

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 33
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 14TH, 2001

15 APPEARANCES:

16 (FOR PLAINTIFF)

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17

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19 (FOR DEFENDANTS)

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26

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1 LOS ANGELES, CALIFORNIA; MONDAY, MAY 14TH, 2001

2 9:00 A. M

3 DEPARTMENT 308 HON. CHARLES MC COY, JUDGE

4

5

6 (THE FOLLOWING PROCEEDINGS

7 WERE HELD IN OPEN COURT IN

8 THE PRESENCE OF THE JURY.)

9

10 THE COURT: GOOD MORNING, LADIES AND

11 GENTLEMEN. GOOD TO SEE ALL OF YOU.

12 OUR JURY PANEL IS WITH US.

13 COUNSEL ARE PRESENT AS WELL.

14 GOOD MORNING, GOOD COUNSEL.

15 GOOD TO SEE YOU.

16 OUR WITNESS IS ON THE STAND. SIR,

17 YOU UNDERSTAND YOU ARE STILL UNDER OATH.

18 THE WITNESS: YES, SIR, I DO.

19 THE COURT: VERY WELL. MR. LEITER.

20 MR. LEITER: THANK YOU, YOUR HONOR.

21 THE COURT: YES, SIR.

22

23

24 JERRY WHIDBY,

25 CALLED AS A WITNESS BY THE DEFENSE, HAVING BEEN

26 PREVIOUSLY DULY SWORN, RESUMED THE WITNESS STAND

27 AND TESTIFIED FURTHER AS FOLLOWS:

28 /// /// ///

1 DIRECT EXAMINATION (RESUMED)

2

3 BY MR. LEITER:

4 Q. GOOD MORNING, EVERYBODY.

5 GOOD MORNING, DR. WHIDBY.

6 A. GOOD MORNING, SIR.

7 Q. DR. WHIDBY, PREVIOUSLY, IN OUR LAST
8 EPISODE, WE TALKED ABOUT IMPROVEMENTS IN PRODUCT
9 DEVELOPMENT IN CONVENTIONAL CIGARETTES.

10 A. YES.

11 Q. AND WHAT I'D LIKE TO DO THIS
12 MORNING IS TURN TO THE SUBJECT THAT WE TOUCHED ON
13 ONLY VERY BRIEFLY ON FRIDAY AND THAT IS PRODUCT
14 IMPROVEMENT IN THE AREA OF NON-CONVENTIONAL
15 CIGARETTES.

16 A. RIGHT.

17 Q. SO TO REFRESH OUR RECOLLECTIONS,
18 COULD YOU TELL US AGAIN WHAT NON-CONVENTIONAL
19 CIGARETTES ARE AND WHY THEY ARE DIFFERENT FROM
20 CONVENTIONAL CIGARETTES?

21 A. RIGHT. NON-CONVENTIONAL
22 CIGARETTES, IN GENERAL, ARE CIGARETTES THAT HEAT
23 TOBACCO RATHER THAN BURN TOBACCO.

24 IN CONVENTIONAL CIGARETTES, TOBACCO
25 IS SET ON FIRE, AND THE HEAT FROM THAT TOBACCO
26 THAT'S BURNED GENERATES THE HEAT THAT DRIVES OFF
27 THE SMOKE, FLAVORS AND NICOTINE FROM THE CIGARETTE.

28 WHEREAS IN A NON-CONVENTIONAL

1 CIGARETTE, EXTERNAL HEAT IS APPLIED TO THE TOBACCO
2 TO DRIVE OFF THE FLAVORS AND SMOKE.

3 Q. SO INSTEAD OF ACTUALLY BURNING THE
4 TOBACCO WITH FIRE, ESSENTIALLY, WE ARE HEATING THE
5 TOBACCO INSTEAD; IS THAT CORRECT?

6 A. THAT IS CORRECT.

7 Q. NOW, WHY WOULD THAT BE ADVANTAGEOUS
8 TO HEAT THE TOBACCO RATHER THAN BURN IT?

9 A. BEFORE I WENT TO PHILIP MORRIS,
10 THERE WAS RESEARCH THAT WENT ON WITHIN PHILIP
11 MORRIS AND OTHER PLACES THAT INDICATED THAT YOU
12 COULD DRIVE OFF SMOKE AND FLAVORS FROM TOBACCO AT
13 LOWER TEMPERATURES THAN WHAT THE TOBACCO COMBUSTED
14 AT.

15 YOU COULD DERIVE SMOKE THAT WOULD
16 HAVE LESS OF HARMFUL COMPOUNDS IN IT.

17 ADDITIONALLY, WHEN YOU HEAT TOBACCO
18 RATHER THAN BURN IT, YOU DON'T GET THE PRODUCT OF
19 COMBUSTION FROM THE TOBACCO.

20 SO IF YOU WANT TO REDUCE THE
21 HARMFUL CONSTITUENTS IN TOBACCO, THE BEST WAY
22 THOUGHT WAS TO HEAT IT RATHER THAN BURN IT.

23 Q. SO SOME OF THE HARMFUL CONSTITUENTS
24 WE STATED BY TOBACCO SMOKE ARE CREATED BY THE HIGH
25 TEMPERATURE OF THE BURNING OF THE TOBACCO; IS THAT
26 RIGHT?

27 A. THAT IS RIGHT, YES.

28 Q. SO THE CONCEPT IS IF YOU COULD DRAW

1 SMOKE AND FLAVOR FROM THE TOBACCO WITHOUT HEATING
2 IT UP QUITE SO MUCH YOU CREATE, AT LEAST IN THEORY,
3 LESS OF THE HARMFUL CONSTITUENTS; IS THAT RIGHT?

4 A. THAT IS RIGHT. THERE'S TWO THINGS
5 GOING ON HERE. THE COMBUSTION OF PRODUCTS AND
6 THOSE HARMFUL CONSTITUENTS IN THEM AND THE OTHER IS
7 IF YOU GET THE TOBACCO TOO HOT, THAT WILL DRIVE OFF
8 HARMFUL CONSTITUENTS.

9 Q. NOW, YOU MENTIONED THAT WORK ON
10 THIS STARTED BEFORE YOU GOT TO PHILIP MORRIS AND
11 YOU GOT TO PHILIP MORRIS WHEN, AGAIN?

12 A. 1972.

13 Q. SO YOU FAMILIARIZED YOURSELF,
14 OBVIOUSLY, WITH THE WORK THAT WENT BEFORE YOU IN
15 THIS AREA?

16 A. YES.

17 Q. WHEN WAS THE IDEA OF HEATING
18 TOBACCO RATHER THAN BURNING TOBACCO FIRST DISCUSSED
19 AT PHILIP MORRIS AS BEST AS YOU CAN RECONSTRUCT IT?

20 A. THE BEST I RECALL WAS IN THE
21 MID-'60'S.

22 Q. SO THE CONCEPT HAS BEEN AROUND
23 SINCE THE 1960'S?

24 A. YES, AT LEAST SINCE THEN.

25 Q. SO WHY DIDN'T WE HAVE A PRODUCT IN
26 THE 1960'S THAT HEATED TOBACCO RATHER THAN BURNED
27 IT?

28 A. THE TECHNOLOGY TO DO THAT HAS NOT

1 EXISTED UP UNTIL RECENTLY AND SO NOBODY KNEW HOW TO
2 DO IT IN A UNIT OR A CIGARETTE THAT YOU COULD SELL.

3 Q. SO THE CONCEPT HAS BEEN AROUND FOR
4 A VERY LONG TIME?

5 A. RIGHT.

6 Q. BUT HERE HASN'T BEEN THE TECHNOLOGY
7 TO ALLOW THAT CONCEPT TO WORK ITS WAY INTO A
8 NATIONAL PRODUCT; IS THAT CORRECT?

9 A. THAT IS CORRECT.

10 Q. HAS PHILIP MORRIS BEEN WORKING TO
11 DEVELOP THIS KIND OF NON-CONVENTIONAL CIGARETTE AT
12 THE SAME TIME THAT IT'S BEEN WORKING ON
13 IMPROVEMENTS IN CONVENTIONAL CIGARETTES?

14 A. YES, IT HAS.

15 Q. NOW, WE HAVE CREATED, DR. WHIDBY, A
16 TIME LINE OF PHILIP MORRIS'S EFFORTS SINCE YOU HAVE
17 BEEN AT THE COMPANY IN THE AREA OF DEVELOPMENT OF
18 NON-CONVENTIONAL CIGARETTES.

19 ARE YOU FAMILIAR WITH THIS?

20 A. YES, I AM

21 Q. LET'S MARK THIS AS DEFENSE
22 DEMONSTRATIVE, I BELIEVE, THE NEXT NUMBER IS
23 11, 014.

24

25 * (EXHIBIT 11, 104,
26 DEMONSTRATIVE, MARKED FOR I. D.)

27

28 Q BY MR. LEITER: DR. WHIDBY IF I

1 COULD ASK YOU TO COME DOWN FROM THE WITNESS STAND
2 AND GO TO THE CHART AND EXPLAIN TO US THE VARIOUS
3 CONCEPTS AND PRODUCTS THAT HAVE BEEN WORKED ON BY
4 PHILIP MORRIS OVER THE YEARS IN THIS AREA.

5 A. AS I SAID, THE CONCEPT OF HEATING
6 TOBACCO RATHER THAN BURNING IT HAS BEEN SO
7 ATTRACTIVE TO DEVELOPERS OF CIGARETTES THAT A
8 CONSIDERABLE AMOUNT OF EFFORT HAS BEEN PUT INTO
9 THIS CONCEPT OF PHILIP MORRIS OVER THE YEARS.

10 OUR FIRST CONCEPT WAS A PROJECT
11 CALLED DELTA WHICH WAS HAPPENING IN THE MID-70' S.
12 THE MATERIALS THAT WERE AVAILABLE
13 TO US AT THE TIME ALLOWED US TO BELIEVE THAT WE
14 COULD DEVELOP A CIGARETTE THAT WOULD HEAT TOBACCO
15 RATHER THAN BURNING.

16 AND I THINK WE HAVE A LARGE
17 DEMONSTRATIVE ON THIS TOO.

18 MR. LEITER: LET'S PUT UP NUMBER 11.

19 AND BY THE WAY, I THINK I SAID
20 11, 014. IT SHOULD BE 11, 104.

21 AND WHAT'S ON THE SCREEN NOW IS,
22 LET'S IDENTIFY AS 11, 105.

23 PLEASE CONTINUED, DOCTOR WHEN IT
24 BEE.

25

26 * (EXHIBIT 11, 105,
27 DEMONSTRATIVE, MARKED FOR I. D.)

28 /// /// ///

1 THE WITNESS: SORRY ABOUT THAT.

2 THE GENERAL CONCEPT HERE IS TO
3 CONTINUE A CARBON HEAT SOURCE. AND THE CARBON HEAT
4 SOURCE THAT WE WERE USING AT THE TIME WAS A
5 CHARCOAL HEAT SOURCE.

6 AND WHAT HAPPENED WAS YOU CAN LIGHT
7 THE CHARCOAL WITH A MATCH OR A LIGHTER, CAUSE THAT
8 TO BURN, AND THEN THE HEAT FROM THIS WOULD FLOW
9 BACK THROUGH THE FLAVOR GENERATOR WHICH WAS
10 TOBACCO, GENERATING SOME SMOKE, SOME FLAVORS AND
11 NICOTINE OFF THE TOBACCO, GOING THROUGH A CELLULOSE
12 ACETATE FILTER.

13 THIS WAS MADE UP OF A NON-BURNING
14 HEAVY PAPER TUBE. AND AS A RESULT, WHAT HAPPENED,
15 ON OCCASION WITH THIS UNIT, WAS THAT THE CHARCOAL
16 WOULD GET SO HOT, THAT IT WOULD BURN THROUGH THE
17 TUBE AND THE CHARCOAL WOULD FALL OUT.

18 AND THE TECHNOLOGY FOR CONTAINING
19 THAT CHARCOAL WE DIDN'T KNOW ABOUT IN THE MID-70'S.

20 SO AFTER A FAIR AMOUNT OF WORK ON
21 THE DELTA PROJECT, IT WAS TERMINATED.

22 Q. SO PHILIP MORRIS WAS NEVER ABLE TO
23 MAKE A COMMERCIAL CIGARETTE OUT OF THE DELTA
24 TECHNOLOGY; IS THAT RIGHT?

25 A. NO, SIR, WE DID NOT.

26 Q. AND AS YOU DESCRIBED, THE
27 TECHNOLOGY WASN'T THERE TO GET IT TO WORK PROPERLY?

28 A. THAT IS RIGHT.

1 Q. NOW, THIS IS IN THE MID-1970'S OR
2 SO?

3 A. CORRECT, THAT IS CORRECT, YES.

4 Q. THANK YOU.

5 WHAT HAPPENED NEXT IN TERMS OF
6 PHILIP MORRIS'S DEVELOPMENT OF NON-CONVENTIONAL
7 CIGARETTE PRODUCTS?

8 A. WELL, IN THE -- THIS WHOLE AREA, AS
9 I SAID BEFORE, HAS BEEN A CONTINUING EFFORT AT
10 PHILIP MORRIS, NOT SOMETHING WE HAVE GIVEN UP ON.

11 IN THE EARLY '80'S, GENERAL
12 ELECTRIC, I THINK, CAME OUT WITH SOMETHING CALLED
13 THE FLIP FLASH THAT WAS A SELF-CONTAINED UNIT THAT
14 WAS USED IN A CAMERA WITH A BATTERY ATTACHED TO IT
15 THAT WOULD, IF YOU PRESS THE CAMERA, IT WOULD
16 AUTOMATICALLY FLASH RATHER THAN HAVING TO HAVE A
17 BIG SET OF BATTERIES ASSOCIATED WITH IT. AND I
18 THINK IT HAD LIKE FOUR THRASH BULBS ON IT.

19 WE THOUGHT, MAYBE, THAT WAS
20 GENERATING A LIGHT AND MAYBE IT WOULD GENERATE
21 ENOUGH HEAT WHERE WE COULD AT LEAST GET ONE GOOD
22 PUFF OUT OF THE CIGARETTE AND FIND OUT IF THIS
23 CONCEPT WAS AT LEAST VIABLE WITH THIS AND IF IT
24 WORKED THEN WE COULD, PERHAPS, EMPLOY THIS TO GET
25 ADDITIONAL PUFFS OUT OF A CIGARETTE.

26 SO WE INVENTED FLASH TUBES IN THE
27 CIGARETTE TO CHECK THAT OUT.

28 IT DIDN'T GIVE OFF ENOUGH HEAT, IT

1 GAVE OFF A LOT OF LIGHT BUT IT DIDN' T WORK EITHER.

2 SO THAT CONCEPT REALLY DIDN' T FLY.

3 Q. SO THIS IS A CONCEPT, ESSENTIALLY,
4 OF USING ESSENTIALLY FLASH PHOTOGRAPHY TECHNOLOGY
5 INSIDE A CIGARETTE?

6 A. YES, YES.

7 Q. TO SEE IF YOU COULD GENERATE ENOUGH
8 HEAT TO DELIVER SMOKE FROM THE TOBACCO?

9 A. RIGHT.

10 THE NEXT THING OR ANOTHER THING
11 THAT WE WERE TRYING AT THE TIME WAS IMBEDDING
12 HEATING COILS IN TOBACCO. SO WE WOULD WIND UP
13 HEATING COILS, PUT THAT IN THE TOBACCO COLUMN AND
14 THEN HEAT THE COIL TO DRIVE OFF SMOKE.

15 THIS, OF COURSE, HAD TO BE ATTACHED
16 TO THE EXTERNAL BATTERY TO DRIVE THE HEAT, TO GET
17 THE HEAT FROM THIS.

18 AND WHAT WE FOUND WAS WE COULD GET
19 ONE PRETTY GOOD PUFF OFF OF IT BUT THE SUBSEQUENT
20 PUFFS WE WERE CONTINUING TO REHEAT THE SAME TOBACCO
21 OVER AND OVER AGAIN AND SO THE TASTE OF THE OTHER
22 PUFFS FELL OFF RAPIDLY.

23 SO IT DIDN' T -- THE SECOND, THIRD
24 PUFF, THE SECOND PUFF DIDN' T TASTE AS GOOD AS THE
25 FIRST, THE THIRD ONE DIDN' T TASTE VERY GOOD AT ALL.

26 BUT AGAIN, HERE, IT GAVE US ENOUGH
27 POSITION TO SAY, HEY, THIS IS A REASONABLE WAY
28 SO -- TO PURSUE OUR RESEARCH.

1 Q. JUST TO GET AN IDEA OF TIMING, HOW
2 LONG DID PHILIP MORRIS SPEND WORKING ON THE FLASH
3 BULB TECHNOLOGY AND THE HEATING COIL TECHNOLOGY?

4 A. WE BEGIN EXPERIMENTING WITH
5 ELECTRICALLY HEATED TOBACCO IN THE LATE '70'S,
6 EARLY '80'S, CONTINUED THAT AND WE ARE CONTINUING
7 THAT UP UNTIL THIS PRESENT TIME.

8 Q. OKAY, BUT SOME --

9 A. FOR EXAMPLE, THE FLASH BULB
10 TECHNOLOGY PROBABLY ONLY LASTED SIX OR EIGHT MONTHS
11 OR SOMETHING LIKE FOR THAT NATURE, IT WASN'T
12 SOMETHING -- SOMETHING WE TRIED, WE EXPLORED THAT.
13 WE THOUGHT ABOUT IT. WE TALKED TO THE MANUFACTURER
14 OF THE FLASH BULB TECHNOLOGY, IS THERE ANY WAY WE
15 COULD CONVERT THIS INTO HEAT RATHER THAN A LIGHT,
16 WELL, NOT AT THIS TIME.

17 Q. NOW, BEFORE WE MOVE TO 1987, I AM
18 GOING TO ASK YOU A LITTLE BIT OF HISTORICAL
19 PERSPECTIVE.

20 I TAKE IT PHILIP MORRIS WAS NOT THE
21 ONLY AMERICAN TOBACCO COMPANY WHICH HAD LEARNED THE
22 CONCEPT OF HEATING TOBACCO RATHER THAN BURNING
23 TOBACCO; IS THAT FAIR?

24 A. THAT IS CORRECT, THIS IS A WIDELY
25 KNOWN PHENOMENON.

26 Q. AND PHILIP MORRIS'S COMPETITORS
27 WERE ALSO TRYING TO DEVELOP PRODUCTS; IS THAT
28 RIGHT?

1 A. THAT IS CORRECT.

2 Q. NOW, BECAUSE YOUR COMPETITORS, YOU
3 ARE NOT SHARING WITH EACH OTHER WHAT YOU ARE DOING
4 IN THE R&D STAGE, ARE YOU?

5 A. NO, SIR, WE ARE NOT.

6 Q. WHAT HAPPENED IN 1987 WITH ONE OF
7 YOUR COMPETITORS?

8 A. IN EARLY -- ACTUALLY, MID-1987, RJ
9 REYNOLDS CAME OUT WITH A PRODUCT CALLED PREMIER.
10 AND THEY STARTED MARKETING PREMIER WHICH WAS VERY
11 SIMILAR TO THE 1976 DELTA EVEN, SIMILAR BUT NOT THE
12 SAME.

13 THEY HAD COME UP WITH A WAY OF
14 CONTAINING THE HEAT SOURCE IN THEIR CIGARETTE SO
15 THAT IT COULDN'T FALL OUT.

16 SO THAT STIMULATED, AT THE TIME, A
17 GREAT RUSH OF EFFORTS AT PHILIP MORRIS TO
18 REINVESTIGATE THE TECHNOLOGY THAT WE SAID WE
19 COULDN'T MAKE WORK.

20 Q. LET ME STOP YOU THERE FOR A SECOND.
21 IT'S 1987 AND REYNOLDS ANNOUNCES THAT IT HAS A
22 PRODUCT THAT IT IS ABOUT TO PUT INTO THE MARKET
23 WHICH HEATS RATHER THAN BURNS TOBACCO; IS THAT
24 RIGHT?

25 A. THAT IS CORRECT.

26 Q. WHAT WAS THE REACTION OF PHILIP
27 MORRIS WHEN PHILIP MORRIS HEARD THE ANNOUNCEMENT
28 THAT REYNOLDS HAD A PRODUCT LIKE THAT TO GO ON THE

1 MARKET?

2 A. IT WAS A LOT OF CONSTERNATION, A
3 LOT OF EFFORT TO GET THIS PROJECT, TO RETHINK THE
4 PROJECT, TO THINK ABOUT WAYS WE MIGHT CONTAIN OUR
5 HEAT SOURCE.

6 Q. KIND OF AN OH MY GOD REACTION?

7 A. SORT OF. IT WAS DEFINITELY AN OH
8 MY GOD REACTION.

9 Q. JUST TO JUMP AHEAD ON THE REYNOLDS
10 STORY, WHAT HAPPENED TO PREMIER?

11 A. IT WENT ON THE MARKET AND STAYED ON
12 THE MARKET FOR A WHILE. IT CARRIED ON UP UNTIL THE
13 PRESENT. THEY HAVE MODIFIED THAT PRODUCT AND WHAT
14 THEY SAY HAS MADE IMPROVEMENTS OF IT, I THINK,
15 THERE IS A PRODUCT ON THE MARKET CURRENTLY CALLED
16 ECLIPSE WHICH IS IN TEST MARKET.

17 Q. SO REYNOLDS HAD THE PREMIER BUT DID
18 THE PREMIER CAPTURE A BIG MARKET?

19 A. NO, IT DID NOT. IT DIDN'T TASTE
20 GOOD.

21 Q. IT DIDN'T TASTE GOOD AND REYNOLDS
22 IS STILL WORKING ON THE TECHNOLOGY ITSELF?

23 A. YES, I ASSUME THEY ARE CONTINUING
24 THE MARKET.

25 Q. I HAVE ASKED YOU TO GO BACK AND
26 TALK ABOUT WHAT HAPPENED AT PHILIP MORRIS AT THIS
27 POINT.

28 A. RIGHT.

1 WELL, THEY WERE CONTINUING THEIR
2 HEAT SOURCE WITH FIBERGLASS AROUND THE OUTSIDE OF
3 IT AND THAT'S SOMETHING THAT WE DECIDED WE MIGHT BE
4 ABLE TO DO BETTER THAN THAT.

5 AND WHAT WE DECIDED TO DO WAS TO
6 CONTAIN OUR HEAT SOURCE IN A LITTLE METAL
7 CONTAINER, A LITTLE ALUMINUM CONTAINER THAT WOULD
8 NOT ALLOW THE HEAT SOURCE TO FALL OUT OR BREAK OFF
9 AND FALL.

10 AND BY THE WAY, THE REASON THIS ONE
11 WAS ACTUALLY -- I MEAN, ONE OF THE REASONS THIS WAS
12 TERMINATED, AS WE SAID, WE COULDN'T HOLD IT IN.
13 BUT IT DID, THE HEAT SOURCE DID FALL OUT ON AN
14 EXECUTIVE'S SUIT ONE TIME AND BURN A HOLE ON HIS
15 PANTS. SO WE WEREN'T IN REAL GOOD FAVOR AT THE
16 TIME.

17 BUT WHAT HAPPENED WAS WE HAD
18 LEARNED OVER THE YEARS THAT THE HEAT FROM A CARBON
19 HEAT SOURCE DID GIVE SOME SMOKE AND FLAVOR OFF THE
20 TOBACCO IF YOU PUT IT THIS FAR BACK. BUT IF WE
21 COULD MOVE THE TOBACCO MATERIAL FURTHER FORWARD, WE
22 COULD GET MORE FLAVOR OFF OF IT.

23 AND BECAUSE THE HEAT SOURCE WAS
24 CONTAINED IN THE ALUMINUM CAN, IT WAS MORE MEDIATED
25 IN ITS HEAT THAN IT WAS IF IT WAS COMPLETELY
26 UNCONTAINED.

27 SO PUTTING SOME OF THE TOBACCO UP
28 FRONT GAVE US MORE FLAVOR AND MORE RESPONSE THAN

1 HAVING IT ALL THE WAY BACK.

2 BUT WE DID HAVE SOME TOBACCO BACK
3 HERE TOO. WE GOT SOME ADDITIONAL FLAVORS OFF OF
4 IT.

5 SO THAT'S OUR DELTA II CONCEPT AT
6 THE TIME.

7 AND AS IT TURNS OUT, THE WAY WE PUT
8 IT TOGETHER, THE WAY OUR THOUGHT ABOUT PUTTING IT
9 TOGETHER WAS EXTREMELY COMPLEX.

10 WE BUILT SOME MACHINERY, VERY LARGE
11 MACHINERY, TO ATTEMPT TO PUT THIS TOGETHER.

12 BUT WE NEVER WERE ABLE TO ACHIEVE
13 PRODUCTION SPEED AND ACCURACY OF THE MACHINERY. IT
14 BROKE DOWN. IT DIDN'T -- THE MATERIAL WAS -- THE
15 UNITS, A LOT OF THEM WERE DEFECTIVE, REQUIRING A
16 LOT OF HAND INSPECTION AND WE JUST WEREN'T
17 SUCCESSFUL IN BRINGING THIS TO THE POINT WE COULD
18 GET IT ON THE MARKET.

19 Q. SO EVEN DELTA II PHILIP MORRIS
20 COULDN'T GET IT ON TO THE MARKET.

21 WHAT WERE THE IMPROVEMENTS MADE BY
22 THE TIME YOU GOT TO THE SIGMA VERSION?

23 A. WELL, SIGMA YOU REMEMBER, I TALKED
24 ABOUT A PROJECT CALLED DE-NICOTINIZATION OR DE-NIC
25 ON FRIDAY WHERE WE WERE USING SUPER CRITICAL CARBON
26 DIOXIDE TO REMOVE NICOTINE FROM THE TOBACCO.

27 WELL, AT THIS TIME WE HAD THE
28 OPPORTUNITY TO USE TOBACCO IN BOTH OF THESE PLACES

1 THAT HAD NO NICOTINE IN IT.

2 SO SIGMA WAS THEN A PROJECT THAT
3 CAME OFF OF DELTA WHICH WOULD HAVE NO NICOTINE IN
4 IT. IN ADDITION TO THAT, THE CARBON HEAT SOURCES
5 AND ALL OF OUR PREVIOUS EMBODIMENT GAVE OFF A LOT
6 OF CARBON MONOXIDE.

7 CARBON MONOXIDE IS SOMETHING YOU
8 REALLY DON'T WANT TO HAVE IN YOUR CIGARETTE IF YOU
9 CAN GET AWAY FROM IT.

10 SO WE DEVELOPED SOMETHING CALLED
11 IRON NITRITE WHICH WOULD BURN WHAT, LIGHT CARBON OR
12 CHARCOAL HEAT SOURCE, YOU COULD LIGHT IT WITH A
13 MATCH BUT IT DID NOT GENERATE ANY CARBON MONOXIDE.

14 SO THIS UNIT, HEAT SOURCE CONTAINED
15 IN THE METAL CAGE, THE HEAT SOURCE IS IRON NITRITE
16 RATHER THAN CHARCOAL. THE TOBACCO DOESN'T HAVE
17 NICOTINE IN IT.

18 SO THAT WAS REALLY OUR EFFORT WITH
19 A SIGMA. THE SAME FATE HELD FOR THE SIGMA THAT WAS
20 FOR THE DELTA, UNABLE TO MAKE MACHINERY THAT WOULD
21 ALLOW US TO MAKE IT UNIFORMLY AND FANCY ENOUGH FOR
22 COMMERCIAL PURPOSES.

23 Q. SO PROGRESS IS BEING MADE BUT THE
24 COMPANY STILL ISN'T THERE YET?

25 A. THAT IS RIGHT.

26 Q. TELL US ABOUT THE BETA CONCEPT. I
27 SEE A CAR BATTERY ON THE CHART THERE. WAS PHILIP
28 MORRIS INTENDING TO SELL CAR BATTERIES IN

1 CIGARETTES AND USE THE CAR BATTERIES TO IGNITE THE
2 CIGARETTE?

3 A. NO. BUT FOR RESEARCH PURPOSES,
4 THOUGH, THE SIZE OF THE BATTERY, THE SIZE OF THE
5 UNIT REALLY DIDN'T LIMIT US IN OUR THINKING.

6 AS A MATTER OF FACT, BACK HERE YOU
7 WOULD EITHER HAVE THIS PLUGGED INTO A CAR BATTERY
8 SIZE THING OR SOME SORT OF POWER SUPPLY.

9 BUT THE BETA CONCEPT, WE WERE
10 CONTINUALLY WORKING ON ELECTRIC WAYS TO HEAT
11 TOBACCO AS WELL AS THESE OTHER WAYS, WHERE WE WOULD
12 HEAT THE TOBACCO. AND THIS CHART IS A BIT WRONG.
13 LET ME JUST SORT OF SHOW YOU, IF I CAN, WHAT WE
14 REALLY, WHAT REALLY THE BREAK THROUGH IN BETA WAS.

15 WHAT WE DID WAS TO DEVELOP HEATERS
16 THAT, THAT WOULD ALLOW US TO HEAT DISCRETE PIECES
17 OF TOBACCO RATHER THAN HEATING LIKE THIS, THE WHOLE
18 COLUMN OF TOBACCO.

19 SO THE BREAK THROUGH WAS WE
20 DEVELOPED SOME HEATER TECHNOLOGIES, SOME HEATERS
21 THAT WE WOULD PUT TOBACCO INTO VERY CLOSE CONTACT
22 WITH THESE, HEAT ENOUGH TOBACCO TO GIVE YOU ONE
23 PUFF FROM THE CIGARETTE.

24 THE NEXT TIME YOU WOULD HEAT THE
25 NEXT HEATER, GIVE YOU ANOTHER PUFF ON IT AND WHAT
26 WE FOUND THIS REALLY WAS A WAY TO PRODUCE A GOOD
27 TASTING SMOKE WITH THE HEATER.

28 WE KNEW AT THE TIME THAT WE WOULD

1 HAVE TO DEVELOP SOME PRETTY COMPLEX ELECTRONICS,
2 SOME PRETTY COMPLEX BATTERIES TO MAKE THIS THING
3 INTO ANYTHING PRACTICAL.

4 BUT IT WAS SO ATTRACTIVE AND SO
5 MUCH BETTER THAN THESE CONCEPTS THAT THESE
6 CONCEPTS, EVEN THOUGH WE HAD A REAL PROBLEM MAKING
7 THEM, WE PRETTY MUCH FOCUSED OUR EFFORTS INTO THE
8 ELECTRIC, INTO THE HEAT UNIT.

9 Q. SO PHILIP MORRIS HAD DEVELOPED AN
10 ELECTRICALLY HEATED UNIT BY 19 -- IS THAT '88?

11 A. WELL, NO, WE HAD THE CONCEPT IN,
12 REALLY THE CONCEPT, AND THE CONCEPT, AS I SAID
13 BEFORE WAS HEATING FRESH PIECES OF TOBACCO FOR
14 EVERY PUFF.

15 Q. AND THAT CONCEPT SOUNDED PROMISING?

16 A. YES.

17 Q. COULD YOU PLEASE EXPLAIN WHAT
18 HAPPENED NEXT THAT LED TO THE ACCORD IN THE LATE
19 1990'S?

20 A. ABOUT TEN YEARS AFTER THIS, AGAIN,
21 WITH THE TECHNOLOGY OR THE CONCEPT THAT WE HAD, WE
22 SET OUT TO REDUCE THE SIZE OF THE BATTERY, TO
23 DEVELOP HEATER MATERIALS THAT WOULD ALLOW US TO
24 HEAT TOBACCO THAT PEOPLE COULD SMOKE, TO DEVELOP
25 THE ELECTRONICS AND TO PACKAGE IT INTO A UNIT THAT
26 WE COULD SELL.

27 AND THE ACCORD, WHICH IS OUR
28 ELECTRICALLY HEATED UNIT WAS ACTUALLY MARKETED IN

1 THE FALL OF '98.

2 Q. SO AFTER ALL OF THESE YEARS, PHILIP
3 MORRIS DEVELOPED A NON-CONVENTIONAL CIGARETTE THAT
4 IT HAS PUT OUT INTO AT LEAST TEST MARKETS?

5 A. THAT IS CORRECT, YES.

6 Q. WE HAVE ANOTHER DEMONSTRATIVE, IF
7 YOU PUT UP NUMBER 12, AND LET'S DESIGNATE THAT
8 11, 106.

9
10 * (EXHIBIT 11, 106,
11 DEMONSTRATIVE, MARKED FOR I. D.)

12
13 Q BY MR. LEITER: IS THAT A SIDE
14 VIEW OF THE ACCORD?

15 A. YES, IT IS.

16 Q. AND IF YOU COULD EXPLAIN TO THE
17 JURY HOW THAT WORKS.

18 A. THE BATTERY HERE, WHICH IS
19 REPRESENTED BY THE CAR BATTERY OVER HERE, IS A UNIT
20 THAT WE DEVELOPED WITH A COMPANY IN JAPAN CALLED
21 SANYO, S-A-N-Y-O.

22 THE POWER, AND THESE, THE
23 INSTANTANEOUS POWER IN THIS BATTERY IS EQUIVALENT
24 TO THE CAR BATTERIES. AS A MATTER OF FACT, THIS
25 COULD CRANK THE CAR ONE TIME AND NOT ANY MORE.

26 Q. SO THE ACCORD IS THE DIRECT
27 DECEDENT OF THE BETA CONCEPT?

28 A. YES. THERE'S A MICROCHIP IN HERE

1 THAT'S EQUIVALENT TO AN OLD 386 COMPUTER, IF YOU
2 ARE AWARE OF THOSE.

3 THE HEATER BLADES, THE MATERIAL WE
4 DEVELOPED AND WE DEVELOPED IRON ALUMINIDE AS THE
5 HEATER MATERIAL, RATHER THAN USING NICHROME THAT'S
6 NORMALLY USED LIKE IN HAIR DRYERS. AND NICHROME
7 WIRE IS SOMETHING THAT WE DIDN'T BELIEVE SHOULD BE
8 IN DIRECT CONTACT WITH TOBACCO OR SOMETHING
9 INHALED.

10 WE ALSO HAD TO DEVELOP A NEW AREA
11 OF TRANSISTORS BECAUSE THE POWER WE WERE
12 TRANSFERRING FROM THIS BATTERY, FROM THIS BATTERY,
13 TO OUR HEATER BLADES AT THE LEVEL THAT NOBODY ELSE
14 HAD EVER TRANSFERRED THAT KIND OF POWER, SO
15 INSTANTANEOUSLY FROM IT.

16 SO WITH, AGAIN, THE SANYO WE
17 DEVELOPED SOMETHING CALLED FEET EFFECT TRANSISTORS.

18 WE ALSO DEVELOPED INFRARED SENSORS
19 THAT ALLOW US TO KNOW WHEN A CIGARETTE IS PUT INTO
20 THE LIGHTER AND ALSO PUFF SENSORS TO KNOW WHEN THE
21 INDIVIDUAL IS TAKING A PUFF ON THE CIGARETTE.

22 Q. NOW, BEFORE IT LOOKS TO BE
23 SOMETHING OF A HIGH TECH DEVICE, DID THE TECHNOLOGY
24 TO MAKE THIS PRODUCT EXIST 10, 15 YEARS AGO?

25 A. NO, IT DID NOT. IT DIDN'T EXIST
26 UNTIL WE ACTUALLY PUT IT ON THE MARKET. WE
27 DEVELOPED IT OURSELVES.

28 Q. DID PHILIP MORRIS AND SANYO CREATE

1 THE TECHNOLOGY FOR THIS PRODUCT?

2 A. YES, WE DID.

3 Q. DOES PHILIP MORRIS HOLD PATENTS ON
4 VARIOUS ASPECTS ON THIS PROJECT?

5 A. MANY PATENTS, YES.

6 Q. HOW DOES THE ACCORD WORK IN TERMS
7 OF THE CIGARETTE, DOES THE CIGARETTE BURN IN THE
8 ACCORD?

9 A. NO, IT DOES NOT.

10 Q. HOW DOES IT WORK?

11 A. IT WORKS BY INSERTING THE ACCORD
12 INTO THE LIGHTER, ACCORD CIGARETTE INTO THE
13 LIGHTER, AND YOU PUFF ON IT AND IT GENERATES A PUFF
14 OF SMOKE.

15 IN THE HEATER, IN THE -- JUST THIS
16 AREA OF THE HEATER, THEY HAVE EIGHT LITTLE HEATERS,
17 AND FOR EACH PUFF, AND IT GIVES OFF A TOTAL OF
18 EIGHT PUFFS FOR EACH CIGARETTE. FOR EACH PUFF AN
19 INDIVIDUAL HEATER HEATS AND THEN ANOTHER HEATER
20 WILL HEAT AND ANOTHER ONE AS YOU PUFF ON IT.

21 IF YOU DON'T WANT TO PUFF ON IT
22 IMMEDIATELY YOU CAN SET IT DOWN, WAIT AWHILE AND
23 THEN PUFF AGAIN ON.

24 Q. SO A SMOKER WHO PUTS AN ACCORD
25 CIGARETTE INTO THE HEATING DEVICE, COULD TAKE A
26 PUFF AND THEN PUT IT DOWN FOR A MONTH?

27 A. YES. THEORETICALLY. THAT'S A BIT
28 LONG, I THINK.

1 Q. DOES THE CIGARETTES CREATE ANY ASH
2 WHEN SMOKED?

3 A. NO ASHES, NO.

4 Q. IS THERE ANY OF THE SMOKE THAT'S
5 COMING OFF OF THE CIGARETTE, THE CONVENTIONAL
6 CIGARETTE?

7 A. THERE'S NO SMOKE COMING OFF THE LIT
8 END AT ALL BECAUSE IT IS NOT LIT.

9 Q. AND THE TOBACCO DOESN'T BURN AT
10 ALL?

11 A. NO.

12 Q. NOW YOU MENTIONED THE ACCORD IS
13 CURRENTLY IN TEST MARKET?

14 A. YES.

15 Q. WHAT'S THE INITIAL FEEDBACK?

16 A. THE INITIAL FEEDBACK WE ARE GETTING
17 A GREAT DEAL OF TRIAL, BY THE WAY, IT'S IN
18 RICHMOND, VIRGINIA AND OSAKA, OSAKA JAPAN. AND WE
19 ARE GETTING TRIAL ON BOTH OF THOSE. AND WE HAVE
20 GOTTEN A LOT OF FEEDBACK FROM THE CONSUMER,
21 SUGGESTING WAYS THAT WE CAN IMPROVE THE PRODUCT.
22 AND AS A MATTER OF FACT, WE ARE IN THE PROCESS OF
23 MAKING IMPROVEMENTS IN THE PRODUCT.

24 AND TO WE LAUNCH AN IMPROVED
25 PRODUCT THIS YEAR.

26 Q. SO EVEN AS WE SPEAK, PHILIP MORRIS
27 IS WORKING ON FURTHER REFINEMENTS AND IMPROVEMENTS
28 TO THE ACCORD; IS THAT RIGHT?

1 A. YES. WE THINK THIS IS STILL A VERY
2 FRUITFUL AREA, VERY PROMISING AREA AND WE CONTINUE
3 TO DEVOTE RESOURCES TOWARD IT.

4 I, PERSONALLY, AM WORKING ON IT
5 MYSELF STILL AS A CONSULTANT.

6 Q. SOMETHING YOU ARE STILL INVOLVED IN
7 TODAY?

8 A. YES.

9 Q. DID YOU BRING AN ACCORD TO SHOW THE
10 JURY?

11 A. YES, I DID.

12 Q. YOUR HONOR, IF HE MAY APPROACH THE
13 JURY AND SHOW THEM THE ACCORD.

14 THE COURT: PLEASE.

15 THE WITNESS: THANK YOU, SIR.

16 THOSE ARE THE ACCORD CIGARETTES AND
17 THIS IS THE ACCORD LIGHTER.

18 AND YOUR HONOR, I WOULDN'T SMOKE
19 THIS, OF COURSE.

20 THE COURT: THERE IS A SIGN ON THE WALL.

21 THE WITNESS: I WON'T SMOKE IT.

22 YOU PUT THE CIGARETTE INTO THE
23 LIGHTER AND THERE'S A LITTLE ICON ON THE LEFT SIDE.
24 THE BATTERY IS NOT FULLY CHARGED, BUT ON THIS SIDE
25 IS A LITTLE ICON THAT SAYS THERE'S EIGHT PUFFS
26 THERE. I DON'T KNOW IF YOU CAN SEE THAT OR NOT
27 FROM BACK THERE.

28 AND IF YOU TAKE A PUFF OFF OF IT,

1 IT IS SITTING HERE READY TO GO. IF I TOOK A PUFF
2 OFF OF IT, ONE OF THE LITTLE BARS WOULD GO DOWN
3 SAYING YOU HAVE SEVEN PUFFS LEFT AND SO FORTH AND
4 SO ON UNTIL IT WAS TOTALLY SMOKED.

5 AND YOU TAKE A PUFF, SET IT DOWN,
6 WAIT AWHILE, AND THEN -- THAT'S -- IT WORKS THAT
7 WAY.

8 I DO HAVE ONE THAT TWO PUFFS HAVE
9 BEEN TAKEN OFF OF, OUTSIDE. YOU CAN SEE, IT
10 SCORCHES THE SIDES OF THE CIGARETTE.

11 Q. IF ONE WERE TO TAKE ALL EIGHT
12 PUFFS, THERE WOULD BE EIGHT SCORCH LINES AROUND THE
13 CIRCUMFERENCE THE OF THE CIGARETTE?

14 A. EIGHT SCORCH LINES.

15 THAT'S THE HEATER I AM TALKING
16 ABOUT. WITHIN THE HEATER, YOU CAN SEE THAT THERE'S
17 EIGHT LITTLE HEATER COLS THAT ARE INDIVIDUALLY
18 HOOKED UP TO THE WIRE, THE WIRE THAT'S ON THE END.

19 AND THOSE GO ONE ON ONE SIDE OF THE
20 CIGARETTE, ONE ON THE OTHER SIDE. AND THEN BACK
21 AND FORTH SO THAT YOU ARE NOT HEATING ADJACENT
22 PIECES OF TOBACCO SO THAT YOU ARE GETTING FRESH
23 TOBACCO FOR EVERY PUFF.

24 ALSO, THIS IS THE BATTERY THAT'S
25 BEEN DEVELOPED JOINTLY BETWEEN PHILIP MORRIS AND
26 SANYO.

27 THIS IS A NICAD TECHNOLOGY AT THE
28 CURRENT TIME.

1 THERE' S NEW TECHNOLOGY OUT CALLED
2 LITHIUM ION BATTERIES THAT WE ARE HOPING TO HAVE IN
3 A VERY NEAR FUTURE VERSION OF THIS, WHICH WILL
4 REDUCE THE WEIGHT OF THIS UNIT CONSIDERABLY.

5 MOST OF THE WEIGHT, A LOT OF THE
6 VOLUME IS IN THE BATTERY AT THIS POINT.

7 AND WHAT WE WOULD LIKE TO DO IS TO
8 GET THIS MUCH SMALLER AND MUCH EASIER FOR THE
9 CONSUMER TO USE RATHER THAN HAVING TO CARRY AROUND
10 SOMETHING THAT' S BIG.

11 ALTHOUGH THERE' S ENOUGH POWER IN
12 THIS BATTERY PACK TO SMOKE ABOUT A PACK AND A HALF
13 OF CIGARETTES WITH IT.

14 SO IT IS NOT SOMETHING -- AND THIS
15 IS RECHARGEABLE, SOMETHING THAT GETS RECHARGED AND
16 YOU HAVE MORE BATTERIES, OF COURSE, THAN ONE, IF
17 YOU WOULD LIKE. AND THIS GOES BACK IN HERE LIKE
18 THAT.

19 AND THAT' S THE ACCORD.

20 Q. THANK YOU.

21 NOW, BEFORE YOU RETURN TO THE
22 WITNESS STAND, DOCTOR, ONE MORE SUBJECT.

23 DOES THE ACCORD RESULT IN LESS
24 BIOLOGICAL ACTIVITY THAN THE CONVENTIONAL
25 CIGARETTE?

26 A. YES, IT DOES.

27 Q. HAS THE REDUCTION OF SMOKE
28 CONSTITUENTS IN ACCORD BEEN COMPARED TO THAT OF

1 CONVENTIONAL CIGARETTES?

2 A. YES, IT HAS.

3 Q. ARE YOU FAMILIAR WITH THAT
4 COMPARISON.

5 LET'S PUT UP NUMBER 13 AND
6 DESIGNATE IT AS 11, 107.

7

8 * (EXHIBIT 11, 107,
9 DEMONSTRATIVE, MARKED FOR I. D.)

10

11 Q BY MR. LEITER: FIRST OF ALL,
12 DR. WHIDBY, ARE YOU FAMILIAR WITH WHAT THE SOURCE
13 IS OF THE DATA ON THAT GRAPH?

14 A. YES, I AM

15 Q. AND WHAT IS THE SOURCE?

16 A. THIS IS DATA OBTAINED FROM OUR
17 LABORATORY AT INBIFO.

18 Q. IN GERMANY?

19 A. YES.

20 Q. AND HAS THAT DATA BEEN GIVEN
21 PUBLICLY IN A CONFERENCE ATTENDED BY SCIENTISTS NOT
22 AFFILIATED WITH TOBACCO?

23 A. THAT IS RIGHT. IT WAS GIVEN TO THE
24 SOCIETY OF TOXICOLOGY CONFERENCE IN SPRING OF '98.

25 Q. COULD YOU EXPLAIN TO THE JURY WHAT
26 THAT CHART SHOWS.

27 A. RIGHT. WHAT IT TALKS ABOUT IS A
28 REDUCTION IN SOME OF THESE HARMFUL CONSTITUENTS

1 RELATIVE TO A CIGARETTE.

2 AND WHAT IT SAYS IS THAT WITH THE
3 ACCORD, THE BENZO(A)PYRENE WE TALKED ABOUT ON
4 FRIDAY HAS BEEN REDUCED BY 96 PERCENT.

5 AND IN GENERAL TERMS, WHICH YOU
6 WILL SEE IS MOST, THESE ARE ALL COMPOUNDS THAT
7 SHOULD NOT BE IN SMOKE.

8 IN GENERAL TERMS, WE HAVE
9 REDUCTIONS OF BETWEEN 78 PERCENT AND 99 PERCENT OF
10 THIS LIST OF COMPOUNDS.

11 Q. NOW, OF COURSE, AS THE JURY HAS
12 HEARD, EVEN AS WE STAND HERE TODAY, WE DON'T KNOW
13 EXACTLY WHICH CONSTITUENTS IN SMOKE ARE RESPONSIBLE
14 FOR DISEASE CAUSATION; IS THAT RIGHT?

15 A. I DO NOT KNOW.

16 Q. SO EVEN THOUGH THE ACCORD
17 DRAMATICALLY REDUCES THE DELIVERY OF THESE VARIOUS
18 CONSTITUENTS, CAN YOU TELL THE JURY THAT THE ACCORD
19 IS A SAFE CIGARETTE?

20 A. NO, I CAN'T. I CAN'T TELL YOU THAT
21 ANY ONE OF THESE OR EVEN ALL OF THESE TO ZERO,
22 WOULD THE ACCORD BE A SAFE CIGARETTE.

23 THE REASON IS I DON'T KNOW WHAT IS
24 IN SMOKE THAT'S ACTUALLY CAUSING THE DISEASES.

25 THESE ARE COMPOUNDS THAT
26 TOXICOLOGISTS BOTH WITHIN PHILIP MORRIS AND OUTSIDE
27 OF PHILIP MORRIS HAVE TOLD US THAT WE OUGHT TO TRY
28 TO ACHIEVE AS THE MAXIMUM REDUCTION WE CAN.

1 THAT' S WHAT IS DRIVING US IN THIS
2 AREA.

3 Q. DOES THE ACCORD REPRESENT THE STATE
4 OF THE ART IN REDUCING THE DELIVERY OF THOSE
5 COMPOUNDS THAT HAVE BEEN IDENTIFIED AS HARMFUL?

6 A. YES, IT DOES.

7 Q. THANK YOU, DOCTOR. YOU CAN RETURN
8 TO THE WITNESS STAND.

9 A COUPLE MORE QUESTIONS, DR. WHIDBY
10 AND I AM DONE.

11 IN YOUR OPINION, IS PHILIP MORRIS
12 CONTINUING TO WORK ON DEVELOPMENTS TO REDUCE THE
13 RISKS ASSOCIATED WITH SMOKING?

14 A. YES, WE ARE.

15 Q. AND I WOULD LIKE TO JUST ASK YOU
16 VERY BRIEFLY ABOUT A COUPLE OF EFFORTS THAT ARE
17 UNDER WAY TODAY.

18 I THINK ON FRIDAY YOU BRIEFLY
19 SHOWED THE JURY A VERSION OF THE MERIT THAT WAS
20 REFERRED TO AS FIRE SAFE. IS THAT THE RIGHT WORD?

21 A. NO, SIR, NOT FIRE SAFE. WE HOPE
22 IT' S REDUCED IN THE POTENTIAL TO START FIRES. I
23 DON' T KNOW OF ANY CIGARETTE THAT WOULD ACTUALLY BE
24 FIRE SAFE THAT BURNS TOBACCO.

25 Q. JUST LIKE WE DON' T KNOW THAT
26 THERE' S A SAFE CIGARETTE IN TERMS OF HEALTH,
27 THERE' S NOT A FIRE SAFE CIGARETTE?

28 A. THAT IS CORRECT.

1 Q. CAN YOU EXPLAIN TO THE JURY WHAT
2 PHILIP MORRIS IS DOING IN CONNECTION WITH REDUCING
3 THE, LET'S CALL IT FIRE PROPENSITY OF SMOKING. L?

4 A. RIGHT, RIGHT.

5 WHAT WE HAVE DONE IS TO WORK WITH
6 OUR PAPER SUPPLIER, SWITZER DEMAUDI, OUT OF
7 SPOTTSWOOD, NEW JERSEY WHO MANUFACTURES ALL THE
8 PAPER THAT PHILIP MORRIS USES IN THE U.S. TO PUT
9 AROUND THE TOBACCO TO DEVELOP TECHNOLOGY THAT
10 ALLOWS US TO PUT BASICALLY SPEED BUMPS, TO ADD SOME
11 ADDITIONAL PAPER, THICKNESS, TO THE CIGARETTE PAPER
12 THAT WOULD CAUSE THE CIGARETTE, WHEN IT'S BURNING
13 TO SLOW DOWN. AND IF THE CIGARETTE HAPPENS TO BE
14 LAYING ON FABRIC, TO ACTUALLY GO OUT RATHER THAN
15 STARTING A FIRE.

16 SO THAT'S THE TECHNOLOGY IN A
17 NUTSHELL THAT WE HAVE ON ALL OUR MERITS SOLD IN THE
18 U.S. AT THIS TIME. AND WE HOPE TO HAVE THAT
19 TECHNOLOGY ON ALL OF OUR CIGARETTES IN THE VERY
20 NEAR FUTURE.

21 Q. AND HAS THERE ALSO BEEN ANY RECENT
22 WORK REGARDING TOBACCO SPECIFIC NITROSAMINES?

23 A. YES, THERE HAS BEEN.

24 Q. AND FIRST, IF YOU COULD EXPLAIN
25 WHAT A TOBACCO SPECIFIC NITROSAMINE IS.

26 A. TOBACCO SPECIFIC NITROSAMINES ARE
27 HARMFUL CONSTITUENTS. THEY ARE NITROSAMINES
28 SPECIFIC TO TOBACCO. THEY ARE NOT FOUND IN OTHER

1 PRODUCT, WHEREAS I TALKED ABOUT VOLATILE
2 NITROSAMINES ON FRIDAY, THE VOLATILE NITROSAMINES
3 ARE FOUND IN OTHER THINGS BUT THE TOBACCO SPECIFIC
4 NITROSAMINES ARE NOT. SO THAT'S WHAT I MEAN BY
5 TOBACCO SPECIFIC NITROSAMINES, THEIR REACTIONS
6 AGAINST NITRATE OR OTHER MATERIALS AND ALKALOIDS IN
7 GENERAL.

8 Q. AND WHAT IS PHILIP MORRIS DOING
9 TODAY WITH REGARD TO TOBACCO SPECIFIC NITROSAMINES?

10 A. PHILIP MORRIS IS WORKING WITH THE
11 FARMERS WHO GROW TOBACCO TO MODIFY THE WAY THEY
12 CURE TOBACCO, THE WAY THEY DRY THE TOBACCO, SUCH
13 THAT, AND IT TURNS OUT, THOSE NITROSAMINES ARE
14 FORMED MOSTLY DURING THE DURING PROCESS, OR THE
15 DRYING PROCESS FOR TOBACCO.

16 SO WE ARE WORKING WITH THE FARMERS
17 TO MODIFY THEIR CURING BARNS THAT WILL MINIMIZE THE
18 AMOUNT OF NITROSAMINES ACTUALLY FORMED DURING THE
19 CURE.

20 Q. ARE YOU ALSO FAMILIAR WITH A
21 PROJECT KNOWN AS SCORE, S-C-O-R-E?

22 A. YES, I AM

23 Q. WHAT IS THAT?

24 A. IT'S A PROJECT I AM WORKING ON AND
25 WHAT WE ARE TRYING TO DO THERE IS TO WORK TO
26 MINIMIZE THE HARMFUL CONSTITUENTS IN CONVENTIONAL
27 CIGARETTES, TO USE SOME NEW TECHNOLOGY AND SOME
28 TECHNOLOGIES THAT WE ARE TRYING TO CARRY TO THE

1 ULTIMATE TO REDUCE AS BEST WE CAN, THE HARMFUL
2 CONSTITUENTS IN THE CONVENTIONAL CIGARETTE, TO HAVE
3 THAT TO BE CONSUMER ACCEPTABLE AND HOPEFULLY TO
4 HAVE THAT ON THE MARKET SOMETIME NEXT YEAR.

5 Q. AND THAT'S A PROJECT CURRENTLY
6 UNDER WAY AT PHILIP MORRIS?

7 A. THAT IS CORRECT, YES.

8 MR. LEITER: I HAVE NOTHING FURTHER,
9 THANK YOU.

10 THE COURT: OKAY, COUNSEL.

11

12 CROSS-EXAMINATION

13

14 BY MR. PIUZE:

15 Q. GOOD MORNING.

16 A. GOOD MORNING, SIR.

17 Q. DID YOU GO FISHING THIS WEEKEND?

18 A. NO, SIR. I DIDN'T MAKE IT OUT.

19 Q. HANG AROUND LOS ANGELES THIS
20 WEEKEND?

21 A. SOME, YES. WENT TO SANTA BARBARA
22 TOO.

23 Q. OKAY. DIDN'T GO BACK EAST?

24 A. NO, SIR, DID NOT.

25 Q. HOW LONG HAVE YOU BEEN RETIRED NOW,
26 PLEASE.

27 A. SINCE JUNE OF '98.

28 Q. SO WE ARE GOING ON THREE YEARS?

1 A. THIS JUNE WILL BE THREE, YES, SIR.

2 Q. BEFORE YOU RETIRED FROM PHILIP
3 MRRIS, HAD ONE OF YOUR JOBS IN THE LAST COUPLE
4 YEARS BEEN TO GO THROUGH PHILIP MRRIS' S FILES
5 IN ORDER TO FIND DOCUMENTS TO BE GIVEN OVER IN
6 LITIGATION CASES?

7 A. YES. I WAS INVOLVED WITH LOOKING
8 AT THE DOCUMENTS TO FIND OUT WHETHER OR NOT THEY
9 HAD TRADE SECRET INFORMATION AT THE TIME.

10 Q. HOW LONG HAD YOU BEEN DOING THAT,
11 IN OTHER WORDS, GOING THROUGH THE DOCUMENTS FOR
12 LITIGATION PURPOSES?

13 A. THE ONLY TIME I DID THAT, I
14 BELIEVE, WAS IN CONNECTION WITH THE STATE OF
15 MINNESOTA. STARTED DOING THAT WHEN WE WERE
16 FORMING, AS I UNDERSTAND IT, A REPOSITORY OF
17 DOCUMENTS IN THE CASE THERE.

18 AND ONE OF MY TASKS AT THE TIME WAS
19 TO LOOK AT THE DOCUMENTS TO FIND OUT WHETHER OR NOT
20 THEY CONTAINED INFORMATION THAT WOULD BE A TRADE
21 SECRET NATURE THAT, IF GIVEN TO OUR COMPETITORS
22 SUCH AS REYNOLDS, THEY COULD MAKE, COULD MAKE A
23 MARKETPLACE, I GUESS.

24 Q. WHEN DID YOU START DOING THAT?

25 A. I DON'T REMEMBER THE EXACT DATE.
26 IT WAS PROBABLY, PROBABLY '96, '97, SOMETHING LIKE
27 THAT.

28 Q. HAVE YOU GOTTEN PAID BY ANYONE

1 OTHER THAN PHILIP MRRIS SINCE 1972 FOR YOUR
2 PROFESSIONAL WORK?

3 A. NO, SIR.

4 Q. THE FACT THAT YOU HAVE BEEN RETIRED
5 OVER THE LAST THREE YEARS, DOESN'T MAKE YOU ANY
6 LESS LOYAL OF AN EX-PHILIP MRRIS EMPLOYEE, IS THAT
7 A TRUE STATEMENT?

8 A. NO. I AM AN EX-PHILIP MRRIS
9 EMPLOYEE. I BELIEVE THAT THE WORK THAT PHILIP
10 MRRIS HAS DONE, WORK THAT I HAVE DONE, HAS BEEN
11 VALUABLE WORK IN REDUCING THE HARM IN CIGARETTES
12 AND THAT'S WHAT I AM LOYAL TO IS TRYING TO REDUCE
13 THE HARMFUL CONSTITUENTS IN CIGARETTES AND REDUCE
14 THE SMOKING. THAT'S WHAT I HAVE DONE. THAT'S WHAT
15 I CONTINUE TO DO.

16 Q. HERE'S THE QUESTION I ASKED,
17 THOUGH.

18 THE FACT THAT YOU HAVE BEEN RETIRED
19 FOR THREE YEARS DOESN'T MAKE YOU ANY LESS LOYAL OF
20 AN EX-PHILIP MRRIS EMPLOYEE?

21 A. AS I SAID BEFORE, YES, I AM A LOYAL
22 EMPLOYEE TO PHILIP MRRIS WHO IS DOING THE WORK
23 THAT I DID FOR 26 YEARS AND CONTINUE TO DO.

24 Q. NOW, YOU ARE NOT A PHILIP MRRIS
25 EMPLOYEE ANY MORE, ARE YOU?

26 A. NO, SIR, I AM NOT.

27 Q. YOU HAVEN'T BEEN A PHILIP MRRIS
28 EMPLOYEE FOR ALMOST THREE YEARS?

1 A. EXCEPT IN A CONSENTING CAPACITY,
2 YES.

3 Q. YOU ARE AN INDEPENDENT CONTRACTOR
4 NOW, CORRECT?

5 A. THAT IS CORRECT, YES.

6 Q. YOU DON' T SMDKE, DO YOU?

7 A. NOT CURRENTLY.

8 Q. SINCE WHEN?

9 A. I STOPPED SMOKING WHEN MY OLDEST
10 GRANDSON WAS BORN.

11 Q. WE DON' T EXACTLY REMEMBER THAT
12 DATE.

13 A. NO, BUT I AM TRYING TO. HE' S EIGHT
14 YEARS OLD THIS AUGUST. SO I HAVE BEEN STOPPED FOR
15 ABOUT EIGHT YEARS.

16 Q. SO WHOEVER TOOK A COUPLE OF PUFFS
17 OR WHATEVER OFF OF THAT ACCORD THAT YOU SHOWED THE
18 JURY, THAT WASN' T YOU?

19 A. NO, IT WAS NOT.

20 Q. NOW, AT THE TIME THAT VARIOUS
21 STATES, INCLUDING CALIFORNIA, WERE ATTEMPTING TO
22 SAY TO THE PEOPLE OF THE STATE, YOU CAN' T SMOKE
23 INDOORS ANY MORE IN ROOMS LIKE THIS, WHAT WAS
24 PHILIP MORRIS' S POSITION ON THAT, SIR?

25 MR. LEITER: OBJECTION, SCOPE OF HIS
26 TESTIMONY, FOUNDATION.

27 THE COURT: FOUNDATION.

28 Q BY MR. PIUZE: WELL, DO YOU KNOW

1 WHAT PHILIP MRRIS' S POSITION WAS --

2 THE COURT: NO, FOUNDATION BEFORE WE --
3 FOUNDATION AS A RELEVANCE FOUNDATION IN CONNECTION
4 IN THIS WITNESS' S TESTIMONY.

5 MR. PIUZE: I AM SORRY.

6 Q BY MR. PIUZE: DID YOU HAVE
7 ANYTHING AT ALL TO DO WHEN YOU WERE AT PHILIP
8 MRRIS WTH BIOLOGICAL TESTING?

9 A. NO, I DID NOT.

10 Q. DID YOU HAVE ANYTHING AT ALL TO DO
11 AT PHILIP MRRIS WTH WHOLE PRODUCT TESTING?

12 A. NO. I HAVE A GENERAL UNDERSTANDING
13 OF WHAT WAS DONE.

14 Q. DID YOU HAVE ANYTHING AT ALL TO DO
15 WHILE YOU WERE AT PHILIP MRRIS WTH ITS POLICIES
16 TOWARDS INDOOR SMOKING?

17 A. NO.

18 Q. DID YOU EVER HAVE ANY -- DID YOU
19 GIVE ANY INPUT AT ALL TO ANYONE AT PHILIP MRRIS AS
20 TO WHAT IT SHOULD SAY OR DO IN REGARD TO STATE' S
21 EFFORTS TO KEEP CIGARETTE SMOKE OUT OF ROOMS JUST
22 LIKE THIS?

23 A. NO, I DID NOT.

24 Q. HERE' S 1605.

25 DO YOU KNOW WHAT THAT IS?

26 BY THE WAY, THIS ISN' T AN EYE TEST.
27 IF YOU WANT ME TO BRING IT UP, I CAN APPRECIATE IT.

28 A. I WOULD REALLY APPRECIATE IT. IF

1 YOU CAN MOVE THAT BOARD ALSO, IT GETS IN THE WAY.
2 Q. YOU TAKE A LOOK AT THIS. I WILL
3 GET THE BOARD DOWN.
4 A. GREAT. THANKS, SIR.
5 Q. WE ARE ONLY GOING TO TALK ABOUT THE
6 FIRST PAGE, NOTHING ELSE.
7 A. I AM READY.
8 Q. YOU KNOW WHAT THAT IS?
9 A. YES, SIR, I DO.
10 Q. WHAT IS IT?
11 A. THIS APPEARS TO BE AN ORGANIZATION
12 CHART.
13 Q. AS OF WHAT YEAR?
14 A. IT SAYS AT THE BOTTOM OCTOBER 1ST,
15 1979.
16 Q. SO THIS IS AN ORGANIZATIONAL CHART
17 FROM PHILIP MORRIS TOBACCO; RIGHT?
18 A. THAT IS CORRECT.
19 Q. AND IT'S AN ORGANIZATIONAL CHART
20 NOT OF THE WHOLE COMPANY, BUT JUST OF ONE PORTION
21 OF THE COMPANY; RIGHT?
22 A. THAT IS CORRECT.
23 Q. AND THAT PORTION OF THE COMPANY
24 WOULD BE THE RESEARCH AND DEVELOPMENT DEPARTMENT AT
25 PHILIP MORRIS?
26 A. THAT'S WHAT IT SAYS, YES.
27 Q. IS THAT WHERE YOU SPENT ALL OF YOUR
28 TIME WHILE YOU WORK AT PHILIP MORRIS?

1 A. THAT IS CORRECT.

2 Q. 26 YEARS IN THAT DEPARTMENT?

3 A. THAT IS RIGHT, AND I AM STILL IN

4 THAT DEPARTMENT AS A CONSULTANT, CONSULTING TO THAT

5 DEPARTMENT.

6 Q. DO YOU SOMETIMES CONSIDER YOURSELF

7 STILL TO BE A PHILIP MORRIS EMPLOYEE?

8 A. NO, I DO NOT.

9 Q. IN 1979, YOU HAD BEEN THERE ALREADY

10 FOR SEVEN YEARS; RIGHT?

11 A. THAT IS CORRECT, I THINK.

12 Q. NOW, DURING THE COURSE OF THIS

13 TRIAL, WE, THE LAWYERS, JUDGE, COURT PERSONNEL,

14 JURY HAVE HEARD THE NAMES OF A LOT OF PEOPLE FROM

15 THAT DEPARTMENT. AND I WOULD LIKE YOU TO DISCUSS

16 WHO WAS WHOSE BOSS, WHO WAS ON TOP, WHO WASN' T.

17 ARE YOU READY TO DO THAT?

18 A. YES, SIR.

19 Q. UP AT THE TOP HERE, IT LOOKS LIKE

20 THE HIGHEST NAME ON THE TOTEM POLE IS WAKEHAM BUT

21 IT LOOKS LIKE THE NAME CENTERED HERE IS SELIGMAN,

22 AND I DON' T PUT TOGETHER THESE KINDS OF CHARTS SO

23 WHO IS THE TOP?

24 A. I DON' T EITHER.

25 Q. WHO IS THE TOP PERSON, PLEASE.

26 A. THE PERSON THAT I KNOW OF WHO WAS

27 THE TOP OF R&D WAS DR. SELIGMAN.

28 Q. WELL, LET' S TALK ABOUT

1 DR. SELIGMAN.
2 HE WASN' T A MEDICAL DOCTOR?
3 A. NO, SIR. HE IS LIKE ME, HE IS A
4 CHEMIST.
5 Q. YOU ARE NOT JUST A CHEMIST, THOUGH,
6 YOU HAVE A SUBSPECIALTY OF CHEMISTRY, DON' T YOU?
7 A. YES, I DO.
8 Q. WHAT IS IT?
9 A. ANALYTICAL CHEMISTRY.
10 Q. AND WHAT KIND OF A SUBSPECIALTY
11 CHEMIST WAS DR. SELIGMAN?
12 A. TO THE BEST OF MY RECOLLECTION, AND
13 I CAN BE WRONG, I COULD BE WRONG ABOUT THIS, THE
14 BEST OF MY RECOLLECTION HE WAS AN ORGANIC CHEMIST.
15 Q. SAY IT AGAIN.
16 A. ORGANIC CHEMIST.
17 Q. OBVIOUSLY, YOU KNOW WILLIAM FARONE?
18 A. YES, SIR, I DO.
19 Q. YOU WORKED FOR HIM?
20 A. YES, I DID.
21 Q. HE WAS YOUR BOSS?
22 A. YES, HE WAS.
23 Q. HE IS A CHEMIST?
24 A. YES.
25 Q. WHAT KIND OF CHEMIST WAS HE?
26 A. HE IS A PHYSICAL CHEMIST, TO THE
27 BEST OF MY RECOLLECTION.
28 Q. LET' S TAKE A MINUTE HERE. HE IS A

1 PHYSICAL CHEMIST. DR. SELIGMAN WAS AN ORGANIC
2 CHEMIST. AND YOU WERE AN ANALYTICAL CHEMIST;
3 RIGHT?
4 A. RIGHT.
5 Q. YOU KNOW DR. UYDESS, DON' T YOU?
6 A. YES, I DID.
7 Q. HE WORKED FOR YOU?
8 A. YES, HE DID.
9 Q. WHAT KIND OF A DOCTOR WAS HE?
10 A. HE HAD A PH. D. IN EITHER
11 BIOCHEMISTRY, I THINK IT WAS BIOCHEMISTRY.
12 Q. AND YOU KNOW DR. MELE, DON' T YOU?
13 A. YES, SIR.
14 Q. WHAT KIND OF DOCTOR WAS HE?
15 A. I DON' T RECALL. I THINK HE WAS A
16 BIOLOGIST BUT I AM NOT SURE.
17 Q. NOT A CHEMIST?
18 A. NO, SIR, I DON' T THINK SO.
19 Q. PH. D. ?
20 A. YES, I BELIEVE SO.
21 Q. THE JURY HEARD TESTIMONY READ FROM
22 A TRIAL SOMEWHERE FROM THOSE TWO. AND ONE OF THEM
23 SAID SOMETHING LIKE THIS, GOT OFF THE PLANE
24 EXPECTING TO SEE TOBACCO ROAD OR FARM COUNTY OR
25 DIRT ROADS OR SOMETHING LIKE THAT, COULDN' T BELIEVE
26 IT. HERE WAS THIS UNBELIEVABLY MODERN, FIRST
27 CLASS, UP TO DATE, STATE OF THE ART --
28 MR. LEITER: I AM GOING TO OBJECT TO THE

1 CHARACTERIZATION OF THE TESTIMONY.

2 THE COURT: ALL RIGHT. JUST FOR
3 INTRODUCTION PURPOSES, THE JURY WILL BE THE
4 ULTIMATE JUDGE OF WHAT THAT TESTIMONY SAYS; RIGHT?

5 THANK YOU.

6 Q BY MR. PIUZE: BY THE WAY, THAT
7 WASN'T MEANT TO BE AN EXACT QUOTE. BUT ANYWAY,
8 WHEN YOU ARRIVED IN 1972, WERE YOU PRETTY DARN
9 IMPRESSED WITH THE EQUIPMENT, LABORATORY, PHYSICAL
10 SET UP THAT EXISTED THERE IN THE R&D DEPARTMENT OF
11 PHILIP MORRIS?

12 A. BY AND LARGE, YES. I WAS MOST
13 IMPRESSED WITH THE PEOPLE THERE AND THE PEOPLE'S
14 IDEAS AND THE WORK THAT THEY WERE ATTEMPTING TO DO.
15 I WAS HIRED TO ESTABLISH A LABORATORY, TO BRING
16 THAT UP TO THE STATE OF THE ART AT THE TIME.

17 Q. OKAY. WELL, I AM GOING TO GET TO
18 THE PEOPLE. WE ARE SORT OF AT THE PEOPLE.

19 LET'S STAY WITH THE PHYSICAL LAYOUT
20 A BIT.

21 YOU HAD BEEN THERE FOR A WHILE WHEN
22 DR. UDYESS CAME ON BOARD?

23 A. I BELIEVE I WAS, YES.

24 Q. HAD YOU BEEN THERE FOR A WHILE WHEN
25 DR. MELE CAME ON BOARD?

26 A. I THINK SO, YES.

27 Q. BY AROUND 1979 OR 1980 WHEN WE ARE
28 LOOKING AT THIS FLOW CHART HERE, WOULD YOU SAY THAT

1 PHILIP MORRIS' S RESEARCH AND DEVELOPMENT
2 LABORATORIES DOWN IN RICHMOND WERE FIRST CLASS, UP
3 TO DATE, BEST THERE IS STUFF?
4 A. THEY WERE VERY, VERY GOOD AT THE
5 TIME, YES.
6 Q. BEFORE I GO DOWN THIS CHART, I WANT
7 TO JUST STICK WITH CHEMISTRY A LITTLE BIT AND YOU.
8 DUGWAY, YOU MENTIONED YOU WERE IN
9 DUGWAY?
10 A. YES, SIR, I WAS.
11 Q. DUGWAY IS WHERE, UTAH?
12 A. YES, SIR.
13 Q. AND THAT' S WHERE THE UNITED STATES
14 KEEPS SOME OF ITS NERVE GAS?
15 A. THEY MAY HAVE SOME THERE, BUT MOST
16 OF THEM, UNLESS THEY MOVED THEM, IT' S BEEN A LONG
17 TIME SINCE I WAS THERE, BUT WHEN I WAS THERE, THEY
18 WERE NOT ACTUALLY KEPT ON DUGWAY RESERVATION BUT ON
19 A CLOSE BY PLACE TO THE ARMY DEPOT.
20 Q. DID YOU WORK AT THE DUGWAY PROVING
21 GROUNDS?
22 A. YES, I DID.
23 Q. AND THE DUGWAY PROVING GROUNDS IS
24 WHERE THE UNITED STATES MILITARY TESTED STUFF LIKE
25 NERVE GAS; RIGHT?
26 A. THEY DID, YES.
27 Q. BIOLOGICAL WEAPONS?
28 THE COURT: COUNSEL, UNLESS THERE IS SOME

1 RELEVANCE.

2 MR. PIUZE: I THINK THERE MAY BE.

3 THE COURT: ALL RIGHT.

4 MR. PIUZE: I WILL TELL YOU WHAT, LET ME
5 JUMP 16 QUESTIONS IN BETWEEN AND JUST GET TO IT.

6 Q BY MR. PIUZE: WERE YOU EVER
7 INVOLVED, WHEN YOU WERE AT DUGWAY, WITH CLAIMS THAT
8 WERE BEING MADE BY THE SURROUNDING RESIDENTS
9 AGAINST THE PROVING GROUNDS OR THE STORAGE AREA?

10 A. NO, I WAS NOT.

11 MR. LEITER: I AM GOING TO OBJECT TO
12 RELEVANCE GROUNDS.

13 THE COURT: I WILL LET HIM ANSWER AND I
14 WILL INSTRUCT THE JURY IN A SECOND.

15 WERE YOU, SIR?

16 THE WITNESS: NO, I WAS NOT.

17 Q BY MR. PIUZE: WAS YOUR EXPERIENCE
18 AT DUGWAY ONE OF THE THINGS THAT YOU STRESSED WHEN
19 YOU WENT TO WORK AT PHILIP MORRIS?

20 THE COURT: LADIES AND GENTLEMEN,
21 APPARENTLY THE NERVE GAS THING HAS NOTHING TO DO
22 WITH THIS CASE. I AM SURE YOU WILL COMPLETELY
23 DISREGARD IT.

24 MR. PIUZE: DO YOU WANT ME TO GO TOTALLY
25 AWAY FROM THAT?

26 THE COURT: UNLESS YOU HAVE SOME OTHER
27 CONNECTION.

28 MR. PIUZE: WELL, THAT WAS THE QUESTION I

1 WAS ASKING.

2 MR. LEITER: I AM GOING TO OBJECT,
3 RELEVANCE AND ALSO VAGUE.

4 THE COURT: I WILL LET HIM ASK IT BUT THE
5 DEEPER WE GET INTO IT -- GO AHEAD.

6 THE WITNESS: WHAT WAS THE QUESTION,
7 PLEASE?

8 Q BY MR. PIUZE: WHEN YOU WENT TO
9 WORK AT PHILIP MORRIS, WAS ONE -- WHEN YOU WERE
10 SEEKING A JOB AT PHILIP MORRIS, WAS ONE OF THE JOB
11 QUALIFICATIONS THAT YOU STRESSED THE THING THAT YOU
12 WORKED AROUND TOXINS AND HIGHLY POISONOUS
13 MATERIALS?

14 MR. LEITER: OBJECTION, RELEVANCE,
15 ARGUMENTATIVE.

16 THE COURT: OVERRULED.

17 THE WITNESS: I DON'T RECALL MENTIONING
18 IT AT ALL AT THE TIME.

19 Q BY MR. PIUZE: HOW DID YOU DECIDE
20 TO GO TO WORK FOR PHILIP MORRIS?

21 A. AS I SAID BEFORE, AFTER THE
22 INTERVIEW, THE THING THAT IMPRESSED ME MOST ABOUT
23 PHILIP MORRIS WAS THE PEOPLE I WOULD BE WORKING
24 WITH AT PHILIP MORRIS AND THE OPPORTUNITY TO START
25 A BRAND NEW LAB AND HAVE THAT RUNNING.

26 Q. LET'S GO BEFORE THAT, THOUGH.

27 BEFORE THE INTERVIEW, THERE WAS A
28 REASON THERE WAS AN INTERVIEW?

1 A. YES.

2 Q. DID YOU SEEK THEM OUT, DID THEY
3 SEEK YOU OUT?

4 A. I AM TRYING TO RECALL. I BELIEVE I
5 SOUGHT THEM OUT. I HAD A FRIEND WHO WAS WORKING AT
6 PHILIP MORRIS AND HE WAS THERE AND LET ME KNOW THAT
7 THEY HAD SOME OPENINGS. AND I TALKED TO HIM AND I
8 BELIEVE I WAS GOING THROUGH RICHMOND TO A TECHNICAL
9 MEETING AND STOPPED BY TO HAVE AN INTERVIEW WITH
10 THEM AND THAT WAS IT.

11 Q. OKAY.

12 BACK TO THE CHART NOW SO HERE'S
13 DR. SELIGMAN. YOU TOLD US HE WAS A CHEMIST AND YOU
14 TOLD US THAT AT LEAST AS OF 1979, HE WAS THE TOP
15 MAN; RIGHT?

16 A. THAT'S MY RECOLLECTION, YES.

17 Q. TOP PERSON, EXCUSE ME.

18 WHAT ABOUT WAKEHAM, WHAT'S THIS
19 PERSON'S FIRST NAME?

20 A. HIS FIRST NAME IS HELMUT WAKEHAM,
21 HELMUT IS HIS FIRST NAME.

22 Q. WHAT WAS -- WAS HE A DOCTOR?

23 A. YES, SIR.

24 Q. OF WHAT?

25 A. DR. WAKEHAM, TO BE HONEST WITH YOU,
26 I CAN'T RECALL WHAT HIS AREA OF DISCIPLINE WAS. I
27 DO BELIEVE HE WAS A CHEMIST BUT I DON'T KNOW WHAT
28 AREA OF CHEMISTRY.

1 Q. IT SAYS UP THERE, CORPORATE
2 VICE-PRESIDENT AND VICE-PRESIDENT OF SCIENCE AND
3 TECHNOLOGY. DO YOU SEE THAT?
4 A. YES, SIR, I DO.
5 Q. CAN YOU TELL US VERY BRIEFLY WHAT'S
6 THE DIFFERENCE BETWEEN JUST A VICE-PRESIDENT AND A
7 CORPORATE VICE-PRESIDENT?
8 A. NOT REALLY. I CAN'T TELL YOU THAT.
9 I COULD SPECULATE WHAT IT MIGHT BE.
10 Q. DON'T, PLEASE.
11 DID YOU EVER GET TO BE A
12 VICE-PRESIDENT?
13 A. NO, SIR, I DID NOT.
14 Q. WHAT WAS HORACE WAKEHAM'S JOB?
15 A. HELMUT WAKEHAM
16 Q. I APOLOGIZE. I WAS THINKING OF MR.
17 KORNEGAY.
18 WHAT WAS HELMUT WAKEHAM'S JOB?
19 A. TO THE BEST OF MY KNOWLEDGE, I
20 DON'T KNOW WHAT IT WAS, OTHER THAN, AS IT SAYS
21 THERE. THAT'S IN 1979.
22 Q. OKAY. HAD YOU EVER WORKED FOR HIM?
23 A. NOT DIRECTLY, NO.
24 Q. HAD YOU EVER WORKED FOR HIM?
25 A. NO, NOT DIRECTLY.
26 Q. LET'S COME ON DOWN HERE.
27 COMING ON A STRAIGHT LINE, RIGHT
28 OUT FROM UNDERNEATH MR. SELIGMAN, THERE ARE THESE

1 ONE, TWO, THREE, FOUR PLACES.
2 DO YOU SEE THAT?
3 A. I DO SEE IT, YES.
4 Q. IT'S TOO SMALL TO READ RIGHT NOW
5 A. I CAN'T READ ANY OF IT.
6 Q. I AM GOING TO BLOW THEM UP ONE AT A
7 TIME.
8 BUT THESE ARE CALLED DIRECTORATES
9 DOWN HERE?
10 A. YES, THEY ARE.
11 Q. WHAT'S A DIRECTORATE?
12 A. EXCUSE ME. A DIRECTORATE IS A
13 GROUP THAT HAS, OR IS AN ORGANIZATION THAT HAS
14 MANAGERIAL ROOTS UNDER IT SO A DIRECTOR LEVEL
15 POSITION WOULD HAVE VARIOUS MANAGERIAL ROOTS UNDER
16 IT.
17 FOR EXAMPLE, IT MIGHT HAVE A
18 BIOLOGY GROUP. IT MIGHT HAVE A CHEMISTRY GROUP.
19 IT MIGHT HAVE A PHYSICS GROUP WITHIN THAT, JUST AS
20 IN GENERAL.
21 Q. YOU, AT ONE POINT, BECAME A
22 DIRECTOR, DIDN'T YOU?
23 A. YES, I DID.
24 Q. REMIND US, WHAT YEAR, PLEASE.
25 A. IN 1991, I WAS MADE DIRECTOR OF
26 BASIC RESEARCH. I BELIEVE THAT'S RIGHT.
27 Q. ANYWAY, THERE ARE THESE FOUR
28 DIRECTORATES DOWN HERE. LET'S JUST TAKE A LOOK AT

1 THEM

2 I' D LIKE YOU TO BE ABLE TO TELL THE

3 JURY, IF YOU CAN, WHAT WAS BEING DONE WITH THESE

4 PLACES.

5 ARE YOU READY?

6 AS OF 1979, SO THE FIRST ONE, WAY

7 OVER TO THE LEFT, IT SAYS DIRECTOR OF DEVELOPMENT,

8 AND IT' S A MAN NAMED GANNON; RIGHT?

9 A. YES.

10 Q. SEE THAT ASTERISKS NEXT TO HIS

11 NAME?

12 A. YES.

13 Q. DOES THAT MEAN THAT THIS PARTICULAR

14 PERSON WAS OR WAS NOT A PH. D. AND THEREFORE A

15 DOCTOR?

16 A. I BELIEVE IT' S -- THAT

17 REPRESENTATION MEANS THAT HE IS A PH. D. , YES.

18 Q. SO AS WE LOOK AT THIS CHART, IF WE

19 SEE ASTERISKS THAT MEANS PH. D.

20 A. CORRECT.

21 Q. SO ANYWAY, DID YOU EVER WORK OVER

22 IN THE DEVELOPMENT DEPARTMENT?

23 A. WORKED CLOSELY WITH THEM MANY

24 TIMES.

25 Q. SO THAT' S A NO AGAIN, YOU DIDN' T

26 WORK IN THE DEPARTMENT?

27 A. I WAS NEVER ASSIGNED TO THE

28 DEVELOPMENT DEPARTMENT.

1 Q. OKAY. AND DO YOU SEE THOSE
2 SUBGROUPS THERE, FLAVOR, NEW PRODUCTS, TOBACCO
3 MATERIALS, TOBACCO SERVICES?

4 A. I CAN'T READ IT VERY WELL, BUT I
5 BELIEVE IT SAYS TOBACCO SERVICES, YES.

6 Q. LET'S JUST TALK ABOUT FLAVOR
7 DEVELOPMENT.

8 DO YOU KNOW WHAT THAT IS?

9 A. YES.

10 Q. WHAT IS IT?

11 A. IT'S THE EFFORT, THAT GROUP PUTS
12 EFFORT INTO DEVELOPING FLAVORS FOR CIGARETTES.

13 Q. YOU BELIEVE, PERSONALLY, THAT
14 FLAVOR IS ONE OF THE THINGS THAT SELLS CIGARETTES;
15 RIGHT?

16 A. I BELIEVE IT'S A PORTION OF WHAT
17 THE CONSUMER, THIS IS -- MY GENERAL UNDERSTANDING
18 IS THIS IS A PORTION OF WHAT THE CONSUMER WILL --
19 LOOKS FOR IN A CIGARETTE, THE FLAVOR OF A MARLBORO,
20 FOR EXAMPLE, THE FLAVOR OF A MERIT.

21 Q. LET ME JUST DO A COUPLE
22 PRELIMINARIES.

23 YOU ARE NOT A MARKETING EXPERT,
24 OBVIOUSLY?

25 A. NO, SIR.

26 Q. BUT YOU DO HAVE SOME SORT OF
27 GENERAL UNDERSTANDINGS OF YOUR OWN ABOUT WHAT YOU
28 THINK SELLS CIGARETTES; RIGHT?

1 A. VERY GENERAL.

2 Q. AND WHEN YOU DISCUSS WHAT SELLS
3 CIGARETTES, YOU ARE NOT NECESSARILY TALKING FOR
4 PHILIP MORRIS, YOU ARE TALKING FROM YOUR
5 PERSPECTIVE; RIGHT?

6 A. I AM TALKING FROM MY PERSPECTIVE.

7 Q. THIS IS YOU TALKING, NOT PHILIP
8 MORRIS; CORRECT?

9 A. THAT IS CORRECT.

10 Q. OBVIOUSLY, ONE OF THE THINGS THAT
11 SELLS CIGARETTES IS THE NICOTINE, YOU AGREE WITH
12 THAT?

13 A. I AM NOT SURE I REALLY DO. I THINK
14 NICOTINE, IN GENERAL, IS SOMETHING THAT IS IN
15 CIGARETTES THAT IS AN IMPORTANT PART OF THE
16 CIGARETTE.

17 Q. OKAY. YOU HAVE BEEN SHOWN
18 DOCUMENTS IN THE PAST FROM PHILIP MORRIS WHERE
19 PEOPLE HIGHER UP THAN YOU TALK ABOUT THE FACT THAT
20 WHAT THEY WERE REALLY SELLING WAS NICOTINE, YOU ARE
21 AWARE OF THOSE DOCUMENTS, AREN'T YOU?

22 A. I HAVE SEEN THOSE IN PREPARATION
23 FOR TRIAL.

24 Q. ANYWAY, BACK TO YOU, EVEN THOUGH
25 YOU ARE NOT SURE THAT NICOTINE SELLS CIGARETTES,
26 YOU ARE SURE, IN YOUR MIND, THAT FLAVOR IS A DARN
27 IMPORTANT THING; RIGHT?

28 A. I THINK FLAVOR IS IMPORTANT, YES.

1 THE TASTE OF THE CIGARETTE IS VERY IMPORTANT.

2 Q. OKAY, THANKS.

3 A. THAT'S ME TALKING, NOT AS A FLAVOR
4 DEVELOPER.

5 Q. RIGHT, GOT IT.
6 ALTHOUGH YOU WERE NOT A FLAVOR
7 DEVELOPER, DID YOU SOMETIMES SIT ON TASTE PANELS?

8 A. YES.

9 Q. TELL THE JURY WHAT A TASTE PANEL
10 IS.

11 A. A TASTE PANEL IS A GROUP OF PEOPLE
12 THAT IS PUT TOGETHER BY THE FLAVOR DEPARTMENT,
13 GENERALLY, TO EVALUATE NEW CIGARETTE PROTOTYPES,
14 NEW CIGARETTES AS THEY ARE BEING DEVELOPED TO FIND
15 OUT IF THEY ARE ACHIEVING SOMETHING THAT WOULD BE
16 GETTING CLOSER TO SOMETHING YOU COULD ACTUALLY HAVE
17 SOMEBODY BUY.

18 Q. ONE OF THE THINGS YOU SAID A COUPLE
19 ANSWERS AGO, CORRECT ME IF I AM WRONG, IS THE TASTE
20 OR FLAVOR IS ONE OF THE THINGS THAT MAKES MARLBORO
21 SO POPULAR; RIGHT?

22 A. IT'S MY BELIEF, YES.

23 Q. OKAY, GOOD ENOUGH.
24 SO OVER AT PHILIP MORRIS, YOU,
25 CORPORATELY NOW, NOT YOU, PERSONALLY, BUT YOU,
26 CORPORATELY, TESTED THE TASTE OF MARLBOROS AGAINST
27 THE TASTE OF COMPETITORS' PRODUCTS, DIDN'T YOU?

28 A. R&D DID EVALUATE OUR CIGARETTES

1 VERSUS OUR COMPETITORS' CIGARETTES, YES.

2 Q. BECAUSE IT WAS IMPORTANT TO KNOW
3 FOR PHILIP MORRIS, THAT MARLBORO TASTED BETTER
4 THAN, I AM GOING TO MAKE SOMETHING UP, X-31, HOW IS
5 THAT?

6 A. IT WAS IMPORTANT FOR US TO KNOW HOW
7 OUR CIGARETTES RANKED IN TASTE, YES.

8 Q. SO LET'S GET OFF OF X-31.
9 SOMETIMES PEOPLE OVER AT PHILIP MORRIS RAN TESTS SO
10 THAT THEY COULD CHECK THE TASTE OF A MARLBORO
11 AGAINST THE TASTE OF A CAMEL LIGHT, FOR INSTANCE;
12 RIGHT?

13 A. I AM SURE THAT TEST PROBABLY HAS
14 BEEN RUN. I DON'T RECALL EXACTLY BUT I WOULDN'T
15 ARGUE WITH THAT.

16 Q. TESTS LIKE THAT WERE RUN AGAINST
17 ALL COMPETITORS PRODUCTS; RIGHT?

18 A. TESTS LIKE THAT WERE RUN AGAINST
19 ALL COMPETITOR PRODUCTS, I DON'T KNOW, BUT THERE
20 WAS A LOT OF TESTS RUN.

21 Q. RIGHT.

22 SO I AM NOT GOING TO GET INTO THEM,
23 THE POINT I AM TRYING TO MAKE IS THIS, CORRECT ME
24 IF I AM WRONG. IT WAS IMPORTANT FOR PHILIP MORRIS
25 CORPORATION TO KNOW WHAT IT'S MARLBOROS TASTED LIKE
26 AND SO IT SET UP COMPETITIVE TESTS SO THAT THEY
27 COULD TEST THE FLAVOR OF MARLBORO AGAINST THE
28 FLAVOR OF COMPETITOR PRODUCTS; RIGHT?

1 A. I KNOW WHAT IT WAS IMPORTANT FOR
2 THE DEVELOPERS TO NEED TO KNOW BUT WHAT CORPORATE
3 PHILIP MORRIS NEEDED TO KNOW IS BEYOND MY
4 KNOWLEDGE. WE CAN ASSUME THAT, IF YOU WANT TO.

5 Q. WELL, HAVEN'T YOU TESTIFIED A
6 LITTLE THIS MORNING AND A LOT ON FRIDAY ABOUT WHAT
7 CORPORATE PHILIP MORRIS DID?

8 A. I THINK I HAVE TESTIFIED MORE ON
9 WHAT I KNEW AND WHAT PEOPLE WITHIN R&D -- PEOPLE
10 THAT WORKED WITH ME WITHIN R&D KNEW

11 Q. OKAY, THAT'S A GOOD POINT.
12 AND THAT IS THE TRUTH, ISN'T IT,
13 YOU WEREN'T HERE TESTIFYING WHAT PHILIP MORRIS, THE
14 CORPORATION, THESE OTHER DIVISIONS, THESE OTHER
15 DIRECTORATES, THE OTHER PEOPLE, THE OTHER PLACES
16 KNEW, IT IS WHAT YOU AND YOUR PEOPLE KNOW?

17 A. IT'S WHAT ME AND THE PEOPLE AROUND
18 ME KNOW

19 Q. ANYWAY, ALTHOUGH PHILIP MORRIS
20 TESTED MARLBOROS AGAINST ITS COMPETITORS FOR
21 FLAVOR, FOR TASTE, IT NEVER, UNTIL THE LAST YEAR OR
22 TWO, EVER, TESTED PHILIP MORRIS, EXCUSE ME,
23 MARLBOROS, FOR SAFETY, AGAINST ITS COMPETITORS
24 PRODUCTS, DID IT?

25 MR. LEITER: OBJECTION, FOUNDATION AS TO
26 THIS WITNESS.

27 THE COURT: IF YOU KNOW

28 THE WITNESS: I HAVE A GENERAL

1 UNDERSTANDING -- ONLY A GENERAL UNDERSTANDING OF
2 THE -- AND I DON'T KNOW ABOUT SAFETY TESTING BUT
3 TESTING THAT'S DONE ON PHILIP MORRIS BRANDS,
4 MARLBORO IN PARTICULAR.

5 Q. WELL, I AM TALKING ABOUT BIOLOGICAL
6 ACTIVITY, YOU KNOW WHAT THAT IS, OBVIOUSLY?

7 A. YES, I DO.

8 Q. AND YOU HAVE TESTIFIED ON THIS VERY
9 ISSUE IN OTHER COURTS IN OTHER PLACES AT OTHER
10 TIMES, HAVEN'T YOU?

11 A. YES.

12 Q. YOU TESTIFIED ON THIS VERY ISSUE UP
13 IN SAN FRANCISCO A YEAR OR TWO AGO, DIDN'T YOU?

14 A. YES. BUT NOT -- BUT MY GENERAL
15 KNOWLEDGE OF, OF WHAT KIND OF TESTING HAS BEEN DONE
16 AND WHAT KIND OF TESTING HAS BEEN DONE ON OUR -- ON
17 CIGARETTES HAS BEEN, IN A GENERAL SENSE, HAS DO
18 EVALUATE A WIDE ARRAY OF REFERENCE CIGARETTES THAT
19 HAVE A WIDE ARRAY OF TAR AND NICOTINE IN THEM AND
20 TO BE ABLE TO ASSIST THE BIOLOGICAL ACTIVITY OF
21 THAT.

22 MY GENERAL UNDERSTANDING IS THAT
23 ALL THE CIGARETTES WE TEST HAVE A BIOLOGICAL
24 ACTIVITY.

25 Q. DON'T FORGET NOW MY QUESTION HAS TO
26 DO WITH REAL CIGARETTES THAT REAL PEOPLE SMOKE,
27 THAT REAL PEOPLE PAY REAL MONEY TO PHILIP MORRIS
28 FOR.

1 SHOW HERE' S THE QUESTION. ALTHOUGH
2 PHILIP MORRIS TESTED MARLBOROS AGAINST COMPETITORS'
3 CIGARETTES WHEN IT CAME TO FLAVOR AND TASTES, UNTIL
4 THE LAST YEAR OR TWO IT NEVER EVER TESTED MARLBOROS
5 AGAINST COMPETITORS' PRODUCT FOR BIOLOGICAL
6 ACTIVITY; RIGHT?

7 A. TO THE BEST OF MY KNOWLEDGE, THAT' S
8 TRUE. AS I SAID, WHAT WE HAVE DONE IS TO TEST
9 REFERENCE CIGARETTES AND IT WOULD, IF WE TESTED A
10 MARLBORO, A MARLBORO IS GOING TO HAVE ACTIVITY.

11 Q. AND NOT ONLY DIDN' T PHILIP MORRIS
12 TEST MARLBORO AGAINST, LET' S SAY, CAMEL OR WINSTON
13 OR WHATEVER IS OUT THERE NOWADAYS, UNTIL THE LAST
14 YEAR OR TWO, PHILIP MORRIS NEVER EVEN TESTED A
15 MARLBORO AGAINST A MARLBORO LIGHT FOR BIOLOGICAL
16 ACTIVITY, DID IT?

17 MR. LEITER: OBJECTION, ARGUMENTATIVE.

18 THE COURT: IF YOU KNOW

19 THE WITNESS: AS I HAVE PREVIOUSLY
20 STATED, MY GENERAL KNOWLEDGE IS THAT, IS THAT TAR
21 IS TAR. SO IF A MARLBORO HAD A 15 MILLIGRAMS OF
22 TAR AND A MARLBORO LIGHT HAD 10 MILLIGRAMS OF TAR,
23 THE MARLBORO AT 15 WOULD BE MORE ACTIVE THAN THE
24 MARLBORO AT 11. THAT' S WELL KNOWN.

25 Q BY MR. PIUZE: BUT WHAT' S THE
26 ANSWER TO MY QUESTION?

27 A. WHAT WAS YOUR QUESTION, I AM SORRY,
28 AGAIN?

1 Q. THE QUESTION WAS, PHILIP MORRIS,
2 UNTIL THE LAST YEAR OR SO, HAS NEVER TESTED A
3 MARLBORO RED AGAINST A MARLBORO LIGHT FOR
4 BIOLOGICAL ACTIVITY?

5 A. TO THE BEST OF MY KNOWLEDGE, THAT'S
6 TRUE, YES.

7 Q. WHY NOT?

8 MR. LEITER: OBJECTION, FOUNDATION.

9 THE COURT: DO YOU KNOW WHY NOT?

10 THE WITNESS: YOUR HONOR, ONLY WHAT I
11 HAVE SAID BEFORE ABOUT THE TAR BEING TAR AND
12 BIOLOGICAL ACTIVITY IS GOING TO BE PRESENT IN BOTH
13 OF THOSE AND GENERAL KNOWLEDGE I HAVE IS THAT A
14 HIGH TAR IS GOING TO HAVE HIGHER LEVELS OF ACTIVITY
15 THAN A LOWER TAR.

16 MR. PIUZE: IS THAT YOUR ANSWER.

17 A. YES.

18 Q. WHAT'S A SAFE AMOUNT OF TAR?

19 A. I DON'T KNOW OF ANY LEVEL OF TAR
20 THAT WOULD BE SAFE.

21 Q. DO YOU KNOW A LEVEL OF TAR THAT
22 APPROACHES SAFE?

23 A. NO, I DO NOT.

24 Q. IS THAT THE REASON, BECAUSE THERE
25 IS NO LEVEL THAT APPROACHES SAFE, THAT PHILIP
26 MORRIS NEVER TESTED ITS PRODUCTS FOR BIOLOGICAL
27 ACTIVITY UNTIL THE LAST YEAR OR TWO?

28 MR. LEITER: OBJECTION, FOUNDATION.

1 THE COURT: IF YOU KNOW

2 THE WITNESS: I THINK YOU ARE ASKING ME
3 TO SPECULATE AND GUESS AT THIS POINT.

4 THE COURT: DON'T DO THAT.

5 Q BY MR. PIUZE: IF YOU DON'T KNOW,
6 JUST SAY SO.

7 A. I DON'T KNOW

8 Q. LET'S GO BACK TO THIS CHART HERE.

9 BY THE WAY, JUST BECAUSE I AM GOING
10 TO COME TO THIS LATER, BUT JUST REMIND US, MARLBORO
11 RED, ACCORDING TO THE F. T. C. MACHINES, HAS HOW MUCH
12 TAR?

13 A. SOMEWHERE BETWEEN 15 AND 16 AT THIS
14 POINT, I THINK.

15 Q. MILLIGRAMS?

16 A. THAT IS CORRECT.

17 Q. AND MARLBORO LIGHT HAS HOW MUCH?

18 A. AROUND 10 OR 11, TO THE BEST OF MY
19 RECOLLECTION.

20 Q. SO IT'S GOT ABOUT A THIRD LESS?

21 A. THAT'S ABOUT RIGHT, YES.

22 Q. WHAT COMES DOWN AFTER THAT,
23 MARLBORO, WHAT'S THE NEXT THING DOWN?

24 A. MARLBORO, WELL, THE NEXT THING DOWN
25 WOULD BE MARLBORO ULTRA LIGHTS, I GUESS, AND I
26 DON'T REMEMBER WHAT THE TAR OF THAT IS. I THINK
27 IT'S 4 OR 5.

28 Q. FOUR OR FIVE. SO THAT'S ABOUT A

1 TWO-THIRD REDUCTION?

2 A. IF THAT NUMBER IS CORRECT, YOU ARE
3 RIGHT.

4 Q. AND I KNOW YOU SPENT SOME TIME
5 TALKING ABOUT CAMBRIDGE THE OTHER DAY. AS
6 ADVERTISED, YOU SAID, AS ADVERTISED, CAMBRIDGE HAD
7 0.0 MILLIGRAMS OF TAR; RIGHT?

8 A. YES, THAT'S RIGHT. EXCUSE ME,
9 THERE'S ONE PACK OF CAMBRIDGE THAT HAD THAT,
10 THERE'S ONE AT 1 MILLIGRAM AND ONE AT 4 OR 5
11 MILLIGRAMS.

12 Q. I AM INTERESTED IN THE ONE THAT --
13 THE ONE THAT ORIGINALLY CAME OUT WAS THE LIGHT,
14 LIGHT, LIGHT ONE; RIGHT?

15 A. NO, SIR. THERE'S THREE THAT CAME
16 OUT SIMULTANEOUSLY.

17 Q. SIMULTANEOUSLY.

18 LET'S TALK ABOUT THE LOWEST ONE,
19 JUST FOR THE SAKE OF ARGUMENT; OKAY?

20 A. OKAY.

21 Q. IF CAMBRIDGE HAD, AS ADVERTISED --
22 ON THE GOVERNMENT'S SMOKING MACHINES IT HAD ZERO,
23 ZERO, ZERO; RIGHT?

24 A. NO, SIR, I DON'T THINK THAT'S
25 CORRECT.

26 Q. WHAT DID IT HAVE?

27 A. WE TESTED ON THE GOVERNMENT SMOKING
28 MACHINES AND HOWEVER THE METHOD THAT THE F. T. C. WAS

1 USING AT THE TIME, REQUIRED THEM TO SAY, IT WAS
2 LESS THAN .5, TO SAY IT WAS LESS THAN .5.

3 Q. WELL --

4 A. WE DID ENOUGH TESTING TO SAY IT WAS
5 .1 OR THEREABOUTS.

6 Q. I GOT THAT PART. I AM COMING
7 THERE, BUT DIDN'T THE GOVERNMENT, ON THE
8 GOVERNMENT'S MACHINE, FIND 0.0?

9 A. AGAIN, I DON'T THINK SO I, I
10 THINK -- THEIR METHODOLOGY, AND THIS IS WHAT'S
11 PRESCRIBED BY THE FEDERAL TRADE COMMISSION IF IT
12 IS, IS IF IT IS LESS THAN 0.5 TO REPORT IT AS SUCH.

13 Q. SO ANYWAY, BACK TO YOU, YOU GOT 0.0
14 MILLIGRAMS; RIGHT?

15 A. CORRECT. THAT'S WHAT WAS
16 ADVERTISED, YES.

17 Q. SO IF MARLBORO RED IS 15, AND THE
18 NEXT ONE DOWN IS ROUGHLY 10, AND THAT'S A THIRD
19 OFF?

20 A. RIGHT.

21 Q. AND THE NEXT ONE DOWN IS ROUGHLY 5,
22 THAT'S TWO-THIRDS OFF?

23 A. RIGHT.

24 Q. THIS ONE WASN'T A ONE, AND IT
25 WASN'T A .5, IT WAS A .1; RIGHT?

26 A. CORRECT.

27 Q. SO WHAT'S THAT, A 99 PLUS PERCENT
28 REDUCTION IN TAR?

1 A. PROBABLY. I WON'T ARGUE WITH THAT.
2 I THINK THAT'S PROBABLY RIGHT.

3 Q. AND THAT CIGARETTE WAS WITH A 99
4 PERCENT REDUCTION IN TAR WHEN?

5 A. WENT OUT, TO THE BEST OF MY
6 RECOLLECTION, 1980.

7 Q. OKAY.

8 ANYWAY, AS YOU WERE SAYING, BOTH TO
9 THE COURT AND TO THE JURY, NOT SPEAKING FOR PHILIP
10 MRRIS, BUT FOR YOURSELF, THE WAY YOU SEE IT IS TAR
11 IS THE BAD THING AND SO THE LESS TAR, THE BETTER;
12 RIGHT?

13 A. THE LESS TAR, THE BETTER. ALSO THE
14 COMPLICATING FACTOR THAT IN ORDER FOR IT TO BE
15 EFFECTIVE, SOMEBODY HAS TO BUY IT AND USE IT.

16 Q. I UNDERSTAND.

17 BUT JUST CONCEPTUALLY, I GUESS THAT
18 WOULD MAKE CAMBRIDGE 99 PLUS PERCENT SAFER THAN
19 MARLBORO; RIGHT?

20 A. IT WOULD HAVE 99 PLUS PERCENT
21 REDUCTION IN THOSE HARMFUL CONSTITUENTS WE TALKED
22 ABOUT AS FAR AS SAFETY GOES. I REALLY CAN'T SAY
23 THAT, I DON'T KNOW, THAT'S NOT MY AREA. I WOULD
24 HOPE SO, I THINK SO.

25 Q. SO LET'S JUST BE SURE WE GOT OUR
26 T'S CROSSED AND I'S DOTTED HERE.

27 WE ARE TALKING, YOU ARE NOT A
28 BIOLOGIST. THIS ISN'T REALLY YOUR FIELD. YOU ARE

1 NOT TALKING FOR PHILIP MORRIS ON THIS. THIS IS
2 JUST SORT OF YOUR FILED; RIGHT?

3 A. IT'S MY UNDERSTANDING.

4 Q. OKAY.

5 SO A 99 PLUS PERCENT REDUCTION IN
6 THE BAD STUFF DOESN'T NECESSARILY GET YOU SAFER;
7 CORRECT?

8 A. NO, IT DOES NOT.

9 Q. WHAT IS, I HEARD YOU, I THINK, AT
10 ONE POINT, USE THE TERM "SIDESTREAM SMOKE." WHAT
11 IS IT?

12 A. I THINK IT'S GENERALLY -- MY
13 DEFINITION IS SIDESTREAM SMOKE WOULD BE THE SMOKE
14 THAT'S COMING OFF THE LIT END OF A CIGARETTE.

15 Q. AND WHAT'S THE OTHER STREAM, WHAT
16 DO WE HAVE BESIDES A SIDESTREAM?

17 A. THE MAINSTREAM, THE ONE THAT GOES
18 TO THE SMOKER.

19 Q. SO MAINSTREAM GOES IN THE SMOKER'S
20 LUNG; RIGHT?

21 A. AT LEAST IT GOES INTO HIS MOUTH.

22 Q. OKAY.

23 A. HER MOUTH.

24 Q. GOOD POINT.

25 MAINSTREAM GOES INTO THE SMOKER'S
26 MOUTH. OKAY.

27 A. CORRECT.

28 Q. SIDESTREAM GOES OUT INTO THE ROOM?

1 A. THAT IS CORRECT.

2 Q. IF YOU LIT A MARLBORO AND DIDN' T
3 REALLY PUFF ON IT, YOU KNOW, TOOK AN INTRODUCTORY
4 PUFF JUST TO GET IT GOING AND PUT IT DOWN, HOW LONG
5 WOULD IT TAKE FOR THE CIGARETTE TO GO OUT, ALL THE
6 WAY OUT?

7 A. GENERALLY, A BURN WILL BURN -- IT
8 DEPENDS UPON THE ENVIRONMENTS IT IS IN. BUT IN
9 GENERAL TERMS, 10, 15 MINUTES.

10 Q. SO IF SOMEONE IS NOT PUFFING ON A
11 MARLBORO IN AN ENCLOSED SPACE, THERE' S 10 TO 15
12 MINUTES' WORTH OF SIDESTREAM SMOKE GOING OUT TO THE
13 AIR?

14 A. THAT' S ABOUT RIGHT, YEAH.

15 Q. HOW MANY PUFFS DOES A PERSON,
16 AVERAGE PERSON, TAKE ON A MARLBORO?

17 A. IT VARIES CONSIDERABLY AMONG
18 PEOPLE. BUT AROUND EIGHT OR SO PUFFS, I THINK.

19 Q. SO IF A PERSON, AVERAGE PERSON,
20 SMOKING AN AVERAGE MARLBORO, GETS EIGHT OR SO PUFFS
21 OFF OF THE CIGARETTE, THAT PROBABLY ONLY TAKES,
22 WHAT, 30, 40 SECONDS, 30 SECONDS I BET; RIGHT?

23 A. FOR EIGHT PUFFS, NO.

24 Q. I AM ASKING.

25 A. GENERALLY -- AND I AM NOT AN EXPERT
26 IN HOW PEOPLE SMOKE, NOR HOW FREQUENTLY THEY TAKE
27 PUFFS, BUT IN GENERAL TERMS, I BELIEVE PEOPLE TAKE
28 A PUFF EVERY HALF MINUTE, EVERY MINUTE OR SO. SO I

1 THINK IT'S EXTREMELY VARIABLE.

2 Q. FINE. THE POINT WHERE I AM GOING
3 IS THIS, FOR ANY ONE PERSON SMOKING ANY ONE
4 MARLBORO, THERE'S MORE SMOKE GOING INTO THE AIR OF
5 THE ROOM THAN THERE IS GOING INTO THE LUNG OF THE
6 SMOKER?

7 MR. LEITER: OBJECT TO THE RELEVANCE OF
8 SIDESTREAM SMOKE TO THIS CASE.

9 THE COURT: I AM HAVING THAT DIFFICULTY.
10 SO UNLESS IT CONNECTS UP QUICKLY WE ARE GOING TO
11 DEPART THIS TOPIC.

12 MR. PIUZE: I THINK I CAN CONNECT IT UP.

13 THE COURT: ALL RIGHT. LET'S SEE.

14 Q BY MR. PIUZE: YOUR ANSWER,
15 PLEASE.

16 A. I THINK, IN GENERAL, IN GENERAL
17 TERMS, MORE SMOKE WOULD GO INTO THE SIDESTREAM THAN
18 WOULD BE IN THE MAINSTREAM

19 Q. SO MORE INTO THE AIR?

20 A. AGAIN, IT WOULD DEPEND UPON HOW THE
21 SMOKER SMOKES.

22 Q. MORE INTO THE SURROUNDING AIR THAN
23 THE SMOKER'S LUNGS?

24 A. I THINK, IN GENERAL TERMS, THAT
25 PROBABLY WOULD BE TRUE, YES.

26 Q. I AM BACK TO CAMBRIDGE. WHAT I
27 WANT TO DO, THINKING ABOUT THE 99 PLUS PERCENT
28 REDUCTION IN TAR FROM THE CAMBRIDGE, IS TO SEE, CAN

1 YOU EQUATE IF THE SMOKER IS SMOKING A CAMBRIDGE IS
2 ONLY TAKING IN LESS THAN ONE PERCENT OF THE BAD
3 STUFF THAT SMOKER WOULD GET FROM A MARLBORO, ISN' T
4 SOMEONE SITTING IN A ROOM WHO ISN' T EVEN SMOKING,
5 IN AN ENCLOSED ROOM WHERE THERE ARE SMOKERS JUST
6 BREATHING THE AIR GETTING THE EQUIVALENT AMOUNT OF
7 BAD STUFF, RIGHT OUT OF THE AIR, AS THE PERSON
8 SMOKING THIS CAMBRIDGE IS GETTING?

9 THE COURT: WE WILL HAVE TO GO TO SIDE
10 BAR ON THIS LATER.

11 LET' S CHANGE TOPICS BECAUSE THIS IS
12 NOT A SUBJECT MATTER OF THIS PARTICULAR CASE.

13 Q BY MR. PIUZE: OKAY. THE FRONT
14 TIER OF RESEARCH, THAT' S T. S. OSDENE, THERE IS A
15 STAR NEXT TO OSDENE ALSO, ISN' T THERE?

16 A. YES, THERE IS.

17 Q. SO THAT' S A DOCTOR?

18 A. YES, HE IS.

19 Q. YOU KNEW GANNON?

20 A. YES.

21 Q. YOU KNEW OSDENE?

22 A. YEP.

23 Q. TO THE BEST OF YOUR KNOWLEDGE,
24 OSDENE, DR. OSDENE IS STILL AROUND?

25 A. YES.

26 Q. NOW, LET' S LOOK WHAT' S UNDER
27 DR. OSDENE AS DIRECTOR OF RESEARCH. DID YOU WORK
28 UNDER HIM?

1 A. YES, I DID, ONE TIME.

2 Q. WERE YOU ANALYTICAL CHEMICAL

3 RESEARCH? I KNOW YOU WEREN' T IN BIOCHEMICAL, SO

4 WERE YOU IN ANALYTICAL OR CHEMICAL?

5 A. ANALYTICAL.

6 Q. SO DID YOU WORK UNDER THAT DR.

7 WILL?

8 A. YES, I DID.

9 Q. WHEN WAS THAT?

10 A. I WORKED UNDER DR. WILL FROM 1972

11 TO 1978.

12 Q. DID YOU WORK DIRECTLY UNDER

13 DR. WILL?

14 A. NO, I DID NOT.

15 Q. WAS HE YOUR IMMEDIATE BOSS?

16 A. NO, HE WAS NOT.

17 Q. HOW MANY LAYERS WERE THERE BETWEEN

18 YOU AND DR. WILL?

19 A. THERE WAS ONE PERSON BETWEEN ME AND

20 DR. WILL.

21 Q. SO ON THIS PARTICULAR CHART, IF I

22 WANTED TO, AND I AM NOT GOING TO, WE PUT YOU AND

23 THEN ANOTHER PERSON AND THEN WILL AND FINALLY

24 DR. OSDENE?

25 A. YOU COULD, BUT IT WOULDN' T BE

26 ACCURATE AT THIS TIME.

27 Q. WHY NOT?

28 A. I WASN' T IN DR. WILL' S DIVISION AT

1 THIS TIME.

2 Q. EXCUSE ME?

3 A. I WAS NOT IN DR. WILL'S DIVISION AT

4 THE TIME OF THIS CHART.

5 Q. OKAY. SO WE CHANGE THE NAMES BUT

6 IT IS THE SAME CONCEPT; RIGHT?

7 A. NO.

8 Q. WHY NOT?

9 A. I WASN'T IN THAT DIVISION AT THIS

10 TIME, AT THE TIME OF THE CHART. I WAS IN ANOTHER

11 DIVISION. I WAS IN THE COMPUTER APPLICATION

12 DIVISION WHEN THIS CHART WAS WRITTEN.

13 Q. I GOT THAT.

14 LET ME ASK A BETTER QUESTION.

15 A. I DON'T UNDERSTAND YOUR QUESTION, I

16 AM SORRY.

17 Q. THAT'S MY FAULT.

18 AT ONE POINT, YOU WERE TWO NOTCHES

19 UNDER THE SPACE WHERE WILL'S NAME IS?

20 A. YES, I WAS. THAT IS CORRECT.

21 Q. AT THAT POINT, WILL WASN'T THERE,

22 SOMEONE ELSE WAS THERE?

23 A. NO, DR. WILL WAS THERE AT THAT

24 POINT.

25 Q. OKAY, FINE.

26 A. ALL I AM TRYING TO MAKE SURE --

27 Q. IN '79, YOU WEREN'T THERE?

28 A. THAT IS CORRECT, YES.

1 Q. BUT THE OTHER YEARS, WHAT YEARS
2 WERE YOU THERE?
3 A. I WAS THERE FROM 1972 TO 1978.
4 Q. THANKS.
5 AND FOR SIX YEARS THEN, YOU WERE
6 TWO NOTCHES DOWN UNDER WILL?
7 A. YES.
8 Q. SO IT WAS YOU, SOMEONE ELSE, WILL,
9 OSDENE?
10 A. THAT IS CORRECT.
11 Q. SO YOU WORKED IN THE SAME BUILDING
12 WITH OSDENE?
13 A. NO. IN AN ADJACENT BUILDING, VERY
14 CLOSE.
15 Q. DID YOU HAVE MEETINGS WITH HIM?
16 A. YES.
17 Q. HOW OFTEN DID YOU HAVE MEETINGS
18 WITH HIM?
19 A. FROM THE '72 TO '79 PERIOD,
20 FREQUENTLY, BUT --
21 Q. MONTHLY, WEEKLY, DAILY?
22 A. CERTAINLY MONTHLY, PROBABLY --
23 SOMETIMES WEEKLY BUT RARELY DAILY.
24 Q. WHAT WAS DR. OSDENE, WAS HE A
25 CHEMIST ALSO?
26 A. I BELIEVE DR. OSDENE IS A CHEMIST
27 ALSO, YES.
28 Q. AND DO YOU KNOW -- DO YOU REMEMBER

1 YOU WERE TELLING US ABOUT THE DIFFERENT SUBKINDS,
2 WHAT KIND WAS HE?

3 A. I DON'T RECALL EXACTLY. BUT I CAN
4 SPECULATE. BUT A GUESS --

5 Q. PLEASE DON'T.

6 SO YOU ARE DOWN HERE AND WHAT WERE
7 YOU ANALYZING?

8 A. I WAS IN CHARGE OF THE NUCLEAR
9 MAGNETIC RESONANCE LABORATORY.

10 Q. WHAT WERE YOU ANALYZING?

11 A. I WAS ANALYZING TOBACCO, TOBACCO
12 CONSTITUENTS, SMOKE, NEW FLAVORS, A WIDE ARRAY OF
13 THINGS.

14 Q. OKAY. AND THEN AFTER 1979, OR BY
15 THE TIME 1979 CAME AROUND, YOU WEREN'T THERE ANY
16 MORE; RIGHT?

17 A. THAT IS CORRECT.

18 Q. WHERE DID YOU GO ON THIS CHART?

19 A. TO THE COMPUTER APPLICATIONS
20 DIVISION.

21 Q. SO THAT MEANS WE GOT TO MOVE OVER;
22 RIGHT?

23 A. IF YOU WANT TO SEE IT.

24 Q. I DO.

25 SO HERE'S THE FOURTH DIRECTOR. AND
26 THE FOURTH DIRECTORATE WAS, THIS WAS THE ONE RUN BY
27 DR. FARONE.

28 A. YES, SIR.

1 Q. AT TIMES, LIKE FOR YEARS, DID YOU
2 CONSIDER HIM TO BE A PERSONAL FRIEND OF YOURS?
3 A. YES.
4 Q. SAW HIM REGULARLY?
5 A. YES.
6 Q. DAILY?
7 A. YES.
8 Q. NOW, YOU HAVE ALREADY TOLD US HE IS
9 A CHEMIST. LET'S JUST TAKE A LOOK AT WHAT'S UNDER
10 THERE.
11 IS THE FIRST TIME THAT YOU WORKED
12 FOR, DIRECTLY FOR DR. FARONE, '79, WHEN YOU SWITCH
13 OVER TO COMPUTER APPLICATION MANAGER?
14 A. NO. I WAS NOT WORKING DIRECTLY FOR
15 DR. FARONE THERE.
16 Q. THAT IS BECAUSE YOU WERE WORKING
17 UNDERNEATH WATSON?
18 A. YES.
19 Q. BECAUSE WATSON DOESN'T HAVE A STAR,
20 DOES THAT MEAN WATSON IS NOT A PH. D. AND NOT A
21 DOCTOR?
22 A. THAT IS CORRECT. HE IS NOT.
23 Q. DID YOU WORK DIRECTLY FOR WATSON OR
24 ONE OF, A COUPLE LAYERS UNDER THAT?
25 A. I WORKED DIRECTLY FOR WATSON.
26 Q. NOW, HOW LONG DID YOU STAY THERE
27 WORKING FOR WATSON IN THE COMPUTER APPLICATIONS AND
28 DR. FARONE'S DIRECTORATE?

1 A. I STAYED THERE, I BELIEVE IT WAS
2 '78 UNTIL '81.

3 Q. WHAT WERE YOU DOING?

4 A. I WAS HELPING IN THE DATA
5 ACQUISITION IN LABORATORIES, BUILDING HARDWARE,
6 WRITING SOFTWARE TO ACQUIRE DATA IN THE LABORATORY,
7 MOVE IT TO THE COMPUTER FOR BETTER ANALYSIS. AND
8 THEN GET THAT INFORMATION BACK TO THE SCIENTIST.

9 Q. WHY DID YOU LEAVE THAT JOB?

10 A. I WAS PROMOTED TO MANAGER.

11 Q. MANAGER, STILL IN COMPUTER
12 APPLICATIONS?

13 A. NO, MANAGER OF BIOMATERIAL SCIENCE.

14 Q. SO YOU WERE OUT OF DR. FARONE'S
15 DIRECTORATE THEN?

16 A. NO, BIOMATERIALS IS UNDER
17 DR. FARONE'S DIRECTORATE.

18 Q. THIS ONE HERE?

19 A. YES, SIR.

20 Q. SO BIOMATERIALS SCIENCE IS DOWN
21 HERE SOMEPLACE?

22 A. NO, NO, BIOMATERIALS SCIENCE IS
23 THAT DIVISION.

24 Q. GOT IT.

25 SO YOU WERE PROMOTED UP TO THAT?

26 A. YES.

27 Q. WHAT DID YOU DO?

28 A. I WAS THE MANAGER OF THAT GROUP, I

1 WAS RESPONSIBLE FOR THE WORK THAT GROUP DID.

2 Q. WHAT DID THE GROUP DO?

3 A. THE GROUP WAS RESPONSIBLE FOR A
4 NUMBER OF THINGS. WE HAD A MICROSCOPY GROUP IN IT.
5 MICROSCOPY GROUP HAD MICROSCOPES, SCANNING ELECTRON
6 MICROSCOPES, LIGHT MICROSCOPES.

7 Q. WHAT WERE YOU LOOKING AT UNDER THE
8 MICROSCOPES?

9 A. PRIMARILY AT TOBACCO. THE
10 MICROFLORA THAT'S IN TOBACCO, LOTS OF DIFFERENT
11 ANALYSIS THAT MICROSCOPES COULD DO.

12 Q. ARE YOU LOOKING AT VIRUSES?

13 A. NO.

14 Q. LOOKING AT CANCER?

15 A. NO.

16 Q. LOOKING AT BAD DISEASES UNDER THOSE
17 MICROSCOPES?

18 A. NO, WE ARE NOT.

19 Q. YOU NEVER DID THAT IN YOUR WHOLE
20 CAREER; RIGHT?

21 A. NO.

22 Q. THAT'S A TRUE; RIGHT?

23 A. THAT IS TRUE, YES.

24 Q. SO DO YOU REMEMBER WHEN DR. FARONE
25 LEFT THE COMPANY?

26 A. I BELIEVE IT WAS 1984.

27 Q. DO YOU REMEMBER WHEN HE CAME TO THE
28 COMPANY?

1 A. TO THE BEST OF MY RECOLLECTION, IT
2 WAS SOMETIME IN THE MID-70'S, PERHAPS '76.

3 Q. SO YOU HAD ALREADY BEEN THERE ABOUT
4 FOUR YEARS BEFORE DR. FARONE ARRIVED?

5 A. THAT IS CORRECT.

6 Q. AFTER YOUR COUPLE OF YEARS AS THE
7 BIOMATERIALS MANAGER, WHERE DID YOU GO, YOU,
8 PERSONALLY?

9 A. I BECAME MANAGER OF PHYSICAL
10 RESEARCH.

11 Q. WHERE IS THAT GOING TO BE, OFF TO
12 THE RIGHT HERE?

13 A. THAT IS CORRECT.

14 Q. SO WE HAVE TALKED ABOUT DEVELOPMENT
15 WITH DR. GANNON, RESEARCH WITH DR. OSDENE, APPLIED
16 RESEARCH WITH DR. FARONE, LET'S JUST STOP THERE FOR
17 A SECOND.

18 TELL THE JURY THE WAY, I MEAN, WERE
19 YOU THERE, WHAT'S RESEARCH VERSUS APPLIED RESEARCH?

20 A. RESEARCH IN GENERAL TERMS IS, AT
21 LEAST AT THAT TIME, IT WAS MEANT TO BE RESEARCH
22 THAT WAS FURTHER ALONG OR FURTHER BEHIND, ACTUALLY,
23 IN BEING ABLE TO APPLY IT. IT IS FUNDAMENTAL
24 LOOKING AT, PERHAPS, TEN YEARS IN TECHNOLOGY THAT
25 COULD BE APPLIED 10 OR 15 YEARS IN THE FUTURE
26 WHEREAS APPLIED RESEARCH IS LOOKING AT TECHNOLOGY
27 THAT WOULD BE APPLIED, PERHAPS, FOUR TO FIVE YEARS
28 IN THE FUTURE.

1 SO IT'S IN A TIMEFRAME OF
2 TECHNOLOGIES AND COMPLEXITIES OF TECHNOLOGIES.

3 Q. OKAY. IF I -- I HAVE GOT NO PRIDE
4 OF AUTHORSHIP HERE SO PLEASE CORRECT ME IF I AM
5 WRONG. IF I SAID THAT THE APPLIED RESEARCH WAS
6 MORE OF A PRACTICAL APPLICATION AND THE RESEARCH
7 WAS MORE OF A THEORETICAL APPLICATION, WOULD THAT
8 BE RIGHT OR IS THAT MORE WRONG?

9 A. WELL, WE WOULD HOPE THAT IT WOULD
10 ALL ULTIMATELY END UP BEING PRACTICAL. BUT IT IS
11 MORE OF A TIME SCALE, IF YOU WILL, THAN WHETHER OR
12 NOT IT'S PRACTICAL OR NOT PRACTICAL.

13 Q. OKAY. THANKS.

14 NOW, WHILE YOU WERE THERE, AND
15 AFTER DR. FARONE WAS THERE, WE ARE TALKING '76 NOW,
16 WAS OSDENE EVER FARONE'S BOSS ON THE CHART LIKE
17 THIS?

18 A. I CAN'T RECALL THAT HE WAS, NO.

19 Q. OKAY. WHILE YOU WERE THERE, WAS
20 THIS MAN, WAS HE ALWAYS IN THE TOP SLOT?

21 A. WHILE I WAS AT PHILIP MORRIS?

22 Q. YES.

23 A. NO, SIR.

24 Q. WHEN, ROUGHLY, WHEN YOU GOT THERE
25 IN '72, WAS HE ALREADY IN THE TOP SLOT?

26 A. NO, SIR, HE WAS NOT.

27 Q. WHO WAS?

28 A. DR. WAKEHAM

1 Q. HORACE WAKEHAM?
2 A. NO. HELMUT WAKEHAM
3 Q. HAVE YOU EVER MET HORACE KORNEGAY?
4 A. NO, SIR.
5 MR. LEITER: OBJECTION, RELEVANCE HERE.
6 Q BY MR. PIUZE: OKAY. WHO TOOK
7 DR. SELIGMAN'S PLACE HERE IN THE TOP SLOT OF
8 RESEARCH AND DEVELOPMENT?
9 A. DR. HAUSERMAN.
10 Q. AND WHO TOOK HIS PLACE?
11 A. DOCTOR HOUGHTON, H-O-U-G-H-T-O-N.
12 Q. WHEN DID DR. SELIGMAN VACATE THAT
13 POSITION, UP AT THE TOP THERE?
14 A. I DON'T RECALL EXACTLY WHEN THAT
15 HAPPENED.
16 Q. GIVE US AN APPROXIMATE, COULD YOU?
17 A. OBVIOUSLY '79.
18 Q. HOW ABOUT WHEN DR. FARONE LEFT IN
19 '84, LET'S TRY THAT, WAS HE STILL IN THAT SLOT?
20 A. NO, SIR, HE WAS NOT.
21 Q. WHERE DID HE GO; UP?
22 A. WHERE DID WHO GO?
23 Q. SELIGMAN, DID HE GO UP?
24 A. I WAS ONLY THERE -- I BELIEVE
25 DR. SELIGMAN, THIS IS THE BEST OF MY RECOLLECTION,
26 ULTIMATELY ASSUMED THE JOB THAT DR. WAKEHAM HAD AND
27 I THINK THAT'S A LATERAL, BUT I AM NOT SURE.
28 Q. OKAY. SO HERE WE GO. NOW, THERE'S

1 DEVELOPMENT, RESEARCH, APPLIED RESEARCH AND HERE' S
2 THE LAST DOCTOR AND THIS IS TECHNICAL SERVICES.
3 NOW, R. N. THOMPSON, IS THAT A MAN?
4 A. YES, SIR, HE WAS.
5 Q. NO ASTERISK, SO NOT A PH. D. , NOT A
6 DOCTOR?
7 A. THAT IS CORRECT.
8 Q. AND YOU WORKED UNDER THAT
9 DIRECTORATE FOR A WHILE?
10 A. I AM SORRY.
11 Q. YOU WORKED UNDER THAT DIRECTORATE
12 FOR A WHILE?
13 A. NO, SIR.
14 Q. I APOLOGIZE. I THOUGHT WHEN YOU
15 LEFT COMPUTER APPLICATIONS, YOU WENT, TELL ME
16 AGAIN, WHERE?
17 A. TO BIOMATERIAL SCIENCE.
18 Q. OKAY. AND WHEN YOU LEFT
19 BIOMATERIAL SCIENCE, YOU WENT WHERE?
20 A. PHYSICAL RESEARCH.
21 Q. WHERE AM I GOING TO FIND THAT?
22 A. RIGHT ADJACENT TO COMPUTER
23 APPLICATIONS.
24 Q. SURE AM
25 AND WHEN WAS THAT?
26 A. WHEN I WENT TO PHYSICAL RESEARCH?
27 Q. YES.
28 A. 1987.

1 Q. DID YOU EVER GO INTO HERE,
2 TECHNICAL SERVICES?
3 A. NO.
4 Q. LET ME MAKE IT GO AWAY THEN.
5 WHAT DID YOU DO AT BIOMEDICAL
6 RESEARCH?
7 A. I NEVER WAS IN BIOMEDICAL RESEARCH.
8 Q. I AM MESSING UP BEGIN.
9 AFTER ANALYTICAL MANAGER, YOU DID
10 WHAT?
11 A. I WAS NOT -- I APOLOGIZE, I WAS NOT
12 THE ANALYTICAL MANAGER. I WAS IN THAT DIVISION.
13 Q. AFTER BIOMATERIALS, YOU WENT TO
14 PHYSICAL RESEARCH?
15 A. THAT IS CORRECT, YES.
16 Q. I APOLOGIZE TO EVERYBODY.
17 WHAT DID YOU DO?
18 A. WHEN I WENT TO BECOME MANAGER OF
19 PHYSICAL RESEARCH THERE WAS SOMEWHAT OF A
20 REORGANIZATION WITHIN R&D AND SOME OF THE GROUPS
21 WENT THE BIOMATERIAL SCIENCE DIVISION, WENT WITH ME
22 TO THE PHYSICAL RESEARCH DIVISION.
23 SOME OF THE OTHER GROUPS WENT TO
24 OTHER DIVISIONS BUT AS MANAGER OF PHYSICAL RESEARCH
25 DIVISION, I WAS RESPONSIBLE FOR THE PROJECT, THE
26 LABORATORY PROJECT FOR REMOVING NICOTINE FROM
27 TOBACCO, DEVELOPING NON-CONVENTIONAL CIGARETTES,
28 DEVELOPING METHODS FOR REDUCING THE EMISSION

1 PROPENSITY OF CIGARETTES THE MICROSCOPY GROUP, AS I
2 RECALL, WENT WITH ME TO PHYSICAL RESEARCH.

3 I ALSO HAD A GROUP OF PEOPLE
4 WORKING ON THE MECHANICAL PROPERTIES OF TOBACCO TO
5 FIND WAYS TO HAVE TOBACCO BETTER SURVIVE THE
6 MANUFACTURING PROCESS. AND I THINK THERE WAS A
7 COUPLE -- AT LEAST ONE OR TWO OTHER GROUPS WITHIN
8 THE MANAGERIAL GROUP THAT I DON'T RECALL AT THIS
9 POINT.

10 Q. REMEMBER YOU WERE TALKING TO THE
11 JURY ON FRIDAY ABOUT NOD, N-O-D?

12 A. YES, SIR.

13 Q. THAT'S THE ONE THAT SMELLED LIKE --

14 A. SMELLED PRETTY BAD ON OCCASIONS,
15 YES.

16 Q. WHAT YEAR DID YOU START WITH NOD?

17 A. 1981.

18 Q. THE NOD PROJECT HAD BEEN UNDER WAY
19 FOR A LONG, LONG, LONG TIME, BEFORE YOU EVER GOT
20 NEAR IT, HADN'T IT?

21 A. NO, SIR, IT HAD NOT BEEN.

22 Q. HADN'T?

23 A. NO, SIR.

24 Q. EVER HEARD OF A WOMAN NAMED
25 DOBBERSTEIN?

26 A. YES, SIR, I HAVE.

27 Q. WHO WAS SHE?

28 A. ENGINEER AT PHILIP MORRIS.

1 Q. WASN' T SHE WORKING ON NOD LONG
2 BEFORE YOU GOT ANYPLACE NEAR IT?

3 A. NO, SIR, NOT TO MY KNOWLEDGE.

4 Q. HAVE YOU EVER SEEN A REPORT THAT
5 MS. DOBBERSTEIN DID ON THE NOD PROJECT?

6 A. I AM NOT SURE THE REPORT YOU ARE
7 REFERRING TO. I HAVE SEEN REPORTS THAT SHE HAS
8 WRITTEN.

9 Q. WELL, ON THE NOD -- HOW ABOUT THE
10 NOD PROJECT, THAT' S WHAT I AM INTERESTED IN, HAVE
11 YOU EVER SEEN ANYTHING SHE' S WRITTEN ON THE NOD
12 PROJECT?

13 A. I DO RECALL SOME.

14 Q. WASN' T THE NOD -- EXCUSE ME, WASN' T
15 THE NOD PROJECT THEN IN EXISTENCE FROM STARTING
16 AROUND 1977?

17 A. THE DISCOVERY OF THE PHENOMENA, WE
18 TALKED ABOUT ON FRIDAY, OF THE BACTERIA, REMOVING
19 THE NITRATE FROM THE AERIAL PROCESS, THE EXTRACT,
20 THE LIQUID MATERIAL THERE, MAY HAVE BEEN DISCOVERED
21 ABOUT THAT TIME.

22 Q. THE NOD PROCESS, THE NOD PROJECT
23 HAD BEEN GOING ON ONE WAY OR ANOTHER THREE OR FOUR
24 YEARS BEFORE YOU CAME HERE, HADN' T IT?

25 A. TO THE BEST OF MY KNOWLEDGE, THE
26 PROJECT HAS, IT WAS FORMED, IT WAS WORKING UNDER
27 ME. WHEN I WAS IN THE BIOMATERIAL SCIENCES
28 DIVISION, WE WERE THE VERY EARLY ON, I WON' T ARGUE

1 THAT IT WAS A COUPLE YEARS, PERHAPS, BEFORE I TOOK
2 OVER AS THE MANAGER OF THE DIVISION, BUT THEY WERE
3 DOING WORK IN THE FACTORY, WITHOUT BRINGING IT TO
4 THE LABORATORY AND THE POWER PLANT TRYING TO BETTER
5 HARNESS THAT PROCESS.

6 BUT TO THE BEST OF MY KNOWLEDGE,
7 THE BEST OF MY RECOLLECTION, IT WAS IN THE VERY
8 EARLY '80'S THAT WE BROUGHT THAT TO THE LABORATORY
9 AND THE PILOT PLANT TRYING TO HARNESS THAT PROCESS.

10 Q. THAT'S WITH YOUR INVOLVEMENT?

11 A. YES.

12 Q. HERE'S WHERE I AM GOING. HADN'T
13 PEOPLE, SCIENTISTS, ENGINEERS, SCIENTISTS AT PHILIP
14 MORRIS, THOUGHT OF THIS GREAT IDEA TO GET RID OF
15 N. O. D -- WHAT IS N. O. D? TELL US AGAIN.

16 A. NATURALLY OCCURRING
17 DENITRIFICATION. THERE WERE A NUMBER OF BIOLOGICAL
18 PROCESSES THAT WERE BEING LOOKED AT FOR THE REMOVAL
19 OF NITRATE, THAT PRE-EXISTED THE NOD DISCOVERY.

20 Q. NITROSAMINES ARE REALLY BAD THINGS
21 IN THIS TOBACCO SMOKE?

22 A. NITROSAMINES ARE THINGS THAT BOTH
23 INTERNAL TOXICOLOGISTS AND EXTERNAL TOXICOLOGISTS
24 HAVE TRIED TO TELL US TO TAKE OUT, AREAS THAT I HAD
25 BEEN WORKING ON, HAD WORKED ON, CONTINUE TO WORK
26 ON, YES.

27 Q. YES, BAD THINGS; RIGHT?

28 A. YES.

1 Q. AND A NOD WAS A PROJECT THAT GETS
2 RID OF THE NITROSAMINES?

3 A. NOD PROCESS WAS OUR ATTEMPT TO
4 FURTHER REDUCE THE NITRATES IN THE PROCESS, YEP.

5 Q. AND BY THE TIME YOU GOT THERE, TO
6 THAT PROJECT, IT HAD BEEN, AT LEAST CONCEPTUALLY,
7 ON PAPER, AND IN THE LABORATORY, BEEN ONGOING FOR
8 THREE OR FOUR YEARS ALREADY, HADN'T IT?

9 A. I THINK I HAVE TOLD YOU THE BEST I
10 CAN ON THAT. MY KNOWLEDGE IS, IS WE, WHEN I FIRST
11 GOT TO THE DIVISION, THEY WERE ALREADY WORKING ON,
12 TO SOME EXTENT, BUT IT WAS STILL IN ITS EARLY
13 STAGES OF BEING DEVELOPED WHEN I GOT TO THE
14 BIOMATERIALS SCIENCES DIVISION.

15 Q. I THOUGHT ONE OF THE DIVISIONS AND,
16 ALTHOUGH YOU DIDN'T GO FOR '77, YOU WENT FOR THAT
17 GENERAL TIME PERIOD, CORRECT ME IF I AM WRONG.

18 A. I WON'T ARGUE WITH THE FACT THAT IT
19 WAS DISCOVERED THEN, YOU KNOW, THE ACTUAL TRYING TO
20 HARNESS IT IN THE LABORATORY, IN THE PILOT PLANT
21 WAS THE AREA THAT I AM TALKING ABOUT.

22 Q. THANKS.

23 NOW, BEFORE YOU EVER GOT NEAR THE
24 PROJECT, WASN'T THE ORIGINAL CONCEPT, THE ORIGINAL
25 WAY THAT IT WAS WANTED TO BE DONE, AXED, KILLED
26 OFF, BECAUSE IT WAS TOO EXPENSIVE?

27 A. NOT TO MY KNOWLEDGE, NO.

28 Q. WEREN'T WITH WORKING ON AN

1 ALTERNATIVE OR SECONDARY WAY OF ACHIEVING THE GOAL
2 FOR LESS MONEY?

3 A. NO, I WAS NOT.

4 Q. HERE'S THE REPORT THAT I WAS
5 TALKING ABOUT. THIS IS 1633. JUST TELL ME WHETHER
6 OR NOT YOU HAVE EVER SEEN THAT REPORT.

7 THE COURT: TELL YOU WHAT. WHILE HE IS
8 EXAMINING THAT DOCUMENT, THIS WOULD BE A GOOD TIME
9 FOR THE JURY TO TAKE A BREAK. SO LADIES AND
10 GENTLEMEN, WE WILL SEE YOU AT 11:05.

11

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

15

16 MR. PIUZE: HERE'S WHERE I WAS GOING WITH
17 AN AREA WHERE YOU WANTED A SIDE BAR.

18 THE COURT: THERE WAS TWO, A NERVE GAS
19 AND THE SIDESTREAM SMOKE.

20 MR. PIUZE: YES, SIR. NERVE GAS IS
21 HISTORY, SIDESTREAM SMOKE. BASICALLY, MY AREA OF
22 INQUIRY WOULD BE LIKE THIS.

23 PHILIP MORRIS SAYS THAT
24 ENVIRONMENTAL SMOKE ISN'T HARMFUL.

25 SIDESTREAM SMOKE IS ENVIRONMENTAL
26 SMOKE.

27 I WANT TO CROSS-EXAMINE THIS
28 WITNESS ON THE FACT THAT, A CAMBRIDGE CIGARETTE

1 PUTS IN A SMOKER' S LUNG PROBABLY LESS TAR THAN THAT
2 SMOKER GETS OUT OF BEING IN A ROOM BREATHING THE
3 AIR, AND THEREFORE --

4 THE COURT: YOU CAN DO THAT.

5 MR. PIUZE: AND THEREFORE, IF THE
6 ENVIRONMENTAL SMOKE ISN' T HARMFUL AS PHILIP MORRIS
7 PROCLAIMS, THEN THE CAMBRIDGE CIGARETTE SHOULDN' T
8 BE HARMFUL EITHER.

9 HE SAYS IT' S ALWAYS HARMFUL, ALWAYS
10 HARMFUL, NEVER SAFE.

11 THE COURT: SEE, I DON' T HAVE ANY
12 EVIDENCE IN THIS CASE YET ABOUT PHILIP MORRIS' S
13 POSITION ON ENVIRONMENTAL SMOKE. AND I DON' T
14 RECALL VERY MUCH, IF ANYTHING, IN THIS CASE HAVING
15 TO DO WITH THE HAZARD OF ENVIRONMENTAL SMOKE.

16 NOR DO I RECALL ANY CLAIM BY
17 MR. BOEKEN THAT HE HAS BEEN HARMED BY ENVIRONMENTAL
18 SMOKE.

19 MR. PIUZE: THERE IS NO SUCH CLAIM IN
20 THIS CASE. AND I DON' T WANT TO MISLEAD THE COURT.
21 THE PURPOSE OF THIS QUESTIONING IS SIMPLY TO SHOW
22 THAT IF PHILIP MORRIS' S POSITION THAT --

23 THE COURT: THERE' S EVIDENCE, THOUGH,
24 THAT THERE' S -- THEIR POSITION THAT I AM AWARE OF,
25 MAYBE COUNSEL CAN POINT ME TO IT --

26 MR. PIUZE: I WILL DO IT THROUGH HIM, IF
27 HE WANTS TO SAY, HE' S GOT NO IDEA WHAT PHILIP
28 MORRIS' S POSITION ON THAT IS, FINE. THAT' S FINE.

1 BUT I CAN TELL THE COURT WHAT THEIR
2 POSITION IS. IT'S NOT BEFORE THE JURY. BUT I CAN
3 TELL THE COURT WHAT THEIR POSITION IS.

4 THE COURT: YOU CAN TELL ME BUT YOU ARE
5 NOT GOING TO BE TAKING THE STAND AND RAISING YOUR
6 RIGHT HAND.

7 MR. PIUZE: OF COURSE, THAT -- I KNOW
8 THAT. BUT OBVIOUSLY, OBVIOUSLY, THEY DON'T ADMIT
9 THAT SECONDHAND SMOKE IS BAD. THEY DON'T ADMIT
10 THAT. THEY DON'T ADMIT THAT.

11 THE COURT: WELL, THAT'S NOT AN ISSUE IN
12 THE CASE RIGHT NOW THAT I KNOW OF.

13 MR. PIUZE: AND I -- IT'S ONLY FOR
14 COMPARISON PURPOSES. IF HE SAYS CAMBRIDGE IS NOT
15 SAFE, IF HE SAYS ANY AMOUNT IS TOO MUCH.

16 THE COURT: HE HAS.

17 MR. PIUZE: ANY AMOUNT IS HAZARDOUS, I
18 JUST WANT TO SHOW THAT CONFLICT WITH THE COMPANY'S
19 OFFICIAL POSITION.

20 THE COURT: THE COMPANY'S OFFICIAL
21 POSITION, IF YOU WANT TO TAKE HIM OUTSIDE THE
22 PRESENCE AND FIND OUT IF HE KNOWS THE COMPANY'S
23 OFFICIAL POSITION, OR IS IN A POSITION TO STATE
24 WHAT THE COMPANY'S OFFICIAL POSITION IS ON THAT,
25 THEN I WILL BE PRESENTED WITH A DIFFERENT ISSUE.

26 MR. PIUZE: CAN WE BRING HIM IN RIGHT
27 NOW

28 THE COURT: I WILL LET HIM DO IT ON THE

1 RECORD AND I MAY STILL NOT ALLOW IT.

2 MR. LEITER: BEFORE WE BRING HIM IN,
3 FIRST OF ALL, LET ME JUST STATE FOR THE RECORD THAT
4 MR. PIUZE IS MISTAKING THE COMPANY'S POSITION, BUT
5 I AM PUTTING THAT ASIDE FOR THE MOMENT. THIS
6 WITNESS HAS ALREADY TESTIFIED AS TO WHAT HIS AREAS
7 OF EXPERTISE ARE AND ARE NOT, AND THERE'S NO
8 FOUNDATION. AND I DON'T THINK THERE CAN BE THAT HE
9 HAS ANY EXPERTISE NOT JUST ON THE COMPANY'S
10 OFFICIAL POSITION, BUT ON THE HAZARDS OF
11 ENVIRONMENTAL SMOKING IN ANY SENSE.

12 FOR ALL THE OBVIOUS REASONS, THIS
13 IS AN ATTEMPT TO GET IN AN AREA THAT IF IT OPENS
14 UP, WE ARE GOING TO HAVE TO CALL A WHOLE BUNCH OF
15 WITNESSES TO TALK ABOUT IT.

16 THE COURT: I SEE IT AS COLLATERAL TO
17 THIS TRIAL, FRANKLY.

18 I WILL ALLOW YOU TO MAKE YOUR
19 RECORD, THOUGH, OUTSIDE THE PRESENCE OF THE JURY.

20 MR. PIUZE: I CAN DO IT RIGHT NOW THANK
21 YOU VERY MUCH.

22 THE COURT: SIR, IF YOU WOULD PLEASE COME
23 FORWARD.

24 SIR, IF YOU WOULD PLEASE BE SEATED.
25 WE JUST NEED TO ASK YOU A COUPLE MORE QUESTIONS.

26 WE ARE BACK ON THE RECORD.

27 THE WITNESS: ALL RIGHT.

28 JERRY WHIDBY,

1 CALLED AS A WITNESS BY THE DEFENSE, HAVING BEEN
2 PREVIOUSLY DULY SWORN, RESUMED THE WITNESS STAND
3 AND TESTIFIED PURSUANT TO EVIDENCE CODE SECTION
4 402 AS FOLLOWS:

5

6

EXAMINATION

7

8 BY MR. PIUZE:

9 Q. IS ENVIRONMENTAL SMOKE HAZARDOUS?

10 THE COURT: NO, THE QUESTION IS WHETHER
11 OR NOT HE CAN STATE THE COMPANY'S OFFICIAL
12 POSITION.

13 Q BY MR. PIUZE: WHAT IS PHILIP
14 MORRIS'S OFFICIAL POSITION ON WHETHER OR NOT
15 ENVIRONMENTAL SMOKE IS HAZARDOUS?

16 MR. LEITER: OBJECTION, FOUNDATION.

17 THE COURT: DO YOU KNOW?

18 THE WITNESS: I REALLY DON'T.

19 Q BY MR. PIUZE: WHAT IS PHILIP
20 MORRIS'S POSITION ON WHETHER OR NOT SIDESTREAM
21 SMOKE IS HAZARDOUS?

22 MR. LEITER: SAME OBJECTION.

23 THE COURT: IF YOU KNOW

24 THE WITNESS: I DON'T KNOW

25 Q BY MR. PIUZE: WHAT IS PHILIP
26 MORRIS'S POSITION ON WHETHER OR NOT THE SMOKE THAT
27 A SMOKER TAKES INTO HIS LUNGS IS MORE IN VOLUME, AS
28 FAR AS BAD STUFF, THAN WHAT THE SMOKER GETS OUT OF

1 THE AIR THE SMOKER IS IN?

2 MR. LEITER: SAME OBJECTION.

3 THE COURT: OVERRULED.

4 THE WITNESS: YOU WOULD ASK ME TO
5 SPECULATE.

6 MR. PIUZE: DON' T.

7 THE COURT: THANK YOU, COUNSEL.

8 LET' S TAKE OUR BREAK.

9

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

12

13 (THE FOLLOWING PROCEEDINGS
14 WERE HELD IN OPEN COURT IN
15 THE PRESENCE OF THE JURY.)

16

17 THE COURT: SIR, YOU UNDERSTAND YOU ARE
18 STILL UNDERSTAND OATH.

19 THE WITNESS: YES, SIR, I DO.

20

21

22 JERRY WHIDBY,
23 CALLED AS A WITNESS BY THE DEFENSE, HAVING BEEN
24 PREVIOUSLY DULY SWORN, RESUMED THE WITNESS STAND
25 AND TESTIFIED FURTHER AS FOLLOWS:

26 /// /// ///

27 /// /// ///

28 /// /// ///

1 CROSS-EXAMINATION (RESUMED)

2

3 BY MR. PIUZE:

4 Q. DO YOU SEE WHAT'S UP ON THE BOARD
5 NOW?

6 A. YES, SIR, I DO.

7 Q. YOU KNOW WHAT THIS IS, IT'S PART OF
8 THIS THAT WAS USED ON DIRECT EXAMINATION; RIGHT?

9 A. CORRECT.

10 Q. SO GREEN HAS TO DO WITH TAR, BLUE
11 HAS TO DO WITH NICOTINE; RIGHT?

12 A. THAT IS RIGHT.

13 Q. I AM INTERESTED IN TALKING TAR FOR
14 NOW

15 SO WHAT IS THAT MEANT TO REPRESENT,
16 PLEASE.

17 A. THAT IS MEANT TO REPRESENT THE
18 SALES WEIGHTED AVERAGE TAR LEVELS FOR THE
19 CIGARETTES ON THE MARKET, IN THE MARKET IN 1954 AND
20 IN 1997, AND TO REPRESENT THE DECLINE IN THE SALES
21 WEIGHTED AVERAGE TAR FROM '54 TO '97.

22 Q. WHAT SALES -- SAY IT AGAIN, SALES?

23 A. SALES WEIGHTED.

24 Q. WHAT DOES THAT MEAN?

25 A. THAT MEANS OF ALL THE CIGARETTES
26 SOLD, THE AVERAGE TAR LEVEL IN 1954 WOULD BE 36
27 MILLIGRAMS, OF PHILIP MORRIS'S BRANDS.

28 AND IN 1997, THE AVERAGE CIGARETTE

1 SOLD WOULD BE 12 MILLIGRAMS OF TAR.

2 Q. SO JUST FOR OPENERS, THIS IS ALL
3 PHILIP MORRIS; RIGHT?

4 A. YES, I BELIEVE THIS IS THE CHART
5 YOU HAVE HERE, YES.

6 Q. I APOLOGIZE.

7 A. I AM SORRY, I WAS CLEARING MY
8 THROAT.

9 Q. IN 1954, MARLBORO RED WAS WHAT
10 PERCENTAGE ABOVE ALL PHILIP MORRIS SALES?

11 A. TO MY KNOWLEDGE, BEST OF MY
12 KNOWLEDGE, IN 1954, MARLBORO RED, I DON'T BELIEVE
13 WAS ON THE MARKET. I THINK IT CAME ON THE MARKET
14 IN '55.

15 Q. SO I GUESS 1954, ARE WE TALKING AT
16 LEAST FILTER CIGARETTES THERE?

17 A. NO, SIR. MOST OF THE CIGARETTES IN
18 1954 WERE NON-FILTER CIGARETTES.

19 SIMILAR TO THE COMMANDER I HAD ON
20 FRIDAY, I WAS DEMONSTRATING IT TO THE JURY.

21 Q. SO THAT REDUCTION IN TAR CAME
22 PRIMARILY FROM THE FILTER, DIDN'T IT?

23 A. WELL, IT CAME FROM THE FOUR THINGS
24 WE TALKED ABOUT ON FRIDAY. IT CAME FROM ALL FOUR
25 OF THEM ACTUALLY. IT CAME FROM FILTRATION,
26 VENTILATION, COURSE PAPER AROUND THE TOBACCO, AND
27 EXPANDED TOBACCO, WITH ALL FOUR OF THOSE. IT IS MY
28 BELIEF THAT A GOOD TASTING CIGARETTE REALLY

1 COULDN' T BE DEVELOPED AT THE LEVEL WE HAVE MET
2 TODAY.

3 Q. OKAY, HERE' S ALL I WANTED TO KNOW
4 WAS THE FILTER PRIMARILY
5 RESPONSIBLE FOR MOST OF THAT REDUCTION? IF THE TAR
6 WAS CUT TWO-THIRDS, WAS THE FILTER PRIMARILY
7 RESPONSIBLE?

8 A. FILTER PLAYS AN IMPORTANT ROLE, AS
9 I JUST SAID.
10 THE OTHER THREE THINGS ALSO PLAYED
11 A SIGNIFICANT ROLE.

12 Q. CAN YOU TELL US WHETHER THE FILTER
13 WAS MORE THAN 50 PERCENT RESPONSIBLE FOR THAT
14 REDUCTION?

15 A. I APOLOGIZE FOR NOT ANSWERING YOUR
16 QUESTION DIRECTLY. IT WOULD DEPEND UPON THE
17 CIGARETTE DESIGN THAT YOU ARE TALKING ABOUT,
18 WHETHER IT WAS 50 PERCENT OR NOT.

19 THERE ARE SOME CIGARETTES WHERE THE
20 FILTRATION MAY INDEED BE 50 PERCENT OF THE
21 REDUCTION, OR CIGARETTES WHERE THE OTHER THINGS IN
22 COMBINATION WOULD BE MORE THAN THE FILTER.

23 SO I AM NOT TRYING TO BE VAGUE OR
24 ANYTHING, I AM JUST TRYING TO BE ACCURATE.

25 Q. THAT' S OKAY, BECAUSE I AM TRYING TO
26 BE DONE.

27 COULD I GET YOU TO DO SOMETHING FOR
28 ME. COULD YOU COME DOWN. YOU WORKED WITH THOSE

1 BLOW-UPS THE OTHER DAY. WOULD YOU DO SOMETHING FOR
2 ME WITH THIS BLOWUP HERE, PLEASE.

3 THE COURT: ALL RIGHT, SIR, STEP DOWN.

4 MR. PIUZE: WITH THIS ELMD, WHATEVER.

5 Q BY MR. PIUZE: I AM INTERESTED IN
6 THE CARLTON -- I AM INTERESTED IN THE CARLTON THAT
7 YOU ADVERTISED AS HAVING 0.0 MILLIGRAMS OF TAR.
8 WOULD YOU PUT IT IN --

9 MR. LEITER: CAMBRIDGE.

10 MR. PIUZE: CAMBRIDGE. MR. CARLTON
11 TURNED AROUND, WONDERING WHY I WAS PICKING ON HIM

12 Q BY MR. PIUZE: I AM INTERESTED IN
13 THE CAMBRIDGE CIGARETTE PHILIP MORRIS MADE AND
14 ADVERTISED AS BEING .01 MILLIGRAMS OF TAR.

15 AND I DON'T HAVE A GREEN PEN, BUT
16 WITH THE ONE YOU HAVE GOT, WOULD YOU PUT IT ON
17 THERE IN THE PROPER SCALE, PLEASE.

18 A. THE BEST I CAN DO. I DON'T HAVE
19 CALIBRATED EYE BALLS, BUT IT'S NOT GOING TO BE AT
20 ONE. IT WILL BE BARELY VISIBLE ABOVE THIS LINE.

21 IT IS GOING TO BE VERY LOW, AS WE
22 ALREADY DISCUSSED.

23 Q. COULD YOU DROP THE LINE DOWN ON THE
24 RIGHT AND WRITE "CAMBRIDGE" SO LATER ON WE WILL
25 REMEMBER WHAT HAPPENED.

26 WHAT IF I JUST DO THIS IN FRONT OF
27 EVERYBODY SO WE WILL ALL KNOW ALL RIGHT?

28 A. OKAY. AGAIN, THAT'S -- IF WE HAD

1 AN ACTUAL ACCURATE SCALE THERE, I DON'T KNOW IF IT
2 WOULD BE THERE OR BELOW IT.

3 Q. IN OTHER WORDS, YOU MIGHT HAVE
4 DRAWN THAT LINE A LITTLE TOO HIGH?

5 A. MIGHT HAVE. MIGHT HAVE BEEN TOO
6 TALL. DON'T KNOW

7 Q. AND WHAT WE ARE MEASURING HERE IS
8 THE BAD STUFF; RIGHT?

9 A. WE ARE MEASURING TAR. AND TAR
10 CONTAINS THE BAD STUFF. IT ALSO CONTAINS THE
11 FLAVOR AND THE TASTE.

12 Q. AND THE NICOTINE?

13 A. AND THE NICOTINE, YES.

14 EXCUSE ME, TAR DOES NOT CONTAIN
15 NICOTINE.

16 THE COURT: YOU ARE GOING TO HAVE TO
17 SPEAK UP A LITTLE BIT.

18 THE WITNESS: THE TAR DOES NOT CONTAIN
19 THE NICOTINE.

20 Q BY MR. PIUZE: WHY DON'T I STAND
21 HERE AND YOU SIT THERE. THANKS FOR COMING OVER
22 HERE.

23 TYPICALLY, YOU BRING THE TAR DOWN
24 TO BRING THE NICOTINE DOWN; RIGHT?

25 A. TYPICALLY, THE NICOTINE FOLLOWS THE
26 TAR, THAT IS CORRECT.

27 Q. NOW, WHAT YEAR DID THAT CAMBRIDGE
28 COME OUT ON THE MARKET AGAIN, PLEASE?

1 A. AS I SAID BEFORE, IT CAME OUT IN
2 1980.

3 Q. AND WHAT YEAR DID IT COME OFF THE
4 MARKET?

5 A. I BELIEVE IT WAS '86.

6 Q. I AM GOING TO WRITE 1980 ON THIS
7 PARTICULAR CHART AND ASK THAT THIS BE NUMBERED
8 PROBABLY 10,000 AND?

9 THE CLERK: YOUR NEXT NUMBER IS 32.

10 MR. PIUZE: 32.

11 THE CLERK: 10,032.

12

13 * (EXHIBIT 10,032, CHART, MARKED
14 FOR I. D.)

15

16 Q BY MR. PIUZE: IF PEOPLE --
17 WITHDRAW THAT AND START DIFFERENTLY.

18 WE ALREADY DISCUSSED, YOU ARE AWARE
19 OF PHILIP MORRIS DOCUMENTS FOR SOME OF THE PEOPLE
20 WHO WERE ABOVE YOU SAID, IT'S REALLY NICOTINE THAT
21 PEOPLE ARE AFTER; RIGHT, YOU ARE AWARE OF THAT?

22 MR. LEITER: OBJECT TO THE
23 CHARACTERIZATION OF THE DOCUMENTS.

24 THE COURT: OVERRULED.

25 THE WITNESS: I HAVE SEEN DOCUMENTS LIKE
26 THAT IN PREPARATION FOR TRIALS, YES.

27 Q BY MR. PIUZE: AND WE ALSO HAVE
28 NOT TALKED ABOUT YOUR THOUGHT THAT FLAVOR OR TASTE

1 IS ONE OF THE MOST IMPORTANT THINGS?

2 A. YES.

3 Q. CAN NICOTINE BE SOMEHOW, LET'S SAY
4 THIS IS CAMBRIDGE AND LET'S SAY THAT'S THE FILTER,
5 IS THERE SOME WAY -- AND ONE OTHER THING, I TAKE IT
6 THAT THIS CAMBRIDGE WAS A LOW NICOTINE CIGARETTE
7 TOO?

8 A. IT WAS PROPORTIONALLY LOW TO THE
9 TAR LEVEL, YES.

10 Q. WOULD THERE BE A WAY OF PUTTING
11 NICOTINE ON THE OUTSIDE OF THE FILTER SOMEPLACE OR
12 EVEN IN THE FILTER SO THAT WHEN A PERSON INHALED,
13 IN ADDITION TO THE MINUTE AMOUNTS OF NICOTINE THE
14 PERSON WAS GETTING OFF OF THE TOBACCO SMOKE, THE
15 PERSON COULD ALSO BE GETTING NICOTINE THAT YOU
16 ARTIFICIALLY PUT IN THE FILTER?

17 A. I GUESS IT'S POSSIBLE TO DO THAT.
18 IT'S NOT SOMETHING THAT I HAVE EVER DONE, NOTHING
19 THAT PHILIP MORRIS HAS EVER DONE.

20 Q. RIGHT. AND THAT'S A POINT. TO
21 YOUR KNOWLEDGE, PHILIP MORRIS NEVER TRIED TO DO
22 THAT?

23 A. NOT ITSELF, COMMERCIALY, NO.

24 Q. SO WHEN PHILIP MORRIS HAD THIS
25 CIGARETTE ON THE MARKET THAT HAD MORE THAN 99
26 PERCENT LESS OF THE BAD STUFF, IT NEVER TRIED
27 TAKING SOME NICOTINE AND PUTTING IT INSIDE OF A
28 FILTER WHERE THE PEOPLE WHO WERE SMOKING IT COULD

1 GET THAT NICOTINE WITHOUT GETTING ANY OF THE BAD
2 STUFF; RIGHT?

3 A. THAT IS RIGHT. I AM GENERALLY
4 AWARE OF A PRODUCT THAT WAS ON THE MARKET THAT WAS
5 SOMEWHAT LIKE THAT.

6 Q. NOW, AS FAR AS FLAVOR IS CONCERNED,
7 THE FLAVOR COMES OUT OF THE TOBACCO BURNING; RIGHT?

8 A. THE FLAVOR RESULTS FROM THE TOBACCO
9 BEHIND THE BURNING COAL BEING HEATED AND DRAWING
10 FLAVOR OFF OF THAT, YES.

11 Q. THANK YOU.

12 DID PHILIP MORRIS EVER TRY PUTTING
13 FLAVOR IN THE FILTER?

14 A. I DON'T BELIEVE WE ADDED FLAVOR TO
15 THAT FILTER.

16 Q. THANKS.

17 IN THEORY, I KNOW YOU HAVEN'T, YOU,
18 CORPORATELY, YOU, PERSONALLY, BUT PHILIP MORRIS
19 DOMESTIC TOBACCO CORPORATION, NEVER TRIED THIS, BUT
20 IN THEORY, YOU COULD ADD FLAVORS TO THE FILTER,
21 COULDN'T YOU?

22 A. IN THEORY, YOU CAN DO THAT.

23 Q. ALL RIGHT. NOW, LET ME COME BACK
24 TO THIS ORGANIZATIONAL CHART HERE.

25 WHEN YOU BECAME -- I HAVE TRIED TO
26 FOLLOW YOUR CAREER ALONG AND I THINK WE ARE AT
27 SOMEPLACE IN THE VICINITY OF ABOUT 1986 OR SO.
28 TELL ME WHAT CAREER CHANGE YOU HAD AROUND 1986.

1 A. 1987.

2 Q. '7?

3 A. I MOVED FROM BEING MANAGER OF THE

4 BIOMATERIALS SCIENCE DIVISION, INDICATED IN YELLOW

5 ON THE SECOND LINE DOWN THERE, THE SECOND ONE OVER

6 TO THE RIGHT, TO BECOMING MANAGER OF THE PHYSICAL

7 RESEARCH DIVISION.

8 Q. SO YOU WENT FROM HERE TO HERE?

9 A. YES, SIR.

10 Q. AND WHAT DID YOU DO THERE?

11 A. AS I SAID A FEW MINUTES AGO, I WAS

12 MANAGER OF THE GROUP THAT WAS RESPONSIBLE FOR THE

13 REMOVAL OF NICOTINE FROM TOBACCO, NON-CONVENTIONAL

14 CIGARETTE DEVELOPMENT. I HAD A PROJECT ON REDUCING

15 THE EMISSION PROPENSITY OF CIGARETTES THAT WE

16 TALKED ABOUT, THE MICROSCOPY GROUP AND A GROUP

17 RESPONSIBLE FOR LOOKING AT THE MECHANICAL

18 PROPERTIES OF TOBACCO.

19 Q. SO --

20 A. AND ALSO, THERE MAY HAVE BEEN

21 ANOTHER ONE IN THERE THAT I DON'T REMEMBER.

22 Q. REMEMBER THIS ONE FROM FRIDAY?

23 A. YES, SIR.

24 Q. SO YOU WERE THE BOSS OF THAT

25 PROJECT?

26 A. NO, SIR, I WAS NOT.

27 Q. WHO WAS, DO YOU REMEMBER?

28 A. I AM TRYING TO THINK.

1 THE RESEARCH PORTION, RESEARCH AND
2 DEVELOPMENT PORTION, I BELIEVE, DR. HAUSERMAN WAS
3 THE VICE-PRESIDENT OF RESEARCH AND DEVELOPMENT AT
4 THAT TIME, AS WELL AS THE ENGINEERING PORTION OF
5 THIS. AND THERE WAS A HUGE ENGINEER PART OF IT,
6 WAS -- AND I CAN'T REMEMBER THE NAME OF THE PERSON
7 WHO WAS IN CHARGE OF THE ENGINEERING DEPARTMENT.
8 BUT TWO PEOPLE, PRIMARILY. DOCTOR HAUSERMAN WOULD
9 BE THE WON WHO WOULD BE THE OVERALL RESEARCH AND
10 DEVELOPMENT PORTION OF IT AND I CAN'T RECALL THE
11 ENGINEER WHO WAS IN CHARGE OF THE ENGINEER PORTION.

12 Q. THAT BIG PRODUCTION FACTORY WAS
13 BUILT BEFORE YOU FINISHED THE PILOT PLANT TESTING;
14 RIGHT?

15 A. WE STARTED BUILDING IT BEFORE THE
16 PILOT PLAN WAS FINISHED, WHICH WAS BEFORE THE PILOT
17 PLANT TESTING WAS DONE, YES.

18 Q. PRETTY UNUSUAL?

19 A. IT IS. BECAUSE WE WERE SO
20 ENCOURAGED WITH THE RESULTS WE WERE GETTING FROM
21 THE PILOT PLANT.

22 Q. WITHIN A YEAR OR SO BEFORE NOW YOU
23 CALLED THAT A VERY GUTSY, GUTSY MOVE ON PHILIP
24 MORRIS'S BEHALF; RIGHT?

25 A. I THINK IT WAS. I DON'T REMEMBER
26 SAYING GUTSY, BUT IT PROBABLY WAS. I WON'T ARGUE
27 WITH THAT.

28 I WON'T ARGUE WITH IT. I JUST

1 DON' T RECALL SAYING THAT.

2 Q. IT' S OKAY. IT' S NO BIG DEAL.
3 THAT' S YOU, RIGHT, THAT' S PRETTY --

4 A. I WON' T ARGUE WITH YOU.

5 Q. "WELL, STARTED CONSTRUCTION OF A
6 PLANT BEFORE YOU FINISHED THE PILOT PLANT TESTING?"

7 YOU SAID, "WELL, IT' S A PRETTY
8 GUTSY MOVE BUT WE HAD REASON TO START IT AND WE
9 DID. "

10 SO BEFORE, CORPORATELY, PHILIP
11 MORRIS HAD FIGURED OUT WHETHER OR NOT THIS WAS
12 GOING TO WORK, THEY BUILT THIS BIG OLD FACTORY AND,
13 TOO LATE, FIGURED OUT IT WASN' T GOING TO WORK;
14 RIGHT?

15 A. WE REALLY DIDN' T KNOW IT WASN' T
16 GOING TO WORK UNTIL IT WENT INTO TEST MARKET. THIS
17 IS MY GENERAL UNDERSTANDING OF IT. WENT INTO TEST
18 MARKET AND STAYED THERE FOR A PERIOD OF TIME AND
19 PEOPLE REALLY DIDN' T BUY IT. THAT' S THE BOTTOM
20 LINE WHY IT DIDN' T WORK. BUT IT WORKED AS FAR AS
21 REMOVING THE NICOTINE GOES.

22 Q. SOMEONE JUMPED THE GUN IN BUILDING
23 THAT BIG OLD FACTORY?

24 A. I DON' T THINK SO.

25 Q. OKAY.
26 WHAT ARE YOU GOING TO USE THAT FOR?

27 A. AT THIS TIME WE DON' T HAVE ANY
28 PLANS FOR IT.

1 Q. IT WASN'T YOU THAT GAVE THE GREEN
2 LIGHT TO THAT VENTURE?

3 A. NO.

4 Q. WAS THAT BEFORE YOU TOOK OVER THIS
5 POSITION HERE THAT YOU WERE JUST TALKING ABOUT?

6 DID THAT ALL HAPPEN BEFORE YOU TOOK
7 OVER THERE?

8 A. I THINK I MISSPOKE EARLIER ABOUT A
9 DATE. I GUESS IT WAS '86 OR '87. YES, IT DID. I
10 WAS INVOLVED WITH THE -- I WAS INVOLVED WITH THE
11 LABORATORY PORTION OF THAT STARTING WHEN I BECAME
12 MANAGER OF PHYSICAL RESEARCH.

13 Q. YOU WERE INVOLVED WITH THAT?

14 A. YES. I WAS INVOLVED WITH THE
15 LABORATORY PORTION OF IT.

16 Q. IT WASN'T YOU THAT GAVE THE GREEN
17 LIGHT?

18 A. NO, SIR, IT WAS NOT.

19 Q. THAT FACTORY HAS BEEN EMPTY FOR HOW
20 LONG NOW?

21 A. IT'S BEEN ENTIRELY AND NOT IN
22 OPERATION SINCE THE END OF THE TEST MARKETS.

23 Q. JUST GIVE US AN APPROXIMATE YEAR.

24 A. SINCE THE EARLY '90'S.

25 Q. OKAY. NOW, HOW LONG DID YOU STAY
26 HERE (INDICATING)?

27 A. I STAYED MANAGER OF PHYSICAL
28 RESEARCH FROM '87 UNTIL '91.

1 Q. AND THEN WHAT DID YOU DO?

2 A. I WAS DIRECTOR OF BASIC RESEARCH AT
3 THAT TIME.

4 Q. SO DOES THAT, THAT MEANS YOU GOT A
5 DIRECTORATE; RIGHT?

6 A. YES.

7 Q. WHERE IS DIRECTORATE, BASICALLY?

8 A. THERE WAS, AGAIN, ANOTHER
9 REORGANIZATION. I CAN TELL YOU WHO WAS IN WHAT
10 ORGANIZATIONS WERE UNDER ME AT THE TIME AND THEY
11 ARE STILL UP THERE, I THINK.

12 THE ORGANIZATIONS THAT WERE UNDER
13 ME WAS COMPUTER APPLICATIONS DIVISION, THE PHYSICAL
14 RESEARCH DIVISION AND THE CHEMICAL RESEARCH
15 DIVISION.

16 Q. SO A NEW DIRECTORATE, A NEW
17 DIRECTORATE WAS CREATED FOR YOU; RIGHT?

18 A. NO. I ASSUMED A DIRECTORATE THAT
19 WAS PREEXISTING.

20 Q. SOMETHING HERE HAD CHANGED BY THE
21 TIME --

22 A. SOME DIVISIONS WERE MOVED AROUND.

23 Q. HOW LONG DID YOU REMAIN THE HEAD OF
24 THE DIRECTORATE?

25 A. I WAS DIRECTOR UNTIL 1993, WHEN I
26 WAS PROMOTED TO TECHNOLOGY FELLOW

27 Q. REMEMBER YOU WERE SHOWING UP THE
28 VENT HOLES IN THE CIGARETTES?

1 A. YES.

2 Q. HAD THOSE VENT HOLES ALWAYS BEEN IN
3 THAT POSITION?

4 A. WHEN WE STARTED PUTTING VENT HOLES
5 IN THE CIGARETTE, PRETTY MUCH IN THAT POSITION,
6 YES.

7 Q. WHEN DID YOU START PUTTING VENT
8 HOLES IN THE CIGARETTE, APPROXIMATELY?

9 A. YEAH, I AM THINKING, APPROXIMATELY,
10 MID-'60'S, LATE '60'S, EARLY '70'S, I GUESS. WE
11 DID THE RESEARCH TO DETERMINE WHETHER VENT HOLES
12 WERE PLACED, SOME TIME IN, IN THE MID-70'S, SO THEY
13 MIGHT HAVE BEEN MOVED AROUND A LITTLE BIT UNTIL WE
14 FIGURE OUT WHERE THE ULTIMATE PLACE TO PLACE THEM
15 WAS.

16 Q. SEE, I HEARD, I THINK I HEARD YOU
17 TESTIFYING ON FRIDAY THAT ONE OF THE THINGS YOU DID
18 WHEN YOU WORKED UPPED DR. FARONE IS THE TWO OF YOU
19 WERE DOING SOME WORK ON --

20 A. THE BEST PLACEMENT.

21 Q. RIGHT?

22 A. YES.

23 Q. SO BEFORE YOU EVER GOT TO PHILIP
24 MORRIS, THERE WERE ALREADY VENT HOLES IN THE
25 FILTERS; RIGHT?

26 A. BEFORE I CAME TO PHILIP MORRIS,
27 THERE WAS THE TECHNIQUE FOR MECHANICAL PERFORATION
28 OF THE VENT HOLES. AND THAT WAS A VERY DIFFICULT

1 PROCESS THAT THEY USED. AND THE EXACT PLACEMENT OF
2 THOSE VENT HOLES I DON'T RECALL EXACTLY.

3 Q. ONE OF THE THINGS THAT YOU AND
4 DR. FARONE WERE DOING WERE TRYING TO FIGURE OUT
5 WHERE TO PUT THE VENT HOLES SO SMOKERS WOULDN'T
6 BLOCK THEM, SO SMOKERS WOULDN'T COMPENSATE WITHOUT
7 KNOWING IT; RIGHT?

8 A. WE WERE TRYING TO PUT THE VENT
9 HOLES IN THE OPTIMUM PLACE I HAVE TESTIFIED SO
10 PEOPLE COULDN'T BLOCK THEM WITH THEIR FINGER,
11 WOULDN'T BLOCK THEM WITH THEIR FINGERS MOST OF THE
12 TIME AND WOULDN'T PUT THEM IN THEIR MOUTH MOST OF
13 THE TIME.

14 Q. BECAUSE YOU KNEW, YOU KNEW, BACK IN
15 THE MID-70'S, WHEN YOU WERE WORKING WITH
16 DR. FARONE, THAT PEOPLE HAD THAT -- IT MIGHT DEFEAT
17 THE DESIGN OF THE FILTER?

18 A. IF YOU BLOCKED THE VENT HOLES, IT
19 DOES DEFEAT PART OF THE DESIGN OF THE FILTER, IS
20 THAT CORRECT?

21 Q. WHEN -- WHO DECIDED WHERE TO PUT
22 THESE VENT HOLES?

23 A. I DON'T KNOW WHO ACTUALLY MADE THE
24 DECISION. THE RESEARCH TO LEAD TO THAT DECISION
25 WAS SOME WORK THAT I DID WITH DR. FARONE.

26 Q. YOU HAVE BEEN INVOLVED, AS A PHILIP
27 MORRIS CONSULTANT, WITHIN THE LAST COUPLE OF YEARS,
28 IN TRYING TO, I THINK YOU WERE TRYING TO SATISFY

1 YOUR REGULATOR SOMEPLACE AND TRYING TO DETERMINE
2 ALTERNATIVE WAYS THE MEASURING HOW MUCH TAR, HOW
3 MANY MILLIGRAMS OF TAR A SMOKER REALLY GETS; RIGHT?

4 A. WE HAVE BEEN WORKING WITH THE
5 COMMONWEALTH OF MASSACHUSETTS AND THE STATE OF
6 TEXAS, AND PRIOR TO THAT WITH THE FEDERAL TRADE
7 COMMISSION TO ASSIST THEM IN DEVELOPING TECHNIQUES
8 TO MEASURE THE TAR AND NICOTINE FROM CIGARETTES
9 THAT ARE SMOKED DIFFERENTLY THAN THE CURRENT F. T. C.
10 METHOD.

11 Q. AS PART OF YOUR JOB BACK IN THE,
12 LET'S SAY, THE FIRST EIGHT YEARS THAT YOU WERE AT
13 PHILIP MORRIS, LET'S SAY, '72 TO '80, OKAY?

14 A. OKAY.

15 Q. YOU WERE OBVIOUSLY AWARE OF THE
16 CONCEPT THAT REAL SMOKERS SMOKING REAL CIGARETTES
17 WERE GETTING WAY MORE TAR THAN THOSE MACHINES WERE
18 AND SOME FEDERAL TRADE COMMISSION BUILDING?

19 A. I CAN TELL YOU WHAT I WAS AWARE OF.
20 AND WHAT I WAS AWARE OF IS THAT -- MY GENERAL
21 BELIEF, I AM NOT AN EXPERT IN COMPENSATION, BUT MY
22 GENERAL BELIEF IS THAT PEOPLE CAN SMOKE, DO, CAN
23 AND DO SMOKE A CIGARETTE DIFFERENTLY, DIFFERENT
24 PEOPLE SMOKE DIFFERENTLY, SMOKE DIFFERENT -- ONE
25 TIME OF THE DAY TO THE OTHER. AND THAT WAS
26 INFORMATION THAT PHILIP MORRIS, BEFORE I WENT TO
27 PHILIP MORRIS, FURNISHED TO THE F. T. C., THE FEDERAL
28 TRADE COMMISSION, THEY PUT INTO THEIR REPORT, AND

1 IT'S NOT, EVERYBODY IN THE PUBLIC HEALTH COMMUNITY
2 KNOWS THAT TOO.

3 Q. RIGHT.

4 A. EVERYBODY KNOWS IT.

5 Q. OKAY. I WAS JUST WITH YOU?

6 A. SO IT'S UP AND DOWN; RIGHT?

7 Q. EXCUSE ME.

8 YOU KNEW THAT REAL SMOKERS WEREN'T
9 GETTING THE AMOUNTS THAT THE FEDERAL GOVERNMENT
10 MACHINES WOULD; RIGHT?

11 A. I KNEW THAT REAL SMOKERS, TO QUOTE
12 YOU, SMOKERS WHO CAN GET DIFFERENT NUMBERS THAN THE
13 F. T. C. , THEY CAN GET HIGHER NUMBERS OR LOWER
14 NUMBERS.

15 Q. WHO IS THE PERSON, THE REGULATOR IN
16 MASSACHUSETTS WHO YOU HAVE BEEN WORKING WITH?

17 A. DR. GREGORY CONNOLLY.

18 Q. WHAT KIND OF DOCTOR IS GREGORY
19 CONNOLLY? IS HE A MEDICAL DOCTOR OR IS HE A PH. D. ?

20 A. I BELIEVE HE IS A DENTIST.

21 Q. A DENTIST?

22 A. I BELIEVE SO.

23 Q. WHAT'S HIS POSITION IN
24 MASSACHUSETTS, PLEASE?

25 A. I THINK HIS TITLE IS DIRECTOR OF
26 PUBLIC HEALTH, I THINK, AND TOBACCO CONTROL. I
27 DON'T KNOW HIS EXACT TITLE.

28 Q. JUST BRIEFLY, TELL THE JURY WHAT

1 YOU HAVE BEEN WORKING WITH HIM ON.

2 A. IT'S TWO THINGS WE WORKED WITH HIM
3 ON. ACTUALLY, THREE THINGS.

4 USING ALTERNATE PUFFING PARAMETERS
5 TO MEASURE THE TAR AND NICOTINE THAT COMES FROM
6 COMMERCIAL CIGARETTES, AND THE ALTERNATE PUFFING
7 PARAMETERS ARE MORE INTENSE THAN THE F. T. C. PUFFING
8 PARAMETERS.

9 THE F. T. C. PUFFING PARAMETERS ARE
10 ONE PUFF TAKEN ON A CIGARETTE EVERY MINUTE, A
11 TWO-SECOND PUFF, 35 C. C. PUFF, AND ALL THE VENT
12 HOLES OPEN.

13 THE COMMONWEALTH OF MASSACHUSETTS,
14 THEY PRESCRIBED TO US TO TAKE A PUFF EVERY 30
15 SECONDS, SO TWICE AS EFFECTIVELY AS THE F. T. C. TO
16 TAKE A 45 C. C. PUFF. SO THAT'S 10 C. C. 'S BIGGER
17 THAN THE F. T. C. AND TO BLOCK HALF THE VENT HOLES,
18 THAT WE DEVELOPED A METHOD TO DO THAT. WE ALSO
19 LOOKED AT OTHER MATERIALS IN THE SMOKE, THE
20 MAINSTREAM SMOKE IN THE SIDESTREAM SMOKE WITH
21 DR. CONNOLLY.

22 Q. WHEN DID THIS START?

23 A. THIS STARTED BEFORE I RETIRED. IT
24 WAS MID TO -- PRIOR TO THAT, I WAS WORKING WITH
25 SOMEWHAT IN THE SAME AREA OF THE F. T. C. IN THE
26 MID-90'S.

27 Q. SO ROUGHLY SINCE THE MID-1990'S,
28 YOU WERE PHILIP MORRIS'S LIAISON MAN WITH

1 DR. CONNOLLY?

2 A. YES, I AM I AM NOT CURRENTLY BUT
3 I HAVE BEEN.

4 Q. WHY DID HE HAVE YOU BLOCK HALF OF
5 IT UP, PLEASE.

6 A. HIS THEORY IS THAT SOME PEOPLE TEND
7 TO SMOKE MORE INTENSELY THAN WHAT THE F. T. C.
8 NUMBERS WOULD INDICATE. THAT'S MY BELIEF ABOUT
9 WHAT HE DID.

10 Q. YOU WEREN'T UP THERE ALONE, WERE
11 YOU?

12 A. NO, SIR, I WAS NOT.

13 Q. PEOPLE FROM OTHER TOBACCO
14 MANUFACTURERS WERE UP THERE?

15 A. YES. I AM JUST TRYING TO THINK,
16 WAS I EVER THERE ALONE WITH -- I MAY HAVE BEEN, I
17 DON'T RECALL.

18 Q. DON'T TAKE IT TOO LITERALLY. THERE
19 ARE OTHER PEOPLE THERE BESIDES?

20 A. YES, SIR.

21 Q. MANUFACTURERS GOING THROUGH THE
22 SAME PROCESS BESIDES PHILIP MORRIS?

23 A. YES, SIR.

24 Q. WEREN'T YOU COMPARING YOUR OWN
25 CIGARETTES TO THEIRS, HOW THEY WERE DOING ON THESE
26 MACHINES?

27 A. WELL, DID WE DO THAT?
28 WE DETERMINED OUR CIGARETTES,

1 OUR -- THE VALUE OF OUR CIGARETTES AND WE SUBMITTED
2 THOSE TO DR. CONNOLLY.

3 OTHER MANUFACTURERS PRESENTED,
4 DETERMINE THE VALUES OF THEIR CIGARETTES AND
5 SUBMITTED THEM TO DR. CONNOLLY.

6 AND TOGETHER, WE LOOK AT REFERENCE
7 CIGARETTES SO WE COULD COMPARE BETWEEN LABORATORIES
8 TO MAKE SURE THAT WE WERE RUNNING SIMILAR TESTS.

9 Q. JUST USING REAL MARLBOROS FOR THESE
10 TESTS?

11 A. WE PURCHASED OUR MARLBOROS IN THE
12 COMMONWEALTH OF MASSACHUSETTS. THAT WAS A
13 REQUIREMENT BY THE TEST, INITIALLY. LATER ON DR.
14 CONNOLLY ALLOWED US TO GET CIGARETTES OUT OF THE
15 WAREHOUSE IN MASSACHUSETTS.

16 Q. TO THE BEST OF YOUR KNOWLEDGE,
17 MARLBORO SOLD IN CALIFORNIA, MASSACHUSETTS,
18 FLORIDA, ALASKA, ALL THE SAME THING?

19 A. YES, SIR, THEY ARE.

20 Q. ANYWAY, ALL OF YOUR TAR NUMBERS
21 BASICALLY DOUBLED UP THERE IN MASSACHUSETTS, DIDN'T
22 THEY?

23 A. THEY WENT UP BY A FACTOR OF TWO AT
24 THE MARLBORO LEVEL, YES.

25 Q. YOU DIDN'T TEST JUST MARLBOROS, DID
26 YOU?

27 A. NO, WE DID NOT.

28 Q. YOU TESTED MARLBORO LIGHTS?

1 A. WE TESTED A WIDE ARRAY OF
2 CIGARETTES.

3 Q. MARLBOROS TESTED WERE BASICALLY
4 DOUBLED?

5 A. THEY DOUBLED OR IN SOME CASES WENT
6 UP MORE THAN A FACTOR OF TWO.

7 BUT WHAT HAPPENED WAS THE RELATIVE
8 RANKING OF THE CIGARETTES BETWEEN THE F. T. C. TEST
9 AND THE COMMONWEALTH OF MASSACHUSETTS OR THE STATE
10 OF TEXAS TEST, THE RANKINGS STAYED THE SAME. THE
11 HIGHEST WAS STILL THE HIGHEST AND THE LOWEST WAS
12 STILL THE LOWEST.

13 Q. RIGHT. BUT THE NUMBERS THAT HAD
14 BEEN PUT OUT AS TO HOW MUCH OF THE BAD STUFF PEOPLE
15 WERE TAKING INTO THEIR SYSTEM ALL BASICALLY
16 DOUBLED?

17 A. THE NUMBERS, AS I SAID BEFORE,
18 EITHER DOUBLED OR IN SOME CASES WENT HIGHER THAN
19 DOUBLE.

20 Q. WHAT IS -- WITHDRAW THAT.

21 YOU HAVE TOLD ME ONCE THAT YOU ARE
22 NOT INTO THE BIOLOGY END OF IT. YOU HAVE TOLD US
23 AREAS WHERE -- TO WHICH YOUR EXPERTISE DOESN' T
24 EXTEND, BUT IN SOME OF THOSE YOU HAVE TOLD US SORT
25 OF WHAT YOU HAVE HEARD AT THE COMPANY; RIGHT?

26 A. MY GENERAL UNDERSTANDING, YES.

27 Q. OKAY. WHAT' S -- IS THERE ANY
28 AMOUNT OF TAR THAT' S SAFE? DOES ANYONE IN THE

1 WORLD KNOW THAT?

2 A. I DON'T KNOW OF ANYBODY THAT DOES.
3 MY GENERAL UNDERSTANDING, I DON'T KNOW WHAT IT IS,
4 I DON'T KNOW WHAT IN TAR I COULD TAKE OUT TO MAKE
5 IT SAFE.

6 Q. DO YOU KNOW WHY THAT ISN'T KNOWN?

7 MR. LEITER: I DIDN'T HEAR THE QUESTION.

8 Q BY MR. PIUZE: DO YOU KNOW WHY
9 THAT ISN'T KNOWN?

10 A. NOBODY HAS DISCOVERED WHAT IT IS
11 YET. I GUESS, THAT'S MY GENERAL UNDERSTANDING.

12 Q. WHY HASN'T PHILIP MORRIS, UNTIL THE
13 LAST COUPLE OF YEARS, TESTED, ACTUALLY TESTED FOR
14 BIOLOGICAL ACTIVITY, MEANING CANCER AND STUFF, BAD
15 STUFF, ITS MARLBOROS AGAINST ITS MARLBORO LIGHTS?

16 A. I ALREADY TESTIFIED MY GENERAL
17 UNDERSTANDING IS THAT WE HAVEN'T DONE THAT BECAUSE
18 WE HAVE TESTED CIGARETTES OVER A WIDE ARRAY OF TAR
19 AND NICOTINE AND WE FIND THAT THEY ARE ALL ACTIVE.

20 Q. WHY HASN'T --

21 A. I AM SORRY. IF YOU HAVE, FOR
22 EXAMPLE, A 15 MILLIGRAM TAR LIKE MARLBORO, AND MOST
23 OF THE BIOLOGICAL TESTS, IF YOU HAD A CIGARETTE
24 LIKE MARLBORO LIGHTS, A TEN MILLIGRAMS, A THIRD
25 LESS, YOU GET A THIRD LESS OF THE ACTIVITY.

26 Q. I UNDERSTAND THAT. WE DID TALK
27 ABOUT THAT.

28 WHY HASN'T PHILIP MORRIS TESTED,

1 UNTIL VERY, VERY RECENTLY, ONE MARLBORO AGAINST THE
2 OTHER, A RED AGAINST A GOLD OR AGAINST AN ULTRA
3 LIGHT, TO FIGURE OUT WHICH OF ITS FINISHED PRODUCTS
4 IS SAFER, IF ANY ARE?

5 MR. LEITER: OBJECTION, ASKED AND
6 ANSWERED.

7 THE COURT: OVERRULED.

8 THE WITNESS: IT'S ALSO MY GENERAL
9 UNDERSTANDING THAT IN ORDER TO DO THESE BIOLOGICAL
10 TESTS, YOU NEED TO HAVE SOMETHING THAT'S CONSISTENT
11 FROM ONE TIME TO THE OTHER, TESTS APPARENTLY TAKE A
12 LONG TIME TO RUN AND THE CIGARETTES THAT WE HAVE
13 ARE A NATURAL PRODUCT LIKE WINE IS A NATURAL
14 PRODUCT. SO WINE FROM THE NAPA VALLEY VERSUS THE
15 SONOMA VALLEY IS GOING TO BE DIFFERENT AND MARLBORO
16 FROM ONE TIME TO ANOTHER TIME, BECAUSE IT IS AN
17 ACTUAL PRODUCT, IT COMES IN IS GOING TO BE
18 DIFFERENT.

19 SO IN ORDER TO MAKE COMPARISONS,
20 GOOD COMPARISONS, YOU NEED TO HAVE CONSISTENT
21 REFERENCE MATERIAL TO DO THAT WITH.

22 AND IT IS SOMETHING THAT THE
23 FEDERAL GOVERNMENT USES, GOVERNMENTS AROUND THE
24 WORLD USE, THAT THE PUBLIC HEALTH COMMUNITY USES,
25 WE FOLLOW THOSE GUIDELINES AND THAT'S WHAT WE COULD
26 DO TO EVALUATE THE BIOLOGICAL ACTIVITY OF
27 CIGARETTES.

28 Q. WHAT GUIDELINES, THERE ARE NO

1 GUIDELINES TELLING YOU YOU HAVE TO USE REFERENCE
2 CIGARETTES?

3 A. MY UNDERSTANDING IS THAT THE --
4 MAYBE THEY ARE NOT GUIDELINES. BUT WHAT THEY ARE
5 IS WHAT WE FOLLOW WHAT THE PUBLIC HEALTH COMMUNITY
6 DOES AND WHAT THE FEDERAL GOVERNMENT DOES.

7 Q. LISTEN. IT'S A TRUE FACT THAT
8 PHILIP MORRIS, ANY OLD TIME IT EVER WANTED COULD
9 HAVE DECIDED TO TEST ONE MARLBORO, A RED ONE
10 AGAINST A GOLD ONE, OR AGAINST AN ULTRA LIGHT ONE
11 FOR BIOLOGICAL ACTIVITY?

12 A. I WON'T ARGUE WITH THAT.
13 MR. LEITER: OBJECTION, ARGUMENTATIVE.
14 THE COURT: OVERRULED.

15 Q BY MR. PIUZE: THERE IS NO
16 GUIDELINE OR RULE OR REGULATION OR FEDERAL OR STATE
17 OR ANYTHING THAT SAYS YOU CAN'T DO THAT, IS THERE?

18 A. THERE IS NOBODY THAT I KNOW OF THAT
19 IS ASKING US TO DO THAT.

20 Q. BUT YOU ARE DOING IT NOW, RIGHT?

21 A. WE ARE DOING IT NOW, YES.

22 Q. YOU ARE DOING IT NOW SINCE WHEN?

23 A. I HAVEN'T BEEN THERE, BUT THE BEST
24 OF MY KNOWLEDGE FOR A YEAR OR TWO, I DON'T KNOW
25 EXACTLY HOW LONG.

26 Q. AS A MATTER OF FACT, PHILIP MORRIS
27 HAS FINALLY DECIDED TO TEST IT'S FINISHED
28 MANUFACTURED PRODUCTS FOR BIOLOGICAL ACTIVITY,

1 MEANING CANCER, ONLY AFTER PHILIP MORRIS FINALLY
2 ADMITTED THAT ITS TOBACCO PRODUCTS WOULD CAUSE
3 CANCER?

4 MR. LEITER: OBJECTION, ARGUMENTATIVE.

5 Q BY MR. PIUZE: ISN'T THAT TRUE?

6 THE COURT: IF YOU KNOW

7 THE WITNESS: I DON'T KNOW WHY THEY ARE
8 TESTING THEM

9 Q BY MR. PIUZE: THAT ISN'T EXACTLY
10 WHAT I ASKED YOU.

11 THE QUESTION WAS THIS: ISN'T IT
12 CORRECT THAT AFTER NEVER TESTING, EVER TESTING ITS
13 CIGARETTES, FINISHED CIGARETTES, THAT PEOPLE
14 ACTUALLY SMOKE, FOR BIOLOGICAL ACTIVITY, PHILIP
15 MORRIS ONLY STARTED DOING THESE TESTS AFTER PHILIP
16 MORRIS FINALLY AGREED THAT ITS PRODUCTS CAUSE
17 CANCER?

18 MR. LEITER: SAME OBJECTION.

19 THE COURT: IF YOU KNOW

20 THE WITNESS: I STATED MY KNOWLEDGE IN
21 THIS AREA FULLY. I DON'T KNOW

22 Q BY MR. PIUZE: FINE. THIS IS MY
23 LAST TOPIC.

24 ALTHOUGH YOU ARE NOT IN MARKETING,
25 I AM GOING TO WITHDRAW THAT -- YOU OWN STOCK IN THE
26 COMPANY, OBVIOUSLY?

27 A. A VERY SMALL AMOUNT.

28 Q. AND YOU GET, YOU HAVE GOT OPTIONS

1 FOR MDRE?

2 A. A FEW

3 Q. YOU FOLLOW HOW WELL THE COMPANY
4 DOES, GENERALLY?

5 A. IN A GENERAL SENSE, YES.

6 Q. EVEN THOUGH YOU ARE NOT IN
7 MARKETING AS A LONG-TERM EMPLOYEE, AN EX-EMPLOYEE
8 AND NOW CONSULTANT FOR PHILIP MRRIS, YOU OBVIOUSLY
9 KNOW THAT MARLBORO IS THE COMPANY'S BEST SELLING
10 PRODUCT; RIGHT?

11 A. I KNOW THE MARLBORO BRAND FAMILY,
12 YES, IS THEIR BEST SELLER.

13 Q. AND SOMETIME OVER THE PASSAGE OF
14 TIME, RED SLIPPED BEHIND GOLD, I GUESS, DO YOU KNOW
15 THAT?

16 A. I HAVE HEARD THAT, YES.

17 Q. BUT FOR THE LONGEST TIME, RED WAS
18 AHEAD OF GOLD; RIGHT?

19 A. THAT IS CORRECT, YES.

20 Q. ONE WAY OR ANOTHER, THE MARLBORO
21 FAMILY IS LIKE THE MICHAEL JORDAN OF CIGARETTES;
22 RIGHT?

23 MR. LEITER: OBJECTION TO THE ARGUMENT.

24 THE COURT: SUSTAINED.

25 MR. PIUZE: I WILL TAKE IT BACK.

26 Q BY MR. PIUZE: THIS IS, I MEAN,
27 MARLBORO WAS THE UNQUESTIONED, ALL TIME, BIG TIME,
28 BEST SELLING CHAMP BRAND; RIGHT?

1 MR. LEITER: OBJECTION, FOUNDATION WITH
2 THIS WITNESS.

3 THE COURT: OVERRULED.

4 THE WITNESS: WHAT I DO KNOW IS THAT,
5 WHAT I BELIEVE I KNOW IS THAT MARLBORO IS THE BEST
6 SELLER IN THE COUNTRY.

7 Q BY MR. PIUZE: AND HAS BEEN FOR AS
8 LONG AS YOU CAN REMEMBER BACK?

9 A. NO, SIR. WHEN I WENT TO PHILIP
10 MORRIS IT WASN'T.

11 Q. HAS BEEN SINCE WHEN?

12 A. I THINK MARLBORO OVERTOOK WINSTON
13 IN THE MID, PROBABLY LATE '70'S, EARLY '80'S. BUT
14 DON'T HOLD ME TO THAT DATE EXACTLY, SOMEWHERE IN
15 THAT TIMEFRAME. IT WAS AFTER I WAS AT PHILIP
16 MORRIS.

17 Q. I WON'T HOLD YOU TO THAT.

18 THEY WAY, THE PHILIP MORRIS COMPANY
19 AND COMPANIES ARE BUILT ON THE SUCCESS OF MARLBORO
20 CIGARETTES; RIGHT?

21 MR. LEITER: OBJECTION, FOUNDATION.

22 THE COURT: FROM THIS WITNESS IN R&D,
23 OVERRULED. GO AHEAD.

24 THE WITNESS: I WON'T ARGUE WITH IT, BUT
25 I DON'T KNOW.

26 Q BY MR. PIUZE: IF PHILIP MORRIS,
27 IN 1980 OR 1981 OR '82, '3, '4, '5, '6, HAD THIS
28 CIGARETTE ON THE MARKET, AND I AM SHOWING YOU

1 EXHIBIT 10, 032, AND IF PHILIP MORRIS HAD TRIED TO
2 PUT IN SOME NICOTINE OR SOME FLAVOR IN THAT FILTER,
3 PHILIP MORRIS, WOULD HAVE BEEN TRYING TO UNDERCUT
4 ITS MEAL TICKET PRODUCT, WOULDN' T IT?

5 MR. LEITER: OBJECTION, CALLS FOR
6 SPECULATION.

7 THE COURT: OVERRULED. BUT THIS WITNESS
8 IS NOT NECESSARILY THE RIGHT WITNESS FOR THIS.

9 DO YOU KNOW, SIR?

10 THE WITNESS: NO, SIR.

11 Q BY MR. PIUZE: IF PHILIP MORRIS
12 HAD TRIED WITH THIS CIGARETTE THAT HAS 99 PLUS
13 PERCENT LESS OF THE BAD STUFF, TO ADD FLAVOR AND
14 NICOTINE INTO THE FILTER ITSELF, AS OPPOSED TO THE
15 TOBACCO, IT WOULD HAVE BEEN RUNNING, WOULD IT NOT,
16 A RISK OF INTERFERING WITH ITS MOST POPULAR PRODUCT
17 ON THE MARKET?

18 MR. LEITER: OBJECTION, FOUNDATION, CALLS
19 FOR SPECULATION.

20 THE COURT: OVERRULED.

21 THE WITNESS: I DON' T KNOW I WOULD HAVE
22 TO SPECULATE TO GIVE AN ANSWER TO THAT, SO I REALLY
23 DON' T KNOW

24 Q BY MR. PIUZE: OKAY, THANKS.

25 SO NOWADAYS, IN ADDITION TO FISHING
26 AND TAKING IT EASY, WHAT DO YOU DO BESIDES -- YOU
27 MENTIONED THAT YOU DO SOME LITIGATION, BUT WHAT
28 DOES THAT MEAN BESIDES ACTUALLY BEING IN A PLACE

- 1 LIKE THIS?
- 2 A. IT MEANS WHAT IT MEANS.
- 3 Q. YOU ARE NO LONGER IN THE BUSINESS
- 4 OF GATHERING UP INFORMATION AND GOING THROUGH
- 5 COMPANIES FILES AND STUFF LIKE THAT?
- 6 A. NO, SIR. I DO, ON A RARE OCCASION,
- 7 GIVE ADVICE ON WHAT I THINK WOULD BE TRADE SECRET
- 8 INFORMATION. BUT NO, NOT IN GENERAL.
- 9 Q. WHO IS THE MAN HERE IN THE BACK ON
- 10 THE FAR RIGHT, YOUR FAR RIGHT?
- 11 A. MR. WEBB.
- 12 Q. AND WHO IS MR. WEBB?
- 13 A. HE IS AN ATTORNEY.
- 14 Q. FROM?
- 15 A. HUNT & WILLIAMS.
- 16 Q. WHERE?
- 17 A. RICHMOND, VIRGINIA.
- 18 Q. DID YOU TWO COME OUT HERE TOGETHER?
- 19 A. NO, WE DID NOT.
- 20 Q. HAVE YOU BEEN TALKING TO HIM SINCE
- 21 YOUR PORTION STARTED?
- 22 A. YES.
- 23 Q. WHERE IS THE LAST PLACE THAT YOU
- 24 TESTIFIED BEFORE THIS?
- 25 A. IN NEW YORK.
- 26 Q. PRETTY RECENTLY?
- 27 A. YES.
- 28 Q. WAS HE THERE?

1 A. YES, HE WAS.

2 Q. WHERE ARE YOU GOING NEXT?

3 A. I DON'T HAVE ANY IDEA. I AM GOING

4 TO GO TO ALASKA ON VACATION THIS SUMMER.

5 Q. GO FISHING?

6 A. TRY TO CATCH SALMON AND HALIBUT.

7 Q. HAVE A GOOD TIME.

8 A. THANK YOU VERY MUCH.

9 MR. PIUZE: THANK YOU VERY MUCH.

10

11 REDIRECT EXAMINATION

12

13 BY MR. LEITER:

14 Q. DR. WHIDBY, I JUST HAVE A COUPLE

15 QUESTIONS.

16 WE HAVE HEARD SOME MORE QUESTIONS

17 THIS MORNING WITH TESTING MARLBORO RED VERSUS

18 MARLBORO LIGHT. AND I WANT TO SEE IF I CAN CAPTURE

19 WHAT MR. PIUZE'S QUESTION WAS.

20 THERE IS SOME BIOLOGICAL TESTING OF

21 PRODUCT GOING ON TODAY, YOU ARE AWARE OF THAT?

22 A. IT'S MY UNDERSTANDING, YES.

23 Q. ARE YOU AWARE OF ANY TEST THAT WILL

24 TELL YOU OR TELL SCIENTISTS WHETHER A MARLBORO RED

25 IS SAFER FOR SMOKERS THAN A MARLBORO LIGHT, ANY

26 BIOLOGICAL TEST?

27 A. NO, SIR, I AM TOTALLY UNAWARE OF

28 THAT.

1 Q. ARE YOU AWARE OF WHETHER THERE HAS
2 EVER BEEN ANY TEST THAT, BIOLOGICAL TEST THAT WOULD
3 TELL SCIENTISTS WHETHER A MARLBORO RED IS SAFER
4 THAN A MARLBORO GOLD?

5 A. NEVER HEARD SUCH A TEST.

6 Q. NOW, WERE YOU ALSO ASKED ABOUT WORK
7 WITH THE MASSACHUSETTS DEPARTMENT OF HEALTH AND
8 DR. CONNOLLY, IS THAT RIGHT?

9 A. YES, SIR.

10 Q. WHO INSTIGATED THOSE TESTS?

11 A. DR. CONNOLLY.

12 Q. IT WAS SOMETHING THAT PHILIP MORRIS
13 IS COOPERATING WITH THE PUBLIC HEALTH AUTHORITIES?

14 A. JUST LIKE WE DID WITH THE F. T. C. ,
15 YES, SIR.

16 Q. THE TESTING THAT DOCTOR CONNOLLY IS
17 DOING, YOU MENTIONED SIMILAR TESTING IN TEXAS AND
18 PREVIOUSLY WITH THE F. T. C. ; IS THAT RIGHT?

19 A. THAT IS CORRECT.

20 Q. HAVE YOU EVER HEARD THE TEST
21 PARAMETERS DESCRIBED AS EXAGGERATED F. T. C.
22 STANDARDS?

23 A. YES.

24 Q. WHAT DOES THAT MEAN?

25 A. THAT MEANS THEY ARE MORE INTENSE,
26 FULL, THAN THE F. T. C. PARAMETERS. THEY ARE, AS I
27 SAID, BIGGER PUFF VOLUMES, MORE FREQUENTLY,
28 BLOCKING THE VENT HOLES, THAT KIND OF THING.

1 Q. SO THE TEST PARAMETERS FOR
2 DR. CONNOLLY'S TESTS WERE SPECIFICALLY TO SEE WHAT
3 HAPPENS TO TAR DELIVERY IF YOU COVER UP THE VENT
4 HOLES, SMOKE MORE DEEPLY, ET CETERA; IS THAT RIGHT?

5 A. YOU COVER UP HALF THE VENT HOLES,
6 SMOKE A BIGGER PUFF, NOT NECESSARILY MORE DEEPLY, I
7 DON'T KNOW WHAT THAT MEANS, EXACTLY, TAKE A BIGGER
8 PUFF, TAKE IT MORE FREQUENTLY.

9 Q. WHAT DR. CONNOLLY AND THE INDUSTRY
10 FOUND OUT WAS THAT TAR DELIVERY GOES UP?

11 A. THAT IS CORRECT.

12 Q. NOW, IS THAT TO SUGGEST TO YOU THAT
13 THAT'S HOW ALL SMOKERS SMOKE?

14 A. NO, SIR.

15 Q. NOW, YOU TESTIFIED A LITTLE BIT
16 ABOUT SMOKERS. DO ALL SMOKERS SMOKE THE SAME WAY?

17 A. MY UNDERSTANDING IS PEOPLE DO NOT
18 SMOKE THE SAME WAY. THEY SMOKE DIFFERENTLY FROM
19 INDIVIDUAL TO INDIVIDUAL AND EVEN ONE PERSON WILL
20 SMOKE DIFFERENTLY FROM DIFFERENT TIMES OF THE DAY.

21 Q. NOW, LET ME CLARIFY ONE POINT. I
22 SPENT SOME TIME, THIS IS PLAINTIFF'S EXHIBIT 1605,
23 LOOKING AT THIS ORGANIZATION CHART, WHICH, AS YOU
24 RECALL, WAS DATED OCTOBER 1, 1979. IS THAT RIGHT?

25 A. YES.

26 Q. AND YOU WERE TAKEN THROUGH THIS
27 OVER TIME, AND ASKED WHAT JOBS YOU HAD AT VARIOUS
28 TIMES.

1 BY THE WAY, DR. OSDENE, YOU
2 MENTIONED THAT HE WAS STILL AROUND. YOU DIDN' T
3 MEAN TO SUGGEST THAT HE WAS STILL AT PHILIP MORRIS?
4 A. NO, SIR, I DID NOT.
5 Q. HE IS STILL ALIVE, AS FAR AS YOU
6 KNOW?
7 A. AS FAR AS I KNOW, HE IS.
8 Q. NO LONGER AT PHILIP MORRIS, IS HE?
9 A. NO, SIR, NOT TO MY KNOWLEDGE.
10 Q. NOW, JUST TO BE CLEAR ABOUT WHAT
11 HAPPENED, RESEARCH AND DEVELOPMENT DEPARTMENTS,
12 SOMETIMES GET REORGANIZED; IS THAT RIGHT?
13 A. THAT IS CORRECT.
14 Q. AND THAT MEANS --
15 A. QUITE FREQUENTLY.
16 Q. AND THAT MEANS NOTHING MORE THAN
17 REPORTING RELATIONSHIPS MAY CHANGE?
18 A. THAT IS CORRECT.
19 Q. SO THE CHEMICAL RESEARCH MANAGER IN
20 1979 MIGHT HAVE REPORTED TO THE DIRECTOR OF
21 RESEARCH, BUT AT ANOTHER POINT IN TIME COULD BE
22 REPORTING TO SOMEBODY ELSE?
23 A. THAT IS CORRECT.
24 Q. UNCOMMON TO HAVE REORGANIZATIONS
25 WHERE THOSE REPORTING RELATIONSHIP CHANGE?
26 A. NO.
27 Q. THE LAST SUBJECT THAT I WANTED TO
28 RAISE WITH YOU IS THE CAMBRIDGE CIGARETTE. PHILIP

- 1 MORRIS PUT CAMBRIDGE OUT ON THE MARKET?
- 2 A. RIGHT.
- 3 Q. NATIONWIDE?
- 4 A. RIGHT, NATIONWIDE.
- 5 Q. WAS THAT ON THE MARKET FOR SIX
- 6 YEARS?
- 7 A. YES.
- 8 Q. DIDN' T ATTRACT A LOT OF MARKET
- 9 SHARE?
- 10 A. NO, IT DID NOT.
- 11 Q. NOW, THE PROBLEMS, AND I THINK YOU
- 12 TESTIFIED ABOUT THIS WITH CAMBRIDGE, WERE NOT THAT
- 13 THERE WASN' T ENOUGH FLAVOR ON THE FILTER OR
- 14 NICOTINE ON THE FILTER, IS THAT YOUR UNDERSTANDING?
- 15 A. THAT IS CORRECT.
- 16 Q. CAN YOU TELL US AGAIN WHAT THE
- 17 PROBLEMS WERE WITH CAMBRIDGE?
- 18 A. EXTREMELY HARD TO DRAW, HARD TO
- 19 LIGHT, DIDN' T HAVE MUCH TASTE. AND WITH ALL THOSE
- 20 THINGS IN COMBINATION, IT WAS, AT LEAST THE LOWEST,
- 21 IT WAS NOT SOMETHING THAT PEOPLE WANTED TO SMOKE,
- 22 TO BUY AND SMOKE.
- 23 Q. WOULD PUTTING NICOTINE IN THE
- 24 FILLER OR TASTE ON THE FILTER HAVE SOLVED THE
- 25 PROBLEM WITH IT BEING HARD TO LIGHT OR BEING HARD
- 26 TO DRAW?
- 27 A. NOT IN MY ESTIMATION, NO.
- 28 Q. STILL WOULD HAVE BEEN HARD TO

1 LIGHT?

2 A. STILL WOULD HAVE BEEN HARD TO
3 LIGHT, HARD TO DRAW AND PROBABLY WOULDN' T HAVE HAD
4 MUCH TASTE.

5 Q. AND YOU MENTIONED A COUPLE TIMES IN
6 YOUR TESTIMONY THAT IF YOU MAKE A SAFER CIGARETTE
7 OR A CIGARETTE THAT REDUCES RISK, BUT NOBODY BUYS
8 IT, YOU HAVEN' T ACCOMPLISHED ANYTHING; RIGHT?

9 A. YES, THAT' S TRUE.

10 Q. HYPOTHETICALLY, YOU COULD MAKE A
11 FILTER OUT OF A BRICK; RIGHT?

12 A. YOU COULD.

13 Q. YOU WOULDN' T SELL A LOT OF
14 CIGARETTES?

15 A. NO.

16 Q. WOULDN' T ACCOMPLISH MUCH?

17 A. NO.

18 Q. EVEN THOUGH CIGARETTES WITH A
19 FILTER MADE OUT OF A BRICK WOULDN' T DELIVER ANY
20 SMOKE AT ALL?

21 A. SORT OF LIKE A CAMBRIDGE FILTER.

22 Q. OKAY. NOW, EVEN THOUGH CAMBRIDGE
23 WAS NOT SUCCESSFUL IN THE MARKET, PHILIP MORRIS HAS
24 HAD OTHER ULTRA LOW TAR CIGARETTES OUT ON THE
25 MARKET, HASN' T IT?

26 A. YES.

27 Q. CAN YOU GIVE US SOME IDEA OF WHAT
28 THOSE PRODUCTS ARE?

- 1 A. A MERIT IS OUR VERY LOW TAR
2 CIGARETTE THAT'S ON THE MARKET TODAY AND IT HAS
3 SOME SALES ASSOCIATION WITH IT, EVEN DOING THE BEST
4 WE CAN, THAT LEVEL, PEOPLE STILL ARE NOT
5 OVERWHELMINGLY PURCHASING VERY LOW TAR CIGARETTES.
- 6 Q. IS THE MERIT LINE, AS A WHOLE, IS
7 FAIRLY LOW TAR --
- 8 A. THAT IS RIGHT.
- 9 Q. -- BRAND OF CIGARETTES?
- 10 A. YES.
- 11 Q. SO A SMOKER WHO WANTED TO GET THE
12 ABSOLUTE MINIMAL TAR DELIVERY HAS OPTIONS IN THE
13 MARKETPLACE; RIGHT?
- 14 A. YES, FROM PHILIP MORRIS BRANDS AS
15 WELL AS OTHERS, THAT IS CORRECT.
- 16 Q. AND YOUR COMPETITORS HAD BRANDS ON
17 THE MARKET?
- 18 A. YES.
- 19 Q. AND IN FACT, EVEN BACK AT THE TIME
20 OF CAMBRIDGE, PHILIP MORRIS WAS LOOKING FOR A
21 PRODUCT THAT WOULD COMPETE WITH OTHER PRODUCT
22 ALREADY ON THE MARKET; IS THAT CORRECT?
- 23 A. THAT IS CORRECT, YES, PRIMARILY THE
24 CARLTON.
- 25 Q. THE CARLTON AND ALSO THE NOW?
- 26 A. THAT IS RIGHT.
- 27 Q. WHICH ARE ALSO VERY, VERY LOW
28 DELIVERY CIGARETTES?

1 A. RIGHT.

2 Q. SO CONSUMERS HAD THAT OPTION?

3 A. RIGHT.

4 MR. LEITER: NOTHING FURTHER. THANK YOU,
5 YOUR HONOR.

6 THE COURT: OKAY, COUNSEL.

7 MR. PIUZE: I HAVE MY EYE ON THE CLOCK
8 AND IT'S TIME FOR ME TO SAY NO FURTHER QUESTIONS.

9 THE COURT: THANK YOU TO BOTH MY COUNSEL.
10 SIR, YOU ARE EXCUSED.

11 LADIES AND GENTLEMEN, WE WILL SEE
12 YOU AT 1:30 THIS AFTERNOON. DON'T DISCUSS THE CASE
13 WITH ANYONE.

14

15 (AT 12 NOON, THE LUNCH
16 RECESS WAS TAKEN TO
17 1:30 P.M. OF THE SAME DAY.)

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