

Secret Attorney-Client Documents Are Evidence of Potential Crimes or Fraud by the Tobacco Industry

**Committee on Government Reform and Oversight
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Executive Summary

In the last three years, Congressional hearings, FDA's investigations, and litigation have disclosed numerous internal documents from the tobacco industry. These documents have revealed extensive industry efforts to manipulate and control nicotine levels in cigarettes, as well as tobacco company research on marketing tobacco products to children. Yet despite these extensive disclosures, little evidence has emerged about the role played by the tobacco industry's lawyers in concealing information from the public.

Now new evidence is emerging that suggests that secret documents, which the companies claim are protected by the attorney-client privilege, may be the most damaging tobacco industry documents of all. This evidence suggests that tobacco attorneys created and participated in an elaborate scheme to defraud and deceive the American public for over 30 years.

To date, the involvement of the tobacco lawyers has been hidden from the public by the companies' invocation of the attorney-client privilege. Courts that have reviewed portions of these documents in camera, however, have concluded that they contain evidence of a decades-long crime or fraud. Recently, courts have found:

* Industry attorney-client documents "revealed the most explicit admissions" that tobacco company lawyers participated in a "program to further the alleged ongoing fraud and deception" and that the tobacco companies and their lawyers "specifically abused the attorney-client privilege in their efforts to effectuate their allegedly fraudulent scheme." *Haines v. Liggett Group Inc.*, 140 F.R.D. 681, 695 (D.N.J. 1992), vacated, 975 F.2d 81 (3rd Cir. 1992).

* Tobacco company lawyers carried out and planned "fraudulent activities and undertook to misuse the attorney/client relationship to keep secret research and other activities related to the true health dangers of smoking." *State of Florida v. American Tobacco Co.*, Civ. Action No. CI 95-1466 AH (Palm Beach County, Fla., filed Feb. 21, 1995).

* The government established a "reasonable basis to believe that the crime-fraud exception to the general rule of privilege should be invoked." *Minnesota v. Philip Morris*, Civ. Action No. C1-94-8565 (Ramsey County, Minn., filed Aug. 18, 1994).

* The plaintiffs established probable cause that "a fraudulent purpose existed" in the tobacco industry's attorney-client documents; these

documents "furthered the fraud perpetuated on the public." *Sackman v. Liggett Group, Inc.*, 920 F.Supp. 357, 368 (E.D.N.Y. 1996), vacated on other grounds, 167 F.R.D. 6 (E.D.N.Y. 1996).

The minority staff of the committee on Government Reform and Oversight has obtained a small number of the secret attorney-client documents. The documents obtained and analyzed by the minority staff are some of the attorney-client documents of Liggett & Myers Tobacco Company. These documents contain important evidence of one tobacco company's efforts to conceal health information from the public -- and they illustrate the central role played by tobacco lawyers in these efforts.

Specifically, these documents show that the Liggett attorneys:

- * Recognized that Liggett has developed a new cigarette with "major health benefits" but advised that Liggett not market the cigarette because it "may incite accelerated tobacco litigation which may, in turn, result in infinite liability." As an apparent result, Liggett never marketed the new cigarette.

- * Censored Liggett's communication of health risks to doctors because such a communication could "knock the props from under us" in future litigation.

- * Intervened to prevent Liggett managers from making public statements about human health effects that would contradict "our position that there is no scientific proof of any cause and effect relationship between smoking and human health."

- * Reviewed scientific research by Liggett and other companies to insure that it would not "ricochet to our detriment."

Despite their significance, these documents may not be the most important Liggett documents. For example, they do not contain any of the so-called "joint defense" documents, which describe the joint legal strategies of Liggett and other tobacco companies.

Although the documents described in this report are only a tiny fraction of the tobacco industry's attorney-client documents, their import is substantial. They appear to be evidence of potential significant corporate crime or fraud. The policy implications is clear: the attorney-client documents still being held secret by the tobacco industry should come to light. Until these attorney-client documents are made public, the full truth about the tobacco industry's attempt to defraud the public will never be known.

Discussion

I. Recent Court Rulings on Crime or Fraud by the Tobacco Industry

It appears that lawyers have been at the heart of a tobacco industry strategy to cast doubt on whether smoking causes cancer and to keep detrimental research on human health effects from the public. Lawyers can function largely out of view because they can shield their work product behind the attorney-client privilege. Several courts, however, have recently been presented with attorney-client documents for in camera review. These courts have determined that the tobacco industry's attorney-client documents contain evidence of a tobacco industry crime or fraud -- and should therefore be disclosed.

a. The Attorney-Client Privilege and the Crime-Fraud Exception

The attorney-client privilege protects confidential communications between an attorney and a client for the purpose of obtaining legal advice. This privilege extends solely to legal advice given by a legal advisor acting in the capacity of a lawyer. Scientific information does not become privileged merely because it is incorporated into a communication between an attorney and client. *Upjohn Co. v. United States*, 449 U.S. 383, 395-96 (1981).

The joint defense privilege is an extension of the attorney-client privilege. *United States v. Schwimmer*, 892 F.2d 237, 243 (2d Cir. 1989). The joint defense privilege protects communications between different persons or entities "when the communications are part of an ongoing and joint effort to set up a common defense strategy." *Eisenberg v. Gagnon*, 766 F.2d 770, 787 (3rd Cir. 1985), cert. denied, 474 U.S. 946 (1985).

However, neither the attorney-client nor joint defense privilege provide an absolute protection from disclosure. The crime-fraud exception to these privileges is a legal concept that prevents lawyers from using the privileges as a shield behind which they participate in an ongoing crime or fraud. The attorney-client privilege "ceases to operate . . . where the desired advice refers not to prior wrongdoing, but to future wrongdoing.' It is the purpose of the crime-fraud exception to the attorney-client privilege to assure that the seal of secrecy' between lawyer and client does not extend to communications made for the purpose of getting advice for the commission of a fraud' or crime." *United States v. Zolin*, 491 U.S. 554, 563 (1989).

Courts have held that the crime-fraud exception applies to substantial abuses of the attorney-client relationship, continuing illegality, false

suggestions and the suppression of truth, other misconduct, and any form of deception or deceit. See, e.g., *In re Sealed Case*, 754 F.2d 395, 399 (D.C. Cir. 1985); *International Telephone and Telegraph Corp. v. United Telephone Company of Florida*, 60 F.R.D. 177, 180 (M.D. Fla. 1973); *In Re Westinghouse Electric Corporation Uranium Contracts Litigation*, 76 F.R.D. 47, 57 (W.D.Pa. 1977); *Volcanic Gardens Management Co. v. Paxson*, 847 S.W.2d 343, 347 (Tex. App. 1993); *Central Constr. Co. v. Home Indemnity Co.*, 794 P.2d 595, 598 (Alaska 1990).

b. Judicial Rulings on the Participation by the Tobacco Industry's Lawyers in Crime or Fraud

Recently, both federal and state courts have found that a significant number of privileged tobacco documents fall within the crime-fraud exception to the attorney-client privilege. In the words of one judge, these documents "speak for themselves in a voice filled with disdain for the consuming public and its health." At least five different courts have recently ruled that the tobacco industry's attorney-client documents contain evidence of a crime or fraud by the tobacco industry.

1. *Haines v. Liggett Group*

The first court to consider whether the tobacco industry's attorney-client documents are evidence of a crime or fraud was the federal district court in the *Haines* case. The judge in this case conducted an in camera review of a set of 1,500 attorney-client documents from the tobacco industry. *Haines v. Liggett Group, Inc, et al.*, 140 F.R.D. 681 (D.N.J. 1992), vacated, 975 F.2d 81 (3rd Cir. 1992), on remand, 814 F.Supp. 414 (D.N.J. 1993). This court found that its in camera inspection of selected documents "supports plaintiff's contentions of the explicit and pervasive nature of the alleged fraud by defendants and defendants' abuse of the attorney-client privilege as a means of effectuating that fraud." *Id.* at 689.

The court's review "revealed the most explicit admissions" that the tobacco company lawyers participated in a "program to further the alleged ongoing fraud and deception." *Id.* at 695. The court found that the tobacco companies and their lawyers "specifically abused the attorney-client privilege in their efforts to effectuate their allegedly fraudulent schemes." *Id.* at 695.

The judge concluded that "the documents speak for themselves in a voice filled with disdain for the consuming public and its health." *Id.* at 684. According to the court, "despite the industry's promise to engage

independent researchers to explore the dangers of cigarette smoking and to publicize their findings, the evidence clearly suggests that the research was not independent: that potentially adverse results were shielded . . . ; that the attorney-client privilege was intentionally employed to guard against such unwanted disclosure: and that the promise of full disclosure was never meant to be honored, and never was." *Id.* at 684.

The Haines court held that certain tobacco documents being withheld as secret demonstrated a fraud on the public perpetuated by lawyers and that these documents should be available for use at trial. The case, however, never went to trial, because tobacco company appeals, which vacated the ruling on procedural grounds, and other legal tactics delayed the action. Ultimately, the plaintiff's counsel, which had incurred millions of dollars in fees, could no longer afford to pursue the case.

2. Florida v. American Tobacco Co.

In the last two years, renewed attempts have been made in litigation to disclose the secret attorney-client documents. Once again, the courts have found that the crime-fraud exception applies after reviewing the documents.

For example, on April 9, 1997, the special master in the State of Florida v. American Tobacco Co., Civ. Action No. CL 95-1466 AH (Palm Beach County, Fla., filed Feb. 21, 1995), ordered the production of certain privileged Liggett documents because they demonstrate that the tobacco company "engaged in extensive efforts to hide . . . the health hazards associated with cigarettes" from the public and that it "misled and defrauded the public and public health officials regarding the relationship between smoking and health." The master found that the documents also show that the tobacco company lawyers carried out and planned "fraudulent activities and undertook to misuse the attorney/client relationship to keep secret research and other activities related to the true health dangers of smoking."

The special master's ruling was upheld by the Circuit Court judge in April 1997.

3. Minnesota v. Philip Morris

The most important lawsuit to date considering the evidence of crime and fraud in the attorney-client documents is the lawsuit brought by the Minnesota Attorney General. In *State of Minnesota v. Philip Morris, Inc.*, Civ. Action No. C1-94-8565 (Ramsey County, Minn., filed Aug. 18, 1994), the State of Minnesota and Blue Cross and Blue Shield of Minnesota

sued all the major cigarette companies. Although the defendants' document production in this case is far from complete, the tobacco companies claim over 150,000 documents are privileged (amounting to over 1/2 million pages.) n1

Based on a review of the privilege logs and the documents produced to date, the Minnesota court concluded that the state had established "a reasonable basis to believe that the crime-fraud exception to the general rule of privilege should be invoked." The court found that the tobacco companies released public statements "intended to minimize or reduce fears that smoking is dangerous to one's health." According to the court, it would be improper to permit the tobacco industry's use of "health-related research which supports [its] economic interests" in "advertising and public relations campaigns" which at the same time allowing the industry to assert claims of "privilege for research which may lead to the opposite conclusion." The court concluded that the tobacco companies have an "obligation to disclose" the hazards of tobacco products, which "cannot be eliminated by the assertion of attorney-client privilege."

Because of the compelling evidence of crime or fraud, the court in Minnesota required the companies for the first time to submit all 150,000 documents to the court for in camera review. To balance efficiency and due process in reviewing these documents, the court fashioned a review process. The allegedly privileged documents will be divided into categories based on the type of privilege claimed (e.g., opinion work product, fact work product, attorney-client, or joint defense), the subject matter, author, and recipient. Once categorized, the special master will conduct a hearing on each category of documents to determine the appropriate application of privilege.

4. Other Recent Cases

Several other recent cases have also rejected the tobacco industry's assertion of attorney-client privileges. For example, in *Sackman v. Liggett Group, Inc.*, 920 F.Supp. 357, 365 (E.D.N.Y. 1996), vacated on other grounds, 167 F.R.D. 6 (E.D.N.Y. 1996), the federal magistrate ruled that Liggett had wrongly asserting 123 documents were privileged when they were not. Finding that the plaintiffs "sustained their burden of establishing probable cause that a fraudulent scheme existed and that the documents . . . are in furtherance of that fraud," the magistrate in *Sackman* concluded that the crime-fraud exception obviates the assertion of privilege and "mandates disclosure." *Id.* at 369.

The court in *Burton v. R.J. Reynolds Tobacco Co.*, 167 F.R.D. 134, 142 (D. Kan. 1996), also found that a prima facie case of fraud had been established. In a subsequent ruling, the magistrate also rejected R.J. Reynolds' claims of privilege for memoranda relating to research and development, letters from outside counsel on scientific research, literature reviews prepared by scientists at the direction of counsel, a letter from a consultant for outside counsel, minutes of a research-related meeting, and notes made by employees at industry meetings on smoking and health research. 170 F.R.D. 481, 490 (D. Kan. 1997). The court found that some of these documents "may contain evidence that R.J.R. knew, during the relevant time period, that nicotine was addictive." *Id.* at 490.

Similarly, in *Butler v. Philip Morris*, Civ. Action No. 94-5-53 (Jones County, Miss., filed May 12, 1994), the trial judge reviewed Liggett documents identified as joint defense documents and ordered their production.

II. The Liggett Attorney-Client Documents

To date, there has been virtually no public disclosure of the attorney-client documents that the courts have ruled contain evidence of crime or fraud. As the Haines case demonstrates, tobacco companies have guarded their secret attorney-client documents fiercely and employed legal tactics to delay the production of these documents in litigation.

This report pierces this veil of secrecy -- at least to a small extent -- by analyzing some of the attorney-client documents. The minority staff has obtained a set of some of the attorney-client privileged documents of Liggett & Myers Tobacco Company. These secret documents may not be the most important Liggett documents, because they do not include documents showing the joint defense of Liggett and the other tobacco companies. Nevertheless, they suggest that Liggett, acting on the advice of its lawyers, knowingly blocked the marketing of safer tobacco products.

These documents also show that lawyers representing Liggett censored correspondence with the medical community and public statements made by employees. They also show that Liggett's lawyers determined whether scientific research would be funded based on whether it would show cigarette smoking to be dangerous.

a. Suppression of the Marketing of a Safer Cigarette

Two previously secret Liggett attorney-client documents illustrate the role

played by lawyers representing Liggett in suppressing the marketing of a "safer" cigarette that the lawyers conceded would "dramatically reduce the incidence of both non-cancerous and cancerous tumors in test mice as compared to the tumor incidence produced by conventional cigarettes." These documents show that Liggett's lawyers advised against marketing the safer cigarette because the cigarette "may incite accelerated cancer litigation which may, in turn, result in infinite liability."

1. The "Initial Observation" Memorandum

The first attorney-client document is an undated memorandum marked "Confidential" and entitled "Some Initial Observations on the Patented Cigarette Project." n2 This document describes Liggett's extensive efforts to determine what constituents of tobacco smoke cause tumors and to develop a safer cigarette that eliminated these hazardous constituents.

According to the memorandum:

In 1954, Liggett began a contractual relationship with Arthur D. Little, Inc. ("ADL") under which Liggett's Tobacco Research Center and ADL's Life Sciences research laboratory in Cambridge, Massachusetts undertook to jointly investigate the supposed correlation between cigarette smoking and cancer. This research was initiated in the wake of the 1953 demonstration by Wynder, Graham and Croninger that cigarette smoke condensate produces tumors on the skin of susceptible mice when painted on the skin in large amounts.n3

As described by the lawyers, the "principal thrust" of Liggett's research with ADL was "to determine which substance was responsible for this tumorigenic effect and to ascertain a method -- if possible -- by which the tumorigenic effect could be reduced or eliminated." n4 Lawyers recognized that "[t]he back skin of these specially bred laboratory mice is generally recognized by some medical researchers as having sensitivity characteristics similar to human lung tissue." n5 Liggett expended \$13 million on this biological testing program through the end of 1978. n6 In 1997 dollars, this expenditure would be over \$30 million.

Through this research, Liggett learned that "the tumor-causing activity of cigarette smoke condensate is primarily initiated by the polycyclic aromatic hydrocarbon [PCAH] fraction of the condensate." n7 As a result, Liggett initiated "an effort . . . to reduce the quantity of the PCAH fraction in smoke condensate." n8 According to Liggett's lawyers, "several hundred materials were added to tobacco and the mixtures were combusted." n9

Liggett's efforts ultimately proved successful, according to Liggett's lawyers. The memorandum states that Liggett learned that "[p]alladium, an inert metal, apparently inhibits the formation of PCAH molecules by blocking molecular linkage of carbon, hydrogen, and oxygen." n10 According to the lawyers, the "palladium catalyst was the most effective in reducing the amount of the PCAH fraction in the [smoke] condensate." n11

Liggett also learned through this research that "use of tobacco blends high in nitrogen found in burley, and conventional tobacco blends supplemented with nitrogen in the form of nitrate salts similar to those in burley, further reduced the PCAH fraction of the condensate." n12 Tests of smoke concentrates "showed that a treated tobacco level of 0.75% nitrate nitrogen combined with a palladium catalyst of 400 ppm (between 0.01% and 0.1% of the tobacco weight) achieved an effective reduction of up to 88% of non-cancerous tumors and up to 100% of cancerous tumors in comparison to concentrates from untreated control cigarettes."n13

According to the lawyers, Liggett conducted extensive additional research. Liggett developed "a special filter to remove the increased nitrogen oxide and other irritant substances from the palladium-treated cigarette's smoke." n14 Liggett also determined that "the amount of palladium carried by the smoke through the filter is virtually nonexistent." n15 In fact, the document notes that "even at slightly higher levels, there is no indication that the palladium has any toxic effect" and that palladium has not "been shown to produce toxic effects even among workers in palladium refining or manufacturing operations." n16

Thus, Liggett's lawyers concluded their analysis of the palladium cigarette by stating that "it seems clear that some major health benefits can be predicted." n17

2. The Greer Memorandum

Although Liggett's lawyers were apparently convinced that the palladium cigarette offered significant health benefits, the lawyers were not convinced that the product should be marketed. To the contrary, as a second attorney-client documents demonstrates, they argued strenuously against the marketing of the cigarette because of their concern that such an effort would imply that other Liggett products were dangerous. The second document is a draft memorandum from Joseph H. Greer, Liggett's Vice President and General Counsel, to Robert Hooker, another Liggett lawyer. n18 The Greer Memo provides Liggett's legal analysis of whether:

In the event that this Corporation manufactures, markets and advertises a cigarette containing a blend of tobacco treated with a catalyst which purportedly substantially reduces the biological effects of tar' . . . as proven by mice painting tests that reduced the number of carcinogenic tumors appearing on the catalyst-blend painted mice as compared to the controls, what risks does this Corporation take with regard to governmental and civil action and possible resulting liability? n19

The Greer Memo demonstrates that Liggett's chief lawyer advised Liggett that there were serious and perhaps overwhelming litigation risks associated with marketing the palladium cigarette. Specifically, Mr. Greer concluded that "in the case of civil litigation aimed at cancer of the lung, emphysema, heart disease, etc., the running of a catalyst cigarette advertisement making reference specifically or impliedly to reductions in health hazards may incite accelerated cancer litigation which may, in turn, result in infinite liability." n20

Liggett's lawyer also expressed the concern that marketing of the new cigarette "may further substantiate that this Corporation has a great deal more scientific and medical knowledge concerning lung cancer and cancer in general than it previously had." n21 The consequences would be that "a more significant warning could be required for our present products to the public or negligence on this Corporation's part would result." n22

Mr. Greer noted that in two of the most recent smoking health cases in which Liggett had been involved, Liggett argued "that such mouse painting tests by Wynder and others were invalid because of a lack of replication and further invalid as a scientific test based on acceptable methodology." n23 Liggett's lawyer postulated that "if this Corporation presented evidence . . . that the catalyst-painted mice received 80% fewer carcinogenic tumors than the controls painted with the regular Chesterfield blend, then this Corporation has obliterated its defense." n24

The Greer memo also indicates that the Liggett lawyers anticipated serious problems with the FTC if the company tried to market the palladium cigarette with "health-related" claims. The lawyers noted that the FTC would require substantiation of any advertising claims and this substantiation would be a "collateral implication that the catalyst cigarette does reduce a health hazard concerning lung cancer." n25 Liggett's lawyers warned that if Liggett made any mouse-painting claims in its ads and had to substantiate the claims in a public FTC hearing, "the claims in cancer litigation as well as in emphysema litigation may be enlarged" and the company's "defenses of

contributory negligence and assumption of risk may have been diminished" resulting in "enormous risks" and potentially "vast amounts of monetary liability." n26

The recommendation of Liggett's lawyers not to market the palladium cigarette apparently prevailed within the company. Despite the company's conclusion that the new cigarette offered "major health benefits," the palladium cigarette was never sold commercially.

b. Censorship of Correspondence to the Medical Community

The documents obtained by the minority staff also show that Liggett's lawyers determined the appropriate language that could be used by Liggett's scientists and company employees when communicating with doctors. Under the guise of privileged communications, Liggett's counsel censored company statements to eliminate statements that conveyed knowledge of adverse health effects caused by smoking.

In the 1960s, Liggett discovered that hydrogen cyanide present in the gas phase of cigarette smoke inhibited ciliary transport in the lungs. Ciliary transport is one of the main mechanisms by which the lungs clear themselves of physical irritants such as smoke particles. Liggett's research director initiated a search for a filter that could capture hydrogen cyanide in the gas phase. n27 This initiative resulted in the Keith filter, which was used in the LARK cigarette. n28

Liggett wanted to market LARK to medical doctors by providing them with information supporting the filter's success removing materials that "are largely responsible for the inhibitory effect on the cilia induced by unfiltered and conventionally filtered cigarette smoke," n29 but Liggett's lawyers intervened to censor the company's communication with the doctors. In a privileged memo of September 16, 1963, Liggett's lawyers commented on a proposed letter to U.S. medical doctors promoting the LARK cigarette. n30 One of Liggett's lawyers, Mr. Haas, who subsequently became Liggett's general counsel, stated:

As I have stated with respect to other releases in the past there is one feature of the current proposal which could serve to knock the props from under us' in future litigation. We have consistently maintained in court that the results of animal experimentation cannot be directly extrapolated to human beings. In my opinion the doctors receiving the suggested letter in its present form would get the impression, and rightly so, that the Company now says that animal experimentation in

the cilia studies is of definite benefit to man." n31

C. Censorship of Public Statements

Liggett's lawyers also presented company employees from making statements to the press linking smoking with human health. For example, in a memo dated January 16, 1969, Liggett's lawyer Fred Haas wrote to Liggett executives J. Old and S. White about a quote in Fortune that "it's gas, not tar, that is the major cigaret health hazard." n32 Mr. Haas wrote that this statement was contrary to Liggett's position that "there is no scientific proof of any cause and effect relationship between smoking and human health." n33 Mr. Haas then stated that Liggett should take steps to prevent such statements from being made in the future:

I have spoken with the Marketing people along these lines since the beginning, and it is disturbing that such a remark could be attributed to anyone here. I think it incumbent upon us to find out if anyone in the Company actually did make this statement and to caution Brand Management once again. n34

D. Control of Company Funded Research

Liggett's attorneys were also actively involved in reviewing the outside research projects funded by the company. Their goal, as revealed in the attorney-client documents, was to insure that the outside research funded by Liggett did not demonstrate a link between smoking and any health problem.

For example, in a memo to Liggett executives M.E. Harrington and K. McAllister dated February 2, 1971, Liggett's general counsel Fred Haas recommended that Liggett fund a Washington University research proposal on immunologic aspects of cancer. n35 Mr. Haas stated that funding this research "warrants our serious consideration" and that he did "not see how it could ricochet to our detriment since the smoking habit has no part in the study and, as I said at the outset, the project is not involved in finding causation." n36

Mr. Haas also wrote an internal memo to Liggett executives M.E. Harrington and K. McAllister on a research proposal submitted by Harvard's Channing Laboratory to be sponsored as a "special project" of the Council of Tobacco Research, an industry trade group.n37 In his memo recommending the funding, Mr. Haas stated that the main researcher at the Harvard Project, Dr. Gary Huber, "made it clear that no research would be based on the hypothesis that smoking causes any disease."n38

III. The Attorney-Client Documents that Remain Secret

The secret attorney-client documents reviewed in this staff report provide just a glimpse of the central role played by tobacco industry lawyers in blocking the marketing of "safer" tobacco products and concealed information about the health risks of cigarettes.

The minority staff has obtained an index of over 3,500 Liggett attorney-client documents that discuss joint legal strategies between Liggett and other tobacco companies.ⁿ³⁹ The volume of these "joint defense" documents far exceeds the number of documents reviewed by the minority staff. However, none of the Liggett documents that discuss Liggett's joint defense strategy have been reviewed by the minority staff, nor have any of these documents been made public.

Moreover, the Liggett documents themselves are only a small part of the universe of the secret attorney-client documents. According to the judge in the Minnesota litigation, there are more than 150,000 attorney-client documents that need to be reviewed for evidence of a crime or fraud, but have never been released to the public.

Until the entire set of attorney-client documents of the tobacco industry are disclosed, the full truth about the tobacco industry's attempt to defraud the public will never be understood.

Endnotes

n1. As of May 9, 1997, none of the Defendants (except Liggett) had finished their privilege logs. At least one of these companies had at that time apparently listed less than 20% of its attorney-client documents on a privilege log.

n2. Undated memorandum marked "Confidential" and entitled "Some Initial Observations on the Patented Cigarette Project" (hereinafter referred to as the "Initial Observations Memo"). The Initial Observations Memo is included as attachment 1 to this staff report.

n3. Initial Observations Memo at 2.

n4. Initial Observations Memo at 2.

n5. Initial Observations Memo at 5.

n6. Initial Observations Memo at 2.

n7. Initial Observations Memo at 2.

n8. Initial Observations Memo at 3.

n9. Initial Observations Memo at 3.

n10. Initial Observations Memo at 3.

n11. Initial Observations Memo at 3.

n12. Initial Observations Memo at 3.

n13. Initial Observations Memo at 3.

n14. Initial Observations Memo at 4.

n15. Initial Observations Memo at 6.

n16. Initial Observations Memo at 6.

n17. Initial Observations Memo at 6.

n18. Draft Memorandum of Law dated October 18, 1977, from Joseph H. Greer to Robert Hooker (hereinafter referred to as the "Greer Memo"). The Greer Memo is included with his staff report as attachment 2.

n19. Greer Memo at 1.

n20. Greer Memo at 8.

n21. Greer Memo at 10.

n22. Greer Memo at 10.

n23. Greer Memo at 8.

n24. Greer Memo at 8.

n25. Greer Memo at 9.

n26. Greer Memo at 10

n27. March 15, 1963, Memorandum entitled "Development of the Three Piece Keith Filter" (hereinafter referred to as the "Keith Filter Memo"). The Keith Filter Memo is included with this staff report as attachment 3.

n28. Keith Filter Memo at 4.

n29. Draft Liggett letter to physicians, enclosed with transmittal letter dated March 8, 1963, from William W. Bates, Jr. to Charles J. Kensler (hereinafter referred to as the "Draft Letter"). The Draft Letter is included with this staff report as attachment 4.

n30. Memorandum dated September 16, 1963, from Fred P. Haas to Frank H. Horan (hereinafter referred to as the "Haas Memo"). The Haas Memo is included with this staff report as attachment 5.

n31. Haas Memo.

n32. Memorandum dated January 16, 1969, from F.P. Haas to J. Old, Re: Page 6 Relative to LARK Brand (hereinafter referred to as the "Fortune Memo"). The Fortune Memo is included in this staff report as attachment 6.

n33. Fortune Memo.

n34. Fortune Memo.

n35. Memorandum dated February 2, 1971, from F.R. Haas to M.E. Harrington and K. McAllister, Re: Proposal on Research Dealing with Immunological Aspects of Cancer (hereinafter referred to as the "Washington University Proposal"). The Washington University Proposal was included with this staff report as attachment 7.

n36. Washington University Proposal at 3.

n37. Memorandum dated July 6, 1972, from F.R. Haas to M.E. Harrington and K. McAllister, Re: Proposed Research Project -- Changing Laboratories (hereinafter referred to as the "Harvard Project Proposal"). The Harvard Project Proposal is included with this staff report as attachment 8.

n38. Harvard Project Proposal at 4.

n39. The index containing the joint defense documents is available for inspection at the minority office of the Committee on Government Reform and Oversight, room B-350A Rayburn House Office Building.