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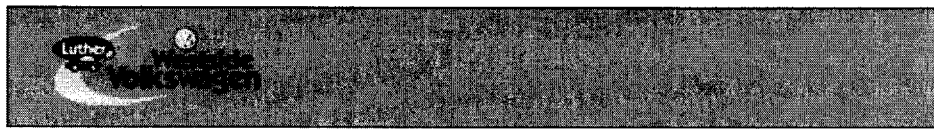
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Were tobacco lawyers being watched?

David Phelps, Star Tribune

May 28, 2004 TOBACCO0528

Attorneys representing the state of Minnesota in its battle with Big Tobacco may have been subjected to unusual, and perhaps unethical, surveillance during visits to a British document depository under the control of British American Tobacco Co., according to a study released late Thursday.

Co-written by Dr. Richard Hurt, an addiction expert at the Mayo Clinic, the study in the Lancet, a British medical journal, says attorneys for British American Tobacco (BAT) kept track of documents requested during the period Minnesota attorneys were there and viewed the databases being searched.

The study says the surveillance continued after the Minnesota case went to trial in 1998, which resulted in a settlement that included a provision keeping the BAT depository in Guildford, outside London, open for 10 years.

Knowledge of what the plaintiffs' attorneys were reviewing could have provided BAT attorneys with insight into the strategies of their opponents, the study suggests.

Teams of attorneys from the Minneapolis law firm of Robins Kaplan Miller & Ciresi made numerous trips to Guildford on behalf of the state in the mid 1990s.

"We find it highly unreasonable for BAT to covertly monitor database searches," the study concludes.

BAT, which has a sizable international presence, also is accused of foot-dragging in producing internal company documents and making it difficult for the public, including academic researchers, journalists and other attorneys suing the tobacco industry, to have access to its documents.

Representatives of BAT's British headquarters could not be reached for comment.

Hurt, director of the Nicotine Dependence Center at the Mayo Clinic and the state's lead witness on nicotine addiction in the

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1998 trial, co-wrote the study with Monique Muggli, an independent tobacco researcher and attorney Eric LeGresley.

The authors called for BAT to be removed as custodian of the Guildford depository.

A second and much larger depository remains in Minneapolis containing documents from U.S. cigarette manufacturers. Both were set up for attorneys in the Minnesota case and were opened to the public after the 1998 settlement. The Minnesota depository is run by a court-appointed third party.

Documents from the depositories are used in ongoing litigation against the tobacco industry and public health research.

"Given this new evidence, we assert that British American Tobacco is incapable of operating its depository in the spirit of the Minnesota settlement and should therefore be divorced from its operation," the three authors wrote in their study.

The authors also questioned the integrity of some of the records on file, noting revisions in documents and a missing audio tape that used less-than-complimentary descriptions of potential new smokers in a marketing meeting.

One of the altered marketing documents initially referred to potential new users as "illiterate, low-income 16-year-olds" but was changed to refer to 18-year-olds.

An audio tape reviewed in 2001 and again in 2004 about marketing in emerging countries was found to be missing several passages, including one in which an executive said: "If you just say, this is a cheap cigarette for you dirt poor little black farmers ... they're not going to buy it." A complete tape subsequently was produced upon request.

Newly produced documents indicate that during the period from 1996, when the Minnesota case was heavy in the discovery process, through 2001 a variety of surveillance techniques were used, including cameras and a two-way mirror to monitor the work of visitors, the study reported.

Documents uncovered during the study indicated that co-author LeGresley was physically tracked on camera outside of the depository and that use of his cell phone was observed.

Former Attorney General Hubert Humphrey III said one of the reasons Minnesota resisted attempts in the mid 1990s to be part of a multistate settlement was over the issue of document access, which would be restricted as part of the national settlement terms.

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He said the BAT depository should be run like the Minnesota depository.

"This was a much more closed situation," Humphrey said. "Many of the most important documents are there and they have impact globally."

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