

IN THE CIRCUIT COURT OF  
THE 11TH JUDICIAL CIRCUIT  
IN AND FOR DADE COUNTY, FLORIDA  
GENERAL JURISDICTION DIVISION  
CASE NO. 94-08273 CA (22)

HOWARD A. ENGLE, M D. ,  
et al. ,

Plaintiffs,

vs.

R. J. REYNOLDS TOBACCO  
COMPANY, et al. ,

Defendants.

\_\_\_\_\_ /

Miami - Dade County Courthouse  
Miami, Florida  
Tuesday, 9:30 a.m  
November 24, 1998

**TRIAL - VOLUME 146**

The above-styled cause came on for trial  
before the Honorable Robert Paul Kaye, Circuit Judge,  
pursuant to notice.

**APPEARANCES:****STANLEY M ROSENBLATT, ESQ.****SUSAN ROSENBLATT, ESQ.****CLIFFORD DOUGLAS****On behalf of Plaintiffs****DECHERT PRICE & RHOADS****ROBERT C. HEIM, ESQ.****SEAN P. WAJERT, ESQ.****On behalf of Defendant Philip Morris****COLL DAVIDSON CARTER SMITH SALTER & BARKETT****NORMAN A. COLL, ESQ.****On behalf of Defendant Philip Morris****ZACK KOSNITZKY****STEPHEN N. ZACK, ESQ.****On behalf of Defendant Philip Morris****CARLTON FIELDS WARD EMMANUEL SMITH & CUTLER****R. BENJAMINE REID, ESQ.****On behalf of Defendant R. J. Reynolds****JONES, DAY, REAVIS & POGUE****RICHARD M KIRBY, ESQ.****On behalf of Defendant R. J. Reynolds****KING & SPALDING****MICHAEL RUSS, ESQ.****RICHARD A. SCHNEIDER, ESQ.****On behalf of Defendant Brown & Williamson****CLARKE SILVERGLATE WILLIAMS & MONTGOMERY****KELLY ANNE LUTHER, ESQ.****On behalf of Defendants Liggett Group****and Brooke Group****SHOOK HARDY & BACON****EDWARD A. MOSS, ESQ.****WILLIAM P. GERAGHTY, ESQ.****On behalf of Defendant Brown & Williamson****JAMES T. NEWSOM, ESQ.****On behalf of Defendant Lorillard****DEBEVOISE & PLIMPTON****ANNE COHEN, ESQ.****JOSEPH R. MOODHE, ESQ.****On behalf of Defendant The Council for Tobacco Research**

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and Brooke Group

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I N D E X

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IAN UYDESS, Ph. D.	
Direct by Mr. Rosenblatt .....	15945

E X H I B I T S

<b>PLAINTIFFS'</b>	<b>OFFERED</b>	<b>ADMITTED</b>	<b>FOR ID</b>
<b>EXHIBITS</b>	<b>PAGE</b>	<b>PAGE</b>	<b>PAGE</b>

None

E X H I B I T S

<b>DEFENDANTS'</b>	<b>OFFERED</b>	<b>ADMITTED</b>	<b>FOR ID</b>
<b>EXHIBITS</b>	<b>PAGE</b>	<b>PAGE</b>	<b>PAGE</b>

None

1 (Whereupon, the following proceedings were had:)

2 THE COURT: Okay. Have a seat, folks,  
3 please. I apologize for the delay. Judge Cook became  
4 ill with the flu, couldn't do the calendar this  
5 morning. So I got stuck with it again.

6 Anyway, I did get your note at 8:30 or  
7 thereabouts. That resolved that problem I assume for  
8 at least the morning.

9 Are we ready with a witness?

10 MR. ROSENBLATT: Yes.

11 MR. HEIM Your Honor, I wanted to make a  
12 comment before the witness comes in the room, if I  
13 might, just to alert Your Honor.

14 MR. ROSENBLATT: Counsel said he was going to  
15 bring something up, so I told the witness to wait  
16 outside.

17 MR. HEIM Your Honor, I read the deposition  
18 of Dr. Uydess last night, and I raise this issue for  
19 Your Honor really to alert the Court to it.

20 And the issue is the question of foundation  
21 for the witness' testimony. This gentleman, unlike  
22 Dr. Farone, was not a management level employee of the  
23 company. He was a scientist working within a  
24 particular area of the company.

25 And, of course, he can testify as to what he

1 did and what he saw, anything that's within his  
2 personal knowledge, as is required of a fact witness  
3 under Section 604.

4 But he is not a person who can offer  
5 scientific opinions on areas outside his area; that is,  
6 as a fact witness he cannot rely on things that  
7 somebody allegedly told him, to then use that as a  
8 predicate for an opinion. Because, I think Your Honor  
9 will hear, he has a pretty broad sphere as to what he  
10 did, even though he was with the company for 11 years.

11 As I said, he was not a management level  
12 employee of the company, he was not an executive, and  
13 he should not be able to testify on what the company  
14 supposedly knew or what the company thought or what the  
15 company believed. He can say what he knew, and he can  
16 say what somebody told him, if it satisfies the  
17 evidentiary requirements. But I think there's going to  
18 be foundation issues here.

19 I alert the Court to that. I'm not  
20 suggesting that we do anything about it in advance, but  
21 I do believe that with regard to this witness we are  
22 going to have those kinds of issues.

23 THE COURT: Well, let me just see. I had  
24 something here on him

25 MR. HEIM Maybe I have a copy, Your Honor.

1 THE COURT: Well, I don't know what happened  
2 to it. I had something here. I was reading it  
3 yesterday.

4 MR. ROSENBLATT: Was that the letter  
5 disclosure, Judge? I've got an extra --

6 THE COURT: It was a letter disclosure, and  
7 there was something attached, some article he had  
8 written for the FTC or something.

9 MR. HEIM No. I think it's his FDA  
10 affidavit.

11 THE COURT: FDA affidavit.

12 MR. HEIM Remember, Dr. Farone had an FDA  
13 affidavit, too, I think. If it wasn't an affidavit, it  
14 was something akin to it.

15 THE COURT: But did I have a deposition of  
16 him?

17 MR. HEIM There was a deposition taken of  
18 him yesterday, Your Honor.

19 THE COURT: The one previous to that.

20 MR. HEIM One in Mississippi several years  
21 ago. I believe that's the only deposition that I'm  
22 aware of.

23 THE COURT: Within the parameters that he's  
24 discussed at this point, it seems to me that I recall  
25 something about the fact that while he was working on

1 the job, that he came in contact with a whole bunch of  
2 people who have a whole series of job information and  
3 items that they discussed, which relate to his job.

4 Do you intend to get into that?

5 MR. ROSENBLATT: Yes. We see him as a broad  
6 witness.

7 Again, we're back to where we always are  
8 before a witness begins to testify. They spent several  
9 hours questioning him yesterday, and I made this point,  
10 Your Honor, yesterday, that unique to this case, they  
11 don't take a discovery deposition to find out what a  
12 person's opinions are or what he knows. They spend  
13 hours and hours to limit. That's always the purpose,  
14 to limit. Right now it's in a vacuum

15 THE COURT: That's what lawyers do.

16 MR. ROSENBLATT: Not in my experience. What  
17 lawyers do is to take -- you know, what do you know,  
18 what did you see, who did you talk to, what are your  
19 opinions? That's what lawyers do.

20 THE COURT: If a lawyer feels that he's  
21 confident in understanding what this person is about to  
22 testify to, either because of prior depositions or  
23 testimony, the next function a lawyer has is to knock  
24 the witness out of the box in the first place.

25 So we don't have to worry about him This is

1 what lawyers do. That's why you file motions to  
2 dismiss, knock the case out. I understand that. It's  
3 not a problem, it's tactics. And they're entitled to  
4 it. If they prevail, that's fine.

5 On the other hand, if what they want to do is  
6 limit the person, the witness, to either a field of  
7 expertise that he has been offered for, or to keep him  
8 within the bounds of the knowledge that he had, that's  
9 also what lawyers do and should do. I don't have any  
10 problem with that.

11 But I also understand that when a person is  
12 involved in work, such as in a laboratory with other  
13 people or in a job with other people, there is  
14 interrelationship and communications between other  
15 people that affect his day-to-day, daily working  
16 activities.

17 You can't say just because they had  
18 conversation and discussed something that one can't get  
19 involved in that in testimony. Otherwise, we wouldn't  
20 be able to get anywhere with testimony and evidence.  
21 It's like only having one side of a telephone  
22 conversation in which all you hear is uh-huh, uh-huh,  
23 uh-huh, then you hang up. It doesn't make any sense.

24 MR. HEIM Of course that's not what I was  
25 suggesting, Your Honor. We simply were asking the

1 doctor what was his personal knowledge and where did it  
2 come from I think that's a fair inquiry.

3 THE COURT: If somebody working alongside him  
4 said something to him that affects the way he works and  
5 he's going to do something based on that, I think  
6 that's fair game and he can testify.

7 As far as company policy is concerned, as far  
8 as company directives, things that he may become aware  
9 of that hasn't anything to do with his job, that's a  
10 different story.

11 And we'll talk about that when we get there.  
12 Can't limit him as far as his function of his job.

13 MR. HEIM Nor did I intend to.

14 THE COURT: Okay.

15 Let's bring in the jury.

16 (The jurors entered the courtroom.)

17 THE COURT: Good morning. Usual question:  
18 anybody read, see, hear, discuss, talk about, discover  
19 anything about this case or any allied information?

20 JURORS: No, sir.

21 THE COURT: Okay. Let's proceed.

22 What do you need?

23 THE BAILIFF: I'm getting a pad, writing pad.

24 THE COURT: Yes, ma'am, you need another pad?

25 Might as well grab a handful of them

1 People are taking notes, huh?

2 JUROR: Quite a few.

3 THE COURT: Okay. Is the witness in the  
4 courtroom?

5 MR. ROSENBLATT: Yes, Your Honor.

6 THE COURT: Call your witness.

7 MR. ROSENBLATT: Dr. Uydess.

8 THE COURT: Dr. Uydess, please.

9 Thereupon:

10 IAN UYDESS

11 having been called as a witness, was duly sworn,  
12 examined, and testified as follows:

13 DIRECT EXAMINATION

14 BY MR. ROSENBLATT:

15 Q. Dr. Uydess, please tell the members of the  
16 jury your name and your present address.

17 A. My name is Ian Uydess, and I live in  
18 Richmond, Virginia in Midlothian, which is a suburb of  
19 Virginia, 4309 Northwich Court, N-O-R-T-H-W-I-C-H,  
20 Court.

21 Q. I'm calling you Dr. Uydess. The jury has  
22 heard from a lot of M.D.s in this case. You are a  
23 Ph.D., and I'll get to that in a minute; is that  
24 correct?

25 A. Yes, it is.

1 Q. Starting with your Bachelor of science  
2 degree, your undergraduate degree, tell us what your  
3 area of focus was and what university you went to.

4 A. Starting with the Bachelor's of science  
5 degree?

6 Q. Yes.

7 A. At that point in time, I was in New Jersey at  
8 a university called Farleigh Dickenson where I got my  
9 bachelor of science primarily in premed. I was trying  
10 to decide if I wanted to go into medical or research.  
11 I decided I wanted to do research and applied to  
12 graduate schools for a Ph.D. Because I wanted to  
13 remain in a medically-oriented area, I decided to go to  
14 part of the University of Buffalo, actually part of the  
15 medical school called Roswell Park.

16 It's a very internationally renowned research  
17 center and hospital for cancers like emphysema. I was  
18 accepted there very fortunately and went to undergrad  
19 there. I went there for most of my career.

20 Q. Division of SUNY, that's State University of  
21 New York at Buffalo?

22 A. Right. While I was there I met someone in  
23 Rochester, which is a neighboring city to Buffalo, who  
24 was involved in a slightly different area with NASA  
25 doing space research, exobiology research having to do

1 with the original Mars program, where a ship was sent  
2 to Mars to land a satellite, make measurements.

3 I liked that and I got involved with him and  
4 decided to transfer from the University of Buffalo,  
5 Roswell Park division, to Rochester where I spent the  
6 first year completing my work and writing my thesis  
7 from Buffalo, and Rochester awarded me that degree  
8 based on that work. Complicated. It was based on the  
9 work I did in Buffalo. That's where I stayed for  
10 several years as a post-doctoral fellow in the  
11 department of medicine at the medical center there.

12 Q. Now, your curriculum vitae refers to, in  
13 terms of your Master of science degree, cell and  
14 molecular biology. Tell us what that field  
15 encompasses.

16 A. Well, because Roswell Park was a cancer  
17 research institute primarily, if you were a student  
18 there, a lot of the curriculum, the courses you had,  
19 had a lot to do with the human body and physiology,  
20 what was known about cancer at the time, the causative  
21 agents, why cancer exists, how does it happen, what  
22 leads to it, what promotes it.

23 And so the course work was in that general  
24 realm And so cell biology, molecular biology, and the  
25 various studies you do -- cell biology, you're studying

1 cells and cell systems; and molecular, you're studying  
2 the subparts when you're studying these topics.

3 My background was in that, and microbiology,  
4 which is studying microorganisms.

5 Q. Then as you said, you continued. You did  
6 your post-doctoral fellowship. Does this mean after  
7 you had your Ph.D. degree?

8 A. Yes.

9 Q. You remained there and you were in the  
10 department of medicine and infectious disease at the  
11 University of Rochester Medical Center, and your focus  
12 was immunology and infectious disease.

13 Now, you're not an M.D., and yet you're -- so  
14 explain that. How, as a Ph.D. with your scientific  
15 background, you're focusing in on areas that people  
16 tend to associate with medical doctors?

17 A. Well, because, again, a large part of my  
18 training was medically oriented, and I had a lot of  
19 similar courses that you would have up to a point with  
20 regard to getting an M.D., physiology anatomy, things  
21 of that nature. It's not unusual to find at a medical  
22 institution M.D.s and Ph.D.s working together to attack  
23 a project in which the M.D.s handle the medical side  
24 and the Ph.D.s are basically helping them do the basic  
25 research to learn more about that disease, that

1 situation or whatever is being investigated.

2 Q. So when you completed your post-doctoral  
3 fellowship in 1977, what did you do thereafter in terms  
4 of employment?

5 A. Well, there was a kind of strange change in  
6 my career, which ultimately led me here. One day while  
7 at the University of Rochester where I also interacted  
8 with the graduate school, which was right next door, I  
9 was teaching some courses there with another faculty  
10 member, a notice came around the department from a  
11 corporation that was looking for some new graduates  
12 with either Master's degrees or Ph.D.s in material  
13 sciences, people who learned how to investigate  
14 materials of various types.

15 They were asking us could we recommend some  
16 students and please put them in contact with this  
17 company. And I looked at it and it was Philip Morris  
18 Corporation letterhead. I knew very little about  
19 Philip Morris at the time, not being a smoker myself.  
20 I began to write a letter to respond to the manager who  
21 had published the letter, and tell them, sorry, we've  
22 talked to the students and no one was interested in  
23 responding. I was making some typos, it was before  
24 computers, and I was getting tired of throwing out the  
25 papers and making corrections. I decided I would give

1       them a call.

2                       So I called the phone number on the  
3       letterhead and spoke to the man whose name was on the  
4       letter. And in that conversation, he started asking me  
5       what I did. So I explained both the medical work and  
6       also the space research, the NASA work that I had done  
7       for a while.

8                       He said, you know, we have a technical  
9       seminar program down here and we frequently bring in  
10      people to give talks in a lot of different areas; would  
11      you consider coming down and telling us about the NASA  
12      work that you did?

13                      So I thought that was a great opportunity. I  
14      said, sure.

15                      Several weeks later, I came down to Richmond,  
16      Virginia to give the talk at Philip Morris' R&D center,  
17      which is there; and while there spent several days,  
18      talked to a lot of people in the R&D center, met a lot  
19      of the directors, including the gentleman who  
20      ultimately hired me, Bill Farone.

21                      Q.    Dr. William Farone was the scientist who  
22      actually hired you?

23                      A.    Yes. He was not the individual who wrote the  
24      letter, which a lot of these corporations typically do.  
25      They'll have a situation where they want to hire

1 someone of a technical background. They know what  
2 universities are out there that have graduate students  
3 in those areas. They send out letters trying to  
4 solicit employees.

5 But Bill did not actually write the letter;  
6 one of his managers at the time did. So I had no  
7 contact with Bill until I actually got to Richmond.  
8 But while there we began to talk. He liked my  
9 background. I was asked questions like, how long did  
10 you plan on staying in Rochester? I was asked to come  
11 back and look around and learn more about what they do.

12 Q. And there came a point where you went to work  
13 for Philip Morris?

14 A. Yes. At that time I was asked directly,  
15 would I consider employment there. And because of the  
16 phenomenal facilities, which were a total surprise to  
17 me -- I mean, I came out of two institutions, Roswell  
18 Park University of Buffalo and also Rochester, which  
19 were both wealthy institutions, well supported, had  
20 excellent equipment, excellent staffs, talented people.

21 To be quite honest, the first trip to  
22 Richmond, I expected to be taken from the airport in a  
23 cab down a dirt road. Being naive, because I didn't  
24 really know much about the tobacco industry, I thought  
25 I was going to go down a dirt road with pineapple

1 fields, kind of like in Hawaii. And I'd wind up at an  
2 old stone building like a state university or stone  
3 building, and be shown around and give a talk and go  
4 home.

5 And instead, I saw this ultra-modern  
6 facility, not just the R&D facility. And I had a tour.  
7 They gave me a tour of the manufacturing center, which,  
8 even back in 1977, which is when this was, was highly  
9 automated, sophisticated. I had never seen anything  
10 like it.

11 And a lot of the people I met in the R&D  
12 center where there were 600 some odd people like me,  
13 not all Ph.D.s, but trained people, were relatively  
14 young, come out of the universities, many of them  
15 nonsmokers. I felt very comfortable there.

16 And when they asked me if I'd like to work  
17 there, plus added that the reason they wanted me was  
18 because of my background and that they were looking  
19 towards making a safer product, they wanted to improve,  
20 enhance their product, but with regard to making it  
21 better, safer -- that's why Bill Farone, who was  
22 leading me around and showing me the facilities,  
23 explained that he came on and other people had been  
24 brought in at the same time.

25 Q. What was your job title when you were first

1 hired?

2 A. Initially, I believe it was research  
3 scientist, which was slightly above the entry level for  
4 a person with a Ph.D. It meant you had some additional  
5 experience above and beyond getting your degree.

6 Q. Okay. Now, in big picture terms, you worked  
7 from Philip Morris from 1978 until 1989, but there was  
8 a gap in time where you went to work for someone else  
9 for what, about eight months?

10 A. Yes.

11 Q. But, I mean, overall you worked for Philip  
12 Morris about eleven years?

13 A. Approximately. Yes.

14 Q. As I'm looking at your C.V. You say, during  
15 the first period of employment from 1978 to 1980, your  
16 focus was microstructure analysis, tobacco structure  
17 and chemistry.

18 So tell us what, as a Ph.D and a  
19 post-doctoral fellow, what you were doing on a daily  
20 basis in those areas.

21 A. When I first came to Philip Morris I didn't  
22 immediately get launched into this safer products-type  
23 of research. There were other needs there, and that  
24 was explained to me when I was offered the job.

25 Because some of the tools I used in my

1 background involved something liked an electron  
2 microscope, which maybe you've seen pictures of in  
3 magazines where you can look at extremely small things  
4 and blow them up, it's widely used in all kinds of  
5 research and science.

6 I did quite a bit of that in my past work,  
7 graduate work. And they really needed someone at a  
8 senior level to help them do more of that.

9 They already had someone in laboratory that  
10 did that type of work. But someone who had more  
11 experience. I was attached to the lab and that was  
12 where I would spend the first years at Philip Morris,  
13 learning more about what they did and learning more  
14 about Philip Morris, and yet, at the same time, use  
15 some of the tools. I had to look at the structure of  
16 tobacco and research in those areas.

17 Q. There came a time, I guess it was in 1980,  
18 where you left Philip Morris. You went to work for an  
19 outfit called Carl Zeiss, Z-E-I-S-S, USA.

20 Why did you decide to leave Philip Morris and  
21 go to work for Carl Zeiss?

22 A. There were several reasons. Although I was  
23 attracted to go to Philip Morris -- and I really wanted  
24 to make that career move because of the expectation of  
25 being able to get involved in making a better product,

1 a safer product for the public, which I thought was  
2 really important.

3           Again, smoking and health was not a new  
4 subject to me coming out of a cancer research  
5 institution in the late '70s and early '80s, then  
6 working. Smoking and health was always a major issue.  
7 And actually, some of the course work I had was in that  
8 area.

9           So while I did accept the job there, and  
10 quite happily wanted to go to Philip Morris, I always  
11 had a little bit of a problem internally justifying,  
12 rationalizing, why I was there. Although that wasn't a  
13 major reason why I left, but it was one of them

14           I also wanted to do some work with a director  
15 there who I had suggested a research program to, which  
16 I thought would be very beneficial to Philip Morris.

17           Q. What was the name of that director?

18           A. Dr. Thomas Osdene. And he thought that the  
19 research I suggested, wrote a proposal for, was  
20 exciting and excellent, definitely wanted to do it;  
21 told me he'd like me to do it. But he thought that I  
22 should be in his division to do it.

23           I was in Bill Farone's division at the time  
24 and they were both directors within research and  
25 development.

1 I also gave Dr. Farone the same proposal so  
2 that he could see it. And while Dr. Osdene was trying  
3 to move me into his division, Dr. Farone wasn't really  
4 happy about that.

5 Q. Farone wanted you to remain --

6 A. Wanted me to remain in his division. Part of  
7 this was my fault. I was so focused on the science at  
8 the time. I was much younger, 15, 20 years ago. I  
9 wasn't paying attention to some things I should have  
10 been paying attention to.

11 Dr. Farone interfered with the vice president  
12 who had already okayed my moving. And made a case to  
13 stay where I was and that was reversed. And not that  
14 that wasn't disappointing. I was very, very happy  
15 being with Dr. Farone, who was an excellent scientist.  
16 And we got along very, very well, but I was looking to  
17 apply more of my biomedical research capabilities.

18 Q. You thought you would have a better  
19 capability of doing that in Osdene's division?

20 A. Yeah, where this project involved more of the  
21 things that I did in my post-doctoral research time and  
22 previous to that than what I was doing primarily in  
23 Dr. Farone's division. So I was kind of disappointed.

24 Then the third factor was that out of the  
25 blue I get a call one day from a company that designs

1 and sells some of the best electron microscopes in the  
2 world, an old --

3 Q. Carl Zeiss?

4 A. Yes. Makes a lot of optics, everything from  
5 eyeglasses to a tremendous amount of medical equipment  
6 that's in operating rooms all over the world; the kinds  
7 of optics that are used by surgeons to do minute  
8 surgery on the brain on the nervous system

9 So those three things together kind of led me  
10 to make a decision to leave and go work for Carl Zeiss.  
11 After discussing it with people I felt close with at  
12 Philip Morris, I wasn't sure what to do. So I  
13 discussed it with Bill Farone and Tom Osdene and  
14 Clifford Lilly, who was a principal scientist at the  
15 company. They all were very sorry that I was thinking  
16 about leaving and told me that if anything ever changed  
17 and I wanted to come back, to please let them know.

18 Q. And that's what ultimately happened. You  
19 went to work for Carl Zeiss, that company, for about  
20 how long?

21 A. 7, 8, 9 months.

22 Q. Then you decided to come back to Philip  
23 Morris?

24 A. Yes. Things were not exactly as I had  
25 thought at Carl Zeiss. And not that I went there, got

1 unhappy and left. It was a series of situations that,  
2 the people who were hiring me in New York, who  
3 indicated I'd be doing this, when I went to Germany to  
4 the parent company, which I did a month or month and a  
5 half after I got to New York, thinking that I was in  
6 this new position to do these really neat things, the  
7 German parent company told me: Well, whatever New York  
8 told you, that's all fine and good, but you're not  
9 going to do that; we do that here.

10 So it was another disappointment. At the  
11 same time, every weekend I was being flown back to  
12 Richmond, Virginia because we had not moved yet, and  
13 Carl Zeiss was flying me up Monday morning and flying  
14 me back during the interim period.

15 Every weekend, since many of our friends were  
16 still at Philip Morris, including Bill Farone and Tom  
17 Osdene, we were seeing them throughout that period and  
18 we were always exchanging questions like, how is  
19 everything in New York? And I say fine. And how is  
20 everything in Richmond? And I say fine. And one day  
21 when they asked me, how is everything in New York? And  
22 I hesitated.

23 Q. That was your opening to go back?

24 A. Well, maybe I didn't mean it to be that, but  
25 I kind of hesitated and said, well, okay, one of them,

1 and I don't remember who it was at the time, said,  
2 well, why don't you just come back here?

3 Q. And you did go back?

4 A. Yes.

5 Q. That would have been about 1981?

6 A. I forget the exact time.

7 Q. When you returned to -- you left Philip  
8 Morris, you were a research scientist. When you  
9 returned to Philip Morris, after this eight-month gap  
10 with Carl Zeiss, was your title the same or was it  
11 different?

12 A. Well, actually, when I left Philip Morris,  
13 the first time in whatever it was, August '80 or  
14 whatever the date was, I had just been promoted.

15 All of the work I did those first two or  
16 three years it was felt to be good, and I had gotten  
17 very good performance appraisals. The spring before I  
18 actually left, I think I left in August, but the spring  
19 before I was promoted up a level.

20 When I left the first time, I left at that  
21 level, and when I came back eight months later, I came  
22 back to that same level with the same benefits  
23 continuing as if I had actually not gone.

24 Q. Now, in looking at your C.V., it says from  
25 1981 to 1989 you were the senior scientist in research

1 and development at Philip Morris, and your focus was,  
2 again, tobacco structure and chemistry, and you've  
3 added bioengineering and biotechnology.

4 Now, let me ask you this basic question. The  
5 average person looks at a cigarette; it looks like a  
6 fairly simple thing. You've got a Ph.D. in  
7 bioengineering, biotechnology.

8 How does this little cigarette become so  
9 complicated?

10 A. Well, a 100 years or more ago a cigarette was  
11 tobacco leaves from the field that either got rolled up  
12 or cut up and put into a piece of paper and basically  
13 smoked. Purely natural product.

14 Over the years, companies that manufactured  
15 these things, like any company, wanted to improve the  
16 product, be able to make it faster, better, more  
17 consistently, have more control over it, all the things  
18 that automobile companies do and virtually everybody  
19 else in the world.

20 So they began to learn how to do these things  
21 slowly from year to year. Some better than others.  
22 And quite obviously, Philip Morris was one of these  
23 companies, not only learned how to do these things, but  
24 learned how to do them better than anyone, and that's  
25 partly what attracted me to Philip Morris. It was

1 obvious, when you went there, that this was not, in  
2 quotes, "an ordinary" company.

3           It used its growing information about the  
4 chemistry of tobacco, about the physics of smoking, and  
5 the mechanics of making the cigarette in the factories,  
6 put all this information together to no longer take  
7 leaves from the field, which they buy from farmers --  
8 they have nothing to do with growing those leaves.  
9 They buy the leaves. And instead of chopping them up  
10 and putting them in paper, as they did many, many years  
11 ago, these cigarettes are now highly and  
12 sophisticatedly engineered.

13           That's why on the staff at Philip Morris,  
14 even when I got there, there were very senior  
15 experienced, sophisticated engineering people, who had  
16 physics and mathematics background, and this is what I  
17 didn't understand when I first got there. I looked at  
18 all this and was just amazed.

19           Again, the product has gone from being a  
20 natural product and rolled up and smoked, to this  
21 sophisticatedly-engineered product.

22           Q. Now, give us an idea as to the areas that you  
23 were involved in on a day-to-day basis. It's one thing  
24 to talk about the goal of making a safer cigarette, but  
25 what were you, as a scientist, with your background,

1 doing on a day-to-day basis, and tell us who you were  
2 interacting with on a frequent basis?

3 A. Well, in the beginning --

4 MR. HEIM Your Honor, could we have one  
5 question at a time?

6 THE COURT: Yes.

7 MR. ROSENBLATT: I have to change my  
8 personality completely to accomplish that, but I'll  
9 try.

10 MR. HEIM That would be good, too.

11 MR. ROSENBLATT: I hope you're laughing with  
12 me.

13 THE COURT: Okay. It was compound.

14 THE WITNESS: Would you please repeat that  
15 now. Repeat the first part of it, please.

16 (The record was read by the reporter.)

17 THE WITNESS: Well, in the beginning again,  
18 it largely was in the area of structural research and  
19 structural, meaning the leaf. This was at a time when  
20 Philip Morris and its major competitors, Reynolds  
21 Tobacco and others, were learning that instead of now  
22 just using cut-up, dried leaf, that they also  
23 engineered to a certain extent in the manufacture of  
24 cigarettes, that they could process that piece of leaf,  
25 which gets really skinny and flat because of what they

1 call curing. They take the tobacco leaf from the  
2 field, which is kind of puffy, big cells in it, a lot  
3 of air and water, and it's dried down by the farmers.

4 And it's done either through a heating  
5 process, where they put it in what they call a flue  
6 curing barn, where they use little gas flames like a  
7 bunsen burner to heat the whole barn up, and it dries  
8 the leaves fairly quickly. And as they dry, the water  
9 leaves them, and other things leave them, and it gets  
10 squashed down.

11 These companies found if they processed the  
12 squashed leaves, the dried leaves, they could blow them  
13 back up again. The companies refer to it as a puffing  
14 process, or expanding, which is the nicer term or  
15 scientific.

16 By doing this, they could do several things  
17 that they liked. First of all, they could take the  
18 little shreds, which occupied very little space, and  
19 blow them up, which occupied more space, which meant  
20 they could put fewer shreds, which saves them on  
21 tobacco.

22 That was a cost effectiveness thing. They  
23 could make the unit cost of each cigarette less and  
24 less and less.

25 At the same time, which also was a benefit,

1 the tobacco industry was being pressured by the public  
2 and the government and the FDA to try to lessen the  
3 hazardous qualities of smoke. And so as a second  
4 benefit, putting less tobacco into each cigarette meant  
5 that the amount of material that went into your lungs  
6 was lessened a certain amount by that.

7           And so that was kind of a positive thing and  
8 actually led to the products that came out at the time  
9 which was referred to as lower delivery, one of the  
10 things that led to things like lower delivery, lower  
11 tar, which was also an okay thing in itself, although  
12 these companies learned to do other things to the  
13 cigarette to kind of reverse part of that.

14           So I supported that area. I was helping  
15 Philip Morris look at how the structure changed as they  
16 did these various kinds of processing. Because there  
17 were two or three different ways you could do the  
18 puffing. And I worked with chemists. This is about  
19 the time I started to get heavily involved with other  
20 departments like engineering and process development  
21 and new product development, analytical research. All  
22 of a sudden I was going outside my own group and  
23 working with other parts of the company to look at how  
24 you make cigarettes, which is the first step of what I  
25 was hired to do.

1 Q. What was your involvement with engineering;  
2 how would you get involved with that area?

3 A. Well, to do what I was doing, I wanted to  
4 know as much as I could about what happens to that leaf  
5 over in engineering, because it had to do with how you  
6 do the work you're going to do.

7 So I went over to engineering and I had  
8 already learned there were several people who were the  
9 senior engineers of the people, a person named Henry  
10 Merritt, who was the principal engineer.

11 And I kind of attached myself to him and  
12 said: Henry, can you take me over and teach me the  
13 process? So he led me through the factory one day. It  
14 was wonderful; a walking tour of the manufacturing  
15 center from the very beginning to the very end with the  
16 senior engineers telling me basically what went on in  
17 every major step.

18 Q. Like a private tour?

19 A. Yeah. Again, I didn't understand, and learn  
20 and memorize every single step, but I learned a  
21 tremendous amount that helped me in my research.

22 I then became involved with people in product  
23 development, who were the people who helped formulate  
24 the cigarette products, working with engineers and  
25 other people.

1           So there were several people there at the  
2 time who mentored me and taught me a little bit about  
3 what goes on in their division and how they interact  
4 with the rest of the company.

5           So I began to see more and more how the  
6 company functioned internally. And I began to work  
7 better with my colleagues.

8           Q. That was my next question. How, for example,  
9 your communication with and learning about these other  
10 departments, engineering, process development,  
11 analytical research, impacted your activities on a  
12 day-to-day basis?

13          A. It just got me more involved in a higher  
14 level of interaction within the company. Instead of  
15 working like a laboratory works, like many of us do,  
16 you work in a department or someplace in the company  
17 with the same four or five, six people, and every once  
18 in a while you contact someone outside.

19                I was now being brought by my management,  
20 because Bill Farone and others wanted me to do this.  
21 So I was interacting with many, many more parts of the  
22 company to support the work I was doing, part of it, so  
23 I could understand what was going on so I could do what  
24 I was asked to do better.

25          Q. In terms of the work that you did on projects

1 to develop safer cigarettes, could you describe  
2 specifically some of those research projects, exactly  
3 what they involve.

4 A. The earliest I think of any major consequence  
5 was a project that actually got started before I left  
6 the first time. It involved the company Philip Morris'  
7 wanting to find a way, a better way to remove something  
8 called nitrate, a chemical, which is in the soil, winds  
9 up in the plant and part of most biological systems,  
10 from the product.

11 It already had a process to do this at one of  
12 its facilities, which was called Park 500, where they  
13 made something called reconstituted leaf or sheet,  
14 which I won't get into right now.

15 In that process, it's kind of like a  
16 paper-making process. You take scrap leaves that maybe  
17 you would have thrown away because they weren't of the  
18 quality you wanted or they were left over from  
19 something else.

20 And instead of throwing them away, you press  
21 them, add hot water to them, squash them in these giant  
22 roller devices, separating the liquid from what's left,  
23 which turns out to be just the fiber of the leaf, the  
24 cellulose in the plant leaves, and it makes a paper  
25 material, call it base web. And all the liquids go

1 over in this direction, and a lot of those liquids is  
2 what's left in the plant.

3 They found if they could take that liquid and  
4 chill it, they could precipitate, have all that liquid  
5 fall out. That was something they wanted to do for  
6 several reasons. Then put that liquid back on this  
7 leaf material, this paper, and make a paper-like  
8 product, which they could shred up and put it back in  
9 cigarettes.

10 So they wanted a better way to do this  
11 nitrate removal because it wasn't as efficient as they  
12 would like. Three or four projects sprang up about  
13 this time: chemical projects looking at chemistry ways  
14 to do that; physics ways to do that; mechanical ways to  
15 do it, using various kinds of filtration devices; then  
16 the area that I was in, biological ways to do it,  
17 because there was literature out there in the world  
18 about microorganisms, bacteria, yeast, other cells like  
19 that, that actually take nitrate in and either remove  
20 it from the stuff around them or actually kind of  
21 digest it, break it up into something else so that it's  
22 gone.

23 And some people in Philip Morris began to  
24 look at this microbial way --

25 Q. Microbial meaning what?

1           A.    Using bacteria that were resident. I mean,  
2   again, leaves come from the field. In the soil there  
3   is bacteria, in the plant. They're not harmful; kind  
4   of average soil microorganisms. Some of those  
5   naturally take nitrate and dispose of it. This was  
6   discovered by Teng; Dr. Daniel Teng was one of them

7                    So we began to explore how to use this as a  
8   very natural way to do this denitrification in nitrate  
9   removal. And that began just before I left.

10                   I was really a consultant to it. Because of  
11   my background, I was asked to kind of keep in touch  
12   with the program. And then I left and that program  
13   didn't do real well. And then I came back. And after  
14   a short time after I was back, I was asked directly by  
15   my director, who was still Bill Farone, to get directly  
16   involved in that project.

17           Q.    The denitrification program was a fancy name  
18   for simply the objective being to remove the nitrates?

19           A.    Yes.

20           Q.    Did Philip Morris have the technology to  
21   remove the nitrates?

22           A.    A new technology?

23           Q.    Any technology?

24           A.    They had the one they used, the Park 500, the  
25   precipitation technology, which they felt wasn't

1 effective enough. That's why they started all these  
2 other projects.

3 Q. You had involvement in some of the other  
4 projects?

5 A. No. I just knew about them through people  
6 like Cliff Lilly and other people who were involved in  
7 the engineering part of it or the chemistry part of it  
8 or whatever.

9 Q. What ultimately became of the denitrification  
10 program?

11 A. Well, management, corporate management,  
12 decided that based upon the information it had, it  
13 thought that the biological solution was the one it  
14 wanted to follow.

15 First of all, it was a nifty new technology,  
16 kind of in this bioengineering kind of an area.

17 Philip Morris liked that and Philip Morris  
18 was recognizing at the time that some of its own future  
19 wasn't just engineering and chemistry, which is what it  
20 always used in the past to do all the really wonderful  
21 things it did as far as engineering cigarettes,  
22 sophistication it introduced into manufacturing  
23 cigarettes.

24 So it decided, based upon the data that we  
25 had, that the biological solution looked like the best

1 way to go.

2           There were two projects, one in Europe and  
3 one in the U.S., which were kind of competing; the one  
4 here used bacteria and the one in Europe used yeast.  
5 Given, again, the results and the data, the corporation  
6 decided to go with the bacterial one that was in the  
7 U.S. So that's where the focus was.

8           And we were told to scale it up, which means  
9 take our experiments out of little beakers and flasks,  
10 which is where they were being done, and now put them  
11 in these large vats called fermenters where you can  
12 look at what the process might look like if it was real  
13 in a factory.

14           We did that for a while and improved it and  
15 got it to work very, very well, and found there were  
16 some problems with it, which you do have whenever you  
17 do something like this. And were linked to other  
18 departments like the flavor development group. These  
19 were sophisticated chemists that made up a lot of the  
20 departments. And we went along that line for a while  
21 and actually built a small plant called a pilot plant  
22 to do it and it worked extremely well.

23           People used the product. They took the  
24 product that we denitrified, put it back on leaf, this  
25 RL material, and smoked it to be sure it was going to

1 be okay. And that went on throughout the whole process  
2 with, again, every once in a while, a tiny problem, but  
3 then the scientists in other areas said: Not a worry.  
4 We can take care of this.

5 And then after this very successful run -- I  
6 think it was about three months where the process  
7 worked better than it ever worked in a laboratory -- it  
8 was terminated. Then we were told that it was going to  
9 be shelved; that the company wasn't going to go ahead  
10 and use it for product quality reasons, which really  
11 surprised me because there was nothing like what they  
12 call in the pharmaceutical business, a show stopper.  
13 There was nothing like that.

14 Then when I tried to find out what was going  
15 on, I was told to go back and do my other work. So I  
16 was disappointed.

17 Q. Dr. Uydess, did the technology exist at  
18 Philip Morris, during the time you were employed there  
19 from 1978 to 1989, to produce safer cigarettes?

20 A. In my opinion, and the opinions of people I  
21 talked to while I was there --

22 MR. HEIM Objection. Your Honor, may we  
23 approach on this?

24 THE COURT: If you want to about it.

25 BY MR. ROSENBLATT:

1           Q.    Dr. Uydess, I want to have an understanding  
2 as to what test results you were actually privy to,  
3 what you actually saw and observed. I want to make a  
4 distinction between that and what Gullotta may have  
5 simply told you over coffee. So tell me about that.

6           A.    There were occasions in which Frank would  
7 take me back into the second half of the laboratory,  
8 the back half, which is where the equipment was that  
9 was used to make the measurements themselves, the EEG  
10 equipment, the computers, things of that nature.

11                   And sometimes, because he was so enthusiastic  
12 and excited about what maybe he had seen that morning  
13 or the previous day, would on occasion show me certain  
14 parts of his results, the spectra, the tracings that  
15 come out of the instrument that is the  
16 electroencephalogram, and kind of talk to me in a  
17 general way about the things that he was seeing and  
18 measuring, and how excited he was to be able to do  
19 these things.

20           Q.    Now, the tracings you're talking about, the  
21 squiggly lines of brain waves on a piece of paper, a  
22 long piece of paper?

23           A.    Sometimes a short piece of paper.

24           Q.    What was he measuring, in terms, in relation  
25 to the cigarette, what was he measuring, what was the

1 purpose of what he was doing, if you know?

2 A. On many of the occasions, not all, it was  
3 something having to do with the nicotine response. On  
4 other occasions, may have been having to do with some  
5 of the flavor he was doing also. But it seemed  
6 sometimes the more exciting stuff had to do with the  
7 nicotine effects.

8 Q. To your knowledge, did Philip Morris ever  
9 publish information about Dr. Gullotta's work outside  
10 of Philip Morris?

11 MR. HEIM Objection. Preemption.

12 THE COURT: I don't know about that yet.  
13 Overrule as it relates to the question.

14 I don't know where you're going to go with  
15 this at this point.

16 MR. ROSENBLATT: I don't either until I hear  
17 the answer.

18 THE COURT: Well, let's see.

19 MR. ROSENBLATT: I know where I'm going if I  
20 get the right answer.

21 THE COURT: I understand that, but there's  
22 certain areas we can go and certain areas we can't.  
23 I'm unaware of where we're at.

24 MR. ROSENBLATT: I'll tell you.

25 (Proceedings were had at sidebar:)

1 BY MR. ROSENBLATT:

2 Q. Dr. Uydess, do you know of your own personal  
3 knowledge whether there came a time when Dr. Gullotta's  
4 electrophysiology program was shut down in Richmond,  
5 Virginia?

6 A. Yes.

7 Q. And was it simply terminated or was it moved?

8 A. No, it was moved.

9 Q. Where to?

10 A. To Germany.

11 Q. Once it was moved to Germany, did you kind of  
12 lose track of what research, if any, was done in  
13 Germany?

14 A. No. I didn't have the same daily contact  
15 with Frank as we had when we were both in the United  
16 States, but we kept in touch.

17 Q. I'm not asking you for the explanation, but  
18 I'm simply asking you, did you ever get an explanation  
19 from anybody as to why Gullotta's research that you've  
20 described was moved from America to Germany?

21 A. Did I get an explanation from anybody?

22 Q. Yes.

23 A. Frank and I talked about it --

24 Q. Wait, okay.

25 MR. ROSENBLATT: My next question would be,

1 judge: What did Frank tell you?

2 THE COURT: And?

3 MR. ROSENBLATT: Maybe I'll get lucky and  
4 they won't object.

5 MR. HEIM Object.

6 MR. ROSENBLATT: Although I doubt it.

7 MR. HEIM I'd fallen asleep.

8 MR. MDSS: As you know, it normally doesn't  
9 take prompting.

10 THE COURT: Sustain the objection.

11 BY MR. ROSENBLATT:

12 Q. Did it ever return to the United States?

13 A. The project?

14 Q. Gullotta's research, the project.

15 A. Not to my knowledge, no.

16 Q. Gullotta is still with Philip Morris?

17 A. As far as I know, yes.

18 Q. Are you still friends?

19 A. No. Well, as far as I'm concerned we're  
20 still friends, but we don't see each other anymore, or  
21 talk.

22 Q. In terms of your own work at Philip Morris,  
23 did you have control over what you wanted to publish?

24 A. No.

25 Q. How did that work? What did you have to do?

1 If you found something very interesting and you thought  
2 it would be in the public interest and that the wider  
3 community should know about it, what steps did you have  
4 to go through before you got permission to publish  
5 something outside the inhouse documentation of Philip  
6 Mrris?

7 A. Normally, you would probably mention it  
8 informally to your supervisor, manager, director, that  
9 you thought it would be good to do this. They would  
10 sometimes say: Okay, why don't you go ahead and write  
11 a draft.

12 You'd write a draft of whatever it was that  
13 you thought you wanted to write about, give it probably  
14 back to that person, they would review it.

15 If they thought there was a reason to publish  
16 it externally, it would go to a review, an internal  
17 review committee. Probably also be looked at by other  
18 people in the management chain.

19 So as an example, if that was my manager  
20 looking at what I had written, even though he thought  
21 it was okay, he or she thought it was okay, it would go  
22 up to a director or something of that nature. Also be  
23 checked for scientific accuracy and quality and other  
24 things.

25 And then if someone really thought there was

1 a chance, it might go outside a review committee within  
2 Philip Morris, other people in R&D would take a look at  
3 it to see if they thought it was also appropriate to go  
4 out.

5 Q. Do you know whether lawyers employed by  
6 Philip Morris, whether inhouse counsel or outside  
7 counsel, had any input in that process? The process  
8 I'm referring to is deciding whether a scientific  
9 matter should be published.

10 A. Even early on when I first got --

11 MR. HEIM Your Honor, could we have  
12 foundation here again?

13 BY MR. ROSENBLATT:

14 Q. I'm asking, based on your 11 years at Philip  
15 Morris, do you know, and if his answer is yes, how do  
16 you know that?

17 MR. HEIM Your Honor, we'd like the personal  
18 knowledge aspect of it first.

19 MR. MOSS: It's not a matter of -- what he's  
20 trying to do is escape the hearsay.

21 MR. ROSENBLATT: What you're trying to do is  
22 make a speech to the jury. Don't tell what I'm trying  
23 to do.

24 THE COURT: Gentlemen, enough. Don't do it.

25 MR. MOSS: Sorry, Your Honor.

1           THE COURT: I think you have to understand,  
2 there's such thing called hearsay. We can't get into  
3 hearsay information. Things that you know from your  
4 own accord, from your own work, or that you have been  
5 exposed to, other than what people have told you from  
6 outside.

7 BY MR. ROSENBLATT:

8           Q. So are you able to answer the question within  
9 those parameters that the Judge just gave you?

10          A. I believe so, through my own personal  
11 experience.

12          Q. Okay. Tell us about it.

13          A. Yes. Lawyers, attorneys inside the company  
14 would interact with you; many times, as in the case  
15 that I know of, one of the cases I know of personally  
16 with regard to just patent rights and patentability of  
17 things, wanting to make sure that someone didn't, in  
18 their excitement about something they discovered,  
19 divulge information about competitive companies about  
20 something that was important to Philip Morris.

21                 Frequently, when someone was going to publish  
22 a technical article, the internal lawyers, sometimes in  
23 Richmond and or New York, would look at it to make sure  
24 that certain things had been done before that thing got  
25 published, like patent, a good idea or whatever, or not

1 mention certain things if patents had not been issued,  
2 just to protect the company in that nature.

3 Q. Did you know a scientist at Philip Morris  
4 named Victor DeNoble?

5 A. Yes.

6 Q. Tell us in just a general way the kind of  
7 research that he was involved in.

8 A. He, again, was an experimental psychologist.  
9 And his area of expertise was using animal systems,  
10 model systems they call it, to test the impact effect  
11 of, to a large extent, drugs of abuse, things like  
12 heroin and cocaine and things of that nature.

13 And he was brought into Philip Morris to  
14 basically bring that same kind of technology and test  
15 system into Philip Morris R&D to do work in that  
16 department.

17 Q. Was DeNoble involved in any animal  
18 experimentation?

19 A. Yes. And most of his work was -- he had an  
20 animal colony in his laboratory that they experimented  
21 upon.

22 Q. What types of animals?

23 A. Small rodents.

24 Q. Rats?

25 A. Rats, yes.

1 Q. Were you ever in the facility?

2 A. Oh, yes.

3 Q. Did there come a time when DeNoble's work was  
4 stopped by Philip Morris?

5 A. Yes.

6 Q. And was that transferred to Germany or was it  
7 just stopped altogether?

8 A. It was just stopped.

9 Q. To your knowledge, during the 11 years that  
10 you were employed at Philip Morris, was any information  
11 about the toxicity of cigarettes and their  
12 addictiveness disclosed to the public?

13 MR. HEIM Objection.

14 THE COURT: I'll have to sustain that as far  
15 as that question goes.

16 (Proceedings were had at sidebar:)

17 BY MR. ROSENBLATT:

18 Q. You were at Philip Morris 11 years from about  
19 '78 to '89 with that eight months for the other  
20 employer. What is INBIFO? What does that mean to you,  
21 the so-called research lab in Germany?

22 MR. MDSS: Objection, Your Honor.

23 MR. HEIM So-called research lab in Germany.

24 MR. ROSENBLATT: It's in evidence.

25 THE COURT: The cat is out of the bag; you

1 can't get it back in.

2 Are you familiar with the term INBIFO?

3 THE WITNESS: Yes.

4 THE COURT: And how did you become familiar  
5 with the term?

6 THE WITNESS: Over the course of my 11 years  
7 there.

8 THE COURT: Tell us what you think INBIFO is.

9 MR. ROSENBLATT: I'm going to sit down,  
10 Judge.

11 MR. HEIM I vote for that.

12 THE COURT: No comments, please.

13 THE WITNESS: Over my 11 years at Philip  
14 Morris, as I got involved in more and more things and  
15 my work got into the safer cigarette area, which is  
16 what I was hired to do, I developed these friendships  
17 accidentally with people like Victor DeNoble and Frank  
18 Gullotta in particular, people like Tom Osdene, who was  
19 the director of all these things we're talking about.

20 I began to hear this term Sometimes only  
21 referred to as Germany, and then as INBIFO. And  
22 realizing that it was in an area that I had learned  
23 over those few years was kind of a sensitive topic  
24 area. I didn't ask a whole lot of questions about it;  
25 would sometimes ask other people around me who I knew:

1 Well, do you know anything about this thing called  
2 INBIFO? And I found out a lot of people didn't.

3 And yet, as my work progressed and as my  
4 friendships with Frank got more extensive, and DeNoble  
5 and I learned more about those areas, and again, like  
6 Tom Osdene and others, I began to hear more and more  
7 about the kind of work being done at INBIFO.

8 It essentially was a research institute that  
9 did a variety of health-related studies; some of them  
10 on emphysema, some of them on toxicity and other things  
11 like that on animal system

12 Then on occasion, people went back and forth,  
13 like Dr. Osdene, to INBIFO, where projects were being  
14 conducted for Philip Morris that were not being  
15 conducted in Richmond in the United States, but were  
16 being conducted overseas in Germany.

17 Q. Did you ever learn of what the criteria was,  
18 why certain research would only be done in Germany  
19 rather than in Richmond, Virginia? And if you did,  
20 tell us from what source you learned that.

21 A. With regard to my own personal experience,  
22 this project that we mentioned a while ago, that I had  
23 suggested to Dr. Osdene, which he really wanted to do  
24 and wanted me to come into his division to do, involved  
25 using Dr. DeNoble's animals that they were doing these

1 behavioral experiments on with nicotine. I wanted to  
2 use my background research from the University of  
3 Rochester, which was in blood research, immunology in  
4 animals to study things. It involved studying how  
5 smoke impacted the immune system of the animal so we  
6 could learn more about the impact of smoke on health.  
7 And other things like that.

8 Well, Dr. Osdene really wanted to do that and  
9 we were making plans for me to do that with Victor in  
10 his laboratory.

11 And then the topic came up: Well, you know,  
12 this is a little sensitive and we may not be able --  
13 this is from Dr. Osdene: We may not be able to do it  
14 here in Richmond.

15 And I said to him: That's really too bad,  
16 because I think it would have really been neat for us  
17 to do that.

18 He said: It's okay. It doesn't mean we  
19 can't do it. We can't do it here. We have to do it in  
20 Germany. You may have to go over there and help set it  
21 up. We can do it, but not here. We'll do it over  
22 there.

23 Then I heard from friends of mine who I knew  
24 well, like DeNoble and others, that similar --

25 MR. HEIM Objection.

1           THE COURT: Just generally that it was said.  
2 Overruled.

3           THE WITNESS: That same discussion happened  
4 with other people; that there were areas of research  
5 that were considered very, very sensitive that the  
6 company wanted to remove from the United States,  
7 apparently like when they took Dr. Gullotta's whole  
8 project and moved it to Germany.

9 BY MR. ROSENBLATT:

10           Q. Sensitive in what sense?

11           A. It had to do with smoking and health or the  
12 addictiveness of nicotine; had to do with these very  
13 sensitive issues.

14           Q. To your knowledge, did any scientist at  
15 Philip Morris, working in Richmond, request access to  
16 the studies, to the research results that were being  
17 conducted in Germany?

18           A. The only one I know of personally from my own  
19 experience is my director, Dr. Farone, once asked  
20 Dr. Osdene, because of his own interest. Here was a  
21 director doing allied things. He wanted to see some of  
22 this.

23           MR. HEIM Your Honor, double hearsay.

24           THE COURT: Well, insofar as he just  
25 mentioned Dr. Osdene --

1 MR. HEIM Dr. Farone.

2 THE COURT: They had made inquiries. That's  
3 as far as you know.

4 THE WITNESS: All I knew at the time was  
5 Dr. Farone asked to see data from INBIFO, and he did  
6 not and he was told he did not have access to that  
7 information by Dr. Osdene.

8 BY MR. ROSENBLATT:

9 Q. Now, what does the term "ratooning" mean to  
10 you?

11 A. It was a practice that was used in  
12 agriculture where a plant grows and then you let it  
13 grow to a certain extent, and then you kind of whack it  
14 off near the base and let it regrow.

15 And part of that was so that you could get  
16 two crops out of the same field. So if you're growing  
17 and harvesting the crop, you could do that and then not  
18 go right to the end of the season. But kind of a  
19 couple of months ahead of it whack the plant off, let  
20 it regrow and harvest some more crop, and it made it  
21 very crop effective for farmers to do that with certain  
22 kinds of crops.

23 Philip Morris thought this was an opportunity  
24 to examine things about the tobacco plant. And so it  
25 began to do some field experiments in various areas in

1     which it studied that; some of which had to do with  
2     something like nicotine or things like nicotine.

3             MR. ROSENBLATT: Judge, I'm going to get into  
4     a different area now.

5             THE COURT: Yes. We can break for lunch.  
6     We'll take the standard hour, 15 minutes or so. I'll  
7     give you an hour and a half. 1:30. Come back here at  
8     1:30.

9             (The jurors exited the courtroom)

10            THE COURT: Same rules apply over the lunch.  
11    Must not discuss your testimony with anybody, including  
12    the lawyers. Feel free to go out and enjoy your lunch,  
13    and come back at 1:30.

14            MR. HEIM Your Honor, I couldn't hear. You  
15    instructed him not to talk to any of the lawyers over  
16    lunch?

17            MR. ROSENBLATT: About his testimony.

18            THE COURT: You can talk about anything in  
19    the world; want to talk politics, sports, but nothing  
20    about the case. You certainly can have lunch with  
21    them, if they want. But stay away from any testimony  
22    about the case.

23            All right, we'll be back here 130.

24            (A lunch recess was taken at 12:15 p.m.)

25