

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 39
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 21ST, 2001
15 APPEARANCES:
16 (FOR PLAINTIFF) LAW OFFICES OF
MICHAEL J. PIUZE
17 11755 WILSHIRE BLVD.
SUITE 1170
18 LOS ANGELES, CA 90025
19 (FOR DEFENDANTS) ARNOLD & PORTER
BY: MAURICE A. LEITER
20 JOHN CARLTON
777 S. FIGUEROA ST.
21 44TH FLOOR
LOS ANGELES, CA 90017
22
23 LISA C. RIDLEY
OFFICIAL REPORTER
24 600 S. COMMONWEALTH AVE.
ROOM 308
LOS ANGELES, CA 90005
25
26 VOLUME 39A OF
PAGES 6111 THROUGH 6201
27
28

1 LOS ANGELES, CALIFORNIA; MONDAY, MAY 21ST, 2001

2 9:20 A.M

3 DEPARTMENT 308 HON. CHARLES MC COY, JUDGE

4

5 (THE FOLLOWING PROCEEDINGS

6 WERE HELD IN OPEN COURT IN

7 THE PRESENCE OF THE JURY.)

8

9 THE COURT: GOOD MORNING, LADIES AND
10 GENTLEMEN. IF YOU NEED TO GO TO THE RESTROOM, THE
11 FIFTH FLOOR AND THE FOURTH FLOOR. WHAT'S HAPPENING
12 IS THE WATER PRESSURE IS SLOWLY RISING IN THE
13 BUILDING, BUT IT HAS MADE IT TO THE FIFTH AND
14 FOURTH FLOOR.

15 GOOD MORNING, GOOD COUNSEL.

16 MR. LEITER.

17

18 CLOSING ARGUMENT (CONTINUED)

19

20 BY MR. LEITER:

21 GOOD MORNING, EVERYBODY. I HOPE

22 YOU HAD A NICE WEEKEND.

23 I HAVE SOME MORE THINGS THAT I WANT

24 TO TALK TO YOU ABOUT THE ALLEGATIONS THAT HAVE BEEN

25 MADE IN THE CASE AND ABOUT THE PLAINTIFF. AND I

26 WANT TO TURN ALSO, AFTER TALKING ABOUT THE FACTS,

27 TO HOW THE LAW, AS JUDGE MCCOY WILL INSTRUCT YOU,

28 APPLIES TO THOSE FACTS.

1 I PLAN TO FINISH THIS MORNING.
2 NOW, ON FRIDAY, IN THE AFTERNOON,
3 TOWARDS THE END OF THE DAY, WE WERE TALKING ABOUT
4 SOME OF THE MANY, MANY ACCUSATIONS THAT HAVE BEEN
5 MADE BY THE PLAINTIFF AGAINST MY CLIENT IN THIS
6 CASE AND HOW, AS I ASKED YOU, IN EVALUATING THOSE
7 ACCUSATIONS, TO FOCUS ON THE EVIDENCE, THE FACT
8 THAT THE ACCUSATIONS HAVE BEEN MADE AND REPEATED
9 AND REPEATED AND REPEATED DOESN'T MAKE THEM TRUE.

10 AND I ASK YOU TO EVALUATE THE
11 EVIDENCE AS A WHOLE, IN CONTEXT, USING YOUR GOOD
12 COMMON SENSE.

13 AND I WANT TO PICK UP RIGHT THERE
14 AND TALK ABOUT SOME OF THE OTHER ALLEGATIONS,
15 ACCUSATIONS THAT HAVE BEEN MADE AND I WANTED TO
16 START WITH YOUTH SMOKING THIS MORNING.

17 NOW, YOUTH SMOKING IS A
18 PARTICULARLY EMOTIONAL OR EVEN INFLAMMATORY KIND OF
19 ACCUSATION. THEY ARE TARGETING OUR KIDS. THEY ARE
20 TRYING TO GET OUR KIDS TO START SMOKING.

21 WHAT IS THE EVIDENCE ON THAT ISSUE
22 IN THIS CASE?

23 WELL, YOU HEARD DIRECTLY FROM
24 PHILIP MORRIS, FROM ELLEN MERLO WHO IS NOW ONE OF
25 THE TOP EXECUTIVES AT THE COMPANY BUT WHO SPENT
26 MANY, MANY YEARS IN THE ADVERTISING AND MARKETING
27 DEPARTMENT. AND SHE SAYS, FLAT OUT, PHILIP MORRIS
28 DOES NOT TARGET UNDER AGE PEOPLE IN ITS

1 ADVERTISING. IT DOES NOT ENCOURAGE UNDER AGE
2 PEOPLE TO SMOKE, AND IT DIDN'T IN THE PAST.

3 AND SHE TOLD YOU ABOUT HOW FOR MANY
4 YEARS PHILIP MORRIS HAS HAD SAFEGUARDS IN THE
5 MARKETING DEPARTMENT, TO MAKE SURE THAT THE COMPANY
6 WAS NOT TARGETING KIDS AND THOSE WOULD INCLUDE
7 MAKING SURE THAT MODELS WERE BOTH OVER 25 AND
8 APPEARING TO BE OVER 25.

9 YOU HEARD ABOUT STOPPING SAMPLING
10 MANY, MANY YEARS AGO. THAT'S HANDING OUT
11 CIGARETTES ON THE STREET.

12 YOU HEARD ABOUT EFFORTS THAT PHILIP
13 MORRIS HAS HAD UNDER WAY WITH RETAILERS FOR MANY
14 YEARS TO TRY TO WORK WITH RETAILERS TO PREVENT THEM
15 FROM SELLING CIGARETTES TO MINORS, AS YOU HEARD
16 MS. MERLO EXPLAIN, PHILIP MORRIS DOESN'T SELL
17 CIGARETTES DIRECTLY TO CONSUMERS, IT SELLS THEM TO
18 WHOLESALERS WHO SELL THEM TO RETAILERS AND THE
19 RETAILERS SELL THEM TO CONSUMERS. PHILIP MORRIS
20 DOESN'T MARKET, DOESN'T SELL CIGARETTES DIRECTLY TO
21 CONSUMERS THROUGH THE MAIL, THROUGH THE INTERNET,
22 THROUGH ANYWHERE ELSE.

23 AND PHILIP MORRIS HAS WORKED FOR
24 MANY YEARS WITH RETAILERS TO TRY TO HELP THEM
25 ENFORCE THE LAW THAT SAYS YOU DON'T SELL CIGARETTES
26 TO UNDER AGE PEOPLE.

27 AND YOU ALSO HEARD FROM MISS MERLO
28 THAT IN RECENT YEARS PHILIP MORRIS HAS DONE

1 SOMETHING MORE, THEY HAVE TAKEN STEPS TO ACTIVELY
2 DISCOURAGE UNDER AGE PEOPLE FROM SMOKING
3 CIGARETTES.

4 YOU SAW SOME OF THE MESSAGES THAT
5 PHILIP MRRIS HAS BEEN RUNNING ON TELEVISION FOR
6 THE LAST COUPLE YEARS. YOU HEARD ABOUT THE FUNDING
7 OF PROGRAMS IN SCHOOLS, AND IN THE COMMUNITY, AND
8 YOU HEARD ABOUT ADDITIONAL ACCESS PREVENTION
9 PROGRAMS THAT PHILIP MRRIS HAS HAD UNDER WAY.

10 THAT'S WHAT YOU HEAR DIRECTLY FROM
11 PHILIP MRRIS.

12 NOW, PLAINTIFF POOH-POOHS ALL OF
13 THAT.

14 AND OF COURSE, NOT SURPRISINGLY
15 PLAINTIFF POOH-POOHS PRETTY MUCH EVERYBODY PHILIP
16 MRRIS DOES -- BLESS YOU -- OR HAS EVER DONE.

17 PHILIP MRRIS IS RUNNING MESSAGES
18 TO TRY TO DISCOURAGE UNDER AGE PEOPLE FROM SMOKING
19 AND TO ENCOURAGE PARENTS TO TALK TO THEIR KIDS
20 ABOUT SMOKING. AND THE PLAINTIFF POOH-POOHS THOSE.

21 YOU HAVE TO FIGURE THAT IF PHILIP
22 MRRIS WEREN'T DOING THAT, THE PLAINTIFF WOULD
23 POOH-POOH THE FACT THAT THEY WEREN'T DOING IT AND
24 SAY WHY AREN'T THEY DOING IT. SO IT IS A LOSE,
25 LOSE SITUATION AS FAR AS THE PLAINTIFF IS
26 CONCERNED. BUT THE PLAINTIFF SAYS NO, NO, YOU
27 CAN'T BELIEVE WHAT ELLEN MERLO TOLD YOU, YOU HAVE
28 TO LOOK AT THE EVIDENCE.

1 AND I AGREE COMPLETELY, YOU HAVE TO
2 LOOK AT THE EVIDENCE.

3 WHAT DOES THE EVIDENCE SHOW ABOUT
4 WHETHER PHILIP MORRIS MARKETED TO UNDER AGE PEOPLE?
5 THE EVIDENCE IN THIS CASE, LADIES
6 AND GENTLEMEN, CONSISTS OF WHAT, THREE, FOUR, FIVE
7 DOCUMENTS, PERIOD, OUT OF THE MILLIONS THAT ARE OUT
8 THERE AVAILABLE TO PLAINTIFF'S COUNSEL, TO THIS
9 PLAINTIFF'S COUNSEL AND TO OTHER PLAINTIFF'S
10 COUNSEL.

11 YOU SAW THREE, FOUR, FIVE
12 DOCUMENTS. THEY WERE ALL FROM THE PERIOD BETWEEN
13 THE MID-1970'S AND THE EARLY 1980'S.

14 AND MOST OF THEM, IN FACT, ALL BUT
15 ONE, IF I REMEMBER CORRECTLY, AND AS I SAID ON
16 FRIDAY, IT'S YOUR RECOLLECTION THAT CONTROLS, NOT
17 MINE. BUT MY RECOLLECTION IS ALL BUT ONE OF THEM
18 WERE WRITTEN BY ONE GUY, HIS NAME IS MYRON JOHNSON,
19 WHO WASN'T EVEN IN THE ADVERTISING OR MARKETING
20 DEPARTMENT. HE WAS A DEMOGRAPHER. HE COLLECTED
21 DATA DOWN IN RICHMOND, THAT'S IT.

22 THAT'S THE EVIDENCE IN THIS CASE
23 THAT PHILIP MORRIS TARGETED AND MARKETED ITS
24 CIGARETTES TO UNDER AGE PEOPLE AS THE PLAINTIFF
25 WOULD HAVE YOU BELIEVE FOR 50 YEARS.

26 THOSE THREE OR FOUR OR FIVE
27 DOCUMENTS FROM THAT PERIOD MOSTLY WRITTEN BY ONE
28 GUY.

1 AND HERE' S THE INTERESTING THING
2 ABOUT THOSE DOCUMENTS, EVEN THOSE DOCUMENTS DON' T
3 SAY PHILIP MORRIS IS TARGETING UNDER AGE PEOPLE IN
4 ITS ADVERTISING AND MARKETING.

5 THOSE DOCUMENTS ARE COLLECTIONS OF
6 STATISTICS. THOSE DOCUMENTS ARE DOCUMENTS THAT
7 SAY, PHILIP MORRIS HAD SOME DATA ABOUT THE SMOKING
8 HABITS OF UNDER AGE PEOPLE.

9 THEY WENT OUT AND THEY LOOKED AT
10 DATA. AND I THINK ON ONE OCCASION, ACTUALLY,
11 COMMISSIONED DATA ON ITS OWN TO SEE WHAT THE
12 SMOKING PATTERNS OF UNDER AGE PEOPLE WERE.

13 THAT' S IT.

14 AND IN FACT, ONE OF THE DOCUMENTS
15 THAT THE PLAINTIFF' S COUNSEL HAS SHOWED YOU FROM
16 TIME TO TIME REFERS TO UNDER AGE PEOPLE AS
17 POTENTIAL CUSTOMERS.

18 NOW, I AM NOT GOING TO TELL YOU
19 THAT GOING OUT THREE OR FOUR TIMES IN THE LATE
20 1970' S OR THE EARLY 1980' S TO SEE WHAT THE SMOKING
21 HABITS OF UNDER AGE PEOPLE WERE, I AM NOT GOING TO
22 TELL YOU THAT WAS A GOOD IDEA.

23 BUT WHAT I AM GOING TO TELL YOU IS
24 THIS: DOES THAT PROVE THAT THERE WAS ACTUALLY
25 TARGETING OF UNDER AGE PEOPLE, EVEN IN THAT PERIOD,
26 NOT TO MENTION FOR OVER 50 YEARS?

27 WOULDN' T YOU THINK THAT IF PHILIP
28 MORRIS WERE ON A REGULAR BASIS TRACKING, AS THE

1 PLAINTIFF TOLD YOU, TRACKING THE SMOKING HABITS OF
2 UNDER AGE PEOPLE, YOU' D SEE A BIG STACK OF THOSE
3 KINDS OF DOCUMENTS.

4 RIGHT?

5 YOU WOULD EXPECT TO SEE THAT
6 HAPPENING ALL THE TIME.

7 THEN YOU WOULD EXPECT TO SEE, IN A
8 BIG COMPANY LIKE PHILIP MORRIS, AND BY THE 1980' S,
9 WE ALL AGREE IT WAS A BIG COMPANY, YOU WOULD EXPECT
10 TO SEE DOCUMENTS FROM THE MARKETING DEPARTMENT.

11 HERE' S OUR PLAN, HERE' S WHAT WE INTEND TO
12 ACCOMPLISH, HERE' S WHERE WE ARE GOING TO PUT OUR
13 ADS AND OUR MARKETING BUDGET AND HERE' S WHY.

14 YOU SAW NONE OF IT. NONE OF IT.

15 PLAINTIFF HAD ACCESS TO ALL THOSE
16 MILLIONS AND MILLIONS OF DOCUMENTS. THEY DON' T
17 HAVE A SINGLE DOCUMENT, NOT EVEN ONE, FROM THE
18 MARKETING DEPARTMENT THAT SAYS HERE' S THE PLAN.

19 THEY HAD NO TESTIMONY EVEN FROM ONE
20 OF THE INSIDERS, AS MR. PIUZE CALLED THEM SAYING
21 PHILIP MORRIS IS TARGETING UNDER AGE PEOPLE WITH
22 ITS ADVERTISING.

23 YOU HAVE THREE OR FOUR DOCUMENTS
24 FROM THAT SHORT PERIOD OF TIME SAYING THE COMPANY
25 WAS LOOKING OR LOOKED AT THE SMOKING HABITS OF
26 UNDER AGE PEOPLE.

27 THAT' S THE PROOF.

28 AND THEN WHAT YOU HAVE IS SIMPLY

1 THE ACCUSATION BEING REPEATED AND REPEATED AND
2 REPEATED.

3 TRUTH OF THE MATTER IS, PEOPLE WHO
4 ARE IN THEIR TEENS BEGIN SMOKING. THEY BEGIN
5 SMOKING BECAUSE SMOKING IS SEEN AS AN ADULT THING
6 TO DO. YOU HEARD ALL THIS TESTIMONY. IT IS SEEN
7 AS COOL. THEY WANT TO BE LIKE THEIR PARENTS. THEY
8 WANT TO BE LIKE GROWNUPS. IT'S A PEER PRESSURE AND
9 IT'S A PARENTAL THING.

10 THAT'S WHAT THE EVIDENCE IS.

11 AND THE NOTION THAT PHILIP MORRIS
12 HAS BEEN OUT FOR 50 YEARS TRYING TO DO THIS, TRYING
13 TO GET KIDS TO START SMOKING, HASN'T BEEN PROVED.

14 THE EVIDENCE ABOUT WHAT PHILIP
15 MORRIS DID IS HIGH EXECUTIVES FROM THIS COMPANY WHO
16 TOLD YOU IT WASN'T TRUE AND ESSENTIALLY NO
17 DOCUMENTS, NO PROOF FROM THE OTHER SIDE THAT IT IS.
18 JUST AN ACCUSATION REPEATED AND REPEATED AND
19 REPEATED.

20 THAT'S WHAT I MEAN WHEN I SAY THAT
21 IT'S IMPORTANT TO LOOK NOT JUST AT THE ACCUSATION,
22 BUT AT THE ACTUAL PROOF THAT YOU GOT IN THE CASE AS
23 TO WHETHER THE ACCUSATION IS TRUE.

24 NOW, THE OTHER MAJOR POINT THAT I
25 MENTIONED WHEN YOU ARE EVALUATING THE EVIDENCE IS
26 NOT JUST TO LOOK AT THE EVIDENCE AS A WHOLE, BUT TO
27 TRY TO FIGURE OUT WHAT THIS ACCUSATION, WHAT THE
28 EVIDENCE HAS TO DO WITH THE PLAINTIFF IN THIS CASE,

1 MR. BOEKEN.

2 AND WHAT DOES THE WHOLE BUSINESS
3 ABOUT THE YOUTH MARKET AND THE ALLEGATIONS ABOUT
4 YOUTH MARKETING HAVE TO DO WITH MR. BOEKEN?

5 MR. BOEKEN BEGAN SMOKING, AS YOU
6 KNOW, IN 1957, WHEN HE WAS 13 YEARS OLD.

7 HE NEVER SAYS ADVERTISING HAD
8 ANYTHING TO DO WITH HIS DECISION TO START SMOKING.

9 HE SAID, HE STARTED SMOKING BECAUSE
10 HIS PARENTS SMOKED, HIS FRIENDS SMOKED, IT WAS
11 COOL, IT WAS FASHIONABLE. EVERYBODY SMOKED.

12 EVEN THE PLAINTIFF HIMSELF DOES NOT
13 SAY HE STARTED SMOKING BECAUSE OF ADVERTISING.

14 ALL YOU HAVE REALLY ON THAT LITTLE
15 PIECE OF THE PUZZLE IS THE PLAINTIFF'S EXPERT,
16 DR. GOLDBERG.

17 AND YOU REMEMBER DR. GOLDBERG FROM
18 PENN STATE, CAME UP EARLY IN THE CASE. HE IS THE
19 MARKETING WITNESS FOR THE PLAINTIFF WHO CAREFULLY
20 READ EACH OF THE HALF DOZEN DOCUMENTS THAT THE
21 PLAINTIFF'S LAWYER HAD GIVEN HIM BUT HAD DONE NO
22 INVESTIGATION ON HIS OWN.

23 DR. GOLDBERG SAID, WELL, IT MUST
24 BE. IT MUST BE.

25 THAT'S THE TESTIMONY.

26 DR. GOLDBERG, IT MUST BE.

27 NOW, NOT ONLY DID YOU NOT SEE ANY
28 DOCUMENTS FROM PHILIP MORRIS SUGGESTING THAT THEY

1 INTENDED TO MARKET TO KIDS IN THE '70'S THE '80'S
2 THE '90'S, YOU SAW NOTHING, NOT A SINGLE DOCUMENT
3 TO SUPPORT THE ACCUSATION THAT THE WHOLE MARLBORO
4 CAMPAIGN IN THE 1950'S WAS DONE TO ATTRACT UNDER
5 AGE BOYS TO SMOKING.

6 NOT A SINGLE PIECE OF PAPER
7 SUPPORTS THAT ACCUSATION, JUST DR. GOLDBERG SAYING,
8 IT'S GOT TO BE. THIS IS A PRIME EXAMPLE OF AN
9 ACCUSATION WITH NO SUPPORT. WITH NO SUPPORT.

10 REMEMBER ALL OF THOSE 1950'S ADS,
11 THOSE 1950'S MARLBORO ADS WITH THE TOUGH GUYS WITH
12 THE TATTOOS?

13 WHAT WAS PHILIP MORRIS SELLING IN
14 THOSE ADS?

15 WELL, YOU HEARD FROM THE ADS
16 THEMSELVES, THEY WERE SELLING, REMEMBER THE SLOGAN,
17 FILTER, FLAVOR, FLIP TOP BOX.

18 PHILIP MORRIS WAS A SMALL COMPANY
19 IN THE '50'S. IT REPOSITIONED MARLBORO BECAUSE IT
20 WAS SELLING A CIGARETTE THAT HAD FLAVOR, EVEN
21 THOUGH IT HAD FILTER.

22 AND IT CAME IN A COOL BOX, THAT'S
23 WHAT THE ADS SAY, THE REST OF IT IS JUST
24 SPECULATION AND ACCUSATION, PERIOD.

25 AND HERE'S ONE INSTANT WHERE
26 MR. BOEKEN HIMSELF DOESN'T EVEN SUPPORT THE
27 ACCUSATION THAT'S BEING MADE. HE SAYS IT'S NOT
28 TRUE.

1 AND I DO WANT TO SHOW YOU ONE OTHER
2 THING ABOUT THIS. DR. GOLDBERG WAS ON THE STAND
3 INSISTING THAT, OF COURSE, THEY WERE ADVERTISING TO
4 KIDS. REMEMBER THAT?

5 AND WE WENT BACK AND FORTH, BACK
6 AND FORTH, AND THEN, DR. GOLDBERG WAS FINALLY OFF
7 THE STAND. AND THE VERY NEXT WITNESS THAT THE
8 PLAINTIFF CALLED WAS DR. HAMMER. DR. HAMMAR COMES
9 FROM BRIMMERTON, WASHINGTON.

10 EARLY ON IN HIS TESTIMONY, YOU
11 HEARD THAT BRIMMERTON, WASHINGTON IS AN AREA UP IN
12 WASHINGTON STATE WHERE THEY HAVE A HIGH INCIDENCE
13 OF SMOKING.

14 AND MR. PIUZE ASKED:
15 "DR. HAMMER, WHY, IF YOU
16 HAVE AN OPINION, AND I DON'T WANT YOU
17 TO STRETCH IF YOU DON'T, BUT WHY IS
18 THAT SUCH A HEAVY SMOKING AREA? "

19 DR. HAMMER SAID:
20 "WHAT I THINK IT IS DUE TO
21 IS PROBABLY JUST TRADITION, FAMILY
22 TRADITION, PARENTS SMOKED, KIDS
23 SMOKE. "

24 THAT'S EXACTLY RIGHT. THAT'S
25 EXACTLY RIGHT.

26 NOW, I WANT TO STAY FOR A MINUTE
27 WITH THE 1950'S.

28 BECAUSE WE SPENT A LOT OF TIME

1 TALKING ABOUT THE 1950' S.

2 THERE IS NO EVIDENCE IN THIS CASE
3 THAT MR. BOEKEN STARTED SMOKING BECAUSE OF
4 CIGARETTE ADVERTISING.

5 AND THERE' S ALSO NO EVIDENCE IN
6 THIS CASE THAT MR. BOEKEN STARTED SMOKING BECAUSE
7 OF ANYTHING PHILIP MORRIS SAID OR DID.

8 NONE.

9 MR. BOEKEN WAS 13 YEARS OLD WHEN HE
10 STARTED SMOKING IN 1957.

11 WAS HE A KID?

12 YES.

13 DID HE MAKE AN ADULT CHOICE TO
14 SMOKE IN 1957?

15 NO.

16 HE WAS 13 YEARS OLD.

17 DOES THAT MATTER TO THIS CASE?

18 NO. NOT AT ALL.

19 WHY NOT?

20 TWO REASONS.

21 HERE' S THE FIRST. MR. BOEKEN WAS
22 NOT PETER PAN.

23 HE DID NOT FOREVER REMAIN A
24 13-YEAR-OLD BOY WHO NEVER GREW UP, NEVER GREW UP,
25 LIVED IN NEVER-NEVER LAND.

26 HE BECAME AN ADULT, LEARNED THE
27 RISKS OF SMOKING, COULD HAVE QUIT.

28 THIS CASE IS NOT ABOUT THE DECISION

1 THAT MR. BOEKEN MADE WHEN HE WAS 13 YEARS OLD LIKE
2 SO MANY KIDS HAVE MADE AND MORE KIDS MADE BACK IN
3 THE 1950'S THAN MADE TODAY.

4 THIS CASE IS NOT ABOUT THAT ONE
5 CHOICE TO SMOKE, AS THOUGH ONCE HE MADE THAT
6 CHOICE, THE DYE WAS CAST, NOTHING ELSE MATTERED AND
7 THAT'S THE END OF THE CASE.

8 THIS CASE IS ABOUT THE CHOICES THAT
9 MR. BOEKEN MADE EVERY SINGLE DAY, TO BUY
10 CIGARETTES, TO OPEN THE PACK, TO PUT THEM IN HIS
11 MOUTH AND TO SMOKE THEM

12 HE MADE THOSE DECISIONS NOT JUST
13 WHEN HE WAS 13 OR 14 YEARS OLD, BUT THROUGHOUT HIS
14 ADULT LIFE.

15 IN THE FACE OF, AS WE TALKED ABOUT
16 ON FRIDAY, THE AVALANCHE OF INFORMATION, GROWING
17 AND GROWING AND GROWING EVERY YEAR.

18 HE MADE CHOICES EVERY DAY.

19 HE MADE CHOICES TO QUIT WHEN HE WAS
20 AN ADULT. HE MADE CHOICES TO START AGAIN.

21 DON'T BE MISLEAD INTO THINKING THIS
22 IS A CASE ABOUT ONE DAY IN 1957 WHEN MR. BOEKEN
23 DECIDED HE WOULD LIKE TO TRY CIGARETTES.

24 LIFE DOESN'T WORK THAT WAY. WE ARE
25 NOT VICTIMS OF THE CHOICES THAT WE MAKE WHEN WE ARE
26 13 YEARS OLD. WE ALL GROW UP. WE ALL HAVE
27 RESPONSIBILITY.

28 THAT'S THE FIRST REASON THAT THE

1 1950'S ARE KIND OF, IN OUR OPINION, A BIG
2 MISDIRECTION IN THE CASE.

3 HERE'S THE SECOND REASON. AND I
4 ALLUDED TO IT JUST A COUPLE MINUTES AGO.

5 WHATEVER YOU THINK ABOUT THE
6 1950'S, THERE IS NO EVIDENCE IN THIS CASE THAT
7 MR. BOEKEN BEGAN TO SMOKE BECAUSE OF ANYTHING
8 PHILIP MORRIS SAID OR DID.

9 THERE IS NO EVIDENCE HE SAW OR
10 HEARD ANY STATEMENT MADE BY PHILIP MORRIS IN THE
11 1950'S.

12 AND AS YOU REMEMBER FROM FRIDAY
13 THERE'S REALLY NO EVIDENCE THAT HE SAW OR HEARD
14 ANYTHING IN PARTICULAR FOR MANY, MANY, MANY YEARS
15 UNTIL 1994, ALTHOUGH HE HAD A GENERAL RECOLLECTION
16 ABOUT WHEN THE SURGEON GENERAL'S REPORT CAME OUT
17 BUT HE DOESN'T SAY, I SAW THE FRANK STATEMENT. I
18 DECIDED TO SMOKE BECAUSE PHILIP MORRIS SAID WE
19 DON'T AGREE THAT CAUSATION HAS BEEN PROVED,
20 NOTHING, NOTHING, NOTHING.

21 AND IN ANY EVENT, THERE WAS ALL
22 SORTS OF INFORMATION OUT THERE, EVEN AT THAT TIME,
23 ABOUT THE RISKS OF SMOKING.

24 THERE WAS LOTS OF INFORMATION AND
25 THERE'S NO DISPUTE ABOUT IT IN THE CASE.

26 THERE IS NO DISPUTE WHATSOEVER THAT
27 ALL OF THOSE SCIENTIFIC STUDIES GOT ALL SORTS OF
28 PRESS, AS YOU HEARD FROM WITNESS AFTER WITNESS, IN

1 THE 1950' S, 50 PERCENT OF ADULTS SMOKED, MASSIVE
2 PUBLICITY THAT SMOKING IS LINKED TO CANCER.

3 VERY, VERY LITTLE IN THE MEDIA
4 ABOUT THE TOBACCO COMPANY' S RESPONSE.

5 SO WHAT IS THE SECOND REASON THAT
6 THE 1950' S ARE NOT REALLY THE BE ALL AND THE END
7 ALL OF THIS CASE?

8 NO EVIDENCE WHATSOEVER THAT
9 MR. BOEKEN STARTED SMOKING BECAUSE OF ANYTHING MY
10 CLIENT DID.

11 HE STARTED SMOKING FOR THE SAME
12 REASON LOTS OF OTHER PEOPLE STARTED SMOKING. IT
13 WAS AN ADULT THING, LOTS OF ADULTS DID IT.

14 IT WAS AN ADULT THING BECAUSE IT
15 WAS POPULAR. IT WAS WELL KNOWN. IT WAS IN THE
16 MOVIES. IT WAS ON TELEVISION, YOU BET.

17 THAT' S THE WAY OUR SOCIETY WAS BACK
18 IN THE 1950' S.

19 NOW, PLAINTIFF SPENDS A LOT OF TIME
20 IN THE 1950' S SUGGESTING THAT IF PHILIP MORRIS HAD
21 DONE SOMETHING DIFFERENTLY, MR. BOEKEN WOULD NOT
22 HAVE SMOKED. AND THAT' S REALLY THE SUGGESTION.

23 AND THAT' S ONE OF THE PLACES IN
24 THIS CASE, AMONG MANY PLACES WHERE I THINK YOU
25 SHOULD USE YOUR GOOD COMMON SENSE IN EVALUATING THE
26 EVIDENCE IN THE CASE.

27 TRUE, THERE WERE NOT WARNINGS ON
28 THE PACKS IN 1957, ' 58, ' 59, ' 60, NOT UNTIL

1 CONGRESS MANDATED THEM IN THE MID-1960' S.

2 BUT TWO POINTS: NUMBER 1, AS I
3 JUST SAID, THERE WAS ALL SORTS OF INFORMATION OUT
4 THERE ABOUT HEALTH RISKS, FOR ANYBODY WHO WANTS TO
5 SEE IT, AND TWO, THIS MAY BE THE MORE IMPORTANT
6 ONE, DO YOU REALLY THINK, IF THERE HAD BEEN A
7 WARNING ON THE PACK, IN 1957, '58, '59 OR '60,
8 MR. BOEKEN WOULDN'T HAVE PICKED UP THE CIGARETTES
9 AND STARTED SMOKING THEM?

10 DO YOU REALLY THINK THAT?

11 I THINK THE EVIDENCE IS ABSOLUTELY
12 NOT.

13 THAT'S NOT TRUE.

14 HE WOULD HAVE SMOKED ANYWAY.

15 THERE WERE WARNINGS ON THE PACK
16 FROM THE MID-1960' S ON. EVERY PACK HE BOUGHT,
17 EVERY PACK HE OPENED, EVERY PACK FROM WHEN HE TOOK
18 A CIGARETTE. AND HE SAID -- I PLAYED THAT PIECE OF
19 HIS TESTIMONY ON FRIDAY -- HE SAID HE DIDN'T BOTHER
20 TO READ IT.

21 DIDN'T BOTHER TO READ IT.

22 DO YOU REALLY THINK THAT HAD THERE
23 BEEN A WARNING ON THE PACK A FEW YEARS EARLIER, HE
24 WOULD HAVE PICKED UP THE WARNING, READ IT AND SAID,
25 SOUNDS RISKY, I DON'T THINK I WILL DO IT.

26 HERE'S THE SECOND POINT.

27 MR. BOEKEN, AS WE KNOW, AND THERE'S NO DISPUTE
28 ABOUT THIS EITHER, WAS A GUY THAT TOOK RISKS.

1 HEROIN, MARIJUANA, HE PUT THAT IN
2 AS A RISKY THING. WE CAN DEBATE WHETHER IT WAS OR
3 WASN'T BACK IN THE 1960'S, CERTAINLY HEROIN, DIDN'T
4 START HEROIN, NOT THINKING IT WAS BAD FOR HIM, NOT
5 THINKING HE WAS TAKING A RISK.

6 WE TALKED ABOUT OTHER RISKS IN HIS
7 LIFE, EVERYTHING FROM HIS PROFESSION ON DOWN.

8 THIS WAS A GUY WHO DID WHAT HIS
9 FRIENDS WERE DOING, STARTED USING MARIJUANA BECAUSE
10 THAT'S WHAT THE CROWD WAS DOING, STARTED USING
11 HEROIN BECAUSE THAT'S WHAT THE CROWD WAS DOING,
12 STARTED DRINKING ALCOHOL BECAUSE THAT'S WHAT HIS
13 BUDDIES WERE DOING. STARTED SMOKING CIGARETTES
14 BECAUSE THAT'S WHAT HIS BUDDIES WERE DOING.

15 DO YOU REALLY THINK THAT IF THERE
16 HAD BEEN SOME WARNING ON THE PACK IN 1957,
17 MR. BOEKEN, WHO SAYS, NEVER HEARD ANYTHING FROM THE
18 TOBACCO COMPANIES, DIDN'T START SMOKING BECAUSE OF
19 ANYTHING THEY SAID, HE WOULD HAVE PICKED UP THAT
20 WARNING, IGNORING EVERYTHING ELSE, BY THE WAY, THAT
21 WAS OUT THERE, HE WOULD HAVE PICKED UP THE PACK AND
22 SAID I AM NOT GOING TO SMOKE.

23 DOESN'T FIT MR. BOEKEN, DOESN'T FIT
24 THE FACTS OF THE CASE.

25 THEN THERE'S THE SECOND ARGUMENT
26 ABOUT THE 1950'S WHICH COMES FROM THE PLAINTIFF'S
27 SIDE WHICH IS REALLY THE MOST, I AM TRYING TO THINK
28 OF THE RIGHT WORD, MAYBE THE BIGGEST RED HERRING OF

1 ALL IN THE CASE AND THAT IS, WELL, WHAT PHILIP
2 MORRIS SHOULD HAVE DONE IS JUST YANKED THEM OFF THE
3 MARKET. AND THEN I THINK HE SAID THIS IN HIS
4 CLOSING ARGUMENT, WE WOULDN' T BE HERE TODAY.

5 WOULDN' T BE HERE TODAY.

6 LET' S THINK ABOUT THAT FOR JUST A
7 MINUTE.

8 CIGARETTES WERE LEGAL, ARE LEGAL,
9 PROPERLY SOLD. OUR SOCIETY HAS MADE A DECISION
10 ABOUT WHAT TO DO ABOUT CIGARETTES. IF PHILIP
11 MORRIS HAD PULLED ITS CIGARETTES OFF THE MARKET,
12 WOULD MR. BOEKEN NOT HAVE GOTTEN CIGARETTES?

13 IF PHILIP MORRIS HAD PULLED ITS
14 CIGARETTES OFF THE MARKET, WOULD THERE BE NO
15 SMOKING IN THE UNITED STATES?

16 THIS IS REALLY JUST ANOTHER WAY OF
17 ASKING YOU, LADIES AND GENTLEMEN OF THIS JURY, TO
18 UNDO, RETHINK, SECOND-GUESS 50 YEARS OF SMOKING
19 POLICY IN THE UNITED STATES.

20 SUGGESTING TO YOU THAT CIGARETTES
21 SHOULD HAVE BEEN BANNED, SUGGESTING TO YOU THAT
22 THERE SHOULD HAVE BEEN NO CIGARETTES.

23 NOW, I CERTAINLY DEFEND THE
24 PLAINTIFF' S RIGHT TO MAKE THAT ARGUMENT TO YOU BUT
25 OUR SOCIETY MADE A DIFFERENT DECISION.

26 AND IF PHILIP MORRIS HAD SIMPLY
27 TAKEN ITS CIGARETTES OFF THE MARKET, THERE WOULD
28 HAVE BEEN CIGARETTES IN THE MARKET.

1 EVEN IF THERE HAD BEEN NO
2 CIGARETTES ON THE MARKET, PEOPLE WHO WANTED TO
3 SMOKE WOULD HAVE GOTTEN THEIR HANDS ON CIGARETTES
4 JUST LIKE MR. BOEKEN GOT HIS HANDS ON HEROIN TO
5 INJECT INTO HIS VEINS, JUST LIKE HE GOT HIS HANDS
6 ON MARIJUANA.

7 HE STILL WOULD HAVE SMOKED. YOU' D
8 STILL BE SITTING HERE. MR. PIUZE WOULD STILL BE
9 SITTING THERE. JUDGE MCCOY WOULD STILL BE SITTING
10 THERE. MAYBE THE ONLY DIFFERENCE IS MR. CARLTON
11 AND I WOULDN' T BE HERE BECAUSE IT MIGHT BE A
12 DIFFERENT CIGARETTE COMPANY AS THE DEFENDANT IN THE
13 CASE.

14 BUT ALL OF YOU WOULD HAVE STILL
15 BEEN HERE.

16 HE STILL WOULD HAVE SMOKED. AND I
17 SUGGEST TO YOU THAT THE NOTION THAT SOMEHOW THERE
18 SHOULD HAVE BEEN NO CIGARETTES, HOWEVER LOFTY THAT
19 MAY SOUND, IS ASKING YOU TO UNDO HISTORY.

20 NOT JUST DECISIONS MADE BY MY
21 CLIENT BUT DECISIONS MADE BY EVERYBODY.

22 NOW, I WANT TO MAKE ONE FINAL POINT
23 ABOUT THE 1950' S, AND THAT' S THE BUSINESS ABOUT THE
24 SCIENTIFIC DEBATE, AND THE BUSINESS ABOUT WHETHER
25 THERE WAS A CONSENSUS IN THE 1950' S.

26 AND WHAT YOU HEARD FROM THE
27 PLAINTIFF, WHICH IS KIND OF OBVIOUS, HOW COULD
28 PEOPLE BE EXPECTED TO KNOW IF PHILIP MORRIS SAID

1 IT' S NOT YET PROVED.

2 THAT' S MIXING APPLES AND ORANGES,
3 TO THE BLUNT ABOUT IT.

4 WAS THERE A LOT OF INFORMATION OUT
5 THERE TELLING PEOPLE THAT SMOKING IS RISKY? YOU
6 BET.

7 WAS THERE A LOT OF INFORMATION OUT
8 THERE SAYING THERE ARE SCIENTISTS WHO ARE LINKING
9 SMOKING TO DISEASE?

10 YES.

11 BUT THERE WAS ALSO A DIFFERENT
12 DISCUSSION GOING ON AND THAT WAS THE SCIENTIFIC
13 DISCUSSION AS TO WHETHER CAUSATION HAD BEEN PROVED,
14 WHETHER, AS A MATTER OF SCIENCE, IT HAD BEEN PROVED
15 THAT SMOKING CAUSES LUNG CANCER, WHICH IS A
16 DIFFERENT QUESTION FROM ARE YOU TAKING A RISK IF
17 YOU PUT THE CIGARETTES IN YOUR MOUTH.

18 AND ON THE QUESTION OF WHETHER
19 THERE WAS SCIENTIFIC PROOF, DR. DOLL SAID, SURE,
20 THERE WAS, BY WHATEVER THE DATE IS, 1955, 1957,
21 1960.

22 AND I HAVE NO DOUBT THAT THAT' S
23 WHAT DR. DOLL BELIEVES.

24 DR. DOLL WAS ONE OF THE PEOPLE, AS
25 YOU KNOW, THAT CAME OUT WITH SOME OF THE EARLY
26 STUDIES WHO FOCUSED ON EPIDEMIOLOGY AS THE WAY TO
27 PROVE CAUSATION, LONG BEFORE THAT METHOD OF PROVING
28 CAUSATION, EPIDEMIOLOGY STATISTICS INSTEAD OF CAUSE

1 AND EFFECT WAS ACCEPTED BY THE SURGEON GENERAL.

2 AND DR. DOLL SHOWED YOU SOME
3 EXAMPLES OF THE PEOPLE WHO AGREED WITH HIM BACK IN
4 THE 1950'S AND I THINK HE SAID IT SEVERAL TIMES,
5 EVERYBODY WHO WAS THINKING ABOUT IT THE WAY I WAS
6 THINKING ABOUT IT AGREED, EVERYBODY WHO WAS LOOKING
7 AT THE STATISTICS IN THE 1950'S BY '57, '59,
8 WHATEVER IT WAS, AGREED.

9 AND THAT'S TRUE.

10 BUT IT'S ALSO ONLY HALF THE STORY.

11 BECAUSE THERE WERE A LOT OF PEOPLE
12 IN THE 1950'S, IN THE SCIENTIFIC COMMUNITY AND THE
13 GOVERNMENT WHO SAID, EPIDEMIOLOGY IS NOT THE WAY TO
14 GO.

15 AND THAT'S WHAT WAS DR. LUDMERER'S
16 POINT.

17 NOT DISPUTING THAT THE PEOPLE WHO
18 FOCUSED JUST ON THE EPIDEMIOLOGY SAID, YES, WE ARE
19 THERE, BUT SAYING THAT THERE WERE AN AWFUL LOT OF
20 PEOPLE IN THE SCIENTIFIC COMMUNITY WHO DIDN'T
21 ACCEPT THAT APPROACH.

22 AND THAT WAS THE OTHER SIDE OF THE
23 STORY.

24 AND THAT'S WHY THERE WAS NOT A
25 SCIENTIFIC CONSENSUS IN 1959, 1957 AND 1960.

26 IN FACT, THERE'S NO QUESTION, "NEW
27 ENGLAND JOURNAL OF MEDICINE" IS JUST ONE EXAMPLE
28 THAT YOU SAW DURING THE TRIAL WHICH THE PLAINTIFF

1 TELLS YOU, CORRECTLY, IS ONE OF THE FOUR TOP
2 JOURNALS IN THE WORLD, FOUR TOP SCIENTIFIC JOURNALS
3 IN THE WORLD.

4 THIS IS 1961. AFTER THE PLAINTIFF
5 TELLS YOU IT WAS, IN HIS PHRASE, A DONE DEAL.

6 EDITORIAL IN THE "NEW ENGLAND
7 JOURNAL OF MEDICINE: "

8 "MANY CONSCIENTIOUS
9 OBSERVERS BELIEVE THAT THERE ARE
10 STRONG INDICATIONS IN FAVOR OF A
11 CAUSAL RELATION IN THE VAST MAJORITY
12 OF CASES AND NO ACCEPTABLE EVIDENCE
13 THAT DISPROVES IT. OTHERS REMAIN
14 UNCONVINCED OR HAVE TAKEN A DETERMINED
15 STAND BEHIND DR. LITTLE. "

16 DR. LITTLE, AS YOU KNOW, WAS THE
17 HEAD OF THE T. I. R. C. , EMINENT SCIENTIST BUT AT THAT
18 POINT HEAD OF THE T. I. R. C. AS WELL.

19 "CERTAIN FACTS STAND OUT
20 THAT THE STAKES ARE HIGH IN TERMS OF
21 LIFE AND DEATH, THAT SMOKING HAS BEEN
22 INDICTED AS A SOMETIMES LETHAL AGENT
23 AND THAT NON-SMOKING IS ALMOST
24 CERTAINLY HARMLESS. EACH INDIVIDUAL
25 MUST CHOOSE HIS OWN COURSE WHETHER TO
26 WOO THE LADY NICOTINE OR ABJURE THE
27 FILTHY WEED WHILE THE SEARCH FOR TRUTH
28 CONTINUES. "

1 LOOK AT THAT LAST SENTENCE, JUST
2 BEFORE THAT YOU ARE HEARING, YEAH, THERE'S EVIDENCE
3 ON BOTH SIDES OF THE SCIENTIFIC DEBATE, BUT EACH
4 INDIVIDUAL MUST CHOOSE HIS OWN COURSE.

5 NO QUESTION THAT THERE ARE RISKS
6 THAT ARE BEING SHOWN BUT AS A MATTER OF SCIENCE
7 THIS DEBATE IS GOING ON AMONG THE SCIENTISTS, NOT
8 YET CLEAR.

9 EVERY INDIVIDUAL MUST CHOOSE HIS
10 OWN COURSE.

11 I LOVE THE PHRASE "WHETHER TO WOO
12 THE LADY NICOTINE OR ABJURE THE FILTHY WEED. "

13 1961, 1964. 1964, AND YOU HAVE
14 SEEN THIS BEFORE AS WELL, FOR ALL THOSE ON THE SIDE
15 OF SAYING, THERE WAS A SCIENTIFIC CONSENSUS IN '57,
16 '59, '55, WHATEVER, 1964, SURGEON GENERAL'S REPORT,
17 AND THIS IS WHEN DR. LUDMERER SAYS PRETTY MUCH YOU
18 HAVE GOT A CONSENSUS RIGHT AROUND THIS TIME.

19 SURGEON GENERAL HIMSELF.

20 "FEW MEDICAL QUESTIONS HAVE
21 SUFFERED SUCH PUBLIC INTEREST OR
22 CREATED MORE SCIENTIFIC DEBATE THAN
23 THE TOBACCO HEALTH CONTROVERSY, THE
24 INTERRELATIONSHIPS OF SMOKING AND
25 HEALTH INDUSTRY ARE COMPLEX, THE
26 SUBJECT DOES NOT LEND ITSELF TO EASY
27 ANSWERS. NEVERTHELESS, IT HAS BEEN
28 INCREASINGLY APPARENT THAT THE ANSWERS

1 MUST BE FOUND. "

2 IF THERE WAS A SCIENTIFIC

3 CONSENSUS, IN 1955 OR '57 OR '59 OR '60, THE

4 SURGEON GENERAL WOULD NOT HAVE HAD TO CONVENE

5 SCIENTISTS TO REVIEW ALL THE DATA, THE EPIDEMIOLOGY

6 DATA, THE ANIMAL TESTING ISSUES, NEVER ABLE TO GET

7 AN ANIMAL MODEL, THE ISSUES ABOUT WHAT THEY HAD

8 FOUND INSIDE CIGARETTE SMOKE. IF IT HAD NOT BEEN A

9 DEBATE, IN THE EARLY 1960'S, ALL OF THIS TIME, ALL

10 OF THIS EFFORT, LEADING TO THIS BIG, FAT REPORT,

11 WOULD NOT HAVE BEEN NECESSARY.

12 THE SURGEON GENERAL SURE DIDN'T

13 THINK THIS WAS A DONE DEAL IN 1957 AND '59.

14 WHY IS ALL THIS IMPORTANT?

15 WELL, A LOT HAS BEEN ATTEMPTED HERE

16 TO KIND OF MDOOSH TOGETHER, M-O-O-S-H, TOGETHER,

17 SCIENTIFIC ISSUES AND INFORMATION TO THE PUBLIC

18 ABOUT RISKS.

19 ON THE SCIENTIFIC SIDE, YEAH, THERE

20 WERE PEOPLE DISCUSSING, DEBATING, WHETHER IT HAD

21 BEEN PROVED AS A MATTER OF SCIENCE.

22 BUT AS TO WHETHER THERE WAS

23 INFORMATION OUT THERE THAT THIS IS A RISK, YOU ARE

24 TAKING A CHANCE BY SMOKING THIS PRODUCT. THERE IS

25 NO DISAGREEMENT IN THIS CASE THAT THERE WAS A TON

26 OF THAT INFORMATION OUT THERE.

27 AND AS I SAID, WHAT'S IMPORTANT IS

28 NOT JUST THE 1950'S, ALTHOUGH I HAVE TRIED OVER THE

1 LAST FEW MINUTES TO EXPLAIN IT TO YOU.

2 WHAT' S IMPORTANT HERE IS THAT
3 MR. BOEKEN MADE HIS CHOICES STARTING IN 1957, BUT
4 CONTINUING ALL THROUGH HIS ADULT LIFE.

5 THAT' S WHAT THIS CASE IS ABOUT.

6 I WANT TO SWITCH GEARS, WHILE WE
7 ARE STILL A LITTLE BIT IN THE 1950' S. I WANT TO
8 TALK ABOUT C. T. R.

9 C. T. R. , AS YOU KNOW, STARTS OUT IN
10 1954, AS THE TOBACCO INDUSTRY RESEARCH COMMITTEE
11 THAT WAS T. I. R. C.

12 THAT WAS THE ORGANIZATION THAT THE
13 TOBACCO COMPANIES SAID IN THAT FRANK STATEMENT,
14 REMEMBER, IT WAS PUBLISHED ON THAT ONE DAY IN
15 JANUARY IN 1954, TOBACCO INDUSTRY SAID WE ARE GOING
16 TO FUND RESEARCH, WE ARE GOING TO FUND RESEARCH, WE
17 ARE GOING TO PUT MONEY IN, WE ARE GOING TO HIRE
18 OUTSIDE SCIENTISTS, AND THOSE OUTSIDE SCIENTISTS
19 ARE GOING TO FUND RESEARCH, THEY ARE GOING TO GET
20 PROPOSALS FROM PEOPLE IN THE SCIENTIFIC COMMUNITY
21 AT UNIVERSITIES, WHEREVER, AND WE ARE GOING TO FUND
22 THEIR RESEARCH INTO ISSUES RELATED TO SMOKING AND
23 HEALTH. THAT' S WHAT THE INDUSTRY SAID.

24 NOW, THE ACCUSATION FROM THE
25 PLAINTIFF IS THAT THAT WAS ALL JUST A BIG FARCE.

26 THAT THERE WAS REALLY NO INTENT TO
27 DO LEGITIMATE RESEARCH, AND THERE WAS REALLY NO
28 OUTPUT, REALLY NEVER HAPPENED. IT WAS ALL JUST A

1 SCAM IT WAS ALL RUN BY THE COMPANIES. IT WAS ALL
2 DICTATED BY THE LAWYERS.

3 AND ONCE AGAIN, THE ACCUSATION GOT
4 REPEATED TO YOU AN AWFUL LOT OF TIMES, BASED ON A
5 FEW DOCUMENTS.

6 LET' S TALK ABOUT THE DOCUMENT
7 DEBATE AND THEN LET' S TALK ABOUT HOW YOU RESOLVE
8 THE DOCUMENT DEBATE.

9 PLAINTIFF SAYS, FROM THOSE MILLIONS
10 OF DOCUMENTS THAT PHILIP MORRIS AND EVEN SOME AT
11 OTHER COMPANIES, WE HAVE PULLED OUT A BUNCH OF
12 INTERNAL DOCUMENTS FROM PEOPLE AT PHILIP MORRIS
13 THAT SAY IT WAS A BIG SCAM, IT WAS A BIG FARCE.

14 ALL RIGHT. I WANT TO SHOW YOU,
15 JUST THE SEQUENCE OF THESE DOCUMENTS.

16 WAY, WAY BACK AT THE BEGINNING,
17 THIS IS FROM THE JOHN HILL COLLECTION, HILL AND
18 KNOWLTON, WHO ARE THE PUBLIC RELATIONS PEOPLE THAT
19 THE TOBACCO COMPANIES HIRED TO HELP THEM LOOK INTO
20 IT, HELP THEM DEAL WITH THE ISSUES, DECEMBER 15,
21 1953.

22 THE FOLLOWING INFORMATION WAS GIVEN
23 US BY THE PRESIDENTS OF THE LEADING TOBACCO
24 COMPANIES AT THE HOTEL PLAZA THIS MORNING.

25 SO THIS IS SOMEBODY WRITING SOME
26 NOTES ABOUT THAT BIG SECRET MEETING IN 1953 AT THE
27 PLAZA HOTEL TO LAUNCH THIS HUGE CONSPIRACY.

28 THIS IS A PLAINTIFF' S DOCUMENT.

1 PLAINTIFF SHOWED YOU PORTIONS OF THIS DOCUMENT.
2 THE INDUSTRY POSITION.
3 "THE INDUSTRY, THE TOBACCO
4 COMPANY, IS STRANGELY CONVINCED THAT
5 THERE IS NO SOUND SCIENTIFIC BASIS FOR
6 THE CHARGES THAT HAVE BEEN MADE. "
7 SO THE SECRET DOCUMENT DOESN'T SAY,
8 THE INDUSTRY KNOWS THIS IS ALL TRUE, AND THEY WANT
9 TO PERPETRATE A FRAUD.
10 WHAT THE DOCUMENT SAYS IS THE
11 INDUSTRY, THE PEOPLE AT THAT MEETING SAY THEY DON'T
12 BELIEVE IT.
13 "THEY POINT OUT THAT THE
14 NATIONAL CANCER INSTITUTE OF THE U. S.
15 PUBLIC HEALTH ADMINISTRATION, WHICH IS
16 A GOVERNMENT AGENCY, AND SUPPORTED BY
17 CONGRESSIONAL APPROPRIATIONS, HAS
18 OFFICIALLY REPUTED THE TIE UP BETWEEN
19 CIGARETTE SMOKING AND CANCER.
20 "SO IN THIS SECRET MEETING,
21 AND IN THIS SECRET DOCUMENT THAT
22 SUPPOSEDLY TELLS YOU THE TRUTH, WHAT
23 YOU SEE IS, FOR BETTER OR WORSE, THE
24 INDUSTRY PEOPLE SAY WE BELIEVE IT AND
25 WE THINK THERE ARE PEOPLE WHO AGREE
26 WITH US. "
27 COMPANIES' ANSWERS TO QUESTIONS PUT
28 TO THEM BY JOHN HILL, THAT'S THE HEAD OF

1 HILL & KNOWLTON AND THE UNDERSIGNED, THAT'S THE
2 HILL AND KNOWLTON GUY WHO WROTE THIS DOCUMENT,
3 PROVIDE VALUABLE BACKGROUND.

4 THERE, "WILL THE CIGARETTE
5 COMPANIES ORGANIZE THEMSELVES INTO AN
6 ASSOCIATION PUBLICLY ANNOUNCED WHICH
7 WILL OPENLY SPONSOR THEIR PUBLIC
8 RELATION ACTIVITIES?

9 "COMPANIES REPLIED THAT THEY
10 HAD NO DESIRE TO SET UP A SMOKE SCREEN
11 OR FRONT TYPE OF ORGANIZATION. "

12 PLAINTIFF'S DOCUMENT. PLAINTIFF'S
13 DOCUMENT ABOUT THE SECRET MEETING AND THE SECRET
14 CONSPIRACY.

15 WELL, WHAT HAPPENED, T. I. R. C. WAS
16 STARTED AND, YES, IT HAD A SCIENTIFIC ADVISORY
17 BOARD THAT APPROVED RESEARCH PROPOSALS AND YET, IT
18 HAD A PUBLIC RELATIONS COMPONENT WHICH, A FEW YEARS
19 LATER, IN THE LATE 1950'S, WAS SPLIT OFF INTO THE
20 TOBACCO INSTITUTE, AND THE TWO OF THEM WENT THEIR
21 SEPARATE WAYS. AND THE PLAINTIFF'S CASE, ON
22 PROVING THESE ALLEGATIONS OF C. T. R. , ARE A SERIES
23 OF DOCUMENTS, MOSTLY FROM PHILIP MORRIS, AND I AM
24 GOING TO FOCUS ON THE PHILIP MORRIS ONES, WRITTEN
25 BY DR. OSDENE, DR. WAKEHAM, DR. SELIGMAN, WHERE
26 THEY ARE COMPLAINING ABOUT C. T. R. , THEY DON'T LIKE
27 IT. OKAY.

28 A COUPLE OF THINGS THAT YOU SHOULD

1 NOTE.

2 THE FIRST IS, NO EVIDENCE THAT
3 OSDENE, WAKEHAM, SELIGMAN HAD ANY RESPONSIBILITY
4 OVER C. T. R. , HAD ANY ROLE IN C. T. R. , HAD ANY POWER
5 OVER C. T. R.

6 WHAT THEY DID IS WRITE A SERIES OF
7 MEMOS SAYING WE DON'T LIKE IT.

8 AND I AM NOT GOING TO GO THROUGH
9 ALL THE MEMOS AND READ THEM, BUT I WANT TO SHOW YOU
10 SOMETHING WHICH IS, WE THINK, KIND OF INTERESTING.

11 OSDENE TO WAKEHAM, 1967.

12 OSDENE WENT TO VISIT PEOPLE AT
13 C. T. R. AND SAID:

14 "THE MEETING WAS USEFUL FROM
15 THE POINT OF CONTACT BEING MADE WITH
16 C. T. R. STAFF AND I PERSONALLY FELT
17 THAT THEY ARE BECOMING MUCH MORE
18 ATTUNED TO THE NEEDS OF OUR INDUSTRY.

19 "THIS MAY BE A STEP IN THE
20 RIGHT DIRECTION. "

21 AS EARLY AS 1967, DR. OSDENE WAS
22 UNHAPPY THAT C. T. R. ISN'T BEING RESPONSIVE TO THE
23 NEEDS OF THE INDUSTRY.

24 WAKEHAM TO MILHEISER, OCTOBER 14,
25 1969, STILL COMPLAINING.

26 OBVIOUSLY HIS COMPLAINTS HAVE NOT
27 BEEN HEEDED.

28 IN FACT, FEBRUARY 24, 1970, MR.

1 CULLMAN, WHO WAS THE C. E. O. OF PHILIP MORRIS AT THE
2 TIME, THE GUY WHO IS IN CHARGE, THE GUY WHO IS
3 RESPONSIBLE FOR C. T. R. WRITES TO DR. WAKEHAM IN
4 THIS INTERNAL MEMO.

5 "I WOULD LIKE YOU TO TAKE A
6 MORE POSITIVE POSITION WITH RESPECT TO
7 THE ACTIVITIES OF C. T. R. AND TO KEEP
8 US INFORMED IF YOU FEEL YOUR VIEWS ARE
9 NOT BEING GIVEN DUE CONSIDERATION AT
10 C. T. R. "

11 STOP COMPLAINING, DR. WAKEHAM TAKE
12 A MORE POSITIVE ATTITUDE TO C. T. R.

13 DR. WAKEHAM DIDN' T STOP
14 COMPLAINING.

15 YOU HAVE SEEN ALL THESE DOCUMENTS
16 LATER IN 1970, THIS IS THE LETTER HE WROTE TO SEND
17 TO EARLE CLEMENTS OF THE TOBACCO INSTITUTE.

18 DECEMBER 1970, DR. WAKEHAM WRITES
19 BACK TO MR. CULLMAN, BEST PROGRAM FOR C. T. R. WHAT
20 DOES HE THINK THE BEST PROGRAM WOULD BE?

21 "IT WOULD SEEM APPROPRIATE
22 TO EXPLORE IN SOME DEPTH DURING THE
23 NEXT YEAR OR TWO HOW C. T. R. IS OR
24 MIGHT BE SERVING THE NEEDS OF THE
25 CIGARETTE INDUSTRY. "

26 HE IS STILL UNHAPPY THAT C. T. R.
27 ISN' T DOING THE THING THAT HE FEELS WOULD HELP THE
28 INDUSTRY.

1 "THE DISPARITY OF OPINION ON
2 THIS SUBJECT WITHIN THE INDUSTRY
3 INDICATES THAT THE ANSWER TO THE
4 QUESTION IS NOT OBVIOUS. IF WE,
5 MEMBERS OF THE INDUSTRY, CANNOT
6 CONVINCE OURSELVES OF A DEFINITE
7 ANSWER TO THE QUESTION HOW, THEN WE
8 MIGHT VERY WELL DECIDE IT IS A WASTED
9 EFFORT. IF SO, C. T. R. SHOULD BE
10 TERMINATED. "

11 THERE'S ANOTHER SUGGESTION IT WAS
12 NOT TERMINATED.

13 WELL, AS YOU KNOW FROM THE
14 DOCUMENTS SHOWN TO YOU BY THE PLAINTIFFS, OSDENE
15 AND SELIGMAN AND WAKEHAM COMPLAINED FOR YEARS.

16 1977, IT'S NOW 10 YEARS SINCE THE
17 FIRST OF THESE MEMOS WHERE THESE GUYS ARE
18 COMPLAINING THAT THEY DON'T LIKE C. T. R.

19 OSDENE TO SELIGMAN, HE IS AMAZED AT
20 THE TRENDS C. T. R. WORK IS TAKING, OPIATES AND
21 NICOTINE MAKE SIMILAR IN ACTION. WE ACCEPT THE
22 FACT THAT NICOTINE IS HABITUATING. THESE ARE
23 QUOTES THAT HE IS HEARING FROM SOMEBODY AT C. T. R.
24 HE DOESN'T LIKE THAT. HE COMPLAINS AGAIN.

25 JANUARY 1979, OSDENE SELIGMAN AND
26 WAKEHAM NOW HAVE BEEN COMPLAINING ABOUT C. T. R. FOR
27 12 YEARS. 12 YEARS.

28 MARCH 31, 1980, SELIGMAN WRITES TO

1 DR. SPEARS, WHO WAS ALSO COMPLAINING, THOUGH FOR
2 DIFFERENT REASONS.

3 SO HERE'S WHAT YOU GOT.

4 YOU GOT 13 YEARS OF THESE GUYS AT
5 PHILIP MORRIS COMPLAINING ABOUT C. T. R. , WE SAY,
6 THESE ARE GUYS WHO WERE COMPLAINING, BUT THEIR
7 COMPLAINTS WEREN'T HEEDED. C. T. R. CONTINUED TO DO
8 THE WORK THAT IT SET OUT DO.

9 IT CONTINUED TO FUND RESEARCH
10 THROUGH INDEPENDENT SCIENTISTS. IT CONTINUED TO
11 FOCUS ITS RESEARCH ON AREAS RELATED TO SMOKING AND
12 HEALTH.

13 PLAINTIFF SAYS NO, NO, THOSE
14 DOCUMENTS TELL YOU THAT THE WHOLE THING WAS A BIG
15 FARCE.

16 WELL, WE THINK THE DOCUMENTS
17 THEMSELVES SUPPORT OUR STORY BUT WE DID SOMETHING
18 MORE FOR YOU IN THIS TRIAL.

19 WE SAID, WELL, IF THERE'S A DEBATE
20 AS TO WHAT THOSE DOCUMENTS TELL US ABOUT THE
21 RESEARCH C. T. R. DID, LET'S GO LOOK AT THE RESEARCH.

22 AND THAT'S WHAT MS. HOSHIZAKI CAME
23 TO TELL YOU ABOUT.

24 SHE SPENT ALL OF THOSE HOURS
25 FILLING UP HER LIBRARY WITH ALL OF THE MATERIALS
26 SHE REQUESTED AND SHE LOOKED AT THE ACTUAL RESEARCH
27 C. T. R. FUNDED.

28 AND I AM NOT GOING TO TALK ABOUT

1 THE DETAILS ABOUT IT. SHE LOOKED AT THE AREAS.

2 SHE LOOKED AT THE GRAND PROPOSALS.

3 SHE LOOKED AT THE RESEARCH THAT WAS
4 FUNDED. SHE LOOKED AT HOW SO MUCH OF THAT RESEARCH
5 WAS ALSO COMPANY FUNDED BY THE AMERICAN CANCER
6 SOCIETY, THE NATIONAL INSTITUTES FOR HEALTH,
7 UNIVERSITIES, GOVERNMENTS. SHE SAID, ESSENTIALLY,
8 THE DOCUMENTS AREN'T WHAT'S IMPORTANT. IF YOU WANT
9 TO FIND OUT WHETHER THIS WAS A LEGITIMATE RESEARCH
10 ORGANIZATION THAT DID WHAT THE INDUSTRY SAYS IT WAS
11 GOING TO DO, HOW ABOUT WE GO LOOK AT THE RESEARCH?

12 AND THAT'S WHAT SHE DID.

13 NOW, PLAINTIFF DISAGREES, BUT
14 REALLY HERE'S THE QUESTION.

15 IF THE PLAINTIFF DISAGREES AND THE
16 PLAINTIFF SAYS, NO, THOSE DOCUMENTS TELL US A
17 DIFFERENT STORY, WHERE WAS THE TESTIMONY FROM AN
18 EXPERT ON THEIR SIDE WHO WENT AND LOOKED AT THE
19 RESEARCH?

20 IF DR. HOSHIZAKI WAS WRONG, IF
21 DR. HOSHIZAKI DIDN'T GIVE IT TO YOU STRAIGHT ABOUT
22 THE RESEARCH THAT WAS FUNDED BY C. T. R. , THE ACTUAL
23 RESEARCH -- BY THE WAY, REMEMBER HOW SHE SHOWED YOU
24 EXAMPLES OF A WHOLE LOT OF RESEARCH THAT DIDN'T
25 COME OUT CONSISTENT WITH THE PLAINTIFF'S CONSPIRACY
26 THEORY, A WHOLE LOT OF RESEARCH THAT DID SHOW
27 LINKS, THAT DID SHOW FURTHER PROOF, FURTHER
28 EVIDENCE OF THE LINKS BETWEEN SMOKING AND CANCER,

1 IF THE PLAINTIFF SAYS, NO, NO, THAT'S NOT WHAT THE
2 RESEARCH SHOWED, THEY HAD EVERY OPPORTUNITY TO DO
3 WHAT WE DID, HIRE AN EXPERT, GO OUT AND LOOK AT THE
4 RESEARCH AND COME IN AND PRESENT THAT TESTIMONY TO
5 YOU AND THEY DIDN'T DO IT.

6 DR. HOSHIZAKI'S TESTIMONY ABOUT THE
7 RESEARCH IS UNREFUTED.

8 AND WE THINK THAT IF YOU ARE TRYING
9 TO RESOLVE WHAT THOSE DOCUMENTS MEAN, ASK YOURSELF,
10 WHERE'S THE PLAINTIFF'S EXPERT ON THIS SUBJECT?

11 WHO TELLS YOU ABOUT THE RESEARCH
12 AND WHY DIDN'T YOU SEE IT?

13 ONE FINAL THING ABOUT C. T. R.
14 RESEARCH AND THIS GETS BACK TO ONE OF THE CENTRAL
15 QUESTIONS THAT I KEEP BRINGING UP AGAIN AND AGAIN.
16 SORRY IF I SOUND LIKE A BROKEN RECORD. AND THAT
17 IS, WHAT DOES THIS WHOLE C. T. R. ISSUE HAVE TO DO
18 WITH MR. BOEKEN?

19 WE ALREADY KNOW AN AWFUL LOT ABOUT
20 MR. BOEKEN, BUT THIS WHOLE BUSINESS ABOUT THE
21 RESEARCH AND WHAT WAS FUNDED AND WHAT DOES IT HAVE
22 TO DO WITH MR. BOEKEN? LET'S PLAY CLIP NUMBER 7.

23

24 (AT THIS TIME, THE VIDEO
25 WAS PLAYED)

26

27 MR. LEITER: ANOTHER SERIES OF
28 ACCUSATIONS THAT DON'T REALLY HAVE ANYTHING TO DO

1 WITH MR. BOEKEN, DIDN'T START SMOKING BECAUSE OF
2 ANYTHING HAVING TO DO WITH ANY OF THIS. AND
3 ANOTHER SERIES OF ACCUSATIONS THAT ARE REPEATED AND
4 REPEATED AND REPEATED BUT NOT SUPPORTED BY THE
5 EVIDENCE, NOT SUPPORTED BY THE PROOF.

6 NOW, I WANT TO SWITCH GEARS AGAIN,
7 TRY TO GET THROUGH AS MANY OF THESE ACCUSATIONS AS
8 I CAN IN AS SHORT AMOUNT OF TIME AS I CAN.

9 I WANT TO GO BACK A LITTLE BIT TO
10 RESEARCH AND DEVELOPMENT AND TO THE ISSUE OF THE
11 RESEARCH DONE AND THE TESTING DONE AND THE PRODUCTS
12 MADE BY PHILIP MORRIS.

13 PRINCIPAL PERSON WHO MADE THESE
14 ACCUSATIONS IS DR. FARONE.

15 DR. FARONE CAME HERE PRETTY EARLY
16 ON IN THE CASE. I THINK HE WAS THE SECOND WITNESS
17 IN THE CASE. HE TESTIFIED FOR ABOUT A DAY, AND IN
18 THE MORNING, SHOT OFF A SERIES OF ACCUSATIONS ABOUT
19 PHILIP MORRIS AND THE PRODUCT DEVELOPMENT AREA,
20 MAINLY, AND THEN WAS CROSS-EXAMINED IN THE
21 AFTERNOON.

22 AND WHAT DO WE THINK ABOUT
23 DR. FARONE'S TESTIMONY?

24 WELL, THERE'S A COUPLE OF FACTS
25 THAT ARE PRETTY CLEAR.

26 THE FIRST IS THAT IN THE EIGHT
27 YEARS HE WAS AT PHILIP MORRIS, WHERE HE SAYS ALL OF
28 THESE HORRIBLE THINGS WERE HAPPENING, I THINK IT

1 WAS EIGHT YEARS, THERE'S NO EVIDENCE AT ALL THAT
2 WHILE HE WAS AT PHILIP MORRIS, HE BELIEVED THERE
3 WAS SOMETHING TERRIBLE HAPPENING, OR THAT HE DID
4 ANYTHING ABOUT IT.

5 NO DOCUMENTS, NO NOTHING, THAT
6 WHILE HE WAS AT PHILIP MORRIS, HE COMPLAINED, HE
7 COMPLAINED TO HIS BOSSES, HE WENT TO THE "NEW YORK
8 TIMES," HE WENT TO "60 MINUTES," WHICH WAS ON THE
9 AIR BACK THEN, WENT TO THE "WASHINGTON POST," WENT
10 TO THE F. B. I. , AND SAID, LADIES AND GENTLEMEN,
11 THERE'S SOMETHING BAD GOING ON AT PHILIP MORRIS
12 THAT YOU FOLKS OUGHT TO TAKE A LOOK AT, WHILE HE
13 WAS AT PHILIP MORRIS. THERE'S NO EVIDENCE THAT ANY
14 OF THAT HAPPENED.

15 AND REMEMBER, REMEMBER HIS
16 TESTIMONY, THIS IS A GUY WHO HAD NO PRIOR TIES TO
17 THE TOBACCO INDUSTRY AT ALL. AND HE SAYS HE
18 STARTED HEARING ABOUT BAD THINGS HAPPENING AT
19 PHILIP MORRIS WITHIN A WEEK.

20 REMEMBER THE ACCUSATION ABOUT NO
21 BIOLOGICAL RESEARCH? YOU HEARD THAT AFTER HE HAD
22 BEEN THERE ABOUT A WEEK. HE'S A GUY WITH NO TIES
23 TO THE INDUSTRY. COMES IN, BECAUSE HE'S TOLD HE IS
24 GOING TO MAKE A SAFER CIGARETTE BECAUSE HE IS GOING
25 TO LOOK AT PRODUCT DIVERSIFICATION. WITHIN A WEEK,
26 HIS TESTIMONY NOW IS, PEOPLE ARE TELLING HIM
27 THERE'S SOMETHING VERY FISHY GOING ON AT THIS
28 COMPANY AND NO EVIDENCE THAT HE WALKED AWAY.

1 NO EVIDENCE THAT HE SAID I DON' T
2 WANT TO BE HERE. NO EVIDENCE THAT SAID THIS IS NOT
3 THE PLACE FOR ME, WHAT DOES THAT MEAN ABOUT THE
4 TRUTHFULNESS OF THIS TESTIMONY?

5 IN FACT, WE KNOW MORE ABOUT THE
6 FACT THAT HE JUST DIDN' T WALK AWAY AND HE DIDN' T
7 LEAVE, WE KNOW FROM HIS CROSS-EXAMINATION IN THIS
8 CASE THAT HE WAS PRETTY HAPPY.

9 HE CAME TO WORK ON SAFER CIGARETTES
10 AND JUST LIKE DR. CARCHMAN AND DR. WHIDBY TOLD YOU,
11 HE DID GOOD WORK.

12 THIS IS FROM HIS CROSS-EXAMINATION
13 IN THIS CASE. THIS IS A MINI-SCRIPT SO I AM GOING
14 TO TRY TO GET REALLY CLOSE IN ON IT.

15 "YOU ARE PROUD OF THE WORK
16 THAT YOU DID AT PHILIP MORRIS, AREN' T
17 YOU?

18 "THAT IS CORRECT.

19 "YOU PUBLISHED SOME OF IT?

20 "RIGHT. YES.

21 "PROUD TO TALK TO OTHER
22 PEOPLE ABOUT IT?

23 "YES.

24 "AND YOU' RE PROUD OF THE
25 WORK DONE BY SCIENTISTS WHO WORKED FOR
26 YOU IN APPLIED RESEARCH TO TRY TO
27 DEVELOP SAFER CIGARETTES?

28 "YES.

1 "IT WAS AN OBJECTIVE THAT
2 YOU BELIEVED IN; RIGHT?

3 "THAT IS CORRECT.

4 "YOU BELIEVED IT WAS A
5 WORTHWHILE OBJECTIVE FOR PHILIP MORRIS
6 TO BE ENGAGED IN?

7 "RIGHT. VERY MUCH SO. "

8 AND IT GOES ON AND ON. DR. FARONE,
9 NOT ONLY DIDN'T COMPLAIN THAT SOMETHING REALLY BAD
10 WAS GOING ON AT PHILIP MORRIS, BUT HE WAS VERY
11 HAPPY THERE. AND IN FACT, HE WAS PERFECTLY HAPPY
12 TO STAY. HE THOUGHT HE WAS GOING TO GET PROMOTED,
13 THOUGHT HE WAS GOING TO MOVE UP THAT ORGANIZATION
14 CHART TO A HIGHER POSITION IN THE RESEARCH AND
15 DEVELOPMENT DEPARTMENT, WASN'T ABOUT TO LEAVE THE
16 COMPANY, WASN'T ABOUT TO GO TO THE F. B. I. AND SAY
17 SOMETHING BAD HERE OR GO TO THE MEDIA AND SAY
18 SOMETHING IS BAD HERE. THEN HE GOT FIRED.

19 THIS IS HIS LETTER, SHOWED IT
20 DURING HIS CROSS-EXAMINATION, AND HE GOT FIRED FOR
21 REASONS THAT HAD NOTHING TO DO WITH ANY COMPLAINTS
22 OR ACCUSATIONS THAT THERE WAS SOMETHING FISHY AT
23 THE COMPANY. HIS WIFE RAN INTO AN EMPLOYMENT
24 PROBLEM HE HAD AN E. E. O. C. , AN EQUAL OPPORTUNITY
25 EMPLOYMENT COMPLAINT. HE WROTE THIS LETTER.

26 HE DISPUTES WHY. HE WROTE THE
27 LETTER. HE SUGGESTS THAT HIS BOSS, DR. HAUSERMAN,
28 SUGGESTED THAT HE OUGHT TO WRITE THIS LETTER, BUT

1 HE WROTE A LETTER TO THE COMPANY SAYING, I RETAINED
2 AN ATTORNEY FOR THE PURPOSE OF TAKING WHATEVER
3 LEGAL ACTIONS ARE NECESSARY TO PROTECT MY CAREER
4 FROM WHAT I PERCEIVE AS DISCRIMINATORY TREATMENT.

5 SO I RETAINED AN ATTORNEY, I MAY
6 SUE THE COMPANY, AND AS YOU HEARD FROM HIS
7 TESTIMONY, HE ADMITTED THIS ON CROSS-EXAMINATION,
8 HE TOLD A COUPLE OF PEOPLE WHO WORKED FOR HIM THAT
9 HE WAS THINKING ABOUT SUING THE COMPANY, AND HE GOT
10 FIRED FOR INSUBORDINATION.

11 AND YOU REMEMBER WE HAD A LONG
12 DISCUSSION, DR. FARONE AND I, ABOUT HIS FIRING, AND
13 HOW HE SAID IT DIDN' T REALLY MAKE HIM ANGRY.

14 I ASKED HIM QUESTION AFTER QUESTION
15 ABOUT IT, EVENTUALLY HE GOT ANGRY AT ME.

16 YOU CAN TAKE THAT FOR WHAT IT' S
17 WORTH. MAYBE HE JUST DIDN' T LIKE MY QUESTIONS
18 ABOUT IT. BUT HE SAID, NO, NO, I WASN' T ANGRY. I
19 JUST MOVED ON.

20 AND WHAT DID HE MOVE ON TO DO?

21 DID HE MOVE ON, HE SAYS -- LET ME
22 START THAT SENTENCE OVER AGAIN. WHAT DID HE MOVE
23 ON TO DO?

24 HE NOW SAYS THERE WERE ALL THESE
25 SAFER CIGARETTE IDEAS, THAT PHILIP MORRIS COULD
26 HAVE PUT INTO PRODUCTION BUT THEY DIDN' T.

27 AND HE SAYS, I FEEL BADLY. I FEEL
28 BADLY THAT THINGS DID HAPPEN BECAUSE MAYBE I COULD

1 HAVE SAVED SOME LIVES.
2 DOES DR. FARONE GO TO SOME OTHER
3 COMPANY OR START UP A COMPANY ON HIS OWN? DID HE
4 PUBLISH ARTICLES ABOUT THESE SAFER CIGARETTES?
5 DID HE DO SOMETHING TO GET THESE
6 CIGARETTES MADE THAT HE SAYS COULD HAVE BEEN MADE?
7 HE FLIES AROUND THE COUNTRY
8 TESTIFYING AGAINST THE COMPANY THAT FIRED HIM
9 DO YOU NEED ANY STRONGER DEFINITION
10 OF A DISGRUNTLED FORMER EMPLOYEE?
11 FLIES AROUND THE COUNTRY,
12 ACCUSATION AFTER ACCUSATION, NOW HE SAYS, NOW HE
13 SAYS, WITHIN A WEEK OF GETTING TO PHILIP MORRIS, I
14 KNEW THERE WERE REALLY BAD THINGS GOING ON. THEY
15 WON'T DO RESEARCH. THEY WON'T DO TESTING. THEY
16 ARE DESTROYING DOCUMENTS ON A REGULAR BASIS. AND I
17 KNEW ALL ABOUT IT AND I KNEW ALL ABOUT IT EARLY ON.
18 I'D LIKE TO THINK, LADIES AND
19 GENTLEMEN THAT ANY OF US WHO WALKED INTO A NEW JOB
20 AND SAW THAT KIND OF STUFF GOING ON, WOULD DO
21 SOMETHING ABOUT IT, WOULD LEAVE, OR AT THE VERY
22 LEAST WOULD SAY, THIS IS NOT WHERE I WANT TO WORK.
23 DR. FARONE WHO NOW COMES ALL HIGH
24 AND MIGHTY AND SAYS, I AM HERE BECAUSE I WANT TO
25 HELP, HAS ACCUSATION AFTER ACCUSATION, BASICALLY
26 WITHOUT PROOF, BASICALLY A COMPLETELY DIFFERENT
27 STORY FROM WHEN HE WAS HAPPILY AT PHILIP MORRIS,
28 HOPE TO GO GET PROMOTED TO DIRECTOR OF RESEARCH.

1 WHAT ABOUT THOSE ACCUSATIONS?

2 WE HAVE TALKED ABOUT SOME OF THEM
3 AND I DON'T WANT TO REHASH WHAT I TALKED ABOUT ON
4 FRIDAY. BUT LET ME MENTION JUST A COUPLE THINGS.

5 AMMONIA. ONE OF DR. FARONE'S
6 ACCUSATIONS WAS AMMONIA.

7 THEY ARE STICKING AMMONIA IN THE
8 CIGARETTES FOR THE PURPOSE OF INCREASING THE
9 NICOTINE. REMEMBER THAT?

10 IT'S GOING TO INCREASE THE P. H.
11 LEVEL. IT'S GOING TO MAKE IT LESS ACIDIC. IT'S
12 GOING TO MAKE IT MORE BASE.

13 MR. PIUZE: YOUR HONOR, I OBJECT TO THIS.
14 DR. FARONE NEVER SAID ANY OF THOSE THINGS.

15 THE COURT: COUNSEL, THE EVIDENCE WILL
16 SPEAK FOR ITSELF. IF THE JURY WANTS READBACK, THEY
17 CAN HAVE IT.

18 PROCEED, COUNSEL.

19 MR. LEITER: OKAY. YOU HEARD THIS AND
20 THEN YOU ALSO HEARD A DOCUMENT FROM REYNOLDS THAT
21 SAID THE SAME THING.

22 WELL, IT TURNS OUT THAT THAT'S NOT
23 TRUE. DR. CARCHMAN TOLD YOU ABOUT IT, AND YOU
24 DON'T HAVE TO TAKE DR. CARCHMAN'S WORD FOR IT.
25 MASSACHUSETTS DEPARTMENT OF PUBLIC HEALTH LOOKED
26 INTO IT, 1997, AND SAID, DOESN'T WORK. THE P. H.
27 LEVEL OF MARLBORO IS PRETTY MUCH IN THE RANGE OF
28 OTHER CIGARETTES AND ITS COMPETITORS.

1 DR. CARCHMAN TOLD YOU THAT FOR THIS
2 CHEMICAL EFFECT TO TAKE PLACE, YOU GOT TO GET OVER
3 SEVEN.

4 NOT EVEN CLOSE.

5 BY THE WAY, IF IT TURNS OUT I AM
6 WRONG ABOUT WHETHER DR. FARONE SAID IT OR NOT,
7 ALLEGATIONS IN THE CASE, YOU HEARD NOTHING ABOUT IT
8 IN CLOSING ARGUMENT. ANOTHER ALLEGATION THAT GOT
9 REFUTED BY THE REAL EVIDENCE.

10 DR. FARONE CERTAINLY TALKED TO YOU
11 ABOUT CAMBRIDGE. AND WE HAVE ALREADY TALKED ABOUT
12 CAMBRIDGE. I AM NOT GOING TO GO THERE AGAIN, OTHER
13 THAN TO REMIND YOU AGAIN, CAMBRIDGE WAS A PRODUCT
14 THAT WAS ON THE MARKET, AVAILABLE, TO BE SMOKED, BY
15 MR. BOEKEN IF HE WANTED IT.

16 HERE'S A BIG ONE, FROM DR. FARONE,
17 THEY DIDN'T TEST MARLBOROS FOR CARCINOGENICITY.

18 REMEMBER THAT ONE?

19 THEY DIDN'T TEST MARLBOROS. THEY
20 DIDN'T TEST THE MARLBORO RED AGAINST THE MARLBORO
21 LIGHTS. THEY DIDN'T DO THAT FOR YEARS AND YEARS
22 AND YEARS. CAN YOU BELIEVE IT, LADIES AND
23 GENTLEMEN? THEY DIDN'T TEST THE MARLBOROS FOR
24 CARCINOGENICITY.

25 THAT, IN MY OPINION, IS THE BIGGEST
26 RED HERRING IN THE CASE.

27 THE BIGGEST RED HERRING IN THE CASE
28 FOR THIS REASON.

1 FIRST OF ALL, TESTING MARLBOROS TO
2 SEE WHETHER THERE'S BIOLOGICAL ACTIVITY WOULD HAVE
3 TOLD PHILIP MORRIS AND EVERYBODY ELSE ONE THING,
4 AND THAT IS, THAT THERE IS BIOLOGICAL ACTIVITY IN
5 CIGARETTES, WHICH IS SOMETHING EVERYBODY KNOWS.

6 TESTING MARLBORO TO SEE IF IT'S
7 BIOLOGICALLY ACTIVE WOULD NOT HAVE TOLD ANYBODY
8 ANYTHING THEY DIDN'T ALREADY KNOW

9 NOTHING THAT THE SCIENTIFIC
10 COMMUNITY DIDN'T ALREADY KNOW

11 HOW DO WE KNOW THAT EVERYBODY KNEW
12 THERE WAS BIOLOGICAL ACTIVITY IN CIGARETTES?

13 WELL, PHILIP MORRIS SPENT MANY,
14 MANY YEARS AND MANY, MANY MILLIONS OF DOLLARS
15 WORKING ON TECHNOLOGIES TO REDUCE THE DELIVERY OF
16 TAR TO SMOKERS, TO REDUCE THE BIOLOGICAL ACTIVITIES
17 THAT GETS TO SMOKERS.

18 PHILIP MORRIS TRIED TO REMOVE SOME
19 OF THE CHEMICALS THAT HAD BEEN IDENTIFIED.

20 YOU HEARD ABOUT PHENOLS, YOU HEARD
21 ABOUT BENZO(A)PYRENE. YOU HEARD ABOUT
22 NITROSAMINES. YOU HEARD ABOUT NITRATES.

23 TESTING THE PRODUCT DOESN'T TELL
24 YOU ANYTHING.

25 TESTING MARLBORO REDS VERSUS
26 MARLBORO LIGHTS, WOULD TELL YOU THE ONE THING THAT
27 EVERYBODY KNEW, WHICH IS THAT THE TAR THAT IS IN
28 EACH OF THESE CIGARETTES IS THE SAME. YOU REMEMBER

1 DR. CARCHMAN TALKING TO YOU ABOUT IT, BUT THAT THE
2 AMOUNT OF TAR THAT'S DELIVERED BY THE MARLBORO
3 LIGHTS IS LESS.

4 WAS THERE A BIOLOGICAL TEST THAT
5 COULD TELL YOU WHETHER THAT ALONE MADE IT SAFER FOR
6 SMOKERS? DR. CARCHMAN SAID NO.

7 NO.

8 AND HERE IS THE BIGGEST FALLACY
9 ABOUT THE BIOLOGICAL TESTING ISSUE, AND THAT IS YOU
10 HEARD FROM DR. CARCHMAN, WHILE THEY DIDN'T TEST
11 MARLBORO THEMSELVES FOR BIOLOGICAL ACTIVITY BECAUSE
12 THERE WAS NO PARTICULAR THING TO BE LEARNED AT THE
13 TIME BY DOING IT, THEY DID TEST RESEARCH
14 CIGARETTES. THEY DID IT ON A REGULAR BASIS AND
15 THEY DID IT FOR A VERY IMPORTANT AND SPECIFIC
16 REASON.

17 AND THAT REASON IS THIS: WHEN THEY
18 WERE MAKING A CHANGE TO A PRODUCT, THEY WERE GOING
19 TO ADD A NEW INGREDIENT TO MARLBORO, THEY COULDN'T
20 MAKE MARLBORO SAFE BUT THEY COULD CERTAINLY MAKE
21 SURE THAT BY ADDING AN INGREDIENT OR CHANGING THE
22 COMPOSITION, THEY WEREN'T MAKING IT WORSE.

23 THEY TESTED THAT AND THEY TESTED
24 THAT LIKE CRAZY.

25 IF WE ARE GOING TO ADD A FLAVOURANT
26 OR WE ARE GOING TO ADD AN INGREDIENT, WE DON'T WANT
27 TO INCREASE THE BIOLOGICAL ACTIVITY.

28 SO, AGAIN, THE NOTION THAT THERE

1 WAS NO TESTING GOING ON FOR BIOLOGICAL ACTIVITY,
2 FALSE, FALSE, FALSE.

3 THEY DIDN'T TEST THE NEW VERSION OF
4 THE CIGARETTE AGAINST A MARLBORO, BECAUSE
5 COMMERCIAL CIGARETTES CAN VARY.

6 AND IF YOU ARE DOING A SCIENTIFIC
7 TEST, YOU DO A TEST AGAINST A CONSTANT.

8 AND THE CONSTANTS WERE THE RESEARCH
9 CIGARETTES NOT DEVELOPED BY PHILIP MORRIS,
10 DEVELOPED, AS YOU CAN SEE, AT THE UNIVERSITY OF
11 KENTUCKY, USED IN THE PUBLIC HEALTH COMMUNITY, USED
12 BY GOVERNMENT IN THE YEARS WHEN THE GOVERNMENT WAS
13 WORKING WITH PHILIP MORRIS TO TRY TO REDUCE THE
14 RISKS OF CIGARETTES.

15 YOU HEARD DR. CARCHMAN SAY THERE
16 ARE DIFFERENT VERSIONS OF THESE RESEARCH
17 CIGARETTES, SO THAT YOU CAN MAKE IT CLOSE TO A
18 MARLBORO. YOU CAN MAKE IT CLOSE TO A MARLBORO
19 LIGHT. YOU CAN MAKE IT CLOSE TO A MERIT. YOU CAN
20 MAKE IT CLOSE TO SOMETHING ELSE.

21 BUT YOU ARE USING, AS A MODEL, WHEN
22 YOU ARE TESTING, A STANDARD REFERENCE OR RESEARCH
23 CIGARETTE OR REFERENCE CIGARETTE, IT'S A STANDARD
24 REFERENCE SO THAT IF PHILIP MORRIS DOES A TEST AND
25 GETS A RESULT, SOMEBODY HALFWAY AROUND THE WORLD IN
26 A LAB CAN TEST ALSO WITH THE SAME REFERENCE
27 CIGARETTE AND TRY TO REPLICATE THE RESULTS. THAT'S
28 ALL THERE IS TO THIS ALLEGATION.

1 SO WHEN YOU HEAR OVER AND OVER
2 AGAIN, THEY DIDN'T TEST MARLBOROS FOR BIOLOGICAL
3 ACTIVITY AND YOU HEAR THE PLAINTIFF REPEAT THAT AS
4 THOUGH HE HAS JUST INVENTED THE LIGHT BULB, IT'S A
5 RED HERRING.

6 NO, THEY DIDN'T TEST MARLBORO IN
7 THOSE YEARS, BECAUSE THERE WASN'T ANYTHING TO BE
8 LEARNED BY JUST TESTING A MARLBORO TO SEE IF IT HAD
9 BIOLOGICAL ACTIVITY.

10 BUT DID THEY TEST? YES.

11 DID THEY DO BIOLOGICAL TESTS WHEN
12 THEY WERE MAKING CHANGES?

13 YES.

14 DID THEY KNOW THAT THERE WAS
15 BIOLOGICAL ACTIVITY CONNECTED TO MARLBORO AND
16 MERITS AND EVERY OTHER CIGARETTE?

17 YES.

18 DID THEY KNOW THAT A MERIT OR A
19 MARLBORO LIGHT DELIVERED LESS OF THAT SAME TAR TO
20 THE SMOKER?

21 YES.

22 WAS THERE A BIOLOGICAL TEST OUT
23 THERE AT ANY POINT THAT COULD TELL YOU WHETHER ONE
24 CIGARETTE WAS ACTUALLY SAFER TO SMOKE THAN ANOTHER?

25 NO.

26 NOBODY HAS TOLD YOU DIFFERENTLY,
27 NOT DR. FARONE, NOT ANYBODY ELSE.

28 NOW, I WANT TO MAKE ONE MORE POINT

1 AND I AM COMING TO THE END OF THE PART OF MY
2 ARGUMENT WHERE WE ARE TALKING ABOUT SPECIFIC
3 ALLEGATIONS, AND THEN I WANT TO MOVE, MAYBE AFTER A
4 BREAK, TO TALK TO YOU ABOUT HOW TO APPLY THE FACTS
5 TO THE LAW IN THE CASE.

6 BUT I DO WANT TO SAY ONE MORE THING
7 ABOUT LOW TAR. BECAUSE ONE OF THE LEGAL CLAIMS IN
8 THE CASE IS THAT PHILIP MORRIS SHOULD HAVE WARNED
9 SMOKERS BEFORE 1969, WHICH IS THAT LEGAL CUT-OFF
10 DATE YOU HAVE HEARD REFERENCE TO IN THE PLAINTIFF'S
11 ARGUMENT THAT PHILIP MORRIS SHOULD HAVE WARNED
12 SMOKERS BEFORE 1969 ABOUT HOW TO SMOKE LOW TAR
13 CIGARETTES AND THE FAILURE TO DO THAT GAVE
14 CONSUMERS SOME MISIMPRESSION OR CREATED SOME HARM
15 OKAY.

16 NOW, REMEMBER, BECAUSE WE ARE
17 TALKING ABOUT PRE-1969, PRE-1969, BEFORE JULY 1ST,
18 1969, WE ARE NOT TALKING ABOUT MARLBORO LIGHTS,
19 WHICH CAME ON THE MARKET LATER.

20 WE ARE NOT TALKING ABOUT MERITS AND
21 OTHER CIGARETTES THAT CAME ON THE MARKET LATER.

22 WE ARE TALKING ABOUT THAT FIRST
23 GROUP OF LOW TAR CIGARETTES.

24 AND HERE'S THE PROBLEM WITH THAT
25 ALLEGATION.

26 DR. DOLL HIMSELF SAID, THERE WAS NO
27 PROBLEM WITH THOSE.

28 WHETHER THERE WAS A WARNING OR

1 WHETHER THERE WAS NOT A WARNING, AND HE DIDN' T
2 SPECIFICALLY ADDRESS THE ISSUE OF WARNINGS. HE
3 SAID, THOSE EARLY LOW TAR CIGARETTES, IN HIS
4 OPINION, DID REDUCE RISK.

5 YOU MIGHT REMEMBER WHEN MR. CARLTON
6 WAS CROSS-EXAMINING DR. DOLL, THERE WAS A QUESTION
7 OF WHETHER DR. DOLL HAD SAID, IN EARLIER TESTIMONY,
8 THAT LOW TAR CIGARETTES DID CONFER A BENEFIT, AND
9 DR. DOLL SAID, I DID SAY THAT, BUT I WAS REFERRING
10 TO THOSE CIGARETTES THAT CAME OUT MUCH EARLIER.

11 HERE' S THE TESTIMONY.

12 "Q DO YOU RECALL
13 TESTIFYING IN THE STATE OF FLORIDA
14 VERSUS THE AMERICAN TOBACCO COMPANY?"

15 THIS IS MR. CARLTON ASKING
16 QUESTIONS ARE OF THE DOCTOR.

17 "A YES, I DO.

18 "Q ON JANUARY 17TH OF
19 1997?

20 "A I DON' T REMEMBER THE
21 DATE, BUT AROUND THEN.

22 "Q DOES THAT SOUND
23 ABOUT RIGHT?

24 "A SOUNDS ABOUT RIGHT. "
25 OKAY. AND I' M READING FROM
26 PAGE 177 OF THAT TRANSCRIPT.

27 "Q NOW, DOCTOR, YOU
28 BELIEVE THAT THE CASE IS MADE THAT IT

1 HAS BEEN PROVEN THAT LOWER TAR
2 CIGARETTES REDUCE THE RISK OF LUNG
3 CANCER; ISN' T THAT CORRECT?

4 "A I THINK IT' S BEEN
5 PROVEN BEYOND A REASONABLE DOUBT THAT
6 LOWER TAR CIGARETTES DO REDUCE THE
7 RISK OF LUNG CANCER TO SOME EXTENT. "

8 THAT' S WHAT DR. DOLL HAD SAID IN
9 1997 IN THE FLORIDA CASE THAT LOW TAR CIGARETTES
10 GENERALLY DO REDUCE THE RISK OF LUNG CANCER TO SOME
11 EXTENT.

12 AND HERE' S DR. DOLL' S ANSWER IN
13 HERE.

14 "A YES, I WAS REFERRING
15 TO THE ONES THAT WE USED IN THE 1960' S
16 COMPARED TO THE 1930' S. THAT' S WHAT I
17 HAD EVIDENCE FOR AND THAT' S WHAT I WAS
18 REFERRING TO.

19 "Q BUT THAT' S NOT
20 MENTIONED IN THAT QUESTION AND ANSWER,
21 IS IT?

22 "A BUT THAT' S WHAT I
23 WAS REFERRING TO. "

24 NOW, OBVIOUSLY, MR. CARLTON WAS
25 AIMING FOR, OVERALL, DR. DOLL HAD SAID LOWER TAR
26 CIGARETTES REDUCED THE RISK. AND DR. DOLL WASN' T
27 AGREEING TO THAT. BUT EVEN DR. DOLL SAID, THOSE
28 CIGARETTES, THOSE LOWER TAR CIGARETTES IN THE

1 EARLIER TIMES, THE ONES THAT ARE -- THE ISSUE IN
2 THIS PRE-1969 CLAIM DID CONFER BENEFIT.

3 AND SECOND ISSUE, THE ONE THAT I'D
4 LIKE TO COME BACK TO, WHAT DOES THIS ISSUE HAVE TO
5 DO WITH MR. BOEKEN?

6 WHEN DID MR. BOEKEN SWITCH TO LOW
7 TAR CIGARETTES?

8 WHEN WOULD HE POTENTIALLY HAVE RUN
9 INTO A PROBLEM FROM SOME PRE-1969 FAILURE TO WARN
10 ABOUT WHAT TO DO WITH THESE CIGARETTES?

11 MR. BOEKEN'S TESTIMONY:

12 "Q YOU STARTED SMOKING
13 MARLBORO REDS; RIGHT? HOW LONG DID
14 YOU SMOKE? YOU DIDN'T START SMOKING,
15 I ASSUMED, MARLBORO REDS, BUT FROM THE
16 TIME YOU SMOKE MARLBORO REDS, HOW LONG
17 DID YOU SMOKE THOSE CIGARETTES?

18 "A UNTIL ABOUT 1981,
19 '82, '81, '82, SOMEWHERE RIGHT THERE.

20 "Q WHAT DID YOU SWITCH
21 TO?

22 "A MARLBORO 100, I
23 BELIEVE THEY ARE 100 GOLD. "

24 AGAIN, BIG ACCUSATION NOT SUPPORTED
25 BY THE EVIDENCE, NOT RELEVANT TO THIS PLAINTIFF.

26 OUR SENSE IS THAT THE PLAINTIFF'S
27 STRATEGY, AT THIS POINT IN THE CASE, OF COURSE, IS
28 PRETTY CLEAR, WE BELIEVE, DON'T SPEND AN AWFUL LOT

1 OF TIME ON MR. BOEKEN HIMSELF, ALTHOUGH HIS STORY,
2 WE SUBMIT, IS CRITICAL TO THE CASE, BECAUSE
3 MR. BOEKEN'S TESTIMONY DOES NOT MATCH UP WITH THE
4 EVIDENCE AND IT DOESN'T FIT EVEN COMMON SENSE.

5 SO DON'T SPEND AN AWFUL LOT OF TIME
6 ON YOUR CLIENT'S TESTIMONY EVEN THOUGH IT'S
7 CRITICAL TO THE CASE, ON THE PLAINTIFF'S SIDE, BUT
8 THROW OUT A LOT OF ACCUSATIONS AGAINST PHILIP
9 MORRIS. HAND GRENADE AFTER HAND GRENADE AFTER HAND
10 GRENADE.

11 REPEAT THEM AS OFTEN AS POSSIBLE.
12 BECAUSE IF YOU REPEAT THEM OFTEN ENOUGH, PEOPLE ARE
13 JUST GOING TO KIND OF ASSUME THAT THERE MUST BE
14 SOMETHING TO IT.

15 WE ASK YOU, VERY SIMPLY,
16 ACCUSATIONS ARE ACCUSATIONS. LOOK AT THE EVIDENCE.
17 LOOK AT THE EVIDENCE AS A WHOLE, AND DECIDE WHETHER
18 THESE ACCUSATIONS ARE TRUE.

19 I HAVE NEVER SAID AND HE HAS NEVER
20 SAID IN THIS CASE THAT MY CLIENT DID NOTHING BUT
21 CORRECT CHOICES, MADE NOTHING BUT CORRECT CHOICES
22 OVER THE LAST 50 YEARS. WE TOLD YOU FROM DAY
23 ONE IN THIS CASE THAT THEY DID NOT. BUT THESE
24 ACCUSATIONS AND THE BIG CONSPIRACY WHICH PERMEATED
25 EVERY ASPECT OF THE COMPANY, EVERY DIVISION,
26 RESEARCH AND DEVELOPMENT, ADVERTISING, CORPORATE,
27 EVERYWHERE, THOSE ACCUSATIONS ARE JUST NOT TRUE AND
28 THEY ARE JUST NOT TRUE BY THE ACTUAL EVIDENCE IN

1 THIS CASE.

2 WHAT I WANT TO DO IS TURN TO SOME
3 OF THE LEGAL INSTRUCTIONS AND OFFER SOME
4 SUGGESTIONS ABOUT HOW YOU APPLY THE FACTS TO THE
5 LAW AS JUDGE MCCOY -- AS JUDGE MCCOY, AS I BELIEVE,
6 WILL INSTRUCT YOU.

7 BUT YOUR HONOR, THIS MIGHT BE A
8 GOOD TIME TO TAKE A BREAK.

9 THE COURT: LADIES AND GENTLEMEN, WE WILL
10 SEE YOU AT QUARTER TIL. REMEMBER, THE FIFTH AND
11 THE FOURTH FLOOR.

12 THE COURT ATTENDANT: IT'S WORKING NOW,
13 YOUR HONOR.

14

15 (AT THIS TIME, A RECESS
16 WAS TAKEN.)

17

18 (THE FOLLOWING PROCEEDINGS
19 WERE HELD IN OPEN COURT IN
20 THE PRESENCE OF THE JURY.)

21

22 THE COURT: OUR JURY PANEL IS WITH US.
23 COUNSEL ARE PRESENT AS WELL.

24 MR. LEITER.

25 MR. LEITER: THANK YOU, YOUR HONOR.

26 /// /// ///

27 /// /// ///

28 /// /// ///

1 CLOSING ARGUMENT (CONTINUED)

2

3 BY MR. LEITER:

4 WELL, LADIES AND GENTLEMEN, I
5 CHECKED DURING THE BREAK AND I WANT TO TELL YOU
6 RIGHT UP THAT MR. PIUZE MAY BE RIGHT ABOUT ONE
7 THING. I AM NOT SURE THAT DR. FARONE IS THE PERSON
8 IN THIS CASE WHO MADE THE ACCUSATION ABOUT AMMONIA.

9 IT MIGHT HAVE COME UP ELSEWHERE AND
10 IN FACT, I BELIEVE, WHEN PEOPLE AT PHILIP MORRIS'S
11 COMPETITORS, REYNOLDS AND MAYBE BROWN & WILLIAMSON
12 WERE TRYING TO FIGURE OUT WHY MARLBORO WAS DOING
13 WELL, AND FLOATED THAT THEORY AS WELL.

14 BUT EVEN IF IT WASN'T DR. FARONE,
15 ANOTHER ACCUSATION MADE IN THIS CASE, ANOTHER
16 ACCUSATION NOT BORNE OUT BY THE EVIDENCE.

17 YOU DIDN'T HEAR ANYTHING ABOUT THAT
18 IN THE PLAINTIFF'S CLOSING ARGUMENT. IT WAS ONE OF
19 THOSE GRENADES THAT NEVER EXPLODED.

20 I WANT THE TURN NOW, HOPEFULLY NOT
21 SPEND TOO MUCH TIME ON IT, ON THE LAW

22 NOW, JUDGE MCCOY, WHEN WE ARE ALL
23 DONE WITH OUR ARGUMENTS, WILL INSTRUCT YOU ON THE
24 LAW AND THEN IT WILL BE YOUR TURN TO GO BACK INTO
25 THE JURY ROOM, DECIDE THE FACT AND APPLY THE FACTS
26 TO THE LAW

27 AND YOU WILL HEAR THE LAW FROM A
28 SERIES OF JURY INSTRUCTIONS THAT HIS HONOR WILL

1 READ TO YOU. AND THOSE JURY INSTRUCTIONS PROVIDE
2 SOMETHING OF A ROAD MAP.

3 A ROAD MAP OF THE LEGAL CLAIMS IN
4 THE CASE AND THE QUESTIONS THAT YOU SHOULD ANSWER.
5 AND THEN, WHEN YOU ARE READY, YOU WILL GET A
6 SPECIAL VERDICT FORM THIS IS MY COPY. YOURS
7 WON'T HAVE THE HIGHLIGHTS ON IT OR MY LITTLE NOTES,
8 BUT YOU WILL GET A SPECIAL VERDICT FORM WHICH WILL
9 BE A SERIES OF QUESTIONS ABOUT EACH LEGAL CLAIM
10 THAT YOU WILL NEED TO ANSWER, YES OR NO, OR AT
11 LEAST ANSWER YES OR NO TO SOME OF THEM TO DECIDE
12 THE CASE.

13 SO I WANT TO TAKE JUST A FEW
14 MINUTES AND TALK ABOUT SOME OF THE INSTRUCTIONS AND
15 SOME OF THE QUESTIONS ON THE JURY -- ON THE VERDICT
16 FORM TO GIVE YOU OUR SENSE OF HOW THOSE QUESTIONS
17 SHOULD BE ANSWERED.

18 NOW, THERE ARE SEVERAL LEGAL CLAIMS
19 IN THE CASE, THE FIRST ONE IS CALLED DESIGN DEFECT.

20 AND I THINK MR. PIUZE MENTIONED
21 THIS TO YOU IN HIS CLOSING ARGUMENT AS WELL.

22 THE FIRST CLAIM IS WAS THERE A
23 DESIGN DEFECT. AND THERE ARE A NUMBER OF ELEMENTS
24 TO THE CLAIM

25 NOW, ONE, TWO, THREE, FOUR, FIVE
26 ARE THE ELEMENTS.

27 AND I WANT TO TALK TO YOU ABOUT A
28 COUPLE OF THEM BUT THE ELEMENTS ARE, THINK OF

1 THEM AS BLANKS ON A BRIDGE.

2 FOR PLAINTIFF TO WIN ON ANY
3 PARTICULAR LEGAL CLAIM, PLAINTIFF HAS TO PROVE BY A
4 PREPONDERANCE OF THE EVIDENCE EACH OF THE ELEMENTS
5 OF THAT CLAIM IT'S ALMOST AS THOUGH THE PLAINTIFF
6 IS BUILDING A BRIDGE ACROSS A RIVER.

7 AND IN ORDER TO WIN ON ANY
8 PARTICULAR CLAIM, EACH ELEMENT IS A PLANK BUILDING
9 THAT BRIDGE. AND PLAINTIFF HAS TO BUILD ALL THE
10 PLANKS AND SATISFY ALL THE ELEMENTS TO GET TO THE
11 OTHER SIDE.

12 AND IF PLAINTIFF DOESN'T SATISFY
13 ALL OF THE ELEMENTS, PLAINTIFF DOES NOT WIN ON THAT
14 CLAIM AND YOU FIND FOR THE DEFENSE.

15 THIS IS THE FIRST ONE WHICH IS
16 DESIGN DEFECT AND THERE ARE FIVE ELEMENTS TO THAT
17 CLAIM AND THE FIRST ONE, THE DEFENDANT WAS A
18 MANUFACTURER OF A PRODUCT; NAMELY CIGARETTES. WE
19 ARE NOT DISPUTING THAT PHILIP MORRIS MADE A
20 PRODUCT; NAMELY, CIGARETTES.

21 AND THE SECOND IS A VERY, VERY
22 IMPORTANT ONE, WHICH IS THE PRODUCT POSSESSED A
23 DEFECT IN ITS DESIGN. THAT'S THE ONE THAT I WANT
24 TO TALK ABOUT MOST SPECIFICALLY.

25 DEFECT IN DESIGN EXISTED AT THE
26 TIME IT LEFT THE DEFENDANTS' POSSESSION. WE ARE
27 GOING TO SHOW YOU THAT THERE IS NO DEFECT IN
28 DESIGN.

1 THE FOURTH IS THAT THE DEFECT IN
2 DESIGN WAS A CAUSE OF INJURY TO THE PLAINTIFF AND I
3 WANT TO TALK WITH YOU ABOUT THAT ONE AS WELL.

4 AND THEN THE FIFTH ONE, IS THE
5 PLAINTIFF'S INJURY RELATED FROM A USE OF THE
6 PRODUCT THAT WAS REASONABLY FORESEEABLE BY THE
7 DEFENDANT.

8 NOW, WHAT MAKES A PRODUCT DEFECTIVE
9 IN DESIGN?

10 DEFECTIVE IN DESIGN IS A TERM OF
11 ART.

12 IT'S NOT SOMETHING THAT YOU JUST
13 DECIDE WHAT DOES DEFECT MEAN THAN, WHAT DOES DESIGN
14 MEAN, IT'S A TERM OF ART.

15 AND THERE ARE TWO WAYS IN WHICH A
16 PRODUCT CAN BE DEFECTIVE IN DESIGN. AND THEY ARE
17 LISTED HERE AS (A) AND (B).

18 AND YOU NEED TO FIND THAT ONE OF
19 THEM IS TRUE IN ORDER TO BUILD THAT PLANK IN THE
20 PLAINTIFFS' S BRIDGE.

21 WHAT I AM ABOUT TO TELL YOU IS THAT
22 NEITHER ONE OF THEM WAS PROVED IN THIS CASE.

23 THERE IS NO DEFECT IN DESIGN IN THE
24 PRODUCT AS THAT IS DEFINED IN THIS INSTRUCTION.

25 HERE'S THE FIRST TEST.

26 THE PRODUCT FAILS TO PERFORM AS
27 SAFELY AS AN ORDINARY CONSUMER WOULD EXPECT, ~~MY~~
28 UNDERLINE, BY THE WAY, WHEN USED IN AN INTENDED OR

1 REASONABLY FORESEEABLE MANNER. THE PRODUCT FAILS
2 TO PERFORM AS SAFELY AS AN ORDINARY CONSUMER WOULD
3 EXPECT.

4 MR. BOEKEN SMOKED CIGARETTES FOR 40
5 YEARS. WE ARE MEASURING EXPECTATIONS OVER THE 40
6 YEARS. IT IS UNDISPUTED IN THIS CASE ABOUT THE
7 VOLUME OF INFORMATION ABOUT THE HEALTH RISKS THAT
8 WAS OUT THERE FROM ALL SORTS OF DIFFERENT SOURCES.

9 THIS IS NOT A TEST ABOUT WHAT
10 MR. BOEKEN KNEW THIS IS A TEST ABOUT WHAT AN
11 AVERAGE, ORDINARY, REASONABLE PERSON KNEW DID AN
12 AVERAGE, ORDINARY, REASONABLE PERSON OVER TIME,
13 EXPECT THAT THIS WAS A RISKY, DANGEROUS PRODUCT?

14 AND THE ANSWER IS YES.

15 YES, YES, YES.

16 WHEN A SMOKER PICKS UP A CIGARETTE
17 OVER THIS PERIOD OF TIME, DOES THE SMOKER
18 UNDERSTAND FROM THE WARNINGS ON THE PACK, FROM THE
19 WARNINGS ON THE ADS, FROM THE AVALANCHE, THE
20 MOUNTAIN OF INFORMATION ABOUT HEALTH RISKS THAT
21 HAVE BEEN OUT THERE AND HAVE BEEN OUT THERE, AS YOU
22 ARE MEASURING THIS OVER TIME, DO PEOPLE KNOW THAT
23 CIGARETTES WERE RISKY?

24 OF COURSE. AND YOU REALLY HAVEN'T
25 SEEN ANY EVIDENCE TO THE CONTRARY.

26 NUMBER (B), LETTER (B), IS THERE A
27 RISK OF DANGER INHERENT IN THE DESIGN WHICH
28 OUTWEIGHS THE BENEFITS OF THAT DESIGN?

1 NOW, AGAIN, WITHOUT TURNING YOU ALL
2 INTO LAW STUDENTS, THAT WOULD BE YOUR WORST
3 NIGHTMARE COME TRUE. THE KEY WORD HERE IS DESIGN.

4 IS THERE A DEFECT OR A RISK OF
5 DANGER INHERENT IN THE DESIGN WHICH OUTWEIGHS THE
6 BENEFITS OF THAT DESIGN?

7 YOU HAVE SEEN NO EVIDENCE THAT ANY
8 PARTICULAR DESIGN OF CIGARETTES IS WHAT MAKES THEM
9 DANGEROUS.

10 DR. CARCHMAN ADDRESSED THIS
11 SPECIFICALLY WHEN HE SAID WHAT MAKES CIGARETTES
12 DANGEROUS IS THE TOBACCO. IT IS AN INHERENTLY
13 DANGEROUS PRODUCT BECAUSE OF THE TOBACCO ITSELF,
14 NOT BECAUSE OF ANY PARTICULAR DESIGN OF THE
15 PRODUCT.

16 AND THIS IS REALLY THE FLIP SIDE OF
17 THE, WAS THERE A SAFER PRODUCT QUESTION THAT WAS --
18 SAFER PRODUCT THAT COULD HAVE BEEN AVAILABLE TO
19 MR. BOEKEN THAT SOMEHOW WASN'T AVAILABLE TO
20 MR. BOEKEN.

21 NOT ONLY DO WE KNOW THAT WHAT MAKES
22 CIGARETTES DANGEROUS IS THE TOBACCO, NOT THE
23 PARTICULAR DESIGN OF ANY PARTICULAR CIGARETTE, BUT
24 WE KNOW THAT THERE WAS NO ALTERNATIVE DESIGN OF
25 CIGARETTES OUT THERE THAT HAD MR. BOEKEN SMOKED, HE
26 WOULD NOT HAVE GOTTEN SICK.

27 THERE IS NO DESIGN THAT WAS
28 WITHHELD THAT COULD HAVE BEEN USED. WE TALKED

1 ABOUT SOME OF THEM YESTERDAY. THE NOD PROGRAM
2 PHILIP MORRIS DOES REMOVE NITRATES AND EVEN
3 REMOVING NITRATES DOESN'T MAKE IT SAFER.

4 CAMBRIDGE WAS OUT ON THE MARKET AND
5 THAT WASN'T A SAFE CIGARETTE EITHER.

6 IT DID HAVE SUBSTANTIAL RISK
7 REDUCTION. NOBODY BOUGHT IT, BUT IT WAS AVAILABLE
8 FOR PEOPLE TO SMOKE.

9 NOT WITHHELD.

10 THERE WAS NO ALTERNATIVE DESIGN
11 THAT WOULD HAVE MADE SMOKING SAFER.

12 NOW, BASED ON THOSE TWO ALONE,
13 THERE IS NO DEFECTIVE IN DESIGN OF THE PRODUCT AND
14 THIS CLAIM FAILS.

15 BUT THERE'S A COUPLE OF OTHER
16 THINGS THAT I WANT TO TELL YOU IN THE ROAD MAP IN
17 THIS PARTICULAR CAUSE OF ACTION.

18 IF, AND I DON'T THINK HE CAN, THIS
19 IS THE NON-HIGHLIGHTED PARAGRAPH, IF THE PLAINTIFF
20 PROVES THAT THE RISK OF DANGER INHERENT IN THE
21 DESIGN OUTWEIGHS THE BENEFIT OF THAT DESIGN AND WE
22 DON'T THINK YOU EVER GET THAT FAR, THEN THE
23 DEFENDANT HAS THE BURDEN OF PROVING BY A
24 PREPONDERANCE OF THE EVIDENCE THAT THE BENEFITS OF
25 THE PRODUCT, AS A WHOLE, OUTWEIGH THE DANGER IN
26 SUCH DESIGN.

27 I DON'T THINK YOU EVER GET TO THIS.
28 BUT IF YOU DID, PHILIP MORRIS THEN HAS THE BURDEN

1 OF PROVING THAT PARAGRAPH.

2 AND IN DETERMINING WHETHER THE
3 BENEFITS OF THE DESIGN OUTWEIGH SUCH RISKS, YOU MAY
4 CONSIDER, AMONG OTHER THINGS, AND I WANT TO FLIP --
5 SKIP DOWN TO THE HIGHLIGHTED SECTION, THE
6 MECHANICAL FEASIBILITY OF THE SAFER ALTERNATIVE
7 DESIGN.

8 MEANING YOU GET RIGHT BACK TO THAT
9 POINT AGAIN.

10 WAS THERE ANOTHER DESIGN OF
11 CIGARETTES THAT WAS SAFE, THAT WOULD HAVE PREVENTED
12 MR. BOEKEN FROM GETTING SICK FROM SMOKING? THE
13 ANSWER IS NO.

14 AND YOU MAY ALSO CONSIDER THE
15 EXISTENCE OR NONEXISTENCE OF WARNINGS. AND THAT
16 REALLY, REALLY, REALLY IS A CRITICAL PART OF THIS
17 INSTRUCTION.

18 WE ARE TALKING ABOUT WEIGHING RISKS
19 AND BENEFITS.

20 WHO WEIGHS RISKS AND BENEFITS WHEN
21 WE ARE TALKING ABOUT SMOKING?

22 SMOKERS DO.

23 SMOKERS UNDERSTAND THE RISKS. WE
24 HAVE TALKED ABOUT THAT EXTENSIVELY, AND I AM GOING
25 TO TRY NOT TO REPEAT MYSELF ALTHOUGH I WOULD LIKE
26 TO. SMOKERS MAKE THE CHOICE TO SMOKE. WEIGHING
27 THE RISKS AND WEIGHING THE BENEFITS.

28 THAT'S THE REAL RISK BENEFIT TEST

1 WITH SMOKERS.

2 AND THE EXISTENCE OR NONEXISTENCE
3 OF WARNINGS IS REALLY IMPORTANT TO THAT, BECAUSE
4 THAT'S HOW SMOKERS WEIGH THE RISKS. WITH KNOWLEDGE
5 OF ALL OF THOSE BENEFITS AND RISK OUT THERE.

6 THAT'S THE DESIGN DEFECT CLAIM
7 THERE'S A SECOND PRONG, OR ACTUALLY A THIRD PRONG,
8 TO THIS DEFECTIVE PRODUCT CLAIM AND THAT IS
9 CALLED FAILURE TO WARN.

10 AND MR. PIUZE MENTIONED THAT AS
11 WELL.

12 SO IN DECIDING THE DEFECTIVE
13 PRODUCT CLAIM, YOU ARE LOOKING AT THE TWO PRONGS
14 THAT WE TALKED ABOUT BEFORE, SAFE AS AN ORDINARY
15 CONSUMER WOULD EXPECT. RISK BENEFIT. WEIGHING THE
16 RISKS AND THE BENEFITS. TAKING INTO ACCOUNT
17 WHETHER THERE WAS ANOTHER DESIGN, AND WHAT PEOPLE
18 WEIGH WHEN THEY SEE WARNINGS.

19 THE THIRD PRONG OF THIS CLAIM IS
20 CALLED FAILURE TO WARN.

21 AND THAT ALSO HAS FOUR PLANKS IN
22 THE BRIDGE.

23 AND THE ONE THAT I WANT TO FOCUS ON
24 IS THE SECOND ONE, THAT THE PRODUCT WAS DEFECTIVE.

25 IN THIS CASE, A PRODUCT IS
26 DEFECTIVE IF THE MANUFACTURER OF THE PRODUCT HAS A
27 DUTY TO WARN OF DANGERS, AND FAILS TO PROVIDE AN
28 ADEQUATE WARNING OF THAT DANGER PRIOR TO, AND

1 THERE' S THAT LEGAL DATE AGAIN, JULY 1, 1969, A DATE
2 ESTABLISHED BY LAW IN THIS CASE, AND CIGARETTE
3 MANUFACTURER HAS A DUTY TO WARN PRIOR TO JULY 1,
4 1969, IF THE USE OF THE PRODUCT IN A MANNER THAT IS
5 REASONABLY FORESEEABLE BY THE MANUFACTURER INVOLVES
6 A SUBSTANTIAL DANGER THAT WOULD NOT BE READILY
7 RECOGNIZED BY ORDINARY USERS OF THE PRODUCT.

8 COMMON KNOWLEDGE, ORDINARY
9 CONSUMER, AVALANCHE OF INFORMATION ABOUT THE HEALTH
10 RISKS. IT' S REALLY ANOTHER WAY OF GETTING TO THE
11 SAME THING.

12 IF YOU CONCLUDE, AND WE BELIEVE
13 THAT YOU SHOULD, THAT THE ORDINARY, AVERAGE
14 CONSUMER, OVER TIME, HAD KNOWN ABOUT -- BLESS
15 YOU -- HAS KNOWN ABOUT THE RISKS, AND THAT, BY THE
16 WAY, DOES NOT MEAN THAT THE ORDINARY CONSUMER NEEDS
17 TO KNOW EVERYTHING ABOUT LUNG CANCER, HEART
18 DISEASE, EMPHYSEMA, EVERY POSSIBLE RISK OF SMOKING,
19 BUT AN ORDINARY CONSUMER, UNDERSTANDS THAT THIS IS
20 A RISKY, DANGEROUS POTENTIALLY HARMFUL PRODUCT,
21 THEN THIS CLAIM FAILS.

22 I WANT TO SHOW YOU, AS WE MOVE ON,
23 HOW THIS WORKS. WHEN YOU GET YOUR VERDICT FORM
24 FIRST QUESTION, SPECIAL VERDICT NUMBER 1, CLAIM OF
25 DEFECTIVE PRODUCT, WAS THERE EITHER A DEFECT IN
26 DESIGN OR A DEFECT RESULTING FROM A FAILURE TO WARN
27 OCCURRING BEFORE JULY 1, 1969?

28 NUMBER 1, THE DEFECT IN DESIGN IS

1 THOSE FIRST TWO PRONGS THAT YOU SAW IN THAT FIRST
2 JURY INSTRUCTION. I DON'T THINK THE PLAINTIFF HAS
3 PROVED EITHER ONE OF THOSE.

4 TWO, IS THE DEFECT RESULTING FROM A
5 FAILURE TO WARN BEFORE 1969. AGAIN, THAT'S THE
6 SAME COMMON KNOWLEDGE, ORDINARY CONSUMER, PEOPLE
7 AWARE OF THE RISKS OF SMOKING TEST.

8 THE ANSWER TO THAT QUESTION IS NO,
9 WE BELIEVE.

10 AND IF YOU ANSWERED NO TO QUESTION
11 ONE, THEN YOU ARE DONE WITH THIS SPECIAL VERDICT
12 FORM WITH THIS PARTICULAR SPECIAL VERDICT.

13 FIRST QUESTION ANSWER NO. YOU MOVE
14 ON TO SPECIAL VERDICT NUMBER 2.

15 IF YOU DO PROCEED WITH THIS, AND I
16 DON'T BELIEVE THAT YOU SHOULD, WE HAVE THAT
17 ELEMENT, DID THE DEFECT EXIST WHEN THE PRODUCT LEFT
18 THE POSSESSION OF THE DEFENDANT.

19 AND THEN YOU HAVE QUESTION 3, WHICH
20 IS ANOTHER VERY, VERY IMPORTANT QUESTION, WAS THE
21 DEFECT A CAUSE OF INJURY TO PLAINTIFF?

22 WAS THE DEFECT A CAUSE OF INJURY TO
23 THE PLAINTIFF?

24 AND THE ANSWER TO THAT QUESTION, IF
25 YOU EVER GOT THAT FAR, IS ALSO CLEARLY NO.

26 THERE WAS NO ALTERNATIVE DESIGN
27 THAT WOULD HAVE PREVENTED HIM FROM GETTING SICK.

28 PLAINTIFF'S TESTIMONY ESTABLISHES,

1 WE BELIEVE, THAT HE WAS AWARE OF THE RISKS, THAT HE
2 DID NOT SMOKE BECAUSE HE WAS TRICKED INTO IT BY
3 PHILIP MORRIS.

4 THE ANSWER TO THAT QUESTION IS NO,
5 AND THAT ALSO BRINGS YOU TO THE END OF SPECIAL
6 VERDICT NUMBER 1.

7 SPECIAL VERDICT NUMBER 2 RELATES TO
8 THE ISSUE OF NEGLIGENCE.

9 NOW, IN THIS BRIDGE, ANOTHER BRIDGE
10 THAT THE PLAINTIFF HAS TO BUILD, FOR EACH CLAIM
11 THE PLAINTIFF HAS TO BUILD EACH PLANK IN THE BRIDGE
12 TO GET TO THE OTHER SIDE.

13 THIS HAS THREE ELEMENTS, THE FIRST,
14 THE DEFENDANT WAS A MANUFACTURER OF THE PRODUCT,
15 NOT AN ISSUE.

16 SECOND, THE DEFENDANT WAS
17 NEGLIGENT. SO NOW WE ARE AT A CAUSE OF ACTION THAT
18 IS EVEN HARDER FOR THE PLAINTIFF TO PROVE, BECAUSE
19 NOW WE ARE TALKING ABOUT THE CONDUCT OF PHILIP
20 MORRIS.

21 AND AS WE HAVE DISCUSSED AND AS WE
22 HAVE HOPEFULLY SHOWN YOU OVER THE LAST SEVEN WEEKS,
23 EIGHT WEEKS, HOWEVER LONG WE HAVE BEEN HERE,
24 PLAINTIFF HAS NOT PROVED THAT PHILIP MORRIS WAS
25 NEGLIGENT, THAT PHILIP MORRIS ACTED UNREASONABLY.

26 DID PHILIP MORRIS ACT PERFECTLY?
27 NO.

28 DID PHILIP MORRIS ACT NEGLIGENTLY?

1 NO TO THAT AS WELL.

2 HERE' S THE FINAL AND PROBABLY MOST
3 IMPORTANT PLANK, THEY ARE ALL IMPORTANT. THE ONE I
4 WANT TO FOCUS ON, THAT THE NEGLIGENCE OF DEFENDANT
5 WAS A CAUSE OF INJURY AND DAMAGE TO THE PLAINTIFF.

6 DID PHILIP MRRIS -- LET ME START
7 THAT ONE OVER AGAIN. DID PLAINTIFF SMOKE FOR 40
8 YEARS BECAUSE PHILIP MRRIS MADE HIM SMOKE, OR
9 TRICKED HIM INTO SMOKING?

10 NO.

11 DID PLAINTIFF NOT QUIT FOR 40 YEARS
12 BECAUSE PHILIP MRRIS TRICKED HIM INTO NOT QUITTING
13 OR PREVENTED HIM FROM QUITTING?

14 NO.

15 DID PHILIP MRRIS MAKE HIM SMOKE,
16 PREVENT HIM FROM STOPPING SMOKING?

17 NO AND NO.

18 WAS THERE A PRODUCT OUT THERE THAT
19 PHILIP MRRIS COULD HAVE PUT OUT ON THE MARKET BUT
20 DIDN' T PUT OUT ON THE MARKET THAT WOULD HAVE
21 PREVENTED HIM FROM GETTING SICK?

22 NO.

23 THAT' S A NEGLIGENCE CLAIM

24 SPECIAL VERDICT NUMBER 2, WAS
25 DEFENDANT NEGLIGENCE?

26 WE THINK THE ANSWER TO THAT
27 QUESTION IS NO.

28 AND IF YOU ANSWER NO TO QUESTION 1,

1 YOU ARE DONE WITH THIS SPECIAL VERDICT.

2 IF YOU GET PAST QUESTION 1, WAS THE
3 NEGLIGENCE OF PHILIP MORRIS A CAUSE OF INJURY OR
4 DAMAGE TO THE PLAINTIFF?

5 WE BELIEVE THE ANSWER TO THAT
6 QUESTION IS NO AS WELL.

7 NOW, THE REST OF THE SPECIAL
8 VERDICTS THAT GO TO CLAIMS OF THE PLAINTIFF ARE ALL
9 KIND OF VARIATIONS ON THE SAME THEME. AND I AM
10 GOING TO GO THROUGH THEM A LITTLE BIT MORE QUICKLY
11 AND NOT REPEAT THE SAME POINTS.

12 BUT THESE ALL ARE SOME VERSION OF A
13 FRAUD CLAIM, WHICH IS EVEN TOUGHER THAN THE
14 NEGLIGENCE CLAIM

15 WAS THERE INTENTIONAL MISCONDUCT
16 THAT MADE A DIFFERENCE TO MR. BOEKEN IN THIS CASE?

17 AND YOU WILL SEE THAT I BELIEVE
18 THERE ARE FOUR DIFFERENT VERSIONS AND THEY ARE
19 VARIATIONS OF THE SAME THEME.

20 NOW, I HAVE NOT HIGHLIGHTED EACH
21 AND EVERY BLANK ON THE BRIDGE OF THESE CLAIMS, BUT
22 NOT BECAUSE WE DON'T CONTEST THEM, BELIEVE YOU ME.

23 I HIGHLIGHTED ONE BECAUSE I WANT TO
24 FOCUS ON THAT ONE. BUT BY NO MEANS DOES THAT
25 SUGGEST THAT WE DON'T CONTEST EACH AND EVERY ONE OF
26 THESE.

27 THIS IS THE FIRST OF THE FRAUD
28 CLAIMS WHICH IS FRAUD BY INTENTIONAL

1 MISREPRESENTATION.

2 FIRST PLANK IN THE BRIDGE,
3 DEFENDANT MUST HAVE MADE A REPRESENTATION AS TO A
4 PAST OR EXISTING MATERIAL FACT. THAT
5 REPRESENTATION MUST HAVE BEEN FALSE. THE DEFENDANT
6 MUST HAVE KNOWN THAT THE REPRESENTATION WAS FALSE
7 WHEN MADE OR MUST HAVE MADE THE REPRESENTATION
8 RECKLESSLY WITHOUT KNOWING WHETHER IT WAS TRUE OR
9 FALSE.

10 THE DEFENDANT MUST HAVE MADE THE
11 REPRESENTATION WITH AN INTENT TO DEFRAUD THE
12 PLAINTIFF, THAT IS, HE OR SHE MUST HAVE MADE THE
13 REPRESENTATION FOR THE PURPOSE OF INDUCING THE
14 PLAINTIFF TO RELY ON IT OR TO ACT OR REFRAIN FROM
15 ACTING IN RELIANCE.

16 HERE'S ONE THAT I WANT TO FOCUS ON,
17 ALTHOUGH WE CHALLENGE ALL OF THOSE ABOVE IT.

18 THE PLAINTIFF MUST HAVE BEEN
19 UNAWARE OF THE FALSITY OF THE REPRESENTATION, MUST
20 HAVE ACTED IN RELIANCE UPON THE TRUTH OF THE
21 REPRESENTATION, AND MUST HAVE BEEN JUSTIFIED IN
22 RELYING ON THE REPRESENTATION.

23 IF YOU DO NOT BELIEVE THE
24 PLAINTIFF'S TESTIMONY IN THIS CASE, YOU CANNOT FIND
25 FOR THE PLAINTIFF ON THIS FRAUD CLAIM, ON THE
26 NEGLIGENCE CLAIM, WE SUBMIT, OR ON ANY OF THE OTHER
27 FRAUD CLAIMS TO COME.

28 IF PLAINTIFF WAS AWARE OF THE

1 RISKS, IF PLAINTIFF LEARNED ABOUT THE RISKS OVER
2 TIME AND CONTINUED TO SMOKE, IF THE REASON
3 PLAINTIFF DIDN' T COMMIT HIMSELF TO QUITTING WAS NOT
4 BECAUSE HE WAS BEING TRICKED, THEN WHATEVER YOU
5 THINK ABOUT WHAT COMES BEFORE, THIS PLANK OF THE
6 BRIDGE IS NOT BUILT, PLAINTIFF DOES NOT GET TO THE
7 OTHER SIDE.

8 AND FINALLY, LAST PLANK, AS A
9 RESULT OF THE RELIANCE UPON THE TRUTH OF THE
10 REPRESENTATION, PLAINTIFF MUST HAVE SUSTAINED
11 DAMAGE.

12 PLAINTIFF GOT INJURED AND I
13 ACTUALLY BELIEVE THAT' S GOING TO BE CHANGED TO
14 INJURY OR DAMAGE, JUST TO BE CLEAR.

15 WE MADE SOME LAST MINUTE TINKERING.

16 PLAINTIFF' S INJURY OR DAMAGE COMES
17 BECAUSE, UNDER THIS THEORY, HE RELIED ON WHAT
18 PHILIP MORRIS SAID, NOT THAT HE GOT INJURED FROM
19 SMOKING, BUT HE GOT INJURED ACCORDING TO THIS
20 THEORY BECAUSE HE RELIED AND SMOKED BECAUSE OF WHAT
21 PHILIP MORRIS SAID OR DID.

22 NOT PROVED IN THIS CASE, NOT
23 SUPPORTED BY ANY OF THE EVIDENCE, PARTICULARLY MR.
24 BOEKEN' S TESTIMONY.

25 SPECIAL VERDICT NUMBER 3, AND
26 AGAIN, I HAVEN' T HIGHLIGHTED ALL OF THE QUESTIONS,
27 BUT WE DON' T THINK ANY OF THESE ARE A GIMME. WE
28 DON' T THINK ANY OF THESE ARE PROVED.

1 DID DEFENDANT MAKE A REPRESENTATION
2 AS TO A PAST OR EXISTING MATERIAL FACT, WAS THE
3 REPRESENTATION FALSE, WE HAVE TALKED ABOUT THAT.

4 DID DEFENDANT KNOW THAT THE
5 REPRESENTATION WAS FALSE WHEN MADE?

6 OR DID DEFENDANT MAKE THE
7 REPRESENTATION RECKLESSLY WITHOUT KNOWING WHETHER
8 IT WAS TRUE OR FALSE?

9 DID THE DEFENDANT MAKE THE
10 REPRESENTATION WITH AN INTENT TO DEFRAUD PLAINTIFF?

11 AND AGAIN, I AM NOT GOING TO REPEAT
12 MY WHOLE ARGUMENT OVER THE LAST COUPLE OF DAYS AS
13 TO WHY YOU SHOULD ANSWER THESE QUESTIONS NO.

14 WAS PLAINTIFF AWARE OF THE FALSITY
15 OF THE REPRESENTATION, THAT'S ACTUALLY A YES
16 QUESTION. I BELIEVE THERE WAS AS FALSE
17 REPRESENTATION BUT HE KNEW IT.

18 IF HE BELIEVED PHILIP MORRIS WAS
19 NOT TELLING THE TRUTH, THAT HE DIDN'T ACT IN
20 RELIANCE.

21 QUESTION 6 IS THE ONE THAT REALLY I
22 WAS FOCUSING ON, QUESTION 6, DID PLAINTIFF ACT IN
23 RELIANCE ON THE TRUTH OF THE REPRESENTATION?

24 DID HE SMOKE BECAUSE OF SOMETHING
25 PHILIP MORRIS SAID OR DID?

26 DO YOU REALLY BELIEVE, AND PUT
27 ASIDE THE AVALANCHE OF INFORMATION ABOUT THE HEALTH
28 RISK, DOESN'T RECALL IT, FOCUSED ONLY ON WHAT HE

1 HEARD FROM PHILIP MORRIS, BELIEVED THAT, AND
2 SMOKED.

3 WAS PLAINTIFF JUSTIFIED IN RELYING
4 UPON THE REPRESENTATION? WAS PLAINTIFF DAMAGED AS
5 A RESULT OF HIS RELIANCE UPON THE TRUTH OF THE
6 REPRESENTATION?

7 A LOT OF PLANKS TO THIS BRIDGE. WE
8 DON'T THINK YOU GET ANYWHERE CLOSE TO THE END
9 BECAUSE AS YOU CAN SEE, IF YOU ANSWERED NO TO
10 QUESTION 6, OR TO QUESTIONS BEFORE IT, EXCEPT THE
11 ONE THAT WAS A LITTLE BIT OF A FLIP, THEN YOU ARE
12 DONE WITH SPECIAL VERDICT NUMBER 3.

13 NOW, I WANT TO VERY BRIEFLY TOUCH
14 ON THE OTHERS BECAUSE THEY ARE KIND OF VARIATIONS
15 OF THE SAME THEME.

16 NEXT ONE, FRAUD AND DECEIT, THE
17 CLAIM IS, BY CONCEALMENT.

18 FIVE PLANKS TO THIS BRIDGE,
19 DEFENDANT MUST HAVE CONCEALED OR SUPPRESSED A
20 MATERIAL FACT, THE DEFENDANT MUST HAVE BEEN UNDER A
21 DUTY TO DISCLOSE THE FACT, DEFENDANT MUST HAVE
22 INTENTIONALLY CONCEALED OR SUPPRESSED THE FACT WITH
23 INTENT TO DEFRAUD THE PLAINTIFF. THE PLAINTIFF
24 MUST HAVE BEEN UNAWARE OF THE FACT AND WOULD NOT
25 HAVE ACTED AS HE OR SHE DID IF HE OR SHE HAD KNOWN
26 OF THE CONCEALED OR SUPPRESSED FACT, AND FINALLY,
27 THE CONCEALMENT OR SUPPRESSION OF THE FACT CAUSED
28 THE PLAINTIFF TO SUSTAIN, AND THAT SHOULD BE INJURY

1 AND DAMAGE.

2 SAME POINT, REALLY, DID MR. BOEKEN
3 SMOKE BECAUSE HE WAS EXPECTING PHILIP MORRIS TO SAY
4 SOMETHING, AND WHEN HE DIDN'T HEAR IT, HE WENT AND
5 SMOKED? THE EVIDENCE DOESN'T SUPPORT THAT.

6 WAS HE AWARE OF THE FRANK STATEMENT
7 AND EXPECTING TO HEAR SOMETHING FURTHER, NEVER
8 HEARD OF THE FRANK STATEMENT.

9 IF HE HAD HEARD SOMETHING FROM
10 PHILIP MORRIS, WOULD HE NOT HAVE SMOKED?

11 WE TALKED ABOUT THAT A LITTLE BIT
12 EARLIER THIS MORNING.

13 MR. BOEKEN WOULD HAVE SMOKED,
14 MR. BOEKEN WAS A RISK TAKER, MR. BOEKEN WAS NOT
15 DECEIVED.

16 DID HE SUFFER INJURY AND DAMAGE
17 BECAUSE HE DIDN'T HEAR SOMETHING THAT HE WAS
18 EXPECTED TO HEAR?

19 AGAIN, SPECIAL VERDICT NUMBER 4,
20 SAME ISSUE. ALL OF THE THESE PLANKS OF THE BRIDGE
21 ARE BROKEN UP INTO SEPARATE QUESTIONS, YES OR NO
22 QUESTIONS. IF YOU ANSWER NO TO QUESTION 1, YOU ARE
23 DONE.

24 YOU DON'T HAVE TO PROCEED.

25 NO TO QUESTION 2, YOU ARE DONE.

26 SAME WITH QUESTION 3, QUESTION 4,
27 THE ISSUE OF PLAINTIFF'S CONDUCT AND PLAINTIFF'S
28 TESTIMONY, WAS HE AWARE OF THE FACT THAT AT THE

1 TIME HE ACTED, WAS HE AWARE THAT SOMETHING HE WAS
2 WAITING TO HEAR SOMETHING FROM PHILIP MORRIS.

3 WOULD PLAINTIFF HAVE ACTED AS HE
4 DID IF HE HAD KNOWN, A CONCEALED OR SUPPRESSED
5 FACT.

6 THAT'S ACTUALLY A QUESTION.

7 WOULD PLAINTIFF HAVE ACTED AS HE
8 DID IF HE HAD KNOWN THE CONCEALED OR SUPPRESSED
9 FACT, NO MATTER WHAT PHILIP MORRIS SAID OR DID,
10 WOULD MR. BOEKEN HAVE SMOKED ANYWAY?

11 THE ANSWER TO THAT QUESTION IS YES.
12 FOR ALL THE REASONS THAT WE HAVE TALKED ABOUT OVER
13 THE LAST SEVEN WEEKS.

14 WAS PLAINTIFF DAMAGED AS A RESULT
15 OF THE DEFENDANT'S CONCEALMENT OR SUPPRESSION OF
16 THE FACT -- THEY DIDN'T GET THAT FAR ON THE FORM
17 TWO MORE.

18 AGAIN, VARIATIONS OF THE SAME
19 THEME.

20 FALSE PROMISE, 4 ELEMENTS TO THE
21 PLANK -- EXCUSE ME, 4 PLANKS TO THE BRIDGE, GOT MY
22 METAPHORS MESSED UP, SAME THEME.

23 NUMBER 1, THE DEFENDANT MUST HAVE
24 MADE A PROMISE AS TO A MATERIAL MATTER AND AT THE
25 TIME IT WAS MADE, HE OR SHE MUST HAVE INTENDED NOT
26 TO PERFORM IT.

27 TWO, THE DEFENDANT MUST HAVE MADE
28 THE PROMISE WITH THE INTENT TO DEFRAUD THE

1 PLAINTIFF.

2 THREE, THE PLAINTIFF MUST HAVE BEEN
3 UNAWARE OF THE DEFENDANT'S INTENTION NOT TO PERFORM
4 THE PROMISE. HE OR SHE MUST HAVE ACTED IN RELIANCE
5 ON THE PROMISE AND MUST HAVE BEEN JUSTIFIED IN
6 ACTING IN RELIANCE ON THE PROMISE MADE BY THE
7 DEFENDANT. NO, NO AND NO.

8 THE FOURTH PLANK, AS A RESULT OF
9 THE RELIANCE UPON THE DEFENDANT'S PROMISE, THE
10 PLAINTIFF MUST HAVE SUSTAINED INJURY AND DAMAGE.

11 PLAINTIFF SUSTAINED INJURY AND
12 DAMAGE NOT FROM SMOKING BUT FROM RELYING ON A
13 PROMISE SUPPOSEDLY MADE BY PHILIP MORRIS. THAT'S
14 THE LEGAL THEORY. THE EVIDENCE DOESN'T SUPPORT IT.

15 THAT IS SPECIAL VERDICT NUMBER 5.
16 SAME FORMAT AS YOU CAN SEE. AND ULTIMATELY,
17 WITHOUT READING ALL OF THE QUESTIONS, YOU GET TO
18 QUESTION NUMBER 5, DID PLAINTIFF ACT IN RELIANCE ON
19 THE PROMISE.

20 QUESTION 6, WAS PLAINTIFF JUSTIFIED
21 IN RELYING UPON THE PROMISE MADE BY THE DEFENDANT.
22 NO.

23 WAS PLAINTIFF DAMAGED AS A RESULT
24 OF HIS RELIANCE ON DEFENDANT'S PROMISE?

25 AND AGAIN, DEPENDING ON HOW YOU
26 ANSWER THE QUESTIONS, AND YOU WILL SEE THEM AS YOU
27 SEE THE SPECIAL VERDICT FORM, A LOT OF THEM HAVE
28 WHAT WE CALL FIRE WALLS, IF YOUR ANSWER TO QUESTION

1 NUMBER 1 IS NO, YOU ARE DONE. BECAUSE, REMEMBER,
2 FOR THE PLAINTIFF TO SUCCEED, HE HAS TO BUILD EACH
3 PLANK OF THE BRIDGE.

4 AND IF YOU ANSWER ONE OF THOSE
5 PLANKS NO, EXCEPT WHERE IT SAYS YES, AS THE
6 FIREWALL QUESTION, AND I THINK I EXPLAINED THAT,
7 THEN YOU ARE DONE.

8 WE DON'T THINK THE EVIDENCE
9 SUPPORTS ANY OF THESE CAUSES OF ACTION.

10 AND THE LAST ONE IS NEGLIGENCE,
11 FRAUD BY NEGLIGENT MISREPRESENTATION.

12 THERE ARE 6 PLANKS TO THIS BRIDGE.

13 AND AGAIN, BY NOW THERE SHOULD BE A
14 PRETTY FAMILIAR SERIES OF PLANKS. DEFENDANT MUST
15 HAVE MADE A REPRESENTATION AS TO A PAST OR EXISTING
16 MATERIAL FACT; THE REPRESENTATION BE UNTRUE,
17 REGARDLESS OF HIS OR HER ACTUAL BELIEF, THE
18 DEFENDANT MUST HAVE MADE THE REPRESENTATION WITHOUT
19 ANY REASONABLE GROUND FOR BELIEVING IT TO BE TRUE,
20 THE REPRESENTATION MUST HAVE BEEN MADE WITH THE
21 INTENT TO INDUCE PLAINTIFF TO RELY UPON IT, AND BY
22 THE WAY, BY PLAINTIFF, JUST TO BE CLEAR, IT DOESN'T
23 MEAN MR. BOEKEN SPECIFICALLY, IN THIS PARTICULAR
24 CONTEXT. OKAY, IT'S NOT THAT PHILIP MORRIS WOULD
25 HAVE TO HAVE SAID MR. BOEKEN.

26 I WANT TO BE CLEAR ABOUT THAT.

27 BUT THERE HAS TO BE A
28 REPRESENTATION MADE WITH THE INTENT TO FOOL PEOPLE,

1 WITH THE INTENT TO TRICK PEOPLE.

2 PLAINTIFF MUST HAVE BEEN AWARE.

3 NOW WE ARE TALKING ABOUT THIS

4 PLAINTIFF.

5 MR. BOEKEN MUST HAVE BEEN UNAWARE

6 OF THE FALSITY OF THE REPRESENTATION, MR. BOEKEN

7 MUST HAVE ACTED IN RELIANCE UPON THE TRUTH OF THE

8 REPRESENTATION, AND MUST HAVE BEEN JUSTIFIED IN

9 RELYING ON THE TRUTH OF THE REPRESENTATION. AND

10 FINALLY, AS A RESULT OF RELIANCE UPON THE TRUTH OF

11 THE REPRESENTATION, THE PLAINTIFF MUST HAVE

12 SUSTAINED INJURY AND DAMAGE.

13 SAME BASIC THEME, SAME BASIC

14 FORMAT, SAME BASIC VERDICT FORM THIS IS SPECIAL

15 VERDICT NUMBER 6, WHICH IS THE ONE THAT MATCHES

16 OUT.

17 THIS PARTICULAR VERDICT FORM HAS

18 EIGHT QUESTIONS, A LOT OF FIRE WALLS.

19 WAS PLAINTIFF AWARE OF THE FALSITY,

20 DID PLAINTIFF ACT IN RELIANCE UPON THE TRUTH OF THE

21 REPRESENTATION.

22 AND ALL OF THESE FRAUD BASED CAUSES

23 OF ACTION, IF YOU DON'T BELIEVE THE PLAINTIFF'S

24 TESTIMONY, AND FOR ALL THE REASONS WE DISCUSSED WE

25 DON'T BELIEVE YOU CAN, YOU CANNOT FIND FOR THE

26 PLAINTIFF IN THESE CAUSES OF ACTION.

27 NOW, THIS IS SOMETHING OF A ROAD

28 MAP TO THE LEGAL CLAIMS, THE LEGAL ISSUES IN THE

1 CASE AND HOW WE BELIEVE THE FACTS -- YOU CAN SHUT
2 THAT DOWN, HOW WE BELIEVE THE FACTS LEAD YOU TO
3 CONCLUSIONS ABOUT THE LAW IN THIS CASE.

4 I AM JUST ABOUT DONE.

5 THIS IS MY ONE AND ONLY CHANCE, THE
6 DEFENSE'S ONE AND ONLY CHANCE TO SPEAK TO YOU IN
7 CLOSING ARGUMENT.

8 THE PLAINTIFF, BECAUSE HE HAS THE
9 BURDEN OF PROVING HIS CASE, BECAUSE HE HAS THE
10 BURDEN OF PROVING THOSE PLANKS ON THOSE BRIDGES,
11 GETS BOTH THE FIRST AND LAST WORD IN ARGUMENT.

12 SO WHEN I AM DONE, MR. PIUZE WILL
13 HAVE A CHANCE TO ADDRESS YOU AGAIN AND I WON'T HAVE
14 ANOTHER CHANCE TO RESPOND TO WHAT HE SAID.

15 I DON'T KNOW WHAT HE IS GOING TO
16 SAY. AND I DON'T KNOW HOW LONG HE IS GOING TO TAKE
17 TO SAY IT.

18 BUT I EXPECT YOU WILL SEE SOME OF
19 THE DOCUMENTS AGAIN. I EXPECT YOU WILL SEE SOME
20 MORE ARGUMENT ABOUT THE DOCUMENTS AND I EXPECT YOU
21 WILL HEAR SOME MORE INVECTIVE ABOUT PHILIP MORRIS.

22 HE MAY TALK TO YOU ABOUT HIS
23 FAVORITE DOCUMENT, THAT MEMO FROM THE TOBACCO
24 INSTITUTE WITH FRED PANSER. AND HE MAY EVEN SHOW A
25 T-SHIRT FOR ALL WE KNOW HOLD OUT FOR THE
26 SKYWRITING AND THE TATTOOS. AND HE MAY JUST
27 GENERALLY TELL YOU THAT THIS COMPANY SHOULD BE
28 PUNISHED. AND YOU SHOULD THEN, THEREFORE, FIND FOR

1 THE PLAINTIFF AND AWARD AN AWFUL LOT OF MONEY.

2 I ASK YOU, NOT KNOWING WHAT HE IS
3 GOING TO SAY AND NOT KNOWING, THEREFORE, THAT I CAN
4 RESPOND, KNOWING THAT I CAN'T RESPOND, I ASK YOU TO
5 DO, ONCE AGAIN WHAT I HAVE ASKED YOU TO DO
6 THROUGHOUT THIS ARGUMENT, AND HOPEFULLY THROUGHOUT
7 THE CASE, WHICH IS TO DECIDE THIS CASE NOT BASED ON
8 ACCUSATIONS, NOT BASED ON ALLEGATIONS, NO MATTER
9 HOW MANY TIMES YOU HEARD THEM AND NO MATTER IN HOW
10 MANY DIFFERENT FORMS, BUT TO DECIDE THE CASE BASED
11 ON THE EVIDENCE.

12 WE DON'T THINK THE SNIPPETS OF
13 DOCUMENTS CAREFULLY SELECTED FROM A HUGE MOUNTAIN
14 OF DOCUMENTS, WE DON'T THINK THEY TOLD YOU THE
15 WHOLE STORY. AND WHAT WE HAVE TRIED TO DO IS
16 PRESENT TO YOU EVIDENCE ABOUT THE WHOLE STORY,
17 ABOUT THE RESEARCH THAT WAS DONE WITH THE PRODUCT
18 DEVELOPMENT DONE BY PHILIP MORRIS OVER THE YEARS,
19 ABOUT WHAT THE COMPANY HAS DONE WELL AND WHAT THE
20 COMPANY HAS DONE NOT SO WELL.

21 WE HAVE TRIED TO GIVE YOU AS BEST
22 WE CAN THE FULL STORY.

23 AND WE HOPE YOU DECIDE THE CASE
24 BASED ON THE FULL STORY.

25 SOME OF THAT EVIDENCE WE THINK
26 PLACES MY CLIENT, PHILIP MORRIS, IN A PRETTY GOOD
27 LIGHT.

28 AND SOME OF THE EVIDENCE, SOME OF

1 THE EVIDENCE PRESENTED BY US, PRESENTS PHILIP
2 MORRIS IN NOT A VERY GOOD LIGHT AT ALL.

3 AND MR. PIUZE, IN HIS REBUTTAL
4 ARGUMENT, MAY JUST TRY TO MAKE YOU ANGRY AT PHILIP
5 MORRIS. HE MAY WANT YOU TO GET REALLY MAD AND GO
6 INTO THAT JURY ROOM AND HAMMER THEM

7 WELL, I DON'T THINK THE EVIDENCE
8 SUPPORTS THAT. BUT THE EVIDENCE, LIKE ALL THE
9 EVIDENCE SHOWS THAT PHILIP MORRIS IS RESPONSIBLE
10 FOR THE CHOICES IT HAS MADE OVER THE YEARS, THE
11 GOOD ONES AND THE NOT SO GOOD ONES.

12 PHILIP MORRIS, AS YOU HEARD FROM
13 MS. MERLO, MADE SOME MISTAKES AND IT'S TRYING HARD
14 NOW TO SELL ITS PRODUCT WHICH, YES, IS A DANGEROUS
15 PRODUCT, IN A RESPONSIBLE WAY.

16 DOES IT STILL HAVE CRITICS AND
17 SKEPTICS OUT THERE? IT SURE DOES. AND IT PROBABLY
18 ALWAYS WILL.

19 BUT PHILIP MORRIS IS TRYING HARD
20 AND YOU HAVE HEARD AN AWFUL LOT ABOUT THE CHANGES
21 THAT IT HAS MADE.

22 ALL IT CAN DO IS SAY, THROUGH ITS
23 DEEDS, THAT IT'S MAKING AN EFFORT, AND THAT A
24 VERDICT FOR YOU IS NOT NEEDED TO GET ITS ATTENTION.

25 NOW, MR. PIUZE SUGGESTED TO YOU IN
26 HIS CLOSING ARGUMENT THAT PHILIP MORRIS ONLY MADE
27 CHANGES BECAUSE IT GOT SUED BY ALL THE ATTORNEYS
28 GENERAL AND FOR NO OTHER REASON, AND HAS SAID HOW

1 TERRIBLE AND HOW AWFUL, AND THAT'S ONE OF THE
2 REASONS YOU SHOULD GET ALL RILED UP AND MAD AT
3 PHILIP MORRIS.

4 MS. MERLO ANSWERED THAT QUESTION.
5 IS PHILIP MORRIS DOING THINGS
6 DIFFERENTLY NOW BECAUSE IT GOT SUED BY EVERY
7 ATTORNEY GENERAL IN THE COUNTRY?

8 AND HE SAID, IN PART, YES. I THINK
9 THE PHRASE SHE USED, AND CORRECT ME IF I AM WRONG,
10 YOUR RECOLLECTION CONTROLS, BUT I THINK THE PHRASE
11 SHE USED WAS IT IS A VERY HUMBLING EXPERIENCE TO
12 WORK FOR A COMPANY ALL THOSE YEARS AND TO THEN GET
13 SUED BY EVERY ATTORNEY GENERAL AROUND THE COUNTRY.
14 AND PHILIP MORRIS SETTLED THOSE SUITS. BUT A LOT
15 OF CHANGES THAT WERE MADE, STARTED TO BE MADE LONG
16 BEFORE THAT.

17 SOME OF THE CHANGES, YES, ARE IN
18 RESPONSE TO RECOGNIZING HOW FAR PHILIP MORRIS HAS
19 FALLEN OUT OF STEP, HOW UNPOPULAR IT HAS BECOME,
20 OVER THE YEARS.

21 BUT HAVING SAID ALL OF THAT, I FEEL
22 SO STRONGLY THAT THIS IS NOT A CASE THAT YOU DECIDE
23 BASED ON EMOTION OR ANGER OR BIAS. YOUR JOB IS TO
24 DECIDE THIS CASE, THIS CASE, MR. BOEKEN'S CASE, IS
25 PHILIP MORRIS LEGALLY RESPONSIBLE TO MR. BOEKEN?

26 IS PHILIP MORRIS LEGALLY
27 RESPONSIBLE FOR MR. BOEKEN GETTING SICK?

28 THE EVIDENCE DOES NOT SUPPORT THAT.

1 IT' S REALLY THAT SIMPLE.
2 BEFORE YOU GET TO ANY OTHER
3 QUESTION IN THIS CASE, AS I SAID, THE NOTION THAT
4 YOU SHOULD GET ALL RILED UP AND GO IN AND, YOU
5 KNOW, DECIDE THIS CASE BASED OUT OF ANGER OR
6 EMDTION, YOU DON' T GET TO DO THAT.

7 WHAT I AM ASKING YOU TO DO, WHAT MY
8 CLIENT IS ASKING YOU TO DO, IS NOT TO CHANGE THE
9 WORLD, IS NOT TO REVISIT 50 YEARS OF CHOICES THAT
10 OUR SOCIETY HAS MADE ABOUT SMOKING, BUT TO DECIDE
11 THIS CASE, THIS CASE, BECAUSE THAT' S WHAT YOU ARE
12 HEAR TO DO.

13 NOW, ABOUT THE LAST THING THAT I
14 WANT TO SAY TO YOU HAS TO DO WITH THIS CASE.

15 MR. BOEKEN HAS LIVED FOR THE LAST
16 40 YEARS IN A WORLD WHERE HE HAD THE FREEDOM TO
17 MAKE CHOICES.

18 HE HAD THE FREEDOM TO CHOOSE TO
19 RIDE HIS MOTORCYCLE, HE HAD THE FREEDOM TO CHOOSE
20 WHAT OCCUPATION HE WANTED TO GET INTO, WHICH, IN
21 HIS CASE, WAS SELLING HIGH RISK SECURITIES, AND,
22 YES, HE HAD THE FREEDOM TO CHOOSE TO SMOKE.

23 HE WAS FREE TO DO THAT AND IT' S A
24 CHOICE HE MADE.

25 AND JUST AS PHILIP MORRIS IS
26 RESPONSIBLE FOR THE CHOICES THAT IT MADE, SO IS
27 MR. BOEKEN.

28 AND I TELL YOU THIS NOT BECAUSE

1 MR. BOEKEN IS DIFFERENT FROM YOU OR ME OR ANYBODY
2 ELSE, MR. BOEKEN, LIKE THE REST OF US, HAD ACCESS
3 TO ALL THAT INFORMATION ABOUT THE HEALTH RISKS OF
4 SMOKING AND HE CHOICE TO SMOKE.

5 HE IS RESPONSIBLE FOR THOSE
6 CHOICES.

7 THE EVIDENCE DOES NOT SHOW THAT HE
8 WAS TRICKED INTO SMOKING FOR 40 YEARS. THE
9 EVIDENCE DOES NOT SHOW THAT HE WAS FOOLED INTO NOT
10 QUITTING. THE EVIDENCE DOES NOT SHOW THAT THERE
11 WAS A PRODUCT OUT THERE THAT COULD HAVE BEEN MADE
12 THAT WASN'T MADE THAT WOULD HAVE STOPPED HIM FROM
13 GETTING SICK.

14 MR. BOEKEN IS RESPONSIBLE FOR THE
15 CHOICES THAT HE MADE.

16 IF HE CHOSE TO EAT BACON CHEESE
17 BURGERS AND FRENCH FRIES EVERY DAY FOR 40 YEARS AND
18 ENDED UP WITH HIGH CHOLESTEROL AND A HEART
19 CONDITION, SHOULD HE SUE THE FAST FOOD CHAINS?

20 IF HE ATE FOUR CHOCOLATE BARS A DAY
21 AND ENDED UP GETTING SICK, SHOULD HE SUE THE
22 CHOCOLATE MANUFACTURER?

23 NOW, BELIEVE ME, I AM NOT COMPARING
24 CIGARETTES TO HAMBURGERS AND FRENCH FRIES OR TO
25 CHOCOLATE BARS, BUT THE PRINCIPLE IS THE SAME, YOU
26 MAY NOT LIKE CIGARETTES, YOU MAY NOT LIKE CIGARETTE
27 COMPANIES, YOU MAY NOT LIKE PHILIP MORRIS, YOU MAY
28 NOT APPROVE OF EVERYTHING THAT PHILIP MORRIS HAS

1 DONE, ALTHOUGH I THINK WE HAVE SHOWN YOU FROM THE
2 EVIDENCE THAT PHILIP MORRIS IS DOING ITS BEST TODAY
3 TO SELL ITS PRODUCT AS BEST IT CAN IN A RESPONSIBLE
4 WAY.

5 YOU MAY NOT LIKE ANY OF THAT. BUT
6 AT ITS CORE, AT ITS HEART, THIS IS NOT A
7 COMPLICATED CASE.

8 AT ITS CORE, AT THE VERY ESSENCE OF
9 THIS CASE, MR. BOEKEN CHOSE TO SMOKE. HE TOOK A
10 RISK. AND HE WAS NOT ENTITLED TO ONE DOLLAR, A
11 MILLION DOLLARS, TEN MILLION DOLLARS, 100 MILLION
12 DOLLARS, TEN BILLION DOLLARS.

13 PHILIP MORRIS IS NOT LEGALLY
14 RESPONSIBLE FOR MR. BOEKEN'S SMOKING OR FOR MR.
15 BOEKEN'S INJURY.

16 THIS CASE IS ABOUT CHOICE, AND IT'S
17 ABOUT RESPONSIBILITY FOR THOSE CHOICES.

18 AND MR. BOEKEN IS NOT ENTITLED TO
19 YOUR VERDICT IN THIS CASE.

20 THANK YOU.

21 THE COURT: THANK YOU, COUNSEL.

22 DO YOU WISH TO PROCEED AT THIS
23 TIME?

24 MR. PIUZE: I WANT TO GO BUT I NEED LIKE
25 FIVE MINUTES JUST TO PULL SOME STUFF OUT. CAN I?

26 THE COURT: OKAY.

27 LADIES AND GENTLEMEN, I AM GOING TO
28 ALLOW YOU TO STEP OUT FOR A SECOND AND I AM GOING

1 TO ALLOW PLAINTIFF' S COUNSEL TO BEGIN.

2 JUST STAY IN THE HALLWAY RIGHT
3 OUTSIDE THE DOOR, IF YOU WOULD, PLEASE. IT WILL BE
4 JUST ABOUT FIVE MINUTES.

5

6 (AT THIS TIME, A RECESS
7 WAS TAKEN.)

8

9 (THE FOLLOWING PROCEEDINGS
10 WERE HELD IN OPEN COURT IN
11 THE PRESENCE OF THE JURY.)

12

13 THE COURT: OUR JURY PANEL IS BACK WITH
14 US. COUNSEL ARE PRESENT AS WELL.

15 MR. PIUZE, PROCEED.

16

17 CLOSING ARGUMENT

18

19 BY MR. PIUZE:

20 I AM STILL SORRY I MADE YOU SICK.

21 I AM STILL WAITING TO HEAR AN

22 APOLOGY. WAIT UNTIL HELL FREEZES OVER.

23 WAIT TO HEAR AN APOLOGY NOT JUST

24 FOR MR. BOEKEN BUT FOR LOTS AND LOTS AND LOTS OF

25 OTHER PEOPLE. I AM WAITING TO HEAR AN APOLOGY. I

26 WILL WAIT UNTIL HELL FREEZES OVER ON THAT ONE TOO.

27 SO HERE' S WHAT I WOULD LIKE TO DO

28 TO START. AND I AM GOING TO GO AS FAST AS I CAN.

1 WE HAVE BEEN HERE A LONG TIME.

2 THANK YOU FOR LISTENING SO HARD.

3 THIS STUFF SPEAKS FOR ITSELF.

4 BUT THERE WAS A QUESTION, THIS IS
5 MY FAVORITE DOCUMENT. THIS IS MY FAVORITE
6 DOCUMENT.

7 AND THERE WAS A QUESTION POSED BY
8 PHILIP MORRIS IN CLOSING, OLD FREDDY PANSER IN
9 1972. WELL, FREDDY TALKED THE TALK, BUT DID THE
10 TOBACCO INDUSTRY WALK THE WALK?

11 AND SO THE QUESTION WAS WHATEVER
12 BECAME OF THIS, GEE, WHATEVER BECAME OF THIS?

13 THE LAST WORD SPOKEN HERE, AND I
14 WROTE THEM DOWN SO I WOULD BE SURE TO GET THEM
15 WERE, "FREE CHOICE AND RESPONSIBILITY. "

16 AND THE FREE CHOICE IS BASED UPON
17 INFORMATION. YOU WANT TO INTELLIGENTLY CHOOSE
18 SOMETHING, ALL WE NEEDED INFORMATION.

19 AND THAT ISN'T TOO BRILLIANT.

20 THEY FIGURED THAT OUT A LONG TIME
21 AGO.

22 SO PEOPLE OUT THERE ARE GOING TO
23 CHOOSE TO KEEP THEIR INDUSTRY FILTHY RICH OR THE
24 PEOPLE ARE GOING TO CHOOSE THAT THEY ARE TOO SCARED
25 TO USE A PRODUCT, WHICH, BY THE WAY, AIN'T WATER,
26 AIN'T FOOD, WASN'T AROUND BEFORE AROUND 1920 IN
27 THIS COUNTRY.

28 AND IN ORDER TO KEEP THIS GOING,

1 THE INFORMATION SYSTEM HAD TO, IN THEIR VIEW, GET
2 JAMMED UP.

3 AND SO OLD FREDDY PANSER IN 1972
4 SAID, FOR 20 YEARS, SO THAT MEANS SINCE '52, BUT
5 FOR 20 YEARS WE HAVE BEEN DOING DAH, DAH, DAH, DAH.
6 AND ITS BEEN A HOLDING STRATEGY.

7 AND OUR HOLDING STRATEGY CONSISTS
8 OF CREATING DOUBT ABOUT THE HEALTH CHARGE WTHOUT
9 ACTUALLY DENY IT.

10 AND SO IF WE WERE ASKED HERE, GEE,
11 WHATEVER BECAME OF THAT, JUST ONE MORE OF THOSE
12 LITTLE OLD DOCUMENTS THAT NOTHING HAPPENED ON THAT
13 LITTLE OLD DOCUMENT.

14 WELL, HERE IS ANOTHER LITTLE OLD
15 DOCUMENT. AND THIS IS 1984. THIS IS 20 -- I AM
16 SORRY -- 12 YEARS LATER.

17 LET'S SEE WHAT BECAME OF WHAT
18 FREDDIE PANSER HAD TO SAY TO HORACE KORNEGAY IN
19 1972.

20 BECAUSE HORACE SHOWED UP IN
21 CONGRESS, THIS DOCUMENT FOR '56, IN 1984.

22 AND HORACE, WHO MR. PANSER HAD
23 WRITTEN THAT MEMO TO, SAID THE FOLLOWING TO
24 CONGRESS, 14 YEARS LATER.

25 I SHOULD HAVE USED MORE SCOTCH TAPE
26 ON THIS.

27 THERE'S A WAR AGAINST US. 39
28 SCIENTISTS CAME HERE TO CONGRESS TO PRESENT

1 TESTIMONY AGAINST THE ANTI-SMOKING BILLS.

2 39 SCIENTISTS. THE EVIDENCE IS
3 BASED UPON THEIR OWN PUBLISHED RESEARCH FOR THEIR
4 REVIEW OF SCIENTIFIC LITERATURE. EACH OF THEM HAS
5 REACHED AN AREA OF EMINENCE.

6 THE EVIDENCE PRESENTED BY THESE MEN
7 AND WOMEN, AS SUMMARIZED, THE SCIENTISTS ARE LISTED
8 AND THE PROFESSIONAL AFFILIATIONS ARE LISTED, WE
9 ARE GIVING YOU THIS, UNITED STATES CONGRESS, IN THE
10 BELIEF THAT THE CONTROVERSY MUST BE RESOLVED BY
11 SCIENTIFIC RESEARCH AND THE BELIEF THAT AN INFORMED
12 DISCUSSION OF THE CONTROVERSY IS IN THE PUBLIC
13 INTEREST.

14 AND I WILL GO WITH THAT. INFORMED
15 DISCUSSION IS IN THE PUBLIC INTEREST AND INFORMED
16 DISCUSSION WAS IN MR. BOEKEN'S INTEREST AND
17 INFORMED DISCUSSION IS IN EVERY ONE'S INTEREST.
18 ALTHOUGH YOU WON'T HAVE THE BLOW-UPS, YOU WILL HAVE
19 THIS DOCUMENT, THE HIGHLIGHTING HAS BEEN TAKEN
20 HERE, FROM THE DOCUMENT WE HAVE GOT TO MAKE A
21 COUPLE POINTS.

22 PHILIP MORRIS WAS RIGHT ABOUT ONE
23 THING, I LISTEN, I LEARN. THERE'S ALWAYS ROOM TO
24 LEARN.

25 THE COURT: I DON'T THINK YOU NEED TO
26 GIVE THEM TO COUNSEL.

27 MR. PIUZE: OKAY.

28 THE COURT: THANK YOU.

1 MR. PIUZE: HERE IT IS. "CREATING DOUBT
2 ABOUT THE HEALTH CHARGE WITHOUT ACTUALLY DENYING
3 IT. "

4 BECAUSE, REMEMBER, FOR RICHARD
5 BOEKEN, AND FOR TENS AND TENS OF MILLIONS OF OTHER
6 PEOPLE, WHO WERE FED INFORMATION AND
7 MISINFORMATION, THEY RELIED ON THE INFORMATION THAT
8 WAS OUT THERE ON DECIDING WHAT TO DO, WHETHER THERE
9 WAS A CONTROVERSY, WHETHER, HONEST TO GOD IT'S
10 COMPLETELY DANGEROUS OR WHETHER THERE'S A
11 CONTROVERSY AND THERE'S SOMETHING OUT THERE.

12 ANYWAY, HERE'S THE PLAN IN 1972,
13 LET'S WATCH AND SEE IF ANYTHING BECAME OF IT.

14 FIRST, LET'S GET TO THE "WITHOUT
15 ACTUALLY DENYING IT" PART BECAUSE THIS IS WHAT GOES
16 TO CONGRESS IN '84.

17 IT IS IMPORTANT TO NOTE THAT
18 NEITHER THE SCIENTISTS NOR THE TOBACCO INDUSTRY
19 MADE OR MAKE ANY CLAIMS OTHER THAN IT IS NOT KNOWN
20 WHETHER SMOKING HAS A ROLE IN THE DEVELOPMENT OF
21 VARIOUS DISEASES AND A GREAT DEAL MORE RESEARCH IS
22 NEEDED.

23 SO AS FAR AS WITHOUT ACTUALLY DENY
24 IT, THERE'S ONE PART OF IT. BECAUSE HE WAS CAREFUL
25 TO SAY, WE AIN'T REALLY SAYING, AND YOUR SCIENTISTS
26 AIN'T REALLY SAYING, IT'S JUST THAT WE DON'T KNOW
27 ANYTHING.

28 NOW, LET'S TAKE A LOOK AT THE OTHER

1 PART, CREATING DOUBT ABOUT THE HEALTH CHARGE.

2 WHATEVER BECAME OF FREDDY PANSER'S
3 MEMO? THERE WERE BASIC FLAWS IN THE METHODS USED
4 IN THE EPIDEMIOLOGY STUDIES THAT CAST DOUBTS ON THE
5 ACCURACY OF THE CLAIMED CORRELATIONS.

6 SO THERE THEY WANT TO CREATE DOUBT,
7 AND HERE THEY ARE TELLING US THAT THEY TESTED
8 DOUBT.

9 TALKING ABOUT THE EPIDEMIOLOGY
10 SURVEYS, BOTH THESE AND OTHER FACTORS CAN BIAS AN
11 EPIDEMIOLOGY SURVEY AND CAN CAST DOUBT UPON ITS
12 CONCLUSIONS.

13 DON'T FORGET, A GUY WHO IS TURNING
14 IN THIS REPORT IS THE GUY WHO GOT THE MEMO FROM MR.
15 PANSER, 12 YEARS BEFORE THAT SAYS, WHAT WE ARE
16 GOING TO DO IS CAST DOUBT AND CREATE DOUBT.

17 TO THE CONGRESS, PERSISTENT ERRORS
18 IN DIAGNOSIS OF LUNG CANCER HAS REPORTED ON DEATH
19 CERTIFICATES CONTINUED TO CAST DOUBT ON THE
20 VALIDITY OF THOSE STUDIES.

21 HERE'S 1972 -- EXCUSE ME, LET ME
22 JUST JUMP BACK JUST A TOUCH, BACK IN 1972. HERE
23 ARE THE TWO THINGS WE ARE GOING TO TRY TO SELL,
24 SELL CONSTITUTIONAL HYPOTHESIS AND THE SO-CALLED
25 MULTI-FACTORIAL. IT'S THE AIR, IT'S THE VIRUS, IT
26 IS THE GENETICS, IT'S THE STRESS.

27 AND BY THE WAY, WE CAN SELL THIS TO
28 52 PERCENT OF THE PEOPLE OUT THERE, MAYBE HEAVY

1 SMOKERS AND TOBACCO STATE CONGRESSMEN.

2 SO HERE' S HOW THIS ENDS, 12 YEARS
3 LATER.

4 THE EXPERTS TOOK THE POSITION, IT' S
5 NOT POSSIBLE, SCIENTIFICALLY, TO STATE THAT
6 CIGARETTE SMOKING CAUSES LUNG CANCER.

7 BECAUSE OF FLAWS IN EPIDEMIOLOGIC
8 STUDIES, FAILURE OF ANIMAL STUDIES, RECENT WORK
9 REPORTED OR FACTORS INVOLVED IN THE DISEASE.

10 FAR MORE RESEARCH IS NEEDED TO FIND
11 THE CAUSE OR CAUSES OF DISEASE.

12 OKAY. WELL, THAT' S WHAT BECAME OF
13 THE FREDDY PANSER MEMO. IT FOUND ITS WAY TO THE
14 UNITED STATES CONGRESS 12 YEARS LATER.

15 AND IT CAME BACK AGAIN EIGHT YEARS
16 LATER WHEN THAT SMOKING CAMEL GOT UP THERE AND SAID
17 WE DON' T KNOW THE CAUSE OF LUNG CANCER.

18 THAT' S WHAT HAPPENED TO FREDDY
19 PANSER.

20 AND IN 1984 WHEN MR. KORNEGAY, ON
21 BEHALF OF THE TOBACCO INSTITUTE, SAYS HERE, WE NEED
22 A LOT MORE RESEARCH TO FIGURE OUT WHAT WE CAN DO.

23 LET' S JUST THINK ABOUT DR. CARCHMAN
24 COMING IN HERE AND SAYING SOMETHING THAT I THINK IS
25 ALMOST UNIMAGINABLE IN A CONSUMER-ORIENTED SOCIETY
26 THAT WE LIVE IN, WE, WITH UNLIMITED RESEARCHES,
27 UNLIMITED BUDGETS, UNLIMITED EQUIPMENT, UNLIMITED
28 FACILITIES, UNLIMITED SCIENTISTS, HAVE NEVER, EVER,

1 EVER, TESTED A MARLBORO CIGARETTE FOR BIOHAZARDS
2 UNTIL THIS PAST YEAR.

3 AND YOU THINK THAT'S A RED HERRING?

4 WELL, CHECK THIS OUT. WHAT IF
5 MARLBORO CAME UP WITH MORE BIOHAZARDS THAN WINSTON?
6 WHICH BRAND TAKES A BEATING AT THE
7 STORE?

8 WHAT IF MARLBORO CAME UP WITH MORE
9 BIOHAZARDS THAN CAMEL FILTER, WHICH TAKES A BEATING
10 AT THE STORE?

11 AND I AM NOT JUST POINTING TO
12 PHILIP MORRIS NOW, THEY ALL DO.

13 BUT PHILIP MORRIS, THINK ABOUT IT,
14 IN OUR CONSUMER SOCIETY, THE FINISHED PRODUCT THAT
15 GOES INTO PEOPLE'S BODIES, HAS NEVER BEEN TESTED,
16 THIS GIGANTIC EMPIRE WAS CREATED, THEY PURPOSELY
17 NEVER TESTED IT UNTIL SOMETIME IN THE LAST YEAR.

18 AND NOW AFTER HAVING 60 PERCENT OF
19 THE AMERICAN MALE POPULATION SMOKING CIGARETTES AT
20 ONE TIME. OVER 50 MILLION PEOPLE SMOKING
21 CIGARETTES IN THIS COUNTRY, RIGHT NOW, PROBABLY
22 OVER 50 MILLION PEOPLE SMOKING CIGARETTES IN THIS
23 COUNTRY, NOW WHEN THEY DO A TEST ON THE CIGARETTES,
24 THEY GOT TO GET SOMEONE'S SIGNATURE TO SAY, I
25 UNDERSTAND THAT THIS STUFF CAN REALLY HONEST TO GOD
26 KILL ME. NO B. S.

27 AND SO FOR MY LAST, I AM NOT GOING
28 TO TAKE A LONG TIME THIS AFTERNOON, BUT FOR MY LAST

1 SIX SECONDS NOW, I WILL SAY AGAIN, THE LARGEST
2 ANIMAL EXPERIMENTATION EVER DONE IN HISTORY WITH A
3 CONSUMER PRODUCT, THE ANIMAL THAT WAS CHOSEN FOR
4 THE EXPERIMENT WAS US.

5 AND THAT'S DISGUSTING.

6 THE COURT: ALL RIGHT, VERY WELL.

7 IT'S NOW NOON. LADIES AND
8 GENTLEMEN, WE WILL SEE YOU ALL AT 1:30. DON'T
9 DISCUSS THE CASE WITH ANYONE.

10

11 (AT 12 NOON, THE LUNCH
12 RECESS WAS TAKEN TO
13 1:30 P.M. OF THE SAME DAY.)

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