

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, )  
10 INCORPORATED, A )  
11 CORPORATION; INTERNATIONAL )  
12 HOUSE OF PANCAKES )  
INCORPORATED, A )  
CORPORATION. )  
DEFENDANTS. )  
\_\_\_\_\_ )

13 REPORTER'S DAILY TRANSCRIPT OF PROCEEDINGS  
14 MONDAY, MAY 21ST, 2001

15 APPEARANCES:

16 (FOR PLAINTIFF)

LAW OFFICES OF  
MICHAEL J. PIUZE  
11755 WILSHIRE BLVD.  
SUITE 1170  
LOS ANGELES, CA 90025  
ARNOLD & PORTER  
BY: MAURICE A. LEITER  
JOHN CARLTON  
777 S. FIGUEROA ST.  
44TH FLOOR  
LOS ANGELES, CA 90017

17

18

19 (FOR DEFENDANTS)

20

21

22

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

25

VOLUME 39B OF  
26 PAGES 6202 THROUGH 6261

27

28

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

2 1:30 P.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

10 CLOSING ARGUMENT (CONTINUED)

11

12 BY MR. PIUZE:

13 THE LAST THING THAT PHILIP MORRIS

14 TOLD YOU ALL WAS THAT THIS CASE WAS ABOUT FREE

15 CHOICE AND RESPONSIBILITY.

16 IN HIS WORDS, THEIR WORDS, ITS

17 WORDS, FREE CHOICE AND RESPONSIBILITY. SO

18 THAT'S -- 2001, FREE CHOICE AND RESPONSIBILITY.

19 AND HERE'S 21 YEARS AGO. THIS IS

20 EXHIBIT 388, AND DIDN'T THEY PIVOT RIGHT ON THE

21 HEAD?

22 THE ENTIRE MATTER OF ADDICTION IS

23 THE MOST POTENT WEAPON A PROSECUTING ATTORNEY CAN

24 HAVE IN A LUNG CANCER CIGARETTE CASE. WE CANNOT

25 DEFEND CONTINUED SMOKING AS FREE CHOICE IF A PERSON

26 IS ADDICTED.

27 21 YEARS AGO, 21 YEARS LATER, WE

28 DEFEND CIGARETTE SMOKING AS FREE CHOICE EVEN THOUGH

1 A PERSON IS ADDICTED.

2 NOW, THEY HID THE ADDICTION THING.  
3 THEY HID THE ADDICTION THING AS LONG AS THEY COULD  
4 POSSIBLY HIDE IT.

5 AND IT WAS ONLY THIS YEAR IN THE  
6 YEAR 2001 THAT THEY FINALLY FESSED UP TO IT.

7 BUT THINK ABOUT IT, HOW CAN WE  
8 DEFEND CONTINUED SMOKING AS FREE CHOICE, IF A  
9 PERSON IS ADDICTED AND IF WE GIVE THEM HALF TRUTHS,  
10 SEMI-TRUTHS AND HALF LIES TO KEEP THEM HOOKED AND  
11 REASSURE THEM IT AIN'T AS BAD AS EVERYONE SAYS.

12 NOW, I HAVE THANKED THE COURT, THE  
13 STAFF, I HAVE THANKED YOU SEVERAL TIMES.

14 AND I'D LIKE TO TAKE A SECOND AND  
15 I'D LIKE TO THANK MR. GOLDSTEIN AND MS. LAWLOR WHO  
16 HAVE BEEN HELPING ME PUT THIS CASE ON. AND ONE OF  
17 THEM WHO IS GOING TO REMAIN CONFIDENTIAL HERE,  
18 SLIPPED ME THE FOLLOWING PEARLS OF WISDOM

19 "PEOPLE HAVE TO KNOW THE  
20 TRUTH. PEOPLE HAVE TO KNOW THE TRUTH  
21 IN ORDER TO MAKE A FREE CHOICE. IF  
22 YOU DON'T HAVE THE TRUTH, YOU CAN'T  
23 HAVE THE FREE CHOICE. WITHOUT THE  
24 TRUTH, YOU ARE NOT IN A POSITION TO  
25 MAKE A FREE CHOICE. "

26 NOW, WHAT THIS IS ALL ABOUT FROM  
27 1972, AND PLEASE REMEMBER, THEY ARE BRAGGING, THEY  
28 HAVE ALREADY BEEN DOING IT FOR 20 YEARS WHEN THAT

1 MEMO WAS WRITTEN IN 1972.

2                   WHAT THEY ARE DOING IN 1972, IN  
3 1952 AND 1982 AND 1962 AND 1992, BUT NOW THEY HAVE  
4 STOPPED, WHAT THEY WERE DOING WAS PUTTING OUT  
5 SOMETHING THAT, IN GOVERNMENT, IS CALLED SOMETIMES  
6 PLAUSIBLE DENIABILITY, A STORY, SOMETHING TO LATCH  
7 ONTO, SOMETHING, ANYTHING.

8                   AND WHAT THEY DID WAS THEY SPENT  
9 MONEY TO PUT OUT A STORY THAT THEY KNEW WAS B. S.

10                   AND THEY HAD THE GALL TO COME IN  
11 HERE AND SAY, RICHARD BOEKEN AND 50 MILLION  
12 AMERICANS OR 60 MILLION AMERICANS OR 70 MILLION  
13 AMERICANS, OR HOWEVER MANY MORE THERE WERE, SHOULD  
14 HAVE KNOWN DARN WELL, WHEN ALL OF OUR PH. D. 'S AND  
15 M. D. 'S AND GENIUSES ARE SCRATCHING THEIR HEADS,  
16 SAYING WE DON'T KNOW WHAT CAUSED, WE DON'T KNOW  
17 WHAT CAUSED, IT COULD BE SO MANY OTHER THINGS,  
18 DON'T YOU WORRY ABOUT IT.

19                   THAT'S HYPOCRITICAL TO THE MAX.

20                   SO THIS IS EXHIBIT NUMBER 388. AND  
21 FOR ANY OF YOU WHO WROTE DOWN THE LAST WORDS IN  
22 THIS CASE FROM PHILIP MORRIS, "FREE CHOICE AND  
23 RESPONSIBILITY," REMEMBER, 21 YEARS AGO, WE CAN'T  
24 DEFEND SMOKING AS FREE CHOICE IF A PERSON IS  
25 ADDICTED.

26                   AND THERE'S NO DISPUTE IN THIS CASE  
27 THAT RICHARD BOEKEN WAS ADDICTED, BIG TIME. AND  
28 EVEN DR. BECKSON, WHO WAS GOING TO COME IN HERE AS

1 HE DID UP IN SAN FRANCISCO A COUPLE YEARS AND SAY  
2 NO, NO, THAT PERSON AIN' T ADDICTED, CHANGED HIS  
3 MIND.

4 NOW, ON THE ISSUE OF CREATING DOUBT  
5 ABOUT THE HEALTH CHARGE WITHOUT ACTUALLY DENYING  
6 IT, WE SHOWED YOU WHAT WENT TO CONGRESS 12 YEARS  
7 LATER. HERE' S WHAT DR. FARONE HAD TO SAY.

8 AND I AM READING FROM THIS  
9 TRANSCRIPT, THIS TRIAL, PAGE 1549. DON' T FORGET,  
10 HE STARTED AT PHILIP MORRIS IN 1976.

11 "ABOUT A YEAR AND A HALF  
12 AFTER I HAD BEEN THERE, AND I HAD BEEN  
13 TOLD BY DR. OSDENE ON SEVERAL  
14 OCCASIONS THAT ONE OF HIS MAIN  
15 MISSIONS, AS HE PUT IT, WAS TO  
16 MAINTAIN CONTROVERSY, MEANING, KEEP  
17 SHEDDING DOUBT ON WHETHER OR NOT  
18 NICOTINE WAS ADDICTIVE AND WHETHER OR  
19 NOT SMOKING CAUSED DISEASE. "

20 "IT WAS HIS JOB TO MAINTAIN  
21 CONTROVERSY ON ADDICTION, EVEN THOUGH  
22 YOU KNEW THAT TOBACCO WAS ADDICTIVE.

23 "AND IT WAS HIS JOB TO  
24 CREATE CONTROVERSY ABOUT WHETHER OR  
25 NOT TOBACCO CAUSED DISEASE, EVEN  
26 THOUGH YOU KNEW IT CAUSED DISEASE. "

27 NOW, THAT' S NOT THE T. I. R. C. OR THE  
28 T. I. A. OR THE C. T. R. OR THE ANYBODY, THAT' S

1 DR. OSDENE.

2 A COMMENT WAS MADE LAST FRIDAY  
3 ABOUT, GEE, WHY DIDN' T THE PLAINTIFF BRING IN OUR  
4 FORMER EMPLOYEE, MELE, WHY DIDN' T THE PLAINTIFF  
5 BRING IN OUR FORMER EMPLOYEE, UYDESS, BOTH OF THEM  
6 TESTIFIED IN A MAJOR TRIAL IN FLORIDA, WHERE THE  
7 STATE OF FLORIDA WAS THE PLAINTIFF.

8 I FIGURE THE TRANSCRIPT WAS CLEAR  
9 ENOUGH.

10 BUT, IT RAISES A QUESTION. WHY  
11 DIDN' T THEY BRING IN OSDENE?

12 HE' S AROUND.

13 MR. LEITER: OBJECTION, YOUR HONOR.

14 THE COURT: SUSTAINED, NO EVIDENCE.

15 MR. PIUZE: WHY DIDN' T THEY --

16 THE COURT: NO EVIDENCE ABOUT WHERE  
17 OSDENE IS.

18 MR. PIUZE: OH, YES, ABSOLUTELY.

19 THE COURT: ALL RIGHT, IF YOU CAN POINT  
20 IT OUT TO ME THEN, I DON' T HAVE A PERFECT MEMORY.

21 I DON' T KNOW WHERE OSDENE IS.

22 MR. PIUZE: BRAZIL.

23 MR. LEITER: OBJECTION, YOUR HONOR.

24 MR. PIUZE: I WILL MOVE ON. I WILL  
25 WITHDRAW THAT. I THINK I AM RIGHT BUT I WILL  
26 WITHDRAW IT.

27 THE COURT: ALL RIGHT.

28 MR. PIUZE: WHY DIDN' T THEY BRING IN

1 CAMPBELL? BECAUSE WE KNOW ELLEN MERLO SEES HIM AT  
2 LUNCH EVERY ONCE IN AWHILE IN NEW YORK CITY.

3 WHERE ARE ALL THESE DUDES, WHERE  
4 ARE THEY?

5 SO, YEAH, I RELIED ON TESTIMONY  
6 TAKEN DOWN FROM THE STATE OF FLORIDA TO PUT THESE  
7 TWO WITNESSES ON.

8 BUT IF SOMEONE IS GOING TO ASK THE  
9 QUESTION, I WILL ASK THE QUESTION.

10 WHERE WERE THESE GUYS?

11 AND I AM GOING TO PUT DR. FARONE'S  
12 DEPOSITION AWAY HERE -- NOT DEPOSITION, HIS TRIAL  
13 TESTIMONY AWAY HERE. BUT BEFORE I DO, I'D LIKE TO  
14 SAY A COUPLE THINGS ABOUT IT. YOU PEOPLE OUT OF  
15 THE COMMUNITY CAN TELL SOMEONE WHO'S B.S.'ING FROM  
16 SOMEONE WHO IS TRUTHFUL.

17 THAT'S WHAT WE LEARN TO DO FROM THE  
18 TIME WE ARE LITTLE KIDS AND WE GROW UP.

19 I WILL SINK AND SWIM WITH  
20 DR. FARONE. I WILL GO OUT IN HIS BOAT WITH HIM ANY  
21 DAY.

22 HE GOES AROUND AND TESTIFIES FOR  
23 FREE, UNTIL THIS YEAR, BECAUSE HE'S ASHAMED.

24 HE FEELS PARTIALLY RESPONSIBLE.

25 HE DIDN'T GO FIND THE F. B. I., HE  
26 DIDN'T GO FIND "60 MINUTES," AND HE DIDN'T GO FIND  
27 THESE GOVERNMENT AGENCIES. THEY CAME AND FOUND  
28 HIM

1                   AND THEY CAME AND FOUND HIM  
2 SOMEPLACE IN THE VICINITY OF ABOUT FIVE AND SIX  
3 YEARS AGO WHEN THE STUFF REALLY STARTED TO HIT THE  
4 FAN. THEY CAME IN FOR HIM HE DIDN'T GO TO THEM  
5                   IN OTHER WORDS, DISGRUNTLED  
6 EMPLOYEE GOING OUT AND RATTING?  
7                   NO. AS A MATTER OF FACT, HE KEPT  
8 HIS MOUTH SHUT. HE KEPT HIS MOUTH SHUT FOR  
9 APPROXIMATELY 10, 12 YEARS, UNTIL THE GOVERNMENT  
10 AND THE MEDIA CAME AND FOUND HIM  
11                   AND WHAT WAS HE DOING DURING THOSE  
12 10 TO 12 YEARS?  
13                   HE IS THE PRESIDENT OF A COMPANY  
14 THAT DOES BIOLOGY FOR ENVIRONMENTALLY FRIENDLY  
15 WORK. THAT'S WHAT HE DOES.  
16                   ALL THEIR STUFF IS BIOLOGY THAT  
17 WON'T HARM THE ENVIRONMENT.  
18                   NOW, I AM READY TO STAND BY THIS  
19 GUY.  
20                   AND WHEN HE TELLS YOU THAT  
21 DR. OSDENE SHOWED HIM A DOCUMENT, 25 YEARS, 23  
22 YEARS AGO, WHATEVER IT WAS, AND SAID, WE TESTED  
23 MARLBOROS FOR BIOLOGIC ACTIVITY OVERSEAS AND HERE  
24 ARE THE RESULTS, YOU ARE NOT SUPPOSED TO SEE IT,  
25 SHOULDN'T BE SHOWING IT TO YOU, I AM GOING TO DUMP  
26 IT WHEN I GO HOME. I BELIEVE THAT THAT HAPPENED.  
27                   AND DO I KNOW IF OSDENE WAS MAKING  
28 UP A STORY TO HIM OR NOT?

1 NO.  
2 BUT I KNOW A HIGH-RANKING  
3 OFFICIAL -- DON'T FORGET WHERE THESE GUYS WERE ON  
4 THE HIERARCHY HERE. THIS WAS NEXT TO THE TOP. ONE  
5 OF THESE PEOPLE AT ONE OF THESE DIRECTORATES TOLD  
6 ANOTHER, WE VIEW SOME OF THIS DENITRIFICATION  
7 PRODUCT AS WE HAVE TESTED IT AND YOU ARE UP AGAINST  
8 A REAL HONEST MARLBORO, FOR BIOLOGIC ACTIVITIES AND  
9 HERE ARE THE RULES, I AM DESTROYING THEM, I  
10 SHOULDN'T EVEN BE SHOWING YOU.  
11 CAN YOU IMAGINE -- NOW, RECENT  
12 CONTROVERSY THAT I MENTIONED HERE, CAN YOU IMAGINE  
13 WITH 150 PEOPLE KILLED AS A RESULT OF FIRESTONE  
14 TIRE BLOWOUT, CAN YOU IMAGINE IF DOCUMENTS LIKE  
15 THAT WERE UNCOVERED? UNBELIEVABLE.  
16 HOW CAN A PRODUCT BE PUT ON THE  
17 MARKET WITHOUT TESTING IT?  
18 THESE DOCUMENTS TELL A STORY. STAY  
19 AWAY FROM TESTING FOR CANCER.  
20 THEY DIDN'T WANT TO KNOW  
21 NOW, I HEARD ALSO LAST FRIDAY THAT  
22 THIS CASE WAS ABOUT MONEY. WELL, I GUESS IT IS  
23 ABOUT MONEY.  
24 THIS CASE IS ABOUT CHOICE, YES,  
25 THIS CASE IS ABOUT CHOICE.  
26 THIS CASE IS ABOUT PHILIP MORRIS'S  
27 CHOICE.  
28 THIS CASE IS ABOUT THE TOBACCO

1 INDUSTRY' S CHOICE, AND 1954, TO DO THE RIGHT THING,  
2 AND COST THEMSELVES A TON OF MONEY, OR MAKE A TON  
3 OF MONEY AT THE TOTAL DISRESPECT OF HUMAN LIFE,  
4 THEIR CONSUMERS, THE GOVERNMENT AND OUR SOCIETY.

5 SO WE HAVE BEEN IN HERE LONG ENOUGH  
6 THAT WE HEAR THIS CALLED AN EPIDEMIC. AND YOU KNOW  
7 WHAT, IT IS. IT' S A TERRIBLE, TERRIBLE, TERRIBLE  
8 EPIDEMIC.

9 AND IT' S AN EPIDEMIC THAT' S BEEN  
10 GOING ON FOR MONEY.

11 WE HEAR THIS MORNING, WELL, GEE  
12 WHIZ, PHILIP MORRIS SETTLED ITS SUIT WITH THE  
13 ATTORNEYS GENERAL, STATES ATTORNEY GENERAL. IT  
14 DID.

15 AND THEIR PROFITS WENT WAY UP. AND  
16 BIBLE BRAGGED ABOUT IT, AND MR. JOHNSON TOLD YOU  
17 THAT.

18 THESE ARE SURVIVORS. THOSE ARE  
19 SURVIVORS, SURVIVORS, SURVIVORS. THESE ARE  
20 SURVIVORS.

21 YOU BETTER BELIEVE THIS CASE IS  
22 ABOUT MONEY. AND YOU BETTER BELIEVE THAT A BODY  
23 COUNT OUT THERE IS ABOUT MONEY TOO. THAT' S ALL  
24 THAT IT IS ABOUT.

25 THEY HAD A CHOICE, AND THEY CHOSE  
26 MONEY. AND I HEARD LAST MONDAY, EXCUSE ME --  
27 FRIDAY, THAT MAYBE THERE WAS A THOUGHT THAT PHILIP  
28 MORRIS WAS EASY PICKEN' S, SO THAT' S WHY WE ARE

1 HERE, BECAUSE THEY ARE EASY PICKEN' S.  
2 GIVE ME A BREAK.  
3 I AM A RELATIVELY BRAVE GUY. AT  
4 LEAST I CONSIDER MYSELF TO BE.  
5 BUT THEY AIN' T EASY PICKEN' S.  
6 AS A MATTER OF FACT, THEIR  
7 CHAIRMAN, MR. BIBLE, SAID IN 1994, HERE' S THE KIND  
8 OF PICKEN' S THEY ARE.  
9 "WE ARE COMMITTING ALL OF  
10 THE RESOURCES NECESSARY TO DEFEND THE  
11 COMPANY FROM NEW FORMS OF LITIGATION  
12 MAKING SURE WE HAVE BETTER FIRE POWER  
13 THAN OUR FOES, NO MATTER HOW  
14 FORMIDABLE. "  
15 HE WASN' T TALKING ABOUT ME. HE WAS  
16 TALKING ABOUT 46 STATES ATTORNEY GENERAL COMING  
17 AFTER HIM  
18 HE WAS GOING TO HAVE BETTER FIRE  
19 POWER THAN ALL OF THEM  
20 SO, I GUESS, IT LOOKS LIKE THEY  
21 HAVE BETTER FIRE POWER THAN MR. BOEKEN DOES.  
22 EXCEPT MR. BOEKEN, HONEST TO GOD,  
23 HAS THE TRUTH ON HIS SIDE. AND THEY DON' T.  
24 SO OUR SOCIETY, THIS IS ANOTHER ONE  
25 OF THE LAST THINGS THAT WAS SAID, OUR SOCIETY AND  
26 MR. BOEKEN MADE CHOICES BASED UPON FRAUDULENT  
27 CONDUCT -- EXCUSE ME, OUR SOCIETY AND MR. BOEKEN  
28 MADE CHOICES. YES, BASED UPON FRAUD, BASED UPON

1 MISDIRECTION, BASED UPON HIDDEN EVIDENCE, BASED  
2 UPON CREATING DOUBT, BASED UPON SUCKING PEOPLE IN.  
3 LATE IN THE CLOSING ARGUMENT, IT  
4 WAS STATED BY THE DEFENSE, A REPRESENTATION MUST  
5 HAVE BEEN MADE TO FOOL PEOPLE BEFORE YOU CAN FIND  
6 US LIABLE.

7 I AM A BELIEVER. A REPRESENTATION  
8 MUST HAVE BEEN MADE TO FOOL PEOPLE BEFORE THEY GET  
9 WHAT THEY DESERVE.

10 WELL, WHAT WERE THEY OUT THERE  
11 DOING ALL OF THESE YEARS BUT FOOLING PEOPLE OR  
12 TRYING?

13 AND THE INCREDIBLE ULTIMATE IRONY  
14 IS, THE ONES THAT THEY SUCCEEDED IN FOOLING, BECOME  
15 MENTALLY DEFICIENT, UNDESERVING, LIARS, IDIOTS.

16 ISN'T THAT CUTE.

17 THEIR BEST CUSTOMERS, THE ONES WHO  
18 BELIEVED THEM, THE ONES WHO FORGED OVER THE MONEY.

19 AREN'T JUST DISRESPECTED, THEY ARE  
20 INSULTED.

21 THERE'S MR. BOEKEN'S DEPOSITION  
22 RIGHT THERE.

23 DO YOU WANT TO LISTEN TO THAT, YOU  
24 CAN.

25 DON'T HAVE TO.

26 SOME OF THE FIRST WORDS IN THAT  
27 DEPOSITION WERE, "WHERE DID YOU COME FROM THIS  
28 MORNING?"

1 "RADIATION THERAPY FOR MY BRAIN. "

2 I THINK THERE ARE SIX SEPARATE  
3 DEPOSITION SETTINGS THERE. I KNOW IT'S 18 HOURS.  
4 I KNOW THAT SOME OF THOSE SESSIONS WERE LESS THAN  
5 TWO HOURS BECAUSE HE HAD TO THROW IN THE TOWEL  
6 BECAUSE HE COULDN'T CONTINUE.

7 I KNOW MR. BOEKEN CLEARLY SAID IN  
8 THERE AT THE BEGINNING HE WAS HAVING PROBLEMS WITH  
9 MEMORY, CONCENTRATION, FUZZINESS AND FOCUS.

10 AND ONE OF THE THINGS HE SAID IS I  
11 CAN'T FOCUS, NOT ONLY CAN'T MY EYES FOCUS, MY BRAIN  
12 CAN'T FOCUS.

13 BUT JUST TO REMIND YOU, AT THE END  
14 OF THAT DEPOSITION, FOUR SNIPPETS TAKEN OUT OF  
15 THERE, MAYBE FIVE, AND WAIVED AROUND AND HE WAS  
16 DISRESPECTED BECAUSE OF FIVE SNIPPETS THERE OUT OF  
17 18 HOURS WITH THIS GUY SICK AS A DOG, BUT THIS  
18 STIPULATION WAS READ AT THE END, FROM THE COURT.

19 "THE PLAINTIFF'S DIRECT  
20 EXAMINATION OCCURRED ON OCTOBER 18TH  
21 FROM 11:48 TO 2:58, THREE HOURS AND  
22 TEN MINUTES, CONTINUED ON DECEMBER  
23 19TH, WENT FROM 10:33 TO 2:14, THREE  
24 HOURS AND 45 MINUTES. THOSE WERE  
25 TAKEN AT MR. PIUZE'S OFFICE.

26 "THE NEXT DAY AT THE LAW  
27 OFFICE OF ARNOLD AND PORTER, WHICH IS  
28 MR. LEITER AND MR. CARLTON, THE

1 DEPOSITION WAS FROM 10:54 TO 12:57,  
2 TWO HOURS.

3 "THEN ANOTHER DEPOSITION THE  
4 NEXT DAY, DECEMBER 21ST, 10:24 TO  
5 12:43, SAME PLACE, OFFICE OF THE  
6 DEFENSE, 2 HOURS AND 20 MINUTES.

7 "DECEMBER 27TH, A DEPOSITION  
8 WAS TAKEN AT MR. BOEKEN'S HOME, 9:50  
9 TO 1:12, THREE AND A HALF HOURS.

10 "DECEMBER 28TH, MR. BOEKEN'S  
11 HOME, 8:47 IN THE MORNING, UNTIL  
12 10:10, ONE HOUR AND 20 MINUTES.

13 "AND FINALLY, BACK AT THE  
14 OFFICE OF THE DEFENSE COUNSEL,  
15 FEBRUARY 10, THIS YEAR, 10:11 IN THE  
16 MORNING TIL 12:45, TWO AND A HALF  
17 HOURS. "

18 AND THEN THE COURT ADDED IT UP, 6  
19 HOURS AND 45 MINUTES FOR THE PLAINTIFF, 11 HOURS  
20 AND 40 MINUTES FOR THE DEFENSE. THAT'S 18 AND A  
21 HALF HOURS OF DEPOSITION. THERE'S 18 AND A HALF  
22 HOURS OF DEPOSITION.

23 WAS THIS GUY SICK?

24 I GUESS.

25 AND WAS THIS GUY HAVING ALL KINDS  
26 OF MEDICATION? YEP.

27 FROM RADIATION? YEP.

28 STEROIDS? YEP.

1 SLEEP DEPRIVED? SOME OF HIS FIRST  
2 WORDS IN THERE IS THAT HE GOT ABOUT THREE HOURS OF  
3 SLEEP THE NIGHT BEFORE.

4 BUT YOU KNOW SOMETIMES THESE WORDS  
5 SPEAK BETTER THAN I CAN. BECAUSE HERE IS THIS  
6 GREAT QUESTION, THIS IS ON DECEMBER 27TH, FROM MR.  
7 CARLTON, AND THE ISSUE HERE IS WHEN HE BELIEVED OR  
8 DIDN'T BELIEVE THAT THEY WERE LYING.

9 SO THIS IS MR. CARLTON ASKING.

10 "Q AT SOME POINT ALONG  
11 THE WAY YOU CONCLUDED THE CIGARETTE  
12 COMPANIES WERE NOT TELLING THE TRUTH  
13 ABOUT THE HEALTH EFFECTS OF SMOKING?

14 "A RIGHT.

15 "Q WHEN?

16 "A THAT WOULD BE  
17 AFTER -- THAT WOULD BE IN 1996. I  
18 BELIEVE THAT'S THE CORRECT YEAR.

19 "Q WHAT WAS IT THAT  
20 CAUSED YOU TO CHANGE YOUR OPINION  
21 ABOUT THE TRUTHFULNESS OF THE  
22 CIGARETTE COMPANIES?

23 "A MY MOTHER PASSED  
24 AWAY OF LUNG CANCER. "

25 AND MR. CARLTON TELLS MR. BOEKEN,  
26 "YOUR MOTHER DIED IN 1994, DIDN'T SHE?" WHICH SHE  
27 DID.

28 MR. BOEKEN DIDN'T EVEN REMEMBER

1 HERE THE YEAR HIS MOTHER DIED.

2 MR. CARLTON KNEW IT BECAUSE HE TOLD  
3 HIM ON AN EARLIER OCCASION, WHICH I MAY OR MAY NOT  
4 SHOW YOU HERE IN A MINUTE.

5 BUT THE POINT I AM TRYING TO MAKE  
6 IS, MR. BOEKEN MESSED UP ON TWO YEARS WHEN HIS MOM  
7 DIED ALL THROUGH THESE DEPOSITIONS.

8 SO IS IT SURPRISING TO ME THAT  
9 THERE'S A FEW THINGS HE CAN WAVE AROUND AND SAY,  
10 DAH, DAH, DAH, DAH, BROKEN IS A LIAR -- DIDN'T HEAR  
11 THAT WORD, BUT THAT'S WHAT IT IS MEANT TO IMPLY, WE  
12 CAN'T BELIEVE ANYTHING HE SAYS.

13 BULL.

14 BUT HERE, THAT'S ONE DAY, HERE'S  
15 ANOTHER DAY. HOW MANY TIMES DID WE HEAR, DURING  
16 THE COURSE OF THIS DEFENSE CLOSING STATEMENT,  
17 SOMETHING TO THE EFFECT, MR. BOEKEN DIDN'T EVER  
18 HEAR -- MR. BOEKEN DIDN'T EVER HEAR THAT SMOKING  
19 CIGARETTES WAS BAD FOR YOU?

20 NO ONE CAN BELIEVE THAT. HE  
21 COULDN'T HAVE BEEN IN A TIME WARP. LOOK AT ALL OF  
22 OUR "LOS ANGELES TIMES" AND ON AND ON AND ON AND  
23 ON.

24 THE PROBLEM IS MR. BOEKEN NEVER  
25 SAID THAT.

26 SEE, NEVER NEVER SAID THAT.

27 HERE, THIS IS FEBRUARY 10TH, THIS  
28 IS MR. CARLTON.

1 MR. CARLTON'S QUESTION.

2 "Q MR. BOEKEN, YOU  
3 HEARD IN THE 1960'S THAT THE SURGEON  
4 GENERAL HAD ISSUED A WARNING?"

5 THERE'S A REASON MR. CARLTON ASKED  
6 THAT BECAUSE MR. BROKEN HAS ALREADY TESTIFIED TO  
7 THAT EARLIER IN HIS DEPOSITION.

8 "A SURE, I HEARD IT.  
9 THERE WAS AN ARGUMENT, A CONFLICT OVER  
10 IT. "

11 SO THIS LITTLE THING THAT I HEARD  
12 AGAIN AND AGAIN AND AGAIN THIS MORNING AND FRIDAY,  
13 HOW IN THE WORLD COULD BROKEN NOT HAVE HEARD THAT  
14 CIGARETTE SMOKE WAS BAD FOR YOU. HE HEARD. HE  
15 KNEW ABOUT THE SURGEON GENERAL'S WARNING. HE KNEW  
16 IT WAS IN THE '60'S.

17 BUT HEARING, HEARING AIN'T  
18 BELIEVING.

19 LET ME TELL YOU. I KNOW THAT --  
20 REMEMBER WE HAD MR. FERREE IN HERE. WE HAD  
21 PROFESSOR VISCUSI FROM HARVARD IN HERE, THE  
22 ECONOMIST FOR THE DEFENSE. WE HAD NEAL BENOWITZ IN  
23 HERE WHO TALKED ABOUT IT TO SOME EXTENT AND I AM  
24 GOING TO READ A TOUCH FROM HIM

25 BUT ONE OF THEM ALONG THE LINE, AND  
26 I AM SURE IT WAS MR. FERREE SAID, HEARING ISN'T  
27 NECESSARILY BELIEVING.

28 THERE WAS A MOTORIST WHO GOT BEAT

1 UP BY THE POLICE OR SO HE SAID.

2 AND EVERYONE IN THE WORLD HEARD IT.  
3 THEY DIDN'T JUST HAVE TO HEAR IT, WE EVEN HAD IT ON  
4 VIDEO.

5 IT IS ONE OF THOSE RARE INSTANCES  
6 THAT'S SO BAD THE CASE WENT ON FOR TRIAL FOR --

7 MR. LEITER: YOUR HONOR, I AM GOING TO  
8 OBJECT TO THIS AS OUTSIDE OUR RECORD.

9 THE COURT: IT IS. IT CAN BE ARGUED BY  
10 ANALOGY BUT MOVE ON.

11 MR. PIUZE: LET'S JUST SAY THERE HAVE  
12 BEEN TIMES WHEN POLICE OFFICERS COULD GET TRIED IN  
13 THEIR BACKYARDS FOR ASSAULT AND HURTING PEOPLE AND  
14 WALK AND THERE HAVE BEEN TIMES WHEN THEY COULD WALK  
15 EVEN THOUGH IT WAS CAPTURED ON FILM

16 BECAUSE HEARING AIN'T NECESSARILY  
17 BELIEVING. AND EVEN SEEING SOMETIMES ISN'T  
18 NECESSARILY BELIEVING. JUST DEPENDS. IT'S IN THE  
19 EYE OF THE BEHOLDER.

20 SO, YES, MR. BOEKEN HAD HEARD THAT  
21 THERE WAS A SURGEON GENERAL'S REPORT, AND YES,  
22 MR. BOEKEN WAS AWARE THAT WARNINGS WENT ON THE SIDE  
23 OF THE SPECIFIC PACKAGES, AND YES, MR. BOEKEN KNEW  
24 THAT THERE WERE CLAIMS THAT CIGARETTES WOULD BE  
25 BAD, WOULD DO BAD THINGS TO YOU, BUT THAT'S NOT ALL  
26 HE KNEW, THAT'S NOT ALL HE KNEW

27 THIS IS MR. CARLTON AGAIN. LET ME  
28 MAKE SURE, THIS IS MR. CARLTON. THIS IS FROM

1 DECEMBER 27TH, TO MR. BOEKEN.

2 "Q YOU TESTIFIED WHEN  
3 BEING QUESTIONED BY YOUR OWN ATTORNEY  
4 THAT YOU BELIEVED THE SURGEON  
5 GENERAL'S WARNINGS WERE POLITICALLY  
6 MOTIVATED. DO YOU RECALL THAT  
7 TESTIMONY?

8 "A YES, I DO.

9 "Q WHEN WAS IT YOU  
10 FIRST FORMED THAT OPINION?

11 "A SOMEWHERE IN THE  
12 LATE '60'S, MID-60'S, SOMEPLACE IN  
13 THAT TIME PERIOD.

14 "Q MID TO LATE '60'S?

15 "A YES, I RECALL A  
16 HOOPDEGAW ABOUT A WARNING.

17 "Q WHEN YOU SAY  
18 "HOOPDEGAW," WHAT DO YOU MEAN BY THAT?

19 "A THAT'S ALL I KNEW  
20 THE SURGEON GENERAL WAS HAVING A  
21 WARNING. "

22 WHY IS MR. BOEKEN BRINGING THIS  
23 LAWSUIT? THAT WAS AN ISSUE THAT WAS RAISED ON  
24 FRIDAY. START YOU OFF WITH THIS REASON. HE HAD  
25 HEARD IN THE LATE '90'S ABOUT ADDITIVES GOING INTO  
26 THE CIGARETTES. AND HE WAS VERY ANGRY "AND  
27 EXPRESSED TO MY WIFE HOW ANGRY IT MADE ME. "

28 AND AT THIS POINT, HE GOT MAD ABOUT

1 THE INFORMATION HE HAD HEARD.

2 NOW, A PERSON'S LAST DAYS ON EARTH,  
3 I GUESS, SHOULD BE AS PEACEFUL AS POSSIBLE. AND A  
4 PERSON'S LAST DAYS ON EARTH MAYBE SHOULD HAVE AS  
5 LITTLE STRIFE AS POSSIBLE. AND MAYBE A PERSON  
6 SHOULD TRY TO ENJOY AND RELAX AND TAKE IT EASY IN  
7 HIS LAST DAYS.

8 BUT MR. BOEKEN GAVE UP SOME OF HIS  
9 PRECIOUS TIME IN HIS LIFE, AT LEAST 18 HOURS' WORTH  
10 SITTING RIGHT THERE ON THAT TABLE, AND HAS BEEN  
11 INVOLVED IN THIS LITIGATION FOR OVER A YEAR, AND  
12 MR. BOEKEN GAVE IT UP FOR MANY REASONS, ONE OF  
13 WHICH IS HE, TO QUOTE DR. HOSHIZAKI, IS P. O. 'D.  
14 HE'S VERY, VERY, ANGRY.

15 CAN WE EXPECT LESS OF THE MARLBORO  
16 MAN?

17 HE SHOULD BE ANGRY.

18 HE SHOULD BE ANGRY.

19 PHILIP MORRIS SAYS, WELL, WE NEVER  
20 TALKED TO HIM, WE NEVER TOLD HIM ANYTHING. GEE,  
21 WHAT DID WE EVER SAY TO HIM?

22 WELL, HERE'S WHAT THEY SAID TO HIM  
23 LOOK AT THIS, KID, LOOK AT THIS, OR THIS.

24 HE HELD THIS UP IN HIS DEPOSITION,  
25 IT'S ON THE CAMERA IN THE DEPOSITION TRANSCRIPT.  
26 HEY, KID, LOOK AT THIS. AND LOOK AT THIS. AND  
27 LOOK AT THIS.

28 SO, YEAH, THEY TALKED TO HIM ALL

1 RIGHT. THEY TALKED TO HIM WITH THE BEST  
2 ADVERTISING EFFORT THAT MONEY CAN POSSIBLY BUY AND  
3 I AM NOT AN ADVERTISING EXPERT.

4 AND THE ADVERTISING PART OF THE  
5 CASE IS NOT EXACTLY THE STRONGEST THING THAT BRINGS  
6 OUT MY STRONGEST FEELINGS BUT I WILL STAY WITH IT  
7 FOR A MINUTE OR TWO.

8 DR. GOLDBERG IS THE HEAD OF  
9 MARKETING AT PENN STATE UNIVERSITY.

10 AND DR. GOLDBERG DIDN'T DO ANY  
11 STUDIES FOR THIS CASE, HE DIDN'T DO ANY EXPERIMENTS  
12 FOR THIS CASE, THAT'S TRUE.

13 BUT HE HAS FOR THE GOVERNMENT OF  
14 CANADA. AND HE HAS FOR THE GOVERNMENT OF THE  
15 UNITED STATES.

16 HE'S WORKED ON PROJECTS FOR THE  
17 GOVERNMENT OF THE UNITED STATES AND THE GOVERNMENT  
18 OF CANADA HAVING TO DO WITH KIDS SMOKING.

19 AND HE DISCUSSED IT IN TREMENDOUS  
20 DETAIL WHILE HE WAS HERE.

21 AND I WILL JUST REMIND YOU OF JUST  
22 ONE LITTLE VIGNETTE. HE'S FROM MONTREAL, QUEBEC,  
23 CANADA, WHICH HAPPENS TO BE A BILINGUAL PLACE,  
24 SPEAKS FRENCH, SPEAKS ENGLISH.

25 AND HE TALKED ABOUT THE FACT THAT  
26 THE GOVERNMENT OF QUEBEC HAD TAKEN OFF TELEVISION  
27 ALL KINDS OF ADS THAT WOULD APPEAL TO KIDS, HE  
28 DIDN'T TALK ABOUT TOBACCO, ABOUT M&M TOYS, SUGAR

1 PUFFS, RICE, WHATEVER CEREAL SHOWED ON SATURDAY  
2 MORNING, ALL THAT STUFF OFF THE TUBE.

3 BUT THE ENGLISH SPEAKING KIDS, THEY  
4 WERE GETTING THEIR TELEVISION FEEDS FROM MAINE AND  
5 VERMONT AND PLACES LIKE THAT; WHEREAS, THE  
6 FRENCH-SPEAKING KIDS, THEY DIDN'T GET ANY  
7 INFORMATION AT ALL.

8 AND SO HE WENT OUT AND DID A STUDY,  
9 HAPPENED RIGHT IN HIS BACK YARD, AND GUESS WHAT,  
10 THE ENGLISH-SPEAKING KIDS, THEIR BUYING HABITS  
11 DIDN'T CHANGE A BIT.

12 THE FRENCH-CANADIAN KIDS THE SALES  
13 OF ALL THAT STUFF WENT RIGHT, RIGHT DOWN, BECAUSE  
14 THERE IS NO MORE ADVERTISING.

15 NOW, THIS IS A BIG-TIME GUY, HE  
16 KNOWS HIS STUFF. THIS IS HIS BUSINESS AND HE CAME  
17 IN HERE AND SAID, ALL OF THAT STUFF IS DESIGNED TO  
18 ATTRACT KIDS.

19 AND THAT WAS HIS TESTIMONY.

20 AND HE ALSO SAID THAT WITH NO KIDS,  
21 THEY DON'T HAVE A BUSINESS.

22 NOW, I GET A LAUGH OUT OF HEARING  
23 ELLEN MERLO COME IN HERE. AND I WILL JUST TELL  
24 YOU, I CONSIDER MYSELF RELATIVELY STREET SMART. I  
25 WON'T TRUST HER ANY FURTHER THAN I COULD THROW HER.  
26 I AM WITH ALL THOSE PEOPLE, I AM WITH THE AMERICAN  
27 LUNG ASSOCIATION.

28 THE COURT: COUNSEL, YOUR FINDINGS, YOUR

1 FINDINGS ABOUT WHO YOU BELIEVE AND WHO YOU DON' T  
2 BELIEVE ARE IRRELEVANT.

3 MR. PIUZE: I APOLOGIZE.

4 THE COURT: THANK YOU, SIR.

5 MR. PIUZE: I WILL CAST MY VOTE WITH THE  
6 AMERICAN LUNG ASSOCIATION, WITH THE COMMITTEE FOR  
7 TOBACCO-FREE KIDS, WITH THE ATTORNEY GENERAL OF  
8 THIS STATE AND WITH THE SCHOOL SUPERINTENDENT OF  
9 THIS STATE. I WILL CAST MY VOTES FOR THEM

10 SHE ADMITTED THEY WOULDN' T TRUST  
11 HER OR THE COMPANY ANY FURTHER THAN THEY COULD  
12 THROW THE COMPANY.

13 AND SO SHE CAME IN HERE WITH THIS  
14 FANCY CHART, PHILIP MORRIS COMES IN HERE WITH THIS  
15 FANCY CHART AND SAYS, LOOK AT THIS, WE HAVE GOT A  
16 NEW WAY OF DOING THIS NOW, AND WE HAVE GOT A  
17 SPECIAL PERSON OVER HERE AND THE SPECIAL PERSON' S  
18 JOB IS TO MAKE SURE KIDS DON' T SMOKE.

19 OH?

20 IT SORT OF REMINDS ME OF THE TIME  
21 THEY SET UP A COMMITTEE FOR TOBACCO RESEARCH BACK  
22 IN 1954 TO GET TO THE TRUTH OF THE MATTER.

23 YOU CAN SET UP AS MANY COMMITTEES,  
24 AS MANY POST, AS MANY PEOPLE AS THEY WANT.

25 IT' S SMOKE AND MIRRORS.

26 BUT WHAT' S HAPPENING HERE NOWADAYS,  
27 YOU HAVE HEARD HERE THAT TOBACCO ADVERTISING HAS  
28 BEEN BANNED FROM THE TUBE SINCE 1971. I TURNED ON

1 THE TELEVISION SET AND I SEE PHILIP MORRIS' S NAME  
2 ALL THE TIME.

3 WE KNOW THAT IN THE STATE THERE ARE  
4 TEXTBOOK COVERS THAT HAVE PHILIP MORRIS ON THEM  
5 MS. MERLO SAID, TRULY, YOU KNOW  
6 NOTHING HAPPENS BY ACCIDENT. IT DIDN' T HAPPEN BY  
7 ACCIDENT THAT THIS TEENY LITTLE COUNTRY COMPANY GOT  
8 INTO THE BIGGEST CONSUMER PRODUCTS COMPANY IN THE  
9 WORLD.

10 AND ONE OF THE REASONS IT ISN' T BY  
11 ACCIDENT IS BECAUSE THEY TEST -- THEY TEST MARKET  
12 THINGS. THEY POLL THINGS. THEY FOCUS GROUP  
13 THINGS, THEY TRY THINGS IN ADVANCE TO SEE HOW IT IS  
14 GOING TO WORK.

15 THIS TRIAL IS AN EXAMPLE.

16 SO SHE COMES IN AND SAYS, YOU KNOW  
17 WHEN WE HAVE BEEN ACTUALLY POLLING PEOPLE, TALKING  
18 TO PEOPLE, SOME PEOPLE ACTUALLY COME BACK AND SAY  
19 THEY HONESTLY BELIEVE WE ARE THE DEVIL.

20 AND SO I GOT A SERIES OF RHETORICAL  
21 QUESTIONS HERE.

22 IF THERE WAS A DOUBT, WOULD THE  
23 DEVIL CREATE SOMETHING AND GIVE IT TO PEOPLE THAT  
24 WOULD MAKE THEM VERY, VERY, VERY SICK, SLOWLY AND  
25 PAINFULLY AND KILL THEM?

26 AND IF THE ANSWER TO THAT QUESTION  
27 IS YES, GO TO THE NEXT QUESTION. IF THERE WAS A  
28 DEVIL, WOULD THE DEVIL MAKE THIS PRODUCT VERY

1 ATTRACTIVE TO YOUNG PEOPLE BY SAYING, LOOK HERE,  
2 YOU WANT TO BE A SUPER MDEL, LOOK AT HER, SHE  
3 SMDKES.

4 YOU WANT TO BE A FAMOUS ATHLETE,  
5 LOOK AT HIM, HE SMDKES.

6 YOU WANT TO BE TOUGH LIKE THAT  
7 COWBOY, LOOK AT HIM, HE SMDKES.

8 YOU WANT TO BE A MAN'S MAN OR A  
9 MARINE OR MACHO, LOOK AT HIM, HE SMDKES.

10 AND IF THE ANSWER TO THAT QUESTION  
11 IS YES, GO TO THE NEXT QUESTION.

12 IF THERE REALLY WAS A DEVIL, WOULD  
13 THE DEFENDANT MAKE THIS STUFF ADDICTIVE SO THAT  
14 AFTER YOU STARTED USING IT, YOU EITHER COULDN'T  
15 STOP OR WOULD HAVE A HARD, HARD TIME STOPPING.

16 DON'T FORGET, DR. BENOWITZ SAID  
17 THERE ARE SOME PEOPLE THAT CAN STOP. RARE. BUT  
18 THERE ARE.

19 AND IF THE ANSWER TO THAT IS YES,  
20 GO TO QUESTION NUMBER 4. IF THERE REALLY WAS A  
21 DEVIL, WOULDN'T THE DEVIL TAKE PLEASURE IN  
22 INSULTING PEOPLE BY CHARGING THEM MONEY FOR THIS  
23 PRODUCT?

24 AND IF THE ANSWER TO THAT ONE IS  
25 YES, GO TO QUESTION NUMBER 5 AND THERE'S ONLY TWO  
26 MORE, IF THERE REALLY, REALLY WAS A DEVIL, AND  
27 SOMEONE BLEW THE WHISTLE ON YOU AND SAID THAT STUFF  
28 KILLS, THAT STUFF WILL MAKE YOU SICK, THAT STUFF

1 WILL CAUSE LUNG CANCER, THAT STUFF IS ADDICTIVE, IF  
2 THERE REALLY WAS A DEVIL, WOULD THE DEVIL SAY, OH,  
3 NO, WE GOT TO STUDY IT SOME MORE, WE ARE NOT SURE  
4 ABOUT THAT, OUR SCIENTISTS SAY THAT MAYBE IT  
5 DOESN'T. WE NEED TO STUDY LONG, LONG, LONG-TERM  
6 AND IF THE ANSWER TO THAT QUESTION IS YES, IF THERE  
7 REALLY WAS A DEVIL, WOULD HE NAME THE PRESIDENT OF  
8 HIS COMPANY BIBLE?

9 SO HERE'S MR. BIBLE, WITH THIS  
10 INTRODUCTION.

11 IT'S FROM MINNESOTA. THIS WAS READ  
12 DURING THE TRIAL.

13 "HOW MANY WOULD HAVE TO DIE  
14 FROM SMOKING BEFORE YOU WOULD REASSESS  
15 YOUR DUTIES ONE? A HUNDRED? 5,000?  
16 HOW MANY, SIR?

17 "A WELL, I DON'T KNOW  
18 THAT ANYBODY DOES. SO I FIND THAT A  
19 VERY HARD ASSUMPTION TO MAKE."

20 NEXT QUESTION: THIS IS MR.  
21 CERISI.

22 "I DIDN'T ASK YOU THAT YET.  
23 WE WILL GET TO THAT. HOW MANY WOULD  
24 HAVE TO DIE FROM YOUR PRODUCT BEFORE  
25 YOU WOULD REASSESS YOUR DUTY?

26 "A I WOULD HAVE  
27 THOUGHT, IF YOU ARE FORCING ME TO SAY  
28 THAT SOMEBODY, I WOULD HAVE TO ASSUME

1           SOMEBODY DIED.  IF ONE PERSON DIED, I  
2           WOULD REASSESS MY DUTIES.

3                   "Q        SO IF ONE PERSON  
4           DIED FROM SMOKING THEN YOU REASSESS  
5           YOUR DUTIES; IS THAT CORRECT?

6                   "A        YES, I WOULD  
7           REASSESS MY DUTIES.  I WOULD LOOK AT  
8           ALL OF MY DUTIES.

9                   "Q        WOULD YOU SHUT DOWN  
10          YOUR BUSINESS IF ONE PERSON DIED?

11                  "A        WELL, THAT QUESTION  
12          HAS ACTUALLY BEEN ASKED OF ME  
13          PUBLICLY, AND AT THE TIME I SAID  
14          ' YES. ' "

15                   BUT THEN HE WENT ON TO CHANGE HIS  
16          STORY.

17                   "AND THE REASON OR ONE OF  
18          THE REASONS IS, I SUBSEQUENTLY  
19          CONCLUDED THAT PROBABLY WOULDN'T BE A  
20          VERY EFFECTIVE THING TO DO BECAUSE  
21          THERE'S QUITE A LARGE SUPPLY OF  
22          CIGARETTES IN THE SUPPLY LINE. "

23                   AND I WANT TO DISCUSS THAT.

24                   A CHART WAS SHOWN BY DR. PETO,  
25          ENGLISH, GENIUS, BRILLIANT, ONE OF DR. DOLL'S  
26          PEOPLE.  PROTEGE OF DR. DOLL.

27                   DR. FEINGOLD DREW THAT SAME CHART  
28          ON THIS BIG PIECE OF BROWN PAPER THAT WAS HERE WHEN

1 I SHOWED YOU.

2 AND IT'S NOT GOING TO BE IN THE  
3 JURY ROOM

4 WHAT THE BROWN CHART MEANS AND WHAT  
5 THE GRAPH MEANT AND WHAT WAS TESTIFIED TO IS THIS:  
6 THAT AS A PERSON CONTINUES TO SMOKE, THE PERSON'S  
7 RISK OF GETTING LUNG CANCER GOES UP. AND WHEN A  
8 PERSON STOPS SMOKING, IT NEVER GOES DOWN.

9 IT STAYS. OBVIOUSLY, ANYONE, EVEN  
10 IF THEY ARE 99 YEARS OLD, SHOULD QUIT.

11 BUT WHATEVER THE RISKS ARE, THEY  
12 NEVER GO BACKWARDS. IF A PERSON QUILTS AT 40, THE  
13 RISKS DON'T GO DOWN, 45, DON'T GO DOWN, 55, DON'T  
14 GO DOWN.

15 AND SO WHAT THIS MAN SAID ABOUT  
16 CIGARETTES AND THE PIPELINE, THERE'S NOT JUST  
17 PRODUCT IN THE PIPELINE, THERE'S DEATH AND DISEASE  
18 AND DESTRUCTION IN THE PIPELINE TOO.

19 AND FOR THOSE FORMER SMOKERS WHO  
20 HAVE QUIT, ANY TIME THEY START COUGHING, THEY GOT  
21 TO WONDER AND LOOK OVER THEIR SHOULDER AND SAY  
22 WHAT'S THAT?

23 SO WHAT HE SAID ABOUT THE PIPELINE  
24 ISN'T JUST PRODUCT, IT'S VICTIMS, VICTIMS IN THE  
25 PIPELINE. AND THAT IF THESE THINGS MAGICALLY  
26 DISAPPEARED TOMORROW, THERE WOULD STILL BE VICTIMS  
27 IN THE PIPELINE.

28 AND BACK TO THIS MAN AGAIN.

1 WE WERE TOLD ON MONDAY THAT THIS  
2 CASE IS ABOUT MONEY.

3 RIGHT. THIS CASE IS ABOUT MONEY.  
4 RIGHT. RIGHT. RIGHT.

5 THIS CASE HAS BEEN ABOUT MONEY  
6 SINCE 1950. THIS CASE HAS BEEN ABOUT MONEY SINCE  
7 1954. THIS CASE HAS BEEN ABOUT MONEY EVERY DAY,  
8 EVERY HOUR, EVERY MINUTE, EVER SINCE THEN.

9 AND THE LONGER THIS BALL IS KEPT IN  
10 THE AIR, IT'S FIVE BILLION BUCKS A YEAR NOW OFF OF  
11 DOMESTIC TOBACCO ALONE, FIVE BILLION BUCKS A YEAR.

12 SO YOU WANT TO DO MORE STUDIES,  
13 CARCHMAN WANTS TO START SOME NEW STUDIES OVERSEAS.  
14 WELL, GEE, TAKES 20, 30 YEARS FOR PEOPLE TO GET  
15 CANCER, WELL, IT MAY TAKE AWHILE FOR THOSE STUDIES.

16 YEP. STUDIES WERE NEEDED IN 1972,  
17 STUDIES WERE NEEDED IN 1984, STUDIES WERE NEEDED IN  
18 1990.

19 WHEN CAMPBELL WAS BEFORE CONGRESS,  
20 STUDIES WERE NEEDED. THAT'S RIGHT.

21 AND THE LONGER IT'S PUT OFF, STUDY,  
22 STUDY, STUDIES, THE CASH REGISTER KEEPS RINGING.

23 AND THERE'S A SCALE, NOTHING IN  
24 LIFE IS FREE, NOTHING IS FOR NOTHING.

25 CASH REGISTER RINGS, SOMETHING  
26 HAPPENS ON THE OTHER END.

27 JUST TAKE A LOOK AT THIS, PLEASE.  
28 THIS IS THE EASY PICKEN'S AND I WANT TO MAKE A

1 POINT THERE AND THEN MOVE ON.

2                   THIS IS MR. BIBLE. WE, IN THE  
3 LEGAL ARENA, WERE COMMITTED, WERE COMMITTING ALL OF  
4 OUR RESOURCES NECESSARY TO DEFEND THE COMPANY FROM  
5 NEW FORMS OF LITIGATION, MAKING SURE WE HAVE GOT  
6 BETTER FIRE POWER THAN OUR FOES, NO MATTER HOW  
7 FORMIDABLE.

8                   IN THE NEW CLASS ACTION SUITS AND  
9 STATE MEDICAID CASES WE BELIEVE THE LAW CONTINUES  
10 TO BE ON OUR SIDE. ALTHOUGH THESE NEW CASES POSE  
11 DIFFICULT CHALLENGES, WE SHOULD ULTIMATELY PREVAIL  
12 ON THEM, JUST AS WE HAVE BEEN SUCCESSFUL IN OTHER  
13 TYPES OF CASES OVER THE LAST 40 YEARS.

14                   IT IS IMPORTANT TO NOTE HERE THAT  
15 THE TOBACCO INDUSTRY HAS NEVER LOST OR PAID TO  
16 SETTLE A CASE. BEYOND DEFENDING OURSELVES, WE ARE  
17 TURNING THE LEGAL TABLES AND SOME OF THOSE WHO  
18 ATTACK US, WE ARE GOING ON THE OFFENSIVE TO  
19 VINDICATE OUR RIGHTS TO MAKE IT CLEAR THAT THE  
20 CURRENT NOTIONS OF POLITICAL CORRECTNESS CANNOT BE  
21 USED TO JUSTIFY UNLAWFUL CONDUCT THAT ABRIDGES  
22 THOSE RIGHTS.

23                   WE' RE USING -- EXCUSE ME, WE' RE  
24 USING THE E. P. A. OVER, SUING STATE AND LOCAL  
25 GOVERNMENTS, SUING ABC.

26                   SO YOU WERE TOLD THIS MORNING BY  
27 PHILIP MORRIS' S ATTORNEY, THAT THEY PAID THEIR WAY  
28 OUT OF THE STATE' S ATTORNEY GENERAL CASES.

1                   OKAY.

2                   AND YOU WERE TOLD BY DOCTOR --  
3 EXCUSE ME -- MR. JOHNSON, WITH NO CONTRADICTION OF  
4 ANY KIND, THAT AFTER THEY BOUGHT THEIR WAY OUT OF  
5 THE STATE'S ATTORNEY GENERAL CASES, THEIR PROFITS  
6 WENT UP, UP, UP.

7                   TO THIS, THAT WAS THE PROFITS FOR  
8 THE LAST YEAR. AT THE END OF THIS CASE, I AM GOING  
9 TO BE, THE END OF THIS CASE IS COMING, BUT REMEMBER  
10 IN MY REBUTTAL I AM GOING TO BE TALKING DAMAGES AND  
11 ONE OF THE COMPONENTS OF THE DAMAGES IS THE  
12 PUNITIVE DAMAGES.

13                  AND WHEN I PUT THIS DOWN, I AM NOT  
14 GOING TO PICK THEM UP AGAIN. BUT I JUST WANT YOU  
15 TO KNOW THAT IN ASSESSING PUNITIVE OR EXEMPLARY  
16 DAMAGES, THE WEALTH OF THE DEFENDANT MUST BE TAKEN  
17 INTO ACCOUNT.

18                  BECAUSE OBVIOUSLY, WHAT'S PROPER  
19 PUNISHMENT FOR MY 17-YEAR-OLD DAUGHTER WOULD BE THE  
20 MEREST SLAP ON THE WRIST FOR ME AND WOULD NOT EVEN  
21 BE A GNAT LANDING ON PHILIP MORRIS'S ARM

22                  TAKING AWAY A WEEK'S ALLOWANCE FROM  
23 HIGH 17-YEAR-OLD DAUGHTER FOR A MINOR  
24 TRANSGRESSION, WOULDN'T REALLY FIT WHAT HAPPENED  
25 HERE.

26                  WHEN THIS GOES DOWN, I AM NOT  
27 PICKING IT UP AGAIN, BUT I WOULD LIKE TO MAKE A  
28 POINT FIRST.

1 THE PUNITIVE AND EXEMPLARY DAMAGES  
2 SHOULD BE ASSESSED AGAINST THE DOMESTIC TOBACCO  
3 COMPANY ONLY.

4 IT IS THE FINANCIAL CONDITION OF  
5 THE DOMESTIC TOBACCO COMPANY ONLY THAT WE ARE  
6 CONCERNED ABOUT.

7 IT IS NOT THE FINANCIAL CONDITION  
8 OF THE -- I WANT TO SAY PARENT, BUT "PARENTS" IS A  
9 BAD WORD BECAUSE THE CHILD IN THIS CASE, BEGAT THE  
10 PARENT.

11 THE UMBRELLA COMPANY, LET'S SAY, WE  
12 ARE NOT INTERESTED IN THOSE FINANCIAL NUMBERS. WE  
13 ARE INTERESTED IN THE DOMESTIC TOBACCO COMPANY'S  
14 NUMBERS ONLY.

15 WHICH BRINGS ME TO THIS.

16 THAT'S WHAT'S HAPPENED SINCE THE  
17 '70'S. IT'S CLOSE TO TRIPLE. TWO SOMETHING. NOT  
18 QUITE TRIPLE. BUT THAT'S THE DETERRENT EFFECT.  
19 THE DETERRENT, SO IT WON'T HAPPEN AGAIN IN THE  
20 FUTURE.

21 THAT'S THE DETERRENT EFFECT THAT  
22 THOSE SETTLEMENTS HAD ON THIS COMPANY. NADA.

23 I AM NOT A BIG NOTE GUY, BUT THERE  
24 ARE CERTAIN THINGS THAT WERE SAID ON THE DEFENSE  
25 CLOSING THAT I FEEL I HAVE TO RESPOND TO.

26 THE FACT THAT I ONLY OBJECTED  
27 TWICE, THAT DOESN'T MEAN THAT THOSE ARE THE ONLY  
28 TWO TIMES I DISAGREED WITH WHAT WAS BEING SAID,

1 BELIEVE ME. THERE ARE CERTAIN RULES OF THE ROAD  
2 HERE. THAT'S FINE. I ONLY SPOKE UP TWICE.

3 THE FACT THAT I DIDN'T, CERTAINLY  
4 DOESN'T MEAN THAT I AGREE WITH MOST OF THE STUFF  
5 THAT WAS SAID.

6 SO LET'S START WITH DR. CARCHMAN  
7 CAME IN AND TOLD US CIGARETTES ARE DANGEROUS AND  
8 RISKY. HE DID.

9 THIS IS THE NEW PHILIP MORRIS  
10 TALKING.

11 DANGEROUS WAS NEVER, EVER USED OUT  
12 OF PHILIP MORRIS'S MOUTH ABOUT CIGARETTES UNTIL A  
13 YEAR AGO. EVER. EVER.

14 THEY SPENT HUNDREDS OF MILLIONS AND  
15 BILLIONS OF DOLLARS PUTTING OUT ADVERTISING IMAGES  
16 TO THE EXACT CONTRARY AND THE FACT THAT THEY COME  
17 IN NOW, CHASTISED AFTER BEING BEAT UP, SLAPPED  
18 AROUND, RUN TO GROUND, AND SAY, DANGEROUS, THAT  
19 AIN'T THE WAY IT USED TO BE AND THAT ISN'T WHAT  
20 THEY USED TO SAY, NEVER BEEN HEARD BEFORE.

21 THIS IS A NEW PHILIP MORRIS.

22 AND DR. CARCHMAN CAME IN HERE AND  
23 SAID, CIGARETTES WERE RISKY. NOW, THAT WAS  
24 SOMETHING THAT WAS INVENTED FOR THE '90'S. THAT  
25 WAS A HALF STEP.

26 THAT WAS WAY TOO LATE FOR RICHARD  
27 BOEKEN. IT WAS WAY, WAY TOO LATE FOR PLENTY OF  
28 OTHER PEOPLE.

1                   AND "RISKY" IS A PRETTY AMBIGUOUS  
2 TERM TOO.

3                   NOW, RIGHT OFF THE BAT, LAST  
4 FRIDAY, THERE WAS AN ATTACK ON MR. BOEKEN, AN  
5 ATTACK ON HIS CHARACTER, AN ATTACK ON WHAT HE SAID,  
6 AND I JUST WANT TO -- THIS WAS THE DIRECT  
7 EXAMINATION. THIS IS TWO DAYS' WORTH OF STUFF.

8                   AND I ASKED HIM QUESTIONS. AND I  
9 WOULD JUST LIKE TO SHARE A LITTLE BIT OF THIS WITH  
10 YOU.

11                  BEFORE I READ THAT, I AM GOING TO  
12 SHARE ONE OTHER PART THAT I HAVEN'T -- AM I TALKING  
13 TOO LONG -- THAT I HAVEN'T, I AM NOT GOING TO READ.

14                  SOME OF YOU WILL KNOW, SOME OF YOU  
15 WILL REMEMBER, SOME OF YOU WON'T HAVE ANY PERSONAL  
16 KNOWLEDGE, BUT THIS IS WHAT IT'S LIKE TO BE  
17 ADDICTED TO CIGARETTES AND THIS IS WHAT HE TOLD US  
18 IN THE DEPOSITION.

19                  WAKE UP IN THE MORNING, THE FIRST  
20 THING YOU DO IS YOU REACH, AND WHEN YOUR HAND LANDS  
21 ON A CIGARETTE, IT IS NOT A MISTAKE, BECAUSE THE  
22 LAST THING YOU DID LAST NIGHT WAS PUT THEM THERE  
23 WHEN YOU HAD YOUR LAST BUTT.

24                  AND AFTER YOU GET OUT OF THE  
25 SHOWER, AND WHILE YOU ARE SHAVING, YOU HAVE A  
26 CIGARETTE.

27                  AND WHEN YOU HAVE THAT FIRST CUP OF  
28 COFFEE, YOU HAVE GOT TO HAVE A CIGARETTE.

1                   AND ANY TIME THERE' S FOOD AROUND,  
2 YOU SOMETIMES INTERRUPT YOUR FOOD TO HAVE A  
3 CIGARETTE.

4                   YOU CAN HAVE A CIGARETTE BETWEEN  
5 COURSES, HAVE A CIGARETTE WHILE YOU ARE EATING.

6                   HAVE A CIGARETTE AFTER SEX. YOU  
7 HAVE A CIGARETTE WITH DESSERT.

8                   CIGARETTES MUST BE HAD.

9                   THAT' S WHAT HE SAYS.

10                  WHAT DID THEY SAY?

11                  THEY EQUATED IN ONE OF THESE  
12 DOCUMENTS YOU ARE GOING TO HAVE FOR EVIDENCE,  
13 CIGARETTES ARE AS IMPORTANT AS EATING AND  
14 COPULATING.

15                  AND WHAT DID ONE OF THEIR  
16 COMMERCIALS SAY, THEIR FIRST COMMERCIAL, THE TOUGH  
17 GUY WITH THE CAR, THE MECHANIC?

18                  "SOMETIMES I FORGET TO EAT, BUT I  
19 NEVER FORGET MY MARLBOROS. "

20                  YOU KNOW WHAT, IT' S TRUE. IT' S A  
21 POWERFUL, POWERFUL, POWERFUL, ADDICTIVE THING.

22                  ANYWAY, HERE' S MR. BOEKEN, WHEN HE  
23 WAS 15 AND 16 AND HE HAD BRONCHITIS, HE WAS AWARE  
24 THAT A LOT OF PEOPLE CLAIMED THAT THE AIR IN LOS  
25 ANGELES WOULD CAUSE IT.

26                  SMDG WAS REALLY BAD AND CONSIDERED  
27 REALLY HARMFUL.

28                  PEOPLE POINTED TO THE SMDG. AND

1 WHEN HE WAS 15 AND 16 AND FIRST HEARD HE HAD  
2 BRONCHITIS, HE DID NOT THINK THAT SMOKING CAUSED  
3 IT. AND HE HAD NOT HEARD THAT.

4 HE IS 15 AND 16. IT'S 1959, 1960.

5 AND HERE'S MR. BOEKEN AGAIN. DON'T  
6 FORGET, THIS IS THE GUY WHO THIS FINAL ARGUMENT WAS  
7 DESIGNED TO SHOW YOU. HE MUST BE FULL OF IT  
8 BECAUSE HE SAID, HE HAD NEVER EVER, EVER HEARD THAT  
9 CIGARETTES WERE HARMFUL TO YOU UNTIL 1994.

10 OF COURSE, HE NEVER SAID ANY SUCH  
11 THING.

12 I RECALL THAT THERE WAS NEWS THAT  
13 THE CIGARETTE COMPANIES HAD BEEN REQUIRED TO PUT ON  
14 A WARNING. BY THE GOVERNMENT, THE SURGEON GENERAL,  
15 HAD PUSHED IT THROUGH AND HAD TO PUT A WARNING ON  
16 THE SIDE OF CIGARETTES.

17 HE THOUGHT IT WAS POLITICAL MORE  
18 THAN ANYTHING ELSE.

19 HE THOUGHT IT WAS POLITICAL, IT WAS  
20 THE GOVERNMENT, THE SURGEON GENERAL WAS ON A  
21 VENDETTA OF HIS OWN PERSONAL STRIDE, HE  
22 ACCOMPLISHED THIS SMALL FETE. THAT'S WHAT I  
23 BELIEVE.

24 I BELIEVE THE CIGARETTE  
25 ADVERTISEMENTS, I MEAN, DIDN'T THINK THERE WAS  
26 ANYTHING WRONG. I BELIEVED THEY WERE GOOD FOR YOU.  
27 I BELIEVED EVERYONE SMOKED THEM BACK IN THE '60'S;  
28 RIGHT. I DID NOT BELIEVE THEY WERE UNHEALTHY.

1 DID YOU GET INFORMATION FROM THE  
2 TOBACCO COMPANIES THAT THEY THOUGHT THE SURGEON  
3 GENERAL WAS ALL WET AND THERE WAS NO PROOF  
4 WHATSOEVER THAT CIGARETTES CAUSED ANY ILL-EFFECT TO  
5 YOUR HEALTH?

6 SURE.

7 FROM THE NEWS, I AM AN ADVOCATE OF  
8 FOLLOWING THE NEWS.

9 CERTAINLY MR. BOEKEN, CERTAINLY,  
10 MR. BOEKEN, YOU SAY YOU ARE A SMART FELLOW AND I  
11 BELIEVE YOU. YOU ARE AWARE, AT LEAST DURING THE  
12 1970'S, THAT EARLY, AT LEAST, THERE WAS SOME SORT  
13 OF A CONTROVERSY ABOUT WHETHER OR NOT SMOKING WAS  
14 TRULY BAD FOR YOU, AND HE SAYS YES.

15 AND HE WAS ASKED IF HE CAME INTO  
16 RECEIPT OF INFORMATION FROM THE TOBACCO INDUSTRY,  
17 WHICH ADDRESSED THE SURGEON GENERAL'S WARNINGS.

18 AND THERE ARE A COUPLE OF  
19 OBJECTIONS IN HERE -- HERE, I AM GOING TO READ  
20 THIS.

21 HE RECEIVED INFORMATION THAT IT WAS  
22 NOT HARMFUL. IT WAS NOT ADDICTIVE. IT DID NOT  
23 CAUSE HEALTH HAZARDS. THERE WAS NO PROOF OR  
24 SCIENTIFIC FACT THAT IT CAUSES CANCER. DOES ANY OF  
25 THIS SOUND FAMILIAR?

26 OR EMPHYSEMA OR ANY LUNG OR BLOOD  
27 DISEASES.

28 FOR ANY REASONS THAT HAVE TO DO

1 WITH YOU AS A PERSON, ARE YOU TYPICALLY SUSPICIOUS  
2 OF BIG INDUSTRY, DO YOU USUALLY TRUST THEM?

3 I AM MESSING UP. THIS ISN'T AN ACT  
4 QUOTE.

5 DO YOU GENERALLY TRUST BIG  
6 INDUSTRY? HE SAID HE GENERALLY TRUSTS.

7 HERE'S AN OBJECTION.

8 HE BELIEVED THAT WHEN THEY SAID IT  
9 WASN'T THAT LARGE A HEALTH HAZARD, THAT IT WAS, AS  
10 FAR AS ADDICTIVENESS, THEY KNEW IT HAD AN ADDICTION  
11 TO IT. I WAS ADDICTED.

12 BUT I BELIEVED THEIR STATEMENTS,  
13 THERE WAS NO HEALTH RISK. AND HE TELLS ME AGAIN I  
14 AM NOT SURE WHAT YEAR I AM DEALING WITH NOW.

15 HERE'S A LITTLE QUESTION. I KNOW  
16 YOU HAVE GOT AN EXCUSE THAT YOU DIDN'T SLEEP LAST  
17 NIGHT AND YOU GOT CHEMOTHERAPY AND EVERYTHING AND I  
18 ACCEPT THE EXCUSE. BUT THAT WASN'T MY QUESTION.

19 YOU HAVE ALREADY TOLD US ABOUT THE  
20 INFORMATION THAT YOU RECEIVED FROM THE NEWS MEDIA,  
21 GIVEN THE TOBACCO INDUSTRY'S THOUGHT ON WHETHER OR  
22 NOT THE PRODUCT WAS HARMFUL, JUST SO WE HAVE A  
23 CLEAR RECORD, WAS IT YOUR UNDERSTANDING BACK IN THE  
24 '70'S, THAT THE TOBACCO INDUSTRY AGREED THAT THEIR  
25 PRODUCT WAS HARMFUL, THAT THEY DISAGREED THAT THEIR  
26 PRODUCT WAS HARMFUL, OR THAT THEY WERE SCRATCHING  
27 THEIR HEAD AND SAYING, GEE WHIZ, WE DON'T KNOW.

28 AND HE SAID THEY DISAGREED THAT THE

1 PRODUCT WAS HARMFUL. HE BELIEVED THEM AND HE  
2 RELIED UPON THEM

3 SO THIS CASE GOES TO THE JURY, GOES  
4 TO YOU, LADIES AND GENTLEMEN, ON, I THINK, SIX  
5 DIFFERENT THEORIES. EXCEPT FOR TWO, THEY ARE ALL  
6 DIFFERENT KINDS OF FRAUD.

7 I AM NOT GOING TO SHOW YOU  
8 ANYTHING. I AM NOT GOING TO READ YOU ANYTHING.

9 THOSE THINGS ARE NOT BAD AS FAR AS  
10 SOME OF THESE LEGAL INSTRUCTIONS GET A LITTLE  
11 THICK. THESE AREN'T BAD. BUT THE BOTTOM LINE TO  
12 ALL THOSE INSTRUCTIONS, I COULDN'T DO IT ANY BETTER  
13 THAN MR. LEITER DID THIS MORNING, MUST HAVE BEEN A  
14 REPRESENTATION MADE TO FOOL ME.

15 YOU KNOW WHAT, I AM GOING TO GO  
16 WITH THAT TRANSLATION OF ALL OF THOSE FRAUD JURY  
17 INSTRUCTIONS.

18 PHILIP MORRIS MUST HAVE MADE A  
19 REPRESENTATION TO FOOL PEOPLE.

20 AND, GEE, HAVEN'T THEY ADMITTED IT,  
21 DON'T ALL THESE DOCUMENTS ADMIT IT?

22 DIDN'T THEY LIE?

23 THEY MADE A REPRESENTATION TO FOOL  
24 PEOPLE SO PEOPLE WOULD BUY THEIR DARN PRODUCT SO  
25 THAT THEY CAN BE FILTHY RICH.

26 THE TEN MINUTES WE USED THIS  
27 MORNING TO DISCUSS THIS C. T. R. THING, SOMETHING I  
28 DON'T REALLY WANT TO TALK ABOUT A WHOLE LOT, AND I

1 WANT YOU TO REMEMBER DOCUMENT NUMBER 331, I WOULD  
2 APPRECIATE IT IF SOMEONE WOULD WRITE THAT DOWN  
3 BECAUSE THIS IS THE ONE DOCUMENT THAT DR. HOSHIZAKI  
4 WAS HERE, NO ONE HAD EVER SHOWN HER THIS PARTICULAR  
5 DOCUMENT AND THIS DOCUMENT IS A PHILIP MORRIS  
6 DOCUMENT, COMES RIGHT OUT OF THEIR FILES.

7 AND LOOK AT THE NAMES, SELIGMAN,  
8 BOWLING. BOWLING IS THE GUY ON ONE OF THOSE VIDEO  
9 TAPES WHO SAYS THAT, GEE, NO ONE KNOWS WHAT CAUSES  
10 CANCER, MAYBE THE AIR IN NEW YORK CITY THAT CAUSES  
11 CANCER.

12 THIS IS 1976, AND WE DON'T KNOW  
13 WHAT CAUSES CANCER. IT'S PROBABLY THE AIR THAT WE  
14 BREATHE.

15 ARE YOU LISTENING, MR. BOEKEN.

16 SELIGMAN WAS THE TOP DOG OVER AT  
17 RESEARCH AND DEVELOPMENT WHO GOT ALL THESE NICE  
18 MEMOS ABOUT DESTROYING DOCUMENTS.

19 TOM OSDENE, DIRECTOR OF RESEARCH.  
20 AND IN 1978 NOW, 14 YEARS AFTER THESE ORGANIZATIONS  
21 HAD BEEN CREATED, LET'S STOP, WHY AM I SPENDING A  
22 LITTLE BIT OF TIME ON THIS?

23 WELL, THERE ARE A COUPLE JURY  
24 INSTRUCTIONS THAT DEAL WITH CONSPIRACY. ONE  
25 CONSPIRATOR'S ACTS ARE ANOTHER CONSPIRATOR'S ACTS.

26 IF THERE WAS A REAL CONSPIRACY AND  
27 ONE DID IT AND ONE DID IT, THAT'S WHAT THOSE  
28 INSTRUCTIONS SAY, I AM NOT GOING TO PUT THEM UP AND

1 SPEND ANY TIME ON IT.  
2                   WHAT WAS THE CAST OF CHARACTERS?  
3 PLEASE LOOK AT THE FRANK STATEMENT. LOOK DOWN ON  
4 THE LOWER LEFT-HAND CORNER. THAT WAS THEIR COMING  
5 OUT ANNOUNCEMENT.  
6                   THAT WAS A HILL & KNOWLTON  
7 ANNOUNCEMENT.  
8                   HERE WE ARE, YOUR HEALTH IS OF  
9 PARAMOUNT IMPORTANCE TO US.  
10                  AND NOTHING HAS EVER BEEN PROVED.  
11                  PHILIP MORRIS WAS RIGHT THERE IN  
12 THAT MEMO.  
13                  AND REYNOLDS AND LIGGETT, THEY WERE  
14 ALL THERE.  
15                  THEY WERE ALL PART OF IT.  
16                  AND SO THEY CREATED THIS T. I. R. C. ,  
17 THEY DIDN'T HAVE TO SPEAK FOR THEMSELVES BECAUSE  
18 THEY COULD SPEAK FOR THE T. I. R. C. AND THEY COULD  
19 KEEP THEIR MOUTH SHUT AND STAND IN THE BACKGROUND  
20 AND HAVE T. I. R. C. TALK FOR THEM  
21                  T. I. R. C. BECAME C. T. R. AND  
22 T. I. R. C. SPUN OFF T. I. AND THIS SOUNDS LIKE  
23 MILITARY TALK.  
24                  BUT THEY WERE ALL MEMBERS OF IT.  
25 THEY, MEANING THE TOBACCO COMPANIES, PAID FOR THESE  
26 ORGANIZATIONS. THEY PAID THESE ORGANIZATIONS TO  
27 TAKE CARE OF THEM AND LET'S SEE WHAT THEY DID.  
28                  AND UNFORTUNATELY, AS WITH SO MANY

1 OF THESE MEMOS, AT THE OUTSET, NO WRITTEN RECORDS,  
2 DON'T DISTRIBUTE ANYTHING, ONE FOR YOUR FILES ONLY.

3 NOW CAN I SAY IT ANY BETTER THAN  
4 MR. SELIGMAN SAID, AS A MEANS OF INTRODUCTION, SO  
5 AND SO DESCRIBED THE HISTORY, PARTICULARLY IN  
6 RELATION TO C. T. R. , IT BEGAN AS AN ORGANIZATION  
7 CALLED TOBACCO INDUSTRY RESEARCH COUNCIL. IT WAS  
8 SET UP AS AN INDUSTRY SHIELD IN 1954.

9 THAT WAS THE YEAR STATISTICAL  
10 ACCUSATIONS RELATING SMOKING TO DISEASE WERE  
11 LEVELED AT THE INDUSTRY.

12 LITIGATION BEGAN, THE WYNDER,  
13 GRAHAM REPORTS WERE ISSUED.

14 C. T. R. HAS HELPED OUR LEGAL  
15 COUNSEL -- THE SCIENTIFIC, THE SCIENTIFIC,  
16 SCIENTIFIC, WE ARE GOING TO FIND OUT WHETHER THIS  
17 STUFF IS REALLY GOOD OR NOT. WE ARE GOING TO FIND  
18 OUT IF IT'S REALLY BAD OR NOT. WE ARE GOING TO  
19 FIND OUT IF DR. DOLL KNOWS WHAT HE IS REALLY  
20 TALKING ABOUT.

21 C. T. R. HAS HELPED OUR LEGAL COUNSEL  
22 BY GIVING ADVICE AND TECHNICAL INFORMATION WHICH IS  
23 NEEDED AT COURT TRIALS.

24 C. T. R. HAS SUPPLIED SPOKESMEN FOR  
25 THE INDUSTRY AND CONGRESSIONAL HEARINGS.

26 REMEMBER THAT 1984 THING?  
27 WE HAVE 39 SCIENTISTS.

28 AND THESE 39 SCIENTISTS IN 1984 ARE

1 STILL TRYING TO FIGURE OUT WHAT THEY WERE SETTING  
2 UP TO DO IN 1954.

3 THE MONEY SPENT AT C. T. R. PROVIDES  
4 A BASIS FOR INTRODUCTION OF WITNESSES.

5 BLANK FEELS THAT, QUOTE, SPECIAL  
6 PROJECTS, CLOSE QUOTES, ARE THE BEST WAY MONIES ARE  
7 SPENT.

8 ON THESE PROJECTS, C. T. R. HAS ACTED  
9 AS A FRONT.

10 BUT GEE WHIZ, EVERY ONCE IN AWHILE,  
11 THEY ARE RELUCTANT TO SERVE THAT WAY. AND IN RARE  
12 INSTANCES, THEY REFUSED TO DO IT.

13 THERE ARE EXTRAORDINARILY  
14 DISTURBING DOCUMENTS THAT I AM NOT GOING TO PUT UP  
15 THERE, THAT YOU HAVE GOT, THAT TALK ABOUT THE  
16 LAWYERS RUNNING THE SCIENCE.

17 INSTEAD OF USING SCIENCE TO TRY TO  
18 STOP FROM KILLING PEOPLE, THE LAWYERS PREVENT THE  
19 SCIENCE TO TRY TO STOP FROM LOSING CASES.

20 PEOPLE'S LIVES VERSUS LITIGATION.

21 SCIENCE WAS THERE, AND THE LAWYERS  
22 PUT SCIENCE ON HOLD, AND PREVENTED THINGS FROM  
23 BEING DONE BECAUSE IT MIGHT MESS UP THEIR  
24 LITIGATION POSITION.

25 NOW, I HAVE USED THE WORD  
26 DISGUSTING. I USED THE WORD "DISGUSTING" BECAUSE I  
27 AM TRYING TO BE VERY, VERY POLITE HERE AND TRYING  
28 TO BE VERY, VERY LOW KEY THROUGHOUT THIS TRIAL.

1 BUT THAT WAS DISGUSTING.

2 AND YOUR HONOR, I HAVE GOT ENOUGH  
3 THAT I THINK WE SHOULD TAKE A LITTLE BREAK HERE, IF  
4 THE COURT DOESN' T MIND.

5 THE COURT: ALL RIGHT, VERY WELL. IT' S  
6 NOW QUARTER TIL. WE WILL TAKE A BREAK UNTIL 3  
7 O' CLOCK. DON' T DISCUSS THE CASE WITH ANYONE.

8

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

11

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

15

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

18

MR. PIUZE.

19

20 CLOSING ARGUMENT (CONTINUED)

21

22 BY MR. PIUZE:

23 SO THIS IS OCTOBER 1969. AND YOU  
24 RECOGNIZE WAKEHAM S NAME. SO YOU KNOW THIS IS A  
25 PHILIP MORRIS DOCUMENT. AND MR. WAKEHAM, ON BEHALF  
26 OF PHILIP MORRIS SAYS, "32 YEARS AGO WHAT I JUST  
27 FINISHED SAYING, UNFORTUNATELY, THE SCIENTIFIC  
28 EXPERTISE OF THE INDUSTRY, BECAUSE OF THE LIABILITY

1 SUIT SITUATION, HAS NOT BEEN PERMITTED TO MAKE  
2 CONTRIBUTION TO THE PROBLEM A CONTRIBUTION WHICH  
3 I BELIEVE WAS AND IS VITAL. "

4 AND SO THE FEAR SOMEONE LIKE ME  
5 REPRESENTING SOMEONE LIKE MR. BOEKEN, IN FRONT OF  
6 SOME PEOPLE LIKE YOU, HAVE KEPT THIS INDUSTRY FROM  
7 DOING SCIENTIFIC RESEARCH, BECAUSE THESE PEOPLE  
8 KNEW WHAT THE TRUTH WAS.

9 ONE OF THE DOCUMENTS THAT WAS BLOWN  
10 UP, WE HAVE A SMALL VERSION OF IT AND IS GOES UP TO  
11 1980, SUBJECTS TO AVOID, CAUSES OF CANCER, CAUSES  
12 OF CANCER IN HUMANS.

13 THIS IS BEYOND THE OSTRICH  
14 APPROACH.

15 STUFF LIKE THIS IS SO FAR OFF THE  
16 CHART, THIS SHOULD NEVER, EVER, BE ALLOWED TO  
17 HAPPEN AGAIN. FORGET THE TOBACCO INDUSTRY. ANY  
18 INDUSTRY, ANY TIME.

19 I STARTED OFF THIS AFTERNOON' S  
20 SEGMENT, AND I PUT SOMETHING UP THERE FROM PHILIP  
21 MORRIS OR THE TOBACCO INDUSTRY, I FORGET WHICH, AND  
22 I SAID, GEE, OUR DEFENSE OF FREE CHOICE IS DOWN THE  
23 TUBES, IF WE THINK ABOUT THE FACT THAT THIS PRODUCT  
24 IS ADDICTIVE.

25 SO THAT' S WHAT THE DEFENDANT HAD TO  
26 SAY, WHETHER DIRECTLY OR THROUGH ITS COCONSPIRATOR.

27 HERE' S WHAT DR. BENOWITZ HAD TO  
28 SAY.

1 I WANT TO TAKE A MINUTE ON  
2 DR. BENOWITZ. I WANT TO TAKE THREE.  
3 THIS IS THE PUBLIC HEALTH SEGMENT  
4 OF OUR SOCIETY TALKING HERE.  
5 THIS IS AS HIGHLY RESPECTED A  
6 PERSON AS YOU WILL FIND ANYWHERE IN THE WORLD.  
7 IF THERE'S ANYONE IN THE RUNNING  
8 WITH HIM, IT'S DR. DOLL.  
9 JUST SO I DON'T FORGET, DR. DOLL'S,  
10 A LITTLE BIT OF HIS TESTIMONY WAS TAKEN OUT OF  
11 CONTEXT HERE.  
12 HE SAID, YEAH, LIGHTER CIGARETTES  
13 ARE BETTER WHEN YOU COMPARE THE '60'S CIGARETTES  
14 NOT 1930'S CIGARETTES, DON'T FORGET THOSE '30'S  
15 CIGARETTES WERE SENT IN TO HIM FROM PEOPLE AROUND  
16 THE COUNTRY OF ENGLAND BECAUSE HE COULDN'T GET ANY  
17 FOR RESEARCH. BUT WE AIN'T COMPARING '60  
18 CIGARETTES TO '30 CIGARETTES. WE ARE COMPARING  
19 '60'S, SO-CALLED LIGHT CIGARETTES, TO '60'S, NOT SO  
20 LIGHT CIGARETTES. THAT'S THE COMPARISON.  
21 AND THAT'S THE COMPARISON THAT  
22 SHOULD BE DRAWN.  
23 AND THAT'S THE COMPARISON THERE  
24 SHOULD HAVE BEEN AN INSTRUCTION ON, 1930 CIGARETTES  
25 THAT SOMEONE DUG OUT OF THEIR SELLER BECAUSE THEY  
26 COULDN'T FIND ANY RESEARCH.  
27 ANYWAY, HERE'S NEAL BENOWITZ. NEAL  
28 BENOWITZ SAYS 15 PERCENT OF LONG-TERM MALE SMOKERS

1 WILL GET LUNG CANCER. PEOPLE WHO ARE ADDICTED TO  
2 NICOTINE DO NOT HAVE ANY CLUE ABOUT HOW DANGEROUS  
3 THIS REALLY IS. THEY HAVE GOT NO CLUE ABOUT HOW  
4 MANY PEOPLE DIE, THEY HAVE NO CLUE ABOUT WHAT  
5 PERCENTAGE OF POPULATION GETS LUNG CANCER.

6                   THEY GOT NO IDEA WHAT THE ABSOLUTE  
7 RISKS ARE.

8                   SMOKERS TEND TO MINIMIZE THE RISKS.  
9 THEY MAY ACKNOWLEDGE IT IN GENERAL BUT THEY SAY,  
10 FOR ME, I KNOW I AM NOT -- IT IS GOING TO BE ALL  
11 RIGHT, IT'S OKAY FOR ME TO DO THIS. HE CALLED IT A  
12 RATIONALIZATION AND SAID SOMEONE WHO IS ADDICTED TO  
13 A DRUG WILL KEEP ON USING IT. THEY WILL EMBRACE  
14 ANY IDEA OR ANY REASON. AND HE IS SHOWN THE ROPER  
15 EXHIBIT HERE, EXHIBIT 3 30.

16                   AND HE'S ASKED, YOU KNOW WHAT -- I  
17 AM GOING TO DO THIS IN THE SECOND VOLUME. HE'S  
18 ASKED:

19                   "Q       DOES ADDICTION  
20       INTERFERE WITH AN INDIVIDUAL PERSON'S  
21       PERCEPTION OF THE RISK?"

22                   AND HE SAYS:

23                   "IT IS TRUE OF ANY DRUG. IF  
24       A PERSON DESIRES TO KEEP USING THE  
25       DRUG, AND IF THERE ARE REASONS WHY  
26       THEY SHOULDN'T, HEALTH CONCERNS, THEN  
27       THE PERSON WILL LOOK TO MINIMIZE THE  
28       HEALTH RISKS.

1                   "SO EVEN IF HE SAW SOMETHING  
2           WHERE THERE WAS INFORMATION -- "  
3           EXCUSE ME, "SO IF YOU SEE SOMETHING  
4           THAT HAS INFORMATION TO THE OPPOSITE,  
5           YOU' LL SEIZE ON IT. IF SOMEONE TELLS  
6           YOU, WELL, I SMOKED FOR A LONG TIME  
7           AND IT DIDN' T HURT ME, YOU' LL SEIZE ON  
8           THAT. IF SOMEONE SAYS, AS LONG AS YOU  
9           DON' T FEEL SICK, YOU CAN KEEP SMOKING.

10                   "ANYTHING THAT ALLOWS YOU TO  
11           KEEP TAKING THE DRUG, YOU WILL SEIZE  
12           UPON IT, AND THAT, IN A SENSE, IS  
13           MINIMIZING THE RISK. AND THIS HAS  
14           BEEN STUDIED BY ASKING SMOKERS HOW  
15           HAZARDOUS THEY THINK SMOKING IS. AND  
16           MOST SMOKERS THINK THAT, ONE, IT' S  
17           MORE HAZARDOUS FOR SOMEONE ELSE, THEY  
18           DON' T HAVE AN ACCURATE IDEA HOW  
19           HAZARDOUS IT IS COMPARED TO OTHER  
20           THINGS, OTHER SORTS OF HAZARDS,  
21           SMOKERS PERCEIVE THE RISKS OF SMOKING  
22           TO BE LESS THAN NON-SMOKERS DO. "

23                   AND I SHOWED HIM, WOULD THIS HELP  
24           AN INDIVIDUAL TOBACCO OR NICOTINE ADDICT GIVE  
25           HIMSELF OR HERSELF A RATIONALE FOR SMOKING?

26                   READING THE WORDS THAT WE HAVE SEEN  
27           HERE SO MANY TIMES, IT IS NOT KNOWN WHETHER SMOKE  
28           HAS A ROLE IN DEVELOPMENT OF VARIOUS DISEASES.

1                   AND HE SAYS, SURE, IT WOULD. IT  
2 PROVIDES DOUBT.  
3                   LET' S STOP. IT PROVIDES DOUBT,  
4 WHAT A COINCIDENCE, ABOUT WHETHER THE HEALTH RISKS  
5 THAT THEY HAVE HEARD FROM OTHER SOURCES IS  
6 ACCURATE. AND WHEN THE DOUBT EXISTS, THE SMOKERS  
7 WILL ASSUME THE BEST.  
8                   THE BEST FOR THEM IS WHAT JUSTIFIES  
9 THEM SMOKING.  
10                  HERE' S ANOTHER ONE.  
11                  GREAT DEAL MORE RESEARCH IS NEEDED  
12 TO UNCOVER THE CAUSES AND MECHANISMS INVOLVED IN  
13 THE ONSET OF THESE DISEASES.  
14                  SURE, THAT HELPS A SMOKER  
15 RATIONALIZE.  
16                  WELL WHAT ABOUT A WELL RESPECTED,  
17 HIGH POWERED, HIGH-RANKING HEAD OF ONE OF THE MAJOR  
18 CORPORATIONS IN THE UNITED STATES, SWEARING TO THE  
19 UNITED STATES CONGRESS THAT ON THE ISSUE OF DOESN' T  
20 YOUR TOBACCO CAUSE LUNG CANCER, HOW ABOUT THAT  
21 PERSON SAYING I DON' T KNOW WHAT CAUSES LUNG CANCER.  
22                  AND HE SAID SURE.  
23                  LOOK, I HAVE JUST BEAT THAT TO  
24 DEATH. THEY SAID THEY WERE GOING TO GIVE  
25 MISINFORMATION. THEY SAID THEY WERE GOING TO GIVE  
26 DISINFORMATION. THEY SAID THAT THEY WERE GOING TO  
27 CREATE DOUBT. THEY CREATED DOUBT.  
28                  THEY CREATED DOUBT. PEOPLE BOUGHT

1 INTO IT. PEOPLE STILL BUY INTO IT. PEOPLE DIE,  
2 THEY MAKE MONEY. THEY MAKE MONEY, PEOPLE DIE.  
3                   THEY TELL THE TRUTH, PEOPLE WON'T  
4 DIE, THEY WON'T MAKE MONEY.  
5                   IF THEY REALLY STOP SELLING TO  
6 MINORS, THEY WON'T MAKE MONEY.  
7                   AND YET MR. BIBLE SAID, MOST  
8 IMPORTANT THING TO US IS MAKING MONEY.  
9                   SO HE'S IN A DILEMMA. PHILIP  
10 MORRIS IS IN A DILEMMA.  
11                   I THINK PHILIP MORRIS IS IN NOT  
12 JUST -- PHILIP MORRIS IS NOT JUST DENYING.  
13                   ONE MORE THING AND I AM DONE WITH  
14 DR. BENOWITZ HERE.  
15                   THIS IS ON LIGHT CIGARETTES.  
16                   "THE MANUFACTURERS,  
17 REGISTERED LOWER YIELDS ON MACHINES,  
18 THEY DIDN'T MANUFACTURE CIGARETTES  
19 THAT EXPOSED THE SMOKER TO LOWER  
20 YIELDS. SINCE THE 1950'S, TAR, "  
21 THAT'S WHAT I AM INTERESTED IN, "TAR  
22 YIELDS OF CIGARETTES HAVE DROPPED, "  
23 AND HE SAYS "AS TESTED ON SMOKING  
24 MACHINE, NOT IN PEOPLE. "  
25                   DON'T FORGET, ONE OF THE PRODUCT --  
26 ONE OF THE PRODUCT LIABILITY PRONGS HERE IS WHAT IS  
27 CALLED CONSUMER EXPECTATIONS.  
28                   CONSUMER EXPECTATIONS IS THEREFORE

1 LIGHT CIGARETTES.

2                   WOULD AN ORDINARY CONSUMER BELIEVE,  
3 SINCE THE 1950'S, THAT LIGHT CIGARETTES ARE BETTER  
4 FOR THEM, AND OBVIOUSLY THE ANSWER IS YES. AND DO  
5 THE MANUFACTURERS AND THE GOVERNMENT KNOW THE WHOLE  
6 TIME THAT IT WAS PHONY? AND OBVIOUSLY, THE ANSWER  
7 IS YES.

8                   BECAUSE THEY HAVE KNOWN ALL ALONG,  
9 THE DEFENSE LAWYERS BROUGHT IT OUT WITH MY  
10 WITNESSES. THE DEFENSE LAWYERS BROUGHT IT OUT WITH  
11 THEIR OWN WITNESSES.

12                   THE GOVERNMENT AND THE INDUSTRY HAS  
13 KNOWN ALL ALONG, THAT SMOKERS TAKE LIGHT CIGARETTES  
14 AND COMPENSATE AND DO JUST AS MUCH POISON WHEN THEY  
15 SMOKE THOSE THINGS AS IF IT WAS A FULL STRENGTH  
16 CIGARETTE.

17                   THERE'S ONLY ONE LITTLE GROUP THAT  
18 DIDN'T KNOW AND IT WAS THE PEOPLE THAT WAS TAKING  
19 THEM IN.

20                   WE ARE TALKING 1950'S HERE.

21                   NOW, THIS WARNING ISSUE WHAT SHOULD  
22 HAVE BEEN WASHED ABOUT, WHAT INSTRUCTIONS SHOULD  
23 HAVE BEEN GIVEN, TELLING PEOPLE DON'T PUFF SO DEEP,  
24 DON'T TAKE TOO MUCH PUFFS, DON'T COVER UP THOSE  
25 HOLES, THAT'S FAIR GAME UNTIL JULY 1, 1969.

26                   SO THAT'S THE CONSUMER EXPECTATION  
27 SHEET.

28                   I AM GOING TO FINISH BY 4 O' CLOCK.

1 I DON'T CARE IF I AM IN THE MIDDLE OF A WORD, I AM  
2 GOING TO FINISH AT 4 O' CLOCK, OR OTHERWISE.

3 HOW ABOUT THIS CASE BEING ABOUT  
4 SOMETHING REALLY COMPLICATED LIKE RIGHT AND WRONG?  
5 OKAY.

6 WE HAD A LITTLE DISCUSSION  
7 SOMEPLACE ALONG THE LINE ON RIGHT AND WRONG. AND I  
8 THINK WE WERE TOLD BY ONE OF THE DEFENSE WITNESSES  
9 THAT CORPORATIONS WOULD BE FOOLS TO THINK THEY KNOW  
10 RIGHT OR WRONG. THEY WOULD BE FOOLS TO BELIEVE  
11 THAT THEY KNEW RIGHT OR WRONG. THEY WOULD BE FOOLS  
12 TO LISTEN TO THEM

13 WRONG.

14 THAT AIN'T RIGHT. THAT'S WRONG.

15 PHILIP MORRIS, THE BIGGEST, IS A  
16 BULLY.

17 AND WHEN THE BOSS WRITES THAT NO  
18 MATTER WHO COMES AFTER US, WE ARE GOING TO OUT  
19 MUSCLE AND OUT GUN THEM, OUT WHATEVER THEM, THAT'S  
20 A BULLY TACTIC.

21 I AM GOING TO ASK YOU ALL AGAIN, IN  
22 A BIT, TO COMPENSATE MY GUY, RICHARD BOEKEN, AND TO  
23 PUNISH THEM, REALLY PUNISH THEM, REALLY PUNISH  
24 THEM

25 AND I WANT TO TELL YOU ABOUT  
26 BILLIES. THE BIGGER THE BULLY IS, THE HARDER THE  
27 BULLY FALLS.

28 BUT THE BULLY DON'T FALL UNLESS YOU

1 SMACK THEM FIRST, HARD.

2 THE ONLY THING THESE GUYS CARE  
3 ABOUT, THE ONLY THING THESE GUYS RESPECT, IS THEIR  
4 PROFIT. AND IT SAYS SO RIGHT IN THAT DOCUMENT THAT  
5 YOU ARE GOING TO HAVE, THAT'S HIGHLIGHTED IN PINK.

6 THAT'S ALL THEY CARE ABOUT IS THEIR  
7 PROFIT.

8 MS. MERLO CAME IN HERE, BASICALLY,  
9 SAYS, YOU KNOW WHAT, WE DIDN'T REALLY DISAGREE WITH  
10 THE SURGEON GENERAL, WE SORT OF KEPT OUR MOUTH  
11 SHUT, WE SORT OF KEPT TO OURSELVES.

12 AND FOR ME, THAT'S THE COVER UP OF  
13 THE COVER UP.

14 THE 1954, WHEN THEY MADE THESE  
15 ORGANIZATIONS, THAT'S WHEN THE COVER UP STARTED.

16 NOW THAT IT'S ALL UNWOUND, THEY ARE  
17 GOING TO PRETEND IT NEVER HAPPENED.

18 WELL, WE DIDN'T REALLY DISAGREE  
19 WITH THE SURGEON GENERAL. WE WERE JUST SORT OF  
20 QUIET.

21 WELL, WE SORT OF KEPT TO OURSELVES.

22 WELL, BOLONEY.

23 TALK ABOUT RICHARD, TALK ABOUT  
24 DAMAGES. SIT DOWN.

25 HERE'S A CONVERSATION HE HAD WITH  
26 DR. TRABULUS. QUOTING DR. TRABULUS.

27 I'D TELL YOU TO STOP, BUT I AM NOT  
28 GOING TO, TAKE IT FOR WHAT IT IS. THAT WOULD BE

1 DR. TRABULUS. IN HIS OFFICE, FOR A PHYSICAL EXAM  
2 DID HE EXPLAIN WHAT HE MEANT.  
3 NO. BUT I UNDERSTOOD HIM  
4 WHAT WAS YOUR UNDERSTANDING AS TO  
5 WHAT WAS MEANT BY THAT?

6 THAT HE WASN'T GOING TO GIVE ME A  
7 SPEECH.

8 AND IN FACT, I ASKED DR. TRABULUS,  
9 HE WAS HERE FOR A VERY SHORT PERIOD OF TIME, BUT I  
10 ASKED HIM, DID YOU LECTURE HIM, DO YOU LECTURE YOUR  
11 PATIENTS, AND HE SAID NO.

12 BUT THERE CAN BE NO DOUBT THAT  
13 MR. BOEKEN SPOKE TO DR. TRABULUS, BECAUSE HE GOT  
14 NICORETTE GUM HE GOT NICORETTE PATCHES. HE  
15 COULDN'T GET THAT STUFF WITHOUT PRESCRIPTION. HE  
16 ACTUALLY COULDN'T. THERE IS NO DOUBT HE DISCUSSED  
17 THAT.

18 DR. TRABULUS, WHEN HE CAME IN HERE,  
19 TOLD YOU THAT MR. BOEKEN RAISED HEALTH CONCERNS  
20 WITH HIM, THESE PRESCRIPTIONS RESULTED.

21 WE KNOW THAT IN THE YEAR THAT HE  
22 FIRST SAW DR. TRABULUS, HE QUIT FOR 45 DAYS.

23 MR. BOEKEN DIDN'T OSTRICH. HE  
24 TRIED TO QUIT. HE TRIED TO QUIT.

25 HE TRIED TO QUIT.

26 AND I SUGGEST THAT ONE OF THE  
27 REASONS HE WAS NOT SUCCESSFUL IS BECAUSE, UNLIKE  
28 THE OTHER TWO, HE WASN'T SO SURE THAT THIS STUFF

1 WAS SO BAD.

2                               AND THE REASON HE WAS SURE HE KNEW  
3 IT WASN'T GOOD FOR HIS BRONCHITIS, AND IT WASN'T  
4 GOOD FOR HIS MIND. WHEN IT CAME TO THE ISSUE OF  
5 LUNG CANCER, WHEN IT CAME TO THE ISSUE OF KILLING  
6 HIM, THESE GUYS PUT THAT STUFF OUT YEAR AFTER YEAR  
7 AFTER YEAR AFTER YEAR, CREATING DOUBT. HE BIT.

8                               SO THIS IS THE THIRD AND LAST TIME  
9 I WILL SAY, IN THIS CASE, RICHARD BOEKEN'S SIN IS  
10 THAT HE BELIEVED THEM

11                              HE HOOKED FOR THAT LINE JUST LIKE  
12 HE DID FOR NICOTINE. AND THE INCREDIBLE, ULTIMATE  
13 IRONY ABOUT THIS CASE, THERE'S TWO OF THEM, ONE,  
14 THE PEOPLE SHOULD BE SMARTER THAN OUR SCIENTISTS;  
15 TWO, IF THEY BELIEVED US, THEY ARE FOOLS.

16                              I HAVE SAID WHAT I WANT TO ABOUT  
17 THIS STUFF HERE. I AM NOT GOING TO SHOW IF I  
18 BELIEVE -- EXCUSE ME -- IT IS MY POSITION THAT WITH  
19 ALL THE MONEY, TIME, EFFORT, BRAIN POWER, AND  
20 MARKETING AND ADVERTISING THAT WAS SPENT ON THIS  
21 SITUATION OVER THE COURSE OF DECADES, THAT IT IS  
22 HYPOCRISY TO FIND FAULT WITH MR. BOEKEN FOR BUYING  
23 INTO IT.

24                              I ACKNOWLEDGE THAT SOME OF YOU  
25 MIGHT THINK THAT HE SHOULD NOT HAVE TRUSTED PHILIP  
26 MORRIS.

27                              I ACKNOWLEDGE THAT'S A POSSIBLE  
28 ARGUMENT IN THE JURY ROOM

1 I PUT THIS UP, 377, JUST TO REMIND  
2 YOU ABOUT IT.

3 THAT IF THAT'S TRUE, THE SCORPION  
4 DOES NOT WALK. PHILIP MORRIS DOES NOT CLAIM HE WAS  
5 NEGLIGENT. PHILIP MORRIS DOESN'T CLAIM ANY  
6 REDUCTION. THEY SAY, ALL OR NOTHING.

7 OKAY. YOUR CHOICE.

8 MR. BOEKEN WAS PART AT FAULT FOR  
9 BELIEVING THE SCORPION. THE SCORPION PAYS THE  
10 PRICE. BECAUSE THE SCORPION IS AT LEAST A  
11 CONCURRING CAUSE AND NOTHING WOULD HAVE HAPPENED  
12 WITHOUT THE SCORPION.

13 HERE'S HOW I THINK YOU SHOULD  
14 COMPENSATE MR. BOEKEN. HERE'S WHY. YOU KNOW WHAT,  
15 THERE WAS VERY LITTLE TALK ABOUT THAT, SO I WILL DO  
16 VERY LITTLE TALK ABOUT THAT.

17 I HAVE TOLD YOU THE NUMBERS THAT I  
18 HAD IN MIND. AND I HAVEN'T HEARD A DISAGREEMENT.

19 HE WORKED HARD. HE WAS SUCCESSFUL.  
20 HE IS NOT GOING TO GET TO ENJOY THE FRUITS OF HIS  
21 LABOR.

22 HE HAS A LOVING WIFE. HE IS NOT  
23 GOING TO GET A CHANCE TO TAKE CARE OF HER.

24 HE TOOK CARE OF HIS MOTHER UNTIL  
25 THE DAY SHE DIED.

26 THAT'S ALL THE HISTORY FOR NOW

27 THE AMOUNT OF MONEY THAT I  
28 EXPLAINED AS FAR AS WHAT'S CALLED SPECIAL DAMAGES,

1 THE MEDICAL, THE WAGE LOSS, THERE' S HARD DOCUMENTS  
2 TO BACK THOSE THINGS UP.

3 THE AMOUNT OF COMPENSATION THAT I  
4 MENTIONED AS FAR AS WHAT' S CALLED GENERAL DAMAGES,  
5 YOU REMEMBER WHAT HE SAID IN THE DEPOSITION ABOUT  
6 WHAT THAT TREATMENT DID TO HIM

7 AND THE FACT THAT HE' S NOT GOING TO  
8 BE AROUND. I CHOSE A NUMBER, I DON' T WANT IT TO BE  
9 TOO HIGH, BECAUSE I DON' T WANT TO LOSE CREDIBILITY  
10 WITH THE JURY. I DON' T WANT TO BE TOO LOW, BECAUSE  
11 I DON' T WANT TO STIFF MY CLIENT. SO I CHOOSE SORT  
12 OF A NUMBER THAT I THINK IS PALATABLE. IT' S NOT  
13 NECESSARILY A PRIDE OF AUTHORSHIP THERE. IT' S A  
14 RANGE.

15 I HAVEN' T HEARD ANY CONTRADICTIONARY  
16 SUGGESTION, SO I MOVE ON TO THIS: THIS CASE HERE  
17 HAS BEEN 47 YEARS IN THE MAKING.

18 SOME OF THE STUFF THAT' S BEEN SAID  
19 HERE, SOME OF THE DOCUMENTS THAT YOU HAVE SEEN  
20 HERE, SOME OF THE INFORMATION THAT' S BEEN RECORDED  
21 HERE, IS STUFF THAT WE SHOULD ALL BE ASHAMED OF,  
22 NOT JUST PHILIP MORRIS, I AM ASHAMED OF IT.

23 OUR GOVERNMENT HAS GOT THREE  
24 BRANCHES, EXECUTIVE, LEGISLATIVE, JUDICIAL.

25 WE HERE, NOW, US, REPRESENT THE  
26 JUDICIAL BRANCH OF THE GOVERNMENT FOR THIS CASE.

27 THE THREE BRANCHES OF THE  
28 GOVERNMENT ARE SUPPOSEDLY EQUAL.

1                    THAT' S THE WAY IT WAS CREATED.

2                    AND SO FOR THIS CASE, WE, ARE EQUAL  
3 TO THE EXECUTIVE AND THE LEGISLATURE.

4                    THEY HAVE GOT PROPOSALS ABOUT WHAT  
5 THEY WANT TO DO A PUBLIC OPINION AND LITIGATION AND  
6 LEGISLATION AND ON AND ON AND ON.

7                    WE ARE AN EQUAL PART OF THE  
8 GOVERNMENT. NOW HERE.

9                    HOW DO YOU SAY TO ANY MANUFACTURER  
10 OUT THERE OF ANYTHING THAT IF THEY EVER DO ANYTHING  
11 LIKE THIS REMOTELY CLOSE TO THIS AGAIN, THAT IT  
12 CAN' T CONCEIVABLY BE TOLERATED?

13                    WELL, THERE' S ONLY ONE WAY IT CAN  
14 BE ACCOMPLISHED JUDICIALLY, MONEY. PUNITIVE AND  
15 EXEMPLARY DAMAGES. AND THERE' S ONLY ONE THING THAT  
16 THEY CARE ABOUT, ADMITTEDLY, MONEY. AND SO IT' S  
17 GOT TO HURT.

18                    A SLAP ON THE WRIST IS A JOKE.  
19 IT' S A LAUGH. IT' S AN INSULT. IT' S AN INSULT TO  
20 ALL OF THE PEOPLE WHO HAVE BEEN VICTIMIZED OVER THE  
21 YEARS. AND IT' S AN INSULT TO THE PEOPLE, TO FORMER  
22 SMOKERS WHO, WHENEVER THEY START COUGHING SAY,  
23 UH-OH.

24                    SO I WANT TO JUST REMIND YOU OF THE  
25 ANALYSIS, BECAUSE HE MENTIONED THIS MORNING ABOUT  
26 SOME NUMBERS HERE.

27                    IF THE AVERAGE PERSON MAKES 50, 000  
28 BUCKS, WHEN THE AVERAGE PERSON DOESN' T, AND IF THIS

1 COMPANY MAKES OVER FIVE BILLION A YEAR, WHICH IT  
2 DOES, THE MULTIPLIER IS A HUNDRED THOUSAND TO ONE.  
3 A CUP OF COFFEE IS A HUNDRED THOUSAND BUCKS.  
4 PARKING IN THE BUILDING IS A MILLION ONE BUCKS.

5 IF THE AVERAGE PERSON MAKES \$25,000  
6 A YEAR, WHICH IS LOW, DOUBLE THOSE FIGURES, A CUP  
7 OF COFFEE IS \$200,000 FOR PHILIP MORRIS. PARKING  
8 IN THE BUILDING IS TWO MILLION DOLLARS FOR PHILIP  
9 MORRIS. AND THE NUMBER IS SOMEPLACE BETWEEN THOSE  
10 TWO.

11 TAKING MY KID'S ALLOWANCE AWAY FROM  
12 HER FOR AN INFRACTION IN THE RULES THAT SHE'S GOT  
13 TO ABIDE BY, ONE WEEKS'S ALLOWANCE, TO HER, FOR  
14 SOMETHING SMALL IS 100 MILLION DOLLARS TO THEM  
15 100 MILLION DOLLARS PUNITIVE AND  
16 EXEMPLARY DAMAGE AWARD HERE IS TAKING MY KID'S  
17 ALLOWANCE AWAY FOR A WEEK.

18 SLAP ON THE WRIST.

19 I PUT SOME NUMBERS UP HERE. I  
20 DON'T WANT THE NUMBERS SO MUCH RIGHT NOW AND I AM  
21 GOING TO COVER UP THE NUMBERS BECAUSE RIGHT NOW I  
22 AM NOT INTO THE NUMBERS.

23 I HEARD, ON FRIDAY, ABOUT PHILIP  
24 MORRIS'S CHANGE OF HEART, AND HERE'S WHAT I BELIEVE  
25 ABOUT PHILIP MORRIS'S CHANGE OF HEART.

26 WE WERE MADE TO -- MS. MERLO,  
27 QUOTING, FRIDAY, LITTLE BIT THIS MORNING.

28 IT TOOK TOO LONG FOR US TO CHANGE

1 OUR POSITION. IT COST US, THE COMPANY, DEARLY. IT  
2 COST US, THE COMPANY, CREDIBILITY. IT COST US, THE  
3 COMPANY PRESTIGE, AND IT COST US, THE COMPANY,  
4 CRITICISM

5 TOUGH LUCK.

6 IT'S US, US, US.

7 I DIDN'T HEAR HER SAY, WELL, NOW  
8 THAT WE ARE ADMITTING THAT OUR PRODUCT CAUSES  
9 CANCER, IT COST JOE SMITH THIS, OR JOSEPHINE JONES  
10 THAT, OR RICHARD BOEKEN THAT.

11 THAT'S NOT PART OF THE NEW PHILIP  
12 MORRIS DEAL.

13 IT'S WHAT IT COSTS US.

14 WELL, THAT'S WHAT I WROTE THERE  
15 LAST WEEK. SEE, THAT'S A JUST US PUNITIVE DAMAGE  
16 AWARD.

17 THAT'S AN I WILL TAKE MY KID'S  
18 ALLOWANCE AWAY FOR ONE MEASLY WEEK FOR A MINOR  
19 INFRACTION. THAT'S WHAT THAT IS.

20 THE PROFITS OF PHILIP MORRIS, I  
21 SAID I WASN'T GOING TO PICK THIS UP, I TAKE IT  
22 BACK.

23 5.35 BILLION DOLLARS IN 2000.

24 THAT'S THE TOBACCO COMPANY. THAT'S WHAT WE ARE  
25 INTERESTED IN.

26 IF THERE WAS A WAY THAT I COULD SAY  
27 TO YOU, PUT A STAKE THROUGH ITS HEART, KILL IT, I  
28 WOULD, DEAD. BUT I CAN'T. IT'S NOT THE LAW

1 THERE'S NO CIVIL DEATH PENALTY, THAT CANNOT BE  
2 DONE.

3 IF I COULD, I WOULD.  
4 THAT EMBLEM OUT THERE WHERE SOME OF  
5 YOU JURORS HAVE SAT AT ONE TIME OR ANOTHER, AND I  
6 MENTIONED IT, LADY JUSTICE DOESN'T HAVE A PIECE OF  
7 PAPER. AND SHE DOESN'T HAVE A TOOTH PICK. AND SHE  
8 DOESN'T HAVE A RULER THERE TO GO (INDICATING).

9 SHE'S GOT A SWORD.

10 NOW, I SAY, TWO YEARS PROFITS, AND  
11 I AM NOT JOKING. THANKS.

12 I AM DONE.

13 THE COURT: THANK YOU, COUNSEL.

14 ALL RIGHT, LADIES AND GENTLEMEN,  
15 IT'S NOW 20 MINUTES TO 4:00. I WILL NOT BE ABLE TO  
16 GET ALL THE WAY THROUGH MY JURY INSTRUCTIONS TO YOU  
17 IN THOSE 20 MINUTES. SO I AM GOING TO GIVE YOU THE  
18 EVENING OFF AND I WILL SEE YOU TOMORROW MORNING AT  
19 8:45 FOR THE JURY INSTRUCTIONS AND THEN THE JURY  
20 WILL GO INTO THE JURY ROOM

21 DON'T DISCUSS THE CASE WITH ANYONE.

22 THANK YOU.

23

24 (AT THIS TIME, THE PROCEEDINGS  
25 IN THE ABOVE-ENTITLED MATTER  
26 WERE CONTINUED TO TUESDAY, MAY  
27 22ND, 2001 AT 9:00 A.M.)

28