

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,	:	CA No. 99-2496 (GK)
	:	December 15, 2004
Plaintiff,	:	
	:	9:33 a.m.
	:	
v.	:	Washington, D.C.
	:	
PHILIP MORRIS USA, et al.,	:	
	:	
Defendants.	:	
. . . . .	:	

VOLUME 42  
MORNING SESSION  
TRANSCRIPT OF TRIAL RECORD  
BEFORE THE HONORABLE GLADYS KESSLER  
UNITED STATES DISTRICT JUDGE

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22 Proceedings reported by machine shorthand, transcript produced  
23 by computer-aided transcription

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1 P R O C E E D I N G S

2 THE COURT: Good morning everybody.

3 This is United States of America versus Philip Morris.  
4 CA 99-2496. And we are ready to proceed at this time.

5 Mr. Bass. And Doctor, you're still under oath this  
6 morning.

7 THE WITNESS: Yes, Your Honor.

8 DEAN M. KRUGMAN, Ph.D., Government's witness, RESUMES

9 CROSS-EXAMINATION (Cont'd.)

10 BY MR. BASS:

11 Q. Good morning, Dr. Krugman.

12 A. Good morning.

13 Q. I believe when we left off yesterday we were talking about  
14 the research that you had done on cigarette warnings; right?

15 A. Yes, sir.

16 Q. And I just wanted to close out that area of examination and  
17 then move on. But one of the articles that you had published  
18 that you were one of the coauthors of that related to that  
19 research was an article published in Tobacco Control. This is  
20 U.S. Exhibit 64240. I think we might have even had that with  
21 you yesterday, which I've got here on the screen.

22 Do you see that?

23 A. Yes, sir.

24 Q. All right. And that's -- that is one of the articles of  
25 warnings that you co-authored and that was published in Tobacco

1 Control in 1993; is that right?

2 A. Correct.

3 Q. Now, isn't it true, Dr. Krugman, that before this article  
4 was published in Tobacco Control, that it was reviewed by a  
5 lawyer who has been involved in litigation against the tobacco  
6 industry?

7 A. I don't know that to be the case.

8 Q. All right. Well, let me see if I can refresh your  
9 recollection on that.

10 If you look at the very end of the article -- often in  
11 articles like this you will see an acknowledgement, and here at  
12 the end you see various people we would like to thank. At the  
13 very end it starts, "We appreciate the," and then it goes over  
14 to the next page. We have, "We appreciate the prepublication  
15 review of this manuscript by Allen Bloom, John W. Richards,  
16 Richard Daynard, and Edward T. Popper."

17 Do you know who Richard Daynard is?

18 A. I have a vague recollection of who he is.

19 Q. Isn't it a fact that Richard Daynard is a law professor on  
20 the faculty of Northeastern University and that he has a  
21 tobacco -- heads a tobacco litigation project at Northeastern  
22 University that provides resources to various plaintiffs'  
23 lawyers who are involved in litigation against the tobacco  
24 industry?

25 A. If you represent that to me.

1 Q. Let's not just take my word for it, let's see if we can't  
2 take Daynard's word for it. This is JD 013111. And this is  
3 something that came from the website of the Northeastern  
4 University that I pulled off some time this week which is --  
5 describes Mr. Daynard.

6 If you look at the first paragraph of the text here, it  
7 says, "Professor Daynard is at the forefront of the national  
8 movement to establish the legal responsibility of the tobacco  
9 industry for tobacco-induced death, disease and disability. He  
10 is the chair of the Tobacco Products Liability Project,  
11 President of the Tobacco Control Resource Center and Editor-in-  
12 Chief of the Tobacco Products Litigation Reporter." Is that  
13 right?

14 A. Yes. Now that you refresh my memory I'm familiar with  
15 Dr. Daynard.

16 Q. And he was involved in prepublication review of the Tobacco  
17 Control Article on Warnings; right?

18 A. I imagine that to be the case. I don't remember -- I don't  
19 remember him reviewing it, but if it says it there, it must be  
20 that one of my colleagues had sent it out to him, yes.

21 Q. All right. Let's turn to a different topic, which is the  
22 conclusions you reached --

23 THE COURT: Let me follow up with a question or two.

24 Are you aware of any changes that were made in the  
25 draft that was sent to this professor as a result of any

1 suggestions or recommendations from him?

2 THE WITNESS: Not at all, Your Honor.

3 THE COURT: Did you know that the draft was being sent  
4 to him?

5 THE WITNESS: No. Dr. Fisher is the lead author on  
6 that article and he -- we -- can I have the Tobacco Control  
7 Article, please? I don't have that in front of me.

8 MR. BASS: I don't have the whole thing.

9 THE WITNESS: Thank you. Thank you so much.

10 Dr. Fisher was the lead author on this and he was  
11 establishing where it was going to be published, so he would  
12 have sent it out to Dr. Daynard. And I'm aware of no changes  
13 that were made in the manuscript as a result of that.

14 THE COURT: Mr. Bass.

15 BY MR. BASS:

16 Q. Just for the record, you wouldn't know one way or another  
17 whether there were changes because you're not the one who  
18 interacted with Mr. Daynard; is that right?

19 A. I did not interact with Daynard, but I did have a lot to do  
20 with the writing and the template and the way the article was  
21 put together. And Dr. Fisher and I talked all the time about  
22 what was going in and what was not going in, in these articles.

23 So if there was -- if there was a substantive change or  
24 a directional change, I would have known about it. I would have  
25 known about it and said something. I don't remember any



1 substantive changes after it went out to various reviewers.

2 Q. But this would be fair. You don't know one way or another  
3 whether Daynard suggested any changes, do you?

4 A. That would be correct.

5 Q. All right. Let's turn to a different topic which is the  
6 conclusions that you reached in your testimony about the Frank  
7 Statement in 1954. All right?

8 A. Yes, sir.

9 Q. Now, your opinion as stated in your written direct is that  
10 the Frank Statement was -- and this is a quote -- "An effective  
11 public relations strategy put forth by the cigarette industry."  
12 Is that right?

13 A. That is correct.

14 Q. Now, in your expert report you stated that the Frank  
15 Statement could have persuaded many consumers that smoking was a  
16 safe consumption experience and provided a rationale for  
17 continuing to smoke.

18 And I can show you where that is because it may have  
19 been a while since you saw your expert report, but this was on  
20 page 3 of your expert report.

21 Do you see that? It's right in the beginning of the  
22 section where you discuss the Frank Statement.

23 A. I do.

24 Q. You said, "could have persuaded;" right?

25 A. Yes.

1 Q. Now in your written testimony that you submitted to the  
2 court you stated -- and again I'm quoting, this is page 183 of  
3 your written direct, which I can also put up if we need to --  
4 but you stated, "The message conveyed by the tobacco companies  
5 persuaded many consumers that smoking was a safe experience and  
6 provided a rationale for continuing to smoke."

7 That's page 183. That's right here. Do you see that?

8 THE COURT: I'm sorry. What page is that?

9 MR. BASS: That's 183 of his written direct. I've  
10 highlighted here.

11 BY MR. BASS:

12 Q. Do you see that?

13 A. Yes, I do.

14 Q. Now, in your written direct you didn't say "could have," you  
15 said "persuaded." Right?

16 A. Yes.

17 Q. When did you change your opinion on that issue?

18 A. I don't believe that's an opinion change, it's just a  
19 strengthening of the writing.

20 Q. You don't think that's a change in opinion?

21 A. The difference between could have persuaded many and  
22 persuaded many?

23 Q. Right. You don't think that's a change?

24 A. I don't see that as a major change, no.

25 Q. I have to tell, you, Dr. Krugman, us lawyers believe that

1       when somebody goes from saying something could have happened to  
2       saying did, that's a pretty big change. And so--

3               MS. BROOKER: Objection, argumentative.

4       BY MR. BASS:

5       Q. What I want to know is --

6               THE COURT: That objection is well taken and sustained.

7               Go ahead. Next question.

8       BY MR. BASS:

9       Q. All right. Let me ask you, Dr. Krugman, as of the time that  
10       you did your report, your expert report, you had not conducted  
11       any empirical research of any kind that attempted to quantify  
12       the impact of the Frank Statement on smokers, had you?

13       A. That's correct, sir.

14       Q. All right. And after your expert report was issued did you  
15       conduct any additional research of any kind, any empirical  
16       research to quantify the impact of the Frank Statement on  
17       smokers?

18       A. No, sir.

19       Q. Did you find any documents that were contemporaneous of the  
20       Frank Statement in which somebody else had conducted that  
21       research that you weren't aware of at the time of your expert  
22       report?

23       A. No, but would have reread the documents that I had  
24       previously been working on with the expert report.

25       Q. All right. And, in fact, in your deposition in this case

1     you stated, with respect to the Frank Statement, that by  
2     prominently pointing to medical research linking smoking to  
3     cancer the Frank Statement could have served to heighten the  
4     concern of at least some smokers; right?

5     A. May I have that --

6     Q. That's April 30, 2002 deposition at page 98.

7     A. Okay. Thank you, sir.

8     Q. That's what you said; right? It could have served to  
9     heighten the concern of some smokers.

10    A. I'm just trying to catch up with you, sir. One moment.

11    Q. I understand. You need to look at the question as well.

12    A. Yes, but I think you need to put it in context of the  
13    statement before that, where I was -- where I was asked about  
14    it, and I say, I believe that a cigarette smoker reading this ad  
15    could have come away with and not all smokers did, but certainly  
16    some could have or did with the impression that smoking was a  
17    safe consumption experience and not to worry about it.

18                 And then there was sufficient -- there was sufficient  
19    enough doubt created by this ad to allay their concerns over the  
20    burgeoning controversy. And then go on to say that, yes, in  
21    some cases a person may have -- put it the way that you just  
22    phrased it.

23    Q. All right. I didn't see in your written direct testimony  
24    anywhere where you said that the Frank Statement could have also  
25    heightened concern for some smokers.

1                   That wasn't in your written direct testimony, was it?

2       A.   No, it was not.

3       Q.   Now, one of the things that you cite as support for your  
4       conclusions about the Frank Statement is a book by Karen Miller.  
5       Is that right?

6       A.   Dr. Karen Miller, that's correct, sir.

7       Q.   Dr. Miller. And Dr. Miller was an Assistant Professor at  
8       the University of Georgia where you teach when her book came out  
9       in 1999; is that right?

10      A.   That is correct.

11      Q.   She's still there?

12      A.   She is.

13      Q.   At the University of Georgia?

14      A.   Dr. Karen Miller Russell.

15      Q.   And she's a tenured professor now?

16      A.   She is.

17      Q.   And you view Dr. Miller as a reliable source of information?

18      A.   Yes.

19      Q.   And you know Dr. Miller, don't you?

20      A.   I do.

21      Q.   Now, the predicate for Dr. Miller's book was a doctoral  
22      dissertation that she had written around 1993 at the University  
23      of Wisconsin; right?

24      A.   That is correct.

25      Q.   And the book -- or the dissertation was about Hill and

1 Knowlton, right?

2 It was about research that she had conducted on Hill  
3 and Knowlton and its work in public relations historically;  
4 right?

5 A. As the voice of business, yes, sir.

6 Q. And one chapter of that dissertation dealt with Hill and  
7 Knowlton's work for the tobacco industry in the '50s and '60s;  
8 is that right?

9 A. Correct.

10 Q. Now, I think that you've seen this dissertation in the past  
11 in depositions. The dissertation is JD 013097.

12 Go ahead and hand that to him, Judy.

13 A. Thank you.

14 Q. And that's not -- what you've got there is not the entire  
15 dissertation, it's the chapter on tobacco.

16 A. Yes.

17 Q. But let me ask you. At page 316 of that dissertation --

18 THE COURT: This is a dissertation from the University  
19 of Wisconsin; is that right?

20 MR. BASS: That's right, Your Honor.

21 BY MR. BASS:

22 Q. Dr. Miller talked about the impact of the Frank Statement,  
23 and she said, "It is difficult to determine what, if any, effect  
24 the advertising and public relations campaigns had on public  
25 beliefs and behavior concerning smoking. People said they did

1 not trust tobacco ads; in 1955" -- that's the year after the  
2 Frank Statement -- "belief in cigarette ads ranged 4 to  
3 8 percent compared to about 30 percent for refrigerator  
4 advertisements."

5 Do you see that?

6 A. Yes.

7 Q. Now, that statement -- that second -- the second part of  
8 that statement about belief in cigarette ads is not in  
9 Dr. Miller's book, is it?

10 A. No, it is not.

11 Q. And it's also not in your written testimony about the impact  
12 of the Frank Statement, is it?

13 A. Correct.

14 Q. Do you recall that in the -- you were an expert witness in  
15 the State of Maryland Attorney General's case against the  
16 tobacco industry?

17 A. Yes, sir.

18 Q. And you were deposed in that case; right?

19 A. Correct.

20 Q. Do you recall that in that case you were shown that same  
21 passage from Dr. Miller's book that I just showed you? Do you  
22 recall that?

23 A. No, I don't.

24 Q. All right. I can show you that. I think --

25 MS. BROOKER: Your Honor, if I can ask Mr. Bass to

1 clarify the question. I wasn't clear. Did he mean the book or  
2 the dissertation?

3 MR. BASS: I'm sorry. I meant the dissertation. Thank  
4 you.

5 BY MR. BASS:

6 Q. All right. Now this is the -- can you give him the State of  
7 Maryland? This is your deposition on October 22, 1998 in the  
8 State of Maryland case. I'll have you turn to page 159. There  
9 you see that you were shown a copy of the dissertation. Is that  
10 right?

11 A. Yes. I'm just going back and looking at the year. Go  
12 ahead.

13 Q. I just want to get clear for the record. You were shown a  
14 copy of the dissertation by Dr. Miller as Krugman Exhibit 5.

15 A. Yes.

16 Q. In that deposition; right?

17 A. Yes.

18 Q. Then on page 160 -- if you look at what I put up on the  
19 screen -- you were shown the same passage from the dissertation  
20 that I just read you; is that right?

21 A. Correct.

22 Q. And this deposition was 1998, in October 1998; is that  
23 right?

24 A. Yes.

25 Q. And her book came out in 1999; right?



1 A. Correct.

2 Q. Did you have any discussion with Dr. Miller after you were  
3 deposited in the Maryland case about that particular passage of  
4 her dissertation, whether you thought that that was something  
5 that ought to be in her book?

6 A. I would -- I would never tell any of our Assistant  
7 Professors what ought or ought not to be in their books. This  
8 is -- you pay people in our business to be able to think for  
9 themselves.

10 Q. Well, I understand that. And I'm not suggesting,  
11 Dr. Krugman, that you didn't tell her what to put in her book.  
12 The question was a little more general than that, which is: Did  
13 you have any discussion -- in other words, you're at a  
14 deposition, this comes up, you see her dissertation. You go  
15 back to the University of Georgia and there she's there and you  
16 talk to her and say, Hey, by the way, this came up in my  
17 deposition.

18 Did you even discuss with her the fact that it came up  
19 in your deposition and what the issues were that you were  
20 examined on?

21 A. I don't know that I did.

22 I probably talked with her about it after her book came  
23 out because her book was being re -- was in review at the  
24 University of North Carolina Press at the same time, and I was  
25 very interested in the book because it could make or break the

1 young person's promotion.

2 THE COURT: Meaning her promotion for tenure purposes?

3 THE WITNESS: Yes. Yes. It was published at the  
4 University of North Carolina Press, and I had to call our  
5 history department to find out the worth of that press, and went  
6 to find out that it was more of the valued presses in the US on  
7 that matter. So I was very concerned about it.

8 BY MR. BASS:

9 Q. But as to my question, you don't know specifically whether  
10 you had a discussion with her about that particular passage of  
11 her dissertation after your deposition in Maryland; is that  
12 right?

13 A. I asked Dr. Miller about passages in her dissertation. I  
14 don't necessarily have the time line as to -- as to when it  
15 occurred. We talked about her dissertation, certainly.

16 Q. All right. If we go on in Dr. Miller's book, which is JD  
17 013101. Judy, can you hand him that?

18 That's a copy of her book. I've actually got the book  
19 over here. But just, can you confirm that what you've got there  
20 is The Voice of Business by Karen Miller?

21 A. Yes.

22 Q. All right. If you turn to page 145 of that you will see  
23 that she did include the statement, "It is difficult to  
24 determine how much, if any, effect the advertising and public  
25 relations campaigns had on public beliefs and behavior

1       concerning smoking."     Right?

2       A.   Yes.

3       Q.   And when you cited Dr. Miller's book in your written direct  
4       testimony to the court you didn't reference that passage in her  
5       book, did you?

6       A.   No, because that was not the reference of the book that was  
7       compelling for me in the analysis I was making.

8       Q.   All right.  And let me ask you this.  In the end, in the  
9       period after the Frank Statement came out in January 1954,  
10      smokers, really, they voted with their feet in terms of whether  
11      they were reassured because in droves they switched from the  
12      cigarettes that they had been smoking to filtered cigarettes.  
13      Isn't that right?

14      A.   Yes.

15      Q.   And I think that Dr. Miller notes that as well in her book.  
16      If you turn to page 145 again.  She says -- what I've  
17      highlighted here on the screen -- "Still, both beliefs about  
18      smoking and consumption patterns changed as the two sides  
19      presented their cases in the media."     Is that right?

20      A.   Yes.  And earlier Dr. Miller talks about how much better  
21      that the tobacco industry was at presenting their cases in the  
22      media, and that's the part of the text and the book that I chose  
23      to use, where she -- as an expert in public relations, she made  
24      the point that the tobacco industry did a much better job of  
25      being able to present their case in an unadulterated fashion by

1 putting out the Frank Statement. That's the part of  
2 Dr. Miller's analysis that I rely on.

3 Q. The part that I just put up here on the screen you didn't  
4 mention that in your direct testimony, did you?

5 A. No.

6 MS. BROOKER: Objection. Go ahead.

7 BY MR. BASS:

8 Q. Now, are you aware of any contemporaneous survey of smokers  
9 to see how smokers reacted to the Frank Statement?

10 A. I can't recall any at this time.

11 Q. You certainly don't cite any in your testimony, do you?

12 A. Correct.

13 Q. All right. Let me show you what's been marked as Exhibit JD  
14 062179, which I have here on the screen. Let me ask you, is  
15 this a document that you've seen before?

16 A. I don't remember seeing this document.

17 Q. All right. Let's just take a moment with it.

18 The document is a -- it's a memorandum dated March 5,  
19 1954; right?

20 A. Correct.

21 Q. It's a memo to Mr. John Hill; is that right?

22 A. Correct.

23 Q. And you understood that Mr. John Hill was the Hill in Hill  
24 and Knowlton? He was the head of Hill and Knowlton; right?

25 A. Yes, sir.

1 Q. And it's from a Mr. Littin; is that right?

2 A. Yes.

3 Q. And he's reporting on a meeting that Mr. Littin had with the  
4 Warwick and Legler account people; right?

5 A. Yes.

6 Q. All right. And if you look in the memo you will see -- in  
7 the paragraph that I've highlighted, you will see that -- by the  
8 way, Legler, these were representatives -- if you look in the  
9 very first paragraph at the top, in the very first sentence, you  
10 will see that these folks were representatives of Larus and  
11 Brothers, Lords, Sano, Domino and pipe tobacco brands; is that  
12 right?

13 A. Yes.

14 Q. Do you recall in the Frank Statement those were some of the  
15 other signatories on the Frank Statement besides just the  
16 defendants in this case?

17 A. I don't remember that, sir.

18 Q. Well, we can pull that up in a second.

19 You recall that there were other signatories to the  
20 Frank Statement besides just the cigarette manufacturing  
21 companies; right?

22 A. Yes. Just so I'm clear, Larus, and Brothers and Lord's, and  
23 Sano, and Domino are pipe tobacco brands.

24 Q. Right.

25 A. Okay, these are not cigarettes.

1 Q. No, no. Domino and pipe tobacco brands I think -- I think  
2 Sano was actually a cigarette manufacturer. Larus -- I think  
3 one of them was a wholesaler, but we can look at the Frank  
4 Statement.

5 And just so we are clear, Legler is one of the -- he's  
6 an advertising agency guy; right?

7 A. I don't -- the name Legler doesn't --

8 Q. Well, it refers to him, and it refers -- it refers to him at  
9 the top. He's one of the people who is being met with.

10 A. Okay.

11 Q. Now if we go to the paragraph that I highlighted, it says,  
12 "Legler told me they had conducted a survey of 400-odd smokers  
13 to check the effect of the January 4th ad on smoker habits."

14 Now, you would understand the January 4th ad to be the  
15 Frank Statement; right?

16 A. Yes.

17 Q. He says, "Their survey," he said, "showed that the ad had  
18 scared people into cutting down and in some cases stopping their  
19 use of tobacco entirely." Is that right?

20 A. Yes.

21 Q. This is not a document you've seen before; right?

22 A. It is not.

23 Q. And it's not something that the government provided to you  
24 at any point to say this is something you need to know about, is  
25 it?

1 A. I haven't seen it.

2 Q. All right. You would agree with me that that's  
3 contemporaneous evidence of the impact of the Frank Statement on  
4 smokers, wouldn't you?

5 A. Partially, yes.

6 Q. All right. Let's turn to a different topic, which is the  
7 cigarette advertising code.

8 You discussed the cigarette advertising code, which  
9 I'll use a shorthand for, it was a code that was put out in  
10 1964, right, and revised at various times along the way?

11 A. Yes.

12 Q. All right.

13 A. May I back up for a moment to my last answer?

14 Q. I want to move on, Dr. Krugman. The government will have a  
15 chance to do redirect with you.

16 MS. BROOKER: Your Honor, if Dr. Krugman has something  
17 to correct now, it will save time if we have him do that at the  
18 moment.

19 MR. BASS: But it will come out of my time and I want  
20 it to come out of your time.

21 THE COURT: Very well. We will come back to it in the  
22 government's redirect.

23 BY MR. BASS:

24 Q. You discuss the advertising code at pages 163 to 182 of your  
25 written direct, right?

1 A. Yes.

2 Q. Now, your conclusion with respect to the advertising code --  
3 this is at page 163, 164 -- is that it has -- the advertising  
4 code has largely been ignored by the industry and has not  
5 stopped the tobacco companies from marketing to teenagers;  
6 right?

7 A. Yes.

8 Q. All right. Let's just take a quick look at this.

9 First, the advertising code was adopted by the industry  
10 in 1964, I think as you just mentioned; is that right.

11 A. Yes.

12 Q. And do you know why the -- why the industry adopted an  
13 advertising code in 1964?

14 A. It's my understanding that they were under pressure.

15 Q. Under pressure from where?

16 A. The public and the government.

17 Q. Right. In fact, the Federal Trade Commission had proposed a  
18 rule that would regulate the advertising of cigarettes that  
19 included certain restrictions that were intended to deal with  
20 the possibility that adolescents were being overexposed to  
21 cigarette ads; right?

22 A. Yes.

23 Q. The FTC issued a report on its proposed rule in 1964 in  
24 which they said -- they pointed to various problems with  
25 cigarette advertising. There were two issues they were dealing



1 with. One was, is there health advertising, and the other is,  
2 is there some impact on youth. Is that right?

3 A. Okay.

4 Q. Do you recall that?

5 A. Not specifically.

6 Q. All right. Well, we can take a look at the FTC. This is  
7 U.S. Exhibit 75032, Judy.

8 Do you have that in front of you? That's the trade  
9 regulation rule for the prevention of unfair or deceptive  
10 advertising and labeling of cigarettes in relation to the health  
11 hazards of smoking and accompanying statement of basis and  
12 purpose of rule; right?

13 A. Yes.

14 Q. And if you would just look at page 69, you will see, as I  
15 put up here on the screen, there's a discussion of the impact of  
16 cigarette advertising on youth. Right?

17 A. Yes.

18 Q. And that carries on to page 70?

19 A. Yes.

20 Q. And I don't think we have to go through all this, but the  
21 FTC was discussing some of the concerns that they and the  
22 government had about various types of advertising. For example,  
23 as shown up here on page 70, endorsements of cigarettes by  
24 popular athletes; right?

25 A. Yes.

1 Q. And then the FTC also said -- and if you turn to page 112  
2 they noted, they said -- and again in what I've highlighted if  
3 you've got page 112 there -- they said, "Indeed the nation's  
4 advertising media and the cigarette industry are aware that  
5 cigarette advertising appealing to youth requires special  
6 attention." Right?

7 A. Yes.

8 Q. And on the footnote at the bottom they discuss the  
9 advertising industry, the media, specifically, the Television  
10 Code Review Board and the National Association of Broadcasters,  
11 some actions that they had taken because there was a lot of  
12 concern. There was a lot of cigarette advertising on television  
13 at times when there were a lot of young people watching shows.  
14 Right?

15 A. Yes.

16 Q. Of course, back then -- well, they had three networks and  
17 there was not nearly the kind of choice in television  
18 programming that we have today; right?

19 A. Correct.

20 Q. All right. And ultimately what the FTC concluded in this  
21 document was that they would let the tobacco industry regulate  
22 itself.

23 If you look at page 124, in what I've highlighted, if  
24 you've got that there if front of you.

25 They discuss whether cigarette advertising and labeling

1       should be left to industry self-regulation. They then mention  
2       the fact that the industry at the hearings on this had asked to  
3       be allowed to regulate itself.

4               And they, further down, in what I've highlighted, say,  
5       "We have declared the standards of conduct to which members of  
6       the cigarette industry must conform in order to avoid violation  
7       of the Trade Commission Act. The industry has indicated an  
8       intention of acting voluntarily to end undesirable practices in  
9       the area covered by proposed rules 2 and 3, and should the  
10      industry succeed in eliminating such practices, there will be no  
11      need for formal commission action." The commission went on to  
12      say, "We will see what the industry does." Right.

13     A. That's what it says, yes.

14     Q. And shortly thereafter the industry promulgated the ad code;  
15      is that right?

16     A. Yes.

17     Q. Now, you're aware that a number of other industries that  
18      sell consumer products have, also have codes that govern their  
19      advertising, right?

20     A. I haven't concerned myself with the codes of other  
21      industries.

22     Q. Well, but I just asked if you're aware that there are other  
23      industries that have such codes; right?

24     A. Yes.

25     Q. And, in fact, in your book there's a discussion of some of

1 the advantages of industry self-regulation of advertising;  
2 right?

3 A. Yes.

4 Q. If we look at that, on -- if you turn, do you have your book  
5 there from yesterday?

6 MR. BASS: This is again, Your Honor, U.S.  
7 Exhibit 64272. This is Dr. Krugman's book.

8 Q. And if you turn to page 146, Dr. Krugman, you will see the  
9 discussion of self-regulation of advertising; right?

10 A. Yes.

11 Q. And it discusses four advantages of self-regulation,  
12 including that it's quicker, cheaper, and more flexible than  
13 government regulation; right?

14 A. Yes.

15 Q. It's based on voluntary compliance and industry cooperation.  
16 That's listed as an advantage; right?

17 A. Yes.

18 Q. It focuses on standards, such as taste, industry welfare,  
19 and other interests that are beyond legal standards; right?

20 A. Yes.

21 Q. In other words, sometimes these industry codes can impose  
22 self-imposed regulations that would raise significant legal  
23 problems under the First Amendment if the government tried to  
24 impose them; right?

25 A. Yes.

1 Q. And it also reduces -- the last advantage is it reduces  
2 adverse publicity, promotes industry credibility, and enhances  
3 advertising effectiveness; right?

4 A. Yes.

5 Q. If you look at page 154 and 155 of your book, there's a  
6 specific discussion of self-regulation by trade associations and  
7 it gives some examples. The Toy Manufacturers Association, the  
8 Motion Picture Association of America, US Brewers Association,  
9 the Wine Institute, the Pharmaceutical Manufacturers. These all  
10 have published advertising codes; right?

11 A. Yes.

12 Q. And that's not a comprehensive list, there are others as  
13 well; right?

14 A. Yes.

15 Q. And the FTC has also stated over time that there are  
16 significant benefits to self-regulation; is that right?  
17 Self-regulation of an industry's advertising; is that right?

18 A. Yes.

19 Q. Now, if we turn the Cigarette Advertising Code itself, it  
20 was adopted in 1964. This is US Exhibit 21228. Do you have  
21 that in front of you, Doctor?

22 A. I do.

23 Q. If you turn to page -- it's page 4, it's article 4, and  
24 it's -- but I don't think it's the fourth page in here. See if  
25 you can get that.

1 A. I have article 4 in front of me.

2 Q. All right. And we see -- and, of course, you know from  
3 reading this in the past, that there are -- article 4 is the  
4 advertising standards; right?

5 A. Yes.

6 Q. And we see that there are certain restrictions and  
7 guidelines with respect to both media placement and content of  
8 advertising; right?

9 A. Yes.

10 Q. When you look at media placement, if you look under "A", you  
11 will see that there's a restriction, cigarette advertising shall  
12 not appear, and then it goes on to say on television and radio  
13 programs, or in publications directed primarily to persons under  
14 21 years of age; right?

15 A. Yes.

16 Q. Now, since around 1970 the tobacco industry has been  
17 prohibited from using television and radio; right?

18 A. Yes, sir.

19 Q. But they are allowed to use other mass media, including  
20 magazines and billboards; right?

21 A. Yes. I would point out that in 19 -- I think it was 1967  
22 the FTC concluded that the code was not effective in much of  
23 what it was assigned to do.

24 Q. Well, let me ask you this. At any time after that 1964  
25 report that we just saw where the FTC said "We're going to have

1 industry self-regulation," did the FTC come back and impose a  
2 trade regulation rule on cigarette advertising?

3 A. No.

4 Q. Isn't it true that in that 1967 report the main focus of the  
5 report was television and radio advertising, and that the result  
6 of that was cigarettes got kicked off television and radio  
7 permanently by Congress by 1970 or 71?

8 A. Excuse me for just a moment, please.

9 MR. BASS: Can you see this, Your Honor?

10 THE COURT: I'm sorry?

11 MR. BASS: Can you see this okay?

12 THE COURT: I can. Thank you.

13 THE WITNESS: What the code said was -- what the FTC  
14 concluded in 1967 was that after the adoption of the code, the  
15 tobacco companies made only minor changes in some of their ads  
16 and overall they did not change their cigarette brand themes and  
17 the impact of their advertisements was the same.

18 BY MR. BASS:

19 Q. The FTC didn't impose a new trade regulation rule?

20 A. No, it did not.

21 Q. Now in the advertising code -- you understand, by the way,  
22 Dr. Krugman, that this particular case that we're in is a fraud  
23 case; right?

24 A. In a general way, but I'm not at all part of understanding  
25 the legal ramifications of various aspects of it.

1 Q. I understand that. But you understand we are not -- this is  
2 not an administrative proceeding to determine what's the best  
3 way to regulate cigarettes; right?

4 A. I do understand that, yes.

5 Q. And in the 1964 code the industry used the term "directed  
6 primarily" with respect to media placement; is that right?

7 A. Yes, that's the exact words they used.

8 Q. Now, are you aware of any instance at any time since 1964 in  
9 which any of the defendants in this case have placed cigarette  
10 advertising in any magazines or other mass media that was  
11 directed primarily at anyone -- at persons under the age of 21?

12 A. I'd point out a host of -- a host of documents at the end  
13 of -- at the end -- in an appendix and some within the framework  
14 that discussed the word "primarily" and how it was used, and the  
15 various mechanisms of primarily, and then point to any number of  
16 documents that we could -- that we could go through to look at.

17 Q. That's not really my question though, Dr. Krugman.

18 The question is whether the ads were placed in media  
19 that was directed primarily to persons under 21 years of age?  
20 Not what the ad was directed at or the target was, but whether  
21 the media was directed primarily at persons under the age of 21.

22 MS. BROOKER: Objection, asked and answered.

23 MR. BASS: I don't believe so.

24 THE COURT: The objection is overruled.

25 A. I'm aware of many documents that talk about the various age



1 groups and directly target people under the age of 21 or use the  
2 word, these are basic targets or primary targets, or targets  
3 that are important to us, or that we need to go after.

4           Additionally, as I say in my expert report, the use of  
5 the word "primarily" is extraordinarily ambiguous and hard to  
6 nail down, so I had to go back to the various reports to glean  
7 out what the intent was.

8 Q. Well, did you look at how the members of the industry  
9 interpreted the term "directed primarily" in terms of  
10 determining what media to place cigarette ads in?

11 A. I'm not sure of the question, sir.

12 Q. What I asked you is did you go back and did you look at how  
13 the members of the industry interpreted the term "directed  
14 primarily" for purposes of media placement?

15 A. I remember at least one person saying it was ambiguous.

16 Q. But don't you remember seeing that the members of the  
17 industry interpreted "directed primarily" as meaning media that  
18 the audience of the media was not more than 50 percent under 21;  
19 right? That's the way it was interpreted.

20 A. It wasn't the way it had been discussed in other places.

21 Q. Let me ask you this. I'll simplify it for you.

22           Are you aware of any instance in which any of the  
23 members of the industry placed ads in media where the audience  
24 of that media was more than 50 percent under the age of 21,  
25 since 1964?

1 A. No, but when you -- no, but when you put the question that  
2 way, it doesn't, I think, fairly interpret what the use of  
3 "primarily" is and the way the industry had used "primarily" in  
4 their literature and in their statements, in their public  
5 statements.

6 Q. Well, the term that you use in your testimony is "knowingly  
7 reach", right?

8 You use that term throughout your testimony; right?

9 A. Yes, sir.

10 Q. You say that throughout time the tobacco industry put ads in  
11 magazines and on billboards and in other media that they knew  
12 would reach people under the age of 21 or under the age of 18.  
13 Right?

14 A. Correct.

15 Q. Now, the fact of the matter is that there is no form of mass  
16 media that could be used that wouldn't reach some people under  
17 the age of 18 or under the age of 21; right?

18 A. Pardon me. When you use mass media, you -- you will in many  
19 cases reach people under the age of 21.

20 Q. And under the age of 18; right?

21 A. And under the age of 18.

22 Q. The fact of matter is if I put an ad in Modern Maturity,  
23 which is the magazine of the American Association of Retired  
24 Persons, there would be some people, wouldn't you expect, under  
25 the age of 21 who would see that; right?

1 A. It's possible, yes.

2 Q. Well, you even have in your data, you have a fairly -- you  
3 know, to my mind at least, a stodgy publication like U.S. News  
4 and World Report, and you show that according to MRI some  
5 450,000 teenagers under the age of 18 read U.S. News and World  
6 Report; right?

7 MS. BROOKER: Objection to the argument and commentary  
8 I think of that question about U.S. News and World Report being  
9 stodgy.

10 THE COURT: The objection is overruled.

11 A. Yes, and I point out that that particular magazine has the  
12 lowest number of adolescents between 12 and 17, in fairness.

13 Q. But my point is, it's almost impossible to put  
14 advertisements in any form of mass media because the very nature  
15 of it being mass media is fairly undifferentiated. It goes out  
16 to all kinds of people and you don't have the -- the marketer  
17 does not have control over who sees the media; right?

18 A. I would not use the phrase in today's media that it's  
19 undifferentiated.

20 Q. Well, let's take out the word undifferentiated.

21 You would agree that no matter what form of mass media  
22 you use for advertising, there's always going to be some kind of  
23 spillover beyond the particular target that you're trying to  
24 reach unless you're just trying to reach everybody; right?

25 A. There may indeed be spillover, but spillover isn't what I'm

1 referring to when I discuss breaking the code. That's not at  
2 all my -- a term that I would use.

3 Q. Well, I didn't see anywhere in your direct testimony -- you  
4 can correct me if I'm wrong -- where you said that anybody in  
5 the industry had placed cigarette advertisements in media that  
6 were directed primarily at a majority of persons under 21. Is  
7 that right?

8 A. When you carefully construct it to get back to the majority  
9 over 50 percent, that is technically correct. I have a host of  
10 documents in my direct testimony that point to the specific use  
11 of targets and markets under the age of 21 and using various  
12 media to reach those targets.

13 Q. All right, Doctor. In addition to the media placement  
14 guideline, there are some guidelines on content in the code; is  
15 that right?

16 A. Correct.

17 Q. One of those guidelines is -- if you turn to page 5 of the  
18 code. This is again U.S. Exhibit 21228. I'm sorry, it goes  
19 from page 4 to page 5.

20 Section E at the bottom of page 4 discusses the age of  
21 models that can appear in cigarette advertising. Is that right?

22 A. Yes.

23 Q. And it says that models in cigarette advertising, natural  
24 persons, must be at least 25 years of age and shall not be  
25 dressed or otherwise made to appear to be less than 25 years of

1 age. Is that right?

2 A. I see that, sir.

3 Q. And that later got changed in the 19 -- in a later iteration  
4 of the code to be, instead of dressed or made appeared to be,  
5 simply appear to be age 25; right?

6 A. Yes.

7 Q. And in your testimony you state that the industry violated  
8 that provision of the code; right?

9 A. Correct.

10 Q. And let's just start with, you're not -- you don't have any  
11 evidence that at any point anybody in the industry actually used  
12 a model whose actual age was under 25; is that right?

13 A. I do not.

14 Q. But you cite an article by MAS-sis or MAY-sis -- I'm not  
15 sure of the pronunciation -- which in support of the proposition  
16 that the industry has had ads that use models who appear to be  
17 under the age of 25; right?

18 A. Yes.

19 Q. Let's just talk about that article for a second. The Mazis  
20 article is U.S. Exhibit 64268. Do you have that in front of  
21 you?

22 A. I do.

23 Q. And Mazis is -- this is published in 1992; right? Is that  
24 right?

25 A. Yes, sir.

1 Q. The article is Perceived Age and Attractiveness of Models in  
2 Cigarette Advertisements; correct?

3 A. Yes, sir.

4 Q. All right. Just so the court understands what was done  
5 here, Mazis and colleagues did what's known as a mall intercept  
6 study; right?

7 A. Correct.

8 Q. And literally what you do is you go to a mall and you  
9 intercept people and see if they are willing to participate in  
10 the study. You take them over to a place and you interview them  
11 or you have them go through the study; right?

12 A. Yes.

13 Q. This was, as described in the study, it was done in an East  
14 Coast city and had approximately 500 and some participants; is  
15 that right?

16 A. I believe so.

17 Q. I think that's on page 26. I want to make sure you have a  
18 chance to take a look. That's on page 26. Is that right?

19 A. Yes.

20 Q. All right. And what they did is they looked at cigarette  
21 ads in magazines and they found 50 cigarette ads with models  
22 whose faces were clearly visible and used those as the basis for  
23 their research; is that right?

24 A. I believe so, yes.

25 Q. All right. And they had survey participants of different

1       ages and they were asked to judge that -- I think that the two  
2       groups looked at 25 ads apiece so they weren't too many ads to  
3       look at, and they were asked to estimate the age of the 60 --  
4       there were -- back up for a second.

5               The 50 ads that were selected had 65 models whose faces  
6       were clearly visible; right?

7       A.   Yes.

8       Q.   And the survey participants were asked to judge the age of  
9       those 65 models, right?

10      A.   Yes.

11      Q.   Now, if you look at -- well, in the article what they report  
12      first is that of those 65, there were only 14 models who were  
13      judged on average by the group to be under the age of 25; right?

14      A.   Yes.   If you look at the mean on Table 3 there are those  
15      that fall on average, but then you would see the right-hand side  
16      there's another column that says the percent judging age less  
17      than 25.

18             So, in other words, although the mean may have been  
19      above 25 in some of the other ads, like 1A -- if you look at the  
20      right-hand side on 1A, 21.4 percent of the people -- not the  
21      average, but 21 percent of the people judged that ad to be less  
22      than 25.

23             So, in order to get it into the column that you're  
24      referring to there had to be an overall average under 25.

25      Q.   Right.   And one of the things this shows is how subjective

1       it is for people to judge, just by appearance, the age of  
2       someone because you have, in the right-hand column for all of  
3       the models is at least some people who think they are under 25,  
4       and the percentages vary considerably, right? Even for models  
5       who are judged to be over 30, right?

6       A. Well, the point of the study was to see what the average  
7       person thought of it.

8       Q. Right. Now -- so 14, though, were judged on average to be  
9       under age 65. Now, of those --

10               THE COURT: Under age?

11       Q. I'm sorry. 14 of the 65 were judged to be under the age of  
12       25, right, Doctor?

13       A. Yes.

14       Q. And of those, though, a number of them -- a number of those  
15       14 on average were judged to be between 23 and 25, right?

16               If you look, I've highlighted, for example, for the  
17       KOOL Mild's ads, you see 23.9, 23, 24.2, 23.1, those are ones  
18       that are judged to be on averaged between 23 and 25; right?

19       A. Yes, but still all under 25.

20       Q. And you see on the next page where the table finishes out;  
21       for example, for Newport Lights there's one at 24.5, and there's  
22       a number of others in the 23 to 25 range. Is that right?

23       A. Yes.

24       Q. And none of the models were judged, on average, to be under  
25       the age of 20; right?



1 A. Correct.

2 Q. Now, the authors also looked at -- and this was research  
3 that was conducted -- this was published in 1992, and I think as  
4 we indicated yesterday, there were no teen readership surveys of  
5 magazines before 1999 -- 1991; right?

6 A. Would you say that again, please?

7 Q. Yes. I just wanted to remind you that yesterday we talked  
8 about the fact that before 1991 when MRI did its first teen  
9 survey, there were not regular surveys of teenagers' readership  
10 of magazines; right?

11 A. That's correct. Simmons may have been slightly before then.

12 Q. And one of the things that the folks who did this study, the  
13 Mazis study did, is they actually looked at -- if you look at  
14 Table 1 -- they also looked at the average audience age of the  
15 magazines in which these various ads appeared.

16 Do you see that in Table 1, the middle column?

17 A. Yes.

18 Q. And for all of the ads, except for Lucky Strike Lights, the  
19 average age of the readership of the publications in which they  
20 appeared, based on the data that was collected by Mazis, was  
21 over 30; right?

22 A. Yes.

23 Q. And that average audience age for magazine publications is  
24 data that's been routinely put out by both MRI and Simmons long  
25 before the 1990s as a result of their adult readership surveys;

1 right?

2 A. Yes.

3 Q. All right. And then just to close out on Mazis, one thing  
4 that they concluded -- it's always interesting to see what the  
5 authors conclude from their research -- at the very end they  
6 concluded that, as I've got highlighted, "The finding that young  
7 models were not differentially attractive to young audiences  
8 calls into question the charge that young models were being used  
9 to 'target' youth. Young models were attractive to all groups.  
10 One interpretation of these findings is that cigarette  
11 manufacturers may use younger models to appeal to a wide  
12 audience and may use older models to appeal to older smokers.  
13 Another interpretation is that restrictions on the use of  
14 younger models in cigarette ads would make it more difficult for  
15 cigarette manufacturers to reach younger audiences."

16 Now that's what it says, right?

17 A. So they are interpreting it both ways.

18 Q. Well, they are saying it could go either way; right?

19 A. At that point in the article they are saying it could go  
20 either way, but in the very front of the article they know that  
21 it's a clear violation.

22 Q. This part of the Mazis article is not referenced in your  
23 written direct, is it?

24 A. No, it is not.

25 THE COURT: Has anyone, to your knowledge, done a study

1       examining whether there is greater accuracy on the part of  
2       people identifying the ages of individuals, models who are  
3       closer to their own age? I'm not sure if that question is  
4       clear.

5               THE WITNESS: It's a good question. I don't -- I don't  
6       think a study like that has been done.

7               THE COURT: Mr. Bass.

8       BY MR. BASS:

9       Q. Let me turn to a different part of your conclusions in your  
10      written direct.

11             One of the things that you say in your testimony, in  
12      your written direct to the court, is that cigarette messages  
13      bypass logical analysis; right?

14      A. Yes, sir.

15      Q. What you're talking about is the cigarette ads have mostly  
16      imagery as opposed to a lot of words that are written about the  
17      ads; right?

18      A. What page are you on, sir?

19      Q. That's on page 34. Is that right?

20      A. Yes.

21      Q. And in support of that proposition you cite the Vaughn  
22      model, also known as the FCB Strategy Planning Model; is that  
23      right?

24      A. In partial support, yes.

25      Q. And the FCB, that's Foote, Cone & Belding; is that right?

1 A. Right.

2 Q. Now, that model is also discussed in your book, isn't it?

3 A. Yes.

4 Q. And, actually, I think this is one of the chapters that you  
5 wrote; is that right?

6 It's in -- if you turn to your book, which is U.S.  
7 Exhibit 64272, to page 254, although the discussion starts a  
8 little bit before that --

9 A. Give me those numbers again.

10 Q. At page 254 in your book.

11 A. Yes.

12 Q. Is that a chapter that you wrote?

13 A. Yes.

14 Q. All right. And in there there's a discussion on page 254 of  
15 the learn-do-feel model; right?

16 A. Yes.

17 Q. And that's learn-do-feel is part of the -- that's part of  
18 the Vaughn model; right?

19 A. Yes.

20 Q. And this part of it is the low-involvement part of the  
21 Vaughn model, right, which is what you say characterizes  
22 cigarette advertising; is that right?

23 A. Mostly, yes.

24 Q. Let's see what you say about the low-involvement model in  
25 the book. I put this up on the screen and I've highlighted a

1 passage in which your book says, "Generally, the model is --"  
2 we're talking about the low-involvement model; right?

3 A. Yes.

4 Q. "The model is characterized by products or services that are  
5 well established in the market, yet do not have a great deal of  
6 product differentiation between the competitors. Products such  
7 as dish soap, chewing gum, and floor wax are often purchased on  
8 a regular basis and may not be given a great deal of  
9 consideration prior to purchase.

10 "Advertising objectives are designed to create limited  
11 awareness and help remind the consumer of the brand at the time  
12 of purchase. At times, such objectives may be image based when  
13 image is taken to mean an easy way to think about or stereotype  
14 the product. Advertising objectives are not focused on changing  
15 or developing attitudes. Attitudes are formed as a result of  
16 using the product or service."

17 Did I read that right?

18 A. Yes.

19 Q. And the fact of the matter is that if you look at what  
20 Vaughn discussed, they discussed various types of reminder  
21 advertising such as Budweiser might use to remind you to drink  
22 Budweiser; right?

23 A. Yes.

24 Q. And you noted at the outset of our testimony in the  
25 government's examination that for the past 30 years Marlboro has

1       had a very consistent western theme of Marlboro Country or the  
2       Marlboro Man; right?

3       A.   Yes.

4       Q.   And haven't people written that that is characteristic of  
5       reminder advertising where you have a theme that reminds you  
6       with very little having to think about it, that yes, that's the  
7       association with Marlboro; right?

8       A.   Yes.

9       Q.   And the same thing, Newport has had the same campaign for  
10      the Alive With Pleasure Campaign, as you pointed out, with very  
11      similar themes for 30-some years, and that also is a form of  
12      reminder advertising that people can readily associate those  
13      colors and that type of advertising, the picture of the pack and  
14      it reminds them, yes, Newport, without having to think a lot  
15      about it; right?

16      A.   Yes.

17      Q.   Now, I didn't see anywhere in your book where it stated that  
18      low-involvement advertising is somehow particularly useful or  
19      qualified to target adolescents to have them start using a  
20      product; is that right?

21      A.   Yes.

22      Q.   And certainly I went and looked at what Vaughn had written  
23      and I didn't see anything in there either saying, Gee, this low  
24      involvement quadrant in my model, this is a good place to figure  
25      out how to advertise to adolescents; right?

1     A. That's correct, but we've kind of jumped around a little  
2     bit, sir, and we went from my book to the Vaughn model, which I  
3     use in the direct testimony, and the Vaughn model has some very  
4     specific ramifications for cigarette -- for cigarette products.

5             So we've taken a kind of general notion that I laid out  
6     in my book, went to the Vaughn model and then kind of gone back  
7     to my book and back to the Vaughn model.

8             So, when I use the Vaughn model in my direct testimony,  
9     it's because the Vaughn model, when he initially hypothesized it  
10    and was thinking about it way it worked, put cigarettes in that  
11    lower right-hand low involvement quadrant.

12    Q. Right. He put it in that quadrant that you in your book  
13    characterized as advertising where the objectives are not  
14    focused on changing or developing attitudes; right?

15    A. Again, sir, you've gone back to my book, and I think the  
16    more -- which is a general overview -- surely, I think a good  
17    general overview of it, but the Vaughn model, which I clearly  
18    use in my direct testimony, is the most germane to the way I  
19    elect to analyze and classify cigarette advertising in this  
20    case.

21    Q. Well, just so we are clear, Dr. Krugman.

22    A. Yes, sir.

23    Q. Because I do want this to be clear. I'm not trying to  
24    dispute with you that cigarettes are in the low involvement  
25    category. Okay? Do you understand that?

1 A. Yes.

2 Q. What I'm trying to do with what you have in your book is  
3 help the court to understand further, because what's in your  
4 book is not in your testimony; right?

5 A. Yes.

6 Q. To understand further what it means to be in the low-  
7 involvement category. All right? So we are both in agreement  
8 that cigarettes are in the low involvement category; right?

9 A. Correct.

10 Q. And low-involvement category is often characterized by  
11 advertising with imagery; right?

12 A. Correct, sir. That's correct.

13 Q. All right. Let's talk a little bit about your conclusion  
14 that cigarette marketing expenditures are high.

15 In your written direct, at page 21, you say -- well, if  
16 you would get that in front of you. Near the bottom, you say,  
17 "Cigarette advertising and promotion expenditures historically  
18 and currently have traditionally been high and have recently  
19 been increasing." Right?

20 A. Correct, sir.

21 Q. And I read that and I sort of wondered a little bit. When  
22 you say high, high in relation to what?

23 A. The overall dollars spent are enormous, so they are high.

24 Q. Well but there's no benchmark in here, is there?

25 You didn't compare cigarette advertising to any other



1 industry's advertising to see, to give some kind of benchmark of  
2 relativity, did you?

3 A. I do.

4 Q. That's where -- you have some examples from back in the '60s  
5 with respect to television and so forth; is that right?

6 A. '60s, '70s, going up to the -- to at least the -- I believe  
7 the '80s using FTC data, sir.

8 Q. Right, but -- so let me just clarify because I was -- I was  
9 not as clear as I wanted to be.

10 I didn't see anything where you compared cigarette  
11 advertising in the '90s, or more recently, to any other  
12 industry; is that right?

13 A. Yes. And I would remind us that it's not only cigarette  
14 advertising, it's cigarette advertising and promotion that we're  
15 talking about at this point in time.

16 Q. That's right. You talk about cigarette advertising and  
17 promotion, and you mention in your book and in other places that  
18 those are two different categories of marketing; right?

19 A. Yes. And in my direct testimony I'm very careful to show  
20 how the concept of integrated marketing communication links  
21 those two together.

22 Q. Let's start with cigarette advertising. All right?

23 A good source of information on cigarette advertising  
24 is the FTC regular reports to Congress that report on the amount  
25 of cigarette advertising and promotion; right?

1 A. Correct, sir.

2 Q. And you had available to you the FTC report for 2002 that  
3 was issued this year, which is the most up-to-date FTC report  
4 that anybody has available; is that right?

5 A. Yes. I got that right before my expert report -- my direct  
6 testimony was going in, so it wasn't included in the fullest  
7 way. I mostly focused on the 201, mostly for timing issues. It  
8 just came out right before I was finishing up.

9 Q. All right. Now, let's just -- the court has seen, through  
10 some other witnesses, some of this and I would be pretty quick  
11 with it.

12 But we took the FTC data from -- and this is from the  
13 most recent report -- and broke out the promotional expenditures  
14 from all other expenditures which was mostly advertising  
15 expenditures, just to show, and other witnesses have had similar  
16 exhibits, to show that the clear trend is that the promotional  
17 expenditures that are driving the marketing expenditures over  
18 all as you see up; is that right?

19 MS. BROOKER: Your Honor, I would just ask that  
20 Mr. Bass could clarify for the record whether these are adjusted  
21 or unadjusted figures.

22 THE COURT: Several things. Adjusted and unadjusted,  
23 number one, and number two, you should identify the exhibit for  
24 the record.

25 MR. BASS: First, it's unadjusted. It's just the

1 numbers reported by FTC are not inflation adjusted and they are  
2 straight out of the FTC. The exhibit is JDEM, 010135.

3 BY MR. BASS:

4 Q. Do you see that, Dr. Krugman?

5 A. I do.

6 Q. That comports with your understanding that since 1990, it's  
7 the -- especially since 1996 or '97 -- that it's the promotional  
8 spending that is driving the numbers upward; right?

9 A. Yes, sir.

10 Q. Now, if we focus just on media spending, and we focus a  
11 little bit more closely on it, we see that since 1990 cigarette  
12 media spending is actually going down. And if you look at the  
13 major forms of mass media, this again is straight out of the  
14 categories in the FTC report.

15 What I put on the screen is J-DEM 010130. This is the  
16 combined outdoor advertising, magazine and newspaper and  
17 point-of-sale advertising. All right. Do you see that?

18 A. Yes, sir.

19 Q. And if you aggregate those, what you see is a fairly steady  
20 decline in those overall expenditures from 1990 to the most  
21 recent data that the FTC has put out; right?

22 A. Yes.

23 THE COURT: Is it fair to say, Doctor, that the  
24 biggest -- not the biggest -- but the sharpest decline occurs in  
25 approximately 1998 after the signing of the MSA?

1           THE WITNESS: I think there is a -- from '98 to '99  
2       there was more spending in magazines, and then in -- yes, over  
3       all, Your Honor, that's correct.

4           I was just pointing out that there would be some  
5       differences between outdoor magazines and point of sale. Yes,  
6       Your Honor.

7       BY MR. BASS:

8       Q. Now, you go -- if you look at the FTC report, they also,  
9       they have historical data for various categories of media  
10      spending by the industry. And if you look at just magazines --  
11      again, this is J-DEM 010134 -- and the FTC reported in its most  
12      recent report -- this is right out of the report -- they  
13      reported that spending on magazine advertising peaked in 1984  
14      when cigarette companies reported spending \$425.9 million;  
15      right?

16           And I'm sorry. That's from, what I got up there is  
17      from JD-013056.

18      A. Yes, sir.

19      Q. And then what I did is I charted it from the peak, which was  
20      in 1984, to the present, and what you see is before the MSA,  
21      magazine expenditures were on their way down. They had a brief  
22      peak as the MSA came into effect, and then it went back down and  
23      has continued its downward trend. Is that right?

24      A. Yes, sir.

25      Q. So just so we are clear, magazine spending has been going

1 down for a long time; right?

2 A. It has been going down, yes, sir.

3 Q. If we -- by the way, if we adjusted those numbers for  
4 inflation, it would be a steeper decline, because magazines cost  
5 more today than they did in 1984, right? Cost more to advertise  
6 in magazines; right?

7 A. Yes.

8 THE COURT: Mr. Bass, why don't we take a break at this  
9 point. We will take 15 minutes, everyone, please.

10 (Recess began at 11:00 a.m.)

11 (Recess ended at 11:16 a.m.)

12 THE COURT: Mr. Bass, how much longer do you think you  
13 have?

14 MR. BASS: My goal is to -- I just took a whole bunch  
15 of stuff out, and I very much hope to finish before lunch with  
16 my part, Your Honor.

17 THE COURT: I would hope so. Okay, go ahead, please.

18 BY MR. BASS:

19 Q. All right. We were talking, Dr. Krugman, about the amount  
20 of media spending by the tobacco industry; right?

21 A. Yes, sir.

22 Q. All right. And I just wanted to see if we can't put it a  
23 little bit into perspective.

24 Let me show you what's been marked as J-DEM 010150,  
25 which is a chart that we've created of advertising expenditures

1 in major categories, and this is in magazines. All right? Do  
2 you understand that, Dr. Krugman?

3 A. Yes.

4 Q. And this is data that came from the Magazine Publishers of  
5 America based on data from CMR/TNS; right?

6 That's what it says. I understand you don't know, but  
7 that's what it says; right?

8 A. Yes.

9 Q. And the CMR is the same source that you went to, to get data  
10 on the tobacco industry's spending in various magazines; right?

11 A. Correct.

12 Q. Now these categories that are represented on here are  
13 categories that are created by the Magazine Publishers  
14 Association -- or Magazine Publishers of America, and they put  
15 this information actually up on their website.

16 Have you ever seen this on their website? You won't  
17 see this chart, but the data.

18 A. It's from the Magazine Publishers Association?

19 Q. Right.

20 A. I have not seen this chart.

21 Q. And I want you to assume the information on this chart is  
22 correct, someone else will come in at some point to provide the  
23 basis for it, but it is, then it shows that cigarettes, tobacco  
24 and accessories, which is going to include a little bit more  
25 than cigarettes, but as an advertising category they have

1       essentially stayed flat or gone down while the other major  
2       categories of spending on advertising and magazines have gone  
3       up; right?

4               And I'm talking now from the period from 1994 to 2003.  
5       Right?

6       A.   Yes.

7       Q.   And cigarettes are no longer even in the top 10 categories  
8       of spending on advertising and magazines; right?

9       A.   Yes.

10      Q.   All right.   Just a couple of other things so that we can  
11      keep this in perspective.

12             I'm going to show you what's been marked as J-DEM  
13      010149.   This is a comparison of media advertising expenditures  
14      between the tobacco industry in 2002 as reported by the FTC and  
15      various aspects of the household cleaning products industry.

16             Do you see that?

17      A.   These are advertising media expenditures only?

18      Q.   Right.   That's right.   Advertising and media.

19      A.   There's no promotional dollars in here?

20      Q.   That's right.   There are no promotional dollars, this is  
21      just advertising.

22             And you see that in terms of the tobacco industry, that  
23      its spending is about on par with Procter & Gamble's spending on  
24      household cleaning products.   That's just one member of the  
25      household cleaning products industry, right?   Probably the

1       biggest one; right?

2       A.   Yes.

3       Q.   And it's about on par with the total industry spending just  
4       on laundry and fabric care products; is that right?

5       A.   Yes.

6       Q.   All right. And we saw earlier from the FTC reports that the  
7       tobacco industry's spending on mass media -- on advertising --  
8       excuse me -- has gone down since 1990, but overall, based on the  
9       data that I've put up here on J-DEM 010190, overall spending on  
10      advertising has continued to climb from 1990 to 2004 with a  
11      brief decline in, I think, 2001; right?

12      A.   Yes.

13      Q.   So cigarette advertising is becoming an ever smaller part of  
14      the overall advertising picture; is that right?

15      A.   Cigarette media advertising has certainly become more  
16      constrained.

17      Q.   Well, that's what -- I used the word "advertising" because I  
18      understand that that's the word that we're talking about. Not  
19      marketing, but advertising. Right?

20                Just before you get to what you were going to say, the  
21      question was, isn't it true that cigarette advertising has  
22      become an ever smaller part of the overall advertising pie?

23      A.   Yes.

24      Q.   All right. And you're aware that various publications and  
25      marketing industry put out rankings of top brands based on their



1 advertising spending; right?

2 A. Sure.

3 Q. You've seen the issue of Brand Week where they do super  
4 brands. Have you seen that before?

5 A. At times, yes. I can't remember an exact one, sure.

6 Q. Let's have JD 013105 which is the current issue of Brand  
7 Week, or it may be a recent issue of Brand Week, but it's the  
8 most recent ranking of super brands.

9 Do you have that, Judy?

10 A. Thank you.

11 Q. All right. You have that in front you?

12 A. I do.

13 Q. That's the 2004 super brands issue of Brand Week; right?

14 A. Yes.

15 Q. Brand Week is what would be called a trade publication;  
16 right?

17 A. Yes.

18 Q. What I've done is I've excerpted some information from  
19 there, in J-DEM 010188, to show where the various cigarette  
20 brands rank among top brands in the United States.

21 I think you had mentioned in your testimony that  
22 Marlboro was the most valued brand in the world; right?

23 A. I said according to the analysis, Marlboro was valued at one  
24 of the -- was one of the most valuable brands in the world based  
25 on its -- yes, it was in the top 10.

1 Q. Then if we put the information about -- this is current  
2 up-to-date -- if we put up information about where the various  
3 cigarette brands rank among top consumer advertising spending,  
4 we see that the highest ranking one is Camel at number -- this  
5 is from 2003 data -- Camel is at number 403; right?

6 A. Yes.

7 Q. And we go down, Newport is number 1,916; right?

8 A. Yes.

9 Q. And then if we look down here a little bit on the bottom  
10 part of my chart, they also have spending that is done on --  
11 they include in this spending on various public service  
12 campaigns, and we see that the separate category, Philip Morris  
13 spending on youth smoking prevention, ranks 200; right?

14 A. Yes.

15 Q. That's ranked higher than any of the cigarette brands today;  
16 right?

17 A. Yes.

18 Q. And we see Truth About Smoking, that's the American Legacy  
19 Foundation, youth smoking -- well, the American Legacy  
20 Foundation does both youth smoking prevention and programs aimed  
21 at existing smokers, but that's their spending and that's ranked  
22 at number 246; is that right?

23 A. Yes.

24 Q. And that's also higher than any of the cigarette brands;  
25 right?

1 A. Yes.

2 Q. All right. Now, I want to do something very quick on  
3 promotions; the Judge has heard some other testimony from some  
4 of the other experts about it.

5 But we see on this chart, which I showed you before  
6 J-DEM 010135, that from roughly 1998 or '99 to 2002 you see  
7 roughly a doubling, from about 6 billion up to about 12 billion,  
8 in promotional expenditures; right?

9 A. Correct.

10 Q. Isn't it true that during that period of time, which is  
11 after the MSA, that prices of cigarettes went up dramatically?

12 A. I don't follow cigarette pricing.

13 Q. You don't know?

14 A. I don't know. I don't follow cigarette pricing.

15 Q. All right. Let me ask you to assume that cigarette prices  
16 during that period nearly doubled. Okay?

17 A. What period of time?

18 Q. From the period from 1998 to 2002. All right.

19 Now, when we talk about promotional expenditures,  
20 mostly what we're talking about are discounts in price; right?  
21 In various ways.

22 You can discount the price with a coupon; right?

23 That's price discount; right?

24 A. Yes.

25 Q. You can do what's called a buy down with a retailer where

1       you make a payment to the retailer so that the retailer will  
2       reduce the price of cigarettes; right?

3       A.   Yes.

4       Q.   You can do what's called cents off, which is you come in and  
5       there's a promotion that says \$0.50 off a pack of cigarettes  
6       right there; right?

7       A.   Yes.

8       Q.   And most of this money on promotions is coming from price  
9       promotions during this period from 1998 to 2002, right?  If you  
10      look at the FTC report that's what it says.

11      A.   But those price promotions could also help communicate  
12      imagery.

13      Q.   Right, I understand that.  Let's talk about the money that's  
14      being spent.

15                If the price of cigarettes doubles -- we're just going  
16      to do a little bit of a hypothetical here.  If you have a price  
17      of cigarettes that's \$2 and you have average promotional  
18      spending -- let's say the list price is \$2 and you have average  
19      promotional spending of 10 percent, then you're going to have an  
20      average of \$0.20 in promotional spending per pack; right?

21      A.   Yes.

22      Q.   Now, if the price of cigarettes goes to \$4 and you still  
23      have a 10 percent on average promotional spending on cigarettes,  
24      then the amount of the promotional spending for a pack is going  
25      to be \$0.40 a pack; is that right?

1 A. Yes.

2 Q. And so even though the percentage of promotions has not  
3 increased at all, what gets labeled by the FTC as promotional  
4 spending will double; is that right?

5 A. I'm not -- I'm not an expert at all on pricing here. You're  
6 really getting out of my area of expertise.

7 Q. Okay. Well, if we're getting out of your area of expertise,  
8 that's fine.

9 I take it, then, you're just not in a position to  
10 really explain why this promotional spending has been going up  
11 so much during the most recent years; is that right?

12 A. I would be in a position to explain those, the dollars going  
13 up and how it relates to imagery and how it relates to  
14 communicating brands and brands in store and brands in other  
15 ways. I would not be in a position to look at pricing issues.  
16 That's not my area.

17 Q. Well, one of the things you mentioned in your testimony  
18 yesterday, you talked about one of those stores that you had  
19 gone to and taken pictures at where they had a pic -- a poster  
20 outside for Newport, and you said it's the same poster they've  
21 had for the past 3 or 4 years; right?

22 A. Yes.

23 Q. And if they -- if they are doing price promotions and they  
24 are putting that at the bottom of the poster as the various  
25 prices, they are not actually spending any more money on the

1       imagery; right?

2       A.   If it's the same -- if it's the same sign that they've paid  
3       to be there or they paid to be there on a reoccurring basis and  
4       they change the price, is that the question?

5       Q.   Right.

6       A.   Well, there's going to be an interaction between seeing the  
7       image and seeing the price.

8       Q.   Right, I understand that.  But they are not -- the imagery  
9       component of the promotion is no more -- in other words, all  
10      this going up on this line is not increased imagery promotion,  
11      it's the price component; right?

12      A.   No, I wouldn't necessarily agree with it in the way you put  
13      it.

14      Q.   Well, the imagery part of a price promotion comes where you  
15      have the sign that says what the price is that's associated with  
16      the sign, like the Marlboro sign that has the imagery; right?

17      A.   I understand that, sir.

18      Q.   And if the price of cigarettes doubles on that and you still  
19      have an average of a 10 percent discount and you're -- under the  
20      FTC the way they defined the numbers, you're now spending -- I'm  
21      not sure it's really spending, but they what they say -- you're  
22      spending twice as much money on the promotion part, the imagery  
23      is still the same.

24                You still have the opportunity to put the image there  
25      with the price, but you're not spending more by virtue of the

1       increased price promotion on the imagery portion; right?

2       A. I would put it differently. I'm not sure I can follow along  
3       with your example as clearly as I would like to, to be able to  
4       answer it as -- in a reasonable way.

5               When I look at those promotional allowances in coupons  
6       and retail value going up, many of those are for items in the  
7       store where you have retail value added and you call attention  
8       to that and you have signs that call attention to that, and you  
9       have imagery at times connected with it.

10              The other portions of promotional allowances, as you  
11       have so described, help the company get the product in the  
12       store, in the displays, in the overhead racks, being visible and  
13       helping to communicate that image.

14              So, in my mind it's not -- you can't cordon it off as  
15       simply as you would like to.

16       Q. Well, you understand that the FTC has a category that is  
17       point-of-sale advertising; right?

18       A. I do, sir.

19       Q. And that's -- you understand that's the amounts being spent  
20       on the posters in the stores, on the store front, and out on the  
21       store property; right?

22       A. I do, sir.

23       Q. And isn't it a fact that, if you look at the FTC report,  
24       that that number -- the amount of money spent on that has stayed  
25       flat over the past roughly 10 years?

1 A. Yes.

2 Q. All right. Let me turn to one other thing before we get to  
3 the final area, which is magazines, and that's just this. I  
4 wasn't going to cover this, but one of the other witnesses  
5 referred to this same quote at some point, so I want to just  
6 clear it up for the court.

7 In your written direct at page 52 -- this is in the  
8 section where you're discussing whether cigarettes increase --  
9 I'm sorry -- advertising and marketing increase primary demand  
10 for cigarettes, and you have a quote from Emerson Foote; right?

11 A. Correct.

12 Q. And what you say is that -- you describe who Emerson Foote  
13 was. You say that first he founded Foote, Cone & Belding, then  
14 he left Foote, Cone and went to McCann-Erikson where tobacco  
15 accounted for \$20 million worth of business; right?

16 A. Yes.

17 Q. And then you have a quote from Mr. Foote where he says,  
18 "It's complete nonsense to say that cigarette advertising  
19 doesn't increase demand for cigarettes." Right?

20 A. Correct.

21 Q. But what you don't say is that Mr. Foote left the McCann  
22 agency in 1964 in a big dispute about cigarette advertising, do  
23 you?

24 A. No.

25 Q. If we look at Time Magazine -- it was big enough news to be



1 reported in Time Magazine, this is JD 03112 -- and it discusses  
2 ex-chain smoker's exit, and it talks about Foote leaving  
3 McCann-Erikson. It says, "I will not have anything to do with  
4 any advertising agency which promotes the sale of cigarettes."  
5 Right?

6 A. Yes.

7 Q. And then if we look at the next page of that, Mr. Foote says  
8 that he hopes to work for anti-cigarette causes as a volunteer  
9 propagandist behind the scenes; right?

10 A. That's what the quote says.

11 Q. And then how did Mr. Foote follow up on that desire?

12 Isn't it true that Mr. Foote became the head of the  
13 United States National Interagency Council on Smoking and Health  
14 shortly thereafter?

15 A. Okay.

16 Q. So he actually was a government official; right?

17 A. I'm not familiar with the organization, so I can't -- I  
18 can't comment on that.

19 Q. That's a government agency, right? The National Interagency  
20 Council on Smoking and Health.

21 A. I don't know that.

22 Q. The document where he has the quote that you used --

23 A. Yes.

24 Q. -- actually, this is U.S. Exhibit 77086, which is the  
25 document that you cite to, refers to the fact that he -- when he

1 left McCann-Erikson, he went to the Interagency Council on  
2 Smoking and Health, and then it says, "For more than 10 years, I  
3 was in the forefront of the tobacco-health campaign." Right?

4 A. Yes.

5 Q. That is not information that you included in your direct  
6 examination when you quoted Mr. Foote as an advertising  
7 executive who was familiar with tobacco advertising; right?

8 A. The reason I selected --

9 Q. Just answer yes or no first, please.

10 A. Yes.

11 Q. All right. Now --

12 A. The reason I selected Mr. Foote as well as referred to  
13 others in the Surgeon General's Report is I first saw his quote  
14 in the Surgeon General's Report and then went and looked up his  
15 actual -- the actual statements that he made.

16 And the reason I was persuaded by Mr. Foote was here  
17 was an individual that started with Lord & Thomas Advertising  
18 Agency, and when the agency broke up he was handed, I believe it  
19 was -- I hope I'm factually correct -- the American Tobacco  
20 account, and they started Foote, Cone & Belding, and he had just  
21 enormous experience in advertising tobacco and cigarette  
22 products.

23 So I was very persuaded by his knowledge of the  
24 industry when he discussed primary demand. That's why I  
25 selected it. His advocacy position really was not particularly

1 important to me.

2 Q. But it might not have been important to you, Dr. Krugman,  
3 but don't you think that it would be fair to say that for people  
4 evaluating the impact of his statement, that it would be  
5 important information for them to know that he had served as an  
6 advocate and, in fact, as an official of the government which is  
7 suing us in this case?

8 A. I'm trying to think that through.

9 The persuasive part to me was a gentleman who had  
10 worked long and hard and knew the particulars of the industry  
11 with respect to the development of primary demand and whether it  
12 could bring new people into the market. That's why I selected  
13 it.

14 Q. All right. And I'm not going to spend much time on primary  
15 demand because I believe the government has a witness,  
16 Dr. Erikson, who is going to be talking a lot more about the  
17 literature on that issue, but I wanted to note a couple of  
18 things.

19 Number one, you didn't mention -- there's a discussion  
20 in your book at page -- starting at page 118 on advertising and  
21 aggregate consumption, right? If you look at page 118. Do you  
22 see that?

23 A. Yes.

24 Q. And in there, as I've highlighted -- this is not in your  
25 direct testimony -- it says, "Most of the evidence would seem to

1       indicate that advertising is the result rather than the cause of  
2       consumption." Right?

3       A. That's what it says. I wish -- again, I did not write this  
4       portion of the book, my co-author did, and I would have written  
5       it differently. I wouldn't have used the word "cause."

6       Q. But I mean you're the lead author on this overall book.

7       A. Yes, I am.

8       Q. And it also says on that same page -- and mine is a little  
9       bit cut off on the right-hand margin, but I think we can get it.

10                "Of the attempts to assess the effect of total  
11       advertising expenditures on aggregate consumption in specific  
12       markets, such as cigarettes and alcoholic beverages, only a few  
13       studies have found modest changes in total market sales, as  
14       opposed to market shares." Right?

15       A. That's correct.

16       Q. And most of the studies have found that the effect of  
17       advertising in terms of cigarettes is a shift in market shares;  
18       is that right?

19       A. Well, if you go back to the first point on aggregate  
20       consumption. When you look at effects, it's very difficult to  
21       find effects when you're looking at aggregate consumption. It's  
22       just a very hard thing to do. So that's not an inaccurate  
23       statement in the book at all, it's just a statement that it's  
24       just difficult to find them.

25       Q. All right.

1           THE COURT: Aren't the two statements from your book  
2     that were just quoted by Mr. Bass inconsistent with the position  
3     that you have quoted approvingly from Emerson Foote?

4           Mr. Foote seems to be saying that, "of course  
5     advertising increases and stimulates sales," and you seem to be  
6     saying something different. You or your co-author seem to be  
7     saying the opposite of that in your book.

8           THE WITNESS: My co-author who wrote it would give the  
9     impression that that's the opposite.

10          And I selected Mr. Foote because I'm of the belief, as  
11     are other professionals who I quote in the direct testimony,  
12     that advertising and sales promotion increase primary demand.

13          THE COURT: Does your book indicate the different  
14     portions or different chapters are written some by you, some by  
15     your co-author?

16          THE WITNESS: No, they don't, and that's one of the  
17     problems with the multiple-authored book, because earlier,  
18     yesterday when we talked about some of the work that was done up  
19     front on select -- on perception, Your Honor, was not written by  
20     me and would have been -- would have been viewed differently by  
21     me when you look at later portions of the book. That can be a  
22     problem. But the opening portions of the book lay out very  
23     general issues to introductory students.

24          THE COURT: That's a pretty major problem, isn't it, if  
25     you sign your name as an author of the book and you disagree

1 with a fairly significant conclusion reached in one of the  
2 portions of the book?

3 THE WITNESS: Well, Your Honor, the earlier portions of  
4 the book take a more -- take a more general position and then we  
5 get into the particulars later.

6 My co-author and I have disagreed on some -- on matters  
7 that go into the book, surely.

8 BY MR. BASS:

9 Q. All right, Dr. Krugman, I want to now turn to what I hope  
10 will be the last part of the examination, but not a short part.  
11 This is one -- I want to focus specifically on magazine  
12 advertising, because a good deal of your testimony focused on  
13 that, and certainly the direct examination you did yesterday  
14 with respect to the various things that you showed the court  
15 focused on magazine advertising; right?

16 A. Yes.

17 Q. And magazine advertising is also something as opposed to  
18 many other forms of advertising and marketing where the  
19 defendants actually are still in the business of advertising in  
20 magazines, except for Philip Morris right now; right?

21 A. Yes.

22 Q. All right. So we're getting into an area of current  
23 advertising and marketing practices.

24 Now, the first thing is that you wrote -- you published  
25 an article in the Journal of Public Policy and Marketing in 2000

1       that deals with cigarette advertising; right?

2       A.   Yes, sir.

3       Q.   And that was with Karen Whitehill King; right?

4       A.   Yes.

5       Q.   And that is U.S. Exhibit 64327.  I'll let you have it so I  
6       can ask you some questions about it.

7       A.   Thank you.  I only have a portion of the article.  Is that  
8       intended?

9               MR. BASS:  Give him the whole thing.

10      Q.   I'm going to ask you a series of questions.  I want to make  
11      sure you have it.  Let me ask you while they are trying to find  
12      it, and we will get it to you, let me ask you some preliminary  
13      questions about it.

14             The first thing is the title of your article is:  
15      Teenage Exposure to Cigarette Advertising in Popular Consumer  
16      Magazines; right?

17      A.   Yes.

18      Q.   And actually, though, it's not about teenage exposure to  
19      cigarette advertising in popular consumer magazines so much as  
20      teenage exposure to popular consumer magazines that have  
21      cigarette ads in them; right?

22      A.   We explain that in the article.

23      Q.   Right, you explain it.  But just so we are clear.

24             You didn't actually have any measure in this article of  
25      teenagers exposures to the actual ads; right?

1 A. No. We talk about it in the article as OTS: opportunity to  
2 see.

3 Q. All right. I just want to be -- in fairness on that, on  
4 page 184 of your article, talking about opportunity to see. And  
5 you note that there are currently no data available on the  
6 literature that provide an accurate estimate of actual  
7 advertising exposure; right? That's in the right-hand column.

8 A. Yes. You said advertising exposure. Cigarette advertising  
9 exposure.

10 Q. Well, I was just reading what it says here, but of cigarette  
11 advertising exposure. And that's true today; right?

12 A. Would you ask the question again, sir? I'm sorry. I was  
13 reading and trying to catch up with you.

14 Q. That's okay. Is that true today, still today, that there's  
15 no data available in the literature that provides an accurate  
16 estimate of actual cigarette advertising exposure?

17 A. I have seen -- there are some estimates. There are some --  
18 there are some -- there are some better estimates of opportunity  
19 to see, but -- but not exposures to the ad, if I understand your  
20 question correctly.

21 Q. Right. There are estimates -- there are inferences from  
22 other data, but there's no actual data among adolescents on  
23 their exposure to cigarette advertising; right?

24 A. There's one piece that tried to do that -- there is  
25 one piece that tried to estimate exposure in a very limited way.



1 Q. That's the Lancaster article?

2 A. Yes, sir.

3 Q. But again that was an estimate, that was still conferred --  
4 it didn't get the final step, right? It didn't have actual  
5 data, because you're talking about adolescents, and people don't  
6 generally measure adolescents -- market research firms don't  
7 measure adolescents' exposure to cigarette ads, do they?

8 A. I'm trying very hard to understand the question.

9 If I understand the question, you're saying that there  
10 aren't estimates of adolescents actually seeing ads as opposed  
11 to having the opportunity to see the magazine.

12 Q. Right.

13 A. Yes.

14 Q. Did we get a copy of the article?

15 Now, just so we have the perspective. There's various  
16 research that you refer to in your written direct examination on  
17 cigarette advertising in magazines, but up to the point that  
18 your article was published, as I've highlighted here, you stated  
19 that, "No study has estimated the likely amount of exposure to  
20 popular consumer magazines that contain tobacco advertising."  
21 Right?

22 A. That we knew about, sure.

23 Q. So your study was trying to go the next step, right?

24 You were trying to further some research that had been  
25 done previously.

1 A. That's the point of when we do our work, sure.

2 Q. Right. And you started off -- I just want to spend a second  
3 on the methodology -- but you started with -- you used data from  
4 1998; right?

5 A. Yes.

6 Q. And the methods on page 185. You used data from MRI's 1998  
7 Teen Mark Report -- here, I'll put this on the screen so we can  
8 all follow along.

9 But at the top, it says you used data from MRI's 1998  
10 Teen Mark Report to generate a list of popular consumer  
11 magazines with teenage composition -- and teenage you define as  
12 12 to 17; right?

13 A. Right.

14 Q. Relative to total audience of the magazines of 15 percent or  
15 higher.

16 A. Yes.

17 Q. And you had a list of 34 magazines under MRI.

18 Then you took out some of those magazines because they  
19 don't accept cigarette advertising.

20 A. Correct.

21 Q. Including Sassy, YM, Teen, Seventeen; right?

22 A. Yes.

23 Q. I couldn't tell if that was -- you have "e.g. Sassy, YM,  
24 Teen and Seventeen." I couldn't tell if that meant there were  
25 more or not.

1 A. I don't think there were more. Interesting.

2 Q. And then you also, you cross-checked this with the Simmons  
3 Teen Report for 1998; right?

4 A. Well, the first thing we did was checked to see that the  
5 magazines in question contained cigarettes ads and then cross-  
6 checked it with Simmons.

7 Q. All right. And after that you had 14 magazines left; right?

8 A. Yes, sir.

9 Q. Now, what I couldn't tell from this is how many magazines  
10 from MRI that had over 15 percent readership, didn't have over  
11 15 percent under the Simmons' readership survey?

12 A. I don't know. We were -- I don't know.

13 Q. And I put minus 16 here, but I understand that if they  
14 didn't contain cigarette advertising, it would also drop off the  
15 list, and I know that would knock off -- could knock off some  
16 magazines; right?

17 A. Yes, but magazines not reported by Simmons were dropped from  
18 the study, which -- because we ultimately wound up using the  
19 Simmons approach.

20 So unless they were in the Simmons' database for  
21 magazines read we couldn't use them even if they were on the MRI  
22 list.

23 Q. All right.

24 A. That would explain much of the drop off.

25 Q. But we can't tell from this description of the methodology

1       what the different reasons for the rest of the 16 dropping off;  
2       right?

3       A.   No.   That is the reason.

4               The list -- the list remaining was cross-checked with  
5       the 1998 Simmons' Teen Report.   Magazines not reported by SMRB,  
6       Simmons were dropped from the study.   14 consumer magazines that  
7       contained advertising and have teenage readership composition of  
8       at least 15 percent remained on the list.   So that's how we got  
9       there.

10      Q.   All right.   Then what you found in your study is that if --  
11      a manufacturer placed just one ad in each of the 14 magazines  
12      they would reach a significant percentage of teenagers with a  
13      frequency ranging from 1.7 to 2.3.   That's in Table 2 on page  
14      186.

15      A.   Yes, sir.

16      Q.   So the court has that.

17               Table 2 in your article, it shows that by putting  
18      one ad in each of those 14 magazines you would reach 66 percent  
19      of teens, age 12 to 17; right?

20      A.   Yes.

21      Q.   And the reach of those teens would, on average, they'd be  
22      reached about two times; right?

23      A.   Yes, sir.

24      Q.   Now you did not, though, in your study compare the reach of  
25      the magazines from 12 and 17-year-olds with the reach of those

1 same magazines to any other age group; right?

2 A. That wasn't the purpose of the study.

3 Q. But you didn't do that; right?

4 A. Yes, because it wasn't the purpose of the study.

5 Q. But it would be possible, would it not, to take the same  
6 schedule of one advertisement in each of those 14 magazines and  
7 look at what the reach and frequency would be to, for example,  
8 the 18 to 34-year-old age group; right?

9 A. If we had the available -- the availability of the data, but  
10 let me take a step back, if I may.

11 We asked Simmons to run the study from their dataset  
12 for us and we gave them a very select set of questions. So we  
13 weren't -- we weren't allowed to ask about other points -- other  
14 groups simply because that wasn't the objective of the study and  
15 we were working on their good will to run the data for us.

16 The study was really as you would characterize it a  
17 first chance to look at this question. Nobody had looked at the  
18 question this way. So we took a very limited number of  
19 magazines and a very conservative list, a very limited number of  
20 magazines and a very conservative number of one insertion and  
21 did it.

22 Q. And you have not since undertaken a further study in which  
23 you have then taken those 14 magazines or a similar grouping of  
24 magazines and compared reach and frequency to 12 and  
25 17-year-olds with reach and frequency to some other age groups,

1       such as 18 to 34; right?

2       A.   No.

3       Q.   So we cannot tell from this study, we can't tell whether  
4       these magazines have greater reach and frequency to people 12  
5       and 17 than they do to people in say the 18 to 34-year-old age  
6       group; right?

7       A.   That's true.  Again, it wasn't the point of the study  
8       though.

9       Q.   I understand that.

10               All right, now -- and you specifically state in the  
11       discussion -- this is on page 187 -- "that a finding that  
12       teenagers are exposed to cigarette advertisements in these  
13       current popular magazines does not demonstrate intent on the  
14       part of the tobacco industry to reach such markets."  Right?

15       A.   Yes.

16       Q.   I didn't see that statement in your written direct testimony  
17       in this case; is that right?

18       A.   No.  My views have -- my views have become more  
19       sophisticated on the matter over the 5 years.

20       Q.   Is that because of all the tobacco industry documents that  
21       you were provided by the Department of Justice?

22       A.   It's because of my studying the matter in more depth.

23               Again, as I said at least twice, this was our first  
24       kind of social science way to ask the question, and it -- the  
25       research always needs to progress and get better, and views can

1 change or mature. You're...

2 Q. All right. You also said -- and this is on page 188, the  
3 first part I've highlighted -- "Other methods such as eye  
4 tracking and recognition could be used to assess the rate at  
5 which teens actually see cigarette ads in magazines." Right?

6 A. Yes.

7 Q. And that's not research that you've undertaken since the  
8 publication of this study?

9 A. I wish I had the funding to do just that. That would be --  
10 that's a very good idea. It's a good thing to do.

11 Q. Did you ask the government if they would fund something like  
12 that for the purposes of your testimony in this case?

13 A. No.

14 THE COURT: What about the follow-up question,  
15 Mr. Bass? Did he ask any of the --

16 BY MR. BASS:

17 Q. Did you ask any of the cigarette manufacturers whether they  
18 would fund that, Dr. Krugman?

19 A. No, sir.

20 Q. I take it you haven't asked anybody that question for  
21 funding at this point, have you?

22 A. We asked -- not for this specific question, no.

23 Q. All right. And you also say -- the next part I've  
24 highlighted -- that "Although SMRB" -- that's Simmons Media  
25 Research Bureau; right?

1 A. Marketing Research.

2 Q. Marketing. But we just call it Simmons?

3 A. SMRB or Simmons.

4 Q. "Although SMRB and MRI are the most commonly used syndicated  
5 sources for national advertisers to gauge readership for  
6 magazines, they are limited by the way data are collected,  
7 (self-report) the response rate, and the way the teen sample is  
8 drawn." Right?

9 A. That's correct.

10 Q. But you don't go further and discuss what those limitations  
11 are, do you?

12 In other words, you don't elaborate beyond that  
13 statement on the nature of those limitations?

14 A. Not here, no.

15 Q. We're going to get to those in a minute.

16 And you also say, "In addition, measures of audience  
17 size that are available through these sources provide estimates  
18 of the audience size for a particular magazine vehicle, which is  
19 not the same as the size of the audience exposed to a specific  
20 advertisement." Right?

21 A. Correct, sir.

22 Q. In fact, I think there's some data in your book where you  
23 say that the average American is exposed to something between  
24 300 and 1500 advertisements in commercials a day, of which 80  
25 are consciously noted and only 12 result in some sort of



1 response; right?

2 A. Those are very general figures. You hear a lot about  
3 exposure and advertising.

4 Q. But the point is that people get exposed to a lot of  
5 advertising and there's a term "advertising clutter"; right?

6 A. Clutter refers to a communication environment where there's  
7 a lot of messages and it's hard to break through, which is one  
8 of the reasons long-standing campaigns with a lot of weight  
9 behind them have the ability to break through.

10 Q. In your book you also say -- and I don't know if this was  
11 written by you or one of your coauthors, but this is on page 8  
12 of your book -- it says, "Research has proven again and again  
13 that a person may remember an ad but not necessarily what was  
14 advertised. Other research has shown that a person's memory for  
15 an ad is not necessarily related to the ad's persuasibility, as  
16 measured by either attitude change or purchase behavior."

17 Right?

18 A. Yes.

19 Q. That's a pretty fundamental tenet of advertising; right?

20 A. Let me read it over again.

21 Yes, sir.

22 Q. All right. Now, let's talk about -- a little bit about MRI  
23 and how they conduct these surveys. Hopefully, we can go  
24 through this pretty quickly, but I've got stuff I can show if we  
25 need to.

1                   The MRI conducts twice a year what's known as a  
2 household survey; right?

3       A. Yes, sir.

4       Q. And just to be clear, this is -- the household survey that  
5 they conduct is their adult survey of consumers with respect to  
6 their exposure to various media; right?

7       A. Yes.

8       Q. And a key component of that survey is readership of  
9 magazines; right?

10      A. Yes.

11      Q. And when they ask people about their readership of  
12 magazines, the question that's asked is: Have you read or  
13 looked into the particular magazine during the period in  
14 question, which is typically the past 30 days, right?

15      A. Or when the duration of the magazine is, yes.

16      Q. And that's called -- that is called recent readership method  
17 of survey; right?

18      A. Yes.

19      Q. And MRI -- the sample that they draw from households is,  
20 between the spring and the fall survey they do is roughly  
21 between 25 and 30,000 households; right?

22      A. I'd have to see that again, but that could be the case.

23      Q. I don't think the exact number is all that important, but  
24 let me ask you this.

25                   A number of years ago Simmons used to use a different

1 methodology than MRI called Through the Book; right?

2 A. Yes.

3 Q. And under the through the book method you would -- it was  
4 also a household survey, so it was an interviewer going to  
5 somebody's house and interviewing them; right?

6 A. Yes.

7 Q. And through the book they would have actual condensed  
8 magazines with actual articles, editorial content of the  
9 magazines, not the ads, but editorial content of the magazines  
10 without the advertisements to jog people's memory about whether  
11 they had read or looked into that magazine; right?

12 A. Yes.

13 Q. And Simmons used the through the book method until  
14 approximately 1994; right?

15 A. I think so.

16 Q. And the Simmons method of through the book resulted in much  
17 lower overall readership numbers than the MRI recent reader  
18 methodology; right?

19 A. There's a controversy over it. I'd have to go back and look  
20 at that specifically.

21 Q. Let me look, show you some data from 1994, the last year  
22 that Simmons did the through the book method. This is J-DEM  
23 010127. And this is adult readers, 18 and over, and this shows  
24 what the broadest readership measure was for each of those two  
25 surveys in 1994 for a number of popular magazines, all of which

1 I believe contained cigarette ads. All right?

2 And what you see is that for each one of these the  
3 readership number for Simmons is lower than for MRI. In some  
4 instances MRI is more than 200 percent or more than double the  
5 number of readers from Simmons; right?

6 A. Yes.

7 Q. And there's actually a whole -- well, it's not a large body,  
8 but there actually is some academic literature in the marketing  
9 area that discusses which one of these methods is a better way  
10 to measure readership; right?

11 A. Yes.

12 Q. And there's at least a number of researchers who say the  
13 Simmons' method was the more accurate method of readership, but  
14 it was too cumbersome to expand it to the number of magazines  
15 that MRI covered; right?

16 A. Yes.

17 Q. And so ultimately Simmons had to abandon recent readership  
18 and use -- I'm sorry -- Simmons had to abandon through the book  
19 to go to recent readership in order to keep up with MRI in terms  
20 of coverage of magazines?

21 A. They are now -- their methods are now much more similar.

22 Q. And if we look, one of the issues that comes up with  
23 cigarette advertising is, Well, what's the reach of the magazine  
24 to youths?

25 And you see the same thing in 1994 in the two youth

1 readership surveys. This is, again, this is J-DEM 010144. And  
2 this is the readers between the ages of 12 to 17 for Simmons and  
3 MRI, and you see that under Simmons the reach or the readership  
4 of those magazines is in every instance lower than it is for  
5 MRI; right?

6 A. Yes.

7 Q. And if you were to establish a readership figure of 2  
8 million as some kind of regulatory cutoff for advertising in  
9 magazines. In 1994 if you used Simmons you could put an ad, a  
10 cigarette ad in Vogue; if you used Simmons you could put a  
11 cigarette ad in Hot Rod, but you couldn't if you used MRI. The  
12 same thing for Sport. And there are probably other magazines  
13 where that would be the case. Is that right?

14 A. Yes.

15 Q. So, immediately what we see is you have a problem when you  
16 start to come up with this regulatory measure of cigarette  
17 advertising to a certain number of youth readers that the data  
18 don't all jive together; right?

19 A. Well, I think -- I think part of the issue is that in  
20 understanding audiences, everybody -- everybody understands that  
21 they are estimates. And the most important thing is to get an  
22 estimate that's a level playing field so you would know the  
23 relative strength of one -- one magazine against another.

24 And it is true that Simmons has gone to MRI for  
25 practical reasons, just so they could kind of get in the same

1     playing field, but that doesn't necessarily get at the question  
2     as to which one is really more accurate or better.

3     Q.   Well, I understand that, and let's take from the standpoint  
4     of an advertiser who wants to put the ad in a magazine.

5             The relative ranking of Simmons and MRI was generally  
6     the same in terms of which magazines had the most readers;  
7     right?  Relative ranking.

8     A.   Yes.

9     Q.   And so if you're an advertiser and you say I want to put it  
10    in the larger magazines, you could use either one without  
11    worrying about what the total number is; right?

12    A.   Yes.

13    Q.   And advertisers have long been able to do that, and the  
14    issue of which one more accurately reports readers has not  
15    really concerned advertisers in terms of making their media  
16    selections unless the magazines show a significantly different  
17    overall ranking; isn't that right?

18    A.   Well, the numbers of people reached are always a concern to  
19    advertisers.

20    Q.   I understand the numbers of people that they reach.

21             But if you consistently use one or the other, then you  
22    can gauge the relative reach of your advertising campaign  
23    across-the-board; is that right?

24    A.   Mostly.

25    Q.   All right.  And before the FDA proposed a rule in 1994 -- I

1 think it was 1994, it could have been 1995 -- but proposed a  
2 rule to restrict cigarette advertising in magazines with either  
3 15 percent youth readership or 2 million youth readers, no  
4 government agency had previously tried to enforce such a  
5 standard, a regulatory standard, with respect to advertising in  
6 magazines for any product; isn't that right?

7 A. I'm not here to talk about regulation. I haven't been asked  
8 in this case to talk about regulatory matters or opine on what  
9 the government should be doing in terms of various percentages  
10 or standards.

11 Q. And I'm not asking you -- believe me, Dr. Krugman -- I'm not  
12 asking you to tell the court what your recommendation would be.  
13 Mine is a simpler question.

14 Before 1995 when -- you understand, let's take it in  
15 smaller bites. You understand around 1994, 1995, the FDA  
16 proposed a rule or a regulation that would limit cigarette  
17 advertising in any magazine that had either 15 percent youth  
18 readership -- youth being ages 12 to 17 -- or 2 million youth  
19 readers; right?

20 A. Yes.

21 Q. And they could put black and white tombstone ads in  
22 magazines that were below that threshold; right?

23 A. Yes.

24 Q. My question is are you aware of any time before the FDA made  
25 that proposal in which any government agency or any other

1 regulatory authority had proposed using a similar standard of  
2 either percent of youth readership or absolute numbers of youth  
3 readers as a basis to restrict magazine advertising?

4 A. I don't know.

5 Q. All right. And are you aware that the -- ultimately that  
6 FDA regulation was vacated by the Supreme Court so it didn't  
7 become -- it was not enforced as a regulation. Isn't that  
8 right?

9 A. I am aware of that.

10 Q. But there has since then been ongoing discussion in academic  
11 literature and among the tobacco companies themselves about  
12 using some kind of standard to regulate cigarette advertising in  
13 magazines; right?

14 A. I'm aware of it, yes.

15 Q. And many people have started to use that 15 percent and  
16 sometimes the 2 million cutoff as a -- as a standard to sort of  
17 determine whether a magazine is or is not a youth magazine;  
18 right?

19 A. Yes.

20 Q. Now, were you aware that the Magazine Publishers of America  
21 had submitted comments to the FDA on the FDA's proposal?

22 A. No.

23 MS. BROOKER: Objection, relevance.

24 THE COURT: Sustained.

25 BY MR. BASS:



1 Q. Let me talk a little bit about -- well, just to close out  
2 one part of that.

3 If you use an actual numerical standard of readership  
4 for a magazine, of youth readers for a magazine, then it does  
5 matter whether you have an accurate measure of the readers of  
6 that magazine, doesn't it?

7 A. Sure. But, of course, you want to be as accurate as  
8 possible, understanding that different techniques will elicit  
9 different numbers.

10 Q. All right. Now, let's talk about percent of youth  
11 readership, 15 percent.

12 If you -- in order to get a percent of youth readers  
13 you have to have a survey, you have to have some method of  
14 having a universe that includes everybody from age 12 to all  
15 through adults, right, in order to get a percent of the youths  
16 of the total; right?

17 A. Correct.

18 Q. And when MRI conducts those surveys in the spring and the  
19 fall of every year of its households, they don't include 12 to  
20 17-year-olds?

21 A. 12 to 17-year-olds are included differently.

22 Q. Well, what they do is they go to the household and they ask  
23 the people in the house, Do you have -- to list everybody in the  
24 household by age, including people 12 to 17; right?

25 A. Yes.

1 Q. And then what they do is they mail a survey to the 12 to  
2 17-year-olds and ask them questions in the mail survey; right?

3 A. They either leave it behind or mail it.

4 Q. Well, I can pull out a document here in a second. And maybe  
5 what you're thinking about is -- because there are several  
6 different components.

7 When they go to the household, the interviewer fills  
8 out the information that they get from the interview; right?

9 A. Yes.

10 Q. They leave behind a consumer survey of products and ask the  
11 person to fill out that survey of the different products that  
12 they've used and then they try to come back and pick that up;  
13 right?

14 A. Yes.

15 Q. And some people -- sometimes the interviewers have moved on  
16 to another city and so they ask them to mail them back; right?

17 A. I would like to see the methodology right in front of us.

18 Q. I want to make sure we get it straight.

19 Let's get, Judy, JD 013099.

20 That document, Dr. Krugman, is straight off the MRI  
21 website and is the technical guide for their general media  
22 survey. All right?

23 A. Yes.

24 Q. And it is kind of a long document. Actually, I think this  
25 is not where we're going to find the answer to the teen survey

1 issue. If we go to JD 023198, we get -- unfortunately, it's a  
2 smaller document -- we get the MRI Teen Mark Technical Guide.  
3 All right?

4 You understand that Teen Mark is the survey that MRI  
5 conducts of -- this actually is teenagers because it's actually  
6 12 to 19; right?

7 A. Yes. But 12 to 17 can be separated out of that data set.

8 Q. No, I understand. If you look at page 2 --

9 A. I see it.

10 Q. It says, "A mailed questionnaire was used to collect all  
11 data for the study"?

12 A. Correct.

13 Q. So we've got that straight.

14 A. Yes.

15 Q. So the adult survey is -- the adult survey is a household  
16 survey and the teen survey is a mailed survey; correct?

17 A. Yes.

18 Q. If we stay on this same page -- and I think it describes in  
19 there on -- I think on page 1 the fact that the survey is mailed  
20 to all the teens from the households that are covered by the  
21 adult survey; right?

22 A. Yes.

23 Q. All right. And if you look on here they have for this  
24 particular -- this is Teen Mark 2003 -- they have the data that  
25 they mailed surveys to 17,472 persons and then they have final

1 In Tab, that means the number that were actually returned;  
2 right?

3 A. Uh-huh.

4 Q. 4,577 or 27.3 percent response rate to the mailed survey;  
5 right?

6 A. Yes.

7 THE COURT: What is considered, Doctor, the  
8 statistically acceptable return percentage rate?

9 THE WITNESS: 27 percent would be quite acceptable.

10 THE COURT: Okay.

11 BY MR. BASS:

12 Q. Well, let's just be clear, Doctor. You're saying that a  
13 survey with a nonresponse rate of 73 percent is generally  
14 accepted as a valid survey?

15 A. A 27 percent response rate is not a great response rate, but  
16 based on the other things they are doing later on in this data,  
17 it's acceptable.

18 Q. All right. Well, we will talk about that.

19 The household survey, though -- if we think about this  
20 by definition, at least of the households that you go to, you've  
21 got -- where they fill it out -- you've got a hundred percent of  
22 those households.

23 A. May I interrupt, sir?

24 Q. Sure.

25 A. Those aren't really the equivalencies because you're not

1     getting -- people are rejecting and not letting you in, just  
2     like people aren't filling it out. So those are not apples and  
3     apples. You can't say it's a hundred percent response rate.  
4     It's a hundred percent response rate for the people that let you  
5     in. There's a large number that aren't letting you in.

6             So it's not exactly the same thing as people not  
7     filling out a survey, but there's a similar idea behind that.  
8     I'm sorry for interrupting.

9     Q. No, that's all right. You're making a good point and I've  
10    got the -- I've got the data in here somewhere.

11            THE COURT: A famous statement for computers; right?

12            MR. BASS: Pardon me?

13            THE COURT: I said, a famous statement for computers.

14            MR. BASS: That's right.

15            I'll tell you what. I'll find it a little bit so we  
16    don't get too held up.

17    BY MR. BASS:

18    Q. But the way they do the mail survey is first you've got the  
19    adult households that were in the adult survey, and of those  
20    you're getting 27.3 percent of the teens to return the survey  
21    form; right?

22    A. Yes, sir.

23    Q. Have you actually seen the survey form that gets mailed to  
24    these teens?

25    A. I have not.

1 Q. Let's take a look at one. This is JD 013094.

2 I would just like to hand one of these up to the court  
3 because it's kind of hard to see to get a real feel for it on  
4 the screen.

5 This is the 2004 American Teenager Study from MRI.

6 THE COURT: Let me be clear. Doctor, is this document  
7 left with people in the 12 to 17-year-old -- or 12 to  
8 19-year-old age category?

9 THE WITNESS: Yes.

10 THE COURT: This document that has 50 -- no, 64 pages?

11 THE WITNESS: I'd have to look at this, Your Honor, to  
12 see exactly how many of the pages.

13 THE COURT: Trust me. It has 64 pages.

14 And this is left with young people who can range in age  
15 from 12 to 19; is that right? For them to fill out and return.

16 THE WITNESS: Yes, but they could -- probably in  
17 portions -- and I'm just estimating this, Your Honor -- not have  
18 to fill everything out for portions of it to be used, but I  
19 don't know that completely. I'd have to look at it. I've used  
20 a similar technique in other industries.

21 BY MR. BASS:

22 Q. Just so we are clear, Dr. Krugman. And actually just so the  
23 court understands, too. It's actually mailed to teenagers and  
24 then they get this thing and they are told, with instructions in  
25 the mail, fill it out, send it back; right?

1 A. Yes.

2 Q. And would it be fair to say that this 64-page document  
3 survey is a fairly daunting survey for a teenager to fill out?

4 A. It's long. I'm not sure at what point they can cut off and  
5 not have to do any more and send it back in because if they  
6 don't -- if they are not reading comic books, they would just  
7 pass it over, and if they weren't doing certain things they  
8 would just pass those parts over.

9 Q. All right. I suppose it wouldn't be surprising that  
10 approximately three-quarters of the teens who get this thing in  
11 the mail don't end up returning it; right?

12 A. Like many surveys, that's true.

13 Q. One of the things that the MRI notes in their technical  
14 guide is a limitation on their data is whether people,  
15 particularly with the parts that are either left with the  
16 responder or sent in the mail, whether they fill it out  
17 correctly; right?

18 A. Yes.

19 Q. And another thing that they note in their technical guide on  
20 their website as a limitation on the data is whether the people  
21 who do fill them out are similar to the people who don't fill  
22 them out; right?

23 A. There's always those biases when you're doing audience work,  
24 that's correct.

25 Q. That's called a nonresponse bias; right?

1     A. Or an audience bias, yes, depending on the way of looking at  
2     it, sure.

3     Q. And there are people who have written about this who have  
4     noted that it's likely that with these thick 64-page teen  
5     surveys that are sent in by mail, that the people who are  
6     actually taking the time to fill them out and send them back may  
7     well be different from the teens who aren't in the sense that  
8     they are more literate, more highly motivated and more well  
9     educated; right?

10    A. There's always a literacy issue, but if you look at the  
11    bottom of the Mediamark Research, Teen Mark 203 technical guide  
12    that you've given me, they take certain steps to limit those  
13    problems.

14    Q. They take certain steps to limit them, but those steps do  
15    not -- what we can talk about -- but those steps do not deal  
16    with nonresponse; isn't that right?

17            They don't have any data. They have not done a study  
18    and they don't have any data like can be done to figure out what  
19    the differences between the responders and nonresponders; right?

20    A. Yes, just as you would have no response, no data as to the  
21    people who let you in their homes to do the in-home survey  
22    versus letting you in or not letting you in for the in-home  
23    survey.

24    Q. And both the in-home survey and, by definition, the teen  
25    survey that gets derived from it, both of them are overweighted



1 to higher income households, aren't they?

2 A. They can be. I'd have to go back and look at that  
3 specifically.

4 THE COURT: Is there any -- let me phrase it  
5 differently. What, if any, incentive is there for a teenager to  
6 fill out this lengthy study?

7 THE WITNESS: There isn't. I don't have the exact  
8 incentive, but the method should make that clear.

9 MR. BASS: I'll see if I can find it, Your Honor. I  
10 believe that they get paid \$5. I will see if that's -- that's  
11 obviously not evidence. I'll see if I can find that.

12 Your Honor, now would be a good time for us to break  
13 for lunch. I probably have 10 or 15 minutes just to wrap up.

14 THE COURT: I notice that you all do that as I'm  
15 inevitably just about to take a note on the last testimony I've  
16 heard, but that may just be my imagination. Okay.

17 MR. BASS: Actually, I think I have about a half-hour.

18 THE COURT: You have a half an hour.

19 All right. A quarter of 2:00, everybody, and you all  
20 may be excused.

21 (Lunch recess began at 12:35 p.m.)

22

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24

25

1 INDEX

2 WITNESS: PAGE:

3 DEAN M. KRUGMAN, Ph.D.  
4 CROSS-EXAMINATION by Mr. Bass 8589

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6

7 \*\*\*\*\*  
CERTIFICATE

8 I, EDWARD N. HAWKINS, Official Court Reporter, certify  
9 that the foregoing pages are a correct transcript from the  
record of proceedings in the above-entitled matter.

10

Edward N. Hawkins, RMR

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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,	.	
	.	
Plaintiff,	.	Docket No. CA CA99-02496
	.	
v.	.	
	.	
PHILIP MORRIS USA, et al.,	.	Washington, D.C.
	.	December 15, 2004
	.	
Defendants.	.	
. . . . .	.	

VOLUME 42  
AFTERNOON SESSION  
TRANSCRIPT OF BENCH TRIAL PROCEEDINGS  
BEFORE THE HONORABLE GLADYS KESSLER,  
UNITED STATES DISTRICT JUDGE

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1           AFTERNOON SESSION, WEDNESDAY, DECEMBER 15, 2004

2                   P R O C E E D I N G S

3   (1:50 p.m.)

4           THE COURT: All right. Mr. Bass, let's try to get it done  
5 in a half an hour, please.

6           MR. BASS: I'll give it my very best, Your Honor. I've  
7 got it down to a few things.

8           CONTINUED CROSS-EXAMINATION OF DEAN M. KRUGMAN, Ph.D.

9 BY MR. BASS:

10 Q.       The first thing, Dr. Krugman, I just want to answer the  
11 Court's question. I think it was actually on the screen while  
12 we were trying to figure out what the answer was, but if you  
13 look right here, teenagers, this is from again the Teenmark Tech  
14 Guide, and if you look here, teenagers get a \$10 incentive for  
15 completing and returning the survey; is that right?

16 A.       Yes.

17 Q.       As well as getting the opportunity to be one of three  
18 teenagers to win a Dell computer and monitor; is that right?

19 A.       Yes.

20 Q.       Now, I had an opportunity to find a couple other things  
21 over the lunch break, including -- I just wanted to show here,  
22 this is, again, in JD 013099, this is the MRI tech guide for the  
23 adult study, and we had talked about this, but we didn't have  
24 this right in front of us. In the very first paragraph, it  
25 mentions that "the sample is disproportionately over allocated

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1 within 10 MRI media markets" -- and it lists the ten cities --  
2 "and also within the upper 25 percent of the national income  
3 distribution", do you see that?

4 A. Yes, sir.

5 Q. All right. And so, I think that answers our question  
6 about whether upper income households are over represented in  
7 the survey, right?

8 A. Yes.

9 Q. And by extension, if the teenagers who are surveyed by  
10 MRI come from the adult survey, then, presumably, the teenage  
11 survey is also disproportionately over weighted to upper income  
12 households, right?

13 A. That may be -- I was looking. I don't know what kind of  
14 an equalizing factor they have for some of these things.

15 Q. What they do is they take census data and they reweigh  
16 the responses to different areas of the census, right?

17 A. Yes.

18 Q. But they're still, initially, getting that data from  
19 higher income households, correct?

20 A. Yes, and I don't know if they equalize it back the other  
21 way as well. I just don't know that.

22 Q. All right. And I also found the data that I was looking  
23 for earlier. This is in JD 013118. This is from the 2003  
24 spring adult survey. And I couldn't find it because it's an  
25 appendix to the tech guide that I didn't have with the tech



1 guide, but this runs through the data on how they get down to  
2 the number of completed interviews. If you start at the top,  
3 you'll see total sample households initially selected, 46,216,  
4 and then there are various ways that people, that households  
5 drop out, if there's no address there, it's a vacant address or  
6 something. So then they have after that 39,300 eligible  
7 households, right?

8 A. Yes.

9 Q. And then they have more that drop out because either they  
10 weren't contacted, which sometimes happens because the  
11 interviewers don't want to go to the house for some reason or  
12 some other -- or some other --

13 A. Any number of reasons.

14 Q. Right. And then, as you mentioned, a lot of people were  
15 refused here, 7,522 refused, right?

16 A. Yes.

17 Q. And that's not unusual for such an extensive survey that  
18 the interviewer says when they come there this is going to take  
19 about an hour, right?

20 A. Yes.

21 Q. Right. And then they get back down and it has completed  
22 interviews down here, is 25,654; is that right?

23 A. Yes.

24 Q. And then the response rate here is 65.3 percent; is that  
25 right?

- 1 A. Yes.
- 2 Q. That's much higher than the teen response rate of  
3 approximately 27 percent, right?
- 4 A. It's a booklet response rate of 39 percent.
- 5 Q. Right, that's what I wanted to mention. We talked  
6 earlier about the product booklet, which is left with the member  
7 of the household to fill out and either be picked up later on or  
8 sent back, and of those they get back approximately 39.6 --  
9 approximately 40 percent of those booklets come back, right?
- 10 A. Yes.
- 11 Q. All right.
- 12 A. So, when we look at the survey to the teenagers, we see  
13 there's an extensive product booklet at the end as well.
- 14 Q. Right. The teenager survey combines the media survey and  
15 the product survey in one instrument, right?
- 16 A. That's correct.
- 17 Q. And in the adult survey you have two instruments, one is  
18 "interviewer completed" and the other is "respondent completed",  
19 right?
- 20 A. Right.
- 21 Q. Now, just so we've got this, in the tech guide, which is  
22 JD 013099, which you've been given previously for the adult  
23 survey, they talk about limitations. I think we mentioned this  
24 previously, but we didn't have this in front of us. And the  
25 first limitation which I have highlighted on the screen is

1 "nonresponding and nonreporting persons may have media habits  
2 which differ from those of respondents. Therefore,  
3 nonresponding persons and other limitations in the original  
4 sample prevent the in-tab from being a perfect probability  
5 sample"; is that right?

6 A. That's correct, it would be similar in many surveys.

7 Q. Right. And number C here, which I don't have  
8 highlighted, but we see here also says: "That because the  
9 sample design precludes proportional representation of certain  
10 groups within the population such as ethnic groups, racial  
11 groups, persons in certain income or education groups or persons  
12 whose primary language is other than English." And those people  
13 may have different media habits, that that may also affect the  
14 accuracy of the survey, right?

15 A. Yes.

16 Q. Now, one thing that is not specifically in here, but I  
17 believe you may know, is that because this is a household  
18 survey, it doesn't cover respondents in institutional settings,  
19 right?

20 A. Yes.

21 Q. And that includes students in college, right?

22 A. Yes.

23 Q. And people in the military, right?

24 A. Yes.

25 Q. As well as other institutions like prisons and so forth,

1 right?

2 A. Yes.

3 Q. And it would be fair to say that there are a lot of  
4 people age 18 to 24 in colleges and in the military who are  
5 missed by the survey, right?

6 A. It's possible.

7 Q. Well, wouldn't you say it's likely?

8 A. Could happen. They --

9 Q. All right. The -- let's talk about one other limitation  
10 on the data that comes out of the MRI survey. Like all surveys  
11 of this kind, there is a margin of error; isn't that right?

12 A. Yes.

13 Q. And I believe MRI talks about it as sampling tolerances;  
14 is that right?

15 A. Could be. I don't see it exactly, but that's likely.

16 Q. And people, generally, are familiar with this type of  
17 tolerance from, for example, the recent campaign where polls get  
18 reported with a margin of plus or minus X percent as being the  
19 margin of error of the survey, right?

20 A. Correct.

21 Q. And I think I've got -- yes. If we look at -- that's not  
22 it. If we look again at JD 013099, again, that's the MRI  
23 technical guide on page 23. They discuss sampling tolerances,  
24 right? It's on page 23.

25 A. Yes.

1 Q. All right. And they note, as you noted, that all sample  
2 surveys are characterized by sampling tolerances. Sampling  
3 tolerance is the difference that can be expected between the  
4 results of the sample survey and the results of a full survey or  
5 census using the same procedures and techniques, that comports  
6 with your understanding of sample tolerance?

7 A. Fine, yes.

8 Q. And then they say, as I highlighted further down, "The  
9 sampling tolerance is a very specific statement. It states in  
10 95 percent of the samples of this size and type, the difference  
11 between the sample estimate and true value will not exceed plus  
12 or minus N where N is the sampling tolerance", right?

13 A. Yes.

14 Q. And they go on to say that "Sampling tolerances for the  
15 magazine, and other media audiences, are tabulated for each  
16 report series and are contained in the respective reports",  
17 right?

18 A. Yes.

19 Q. And so right there in the reports, when you get them from  
20 MRI, they have the sampling tolerances, right?

21 A. Yes.

22 Q. Now, I don't see anywhere in any of the data that you  
23 used from MRI where, number one, there's a mention of sampling  
24 tolerances, and number two, where there's any indication of what  
25 the sampling tolerance was; is that right?

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- 1 A. That's right.
- 2 Q. And isn't it a fact that for the smaller cells of data,  
3 in other words, for magazines with smaller readership because  
4 fewer people in the survey reported reading them, the sampling  
5 tolerances get bigger?
- 6 A. They could get bigger, yes.
- 7 Q. But the general rule is that they would get bigger; isn't  
8 that right?
- 9 A. Yes.
- 10 Q. And one of the things that academics who've written about  
11 these types of surveys has noted is, that when you get these  
12 smaller magazine audiences, the data tends to jump around a lot  
13 from year to year because you have such big sampling tolerances;  
14 isn't that right?
- 15 A. Can happen.
- 16 Q. It can. And it does. You do see with some of the titles  
17 sometimes the readership can bounce around by as much as 50, 100  
18 percent from year to year up and down, right?
- 19 A. Not the ones that I've looked at.
- 20 Q. If you -- and the sampling, the plus or minus sampling  
21 tolerance, for many of the individual publications in the  
22 survey, can be plus or minus as much as 10 percent; isn't that  
23 right?
- 24 A. I would have to look and see. That's possible.
- 25 Q. All right. Now, if you're doing a -- if you have two

1 surveys, which we have here, we have the adult survey and the  
2 youth survey, each of which has a sampling tolerance, and then  
3 you combine the data from those two to derive a percent of one  
4 of the other -- one to the other, there are statistical  
5 techniques that could be used to determine what the range of  
6 that percentage is in terms of a sampling range, right?

7 A. Yes, and they do that.

8 Q. Well, but when you say "they do that", MRI doesn't report  
9 the teen readership percentage of any magazine, does it?

10 A. MRI provides teen readership data, sir.

11 Q. They provide teen readership data, but if you go to MRI  
12 and you say what's the percentage of teens 12 to 17 who read  
13 Sports Illustrated, they'll say here's the data, you go figure  
14 it out, right?

15 A. That could be the case.

16 Q. Well, they -- I mean, when you send Dr. Morrison to get  
17 the MRI data, she had to get the data and compute the  
18 percentages herself, didn't she?

19 A. I believe -- I'm not sure if the data came in the raw  
20 numbers or they came computed with their program. I'm not sure.  
21 I'm not sure your statement is correct.

22 Q. All right. We'll see if we can find that, the data that  
23 we got from Margaret Morrison. But putting that aside, when  
24 you're trying to then compute a percentage of teen readership  
25 for a particular publication, would it be fair to say that based

1 on -- that there ought to be some kind of -- or that there  
2 could, at least, be some kind of confidence interval, for  
3 example a 95 percent confidence interval to show the range of  
4 error for that percentage?

5 A. Could be.

6 Q. All right. Well let me show you JDEM 010192, which I'll  
7 represent to you was prepared by someone with far more  
8 statistical knowledge than I would have, which represents the  
9 two standard deviation range percentage confidence interval for  
10 readership for five magazines that were reported in your data as  
11 being over 15 percent, and those five magazines are  
12 Entertainment Weekly, Motor Trend, Popular Science, Road And  
13 Track and Sports Illustrated?

14 A. The 5 magazines of the 53 that we reported?

15 Q. These are 5 of the 53, that's right.

16 A. Are these the only 5 of the 53?

17 Q. No, these are 5 representative -- first, of the 53, many  
18 of those were not over 15 percent; is that right?

19 A. That's what I was asking.

20 Q. Right. These are 5 of some number of those that were  
21 over 15 percent. I don't recall -- there were not actually that  
22 many over 15 percent for 2002.

23 MS. BROOKER: Your Honor, I'm sorry, I didn't mean to  
24 interrupt, but since the source is partly Dr. Krugman's  
25 demonstrative, I think he has a copy up there, I want to say that



1 he should be able to take a look at his larger spreadsheet, which  
2 he used in his one hour live, if this were the source of it and  
3 if he needs to look at more information I'm requesting that he be  
4 able to do that.

5 THE COURT: Do you have everything you need up there?

6 MR. BASS: I'm happy to have him do that. That's not a  
7 problem. I mean --

8 BY MR. BASS:

9 Q. The source for the point estimates come straight out of  
10 the chart that's at the back of your written direct?

11 A. Yes.

12 Q. That's included in there, and if we go to that, that's  
13 demonstrative U.S. 17508, and we look at -- if we look at the  
14 one with the percentages, I'm sorry, I think that's 17509.  
15 17509 has the percentages, and if we look, for example, under  
16 Entertainment Weekly --

17 MS. BROOKER: Your Honor, if I could also just ask, what  
18 is the source for the standard deviation, because that's not in  
19 Dr. Krugman's demonstrative? Mr. Bass could just provide a  
20 little more information about the source of that information,  
21 that might be helpful.

22 MR. BASS: Right. The sources of that come from the MRI's  
23 reporting of the two sigma tolerance, two standard deviation  
24 tolerances, for the readership of these magazines.

25 BY MR. BASS:

- 1 Q. I don't want to get -- I don't want to get overly bogged  
2 down on this, Dr. Krugman, because we'll have somebody to  
3 testify about this to lay the foundation for it, but what you  
4 see here, assuming these were accurately computed, is that if  
5 you do a margin of error or a confidence interval, some of the  
6 publications where the point estimate is above 15 percent teen  
7 readership, include within the 95 percent confidence range being  
8 below 15 percent; is that right?
- 9 A. Okay.
- 10 Q. All right. And would it be fair to say that in none of  
11 the literature that I've seen from various authors that report  
12 on cigarette advertising in magazines as being above or below  
13 15 percent, reports these -- any kind of confidence intervals or  
14 supplies any data on these tolerances that exist within the MRI  
15 data; is that right?
- 16 A. I haven't seen them.
- 17 Q. All right. Okay. All right.
- 18 Now, are you familiar with a publication called SRDS?
- 19 A. Yes.
- 20 Q. And SRDS is Standard Rate and something --
- 21 A. Data service.
- 22 Q. Standard Rate and Data Service, thank you, which is a  
23 publication in the -- that's familiar to people in the magazine  
24 industry because it compiles the rates that various magazines  
25 charge for advertising, right?

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- 1 A. Correct.
- 2 Q. And it's an enormous book, and it's like -- it's a very  
3 thick, couple volume set of materials, isn't it?
- 4 A. Correct.
- 5 Q. And it lists, literally, thousands of different  
6 magazines; isn't that right?
- 7 A. Yes.
- 8 Q. And it also contains approximately 50 some different  
9 categories of magazines; isn't that right?
- 10 A. Many categories, yes.
- 11 Q. And are you familiar with the fact that the SRDS contains  
12 a category for children magazines?
- 13 A. Yes.
- 14 Q. And it contains a category for teen magazines?
- 15 A. Okay.
- 16 Q. And one for youth magazines, right?
- 17 A. Not -- I'm not familiar with those categorizations within  
18 SRDS.
- 19 Q. Okay. Have you, at any point, taken a look at the way  
20 SRDS categorized magazines to see if any members of the tobacco  
21 industry placed ads in any magazine that was classified by SRDS  
22 as a children's, youth, or teen magazine?
- 23 A. No. SRDS would be looking at circulation rates, if I'm  
24 correct, in order to make those categorizations, and circulation  
25 rates would simply be who subscribes to a magazine in the home,

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1 not who reads it, and that would often be fairly deceptive as to  
2 how many folks in the house were reading it. So if it was just  
3 based on purchasing, I don't think that will necessarily give  
4 you an accurate portrayal.

5 Q. Well, it would be fair to say, though, that what SRDS  
6 really is reporting is -- I mean the magazines themselves choose  
7 which classification they go into; isn't that right?

8 A. Yes, but the classification, sir, could be very arbitrary  
9 based on their subscription data, or some other way they elected  
10 to do it as opposed to who reads it.

11 Q. Right, but what I'm saying is that is the magazines'  
12 classification of where they think they are, right?

13 A. But often we're -- but the magazine's classification of  
14 where they want to be may not be necessarily where they are,  
15 sir.

16 Q. All right. Let me show you what's been marked as JDEM  
17 010145, which I'll represent to you is a listing of all the  
18 magazines classified in SRDS from 1992 to 2002 that are  
19 classified as either children's, youth, or teen magazines. Do  
20 you see that?

21 A. I'm -- yes, I'm having trouble reading it.

22 Q. Let's see if we can -- that makes it a little bit better.  
23 Obviously it's hard to read, because there are so many magazines  
24 on here.

25 MS. BROOKER: Does he have a copy up there?

1 MR. BASS: Yes.

2 BY MR. BASS:

3 Q. That will be easier to read.

4 A. Thank you so much.

5 Q. Now, I'm going to ask you, and we may have to give you a  
6 chance to consider this during a break, I'm going to ask you if  
7 you're aware of any one of these magazines that's listed up here  
8 that any of the tobacco companies has carried any cigarette --  
9 placed a cigarette ad in at any time between 1992 and 2002?

10 A. I don't know that, but based on what I am looking at,  
11 this classification scheme wouldn't be accurate with respect to  
12 reaching young people between the ages of 12 and 17. If I'm  
13 correct, I don't see Sports Illustrated on here.

14 Q. Right, because Sports Illustrated class identifies itself  
15 as an adult magazine for men interested in sports, right?

16 A. Yes, sir, I understand the concept of self  
17 classification, but that's not at all what I'm interested in  
18 looking at. Sometimes what you want to be is not what you are,  
19 so, for example, Rolling Stone or Sports Illustrated, or many of  
20 those others, have very large young person readership and  
21 they're not putting themselves in this category.

22 THE COURT: What about magazines such as Career Success,  
23 or Careers and Colleges? Are you aware of any advertising in  
24 those two magazines by any of the defendants?

25 THE WITNESS: I am not, Your Honor.

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1 BY MR. BASS:

2 Q. Now, Dr. Krugman, if you were an advertiser or a marketer  
3 who wanted to target an audience of teens, one thing you could  
4 do is you could go to the SRDS and, say, let me go to the  
5 magazines that are teen magazines and see what their rates are  
6 and put ads in those magazines, right?

7 A. That may be a step, but that surely wouldn't be the step.

8 Q. And if you wanted to reach teens and you wanted to place  
9 an ad in Sports Illustrated, you would then be paying full price  
10 for an advertisement in Sports Illustrated that's going to reach  
11 80 plus percent adults over the age of 17 in order to reach that  
12 little slice of teen readers; isn't that right?

13 A. Well, that is correct. Some of those may also be in your  
14 market, as well as the 12 to 17-year-olds.

15 Q. All right. Now, let me focus specifically on Sports  
16 Illustrated, since we've been talking about that. Let me ask  
17 you this preliminarily: One of the things that your book says,  
18 that you've said in your depositions, is that magazines are a  
19 good segmentation tool?

20 A. They can be, yes, sir.

21 Q. All right. And magazines allow, for example -- they can  
22 be good segmentation tools as to reaching different sexes; isn't  
23 that right?

24 A. Yes.

25 Q. So Car and Driver will reach men much more predominantly,

- 1    whereas Vogue will reach women more predominantly, isn't that  
2    right?
- 3    A.     Yes.
- 4    Q.     Likewise you can do a segment as to ethnicity, such as  
5    Ebony or Jet will reach an African/American audience primarily,  
6    right?
- 7    A.     Yes.
- 8    Q.     You can do as to age, Seventeen is a very popular teen  
9    magazine, as opposed to Modern Maturity, which is a very large  
10   circulation magazine to mostly seniors; isn't that right?
- 11   A.     Yes, sir.
- 12   Q.     And you can do as to interest. You could do cars, Car  
13   and Driver, Auto Week, right?
- 14   A.     Yes.
- 15   Q.     And you can do news, Newsweek and Time, right?
- 16   A.     Yes.
- 17   Q.     All right. So you can segment in different ways, and  
18   another thing that you can do, one of the big advantages of that  
19   big MRI adult survey is when you take the product survey and you  
20   match it with the media survey, you can actually determine which  
21   media are being most read by the users of the products, right?
- 22   A.     At times you can do that.
- 23   Q.     At times. Well, it has to be a product covered by the  
24   survey, obviously?
- 25   A.     Yes.

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1 Q. And one of the products covered by the survey is  
2 cigarettes, right?

3 A. Yes.

4 Q. Only in the adult survey, right?

5 A. Yes.

6 Q. Right. And so you can then generate data from MRI  
7 surveys where you can determine, for example, with respect to  
8 each magazine, which magazines have a higher index of smokers;  
9 in other words, there are more smokers reading that magazine  
10 than the average magazine, right?

11 A. Yes.

12 Q. And you've seen in the defendants' media plans that they  
13 often are reporting the smoker index for various media that they  
14 are thinking about putting advertising in, right?

15 A. I think so.

16 Q. And you can also, with the MRI data, you can generate an  
17 index of a particular age group, right?

18 A. Yes.

19 Q. In other words, you can say, gee, is this a magazine that  
20 is highly read by people 45 and older or 21 to 34, or whatever  
21 age group you want, right?

22 A. Yes.

23 Q. Now, let's talk specifically about Sports Illustrated.  
24 The manufacturers of cigarettes have been putting ads in Sports  
25 Illustrated since the 1950s, haven't they?

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1 A. Yes.

2 Q. And certainly it's pretty self-evident that Sports  
3 Illustrated is overwhelmingly weighted to male readers; isn't  
4 that right?

5 A. Yes.

6 Q. These days they have a Sports Illustrated for women, but  
7 that's a fairly recent phenomenon, right?

8 A. Yes.

9 Q. And if you look at the MRI data on Sports Illustrated,  
10 you'll see that Sports Illustrated is also over weighted to  
11 readers in the age 18 to 34 category. If you look at JDEM  
12 010124, this is from 1998, which is the same year of the data  
13 that you used in your study. If you look, this is an index of  
14 age 18 to 34 readers of various publications, and if you look at  
15 Sports Illustrated, the index is 136. Do you see that?

16 A. I do, sir.

17 THE COURT: What does the index stand for or what does it  
18 represent? Can you answer that, Doctor?

19 THE WITNESS: Yes. They would set the average group of  
20 readers at 100, and then any other group of readers, whether it  
21 was below or above that 100, would be higher or lower. So it's  
22 simply saying that on an average of 100, this is a 136 for that  
23 age group.

24 BY MR. BASS:

25 Q. And what actually is on here, Dr. Krugman, is I actually

1 put all of the magazines that were reported by Dr. Morrison from  
2 her data as being -- that she provided to you, she submitted a  
3 declaration where she said there were 29 magazines that were  
4 youth magazines, and I checked out the index for all of them,  
5 and you would agree, that for all but two of them, which is Life  
6 and Popular Science, that they are actually over indexed to the  
7 18 to 34 age group; isn't that right?

8 A. Yes, but we don't know what the indexes are for the other  
9 age groups.

10 Q. That's right, we don't, but we see, if a marketer says  
11 they're targeting 18 to 34, or some group within there, that by  
12 and large these magazines would be magazines that will be more  
13 read within that age group than the average magazine?

14 A. I certainly understand that point, sir, but it is also  
15 likely that the index on here for 12 to 17-year-olds is also  
16 above the normal index.

17 Q. And that may well be, Dr. Krugman. I mean, obviously,  
18 there are magazines that have an older age group, magazines that  
19 have a medium age group or a younger age group. There is --  
20 it's likely that these magazines have readership across many  
21 different ages, these are mostly very broad circulation  
22 magazines; isn't that right?

23 A. I understand what you're saying, sir, I'm simply adding  
24 to that the notion that 12 to 17-year-old index would put this  
25 into perspective better.

1           THE COURT: So it would be fair to conclude that the  
2     magazines that were just up on the scene are all -- that they  
3     almost all of them, except for one or two, just one, have above  
4     average readership of people from 12 to 34, would that be an  
5     accurate way of saying that?

6           THE WITNESS: From 18 to 34, Your Honor.

7           THE COURT: No, but I'm saying 12 to 34 based on your last  
8     answer, is that accurate?

9           THE WITNESS: I think that would be the case. I don't  
10    have that data in front of me, but I think if we looked at the 12  
11    to 17 index, it would be similar, but I do not have it in front  
12    of me to say that precisely.

13          THE COURT: Okay.

14    BY MR. BASS:

15    Q.     All right. And if we then look to the same group of  
16    magazines at their smoker index -- and this is smokers age 18 to  
17    34, which is a way that you can cut the MRI data, right?

18    A.     Yes.

19    Q.     You see that, again, with the exception of one, Life,  
20    there's always an exception that proves the rule, but with the  
21    exception of one, all of these magazines are over indexed for  
22    smokers between the ages of 18 and 34; isn't that right?

23    A.     Yes, but I would -- I have the same question as I did  
24    with your earlier chart, and that you need to know what the  
25    index was for 12 to 17-year-olds in order to get some

1 perspective on this.

2 Q. Well, we certainly won't be able to find out the index of

3 12 to 17-year-old smokers because that data doesn't exist,

4 right?

5 A. For --

6 Q. Smokers.

7 A. For the various -- the MRI data doesn't exist.

8 Q. Right, they don't collect data on smokers under age 18?

9 A. Yes, but you would --

10 Q. But what we see in here is --

11 MS. BROOKER: Objection, I'm sorry, Dr. Krugman just

12 wasn't finished with his answer.

13 MR. BASS: I'm sorry, go ahead.

14 THE WITNESS: If you put those two indexes together that

15 you just had, and you found out that 12 to 17 index, you would

16 have a fairly good estimate.

17 BY MR. BASS:

18 Q. And if we looked at -- we see that some of these at the

19 end of the list, Vibe, Spin, Rolling Stone, Hot Rod, those all

20 have index -- indices over 200, meaning that they have more than

21 double the proportion of smokers in their readership as the

22 average magazine, right?

23 A. Yes, and those would also have very high, 12 to

24 17-year-old indices, not for smokers, but just for your first

25 chart.

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1 Q. Right. Let's talk about Sports Illustrated in  
2 particular. The -- as we saw in both of those charts, I didn't  
3 point it out in the last one, but Sports Illustrated had a  
4 smoker index here of 136, and we saw in the previous chart that  
5 it also has a higher index of 18 to 34-year-olds, right?

6 A. Yes.

7 Q. Now, a marketer who says my target market for my product  
8 is going to be 18 to 34-year-old smokers, could look at that  
9 data for Sports Illustrated, and that's actually cited, the  
10 target is 18 to 34-year-old male smokers could look at Sports  
11 Illustrated and say, wow, Sports Illustrated gives me more 18 to  
12 34-year-olds, more smokers, and more males than just about any  
13 magazine around, and it also, because Sports Illustrated is what  
14 they call a very big book, book being a magazine, it also has  
15 very large reach to that audience?

16 A. Yes. Two things, sir. One is that it's likely that  
17 you're going to have a similar index for 12 to 17-year-olds, and  
18 also, I find it interesting that the industry said they didn't  
19 want to advertise to anyone under 21, so now there's a target  
20 market of 18, 19 and 20-year-olds.

21 Q. As the Judge said, we went through that whole issue about  
22 whether the industry said they did want to market anyone under  
23 21 with Dr. Dolan and I do not intend to go back through that  
24 issue, other than to say I don't think you're going to find  
25 anywhere where the industry said that. They said they would not

1 put media in -- they would not put advertisements in media  
2 directed primarily to persons under 21. That's what it said in  
3 the ad code, right?

4 MS. BROOKER: Objection, argumentative and Dr. Krugman was  
5 referring to his own testimony not Dr. Dolan.

6 THE COURT: Well, let me hear if the witness can answer  
7 the question. It was kind of a convoluted question as well.

8 Did you understand it or do you want it repeated?

9 THE WITNESS: I think I can give an answer. I hope it's  
10 the answer to the question, though.

11 THE COURT: Go ahead.

12 THE WITNESS: I'm going to try. The ad code says they  
13 don't want to advertise primarily to people under 21, and I take  
14 an exception to that in my expert report in pointing out problems  
15 with that with any number of documents. Additionally, Mr. Bass  
16 just said that they didn't want to market to anybody under 21,  
17 and in my expert report I do layout several instances where the  
18 word "marketing" is used with advertising. So it broadens that  
19 concept, Your Honor.

20 BY MR. BASS:

21 Q. Let me ask you this, Dr. Krugman: Is there anyplace  
22 where the industry, or an individual cigarette manufacturer, has  
23 said, "we won't place cigarette ads in media that may be exposed  
24 to people under 18"?

25 A. Not in the way you say it like that, no.

1 Q. That's right, because if they said that, and then they  
2 did it --

3 A. No.

4 Q. -- they wouldn't be in any media, would they?

5 A. The -- are we now speaking of the ad code again, sir?

6 Q. No, we're not talking about the ad code, we're talking  
7 about the issue that you've raised, which is exposure to people  
8 under 18 when you put ads in -- I think we covered this earlier,  
9 when you put ads in media, mass media, almost invariably you're  
10 going to get exposure to people under 18, right?

11 A. You're going to get some exposure in mass media, that's  
12 correct, sir.

13 Q. And the industry never said we're not going to put ads in  
14 media that may be exposed to people under 18, right?

15 A. When you phrase it like that, right.

16 Q. Right. Now, let's go back to Sports Illustrated for just  
17 a second. One of the things the industry did say is that they  
18 were targeting their advertising at smokers and adult smokers,  
19 right?

20 A. Yes.

21 Q. And if you use the segmentation tools that are available  
22 to a marketer with magazines, Sports Illustrated is a good place  
23 to put advertising aimed at adult male smokers, isn't it?

24 A. Yes.

25 Q. And what you showed -- well, I think you talked about

1    what you called youth brands, Marlboro, Newport and Camel, as  
2    being advertising in Sports Illustrated, among other magazines,  
3    right?

4    A.     Yes, sir.

5    Q.     And what I did is I had somebody go through the CMR data  
6    that Dr. Morrison had collected from 1992 to 2002, that you then  
7    provided us to, and I said, well, let's see, let's pull out all  
8    the cigarette brands that were advertised in Sports Illustrated  
9    during that 10-year period, and this is what we came up with.  
10   We came up with cigarettes, such as up on the upper left-hand  
11   corner, Basic. Okay, Basic is what's called a value brand,  
12   right?

13   A.     Yes, sir.

14   Q.     We came up with Benson & Hedges, right, that's an old  
15   brand that has sort of a premium appeal to wealthier people,  
16   right? That's what they try to get?

17   A.     Yes.

18   Q.     You've got Cambridge -- I'm sorry, you've got on the  
19   right-hand side, Carlton, which is a very low-tar brand; is that  
20   right?

21   A.     Yes.

22   Q.     You've got -- as a matter of fact, you've got a brand  
23   here that's interesting, called USA Gold. Do you know what that  
24   is?

25   A.     I do not.



1 Q. That's a brand from Commonwealth Brands in Kentucky,  
2 which is one of the companies that was not an original  
3 participating manufacturer in the Master Settlement Agreement in  
4 which, if you probably look in those stores in Georgia, where  
5 you took those pictures, it's probably got the lowest price  
6 brand on the shelf. Have you seen USA Gold down there?  
7 A. I have not, sir, but I haven't looked, though.  
8 Q. All right. You've got Doral, which is a value brand,  
9 right?  
10 A. Yes.  
11 Q. Eclipse, which was RJR's novel cigarette product, right?  
12 Is that right?  
13 A. Yes.  
14 Q. GPC, which is Brown & Williamson value brand; is that  
15 right?  
16 A. Yes.  
17 Q. Kent, which has probably got a very old group of smokers  
18 associated with it. It's a brand that's been around back to  
19 the '50s; is that right?  
20 A. Yes.  
21 Q. You have products such as Old Gold, which is a Lorillard  
22 product, again, that I don't think anybody has ever classified  
23 as a youth brand; is that right?  
24 A. Yes.  
25 Q. So, what you really see is that the marketers of

1 cigarettes have put pretty much any brand of cigarettes that is  
2 not, I guess, targeted in some manner to women, they put ads for  
3 it in Sports Illustrated, right?

4 A. Yes, and it really reflects, at least part of the notion  
5 that I put in my expert report or my direct testimony, where  
6 there's a lot of weight and pressure on younger people, and this  
7 is part of the normalization process of making smoking okay to  
8 that younger audience. In other words, using the youth brands  
9 of Marlboro and Newport and Camel is certainly one way to look  
10 at it, and I think an important way to look at it. Another way  
11 to look at it is what you are just showing us, that these  
12 markets are then exposed to a lot of cigarette advertising over  
13 a period of years.

14 Q. All right. But it would be fair to say that the  
15 manufacturers of cigarettes have not exactly limited themselves  
16 in terms of their ads in Sports Illustrated to so-called "youth  
17 brands", right?

18 A. Yes.

19 Q. All right.

20 THE COURT: Isn't that in part because Sports Illustrated  
21 has a readership that covers far more than 18 to 34-year-olds?

22 THE WITNESS: Sports Illustrated is heavily read and has a  
23 large readership throughout. I do not have, off the top of my  
24 head, Your Honor, what the readership is above 30, above  
25 34-year-olds.

1 BY MR. BASS:

2 Q. Well, one thing we can easily derive from the percentages  
3 that you have of youth readers of Sports Illustrated is that  
4 overwhelmingly, 80 something percent, of Sports Illustrated  
5 readers throughout the period that you have data, are adults,  
6 right?

7 A. Yes.

8 Q. And if we look in the pages of Sports Illustrated, when  
9 we see these ads from Sports Illustrated, and other magazines,  
10 for cigarettes, we don't see what the other ads are that  
11 surround it, do we?

12 A. No.

13 Q. But if we look in there, what you will see in Sports  
14 Illustrated are ads for cars, right?

15 A. Yes.

16 Q. You'll see ads for things like Viagra, right?

17 A. Yes.

18 Q. Nicorette, which is a smoking cessation program, which,  
19 by the way, is restricted to sales to 18 and over, right?

20 A. I would have to look to see if that exists.

21 Q. All right. But you'll see ads for all kinds of other  
22 products that are intended for adults, right?

23 A. Yes.

24 Q. Now, let's turn quickly, and this will be the last thing,  
25 to Rolling Stone.

1           As you showed in your direct examination yesterday,  
2   Rolling Stone clearly has had a lot of cigarette ads since the  
3   1970s, right?

4   A.       Yes.

5   Q.       And it would be fair to say that cigarette manufacturers  
6   have been advertising in Rolling Stone, various manufacturers at  
7   various times pretty much continuously since the 1970s, right?

8   A.       Yes.

9   Q.       And as we saw earlier, Rolling Stone has -- this is the  
10   index of 18 to 34-year-old readers, and this is 1998, but  
11   Rolling Stone has a high index of 18 to 34-year-old readers,  
12   right?

13   A.       Yes.

14   Q.       In addition to the data you presented about 12 to  
15   17-year-old readers of Rolling Stone, right?

16   A.       Yes.

17   Q.       And we also saw just a moment ago that Rolling Stone has  
18   a high index of smokers age 18 to 34. In fact, it's one of the  
19   highest at 241; isn't that right?

20   A.       Yes, and my same point would exist for Rolling Stone that  
21   does for Sports Illustrated, that you would, no doubt, have a  
22   very high 12 to 17 index.

23   Q.       Right. And if you're an advertiser of cigarettes and you  
24   want to reach, you want your dollars, your advertising dollars  
25   to work as hard as possible for you with respect to the audience

1 you're spending them on and your target is 18 to 34-year-old  
2 smokers, then Rolling Stone, based on its high index of 18 to  
3 34-year-olds and it's high index of smokers, is going to work  
4 pretty hard for those dollars, isn't it?

5 A. It could work hard for those dollars and it would work  
6 equally hard for those dollars reaching 12 to 17-year-olds.

7 Q. Right. But during the period of time -- up until 1991  
8 when MRI started doing teen surveys, there was not even data out  
9 there on what the 12 to 17 readership of Rolling Stone was, was  
10 there?

11 A. No, Mr. Bass, there wasn't. But one of the advantages we  
12 have at looking at 10 years worth of data and starting at 1993  
13 what we present to the Court, you see real good consistency  
14 across the magazines that we've been discussing, so there's  
15 really no reason to believe, although we don't have data, that  
16 just because we don't have a measurement of data in 1992, that  
17 teens weren't reading that vehicle in 1992. In other words,  
18 readership didn't start with those people simply because  
19 measurements started.

20 Q. And let me just ask you this straight out: Is it your  
21 contention that the cigarette manufacturers in this case, that  
22 they targeted adolescents by placing cigarette ads in Rolling  
23 Stone?

24 A. Yes.

25 Q. All right. Now, let's look at your book to see what your

1 book says about Rolling Stone.

2 This is on page 120, and there's a little case study in  
3 here, so to speak, about Rolling Stone, and it says -- actually,  
4 I think I might want page 119.

5 It starts here a little bit on page 119.

6 It starts here, this is -- in a section in chapter 4 of  
7 your book, and it says over here on the side: "Rolling Stone:  
8 A Case of Media Economics", right?

9 A. Yes.

10 Q. And it says, "Never trust anyone over 30" was Rolling  
11 Stone's anthem when it first appeared in the 1960s. During  
12 those early years, the Stone was a monthly publication with 24  
13 pages of black and white pictures. Today, it is published  
14 biweekly and is filled with more than 100 pages of color and  
15 award winning material," right?

16 A. Yes.

17 Q. And then it says, "On the road to success, the Stone  
18 encountered a series problem. Over time the Stone's readership  
19 changed from young, non-affluent readers, who professed  
20 antiestablishment ideals to affluent middle age professionals  
21 who were part of the establishment", is that right?

22 A. Yes, and Rolling Stone still reaches a lot of 12 to  
23 17-year-olds.

24 Q. And it goes on to say "many of Rolling Stone's current  
25 readers have never heard the '60s motto, and those who have read

1 the magazine since its birth are now over 40", right?

2 A. That's what it says.

3 Q. And then it says: "However, even as the Stone's

4 readership matured, advertisers continued to see the magazine as

5 a cult publication targeted to people with sandals, long hair,

6 and little income," right?

7 A. Yes.

8 Q. And then it goes on to describe how Rolling Stone engaged

9 in its own advertising campaign to convince people that its

10 readership had changed, right?

11 A. Yes.

12 Q. And it shows in your book, it shows as an example of, I

13 think, of creative advertising, it shows the Rolling Stone

14 campaign where they talk contrasted perception and reality, and

15 these are ads from Rolling Stone aimed at advertisers, right?

16 A. Yes.

17 Q. And they say -- their point was "there's the perception

18 of us as a hippy magazine, and there's the reality which is

19 we're a magazine for middle aged affluent professionals", right?

20 A. Well, if you still look at the 12 to 17-year-old readers

21 in the 10-year period of time I report, it remains fairly

22 stable.

23 Q. I understand that, Dr. Krugman, but if someone who is a

24 young future marketing professional were to come out of classes

25 at the University of Georgia in the 1990s and go to work for a

1 tobacco company, having read your book, it would be fair to say  
2 that they would think Rolling Stone is not a bad magazine for  
3 putting adult ads in, right?

4 A. I'm not sure I would put it quite like that, given the  
5 other information that I've given you.

6 Q. Well, that other information isn't in here, is it?

7 A. No, it is not.

8 Q. And if we look at what's actually in Rolling Stone, just  
9 as with Sports Illustrated, we see not just so-called "youth  
10 brands" of cigarettes, but we see many different kinds of  
11 cigarettes, including value brands, low-tar brands, brands like  
12 Chesterfield, that I don't think anybody would refer to as a  
13 youth brand of cigarettes, isn't that right?

14 A. Yes, and it also is the same point that I would make with  
15 Sports Illustrated, that you have now a younger audience, seeing  
16 a lot of cigarette ads and normalizing that behavior saying  
17 smoking is okay.

18 Q. And then, if we see -- if we look through the same pages  
19 of Rolling Stone, you have those big books where you've  
20 excerpted the cigarette ads, right, but we don't see the rest --  
21 the Judge -- nobody else sees the rest of the ads that are in  
22 those Rolling Stone magazines, do they?

23 A. No.

24 Q. But if we were to look at those, we would, again, see  
25 lots of ads for cars, right?



1 A. We would see a range of young products and older products  
2 as well.

3 Q. Well, people don't advertise cars to people 12 to 17, do  
4 they?

5 A. Not necessarily.

6 Q. Not necessarily? Well, there's just not that big of a  
7 market, Dr. Krugman, of people age 12 to 17, number one, who can  
8 drive, and number two, have the money to go buy a car  
9 themselves, right?

10 A. Okay.

11 Q. You also see a lot of ads in there for alcohol, right?

12 A. Yes.

13 Q. Not just beer, but there's a lot of ads for distilled  
14 spirits, right?

15 A. Right.

16 Q. And you would see ads for other adult oriented products,  
17 right?

18 A. Right.

19 Q. All right.

20 MR. BASS: That concludes my examination, Dr. Krugman.  
21 Thank you very much.

22 THE COURT: All right, Mr. Minton, please.

23 CROSS-EXAMINATION OF DEAN M. KRUGMAN, Ph.D.

24 BY MR. MINTON:

25 Q. Good afternoon, Dr. Krugman, my name is Mike Minton and I

1   represent Lorillard Tobacco Company.

2   A.     Good afternoon.

3   Q.     I'd like to begin by asking you some questions about the

4   development and implementation of Lorillard's marketing

5   strategies, and what I would like to do is focus on the last

6   decade of marketing at Lorillard.

7           In order for Lorillard to have a marketing strategy, real

8   people had to formulate that strategy, correct?

9   A.     Correct.

10  Q.     And real people have to implement it, correct?

11  A.     Correct.

12  Q.     And the point is, if Lorillard were knowingly targeting

13  under-age smokers, there are real people that you're accusing of

14  doing that, correct?

15  A.     Yes.

16  Q.     And marketing organizations within large companies have

17  organizational structures, correct?

18  A.     Yes.

19  Q.     You wrote about that in your book, correct?

20  A.     What organizational structures are you referring to?

21  Q.     Well, you spell out, actually, in your book the

22  organizational structures of the marketing function and you

23  describe how there can be brand managers, and people who are in

24  charge of marketing, and the CEO who sits at the top, and then

25  people who were involved in distribution and sales and market

- 1 research and product planning, you discuss those organizational  
2 structures in your book, don't you?
- 3 A. Yes, sir.
- 4 Q. And depending on the advertiser, there may even be  
5 different brand managers for the various brands, correct?
- 6 A. Yes.
- 7 Q. And they could interact with outside marketing agencies,  
8 correct?
- 9 A. Yes.
- 10 Q. Let's discuss your analysis of that hierarchy within  
11 Lorillard's marketing function within the last decade. You  
12 recall your deposition was taken in this case in November 2003?
- 13 A. Yes.
- 14 Q. And that was after you had formed your opinions and  
15 written them down in your expert report and were prepared to  
16 testify about them in your deposition, correct?
- 17 A. Yes.
- 18 Q. And you recall that my partner, Rick Cornfeld, named to  
19 you each of the 11 Lorillard witnesses whose depositions had  
20 been given in this case, and you said you didn't have any  
21 understanding who any of those people were, correct?
- 22 A. If that's what the deposition says, that's what the  
23 deposition says.
- 24 Q. Don't take my word. Is that --
- 25 MS. BROOKER: Objection, Your Honor. Could we just have a

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1 copy of the deposition?

2 THE COURT: Yes.

3 MR. MINTON: Jamey, if you could bring up please,

4 Dr. Krugman's deposition at page 662, beginning at line 21

5 through 663, line 18.

6 BY MR. MINTON:

7 Q. Do you see that Dr. Krugman?

8 A. Yes, I do.

9 Q. 11 people, 4 of whom included Victor Lindsley, Martin

10 Orlowsky, Kathy Sparrow and George Telford, correct?

11 A. Yes.

12 Q. Is it still the case that you don't know who the Newport

13 brand manager is?

14 A. Correct.

15 Q. And is it still the case you don't know who Lorillard's

16 vice president of marketing is?

17 A. Correct.

18 Q. And is it still the case that you don't know who is in

19 charge of Lorillard's sales, or its marketing research, or its

20 product planning?

21 A. Correct.

22 Q. You don't even know who Lorillard's CEO is?

23 A. Correct.

24 Q. But if Lorillard were knowingly targeting under-age

25 smokers, those would be the people who were right smack in the

Scott L. Wallace, RDR, CRR  
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1 middle of that effort correct, sir?

2 A. Yes, perhaps.

3 Q. Wouldn't you expect, Dr. Krugman, that the government

4 would ask those folks about Lorillard's marketing strategies in

5 their deposition?

6 A. Yes.

7 Q. But at the time that you testified about your opinions in

8 this case, you couldn't identify or recall any testimony given

9 by any Lorillard witness, correct?

10 A. Correct.

11 Q. And wouldn't you expect that those Lorillard employees

12 would have testified about the purpose and intent of Lorillard's

13 marketing and advertising?

14 A. They may have given a version of their intent.

15 Q. All right. And they would have testified about their

16 version of the strategy of Lorillard's marketing efforts?

17 A. Yes.

18 Q. They would have testified about which potential customers

19 were being targeted?

20 MS. BROOKER: Objection, this calls for speculation as to

21 what they might have been asked about in the deposition. I mean,

22 Mr. Minton wants to show him some --

23 THE COURT: Overruled, I'll allow a few more questions,

24 Mr. Minton.

25 MR. MINTON: All right.

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1 BY MR. MINTON:

2 Q. Is it your opinion, Dr. Krugman, that there was  
3 absolutely nothing that they may have testified about in your  
4 deposition that could influence your opinions in this case?

5 MS. BROOKER: Objection, confusing and calls for  
6 speculation.

7 THE COURT: Sustained.

8 BY MR. MINTON:

9 Q. Well, Dr. Krugman, do you recall testifying yesterday  
10 that in connection with your opinions, you wanted to, quote,  
11 "get it right," end quote, and leave no stone unturned?

12 A. With respect to the reach and frequency data, yes.

13 Q. Yes. And do you think that not considering any testimony  
14 by the actual, real people at Lorillard who testified in this  
15 case about Lorillard's marketing efforts and strategy, that you  
16 left no stone unturned?

17 MS. BROOKER: Objection, mischaracterizes the earlier  
18 testimony on this.

19 THE COURT: I'm going to sustain the objection, unless  
20 you're representing that those individuals have already been  
21 deposed in this case.

22 MR. MINTON: They were, Your Honor. Each of the 11  
23 individuals whose names were read off in that deposition that we  
24 showed on the screen, and specifically the four individuals that  
25 I then named as well.

1           THE COURT: Well, that certainly wasn't clear to me. I  
2   thought you were simply identifying people with those particular  
3   responsibilities for marketing. Let me hear the question again  
4   now, please.

5           MR. MINTON: Let me make it more specific, Your Honor.

6   BY MR. MINTON:

7   Q.     Is it your testimony, Dr. Krugman, that by not  
8   considering the deposition testimony of Lorillard's Newport  
9   brand manager and it's CEO and it's vice president of marketing  
10   with respect to the implementation of Lorillard's marketing  
11   programs, that you have left no stone unturned in developing  
12   your opinions in this case?

13   A.     Yes. I feel very comfortable with the conclusions I've  
14   come to, based on looking at the other material.

15   Q.     All right. Is it your assumption that Lorillard provided  
16   instructions to its creative people and the advertising agencies  
17   that it worked with?

18   A.     Lorillard would have provided direction to the agencies,  
19   yes, if that's -- if I understand the question correctly.

20   Q.     Okay. Do you know who Lorillard's outside advertising  
21   agency is?

22   A.     Not at this point, I do not.

23   Q.     Do you know if they are the people who develop the  
24   imagery in Lorillard's ads?

25   A.     I do not.

1           MR. MINTON: Jamey, could you please bring up the table of  
2 contents of Dr. Krugman's written direct. It's the page  
3 following the cover page.

4 BY MR. MINTON:

5 Q.       I want to ask you a few questions about Lorillard's  
6 advertising and promotion practices. And in your written  
7 direct, you discuss a number of different categories. And  
8 before we address any of the specific categories, let me ask you  
9 this: Is it a fact that nowhere in your written direct  
10 examination you discuss the practices and policies for  
11 Lorillard's marketing as they are set forth in Lorillard's  
12 Marketing Regulations Manual?

13 A.       I do not discuss their manual.

14 Q.       That document's not on your reliance list, correct?

15 A.       Correct.

16 Q.       And the government never provided that document to you,  
17 correct?

18 A.       Correct.

19 Q.       So you don't know whether or not Lorillard's Marketing  
20 Regulations Manual establishes requirements and limitations on  
21 Lorillard's marketing practices, correct?

22 A.       I do not know about their internal manual on their  
23 practices.

24 Q.       You don't know whether it includes limitations on the  
25 very marketing practices that you're addressing in your



1 testimony, correct?

2 A. I do not know about the manual, that's correct.

3 Q. All right. I think we can move through some of these

4 categories that are up on the screen quickly.

5 Of course, none of the manufacturers advertise on TV or

6 use billboards, correct? Those are two categories up on -- and

7 discussed in your testimony, correct?

8 A. Correct.

9 Q. And in your written direct, you don't point to any past

10 TV advertisements or, for that matter, any billboards by any

11 defendant, do you? In other words, specific ads or specific

12 billboards.

13 A. I do discuss the Marlboro billboards.

14 Q. Okay. But you don't point to any particular imagery, do

15 you?

16 A. Well, I point to the imagery and much of that imagery was

17 found on billboards, if that's --

18 Q. Is that the one instance, then, that you point to

19 anything specific, either with respect to TV or billboards?

20 A. Well, I talk about the imagery, sir, and that imagery was

21 on -- certainly on billboards.

22 Q. Perhaps I didn't make my question clear.

23 A. Yes.

24 Q. You discuss it in a categorical sense in the fact that

25 they existed, but other than what you specifically mentioned

1 with respect to Marlboro, that's the only specificity, then,  
2 that you bring to the discussion, correct?

3 MS. BROOKER: Objection, asked and answered.

4 THE COURT: He may answer.

5 THE WITNESS: I do discuss the amount -- I do discuss the  
6 amount of spending in outdoor advertising.

7 BY MR. MINTON:

8 Q. Okay. The third item that appears under section 3 is  
9 "Sampling and Promotional and Specialty Items." Do you see  
10 that?

11 A. Yes.

12 Q. And you don't offer any testimony in your written direct  
13 examination concerning Lorillard's past practices on sampling or  
14 even what they are today, correct?

15 A. I do discuss promotional efforts.

16 Q. Now, if you'll try to respond to my specific question,  
17 Dr. Krugman.

18 A. I'm sorry, sir. Could you ask the question again, sir.

19 Q. Sure. You don't offer any testimony in your written  
20 direct exam concerning Lorillard's past practices on sampling or  
21 even what they are today, correct?

22 A. That's correct.

23 Q. The fact of the matter is, you don't know what  
24 Lorillard's policy is regarding giving away free samples of its  
25 products, correct?

- 1 A. Not specifically.
- 2 Q. And the same is true with respect to Lorillard's policies  
3 and practices on giving out premium items. You don't discuss  
4 that in your written direct and you don't know what those  
5 policies are, correct?
- 6 A. It's not discussed.
- 7 Q. And you don't know what Lorillard's policy are?
- 8 A. I don't know the manual on your specific policies, no.
- 9 Q. And you don't point to any Lorillard premium item that  
10 you say has any appeal to an underage smoker, correct?
- 11 A. I pointed out the counter displays in my one-hour  
12 yesterday, and I also point out the counter displays as an  
13 example of integrated marketing communication.
- 14 Q. Well, maybe you didn't understand my question,  
15 Dr. Krugman. By "premium item," I mean something that is being  
16 given away. And you don't point to any Lorillard premium item  
17 at all in your direct testimony, do you?
- 18 A. I'd have to go back and look at the counter displays and  
19 see if they're two-for-one or things of that nature.
- 20 Q. Okay. Your section D is on "Public Entertainment  
21 Activities and Sponsorship." You don't mention Lorillard in  
22 that section of your testimony, correct?
- 23 A. I do not.
- 24 Q. And the fact is you don't know if Lorillard has ever had  
25 any sponsorships, correct?

- 1 A. I'd have to go back in my direct testimony to see if I  
2 mention a Lorillard product. I don't know that I -- I simply  
3 don't remember if I do.
- 4 Q. I think in the immediately prior answer, you said you  
5 didn't know if Lorillard ever had any sponsorships, didn't you?
- 6 A. I was talking about --
- 7 Q. Excuse me.
- 8 A. I'm sorry. I was moving one -- I was moving down to the  
9 next.
- 10 Q. All right. You don't mention Lorillard in connection  
11 with any sponsorships, correct?
- 12 A. That's correct, sir.
- 13 Q. And you don't know if Lorillard has ever had any  
14 sponsorships, correct?
- 15 A. I don't know that, sir.
- 16 Q. And you don't mention Lorillard in connection with any  
17 public entertainment activities, correct?
- 18 A. That was the question I was just answering. And I don't  
19 know if any of the product placement is mentioned in the direct  
20 testimony.
- 21 Q. You don't know what restriction Lorillard places on any  
22 public entertainment activities, correct?
- 23 A. Correct.
- 24 Q. You have a section on "Defendants' Product Placement in  
25 Movies." You don't mention Lorillard in that section, correct?

- 1 A. I don't think I do. I don't know. I don't remember.
- 2 Q. By the way, you don't know when the last time any tobacco  
3 company reported an expenditure in that category to the FTC, do  
4 you? Do you know if it was five years ago? Ten years ago?
- 5 A. I could go back and look. I don't have that off the top  
6 of my head.
- 7 Q. Do you know if Lorillard has ever paid to have one of its  
8 products placed in a movie or on TV?
- 9 A. Again, sir, I would like to go look at my direct  
10 testimony to see if it's there. I don't remember.
- 11 Q. Do you know what Lorillard's response has been when  
12 motion picture and TV producers have requested permission to  
13 display or depict Lorillard's products in TV or movies?
- 14 A. I do not.
- 15 Q. Your section F is "Defendants' Magazine Advertisements"  
16 and I want to focus for a while on that. Do you know the  
17 specific procedure that Lorillard uses to decide whether to  
18 advertise in a particular magazine?
- 19 A. I do not know the current procedure.
- 20 Q. Do you know what information Lorillard uses and obtains  
21 in the process of making that decision?
- 22 A. I can't remember.
- 23 Q. In Demonstrative Exhibit 17507, in your testimony at  
24 pages 118 and 119, you point to the 53 magazines. And is it  
25 correct, sir, that you don't try to break down which defendants

- 1     advertised in which magazines at any time?
- 2     A.       That's correct.
- 3     Q.       Other than Rolling Stone, you haven't offered any
- 4     testimony on which magazines on that list that Lorillard
- 5     actually advertised in, either in the past or today, correct?
- 6     A.       I have not offered specific testimony on that; that's
- 7     correct.
- 8     Q.       Or for which brands it may have advertised, correct?
- 9     A.       Correct.
- 10    Q.       Do you know when Lorillard last advertised in Rolling
- 11    Stone, Dr. Krugman?
- 12    A.       I'd have to get the book to see that. I do not remember.
- 13    Q.       You don't know how many years ago it was that Lorillard
- 14    ceased advertising in Rolling Stone?
- 15    A.       I don't know, no.
- 16    Q.       Do you know why Lorillard decided to stop advertising in
- 17    Rolling Stone?
- 18    A.       No.
- 19    Q.       Do you know what Lorillard's policy has been since
- 20    March 2001 regarding magazines that it will not advertise in,
- 21    based on MRI Teenmark or Simmons readership data?
- 22    A.       Yes, I do, but it escapes me at the moment as to what the
- 23    precise policy is. I certainly read it.
- 24    Q.       Now, ESPN Magazine is on your list in Demonstrative
- 25    17507, correct?

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- 1 A. Yes.
- 2 Q. And do you know whether Lorillard ceased advertising in
- 3 ESPN?
- 4 A. They started and stopped.
- 5 Q. And do you know why they stopped?
- 6 A. Because ESPN came in with a higher readership. And I
- 7 don't remember exactly what the readership is.
- 8 Q. On the MRI Teenmark data?
- 9 A. Yeah.
- 10 Q. By the way, you present 10- or 11-year averages in
- 11 Demonstrative Exhibit 17507 with respect to the MRI Teenmark
- 12 data, correct?
- 13 A. Yes.
- 14 Q. And for some of those 53 magazines on your list, the age
- 15 of their readership has been going up, correct?
- 16 A. For some.
- 17 Q. And conversely, the year-by-year Teenmark data for some
- 18 of those magazines indicate that their youth readership has been
- 19 going down, correct?
- 20 A. At times, yes, sir.
- 21 Q. And do you know if, for instance, that's the case with
- 22 Jet Magazine?
- 23 THE COURT: I'm going to interrupt for a minute. For some
- 24 reason, I have either misplaced or never got 17507.
- 25 MR. MINTON: It's in Dr. Krugman's testimony, I believe at

1 page 118. It's inside his testimony, Your Honor.

2 THE COURT: That's why I can't find it. 118.

3 MR. MINTON: I believe that's right.

4 THE COURT: Okay, thank you.

5 All right, you had a question pending.

6 MR. MINTON: I had asked whether Dr. Krugman knew that

7 that was the case for Jet, whether their youth readership, as

8 determined by the MRI Teenmark survey, has been going down.

9 THE WITNESS: It has been going down.

10 BY MR. MINTON:

11 Q. And for Glamour, the same is true?

12 A. Yes.

13 Q. Same is true for Motor Trend and Rolling Stone?

14 A. Yes.

15 Q. Do you know if during -- and by the way, each of the

16 magazines that -- put Rolling Stone aside, but every other

17 magazine that we just mentioned would meet the 15 percent/2

18 million criteria that you mention in your written direct,

19 correct?

20 A. I'd have to go back and check that specifically.

21 Q. Do you know if during the years 2002, 2003 and 2004,

22 Lorillard has advertised Newport in any magazine that had a

23 Teenmark number above 15 percent?

24 A. Give me those dates again, sir.

25 Q. 2002, 2003 and 2004.

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- 1 A. I simply don't know.
- 2 Q. Okay. Now, you recall the Judge asking you about Sports  
3 Illustrated's readership, and you discuss SI at page 121. Do  
4 you know whether or not Sports Illustrated offers a restricted  
5 edition that Sports Illustrated represents is not sold on  
6 newsstand and is limited to subscribers with no persons under  
7 the age of 21 in their household?
- 8 A. I would need to know how they determined that.
- 9 Q. I'm just asking you whether or not you know that such a  
10 restricted edition exists.
- 11 A. I know there is a restricted edition.
- 12 Q. But you don't know what the criteria are for the  
13 restricted edition?
- 14 A. I don't know how they go about getting that restricted  
15 edition.
- 16 Q. All right. Let's talk about Newport advertising. Can  
17 you confirm for us, Doctor, that you don't point to any  
18 empirical data in your written testimony on the number or  
19 percentage of underage smokers that reported that they either  
20 saw a particular Newport ad or recalled a Newport campaign?
- 21 A. Are you asking if there was any recall or recognition  
22 data on under 17-year-olds for Newport?
- 23 Q. Yes. Whether you have pointed to any empirical data in  
24 your written direct exam on the number or percentage of underage  
25 smokers that reported that they either saw a particular Newport

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- 1 ad or recalled a Newport campaign.
- 2 A. No.
- 3 Q. And by the way, that's true for any defendants' ad or  
4 campaign, correct? You don't do that in your written testimony,  
5 correct?
- 6 A. Correct.
- 7 Q. Now, market research is done to measure whether a  
8 marketing communication influences a person's attitudes,  
9 correct? And I'm not going to go back over the ground that  
10 Mr. Bass covered, but I just want to set the stage. That's an  
11 accurate statement, correct?
- 12 A. At times, yes, that would be part of it, sir.
- 13 Q. All right. We can agree, can't we, that empirical data  
14 relevant to the question of whether a Newport ad was effective  
15 would include whether people recalled the ad, whether they paid  
16 attention to the ad, what their comprehension of the  
17 advertisement was and what opinion or attitude they formed about  
18 the advertisement, correct?
- 19 A. That would be one way to do it, sir.
- 20 Q. And you don't point to any empirical data on what number  
21 or percentage of persons in any age range paid attention to any  
22 Newport ad or campaign, correct?
- 23 A. Correct.
- 24 Q. Same is true for any defendants' ad, correct?
- 25 A. No, sir.

- 1 Q. No, sir, that's correct, you don't, correct?
- 2 A. No, I do report some -- I do report recognition data and  
3 some recall data for the Camel campaign.
- 4 Q. All right. You don't point to any empirical data on what  
5 number or percentage of persons in any age range could recall  
6 either the tag lines or specific imagery from a Newport  
7 campaign, correct?
- 8 A. That's correct.
- 9 Q. Let's talk about message. You don't point in your  
10 testimony to any empirical data on what message or impression  
11 underage persons may have taken away from any Newport  
12 advertisement, correct?
- 13 A. I do -- I do refer to the concept of peer in the  
14 development of the peer image and the concept of peer being  
15 appealing to young persons. And then I do refer to Newport  
16 documents that specifically note they want Newport to be the  
17 peer brand.
- 18 Q. I understand you do that, Dr. Krugman, and we'll talk  
19 about the peer concept in a moment. My question for now is:  
20 You don't point in your written testimony to any empirical data  
21 on what message or impression underage persons took away from  
22 any Newport advertisements, correct?
- 23 A. That's correct, sir.
- 24 Q. And you don't point to any empirical data, how anyone  
25 perceived or interpreted any Newport advertisements, correct?

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1 A. That's correct.

2 Q. And you don't point in your testimony to empirical data  
3 on the types of persons who expressed a liking for a Lorillard  
4 ad or ad campaign, correct?

5 A. That's correct.

6 Q. And even if we were to assume that there is a group that  
7 expressed a liking for a particular Lorillard ad or a Lorillard  
8 ad campaign, you don't point to any empirical data on what it  
9 was that people may have said they liked about the ads, correct?

10 MS. BROOKER: Objection, confusing -- the question.

11 THE COURT: Overruled. The doctor may answer.

12 You may answer.

13 THE WITNESS: Could you ask that again, please.

14 BY MR. MINTON:

15 Q. Sure. Even if we were to assume that there is a group  
16 out there that has expressed a liking for a Lorillard ad or ad  
17 campaign, you don't point to any empirical data on what it was  
18 that people may have said they liked about the ads or the  
19 campaign, correct?

20 A. I just can't answer that.

21 Q. You don't know whether you did or not?

22 A. Well, I'm having trouble with the question.

23 Q. Okay. Let me ask it a different way: You don't point to  
24 any empirical data on what anyone said they liked about a  
25 particular Newport ad or a Newport campaign, correct?

- 1 A. Correct.
- 2 Q. As a matter of fact, when you testified and gave your  
3 opinions in November 2003 in this case, you said you didn't  
4 recall seeing any research regarding any Lorillard ad, correct?
- 5 A. That's correct.
- 6 Q. Now, let's turn to your testimony about Newport as a peer  
7 brand. A "peer" is a contemporary of the same status, correct?
- 8 A. Can be.
- 9 Q. All right. Well, that's, for instance, how the  
10 dictionary would define "peer," right?
- 11 A. It may be broader than that.
- 12 Q. All right. Well --
- 13 A. It could certainly be a little bit broader than that.
- 14 Q. Let's explore, then, a bit what peers are. You have  
15 peers, don't you, Dr. Krugman?
- 16 A. Certainly.
- 17 Q. We all have peers, correct?
- 18 A. Yes.
- 19 Q. Different people may belong to different peer groups?
- 20 A. Yes.
- 21 Q. For example, you might be in a peer group of -- and don't  
22 take this wrong -- middle-aged professors?
- 23 A. I'm taking it wrong. Correct.
- 24 Q. All right. And you also might be in a separate peer  
25 group of people who live in particular neighborhoods around

- 1 Athens, Georgia, correct?
- 2 A. Correct.
- 3 Q. And I might belong, and I'll do the same to myself, to a
- 4 peer group of middle-aged lawyers, right?
- 5 A. Correct.
- 6 Q. All right. And I could also have a separate peer group
- 7 of lawyers in my law firm, right?
- 8 A. Correct.
- 9 Q. And neither you nor I may belong to the same peer group
- 10 or groups, right?
- 11 A. Correct.
- 12 Q. Your point being it depends on how we describe the peer
- 13 group, correct?
- 14 A. Yes.
- 15 Q. And you cite to the Newport 2000 strategic plan overview
- 16 in your discussion of Newport's peer advertising, correct?
- 17 A. Yes.
- 18 MR. MINTON: Let's have a look at that document. Jamey,
- 19 if you could please bring up U.S. Exhibit 56953. And I want to
- 20 go to Bates number 98196671 at the top of the page.
- 21 BY MR. MINTON:
- 22 Q. Do you see the brand positioning statement at the top of
- 23 the page, Dr. Krugman?
- 24 A. Yes.
- 25 Q. All right. It says: "Newport is the leading menthol

1 cigarette brand among adult smokers 21 to 40 years old who are  
2 seeking a quality and uniquely pleasurable smoking experience."

3 Correct?

4 A. Yes.

5 Q. And that says, Newport's brand positioning or targeting  
6 was 21- to 40-year-olds, right?

7 A. Correct.

8 Q. And you don't quote that statement in your testimony  
9 about this document, do you?

10 A. I don't know. Where are you on --

11 Q. Well, you mention this document at pages -- page 91,  
12 lines 10 through 15 of your written direct examination.

13 A. Thank you, sir. I'm going to look for that right now if  
14 you just give me a moment, please.

15 Q. All right.

16 (Pause.)

17 BY MR. MINTON:

18 Q. Do you need the question back, Dr. Krugman?

19 A. No, I'll have it if you give me a moment to look at this  
20 section, sir.

21 THE COURT: While the witness is looking, let me ask a  
22 question: I have the United States' motion for entry of an order  
23 regarding testimony by Mr. Milstein. I have the opposition. Is  
24 the government going to be filing any reply or do you know yet?

25 MR. BRODY: Your Honor, we filed a reply last night and I

1 think we delivered copies to chambers about 9:20 this morning.

2 THE COURT: Maybe I did get that. All right. So we have  
3 everything on that. Okay.

4 THE WITNESS: That's correct.

5 BY MR. MINTON:

6 Q. You do quote a sentence that appears under the next  
7 heading down, "Creative Strategy," and it says: "Develop  
8 creative executions that continue to strengthen and refresh  
9 Newport's competitive advantage as the peer brand of choice  
10 among younger adult smokers by reinforcing the perception that  
11 Newport delivers smoking pleasure in social settings relative to  
12 their lifestyles."

13 Do you see that?

14 A. Yes.

15 Q. And that's the passage you quote, correct?

16 A. Yes.

17 Q. And the type of imagery that's mentioned in this document  
18 is keyed, then, to social settings relative to their lifestyles,  
19 correct?

20 A. Yes.

21 Q. And "their" referring to the lifestyles of some peer  
22 group of younger adult smokers, correct?

23 A. Yes.

24 Q. And the academic literature tells us, doesn't it,  
25 Dr. Krugman, that we perceive -- what we perceive from the



1 communication is affected by our individual perspective and our  
2 individual context, correct?

3 A. Yes.

4 Q. In other words, our perception is selective, right?

5 A. Yes.

6 Q. And we frame communications and we perceive them  
7 according to who we are and what our situation is in life,  
8 right?

9 A. If we deal -- if we deal actively with them, we do.

10 Q. And --

11 A. Sometimes we don't -- we don't deal actively with the  
12 communication, so therefore, it's not as selective as we think  
13 it is.

14 Q. Right. You're not an expert in the psychology of  
15 subliminal communication, are you, Dr. Krugman?

16 A. No, sir. The example that I just gave you was  
17 supra-liminal, not subliminal. I am an expert in audiences and  
18 messages, though.

19 Q. All right. Assume that an image contains information  
20 about a person's financial status and let's say it shows what  
21 car the person drives and the way the person is dressed. The  
22 scientific literature predicts that there will be a difference  
23 in the way a very wealthy person will perceive that image  
24 compared to a very poor person, correct?

25 A. It's possible.

1 Q. Well, the fact is that our perception is dependent upon  
2 our context, correct?

3 A. Often, yes.

4 Q. All right. And it works the same way for age, doesn't  
5 it, Dr. Krugman? You recall the question the Judge asked you.  
6 And the scientific literature tells us that, all other things  
7 being equal, there's going to be a systematic difference in how  
8 older people and younger people interpret the age of those that  
9 are outside their own age ranges, correct?

10 A. There could be.

11 Q. Well, first of all, that comports with common sense, does  
12 it not?

13 A. That we see things according to our group or --

14 Q. According to our own experience and our own context,  
15 correct?

16 A. Yes.

17 Q. All right. Now, with that in mind, let's look at a few  
18 of the Newport ads.

19 THE COURT: Mr. Minton, if you're going to change topics,  
20 it's about 2 minutes early, but you know we had to break early  
21 this afternoon because of a meeting I had. Did you remember that  
22 or not remember?

23 MR. MINTON: I did remember that, Your Honor, and I'm  
24 probably five minutes away, but that's --

25 THE COURT: Are you really only five minutes away? I do

1 not like to be late to meetings, especially when they've  
2 rearranged the whole meeting schedule to accommodate me.

3 MR. MINTON: I'm not that much of a risk taker, Your  
4 Honor.

5 THE COURT: Okay. All right, everybody. You may step  
6 down, Doctor.

7 9:30 tomorrow. Five minutes, hopefully, for Lorillard.  
8 We have one other very short cross; is that right? Two?

9 MR. BEACH: For Reynolds, ma'am, approximately 40 minutes  
10 at the most.

11 THE COURT: All right. Mr. Wallace?

12 MR. WALLACE: Twenty.

13 THE COURT: Mr. Webb.

14 MR. WEBB: Actually, I think I told you an hour and a half  
15 and I'm bringing it down to probably 45 minutes to an hour.

16 THE COURT: Okay. Hopeful -- well, definitely by lunch,  
17 everybody. And you will get your redirect done in the afternoon,  
18 right?

19 MS. BROOKER: Yes, Your Honor.

20 THE COURT: Okay. 9:30 tomorrow, please.

21 (Proceedings adjourned at 3:28 p.m.)

22 C E R T I F I C A T E

23 I, Scott L. Wallace, RDR-CRR, certify that the  
24 foregoing is a correct transcript from the record of proceedings  
in the above-entitled matter.

25 -----  
Scott L. Wallace, RDR, CRR

Scott L. Wallace, RDR, CRR  
Official Court Reporter

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