Tobacco Document Warns of Lies

By ACSH Staff — March 1, 2002

You have to admit: Law firms defending the behavior of cigarette companies, especially from 1950-1980, really have their work cut out for them. Their mission is to defend a client who for decades systematically misrepresented the truth about cigarette smoking and health.

In a remarkable, confidential, internal document (now available on the internet; see http://www.tobacco.org/Documents/jonesday1.html), lawyers from the firm Jones and Day present a roadmap of their clients' lies and deceptions starting in 1950, and in numerous places show their disgust at the stupidity, arrogance, and chutzpa of the very clients they are now representing. The document is undated, but given its content, it is likely it was prepared in the late 1980s.

Some examples of the brutally candid advice tobacco lawyers gave their squirming clients:

The Tobacco Institute (TI), which represented the major manufacturers since the early 1950s, maintained for decades that there was no evidence that cigarettes caused disease, or that at worst the issue was still an "open question". The Jones and Day memo calls the TI statements that deny causation "conservatively speaking, imprudent and impolitic," noting "no member company of TI has ever disassociated itself from TI statements."

The memo continues, "even if the tobacco companies believed [that tobacco and health was an open question] in 1954, industry documents demonstrate that the industry has had grave doubts about its validity for over 25 years."

Remember, this charge is being related by the attorneys who were advising and representing Big Tobacco in court.

"For example," the memo continues, "a 1967 document prepared by J.S. Dowdell (RJRT) acknowledged that 'the industry has little, if any, positive evidence' to refute the health charges. To a similar effect is a 1962 letter from W.S. Crutchens (B&W) to Bowman Gray (RJRT). Of greater concern is a 1968 memorandum in which William Kloepfer (from the Tobacco Institute) concedes: 'our basic position in the cigarette controversy is subject to the charge, and may be subject to a finding, that we are making false and misleading statements to promote the sale of cigarettes'. Nevertheless, the campaign continued. Indeed a 1972 Tobacco Institute memorandum outlines a 'holding' strategy as consisting of 'creating doubt about the health charge without actually denying it.' The proposed strategy was to assert alternative causation theories as a mechanism to avoid addressing the primary health issues."

Did tobacco executives know about the dangers of smoking, and when did they know?

The answer is "you bet they knew years before almost anyone else did." Consider this candid
statement by Jones and Day, in the course of a text that lamented how ignorant cigarette executives appeared when asked in public about the literature linking smoking and health:

"Although information dating to the 1930s was sufficient to put the tobacco companies on notice (and trigger both duty to investigate and a duty to warn), evidence linking cigarette smoking and cancer clearly existed and was universally known in scientific circles during the period 1950-1954. By the same time, credible evidence linking smoking with cardiovascular and nonmalignant pulmonary diseases emerged."

Further, and even more damning, the memo notes: "Plaintiffs will contend that the companies knew or should have known of scientific data linking cigarettes and lung cancer during the 1930s, or at least the 1940s. In any event the evidence is irrefutable that the companies were aware by 1954 of the early epidemiological studies and the 1953 Wynder-Graham mouse skin painting study."

These are statements from the same law firm that, during multiple depositions with me, has argued that the Industry knew nothing about cigarettes causing disease because the data were not available to support such a view.

**Drawing Attention to Flawed Research**

Beginning in the 1980s, I began to write regularly to the head of the Tobacco Institute, noting that while the Industry rejected the causal link between cigarettes and disease and the thousands of studies that documented this link, the Industry had never set forth exactly what its criteria for causation were that is, what type of evidence they would accept as proving causality.

Jones and Day in their memo made exactly the same charge toward their own clients when they wrote "to this date, no industry witness can identify the quantity or quality of evidence it would take to convince him that there is a causal relationship between cigarette smoking and lung cancer or other diseases."

Tobacco companies and their lawyers have long maintained in public that the research they funded and the research of the Tobacco Industry Research Council (TIRC) was completely independent, not influenced by cigarette companies.

The Jones and Day memo clearly explodes that lie: "although the Industry funded a number of other 'outside' research programs, it did so only when it received clear advance assurances of a 'favorable' outcome. For example, Dr. Gary Huber, then of Harvard, solicited industry funds with his view that 'the number of people at potential risk from tobacco consumption is extremely small relative to the very large number of people who now smoke.' Philip Morris and others in industry, including Reynolds, contributed funds to the Sloan Kettering Institute in an attempt to partially muzzle Dr. Ernst Wynder (a prominent tobacco researcher). The industry also funded a project at UCLA Medical School but only after the Medical School reassured the industry that nothing damaging to the industry would be discovered."
The TI and the individual member companies long maintained that TIRC was an independent research group dedicated to getting the real facts about smoking and health. But the Jones and Day document flatly states that the Industry consider TIRC a pure public relations tool, and indeed all projects funded under TIRC had to be approved in advance by the attorneys for the Industry.

For those who still maintain that the tobacco industry was in the dark for decades about the spectacular health dangers of smoking and thus should be forgiven for not warning the public about those dangers in the early 1950s the Jones and Day document will be an insurmountable obstacle. The Industry knew and chose to misrepresent and deny the risks. The attorneys currently representing them in litigation know this better than anyone else.
Responses:
March 5, 2002

Dear Elizabeth,

I challenge your position on the responsibility of smokers versus tobacco companies.

Of course, consumers are aware of the dangers of smoking and should know better than to take the risk. But the fact is that people’s addictions are not
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