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## Smoke and Mirrors

### How Cigarette Makers Keep Health Question 'Open' Year After Year

Council for Tobacco Research  
Is Billed as Independent  
But Guided by Lawyers

### An Industry Insurance Policy

By Alix M. Freedman and  
Laurie P. Cohen

*Staff Reporters of THE WALL STREET JOURNAL*

This is the story of the longest-running misinformation campaign in U.S. business history, and how it may ultimately backfire on its corporate sponsors.

The tale opens in 1954. Cigarette smoking, like tall fins and the new music called rock-and-roll, was fun and glamorous. But a warning had just been sounded that smoking might not be good for you. A scientist at Memorial Sloan-Kettering Cancer Center had painted tobacco tars on the backs of mice and produced tumors. The tobacco industry met this sudden threat head-on.

In full-page newspaper ads headlined "A Frank Statement to Cigarette Smokers," tobacco companies announced that a new research group, funded by the industry but independent, would examine "all phases of tobacco use and health." Its solemn pledge: "We accept an interest in people's health as a basic responsibility, paramount to every other consideration in our business."

The tobacco industry's main vehicle for damage control was up and running.

#### Sowing Doubt

For almost four decades, the Council for Tobacco Research in New York City has been the hub of a massive effort to cast doubt on the links between smoking and disease. Sponsored by U.S. tobacco companies and long run behind the scenes by tobacco-industry lawyers, the ostensibly independent council has spent millions of dollars advancing sympathetic science. At the same time, it has sometimes disregard-

ed, or even cut off, studies of its own that implicated smoking as a health hazard.

"When CTR researchers found out that cigarettes were bad and it was better not to smoke, we didn't publicize that" in press releases, says Dorothea Cohen, who for 24 years until her retirement in 1989 wrote summaries of grantee research for the Council's annual report. "The CTR is just a lobbying thing. We were lobbying for cigarettes."

Many companies under attack for their products have underwritten research to buttress safety claims. What sets the tobacco industry apart are the scope, aggressiveness and persistence of its undertaking. For decades rival tobacco companies have acted in concert to combat the growing body of evidence linking their products to cancer, heart disease and emphysema.

#### Cheap Insurance

The U.S. Centers for Disease Control today links 434,000 deaths a year to smoking. The surgeon general has declared smoking "the single largest preventable cause of death and disability," citing "overwhelming" evidence from no less than 50,000 studies. Yet the wisp of uncertainty supplied by the Council has always been enough to protect the \$50 billion industry in Congress and especially in court, and tobacco companies have never paid a dime in product liability claims.

Addison Yeaman, a former Brown & Williamson Co. lawyer and ex-chairman of the Council, says the passage of time hasn't altered his faith in this view expressed at a Council meeting in 1975: The "CTR is [the] best and cheapest insurance the tobacco industry can buy, and without it, the industry would have to invent CTR or would be dead."

Michael Pertschuk, a former chairman of the Federal Trade Commission, finds the industry's defense extraordinary: "There never has been a health hazard so perfectly proven as smoking, and it is a measure of the Council's success that it is able to create the illusion of controversy in what is so elegantly a closed scientific case."

#### A Legal Peril

But now the device the industry has so long used to deflect attack has become its biggest vulnerability. That is because the Supreme Court last year said smokers can sue accusing the industry of deliberately hiding or distorting smoking's dangers. And the U.S. attorney's office in Brooklyn, N.Y., is

conducting a criminal investigation into whether the industry used the Council to defraud the public.

Whether anything will come of the criminal inquiry — and whether plaintiffs can convince juries that the industry did in fact misrepresent health hazards — are very much open questions; just last month, one jury rejected allegations of a conspiracy. But if plaintiffs should begin to succeed, perhaps by gaining access to now-secret Council documents, they could turn on its head what up to now has been an almost totally winning industry strategy.

The Council for Tobacco Research declined to respond to questions about its activities, as did all of the Big Six tobacco companies — Philip Morris Cos., RJR Nabisco Holdings Corp., American Brands Inc., B.A.T. Industries PLC (parent of Brown & Williamson), Loews Corp. (parent of Lorillard) and Brooke Group Ltd. (parent of Liggett Group).

At the outset, many in the industry thought the late-1953 crisis posed by the Sloan-Kettering mouse research was entirely manageable. With the Council, "the industry was told that in the best of worlds, we'd do a great service to mankind," says James Bowling, a former Philip Morris director. "Our product either would be exonerated or, if involved [in causing cancer], they'd identify the ingredients and we'd take them out. We thought this is marvelous."

So apparently did some scientists. The Council snagged a noted figure, Clarence Cook Little, as its scientific director. Thanks to his renown as a former University of Michigan president and director of a prestigious laboratory, the Council was able to attract an illustrious scientific advisory board, which culled through proposals from a who's who of American scientists who sought its research grants. Over the years, it has doled out more than \$200 million.

But the Council's role was never just research. It was largely a creature of Hill & Knowlton, the public-relations firm, which cigarette merchants retained when the mouse research came out. Hill & Knowlton installed the Council in the Empire State Building in New York one floor beneath its own offices, with one of the PR firm's staffers as the supposedly independent research council's executive director. Hill & Knowlton also began publishing a newsletter that reported such news items as "Lung Cancer Found in Non-Smoking Nuns," and it helped authors

generate books with titles like "Smoke Without Fear" and "Go Ahead and Smoke."

Some people, including many in the news media, were skeptical of the Council. "To reporters, the Council was never independent," says Earl Ubell, a veteran science reporter at WCBS-TV in New York. "It was a wholly owned subsidiary of the tobacco industry." But in the interest of balance, journalists writing on smoking and health routinely included the Council's views.

And many smokers lacked the professional skepticism of reporters. "You would have to have lived in that era to understand — they kept providing false reassurances, so I had no idea that smoking was so very dangerous," says Janet Sackman, who once appeared in ads as Miss Lucky Strike and who now has throat cancer.

As early as 1958, however, the Council had strong intimations from studies it financed that smoking could be dangerous. "Cigarette smoke condensate is a weak mouse skin carcinogen," said a Council-financed study completed in that year.

Ensuing Council-financed research found more links to disease. In 1961, a study of 140 autopsies at a Veterans hospital in Iowa City, Iowa, said "a history of cigarette smoking is significantly related to the incidence of carcinoma." In 1963, researchers at Philadelphia General Hospital and the University of Pennsylvania linked chronic smoking to earlier coronary artery disease and a higher incidence of coronary occlusion.

The Council summarized such results in its annual reports, but it often chose other research to stress to the public. Ms. Cohen, who wrote the summaries, cites a 1965 study that said pregnant women who smoked had smaller babies and were more likely to give birth prematurely. But the industry in 1982 submitted to Congress a study the Council hadn't financed, saying that smokers had no greater risk of premature babies and that low birth weight wasn't a problem.

"In the '60s," says Ms. Cohen, "there was so much bad news about smoking that there really wasn't much the CTR could put out, but anything they could find they would use."

### The Lawyers Step In

By 1964, keeping the case open was no longer just shrewd public relations; it had become a legal imperative. As more Americans came to believe smoking could kill, the number of tobacco liability suits jumped to 17 from seven the year before. And in that year, the Surgeon General labeled smoking a health hazard.

It "was a serious, stunning shock," says Mr. Bowling, the former Philip Morris director. "That's the stage at which the lawyers became a lot more involved."

Needing a defense from science as

never before, yet dreading the legal exposure that adverse research would bring, the industry created within the Council a Special Projects division — with lawyers, not scientists, at the helm. Much of what it did was shrouded in mystery. "Everything was cloak-and-dagger," recalls John Kreisher, a former associate scientific director of the Council. "We weren't allowed on their floor."

The core of the lawyers' operation was a vast database, storing the world's literature on tobacco and health, data on foes and strategy documents. The lawyers began shuttling the globe, looking for research and expert witnesses. They sought out studies supporting causation of lung cancer by factors other than smoking and research suggesting the complex origin of all diseases linked to tobacco.

Overtures to scientists usually were handled by outside law firms, especially Jacob, Medinger, Finnegan & Hart in New York. It also served as counsel to the Council, and its Edwin Jacob took the lead role at the Special Projects unit. This arrangement offered crucial advantages. Notes Roy Morse, a former research chief at R.J. Reynolds: "As soon as Mr. Jacob funded" a scientific study, "it was a privileged relationship and it couldn't come into court" because of legal rules protecting attorney-client communications. "So they could do projects that they could bury if they chose."

How often they may have done that is unclear, because 1,500 Council documents are under seal in a federal suit in New Jersey, withheld under the attorney-client privilege. In any case, the industry had other options, such as halting funding after an initial phase. Mr. Jacob and the firm of Jacob Medinger declined to comment.

### Scientists Sign Up

In 1972, the Special Projects unit gave Hugh Fudenberg, an immunologist, funding to determine whether some people are genetically predisposed to emphysema. Early results indicated up to 10% might be. Dr. Fudenberg planned "to warn high-risk people not to smoke," he says, but before he could his funding was discontinued without explanation. "They may have cut me off because it would have been negative for them," he speculates.

A researcher named Geoffrey Ashton learned the limits of the Council's independence in 1976. He was invited by Mr. Jacob to study whether there might be some genetic factor underlying both smoking and certain diseases. But the study never got funded. Dr. Ashton says the lawyer told him "the presidents of the tobacco companies had turned down the proposal because they didn't think the outcome would be useful to them."

This case, like several others, points up the sometimes-perplexing relationship between scientists and the tobacco

Council. Dr. Ashton says he was "very apprehensive" about casting his lot with the industry. What finally won him over? "Not to shock you, but scientists are always looking for money to further their research," Dr. Ashton says.

Likewise, a pharmacologist, Charles Puglia, did a special project for the Council's lawyers from 1979 to 1981, although he believed smoking to be dangerous. He explains: "It was early on in my career and it got me started with a laboratory."

While these scientists hesitated to accept tobacco funding but finally said yes, others, such as Theodore Finley, hesitated and finally said no. Dr. Finley, encouraged by Jacob Medinger lawyers to apply for cigarette research funding, decided to examine whether emphysema can result from a reduction that smokers face in a protective lining of the lung. He soon backed out. "If my theory was correct, it would have discredited cigarettes," he says. "But it would be hard to talk about the evils of tobacco while being supported by them at the same time. This was dirty money — I felt like a prostitute."

The researchers the Council cultivated most assiduously were those of a different breed: contrarians whose work disputed the perils of tobacco. For instance, James F. Smith did two controversial studies in the 1960s and 1970s saying smokeless tobacco did not cause cancer. (The surgeon general in 1986 said it raised the risk of oral cancer.)

Although Dr. Smith all but repudiated his own conclusions on CBS's "60 Minutes" in 1985 — urging the public to avoid smokeless tobacco — a short time later he acknowledges he accepted an offer of several thousand dollars from Jacob Medinger lawyers to review scientific literature in preparation for a tobacco liability suit. The plaintiff was the mother of an Oklahoma youth who had died of oral cancer after using smokeless tobacco for seven years.

The Jacob Medinger firm and other defense lawyers won the suit, invoking Dr. Smith's studies as independent research. But there are indications he had longstanding ties to the Council; one court document shows his first study was earmarked a "priority" for funding by Council lawyers 20 years earlier. Dr. Smith says the Council paid for equipment at his department's lab at the University of Tennessee when he was doing his smokeless-tobacco studies, though it didn't finance the studies.

### Rewarding Research

Two other favorite scientists of the Council were Carl Seltzer and Theodor Sterling. Dr. Seltzer, a biological anthropologist, believes smoking has no role in heart disease and has alleged in print that data in the huge 45-year, 10,000-person Framingham Heart Study — which found otherwise — have been distorted by anti-tobacco researchers. Framingham Director William Castelli

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scuffs at Dr. Seltzer's critique but says it "has had some impact in keeping the debate alive."

Dr. Sterling, a statistician, disputes the validity of population studies linking smoking to illness, arguing that their narrow focus on smoking obscures the more likely disease cause — occupational exposure to toxic fumes.

For both men, defying conventional wisdom has been rewarding. Dr. Seltzer says he has received "well over \$1 million" from the Council for research. Dr. Sterling got \$1.1 million for his Special Projects work in 1977-82, court records show.

In relying on such research, the tobacco industry is "exploiting the margins of science," contends Anthony Colucci, a former top researcher and later director of scientific litigation support at R.J. Reynolds. He offers an analogy: "There's a forest full of data that says tobacco kills people, and sitting on one tree is a lizard with a different biochemical and physiological makeup. The industry focuses on that lizard — that tiny bit of marginal evidence."

R.J. Reynolds is suing Dr. Colucci, an outspoken critic, to keep him from testifying in a trial or talking to the media about tobacco liability, and accuses him of demanding a big consulting contract to keep quiet. Dr. Colucci says Reynolds "manipulated the negotiations" so it can now portray them as an extortion attempt. He adds: "This is a clear demonstration of the extent to which a tobacco company will go to silence someone who is telling the truth."

The Special Projects unit worked in a variety of ways to protect tobacco companies: Lobbying in Congress against advertising curbs, the industry in 1982 submitted to Congress a researcher's statement that peer pressure, not advertising, induced young people to smoke. Congress wasn't told that the research had been funded by Council attorneys. This was no accident. At a meeting of tobacco-company lawyers the year before, Mr. Jacob explained that the reason for funding that particular research as a Special Project was to conceal the researcher's ties to the industry. "We did not want it out in the open," Mr. Jacob said, according to the meeting transcript as cited in a Newark, N.J., federal judge's opinion.

The Council's lawyers weren't content for long to confine their activities to the Special Projects division. By the late 1960s, they had begun to encroach on the smoking research emanating from the putatively independent Council itself. Often, the Council and its lawyers shared or swapped projects and scientists.

By 1968, the Council had begun putting researchers under contract for many studies. This gave it the right to control both a study's design and publication of the results. However, as a con-

tractor, the Council could be held responsible for withholding negative findings. So its operatives would do their utmost to ensure that ugly surprises didn't arise.

This contributed to a parting of the ways with Hill & Knowlton. "The lawyers had this thing under control," recalls Loet Velmans, a former chief executive of the PR firm. It quit the account in the late 1960s, he says, out of frustration that the industry "for legal reasons felt it couldn't admit to anything [on tobacco and health] because then it would be sued out of existence."

Says Robert Kersey, a former head of tobacco research at Liggett: "Almost everything that transpired had to be done under the advice of counsel so that nothing . . . would incur a potential liability."

### Smoking Rodents

In 1968, the Council contracted with Mason Research Institute in Worcester, Mass., to evaluate "smoking machines" for animal inhalation studies and do toxicity tests on rodents. As the study drew to a close in 1972, Mason researcher Miasnig Hagopian was astonished when scientists from the Council and from R.J. Reynolds began turning up weekly at his lab, where he says they sat for hours taking notes. They made sure that only the most genetically vigorous (that is, cancer-resistant) rodents were going to be used, he says, and dictated which cigarettes and how many puffs were administered to them.

"It got to the point where they were directing the course of the study," says Dr. Hagopian. "It was nowhere near as objective as if it had been funded by" the government.

Although he did complain to Mason's president, Dr. Hagopian concedes he and other researchers mainly "looked the other way." They wanted to make sure the contract was renewed so they could do the critical experiments on whether smoke affects rodents' lung tissues. However, the Council canceled funding before Mason began the animal study.

The Council pulled out the big guns after another study, at Bio-Research Institute in Cambridge, Mass. When Syrian hamsters were exposed to smoke twice a day for 59 to 80 weeks, 40% of those of a cancer-susceptible strain and 4% of a resistant strain developed malignant tumors. Before publishing the study in 1974, the institute's founder, Freddy Homberger, sent a manuscript to Robert Hockett, then scientific director of the Council. Dr. Homberger says he had to do so because halfway through his study, the Council had changed it from a grant to a contract "so they could control publication — they were quite open about that."

Soon thereafter, Dr. Hockett and Mr. Jacob, the lawyer, hastened to Dr. Homberger's summer home in Maine.

Their mission? "They didn't want us to call anything cancer," Dr. Homberger testified years later at the Rose Cipolone tobacco liability trial in federal court in Newark, N.J. "They wanted it to be pseudo-epitheliomatous hyperplasia, and that is a euphemism for lesions preceding cancer. And we said no, this isn't right. It is a cancer." Today, Dr. Homberger adds that Mr. Jacob told him he would "never get a penny more" if the paper was published without making the changes.

He compromised. At the last minute, he changed the final proofs to read "micro-invasive" cancer, meaning a microscopic malignancy. Despite this, his lab was never funded by the Council again.

Dr. Homberger would come to regret his concession. And the Council would find a use for it — on the same occasion on which it eventually would use research from another lab, Microbiological Associates of Bethesda, Md.

### What Kind Of Cancer

The Council contracted with that lab to do the world's largest inhalation study, involving more than 10,000 mice. To do it, the Council spent hundreds of thousands of dollars in a quest for the perfect smoking machine, one that prevented mice from either holding their breath or overdosing on carbon monoxide. The lab initially had considerable freedom, says Carol Henry, who was its director of inhalation toxicology. But after nine years of work and \$12 million, the team was told in 1982 that it could no longer meet with Council staffers unless a lawyer was present.

"We had never done science through lawyers before, and we told them it was unacceptable," says Dr. Henry. She says a Jacob Medinger lawyer told her, "That's the way it is."

The scientists knuckled under. If the Council had canceled before all phases of the first experiment were done, 40 staffers might lose their jobs and nine years' worth of data would never come to light.

In the first experiment, in which mice inhaled the equivalent of five cigarettes a day, five days a week, for 110 weeks, 19 out of 978 mice got cancer — versus seven out of 651 controls. However, the tumors weren't squamous-cell carcinomas, the kind usually seen in human lung cancer. And there was a 10% possibility the results were due to chance, whereas scientists prefer no more than 5%. Even so, Dr. Henry says the study built a "very strong case" that cigarettes can induce cancers in animals. This was to be the first of several experiments.

But lawyers from Jacob Medinger told Microbiological the project would go no further. "When a contract is canceled given these kinds of results," Dr. Henry says, "reasonable scientists might conclude the liability issue must have suddenly become apparent to this

group." In fact, says Dr. Kreisher, the Council's former associate scientific director, Council lawyers "worried like hell" about it.

Microbiological and the Council parted ways, but the tobacco industry got plenty of mileage out of the Microbiological mice. In 1984, the Council issued a news release noting the absence of squamous-cell lung cancer in the lab's study. The timing wasn't coincidental: That year, lawyers from Liggett, Philip Morris and Lorillard began taking depositions in the landmark case of Mrs. Cipollone, a New Jersey woman whose family claimed she had died of smoking-related squamous-cell lung cancer. And at the federal trial four years later, a witness for the defense said the fact that the smoking mice didn't get squamous-cell carcinoma (although some did get cancer) showed that "cigarette smoke has not been shown to be a cause of lung cancer."

The witness also put Dr. Homberger's Syrian hamsters to good use. Smoking hadn't produced any more than "microinvasive" tumors in the hamsters, noted the witness, toxicologist Arthur Furst.

Dr. Homberger, regretting he had agreed under pressure to use this milder wording, calls this use of his report "baloney," adding: "It was cancer beyond any question, not only in our opinion but in the view of the experts who looked at the slides." Dr. Furst declined to comment.

The tobacco companies succeeded in planting doubt in some jurors. "I didn't think it was proven scientifically that smoking caused her lung cancer," says juror Barbara Reilly. She says that under pressure from other jurors, she and two other holdouts went along with a finding in favor of the Cipollones, but managed to hold the damages to \$400,000 instead of the \$20 million some wanted to give. The award was based on false safety assurances by cigarette companies in their pre-1966 advertising.

An appeals court overturned the verdict, saying the plaintiffs had to prove Mrs. Cipollone had relied on the ad claims. In December, the Cipollones withdrew the suit rather than retry it, citing the cost.

The advent of this suit had coincided with the end of the Council's contract and Special Projects research, as well as the waning influence of Jacob Medinger, which departed under pressure in 1984. Tobacco industry lawyers say privately that executives and attorneys grew fearful that the Council, though designed to deflect liability, would wind up incurring just that, because it could be portrayed as having breached a public pledge to do independent research.

### Legal Landscape Shifts

In fact, by the mid-1980s, the industry had begun to face the very suits against the Council that it feared. In one, the

## Tobacco Plaintiffs Face a Grilling

LAUREL, Miss. — Days after Burl Butler filed suit accusing six tobacco companies of causing his lung cancer, a call came in to the barber shop he'd owned for 30 years. "Is Burl still chewing and smoking?" the anonymous caller asked.

A young barber who picked up the phone volunteered that although Mr. Butler had never smoked, he did have a taste for Levi Garrett chewing tobacco. With that, the line went dead. But Mr. Butler, who claims he got his cancer from second-hand smoke at his barber shop, thinks there is no mystery. "We



Burl Butler

know that was an enemy from the tobacco side," he says. "They were trying to intimidate us."

The lead tobacco industry attorney in the case, James Kearney, declines to comment on any aspect of the case.

The tobacco industry's great success against

litigants lies not only in convincing jurors that tobacco-disease links remain unproved but also in tactics that scare off or wear down plaintiffs before the cases ever come to trial. Now, as the industry faces a fresh round of suits, those tactics will be put to the test once more.

### THOROUGH SEARCH

A company accused of causing someone's cancer clearly has an interest in probing for alternative causes. But "the tobacco industry makes a plaintiff feel as if everything in his life is exposed," says Thomas F. Johnson, a Philadelphia attorney. "It can be debilitating and scary."

Sleuths seek out anyone plaintiffs have known in quest of gossip and clues, says Doug Baldwin, an investigator in 1984-88 for George L. Barnes & Associates in Los Angeles, the industry's favorite gumshoe firm. He says none of the work the firm did while he was there — for hundreds of thousands of dollars per plaintiff — was used in court. So why bother? "We know details about plaintiffs that would have forced them to drop the suits," he says.

Jim Barnes of the Barnes firm says, "There can be lots of reasons for why people drop cases — litigation is expensive."

While plaintiffs' attorneys say some clients give up in the face of the ordeal, most steel themselves and proceed. In one case, tobacco lawyers asked plaintiff John Gunsalus and his friends about

a gun-possession charge he had faced 10 years earlier, a burglary prison term he had served and allegations of marital infidelity. Attempts to present this in Philadelphia federal court were blocked. But the judge did allow evidence about how police once beat an intoxicated Mr. Gunsalus after he broke into the bar where he worked while it was closed.

### COURTROOM HARBALL

"One of the issues in that case was if a warning had been on a cigarette package prior to 1966, would it have made a difference in this person's behavior," explains Edward Mammino, a tobacco industry attorney. The fact that Mr. Gunsalus, despite the beating, later broke in again "indicates what this gentleman's reaction would have been to a warning on a pack of cigarettes."

If a case makes it to trial, the hardball continues. Mr. Mammino sought a judge's permission to tell a Philadelphia federal jury that a witness for Mr. Gunsalus once served in the Nazi army. The judge said no. Mr. Mammino says he merely argued his right to cite the information to combat a motion from the plaintiff, and "it never occurred to me to use it."

The industry is also known for blanketing the courtroom with 30 or 40 lawyers, a tactic called "the wall," says New Jersey plaintiff's attorney Marc Edell. A 1988 memo by an outside lawyer for R.J. Reynolds, J. Michael Jordan, describes another strategy.

"The aggressive posture we have taken regarding depositions . . . continues to make these cases extremely burdensome and expensive for plaintiffs' lawyers," he wrote. Mr. Jordan, who declines comment, continues in the memo to other lawyers: "To paraphrase General Patton, the way we won these cases was not by spending all of Reynolds' money, but by making that other son of a bitch spend all his."

For Mr. Butler in Mississippi, the emotional toll is the worst part (his lawyers are paying for the litigation and will get part of any damages). For one thing, industry lawyers managed to delay the videotaping of his testimony for weeks in spite of his worsening condition.

Customers smoked so much that Mr. Butler's barber-shop ceiling turned brown and the silver ashtrays built into the old-fashioned barber chairs were usually full. But lawyers hoping to weaken the lung-cancer victim's case have probed Mr. Butler's school records, checked whether he had a cigarette vending machine in his shop (he didn't), grilled him about risks he took by hunting and using power tools, and asked what he ate. They even requested his mother's recipe for "smothered gravy."

—Laurie P. Cohen and Alex M. Freedman

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Cipollone family's lawyer, Marc Edell, sued the Council in 1984 on behalf of Susan Haines, the daughter of a lung-cancer victim.

To prove his claims of fraud and conspiracy, Mr. Edell has been trying to get access to the 1,500 Council documents the industry has kept secret by invoking attorney-client privilege. Such privilege can be abrogated in case of fraud, and last year a federal judge in Newark, citing possible evidence of fraud, set in motion the process of making documents available to Mr. Edell. The judge, H. Lee Sarokin, who had been hearing tobacco lawsuits for a decade, wrote a scathing opinion saying that the tobacco industry may be "the king of concealment and disinformation."

A federal appeals court removed him from the case last September for failing to maintain the appearance of impartiality. A new judge will decide the critical issue of whether the industry must divulge any of the 1,500 Council documents.

In the meantime, plaintiffs' attorneys are pinning their hopes on the Supreme Court's ruling last June. The ruling, which grew out of the Cipollone case, said that although cigarette warning labels prevent smokers from bringing "failure to warn" cases, plaintiffs may file suits alleging that cigarette makers intentionally hid or misrepresented tobacco's health hazards. This has led some to view the Council for Tobacco Research as the key to recovering damages from the industry.

But doing so may not be easy. At the end of January, a state court jury in Belleville, Ill., rejected the allegation that companies had conspired to play down tobacco's dangers. Some say winning such a case may depend on getting access to sealed Council documents.

Also facing an uphill battle is the criminal investigation by the U.S. Attorney in Brooklyn, N.Y. Prosecutors are facing statute-of-limitations problems because the Special Projects unit was disbanded more than five years ago.

But what may prove the best protection for the tobacco industry is the readiness of certain scientists to read the evidence differently from the majority. Says Dr. Colucci, the ex-Reynolds employee: "The scientists can come from Mars, but no matter how obscure or how misbegotten, as long as they are willing to tell the scientific lie that 'it's not proven,' the tobacco industry is off the hook."

### **Milestones in the Struggle Over Smoking**

■ 1953: Sloan-Kettering researcher Ernest Wynder paints tobacco tars on mice and produces cancer.

■ 1954: Industry forms Council for Tobacco Research.

■ 1954: Industry faces first tobacco liability suit, Pritchard vs. Liggett & Myers (dropped by plaintiff 12 years later).

■ 1964: Surgeon General calls cigarette smoking a "health hazard."

■ 1965: Council sets up secretive, lawyer-directed Special Projects division.

■ 1965: Congress requires cigarette label warnings (later toughened).

■ 1971: Congress bans TV and radio cigarette ads.

■ 1982: Surgeon General calls cigarette smoking major single cause of cancer mortality in U.S.

■ 1983: Rose Cipollone of New Jersey sues three companies saying their cigarettes gave her lung cancer.

■ 1984: Surgeon General calls smoking "chief, single, avoidable cause of death in our society."

■ 1986: Surgeon General says passive smoking can cause lung cancer and smokeless tobacco can rise oral-cancer risk.

■ 1986: In Oklahoma City, U.S. Tobacco wins only smokeless-tobacco liability case ever tried.

■ 1988: In only damage award against industry, federal jury in Newark orders Liggett to pay Cipollone heirs \$400,000; award is later overturned and suit is dropped in 1992.

■ 1992: Federal judge in Newark, seeing possible tobacco-industry fraud, moves to let a plaintiff see Council documents protected by lawyer-client privilege; later, judge is removed and order is voided.

■ 1992: U.S. Attorney in Brooklyn, N.Y., begins criminal probe of industry.

■ 1992: Supreme Court says smokers can file suits accusing tobacco companies of deceiving public about smoking dangers despite warning-label law.

■ 1993: In first trial after high court ruling, state jury in Belleville, Ill., finds no conspiracy to hide tobacco dangers.

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