UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, Plaintiff, v. PHILIP MORRIS USA INC., f/k/a PHILIP MORRIS INC., et al., Defendants.	Civil Action No. 99-CV-02496 (GK) Next Scheduled Court Appearance: Trial (ongoing)

WRITTEN DIRECT EXAMINATION

OF

MICHAEL ERIKSEN, Sc.D.

SUBMITTED BY THE UNITED STATES PURSUANT TO ORDERS #471 AND #924

I. INTRODUCTION

Q: Please introduce yourself to the Court.

A: I am Dr. Michael Eriksen. I am currently Professor and Director of the Institute of Public Health at Georgia State University. Before this Court, I was proffered and accepted as an expert in public health.

Q: Have you previously filed written testimony in this case?

A: Yes. On January 17, 2005, I filed written testimony that explained how the weight of the scientific evidence supported the conclusion that the tobacco companies' cigarette brand marketing is a substantial contributing factor to youth smoking initiation and continuation.

Q: Did your testimony filed January 17 contain a description of your background and qualifications?

A: Yes. I would refer the Court to pages 4 to 29 of that testimony, which I will not repeat here.

Q: What is the subject matter of your current testimony?

A: I am providing a description to the Court of certain remedies.

Q: What are the specific remedies that you describe in your testimony?

A: They are: (1) counter-marketing campaign to correct the misperceptions of the glamour, acceptability, appeal and safety of tobacco use; and (2) certain reasonable restrictions on the marketing of cigarettes.

Q: What are the bases for your recommended remedies?

A: As I describe further below, my recommendations are based on peer-reviewed scientific literature and the evidence and conclusions contained in the Reports of

the Surgeon General of the United States and other official government reports. These reports, which summarize and synthesize peer reviewed literature, include best practice recommendations issued by the CDC in 1999, conclusions stated in the 2000 and 2004 Reports of the Surgeon General, and a systematic review of the scientific peer reviewed literature in 2001. U.S. Exhibit 18,264 (CDC Best Practices, 1999; 2000 Report of the Surgeon General; 2004 Report of the Surgeon General; Task Force on Community Preventive Services, 2001). In addition, I also rely on my tobacco control research that includes NIH-funded tobacco control research grants and dozens of peer-reviewed scientific publications on topics, ranging from adolescent smoking prevention to counseling cancer patients to quit smoking.

Q: Has the United States asked you, for the purposes of this testimony, to assume that the Court has made a finding of liability?

A: Yes. The United States asked me to assume that the Court made a finding of liability, specifically finding that the United States has established that the tobacco companies intentionally schemed to defraud the American public by publicly disseminating false, deceptive, and misleading statements that, among other things, denied that smoking causes diseases and other adverse health effects; denied that cigarettes are addictive or that the companies manipulated nicotine; denied that the companies marketed to young people and denied that they marketed to keep smokers in the market; and promised to sponsor independent, disinterested research into the potential adverse health effects of smoking.

II. Counter-Marketing Campaign To Correct The Current Misperceptions Of The Glamour, Acceptability, Appeal And Safety of Tobacco Use

Q: Please explain what you mean by a counter-marketing campaign to correct the misperceptions of the glamour, acceptability, appeal and safety of tobacco use.

A: In order to redress the tobacco companies' conduct which I have just referred to above, I would recommend that a counter-marketing campaign be directed to the American public.

Q: Would a single national campaign be adequate to redress Defendants' conduct?

A: No. Since the conduct has been ongoing for such a long time and covered such a wide range of areas, a single national campaign would be inadequate to redress it. Rather, I would recommend a counter-marketing campaign with various components, each of which would address some of the tobacco company conduct I have discussed above.

Q: Are there certain essential elements for any counter-marketing campaign?

A: In 2003, the Centers for Disease Control and Prevention's Media Campaign Resource Center formulated specific guidelines and recommendations for states and others organizations contemplating counter-marketing programs. U.S. Exhibit 18,264 (CDC, 2003). These guidelines identified characteristics associated with successful counter-marketing campaigns and conclude that these campaigns: (1) must be long term; (2) should consist of integrated, not isolated, components; (3) must be integrated into the larger tobacco control program; (4)

must be culturally competent; (5) should be strategic; (6) should be evaluated; and (7) should be adequately funded.

Q: Please describe these seven components.

A: First, the scientific evidence indicates that for a counter-marketing program to be effective it must be sustained over time, and not simply a short-term effort. The marketing of cigarettes has lasted decades, and so should an effort to tell the truth about smoking and counter the pervasive cigarette marketing campaigns.

For the second and third components, the scientific evidence suggests that counter-marketing efforts are most effective when conducted as campaigns and coordinated with and integrated into other elements of a comprehensive tobacco control program. U.S. Exhibit 18,264 (1994 Report of the Surgeon General; 2000 Report of the Surgeon General; Task Force on Community Preventive Services, 2001.)

Regarding the fourth and fifth components, effective communication campaigns need to be able to reach their target audience with strategic and culturally appropriate messages that will contribute to behavior change. We know the populations that are at risk to start to smoke, as well as those that continue to smoke and have not yet been effectively reached. One message will not work for all. As the Surgeon General recently testified,

> My real challenge is the translational element, taking that great science, packaging it in a culturally competent manner to those diverse populations in order to change behavior, to reduce morbidity and mortality, to stop the smoking, to improve health, to decrease the cost of healthcare -- that's the challenge before me every day.
>
> So disparities are a very real part because the United States is such a great nation because we are so diverse. We have so many populations that we serve, yet many of those people continue to smoke. And 40 years

> after Luther Terry put out his first Surgeon General's Report, we're still dealing with nearly a half a million deaths years a year that are preventable, as well as millions of people who suffer the morbidity, the complications of smoking and loss of the quality of their life.

Trial Testimony of Surgeon General Carmona, United States v. Philip Morris, May 3, 2005, 20160:11-24.

Sixth, ongoing evaluation is necessary and important to ensure continuing success, as Dr. Biglan discussed in his written direct testimony filed on January 3, 2005 at pages 400-401. A campaign must be regularly evaluated and adjusted based on the campaign's results.

Finally, adequate funding is essential to ensure effectiveness of the program. As the Surgeon General noted in the 2000 Report, "A factor that has limited the success of traditional mass media campaigns is the small size of the campaign budgets compared with the advertising and marketing budgets of the tobacco industry." U.S. Exhibit 18,264 (2000 Report of the Surgeon General at 409).

Q: Has the Surgeon General reached any conclusions regarding the effectiveness of counter-marketing campaigns?

A: Yes. In the 2000 Report, the Surgeon General stated, "Countermarketing activities can promote smoking cessation and decrease the likelihood of initiation. Countermarketing campaigns also can have a powerful influence on public support for tobacco control activities and provide an educational climate that can enhance the efficacy of school- and community-based efforts." U.S. Exhibit 18,264 (2000 Report of the Surgeon General at 20).

A. First Component

Q: Please describe the first component of the counter-marketing campaign you recommend.

A: As I have previously testified before this Court, while not the only factor, cigarette marketing is a substantial contributing factor to the initiation and continuation of youth smoking. The scientific evidence points to the ubiquity, pervasiveness, and imagery associated with cigarette marketing. Today's eighteen year olds have grown up during a period over which the tobacco companies have spent approximately 100 billion dollars on marketing cigarettes, and the brand imagery used to market cigarettes in many instances corresponds to adolescent aspirations as explained by Dr. Anthony Biglan in his written direct testimony filed on January 3, 2005. Thus, an effective and sustained effort aimed at young people to counter this influence is needed.

Q: What specific tobacco company conduct does this remedy address?

A: In my earlier written direct testimony filed on January 17, 2005, I concluded based upon the weight of the scientific evidence that the tobacco companies' marketing is a substantial contributing factor to youth smoking initiation and continuation. I also understand that the United States has alleged that the tobacco companies deny the relationship between marketing and youth smoking behavior, made promises to the public that they only marketed their cigarette brands to promote brand switching among adult smokers, and that they would not market their cigarette brands to young people including those under 21.

This remedy would be necessary to address the tobacco companies' design of imagery in their cigarette brand marketing that appeals to adolescents; their advertising and promotion that is aimed at youth and successful in reaching youth under the age of 21 including price and product promotions and other forms of marketing; and their substantial increase in marketing spending over the last few years since entering the Master Settlement Agreement.

Q: Please describe how this component of a counter-marketing campaign could be implemented by the Court as a practical matter.

A: The Court could establish a fund for receipt of tobacco company funds to support a nationwide youth-focused counter-marketing campaign. The Court could also work through existing organizations to disperse tobacco company funding for states to conduct their own counter-marketing campaigns. The Court could also consider directing the tobacco companies to fund an existing independent organization to administer a nationwide program. The important element is for the organizations accountable for expenditure of the funds and conduct of the counter-marketing campaign to be completely independent from the tobacco companies themselves.

Q: What scientific evidence is there that such a counter-marketing campaign would be effective?

A: There is both historic and recent evidence on the effectiveness of media campaigns on reducing cigarette smoking.

Q: Can you describe what you refer to as historic evidence of the effect of media campaigns on cigarette smoking?

A: Yes. The 2000 Report of the Surgeon General summarizes the scientific evidence from the time of the Fairness Doctrine over three decades ago, when television and radio stations were required to broadcast one counter-advertisement for every three cigarette commercials. During the time of the Fairness Doctrine, there was an unprecedented reduction in per capita cigarette consumption, and there was some indication that these counter-advertisements were hurting cigarette sales more than cigarette commercials were helping sales. U.S. Exhibit 18,264 (2000 Report of the Surgeon General at 45).

Q: What more recent evidence are you referring to?

A: Over the last few years, research has been conducted to document the effectiveness of counter-marketing campaigns, particularly for young people. The effectiveness of counter-marketing efforts have been documented in 1) states with sustained counter-marketing efforts; 2) guidance material from CDC; and 3) systematic reviews of the literature. U.S. Exhibit 18,264 (2000 Report of the Surgeon General; CDC Best Practices, 1999; Task Force on Community Preventive Services, 2001).

Q: What has research on the state programs found?

A: A number of states have conducted comprehensive counter-marketing campaigns as part of a larger state-funded tobacco control program. This effort began in the early 1990s in California with a portion of a cigarette excise tax increase earmarked for tobacco control programs. Similar programs were launched in Massachusetts, Arizona, Oregon, Florida and Maine. All of these states conducted aggressive counter-marketing campaigns as one component of a

comprehensive tobacco control program. These states experienced reductions in cigarette smoking among youth that exceeded the rates seen in other states, and the results from these studies have been published in Morbidity and Mortality Weekly Reports. U.S. Exhibit 18,264 (2000 Report of the Surgeon General; CDC Best Practices, 1999).

Q: What does the 2000 Report of the Surgeon General conclude about the state counter-marketing campaigns?

A: The 2000 Report of the Surgeon General reviews the impact of various state tobacco control programs. The results in Florida discussed in that Report provide a good example of the effectiveness of comprehensive and well-funded tobacco prevention programs. Between 1998-1999, smoking among middle school students dropped 19% (18.5% to 15.0%) and 8% among high school students (27.4% to 25.2%). By 2000, the middle school rates had declined by more than half, and the high school rates by more than one quarter. U.S. Exhibit 18,264 (2000 Report of the Surgeon General).

Q: You mentioned the CDC Best Practices Guide – please explain how it is relevant.

A: Yes. To help states allocate resources that were expected to flow from the Master Settlement Agreement, CDC developed programmatic and budgetary guidelines for states that were based on the experience of previously successful states, such as California, Massachusetts and Florida. As part of this effort, CDC recommended that counter-marketing programs be one of nine core components

of a comprehensive state based tobacco control program. U.S. Exhibit 18,264 (CDC Best Practices, 1999).

Q: What have systematic reviews found?

A: The Task Force on Community Preventive Services is a national effort, led by CDC, to systematically review the scientific evidence to determine the effectiveness of a variety of community interventions. The Task Force has investigated issues as diverse as vaccines and violence, and one of the first topics it evaluated was community interventions to reduce tobacco use. In its 2001 report, the Task Force concluded that there was strong evidence on the effectiveness of media campaigns with other interventions to both reduce the initiation of smoking among young people, and to increase smoking cessation among adults. Their finding of "strong evidence" is the highest criteria of effectiveness provided by the Task Force. U.S. Exhibit 18,264 (Task Force on Community Preventive Services, 2001).

Q: How much funding would be necessary for the type of counter-marketing campaign you describe?

A: CDC's Best Practices recommends that states spend from between one to three dollars per capita for counter-marketing efforts. This estimate ranges from $300 - $900 million annually and does not include a coordinated nationwide component. U.S. Exhibit 18,264 (CDC Best Practices, 1999). Because this estimate was made in 1999, it would need to be increased approximately 25% to account for inflation since that time (approximately 15% increase) and for the growth in population (approximately 10% increase).

Q: Is there any additional element to this remedy?

A: Yes. I would recommend that the Court order the tobacco companies to correct their current communications about marketing and to make certain marketing data available to researchers and the American public.

Q: What do you mean by correcting communications about marketing?

A: The tobacco companies continue to deny, even in this litigation, that there is any connection between their marketing efforts and youth smoking behavior, including smoking initiation and continuation. I would recommend that the Court order that the tobacco companies cease making such statements. Additionally, the Court may order that corrective communications be devised by an independent third party, and be made both by the tobacco companies and by an independent third party.

Q: What marketing data do you recommend be made available to researchers and the American public?

A: Disaggregated marketing data, particularly disaggregated marketing expenditure data and sales data.

Q: What is disaggregated marketing data?

A: I am referring to data disaggregated – or broken down – by type of marketing; by company and brand; and by geographic location. Marketing expenditures disaggregated by company and brand would allow for comparisons between brand specific smoking initiation and brand specific marketing. Marketing expenditure and sales data disaggregated by geographic location, down to the smallest level of geographic specificity possible, such as zip code, census track, neighborhood or

block, or even individual store, would allow for a more detailed understanding of the effects of specific cigarette advertising and promotional campaigns on smoking behavior, particularly the effect of a specific type of campaign would have on individual smokers. Marketing sales data disaggregated by brand, geographical region, type of promotion used, number of cigarettes sold, advertising in stores and other factors would similarly contribute to a more detailed understanding of this question.

Q: Why do you recommend that Defendants release disaggregated marketing expenditure and sales data to researchers and the American public?

A: The tobacco companies continue to deny the causal relationship between their cigarette marketing and youth smoking behavior, including starting to smoke, continuing to smoke, and down-switching to smoke "light" and low tar cigarettes. They continue to claim that marketing does not have a causal relationship to youth smoking behavior or that "advertising" does not "cause" "smoking initiation" and to criticize studies which use proxies to measure exposure to marketing. Release of this data would allow researchers to conduct additional research that would measure the strength of the relationship between marketing and smoking behavior based on actual marketing expenditures and prevent the American public from being misled.

Q: How would this disaggregated marketing data measure the strength of the relationship between marketing efforts and smoking behavior?

A: Multiple years of disaggregated brand and location-specific marketing expenditure data could be analyzed in conjunction with location-specific cigarette

smoking behavior (initiation, prevalence and brand preference) data and could help measure the magnitude of the relationship between marketing expenditures and smoking behavior. By having precise expenditure data for the various marketing categories (e.g., magazines, retail value added, public entertainment, etc.) by brand, by locale, analyzed in relationship to community smoking behavior would overcome one of the greatest limitations of the current econometric research, which I explained in my earlier written direct, namely its current reliance upon aggregate measures of marketing and consumption. In other words, as I have already testified, current econometric analysis tends to look at aggregate marketing expenditures (or even whether advertising is allowed or not) on aggregate measures of smoking behavior (e.g., smoking prevalence, per capita consumption, or grams of cigarettes smoked). Thus, rather than having broad aggregate measures, a researcher would be able to look at brand-specific marketing expenditures and brand-specific cigarette smoking behavior, including the first brand smoked in the same community or locale.

Q: How could this type of study contribute to our understanding of the effect of cigarette marketing on smoking behavior?

A: As I previously testified, a randomized controlled trial to measure the relationship between cigarette marketing efforts and youth smoking initiation and smoking continuation is both unethical and infeasible. An econometric study using the tobacco companies' disaggregated marketing data as also described by Dr. Heckman would provide additional empirical evidence of the magnitude of the relationship between youth smoking initiation and continuation. Currently, in the

absence of either a randomized controlled trial or an econometric study using disaggregated marketing data, the scientific community must rely on the scientific data that are available. As I testified previously, the weight of this scientific evidence concludes that cigarette marketing is a substantial contributing factor to youth smoking initiation and continuation.

Q: You mention two types of data, cigarette smoking data and disaggregated marketing data. Are either of these types of data already available to researchers?

A: Cigarette smoking data that measures initiation, prevalence and brand preference are available to researchers from, among other sources, the Monitoring the Future study conducted by the University of Michigan. Many other surveys measure consumption, initiation, prevalence, and cessation behaviors, including the National Youth Tobacco Survey, the Youth Risk Behavior Study, the Behavioral Risk Factor Surveillance Systems, and the Tobacco Use Supplements to the Current Population Survey. Disaggregated marketing data generally are not available to researchers while some of it may be disclosed in litigation. The tobacco companies maintain much of this information as confidential and do not disclose it to the public or to the scientific community for research.

Q: Don't the tobacco companies provide some disaggregated marketing data to the FTC?

A: Yes. The tobacco companies provide annually disaggregated marketing expenditure data referred to as 6B data to the FTC. Because the companies provide this data as confidential information, the FTC cannot disclose it to the

public. The FTC issues annual reports that disclose expenditures for the industry overall. They do not release, however, any data broken down by company or by brand, and by type of marketing. To my knowledge, the FTC staff does not analyze this data either.

Q: Have you previously requested this data?

A: Yes. I have requested this data from both the tobacco companies, through their outside counsel, and from the Federal Trade Commission itself. The requests from the tobacco companies are described in my depositions for this case as well as the FTC proceedings against the R.J. Reynolds Tobacco Company in 1998.

Q: Would public release of the FTC 6B data be sufficient for the purposes you describe?

A: No, although it might be somewhat helpful. The FTC 6B data, while disaggregated for company and brand, is not disaggregated by geographic location. Completely disaggregated marketing expenditure data, including geographic disaggregation, to the store level, would allow for the most thorough assessment of the relationship between specific types of marketing expenditures and youth smoking initiation, as well as brand preference.

Q: How did you know Defendants maintain such data?

A: It is my understanding that companies customarily maintain such data. Additionally, some of this data was produced in this case. For example, David Beran, Executive Vice President of Strategy Communication and Consumer Contact at Philip Morris, testified that Philip Morris maintained "share and volume" and expenditure data "on a regional basis" that Philip Morris does not

make publicly available. Testimony of David Beran, April 19, 2005, 19388:10-20. Beran also testified that Philip Morris tracked the impact of its sales promotions on the volume of cigarettes sold. Testimony of David Beran, April 19, 2005, 19318:10-20, 19389:6-12; U.S. Exhibits 93631, 93632, 93633, and 93634. Philip Morris also maintains continuous tracking survey data which Carolyn Levy described in her testimony in this case, and some of which I understand may have been produced in this case.

Q: Did Dr. Heckman recently provide testimony regarding disaggregated data?

A: Yes. Dr. Heckman also agreed that disaggregated data would provide greater insight into the relationship between cigarette marketing and youth smoking initiation for econometric research. In his April 14, 2005 testimony, Dr. Heckman indicated that the independent analyses of these data were of critical importance, but further indicated that the tobacco companies had not made these data available to him in this case or in earlier litigation in which he requested this data. In response to a question by government counsel about whether he would find this type of information of value, Dr. Heckman responded:

> If the data were available, I think it would clarify everything to have that data in the public domain and to look at the question of smoking initiation and relationships of good disaggregated data, yes.

Trial Testimony of James Heckman, United States v. Philip Morris, April 14, 2005, 18963.

Q: Can researchers use the annual public FTC reports to perform the type of econometric study you are discussing?

A: No. The annual FTC reports that are available to the public only provide aggregated marketing expenditures for all tobacco companies combined. These publicly available reports do not provide marketing expenditure breakdowns by company or cigarette brand, despite the fact that the tobacco companies do produce company and brand-specific data to the FTC by requirement. Because the tobacco companies identify the data they are required to provide to the FTC as proprietary, the FTC has to treat these data as confidential and do not make it publicly available. Finally, the tobacco companies do not provide any geographically disaggregated data to the FTC.

Q: Can researchers or scientists get disaggregated marketing data from any source other than the tobacco industry?

A: Scientists can purchase some limited information from third-party firms. Different vendors such as Competitive Media Reports (CMR) or the Joyce Julius company estimate the economic value of the tobacco companies' marketing expenditures in various media and then sell this information to researchers, competitors, and anyone who wishes to purchase it. Other vendors such as A.C. Neilsen and IRI collect scanner data, which is data based on the scanning of UPC bar codes at retail locations. Such data reflects information about cigarettes sold at retail, including brand, number of packs, and cigarettes per pack; prices of cigarettes; and promotional information, such as whether a coupon or other promotion was used at purchase. IRI also collects some observational data of promotions available in retail, by visiting different retail locations and recording

information about the promotions available; in addition, IRI collects certain scanner data on purchases made by individuals within a household.

Q: Are the type of data that is available for purchase adequate for the purposes you describe?

A: No, for at least three reasons. First, none of these data provide actual expenditure information; actual expenditure data are possessed only by the tobacco companies and is not available to the public. The data on expenditures that are available for purchase from companies such as CMR or Joyce Julius only estimates tobacco company expenditures. For example, CMR estimates the tobacco companies' expenditures on magazine advertising based upon observations of the number of pages of advertisements placed in magazines. Joyce Julius estimates the value to the tobacco companies of the exposure of cigarette brand logos used in race car sponsorships on television broadcasts of racing events. Second, much of the data available for purchase are not geographically disaggregated. Third, some of these data sets are incomplete; for example, the Neilson data set only includes 70 to 75 percent of the population. Finally, the data available for purchase are prohibitively expensive for researchers.

Q: Do scientists continue to perform research on the connection between marketing and smoking behavior, even though Defendants do not make their disaggregated data available to researchers and the American public?

A: Yes, in fact much research has been conducted and continues today.

Q: How do scientists perform this research without the disaggregated data?

A: There are a variety of ways. Econometricians use aggregated data, which, as I testified in my previous written direct examination at pages 66-71 have a number of limitations. Some researchers purchase advertising expenditure data, but as previously mentioned, these data are expensive and do not include promotional expenditures. Other researchers attempt to collect their own observational data. A number of other researchers use proxies for exposure to cigarette advertising and promotion, for example by determining if individuals have favorite advertisements, possess or use promotional items, or desire to own promotional items. All of these approaches have limitations, but are necessary without the tobacco companies' provision of actual disaggregated marketing expenditure data.

Q: Taking a single study as an example, can you explain what type of research the scientists used and the limitations, if any, of that type of data?

A: Yes. In "The Last Straw," for example, in which I was a co-author, we purchased advertising data from Competitive Media Reporting that included annual advertising expenditures in magazines, newspapers, Sunday supplements, and outdoors (e.g., billboards) to study the relationship between advertising expenditures and adolescent brand preferences compared to those of adults. While this was the lead article in the Journal of Marketing and was recognized as the outstanding marketing article published that year, the research was still limited to analyzing the relationship between adolescent brand preference and estimated advertising expenditures. As I testified above, CMR data only provides estimates of the tobacco companies' advertising expenditures. We were unable to purchase

brand specific promotional expenditures or obtain that data from the tobacco companies.

Q: Can you provide another example?

A: Yes. In four longitudinal studies, by Biener and Siegel, Choi et al., Sargent et al. and Pierce et al., that I described in my earlier written direct testimony filed January 17, 2005 at pages 76 to 78 and discussed in my cross-examination, these researchers constructed proxy measures of exposure to cigarette marketing to compensate for the lack of access to the tobacco companies actual brand-specific advertising and promotional expenditure data, which is in possession of the tobacco companies.

B. Second Component

Q: Please describe the second component of the counter-marketing campaign you recommend.

A: As I state above, it is also important for any counter-marketing campaign to correct the misperceptions of the safety of tobacco use. I would therefore recommend that another component of the counter-marketing campaign focus on issues related to the health risks of smoking, and particularly issues related to light cigarettes and addiction.

Q: Is your testimony related to informing the public about the risks of smoking consistent with other testimony in this case?

A: Yes. My recommendation is consistent with the testimony recently provided by the Surgeon General in this case who testified that his "job is to increase the health literacy of the American public . . ." Trial Testimony of Surgeon General

Carmona, United States v. Philip Morris, May 3, 2005, 20118:23-20119:1. He further explained:

> [T]here is a need for a continuing and sustained national tobacco use prevention and control effort. Many factors encourage the use [of tobacco] in the country. . . . [O]ne of the things I recognize as Surgeon General is the public often doesn't understand that relationship, the health consequences of an action, of using a tobacco product. So . . . we must inform the American public as to the health consequences of smoking.

Trial Testimony of Surgeon General Carmona, United States v. Philip Morris, May 3, 2005, 20127:2-22.

Q: What recommendation would you make related to light cigarettes?

A: As well as focusing on preventing adolescents from starting to smoke, it is important that a counter-marketing campaign also help smokers quit. Of particular importance and public health potential is to have a large portion of this counter-marketing campaign directed at health-concerned smokers who switched to cigarettes the tobacco companies have marketed as lighter or less tar rather than quitting. As testimony has shown in this case, most light cigarette smokers are unaware of how smokers tend to change their smoking patterns in order to derive the same or more tar and nicotine from "light" and low tar cigarettes that is obtained from full flavor cigarettes, resulting in no health benefit for those smokers who switch to "light" cigarettes and compensate.

In addition to providing accurate information about disease causation and addictiveness, it is necessary to ensure that the information that is being conveyed whether implicitly or explicitly is not misleading to the American public. This is of particular importance with regard to the use of product descriptors that have been used to provide reassurance to health-concerned smokers and imply that

certain brands have health benefits. Thus, I also recommend that terms that convey a misleading impression of the harm caused by the product should no longer be used.

Q: Please explain further.

A: I recommend removal of cigarette brand descriptors such as "low tar," "light," "ultra-light," or "mild" from all marketing and the name of the brand. Assuming the United States' allegations have been proven, these products are not reduced exposure cigarettes, and the marketing of them with these brand descriptors is misleading. As has been established through Dr. Weinstein's Written Direct Testimony (at page 24), the majority of ultralight smokers and over one-third of light smokers smoke these cigarettes in order "to reduce the risks of smoking without having to give up smoking." In fact, a major conclusion of the 2004 Surgeon General's Report is that "Smoking cigarettes with lower machine-measured yields of tar and nicotine provides no clear benefit to health." U.S. Exhibit 18,264 (2004 Report of the Surgeon General at 25).

Q: Has the Surgeon General concluded that the use of descriptors such as "low tar," "light," "ultra," and "mild" may be misleading?

A: Yes. In the 2000 Report of the Surgeon General, he concluded that "Smokers receive very little information regarding chemical constituents when they purchase a tobacco product. Without information about toxic constituents in tobacco smoke, the use of terms such as "light" and "ultra light" on packaging and in advertising may be misleading to smokers." U.S. Exhibit 18,264 (2000 Report of the Surgeon General at 261).

The Surgeon General further concluded, "Because cigarettes with low tar and nicotine contents are not substantially less hazardous than higher yield brands, consumers may be misled by the implied promise of reduced toxicity underlying the marketing of such brands." U.S. Exhibit 18,264 (2000 Report of the Surgeon General at 261).

Q: What recommendation do you make related to issues of addiction?

A: Although some of the tobacco companies have begun to acknowledge the harmfulness and addictiveness of cigarette smoking, their admissions are not consistent across companies and are selectively provided. Moreover, there has been testimony in this case that the tobacco companies' changes in some of their public positions on disease causation were only a result of litigation. I would therefore recommend that the Court order the tobacco companies to correct their communications about disease and addiction. Such corrective communications could be devised by an independent third party, and be made both by the tobacco companies and by an independent third party.

Q: Do you have any other recommendation related to correcting the misperceptions of the safety of tobacco use?

A: Yes, to ensure greater transparency and consistency between the companies' internal actions and external statements in the future, I would recommend that the tobacco companies make certain internal scientific materials publicly available.

Q: What scientific materials are you referring to?

A: Tobacco companies have a thorough understanding of smoking behavior, smoking topography, compensation, and cigarette-related toxicology. This is not

surprising given the hundreds of millions of dollars spent annually on product research and development by tobacco companies, and their financial incentives to understand their products. I understand that the United States has alleged that the tobacco companies made misleading public promises that the harm from smoking had not been established, and that they would conduct independent research into the health effects of smoking.

Q: Why do you make this recommendation?

A: Disclosure of the tobacco companies' scientific knowledge will prevent them from misleading the public about the dangers of smoking.

Q: How do you propose this disclosure of information by Defendants would actually work?

A: Although this could work in various different ways, one possible method would be that a third party with scientific experience could review tobacco company research to ensure that the tobacco companies' public statements and conduct do not deceive the public. Such research could also be made available on a continuous basis to the public health community to facilitate public health research, public education campaigns, or other activities.

III. Marketing Restrictions

Q: Please describe the second type of remedy you propose.

A: I recommend: (1) replacing any youth-appealing or misleading imagery in cigarette advertising and promotion (but not cigarette packaging) to factual, black and white communication; (2) restriction of visibility of any youth-appealing or

misleading imagery and logos at retail; and (3) restriction of promotional devices that lower the price of cigarettes.

Q: Has the Surgeon General reached any conclusions related to your recommendation?

A: Yes. One of the Surgeon General's major conclusions in his 2000 Report was that "Regulation of advertising and promotion, particularly that directed at young people, is very likely to reduce both prevalence and uptake of smoking." U.S. Exhibit 18,264 (2000 Report of the Surgeon General at 6). Additionally, the Surgeon General concluded that, "Regulation of tobacco product sale and promotion is required to protect young people from influences to take up smoking." U.S. Exhibit 18,264 (2000 Report of the Surgeon General at 261).

Q: Why do you recommend that youth-appealing or misleading imagery in cigarette advertising and promotion be replaced by factual, black and white communication?

A: As I have previously testified, based on the weight of the scientific evidence, cigarette marketing is a substantial contributing factor for the initiation and continuation of cigarette smoking. According to the 1994 Surgeon General's Report, and as experts in this case have testified, the positive imagery created by Defendants' marketing efforts has had the effect of making smoking appear desirable and appealing directly to adolescent aspirations. These outcomes are the result of extensive market research, and are dependent on the sophisticated use of imagery, primarily through pictures, but also through the use of design, color, graphics, and words. Moreover, as I expressed above, it is important that light

cigarettes are not presented to the American public in a way that either implicitly or explicitly misleads them. I therefore recommend that any misleading imagery used to market light cigarettes, and any youth-appealing imagery used to market any cigarette brand to young people, be replaced by factual, black-and-white communication.

Q: Is it feasible to restrict some of the advertising and promotional efforts of a major business sector simply to the conveyance of factual information?

A: Yes. This approach is currently the policy being followed by a large economic sector in the United States business community, namely financial offerings, subject to the rulings of the Security and Exchange Commission (SEC). Since 1958, the Securities and Exchange Commission has prohibited "free writing" and has limited public financial offerings to "simple statements of fact."

Q: What has been the experience of the financial sector?

A: These regulations have been in place for nearly 50 years and appear to be a well-accepted business practice within the financial community.

Q: Why do you recommend this SEC approach be applied to misleading or youth-appealing imagery in cigarette marketing?

A: Adoption of an SEC approach (similar to SEC Rule 134) to this type of misleading or youth-appealing imagery would preserve the tobacco companies' ability to communicate with consumers, but would do so in a way where the communication would be limited to the conveyance of factual statements such as communication of the price, physical dimensions, toxicologic profile and other characteristics of the tobacco product. Such a rule would allow tobacco

companies to communicate factual information about any potential comparative advantage of their product, but would prohibit the use of any type of misleading imagery which may deceive smokers of light cigarettes or youth-appealing imagery.

Q: Is your proposal the same as the FDA regulations issued in August of 1996 and later struck down by the Supreme Court in FDA v. B&W, 529 U.S. 130 (2000)?

A: No. The FDA regulations would have allowed the use of words to convey images. Words can be very powerful in conveying imagery and evoking emotions. The FDA proposal would have allowed for poetry, enticing copy, hyperbole, and all means of rhetoric. My proposal would strictly limit all marketing to factual statements about product characteristics, price, location and other factual information.

Q: What would result from replacing youth-appealing and misleading imagery in marketing with black-and-white communication?

A: As discussed in my written direct testimony, conducting a large-scale experimental study, or randomized controlled trial, on the effect of cigarette marketing is both unethical and infeasible. There are however data from econometric studies suggesting that complete bans on advertising are associated with reductions in the aggregate demand for cigarettes. My written direct testimony reviews this literature and concludes that, while the results are mixed, the studies tend to suggest a small but important effect from comprehensive cigarette advertising bans, i.e., complete bans are associated with a reduction of 6-

7 percent in aggregate cigarette consumption. U.S. Exhibit 18,264 (Saffer and Chaloupka 2000).

Q: Second, please explain what you mean by restriction of visibility of any youth-appealing or misleading imagery and logos at retail.

A: The tobacco companies have shifted their marketing expenditures from mass media such as billboards and magazines to expenditures on advertising and promotion at the point of sale. Today, hundreds of thousands of convenience stores are festooned with the tobacco companies' youth-appealing and misleading image-based cigarette marketing efforts, including image advertising and promotions. To achieve the goal of having cigarettes treated commensurate with the harm they cause, any youth-appealing or misleading imagery should not be allowed at retail and cigarettes themselves should not only be out of reach, but also out of sight (i.e., under the counter). It may be possible for this result to be obtained by means of the contracts the companies have with retailers.

Q: Third, please explain what you mean by restriction of promotional tools that lower the prices of cigarettes.

A: In this trial, one of the few issues upon which there was complete agreement among experts on both sides was the inverse causal relationship between price and consumption. Dr. Chaloupka presented this body of research in his testimony, and Dr. Heckman agreed. As price goes down, consumption goes up, particularly for young people. Promotional efforts such as buy one, get one free campaigns, discount coupons and added value offers that decrease the price of

cigarettes increase cigarette consumption. I recommend that these price promotions be disallowed or limited.

Q: Are there other price-related remedies that could be considered?

A: It would be possible to order the cigarette companies to sell cigarettes only in cartons (packs of ten). Because cartons are as up to ten times as expensive as single packs of cigarettes, this step would decrease youth smoking as young people have less disposable income than older people and make it more expensive and inconvenient and therefore less likely for young people to purchase cigarettes.

Demonstrative 18,264: Literature Considered by Dr. Eriksen

Centers for Disease Control and Prevention. Best Practices for Comprehensive Tobacco Control Programs—August 1999. Atlanta GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, August 1999. (CDC Best Practices, 1999).
Centers for Disease Control and Prevention. Designing and Implementing an Effective Tobacco Counter Marketing Campaign. Atlanta GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2003 (CDC, 2003).
DHHS. Reducing Tobacco Use: A Report of the Surgeon General. Department of Health and Human Services, Centers for Disease Control and Prevention, Office on Smoking and Health, 2000. (2000 Report of the Surgeon General).
DHHS. Preventing Tobacco Use Among Young People. A Report of the Surgeon General. Department of Health and Human Services, Centers for Disease Control and Prevention, Office on Smoking and Health, 1994. (1994 Report of the Surgeon General).
DHHS. The Health Consequences of Smoking. A Report of the Surgeon General. Department of Health and Human Services, Centers for Disease Control and Prevention, Office on Smoking and Health, 2004. (2004 Report of the Surgeon General).
Saffer H. and Chaloupka F. The effect of tobacco advertising bans on tobacco consumption. Journal of Health Economics 19:1117-1137, 2000. (Saffer and Chaloupka, 2000).
Task Force on Community Preventive Services. Recommendations regarding interventions to reduce tobacco use and exposure to environmental tobacco smoke. American Journal of Preventive Medicine 20(2S): 10-15, 2001 (Task Force on Community Preventive Services, 2001), summarizing Hopkins DP et al. Reviews of evidence regarding interventions to reduce tobacco use and exposure to environmental tobacco smoke. American Journal of Preventive Medicine 20(2S): 16-66, 2001.
U.S. Public Health Service. Smoking and Health: Report of the Advisory Committee to the Surgeon General of the Public Health Service. Washington, D.C., U.S. Department of Health, Education and Welfare, Public Health Service, CDC, 1964. PHS publication no. 1103. (1964 Report of the Surgeon General).