

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES

DEPARTMENT 308	HON. CHARLES W. MC COY, JUDGE
RICHARD BOEKEN,	)
PLAINTIFF,	)
VS.	) SUPERIOR COURT
	) CASE NO. BC 226593
PHILIP MORRIS, INCORPORATED,	)
A CORPORATION; INTERNATIONAL HOUSE	)
OF PANCAKES, INCORPORATED, A	)
CORPORATION,	)
DEFENDANTS.	)
	)

REPORTER'S DAILY TRANSCRIPT OF PROCEEDINGS  
WEDNESDAY, MAY 9, 2001  
P. M. SESSION  
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1 CASE NUMBER: BC 226593  
2 CASE NAME: BOEKEN V. PHILIP MORRIS  
3 LOS ANGELES, CALIFORNIA WEDNESDAY, MAY 9, 2001  
4 DEPARTMENT 308 HON. CHARLES W MC COY, JUDGE  
5 APPEARANCES: (AS NOTED ON TITLE PAGE.)  
6 REPORTER: LINDA STALEY, CSR NO. 3359, RMR, CRR  
7 TIME: 1:52 P.M

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11

KIP VISCUSI,

12

WTNESS, RESUMED THE STAND AND TESTIFIED FURTHER AS FOLLOWS:

13

14

THE COURT: GOOD AFTERNOON, LADIES AND GENTLEMEN.

15

16

(CHORUS GOOD AFTERNOON' S. )

17

18

THE COURT: COUNSEL. WELCOME BACK.

19

20

(CHORUS OF GOOD AFTERNOON' S. )

21

22

THE COURT: SIR, YOU UNDERSTAND YOU' RE STILL UNDER

23

OATH.

24

THE WTNESS: YES, YOUR HONOR.

25

THE COURT: VERY WELL. PLEASE BE SEATED.

26

MR. PIUZE.

27

MR. PIUZE: THANK YOU, YOUR HONOR.

28

THE COURT: YES.

1 **CROSS EXAMINATION (RESUMED)**

2 BY MR. PIUZE:

3 Q. EXPLAIN THAT TO ME, WOULD YOU?

4 A. EXPLAIN THE TABLE?

5 Q. THE LAST ONE, NONSMOKERS.

6 A. NON-SMOKERS?

7 Q. YEAH. NONSMOKERS -- 45 PERCENT OF NONSMOKERS  
8 NOT RELAPSING, NOT CONTINUOUS, NOT FORMER, BUT NONSMOKERS,  
9 NEVER SMOKERS, BELIEVE THEY ARE LIKELY TO DEVELOP LUNG CANCER  
10 BECAUSE OF CIGARETTE SMOKING?11 A. APPARENTLY, THIS WOULD BE FEAR OF ENVIRONMENTAL  
12 TOBACCO SMOKE.

13 Q. MEANING SECONDHAND SMOKE?

14 A. YES. I FOUND CORROBORATIVE EVIDENCE IN OTHER  
15 SURVEYS THAT THOSE RISK BELIEFS ARE HIGH.16 Q. SO ALMOST HALF THE PEOPLE OUT THERE THINK  
17 THEY'RE GOING TO GET LUNG CANCER JUST FROM BREATHING THE AIR,  
18 EVEN THOUGH THEY DON'T SMOKE?

19 A. THAT'S WHAT THESE NUMBERS SEEM TO SUGGEST.

20 Q. THAT'S SOMETHING ELSE.

21 YOU'VE WORKED ON SECONDHAND SMOKE FOR THE  
22 TOBACCO INDUSTRY, HAVE YOU?23 A. I'VE DONE ONE THING ON SECONDHAND SMOKE FOR  
24 THEM, PLUS, I'VE DONE SECONDHAND SMOKE WORKING FOR THE  
25 ENVIRONMENTAL PROTECTION AGENCY.26 Q. ALL RIGHT. ONE OF THE THINGS YOU DID IS YOU  
27 FIGURED OUT THAT IF WE BANNED SMOKING IN THE WORKPLACE, IT  
28 MIGHT COST \$3 BILLION WORTH OF TIME OR EFFORT OR PLEASURE OR

1 SOMETHING LIKE THAT?

2 A. I DID A CALCULATION OF THE LOSS TO SMOKERS THAT  
3 WERE REQUESTED BY THE U. S. DEPARTMENT OF LABOR.

4 Q. \$11 BILLION?

5 A. I FORGET THE EXACT NUMBERS.

6 Q. SOUND ABOUT RIGHT?

7 A. IT WAS A BIG NUMBER.

8 Q. DOES THAT SOUND ABOUT RIGHT?

9 A. I DON'T KNOW WHICH BILLION IT IS, BUT IT WAS A  
10 LOT OF MONEY IN TERMS OF THE LOST WELFARE.

11 Q. WHEN YOU FIRST -- WHO GOT THESE FIGURES HERE?

12 A. THESE FIGURES?

13 Q. YEAH. DID YOU GET THESE?

14 A. YES. THESE ARE FROM THE GALLUP POLL. THESE  
15 ARE NOT MY NUMBERS. THESE ARE GALLUP NUMBERS.

16 Q. DIDN'T THAT REALLY SURPRISE YOU WHEN YOU FIRST  
17 SAW THAT?

18 A. NO. BECAUSE I PUBLISHED AN ARTICLE LAST SUMMER  
19 ON PERCEPTIONS OF ENVIRONMENTAL TOBACCO SMOKE, AND THIS WAS  
20 FOR A DIFFERENT SAMPLE. BUT PEOPLE PERCEIVED THAT, IN SPAIN,  
21 THAT 20 OUT OF 100 PEOPLE WILL DIE FROM ENVIRONMENTAL TOBACCO  
22 SMOKE, WHICH IS ABOUT HALF THE RISK THAT PEOPLE IN SPAIN  
23 THINK FOR THE RISK OF SMOKING.

24 SO PEOPLE TEND TO HAVE HIGH RISK PERCEPTIONS  
25 FOR ENVIRONMENTAL TOBACCO SMOKE.

26 Q. SPAIN?

27 A. YES. I PUBLISHED THREE ARTICLES DEALING WITH  
28 SMOKING RISKS IN SPAIN.

1 Q. OKAY. BUT THIS, WHAT I'M SHOWING THE JURY NOW,  
2 THIS ISN'T SPAIN. THIS IS UNITED STATES OF AMERICA HERE,  
3 RIGHT?

4 A. I AGREE. BUT I RAN SIMILAR SURVEYS IN BOTH  
5 COUNTRIES -- OR I PUBLISHED ARTICLES DEALING WITH SIMILAR  
6 SURVEYS IN BOTH COUNTRIES, SIMILAR RESULTS FROM LUNG CANCER  
7 THAT YOU GET IN THE UNITED STATES. IT'S ALMOST IDENTICAL.

8 Q. WHAT YEAR IS THIS?

9 A. IT'S HARD TO SEE. 1995. I'M TRYING TO READ IT  
10 FROM HERE.

11 Q. I SEE. IT'S DOWN HERE. IT'S 1995.

12 A. ALL RIGHT.

13 Q. SO HOW DO THOSE 45 PERCENT OF THE PEOPLE AVOID  
14 THE RISK?

15 MR. CARLTON: OBJECTION. BEYOND THE SCOPE.

16 THE COURT: SUSTAINED.

17 Q. BY MR. PIUZE: SAME SURVEY IN THE SAME YEAR.  
18 SAME CATEGORIES. BUT THE QUESTION IS BEING SWITCHED TO HEART  
19 DISEASE.

20 SAME RESULTS, RIGHT?

21 A. VERY SIMILAR, THAT'S CORRECT.

22 Q. OKAY. WELL, WHEN WE ENDED, I WAS ASKING YOU  
23 ABOUT THIS PROFESSOR SLOVIC, AND PART OF HIS STUFF WENT UP ON  
24 THE BOARD.

25 JUST CONFIRM FOR THE JURY, THOUGH, THAT ON SOME  
26 OF THE ISSUES THAT YOU'VE BEEN TESTIFYING ABOUT HERE, HE  
27 DIAMETRICALLY OPPOSES WHAT YOU HAVE TO SAY?

28 A. WE DISAGREE.

1 Q. AND THAT ISSUE WOULD BE?

2 A. ON SMOKING RISK BELIEFS. SO HE FAVORS  
3 QUESTIONS THAT ARE QUALITATIVE IN NATURE. IS SMOKING VERY  
4 RISKY, SOMEWHAT RISKY, ET CETERA. AND I HAVE USED  
5 QUANTITATIVE QUESTIONS.

6 Q. AND ON THE ISSUE OF OPTIMISM BIAS -- YOU KNOW  
7 WHAT THAT ISSUE IS, DON'T YOU?

8 A. I CERTAINLY DO.

9 Q. OF COURSE, YOU DO.  
10 DID YOU USE THAT TERM THIS MORNING BY ANY  
11 CHANCE?

12 A. YES, I DID.

13 Q. YES, YOU DID.

14 AND SOME OF THE GRAPHS THAT WERE PUT UP HAD TO  
15 DO WITH OPTIMISM BIAS?

16 A. THAT'S CORRECT.

17 Q. HE DISAGREES WITH YOUR CONCLUSIONS ON OPTIMISM  
18 BIAS, DOESN'T HE?

19 A. NO. IN FACT, I USE, IN MY PUBLICATIONS,  
20 EVIDENCE FROM ONE OF HIS ARTICLES IN THE JOURNAL OF  
21 ADOLESCENT PSYCHOLOGY --

22 Q. RIGHT.

23 A. -- DOCUMENTING THAT THERE IS NO OPTIMISM BIAS.  
24 SO IN TERMS OF HIS ACTUAL RESEARCH, IT'S CONSISTENT WITH WHAT  
25 I'VE SHOWN.

26 Q. SO MY QUESTION WAS: HE DISAGREES WITH YOU ON  
27 THE ISSUE OF OPTIMISM BIAS, DOESN'T IT?

28 A. I DON'T KNOW IF HE DISAGREES WITH ME ON THAT.

1 HE SEEMS TO LIKE TO DISAGREE WITH ME ON EVERYTHING. BUT IN  
2 TERMS OF WHAT HIS RESEARCH DEMONSTRATES, HIS RESEARCH IS  
3 CONSISTENT WITH WHAT I SHOW TODAY.

4 Q. THIS IS YOUR TRANSCRIPT FROM 19 -- WHAT YEAR  
5 WAS THIS CASE?

6 DO YOU REMEMBER?

7 '98, '99?

8 A. THREE YEARS AGO.

9 Q. DO YOU SEE THIS HERE?

10 THE LAWYER ASKED YOU A QUESTION. THERE'S A  
11 LARGE AMOUNT OF LITERATURE THAT EXAMINES WHAT'S CALLED  
12 OPTIMISM BIAS, AND HE MENTIONS JEFFREY ARNETT.

13 DO YOU SEE THAT?

14 A. THAT'S CORRECT.

15 Q. AND JEFFREY ARNETT WAS SOMEONE WHO TESTIFIED IN  
16 THAT PARTICULAR CASE OPPOSITE YOU, RIGHT?

17 A. YES.

18 Q. DIFFERENT OPINION ON OPTIMISM BIAS?

19 A. YES.

20 Q. THEN HE GOES AND TALKS ABOUT PAUL SLOVIC.

21 DO YOU KNOW THE RISKS, RIGHT?

22 A. THAT'S CORRECT.

23 Q. IS THAT OPTIMISM BIAS, TOO?

24 A. WELL, I DON'T THINK IT'S A DIRECT TEST OF  
25 OPTIMISM BIAS. I THINK THE JOURNAL ARTICLE OF BENSON AND  
26 SLOVIC, WHICH SHOULD BE IN OUR RELIANCE MATERIALS, IS THE  
27 DIRECT TEST.

28 IN THAT ARTICLE, WHAT HE DID IS FIND THAT

1 SMOKERS HAD LOWER RISK BELIEFS THAN NONSMOKERS. I FOUND  
2 THAT, TOO. THE QUESTION IS WHETHER SMOKERS' RISK BELIEFS ARE  
3 ABOVE THE TRUE LEVEL OF THE RISK. AND HE NEVER INVESTIGATED  
4 THAT ISSUE.

5 AND WE'VE SEEN FROM OUR RESULTS THAT WITH  
6 RESPECT TO THE KEY ISSUE OF RISK BELIEFS WITH RESPECT TO THE  
7 TRUE RISK, SMOKERS OVERESTIMATE THE RISK.

8 Q. SO I'M -- WHAT I'M GOING TO TRY TO DO IS ASK  
9 QUESTIONS WHERE YOU CAN GIVE ME RELATIVELY SHORT ANSWERS, IF  
10 POSSIBLE, SO JUST SO I CAN MOVE THIS ALONG. IF IT ISN'T  
11 POSSIBLE, SO BE IT. BUT THAT'S WHAT I'M GOING TO TRY TO DO.

12 ANYWAY, THIS IS THE PART WHERE DR. SLOVIC  
13 CRITICIZED YOUR ANALYSIS -- SEE THAT LINE 18 THERE?

14 YOU WERE ABOUT TO PUBLISH A CRITIQUE OF HIS  
15 CRITIQUE?

16 A. YES. WE DISCUSSED THAT THIS MORNING.

17 Q. ONE OF HIS -- ONE OF THE THINGS THAT HE  
18 DISAGREED WITH YOU ABOUT IS WHAT HE BELIEVED TO BE YOUR  
19 FAULTY ASSUMPTION THAT "ONE KNOWS THE RISK" --

20 MR. CARLTON: OBJECTION, YOUR HONOR. I'LL OBJECT TO  
21 THE READING OF THIS ARTICLE FROM ANOTHER TRIAL.

22 THE COURT: I'LL ALLOW IT.

23 Q. BY MR. PIUZE: DO YOU KNOW WHAT?

24 I'M GOING TO USE MY DISCRETION AND TAKE IT DOWN  
25 JUST TO GO FASTER.

26 YOU HAVE YOUR OPINIONS. YOU STATED THEM TO THE  
27 JURY.

28 THERE ARE PEOPLE THAT HAVE OPINIONS OPPOSITE

1 YOU, RIGHT?

2 A. THAT' S CORRECT.

3 Q. OKAY. LET ME KEEP MOVING, THEN.

4 DO YOU KNOW WHAT INFORMATION TRANSFER IS?

5 A. YES. PROVIDING INFORMATION.

6 Q. IN THE 1997 AND 1998 SURVEYS -- REMEMBER WE  
7 TALKED ABOUT THOSE SURVEYS?

8 A. YES.

9 Q. SPONSORED BY LAWYERS FOR THE TOBACCO COMPANY  
10 COMPANIES?

11 A. THEY PAID FOR THE SURVEYS, YES.

12 Q. WERE SOME OF THE RESULTS OF THOSE SURVEYS PUT  
13 UP ON THE BOARD HERE?

14 A. YES.

15 Q. WASN' T THERE A GREAT DEAL OF INFORMATION  
16 TRANSFER -- I' M GOING TO GET YOU TO DEFINE THAT BETTER IN A  
17 MINUTE -- BUT WASN' T THERE A GREAT DEAL OF INFORMATION  
18 TRANSFER THAT HAD BEEN GOING ON BEFORE THOSE 1997 AND 1998  
19 SURVEYS?

20 A. IN TERMS OF INFORMATION AVAILABLE TO THE  
21 PUBLIC?

22 Q. YEAH.

23 A. AS OPPOSED TO WHAT IT PROVIDED IN THE SURVEY,  
24 YES.

25 Q. YEAH. INFORMATION TRANSFER -- LET' S SEE IF I  
26 CAN GIVE AN EXAMPLE HERE.

27 DO YOU WATCH THE RED SOCKS?

28 A. YES. I HAVE PART OF A SEASON TICKET PACKAGE.

1 Q. LET'S SAY THAT DURING THE PLAYOFFS, IF THEY  
2 EVER GET IN THE PLAYOFFS, AN ANNOUNCER DURING SOME DEAD TIME  
3 STARTS GIVING SOME STATISTICS, WHICH ORDINARILY NO ONE WOULD  
4 EVER LOOK AT THESE STATISTICS, BUT BECAUSE THERE'S DEAD TIME,  
5 HE STARTS TALKING ABOUT THE PERCENTAGE OF TIMES THIS BATTER  
6 DOES SOMETHING WEIRD.

7 YOU'RE FAMILIAR WITH THAT KIND OF CONCEPT,  
8 RIGHT?

9 A. YES.

10 Q. AND SORT OF FILLING IN THE TIME. AND SO  
11 SOMETHING THAT WASN'T EVER IMPORTANT, ALL OF A SUDDEN, PEOPLE  
12 ARE STARTING TO LISTEN TO A LITTLE BIT, RIGHT?

13 A. ALL RIGHT.

14 Q. THAT'S AN INFORMATION TRANSFER, RIGHT?

15 A. YES.

16 Q. BEFORE THE 1997 AND 1998 SURVEYS, AFTER THOSE  
17 WERE TAKEN, AFTER TOBACCO HAD BEEN IN THE NEWS WAY, WAY, WAY  
18 MORE THAN IT HAD BEEN FOR YEARS, RIGHT?

19 A. I BELIEVE THE COVERAGE IN THE PRESS HAS BEEN  
20 INCREASING OVER TIME, YES.

21 Q. AND SO BEFORE THOSE 1997 AND 1998 SURVEYS WERE  
22 TAKEN ABOUT SMOKERS' PERCEPTIONS, PEOPLE'S PERCEPTIONS,  
23 NONSMOKERS' PERCEPTIONS, ALL HAVING TO DO WITH TOBACCO, JUST  
24 LIKE THAT DRY STATISTIC ABOUT HOW OFTEN THIS BATTER DID  
25 SOMETHING WEIRD, PEOPLE WHO NEVER PAID ANY ATTENTION TO  
26 TOBACCO AT ALL, IT WAS IN THE NEWS AGAIN AND AGAIN AND AGAIN  
27 BECAUSE OF EVERYTHING THAT WAS GOING ON, RIGHT?

28 A. WELL, I DON'T KNOW IF THERE ARE PEOPLE WHO'VE

1 NEVER PAID ATTENTION TO IT AT ALL, BUT CERTAINLY, IT'S BEEN  
2 IN THE NEWS TO AN INCREASING EXTENT. THAT'S CERTAINLY TRUE.

3 Q. BACK IN THE '50'S AND '60'S AND '70'S AND EARLY  
4 '80'S BEFORE YOU PERSONALLY GOT INVOLVED, YOU HAVE SEEN THE  
5 KIND OF POLLING THAT WENT ON, BUT YOU'RE NOT AS COMFORTABLE  
6 WITH THAT POLLING AS THE LATER STUFF, TRUE?

7 A. I'M NOT AS COMFORTABLE WITH THAT POLLING AS I  
8 AM WITH MY POLLING.

9 Q. WHY?

10 A. I LIKE THE QUANTITATIVE QUESTIONS WHERE YOU CAN  
11 FIGURE OUT RELATIVE TO A TRUE SCIENTIFIC RISK WHETHER YOU'RE  
12 ABOVE OR BELOW IT AS OPPOSED TO THE MORE OPEN-ENDED TYPES OF  
13 QUESTIONS.

14 Q. CORRECT ME IF I'M WRONG.

15 ONE OF THE SPECIFIC THINGS YOU MENTIONED THIS  
16 MORNING WAS THE EARLIER POLLS THEY TALK ABOUT CAUSE, BUT  
17 CAUSE WASN'T REALLY DEFINED, RIGHT?

18 A. YES.

19 Q. AND SO THAT'S SORT OF A PROBLEM, RIGHT?

20 A. I BELIEVE IT IS.

21 Q. OKAY. FINE. AND THAT'S A PROBLEM THAT YOU'VE  
22 TRIED TO CLEANUP WITH YOUR OWN POLL SURVEY?

23 A. YES.

24 Q. YOU'RE NOT A POLSTER, ARE YOU?

25 A. I RUN SURVEYS AND DESIGN SURVEYS, BUT -- I'M  
26 NOT SURE WHAT YOU CALL ME. BUT I'M NOT A GALLUP PERSON, NO.

27 Q. I'LL CALL YOU A PROFESSOR.

28 A. YES.

1 Q. AND SOME OF THOSE EARLIER POLLS THAT WERE DONE,  
2 YOU KNOW SOME OF THEM WERE COMMISSIONED BY THE TOBACCO  
3 INDUSTRY ITSELF, DON'T YOU?

4 A. I KNOW SOME OF THE ROPER POLLS WERE GOING ON.  
5 IF THE GALLUP YOU POLLS WERE --

6 Q. HAVE YOU HAD ACCESS TO SOME OF THE ROPER POLLS  
7 THAT WERE COMMISSIONED BY THE INDUSTRY ITSELF?

8 A. I'VE SEEN SOME POLLS, AND I'VE ATTEMPTED TO GET  
9 EVERY GALLUP POLL RELATED TO SMOKING THAT'S EVER BEEN DONE.

10 Q. WHAT ABOUT ROPERS?

11 WE'VE HAD TESTIMONY HERE THAT, FOR SURE, THE  
12 TOBACCO INDUSTRY FOR SURE PAID ROPER TO GO TO POLLING, AND  
13 WE'VE SEEN EVIDENCE OF IT HERE.

14 HAVE YOU SEEN EVIDENCE OF THAT?

15 A. I'M SURE SOME OF IT. I'M NOT SURE IF I'VE SEEN  
16 ALL OF IT.

17 Q. HAVE YOU TRIED TO GET AHOLD OF ANY OF IT?

18 A. I HAVEN'T TRIED BEYOND WHAT WAS PUBLICLY  
19 AVAILABLE.

20 Q. ANY PARTICULAR REASON?

21 A. I DIDN'T KNOW THAT I WAS MISSING INFORMATION.

22 Q. I GUESS YOU WOULDN'T KNOW UNLESS YOU ASKED FOR  
23 IT.

24 DID YOU ASK ANY OF THESE LAWYERS THAT CAME TO  
25 YOU OR TALKED TO YOU OVER THE LAST 15 YEARS TO GET YOU SOME  
26 OF THAT STUFF?

27 A. I DIDN'T KNOW I WAS MISSING ANYTHING TO ASK  
28 FOR.

1 Q. OKAY. ANYWAY, BECAUSE OF BETTER POLLING OR  
2 BETTER ASKING TECHNIQUES NOW, AS YOU SEE IT, FROM THE MID  
3 '80'S ON, IT'S KIND OF HARD FOR YOU TO ATTEMPT TO COMPARE THE  
4 KNOWLEDGE OF PEOPLE IN THE '50'S AND '60'S AND '70'S TO WHEN  
5 YOU GOT INTO IT IN THE MID '80'S, RIGHT?

6 A. IT'S NOT PERFECT. WE KNOW SOMETHING GIVEN THE  
7 GALLUP POLL TRENDS, BUT IT'S NOT A PERFECT RELATIONSHIP  
8 BETWEEN WHAT PEOPLE THOUGHT IN '85 IN THAT POLL VERSUS THE  
9 EARLIER ERA.

10 Q. OKAY. PEOPLE WHO HAVE A LOW RISK PERCEPTION --  
11 WHAT'S RISK PERCEPTION?  
12 DEFINE THAT.

13 A. PEOPLE WHO BELIEVE THE PROBABILITY OF SOME  
14 ADVERSE OUTCOME FROM SMOKING IS SMALL. IN THIS INSTANCE --

15 Q. I'M NOT EVEN TALKING ABOUT SMOKING YET. JUST  
16 GENERALLY. RISK PERCEPTION. DEFINE IT.

17 A. IT'S YOUR PROBABILISTIC BELIEF IN SOME OUTCOME.  
18 YOUR SUBJECTIVE BELIEVE.

19 Q. OKAY. THERE ARE OPTIMISM PEOPLE IN THE WORLD,  
20 PESSIMISTIC PEOPLE IN THE WORLD, IN BETWEEN PEOPLE IN THE  
21 WORLD, RIGHT?

22 A. I'M NOT SURE IF PEOPLE ALWAYS SYSTEMATICALLY  
23 ARE IN ONE DIRECTION. I KNOW THERE OPTIMISTIC PEOPLE WITH  
24 RESPECT TO CERTAIN TYPES OF THINGS.

25 Q. ALL RIGHT. I KNOW -- I DIDN'T REALLY ASK IF  
26 THERE ARE PEOPLE WHO BELIEVE OPTIMISM OUTCOME 100 PERCENT OF  
27 THE TIME, BUT LET ME DO IT THIS WAY.

28 YOU'RE CERTAINLY FAMILIAR WITH THE PHRASE, SOME

1 PEOPLE LOOK AT THE GLASS HALF EMPTY; SOME OF THE PEOPLE LOOK  
2 AT THE GLASS HALF FULL, RIGHT?

3 A. YES.

4 Q. WHAT DO YOU THINK THAT MEANS?

5 A. A CHEERY DISPOSITION.

6 IT DOESN'T NECESSARILY IMPLY ANYTHING  
7 SPECIFICALLY ABOUT, PROBABLY, PERCEPTIONS, BECAUSE THERE'S  
8 PROBABILITIES OF GOOD EVENTS AND BAD EVENTS, AND WE DON'T  
9 KNOW THAT CERTAIN KINDS OF PEOPLE OVERESTIMATE ALL  
10 PROBABILITIES OR UNDERESTIMATE ALL PROBABILITIES.

11 Q. DON'T YOU THINK HALF EMPTY AND HALF FULL JUST  
12 SORT OF REFERS TO SOME PEOPLE?

13 SOME ARE THE LITTLE MORE OPTIMISTIC AND  
14 POSITIVE KIND AND SOME PEOPLE ARE THE LITTLE MORE PESSIMISTIC  
15 AND SKEPTICAL KIND?

16 A. THERE ARE DIFFERENCE LIKE THAT.

17 Q. OKAY. ANYWAY, BACK TO RISK PERCEPTION.

18 LET'S FORGET ABOUT TOBACCO JUST FOR A LITTLE  
19 BIT.

20 AS FAR AS RISK PERCEPTION IS CONCERNED, DO YOU  
21 THINK THERE'S SOME PEOPLE THAT SORT OF ARE PRONE TO SEEING A  
22 HALF EMPTY GLASS AND A BAD OUTCOME?

23 A. I'VE NEVER SEEN ANY EVIDENCE INDICATING THAT  
24 PEOPLE -- ANY PEOPLE SYSTEMATICALLY ERR IN ONE DIRECTION OR  
25 ANOTHER.

26 Q. SEE, YOU'VE PUT SYSTEMATICALLY INTO IT, AND I  
27 DON'T KNOW WHAT THAT -- HOW THAT RESPONDS TO MY QUESTION.

28 A. WELL, IF YOU TAKE ONE RISK, SOME PEOPLE MAY

1 OVERESTIMATE IT, SOME PEOPLE MAY UNDERESTIMATE IT. I AGREE  
2 WITH THAT FOR ANY GIVEN RISK.

3 THE QUESTION IS WHETHER THEY OVERESTIMATE  
4 EVERYTHING ACROSS THE BOARD OR UNDERESTIMATE ACROSS THE  
5 BOARD.

6 Q. BUT, YOU SEE, I'M NOT TALKING ABOUT ANY ONE  
7 RISK, AND I'M ALSO NOT TALKING ABOUT 100 PERCENT OF THE TIME,  
8 100 PERCENT OF THE TIME. JUST TALKING GENERALLY.

9 CAN YOU ANSWER THE QUESTION THAT WAY?

10 A. I FORGET THE QUESTION.

11 Q. OKAY. I'LL ASK A DIFFERENT QUESTION.

12 ARE PEOPLE WHO HAVE A LOW RISK PERCEPTION MORE  
13 LIKELY TO SMOKE?

14 A. YES.

15 Q. DEFINE LOW RISK PERCEPTION?

16 A. PEOPLE WHO UNDERESTIMATE THE RISK OF SMOKING  
17 WOULD HAVE A LOW RISK PERCEPTION. THAT WOULD TEND THEM TO BE  
18 MORE LIKELY TO SMOKE THAN IF THE RISK BELIEFS WERE HIGHER.

19 Q. PEOPLE WHO HAVE A HIGH RISK PERCEPTION ARE LESS  
20 LIKELY TO SMOKE?

21 A. THAT'S CORRECT.

22 Q. SEEMS TO MAKE COMMON SENSE, RIGHT?

23 A. YES.

24 Q. OKAY. SO FOR INSTANCE, SOMEONE WHO IS  
25 ABSOLUTELY SCARED TO DEATH, SCARED, SCARED, SCARED TO DEATH  
26 TO FLY ON AN AIRPLANE WOULD PROBABLY BE LESS LIKELY TO FLY ON  
27 AN AIRPLANE THAN SOMEONE WHO WAS THE KID WHO ALWAYS WANTED TO  
28 BE A FIGHTER PILOT?

1 HOW S THAT?

2 A. SURE.

3 Q. SAME THING WITH SMOKING CIGARETTES?

4 A. THAT' S FINE WITH ME, TOO.

5 Q. OKAY. WHO' S WEINSTEIN?

6 A. HE' S A PROFESSOR AT RUTGERS.

7 Q. AND DOES HE WEIGH IN ON THE ISSUE OF RISK  
8 PERCEPTION, TOO?

9 A. I BELIEVE HE' S TESTIFIED IN ONE CASE ON RISK  
10 PERCEPTION, YES.

11 Q. DID HE WEIGH IN ON OPTIMISM BIAS, TOO?

12 A. HE' S DONE A LOT OF WORK ON THAT HYPOTHESIS,  
13 YES.

14 Q. OPTIMISM BIAS, AGAIN, IS THE THING WHERE PEOPLE  
15 ARE SAYING, WELL, THERE MAY BE A RISK, BUT IT WON' T BE ME,  
16 RIGHT?

17 A. THAT' S RIGHT.

18 Q. OKAY. YOU' VE SURVEYED PEOPLE ALL THE WAY DOWN  
19 TO THE AGE OF SIXTEEN YEARS OLD, HAVEN' T YOU?

20 A. YES.

21 Q. HOW COME?

22 A. YOU MISSTATED THAT. I DIDN' T SURVEY THEM I  
23 USED SURVEYS. THE 1995 SURVEY WENT DOWN TO AGE 16. AND  
24 AFTER THAT, IT STARTED AGE 18.

25 AND WHY THEY PICKED AGE 16 BACK IN 1985 -- THAT  
26 WAS THE LEGAL AGE FOR SMOKING. IN MOST STATES, YOU COULD  
27 SMOKE AT AGE 16 BACK IN 1985.

28 Q. WHEN YOU SAY "THEY PICKED," WHO ARE "THEY"?

1 A. AUDITS AND SURVEYS.

2 Q. AND THEY WERE COMMISSIONED BY?

3 A. THE TOBACCO INDUSTRY ATTORNEYS.

4 Q. SO WHAT ABOUT THESE 16 YEAR OLDS THAT WERE  
5 SURVEYED. HOW DID THEY COME OUT; JUST LIKE EVERYONE ELSE OR  
6 WERE THEY DIFFERENT?

7 A. NO. THE GROUP 16-TO-21-YEAR-OLDS WERE  
8 DIFFERENT. THEY HAD HIGHER RISK BELIEFS THAN OLDER PEOPLE.

9 Q. YOUNGER PEOPLE WITH MORE KNOWLEDGE AT THEIR  
10 DISPOSAL HAVE NO MORE IDEA ABOUT THE RISKS OF SMOKING THAN  
11 OLDER PEOPLE?

12 A. THE WAY I CHARACTERIZE IT; THEY WERE BROUGHT UP  
13 IN A STRONGER ANTI-SMOKING ENVIRONMENT. WE'RE THE OLDER  
14 PEOPLE. SO IN 1985, THEY HAD SOMEWHAT HIGHER RISK BELIEFS.  
15 OLDER PEOPLE OVERESTIMATED THE RISKS. BUT YOUNGER PEOPLE  
16 OVERESTIMATED THEM EVEN MORE.

17 Q. I HATE TO ASK THIS KIND OF QUESTION NOWADAYS,  
18 BUT WHAT'S AN OLDER PEOPLE?

19 A. I GUESS I QUALIFY AS ONE OF THE OLDER PEOPLE IN  
20 THE SAMPLE. SO WE BROKE IT UP INTO THREE AGE GROUPS; 16 TO  
21 21, I THINK THE SECOND ONE WAS 21 TO 45, THEN THE THIRD GROUP  
22 WAS 45 AND OLDER.

23 Q. OKAY. SO 45 AND OLDER ARE OLDER PEOPLE?

24 A. THAT'S MY RECOLLECTION --

25 Q. IT'S OKAY.

26 A. -- FROM HOW I DIVIDED THEM UP.

27 Q. LET'S PUT IT THIS WAY. MY GUY IS 56 YEARS OLD.  
28 HE'S DEFINITELY AN OLDER PEOPLE AS FAR AS THESE

1 SURVEYS ARE CONCERNED, RIGHT?

2 A. YES.

3 Q. WILL YOU TELL THE JURY, AGAIN, OLDER PEOPLE ARE  
4 LESS LIKELY TO WHAT?

5 A. WELL, THEY HAVE THE SAME RISK PERCEPTIONS AS A  
6 21-TO-45-YEAR-OLD, BUT THEY HAD LOWER RISK PERCEPTIONS THAN A  
7 16-TO-21-YEAR-OLD.

8 Q. AND WHY THE REASON THAT YOU GAVE JUST A LITTLE  
9 WHILE AGO THAT OLDER PEOPLE HAVE DIFFERENT RISK PERCEPTIONS  
10 IS WHAT?

11 A. THEY WERE BROUGHT UP IN A LESS STRONG  
12 ANTI-SMOKING ENVIRONMENT THAN YOUNGER PEOPLE.

13 Q. NOW, I WANT TO TOUCH ON ONE THING THAT WE SORT  
14 OF CROSSED ON THIS MORNING AND THEN MOVE ON.

15 WHEN YOU DID THAT CRITIQUE OR RE-ANALYSIS OR --  
16 WHAT DO YOU CALL THE THING YOU DID WHEN YOU TOOK THE  
17 '85 SURVEY AND READ IT AND WROTE A 30-PAGE REPORT ON IT?

18 WHAT DO YOU CALL THAT?

19 A. WELL, IT WAS AN EXPLORATION OF THE DATA,  
20 ESSENTIALLY, TRYING TO FIGURE OUT WHAT ITS IMPLICATIONS WERE  
21 AND A CROSS-CHECK ON THE AUDITS AND SURVEYS ANALYSIS OF THE  
22 DATA.

23 Q. THAT INFORMATION THAT I WAS TALKING TO YOU  
24 ABOUT WHEN I WAS STANDING SORT OF BY YOUR SIDE AND BEHIND  
25 YOU, DIDN'T YOU ADVISE THE LAWYERS NOT TO CIRCULATE THOSE  
26 FIGURES BEYOND THE ROOM?

27 A. YES. BECAUSE THEY WANTED THEM IN THE  
28 SITUATIONS WHERE RESULTS WERE NOT STATISTICALLY SIGNIFICANT.

1 THAT THEY WOULDN' T TAKE THEM AT FACE VALUE. SO IF THEY WERE  
2 GOING TO CIRCULATE THEM, THAT THEY SHOULD TREAT THE ONES THAT  
3 WERE NOT SIGNIFICANT APPROPRIATELY. AND IT WAS NOT CLEAR TO  
4 ME THAT LAWYERS UNDERSTOOD ALL OF THE STATISTICAL NUANCES AS  
5 TO WHAT THE RESULTS MEANT.

6 Q. YOU TOLD MR. CARLTON ON DIRECT EXAMINATION THAT  
7 YOU HAD BEEN -- I THINK THE WORDS WERE, YOU HAD BEEN MADE  
8 AWARE OF SOME OF THE TESTIMONY OF DR. BENOwitz.

9 DO YOU RECALL THAT?

10 A. I'VE READ THE TESTIMONY OF DR. BENOwitz.

11 Q. OKAY. THAT'S WHERE I WAS GOING. WHO ELSE'S?

12 A. MR. FERRY OR FERRE. AND THAT'S ALL.

13 Q. JUST THOSE TWO?

14 A. JUST THOSE TWO.

15 Q. THE SURGEON GENERAL DATA YOU RELY ON FOR SOME  
16 OF THE FIGURES THAT WENT UP ON THE BOARD WERE FROM 1989?

17 A. THAT'S CORRECT.

18 Q. AS FAR AS HOW MANY -- WHAT PERCENTAGE OF PEOPLE  
19 DIE FROM TOBACCO HERE IN AMERICA, LONG-TERM SMOKERS, HAVE  
20 THEY TALKED TO YOU AT ALL ABOUT WHAT DR. FEINGOLD HAD TO SAY  
21 HERE?

22 A. NO, THEY HAVEN' T.

23 Q. DR. STRAUSS?

24 A. NO.

25 Q. DR. DOLL?

26 A. NO.

27 Q. OOKAY. ONE WAY OR THE OTHER, IF THERE'S A  
28 DISCREPANCY BETWEEN DR. BENOwitz --

1 BECAUSE YOU MENTIONED 50 PERCENT, RIGHT?

2 A. THAT'S CORRECT.

3 Q. -- AND THE SURGEON GENERAL STUFF, AND YOU SAID  
4 THAT WAS BETWEEN 16 AND 33 PERCENT?

5 A. THAT'S CORRECT. 33 PERCENT FOR HEAVY SMOKERS.

6 Q. WHAT IF I SAID, MAYBE THE FACT THAT 1989 WAS  
7 THE SURGEON GENERAL'S REPORT BASED ON EARLIER DATA -- AND WE  
8 HAD A WHOLE BUNCH OF REALLY HIGH QUALITY EXPERTS IN HERE WHO  
9 HAVE MUCH NEWER DATA AVAILABLE -- WOULD THAT BE AN  
10 EXPLANATION FOR YOU?

11 MR. CARLTON: OBJECTION TO THE COMMENTARY.

12 THE COURT: OVERRULED.

13 THE WITNESS: I WOULDN'T THROW IN THE TOWEL SO EASILY.

14 THE INSTITUTE OF MEDICINE REPORT COMING OUT  
15 THIS YEAR PRESENTS THE RESULTS ON LIFE EXPECTANCY THAT I  
16 QUOTED.

17 ALSO, DR. DOLL IS A BRITISH RESEARCHER, AND  
18 I'VE READ HIS STUDIES. AND IN THE BRITISH STUDIES OF  
19 DOCTORS, THE SAME DOCTORS FOR WHICH THEY ANALYZED CANCER,  
20 THEY DRINK 42 DRINKS PER WEEK. THIS IS NOT THE AMERICAN  
21 POPULATION. THIS IS A VERY STRANGE POPULATION. SO I'D WANT  
22 TO SEE WHAT STUDIES THEY'RE REFERRING TO.

23 Q. SO BRITISH DOCTORS SMOKE A LOT AND DRINK A LOT,  
24 HUH?

25 A. BOTH MORE THAN WE DO, YES.

26 Q. WELL, I DON'T ACTUALLY RECALL ASKING THAT ABOUT  
27 THAT, THOUGH.

28 A. WELL, DR. DOLL, YOU MENTIONED, AND I'VE READ

1 DR. DOLL' S STUDIES.

2 Q. OKAY. HOW ABOUT THE FACT THAT I MENTIONED  
3 DRS. FEINGOLD AND STRAUSS, TOO?

4 A. I HAVEN' T READ ENOUGH OF THEIR STUDIES. I  
5 DON' T KNOW IF THEY' VE DONE STUDIES.

6 Q. HERE WAS THE QUESTION.

7 THE ONLY QUESTION WAS: I' M TELLING YOU THAT  
8 THEIR STUFF IS 11 YEARS NEWER, AT LEAST, THAN THE SURGEON  
9 GENERAL' S STUFF.

10 DOES THAT GIVE YOU SOME EXPLANATION AS TO WHY  
11 THE NUMBERS COULD BE DIFFERENT?

12 A. I DON' T KNOW THAT THEY' RE TALKING ABOUT THINGS  
13 THAT ARE NEWER. I' VE BEEN TRACKING EVERY SURGEON GENERAL' S  
14 REPORT EVERY YEAR, AND IF THE WORLD HAD CHANGED, I' M SURE THE  
15 SURGEON GENERAL WOULD HAVE TOLD US.

16 Q. AND WHEN WAS THE LAST REPORT?

17 A. LAST YEAR.

18 Q. AND DID IT DISCUSS THESE THINGS THAT WE' RE  
19 TALKING ABOUT RIGHT NOW?

20 A. IT DISCUSSED YOUTH SMOKING, THE LAST REPORT I  
21 READ.

22 Q. SO THAT' S A NO, RIGHT?

23 A. I DON' T THINK YOU GAVE THE TOTAL ANNUAL DEATH  
24 RISK, NO.

25 Q. OKAY. HERE ARE TWO LAST THINGS, I THINK. AND  
26 THE FIRST HAS TO DO WITH YOUR -- DID YOU MAKE ALL THESE?

27 A. I DIDN' T DO THE CHARTS, NO. DIDN' T DRAW THE  
28 CHARTS.

1 Q. WHAT DID YOU PROVIDE?

2 A. THE STATISTICS FOR THE VARIOUS CHARTS THAT  
3 DECIDED WHICH INFORMATION I WANTED TO PRESENT.

4 Q. SO WHAT'S THE ANSWER TO THAT QUESTION?

5 A. "WHAT IS HARMFUL"?

6 Q. YEAH.

7 A. SOMETHING THAT HARMS YOUR HEALTH. THIS WORDING  
8 IS NOT ACCIDENTAL. THERE'S A REASON FOR THIS WORDING. SO  
9 IT'S ANALOGOUS TO THE WORDING ON THE FIRST CIGARETTE WARNING  
10 LABELS APPROVED BY THE U. S. CONGRESS.

11 Q. SO WHAT IS HARMFUL IS SOMETHING THAT HARMS YOUR  
12 HEALTH?

13 A. THAT'S THE WAY I WOULD INTERPRET IT.

14 Q. SO THE DEGREE OF RISK ISN'T INVOLVED IN IT?

15 A. IT DOESN'T SPECIFY THE PARTICULAR OUTCOME, NO.

16 Q. SO IF SOMEONE WAS ANSWERING THAT QUESTION AND  
17 SOMEONE THOUGHT -- JUST AS AN EXAMPLE -- YOU KNOW WHAT, I  
18 MIGHT GET BRONCHITIS FROM THIS, OR A SHORTNESS OF BREATH FROM  
19 THIS, BUT PROBABLY WON'T GET MUCH MORE THAN THAT, THAT PERSON  
20 GOES INTO THE "YES" CATEGORY, RIGHT?

21 A. I CALL BRONCHITIS HARMFUL. WE DID STUDIES OF  
22 BRONCHITIS FOR EPI.

23 Q. I'M NOT DISAGREEING WITH THE FACT THAT IT'S  
24 HARMFUL.

25 WHAT'S THE ANSWER TO MY QUESTION?

26 A. YES.

27 Q. THANKS.

28 WHAT ARE THE ANSWERS TO THOSE QUESTIONS?

1           A.     "WHAT OTHER CAUSES OF LUNG CANCER MIGHT THERE  
2     BE?"  
3                   ENVIRONMENTAL EXPOSURES.   EXPOSURES FROM WHERE  
4     YOU WORK.

5                   "IS ONE ALONE ENOUGH?"  
6                   THAT QUESTION --

7           Q.     LET' S STAY AT THE FIRST ONE FOR JUST A BIT  
8     MORE, IF WE COULD.

9                   ESPECIALLY BACK IN THE '60' S AND '70' S -- WHAT  
10    ABOUT AIR POLLUTION?

11          A.     AIR POLLUTION CAN CAUSE LUNG CANCER.

12          Q.     WHAT ABOUT VIRUSES?

13          A.     VIRUSES.

14          Q.     YEAH?

15          A.     NOT THAT I KNOW OF.

16          Q.     WHAT ABOUT FOOD ADDITIVES?

17          A.     CAUSE LUNG CANCER?

18                   NO.

19          Q.     WHAT ABOUT OCCUPATIONAL HAZARDS?

20          A.     YES.

21          Q.     WHAT ABOUT STRESSES?

22          A.     NOT INDEPENDENTLY OF SOME OTHER RISK FACTOR.

23          Q.     OKAY.   HERE, I ' M JUST -- I ' M GOING TO STAY WITH  
24    THIS PAGE, BUT I JUST WANT YOU TO SEE WHAT I ' M READING FROM  
25    HERE.   THIS IS THE SOMETHING CALLED THE ROPER PROPOSAL FROM  
26    MAY OF 1972.

27                   YOU KNOW WHAT THAT IS, DON' T YOU?

28          A.     IT' S A PROPOSAL FROM ROPER.   I DON' T KNOW

1 ANYTHING MORE ABOUT IT.

2 Q. DIDN'T YOU KNOW THAT ROPER HAD GONE OUT AND  
3 DONE A PUBLIC OPINION SURVEY FOR THE TOBACCO INDUSTRY  
4 REGARDING WHAT PEOPLE BELIEVED CAUSED LUNG CANCER?

5 A. I DON'T BELIEVE I'VE SEEN THIS BEFORE. IF I  
6 HAVE, CORRECT ME, BUT I DON'T BELIEVE I HAVE.

7 Q. THERE'S NO WAY I CAN CORRECT YOU.  
8 SO REMEMBER, I ASKED YOU A LITTLE WHILE AGO, IF  
9 YOU ASKED THE TOBACCO INDUSTRY LAWYERS IF THEY COULD GET YOU  
10 PRIVATE POLLING, THAT WAS DONE INTERNALLY, REMEMBER THAT?

11 A. YEAH, I DO REMEMBER THAT QUESTION.

12 Q. AND YOUR ANSWER WAS, NO, BECAUSE YOU HAD  
13 ALREADY?

14 A. NO. I SAID I DIDN'T KNOW THAT I WAS MISSING  
15 SOMETHING.

16 Q. HAS ANYONE EVER TOLD YOU THAT THERE WAS A  
17 SURVEY DONE IN 1970 BY THE TOBACCO INDUSTRY TO TRY TO FIGURE  
18 OUT WHAT WAS ON PEOPLE'S MINDS AS FAR AS LUNG CANCER IS  
19 CONCERNED?

20 A. I DON'T BELIEVE THAT RINGS A BELL, NO.

21 Q. OKAY. WELL, ONE CAUSE -- I'M STILL IN THE  
22 '70'S NOW WE'RE ON 1970 OR SO. AND I PICKED THAT DATE  
23 BECAUSE THE JURY KNOWS THAT WE HAVE THIS SURVEY THAT WAS  
24 DONE.

25 A. SO DO I THINK ONE ENVIRONMENTAL -- ONE CAUSE OF  
26 LUNG CANCER IS SUFFICIENT TO GIVE YOU LUNG CANCER?

27 Q. I'M NOT ASKING YOUR OPINION, PERSONAL OPINION.  
28 ALL OF THIS STUFF THAT HAD TO DO WITH POLLING AND WHAT THE

1 PUBLIC THOUGHT, NOT YOUR PERSONAL OPINION.

2 AND SO I'M SAYING, WHAT DID THE PUBLIC THINK  
3 BACK THEN?

4 WAS ONE ENOUGH?

5 A. I DON'T KNOW WHAT THE EXACT QUESTION WAS. DID  
6 THEY SAY, ONE CAUSE ENOUGH?

7 Q. THAT'S MY QUESTION TO YOU. DO YOU THINK THE  
8 PUBLIC BELIEVED THAT ONE CAUSE WAS ENOUGH?

9 MR. CARLTON: OBJECTION. LACK OF FOUNDATION.

10 THE COURT: DO YOU HAVE ANY INFORMATION ON THAT ONE  
11 WAY OR ANOTHER?

12 THE WITNESS: I DON'T HAVE ANY INFORMATION ON THAT.

13 Q. BY MR. PIUZE: THAT'S FINE. WHAT ABOUT THIS?  
14 DO YOU KNOW IF THE PUBLIC BACK IN 1970 THOUGHT  
15 THAT CIGARETTE SMOKING MAY NOT BE THE HEALTH HAZARD THAT THE  
16 ANTI-SMOKING PEOPLE SAY IT IS BECAUSE OTHER ALTERNATIVES ARE  
17 AT LEAST AS PROBABLE?

18 A. I HAVEN'T SEEN THAT STATEMENT EITHER.

19 Q. WOULD YOU BELIEVE THAT IN 1970 --

20 MR. CARLTON: OBJECT. WOULD YOU BELIEVE.

21 THE COURT: YOU CAN ASK THE QUESTION.

22 MR. PIUZE: THANK YOU.

23 THE COURT: YOU MAY HAVE TO REPHRASE IT, THOUGH.

24 MR. PIUZE: WELL, THEN, I WON'T ASK IT, THEN. WHY  
25 DON'T I DO IT BETTER.

26 THE COURT: ALL RIGHT.

27 MR. PIUZE: THANK YOU. WITH A HINT.

28 Q. THESE WERE OPINION SURVEYS, RIGHT?

1           A.     I DON'T KNOW I HAVEN'T SEEN -- OH, MY OPINION  
2 SURVEYS, YES.

3           Q.     OKAY. NOW, HERE'S AN OPINION SURVEY FOR YOUR  
4 OPINION.

5                     DO YOU HAVE AN OPINION WHETHER OR NOT BACK IN  
6 1970, THE MAJORITY OF SMOKERS BELIEVED THAT CIGARETTES WERE  
7 ONLY ONE OF MANY CAUSES OF SMOKERS HAVING ILLNESSES?

8           A.     NO. I DON'T HAVE AN OPINION ON THAT.

9           Q.     DO YOU HAVE AN OPINION AS TO WHETHER OR NOT  
10 SMOKERS BELIEVED THAT IF THEY GOT SICK, IT WAS NOT BECAUSE OF  
11 SMOKE; IT WAS BECAUSE OF SOME BIOLOGICAL OR CONSTITUTIONAL  
12 DEFECT THAT THEY HAD?

13          A.     I DON'T HAVE AN OPINION ON THAT EITHER.

14          Q.     HAVE YOU EVER HEARD ANYONE PROPOSE THAT AS THE  
15 STATE OF PUBLIC THOUGHT BECAME IN 1970?

16          A.     NO. IT COMES UP EVEN NOW IN VARIOUS CONTEXTS,  
17 BUT I'VE NEVER HEARD PEOPLE SAY THAT WAS THE STATE OF PUBLIC  
18 THOUGHT.

19          Q.     OKAY. SMOKERS, THOUGH. EVER HEARD THAT?  
20 THAT'S WHAT SMOKERS BELIEVE?

21          A.     THAT SMOKERS COUGH?

22          Q.     SMOKERS THOUGHT.

23          A.     SMOKERS THOUGHT.

24          Q.     IN 1970, SMOKERS THOUGHT THAT IF THEY HAD MORE  
25 ILLNESSES THAN NONSMOKERS, IT WAS BECAUSE OF WHAT IS CALLED A  
26 CONSTITUTIONAL HYPOTHESIS THAT THERE WAS SOMETHING ABOUT THEM  
27 THAT, IN ADDITION TO LEADING THEM TO SMOKE, ALSO MADE THEM  
28 MORE SUSCEPTIBLE TO ILLNESS?

1 A. I HAVEN'T SEEN THAT EITHER.

2 Q. OKAY. SO HERE WE GO. NOW, WE'RE BACK TO YOUR  
3 STUFF THAT'S UP ON THE BOARD HERE.

4 WHAT'S THE ANSWER TO THIS QUESTION HERE?

5 A. THE NO'S -- "WHERE IS NO AND UNDECIDED?"  
6 THE NO'S WOULD BE THE GAP BETWEEN 100 AND THE  
7 GREEN LINE -- I THINK THAT'S GREEN.

8

9 (JUROR SNEEZES.)

10

11 MR. PIUZE: BLESS YOU.

12 THE WITNESS: AND THE UNDECIDED ARE THE GAPS BETWEEN  
13 THE GREEN AND THE BLUE.

14 Q. BY MR. PIUZE: NOW, YOU SEE HOW YOU ADDED  
15 TOGETHER GREEN AND BLUE?

16 A. I DID.

17 Q. IS THERE A WAY OF ADDING TOGETHER THE  
18 UNDECIDED'S AND THE NO'S?

19 A. FLIP IT UPSIDE DOWN.

20 Q. IS THERE ANY REASON YOU DID NOT DO THAT ON THE  
21 CHART SO WE DON'T HAVE TO FLIP IT UPSIDE DOWN?

22 A. YOU CAN READ IT THAT WAY, TOO. YOU CAN SAY, WE  
23 ALREADY DID THE YES'S. I DID YES'S BY THEMSELVES.

24 Q. RIGHT.

25 A. AND THAT INCLUDES -- THAT WOULD BE THE SAME  
26 THING AS THE FLIP SIDE OF THAT BEING NO PLUS UNDECIDED.

27 Q. THAT'S WHAT I'M ASKING YOU. WHAT'S NO PLUS  
28 UNDECIDED?

1           A.     IT'S 100 MINUS THE BLUE.  SO IT'S READING FROM  
2     THE TOP TO THE BLUE.

3           Q.     SO IF WE WANTED TO DO IT BOTH WAYS, I'D BE  
4     DOING SOMETHING LIKE THAT?

5           A.     RIGHT.

6           Q.     OKAY.  HERE.  WE'RE BACK TO THE ONE THAT HAD  
7     MICHAEL JORDAN ON IT.

8                     LET'S LOOK AT THE RED NOW  THIS IS 1950.  DO  
9     YOU SEE THAT FIRST 90?

10                    WHAT IS THAT?

11          A.     90 PERCENT.

12          Q.     90 PERCENT WHAT?

13          A.     "HAD HEARD OR READ ANYTHING RECENTLY TO THE  
14     EFFECT THAT CIGARETTE SMOKING MAY BE HARMFUL TO HEALTH."

15          Q.     THAT WAS A 1954 QUESTION, RIGHT?

16          A.     RIGHT.

17          Q.     THERE WAS NO OPINION OF ANY KIND ASKED THEN,  
18     RIGHT?

19          A.     AS FAR AS I KNOW, NO.

20          Q.     SO THIS FIRST THING, NO ONE WAS ASKED FOR AN  
21     OPINION, NO ONE GAVE AN OPINION?

22          A.     I THINK THEY MAY HAVE BEEN ASKED OTHER  
23     QUESTIONS IN '54.  I'D WANT TO SEE THE OTHER CHARTS BEFORE I  
24     RULED OUT NO OPINIONS IN '54, BECAUSE I THINK THE OTHER ONES,  
25     WE HAVE '54 AS THE STARTLING POINT.

26          Q.     WELL, THIS IS YOUR CHART, RIGHT?

27          A.     NO.  THERE'S OTHER OPINIONS ON OTHER CHARTS.

28          Q.     OKAY.  I'M COMING --

1 A. BUT THERE'S NO OPINION ON THIS CHART --

2 Q. OKAY.

3 A. -- FOR '54.

4 Q. SO JUST TO SQUARE IT AWAY, THE FIRST ONE, NO  
5 OPINIONS ASKED -- AS FAR AS WE KNOW RIGHT NOW -- YOUR CHART,  
6 NO OPINIONS ASKED, NO OPINIONS GIVEN, RIGHT?

7 A. I DON'T KNOW IF THAT'S TRUE OF THE SURVEY, BUT  
8 THAT'S TRUE OF THAT ONE CHART --

9 Q. FINE.

10 A. -- FOR '54.

11 Q. ALL RIGHT. NOW, LET'S GO TO NO. 2. IT'S  
12 ANOTHER 90 PERCENT RESPONDED YES WHEN ASKED, "DO YOU THINK  
13 SMOKING IS HARMFUL OR NOT?"

14 AND HARMFUL INCLUDED EVERYTHING FROM WHAT?

15 I KNOW ON THE BAD END, IT'S DEAD, BUT WHAT IS  
16 IT ON THE OTHER END, HARMFUL?

17 A. THERE ARE A LOT OF SERIOUS ILLNESSES YOU CAN  
18 THINK OF, BUT GENERALLY, THESE ARE QUESTIONS THAT WOULD BE  
19 OPEN TO INTERPRETATION BY THE INDIVIDUAL.

20 Q. I KNOW THERE ARE TERRIBLE ILLNESSES BETWEEN,  
21 BUT WHAT I'M ASKING FOR IS, WHERE DOES HARMFUL START?

22 DOES HARMFUL START WITH A COLD, OR DOES HARMFUL  
23 START WITH A COUGH, OR DOES HARMFUL START WITH SLIGHTLY  
24 YELLOW TEETH, OR SLIGHTLY YELLOW FINGERS FROM HOLDING A  
25 CIGARETTE?

26 A. IT'S NOT DEFINED IN THE QUESTION, BUT WE DO  
27 KNOW FROM ASKING THE SIMILAR QUESTIONS ACROSS PRODUCTS THAT,  
28 FOR CIGARETTES, MANY, MANY MORE PEOPLE RATE IT AS HARMFUL AS

1 OTHER RISKY ACTIVITIES.

2

3 (JUROR SNEEZES.)

4

5 MR. PIUZE: BLESS YOU.

6 Q. WHAT'S THE ANSWER TO THAT QUESTION?

7 A. "DID INDUSTRY KNOW CIGARETTE SMOKING WAS  
8 DANGEROUS BACK IN 1968?"

9 Q. SO THERE WILL BE NO -- I MEAN, I KNOW WE'RE ON  
10 THE SAME WAVELENGTH, BUT I'M TALKING ABOUT THE TOBACCO  
11 INDUSTRY, OBVIOUSLY.

12 YOU REALIZE THAT?

13 A. THAT'S CORRECT.

14 Q. OKAY. WHAT'S THE ANSWER TO THAT QUESTION?

15 A. I DON'T KNOW WHAT THE INDUSTRY KNEW. I DON'T  
16 KNOW WHAT WAS GOING THROUGH THEIR HEADS.

17 Q. DO YOU THINK THE TOBACCO INDUSTRY HAD LESS  
18 ACCESS TO ALL OF THIS FLOW OF INFORMATION OUT THERE THAN  
19 JOE SMITH OR SALLY JONES DID?

20 A. NO.

21 Q. OKAY. DID ANYONE GO OUT AND POLL THE TOBACCO  
22 INDUSTRY ABOUT THEIR KNOWLEDGE?

23 A. NO.

24 Q. ANYONE GO OUT AND TAKE PRIVATE POLLS OF THE  
25 TOBACCO EXECUTIVES TO FIND OUT WHAT THEY REALLY, TRULY KNOW?

26 A. NO.

27 MR. CARLTON: OBJECTION. SPECULATION.

28 THE COURT: AS FAR AS YOU KNOW

1 THE WITNESS: AS FAR AS I KNOW

2 Q. BY MR. PIUZE: SAME ANSWERS?

3 A. SAME ANSWERS.

4 Q. THE SOURCE FOR THIS PARTICULAR CHART WAS YOUR  
5 BOOK, RIGHT?

6 A. THAT'S CORRECT.

7 Q. WHEN YOU SENT THE DRAFT OF YOUR BOOK TO THE  
8 PUBLISHER, AND LONG BEFORE THIS BOOK WAS EVER PUBLISHED, YOU  
9 ALSO SENT IT TO THE LAWYERS FOR THE TOBACCO INDUSTRY, DIDN'T  
10 YOU?

11 A. I SENT IT TO ONE LAWYER AS A COURTESY SINCE SHE  
12 GAVE ME THE DATA AND TURNED ME LOOSE WITH IT, AT THE SAME  
13 TIME I MAILED IT OFF TO THE PUBLISHER.

14 Q. RIGHT. THAT'S WHAT I ASKED.

15 A. THAT'S CORRECT.

16 Q. WHAT'S THE ANSWER TO THAT QUESTION?

17 A. IT'S THE SAME ISSUE AS BEFORE. THIS IS  
18 SOMETHING A PERSON WOULD HAVE TO INTERPRET ON THEIR OWN. I  
19 DON'T KNOW HOW EACH PERSON INTERPRETS IT, BUT I DO KNOW THAT  
20 PEOPLE ARE MORE LIKELY TO LABEL CIGARETTES AS HARMFUL THAN  
21 OTHER RISKY DANGEROUS PRODUCTS.

22 Q. WHEN HAS THE CIGARETTE OR TOBACCO INDUSTRY  
23 STARTED CALLING ITS PRODUCT DANGEROUS?

24 WHEN'S THE FIRST TIME YOU EVER HEARD A TOBACCO  
25 SPOKESPERSON CALL ITS PRODUCT DANGEROUS?

26 A. WELL, WE'VE GONE ON RECORD -- THE VARIOUS  
27 HAZARD WARNINGS ON PACKS, AND THEY SAID RISKS OF VARIOUS  
28 KINDS. BUT I HAVEN'T TRACKED ANY OFFICIAL STATEMENTS BY THE

1 INDUSTRY ON DANGEROUS. I KNOW THEY'VE GOT WEBSITES NOW THAT  
2 PROVIDE THAT INFORMATION.

3 Q. HOW DO YOU KNOW THAT?

4 A. I VISITED THEM MYSELF. SO BROWN & WILLIAMSON  
5 AND PHILIP MORRIS BOTH HAVE INTERNET SITES THAT ALSO SEND YOU  
6 TO THE SURGEON GENERAL OR CDC FOR INFORMATION AS WELL.

7 Q. AND IF I WERE TO SUGGEST TO YOU THAT THEIR  
8 WEBSITES HAVE SAID DANGEROUS FOR THE LAST 12 TO 14 MONTHS OR  
9 SO, WOULD YOU BE ABLE TO AGREE OR DISAGREE WITH THAT?

10 A. I CERTAINLY BELIEVE THAT'S TRUE. I'M NOT SURE  
11 WHEN IT BEGAN, BUT I KNOW IT'S BEEN TRUE FOR AT LEAST A YEAR.

12 Q. OKAY. WHAT'S THE ANSWER TO THAT?

13 A. I'M NOT SURE WHAT THE QUESTION IS.

14 "HOW ALREADY AFFECTED" WOULD SEEM TO IMPLY NOW

15 Q. THE QUESTIONS OF SMOKERS, "DO YOU BELIEVE THAT  
16 SMOKING HAS ALREADY AFFECTED YOUR HEALTH," AND TWO-THIRDS OF  
17 THAT, ROUGHLY, SAID YES?

18 A. I'M SORRY. I WAS READING THAT AS "NOW" RATHER  
19 THAN "HOW"

20 Q. SORRY.

21 A. IT DOES NOT INDICATE HOW THAT'S CORRECT.

22 Q. WELL, DO YOU REMEMBER, I WAS ASKING YOU ABOUT  
23 MICHAEL JORDAN EARLIER TODAY?

24 A. YES.

25 Q. AND YOU AGREED WITH THE CONCEPT, OBVIOUSLY,  
26 THAT IF YOU SAID, WHO'S MICHAEL JORDAN, MORE PEOPLE WOULD  
27 KNOW WHO MICHAEL JORDAN IS THAN IF YOU SAID, WHO WAS THE LAST  
28 M/P, RIGHT?

1 A. I BELIEVE THAT'S PROBABLY TRUE.

2 Q. DO YOU KNOW WHO THE LAST M/P WAS?

3 A. SHAQUILLE O' NEIL.

4 Q. THAT'S GOOD.

5 A. SHOULD BE THE M/P THIS YEAR, BUT HE WON'T BE.

6 Q. NO COMMENT.

7 ISN'T IT -- AS THE INFORMATION GETS MORE AND  
8 MORE AND MORE CHANNELED, DOESN'T THE NUMBER OF PEOPLE WHO SAY  
9 YES GET SMALLER AND SMALLER AND SMALLER?

10 MR. CARLTON: I'LL OBJECT AS VAGUE, UNLESS THE WITNESS  
11 UNDERSTANDS IT.

12 THE COURT: OVERRULED.

13 DO YOU UNDERSTAND THE QUESTION?

14 THE WITNESS: I REALLY DON'T.

15 Q. BY MR. PIUZE: OKAY. THEN I APOLOGIZE.

16 HERE. LET'S JUST USE MICHAEL JORDAN AGAIN FOR  
17 A SECOND.

18 "WHO IS MICHAEL JORDAN," THIS MANY PEOPLE KNOW  
19 IF THE QUESTION BECOMES, DO YOU KNOW IF  
20 MICHAEL JORDAN IS THE M/P, THE NUMBER GETS SMALLER, RIGHT?

21 A. BECAUSE IT GIVES THEM THE ANSWER. YOU KNOW,  
22 ALMOST ANY -- YOU KNOW, THAT QUESTION IS -- WOULD BE CALLED A  
23 LEADING QUESTION. I MEAN, THAT'S VERY LEADING IN INFORMATION  
24 TERMS OF THE INFORMATION YOU GIVE THEM

25 Q. I'M A TRIAL LAWYER --

26 A. RIGHT.

27 Q. -- YOUR TELLING ME WHAT A LEADING QUESTION IS?  
28 AND IF YOU SAY WHAT'S HIS SCORING AVERAGE OR

1           WHAT' S HIS PLAYOFF AVERAGE, AS YOU WANT MORE AND MORE  
2           INFORMATION, THE NUMBER GOES SMALLER AND SMALLER AND SMALLER,  
3           RIGHT?

4           A.       SURE.

5           Q.       OBVIOUSLY.  OKAY.

6                        SO NOW BACK TO THIS.

7                        THIS QUESTION HERE, THAT' S A

8           WHO-IS-A-MICHAEL-JORDAN QUESTION, RIGHT?

9           A.       WELL, IF YOU BELIEVE IT' S OBVIOUS TO EVERYBODY  
10          THAT SMOKING IS DANGEROUS TO HEALTH, WHICH I THINK IS SO  
11          WIDELY KNOWN, THAT IT' S WELL-KNOWN --

12          Q.       IT DOESN' T SAY DANGEROUS, BY THE WAY.  I DON' T  
13          WANT TO QUIBBLE --

14          A.       HAS ALREADY AFFECTED YOUR HEALTH.  THAT WOULD  
15          IMPLY ADVERSELY AFFECTED YOUR HEALTH.

16          Q.       SURE.  AND SO, ALL I' M TRYING TO GET OUT --

17          A.       THIS IS NOT A MICHAEL JORDAN QUESTION, BECAUSE  
18          PEOPLE WHO HAVE BEEN -- ALREADY BEEN HARMED, EVEN THOUGH IT  
19          MAY AFFECT THEM IN THE FUTURE, WOULD NOT ANSWER YES.  THIS IS  
20          WHETHER THE HARM HAS ALREADY HAPPENED.

21          Q.       LET ME DO IT ANOTHER WAY, AND THEN I' M  
22          VIRTUALLY PROMISING I' M -- THEN I' M GOING TO BE SITTING DOWN  
23          WITHIN FIVE MINUTES.

24                        "AFFECTED YOUR HEALTH" INCLUDES EVERY CATEGORY,  
25          RIGHT?

26          A.       YES.

27          Q.       NICOTINE STAINS ON THE FINGERNAILS?

28          A.       I' M NOT SURE THAT' S A HEALTH EFFECT AS OPPOSED

1 TO A COSMETIC THING.

2 Q. OKAY. OKAY.

3 NOW, HERE'S THE LAST TOPIC I WANT TO DISCUSS  
4 WITH YOU.

5 NEXT TO LAST.

6 YOU TOLD US WHEN THERE'S A DISAGREEMENT BETWEEN  
7 TWO SOURCES, SUCH AS INDUSTRY AND GOVERNMENT OVER RISK,  
8 PEOPLE WON'T NECESSARILY GO TO GOVERNMENT AND THEY WON'T  
9 NECESSARILY GO TO INJURY, BUT WHAT YOU'RE SAYING IS, THEY'LL  
10 GO TO THE ONE WITH THE HIGHEST RISK, RIGHT?

11 A. THAT'S RIGHT.

12 Q. AND IF THERE'S A DISAGREEMENT BETWEEN ONE  
13 U. S. GOVERNMENT AGENCY AND ANOTHER, THAT WILL BE A PUSH,  
14 RIGHT?

15 A. THEY'LL AVERAGE IT.

16 Q. AVERAGE IT.

17 AND IF THERE'S A DISAGREEMENT BETWEEN ONE  
18 INDUSTRY AND -- GENERAL MOTORS AND FORD, PHILIP MORRIS AND  
19 RJR -- BUT TWO COMPONENTS OF AN INDUSTRY, THEY'LL AVERAGE  
20 THAT, TOO?

21 A. THAT'S RIGHT.

22 Q. THE TIME IT DOESN'T GET AVERAGED IS WHEN IT'S  
23 INDUSTRY AND GOVERNMENT?

24 A. THAT'S RIGHT.

25 Q. YOU'VE GIVEN US PERCENT -- AND IN THAT CASE,  
26 YOU SAY PEOPLE WILL TEND TO BELIEVE THE HIGHER RISK?

27 A. THAT'S CORRECT.

28 Q. OKAY. AND WHAT ARE THE PERCENTAGES THERE?

1           A.       SOME PEOPLE END UP RIGHT AT THE EXTREME, LIKE  
2           THEY PICK THE HIGH RISK NUMBER AS THEIR ANSWER.  BUT ALMOST  
3           EVERYBODY WAITS -- IN THIS CASE, THEY'RE WEIGHTING THE HIGH  
4           RISK ESTIMATE MUCH MORE HIGHLY THAN THE LOW RISK ESTIMATE,  
5           EVEN APART FROM THE PEOPLE WHO DIDN'T MAKE THE EXTREME.

6           Q.       I ASKED A BAD QUESTION.

7                     YOU'VE BEEN GIVING US PERCENTAGE OF PEOPLE WHO  
8           DO THIS AND PERCENTAGES OF PEOPLE WHO DO THIS, AND WE'VE  
9           HEARD THAT THROUGHOUT THE TESTIMONY, AND IN THIS CASE HERE,  
10          DIDN'T SEE A CHART WHERE YOU SAY "X" PERCENTAGE OF PEOPLE  
11          WOULD GO TO THE HIGH NUMBER, "Y" PERCENTAGE OF PEOPLE WOULD  
12          GO TO THIS NUMBER.

13                    DID YOU DO ANYTHING LIKE THAT?

14          A.       I DON'T THINK IT MADE IT INTO THAT ARTICLE.  IT  
15          WAS FANCIER STATISTICAL STUFF RATHER THAN JUST COUNSEL  
16          PEOPLE.

17          Q.       ARE YOU INTERESTED -- THIS IS THE LAST  
18          SUBJECT --

19                    ARE YOU INTERESTED IN THE INDUSTRY'S ATTEMPTS  
20          TO INFLUENCE THE RISK PERCEPTIONS WHICH YOU'VE TALKED ABOUT  
21          HERE TODAY?

22          A.       ALL I'M INTERESTED IN IS WHERE PEOPLE END UP.  
23          SO MY FOCUS IS ON THE RESULTS.  SO I CARE ABOUT PEOPLE'S RISK  
24          BELIEFS RATHER THAN TRACKING ALL THE INDUSTRY STATEMENTS AND  
25          THOSE THINGS.  SO I'M FOCUSING ON THE BOTTOM LINE.

26          Q.       HOW LONG HAVE YOU BEEN WORKING WITH THE TOBACCO  
27          INDUSTRY, PROFESSOR?

28          A.       WELL, I'VE BEEN CONSULTING ON VARIOUS THINGS.

1       STARTED IN 1987.  A COUPLE OF YEARS, I DID NOTHING.  SOME  
2       YEARS, I DID A LITTLE.  A LOT MORE RECENTLY WITH ALL THE  
3       LITIGATION.

4               Q.       SINCE 1987?

5               A.       YES.

6               Q.       DO YOU HAVE ANY INFORMATION AFTER 14 YEARS OF  
7       CONSULTING -- NOT EVERY DAY, NOT EVERY YEAR -- BUT DO YOU  
8       HAVE ANY INFORMATION AFTER ALL OF THESE YEARS OF CONSULTING  
9       ABOUT WHETHER OR NOT THE TOBACCO INDUSTRY TRIED TO INFLUENCE  
10      THE VERY RISK PERCEPTIONS THAT YOU'VE BEEN DISCUSSING WITH  
11      THE JURY?

12              A.       NO.

13              Q.       OKAY.  HERE'S SOMETHING THAT WE'VE HAD COME UP  
14      OFF AND ON DURING THE TRIAL.

15                      HAVE YOU EVER SEEN THAT?

16              A.       I SAW IT THIS MORNING WHEN I LOOKED AT YOUR  
17      CHARTS.

18              Q.       YOU LOOKED AT ALL MY CHARTS THIS MORNING?

19              A.       THERE'S ONE CHART -- THERE'S ONE CHART THAT WAS  
20      SITTING OUT IN THE OPEN.  THIS IS PART OF YOUR TIME LINE.

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

23              A.       I'VE SEEN DISCUSSIONS ABOUT THAT, YES.

24              Q.       WHERE?

25              A.       IN VARIOUS PLAINTIFFS' CASES AND VARIOUS  
26      DISCUSSIONS, I GUESS, IN THE PRESS.

27              Q.       THE TOBACCO INDUSTRY HAD ACCESS TO THE VERY  
28      BEST POLLING AVAILABLE AT ALL TIMES, DIDN'T THEY?

1 MR. CARLTON: OBJECTION. FOUNDATION.

2 THE COURT: SUSTAINED.

3 Q. BY MR. PIUZE: DO YOU KNOW IF THE TOBACCO  
4 INDUSTRY WAS ABLE TO AFFORD THE VERY BEST POLSTERS EVER SINCE  
5 1950 --

6

7 (JUROR SNEEZES.)

8

9 MR. PIUZE: BLESS YOU.

10 Q. -- 3, LET'S SAY?

11 A. A COMPANY WITH FAR LESS RESOURCES THAN THE  
12 TOBACCO INDUSTRY CAN HIRE GOOD POLSTERS.

13 Q. SO THAT'S A YES?

14 A. YES.

15 Q. OF COURSE.

16 DO YOU KNOW IF THE TOBACCO INDUSTRY  
17 SYSTEMATICALLY WENT OUT THERE AND POLLED IN ORDER TO  
18 INFLUENCE THE RISK PERCEPTION THAT YOU'VE BEEN DISCUSSING  
19 HERE TODAY?

20 MR. CARLTON: OBJECTION. ASSUMES A FACT.

21 THE COURT: DO YOU KNOW?

22 THE WITNESS: I DON'T KNOW AND I DON'T KNOW HOW  
23 POLLS INFLUENCE RISK PERCEPTIONS ANYWAY.

24 Q. BY MR. PIUZE: OKAY. SO WHEN YOU'VE SEEN THIS  
25 IN OTHER CASES, HOW HAVE YOU SEEN THAT?

26 LIKE THIS IN CROSS-EXAMINATION OR YOU'VE COME  
27 ACROSS THE DOCUMENT PREPARING FOR TRIAL OR WHAT?

28 A. I'VE JUST SEEN STATEMENTS ABOUT THAT, BUT I'VE

1 NEVER SEEN A CHART, AND NOBODY'S EVER CROSS-EXAMINED ME ABOUT  
2 THIS.

3 Q. OKAY. AND BECAUSE I SAID FIVE MINUTES, AND I'M  
4 OVER, I'M SITTING DOWN.

5 THIS IS -- WE ARE THE FIRST INDIVIDUAL SMOKER  
6 CASE -- INDIVIDUAL, MEANING A HUMAN BEING -- AGAINST THE  
7 TOBACCO -- A TOBACCO COMPANY THAT YOU'VE EVER TESTIFIED IN,  
8 RIGHT?

9 A. IT'S THE SECOND.

10 Q. SECOND. AND WHEN WAS THE FIRST?

11 A. BONNIE APOSTOLOU IN JANUARY OF THIS YEAR IN  
12 BROOKLYN, NEW YORK.

13 MR. PIUZE: OKAY. NO FURTHER QUESTIONS.

14 THE COURT: THANK YOU.

15 MR. CARLTON: EXCUSE ME, YOUR HONOR.

16 THE COURT: YES, SIR. THANK YOU.

17

18 REDIRECT EXAMINATION

19 BY MR. CARLTON:

20 Q. I JUST HAVE ONE QUESTION. MAYBE TWO.

21 YOU MENTIONED THAT YOU KNOW, BASED ON VARIOUS  
22 STUDIES, THAT FOR CIGARETTES, MANY MORE PEOPLE RATE  
23 CIGARETTES AS HARMFUL THAN THEY DO OTHER RISKY ACTIVITIES?

24 A. YES.

25 Q. WHAT DO YOU MEAN BY THAT?

26 A. WELL, IN FACT, I EVEN HAVE A SURVEY IN MY BOOK  
27 RUN BY THE BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, WHICH IS  
28 PART OF THE U.S. TREASURY, AND THEY ASK PEOPLE TO RATE HOW

1 DANGEROUS DIFFERENT ACTIVITIES WERE; IS THIS HARMFUL. AND  
2 CIGARETTES HEADED THE LIST, YOU KNOW, MUCH MORE THAN ANY OF  
3 THE OTHER THINGS THAT THEY SURVEYED PEOPLE ABOUT.

4 Q. AND I HAVE ACTUALLY ONE MORE QUESTION.

5 MR. PIUZE IN ONE OF HIS QUESTIONS TOLD YOU THAT  
6 THE PLAINTIFF IN THIS CASE IS 57 YEARS OLD AND ASKED YOU  
7 WHETHER HE WOULD QUALIFY --

8 MR. PIUZE: 56.

9 Q. BY MR. CARLTON: -- OR 56 -- AS AN OLDER PERSON  
10 FOR PLACEMENT IN ONE OF THE THREE GROUPS OF THE 1985 SURVEY.

11 DO YOU RECALL THAT?

12 A. THAT'S CORRECT.

13 Q. ALL RIGHT. WELL, LET'S SEE. IF HE'S 56 NOW,  
14 IN 1985, HE WOULD HAVE BEEN 41.

15 WHAT GROUP WOULD THAT HAVE PLACED HIM IN?

16 A. HE WOULD BE IN THE MIDDLE GROUP, SO JUST PASSED  
17 MIDDLE AGE GROUP. AND THAT GROUP HAD RISK BELIEFS  
18 CONSIDERABLY HIGHER THAN THE RISKS OF LUNG CANCER.

19 MR. LEITER: NOTHING FURTHER.

20 THE COURT: ALL RIGHT. SIR, YOU ARE EXCUSED. YOU MAY  
21 STEP DOWN.

22 THE WITNESS: THANK YOU, YOUR HONOR.

23 THE COURT: THANK YOU.

24 WELL, WHY DON'T WE TAKE OUR AFTERNOON BREAK.

25 MR. LEITER: ACTUALLY, BEFORE WE TAKE THE BREAK, COULD  
26 WE TALK TO YOU AT SIDE BAR?

27 /

28 /

1 (A CONFERENCE WAS HELD AT THE BENCH,  
2 WHICH WAS NOT REPORTED.)

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

7  
8 THE COURT: LADIES AND GENTLEMEN, THE NEXT WITNESS  
9 WILL BE AVAILABLE FOR YOU TOMORROW MORNING FIRST THING. I'M  
10 SURE YOU'RE DISAPPOINTED I'M NOT GOING TO BE ABLE TO KEEP YOU  
11 ANY LONGER. WE'LL LET YOU GO EARLY THIS EVENING.  
12 WE'LL SEE YOU TOMORROW AT 8:45 A.M  
13 DON'T DISCUSS THE CASE WITH ANYONE.  
14 THANK YOU VERY MUCH.

15  
16 (AT 2:50 P.M., AN ADJOURNMENT WAS TAKEN  
17 UNTIL THURSDAY, MAY 10, 2001 AT 9:00 A.M.)

18  
19  
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28