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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.

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.

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.

against the tobacco industry has been removed from two prominent cases.

Despite a hostile environment, cigarette makers are making it big. Farmings increased

A federal judge who had harsh words

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.

ful, 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

Private studies are brought to light in a two-month

investigation into what the nation's major tobacco companies knew about smoking. in which research techniques grew increasingly sophisticated. One ex-Reynolds researcher says his work pointed toward an explanation for how smoking causes emphysema.

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

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.



Tim Rickard/News & Recons

Lawyers for diseased

smokers are very

nterested in what went

on at Reynolds'

research laboratory.

## 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

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

opment, 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.

Please see RJR, Page 2



**CAUSES OF DEATHS smoking vs. other** 

Continued from page I

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 in-dustry-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 Mor-ris; 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 Tist," 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 begin assaute of lune makes. 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 re-search that led to the development of technology and tools ... eventu-ally 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



OWe were not at a point where we could do a valid experiment.  $\Phi$ 

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

 Preliminary results in one dis-continued 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," Col-ucci said of the tobacco company's lawvers 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.

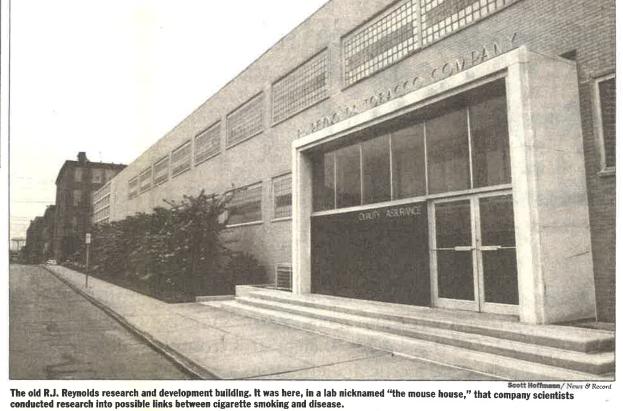
In the report, Brubaker, a New York toxicologist, says Colucci's work is "the more important of the smoking and health research effort because it comes close to determining what was thought to be the underlying pathobiology (mechanism) of emphysema."

But now Reynolds' officials — and some of Colucci's ex-col-

leagues — 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 Bum-garner, 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



from the start. Attorneys collected dozens of research notebooks from the biochemists several months be-fore 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," Bumgar-ner recalled. "That was the first indication we had that something was amiss."

Simmons, the Revnolds executive, denied that any scientific note-books 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 Ani-mals." 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 con cerning in-house smoking research were made more to guard against potential lawsuits than to aggressively seek answers to health ques

#### 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, fig ure 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 ciga-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 unneces-

sary 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 re-gardless 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 re-

search 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 re-

search 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 ac-cused 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 smok-

Nevertheless, walls soon were knocked out within the sprawling vellow-brick research building at Chestnut and Belews 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

rabbits were exposed to smoke, were

badly flawed. He said changes seen in the lungs of rabbits exposed to smoke were

also seen in rabbits not exposed, thus

making conclusions impossible.

deal only with smoking and health issues. Brubaker's 1985 report estimated about a third of the divi-sion's efforts were spent on such

joined the mouse house group in 1967 as a 27-year-old research bio-

chemist He now works with the U.S. Environmental Protection

Agency in Research Triangle Park.

problem, let's try to fix it, if there is

Nielson said the lab wasn't ad-

vanced enough to do cancer re-

search involving long-term animal

studies. But he was proud, nonethe-

less, of the program he put to-

gether.
"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

The new research team didn't

said.

projects.

'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

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

#### "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 Warn-

er-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 im-pact of smoke on the animals;

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 harm-

"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 ma-chine in order to analyze the effect of cigarette smoke on pulmonary surfactant, which the medical com-munity 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

exposed to smoke in either en-closed chambers, or by having the

Please see STUDIES, Page 3

**DIFFERING VIEWS ON ONE RJ. REYNOLDS PROJECT** COLUCCI SIMMONS One discontinued study probed the relation-Sam Simmons said the studies, in which

ship between smoking and emphysema Anthony Colucci, its leader, says his work was "on the cutting edge of science" and could have revealed a possible cause for

> the world what they are." Reynolds' public position on Colucci differs markedly from its private preparations.
>
> Dan Donahue, Reynolds' deputy

> general counsel for litigation, said he considers Colucci a friend. He said he is puzzled and saddened that Colucci would accuse the company of distorting science.
> "I have no indication from hav-

ing worked with Tony Colucci as a consultant for us, while he was being paid by us, that he had those concerns," Donahue said. "If all of a sudden he's developed those kinds of concerns now that he's not being paid by the company, I have to ask why.

Donahue also speculated that Colucci may be publicly trying to distance himself from the tobacco industry to enhance his consulting business with other corporations.
Essentially, Colucci agrees: "I'm

in the business of building defenses or prosecuting them in toxic tort litigation. How much credibility will I have if when they asked about cigarette smoking am I supposed to say? It's still a mystery?

"I want no ties to tobacco because, in my opinion, tobacco kills more people every year than all the toxic chemicals put together."

Colucci said he does not intend to make money as an expert witness in tobacco liability cases. He said he has enough consulting work. Plaintiffs' attorneys in Mississippi and Florida, who have contacted Colucci for help in tobacco law-suits, confirmed that he did not request a fee.
"They had a responsibility early

it and made a mockery of it. I think it's time for the tobacco industry to say, "This stuff kills people. We know that. Smoke at your own risk."

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 uncoming tobacco lawsuit. The deposition is under court seal

Colucci, who has never testified in a tobacco lawsuit, refuses to discuss his work at Revnolds 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 divi-

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 ratting on the company. Fine. I don't expect to be a hero. But it's about time that somebody credible tells

on to tell what their own researchers were finding out," Colucci said of Reynolds. "Instead, they ignored

#### exhaled. The Reynolds surfactant studies were based on white rabbits' being

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

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 week-end rodeo cowboy. Yet he's also a scientific whiz who speaks the so phisticated language of cellular bi-

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 be-lieve." And while he is apt to quote Socrates and Shakespeare, he often quotes Colucci: "In this world there are hammers and nails. Most peo ple are nails. I want to be a ham-

Don't mistake Colucci for a white knight. The contradictions in his life, particularly as they relate to 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 bio-chemist Sam Simmons, who worked with Colucci and now is Reynolds' director of smoking and

"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

And Colucci knows plenty about



Ol'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 To-

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

acco lawsuits.
Since 1988, Colucci, who lives in

### Is what they knew then crucial now?

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

BY JUSTIN CATANOSO

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 inheled toxics. 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 breaths. 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, neonle 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 emphy-sema by punching holes in the cell membranes of pulmonary surfac-

Pulmonary surfactant is a com-pound 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 Cali-fornia-San Francisco medical school, is considered the nation's leading expert on pulmonary sur-factant. 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 skep-

emphysema, and he remains skep-tical 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 sur-factant. He explained today's most promising, but still unproven, the-ory for the cause of emphysema:

Cigarette smoke appears to over-stimulate 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-

cally relevant?

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

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 Gar-ner, 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, to-bacco 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. 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 digarettes, mostly Chesterfields, for 40 years.

Her attorneys got access to tobacco com-pany 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 Ci-pollone's lung cancer, and they noted that she continued to smoke cigarettes even af ter warning labels went on packs in 1966.

A jury awarded the Cipolione 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 fawsuits 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

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 pos-session, 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 beak that claim Edell intro-

To back that claim, Edell intro-duced internal memos and research reports from as far back as 1946 that show industry scientists took seriously the early controversial studies linking smoking to can-cer and that industry scientists had confirmed some studies them-

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

One 1972 memo called the to-bacco defense strategy "brilliantly conceived and executed" in how it conceived and executed in how to 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 Ci-pollone case tended to follow that

proven strategy.

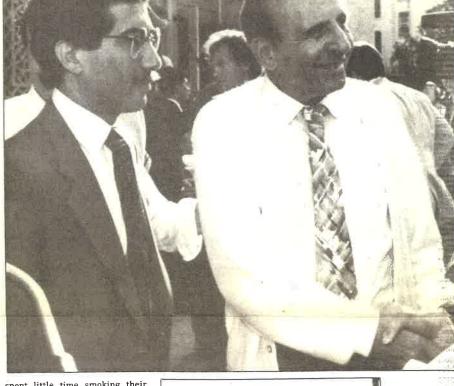
They spent little time arguing over the documents. Instead, they brought forth doctors who cast doubt on whether Cipollone's lung cancer was caused by smoking. And the attorneys stressed that Cipollone continued to smoke for 15

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 la-bels in 1966. It was the first time a tobacco company ever lost a ver-dict. Lorillard and Philip Morris were exonerated; Cipollone had



spent little time smoking their brands. No punitive damages were

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 re-tried. 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 Edellafter the jury verdict in 1988 in which he was awarded \$400,000. His wife, Rose, left, died in 1984. The Associated Press

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 fir-

ings and the stopping of research.

wrote. "It is not clear whether they

were scientific, economic, both or

are unknown."

'At this point, the precise rea-

Brubaker

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 -— thus shedding light on how this damage was caused.
- Pulmonary surfactant was be ing damaged by smoke, and thus was damaging air sacs deep in the
- · The smoke appeared to trigger an increase in lysolecithin in 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 lysolecithin 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" 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 impossi-

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 diviand 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 pub-

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, conceded his memory is dim on exact scientific findings, "I don't 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? 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 whatso-ever 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 back-ground 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 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.

THE PROJECT TEAM

Justin Catanoso, **Buddy Moore**, 32, has been 27, who designed the se with the News & Record since ries, has been a copy editor with 1987. He is the the News & Remedical reporter and previously cord since 1988. He is a reported on 1988 graduate Winston-Salem for the newspa of the honors college at the per. He is a 1982 graduate

of Pennsylvania

State University

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

liams College.



ness reasons," Simmons said.

have no reason to believe other-

cited in Brubaker's report, com-missioned in response to a lawsuit

that Reynolds' legal team was pre-paring for in 1985.

Reynolds attorney Daniel Dona-

hue declined to discuss the Bru-

baker document. Explaining why

one might be commissioned, Dona

hue said that some disinterested

forum, "a court for example," might be interested in hearing

But none of those reasons are

Tim Rickard, 33, has been a graphic artist with the News & Record since 1985. He is a 1984 graduate of Kentucky Wesleyan College with a bachelor's degree in art.



Mark Sutter with the News 1990. He received a master's degree from Georgia State University in 1985 and a hachelor's de gree from Michigan State University in 1981.



sons

writer who has been with the News & Record since 1984. He is a 1973 journalism graduate of Pennsylvania State University. and he has a arts degree from UNCG.

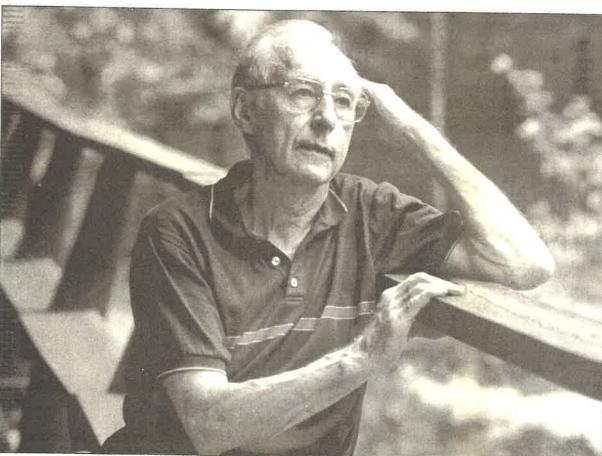
Taft Wireback



Association.

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

CIGARETTE CONSUMPTION AND LUNG DISEASE 150,000 125.000 510 million 100,000 Lung 75,000 200 50,000 1900 1910 1920 1930 1935 1940 1945 1950 1955 1960 1965 1970 1975 1980 1985 1990 1991 In the early part of this century, when cigarette smoking was limited, incidents of lung cancer were extremely rare. Doctors considered lung cancer a medical eddity. Medical experts generally agree that one must smoke consistently for many years before lung cancer results. Accordingly, the prevalence of lung cancer began cropping up and increasing as cigarette smoking intensified over time. The Surgeon General estimates that 87 percent of all lung cancers are stributable to

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

By TAFT WIREBACK Staff Writer

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 thirdlargest cigarette maker.

XA's goal sounds almost quixotic: Find the major, cancer-caus-ing ingredient in tobacco smoke an 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 pre-vented 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 admit-ting all the cigarettes they had been producing were not

Mold, a Durham retiree, spent most of his career work-ing on XA - short for the pro-ject'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 mar-

developed. It hadn't caused cancer in tests on laboratory animals.

They stubbed it out.

a chemist says of his

company's refusal to

market the new

cigarette he

ket 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 relat-

do do 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

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 Marianal Carear Institutes and the property and tobacco. the National Cancer Institute's smoking and tobacco control program. "It's one thing to attack unknowing-ly. It's quite another to attack findings that you know

Please see XA, Page 5

### 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

Many in America's medical community erhaps 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 smok ing 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

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 Healt 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

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 per-cent of all lung cancers and 82 percent of all chronic lung diseases are caused by

not meant to duplicate the large population studies," Hoffmann said. not necessar 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,

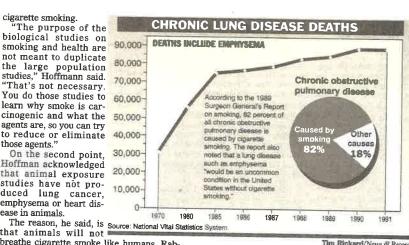
Hoffman acknowledged animal exposure studies have not produced lung cancer, emphysema or heart disease in animals.

The reason, he said, is Source National Vital Statistics 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 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

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.



### Lorillard was warned in '46

Lorillard Tobacco Co. got early warning of tobacco's dangers, then it researched ways to cut the cancer risk.

By Taft Wireback

Court documents show that Lorillard Tobacco Co. — which has manufacturing facilities in Greensboro - was alerted that cigarettes could be cancer-causing nearly 50

years ago.

In a 1946 letter to Lorillard's manufacturing committee, a company chemist even named the smoking byproduct — benzpyrene that many researchers would later label a cancer-causing agent

in cigarette smoke. "In other words, benzpyrene is presumed to be a combustion product of burning tobacco and, by animal experiments, it has been shown to possess definite carcinogenic properties," the chemist, H.B. Parmele, wrote in the memo 46 years ago.

The letter emerged during the

case of Rose Cipollone, a smoker whose family sued the Liggett Group, Lorillard and Philip Morris & Co. after she died of lung cancer, allegedly caused by cigarettes

made by the three companies. By the mid-1950s, Lorillard was doing experiments with mice to test the cancer-causing properties of cigarettes, according to another internal memo unearthed by Cipol-lone's lawyers. The confidential, 1955 memo described Lorillard's "animal experiments with respect to cigarette tars and tumor or can-cer formation."

Lorillard spokesman David Hardy said none of the company's internal documents admit that cigarettes cause disease. They show only that the company kept abreast of allegations its product might be harmful, then investigated them, said Hardy, a Kansas City lawyer who represents Lorillard and Philip Morris in the Cipollone suit.

By 1960, Lorillard was consider-ing additives to remove cancercausing agents from its tobacco, according to another document in the Cipollone case. A chemical supplier sent Lorillard a letter that

#### WHAT THEY SAID

If it is proven that cigarettes are do something about it regardless of what somebody else tells us to do. And we would do our level best. This is just being human - Bowman Gray Jr., chairman, R.J. Reynolds Tobacco

Co., June 1964.

"The case against smoking is based almost entirely on inferences draw from statistics, and no causal actually been established." – The Tobacco Institute

"If our product is harmful, we'll stop making it right now We now know enough that we can take anything out of our product, but we don't know what ingredients to take out. - James Bowling,

invested by the government, the lobacco industry and private organizations the smoking and health controversy remains unresolved. - Edward Horrigan vice president of Philip Morris, January 1972. Jr., chief executive R.J. Reynolds Tobacco Co., 1982

\*After three decades of investigation and millions of dollars

"Smoking has not been scientifically established as the cause of any human disease. Scientists simply do not know the cause or causes of the diseases claimed to be associated with smoking. Nor do they understand the mechanism or mechanisms whereby these

diseases develop. R.J. Reynolds Tobacco
Company position stated in a 1985 lawsuit Browner vs.

"The Tobacco Institute on hehalf of the industry recognizes that smoking may be a risk factor for different diseases. The scientific evidence, however, is based on epidemiological studies Those studies show risk factors, not causation, Causation has not been established."

Brennan Dawson, spokeswoman, The Toba Institute, August 1992.

1980s

1960s 1970s 1950m

"Certain scientists and medical authorities have claimed for many years that the use of tobacco contributes to cancer developm in susceptible people. Just enough evidence has been presented to justify the possibility of such a presumption. However, so little is known about the causes of cancel that no one can say with absolute

1940m

- From a 1946 memo from a Lorillard Tobacco Co. chemist to the company's manufacturing

WHAT THEY THOUGHT

year promising shipment of four

experimental catalysts to lower benzpyrene, carbon monoxide and

tar in cigarettes

flavorful. - From a 1961.

active materials in cigarette tobacco. These are: a) cancer causing b) cancer promoting

There are biologically

c) poisonous d) stimulating.

from a Liggett & Myers Tobacco Co. research consultant:

"For nearly 20 years, this industry has employed a single strategy to defend itself on three major fronts - litigation, politics, and public opinion." The strategy included:
"Creating doubt about the health charge without actually denying it; advocating the public's right to smoke, without actually urgin them to take up the practice; encouraging objective scientific research as the only way to resolve the question of health hazard."

- From a 1972 internal memo to Greensboro's Horace Kornegay, then president of the Tobacco Institute, which deemed defense of tobacco strategies "brilliantly conceived and executed."

"Historically, the joint industry-funded smoking and health research programs have not been selected against specific scientific goals, but rather for various purposes such as public relations, politica relations, position for litigation, etc. Thus, it seems obvious that reviews of such programs for scientific relevance and merit in the smoking and health field are not likely to produce high ratings."

From a 1974 internal memo by Lorillard executive A.W. Spears – stamped "Confidential" – reviewing scientific research funded by Lorillard

and other tobacco companies

Cipollone didn't start smoking until after 1966, when the first labels went on each pack warning that

XA

Continued from page 4

XA took seed at Liggett in 1954, in the earliest days of the public controversy over smoking and its links to cancer.

Ernst Wynder, a young scientist at the Sloan-Kettering Institute in New York, had just unveiled a shocking study that showed mice grew cancerous tumors when their backs were repeatedly daubed with a mixture containing the residue of

cigarette smoke.

Wynder's work formed a scientific basis for new statistical studies that tied smoking to increased death rates from cancer. Smokers

were worried.

The scare eventually subsided and cigarette sales resumed their upward pace. But in the immediate aftermath of Wynder's study, the industry feared that health-con-scious Americans would quit or significantly reduce their smoking.

Liggett's top scientist, the late F.R. Darkis, hired a Massachusetts research firm — Arthur D. Little Inc. — to try to duplicate Wynder's experiments.

Some suspected the cancer in Wynder's mice was caused by a fluke. For instance, his use of a gas burner to light the test cigarettes, which were identified in Wynder's published study only as Brand X. At a March 1954 meeting with

Arthur D. Little biologists, Darkis said the scientists should try to find out which brand Wynder had used in his tests. Then, Brand X could be tested against Liggett's top-selling

product, Chesterfield.
"If Chesterfield turns out to be negative and X is positive, it would then be possible to say that by using Dr. Wynder's techniques Chesterfield did not produce can-cer in mice," Darkis said, accordto minutes of the all-day

Then Darkis gave voice to the

vision that would become the XA Project, result in the hiring of Mold and become Mold's obsession for the next quarter century.

"If we can eliminate or reduce the carcinogenic agent in smoke," he said, "we will have made real progress."

#### From shellfish to tobacco

Mold, a Minnesota native, is a and slender man with a re-served, precise manner — almost the stereotypical image of a lab-coated scientist preoccupied with equations, test tubes and exotic ex-

He spent most of his early career studying contaminated shellfish for the U.S. Chemical Corps, which hoped to use the paralyzing poisons from toxic oysters, clams and mus-sels in chemical warfare.

Federal officials eventually de-cided it wouldn't work, and Mold went looking for another job. He met Darkis at an American Chemical Society gathering in 1955.
From the outset, Mold's chief

assignment was to find the cancer in cigarette smoke. Others at Lig-gett may have doubted it was there, but Mold wasn't among them. Biological researchers at Arthur

D. Little duplicated Wynder's ex-periments with Chesterfield and found it also caused cancers, though fewer than Brand X. Mean-while, statistical evidence kept mounting to show that the more you smoked, the more likely you

were to die of cancer.

"You'd have to be really blind not to believe that," Mold, 71, a non-smoker, said recently.

Still, it was an era when ciga-rettes were an ingrained part of American culture. Half the nation's men smoked. Movie actor Ronald Reagan heartily endorsed Chesterfield in magazine ads, promising "no unpleasant aftertaste."

Mold moved into Liggett's twostory research center near down-town Durham, across the street

from the company's huge new manroin the company's nuge new man ufacturing plant that proudly displayed a large silver plaque, "Dedicated to the millions who smoke the cigarette that satisfies — Chesterfield."

Mold's first task was breaking cigarette smoke into its most ele-mental components so he and his staff could isolate the carcinogens.

"Initially, a lot of people were hoping it was in the paper, the burning of the cigarette paper, something they could alter," Mold

"It soon became clear that it wasn't in the paper but was actu-ally coming from the tobacco."

#### Where there's smoke...

Mold decided the culprit was the simple act of lighting up: adding fire to tobacco or virtually any other vegetation.

The intense heat broke down the

most basic building blocks of to-bacco — carbohydrates — and they recombined into larger hydrocar-bons that were carcinogenic.

The quest took eight years. But in 1963 — a year before the first U.S. Surgeon General's report branded smoking hazardous — Mold and his team pinpointed what they believed was the most carcinoscipus component. nogenic component.

They picked a group of hydrogen

and carbon compounds formed in the burning process, such as benzpyrene, a crystalline substance present in byproducts of coal, oil, "There's a whole family of them," Mold said of these cancer-causing compounds, which scien-tists refer to as polycyclic aromatic

hydrocarbons.

That year Liggett paid golf legend Arnold Palmer \$10,000 to smoke another of its brands, L&M.
Part of his job was to toss one onto the green before putting, then pick it up and take a puff afterward.

In a less-publicized gesture, Lig-gett forwarded its cancer research

to the Surgeon General under an agreement the data would not be made public.

One of the proposed additives

was a mixture containing palla

dium, the chemical later used in producing a "safer" cigarette by

Mold's research was included. But the report suggested a variety of other possible explanations for the health problems of smokers, ranging from coffee drinking to air pollution and lack of exercise. The Liggett document concluded that studies linking tobacco to disease weren't strong enough to "warrant a degree of public concern greater than that provided by many other common habits."

#### On the trail

Mold spent the next decade on the trail of a secret ingredient, an additive to snuff out carcinogens.

He and his team of five other

scientists tested more than 200 sub-stances before deciding that the most effective cancer shield was palladium — a heavy metal related to platinum and widely known as a atalyst, a substance that speeds chemical reactions.

"The Ligger Chemiss now had when a small amount was added, it knocked out half the cigarette's carcinogenic activity. Later, they learned that by mixing magnesium nitrate with palladium they could further boost the cancer block.

Biologists at Arthur D. Little biologists at Arthur D. Entonesstarted "mouse-painting" tests in the early 1970s. Every day for 80 weeks, they painted residue of Mold's doctored cigarettes on 50 to 100 mice, specially bred to be susceptible to cancer.

The biologists repeated the test periodically during the ensuing decade. The results showed no can-cers on mice coated with the correct mixture of XA tobacco, while control groups painted with regular tobacco residue had numerous malignancies, Mold said. Even 20 years later, Mold glows

with pride recalling the heady days of discovery. "I would think the R.J. Reynolds and Philip Morris were three or four times the

size of our operation," he said. "But we were the only ones in

researchers at Liggett in Durham.

case, a jury exonerated Lorillard and Philip Morris, whose products

In a trial in the 1988 Cipollone

the whole damned world able to solve this problem. And there were lots of other people working on it, even though they don't admit it."

#### The big letdown

Liggett's senior executives seemed gung-ho. Company re-searchers made a special blend of tobacco with the new additive.

Liggett got patents on the palla-dium and nitrate process. The com-pany bought large stores of palladium to ensure a steady sup-ply, Mold said. A marketing team began readying an advertising campaign for the new product, which it dubbed Tame cigarettes.

Mold said that ads for the new product would not have claimed the threat of human cancer had been eliminated. They would say that mice did not get cancerous tumors when exposed to the smoke.

"We were just going to say what the test data showed," Mold said. But the momentum behind XA as short-lived.

During the Cipollone trial four years ago, Liggett officials said they grew leery because the new cigarette had a funny flavor. Com-pany officials also remembered worrying whether the heavy metal palladium would create its own nealth problems for smokers. Moreover, the nitrate in XA gave it relatively high levels of nitrosamines, nitrogen compounds also linked to cancer

But Mold said Liggett officials told him earlier that, far from tast-ing bad, XA got a passing grade in taste tests.

Mold said Liggett's alleged health worries were baseless. Research showed none of the palladium additive made its way into the bodies of test animals, he said. Nitrosamines were removed with a filter, Mold said, and levels were no higher than for other major brands.

The real problem with XA, Mold said, was that Liggett's lawyers feared the legal implications of in-troducing the new product.

smoking may be hazardous.

To promote it properly, Liggett would have to make an admission, however subtle, that untreated cigarettes were less safe.
After 1975, Liggett lawyers at-

tended every meeting about the product, Mold said. He said notes were collected after meetings so there would be no written record.

Memos and letters about the new

cigarette bore the legal department's stamp, "lawyer-client privilege," a technique apparently intended to keep the material from being subpoenaed in a court case.

Mold said the legal department tried several times, unsuccessfully, to kill off the project. He was pre-vented from publishing his findings because Liggett attorneys were leery of having the company's name linked to XA, Mold said.

Mold said he and some Liggett officials, including former president Kinsley V. Dey, worked to keep the project alive. They even tried to sail the table to be said to tried to sell the technology over-seas. Dey declined to comment.

Meetings were conducted with such groups as the American Can-cer Society and the National Cancer Institute to gauge their reactions to the new cigarette. Dis-cussions were held with a senior White House official, Charles O'Keefe, assistant health adviser to then-President Jimmy Carter.

During the Cipollone trial four years ago, Liggett officials said they got no encouragement from health organizations to market XA. Indeed, officials at anti-smoking groups say they couldn't endorse a cigarette that addressed only one of tobacco's hazards. And Mold acknowledges the XA additive doesn't prevent other diseases linked to cigarette smoking, such as emphysema and heart disease.

Lawyers for Rose Cipollone's family claimed during the 1988 trial that her death was partly caused by Liggett's refusal to market XA. A judge dismissed that charge, mainly because no proof was pre-sented that Cipollone would have switched to the new cigarette.

#### Industry pressure

Mold staved on with Liggett for four years after that, amid assur-ances the company still had big plans for the new cigarette. Finally, he decided Liggett executives were stringing him along. He thinks the other tobacco com-

panies, by then much stronger financially than Liggett, had a hand in the company's refusal to market the "safer" cigarette. They put pressure on Liggett through the Tobacco Institute, the industry's influential lobbying arm, Mold said. The institute declined to comment.

"If this product came out, they would really stand to lose their business," Mold said of the other major cigarette makers. He said the other companies probably would have had to have remade all their brands, using Liggett's patented technique.

How sure is Mold that XA could have saved lives or at least prolonged them?

"Nobody can say that for sure," he said. "We have evidence that we reduced the tumor potency of this material in animal tests. As to whether that could be transferred into human smoking, you certainly would hope that it would.

Mold said that despite his belief that smoking causes cancer, he staved with Liggett all those years because it seemed to be responding properly to the cancer threat.

"It looked," he said, "like we were trying to do the right thing.'

FROM FILTERS TO FREEZE-DRYING

### Millions spent to make cigarettes appear safer

As health claims against smoking intensify, the tobacco industry makes cigarettes appear safer - while never saying they are hazardous.

BY JUSTIN CATANOSO Staff Writer

In 1952, Reader's Digest published the article "Cancer by the Carton." That same year, Lorillard introduced Kent, the first cigarette with a filter tip.

The timing was hardly coinci-

Researchers had been issuing studies linking cigarette smoking with lung cancer and lung disease. Publicly, tobacco companies maintained that their product was safe; privately they spent millions to de-velop and market cigarettes that appeared safer to suddenly health-

conscious smokers.

Filters became the rage Cellulose filters. Charcoal filters. Recessed filters. Perforated filters. The goal was to lower cigarettes' level of tar, a known carcinogen, reduce carbon monoxide, which damages the heart, and lower nico-tine, a powerfully addictive drugThe advertising blitz followed: "Smoother, Cooler Smoking," Chesterfield; "Just What the Doctor Ordered," L&M; "The real thing in mildness," Tarryton.

Critics long have maintained that for legal reasons, the tobacco industry could never say why it was adding filters. That would be a tacit admission that filterless cigarettes

But the industry didn't need to say anything. The U.S. Surgeon General was getting the word out. And the industry reaped the bene-fits as more smokers switched to filters rather than quit.

In 1966, two years after the first Surgeon General's report called smoking a major health hazard, the U.S. Public Health Service studied the makeup tobacco smoke and concluded, "The preponderance of scientific evidence strongly suggests that the lower the tar and nicotine content of cigarette smoke, the less harmful the effect."

R.J. Reynolds Tobacco Co. long has been recognized as an industry leader in innovative tobacco products, from Winston's filter tips in the mid-1950s to Premier, the illfated smokeless cigarette intro-

duced 30 years later.
In the late 1960s, the company

THE GOOD AND THE BAD GOOD

Cigarettes have smaller amounts of dan-

Nicotine 37 mg 13 mg Early 1950s 2 mg 0.9 mg Today BAD

Smokers today tend to smoke a greater number of low tar and nicotine cigarettes and draw more deeply to compensate for the lower levels, thus negating many possi-

experimented with using freezedried tobacco as a way of reducing tar, nicotine and carbon monoxide levels. It also pioneered the process of "puffing" tobacco — literally exploding tobacco leaves to increase bulk but decrease the amount of tobacco used in a cigarette. This also helped lower tar and nicotine content.

In 1970. Revnolds introduced Vantage, which the company touted as lower in tar and nicotine than nearly any other cigarette.

Also at that time, the Surgeon

General continued to link more health problems to smoking: coronary heart disease, cancers of the throat and mouth, and low birth-

weight babies, in addition to lung cancer and chronic lung disease.
"We do not make any judgment about lower tar and nicotine from cigarettes," W.S. Smith Jr., a com-

pany vice president, said of Van-tage in 1970. "We simply have developed this new brand in response to growing demand for a cigarette that offers the combination of full flavor, easy draw and lower tar and nicotine." But providing "full flavor," by

Reynolds or anyone else, did not come easily. Consumer tests showed that early low tar and nico tine cigarettes tasted badly. So cigarette manufacturers began adding chemical flavorings to boost taste. "The industry won't disclose

what chemicals are going in," says Scott Ballin, a vice president with the American Heart Association in Washington. "No one knows the pharmacological implications of these additives.' That's because the industry is not obligated to disclose what

chemicals go into a particular brand. Although the Surgeon General says smoking is responsible for 430,000 deaths a year, no federal agency regulates how cigarettes are manufactured or what That fact has enraged anti-smoking forces for years and was a motivating factor behind the ag-

gressive attack on Premier. Revnolds' so-called smokeless cigarette, introduced in 1988. Premier didn't burn tobacco. It warmed tobacco-flavored beads by

drawing hot air through its carbon tip. No ashes and virtually no smoke came from the lit end.

Independent scientists who evaluated Premier concluded that it was a safer cigarette because the trouble with regular cigarettes But legally, Reynolds was stuck

in a familiar bind. Company attorneys advised that Premier could not be touted as safer because that could indict its other brands as unsafe. So Reynolds said Premier substantially reduced "controversial compounds." They called it "The Cleaner Smoke."

The American Medical Association, however, called it a slick nicotine delivery device and not a cigarette at all. The AMA and other anti-smoking groups demanded that Premier be regulated by the Federal Drug Administration like any other drug. Reynolds spent \$500 million to

new products for up to 18 months But Premier was pulled from its two test markets after just five months — before the FDA could rule on whether Premier was a cigarette or a drug. Some health experts, who acknowledge that 50 million Ameri-

develop Premier. It usually tests

cans choose to smoke despite the known risks involved, lament tobacco industry legal positions that seemingly preclude less-hazardous cigarettes from being marketed.

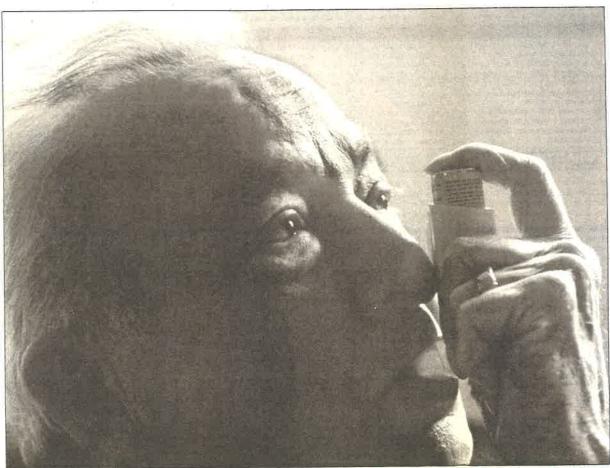
"If you can make a substantial improvement in the health of people who continue to smoke, then you should do it," says Dr. Peter Dews, a pharmacologist at Harvard University Medical School. "With Premier, I think an opportunity was missed.

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 BLAM



Emphesema victim Paul Faulkenberry must use an inhalant device every few hours. He blames himself for his predicament.

### Lawsuit win in N.C. not likely

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

By TAFT WIREBACK

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

"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, profes-sor 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, Pennsyl-vania, and Texas.

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

At the car dealership, Paul Faulkenberry almost always had a cigarette in his hand. THREE Being sales manager was fast-paced and stressful. The Old Golds and Kents helped him

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

me smoke. I

volunteered." Juries

generally have

agreed.

So the logical next step is to hire a lawyer and sue the cigarette makers - espe-cially after a U.S. Supreme Court's recent decision open-ing the door to such lawsuits. Says one smoker: "They didn't make

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

spite 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 guide-lines. 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. Par-ents 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.

Please see SUITS, Page 7

# U.S. CIGARETTE CONSUMPTION AND EXPORTS 600

### 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

Life on the firing line hasn't kept the

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

Hostile health organizations working toward its demise.

A parade of lawsuits filed by ex-cus-tomers 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 RJR Nabisco, the industry's two giants, have diversified into food products and other areas - a nod, some say, to their con-cern 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 Forbes/Value line report.

This showing is against a backdrop in which domestic ckard/News & Record 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 boost-

ed profits by closing plants, paring payrolls and streamlin-

ing 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 ncreasing 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 growinternational market keeps grow-ing, 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.

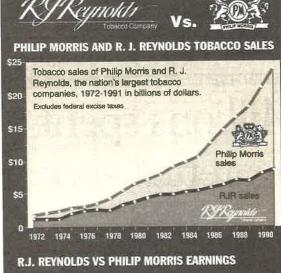
"I think tobacco will always be a tremendous business," said Professor Donald Garner, an expert in tobacco liability cases at the University of Southern Illinois. "There will always be 15 to 20 percent of people who smoke. I don't think it will ever get any lower than that."
The stakes are high.

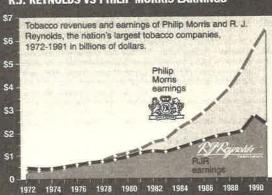
The U.S. Department of Health and Human Services reports that smoking costs the nation \$52 billion annually in health-care expenses and lost work time. But as an industry, tobacco contributes to the Gross National Product nearly \$150 billion. Exports outpace imports by nearly \$20 billion.

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 Water

and takes, according to the Price Water-house 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





"We could argue all day who got the bene-fit 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."

#### **RECORD**

### Judge who spoke bluntly is removed

The tobacco industry succeeded this month in having an outspoken judge removed from two prominent lawsuits.

By Justin Catanoso Staff Writer

For 10 years, U.S. District Court Judge H. Lee Sarokin of Newark, N.J., presided over high-profile to-bacco lawsuits, longer than any other federal judge. His sharplyworded opinions consistently attracted national headlines.

In the landmark Cipollone case in 1988, Sarokin denied a motion to end the trial. He wrote that a "jury might reasonably conclude" that

tobacco companies willfully ignored the dangers of smoking and conspired to misrepresent health

issues concerning smoking. In February, in what could become the next landmark tobacco case, Sarokin ordered the Tobacco Institute to release 1.500 confidential documents. The institute argued the documents are protected by attorney-client privilege; Saro-kin ruled they show that the industry has lied for decades about the hazards of smoking.

"Who are these persons who knowingly and secretly decide to put the buying public at risk solely for the purpose of making profits and who believe that illness and death of consumers is an appropriate cost of there own prosperity!"

Sarokin wrote after reviewing the documents.

"Despite some rising pretenders, the tobacco industry may be the king of concealment and disinfor-

For the past five years, tobacco industry attorneys have argued that Sarokin, a 63-year-old Carter Administration appointee, is biased against them. They have fought re-peatedly to have him removed from key tobacco cases.

This month, they got their wish. On Sept. 8, the Third Circuit Court of Appeals in Philadelphia unanimously removed Sarokin from Haines vs. Liggett, R.J. Reynolds, Philip Morris and the Tobacco Institute. In what it called an "agonizing" decision, the court said it but that his blunt opinions gave that appearance.

The court also ruled that a new federal judge will decide whether the industry must turn over the 1,500 confidential documents sought by attorneys in the Haines

Marc Edell, attorney for Susan Haines, said he will appeal Sarokin's removal. Just the same, the tobacco industry cheered the re-

moval as a major victory.
"In order for the defendants to get a fair hearing, it was necessary for the manufacturers to have their case examined by an impartial judge," said Daniel Donahue, Reynolds' deputy counsel for litigation. "We will be able to clearly demonstrate that this industry has not been engaged in any fraudulent

activity."
On Sept. 11, Sarokin voluntarily removed himself from the Cipol-lone case, which the U.S. Supreme Court ordered retried.

But Sarokin, who has declined all media interview requests, denied

y biases against the industry.
'I fear for the independence of a judiciary if a powerful litigant can cause the removal of a judge for speaking the truth based upon the evidence, in forceful language that addresses the precise issues presented for determination," the judge wrote. "If the standard here had been applied to the late Judge John Sirica, Richard Nixon might have continued as president.

LIGGETT & MYERS

LABORALORS



OThe tobacco industry may be the king of concealment and disinformation. @ H. Lee Sarokin

#### **SUITS**

Continued from page 6

Still, the Supreme Court has marked a path for pressing lawsuits against cigarette makers. And some trial lawyers are optimistic.

"I think you're going to see litigation all across the country now,' says J.D. Lee, a lawyer from Knoxville, Tenn. who plans to use the new guidelines in filing 10 or more tobacco-related lawsuits.

#### The new rules

In its June 24 decision, the high court said cigarette makers can't be sued for failing to warn people about the dangers of smoking after 1969 — the year federal officials required explicit cautions on every tobacco product and ad.

Cigarette makers may be sued, however, in cases in which a diseased smoker claims the companies fraudulently concealed information about tobacco's harmful nature, the Supreme Court said.

The court also approved lawsuits by smokers who say they were led astray by implied health claims for instance, ads for filter or lowtar cigarettes.

Legal experts agree the fraud approach has greater potential, mainly because of new evidence about what cigarette makers knew about disease, when they knew it and what they did about it.

In a fraud case, the sick smoker tries to prove that tobacco companies made a business decision to deceive the public about the health risks of their products, putting

profits above truth and safety.

That allegation is at the heart of what's likely the next landmark cigarette case, the Susan Haines case, which also is being handled by Edell. Haines sued The Tobacco Institute trade association and R.J. Reynolds Tobacco Co., the Liggett Group and Philip Morris Inc. — the three companies that made cigarettes smoked by her father, who died of lung cancer at age 55 after 41 years of heavy smoking.

Haines, a New Jersey resident contends the tobacco industry hid damaging information about cigarettes through a research group it set up, the Council for Tobacco Research, CTR for short. Potentially damaging research allegedly was funneled through a "special projects" group supervised by industry lawyers.

"If the projects were coming out the right way, they would change them into a regular CTR project," Edell says. "If they came out the wrong way, they didn't get any more funding."

#### Jury outrage

Edell has subpoenaed hundreds of council documents in the case, hoping to prove his cover-up the-

ory. Earlier, the New Jersev lawver uncovered a wealth of similar industry documents in the Cipollone case — internal memos, letters and reports that he cited as proof that tobacco companies knowingly lied to the public about tobacco's dan-

Lawyers for cigarette makers say the documents show no such thing. They point to the verdict in the Cipollone trial four years ago. After reviewing all the documents, the jury rejected Cipollone's allegations of fraud and conspiracy.

Industry spokesmen deny that tobacco companies covered up research critical of smoking or promoted other projects aimed at confusing the public about the danger. Some research was carried out in partnership with health groups such as the National Cancer Institute, American Cancer Society and the American Medical Association, said Daniel Donahue, Reynolds'

deputy counsel for litigation.
"These are not organizations which anyone with a rational mind which anyone with a rational mind could say have a bias in favor of the tobacco industry." Donahue says. "These are not people whose moti-vation would be to cook up bogus

Edell says the documents he's pursuing paint a different picture. He hopes to use them to anger jurors and make them skeptical about other parts of the tobacco industry's courtroom defense. For instance, trying to place all the blame on the dead or dying ex-

"I think that once a jury gets enraged by certain activities, that has an effect on the overall credibility of the defendants," he says.

Edell's efforts to gather more documents suffered a setback recently when a federal appeals court removed the judge in the Haines case. The judge, H. Lee Sarokin, had sided with Edell in ordering the industry to surrender more of its confidential documents.

"The documents speak for themselves in a voice filled with disdain for the consuming public and its health," wrote Sarokin, a U.S. District Court judge, after reviewing some of the material.

The four defendants appealed, arguing successfully that Sarokin's comments appeared biased and that he should be removed from the

Regardless of what documents they ultimately see, juries still face

Someone who started smoking at a young age, in the 1940s or 1950s, before the

general public had access to today's detailed knowledge of smoking's proven

harm. This person must convince a jury not only that he or she was too addicted to

quit, but also that his or her efforts to stop

industry's public denials of a link between

A "PERFECT PLAINTIFF"

smoking and disease.

WHO'S MOST LIKELY TO WIN A JURY AWARD

the question of whether the truth would have had any effect on the smoker. Would it really have mattered if tobacco companies had ac-knowledged years ago that smoking is a health threat?

Mary Laughlin, of New Hope, an., thinks it might have saved her life. Laughlin, 53, has cancer of the lungs, brain and lymph system that doctors have linked to 35 years of smoking.

"If something had alerted me that it was going to ruin my health, I don't think I would have done it," Laughlin said recently in a tele-phone interview. "I thought, 'Well,

She's working with Knoxville lawyer Lee on a possible lawsuit against Reynolds, maker of the Winston brand she smoked for four

#### The asbestos parallel

Lee, Edell and other lawyers for sick smokers hope the tobacco sce-nario unfolds like the downfall of the asbestos industry, which lost a string of major jury trials after ailing workers bolstered their lawsuits with internal company docu-

asbestos makers knew their prod-uct was deadly but did nothing to

But some experts see significant workers suffered injury on the job, not pursuing a pastime they found pleasurable.

Moreover, people have suspected for generations that cigarettes are harmful.
"It just won't get you a home run

in court if the defendant hasn't told specializes in product liability.

Some think that only the "perfect plaintiff" stands a chance of winning a major jury award. Lawyers identify that plaintiff as someone who started smoking at a young age, in the 1940s or 1950s, before

addicted to guit later, but also that his or her efforts to stop smoking

A non-smoker who claims he or she was injured by passive smoke. An example: A

class action suit filed against tobacco companies by non-smoking flight atten-

companies by mois-stroking ingul audit-darts. Some have died or suffered serious illness because of the smoking once allowed on all airline flights. "The tobacco industry can't say our clients had a choice. Flight attendants had no choice."

says their attorney, Peter Schwedock.

AN "INNOCENT BYSTANDER"

The maximum

they grow tobacco. Evidently it couldn't hurt you.' "

Those documents showed that warn unsuspecting workers, who later became sick.

differences between asbestos and tobacco. For one thing, asbestos

you something that you already knew," says Victor Schwartz, a prominent Washington lawyer who

the general public had access to today's detailed knowledge of smoking's proven harm.

Then the smoker must convince a jury not only that he was too

#### "Every juror knows someone who has been able to quit smoking," says Schwartz, author of the

**Delayed effect** Meanwhile, a smoker's chances in court are hampered further by the very types of disease that to-bacco causes or promotes. It's difficult, if not impossible, to prove the illness came solely or even primarily from smoking.

were undercut by the tobacco in-

dustry's public denials of a link

"That justifies at least part of their suffering being paid for by the company who profited by de-ceit," says Donald Garner, a Uni-versity of Southern Illinois law

professor widely known for his writing on the legal implications of

tobacco's addictive powers.
Garner suggests addiction may

give diseased smokers a way

around the argument that they have only themselves to blame.

Schwartz, the Washington product-liability expert, is skeptical.

most-used textbook on civil court

between smoking and disease.

Lung cancer, emphysema and heart disease stem from a variety of causes, including a person's genetic makeup. Medical researchers think smoking plays a big part in 80 percent or more of certain lung diseases, but that still leaves a lot of room for lawyers to argue By contrast, exposure to asbestos

results in two very distinctive dis-eases, asbestosis and mesotheli-

"You can't get asbestosis from smoking," says James Lowe, a prominent Cleveland trial attorney. You can't get mesothelioma from working in a factory that produces some other carcinogen.

Another problem is the long time between a person's first smoke and the deadly consequences, often a gap of several decades. Courts han-

dle lawsuits more effectively when cause and effect are closer, when the damage isn't so incremental.

Liggett & Myers research building in Durham. Some of the findings produced here — including work on a

cigarette that didn't cause cancer in laboratory animals — likely will be used in future lawsuits.

"If someone runs you down in front of your office, we can focus on that day, the time, was he drunk, how bad he hurt you and are you faking," says law professor Garner. Not so in a smoking case, Garner says. Nobody can point to one mo-ment when the smoker suffered

irreversible damage. The decades-long process also means smokers usually are at or

near retirement when disease strikes. That lowers the potential for a large jury award because such awards often are pegged to how many income-producing years a victim has lost.

#### **Innocent bystanders**

Some lawyers are taking a waitand-see attitude because of the po-tential stumbling blocks. Bob Gibbins, former president of the Association of Trial Lawyers of America, dropped several lawsuits against cigarette makers during the 1980s. Tobacco companies were on a roll, chalking up highly publicized courtroom victories over former smokers.

"The juries just were not ready to award in our favor," says Gibbins, of Austin, Tex. "So I just

bills, the Austri, 1ex. 30 I Just basically explained that to our cli-ents and we got out of it." Indeed, the cigarette makers have never lost to a diseased smoker in more than 320 lawsuits stretching back to the 1950s.

Lawyers say that if the tobacco

industry ever suffers a big loss in the courtroom, it probably will be to an "innocent bystander," a non-smoker who claims he or she was

injured by passive smoke.

For instance, a class action suit was filed in Florida last November against the major tobacco compa-nies on behalf of thousands of flight

Some have died or suffer serious illness because of the smoking once allowed on all airline flights, according to Peter Schwedock, a Miami lawyer who filed the suit.
"None of them are smokers. It's

all due to secondhand smoke," Schwedock says. "The tobacco industry can't say our clients had a choice. Flight attendants had no

#### Key to the courtroom

All the legal wrangling sounds like so much mumbo jumbo to Greensboro resident Margaret

Stanley, in her 70s, is just trying to live with what 40 years of two-pack-a-day smoking did to her lungs.
She's interested in newly emerg-

ing information about the tobacco industry's scientific research into smoking and health. But she's not

angry at the companies.

Indeed, she doesn't trace her smoking to the industry's glamorous ads or its efforts to downplay tobacco's health risks.

"It was peer pressure," says
Stanley, who is battling emphysema. "I don't want to sue the
company. They didn't make me

Legal experts say only time will tell whether that attitude prevails in the nation's courtrooms, as it has for decades.

Garner, the Illinois law profes-sor, says it will take seven or eight years before the implications of this summer's Supreme Court decision are clearly defined. "By then we'll know if juries can

ever be persuaded that there was fraud, and if that fraud had an effect on plaintiffs," Garner says.

"The Supreme Court has given smokers a key. Whether that key opens up a treasure chest or just an empty box, we'll have to wait and

#### THEY DON'T FIT THE NICHE

### igarettes unregulated

BENZENE LEVELS COMPARED

The content of cigarettes is largely unregulated - a fact of life anti-smoking activists hope to change.

BY TAFT WIREBACK Staff Writer

Critics of the tobacco industry damn cigarette smoke as one of the most toxic substances ever approved for human consumption. "If it came out of some comit came out of some company smokestack, it would be banned," says Anthony Colucci. a former re search scientist for R.J. Reynolds Tobacco Co.

So why aren't the ingredients in cigarettes regulated by any federal

agency?
Why doesn't the Food and Drug Administration require disclosure of each brand's content, including chemical additives? Why are hightar and high-nicotine brands per-mitted when it has been proved

that they are the most dangerous?
The tobacco industry says it's not regulated that way because cigarettes don't fit the FDA's niche "Tobacco products are not a food or a drug," says Thomas Lauria, a spokesman for the Tobacco Insti-Each year, the tobacco industry

has to give the federal Department of Health and Human Services a list of what goes into its products. But under federal law, the list doesn't name contents by company or brand, and the department must keep the information secret.

Moreover, the health department has no power to order changes, though it can warn Congress about any additive it deems risky.

Critics say the industry has vaded tighter control one way through political clout.

"They have friends in many high places and have managed to make certain those friends were in key decision-making positions in virtu-

allowable level of benzene in drinking micrograms of benzene found from one water is 0.15 cigarette contains 12 to micrograms per in several liters of Perrier led to a worldwide 48 micrograms of benzene. On average, most recall of 72 million bottles smokers of the sparkling 10 eight cigarettes 12 water. Perrier water **Drinking water** One cigarette Source: Foreign Agricultural Service, U.S. Dept. of Agriculture

ally every administration and Congress," says U.S. Rep. Richard Durbin, D-Ill., a critic of the indus-

But historical reasons exist, too. No other crop has deeper roots in U.S. culture than tobacco. It was the first cash crop in the Jamestown colony in the early 1600s. It helped finance the Revolutionary

In World War I, Gen. John Pershing cabled Washington to say to-bacco was indispensable to his troops And in World War II. FDR made tobacco a protected crop as part of the war effort.

Tobacco leaves are even carved in stone on pillars at the nation's Capitol. Clearly, the virtues of to-bacco have been extolled far longer than its hazards.

But as those hazards became widely known, the tobacco industry sought to exchange some of its immense profits for political influence. A study issued last month by Public Citizen, a Washington-based consumer advocacy group, re-ported that tobacco interests have given more than \$3 million to both political parties this election cycle.

Durbin and other anti-smoking activists believe the tide is turning against the industry. They think it has been damaged by recent revelations about the industry's scientific research into the dangers of smoking — while company spokes-men publicly claimed no proven

Several legislative efforts are pending. Proposals include the fol-

lowing:

• Bills introduced in both the U.S. House and Senate to bring tobacco products under FDA control. The proposals would create a special FDA category for tobacco products, requiring that cigarette makers — among other things stop such sales tactics as giving out free samples. FDA control might mean that only low-tar cigarettes would be allowed.

• A measure proposed by Sen. Ted Kennedy, D-Mass., would force tobacco companies to disclose all chemical additives, reveal tar and nicotine levels of each product, and strengthen warning labels by enlarging them and putting them on the front of each pack.

 A proposal by the American Society of Clinical Oncology would increase the federal tax on cigarettes to as much as \$3 a pack. The aim is to make cigarettes too costly for casual use and provide money to improve health care for unin-

sured Americans.

### Studies may breathe life into lawsuits

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

BY JUSTIN CATANOSO AND TAFT WIREBACK

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 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 can-cer associations. "There is no ac-countability on the part of the tobacco industry for what it perpe-trates 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 Revnolds 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 Cyn-thia 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 Revnolds 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 informa-on effectively, a sick smoker would have to prove that Reynolds stopped important research for de ceitful reasons, then told lies about it that convinced the smoker to keep smoking - despite federal warning labels on every pack of

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 manu-facturers, 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

An influential law professor is developing a new theory by which injured smokers can sue

Over the years, Donald Garner's legal writings have influenced how cancer-stricken smokers sue ciga-

rette makers in federal courts. Yet no such lawsuit ever has been suc-

So Garner, a law professor at Southern Illinois University, is de-

veloping 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

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 peo-

ple to smoke, and thus making money off the deception," Garner

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 infor-

mation.

The U.S. Supreme Court, in a

so-called class-action lawsuit.

Under state consumer deceptive

trade practice laws, Garner be-lieves injured smokers can put the

focus on the alleged misconduct of cigarette makers and shift the fo-

cus away from a smoker's unwill-

General's warning on each ciga

rette 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 con-

sumer fraud laws, particularly in states like Illinois and Minnesota,

is to punish public deceivers," Garner said. "The laws deemphasize,

radically at times, the proof neces-

sary 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 liti-

gation experts. Some said it will

work no better than other attempts to sue the industry. Still, they said

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

highly regarded nationally.

professor's views tend to be

ingness to quit despite the Surgeon

'Instead of trying to translate the alleged fraud into an award for someone's lung cancer, the more

tobacco companies. By Justin Catanoso

cessful.

neys 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 bepretent that active research is be-ing 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 Brook-lyn also declined to comment.

News of the criminal investiga-tion 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.

Smokers urged to sue for funds

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

### Truth a casualty in tobacco

The cigarette companies should come clean, even now.

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 con-sequences 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 stub-bornly 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 de-fense of its products. The series raises questions about the indus-try's response as the risks of smok-

ing 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 can-cer-causing agent in tobacco in

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 for-mer RJR researcher says the company shut down its lab and fired its There is even evidence that the industry chose to squelch a safer cigarette rather than imply that conventional brands were danger-

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 im-

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 dan-gers 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 smok-ers 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 to bacco 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 la-beling 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

to budge on its position that while risk factors were associated with

Advice ignored, "From the beginning, Hill & with those answers."

He said the company was instru-

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 interna-tional 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 tving 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, Vel-mans 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. 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

mental 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 & Knowl-

ton tried to get the tobacco industry

smoking and disease, cause-and-ef-fect harm remained unproven

Essentially, Hill & Knowlton urged the industry to take a more ositive 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 situa-

tion," 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 enlighten-

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 nany 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.



**The whole point of** these consumer fraud laws ... is to punish public deceivers. O

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. Sur-

geon 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 even tually leads to lung cancer or em-

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.

June 24 ruling, made lawsuits possible that allege fraud and deceit against tobacco companies. Garner believes allegations of fraud will be difficult to win with in federal court.

A typical two-pack-a-day smoker who smoked for 30 years likely For example, an injured smoker would have spent more than \$12,000 buying cigarettes. To make the court effort worthwhile, Garner may be able to show that a cigarette maker covered up informa-tion that smoking is dangerous, said, thousands of plaintiffs would while publicly saying the hazards remain unproven. But to win, the need to be lumped together in a smoker must prove he or she relied on those false statements - despite Garner sees a distinct advantage federal warning labels on every pack of cigarettes that smoking is in suing tobacco companies in state

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 indreds 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 tifeory," Schwartz said, "it starts out on the right foot. But whether it lands on both feet, I'm not sure."