

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

PHILIP MORRIS USA INC., f/k/a PHILIP
MORRIS INCORPORATED, *et al.*,

Defendants.

Civil Action No. 99-CV-02496 (GK)

**BRIEF OF AMICUS CURIAE THE REGENTS OF THE UNIVERSITY OF
CALIFORNIA IN SUPPORT OF THE UNITED STATES' PROPOSED FINAL
JUDGMENT AND ORDER**

TABLE OF CONTENTS

	PAGE
I. INTRODUCTION.....	1
II. INTEREST OF AMICUS CURIAE.....	2
A. The University's Tobacco Documents Library	2
B. The University's Experience With Tobacco Industry Document Collection.....	5
III. THE IMPORTANCE OF DOCUMENT DISCLOSURE.....	8
IV. INTERNET DISCLOSURE OF DOCUMENTS IN THE BATCO GUILDFORD DEPOSITORY SHOULD BE EXPRESSLY REQUIRED	9
V. THE JUDGMENT SHOULD CREATE A PROCEDURE TO RESOLVE PROBLEMS OF ACCESS TO DOCUMENTS.....	11
A. A Publicly-Available Process	11
B. Review of Privileged and Redacted Documents	12
C. Penalties for Repeated Violation of Document Disclosure Requirements.....	13
VI. THE JUDGMENT SHOULD PROHIBIT DEFENDANTS FROM COLLECTING AND USING INFORMATION ABOUT THE USERS OF INTERNET DOCUMENT WEBSITES OF DEPOSITORIES	14
VII. THE JUDGMENT SHOULD ADDRESS A NUMBER OF TECHNICAL DOCUMENT DISCLOSURE ISSUES.....	14
VIII. CONCLUSION	17

TABLE OF AUTHORITIES

PAGE

STATE CASES

<i>Brown & Williamson Tobacco Corp. v. Regents of the University of California</i> (Super.Ct. for County of San Francisco, No 967298)	2
---	---

137026.1

I. INTRODUCTION

Amicus Curiae, The Regents of the University of California submits this brief in support of Section IV.F of the United States' Proposed Final Judgment and Order ("Judgment"), which addresses the disclosure and publication of tobacco industry documents. The University of California at San Francisco Library maintains the Legacy Tobacco Documents Library ("LTDL"), and British American Tobacco Documents Archive ("BATDA"). These archives collect tobacco industry documents that have been released through settlements or otherwise and make them permanently and freely available to researchers and the public on the Internet. The LTDL and BATDA have become standard sources through which researchers, policy makers, the public, and litigants obtain access to these important materials. Tobacco documents archived in the LTDL and BATDA have been extremely valuable to scholars studying tobacco control issues, and numerous books and hundreds of scholarly papers have relied on them. For that reason, the University strongly supports the continued and additional disclosure and publication that would be mandated by Section IV.F of the Proposed Judgment.

The University has faced persistent and recurring problems obtaining access to tobacco company documents, despite the mandate of earlier settlements that they be disclosed. Other issues have limited the usability of those documents that have been disclosed. Many of these problems can be avoided in the future by including appropriate provisions in the Judgment. This Brief seeks to identify some of the circumstances that have hampered access or usability and to propose solutions. In addition to these technical fixes, there are a few additional provisions that the University believes are critical to continued free and open access to these documents. Most important of these is establishment of an efficient, expeditious procedure through which members of the public can obtain adjudication of disputes regarding the defendants' compliance with the provisions of Section IV.F. In the absence of such procedures, defendants have little incentive to be responsive when users identify problems. Industry unresponsiveness has undermined the value of document disclosure mandated by prior

settlements, and this Court's Judgment should include provisions to prevent the same from happening here.

II. INTEREST OF AMICUS CURIAE

The Regents of the University of California is empowered by Article IX, section 9 of the California Constitution with governance of the University of California ("UC" or "the University"). UC is the largest public research university in the United States. Its San Francisco campus is one of the world's premier health sciences research and educational institutions. The University's interest in this matter stems primarily from its role as the custodian of the Legacy Tobacco Documents Library and British American Tobacco Documents Archive at the University of California, San Francisco ("UCSF"). That role has given the University insight into both the value of the sort of document disclosure mandated by the United States' Proposed Judgment and the potential problems that can arise in making documents readily accessible to scholars and the public.

A. The University's Tobacco Documents Library

The UCSF Library early recognized the scholarly value of tobacco company documents. It began archiving such documents in 1994, when thousands of pages of Brown & Williamson Tobacco Corporation documents were provided unsolicited to UCSF Professor Stanton Glantz, who donated them to the UCSF Tobacco Control Archives. Those materials were the subject of a suit in San Francisco Superior Court (*Brown & Williamson Tobacco Corp. v. Regents of the University of California* (Super.Ct. for County of San Francisco, No 967298)) in which Brown & Williamson sought to permanently remove the disputed material from the Library and to obtain the names of Library patrons who had accessed the material. Brown & Williamson's suit was based largely on its claims that the documents were subject to attorney-client or attorney-work product privileges. In rejecting Brown & Williamson's request for an injunction barring disclosure of the documents, the trial court found:

But the nature of what is being requested would in fact impinge upon public discussion, public study of this information, which has a bearing on all kinds of issues of public health, public law,

documents which may be taken to suggest the advisability of legislation in all kinds of areas.

So, there is . . . a very strong public interest in permitting this particular information, judging from what has been shown in the papers, as to what it concerns, permitting this information to remain available for use by the university or by others who may obtain it from the university.

Id. Preliminary Injunction Hearing Transcript at pp 58-59 (May 25, 1995) (available at <http://www.library.ucsf.edu/tobacco/litigation/bwver.pdf>). In June 1995, the Library responded to intense public interest by publishing the documents on the World Wide Web. The documents are now part of the LTDL.

The then-pioneering idea of publishing tobacco industry documents on the Web has become a key feature of major settlements in tobacco control litigation. Building on the Minnesota Settlement, the Master Settlement Agreement (“MSA”) provided for online disclosure of tobacco industry documents from the seven settling American defendants, American Tobacco, Brown & Williamson, Council for Tobacco Research, Lorillard, Philip Morris, RJ Reynolds, and the Tobacco Institute. See United States’ Proposed Findings of Fact (“USPFOF”), Section V, ¶ 288, and record citations therein. In January 2002, the UCSF Library launched the Legacy Tobacco Documents Library (accessible at <http://legacy.library.ucsf.edu>), which provides researchers and the public with uniform, free, instant Web access to all of the available documents in a permanent, stable, user-friendly system. Thanks to funding from the American Legacy Foundation, the LTDL will, unlike the industry sites, exist as a permanent source of public access. (Under the MSA the settling tobacco companies only have to maintain their sites until 2010.) Once a document is added to the LTDL each document is accessible through a permanent Internet address (URL) unique to that document. The LTDL permits users to search all industry collections in a consistent way instead of requiring users to navigate seven different company websites, each with different search interfaces. The University also maintains the privacy of users by not tracking their behavior or recording which documents they download. The Library first created the LTDL with data provided by the National Association of Attorneys General. Initially, the LTDL comprised roughly 4 million documents. Today the LTDL houses

more than 7.5 million documents and continues to grow as more documents are released by the industry on its websites as required by the MSA.

The project to collect, digitize, and make publicly available British American Tobacco Company (“BATCo”) documents required a separate effort, since BATCo is not a party to the MSA and did not create a website to house its documents. Instead, the documents were available for viewing only under very restricted conditions at a depository in Guildford, England. UCSF librarians and researchers collaborated with researchers at the London School of Hygiene and Tropical Medicine (“LSHTM”) and at the Mayo Clinic (“Mayo”) to generate grant funds, then requested copies of the documents in the Guildford Depository and scanned and indexed them. Unlike with the creation of the LTDL, funds were necessary to acquire paper copies of documents, scan them to create electronic copies of the documents, create indexing information (what librarians call “metadata”: information such as title, date, author and keyword), track documents acquisition, and create a separate online digital archive, the British American Tobacco Documents Archive (“BATDA,” accessible at <http://bat.library.ucsf.edu>). With funding from the Flight Attendant Medical Research Institute, the Wellcome Trust, and the National Cancer Institute, UCSF launched BATADA in October 2004, with 250,000 documents; today BATDA includes about 691,000 documents and is currently growing at a rate of 8–10,000 documents each week.

Between January 2002, and August 2005, the LTDL has logged more than 1.4 million visits with users downloading more than 2.7 million documents. Between October 2004 and August 2005, the BATDA has logged more than 49,000 visits with visitors downloading more than 211,500 documents. In addition to academic and policy researchers, LTDL and BATDA users include government agencies, tobacco control advocates, educators, students, and litigants. The UCSF Library has become known internationally as the stable, permanent home for tobacco industry documents; the journal *Tobacco Control* already requires authors citing tobacco industry documents to use LTDL and BATDA permanent URLs for each document and other journals accept this citation format.

Because of its role as a key custodian of tobacco industry documents, the University has a strong interest in maintaining and expanding public and scholarly access.

B. The University's Experience With Tobacco Industry Document Collection

The University has extensive first-hand experience with issues that can arise with industry document disclosure. In addition to providing permanent, constant, uniform access to tobacco industry documents, the UCSF Library has functioned as a de facto quality assurance team for data posted by the industry on the individual companies' documents websites and, in some cases, for items deposited in the Minnesota Depository. The University has faced a series of recurring problems in obtaining access to documents from tobacco industry websites or depositories that could be avoided or addressed by including appropriate provisions in the Judgment disclosure provisions.

The UCSF LTDL has an on-going program of adding documents to its collection as they become available from various sources, particularly the websites that the tobacco companies are required to maintain by the MSA. Additions to the LTDL are made by regularly searching the industry sites for new documents using automated computer programs to retrieve new document images and indexing data as they are added to industry websites. (The computer programs, called "spiders," work by mimicking a user doing a database search for documents recently added to a website.) Collecting documents in this way requires that Library staff verify data and images associated with each document. Missing, altered, or incorrect data require staff time to troubleshoot and resolve. Moreover, because data collection "spiders" mimic user behavior, unexpected, undocumented, or unannounced changes made by the tobacco companies to their website functionality, whether intentional or accidental, create difficulties and delay data collection.

The Library has made providing and maintaining public access to tobacco industry documents a high priority and thus has invested substantial resources to ensure that data posted to the industry sites are correct and that document images are in fact accessible. This has been important for assuring meaningful access because few outside the UCSF Library have the

expertise and resources to identify systematic problems on the industry websites; even fewer have the knowledge or connections to remedy those problems. The industry documents websites provide no means for users to report problems. The typical user of these sites has no recourse for reporting problems such as missing documents or challenging inappropriate claims of privilege, much less resolution of such a challenge.

Since February 2002, Library staff has spent approximately one person-year identifying, documenting, and seeking correction of problems created by bad data or broken or altered website functionality on the industry sites. The Library's experience has given it an important frame of reference for assessing the requirements of an effective document disclosure regime. For example, in one case, staff noticed that metadata for thousands of documents was partially missing from the Council for Tobacco Research ("CTR") documents site. Staff eventually supplied lawyers for the CTR with copies of thousands of database records to replace data inadvertently erased by the company maintaining that website. It took several months for the data to be reloaded to the CTR site.

On numerous occasions Library staff has identified missing or "damaged" images of documents that fail to download and thus are essentially unavailable. In many cases the unavailable items have affected tens of thousands of document pages. UCSF Library staff has worked with staff at the California Office of the Attorney General in an effort to resolve these issues; resolution has often taken several months and, in one case, well over a year. Some items have yet to be satisfactorily resolved.

The Library has found in particular, the problem of missing e-mail attachments are a troubling, recurring, and unresolved issue. Thousands of the most recent documents posted to the industry sites are copies of e-mail messages. Such messages frequently refer to or request comments on attachments such as word-processing documents, slide presentations, and spreadsheets. Other e-mails transmit attachments with the responses. The e-mail messages themselves contain little information; the attachments, which are frequently missing from the industry sites, contain the data, ideas, programs, plans, and so on, that is of interest to the

research community. This practice of failing to include the attachments effectively thwarts the intent of the Minnesota Settlement and MSA to provide full disclosure.

The University also has extensive experience with access problems with industry document depositories. The University has experienced the well-documented problems with access to the British American Tobacco Company's Guildford Document Depository (discussed below) in its attempts to acquire the Guildford documents for its collections. Although difficulties at the Depository established as a result of the Minnesota Settlement have been less severe, the University has experienced extraordinary delays and problems getting access to some documents even in Minnesota. For example, BATCo's lawyers stopped for 8 months the University's scanning of some 860,000 pages of documents that had been produced in this action and deposited by BATCo in the Minnesota Depository. This interference resulted in a delay of up to 1 year in providing meaningful public access to these documents through the BATDA website. BATCo's lawyers have also withdrawn some documents from the collection requiring the Mayo Clinic to seek intervention by the Supervising Court in Minnesota.

Completion of a second scanning project has been delayed at least 3 months while Depository staff waits for Liggett & Myers representatives to "correct" (replace missing pages, etc.) 2 dozen boxes of documents. (These documents are currently not available on any Internet website.) UCSF Library staff for a third project, which seeks to preserve multimedia items such as videotapes, audiotapes and other electronic media in the Minnesota Depository, identified hundreds of missing multimedia items. Although the companies have been notified of the missing items, the items remain missing and the public has no recourse.

As a result of its role as the world's leading archivist of tobacco industry documents, the University has perhaps more experience than any other entity with the technical and other problems that can undermine the value of tobacco industry document disclosure. That role also gives the University a strong interest in ensuring that document disclosure effectively provides the broadest public and scholarly access to important industry materials. The University has a unique, highly informed perspective on the appropriate provisions of any

document disclosure requirement that it believes can be of substantial assistance to the Court and the parties in this litigation.

III. THE IMPORTANCE OF DOCUMENT DISCLOSURE

The availability of tobacco company documents has been paramount in monitoring and understanding the behavior of the tobacco industry, scholarship, public policy-making, and general understanding of issues related to tobacco and tobacco control. Public access to tobacco industry documents has generated more than 350 peer-reviewed articles published in the world's most prestigious medical and public health journals, including *Journal of the American Medical Association*, *British Medical Journal*, *American Journal of Public Health*, and *The Lancet*. These scholarly works have contributed substantially to the medical, public health, and public policy knowledge and understanding of the tobacco industry's half-century long campaign to "create controversy" about the scientific evidence linking smoking and later second-hand smoke, and disease, to prevent effective public policies to reduce tobacco use, to target children, teens, and disenfranchised groups through its marketing campaigns, and much more. See USPFOF, Section V ¶¶ 283-85, and record citations therein; see also Exhibit A to this Brief, which contains a list of scientific publications citing tobacco industry documents.

Document disclosure will advance public knowledge and scholarship not only for its own sake, but will advance the Proposed Judgment's goal of preventing future misconduct by the industry. Investigation of tobacco company documents for the purposes of disclosure or scholarly and public interest have been effective in exposing deceptive practices and strategies of the tobacco industry in areas touched upon by this case such efforts to mislead the public about the effects of active and passive smoking, industry knowledge of and actions related to nicotine addiction and smoker compensation, and industry strategies for marketing and youth smoking. See USPFOF, Section V, ¶¶ 283-85, and record citations therein. For example, researchers have identified such industry practices as working to reverse or delay smoking restrictions, subverting research of bodies such as the US Environmental Protection Agency, World Health Organization and the International Agency for Research on Cancer, refusing to acknowledge health

consequences of smoking, colluding to create “controversy” about the health effects of second-hand smoke, and engaging in contraband activities. See Exhibit B, which lists and describes some of the research publications bearing on these issues. Of course the first step in combating such practices is to identify them. The access of scholars, tobacco control advocates, and members of the public to tobacco industry documents allows these groups to serve as an important source of information that will increase the Independent Investigations Officer’s (“IO’s”) ability to monitor defendants’ compliance with the Judgment.

For these reasons, the University supports the Government’s request for continued disclosure of documents to the Minnesota Depository and to documents websites for all defendants, including Liggett & Myers and BATCo, who are not required to maintain such websites under the current agreements.

IV. INTERNET DISCLOSURE OF DOCUMENTS IN THE BATCO GUILDFORD DEPOSITORY SHOULD BE EXPRESSLY REQUIRED

As summarized above, the LTDL was created based on the documents released as part of the Minnesota Settlement and MSA. BATCo is not a party to the MSA and has declined to maintain a documents website. See USPFOF, Section V, ¶ 289 and record citations therein. However, the Minnesota Settlement required BATCo to make 6-8 million pages of documents produced in that case available to the public, which it has done by creating a document depository in Guildford, England. See USPFOF, Section V. ¶ 294 and record citations therein. BATCo has erected numerous obstacles to researchers seeking to examine material in the Guildford Depository and has denied reasonable access to the documents there. Health Committee of the UK House of Commons, *The Tobacco Industry and the Health Risks of Smoking* (hereafter “UK Report” 32241213-1295 at 1282 (US 93249). In order to view the BATCo documents, researchers have been required to travel to Guildford, England where BATCo unreasonably limits the hours of public access and the number of researchers permitted access to the documents at any given time. UK Report at 32241282. The available document indices give no useful information about the 8 million pages stored in the Deposition. UK

Report at 32241283. Furthermore, BATCo has used the Guildford Depository to collect information on individuals and organizations who seek documents there and on the specific documents that they select for copying and review. USPFOF, Section V, ¶ 286; see also Muggli ME, LeGresley EM, Hurt RD, Big Tobacco Is Watching: British American Tobacco's Surveillance and Information Concealment at the Guildford Depository, *Lancet* 2004; 363(9423): 1812-1819.

In an attempt to circumvent these access barriers, the UCSF Library has worked for several years (with Mayo and LSHTM) to acquire all the Guildford documents and make them available on the web as the BATDA online digital collection. BATCo has refused to provide electronic copies of the documents or detailed electronic indexes. See UK Report at 32241282-1283. Instead, staff from UCSF, Mayo and LSHTM have been required to visit Guildford over a period of 3-4 years and request each of approximately 42,000 document files, one by one, by manually filing out individual request forms on paper. BATCo then delivers hard copies of the documents after delays ranging from 6 to 12 months. BATCo has often withheld documents with unsubstantiated claims of privilege; there is no practical way to appeal such assertions. Once the paper copies of documents are delivered, UCSF and its partners then have to scan the documents and create metadata information, even though BATCo's own internal documents show much of the Guildford collection has been scanned. See UK Report at 322441283; see also Muggli, et al., at 1812-1819.

About half of the Guildford Depository documents are now available in BATDA at UCSF, but BATCo's refusal to provide indexing data or electronic images of the documents has substantially slowed this progress and increased the costs of this project. On the current schedule, acquiring BATCo's documents and making them permanently available will cost several million dollars and will take up to at least another year to be completed. As noted earlier, there is also no meaningful process for challenging BATCo when it refuses to provide a copy of a document.

These barriers to research and public disclosure would be eliminated if the

documents were promptly copied and made available online through the UCSF BATDA collection. This could, in turn, be easily accomplished if BATCo was required to make the Guildford documents available on the Internet. See UK Report 322241283. The Proposed Judgment does provide that BATCo create and maintain an Internet document website, and the United States' Proposed Findings of Fact suggest that it is intended that the Guildford documents be included on that website. See USPFOF, Section V, ¶ 296. Nevertheless, the Judgment should explicitly require that BATCo include on that site all (non-privileged) documents produced in the Minnesota litigation currently housed in the public area of the Guildford Depository. Moreover, the full contents of the Guildford Depository (either originals or copies) should also be transferred to the Minnesota Depository, together with all current and past electronic indices and privilege logs so that there is a permanent hard copy record to verify documents on the website. The past indices are necessary to determine whether any material has been removed from the Guildford Depository. The costs of this transfer should be borne by BATCo. These steps would enable true public access to these important documents.

V. THE JUDGMENT SHOULD CREATE A PROCEDURE TO RESOLVE PROBLEMS OF ACCESS TO DOCUMENTS

A. A Publicly-Available Process

A key problem in creating meaningful access to documents released as a result of prior settlements is the absence of any established process through which users of the documents can address access, content, or functionality problems. As the evidence presented in this case has demonstrated, the tobacco industry has a long history of employing improper and overbroad privilege claims, and destruction of documents, to prevent disclosure of industry documents, even when subject to court orders. See USPFOF, Section III.F., Section V, ¶¶ 89-98, 297-301 and record citations therein; see also LeGresley, Muggli, Hurt, "Playing Hide-and-Seek With the Tobacco Industry," 7 Nicotine & Tobacco Research 27-44 (February 2005). As outlined above, numerous problems both with data and with website functionality have been documented by UCSF. Researchers have also experienced multiple problems accessing documents at both the

Guildford and the Minnesota Depositories. Currently, users have no recourse for correcting problems and errors, and even parties such as UCSF, who have the resources to pursue corrections and fixes, have no formal means of appeal and must wait months and even years for resolution. Two provisions could ameliorate these problems.

First, each tobacco company website should be required to identify a representative to whom users may report problems they may encounter with content or functionality. The designated representative should have the knowledge and authority necessary to resolve problems. Second, members of the public should have access to an efficient and speedy procedure to resolve document disclosure disputes that are not promptly resolved by the designated company representative. The Judgment should include provisions authorizing the IHO to establish procedures for the resolution of such disputes that are simple, efficient, inexpensive, accessible to non-lawyers, and quick. The IHO should be empowered to decide complaints brought pursuant to these procedures and to order defendants to comply with the Judgment's document disclosure provisions. It is important that any such procedure be open directly to *users* of documents, since it is they (rather than, for example, the IO) who are likely to first recognize problems and who can best articulate their own needs and issues. The company websites should indicate clearly how to initiate such complaints and the depositories should post procedures visibly. The IHO should also be authorized to award reasonable costs, including attorneys fees, to prevailing users. The University believes that such a procedure is critical to making document disclosure meaningful.

B. Review of Privileged and Redacted Documents

As meticulously set forth in the Government's Proposed Findings of Fact, the industry has a long history of abuse of privilege and trade secret claims. See USPFOF, Section III, ¶¶ 5136-5179 and record citations therein. The industry has withheld thousands of documents from the MSA-required websites on the basis of claims of privilege. The Government's Proposed Judgment helps combat abusive claims of privilege by requiring that defendants post on their Internet Document Websites detailed information about documents that

are withheld on grounds of privilege or trade secret. Nevertheless, protections against abusive privilege or trade secret claims should be augmented by two additional provisions. First, full biographical index data should be provided on industry sites for all privileged and trade secret documents. Currently several hundred thousand document records are stored separately in “Privilege Logs.” Isolating document records in “Privilege Logs” effectively impedes access to the bibliographic data for each document, since searching the “Privilege Logs” is a separate and cumbersome step. To improve visibility of these records, they should be integrated with the rest of the document records in each website so that they too are retrieved by a search for documents. They will differ from other documents in that they will not contain a URL linking the record with a document image.

Second, Internet Document Websites *users* should be able to contest claims through the process described above. The IHO should be permitted to conduct *in camera* review of documents whose privileged or trade secret status is contested either by users or the IO. Where the IHO determines such documents are not properly withheld from disclosure under the Judgment – for example, because they are not properly privileged, because the privilege has been waived, or because the claim of privilege has been previously found invalid – the IHO should be empowered to order the documents be disclosed. Defendants’ interests may be protected by a provision in the Judgment stating that the IHO’s determination that documents must be disclosed shall not prejudice the ability of defendants to contest admissibility for reasons of privilege in any future litigation.

C. Penalties for Repeated Violation of Document Disclosure Requirements

As described above, tobacco companies have repeatedly engaged in a variety of tactics to impede public access to documents or to thwart full disclosure. Under the current regime, they can do so essentially without consequence. Furthermore, because of the number of documents involved and the potential need for users to repeatedly challenge industry compliance failures, defendants may be tempted, even if an efficient remedial process is established, to be recalcitrant in fully complying with disclosure requirements, since they are more likely to be able

to bear the cost of even an informal procedure than are users. To create a disincentive for recalcitrance, the IO should be empowered to propose, and the IHO to impose, penalties on companies that engage in a pattern of repeated violations of document disclosure requirements.

VI. THE JUDGMENT SHOULD PROHIBIT DEFENDANTS FROM COLLECTING AND USING INFORMATION ABOUT THE USERS OF INTERNET DOCUMENT WEBSITES OR DEPOSITORIES

There is substantial evidence that defendants have made a practice of tracking the identity of users of document depositories and websites and the documents they are reviewing, and that tobacco industry lawyers have used that information. USPFOF, Section V ¶ 286; Memorandum Opinion 332 at p. 2; see also Muggli ME, LeGresley EM, Hurt RD, Big Tobacco Is Watching; British American Tobacco's Surveillance and Information Concealment at the Guildford Depository, *Lancet* 2004; 363 (9423): 1812-1819.

Library policies typically prohibit tracking individual user activity, and strictly limit the use of such information. See, e.g., UCSF Library Privacy Statement (<http://www.library.ucsf.edu/info/policies/privacy.html>). Similarly, the ethical standards of the American Library Association provide that "We protect each library user's right to privacy and confidentiality with respect to information sought or received and resources consulted, borrowed, acquired or transmitted." See <http://www.ala.org/ala/oif/statementspols/codeofethics.html>. These policies recognize that, even where a neutral library is involved, monitoring individual usage is improper and creates a chilling effect on research. The problem is, of course, substantially compounded where the monitoring agent is the subject of the research. Accordingly, the Judgment should expressly prohibit defendants from recording or tracking user activity.

VII. THE JUDGMENT SHOULD ADDRESS A NUMBER OF TECHNICAL DOCUMENT DISCLOSURE ISSUES

Based on its experience dealing with existing tobacco company document websites, the University proposes the following technical enhancements to the United States' Proposed Judgment, all of which will help assure better public access to disclosed documents.

1. Web Links

The Proposed Judgment requires that defendants “shall provide links to their Internet Document websites from any and all publicly-accessible company websites” but is not specific about where within those sites the links should appear. The University proposes that the Judgment specify that links to industry documents websites appear in the main menu of all pages of industry corporate/company websites, so the link is readily accessible to the public. (For example, it should require that on the RJR CORPORATE homepage and all sub-pages the main navigational menu include a link to the RJR DOCUMENTS website.)

2. Indexing Fields

Each document must have a permanent unique document identification that does not change when the website is changed. Changes in document IDs have created a variety of problems in usability of the industry sites and violate a basic principle of database design. Each record should have only one identifier and it should be unique.

Dates must be recorded in the standard ISO format with 8 digits – YYYYMMDD, with unknown dates recorded as 00000000. Estimated dates can have “/e” following the 8 digit ISO standard date. Variations in date format on industry sites have substantially increased the time and expense of accessing and indexing documents.

Every record should have a “date posted” field that reflects the date it was first posted to the website that should never change. If records are changed, there should be a “date modified” field that is updated when the record is changed. Any changes to content, including additions or deletions of existing records and additions or deletions of metadata to existing records must be noted. These requirements will prevent the mysterious deletions and additions of documents and information that have often been a problem on the industry sites.

3. Metadata for Document Additions

Company websites should be required to provide monthly update files of document metadata (referred to in the Judgment as “bibliographic fields”) in XML format, a common data format standard used worldwide. A document’s XML record should include the

URL that points to the document image. The precise definition of the elements of the record should be publicly available on the company websites, as well as the corresponding XML codes.

4. Large Document Accessibility

Because attempts to download large documents almost inevitably fail, documents more than 500 pages should be broken into sub-documents no longer than 500 pages. The indexing metadata should indicate which sub-documents are related to each other and the order to assemble them into the original larger document.

5. E-mail Attachments

As described above, the failure of industry websites to include attachments with e-mail can be a significant problem. The Court should require that all e-mail attachments be provided in the same document as the e-mail that transmits the attachment.

VIII. CONCLUSION

Exhibits C and D to this Brief set forth specific language that the University proposes be substituted for Sections IV.F and VI.D, respectively, of the United States' Proposed Final Judgment and Order. For the foregoing reasons, the Court should order those remedies.

Dated: August 24, 2005

JAMES E. HOLST
CHRISTOPHER M. PATTI
University of California
Office of the General Counsel
1111 Franklin Street, 8th Floor
Oakland, CA 94607-5200
Telephone: 510-987-9800
Facsimile: 510-987-9757
christopher.patti@ucop.edu

PETER LEFF, DC Bar # 457476
O'DONNELL, SCHWARTZ & ANDERSON, P.C.
1300 L Street N.W., Suite 1200
Washington, D.C. 20005-4126
Telephone: 202-898-1707
Facsimile: 202 682-9276
pleff@odsaw.com

By: /s/ Peter Leff
Peter Leff

Attorneys for Amicus Curiae
THE REGENTS OF THE
UNIVERSITY OF CALIFORNIA

Attachment A

**RESEARCH REPORTS AND PUBLICATIONS BASED ON TOBACCO
INDUSTRY DOCUMENTS, 1991-2005**

Norbert Hirschhorn MD

July 2005 8th Edition*

*New and newly discovered items since the last edition are starred. There are 36 new items.

See especially the notable additions under "Litigation."

Please let me know about citations not listed, and corrections.
bertzpoet@yahoo.com

A. A number of important reports using tobacco industry documents relating to the international issues found at various web sites.

I. From the World Health Organization:

Voice of Truth: Multinational Tobacco Industry Activity in the Middle East: A Review of Internal Industry Documents.

Tobacco Company Strategies to Undermine Tobacco Control Activities at the World Health Organization. (Geneva: World Health Organization, 2000), 247 pp
www.who.int/tobacco/policy/industry_conduct/en/index.html

Towards Health with Justice. Litigation and public inquiries as tools for tobacco control.
<http://www.who.int/tobacco/resources/publications/en/>

'Profits Over People: Tobacco Industry Activities to Market Cigarettes and Undermine Public Health in Latin America and the Caribbean.
http://www.paho.org/English/HPP/HPM/TOH/profits_over_people.pdf

*Hirschhorn N. The Tobacco Industry Documents. What They Are, What They Tell Us, And How To Search Them. Practical Manual. 2nd Edition 2005
http://www.who.int/tobacco/surveillance/ti_monitoring/en/

*Drope J. The development of Philip Morris's position on ETS for its website.
http://www.who.int/tobacco/surveillance/ti_monitoring/en/ 2005

2. From the International Consortium of Investigative Journalists:

Tobacco companies linked to criminal organizations in lucrative cigarette smuggling (30 articles): <http://www.public-i.org/search.aspx?strSearch=smuggling&ddlType=articles>

Coates B. Cigarette company documents outline strategy to derail global tobacco treaty. 19 March 2005. <http://www.public-i.org/report.aspx?aid=85&sid=200>

3. From the Royal Canadian Mounted Police (investigation of smuggling):

Information to Obtain a Search Warrant To be executed against: Imperial Tobacco Canada Limited. Author: Marc Roussy, Agent de la paix [Peace Officer], Gendarmerie Royale du Canada [Royal Canadian Mounted Police]. 22 November 2004.

<http://www.smoke-free.ca/ITL%20search%20warrant/November%202004%20ITL%20search%20warrant%20&%20affidavit.pdf>

4. From Action on Smoking and Health (ASH) /UK:

BAT and tobacco smuggling.

<http://www.ash.org.uk/html/smuggling/html/smugglingbat.html>

Joosens L, Raw M. Turning off the tap: An update on cigarette smuggling in the UK and Sweden, with recommendations to control smuggling.

<http://www.ash.org.uk/luk/lukdocs/turningoffthetap.pdf>

*BAT in its own words: tobacco company papers show truth behind greenwash.

<http://www.ash.org.uk/> (Link to "press releases.")

The cigarette "transit road" to the Islamic Republic of Iran and Iraq. Illicit tobacco trade in the Middle East. Cairo: WHO, 2003 (WHO-EM/TFI/011/E/G/07.03/1000)

<http://www.emro.who.int/tfi/TFIiraniraq.pdf>

Tobacco explained: The truth about the tobacco industry in its own words.

<http://www.ash.org.uk/html/conduct/html/tobexpld.html>

Trust us: We're the tobacco industry (co-produced with the Campaign for Tobacco Free Kids, USA, in English and Spanish).

<http://www.ash.org.uk/html/conduct/html/trustus.html>

<http://tobaccofreekids.org/campaign/global/framework/docs/TrustUs.pdf>

<http://tobaccofreekids.org/campaign/global/framework/docs/TrustUsSpanish.pdf>

Bates C, Connolly GN, Jarvis M. Tobacco additives: cigarette engineering and nicotine addiction.

<http://www.ash.org.uk/html/regulation/html/additives.html>

Hastings G, Macfadyen L. Keep smiling. No one's going to die!

<http://www.marketing.strath.ac.uk/ctcr/publications/KeepSmilingReport.pdf>

ASH/UK publications for sale: <http://www.ash.org.uk>

Big Tobacco & Women -- What the tobacco industry's confidential documents reveal.

Low tar -- why low tar cigarettes don't work and how the tobacco industry has fooled the smoking public.

Danger! PR in the playground. Tobacco industry initiatives on youth smoking.

5. From Campaign for Tobacco-Free Kids:

Illegal Pathways to Illegal Profits. The Big Cigarette Companies and International Smuggling. (In English and Spanish.)

<http://www.tobaccofreekids.org/reports>

<http://tobaccofreekids.org/campaign/global/framework/docs/SmugglingSpanish.pdf>.

6. From Tobacco Control: Free PowerPoint presentations:

<http://tc.bmjournals.com/misc/powerpoint.shtml>

*7. From Christian Aid (UK), with Action on Smoking and Health and Friends of the Earth:

*BAT's Big Wheeze. The Alternative British American Tobacco Social and Environmental Report. 2004. <http://www.christian-aid.org.uk/indepth/404bat/index.htm>

*8. From Physicians for a Smoke-Free Canada and Health Canada

Collishaw NE. From Montreal to Minnesota: following the trail of Imperial Tobacco's documents. September 1999. http://www.smoke-free.ca/pdf_1/MONTMINNov1.pdf

Collishaw NE. Manipulation. The story of Imperial Tobacco and its cigarettes. October 1999. http://www.smoke-free.ca/pdf_1/manipulatione.pdf

Callard C. The golden years of the CTMC 1962-1987. 31 May 2000. http://www.smoke-free.ca/pdf_1/documentresearchpdf/CTMCHistory.PDF

Collishaw N. Selling smokes to starters. 31 May 2000. http://www.smoke-free.ca/pdf_1/documentresearchpdf/SmokestoStarters.PDF

Collishaw N. The story of Player's Lights. 31 May 2000. http://www.smoke-free.ca/pdf_1/documentresearchpdf/playerslights.PDF

Dewhirst T. Tobacco Promotions Appealing to Male Youths in Canada: Positioning Cigarettes as Symbols of Masculinity, Independence, Rebelliousness, Excitement, and Adventure. 31 May 2000. http://www.smoke-free.ca/pdf_1/documentresearchpdf/Tim-No-Tobacco-Day.PDF

Edwards K. Getting the Pack to Speak for Itself: Cigarette Packaging in the Face of Restrictions on Advertising. 31 May 2000. http://www.smoke-free.ca/pdf_1/documentresearchpdf/PackageSpeaking.PDF

Collishaw N. Tales of toxic tobacco. 31 May 2000. http://www.smoke-free.ca/pdf_1/documentresearchpdf/toxictobacco.PDF

Callard C. 40 years of research: no Holy Grail. 31 May 2000. http://www.smoke-free.ca/pdf_1/documentresearchpdf/noholygrail.PDF

Collishaw N. From Lights to Brighter Lights: The Re-engineering of Canadian Cigarettes. 31 May 2000.

http://www.smoke-free.ca/pdf_1/documentresearchpdf/LightstoBrighterLights.PDF

Elasticity and Canadian cigarettes. 6 June 2001.

http://www.smoke-free.ca/eng_research/elasticity.htm

How tobacco advertising works. August 2002.

http://www.smoke-free.ca/pdf_1/adbrochure-howadswork.pdf

Cigarette marketing in Canada. Lifestyle studies. September 2002.

http://www.smoke-free.ca/pdf_1/adbrochure-documents.pdf

Cigarette marketing in Canada. Event sponsorship. September 2002.

http://www.smoke-free.ca/pdf_1/adbrochure-currentactivities.pdf

Reducing harm or increasing profit? August 2002.

http://www.smoke-free.ca/pdf_1/Reducing%20harm%20increasing%20profit.pdf

Behind the scenes: how Canadian tobacco companies orchestrated the war on smoking bans. February 2003.

http://www.smoke-free.ca/pdf_1/ventilation.pdf

A comprehensive plan to end the 'light' and 'mild' deception. January 2005.

http://www.smoke-free.ca/pdf_1/Endingthedeception-2005.pdf

B. Books and book chapters discussing or using tobacco industry documents

ASPECT Consortium. Tobacco or Health in the European Union. Past, Present and Future. European Commission Directorate-General for Health and Consumer Protection. Luxembourg: Office for Official Publications of the European Communities, 2004. Chapters 3 (Joossens L, Raw M, Godfrey F. The development of European tobacco-control policy), 6 (Hastings G, Angus K. The influence of the tobacco industry on European tobacco-control policy)

Feldman EA, Bayer R (editors). Unfiltered: Conflict Over Tobacco Policy and Public Health. Cambridge Massachusetts: Harvard University Press, 2004. Chapters 4 (Ballard J. The politics of tobacco control in Australia: International template?), 9 (Gilmore A, McKee M. Tobacco-control policy in the European Union), 10 (Brandt AM. Difference and Diffusion: Cross-cultural perspectives on the rise of anti-tobacco policies)

*Gilmore A; Österberg E, Heloma A, Zatonski W; Delcheva E, McKee M.. Chapter 14. Free trade versus the protection of health: the examples of alcohol and tobacco. In: Health Policy and European Union enlargement. MacLehose L, McKee M, Nolte E (eds). (Milton Keynes, England: Open University Press, 2004)

Glantz SA, Slade J, Bero LA, Hanauer P, Barnes DE. The Cigarette Papers. Berkeley: University of California Press, 1996

Glantz SA, Balbach ED. Tobacco War. Inside the California Battles. Berkeley: University of California Press, 2000

Hiilamo H. Manufacturing Lies: Tobacco Industry Research Funding In Finland. Helsinki: ASH Finland, 2004 [In Finnish].

Hilts PJ. Smokescreen. The Truth Behind the Tobacco Industry Coverup. New York: Addison-Wesley Publishing Company, 1996

Kessler D. A Question of Intent. A Great American Battle with a Deadly Industry. New York: Public Affairs Press, 2001

Kluger R. Ashes to Ashes. America's Hundred-Year Cigarette War, the Public Health, and the Unabashed Triumph of Philip Morris. New York: Knopf, 1996

Lovell G. You Are the Target. Big Tobacco: Lies, Scams – Now the Truth. Vancouver, British Columbia: Chryan Communications, 2002

Parascandola M. "Safer" cigarettes." In: Scribner's Turning Points in History. Jordan Goodman, Marcia Norton, Mark Parascandola, editors. Farmington Hills, Michigan: Macmillan/Scribner, 2004, pp. 505-509

Pertschuck M. Smoke in Their Eyes. Lessons in Movement Leadership from the Tobacco Wars. Nashville: Vanderbilt University Press, 2001

Pringle P. Cornered. Big Tobacco at the Bar of Justice. New York: Henry Holt and Company, 1998

Rabin RL. The Third Wave of Tobacco Tort Litigation. Ch. 7 in: Regulating Tobacco. RL Rabin, SD Sugarman, eds. New York: Oxford University Press, 2001

Ryback DC, Phelps D. Smoked. The Inside Story of the Minnesota Tobacco Trial. Minneapolis: MSP Books, 1998

Slade J. Marketing Policies. Ch. 4 in: Regulating Tobacco. RL Rabin, SD Sugarman, eds. New York: Oxford University Press, 2001

Vateesatokit P. Tailoring Tobacco Control Efforts to the Country: The Example of Thailand. Ch. 7, in: Tobacco Control Policy. Strategies, Successes & Setbacks. J De Beyer and LW Brigden, eds. Washington DC: World Bank and RITC, 2003

C. Peer-reviewed publications based on document research (by topic), 1991-2004.

(This portion updates the 1995-March 2002 inventory of Ross MacKenzie, Jeff Collin and Kelley Lee: The tobacco industry documents: an Introductory handbook and resource guide for researchers. London School of Hygiene and Tropical Medicine, 2003.)

Abstracts of most articles cited here may be found at:
<http://www.ncbi.nlm.nih.gov/entrez/query.fcgi>

Commentary on documents and documents research

Anonymous. How to access tobacco industry documents. *Tobacco Control* 2002; 11 (Suppl 1): i39

Assunta M. Big Mouth. *New Internationalist* 2004;Issue 369:16-17

Balbach E, Gasior R, Barbeau E. Tobacco industry documents: comparing the Minnesota Depository and internet access. *Tobacco Control* 2002;11:68-72

Bero L. Implications of the tobacco industry documents for public health and policy. *Annual Review of Public Health*. 2003;24:267-88

Brown C, Rubin D. Casual markers in tobacco industry documents: the pragmatics of responsibility. *Journal of Pragmatics* 2005;37:799-811

Brown C, Rubin DL. Being frank: Ideology, construction and intertextuality in the tobacco industry's "A Frank Statement." *Texas Linguistic Forum* 2005;in press

Chapman S. The stench of tobacco industry dirty linen. (Editorial.) *Tobacco Control* 2000;9:261-262

Ciresi MV, Walburn RB, Sutton TD. Decades of deceit: document discovery in the Minnesota tobacco litigation. *William Mitchell Law Review* 1999;25:477-566

Collin J, Lee K, Gilmore AB. Unlocking the corporate documents of British American Tobacco: an invaluable global resource needs radically improved access. *Lancet* 2004;363:1746-1747

Cummings KM, Pollay RW. Exposing Mr Butts' tricks of the trade. *Tobacco Control* 2002;11 (Suppl 1):i1-4

Diethelm PA, Rielle J-C, McKee M. Links with the tobacco industry... Authors' reply to Ragnar Rylander. *Lancet* 2005;365:211-212

Dyer C. Secret smoking documents finally to go on the web. *BMJ* 2004;328:1335

Glantz S, Barnes D, Bero L, Hanauer P, Slade J. Looking through a keyhole at the tobacco industry: The Brown and Williamson documents. *JAMA* 1995;274:219-224

Glantz S. The truth about big tobacco in its own words. *BMJ* 2000;321:313-314

Godlee F. WHO faces up to its tobacco links. *BMJ* 2000;321:314-315

Grimm D. Is tobacco research turning over a new leaf? *Science* 2005;307:36-37

*Henningfield JE, Santora PB, Stillman FA. Exploitation by design—could tobacco industry documents guide more effective smoking prevention and cessation in women? *Addiction* 2005;100:735-736

Hirschhorn N. Tobacco industry documents – secrets revealed. *Global Health & Environment Monitor* 2000;8:7

Jamrozik K. Barbarians inside the gate: How the tobacco industry penetrated the World Health Organization. (Book review of “Tobacco Company Strategies to Undermine Tobacco Control Activities at the World Health Organization.” Geneva: World Health Organization, 2000 *International Journal of Epidemiology* 2001;633-634

Kretzchmar WA Jr, Darwin C, Brown C, Rubin D, Biber D. Looking for the smoking gun: principled sampling in creating the tobacco industry documents corpus. *Journal of English Linguistics* 2004;31:31-47

LaFrance AB. Tobacco litigation: smoke, mirrors and public policy. *American Journal of Law & Medicine* 2000;26:187-203

Lee K, Gilmore AB, Collin J. Looking inside the tobacco industry: revealing insights from the Guildford Depository. *Addiction* 2004;99:394-397

Lee K. Peering through the smokescreen. *New Scientist*, Issue 2478, 18 December 2004, 42-45

Lieberman J. The shredding of BAT's defence: McCabe v British American Tobacco Australia. *Tobacco Control* 2002; 11: 271-274

Mackay JM. The tobacco industry in Asia: revelations in the corporate documents. *Tobacco Control* 2004;13 (Suppl 2): ii1-3

Malone R, Balbach E. Tobacco industry documents: treasure trove or quagmire? *Tobacco Control* 2000;9:334-338

Malone RE. Tobacco industry documents: comparing the Minnesota Depository and internet access. *Tobacco Control* 2002 ;11:285

Malone R, Bero L. Chasing the dollar: why scientists should decline tobacco industry funding. *Journal of Epidemiology and Community Health* 2003;57:546-548

Malone R. Telling the truth about Big Tobacco. *Journal of Addiction Nursing* 2004;15:107-109

McKee M. Competing interests: the importance of transparency. *European Journal of Public Health* 2003;13:193-194

Morabia A. The controversial controversy of a passionate controversialist. *Journal of Clinical Epidemiology* 2002;55:1207-1213

Muggli ME, LeGresley E, Hurt RD. Big Tobacco is Watching: British American Tobacco's Surveillance and Information Concealment at the Guildford Depository. *Lancet* 2004;363:1812-1819

Parascandola M. Hazardous effects of tobacco industry funding. *Journal of Epidemiology and Community Health* 2003;57:548-549

Parascandola M. Skepticism, statistical methods, and the cigarette. A historical analysis of a methodological debate. *Perspectives in Biology and Medicine* 2004;47:244-261

*Parascandola M. Epidemiology in Transition: Tobacco and Lung Cancer in the 1950s Ch. 11, pp.226-248, in: *Body Counts: Medical Quantification in Historical and Sociological Perspective /La quantification medicale, perspectives historiques et sociologiques*. Edited by Gérard Jorland, Annick Opinel, George Weisz. (Montreal & Kingston • London • Ithaca:McGill-Queen's University Press, 2005) [NB: The article illustrates historical context for industry documents.]

Proctor RN. Should medical historians be working for the tobacco industry? *Lancet* 2004;363:1174-1175

Ravnitzky M, Weigum J. Filtered or unfiltered information: Choices in how to make the Minnesota tobacco document depository records more accessible to the public. *William Mitchell Law Review* 1999;25:715-740

Rubin D. The tobacco documents corpus: archiving the industry. NIH-NCI Tobacco Documents Project at the University of Georgia;2003 (unpublished):
http://www.uga.edu/tobaccodocs/papers/ach/ach_paper.html (Other presentations on linguistic analysis of industry documents may be found at: <http://www.uga.edu/tobaccodocs/papers.html>)

*Rubin D. University of Georgia Tobacco Documents Corpus and Text Analysis Tools. 2005. <http://www.uga.edu/tobaccodocs> . CD available on request.

Schmertz JR Jr, Meier M. Evidence (attorney-client privilege). *International Law Update* 2004;10:164-166

*Todd JS, Rennie D, McAfee RE, Bristow LR, Painter JT, Reardon TR, Johnson DH Jr, Corlin RF, Coble YD Jr, Dickey NW, Flaherty TT, Formica PE, Goldrich MS, Jacott WE, Lewers DT, Nelson JC, Seward PJ, Smoak RD Jr, Suk M, Walker FB, Wootton P, Lundberg GD. The Brown and Williamson Documents: Where Do We Go From Here? *JAMA* 1995;274:256-258

Walburn RB. The role of the once-confidential industry documents. *William Mitchell Law Review* 1999;25:431-438

Yerger VB, Daniel M R, Malone RE. Taking it to the streets: responses of African American young adults to internal tobacco industry documents. *Nicotine & Tobacco Research* 2005;7:163-172

Environmental tobacco smoke/Secondhand Smoke

Assunta M, Fields N, Knight J, et al. "Care and feeding": the Asian environmental tobacco smoke (ETS) consultants programme. *Tobacco Control* 2004;13 (Suppl 2): ii4-12

Barnes D, Hanauer P, Slade J, Bero L, Glantz S. Environmental tobacco smoke: The Brown and Williamson documents. *JAMA* 1995;274:248-253

Bialous SA, Glantz SA. ASHRAE Standard 62: tobacco industry's influence over national ventilation standards. *Tobacco Control* 2002;11:315-328

Chapman S. The end of pub smoking in Australia: a tribute to Frank Sartor. 2005. <http://tobacco.health.usyd.edu.au/site/supersite/news/pdfs/pubsmoke.pdf>

Connolly G, Wayne G, Lymperis D, Doherty M. How cigarette additives are used to mask environmental tobacco smoke. *Tobacco Control* 2000;9:283-291

Dearlove JV, Glantz SA. Boards of Health as venues for clean indoor air policy making. *American Journal of Public Health* 2002;92:257-265

Dearlove JV, Bialous SA, Glantz SA. Tobacco industry manipulation of the hospitality industry to maintain smoking in public places. *Tobacco Control* 2002;11:94-104

Diethelm PA, Rielle J-C, McKee M. The whole truth and nothing but the truth? The research that Philip Morris did not want you to see. *Lancet* 2004;published online November 11: <http://image.thelancet.com/extras/03art7306web.pdf>

Drope J, Chapman S. Tobacco industry efforts at discrediting scientific knowledge of environmental tobacco smoke: a review of internal industry documents. *Journal of Epidemiology and Community Health* 2001; 55: 588-594

Drope J, Bialous SA, Glantz SA. Tobacco industry efforts to present ventilation as an alternative to smoke-free environments in North America. *Tobacco Control* 2004;13 Suppl1:i41-47

*Givel M. Tobacco industry opposition to designating environmental tobacco smoke through E-codes. *Journal of Public Health Policy* 2005;26:75-89

Hong M, Bero L. How the tobacco industry responded to an influential study of the health effects of secondhand smoke. *BMJ* 2002;325:1413-1416

Mandel LL, Glantz SA. Hedging their bets: tobacco and gambling industries work against smoke-free policies. *Tobacco Control* 2004;13:268-276

Magzamen S, Glantz SA. The new battleground: California's experience with smoke-free bars. *American Journal of Public Health* 2001;91: 245-252

Neilsen K, Glantz SA. A tobacco industry study of airline cabin air quality: dropping inconvenient findings. *Tobacco Control* 2004;13 Suppl 1:i20-29

Pan J, Barbeau EM, Levenstein C, Balbach ED. Smoke-free airlines and the role of organized labor: A case study. *American Journal of Public Health* 2005;95:398-404

Pion M, Givel MS. Airport smoking rooms don't work *Tobacco Control* 2004;13 Suppl 1:i37-40

Tsoukalas T, Glantz SA. The Duluth clean indoor air ordinance: problems and success in fighting the tobacco industry at the local level in the 21st century. *American Journal of Public Health* 2003;93:1214-1221

Industry and science

Bero LA, Glantz S, Hong M-K. The limits of competing interest disclosures. *Tobacco Control* 2005;14:118-126

Bialous S, Yach D. Whose standard is it anyway? How the tobacco industry determines the International Organization for Standardization (ISO) standards for tobacco and tobacco products. *Tobacco Control* 2001;10: 96-104

Bitton A, Neuman MD, Barnoya J, Glantz SA. The p53 tumor suppressor gene and the tobacco industry: research, debate, and conflict of interest. *Lancet* 2005;365:531-540

Chapman S, Shatenstein S. The ethics of the cash register: taking tobacco research dollars. *Tobacco Control* 2001;10:1-2

Garne D, Watson M, Chapman S, Byrne F. Environmental tobacco smoke research published in the journal *Indoor and Built Environment* and associations with the tobacco industry. *Lancet* 2005;365:804-809

* Givelber D, Strickler L. Junking good science: undoing Daubert through cross-examination and argument. *American Journal of Public Health* 2005 (in press)

*Grüning T, Gilmore A, McKee M. Tobacco industry influence on science and scientists in Germany. *American Journal of Public Health*: In Press

Goldstein AO. Institutional addiction to tobacco. *Tobacco Control* 1999;8:70-74

Grannis FW. (Correspondence.) Overestimation of lung cancer mortality in a computed tomography-screened population. *Journal of Clinical Oncology* 2005;23:2439-2440

Patz EF, Swensen SJ, Herndon JE II. (In Reply.) *Journal of Clinical Oncology* 2005;23:2440-2441

Gunja M, Wayne GF, Landman A, Connolly G, McGuire A. The case for fire safe cigarettes made through industry documents. *Tobacco Control* 2002;11:346-353

Hirschhorn N, Bialous S, Shatenstein S. Philip Morris' new scientific initiative: an analysis. *Tobacco Control* 2001;10:247-252

Hirschhorn N. Shameful Science: four decades of the German tobacco industry's hidden research on smoking and health. *Tobacco Control* 2000;9:242-247

*Leistikow BN, Martin DC, Jacobs J, Rocke DM. Smoking as a risk factor for injury death: a meta-analysis of cohort studies. *Preventive Medicine* 1998;27:871-878

*McDaniel PA, Malone RE. Understanding Philip Morris's pursuit of US government regulation of tobacco. *Tobacco Control* 2005;14:193-200

Ong E, Glantz S. Constructing "Sound Science" and "Good Epidemiology": tobacco, lawyers, and public relations firms. *American Journal of Public Health* 2001, 91:1749-1757

Ong E, Glantz S. Tobacco industry efforts subverting the International Agency for Research on Cancer's second-hand smoke study. *Lancet* 2000;355:1253-1259

*Parascandola M. Science, industry, and tobacco harm reduction: a case study of tobacco industry scientists' involvement in the National Cancer Institute's smoking and health program, 1964–1980. *Public Health Reports* 2005;120:338-349

Tong EK, Glantz SA. ARTIST (Asian regional tobacco Industry scientist team): Philip Morris' attempt to exert a scientific and regulatory agenda on Asia. *Tobacco Control* 2004;13 (Supl 2): ii118-ii124

Tong EK, England L, Glantz SA. Changing conclusions on secondhand smoke in a sudden infant death syndrome review funded by the tobacco industry. *Pediatrics* 2005;115:356-366

Warner KE. Tobacco industry scientific advisors: serving society or selling cigarettes? *American Journal of Public Health* 1991;81:839-842

Industry: investment, taxation and economics

Alamar BC, Glantz SA. The tobacco industry's use of Wall Street analysts in shaping policy. *Tobacco Control* 2004;13:223-227

Bantin C. Cheap smokes: State and federal responses to tobacco tax evasion over the Internet. *Health Matrix:Journal of Law-Medicine* 2004;14 Health Matrix 325

Chaloupka F, Cummings K, Morley CP and Horan J. Tax, price and cigarette smoking: evidence from the tobacco documents and implications for tobacco company marketing strategies. *Tobacco Control* 2002;11 (Supl 1):i62-i72

Fenn AJ, Schroeter JR. Cigarettes and addiction information: simulating the demand effects of the tobacco industry's "conspiracy of silence." *Applied Economics* 2004;36:2151-2159

Traynor MP, Glantz SA. California's tobacco tax initiative: the development and passage of Proposition 99. *Journal of Health Politics, Policy and Law* 1996;21:543-585

Wander N, Malone RE. Selling off or selling out? Medical Schools and ethical leadership in tobacco stock divestment. *Academic Medicine* 2004; 79: 1017-1026

Industry strategies and tactics

*Balbach Ed, Barbeau EM, Manteufel V, Pan J. Political coalitions for mutual advantage: the case of the Tobacco Institute's Labor Management Committee. *American Journal of Public Health* 2005;95:985-993

Bialous SA, Fox BJ, Glantz SA. Tobacco industry allegations of "illegal lobbying" and state tobacco control. *American Journal of Public Health* 2001;91:62-67

Bryan-Jones K, Bero LA. Tobacco industry efforts to defeat the occupational safety and health administration indoor air quality rule. *American Journal of Public Health* 2003;93:585-592

Carter SM. Mongoven, Biscoe & Duchin: destroying tobacco control activism from the inside. *Tobacco Control* 2002;11:112-118

Carter SM. Cooperation and control: the Tobacco Institute of Australia. *Tobacco Control* 2003; 12 Suppl 3:iii54-60

Carter SM, Chapman S. Smoking, disease, and obdurate denial: the Australian tobacco industry in the 1980s. *Tobacco Control* 2003;12 Suppl 3:iii23-30

Chapman S. "It is possible he is a kind of nut": how the tobacco industry quietly promoted Dr William Whitby. *Tobacco Control* 2003;12 Suppl 3:4-6

Chapman S, Penman A. "Can't stop the boy": Philip Morris' use of Healthy Buildings International to prevent workplace smoking bans in Australia. *Tobacco Control* 2003;12 Suppl 3:iii107-112

Chapman S, Carter SM, Peters M. "A deep fragrance of academia": the Australian Tobacco Research Foundation. *Tobacco Control* 2003;12 Suppl 3:iii38-44

Chapman S. "We are anxious to remain anonymous": the use of third party scientific and medical consultants by the Australian tobacco industry, 1969 to 1979. *Tobacco Control* 2003; 12 Suppl 3:iii31-37

Chapman S, Carter SM. "Avoid health warnings on all tobacco products for just as long as we can": a history of Australian tobacco industry efforts to avoid, delay and dilute health warnings on cigarettes. *Tobacco Control* 2003;12 Suppl 3:iii13-22

Collin J, LeGresley E, MacKenzie R, Lawrence S, Lee K. Complicity in contraband: British American Tobacco and cigarette smuggling in Asia. *Tobacco Control* 2004; 13 (Suppl 2): ii104-ii111

Fields N, Chapman S. Chasing Ernst L Wynder: 40 years of Philip Morris' efforts to influence a leading scientist. *Journal of Epidemiology and Community Health* 2003;57:571-578

Francey N, Chapman S. Operation Berkshire: the international tobacco companies' conspiracy. *BMJ* 2000; 321:371-374

*Givel M, Glantz S. Political insiders without grassroots advocacy in the administration of a Missouri tobacco control youth access program. *Public Integrity* 2004-2005; 7:5-19

Givel M, Glantz S. Tobacco lobby political influence on US state legislatures in the 1990s. *Tobacco Control* 2001;10:124-134

Hirschhorn N. Corporate social responsibility and the tobacco industry: hope or hype? *Tobacco Control* 2004;13:447-453

Ibrahim JK, Tsoukalas TH, Glantz SA. Public health foundations and the tobacco industry: lessons from Minnesota. *Tobacco Control* 2004;13:228-236

Kall DM. Smoking gun or organizational haze?: the tobacco companies' response to cancer research. Abstract presented at the Southern Sociological Society annual meeting, 2003

Lambe M, Hallhagen E, Boethius G [The cynical game of the tobacco industry: many years efforts to deny or cover-up the negative effects of tobacco are revealed by the forced publication of internal documents]. [Article in Swedish] *Lakartidningen* 2002;99:2756-2762

Landman A. Push or be punished: tobacco industry documents reveal aggression against businesses that discourage tobacco use. *Tobacco Control* 2000;9:339-346

Landman A, Bialick P. Tobacco industry involvement in Colorado. 2004: <http://repositories.cdlib.org/tc/reports/CO2004/>

LeGresley E, Muggli ME, Hurt RD. Playing hide-and-seek with the tobacco industry. *Nicotine and Tobacco Research* 2005;7:27-40

Liberman J. The shredding of BAT's defence: McCabe vs British American Tobacco Australia. *Tobacco Control* 2002;11:271-274

Malone RE. Tobacco industry surveillance of public health groups: the case of STAT (Stop Teenage Addiction to Tobacco) and INFACT (Infant Formula Action Coalition). *American Journal of Public Health* 2002;92:955-960

Mangurian C, Bero L. Lessons learned from the tobacco industry's efforts to prevent the passage of a workplace smoking regulation. *American Journal of Public Health* 2000;90:1926-1930

Morley C, Cummings K, Hyland A, Giovino G, Horan J. Tobacco Institute lobbying at the state and local levels of government in the 1990s. *Tobacco Control* 2002;11 (Suppl 1):i102-i109

Muggli ME, Hurt RD, Blanke DD. Science for hire: a tobacco industry strategy to influence public opinion on secondhand smoke. *Nicotine & Tobacco Research* 2003;5:303-314

Muggli M, Forster J, Hurt R, Repace J. The Smoke You Don't See: Uncovering Tobacco Industry Strategies Aimed Against Environmental Tobacco Smoke. *American Journal of Public Health* 2001;91:1419-1423

Muggli ME, Hurt RD, Repace J. The tobacco industry's political efforts to derail the EPA report on ETS. *American Journal of Preventive Medicine* 2004;26:167-177

Muggli ME, Hurt RD. Tobacco industry strategies to undermine the 8th World Conference on Tobacco or Health. *Tobacco Control* 2003;12:195-202

Muggli ME, Hurt RD, Becker LB. Turning free speech into corporate speech: Philip Morris' efforts to influence U.S. and European journalists regarding the U.S. EPA report on secondhand smoke. *Preventive Medicine* 2004;39:568-580

Muggli ME, Hurt RD. A cigarette manufacturer and a managed care company collaborate to censor health information targeted at employees. *American Journal of Public Health*; 2004;1307-1311

Neuman M, Bitton A, Glantz S. Tobacco industry strategies for influencing European Community tobacco advertising legislation. *Lancet* 2002;359:1323-1330

*Offen N, Smith E A, Malone RE. The perimetric boycott: a tool for tobacco control advocacy. *Tobacco Control* (in press)

Pilkington P, Gilmore AB. The Living Tomorrow Project: how Philip Morris has used a Belgian tourist attraction to promote ventilation approaches to the control of second hand smoke. *Tobacco Control* 2004;13:375-378

Ritch W, Begay M. Strange bedfellows: the history of collaboration between the Massachusetts Restaurant Association and the tobacco industry. *American Journal of Public Health* 2001;91:598-603

Saloojee Y, Dagli E. Tobacco industry tactics for resisting public policy on health. *Bulletin of the World Health Organization* 2000;78:911-912

Samet JM, Burke TA. Turning science into junk; the tobacco industry and passive smoking. *American Journal of Public Health* 2001;91:1742-1744

Shamasunder B, Bero L. Financial Ties and Conflicts of Interest Between Pharmaceutical and Tobacco Companies. *JAMA* 2002;288:738-744

Shatenstein S. Blindfold and a cigarette. *The Globe and Mail*, Toronto, Ontario, Tuesday, September 3, 2002, Page A13, [Op-ed]

Smith EA, Malone RE. Thinking the "unthinkable": why Philip Morris considered quitting. *Tobacco Control* 2003;12:208-213

Smith EA, Malone RE. Altria means tobacco: Philip Morris's identity crisis. *American Journal of Public Health* 2003;93:553-556

Trochim WM, Stillman FA, Clark PI, Schmitt CL. Development of a model of the tobacco industry's interference with tobacco control programmes. *Tobacco Control* 2003;12:140-147

Trotter L, Chapman S. "Conclusions about exposure to ETS and health that will be unhelpful to us": how the tobacco industry attempted to delay and discredit the 1997 Australian National Health and Medical Research Council report on passive smoking *Tobacco Control* 2003;12 Suppl 3:iii102-106

Tsoukalas TH, Glantz SA. Development and destruction of the first state funded anti-smoking campaign in the USA. *Tobacco Control* 2003;12(2):214-220

Von Eyben FE. Manipulationens anatomi [The anatomy of manipulation]. *Ugeskrift for Laeger* 2000;162:4962 [Danish]

White J, Bero LA. Public health under attack: the American Stop Smoking Intervention Study (ASSIST) and the tobacco industry. *American Journal of Public Health* 2004;94:240-250

Yach D, Bettcher D. Globalisation of tobacco industry influence and new global responses. *Tobacco Control* 2000;9:206-216

Ingredients and design

Alpert HR, Carpenter C, Connolly GN, Rees V, Wayne GF. "Fire safer" cigarettes. The effect of the New York State cigarette fire safety standard on ignition propensity, smoke toxicity and the consumer market. Harvard School of Public Health 2005 (press release, link to .pdf) <http://www.hsph.harvard.edu/press/releases/press01232005.html>

*Carpenter CM, Wayne GF, Connolly GN. Designing cigarettes for women: new findings from the tobacco industry documents. *Addiction* 2005;100:837-851

Chapman S. "Keep a low profile": pesticide residue, additives, and freon use in Australian tobacco manufacturing *Tobacco Control* 2003;12 Suppl 3:iii45-53

Cook BL, Wayne GF, Keithly L, Connolly G. One size does not fit all: how the tobacco industry has altered cigarette design to target consumer groups with specific psychological and psychosocial needs. *Addiction* 2003;98:1547-1561

Cummings K, Morley C, Hyland A. Failed promises of the cigarette industry and its effect on consumer misperceptions about the health risks of smoking. *Tobacco Control* 2002;11 (Suppl 1):i110-i117

Dunsby J, Bero L. A nicotine delivery device without the nicotine? Tobacco industry development of low nicotine cigarettes. *Tobacco Control* 2004;13:362-369

Garten S, Falkner RV. Continual smoking of mentholated cigarettes may mask the early warning symptoms of respiratory disease. *Preventive Medicine* 2003;37:291-296

Garten S, Falkner RV. Role of mentholated cigarettes in increased nicotine dependence and greater risk of tobacco-attributable disease. *Preventive Medicine* 2004;38(6):793-798

Givel M. A comparison of US and Norwegian regulation of coumarin in tobacco products. *Tobacco Control* 2003;12:401-405

*Givelber DJ. Pure smoke: products liability, innovation, and the search for the safe cigarette. *Tulane Journal of Technology and Intellectual Property* 2005;7:1-49

Henningfield JE, Benowitz NE, Ahijevych K, Garrett BE, Connolly GN, Wayne GF. Does menthol enhance the addictiveness of cigarettes? An agenda for research. *Nicotine & Tobacco Research* 2003;5:9-11

Henningfield J, Pankow J, Garrett B. Ammonia and other chemical base tobacco additives and cigarette nicotine delivery: Issues and research needs. *Nicotine & Tobacco Research* 2004;6:199-205

Henningfield JE, Benowitz NL, Connolly GN, Davis RM, Gray N, Myers ML, Zeller M. Reducing tobacco addiction through tobacco product regulation. *Tobacco Control* 2004;13:132-135

Hurt R, Robertson C. Prying open the door to the tobacco industry's secrets about nicotine. *JAMA* 1998;280:1173-1181

King W, Carter SM, Borland R, Chapman S, Gray N. The Australian tar derby: the origins and fate of a low tar harm reduction programme. *Tobacco Control* 2003;12 Suppl 3:iii61-70

King B, Borland R. The "low-tar" strategy and the changing construction of Australian cigarettes. *Nicotine & Tobacco Research* 2004;6:85-94

Kozlowski L, O'Connor RJ. Official tar tests are misleading: use a two-stage compensating test. *Lancet* 2000;355:2150-2161

Kozlowski L, O'Connor R. Cigarette filter ventilation is a defective design because of misleading taste, bigger puffs, and blocked vents. *Tobacco Control* 2002;11 (Suppl 1):i40-50

Kozlowski L, Dreschel NA, Stellman SD, Wilkenfeld J, Weiss EB, Goldberg ME. An extremely compensatable cigarette by design: documentary evidence on industry awareness and reactions to the Barclay filter design and cheating the tar testing system. *Tobacco Control* 2005;14:64-70

Leavell N. The low tar lie. *Tobacco Control* 1999;8:433-439

*May HE, Wigand JS. Why governments should compel the Tobacco Industry to disclose their ingredients. *Essays in Philosophy* 2005;6 (no page #s)

Nye D. Regulatory myopia and public health: 'Tough' tobacco control? *Competition & Change* 2004;8:305-321

Pankow JF. A consideration of the role of gas/particle partitioning in the deposition of nicotine and other tobacco smoke compounds in the respiratory tract. *Chemical Research Toxicology* 2001;14:1465-1481

Pauly J, Mepani A, Lesses J, Cummings K, Streck R. Cigarettes with defective filters marketed for 40 years: what Philip Morris never told smokers. *Tobacco Control* 2002;11 (Suppl 1):i51-61

Pollay RW, Dewhirst T. A Premiere example of the illusion of harm reduction cigarettes in the 1990s. *Tobacco Control* 2003;12:322-332

Scharfstein J. Blowing smoke: How cigarette manufacturers argues that nicotine is not addictive. *Tobacco Control* 1999;8:210-213

Schulze A, Pötschke-Langer M, Bertram B. Die Tabakindustriedokumente I. Chemische Veränderung an Zigaretten und Tabakabhängigkeit. Rote Reihe Band drei. Tabakprävention und Tabakkontrolle. Deutscheskrebsforschungszentrum, Heidelberg 2005.
<http://www.tabakkontrolle.de/>

Slade J, Bero L, Hanauer P, Barnes D, Glantz S. Nicotine and Addiction: The Brown and Williamson documents. *JAMA* 1995;274:225-233

Tengs TO, Ahmad S, Savage JM, Moore R, Gage E. The AMA proposal to mandate nicotine reduction in cigarettes: a simulation of the population health impacts. *Preventive Medicine* 2005;40:170-180

Vagg R, Chapman S. Nicotine analogues: a review of tobacco industry research interests. *Addiction* 2005;100:701-712

Wayne GF, Connolly G. Application, function, and effects of menthol in cigarettes: A survey of tobacco industry documents. *Nicotine & Tob Res* 2004;6 Suppl 1:S43-54

Wayne G, Connolly G. How cigarette design can affect youth initiation into smoking: Camel cigarettes 1983-93. *Tobacco Control* 2002;11 (Suppl 1):i32-39

Wayne GF, Connolly GN, Henningfield JE. Assessing internal tobacco industry knowledge of the neurobiology of tobacco dependence. *Nicotine & Tobacco Research* 2004;6: 927-940

Litigation

Adams M, Bornhauser A, Pötschke-Langer M, Grunewald B. [The liability of cigarette producers for the damages to health caused through smoking.] [Article in German] *Neue Juristische Wochenschrift* 2005: In press

Bero L, Barnes D, Hanauer P, Slade J, Glantz S. Lawyer control of the tobacco industry's external research program: The Brown and Williamson documents. *JAMA* 1995;274:241-247

Egilman D, Kim J, Biklen M. Proving causation: the use and abuse of medical and scientific evidence inside the courtroom--an epidemiologist's critique of the judicial interpretation of the Daubert ruling. *Food Drug Law Journal* 2003;58:223-250

*Guardino SD, Friedman LC, Daynard RA. Remedies for document destruction: tales from the tobacco wars. *The Virginia Journal of Social Policy & the Law* 2004;12:1-60

*Guardino SD, Daynard RA. Punishing tobacco industry misconduct: the case for exceeding a single digit ratio between punitive and compensatory damages. *University of Pittsburgh Law Review* 2005;67 (in press)

*Friedman LC, Daynard RA, Banthin CN. How Tobacco-Friendly Science Escapes Scrutiny in the Courtroom. *American Journal of Public Health* 2005;95 (suppl)(in press)

Hanuaer P, Slade J, Barnes D, Bero L, Glantz S. Lawyer control of internal scientific research to avoid products liability lawsuits: The Brown and Williamson documents. *JAMA* 1995;274:234-240

Hiilamo HT. Tobacco control implication of the first European product liability suit. *Tobacco Control* 2005;14:22-30

Hurt RD. The influence of the Minnesota tobacco trial on the healthcare community and tobacco regulation. *William Mitchell Law Review* 1999;25:455-469

Kelder GE, Daynard RA. Tobacco litigation as a public health and cancer control strategy. *Journal of the American Medical Women's Association* 1996;51:57-62

Nixon ML, Mahmoud L, Glantz SA. Tobacco industry litigation to deter local public health ordinances: the industry usually loses in court. *Tobacco Control* 2004;13:65-73

Proctor R. "Tobacco and health. Expert witness report filed on behalf of plaintiffs in: 'The United States of America, plaintiff, v. Philip Morris, Inc., et al, defendants,' Civil action No. 99-CV-02496 (GK) (Federal case." *Journal of Philosophy, Science & Law (e-journal)*, March 2004;4. <http://www.psljournal.com/archives/papers/tobacco.cfm>

United States Department of Justice. United States of America, plaintiff v. Philip Morris, et al. defendants. United States' Final Proposed Findings of Fact. United States District Court for the District of Columbia, Civil Action No. 99-CV-02946 (GK), 2004 <http://www.usdoj.gov/civil/cases/tobacco2/>

Marketing

Acevedo-Garcia D, Barbeau E, Bishop JA, Pan J, Emmons KM. Undoing an epidemiological paradox: The tobacco industry's targeting of US immigrants. *American Journal of Public Health* 2004;94:2188-2193

Anderson SJ, Glantz SA, Ling PM. Emotions for sale: cigarette advertising and women's psychosocial needs. *Tobacco Control* 2005;14:127-135

Balbach ED, Gasior RJ, Barbeau EM. R.J. Reynolds' targeting of African Americans: 1988-2000. *American Journal of Public Health* 2003;93:822-827

Barbeau EM, Leavy-Sperounis A, Balbach ED. Smoking, social class, and gender: what can public health learn from the tobacco industry about disparities in smoking? *Tobacco Control* 2004;13:115-120

Carlyle J, Collin J, Muggli ME, Hurt RD. British American Tobacco and Formula One racing. *BMJ* 2004;329:104-106

Carter SM. New frontier, new power: the retail environment in Australia's dark market. *Tobacco Control*. 2003 Dec;12 Suppl 3:iii95-101

Carter SM. Going below the line: creating transportable brands for Australia's dark market. *Tobacco Control* 2003;12 Suppl 3:iii87-94

Carter SM. From legitimate consumers to public relations pawns: the tobacco industry and young Australians. *Tobacco Control* 2003;12 Suppl 3:iii71-78

Carter SM. The Australian cigarette brand as product, person, and symbol. *Tobacco Control*. 2003;12 Suppl 3:iii79-86

- Collin J, Muggli M, Carlyle J, Lee K, Hurt RD. A race to the death: British American Tobacco and the Chinese Grand Prix. *Lancet* 2004;364:1107-1108
- Cummings KM. Commentary. Tobacco risk perceptions and behavior: Implications for tobacco control. *Nicotine & Tobacco Research* 2004;6:S285-288
- Davis R, Landman A.. Lorillard's "Candy Box" ad for Newport cigarettes: is she pregnant? *Tobacco Control* 2000;9 (Suppl III):iii3-5
- Dewhirst T, Hunter A. Tobacco sponsorship of Formula One and CART auto racing: tobacco brand exposure and enhanced symbolic imagery through co-sponsors' third party advertising. *Tobacco Control* 2002;11:146-150
- Dewhirst T, Sparks R. Intertextuality, tobacco sponsorship of sports, and adolescent male smoking culture. *Journal of Sport and Social Issues* 2003;27:372-398
- DiFranza JR, Richards JW, Paulman PM, Wolf-Gillespie N, Fletcher C, Jaffe RD, Murray D.RJR Nabisco's cartoon promotes camel cigarettes to children. *JAMA* 1991;266:3149-3153
- Gardiner P. The African Americanization of menthol cigarette use in the United States. *Nicotine & Tobacco Research* 2004;6 Suppl 1:S55-65
- Hammond D, Tremblay I, Chaiton M, Lessard E, Callard C. Tobacco on campus: industry marketing and tobacco control policy among post-secondary institutions in Canada. *Tobacco Control* 2005;14:136-140
- Hastings G, MacFadyen L. A day in the life of an advertising man: review of internal documents from the UK tobacco industry's principal advertising agencies. *BMJ* 2000;321:366-371
- Katz S, Lavack A. Tobacco related bar promotions: insights from tobacco industry documents. *Tobacco Control* 2002;11 (Suppl 1):i92-101
- Lewis MJ, Yulis SG, Denevo C, Hrywna M. Tobacco industry direct marketing after the Master Settlement Agreement. *Health Promotion Practice* 2004;5(3 Suppl):75S-83S
- Ling PM, Glantz SA. Using tobacco-industry marketing research to design more effective tobacco-control campaigns. *JAMA* 2002;287:2983-2989
- Mekemson C, Glantz S. How the tobacco industry built its relationship with Hollywood. *Tobacco Control* 2002;11 (Suppl 1):i81-91
- Muggli M, Pollay R, Lew R, Joseph A. Targeting of Asian Americans and Pacific Islanders by the tobacco industry: results from the Minnesota Tobacco Document Depository. *Tobacco Control* 2002;11:201-209
- Muggli ME, Hurt RD. Listening between the lines: what BAT really thinks of its consumers in the developing world. (Letter.) *Tobacco Control* 2003;12:104

Offen N, Smith EA, Malone RE. From adversary to target market: the ACT-UP boycott of Philip Morris. *Tobacco Control* 2003;12:203-207

Pollay R, Dewhirst T. The dark side of marketing seemingly "Light" cigarettes: successful images and failed fact. *Tobacco Control* 2002; 11 (Suppl 1):i18i31

Portugal C, Cruz TB, Espinoza L, Romero M, Baezconde-Garbanati L. Countering tobacco industry sponsorship of Hispanic/Latino organizations through policy adoption: a case study. *Health Promotion Practice* 2004;5:143S-156

Rosenberg NJ, Siegel M. Use of corporate sponsorship as a tobacco marketing tool: a review of tobacco industry sponsorship in the USA, 1995-1999. *Tobacco Control* 2001;10:239-246

Sepe E, Ling PM, Glantz SA. Smooth moves: bar and nightclub tobacco promotions that target young adults. *American Journal of Public Health* 2002;92:414-419

Smith EA, Malone RE. The outing of Philip Morris: advertising tobacco to gay men. *American Journal of Public Health* 2003;93:988-993

Smith EA, Malone RE. "Creative Solutions": selling cigarettes in a smoke-free world. *Tobacco Control* 2004;13:57-63

Stevens P, Carlson LM, Hinman JM. An analysis of tobacco industry marketing to lesbian, gay, bisexual, and transgender (LGBT) populations: strategies for mainstream tobacco control and prevention. *Health Promotion Practice* 2004;5(3 Suppl):129S-134S

Sutton SD, Robinson RG. The marketing of menthol cigarettes in the United States: populations, messages, and channels. *Nicotine & Tobacco Research* 2004;6 Suppl 1:S83-91

*Toll BA, Ling PM. The Virginia Slims identity crisis: an inside look at tobacco industry marketing to women. *Tobacco Control* 2005;14:172-180

Wakefield M, Morley C, Horan J, Cummings K. The cigarette pack as image: new evidence from tobacco industry documents. *Tobacco Control* 2002;11 (Suppl 1): i73-80

Washington HA. Burning Love: big tobacco takes aim at LGBT youths. *American Journal of Public Health* 2002;92:1086-1095

Yerger VB, Malone RE. African American leadership groups: smoking with the enemy. *Tobacco Control* 2002;11:336-345

Regional

Alechnowicz K, Chapman S. The Philippine tobacco industry: "the strongest tobacco lobby in Asia". *Tobacco Control* 2004; 13 (Suppl 2): ii71-78

Assunta M. BAT flouts tobacco-free World Cup policy. *Tobacco Control* 2002;11:277-278

Assunta M, Chapman S. Industry sponsored youth smoking prevention programme in Malaysia: a case study in duplicity. *Tobacco Control* 2004; 13 (Suppl 2): ii37-42

Assunta M, Chapman S. A mire of highly subjective and ineffective voluntary guidelines: tobacco industry efforts to thwart tobacco control in Malaysia. *Tobacco Control* 2004; 13 (Suppl 2): ii43-50

Assunta M, Chapman S. "The world's most hostile environment": how the tobacco industry circumvented Singapore's advertising ban. *Tobacco Control* 2004; 13 (Suppl 2): ii51-57

Assunta M, Chapman S. A "clean cigarette" for a clean nation: a case study of Salem Pianissimo in Japan. *Tobacco Control* 2004; 13 (Suppl 2): ii58-62

Assunta M, Chapman S. The tobacco industry's accounts of refining indirect tobacco advertising in Malaysia. *Tobacco Control* 2004; 13 (Suppl 2): ii63-70

Barnoya J, Glantz S. Tobacco industry success in preventing regulation of secondhand smoke in Latin America: the "Latin Project". *Tobacco Control* 2002;11:305-314

Birkeland GMH, Birkeland V. Tobakksindustriens erstatningsansvar [Tobacco industry liability] [Article in Norwegian]. *Norges Offentlige Utredninger* 2000:16. Attachment 9: [Report on search of documents in the Minnesota Tobacco Document Depository].
<http://odin.dep.no/shd/norsk/publ/utredninger/NOU/030001-020003>

Birkeland V, Andreassen PM, Duvaland L. Tobakksindustriens erstatningsansvar [Tobacco industry liability] [Article in Norwegian]. *Norges Offentlige Utredninger* 2000:16. Attachment 10: [Report on search of documents in the Guildford Depository].
<http://odin.dep.no/shd/norsk/publ/utredninger/NOU/030001-020003>

*Braude J. Smoke Signals. What Big Tobacco can teach about democratization. *The New Republic OnLine*. 18 April 2005. <http://www.tnr.com/doc.mhtml?i=w050418&s=braude041805>

Chapman S, Byrne F, Carter SM. "Australia is one of the darkest markets of the world": The global importance of Australian tobacco control. *Tobacco Control* 2003;12 (Suppl 3):iii1-3

Drope J, Glantz S. British Columbia capital regional district 100% smokefree bylaw: a successful public health campaign despite industry opposition. *Tobacco Control* 2003;12:264-268

Gilmore AB, McKee M. Moving east: how the transnational tobacco companies gained entry to the emerging markets of the former Soviet Union – part I: establishing cigarette imports. *Tobacco Control* 2004;13:143-150

Gilmore AB, McKee M. Moving east: how the transnational tobacco companies gained entry to the emerging markets of the former Soviet Union – part II: An overview of priorities and tactics in establishing a manufacturing presence. *Tobacco Control* 2004;13:151-160

Gilmore AB, McKee M. Exploring the impact of foreign direct investment on tobacco consumption in the former Soviet Union. *Tobacco Control* 2005;14:13-21

*Gilmore AB, Pomerleau J, McKee M, Rose R, Haerpfer C et al. Prevalence of smoking in eight countries of the former Soviet Union. Results from the Living Conditions, Lifestyles and Health Study. *American Journal of Public Health* 2004;94:2177-2184

Gilmore A, Radu-Loghin C, Zatushevski I, McKee M. Pushing up smoking incidence: plans for a privatised tobacco industry in Moldova. *Lancet* 2005;365:1354-1359

Givel MS, Glantz SA. Tobacco industry political power and influence in Florida from 1979 to 1999. Institute for Health Policy Studies, University of California San Francisco Center for Tobacco Control Research and Education. Tobacco Control Policy Making: United States. Paper FL1999. <http://repositories.cdlib.org/ctcre/tcpmus/FL1999>

Givel MS, Glantz SA. The Public Health Undermined: The Tobacco Industry's Legacy in Missouri in the 1990's. Institute for Health Policy Studies, University of California San Francisco Center for Tobacco Control Research and Education. Tobacco Control Policy Making: United States. Paper MO2000. <http://repositories.cdlib.org/ctcre/tcpmus/MO2000>

Givel M, Glantz SA. Tobacco control and direct democracy in Dade County, Florida: Future implications for health advocates. *Journal of Public Health Policy* 2000;21:268-295

Givel MS, Dearlove J, Glantz SA. Tobacco Policy Making in California 1999-2001: Stalled and Adrift. Institute for Health Policy Studies, University of California San Francisco Center for Tobacco Control Research and Education. Tobacco Control Policy Making: United States. Paper CA2001. <http://repositories.cdlib.org/ctcre/tcpmus/CA2001>

Givel MS Glantz SA. Political Reform and Tobacco Control Policy Making in Mississippi From 1990 to 2001. Institute for Health Policy Studies, University of California San Francisco Center for Tobacco Control Research and Education. Tobacco Control Policy Making: United States. Paper MS2002. <http://repositories.cdlib.org/ctcre/tcpmus/MS2002>

Givel M. Oklahoma tobacco policy making. *Journal of the Oklahoma State Medical Association* 2005;98:89-94

Hiilamo H. [Tobacco companies' tactics in the prevention of tobacco regulation in Finland] [Article in Finnish] *Yhteiskuntapolitiikka* 2002;67:199-213

Hiilamo H. Tobacco industry strategy to undermine tobacco control in Finland. *Tobacco Control* 2003;12:414-423

Iida K, Proctor RN. Learning from Philip Morris: Japan Tobacco's strategies regarding evidence of tobacco health harms as revealed in internal documents from the American tobacco industry. *Lancet* 2004;363:1820-1824

Joossens L, Sasco A, Salvador T, Villalbi JR. [Women and tobacco in the European Union] [Article in Spanish] *Revista Espanola de Salud Publica* 1999;73:3-11

Kingman S. Hong Kong tobacco deaths presage vast China epidemic. *Bulletin of the World Health Organization* 2001;79:10

Knight J, Chapman S. "A phony way to show sincerity, as we all well know": tobacco industry lobbying against tobacco control in Hong Kong. *Tobacco Control* 2004; 13 (Suppl 2): ii13-21

Knight J, Chapman S. "Asian yuppies...are always looking for something new and different": creating a tobacco culture among young Asians. *Tobacco Control* 2004; 13 (Suppl 2): ii22-29

Knight J, Chapman S. "Asia is now the priority target for the world anti-tobacco movement": attempts by the tobacco industry to undermine the Asian anti-smoking movement. *Tobacco Control* 2004; 13 (Suppl 2): ii30-36

Lambert A, Sargent JD, Glantz SA, Ling PM. How Philip Morris unlocked the Japanese cigarette market: lessons for global tobacco control. *Tobacco Control* 2004;13:379-387

Lawrence S, Collin J. Competing with kreteks: transnational tobacco companies, globalisation and Indonesia. *Tobacco Control* 2004; 13 (Suppl 2): ii96-103

Lee K, Gilmore AB, Collin J. Breaking and re-entering: British American Tobacco in China 1979-2000. *Tobacco Control* 2004; 13 (Suppl 2): ii88-95

*Leistikow B. (Letter) Diabetes in Canada's First Nations. *Canadian Medical Association Journal* 2001;164:1126-1127

*Leistikow B. (Letter) Child hunger in Canada. *Canadian Medical Association Journal* 2001;164:1275

MacKenzie R, Collin J, Sopharo C, et al. "Almost a role model of what we would like to do everywhere": British American Tobacco in Cambodia. *Tobacco Control* 2004; 13 (Suppl 2): ii112-117

MacKenzie R, Collin J. "If we can just 'stall' new unfriendly legislations, the scoreboard is already in our favour": transnational tobacco companies and ingredients disclosure in Thailand. *Tobacco Control* 2004; 13 (Suppl 2): ii79-87

O'Sullivan B, Chapman S. Eyes on the Prize: Transnational Tobacco Companies in China 1976-1997. *Tobacco Control* 2000;9:292-302

Perez-Martin J, Peruga A. [The International Association of Tobacco Growers attacks WHO] [Article in Spanish] *Revista Panamericana Salud Publica* 2003;13:267-270

Shafey O, Fernández E, Thun M, Schiaffino A, Dolwick S, Cokkinides V. Case studies in international tobacco surveillance: Cigarette advertising and female smoking prevalence in Spain, 1982-1997. *Cancer* 2004;100:1744-1749

Soto-Mas F, Villalbi JR, Granero L, Jacobson H, Balcazar H. [The tobacco industry's internal documents and smoking prevention in Spain][Article in Spanish] *Gaceta Sanitaria* 2003;17 Suppl 3:9-14

Szilagyi T, Chapman S. Hungry for Hungary: examples of tobacco industry's expansionism. *Central Europe Journal of Public Health*. 2003;11:38-43

Szilagyi T, Chapman S. Tobacco industry efforts to keep cigarettes affordable: a case study from Hungary. *Central Europe Journal of Public Health* 2003;11:223-228

Szilagyi T, Chapman S. Tobacco Industry Efforts to Erode Tobacco Advertising Controls in Hungary. *Central European Journal of Public Health* 2004;12:190-196

*Wen CP, Cheng TY, Eriksen MP, Tsai SP, Hsu CC. The impact of the cigarette market opening in Taiwan. *Tobacco Control* 2005;14(Suppl 1):14-9

*Wen CP, Chen T, Tsai Y-Y, Tsai SP, Chung WSI, Cheng TY, Levy DT, Hsu CC, Peterson R, Liu W-Y. Are marketing campaigns in Taiwan by foreign tobacco companies targeting young smokers? *Tobacco Control* 2005;14(Suppl 1):i38-44

Youth

Andersen BS, Begay ME, Lawson CB. Breaking the alliance: Defeating the tobacco industry's allies and enacting youth access restrictions in Massachusetts. *American Journal of Public Health* 2003;93:1922-1928

Cummings K, Morley C, Hyland A, Horan J, Steger, C, Leavell N. Marketing to America's youth: evidence from corporate documents. *Tobacco Control* 2002;11 (Suppl 1):i5-17

Dewhirst T, Sparks R. Intertextuality, tobacco sponsorship of sports, and adolescent male smoking culture. A selective review of tobacco industry documents. *Journal of Sport & Social Issues* 2003;27:372-399

*Hammond D. Smoking behaviour among young adults: beyond youth prevention. *Tobacco Control* 2005;14:181-185

Klein J, St Clair S. Do candy cigarettes encourage young people to smoke? *BMJ* 2000;321:362-365

*Krugman DM, Quinn WH, Youngjun S. Understanding the role of cigarette promotion and youth smoking in a changing marketing environment. *Journal of Health Communication* 2005;10:261-278

Landman A, Ling PM, Glantz SA. Tobacco industry youth smoking prevention programs: protecting the industry and hurting tobacco control. *American Journal of Public Health* 2002;92:917-930

Ling PM, Glantz SA. Why and how the tobacco industry sells cigarettes to young adults: evidence from industry documents. *American Journal of Public Health* 2002;92:908-916

Ling PM, Glantz SA. Tobacco industry research on cessation. Recapturing young adults and other recent quitters. *Journal of General Internal Medicine* 2004;19:419-426

Perry C. The tobacco industry and underage youth smoking: Tobacco industry documents from the Minnesota litigation. Archives of Pediatrics and Adolescent Medicine 1999;153:935-941

Pollay R. Targeting youth and concerned smokers: evidence from Canadian tobacco industry documents. Tobacco Control 2000;9:136-147

Attachment B

1. Landman A, Ling PM, Glantz SA. **Tobacco industry youth smoking prevention programs: protecting the industry and hurting tobacco control.** American Journal of Public Health 2002;92:917-930

--Explains how the tobacco industry uses its "youth smoking prevention" programs to undermine efforts to reduce tobacco use around the world. This article describes how programs like "We Card" and "Action Against Access" have helped the industry maintain access to youth for gathering marketing data, and how these programs have helped the industry defeat adverse legislation, influence government ministries and legislative processes in countries around the world.

2. Neilsen K, Glantz SA. **A tobacco industry study of airline cabin air quality: dropping inconvenient findings.** Tobacco Control 2004;13 Suppl 1:i20-29

--Describes a major tactic the tobacco industry used in its attempts to reverse or delay in-flight smoking restrictions. Explains how, as a result of this industry interference, airline patrons and employees (particularly flight attendants) continued to be exposed to secondhand smoke on the job in amounts which the industry's own consultants noted exceeded international standards.

3. Ong E, Glantz S. **Tobacco industry efforts subverting the International Agency for Research on Cancer's second-hand smoke study.** Lancet 2000;355:1253-1259

--Reveals that the Philip Morris tobacco company (PM) spearheaded an inter-industry, three-prong strategy to subvert the International Agency for Research on Cancer (IARC) as IARC prepared to publish a study on the health effects of secondhand tobacco smoke. It divulges how Philip Morris developed industry-directed research specifically designed to counter the IARC's anticipated findings, and how PM designed a communications strategy to shape opinion on the report by manipulating the media and the public.

4. Francey N, Chapman S. **Operation Berkshire: the international tobacco companies' conspiracy.** BMJ 2000; 321:371-374

--This article describes the major international tobacco companies' private collusion, starting in 1977, to refuse to acknowledge that smoking causes lung cancer, heart disease, emphysema, and other serious diseases. Describes the organizations, associations, task forces, and other mechanisms the tobacco industry put in place worldwide to manufacture a "smoking and health controversy."

5. Muggli ME, Hurt RD, Blanke DD. **Science for hire: a tobacco industry strategy to influence public opinion on secondhand smoke.** Nicotine & Tobacco Research 2003;5:303-314

-- A review of internal tobacco company documents that reveals that members of the tobacco industry and its corporate attorneys created an international scientific consultants program to influence public opinion on environmental tobacco smoke (ETS). This program was shaped to protect the industry from international threats of smoking restrictions. Additionally, this program was used to promote a scientific backdrop supporting the industry's position on ETS that differed from regulatory agencies and published scientific research. This report details the pervasive nature of the industry's so-called "ETS Consultants Program," outlines the wide range of activities undertaken by the consultants, and highlights the role of the industry's corporate attorneys in creating and managing this program.

6. Muggli ME, Hurt RD, Repace J. **The tobacco industry's political efforts to derail the EPA report on ETS.** American Journal of Preventive Medicine 2004;26:167-177

--This report demonstrates the powerful influence that the industry has on federal regulatory agencies. It shows how a single member of the U.S. Congress, his staff, tobacco industry attorneys, and executives worked together aggressively to delay the 1993 EPA risk assessment on secondhand smoke. It describes how their efforts placed a cloud over the validity of the EPA's conclusions that was not fully vindicated until December 2002, when the U.S. 4th Circuit Court of Appeals overturned a tobacco industry lawsuit against the EPA.

7. White J, Bero LA. **Public health under attack: the American Stop Smoking Intervention Study (ASSIST) and the tobacco industry.** American Journal of Public Health 2004;94:240-250

--This study analyzed tobacco industry documents to discover the industry's response to the largest tobacco control effort ever undertaken in the U.S., the American Stop Smoking Intervention Study (ASSIST). It found that the tobacco industry considered ASSIST a major threat due to its emphasis on policy and creation of local tobacco control infrastructures. The industry mobilized resources for a well-coordinated attack on ASSIST. Documents reveal that the industry mounts a vigorous response to policy advocacy efforts, particularly at the local level.

8. Bates C, Connolly GN, Jarvis M. **Tobacco additives: cigarette engineering and nicotine addiction.**

<http://www.ash.org.uk/html/regulation/html/additives.html>

--This report based on industry documents highlights concerns about cigarette design and additives, specifically additives that free-base nicotine, encourage the formation of nicotine receptors in the brain, dilate and numb airways, make

cigarette more palatable to children, and contribute pharmacologically active or toxic substances when burned. Other concerns are additives that help the industry circumvent the US Federal Trade Commission (FTC) machine measurements of tar and nicotine levels.

9. **Tobacco Company Strategies to Undermine Tobacco Control Activities at the World Health Organization.** (Geneva: World Health Organization, July, 2000), 247 pp
www.who.int/tobacco/policy/industry_conduct/en/index.html

--Industry documents reveal that tobacco companies view the World Health Organization (WHO) as one of their leading enemies and saw themselves in a pitched battle against WHO. The report shows that the tobacco companies fought WHO's tobacco control agenda by staging events to divert attention from the public health issues raised by tobacco use, attempting to reduce budgets for WHO's scientific and policy activities, pitting other United Nations agencies against WHO, seeking to convince developing countries that WHO's tobacco control program was a "First World" agenda being carried out at the expense of the developing world, distorting the results of important scientific studies on tobacco, and discrediting WHO as an institution.

10. Collin J, LeGresley E, MacKenzie R, Lawrence S, Lee K. **Complicity in contraband: British American Tobacco and cigarette smuggling in Asia.** Tobacco Control 2004; 13 (Suppl 2): ii104-ii111

-- This analysis of previously confidential documents from British American Tobacco's (BAT's) Guildford depository demonstrates the strategic importance of cigarette smuggling across global, regional, national, and local levels. Particularly important in Asia, the paper reveals, engaging in contraband activities enabled tobacco companies to access to closed markets, create pressure for market opening, and reap high profits. Documents demonstrate BAT's detailed oversight of illicit trade, and their seeking to reconcile the conflicting demands of control over these markets, and deniability of their engagement in them.

11. Hurt R, Robertson C. **Prying open the door to the tobacco industry's secrets about nicotine.** JAMA 1998;280:1173-1181

-- This review of internal company documents from the 1950s revealed industry acknowledgment of the scientific evidence of nicotine's addictive properties and the link between illness and cigarette smoking. It shows that the industry internally acknowledge nicotine's addictive properties by 1963, but failed to reveal this to the public. Other documents reveal a long-standing recognition inside the industry of the pharmacological effects of smoking and nicotine, including both addiction and tolerance.

12. Leavell N. **The low tar lie.** Tobacco Control 1999;8:433-439

-- Reveals that while the tobacco industry publicly vowed to place the public's health above every other facet of its business, it privately acknowledged its inability to create a safe product. This review of documents reveals that the industry engineered low tar cigarettes to maintain addiction, and marketed low tar cigarettes in a way that promoted the public's perception of safety.

13. Glantz, Stanton A., Slade, John, Bero, Lisa A., Hanauer, Peter and Barnes, Deborah E., editors **The Cigarette Papers**. Berkeley: University of California Press, c1996.

--In May 1994 a box containing 4,000 pages of internal tobacco industry documents arrived at the office of Professor Stanton Glantz at the University of California, San Francisco. The anonymous source of these "cigarette papers" was identified only as "Mr. Butts." These documents provided one of the earliest, most complete and most shocking inside accounts of the activities of one tobacco company, Brown & Williamson, over more than thirty years. *The Cigarette Papers* quotes extensively from the documents themselves, analyzes what they reveal, shows what the tobacco companies have long known and has galvanized many since that time to take action.

Attachment C

Amicus, The Regents of the University of California, proposed revisions to United States' Proposed Final Judgment and Order, Section IV.F.

F. Document Disclosure

1. Defendants Philip Morris, R.J. Reynolds, Lorillard, Brown & Williamson, CTR, and TI will maintain Internet Document Websites until June 30, 2030 at their expense. A link to each defendant's Internet Document Website, reasonably describing the Website, shall appear on the main menu of all pages of each defendant's corporate website. These Defendants shall maintain on their Internet Document Websites the documents and bibliographic information that currently appear on their respective Internet Document Websites as well as the additional documents and bibliographic information described below. These Defendants shall provide links to their Internet Document Websites from any and all publicly-accessible company websites.

2. Defendants BATCo and Liggett shall create and maintain at their expense Internet Document Websites until June 30, 2030. The BATCo and Liggett Internet Document Websites shall be created and publicly accessible no later than 60 days from the date of this Final Judgment and Order. BATCo and Liggett shall provide links to their Internet Document Websites from any and all publicly-accessible company websites.

3. Defendants shall add documents and bibliographic data to the websites as follows:

- a. Defendants shall add the following additional documents: (1) all documents produced to the United States in this action; (2) all documents produced on or after the date of this Final Judgment and Order in any court or administrative action in the United States concerning smoking and health, marketing, addiction, low-tar or low-nicotine cigarettes, or less hazardous cigarette research; (3) all transcripts of depositions and letter of request testimony (with corresponding exhibits if not already on the website) given by any of their current or former employees, officers, directors, corporate designees, attorneys or agents, in this action or in any court or administrative action in the United States concerning smoking and health, marketing, addiction, low-tar or low-nicotine cigarettes, or less hazardous cigarette research; such transcripts shall be in machine-readable text if received or available from the court reporter; and (4) Disaggregated Marketing Data, including Disaggregated Expenditure Data and Disaggregated Sales Data (see Section IV.F.7, infra). Philip Morris shall provide on its website all such documents produced by, pertaining to, or concerning Altria. BATCo shall provide on its website all documents contained in its Guildford, England Document Depository. BATCo shall also deposit copies of all documents contained in its Guildford, England Document Depository in the Minnesota Depository. Liggett shall provide on its website all documents Liggett previously produced to the Minnesota Depository.

b. Defendants shall add these additional documents (and data newly required by this Final Judgment and Order) to their respective Internet Document Websites within 45 days of the date of production, in the case of documents; within 45 days of receipt of the transcript, in the case of depositions and letter of request testimony; within 45 days of the effective date of this Final Judgment and Order in the case of existing Disaggregated Marketing Data and the BATCo Guildford Depository Documents; and within 45 days of the end of each calendar year for Disaggregated Marketing Data required to be disclosed in the future (see Section IV.F.7, infra). These requirements are subject to Section IV.F.8 concerning documents under court order or ruling.

c. Each Internet Document Website shall provide, and be searchable by, the following bibliographic fields for all documents (no matter whether images are provided or are withheld on grounds of privilege or confidentiality):

- i. Document ID
- ii. Master ID
- iii. Other Number
- iv. Document Date
- v. Primary Type
- vi. Other Type
- vii. Person Attending

- viii. Person Noted
- ix. Person Author
- x. Person Recipient
- xi. Person Copied
- xii. Person Mentioned
- xiii. Organization Author
- xiv. Organization Recipient
- xv. Organization Copied
- xvi. Organization Mentioned
- xvii. Organization Attending
- xviii. Organization Noted
- xix. Physical Attachment 1
- xx. Physical Attachment 2
- xxi. Characteristics
- xxii. File Name
- xxiii. Site
- xxiv. Area
- xxv. Verbatim Title
- xxvi. Old Brand

- xxvii. Primary Brand
- xxviii. Mentioned Brand
- xxix. Page Count
- xxx. Live hyperlink to document image (except where image is withheld) with a permanently-assigned URL
- xxxi. Court or administrative action in which document was produced or transcript taken, including case title(s), action number(s), court(s) or administrative body(ies)
- xxxii. Date on which document was produced or transcript was received
- xxxiii. Date hard copy was produced to Minnesota Depository
- xxxiv. Box number in which hard copy was produced to Minnesota Depository
- xxxv. Information regarding divided large documents as set forth in Section IV.F.4.g, below.
- xxxvi. The date on which the document was originally posted to the Internet Document Website
- xxxvii. The date on which any modifications of the document or any of the bibliographic information set forth were made and a description of the modifications

All date fields must be recorded in the standard ISO format—

YYYYMMDD, with unknown dates recorded as 00000000. Where dates

are estimated, “/e” shall be added to the date field. In addition, defendant

BATCo’s bibliographic fields shall include the File Number, File Owner, and File User fields that it used in this action, and its website shall identify the Folder Number prefixes.

- d. The Internet Document Websites shall also provide, and be searchable by, the above fields for documents withheld from the website on grounds of privilege (“the privilege log”), and for documents withheld from the website on grounds that they contain trade secret information (“the confidential document index”). Each Internet Document Website’s privilege log shall also provide fields stating the basis for the privilege assertion with sufficient detail to allow an opposing party, the IO, the IHO, or the Court to assess the soundness of the assertion; and, similar to Order #51, ¶ III.G.9 in this action, a statement of whether the claimed privilege has ever been (i) expressly waived, or (ii) ruled waived, invalid, inapplicable or unenforceable for any reason by a court, with a specification of the case title(s), action number(s), court(s), date(s) of waiver or decision, and Document ID(s) for such waivers, orders and decisions. Each Internet Document Website shall provide a copy of all such waivers, orders and decisions (and underlying judicial materials such as magistrate judge reports and recommendations). Defendants may withhold the title of documents withheld on grounds of privilege if the

document title, without reference to the document's contents, reveals privileged information, with the restriction that the title must be provided where a Defendant has previously waived privilege over the document title, e.g., pursuant to Order #75, ¶ 8 in this action. Where a document title is withheld, defendants must provide such record a title describing the contents in language that does not reveal privileged information. The privilege logs shall be integrated with other information on the Internet Document Websites such that a single search will produce responsive document information whether or not the document appears on the privilege log.

- e. Each Internet Document Website shall provide a glossary that identifies, and is searchable by, the persons referred to in its privilege log and its confidential document index, by name and relationship to the parties in the relevant actions.
- f. Each Internet Document Website shall provide its bibliographic data index, privilege log, confidential document index, and glossary in a format suitable for downloading (e.g., comma separated value (CSV) file, compressed in a ZIP or similar format). In addition, monthly update files shall be provided in a format suitable for downloading, and shall be maintained on the website for 12 months.
- g. Documents of more than 500 pages shall be divided into sub-documents no longer than 500 pages. The bibliographic data shall indicate which

subdocuments are related to each other and the correct order to assemble them into the original larger document.

- h. Electronic mail documents shall include all attachments originally sent with the electronic mail message.

5. Defendants Philip Morris, R.J. Reynolds, Lorillard, Brown & Williamson, CTR, TI, BATCo, and Liggett shall, at their expense, produce documents to the Minnesota Depository created in Minnesota v. Philip Morris Inc., No. C1-94-8565 (Minn. Dist. Ct.), or its successor, as follows:

- a. These defendants shall produce to the Minnesota Depository hard copies of all documents described in Section IV.F.3.a.
- b. These documents shall be produced to the Minnesota Depository within 30 days of being produced in the pertinent litigation or administrative proceeding (or received from the court reporter). This requirement is subject to Section IV.F.8 below concerning documents under court order or ruling.
- c. Each production of documents to the Minnesota Depository shall include an index of the documents produced in that production, with the fields specified in Section IV.B.3.c, in both hard copy and electronic form.
- d. Defendants shall continue to fund and produce documents to the Minnesota Depository until June 30, 2030.

6. A Defendant may redact from a document placed on its Internet Document Website or produced to the Minnesota Depository individual Social Security numbers,

home addresses, and home telephone numbers. Such redactions shall indicate that confidential personal information has been redacted. Wherever less than the entirety of a document is subject to a claim of privilege or trade secret pursuant to Section IV.F.8 below, Defendants shall produce the document in redacted form on their Internet Document Website and to the Minnesota Depository. Such redactions shall indicate that privileged or trade secret information, as pertinent, has been redacted.

7. Disclosure of Disaggregated Marketing Data.

- a. Each Defendant Cigarette Manufacturer shall be required to disclose all Disaggregated Marketing Data on its Internet document website.
- b. All Disaggregated Marketing Data for the period 1971-2004 shall be placed on each Defendant Cigarette Manufacturer's respective Internet document website within 45 days of the effective date of this Final Judgment and Order.
- c. Disaggregated Marketing Data for 2005 shall be placed on each Defendant Cigarette Manufacturer's respective Internet document website by the later of February 14, 2006 or 45 days from the effective date of this Final Judgment and Order.
- d. Disaggregated Marketing Data for subsequent years (2006-2029) shall be placed on each Defendant Cigarette Manufacturer's Internet Document website annually by February 14 of each following year. For example, Disaggregated Marketing Data for 2006 shall be placed on each Defendant

Cigarette Manufacturer's respective Internet document website no later than February 14, 2007.

- e. Disaggregated Marketing Data shall be accessible via a direct link from the entry page, or home page, of each Defendant's respective Internet document website.
- f. Disaggregated Marketing Data shall be maintained in the databases and formats maintained by Defendants, and all reports generated from such Disaggregated Marketing Data shall be made available on each Defendant Cigarette Manufacturer's respective Internet document website.
- g. In addition, each year's Disaggregated Marketing Data shall be separately maintained in a format suitable for downloading (e.g., comma separated value (CSV) file, compressed in a ZIP or similar format). All data fields shall be specified.

8. This Final Judgment and Order does not require any Defendant to place on its Internet Document Website or in the Minnesota Depository documents that: (1) it continues to claim to be privileged or a trade secret in the document's entirety, or (2) continue to be subject in the document's entirety to any protective order, sealing order or other order or ruling that prevents or limits the pertinent Defendant from disclosing such documents. As in Order #36, a "trade secret" is defined as information, including a formula, pattern, compilation, program, device, method, technique or process that (a) derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure and use; and (b) is the subject of efforts that are reasonable under the circumstances to

maintain its secrecy. However, the foregoing exceptions shall not apply to documents which a Defendant continues to claim to be privileged but which this Court ordered produced in this action; and shall not apply to documents which a Defendant continues to claim to be trade secret or contain confidential or proprietary business information, or which continue to be subject to any protective order, sealing order or other order or ruling that prevents or limits the pertinent Defendant from disclosing such documents, if this Court overruled such assertions and/or the pertinent Defendant did not make such assertions to prevent the documents from being used in open court during this action. Defendants may not remove document images or bibliographic information, other than for claims of privilege or trade secret status, without prior express approval of the IO.

9. The foregoing provision shall not limit the right of the IO, IHO, the United States Department of Justice or the District Court to inspect and copy any of Defendants' documents pursuant to any of the provisions of this Final Judgment and Order, including documents that a Defendant claims to contain a trade secret or proprietary business information, or continue to be subject to any protective order, sealing order or other order or ruling that prevents or limits a Defendant from disclosing such documents; except that this provision shall not apply to any document over which a Defendant maintains a legitimate claim of privilege. Such documents may be reviewed only by the Independent Hearing Officer or the District Court in camera.

10. Because the economic value of many trade secrets substantially declines with the passage of time, Defendants shall review all trade secret assertions every three years to determine whether they still satisfy the definition of trade secret in Section

IV.F.8. The first review shall be complete within 1 year of this Final Judgment and Order.

11. User complaint resolution procedure:

- a. Each of the defendants shall display prominently on its Internet Document Website contact information for a company representative to whom users may direct complaints, requests, or inquiries regarding the defendant's obligations under Section IV.F. Such representative shall be available during normal business hours to receive communications from users, shall be familiar with defendant's Internet Document Website and shall be able and authorized to address and resolve issues that may be reasonably expected to arise regarding the functionality, content, and accessibility of the Internet Document Website. Similar information should be displayed prominently at the depositories.
- b. Users who have raised a complaint, request, or inquiry with the designated company representative pursuant to Section IV.F.11.a, above, but have failed to obtain a prompt resolution may file a complaint with the IHO.
- c. The IHO shall establish procedures for the adjudication of complaints filed pursuant to Section IV.F.11.b. Such procedures shall be efficient, shall minimize cost to the parties, shall be accessible to non-lawyer users, and shall permit prompt resolution of disputes, in most cases in less than 30 days. The procedure shall also provide that all submissions in connection with any complaint shall be served on the IO who will have the option to intervene as a party to the procedure.

- d. Each of the defendants shall display on its Internet Document Website the complaint resolution procedure adopted pursuant to section IV.F.11.c. Similar information should be displayed prominently at the depositories.
- e. Where complaints filed under section IV.F.11.c involve challenges to defendants' withholding of documents from the Internet Document Website on the basis that the documents are claimed to be privileged or contain trade secret information, the IHO shall be authorized to conduct an *in camera* review of the relevant documents, determine whether they were properly withheld from the Internet Documents Website, and, if appropriate, order that the documents be posted on the Internet Documents Website pursuant to the provisions of this section. Any such determination by the IHO will be without prejudice to the defendant's right to argue in any subsequent litigation that the documents are inadmissible on grounds of their privileged or trade secret status.
- f. Pursuant to the provisions of Section VI.C.1.m, the IO shall be authorized to recommend sanctions, including fines, against any Defendant, Covered Person or Entity who is determined through the user complaint resolution procedure to have engaged in repeated violations of the provisions of Section IV.F. In addition, the IHO is authorized to award prevailing users the reasonable expenses they incur, including attorney's fees, in pursuing complaints made under Section IV.F.11.b above.

12. Defendants and/or their representatives who operate the Internet Documents Websites and depositories may not track, log, or otherwise record any

information about users, including but not limited to IP address or hostname, search terms, search strategies, search results, documents downloaded, images accessed, or bibliographic data requested, except as necessary to respond to user requests.

Information regarding individual users that is necessary to respond to user requests shall not be used for any other purpose, provided to any person unless necessary to efficiently respond to user requests, and shall not be retained longer than necessary to respond to user requests.

Attachment D:

Amicus, The Regents of the University of California, Proposed Revisions United States's Proposed Final Judgment and Order, Section VI.D.

D. Authority of the Independent Hearing Officer

1. The Independent Hearing Officer ("IHO") shall have the authority to adjudicate, pursuant to the procedures set forth in Section VI.E. below, any complaint brought by the IO or Final Order addressing an alleged violation of the Final Judgment and Order, or any dispute arising under or related to any of the IO's recommendations made pursuant to Sections VI.C.1.h or VI.C.1.i.

2. The IHO shall have the authority to hire and/or retain personnel as reasonably necessary to assist the IHO in carrying out his or her duties and responsibilities pursuant to the Final Judgment and Order.

3. Pursuant to the provisions of IV.F.11, above, the IHO shall have authority to adjudicate and resolve complaints brought by users of Internet Document Websites or Document Depositories regarding defendants' compliance with Section IV.F, above.