Frontline Interview

with

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by

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Q. Let's start out. Let's just talk a little bit about the history of this sort of litigation. We were talking before and you mentioned that there have been these cases, peaks and valleys, so if you would just describe that a little bit.

A. This litigation is really nothing new. It's something that's been with the industry for a very substantial time. And over the years dating back to the late 50's there have been some 145 or so of these cases disposed of by members of the industry and in no case has the industry paid a penny in settlement and in no case has a judgment been rendered against the industry. I think this is because the cases involve the central issue of personal responsibility for one's own conduct and I think there has been a recognition, and I think there will continue to be a recognition, that if one is going to draw the line somewhere, and if one is going to require some degree of personal responsibility for one's own choices in life, that line has to be drawn well short of imposing liability here.

Q. Why do you think that there would be a sort of flurry of these cases now?

A. Well, I don't know. This litigation has had its peaks and valleys over the years. We happen to be in one of the peaks now. I think when this peak goes away we'll see another valley. But it has caught the public's attention at this time, and there are some people who think, I believe quite incorrectly, that things have changed and that the litigation is now better from a plaintiff's point of view. I disagree with that very much.

Q. Well, let's talk about that a little further. There are lawyers who say that product liability law has progressed to a point where it's very much in favor of a plaintiff. Why is that not true?

A. Well, it may be more in favor of the plaintiff than it has been in the past, but I don't think it's more in favor of the plaintiff from the point of view of these cases. You know the doctrine of strict liability in tort, which is a legal doctrine which plaintiff lawyers are trying to rely on in these cases, never, ever anticipated that the doctrine would be used in order to award damages to someone for the results of someone's own choices in life. And indeed, when the strict liability doctrine was articulated by leading legal scholars from the American Law Institute back in 1963 ... when it first was codified in the Restatement of Torts, ... many people don't know that smoking was singled out by the scholars as an example of what this doctrine was not designed to stretch to. It was singled out along with the use of alcohol and the use
of butter in potential claims based upon serum cholesterol content. It very specifically referred to tobacco, along with alcohol and butter. So I don't think that that doctrine can be stretched to cover this kind of claim. And there have been other ways in which I think the litigation is really improved for us rather than disimproved over the years.

Q. Well, some of the plaintiff's lawyers would say that whether or not it is a question of personal responsibility that the law says that if a product injures a person then that person is entitled to seek damages.

A. Well, that's really not what the law says. What the law says is that if you have product which is defective and unreasonably dangerous and the person himself is not at fault and has not assumed the risk, then he may have a cause of action. And as the codifiers of the Restatement of Torts, product liability section, pointed out, back in 1963, if a product's risks, claimed risks, are well known, then it's not unreasonably dangerous within the meaning of the strict liability in tort doctrine. And what you have to understand is that that statement was made ... and tobacco was singled out as not being within reach of the doctrine ... about a year before the 1964 Surgeon General's report. And when you think about that, you see how this litigation has really, I think, improved from the standpoint of someone defending the litigation.

Q. The plaintiff lawyers also look at risk utility analysis and they say that the risks of smoking so outweigh its benefits that therefore they should declare cigarettes defective.

A. Well there is a risk utility doctrine which has been applied in some states. I think that doctrine is quite inapplicable to cigarette smoking and if you read the cases and if you examine the doctrine, on anything other than a very surface level, you will see that the doctrine is really designed to apply to alternative designs of a product ... whether it ought to have a bolt here or a fence there, or what have you ... and really ought not be applied to the product itself. In addition to that, the benefits of smoking are highly individualized, highly personal. There is good reason to feel that the risk utility doctrine, wholly apart from the fact that it ought to be limited to alternative design, really ought not apply to voluntary activity like smoking or alcohol intake or the eating of foods with serum cholesterol. I think you can see where this society is going to find itself if we end up imposing liability for something like cigarette smoking.
Q. Would you say it's fair to categorize this as stretching these laws, these product liability laws very far?

A. Oh, I don't think there is any question about the fact the plaintiffs in these cases are attempting to stretch the law far beyond anywhere it ought to go. Just step back and think about this for a minute. Here you have an industry which has sold a product for the last twenty years pursuant to a Government ordered program of distribution. After the 1964 Surgeon General's Report, this society sat down and decided what it was going to do about smoking. Now it didn't fall into the prohibition trap it had with alcohol as some people would have liked. It (the Congress) decided that people could freely buy and use the product and people could sell it as long as warning labels were put on every package and as long as advertising was restricted and carried warning labels. Now, we've done that for the last 20 years and there is just something terribly wrong and unfair about saying well, we've done that for 20 years but we are now going to let people claim they have been injured, turn around and sue tobacco manufacturers. Indeed, if you step back and think about it, if you can impose liability on companies which have sold a product under a government controlled program that has caused warning labels to be applied to every package of the product, then you sure ought to be able to allow people to sue alcohol manufacturers, a product which is not covered with warning labels ... you ought to allow them to sue butter and cream manufacturers for high serum cholesterol ... diet soda manufacturers ... the list is virtually endless. And this society is at a turning point that's very, very important in terms of how it's going to manage its legal and societal affairs if it permits this kind of thing to occur.

Q. Well, there's another argument that we've heard which is that people say red meat is one thing, alcohol is one thing, butter.... But there is a safe level of use of those products and that the overwhelming evidence of medical studies over the 20 years since the Surgeon General's report is that there is really not a safe level of cigarette use.

A. Well, I would say several things in answer to that. First of all, I don't know anyone who responsibly takes the position that there is a safe level of alcohol use when you have someone who is suing for the kind of injury that can occur from alcohol use. If someone is suing for cirrhosis of the liver or someone is suing for alcoholism, whatever the safe level has been, that has been exceeded. If there really is a connection between serum cholesterol levels and heart disease and someone has suffered a heart attack and is disabled, I don't know that you can try to
draw lines by saying in a suit against the butter manufacturer that safe levels existed and you exceeded them. Wholly apart from that, there is an assumption made frequently that the causation issue has been nailed down, that cigarettes have been proven to cause the diseases with which they have been associated, when in fact, once again, if you dig below the surface, what you have is a statistical association here rather than proven causation. In attempting to distinguish suits against cigarette manufacturers from the suits (which are surely going to follow if this litigation goes a certain way) against alcohol manufacturers on some dose level, isn't a distinction that really is legitimate. Because people cannot be told with respect to any of those products there was a dose you shouldn't have exceeded.

Q. Well, has there ever been an attempt by the industry to say that there is a level of cigarette smoking after which it may be more hazardous than not?

A. Well, I think what the industry has said, and let's be clear on this, the industry has never said there is not risk associated with this product, in the sense that the industry has said there is a genuine controversy, a genuine question with respect to whether or not smoking causes the diseases with which it has been associated. Our position is that cause has not been scientifically established. It certainly hasn't been established in any legal sense. But the fact is, that people who have used that product have done so for the last 20 years in the face of government mandated warnings on every package. The people who used it before that did so in the face of the kind of general condemnation of the product, if you will, that has been abroad since King James back in the early 1600's published what he called his Counterblaste at Tobacco to answer Sir Walter Raleigh's promotion of tobacco.

Q. So there has been quite a bit of social awareness of whatever risks might or might not ...

A. Oh, I don't think there has been any question about the fact that there has been social awareness of risks claimed to be associated with smoking for a period of time really coincident with the activity itself. As I've indicated, from the time King James published his counterblaste at tobacco in the early 1600's, through periods of time in this country when 14 states outlawed the sale of cigarettes and cigarette papers, through periods when we have had anti-tobaccoists running on presidential tickets, right up through the warning label legislation in 1966, smoking has been associated with risks and people have known that.
Q. Is it fair then, for someone to come back and say well, yes I knew there was a lot of talk in the air about smoking, but I didn't know it was that bad for me?

A. Well, you know, to begin with the question is whether or not they really knew it was that bad in the sense of having appreciated the risk. But how detailed does someone's information have to be before they are personally responsible for their decision? Do you really have to demand that people who have undertaken smoking and for the last 20 years have fought their way past warning labels in order to get at the product ... is it really fair to say that they have to know every report that has been made and details of every study which has been trumpeted (forget about the studies going our way) before they have an awareness that is of a qualitative nature which, in fairness, ought to prohibit them from turning around and suing.

Q. In regard to the causation issue, it seems like this might also be an attempt to get a jury or a court to decide something that a scientist has not been able to decide.

A. Well I think that's right. Of course there is a real controversy raging about what science has and has not been able to establish yet. There has been a lot of work of an epidemiological nature statistically associating smoking with certain diseases. But even in the epidemiological area, there is some substantial epidemiological evidence which points the other way. And one very interesting thing here is that despite what the Surgeon General in 1982 called major efforts with various strains and species of animals to introduce lung tumors through having the animals inhale smoke, the results of those experiments in his own words were, "Negative." So the effort to establish biological plausibility of the causation thesis and to try to take it beyond one based upon statistics alone, has in my judgment failed and that failure has been acknowledged.

Q. Well, the plaintiff's lawyers, you know, many of them say that causation is absolutely the easiest part of their case. They expect to just run away with it in court.

A. Well, you know, that indicates a lack of attention to some problems which the causation thesis carries with it. Once you try to move past statistical association toward trying to prove causation, you run into some problems. You run into the fact that laboratory attempts to induce tumors through the introduction of whole smoke into animal lungs in massive doses has been a failure as the Surgeon General acknowledged in 1982. You run into certain problems even with the statistics. Most people don't
know, for example, that the age of onset of lung cancer is about 65 to 67 years old, that's the average age of onset, that's the case with respect to people who smoke very heavily, with respect to people who smoke lightly, with respect to people who have smoked for many years, with respect to people who have smoked for a few years and with respect to people who haven't smoked at all. And that's a very discordant and discomforting fact for people who want to push the causation thesis.

If there is a cause here, why do you have a per capita consumption rate of cigarettes in Japan that is higher than that in the United States with a lower lung cancer incidence. Why do you have Great Britain with a much higher lung cancer rate with a lower cigarette consumption. Why did Dr. Doll, who is one of the people whose work the anti-smoking people rely upon, find to his amazement that people who reported that they inhaled not at all or only slightly had a lung cancer rate that was higher than people who reported they inhaled deeply in the very study which promoted a lot of the anti-smoking sentiments. So there are real problems with the causation thesis out there which are going to get some scrutiny and some attention of the kind they don't get in articles written in the press.

Q. Do you think that that sort of confidence on the plaintiff's part, that causation is just far and away the easiest part, is misplaced.

A. Well, I don't think that is confidence on the part of the plaintiff's bar so much as it is an attempt to try and take advantage of a popular perception based upon the reality that when these things are reported in the media they really don't get into the detail and they aren't given the kind of scrutiny they are going to get when plaintiff's expert testifies. Beyond the general causation issue, too, you have the very substantial problem which plaintiffs have in these cases of having to try to establish not only a general causation thesis but that this specific lung cancer in this specific person with this specific medical background was caused by smoking. Now the fact is that even the studies by people the anti-smoking forces rely on have acknowledged that, even with respect to heavy smokers, 9 out of 10 people never develop lung cancer. The incidence is less than 1 out of 10. Fifteen percent of the lung cancers are seen in people who have never smoked. Now when you recognize that about 75 percent of the male population in this country has smoked at one time or another, 15 percent of the lung cancer cases being in non-smokers is a very
significant number. Now that presents problems for the
genral causation thesis of the plaintiffs and it sure
presents some very substantial problems with respect to
whether or not anyone could ever say, even if they bought
the general causation thesis of the plaintiff's attorney,
that this specific cancer was due to smoking and not one
of the other numerous causes which have also been asserted
to exist.

Q. Well, let's move on to the second part of your
argument which is, it seems to me, the most touchy, which
is this question of addiction. You know, this whole
question that someone did not voluntarily take this on, it
wasn't their personal responsibility because they were in
fact addicted to it.

A. Well, you know, a couple of things with respect to
this issue of addiction. First of all, I think it is
quite clear that the claim of addiction here really isn't
so much an honest observation of the smoking phenomenon as
it is an effort by plaintiff lawyers in these cases to
deal with the significant problem they have of these cases
involving personal responsibility for one's own choices in
life. The fact is that in the famous 1964 Surgeon
General's Report, the question of addiction was examined
and the Surgeon General said, very expressly and very
clearly, on page 354 of that report, that the smoking
habit, that's what he called it, the smoking habit is not
an addiction it is an habituation. Smoking is a habit,
because it doesn't meet the standard tests for addiction
which have been adopted by the World Health Organization
and others. And that's the fact. And to try to lump
cigarette smoking with heroin use and morphine use and to
take the position that those things are in the same
ballpark, and the cigarette smokers are like heroin
addicts and morphine addicts is just ridiculous.

Q. You have said that cigarette smoking does not meet
those criteria that were described for an addiction.
Could you just explain what they are.

A. Surely. Smoking really can't fairly be categorized,
as your common sense would tell you, with things like
heroin and morphine. And apart from your common sense
telling you that, smoking just doesn't meet the classic
standards for addiction which have framed the basis for
calling things addictive or not. Those standards are
first of all, an ever increasing of the dose -- that's
what a heroin addict does, that's what a morphine addict
does, they keep hiking the dose up. That's not the case
with smoking -- people smoke a pack a day, a half pack a
day, or what have you. The second test for addiction is
very traumatic almost life-threatening physical withdrawal
symptoms. A heroin addict in violent pain, nausea,
bumping off walls, vomiting ... that's not what you get with smoking. Many, many people don't feel any effect at all other than that somewhat nervous anxiety and edginess which might last for a few days. It certainly isn't a withdrawal symptom that typifies addictive drugs. And finally, addiction is typified by the use of a product which is destructive to one's social behavior, one's work life, and one's family -- that's what happens to a heroin and morphine addict. That's certainly not the case with tobacco. And what you have here isn't an attempt to try to honestly assay smoking and decide whether it is addictive or not. It's an effort by anti-smoking forces and plaintiff lawyers to deal with the problem of freedom of choice and personal responsibility for one's own behavior, which marks these cases, by trying to provide an excuse.

Q. Well, you know they will have their experts who will come forward and say there is withdrawal -- people go through terrible withdrawal and it sometimes lasts much more than a couple of days. This craving, which some people never get over, and there are people who when they stop and start again they are right back up to their previous level and that those are also criteria.

A. Well, you're not going to have difficulty finding experts to testify to anything in litigation so the fact that experts may claim this is addictive isn't really a test. But, if you define addiction broadly enough to pick up smoking, which is the name of the game that is being played, you end up picking up smoking alright, but you weave a net that is so broad and so general that you pick up everything under the sun. You end up claiming that coffee is addictive, because of its caffeine, that tea is addictive. You end up claiming that chocolate is addictive, you end up claiming that jogging is addictive. It almost becomes a self-fulfilling prophecy. The claim is, the person didn't quit, therefore the person couldn't quit. The person didn't quit, therefore the person was addicted. The person didn't quit, therefore his conduct in choosing to smoke has to be excused. And one interesting thing here is that some people who are genuinely opposed to smoking, people who are interested in seeing it stopped, are claiming that this claim of addiction is very irresponsible. Because if not true, they say, it encourages people to keep smoking by putting off the responsibility onto someone else. The fact is that 35 million people in this country have quit smoking since 1964. The Surgeon General has noted that 95 percent of them have quit without any clinical or medical help of any kind. Now that doesn't sound to me like an addictive substance. It sounds to me like an activity someone can quit if they want to and if they decide they have the will to do it. And it is certainly not an activity which honestly ought to be classified as addictive for the purpose of avoiding one's responsibility for one's choices.
Q. Would you say that that is the weakest part of the case, this addiction claim?

A. Well, I think the plaintiff's claim of addiction is a very weak claim indeed because I think if someone steps back and says, wholly apart from what the honest tests are for addiction, if someone just uses their common sense and says is tobacco smoking really like heroin addiction? Is tobacco smoking really like morphine addiction? Is the cigarette smoker really like a heroin addict? What does your common sense tell you about that? Your common sense tells you that that's not an honest argument and it's really an attempt to avoid personal responsibility and provide an excuse for someone's own choices. And then you get into the whole question about whether this society ought to get itself into the position of awarding damages to people who claim that they are addicts with respect to anything. The addiction claim with respect to smoking, as I've indicated, I don't think is a genuine claim and I don't think it holds water. But the suggestion that people ought to be able to solve their problems in a personal injury action by saying that I'm an addict therefore don't impose any personal responsibility on me, just pay ... wholly apart from the real lack of sense in this argument or this claim that smoking is addictive the way heroin and morphine is ... you've really got to step back and think about the consequences of accepting that someone can claim that they are an addict and excuse their conduct and recover damages. Such claims have enormous implications with respect to how this society's legal system is going to work. And we ought to think long and hard before we as a society say, well if you claim you are an addict, we are going to excuse your behavior and we are going to let you recover damages under circumstances where people who aren't putting that label on themselves won't.

Q. The third part that they are determined to rely on is this idea that marketing, cigarette advertising, over the years has been so powerful, so effective in a way that it has tended to counteract the social awareness of whatever risks of smoking that might or might not exist.

A. All right. With respect to this claim by plaintiffs here that advertising has overridden the warning labels, once again if you just step back and use your own common sense, use your own judgment, and say to yourself, is it really fair to say that warning labels on every package, and warning labels on every advertisement, which are very unusual in this society, very discordant, very distinctive, have been overridden by (portrayals of) people splashing in the surf, or hitting a volleyball on the beach, or swinging on a swing in a shady glen just doesn't make any sense. The warning label applied to cigarettes, and it's been on for the last 20 years, is
very singular and very unusual. There is not another product that is sold in this society that carries with it a legal label stamped on every package that says "Warning" and then goes on to caution you about the possible health effects. There is no product in this society limited to print advertising with a requirement that every print advertisement have stamped on it the Surgeon General's warning. And the claim that that unusual, dissonant, discordant, warning label on every package of the product that is opened, on every advertisement that is seen, is overridden by attractive models and interesting settings just doesn't make a lot of sense.

Q. Why do you think they would push that so hard, then? I mean it seems like another issue that is very touchy.

A. Once again, it's not hard to see why plaintiff lawyers are trying to claim that Surgeon General warnings are overcome by people swinging on swings in shady glens or hitting a volleyball. They are making that claim because they want to find an excuse for the smoker's conduct. They want somehow to get out from under the central character of these cases which is personal responsibility for one's own choices in life. And they want to try somehow to find an excuse. They try to find an excuse in claiming addiction, in lumping smoking with heroin, and they try to find an excuse by saying, well, the warning labels were somehow overridden by attractive advertisements.

Q. One sort of technical question about the management of these cases. One thing that we've heard is that these being very complex, very multi-faceted kinds of cases, that the discovery in these cases done by the industry in relation to the plaintiffs, their medical history and everything else, we've heard people say it is just thorough, but perhaps to the point of being very intrusive or very stressful for the people who are bringing these suits. Now, first of all, is that standard practice in this kind of discovery and how would you answer claims that somebody is under too much stress for going through it.

A. Well I think that any time you have a personal injury action that involves, as these cases do, someone's complete medical history, and someone's exposure to other substances which are claimed to cause cancer, you are going to have a very thorough discovery by defendants ... with respect to that medical history ... with respect to one's work history ... with respect really to one's whole life exposure to other possible causes.
Q. That's information you must have?

A. That's information we must have in order to defend these cases and I think anyone standing back and looking at it would understand that. If that is too stressful, or if that is too inconvenient for people who filed these cases, that's just something that fairly, they ought to expect when they file them. You can't file a case like this and step back and say please don't look into my medical history and please don't see what I've been exposed to in my life, and please don't see what my work environment has been. You have to fairly allow investigation into that because of the kind of a case which you as a plaintiff have filed.

Q. What about the charge that the industry would contact neighbors, acquaintances, people who may have only met the plaintiff once or twice in their life and that some of the plaintiffs complain that this, they feel, this is a tactic to keep them from filing cases.

A. Well, it is really not that at all. It's an effort to try and gather information that is relevant and useful to the lawsuit. And even something as simple as a plaintiff's smoking history, when you get into these cases, ends up being something that you can't ascertain just by asking the plaintiff what his or her smoking history has been and accepting that. We've got cases going on where people have made the claim that the plaintiff has never stopped smoking, only to find medical reports where the plaintiff himself has said that he has quit for five years, quit for 8 months, and where we find associates at work or neighbors saying that the plaintiff has quit for a period of time. It is just not fair for someone to file a lawsuit like this and in addition to trying to disclaim personal responsibility for their own choices in life, it's just not fair for someone to say, "well I filed the lawsuit, but please don't look into my background to see whether I have quit smoking," or "please don't look into my background to see what other diseases I have had or what other things I have been exposed to."

Q. Then, in fact, the other side is doing it as well?

A. Exactly. Discovery is a two-way street in cases like this. The whole purpose of pretrial discovery, which has been with us since the 1930's, is to try to make a lawsuit not a batch of surprises and a sporting event, but to make it an honest and reasoned search for the truth.
Q. And they discovered hundreds of workers and executives.

A. Oh yes. There's been a lot of discovery by plaintiffs against members of the industry. There is nothing unusual about pre-trial discovery, unless someone is taking, inappropriately, an unfair view of it. Someone might wish that they could have it only one way, and some of the plaintiffs' counsel seem to indicate that, but that's not the way, fairly, lawsuits are prepared.

Q. Now in regards to the discovery that has been done of the industry, private plaintiffs, I'm sure that you are probably aware that in New Jersey this batch of cases being brought in New Jersey, there are many, many documents involved in having them discovered and brought to the plaintiffs group of lawyers that are under protective order now. Now the plaintiffs lawyers claim that these should be free and public information and that the industry is just stonewalling their way to keep these away the public view. Why would there be such an effort to keep discovery materials under a protective order?

A. Well, the issue of whether or not the numerous documents produced by members of the industry in the New Jersey litigation ought to be made public prior to their being used as evidence at trial is presently the subject of an appeal to the United States Court of Appeals for the third Circuit and I don't really want to comment upon the merits of that litigation. Suffice it to say that there are very good and sound reasons for wanting to maintain, what after all was a magistrates' order in those New Jersey cases, keeping that information confidential until it was used as evidence in open court. The fact is that that's where evidence ought to be presented, that's where it ought to be aired and answered. And a court order, that was put on it in those cases, keeping that information confidential until the trial was designed to avoid the problem of counsel presenting information to the media on a very selective basis and creating a situation of being pre-judged on the basis of a selective and usually rather surface review of just specks and bits of an entire documentary picture.

Q. It does become sort of a P.R. battle, doesn't it? It becomes very much a battle of public opinion.

A. Well, I don't think that the cases in the court room, if things are properly managed, become a P.R. battle or battles of public opinion. I have a lot of confidence in the jury system, I think it works and I think that's the best way to resolve issues like this. But there is no question about the fact that these cases have caught the media's attention, there's no question in my mind about
the fact that people on the anti-smoking side of the fence and on the plaintiffs' side of the fence have really done their best to generate a lot of publicity. But when you sort out these issues and you begin to give them a little more than surface attention, I think you end up seeing that our position is a pretty good one.

Q. How are you going to convince the jury, if I'm a very susceptible juror and you have to give me your three best statements on causation, on addiction and on this marketing claim, and you have one minute to convince me that everything they said is not legitimate.

A. I would say to you on the causation issue, give attention to the fact that only one out of every 10 very heavy smokers ever develop cancer, and 15 percent of lung cancer cases appear in people who have never smoked before. And when you start trying to decide that a particular person has lung cancer because of a claim of smoking instead of a variety of other things that have been associated with cancer, I don't think one can fairly say that. With respect to the claim of addiction, I think it is foolish to lump cigarette smoking with heroin and with morphine. Thirty-five million people in this country have quit since 1964 and the Surgeon General says 95 percent of them have quit without any help from anyone in the way of medical or clinical assistance. If someone wants to quit, they can. And with respect to the claim of advertising somehow overriding warning labels, the warning labels on every package of the product, on every advertisement, are very unusual, very discordant, very singular and aren't overridden by handsome men and attractive women, which you see in ads, swinging on a swing or bouncing a volleyball. And finally, overriding all of these cases, and I think the strongest central argument that can be made, is that these cases involve personal responsibility for one's own choices. If there is anything left of personal responsibility in this society, you don't end up allowing people who decided to live a certain life style and consume a product in the face of government warnings for the last 20 years, which was part of a government decision with respect to how to handle this product, to sue. Or you end up having people sue for everything under the sun that has been associated with a health problem, and our court system and our society is literally going to be awash in product liability litigation of all kinds with no end to it.
Q. Now, one last thing before we get on to some of the larger over-reaching questions. We've heard people say that you would find yourself in a hard position in a courtroom because you would be simultaneously saying that the industry does not accept that there is a significant risk, or has never acknowledged that there would be a really significant risk to smoking, but at the same time, the industries legal position would be that if there is that risk that a smoker is assuming it. Is that a fair characterization?

A. Well, I don't think it is and I don't think there's any contradiction between saying the cause or link between smoking and diseases with which it has been statistically associated hasn't really been scientifically established... and certainly hasn't been legally established... in pointing out that people who have smoked have done so for the last 20 years in the face of government ordered labels pursuant to which the Surgeon General of the United States has warned them about the activity. And there is no contradiction in also pointing out that well before that people were asserting and believing that smoking was a risky activity. So I don't think there is any contradiction between those two positions.

Q. Let's move on to the questions of the jury. These are going to be unique cases and that everyone on the jury has some experiences with smoking. Explain to me from your point of view how is that going to affect your arguments?

A. Well, I think these cases are unique in the sense that they involve an activity which people are very familiar with and an issue which people have really thought about and which people have seen, and people coming to jury service are going to bring that with them. They are going to be instructed on the law and they are going to see the facts in the court room and I think in this instance one of the key legal issues in the case really dovetails with the common sense evaluations which people will make of the cases. And that is that you have to step back and say to yourself is it really sensible, is it really fair, is it really right to have someone make a choice about whether they are going to use a product or not and what kind of lifestyle they are going to have and then later on say, well I ignored these warnings but I now want to claim that I was hurt because I went ahead and voluntarily used the product.
Q. That must be the reaction that you find from people, I know that we find when people hear about these cases, their immediate reactions is that they really don't make any sense.

A. Well, I think the immediate reaction to these cases -- that it doesn't make any sense -- strikes a chord. I mean, usually when something is pretty clear, usually when sound judgment and good sense tell you something about a case, you get an immediate reaction and a very substantial reaction that that doesn't make any sense. It doesn't make any sense to let someone who has chosen to smoke end up saying later on I want to convince the rest of you that you ought to give me money for that.

Q. Now, in terms of the social cost of this kind of litigation, assuming the worst, which would be that you would lose a string of cases and have large verdicts even on appeal, what would that mean?

A. Well, I don't assume the worst here because I think our position is very sound and we've disposed of 145 of these cases without ever paying a penny in settlement or judgment, and I don't anticipate that will change. But when someone says let's assume the worst for the time being, the worst one assumes is the worst for the society in general. Because if liability were to be imposed in cases like this, there would be no stopping the theory that you can put your own personal choices and responsibility for your own behavior aside and sue. The next wave of cases would be against alcohol manufacturers and beer manufacturers. And (there's) no warning label on alcohol, people don't have to open a package which has a big warning label on it to get at their alcohol. So they probably have a better case there than they would against cigarettes. And then you would have people suing, claiming that butter has too much cholesterol in it, or that red meat is harmful or that charcoal grilling has done someone wrong. There are a lot of diseases said to be associated with a lot of products that are consumed and you have to believe that if the dam breaks, you are going to have people suing for every product under the sun and they are going to find an expert, the plaintiff lawyers are, and this society is going to be awash in cases pursuant to which people are trying to recover damages for their own behavior and their choices in life.
Q. What do you think, why do you think that there would be these plaintiff lawyers across the country willing to push and they say they are advancing a lot of time, they are advancing a lot of money, they don't know if they are going to win but they are taking risks because they think their case is substantial.

A. Well, I think you would have to ask them that. I think plaintiffs are making a mistake in these cases. I think our position is a sound one. I don't think people who have made decisions and choices in life and who decided to consume a product and live a certain lifestyle are going to persuade people that they later ought to be paid for essentially their own decision. And I also don't think they are going to convince people that if you pay them you are not going to have to pay people who have drunk liquor and who sue liquor companies or people who have become obese through eating a lot of fats. I don't think you are going to convince people that they aren't going to sue the companies which sold them the products.

Q. It really does seem like the tobacco industry seems to be a very convenient, very easy target for not only lawyers who maybe ought to make whatever they want to make out of it, but this whole feeling of sort of anti-industry anti-smoking in particular.

A. Well, you have with respect to smoking, an issue which has been the subject of a lot of public attention, a lot of criticism and an awful lot of rhetoric and you've gotten science mixed up with rhetoric and you've had a steady drum beat of criticism of the activity. And if you are going to allow someone to recover for consuming a product in the face of that kind of warning, that kind of criticism, that kind of cautionary advice, that kind of warning label mandated by the government, there isn't going to be any stopping them if they succeed here, from suing on the basis of a variety of other products which don't carry that label on them.

Q. Do you think they are getting the law mixed up with rhetoric too?

A. Well, I think plaintiff lawyers in these cases may be getting the law mixed up with rhetoric and really overlook the central issue which is ... Is there anything left of personal responsibility for one's own choices? What they are trying to push here really isn't very fair.
Q. Would you ever settle a case, would the industry ever settle a case?

A. The industry would not. The industry has never settled one of these cases, it has never paid a penny in settlement or judgments, has disposed of 145 of them, and you just can't begin settling cases of this kind. You have got to draw the line somewhere not only as an industry but as a society. And you have to draw it well short of paying people money that they claim they are entitled to because of the effects of an activity they chose to engage in in the face of government warnings which were part of a government program for the sale of this product.

Q. So you will go on with a vigorous defense?

A. Absolutely. We will go on with a vigorous defense of this litigation. That's always been the case and will always be the case.

Q. One last thing. It does seem as if this whole question of personal responsibility, it seems that it is an attempt to get away from personal responsibility and place it on an industry. And they say, "well the industry can afford it, they can afford to pay out these claims even if they have paid out $5 million a year in claims for the next 20 years it wouldn't touch them."

A. You know, that's an excellent point and that is what the real societal cost would be in imposing liability for these kinds of cases. For every time you impose liability there is a societal cost. And if in order to put substantial sums of money in the pockets of people who have chosen to smoke, you end up putting an industry out of business, if you end up with people who are laid off work, find themselves without a job, with all of the pain and harm and human misery that carries with it, that is one very serious cost to be sustained for rewarding someone who is attempting to excuse his or her own conduct. and if that happens with respect to cigarette smoking, that's going to happen with respect to alcohol and a variety of other products, too. and there is something wrong with causing enormous economic dislocation and causing enormous pain and human suffering to people employed in industries like tobacco or alcohol or the dairy industry in order to put money in the pocket of someone who has chosen to do something, and in order to put a contingent fee in the pocket of a plaintiff's lawyer who has pushed that litigation.
Q. So it's not just a question of the industry and of the companies like the R.J. Reynolds conglomerate that everybody thinks of as being able to afford it, you know, it's more than that?

A. Yes, a company like R.J. Reynolds is a collection of people. The tobacco industry is a collection of people. There are some 200,000 farms which produce tobacco in this country, most of them small family farms. There are some 710,000 people employed in the tobacco industry and in delivering goods and services to it. There are some $30 billion a year paid in taxes as a result of tobacco industry activity. And what if you end up saying -- this won't happen -- but if it were to end up crippling that industry and putting people out of work and causing enormous dislocation and the kind of suffering that goes on when industries shut down, and the steel industry in this country is a great example of that, you say to yourself that is one very major substantial cost. And is this society going to impose that cost on some of its citizens, on many of its citizens, so that people who have chosen to smoke can end up getting fat verdicts out of which a contingent fee is paid to a lawyer.

Q. But you know, they have a very emotional argument to answer that which is, look at this poor woman who died of lung cancer and she died a slow agonizing death and her family is destroyed, and look at the statistics that they say 500,000 premature deaths a year from smoking.

A. Well, once again putting aside the scientific issue and where that really ought to fairly come out, and dealing with the emotional argument, there is a certain emotional overtone to these cases. No one likes to see someone sick, no one likes to see someone die from any disease, but if you step back and free yourself from emotion and approach the thing reasonably, which is what you have to do to act fairly, you ask yourself that central question. Is it right to pay damages to someone, to give someone a bunch of money, for their having engaged in an activity which they knew carried with it claimed risks? Is it fair to let them turn around and say give me money for that although I made my choice? It's just not right, it's not fair and it can't be confined to smoking cigarettes, it's going to go much farther than that if liability is ever imposed here.
Q. Well, you are going to have those people on the jury who are going to hear these very sad stories of these people who have died and who are maybe inclined to an anti-smoking idea anyway, and they are going to be reacting with their emotions, how can you counter that with statistics and facts and legal points.

A. Well, you know I've tried a lot of cases and I've seen a lot of juries and I believe very deeply in the jury system. You get 12 ordinary people in that jury box and they don't leave their common sense outside the room when they come in, and my experience has been that they act fairly, they act sensibly, they act responsibly, and they are going to use reason and judgment and not sympathy to decide these matters, and I think they are going to decide that you draw the line on personal responsibility for one's choices somewhere and you draw them well short of awarding damages in cases like this.

Q. What is your personal feeling about how these cases are going to come out?

A. My personal feeling, and it's a very strong one, is we're going to continue to win these cases as we have in the past. The 145 cases we've disposed of without paying anything in settlement or judgment are going to frame the pattern for the future because of this central issue of personal responsibility for one's own choices.

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