BIG TOBACCO LEADS THE WAY

How to Earn Billions by Killing Millions

JOHN UUSTAL, ESQ.
“It is more profitable for your congressman to support the tobacco industry than your life.”

—Jackie Mason
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The Deadliest Fraud

Cindy Naugle was already physically frail when I first met her. She was in her fifties, but she looked younger, at least until she had to get up and do something. She struggled to catch her breath after walking even a few steps. She needed an oxygen tank to live. It took her hours to make her bed, brush her teeth, and get dressed in the morning. She was physically weak, yes, but strong-willed to the point of being stubborn, and she worked harder than anyone I’ve ever met. She could barely walk, but she was never late for work. I want to tell you about who killed her and how they did it. I especially want you to know how they abused the justice system that should have saved her, and how I failed to stop them.

Fraud is a financial crime. The criminal lies to get money. That’s the intent and the reason for the fraud. But fraudsters rarely care about the collateral consequences of their crimes, which are often far worse than any financial loss. Sometimes people die. The tobacco companies committed the deadliest fraud in American history. It’s not just that they lied about a deadly product; it’s not just that they specifically targeted children for addiction; it’s not just that they preyed on the psychological weaknesses of addicts. The most astounding thing is how they still get away with altering the product to make it more addictive. And no one seems to care.

Tobacco companies put additives into cigarettes to free-base the nicotine. Like the crack version of cocaine, free-base nicotine makes the drug more addictive, allowing it to reach the brain almost immediately.¹ And this is only one of the ingenious ways the tobacco companies continue to do their best to make a deadly drug even more addictive. If someone you know is trying to quit smoking, take a moment to think about an industry that works to make its deadly product more addictive, knowing that millions of people will die as a result.

Thanks to lawsuits, at least the tobacco companies don’t lie anymore about the dangers of smoking. Those dangers are now so well understood that it’s hard to imagine a time when they were not publicly known. But the tobacco companies began their conspiracy to commit fraud in the 1940s and 1950s. Back then, they gave out free cigarettes at schools. Candy stores sold single “penny cigarettes” to children. Smoking was advertised on television shows, even in cartoons, and cigarette ads featured cartoon characters like the Flintstones. Doctors loved to smoke, and did so for the ’health benefits.’ Even famous athletes smoked.
The tobacco companies knew the truth about the dangers of smoking well before public health authorities, and they were careful to conceal their research and their conclusions. When scientists and doctors first began to suspect the truth, the tobacco companies started to develop a strategy: secretly targeting kids as replacement smokers, while at the same time fighting to keep current smokers addicted to nicotine as long as possible. They overwhelmed the public with a scientifically-constructed message designed to take advantage of known weaknesses in the way an addict processes information. Nicotine physically changes the brain, and this creates an opportunity to take advantage of those changes.

The tobacco companies did just that. They designed a message that focused, first, on doubt. They knew that addicts would seize on any doubt as a psychological crutch. Internally, they realized that tobacco was no longer their real product, nor even nicotine. Doubt was their product, and their survival depended on it. That was the reason for all the fake science and massive propaganda claiming that there was no proof that smoking caused disease.

Second, the tobacco companies designed their message to convey the impression that any risk, even if it turned out to be true, was minimal and remote. Smoking might make you a little sicker when you’re really old? *It's like eating bacon, or sugar, or strawberries; we're not going to give up everything we love so we can live a few more weeks!* Cigarettes might cause cancer? *Everything might cause cancer these days!* Cigarettes are dangerous? *So is driving, but no one's giving that up!*

Third, the tobacco companies designed their message to convince the addict to delay taking action. They knew they didn't have to convince the addict not to quit, they just had to convince them not to quit today. *You can always quit tomorrow, long before anything bad happens, but right now we don't even know if smoking is bad.*

**Obscuring Science**

Tobacco companies knew as far back as the 1940s that smoking was dangerous and potentially deadly. But they had billions of dollars to spend in their fight against facts. They also knew that they were in a race against the clock; sooner or later, the truth would come out. Their plan was not to convince people that science was wrong or that doctors were lying, but rather, to foster doubt.
The tobacco companies knew that the addicted mind wanted to believe, as long as it could find an excuse. So, they made it their business to create false excuses, to encourage false doubt. As one tobacco memo put it, “doubt is our product since it is the best means of competing with the ‘body of fact’ that exists in the mind of the general public. It is also the means of establishing a controversy.”

It was in the arena of public opinion that the tobacco companies ultimately won the fight against facts. They didn’t need the smartest scientists or the most favorable studies and reports; what they needed was enough noise to drown out the truth. They looked for charismatic doctors and researchers, and paraded them in front of the cameras to calm the fears of the people. These TV appearances, along with ads cleverly disguised as news articles, touting the benefits of smoking, and dismissing any negative claims, caused the confusion and doubt needed to keep people buying cigarettes.

By 1981, Big Tobacco was spending one billion dollars a year in advertising. For every warning and negative report that came out, there were thousands of counterattacks in the form of ads and “expert reports.” It should come as no surprise, then, that the public was largely unaware of the true health hazards of smoking well into the 1980s. In fact, the tobacco companies were so successful at tricking consumers into buying their defective products, they became role models for other dishonest corporations.

**Inhalable Death**

While tobacco and cigarettes had been around for hundreds of years, the modern cigarette was the result of two important advances: the Bonsack Machine and the Flue-curing process. In 1880, James Bonsack, an inventor and mechanic, created the first cigarette-making machine, which chopped the tobacco, deposited it into the rolling papers, rolled it up, and cut it into individual cigarettes. Bonsack’s machine was able to roll thirteen times the amount of cigarettes that a human cigarette roller could. Today, similar machines can roll 984,000 cigarettes an hour.
For James Buchanan Duke, a tobacco company owner, this machine was exactly what his business needed. He acquired the first license to use it, and when he found himself with more cigarettes than he could sell, he turned to advertising. Duke placed ads in the “glossies,” the first known magazines, gave out cigarettes at events, sponsored races, and visited tobacco shops to get a feel for the market. Although this all took place in the late 1800s, Bonsack’s machine and Duke’s advertising techniques paved the way for everything that came later.

Then, in the early 1900s, cigarette companies designed a new method of curing tobacco. Before that, people smoked cigarettes like cigars, without inhaling the smoke. By flue-curing the tobacco (heat-curing
it without exposing it to smoke) the cigarette companies created a milder and thus more inhalable smoke. Modern cigarettes are so uniquely dangerous because smokers can easily inhale the smoke and hold it in their lungs.

**Friendly Fire**

By World War I, the cigarette companies had laid the foundations for the modern tobacco industry: mass production, flue-curing, and advertising. They sent free cartons to soldiers overseas. They started marketing their products to the military wives. By the end of World War II, Big Tobacco had made cigarettes cool, sophisticated, and rebellious. Men, women, and an alarming amount of children picked up the habit. Doctors and patients in hospitals, travelers aboard an airplane, even pregnant women smoked without a second thought. Tobacco companies advertised everywhere. Everyone who was anyone was on a cigarette ad: Lucy and Ricky, Ronald Reagan, Rita Hayworth, Santa Claus, Fred Flintstone; it was impossible to avoid the relentless barrage. By the 1960s, 50 percent of men and 33 percent of women in the U.S. identified as smokers.

But the rising popularity of cigarette smoking had unforeseen consequences. A 1938 article by Raymond Pearl, a highly regarded American biologist, claimed that smokers simply did not live as long as non-smokers. And in 1939, a paper published by Drs. Alton Ochsner and Michael DeBakey first linked the custom of inhaling cigarette smoke to the increase in cases of lung cancer. But these reports were confined to niche journals, and the public remained in the dark.

**Cancer by the Carton**

Public health scientists didn't have access to the secret tobacco company documents on the dangers of smoking, but in 1952, the popular “Reader’s Digest” published an article titled “Cancer by the Carton,” which explored the correlation between an increase in lung cancer mortality and the increase in cigarette consumption, causing a stir in the media and public opinion. What followed was the largest drop in cigarette consumption since the Great Depression.

In early December 1953, Paul Hahn, the president of the American Tobacco Company, sent a telegram to the heads of the seven major U.S. tobacco companies. He urged them to set up a meeting to discuss “the
highly publicized claims of certain medical men… charging serious danger to health from smoking.”

The meetings took place at the Plaza Hotel in New York over the course of 10 days, starting on December 14. It was there that tobacco executives first met with the public relations experts from Hill & Knowlton.

After two days of discussing the problem, Hill & Knowlton got to work on strategy. While this plan was brewing, the tobacco companies suffered another blow. Life Magazine published the results of a mouse painting study conducted by Drs. Evarts Graham, Adele Croninger and Ernst Wynder.

Three times a week, the researchers painted mice with a tar and acetone solution that came directly from cigarettes. The result was that 44 percent of mice developed carcinomas, and of the mice that were still alive after 12 months, 58 percent developed cancer. The pictures that accompanied the story were impactful and terrifying; frightened mice covered in tumors and tar, and a “cigarette smoking machine” that was used to gather the tar from the cigarettes to paint onto the mice’s tiny, shaved backs. People weren’t throwing out their cartons of cigarettes just yet, but their attention was piqued. Fortunately for Big Tobacco, Christmas came one day early that year.

On the night of December 24, 1953, Hill & Knowlton presented its plan. The tobacco companies needed to do three things for their consumers: establish confidence in their product, assure the public of its safety, and most importantly, “free millions of Americans from the guilty fear that is going to arise deep in their biological depths every time they light a cigarette.” How? By creating doubt, making consumers doubt the veracity of negative health claims, making them doubt their doctors, and making them doubt the facts.

The tobacco companies agreed to take the first step toward creating this doubt with the now infamous Frank Statement.
A Less than Frank Statement

On January 4, 1954, ten days after the Plaza meetings, the tobacco companies released an ad titled, “A Frank Statement to Cigarette Smokers.” They ran the ad in more than 400 newspapers, reaching an estimated 43 million readers. The Frank Statement claimed that there were, in fact, many possible causes of lung cancer, arguing there was no definitive proof that cigarette smoking was one of them. They plainly stated that they didn’t believe their products were harmful, and promised to always “cooperate closely with those whose task it is to safeguard the public health.” They went on to reveal their solution to the public’s concern over the potential dangers of cigarettes: The Tobacco Industry Research Committee (TIRC).

As a joint venture between all the major tobacco manufacturers, the TIRC’s supposed aim was to study the possibility of a link between cigarettes and lung cancer, as well as to keep the public informed of any new developments. But the TIRC was a fraud. It never found any such link, and its reports to the public consistently denied all health risks. The Committee managed to win wide acceptance in the scientific
world first, and research funded by it would be cited by the U.S. Surgeon General for years to come. Unfortunately, it took decades, and the release of confidential internal company documents, for the TIRC to be revealed for what it truly was: a PR agency disguised as a research facility. In fact, TIRC’s offices were located one floor below Hill & Knowlton’s headquarters in the Empire State building.

Today, thanks to lawsuits, we have countless documents proving that Big Tobacco knew the truth about the deadly danger of smoking while they were publicly lying about it. As early as 1953, Claude Teague, a young researcher from the R.J. Reynolds Tobacco Company, concluded in the infamous document “Survey of Cancer Research” that studies of clinical data confirmed the relationship between prolonged heavy smoking and the incidence of lung cancer.

**Cancer Free Utopia**

Hill & Knowlton’s report of the famed Plaza Hotel meetings references a tobacco executive exclaiming “Boy! Wouldn’t it be wonderful if our company was first to produce a cancer free cigarette. What we could do to our competition!” A 1958 report by the British American Tobacco Company confirmed that, by then, almost every tobacco scientist already knew of the link between smoking and lung cancer.

In 1961, the Director of Research for Philip Morris presented his “Tobacco and Health Research and Development Approach” in which he clearly established that smoke contains carcinogens, and it’s not possible to filter them out. He provided a partial list of over 35 carcinogens found in cigarette smoke. In 1962, the head of the Chemical Research Department for R.J. Reynolds wrote a report titled “The Smoking and Health Problem - A Critical and Objective Appraisal.” He confirmed that the TIRC did, in fact, find what he called an “overwhelming” amount of evidence pointing to cigarette smoke as a health hazard. And yet, Big Tobacco continued to lie to the public for decades to come.

In 1962, at the behest of President John F. Kennedy, the Surgeon General’s Advisory Committee on Smoking and Health was created. In 1964, the Surgeon General released a report concluding that cigarette smoke was harmful, that it was the primary cause of chronic bronchitis, and that there was a correlation between smoking, emphysema, and heart disease. The report, released on January 11, went on to find a causal link between smoking and lung cancer in men, as well as a correlation between women who smoke while pregnant giving birth to underweight newborns.
But Big Tobacco was ready with a new version of the same plan to take advantage of the way an addict’s brain processes information: don’t worry about the Surgeon General’s report, because now you can buy cigarettes with filters. On the day the report was released, Howard Cullman, the president of the Tobacco Merchants Association and director of Philip Morris, appeared on a CBS News Extra report on Smoking and Health. He touted the benefits of filters, and assured the public that if any harmful elements were found in cigarette smoke, they would “be removed.”

Eighteen days after the Surgeon General’s Report was made public, George Weissman, the Executive Vice President Overseas (International) at Philip Morris, sent a confidential memo to his CEO, Joseph F. Cullman, outlining their next steps. After referring to the report as “propaganda,” Weissman went on to suggest undermining the findings with the help of cartoonists and satirical print and television writers. While deflection was important, he believed that the more pressing issue was providing the customers with “a psychological crutch and a self-rationale to continue smoking.”

The crutch came in the form of a two-pronged approach. First, the introduction of filtered, light, and low tar cigarettes. These cigarettes would be perceived as safe. Second, was the continued focus on creating doubt. Combined, these two elements formed a perfect strategy, one that would keep Big Tobacco drowning in profits for years, but would claim millions of lives in the process.

Tobacco sales dipped slightly after the Surgeon General’s report, but the industry quickly promoted filtered and low tar cigarettes as a “healthy” alternative. The tobacco companies discovered that painting the filters white would cause them to change color when smoked. This would provide false visual proof that the filters were doing their job. Never mind that the color change had nothing to do with filtration. As an internal Philip Morris report explained, “the illusion of filtration is as important as the fact of filtration.” The illusion of filtration could not protect smokers, but it could protect sales.

### A Light Promise

Low tar and light cigarettes were not safer either. Smokers who switched to a lighter cigarette ended up smoking twice as much as they did before to get the same amount of nicotine, and they inhaled more deeply. The smoker ingested at least as much smoke, and there was no health advantage. As the tobacco companies knew well before the Surgeon General figured it out, the health claims for light and low tar cigarettes were false. The tobacco industry provided a product for every category of smoker: those who
wanted to smoke got full flavor cigarettes, those who were hesitant for health reasons got filters, and those who wanted to cut down or even quit got low tar and lights.

Along with these new products designed to reassure smokers, the tobacco conspiracy continued the fraudulent campaign designed to create doubt. The TIRC was deemed a “successful defensive operation” by tobacco executives, and in 1964, it was renamed as the Council for Tobacco Research (CTR). Outwardly, the CTR worked toward the same goals as the TIRC: to find out if smoking caused cancer or any other disease. Internally, company memos described the CTR’s goals differently, “promoting cigarettes and protecting them from these and other attacks,” by “creating doubt about the health charge without actually denying it, and advocating the public’s right to smoke”.

Working alongside the CTR was the Tobacco Institute, a lobbying association. Their job was to shine a positive light on the industry and fight legislation that wasn’t tobacco friendly. These organizations worked hard to overcome the controversy that came with the 1966 labeling act that required every pack of cigarettes to have a warning label regarding the possible dangers of smoking. While the labels said that smoking cigarettes “may be” hazardous, the CTR and the Tobacco Institute denied any such danger and insisted that filters and light cigarettes would take care of any hazard. Even in the 1970s, when the label became more specific and unequivocally said “smoking is dangerous to your health,” the Tobacco Institute released a false report stating that scientists had yet to prove that cigarette smoke caused any disease in humans.

**Campaign of Doubt**

For every scientific report and warning, Big Tobacco responded with hundreds of ads disguised as news stories. The tobacco industry spent more on advertising in one day than the government agency tasked with researching smoking spent in a year. And every ad had the same purpose, to make consumers wonder if smoking was really all that bad. It was that moment of doubt that kept people buying cigarettes.

In 1971, Philip Morris acquired a research institute in Germany and used it to secretly test cigarettes. The Institut für Biologische Forschung (INBIFO) was tasked with determining if a less harmful cigarette was possible. They conducted extensive animal testing on several ingredients found in cigarettes. The research focused on inhalation and the study of lung cells. All communication with this facility was kept secret.
Phillip Morris never published any of the studies conducted at INBIFO, and they never shared any information with the public or the U.S. government. In fact, internal company memos referenced a common practice of destroying incriminating documents, using “dummy” mailboxes, and sending documents there to be kept away from the government and the U.S. Surgeon General. While Big Tobacco was lying about the dangers of smoking, they were using the tactics of sophisticated international criminals to hide the real science.

### Choosing Death

Many people don’t like lawsuits against tobacco companies. Long ago, I was one of those people. I didn’t yet understand the truth about how tobacco companies, with premeditated intent, get children addicted to a deadly drug. I didn’t yet understand how they manipulated addicts while designing cigarettes to be more addictive and harder to quit. Nicotine addiction is chemically powerful; nicotine is far more addictive than most illegal drugs. And the level of addiction can vary tremendously; some people are genetically predisposed to be far more physically and chemically dependent on nicotine than others. These people almost never quit for long. Fighting a nicotine addiction is hard enough, but addicts have another powerful enemy working against them. The tobacco industry is using every scientific resource available to make cigarettes maximally addictive: additives discovered in the 1970s that free-base the nicotine; reconstituted tobacco that maximizes the amount of nicotine in each cigarette; design tweaks like the placement of air holes in the paper; and the addition of menthol.

Think about that for a moment: the tobacco companies don’t just sell a deadly, addictive drug and lie about it, they actually change the product to make it easier to get addicted and more difficult to quit. If they cannot be held responsible for that evil conduct, then why do we even have a justice system?

The modern cigarette is a complex and highly researched product. Every single aspect of it has been extensively studied and engineered to yield the best possible results: namely, addicted customers who cannot quit. Tobacco companies have always relied on the public’s assumption that a cigarette is just tobacco rolled up into a paper with a filter stuck on one end. They used this image of a “simple” product to defend themselves when nicotine addiction was addressed by the government for the first time in the 1988 Surgeon General’s report.
Big Tobacco’s response was swift and clear: “After years of well-funded research, it has not been established that cigarette smoking produces a physical dependence to nicotine.” Furthermore, they went on to explain that nicotine is naturally found in cigarettes. This fact is true, but what they didn’t explain is that during the manufacturing process, the nicotine is extracted from the tobacco, and a very specific amount is put back in.

Nicotine for All

Tobacco manufacturers control the exact levels of nicotine in every single cigarette. And they have always controlled it to their own advantage. In 1959, an internal report from British American Tobacco spoke of the dangers of lowering the levels of nicotine in their products: “to reduce the nicotine per cigarette as much as possible… might end in destroying the nicotine habit in a large number of consumers and prevent it ever being acquired by new smokers.” I almost choked when I first read that. The tobacco companies know how to end the addiction, and prevent new addicts. But that wouldn't be good for profits. I guess they’re used to making obscene amounts of money, and they can use that money to lobby and scheme their way into legitimacy.
The 1988 Surgeon General’s report caused the same kind of public scrutiny as the 1964 one had. People started to wonder if maybe this was the reason quitting cigarettes had always been so difficult. While it’s hard to imagine now, there was a time when people didn't realize that nicotine delivery was the main purpose of cigarettes, much less that nicotine was an addictive substance. But Big Tobacco knew. They knew over 20 years prior to any of this becoming public. In a 1963 report, the general counsel for Brown & Williamson Tobacco Corporation strategized ways to continue manufacturing cigarettes in spite of the upcoming 1964 Surgeon General’s Report. The document contains the now famous line: “Moreover, nicotine is addictive. We are, then, in the business of selling nicotine, an addictive drug.”

Internal R.J. Reynolds documents from 1972 confirm that cigarettes, and tobacco products in general, are “a vehicle for delivery of nicotine,” and that because a person’s motivation for smoking is to satisfy a craving for nicotine, cigarettes should be designed and manufactured with “attractive dosage forms of nicotine.” Big Tobacco knew for decades that cigarette consumption is driven by this addiction, and that smoking is the fastest way to get nicotine to the brain; even injecting nicotine isn’t as fast as inhaling it into the lungs. Still, they maintained that smoking was a choice and people could stop whenever they felt like it.

By the 1980s, the tobacco industry was beginning to worry about lawsuits, and their defense strategy hinged on the concept of free will and free choice. But an addict’s choice is not exactly free. So, the tobacco companies denied that nicotine was addictive with as much creativity and energy as they put into denying that smoking was harmful. On April 14, 1994, the seven tobacco CEOs appeared before Congress. Every single one of them testified, under oath, that they did not believe nicotine was addictive. A few months later, the Department of Justice opened a perjury investigation against the CEOs. Unfortunately, because they all worded their replies as a “belief,” the DOJ was unable to prosecute.

Big Tobacco has always been a step ahead. They know addiction is what keeps people smoking even in the face of mounting health risks; they know how to end the addiction; they know how to prevent new addicts. But new addicts are exactly what they want, and they know just where to find them. You gotta get them while they’re young.

The Camel of Hamelin

The tobacco industry has always denied they advertise to children. But the fact is that youth smoking is not just important to the success of Big Tobacco, it’s absolutely essential. According to the 2012 Surgeon
General’s Report, 88 percent of adult smokers reported that they had started smoking by the time they were 18 years old. Many start smoking before they are even 12. Every day, almost 2,100 teens and young adults become regular smokers.

No one is more pliable and easily manipulated than a child. Their innocence and inexperience make them especially susceptible to advertising and peer pressure, and their still developing brains are practically tailor-made for nicotine addiction. The tobacco industry knows that new smokers will come in the form of young smokers, and they’ve advertised accordingly. In 1984, as a response to the controversy surrounding their advertising tactics, R.J. Reynolds issued a statement in which they maintained they had never, and would never, advertise to children: “We don’t want young people to smoke,” “We don’t advertise to young people,” “Kids just don’t pay attention to cigarette ads.”

But here’s the truth. In the fall of 1927, an R.J. Reynolds memo to company salesmen reminded them that: “school days are here. And that means big tobacco business for somebody.” Their strategy was to find the “leaders and the most popular students,” and get them hooked. Once the cool kids were in, the rest would naturally follow.

In 1973 the same company sent a research memo about “New Brands of Cigarettes for the Youth Market.” A 1974 marketing presentation fixated on smokers as young as 14: “As this 14-24 age group matures, they will account for a key share of the total cigarette volume—for at least the next 25 years.” In 1978, Curtis H. Judge, president of the Lorillard Tobacco Company, received a memo from one of his sales managers explaining the advantages that peer pressure was having on their Newport brand, “It is the ‘In’ brand to smoke if you want to be one of the group,” and clearly outlining their target demographic, “the base of our business is the high school student.”

R.J. Reynolds hit a home run with its youth marketing when it started the Joe Camel campaign. They began using this cartoon camel in 1987. Quickly rising to popularity among children, Joe Camel appeared in thousands of brightly colored ads in magazines and billboards. He was often pictured wearing sunglasses, leather jackets, and baseball caps, usually with a cigarette dangling out of his mouth. He was perpetually cool and instantly recognizable. And the only way to get his cool Joe Camel products was to buy Camel cigarettes, which came with "C-Notes" that could be traded in for items that kids would want.

A 1991 study by the Journal of the American Medical Association reported that by age six, children were able to associate Joe Camel with cigarettes at almost the same rate that they paired Mickey Mouse with
the Disney Channel logo. During that time, an estimated 32 percent of cigarettes illegally sold to minors were Camels. This worked out to profits of about $476 million per year.

Joe Camel was retired by R.J. Reynolds in 1997 after pressure from Congress, several public-interest groups, and a lawsuit by a California attorney. But R.J. Reynolds documents confirm the simple, deadly math that Big Tobacco operates on. Smokers start young or they don’t start at all, and Big Tobacco must have enough new smokers to replace the ones that quit or die. Otherwise, the tobacco companies know they will “decline, just as a population which does not give birth will eventually dwindle.”

Cessation Annihilation

Most smokers spend a large chunk of their time thinking about quitting, or trying to quit. In the U.S., 68 percent of adult smokers and 45 percent of high school smokers want to quit. Big Tobacco is well aware that almost their entire customer base wants to stop using their products. So, what to do? For Philip Morris, the answer was clear: fight the development and use of anti-smoking aids.

Just in case you’ve become numb to the pure premeditated evil we have been discussing, I want to say that again: Philip Morris was trying to prevent the development of smoking cessation drugs. Does that take your breath away as it did mine? Philip Morris, knowing that its customers were addicted to their deadly product, and that their lives depended on finding a way to quit, tried to prevent life-saving drugs from reaching them.

Nicorette gum was approved by the FDA in 1984. At that time, it had already been approved for use in Switzerland and the United Kingdom for years. As part of their upcoming U.S. release, Merrell Dow Pharmaceuticals released the “Smoking Cessation Newsletter.” Upon learning of this publication, Philip Morris pressured Merrell Dow to eliminate their campaign to notify doctors of this life-saving drug. The tobacco companies saw this as “anti-smoking propaganda.”

Philip Morris had been buying agricultural chemicals from Merrell Dow’s parent company, Dow Chemical, for years, and they used their purchasing power as leverage. Merrell Dow caved, and the newsletter was scrapped after the first issue. Dow Chemical took it a step further and virtually eliminated all anti-smoking messages in their ads, and stopped supporting anti-smoking organizations. They did such a good job, that a Philip Morris official remarked that “Dow is committed to avoid contributing to the anti-cigarette efforts.”
In 1992, Ciba-Geigy, a Swiss pharmaceutical company, launched their Habitrol nicotine patch in the U.S. In addition to this venture in nicotine replacement products, Ciba-Geigy manufactured and sold agricultural chemicals to tobacco farmers. Philip Morris and R.J. Reynolds, along with a tobacco growers group from North Carolina, pressured Ciba to tone down their advertising of Habitrol to “more appropriate” levels. Under this financial pressure, Ciba agreed and assured them that their advertising would be limited, and wouldn’t become an anti-smoking campaign.

Unlikely Heroes

The story of cigarettes in America is one of duplicity. There’s what everyone thought was happening, and what was actually happening. There’s what everyone was told, and there’s the truth. For over 40 years, these two tracks never crossed. It wasn’t until the 1990s that the truth about what had been going on behind the scenes came to light.

In 1994, the same year the seven CEOs swore under oath to Congress that they didn’t believe nicotine was addictive, Merrell Williams Jr. and Jeffrey Wigand set off a chain of events that threatened to expose the tobacco conspiracy.

Merrell Williams was a paralegal at a Kentucky law firm hired to represent Brown & Williamson Tobacco. Williams’ job was to examine internal company documents and code the ones that could be useful to someone suing the tobacco company. The codes included DA for addiction, DDA for lung cancer, DDB for throat cancer, DDC for other cancers, and DDE for permanent genetic damage. Williams realized the point of his task was to identify damaging documents and continue the cover-up that had been going on for decades. Over the course of four years, he snuck out more than four thousand internal company documents.

After he was laid off in 1992, and had to have emergency heart surgery, Williams, a smoker, sued his employer and threatened to use the documents to prove that cigarettes caused his illness. Although Brown & Williamson countersued him in 1993 for theft and breach of contract, the documents eventually got out. First, they were sent to a professor and tobacco researcher at the University of California, and later, they were passed on to attorneys who were in litigation with various tobacco companies.

In the spring of 1993, Jeffrey Wigand was fired from his position as Vice President of Research and Development at Brown & Williamson Tobacco. He maintains that he was fired because he was opposed
to, among other things, the company’s practice of adding addictive and carcinogenic substances to cigarettes. Although he was bound by a confidentiality agreement, in 1995, Jeffrey went on to appear in a 60 Minutes segment where he revealed the truth many had suspected: cigarettes cause cancer, nicotine is addictive, and tobacco companies target children.

After Jeffrey and Merrell’s efforts were made public, state governments had real ammunition to use against the tobacco companies. Some states started suing them for the massive financial cost, mostly medical reimbursements, that smoking created for state governments. I was one of the lawyers who represented the State of Florida. People have a hard time remembering what it was like before we won those lawsuits. Just as it is hard for me to understand the world that came before me (where individual cigarettes were sold for a penny to little kids in candy shops), younger people today have a hard time understanding a time when there was true doubt in the public mind about whether cigarettes were harmful or addictive.

In 1998, the major tobacco companies agreed to enter into the Tobacco Master Settlement Agreement (MSA) and pay the states $206 billion. As part of the settlement, the companies agreed to several conditions, including advertising and lobbying restrictions, the disbanding of their sham scientific organizations (such as the Tobacco Institute), and the release of internal company documents to the public. The documents released corroborated every accusation I ever dreamed of throwing at Big Tobacco: the deadly danger, the lies, the conspiracy; it was all there.

So, in 1999, Philip Morris added a message on their website that stated there was an “overwhelming medical and scientific consensus” that cigarettes caused several diseases including heart disease, emphysema, and lung cancer. The message went on to say that smoking was “addictive,” although they did include their favorite qualifier: “as that term is most commonly used today.”

Over forty-five years after the accusations first surfaced, Big Tobacco finally admitted cigarette smoking caused diseases and was addictive. That’s forty-five years of lies and fraud. Forty-five years during which millions of people were allowed to die, so that the tobacco industry could grow richer and richer. A fraud that finally ended only because of a lawsuit. I thought we had won, but I underestimated how clever and duplicitous the tobacco companies were. An even more sophisticated fraud was coming.
The tobacco industry has always shown incredible creativity. That’s how they manipulated the law and abused the justice system in order to win every case brought against them for decades. What Merrell Williams Jr. uncovered and made public in 1994 was something that had been going on for longer than we will ever know. Big Tobacco managed to hide their most damning and incriminating company memos by sending these documents to their attorneys and then claiming the protection of the attorney-client privilege.

This practice was deemed illegal by courts in Florida and Minnesota based on the “crime-fraud exception” to attorney-client privilege—attorneys cannot use confidentiality to help a client plan or commit a crime. So, documents—many of them damning—were eventually released to the public as part of the 1998 Master Settlement. Some documents were dated as far back as the 1950s, proving that this concealment had been going on for close to half a century. But who can say what documents never saw the light of day? Clearly, some documents are mentioned but missing. Were the most damning documents shredded or burned, or hidden by some other clever ruse?

Big Tobacco concealed the truth in an immoral and unethical way, and they did it with the help of their lawyers. The tobacco industry hires the greatest law firms money can buy; they spend the most, and as a result, they get the best. This has always been their strategy, and it will continue for as long as lawyers are willing to represent these companies. Big Tobacco makes insane profits; rivers of money beyond anyone’s imagination.

An expert in Cindy Naugle’s case (and I promise that we will get back to Cindy in a bit) testified that one tobacco company subsidiary alone made $10 million a day in excess free cash. That means that after all the money is used for expenses and operations and attorneys and lawsuits and advertising and settlement payments to the states and taxes and insane payouts to the executives and the CEO bonus plan and everything else the company needs and wants, they still have an additional $10 million a day to kick up to the parent company. That’s billions of dollars a year. It’s just a little excess free cash. As long as Big Tobacco has this kind of money, they will spend a little bit of it defending themselves in the aggressive and abusive way that they’ve pioneered. Their victims, on the other hand, run out of money or die before justice is served. In fact, this is Big Tobacco’s strategy and goal.
One tobacco lawyer told me that the tobacco companies refer to cases in which the smoker has died as “dead” cases, which are usually worth much less. The real goal for these attorneys is to delay until all the cases are “dead/dead.” A “dead/dead” case is one in which the smoker has died and then their spouse has died. Those cases are legally worth so little that they are often dismissed. So, the strategy is simply to delay until the victims have died and their cases are dismissed. In my opinion, after watching these tactics carefully for years, they manage that delay by using their money to abuse the justice system. One of R.J. Reynolds’s attorneys put it best, “the way we won these cases was not by spending all of [R.J. Reynolds’s] money, but by making the other son of a bitch spend all of his.”

How do tobacco companies drive up costs for the victims? They hire a slew of extremely costly experts that plaintiffs have to pay to depose. Often, the tobacco companies don’t even call these experts to testify at trial. They’re simply there to force the victim’s attorney to spend time and money. Another tactic is to perform extensive depositions of the plaintiff, of the plaintiff’s family, and of the plaintiff’s friends and acquaintances. They find people who barely knew the plaintiff decades before. These depositions can take place over the course of several days. They’re mentally and emotionally taxing for a plaintiff, and they become torturous for their loved ones.

Sometimes the tobacco attorneys are rude and disrespectful to the survivors. Sometimes they hire private investigators to approach the family in their homes. And then the victim’s attorney must consider deposing these investigators. Again, more time and money. And after all these depositions, to be prepared for trial, the victim’s attorney needs to pay for all the deposition transcripts, which are shockingly expensive.

Deep pockets protect the tobacco companies from paying for their crimes in court. But they have another secret weapon as well–lobbyists and campaign contributions. The tobacco industry actually helps write the laws that could potentially affect them! Money buys allies, and they have allies everywhere, including Congress. In 1979, out of 113 tobacco-related bills, eight were passed, 49 were defeated, and 56 were left pending. This may have been what led Horace Kornegay, the president and executive director of the Tobacco Institute, to boast in a 1980 speech that they had almost 300 representatives and 75 senators who were “Grade A contacts.”
Kings of Capitol Hill

Ted Kennedy once characterized Big Tobacco as having “probably the most effective lobby on Capitol Hill.” And even today, with everything we know about the tobacco industry and its crimes, that statement still holds true in both major parties. There are numerous Democratic and Republican officials getting contributions from tobacco companies and voting their way.

Several top ranking officials in our current government have relationships with the tobacco industry. U.S. Attorney General Jeff Sessions received so much money from R.J. Reynolds in 1996 for his Senate campaign, that his staff had to give some of it back to avoid going over the federal allowable limits. Sessions was serving as Alabama’s Attorney General in 1996, and he was hesitant to join the rest of the states in suing the tobacco companies for the medical costs of treating smoking-related illnesses.

After Sessions was elected to the Senate, his successor Attorney General relented and joined the suit. An email between two tobacco executives references a dinner in which Sessions voiced his disapproval of the Master Settlement, “If we let them get by with this extortion of the tobacco industry, then they’ll start shaking down other industries, one after the other.”

Current Senate Majority Leader Mitch McConnell fought on behalf of Big Tobacco in 2015. During negotiations for the Trans-Pacific Partnership, some countries wanted safeguards on tobacco products because they are addictive and deadly. But McConnell threatened to interfere and possibly disrupt the process if tobacco wasn’t given the same privileges as other agricultural commodities. During the previous year, the tobacco industry had contributed $113,725 to McConnell’s re-election campaign.
In fact, McConnell has received more money from tobacco companies and interest groups than any other member of Congress. In 2008, he received $130,400, and in 2009, he was one of 17 representatives to vote against the Family Smoking Prevention and Tobacco Control Act. Former U.S. Secretary of Health and Human Services Tom Price, also voted against the FDA legislation. Price had previously opposed a 62-cent cigarette tax hike that helped pay for public health insurance for poor children. He believed “raising taxes on hard-working Americans” to help underprivileged children was reckless and irresponsible. He knows full well, of course, that cigarette taxes on those hard-working Americans is the single most effective way to save their lives.

Each penny increase in the price of cigarettes decreases the amount of people who ever get addicted. But fewer addicts is bad for tobacco profits, and until 2012, Price owned shares in Philip Morris International and Altria. That year, he sold them for a profit of $37,000. His congressional campaign received $18,000 from Altria Group, and $19,000 from R.J. Reynolds. In 2017, 20 days after Price was confirmed as secretary, his former deputy chief of staff was hired to lobby on behalf of R.J. Reynolds.

Moving up through the ranks, we find even more links between government officials and Big Tobacco. Vice President Mike Pence penned an op-ed in 2001 in which he doubted the dangers of smoking: “despite
the hysteria from the political class and the media, smoking doesn’t kill. In fact, two out of every three smokers does not die from a smoking related illness and nine out of ten smokers do not contract lung cancer.” The quote carefully obscures the reality that one out of three children who pick up cigarettes and become addicted will die as a consequence of smoking. And even though many will eventually quit, many millions more will fight a devastating and debilitating disease before they die of something else.

The odds of surviving a game of Russian Roulette (picking up a six-bullet revolver, loading it with one bullet, spinning the chamber, pointing it at your head, and pulling the trigger) are twice as high as those of surviving smoking.

A couple of months after publishing his article in favor of smoking, Pence had a meeting with tobacco lobbyists, who were pleased enough to recommend to their superiors that they “cut him a check in the near future.” Through the years, Pence has received $39,000 from R.J. Reynolds, and over $60,000 from the National Association of Convenience Stores, a tobacco-friendly organization. President Donald Trump has also benefited from Big Tobacco’s endless fortune. He received one million dollars from Reynolds American Inc., and $500,000 from Altria Group Inc. for his Inauguration Committee.38

Of course, none of these machinations would ever work without the help of Big Tobacco’s skilled attorneys. The legislations, the loopholes, the donations, and the lies have all been possible because they’ve had help. I believe the degeneration of professional ethics in the Law can be traced back to when law firms became entangled with the tobacco industry.

From Billions to Nought

In May of 1994, a Miami Beach pediatrician named Howard Engle was the lead plaintiff in a class action suit against the tobacco industry for injuries and illnesses suffered due to smoking. Engle smoked multiple packs of cigarettes a day for decades, and he was unable to quit, even after being diagnosed with emphysema. In October of that same year, the court certified a class of smokers who could bring suit together against the tobacco companies. In 1996, the class was reduced to just Florida smokers. There were hundreds of thousands of people in the class, seeking $200 million in damages.

The trial finally began on October 19, 1998. Almost two years later, in July of 2000, the jury ruled in favor of the plaintiffs and returned a verdict that included punitive damages of $145 billion. In 2003,
the Florida Third District Court of Appeal deemed this amount excessive, and overturned it. They also ordered that the class be decertified. The court ruled that the class members were too different from each other to be considered together. In 2006, the Florida Supreme Court affirmed this decertification of the class, but also allowed individual class members to file separate suits against tobacco companies. These suits became known as the “Engle Progeny” cases. More than 8,000 suits against the tobacco industry were filed in state and federal courts.

My firm represented Cindy Naugle in one of these progeny cases. The details of the case are similar to those of other tobacco cases: a plaintiff who started smoking at a young age, in a time when the tobacco companies were targeting children and lying about it. She was unable to quit for years despite multiple desperate attempts, and eventually developed serious and debilitating diseases. My firm filed the first Engle progeny lawsuit, and one of the first cases to go to trial was Cindy Naugle’s. That was a long time ago. Cindy has since passed. But her case is still not over.

Cindy’s Story

Cindy Naugle started smoking in 1968, when she was 20 years old. She was at a bar with a friend, and decided to purchase a pack of Benson & Hedges cigarettes at a vending machine. She wanted to appear older and more sophisticated. By the time she was 22, she was smoking two packs a day. Cindy smoked for the next 25 years, finally quitting in 1993 with the help of the nicotine patch. But by then, the damage was done. Cindy was diagnosed with Chronic Obstructive Pulmonary Disease (COPD) in November of 1992.

When Cindy started smoking, nobody in her life thought it was a big deal. Her father had been smoking since before she was born, and three of her four siblings smoked at one point or another. In the mid 1970s her dad had a heart attack that required him to have quadruple bypass surgery. Although the doctors didn’t blame the cigarettes for his heart attack, they did tell him he should stop smoking. By this point, Cindy had attempted to quit smoking several times, to no avail. Her first attempt came just two years after she started smoking. When quitting cold turkey failed, she tried weaning herself off. Cindy tried to quit smoking at least once a year for the entire time she smoked. She usually lasted a few days before caving and buying a pack of cigarettes; once, she was able to last a whole month. But the end result was always the same, she always went back to smoking.
It sounds strange to us today, because of all the information we now have, but this was a different time, and Cindy never realized that she was addicted to cigarettes and that it was her addiction that kept her from giving them up. She didn’t know addiction was the reason she had to smoke first thing in the morning and last thing at night, the reason sometimes she’d wake up in the middle of the night to smoke. But she knew that her smoking was beginning to interfere with her life.

A Silent Enemy

Cindy testified at trial that she kept trying to quit because she wanted control over her own life: “I just wanted to be able to sit at my desk and do my work without feeling like a nervous wreck. You just get so nervous, tense, irritated, agitated; and it got to the point you couldn’t sleep at night. I wanted to be able to relax and be a normal person. I wanted to go to the movies and sit through a whole movie without feeling like I have to get up. I would sit there looking at my watch, how much longer can I go, you know. I would constantly look at my watch. Or if you’re in a department store, and it’s like, I gotta go back out in the lobby, I gotta go have a cigarette. You want to just go places and do things without relying on going outside because you got to have a cigarette.” When Cindy started smoking in the late 1960s, lighting up at the movies, at a department store, or at work was common. But things were changing, and being a smoker was getting harder, especially in the workplace.

At Cindy’s first job, at her father’s paint store, she was allowed to smoke inside while she worked. There were ashtrays all around the store, for employees and customers alike. But when the store closed in 1988, she had to go out into a world that was becoming increasingly wary of cigarettes. Her next two jobs, at the Florida Bar Association and Neiman Marcus, did not allow smoking inside. Although she was allowed smoking breaks, they weren’t numerous enough to match her need.

At trial, she described her time at Neiman Marcus when she would have to close the store at the end of the night: “I was supposed to close out the drawer… and I would be so nervous… I couldn’t do it myself because I would be such a wreck. It’s like I gotta get out there and have a cigarette, because it’s the end of the evening.” She left both jobs within months. In early 1990, she got a job at a small publishing company. Once again, she wasn’t allowed to smoke inside, but she was given smoking breaks. Because it was a small business, and much less structured than her previous jobs, Cindy was able to take breaks more often. However, there were times when her breaks started to negatively impact her job performance, and her boss had to ask her to cut back.
When Cindy was 44 years old, she went to the doctor with a cough that had lasted a few days too long. She wanted to make sure nothing was wrong. Sadly, something was wrong. After taking a chest X-ray, her doctor told her she had emphysema in one of her lungs. He prescribed the patch and ordered her to stop smoking. Cindy had her last cigarette on February 19, 1993. A few years after her diagnosis, she began to feel the symptoms of her COPD. She was often short of breath, and could no longer perform activities that had once been easy for her, such as walking her brother’s two dogs. She was placed on medication to help her breathing, but her fate was sealed. Cindy’s life began to shrink, little by little, breath by breath, until nothing was left.

**Trial by Exhaustion**

At the time of the trial, in 2009, Cindy was doing her best to lead a normal life, or at least as normal as someone with such a devastating disease could manage. She had a job as an office manager at an auto repair shop and lived in an apartment, on her own. Cindy, who never married, prided herself on being independent and self-sufficient. Two qualities which, sadly, made her new life especially difficult to bear. Her disease progressed to such a degree that she needed to be on an oxygen machine every minute of every day. Because she couldn’t move fast or bend, her brother had to drive her to and from work every day.

She kept an oxygen concentrator at work, but due to its weight and her lack of strength, someone had to carry it for her any time she needed to move from her desk. She also had to carry a walkie-talkie with her into the bathroom in case she was unable to move the concentrator and get out. Cindy’s whole life shrunk down to her home, work, and the grocery store. She stopped doing things she once loved, like going to the beach or visiting her family. Everything became “stop and go;” even the smallest of tasks took hours to complete because of how slow her disease made her.

Although she didn’t have to be at work until 7:45 a.m., she would wake up at 4:30 a.m. to leave herself enough time to get ready. Changing the sheets on her bed took about 40 minutes, and vacuuming her small apartment became a two-hour ordeal. Worst of all was the constant worry over health insurance and the thought that if her plan changed or was cancelled, she’d be out of oxygen. It was this diminished life, and the fear that a job or insurance loss could kill her that prompted her brother, former Fort Lauderdale Mayor Jim Naugle, to suggest that she sue Philip Morris.
Cindy was hesitant to sue at first, she didn’t see herself as the type of person who files a lawsuit against anyone, much less a giant corporation. But she changed her mind upon learning the truth about the “habit” that had been plaguing her life since her twenties. “The tobacco companies purposely made the cigarettes addictive, so that we would spend more money buying them” she said at trial, “and they knew they were addictive all the time. I had no idea that they knew they were addictive or that they purposely made them that way, and that was what angered me.”

The Naugle trial began on November 2, 2009. Cindy’s oxygen concentrator was so loud, it had to be muffled with blankets so the people in the courtroom would be able to hear what was being said. Cindy took an uncomfortably long time to walk the seven steps to the witness stand to testify. Then it took her five minutes to catch her breath before she could start answering questions. The answers came slowly, as she had to pause to breathe every so often. It was clear to everyone that her illness was severe and exhausting, and a burden she would live with for the rest of her life.

A few weeks later, the jury returned a verdict in our favor. They found Cindy 10 percent at fault, and Philip Morris 90 percent at fault. They awarded compensatory damages totaling $56 million, and punitive damages of $244 million. The total amount of $300 million sounded excessive to some, but as an economist testified during trial (and as I mentioned earlier), the Altria subsidiary that manufactured Cindy’s cigarettes makes $10 million in excess cash every single day. After all the accounts are paid, they have an extra $10 million of free money hanging around. This happens every day.

The trial lasted twenty-four days. The jury decided its verdict would punish Philip Morris with just twenty-four days of its excess free cash. Twenty-four days for decades of living with a disease and an addiction that would soon kill Cindy unless she got the money for a lung transplant. Twenty-four days for over fifty years of lies and fraud. In 2012, the trial court reduced the compensatory and punitive damages to $12,982,500 and $25,965,000 respectively, totaling almost $39 million. It was barely a few days’ profit. The judgment was entered in June 2010.

Death by Litigation

Even after the reduction in damages, Philip Morris continued to fight, and appealed to the Fourth District Court of Appeal. The appellate court held that the amount was justified, “A verdict is not excessive just because it is large.” The court further condemned Philip Morris’ conduct, “Although Naugle was
aware that smoking *could have been* dangerous to her health… PM USA *knew* that smoking cigarettes presented dangerous health consequences and that it concealed material information relating to the true health effects of smoking as well as the addictive nature of smoking.” At this point, we figured we’d come to the end of the story. Little did we know we were just getting started.

On December 12, 2012, the Court of Appeal withdrew and reversed its previous ruling. The new opinion was not signed by any of the judges on the panel. That opinion held that “the jury was moved by passions—sympathy for [Naugle’s] suffering and anger toward PM USA’s conduct and strategy.” The court affirmed the judgment that Philip Morris was liable for compensatory and punitive damages, but required a second trial to determine the damage amounts. The second trial began on October 2013, before the Honorable Jack Tuter.

Trial is always hard for a lawyer. It consumes you. Your entire life outside the trial fades away. Sleep is a luxury you get, at least a little, on most nights, but not all. And at our firm, when one trial team goes to trial, the whole firm goes to trial; it’s all hands on deck. But this trial tested us in ways we had never been tested before, and stretched us to the breaking point. It was the craziest, most difficult trial of my life. There were so many unique challenges in it, any one of which could have overwhelmed us.

First of all, Big Tobacco flew in a legal dream team from all over the country. They not only had the best lawyers, they had so many I couldn’t even count them. They had a lawyer for everything; a specialist to concentrate on each aspect of the trial. It seemed as if they had people working every night on new motions that we wouldn’t even have time to read, much less respond to in writing.

Cindy’s health had continued to deteriorate during the four years since the first trial. She needed a lung transplant to save her life, but the surgery would require significant time off from work and it would still be expensive, even with health insurance. She couldn’t afford it. She almost died several times during those four years. In the week before the second trial she got sick again. My partner, Todd McPharlin, was with her the Friday before trial started, defending yet another deposition. Tobacco lawyers were once again aggressively interrogating her. It was incredibly stressful for her, and the strain grew worse with each question. She took longer and longer to answer. Before the deposition ended, she could not go on. Todd called 911, and Cindy was hospitalized.

We had come to know and love Cindy. We were worried for her, and as she deteriorated, we grew desperate to figure out some way to save her—all while trying to win her case. After trial started, Todd
would visit her in the hospital, even with everything else going on. And we got constant updates from her brother. But more than the time needed to check in on her was the emotional toll that her suffering was taking on her and her loved ones. I exploded several times at tobacco lawyers during that trial, in ways that were not professional. I was rude. I’m not proud of this. But someone I cared about was fighting for her life, and if these tobacco lawyers hadn’t abused the justice system that I love, she would have been able to afford that lung transplant.

It’s also a major problem when the plaintiff cannot appear in court. We were asking these jurors to understand Cindy and her life without ever meeting her. She could not come into the courtroom and testify about waking up hours early so she had time to get ready for work, or about any of the other ways, little and big, that her life had been dimmed, narrowed, and ruined. Lawyers rarely win cases if the jury does not connect on some level with the client. In this case, it was a client they would never meet.

But that’s not all. Cindy’s condition created new and innovative ways for the tobacco companies to delay. We had to respond to arguments we had never dealt with before, and we didn’t have the time to research and write proper legal memorandums. Instead, we were on our feet each morning, arguing motions that we often hadn’t even had time to read.

Philip Morris fought hard to delay the trial. If Cindy died before the verdict and the new judgment, the case would go dead/dead, and tobacco would win. That wasn’t justice. So, Judge Tuter ordered the trial to proceed. But this was uncharted waters, and extremely difficult for him, too. The decisions he had to make during that trial were decisions he had never faced before. There was no easy answer. And often, the judge had to make his decisions under incredible time constraints, without the benefit of research. I have never seen a judge in a more difficult position.

Tobacco would argue every day that the judge should terminate the trial. Once Cindy went on a ventilator, these arguments became more heated. According to tobacco, Cindy was no longer competent legally, and she could not proceed with her lawsuit. Although Judge Tuter denied the motion, there loomed another threat—the probate judges in Fort Lauderdale have morning hearings. We were worried that tobacco would go in unopposed, without notice to us, and get an order finding Cindy incompetent.

We consulted a probate lawyer who told us that these motions are routinely granted because there is little harm done even if they turn out to be wrong, as they can be quickly reversed. But it would have been catastrophic for us if such an order was entered, because the moment that happened, our trial
became legally invalid. This would be true, the probate lawyer explained, even if the order was reversed. So, I had to station young attorneys outside the courtrooms of every probate judge, watching for the tobacco lawyers, prepared to inform the probate judge that there was a pending trial in front of Judge Tuter. Needless to say, these lawyers standing in the hall outside probate courtrooms could have been much better used for other things. Our resources were already stretched beyond the breaking point.

Due to Cindy’s deteriorating health, to try to maximize the fairness to the tobacco companies, Judge Tuter ordered the hospital to produce Cindy’s medical records to them on a daily basis. This put yet another additional strain on my trial team and my firm. We had to collect these records and review them every day. Tobacco had extra lawyers standing by, plus medical professionals on call. We did not.

And because Cindy’s condition was constantly changing, the opinions of the medical experts on such things as life expectancy and how much it would cost to treat her illness would have to change with each new medical development. The Judge felt he had no choice but to order additional depositions of the experts that would be testifying on Cindy’s behalf, and these depositions would have to occur at night during trial. So, after trial ended for the day, I headed to a court reporter’s office to defend a deposition by tobacco attorneys of a pulmonologist who was going to testify about Cindy’s medical needs. By the time the deposition ended, it was quite late. After that, we started our night shift—getting ready for the next day. We didn’t have enough time to really prepare, or to sleep. But we were stretched so thin that we had no one else to attend the deposition.

After all this, after presenting considerable expert testimony about Cindy’s needs over the next few years, and about the cost of the lung transplant that would save her life, we received an unfortunate update from the hospital. They had changed her condition to terminal. She was going to die. I had to tell the jury during my closing argument that she would not survive. There was no longer any need in their verdict to provide the money for a lung transplant to save her life. No need to look at her future medicals, her future suffering. No need to look at the future at all. It was too late.

Let There Be Injustice

On October 16, 2013, the second jury returned a verdict of $11.2 million. Of that, $4.1 million was compensatory, and $7.5 million was for punishment. Cindy passed away seven days later. We had failed her. We did not get her the money she needed in time to save her life.
To put it in context, outside of tobacco litigation, most cases settle. Very few go to trial, and then almost none of them ever have to be retried. Cindy’s case was already a very rare case, one that had taken far too long. Although we were grieving, I thought the end was at least in sight. Once again, I was wrong.

By this point, I knew that Philip Morris would never stop fighting, regardless of how much it cost them or how much it cost Cindy. I knew that they would use any technically legal tactic, no matter the effect on the judges or the court system, and no matter how abusive it was. Even I could not foresee what was about to happen.

A few days after the jury submitted their verdict, the jury foreman left a voicemail for Judge Tuter. In the message, the foreman said he had received a text message from one of the jurors that led him to believe something “was done wrong” by the other juror. On October 24, 2013, Philip Morris filed a motion to interview the jurors and view the text messages. The judge granted the motion. We appealed, but lost.

On January 4, 2014, the court ordered the foreman to appear before the judge and bring his cell phone so the judge could review the messages. According to the order, based on the content of the texts, the judge would ask the foreman any pertinent questions. Judge Tuter also allowed the plaintiff and the defense to submit written questions for him to ask the foreman. When the judge interviewed the foreman, he testified that he had received a text after the verdict from another juror, in which the previous Naugle verdict of $300 million was mentioned. The text was ambiguous, but it could have been read to suggest that this other juror had done research before the verdict. Jurors are not allowed to do their own research. However, the more reasonable interpretation of the text was that this juror had looked into the prior Naugle verdict after our trial ended.

Philip Morris argued that the judge should conduct more juror interviews. Judge Tuter ruled that there would be no further interviews because of a strong tradition of protecting the privacy of the jury, and because the interrogation did not clearly show anything wrong. He refused to disturb the judgment.

Philip Morris appealed. The tobacco lawyers argued, as usual, that the trial judge had committed multiple errors. In the end, the appellate court affirmed the trial judge on all issues save one. On January 6, 2016, the District Court of Appeal ruled in favor of Philip Morris on the juror interview question, and the trial judge was ordered to interview the second juror.
Judge Tuter conducted a 25 minute interview in his chambers with the juror, Mr. Schuler. Judge Tuter made sure to explain to Mr. Schuler that he would not be penalized for telling the truth, and that he was not in trouble. Mr. Schuler insisted that any internet research he did took place after the jury had returned its verdict and had been discharged. Judge Tuter concluded that the juror was “honest, straightforward in his answers, and believable and credible during his testimony.”

In addition to asking the juror questions of his own, the judge asked us if we had any additional questions we wanted him to ask. We submitted several written questions, and so did the tobacco lawyers. After asking those questions, Judge Tuter asked us if we had anything else to add, anything at all. Philip Morris had no further questions, we only had one more. Before going back to his chambers with the juror to ask the final question, the judge asked one last time if we had any more questions. Neither side had anything else. When Judge Tuter went back to his chambers, he asked Mr. Schuler our additional question, as well as several follow-up questions of his own.

Mr. Schuler reiterated that he had not conducted any research during the course of the trial. He stated this over fifteen times during the course of the interview. Afterwards, the judge came back out to meet us one last time and make sure we were absolutely sure there were no more questions. Both sides said no. After a review of the juror's testimony, Judge Tuter again refused to disturb the verdict.

Philip Morris appealed once again, claiming the juror had lied during the interview, and the judge was wrong to believe him. Philip Morris attacked the entire interview process, arguing that the tobacco lawyers should have been allowed to submit more questions. Philip Morris even claimed that the juror interview couldn't be trusted because it was “after-the-fact.” Philip Morris had requested a juror interview, and spent over a year going up to the appellate court to make it happen, and yet now claimed that such an interview could not be trusted. It would have been funny if these types of delays hadn't been used to avoid paying the money needed to save Cindy’s life.

This time, the wait for the appellate decision was particularly excruciating. Because Cindy had already passed away and she had left no survivors, if Philip Morris won its appeal, there would not have been a new trial. Philip Morris would have won the case by delaying it long enough so that she had died without survivors before the new trial. This case would then be, as the tobacco lawyers call it, dead/dead.
That is the fundamental litigation strategy for the tobacco companies: delay, delay, delay. Big Tobacco knows that due to the class requirements, all the Engle plaintiffs are old and sick (if they have not already died). By stalling and delaying court proceedings, the tobacco companies buy time. And during that time, more and more of these cases go dead/dead. In fact, of the hundreds of thousands of people who initially “won” their Engle lawsuit so that they could file their own individual claims, barely dozens have cases that have gone to court. All the rest slowly go dead/dead.

In 2016, The Fourth District Court of Appeal rejected the defense arguments and affirmed the verdict. The appellate court did so without a written opinion (an indication that the issues were so clear, no comment was even needed). That prevented Philip Morris from appealing to the Florida Supreme Court, and for all intents and purposes, this ordeal was finally ending. Or at least, that would have been true in any other case.

Philip Morris had ninety days to file a Petition asking the United States Supreme Court to review the final judgment. Consistent with a strategy of delay, Philip Morris asked for an extension of sixty days to file the Petition, waiting until close to the end of the time period to request that the United States Supreme Court review Cindy Naugle’s individual case. We did not respond, thinking that the entire thing was frivolous.

Nevertheless, the United States Supreme Court ordered us to respond, and we are now litigating Cindy’s case in that Court. As I write this, twenty-five years after the Engle case was filed, almost a decade after Cindy’s brother called me to see if Cindy had a case, and years after Cindy died, we have no idea if there is any end in sight.

I know who killed Cindy, and now you do too. What we don’t know is whether anyone will ever be brought to justice.

When I look at what the tobacco lawyers have accomplished, it takes my breath away. These lawyers are the best of the best, and they have done the impossible for the tobacco industry.
Think about the Americans who were given free cigarettes by tobacco companies when they were just school children, who bought penny cigarettes at candy stores when they were eight or nine years old, and who fought in World War II and Korea where they were given cigarette cartons as rations. Some of them banded together and sued the tobacco companies in 1994.

This was years before the companies admitted that tobacco is addictive and that it causes illness. And those smokers won. The tobacco companies have already been found guilty of the deadliest fraud in American history, and the hundreds of thousands of Florida residents in the Engle class action have already won a judgment on liability. The only significant issues remaining for these hundreds of thousands of smokers is the amount of money that would properly compensate them, and the percentage of fault that the smoker bears.

Yet, how many of these hundreds of thousands of smokers have seen a single penny from Big Tobacco in their individual lawsuits? Dozens at most, while the rest of the cases drag on until they go dead/dead. And the few judgments that tobacco has to pay don't affect the tobacco companies at all. They have managed to post record profits, while continuing to manipulate their cigarettes in order to make them more addictive more quickly, and harder to quit.

How did those clever tobacco lawyers accomplish the impossible? They have successfully employed a litigation strategy that takes advantage of a fundamental tenet of the American judicial system: courts must protect the rights of all defendants in each individual case. A defendant who is wealthy and powerful enough can choose to litigate every issue in every case, no matter how insignificant. A defendant who has already masterminded an elaborate fraud to amass a fortune, can use a tiny portion of those ill-gotten gains on a scorched earth litigation strategy. This approach increases the time and expense necessary for each individual case, overwhelming the victims’ lawyers and abusing the court system until the years drag on and the victims die.

In a perfect world, maybe even in the not-so-distant past, lawyers would refuse to abuse the court system like this, regardless of how much money they could make doing it. But that’s not happening today. Because of a cynical strategy that takes advantage of the idealism of our justice system and our judges, almost every single victim will die before trial. And because their cases will eventually die as well, the strategy of delay will be so incredibly successful that it will save the tobacco companies billions of dollars in compensation that they have already been found liable for.
I've finally had to admit to myself that right now our courts cannot adequately punish companies that commit intentional wrongdoing that knowingly kills people. And I’m not the only one who's noticed. Other companies have followed tobacco's lead. My beloved civil justice system is, at least for now, impotent against these corporate serial killers. I do not see any light at the end of this tunnel, but I will keep fighting in court because it's all I know how to do. Perhaps, I hope, this is like the dark days of past struggles, and one day we, or those that come after us, will find some new path to justice.


8. Western Union; Hahn PM; American. "In view of the highly publicized claims of certain medical men not sponsored by any duly accredited scientific medical organization charging serious danger to health from smoking.” December 10, 1953. Bates Number: 508775416.


18 Quoted by Judge Kessler, United States v. Philip Morris 449 F Supp. 2nd 1 at

19 Memo from Fred Panzer to Horace Kornegay, “Roper Proposal,” May 1, 1972, Bates Number: T1FL0532362 –2365


About the Author

John Uustal, a Florida-based trial lawyer and author, protects grievously injured people by holding massive corporations and insurance companies responsible for their misconduct.

A fearsome advocate with a reputation for astonishing verdicts, John works on some of the biggest and most important cases in the country. His diligence:

- Exposes corporate cover ups
- Punishes insurance companies for delay
- Wins cases that other attorneys won’t handle
- Unmasks untruthful witnesses

John goes all in for every client he takes on. He funds proven medical and engineering investigations, hires the best experts in the country, and meticulously prepares for trial (he has a courtroom in his office). Because of the time and money he invests in each case, he can only take on a very small number of clients.

John Uustal provides expert legal commentary for news outlets, teaches lawyers how to master the courtroom, and his second book Corporate Serial Killers: Boosting Profits with the New License to Kill (Sutton Hart Press) launches January 2018.