Did tobacco executives tell the truth, the whole truth, and nothing but the truth?

by Morton Mintz

THE ARTFUL DODGERS

The story of Sean Marsee is familiar to millions of Americans. They saw it on "60 Minutes," and read about it in *Reader's Digest* and newspapers around the country. Marsee was the 12-year-old closet "snuff dipper" from Oklahoma. He was habituated or addicted to the Copenhagen brand, which is made from moist smokeless tobacco and which has very high levels of nicotine. His mother, a nurse, discovered what he was doing, but he told her that smokeless tobacco couldn't hurt his lungs as cigarettes would. It mattered very much to him that he not damage his lungs because he wanted to, and did, become a medal-winning high school track star. Besides, if snuff weren't safe, the cans would carry warnings, as do cigarette packs, and professional athletes wouldn't promote it.

In 1983, when Sean was 18, he was found to have cancer in the middle third of his tongue near the groove on the right side of his mouth where he had kept his quid of Copenhagen. He underwent three increasingly mutilating rounds of surgery, and in February 1984, when he was 19, he died.

Later when Sean's mother, Betty Marsee, was living in Ada, Oklahoma, she told her son's story to Dania Deschamps-Braly, a local attorney. The result was a David-and-Goliath product liability lawsuit that pitted Betty Marsee against United States Tobacco Company, the 476th-largest industrial corporation in America.

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In previous smoking lawsuits, judges have sealed documents obtained in pretrial discovery that showed what cigarette executives knew about tobacco-related disease, marketing strategies, and other major issues, and when they knew it. The Marsee trial was different. Dania Deschamps-Braly and her husband and legal partner George Braly not only obtained and reviewed an estimated 800,000 pages of documents from U.S. Tobacco, which had also once manufactured cigarettes, but also exposed the papers—many of them devastating—to public scrutiny.

A jury of four women and two men tried the case for 22 days last May and June in the U.S. District Court in Oklahoma City. The Bralys argued that Copenhagen is far richer than any other consumer product in nitrosamines, extremely potent carcinogens that have caused cancer—including tongue cancer—in about 40 separate species of laboratory animals. Defense counsel Alston Jennings Sr., a famed trial attorney from Little Rock, Arkansas, countered that it hasn't been "scientifically established" that tobacco, whether smoked or held in the mouth, causes disease. Moreover, he pointed out, no abnormality at all was found in the tip of Sean's tongue, which he used to position the quid, nor in the cheek and gum tissue that were directly and almost constantly exposed to the quid. The plaintiff's experts, including world-renowned scientists, blamed Sean's cancer on his use of snuff; the defense experts, some of them equipped with minor-league credentials and suspect motives, tried to exonerate tobacco.

Goliath won. On June 20, the jury found for

U.S. Tobacco, deciding that a preponderance of the evidence did not show that Sean's six-year, heavy use of Copenhagen had caused his tongue cancer. Having made that decision, the jury, as instructed, did not consider other issues, such as the conduct of the company and the credibility of some of its witnesses, particularly Louis F. Bantle, chairman and chief executive officer of U.S. Tobacco, and Dr. Richard A. Manning, vice president for research and development.

Moreover, in numerous pretrial and trial rulings, U.S. District Judge David L. Russell barred important plaintiff's evidence, and these rulings will be the foundation of an appeal. Had the jury considered such issues and evidence, it might have severely jolted U.S. Tobacco because, for the first time in a tobacco product-liability case, the jury was allowed to set punitive damages.

Did Bantle, Manning, or others testifying on behalf of U.S. Tobacco commit perjury by hiding behind a wall of alleged ignorance despite overwhelming evidence that the product they produce kills people? Does their testimony say something about our own cynicism, about our tolerance for disingenuousness and our willingness to accept it from top corporate officials hoping to guard the bottom line? The jury couldn't rule on these questions. You can.

Robinspeak

U.S. Tobacco manufactures Copenhagen and Skoal, the world's best-selling brands of snuff. In 1985, in this country alone, U.S. Tobacco sold 480.8 million cans of these and other brands of snuff—17.3 million more than in 1984 and 54.9 million more than in 1983. Sales were $480 million, with smokeless tobacco, cigars, and pipe tobacco accounting for 86 percent of the total. In four years profits had more than doubled to $93.5 million, or 19.5 percent of sales—the highest rate among the Fortune 500. For this financial performance, chairman and CEO Bantle received compensation of more than $1.1 million. He, his wife, and their children own about 172,000 shares of company stock worth about $7 million.

Such data provide a context for troubling questions. Suppose snuff causes mouth cancer, gum disease, and tooth loss. Suppose also that these sales increases and high profits are significantly attributable to marketing techniques that were intended to, and do, hook children and youths. Suppose, too, that a U.S. Tobacco official is realistic enough to know the suppositions to be truths. Finally, suppose he knows that admitting what he knows would probably ruin U.S. Tobacco, causing the loss of investment, of thousands of jobs, and of his executive compensation. Would you expect him, under oath, to tell the whole truth?

In Oklahoma City, issues of this very kind confronted Bantle, Manning, other U.S. Tobacco executives, and several well-paid scientific experts. All swore the answers they gave were the whole truth.

Louis Bantle swore that "I am not aware that anyone has said that snuff causes cancer." Like a number of company officials, Bantle refused to attend the trial and, under court rules, he couldn't be compelled to do so. George Braly managed to get, instead, Bantle's testimony in a sworn deposition that he videotaped and played before the jury in Oklahoma. In the deposition Bantle testified that he didn't know of a statement by the National Cancer Advisory Board in February 1985 that "there is sufficient evidence for a cause-and-effect relationship between smokeless-tobacco use and human cancer." He said that "I have not heard of" the International Agency for Research on Cancer, which is funded by the World Health Organization, and which, in September 1985, found "sufficient evidence that oral use of snuff...is carcinogenic to humans."

An advisory panel on smokeless tobacco appointed by the Surgeon General said in a much-publicized report last March: "The scientific evidence is strong that the use of snuff can cause cancer in humans." Bantle said he did know of this report, but hadn't read it. He gave this testimony ten days after the report was issued and five weeks after President Reagan signed legislation that requires rotating warnings on smokeless tobacco products.

One of Bantle's partners in sworn ignorance was Hugh W. Foley, the company spokesman to whom all health inquiries about smokeless tobacco were referred from February 1981 to the spring of 1985, when he was promoted to vice president for corporate affairs. The National Cancer Advisory Board resolution that found "sufficient evidence for a cause and effect relationship between smokeless tobacco use and human cancer" had been adopted in February 1985 during his watch. Was he even aware that the International Agency for Research on Cancer had considered the issue? "No sir, I am not." Like Bantle, Foley gave his videotaped deposition a few days after the press reported that the Surgeon General's advisory panel had found strong scientific evidence "that the use of snuff can cause

cancer in humans." Did Foley know of this? "No sir, I was not aware of that statement."

Why should a U.S. Tobacco executive bother himself with such matters when, as Bantle told George Braly, he doesn't believe the scientific evidence warrants a health warning on the cans, or even a statement that a controversy exists about the safety of smokeless tobacco? Besides, he pointed out in testimony, he subscribes even today to a joint statement, which his own and other tobacco companies published as an advertisement in 1954, that "an interest in public health is a basic responsibility paramount to every other consideration in our business." Had it ever "entered your mind?" that a health warning might have hurt U.S. Tobacco's soaring sales, Braly asked. "No, sir," Bantle replied. "Not at all?" "No, sir." For some years, the smokeless tobacco U.S. Tobacco has shipped to Sweden has carried a warning saying in part that it "contains nicotine causing a strong dependency equal to that of tobacco smoking. Mucous membranes and gums may be damaged and require medical attention." Asked about why his company warned Swedes but not Americans, Bantle said, "Well, it's the law in Sweden."

In May 1974, T.C. Tso, a tobacco scientist with the Agricultural Research Service, sent W.B. Bennett, then U.S. Tobacco's director of research and development, a copy of a report that one might expect to have set off alarm bells, a report that *Science* would publish the following October. The report, mainly by Drs. Dietrich Hoffman and Stephen S. Hecht, stated that N-Nitrosomornicotine (NNN), a "potential carcinogen, has been positively identified" in smokeless tobacco at levels of "between 1.9 to 88.6 parts per million, one of the highest values of an environmental nitrosamine yet reported. The amount in food and drink rarely exceeds 0.1 part per million. This compound is the first example of a potential organic carcinogen isolated from tobacco."

The company's reaction was, and remained, cool. "Our initial approach was to attempt to discredit the claims," according to a September 1975 memo by Richard Manning, who would succeed Bennett in 1980 before becoming vice president for R&D. U.S. Tobacco "made a judgment" that no action be taken, Bantle testified a decade later.

A major concern about smokeless tobacco is its promotion to children under 18, who commonly start with a low-nicotine brand, become hooked, and are "graduated" to Copenhagen, the richest in nicotine. In answers to interrogatories, Vice President Wuchiski said: ". . .defendant has always maintained a strict and explicit company policy forbidding the giving of free samples of smokeless tobacco to minors." Similarly, Bantle swore that under "written policies dating way

When silence is golden

Frequently, a corporation or trade association dumps an executive or hireling, but buys his silence with a wad of cash. Only rarely do the terms of the deal surface. But surface they did in the Marsee case concerning the eternal silence about smokeless tobacco of one Gerald V. Gilmartin.

In 1957, Gilmartin went to work in Peekskill, New York, for Allied Public Relations, Inc., which represented U.S. Tobacco and three other snuff makers. In 1965, he shifted those accounts to his own company, Prudential Public Relations, Inc. Fifteen years later these accounts were again shifted, this time to the Smokeless Tobacco Council (STC), which shared offices with Prudential and employed Gilmartin as its executive vice president and secretary-treasurer. After some undisclosed disagreements developed, the STC asked Gilmartin to leave. He did so in June 1984.

Under the termination agreement, signed by James W. Chapin, chairman of the STC and general counsel of U.S. Tobacco, the STC bought a $257,000 annuity for Gilmartin. The owner of the annuity was listed as the STC, c/o Jacob, Medinger & Finnegan. The annuity might be viewed as generosity, because Gilmartin did not have an ongoing contract that had to be bought out; he served at will and could be let go at any time. "I was told," Gilmartin testified, that the annuity "was in payment for many years of faithful and productive service."

But, as Braly showed, the termination agreement provided for "forfeiture of all amounts payable" under the agreement and the $257,000 annuity if "Gilmartin shall at any time make any statement (written or oral) which is disparaging or inimical to the STC, its member companies, or any tobacco products."

". . .have you ever made any statements that were disparaging or inimical to the Smokeless Tobacco Council?" Braly asked.

"No," Gilmartin answered.

—M.M.

back into the thirties, we never have—and we never will—market tobacco to persons under 18."

However, in January 1968, when Bantle was vice president for marketing, he attended a two-day meeting in New York on "the future of the company's orally utilized tobacco products." The minutes quote him as having said: "We must sell the use of tobacco in the mouth and appeal to young people. . .we hope to start a fad." Confronted with the quote by Braly, Bantle did not dispute it. Braly also quoted from a 1977 *Chicago Tribune* article in which Bantle said, "We've gotten excellent sales growth from young people." "I don't remember that statement," Bantle testified. "But I don't deny it."

Bantle also conceded that certain U.S. Tobacco marketing methods could reach boys. An example cited by Braly was an offer of free snuff samples to anyone who mailed in a coupon in advertisements in magazines such as *Sports Illustrated*, which, Bantle acknowledged, are read by those under 18. But the people who processed the coupons "reviewed the signatures," Bantle testified. "If they looked like they were coming from young people, they were not answered."

S. David Schiller, an assistant United States attorney in Richmond, Virginia, has described the evasive testimony about blatant violations of court bankruptcy orders by several executives of the A.H. Robins Company as "Robinspeak," which he defined as: "I don't know," "I don't recall," "I have no present recollection," "We had no definitive discussion," "I probably said," "I would have said." Were the answers of Louis Bantle the whole truth and nothing but? Or were the answers of the professedly ignorant CEO merely Robinspeak on tobacco road?

What carcinogens?

Dr. Richard Manning, vice president for R&D, joined U.S. Tobacco in 1969 as a senior research chemist. Because of his position, his testimony left many courtroom observers incredulous. It's easy to see why. For starters, he and George Braly had this exchange:

Q. "What is the range of nicotine found in tobacco?"

A. "I don't know."

Q. "Did you tell the jury you are a tobacco chemist?"

A. "Yes, sir. . . ."

Q. "No information on that subject?"

A. "No."

Per Erik Lindqvist, senior vice president for worldwide marketing, followed Manning's lead in obscuring the importance of nicotine in hooking snuff dippers. Looking toward the development of new smokeless tobacco products, Lindqvist wrote the president of the tobacco division in June 1981: "Flavorwise we should try for innovation, taste, and strength. Nicotine should be medium, *recognizing the fact that virtually all tobacco usage is based upon nicotine, 'the kick,' satisfaction*." (My emphasis.) Was this a recognition by Lindqvist "that virtually all tobacco usage is based upon nicotine?" George Braly asked. "No," the executive swore. "What I am saying in this paragraph is that it is important that the consumer can feel the tobacco satisfaction."

Q. "Don't you, in fact, use the following precise words, 'recognizing the fact that virtually all tobacco usage is based upon nicotine'?"

A. "Satisfaction."

Q. "Yes."

A. "Nicotine satisfaction."

Q. "Yes."

A. "That is what I am saying."

Q. "Virtually all tobacco usage is based upon nicotine satisfaction; is that what you are telling the jury?"

A. "That's what this document says. . . ."

Q. "The United States Tobacco Company had for years planned different tobacco products around different levels of nicotine satisfaction; isn't that correct?"

A. "No, I can't answer that question. I don't know what you refer to here."

Q. "Do you deny that that is true?"

A. "I don't deny it and I don't admit it. I don't recall."

The next exchange with Manning led more eyebrows to rise:

Q. "What are carcinogens?"

A. "What do you mean by carcinogens?"

Timothy M. Finnegan of Jacob, Medinger & Finnegan in New York, U.S. Tobacco's principal law firm, interjected: "The witness is entitled to have a question that he understands. I ask you to clarify."

Q. "Doctor, my question is what are carcinogens?"

A. "I really don't know what you mean by carcinogens."

After Manning gave the same answer a third time:

Q. "I will tell you that what I understand the word carcinogen to mean is something that causes cancer. Do you understand it any differently?"

A. "It causes cancer in what, sir?"

Q. "Animals."

A. "What is cancer in animals? I am an organic chemist. I am not a pathologist. I am not an oncologist. I am not a medical doctor and, no, I cannot answer that question because I don't know."

Three times Braly asked: "Is there anybody that works for the United States Tobacco Company that knows more about this particular subject of carcinogens than you do?" Manning's first answer was, "I didn't say I knew about this particular subject of carcinogens." His second answer was, "Is your question is there somebody that knows more than nothing?"

Q. "About carcinogens."

A. "I don't know."

Q. "So if there is such a person that works for the U.S. Tobacco Company, you don't have any idea who it is?"

A. "Correct."

Q. "And you admit to this jury that you know nothing about that subject?"

Immediately, there followed exchanges, twice interrupted by Finnegan, in which Manning tried to deny his admission that he was a total ignoramus about carcinogens. Finally:

Q. "My question was didn't you just tell the jury that you didn't know of anybody in the company that knew more than nothing about carcinogens?"

A. "I think you are telling me I just said that."

Q. "I am asking you. Didn't you just say that a few minutes ago?"

A. "Right now, I don't remember."

Later:

Q. "What research has been carried out by the United States Tobacco Company in connection with the safety of snuff used by human beings?"

A. "I don't know what you mean by the use of the word safety in that context, either."

Q. "Has the United States Tobacco Company ever carried out any research to determine whether or not its snuff products are dangerous for human beings to use?"

A. "I don't know what you mean by dangerous in that concept—or context."

There was much more of the same kind of grappling over issues such as whether the company has researched or hired others to research whether snuff is carcinogenic or mutagenic. And, to end, there was this:

Q. "What is a low concentration of nitrosamines?"

A. "I do not know what a low concentration of nitrosamines is."

Braly told the jury he had a word for Manning's testimony: "Snuffspeak."

After the verdict, a juror told me this about the executives' testimony: "They stonewalled it. It was very obvious to everybody. Dr. Manning pretended he didn't know anything at all. The chairman was even worse than Manning." But the same juror, asking not to be identified, said that deposition testimony taken in advance of a trial is like "a game plan" in sports, i.e., a strategy to be held close to the vest, is therefore not taken as seriously as live testimony in the courtroom. It didn't faze the juror, who spoke as if this notion was widely shared in this buckle of the Bible Belt, when I pointed out that both kinds of testimony are given under an identical oath.

Arrant experts

It's easy for cash-rich corporate law firms to find academicians to provide helpful testimony. It was particularly easy in the Marsee case because of the foresightedness of U.S. Tobacco. In August 1974, R&D chief Bennett wrote a letter, with a copy to Bantle, in which he said that "cigarette companies have built up quite a stable of experts in these fields related to their products, but we are not in too good a shape in this respect." How they got in shape is exemplified by their recruitment of Dr. William H. Binnie, chairman of pathology at Baylor College of Dentistry in Dallas.

In early 1984, Binnie went to an oral pathology meeting in Holland. So did Janet S. McClendon of Jacob, Medinger, the U.S. Tobacco law firm, which for several years also represented R.J. Reynolds Tobacco Company, the big cigarette maker. Within a few minutes in the trial, Binnie gave George Braly two differing accounts of the origin of his availability to Jacob, Medinger and the smokeless tobacco industry.

Initially, he said "I was approached" by McClendon. Then he said he had "sought out" the lawyer. "Here was this lady sitting in our meeting and I was just curious to find out who she was," Binnie said. "I didn't even know she was an attorney." Braly asked Binnie whether McClendon "travels around to all these medical meetings hunting for doctors that will testify for the tobacco industry?" The doctor replied, "No comment."

Braly asked Binnie if he had "testified on behalf of the smokeless tobacco industry before Congress about a year ago?" "No," he said, "I submitted a document." In it, he expressed the belief that smokeless tobacco does not cause oral cancer. At whose request had he given his opinion to Congress? "I had seen the proposed bill

[to require health warnings on smokeless tobacco products] and the law firm asked if I wanted to see what I thought of it."

Q. "And, I take it, you think that tobacco doesn't cause oral cancer?"

A. "Correct."

Braly reminded him that at least 90 percent of the victims of head and neck cancers are tobacco users and asked if this had "any significance to you?" "No," Binnie said. Indeed, he was so protective of all tobacco use that, when asked whether cigarette smoking is "a cause of lung cancer," he replied, "I don't know that."

Then Braly asked the witness if he was the same W.H. Binnie who had published an article in the *Journal of Oral Pathology* in 1983—a year before the McClendon recruitment in Holland. Binnie said he was. In the article he had written: "The method of smoking notwithstanding, there is ample evidence to support the premises of tobacco consumption as a dose/time related entity in the etiology of intra-oral cancer."

Q. "But have you changed your mind now?"

A. "No, I haven't."

On January 10, 1983, ABC television aired a piece on snuff that disturbed the peace of Chairman Bantle. Two days later, he sent a memo to Executive Vice President Barry Nova: "What is the downside of Monday's broadcast? 'The Surgeon General warning snuff dipping may cause cancer'? It's possible it could trigger such a suggestion. We should develop a strategy for

Remembering to forget

Evasive testimony is an art, not a science. No lawyer can tell you, definitively, how to avoid answering unpleasant questions under oath while escaping the pitfalls of perjury, contempt of court (or Congress), and obstruction of justice charges. But for the past 35 years, mob bosses, Watergate dirty tricksters, and Chief Executive Obfuscators at Fortune 500 corporations have refined a set of poses that seldom fail to steer them safely between the Scylla of telling the truth and the Charybdis of getting indicted. Listed below are the three personae that have worked the best for the less than fully forthcoming:

Dragged from the hospital
("Against the orders of my doctor")

It all began in 1951 when mobster Frank Costello simultaneously pleaded laryngitis, photosensitivity, and the fifth amendment in testimony before the Kefauver Crime Investigating Committee. Instead of threatening him with charges of contempt of Congress and perjury, the committee ought to have awarded him an Oscar.

Costello knew that if he could stall Kefauver for 30 days, the committee's money and mandate would run out, and he could continue to wear leather slippers, instead of the cement kind. So he bought time. He whined about the klieg lights and moaned about the television cameras (Kefauver ordered them not to show his face, so millions watched Costello's nervous fingers all day). When one of the senators suggested that he might be extradited for lying on his naturalization affadavit, Costello became hoarse, and his lawyer remembered the note in his pocket from Costello's physician ordering him to stay home. But in order to help in the investigation, Costello offered to risk permanent injury to his health by staying. Under the strain of it all, however, Costello forgot almost everything the committee wanted to know, including the names of close friends and the amount of money in his strongbox (which he managed to remember later when they threatened to slap the cuffs on him). Threatened with a contempt citation for refusing to divulge his net worth, Costello wheezed loudly, insisted he should be in bed, and stalked out of the hearings. His illness, proclaimed by his attorney as "laryngeal bronchitis," prevented Costello from saying anything of any value when he returned under duress.

But just in case the FBI saw fit to charge him with perjury, Costello's lawyers disqualified everything that had been said during seven days of testifying in New York: "With the intolerable conditions that existed, it became apparent that the witness was unable to testify properly, that the witness could not concentrate on the subject matter of the questioning and that, as a result, his answers were incoherent, unintelligible and at times inconsistent and seemingly contradictory." Costello's condition improved rapidly once Kefauver had left for Washington.

The Dottering Grandfather
("When you get to be my age, Senator. . .")

White House lawyer Richard Moore refined and sanctified the role of obfuscator with this classic performance before the Ervin Committee in 1973. In marked contrast to smooth Watergate operators Dean and Mitchell, Moore had no cool to lose. Utterly befuddled, he fumbled through

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such a possibility, or better, for seeing that it does not happen." A few days later the company's Task Force on Regulatory/Political Environment came up with an unsigned memo listing numerous "preliminary strategy recommendations." One of them was only three words, the second word of which is an adjective that, dictionaries say, often modifies "knave": "Develop arrant doctors." Braly inquired, "Are you one of the arrant doctors that they have recruited?" Binnie said he was not.

You dirty rat

So, how, with all this dubious testimony, could the jury rule in favor of U.S. Tobacco? The witness who decisively influenced them to conclude that snuff hadn't been shown to have killed Sean Marsee was Dr. Arthur Furst, immediate past president of the American College of Toxicology. Although an organic chemist, the impressively credentialed Furst is a full professor in the pharmacology department at Stanford University Medical School and is the author of about 220 professional papers in the fields of cancer research, chemistry, and toxicology.

From 1965 to 1969, while he was at the University of San Francisco, Furst conducted smoking studies paid for in full or in part by the Council for Tobacco Research U.S.A., which is funded by the cigarette industry. In 1981, when the Smokeless Tobacco Research Council was

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by Jacob Weisberg

his opening statement that was supposed to contradict Dean's assertions about Nixon's knowledge of the cover-up. In Moore's description, even Nixon came off as a well-meaning Alzheimer's victim—racking his brain for the signs he should have seen that his underlings were up to no good. When grilled, Moore put a finger to his temple, stammered, scratched, and became so confused that he couldn't speak. During the second day of his utterly useless testimony, Moore tried to make the senators feel guilty for pushing an old guy like him around. Standing up for senility, he declared that people think "it's nice to hear that someone is willing to admit he does not know exactly where he was at 12:11 p.m. on June 30, 1972." Moore played to rave notices. After his testimony the Committee was flooded with calls and telegrams from people outraged at the way Moore had been treated.

Lousy Head for Details
("The vice-presidents don't tell me unless I ask")

This was the line favored by executives at A.H. Robins Company. In his book *At Any Cost: Corporate Greed, Women, and the Dalkon Shield*, Morton Mintz reports that A. Claiborne Robins, Jr., the CEO, testified "I don't know one way or the other" when asked whether his company had paid out any cash settlements in Dalkon Shield lawsuits. Claiborne Robins, Sr., who ran the company with his son, managed to forget during a deposition all about a major settlement with Aetna insurance, which he had been informed of a few weeks previously at a company board meeting. "My recollection is not as good as I would like it to be," the elder Robins said, taking a cue from Richard Moore. Another top executive couldn't remember whether she had warned Robins employees wearing Dalkon Shields to have them removed. A specialist who wrote studies promoting the defective IUD couldn't remember whether he owned stock in the Dalkon company. (He did.)

Supreme Court Justice William Rehnquist's memory proved equally spotty during testimony last August before the Senate Judiciary Committee. When asked during confirmation hearings whether he had approached minority voters and demanded that they prove their literacy by reading portions of the constitution, the chief justice-designate said he "did not believe" he had done so, but cautioned that his memory had grown "faint." When pressed, Rehnquist, in fluent Robinspeak, said he did "not recall" participating in such challenges.

The essential ingredient in all perjury avoidance/truth avoidance is, of course, the "I don't remember, I don't recall" formulation. When professing ignorance becomes absurd, your memory can be jogged, it can all come rushing back, now that you mention it. It's not perjury to remember later, even if it's not telling the whole truth.

Take a lesson from Mike Deaver. A month ago, it looked bad for him. A Congressional Committee had accused him of lying in his May 16 testimony about his contact with Administration officials after he left the White House. The evidence was referred to independent Deavergate Counsel Whitney North Seymour. But lawyers who have examined the evidence say Deaver's not likely to be convicted. He didn't deny talking to Robert McFarlane on behalf of a client. He just forgot to remember. ■

formed, Furst became a member of its scientific advisory board. He testified that the 1974 "stable of experts" letter was "news to me." "Isn't the Council the 'stable' for the smokeless tobacco industry?" George Braly asked. "Absolutely not," Furst replied.

Furst acknowledged at the trial that he hadn't published an article on the subject of tobacco and cancer for probably 20 years. He testified that he was aware that the Surgeon General, on the advice of a large number of the country's most prestigious scientists, had listed five criteria to be taken into account in determining whether there is "a sufficient basis to form a judgment of causality." But when asked "if you have any recollection of what they are?" he replied, "At the moment, no." He went on to "disagree, absolutely," with the criteria and claim that "the scientists" do not agree either.

As one would expect, the positions Furst took on the relationship between tobacco and disease were echoes of the views of the cigarette and smokeless tobacco industries, and rejections of views of the majority of the medical and scientific community. ". . . [A]re cigarettes a cause of lung cancer in human beings?" Braly asked. ". . . [T]he answer would be no because it has not been proven," Furst said. Similarly, he dismissed all of the authoritative warnings by the Surgeon General and others that snuff can cause mouth cancer.

Furst's testimony was seductive. Yes, he said, nitrosamines are carcinogens in animals. But he had happy news: in snuff, they are counteracted by "anti-cancer agents." In asserting this, he relied heavily on an experiment in which snuff components caused cancer in rats, while snuff itself did not. "There must be some anti-cancer activity in that snuff," he testified.

Once again, George Braly's cross-examination was shattering, even if it didn't strike the jury that way. Furst admitted he had not made the simple calculations that would have established the comparative exposures to NNN, in terms of body weight, of the rats in the experiment on which he relied, and of Sean Marsee. These calculations, which Braly did on the spot, showed that Sean, by consuming four cans of Copenhagen a week for six years, had been exposed to nine to ten times as much NNN as the rats.

Moreover, Furst said he believed it to be "absolutely" important to have hands-on experience in scientific experiments, but admitted he had never tested nitrosamines in animals. Few, if any, scientists know more about or have more hands-on experience with nitrosamines than Dr. William Lijinsky of the Cancer Research Center in Frederick, Maryland. Lijinsky had done his own study in which NNN caused tongue cancer in animals, and U.S. Tobacco attorney Jennings had told Furst of this. But, Furst testified, Jennings had not told him (or other defense experts) of the most salient fact, revealed in this exchange:

Q. "Did they tell you that this was the experiment that had been done at the lowest dose levels ever tested on nitrosamines?"

A. "Obviously not, no, sir."

Furst also disclosed that he had not been told that Lijinsky had testified at the trial about the dose levels in his tongue-cancer study. "I just learned about this today," Furst told Braly during cross-examination. "I won't argue with that."

He did not, however, change his position.

Silent oaths

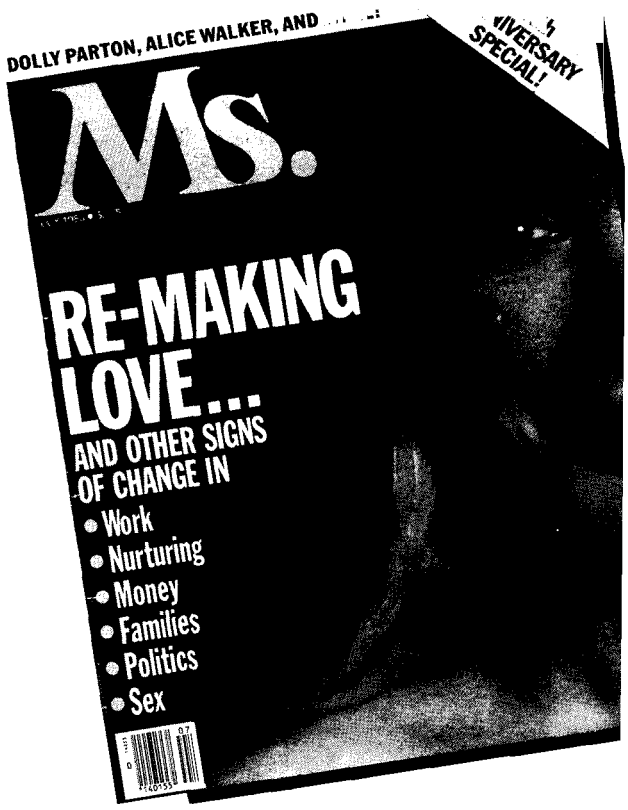
If, in 1986, the chairman and CEO of the leading snuff company is "not aware that anyone has said that snuff causes cancer," and if the vice president for R&D doesn't know what a "carcinogen" is, or what "safe" or "dangerous" are, do they know what an oath is? What the "whole truth" is? I believe they do.

Probably I'm naive, but I have to say that I'm repelled by the sight of platoons of corporate executives, on Capitol Hill as well as in the courts, who swear to tell—but who tell nothing like—the truth, the whole truth, and nothing but the truth. And I'm appalled when they tell nothing like the truth about conduct that has exposed dozens, hundreds, or even tens of thousands of human beings to avoidable disease, injury, and death.

To be blunt, I am talking about conduct that, when engaged in on the street, is universally recognized as manslaughter, or, if the conduct was knowing and willful, as murder. Maybe it's also naive to wonder why it is that when corporate executives who engage in such conduct violate a solemn oath to tell the truth, "so help you God," they rarely, if ever, elicit even a tut-tut from mainline editorialists and columnists, or the wrath of mainline clergymen, or such telegenic hellfire preachers as Jerry Falwell and Jimmy Swaggart.

But maybe the public oath these executives mouth is not the silent oath they obey. The silent oath, as I imagine it, would run like this: "I do solemnly swear to tell the truth, the whole truth, and nothing but the truth, so long as I reveal no truth that could hurt my corporation or me, so help me CEO." ■

America's leading feminist magazine used to challenge the worst in men. Now it encourages the worst in women.



HAS MS. UNDERGONE A SEX CHANGE?

by Susan Milligan

But for the logo in the corner, it could be *Self*. "Re-Making Love," reads the July cover headline that runs over a photo of a man kissing the bare shoulder of a carefully made-up woman. Yet this is *Ms.*, the country's leading feminist magazine. So, what does *Ms.*, which claims "the most influential women in America" as its readers, have to say about the current condition of love-making?

" 'Re-Making Love' was chosen as our cover story," write the editors, "because sexuality is the area of our lives where the power balance has changed the most and is likely to stay changed." And how has that balance changed? Feminists used to get angry at men who treated women as sex objects; now *Ms.* says sex objects are okay—if they're men. The authors of this article write: "Whether in 1950 or 1980, casual sex has always been *the* macho symbol, and very few men were complaining as long as they controlled the action." Now, they boast, women can control the action, too, and they applaud women such as one who told them, "I have lovers because what else is there in life that's so much fun as turning on a new man, interesting him, conquering him?" They also scoff at George Leonard, who, in a 1982 *Esquire* article, deplored the "loss of loving, nurturing, long-term" sex. Have we ever come a long way.

Claiming "*the* macho symbol" as a woman's right is just one example of how *Ms.* has come to encourage some of the very values it used to condemn. While still officially feminist, *Ms.* is a compromised version of the radical magazine it was 14 years ago. The magazine that declared in its first issue that it wanted to be as "serious, outrageous, satisfying, sad, funky, intimate, global, compassionate, and full of change as women's lives really are" has retreated from that complexity. *Ms.* is now full of articles such as "How to Manage a Fear of Power," "Packing It In: A 10-Day Trip in a Carry-On Bag," "Toys for Free Grown-ups: A Consumer Guide to Sex Gadgets, Potions, and Videos," and "The New Computer Diet—From Chocolate Chips to Microchips." There is little anymore that distinguishes *Ms.* from other mainstream women's magazines such as *Cosmopolitan*, *Mademoiselle*, *Working Woman*, or even magazines such as *Playgirl*.

"When *Ms.* was launched scarcely a decade ago, it was a different world," proclaims a recent trade ad. "We led the way, and we changed the world. So much so that we changed ourselves. . ." And so the magazine did. Perhaps the biggest change in *Ms.* is that it no longer challenges the greed, selfishness, and materialism it once claimed subjugated women and imprisoned men. Today's *Ms.* not only condones those values, but

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