT: YOU HAVE JUST MADE SEVERAL
12 STATEMENTS. WHY DON'T WE CONVERT IT INTO A
13 QUESTION.
14 Q. THIS GUY MADE A PROMISE AND A
15 COMMITMENT, IT'S B. S. HE'S GONE, YOU CAN'T SPEAK
16 FOR HIM
17 MR. LEITER: OBJECTION, YOUR HONOR.
18 THE COURT: COUNSEL, LET'S HAVE
19 QUESTIONS.
20 Q BY MR. PIUZE: MR. CAMPBELL MADE A
21 COMMITMENT TO THE UNITED STATES OF AMERICA UNDER
22 OATH IN CONGRESS ABOUT WHAT PHILIP MORRIS BELIEVED
23 AND DIDN'T BELIEVE. HE'S GONE.
24 THE COURT: COUNSEL.
25 MR. LEITER: YOUR HONOR --
26 THE COURT: COUNSEL, TAKE MY INSTRUCTION.
27 MR. PIUZE: YES, SIR.
28 Q BY MR. PIUZE: SO, AFTER YOU HAVE

1 RETIRED --

2 A. YES.

3 Q. -- BASED ON PHILIP MORRIS' S PAST
4 CONDUCT, WHY SHOULD WE BELIEVE THIS?

5 MR. LEITER: IT' S ARGUMENT.

6 THE COURT: OVERRULED.

7 THE WITNESS: BECAUSE WE HAVE A MISSION
8 AND A COMMITMENT AND A WAY OF EVALUATING THE
9 ORGANIZATION BASED ON SOME VERY SPECIFIC GOALS AND
10 THAT FIRST GOAL IS TO DO OUR PART TO REDUCE THE
11 INCIDENCE OF YOUTH SMOKING.

12 Q BY MR. PIUZE: OKAY. AND I AM
13 DONE. THIS IS IT. THIS IS THE LAST POINT. I KNOW
14 EVERYBODY IS GOING TO BE HAPPY ABOUT THAT.

15 AFTER YOU ARE RETIRED OR CAROLYN
16 LEVY IS RETIRED OR CAROLYN LEVY GOES BACK TO DO THE
17 NICOTINE ADDICTION EXPERIENCE --

18 MR. LEITER: OBJECT TO THE COMMENTARY OF
19 THE QUESTION.

20 THE COURT: SUSTAINED.

21 Q BY MR. PIUZE: LATER ON, MIGHT
22 SOMEONE IN THE BUSINESS THINK THAT THE NUMBER ONE
23 COMMITMENT IS REALLY, THE ALL-CONSUMING AMBITION IS
24 TO CREATE WEALTH FOR THE OWNERS OF PHILIP MORRIS?

25 MR. LEITER: ARGUMENT, CALLS FOR
26 SPECULATION.

27 THE COURT: OVERRULED.

28 THE WITNESS: IF THE WORK I HAVE BEEN

1 DOING ON CORPORATE RESPONSIBILITY IS ANY
2 INDICATION, NO CORPORATION WILL BE ABLE TO ACT THAT
3 WAY, NOT JUST PHILIP MORRIS, BUT THERE IS AN
4 EXPECTATION AMONG CONSUMERS IN SOCIETY TODAY THAT
5 CORPORATIONS ADD VALUE IN THE WAY THEY DO BUSINESS.
6 AND I DON'T BELIEVE ANY SUCCESSFUL CORPORATION WILL
7 BE ABLE TO IGNORE THE TRIPLE BOTTOM LINE OF
8 CONTRIBUTING TO SOCIETY, PROTECTING THE ENVIRONMENT
9 AND, YES, ADDING TO SHAREHOLDER VALUE.

10 Q. OR SOCIETY WILL HAVE SOMETHING TO
11 SAY ABOUT IT?

12 A. I BELIEVE THAT'S RIGHT, YES.

13 Q. OKAY. SO SOCIETY WILL HAVE
14 SOMETHING TO SAY ABOUT IT?

15 A. THAT IS RIGHT.

16 MR. PIUZE: I HAVE NO FURTHER QUESTIONS.

17 THE COURT: THANK YOU.

18 ALL RIGHT, WE ARE GOING TO TAKE OUR
19 MORNING BREAK, LADIES AND GENTLEMEN. BE BACK AT
20 11:10.

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: PLEASE BE SEATED.

2 MR. LEITER.

3 MR. LEITER: YOUR HONOR, WE HAVE NO
4 FURTHER QUESTIONS FOR MS. MERLO.

5 THE COURT: ALL RIGHT. YOU ARE EXCUSED.

6 MR. LEITER: PHILIP MORRIS CALLS RICHARD
7 CARCHMAN.

8 THE COURT: SIR, IF WOULD YOU PLEASE STEP
9 FORWARD.

10

11

12 RICHARD CARCHMAN,
13 CALLED AS A WITNESS BY THE DEFENSE, WAS SWORN
14 AND TESTIFIED AS FOLLOWS:

15 THE CLERK: YOU DO SOLEMNLY SWEAR THE
16 TESTIMONY YOU MAY GIVE IN THE CAUSE NOW PENDING
17 BEFORE THIS COURT, SHALL BE THE TRUTH, THE WHOLE
18 TRUTH AND NOTHING BUT THE TRUTH, SO HELP YOU GOD.

19 THE WITNESS: YES, I DO.

20 THE CLERK: HAVE A SEAT.

21 PLEASE STATE AND SPELL YOUR NAME
22 FOR THE RECORD.

23 THE WITNESS: MY NAME IS RICHARD
24 CARCHMAN, C-A-R-C-H-M-A-N.

25 /// /// ///

26 /// /// ///

27 /// /// ///

28 /// /// ///

1 DIRECT EXAMINATION

2

3 MR. LEITER:

4 Q. GOOD MORNING, DR. CARCHMAN.

5 A. GOOD MORNING.

6 Q. DR. CARCHMAN, YOU ARE HERE AT THE
7 REQUEST OF THE PHILIP MORRIS?

8 A. YES.

9 Q. ARE YOU CURRENTLY EMPLOYED BY
10 PHILIP MORRIS?

11 A. NO.

12 Q. WERE YOU PREVIOUSLY EMPLOYED BY
13 PHILIP MORRIS?

14 A. YES.

15 Q. WOULD YOU PLEASE TELL THE JURY WHAT
16 YEARS YOU WERE EMPLOYED BY PHILIP MORRIS AND WHAT
17 YOUR JOBS WERE WHEN YOU WERE THERE.18 A. I WAS EMPLOYED FROM APPROXIMATELY
19 1989 TO 1999. I RETIRED FEBRUARY 1ST, 1999, AND I
20 CAME ON BOARD IN DECEMBER OF '88, CALL IT '89, AS A
21 TECHNICAL, TECHNICAL PERSON. AND I HELD THAT JOB,
22 I REPORTED TO THE VICE-PRESIDENT OF RESEARCH FOR
23 ABOUT A YEAR AND A HALF. AND THEN I WAS ASKED TO
24 TAKE ON ADDITIONAL RESPONSIBILITY AND I BECAME
25 MANAGER OF BIOCHEMICAL RESEARCH FOR ANOTHER YEAR
26 AND A HALF, REPORTING BOTH TO THE VICE-PRESIDENT OF
27 RESEARCH AND TO THE DIRECTOR OF RESEARCH FOR THE
28 TWO DIFFERENT JOBS I HAD.

1 AND THEN I BECAME THE HEAD OF
2 SCIENTIFIC AFFAIRS, WHICH IS AN ORGANIZATION OF
3 SCIENTISTS WITHIN RESEARCH AND DEVELOPMENT, DEALING
4 WITH PRODUCT TESTING AND THEN EVENTUALLY
5 ENVIRONMENTAL TOBACCO SMOKE ISSUES AND THEN
6 EVENTUALLY SMOKING AND HEALTH ISSUES.

7 AND I ROSE FROM DIRECTOR OF THE
8 GROUP, DIRECTOR TO VICE-PRESIDENT, AND THEN
9 VICE-PRESIDENT OF WORLDWIDE SCIENTIFIC AFFAIRS.
10 AND IN MY LAST YEAR, I WAS THE VICE-PRESIDENT OF
11 RESEARCH, DEVELOP AND ENGINEERING, REPORTING TO THE
12 HEAD OF OPERATIONS OF WHICH RESEARCH, DEVELOPMENT,
13 AT THAT TIME, RESEARCH DEVELOPMENT AND ENGINEERING
14 WERE A PART.

15 Q. DURING YOUR TIME AT PHILIP MORRIS,
16 WHICH WAS '89 TO '99, YOU WERE INVOLVED IN THE
17 RESEARCH AND DEVELOPMENT DEPARTMENT; RIGHT?

18 A. YES.

19 Q. AND YOU HELD MANAGEMENT POSITIONS
20 IN THE COMPANY DURING THAT PERIOD; RIGHT?

21 A. YES.

22 Q. AND YOU ROSE TO BE, IS IT FAIR TO
23 SAY, ONE OF THE TOP SCIENTISTS AT THE COMPANY?

24 A. YES.

25 Q. YOU RETIRED IN 1999?

26 A. FEBRUARY 1ST.

27 Q. WHY DID YOU RETIRE?

28 A. THEY OFFERED EARLY REQUIREMENT

1 PACKAGE. IT WAS A GENEROUS ONE, NOT SPECIFICALLY
2 DESIGNED FOR ME.

3 Q. NOT YOU, PERSONALLY?

4 A. NO, NO. AND IT ADDED FIVE YEARS TO
5 MY AGE AND FIVE YEARS TO MY SERVICE. AND IN
6 CONSULTATION WITH MY FAMILY, WE DECIDED THAT WAS
7 THE BEST THING FOR ME TO DO AND I DID IT.

8 Q. HOW ARE YOU ENJOYING RETIREMENT?

9 A. WELL, NOT AS MUCH AS I WOULD LIKE.
10 BUT LOS ANGELES, THE WEATHER HERE IS VERY NICE
11 RIGHT NOW I CAN'T USE THE WORD RETIREMENT AT
12 HOME, MY WIFE GETS VERY UPSET.

13 Q. AND THAT BRINGS ME TO WHAT I WANTED
14 TO ASK YOU NEXT WHICH IS YOU HAVE BEEN DOING
15 CONSULTING WORK SINCE YOU RETIRED, ISN'T THAT
16 RIGHT?

17 A. YES.

18 Q. AND YOU ARE A CONSULTANT FOR PHILIP
19 MORRIS?

20 A. YES.

21 Q. AND YOU GET PAID AS A CONSULTANT;
22 RIGHT?

23 A. YES.

24 Q. SO EVEN THOUGH YOU ARE NOT AN
25 EMPLOYEE OF PHILIP MORRIS, YOU STILL HAVE A
26 FINANCIAL RELATIONSHIP WITH PHILIP MORRIS UP TO THE
27 PRESENT?

28 A. YES.

1 Q. AND WHAT DO YOU DO AS A CONSULTANT
2 FOR PHILIP MORRIS?

3 A. TWO THINGS; THIS IS ONE, THIS IS
4 ABOUT 30 PERCENT OF WHAT I DO.

5 Q. AND WHEN YOU SAY "THIS," YOU MEAN?

6 A. WORKING WITH LAWYERS, DEALING WITH
7 QUESTIONS OF LITIGATION, DEPOSITIONS AND TESTIMONY.

8 Q. AND TESTIFYING IN LAWSUITS IN WHICH
9 PHILIP MORRIS HAS BEEN SUED; RIGHT?

10 A. THAT IS RIGHT.

11 Q. AND THAT'S ABOUT 30 PERCENT OF YOUR
12 TIME AS A CONSULTANT?

13 A. WITH PHILIP MORRIS. THE OTHER 65,
14 70 PERCENT IS WORKING WITH THE SCIENTISTS, MOSTLY
15 IN WORLDWIDE SCIENTIFIC AFFAIRS.

16 Q. DR. CARCHMAN, MANY OF US IN THE
17 COURTROOM, INCLUDING MYSELF, HAVE BEEN FIGHTING THE
18 SAME BUG, SO WE WILL HAVE VARIOUS SNEEZES
19 THROUGHOUT THE DAY.

20 A. OKAY.

21 Q. I AM SORRY, WHY DON'T YOU TELL US
22 AGAIN WHAT YOU DO FOR THE OTHER 70, ROUGHLY,
23 PERCENT OF YOUR CONSULTING TIME?

24 A. IT REALLY IS A CONTINUATION OF WHAT
25 I DID BEFORE I RETIRED, AND THAT'S WORKING WITH THE
26 SCIENTISTS WITHIN RESEARCH, DEVELOPMENT,
27 ENGINEERING, DEALING WITH SMOKING AND HEALTH ISSUES
28 AS IT IMPACTS THE PRODUCT AND TRYING TO MODIFY THE

1 PRODUCT. IT USED TO BE CALLED MAKING LESS
2 HAZARDOUS CIGARETTES, AND THE CURRENT CONCEPT IS
3 MUCH BROADER, CALLED HARM REDUCTION, WHICH IS MORE
4 THAN REDUCING THE RISK OF CIGARETTES. AND I SPEND
5 MOST OF MY TIME DOING THAT.

6 Q. MOST OF YOUR CONSULTING TIME SINCE
7 YOUR RETIREMENT WORKING TO HELP DEVELOP LESS
8 DANGEROUS CIGARETTE PRODUCTS OR, GENERALLY, WORKING
9 ON HARM REDUCTION; IS THAT RIGHT?

10 A. YES.

11 Q. IS THAT ALSO AN AREA FOR WHICH YOU
12 HAVE HAD SOME RESPONSIBILITY WHEN YOU WERE A FULL
13 TIME EMPLOYEE AT PHILIP MORRIS?

14 A. YES.

15 Q. OKAY. WHAT I WOULD LIKE TO DO IS
16 TALK A LITTLE BIT ABOUT YOUR BACKGROUND. FIRST OF
17 ALL, WHAT IS, I KNOW YOU HAVE A PH. D. , WHAT IS YOUR
18 PH. D. IN?

19 A. I GOT MY PH. D. IN ABOUT 1972 FROM
20 THE DEPARTMENT OF PHARMACOLOGY AT DOWNSTATE MEDICAL
21 CENTER, PART OF THE STATE UNIVERSITY OF NEW YORK,
22 KINGS COUNTY HOSPITAL IN BROOKLYN, BROOKLYN, NEW
23 YORK. SO IN THE DEPARTMENT OF PHARMACOLOGY.

24 Q. WHAT IS PHARMACOLOGY?

25 A. IT'S THE STUDY OF HOW DRUGS WORK,
26 TO BE DISTINGUISHED, SAY, FROM A PHARMACIST WHICH
27 WILL TAKE A PRESCRIPTION AND FORMULATE THE
28 MEDICATION. A PHARMACOLOGIST, BASICALLY, IS

1 INVOLVED IN THE DEVELOPMENT AND UNDERSTANDING OF
2 HOW DRUGS WORK.

3 Q. CAN YOU DESCRIBE, AND I WANT TO GO
4 BACK A LITTLE BIT BEFORE YOU GOT YOUR PH. D. , TELL
5 THE JURY A LITTLE BIT ABOUT YOUR EDUCATION AND THE
6 WORK THAT YOU WERE DOING WHILE YOU WERE RECEIVING
7 YOUR EDUCATION.

8 A. UH-HUH.

9 I GRADUATED HIGH SCHOOL IN 1956
10 AND -- I AM SORRY -- 1960, I WISH '56, IN 1960, AND
11 I THEN WENT TO COLLEGE. AND IT TOOK ME SIX YEARS
12 TO GRADUATE. AND I HAD A NUMBER OF, BESIDES BEING
13 A FULL TIME STUDENT, I ALSO HAD A COUPLE FULL TIME
14 JOBS.

15 AND SO I GRADUATED COLLEGE IN 1966.
16 BUT FROM 1964 TO 1968, I WORKED AT THE INSTITUTE
17 FOR CANCER RESEARCH AT COLUMBIA. I WAS A TECHNICAL
18 RESEARCH ASSISTANT. SO THAT HELPED PAY FOR SCHOOL.

19 AND AFTER I GRADUATED COLLEGE, I
20 STAYED ON THERE FOR A COUPLE OF YEARS AND I DID
21 BASIC CANCER RESEARCH, NOT RELATED TO ANYTHING
22 RELATED TO TOBACCO, BUT TRYING TO UNDERSTAND WHAT
23 WAS GOING ON WITH CANCER, WITH CHEMICALS, WITH
24 VIRUSES AND WITH SOME DRUGS THAT PEOPLE THOUGHT
25 MIGHT BE USEFUL.

26 IN 1968, I APPLIED FOR AND WAS
27 ACCEPTED INTO THE GRADUATE PROGRAM AT DOWNSTATE,
28 DOCTORATE PROGRAM

1 AND IN THAT DEPARTMENT, THE FIRST
2 TWO YEARS, THE PROGRAM WAS WITH THE MEDICAL
3 STUDENTS, SO WE TOOK ALL THE SAME COURSES THE
4 MEDICAL STUDENTS DID.

5 AND THEN AT THE END OF THE SECOND
6 YEAR, WE TOOK GRADUATE PROGRAMS. AND MY DOCTORAL
7 THESIS HAD TO DO WITH HOW CERTAIN HORMONES WORK IN
8 THE BODY AND HOW DIFFERENT PARTS OF THE SYSTEMS
9 TALKED TO EACH OTHER.

10 AND SO IN -- I FINISHED IN THREE
11 AND A HALF YEARS. I STAYED AROUND FOR ANOTHER SIX
12 MONTHS WRITING UP PAPERS AND THINKING ABOUT WHAT I
13 WANTED TO DO.

14 I HAD SOME INTERESTING OFFERS, BUT
15 IN 1972, I WENT TO WORK FOR THE U. S. GOVERNMENT IN
16 WASHINGTON AT THE NATIONAL CANCER INSTITUTE IN THE
17 LABORATORY OF MOLECULAR BIOLOGY.

18 Q. I WANT TO STOP YOU THERE FOR JUST A
19 SECOND, DR. CARCHMAN.

20 FINISHING UP YOUR EDUCATION, YOU
21 GOT YOUR PH. D. IN 1972, IN PHARMACOLOGY; IS THAT
22 RIGHT?

23 A. YES.

24 Q. WHILE YOU WERE STUDYING FOR YOUR
25 PH. D. , DID YOU DO ANY WORK IN CANCER RESEARCH?

26 A. THE THINGS THAT I WAS STUDYING,
27 SOME OF THESE VERY BASIC PROCESSES, IT TURNS OUT
28 ARE VERY RELEVANT TO SOME OF THE THINGS THAT ARE

1 GOING ON IN TRYING TO UNDERSTAND WHAT MAKES THINGS
2 CANCEROUS AND HOW, IF YOU CHANGE THESE THINGS, YOU
3 CAN TAKE SOME CANCER CELLS AND GET THEM TO REVERT
4 TO NORMAL CELLS, WITHOUT DRUGS.

5 AND SO -- BUT IT TURNS OUT, A LOT
6 OF THESE BASIC PROCESSES THAT I WAS STUDYING
7 WERE -- WERE AND ARE VERY GERMANE TO WHAT'S GOING
8 ON WITH REGARD TO WHAT'S INVOLVED WITH CANCER.

9 Q. NOW, YOU MENTIONED YOUR PH. D. IS IN
10 PHARMACOLOGY AND YOU DESCRIBED FOR THE JURY WHAT
11 THAT WAS.

12 WHAT IS TOXICOLOGY?

13 A. ACTUALLY, IF I MIGHT, MR. LEITER,
14 THE WHOLE NOTION REALLY STARTS WITH PHYSIOLOGY,
15 WITH -- THAT'S HOW YOUR BODY WORKS, YOUR MUSCLE,
16 YOUR HEART, YOUR BRAINS, YOUR KIDNEYS, YOUR LUNGS.
17 AND PHARMACOLOGISTS ARE REALLY RELATED TO
18 PHYSIOLOGISTS. THE PHYSIOLOGIST WOULD TAKE A KNIFE
19 AND CUT A NERVE AND YOUR HAND WOULD GO LIMP AND YOU
20 WOULD LOSE NERVES AND MUSCLES, AND SAY, OH, THESE
21 NERVES AND MUSCLES ARE IMPORTANT TO HOW YOUR
22 FINGERS WORK.

23 A PHARMACOLOGIST, INSTEAD OF TAKING
24 A KNIFE, TAKES A DRUG, INTERFERES WITH THE NERVES,
25 INTERFERES WITH THE MUSCLES AND OFTENTIMES THIS
26 INTERFERENCE TELLS YOU HOW THE MUSCLES AND THE
27 NERVES ARE WORKING. AND THAT'S WHERE DRUGS COME
28 FROM

1 A TOXICOLOGIST, AGAIN, THEY ARE ALL
2 RELATED, BASICALLY, LOOKS AT THE ADVERSE, THE BAD
3 SIDES OF CHEMICALS AND DRUGS. BUT THEY ARE ALL,
4 ALL RELATED.

5 THERE IS NO DRUG OUT THERE THAT
6 DOESN'T HAVE A BAD SIDE. SO TOXICOLOGISTS STUDY
7 THE BAD SIDES.

8 AND MANY TIMES THE BAD SIDES TURN
9 OUT TO BE THE DRUGS OF THE FUTURE, THINGS THAT THEY
10 WERE USING. SULPHUR DRUGS FOR TREATING INFECTIONS,
11 THE SIDE EFFECTS ENDED UP PRODUCING DIURETICS,
12 ANTI-DIABETIC DRUGS. SO SOMEBODY'S SIDE EFFECT
13 BECOMES SOMEBODY ELSE'S DRUGS.

14 SO PHYSIOLOGIST, PHARMACOLOGIST AND
15 TOXICOLOGIST ARE ALL RELATED.

16 Q. SO FAIR TO SAY THAT YOU HAVE A FAIR
17 AMOUNT OF EXPERTISE IN TOXICOLOGY AS WELL AS
18 PHARMACOLOGY, GIVEN THE RELATIONSHIP WITH EACH
19 OTHER?

20 A. YES.

21 Q. YOU WERE STARTING TO TELL THE JURY
22 ABOUT YOUR CAREER, WHAT YOU DID AFTER 1972, WHEN
23 YOU GOT YOUR PH.D. PLEASE CONTINUE.

24 A. AND SO I WENT TO THE LABORATORY OF
25 MOLECULAR BIOLOGY AT THE NATIONAL CANCER INSTITUTE
26 AND I SPENT TWO YEARS THERE STUDYING MOLECULAR
27 MECHANISMS OF CANCER, AGAIN, USING BOTH CHEMICALS
28 AND VIRUSES. AND SOME OF THE THINGS THAT I

1 ACTUALLY STUDIED FOR MY DOCTORATE, AS I SAID
2 BEFORE, SOME OF THESE CHEMICALS THAT CHANGE IN THE
3 BODY ARE RELATED, IN A MORE GENERAL WAY, TO MANY
4 THINGS, INCLUDING CANCER.

5 AND IN 1974, I GOT A JOB OFFER AT
6 THE MEDICAL COLLEGE OF VIRGINIA, WHICH IS PART OF
7 THE VIRGINIA, STATE OF VIRGINIA SYSTEM, IT'S IN
8 RICHMOND, VIRGINIA, TO COME DOWN TO THE DEPARTMENT
9 OF WHAT WAS THE DEPARTMENT OF PHARMACOLOGY AT THE
10 TIME, AS AN ASSISTANT PROFESSOR.

11 AND SO IN THE SPRING OF '74, IF I
12 PACKED UP A COUPLE BOXES AND HEADED FURTHER SOUTH
13 FROM D. C. TO RICHMOND, IT'S ABOUT TWO-HOUR DRIVE
14 AND --

15 Q. AND YOU HAVE BEEN LIVING IN
16 VIRGINIA EVER SINCE?

17 A. YES. I WAS AT THE MEDICAL SCHOOL
18 FROM 1974 UNTIL 1989. AND WHEN I LEFT TO GO TO
19 PHILIP MORRIS, I STILL HAD RESEARCH GRANTS. I
20 STILL HAD STUDENTS. AND I STILL HAVE MY AFFILIATE
21 APPOINTMENTS. AND I STILL SERVE ON COMMITTEES,
22 TEACHING COMMITTEES, GRADUATE STUDENT COMMITTEES AT
23 THE MEDICAL SCHOOL.

24 Q. LET'S TALK FOR JUST A MINUTE ABOUT
25 YOUR WORK AT THE MEDICAL COLLEGE OF VIRGINIA. WERE
26 PART OF YOUR RESPONSIBILITIES TEACHING?

27 A. YES.

28 Q. WHAT DID YOU TEACH?

1 A. I TAUGHT PHARMACOLOGY, TOXICOLOGY,
2 AND IN THE BEGINNING, A LITTLE BIT OF
3 BIOSTATISTICS. I TAUGHT MEDICAL STUDENTS,
4 PRIMARILY GRADUATE STUDENTS, THOUGH I ALSO WAS
5 INVOLVED IN TEACHING ATTENDING PHYSICIANS AND ALSO
6 INTERNS AND RESIDENTS AS WELL.

7 Q. WERE YOU ALSO INVOLVED AT THE
8 MEDICAL COLLEGE OF VIRGINIA WITH THE MASSEY CANCER
9 CENTER?

10 A. YES.

11 Q. AND WHAT WAS THE MASSEY CANCER
12 CENTER AND WHAT DID YOU DO?

13 A. THE MASSEY CANCER CENTER WAS AT THE
14 TIME THE ONLY COMPREHENSIVE CANCER CENTER IN THE
15 STATE. AND IT HAS A SPECIAL GOVERNMENT
16 DESIGNATION. AND I WAS THE ASSOCIATE SCIENTIFIC
17 DIRECTOR OF THE MASSEY CANCER CENTER.

18 Q. DURING YOUR TIME AT THE MEDICAL
19 COLLEGE OF VIRGINIA, DID YOU HAVE ANY INVOLVEMENTS
20 IN GOVERNMENT RESEARCH PROJECTS RELATING TO CANCER?

21 A. YES.

22 Q. AND CAN YOU DESCRIBE WHAT THOSE
23 WERE?

24 A. I HAD RESEARCH GRANTS FROM A NUMBER
25 OF FEDERAL AGENCIES RELATING TO UNDERSTANDING
26 CANCER. I ALSO HAD, I TOOK OVER THE AMERICAN
27 CANCER SOCIETY TEACHING, TEACHING GRANTS WHERE WE
28 WERE BRINGING IN YOUNG PHYSICIANS TO DO BASIC

1 RESEARCH. AND I ACTUALLY HAD SEVERAL OF THOSE
2 WORKING MY LAB OVER THE YEARS.

3 SO I DID BOTH CANCER RESEARCH,
4 FUNDED BY THE GOVERNMENT, AS WELL AS EDUCATION
5 FUNDED BY GOVERNMENT AS WELL AS EDUCATION FUNDED BY
6 ORGANIZATIONS LIKE THE AMERICAN CANCER SOCIETY.

7 Q. SO SOME OF YOUR RESEARCH WAS FUNDED
8 BY GOVERNMENT, SOME WAS FUNDED BY PUBLIC HEALTH
9 ORGANIZATIONS LIKE THE AMERICAN CANCER SOCIETY?

10 A. YES. I WAS ALSO FUNDED BY THE
11 AMERICAN HEART ASSOCIATION FOR A WHILE AS WELL.

12 Q. A COUPLE TIMES WHEN YOU HAVE TALKED
13 ABOUT RESEARCH, YOU HAVE USED THE PHRASE "BASIC
14 RESEARCH INTO CANCER. "

15 COULD YOU EXPLAIN WHAT THAT IS?

16 A. THE DISTINCTION IS BASIC VERSUS
17 APPLIED. APPLIED RESEARCH, AND THIS IS NOT TO
18 MINIMIZE APPLIED RESEARCH, IT'S VERY IMPORTANT, IS
19 WHERE PEOPLE TAKE IDEAS AND IMPLEMENT THEM IN SOME
20 COMMERCIAL WAY, EITHER FROM A DRUG COMPANY OR
21 TREATMENT OR A DEVICE.

22 THE BASIC PIECE IS PRIMARILY WHAT I
23 DID FOR ALL THOSE YEARS, HAD TO DO WITH TRYING TO
24 ASK THE RIGHT QUESTIONS, WHICH SOMETIMES WASN'T
25 THAT EASY, AND THEN TRYING TO ATTACK THE QUESTION
26 WITH EXPERIMENTS TO SEE WHETHER IT STOOD UP, HOW IT
27 STOOD UP. BUT THEY WERE VERY FUNDAMENTAL, VERY
28 FUNDAMENTAL QUESTIONS IN THE AREAS OF MY INTEREST.

1 Q. OKAY. SO YOU DID ADD THE MEDICAL
2 COLLEGE OF VIRGINIA, AND THE MASSEY CANCER CENTER
3 FROM 1974. WE ARE NOW GETTING TOWARDS 1989,
4 TEACHING AND DOING CANCER RESEARCH; IS THAT
5 CORRECT?

6 A. YES.

7 Q. HOW DID IT COME TO PASS THAT YOU
8 WENT TO WORK AT PHILIP MORRIS?

9 A. WELL, PHILIP MORRIS IS THREE MILES
10 DOWN 95, BIG NORTH-SOUTH HIGHWAY IN THE EASTERN
11 PART OF THE UNITED STATES. AND MANY OF THE
12 SCIENTISTS AT PHILIP MORRIS TOOK COURSES AT A
13 NUMBER OF INSTITUTIONS, INCLUDING THE MEDICAL
14 COLLEGE OF VIRGINIA. AND SO I HAD AN OPPORTUNITY
15 TO RUN INTO SOME OF THESE FOLKS. AND SOME OF THE
16 SCIENTISTS FROM PHILIP MORRIS ACTUALLY PRESENTED
17 SOME OF THE RESEARCH THEY WERE DOING AT PHILIP
18 MORRIS TO SOME OF US, MY COLLEAGUES AT THE MEDICAL
19 SCHOOL.

20 IT WASN'T UNIQUE TO PHILIP MORRIS.
21 WE ALSO HAD A. H. ROBBINS, WE HAD REYNOLDS METALS,
22 WE HAD ALL KINDS OF PEOPLE, PEOPLE FROM OTHER
23 INSTITUTIONS. IT'S A NORMAL ACADEMIC KIND OF
24 EXCHANGE.

25 SO I MET SOME OF THESE FOLKS AND I
26 ACTUALLY ENDED UP TRAINING SEVERAL OF THEM

27 AND ONE OF THEM, DR. JIM CHARLES,
28 WAS MY GRADUATE STUDENT AND HE GRADUATED, I THINK,

1 IN '81 OR '82, AND HE WENT BACK TO PHILIP MORRIS.

2 AND IN ABOUT '85 OR '86, HE ASKED
3 ME IF I WOULD BE WILLING TO CONSULT FOR PHILIP
4 MORRIS ON AN INGREDIENT QUESTION, BECAUSE PHILIP
5 MORRIS WAS PREPARING TO MAKE SUBMISSIONS TO THE
6 U. S. GOVERNMENT WITH REGARD TO THE INGREDIENTS IT
7 USED IN THE CIGARETTES THAT IT MANUFACTURED AND
8 SOLD IN THE UNITED STATES.

9 Q. AND DID YOU AGREE TO DO THE
10 CONSULTING?

11 A. YES.

12 SO I DID THAT FOR A LITTLE BIT AND
13 JIM AND I WOULD HAVE LUNCH ONCE IN AWHILE. I WOULD
14 PAY ONE TIME, HE WOULD PAY THE NEXT TIME. WE WERE
15 PRETTY GOOD FRIENDS.

16 AND THEN IN '88, HE SAID TO ME, WHY
17 DON'T YOU THINK ABOUT COMING TO WORK FOR PHILIP
18 MORRIS FULL TIME. AND SO I HAD A FEW MORE BEERS
19 AND I SAID, I HAVE TO THINK ABOUT THIS.

20 I SPOKE TO MY WIFE, SHE WASN'T REAL
21 EXCITED AND MY KIDS WEREN'T VERY EXCITED BECAUSE
22 THEY LIKED WHAT I WAS DOING AT THE UNIVERSITY.

23 AND I WENT BACK TO JIM AND I SAID,
24 I DON'T KNOW, BUT I THINK I WANT TO CHANGE. BUT I
25 AM NOT SURE THIS IS THE CHANGE I WANT.

26 SO I WENT BACK, I SPOKE TO MY
27 CHAIRMAN, I SPOKE TO THE DEAN AND I BASICALLY CAME
28 BACK AND SAID, I CAN GET A SABBATICAL, WHICH IS A

1 LEAVE OF ABSENCE, AND IF I DON'T LIKE YOU OR YOU
2 DON'T LIKE ME, GO BACK TO THE UNIVERSITY.

3 I HAD FUNDING FOR THREE OR FOUR
4 MORE YEARS. I STILL HAD GRADUATE STUDENTS AND THEY
5 SAID YOU CAN STILL TAKE CARE OF YOUR GRADUATE
6 STUDENTS, YOU CAN TRANSITION YOUR RESEARCH.

7 SO I WENT AND DID THE SABBATICAL
8 FOR A YEAR AT PHILIP MORRIS. AT THE END OF THAT
9 YEAR, I WENT BACK TO MY CHAIRMAN AND I SAID, I AM
10 GOING TO STAY. AND THEN I ARRANGED WITH THESE
11 AFFILIATE ACADEMIC APPOINTMENTS, SO I COULD
12 CONTINUE TO DO THE STUFF I WAS GOING.

13 SO THAT ONE-YEAR PERIOD DID A LOT
14 OF, DID A LOT OF QUESTIONS.

15 Q. LET ME GET TO THAT.

16 YOU MENTIONED YOU WERE HAVING LUNCH
17 WITH JIM CHARLES, HAD A FEW BEERS, STARTED TALKING
18 ABOUT YOUR GOING TO WORK AT PHILIP MORRIS AND YOU
19 HAD SOME CONCERNS?

20 A. TRUE.

21 Q. WHAT WERE YOUR CONCERNS?

22 A. WELL, FROM THE VERY SIMPLE THING
23 IS, HERE I WAS IN AN ACADEMIC INSTITUTION, I HAD
24 EVERYTHING THAT PEOPLE ARE SUPPOSED TO HAVE, I HAD
25 STUDENTS, I HAD RESEARCH MONEY, I WAS A FULL
26 PROFESSOR, I HAD THE MASSEY CANCER CENTER. BUT I
27 REALLY WASN'T ALL THAT HAPPY ABOUT SOME THINGS.
28 AND WORKING FOR A COMPANY, OKAY, I HAD THIS VISION

1 OF WEARING A SUIT AND CUTTING OFF MY BEARD AND
2 GETTING A REAL HAIR CUT. AND THEN IT WAS ALSO THE
3 QUESTION OF WORKING FOR A TOBACCO COMPANY.

4 Q. WHAT WERE YOUR CONCERNS ABOUT
5 WORKING FOR A TOBACCO COMPANY?

6 A. WELL, HERE I WAS, WE JUST WENT
7 THROUGH MY BACKGROUND, WHERE I CAME FROM, AND
8 THOUGH I NEVER DID ANY TOBACCO RELATED RESEARCH,
9 NOR WAS I ASSOCIATED WITH ANY PEOPLE THAT DID,
10 THERE WAS A REAL HEALTH ISSUE CONCERNING THE USE OF
11 TOBACCO.

12 AND SO I WANTED TO MAKE SURE THAT
13 WHAT THEY WERE ASKING ME TO DO, AT LEAST I COULD
14 LIVE WITH AND I COULD SLEEP WITH AT NIGHT.

15 Q. SO YOU JUST --

16 A. SO I, YOU KNOW, SOMEBODY ASKS YOU
17 TO DO SOMETHING AND, YEAH, THEY PAY YOU MORE MONEY,
18 OKAY, BUT WHAT DO THEY WANT, WHAT DO THEY WANT FOR
19 YOU FOR THIS KIND OF STUFF.

20 Q. SO YOU DECIDED TO PUT A TOE IN,
21 TAKE A SABBATICAL FROM THE MEDICAL COLLEGE OF
22 VIRGINIA AND THE MASSEY CANCER CENTER AND SPEND A
23 YEAR OVER AT PHILIP MORRIS TRYING TO DECIDE IF THIS
24 IS REALLY WHAT YOU WANTED TO DO; RIGHT?

25 A. RIGHT.

26 Q. WHAT DID YOU DO DURING THAT YEAR?

27 A. WELL, I SPOKE TO ALL THE SCIENTISTS
28 I COULD, BOTH THE NEW SCIENTISTS AND THE PEOPLE

1 THAT HAD BEEN THERE FOR 30 YEARS.

2 AND BY "SCIENTISTS," I MEAN, THEY
3 HAD PHYSICAL ASSISTS, PHYSICAL CHEMISTS, A VARIETY
4 OF BIOLOGISTS, IN THE UNITED STATES, IN RICHMOND.

5 I ALSO WENT TO EUROPE AND THEY HAVE
6 A SMALLER R&D IN SWITZERLAND. AND I SPOKE TO THOSE
7 FOLKS. BUT MY REAL INTEREST WAS ON THE RESEARCH
8 INSTITUTE THAT PHILIP MORRIS HAD IN GERMANY, IN
9 COLOGNE, GERMANY, PRIMARILY. THE ACRONYM IS
10 INBIFO, WHICH ITS ENGLISH TRANSLATION IS THE
11 INSTITUTE FOR BIOLOGICAL RESEARCH.

12 Q. THE JURY HAS HEARD A LITTLE BIT
13 ABOUT INBIFO DURING THIS TRIAL. I AM SORRY, THE
14 ACRONYM STANDS FOR?

15 A. THE INSTITUTE FOR BIOLOGICAL
16 RESEARCH.

17 AT THE TIME, THERE WERE MAYBE 130,
18 140 FOLKS, A COUPLE OF M.D.'S, M.D., PH.D.'S, A LOT
19 OF PH.D.'S, SOME VETERINARY PATHOLOGISTS. AND, YOU
20 KNOW, I HAD BEEN AROUND THE WORLD AND SEEN OTHER
21 INSTITUTES AND THIS WAS, AT LEAST SUPERFICIALLY, IT
22 HAD ALL THE GIZMOS, ALL THE MACHINES. IT HAD VERY
23 SOPHISTICATED EQUIPMENT AND IT HAD PEOPLE THAT
24 THAT'S WHAT THEY DO. OKAY. AND I SPENT A LOT OF
25 TIME, A LOT OF TIME THERE.

26 Q. AND WE WILL COME BACK AND TALK
27 ABOUT THAT A LITTLE BIT MORE.

28 AT THE END OF YOUR SABBATICAL YEAR,

1 YOU DECIDED THAT YOU DID WANT TO STAY AT PHILIP
2 MRRIS?

3 A. YES.

4 Q. WHY?

5 A. WELL, ONE, I FELT THAT IT WAS A
6 SERIOUS COMMITMENT BY THE COMPANY TO TRY TO CHANGE
7 THIS PRODUCT THAT THEY WERE SELLING, AND THAT THEY
8 HAD WHAT I PERCEIVED AS A COMMITMENT AND THEY HAD
9 RESOURCES. AND FOR ME, THE THING, THE TWO THINGS
10 THAT PUSHED ME WAS THE INSTITUTE IN EUROPE AND WHAT
11 QUALITY THE PEOPLE AND WHAT THEY WERE DOING, AND
12 TWO, THE COMMITMENT BY THE RESEARCH AND DEVELOPMENT
13 MANAGEMENT TO TRY AND MAKE THESE THINGS, MAKE THESE
14 THINGS HAPPEN.

15 Q. THE COMMITMENT TO MAKING LESS RISKY
16 PRODUCTS?

17 A. YES.

18 Q. NOW, AT THE VERY BEGINNING OF YOUR
19 TESTIMONY, YOU TOLD THE JURY THE VARIOUS TIMES ALSO
20 THAT YOU HAD DURING YOUR TEN YEARS, THAT YOU WERE A
21 FULL TIME EMPLOYEE AT PHILIP MRRIS.

22 COULD YOU TAKE JUST A COUPLE OF
23 MINUTES AND TELL THE JURY, ESSENTIALLY, WHAT YOUR
24 JOB RESPONSIBILITIES WERE. AND I KNOW THEY CHANGED
25 SOMEWHAT OVER TIME.

26 BUT WHAT WAS IT YOU WERE TO DO AT
27 PHILIP MRRIS?

28 A. AS I SAID, THE FIRST THING HAD TO

1 DO WITH THESE, WHAT WE CALL INGREDIENTS ADDED TO
2 TOBACCO IN THE MANUFACTURE OF CIGARETTES. SO YOU
3 KNOW, WHEN YOU LOOK AT A CIGARETTE, IT'S A PIECE OF
4 PAPER WITH THE TOBACCO IN A FOLDER.

5 AND WHEN YOU MANUFACTURE THIS
6 CIGARETTE, YOU ADD THINGS TO THEM THE THING THAT
7 THEY ADD THE MOST OF IS A LOT OF WATER. BUT AT THE
8 END OF THE DAY, THEY ALSO ADD OTHER THINGS THAT
9 ENABLE THE TOBACCO TO BE MANUFACTURED. AND SOME OF
10 THOSE THINGS INCLUDE FLAVORS. AND THERE'S LICORICE
11 AND THERE'S CHOCOLATE AND COCOA IN THERE. IT HAS
12 TO DO WITH EITHER MANUFACTURING QUESTIONS OR WITH
13 TASTE QUESTIONS.

14 AND SO I WAS RESPONSIBLE FOR MAKING
15 SURE THAT, ONE, THE QUALITY OF THE STUFF WE WERE
16 USING WAS THE HIGHEST QUALITY POSSIBLE; TWO, WE
17 KNEW WHAT IT WAS; THREE, THAT THE PEOPLE WHO WERE
18 SELLING IT TO US GOT IT USING WHAT'S CALLED GOOD
19 MANUFACTURING PRACTICES; THREE, THAT AS YOU USED IT
20 IN THE PRODUCT, IT WASN'T GOING TO CAUSE ANY
21 PROBLEMS ABOVE AND BEYOND THE PROBLEMS CAUSED BY
22 SMOKING CIGARETTES, IT WASN'T GOING TO MAKE IT
23 WORSE, OKAY; AND FOUR WAS TO COMPILE OF THIS LIST
24 THAT WAS GOING TO BE EVENTUALLY SUBMITTED TO THE
25 DEPARTMENT OF HEALTH AND HUMAN SERVICES, THE OFFICE
26 OF SMOKING AND HEALTH.

27 AND SO I HAD A GROUP OF PEOPLE
28 WHOSE RESPONSIBILITY WAS TO KEEP TABS OF WHAT WAS

1 GOING ON IN THE WORLD.

2 WE BELONGED TO ORGANIZATIONS THAT
3 SOLD AND USED THESE INGREDIENTS, AND SOMETIMES BY
4 FOOD PEOPLE, SOMETIMES BY BEVERAGE PEOPLE. IF WE
5 HAD TO DO BIOLOGICAL TESTS OR CHEMICAL TESTS, WE
6 DID IT. IF WE HAD TO BRING IN OUTSIDE EXPERTS TO
7 HELP US, WE DID THAT.

8 SO THAT WAS THE FIRST YEAR AND A
9 HALF. IT WAS EXACTLY AS I WAS TOLD, AS I -- MY
10 EXPECTATIONS WERE MET.

11 Q. NOW, BEFORE WE MOVE OFF OF THE
12 INGREDIENTS TESTING, AND WE WILL COME BACK TO TALK
13 ABOUT INGREDIENTS A LITTLE BIT LATER, BUT LET ME
14 JUST ASK THIS QUESTION RIGHT UP FRONT, IS IT THE
15 INGREDIENTS IN CIGARETTES THAT ARE ADDED TO THE
16 TOBACCO THAT MAKE CIGARETTES DANGEROUS?

17 A. IT'S THE TOBACCO.

18 Q. IT'S THE TOBACCO ITSELF?

19 A. YES.

20 Q. WHY DON'T YOU MOVE ON AND TALK
21 ABOUT OTHER JOB RESPONSIBILITIES YOU HAD WHILE YOU
22 WERE AT PHILIP MORRIS.

23 A. SO HERE I HAD WHAT FOR ME WAS AN
24 IDEAL SITUATION DOING TECHNICAL THINGS AND THEN
25 THEY ASKED ME TO BECOME A MANAGER AS WELL OF ABOUT
26 50 PEOPLE INVOLVED IN BIOLOGICAL RESEARCH IN
27 RICHMOND.

28 I MUST ADD THE FOLLOWING THING.

1 DURING THAT FIRST YEAR, I ALSO HAD DAY-TO-DAY
2 RESPONSIBILITY FOR THE INSTITUTE IN EUROPE, OKAY.

3 Q. THAT'S THE INSTITUTE THAT THE JURY
4 HAS REFERRED TO AS -- HAS HEARD REFERRED TO AS
5 INBIFO?

6 A. RIGHT. AND I HAD THAT
7 RESPONSIBILITY FOR MANY YEARS, AS I SORT OF MOVED
8 THROUGH THAT'S ALWAYS THERE.

9 SO AFTER ABOUT A YEAR AND A HALF, I
10 HAD THIS ADDITIONAL RESPONSIBILITY OF MANAGING, IF
11 YOU WILL, PEOPLE DOING BIOLOGICAL RESEARCH. WE HAD
12 BACTERIAL TESTS LOOKING FOR MUTAGENICITY, THINGS
13 THAT MIGHT CAUSE CANCER.

14 WE HAD PEOPLE DOING ASSAYS, LOOKING
15 FOR CHEMICAL CHANGES IN CELLS OR PARTS OF CELLS
16 THAT ARE CALLED ADDUCTS, THINGS THAT STICK VERY
17 TIGHTLY THAT ARE FELT TO BE IMPORTANT FOR CERTAIN
18 DISEASE STATES, INCLUDING CANCER.

19 WE HAD WORK ON CERTAIN KINDS OF
20 NITROS -- VERY SPECIFIC KINDS OF NITROSAMINES
21 UNIQUE TO TOBACCO ON HOW TO GET RID OF THEM, HOW TO
22 LOWER THEM

23 Q. AND NITROSAMINES ARE ONE OF THE
24 CHEMICALS THAT ARE FOUND IN TOBACCO SMOKE, WHICH
25 HAVE BEEN IDENTIFIED AS A CARCINOGEN?

26 A. IT'S NOT QUITE -- IT'S A VERY LARGE
27 FAMILY OF WHICH SOME OF THEM ARE IDENTIFIED OR FELT
28 TO BE IMPORTANT IN CANCER. NOT ALL OF THEM, SOME

1 OF THEM

2 Q. PLEASE CONTINUE.

3 A. AND IT WAS ALSO A BEHAVIORAL GROUP,
4 LOOKING AT THE EFFECTS OF NICOTINE AND SMOKING,
5 SMOKING BEHAVIOR.

6 AND BECAUSE OF MY RELATIONSHIP WITH
7 THE INSTITUTE IN EUROPE, I ALSO HELP COORDINATE
8 BETWEEN WHAT WE WERE DOING IN RICHMOND AND WHAT WE
9 WERE DOING IN EUROPE.

10 AND THAT WAS WHAT I DID FOR THE
11 FIRST THREE YEARS.

12 Q. ALL RIGHT.

13 WHAT OTHER JOB RESPONSIBILITIES DID
14 YOU HAVE DURING THE REST OF YOUR TIME AT PHILIP
15 MORRIS?

16 A. WELL, JIM CHARLES RETIRED AND I WAS
17 GIVEN HIS, HIS RESPONSIBILITIES. PLUS I WAS GIVEN
18 ENVIRONMENTAL TOBACCO SMOKE WHICH WAS HANDLED BY
19 ANOTHER GROUP OF, ANOTHER GROUP OF SCIENTISTS.

20 AND SO I WAS INVOLVED IN PRIMARILY
21 SPONSORING RESEARCH ON THE OUTSIDE, EITHER DIRECTLY
22 BY PHILIP MORRIS OR THROUGH ANOTHER ORGANIZATION
23 THAT PHILIP MORRIS WAS A PRINCIPLE MECHANIC OF
24 CALLED THE CENTER FOR INDOOR AIR RESEARCH.

25 AND COORDINATING N. T. S. WORK THAT
26 INBIFO WAS DOING AND STILL IS DOING. AND THAT WENT
27 ON FOR AWHILE.

28 WHEN THE U. S. OCCUPATIONAL SAFETY

1 AND HEALTH ADMINISTRATION HAD ISSUED SOME LEGAL
2 DOCUMENTS PROPOSING CHANGES IN WORKING PLACE
3 CONDITIONS WITH REGARD TO SMOKING IN THE WORKPLACE,
4 I WAS ASKED BY PHILIP MORRIS TO MAKE TECHNICAL
5 SCIENTIFIC SUBMISSIONS TO THE AGENCY IN TERMS OF
6 OUR POSITIONS, OUR DATA, THAT, YOU KNOW, THAT KIND
7 OF WORK.

8 AND THEN AFTER THAT, I WAS GIVEN
9 THE ADDITIONAL RESPONSIBILITY OF ALL SMOKING AND
10 HEALTH, SCIENTIFIC ISSUES WITHIN THE COMPANY. AND
11 THE ORGANIZATION THEN BROUGHT IN SOME ADDITIONAL
12 PEOPLE THAT EITHER EXISTED WITHIN THE COMPANY,
13 DOING THAT IN OTHER PARTS OR WE WENT AND HIRED
14 ADDITIONAL FOLKS.

15 Q. SO ULTIMATELY YOUR RESPONSIBILITIES
16 INCLUDED ALL SMOKING AND HEALTH SCIENTIFIC MATTERS
17 AT PHILIP MORRIS; IS THAT FAIR?

18 A. YES.

19 Q. ANY OTHER RESPONSIBILITIES AT
20 PHILIP MORRIS THAT YOU HAVEN'T TOUCHED ON, OTHER
21 THAN MANAGEMENT KIND OF RESPONSIBILITIES?

22 A. YEAH, WELL, I WON'T TALK ANYTHING
23 ABOUT THAT. THAT'S NOT MY FAVORITE THING, ANYWAY.

24 Q. OKAY.

25 A. BUT INTERFACED VERY CLOSELY WITH
26 THE PRODUCT DEVELOPMENT FOLKS. WHEN WE WOULD SIT
27 DOWN AND WE WOULD ARGUE ABOUT WHAT IS IT IN SMOKE
28 WE CAN GET RID OF, WHAT IS IT WE CAN LOWER, WHAT

1 ARE THE CONSEQUENCES OF DOING THAT, TECHNICALLY,
2 HOW DO YOU DO IT, THESE ARE NOT NECESSARILY NEW
3 QUESTIONS. THEY ARE QUESTIONS THAT FOLKS WITHIN
4 R&D HAVE BEEN ASKING FOR AT LEAST 40 YEARS. BUT
5 SOME OF THE THINGS THAT COME TO YOU FROM THE
6 SCIENTIFIC LITERATURE HAVE CHANGED OVER TIME IN
7 TERMS OF WHAT'S IMPORTANT AND WHAT'S NOT IMPORTANT.

8 AND HOW YOU TRY TO INTERPRET THAT
9 AND DEAL WITH THAT AND THEN TRY TO GO BACK TO THE
10 PRODUCT DEVELOPMENT FOLKS AND SAY, THIS IS THE
11 FAMILY OF COMPOUNDS WE NEED TO GET RID OF, WHAT DO
12 WE KNOW ABOUT IT, HOW CAN WE DO THAT AND THEN
13 REALLY WHAT ARE THE CONSEQUENCES.

14 IF WE GET RID OF THIS, DO WE MAKE
15 IT BETTER, DO WE MAKE IT WORSE? DO WE NOT DO --
16 AND AT THAT POINT, WHEN THEY CAME UP WITH SOME
17 IDEAS FOR THIS ELECTRICALLY-HEATED CIGARETTE THAT I
18 AM SURE YOU ARE GOING TO HEAR MORE AND MORE ABOUT,
19 WAS A TECHNICAL APPROACH THAT CHANGED THE PRODUCT
20 TO TRY AND REDUCE THESE THINGS IN SMOKE THAT ARE
21 NOT GOOD FOR YOU.

22 SO I WAS INTIMATELY INVOLVED IN THE
23 DEVELOPMENT AND TESTING OF PRODUCTS LIKE THAT.

24 Q. AND AGAIN, JUST TO JUMP AHEAD JUST
25 A LITTLE BIT, YOU MENTIONED THIS IN YOUR LAST
26 ANSWER, THERE HAVE BEEN A LARGE NUMBER OF CHEMICAL
27 COMPOUNDS IN TOBACCO SMOKE THAT ARE IDENTIFIED AS
28 CARCINOGENS; CORRECT?

1 A. YES. BUT WE WEREN' T JUST CONCERNED
2 WITH THE CARCINOGENS. YES.

3 Q. AND I WANT TO START WITH
4 CARCINOGENS FOR JUST A SECOND. ABOUT HOW MANY?

5 A. WELL, IT DEPENDS WHO YOU GO TO AND
6 HOW THEY COUNT. THERE ARE PROBABLY MORE THAN FIVE
7 DOZEN CARCINOGENS THAT HAVE BEEN IDENTIFIED.

8 AND I SAY CARCINOGENS, THAT
9 INCLUDES THINGS THAT ARE IDENTIFIED AS ANIMAL
10 CARCINOGENS.

11 IF YOU EITHER GIVE IT TO AN ANIMAL
12 OR INJECT IT INTO AN ANIMAL, FEED IT INTO AN
13 ANIMAL, AND SOME CONDITION, SOME DOSE, YOU ARE
14 GOING TO GET SOME KIND OF CANCER.

15 AND THE VAST MAJORITY OF THE FIVE
16 DOZEN OR SO ARE ANIMAL CARCINOGENS.

17 THEN THERE ARE A DOZEN, PLUS OR
18 MINUS, THAT ARE IDENTIFIED AS HUMAN CARCINOGENS.

19 AND THESE THINGS ARE IDENTIFIED AS
20 HUMAN CARCINOGENS, PRIMARILY, FROM OCCUPATIONAL
21 SETTINGS.

22 SO IF YOU WORK IN A MINE OR IN A
23 RUBBER PLANT OR A PETROLEUM PLANT WHERE YOU MIGHT
24 BE EXPOSED TO BENZENE, WHICH IS FOUND IN TOBACCO
25 SMOKE, IT'S A KNOWN HUMAN CARCINOGEN. THEY
26 IDENTIFIED IT AS A KNOWN HUMAN CARCINOGEN BASED
27 UPON OCCUPATIONAL SETTINGS.

28 SO YOU HAVE THINGS LIKE BENZENE,

1 YOU HAVE A VARIETY OF HEAVY METALS, FORMS OF
2 CHROMIUM YOU HAVE SOME ARSENIC IN THERE. BUT
3 AGAIN, THESE ARE LISTED AS KNOWN CARCINOGENS. I'D
4 SAY ABOUT A DOZEN OF THOSE.

5 Q. AND THE DIFFICULTY IS THAT ALTHOUGH
6 THEY ARE IDENTIFIED AS CARCINOGENS, NOBODY KNOWS,
7 EITHER AT PHILIP MORRIS OR IN THE SCIENTIFIC
8 COMMUNITIES, PRECISELY WHICH ONES, WHICH ONE, WHICH
9 ONES, WHICH COMBINATIONS ARE RESPONSIBLE FOR A
10 DISEASE CAUSATION IN HUMANS FROM SMOKING?

11 A. THAT IS RIGHT.

12 Q. AND SO IN TRYING TO DEVELOP A
13 BETTER PRODUCT, YOU WERE JUST TALKING ABOUT TRYING
14 TO TAKE OUT SOME OF THOSE COMPOUNDS AND THEN TRYING
15 TO FIGURE OUT WHETHER BY DOING THAT YOU HAVE
16 ACTUALLY ACCOMPLISHED ANYTHING?

17 A. THAT IS RIGHT.

18 Q. AND YOU ALSO MENTIONED THAT THERE
19 IS ALSO THE POSSIBILITY THAT BY TAKING, BY MAKING
20 SOME SORT OF DESIGN CHANGE, YOU COULD MAKE MATTERS
21 WORSE?

22 A. ABSOLUTELY.

23 Q. WHAT DID YOU MEAN BY THAT?

24 A. ABSOLUTELY.

25 THE NEWEST CONCEPT THAT PHILIP
26 MORRIS IS INVOLVED IN IN THE OUTSIDE ORGANIZATION
27 IS A CONCEPT CALLED HARM REDUCTION.

28 AND THAT'S WHAT I WAS TRYING TO

1 SAY. IT'S NOT JUST CHANGING THE CIGARETTE. YOU
2 HAVE -- IT IS TRYING TO UNDERSTAND THE WHOLE
3 PICTURE, HOW THE PERSON SMOKES IT, HOW MANY PEOPLE
4 SMOKE, HOW MANY PEOPLE QUIT.

5 AND SO, FOR EXAMPLE, IF YOU WERE TO
6 TAKE OUT ALL OF THE IRRITATING THINGS IN SMOKE,
7 OKAY, I WOULD SAY, FIRST BLUSH, THAT'S PROBABLY A
8 GOOD IDEA.

9 BUT LET'S SAY WHEN YOU DO THAT, IF
10 YOU COULD DO IT, WHAT YOU DO IS YOU MAKE THIS
11 PRODUCT NOT AS HARSH, MORE PEOPLE MAY START
12 SMOKING, MAYBE THEY CAN INHALE DEEPER AND HOLD IT
13 LONGER.

14 MAYBE PEOPLE THAT WERE GOING TO
15 QUIT DON'T QUIT. OKAY.

16 MAYBE THE KINDS OF DISEASES THAT
17 YOU GET NOW ARE DIFFERENT, THE PATTERN IS DIFFERENT
18 BECAUSE YOU THINK YOU HAVE DONE THE RIGHT THING,
19 YOU HAVE GOTTEN RID OF ALDEHYDES, WHICH ARE SOME OF
20 THESE IRRITATING COMPOUNDS, BUT YOU HAVE ACTUALLY
21 MADE THE MATTER WORSE BECAUSE THE PERSON IS NOW
22 EXPOSED TO MORE OF THE OTHER THINGS THAN THEY WERE
23 BEFORE. SO THAT WOULD BE AN EXAMPLE.

24 Q. THAT'S PART OF THE DIFFICULTY OF
25 REDUCING THE RISK OF SMOKING?

26 A. THAT IS RIGHT.

27 Q. JUST A FEW MORE QUESTIONS AND I SEE
28 WE ARE GOING TO GET PRETTY CLOSE TO LUNCH.

1 OVER THE COURSE OF YOUR CAREER,
2 HAVE YOU PUBLISHED IN PEER REVIEWED JOURNALS?

3 A. YES.

4 Q. ABOUT HOW MANY TIMES?

5 A. FROM THE BEGINNING OF MY CAREER TO
6 TODAY, I HAVE, I GUESS, ABOUT 90 PEER REVIEWED
7 ARTICLES, MORE THAN A DOZEN CHAPTERS IN BOOKS.

8 I HAVE BEEN EITHER A PRINCIPLE
9 AUTHOR OR CO-AUTHOR OF GOVERNMENT, GOVERNMENTAL
10 REPORTS, WHETHER FROM THE C. D. C. OR THE AGENCY FOR
11 TOXIC SUBSTANCE AND DISEASE REGISTRY, THE U. S.
12 E. P. A. , AND I HAVE ABOUT 100 SCIENTIFIC
13 PRESENTATIONS THAT I HAVE MADE.

14 Q. AND HAVE YOU ALSO SERVED ON
15 GOVERNMENT PANELS RELATING TO THE DEVELOPMENT OF
16 LOWER RISK CIGARETTES?

17 A. YES.

18 Q. CAN YOU DESCRIBE SOME OF THE PANELS
19 YOU HAVE WORKED ON.

20 A. I WAS INVITED BY HEALTH CANADA,
21 WHICH IS THEIR FEDERAL, THEIR FEDERAL ENTITY, TO
22 PARTICIPATE IN A MEETING WITH SOME OF THE WHO'S WHO
23 OF THE SCIENTIFIC PUBLIC HEALTH ARENA TO COME UP
24 WITH SOME IDEAS FOR TESTING AND DEVELOPING,
25 POTENTIALLY, LOWER RISK, LOWER RISK PRODUCTS.

26 AND THAT REPORT, THE MEETING WAS IN
27 '98. THE REPORT WAS PUBLISHED IN '99. AND THERE
28 WERE FIVE OR SIX SCIENTISTS, PHYSICIANS, PRIMARILY

1 FROM THE UNITED STATES, PUBLIC HEALTH FOLKS, THAT
2 WERE, THAT PARTICIPATED IN THAT MEETING AS WELL.

3 Q. WHO WERE THOSE PUBLIC HEALTH FOLKS
4 THAT PARTICIPATED WITH YOU IN THE HEALTH CANADA
5 PANEL?

6 A. WELL, BILL RICKARD WAS THE CHAIR.
7 HE IS A CANADIAN, AND HE RUNS A VERY LARGE TESTING
8 FACILITY CALLED LAB STAT IN CANADA WHERE
9 GOVERNMENTS, NON-GOVERNMENTAL ORGANIZATIONS, PHILIP
10 MORRIS SENDS STUFF TO BE TESTED. SO HE HAS BEEN
11 INVOLVED IN THE PUBLIC HEALTH SIDE FOR DECADES. SO
12 HE CHAIRED THE MEETING FOR HEALTH CANADA.

13 DETRICH HOFFMAN WAS THERE FROM THE
14 AMERICAN HEALTH FOUNDATION, THE GRANDFATHERS, IF YO
15 ULL, OF TOBACCO AND CANCER.

16 JACK HENNINGFIELD, SUBSTANCE ABUSE
17 FELLOW, FORMERLY AT THE NATIONAL INSTITUTES OF DRUG
18 ABUSE.

19 NEAL BENOWITZ WAS THERE. JOHN
20 SLATE FROM RUTGERS, PAUL LEE FROM ROSWELL, ROSWELL
21 PARK, ROGER JENKINS FROM OAKRIDGE NATIONAL LABS.

22 Q. NEAL BENOWITZ FROM SAN FRANCISCO?

23 A. U. C. S. F. , YES.

24 Q. WHOM THE JURY HAS MET.

25 NOW, WE HAVE TALKED A LITTLE BIT
26 ABOUT YOUR EXPERTISE IN PHARMACOLOGY AND
27 TOXICOLOGY. DO YOU ALSO HAVE EXPERTISE IN
28 EPIDEMIOLOGY?

1 A. INSOFAR AS THAT EPIDEMIOLOGY HAS A
2 FUNDAMENTAL REQUIREMENT FOR STATISTICS, I HAVE HAD,
3 FOR MANY YEARS, JOINT APPOINTMENT IN THE DEPARTMENT
4 OF BIostatISTICS AT THE MEDICAL COLLEGE OF
5 VIRGINIA. AND I STILL HAVE AN AFFILIATE
6 APPOINTMENT AND I STILL HAVE FOUR, FOUR DOCTORAL
7 STUDENTS WHO ARE GETTING THEIR PH. D. 'S THAT I AM ON
8 THEIR COMMITTEE. AND I HAVE BEEN ASKED BY THE MATH
9 ASSOCIATION, MATH SOCIETY OF AMERICA, AS PART OF A
10 NATIONAL SCIENCE FOUNDATION REQUEST TO CONTRIBUTE
11 TO STATISTICS IN THE BIOMEDICAL SCIENCES. AND THAT
12 REPORT HAS BEEN PREPARED AND SUBMITTED.

13 Q. NOW, RIGHT AFTER LUNCH, WE ARE
14 GOING THE START TALKING ABOUT LOW TAR CIGARETTES.

15 LET ME JUST ASK YOU A COUPLE VERY
16 QUICK QUESTIONS BEFORE WE BREAK. DURING YOUR TIME
17 AT PHILIP MORRIS, YOU JUST SAID YOU WERE INVOLVED
18 IN PRODUCT DEVELOPMENT EFFORTS. IS THAT FAIR?

19 A. YES.

20 Q. AND AS PART OF YOUR WORK, DID YOU
21 FAMILIARIZE YOURSELF WITH PRODUCT DEVELOPMENT
22 EFFORTS BY PHILIP MORRIS GOING BACK IN TIME, EVEN
23 BEFORE YOU GOT THERE?

24 A. YES.

25 Q. AND IS THAT A NECESSARY THING TO DO
26 IF YOU ARE GOING TO BE WORKING WITH THE COMPANY ON
27 A GOING FORWARD BASIS?

28 A. NOT UNLESS YOU WANTED TO REPEAT THE

1 SAME MISTAKES.

2 Q. SO YOU HAVE BECOME FAMILIAR WITH
3 PHILIP MORRIS'S PRODUCT DEVELOPMENT EFFORTS OVER
4 THE YEARS, IS THAT FAIR TO SAY?

5 A. YES.

6 Q. LET ME ASK YOU THE GENERAL
7 QUESTION: HAS PHILIP MORRIS TRIED TO DEVELOP,
8 SAFER CIGARETTES OVER THE YEARS?

9 A. PEOPLE HAVE USED THAT TERM SAFER
10 CIGARETTES. I AM MORE COMFORTABLE WITH TRYING TO
11 POTENTIALLY REDUCE THE RISK OF THE PRODUCT. IF WE
12 WANT TO AGREE THAT THAT'S THE SAME AS SAFER
13 CIGARETTES, THAT'S FINE.

14 Q. HAS PHILIP MORRIS WORKED OVER THE
15 YEARS TO HELP REDUCE THE RISK OF SMOKING
16 CIGARETTES?

17 A. YES.

18 Q. AND FOR HOW LONG HAS PHILIP MORRIS
19 BEEN ENGAGED IN THAT KIND OF EFFORT?

20 A. SINCE THE '50'S, BASED ON THE
21 DOCUMENTS THAT I HAVE SEEN.

22 MR. LEITER: YOUR HONOR, THIS MIGHT BE A
23 GOOD TIME TO BREAK FOR LUNCH.

24 THE COURT: THANK YOU VERY MUCH, COUNSEL.

25 ALL RIGHT, LADIES AND GENTLEMEN, WE
26 WILL TAKE OUR LUNCH BREAK. BE BACK AT 1:30 THIS
27 AFTERNOON. DON'T DISCUSS THE CASE WITH ANYONE.

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(AT 12 NOON, THE LUNCH
RECESS WAS TAKEN TO
1:30 P. M OF THE SAME DAY.)