

I write in response to the Commission's request for public comment on its proposal to withdraw its guidance concerning the use of tar and nicotine yields based on the Cambridge Filter Method in the advertising of so-called low-tar cigarettes.

By way of background, I am the Dean of the Graduate School of Arts and Sciences at Harvard University. I am also the Amalie Moses Kass Professor of the History of Medicine at Harvard Medical School and hold a joint appointment with the Department of the History of Science at Harvard University, where I served as chair from 2000-2006. I have researched and written extensively on the social history of cigarettes and tobacco regulation in this country, and am the author of two books, including *The Cigarette Century* (2007). I testified as an expert witness on behalf of the United States in *United States v. Philip Morris USA, Inc., et al.*, 449 F.Supp.2d 1 (D.D.C. 2006), *order clarified by* 477 F.Supp.2d 191 (D.D.C. 2007).

In 1966, the FTC issued a policy statement indicating that a factual statement of the tar and nicotine content based upon the Cambridge Method would not be treated as deceptive as long as there were no express or implied representations in advertisements that the represented level of tar or nicotine reduced or eliminated health hazards. *Cigarette Advertising Guides*, 6 Trade Reg. Rep. (CCH) ¶ 39,012 (Sept. 22, 1955). At that time, however, cigarette manufacturers had knowledge about the deceptive nature of low-tar cigarettes and the influence of compensatory behavior on exposure of smokers who use these cigarettes, which they failed to disclose to public health authorities or the FTC. *See* Prof. Brandt testimony in *U.S. v. Philip Morris USA* at 134-36, available at <http://www.usdoj.gov/civil/cases/tobacco2/20040920%20Allan%20M.%20Brandt,%20Ph.D.,%20Written%20Direct.pdf> ("Brandt testimony"). In fact, the cigarette companies used a testing

method different from the Cambridge method to measure the actual intake of tar and nicotine, while only publicly reporting the Cambridge method results.

I testified in *United States v. Philip Morris USA* that “in a 1967 examination of tobacco advertising practices marked as U.S. Exhibit 57,179, the FTC noted that the public had largely been convinced that filter cigarettes were less hazardous. Their report concluded: For the most part, however, assuaging of smoker anxiety has been a very low key. As previously indicated, the belief that filter cigarettes are less hazardous appears to be widespread. It may be assumed therefore that to people holding this belief, the word ‘filter’ itself connotes ‘less hazard’. And through addition of suitable adjectives to the word ‘filter’, this impression of relative safety can be enhanced.” (Brandt testimony 136:15-23). Cigarettes, including filtered cigarettes and those labeled lowered in tar and nicotine, however, were not safer – and the industry was aware of this fact and that the public would assume otherwise.

In fact, longstanding tobacco industry policy sought to “give smokers a psychological crutch and self-rationale to continue smoking,” to keep consumers smoking cigarettes despite the overwhelming evidence that smoking was a health hazard. *Williams v. Philip Morris U.S.A., Inc.*, 193 Or.App. 527, 531-34, 92 P.3d 126 (Or. 2004) (quoting statement of Philip Morris Vice-President). Use of unrealistically low nicotine and tar yields served this policy well and caused consumers to favor low-tar cigarettes, enabling the companies to sustain and even increase sales.

Public health authorities also incorrectly believed that a cigarette yielding less tar according to the Cambridge Method test could likely produce less cancer as well. National Cancer Institute, *Smoking and Tobacco Control Monograph 13: Risks Associated with Smoking Cigarettes with Low Machine-Measured Yields of Tar and Nicotine 2* (2001) (“Monograph 13”). For example, in 1981, the Surgeon General recommended that smokers who could not quit could

face less risk of illness by smoking “light” cigarettes. U.S. Department of Health and Human Services, *The Health Consequences of Smoking: The Changing Cigarette, A Report of the Surgeon General* (1981), available at http://profiles.nlm.nih.gov/NN/B/B/S/N/_/nnbbsn.pdf. Both of these assumptions have since been proven false. Cigarettes yielding less tar according to the Cambridge Method test do not in fact yield less tar and nicotine than do other cigarettes. Moreover, smoking “light” cigarettes does not reduce cancer risk. Even now, however, “[a] substantial portion of smokers believe that low-tar cigarettes are less risky than Regular cigarettes,” Monograph 13 at 193, and those smokers most concerned about smoking risks and most interested in quitting adopt these low-yield brands. *Id.* at 196-97. As Dr. Burns, an author of the Surgeon General’s reports on smoking and health, testified in *U.S. v. Philip Morris*, “Had that information been available to us, we would not have then offered the recommendation to the population of the United States that it would be a good idea to shift to these products.” *United States v. Philip Morris USA, Inc.*, 449 F. Supp. 2d. 445 (D.D.C. 2006).

The Commission now recognizes that “statements based on the Cambridge Filter Method may be confusing or misleading to consumers who believe they will get proportionately less of the harmful substance from cigarette smoke by smoking relatively lower-yield cigarettes than from higher-yield cigarettes.” FTC Proposal at 8. Based on my study of the subject, this recognition considerably understates the deception perpetrated by the use of the Cambridge Method. By withdrawing its guidance, the Commission will prevent cigarette manufacturers from continuing to make misleading representations about the tar and nicotine yields of cigarettes that do not account for actual tar and nicotine yields obtained by smokers. While I cannot predict exactly what effect this will have on consumer choices or smoking behaviors, at least some smokers likely will understand that so-called “low-yield” cigarettes are, in actuality,

no less harmful than are full-flavored cigarettes. The Commission, accordingly, should withdraw its guidance and not enable cigarette companies to suggest that low-tar cigarettes are an appropriate means to quit or reduce smoking when they are not.