

PROJECT OVERVIEW ▶

NEWS & RECORD

Greensboro, North Carolina

PART ONE

Inside "the mouse house"

- **Scientists studying possible links** between smoking and disease at R.J. Reynolds Tobacco Co. suddenly were fired in 1970. Reynolds calls the studies inconclusive. Future lawsuits may hinge on those events 22 years ago.
- **One fired researcher** says he was on the brink of understanding how smoking causes lung disease. Anthony Colucci came back to Reynolds in the 1980s to help prepare their lawsuit defenses, but now he openly criticizes them. One day they could face off in court.
- **The way smoking causes disease** remains unproven, so is what tobacco companies knew then crucial now?
- **Tobacco companies had a spotless record** in lawsuits brought against them by smokers or their families, but one case – that of Rose Cipollone – likely has changed such lawsuits forever.

PART TWO

The trouble with tobacco

- **When health concerns** about cigarettes arose in the 1950s, one cigarette maker proposed a unique solution: find the harmful substances and eliminate them. A former researcher at Liggett & Myers says he was successful, but the company backed out on the project. Why? Because it would be admitting that all other cigarettes are dangerous, the scientist says.
- **From filters to freeze-drying**, tobacco companies have spent millions to make cigarettes appear safer.
- **Lorillard Tobacco Co.** was first warned of the dangers of cigarettes in 1946. Lorillard says it was keeping abreast of allegations against cigarettes and investigating them.
- **Most medical experts agree** that the links between smoking and disease are established. The tobacco industry isn't convinced.

PART THREE

Playing the blame game

- **Have recent court cases** made it easier for smokers or their families to get awards from tobacco companies? Yes, no and maybe – depending on who you ask. Juries, and many smokers themselves, say tobacco companies didn't force them to start smoking.
- **North Carolina laws** make lawsuit victories by sick smokers unlikely. If smokers are found just 1 percent responsible, cigarette makers don't have to pay damages.
- **A federal judge** who had harsh words against the tobacco industry has been removed from two prominent cases.
- **Despite a hostile environment**, cigarette makers are making it big. Earnings increased by 14.9 percent from 1987 to 1991.
- **The content of cigarettes** largely is unregulated, but not for long, if anti-smoking activists have their way.

While America's major tobacco companies were discounting the results of early studies suggesting that cigarette smoking is harmful, they quietly were conducting studies of their own – and reaching the same conclusions. Did they withhold knowledge of the danger of cigarettes from the public? If so, that research could be a crucial element in a court case against the tobacco industry.

WHAT DID REYNOLDS KNOW?

● R.J. Reynolds Tobacco Co. scientists were fired after years of studying smoking and disease. Other cigarette makers did similar research – all the while proclaiming smoking harmless.

BY JUSTIN CATANOSO AND TAFT WIREBACK
Staff Writers

More than 20 years ago, R.J. Reynolds Tobacco Co. conducted confidential research suggesting links between smoking and lung disease.

That research – never publicly disclosed by Reynolds – was carried out even as company spokesmen publicly were denying that cigarettes are harmful, a position they still maintain.

The research was halted abruptly in 1970 when 26 Reynolds biochemists were fired, not long after their laboratory notebooks were collected by company lawyers.

The firings came after four years of animal testing in which research techniques grew increasingly sophisticated. One ex-Reynolds researcher says his work pointed toward an explanation for how smoking causes emphysema.

The research could be important in lawsuits against the company. The U.S. Supreme Court ruled June 24 that cigarette makers can be sued for fraud if they hid knowledge of smoking's harm from the public.

For two months, the News & Record investigated what America's major tobacco companies knew about the dangers of smoking and when they knew it. Other findings:

Some of the fired Reynolds biochemists think they lost their jobs 22 years ago because the company feared their research could be used against it in court. "I strongly suspect we were fired because anything we were doing was subject to subpoena," says Joseph Bumgarner, a former member of the research team.

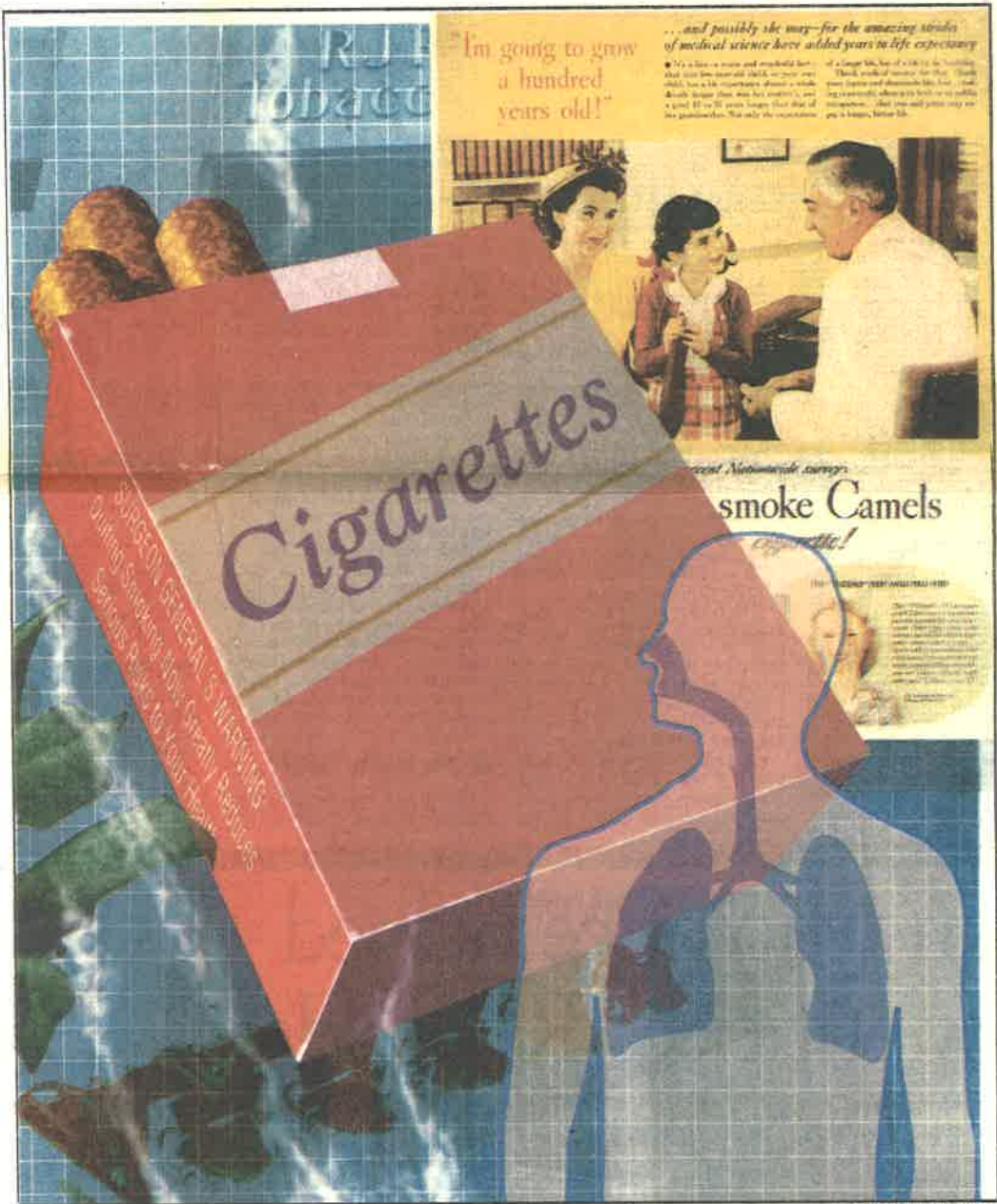
One ex-Reynolds biochemist was questioned in April by Marc Edell, a prominent anti-tobacco lawyer, in what could be the next landmark lawsuit against the industry.

At Liggett & Myers Tobacco Co. in Durham, a researcher developed a cigarette that appeared to be less cancer-causing. He says Liggett refused to market it for fear the new product would indict its other brands.

Lorillard Tobacco Co., with manufacturing facilities in Greensboro, was notified nearly 50 years ago by one of its chemists that credible evidence was building that linked smoking to cancer.

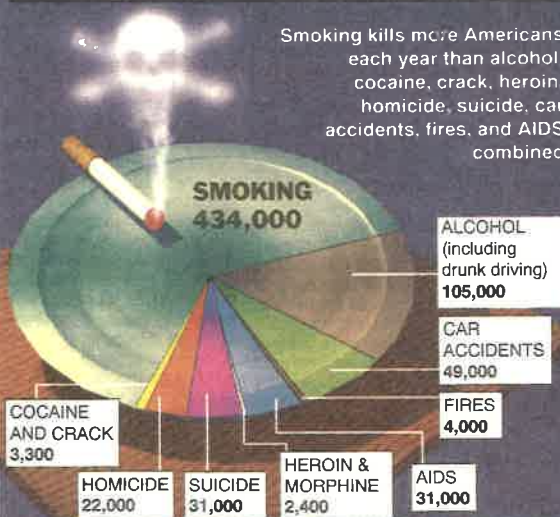
Sick smokers may have difficulty winning lawsuits under the recent Supreme Court decision. Obstacles include the types of disease caused by smoking, health warnings printed on every tobacco product, and the widespread belief that sick smokers are responsible for their own predicaments.

Private studies are brought to light in a two-month investigation into what the nation's major tobacco companies knew about smoking.



Tim Richard/News & Record

CAUSES OF DEATHS smoking vs. other



Closing up the doors at "the mouse house"

● Did R.J. Reynolds Tobacco Co. fire its scientists because their studies were invalid, or were they too valid?

BY JUSTIN CATANOSO
Staff Writer

PART ONE WINSTON-SALEM – The end came suddenly for the 26 scientists gathered in a conference room March 19, 1970.

For three years, this group of young, ambitious biochemists quietly had been studying the effects of cigarette smoke.

Their employer, R.J. Reynolds Tobacco Co., built a state-of-the-art laboratory for their work on mice, rats and rabbits. Scientists designed a pioneering machine that forced the animals to breathe smoke eight hours a day. One project showed promise of explaining how tobacco causes emphysema.

But on that cloudless morning in 1970, Ed Vasallo, Reynolds' new vice president for research and development, derailed the biological research program. The division was being eliminated, he said. The 26 scientists were fired.

Why? Why now? The scientists left the meeting, shellshocked and jobless.

Anthony Colucci, one of the biochemists fired that day, thinks he knows. "It wasn't about bad science or a business decision.

"The decision to shut it down was made because Reynolds did not at that time want to be collecting information that might be detrimental to itself – which would be telling the public what its product does. Ignorance is bliss."

Lawyers for diseased smokers are very interested in what went on at Reynolds' research laboratory.

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RJR

Continued from page 1

Reynolds officials, however, say that smoking and health studies were only one of the biological team's tasks — and not a major one. They insist the research was ended largely because animal testing could be done more economically by university researchers or an industry-funded group, the Council for Tobacco Research.

Moreover, the company's animal laboratory was rudimentary at best and not capable of producing any sound scientific findings, said Sam Simmons, one of the biochemists fired in 1970 and now the company's director of smoking and health.

"We were not at a point where we could do a valid experiment," said Simmons, who was rehired by Reynolds in 1984.

But lawyers for diseased and dying smokers are interested in what happened to Reynolds' biological research program a generation ago. The U.S. Supreme Court ruled recently that cigarette makers may be guilty of fraud if they withheld or covered up knowledge that smoking is dangerous.

The events at Reynolds also could play a key role in shaping future lawsuits and could provide new impetus for stricter federal regulation of tobacco products.

Colucci already has been questioned by Marc Edell, a prominent anti-tobacco lawyer, and he may be a witness in the next major lawsuit against cigarette makers Reynolds, the Liggett Group, formerly Liggett & Myers Tobacco Co.; Philip Morris; and the Tobacco Institute trade association.

In that suit, named Haines vs. Liggett, New Jersey resident Susan Haines, whose father died at age 55 of lung cancer after 41 years of heavy smoking, claims the tobacco industry deceived the public by covering up detailed knowledge of tobacco's harms.

Edell, Haines' lawyer, said he plans to question other scientists involved in Reynolds' smoking and health program.

"My name is on Marc Edell's 'hit list,'" said Al Rodgman, a retired Reynolds chemist who helped start the its smoking research in the early 1950s. "He has all my reports and someday he'll have at me."

Based on a confidential Reynolds report, and a series of interviews with Colucci and other former Reynolds scientists, the News & Record found the following:

- For several years in the late 1960s, Reynolds biochemists studied tobacco smoke's effect on the most basic aspects of lung makeup: proteins, cells and cilia, the tiny hairs that help cleanse the lungs. Other studies focused on a suspected link between smoking and bladder cancer, and on attempts to pinpoint and remove harmful chemical compounds from tobacco.
- It is a story of pioneering research that led to the development of technology and tools ... eventually used by others to further explore the effects of direct smoking on the target organs: the lungs," a Reynolds consultant said in a confidential, 1985 critique of the company's biological research.

The ultimate goal of this research, consultant Paul Brubaker



◉ We were not at a point where we could do a valid experiment. ◉

Sam Simmons,

R.J. Reynolds researcher during the 1960s

wrote, was to understand precisely how cigarette smoke triggered lung disease. With that knowledge, it was reasoned, the company could better figure out how to make cigarettes safer.

The research was conducted at a time when the tobacco industry was publicly denying the many health hazards attributed to smoking — a position it largely maintains to this day.

Brubaker declined to comment on his report, which was obtained by the News & Record.

- Preliminary results in one discontinued project showed that cigarette smoke damaged rabbit lungs at the most basic level — the cells. The project, supervised by Colucci, probed the relationship between smoking and emphysema.

Colucci, now a private consultant in Clemmons, says his work was "on the cutting edge of science" and given time, it might have identified a specific chain of events — called a mechanism — that leads to the onset of lung disease.

"They like to take the position that you can't prove harm because you don't know mechanism," Colucci said of the tobacco company's lawyers and executives. "And sitting right under their noses is evidence of mechanism! What are they going to do with this stuff? They decided to kill it."

Colucci's research efforts are rated highly in the 1985 confidential report, paid for by Reynolds' legal department.

In the report, Brubaker, a New York toxicologist, says Colucci's work is "the more important of the smoking and health research effort because it comes close to determining what was thought to be the underlying pathobiology (mechanism) of emphysema."

But now Reynolds' officials — and some of Colucci's ex-colleagues — dispute that the work was ground-breaking. Co-workers say it was good but too preliminary to draw firm conclusions.

"The results we got were encouraging from a preliminary standpoint and enough to continue in that direction," said Joseph Bumgarner, another of the fired biochemists. "But to say we had conclusive results — no, we didn't. The work was stopped too soon."

- Reynolds' attorneys apparently played a part in the 1970 firings. The company's legal department opposed in-house animal testing



Scott Hoffmann / News & Record

The old R.J. Reynolds research and development building. It was here, in a lab nicknamed "the mouse house," that company scientists conducted research into possible links between cigarette smoking and disease.

from the start. Attorneys collected dozens of research notebooks from the biochemists several months before the scientists were fired.

The 50-page notebooks, which contained the raw research data of specific projects, were never returned to the scientists.

"We waited about a week, then word came back that they were accidentally destroyed," Bumgarner recalled. "That was the first indication we had that something was amiss."

Simmons, the Reynolds executive, denied that any scientific notebooks or documents have been destroyed by Reynolds — ever.

At Reynolds' science library, Simmons showed the News & Record the cover sheets of two notebooks concerning research in 1969-70 signed by Colucci and Bumgarner. Both were titled "The Fate of Smoke Constituents in Animals." Simmons did not reveal the notebooks' contents, citing a court order that they remained sealed.

Daniel Donahue, Reynolds' deputy general counsel for litigation, declined to discuss the role company lawyers played in the firings. But he said it is neither improper nor unusual for lawyers to be in on business decisions that result in skilled personnel being fired.

The involvement of tobacco company lawyers in research could be a factor in future lawsuits. Critics allege that company decisions concerning in-house smoking research were made more to guard against potential lawsuits than to aggressively seek answers to health questions.

At "the mouse house"

As with most tobacco companies, Reynolds' interest in smoking and

health research dates back to the early 1950s, when the first scientific studies linked cigarettes to lung cancer.

The goal of Reynolds' early research was to identify the many compounds in cigarette smoke, figure out which might be toxic, and develop filters to make a "milder, less irritating" product. The popular Winston brand got its first filter in the mid-1950s.

As the controversy about cigarettes intensified, it became clear that more work was needed. In January 1964, the U.S. Surgeon General decried smoking as a major health hazard. Fear spread within the tobacco industry that government soon would begin regulating cigarette manufacturing — a fear never realized.

Publicly, the industry ridiculed smoking research as flawed and inconclusive, mainly because it relied on animal testing that might not be applicable to humans. The industry also lobbied intensely against the warning labels on cigarette packs, calling them unnecessary and an economic threat.

But in June 1964, Reynolds' then-chairman Bowman Gray told a U.S. House committee, "If it is proven that cigarettes are harmful, we want to do something about it regardless of what somebody else tells us to do. And we would do our level best."

That commitment boded well for Eldon Nielson, a biochemist who

joined Reynolds in 1962 and soon began lobbying for an animal research laboratory.

He got his way, becoming manager of the new biological research division. But not before contending with senior company officials and lawyers who were uncomfortable with Reynolds' doing biological research in-house.

"Some of the attorneys didn't like the idea at all," recalled Nielson, now retired and living in Utah. "Some of the managers didn't like the idea at all. You're being accused of things right and left. Some said, 'I wouldn't do animals studies for anything.' It was a controversial issue within the upper reaches of management."

Managers and lawyers apparently were leery of such research because it might lead to findings that smoking was indeed harmful, and that would pose problems in defending lawsuits by sick smokers.

Nevertheless, walls soon were knocked out within the sprawling yellow-brick research building at Chestnut and Belevus streets in downtown Winston-Salem. Special rooms were built to hold mice, rats and rabbits; drainage and ventilation systems were installed.

The scientists dubbed their new animal research laboratory "the mouse house."

"We were young, idealistic and we were going to change the world," said Bumgarner, who

joined the mouse house group in 1967 as a 27-year-old research biochemist. He now works with the U.S. Environmental Protection Agency in Research Triangle Park.

"I never remember thinking we were going to hurt the company," he said. "That was not a consideration. Our goal was: If there is a problem, let's try to fix it, if there is a fix."

Nielson said the lab wasn't advanced enough to do cancer research involving long-term animal studies. But he was proud, nonetheless, of the program he put together.

"I think the lab, over a short period of time, made a good deal of progress and was obtaining data that was very reliable," Nielson said.

The new research team didn't deal only with smoking and health issues. Brubaker's 1985 report estimated about a third of the division's efforts were spent on such projects.

Chemists also worked on starches for the company Penick & Ford, a Reynolds subsidiary. Other research focused on projects linked to Reynolds' interest in purchasing the drug company, Warner-Lambert.

"Smoking bunnies" tests

Colucci, a doctoral graduate from Johns Hopkins University, was hired by Nielson in 1967 to do research on medicines that could be inhaled, work he was told might be useful after the potential Warner-Lambert purchase.

Soon Colucci was made a group leader supervising eight other scientists, including Bumgarner and Simmons. In addition to the drug research, Colucci's team studied rabbits that had been exposed to cigarette smoke to gauge the impact of smoke on the animals' lungs.

Other research sought to isolate toxic compounds in cigarette smoke such as phenol, naphthalene and nicotinic acid to see how the substances were taken up by the cells in rats and rabbits.

Colucci said many in the mouse house thought "it was a joke" that the company maintained publicly that the links between smoking and disease were a mystery.

One reason is that the compounds studied were not picked at random but were based on outside research that deemed those compounds harmful — an admission, Colucci said, that Reynolds scientists also believed them to be harmful.

"We sat around and talked about this stuff," he recalled. "The reason you are doing research on phenol and nicotinic acid is because you know they are cancer promoters, and you're trying to develop methods to reduce them or get rid of them altogether."

At the same time, Reynolds was developing a unique smoking machine to help with the animal exposure studies. The chest-high, rectangular device mimicked how a person smokes cigarettes. Animals were yoked so that all but their heads were shielded from the smoke — to make sure they took in all tobacco residue by breathing, not by licking their body fur.

The biochemists used the machine in order to analyze the effect of cigarette smoke on pulmonary surfactant, which the medical community in the late 1960s considered a key to understanding a possible cause of emphysema. Surfactant keeps the air sacs in the lungs from sticking together each time air is exhaled.

The Reynolds surfactant studies were based on white rabbits being exposed to smoke in either enclosed chambers, or by having the

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"TIME TO TELL THE TRUTH"

Man who once helped now criticizes Reynolds

◉ A former R.J. Reynolds Tobacco Co. scientist speaks out, while the company takes steps to one day confront him in court.

By JUSTIN CATANOSO Staff Writer

◉ CLEMMONS — There are many sides to Anthony Colucci, and many contradictions.

He's a brawny outdoorsman, an avid trout fisherman and a weekend rodeo cowboy. Yet he's also a scientific whiz who speaks the sophisticated language of cellular biology.

He can talk with precise medical knowledge about the hazards of smoking. Yet he also smokes Marlboro Lights.

He stresses the importance of personal loyalty. Yet in five lengthy interview sessions with the News & Record over two months, he spoke out candidly against a company that employed him for 14 years.

The gray-haired, square-jawed Chicago native also admits to "a mean streak you would not believe." And while he is apt to quote Socrates and Shakespeare, he often quotes Colucci: "In this world there are hammers and nails. Most people are nails. I want to be a hammer."

Don't mistake Colucci for a white knight. The contradictions in his life, particularly as they relate to his long employment with Rev-

olds, complicate his current anti-tobacco positions.

Colucci, 54, clearly is angry with Reynolds. By way of explanation, he says, "I'm a scientist who says: 'It's about time they quit this charade. I'm sick and tired of the way they distort and ignore science. It's time for them to tell the truth.'"

Reynolds denies any scientific lies or distortions. Yet while the company questions Colucci's motives for speaking out, Reynolds representatives and Colucci's former colleagues have only praise for his skills as a scientist.

"Tony has excellent credentials, marvelous credentials," said biochemist Sam Simmons, who worked with Colucci and now is Reynolds' director of smoking and health.

"As a scientist, Tony is without peer," said biochemist Joe Bumgarner, who also worked with Colucci and now is with the Environmental Protection Agency in Research Triangle Park. "He worked from flashes of brilliance to flashes of brilliance."

Cynthia Walters, a New Jersey attorney who tried the landmark Cipollone case with attorney Marc Edell, said Colucci could be important — "a hot witness" — in future tobacco lawsuits.

"It's one more piece of evidence to use at trial in terms of showing what they knew and when they knew it," Walters said. "What he says is an admission of what they knew."

And Colucci knows plenty about



◉ I'm not Clean Gene. But then again, Clean Gene wouldn't have the guts to speak out against the tobacco industry. ◉

Anthony Colucci, former scientist with R.J. Reynolds Tobacco Co.

the inner workings of Reynolds Tobacco.

After he was fired as a biochemist in 1970, the company hired him back in 1984 as the director of the scientific litigation support division. With broad experience in the effect of toxic substances on people, he worked in-house for three years with company attorneys to devise defense strategies in tobacco lawsuits.

Since 1988, Colucci, who lives in

Clemmons, has worked as a private consultant both for corporations and plaintiffs in product liability lawsuits involving toxic exposures. Ashland Oil, Texaco and the U.S. Department of Energy are among his clients. He's now working with Tennessee residents in the water pollution lawsuit against North Carolina's Canton Paper Co.

Reynolds retained Colucci as a consultant until March. He severed all ties with the company then after being subpoenaed by Edell for an April 29 deposition, or pretrial questioning, about an upcoming tobacco lawsuit. The deposition is under court seal.

Colucci, who has never testified in a tobacco lawsuit, refuses to discuss his work at Reynolds between 1984 and 1992, citing attorney-client privilege protections. He said his work in the 1960s is not similarly protected because it was not for the company's legal division.

Today, Reynolds attorneys who once sought Colucci's advice are now privately preparing for the day when they may have to attack his credibility in court.

Colucci likely will be labeled a scientist with an inflated sense of self-importance; as a disgruntled employee who advocated company positions on smoking as long as he was being paid; as a quick-tempered man of suspect moral character who has been divorced several times.

Colucci, admittedly blunt-spoken and volatile, says he knows what's coming. "I'm not Clean Gene," he says. "But then again, Clean Gene wouldn't have the guts to speak out against the tobacco industry."

He adds, "I had other choices than to work for Reynolds, but they paid me well. Money is money. I know people will say I'm just raving on the company. Fine. I don't expect to be a hero. But it's about time that somebody credible tells

Is what they knew then crucial now?

● Much about the biological links between smoking and disease remains unknown.

BY JUSTIN CATANOSO
Staff Writer

In the late 1960s, scientists at R.J. Reynolds Tobacco Co. sought to unravel the biological mysteries of how cigarette smoke possibly triggered emphysema.

Definitive conclusions eluded them then. They continue to elude scientists today.

The reason: The chemistry of burning tobacco is tremendously complex, producing more than 4,000 harmful compounds. The biology of the lung is equally complex, and the organ has a remarkable ability to repair itself after exposure to inhaled toxins.

This continuing quest for scientific answers complicates an injured smoker's task in establishing

WHAT CAUSES EMPHYSEMA? THEORIES CHANGE WITH TIME

THE ORIGINAL THEORY

Emphysema is a chronic lung disease in which the air sacs become riddled with holes, or get eroded. The condition makes it difficult to breathe. In the late 1960s, Reynolds and outside researchers suggested a possible link between emphysema and smoke-damaged pulmonary surfactant — a compound in the lung that keeps air sacs from sticking together after a person exhales. Without surfactant, people suffocate.

what the tobacco industry knew definitively years ago about the hazards of smoking.

In 1962, the first academic study was published suggesting that cigarette smoke helped cause emphysema by punching holes in the cell membranes of pulmonary surfactant.

Pulmonary surfactant is a compound in the lung that keeps air sacs from sticking together after a

THE LATEST THEORY

Many scientists are skeptical about the connection between emphysema and damaged pulmonary surfactant. They suggest that cigarette smoke appears to overstimulate a powerful chemical in the lung that keeps the lung free of germs. When too much of this chemical is produced, it not only eats germs but also eats lung tissue itself. Smokers with emphysema tend to have too much of this lung chemical and thus badly damaged lungs.

person exhales. Without surfactant, people suffocate. Emphysema is a chronic lung disease in which the air sacs become riddled with holes, or get eroded. The condition makes it difficult to breathe.

Between 1966 and 1980, several medical journal articles explored the possible connection between emphysema and smoke-damaged pulmonary surfactant. Several of those university studies were

funded by the industry-backed Council for Tobacco Research.

Reynolds scientists used those early studies as the basis for their smoking and health research — in which they exposed animals to cigarette smoke and studied the smoke's impact on the lungs and on the pulmonary surfactant. Findings suggested the damage helped cause emphysema.

Dr. John Clements, a pulmonary biologist at the University of California-San Francisco medical school, is considered the nation's leading expert on pulmonary surfactant. He said he has no doubt that smoking causes lung disease.

But he was skeptical 20 years ago about the connection between smoke-damaged surfactant and emphysema, and he remains skeptical today.

"You still can't rule it out 100 percent," Clements said. "But someone is going to have to come up with an awfully good idea to tie

it in. There is so much evidence for competing ideas."

Dr. Robert Phalen, a toxicologist at the University of California-Irvine, said the connection between smoking and lung disease has moved away from pulmonary surfactant. He explained today's most promising, but still unproven, theory for the cause of emphysema:

Cigarette smoke appears to overstimulate a powerful chemical in the lung that keeps the lung free of germs. When too much of this chemical is produced, it not only eats germs but also eats lung tissue itself. Smokers with emphysema tend to have too much of this lung chemical, Phalen said, and thus badly damaged lungs.

In mixing science with law, matters become even more complex.

For example, what was Reynolds' legal duty in 1969 to disclose information it was developing in its animal research division, if in 1992 it can be established that such re-

search may no longer be scientifically relevant?

Reynolds officials say they had no duty in the 1960s to disclose scientific information they now call invalid.

Experts in the area of tobacco litigation aren't so sure. They say today's standards and base of knowledge should not be used to judge yesterday's science.

"Had the research been carried on, it would have provided the company with information from its own scientists validating what they were reading in the medical journals," said Professor Donald Garner, a tobacco litigation expert at Southern Illinois University.

"For the good-citizen corporation, that would at least have meant a press release stating they were no longer denying the dangerousness of cigarettes. In my opinion, they were actively seeking to keep themselves ignorant to continue denying the dangers of smoking."

INTERNAL DOCUMENTS CAME OUT IN OPEN

320 suits had been won, but this one was different

● The tobacco industry was untouchable in court until the Cipollone case, the first time it ever confronted evidence of its own knowledge on the dangers of smoking.

BY JUSTIN CATANOSO
Staff Writer

Between 1954 and 1988, tobacco companies successfully defended more than 320 lawsuits brought against them by dying smokers or the relatives of dead ones. Not one case settled. Not one penny paid out in damages.

Then along came Rose Cipollone, the New Jersey woman who died in 1984 after 40 years of smoking. With the filing of her lawsuit, tobacco litigation took a new twist.

In 4½ years of research, Cipollone attorney Marc Edell found that tobacco companies had conducted extensive smoking and health studies of their own, had privately confirmed some of the hazards, yet continued to publicly deny the links between smoking and disease.

Tobacco attorneys fought Edell every step of the way. But he succeeded in extracting about 100,000 internal documents from the companies. R.J. Reynolds Tobacco Co., was not a part of the Cipollone suit; its internal documents never have been made public.

From those documents, Edell alleged fraud and conspiracy: that defendants Liggett, Lorillard and Philip Morris knew for themselves the very things they were denying — that smoking is dangerous — and that they covered that information up.

Cipollone smoked Chesterfields by Liggett most of her life, but she also smoked Lorillard and Philip Morris brands.

Edell also accused the companies of failing to adequately warn Cipollone of the hazards of smoking and of violating an implied product

ABOUT THE CASE

Rose Cipollone died in 1984. She had smoked cigarettes, mostly Chesterfields, for 40 years.

Her attorneys got access to tobacco company papers and argued that the companies knew of the dangers of smoking but kept quiet about them.

The tobacco companies argued that it was questionable whether smoking caused Cipollone's lung cancer, and they noted that she continued to smoke cigarettes even after warning labels went on packs in 1966.

A jury awarded the Cipollone family \$400,000. The tobacco companies appealed, and the verdict was overturned.

On June 24, in a landmark ruling, the U.S. Supreme Court ordered the Cipollone case retried. In the process, it spelled out how future tobacco lawsuits can be brought.

The tobacco industry and anti-tobacco groups hailed the ruling. Both sides have reason to cheer.

For the industry:

● The court barred most lawsuits charging that cigarette companies failed to warn smokers that tobacco is hazardous, traditionally the easiest cases for plaintiffs to file. U.S. Surgeon General warnings after 1969 generally shield the industry from such suits.

For potential plaintiffs, the court ruled that future lawsuits can allege:

- "Breach of express warranties," whereby a smoker can argue that deceptive cigarette ads breached an implied warranty by manufacturers that cigarettes are not harmful.
- "Fraudulent misrepresentation," based on a theory that by concealing facts about smoking and health, or by actually lying about damaging information in their possession, the manufacturers breached a legal duty not to deceive.
- "Conspiracy" among manufacturers to misrepresent or conceal the truth about smoking and health.

warranty that cigarettes are not dangerous. Both allegations have been the basis of all tobacco lawsuits since the 1950s.

In early 1988, Edell told a New Jersey jury they would be the first people outside the tobacco industry to learn how cigarette manufacturers shaped strategies to "deceive, confuse and mislead smokers."

To back that claim, Edell introduced internal memos and research reports from as far back as 1946 that show industry scientists took seriously the early controversial studies linking smoking to cancer and that industry scientists had confirmed some studies themselves.

Other documents revealed how tobacco attorneys devised plans to defend the industry.

One 1972 memo called the tobacco defense strategy "brilliantly conceived and executed" in how it created doubt about the health charge without denying it, advocated a person's right to smoke without actually urging them to do so, and continually called for more research on smoking and health questions.

The tobacco attorneys in the Cipollone case tended to follow that proven strategy.

They spent little time arguing over the documents. Instead, they brought forth doctors who cast doubt on whether Cipollone's lung cancer was caused by smoking.

And the attorneys stressed that Cipollone continued to smoke for 15 years after the warning labels went on cigarette packs. Smoking was her choice, her pleasure, they argued.

The six-person jury largely agreed. Four jurors didn't even believe smoking caused Cipollone's lung cancer. The jurors apparently spent little time discussing the fraud and conspiracy charges, and they dispatched with those charges quickly.

In the end, Liggett was found guilty of failure to warn prior to the first Surgeon General warning labels in 1966. It was the first time a tobacco company ever lost a verdict. Lorillard and Philip Morris were exonerated; Cipollone had



spent little time smoking their brands. No punitive damages were assessed.

Appellate courts later overturned the guilty verdict and the \$400,000 awarded to Cipollone's husband, Antonio. For the moment, the tobacco industry's perfect record remains intact.

On June 24, the Supreme Court ordered the Cipollone case be retried. Edell said no decision has been made on when, but he is pressing ahead with other lawsuits alleging fraud and conspiracy.

"We probably tried to make too sophisticated an argument," Edell said recently of the Cipollone trial. "With the documents, it's a very subtle form of misrepresentation that you're dealing with. This was the first case we tried; I would expect to do a better job the next time around."



Antonio Cipollone, above right, with attorney Marc Edell after the jury verdict in 1988 in which he was awarded \$400,000. His wife, Rose, left, died in 1984.

The Associated Press

STUDIES

Continued from page 2

Smoke sent directly into their lungs through nasal tubes. Nielson and Bumgarner recalled that the smoking machine was able to expose four rabbits simultaneously.

Colucci said his "smoking bunnies" studies suggested several things, which were largely in concurrence with outside academic research, but which Reynolds never made public:

● Smoke was damaging the rabbits' lungs at the most basic level — the cells — thus shedding light on how this damage was caused.

● Pulmonary surfactant was being damaged by smoke, and thus was damaging air sacs deep in the lung.

● The smoke appeared to trigger an increase in lysolectin in the lung, a toxic compound also found in snake venom, which appeared to damage the lung by shooting holes in lung membranes.

With the exception of the lysolectin finding, which Colucci said was preliminary, several academic labs had produced similar results. In 1967, researcher Samuel Giammona at the University of Miami concluded in a published study, "Tobacco smoke exposure would initiate changes in the surfactant, favoring the development of emphysema."

But Simmons, the Reynolds executive, said the rabbit exposure studies were badly flawed because the nasal tubes used to deliver smoke to the rabbits' lungs caused infections, leading to unreliable results. He called the smoking machine "state of the art" but said its exposure methods were crude by today's standards.

Simmons added that while small changes were found in the lungs of rabbits exposed to tobacco smoke, the same changes were seen in rabbits not subjected to smoke, thus making conclusions impossible.

Brubaker's report, however, praised the smoking machine and makes no mention of flawed exposure methods. The 26-page report was based on monthly reports and memos written by Nielson, manager of the biological research division, and other research supervisors.

Colucci acknowledged that "the experiments were not all perfect." But he said he had enough evidence to show "cigarette smoke was having a deleterious effect on the animals' lungs" and that the results should have been published.

Even so, Nielson said he doesn't think Reynolds was threatened by any of the work done by his team.

"We had little successes, but nothing major," said Nielson, who conceded his memory is dim on exact scientific findings. "I don't think we were anywhere near find-

ing something that would put the tobacco industry on alert."

Discussing the end

So why was the operation shut down?

Nielson isn't sure. He recalls being given neither a reason nor a warning for the 1970 firings.

"I was quite irritated that I was not consulted in any way whatsoever about the decision; That's a kick in the teeth to have that happen" said Nielson, who was not fired but was so disillusioned by the event that he left the company that fall.

Nielson said he believes the April 1969 death of Bowman Gray — who gave the animal research his blessing — might have doomed the biological research division. Top management changed. Among them, Ed Vasallo, who had no background in science, took over as the new vice president of research and development shortly after Gray's death.

Within a year, Vasallo, now deceased, eliminated animal research at Reynolds and fired the scientists. Soon after, he moved on to handle tax matters for the company.

Bumgarner and Colucci, noting the early collection of their laboratory notebooks by the legal department, believe Reynolds lawyers played a critical role in Vasallo's decision to eliminate the biological research division.

Simmons disagreed. He said the firings were triggered by several

events: First, Reynolds decided against buying Warner-Lambert, and at the same time, it was forced to sell off Penick & Ford, the starch manufacturer. Thus, he said, the company's need for biochemists was diminished.

In addition, Simmons said the biological division finished building the smoking machine, which Reynolds then gave to the Council for Tobacco Research. He said Reynolds also decided to fund the council to conduct biological research at better-equipped academic laboratories.

"Reynolds shut it down for business reasons," Simmons said. "I have no reason to believe otherwise."

But none of those reasons are cited in Brubaker's report, commissioned in response to a lawsuit that Reynolds' legal team was preparing for in 1985.

Reynolds attorney Daniel Donahue declined to discuss the Brubaker document. Explaining why one might be commissioned, Donahue said that some disinterested forum, "a court for example," might be interested in hearing

from an impartial outside observer. To that end, lawyers for Reynolds hired Brubaker to evaluate the quality of the company's biological research and to explain why it was shut down. Brubaker noted no scientific breakthroughs, but he deemed the research sound and moving in the right direction.

Still, he couldn't explain the firings and the stopping of research. "At this point, the precise reasons are unknown," Brubaker wrote. "It is not clear whether they were scientific, economic, both or neither."

THE PROJECT TEAM

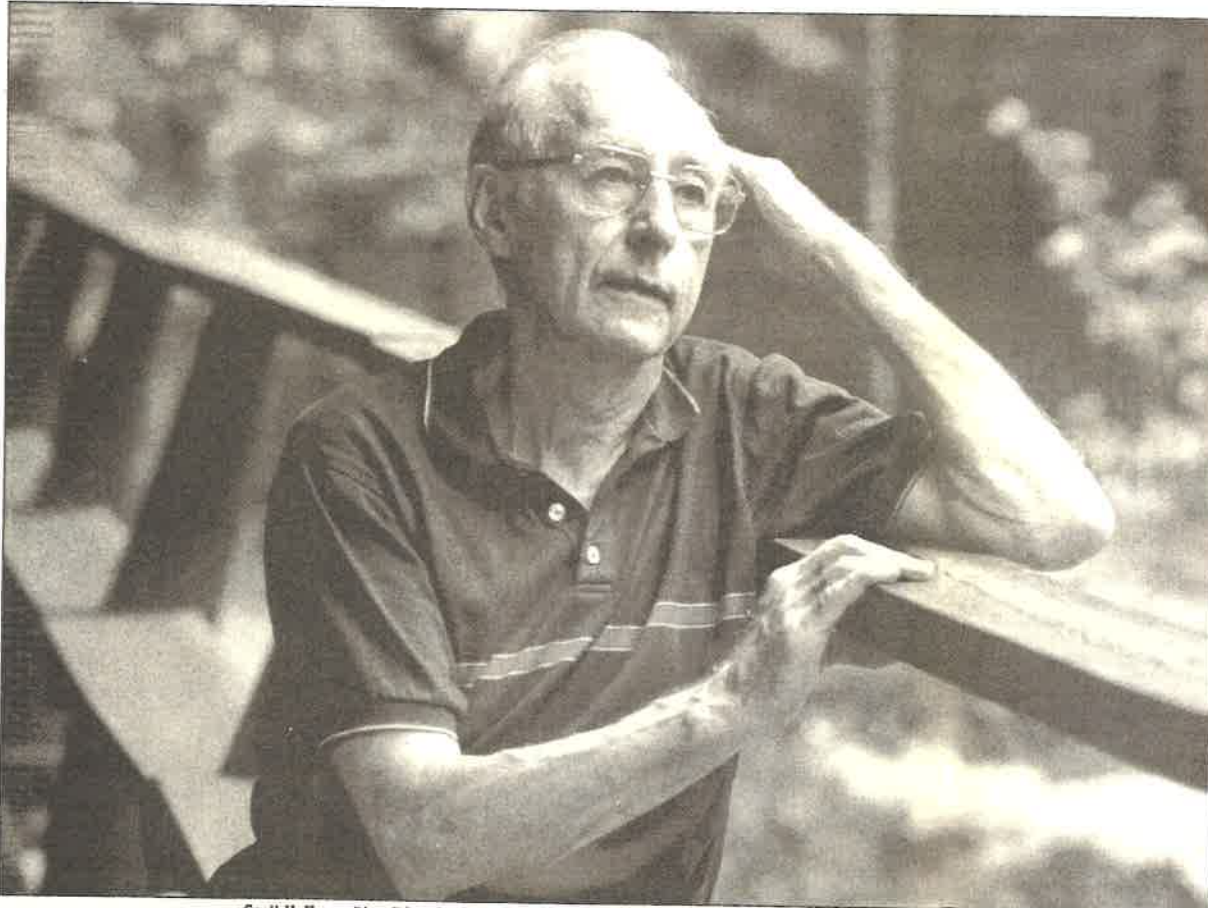


- Justin Catanoso**, 32, has been with the News & Record since 1987. He is the medical reporter and previously reported on Winston-Salem for the newspaper. He is a 1982 graduate of Pennsylvania State University.
- Buddy Moore**, 27, who designed the series, has been a copy editor with the News & Record since 1988. He is a 1988 graduate of the honors college at the University of South Carolina.
- Ann Morris**, 32, has been with the News & Record since 1985. An assistant city/state editor, she has been a Raleigh bureau reporter and Commentary editor. She is a 1981 graduate of Williams College.
- Tim Rickard**, 33, has been a graphic artist with the News & Record since 1985. He is a 1984 graduate of Wesleyan College with a bachelor's degree in art.
- Mark Sutter**, 34, has been with the News & Record since 1990. He received a master's degree from Georgia State University in 1985 and a bachelor's degree from Michigan State University in 1981.
- Taft Wireback**, 41, is a senior writer who has been with the News & Record since 1984. He is a 1973 journalism graduate of Pennsylvania State University, and he has a master's of fine arts degree from UNCG.
- Scott Hoffmann**, 35, has been with the News & Record almost four years. A University of Florida graduate, he has been photographer of the year four times by the N.C. Press Photographers Association.

BURNING ISSUES: The trouble with tobacco

When faced with falling business and mounting health statistics, one company took a novel approach: Determine what's bad in cigarettes and neutralize it. According to one Liggett & Myers researcher, they succeeded — all too well.

CRAFTING A SAFER SMOKE



Scott Hoffmann/News & Record

"They'd be admitting all the cigarettes they had been producing were not safe," researcher James Mold said of Liggett & Myers' decision.

● A Durham chemist spent 25 years developing a safer cigarette, then Liggett & Myers Tobacco Co. turned his dreams of success to ash.

BY TAFT WIREBACK
Staff Writer

PART TWO DURHAM — They called it the XA Project. It was supposed to revive the slumping fortunes of Liggett & Myers Tobacco Co., the Durham giant that once was the nation's third-largest cigarette maker.

XA's goal sounds almost quixotic: Find the major, cancer-causing ingredient in tobacco smoke and make it harmless.

Liggett researchers claim they accomplished just that in a research effort spanning about 25 years — developing, by the late 1970s, a cigarette that virtually eliminated cancerous tumors in test animals.

Then, Liggett refused to market the new product that might have revolutionized the industry and prevented or delayed thousands of cancer deaths.

"I think they were concerned that they'd have everybody suing them because they'd be admitting they had been making a hazardous cigarette," said James Mold, a chemist and Liggett's former assistant director of research. "They'd be admitting all the cigarettes they had been producing were not safe."

Mold, a Durham retiree, spent most of his career working on XA — short for the project's ID number in the company filing system, XA-5001. He left the company in 1984 after trying for more than five years to get Liggett executives to publish the scientific evidence behind XA and market the new product.

But even though Liggett tried stubbing out XA, it did not die. The project was rekindled four years ago as evidence in the Rose Cipollone case, a lawsuit by relatives of a New Jersey woman who died at 58 of lung cancer allegedly related to 40 years of two-pack-a-day smoking.

The Cipollone case became the first in which a jury ordered a cigarette company — Liggett — to pay damages for making products it knew were hazardous.

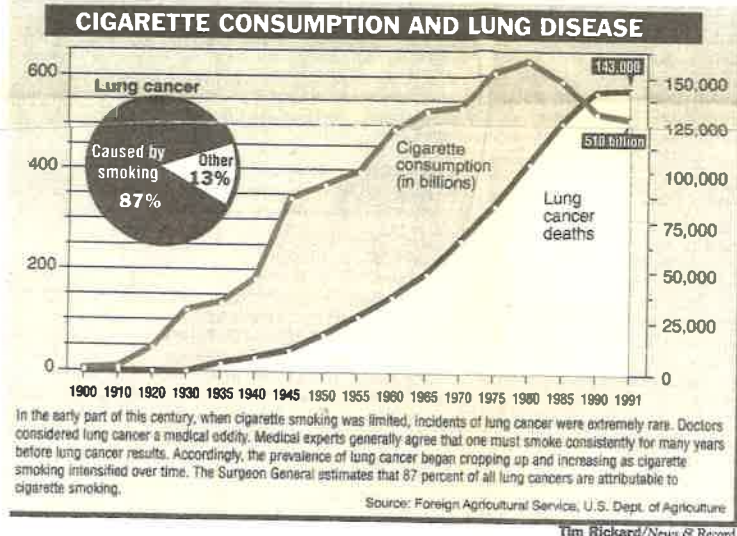
Lawyers pointed to XA as proof that Liggett knew tobacco's dangers for more than three decades, despite industry denials since the 1950s of any proven link between smoking and disease.

Liggett officials declined to comment on XA because of its link to the Cipollone case, which the tobacco company successfully appealed but which may be retried.

Health experts believe it's impossible to make a completely safe cigarette. But XA also is significant for what it reveals about the cigarette industry's long-term knowledge of the dangers of tobacco.

"They were attacking credible findings by outside researchers that smoking was harmful at the same time their own internal scientists were finding the same things," said Donald Shopland, coordinator of the National Cancer Institute's smoking and tobacco control program. "It's one thing to attack unknowingly. It's quite another to attack findings that you know are correct."

They stubbed it out, a chemist says of his company's refusal to market the new cigarette he developed. It hadn't caused cancer in tests on laboratory animals.



Industry still isn't convinced

● The links between smoking and disease remain a medical mystery, the tobacco industry says. Yet most medical experts agree the mystery long has been solved.

BY JUSTIN CATANOSO
Staff Writer

Many in America's medical community — perhaps out of deference to their own smoking habits — viewed with skepticism the mounting evidence in the 1950s and early 1960s that linked cigarette smoking with various diseases.

Lung cancer never has been produced successfully in laboratory animals, cigarette makers note. So where's the link?

However, by 1964, when the first Surgeon General's report was issued, scientists were increasingly convinced that smoking caused lung cancer, emphysema and heart disease. By 1992, with more than 57,000 scientific studies completed, nearly all scientists agree the case on smoking and health is closed.

Scientists employed by the tobacco industry, and the industry itself, are among the few holdouts who maintain that more research is needed. Their position rests on two assertions:

The scientific evidence is based on population studies that show only statistical connections between smoking and disease. Biological studies fail to show cause-and-effect.

Because scientists never have been able to successfully produce lung cancer, emphysema or heart disease in laboratory animals exposed to cigarette smoke, they cannot conclude that smoke causes those diseases in humans.

Dr. Dietrich Hoffmann, associate director of the American Health Foundation and one of nation's top smoking and health researchers, said both assertions are flawed.

Population studies are highly accurate in gauging the cause of diseases, Hoffman said, and have been relied on for more than a century.

For example, he said, studies in Germany in the 1880s showed that workers in dye manufacturing plants were at high risk for bladder cancer. A particular toxin in the dye was identified as cancer-causing. By the 1950s, based largely on studies of workers, dye manufacturers in America and Europe voluntarily agreed to stop using the toxins.

Another example is asbestos. Mesothelioma is a rare lung cancer linked solely to exposure to asbestos. This was learned by studying thousands of workers exposed to asbestos. Biologists still have not figured the exact way asbestos causes the cancer, but few people deny that it does. The studies have led to the phasing out of asbestos use across the country.

On the subject of smoking and health, the American Cancer Society has conducted studies lasting 10 years or more and involving millions of smokers and non-smokers. Not only smoking habits, but also health, diet and other possible toxic exposures have been tracked. Based on such studies, the Surgeon General has concluded that 87 percent of all lung cancers and 82 percent of all chronic lung diseases are caused by

cigarette smoking.

"The purpose of the biological studies on smoking and health are not meant to duplicate the large population studies," Hoffmann said. "That's not necessary. You do those studies to learn why smoke is carcinogenic and what the agents are, so you can try to reduce or eliminate those agents."

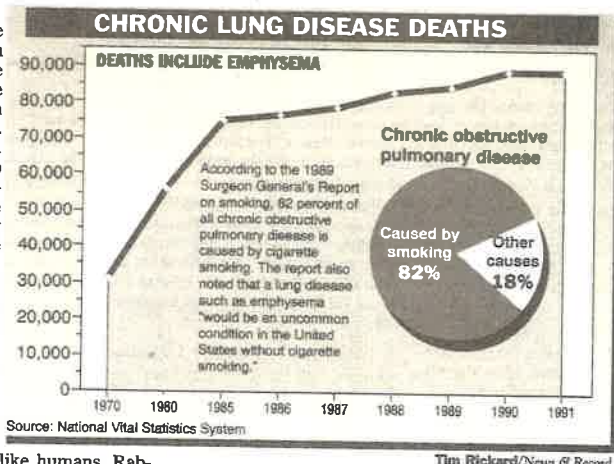
On the second point, Hoffman acknowledged that animal exposure studies have not produced lung cancer, emphysema or heart disease in animals.

The reason, he said, is that animals will not breathe cigarette smoke like humans. Rabbits actually will hold their breath until properly conditioned. Rats and mice will breathe shallowly. Also, animals breathe smoke through their noses; humans inhale smoke deeply into their lungs.

"Unlike with people, when you expose animals, you have to dilute the smoke with air," Hoffmann said. "If you don't, the animals die of carbon monoxide poisoning."

Because animals breathe shallowly, the tar in cigarettes — the primary carcinogen in cigarette smoke — accumulates mainly in the throat, he said.

According to reports from the Surgeon General, smoking studies during the past 15 years have produced animals with benign and cancerous tumors of the throat.

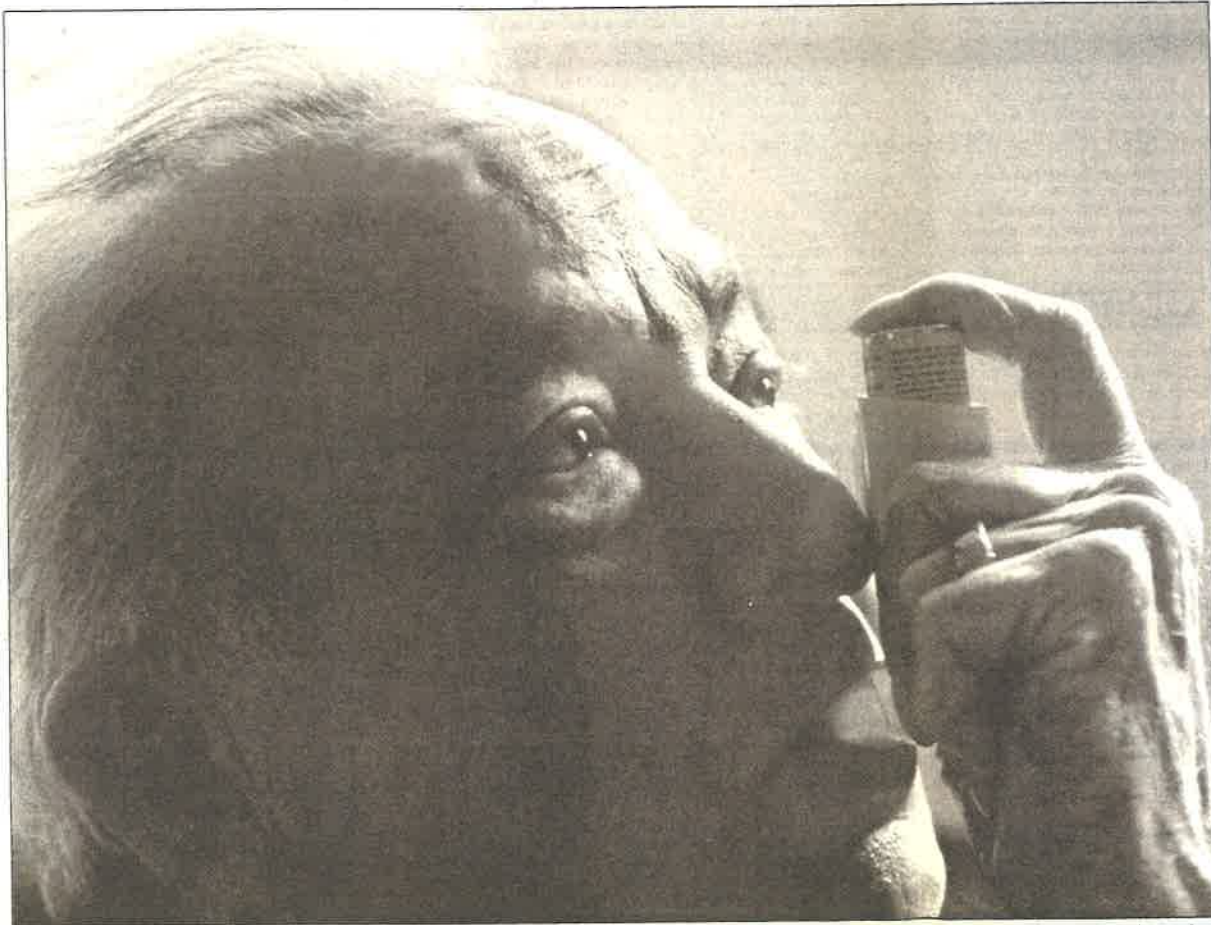


Please see XA, Page 5

BURNING ISSUES: Playing the blame game

Their years – sometimes lifetimes – of smoking now catching up with them, some are blaming tobacco companies for not playing it straight with them. But not all. Some say it was their own decision to start. So in the final analysis . . .

WHO'S REALLY TO BLAME?



Emphysema victim Paul Faulkenberry must use an inhalant device every few hours. He blames himself for his predicament. *Scott Hoffmann/News & Record*

● Sick smokers face big hurdles in suing tobacco companies – despite a recent ruling by the U.S. Supreme Court making more lawsuits likely.

BY TAFT WIREBACK AND JUSTIN CATANOSO
Staff Writers

PART THREE At the car dealership, Paul Faulkenberry almost always had a cigarette in his hand. Being sales manager was fast-paced and stressful. The Old Golds and Kents helped him cope. Now Faulkenberry suffers from emphysema. The Greensboro retiree squirts aerosol spray in his mouth every few hours to keep his lungs open. Still, he can hardly breathe sometimes. He traces it to 50 years of smoking. "I so regret it," says Faulkenberry, 77. "I wish I had never seen a cigarette."

So the logical next step is to hire a lawyer and sue the cigarette makers – especially after a U.S. Supreme Court's recent decision opening the door to such lawsuits. Right?

Faulkenberry doesn't think so. "They didn't make me smoke," he says of the tobacco companies. "I volunteered."

Despite this summer's ruling by the high court, legal experts don't expect an avalanche of successful, multimillion-dollar lawsuits against America's tobacco giants.

Juries might be aghast at evidence that company scientists secretly began unlocking the mysteries of tobacco's many hazards more than 35 years ago. They might be angered by claims the industry hid its growing knowledge of those dangers, even as its spokesmen vigorously denied or soft-pedaled links between smoking and disease.

But diseased ex-smokers – or their survivors – face daunting obstacles in translating that outrage into a jury award under the Supreme Court's new guidelines. Chief among them is the smoker's own guilt.

Many, like Faulkenberry, say they understood that smoking wasn't good for them when they began. Parents of the 1920s and 1930s, just like those of today, warned kids they were asking for trouble.

Medical researchers say that the smoker commits a slow suicide, pulling the trigger on a little gun loaded with cancer, emphysema and heart disease dozens of times every day ... for decades.

Juries generally are unsympathetic. "There's a presumption when you go in that if you're dumb enough to smoke, you deserve what you get," says Marc Edell, a New Jersey lawyer who sued the tobacco industry in the Rose Cipollone case, the lawsuit that led to the recent Supreme Court ruling.

Other drawbacks include the types of disease that smoking causes and the fact that health warnings have been on cigarettes for more than 20 years.

Says one smoker: "They didn't make me smoke. I volunteered." Juries generally have agreed.

Lawsuit win in N.C. not likely

● North Carolina laws make lawsuits by sick smokers especially difficult to win.

BY TAFT WIREBACK
Staff Writer

If a sick smoker ever wins a large verdict against the tobacco industry, it's almost a foregone conclusion the person won't be a North Carolina resident.

Lawyers say that in addition to the state's historic association with tobacco,

North Carolina has laws that make suing any manufacturer difficult.

"From a safety-rights point of view, North Carolina is behind where we were on segregation in 1954," says Doug Abrams, a Raleigh lawyer who specializes in product-liability cases.

North Carolina is one of only four states that allows manufacturers to use the injured person's negligence as a total defense to a lawsuit.

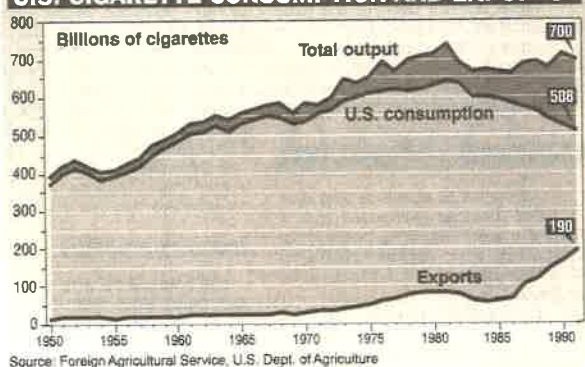
That means if injured people are even 1 percent responsible for their harm, the manufacturer doesn't have to pay any

damages. "Since all juries are finding at least some responsibility on the part of the smoker, it would be very difficult to sue successfully," says Robert Adler, professor of legal studies at UNC-Chapel Hill.

Federal courts offer no alternative, Abrams says, because they enforce each state's product-liability laws.

Adler says that states where a decision is most likely to go against a cigarette maker include Florida, Mississippi, New Jersey, Oregon, Massachusetts, Pennsylvania, and Texas.

U.S. CIGARETTE CONSUMPTION AND EXPORTS



Cigarette makers are making it big

● What, me worry? Cigarette makers haven't lost their money-making touch despite a hostile environment.

BY MARK SUTTER
Staff Writer

Life on the firing line hasn't kept the tobacco industry from improving its bottom line.

It's problems are well-documented. Among them: A steadily declining domestic market.

Hostile health organizations working toward its demise.

A parade of lawsuits filed by ex-customers and their families seeking damages for alleged smoking-induced illnesses.

Yet cigarette makers continue to make money. Tobacco company earnings increased by 14.9 percent annually between 1987 and 1991, according to a study by

Forbes and Value Line, compared with a 4.5 percent annual increase for all industries during the period.

Philip Morris and R.J. Nabisco, the industry's two giants, have diversified into food products and other areas – a nod, some say, to their concern about tobacco's future – but they rely on cigarettes for the majority of profits.

At Philip Morris, food and drink operations make up 50 percent of sales, but tobacco still accounts for two-thirds, or \$6.6 billion, of its annual profits, according to the Forbes/Value line report.

This showing is against a backdrop in which domestic cigarette consumption continues to fall at a 2 percent to 3 percent annual rate.

The industry successfully has counteracted the drops, in part, with price increases. Four such increases took place between January 1991 and April 1992.

Companies also have boosted profits by closing plants, paring payrolls and streamlining production operations.

Despite the decline in domestic sales, R.J. Reynolds, for instance, saw tobacco sales revenues increase by an average of 5.5 percent per year between 1986 and 1990, according to Thomas Hoans of Fitch Investors Service in New York. Reynolds' profits in the same period increased by more than 12 percent a year, Hoans said.

Profits were flat at \$2.3 billion in 1991, but analysts blamed that on the increased marketing costs to maintain domestic market share.

The overseas market has helped the industry keep on an even keel amid the storms around it. Exports have been increasing at a higher percentage rate than domestic consumption has been falling.

In 1991, for instance, exports rose 15.6 percent, while domestic consumption fell 6.7 percent, according to the U.S. Department of Agriculture.

"You might have a decline in U.S. domes-

tic consumption, but as long as the international market keeps growing, the combination makes a very powerful force," said Barry Ziegler, an analyst with the A.G. Edwards brokerage firm in St. Louis.

Within the past year, Reynolds and its international division have reached agreements to build a plant in Turkey, buy another in Hungary and enter a joint venture in Spain. And in July, Reynolds announced a partnership that will make it the first U.S. tobacco company to make cigarettes in Russia.

Kidder Peabody analyst Roy Burry projects that international cigarette consumption will grow at a rate of 2 percent per year for the foreseeable future.

He projects U.S. tobacco companies can increase their overall international sales by 2 percent to 5 percent per year.

Nor will public health or the publicity surrounding liability lawsuits deter all people from taking up the habit, analysts say.

"I think tobacco will always be a tremendous business," said Professor Donald Garner, an expert in tobacco liability cases at the University of Southern Illinois. "There will always be 15 to 20 percent of people who smoke. I don't think it will ever get any lower than that."

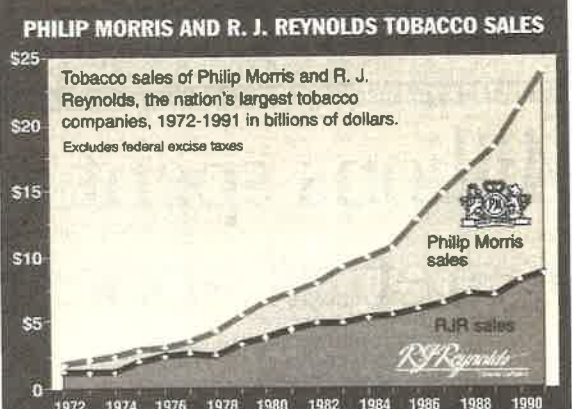
The stakes are high. The U.S. Department of Health and Human Services reports that smoking costs the nation \$52 billion annually in health-care expenses and lost work time. But as an industry, tobacco contributes to the Gross National Product nearly \$150 billion. Exports outpace imports by nearly \$20 billion.

In North Carolina, tobacco contributed \$7.3 billion to the economy in 1991 in the form of wages, profits and taxes, according to the Price Waterhouse accounting firm. That included 281,396 jobs and \$5.7 billion in wages.

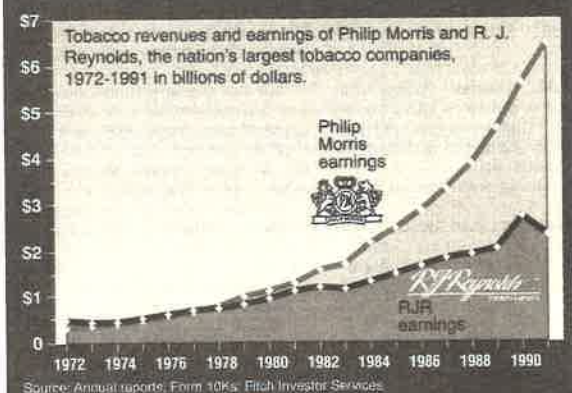
Still, liability lawsuits remain a wild card. But it's one Wall Street doesn't think will come into play.

Please see **SUITS**, Page 7

PHILIP MORRIS AND R. J. REYNOLDS TOBACCO SALES



R.J. REYNOLDS VS PHILIP MORRIS EARNINGS



"We could argue all day who got the benefit from the Supreme Court ruling the case of Cipollone v. Liggett," Kidder Peabody's Burry said. "But it's academic because there never really was a real risk (to the tobacco companies) to begin with."

Studies may breathe the life into lawsuits

● New information about halted research at R.J. Reynolds Tobacco Co. could spell trouble for the tobacco industry in court and Congress.

BY JUSTIN CATANOSO AND TAFT WIREBACK
Staff Writers

National anti-smoking activists said Monday that revelations about scientific research on smoking and health by Winston-Salem's R.J. Reynolds Tobacco Co. could play a part in ongoing criminal and civil cases against the tobacco industry. Also, the Coalition on Smoking Or Health in Washington said it will use the information, published

in a series by the News & Record, to help persuade Congress to regulate how cigarettes are made and what goes into them.

The coalition is made up of the national U.S. heart, lung and cancer associations. "There is no accountability on the part of the tobacco industry for what it perpetrates on the public," said Alan Davis, chairman of the coalition. "They enjoy an almost mystical exemption from regulation. We're trying to change that by taking the facts to Congress and to state legislatures."

The News & Record reported that Reynolds conducted confidential research in the 1960s that suggested how smoking causes emphysema. The research was halted and 26 biochemists fired in

1970. The company maintained then, as it does today, that the hazards of smoking are unproven.

Plaintiff attorneys said the new information about Reynolds will be used by sick smokers in pursuit of civil court damages. Those lawsuits will be based on accusations of fraud for failing to disclose what the company knew about tobacco's dangers.

"You have certain corporate people acknowledging that they knew smoking was harmful," said Cynthia Walters, a New Jersey lawyer involved in several major lawsuits against the industry. "Other corporate people were saying they were sure but decided not to find out. What you have, assuming the truth of either version, is the development of fraud."

A prominent anti-smoking activist in Washington added that the willingness of former Reynolds scientists to speak out candidly about their research also could enhance cases for plaintiffs.

"Here you have living, breathing witnesses," said John Banzhaf, director of Action on Smoking and Health. "Prior to that you mostly just had documents."

Reynolds spokesman David Fishel said the News & Record report doesn't hurt the company's legal position in any way and that the information should not be significant in tobacco lawsuits.

Victor Schwartz, a prominent Washington lawyer, agreed.

He said that to use the information effectively, a sick smoker would have to prove that Reynolds

stopped important research for deceitful reasons, then told lies about it that convinced the smoker to keep smoking - despite federal warning labels on every pack of cigarettes.

"That's a Mount Everest made of Teflon," Schwartz said of the task confronting sick smokers.

Meanwhile, federal prosecutors in New York are looking into possible criminal fraud charges against America's major cigarette manufacturers, based on allegations they purposely deceived the public about the hazards of smoking.

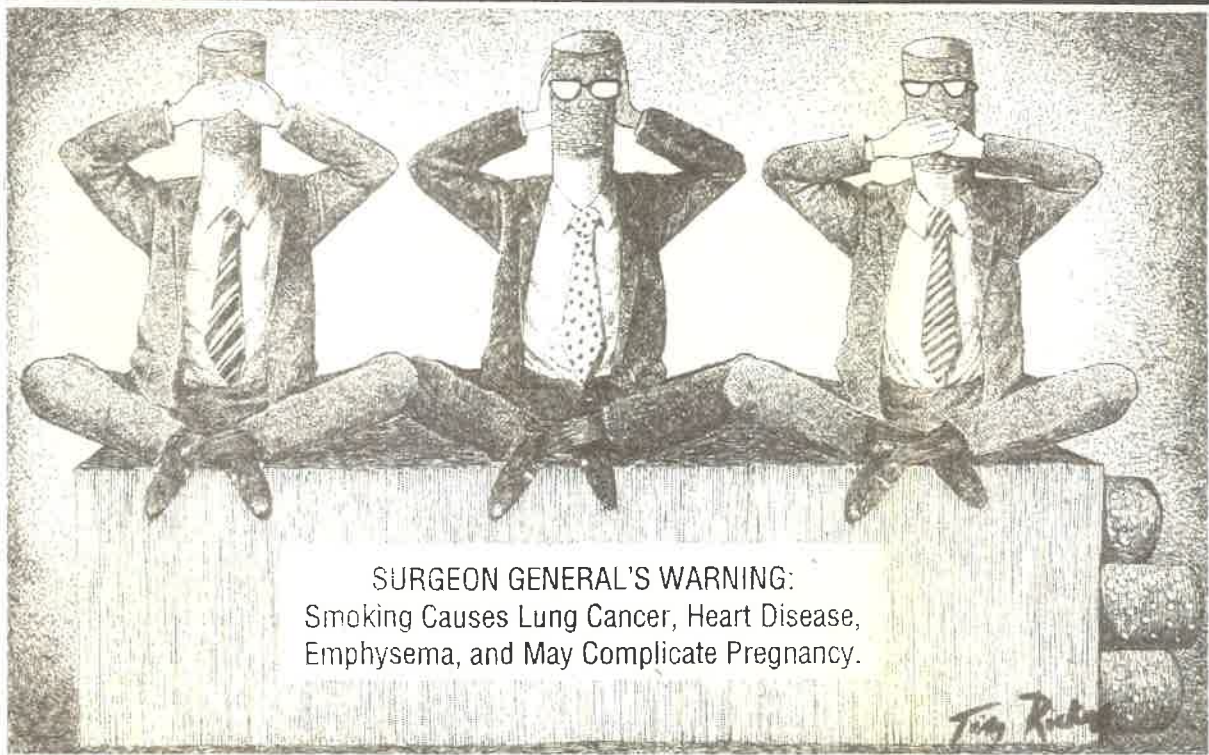
New information about Reynolds' research "may contribute to the indictment of tobacco executives and their attorneys," said Richard Daynard, director of the Tobacco Products Liability Project

in Boston, a group that helps attorneys prepare lawsuits against the industry.

"It supports other evidence that there is a conspiracy organized by tobacco industry attorneys to both pretend that active research is being done and make sure that no active research actually gets done," Daynard added.

Fishel said he had no knowledge of the criminal investigation being conducted by the U.S. Attorney's office for New York's eastern district. Federal prosecutors in Brooklyn also declined to comment.

News of the criminal investigation surfaced in June with a report in The Wall Street Journal. While details about the investigation have been scarce, Daynard said he spoke with prosecutors last week.



SURGEON GENERAL'S WARNING:
Smoking Causes Lung Cancer, Heart Disease,
Emphysema, and May Complicate Pregnancy.

Tim Rickard/News & Record

Truth a casualty in tobacco saga

● The cigarette companies should come clean, even now.

EDITORIAL COMMENT

You don't have to be an anti-smoking zealot to work up a healthy contempt for the tobacco industry. All you need is a shred of respect for the truth.

The truth is that smoking is a dangerous habit. The painful consequences have been well understood for years. Thanks to a truckload of scientific evidence and a raft of education campaigns, there aren't too many people left who aren't aware of them.

Yet the tobacco industry stubbornly refuses to concede the facts. The lawyers, the corporate brass, the paid scientists all insist that the evidence is inconclusive, that smoking may be a habit, but that it is not necessarily a dangerous one.

The charade has become more and more embarrassing. The industry finds itself campaigning against teenage smoking, for example, at

the same time it argues that smoking is harmless.

But the denials continue. Over the past three days, News & Record reporters Justin Catanoso, Taft Wireback and Mark Sutter have documented the depth of cynicism in the tobacco industry's defense of its products. The series raises questions about the industry's response as the risks of smoking became better known.

As early as the mid-1950s, the tobacco companies' own research linked cigarette smoking to cancer. A company chemist at Lorillard sounded an early warning of a cancer-causing agent in tobacco in 1946.

But the series suggests that rather than disclose their findings, cigarette companies chose a policy of willful ignorance. When the research began to look too promising in the late 1960s at R.J. Reynolds in Winston-Salem, for instance, a former R.J.R. researcher says the company shut down its lab and fired its scientists.

There is even evidence that the industry chose to squelch a safer cigarette rather than imply that conventional brands were dangerous.

A chemist at the Liggett & Myers Tobacco Co. in Durham worked for a quarter of a century to perfect a cigarette that suppressed cancer-causing toxins. His successful product was never marketed, he contends, simply because of its implications.

How many lives might have been saved or prolonged if the safer cigarette had been marketed?

The series performs a useful service in raising such questions. If cigarette companies maintained a deliberate silence about the dangers of smoking, they broke faith with a public whose health was put at risk. That breach of faith may come back to haunt the industry in the courts.

Chances are, however, that judgments against the companies won't be crippling.

The courts have correctly laid

the lion's share of responsibility for illness on individual smokers. Eventually, the generation of smokers who started lighting up before the Surgeon General's warning made risks plain will have disappeared. Lawsuits are not apt to become much easier to win.

The real work with regard to tobacco lies in Congress. Manufacturers are required to reveal to consumers what is in a can of corn, a carton of yogurt, but when it comes to tobacco, a substance everyone knows is dangerous, no labeling is required. That doesn't make sense.

The tobacco industry should come clean about the dangers of smoking and what it knew about them. But apart from that, the government can no longer rationalize shielding the industry from the kinds of disclosure that are the norm with other consumer products. And people in this region whose livelihood depends on growing or manufacturing tobacco had better be taking stock.

ONGOING BATTLE

Advice ignored, ex-PR man says

● A public-relations firm tried to buffer attacks on the tobacco industry, but the industry wouldn't heed the advice, a former president says.

BY JUSTIN CATANOSO
Staff Writer

Loet Velmans never will forget the company Christmas party in 1954. He recently had joined Hill & Knowlton, the powerful international public-relations firm, and he was enjoying the holiday gathering with his new colleagues.

Soon a buzz swept through the party. The company's top three executives - founder John Hill, chairman Bert Goss and president Dick Darrow just had left to meet top executives from the nation's biggest cigarette makers: R.J. Reynolds Tobacco Co., Philip Morris, Liggett & Myers, and American Tobacco Co.

The reason: panic. Scientist Ernest Wynder of the Sloan-Kettering Institute in New York had released a study showing

that mice grew cancerous tumors when their backs were daubed repeatedly with residue from cigarette smoke. The study, shocking at the time, formed the basis for tying cigarette smoking to lung cancer.

On that long-ago night in December, Velmans recalled in a phone interview, the tobacco giants hired Hill & Knowlton to begin damage control. The News & Record reported in a three-part series last weekend that cigarette makers themselves knew about the potential hazards of smoking but failed to acknowledge them publicly.

In hiring Hill & Knowlton, Velmans said, the industry was more interested in insulating itself from lawsuits than learning the truth about smoking and health.

Tom Lauria, a spokesman for the Tobacco Institute, an industry lobbying group in Washington for which Hill & Knowlton worked, declined to comment. He said he was not aware of Hill & Knowlton's relationship with the industry and never had heard of Loet Velmans.

Velmans, president of Hill & Knowlton from 1978 to 1986, said the firm had a clear strategy.

"From the beginning, Hill & Knowlton told the client there are two things that had to be clearly defined," said Velmans, now retired and living in Sheffield, Mass. "What, scientifically, is smoking; and what, scientifically, is cancer. We said, 'If you really want to win this battle, you have to come up with those answers.'"

He said the company was instrumental in getting the cigarette makers to set up what now is called the Council for Tobacco Research, or CTR. Its goal was to hire independent scientists to get to the bottom of the smoking controversy.

"We were saying to the client: 'Let the chips fall where they may. Whatever the results of the research, publish it,'" Velmans recalled. "But lawyers for the industry said, 'No matter what, you can't admit to anything.'"

How CTR has been used by the industry will play a critical role in the next major smoking lawsuit.

In that case, to be tried in New Jersey, it's alleged that Reynolds, Liggett & Myers and Philip Morris used CTR as a front to suppress smoking and health research that harmed industry legal positions. The companies deny the charges.

While Hill & Knowlton may have urged candor about research in private, its news releases through the 1950s and 1960s on behalf of the tobacco industry routinely attacked as inconclusive studies that linked smoking to various diseases.

By the late 1960s, Hill & Knowlton tried to get the tobacco industry

to budge on its position that while risk factors were associated with smoking and disease, cause-and-effect harm remained unproven.

Essentially, Hill & Knowlton urged the industry to take a more positive approach. According to a 1969 Wall Street Journal report, the company recommended cigarette makers concede that smoking may in some cases be harmful and that they emphasize steps the industry was taking to resolve the problem.

Hill & Knowlton failed in that effort, mainly because the tobacco industry feared a glut of lawsuits from injured smokers.

In the face of 57,000 studies on smoking and health, the tobacco industry maintains that the causal links to cancer, emphysema and heart disease remain unproven.

"We had an impossible situation," Velmans said. "We had a client who had a party line which said, 'There is no link, there is nothing, and anything coming out of the research was not enlightening.'"

In March 1969, having represented the tobacco industry for 15 years, Hill & Knowlton did not renew its contract with the cigarette makers and dropped the account.

The firm, which has worked for many powerful and controversial clients - including the Church of Scientology and the government of Kuwait - found it futile to represent the tobacco industry.

"I think we were all rather happy that the relationship was severed," Velmans said.

NEW THEORY

Smokers urged to sue for funds put on cigarettes

● An influential law professor is developing a new theory by which injured smokers can sue tobacco companies.

BY JUSTIN CATANOSO
Staff Writer

Over the years, Donald Garner's legal writings have influenced how cancer-stricken smokers sue cigarette makers in federal courts. Yet no such lawsuit ever has been successful.

So Garner, a law professor at Southern Illinois University, is developing a new legal theory by which smokers can allege in state courts that they have been cheated out of the money they've spent buying cigarettes. They can allege fraud.

"Instead of trying to translate the alleged fraud into an award for someone's lung cancer, the more direct approach would be that the industry cheated the public through its advertising and public statements that the hazards are not proven, and by inducing new people to smoke, and thus making money off the deception," Garner said.

Garner said he will support his theory with information published Sept. 26 and 27 by the News & Record that cigarette makers R.J. Reynolds Tobacco, Liggett & Myers and Lorillard proved for themselves the hazards of smoking years ago but covered up the information.

The U.S. Supreme Court, in a June 24 ruling, made lawsuits possible that allege fraud and deceit against tobacco companies.

A typical two-pack-a-day smoker who smoked for 30 years likely would have spent more than \$12,000 buying cigarettes. To make the court effort worthwhile, Garner said, thousands of plaintiffs would need to be lumped together in a so-called class-action lawsuit.

Garner sees a distinct advantage in suing tobacco companies in state courts.

Under state consumer deceptive trade practice laws, Garner believes injured smokers can put the focus on the alleged misconduct of cigarette makers and shift the focus away from a smoker's unwillingness to quit despite the Surgeon General's warning on each cigarette pack.

Federal juries have not been sympathetic to injured smokers, reasoning that the choice to smoke was the individual's, despite any possible industry wrongdoing. Also in federal courts, smokers have to prove their cancer or emphysema was caused by smoking, another difficult task.

"The whole point of these consumer fraud laws, particularly in states like Illinois and Minnesota, is to punish public deceivers," Garner said. "The laws deemphasize, radically at times, the proof necessary that this deception caused someone to buy the product and that they were harmed."

In a large class-action suit, he added, it would be impossible for the tobacco companies to focus on a single person's inability to quit an obviously dangerous habit.

Garner's theory, which he hopes to publish next year, received a mixed response from tobacco litigation experts. Some said it will work no better than other attempts to sue the industry. Still, they said the professor's views tend to be highly regarded nationally.

"Don Garner is a very creative thinker," said Richard Daynard, a law professor in Boston who leads the Tobacco Products Liability



● The whole point of these consumer fraud laws ... is to punish public deceivers. ●
Donald Garner

Project, an anti-smoking group. "He wrote the landmark articles that got the second wave of tobacco litigation going 10 years ago based on smoking and addiction."

In 1980, long before the U.S. Surgeon General called nicotine as addictive as heroin, Garner wrote that injured smokers should accuse tobacco companies of failing to warn of smoking's addictive nature. Garner wrote that addiction is associated with smoking too many cigarettes for too long, which eventually leads to lung cancer or emphysema.

Despite the popularity of such allegations in the 1980s, the tobacco industry successfully defended all lawsuits against it by focusing on the smoker's decisions to start and keep smoking.

Garner believes allegations of fraud will be difficult to win with in federal court.

For example, an injured smoker may be able to show that a cigarette maker covered up information that smoking is dangerous, while publicly saying the hazards remain unproven. But to win, the smoker must prove he or she relied on those false statements - despite federal warning labels on every pack of cigarettes that smoking is dangerous.

However, citing a precedent for fraud victories in state courts, Garner said that about 10 years ago, General Motors was successfully sued across the country for secretly putting Chevrolet engines in hundreds of Oldsmobiles.

The unsuspecting Olds buyers suffered no harm, Garner noted; they simply were deceived. State courts ruled the car buyers were entitled to refunds or new cars.

Victor Schwartz, a prominent Washington lawyer who has defended tobacco companies, said Garner's new theory is interesting but not likely to be a winner.

"I think plaintiffs would still have to prove some relationship between the alleged fraud and the damages they seek," Schwartz said. "With the General Motors example, the Olds buyers had no idea the car had a Chevy engine."

If they had known, Schwartz said, they may not have bought the car, or may not have paid as much for it. Thus, the information kept from the car buyers likely affected their decisions.

But with cigarettes, Schwartz says, smokers long have known exactly what they are buying - a product with tar, nicotine and potential health risks. So how have smokers been defrauded, Schwartz asks, if tobacco companies withheld information smokers already know about?

"When it comes to Garner's new theory," Schwartz said, "it starts out on the right foot. But whether it lands on both feet, I'm not sure."