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I. INTRODUCTION

U. S. tobacco manufacturers facing mature general markets are seeking out special markets for their various product lines. This Hispanic market promises to be the site of fierce competition during this decade. It is estimated that there is a 38% incidence of smoking among Hispanics. Currently, R. J. Reynolds and Philip Morris, the leading U. S. tobacco companies, are beginning to directly pursue the Hispanic market. However, neither has developed an effective campaign to retain Hispanic brand loyalty. This paper will provide Brown & Williamson Tobacco Company with an analysis of its strengths and weaknesses in the Hispanic market.

A. Reports and Records as Sources of Data

The following situational analysis is based on the "1979 Hispanic Smoker Study", "1980 Hispanic Smoker Study", Bureau of the Census "Current Population Reports", and Sosa & Associates' expertise in the Hispanic market.

Since Sosa & Associates did not authorize the above research, it is difficult to assign the proper limitations to the following analysis. Thus, the primary limitation is that the research does not include Sosa & Associates' typology.

B. A Preview to the Presentation

This report provides an environmental situation appraisal. Hispanic consumption patterns, market share analysis, and an overview of the major opportunities and limitations for Brown & Williamson's KOOL cigarettes in the Hispanic market.

The environmental situation appraisal will provide an overview of the general Hispanic market as it applies to the cigarette industry. In addition, the competitive environment will be reviewed as it applies to the Hispanic market. The environmental opportunities and limitations will be specified.

Hispanic Consumption Patterns section and Market Share Analysis section will provide a working understanding of the competitive environment. These sections will review Hispanic cigarette consumption patterns, competitive brand shares, and Brown & Williamson's family brand shares.

The major opportunities and limitations section will develop a scenario of Brown & Williamson's current position in the Hispanic market. This section will provide the basis for the forthcoming 1982 Hispanic marketing plan, as well as an overview of KOOL's strengths and weaknesses in the market.

The conclusions will summarize the strategic implication for KOOL cigarettes in the Hispanic market.

II. CONCLUSIONS

KOOL clearly suffers from a lack of brand and advertising awareness. This in part contributes to KOOL's 34% decline in serious trials from 1979 to 1980. For the most part, KOOL has lacked an advertising campaign that was effectively directed towards the young male smokers, its traditional market, since 1971.

A. The Young Adult Male Market

The young adult male smoker remains an important market segment for KOOL. This market segment has been KOOL's primary market. This market segment is also the fastest growing Hispanic segment. Approximately 42% of the Hispanic market is under 18 years old. Thus, the young adult market becomes very important if KOOL is going to effectively cultivate the Hispanic market.

1. Top Ten Brands by Age:

Brand Family	1979 (21-34)	1980 (21-34)	'79 vs. '80 Index
Marlboro	33	34	103
Winston	20	16	80
Salem	14	9	64
KOOL	7	13	186
Benson & Hedges	5	7	140
Kent	4	5	125
Camel	3	3	100
Pall Mall	–	1	–
Viceroy	2	1	50
Newport	3	3	100

Kool continues to have strength in the young adult market. Kool demonstrated an 86% gain among young adult smokers. Thus, their young adult smoker base remains intact.

2. Top Ten Brand Male Smokers

Brand Family	1979 Male	1980 Male	'79 vs. '80 Index
Marlboro	29	30	103
Winston	24	24	100
Salem	13	11	85
KOOL	7	9	129
Benson & Hedges	3	4	133
Kent	4	3	75
Camel	2	5	250
Pall Mall	3	3	100
Viceroy	2	2	100
Newport	2	1	50

KOOL also demonstrates strength among Hispanic male smokers, therefore, this market segment also remains intact.

B. The Competition

The major obstacle to KOOL's success in the young adult smoker segment appears to be the newer brands, Newport and Belair. These two brands have dramatically increased their brand awareness among young adult smokers.

1. Unaided Brand Awareness by Young Adults:

Brand Family	1979 (21-34)	1980 (21-34)	'79 vs. '80 Index
Marlboro	83	81	98
Winston	77	71	92
Salem	69	57	83
KOOL	57	45	79
Kent	40	45	113
Benson & Hedges	30	35	117
Viceroy	39	29	74
Camel	24	26	108
Newport	21	23	110
Belair	7	18	257

These brands increased their brand awareness 10% and 157%, respectively.

C. Cultural Market Segments

Culturally, KOOL exhibits strong growth potential in the Puerto Rican and Mexican markets. However, it is very weak in the Cuban market.

	1979	1980	'79 vs. '80 Index
Texas Mexican	7	7	100
California Mexican	7	8	114
Puerto Rican	12	17	142
Cuban	6	3	50

D. Incidence of Smoking

Hispanics have a greater incidence of smoking than the general market (38% versus 36%, respectively). Hispanic males have a higher incidence of smoking (49%) than Hispanic females (27%). Finally, young adults, 21-34, have a higher incidence of smoking (41%) than older adults, 35+, (36%).

E. The Menthol/Full Taste Segments

Hispanics represent stronger development potential for the menthol category than Anglo smokers. 33% of Hispanic smokers are menthol users, versus 24.9% for Anglo smokers. In addition, more than 7 out of every 10 Hispanic smokers prefer a full-taste cigarette. In contrast, the Hi-Fi segment is the fastest growing taste category in the general market.

F. The Hispanic Market and KOOL

KOOL faces a distinct challenge in expanding its market in the Hispanic market. Principally, KOOL must work to legitimize menthol among young adult male smokers. This problem will become increasingly difficult over time, as the competition continues to increase. Newport, Belair, Salem, Kent, Marlboro and Winston are already marketing to Hispanics. With the exception of Marlboro, none of the competing brands have been able to secure a stable hold on the young adult market. The young adult market is a growing and a highly volatile market.

Additional research will be needed to properly diagnose Hispanic brand switching behavior and to develop a good understanding of Hispanics' perceptions of the KOOL brand and its competitors' brands. The new research will provide the basis for the 1983 Hispanic marketing plan. The 1983 Hispanic marketing plan will be KOOL's map to gaining a leadership position among Hispanic menthol smokers.

III. THE ENVIRONMENTAL SITUATIONAL APPRAISAL

A. The Hispanic Market

There are some 15 million Hispanics in the U. S., which, taken together with another 6 million undocumented Hispanic aliens, comprise a total market of some 21 million consumers.

The Hispanic population has experienced a 61% growth rate from 1970 to 1980. In contrast, the general U. S. Population's growth rate from 1970 to 1980 was 11.5%. At the current growth rate, the Hispanic market will constitute the largest single ethnic minority in the U. S. by 1985.

Geographically, Hispanics are concentrated in a few areas including: California, Texas, New York, New Mexico, Arizona, Florida, Colorado and Illinois. Because they are geographically concentrated, a minimum number of Areas of Dominant Influence (ADI) are required to effectively communicate to the Hispanic.

The median age for the Hispanic consumer is young - 22.1 years old. The following table illustrates the comparative age differences among the three primary ethnic groups in the U. S.

MEDIAN AGE

	1980	1970
Total Population	29.5	28.1
Hispanics	22.1	20.7
Blacks	23.8	22.5
Anglos	30.0	27.7

Approximately 42% of the total Hispanic population is under 18, compared to 29% for the non-Hispanic sector.

The above table also illustrates that the Hispanic as well as the other ethnic groups is getting older from 1970 to 1980. Nevertheless, the Hispanic is the youngest, and it is paramount to B&W to be ready to attract new smokers as they come of age to start smoking with KOOL. Despite the Hispanics' young age, they represent $51.8 billion in gross income and a potential consumer goods market conservatively estimated at $30 billion.

B. The Competitive Environment

Unit sales for 1981 are expected to be approximately equal to those of the preceding year. Despite the apparent stagnation of the U. S. cigarette market, the business can be very profitable for established industry participants. Limited aggregate growth potential necessitates that expansion strategies for individual companies be based on quests for increased market share. The established industry participants are R.J. Reynolds, Philip Morris, Brown & Williamson, American Tobacco, Lorillard, and Liggett & Myers.

In the quest for increased market share, the Hispanic market has become increasingly attractive to cigarette producers. The Hispanic market being a virgin market is ripe for a well orchestrated marketing campaign directed at their consumer dollars. R.J. Reynolds, Philip Morris, Brown & Williamson and Lorillard are currently either preparing or are marketing their products to Hispanics. R.J. Reynolds has launched a nationwide ethnicised English language campaign directed toward the Hispanics (see Appendix I). In addition, R.J. Reynolds has launched a nationwide direct mail campaign designed to encourage switching to a comparable RJR brand (Appendix II).

Philip Morris has been advertising Marlboro heavily in Hispanic print media; however, the creative unit does not have any copy lines. Philip Morris has also assembled a booklet consisting of all Hispanic business and social organizations at the national level, regional level and local level. In addition, PM has devoted a lot of time and money wooing Hispanic legislators.

Lorillard has been advertising Newport in Spanish with the slogan, "Date Gusto con Newport", in out-of-home media only. Lorillard is also advertising in Hispanic print. Lorillard will probably continue its marketing efforts toward Hispanics.

The Hispanic market is a young, fast growing market segment ready to consume products if they are marketed directly to them. Hispanics being a young market, 42% of the Hispanic market is under 18 years of age, and cigarettes are an adult product; the Hispanic market presents a bonanza of new starters coming on line for the next decade for the manufacturer who gains the dominant market position.

IV. HISPANIC CONSUMPTION PATTERNS

This section provides a detailed overview of the Hispanics' cigarette consumption patterns.

A. Smoking Incidence

General Market	36%
Blacks	47%
Hispanics	38%

✓ Hispanics have a greater incidence of smoking than the general market.

✓ Hispanics have a greater potential for market development because of their strong propensity to smoke.

B. Incidence of Smoking

	1979		1980	
	%	Index	%	Index
Total Smokers	45	100	38	64
Male	55	100	49	89
Female	36	100	27	75
21 - 34	47	100	41	87
35 and over	45	100	36	80
Cuban	45	100	32	71
Puerto Rican	43	100	50	116
Texas Mexican	36	100	32	89
California Mexican	55	100	37	67

✓ Smoking incidence has declined 15% from 1979 to 1980.

✓ There is a strong male skew, 49% versus 27% for female smokers.

✓ There is a skew toward younger smokers.

✓ Puerto Ricans have a high incidence of smoking.

C. Consumption in 1979 - 1980

Market Segment	Packs/Week 1979	Packs/Week 1980
Hispanics	5.4	5.5
Blacks	5.8	6.0
Anglos	8.1	7.9

✓ Hispanics are moderately increasing their consumption per week.

✓ Anglos are moderately decreasing their consumption per week.

D. Consumption: Packs per Week

	Packs/Week 1979	Packs/Week 1980
Total Smokers	5.4	5.5
Male	6.0	5.9
Female	4.8	5.1
21 - 34	5.0	5.3
35 and over	5.9	5.6
Cubans	7.1	7.7
Puerto Ricans	8.0	6.2
Texas Mexicans	4.3	5.1
California Mexicans	4.7	5.0

✓ The younger 21 - 34 age group increased its consumption from 1979 to 1980. While the 35 and over age group reduced its consumption during the same time period.

✓ Puerto Ricans are the only Hispanic culture that has decreased its consumption from 1979 to 1980.

✓ Males experienced a slight decline in consumption, while females experienced an increase in consumption.

Hispanics have a higher incidence of smoking than the general market. Hispanics' incidence of smoking did moderately decline from 1979 to 1980. Hispanic pack-per-week consumption registered moderate increases during the same time period.

The younger adult smoker and the male smoker have the highest incidence of smoking among Hispanics, with 49% and 41%, respectively. Simultaneously, the young adult smokers and the male smokers display strong product consumption patterns. They smoke an estimated 5.9 and 5.3 packs per week, respectively.

KOOL traditionally has been consumed by young adult male smokers. KOOL should target the young adult male smoker as its primary market. They represent the strongest smoking potential segment in the Hispanic market. In addition, this age group will be increasing at a rapid rate over the next five or more years.

V. MARKET SHARE ANALYSIS

The following section will provide a detailed overview of the major manufacturers' current market share, current category share, brand family share, and Brown & Williamson brand family share.

A. Manufacturers' Market Share

The smoking incidence among Hispanics, as stated earlier is 39%. The table below presents the six major manufacturers' market share in 1979 and 1980.

MANUFACTURERS' SHARE

	1979	Index	1980	Index '79 vs. '80
RJR	42	100	36	86
PM	32	100	36	113
B&W	12	100	13	108
ATC	4	100	4	100
LOR	8	100	8	100
L&M	3	100	2	67

✓ RJR and Philip Morris are in dominant positions within the Hispanic market, at 36% each during 1980. Their large market share could be attributed in part to the fact that they are the only firms aggressively pursuing the Hispanic market.

✓ The Hispanic market is in a super growth stage; therefore, it is very important for any serious competitors to enter now, while the competition is not as fierce. Brown & Williamson, with a well orchestrated marketing effort, should be able to maintain/expand its 13% market share over the next three years.

B. Category Market Share

This section evaluates the cigarette market in terms of category or cigarette styles such as non-menthol or menthol cigarettes and tar/nicotine levels. The following tables summarize the Hispanic market by category share during the years 1979 to 1980.

1. The Menthol Segment 1979 to 1980:

	1979	Index	1980	Index '79 vs. '80
Non-menthol	60	100	63	105
Menthol	35	100	33	94

✓ 33% of all Hispanic smokers smoked a menthol. This compares favorably with other ethnic groups.

Ethnic Segments	Menthol Users 1980
Hispanic	33.0%
Black	61.5
Anglo	24.9

✓ Hispanics represent stronger development potential for the menthol category than Anglo smokers. In fact, Anglo smokers are the minority in this instance.

2. Taste Segment 1979 to 1980:

	1979	Index	1980	Index '79 vs. '80
Full-Taste	76	100	74	97
Plain	5	100	4	80
Hi-Fi	19	100	22	116

It is accepted by most tobacco analysts that the general market is shifting its tar/nicotine consumption from full-taste cigarettes to Hi-Fi. The Hispanic market is demonstrating a similar trend; however, it is a much more gradual shift than the general market. This fact is demonstrated by the following table:

1980 CATEGORY SHARE BY SEX, AGE AND HISPANIC CULTURES

Category Type	SEX		AGE		HISPANIC CULTURES			
	Male	Female	21-34	35+	Cubans	Puerto Ricans	Texas-Mexicans	Chicano-Mexicans
Menthol/Non-menthol								
Non-menthol	70	57	65	61	67	51	62	71
Menthol	25	40	33	34	30	47	36	23
Tar/Nicotine:								
Full Taste	78	70	74	76	70	78	77	73
Hi-Fi	17	27	24	19	27	20	21	21
[illegible]	5	3	2	5	3	2	2	6

12

3. The preceding table illustrates category share by sex, age and Hispanic culture. Seven out of every ten Hispanic smokers, regardless of sex, age or Hispanic culture, prefer to smoke a full-taste cigarette rather than a Hi-Fi or plain cigarette. Hispanic preference for a non-menthol cigarette is strong; however, it is not as overwhelming as their preference for full-taste cigarettes. For example, 47% of the Puerto Ricans interviewed smoked a menthol, while 36% of the Texas Mexicans, 30% of the Cubans, and 23% of the Chicano Mexicans also smoked a menthol. With the exception of the Chicano Mexican, the remaining Hispanic cultures have a higher incidence of smoking a menthol than the general market (26.5%).

C. The Top Ten Brands in the Hispanic Market

Overall, the Hispanic market appears to be a fast growing market with five of the top ten brands enjoying a 25%-50% growth rate from 1979 to 1980. KOOL's strength rests with the young adult market (21-34).

KOOL increased its young adult smokers 86% from 1979 to 1980. KOOL appears to be strong among females with a 10% share versus 9% for males. However, the male segment grew 29% versus 11% for females.

Culturally, the stronger segments are the Puerto Rican and the Mexican markets. KOOL is extremely weak in the Cuban market. KOOL's market share declined 50% while Salem increased its market share 7% during 1979 to 1980. Conversely, KOOL is particularly strong in the Puerto Rican market. KOOL registered a 42% increase in its market from 1979 to 1980.

KOOL's market is distinct from Salem's market. KOOL is smoked more by young adults (21-34), while Salem is preferred by older smokers (35+). Salem is largely smoked by females. However, KOOL is split almost equally among females and males. KOOL appears to be more masculine than Salem. Among Hispanic cultures, the Puerto Rican is KOOL's strongest market. In contrast, Salem is strongest among Texas Mexicans. This phenomenon could be partially explained in that Salem has advertised heavily in the Texas markets. KOOL does show moderate strength among Texas and Chicano Mexicans. KOOL is weakest among Cubans.

1. Top Ten Brands

Brand Family Share	1979	1980	'79 vs. '80 Index
Marlboro	24	27	113
Winston	20	18	90
Salem	18	14	78
KOOL	8	10	125
Kent	5	4	80
Benson & Hedges	4	6	150
Camel	2	3	150
Viceroy	2	[illegible]	150
Newport	2	2	100
Pal Mall	2	3	150

✓ Marlboro and Winston are the leading brands among Hispanics, with a 27% and 18% market share, respectively. These two brands currently own about 45% of the market. However, the next 24% of the market is owned by Salem and KOOL, with 14% and 10% market share, respectively. The table above illustrates the market shares of the dominant brands' family share from 1979 to 1980.

✓ KOOL grew 25% from 1979 to 1980 in the Hispanic market.

✓ Non-menthol brands are experiencing strong growths also. Camel, Pall Mall, and Benson & Hedges each expanded their market share 50% from 1979 to 1980. Marlboro grew 13% during the same time period.

✓ The weakest brand appears to be Salem, which declined 22% from 1979 to 1980.

2. Top Ten Brands by Male Smokers:

Brand Family	1979 Male	1980 Male	'79 vs. '80 Index
Marlboro	29	30	103
Winston	24	24	100
Salem	13	11	85
KOOL	7	9	129
Benson & Hedges	3	4	133
Kent	4	3	75
Camel	2	5	250
Pall Mall	3	3	100
Viceroy	2	2	100
Newport	2	1	50

✓ Camel experienced a strong 150% growth among males.

✓ KOOL growth is very definitely skewed toward male smokers. This segment grew 29% from 1979 to 1980.

✓ Salem has declined 15% among male smokers, but still leads the menthol market with 11% versus KOOL's 9%.

3. Top Ten Brands by Female Smokers:

Brand Family	1979 Female	1980 Female	'79 vs. '80 Index
Marlboro	17	23	135
Winston	16	12	75
Salem	23	17	74
KOOL	9	10	111
Benson & Hedges	6	8	133
Kent	6	5	83
Camel	2	2	100
Pall Mall	2	3	150
Viceroy	3	2	67
Newport	2	4	200

✓ KOOL grew 11% among female smokers from 1979 to 1980.

✓ Newport is experiencing strong growth among female smokers. It grew 100% from 1979 to 1980.

✓ Marlboro is also making strong inroads into the female smokers with a 35% growth rate from 1979 to 1980.

✓ Salem surprisingly has declined 26% among female smokers; nevertheless, it remains the leader among female menthol users with a 17% market share versus KOOL's 10% market share.

4. Top Ten Brands by Age:

Brand Family	1979 (21-34)	1980 (21-34)	'79 vs. '80 Index
Marlboro	33	34	103
Winston	20	16	80
Salem	14	9	64
KOOL	7	13	186
Benson & Hedges	5	7	140
Kent	4	5	125
Camel	3	3	100
Pall Mall	-	1	-
Viceroy	2	1	50
Newport	3	3	100

✓ Kool is the strongest growing brand in the 21-34 age group, with an 86% growth rate. KOOL grew to a dominant position in one year in the young adult smoker category.

✓ Salem has declined its market share in this age group by 36%.

✓ With the exception of Marlboro, this age group appears to be very volatile. It represents excellent growth potential for KOOL.

5. Top Ten Brands by Age: 35 and Over:

Brand Family	1979 (35+)	1980 (35+)	'79 vs. '80 Index
Marlboro	14	20	143
Winston	20	19	95
Salem	21	18	86
KOOL	8	7	88
Benson & Hedges	4	4	100
Kent	6	4	67
Camel	1	3	300
Pall Mall	4	5	125
Viceroy	2	2	100
Newport	1	2	200

✓ In the older age group, 35 and over, Camel, Newport and Marlboro dominate with 200%, 100% and 43% growth rates, respectively.

✓ KOOL market share, as expected, is declining in the older age groups.

✓ Salem is also weak in the 35 and over age group.

6. Top Ten Brands by Cubans:

Brand Family	1979 Cuban	1980 Cuban	'79 vs. '80 Index
Marlboro	20	26	130
Winston	20	20	100
Salem	14	15	107
KOOL	6	3	50
Benson & Hedges	14	13	93
Kent	4	5	125
Camel	1	3	300
Pall Mall	1	2	200
Viceroy	2	-	-
Newport	-	-	-

✓ Non-menthols appear to be very strong among Cubans. Camel has grown 200% among Cubans from 1979 to 1980.

✓ KOOL is declining dramatically among Cubans. KOOL has decreased its Cuban market share 50% during 1979 to 1980.

✓ Salem is particularly strong among Cubans with a 7% growth rate. This implies a Cuban propensity for menthol cigarettes.

✓ Marlboro and Winston are very strong among Cuban smokers.

7. Top Ten Brands by Puerto Ricans:

Brand Family	1979 PR	1980 PR	'79 vs. '80 Index
Marlboro	16	18	113
Winston	30	21	70
Salem	13	13	100
KOOL	12	17	142
Benson & Hodges	2	2	100
Kent	5	6	120
Camel	–	1	–
Pall Mall	1	2	200
Viceroy	1	2	200
Newport	9	9	100

✓ KOOL is strong among Puerto Ricans with a 42% growth rate. KOOL is the dominant menthol brand among Puerto Ricans.

✓ Salem and Newport have maintained their market share among Puerto Ricans from 1979 to 1980.

✓ Non-menthol brands are also strong among Puerto Ricans, with Pall Mall, Viceroy, Kent and Marlboro experiencing increasing market growth at 100%, 100%, 20% and 13%, respectively.

✓ The Puerto Rican market appears to be the most volatile of all the markets for both the menthol and non-menthol brands. The Puerto Rican market represents good growth potential for KOOL.

8. Top Ten Brands by Texas Mexicans:

Brand Family	1979 Tex-Mex	1980 Tex-Mex	'79 vs. '80 Index
Marlboro	17	21	124
Winston	25	27	108
Salem	27	20	74
KOOL	7	7	100
Benson & Hedges	5	5	100
Kent	4	3	75
Camel	1	1	100
Pall Mall	2	3	150
Viceroy	1	2	200
Newport	–	–	–

STATE OF MINNESOTA

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DATE: 4/27/98

Pages: 28 (including cover page)

Message:

If there are any problems or questions concerning this transmission, please call (612) 296-6196 or: ______________ at (612) __________

HISPANIC PLAN

PURPOSE

TO REVIEW BACKGROUND ON, AND CURRENT STATUS OF, THE HISPANIC MARKETING PLAN.

TRIAL EXHIBIT
12,905

MN AGO 102 CAPITOL Fax:612-228-5454 Apr 27 '98 7:26 P.03

HISPANIC RECOMMENDATION

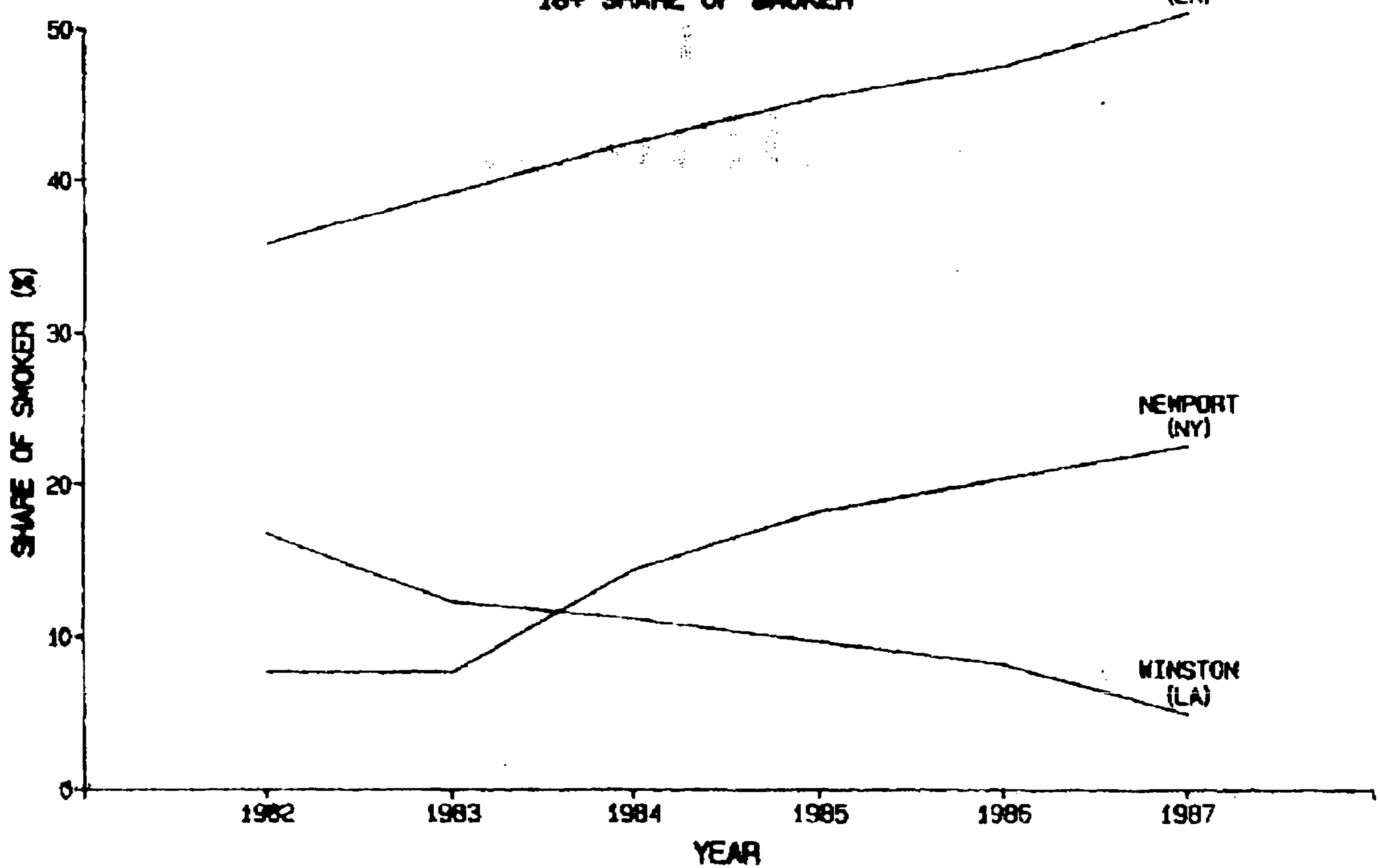
I. KEY OBJECTIVES/STRATEGIES

ESTABLISH GROWTH TREND AMONG YOUNGER ADULT HISPANIC SMOKERS:

- RJR'S HISPANIC YOUNGER ADULT IS DROPPING DRAMATICALLY. MARLBORO/NEWPORT ARE GROWING.
- YOUNGER ADULT SMOKERS HAVE BEEN THE CRITICAL FACTOR IN THE GROWTH AND DECLINE OF EVERY MAJOR BRAND AND COMPANY OVER THE LAST 50 YEARS.
- NO MORE THAN 5% OF SMOKERS START AFTER 24 YEARS OF AGE. MAJORITY STAY LOYAL. MARLBORO GROWS BY ALMOST A SHARE POINT PER YEAR DUE TO 18 YEAR-OLD SMOKERS ALONE.
- THE BIGGEST OPPORTUNITY IS TO CAPTURE YOUNG ADULT SMOKERS, NOT ATTRACT OLDER SWITCHERS.

50660 0321

HISPANIC RECOMMENDATION
18+ SHARE OF SMOKER



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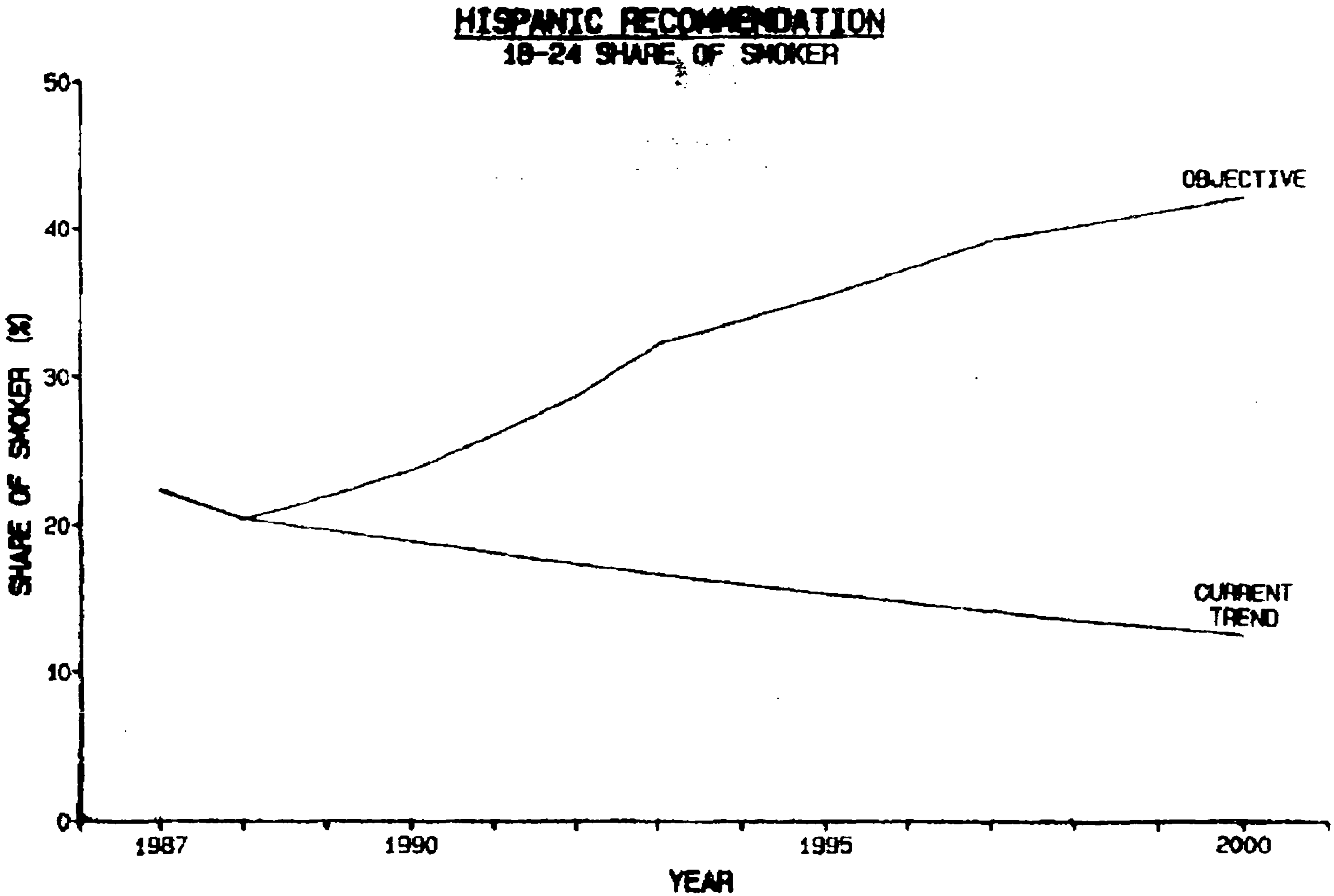
HISPANIC RECOMMENDATION

I. KEY OBJECTIVES/STRATEGIES

SECONDARY OBJECTIVE IS TO PROTECT EXISTING VOLUME BASE:

- WINSTON/SALEM FRANCHISES
- DORAL GROWTH


HISPANIC RECOMMENDATION
18-24 SHARE OF SMOKER
SHARE OF SMOKER (%)
50
40
30
20
10
0
1987
1990
1995
2000
YEAR
OBJECTIVE
CURRENT
TREND

HISPANIC RECOMMENDATION

I. KEY OBJECTIVES/STRATEGIES

- ESTABLISH CONTINUOUS BIG BRAND PRESENCE.
- FOCUS PRIMARY SUPPORT ON BRAND WITH YAS POTENTIAL IN GENERAL/ BLACK MARKET.
- EMPHASIZE LOCAL MARKETING/SALES OPPORTUNITIES

HISPANIC RECOMMENDATION

II. OVERALL SPENDING

RECOMMENDATION: INCREASE AND SUSTAIN HIGHER SPENDING LEVELS

1. HISPANIC VOLUME JUSTIFIES GREATER INVESTMENT

	1988 SPENDING ($000)	SPENDING BASED ON VOLUME CONTRIBUTION	
CAMEL	2,291	% VOLUME 18+ HISPANICS OF TOTAL CIGARETTE VOLUME	7.1
WINSTON	5,228	TOTAL 1988 MARKETING SPENDING	708MM
	7,519	FAIR SHARE SPENDING	50MM

Hispanic Recommendation

II. Overall Spending

Recommendation: Increase and Sustain Higher Spending Levels

2. Growth of the total Hispanic population and 18-24 Hispanic population justifies larger investment now.

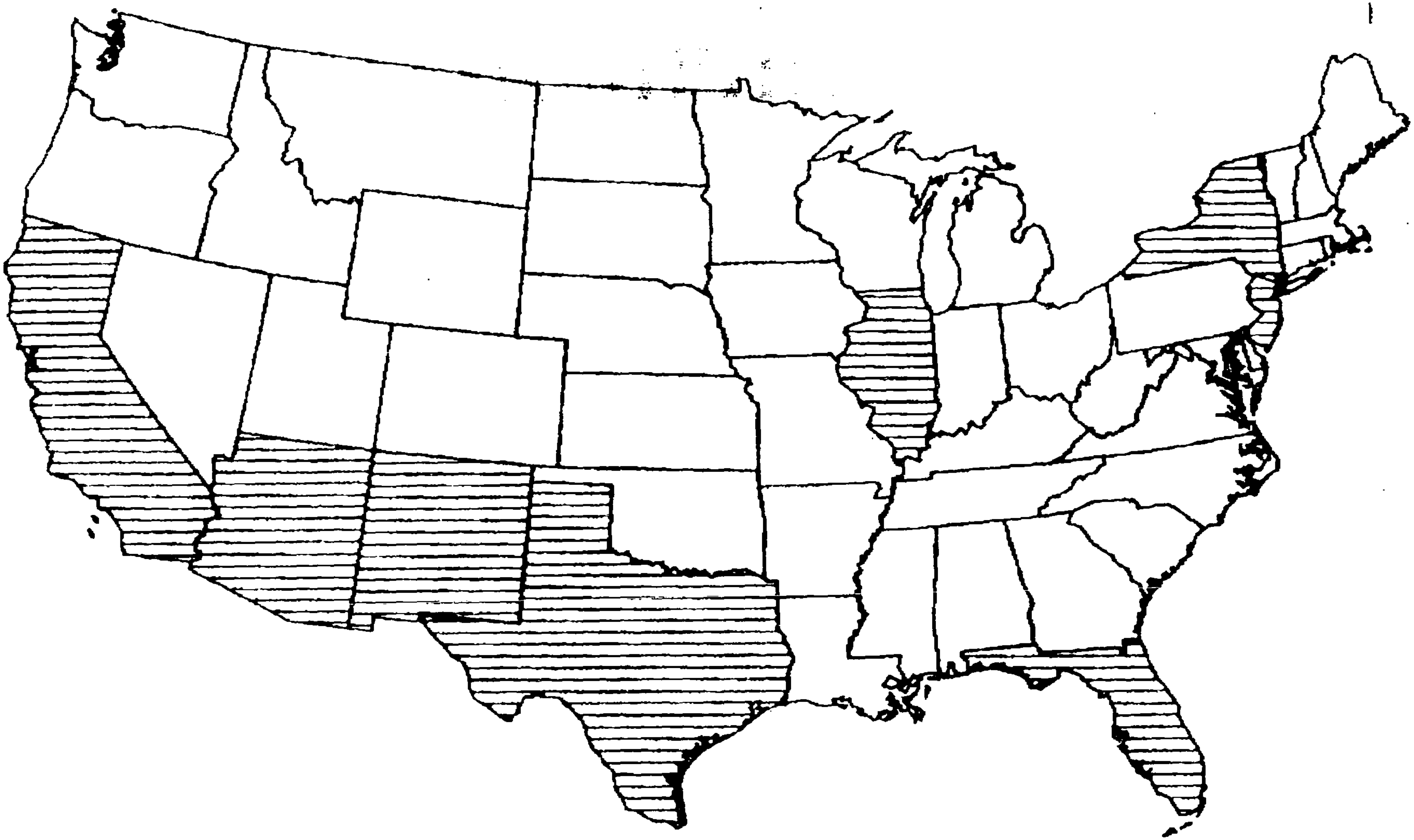
% Volume	18-24	18+
1988	10	7
2000	14	10

3. Concentrated nature of population allows for efficient spending.

- Over 85% of Hispanics in eight states.

HISPANIC RECOMMENDATION

85% OF THE HISPANIC MARKET IS CONCENTRATED IN 8 STATES



HISPANIC RECOMMENDATION

II. OVERALL SPENDING

RECOMMENDATION: INCREASE AND SUSTAIN HIGHER SPENDING LEVELS

4. AGGRESSIVE COMPETITORS ARE CAPTURING HISPANIC SMOKERS.

PHILIP MORRIS

- NAMED #1 HISPANIC ADVERTISER
- THE MARLBORO SOCCER CUP IS EXPANDING INTO TEXAS, CALIFORNIA AND NEW YORK (TELEVISED)
- PM IS ONE OF THE TOP CORPORATE SPONSORS OF HISPANIC ORGANIZATIONS
- PM IS CALLING ON MAJORITY OF SMALL HISPANIC OUTLETS

NEWPORT

- AGGRESSIVE FIELD MARKETING PROGRAM IN NEW YORK/CHICAGO
- EXTENSIVE RETAIL POINT-OF-SALE AND PROMOTIONS

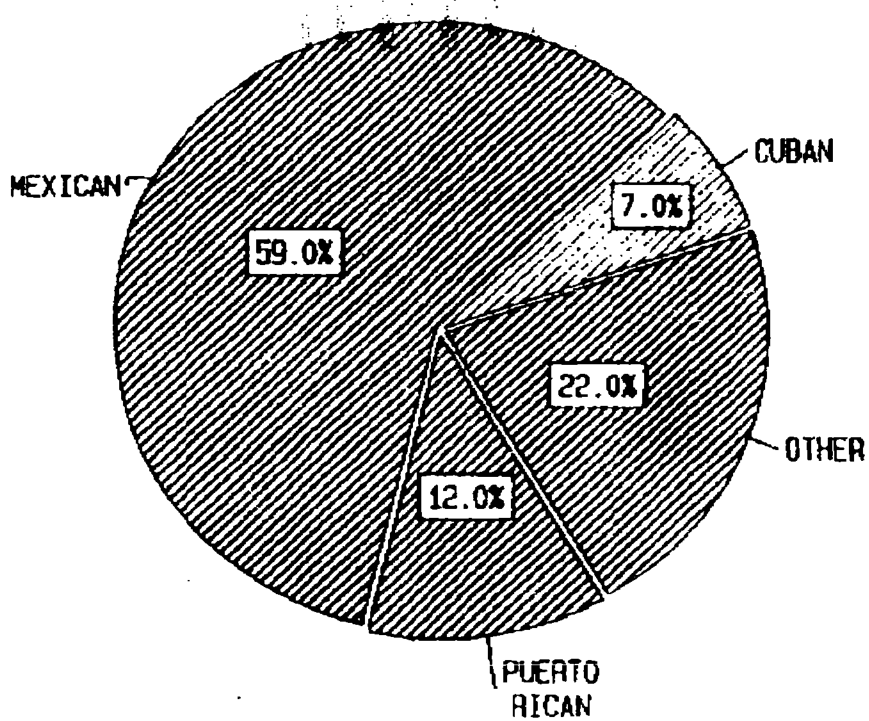
HISPANIC RECOMMENDATION

III. SUBSEGMENT/GEOGRAPHIC EMPHASIS

RECOMMENDATION: EMPHASIZE MEXICAN SUBSEGMENT IN WEST/SOUTHWEST

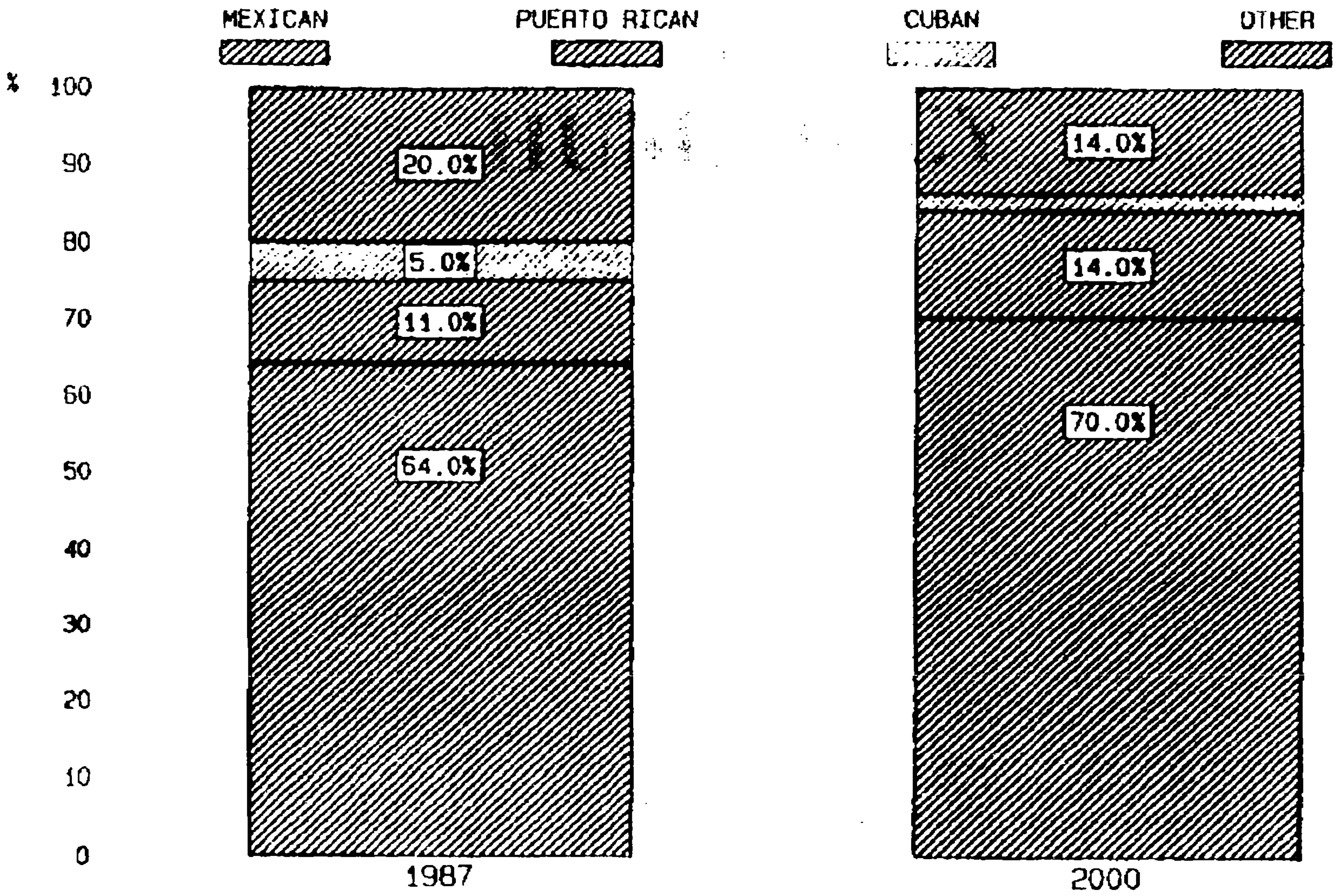
- REPRESENT LARGEST SUBSEGMENT
- FASTEST GROWING SUBSEGMENT
- HISPANICS (ESPECIALLY MEXICANS) HEAVILY CONCENTRATED IN WEST/ SOUTHWEST

HISPANIC RECOMMENDATION
18+ SUB-SEGMENT PROFILE



1987

HISPANIC RECOMMENDATION
18-24 SUB-SEGMENT PROFILE



RPY-12

HISPANIC RECOMMENDATION

IV. BRAND EMPHASIS

BRAND EMPHASIS RECOMMENDATION IS BASED ON THE FACT THAT WINSTON, SALEM AND CAMEL ACCOUNT FOR 90% OF RJR'S TOTAL HISPANIC SHARE OF SMOKERS.

RECOMMENDATION FOR EACH AREA:

- PRIMARY SUPPORT: YAS BRAND (CAMEL OR SALEM)
- SECONDARY SUPPORT: VOLUME BRAND (WINSTON)
- WORK EXISTING DORAL VOLUME PROGRAMS

HISPANIC RECOMMENDATION

V. MARKETING MIX STRATEGIES/TACTICAL GUIDELINES

A. CREATIVE

- STRATEGY

  DEVELOP CREATIVE THAT MOTIVATES HISPANIC SMOKER BRAND CHOICE WHILE REMAINING CONSISTENT WITH THE GENERAL MARKET CAMPAIGN (E.G., PUERTO RICAN SCENERY IN "REFRESHEST" AD WITH SPANISH COPY).

- HISPANIC AGENCIES WILL BE BROUGHT IN TO DEVELOP RELEVANT ADS.

HISPANIC RECOMMENDATION

V. MARKETING MIX STRATEGIES/TACTICAL GUIDELINES

B. MEDIA

- **OVERALL STRATEGIES**
  - MAINTAIN HIGH SPENDING LEVELS
  - BREAK THROUGH THE CLUTTER WITH HIGH IMPACT OOH LIKE MARLBORO VERTACULAR
  - USE SPANISH MAGAZINES AND NEWSPAPERS TO REACH OLDER SMOKERS

HISPANIC RECOMMENDATION

V. MARKETING MIX STRATEGIES/TACTICAL GUIDELINES

C. PROMOTION

- ESTABLISH HIGH COMMUNITY PRESENCE
  - LOCAL "VAN"/CATERING TRUCK PROGRAM
  - NEW/ESTABLISHED EVENT SPONSORSHIP
  - ORGANIZATION INVOLVEMENT/DONATIONS
- ESTABLISH RETAIL DOMINANCE
  - VOLUME PROMOTIONS
  - YOUNGER ADULT PROGRAMS
  - RETAILER/SUBJOBBER PROMOTIONS

Hispanic Recommendation

V. Marketing Mix Strategies/Tactical Guidelines

C. Promotion

- **Van/Catering Truck Program**

  Establish high presence and trial generation among younger adult Hispanics.

  - Roving van includes music, video show, premiums, games, sampling, follow-up coupons
  - Vans attend smaller community events, fairs, festivals, sporting events, clubs, radio station tie-ins
  - 50-100 catering trucks per market
  - Focus is CAMEL

HISPANIC RECOMMENDATION

V. MARKETING MIX STRATEGIES/TACTICAL GUIDELINES

C. PROMOTION

- **ESTABLISHED EVENT SPONSORSHIP**

STRATEGY: MAINTAIN PRESENCE AT ESTABLISHED HIGH PROFILE COMMUNITY EVENTS.

KEY PROGRAM ELEMENTS

- MARKETING MANAGER/FIELD SALES IDENTIFY
- SECONDARY SPONSOR
- BANNERS, BOOTH WITH SAMPLING, PREMIUMS, FOLLOW-UP COUPONS
- MAY SPONSOR SUBEVENT OR STAGE

EVENTS

- FIESTAS
- SPORTS EVENTS
- CAR SHOWS

HISPANIC RECOMMENDATION

V. MARKETING MIX STRATEGIES/TACTICAL GUIDELINES

C. PROMOTION

- **NEW EVENT SPONSORSHIP**

STRATEGY: MAINTAIN CONTINUOUS COMMUNITY PRESENCE BY SUPPLEMENTING ESTABLISHED EVENT SPONSORSHIP WITH CREATED EVENTS THAT HAVE HIGH YOUNGER ADULT APPEAL.

SUMMER SOCCER SPONSORSHIP

DEVELOP THREE-TIER SOCCER SPONSORSHIP:

- WORLD CLASS
- TOP LEVEL PROFESSIONAL SERIES
- AMATEUR EVENTS (64 TEAMS)
- JUNE THROUGH OCTOBER

WINTER MUSIC FESTIVAL

DEVELOP BENEFIT CONCERT FESTIVAL TO TRAVEL TO KEY MARKETS:

- HIGH YOUNGER ADULT APPEAL/POPULAR GROUPS
- PROCEEDS DONATED TO CHARITY
- OCTOBER THROUGH FEBRUARY

HISPANIC RECOMMENDATION

V. MARKETING MIX STRATEGIES/TACTICAL GUIDELINES

C. PROMOTION

- **BRAND/CORPORATE DONATIONS**
  - LEVERAGE NATIONAL CORPORATE DONATIONS.
  - JOIN AND PARTICIPATE IN LOCAL CIVIC AND PROFESSIONAL ORGANIZATIONS IN EACH MARKET BY BRAND.
  - LEVERAGE DONATIONS VIA:
    - PR RELEASES
    - BRAND ADVERTISING
    - TRADE COOPERATION
    - RETAIL TIE-INS

V. MARKETING MIX STRATEGIES/TACTICAL GUIDELINES

C. PROMOTION

- VOLUME PROGRAMS
  - COUNTER DISPLAY (WINSTON SECONDARY)
  - VOLUME PUSH FIRST MONTH OF EACH QUARTER
    - ON-CARTON COUPONS/VPR'S
    - ON-PACK COUPONS/VPR'S SUPERMARKET/DISCOUNT OUTLET WITH CONTINUITY COUPON
  - DIRECT MAIL PROGRAM
    - COUPON TIED TO SWEEPSTAKES FOR CONSUMER AND RETAILER (SCREEN RJR LIST BY ZIP CODE AND SURNAME)
    - CO-OP DIRECT MAIL PROGRAM
  - MEDIA-DELIVERED COUPONS (ROP)

V. MARKETING MIX STRATEGIES/TACTICAL GUIDELINES

C. PROMOTION

- YOUNGER ADULT PROGRAMS

  - POINT-OF-SALE

    - CONVERT FROM WINSTON TO CAMEL
    - DOMINATE DOOR/COUNTER
    - PRODUCE TWO-SIDED: SPANISH/ENGLISH
    - FULL ARRAY OF TEMPORARY POS
    - EXPLORATORY FOR NEW ITEMS WITH FUNCTIONAL VALVE (4TH QTR.)

  - MERCHANDISING

    - CONVERT PERMANENT COUNTER DISPLAY TO PROMOTION VEHICLE
    - DEVELOP NEW PERMANENT COUNTER DISPLAY (SMALLER SIZE/ SMALLER PAYMENT)

Hispanic Recommendation

V. Marketing Mix Strategies/Tactical Guidelines

C. Promotion

- Younger Adult Programs
  - Consumer Mission
    - Sales-distributed coupons to competitive smokers
    - Free pack offer and continuity coupons on young adult brand
    - Complimentary or discounted tickets to Brand's community events
  - Border Promotions (In Development)
    - Heavy-up promotional offers in border locations
    - Trial and conversion offers for newly arrived Mexican-Americans

HISPANIC RECOMMENDATION

V. MARKETING MIX STRATEGIES/TACTICAL GUIDELINES

C. PROMOTION

- RETAILER/SUBJOBBER PROGRAMS
  - UNDER DEVELOPMENT
  - POTENTIAL IMPLEMENTATION 1ST QUARTER 1989
  - TAILORED TO SPECIFIC MARKET
  - SWEEPSTAKES/INCENTIVES FOR JOBBER, SUBJOBBER AND RETAILER

Hispanic Recommendation

VI. Organizational Implications

- **Marketing**
  - **Hispanic Brand Manager**
    - Implement Hispanic plan
    - Manage Field Marketing Managers
  - **Four Regional Marketing Managers**
    - Miami
    - Texas/New Mexico
    - Los Angeles Metro
    - Southern California/Arizona

HISPANIC RECOMMENDATION

VII. ROLL-OUT PLAN

MARKET	TIMING
• SAN ANTONIO/MIAMI DIVISIONS/ LOS ANGELES/HOUSTON REGIONS	10/01/88
• ALBUQUERQUE/CORPUS CHRISTI DIVISIONS/ 18 SELECTIVE HISPANIC DIVISIONS	4/01/89
• NINE ETHNIC DIVISIONS/11 SELECTIVE ETHNIC DIVISIONS	1/01/90

STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

HUBERT H. HUMPHREY III
ATTORNEY GENERAL

102 STATE CAPITOL
ST. PAUL, MN 55155-1002
TELEPHONE (612) 296-6196

DETERMINED TO BE AN
ADMINISTRATIVE MARKING
INITIALS: ___ DATE: 10/21/13

FAX COVER SHEET

~~CONFIDENTIAL~~

TO: Jerry Mande
202/456-6027 - FAX

FROM: Eric A. Johnson
Executive Assistant to the Attorney General
612/296-2643 - PHONE
612/297-4193 - FAX

DATE: February 24, 1998

12 pages - including cover sheet

MESSAGE:

Please deliver immediately.

STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

HUBERT H. HUMPHREY III
ATTORNEY GENERAL

102 STATE CAPITOL
ST. PAUL, MN 55155-1002
TELEPHONE: (612) 296-6196

February 23, 1998

The Honorable John McCain
United States Senate
241 Russell Senate Office Building
Washington, DC 20510

Dear Senator McCain:

On Tuesday, the Commerce Committee will hear testimony from the Chief Executive Officers of America's largest tobacco companies. As you know, these companies are defendants in Minnesota's tobacco litigation, which is entering its fifth week of trial in St. Paul. The thirty-three million pages of internal industry documents we amassed in preparing our case form the largest collection of secret tobacco documents ever assembled. In fact, I am told this may be the largest production of documents in history.

Our trial team has studied this massive record, and, through the industry's opening statements and examination of witnesses in our trial, we are now hearing their arguments and legal positions on issues that the companies are also discussing with you in Congress. I wanted to make you aware of the contrast between the new, "kinder, gentler" image the tobacco industry is attempting to cultivate on Capitol Hill today, and the contrary positions they continue to take before our Court and jury in Minnesota. In my judgment, this contrast casts serious doubt on the sincerity of the CEOs who will testify tomorrow.

In Washington, the industry has belatedly adopted a new, more conciliatory posture. It proclaims a "new day" of harmony and concern for public health. Testifying before Congress, the CEOs now back away from forty years of lies. Testifying before Congress, they pledge to fling open the doors of their secret document vaults. Before Congress, they profess to be shocked--shocked--by new evidence their companies target children. Before Congress, they concede for the first time that nicotine is addictive, at least, "by some definitions." Before Congress, they come close to acknowledging that smoking kills.

But outside the Beltway, the lies continue. If the tobacco companies have begun a "new day," that day has yet to dawn outside of Washington.

Outside of Washington, these companies continue to deny that smoking causes disease. They continue to deny that nicotine is addictive. They continue to deny they target youngsters. They continue to conceal the truth about chemical additives. In a trial in Indiana, they are denying that secondhand smoke is harmful.

And, in the height of arrogance and hypocrisy, they continue to ask juries to blame smokers for believing the lie these companies still perpetuate: that there is no proof smoking causes disease.

I would like to recount for you some examples of the difference between what the industry seems to be saying in Washington and what it is saying elsewhere in America.

I. Tobacco's Chief Spokesman Contradicts the CEOs' Congressional Testimony

Two weeks ago, the Tobacco Industry's chief spokesman was questioned under oath in Minnesota's tobacco trial. Walker Merryman, Vice President of the Tobacco Institute, is the senior official responsible for representing the industry's views to the press, lawmakers and the American people. He has been called "the Voice of Tobacco."

Outside the Beltway, Mr. Merryman tells quite a different story than the CEOs now tell in Congress. Here are some examples of what the 'Voice of Tobacco" is saying out in America's heartland:

- **Is Nicotine Addictive?**

Before Congress last month, the CEOs conceded that nicotine is in fact addictive "under some definitions" (Philip Morris); "under the way people use the term today" (R. J. Reynolds); "under the man in the street's definition" (Brown & Williamson); or "under some definitions today" (U.S.Tobacco).

But this testimony was apparently intended only to lull the Congress, not to mark any real change outside the hearing rooms of Washington. Outside the Beltway, it is as though this testimony never happened. Asked about addiction, the industry's chief spokesman first acknowledged that the CEOs had testified in Congress only two weeks earlier. Asked whether they had testified that nicotine is addictive, he answered "I don't believe they testified that nicotine is addictive, no sir." "None of them?," he was asked. His answer: "I don't believe so."

Asked about the industry's current position on addiction, he testified that he has never asked an industry scientist about addiction in his twenty-one years at the Tobacco Institute, but that ". . . the guidance we received from our member companies certainly would indicate that they don't believe that with respect to using the word 'addiction' and smoking, that that's proper. I don't think it's proper. I know a lot of people do, but I don't think it's proper to say that smoking a cigarette is the same thing as using heroin or crack."

Similarly, in his opening statement, Brown & Williamson's counsel, speaking for all the companies with regard to addiction, asked the jury rhetorically: "Did we say that cigarettes are not addictive but habituating? The answer to that is yes." Of nicotine's role in smoking, his explanation, on behalf of this industry, is that:

> "Nicotine has pharmacological effects. It won't be disputed in this case. Many, many, many, many other things have pharmacological effects. Almost anything that you take into your body that causes you to feel or maybe act in any number of different ways has got pharmacological effects. Coffee does. Water, if you're thirsty, has pharmacological effects. Watching TV has pharmacological effects."

- **Does The Industry Control Nicotine Levels?**

Before Congress last month, the CEO of Brown & Williamson, Mr. Brookes, acknowledged that his company has developed high-nicotine, genetically-altered "Y-1" tobacco strains in order, he said, "to produce a low-tar cigarette with a relatively higher level of nicotine than a normal low-tar cigarette would have. . . ." In other words, B & W uses genetics to ensure that, if tar levels are reduced, nicotine does not fall correspondingly.

In a courtroom outside the Beltway, however, the industry's chief spokesman still adheres to the industry's old, worn-out claim that "nicotine levels follow 'tar' levels--as manufacturers have reduced 'tar' levels and yields over the years to satisfy changing consumer taste, nicotine levels and yields have fallen correspondingly."

- **Does The Industry Target Children?**

Confronted with scores of internal memos documenting his company's efforts to market cigarettes directly to children, the CEO of RJR Nabisco assumed a pose of contrition before the Congress. "I have real problems with those documents," he acknowledged. "I don't like them as chief executive of this company and I don't like them as a father. I think they represent a way of thinking about a business that I simply don't agree with. They look to the habits of adolescents in determining how to make marketing and manufacturing plans. That's unacceptable today, and there is no one at RJR Nabisco, based on my knowledge of these people--Andy Schindler who runs that company--today that would dare even think to do anything like that. It's just completely improper."

Later in his testimony, he returned to the subject, saying "the only thing I can tell you about people's intention to market to underage people is that I believe that it is immoral and unethical, as well as illegal."

But outside the Beltway, the denial continues. The CEOs may be contrite about their damning marketing documents when they come before Congress, asking Congress to grant them legal immunity from American juries, but when their spokesman is compelled to testify before one of those same American juries, and is confronted with the same damning documents, he reverts to the industry's age-old denials: "I've not seen documents which demonstrate to me that the companies or any company has targeted kids as smokers--as customers." Was there marketing to youth? "I don't know that to be a fact, no, sir."

- **Do Cigarettes Cause Disease?**

Testifying before Congress, the CEOs now give the impression they have at least begun to face the facts about smoking and disease. Rather than hide behind untenable claims that it is "unproved" that smoking causes lung cancer, they admitted in their most recent Congressional appearance that "smoking plays a role in causing cancer, lung cancer, in some people" (R.J.Reynolds); "it plays a role" in lung cancer (Lorillard); and "smoking [has] a significant impact as a risk factor in relation to lung cancer" (Brown & Williamson).

But outside the Beltway, the denial continues. In opening statements to the Minnesota jury, counsel for Philip Morris argued that the hazards of tobacco are known to all, even citing an old schoolbook entitled "Tobacco is a Poison." But the industry denies tobacco is a poison and has assured smokers throughout the century that alleged health risks are nonexistent, exaggerated and unproven. The opening statement of counsel for Brown & Williamson perpetuated the age-old double-talk, saying the industry's "position on causation was not that cigarettes don't cause disease, not that cigarettes aren't risky, but that not--there are certain areas, I've shown them to you, where gaps remain in our knowledge that you can't use that word 'causation' in absolute technical and scientific sense." The industry spokesman, Mr. Merryman, said it straight out: "[W]e don't believe it's ever been established that smoking is a cause of disease."

This is not a "new day." Before a jury, the industry clings to its old line, even when forced to admit that, without a single exception, the medical organizations of the world say it is proven that smoking causes disease. Mr. Merryman told the Minnesota jury that, in twenty-one years at the industry's public relations office, he has never asked a company CEO whether smoking causes disease, nor has he asked to see any industry documents on the subject. He says he wouldn't ask his member companies about the issue even if medical authorities said smoking killed 800,000 Americans each year.

So the industry's top spokesperson--whose job it is to tell the public about smoking and health--just doesn't know. At the same time, the industry's top scientist--who apparently does know--just doesn't tell! In testimony just last week, Dr. James Glenn, the head of the industry's purported research arm, the Council for Tobacco Research (CTR), was asked under oath:

Q: " Did you as the head of the CTR ever stand up and say, "Youth should not start smoking because smoking causes disease and other problems?" Did you ever do that?"
A. "Yes."

Q. "Where have you put that in writing?"
A. "I haven't put it in writing. I've told it to my four children."

Q. "Oh. You told your own children that; is that right? But had you ever told the public's children that, as the head of the CTR, sir?"
A. "That's not my responsibility or my -- my assignment at The Council for Tobacco Research. I've been busy dispensing 20 million dollars a year in good, solid funding of basic biomedical research."

Q. "Just not your job; is that right?"
A. "It is not my job."

Q. "And if it wasn't The Tobacco Institute's job and it wasn't the manufacturers' jobs, whose job was it in the industry, if you know?"
A. "In the industry?"

Q. "Yes."
A. "I'm not sure it was anybody's job in the industry."

Q. "Nobody's job."
A. "It was public information. The Surgeon General had made the general public aware of the risk factors involved. I think it's been common knowledge for a long time."

Q. "So nobody's job in the industry. That's your opinion; correct?"
A. "I don't know whether it was their job or not, but I don't think so."

II. Forthcoming and Candid?

Before Congress, the CEOs suddenly project the appearance of being forthcoming and candid. But the Minnesota trial testimony flatly contradicts this appearance. In fact, when ignorance suits its purposes, this industry is still able to raise lack of knowledge to a fine art. In his Minnesota testimony, the "Voice of Tobacco," Mr. Merryman, swore that he:

- is seldom asked about health issues;
- can't recall what percentage of smokers start smoking as children;
- has read only 'parts' of the agreement his industry negotiated with some attorneys general last June;
- is not aware that his industry is asking Congress for immunity from lawsuits;
- doesn't know what position his industry is taking about releasing its internal documents;
- doesn't know what his CEOs said about addiction in their recent congressional testimony;
- can't recall how many carcinogens are in cigarette smoke;
- doesn't know why Liggett and Myers recently left his organization or whether it was were ejected for admitting smoking causes diseases;
- doesn't know how tobacco companies conduct their scientific research; and
- doesn't know whether his association, as the tobacco industry's lobbying arm, helps finance its legislative allies.

The head of the Council for Tobacco Research, the industry's purported scientific research arm, Dr. James Glenn, apparently suffers from a similar lack of curiosity. Asked whether the Directors of his organization believe smoking causes lung cancer, Dr. Glenn testified that, in his eleven years leading the industry's research body, the topic of smoking and lung cancer "simply . . . hasn't come up," adding "We have been addressing much more basic scientific problems."

III. Time for "The Whole Truth"?

The industry's spokesman, Mr. Merryman, says "it's important that the public get the whole truth."

But last week, in sworn deposition testimony in Minnesota's trial, the retired Vice President of Philip Morris, Dr. Thomas Osdene, invoked his Fifth Amendment privilege against self-incrimination, rather than answer questions on such subjects as: the alleged destruction of documents, addiction, manipulation of nicotine, the safety of chemical additives in cigarettes, secret European animal experiments, the hiding of research offshore and marketing to children. In fact, Dr. Osdene invoked the Fifth Amendment more than 100 times.

Philip Morris says it is disappointed in Dr. Osdene's decision not to answer the questions. Philip Morris says it wants its people to tell the truth and to testify fully and candidly. The other companies profess a similar desire and say they agree with Mr. Merryman that "it's important that the public get the whole truth."

Here are ten tests to determine whether these claims are sincere:

Test No. 1: Will Mr. Bible Answer the Questions Dr. Osdene Would Not?

Commenting on Dr. Osdene's repeated invocation of the Fifth Amendment, Philip Morris' lead trial counsel was quoted as saying "It's certainly not what we wanted. Philip Morris asked Dr. Osdene to testify full and truthfully." Surely the company's Chief Executive Officer has access to the answers to any and all questions about Philip Morris' secret research, its handling of documents, its knowledge of addiction and its control of nicotine, its chemical additives and its marketing to children. Will Mr. Bible provide Congress and the American people full and truthful answers to each of the questions Dr. Osdene refused to answer?

Test No. 2: Will B & W Tell the Truth About Y-1?

In 1994, FDA investigators learned that, at the same time tobacco executives were assuring Congress that they do not manipulate nicotine and that "nicotine levels follow tar levels," Brown & Williamson had, in fact, developed a secret, genetically-altered strain of high-nicotine tobacco known as "Y-1." When this information became public, B& W promptly assured Congress that it was terminating its use of Y-1, which has twice the nicotine of regular tobacco.

Last month, however, in a deposition in a New York case, B & W's executive in charge of tobacco blending, Roger Black, revealed, according to press reports, that contrary to its public assurance to Congress, B & W has continued and even expanded its commercial use of Y-1 in cigarettes in the U.S., to this very day.

When asked how seeds of the Y-1 strain were transported to Brazil, Mr. Black is reported to have invoked his Fifth Amendment privilege against self-incrimination. Last month, B & W's CEO gave Congress the impression that Y-1 was a failed experiment, testifying that "[u]nfortunately, in tests the consumer just didn't like it." Now, press reports say Mr. Black's deposition flatly contradicts this sworn claim, and that Mr. Black testified consumers actually prefer the taste of cigarettes with the Y-1 tobacco.

If the tobacco industry believes the public should have the whole truth, will B & W provide a full explanation of its development and use of Y-I, including making Mr. Black's deposition available to the Committee and to the American people?

Test No. 3: Will They Open the London Depository?

Although the tobacco industry CEOs told the House Commerce Committee last month that they would make public more than thirty million pages of internal documents that Minnesota has forced them to produce in its lawsuit, they have now reneged on that pledge with regard seven million of those pages.

These seven million pages are the internal documents of the world's second-largest cigarette company, BAT Industries, Ltd., the holding company that controls Brown & Williamson and other tobacco companies worldwide. These documents are stored in a locked depository outside of London, England, which BAT was forced to set up as part of Minnesota's lawsuit. These files contain information about secret research on addiction and nicotine dating back to the 1950's, research which BAT described, even before the first Surgeon General's Report, as far more extensive than anything known to the public health authorities. If America deserves the "whole truth," then the industry should unlock the London vault.

Test No. 4: Will They Release The "4A" Indices, The Map Through the Maze?

The industry has offered to unseal many of the 25 million pages of documents that are being held in the other document depository created in Minnesota's case, the Minneapolis depository. But they still refuse to reveal to the Congress or the public the detailed, computerized indices to these documents. These indices--the so-called "4A" indices (not to be confused with the cryptic and vague "4B" indices prepared by the industry after the depository was opened)--are the roadmap through the millions of pages in the maze. When will they be unsealed? (The State of Minnesota did gain access to these indices, after defeating an industry appeal to the United States Supreme Court, but a court order requested by the industry still prevents the State from making them public.)

Test No. 5: Will They Unseal the Huber Deposition?

Philip Morris has insisted on court orders (in Texas and Minnesota) sealing the deposition testimony of one of its longtime scientific consultants, Dr. Gary Huber, who is reported by the press to have testified in his Texas deposition that industry lawyers controlled and suppressed important medical research. If Philip Morris truly wants its people to speak freely, will it now agree to unseal the Huber deposition?

Test No. 6: Will RJR Tell The Truth About Winston Cigarettes?

R.J. Reynolds is aggressively marketing Winston cigarettes to young smokers with claims that this brand has "no additives." Reynolds should provide clear and unequivocal answers to the following questions:

1. Are Winstons safer than cigarettes with chemical additives?
2. Minnesota has adopted a law requiring manufacturers to disclose whether their cigarettes contain detectable levels of (a) arsenic; (b) ammonia, (c) cadmium, (d) formaldehyde, or (e) lead, whether in the unsmoked cigarette or in the smoke. RJR fought this law. Will they disclose

whether "no additive" Winstons contain detectable levels of these five substances, either in the unburned cigarettes or in the smoke?

3. Doesn't the smoke of Winstons contain carbon monoxide?
4. Ads for Winstons say no chemicals are added "to the tobacco." What chemicals are added to the filters or the paper?

Test No. 7: Will They Admit Parentage of the $50 Billion Tax Credit?

In their most recent testimony, the CEOs disclaimed any involvement in enactment of the $50 billion tax credit which was mysteriously inserted in last year's tax bill and which, until it was exposed and repealed, created a $50 billion windfall for the tobacco industry by crediting payments under the proposed national "resolution" against future tax increases. One member of Congress has described this amendment as an apparent case of "immaculate conception." Not only did the CEOs disclaim any role in this provision, but some of them claimed not to be aware of it! Will they now reveal their companies' roles in the creation of this tax break?

Test No. 8: Will RJR Reveal Whether Joe Camel Is Dead or Alive?

Late last year, to great fanfare, R.J. Reynolds announced that it was ending the notorious Joe Camel campaign, as indeed it was forced to do in California as the result of litigation there, and was in danger of being ordered to do by the FTC. Then, last month, it was revealed that the company is now distributing "Camel Cash" catalogues featuring eight pages of Joe Camel merchandise "back by popular demand." In his testimony before the House Commerce Committee, the CEO of RJR Nabisco, expressed shock at learning of this, disavowed the campaign and indicated it would be pulled. Immediately after the hearing, however, the company reversed itself, and said the campaign would continue at least through the end of September, 1998, because Joe Camel fans had "certain expectations." Is Joe dead, alive or lying low?

Test No. 9: Will They Tell Congress Whether Advertising Bans Lower Cigarette Consumption?

In its desperate quest to persuade Congress to grant it unprecedented immunity from judgments by American juries, the industry is forced to identify some reason why Congress must grant them this undeserved special treatment.

Their favored argument is that advertising restrictions in the June 20th Bailout Deal are supposedly key to achieving the youth reduction goals desired by Congress and the American people, and supposedly cannot be enacted without their consent, because of First Amendment constraints. Thus, they argue, their consent is necessary to enact an effective overall package.

First Amendment debates aside, their argument that advertising restrictions are central flies in the face of the position these companies have taken in the past, and are taking today, whenever advertising restrictions are proposed. Their age-old position is that, whatever the constitutionality of restrictions, they simply have no impact on smoking in general or youth smoking in particular. Frequently, the industry invokes experience in other countries that have adopted total advertising bans, far beyond what is contemplated in the June 20th Deal, and the industry argues that these total bans have no effect on smoking levels.

If the industry is now assuming a posture of candor, will they reveal whether advertising bans do or do not reduce the consumption of cigarettes? Does RJR, for example, agree with, or renounce, the statement on its own World Wide Web Site (www.greensboro.com/rjrt/adnuse.htm) that "[a]dvertising bans in other countries have not lowered trends in cigarette consumption" and that "a ban may have the opposite of the desired effect – it may increase consumption?" If advertising bans are ineffective, why should Congress grant this industry any concessions in order to achieve one?

Test No. 10: Will They Get Serious About Preventing Youth Smoking?
In their recent Congressional appearance, the CEOs gave lengthy and glowing descriptions of their companies' programs to discourage youth smoking. They failed to mention that, based on the figures introduced in evidence in the Minnesota trial, their spending on these "prevention" programs is actually <u>less than two-tenths of one percent</u> of the amount they spend to advertise and promote cigarettes. Nor did they mention that these "prevention" programs are silent about the health effects of smoking, that they perpetuate the falsehood that there is a "controversy" about whether smoking kills, and that some critics say these programs actually encourage youth smoking by portraying smoking as a forbidden pleasure or "adult custom," to be engaged in only by those who think of themselves as grown up--that is, teens. at best, these programs are window dressing.

If the CEOs truly believe that youth smoking is a serious problem, as they say they do, will they now make a serious commitment to addressing it? Will they fund youth smoking prevention programs at levels commensurate with the problem?

Will they allow these funds to be managed by voluntary health organizations with a proven record on youth smoking and no financial incentive to encourage youth smoking? Will they ensure that these programs educate children honestly about the health effects of smoking?

> And what about children in the rest of the world? The CEOs testified that, if Congress adopts their proposed legislation, a larger percentage of their business will shift overseas.
>
> Will they agree to honor the same voluntary restrictions in their marketing to children in other countries as they say they do in the United States? If not, why not?

I congratulate you, and all the members of the Commerce Committee, for your careful approach to this complex subject. As you move forward with tomorrow's hearing and with your future consideration of this issue, I hope you will listen with a critical ear to the tobacco industry's claim that it has "turned over a new leaf."

Until the so-called "new day" actually dawns in the rest of America, policymakers in Washington should focus on developing a national tobacco control policy based on the needs of our children and the public health, rather than the dictates of the industry.

Thank you very much.

Best regards,

HUBERT H. HUMPHREY III
Attorney General

c: Senate Commerce Committee Members

Minnesota Office of the Attorney General

Hubert H. Humphrey III

WWW.AG.STATE.MN.US

FROM: Luanne Nyberg, Senior Public Health Advisor
Scott Strand, Deputy Counsel

PHONE (612) 215-1533

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AG:120738 v1

STATE OF MINNESOTA

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Newly-Disclosed Document Suggests RJR Concealed and Altered Health Research

The State of Minnesota today placed into evidence in its historic tobacco trial the first of 39,000 never-before-seen tobacco industry documents obtained last week after an epic three-year legal battle. The first of these documents to be made public offers dramatic evidence that at least one tobacco company, R. J. Reynolds, systematically "removed" scientific reports from its files, and simply re-wrote "objectionable" scientific information when "necessary for the successful defense of our present and future suits . . . ."

In the current debate over national tobacco policy, R.J. Reynolds and other tobacco companies are promising to make public the results of their internal research on smoking and health issues. But the document released today calls into serious question whether those results, if actually released, can be believed.

The document introduced today, Trial Exhibit 26,216, is a one-page 1969 memorandum from Dr. Murray Senkus, RJR's Director of Scientific Research, to Max Crohn, a lawyer in RJR's legal department. (A copy is attached.) The subject of the memo is the "Invalidation of Some Reports in the Research Department". In the memo, Research Director Senkus reports to RJR attorney Crohn that "[w]e do not foresee any difficulty in the event a decision is reached to remove certain reports from Research files. Once it becomes clear that such action is necessary for the successful defense of our present and future suits, we will promptly remove all such reports from our files".

Senkus explains that "[a]s a rule, we invalidate about 15 reports each year for various reasons", adding that reports are "invalidated" or re-written for various "reasons", including "needless repetition of previously reported data", "purposeless speculation", "confidentiality of contents", "erroneous interpretation of data", or "miscellaneous reasons." It appears from the memo that RJR's attorney had recommended the "invalidation" of certain troublesome files. In response, Senkus obligingly suggests that "we can cite misinterpretation of data as a reason for invalidation". Alternatively, RJR could say the reports were "needless repetitions" and were removed to "alleviate overcrowding" in the file cabinets. A third option, Senkus says, is simply to "have the authors rewrite those sections of the reports which appear objectionable".

Arguably, this document places in doubt everything R. J. Reynolds has claimed for decades about its knowledge of issues related to smoking and health. If the company has destroyed fifteen troublesome research reports each year, or four hundred and fifty over the last thirty years, how is the public to know what damning information was "invalidated"? How might that information have changed the course of tobacco litigation and American tobacco policy? If reports are made public now, how is America to know they are anything more than self-serving "re-writes" altered to protect the company in litigation?

In open court yesterday, the State's counsel, Roberta Walburn of the Minneapolis firm of Robins, Kaplan, Miller & Ciresi, reported to the District Court that an initial review of the 39,000 new documents is already revealing evidence that tobacco companies systematically withheld documents in litigation, suppressed research, moved research to lawyers' files and to foreign countries, and abused the legal discovery process. Among the documents sheltered in tobacco attorneys' files for the last forty years, and still not available to the public, Walburn stated, are RJR scientific reports from the 1950s on lung cancer, lip cancer, arsenic in cigarettes, coronary disease, and other critical research topics. As we review these documents, "our eyes grow wider", Walburn said, and "we wonder how the course of history would have been altered if this information had been made public."

Minnesota Office of the Attorney General

Hubert H. Humphrey III

WWW.AG.STATE.MN.US

FROM: **Luanne Nyberg, Senior Public Health Advisor**
Scott Strand, Deputy Counsel

PHONE **(612) 215-1533**

FAX RECIPIENTS:

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AG:120738 v1

Minnesota Office of the Attorney General
Hubert H. Humphrey III

TO:	Officials Concerned About Federal Tobacco Policy	DATE:	April 16, 1998
FROM:	Luanne Nyberg, Senior Public Health Advisor Minnesota Attorney General's Office	PHONE:	215-1533 (Voice) 297-4036 (Fax) 297-7206 (TTY)

Yesterday, one of the most compelling documents on the tobacco industry's attempt to cover up nicotine research was entered into evidence. It states, "Our attorneys, however, will likely continue to insist upon a clandestine effort in order to keep nicotine the drug in low profile." This document is one more of the 39,000 recently released documents that the tobacco industry fought all the way to the United States Supreme Court to conceal. Attached, you will find a Washington Post article framing that document and the trial exhibit itself.

We are also pleased to inform you that this afternoon the Honorable Lawrence D. Cohen, Chief Judge of Ramsey County District Court, ruled against the tobacco industry's motion to remove the presiding judge. In his order he wrote, "[T]his Court concludes that Judge Fitzpatrick has conducted this case in a fair and even-handed manner."

1980 Philip Morris Memo Spoke Of Need to Hide Nicotine Studies

By Saundra 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.

Abood Pr. (F)

PHILIP MORRIS U. S. A.

INTER-OFFICE CORRESPONDENCE

RICHMOND, VIRGINIA

To: Dr. R. B. Seligman
Date: March 21, 1980

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 psychopharmacology 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.

1000127789

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 Philip 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,[1] 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.

W. L. Dunn

jh
Attachment
cc: T. S. Osdene

2000127790

[1]Perhaps they should be apprised (see attached box)

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

STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

HUBERT H. HUMPHREY III
ATTORNEY GENERAL

102 STATE CAPITOL
ST. PAUL, MN 55155-1002
TELEPHONE: (612) 296-6196

Enclosed are three tobacco documents you might be interested in:

1. A letter to three House members detailing the positions taken by the tobacco industry before the Minnesota court in a hearing discussing the court order they proposed to the Judge to allegedly fulfill their promise to Congress to make public the information you and the American people need to craft a just and effective tobacco policy. The proposed court order is also attached.

2. A Summary of the testimony and expert report from the Minnesota trial regarding the financial condition of the tobacco industry. Please note:

   A. In 1996, the total global profits of the parent companies of the five tobacco companies that dominate the US market was $26 billion - great deal more than any of the annual tobacco revenue increases being talked about in Congress - and that $26 billion profit was made without raising tobacco prices to their profit maximizing points.

   B Tobacco profitability skyrocketed in the 1980s, and continues to increase rapidly in the 1990s.

3. A copy of thefinancial analysis report entered into evidence. Note that in a few places, the summary document differs from the expert report. Mr. Much updated the figures since the report was completed last year, and gave the most recent figures in court, which we used for the summary.

STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

HUBERT H. HUMPHREY III
ATTORNEY GENERAL

102 STATE CAPITOL
ST. PAUL, MN 55155-1002
TELEPHONE: (612) 296-6196

March 26, 1998

VIA FACSIMILE AND U.S. MAIL

The Honorable John C. Dingell
Ranking Minority Member
Committee on Commerce

The Honorable Henry A. Waxman
Ranking Minority Member
Committee on Government Reform and Oversight,
Member, Committee on Commerce

The Honorable Sherrod Brown
Ranking Minority Member
Subcommittee on Health and the Environment,
Committee on Commerce

Dear Representatives:

On Friday, March 13, the Minnesota District Court heard arguments on the issues addressed in your letter to the court of February 12th, in which you urged the court to make public the documents produced by the tobacco industry in the Minnesota litigation. I want to let you know about the positions taken by the industry in that proceeding.

At the outset, it is important to remember that the tobacco industry has never needed the permission of the Minnesota court to make public any or all of its documents. The protective order in our case in no way limits their ability to fling open their document vaults at any time, if they were genuinely overcome by a desire for openness. Instead, however, they have asked the Minnesota District Court to continue its protective order to keep information from Congress and the public. At the hearing, industry counsel urged the District Court to enter a proposed order (attached) imposing four critical restrictions to portions of the Minnesota document depository and to public access. These would effectively prevent Congress from making meaningful use of important industry information to develop national tobacco policy. Sadly, the industry's promise to "tell all", it seems, is really a promise to "tell some". Specifically:

- Tobacco companies want to deny Congress and the public access to hundreds of thousands of key documents the industry claims are protected by attorney-client privilege. As suggested by the industry's privilege logs, many of the documents on the subject of marketing to children and chemical additives also contain information on the relationship between smoking and numerous diseases, the role of addiction, health issues related to "low tar" cigarettes, and the secret research on nicotine manipulation. For example, a document quoted in the court's ruling indicated that the industry monitored smoking attitudes and behavior of children as young as five years old. The District Court has already ruled that 39,000 of these documents must be released to the state, and thousands more must be reviewed for possible release. The Minnesota Court of Appeals has upheld this ruling, and the matter is under review by the Minnesota Supreme Court. Regardless of the decision of our Supreme Court, however, the industry asked the court to keep these documents from Congress and the public. While it comes as no surprise that the industry would prefer to keep such documents from Congress and the public, this is hardly the "open" approach the tobacco companies promised when they appeared before you.

- The industry does not want to release their road map through the 33 million pages of documents. After three-and-a-half years working through this mountain of paper, Minnesota can vouch for the value of a map. Fortunately, a map exists. It consists of a set of indices known, in the jargon of our litigation, as the "4A Indices". Simply put, these are the computerized document indices created by the companies for their internal use. They contain the type of accurate, specific information necessary to do a meaningful search or review. Predictably, the industry continues to fight hard to keep them secret. For the state to use the 4A indices in our case, we had to fight all the way to the United States Supreme Court. Now the industry wants to keep them from you. Instead, they offer you the so-called "4B Indices". These are the cryptic, vague indices the companies created to share with us in our case. Because we had access to the "4B Indices" from their creation, the industry saw to it that they are of little value. Now they tell the court that, because your letter of February 12 made no specific reference to the 4A Indices, you don't need them. For Congress to find its way through the paper maze, sometime during this Session, you need the real map - - the 4A indices.

- The industry wants to withhold the Guildford depository documents. Millions of pages of documents produced under court order in our case are maintained at a document depository in Guildford, England. These come from the files of BAT Industries and its affiliates, which make up the world's second-largest tobacco manufacturing business. When the CEOs appeared before Congress, the President of BAT's American subsidiary, Brown & Williamson, appeared to be joining in the proposal to "tell all". But his lawyers told the judge in Minnesota that he wasn't speaking for his parent companies, and that whatever the CEOs may have told Congress, they weren't talking about the Guildford documents. The lawyers then argued that BAT should be allowed to withhold from public scrutiny millions and millions of pages in the Guildford depository. In our court hearing, BAT offered only to open Brown & Williamson documents in the Minnesota depository and the relatively few Guildford documents photocopied by Minnesota's trial team and indexed in what is known as the "Minnesota Select Set". We believe it is important to point out that Guildford documents not chosen for the Minnesota Select Set be included in any document disclosure. These Guildford documents may contain information on many issues of vital concern to the Congress which were not directly at issue in our case, such as marketing to children overseas; the health effects of secondhand smoke; and international smuggling.

- <u>The industry also wants to withhold all documents it has labeled, in the parlance of our case, "Category 1" documents. This broad category includes all documents the industry alleges to contain trade secrets</u>. Suffice it to say, we believe the industry has been liberal in its use of this designation. We have urged the District Court, for example, to make public all documents created before 1994, as they may not have any significant value as trade secrets. Not only does the industry propose to keep these self-selected documents sealed, but it even proposes to continue confidentiality for every legal brief, pleading or other court paper that makes reference to these "Category 1" documents.

Industry attorneys told the Minnesota court these sweeping restrictions satisfy whatever commitment the CEOs had made to Congress. At one point, for example, industry counsel cited the industry's proposed order and said:

> We think it's appropriate. We think it meets the commitment that was made to the United States Congress, and we just ask that it be entered. . .

We do not agree. The state of Minnesota and Blue Cross and Blue Shield of Minnesota opposed the proposed restrictions as contrary to the industry's promises to Congress and contrary to the public interest. We support the broadest possible disclosure, arguing (1) Congress should have access to the so-called "privileged" documents the court has ordered disclosed to us; (2) the 4A indices must become public; (3) all documents in the Guildford depository should be treated no differently than other documents; and (4) "trade secret" protection should be limited to genuine trade secrets created after 1994.

The industry's actions in the recent Minnesota hearing are one more example of its capacity to say one thing and do another. In Washington, the industry tells Congress its lawyers are busy carrying out the CEOs' commitment to Congress. But, when their lawyers actually appear in our Minnesota court, they distance themselves quickly from any Congressional commitments. At one point, when asked by the court about the agreement the executives made with Congress, industry counsel replied:

> First of all, your Honor, my contact with that is limited, but second, I understand that to the extent the Congress and the companies need to work out something further or want to work out something further, that should be between Congress and the companies. But third, with respect to the particular matters that were raised by the letter [of February 12], ...

The Court then asked:

> Well the letter was addressed to the Court, and I guess what I'm asking is what should I tell them? To go jump, or --?"

Counsel for the industry answered that by accepting the industry's proposal and blocking access to all alleged "trade secrets", blocking access to all briefs referring to "trade secrets" documents and blocking access to the 4A indices, the court would not be "telling them [the members of Congress] to go jump" but would instead "be telling them that most of the provisions they sought have been met".

At another point, counsel for Brown & Williamson argued that opening the millions of pages in the Guildford depository "has nothing to do with the matters that are the subject of discussion that's taken place as a result of the testimony on the Hill". This prompted the following exchange between Judge Fitzpatrick and the defense counsel:

> So as I understand your position, you would like to tell Congress to go jump as to the Guildford depository. Would that be a fair summary?
>
> I might like to do that, your Honor, but I really don't have to do that at the end because I don't think that this dialogue has really involved the Guildford depository . . .

At another point, counsel again separated the industry's courtroom actions from its Congressional activities, stating:

> Now what happens in our relationship with Congress, your Honor, I frankly have to tell you I can't address either. I'm here to deal with this litigation and to follow the rules of this court.

These examples illustrate once more the tobacco industry's willingness to say one thing to Congress and another thing in the courtroom. If the industry has indeed begun a "new day", it has yet to dawn outside of Washington D.C. I look forward to continuing to work with you to get the full truth out, so Congress can develop national tobacco control policy based on what is best for America's health, rather than on what the tobacco industry wants.

Best regards,

HUBERT H. HUMPHREY III
Attorney General

cc: Representative Thomas Bliley
Chairman, Commerce Committee

Attachment

STATE OF MINNESOTA

COUNTY OF RAMSEY

DISTRICT COURT

SECOND JUDICIAL DISTRICT

Case Type: Other Civil

COURT FILE NO. C1-94-8565

THE STATE OF MINNESOTA,

BY HUBERT H. HUMPHREY, III,
ITS ATTORNEY GENERAL,

and

BLUE CROSS AND BLUE SHIELD
OF MINNESOTA,

Plaintiffs,

vs.

PHILIP MORRIS INCORPORATED;
R.J. REYNOLDS TOBACCO COMPANY;
BROWN AND WILLIAMSON
TOBACCO CORPORATION; B.A.T.
INDUSTRIES P.L.C.; BRITISH-AMERICAN
TOBACCO COMPANY LIMITED; BAT
(U.K. & EXPORT) LIMITED, LORILLARD
TOBACCO COMPANY; THE AMERICAN
TOBACCO COMPANY; LIGGETT GROUP,
INC.; THE COUNCIL FOR TOBACCO
RESEARCH - U.S.A., INC.; and THE
TOBACCO INSTITUTE, INC.,

Defendants.

REVISED PROPOSED ORDER PROVIDING PUBLIC ACCESS TO
<u>THE MINNESOTA DOCUMENT DEPOSITORY</u>
(new language is underlined)

WHEREAS, this Court's June 16, 1995 Order established a depository in Minnesota for the receipt of documents produced by the parties (the "Minnesota Depository");

WHEREAS, the Court's June 16, 1995 Order generally restricted access to the Minnesota Depository to counsel for the parties to this action and persons assigned to maintain it; and

WHEREAS, the defendants who produced their documents into the Minnesota Depository now wish to give the public access to all non-privileged documents that they have produced into the Minnesota document depository other than those documents which contain highly sensitive trade secret information;

NOW, THEREFORE, good cause appearing therefor,

IT IS HEREBY ORDERED:

1. The public shall be given access to all non-privileged documents produced by defendants Philip Morris Incorporated, R.J. Reynolds Tobacco Company, Brown and Williamson Tobacco Corporation, The American Tobacco Company, Lorillard Tobacco Company, The Council for Tobacco Research - U.S.A., Inc., and The Tobacco Institute, Inc. and stored in the Minnesota Depository, except for highly sensitive trade secret documents designated as Category I and certain documents described in paragraph 2 of this Order, at the earliest possible opportunity. 4B indices for these documents will be made available to the public at the depository. Counsel for these defendants and for plaintiffs shall immediately meet with representatives of Smart Legal Assistance and Merrill Corporation to discuss staffing issues and the procedures that should be implemented to ensure broad and orderly access to these documents.

2. Notwithstanding the foregoing, documents such as personnel files and similar documents deserving protection from public disclosure, because of privacy interests or contractual rights of third parties that may not be abrogated by one party, may be protected from public disclosure by the parties.

3. Nothing in this Order shall be construed to allow the public access to those documents with respect to which defendants have raised privilege or work product claims, including inadvertently produced privileged documents.

4. Plaintiffs are hereby authorized to remove from the Minnesota Depository all documents they have placed therein, provided that the documents be retained until the conclusion of this litigation. Any further documents produced by plaintiffs in this litigation shall be produced directly to defendants' liaison counsel.

5. From the date of this Order, no costs incurred in relation to the Minnesota Depository shall be borne by plaintiffs in this action.

6. The moving defendants shall be authorized to require those who copy documents from the Minnesota Depository to pay the costs billed by Merrill Corporation for any such copying.

7. It is expressly recognized that access to the Minnesota Depository by the public shall not impede the access or use of the Minnesota Depository by the parties in this action. Among other things, the parties in this action shall retain the right of first review for all newly-produced documents and the Minnesota Depository staff shall have as its first priority the processing of documents for the parties in this action. Any future

documents produced by defendants to the Minnesota depository shall, in addition, be provided directly to liaison counsel for plaintiffs. As to the Category I and other non-publicly available documents in the depository, plaintiffs in other actions who have been given access to the Minnesota Depository pursuant to addenda to this Court's protective order shall continue to be governed by those addenda and the other procedures mandated by this Court and shall be given second priority with respect to the processing of their copying requests. Notwithstanding the foregoing, it is expressly recognized that the Minnesota Depository shall be adequately staffed to ensure that the public shall have their requests met in an expeditious fashion.

8. For all documents in the depository made available to the public, the restrictions imposed by the Court's Protective Order and Addendum to the Protective Order are no longer binding upon plaintiffs in the Minnesota litigation nor upon plaintiffs in other actions who have been given access to the Minnesota depository. Among other things, all such documents and pleadings or briefs which reference such documents (and not Category I documents, Category II documents, privileged doucments or other non-publicly available documents) which were previously filed under seal in this Court shall be unsealed. The release of restrictions and unsealing of materials shall not affect the protections and obligations in place for all Category I and Category II documents, if any, as well as any other non-publicly available documents in the depository.

9. Except as modified herein or by further Order of this Court, this Court's prior Orders regarding maintenance and continued operation of the Minnesota Depository, including its Order of June 16, 1995, shall remain in effect.

Dated: _______ 1998

____
Judge Kenneth J. Fitzpatrick

STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

HUBERT H. HUMPHREY III
ATTORNEY GENERAL

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Tobacco Industry Profits "Hot Quotes " from Minnesota Trial

Quote Sheet # 5
Testimony And Exhibits Of Paul Much, Expert Financial Analyst, March 23rd, 1998

In the United States, the tobacco market has historically been dominated by six manufacturers - Philip Morris, RJ Reynolds, Lorillard, Brown and Williamson, American Tobacco, and Liggett. This number fell to five when British American Tobacco bought American Tobacco in 1994. The State of Minnesota and Blue Cross, Blue Shield allege that since at least 1954, these companies and their trade associations have: conspired to unreasonably restrain trade and commerce; monopolized the cigarette market; engaged in unlawful and deceptive trade practices; engaged in false advertising; and engaged in consumer fraud. The testimony of the State's financial expert and his analysis of the tobacco industry introduced at trial lays out the incredible profits made by these companies.

US TOBACCO OLIGOPOLY AS A WHOLE

At the heart of financial condition is profitability, and what you have here is consistent, stable, growing profitability, and that will lead to a strong financial condition." *Paul Much testimony from Minnesota trial, March 23, 1998.*

1996 Global Profits for US Tobacco Companies Parent Companies: $21,160,000,000
(in lay terms, just over $21 billion)

Global Consolidated Operations, Tobacco and Non-Tobacco 1954 - 1996*
-Operating profit: $242,022,000,000 *(in lay terms, just over $242 billion)*
-Revenues: $1,928,768,000,000 *(in lay terms, more than $1.9 trillion)*

Global Tobacco Operations 1954 - 1996*
-Operating profit: $167,038,000,000 *(in lay terms, more than $167 billion)*
-Revenues: $995,166,000,000

Domestic Tobacco Operations 1954 - 1996*
-Operating profit: $114,904,000,000 *(in lay terms, almost $115 billion)*
-Revenues: $463,238,000,000

Domestic Tobacco Operating Profits Rate of Increase between 1970s and 1980s: 229%
- Domestic Tobacco Operating Profits 1970 - 1979: $13.4 billion
- Domestic Tobacco Operating Profits 1980 - 1989: $44.1 billion

* "[T]here were gaps in B.A.T where the company did not report its revenues for more than a decade. With respect to Lorillard, there was missing information on the tobacco segment for several years. And with respect to Brown & Williamson, there was also some missing information for several years... If there was information missing for a particular year, we would basically assume that there were no revenues for that year and there were no profits for that year. If it was missing, it was treated as if it was zero. ...[so] it would understate the total revenues and profits." *Paul Much testimony in Minnesota trial, March 23, 1998.*

Tobacco Profits Exceed Pharmaceuticals, Consumer Products between 1980 - 1989

In the period 1980 - 1989, domestic tobacco's operating profits averaged 29%, compared to:

Pharmaceuticals	26%
Non-Alcoholic Beverages	16%
Alcoholic Beverages	11%
Branded Foods	10%
Consumer Products	9%

Tobacco Profits Rise Again in 1990s, Continue to Exceed Profits from Other Products

From 1990 through 1996, domestic tobacco's operating profits averaged 32%, compared to:

Pharmaceuticals	29%
Non-Alcoholic Beverages	20%
Alcoholic Beverages	15%
Branded Foods	12%
Consumer Products	11%

"[O]perating profits have increased as a percentage of sales, they're taking up a growing slice of the growing pie. They've increased from the '50s at 12 percent to the '90s at just under 30 percent"
Paul Much testimony in Minnesota trial, March 23, 1998.

PHILIP MORRIS

- In 1994, Philip Morris (major brands include Marlboro, Merit, and Virginia Slims) held 45 percent of the US cigarette market.
- Tobacco accounts for 53% of Philip Morris revenues and 65% of operating profits; food products (e.g., Kraft, Velveeta, Maxwell House, Oscar Mayer) account for 40% of revenue and 31% of operating profit; beer (e.g., Miller, Molson, Fosters, Leinenkugels) generates 6% of revenues and 3% of operating profit.
- Global Philip Morris operating profits 1954 -1996, $103.1 billion on revenues of $681.4 billion.
- Global Philip Morris tobacco profits 1954 -1996, $76.3 billion on revenues of $342.6 billion.
- Domestic Philip Morris tobacco profits 1954 -1996, $52.2 billion on revenues of $165.4 billion.
- Philip Morris' global tobacco profits have been substantially higher than other branded consumer products during all time periods between 1970 and 1996.
- Philip Morris domestic tobacco operating profit for US operations: $4,206,000,000.

R.J. REYNOLDS

- In 1994, R.J. Reynolds (major brands include Winston, Salem, Camel, and Doral) held 27% of the US cigarette market.

- Tobacco accounts for only 48% of R.J. Reynolds revenues but for 79% of operating profit; food products (e.g., Nabisco, Planters, Life Savers) account for 52% of revenue, and 21% of profit.

- Global R.J. Reynolds operating profits between 1954 - 1996: $46.9 billion on revenues of $301.9 billion.

- Global R.J. Reynolds total tobacco profit, 1954 - 1996: $36.4 billion; on revenues of $169.2 billion.

- R.J. Reynolds domestic tobacco profits, 1954 - 1996, were $30.4 billion on revenues of $127.7 billion.

- 1996 R.J. Reynolds domestic tobacco operating profit for US operations: $1,084.000,000.

BROWN and WILLIAMSON

- In 1994, Brown and Williamson (major brands include Kool, Viceroy, Barclay, and Raleigh) held 19 percent of the US cigarette market.

- Brown & Williamson has been a subsidiary of British American Tobacco Industries, PLC since the 1920s.

- Currently 'commercial' (predominantly tobacco) accounts for 72% of revenues and 61% of profits, while financial services (e.g., Farmers Insurance Group, Canada Trust & Eagle Star) make up 28% of revenue and 39% of operating profit.

- 1996 Brown and Williamson domestic tobacco operating profit for US operations: $772,000,000.

- Brown and Williamson's Global Tobacco historical profitability has proven to be greater than most other branded consumer products.

LORILLARD

- In 1994, Lorillard (major brands include Newport, Kent and True) held 7 percent of the US cigarette market.

- Currently part of Loews Corporation, a diversified tobacco, consumer products and entertainment company.

- Tobacco represents 11% of revenues and 26% of profits, while insurance (e.g., CNA Financial Corporation) represents 84% of revenue and 65% of profits. Offshore drilling makes up 3% of revenue and 8% of profits, and consumer products represent 2% of revenue and 1% of profits.

- Lorillard's historical tobacco profits have been substantially greater than comparable branded consumer products during most years between 1970 and 1996, the time period analyzed.

LIGGETT

- In 1994, Liggett (major cigarette brands include L & M, Chesterfield and Lark) held 2 percent of the US cigarette market.

- Currently part of Brooke Group, Ltd., which also operates a tobacco firm and a real estate firm in Russia.

- 1996 tobacco operating profits: $5 million.

AMERICAN TOBACCO

- In 1994, American Tobacco (major brands include Lucky Strike, Pall Mall, Carlton and Tareyton) held less than 1 percent of the US cigarette market.

- Once the largest tobacco company in the US, American was bought by British American Tobacco (BAT Industries, PLACE) in 1994.

- Pre-BAT 1994, tobacco accounted for 65% of revenues and 58% of profits; alcoholic beverages (e.g., Jim Beam, Whyte & Mackay) accounted for 11% of revenues and 17% of profits; home improvement (e.g., Moen, Master Lock, Aristocraft) accounted for 11% of revenues and 14% of profits, golf and leisure/office products accounted for 13% of revenue, and 11% of profits.

- BAT 1996 operating profits from US tobacco operations: $6,739,000,000.

"[T] he cigarette industry has enjoyed a very long history of stable and growing profits, and as a result the cigarette companies have a very strong financial position." *Paul Much, testifying in Minnesota trial, March 23, 1998,*