

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
2 FOR THE COUNTY OF LOS ANGELES  
3 DEPARTMENT 308 HON. CHARLES MC COY, JUDGE  
4 RICHARD BOEKEN, )  
5 PLAINTIFF, )  
6 )  
7 ) CASE NO. BC226593  
8 VS. )  
9 PHILIP MRRIS, ) VOLUME 29  
10 INCORPORATED, A )  
11 CORPORATION; INTERNATIONAL )  
12 HOUSE OF PANCAKES )  
13 INCORPORATED, A )  
14 CORPORATION. )  
15 DEFENDANTS. )  
16 \_\_\_\_\_ )

13 REPORTER'S DAILY TRANSCRIPT OF PROCEEDINGS  
14 MONDAY, MAY 7TH, 2001  
A. M PROCEEDINGS

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

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

25 VOLUME 29 OF  
26 PAGES 4627 THROUGH 4738

27  
28

1 LOS ANGELES, CALIFORNIA; MONDAY, MAY 7TH, 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: GOOD MORNING, LADIES AND  
10 GENTLEMEN. OUR JURY PANEL IS WITH US. COUNSEL ARE  
11 PRESENT AS WELL.

12 GOOD MORNING, COUNSEL.

13 THE WITNESS IS ON THE STAND.

14 SIR, YOU UNDERSTAND YOU ARE STILL  
15 UNDER OATH.

16 THE WITNESS: YES, SIR.

17 THE COURT: LADIES AND GENTLEMEN, YOU MAY  
18 NOTICE THAT MR. FLORES IS NO LONGER WITH US.  
19 SOMETHING CAME UP IN HIS LIFE WHICH MADE IT  
20 IMPOSSIBLE FOR HIM TO CONTINUE WITH US SO HE HAS  
21 BEEN EXCUSED.

22 HE HAS MADE A COMMITMENT TO ME THAT  
23 HE WILL NOT DISCUSS THE CASE WITH ANYONE UNTIL IT  
24 IS CONCLUDED AND THAT, OF COURSE, WILL INCLUDE YOU.

25 THANK YOU, LADIES AND GENTLEMEN.  
26 COUNSEL, PLEASE.

27 /// /// ///

28 /// /// ///

1                                    RICHARD CARCHMAN,  
2 CALLED AS A WITNESS BY THE DEFENSE, HAVING BEEN  
3 PREVIOUSLY DULY SWORN, RESUMED THE WITNESS STAND  
4 AND TESTIFIED FURTHER AS FOLLOWS:

5

6                                    DIRECT EXAMINATION (RESUMED)

7

8 BY MR. LEITER:

9                    Q.     GOOD MORNING, LADIES AND GENTLEMEN.

10                                    GOOD MORNING, DR. CARCHMAN.

11                    A.     GOOD MORNING.

12                    Q.     ON FRIDAY, DURING YOUR DIRECT  
13 TESTIMONY, ONE OF THE SUBJECTS WE WERE DISCUSSING  
14 WAS LOW TAR CIGARETTES.

15                                    DO YOU REMEMBER THAT?

16                    A.     YES.

17                    Q.     AND YOU WERE TESTIFYING THAT LOW  
18 TAR CIGARETTES OR LOWERING THE TAR IN CIGARETTES  
19 HAS BEEN ENCOURAGED BY THE GOVERNMENT AND THE  
20 PUBLIC HEALTH COMMUNITY GOING BACK TO THE 1950'S;  
21 IS THAT CORRECT?

22                    A.     YES, SIR.

23                    Q.     AND WHAT WAS THE SCIENTIFIC CONCEPT  
24 BEHIND REDUCING TAR DELIVERIES IN CIGARETTES?

25                    A.     IT'S A FUNDAMENTAL CONCEPT IN  
26 TOXICOLOGY. IT'S AT LEAST 400 YEARS OLD. A SWISS  
27 TOXICOLOGIST COINED THE PHRASE, THE ENGLISH  
28 TRANSLATION OR AN ENGLISH TRANSLATION IS "THE DOSE

1 IS EVERYTHING. "

2 SO LESS IS BETTER IS THE OTHER WAY  
3 OF LOOKING AT IT.

4 Q. SO LESS IS BETTER.

5 AND IN ACCORDANCE WITH THE  
6 RECOMMENDATION, PHILIP MORRIS AND THE OTHER  
7 AMERICAN TOBACCO COMPANIES LOWERED THE TAR SOMEWHAT  
8 SIGNIFICANTLY IN THEIR CIGARETTES; CORRECT?

9 A. YES.

10 Q. NOW, WE TALKED A LITTLE BIT ABOUT  
11 THIS ON FRIDAY. IS THERE ANY KIND OF LABORATORY  
12 TEST THAT CAN BE CONDUCTED COMPARING LOW TAR  
13 CIGARETTES TO HIGH TAR CIGARETTES TO DETERMINE  
14 WHETHER THE LOW TAR CIGARETTES, IN FACT, REDUCE THE  
15 RISK OF THE DISEASE?

16 A. NOT THAT I AM AWARE OF.

17 Q. THERE WASN'T, IN FACT, IN THE '70'S  
18 AND THE '80'S?

19 A. NO.

20 Q. AND THERE ISN'T TODAY?

21 A. NO.

22 Q. SO WHAT KIND OF TESTS DO WE HAVE TO  
23 RELY TO DETERMINE WHETHER REDUCING TAR DELIVERIES  
24 IN CIGARETTES ACTUALLY REDUCES RISK?

25 A. THERE ARE MOSTLY INDIRECT, WE  
26 TALKED ABOUT SOME OF THEM ON FRIDAY, SOME OF THEM  
27 ARE ANIMAL INHALATION STUDIES, SOME OF THEM ARE  
28 LOOKING AT MUTAGENICITY OR IN MATERIA OR IN

1 MAMMALIAN CELLS AND OTHER KINDS OF ANIMAL STUDIES,  
2 BUT THEY ONLY GIVE YOU A VERY INDIRECT INDICATION  
3 TO TRY TO ADDRESS THE REALLY IMPORTANT QUESTION  
4 ABOUT FOR A POPULATION OR FOR AN INDIVIDUAL, IN  
5 PARTICULAR, THERE'S NOTHING OUT THERE THAT YOU CAN  
6 DO.

7 Q. NO LABORATORY TESTS.  
8 WHAT ABOUT EPIDEMIOLOGY?

9 A. WELL, EPIDEMIOLOGY HAS BEEN THE  
10 GOAL STONE, GOAL STANDARD FOR 50 SOMETHING YEARS IN  
11 THE AREA OF SMOKING AND HEALTH.

12 BUT THOUGH IT IS THE GOAL STANDARD,  
13 IT TAKES 10, 20 YEARS OR MORE TO START GETTING  
14 ANSWERS TO QUESTIONS.

15 Q. AND EPIDEMIOLOGY, JUST TO REFRESH  
16 EVERYBODY'S RECOLLECTION, IS WHAT?

17 A. IT'S REALLY IN THE WORD ITSELF,  
18 "EPI" MEANS ABOUT, AND "DEMOS" IS GREEK FOR PEOPLE.  
19 SO IT IS A COMPARISON OF DISEASE INCIDENTS OR  
20 DISEASE RATES IN PEOPLE WHERE IN THE BUSINESS  
21 SCIENTIFIC WAY YOU ARE LOOKING AT A DISEASE RATE IN  
22 AN EXPOSED POPULATION OR INDIVIDUAL VERSUS  
23 UNEXPOSED AND YOU ARE COMPARING THE TWO.

24 Q. SO FOR DETERMINING WHETHER LOW TAR  
25 CIGARETTES REDUCE THE RISK, SCIENCE OVER TIME HAVE  
26 LOOKED AT EPIDEMIOLOGY STUDIES; IS THAT CORRECT?

27 A. THE FIRST ONE WAS IN 1961, THAT  
28 CONTINUES UNTIL THE PRESENT TIME.

1 Q. AND THOSE STUDIES COMPARE, IN PART,  
2 SMOKERS OF HIGHER TAR CIGARETTES VERSUS SMOKERS OF  
3 LOWER TAR CIGARETTES; IS THAT CORRECT?

4 A. IN THE PERIOD OF TIME THAT THEY  
5 WERE STUDYING THEM, YES.

6 Q. OKAY.

7 AND YOU TESTIFIED ON FRIDAY AS TO  
8 WHAT YOUR CONCLUSION IS FROM REVIEWING THOSE  
9 EPIDEMIOLOGICAL STUDIES ABOUT THE RISK REDUCTION  
10 FROM LOW TAR CIGARETTES; IS THAT CORRECT?

11 A. YES.

12 Q. AND WHAT WAS THAT OPINION?

13 A. IT WAS TWO-STEP OPINION. ONE THAT  
14 THERE HAS BEEN A CONSISTENT, AND BY "CONSISTENT," I  
15 DON'T MEAN TO SUGGEST THAT EVERY SINGLE  
16 EPIDEMIOLOGICAL STUDY THAT'S EVER BEEN DONE HAS  
17 SHOWN THIS, BUT OVERALL, THERE HAS BEEN A  
18 CONSISTENT PICTURE OF A 20 TO 40 PERCENT REDUCTION  
19 IN LUNG CANCER RISK. THAT'S THE FIRST PIECE.

20 THE SECOND PIECE, AND I MENTIONED  
21 THIS ON FRIDAY, WAS WHAT THE '89 SURGEON GENERAL  
22 SAID WITH REGARD TO THIS, THAT THOUGH THERE IS A  
23 RISK REDUCTION, IT'S INSIGNIFICANT. AND  
24 INSIGNIFICANT IN THAT PERSPECTIVE IS THAT THE RISK  
25 THAT'S LEFT OVER, AFTER YOU REDUCE IT BY 20 TO 40  
26 PERCENT, IS STILL TOO HIGH. IT'S STILL  
27 UNACCEPTABLE FROM A PUBLIC HEALTH PERSPECTIVE.

28 Q. AND IS IT FAIR TO SAY THAT AS WE

1 LOOK AT THE STUDIES TODAY, IN YOUR OPINION, LOW TAR  
2 CIGARETTES HAVE REDUCED SOME RISK BUT THERE' S STILL  
3 SIGNIFICANT RISK AND MORE WORK NEEDS TO BE DONE TO  
4 FIND OUT MORE ABOUT LOW TAR CIGARETTES?

5 A. YES.

6 Q. AND YOU TESTIFIED ON FRIDAY ABOUT  
7 SOME RESEARCH THAT PHILIP MORRIS IS CONDUCTING  
8 TODAY ON THE ISSUE; IS THAT CORRECT?

9 A. YES.

10 Q. NOW, EPIDEMIOLOGICAL STUDIES OF  
11 LARGE GROUPS OF PEOPLE; IS THAT CORRECT?

12 A. THEY STUDY GROUPS OF PEOPLE, SOME  
13 LARGER THAN OTHERS.

14 Q. GROUPS OF PEOPLE.

15 IS THERE ANY WAY TO DETERMINE FOR  
16 ANY PARTICULAR INDIVIDUAL SMOKER, WHETHER, BY  
17 SWITCHING TO LOW TAR CIGARETTES, THAT SMOKER  
18 REDUCES HIS OR HER RISK OF DISEASE?

19 A. NOT THAT I AM AWARE OF.

20 Q. AND SO WHEN WE ARE LOOKING AT LOW  
21 TAR CIGARETTES, WE ARE LOOKING AT, ESSENTIALLY,  
22 STUDIES OF GROUPS OF PEOPLE, POPULATIONS, FAIR  
23 ENOUGH?

24 A. YES.

25 Q. NOW, YOU MENTIONED A COUPLE OF  
26 MINUTES AGO, RESEARCH THAT PHILIP MORRIS IS NOW  
27 CONDUCTING ON LOW TAR CIGARETTES, WHICH IS A  
28 PROSPECTIVE STUDY; CORRECT?

1 A. YES.

2 Q. AND A STUDY THAT YOU ANTICIPATE  
3 WILL CONTINUE SIGNIFICANTLY INTO THE FUTURE; IS  
4 THAT CORRECT?

5 A. YES.

6 Q. WHAT ELSE IS PHILIP MORRIS DOING  
7 TODAY TO HELP ANSWER QUESTIONS ABOUT SMOKING AND  
8 HEALTH?

9 A. LAST SPRING, WE PUBLICLY ISSUED,  
10 AROUND THE WORLD, A DOCUMENT FOR THE PHILIP MORRIS  
11 EXTERNAL RESEARCH PROGRAM THAT WAS DISTRIBUTED TO  
12 3,000, 4,000 INSTITUTIONS, INDIVIDUALS. AND THE  
13 HEAD OF THE PROGRAM, DR. RICK SOLANO, SENT A COPY  
14 OF THIS WITH PERSONAL LETTERS TO A NUMBER OF PUBLIC  
15 HEALTH ADVOCATES AROUND THE WORLD, INCLUDING FOLKS  
16 HERE IN THE UNITED STATES, WHETHER IT WAS DR. JOHN  
17 SLAY, DR. NEAL BENOWITZ, DR. DAVID BURNS IN  
18 SAN DIEGO, BASICALLY TELLING THEM THIS IS WHAT WE  
19 WERE DOING AND ASKING THEM FOR SOME, SOME FEEDBACK.

20 Q. LET ME STOP YOU FOR A SECOND.  
21 WHO IS RICK SOLANO?

22 A. DR. RICHARD SOLANO IS THE PHILIP  
23 MORRIS SCIENTIST, HE'S VICE-PRESIDENT IN RESEARCH,  
24 DEVELOPMENT AND ENGINEERING. AND HE IS THE PHILIP  
25 MORRIS PERSON THAT IS RESPONSIBLE FOR THIS PROGRAM

26 Q. IS THIS A NEW PROGRAM?

27 A. YES.

28 Q. AS OF ABOUT A YEAR AGO?

1 A. YES.

2 Q. AND YOU SAID IT'S CALLED THE PHILIP  
3 MORRIS EXTERNAL RESEARCH PROGRAM

4 AND CAN YOU DESCRIBE FOR US,  
5 BRIEFLY, WHAT THE PHILIP MORRIS EXTERNAL RESEARCH  
6 PROGRAM IS?

7 A. IT IS AN ATTEMPT TO REENGAGE  
8 OUTSIDE RESEARCHERS AND PHILIP MORRIS AND FOCUS IN  
9 ON HEALTH ISSUES THAT, THOUGH THEY DEAL WITH  
10 SMOKING AND HEALTH, ARE INTENDED TO CAPTURE EVEN A  
11 BROADER NET BECAUSE ANSWERS TO QUESTIONS THAT WE  
12 COULD BE INTERESTED IN COULD COME FROM ANY NUMBER  
13 OF, ANY NUMBER OF PLACES.

14 Q. SO IT'S AN ATTEMPT BY PHILIP MORRIS  
15 TO FUND RESEARCH BY OUTSIDE SCIENTISTS THAT  
16 HOPEFULLY WILL ANSWER SOME QUESTIONS HELPFUL TO  
17 PHILIP MORRIS IN PRODUCT DEVELOPMENT, IS THAT FAIR?

18 A. THAT'S PART OF IT, YES.

19 Q. WHAT'S THE OTHER PART OF IT?

20 A. THE OTHER PART HAS TO DO WITH WHAT  
21 THE COMPANY FEELS IS ITS ADDITIONAL RESPONSIBILITY  
22 TO FUND RESEARCH IN THIS AREA RELATED TO THIS  
23 PRODUCT.

24 Q. CAN YOU DESCRIBE, AND I WANT TO ASK  
25 YOU, IN A SECOND ABOUT HOW THE PROGRAM IS SET UP  
26 AND HOW IT FUNCTIONS, BUT CAN YOU DESCRIBE FOR US  
27 BRIEFLY WHAT ARE THE AREAS OF RESEARCH INTO SMOKING  
28 AND HEALTH THAT PHILIP MORRIS IS FIGHTING?

1           A.     THE BROCHURE THAT, THE REQUEST FOR  
2 PROPOSALS LAYS OUT AREAS LIKE EXPOSURE ASSESSMENT,  
3 EPIDEMIOLOGY, CARCINOGENESIS, BASIC MECHANISMS,  
4 NEUROSCIENCES. BUT IT'S BROAD ENOUGH TO CAPTURE  
5 ANY SCIENTIST THAT HAS AN IMAGINATIVE IDEA THAT  
6 THEY THINK MIGHT BE IMPORTANT.

7           Q.     YOU THREW A LOT OF SCIENTIFIC TERMS  
8 OUT AT US, AND I DIDN'T GET THEM WRITTEN DOWN  
9 QUICKLY ENOUGH.

10                   IF YOU COULD TELL US JUST IN A  
11 LITTLE MORE DETAIL THE KINDS OF AREAS OF RESEARCH  
12 AND WHAT ARE THE KIND OF QUESTIONS THAT PHILIP  
13 MORRIS IS HOPING TO PROVIDE ANSWERS TO.

14           A.     LET ME FIRST SAY THAT BEFORE WE SET  
15 UP THIS PROGRAM, WE BROUGHT IN SOME OUTSIDE EXPERTS  
16 TO GET THEIR INPUT AND FEEDBACK IN TERMS OF WHAT WE  
17 SHOULD BE DOING. AND IT WAS THEIR FEELING AND  
18 AGREED TO BY PHILIP MORRIS THAT, ONE, WE SHOULD BE  
19 FUNDING THE HIGHEST QUALITY SCIENCE POSSIBLE; TWO,  
20 WE SHOULD BE FUNDING AREAS THAT ARE UNDER SERVED BY  
21 OTHER PEOPLE, LIKE THE GOVERNMENT; AND THREE, THAT  
22 WE MIGHT CONSIDER FUNDING AREAS AND TOPICS THAT  
23 MIGHT BE VIEWED AS SOMEWHAT RISKY, NOT SOMETHING WE  
24 PRETTY MUCH KNOW WHAT YOU ARE GOING TO GET.

25           Q.     RISKY IN THE SENSE THAT THESE ARE  
26 AREAS THAT SCIENCE, TODAY, DOESN'T QUITE KNOW THE  
27 ANSWER TO?

28           A.     THAT IS CORRECT. THAT IS CORRECT.

1                   AND SO THE FIRST TOPIC WAS EXPOSURE  
2 AND THAT HAD TO DO WITH TRYING TO UNDERSTAND EITHER  
3 ANIMAL SYSTEMS OR, IN HUMAN BEINGS, WHAT KINDS OF  
4 THINGS PEOPLE ARE EXPOSED TO AND WHAT MIGHT THE  
5 CONSEQUENCES OF THAT EXPOSURE BE.

6                   BECAUSE YOU ARE DEALING WITH,  
7 WHETHER IT'S THE UNITED STATES OR MANY OTHER  
8 COUNTRIES, DIVERSE AND HETEROGENOUS POPULATIONS OF  
9 INDIVIDUALS. YOU ARE DEALING WITH MEN. YOU ARE  
10 DEALING WITH WOMEN. YOU ARE DEALING WITH DIFFERENT  
11 ETHNIC GROUPS, DIFFERENT RACIAL GROUPS. YOU HAVE  
12 TO SOMEHOW CAPTURE ALL OF THE THOUGHTS AND IDEAS  
13 AND HYPOTHESES THAT HAVE BEEN RAISED AND SO THAT  
14 WAS OUR INTENT THERE.

15                  FOR EPIDEMIOLOGY, AS I SAID  
16 EARLIER, EPIDEMIOLOGY CURRENTLY REMAINS THE GOAL  
17 STANDARD AND THE CLASSICAL EPIDEMIOLOGY IS BEING  
18 REPLACED BY WHAT'S CALLED MOLECULAR EPIDEMIOLOGY,  
19 WHERE YOU'RE JUST NOT FOLLOWING PEOPLE AND SEE WHAT  
20 THEY GET SICK FROM OR WHAT THEY DIE FROM, BUT YOU  
21 ARE ACTUALLY LOOKING AT THINGS IN THESE PEOPLE THAT  
22 YOU OR OTHERS MIGHT BELIEVE ARE IMPORTANT TO  
23 UNDERSTAND MECHANISMS.

24                  Q.     AND JUST SO THAT WE UNDERSTAND, SO  
25 IN ADDITION TO FOLLOWING PEOPLE TO FIND OUT WHAT  
26 HAPPENS TO THEM, YOU ARE LOOKING AT CELL ISSUES,  
27 DNA ISSUES, THINGS LIKE THAT?

28                  A.     YES, YES, CHEMICAL ISSUES.

1 ANOTHER AREA DEALS WITH THE  
2 NEUROSCIENCES, THE BRAIN AND THE NERVOUS SYSTEM  
3 AND, I GUESS WHEN WE GET INTO SOME DETAIL, I CAN  
4 TALK A LITTLE BIT ABOUT IT. BUT IT COVERS, AGAIN,  
5 EVERYTHING FROM ANIMALS TO PEOPLE AND THERE' S AN  
6 EMPHASIS ON NICOTINE, THOUGH, IF IT IS NOT  
7 RESTRICTED TO NICOTINE AT ALL.

8 Q. OKAY. SO THOSE ARE SOME OF THE  
9 AREAS THAT THE PHILIP MORRIS EXTERNAL RESEARCH  
10 PROGRAM IS FUNDING; CORRECT, OR IS INTERESTED IN  
11 FINDING ANSWERS TO?

12 A. YES.

13 Q. NOW, YOU MENTIONED ON FRIDAY THAT  
14 YOU ARE NOW RETIRED FROM PHILIP MORRIS. YOU ARE A  
15 CONSULTANT FOR PHILIP MORRIS.

16 IS PART OF YOUR CONSULTING  
17 ARRANGEMENT THAT YOU HAVE AN INVOLVEMENT WITH THE  
18 PHILIP MORRIS EXTERNAL RESEARCH PROGRAM?

19 A. YES.

20 Q. AND WHAT IS YOUR INVOLVEMENT?

21 A. ONE, I HAVE MET WITH ALL OF THE  
22 INDIVIDUAL MEMBERS OF THE SCIENTIFIC ADVISORY  
23 BOARD, THESE ARE NON-PHILIP MORRIS EMPLOYEES. AND  
24 THEY ARE THERE TO EVALUATE, JUDGE AND DECIDE ON  
25 WHAT PROPOSALS, WHAT BRANDS GET FUNDED.

26 SO I MET WITH ALL OF THEM, ALL OF  
27 THESE FOLKS.

28 NUMBER 2, I DO NOT SEE ANY OF THESE

1 PROPOSALS THAT COME IN. I DO NOT REVIEW THESE  
2 PROPOSALS UNLESS ONE OF THE S. A. B. MEMBERS ASKED ME  
3 TO LOOK AT SOME SECTION AND PROVIDE SOME TECHNICAL  
4 INPUT.

5 Q. AND MAYBE I OUGHT TO STOP YOU AND  
6 WE OUGHT TO BACK UP A LITTLE AND TALK ABOUT THE  
7 SCIENTIFIC ADVISORY BOARD.

8 YOU ARE AN ADVISOR TO THIS PROGRAM?

9 A. TECHNICAL.

10 Q. TECHNICAL ADVISER.

11 AND YOU MENTIONED THAT THERE IS A  
12 GROUP OF SCIENTISTS, FIRST OF ALL, WHAT'S THE  
13 FUNCTION OF THOSE SCIENTISTS, THESE ARE OUTSIDE  
14 PHILIP MORRIS?

15 A. OUTSIDE. AND THEY ARE  
16 INTERNATIONALLY REPRESENTED, COVERING ALL OF THE  
17 AREAS OF INTEREST. WE ARE IN THE PROCESS OF  
18 EXPANDING IT BASED UPON SOME OF THE RESEARCH  
19 PROPOSALS THAT WE HAVE GOTTEN IN.

20 WE HAVE SEVERAL PHYSICIANS ON THIS,  
21 WE HAVE EPIDEMIOLOGISTS, TOXICOLOGISTS,  
22 CARDIOVASCULAR, CANCER, CANCER PEOPLE, MOLECULAR,  
23 MOLECULAR PEOPLE, AND THEY ARE REPRESENTATIVE OF  
24 THE SCIENTIFIC COMMUNITY IN THE UNITED STATES AND  
25 SOME INTERNATIONAL FOLKS. LIKE I SAY, WE ARE IN  
26 THE PROCESS OF EXPANDING.

27 Q. AND THESE ARE ALL SCIENTISTS AND  
28 PHYSICIANS AND OTHERS FROM OUTSIDE PHILIP MORRIS

1 WHO CONSTITUTE THIS SCIENTIFIC ADVISORY GROUP; IS  
2 THAT CORRECT?

3 A. YES.

4 Q. CAN YOU GIVE US JUST A COUPLE OF  
5 EXAMPLES OF SOME OF THE PEOPLE WHO ARE IN THE  
6 GROUP?

7 A. ONE IS A PHYSICIAN. HE IS  
8 CURRENTLY AT THE UNIVERSITY OF CINCINNATI. HE WAS  
9 ONE OF THE PRINCIPLE AUTHORS OF THE '64 SURGEON  
10 GENERAL'S REPORT AND WAS RESPONSIBLE FOR WRITING  
11 ALL THE CANCER ASSESSMENT GUIDELINES FOR THE U. S.  
12 GOVERNMENT. THAT'S ONE PERSON.

13 ANOTHER PERSON IS THE PROFESSOR AND  
14 CHAIR OF AN ENVIRONMENTAL MEDICINE PROGRAM AT NEW  
15 YORK UNIVERSITY IN NEW YORK. HE IS CURRENTLY THE  
16 HEAD OF ALL THE SCIENTIFIC ADVISORY BOARDS FOR THE  
17 U. S. ENVIRONMENTAL PROTECTION AGENCY AND WAS THE  
18 CHAIRMAN OF THE E. P. A. SCIENTIFIC ADVISORY BOARD ON  
19 ENVIRONMENTAL TOBACCO SMOKE.

20 Q. NOW, THESE OUTSIDE SCIENTISTS FORM  
21 AN OUTSIDE BOARD AND WHAT ROLE DO THEY PLAY IN  
22 EVALUATING PROPOSALS?

23 FIRST, REQUEST FOR PROPOSALS WENT  
24 OUT, AS YOU SAID BEFORE, AND THEN SCIENTISTS SEND  
25 IN PROPOSALS OF RESEARCH THAT THEY WOULD LIKE TO BE  
26 FUNDED; IS THAT CORRECT?

27 A. WE GOT ABOUT 150 PROPOSALS FROM  
28 AROUND THE WORLD THAT CAME IN. EACH MEMBER OF THE

1 S. A. B. WAS ASSIGNED A CERTIFICATE NUMBER OF THESE  
2 PROPOSALS. THERE WAS A LARGE POOL OF EXTERNAL  
3 SCIENTIFIC REVIEWERS, EACH PROPOSAL, IN ADDITION TO  
4 A SCIENTIFIC ADVISORY BOARD MEMBER, HAD AT LEAST  
5 THREE OUTSIDE SCIENTIFIC REVIEWERS. THESE  
6 SCIENTIFIC REVIEWERS ARE UNIVERSITY INSTITUTIONS,  
7 GOVERNMENTAL SCIENTISTS FROM AROUND THE WORLD.

8 AND THEY REVIEW THE PROPOSALS. THE  
9 REVIEW GOES TO THE SCIENTIFIC ADVISORY BOARD MEMBER  
10 WHOSE RESPONSIBILITY, IN ADDITION TO THEIR OWN  
11 REVIEW, IS TO BRING TOGETHER THESE REVIEWS AND COME  
12 UP WITH A SUMMARY POSITION.

13 THE SCIENTIFIC ADVISORY BOARD THEN  
14 MEETS AND THEY GO THROUGH EACH PROPOSAL AND THEY  
15 DECIDE WHICH IS APPROVED AND WHICH IS NOT APPROVED,  
16 AND OF THE 150, SOME 60 ODD PROPOSALS WERE APPROVED  
17 AND THAT'S THE END OF IT.

18 ONCE THEY APPROVE IT, THEN IT'S  
19 FUNDED.

20 Q. WHAT ROLE DO YOU PLAY IN APPROVAL  
21 OF SPECIFIC PROPOSALS?

22 A. I HAVE NO VOTE, NO SAY. I JUST, IF  
23 SOMEBODY HAS A TECHNICAL QUESTION REGARDING  
24 SOMETHING THAT I MIGHT HAVE INFORMATION ON, I WAS  
25 ASKED QUESTIONS. BUT THAT'S IT.

26 Q. WHAT ROLE DOES ANYBODY AT PHILIP  
27 MORRIS HAVE IN DECIDING WHAT PROPOSALS GET APPROVED  
28 AND FUNDED?

1           A.     NONE.

2           Q.     IT' S JUST THE OUTSIDE SCIENTISTS?

3           A.     THAT' S THE CURRENT CONFIGURATION,

4 YES.

5           Q.     THERE WAS, AND THE JURY HAS HEARD A

6 LITTLE BIT ABOUT IT AND I THINK THEY WILL HEAR MORE

7 ABOUT IT IN THE CASE, THERE WAS AN ORGANIZATION IN

8 THE PAST FUNDED BY THE INDUSTRY CALLED THE COUNCIL

9 FOR TOBACCO RESEARCH. ARE YOU FAMILIAR WITH THAT?

10          A.     I AM FAMILIAR WITH IT SOMEWHAT.

11          Q.     AND THAT ORGANIZATION NO LONGER

12 EXISTS; IS THAT CORRECT?

13          A.     YES.

14          Q.     AND DOES THAT HAVE SOMETHING TO DO

15 WITH PHILIP MORRIS INSTITUTING THIS PROGRAM?

16          A.     NO.

17          Q.     INDEPENDENT?

18          A.     THE PROGRAM WE HAVE JUST DISCUSSED

19 IS SOLELY PHILIP MORRIS.

20          Q.     NO OTHER TOBACCO COMPANIES?

21          A.     NO.

22          Q.     WHY IS PHILIP MORRIS DOING THIS?

23          A.     AS I SAID EARLIER, THERE ARE TWO

24 REASONS: ONE, IT' S THE RESPONSIBLE THING TO DO,

25 JUST IN TERMS OF THE PRODUCT WE MARKET. AND THE

26 SECOND IS IT' S GOING TO, WE HOPE, HELP US IN

27 FURTHERING REDUCE THE RISK ASSOCIATED WITH THE USE

28 OF THIS PRODUCT.

1           Q.     HOW MUCH MONEY SO FAR HAS PHILIP  
2 MORRIS PROVIDED TO SCIENTISTS WHO ARE CONDUCTING  
3 THIS RESEARCH?

4           A.     THE FIRST YEARS' S FUNDING IS ABOUT  
5 20 MILLION DOLLARS. IF IT CONTINUES TO GO --  
6 BECAUSE THESE ARE FUNDED FOR ABOUT THREE YEARS  
7 EACH.

8                     THIS COULD BE 75 MILLION DOLLARS A  
9 YEAR BY YEAR ' 3.

10          Q.     OTHER THAN THE EXTERNAL RESEARCH  
11 PROGRAM THAT YOU JUST TALKED ABOUT AND THE  
12 SCIENTIFIC STUDY CONCERNING LOW TAR CIGARETTES THAT  
13 WE TALKED ABOUT A LITTLE BIT EARLIER, ARE THERE  
14 OTHER THINGS THAT PHILIP MORRIS IS DOING TO REACH  
15 OUT TO THE SCIENTIFIC AND PUBLIC HEALTH  
16 COMMUNITIES?

17          A.     YES, WE HAVE, THROUGH THE  
18 PROFESSION, SCIENTIFIC SOCIETIES HAVE BEEN INVOLVED  
19 IN TRYING TO SPONSOR WORK SHOPS, SYMPOSIA AND  
20 MEETINGS THAT WOULD BRING TOGETHER A DIVERSE GROUP  
21 OF PEOPLE BOTH FROM WITHIN THE INDUSTRY, WITHIN THE  
22 PUBLIC HEALTH COMMUNITY, AND FROM THE LABORATORIES.  
23 THAT' S ONE OF THE ADDITIONAL THINGS THAT WE ARE  
24 DOING.

25                     WE ARE ALSO DIRECTLY FUNDING WHAT I  
26 WOULD CALL FUNDAMENTAL, VERY FUNDAMENTAL STATE OF  
27 THE ART WORK, AND MY TERM IS OUT OF THE BOX  
28 THINKING TO TRY TO COME UP WITH IDEAS THAT WOULD

1 RADICALLY CHANGE THIS PRODUCT IN VERY  
2 NON-CONVENTIONAL WAYS AND LEAP, WHAT'S GOING ON  
3 WITHIN THE COMPANY, GENERATIONS AHEAD OF WHERE WE  
4 ARE NOW

5 Q. NOW, PHILIP MORRIS, AS THE JURY  
6 WILL HEAR EVIDENCE ABOUT LATER ON, HAS BEEN  
7 INVOLVED IN RESEARCH FOR OUT OF THE BOX TYPE  
8 PRODUCTS FOR MANY YEARS; IS THAT CORRECT?

9 A. YES.

10 Q. AND YOU ARE NOW TALKING ABOUT  
11 FUNDING AND RESEARCH THAT EVEN GOES BEYOND WHAT  
12 PHILIP MORRIS HAS BEEN ABLE TO USE?

13 A. YES.

14 MR. LEITER: THANK YOU, DR. CARCHMAN. I  
15 DON'T HAVE ANY FURTHER QUESTIONS.

16 MR. PIUZE: I DO.

17

18 CROSS-EXAMINATION

19

20 BY MR. PIUZE:

21 Q. LET ME DO ONE LITTLE PIECE  
22 ARITHMETIC FIRST, PLEASE. I APOLOGIZE.

23 20 MILLION DOLLARS A YEAR?

24 A. THIS FIRST YEAR.

25 Q. YOU GOT A PH. D. IN WHAT?

26 A. PHARMACOLOGY.

27 Q. AND YOU TAUGHT BIostatISTICS?

28 A. YES. STILL DO.

- 1 Q. YOU ARE GOOD AT MATH, OBVIOUSLY?
- 2 A. I AM OKAY.
- 3 Q. HERE'S AN EASY TEST. WE HAVE HEARD
- 4 EVIDENCE HERE THAT THE PHILIP MORRIS DOMESTIC
- 5 TOBACCO COMPANY MAKES 5 BILLION DOLLARS A YEAR.
- 6 HOW MUCH IS THAT A WEEK?
- 7 A. JUST DIVIDE THAT BY APPROXIMATELY
- 8 50.
- 9 Q. RIGHT.
- 10 A. IT'S A LOT OF MONEY.
- 11 Q. THAT'S A HUNDRED MILLION DOLLARS?
- 12 A. THAT'S A LOT OF MONEY.
- 13 Q. A HUNDRED MILLION DOLLARS?
- 14 A. IT'S A LOT OF MONEY.
- 15 Q. COME ON.
- 16 A. IT'S A LOT OF MONEY.
- 17 Q. PLEASE DIVIDE, RATHER THAN SAY 52
- 18 WEEKS IN A YEAR INTO 5 BILLION, LET'S JUST ROUND IT
- 19 OFF TO MAKE IT EASY, 50 WEEKS INTO 5 BILLION IS 100
- 20 MILLION DOLLARS A WEEK; RIGHT?
- 21 A. OKAY.
- 22 Q. HOW MANY DAYS IN A WEEK?
- 23 A. SEVEN.
- 24 Q. 7 INTO 100?
- 25 A. 12, 13.
- 26 Q. 14.
- 27 A. 14.
- 28 Q. ISN'T IT?

1           A.     OKAY.  WELL,  WITH SOME LEFT OVER.  
2  YES.

3           Q.     SEVEN INTO A HUNDRED?

4           A.     THAT' S 98.  SOME LEFTOVER.

5           Q.     PHILIP MORRIS,  BECAUSE THERE' S SOME  
6  LEFTOVER,  PHILIP MORRIS MAKES MORE THAN 14 MILLION  
7  DOLLARS A DAY PROFIT IN THE UNITED STATES OFF ITS  
8  CIGARETTES;  RIGHT?

9           A.     OKAY.

10          Q.     RIGHT?

11          A.     YES.

12          Q.     NOW,  WHAT DOES THIS 20 MILLION  
13  DOLLARS A YEAR GO TO?

14          A.     IT GOES TO FUNDING APPROXIMATELY 65  
15  PROPOSALS THAT THE S. A. B.  ACCEPTED AS  
16  SCIENTIFICALLY VIABLE AND DIRECTED TOWARDS THE  
17  PROGRAM

18          Q.     BUT THIS PROGRAM IS TRYING TO DO  
19  WHAT?

20          A.     AS I SAID,  THE PROGRAM IS TRYING TO  
21  HELP PHILIP MORRIS GET INFORMATION THAT MIGHT HELP  
22  IT IN TERMS OF DEVELOPING REDUCED RISK PRODUCTS.

23          Q.     THIS PROGRAM IS OUT THERE TO TRY TO  
24  SAVE HUMAN LIFE,  ISN' T IT?

25          A.     OH,  YES.

26          Q.     SO ONE LAST LITTLE PIECE OF MATH  
27  HERE.  IF IT IS 14 MILLION PER DAY IN PROFIT,  AND  
28  20 MILLION DOLLARS A YEAR IN RESEARCH,  ARE WE

1 TALKING ABOUT SOMETHING IN THE VICINITY OF ONE AND  
2 A THIRD DAYS, IN ROUND NUMBERS, WORTH OF PROFITS  
3 DEVOTED TO THIS ENTERPRISE TO SAVE LIFE?

4 A. I WOULDN'T -- I MEAN, THE MATH, YOU  
5 ARE ABSOLUTELY CORRECT ON THE MATH. PHILIP MORRIS  
6 PUT NO LIMITATIONS ON THE S. A. B. OR ON PEOPLE  
7 APPLYING. IF THEY WOULD HAVE GOTTEN 1,000 OR  
8 10,000 PROPOSALS, THE S. A. B. , SOMEHOW, WOULD HAVE  
9 APPROVED THAT AND WHATEVER THAT DOLLAR AMOUNT WAS,  
10 IT WOULD HAVE BEEN.

11 WHEN DR. SOLANO WENT TO THE S. A. B. ,  
12 THEY ASKED HIM IF THERE WAS A BUDGET CAPITAL AND  
13 HIS RESPONSE WAS NO.

14 Q. SO THE ANSWER TO MY QUESTION IS,  
15 YES, ONE AND A THIRD DAYS' WORTH OF PROFIT TO FUND  
16 THIS SCIENTIFIC ENDEAVOR TO SAVE LIFE?

17 A. I SAID TECHNICALLY YOU ARE  
18 ABSOLUTELY CORRECT.

19 Q. ONE LAST THING ON THIS ISSUE. WE  
20 HAVE HEARD, AND THIS WAS A LITTLE BIT OF MATH I WAS  
21 JUST GOING THROUGH, WE HAVE HEARD THAT 400,000  
22 PEOPLE A YEAR IN THIS COUNTRY DIE FROM SMOKING  
23 RELATED ILLNESS, PREMATURELY. PHILIP MORRIS HAS  
24 ROUGHLY 50 PERCENT OF THE MARKET. THAT'S 200,000  
25 PEOPLE IN PHILIP MORRIS'S COLUMN. DIVIDE THAT BY  
26 365 DAYS IN THE YEAR AND WHAT DO YOU GET?

27 A. YOU GET A LARGE NUMBER OF PEOPLE  
28 DYING EVERY DAY.

1 Q. OVER 6,000?

2 A. YES.

3 Q. ON PHILIP MORRIS'S SIDE OF THE

4 LEDGER?

5 A. AS YOU HAVE DESCRIBED IT, YES.

6 Q. OKAY. NOW, WHAT'S THE S. A. B., IS

7 THAT -- AM I SAYING IT RIGHT?

8 A. YES.

9 Q. YOU SAY THAT CURRENTLY -- WHEN WAS

10 THAT SET UP?

11 A. LAST YEAR. LAST YEAR.

12 Q. MEANING 2000?

13 A. THAT'S WHEN THE PROGRAM STARTED,

14 YES.

15 Q. WELL, YOU ARE THERE, WE ARE NOT.

16 2000?

17 A. YES.

18 Q. WHY WASN'T IT SET UP IN 1998?

19 A. IN 1998, WHEN WE STARTED THINKING

20 ABOUT THIS, WE STARTED TO PUT TOGETHER A TEAM OF,

21 THE COMPANY PUT TOGETHER A TEAM OF SCIENTISTS TO

22 TRY TO GET A PROGRAM THAT WOULD FULFILL THESE

23 CRITERIA THAT I HAVE JUST OUTLINED.

24 IN 1999, WE HAD A MEETING WITH

25 OUTSIDE SCIENTISTS TO HELP US MAKE SURE THAT WE

26 WERE DOING WHAT WAS THE RIGHT THING TO DO AND THEN

27 IN 2000, THE, THIS WHOLE PROCESS CULMINATED WITH

28 THE RELEASE OF THE -- AN ANNOUNCEMENT OF THE

1 BROCHURE.

2 SO I WOULD SAY FROM AS SOON AS THE  
3 COUNCIL FOR TOBACCO RESEARCH DISAPPEARED, PHILIP  
4 MORRIS WAS WORKING ON A PROCESS TO DO THIS EXTERNAL  
5 RESEARCH PROGRAM

6 Q. THE COUNCIL FOR TOBACCO RESEARCH,  
7 DIDN'T VOLUNTARILY DISAPPEAR, DID IT?

8 A. THAT'S MY UNDERSTANDING, IT DID  
9 NOT.

10 Q. THE COUNCIL FOR TOBACCO RESEARCH  
11 DIDN'T TAKE A VACATION AND GO TO BERMUDA AND STAY  
12 THERE FOR THE LAST THREE YEARS, DID IT?

13 THE COURT: SUSTAINED.

14 Q BY MR. PIUZE: THE COUNCIL FOR  
15 TOBACCO RESEARCH WAS PUT OUT OF BUSINESS BY THE  
16 STATES' ATTORNEYS GENERAL, WASN'T IT?

17 A. THAT'S MY UNDERSTANDING.

18 Q. WHY DIDN'T YOU SET UP THE S. A. B. IN  
19 1994?

20 A. I CAN'T ANSWER THAT QUESTION FOR  
21 TWO REASONS: ONE, I HAD NEVER HAD ANY INVOLVEMENT  
22 WITH COUNCIL FOR TOBACCO RESEARCH. AND NUMBER 2,  
23 THE COMPANY WAS MAKING FINANCIAL CONTRIBUTIONS TO  
24 THE COUNCIL TO CARRY OUT RESEARCH, IN ADDITION TO  
25 THE MONIES THAT IT WAS SPENDING THROUGH RESEARCH  
26 AND DEVELOPMENT AND THEN RESEARCH, DEVELOPMENT AND  
27 ENGINEERING.

28 SO I DON'T THINK THERE WAS ANYTHING

1 AVAILABLE THAT I AM AWARE OF -- NOW, IN 1988,  
2 SPRING OF '88, THIS IS BEFORE I GOT THERE, PHILIP  
3 MORRIS WAS A PRINCIPLE IN ESTABLISHING AN OUTSIDE  
4 FUNDING ORGANIZATION CALLED THE CENTER FOR INDOOR  
5 AIR RESEARCH, WHICH FUNDED RESEARCH AROUND THE  
6 WORLD ON INDOOR AIR WITH AN ENVIRONMENTAL TOBACCO  
7 SMOKE COMPONENT.

8                    THAT, TOO, DISAPPEARED AS A  
9 CONSEQUENCE, AT LEAST, FROM PHILIP MORRIS'S  
10 PERSPECTIVE, AS A RESULT OF THE STATES' ATTORNEY  
11 GENERALS' DECISIONS.

12                  Q.     WELL, I AM GETTING THERE. BUT AS  
13 LONG AS YOU FORESHADOWED IT, WHAT'S THE NAME OF  
14 THAT THING AGAIN?

15                  A.     CENTER FOR INDOOR AIR RESEARCH.

16                  Q.     AND THE BOTTOM LINE TO ALL THAT IS,  
17 THERE WAS A LOT OF CONTROVERSY ABOUT SECONDHAND  
18 SMOKE, SO PHILIP MORRIS WANTED TO DO A LITTLE  
19 RESEARCH ON IT?

20                  A.     I HAVE BECOME SENSITIZED TO THE USE  
21 OF THE WORD "CONTROVERSY. "

22                            I WOULD SAY THERE WAS A LOT OF  
23 SCIENTIFIC ACTIVITY IN THE AREA OF ENVIRONMENTAL  
24 TOBACCO SMOKE AND ONE OF THE THINGS THAT PHILIP  
25 MORRIS DID, ALONG WITH SOME OF THE OTHER TOBACCO  
26 COMPANIES, WAS TO FUND THIS ORGANIZATION TO FUND  
27 RESEARCH.

28                  Q.     SO LET'S COME BACK TO WHERE I

1 WANTED TO BE, WHICH WAS 1994. YOU WERE THE CHIEF  
2 SCIENTIFIC OFFICER IN THIS CORPORATION?

3 A. I DON'T THINK SO.

4 Q. WHAT WERE YOU?

5 A. IN 1994, I WAS IN SCIENTIFIC  
6 AFFAIRS, OR WORLDWIDE SCIENTIFIC AFFAIRS REPORTING  
7 TO THE HEAD OF RESEARCH AND DEVELOPMENT AT THE  
8 TIME, WHO, I BELIEVE, WAS DR. KEN HOUGHTON, AND HE  
9 WOULD BE THE FELLOW WHERE THE BUCK STOPPED.

10 Q. WELL, I HAVEN'T GOTTEN THERE.

11 TELL US, IN 1994, YOU WERE, SAY IT  
12 AGAIN, THE WORLD WHAT?

13 A. NO, I DIDN'T SAY "WORLD." I WAS IN  
14 SCIENTIFIC AFFAIRS. I WAS EITHER THE DIRECTOR OR  
15 THE GROUP DIRECTOR FOR SCIENTIFIC AFFAIRS REPORTING  
16 TO, I BELIEVE, I HAVE TO GO BACK AND LOOK AT MY  
17 RESUME, THE HEAD OF R&D.

18 Q. DIDN'T YOU SAY SOMETHING ABOUT  
19 WORLD, THE FIRST TIME YOU ANSWERED THAT QUESTION?

20 A. NO, THAT WAS -- I WAS THE HEAD OF  
21 SCIENTIFIC AFFAIRS AND THEN LATER IT BECAME  
22 WORLDWIDE SCIENTIFIC AFFAIRS. THAT WAS SUBSEQUENT,  
23 I BELIEVE, TO '94.

24 Q. OKAY, SO THE DIRECTOR OF SCIENTIFIC  
25 AFFAIRS FOR PHILIP MORRIS DOMESTIC TOBACCO COMPANY,  
26 1994?

27 A. MY CHECK CAME FROM PHILIP MORRIS  
28 U. S. A. IN 1994, I ALSO HAD SCIENTISTS REPORTING TO

1 ME IN SWITZERLAND AND IN GERMANY.

2 Q. THAT'S OKAY. BUT WE HAVE HEARD  
3 SOME OF THE TERMS HERE, PHILIP MORRIS, U. S. A. , IS  
4 THE DOMESTIC TOBACCO COMPANY?

5 A. THAT IS RIGHT.

6 Q. THAT'S WHO WAS PAYING YOU IN '94?

7 A. YES, SIR.

8 Q. AND YOU SAY THAT AFTER THAT YOU GOT  
9 PAID BY THE BIGGER PARENT COMPANY?

10 A. ALWAYS GOT PAID BY PHILIP MORRIS,  
11 U. S. A.

12 Q. WHEN WAS IT THAT "WORLD" GOT INTO  
13 YOUR TITLE, OR INTO YOUR RESPONSIBILITIES OR  
14 DUTIES?

15 A. AFTER '94, IT'S '95, '96, BUT IT'S  
16 CLEARLY LISTED IN THE RESUME.

17 Q. WHAT WAS THE COUNCIL FOR TOBACCO  
18 RESEARCH, THEORETICALLY, DOING, IN 1994?

19 A. I DON'T KNOW  
20 I WAS NOT RESPONSIBLE FOR THAT, FOR  
21 THOSE MONIES THAT WENT FROM PHILIP MORRIS. I ONLY  
22 KNEW SOME OF THE. EVEN PRIOR, BEFORE I CAME TO  
23 PHILIP MORRIS, I KNEW SEVERAL MEMBERS OF THE  
24 COUNCIL FOR TOBACCO RESEARCH'S OUTSIDE SCIENTISTS,  
25 THERE, SOME OF THEIR S. A. B. MEMBERS.

26 Q. I DON'T WANT YOU TO TELL US ABOUT  
27 THE SPECIFICS OF WHAT THEY WERE DOING, BUT AT ANY  
28 TIME THAT IT EXISTED, THEORETICALLY, WHAT WAS THE

1 MISSION OF THE COUNCIL FOR TOBACCO RESEARCH?

2 MR. LEITER: OBJECTION, FOUNDATION.

3 THE COURT: IF YOU KNOW

4 THE WITNESS: I DON'T KNOW

5 Q BY MR. PIUZE: WELL, JUST FROM  
6 BEING AROUND PHILIP MORRIS FOR AS LONG AS YOU HAVE,  
7 DON'T YOU KNOW THAT THE COMMITTEE FOR TOBACCO  
8 RESEARCH WAS, THEORETICALLY, THERE TO FIND WAYS TO  
9 MAKE CIGARETTE SMOKING SAFER?

10 MR. LEITER: OBJECTION, FOUNDATION, ASKED  
11 AND ANSWERED.

12 THE COURT: OVERRULED.

13 THE WITNESS: IT WAS NOT DISCUSSION THAT  
14 I REMEMBER WHEN I WAS AT PHILIP MORRIS ABOUT  
15 C. T. R. , FROM 1989 UNTIL I RETIRED. WAS THERE  
16 ANYBODY THAT TALKED ABOUT IT, OTHER THAN TO SAY  
17 THAT THE MONIES THAT PHILIP MORRIS PAID TO C. T. R.  
18 TO DO THIS RESEARCH CAME OUT OF THE R&D BUDGET.

19 Q BY MR. PIUZE: TO DO WHAT  
20 RESEARCH?

21 A. WHATEVER RESEARCH THEY WERE DOING.

22 Q. WELL, TELL US, WHAT RESEARCH WERE  
23 THEY DOING?

24 A. I WAS NOT INVOLVED IN THAT AND I  
25 HAVE ONLY THE MOST PERIPHERAL KNOWLEDGE OF WHAT  
26 THEY DID. AND MY KNOWLEDGE, REALLY, COMES FROM  
27 THINGS THAT PREDATED MY EMPLOYMENT AT PHILIP  
28 MORRIS. I NEVER FOLLOWED WHAT THEY DID, I NEVER

1 LOOKED AT THE PUBLICATIONS OTHER THAN TO NOTE THAT  
2 SEVERAL OF THE U. S. SURGEON GENERAL'S REPORTS USED  
3 SOME OF THE SCIENTIFIC PUBLICATIONS THAT WERE  
4 FUNDED BY C. S. R. IN SOME OF THE U. S. G. REPORTS,  
5 THAT WAS THE EXTENT OF MY KNOWLEDGE AND  
6 INVOLVEMENT.

7 Q. DR. CARCHMAN, YOU, ON FRIDAY, SPENT  
8 A FAIR AMOUNT OF TIME DISCUSSING DOCUMENTS THAT  
9 PREDATED YOUR EMPLOYMENT WITH PHILIP MORRIS. YOU  
10 REMEMBER THAT, DON'T YOU?

11 A. SCIENTIFIC DOCUMENTS.

12 Q. EXCUSE ME?

13 A. SCIENTIFIC DOCUMENTS.

14 Q. SO YOU DO REMEMBER THAT?

15 A. OH, YES.

16 Q. THEN I DON'T QUITE FOLLOW YOU.  
17 BECAUSE C. T. R. PREDATED YOUR EMPLOYMENT WITH PHILIP  
18 MORRIS, JUST AS MANY OF THESE DOCUMENTS HAVING TO  
19 DO WITH CAROLYN LEVY, THOMAS OSDENE DESTROYING  
20 DOCUMENTS, AND INBIFO PREDATED YOUR EMPLOYMENT WITH  
21 PHILIP MORRIS. WHY DOES THE FACT THAT SOME OF THEM  
22 PREDATED YOUR EMPLOYMENT PREVENT YOU FROM TALKING  
23 WHEREAS OTHERS THAT PREDATED YOUR EMPLOYMENT ALLOWS  
24 YOU TO TALK ABOUT THEM?

25 A. THERE'S NOTHING THAT PREVENTS ME  
26 FROM TALKING ABOUT THINGS THAT I HAVE READ.

27 IT WAS NO DIRECT INVOLVEMENT BY ANY  
28 OF THE SCIENTISTS I KNEW, OKAY. WHEN I WAS AT

1 PHILIP MORRIS, WITH C. T. R. , THERE WERE NO  
2 SCIENTIFIC DOCUMENTS CIRCULATED WITHIN R&D THAT  
3 TALKED ABOUT WHAT PHILIP MORRIS, WITH C. T. R. WERE  
4 DOING.

5 SO IT'S NOT A QUESTION OF SOMETHING  
6 THAT PREVENTS ME, IF SOMETHING PREVENTS ME FROM  
7 TALKING ABOUT IT, IT'S BECAUSE I AM NOT AWARE OF  
8 IT, I DON'T KNOW ABOUT IT, NOBODY IS SAYING DON'T  
9 TALK ABOUT THIS.

10 NOBODY IN THE TEN YEARS I WAS THERE  
11 HAD ANY DISCUSSION ABOUT, GEE, LOOK WHAT C. T. R. IS,  
12 IS DOING.

13 Q. I AM JUST TRYING TO GET YOU TO  
14 AGREE, JUST ON THE MOST RUDIMENTARY, UMBRELLA KIND  
15 OF FORM, THAT C. T. R. WAS THEORETICALLY OUT THERE  
16 DOING SCIENTIFIC RESEARCH, COMMITTEE FOR TOBACCO  
17 RESEARCH, TO TRY TO HELP PREVENT PEOPLE FROM DYING  
18 FROM SMOKING TOBACCO?

19 A. I WISH I COULD GIVE YOU A SIMPLE  
20 ANSWER. I KNOW NOTHING ABOUT THEIR MISSION  
21 STATEMENT. I RECOGNIZE, AGAIN, THE MOST  
22 RUDIMENTARY WAY, THAT THE NAME WOULD SUGGEST THAT  
23 THEY FUNDED WORK IN THAT. BUT FROM WHAT I KNOW IS  
24 THEY FUNDED LOTS OF THINGS THAT WEREN'T DIRECTLY  
25 RELATED, THOUGH IMPORTANT SCIENTIFICALLY TO  
26 FUNDAMENTAL QUESTIONS IN CANCER, FUNDED RESEARCH,  
27 BUT THAT'S THE EXTENT OF MY KNOWLEDGE.

28 Q. SO BE IT. SO BE IT.

1 MR. LEITER: OBJECT TO THE COMMENTARY.

2 THE COURT: SUSTAINED.

3 Q BY MR. PIUZE: NOW, WHAT WAS YOUR  
4 HIGHEST TITLE EVER WHEN YOU WERE AT PHILIP MORRIS?

5 A. I WAS, RIGHT BEFORE I LEFT, I WAS A  
6 VICE-PRESIDENT IN RESEARCH, DEVELOPMENT AND  
7 ENGINEERING.

8 Q. AND AS A VICE-PRESIDENT, DIDN'T YOU  
9 HAVE A TITLE OF SOME SORT, A SUBTITLE, IN CHARGE OF  
10 X OR Y OR Z?

11 A. NO.

12 Q. WERE YOU EVER THE CHIEF SCIENTIST  
13 AT PHILIP MORRIS?

14 A. I AM NOT AWARE OF ANY TITLE THAT  
15 SAYS CHIEF, CHIEF SCIENTIST. THERE ARE PEOPLE WHO  
16 WERE CLEARLY LEADERS IN VARIOUS TECHNOLOGIES THAT  
17 WERE AND ARE GOING ON. BUT IN TERMS OF CHIEF  
18 SCIENTIST, IF WE RESTRICT IT TO SMOKING AND HEALTH,  
19 I WOULD SAY AT SEVERAL POINTS IN MY CAREER AT  
20 PHILIP MORRIS, I WAS THE PERSON THE COMPANY WENT TO  
21 ON SMOKING AND HEALTH ISSUES.

22 BUT THERE WAS MORE THAN ONE. I WAS  
23 JUST ONE OF THEM

24 Q. ONE OF WHOM?

25 A. A HANDFUL.

26 Q. SO AT SEVERAL POINTS IN YOUR  
27 TEN-YEAR CAREER AT PHILIP MORRIS, WERE YOU ONE OF  
28 THE TOP FIVE PEOPLE IN PHILIP MORRIS THAT HAD TO DO

1 WITH SMOKING AND HEALTH?

2 A. YES, SIR.

3 Q. HUMAN HEALTH?

4 A. YES, SIR.

5 Q. AND THE FLIP SIDE, HUMAN DEATH?

6 A. AND DISEASE, YES.

7 Q. SO WHY WASN' T S. A. B. SET UP IN

8 1989, THE YEAR YOU CAME ABOARD?

9 A. S. A. B. , FOR THE EXTERNAL RESEARCH

10 PROGRAM IS THAT WHAT YOU ARE TALKING ABOUT?

11 Q. OKAY.

12 A. NO, I AM JUST ASKING.

13 Q. WHAT' S S. A. B. ?

14 A. A S. A. B. IS AN ACRONYM FOR

15 SCIENTIFIC ADVISORY BOARD.

16 Q. AND ISN' T THAT A TERM THAT YOU USED

17 HERE THIS MORNING?

18 A. SEVERAL TIMES.

19 Q. THAT' S THE ONE I AM TALKING ABOUT.

20 A. PHILIP MORRIS HAD, WHEN I WAS

21 THERE, THAT PRECEDED ME, A GROUP OF OUTSIDE

22 SCIENTISTS THAT REPORTED TO THE HEADS OF R&D AND

23 ADVISED THE HEADS OF R&D ABOUT THE RESEARCH

24 PROGRAMS THAT WERE GOING ON IN THE COMPANY AS WELL

25 AS ADVISING THEM IN TERMS OF WHAT OTHER OUTSIDE

26 RESEARCH ACTIVITIES WERE GOING ON.

27 THAT WAS ABOVE AND BEYOND WHATEVER

28 C. T. R. OR C. I. R. WERE DOING.

1 SO THERE WAS SUCH A BODY OF OUTSIDE  
2 SCIENTISTS.

3 IN TERMS OF THE CURRENT S. A. B. FOR  
4 THE EXTERNAL RESEARCH PROGRAM THAT CAME TOGETHER,  
5 AS I HAVE TRIED TO SAY, AS A RESULT OF THE  
6 DISSOLUTION OF C. T. R.

7 PHILIP MORRIS HAS OTHER S. A. B. 'S  
8 THAT SERVE OTHER FUNCTIONS IN THE COMPANY, THESE,  
9 ARE, AGAIN, OUTSIDE SCIENTISTS. SO WE HAVE HAD A  
10 NEW PRODUCTS S. A. B. THAT HELPS US REQUEST SOME OF  
11 THESE NEW PRODUCTS, THESE NEW TECHNOLOGIES, IN  
12 TERMS OF HARM WHAT CURRENTLY IS CALLED HARM  
13 REDUCTION.

14 WE HAVE HAD, IN THE TIME I HAVE  
15 BEEN THERE, OVER THE TEN YEARS, I THINK, TWO OTHER  
16 S. A. B. 'S. AND THESE ARE PRIMARILY OUTSIDE GROUPS  
17 OF SCIENTISTS THAT REVIEW AND CRITIQUE AND  
18 RECOMMEND US, RECOMMEND TO US, IN TERMS OF WHAT WE  
19 ARE DOING AND HOW WE ARE DOING IN TERMS OF PRODUCT  
20 TESTING OR PRODUCT DEVELOPMENT.

21 THE LAST S. A. B. ONLY CAME INTO  
22 CREATION AS A RESULT OF THE DISSOLUTION OF COUNCIL  
23 FOR TOBACCO RESEARCH.

24 Q. THIS LAST S. A. B. DEALS WITH SMOKING  
25 AND HUMAN LIFE, HUMAN DEATH; CORRECT?

26 A. AND DISEASE, YES.

27 Q. AND YOU HAD SOMETHING TO DO WITH  
28 SETTING THIS UP?

1           A.     YES, SIR.

2           Q.     YOU HAD A MAJOR ROLE IN SETTING  
3 THIS UP?

4           A.     I PLAYED A ROLE IN SETTING IT UP.  
5 I PLAYED A ROLE IN SETTING IT UP.

6           Q.     DID YOU PLAY A MAJOR ROLE IN  
7 SETTING THIS UP?

8           A.     I 'D LIKE TO THINK I PLAYED AN  
9 IMPORTANT ROLE. I AM NOT SITTING HERE WEIGHING  
10 WHETHER IT'S MAJOR OR NOT. IT WAS IMPORTANT.

11          Q.     IF THIS ONLY CAME INTO EXISTENCE  
12 IN ORDER TO REPLACE THE C. T. R. , AND YOU MAY HAVE  
13 HAD AN IMPORTANT ROLE IN SETTING THIS UP, HOW, IN  
14 THE WORLD, COULD YOU SET THIS UP TO REPLACE THE  
15 C. T. R. WHEN YOU HAVE ALREADY TOLD US THREE TIMES  
16 YOU DON'T KNOW WHAT THE C. T. R. WAS DOING?

17          A.     THAT IS RIGHT, DIDN'T KNOW WHAT THE  
18 C. T. R. WAS DOING.

19          Q.     IF THIS IS A REPLACEMENT --

20               MR. LEITER: LET HIM FINISH.

21               THE COURT: LET HIM ANSWER.

22               MR. PIUZE: I APOLOGIZE.

23               THE COURT: WOULD YOU LIKE ANOTHER  
24 MINUTE?

25               THE WITNESS: I 'D LIKE TO.

26                         THIS WAS SET UP, I THINK, NOT  
27 SIMPLY TO REPLACE WHAT WAS GOING ON WITH C. T. R. ,  
28 BECAUSE PHILIP MORRIS WAS, IT MAY HAVE BEEN THE

1 BIGGEST PLAYER IN C. T. R. , FINANCIALLY, BUT IT  
2 WASN' T THE ONLY PLAYER.

3                   THIS, THIS EXTERNAL RESEARCH  
4 PROGRAM HAS ATTRIBUTES TO IT THAT I THINK ARE VERY  
5 UNIQUE AND VERY SPECIAL AND SO IF YOU THINK I USED  
6 THE WORD "REPLACEMENT" IN THE SENSE THAT WHAT WE  
7 HAD THEN IS WHAT WE ARE DOING NOW, I DON' T MEAN TO  
8 IMPLY THAT OR STATE THAT.

9                   Q.     HANG ON ONE SECOND? WELL,  
10 "REPLACE" WAS THE WORD YOU USED, AND SO IF  
11 "REPLACE" DOESN' T MEAN "REPLACE, " WHAT DOES IT  
12 MEAN?

13                  A.     IT DOESN' T MEAN REPLACE IN THE  
14 SENSE, IF I BORROW FIVE DOLLARS FROM YOU, I AM  
15 REPLACING IT WITH FIVE DOLLARS.

16                   THAT' S NOT -- IT' S NOT THAT KIND OF  
17 REPLACEMENT.

18                   I WAS SPEAKING MORE CONCEPTUALLY IN  
19 TERMS OF RESEARCH THAT WE HAD CONTROL WITH RESPECT  
20 TO THE RESEARCH FOCUS, OKAY, WHERE PHILIP MORRIS  
21 SCIENTISTS COULD SIT DOWN AND HELP PUT TOGETHER  
22 THIS RESEARCH FOCUS WITH MODIFICATIONS FROM OTHER  
23 PEOPLE AT C. T. R. I DON' T KNOW WHAT, WHAT WAS GOING  
24 ON AND HOW THINGS, HOW THINGS WERE DONE.

25                   WE HAD INPUT, SCIENTIFICALLY, INTO  
26 WHAT WE FELT WAS IMPORTANT TO BE DONE.

27                  Q.     FINE.

28                   SO IF YOUR S. A. B. , WHOSE GOAL IT IS

1 TO SAVE HUMAN BEING'S LIVES, REDUCE THE LOSS OF  
2 LIFE FROM YOUR PRODUCT, WAS NOT MEANT TO BE A  
3 REPLACEMENT FOR C. T. R. , WHICH WAS ABOLISHED IN '98,  
4 I ASK YOU AGAIN, WHY WASN'T IT SET UP IN '96, '95,  
5 '94, '93, '92, '91 OR '89, THE YEAR YOU CAME THERE,  
6 IF IT WASN'T MEANT TO REPLACE C. T. R. WHICH WAS  
7 ABOLISHED IN '98, WHY WASN'T IT SET UP EARLIER?

8 A. YOU KNOW, I CAN'T ANSWER YOUR  
9 QUESTION THE WAY YOU HAVE FRAMED IT. I DON'T KNOW

10 Q. WHY?

11 A. I DON'T KNOW

12 Q. DON'T YOU THINK THAT'S A WORTHY  
13 GOAL, SAVING HUMAN LIFE FROM USE OF YOUR PRODUCT?

14 A. ABSOLUTELY.

15 Q. WHY WASN'T IT SET UP RIGHT?

16 A. THE COMPANY WAS DOING WHAT, IN MY  
17 OPINION, WAS VERY IMPORTANT WORK IN TERMS OF TRYING  
18 TO MODIFY THE PRODUCT AND TO FUND OUTSIDE RESEARCH.

19 TO THE EXTENT THAT THE DISSOLUTION  
20 OF C. T. R. NOW GAVE PHILIP MORRIS SCIENTISTS AND  
21 ADDITIONAL OPPORTUNITY TO ADD TO THAT, RATHER THAN  
22 CRITICIZE IT, I WOULD SAY THAT'S -- THAT WAS GOOD  
23 NEWS AS FAR AS I WAS CONCERNED.

24 TO LIVE ONE'S LIFE MONDAY MORNING  
25 QUARTERBACKING, I THINK, IS INTERESTING. BUT  
26 HAVING LIVED THERE AND WORKED THERE FOR TEN YEARS,  
27 I WOULD SAY WHAT'S GOING ON NOW IS VIEWED BY THE  
28 PEOPLE, THE PEOPLE THAT WORK IN PHILIP MORRIS, AS A

1 VERY POSITIVE AND EXCITING STEP.

2                   WOULD IT HAVE BEEN GREAT TO DO THIS  
3 STUFF YEARS AGO, I BET YOU IT WOULD HAVE BEEN GREAT  
4 TO DO IT YEARS AGO.

5                   WE ARE DOING IT NOW AND WE ARE  
6 DOING IT PROBABLY BETTER NOW THAN WE COULD HAVE  
7 EVER DONE IT BEFORE.

8                   I THINK THAT'S A GOOD THING.

9           Q.     SO MONDAY MORNING QUARTERBACKING,  
10 YOU KNOW, WHEN THERE'S A FOOTBALL GAME AT STAKE, I  
11 GUESS, IS SOMETHING THAT WE DO ALL THE TIME. BUT  
12 ON THE MONDAY MORNING WE ARE QUARTERBACKING THAT  
13 YOU ARE MENTIONING, DON'T FORGET, WE ARE TALKING  
14 ABOUT THE LOSS OF 6,000 LIVES EVERY SINGLE DAY, FOR  
15 EVERY SINGLE WEEK, EVERY SINGLE MONTH, EVERY SINGLE  
16 YEAR, THIS IS JUST ON PHILIP MORRIS'S SIDE OF THE  
17 LEDGER, DURING ALL --

18           THE COURT: COUNSEL, YOU ARE JUST ARGUING  
19 WITH HIM

20           Q     BY MR. PIUZE: SO YOU THINK -- I  
21 APOLOGIZE.

22           THE COURT: ALL RIGHT.

23           Q     BY MR. PIUZE: I WITHDRAW THE  
24 ARGUMENT.

25                   SO YOU AGREE, IT SURE WOULD HAVE  
26 BEEN A NICER IDEA TO DO ALL OF THIS S. A. B. SOONER?

27           MR. LEITER: OBJECTION, MISSTATES HIS  
28 TESTIMONY.



1 THE COURT: OVERRULED.

2 THE WITNESS: I THINK ANYTHING THAT  
3 ANYBODY COULD HAVE DONE TO FACILITATE, TO SPEED UP  
4 OUR UNDERSTANDING AND INVESTIGATION OF THIS, WOULD  
5 HAVE BEEN THE RIGHT THING TO DO.

6 Q BY MR. PIUZE: THEN WHY WASN'T IT  
7 DONE?

8 A. BECAUSE WHAT YOU ARE TALKING ABOUT  
9 NOW IS, AS VIEWED, SAY, FROM WHATEVER C. T. R. WAS  
10 SET UP, I THINK THE COMPANY FELT IT WAS DOING  
11 EVERYTHING THAT IT COULD REASONABLY DO TO GET  
12 MEANINGFUL WORK.

13 NOW, AND MONDAY MORNING  
14 QUARTERBACKING IS NOT AT ALL MEANT TO MINIMIZE THE  
15 LOSS OF LIFE THAT, THE FOLKS THAT I WORK WITH IN  
16 R&D TAKE VERY SERIOUSLY THE RESPONSIBILITIES THAT  
17 IT HAS.

18 BUT TO LOOK NOW IN 2001 AND SEE  
19 WHAT HAPPENED TO C. T. R. AND THE S. A. B. 'S THAT WE  
20 HAVE OR HAD AND WHAT WE ARE DOING, IT'S EASIER TO  
21 LOOK BACK NOW AND SAY, YOU KNOW, WE MIGHT HAVE  
22 ADVANCED THE BALL A LITTLE BIT FASTER IF WE WOULD  
23 HAVE, IF WE WOULD HAVE DONE THAT.

24 I DON'T THINK ANYBODY BACK THEN  
25 SAID, YOU KNOW, WE SHOULD DO THAT BUT WE ARE NOT  
26 GOING TO, WE ARE NOT GOING TO DO THAT.

27 IF SOMEBODY, IF SOMEBODY CAME TO  
28 THE COMPANY AND SAID, YOU SHOULD BE DOING THIS AND



1 HERE ARE THE REASONS WHY, FROM MY EXPERIENCE, I  
2 CAN'T SPEAK BEFORE I GOT THERE, BECAUSE I DIDN'T  
3 KNOW THOSE PEOPLE, THEY WOULD HAVE CONSIDERED IT  
4 AND THEY PROBABLY WOULD HAVE DONE SOMETHING ABOUT  
5 IT.

6 Q. HOW IN THE WORLD CAN YOU SAY TO THE  
7 JURY, YOU MIGHT HAVE ADVANCED THE BALL, YOU KNOW, I  
8 HAVE GOT TO ADMIT MY MIND WONDERED SO THIS ISN'T AN  
9 ACT QUOTE --

10 MR. LEITER: OBJECT TO THE COMMENTARY.

11 Q BY MR. PIUZE: YOU MIGHT HAVE  
12 ADVANCED THE BALL A LITTLE BIT, HOW CAN YOU SAY  
13 THAT?

14 A. BECAUSE IN REFLECTING BACK ON THE  
15 LAST 50 YEARS OF WHAT'S GOING ON WITH SMOKING AND  
16 HEALTH, WE HAVE LEARNED QUITE A BIT, OKAY. BUT  
17 NOBODY, AND WHEN I SAY NOBODY, I DON'T JUST -- I AM  
18 NOT LIMITING MY DESCRIPTION TO PHILIP MORRIS, IT'S  
19 TO PEOPLE IN GOVERNMENT, SCIENTISTS AT  
20 UNIVERSITIES, HAVE THE KIND OF UNDERSTANDING, FROM  
21 QUESTIONS RAISED 50 YEARS AGO THAT WE NEED TO HAVE  
22 TODAY.

23 DO I THINK WE ARE GOING TO HAVE  
24 ANSWERS TO THESE QUESTIONS TOMORROW OR NEXT WEEK OR  
25 NEXT YEAR, I AM HOPEFUL BUT I AM REALISTIC IN THE  
26 SENSE THAT I THINK IT'S GOING TO TAKE QUITE A BIT  
27 OF TIME AND MONEY TO FIGURE OUT WHAT'S GOING ON  
28 HERE.



1 Q. HOW LONG?

2 A. I WISH I KNEW IF I KNEW, I  
3 PROBABLY WOULDN'T HAVE TO BE SITTING HERE HAVING A  
4 DISCUSSION WITH YOU.

5 Q. WELL, YOU ARE. AND SO I'D LIKE YOU  
6 TO TELL THE JURY HOW LONG DO YOU THINK IT'S GOING  
7 TO TAKE NOW THAT THERE HAS ALREADY BEEN 50 YEARS  
8 BEHIND US, HOW LONG DO YOU THINK IT IS GOING TO  
9 TAKE TO ADVANCE THE BALL MORE THAN JUST A LITTLE  
10 BIT?

11 A. I DON'T KNOW THERE'S A LOT OF  
12 EXCITING WORK IN MOLECULAR BIOLOGY THAT'S COMING  
13 OUT IN GENOMICS AND PROTEOMICS THAT HAS A LOT OF  
14 PEOPLE EXCITED.

15 I HAVE BEEN INVOLVED IN SCIENCE FOR  
16 OVER 35 YEARS AND I HAVE GONE THROUGH MY OWN  
17 PERIODS OF EXCITEMENT.

18 I'D LIKE TO BELIEVE THERE ARE  
19 ADVANCES OUT THERE THAT ARE GOING TO BE VERY  
20 IMPORTANT.

21 Q. HOW LONG?

22 A. I HAVE BEEN AROUND -- I CAN'T  
23 ANSWER YOUR QUESTION, I DON'T KNOW ANYBODY THAT  
24 COULD ANSWER YOUR QUESTION.

25 Q. OKAY.

26 SO ANYWAY, LOOKING BACK ON IT, YOU  
27 BEING A MONDAY MORNING QUARTERBACK JUST FOR A BIT  
28 NOW, YOU ARE THINKING THAT THE FACT THAT THIS



1 S. A. B. RESEARCH WAS NOT STARTED IN '89 WHEN YOU GOT  
2 THERE AND DIDN'T GET STARTED UNTIL 2000, PROBABLY  
3 IS OBVIOUSLY RESPONSIBLE FOR NOT ADVANCING THE BALL  
4 JUST A LITTLE BIT.

5 MR. LEITER: OBJECTION, MISSTATES HIS  
6 TESTIMONY.

7 THE WITNESS: NO, THAT'S NOT AT ALL WHAT  
8 I MEAN.

9 MR. PIUZE: EXCUSE ME.

10 THE WITNESS: THAT'S NOT AT ALL WHAT I  
11 MEAN.

12 Q BY MR. PIUZE: WELL, IS IT -- IS  
13 THE DELAY OF 11 YEARS, JUST DURING THE TIME YOU  
14 HAVE BEEN AT PHILIP MORRIS, RESPONSIBLE FOR NOT  
15 ADVANCING THE BALL MORE THAN JUST A LITTLE BIT?

16 A. I THINK THAT'S A GOOD QUESTION AND  
17 I THINK THAT THE ANSWER WOULD BE POSSIBLY SO.

18 Q. THAT'S POSSIBLE.

19 WELL, DOESN'T THAT, AS SOMEONE WHO  
20 IS INVOLVED IN SCIENCE AT PHILIP MORRIS FOR 11  
21 YEARS, MAKE YOU FEEL BAD?

22 A. THERE ARE LOTS OF THINGS THAT MAKE  
23 ME FEEL BAD IN RETROSPECT WHEN I LOOK BACK, SAY,  
24 GEE, IF WE WOULD HAVE DONE IT THIS WAY, WE WOULD  
25 HAVE -- ALL I CAN TELL YOU IS THAT WHATEVER BADNESS  
26 I FEEL, I FEEL VERY GOOD ABOUT WHAT WE ARE DOING,  
27 THAT AT LEAST FROM MY INVOLVEMENT, MY ABILITY TO GO  
28 HOME AND SLEEP AT NIGHT AND TALK TO MY OWN KIDS,



1 IT'S A TOUGH, TOUGH JOB.

2                   AND I FEEL THAT I AM CONTRIBUTING,  
3 I HAVE CONTRIBUTED TO ADVANCING THE BALL. IF I  
4 KNEW TODAY 11 YEARS AGO, I MIGHT HAVE DONE SOME  
5 THINGS DIFFERENTLY. I CAN'T LIVE MY LIFE -- I  
6 CAN'T LIVE MY LIFE THAT WAY.

7                   HERE I AM, THIS IS WHAT WE ARE  
8 DOING. THIS IS WHAT WE HAVE DONE. COULD WE HAVE  
9 DONE IT BETTER? I THINK ANYBODY COULD DO THINGS  
10 BETTER, LOOKING BACK 20 YEARS OR 10 YEARS.

11                Q.     50 YEARS?

12                A.     OR 50 YEARS.

13                Q.     SO LET'S ASK YOU -- BEFORE I ASK  
14 YOU, WHEN YOU USED THE WORD "CONTROVERSY" EARLIER  
15 TODAY, YOU SAID SOMETHING ABOUT, AND YOU SMILED  
16 JUST NOW, YOU SAID SOMETHING ABOUT THE FACT THAT  
17 YOU HAVE BECOME WHAT?

18                A.     SENSITIZED.

19                Q.     WHAT DOES THAT MEAN?

20                A.     CONTROVERSY, WHEN I WAS GROWING UP,  
21 WAS JUST A NORMAL WORD WITHOUT ANY POLITICAL  
22 CHARGE. CONTROVERSY IS YOU AND I CAN SIT AND ARGUE  
23 ABOUT THINGS. WE COULD HAVE A DISCUSSION ABOUT  
24 WHETHER IT'S THIS WAY OR THAT WAY. WE COULD HAVE  
25 OUR CONTROVERSY ABOUT THIS.

26                    AND THAT WAS, EXCEPT IN THIS  
27 ENVIRONMENT HERE, A LEGITIMATE SCIENTIFIC, IF YOU  
28 WERE A SCIENTIST, I AM ASSUMING YOU ARE A LAWYER, A



1 VERY GOOD LAWYER BUT NOT A SCIENTIST. SO WE COULD  
2 HAVE DISAGREEMENTS, SCIENTIFIC DISAGREEMENTS. AND  
3 THAT'S A CONTROVERSY. AND THAT'S NOT A BIG DEAL.  
4 THAT'S THE WAY SCIENCES, SCIENTISTS DEAL WITH EACH  
5 OVER. AND QUESTIONS, THEY ARE ALWAYS ATTACKING  
6 EACH OTHER AND THEIR UNDERLYING ASSUMPTIONS, THE  
7 DATA, DID YOU LOOK AT IT THIS WAY, DID YOU LOOK AT  
8 IT THAT WAY. THAT'S THE NORMAL WAY SCIENTISTS  
9 INTERACT WITH EACH OTHER.

10 Q. IS THERE A CONTROVERSY NOW?

11 MR. LEITER: OBJECTION, VAGUE.

12 MR. PIUZE: WITHDRAWN.

13 Q BY MR. PIUZE: IS THERE STILL A  
14 CONTROVERSY NOW ABOUT WHETHER TOBACCO CAUSES  
15 CANCER?

16 A. NO, SIR.

17 Q. WHEN DID IT END?

18 A. IT STARTED TO END SEVERAL YEARS  
19 AGO. IT CAME TO A FINAL END FOR PHILIP MORRIS, I  
20 BELIEVE, WITH THE STATEMENT, PUBLICLY, ON THE WEB  
21 SITE.

22 Q. LET'S FORGET ABOUT PHILIP MORRIS'S  
23 PUBLIC STATEMENT.

24 WHEN DID THE CONTROVERSY END ABOUT  
25 WHETHER OR NOT TOBACCO CAUSED LUNG CANCER?

26 A. FROM A FINALITY PERSPECTIVE, WHERE  
27 THE WORD IS, YES, WE AGREE, OKAY, THEN THAT'S A  
28 VERY RECENT, A VERY RECENT POSITION.



1 Q. BUT I AM NOT -- SEE, I AM JUST A  
2 LAWYER. BUT YOU ARE A SCIENTIST; RIGHT?

3 A. I AM JUST A SCIENTIST.

4 Q. AND WHOEVER DECIDED TO PUT THAT UP  
5 ON PHILIP MORRIS'S WEB SITE WAS NOT A SCIENTIST,  
6 WAS IT?

7 A. I THINK THE FINAL DECISION WAS NOT  
8 A SCIENTIST.

9 Q. AS A MATTER OF FACT, THE FINAL  
10 DECISION --

11 THE COURT: HOLD ON, HOLD ON.

12 THE WITNESS: I WAS TRYING TO FINISH.

13 THE COURT: HOLD ON.

14 MR. PIUZE: SORRY.

15 THE WITNESS: BUT SCIENTISTS, INCLUDING  
16 MYSELF, WERE INVOLVED IN THE CREATION OF THAT WEB  
17 SITE.

18 Q BY MR. PIUZE: STRANGE HOW THINGS  
19 HAPPEN BECAUSE THE FINAL --

20 MR. LEITER: OBJECT TO THE COMMENTARY.

21 MR. PIUZE: WITHDRAWN.

22 Q BY MR. PIUZE: THE FINAL DECISION  
23 TO PUT THAT UP ON THE WEB SITE AND END THE  
24 CONTROVERSY WAS THE DECISION OF A LAWYER, WASN'T  
25 IT?

26 A. NO, I DON'T THINK MR. SZYMANCZYK IS  
27 A LAWYER. I THINK HE IS A BUSINESS GUY AND IT WAS  
28 HIS FINAL DECISION TO DO THAT.



1 Q. WHO IS MR. PARRISH?

2 A. MR. STEVE PARRISH IS A LAWYER WHO  
3 IS THE HEAD OF CORPORATE AFFAIRS FOR THE BIG, THE  
4 CORPORATE ENTITY.

5 Q. THE PARENT CORPORATION?

6 A. THANK YOU.

7 Q. THE BIG COMPANY?

8 A. THE PARENT COMPANY.

9 Q. SO STEVE PARRISH IS HEAD OF  
10 CORPORATE AFFAIRS FOR THE PARENT COMPANY. HE JUST  
11 HAPPENS TO BE A LAWYER; RIGHT?

12 A. HE IS A LAWYER. I AM SURE IT IS  
13 NOT --

14 Q. JUST HAPPENED TO BE ONE OF THE  
15 LAWYERS FROM AN OUTSIDE FIRM, NOT THEIR FIRM,  
16 DIFFERENT FIRM, BUT AN OUTSIDE FIRM THAT USED TO  
17 DEFEND PHILIP MORRIS IN CASES LIKE THIS?

18 MR. LEITER: OBJECTION, RELEVANCE.

19 THE COURT: OVERRULED.

20 Q BY MR. PIUZE: RIGHT?

21 A. THAT' S TRUE.

22 Q. AND MR. STEVE PARRISH WHO USED TO  
23 DEFEND CASES LIKE THIS, WHERE TOBACCO COMPANIES  
24 WERE ACCUSED OF A LOT OF BAD THINGS, AS HEAD OF,  
25 WHAT, CORPORATE RELATIONS?

26 A. CORPORATE AFFAIRS.

27 Q. AFFAIRS.

28 STEVE PARRISH HAD A SAY IN DECIDING



1 WHAT WENT UP ON THAT WEB SITE; RIGHT?

2 A. YES.

3 Q. I DIDN'T BRING IN THE CONCEPT OF  
4 SCIENTISTS VERSUS LAWYER HERE, BUT DON'T YOU FIND  
5 IT KIND OF INTERESTING, SCIENTIST, PARRISH IS A  
6 LAWYER, THAT A LAWYER HAS A SAY --

7 THE COURT: SUSTAINED.

8 MR. LEITER: OBJECT.

9 THE COURT: SUSTAINED.

10 THE JURY WILL DISREGARD THAT  
11 QUESTION.

12 Q BY MR. PIUZE: IN 1994, YOU HAD  
13 BEEN AN EMPLOYEE OF PHILIP MORRIS FOR HOW LONG?

14 A. ABOUT FIVE YEARS.

15 Q. WHEN YOU STARTED -- WHEN YOU  
16 STARTED AT PHILIP MORRIS, IT WAS AS AN OUTSIDE  
17 CONSULTANT; RIGHT?

18 A. YES, SIR.

19 Q. WHAT YEAR?

20 A. '85, '86.

21 Q. AND DID YOU REMAIN AN OUTSIDE  
22 CONSULTANT UP UNTIL THE TIME YOU HIRED ON AS AN  
23 EMPLOYEE?

24 A. YES.

25 Q. ROUGHLY, WHAT PERCENT OF YOUR TIME  
26 DID YOU SPEND AS AN -- PROFESSIONAL TIME, IN OTHER  
27 WORDS, LET'S PUT ASIDE PLAYING T-BALL WITH YOUR  
28 KIDS, WHATEVER, WHAT PERCENTAGE OF YOUR



1 PROFESSIONAL TIME FROM WHEN YOU STARTED WITH PHILIP  
2 MORRIS UP UNTIL THE TIME YOU WENT ON BOARD FULL  
3 TIME DID YOU SPEND AS A CONSULTANT?

4 A. THIS IS SORT OF A ROUGH AVERAGE?

5 Q. YES.

6 A. SO FROM '85, '86, UNTIL I JOINED IN  
7 '89, A COUPLE OF WEEKS A YEAR.

8 Q. SO VERY LITTLE?

9 A. THAT IS RIGHT. WELL, A COUPLE  
10 WEEKS A YEAR.

11 Q. 2/50THS, 1/23RD, 4 PERCENT? VERY  
12 LITTLE?

13 A. WELL, IT'S A COUPLE OF WEEKS A  
14 YEAR.

15 Q. LET'S THEN GO THEN, LET'S START  
16 WITH 1989.

17 IN 1989, YOU WERE A FULL TIME  
18 EMPLOYEE OF PHILIP MORRIS; RIGHT?

19 A. YES.

20 Q. AND WHERE WAS YOUR OFFICE?

21 A. IN THE WHAT'S CALLED THE RESEARCH  
22 AND DEVELOPMENT TOWER. IT'S AN UNUSUAL  
23 ARCHITECTURAL STRUCTURE THAT'S RIGHT OFF OF 95.  
24 BUT IT'S WHERE R&D, WHERE THE MAJORITY OF R&D, NOT  
25 ALL OF R&D, MAJORITY.

26 Q. RICHMOND, VIRGINIA?

27 A. YES, SIR.

28 Q. AND DID YOU REMAIN IN RICHMOND,



1 VIRGINIA FOR THE NEXT FIVE YEARS?

2 A. YES.

3 Q. IN FACT, DID YOU REMAIN IN

4 RICHMOND, VIRGINIA UNTIL THE TIME YOU LEFT?

5 A. YES.

6 Q. AT ANY TIME, DID YOU GET FLOWN UP

7 TO NEW YORK TO TALK TO THE BIG BOSSES UP IN PARK

8 AVENUE?

9 A. WHILE I WAS AN EMPLOYEE, I

10 REGULARLY, EITHER SPOKE WITH OR WENT UP AND SPOKE

11 WITH WHAT YOU CALL THE BIG BOSSES.

12 Q. REGULARLY MEANS WHAT?

13 A. A COUPLE TIMES A YEAR.

14 Q. MORE THAN THAT?

15 A. MORE THAN THAT, MAYBE.

16 Q. FIVE?

17 A. MAYBE.

18 Q. DID THE BIG BOSSES SOMETIMES COME

19 DOWN TO RICHMOND TO GET BRIEFED BY YOU AND OTHERS?

20 A. THEY CAME DOWN TO RICHMOND

21 REGULARLY AND THEY WERE GENERALLY BRIEFED BY THE

22 HEADS OF R&D.

23 Q. HOW LONG?

24 A. AT LEAST ONE A MONTH.

25 Q. FINE.

26 AND BIG BOSSES, MIGHT THAT INCLUDE

27 PEOPLE AS HIGH AS CAMPBELL?

28 A. ARE YOU SPEAKING ABOUT BILL



1 CAMPBELL, HE WAS PRESIDENT AT U. S. A. ?

2 Q. WELL, I AM TALKING ABOUT THE GUY  
3 WHO TESTIFIED BEFORE CONGRESS IN 1994.

4 A. BILL CAMPBELL, YES, HE, AT THAT  
5 TIME, HE WAS THE PRESIDENT OF PHILIP MORRIS U. S. A.  
6 HE WOULD COME DOWN REGULARLY.

7 Q. ONCE A MONTH, AT LEAST?

8 A. AT LEAST.

9 Q. AND YOU WERE THERE TO BRIEF HIM?

10 A. NO. NO, THAT WAS THE HEAD OF R&D  
11 OR OTHER SCIENTISTS.

12 Q. BEFORE HE CAME DOWN TO RICHMOND TO  
13 GET BRIEFED, BY OTHER SCIENTISTS, DID THESE OTHER  
14 SCIENTISTS EVER ASK FOR YOUR INPUT IN WHAT YOU  
15 THOUGHT MAYBE HE SHOULD BE TOLD?

16 A. NO.

17 Q. NOW, MR. CAMPBELL WAS THE BIG BOSS  
18 OF PHILIP MORRIS DOMESTIC TOBACCO, DID HE GO ON TO  
19 BECOME THE BIG BOSS OF THE BIG COMPANY?

20 A. NO, I THINK HE RETIRED AND WENT,  
21 WENT TO WORK IN A BANKING BUSINESS.

22 Q. BANKING?

23 A. BANKING. CITY GROUP.

24 Q. WHEN YOU WENT UP TO NEW YORK CITY  
25 FIVE TIMES A YEAR, DID YOU EVER GET TO MEET WITH  
26 MR. CAMPBELL, EVER?

27 A. I MET WITH HIM ON SEVERAL  
28 OCCASIONS, PROBABLY THE MOST IMPORTANT, THAT LASTED



1 FOR ABOUT A WEEK, IN AND OF ITSELF, HAD TO DO WITH  
2 THE RECALL THAT OCCURRED UNDER HIS, WHEN HE WAS THE  
3 HEAD OF U. S. A.

4 Q. WHAT WAS THAT?

5 A. PHILIP MORRIS RECALLED, WITH THE  
6 LARGEST CONSUMER RECALL IN THE HISTORY OF THE  
7 UNITED STATES, RECALL PRODUCT, AND I WAS INVOLVED  
8 IN THAT. AND AS PART OF THAT INVOLVEMENT, I WENT  
9 UP TO NEW YORK AND WORKED WITH A GROUP OF  
10 SCIENTISTS AND LAWYERS TRYING TO UNDERSTAND THE  
11 QUESTION AND WHAT WERE WE GOING TO DO WITH IT.

12 Q. WHAT DID PHILIP MORRIS RECALL?

13 A. RECALLED HUNDREDS OF MILLIONS OF  
14 CIGARETTES.

15 Q. WHY?

16 THE COURT: RELEVANCY.

17 MR. PIUZE: EXCUSE ME.

18 THE COURT: NO, WE ARE JUST EXPLORING,  
19 WE CAN DO THIS OUTSIDE THE PRESENCE. I DON'T SEE  
20 THE RELEVANCY. NO.

21 MR. PIUZE: CAN I WRAP IT UP? I THINK I  
22 CAN HIT IT RIGHT ON THE HEAD WITH ONE QUESTION.

23 THE COURT: ALL RIGHT, TRY.

24 Q BY MR. PIUZE: DID PHILIP MORRIS  
25 DECIDE TO RECALL HUNDREDS OF MILLIONS OF CIGARETTES  
26 BECAUSE THEY WERE DANGEROUS TO CONSUMERS?

27 A. ACTUALLY, WE DIDN'T KNOW THE ANSWER  
28 TO THAT QUESTION SO WE WENT DOWN TO ATLANTA TO THE



1 CENTERS FOR DISEASE CONTROL AND PREVENTION AND  
2 ASKED THEM FOR THEIR HELP. WE GAVE THEM ALL THE  
3 INFORMATION WE HAD. WE SAID WE HAVE DONE THIS  
4 RECALL, WHAT ELSE DO YOU THINK WE NEED TO DO.

5 SO --

6 THE COURT: ENOUGH.

7 I WILL TAKE THIS OUTSIDE THE  
8 PRESENCE TO FIND OUT WHAT IT'S ABOUT BEFORE I ALLOW  
9 ANY FURTHER.

10 MR. PIUZE: I'D LIKE YOU TO WATCH THIS  
11 JUST FOR A SECOND HERE, NOT A SECOND, THAT'S FALSE,  
12 THREE MINUTES.

13 MR. LEITER: I DON'T KNOW WHAT THE TAPE  
14 IS BUT I SUSPECT, AND I AM GOING TO OBJECT. WE  
15 HAVE A FOUNDATION PROBLEM AND WE HAVE A BEYOND THE  
16 SCOPE OF HIS TESTIMONY.

17 THE COURT: DOES THIS TAPE HAVE ANYTHING  
18 TO DO WITH HIS RECALL?

19 MR. PIUZE: NO, THIS IS MR. CAMPBELL  
20 BEFORE CONGRESS.

21 MR. LEITER: THIS IS THE '94 HEARINGS, I  
22 SUSPECT. BEYOND THE SCOPE OF HIS TESTIMONY AND NO  
23 FOUNDATION THAT HE WAS INVOLVED.

24 THE COURT: I WILL ALLOW IT. THE JURY  
25 KNOWS WHAT IT IS.

26

27 (AT THIS TIME, THE VIDEO  
28 WAS PLAYED)



1 Q BY MR. PIUZE: YOU WERE ONE OF THE  
2 SCIENTISTS WORKING FOR THE COMPANY BACK IN 1994 AND  
3 FIVE YEARS BEFORE, WEREN' T YOU?

4 A. YES, SIR.

5 Q. DID YOU KNOW, AT THAT TIME, WHETHER  
6 OR NOT SMOKING TOBACCO CAUSED CANCER?

7 MR. LEITER: OBJECT, BEYOND THE SCOPE.

8 THE COURT: OVERRULED.

9 THE WITNESS: MY UNDERSTANDING, MY OWN  
10 PERSONAL SCIENTIFIC UNDERSTANDING WAS YOU HAD TWO  
11 PIECES OF INFORMATION, YOU HAD THE EPIDEMIOLOGY,  
12 VERY STRONG AND CONSISTENT THAT SAID IT DID, AND  
13 EVEN YOU HAD SOME FUNDAMENTAL SCIENTIFIC QUESTIONS  
14 THAT NOBODY HAD THE ANSWER TO.

15 AND THE VIEW WITHIN THE COMPANY, MY  
16 VIEW, FORGIVE ME, YOU ASKED ME ABOUT MY VIEW, MY  
17 VIEW WAS OPERATIONALLY, AS I WAS WORKING WITHIN  
18 PHILIP MORRIS, AS OTHER SCIENTISTS, WE WORKED UNDER  
19 THE ASSUMPTION THAT IT DID OPERATIONALLY.

20 SCIENTIFICALLY, WE WERE STUCK AT  
21 THAT POINT IN THIS CORNER, SINCE WE DIDN' T KNOW NOR  
22 DID ANYBODY ELSE KNOW THE MECHANISM OR WHAT IT WAS,  
23 WE COULDN' T EMBRACE, AT THAT POINT, WE COULD NOT  
24 EMBRACE THE WHOLE THING. WE HAVE COME, BASICALLY,  
25 TO THE POSITION THAT WE STILL DON' T KNOW THE  
26 SCIENTIFIC FACTS THAT HAVE BEEN ALLUDING US AND  
27 OTHERS, BUT THE EPIDEMIOLOGY IS OUT THERE AND  
28 THAT' S ALL YOU NEED, THAT' S ALL THE MEDICAL PEOPLE,



1 THE PUBLIC HEALTH PEOPLE NEED AND THAT'S WHERE WE  
2 ARE RIGHT NOW

3 Q. OKAY. LET'S FORGET THE  
4 OPERATIONALLY AND TALK SCIENTIFICALLY. YOU ARE A  
5 SCIENTIST; RIGHT?

6 A. YES.

7 Q. YOU HAVE BEEN A SCIENTIST FOR HOW  
8 LONG?

9 A. OVER 35 YEARS.

10 Q. YOU WERE HIRED AT PHILIP MORRIS TO  
11 BE A SCIENTIST?

12 A. YES.

13 Q. VERY HIGH-RANKING SCIENTIST?

14 A. YES.

15 Q. RIGHT?

16 A. YES.

17 Q. IN 1994 AS A SCIENTIST YOU DID NOT  
18 KNOW WHETHER OR NOT TOBACCO CAUSED LUNG CANCER, IS  
19 THAT WHAT YOU ARE TELLING US?

20 A. NO. I DIDN'T KNOW -- I DIDN'T KNOW  
21 WHAT THE ANSWERS TO FUNDAMENTAL SCIENTIFIC  
22 QUESTIONS WERE. DID I BELIEVE THAT SMOKING WAS A  
23 RISK FACTOR AND THAT -- LET ME FINISH -- AND BY  
24 RISK FACTOR, I MEAN SOMETHING THAT COULD, INDEED,  
25 CAUSE THAT DISEASE, INCLUDING LUNG CANCER,  
26 ABSOLUTELY. I KNEW THAT BEFORE I CAME, BEFORE I  
27 CAME TO PHILIP MORRIS.

28 THE QUESTION THAT I DIDN'T HAVE AN



1 ANSWER TO THAT WEIGHED VERY HEAVILY ON MY MIND WAS,  
2 NOT KNOWING WHAT IT WAS OR HOW, HOW IT WORKED. I  
3 WASN'T LOOKING AT THIS AS A MATTER OF ANYTHING  
4 OUTSIDE OF A STRICT SCIENTIFIC INTERPRETATION.

5 Q. I AM NOT TALKING ABOUT RISK  
6 FACTORS. I AM NOT TALKING ABOUT OPERATIONALLY.  
7 YOU ARE A SCIENTIST, A HIGH-RANKING SCIENTIST AT  
8 PHILIP MORRIS IN 1994, THE YEAR HE SAID THAT TO THE  
9 CONGRESS. AND I SIMPLY WANT TO KNOW, DID YOU  
10 BELIEVE THAT SMOKING CAUSED LUNG CANCER,  
11 SCIENTIFICALLY?

12 A. TAKING THE WORD "BELIEF" OUT, OKAY,  
13 BUT DID I KNOW, SCIENTIFICALLY, NO.

14 DID I HAVE FEELINGS ABOUT IT, YES.

15 Q. OKAY. YOU FELT THAT THIS PRODUCT  
16 WAS CAUSING -- DO YOU KNOW THE NUMBER OF LUNG  
17 CANCERS IN THIS COUNTRY PER YEAR THAT RESULT IN  
18 DEATH FROM TOBACCO?

19 A. WHICH YEAR? THIS YEAR IT IS ABOUT  
20 160,000.

21 Q. 160?

22 A. ABOUT 160.

23 Q. THREE YEARS AGO?

24 A. IT WAS 150, 155.

25 Q. SO YOU THINK IT'S GONE UP SLIGHTLY?

26 A. OF COURSE IT'S GOING UP.

27 Q. THREE YEARS AGO, FIVE YEARS AGO?

28 A. ON AN ABSOLUTE POPULATION BASIS,



1 THAT'S -- THAT'S ONE WAY OF LOOKING AT IT THE WAY  
2 THE GOVERNMENT LOOKS AT IT IS PER HUNDRED THOUSAND,  
3 SO YOU NORMALIZE FOR ANY CHANGES IN POPULATION.

4 THE INCIDENTS PER HUNDRED THOUSAND  
5 HAS BEEN GOING DOWN.

6 Q. JUST GIVE ME A NUMBER, FIVE YEARS  
7 AGO, HOW MANY PEOPLE DIED OF LUNG CANCER?

8 A. IT WAS A SMALLER NUMBER.

9 Q. ANYWAY, IN 1994, YOU, AS A -- AS  
10 ONE OF THE BIG GUN SCIENTISTS AT PHILIP MORRIS  
11 TOBACCO, THOUGHT -- THOUGHT, FELT, THAT TOBACCO WAS  
12 CAUSING ALL THIS LUNG CANCER, THAT'S WHAT YOU JUST  
13 TOLD US?

14 A. THAT'S WHAT I JUST SAID.

15 Q. DID YOU EVER SAY TO YOUR BOSSES  
16 THAT YOU SHOULD PULL THE PRODUCT OFF THE MARKET  
17 NOW?

18 A. WHAT I SAID WAS WE NEED TO REALLY  
19 MAKE SURE WE ARE FOCUSED ON FIGURING OUT WHAT IT IS  
20 SO WE CAN GET RID OF THESE THINGS, THAT'S WHAT I  
21 SAID. AND I WASN'T THE ONLY ONE TO, ONLY ONE TO  
22 SAY THAT.

23 Q. I KNOW BUT YOU ARE THE ONLY ONE  
24 THAT I GOT TO TALK TO RIGHT NOW

25 A. I AM SORRY.

26 MR. LEITER: OBJECT TO THE COMMENTARY.

27 THE COURT: SUSTAINED.

28 Q BY MR. PIUZE: DID YOU SAY TO YOUR



1 BOSSES, I FEEL THAT YOUR PRODUCT IS CAUSING LUNG  
2 CANCER TO THE EXTENT THAT IT IS KILLING IN THE  
3 VICINITY OF 150,000 PEOPLE IN AMERICA THIS YEAR, SO  
4 PLEASE TAKE IT OFF THE MARKET UNTIL WE CAN FIGURE  
5 OUT A WAY TO MAKE IT SAFE?

6 A. NO. THAT'S NOT WHAT I SAID TO MY  
7 BOSSES.

8 Q. ANYWAY, SO I INTRODUCED THE WORD  
9 "FEEL," DID YOU FEEL, NOW -- LET'S GO BACK TO  
10 SCIENCE.

11 THAT 1994, DID YOU BELIEVE THAT  
12 TOBACCO CAUSED LUNG CANCER?

13 A. BELIEF IN THE SENSE OF FEEL --  
14 STICKING WITH THE WORD "FEEL."

15 Q. NO, WE ARE GONE FROM THAT. YOU  
16 ANSWERED IT. THANK YOU. NOW WE ARE ON TO SCIENCE.

17 DO YOU BELIEVE, AS A SCIENTIST, IN  
18 1994, AS A SCIENTIST, DID YOU BELIEVE THAT TOBACCO  
19 CAUSED LUNG CANCER?

20 A. NO. NOT IN THE ABSENCE OF KNOWING  
21 WHAT IT WAS AND THE MECHANISM

22 Q. THANK YOU.

23 NOW, THIS MAN, MR. CAMPBELL, WHEN  
24 HE TESTIFIED, I THINK THE ANSWER TO THE -- WELL,  
25 HIS ONLY ANSWER, WAS THAT, IN 1994, NO ONE KNOWS  
26 WHAT CAUSED CANCER, BUT MAYBE SOMEDAY WE WILL FIND  
27 OUT, SAID SOMETHING LIKE THAT, YOU JUST HEARD THAT;  
28 RIGHT?



1           A.     I HEARD THAT AS WELL.

2           Q.     SO YOU FOUND OUT; RIGHT?

3           A.     NO.   WHAT WE HAVE DONE IS WE  
4 HAVEN'T FOUND OUT.  WE HAVE CHANGED, CHANGED OUR  
5 POSITION ON THIS QUESTION.

6                     WE ARE NOW SAYING THAT WE STILL  
7 DON'T KNOW BUT IT'S NOT IMPORTANT FOR US TO KNOW  
8 PUBLICLY WHETHER -- WHAT IT IS AND THE MECHANISM  
9 AND THE REASON THE -- WE HAVE DONE THIS IS I THINK,  
10 I BELIEVE, WE WERE CRITICIZED FOR HAVING THIS  
11 OTHER, THIS OTHER POSITION THAT HAS NOT BEEN  
12 SCIENTIFICALLY PROVEN.

13                    AND SO NOW WE HAVE REMOVED  
14 OURSELVES FROM THIS PUBLIC DISCUSSION AND WHAT WE  
15 SAY IS, IF YOU WANT TO UNDERSTAND WHAT'S GOING ON  
16 WITH SMOKING AND HEALTH, LISTEN TO THE U. S. SURGEON  
17 GENERAL, FOR EXAMPLE.  WE HAVE REMOVED OURSELVES  
18 FROM THE DISCUSSION.

19           Q.     SO BETWEEN THE TIME MR. CAMPBELL  
20 SAID THAT TO CONGRESS IN '94 AND NOW, 2001 OR LATE  
21 2000, WHEN THE WEB SITE WAS CHANGED, I THINK WE  
22 HEARD IT WAS VERY LATE IN 2000, SCIENTIFICALLY,  
23 NOTHING HAS CHANGED?

24           A.     ACTUALLY, EVEN BEFORE THAT, THAT IS  
25 CORRECT.

26           Q.     THAT IS CORRECT.  TO THIS DAY,  
27 NOTHING HAS CHANGED?

28           A.     AND BY -- THEN FORGIVE ME, I MAY



1 NOT BE UNDERSTANDING. WHEN YOU SAY "NOTHING HAS  
2 CHANGED," WHAT DO YOU MEAN?

3 Q. YOU SAID THAT IN '94, AS A  
4 SCIENTIST, YOU DID NOT KNOW THAT TOBACCO CAUSED  
5 LUNG CANCER. AND I AM INVITING YOU TO TELL THIS  
6 JURY THAT TODAY ON MARCH 7TH, 2001, AS A SCIENTIST,  
7 YOU DON'T KNOW THAT TOBACCO CAUSES LUNG CANCER?

8 A. NO, WHAT I HAVE SAID IS THAT  
9 SMOKING CIGARETTES CAUSES LUNG CANCER, RELYING UPON  
10 THE EPIDEMIOLOGY, THAT WHAT WE DON'T KNOW, WHICH IS  
11 WHAT WE FOCUSED ON, OVER WHAT WAS KNOWN, OKAY, IS  
12 NO LONGER THE WAY I STATE THINGS OR FEEL ABOUT  
13 THINGS OR THE WAY THE COMPANY STATES THINGS OR  
14 FEELS ABOUT THINGS.

15 Q. EPIDEMIOLOGY HAS BEEN AROUND ON  
16 THIS ISSUE FOR 51 YEARS NOW?

17 A. THAT IS CORRECT.

18 AND WE FOCUSED ON WHAT WAS NOT  
19 KNOWN AND DID NOT, BASICALLY, SAY, IT'S ENOUGH FOR  
20 US TO ACCEPT THE EPIDEMIOLOGY, AND WE HAVE CHANGED  
21 THAT VIEW

22 Q. SO IF SOMEONE AT PHILIP MORRIS,  
23 ANYONE, YOU, MR. CAMPBELL, MR. PARRISH, ANYONE, HAD  
24 DECIDED THAT THE EPIDEMIOLOGY WOULD BE ENOUGH, THEN  
25 PHILIP MORRIS COULD HAVE TAKEN OUT NEWSPAPER ADS IN  
26 1950 AND SAID, OUR CIGARETTES CAUSE LUNG CANCER  
27 WHICH IS A FATAL DISEASE AND WILL KILL YOU?

28 MR. LEITER: OBJECTION, CALLS FOR



1 SPECULATION.

2 THE COURT: OVERRULED.

3 Q BY MR. PIUZE: RIGHT?

4 A. I THINK WE COULD HAVE DONE THIS

5 EARLIER. WHEN WE COULD HAVE DONE IT, I DON'T KNOW

6 Q. WELL, LET'S TALK ABOUT IT.

7 1950, I AM POSING 1950 TO YOU. YES

8 OR NO?

9 A. NO. I DON'T THINK SO.

10 Q. I AM JUST A LAWYER. OKAY.

11 A. NO.

12 Q. HOW ABOUT --

13 A. 1951.

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

15 THE WITNESS: I CAN'T, I AM SORRY. I

16 CAN'T READ IT.

17 I HAVE IT. OKAY.

18 Q BY MR. PIUZE: AND THE QUESTION

19 IS, IF PHILIP MORRIS HAD DECIDED EARLIER THAT THE

20 EPIDEMIOLOGY WAS ENOUGH, ALL BY ITSELF, TO KNOW

21 THAT SMOKING TOBACCO CAUSED LUNG CANCER, WASN'T

22 THERE ENOUGH INFORMATION AVAILABLE IN 1951 FOR

23 PHILIP MORRIS TO TAKE OUT ADS IN PAPERS ALL OVER

24 THE COUNTRY AND SAY, OUR CIGARETTES CAUSE LUNG

25 CANCER, WHICH IS A FATAL DISEASE AND WILL KILL YOU?

26 MR. LEITER: OBJECTION, IT'S COMPOUND AND

27 VAGUE AS WELL AS ARGUMENTATIVE.

28 THE COURT: OVERRULED.



1 THE WITNESS: IN 1951, MY ANSWER WOULD BE  
2 NO. AND IF YOU WOULD LIKE TO KNOW THE REASONS, I  
3 CAN GIVE THEM

4 Q. NO.  
5 1952?

6 A. SAME ANSWER.  
7 IF YOU ARE GOING TO GO YEAR BY  
8 YEAR, I JUST MIGHT SAY, IT WOULD NOT BE, IN MY  
9 MIND, UNTIL APPROXIMATELY THE FIRST SURGEON  
10 GENERAL'S REPORT IN '64 AND THAT, THOUGH THEY ONLY  
11 AGREED WITH MEN, IT WASN'T UNTIL '65 THAT THE  
12 SURGEON GENERAL CAME AROUND TO CONCLUDING THE  
13 CAUSAL RELATIONSHIP OF SMOKING AND LUNG CANCER IN  
14 WOMEN.

15 AND SO FROM MY PERSPECTIVE, IT  
16 WOULD HAVE BEEN IN THAT TIMEFRAME, PLUS OR MINUS  
17 THAT THE EPIDEMIOLOGY WAS OF A SUFFICIENT,  
18 SUFFICIENT STATURE.

19 AND THIS IS NOT JUST MY OPINION,  
20 THIS IS BASED ON THE PUBLICATION, '97, '98, OF THE  
21 LATE PROFESSOR WYNDER'S RECOLLECTION IN A VERY  
22 PROMINENT JOURNAL WHERE HE SAID HE WAS SURPRISED  
23 HOW LONG IT TOOK THE MEDICAL COMMUNITY TO EMBRACE  
24 HIS OBSERVATIONS, AND DOCTOR HILL AND DOLL'S  
25 OBSERVATIONS.

26 AND HE CONCLUDED IT WASN'T UNTIL  
27 THE LATE '50'S, EARLY '60'S THAT IT SHOULD HAVE  
28 HAPPENED.



1 Q. SO WHEN WE ARE TALKING  
2 EPIDEMIOLOGY, AND WE ARE TALKING THE 20TH CENTURY,  
3 DR. WYNDER, DOCTOR -- WHO WAS HIS PARTNER?  
4 A. GRAHAM  
5 Q. DR. HILL, AND WHO WAS HIS PARTNER?  
6 A. DR. DOLL.  
7 Q. THESE FOUR, ARE THEY ALL THE MEN?  
8 A. YES.  
9 Q. ARE ABSOLUTE GIANTS IN EPIDEMIOLOGY  
10 IN THE 20TH CENTURY?  
11 A. AND ACTUALLY SOME OF THEM ARE STILL  
12 AROUND AND STILL CONSIDERED GIANTS IN THE 21ST  
13 CENTURY.  
14 Q. OF THOSE -- YOU SAY SOME OF THEM  
15 ARE STILL AROUND?  
16 A. DR. DOLL IS STILL AROUND.  
17 Q. WE KNOW  
18 A. GOOD.  
19 Q. BUT THAT'S A QUESTION, THESE FOUR  
20 MEN WERE GIANTS OF EPIDEMIOLOGY IN THE 20TH  
21 CENTURY?  
22 A. DR. WYNDER, HILL AND DOLL, CLEARLY  
23 WERE. DR. GRAHAM WAS A VERY PROMINENT PHYSICIAN,  
24 RESEARCHER, CLINICIAN, BUT NOT REALLY AN  
25 EPIDEMIOLOGIST.  
26 Q. OKAY, FAIR ENOUGH  
27 ANYWAY. THERE'S BEEN A "NEW  
28 ENGLAND JOURNAL OF MEDICINE" EDITORIAL FROM 1960



1 THAT'S BEEN PUT UP ON THE ELMD HERE AND DISPLAYED  
2 FOR THE JURY A COUPLE TIMES DURING THE TRIAL.

3 DO YOU KNOW WHAT I AM TALKING  
4 ABOUT?

5 A. NOT OFF THE TOP OF MY HEAD.

6 Q. IT'S YOUR PERSONAL VIEW THEN THAT  
7 1964, '5, WOULD BE THE YEAR WHEN THE EPIDEMIOLOGY,  
8 AND THE STUDIES FROM EPIDEMIOLOGY WERE SO  
9 OVERWHELMING THAT AT THAT POINT, IF THE DECISION  
10 WAS GOING TO BE MADE ON EPIDEMIOLOGY, THE ADS I AM  
11 TALKING ABOUT, SHOULD HAVE GONE OUT IN THE PAPERS?

12 MR. LEITER: OBJECTION, MISSTATES HIS  
13 TESTIMONY, CALLS FOR SPECULATION.

14 MR. PIUZE: WITHDRAW

15 Q BY MR. PIUZE: 1964, '5, WAS THE  
16 YEAR THAT WHAT, SIR?

17 A. THAT THE SURGEON GENERAL, TWO  
18 REPORTS, ONE YEAR AFTER ANOTHER, CONCLUDED THAT  
19 SMOKING CAUSED LUNG CANCER IN '64 IN MEN, ONLY  
20 SUGGESTIVE IN WOMEN, BUT IN '65, IT FELT THAT THE  
21 DATA WAS SUFFICIENT, BASED ON THE EPIDEMIOLOGY, TO  
22 CONCLUDE A CAUSAL RELATIONSHIP.

23 Q. THANK YOU.

24 SO YOU CHOOSE THAT YEAR?

25 A. NO. YOU ACTUALLY ASKED ME TO COME  
26 UP AND I SAID PLUS OR MINUS.

27 Q. NO, ACTUALLY, WHAT I WAS DOING WAS  
28 GOING YEAR BY YEAR AND YOU SAID STOP, DON'T GO YEAR



1 BY YEAR, I WILL TELL YOU WHEN IT IS, I THINK IT IS.  
2 AND YOU ARE THE ONE WHO PUT IT OUT, ISN'T THAT  
3 RIGHT?

4 A. PLUS OR MINUS, YES, I WOULDN'T SAY  
5 A BRIGHT LINE, '64, '65, BUT IN THAT TIMEFRAME.

6 Q. THAT'S FINE. OKAY.  
7 SO HERE'S WHAT I'D LIKE TO KNOW  
8 HOW LONG AGO IS '64, '65.

9 A. 37 YEARS, ON THE OUTSIDE.

10 Q. WHAT'S 37 TIMES 400,000?

11 MR. LEITER: OBJECTION, THIS IS JUST  
12 ARGUMENT.

13 THE COURT: SUSTAINED.

14 Q BY MR. PIUZE: WHY WAS A DECISION  
15 MADE, THIS IS AN IF YOU KNOW, IF YOU ARE NOT PART  
16 OF THIS, PLEASE TELL ME, BUT WHY WAS A DECISION  
17 MADE WITHIN THE LAST TWO YEARS AT PHILIP MORRIS TO  
18 REALIZE THE OBVIOUS, THAT SMOKING TOBACCO CAUSES  
19 LUNG CANCER?

20 MR. LEITER: OBJECTION, IT'S AN  
21 ARGUMENTATIVE QUESTION AND THERE'S NO FOUNDATION.

22 THE COURT: OVERRULED.

23 THE WITNESS: THE ANSWER TO THE QUESTION  
24 IS, IT ACTUALLY -- MY KNOWLEDGE OF THIS STARTED IN  
25 '97 WITH A LETTER FROM A COMPANY TO CONGRESS,  
26 BASICALLY, SETTING THE STAGE FOR WHAT FOLLOWED IN  
27 TERMS OF WHAT EVENTUALLY APPEARED ON THE WEB SITE.

28 SO, I MEAN, THAT IS THE EXTENT OF



1 MY KNOWLEDGE, BECAUSE I WAS INVOLVED IN THAT.

2 Q. OUR JURY HERE, AND ALL OF US, HAVE  
3 HEARD A COUPLE TIMES ABOUT A STORY OF A CHOLERA  
4 EPIDEMIC THAT HAD TO DO WITH THE THAMES RIVER AND A  
5 CERTAIN PUMP HANDLE IN LONDON. ARE YOU FAMILIAR  
6 WITH THAT?

7 A. OH, YES.

8 Q. IF I MADE -- I AM GOING TO MAKE AN  
9 ANALOGY AND ASK YOU IF YOU THINK IT'S A FAIR  
10 ANALOGY, OKAY.

11 IN LONDON, THERE WAS CHOLERA, NO  
12 ONE KNEW EXACTLY WHAT, SCIENTIFICALLY OR  
13 MECHANICALLY OR MECHANISTICALLY OR WORDS OVER MY  
14 HEAD, CAUSED IT. BUT PEOPLE DID KNOW THAT THE PUMP  
15 HANDLE ON THE THAMES CAUSED IT, AND WHEN THE PUMP  
16 HANDLE WAS CHANGED, THE CHOLERA STOPPED, EVEN  
17 THOUGH NO ONE UNDERSTOOD ALL OF THOSE MICROBES AND  
18 DNA'S AND WHATEVER.

19 THE ANALOGY IS, EITHER IN 1950 OR  
20 '54 OR '57 OR '60 OR '65, BUT IN THERE SOMEWHERE,  
21 IT WAS WELL UNDERSTOOD, OVERWHELMINGLY UNDERSTOOD,  
22 THAT PEOPLE WHO SMOKE CIGARETTES WERE SOMETHING  
23 LIKE 20 TIMES MORE LIKELY TO GET LUNG CANCER THAN  
24 SOMEONE WHO DIDN'T SMOKE, WHETHER OR NOT ANYONE  
25 REALIZED WHERE THE MICROBES WERE OR THE DNA'S WERE  
26 OR WHATEVER IT IS YOU STILL DON'T UNDERSTAND, THEY  
27 KNEW DARN WELL, SCIENTISTS NEW DARN WELL, THAT  
28 SMOKING CIGARETTES CAUSED CANCER. IS THAT A GOOD



1 ANALOGY?

2           A.     YOU HAVE GOT THE LONDON THING  
3 PRETTY CLOSE.

4                     IS IT A GOOD ANALOGY, THEY TOOK THE  
5 HANDLE OFF, OKAY, AND THEN THE DISEASE INCIDENCE  
6 DROPPED. AND THE ANALOGY WITH REGARD TO CIGARETTES  
7 IS, AND LUNG CANCER IS THEY DIDN'T KNOW EVERYTHING  
8 THEY NEEDED TO KNOW THEN. WE DON'T KNOW  
9 EVERYTHING, IF YOU LISTEN TO ME, THAT WE NEED TO  
10 KNOW NOW, BUT WE CAN DO SOMETHING ANALOGOUS TO  
11 THAT. AND THAT IS, I THINK, AN ALTERNATIVE, IT IS  
12 AN ALTERNATIVE.

13           Q.     SO WHY DIDN'T SOMETHING GET DONE  
14 ANALOGOUS, IN 1964, '5, OR 1960 OR '57 OR '50 --

15           MR. LEITER: OBJECTION, CALLS FOR  
16 SPECULATION.

17           THE COURT: IF YOU KNOW

18           THE WITNESS: I THINK WHAT WAS DONE OR  
19 WHAT IS BEING DONE IS, HAS BEEN AN ATTEMPT TO  
20 REDUCE THE RISKS ASSOCIATED WITH, WITH THE PRODUCT.  
21 THAT WAS THE EFFORT AND IS THE EFFORT THAT'S UNDER  
22 WAY. THAT'S WHAT PHILIP MORRIS HAS BEEN DOING.

23           Q.     DID YOU MENTION R&D SOMEPLACE IN  
24 SOME OF YOUR EARLIER ANSWERS?

25           A.     I AM SURE I DID, SEVERAL TIMES.

26           Q.     R&D MEANS WHAT?

27           A.     RESEARCH AND DEVELOPMENT.

28           Q.     WHEN A COMPANY, I AM NOT TALKING



1 PHILIP MORRIS NOW, NOT EVEN NECESSARILY TOBACCO,  
2 BUT JUST AS A CONCEPT, TELL ME IF YOU AGREE WITH  
3 THIS SCIENTIFICALLY, WHEN A COMPANY IS RESEARCHING  
4 AND DEVELOPING A PRODUCT, IF IT KNOWS THAT, IN THE  
5 STAGES OF RESEARCHING AND DEVELOPING, THE PRODUCT  
6 IS HARMING PEOPLE, PUT THE PRODUCT ON THE SIDELINES  
7 UNTIL THE COMPANY GETS IT RIGHT SO IT DOESN'T HARM  
8 PEOPLE ANY LONGER?

9 MR. LEITER: I AM GOING TO OBJECT TO THE  
10 QUESTION. IT'S VAGUE.

11 THE COURT: WELL, IT'S DONE IN THE  
12 CONTEXT OF R&D WORK SO I WILL ALLOW IT.

13 THE WITNESS: I THINK THE CONTEXT WITHIN  
14 R&D WAS HERE WE HAD A PRODUCT THAT WAS RISKY AND,  
15 AS I SAY, TODAY, CAUSES DISEASE. OKAY. HAVING  
16 SAID THAT, ONE ALTERNATIVE IS TO TAKE THE PUMP  
17 HANDLE AWAY. THE OTHER ALTERNATIVE IS TO TRY TO DO  
18 SOMETHING WITH WHAT YOU HAVE, WITH THIS PRODUCT TO  
19 REDUCE THE RISK.

20 BECAUSE THE RISKS ASSOCIATED WITH  
21 THE PRODUCT ARE ON EVERY PACK OF CIGARETTES, ARE  
22 LISTED ON EVERY PACK OF CIGARETTES WE SELL IN THE  
23 UNITED STATES. AND THE QUESTION BECOMES, IF WE ARE  
24 GOING TO STAY IN THIS BUSINESS, WHAT, IF ANYTHING,  
25 DO WE DO?

26 DO WE SIT BACK, SIT ON OUR HANDS  
27 AND JUST SELL THE PRODUCT BECAUSE THERE IS NO, NO  
28 DIRECTIVE, NO LEGAL DIRECTIVE THAT I AM AWARE OF TO



1 DO RESEARCH AND DEVELOPMENT TO TRY TO IMPROVE THE  
2 PRODUCT.

3                   AND SO PHILIP MORRIS, AND I THINK  
4 OTHER COMPANIES, BUT I ONLY KNOW ABOUT PHILIP  
5 MORRIS, HAVE TAKEN THE POSITION THAT WE ARE GOING  
6 TO CONTINUE TO MANUFACTURE AND SELL THIS PRODUCT  
7 AND WE ARE GOING TO TRY, TO THE BEST OF OUR  
8 ABILITY, BASED ON TECHNOLOGY AND OUR UNDERSTANDING  
9 OF THE SCIENCE, TO REDUCE THE RISK ASSOCIATED WITH  
10 THIS PRODUCT.

11               Q.     WHAT'S TAKING THE PUMP HANDLE AWAY,  
12 YOU HAVE MENTIONED THAT, WHAT WOULD BE THE  
13 EQUIVALENT OF TAKING THE PUMP AWAY?

14               A.     ONE IS THE GOVERNMENT COULD BAN  
15 TOBACCO AND CIGARETTES.

16               Q.     I HAVEN'T BROUGHT THE GOVERNMENT  
17 INTO MY CONVERSATION. I AM JUST TALKING ABOUT YOU  
18 AND R&D. FORGET THE GOVERNMENT. YOU AND R&D. AND  
19 IF YOU GOT A PRODUCT WHERE BY 1964, 1965, YOU  
20 FIGURE IT'S GOING TO BE KILLING AT LEAST 150,000  
21 PEOPLE A YEAR FROM LUNG CANCER, TAKING THE HANDLE  
22 AWAY WOULD MEAN WHAT?

23               A.     WELL --

24               Q.     SIR?

25               A.     ARE WE TALKING 1960, 1950?

26               Q.     NO, '6, '4, '5?

27               A.     '6, '4, '5.

28                        SO FIRST OF ALL, I DON'T WANT TO



1 MISLEAD YOU. THE AMOUNT OF LUNG CANCER IN THE  
2 UNITED STATES WAS AT THAT POINT A MUCH, MUCH  
3 SMALLER NUMBER THAN IT IS, IS TODAY. NUMBER 1.

4 NUMBER 2, YOUR QUESTION DID NOT  
5 LIMIT ME, AS I UNDERSTOOD IT, IN TERMS OF  
6 POSSIBILITIES.

7 NOW, YOU DIDN'T BRING THE  
8 GOVERNMENT INTO IT, THAT WAS ONE OF THE ALTERNATIVE  
9 POSSIBILITIES.

10 ANOTHER ALTERNATIVE POSSIBILITY IS  
11 THAT PHILIP MORRIS CAN GO INTO ANOTHER BUSINESS.

12 Q. ANYWAY, YOU ARE RIGHT. I DIDN'T  
13 LIMIT YOU AND I WANT TO CONTINUE TALKING TO YOU  
14 ABOUT THIS. BUT JUST PIECE BY PIECE, ONE THING  
15 THAT COULD HAVE BEEN DONE IS THE ANALOGY TO TAKING  
16 THE PUMP HANDLE AWAY WOULD BE WHAT?

17 A. STOP MAKING CIGARETTES.

18 Q. FINE.

19 NOW, WHEN YOU -- THANK YOU.

20 WHEN YOU ANSWERED ME, YOU SORT OF  
21 CAME BACK WITH AN ALTERNATIVE, TAKE THE PUMP HANDLE  
22 AWAY OR TRY TO MAKE IT BETTER; REMEMBER THAT?

23 A. YES, SIR.

24 Q. THAT'S WHAT YOU SAID TO ME; RIGHT?

25 A. YES, SIR.

26 Q. DO YOU KNOW WHAT THE TERM "MUTUALLY  
27 EXCLUSIVE" MEANS?

28 A. IN CERTAIN CONTEXT.



1 Q. WHAT DOES MUTUALLY EXCLUSIVE MEANS?  
2 A. THAT THE TWO EVENTS ARE TRUE TRUE  
3 BUT UNRELATED.  
4 Q. WELL, MAYBE I GOT THE WRONG  
5 CONTEST.  
6 DO YOU EVER WATCH BASEBALL?  
7 A. YES.  
8 Q. PITCHER THROWS THE BALL.  
9 A. YES.  
10 Q. IT' S EITHER A BALL OR A STRIKE;  
11 RIGHT?  
12 A. NO.  
13 Q. THAT' S TRUE.  
14 WHAT IF THE GUY DOESN' T SWING?  
15 A. NO, WHAT HAPPENS IF THERE' S A BALK?  
16 MR. LEITER: MAY I BE THE FIRST TO  
17 SUGGEST THAT WE MIGHT MOVE ON.  
18 THE COURT: I WOULD LIKE TO MOVE ON.  
19 THE WITNESS: IS THAT NOT A REASONABLE --  
20 THE COURT: LET' S MAKE OUR POINT.  
21 THE WITNESS: IS THAT NOT A REASONABLE  
22 ALTERNATIVE?  
23 Q BY MR. PIUZE: THE POINT IS THIS,  
24 THERE' S NO RULE THAT SAYS YOU GOT TO CHOOSE BETWEEN  
25 TAKING THE PUMP HANDLE AWAY AND TRYING TO MAKE A  
26 SAFER PRODUCT, IS THERE?  
27 MR. LEITER: I AM GOING TO OBJECT. THIS  
28 IS ARGUMENT AND WELL BEYOND THE SCOPE OF HIS



1 TESTIMONY AS A SCIENTIST.

2 THE COURT: LET'S CONCLUDE THIS.

3 MR. PIUZE: MEANING?

4 THE COURT: I AM ALLOWING YOU TO PURSUE  
5 IT BUT LET'S DRAW IT TO CONCLUSION.

6 Q BY MR. PIUZE: IN 1964, '5, PHILIP  
7 MORRIS COULD HAVE TAKEN THE PUMP HANDLE AWAY AND  
8 SAID WE ARE NOT SELLING ANY MORE OF THIS STUFF AND  
9 NOW IN THE MEANWHILE COULD HAVE HIRED A TRILLION  
10 SCIENTISTS TO SIT THERE AND DO EXPERIMENTS WITH  
11 ANIMALS TO TRY TO FIGURE OUT HOW TO MAKE IT SAFER;  
12 RIGHT?

13 A. ANY -- I MEAN, THAT'S A  
14 POSSIBILITY, YES. COULD HAVE DONE IT.

15 Q. COULD HAVE DONE IT.

16 MR. PIUZE: YOUR HONOR, I AM LOOKING AT  
17 QUARTER OF 11:00.

18 THE COURT: LET'S BREAK.

19 WE WILL MOVE ON TO ANOTHER SUBJECT  
20 WHEN YOU GET BACK.

21 LADIES AND GENTLEMEN, ALL RIGHT, WE  
22 WILL SEE YOU AT 11 O' CLOCK.

23

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

26 /// /// ///

27 /// /// ///

28 /// /// ///



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

4  
5 THE COURT: SIR, YOU UNDERSTAND YOU ARE  
6 STILL UNDER OATH.

7 THE WITNESS: YES, SIR.

8 THE COURT: MR. PIUZE.

9 MR. PIUZE: THANK YOU. L

10

11

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

16

17 CROSS-EXAMINATION (RESUMED)

18

19 BY MR. PIUZE:

20 Q. THE DOSE, SAY THE LITTLE QUOTE  
21 AGAIN, THE DOSE WHAT?

22 A. THE DOSE IS EVERYTHING.

23 Q. WHAT DOES THAT MEAN, THE DOSE IS  
24 EVERYTHING?

25 A. THE ACTUAL QUOTE IS THE "DIA ES  
26 MACHT," THAT'S THE SWISS GERMAN FROM PARACELBUS,  
27 AND BASICALLY, IN TOXICOLOGY, THE CONCEPT IS, THE  
28 MORE YOU TAKE, THE WORSE THE RESPONSE OR THE



1 QUICKER THE WORSE RESPONSE COMES.

2 Q. OKAY. SO ON FRIDAY WHEN YOU WERE  
3 TALKING ABOUT THIS, I THINK YOU HAD A COKE; RIGHT?

4 A. THE DIET DRINK LIKE YOURS.

5 Q. YOU SEE THOSE TWO DIET DRINKS ON  
6 THE TABLE THERE?

7 A. YES, SIR.

8 Q. WHICH IS THE BIGGER DOSE?

9 A. WELL, IT WOULD APPEAR THAT THE ONE  
10 IN THE PLASTIC CONTAINER HAS MORE OF WHATEVER IS IN  
11 THERE THAN WHAT'S IN THE CAN.

12 Q. SO THE BIG ONE IS THE BIGGER DOSE?

13 A. IT WOULD APPEAR SO.

14 Q. WHAT'S PHARMACOLOGY?

15 A. AS I EXPLAINED ON FRIDAY,  
16 PHARMACOLOGY HAS BEEN THE USE OF CHEMICALS AND THE  
17 DEVELOPMENT OF DRUGS IN AN ATTEMPT TO UNDERSTAND  
18 HOW THESE CHEMICALS AND DRUGS WORK IN BIOLOGICAL  
19 SYSTEMS.

20 Q. YOU HAVE WORKED WITH CHEMICALS AND  
21 DRUGS FOR A LONG, LONG, LONG TIME?

22 A. YES, SIR.

23 Q. ARE THERE SOME CHEMICALS AND DRUGS  
24 IN LIQUID FORM THAT YOU COULD ADD TO MY DIET PEPSI  
25 THAT COULD KILL ME?

26 A. IN A HEARTBEAT.

27 Q. LIKE WHAT?

28 A. TETROTOTXIN.



1 Q. HOW ABOUT SOMETHING MORE COMMON?  
2 A. IT WILL KILL YOU IN A HEARTBEAT?  
3 Q. YES, THREE HEART BEATS, FOUR HEART  
4 BEATS, I DON'T CARE.  
5 A. CYANIDE.  
6 Q. HOW MUCH CYANIDE WOULD IT TAKE TO  
7 KILL ME IN, IF NOT A HEART BEAT, A COUPLE MINUTES?  
8 A. ACTUALLY, THAT'S SOMEWHAT DIFFICULT  
9 TO SAY AS EVIDENCED BY WHEN THEY TRIED TO ASSASSINATE  
10 RASPUTIN, THEY GAVE HIM ENOUGH CYANIDE IN THE  
11 COOKIES AND WINE TO KILL 50 PEOPLE, AND FOR  
12 WHATEVER REASON, IT DIDN'T KILL HIM  
13 BUT THERE IS A DOSE, I DON'T KNOW  
14 IT OFF THE TOP OF MY HEAD, THAT WOULD MORE THAN  
15 LIKELY KILL YOU 50 PERCENT OF THE TIME THAT YOU  
16 TOOK IT.  
17 Q. LET'S USE ANOTHER EXAMPLE. THAT  
18 GOT TOO COMPLICATED.  
19 HOW ABOUT SOMETHING ELSE THAT THE  
20 JURY KNOWS ABOUT, THAT WOULD KILL ME, SOMETHING  
21 COMMON?  
22 A. SOMETHING COMMON?  
23 Q. YES.  
24 A. THAT WOULD KILL YOU (INDICATING)?  
25 Q. IT DOESN'T HAVE TO BE LIKE THAT  
26 (INDICATING) BUT THAT WOULD KILL ME.  
27 A. THERE'S, JUST OFF, JUST OFF THE TOP  
28 OF MY HEAD, OKAY, ARSENIC.



1 Q. HOW MUCH?

2 A. QUITE A BIT, ACTUALLY.

3 Q. HOW MUCH?

4 A. IT WOULD DEPEND ON THE INDIVIDUAL.

5 PEOPLE USED TO TAKE ARSENIC FOR COSMETIC REASONS

6 JUST TO GIVE THEM A WHITE SHALLOW COMPLEXION. IT

7 WAS VIEWED AS BEING POSITIVE.

8 IT WOULD DEPEND ON THE INDIVIDUAL.

9 AGAIN, I DON'T HAVE THAT NUMBER OFF

10 THE TOP OF MY HEAD. THOSE NUMBERS ONE COULD

11 APPROXIMATE THEM, THEY ARE IN PUBLISHED BOOKS.

12 Q. IS THERE SOMETHING AROUND, SO IF I

13 TOOK A TEASPOON OF IT AND PUT IT IN THIS DIET

14 PEPSI, IT WOULD KILL ME?

15 MR. LEITER: I GOING TO OBJECT TO THE

16 RELEVANCE OF THIS.

17 THE COURT: WE NEED TO MOVE THROUGH THIS.

18 MR. PIUZE: IT'S RELEVANT.

19 THE WITNESS: A TEASPOON?

20 MR. PIUZE: YES.

21 THE WITNESS: THAT WOULD KILL YOU LIKE

22 (INDICATING). YEAH, THERE ARE, BOTULININ TOXIN.

23 Q. FINE, OKAY. SAY IT AGAIN.

24 A. BOTULININ.

25 Q. LESS THAN A TEASPOON?

26 A. LESS THAN A TEASPOON.

27 Q. LESS THAN A TEASPOON WOULD KILL ME?

28 A. UH-HUH.



1 Q. SO IF LESS THAN A TEASPOON WOULD  
2 KILL ME, AS FAR AS ME BEING ALIVE AND DEAD, THE  
3 DOSE ISN'T EVERYTHING AT ALL, IS IT?

4 A. OH, NOT AT ALL. NOT AT ALL. THE  
5 NOTION FALLS OUT OF A FUNDAMENTAL CONCEPT, BOTH IN  
6 MEDICINE AND SCIENCE, CALLED THE DOSE RESPONSE.

7 AND FOR 99.99 PERCENT OF THINGS  
8 THAT WE ARE CONFRONTED IN, YOU ARE GOING TO SEE A  
9 DOSE RESPONSE.

10 AND IF YOU ARE TALKING ABOUT A  
11 THERAPEUTIC OR A TOXIC EFFECT, THINGS WILL FOLLOW A  
12 DOSE RESPONSE.

13 SO IF A HALF A TEASPOON WOULD KILL  
14 YOU LIKE THAT, AN EIGHTH OF A TEASPOON, YOU COULD  
15 TAKE FIVE STEPS OR WAIT A WEEK AND EVENTUALLY  
16 SUCCUMB, POSSIBLY.

17 Q. AND THAT'S WHY, FOR PURPOSES OF  
18 THIS DISCUSSION, I DON'T -- I AM NOT CONCENTRATING  
19 ON THE THIS (INDICATING). I AM CONCENTRATING ON  
20 THE KILLING A HUMAN BEING. OKAY?

21 A. OKAY.

22 Q. IF AN EIGHTH OF A TEASPOON, IN THIS  
23 LITTLE CAN, KILLS SOMEONE, IT DOESN'T MATTER THAT  
24 THIS BOTTLE IS BIGGER THAN THIS CAN, BECAUSE THE  
25 PERSON IS GOING TO BE DEAD WHETHER OR NOT THE  
26 PERSON DRINKS OUT OF THIS OR THIS?

27 A. NOW, THAT IS, I WOULD SAY,  
28 INTERESTING BUT TRAGICALLY FLAWED. AND IT'S



1 TRAGICALLY FLAWED BECAUSE THE DOSE THAT KILLS YOU,  
2 ON THIS DOSE RESPONSE CURVE, IS HERE. IT'S AT THE  
3 TOP, THIS EIGHTH OF A TEASPOON.

4 BUT YOU HAVE LESS TEASPOONS AS YOU  
5 GO DOWN.

6 AND NOW I THINK I UNDERSTAND, I  
7 THINK I UNDERSTAND YOUR QUESTION.

8 IF YOU ARE TALKING ABOUT AN  
9 INDIVIDUAL, AN INDIVIDUAL PERSON, THEN ANYBODY WHO  
10 TAKES THIS IS PROBABLY GOING TO DIE.

11 IF YOU ARE DOWN LOWER ON THE CURVE,  
12 SOME OF THOSE PEOPLE ARE STILL GOING TO DIE BUT NOT  
13 AS MANY AS UP HERE.

14 IT'S NOT THAT YOU ARE SAFE DOWN  
15 LOWER. THAT, IF THAT'S WHAT YOU TOOK FROM WHAT I  
16 SAID, THEN I DIDN'T SAY IT CLEARLY ENOUGH.

17 Q. WELL, SEE, I AM ON MY WAY TO LIGHT  
18 CIGARETTES HERE, BUT BEFORE WE CAN GET TO LIGHT  
19 CIGARETTES, YOU HAVE TO UNDERSTAND --

20 MR. LEITER: OBJECT TO THE COMMENTARY.  
21 QUESTION PLEASE.

22 THE COURT: SUSTAINED.

23 Q BY MR. PIUZE: -- DOSE RESPONSE,  
24 BECAUSE, IF THERE'S -- IF YOU KNOW THAT AN EIGHTH  
25 OF A TEASPOON IS ENOUGH TO KILL YOU, IT DOESN'T  
26 MATTER WHETHER THE EIGHTH OF A TEASPOON IS IN A  
27 LITTLE CAN OR THE BIG PLASTIC CONTAINER, DOES IT?

28 A. IF THE LITTLE CONTAINER CONTAINS



1 WHATEVER THIS IS, AND THE BIG CONTAINER CONTAINS  
2 EXACTLY THE SAME THING AND THAT'S WHAT YOU GET, I  
3 THINK THEN YOU ARE CORRECT, IF THAT'S THE SCENARIO  
4 YOU HAVE CONSTRUCTED.

5 Q. OKAY. SO ANYWAY, RIGHT CIGARETTES,  
6 HOW MUCH TAR -- IS TAR THE BAD STUFF?

7 A. ACTUALLY, TAR IS ONE OF THE BAD  
8 THINGS.

9 IT'S THE ONE THAT FOR MANY YEARS,  
10 MOST PEOPLE HAVE FOCUSED ON, BUT IT IS NOT THE ONLY  
11 PLACE THAT YOU FIND COMPOUNDS OF CONCERN IN TOBACCO  
12 SMOKE.

13 Q. LET'S STAY WITH TARS AT LEAST FOR  
14 NOW

15 A. OKAY.

16 Q. TARS ARE A BAD THING IN TOBACCO  
17 SMOKE?

18 A. TOBACCO SMOKE, TARS, I THINK SO.

19 Q. HOW MUCH TAR DOES IT TAKE TO KILL  
20 YOU?

21 A. ACTUALLY, PEOPLE DON'T SMOKE TAR,  
22 OKAY.

23 TAR IS A TECHNICAL ARTIFICIAL  
24 CONSTRUCT OF WHAT IS IN SMOKE. AS I THINK I SAID  
25 FRIDAY IN RESPONSE TO THE FEDERAL TRADE COMMISSION  
26 TEST, IT'S SOMETHING THAT THEY CONDENSE ON A  
27 FILTER, OKAY. AND THEY SUBTRACT OUT THE WATER AND  
28 THE NICOTINE.



1                   IN TERMS OF TOXICITY OF TAR, I AM  
2 NOT AWARE OF ANY DATA IN HUMANS. THERE IS DATA IN  
3 ANIMALS THAT HAVE LOOKED AT THE TOXICITY OF  
4 CONDENSATE, WHICH IS REALLY MORE THAN TAR, AND THAT  
5 TOXICITY DEPENDING UPON THE ANIMAL IS DETERMINED BY  
6 THE NICOTINE TOXICITY, NOT THE TAR, THE OTHER  
7 THINGS IN TAR, THE OTHER THINGS IN THE CONDENSATE?

8                   SO THERE IS NO DATA OTHER THAN WHAT  
9 I HAVE DESCRIBED THAT WOULD BE ABLE TO ANSWER YOUR  
10 QUESTION, I THINK, OTHER THAN THE WAY I HAVE TRIED.

11                Q.     SO YOU DON'T KNOW?

12                A.     WELL, SINCE I SAID, WE DON'T SMOKE  
13 TAR, YES, I DON'T KNOW, NOR AM I AWARE OF ANYBODY  
14 ELSE KNOWING THE ANSWER TO THAT QUESTION.

15                Q.     OKAY. WHAT ELSE IN TOBACCO SMOKE  
16 KILLS PEOPLE?

17                A.     WELL, ACTUALLY, I AM NOT SURE.  
18 ACTUALLY, I AM PRETTY SURE, I TAKE THAT BACK. I  
19 MISSPOKE. I AM PRETTY SURE THAT NOBODY KNOWS WHAT  
20 IT IS IN TOBACCO SMOKE THAT KILLS YOU.

21                    I THINK THERE'S A VERY GOOD  
22 UNDERSTANDING OF THINGS IN TOBACCO SMOKE THAT CAN  
23 BE TOXIC TO YOU, WHETHER THOSE THINGS ACTUALLY KILL  
24 YOU OR NOT, AS THE PERSON IS EXPOSED TO THEM I  
25 DON'T THINK THERE'S ANY DATA OUT THERE THAT WOULD  
26 ALLOW ANYBODY TO ANSWER THAT QUESTION.

27                Q.     THANK YOU.

28                    WHAT IS THERE IN TOBACCO SMOKE THAT



1 CAUSES LUNG CANCER?

2 A. NOBODY KNOWS.

3 Q. WHAT DOES THE WORD "TOXIC" MEAN,  
4 THE WAY YOU JUST USED IT?

5 A. IT MEANS THAT FOR SOME INDIVIDUALS,  
6 BY SOME ROUTE OF EXPOSURE, AT SOME DOSE, YOU ARE  
7 GOING TO GET AN ADVERSE OUTCOME.

8 Q. IF YOU DON'T KNOW, NOW, YOU ARE  
9 SPEAKING FOR YOU PERSONALLY OR YOU ARE SPEAKING AS  
10 YOU, AS A SCIENTIST FROM PHILIP MORRIS?

11 A. ME, RICH CARCHMAN.

12 Q. WHEN YOU LEFT PHILIP MORRIS, WHICH  
13 WAS WHEN?

14 A. FEBRUARY OF '99.

15 Q. WHEN YOU LEFT PHILIP MORRIS AS A  
16 FULL TIME EMPLOYEE, FEBRUARY OF 1999, TO THE BEST  
17 OF YOUR KNOWLEDGE, DID ANYONE AT THE COMPANY KNOW  
18 WHAT CAUSED LUNG CANCER?

19 A. NO.

20 Q. DID ANYONE AT THE COMPANY KNOW WHAT  
21 THERE WAS IN TOBACCO SMOKE THAT KILLED PEOPLE?

22 A. THE COMPANY KNEW, TO THE BEST OF MY  
23 KNOWLEDGE, WHAT EVERYBODY ELSE KNEW ABOUT WHAT WAS  
24 IN SMOKE AND WHAT PEOPLE WERE CONCERNED ABOUT IN  
25 SMOKE. AND I THINK THAT'S STILL TRUE TODAY.

26 Q. WHAT'S A SAFE DOSE OF TAR?

27 A. A SAFE DOSE OF TAR?

28 Q. YES.



1           A.     AS I SAID, PEOPLE DON'T SMOKE TAR.  
2 AND I THINK I HAVE TWO ANSWERS FOR YOU, ONE AS A  
3 SCIENTIST, AND THEN ONE JUST AS A PERSON WITH A  
4 BELIEF. ONE, I DON'T KNOW WHAT A SAFE DOSE OF  
5 SMOKING IS.

6                     AND I THINK THAT THE PUBLIC HEALTH  
7 STATEMENTS THAT, FROM A PUBLIC HEALTH PERSPECTIVE,  
8 THERE IS NO SAFE DOSE. THERE IS NO SAFE CIGARETTE,  
9 THERE IS NO SAFE DOSE IS THE RIGHT PUBLIC HEALTH  
10 APPROACH.

11                    SCIENTIFICALLY, NOBODY KNOWS. THE  
12 ANSWER TO THAT QUESTION, AND THAT'S A POINT OF  
13 CONVERSATION, BUT NOT ONE THAT YOU WOULD WANT TO  
14 HAVE IF YOU WERE PHILIP MORRIS WITH ANYBODY WHO  
15 WASN'T A SCIENTIST.

16           Q.     IF YOU DON'T KNOW WHAT IT IS THAT  
17 CAUSES THE DAMAGE, AND I DON'T WANT TO BE PUTTING  
18 WORDS IN YOUR MOUTH, THAT IS A TRUE STATEMENT SO  
19 FAR?

20           A.     NO.

21                    I DON'T KNOW WHAT IT IS THAT'S  
22 KILLING PEOPLE. I DO HAVE AN IDEA OF WHAT KINDS OF  
23 THINGS ARE IN SMOKE THAT ARE TOXIC. AND TOXIC RUNS  
24 A WHOLE SPECTRUM FROM BEING IRRITATING, MORE  
25 IRRITATING THAN EITHER YOU OR I CAN PROBABLY BE TO  
26 ACTUALLY CAUSING A SERIOUS DISEASE OR KILLING THEM

27           Q.     I DIDN'T UNDERSTAND, WHAT DO YOU  
28 MEAN, YOU OR I COULD BE?



1           A.    IRRITATING.  OKAY.  SOMETHING THAT  
2 MIGHT CAUSE YOUR EYES TO WATER, YOU APPEAR TO BE  
3 CRYING OR TO MAKE YOUR NOSE RUN, THAT KIND OF  
4 IRRITATION.

5           Q.    LET'S START WITH DEATH AND WORK  
6 DOWN TO IRRITATION.  OKAY?

7           A.    YES.

8           Q.    IF YOU DON'T KNOW WHAT IT IS THAT  
9 KILLS PEOPLE, THEN YOU DON'T KNOW HOW MUCH IT TAKES  
10 TO KILL PEOPLE?

11          A.    THAT'S NOT TRUE.  YOU DON'T KNOW  
12 WHAT SPECIFIC THINGS IN THE SMOKE ARE DOING IT,  
13 OKAY.

14                    THAT IS TRUE.

15                    IN FACT, THIS WHOLE QUESTION HAS  
16 LED AT LEAST PHILIP MORRIS, AND I BELIEVE OTHER  
17 QUESTIONS, TO NOT JUST FOCUS ON A PARTICULAR  
18 COMPOUND THAT SOMEBODY SAYS, WELL, THIS IS WHAT'S  
19 CAUSING LUNG CANCER, SO THIS WHOLE THING OF  
20 SPECIFIC REDUCTION THAT'S BEEN AROUND FOR A LONG  
21 TIME AND SAY, LOOK, WE DON'T KNOW, NOBODY ELSE  
22 KNOWS, LET'S JUST TRY TO REDUCE ABSOLUTELY  
23 EVERYTHING WE CAN, SEE HOW THIS CONCEPT AND  
24 IMPLEMENTATION OF GENERAL REDUCTION, BASED ON THAT.

25                    SO I THINK YOU ARE RIGHT.  WE DON'T  
26 KNOW, NOBODY ELSE KNOWS, AND SO ONE IMPORTANT  
27 APPROACH IS, AND LET'S TRY TO REDUCE AS MANY THINGS  
28 AS WE POSSIBLY CAN.



1 Q. IF THOSE TWO CONTAINERS, THOSE TWO  
2 DIET PEPSI CONTAINERS THERE WERE FILLED WITH  
3 WHATEVER IT IS THAT WOULD KILL YOU IN AN EIGHTH OF  
4 A TEASPOON, OKAY, SO THAT'S 12 OUNCES, THERE'S A  
5 LOT OF TEASPOONS IN THERE; RIGHT?

6 A. OH, OH. THEY DON'T EACH CONTAIN  
7 ONE TEASPOON?

8 Q. NOT FOR THIS QUESTION THEY DON'T.  
9 HERE'S 12 OUNCES. THERE'S LOTS AND  
10 LOTS AND LOTS OF TEASPOONS IN THERE; RIGHT?

11 A. HOW MANY?

12 Q. YOU TELL ME.

13 A. TEN. TEN TEASPOONS.

14 Q. THIS IS 20 OUNCES. DOUBLE?

15 A. 20 TEASPOONS.

16 Q. SO THIS ONE HERE HAS ENOUGH TO KILL  
17 YOU 40 TIMES OVER. THIS ONE HERE HAS ENOUGH TO  
18 KILL YOU 80 TIMES OVER?

19 A. IF THAT WAS THE MAXIMALLY TOXIC  
20 DOSE, YOU ARE CORRECT.

21 Q. SO LET'S TALK ABOUT CIGARETTE  
22 SMOKING.  
23 HOW MUCH IS ENOUGH TO KILL YOU?

24 MR. LEITER: OBJECTION, ASKED AND  
25 ANSWERED.

26 THE COURT: OVERRULED.

27 THE WITNESS: THE -- I SHOULD ANSWER THE  
28 QUESTION?



1 THE COURT: IF YOU KNOW

2 THE WITNESS: IT'S BEEN KNOWN FOR 50  
3 YEARS THAT THERE'S DOSE RESPONSE, JUST FOCUSING ON  
4 LUNG CANCER.

5 BOTH WITH REGARD TO THE NUMBER OF  
6 CIGARETTES SMOKED AND THE DURATION SMOKED.

7 THE MORE YOU SMOKE, THE GREATER THE  
8 RISK. THE LONGER YOU SMOKE IS EVEN MORE IMPORTANT  
9 THAN THE NUMBER. IT CAN BE BASED ON PETO AND  
10 DOLL'S CALCULATION THAT THE DURATION IS MAYBE 30  
11 TIMES MORE IMPORTANT THAN THE NUMBER OF CIGARETTES.

12 BUT THERE'S A DOSE AND TIME  
13 RESPONSE.

14 SO SMOKING ONE CIGARETTE IS CLEARLY  
15 NOT AS -- THIS IS AN AVERAGE POPULATION, I AM NOT  
16 TALKING ABOUT ANY INDIVIDUAL -- IT IS CLEARLY NOT  
17 AS DANGEROUS BASED ON THE EPIDEMIOLOGY AS SMOKING  
18 20 OR 40 CIGARETTES.

19 NOW, IF EVERYBODY SMOKED 50 OR 60  
20 CIGARETTES A DAY FOR 40 YEARS, THAT'S ONE THING.

21 BUT PEOPLE SMOKE DIFFERENT AMOUNTS  
22 OF CIGARETTES OVER DIFFERENT TIMES, FOR DIFFERENT  
23 DURATIONS.

24 SO I THINK WHEN I SAID THE DOSE IS  
25 EVERYTHING, THAT'S VERY EVIDENT FROM THE HUMAN  
26 EPIDEMIOLOGY STUDIES. THERE ARE LEVELS OF SMOKING  
27 THAT PRODUCE RISKS THAT ARE ONLY SLIGHTLY ABOVE,  
28 AND THIS IS IN GENERAL, WHAT A NON-SMOKER



1 POPULATION WOULD HAVE.

2 BUT CLEARLY, IF YOU GET UP TO TWO  
3 PACKS A DAY, THAT'S WHERE YOU START SEEING THE  
4 RELATIVE RISKS THAT YOU ARE TALKING ABOUT OF 20 OR  
5 MORE.

6 Q. WHEN YOU MENTIONED THE DOSE IS  
7 EVERYTHING ON FRIDAY, THAT WAS AN ENTREE INTO A  
8 DISCUSSION ABOUT LIGHT CIGARETTES, WAS IT IS NOT?

9 A. I THINK SO, YES.

10 Q. WELL, LET'S GO TO THIS ENTREE.  
11 SO THIS IS ABOUT LIGHT CIGARETTES.

12 OKAY.

13 IT'S NOT ABOUT WHAT YOU JUST SAID  
14 IS SOMEONE WHO SMOKES ONE CIGARETTE A DAY IS  
15 PROBABLY BETTER OFF THAN SOMEONE WHO SMOKES TWO  
16 PACKS A DAY; RIGHT?

17 A. ABSOLUTELY. ABSOLUTELY.

18 Q. WELL, DO YOU THINK YOU --  
19 RESPECTFULLY YOU DON'T NEED A PH. D. TO KNOW THAT;  
20 RIGHT?

21 MR. LEITER: OBJECT TO THE COMMENTARY.

22 THE COURT: OVERRULED.

23 THE WITNESS: I AM NOT SURE -- FORGET  
24 WHAT I SAID I AM NOT SURE ABOUT WAS THE RESPECTFUL  
25 COMMENT. I AM NOT SURE WHETHER THE GENERAL  
26 POPULATION, NON-SCIENTIFIC POPULATION, UNDERSTANDS  
27 THE IMPLICATIONS OF DOSE RESPONSE. BECAUSE IF IT  
28 WAS SO TRIVIAL THEN MAYBE BRADFORD HILL AND THE



1 SURGEON GENERAL SEPARATELY WOULDN'T HAVE INCLUDED  
2 BOTH AS PART OF THEIR CRITERIA OR ASPECTS FOR  
3 CAUSATION. BUT THEY DID, WHICH SAYS TO ME, AMONG  
4 MANY OTHER THINGS, DOSE RESPONSE IS CRITICALLY  
5 IMPORTANT BECAUSE THERE ARE EXPOSURES THAT ARE NOT  
6 DOSE RELATED.

7 Q. SO I WAS INTERESTED IN JUST  
8 FOLLOWING YOUR CONVERSATION ON LIGHT CIGARETTES,  
9 JUST USING THE QUARTER OF A TEASPOON ANALOGY HERE,  
10 IF THERE'S ENOUGH BAD STUFF IN THE GOLD ONE TO KILL  
11 YOU, AND IF THERE'S ENOUGH BAD STUFF IN THE RED ONE  
12 TO KILL YOU A LITTLE FASTER, DOES IT REALLY MATTER?

13 MR. LEITER: OBJECTION, MISSTATES THE  
14 TESTIMONY AND ARGUMENT.

15 THE WITNESS: ONE, I THINK IT MIGHT  
16 MATTER QUITE CONSIDERABLY TO THE PERSON WHETHER  
17 THEY HAD TO WAIT 20 YEARS OR HAD TO WAIT 50 YEARS.  
18 SO I THINK DELAY IS AN IMPORTANT CONSIDERATION,  
19 THOUGH ONE THAT HAS ONLY RECENTLY BEEN DISCUSSED,  
20 AND NOT LIMITED TO SMOKING, JUST DELAYING DISEASE  
21 IS AN IMPORTANT CONCEPT FOR TREATMENT.

22 Q BY MR. PIUZE: THAT'S A GOOD  
23 POINT.

24 MR. LEITER: OBJECT TO THE COMMENTARY.

25 THE COURT: SUSTAINED.

26 THE WITNESS: NOW, FOR THIS, AND WHAT WE  
27 ARE TALKING ABOUT IS WHAT DOES A SMOKER GETS. AND  
28 LET'S SAY THERE WERE TWO OF YOU, OKAY, AND YOU WERE



1 IDENTICAL TWIN BROTHERS, AND YOU SMOKED THIS AND  
2 YOUR IDENTICAL TWIN SMOKED THAT, AND YOU SMOKED  
3 THEM THE SAME NUMBER OF CIGARETTES FOR THE SAME  
4 DURATION, OKAY, AND LET'S SAY YOU AND YOUR TWIN  
5 BROTHER ACTUALLY REPRESENTED LARGE POPULATIONS OF  
6 INDIVIDUALS, ALL OF THE THINGS BEING EQUAL, SMOKING  
7 THESE TWO PRODUCTS IN IDENTICALLY THE SAME WAY, THE  
8 NUMBER OF CIGARETTES, THE RIGHT DURATION.

9 I WOULD SAY FOR THOSE TWO  
10 POPULATIONS, IT IS MORE LIKELY THAN NOT THAT -- I  
11 DON'T KNOW ABOUT DEATH, IF WE FOCUS ON LUNG CANCER,  
12 THAT THESE FOLKS MIGHT, MIGHT VERY WELL HAVE A  
13 DECREASED RISK. THAT'S NOT TO SAY THESE FOLKS  
14 WON'T GET LUNG CANCER, BUT THEY WILL HAVE A  
15 DECREASED RISK THAN THESE FOLKS, ALL OTHER THINGS  
16 BEING EQUALLYING.

17 AND THAT CONCLUSION OF MINE IS  
18 BASED ON MORE THAN FOUR DOZEN STUDIES THAT HAVE  
19 BEEN DONE SINCE 1961 IN WHICH, NOT THIS COMPARISON,  
20 BECAUSE NOBODY HAS MADE THIS COMPARISON --

21 Q. WHY NOT?

22 A. -- YET.

23 Q. WHY?

24 A. WHY NOT?

25 Q. WHY HASN'T PHILIP MORRIS EVER MADE  
26 THAT COMPARISON?

27 A. AND THE REASON THEY HAVEN'T DONE IT  
28 IS THAT IT TAKES 20 PLUS YEARS WITH A LATENCY TO



1 SEE SOMETHING.

2 PEOPLE ARE EXAMINING THIS, OKAY.  
3 IT IS PART OF THE ONGOING EPIDEMIOLOGICAL RESEARCH.  
4 BUT WHAT THE OUTSIDE PEOPLE ARE DOING AND WHAT THE  
5 GOVERNMENT PEOPLE ARE DOING AND WHAT WE ARE NOW  
6 INVOLVED IN.

7 THE COMPARISONS, AS I HAVE TRIED TO  
8 SAY ON FRIDAY, THE OLD HIGH TAR WAS A 25, 30  
9 MILLIGRAM AND THIS WAS, IN 1960, A LOW TAR  
10 PRODUCT. SO HERE WE ARE IN 2001. THIS IS THE HIGH  
11 TAR AND THIS PRODUCT IS NOW ON THE LOW TAR END AND  
12 THERE ARE THINGS THAT ARE EVEN LOWER FROM THE  
13 MACHINE.

14 SO THIS, THE QUESTION YOU ARE  
15 ASKING ME IS NOBODY KNOWS THE ANSWER TO THE  
16 COMPARISON FOR -- BETWEEN THESE TWO. THEY KNOW THE  
17 COMPARISON VERY CLEARLY BETWEEN THIS AND THE OTHERS  
18 AND BETWEEN THIS AND SOME PRODUCTS BETWEEN HERE,  
19 BUT NOT YET THIS.

20 AND IT'S A QUESTION OF TIME.

21 Q. HOLD THAT ONE UP A LITTLE FURTHER.

22 WHAT DOES THAT SAY?

23 A. IT SAYS "MARLBORO LIGHTS. "

24 Q. WHEN DID THEY COME OUT?

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

26 Q. CAME OUT MORE THAN 20 YEARS AGO?

27 A. THAT'S TRUE. BUT IF YOU LOOK AT

28 THE GOVERNMENT NUMBERS AT THE PENETRATION IN THE



1 MARKET, AND THIS IS, I AM ONLY LOOKING AT NUMBERS,  
2 I AM NOT A MARKETING PERSON, I AM NOT A SALES  
3 PERSON, THE PERCENTAGE OF SMOKERS THAT SMOKE THESE,  
4 THAT WOULD GIVE YOU EVEN A CHANCE OF GETTING ENOUGH  
5 PEOPLE TO DO A STUDY, DIDN'T OCCUR UNTIL MUCH, MUCH  
6 LATER.

7                   THIS RIGHT NOW IS NOT THE MARKET  
8 LEADER.

9                   IT'S THIS THAT'S BEEN THE MARKET  
10 LEADER FOR THE LAST COUPLE OF YEARS.

11                   SO WHAT YOU NEED TO LOOK AT, YOU  
12 ARE ASKING -- WE ASK OURSELVES EXACTLY THE SAME  
13 QUESTION YOU ARE ASKING ME.

14                   IT'S GOING TO BE IN THE NEXT FIVE  
15 TO TEN TO FIFTEEN YEARS BEFORE PEOPLE WILL HAVE,  
16 USING EPIDEMIOLOGY AS IT IS CURRENTLY USED, A  
17 HANDLE ON THIS QUESTION.

18                   THERE'S SOME INDICATION FROM SOME  
19 VERY LARGE GOVERNMENT STUDIES THAT THERE ARE SOME  
20 THINGS HAPPENING. WHETHER THEY ARE RELATED TO  
21 THIS, THEY ARE RELATED TO GENERAL CHANGES IN  
22 LIFESTYLE AND HEALTHY BEHAVIORS, I DON'T KNOW THE  
23 ANSWER TO.

24                   Q.     THOSE LIGHTS HAVE BEEN OUT FOR MORE  
25 THAN 20 YEARS AND I HAVE A TIME LINE BACK HERE  
26 WHICH I THINK INDICATES THAT.

27                   AND IF YOU SAID IT TAKES 20 YEARS  
28 TO GET SOME SORT OF -- WHAT DID YOU SAY, IT TAKES



1 20 YEARS OF LATENCY?

2 A. THE LATENCY NUMBER THAT'S USED IS  
3 20 YEARS. AGAIN --

4 Q. LATENCY MEANS?

5 A. FROM THE TIME YOU ARE EXPOSED TO  
6 THE TIME YOU HAVE A CLINICAL RECOGNITION. IT CAN  
7 TAKE 20 YEARS.

8 NOW, FOR SOME PEOPLE IT'S SHORTER,  
9 FOR SOME PEOPLE IT'S LONGER.

10 THE 20 YEARS, PLEASE, IS NOT MEANT  
11 TO BE, THIS IS THE WAY IT IS WITH EVERYBODY.

12 THAT'S NOT WHAT I AM TRYING TO SAY.

13 Q. SO PHILIP MORRIS HAS NEVER TESTED  
14 THE GOLD AGAINST THE RED; RIGHT?

15 A. IN WHAT WAY?

16 Q. TO SEE WHICH ONE CAUSES CANCER MORE  
17 THAN THE OTHER?

18 A. ACTUALLY, IT'S -- UP UNTIL  
19 RECENTLY, IT'S NOT A POSSIBLE THING TO ANSWER FOR,  
20 IN PART, IN LARGE PART, EXACTLY, THE REASON I GAVE  
21 YOU.

22 Q. WHAT IF THE GOLD HAS THE EQUIVALENT  
23 OF A QUARTER TEASPOON, AND THE RED HAS THE  
24 EQUIVALENT OF A HALF A TEASPOON IN IT, WE ALREADY  
25 KNOW THAT A QUARTER OF A TEASPOON KILLS YOU, THEN  
26 WHAT GOOD IS THE GOLD?

27 MR. LEITER: OBJECTION TO THE  
28 HYPOTHETICAL.

1 THE COURT: SUSTAINED.

2 THE WITNESS: DOES THAT MEAN I HAVE TO --

3 THE COURT: YOU DON'T HAVE TO ANSWER THAT  
4 ONE.

5 REPHRASE AND I WOULD ALLOW IT.

6 Q BY MR. PIUZE: OKAY. UNLESS AND  
7 UNTIL YOU KNOW HOW MUCH OF THE BAD STUFF, WHATEVER  
8 BAD STUFF IT IS, IT TAKES TO CAUSE LUNG CANCER OR  
9 KILL YOU, YOU CAN'T TELL WHETHER OR NOT THAT GOLD  
10 PACKAGE IS ANY BETTER FOR YOU THAN THE RED PACKAGE,  
11 CAN YOU?

12 A. THE ANSWER IS NO AND THE SAME  
13 WARNING LABELS EXIST ON BOTH OF THOSE. BUT IF I  
14 SAY I AGREE WITH YOU ABOUT DEATH AND LUNG CANCER,  
15 BUT WHAT OTHER TOXIC END POINTS CAN WE MEASURE THAT  
16 MIGHT BE HELPFUL, I COULD GIVE YOU A DIFFERENT  
17 ANSWER IN TERMS OF THE DIFFERENCE BETWEEN THESE TWO  
18 PRODUCTS. AND THAT'S PUBLISHED, IT'S IN THE PEER  
19 REVIEWED LITERATURE.

20 WE HAVE DONE THIS, OTHER PEOPLE  
21 HAVE DONE THIS.

22 BUT THEN THE QUESTION WE ASK  
23 OURSELVES IS, OKAY, WE CAN TELL THE DIFFERENCE  
24 BETWEEN THIS AND THIS, OKAY, WE CAN TELL THAT  
25 DIFFERENCE. BUT WHAT DOES IT MEAN WHEN YOU AND I  
26 OR INDIVIDUALS LIKE US SMOKE THIS? AND THAT'S PART  
27 OF WHAT WE HAVE SUGGESTED TO THE INSTITUTE OF  
28 MEDICINE AND OTHER FOLKS THAT WE ARE GOING TO TRY,

1 WE ARE GOING TO TRY TO FIND OUT.

2 BUT I HAVE SURROGATES THAT CAN TELL  
3 ME THE ANSWER TO YOUR QUESTION, BECAUSE IF YOU COME  
4 TO ME AND YOU SAY, COME ON, CARCHMAN, IS THIS  
5 SAFER, WILL THIS PRODUCE LESS LUNG CANCER IN A  
6 PERSON, I WILL TELL YOU THE SAME ANSWER, I DON'T  
7 KNOW, ALL OTHER THINGS BEING EQUAL, IT SHOULD  
8 REDUCE THE RISK.

9 HAVING SAID THAT, THIS IS STILL A  
10 RISKY, DANGEROUS PRODUCT. IT'S LESS RISKY, IN MY  
11 MIND, THAN THIS. BUT THE RESIDUAL RISK IS STILL  
12 TOO DARN HIGH.

13 Q. JUST REMEMBER, THE QUARTER OF A  
14 TEASPOON IN EITHER WILL KILL YOU. IS THIS LESS  
15 RISKY THAN THIS?

16 MR. LEITER: OBJECT TO THE HYPOTHETICAL.

17 THE WITNESS: AS I HAVE TRIED TO EXPLAIN,  
18 OBVIOUSLY, NOT MUCH SUCCESS, IF YOU ARE AT WHAT'S  
19 CALLED THE MAXIMALLY TOLERATED DOSE AND YOU ARE AT  
20 THE PLATEAU, IT DOESN'T MATTER WHERE YOU ARE ON  
21 THAT PLATEAU.

22 WHAT I AM SUGGESTING IS THE DOSE  
23 RESPONSE CURVE LOOKS LIKE THIS (INDICATING).

24 AND IF YOU ARE ON THE ASCENDING  
25 PART, THE MORE YOU GIVE, THE WORSE THE PROBLEM

26 Q. NOW, I AM GOING TO TAKE THE PEPSI  
27 AWAY AND THEN THE CIGARETTES AWAY. BUT BEFORE I  
28 TAKE THE CIGARETTES AWAY, COULD YOU RIDE THE SIDE

1 OF THAT RED PACKAGE AND TELL THE JURY HOW MUCH --  
2 WHAT DOES IT TELL THE CONSUMERS ABOUT WHAT'S IN  
3 THERE? DOES IT MENTION TAR?

4 MR. LEITER: YOUR HONOR, I AM GOING TO  
5 OBJECT TO THIS. THIS IS GETTING RIGHT INTO OUR  
6 AREAS.

7 THE COURT: IT MAY WILL BE AND WE MIGHT  
8 HAVE TO HAVE A DISCUSSION OUTSIDE THE PRESENCE.

9 MR. PIUZE: I AM NOT INTERESTED IN  
10 WARNING AT ALL.

11 THE COURT: ALL RIGHT, GO AHEAD, I AM  
12 GOING TO LISTEN CAREFULLY.

13 Q BY MR. PIUZE: DOES IT SAY HOW  
14 MUCH TAR THERE IS?

15 A. ON THIS PACK, NO.

16 MR. LEITER: OBJECTION, YOUR HONOR, WE  
17 ARE RIGHT IN THE AREA AND I THINK WE MAY NEED TO  
18 DISCUSS IT.

19 MR. PIUZE: WHATEVER YOU SAY.

20 THE COURT: ALL RIGHT. AVOID IT AT THIS  
21 POINT AND I WILL LISTEN TO COUNSEL OUTSIDE THE  
22 PRESENCE.

23 Q BY MR. PIUZE: SO ONE OF THE  
24 THINGS THAT'S GOING TO HAPPEN IS THERE IS NOW GOING  
25 TO BE AN ACTUAL STUDY TO FIND OUT WHETHER OR NOT  
26 THE GOLD ONE IS TRULY SAFER THAN THE RED ONE?

27 A. WELL, ACTUAL STUDY, I MEAN, I WOULD  
28 SAY THERE'S, THERE HAVE BEEN STUDIES THAT ARE

1 ONGOING FOR THE LAST 40 YEARS THAT ARE FOLLOWING  
2 ALL OF THIS.

3 I THINK WE ARE AT A POINT IN TIME,  
4 BOTH FROM A TIME PERSPECTIVE AND HOW MANY PEOPLE  
5 ARE SMOKING THESE LIGHT PRODUCTS RIGHT NOW AND FROM  
6 A TECHNOLOGY PERSPECTIVE, THAT WE PROBABLY HAVE A  
7 SHOT AT ANSWERING SOME OF THESE, SOME OF THESE  
8 QUESTIONS.

9 AND I DON'T MEAN TO SUGGEST THAT WE  
10 ARE GOING TO ANSWER ALL OF THE QUESTIONS. IF  
11 WE CAN ANSWER SOME OF THEM, I THINK, A LOT OF  
12 PEOPLE WOULD BE VERY HAPPY, INCLUDING US.

13 Q. I APOLOGIZE.

14 FORGIVE ME, I THOUGHT YOU SAID IN  
15 YOUR LAST LONG ANSWER THAT THAT'S ONE OF THE THINGS  
16 THAT'S GOING TO BE DONE NOW, THAT YOU PROPOSED NOW?

17 A. IT'S BEING DONE. IT'S BEING DONE.

18 Q. START WHAT?

19 A. IT STARTED.

20 Q. WHEN?

21 A. THE CONTRACTS WERE LET THIS YEAR TO  
22 ACTUALLY RECRUIT THE PEOPLE TO DO THE STUDY.

23 Q. SO IN 2001, YOU ARE GOING TO START  
24 TO STUDY WHETHER THE GOLD ONE IS LESS HARMFUL THAN  
25 THE RED?

26 A. ACTUALLY, IT'S MUCH BIGGER. IT'S A  
27 MUCH BIGGER STUDY THAN THAT. THAT IS A  
28 SUBCOMPONENT OF THAT.

1 Q. I CAN GET TO YOUR STUDY. BUT SO  
2 FAR THAT'S YES?

3 A. YES.

4 Q. 2001, YOU ARE NOW GOING TO STUDY  
5 WHETHER THE GOLD ONE IS SAFER THAN THE RED?

6 A. WE ARE GOING TO STUDY THE PRODUCTS  
7 IN A WAY THAT WILL ALLOW US TO HOPEFULLY ANSWER  
8 THOSE KINDS OF QUESTIONS.

9 Q. WHEN YOU WERE GOING THROUGH PHILIP  
10 MORRIS'S DOCUMENTS FOR WHATEVER REASON YOU WENT  
11 THROUGH SOME OLD PHILIP MORRIS DOCUMENTS, YOU TOLD  
12 US ON FRIDAY, DID YOU EVER COME ACROSS THIS MARCH  
13 31ST, 1980 DOCUMENT SIGNED BY BOB SELIGMAN?

14 A. I NEED TO SEE IT. I BELIEVE I HAVE  
15 SEEN THIS, YES. YES. I HAVE SEEN THIS.

16 Q. YOU READ THIS NOW?

17 A. I HAVE SEEN THAT BEFORE, YES.

18 Q. WHAT DO YOU THINK ABOUT THAT?

19 MR. LEITER: OBJECTION, VAGUE QUESTION.

20 MR. PIUZE: WITHDRAWN.

21 THE COURT: SUSTAINED.

22 Q BY MR. PIUZE: WERE YOU EVER THE  
23 VICE-PRESIDENT FOR RESEARCH AND DEVELOPMENT OF  
24 PHILIP MORRIS U. S. A. ?

25 A. NO.

26 Q. DID YOU GET THAT HIGH?

27 A. NOT THE VICE-PRESIDENT, NO.

28 Q. WAS ROBERT B. SELIGMAN, PH. D. , THE

1 VICE-PRESIDENT FOR RESEARCH AND DEVELOPMENT OF  
2 PHILIP MORRIS U. S. A. ?

3 A. AT ONE POINT IN TIME, YES.

4 Q. AS FAR AS RESEARCH AND DEVELOPMENT  
5 AT PHILIP MORRIS IS CONCERNED, IS ONE OF THE THINGS  
6 THAT YOU HAVE BEEN RESEARCHING WHETHER OR NOT  
7 SMOKING CAUSES HUMAN DISEASE?

8 A. BOTH INDIRECTLY AND IN TERMS OF  
9 THE -- THE SUBSTITUTE SURROGATE SYSTEMS THAT WE HAD  
10 AVAILABLE TO US, AS WELL AS FUNDING OUTSIDE  
11 RESEARCH, YES.

12 BUT DID PHILIP MORRIS SCIENTISTS  
13 ACTUALLY DO EXPERIMENTS LOOKING AT HUMAN DISEASE IN  
14 HUMANS, THE ANSWER IS NO.

15 Q. STILL?

16 A. THAT IS CORRECT.

17 Q. YOU HAD TWO QUALIFICATIONS IN YOUR  
18 ANSWER THOUGH. ONE HAD TO DO WITH INSIDE VERSUS  
19 OUTSIDE. AND WHAT WAS THE OTHER QUALIFICATION,  
20 PLEASE?

21 A. NO, ONE WAS -- ONE WAS THE WORK WE  
22 ACTUALLY DID INSIDE. AND SO THAT WOULD BE THINGS  
23 WE EITHER DID IN R&D IN RICHMOND, OR THAT WE DID AT  
24 THE INSTITUTE IN GERMANY. THAT'S WHERE PHILIP  
25 MORRIS SCIENTISTS ACTUALLY DID RESEARCH ON THINGS  
26 IN SMOKE, INCLUDING SMOKE, TOBACCO SMOKE ON ANIMAL  
27 OR PARTS OF ANIMAL SYSTEM OR BACTERIA LOOKING AT  
28 BIOLOGICAL END POINTS AND CHEMICAL END POINTS THAT

1 PEOPLE FELT WERE IMPORTANT FOR DISEASE PROCESSES IN  
2 PEOPLE THAT SMOKED.

3 SO THAT WAS ONE PIECE OF  
4 INFORMATION.

5 THAT WAS DIRECT, THAT WAS R&D  
6 MONEY, R&D PERSONNEL DOING THAT KIND OF WORK.

7 THE INDIRECT WOULD BE MONEY THAT  
8 WOULD GO TO OUTSIDE PEOPLE, AT UNIVERSITIES OR  
9 INSTITUTES, TO CARRY OUT RESEARCH THAT EITHER THEY  
10 PROPOSED OR THAT SOMEBODY IN THE COMPANY WORKING  
11 WITH THEM HAD PROPOSED.

12 Q. LET'S TAKE THEM ONE AT A TIME.  
13 THOSE WERE LONG AND I AM GOING TO TRY TO CHOP THEM  
14 UP AND DISCUSS THEM

15 ARE YOU READY?

16 A. YES, SIR.

17 Q. THE FIRST THING WITHIN THE COMPANY  
18 THAT YOU TALKED ABOUT, THERE WERE NO HUMAN BEINGS  
19 INVOLVED, WERE THERE?

20 A. THAT IS CORRECT.

21 Q. YOU SAID SOMETHING ON FRIDAY ABOUT  
22 SOMETHING ABOUT CERTAIN ETHICS ABOUT USING HUMAN  
23 BEINGS IN RESEARCH STUDIES; DO YOU REMEMBER THAT?

24 A. ABSOLUTELY.

25 Q. LET'S HEAR ABOUT THAT, PLEASE.  
26 WHAT DOES THAT MEAN?

27 A. OKAY. WITH ANY RESEARCH THAT  
28 ANYBODY CARRIES OUT, THAT INVOLVES EITHER HUMANS OR

1 ANIMALS, OKAY, IN OTHER WORDS, WHETHER IT IS RATS,  
2 MICE, MONKEYS, WHATEVER, THERE ARE STANDARDS, THERE  
3 ARE INTERNATIONAL STANDARDS BUT U.S. GOVERNMENT HAS  
4 THEIR OWN STANDARDS FOR BOTH OF THESE.

5 AND ANY WORK THAT A COMPANY WOULD  
6 CARRY OUT INTERNALLY IN ITS OWN FACILITIES OR WOULD  
7 HAVE SOMEBODY ELSE CARRY OUT FOR THEM HAS TO MEET  
8 THESE STANDARDS.

9 SO PUT ASIDE THE CONSIDERATIONS FOR  
10 ANIMALS, BECAUSE THAT'S NOT YOUR QUESTION, JUST  
11 LEAVE IN PLACE THE QUESTION ON HUMANS, SO IF YOU  
12 WANT TO DO A STUDY THAT INVOLVES HUMANS, YOU NEED  
13 TO GET APPROVAL FROM WHAT IS SOMETIMES CALLED THE  
14 INTERNAL REVIEW BOARD, THAT'S AT THE INSTITUTION,  
15 NOT AT PHILIP MORRIS, IT'S CALLED THE I. R. B. OR THE  
16 HUMAN STUDIES GROUP. AND THESE PEOPLE ARE LOOKING  
17 AT WHETHER THE QUESTION THAT'S BEING ASKED IS AN  
18 IMPORTANT QUESTION AND ONE CAN BALANCE THE RISKS TO  
19 THE INDIVIDUALS OVER WHAT MIGHT BE GAINED FOR THE  
20 BETTER GOOD.

21 SO WHEN A DRUG COMPANY WANTS TO DO  
22 A TEST ON A NEW DRUG, THEY HAVE TO GO THROUGH THIS.

23 AND SO THERE'S A RISK AND THERE'S A  
24 BENEFIT.

25 FOR PHILIP MORRIS, THE BENEFIT IS  
26 SOMETHING THAT MAY NOT EVER HAPPEN IN TERMS OF A  
27 REDUCED RISK OR UNDERSTANDING A HARM

28 ALL OF THIS HAS TO BE WEIGHED BY

1 THESE FOLKS. AND THEY SAY TO THEMSELVES, BUT DON'T  
2 WE KNOW EVERYTHING WE NEED TO KNOW AND WHY ARE WE  
3 SUBJECTING THESE PEOPLE TO IT?

4 SOMETIMES THAT'S A CONCLUSION THEY  
5 DRAW

6 MORE OFTEN THAN NOT IF IT'S AN  
7 IMPORTANT QUESTION, THEY WILL SAY, THIS IS AN  
8 IMPORTANT QUESTION, WE THINK IT SHOULD BE ANSWERED  
9 AND WE THINK IT'S OKAY TO USE HUMANS WHO SMOKE.

10 NOW, FOR EXAMPLE, WE HAVE GIVEN DR.  
11 NEAL BENOWITZ SOME VERY SPECIAL EXPERIMENTAL  
12 CIGARETTES THAT HE IS USING IN HUMAN SUBJECTS AT  
13 THE UNIVERSITY UP IN SAN FRANCISCO. HE HAD TO GET  
14 APPROVAL, GIVE PEOPLE CIGARETTES TO SMOKE. HIS  
15 OBJECTIVE IS TO FIGURE OUT, I WON'T BORE YOU WITH  
16 THE DETAILS, HOW TO GET PEOPLE TO STOP SMOKING.

17 AND SO THESE CIGARETTES WE HAVE  
18 MADE FOR HIM WILL TEST SOME IDEAS HE HAS ABOUT  
19 WHAT'S IMPORTANT IN CIGARETTES.

20 AND OVER A COUPLE OF YEARS, HE'S  
21 GOING TO GIVE THESE PEOPLE THAT SMOKE THESE  
22 CIGARETTES. BUT HE HAD TO GET APPROVAL TO DO IT  
23 AND WE WOULDN'T HAVE GIVEN HIM THE CIGARETTES  
24 UNLESS HE SHOWED US A DOCUMENT THAT SAID, I HAVE  
25 GOT THIS APPROVAL.

26 SO THAT'S THE STANDARD, OKAY. AND  
27 WHAT I SAID YESTERDAY --

28 Q. FRIDAY.

1           A.     OH, FRIDAY.  IT SEEMED LIKE  
2 YESTERDAY.  BUT THANK YOU, BUT WHAT I SAID FRIDAY,  
3 THANK YOU, WHAT I HAVE SAID FRIDAY, IS WE HAVE EVEN  
4 BENT OVER BACKWARDS HERE, SO WE GOT A PROPOSAL FROM  
5 A MAJOR UNIVERSITY THAT WANTED TO STUDY PREGNANT  
6 WOMEN WHO SMDKED.

7                     WELL, ALL KINDS OF BELLS, BELLS  
8 WENT OFF ABOUT, MY GOD, PHILIP MORRIS FUNDING A  
9 STUDY WITH PREGNANT WOMEN WHO SMOKE AND THE  
10 CHAIRMAN HAS SAID PREGNANT WOMEN SHOULDN'T SMOKE.  
11 THE WEB SITE SAYS ALL THE THINGS THE PUBLIC HEALTH  
12 PEOPLE SAY ABOUT PREGNANT WOMEN WHO SMOKE.  IT WENT  
13 THROUGH THEIR INTERNAL REVIEW BOARD.  WE RAISED A  
14 SERIES OF ADDITIONAL QUESTIONS TO THE UNIVERSITY  
15 ABOUT SOME THINGS WE FELT THEY SHOULD DO AND WE  
16 HAVEN'T FUNDED IT BECAUSE WE HAVEN'T GOT AN ANSWER  
17 BACK ON SOME OF THESE.

18                    AND I SAID THIS FRIDAY, IF WE FUND  
19 A STUDY WITH PEOPLE SMOKING, WHETHER THEY ARE  
20 PREGNANT WOMEN OR MEN, WE HAVE TO MAKE SURE THAT  
21 THEY HAVE, ARE GIVEN ALL THE INFORMATION ABOUT THE  
22 RISKS OF SMOKING AND OPPORTUNITIES TO QUIT SMOKING  
23 AND THAT IF THEY DECIDE ANYWHERE IN THE STUDY TO  
24 STOP SMOKING, THEY ARE STILL A MEMBER OF THE STUDY,  
25 THEY STILL GET PAID, BUT THEY DON'T HAVE TO -- THEY  
26 DON'T HAVE TO SMOKE.

27                    SO THIS IS SOMETHING I WOULD SAY, I  
28 HAVE NOT SEEN ANY EVIDENCE OF ON THE OUTSIDE OF

1 ANYBODY TAKING THIS KIND OF STEP IN STUDYING PEOPLE  
2 WHO SMOKE AND, AT THE SAME TIME, SAYING, YOU KNOW,  
3 WE ENCOURAGE YOU NOT TO SMOKE AND IF YOU GIVE UP  
4 SMOKING, YOU WILL STILL GET PAID FOR THIS STUDY.

5 SO THAT'S WHAT I WAS TRYING TO  
6 COMMUNICATE ABOUT THE LITTLE EXTRA THAT WE HAVE  
7 TRIED TO BEND OVER ON THIS.

8 BECAUSE NOT FOR SCIENTIFIC REASONS,  
9 BUT FOR REASONS MAY BE EMBODIED IN PEOPLE, IN  
10 PEOPLE LIKE WE ARE DOING THIS, BECAUSE, YOU KNOW,  
11 WHAT WAS THE OLD STORY ABOUT LYNDON JOHNSON WAS SO  
12 CRITICAL, THE PRESS DIDN'T LIKE HIM HE SAID THERE  
13 IS NOTHING I CAN DO THAT WOULD SATISFY THE PRESS.  
14 IF I WERE TO CALL A PRESS CONFERENCE DOWN AT THE  
15 PATOMAC AND WALK ACROSS THE PATOMAC RIVER, WALK  
16 RIGHT ACROSS THE WATER, THE HEADLINES WOULD READ,  
17 JOHNSON CAN'T SWIM

18 AND I AM NOT MAKING AN ANALOGY TO  
19 PHILIP MORRIS TO LYNDON JOHNSON OR TO ANY OTHER  
20 THING BUT WE ARE DOING THE BEST, THE BEST WE CAN TO  
21 DO THE RIGHT THINGS, AND AT THE SAME TIME, TRY TO  
22 AVOID UNNECESSARY, MY PERSPECTIVE, UNNECESSARY  
23 CRITICISM THAT WOULD KEEP US FROM DOING THE RIGHT  
24 THINGS.

25 Q. WELL, HERE'S WHAT I WANTED TO GET.  
26 BEFORE ANIMAL EXPERIMENTS CAN BE DONE, NOT HUMAN  
27 BEINGS, ANIMALS, WHOEVER IS GOING TO DO THE  
28 EXPERIMENT HAS TO GET SPECIAL PERMISSION TO DO IT;

1 RIGHT?

2 A. YES, SIR.

3 Q. AND IF I COULD, I'D APPRECIATE IT,  
4 AT LEAST FOR THE NEXT COUPLE QUESTIONS, IF YOU  
5 COULD JUST SORT OF ANSWER MY QUESTIONS A LITTLE  
6 MORE DIRECTLY.

7 A. YES, SIR.

8 Q. WHY DO SCIENTISTS HAVE TO GO OUT  
9 AND GET PERMISSION IN ADVANCE BEFORE DOING  
10 EXPERIMENTS ON RABBITS, RATS, NOT TO PUT DOWN  
11 RABBITS OR RATS, BUT THINGS, LABORATORY ANIMALS?

12 A. ONE, IT'S THE LAW IN THE UNITED  
13 STATES AND IN MOST OF THE CIVILIZED, MOST OF THE  
14 CIVILIZED WORLD.

15 THERE IS A. A. L. A. C. , AMERICAN  
16 ASSOCIATION OF LABORATORY ANIMALS COMMISSION, THAT  
17 HAS ESTABLISHED THESE GUIDELINES.

18 YOU CAN'T GET A PENNY OF GOVERNMENT  
19 MONEY UNLESS YOU HAVE SATISFIED THOSE CONDITIONS.

20 IN FACT, YOU CAN LOSE YOUR MONEY  
21 AND YOU MIGHT BE ELIGIBLE TO SPEND SOME TIME  
22 SPEAKING TO A LAWYER WHOSE TRYING TO GET YOU THROWN  
23 IN JAIL IF YOU DID SOMETHING THAT WAS OUTSIDE OF  
24 THAT BOX.

25 Q. THAT'S BECAUSE IT'S THE LAW WHAT  
26 OTHER REASONS, WHAT OTHER REASONS DON'T SCIENTISTS  
27 JUST GO AHEAD AND EXPERIMENT ON ANIMALS WITHOUT  
28 DOING SOMETHING IN ADVANCE?

1           A.     WELL, SCIENTIFICALLY, YOU HAVE TO  
2 HAVE A LEGITIMATE SCIENTIFIC QUESTION.

3           Q.     OKAY. IS THAT THE WHOLE ANSWER,  
4 THOSE TWO THINGS?

5           A.     NO, NO, I AM TRYING TO KEEP IT  
6 BRIEF, AS YOU SAY.

7                     SO ONE IS ASKING A LEGITIMATE  
8 SCIENTIFIC QUESTION, TWO IS COMPLYING WITH THE LAW  
9                     ANOTHER REASON HAS TO DO WITH THE  
10 SOCIAL ROLE THAT FOLKS LIKE P. E. T. A. , THE PEOPLE  
11 THAT ARE AGAINST ANIMAL EXPERIMENTATION, IN TERMS  
12 OF USING COMPUTERS OR WHATEVER ELSE TO ANSWER THESE  
13 QUESTIONS, SO THERE ARE LEGAL, THERE ARE SOCIAL AND  
14 THERE ARE SCIENTIFIC QUESTIONS AT LIES.

15          Q.     IF ALL OF THESE PROTECTIONS APPLY  
16 TO LABORATORY ANIMALS SUCH AS RABBITS AND RATS AND  
17 OTHER LABORATORY ANIMALS, PRESUMABLY, AT LEAST AS  
18 MUCH PROTECTION APPLIES TO PEOPLE?

19          A.     I THINK THAT'S A PRESUMPTION. I  
20 WOULD HOPE THAT'S TRUE.

21          Q.     YOU HOPE THAT'S TRUE?

22          A.     YES.

23          Q.     NOW, YOU TOLD US, JUST A BIT AGO,  
24 THAT RIGHT NOW ONE OF THE THINGS THAT'S GOING TO  
25 HAPPEN IS THAT SOMEONE IS GOING TO GO BACK, LOOK  
26 BACK AND FIND OUT WHETHER THE GOLD MARLBOROS WERE  
27 NOT AS BAD AS THE RED MARLBOROS IN PEOPLE BASED ON  
28 20 YEARS OF EXPERIENCE; RIGHT?

1           A.     IT'S ONE OF THE QUESTIONS WE ARE  
2 ASKING, YES.

3           Q.     WELL, HAVEN'T YOU, CORPORATELY,  
4 EXCUSE ME, I AM GOING TO WITHDRAW THAT.

5                     HASN'T PHILIP MORRIS BEEN  
6 CONDUCTING A GIGANTIC HUMAN EXPERIMENT FOR AT LEAST  
7 THE LAST 20 YEARS?

8           A.     IN SO FAR AS WE WERE FOLLOWING THE  
9 RECOMMENDATIONS OF THE SURGEON GENERAL AND OTHER  
10 PUBLIC HEALTH OFFICIALS, I THINK WE ARE ALL  
11 INVOLVED IN THIS, WHAT YOU CALL EXPERIMENT.

12          Q.     YES?

13          A.     THAT'S WHAT I SAID.

14          Q.     YES?

15          A.     YES.

16          Q.     NOW, YOU SAID ON FRIDAY, I THINK  
17 YOU TOOK SOME PAINS AND THEN YOU SAID IT AGAIN THIS  
18 MORNING, TO DESCRIBE ALL OF THE SAFEGUARDS THAT GO  
19 INTO YOUR HUMAN EXPERIMENTS, WHATEVER THEY ARE  
20 GOING TO BE, AND WE ARE GOING TO TALK ABOUT THEM  
21 INCLUDING GETTING CONSENT, YOU CAN DROP OUT AT ANY  
22 TIME, YOU CAN GET PAID, YOU CAN DROP OUT AND ALL  
23 THOSE THINGS.   REMEMBER THAT?

24          A.     YES, SIR.

25          Q.     IF PHILIP MORRIS HAS BEEN ENGAGING  
26 IN A GIGANTIC HUMAN EXPERIMENT FOR AT LEAST THE  
27 LAST 20 YEARS, HAS ANYONE GONE OUT AND GOTTEN ANY  
28 KIND OF WAIVERS FROM THE 50 OR 60 OR 70 --

1 MR. LEITER: OBJECTION, ARGUMENT.

2 Q BY MR. PIUZE: -- MILLION  
3 AMERICANS?

4 THE COURT: SUSTAINED.

5 Q BY MR. PIUZE: LET'S GO TO THIS  
6 DOCUMENT AGAIN FROM MR. SELIGMAN.

7 MR. SELIGMAN WANTED TO AVOID  
8 ATTEMPTING TO RELATE HUMAN DISEASE TO SMOKING. DO  
9 YOU SEE THAT?

10 A. I HAVE READ THE DOCUMENT, I  
11 REMEMBER THAT STATEMENT.

12 Q. DO YOU KNOW WHY THAT IS?

13 A. NOPE, I WASN'T AROUND. I ACTUALLY  
14 MET HIM ONCE IN MY ENTIRE LIFE, NEVER ASKED HIM  
15 ABOUT THAT.

16 Q. AS A SCIENTIST, AND I AM NOW --  
17 THIS IS PERSONAL TO YOU NOW, AS A SCIENTIST, DON'T  
18 YOU WANT, DON'T YOU, STARTING AT LEAST IN 1989,  
19 WHEN YOU WENT TO WORK FOR PHILIP MORRIS, AND  
20 CONTINUING RIGHT UP TO THE PRESENT, RIGHT NOW,  
21 DON'T YOU WANT TO ATTEMPT TO RELATE OR TO PROVE  
22 THERE'S NO RELATION TO HUMAN DISEASE AND SMOKING?

23 A. THE SHORT ANSWER IS ABSOLUTELY YES.  
24 AND IF, INDEED, THE BEHAVIORS OF THE COMPANY WERE  
25 REPRESENTED, WERE REFLECTED EITHER BEFORE, DURING  
26 OR AFTER THAT, THAT WOULD BE SOMETHING ELSE.

27 BUT THE DATA, THE EVIDENCE, THE  
28 OBJECTIVE INFORMATION IS REALLY QUITE TO THE

1 CONTRARY.

2 THE WORDS ARE THE WORDS. THAT'S  
3 WHAT HE SAID. I AM NOT SURE EXACTLY WHAT HE MEANT,  
4 OKAY.

5 Q. WHERE IS HE?

6 MR. LEITER: LET HIM FINISH HIS ANSWER.

7 THE COURT: HOLD ON. GO AHEAD AND FINISH  
8 YOUR ANSWER.

9 THE WITNESS: BUT IF YOU LOOK TO SEE, I  
10 ANSWERED THIS QUESTION WHEN YOU ASKED ME WHAT WE  
11 WERE DOING AND I SAID WE WERE DOING THINGS  
12 INTERNALLY AND EXTERNALLY THAT DIRECTLY RELATED TO  
13 THAT. THAT'S WHAT HE SAID.

14 THE BEHAVIOR OF THE COMPANY IS NOT  
15 AT ALL REFLECTIVE OF THAT STATEMENT.

16 Q. IS HE ALIVE?

17 A. I DON'T KNOW

18 Q. WHEN IS THE LAST TIME YOU SAW HIM?

19 A. THREE YEARS AGO.

20 Q. TWO YEARS?

21 A. THREE YEARS AGO.

22 Q. THREE YEARS AGO?

23 A. HE'S BEEN RETIRED -- HE RETIRED  
24 LONG BEFORE I GOT TO THE COMPANY.

25 Q. WHERE DID YOU SEE HIM?

26 A. I SAW HIM, I THINK, IN NEW YORK.

27 Q. I WASN'T THERE.

28 A. NO?

1 Q. I WAS THINKING NOT AT YANKEE  
2 STADIUM AND PARK AVENUE?

3 A. IT WAS A -- SOME SORT OF A SOCIAL,  
4 A SOCIAL EVENT SEVERAL YEARS AGO. I MET HIM AND I  
5 MET, MAYBE HIS WIFE WAS ILL. HIS WIFE WASN' T  
6 THERE. IT WAS SOME SOCIAL EVENT I WAS INTRODUCED  
7 TO HIM

8 HE RETIRED SEVERAL YEARS BEFORE I  
9 GOT THERE.

10 Q. DID YOU ASK HIM, AND HE WAS, DON' T  
11 FORGET, YOU TOLD US, AT ONE POINT, HE WAS THE  
12 VICE-PRESIDENT OF PHILIP MORRIS FOR RESEARCH AND  
13 DEVELOPMENT, DID YOU ASK HIM, WHAT IN THE WORLD  
14 WERE YOU EVER THINKING WHEN YOU SAID WE ARE GOING  
15 TO AVOID TRYING TO RELATE HUMAN DISEASE TO SMOKING?

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

18 THE COURT: SUSTAINED.

19 Q BY MR. PIUZE: DID HE SUGGEST TO  
20 AVOID ANY SUBJECT THAT WOULD ATTEMPT TO RELATE  
21 HUMAN DISEASE TO SPEAKING?

22 MR. LEITER: OBJECTION, DOCUMENT SPEAKS  
23 FOR ITSELF?

24 MR. PIUZE: WITHDRAWN.

25 Q BY MR. PIUZE: DID YOU ASK HIM WHY  
26 IN THE WORLD HE WROTE THAT WE SHOULD ATTEMPT TO  
27 AVOID -- I AM SORRY, WE SHOULD AVOID ANY ATTEMPT TO  
28 RELATE HUMAN DISEASE TO SMOKING?

1 A. NO, SIR.

2 Q. WHY NOT?

3 A. BECAUSE THE BEHAVIOR OF THE  
4 COMPANY, BASICALLY, DEMONSTRATED THAT, NOBODY  
5 FOLLOWED WHAT YOU ARE SUGGESTING THOSE WORDS SAY.  
6 THE COMPANY ACTED TOTALLY CONTRARY TO THAT. IN  
7 FACT, THERE ARE OTHER DOCUMENTS THAT EXIST, NOT  
8 NECESSARILY WITH BOB SELIGMAN, BUT WITH OTHER  
9 PEOPLE IN HIS CHAIN THAT TALKED ABOUT DOING JUST  
10 THAT.

11 BUT AT THE END OF THE DAY, THE  
12 QUESTION IS, WHAT DID THE COMPANY DO AND NOT DO.  
13 AND FOR ME, THE COMPANY DID BOTH INTERNAL AND  
14 FUNDED EXTERNAL WORK THAT DIRECTLY RELATED TO THAT.

15 Q. DOESN'T IT -- WHEN DID YOU FIRST  
16 SEE THIS DOCUMENT?

17 A. I DON'T KNOW.

18 Q. IN ROUND NUMBERS, LAST YEAR, FIVE  
19 YEARS AGO, TEN YEARS AGO, WHAT?

20 A. WITHIN THE LAST COUPLE OF YEARS.

21 Q. DID YOU SEE THIS DOCUMENT BEFORE  
22 YOUR SOCIAL ENCOUNTER WITH MR. SELIGMAN?

23 A. I BELIEVE SO.

24 Q. WEREN'T YOU AGAST WHEN YOU SAW THIS  
25 DOCUMENT?

26 A. THERE ARE MANY THINGS THAT MAKE ME  
27 AGAST. AND I WOULD SAY FOR ME, ALL THAT WAS  
28 IMPORTANT WAS TO KNOW THAT PHILIP MORRIS ACTUALLY

1 WAS DOING WORK IN THIS AREA.

2 TO GO UP TO BOB SELIGMAN AND SAY,  
3 YOU KNOW, BOB, WHERE THE HELL -- EXCUSE ME -- WHERE  
4 WERE YOU WHEN YOU WERE WRITING THIS, WHAT WERE YOU  
5 THINKING OF WHEN YOU WERE DOING THIS, KNOWING FULL  
6 WELL THAT WE WERE DOING ALL THESE THINGS THAT THIS  
7 DOCUMENT SAYS WE SHOULDN'T DO?

8 TO WHAT END?

9 NOW, IF I WAS A LAWYER, I AM SURE I  
10 WOULD ASK THAT QUESTION.

11 BUT AS A SCIENTIST, THE FACTS, THE  
12 OBJECTIVE FACTS I HAD, WE WERE DOING ALL THIS -- WE  
13 WERE DOING ALL THIS STUFF, HE WANTED -- I CAN'T  
14 TELL YOU WHY HE SAID THAT.

15 Q. WHAT WAS THE ANSWER TO MY QUESTION?  
16 WERE YOU AGAST WHEN YOU SAW THIS DOCUMENT?

17 A. IN ISOLATION, YES. IN ISOLATION,  
18 BUT WHEN I PUT TOGETHER ALL OF THE OBJECTIVE  
19 INFORMATION, IT IS AN ABERRATION. IT IS A  
20 DOCUMENT. THAT'S WHAT IT SAYS. BUT THE OBJECTIVE  
21 DATA, BASICALLY, SAYS, THAT'S NOT WHAT WE DID.

22 Q. AND WHEN YOU, WHEN YOU SAW HIM, WHY  
23 NOT SAY, DR. SELIGMAN, WHAT THE --

24 MR. LEITER: OBJECTION, THIS IS NOW  
25 ARGUMENT.

26 THE COURT: COUNSEL, YOU KNOW, THE  
27 DECIBEL LEVELS ARE BEGINNING TO RISE AND IT'S  
28 CAUSING A LITTLE CONCERN ON THE PART OF THE COURT.

1 I WOULD SAY THIS TO BOTH MY COUNSEL HERE, LET' S  
2 LOWER THINGS JUST SLIGHTLY.

3 SUSTAINED. DON' T ASK THE QUESTION.

4 Q BY MR. PIUZE: IF MR. SELIGMAN  
5 WASN' T SPEAKING FOR THE COMPANY, YOU HAVE ALREADY  
6 TOLD US DR. OSDENE, HE WAS -- HE WASN' T SPEAKING  
7 FOR THE COMPANY EITHER, RIGHT?

8 A. AS FAR AS I CAN TELL, BOTH SELIGMAN  
9 AND OSDENE AND, I GUESS, DUNN, THEY ARE SPEAKING  
10 FOR THEMSELVES.

11 WHETHER OR NOT THEY ARE SPEAKING  
12 FOR THE COMPANY OR NOT, I THINK, ONE NEEDS TO LOOK  
13 AT THE CONTEXT OF WHAT ACTUALLY HAPPENED.

14 Q. REMIND THE JURY, PLEASE, DR. T. S.  
15 OSDENE ROSE TO WHAT CAPACITY AT THE COMPANY?

16 A. HE WAS, UP UNTIL ABOUT A YEAR OR  
17 TWO BEFORE HE RETIRED, A DIRECTOR AND HE RETIRED AS  
18 A VICE-PRESIDENT, NOT IN R&D, IN AN ORGANIZATION, I  
19 MAY NOT HAVE THE TITLE EXACTLY, OF CORPORATE  
20 SCIENTIFIC AFFAIRS. AND HIS FUNCTION FOR MANY  
21 YEARS WAS ENVIRONMENTAL TOBACCO SMOKE.

22 BUT HE WASN' T, FOR MANY, MANY  
23 YEARS, POST-87, SO WHEN I GOT TO R&D, HE WASN' T IN  
24 R&D, HE WAS IN THIS OTHER ENTITY OUTSIDE OF R&D.

25 MR. PIUZE: WE ARE 30 SECONDS PAST NOON  
26 OR 30 SECONDS TO NOON, I CAN' T TELL THE DIFFERENCE.  
27 BUT YOUR HONOR, ONE WAY OR THE OTHER, THIS IS A  
28 GOOD PLACES.

1 THE COURT: COUNSEL, IF COUNSEL WOULD  
2 REMAIN, THE JURY IS EXCUSED, WE WILL SEE YOU THIS  
3 AFTERNOON AT 1:30.

4 SIR, YOU MAY STEP DOWN.

5

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

9

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

12 WHERE ARE YOU GOING WITH THIS  
13 WITNESS?

14 MR. PIUZE: I AM FOLLOWING THE STUFF HE  
15 WAS ASKED ON DIRECT.

16 THE COURT: WELL, IT SEEMS TO ME THAT WE  
17 ARE SORT OF GETTING OUT ON THE EDGE OF BEYOND THE  
18 SCOPE OF WHAT THE DIRECT EXAMINATION WAS.

19 I HAVE BEEN LIBERAL WITH IT AND  
20 ALLOWED IT BUT I JUST, LET ME JUST SAY THIS: I AM  
21 CONCERNED THAT WE ARE GETTING BEYOND THAT POINT  
22 WITH HIM

23 MR. PIUZE: OKAY. I FELT SOME OF THE  
24 COURT'S CONCERN.

25 THE COURT: NOW, LOOK, IT'S BOTH WAYS.

26 THE TONE OF THE VOICE OVER HERE, I  
27 DON'T WANT TO HEAR THAT AGAIN.

28 MR. LEITER: I AM SORRY, YOUR HONOR.

1           MR. PIUZE: YOUR HONOR, I WAS RESPONDING  
2 TO THE SUBJECT MATTER RATHER THAN THE TONE.

3           THE COURT: WHAT YOU ARE GOING TO HAVE TO  
4 DO IS YOU ARE GOING TO HAVE TO GET MORE FOCUSED  
5 WITH HIM, BECAUSE OTHERWISE IT'S NOT JUST ME, I CAN  
6 TELL YOU THIS, AND THEY ARE BEGINNING TO WONDER  
7 WHETHER THEIR TIME IS BEING WASTED AND THE COURT IS  
8 BEGINNING TO WONDER WHETHER ITS TIME IS BEING  
9 WASTED.

10          MR. PIUZE: ONE OF THE THINGS THAT HAPPEN  
11 IS THAT THIS GUY WONDERS AROUND SO MUCH AND IT JUST  
12 HAPPENS TO BE MY STYLE TO LET PEOPLE WONDER BUT I  
13 CAN REIN HIM IN IF THE COURT WOULD WANT.

14          THE COURT: THAT'S WHAT THE COURT WANTS.

15          MR. LEITER: IF I MAY RAISE ONE GENERAL  
16 ISSUE AND GET BACK TO THE SUBJECT, WE ARE ON OUR  
17 THIRD WITNESS. WE ARE, WE HAVE GOTTEN INTO A  
18 ROUTINE, WHERE THE CROSS-EXAMINATIONS ARE EXTENSIVE  
19 AND MULTIPLE HOURS LONGER THAN THE DIRECT  
20 EXAMINATION, WHICH IS CAUSING US SOME TIMING AND  
21 OTHER CONCERNS AND OBVIOUSLY IT'S UP TO THE COURT,  
22 OF COURSE.

23          THE COURT: HOW MANY WITNESSES ARE YOU  
24 GOING TO HAVE?

25          MR. LEITER: WE HAVE APPROXIMATELY,  
26 APPROXIMATELY 10 WITNESSES TOTAL. WE ARE ON  
27 WITNESS NUMBER 3. AND OUR CASE BEGAN A WEEK AGO  
28 THURSDAY.

1                   NOW, I KNOW WE HAVE LOST SOME TIME  
2 DUE TO JUROR ILLNESSES AND THE COURT'S SCHEDULE AS  
3 WELL, BUT WE ARE GETTING KIND OF CONCERNED, WE ARE  
4 TRYING TO KEEP OUR DIRECT AS SHORT AS WE CAN, EACH  
5 OF OUR WITNESS IS BEING CROSS-EXAMINED FOR PROBABLY  
6 TWICE AS LONG AS THE DIRECT AND ALTHOUGH THE COURT  
7 RAISES THIS CONCERN, WE HAVE BEGUN TO HAVE THIS  
8 CONCERN THAT THE CROSS RANGE FAR BEYOND ANYTHING WE  
9 ARE DOING ON DIRECT.

10                   AND IT'S CAUSING US CONCERNING IN  
11 TERMS OF TIMING. IT'S CREATING PROBLEMS OF  
12 AVAILABILITY FOR OUR WITNESSES WHO ARE ALL  
13 PROFESSIONALS. AND I DON'T KNOW EXACTLY WHAT TO DO  
14 ABOUT IT OR WHAT I AM ASKING THE COURT FOR OTHER  
15 THAN JUST TO ALERT THE COURT THAT IT IS BECOMING A  
16 PROBLEM FOR US.

17                   THE COURT: I UNDERSTAND YOUR PROBLEMS.  
18 THE ONE THING IS I AM GOING TO ALLOW THE PLAINTIFF  
19 VIGOROUS CROSS-EXAMINATION OF THESE WITNESSES. AND  
20 THAT'S GOING TO REQUIRE THAT THE COURT ALLOW SOME  
21 LATITUDE.

22                   BUT I AM JUST SAYING THIS MORNING,  
23 I AM FEELING LIKE WHETHER OR NOT WE ARE WASTING A  
24 LITTLE BITE OF TIME, AND I JUST EXPRESSED MY  
25 CONCERNS, AND SO YOU KNOW IT'S IN THE BACK OF MY  
26 MIND AND THAT I AM WATCHING IT, THAT'S ALL I AM  
27 GOING TO SAY RIGHT NOW

28                   ///       ///       ///

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