

Tobacco and Liberty

John Wargo, Yale University

Lecture 15

Environmental Politics and Law

March 23, 2010

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Legal Regimes

- Air Quality
- Pesticides
- Atomic Weapons Testing
- Hazardous Sites
- Plastics

- Tobacco?

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Tobacco: Legal Tools

1. TAXES
2. PLACE BASED RESTRICTION
3. SALES RESTRICTIONS
4. ADVERTISING RESTRICTIONS
5. FAIR WARNING OF HAZARD
6. COMPENSATION
7. END SUBSIDIES
8. REGULATE NICOTINE CONTENT
9. BAN SALE OF ALL TOBACCO PRODUCTS

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INDUSTRY

Tobacco: Scale of the Issue

- \$46.6 billion in consumer spending.
- 50 million citizens smoke approximately 600 billion cigarettes each year.
- 4 billion cigars
- 40 million pounds of tobacco are burned indoors each year.

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Tobacco Related Illness

- 400,000 deaths in the United States each year. (US CDC)
- 3 million deaths in world each year (WHO)
- 468,000 suppliers, wholesalers and retailers depend on the industry.

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Federal Legal Regime Focused On:

- Hazard Warnings
- Advertising Claims and Media
- Age Restriction
- Restrict Access
- Removal of Subsidies
-But Not Prohibition

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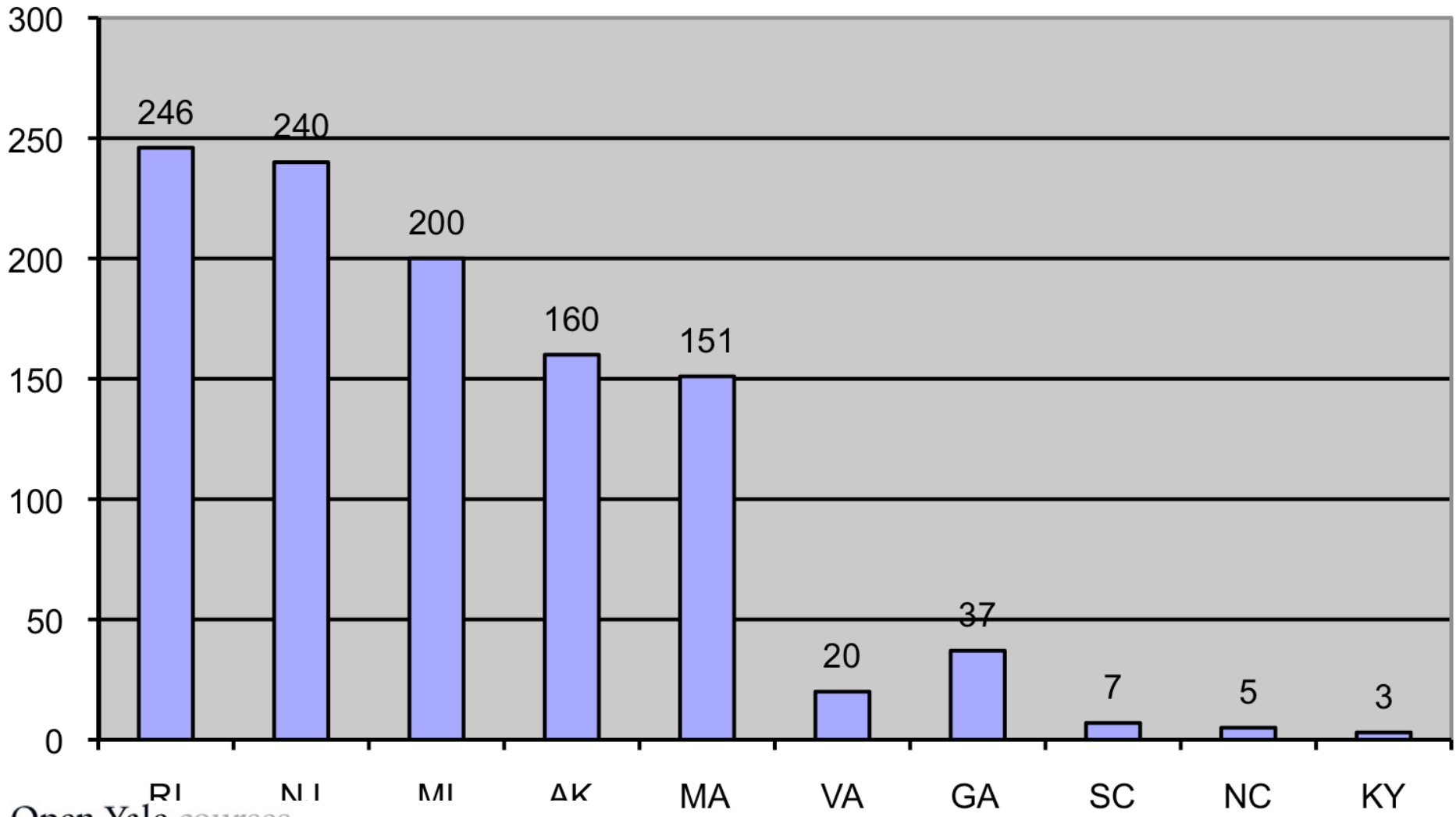
Industry Strategies:

1. Keep Government Focused on Labeling
2. Confuse the Evidentiary Base on Health Effects
3. Associate Tobacco Use with Freedom, Nature, Sociability, and Sexuality
4. Focus on Costs of Regulation, Not Costs of Health Loss
5. Preempt State and Local Regulation Regarding Labeling and Tort Litigation

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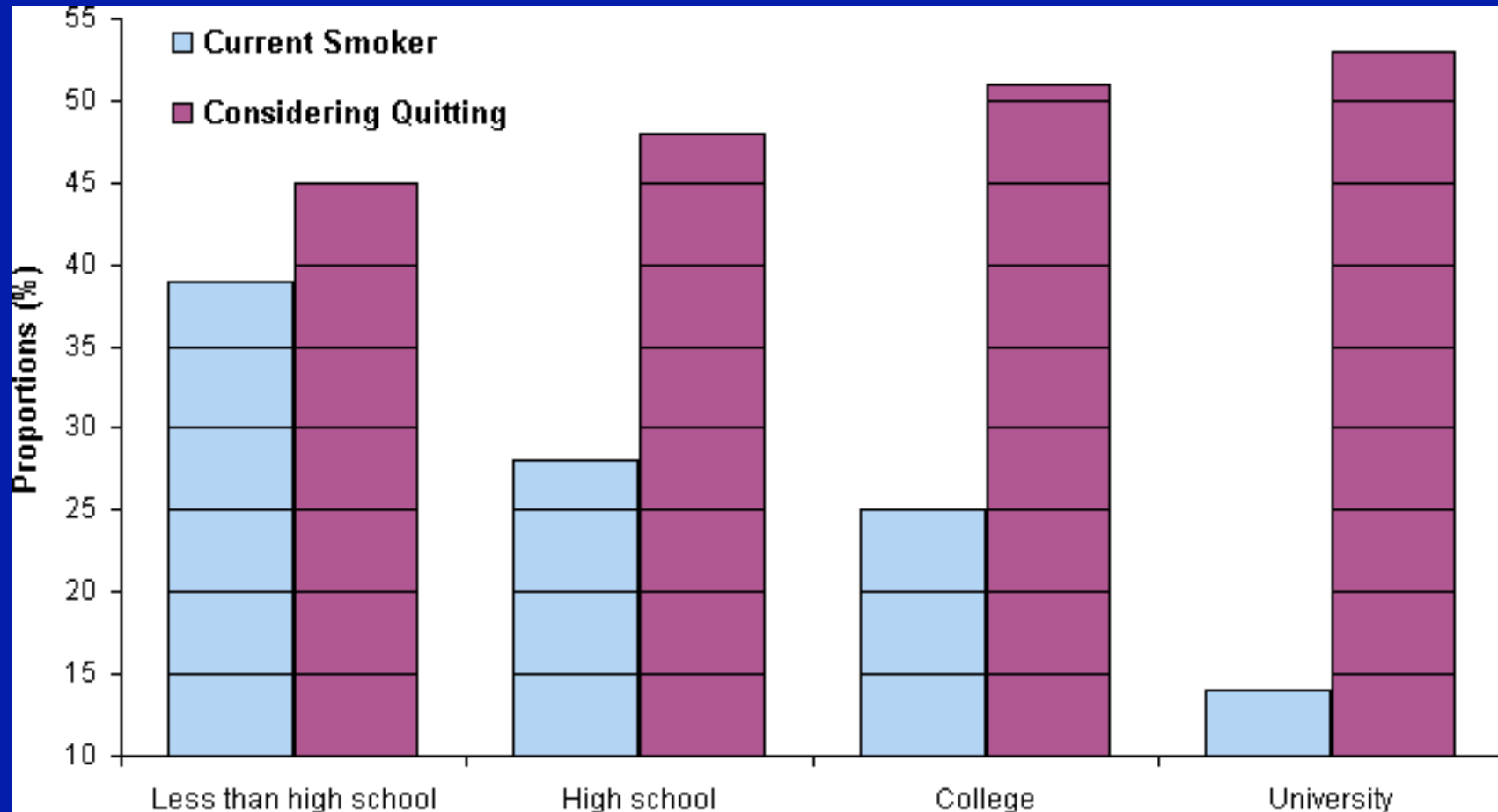
Cigarette Tax By State Cents Per Pack



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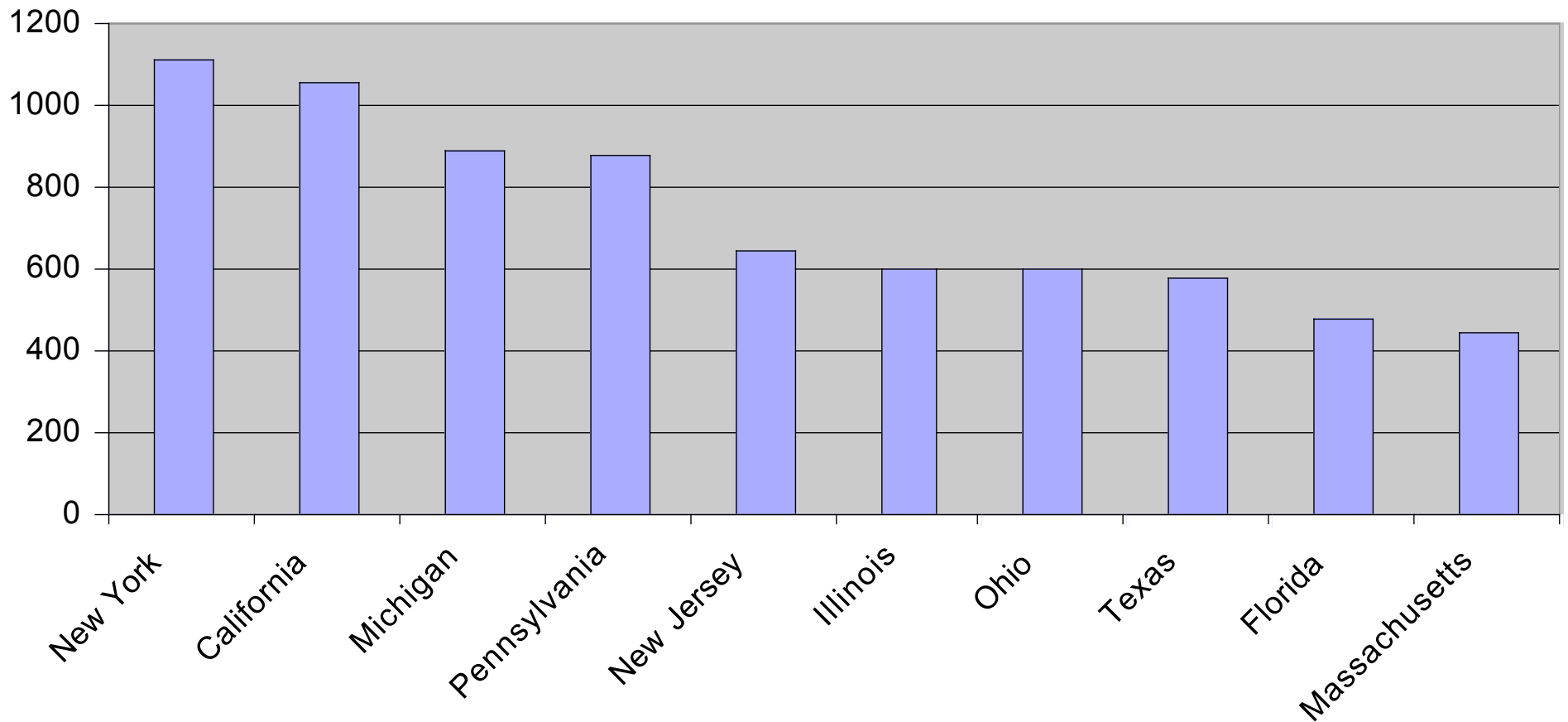
Smoking Prevalence and Education



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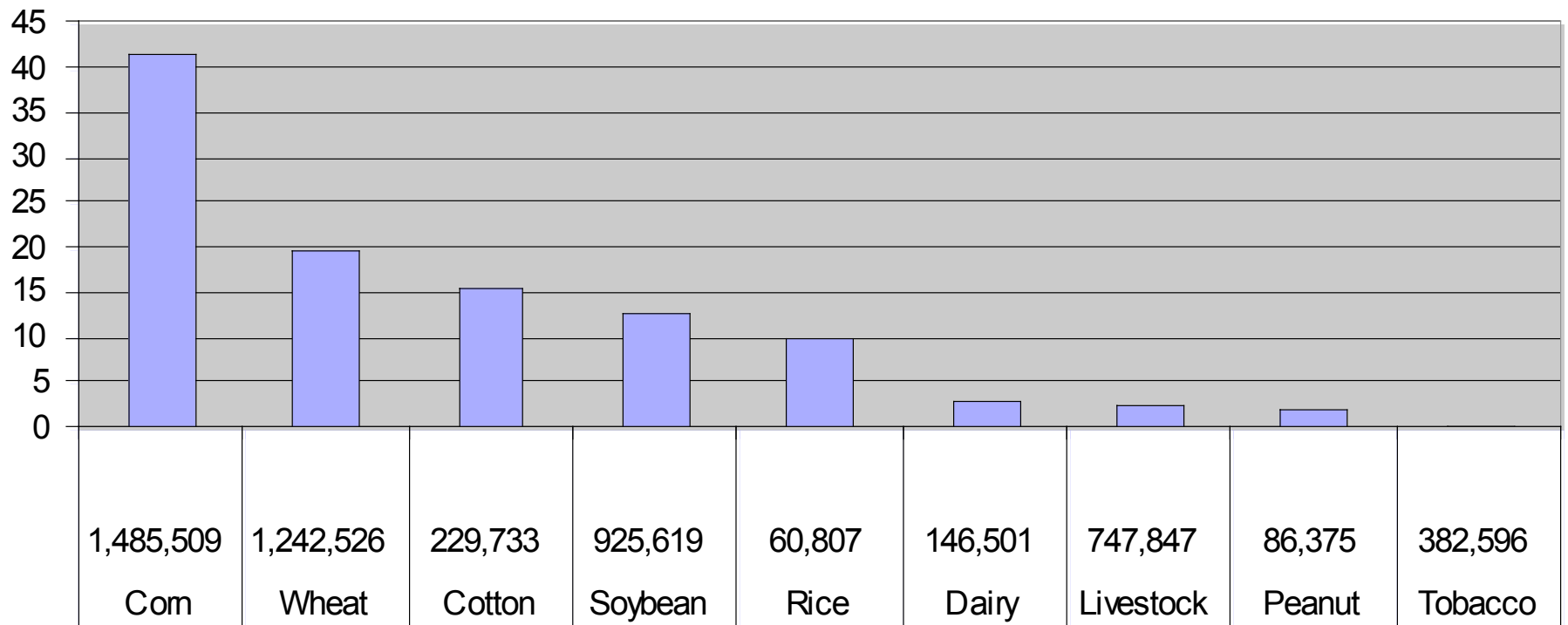
State Tax Revenues 2003 Millions of Dollars



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Subsidies to US Farmers 1995-2004 ***Billions of US\$(2004)***



Tobacco Subsidy 2005: \$5,000

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Advertising Trends

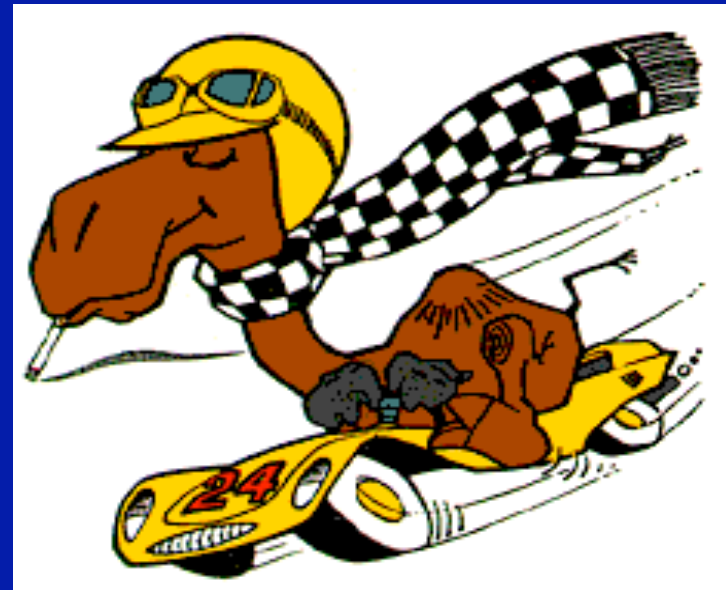
- In 2003, cigarette companies spent \$15.2 B on advertising and promotional expenses.
- This amounted to more than \$53 for every person in the US.
- 22 percent increase over the previous year.
- Expenditures more than doubled since 1998.

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Targeting Children Through Advertising

- Joe Camel Ran for 9 Years: 1988-1997
- 3,000 New Smokers < 18 years old Per Day...
- 1/3 of these will die of tobacco related illness.



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Smooth character.



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Joe Camel:

Modeled after James Bond and Don Johnson of *Miami Vice*

One study showed that nearly one-third of three-year-olds matched the character to the cigarette brand name.

Among 6 year olds, Joe Camel as familiar as Mickey Mouse

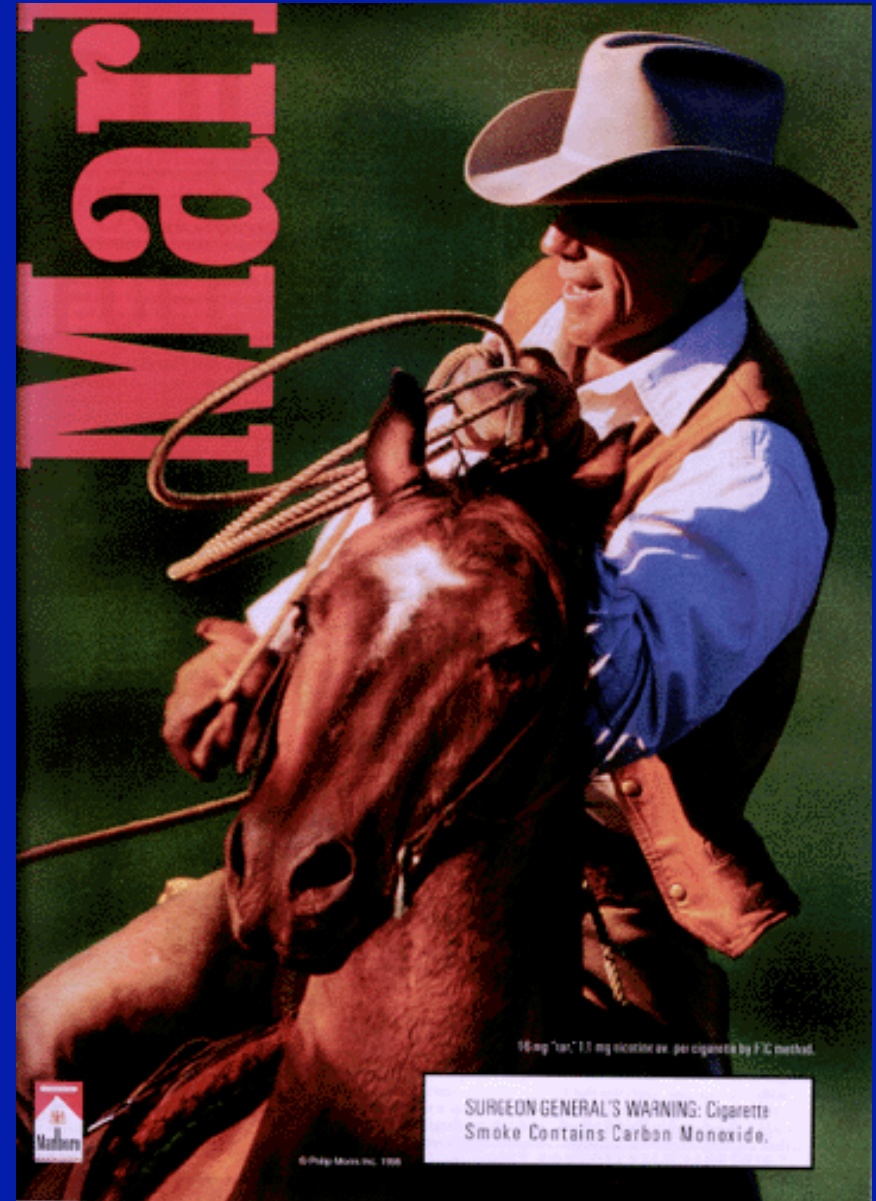
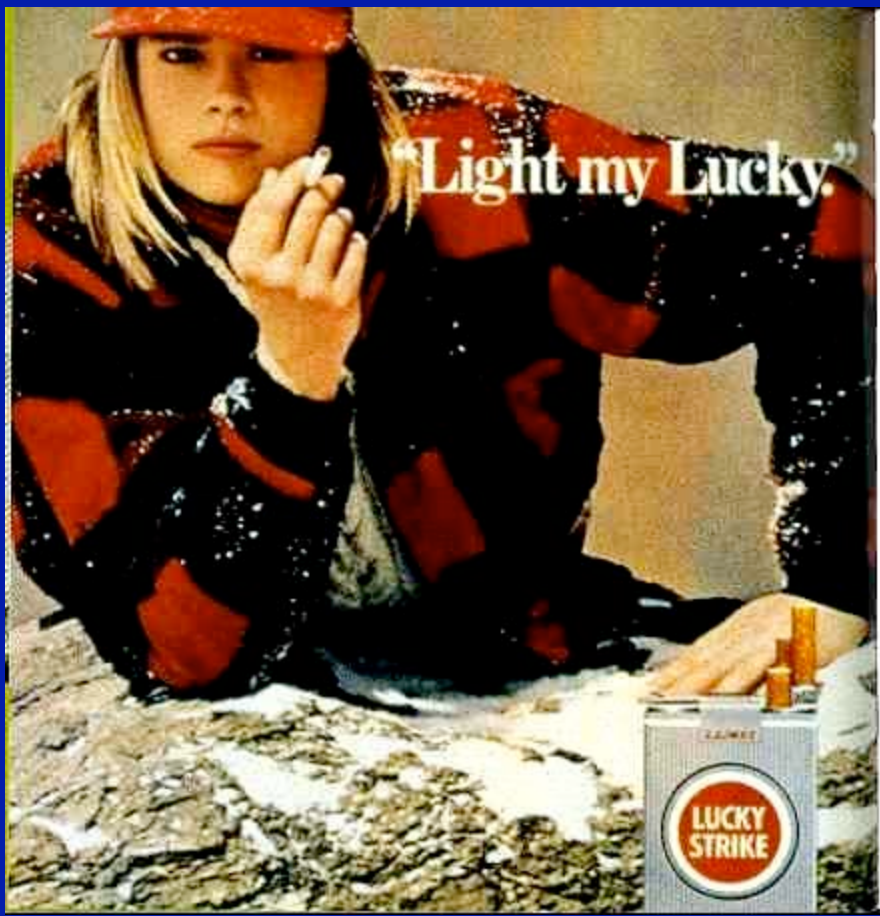
In 3 Years:

- Joe increased Camel's market share from 1 to 33% in <18 yr olds

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00 million per year



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16 mg "tar," 1.1 mg nicotine av. per cigarette by FTC method.

**SURGEON GENERAL'S WARNING: Cigarette
Smoke Contains Carbon Monoxide.**



© Philip Morris Inc. 1998

To keep a slender figure
No one can deny...



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Before you scold me, Mom...
maybe you'd better light up a

Marlboro



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*The figures quoted have been checked and certified to by LYERLAND, ROSS, BROS. AND MONTGOMERY, Accountants and Auditors.

20,679* Physicians say "LUCKIES are less irritating"

"It's toasted"

Your Throat Protection against irritation against cough

According to repeated nationwide surveys,

More Doctors Smoke **CAMELS** than any other cigarette!

Doctors in every branch of medicine were asked, "What cigarette do you smoke?" The brand named most was Camel!

You'll enjoy Camels for the same reasons so many doctors enjoy them. Camels have cool, cool *mildness*, pack after pack, and a *flavor* unmatched by any other cigarette. Make this month's test: Smoke only Camels for 30 days and see how well Camels please your taste, how well they suit your throat as you study smoke. You'll see how enjoyable a cigarette can be!

THE DOCTORS' CHOICE IS AMERICA'S CHOICE!



MARIAN O'NEAL says: "I like Camels. They don't irritate my throat and taste wonderful!"



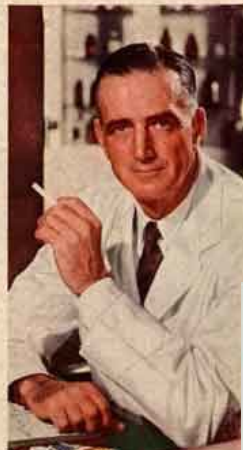
DR. ROBERT HARRIS says: "I get more pleasure from Camels than from any other brand!"



DR. PAUL BELLEVUE says: "Camels are my sure and steady. For me, they're the best!"



For 30 days, test Camels in your "T-Zone" (T for Throat, T for Taste).



Lady with a Lamp (1946 Version)

The price of medical luxury among the top money class with the names of great women. Florence Nightingale, the "lady with the lamp"... Elizabeth Blackwell, first American woman into great hospital degree M.D. ... Dr. Mary Putnam Jacob... Jane Yale Mason... and thousands of others... In America today, thanks to the spirit of these pioneers, 1200 women doctors carry the name they helped you learn along the path of human service.



According to a recent *Nationwide survey*: **MORE DOCTORS SMOKE CAMELS THAN ANY OTHER CIGARETTE**

Men and women in every branch of medicine - 113,597 in all - were queried in this nationwide study of cigarette preference. Three leading research organizations made the survey. The gist of the query was: "What cigarette do you smoke, Doctor?"

The brand named most was Camels!

The rich, full flavor and cool mildness of Camels' superb blend of superior tobaccos seem to have won the same favor in medical circles as with millions of smokers the world around. Try Camels now.



TRY CAMELS ON YOUR "T-ZONE"



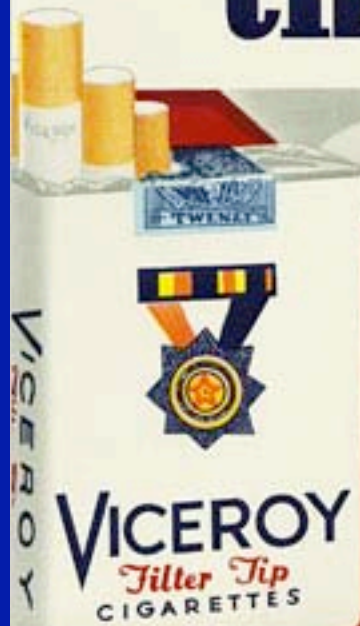
That's T for Taste and T for Throat... the most critical "T-zone" for any cigarette. See how our taste responds to the rich, full flavor of Camels' superior tobaccos. See how our throat reacts to Camels' cool mildness. On the basis of the experience of many smokers, we believe Camels will suit your "T-Zone" to a T.

CAMELS *Coastier Tobaccos*

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Viceroy's *FILTER* the Smoke!



As your Dentist,
I would recommend
VICEROYS

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Guard Against Throat-Scratch

enjoy the smooth smoking of fine tobaccos

...smoke **PALL MALL**
the cigarette whose mildness
you can measure.



Study This Puff Chart:

PUFF BY PUFF... YOU'RE ALWAYS AHEAD WITH PALL MALL



1 The further your cigarette filters the smoke through fine tobacco, the milder that smoke becomes. At the first puff, PALL MALL's smoke is filtered further than that of any other leading cigarette.

2 Again after 2 puffs of each cigarette your own eyes can measure the extra length for extra mildness in the smoke of PALL MALL's traditionally fine tobacco is filtered further. Moreover, after 10 puffs of each cigarette....

3 ...or 17 puffs, Pall Mall's greater length of fine tobacco still travels the smoke further—filters the smoke and makes it mild. Thus Pall Mall gives you a smoother, milder and satisfying to other cigarette after you.

Wherever you go today, you will see more and more people smoking PALL MALL—the cigarette whose mildness you can measure.

Outstanding
...and they are mild!



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Gender and Advertising

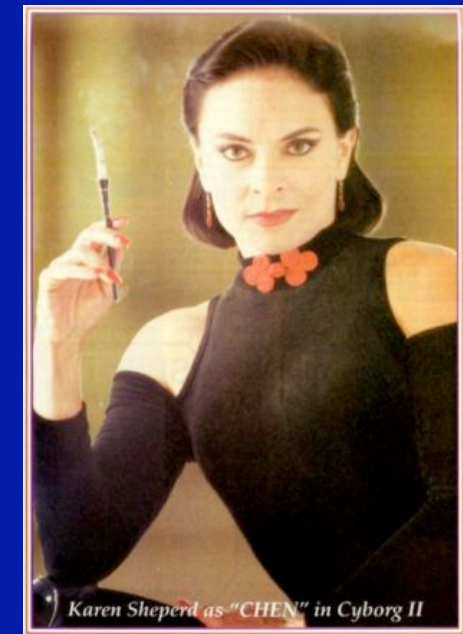
- Women have been extensively targeted in tobacco marketing, both in North America and overseas.
- Tobacco marketing is dominated by themes of both social desirability and independence, which are conveyed through slim, attractive, athletic models.

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Smoking and Gender

* Cigarette smoking is more common among men (23.9%) than women (18.0%).



The highest estimates for cigarette smoking among women are in Kentucky (28.1%), West Virginia (26.0%), and Alaska (22.9%); the lowest estimates were in Utah (9.2%)

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Top Billed 500 Movies

Tobacco use was noted in 75% of all movies reviewed.

43% of the movies showed scenes in which tobacco use could be interpreted as attractive, with qualities described by teens as sexy, exciting, powerful, cool, sophisticated, rebellious, and celebratory,

27% of the movies included some type of anti-tobacco statement.
Top-billed actors lit up in 59% of all movies reviewed.



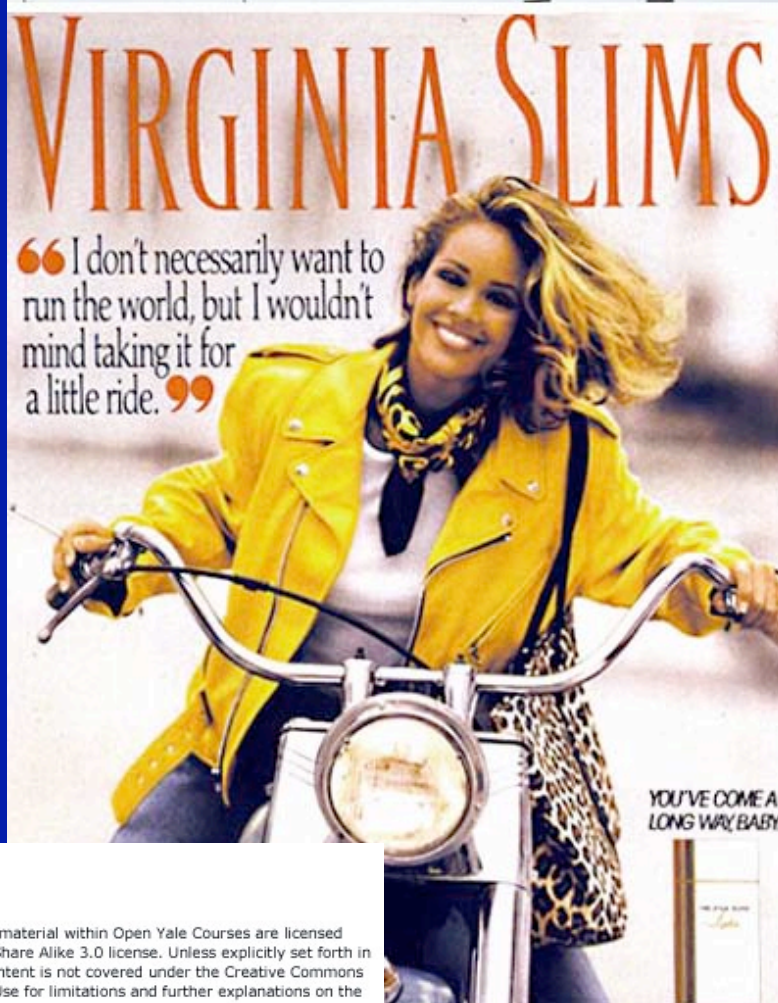
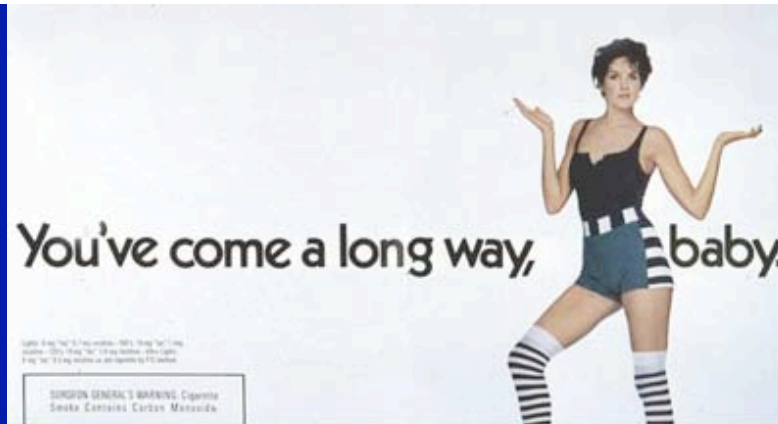
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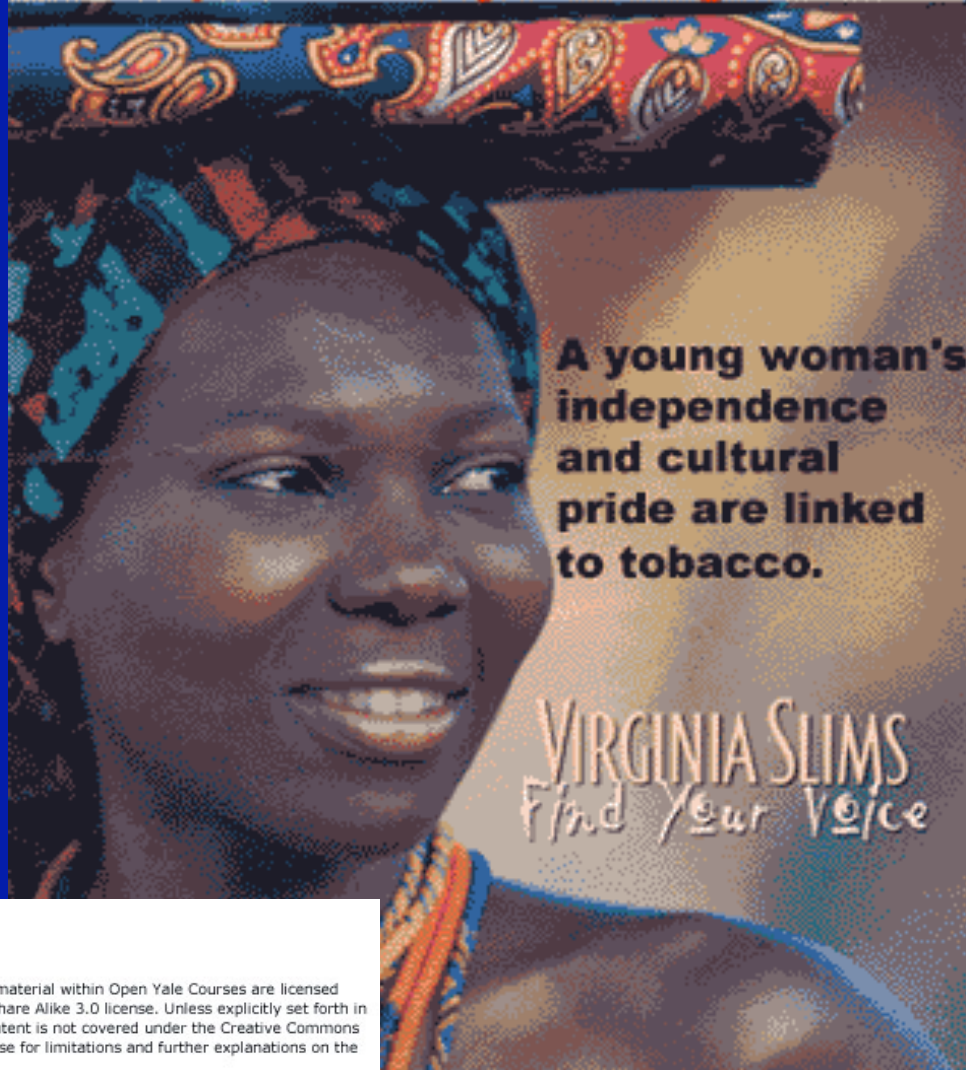
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African-Americans previously had a lower frequency of tobacco smoking than Caucasians. This advertisement suggests that this young black woman in African dress "Find Your Voice", presumably through her expression of independence by smoking.



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NASCAR: FROM RJR TO NEXTEL

The World Health Organization's Framework Convention on Tobacco Control is a public health treaty created on May 21, 2003 that is signed by more than 40 countries, not including the United States. The treaty includes sponsorship and sets new standards for packaging and steps to reduce tobacco smuggling.

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PLAYERS WANTED. IF YOU'VE GOT GAME, YOU COULD WIN \$50,000 IN THE KOOL SPADES SLAM™ TOURNAMENT. TO FIND OUT HOW TO REGISTER, CALL 877-804-KOOL (5055) OR VISIT WWW.SPADES4ALL.COM.

Offer available on select styles only, in select geographical and retail outlets during August and September of 2003. While supplies last. All promotional costs paid by B&W.

THE HOUSE OF MENTHOL™

SURGEON GENERAL'S WARNING: Cigarette Smoke Contains Carbon Monoxide.

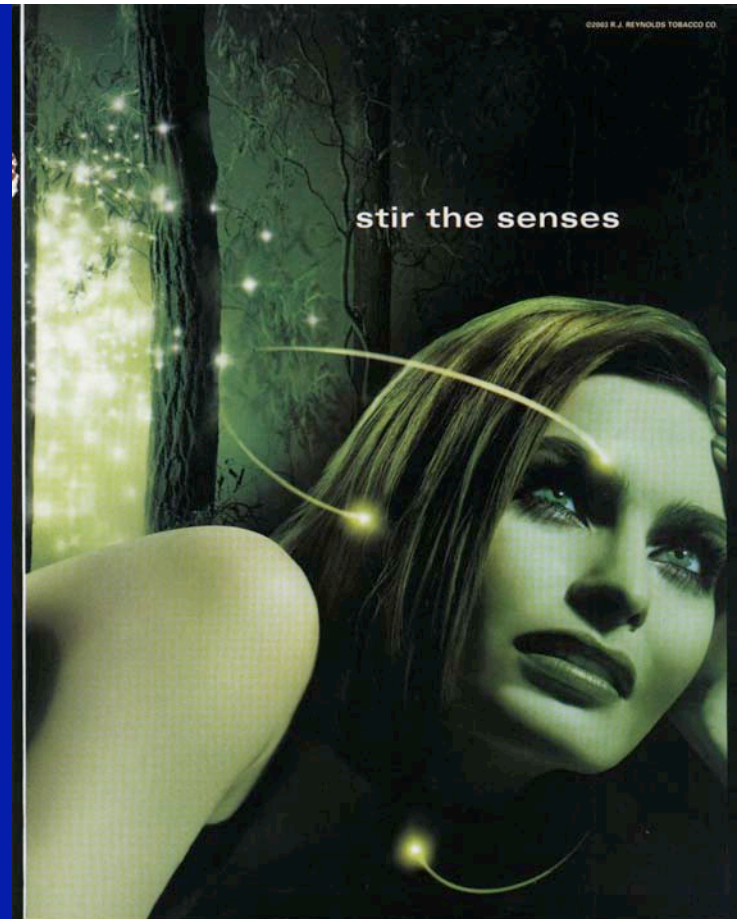
©2003 B&W T Co.
Milds Box: 11 mg. "tar", 0.9 mg. nicotine av. per cigarette by FTC method. The amount of "tar" and nicotine you get from this product varies depending on how you smoke it. There is no such thing as a safe cigarette. For more information visit www.bw.com

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RJR

Stir the Senses Campaign



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Online Product Auctions...


Become a member?

SALEM
©2004 R.J. REYNOLDS TOBACCO CO.

2004
**STIR THE SENSES
TOUR SERIES**
PRESENTS

BACKSTAGE ACCESS

Backstage Access is an online auction where you can bid on **one-of-a-kind** items from **Salem's 2004 Stir the Senses Tour Series** including the **hottest electronics, autographed gear, backstage passes, and more...**



Sony Mini DV

CD Autographed by Carl Thomas

"Back to Basics" CD autographed by Beenie Man

Effen® Martini Party Package for you & 50 friends

Backstage Passes to the Stir the Senses Tour Series

FLOW Musiq
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Wood and Performance Art

BACKSTAGE PASS

To become a member and bid, simply:

- Log on to www.salemaccess.com
- Sign up to receive your personal ID number (PID) and password
- Click on Backstage Access
- Plug in the 12-digit code found on inserts on the back of select packs of Salem

Call **1.800.433.4000** for questions and additional information.

BLACK LABEL FULL FLAVOR 17 mg. "tar", 1.2 mg. nicotine av. per cigarette by FTC method. For more product information, visit www.rjrt.com.

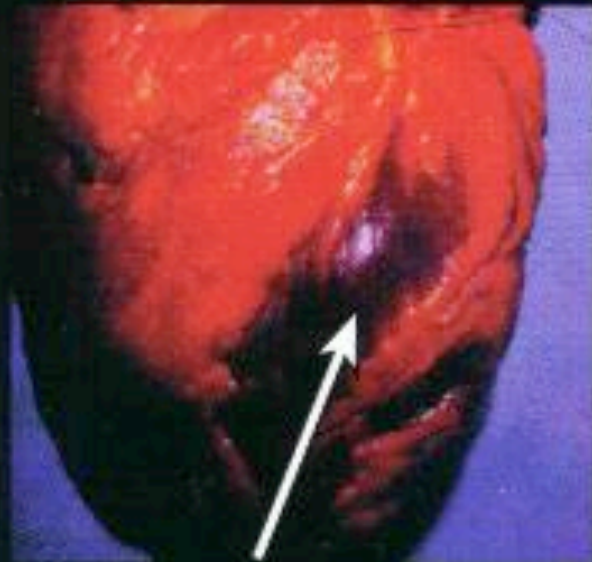
The trademarks that identify the various items are the property of their respective trademark owners, who are neither sponsors nor endorsers of this promotion. Actual items may differ from those shown above.

Visit www.salemaccess.com, and offers restricted to smokers 21 years of age and older. Events restricted to people 21+.

SURGEON GENERAL'S WARNING: Smoking Causes Lung Cancer, Heart Disease, Emphysema, And May Complicate Pregnancy.

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damaged heart muscle - result of clogged artery

WARNING

CIGARETTES ARE A HEARTBREAKER

Tobacco use can result in the clogging of arteries in your heart. Clogged arteries cause heart attacks and can cause death.

Health Canada

Qualité classique, un goût unique
Smooth Flavour, Classic Quality



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WARNING

CIGARETTES CAUSE LUNG CANCER

Every cigarette you smoke increases
your chance of getting lung cancer.

Health Canada



Londres - Paris - New York - Montréal

Allan Ramsay et Compagnie Ltée

Montréal, Canada H3C 3L6

1 800 563-1813

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WARNING

CIGARETTES HURT BABIES

Tobacco use during pregnancy reduces the growth of babies during pregnancy. These smaller babies may not catch up in growth after birth and the risks of infant illness, disability and death are increased.

Health Canada



MACDONALD

EXPORT 'A'

25 Cigarettes - Full Flavour

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WARNING

TOBACCO USE CAN MAKE YOU IMPOTENT

Cigarettes may cause sexual impotence due to decreased blood flow to the penis. This can prevent you from having an erection.

Health Canada



MACDONALD

EXPORT 'A'

25 Cigarettes - Full Flavour

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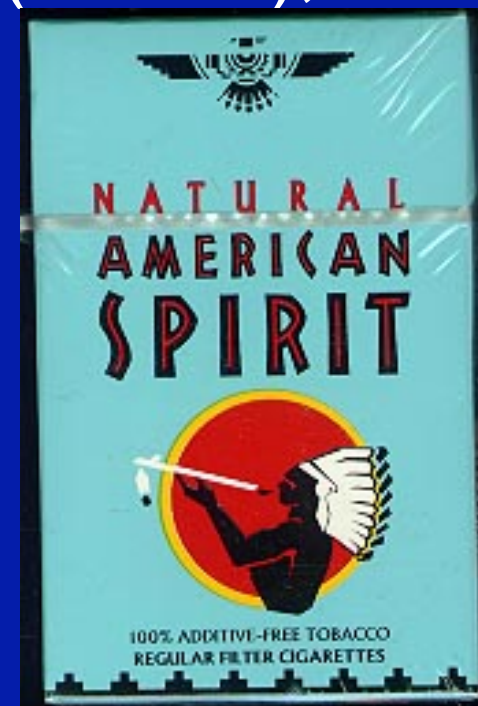
Prevalence Rates by Ethnicity

American Indians/Alaska Natives (32.4%),

African Americans 23.0%

Whites 21.9%

Hispanics 15.2%

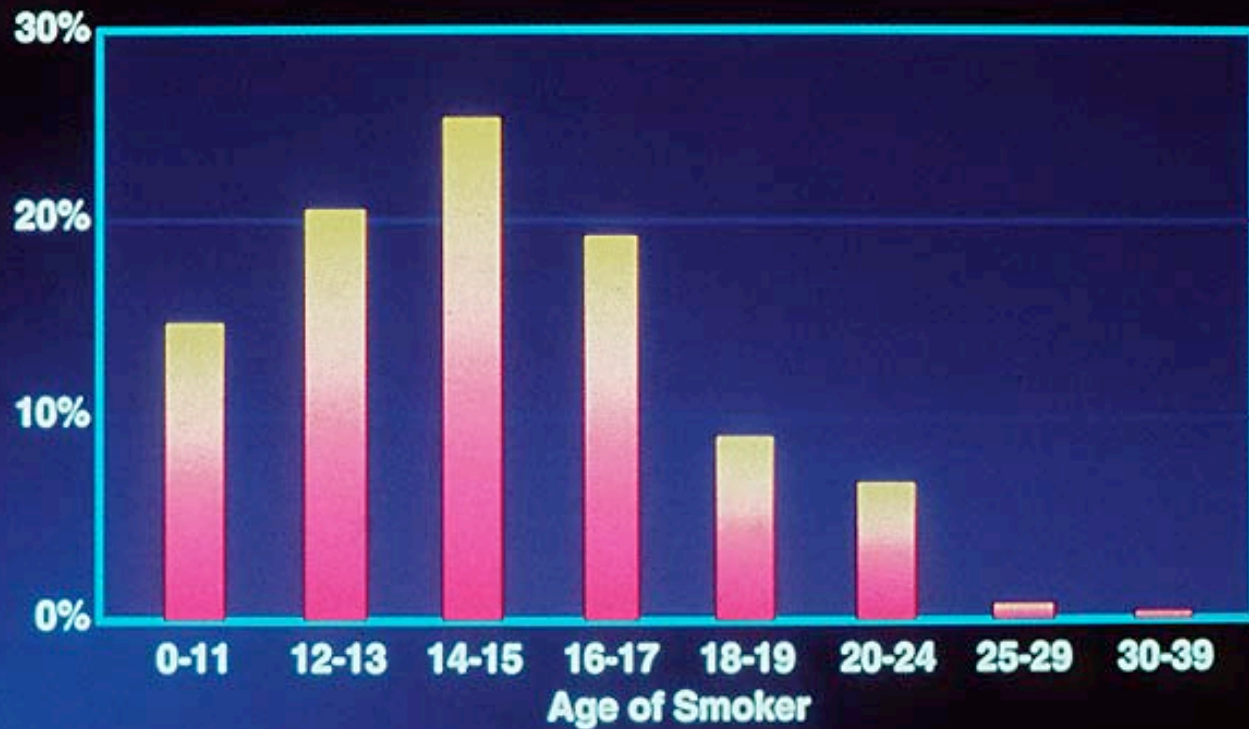


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Most Smokers Begin as Teens



Source: US Centers for Disease Control and Prevention

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“Young smokers have been the critical factor in the growth and decline of every major brand and company over the last 50 years.”

R.J. Reynolds, 1984



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“Realistically, if our company is to survive and prosper, over the long-term, we must get our share of the youth market.”

Claude E. Teague, Jr.
R.J. Reynolds executive



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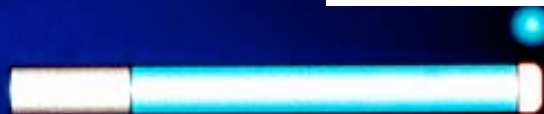


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“Evidence is now available to indicate that the 14–18 year old group is an increasing segment of the smoking population.”

**Claude E. Teague, Jr.
R.J. Reynolds executive**



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“RJR must soon establish a successful new brand in this market if our position in the industry is to be maintained over the long term.”

Claude E. Teague, Jr.
R.J. Reynolds executive



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“...if we are to attract the nonsmoker, or pre-smoker, there is nothing in this type of product that he would currently understand or desire...instead we somehow must convince him with wholly irrational reasons that he should try smoking.”

R.J. Reynolds



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1964 Federal Trade Commission Begins to Regulate Advertising

- *FTC* concluded that cigarette advertising was deceptive
- Advertisers had a responsibility to warn the public of the health hazards of cigarette smoking.
- *FTC* proposed labeling amount of tar and nicotine
- And include a statement such as:

"Caution: Cigarette 'Smoking is Dangerous to Health. It May Cause Death from Cancer and Other Diseases."

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Preemption and Tobacco

Cigarette Labeling and Advertising Act of 1965

Required the label: "Cigarette Smoking May be Hazardous to Your Health"

....But prohibited the Federal Trade Commission **and state and local governments** from requiring any other label on cigarette packages and any warnings in cigarette advertising at least until 1969.

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FCC: Fairness Doctrine

- By 1967, more money was spent on television tobacco advertising than for any other product.
- 1966: John Banzhaf wrote to WCBS-TV in New York on requesting that some other responsible spokesman be given an opportunity to present contrasting views on the issue of the benefits and advisability of smoking.
- FCC required “significant amount of time” to rebut tobacco advertising. **"We hold that the fairness doctrine is applicable to such**

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The Fairness Doctrine: 1949

FCC Rule: It required broadcasters to devote some of their airtime to discussing controversial matters of public interest, and to air contrasting views regarding those matters.

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Public Health Cigarette Smoking Act of 1969

- Demands the cautionary label...
- "Warning: The Surgeon General Has Determined That Cigarette Smoking **is** Dangerous to Your Health."
- Blackout of cigarette commercials Jan 1971
- Television and radio stations estimate loss: \$220 million a year
- 7.5% of their total advertising revenues.

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Warning, Advertising, & Age Restrictions

1965-2008, Congress enacted 6 statutes addressing the problem of tobacco use and human health.

- ❖ Require that health warnings appear on all packaging and in all print and outdoor advertisements
- ❖ Prohibit the advertisement of tobacco products through any electronic communication medium regulated by the Federal Communications Commission
- ❖ Require the Secretary of HHS to report every three years to Congress on research findings concerning tobacco's addictive property
- ❖ Make States' receipt of certain federal block grants contingent on their prohibiting any tobacco product manufacturer, retailer, or distributor from selling or distributing any such product to

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ETS Potential Health Effects:

- Irritation of the eyes, nose, throat, and lower respiratory tract; headaches; nausea; and dizziness.
- Lower respiratory infections,
- Reduced lung function,
- Increased risk for and exacerbation of asthma,
- Increased risk of cardiovascular disease
- Non-respiratory cancers,
- Early onset of menopause.
- ETS may cause brain tumors and cervical cancer.
- Exposure during pregnancy harms to the fetus.

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n: lung cancer.

ETS AND HEART DISEASE

- 13 epidemiological studies indicated a thirty percent increase in the risk of death due to heart disease in nonsmokers exposed to ETS compared to nonsmokers not exposed to ETS.
- ETS is responsible for other physiological effects that increase the risk of heart disease, including impairment of platelet function, damage to the inside lining of arteries, and interference with oxygen delivery and use by cells.
- ETS may also depress cellular respiration and enhance fatty

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1997 HARVARD MEDICAL SCHOOL STUDY

Ichiro Kawachi

- 32,000 nurses
- Relative risk of coronary heart disease of 1.91 compared to nonsmoking women. (ODDS RATIO)
- 60,000 additional deaths each year in the United States that are attributable to ETS.
- 20 x deaths from lung cancer attributable to ETS as stated in EPA'S 1992 passive smoking report

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Chemicals Found in ETS:

Carbon monoxide, carbon dioxide, nicotine, carcinogenic tars, sulfur dioxide, ammonia, nitrogen dioxide, vinyl chloride, hydrogen cyanide, formaldehyde, radionuclides, benzene, nitrosamines, aromatic hydrocarbons, benzoapyrene, and arsenic.

~ 3000 chemicals

~ 200 recognized toxic substances

~ 50 carcinogens

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Who Should Pay For Tobacco Related Illness?

- 1994, a law was passed authorizing the state of Florida to sue cigarette manufacturers to recover Medicaid funds used to treat persons with tobacco-related illnesses.
- Law was upheld by the Florida Supreme Court. As of June 1997, 41 states had sued the tobacco industry to recover the Medicaid costs of treating smoking-related diseases.
- State Settlement estimated at \$250 Billion
- Additional Private Litigation (\$12 B Phillip Morris case Indiana)
- States Have Borrowed Against Anticipated Tobacco Payments
- Are State Governments Getting Addicted to Tobacco Money?

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ROLE OF EPA AND REGULATION OF INDOOR AIR

- EPA concluded in its 1990: "passive smoking is causally associated with lung cancer in adults."
- EPA has concluded that ETS is a Group A (known human) carcinogen.
- EPA estimated in 1992 that as many as 3,000 nonsmokers die from lung cancer associated with ETS each year.

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EPA vs. FDA Role in Science and Regulation

FDA: Is Nicotine a Drug?

If so why hasn't it been regulated?

Is a cigarette a “delivery device” for the drug?

If Yes:

It should be regulated and possibly prohibited under FFDCA.

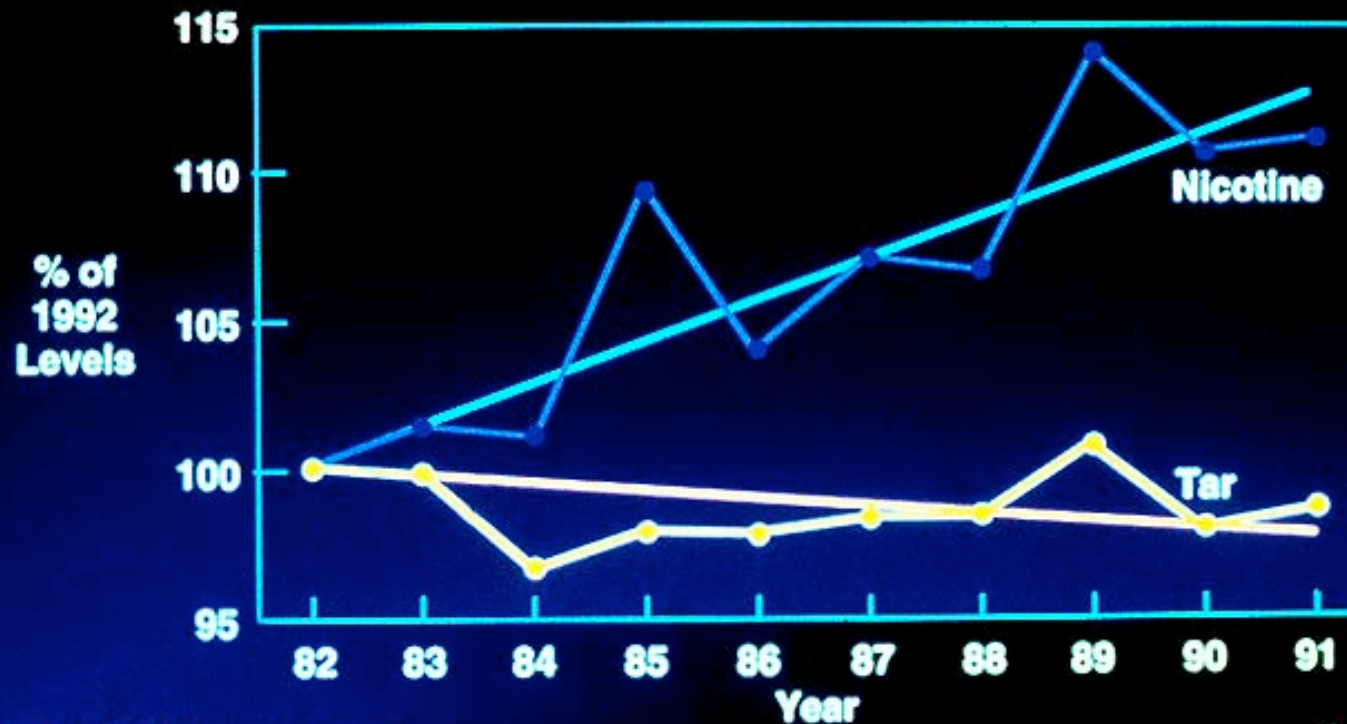
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Sales-Weighted Nicotine and Tar Levels in Smoke As % of 1982 Levels

Average of All Brands*



(Source: FTC Annual Data)

*by FTC method




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% Nicotine in One Brand Family

	Variety	% Nicotine (mg/grams)
Regular		1.46
Light		1.67
Lightest		1.99

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

Higher Stalk Position

More Nicotine

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“It is my conviction that nicotine is a very remarkable beneficent drug that both helps the body to resist external stress and also can as a result show a pronounced tranquilizing effect...”





**Sir Charles Ellis
BATCO Research Conference
Southampton, England
(1962)**



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“...nicotine is not only a very fine drug, but the techniques of administration by smoking has considerable psychological advantage and a built-in control against excessive absorption.”



**Sir Charles Ellis
BATCO Research Conference
Southampton, England
(1962)**



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“We are, then, in the business of selling nicotine, an addictive drug...”

**Addison Yeaman
General Counsel
Brown & Williamson Tobacco Co.
July 17, 1963**



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“We are of the conviction...that the ultimate explanation for the perpetuated cigarette habit resides in the pharmacological effect of smoke upon the body of the smoker...”



**Dr. Helmut Wakehan
Vice President,
Research & Development
Philip Morris, 1969**



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“Think of the cigarette pack as a storage container for a day’s supply of nicotine...think of the cigarette as a dispenser for a dose unit of nicotine...think of a puff of smoke as the vehicle for nicotine...smoke is beyond question the most optimized vehicle of nicotine...”



**William L. Dunn, Jr.
Senior Philip Morris Official
(1972)**



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“In a sense, the tobacco industry may be thought of as being a specialized, highly ritualized and stylized segment of the pharmaceutical industry. Tobacco products uniquely contain and deliver nicotine, a potent drug with a variety of physiological effects.”

Claude E. Teague, Jr.
R.J. Reynolds executive



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Science 16 January 1998: Vol. 279. no. 5349, p. 317

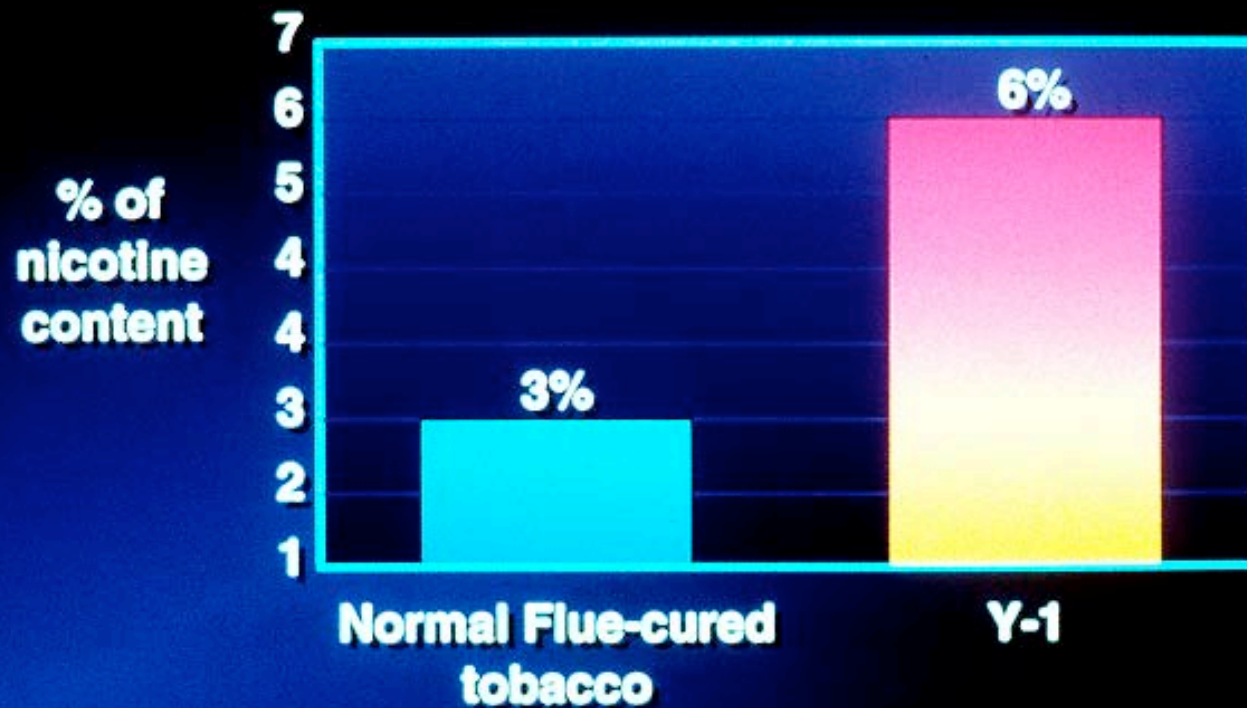
- **PLANT BREEDING:
Biotech Firm in High-Nicotine Intrigue**
- **Eliot Marshall**
- **A small biotech company that specializes in creating miniature vegetables was named last week as a conspirator with an unidentified tobacco company in an alleged scheme to produce a high-nicotine tobacco plant. In a "criminal information" filed on 7 January in Washington, D.C., the U.S. Department of Justice accused DNA Plant Technology Inc. (DNAP) of Oakland, California, of surreptitiously shipping seeds of a tobacco plant called Y-1--a strain that has twice the nicotine content (6%) of normal tobacco--to Brazilian growers during the 1980s.**

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Y-1 Nicotine Content



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“[The ammonia in the cigarette smoke] can liberate free nicotine from the blend, which is associated with increases in impact and 'satisfaction' reported by smokers.”

**A tobacco company
handbook on leaf blending
and product development**



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