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Dockets

# Judge rebukes tobacco industry

## Files revealing "a conspiracy of silence and suppression of scientific research" must be made public, Judge Kenneth Fitzpatrick says.

By David Phelps
*Star Tribune Staff Writer*

With sometimes scathing language, Ramsey District Judge Kenneth Fitzpatrick blasted the tobacco industry for improperly hiding sensitive documents behind attorney-client privilege claims and ordered the files' release to attorneys for the state of Minnesota.

Fitzpatrick said his examination of documents revealed "a conspiracy of silence and suppression of scientific research" that must be examined in the open. He said his findings and the findings of special master Mark Gehan "demand that the light of discovery penetrate to some of the darkest bowels of the tobacco industry, revealing what the industry knew, when it knew it, and if the information was disseminated."

The Minnesota lawsuit is scheduled for trial on Jan. 20. The state and Blue Cross and Blue Shield of Minnesota are attempting to collect reimbursement for the cost of treating smoking-related diseases.

Fitzpatrick's order upheld the earlier findings of Gehan that privilege claims were improperly applied to more than 800 documents.

The documents came from the files of the Liggett Group, which voluntarily provided the material as part of an out-of-court settlement with Minnesota and other states.

Gehan ruled that two-thirds of the Liggett documents, which include shared material with other tobacco companies and tobacco research groups, could remain under seal.

*Turn to* **TOBACCO** *on* **A12** *for:*
*— The documents also have been subpoenaed by a House committee.*

Read the full text of the both the Judge's Order and the Special Master's Recommendation at the Minnesota Attorney General's Office website. Address is: www.ag.state.mn.us/consumer under "Hot News"

**TOBACCO** *from* **A1**

## *Judge says silence 'conspiracy' must be examined in the open*

The documents ordered released Tuesday also have been subpoenaed by the House Commerce Committee and are under review by congressional attorneys. The committee could release the documents before Christmas.

Fitzpatrick admonished the tobacco industry for its conduct, using terms such as "gravely concerned," in a 40-page memorandum that accompanied his order that the state and co-plaintiff Blue Cross and Blue Shield of Minnesota receive the Liggett documents within five days.

The judge said privilege was claimed by the defendants for documents where it clearly should not apply.

"Did the defendants claim privilege for such material simply to create more of a 'haystack' in which to hide their 'needles'?" ... wrote. "Did they fail to conduct a review of the documents sufficient to make a good-faith claim of privilege in the first instance? Whatever the reason, claiming privilege where none even arguably exists constitutes abuse."

Fitzpatrick upheld Gehan's finding that the presence of "crime fraud" in the application of the attorney-client privilege claim invalidated the claim.

Fitzpatrick noted that Gehan had determined that some tobacco research was put under the direction of attorneys in order to "create" the relationship of attorney and client.

"Scientific research does not become privileged merely by insertion into a communication between attorney and client," Fitzpatrick wrote.

One of the privileged documents reviewed by Fitzpatrick was a 1955 memo referring to a medical study. The memo said the study was "interpreted by several of our better ... science writers as indicating that tobacco smoking was an influence in the etiology [cause] of lung cancer."

Fitzpatrick noted in his memorandum that the industry even today denies the causation between smoking and health problems.

About 40 other states have lawsuits pending against the tobacco industry, which has settled with only Florida and Mississippi. Texas' lawsuit is expected to go to trial before Minnesota's. Meanwhile, the other states' suits hinge on a possible national settlement, which Congress is expected to consider when it reconvenes in January.

The defendants in the Minnesota suit include Philip Morris, Inc., R.J. Reynolds Tobacco Co., Brown & Williamson Tobacco Corp., British-American Tobacco Co. Ltd., BAT Ltd., Lorillard Tobacco Co., the American Tobacco Co., Liggett Group, Inc. (defendant of Blue Cross only), the Council for Tobacco Research and the Tobacco Institute.

Star Tribune
NEWSPAPER OF THE TWIN CITIES
DECEMBER 17, 1997

NewsFlash WHAT'S HAPPENING NOW

WASHINGTON THE FULL STORY

# Hundreds of tobacco industry documents released

BRIEK
(1) AP Story - doc's show companies after kids in 1990
(2) Industry statement
(3) ASH attacks
Tom

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

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

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

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

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

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

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

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

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

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

The documents are the largest cache of industry papers ever released at once. They come from the files of the Liggett Corp., which turned state's evidence last year to settle several lawsuits. But Liggett's competitors had fought to keep them sealed, even moving to appeal Fitzpatrick's ruling Wednesday.

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

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

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

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

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

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

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

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

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

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

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**Thursday December 18, 5:05 pm Eastern Time**

**Company Press Release**

# Tobacco Industry Statement on Release of Documents

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

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

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

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

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

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

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

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

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

**More Quotes and News:** Philip Morris Companies Inc (NYSE:MO - news)
**Related News Categories:** government, tobacco

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**Thursday December 18, 1:56 pm Eastern Time**

**Company Press Release**

*SOURCE: Action on Smoking and Health*

# Release of Tobacco Documents Destroys Even Plausible Deniability, Says ASH

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

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

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

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

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

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

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

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

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

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

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

Thomas L. Freedman
12/18/97 04:05:33 PM

Record Type: Record

To: Bruce N. Reed/OPD/EOP

cc:
Subject: Tobacco comment

Here's a crack at what to send to press office on tobacco document release;

Chairman Bliley Congressman Dingell and the Commerce Committee deserve a great deal of credit for the forthright way they are working to expose tobacco documents and make them available for the American people. The documents reinforce the need for comprehensive tobacco legislation. Bipartisan legislation is ultimately the best way to help protect our children and reduce the scourge of teen smoking. The President outlined a plan in September, including provisions for document disclosure, that will lead to an effective solution and reduce teen smoking. We look forward to working with Congress as this process goes forward.

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

Could
① Validate
POTUS
leadership

December 18, 1997

The President's
call – ...
② leadership

**MEMORANDUM**

**TO:** Democratic Members, Committee on Commerce

**FROM:** Hon. John D. Dingell, Ranking Member

**SUBJECT:** Tobacco Documents

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

## Summary and Introduction

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

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

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

1. All documents for which any previous claim of privilege or protection has been denied (even in interim, non-final, or vacated orders) and all documents specifically designated by plaintiffs by Bates numbers.

3. All scientific research or research reports on smoking and health or information relating to smoking and health, and memos regarding the same, written by an employee or outside consultant researcher or research entity of any Defendant or corporate affiliate of any Defendant.

4.b. All documents relating to Special Projects (including CTR Special Projects and Lawyers' Special Projects) or any Special Account (Including Special Account No. 4).

Jerold R. Mande

12/17/97 07:34:21 PM

Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP

cc: See the distribution list at the bottom of this message
Subject: HHS Tobacco and Food Safety Budgets

Here is an update on HHS's tobacco and food safety budgets. I am concerned that these programs are in trouble and in need of your help to receive adequate funding in the President's FY99 budget.

Tobacco

For FY99, OMB is recommending a $30 million increase ($21M for CDC for state programs and $9M for FDA). HHS is currently requesting on appeal to OMB an increase of $120M over the FY98 level ($74M for CDC and $46M for FDA). FDA's increase will enable it to contract with all states to effectively enforce its tobacco rule. As you know, effective enforcement is essential to making access restrictions work. CDC will put $49M toward state programs, $20M toward counter advertising, and $5M toward surveillance and research. At this funding level, CDC will provide each state with $1 million on average, which is less than the $1.2 million average the 16 ASSIST states currently receive. Studies indicate states need about $10 million each to replicate the reductions in youth smoking that California and Massachusetts have achieved. I believe HHS initially requested an increase of $136 million over FY98 for tobacco. For FY98, FDA received $34 million for tobacco, which is an increase of $29.1 million over FY97. CDC received $28.4 million, which is an increase of $7 million over FY97, however the President had requested a $15 million increase. NIH received $25 million for the ASSIST program the same as in FY97 (beginning in FY99 ASSIST will move to CDC -- the CDC budget request reflects the move).

Food Safety

For FY99, OMB is recommending a $30 million increase for HHS ($5M for CDC and $25M for FDA). HHS is currently seeking $44 million on appeal ($5M for CDC and $39M for FDA ($22M for imports and $17M for domestic)). I am trying to determine whether the HHS appeal is on top of the OMB $30 million or instead of it. HHS initially requested a $109 million increase ($21M for CDC and $88M for FDA ($27M for imports and $61M for domestic)). At OMB's currently recommended level of funding the Administration will not be able to achieve many of goals we have already promised in the President's Food Safety Initiative. $5 million would not enable CDC to put in place the early warning system the President promised last January, and $25 million for FDA, depending on how it is divided between imports and domestic, either is just short of what FDA needs to implement the produce initiative the President announced in October with no new money for the programs the VP announced in May, or well short of what is needed for imports and also well short of what is needed domestically.

Message Copied To:

Thomas L. Freedman/OPD/EOP
Donald H. Gips/OVP @ OVP
Toby Donenfeld/OVP @ OVP
Laura Emmett/WHO/EOP
Christopher C. Jennings/OPD/EOP

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

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

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

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

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

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

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

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

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

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

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

**Special Projects**

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

The preponderance of the documents received by the Committee relate to so-called Special Projects. They are referred to in various ways, as a Special Project of the CTR, a Special Project, a lawyers' special project, or Special Account #4 project. The common link was that the project would be recommended for funding by one of the company's outside firms -- most often Shook, Hardy, and Bacon -- in a letter to the General Counsels of the major tobacco firms. The general counsels presumably approved the projects, often at a meeting known as the Committee of Counsel, based upon little more than a one or two page description of the research project. Under these Special Projects, doctors would be funded for thousands to hundreds of thousands of dollars to perform research. It appears that in general, the companies would pay the outside counsel periodically (initially similar amounts, but later based upon market share) and the outside counsel would forward the money to the doctor.

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

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

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

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

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

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

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

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

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

> "Research the disease not tobacco issues.
> "1) Maintain that existing evidence of tobacco-health relationship is inadequate to justify research more close to tobacco;
> "2) Study of disease keeps constantly alive argument that until basic knowledge of the disease advances, inappropriate to devote major effort to tobacco." **(2023842)**

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

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

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

## Nonscientific Factors Contributing to Funding of Special Projects

Many documents appear to suggest that factors other than scientific merit were considered in the funding of special projects. Letters from attorneys in Shook, Hardy and other firms to the counsels to tobacco companies seeking approval for research funding often mentioned these other factors: (1) the doctors had conducted and would continue to conduct research with conclusions consistent with industry views; (2) the doctors were in the past or would likely be willing in the future to defend the industry before Congress, litigation, or in other settings where the industry was under attack; or (3) they held influential positions that would attract favorable attention.

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

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

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

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

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

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

## Significance of Special Projects Documents

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

The documents raise many questions that need to be answered:

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

**Context of the Special Projects issues – The Huber Case**

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

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

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

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Others may find legislative memos of interest. For example, at a meeting of Committee of Counsels on March 31, 1983, there was a lengthy discussion of how to answer a question concerning the hypothetical repeal of the warning label. Counsels have used the warning as a defense in lawsuits to show that smokers had adequate warning. **(See 2006239)** Not wanting to admit they liked the defense, they decided they would answer the question that the industry has always opposed warning legislation "based upon the assumption shared by all that it wouldn't be repealed." **(2000824)**

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

## FAX COVER

## COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

## DEMOCRATIC STAFF OFFICE

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RANKING MINORITY MEMBER
B350A RAYBURN HOUSE BUILDING
PHONE (202) 225-5051
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DATE: 12/18

TO: Tom Freedman FAX #

FROM: Phil Barnett

SUBJECT: Dingell Memo on Tobacco Documents

NO.OF PAGES 10
(EXCLUDING COVER SHEET)

COMMENT:

IF THERE IS A PROBLEM WITH THIS TRANSMITTAL, PLEASE CALL OFFICE A.S.A.P.

Tobacco

50 YEARS

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**BY FAX -- 2 pages**

Monday Oct. 13, 1997

MEMORANDUM

Tom/ FYI

TO: BRUCE REED
The White House

FROM: Bruce Wolpe

Greetings from Australia. The entire country misses you and hopes the entire Reed family can return here in due course.

File: Tobacco-International

I wanted to contact you briefly on the following matter:

Dr. Simon Chapman is Australia's leading public health advocate on tobacco and health issues. He has been very concerned that the proposed settlement does very little to curb the activity of the tobacco companies in their marketing outside the United States.

He is suggesting a UN resolution to correct this flaw in the proposed tobacco settlement, specifically through a joint initiative undertaken by President Clinton, Prime Minister Blair, and President Mandela -- the leaders of the countries that are home to the world's biggest tobacco companies.

Dr. Chapman is a good friend and, after meeting with him Friday, I felt his idea had such merit that I volunteered to pass this on to you for your consideration. His note to me is attached.

I hope this might be of interest. I would be happy to pass back to Chapman any views you might have on this suggestion.

(Please know also I have no clients or commercial interests in this matter.)

With warm regards.

p.s. My email address: bwolpe@hillandknowlton.com.au

## Message for Bruce Wolpe

**From:** SIMON@cmed.wsahs.nsw.gov.au

**Date:** Fri, Oct 10, 1997 3:29 PM

**Subject:** Clinton,Blair + Mandela

**To:** Bruce Wolpe

---

Bruce, as per our discussion this morning, here is a note I sent to some colleagues in the USA, South Africa, and UK last week.

Dear colleagues,

Those of you who attended the Beijing forum on the US tobacco settlement may recall that I raised an idea that I felt might have considerable potential in addressing the major concerns many have about the US settlement not flowing onto the international community, particularly the 3rd world.

In brief, it was this. Clinton, Tony Blair and Mandela are heads of state of three nations which are home to the most of the major tobacco transnationals (US=Philip Morris, RJR etc; UK=BAT; South Africa = Rothmans). If these three leaders could jointly sponsor a UN resolution that would call for an international end to all tobacco advertising, or at very least the adoption as a minimum standard, the terms of the US settlement, I cannot think of a more symbolic and powerful triumvirate.

Clinton as the world's most powerful leader who has shown his hand many times on tobacco and is now in dire need of pulling an international rabbit out of the hat; Blair as the face of post-Thatcherite Europe (UK Labor have announced a total ad ban); and Mandela as the most powerful face of 3rd World politics and a passionate anti-tobacco person.

If the three could walk together into the UN General Assembly and one by one speak to the need for an international code of conduct, I can't think of a more powerful way ahead. The only other major tobacco exporter is Japan -- and it would certainly be the tough nut in the pack.

Another idea may be to try and orchestrate this to coincide with the Sydney 2000 Olympics. The IOC is of course very committed against tobacco sponsorship and has outlawed it from the Olympic movement. This, along with tho dawning of the millenium etc, may frame a major speech from the three in ultra-powerful perspective.

I write to you all as key individuals with good contacts in the three countries I've mentioned. I wonder if you have any reactions to this idea ...ways that it might be progressed, sounded out, how it might be seeded in the respective administrations.

I look forward to hearing from you.

Simon Chapman

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

December 18, 1997

**MEMORANDUM**

**TO:** Democratic Members, Committee on Commerce

**FROM:** Hon. John D. Dingell, Ranking Member

**SUBJECT:** Tobacco Documents

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

## Summary and Introduction

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

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

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

1. All documents for which any previous claim of privilege or protection has been denied (even in interim, non-final, or vacated orders) and all documents specifically designated by plaintiffs by Bates numbers.

3. All scientific research or research reports on smoking and health or information relating to smoking and health, and memos regarding the same, written by an employee or outside consultant researcher or research entity of any Defendant or corporate affiliate of any Defendant.

4.b. All documents relating to Special Projects (including CTR Special Projects and Lawyers' Special Projects) or any Special Account (Including Special Account No. 4).

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

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

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

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

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

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

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

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

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

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

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

## Special Projects

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

The preponderance of the documents received by the Committee relate to so-called Special Projects. They are referred to in various ways, as a Special Project of the CTR, a Special Project, a lawyers' special project, or Special Account #4 project. The common link was that the project would be recommended for funding by one of the company's outside firms -- most often Shook, Hardy, and Bacon -- in a letter to the General Counsels of the major tobacco firms. The general counsels presumably approved the projects, often at a meeting known as the Committee of Counsel, based upon little more than a one or two page description of the research project. Under these Special Projects, doctors would be funded for thousands to hundreds of thousands of dollars to perform research. It appears that in general, the companies would pay the outside counsel periodically (initially similar amounts, but later based upon market share) and the outside counsel would forward the money to the doctor.

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

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

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

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

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

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

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

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

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

> "Research the disease not tobacco issues.
>
> "1) Maintain that existing evidence of tobacco-health relationship is inadequate to justify research more close to tobacco;
>
> "2) Study of disease keeps constantly alive argument that until basic knowledge of the disease advances, inappropriate to devote major effort to tobacco." **(2023842)**

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

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

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

<u>**Nonscientific Factors Contributing to Funding of Special Projects**</u>

Many documents appear to suggest that factors other than scientific merit were considered in the funding of special projects. Letters from attorneys in Shook, Hardy and other firms to the counsels to tobacco companies seeking approval for research funding often mentioned these other factors: (1) the doctors had conducted and would continue to conduct research with conclusions consistent with industry views; (2) the doctors were in the past or would likely be willing in the future to defend the industry before Congress, litigation, or in other settings where the industry was under attack; or (3) they held influential positions that would attract favorable attention.

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

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

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

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

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

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

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**Context of the Special Projects issues – The Huber Case**

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

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

Others may find legislative memos of interest. For example, at a meeting of Committee of Counsels on March 31, 1983, there was a lengthy discussion of how to answer a question concerning the hypothetical repeal of the warning label. Counsels have used the warning as a defense in lawsuits to show that smokers had adequate warning. **(See 2006239)** Not wanting to admit they liked the defense, they decided they would answer the question that the industry has always opposed warning legislation "based upon the assumption shared by all that it wouldn't be repealed." **(2000824)**

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