

NLWJC - Kagan

DPC - Box 048 - Folder-004

**Tobacco-Settlement: New
Documents**



Cynthia A. Rice

08/31/98 06:39:38 PM

Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP
cc: Cynthia Dailard/OPD/EOP
Subject: Tobacco Industry Document Overture?

HHS has been approached by Triad Communications, the company that Philip Morris, Lorillard, and the Tobacco Institute hired to put its company documents in computer format. Triad says they can convert the documents to an easily searchable form and that PM public relations officials have indicated an interest in paying the cost, thinking this could bring them good publicity. PM's board of directors has not yet been consulted. HHS is skeptical but would like to obtain more information. Is that OK? YES

More broadly, HHS and DOJ are making decent progress in fulfilling the requirements of the President's memorandum (we've been making them report to us in biweekly conference calls to keep them on track). DOJ is working with FDA to draft its brief to make the IVA index public -- the district court has not yet set a due date, but DOJ expects them to set one in mid-Sept. HHS has done a lot of leg work on the documents, including sending a CDC team to Minnesota, and is pulling together a group of research and information technology specialists to discuss options at an all-day meeting next Friday (Sept. 11th).



Cynthia A. Rice

07/16/98 07:05:31 PM

Record Type: Record

To: See the distribution list at the bottom of this message

cc:

Subject: BR LOOK AT THIS -Choice of quotes on young female smokers

Bruce you asked if we could find quotes from company documents about young females and smoking. Jerry has turned up several -- do you like any of them?

1984 RJ Reynolds document:

1) "The dominant trend in the younger adult smoker market over the last 50 years has been the rising importance of females."

2) "Younger adult female smokers were the key growth sector in the 1970's and 1980's."

3) A 1976 Philip Morris document examined a "profile of the teen-age girl smoker" done by Yankelovich for the American Cancer Society. No quotes stand out except maybe

"The profile of the teen-age girl smoker counters the image of a socially ill-at-ease youngster turning to cigarettes as a means of being thought of as more sophisticated or as a needed prop for handling social situations. Instead it is the teen-age girl smoker who is at ease socially, very put together, and with full confidence in herself."

Here's what the speech has now:

With the help of the courts, these documents are becoming public. The documents tell us -- in the tobacco companies' own words -- how children and minorities became pawns in their efforts to recruit new customers. There are memos admitting in plain English that "the base of our business is the high school student." Memos saying that "creating a fad [in the 14-20 year old] market can be a great bonanza" for the tobacco company. And even as industry spokespeople insisted that young people were off-limits for advertising strategies, one company document from 1984 recommended targeting "younger adult smokers" because they were the only source of "replacement smokers" in the future.

Message Sent To:

Bruce N. Reed/OPD/EOP
Elena Kagan/OPD/EOP
Laura Emmett/WHO/EOP
Cynthia Dailard/OPD/EOP
Jerold R. Mande/OSTP/EOP

Tob - ser - exec orders
and
Tob - ser - new documents

**PRESIDENT CLINTON:
PROTECTING AMERICA'S YOUTH FROM TOBACCO**

July 17, 1998

"Let's agree on at least one thing: Children are not the future of our tobacco companies. They are the future of America. We must not let their future, or America's future, go up in smoke."

President Bill Clinton
July 17, 1998

Today, President Clinton signs an Executive Memorandum directing the Secretary of Health and Human Services (HHS) to coordinate a public health review of tobacco industry documents and develop a plan to make the documents more accessible to researchers and the public. The President also announces that the Department of Justice will file a brief in support of the State of Minnesota's efforts to make the tobacco industry's own, currently existing, computerized index to these documents available to the public. Through these actions, we can use the industry's darkest secrets to save a new generation of children from this deadly habit.

Most Tobacco Documents Are Not Readily Accessible. For decades, the tobacco companies sought to hide from the public the truth about the dangers of smoking and the industry's own efforts to target children. Documents that have been released show that even as tobacco companies denied the addictive nature of nicotine, they conducted secret research in their labs and devised marketing strategies to addict children to smoking. These documents are the tobacco companies' legacy of shame; however, most of these documents are not readily accessible by the public.

A Presidential Plan For Public Access To Tobacco Industry Documents. President Clinton is directing the Department of Health and Human Services to devise a plan to make these documents more accessible for all Americans. The President is calling on HHS to create a plan that would:

- Propose a strategy for coordinating the review of tobacco documents and make them available through an easily searchable index and/or digest of the reviewed documents;
- Devise a plan to widely distribute the index and/or digest as well as the documents themselves, including expanded distribution on the Internet;
- Provide a strategy for coordinating a broad public and private review and analysis of the documents to gain critical public health information. As part of this analysis, issues to be considered include, an analysis of nicotine addiction and pharmacology, biomedical research, product design, and youth marketing strategies.

Access To Documents Will Lead To Additional Research. By making these documents widely available, the public and private sector will benefit:

- Public health experts can design more effective anti-smoking strategies by studying marketing plans in these documents;

- Scientists can look to the documents for findings that can aid their research into nicotine addiction and tobacco-related illnesses;
- All Americans can understand the role the tobacco industry has played in addicting our children to this deadly habit.

Supporting Efforts To Unseal The Key Tobacco Industry Database. The President will announce that the Department of Justice will file a brief in the trial court of Minnesota in support of the efforts by the State of Minnesota to unseal a comprehensive index to industry documents created by the tobacco companies for use in litigation. This index is the tobacco industries' road map to its own documents, and it will significantly improve the ability of public health experts, scientists, state and federal officials, and the public to gain important public health information. Opening the doors to these documents will help lift the veil of secrecy regarding the tobacco industry's efforts to hook our children on cigarettes.

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MOST TOBACCO DOCUMENTS ARE NOT READILY ACCESSIBLE. For decades, the tobacco companies sought to hide from the public the truth about the dangers of smoking and the industry's own efforts to target children. Documents that have been released show that even as tobacco companies denied the addictive nature of nicotine, they conducted secret research in their labs and devised marketing strategies to addict children to smoking. These documents are the tobacco companies' legacy of shame; however, most of these documents are not readily accessible by the public.

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THE WHITE HOUSE
WASHINGTON

July 16, 1998

THE 1998 GIRLS NATION CLASS

DATE: July 17, 1998
LOCATION: Rose Garden
TIME: 9:15 am
FROM: Minyon Moore/Bruce Reed

I. PURPOSE

To meet the 1998 Girls Nation participants.

II. BACKGROUND

For more than 50 years, the American Legion Auxiliary has provided a unique opportunity for teenage girls to learn firsthand how our system of government works through the Girls State and Girls Nation programs. Almost one million teenage girls have participated in Girls State since it began in 1937, and thousands have attended Girls Nation since it began in 1948.

Each summer, in 49 states, approximately 25,000 young-women participate in Girls State sessions where they learn about their city, county and state governments. Two are chosen from each state to attend Girls Nation.

Janet Murguia, Deputy Assistant to the President for Legislative Affairs will be announced with you and will introduce you. She was a participant in the Girls Nation class of 1977 from Kansas City, Kansas.

During this event, you will announce two actions to make tobacco industry documents far more accessible to the public. First, you will direct HHS to develop a plan to make these documents more readily accessible to the public health community, the scientific community, the States, and the public at large. Second, you will announce that the Justice Department will file an amicus brief in support of the State of Minnesota's motion to unseal the 4-A Index, a tobacco industry-prepared index to their documents. These actions will provide a critical roadmap to industry documents and thereby aid in the fight against youth smoking. Because they contain information about what kinds of advertising appeal to children, these documents can help public health experts design counter-advertising campaigns and other strategies to protect children. These documents also can also assist scientists in understanding more about the addictive nature of

16
nicotine, the health consequences of tobacco use, and the effects of certain tobacco product designs and ingredients.

The actions are needed because most tobacco industry documents are not readily accessible. Public health leaders have found and highlighted some important documents, but there is no comprehensive public index to help researchers locate particular documents or information. Only a small percentage of these documents are posted on the Internet and it is difficult to search through them in their current format.

Specifically, the Executive Memorandum you will sign at the conclusion of your remarks will direct the Secretary of HHS to develop a plan that would:

- Propose a method for coordinating review of the documents and making available an easily searchable index and/or digest of the reviewed documents;
- Propose a plan to disseminate widely the index and/or digest as well as the documents themselves, including expanded use of the Internet; and
- Provide a strategy for coordinating a broad public and private review and analysis of the documents to gain critical public health information. Issues to be considered as part of this analysis include: nicotine addiction and pharmacology, biomedical research, including ingredient safety; product design; and youth marketing strategies.

III. PARTICIPANTS

Diane Duscheck, Girls Nation National Director
Barbara Kranig, National President, American Legion Auxillary
Girls Nation Senators and Staff

IV. PRESS PLAN

Open Press

V. SEQUENCE OF EVENTS

- o You will be briefed in the Oval Office.
- o WHCA will announce you and Janet Murguia into the Rose Garden. Alana Aldag, the Girls Nation President, and Jennifer Hall, the Girls Nation Vice President, will be on stage.
- o Janet Murguia will make brief remarks and introduce you.
- o You make remarks.

- o After your remarks you sign the Executive Memorandum.
- o You proceed back to the podium and introduce the Girls Nation President and Vice President.
- o Alana Aldag will make brief remarks and present you with a copy of their Bills and Resolutions.
- o Jennifer Hall will present you with a shirt.
- o You do a receiving line with the Girls Nation participants and staff.
- o You proceed to the riser for a group photo.
- o You depart.

VI. REMARKS

To be provided by speechwriters.

PRESIDENT CLINTON MAKES TOBACCO DOCUMENTS MORE ACCESSIBLE TO THE PUBLIC

July 17, 1998

Today, President Clinton will direct the Secretary of Health and Human Services to coordinate a public health review of tobacco industry documents and develop a plan to make the documents more accessible to researchers and the public at large. As a first step toward greater public access, the President will announce that the Department of Justice will file a brief in the trial court supporting the State of Minnesota's motion to unseal an industry-created index to the documents. Because they provide new information about what kinds of advertising appeal to children, these documents can help public health experts design counter-advertising campaigns and other strategies to protect children. These documents also can assist scientists in understanding more about the addictive nature of nicotine, the health consequences of tobacco use, and the effects of certain tobacco product designs and ingredients. With today's action, the President is moving forward to protect America's children from tobacco even as he continues to fight to enact comprehensive tobacco legislation this year.

Most Tobacco Documents are Not Readily Accessible

For decades, the American tobacco industry sought to hide from the American people critically important information about the health hazards of tobacco and the industry's efforts to induce children to smoke. Recently, court cases and congressional subpoenas have forced the tobacco companies to make many of their documents public. Most of these documents, however, still are not readily accessible. Public health leaders have found and highlighted important documents, but there is no comprehensive public index to help researchers locate particular documents or information. Only a small percentage of these documents are posted on the Internet and it is difficult to search through them in their current format.

A Plan for Public Access and Public Health

Today, the President directed the Secretary of HHS to take steps to make these tobacco documents more accessible to the public by creating a plan that would:

- Propose a method for coordinating review of the documents and making available an easily searchable index and/or digest of the reviewed documents;
- Propose a plan to disseminate widely the index and/or digest as well as the documents themselves, including expanded use of the Internet; and
- Provide a strategy for coordinating a broad public and private review and analysis of the documents to gain critical public health information. Issues to be considered as part of this analysis include: nicotine addiction and pharmacology, biomedical research, including ingredient safety; product design; and youth marketing strategies.

A Legal Brief to Unseal the Key Industry-Prepared Index

The President also announced that the Department of Justice will file an amicus brief in trial court in support of the State of Minnesota's motion to unseal a comprehensive index to industry documents created by the industry for use in litigation (known as the "4-A Index"). The tobacco industry has fought to prevent the release of this index. It is the industry's road map to its own documents, and it will improve significantly the ability of public health experts, scientists, state and federal officials, and the public to search industry documents and gain important public health information.

Q&A on Tobacco Documents Executive Memorandum
July 17, 1998

Q. What did the President announce today?

A. Today, President Clinton directed the Secretary of Health and Human Services to coordinate a public health review of the tobacco documents and to develop a plan to make the documents more accessible to researchers and the public at large. As a first step toward greater public access, the President announced that the Department of Justice will file in trial court a brief supporting the State of Minnesota's motion to unseal an industry-created index to the documents.

Q: Why is it important for the tobacco documents to be reviewed and more accessible?

A: Because these documents provide new information about which types of advertising appeal to children, they can help public health experts design counter-advertising campaigns and other strategies to protect children. These documents also can assist scientists in understanding more about the addictive nature of nicotine, the health consequences of tobacco use, and the effects of certain tobacco product designs and ingredients. With today's action the President is moving forward to protect America's children from tobacco even as he continues to fight to enact comprehensive tobacco legislation this year.

Q. But aren't there a lot of tobacco documents already on the web, including a significant selection of documents posted on the web by the tobacco industry?

A. It is true that some of documents are already posted on the Internet -- but only a very small portion. In fact, the tobacco industry websites contain only 1-2% of the 33 million pages of tobacco industry documents from the Minnesota trial. Although there are also some other websites with industry documents, as many as 27-28 million pages from the Minnesota trial are not in electronic form and must be searched manually at one of two depositories. And even the documents on the web are notoriously difficult to search and download. So there is really no question that the President's actions today will significantly enhance the public's ability to gain access to these important documents.

In addition, there has been no coordinated public health review of these documents. These documents provide new information about what kinds of advertising appeal to children, and thus can help public health experts design counter-advertising campaigns and other strategies to protect children. These documents also can assist scientists in understanding more about the addictive nature of nicotine, the health consequences of tobacco use, and the effects of certain tobacco product designs and ingredients. The president's directive instructs HHS to coordinate a review of the documents for such critical public health information.

Q. What exactly did the President direct Secretary Shalala to do?

A. The President issued a memorandum directing the Secretary Shalala to report back to him within 90 days on her plan to:

(1) Coordinate review of the documents and make available an easily searchable index and/or digest of the reviewed documents.

(2) Disseminate widely the index and/or digest as well as the documents themselves, including through expanded use of the Internet.

(3) Coordinate a broad public and private review and analysis of the documents to gain critical public health information. Issues to be considered nicotine addiction and pharmacology; biomedical research, including ingredient safety; product design; and youth marketing strategies.

Q. What did the President announce regarding the Justice Department?

A. The President announced that the Justice Department plans to file an amicus brief in trial court in support of the State of Minnesota's motion to unseal a comprehensive index to industry documents created by the industry for use during litigation (known as the "4-A Index"). The tobacco industry has fought to prevent the release of this index. It is the industry's road map to its own documents and could improve significantly the ability of public health experts, scientists, state and federal officials, and the public to search through industry documents.

Q. Does the action taken by the President accomplish everything that the McCain legislation would have accomplished regarding industry documents?

A. Both the McCain legislation and the President's action today make the documents widely available to the public. The McCain legislation would have made even more documents available to the public, by requiring a three Judge panel to review any document for which a tobacco manufacturer continues to claim attorney client privilege. This provision would ensure that manufacturers do not use such a claim to shield information that should rightfully be available to the public.

Q: Does this mean the President is giving up on passing comprehensive tobacco legislation?

A: No. The President is going to continue to push for Congress to pass comprehensive legislation. But he is not going to sit idle until Congress heeds his call to action. He is going to do everything he can, and use every power he has, to reduce youth smoking in this period of Congressional inaction.

Q. Is it true that the Administration is planning to file suit against the tobacco companies to recover billions of dollars in federal health care costs related to smoking?

A. First and foremost, we will continue to push Congress to enact comprehensive bipartisan legislation that will significantly reduce youth smoking. Of course, if Congress fails to act, we are going to consider all of our options. This includes exploring what we can do to reduce teen smoking by executive action, as well as a variety of other activities, which may or may not include bringing suit.

Q: But if the state attorneys general settle with the companies, won't that take the wind out of the sails of a Congressional bill?

A: Further action by the states should only increase pressure on Congress to do its part and help us finish the job -- by reaffirming FDA's full authority over tobacco products, imposing surcharges on tobacco companies that keep marketing cigarettes to young people, and launching a nationwide counteradvertising to warn young people not to smoke. We're going to keep working to build bipartisan support for these measures, and keep the pressure on Congress to pass a strong bipartisan bill this year. So long as 3000 young people start smoking every day, we're not letting Congress off the hook.

Tob - ser - new documents

(and)

Tob - ser - executive actions/orders



Cynthia A. Rice

07/16/98 05:36:34 PM

Record Type: Record

To: Laura Emmett/WHO/EOP

cc:

Subject: FOR ELENA: Look at this Staff Secretary final version of memorandum

Staff Secretary asked me to add a closing graph (and took out the "publish in the federal register" sentence) They also moved the AG announcement up higher -- not sure it works.

DOJ asked that we use "Justice Dept" rather than "Attorney General" and note that they will file the brief in trial court. This latter is very important because Seth Waxman hasn't signed the piece of paper he needs to authorize the appeal (if it comes to that) -- because he's been busy on the Secret Service appeal during the last 48 hours. If you can make this change to the press paper too, they would truly appreciate it.

I've underlined what's different:

MEMORANDUM FOR THE SECRETARY OF HEALTH AND HUMAN SERVICES

SUBJECT: Public Availability of Tobacco Documents

For decades, the tobacco industry sought to hide from the American people critically important information about the health hazards of tobacco and the industry's efforts to induce children to smoke. Recently, court cases and congressional subpoenas have forced the tobacco companies to make many of their documents public.

These documents confirm that for decades the tobacco companies did intensive research on the smoking habits of children, knew tobacco products were addictive and deadly, understood that a price increase would drive down the number of young people who smoke, and deliberately marketed their products to young people and minorities.

Because they provide new information about which types of advertising appeal to children, these documents can help public health experts design counter-advertising campaigns and other strategies to protect children. These documents also can assist scientists in understanding more about the addictive nature of nicotine, the health consequences of tobacco use, and the effects of certain tobacco product designs and ingredients. It is therefore critical to the fight against youth smoking that the Nation's scientists and public health experts carefully examine and analyze these documents.

Although many tobacco industry documents are now public, most are not readily accessible. While many public health leaders have found and highlighted important documents, there is

no comprehensive public index to help researchers locate information contained in the documents. Only a small percentage of the documents are posted on the Internet and it is difficult to search through them in their current format.

The State of Minnesota is currently involved in litigation to obtain the public release of a computerized index (the so-called 4-A Index), created by the tobacco industry for use during litigation. The tobacco industry has fought to prevent the release of this index. It is the industry's road map to its own documents and could improve significantly the ability of public health experts, scientists, State and Federal officials, and the public to search through industry documents. To help ensure greater access to these documents, the Department of Justice plans to file an amicus brief in the trial court in support of the State of Minnesota's motion to unseal the industry-created 4-A index. [This was moved from earlier and includes two changes DOJ wanted "Dept of Justice rather than "Attorney General" and "in trial court"]

The bipartisan comprehensive tobacco legislation recently considered in the Senate contained strong provisions for public disclosure of tobacco industry documents. While I will continue to fight to enact comprehensive tobacco legislation, I am determined to move forward to protect America's children from tobacco.

Therefore, I hereby direct you, working with the Attorney General, the States, public health professionals, librarians, and other concerned Americans, to report back to me in 90 days with a plan to make the tobacco industry documents more readily accessible to the public health community, the scientific community, the States, and the public at large. This plan should:

- (1) Propose a method for coordinating review of the documents and making available an easily searchable index and/or digest of the reviewed documents.
- (2) Propose a plan to disseminate widely the index and/or digest as well as the documents themselves, including expanded use of the Internet.
- (3) Provide a strategy for coordinating a broad public and private review and analysis of the documents to gain critical public health information. Issues to be considered as part of this analysis are: nicotine addiction and pharmacology; biomedical research, including ingredient safety; product design; and youth marketing strategies.

I remain committed to using every power of my office to protect our children from the dangers of tobacco smoke. Let us use the industry's darkest secrets to save a new generation of children from this deadly habit. Armed with the facts, we can and we will win this fight.
[Staff Secretary asked for a closer, and this is what I propose. The second sentence was one Bruce added to the speech]

Tob - act - exec. orders/
'98 JUL 15 PM 6:44 actions

and

Tob - int - new document

July 17, 1998 -- 7/15 DRAFT (6:30pm)

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(2) Propose a plan to disseminate widely the index and/or digest as well as the documents themselves, including expanded use of the Internet and other possible methods.

(3) Provide a strategy for coordinating a broad public and private review and analysis of the documents to gain critical public health information. Issues that could be considered as part of this analysis are: nicotine addiction and pharmacology, biomedical research including ingredient safety, product design, and youth marketing strategies.

To assist in making tobacco documents more accessible to public health experts, scientists, State and Federal officials, and the public, the Attorney General has agreed to file an amicus brief in support of the State of Minnesota's motion to unseal the industry-created 4-A index.

You are authorized and directed to publish this memorandum in the Federal Register.

Here is a transcript of an ABC News story from last night, May 19, that mentioned two Philip Morris documents demonstrating that the tobacco industry knows that raising prices will cause a decline in youth smoking. A Philip Morris strategic planning document from the early 1990s states: "There is no question that increasing taxes will cause a decrease in smoking. This point is best illustrated by the present situation in Canada." In another document from five years earlier, a Philip Morris analysis of price increases concluded: "Price increases prevented 600,000 teenagers from starting to smoke. We don't need to have that happen again." We are trying to get the actual documents.

Tob-rrr - new documents

and

Tob-rrr - price

5TH STORY of Level 1 printed in FULL format.

PAGE 2

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ABC NEWS

SHOW: WORLD NEWS TONIGHT WITH PETER JENNINGS (6:30 pm ET)

MAY 19, 1998

Transcript # 98051905-j04

TYPE: PACKAGE

SECTION: NEWS

LENGTH: 633 words

HEADLINE: WILL PRICE INCREASE DETER TEEN SMOKERS?

BYLINE: AARON BROWN, PETER JENNINGS

HIGHLIGHT:

DEBATE OVER RAISING PRICE PER PACK BY \$1.50

BODY:

THIS IS A RUSH TRANSCRIPT. THIS COPY MAY NOT BE IN ITS FINAL FORM AND MAY BE UPDATED.

PETER JENNINGS: In Washington, there has been another round of testy debate in the Senate about a bill to regulate tobacco.

(voice-over) This one that would raise the price of cigarettes by \$1.50 a pack. Those in favor, including that senator, say that if cigarettes are more expensive, teenagers would buy fewer.

(on camera) The tobacco companies say that price is not a factor. Mind you, that's not what they've always said. Here's ABC's Aaron Brown.

AARON BROWN, ABC News: (voice-over) The industry argues that where underage smoking is concerned, the most basic law of economics does not apply -- charging more will not mean selling less.

STEVEN GOLDSTONE, Chairman & CEO, RJR Nabisco: As parents, we know that the reasons kids smoke aren't related to price.

AARON BROWN: (voice-over) In fact, industry ads argue, steep price increases will only make the problem worse.

WORLD NEWS TONIGHT WITH PETER JENNINGS, MAY 19, 1998

PAGE 3

NARRATOR (Tobacco Industry TV Ad): There will be a black market in cigarettes with unregulated access to kids.

AARON BROWN: (voice-over) The industry cites Canada as proof. In the early '80s, when Canada increased cigarette prices, a black market did emerge. But something else happened in Canada the tobacco industry does not mention.

DAVID SWEANOR, Non-Smokers' Rights-Canada: The price went up in Canada, consumption among teenagers plummeted.

AARON BROWN: (voice-over) The number of kids who smoked every day dropped by 60 percent in little more than a decade.

(on camera) The tobacco companies know this. The evidence of their knowledge is contained in their own files. This Philip Morris strategic planning document from the early '90s states it simply.

(voice-over) "There is no question that increasing taxes will cause a decrease in smoking. This point is best illustrated by the present situation in Canada." Five years earlier, a Philip Morris analysis of price increases concluded, "Price increases prevented 600,000 teenagers from starting to smoke. We don't need to have that happen again."

Today, Philip Morris tells a different story.

STEVEN PARRISH, Senior, Vice President, Philip Morris: There are a lot of things that have an impact on whether a kid is going to smoke. Price is not the only thing.

AARON BROWN: (voice-over) And no one on the anti-tobacco side claims it is. But they do say this...

DAVID SWEANOR: If there is anything more effective at reducing smoking among kids than price, we haven't found it yet.

AARON BROWN: (voice-over) And neither has anyone else. Aaron Brown, ABC News, New York.

PETER JENNINGS: Some other news today. The government has released its first study on the safety...

(voice-over) ...of those so-called personal watercraft, including things like jet skis and waverunners. They represent now a third of all new boats sold. To cut down on accidents, the government recommends the Coast Guard establish safety standards. The vast majority of people who have accidents had no safety instruction.

(on camera) Overseas in Belfast today, rock 'n' roll to promote peace.

BONO, U2: (singing) Just give peace a chance.

PETER JENNINGS: (voice-over) The familiar sounds of U2, including Bono, from Dublin sharing the stage with Protestant and Catholic politicians to encourage support for an historic referendum to be held Friday on the Northern Ireland

WORLD NEWS TONIGHT WITH PETER JENNINGS, MAY 19, 1998

PAGE 4

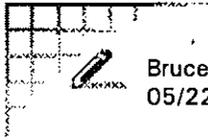
peace agreements that were negotiated with American help in April.

(on camera) In just a moment, is the government doing enough to make sure the drugs we take are safe? We have an ABC News investigation.

(Commercial Break)

LANGUAGE: ENGLISH

LOAD-DATE: May 20, 1998



Bruce N. Reed
05/22/98 03:20:34 PM

Record Type: Record

To: Cynthia A. Rice/OPD/EOP, Mary L. Smith/OPD/EOP, Cynthia Dailard/OPD/EOP, Elena Kagan/OPD/EOP

cc:

Subject: Price Quote

There's a very good quote in one of the Philip Morris documents Mary found on teen smoking and price. It's from Sept 17, 1981 (p.3): "It is clear that price has a pronounced effect on the smoking prevalence of teenagers." The document also suggests a price elasticity of -1.2 for teens, considerably higher than we assume. We should try to use the quote in our defensive talking points (and find out what the author of the memo did for PM).

Tob-ser-new documents
and
Tob-ser-price

To be re-viewed documents

First with the finest cigarettes...through Lorillard research

Bob Davis:

Please draft a reply for me by 9/11 -

August 30, 1978

TO: Mr. Curtis Judge
FROM: T. L. Achey - Field 3
SUBJECT: Product Information

Thanks -
BAG 9/6



Mr. Judge, if you will look at my Sales figures (attached), you will note that NEWPORT KING SIZE is the #1 selling Lorillard brand, and NEWPORT BOX the #6 selling Lorillard brand in Field 3 for the year-to-date.

I know your immediate concern must be the "Lights" market; however, I also know the efforts placed into several "taste" brands over the past few years.

The success of NEWPORT has been fantastic during the past few years. Our profile taken locally shows this brand being purchased by black people (all ages), young adults (usually college age), but the base of our business is the high school student.

NEWPORT in the 1970's is turning into the Marlboro of the 60's and 70's. It is the "In" brand to smoke if you want to be one of the group.

Our problem is the younger consumer that does not desire a menthol cigarette. If that person desires a non-menthol, but wants to be part of the "In group", he goes to Marlboro.

Could we be furnishing a back-lash to Marlboro from our NEWPORT brands?

Is Marlboro as strong with the early beginning consumers as the NEWPORT brands?

Could we end the success story for Marlboro by furnishing the young adult consumers with a total category of "In" brands?

I think the time is right to develop a NEWPORT NATURAL (non-menthol) cigarette to attract the young adult consumer desiring a non-menthol product. We have a solid base with NEWPORT and I foresee much success with the name of NEWPORT on new packaging.

SUITE 2, RTA BLDG., RTE. 22, MT. LAUREL, N.J. 08054 Telephone: (609) 234-8141-42

CONFIDENTIAL: MINNESOTA TOBACCO LITIGATION

03537131

TRIAL EXHIBIT
10,195

First with the finest cigarettes...through Lorillard research

-2-



We would need packaging in the Soft pack and Box.

A good test area might be the Camden, New Jersey Division.
NEWPORT KING SIZE is the #5 brand (all companies) in this
Division.

TLA
T. L. A.

TLA:es

CONFIDENTIAL: MINNESOTA TOBACCO LITIGATION

03537132

SUITE 2 RTR BLDG. RTE. 73. MT. LAUREL, N.J. 08054 Telephone: (609) 234-0141-42

Tob - rec - new documents



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Opinions

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Documents discuss nicotine levels and marketing to teens

6-28-98

By DOUG CAMPBELL, Staff Writer

Lorillard Tobacco Co. strongly suggested in confidential documents that its customers smoked because they were physically addicted to nicotine, that high school students were the core of its customer base, and that a supposedly independent industry-funded health research organization was a public relations machine.

The documents also show that Greensboro-based Lorillard extensively studied ways to elevate the delivery of nicotine and considered developing a brand aimed at image-conscious teenagers.

~~These findings are contained among 33~~

NEWS INFO

Help

These findings are contained among 33 million papers released this year as part of a tobacco industry trial in Minnesota and subpoenaed by the House Commerce Committee. Only a handful of the memos ever before have been available to the public.

The documents offer the most vivid look to date at Lorillard's strategic thinking in an assortment of high-level efforts to make its Kent and Newport brands more competitive.

The revelations appear to undercut Lorillard's long-held public positions on the addictive properties of nicotine and on its evaluations of marketing strategies regarding youths. Academics and some legal experts who have fought against the tobacco industry believe the documents could hurt Lorillard in court and in an ongoing federal criminal probe.

The same experts say that the Lorillard documents are being used in a Justice Department investigation into whether the tobacco companies, including Lorillard, concealed damaging information about their product and therefore committed fraud on customers and the government. The Justice Department is investigating whether cigarette makers suppressed information about the health hazards of smoking, manipulated nicotine levels to keep smokers hooked, or marketed to young teens. Justice spokesman John Russell would not comment, except to say the investigation is continuing.

Furthermore, tobacco foes say the recently disclosed papers -- of which Lorillard's accounted for only a fraction -- place the entire industry in a weak bargaining position in talks over a national settlement. A Senate tobacco settlement bill was recently scuttled, but debate may resume within months.

Lorillard executives, including Alexander Spears, chairman and chief executive, declined to answer specific questions regarding the documents, citing ongoing litigation. Also, Spears said that the tobacco companies are continuing to claim attorney-client privilege over thousands of the papers and that discussing them may cause the companies to forfeit that privilege in future lawsuits.

Before the documents were released, Lorillard issued a statement Feb. 24

How to find tobacco documents

Tobacco company documents are widely available on the Internet. Retrieving them sometimes takes a powerful computer and familiarity with the litigation that forced the cigarette makers into turning them over.

The House Commerce Committee has posted nearly 39,000 of the most sensitive documents on its Web site. The cigarette companies continue to assert attorney-client privilege over these documents.

Maneuvering around this site is tricky because you need special nine-digit numbers to retrieve many documents. There is no traditional index, just privilege logs in which defense attorneys listed the dates the documents were written, their authors, and the subject.

A simpler site to search is the Blue Cross and Blue Shield of Minnesota page. The state posted thousands of documents out of 33 million original items that a court ordered the companies to turn over. Only documents that were identified as exhibits during the trial are posted. This site includes a sampling of the controversial 39,000 documents.

Also, the tobacco companies have a site with a large share of the 33 million documents they released in early 1998.

- [House Commerce Committee's site](#)
- [Blue Cross' site](#)
- [The tobacco companies' site](#)
- [Lorillard's site](#)

saying it was preparing to post its papers on the Internet as part of an effort to emphasize our complete commitment to the comprehensive resolution currently being considered in Congress." Asked whether some of the papers are hurting the tobacco industry in national settlement talks, Spears disagreed.

"I don't really know that that's true," Spears said in an interview. The documents are out there and they can serve whatever purpose people want to use them for." Spears declined to elaborate.

Spears was the head of Lorillard's research and development facility in Greensboro during the time that many, but not all, of the documents were drafted, and he was prominently named in numerous papers dealing with nicotine manipulation. Active in local civic affairs, Spears was chairman of the Greensboro Area Chamber of Commerce in 1997 and has worked for Lorillard since 1959.

Ron Milstein, Lorillard senior associate general counsel in Greensboro, referred all questions to tobacco industry spokesman Scott Williams in Washington. Williams, who works for a public relations firm, declined to comment about specific documents or to answer specific questions. But he acknowledged that the documents' release has caused headaches for the industry.

"Critics use the documents to push political hot buttons," Williams said. The documentation will be a part of the history of the tobacco industry forever. Ultimately, lessons will be learned by both sides when the material is reviewed by cooler heads separated from the heat of the political debate."

Nicotine research

The documents indicate that Lorillard executives recognized at least 25 years ago that the key ingredient in cigarettes is nicotine. Numerous papers produced by scientists at Lorillard's research and development facility in Greensboro appear to undermine the company's -- and the tobacco industry's -- longtime public stance that smoking isn't physically addictive and that the practice and its perceived health risks are a personal choice.

The papers analyzed by the News & Record tend to portray Lorillard executives as having two positions on nicotine: one public and one private.

Appearing before Congress in the spring of 1994, Spears testified: We do not set nicotine levels for particular brands of cigarettes ... Nicotine levels follow the tar levels." Spears' superior at the time, Andrew Tisch, in sworn testimony said he didn't believe nicotine was addictive. In the summer of 1997, Spears told jurors in a Florida second-hand smoke trial that he believed nicotine wasn't addictive.

Yet this was not what Spears' own colleagues were telling him. On April 13, 1977, researcher Harry J. Minnemeyer, who later became director of quality control, wrote to Spears about an effort referred to in the memo as the the nicotine enrichment project."

~~Tobacco scientists know that~~

Tobacco scientists know that physiological satisfaction is almost totally related to nicotine intake," Minnemeyer wrote. The objective of the Research Department in this project has been to find how the nicotine delivery of the new product could be maximized."

Two months later, the vice president for research and development, Fred Schultz, told Spears to continue the nicotine research.

Consideration of nicotine delivery necessary to achieve long-term use and satisfaction by the consumer dictate that we should continue to pursue the concept of nicotine enhancement," reads the

July 22, 1977, memo to Spears.

Three years later, the project continued. Goal: Determine the minimum level of nicotine that will allow continued smoking," reads a Feb. 13, 1980, memo from Lorillard executive Richard Smith to Spears. Smith goes on to state that smoking is both physiologically and psychologically motivated," and that when nicotine levels drop too low smokers will quit."

James Brock, a professor of economics at Miami University in Ohio who has written a book on the history of the tobacco industry, said such statements make it clear that Lorillard and other tobacco companies were well aware of nicotine's addictive properties.

It becomes pretty hard to maintain with a straight face that you didn't know it was addictive," Brock said. The documents make it clear that very high-ranking scientific people knew it was addictive and that they had done extensive research into its addictiveness, and they actually contemplated and in some cases implemented ways to enhance its delivery."

Lorillard's documents

Minnesota requested papers from the country's five major cigarette makers dealing with specific topics such as nicotine, marketing and health. Attorneys involved in the case said they can't be certain they collected all of the companies' internal communications. The attorneys said that although many memos described in detail studies on manipulating nicotine, for example, no documents appeared to announce that any company had put to market a nicotine-enriched cigarette.

Almost all the Lorillard documents entered into evidence in Minnesota were written by scientists in the company's research facility in Greensboro, where chemists develop and test brands before they are put to market. Several executives named prominently in the documents were contacted by the News & Record, but none would comment for this story, saying they had been advised by Lorillard not to say anything.

Lorillard Tobacco Co.

- Headquarters: Green Valley Road, Greensboro
- Employees: 2,273
- Founded: 1760 in New York by Pierre Lorillard
- Year established in Greensboro: 1956
- Chairman and CEO: Alexander Spears
- Core business: Cigarette maker with major brands including Newport, Kent and True
- Annual production: 40 billion cigarettes, \$2 billion in sales
- Parent company: Loews Corp.

Although politicians have hammered industry leaders Philip Morris and R.J. Reynolds Tobacco Co. over damaging internal memos, Lorillard has eluded the national spotlight. Experts say that may be because of its relatively small -- 9 percent -- share of the U.S. cigarette market.

Richard Daynard, a longtime tobacco adversary, believes the Lorillard documents could be highly damaging because they appear to contradict sworn congressional testimony made by Lorillard executives. Daynard is a professor at Northeastern University School of Law and the chairman of the Tobacco Products Liability Project, which consults with plaintiff attorneys in tobacco suits.

Lorillard seems to have gotten off quite lightly so far," Daynard said. There may be less quantitatively on Lorillard (in the trove of documents), but nonetheless they may turn out to be among the first indicted."

Other experts are less certain about Lorillard's fate in the Justice Department's criminal investigation into possible fraud by tobacco producers.

You've got to show fraud. Where's the fraud?," said Gary Black, a tobacco analyst with Sanford C. Bernstein in New York. You've got to show there's some deliberate misstatement by the industry, and there's no misstatement that I can see. The belief that smoking isn't addictive, I don't know that that's fraud."

David Adelman, a tobacco analyst with Morgan Stanley Dean Witter in New York, said: It's incredibly difficult, not to bring a charge of perjury, but to sustain it. You can be factually inaccurate and believe something."

Lorillard officers would not comment.

The most damaging Lorillard documents can be roughly divided into three categories: nicotine research, youth marketing and health studies.

□ **Nicotine research.** During the 1970s and into the 1980s, scientists at Lorillard's research facility in Greensboro attempted to make an enriched nicotine cigarette as part of an effort to make Lorillard brands more competitive. The scientists admitted that nicotine is addictive and postulated that a high-nicotine, low-tar cigarette would keep smokers hooked while making them believe they were using a healthier product.

Cigarette sales are made for one reason. The customer is satisfied with the product either from the taste or the physiological satisfaction derived from the smoke," says a July 16, 1976, Lorillard memo by researcher M.S. Ireland to fellow researcher Minnemeyer. The most probable reason for the addictive properties of the smoke is nicotine."

A May 4, 1976, paper from Minnemeyer to researcher Schultz states: Recommendations from health oriented agencies and pressure from competitive companies make it imperative that Lorillard develop a flavorful cigarette delivering lower tar while at the same time delivering a level of nicotine higher than could be obtained normally."

Lorillard's own tests in the 1970s and 1980s rated its brands as having lower nicotine levels and yields than rival brands such as Marlboro, according to various documents. For example, an April 3, 1973, paper

from researcher T.B. Moring to C.L. Tucker, the director of product development, found that Marlboro had almost five times as many milligrams of nicotine per cigarette than Lorillard brands.

Similar findings were reported in a Dec. 16, 1980, memo from T.D. Jessup, a researcher, to manager D.R. Tedder. Today Tedder is a member of the Guilford County Board of Education who still works for Lorillard. Tedder, through his secretary, declined to comment.

Although it is unclear whether a nicotine-enhanced brand was put to market, in January 1998 Lorillard's Newport brand was rated in federal tests, as administered by the state of Massachusetts, as the leader in terms of nicotine yield among the nation's most popular cigarettes. Those tests used different methods than Lorillard employed in the 1970s and 1980s in measuring nicotine yields, so the results may not be comparable.

Lorillard researchers considered developing a low-nicotine cigarette for smokers who wanted to quit, several documents state. The idea apparently was scrapped in the mid-1970s because the company decided such a product wouldn't sell.

It is our judgment that a cigarette with substantially lowered nicotine could not deliver the smoking satisfaction to sustain consumer purchase," researcher Richard Smith wrote on Nov. 9, 1976, to Schultz. Smith said in the memo that he reached this conclusion after consulting Spears.

The papers dealing with nicotine manipulation may be of particular interest to Justice Department investigators. The government wants to know whether cigarette companies altered nicotine levels without being detected in federal tests, according to legal experts familiar with the inquiry.

The researchers recognized 25 years ago that the best-selling brands were those with high pH levels, or high acidity. Nicotine with a higher pH is more quickly absorbed in the body. The chemists set about adding chemicals such as ammonia to Lorillard's experimental tobacco blends to increase the pH, documents state.

Youth marketing. Company executives said that high school students were the core of Lorillard's business and worried about losing this customer base to rival brands.

An Aug. 30, 1978, marketing memo from T.L. Achey, an executive in the company's former offices in New Jersey, to former Lorillard President Curtis Judge suggests the development of a non-menthol brand to compete head-to-head with Marlboro, which was popular among young smokers.

The success of Newport has been fantastic during the past few years," the memo says. Our profile taken locally shows this brand being purchased by black people (all ages), young adults (usually college age), but the base of our business is the high school student."

It is the 'in' brand to smoke if you want to be one of the group."

Marlboro was the No. 1 brand among all smokers during 1978, as it is today. Lorillard executives appeared worried that despite Newport's popularity among high school students, it still had limited appeal because

it was a menthol cigarette.

Our problem is the younger consumer that does not desire a menthol cigarette. If that person desires a non-menthol, but wants to be part of the 'In group,' he goes to Marlboro," the memo says. Is Marlboro as strong with the early beginning consumers as the Newport brands?"

Lorillard officials declined to comment.

A Nov. 25, 1981, memo from marketing researcher Laurie Moroz to Robert Ave, who became Lorillard president in 1984, compares smoking rates among different age groups, including 13- to 17-year-olds.

Jeff Greene, the director of special projects for the American Lung Association of North Carolina, said Lorillard's and other companies' memos regarding marketing to youths indicate that the industry was aware of national studies showing that people are more likely to become smokers if they start before they turn 18.

The tobacco companies' pledges to curb youth smoking to this point have been made in order to limit their liability; that's their interest, not to reduce youth smoking," Greene said. "We have seen no evidence that they're genuine. They've engaged in unethical marketing practices and have been deceptive to the American people."

□ **Health studies.** Lorillard acknowledged in its internal memos that the Council for Tobacco Research was a public relations machine and controlled by lawyers.

The CTR was founded in 1954 by tobacco companies after government health studies first reported links between smoking and disease. It was presented to the public as a source for independent research on smoking and health. Lorillard documents suggest that the CTR was a waste of money because nobody outside the industry treated its studies seriously.

The joint industry funded smoking and health research programs have not been selected against specific scientific goals, but rather for various purposes such as public relations, political relations, position for litigation, etc.," Spears wrote to Lorillard President Curtis Judge on June 24, 1974.

Thus, it seems obvious that reviews of such programs for scientific relevance and merit in the smoking and health field are not likely to produce high ratings," Spears wrote.

The available documents suggest Lorillard sought more independence from the leadership of industry lawyers who seemed to be determining what sort of studies the CTR would fund.

In handwritten notes dated April 21, 1978, then-CEO Curtis Judge said: We have again 'abdicated' the scientific research directional management of the Industry to the 'Lawyers' with virtually no involvement on the part of scientific or business management side of the business ... Lorillard's management is opposed to the total Industry future being in the hands of the (industry lawyers.)"

Ed Sweda, a senior attorney with the Tobacco Products Liability Project, said these memos are proof that the CTR was a public relations machine.

It showed who was fundamentally calling the shots -- not the scientific group, the attorneys," Sweda said.

Legal implications

Attorneys say the recently released tobacco industry documents were crucial in Minnesota's and Blue Cross Blue Shield's claim that the country's five cigarette makers -- Lorillard, RJR, Philip Morris, Brown & Williamson and the Liggett Group -- should reimburse the state of Minnesota for the cost of treating sick smokers. The case was settled for \$6.6 billion in what was widely seen as a victory for the state.

They were profoundly important," said Tom Gilde, an attorney with Blue Cross Blue Shield of Minnesota. The documents can't recant themselves and they can't say 'I don't remember.' They simply state what people were thinking and saying and doing at the time and in that sense they are unimpeachable."

In more than 300 lawsuits brought to trial, the tobacco industry has only one standing courtroom defeat (in which all appeals have been exhausted) in lawsuits seeking damages from smoking.

Suits brought by three other states besides Minnesota were settled without the introduction of company documents. But those resolutions came at a time when Big Tobacco was poised to agree to a \$368.5 billion national settlement that would limit its future liability in lawsuits. The Minnesota trial happened as cigarette companies were in a fighting mode after the Senate proposed a crippling \$516 billion settlement that offered no immunity from class-action suits.

Now with these new documents, the only kind of immunity that anyone is going to get is to turn state's evidence," said Donald Garner, a professor at the Southern Illinois University School of Law and a tobacco litigation expert.

At present, Lorillard is a defendant in about 200 product liability cases also involving other cigarette makers, and the sole defendant in 15 such cases, according to company filings with the Securities and Exchange Commission.

Lorillard's only standing courtroom defeat in which it was the lone defendant came from a 1994 case in which a California man's lung cancer was caused by smoking asbestos-containing filters made during the 1950s. But that case did not deal with nicotine or tobacco.

At least 58 class-action suits may involve Lorillard, the company said in its government filing, and about 110 reimbursement cases in which government agencies and private citizens are seeking to recover the health care costs of smoking.

Internal documents have been used against Lorillard in trials before. For example, the famous Cipollone case, the first to suggest a conspiracy by tobacco companies to mislead smokers about health risks, in 1988 brought to light a 1946 paper by Lorillard chemist H.B. Parmele. The scientist noted that studies had produced just enough evidence" to possibly justify a link between smoking and cancer. Regardless, the tobacco industry eventually won that trial.

But the Cipollone documents, and others released since then, were not nearly as descriptive as those released en masse this spring, according to tobacco litigation experts. And that difference, the experts say, could change everything.

Many analysts attributed the surprising June 10 defeat of Brown & Williamson in a Florida trial brought by relatives of a smoker who died to the tobacco company's inability to counteract compelling evidence provided by internal company documents.

Charles Thompson, the lead attorney in a class-action suit brought by 10 North Carolinians against the cigarette companies, said the newly released documents make his case. The suit, filed in Greensboro's federal court in February, has yet to reach trial.

It's better than a confession," said Thompson, whose office is in Birmingham, Ala. I've handled several class actions where you had one smoking gun, but never have I had a case like this where you've got smoking guns everywhere."

Top

Have an opinion?

1. Post it on Inter@ct, our bulletin board
2. E-mail a letter to the editor. Please specify that it is intended for publication, and you must include your name, home street address and daytime phone number. Letters must not exceed 250 words.

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1980 Philip Morris Memo Spoke Of Need to Hide Nicotine Studies

By Sandra Torry
Washington Post Staff Writer
Thursday, April 16, 1998; Page A04

Fifteen years before the Food and Drug Administration made its controversial move to regulate cigarettes, industry giant Philip Morris already was strategizing to hide studies that might encourage what it feared was the government's intention, according to a 1980 document introduced yesterday in Minnesota's lawsuit against the industry.

The document -- one of a cache of hotly disputed papers unsealed by the Supreme Court last week -- discusses a company legal strategy to conceal research that might aid efforts to transfer tobacco regulation to the FDA, which "was known to have interests and powers antithetical" to the industry's interests.

Although the document, written by a leading Philip Morris scientist to a top company executive, indicates that some of the studies would go forward, it adds, "Our attorneys, however, will likely continue to insist upon a clandestine effort in order to keep nicotine the drug in low profile."

"The psychopharmacology of nicotine . . . is where the action is for those doing fundamental research on smoking, and from where most likely will come significant scientific developments profoundly influencing the industry. Yet it is where our attorneys least want us to be," he wrote.

Since the FDA moved in 1995 to regulate cigarettes as a combination drug and drug-delivery "device," the industry has argued that the agency does not have jurisdiction, in part because cigarettes do not fit the statutory definition of drugs or drug-delivery devices as defined by the Food, Drug and Cosmetic Act. The industry's challenge to the FDA's proposed set of regulations is pending before a federal appeals court.

Former FDA commissioner David A. Kessler, who initiated the agency's move to regulate tobacco, said the memo was "stronger than anything else I have seen," apparently indicating the industry "knew and acknowledged that nicotine was a drug . . . long before we did."

"Here you have a memo that lays out them saying it [nicotine] is a drug" and that "they have to cover it up," Kessler said. "The hard thing to understand, in light of this memo, is how the lawyers for the industry have denied the fact that nicotine is a drug." For years, the industry has argued that nicotine as it naturally occurs in tobacco

should not be regulated as a drug.

The 1980 memo to Robert B. Seligman, a former company vice president, also states that industry attorneys have advised against research into the health risks of smoking because it likely would be used against cigarette makers in lawsuits by the heirs of deceased smokers.

Philip Morris scientist William L. Dunn, the memo's author and a leading expert on the effects of nicotine, describes the industry's general legal defense strategy this way: "We within the industry are ignorant of any relationship between smoking and disease."

Minnesota Assistant Attorney General Doug Blanke said in an interview that the memo "goes right to the heart of two of the most critical issues in the smoking-and-health debate." First, it underscores the companies' strategy "to plead ignorance about the death and disease they are causing," he said.

Second, as for the comments on the FDA, it demonstrates that industry officials understood "that nicotine is acting on the brain as a drug and decided to conceal that knowledge in order to try to fend off or delay FDA jurisdiction," Blanke said.

Gregory Little, Philip Morris's associate general counsel, declined to comment on the document, saying that would be "inappropriate" because "we believe the document is privileged."

The memo is one of 39,000 documents from various tobacco companies that were unsealed last week after the industry exhausted its appeals at the Supreme Court. A Minnesota judge earlier had rejected the industry's argument that the documents were protected as confidential communications between lawyers and clients. Minnesota moved to break that protection, arguing that the documents were part of a crime or fraud.

Minnesota Attorney General Hubert H. Humphrey III and insurer Blue Cross and Blue Shield of Minnesota contend the industry lied to consumers about the health risks and addictiveness of smoking. They are seeking \$1.77 billion for tobacco-related health care costs.

The case, one of 41 filed by state attorneys general around the nation, is being closely watched during the unfolding tobacco debate. Cases filed by Mississippi, Florida and Texas have been settled for \$30 billion in industry payments, and Minnesota's case is the first to go to trial.

Little said yesterday that none of the documents helps Minnesota "prove in any way whatsoever that the state was misled." That, Little added, "is a fundamental flaw" in the state's case.

But an FDA official, who said he had not reviewed the document, saw it in a different light.

"It's very significant that 18 years ago, Philip Morris anticipated that its studies of the pharmacological effects of nicotine could be used as the basis for FDA jurisdiction," he said. "The document appears to

contradict the companies' current argument that nicotine in tobacco products is not a drug."

Staff writer John Schwartz contributed to this report.

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PHILIP MORRIS U. S. A.
INTER-OFFICE CORRESPONDENCE
RICHMOND, VIRGINIA

(F)
Abood P.

Date: March 21, 1980

To: Dr. R. B. Sellman

From: W. L. Dunn

Subject: The Nicotine Receptor Program

In responding to your query I'm going to first address the more inclusive topic of the psychopharmacology of nicotine. Abood's nicotine receptor program is included, as is the internal nicotine analogue program and the internal animal behavior program. All three of these efforts are aimed at understanding that specific action of nicotine which causes the smoker to repeatedly introduce nicotine into his body.

The psychopharmacology of nicotine is a highly vexatious topic. It is where the action is for those doing fundamental research on smoking, and from where most likely will come significant scientific developments profoundly influencing the industry. Yet it is where our attorneys least want us to be, for two reasons. It is important to have these two reasons expressed and distinguished from one another. The first reason is the oldest and is implicit in the legal strategy employed over the years in defending corporations within the industry from the claims of heirs and estates of deceased smokers: "We within the industry are ignorant of any relationship between smoking and disease. Within our laboratories no work is being conducted on biological systems." That posture has moderated considerably as our attorneys have come to acknowledge that the original carte blanche avoidance of all biological research is not required in order to plead ignorance about any pathological relationship between smoke and smoker. There is an important distinction that has been made here which it is well to articulate: The acute, transient, short-lived effects of nicotine upon a physiological system (among which are those effects or that effect sought by the smoker) are wholly independent of those alleged, cumulative, long-term contributions of smoke compounds to disease processes.

We are now being allowed to conduct research on the immediate effects of nicotine because of this distinction. We can work with biological systems; we can inject nicotine in rats and we can perform the surgery required for implanting cannulae. But in doing so we are engaging in research on the pharmacological action of nicotine, which brings us to the second concern of our attorneys. This is a more recent concern arising from increasingly favorable prospects for the success of a legislative effort to transfer authority for the regulation of tobacco manufacture to a Federal agency (F.D.A.) known to have interests and powers antithetical to the interests of the industry. Any action on our part, such as research on the pharmacology of nicotine, which implicitly or explicitly treats nicotine as a drug could well be viewed as a tacit acknowledgement that nicotine is a drug. Such acknowledgement, contend our attorneys, would be untimely. Therefore, although permitted to continue the development of a three-pronged program to study the drug nicotine, we must not be visible about it.

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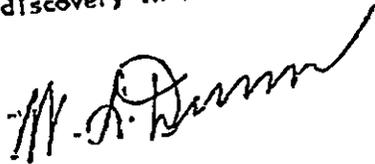
TRIAL EXHIBIT
26,227

I have made these observations not to ridicule but rather to emphasize the vexatiousness of the topic. Everybody is vexed. The Don Hoels and the Ed Jacobs and our corporate attorneys see their mission to be to save the industry not only from litigative demise but also now from regulatory harassment. The Leo Aboods, the Gary Berntsons and the corporate research scientists see their mission to be to hold Phillip Morris poised to respond to fast breaking opportunities or dangers on this very yeasty front.

Although our counselors have perhaps not been fully apprised of the relevance to the industry of the new developments in the neurosciences, I am confident that were they so they would concur with us on the need to stay abreast of developments. And staying abreast requires a heavy commitment, a commitment best maintained by an active research program.

Our attorneys, however, will likely continue to insist upon a clandestine effort in order to keep nicotine the drug in low profile.²

Now I'm in a position to respond directly to your query about the Abood program. So long as we must be officially heedless of the drug properties of nicotine, and cannot openly communicate with our counterparts in other laboratories, and cannot aggressively institute a large-scale neurosciences program on site, then we must have a window to the outside world. Abood's laboratory is that window. Being himself on the forefront and knowledgeable of developments as they are occurring in other laboratories, he is our informant. We need him for that. And it is as simple as that. Whatever else falls out of the arrangement (a discovery in his lab!) will be a fringe benefit.



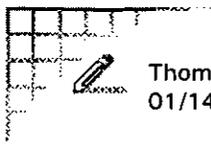
Jh
Attachment
cc: T. S. Osdone

0000127790

¹Perhaps they should be apprised (see attached box)

²Could the rationale for such a position be reviewed with them?

Tobacco - settlement - new documents



Thomas L. Freedman
01/14/98 11:21:53 AM

Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP
cc: Laura Emmett/WHO/EOP, Mary L. Smith/OPD/EOP
Subject: New Tobacco Documents

Later today Waxman will announce he's going to release RJR documents showing presentations to the board by its marketing department on the need to reach young smokers (14-24 years old), that "the future is young smokers" and the need to advertise in places like Sports Illustrated, and that the companies were doing quarterly surveys of teens.



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WASHINGTON
THE FULL STORY

Hundreds of tobacco industry documents released

By LAURAN NEERGAARD
The Associated Press
12/18/97 5:55 PM Eastern

WASHINGTON (AP) — As recently as 1990, tobacco industry lawyers were seeking \$100,000 to study "characteristics of children" and how they decide whether to smoke.

And back in 1967, the industry considered using the Monkees rock group as part of a "youth heroes" advertising campaign.

The disclosures were part of a historic release of more than 800 documents that tobacco companies had fiercely fought to keep secret -- some since 1953 -- but that a congressional committee put on the Internet Thursday.

A quick review of hundreds of the pages shows the wide control that tobacco-hired lawyers played over the decades as the industry struggled to refute scientific evidence of smoking's dangers. A Minnesota judge called the papers evidence of the industry's "conspiracy of silence and suppression of scientific research."

Lawyers met to review which scientific projects got funded, including the 1990 "adolescent morbidity project" that checked records of California children. Attorneys pushed to identify and fund sympathetic scientists and worried that some longtime industry researchers were "over the hill" or their "eyesight is not good" -- before awarding them thousands of dollars.

"Maybe the approach ought to be advocacy first and science second," industry attorney Sam Witt said in minutes of a 1981 meeting where lawyers debated how to fund tobacco "special projects."

"We wanted to protect it under the lawyers," attorney Edwin Jacob added about one particular project. "We did not want it out in the open."

Giving attorneys scientific information allowed the industry to protect its data under attorney-client confidentiality laws, but a Minnesota judge ruled Wednesday that the attorneys lost that protection by committing fraud.

"The lawyers are thus the most powerful group in the smoking and health situation," Minnesota Judge Kenneth Fitpatrick wrote, citing one 1979 memo in which Brown & Williamson counsel Kendrick Wells specifically outlined a plan to wrap scientific information in attorney-client privilege.

The documents are the largest cache of industry papers ever released at once. They come from the files of the Liggett Corp., which turned state's

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evidence last year to settle several lawsuits. But Liggett's competitors had fought to keep them sealed, even moving to appeal Fitzpatrick's ruling Wednesday.

So Thursday, the head of the House Commerce Committee interceded and put the papers on the Internet. Rep. Thomas Bliley, R-Va., had separately subpoenaed the documents two weeks ago, arguing it was vital for Congress to see what the industry knew about smoking's dangers before lawmakers consider the proposed \$368 billion tobacco deal -- which aims to settle 40 state lawsuits against the industry. The deal would, among other things, protect companies from future litigation, so Bliley said getting all potential evidence first was important.

Many of the papers are benign, such things as copies of congressional testimony.

But others attracted immediate attention. For example, one document was a 1967 public relations proposal to use "youth heroes" like the Monkees, the Supremes and sports figures John Unitas and Carl Yazstremski in commercials about smoking issues. R.J. Reynolds told the industry meeting that it wouldn't participate, but the memo said the PR firm would prepare examples of the ads for future industry consideration.

It should "come as no surprise that the tobacco companies needed and sought advice of lawyers, given the adversarial environment of the last four decades," the industry said in a statement Thursday.

Companies insisted the papers were still protected, and declined to comment on specific pages. Instead, they used Congress to end "continued controversy and confrontation" and adopt the tobacco deal.

The government moved to crack down on tobacco in 1994, arguing it was an addictive drug that had been targeted to minors. Documents released in that probe have shown that tobacco companies knew years before the surgeon general did that smoking was deadly and addictive. Cigarette makers argued that the links were speculative and that they were furiously hunting scientific proof.

But the new papers add evidence that attorneys, not scientists, were in charge of looking for a way out instead, said anti-tobacco attorney Richard Daynard.

The papers provide "pieces of the tapestry," he explained. "It's by no means the whole picture, but there are tantalizing clues that the lawyers were running this conspiracy that began in 1953 ... to generate misleading research, suppress accurate research and confuse the public."

Sen. John McCain, R-Ariz., promised Senate Commerce Committee hearings early next year to examine the papers.

But tobacco critics immediately cautioned that they are just the first among millions still being kept secret. "Without releasing the remaining documents to Congress, the tobacco industry can kiss any form of their settlement goodbye," said Sen. Frank Lautenberg, D-N.J.



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Thursday December 18, 5:05 pm Eastern Time

Company Press Release

Tobacco Industry Statement on Release of Documents

WASHINGTON, Dec. 18 /PRNewswire/ -- The following statement was issued today by Philip Morris Incorporated; R.J. Reynolds Tobacco Company; Brown & Williamson Tobacco Corporation; and the Lorillard Tobacco Company:

The documents released by the House Commerce Committee today are privileged documents. This is clear from the face of the documents. With few exceptions, they were written by, sent to, or received from attorneys. They reflect confidential communications between the companies and their legal counsel regarding key legal and regulatory issues that have confronted the tobacco industry for decades. Because the industry continues to maintain in numerous pending court proceedings that the documents are privileged, we cannot comment on the specifics of their contents. We can, however, set the record straight on the context in which these documents were prepared.

These documents concern a host of issues that have been the subjects of litigation and regulatory debate for many years. The issues raised in the documents, dating back to the early 1960's, are not new.

It should also come as no surprise that the tobacco companies needed and sought advice of lawyers, given the adversarial environment of the last four decades. Lawyers were of necessity involved in matters having obvious implications for litigation and regulatory proceedings. And it is precisely because of the involvement and advice of attorneys on such matters that the tobacco companies have deemed these documents, properly, subject to privilege. The debate and environment of confrontation which existed between the industry and its critics during the period these materials were prepared highlight the clear policy choice before Congress. Congress can continue business as usual, allowing the controversy concerning the role of tobacco in our society to continue, or it can enact the comprehensive national tobacco agreement reached between the industry, and various state Attorneys General, representatives of the public health community, and plaintiffs attorneys.

Pursuant to that settlement, the tobacco companies have agreed to regulation over every aspect of their operations, unprecedented advertising and marking restrictions, and huge annual payments to the States and the Federal Government. Many of these restrictions and payments would infringe upon the companies' free speech and other constitutional rights if imposed by government fiat and, therefore, can only be achieved through a settlement agreed to by the companies. In exchange for this agreement, the companies will receive limited protection from certain types of civil liability claims. This would include claims for punitive damages based on allegations regarding past industry conduct which are settled in return for a \$60 billion payment to a public health trust to fund various public health initiatives and research (the companies would remain liable for punitive damages for anything they may do in the future). Suits by individual smokers would be preserved.

If enacted by Congress, this settlement would create a new relationship between the industry, the government, and the public health community, in which tobacco companies would be able to cooperate toward the achievement of certain public health objectives without fear of their efforts would be used against them in pending lawsuits or regulatory proceedings. Thus, the Proposed Resolution targets key areas -- such as tobacco use by minors, FDA oversight, testing and disclosure of additives and ingredients, and developing "reduced risk" products -- where the industry can assist public health

officials rather than being forced to continue litigating against them.

We continue to believe that continued controversy and confrontation serve no useful purpose and delay the inevitable need to implement a national tobacco policy. Those who believe 20 -- or 40 -- year old documents merit continuation of legal and regulatory hostilities in lieu of a national legislative solution fail to see what is at stake. We must learn from, but not be obsessed by, events past, and recognize the value of a comprehensive national policy and the promise it holds for the future.

Only such a comprehensive settlement, agreed to by the tobacco companies, will result in meaningful, national progress with respect to a reduction in youth smoking and responsible regulation of the design, manufacturing and marketing of tobacco products.

SOURCE Philip Morris, Inc.; R.J. Reynolds Tobacco Co.; Brown & Williamson Tobacco Corp.; Lorillard Tobacco Co.

More Quotes and News: Philip Morris Companies Inc (NYSE:[MO](#) - [news](#))
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Thursday December 18, 1:56 pm Eastern Time

Company Press Release

SOURCE: Action on Smoking and Health

Release of Tobacco Documents Destroys Even Plausible Deniability, Says ASH

Also Shows Even More Blatant Antitrust Activity Than Expected; Release Explains How to Evaluate Documents

WASHINGTON, Dec. 18 /PRNewswire/ -- Action on Smoking and Health issued the following:

The tobacco industry documents released today destroy the tobacco industry's ability to make even a plausible denial of the charges previously made based upon earlier-released documents.

They also demonstrate even more blatant tobacco industry antitrust activity than may have previously been suspected, says law professor John Banzhaf, Executive Director of Action on Smoking and Health (ASH).

"In the past, the tobacco industry has denied that it concealed and misrepresented the dangers of smoking, or attempted to market its product to children, by arguing that there were only a few documents which were taken out of context, or were not representative of or acted upon by the companies involved," said Banzhaf. Now the wealth of new documents just released make such denials no longer plausible.

As the special master's report indicates, the documents show that the different cigarette makers cooperated with each other to a far great extent than previously believed, he stated.

For example, the documents describe what is called the "mouse incident," in which Philip Morris ordered RJR to shut down some biological research which could have been embarrassing to the industry.

This, as several other memos make clear, was part of a long-running "gentlemen's agreement" not to do medical research which could embarrass the industry.

There is also growing suspicion, says Banzhaf, that Philip Morris conspired with Commerce Committee Chairman Thomas Bliley, known as the "Congressman from Philip Morris," to orchestrate the release of the documents long before serious consideration of federal tobacco legislation begins, and in a form which makes it difficult for the media and others to appraise them.

"Instead of releasing the documents in text form where they could be easily downloaded, searched for key words, and copied, Bliley posted digital pictures which are very slow to download, cannot then be searched, and which require special programs to handle," says Banzhaf.

Banzhaf suggests that the media download a copy of the report of the special master from the Commerce Committee's Internet Web site or ASH's (<http://ash.org>) because it singles out and quotes from many of the most incriminating documents.

SOURCE: Action on Smoking and Health

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U.S. House of Representatives
 Committee on Commerce
 Room 2125, Rayburn House Office Building
 Washington, DC 20515-6115

December 18, 1997

MEMORANDUM

TO: Democratic Members, Committee on Commerce

FROM: Hon. John D. Dingell, Ranking Member 

SUBJECT: Tobacco Documents

Today Chairman Bliley released tobacco documents subpoenaed by the Committee earlier this month. I supported both the subpoena and the release of the documents. The Chairman intends to place all of the documents on the Internet through the Committee's homepage. This memorandum presents background information and a preliminary assessment of the documents.

Summary and Introduction

On December 5, 1997, Chairman Bliley issued subpoenas to four tobacco companies for certain documents. Specifically, the subpoena requests:

"All documents in categories 1, 3, 4b, 5 and 7 of Judge Kenneth J. Fitzpatrick's May 22, 1997 Order in State of Minnesota, et al. v. Philip Morris, Inc., et al., No. C1-94-8563 (2nd Judicial Dist., MN) (attached), as to which Special Master Mark W. Gehan recommended in his September 10, 1997 Summary of Recommendation to Judge Fitzpatrick (attached) that claims of privilege be denied."

Those categories (for which various privileges had been previously claimed) are:

1. All documents for which any previous claim of privilege or protection has been denied (even in interim, non-final, or vacated orders) and all documents specifically designated by plaintiffs by Bates numbers.
3. All scientific research or research reports on smoking and health or information relating to smoking and health, and memos regarding the same, written by an employee or outside consultant researcher or research entity of any Defendant or corporate affiliate of any Defendant.
- 4.b. All documents relating to Special Projects (including CTR Special Projects and Lawyers' Special Projects) or any Special Account (Including Special Account No. 4).

- 2 -

5. All documents relating to public statements or positions taken by any Defendant or combination of Defendants relating to smoking and health.

7. All documents relating to persons under age 18 (or children, adolescents or young adults).

Prior to today's public release of the documents, the staff had a limited time to review the documents. The documents lacked an index, and had no apparent ordering. The topics discussed in the documents and their context are not always clear. The documents also cover a limited time frame. For example, no documents in the 1990's are included.

Some qualifications about the information contained in this memo are in order. The review of thousands of pages of documents was conducted under tight time constraints, and the minority did not have possession of its own copy of the documents until today. For those reasons, some spellings, names, and quotations taken from the documents may not be exact because they are based on staff notes. These matters can be checked by referring to the documents themselves. **(Numbers in parenthesis refer to the numbering of the documents, which begin with the letter LG.)**

As the public, particularly those who have followed the issues of tobacco legislation, litigation, and regulation, reviews these documents, their usefulness will become clear. The documents certainly raise more questions than they answer, and many of the documents may be rich in significance to those with more experience in the field. Most importantly, these documents represent a relatively small percentage of privileged documents held by various courts, including the "Minnesota select" documents, many of which may have far more significance than this assortment.

The Chairman's decision to make these documents available to the public is proper. The Special Master's prior determination that claims of privilege should be denied was justified. More recently, on December 16, 1997, the Minnesota judge reviewing the documents concluded that the tobacco industry engaged in "a conspiracy of silence and suppression of scientific research," and that the companies "committed numerous abuses of privilege." Most of the documents relate to a program of funding research, directed by the legal departments of the tobacco firms and outside lawyers. They are highly relevant to the complaints of the various states in litigation. To the extent that these documents give weight to claims that the industry engaged in a conspiracy to commit scientific fraud, it may complicate attempts to address questions of immunity in legislation.

The documents provide a starting point in the determination of whether or how industry research efforts were used in a manipulative fashion. They already reveal far more than was known about the extent of the role attorneys played in determining research priorities. Further investigation will be required to understand the full nature of the lawyer-directed research.

The massive funding of "helpful" researchers will certainly astound many. Beyond the hiring of expert witnesses, lawyers appeared to fund the entire livelihood of dozens of researchers. Perhaps it can be explained by the comment of one of the general counsels that "Lawyers cannot testify. We need people who can." (2000743)

A memo from Lorillard General Counsel Arthur Stevens opines about a Witness Development Plan with "percentages or quotas" of witnesses to be sought for testimony relating to specific diseases. (2001008)

In short, the documents present a glimpse of the mountainous costs that the tobacco industry paid in its search for scientific backing for its views, in a scientific community that believes the exact opposite. Consider the proposed funding of a doctor to study the beneficial effects of reducing stress through smoking. A letter from William Shinn of the law firm Shook, Hardy & Bacon to attorney Alexander Holtzman on May 19, 1967, suggests that the doctor could be helpful on television and Congressional hearings in the creation of an image of smoking "as 'right' for many people - as a 'natural' act for man - as a scientifically approved 'diversion' to avoid disease causing stress." Shinn continues, "He would not give an opinion on smoking as a cause of any disease because he does not consider himself qualified. [His private opinion is that smoking does cause some cancers to develop, may cause heart disease in some people, and does cause bronchitis - he says these views are shared by all the doctors he knows but that these same doctors are willing to concede a beneficial diverting affect (sic) to smoking.] (2002520)

The remainder of this memorandum is intended to give you a general sense of the nature of the documents, based upon the staff review. This is far from an exhaustive review of the material, but rather a sampling of the information in the documents.

Special Projects

One important feature of the lawsuits brought by various State Attorneys General has been the allegation of fraud on the part of the tobacco industry in portraying their support of research into health and tobacco as intended to elicit independent scientific research, with no strings attached. The documents support a conclusion that research was in fact directed for the purposes of supporting tobacco lawyers in their litigation. The Council for Tobacco Research (CTR) was supposed to be independent, and governed by a scientific advisory board, but it appears that tobacco lawyers played a large role in determining the thrust of the research. Research which could not get the approval of CTR, but would be important to litigation, was funded as a "special project."

The preponderance of the documents received by the Committee relate to so-called Special Projects. They are referred to in various ways, as a Special Project of the CTR, a Special Project, a lawyers' special project, or Special Account #4 project. The common link was that the project would be recommended for funding by one of the company's outside firms -- most often Shook, Hardy, and Bacon -- in a letter to the General Counsels of the major tobacco firms. The

- 4 -

general counsels presumably approved the projects, often at a meeting known as the Committee of Counsel, based upon little more than a one or two page description of the research project. Under these Special Projects, doctors would be funded for thousands to hundreds of thousands of dollars to perform research. It appears that in general, the companies would pay the outside counsel periodically (initially similar amounts, but later based upon market share) and the outside counsel would forward the money to the doctor.

Special Projects were described in memos in the following ways. In a letter from Lorillard General Counsel Arthur Stevens to outside counsel Timothy Finnegan on February 22, 1980, Stevens questioned the need for certain special projects. He stated that he knew what the "mandate" was for the counsel: "I am mindful of the continuing mandate with which your office, Shook, Hardy and others have been charged by your respective clients on behalf of the industry: that is, to find witnesses and researchers – and, if necessary in order to determine the feasibility of developing a relationship with them, engage them as consultants, or as researchers on initially modest projects." (2006048, at 2006049)

Another memorandum from Liggett General Counsel Greer dated April 10, 1975, defines Special Projects as "scientific research projects of a quality sufficient to bear the imprimatur of the Scientific Director of CTR, approved by management, and which have the potential of arming our counsel and the industry with research helpful in court, in Congress, or elsewhere in adversary situations." (2000525, at 2000526)

In notes of a meeting of the Committee of Counsel on September 10, 1981, outside counsel Ed Jacob defined Special Projects as follows: "Purposes – 1) Develop witness – stimulate the interest of doctors; 2) develop information re: gaps in knowledge." (2000743)

This appeared to trouble Stevens, who wanted a re-evaluation, stating he was "concerned with the degree to which we make advocacy primary and science becomes secondary." He questioned why the same doctors kept coming up over and over and whether the research was worthwhile. In response, counsel Edward Jacob, stated, "If you have a doctor, you have to keep him busy or he will lose interest. Sterling has been enormously helpful. Berkson receives a small check and he has been helpful." (*Ibid.*)

Jacob continued, explaining the genesis of Special Projects: "When we started the CTR Special Projects, the idea was that the scientific director of CTR would review a project. If he liked it, it was a CTR Special Project. If he did not like it, then it became a lawyers' special project." (*Ibid.*)

An apparently attractive feature of Special Projects directed by lawyers was the argument that such research could be protected from discovery, as attorney work product. At the same meeting, Jacob noted, "With Spielberg, we were afraid of discovery for FTC, and with Aviado, we wanted to protect it under the lawyers. We did not want it out in the open." (*Ibid.*)

- 5 -

Not every company was interested in all of the Special Projects. As discussed above, the General Counsel of Lorillard expressed concern, and apparently, so did Liggett in notes of a January 10, 1983, meeting: "CTR Special Project: Things that Lgt [Liggett(?)] has never been involved in. These are 'scientific' or 'pseudo-scientific' projects that CTR has been unwilling to perform. Decker questions need for any of this." (2000788)

One unsigned document (2015011) appears to be a list of research projects of interest to the lawyers. They generally can be described as research that finds alternative factors in cancer and other diseases other than smoking, or research that attempts to refute studies linking smoking to cancer. A lengthy review of research projects follows, with CTR-financed research intermingled with special projects. All appeared to be part of an overall research strategy.

That strategy appears to be well-summarized in an interesting memo questioning the direction of the industry funding of research of nearly everything but the linkage of cancer and smoking. The Brown and Williamson memo on January 19, 1968, paraphrases the defense of the status quo research plan made by Janet Brown, an industry attorney:

"Research the disease not tobacco issues.

- "1) Maintain that existing evidence of tobacco-health relationship is inadequate to justify research more close to tobacco;
- "2) Study of disease keeps constantly alive argument that until basic knowledge of the disease advances, inappropriate to devote major effort to tobacco." (2023842)

Despite the claim that tobacco-sponsored research would be independent, and reviewed by an independent Scientific Advisory Board (SAB), as stated above, many projects were sponsored as Special Projects precisely because the SAB rejected them. For example, in the minutes of one meeting of the Committee of Counsels, lawyer David Hardy reported, "Hockett proposed to have project referred to SAB, and if SAB turns it down to carry it out under CTR special project. Severi's good will has real value." (2000139, at 2000141)

Far from using science as the sole criteria for research, a large percentage of letters going to the counsels requesting funds for Special Projects refers to prior acts of helpfulness by the researcher in testimony, statements, or the like.

Finally, in a memo to Ed Jacob of December, 1979, it appeared that an administrator understood the different roles of the CTR and attorneys. The CTR was responsible for broad administrative matters, while lawyers "establish broad goals and priorities." (2024368)

Nonscientific Factors Contributing to Funding of Special Projects

Many documents appear to suggest that factors other than scientific merit were considered in the funding of special projects. Letters from attorneys in Shook, Hardy and other firms to the

counsels to tobacco companies seeking approval for research funding often mentioned these other factors: (1) the doctors had conducted and would continue to conduct research with conclusions consistent with industry views; (2) the doctors were in the past or would likely be willing in the future to defend the industry before Congress, litigation, or in other settings where the industry was under attack; or (3) they held influential positions that would attract favorable attention.

For example, an August 20, 1971, letter regarding the funding of a Dr. Louis A. Soloff for more than a \$100,000, William Shinn of the law firm of Shook, Hardy, & Bacon noted, "We are needless to say, impressed by Dr. Soloff. He has presented a statement to Congress, appeared on the Security Analysts' program in New York and proved himself to be an excellent courtroom witness." His funding was recommended by the firm. (2002491)

Another letter from the same firm dated June 13, 1972, illustrates the same point but for a different researcher, a Dr. Thomas F. Mancuso: "Dr. Mancuso is willing to speak up. For example, his remarks at the AAAS meeting in Philadelphia on December 28, 1971 (attached), he criticized some of the participants at the meeting (Hammond and Selikoff) for focusing too much attention on smoking and ignoring the 'tremendous number of variables in the microchemical environment which have not been undertaken and which have not been considered.'" David Hardy from the firm recommended that Dr. Mancuso be funded. (2002575)

Other documents appear to indicate that many of the researchers the industry funded were both prominent and in positions to exert significant influence in the scientific community. Documents detail the apparent industry funding of Dr. Eleanor Macdonald, the Director of Epidemiology for the prestigious M.D. Anderson Hospital in Houston, Texas. Dr. Macdonald not only testified on several occasions before Congress, but also apparently assisted the industry in related litigation. In an October 12, 1972, letter from the law firm of Shook, Hardy & Bacon, Mr. William Shinn recommended \$46,730 in funding for Dr. Macdonald's work, noting that she "has been most helpful on several occasions in helping to develop statistics for litigation." (2002584)

Dr. Macdonald apparently remained helpful both as an industry consultant and as a scientist who could help the industry find new sources for industry research. In an April 1980 memo from the law firm of Shook, Hardy & Bacon, one lawyer notes, "Professor Eleanor Macdonald has requested a renewal of her CTR Special Project for one year... Industry support has enabled Professor Macdonald to have [had] a productive year... Professor Macdonald has been of assistance to us during the year. In addition to consulting on lung cancer epidemiology and other scientific issues, she has suggested names of researchers who might be candidates for industry funding. The amount requested is \$123,121." Dr. Macdonald's funding was recommended by the firm. (2002725)

Another example of a researcher apparently funded because of views favorable to the industry, concerns Dr. David Hickey. Lawyers from the same firm wrote in 1971, "It is perhaps unnecessary to add that Hickey is convinced that smoking has been given far too much consideration and air pollution far too little." (2002677) In 1968, lawyer David Hardy said of

Hickey, "In essence, Dr. Hickey is willing to prepare a statement for Congress provided he is able to complete the analysis of certain data which he has acquired. By applying methods of multivariate analysis, he is able to demonstrate that the concentration of certain air pollutants (most of which have not been identified in cigarette smoke) 'predicts' with considerable accuracy mortality rates of such diseases as lung cancer." (2002651)

Significance of Special Projects Documents

The Special Projects documents raise a variety of issues. At a minimum, they provide a small glimpse into the control of supposed independent research by tobacco lawyers. At the other extreme they could reflect a fraud or conspiracy to manipulate scientific research on the health effects of smoking, through the influence of money and the illegal use of attorney privilege. It is, if nothing else, startling to see hundreds of thousands of dollars in research subject to the review not of heads of university departments or hospitals, or organizations such as the National Institutes of Health, but rather only by tobacco attorneys.

The documents raise many questions that need to be answered:

1) How many researchers were paid through these Special Projects account, and how much was spent? The documents show dozens of projects funded each year for hundreds of thousands of dollars, but there is no single accounting. The recipients included a broad variety of institutions and hospitals.

2) What disclosures were made concerning these arrangements? Did researchers inform their institutions of the nature of their financial support? Was their support by tobacco industry lawyers made known in other fora, such as professional conferences or trials?

3) Is it appropriate for tobacco lawyers, not independent scientists, to direct millions of dollars of basic research at universities and hospitals?

4) If Special Projects recipients disclosed that they received money from the industry, did they improperly portray the funds as coming from the CTR, even when tobacco attorneys were making the decisions, not an independent Scientific Advisory Board?

5) Did the attorneys operate the program through the various general counsels in order to cloak the research under privilege? A memorandum on May 23, 1964, discusses a possible survey on consumer attitudes on smoking to be conducted not for the company, but for the lawyers, so if the results were unfavorable, the lawyers would receive the copies and there would be nothing to subpoena. (2006320)

6) Were any studies killed, because the results of the research were heading the wrong way, or did the lawyers seek to quash the public release of studies? One memo from Shook,

- 8 -

Hardy lawyer William Shinn to general counsels on January 11, 1968, refers to an action taken by a Special Projects recipient: "In spite of our instructions to the contrary, Sterling has submitted these papers 'informally' to the Public Health Service." (2006165)

7) Were Special Accounts at outside law firms used to conceal industry involvement in scientific research?

8) What oversight did universities and hospitals exert over the nature of research conducted at their institutions and the source of funding? In no case is there any record of an institution questioning the role of tobacco industry lawyers funding research projects at the institution.

Context of the Special Projects issues – The Huber Case

The documents alone cannot completely answer many of the above questions. Some of these have been raised in papers, but not mentioned in the documents. For example, in the fall of 1997, the Dallas Morning News and the Baltimore Sun ran several articles about one recipient of Special Project funding, Dr. Gary Huber, who received funding for various work at Harvard University, the University of Kentucky, and the University of Texas Health Clinic. Dr. Huber's name appears in a limited number of the documents we received, and the Harvard Project appears in a number of other documents.

The stories about Dr. Huber relate to his current role as a whistle-blower. The articles state that Dr. Huber received \$1.68 million during his work in Texas, an amount far greater than appears to be disclosed in the documents. According to an article in the Dallas Morning News of November 15, 1997, the "money was routed through an outside account bearing a Greek code name to keep it off hospital books and make it difficult for an outsider to find." The article states that the three institutions that Dr. Huber worked for received more than \$7.5 million over 25 years from tobacco lawyers, which also appears more than documented in the subpoenaed materials.

The Health Center was apparently aware that Dr. Huber was funded by industry lawyers, and agreed to their terms. According to the article, under a 1988 agreement between Dr. Huber and the Health Center, hospital officials agreed they could never review any work he did for the lawyers. In a 1994 memo, Dr. Huber warned that his continued funding hinged on avoiding public disclosure, and said the lawyers had insisted on keeping the payments off the Center's books. At that point his funds were funneled through an account named Alethia. Health Center officials let the arrangement go on because "it was either do it that way or not do it," said an associate executive director at the center.

In the articles, Dr. Huber claimed that the Harvard Project was close to establishing a link between cancer and emphysema when funding was canceled. The subpoenaed documents indicate an interest by lawyers to terminate the program, but there appeared no real mention of reasons. (See for example 2008417 discussing how tobacco lawyers considered dealing with him.) Industry lawyers in the article deny the accusation.

Most interesting in the articles is Dr. Huber's assertion of harassment by tobacco lawyers since his cooperation with plaintiffs. In the Baltimore Sun article of November 17, 1997, he says that a lawyer at Jones, Day, Reavis & Pogue threatened to bring "the full weight and power of Jones, Day and its client" - R.J. Reynolds - down on him. He says an attorney with Shook, Hardy & Bacon advised him there would be nothing wrong with removing from his tobacco files documents he no longer needed. The tobacco lawyers deny the accusations.

This matter is raised to point out that important follow-up investigations will be needed to determine the full meaning of the subpoenaed documents, to answer questions involving the knowledge of the institutions of the research sponsors, how the research was used, and whether research was suppressed.

Other Matters

Other documents provided to the Committee present other points of strong interest. A number of documents, for example, deal with industry responses to Safer Cigarette studies. (See for example, 2022168-9)

Other documents relate to advertising strategies. What exactly was the purpose of the proposed use of youth heroes on "Smoking being an adult custom"? (2022162) A number of lawyers were wary of that one. Other documents detail how the Tobacco Institute scripted "debates" on smoking and were wary that there be any notation of sponsorship of various doctors. (2017256)

What is the significance of the detailed computer-automated data base of health related research undertaken by the industry in mid-1960's? Or the existence of a form of clipping service of health related research from 1954-56? One May 28, 1958, memo from F.P. Haas to the general counsels discusses the development of a central file, noting that the TIRC (predecessor of the CTR) had assembled much material on health, but that it was important that future literature be collected and analyzed "under the wing" of counsel. (2017032) Is this an effort to shield unfavorable research under a claim of privilege?

Others may find legislative memos of interest. For example, at a meeting of Committee of Counsels on March 31, 1983, there was a lengthy discussion of how to answer a question concerning the hypothetical repeal of the warning label. Counsels have used the warning as a defense in lawsuits to show that smokers had adequate warning. (See 2006239) Not wanting to admit they liked the defense, they decided they would answer the question that the industry has

- 10 -

always opposed warning legislation "based upon the assumption shared by all that it wouldn't be repealed." (2000824)

A number of the documents touch upon strategies for dealing with requests for ingredients. It is acknowledged in one memo of September 15, 1977 by lawyer William Shinn that many companies dropped numerous ingredients right before they were required to provide a list to HHS, because of possible public relations problems. (2008121)