

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

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

WRITTEN DIRECT EXAMINATION

OF

CAROLYN LEVY

SUBMITTED BY THE UNITED STATES PURSUANT TO ORDER #471A

(As Corrected by Carolyn Levy)

1 **Q: Please state your name for the record.**
2 A: Carolyn Levy.
3 **Q: What is the highest academic degree you have received?**
4 A: I have a Ph.D. in experimental psychology.
5 **Q: From what university?**
6 A: The State University of New York in Albany.
7 **Q: Where did you go to work after you graduated?**
8 A: I went to work for Philip Morris *Incorporated*, which was also known as Philip Morris
9 *USA*, after doing a post-doc.
10 **Q: What year was that?**
11 A: 1975.
12 **Q: How long did you work for Philip Morris?**
13 A: Until 2002.
14 **Q: From 1975 to 2002, what positions did you hold at Philip Morris?**
15 A: I was a research scientist from 1975 to 1979.
16 I was an associate senior scientist from 1979 to 1980.
17 I was the facility leader of the subjective evaluation facility in 1980 and 1981.
18 I was a Manager of Commercial Development from 1981 to 1984
19 I was a Manager of Product Evaluation and Brand Development from 1984 to 1986.
20 I was the Assistant Director of Consumer Research from 1986 to 1991 1989.
21 *I was the Director of Consumer Research from 1989 to 1991.*
22 I was Vice President Director of Planning from 1991 through 1993.
23 *I was Vice President of Planning from 1993 to 1994.*
24 I was Senior Vice President for Marketing and Sales Information from 1994 to 1998.
25 In 1998, I was appointed Senior Vice President of Youth Smoking Prevention.
26 **Q: For how long were you Senior Vice President of Youth Smoking Prevention?**
27 A: From April 1998 until March 2002.
28 **Q: Is it fair to say, in summary, that over the course of your 27 year career with Philip**
29 **Morris you have worked on laboratory research, specifically nicotine research,**
30 **product development and consumer research, and youth smoking prevention**
31 **programs?**
32 A: Yes, among others.

1 **Q: What is the current status of your employment with Philip Morris?**

2 A: I resigned from Philip Morris *for health reasons. I worked through February 2002. and*
3 *my last day of work was March 1, 2002. I then took six weeks of vacation and, at the*
4 *present time, was I'm on salary continuation until April 2004. Since then, I have been*
5 *retired.*

6 **Q: Are you retired?**

7 A: **No.** Yes.

8 **Q: What is the difference between resigning and retiring at Philip Morris?**

9 A: Retirement is a classification where you start drawing pension.

10 **Q: Are you drawing a pension?**

11 A: **No.** Yes.

12 **Q: In the future, will you be eligible to draw a pension?**

13 A: Yes.

14 **Q: And what will that pension be?**

15 A: *It will be 100% of my salary when I retired from Philip Morris. My pension is monthly*
16 *payments totaling \$69,490 per year. I also received a lump-sum pension benefit payment of*
17 *\$1,065,575. I rolled over \$1,473,483 from my deferred profit sharing account into an IRA.*

18 **Q: You have continued to receive a salary and benefits from Philip Morris after you**
19 **resigned, correct?**

20 A: Yes, *until April 2004.*

21 **Q: And your salary continuation will continue until you reach age 55, correct?**

22 A: Yes, *it did continue until shortly after I reached age 55.*

23 **Q: What is the salary that you will receive until you reach age 55?**

24 A: *About \$150,000 I received \$157,500 annually. In addition, as part of my salary*
25 *continuation agreement, I received a long-term incentive compensation payment of*
26 *\$180,975 at the end of January 2004 related to the 2001 portion of the prior three-year*
27 *period that I had worked.*

28 **Q: Each year?**

29 A: **Yes.** *As indicated above, I received \$157,500 annually until I retired.*

30 **Q: And you are receiving that amount yearly even though you are not performing any**
31 **work for Philip Morris, correct?**

32 A: That's correct. *As stated above, I was on salary continuation until I reached retirement age.*

1 **Q:** You also receive medical benefits during your salary continuation, correct?

2 A: Yes, *I did and still do in retirement.*

3 **Q:** Any other benefits or packages or bonuses?

4 A: Life insurance *and dental coverage.*

5 **Q:** You own Philip Morris stock, correct?

6 A: Yes, *I own mutual funds that include Altria stock. At the time of my deposition, I owned*

7 *Altria stock that I have since given to charity. I also hold unexercised options for 50,670*

8 *shares of Altria stock at an average price of \$42.04 per share.*

9 **Q:** Ms. Levy, you have conditions placed upon you by Philip Morris tied to your salary

10 continuation, correct?

11 A: Yes, *I did.*

12 **Q:** You signed an agreement with Philip Morris that prohibits you from working for

13 another employer, correct?

14 A: **Yes.** *Not exactly. My agreement had a non-competition clause that prohibited me from*

15 *working for a competitor of Philip Morris. It did not prohibit any and all employment*

16 *although my salary continuation would have ceased if I took on full-time employment.*

17 **Q:** This agreement also requires you to notify Philip Morris if you do obtain

18 employment elsewhere, correct?

19 A: Yes.

20 **Q:** And to inform Philip Morris if you are subpoenaed in any litigation, correct?

21 A: Yes.

22 **Q:** Are there any other restrictions placed on you by this agreement with Philip

23 Morris?

24 A: **No.** *The agreement also contained other prohibitions, such as not soliciting company*

25 *employees to take other employment.*

26 **Q:** You have testified that from 1975 to 1978, you were a research scientist and from

27 1979 to 1980, you were an associate senior scientist. What part of the Research and

28 Development Department were you working for within Philip Morris?

29 A: Our group was called the Behavioral Research Group *or Laboratory.*

30 **Q:** William Dunn led the Behavioral Research Group?

31 A: Yes.

32 **Q:** He was a principal scientist at Philip Morris at that time, correct?

1 A: Yes.

2 **Q: And he was your supervisor from 1975 until 1980, correct?**

3 A: Yes.

4 **Q: What kind of research did you do as a member of the Behavioral Research Group?**

5 A: When I first joined the company, I was doing research essentially looking at why people

6 smoke, how they smoke, and what they want to smoke. Then in 1978, I opened up a rat

7 lab to look at the effects of nicotine on rat behavior and to do some work with nicotine

8 analogs.

9 **Q: The Behavioral Research Group had a hypothesis as to why people smoke, correct?**

10 A: Yes, *in particular, Dr. Dunn had a hypothesis about why people smoke.*

11 **Q: And that hypothesis was that people smoke for nicotine, correct?**

12 A: Yes, *that was my shorthand way of describing Dr. Dunn's hypothesis that smokers regulate*

13 *the amount of nicotine they obtain from cigarettes and another hypothesis that the*

14 *Behavioral Research Group investigated that smokers obtained performance benefits from*

15 *smoking.*

16 **Q: There were other hypotheses for why people smoke at that time, correct?**

17 A: Yes, *as I recall, there were.*

18 **Q: But the predominant hypothesis in the Behavioral Research Group was that people**

19 **smoked for nicotine, correct?**

20 A: Yes.

21 **Q: And that was during this time period in which you worked in Research and**

22 **Development, correct?**

23 A: Yes.

24 **Q: From the mid to late 1970s, correct?**

25 A: Yes, *until 1980.*

26 **Q: And you did research to test the hypothesis that people smoke for nicotine, correct?**

27 A: Yes.

28 **Q: Some of your research results supported that hypothesis, correct?**

29 A: Yes.

30 **Q: Did any of your research refute it?**

31 A: No, *research either that I conducted or that I was aware of did not refute it, but it was*

32 *ambiguous.*

1 **Q:** Next, I would like to ask you some questions about your work with animal models.
2 You testified you set up a rat lab at Philip Morris in 1978. Did you have prior
3 experience working with laboratory rats as an experimental psychologist?
4 A: Yes.
5 **Q:** Your work with rats at Philip Morris was nicotine-related research, correct?
6 A: Yes.
7 **Q:** It was part of a Nicotine Program at Philip Morris?
8 A: Yes.
9 **Q:** You helped plan that program, correct?
10 A: **Yes.** *Not really. My role was limited to screening nicotine analogs.*
11 **Q:** Turning to U.S. Exhibit 86949, this is an internal Philip Morris memorandum from
12 you, J.I. Seeman and E.B. Sanders, dated March 21, 1978 to Dr. Tom S. Osdene,
13 correct?
14 A: Yes.
15 **Q:** You worked with Dr. Osdene when you were in the Research and Development
16 Department, correct?
17 A: Yes, *I worked for Dr. Osdene, who was Dr. Dunn's boss.*
18 **Q:** He was a Director of Research for Philip Morris at that time, correct?
19 A: Yes.
20 **Q:** The third paragraph on the first page says:
21 Nicotine is biologically a very active molecule, mediating both
22 peripheral (at neuromuscular junctions and autonomic ganglia) and
23 central nervous system responses. The complexity of this multifaceted
24 activity is further complicated by the elusive nature of CNS effects.
25 The following program is aimed, in a modest sense, to evaluate these
26 many biologic activities and their interrelationships.
27 Do you see that?
28 A: Yes, *except that the word "multifaceted" should be "multi-site."*
29 **Q:** And attached to this coverpage is an outline of various areas of research including:
30 receptor isolation, identification and characterization (CNS); pharmacokinetics;
31 CNS Testing; Peripheral Pharmacological Bioassays; Synthetic Organic Chemistry;
32 Evaluation of the Chemical Properties of Analogues and of Nicotine; and Smoking
33 Studies, correct?

1 A: Yes.

2 **Q: References to CNS in this document mean "central nervous system," correct?**

3 A: Yes.

4 **Q: Philip Morris had been doing nicotine research long before this planning document**
5 **as drafted in 1978, correct?**

6 A: Yes. *I believe that Dr. Seeman had been synthesizing nicotine analogs for some time before*
7 *this. I had done some work before this memorandum was drafted looking at the behavioral*
8 *effects of a stereoisomer of nicotine.*

9 **Q: Initially, your work with rats focused on attempting to discover if there were any**
10 **nicotine-related "benefits" from smoking, correct?**

11 A: Yes.

12 **Q: What findings or conclusions did you reach?**

13 A: Nothing notable.

14 **Q: Soon after you set up the rat lab in 1978, the focus of your work changed from**
15 **attempting to find benefits with nicotine to screening nicotine analogs, correct?**

16 A: Yes.

17 **Q: Nicotine analog work was discussed in U.S. Exhibit 86949, the Nicotine Program**
18 **planning document that you have just testified about, correct?**

19 A: Yes.

20 **Q: A nicotine analog is a substance that has a chemical structural similar to nicotine,**
21 **correct?**

22 A: Yes.

23 **Q: And the purpose of your research was to determine if any of these analogs were like**
24 **nicotine, correct?**

25 A: Yes, *we were trying to determine if any of the analogs had central nervous system effects*
26 *similar to nicotine's.*

27 **Q: You were researching nicotine analogs to determine if there were analogs that**
28 **would not have the peripheral nervous system effects of nicotine that contributed to**
29 **health hazards—for instance, increased heart rate and blood pressure—but that**
30 **would have the central nervous system effects of nicotine, correct?**

31 A: Yes.

32 **Q: Turning your attention to U.S. Exhibit 35156, this is another internal Philip Morris**

1 memorandum from you and J. Seeman, and E. Sanders to Dr. Osdene, dated
2 February 3, 1978, correct?

3 A: Yes.

4 Q: And in the final paragraph on the first page it says:

5 The state of the art and the position in which the nicotine program at
6 Philip Morris rests with respect to this state of the art, can best be
7 appreciated by considering the fact that Dr. Avram Goldstein (one of
8 the central figures in endorphin and opiate receptor research) is just
9 initiating a research program on nicotine activity. . . . He has tested
10 two analogues, 2-and 4-isonicotine (gifts from PM) and is currently
11 attempting to prepare R-(+)-nicotine. The Behavioral Research
12 Group has been testing R-(+) . . . for some time

13 Do you see that?

14 A: Yes.

15 Q: The Behavioral Research Group had been doing research with nicotine analogs for
16 some time when this important scientist Dr. Avram Goldstein was only beginning to
17 study them, correct?

18 A: Yes.

19 Q: Turning to page 2 of U.S. Exhibit 35156, the paragraph at the top of the page reads:

20 Understanding nicotine's biological properties is a key to the tobacco
21 industry for two very different reasons: (1) in terms of a defensive
22 posture, such knowledge will allow us to assess the potential health
23 hazards of tobacco alkaloids, e.g. heart rate acceleration, blood
24 pressure elevation, etc.; and (2) in terms of an offensive posture, one
25 can envision nicotine substitutes (possibly even endogenous CNS
26 nicotinic neurotransmitters) which will specifically and selectively
27 activate some of the nicotinic receptors but not others.
28 Correct?

29 A: Yes.

30 Q: So Philip Morris had "offensive" and "defensive" reasons for studying nicotine
31 analogs?

32 A: Yes.

33 Q: In addition to the work you have mentioned, you also studied the effects of
34 withdrawal from nicotine in rats, correct?

35 A: Yes.

1 **Q:** Turning your attention to U.S. Exhibit 21421, this is an internal Philip Morris
2 memorandum from you to Dr. Dunn dated November 1, 1977, correct?
3 A: Yes.
4 **Q:** The subject line reads, "A Proposed Study of Nicotine Withdrawal in Rats,"
5 correct?
6 A: Yes.
7 **Q:** In the third paragraph on the first page you wrote:
8 If nicotine withdrawal effects do exist, then they should be observable
9 using an animal model. Both morphine and caffeine withdrawal in
10 rats have recently been observed to produced conditioned taste
11 aversions to novel solutions. This technique is quite sensitive and
12 should enable us to test for nicotine withdrawal as well.
13
14 **Correct?**
15 A: Yes, *except "produced" should be "produce."*
16 **Q:** On page two, in the first paragraph, you wrote:
17 We do not predict that nicotine will act like morphine and caffeine
18 because we do not believe that rats chronically injected with nicotine
19 undergo withdrawal when the nicotine injections are stopped. We
20 realize, of course, that it is dangerous to set out to prove the null
21 hypothesis. However, because both morphine and caffeine
22 withdrawal have been so easy to produce in the laboratory, any
23 difficulty in producing nicotine withdrawal can only be interpreted as
24 support for our position.
25
26 **Correct?**
27 A: Yes.
28 **Q:** And you go on in this document to lay out "predicted results," correct?
29 A: Yes.
30 **Q:** Before you predicted the results you ran the experiment, correct?
31 A: **Yes.** No.
32 **Q:** These predicted results were that rats would not show withdrawal symptoms,
33 correct?
34 A: Yes.
35 **Q:** It was in Philip Morris' interest to generate those results, correct?

1 A: Yes, *although that was not my motivation in proposing the research.*

2 Q: **Because Philip Morris made public statements claiming there was no withdrawal**

3 **from nicotine, correct?**

4 A: **Yes.** *I do not recall having heard of any such statements prior to the time that I wrote this*

5 *memorandum. I recall that such statements may have been made at a later point in time.*

6 Q: **Now turning your attention to U.S. Exhibit 22285, this is an internal Philip Morris**

7 **memorandum dated November 3, 1977 to Dr. Osden from Dr. Dunn, correct?**

8 A: Yes.

9 Q: **And the subject is "Proposed Study by Levy," correct?**

10 A: Yes.

11 Q: **The body of the memorandum reads as follows:**

12 **I have given Carolyn approval to proceed with this study. If she is**

13 **able to demonstrate, as she anticipates, no withdrawal effects of**

14 **nicotine, we will want to pursue this avenue with some vigor. If,**

15 **however, the results with nicotine are similar to those gotten with**

16 **morphine and caffeine, we will want to bury it. Accordingly, there**

17 **are only two copies of this memo, the one attached and the original**

18 **which I have.**

19

20 **Do you see that?**

21 A: Yes.

22 Q: **This document refers to your withdrawal study, correct?**

23 A: Yes.

24 Q: **Were you aware at that time that the results of your study were to be "buried" if**

25 **you found withdrawal effects of nicotine in rats?**

26 A: No. *And that could not have happened, given the procedures for preserving laboratory*

27 *research that were in place.*

28 Q: **Who took over the rat lab when you left in 1980?**

29 A: Dr. Victor DeNoble.

30 Q: **You also did work on spraying nicotine citrate on tobacco when you were part of the**

31 **Behavioral Research Group, correct?**

1 A: Yes.

2 **Q:** Turning your attention to U.S. Exhibit 85427, this is an internal Philip Morris
3 memorandum from you to T. Sanders, T. Van Auken, R. Rainey and the Behavioral
4 Research Group, correct?

5 A: Yes.

6 **Q:** And the subject line reads, "Spraying Nicotine Citrate on Tobacco," correct?

7 A: Yes.

8 **Q:** You wrote to these individuals, "Please plan to attend a meeting to discuss the above
9 subject on Monday, November 21, 1977 at 10 a.m. in the Behavioral Research
10 Laboratory," correct?

11 A: Yes.

12 **Q:** So in 1977, the Philip Morris Behavioral Research Group was researching the
13 effects of spraying nicotine citrate on tobacco, correct?

14 A: Yes, *I know of nicotine citrate being sprayed on tobacco for use in experimental cigarettes in*
15 *studies of low-tar cigarettes.*

16 **Q:** You also worked on the issue of whether individuals regulated the amount of
17 nicotine they obtained from smoke, correct?

18 A: Yes.

19 **Q:** This was another hypothesis being tested in the Behavioral Research Group?

20 A: Yes, *this was Dr. Dunn's hypothesis I referenced earlier.*

21 **Q:** In fact, you had conversations with Dr. William Dunn, the head of the Behavioral
22 Research Group, about this hypothesis, correct?

23 A: Yes.

24 **Q:** And you did research related to this hypothesis, correct?

25 A: Yes.

26 **Q:** As part of this research you monitored how smokers inhaled smoke from cigarettes
27 with varying tar and nicotine deliveries, correct?

28 A: Yes.

29 **Q:** As a result of this research, were you able to gather evidence that some people
30 change their smoking behavior in response to cigarettes with differing tar and
31 nicotine deliveries?

32 A: Yes.

1 **Q:** Written summaries were prepared of your research, correct?

2 A: Yes.

3 **Q:** Which were summarized once or twice a year in a report, correct?

4 A: Yes.

5 **Q:** Were you ever an author or co-author of one of those reports?

6 A: Yes.

7 **Q:** These reports were internal Philip Morris documents, correct?

8 A: Yes.

9 **Q:** You never published any of this research outside Philip Morris, did you?

10 A: No.

11 **Q:** Did you ever request that any of this be published outside of Philip Morris?

12 A: Yes.

13 **Q:** What happened when you requested that such research be published?

14 A: I was told not to publish or was not given approval to publish by the manuscript review

15 board.

16 **Q:** You left the Behavioral Research Group in 1980, correct?

17 A: Yes.

18 **Q:** But you continued to do nicotine research in the product development and

19 consumer research departments, correct?

20 A: Yes, if you define nicotine research broadly, but only as to the Consumer Research

21 Department. When I was in Consumer Research, my group supported the marketing group

22 in developing the advertising and packaging for Next, a denicotinized cigarette. I cannot

23 recall being personally involved in doing any nicotine research after 1980.

24 **Q:** One such marketing research and theme testing project you were involved with

25 concerned a cigarette that Philip Morris introduced in the late 1980s that had about

26 97% of the nicotine removed, right?

27 A: Yes.

28 **Q:** Philip Morris referred to the tobacco that had gone through the denicotinization

29 process as “alkaloid reduced tobacco,” or “ART,” right?

1 A: Yes.

2 **Q: The different models of Philip Morris’s denicotinized cigarettes delivered varying**
3 **amounts of tar, correct?**

4 A: Yes, *to the best of my recollection, I think they did.*

5 **Q: For those denicotinized products, Philip Morris tested consumer reaction to**
6 **potential marketing messages to ascertain what consumers perceived about the**
7 **benefits of a denicotinized cigarette, correct?**

8 A: Right.

9 **Q: Please look at U.S. Exhibit 20356. This is a document reporting on consumer**
10 **reaction to a denicotinized product, right?**

11 A: Yes.

12 **Q: You received a copy of this document, right?**

13 A: Yes, I did.

14 **Q: U.S. Exhibit 20356 is a January 27, 1989 internal memorandum titled “ART**
15 **Qualitative Research,” right?**

16 A: Yes.

17 **Q: The “Summary” on the first page states in part that “Virtually everyone identified**
18 **with a health benefit”; and, at the bottom of page 2, Bates ending in 7034, the**
19 **document states that reactions to the concept were favorable “primarily due to**
20 **perceived health benefits to the smoker.” Do you see those statements?**

21 A: Yes.

22 **Q: And on the next page, the memorandum reports: “The statement that 97% of the**
23 **nicotine had been removed was the major factor influencing their perceptions the**
24 **NEXT [the brand name for the denicotinized cigarette] would be a ‘safer’**

1 cigarette.” Do you see that?

2 A: Yes.

3 **Q: In the pre-marketing consumer research reported in U.S. Exhibit 20356, or in its**
4 **marketing of the product, Philip Morris did not inform consumers that by removing**
5 **nicotine, Philip Morris had removed the drug in cigarettes that is primarily**
6 **responsible for maintaining smoking behavior, did it?**

7 A: No, it did not.

8 **Q: You also did work on nicotine research later when you were Vice President of**
9 **Planning, correct?**

10 A: *There was no proposed answer with this question. If this question is a reference to U.S. Ex.*
11 *36943 that follows, I was Director of Planning at the time and I consider this document to*
12 *discuss market potential and implications of smoking cessation technology, not "nicotine*
13 *research."*

14 **Q: Turning to U.S. Exhibit 36943, this is an internal Philip Morris memorandum from**
15 **you to William I. Campbell, dated October 2, 1992, correct?**

16 A: Yes.

17 **Q: At that time you were Vice President of Planning, correct?**

18 A: **Yes.** *No, I was Director of Planning.*

19 **Q: The subject of the memorandum is, "Smoking Cessation Technology," correct?**

20 A: Yes.

21 **Q: On page two, paragraph three, you wrote:**

22 [W]e should have contingency plans for a change in the predominant
23 form of nicotine usage. If the market were to broadly redefine our
24 business as “the delivery of nicotine in an aerosol,” the development
25 of alternative delivery mechanisms, substrates, flavors, etc. would
26 make sense. We currently have R&D projects underway to pursue

1 some of these goals, as well as a task force that has been given the
2 responsibility of putting together a business plan for one product
3 which is nearing final prototype development.
4

5 **Correct?**

6 A: Yes.

7 **Q: So in 1992, Philip Morris was studying alternative mechanisms to deliver nicotine in**
8 **an aerosol, correct?**

9 A: Yes.

10 **Q: And had a product near final prototype development, correct?**

11 A: Yes.

12 **Q: And a company task force was developing a business plan for that product, correct?**

13 A: Yes.

14 **Q: Dr. Levy, you have just testified that you did product development and consumer**
15 **research on nicotine. Is it fair to say that in the 1980s, your work shifted from**
16 **laboratory work to product development and consumer research generally?**

17 A: Yes, it is fair to say that in the 1980s, my work shifted out of the laboratory. As I stated
18 above, I do not recall being personally involved in any nicotine research after 1980, except
19 for the work I described while I was in Consumer Research.

20 **Q; And throughout the 1980s, you were promoted through a series of positions that**
21 **involved product development and consumer research?**

22 A: Yes.

23 **Q: You testified that you were the facility leader of the subjective evaluation facility in**
24 **1980 and 1981, the Manager of Commercial Development from 1981 to 1984 and the**
25 **Manager of Product Evaluation and Brand Development from 1984 to 1986. In**
26 **those positions from 1981 to 1986, you were involved in product testing, correct?**

1 A: Yes.

2 **Q: The major tool you used was the blind product test used with a panel of smokers,**
3 **correct?**

4 A: Yes.

5 **Q: That method is called monadic testing, correct?**

6 A: Yes.

7 **Q: Monadic testing means that an individual smoker receives one type of test product**
8 **in a plain white package to smoke and evaluate, correct?**

9 A: Yes.

10 **Q: You also conducted other types of blind testing called sequential monadic or paired**
11 **comparison tests where each individual smoker got two different types of cigarettes**
12 **to smoke and evaluate and compared them side by side, correct?**

13 A: *Yes, I did this when I was facility leader of the subjective evaluation facility in 1980 and*
14 *1981.*

15 **Q: You also testified that you were Assistant Director of Consumer Research from 1986**
16 **to 1991, and Vice President for Marketing and Sales Information from 1994 to 1998.**
17 **Both of those positions involved consumer research, correct?**

18 A: *Yes, except that I was the Assistant Director of Consumer Research from 1986 to 1989 and I*
19 *was the Director of Consumer Research from 1989 to 1991.*

20 **Q: For the sake of completeness, you testified that in between these two positions, you**
21 **were Vice President of Planning from 1991 to 1993. Your responsibilities in that**
22 **position included providing staff support for the office of the president and also**
23 **coordinating preparation of the five year plan for Philip Morris, U.S.A, correct?**

24 A: *Yes, except that I was Director of Planning from 1991 to 1993 and Vice President of*
25 *Planning from 1993 to 1994.*

1 **Q: Returning to your work from 1986 to 1991 and 1994 to 1998 in consumer research,**
2 **the consumer research department was responsible for supporting the brand**
3 **managers in the marketing department, correct?**

4 A: Yes, *except that when I was the Senior Vice President of Marketing and Sales Information*
5 *from 1994 to 1998, Consumer Research also provided support to the sales organization.*

6 **Q: You provided the brand managers information, for example, about consumers'**
7 **brand preferences and the popularity of brands, and research on whether**
8 **consumers liked advertisements and promotional items, correct?**

9 A: Yes, *I and those who worked for me did this when I was Assistant Director and Director of*
10 *Consumer Research from 1986 to 1991. Those who reported to me did this when I was*
11 *Senior Vice President of Marketing and Sales Information from 1994 to 1998.*

12 **Q: Philip Morris tests its cigarette brand advertisements and other communications**
13 **before creating or changing its marketing campaigns, correct?**

14 A: **Yes.** *Sometimes.*

15 **Q: And before changing cigarette packaging?**

16 A: Yes, *generally.*

17 **Q: And before offering new promotional items?**

18 A: **Yes.** *Sometimes.*

19 **Q: And before creating a new product or line extension of an existing cigarette brand?**

20 A: Yes.

21 **Q: Philip Morris uses a variety of marketing techniques to do this research, including**
22 **focus groups, observations, field tests, surveys, recognition and recall tests, "eye**
23 **tracking" tests, and other methods?**

24 A: **Yes.** *These describe research techniques, many if not all of which have been used by Philip*

1 *Morris as part of its marketing research from time to time, although I am not certain what is*
2 *meant here by observations and field tests.*

3 **Q: And Philip Morris uses these techniques both before and after it creates its**
4 **marketing pieces?**

5 A: **Yes.** *Sometimes.*

6 **Q: Philip Morris uses these techniques to determine whether consumers understand the**
7 **messages that it intends to convey by its marketing?**

8 A: *Yes, some of these techniques are used on some marketing elements to assess consumers'*
9 *understanding..*

10 **Q: Philip Morris tests these messages to determine if they are relevant to the target**
11 **audience?**

12 A: *Yes, some of these techniques are used for this purpose.*

13 **Q: And contemporary?**

14 A: *Yes, some of these techniques are used for this purpose.*

15 **Q: And Philip Morris tests whether its brand imagery is liked by the target audience,**
16 **correct?**

17 A: *Yes.*

18 **Q: In fact, the consumer research department is constantly testing consumers to make**
19 **these determinations, correct?**

20 A: *Yes, when I was at Philip Morris, the Consumer Research Department frequently used*
21 *various techniques to obtain information requested by brand management.*

22 **Q: One of the ways Philip Morris does that is by conducting a continuous consumer**
23 **tracking survey by telephone, correct?**

24 A: **Yes.** *The primary purpose of the continuous consumer tracking survey was to obtain*

1 *quantitative demographic information on adult smokers and their purchasing behavior. As I*
2 *recall, it was also used from time to time to collect information on specific brand marketing*
3 *elements or campaigns.*

4 **Q: You worked with this survey, correct?**

5 A: Yes.

6 **Q: Turning to U.S. Exhibit 88156, this is a memorandum from you to Jon Zoler dated**
7 **September 26, 1988, correct?**

8 A: Yes.

9 **Q: John Zoler was the Director of Market Research at this time?**

10 A: Yes.

11 **Q: At that time you were the assistant director of consumer research, correct?**

12 A: Yes.

13 **Q: In the first paragraph the memorandum says "[T]he purpose of this memo is to**
14 **briefly summarize our major accomplishments thus far in 1988 as a foundation for**
15 **the critical issues to be researched in 1989," correct?**

16 A: Yes.

17 **Q: Under the heading, "MARKETPLACE TRACKING," it says:**

- 18 **Implemented Continuous National Tracking System**
19 **– 2000 smokers per month**
20 **– More relevant measurement of changes in smoker shares and**
21 **demographics**
22 **– Timely response to special issues through use of modules**
23 **– RJR Millionaire Cash Quiz**
24 **– Attitude Towards Smoking**
25 **– Quitting**
26 **– Reasons for brand selection**
27 **– Nicotine (Koop Statement)**
28 **– Popular brands among young smokers**
29 **– Dunhill, Rothmans Awareness, Trial, Image**

1
2 **Do you see that?**

3 A: Yes.

4 **Q: So you were responsible for implementing the Continuous National Tracking**
5 **System?**

6 A: Yes, *along with others who reported to me.*

7 **Q: After you left the Consumer Research Department and became Vice President for**
8 **Youth Smoking Prevention, the consumer tracking survey was renamed the**
9 **Continuous Tracking Survey, correct?**

10 A: **Yes.** *I believe the name of the survey was changed to Continuous Tracking Survey during*
11 *my tenure in the Consumer Research Department.*

12 **Q: You hired various market research firms to conduct the Continuous Tracking**
13 **Survey research for Philip Morris, correct?**

14 A: Yes.

15 **Q: These market researchers telephoned individuals all over the United States and**
16 **asked them a standard battery of questions, correct?**

17 A: Yes, *although the specific questions asked depended on a consumer's responses and also*
18 *changed from time to time.*

19 **Q: For instance, the market researchers asked individuals about their cigarette brand**
20 **preferences and their cigarette buying behavior, correct?**

21 A: Yes.

22 **Q: And whether they had seen certain cigarette promotions?**

23 A: Yes, *as I recall, we did this from time to time.*

24 **Q: And what their attitudes were about smoking?**

25 A: Yes, *as I recall, we did this from time to time.*

1 **Q:** The market researcher asked the interviewee demographic questions such as age,
2 gender, education, ethnicity and household income, correct?

3 A: Yes.

4 **Q:** These interviews were typically about twenty minutes in length, correct?

5 A: Yes.

6 **Q:** These interviews and other tracking data were used by the marketing department
7 for a variety of purposes including targeting audiences, correct?

8 A: Yes, *these kinds of data have been used by the Marketing Department to help to define and*
9 *describe the target audiences for particular marketing efforts.*

10 **Q:** Tracking is one of many forms of consumer research that is performed by the
11 consumer research department for use in creating and updating marketing plans,
12 correct?

13 A: Yes.

14 **Q:** And making media placement decisions, as another example, correct?

15 A: Yes.

16 **Q:** Philip Morris also did research to learn where it should place Philip Morris
17 cigarette products in retail stores to ensure that its products drew the maximum
18 amount of consumer attention, correct?

19 A: **Yes.** *Not exactly. As I recall, we conducted research on POS placement, not product*
20 *placement.*

21 **Q:** Turning to U.S. Exhibit 42869, this is a study entitled "Metro Area Consumer Retail
22 Study," correct?

23 A: Yes, *except the title of the exhibit is "Metro Area Consumer Retail Masters Study."*

24 **Q:** This was a study done in the 1990s, correct?

1 A: Yes.

2 **Q: As part of the study, consumers wore special eye-tracking glasses while shopping so**
3 **that researchers could track their eye movements to learn what displays and**
4 **products drew the most consumer attention in retail outlets, correct?**

5 A: *Yes, but the eye-tracking part of the study did not concern products. Rather, it focused on*
6 *the location of displays.*

7 **Q: The study found that the best, most visible spots were “on the counter, behind the**
8 **counter or cashier, and on and around the door,” correct?**

9 A: *Yes, but the precise quote under the heading "Key Findings" is: "Best POS/fixture spots: on*
10 *counter, behind counter/cashier, on and around door."*

11 **Q: Thereafter, Philip Morris's cigarette displays were consolidated behind the counter**
12 **and near the door at retail outlets, correct?**

13 A: **Yes.** *Where cigarette displays are placed in a store is the retailer's decision. Through its*
14 *retail programs, Philip Morris has provided incentives to retailers to place displays and*
15 *cigarette products in preferred locations.*

16 **Q: Philip Morris designed several retail incentive programs based on this and other**
17 **studies, correct?**

18 A: **Yes.** *No, to the best of my knowledge, this eye-tracking study did not directly influence the*
19 *development of any retail programs by Philip Morris. Other studies undoubtedly played a*
20 *role, but I was not responsible for the development of retail programs.*

21 **Q: Around October 1998, Philip Morris announced that it was implementing “Retail**
22 **Leaders,” a retail merchandising program?**

23 A: Yes.

24 **Q: As a member of the Philip Morris Senior Team, which included all senior vice**

1 **presidents at Philip Morris, you were part of the decision making process when**
2 **Philip Morris created its "Retail leaders" program, correct?**

3 A. *Yes, the Senior Management Team was part of the decision making process, but the Sales*
4 *Organization created the "Retail leaders" program and, only occasionally, raised questions*
5 *regarding aspects of the program to the Senior Team.*

6 **Q: "Retail Leaders" replaced an earlier program called the "Retail Masters" program,**
7 **which had been in existence since 1992, correct?**

8 A: Yes.

9 **Q. The "Retail Leaders" program provided incentives to retailers that place cigarette**
10 **brands behind the counter, correct?**

11 A. Yes.

12 **Q. There are other incentives that Philip Morris provides retailers to allow it (rather**
13 **than competitors) greater visibility including more signage and above-counter**
14 **display space, correct?**

15 A. **Yes.** *My understanding at the time I was a member of the Senior Team was that a primary*
16 *purpose of the Retail Leaders program was to reduce the visibility of the cigarette category*
17 *in retail stores by consolidating it in a non-self service location. However, I was not the*
18 *Senior Team member responsible for retail programs.*

19 **Q. And, these incentive programs arose out of Philip Morris's consumer research such**
20 **as this eye tracking study, correct?**

21 A. **Yes.** *No, as I stated above, to the best of my knowledge, this eye-tracking study had nothing*
22 *to do with the development of any retail programs by Philip Morris.*

23 **Q. And Philip Morris's "Retail Leaders" program was a competitive move, was it not?**

24 A. Yes.

1 **Q.** In fact, R.J. Reynold and Lorillard sued Philip Morris in 1999 for injunctive relief
2 and other relief, alleging that the retail leader's program was anti-competitive,
3 correct?

4 **A.** Yes, *that's my recollection.*

5 **Q.** And, you were well aware of that lawsuit because you were part of the Senior Team
6 at Philip Morris at the time, correct?

7 **A.** Yes, *I was generally aware of it.*

8 **Q.** As a member of the senior team, you were aware that the tobacco companies are
9 fiercely competitive over retail space and visibility, correct?

10 **A.** Yes.

11 **Q.** And that continues to be the case today, correct?

12 **A.** Yes, *it was the case up until the time that I retired in March 2002.*

13 **Q.** And, R.J. Reynolds and Lorillard lost their lawsuit against Philip Morris in 2002,
14 paving the way for Philip Morris to continue offering the incentives to retailers to
15 increase the visibility of its cigarette brands relative to competitors brands under its
16 retail leader's program, correct?

17 **A.** Yes, *I recall learning after I retired that Philip Morris had won this lawsuit. I do not know*
18 *whether the statements in the question regarding what happened thereafter are accurate.*

19 **Q:** You have testified about the tools Philip Morris used to conduct consumer research,
20 now I would like to ask you about some of the specific messages Philip Morris
21 sought to project through its marketing. First, turning to U.S. Exhibit 20471, this is
22 an October 8, 1992 document entitled "PM USA Business Update," correct?

23 **A:** Yes.

24 **Q:** The report discusses Philip Morris' "declining share of adult entry smokers,"

1 correct?

2 A: Yes.

3 Q: As a solution, the report recommends "continuously upgrading premium brand
4 positions by keeping them contemporary," correct?

5 A: Yes (with some minor errors in the quoted language), as well as "by enhancing their value to
6 the consumer via superior products and packaging, relevant advertising and image
7 reinforcing promotions."

8 Q: Keeping a marketing activity "contemporary" means keeping it modern and up to
9 date, correct?

10 A: Yes.

11 Q: This document recommends that Philip Morris "contemporize all Marlboro creative
12 with more arresting promotional advertising like Adventure Team and Racing,"
13 correct?

14 A: Yes.

15 Q: And "entry smokers" are those who are entering the cigarette market, correct?

16 A: Yes, although the document refers to "adult entry smokers" and "entry-level adult smokers."

17 Q: And Philip Morris knows from years of research that the great majority of smokers
18 enter the cigarette market before they turn 18, correct?

19 A: **Yes.** No, it is not correct that Philip Morris knows this from "years of research" that it has
20 done. According to the 1994 Surgeon General's Report, 53.0% of smokers of persons aged
21 30-39 who had ever smoked daily recalled that they had begun smoking daily before they
22 turned 18. Of that same group of people, 81.9% recalled that they had tried their first
23 cigarette before they turned 18.

24 Q: Turning to U.S. Exhibit 20526, this is a document entitled "Proposed Script for

1 **Marlboro Story,” apparently drafted in 1995, which traced the development of**
2 **Marlboro advertising themes from the Marlboro Man to the Marlboro Racing Team**
3 **and Marlboro Adventure Team, correct?**

4 A: *Yes, that is what it appears to be, although I do not recall ever having seen this document*
5 *before.*

6 **Q: The document indicates that the "Marlboro Man" represented independence and**
7 **rugged independence, and the promotional events – Marlboro Racing Team and the**
8 **Marlboro Adventure Team – used themes of freedom and adventure, correct?**

9 A: **Yes.** *This document may or may not indicate that. I do not see the words "independence"*
10 *and "freedom" among the various adjectives used in describing the Marlboro brand and its*
11 *themes in the document.*

12 **Q: And, these themes of independence, freedom and adventure are core themes that**
13 **Philip Morris has associated with the Marlboro brand, correct?**

14 A: *Yes.*

15 **Q: And Philip Morris has successfully communicated these themes with the Marlboro**
16 **brand imagery, as shown by consumer research, correct?**

17 A: *Yes.*

18 **Q: And this document indicates that Philip Morris ensures that not only its advertising,**
19 **but also its promotions such as the Marlboro Racing Team and the Marlboro**
20 **Adventure Team, communicate those themes, correct?**

21 A: *Yes, I agree that this is a fair statement about Marlboro's advertising and promotions, but,*
22 *for example, the document states that Marlboro Racing has proved "that the Marlboro*
23 *concept could be successfully extended into other equities consistent with the theme of heroic*
24 *masculinity." Again, I do not see the words "independence" and "freedom" in the document.*

1 **Q:** In addition to testing brand messages and images, you also studied specific groups
2 of consumers, correct?

3 A: Yes.

4 **Q:** One of the groups studied was individuals who had quit smoking, correct?

5 A: Yes.

6 **Q:** While you were a marketing executive, Philip Morris made public statements that
7 the sole purpose of its marketing efforts is to influence the brand choices of current
8 smokers, correct?

9 A: Yes. *I was never a marketing executive, but I believe Philip Morris may have made public*
10 *statements to this effect.*

11 **Q:** And that its marketing is not designed to encourage individuals who do not smoke
12 to start smoking, correct?

13 A: Yes, *I believe Philip Morris may have made such statements.*

14 **Q:** And Philip Morris made public statements that its marketing did not discourage
15 people from quitting, correct?

16 A: Yes. *I do not know.*

17 **Q:** In fact, Philip Morris made these kinds of statements throughout the 27 years you
18 worked for Philip Morris, correct?

19 A: Yes. *I do not know.*

20 **Q:** But when you were in the Consumer Research Department, you performed research
21 on quitting on behalf of Philip Morris, correct?

22 A: Yes.

23 **Q:** Quitting was also a subject of interest and research to Philip Morris when you were
24 in the Behavioral Research Department in the late 1970s, correct?

1 A: Yes.

2 Q: Turning to U.S. Exhibit *20098, this is a report titled Exit-Brand Cigarettes: A
3 Study of Ex-Smokers, written by F.J. Ryan and approved by Dr. Dunn, dated
4 March 1978, correct?

5 A: Yes.

6 Q: You are on the distribution list for this report, correct?

7 A: Yes.

8 Q: On page 2 of the report, bates number 1000368060, on the page titled,
9 "INTRODUCTION," it says in the last paragraph, "If the industry's introduction
10 of acceptable low-nicotine products does make it easier for dedicated smokers to
11 quit, then the wisdom of the introduction is open to debate," (emphasis in original)
12 do you see that?

13 A: Yes.

14 Q: Turning to page 4, bates number 100368062, in the last paragraph on the page it
15 says:

16 In the early spring of 1977 in conjunction with the national tracking
17 study, a telephone survey which monitors the frequency with which
18 smokers change brands as well as the number who are brand loyal,
19 we asked nonsmokers (in households without smokers available)
20 whether they had ever been smokers, and if so, how long ago they had
21 quit, why they had quit, and what brand they had last smoked, as well
22 as their age and sex.

23

24 Do you see that?

25 A: Yes.

26 Q: And more than 10 years later, when you were running the continuous tracking
27 survey, you were also studying quitters and, more specifically, the reasons people
28 quit smoking, correct?

1 A: Yes.

2 Q: Back to U.S. Exhibit *20098, Mr. Ryan also notes on page 8, bates number
3 1000368066, that, "experience in dealing with 'quitters' suggests that most people
4 who quit smoking will resume after a while. Hunt and Matarazzo show data
5 suggesting that 50% of quitters resume smoking within 3 months and 70% resume
6 within a year." Do you see that?

7 A: Yes.

8 Q: So you were aware when you were studying quitters that most quitters resume
9 smoking, correct?

10 A: Yes.

11 Q: On page 12, bates number 1000368070, on the page titled, "Age at Quitting," it says
12 on the last sentence of the page, continuing on page 15, bates number 1000368073:
13 We think it more likely that the initial quit rate for younger smokers
14 is about the same from year to year, but that their long-term success
15 rate is poorer than the success rate for older smokers.
16
17 Do you see that?

18 A: Yes, *the "younger smokers" referred to on this page had an overall average age of 34.8*
19 *years .*

20 Q: Returning to your work in the consumer research department and turning to U.S.
21 Exhibit 88155, this is a Philip Morris Inter-Office memorandum dated September
22 28, 1987 from you to Mr. David E.R. Dangoor, correct?

23 A: Yes.

24 Q: At that time you were the Assistant Director of Consumer Research, correct?

25 A: Yes.

26 Q: David Dangoor was the Head of Marketing at this time, correct?

1 A: Yes.

2 **Q: You reported to Mr. Dangoor at that time?**

3 A: **Yes.** *No. I reported to Jon Zoler at that time, who reported to Mr. Dangoor.*

4 **Q: The subject of the document is "Critical Consumer Research Issues," correct?**

5 A: Yes.

6 **Q: And the first line of this document reads, "Outlined below are the most important**
7 **consumer-related questions which should be addressed in 1988," correct?**

8 A: Yes.

9 **Q: This document contains information about some of the types of research that Philip**
10 **Morris planned to conduct in the upcoming year, correct?**

11 A: Yes.

12 **Q: And this was common practice for the marketing department to identify research**
13 **that should be completed on a continuing basis, correct?**

14 A: **Yes.** *It was my practice at one time to draft such memoranda. I cannot speak to what was*
15 *common practice for the Marketing Department.*

16 **Q: And such research was conducted to determine if Philip Morris's marketing of a**
17 **particular brand continued to be relevant to its target audience, correct?**

18 A: *Yes, some of the research I proposed in U.S. Ex. 88155 related to this topic. Other research*
19 *I proposed related to a more general understanding of the cigarette marketplace.*

20 **Q: And if Philip Morris' marketing of its brand was continuing to meet the needs of**
21 **consumers, correct?**

22 A: *Yes, if you mean "brands," plural.*

23 **Q: One of the topics this document addressed is quitting smoking, correct?**

24 A: *Yes, quitting is addressed in the marketplace tracking section of the memorandum, not the*

1 *Philip Morris brands section.*

2 **Q: So this was one of the "most important consumer-related questions" for Philip**
3 **Morris, correct?**

4 A: Yes, *this was one of many such questions posed in my memorandum.*

5 **Q: On page 2 under "Smoker Dynamics," the last paragraph reads "What are the**
6 **factors which influence brand choice of smokers reentering the market? Can we**
7 **capitalize on these?" Is that correct?**

8 A: Yes.

9 **Q: "Smokers reentering the market" refers to people who have quit smoking but who**
10 **might begin or are beginning to smoke again, correct?**

11 A: **Yes.** *No. This phrase refers to smokers who had quit smoking and had already decided to*
12 *begin smoking again.*

13 **Q: And, "capitalize on these" means whether Philip Morris could design its marketing**
14 **of its brands to appeal to people who had quit smoking, correct?**

15 A: **Yes.** *No. As I indicated above, "capitalize on these" means whether Philip Morris could*
16 *design new products and/or design the marketing of its brands to appeal to smokers who*
17 *had quit smoking and had already decided to begin smoking again.*

18 **Q: Turning to page 5, under "New Products," the fourth sentences reads "Which new**
19 **product options will . . . appeal to former smokers?" Correct?**

20 A: Yes, *this bullet point reads "[w]hich new product options will... best alleviate social*
21 *pressures? appeal to occasional smokers? appeal to users of other tobacco products?*
22 *appeal to former smokers?"*

23 **Q: So Philip Morris was examining what "new product options" would appeal to**
24 **quitters?**

1 A: **Yes.** *No. Philip Morris, as a matter of policy and practice, did not design products to*
2 *appeal to anyone other than adult smokers.*

3 **Q: And the products were cigarettes, correct?**

4 A: Yes.

5 **Q: Under "Smoker Dynamics," the third paragraph on page 2 reads "Can we**
6 **determine the relative importance of various factors which influence quitting? Are**
7 **there segments which can be characterized?" Is that correct?**

8 A: Yes.

9 **Q: So Philip Morris was studying the factors that influence quitting, correct?**

10 A: Yes.

11 **Q: And the relative importance of these various factors?**

12 A: Yes.

13 **Q: In order to design products or line extensions of existing brands that addressed**
14 **those factors?**

15 A: Yes. *To the extent we determined that people quit because of health concerns, that would be*
16 *very important in reaffirming Philip Morris' commitment to develop cigarettes with lower*
17 *harm or risk.*

18 **Q: And to design or redesign its marketing to address those factors?**

19 A: **Yes.** *No.*

20 **Q: So that people would keep smoking Philip Morris cigarettes rather than quitting,**
21 **correct?**

22 A: Yes, *if Philip Morris could design new products to address those concerns.*

23 **Q: And you were examining reasons why people restart smoking Philip Morris's**
24 **cigarettes once they had quit, correct?**

1 A: **Yes** No, I do not recall that.

2 **Q:** Turning to U.S. Exhibit 88156, this is a progress report on the consumer research
3 questions for 1988 outlined in U.S. Exhibit 88155, the report you just testified about,
4 correct?

5 A: Yes.

6 **Q:** It is dated September 26, 1988 and it is from you to Mr. John Zoler, correct?

7 A: Yes, Jon Zoler.

8 **Q:** John Zoler was the Director of Market Research at that time?

9 A: Yes.

10 **Q:** And at that time you were the Assistant Director of Consumer Research, correct?

11 A: Yes.

12 **Q:** In the first paragraph the document says, "The purpose of this memo is to briefly
13 summarize our major accomplishments thus far in 1988 as a foundation for the
14 critical issues to be researched in 1989," correct?

15 A: Yes.

16 **Q:** On page 2 under heading, "Smoker Dynamics," the first line reads:

17 Conducted a major study on quitting, showing:
18 – Demographics of quitters.
19 – Quitting by brand
20 – Reasons for quitting
21 – Methods used to quit
22 – Substitutes used for cigarettes
23

24 **Is that correct?**

25 A: Yes.

26 **Q:** So Philip Morris conducted a "major study" on quitting in 1988?

27 A: Yes.

1 **Q:** And this was a "major accomplishment" for the consumer research department in
2 1988, correct?

3 A: Yes, *it was one of many such accomplishments summarized in this memorandum.*

4 **Q:** Do you recall how many people were surveyed for the quitting study?

5 A: 300 to 500 people *There were 506 people surveyed.*

6 **Q:** The research results indicated that the number one reason for people quitting
7 smoking was health concerns, correct?

8 A: Yes.

9 **Q:** Quitting continued to be a critical consumer research issue for Philip Morris in 1989
10 as well?

11 A: Yes.

12 **Q:** Turning to U.S. Exhibit 20535, this is a Philip Morris internal memorandum
13 entitled "Critical Consumer Research Issues" dated September 26, 1988, correct?

14 A: Yes.

15 **Q:** It is from you again to David Dangoor, correct?

16 A.: Yes.

17 **Q:** David Dangoor was the Head of Marketing and you were the Assistant Director of
18 Consumer Research at that time, correct?

19 A: Yes.

20 **Q:** Just above the first heading it says, "Outlined below are the issues we anticipate
21 addressing in 1989," correct?

22 A: Yes.

23 **Q:** On the first page under the first topic "Marketplace Tracking," in the third
24 paragraph it says, "Can we understand the importance of group dynamics in brand

1 selection, brand switching, quitting? How can group dynamics be influenced by
2 marketing efforts?" Correct?

3 A: Yes.

4 Q: And under that it says, "[a]re the factors which influence quitting changing as the
5 social environment changes?" Correct?

6 A: Yes.

7 Q: So Philip Morris wanted to understand whether the factors that influence quitting
8 were changing, correct?

9 A: Yes.

10 Q: And Philip Morris continually adapted its marketing of cigarettes to address these
11 factors, correct?

12 A: Yes. No.

13 Q: On page 4, under the heading "New Products," in the third paragraph the question
14 is posed, "What new product concepts will alleviate smokers' guilt and reduce their
15 desire to quit?" Correct?

16 A: Yes.

17 Q: So Philip Morris wanted to understand what new marketing concepts would reduce
18 smokers' desire to quit, correct?

19 A: Yes. No. My memorandum refers to an analysis of the potential for new product concepts
20 that might address some of the concerns of existing smokers, such as smoking restrictions,
21 health concerns, cost concerns and social pressures. It does not refer to "marketing
22 concepts."

23 Q: And at the same time that this research was being conducted, Philip Morris
24 continued to make public statements that it only marketed to adults who already

1 **smoked, correct?**

2 A: Yes.

3 **Q: I would also like to ask you some questions about consumer research on the smoking**

4 **habits of 18 to 20 year olds. Philip Morris conducted consumer research on persons**

5 **age 18 to 20, correct?**

6 A: Yes.

7 **Q: Turning your attention U.S. Exhibit 85001, this is a Philip Morris Marketing**

8 **Research Department Report to D. Mackey by several Philip Morris employees,**

9 **including J. Bonhomme, dated May 31, 1988, correct?**

10 A: Yes, *except that two of the authors were not Philip Morris employees.*

11 **Q: Jeanne Bonhomme worked with you in the consumer research department and later**

12 **in the Youth Smoking Prevention ("YSP") Department, correct?**

13 A: Yes.

14 **Q: In fact, did Jeanne Bonhomme report to you in the Youth Smoking Prevention**

15 **Department?**

16 A: Yes.

17 **Q: And you are on the distribution list for this report, correct?**

18 A: Yes.

19 **Q: The first line says:**

20 **This reports findings from qualitative research conducted May 11 and**

21 **12 in Phoenix by PM and LBC researchers. The study was**

22 **undertaken to explore the effects of new Camel advertising and**

23 **promotions in a region where Camel appears to be growing.**

24 **Correct?**

25 **Correct?**

26 A: Yes.

27 **Q: On page 2, under the heading "Overview of Findings," the very first line says, "In**

1 **Phoenix, Camel was perceived by smokers aged 18-24 to be a popular brand:**
2 **popular among their peers and among smokers younger than themselves," correct?**

3 A: Yes.

4 **Q: So for smokers aged 18, they were reporting that Camel was popular with smokers**
5 **younger than 18, correct?**

6 A: **Yes.** *That is not clear from this document.*

7 **Q: Popularity and perceptions of popularity are very important issues for adolescents**
8 **of all ages, correct?**

9 A: Yes.

10 **Q: You were well aware of that fact from your research in the YSP Department,**
11 **correct?**

12 A: Yes, *I think I, like people generally, was aware of this fact. My work in the YSP Department*
13 *began 10 years after this document was written.*

14 **Q: In that same paragraph it says, "For some, the overwhelming presence of Camel**
15 **displays at point-of-purchase, reinforced by eye-catching advertising, enhanced the**
16 **notion of Camel being currently 'popular,'" correct?**

17 A: Yes.

18 **Q: And point of sale displays means those at retail—in convenience stores and drugstores**
19 **and other stores frequented by people of all ages including children and**
20 **adolescents, correct?**

21 A: Yes, *different types of retail stores have point-of-sale displays, but this document does not*
22 *identify what type of retail stores the respondents frequented. From other consumer*
23 *research I did in the past, smokers aged 18-24 normally bought their cigarettes in*
24 *convenience stores.*

1 **Q: Philip Morris conducted other consumer marketing research during this time that**
2 **revealed similar findings—that Camel was perceived by young people as a popular**
3 **brand, correct?**

4 A: *Yes. Philip Morris conducted other marketing research among adult smokers that indicated*
5 *that Camel was perceived to be a popular brand among smokers aged 18-24.*

6 **Q: Overwhelming presence means that the Camel displays made the cigarettes**
7 **themselves, and the "eye-catching advertising," ubiquitous at retail, correct?**

8 A: **Yes.** *My understanding of “overwhelming presence” is that it describes the relative impact*
9 *that Camel displays and Marlboro displays had on smokers shopping in convenience stores.*

10 **Q: And the "eye-catching advertising" refers to the signage at retail, correct?**

11 A: **Yes.** *That is not clear from the document, which also refers to other types of Camel*
12 *advertising, so I am not sure.*

13 **Q: And Philip Morris's research showed that the combination of ubiquity at retail and**
14 **signage contributed to a perception that Camel was popular among people under**
15 **the age of 24, including people under the age of 18, correct?**

16 A: **Yes.** *No. The report states: “Popularity stemmed primarily from seeing friends smoking*
17 *Camel. For some, the overwhelming presence of Camel displays at point-of-purchase,*
18 *reinforced by eye-catching advertising, enhanced the notice of Camel being currently*
19 *‘popular’. To others these incentives announced a need for new customers, that Camel was*
20 *hurting for business.”*

21 **Q: And smokers, and nonsmokers alike, see this same ubiquity and imagery at retail,**
22 **correct?**

23 A: **Yes.** *Smokers and nonsmokers alike are customers in retail stores that sell cigarettes, and*
24 *thus may see whatever advertising materials are found at retail.*

1 **Q:** And Camel's ubiquity at retail and popularity put at risk the popular image of
2 Marlboro at retail, correct?

3 A: Yes. No.

4 **Q:** The next paragraph says, "In an environment in which 'everyone and their mother'
5 smoked Marlboro, Camel represented the brand choice for young smokers who
6 wanted to stand out from the crowd. This description was voiced most clearly (and
7 proudly) by the Camel smokers themselves, most of whom had previously smoked
8 Marlboro or Marlboro Lights." Correct?

9 A: Yes.

10 **Q:** The final paragraph on that page says, "In terms of the Camel smoker image, RJR
11 managed to supplant the typical vision of a WWII veteran in his 50's or 60's who
12 smoked non-filters with that of a man in his late teens or early 20's who expressed
13 his individuality or independence by choosing to smoke Camel," correct?

14 A: Yes.

15 **Q:** Philip Morris regularly conducted consumer research on perceptions of Camel
16 marketing because Marlboro and Camel share the same target audience, correct?

17 A: Yes. No, Marlboro's target audience is much broader than Camel's. Philip Morris
18 regularly conducted consumer research on Camel because it is a key competitive brand.

19 **Q:** On page 3 under the heading "Brand popularity" in the second paragraph it says,
20 "Camel Filters and Camel Lights were considered to be the next most popular
21 brands among the 18-24 set, and many in this set predicted that Camel would
22 ultimately be as popular as Marlboro," correct?

23 A: Yes.

24 **Q:** And popularity is a perception that someone has of the brand, correct?

1 A: Yes and no. Popularity can be both perceived and real. In the context of U.S. Ex. 85001, it
2 appears that popularity refers to perceived popularity.

3 **Q: So at this time, Marlboro was the most popular brand among 18-24 year olds?**

4 A: Yes, more smokers 18-24 smoked Marlboro than any other brand. And as I recall, in studies
5 of perceived brand popularity, Marlboro was also the most popular brand.

6 **Q: And Marlboro still is the most popular brand among 18-24 year olds, correct?**

7 A: Yes, it was in 2002. I do not know today.

8 **Q: It is also the most popular brand for adolescent smokers under the age of 18, correct?**

9 A: Yes, it was in 2002, based on publicly available data. I do not know today.

10 **Q: People under the age of 21, including adolescents under the age of 18, often smoke the**
11 **brand that they perceive as being most popular, correct?**

12 A: Yes.

13 **Q: Continuing on page 3 under "Reasons for Smoking Camel," it says "Camel smokers**
14 **were asked to discuss their smoking histories and why they chose to make Camel**
15 **their brand. Almost all had smoked Marlboro regularly at some point, usually**
16 **when they first started smoking," correct?**

17 A: Yes.

18 **Q: So, if an 18 year old is asked to discuss his smoking history that would include time**
19 **when he was an underage smoker, isn't that correct?**

20 A: Yes, it **would** could.

21 **Q: On page 4 in the fourth paragraph it says, "the second reason cited for choosing**
22 **Camel (or switching from Marlboro) was that Marlboro was considered to be a**
23 **'starter brand' which people smoked in order to be accepted with their peers or the**
24 **'in' crowd. These Camel smokers implied that it was cooler to smoke Camel**

1 because everyone smoked Marlboro. Some felt that they had outgrown Marlboro
2 and were now ready to be more independent," correct?

3 A: Yes, with some minor errors in the quoted language.

4 Q: You understand "starter brand" to refer to the brand a person smokes when they
5 start smoking, correct?

6 A: Yes, it is my understanding from reading U.S. Ex. 85001 that the smokers who participated
7 in this focus group were using the term "starter brand" to refer to the brand they were
8 smoking when they began to smoke on a regular basis.

9 Q: And you know that most smokers start smoking under the age of 18, correct?

10 A: Yes Based on the 1994 Surgeon General's Report, I know that 53.0% of smokers of persons
11 aged 30-39 who had ever smoked daily recalled that they had begun smoking daily before
12 they turned 18. Of that same group of people, 81.9% recalled that they had tried their first
13 cigarette before they turned 18.

14 Q: As a marketing research employee at Philip Morris, you had concerns about
15 Camel's market share increase in the late 1980s, correct?

16 A: Yes.

17 Q: And that's one of the reasons this study in Phoenix, Arizona was conducted,
18 correct?

19 A: Yes.

20 Q: Camel increased its brand share in the late 1980s and early 1990s, correct?

21 A: Yes, as I recall.

22 Q: And action was taken by Philip Morris in response to Camel's market share
23 increase, correct?

24 A: Yes.

1 **Q:** The development and launch of Marlboro Medium was in part driven by a desire to
2 be more competitive with Camel, correct?

3 A: Yes.

4 **Q:** This study done in Phoenix, Arizona, wasn't the only marketing research to examine
5 young smokers of Marlboro and Camel, was it?

6 A: No, *I generally recall that* there were others.

7 **Q:** Turning to U.S. Exhibit 20465, this is a February 6, 1991 memorandum authored by
8 Jeanne Bonhomme and Karen Eisen, correct?

9 A: Yes.

10 **Q:** At this time, Jeanne Bonhomme and Karen Eisen were consumer researchers for
11 Philip Morris, correct?

12 A: Yes.

13 **Q:** The subject line of the memorandum reads, "Marlboro/Camel Consumer Research,"
14 correct?

15 A: Yes.

16 **Q:** The last paragraph on the first page reads "In order to better understand how
17 young adult (18-24) male smokers of Marlboro and Camel view the two brands, 300
18 telephone interviews were conducted nationwide using names obtained from
19 Continuous Tracking." Is that correct?

20 A: Yes.

21 **Q:** "Continuous Tracking" refers to the continuous tracking survey you have testified
22 about, correct?

23 A: Yes.

24 **Q:** Page two of the document indicates that this research was conducted in November

1 **of 1990, correct?**

2 A: Yes.

3 **Q: Turning to U.S. Exhibit 21971, this is a report using data from the Continuous**
4 **Tracking Survey, entitled “Profile of the Young Adult Marlboro Smoker,” correct?**

5 A: Yes, while I do not recall seeing this exhibit before, it appears to be a series of charts using
6 data from a variety of sources, including the Continuous Tracking Survey. Let me explain
7 why I find this exhibit somewhat confusing. The beginning of the exhibit from Bates
8 2048735500 to 2048735563 appears to be a set of charts that may have been collected for a
9 presentation to be given in November 1994. The latter part of the exhibit from Bates
10 2048735564 to 604 appears to be a series of charts discussing the Marlboro Ultra Lights
11 test markets as of 1990.

12 **Q: Page 8 indicates that for the purposes of this study, Philip Morris interviewed 346**
13 **males in July of 1998 for 45 minutes each, correct?**

14 A: **Yes.** No. The document indicates that the 346 “personal interviews” were conducted in
15 July of 1993 as face-to-face interviews, not as part of the Continuous Tracking Survey.

16 **Q: Using tracking research, Philip Morris researched the size of its smoker base and**
17 **determined that Marlboro male smokers age 18 to 24 made a disproportionately high**
18 **contribution to Marlboro's total volume comprising 7 million smokers,**
19 **accounting for one in five adults who smoked Philip Morris's cigarettes and 27% of**
20 **the total Marlboro franchise, correct?**

21 A: **Yes.** No. While the U.S. Ex. 21971 contains data relating to Marlboro male smokers age
22 18-24, it appears to me that the charts in this exhibit have been misinterpreted in this
23 question. For example, in the chart found on page 2, based on data found in the
24 Continuous Tracking Survey and the 1990 U.S. Census, the number of male and female

1 smokers of all brands by all manufacturers is estimated to be over 7 million people, not
2 “Marlboro male smokers age 18 to 24.”

3 **Q: Using tracking research, Philip Morris examined the lifestyles and attitudes of 18-24**
4 **year old male smokers to understand their brand choices, including their leisure**
5 **time activities (hanging out with friends, looking good, talking on the phone with**
6 **friends, going to bars or rock concerts), social circles, attitudes about smoking,**
7 **brand image, and their aspirations and objectives, correct?**

8 A: Yes, as I recall, Philip Morris used the Continuous Tracking Survey to collect some types of
9 attitudinal information, but the “lifestyles and attitudes” information included in U.S. Ex.
10 21971 appears to have been collected from face-to-face interviews in 41 geographically
11 dispersed markets.

12 **Q: Philip Morris determined from this study based upon tracking research that the**
13 **Marlboro brand image among 18-24 year old males included: cool, outgoing, popular,**
14 **outdoorsy, adventurous, and independent, correct?**

15 A: **Yes.** These charts do not appear to contain these conclusions for 18-24 year old males, and
16 the conclusions they do contain appear to be based on face-to-face interviews at a single
17 point in time in July 1993, not telephone tracking research over time. However, these
18 qualities have been generally associated with Marlboro imagery.

19 **Q: Philip Morris also used this tracking study to research to determine whether the test**
20 **marketing of Marlboro Ultra Lights was affecting the brand image of Marlboro Red**
21 **and Marlboro Lights, correct?**

22 A: **Yes.** No, as stated above, the charts in this exhibit addressing the test marketing of
23 Marlboro Ultra Lights do not appear to be based on a tracking study, but rather data
24 collected in test markets in or around 1990. These charts do show that Philip Morris was

1 *trying to determine whether the test marketing of Marlboro Ultra Lights was affecting the*
2 *brand image of Marlboro Red and Marlboro Lights.*

3 **Q: The report found that Marlboro Ultra Lights remained a minority brand in 1994**
4 **but was becoming more mainstream, correct?**

5 A: **Yes.** *I do not see that finding in these charts.*

6 **Q: Philip Morris also used this survey to research 18-24 year olds that smoked**
7 **Marlboro Flavor Low, later named Marlboro Medium cigarettes, correct?**

8 A: *Yes, it appears that Marlboro Flavor Low male smokers ages 18-24 were interviewed in*
9 *connection with the research reflected in the charts comprising U.S. Ex. 21971. The*
10 *Marlboro Flavor Low segment included both Marlboro Lights and Marlboro Medium*
11 *smokers at the time.*

12 **Q: The survey results indicated that 18-24 year old male Marlboro Flavor Low**
13 **(Marlboro Medium) smokers are individuals who are less comfortable with**
14 **smoking, feel pressure to quit, and do not enjoy some of the "image benefits" to the**
15 **same degree as other smokers, correct?**

16 A: *Yes, that is what is stated in the chart found at page 50 of U.S. Ex. 21971 (2048735548).*
17 *The Marlboro Flavor Low segment included both Marlboro Lights and Marlboro Medium*
18 *smokers at the time.*

19 **Q: Philip Morris also used the survey to compare its brands to R.J. Reynolds' Camel**
20 **brand, correct?**

21 A: **Yes.** *The charts indicate that Camel Full Flavor and Camel Flavor Low male smokers ages*
22 *18-24 were also interviewed.*

23 **Q: Philip Morris profiled male Marlboro smokers between the ages of 18 and 24 and**
24 **compared them with the profiles of Camel male smokers of the same age, correct?**

1 A: Yes.

2 **Q: This survey confirmed that Marlboro and Camel were the leading non-menthol**
3 **brands for male smokers ages 18 through 24, correct?**

4 A: **Yes.** *U.S. Ex. 21971 contains a chart reporting Continuous Tracking Survey data from May*
5 *1994 showing that Marlboro and Camel were the leading non-menthol brands for male*
6 *smokers ages 18 through 24 (2048735504). This information was not determined through*
7 *the face-to-face interviews conducted in July 1993.*

8 **Q: Philip Morris determined that, unlike Marlboro smokers, Camel smokers were**
9 **attracted by the individuality of their brand and the advertising packaging, correct?**

10 A: Yes, *that is what is stated in the chart found at page 57 of U.S. Ex. 91721 (2048735555).*

11 **Q: Research on the youth market was not limited to these studies, was it?**

12 A: **No.** *During my time at Philip Morris, we did not consider consumer research involving*
13 *legal-aged adult smokers ages 18-24 to be "[r]esearch on the youth market" as your*
14 *question suggests. Smokers ages 18-24, along with older adult smokers in various age*
15 *brackets, were frequently included within our consumer research studies.*

16 **Q: In fact it was a major area of consumer research for Philip Morris when you were a**
17 **marketing executive, correct?**

18 A: **Yes.** *I was never a marketing executive at Philip Morris, but, as indicated above, Philip*
19 *Morris performed substantial amounts of consumer research on legal-aged smokers of all*
20 *ages while I was with the company.*

21 **Q: Turning your attention back to U.S. Exhibit 20535, this is the "Critical Consumer**
22 **Research Issues" planning document for 1988 from you to David Dangoor, that you**
23 **looked at earlier when you testified about research on quitting, correct?**

24 A: Yes.

1 **Q:** And you were Assistant Director of consumer research and Mr. Dangoor was Head
2 of Marketing at this time, correct?

3 A: Yes.

4 **Q:** In the first paragraph it says, "[C]onsumer research will give special emphasis to
5 three major areas during 1989: Young Smokers, Price Conscious Smokers, The
6 Influence of Group Dynamics on Smokers," correct?

7 A: Yes.

8 **Q:** So "young smokers" was one of three "major" areas of consumer research that
9 received "special emphasis" in 1989, correct?

10 A: Yes.

11 **Q:** Under the heading "Marketplace Tracking" it reads, "Can we gain a better
12 understanding of young smokers?" Is that correct?

13 A: Yes.

14 **Q:** You wanted to have a full understanding of smokers ages 18 to 24 because of the
15 significant market share that Marlboro had amongst smokers in that age group,
16 correct?

17 A: Yes, *as the document indicates, I thought that Philip Morris should have a better*
18 *understanding of such smokers for this reason, among others.*

19 **Q:** In the second paragraph it reads, "How can they be induced to switch to a price
20 value brand?" Is that correct?

21 A: Yes, *although the "they" here refers to "the Branded Price Conscious smoker" of any age 18*
22 *or above.*

23 **Q:** And by "price value brand," the document means from one of your competitors'
24 price value brands, correct?

1 A: **Yes.** *No, the reference to "Price Value Brand" refers to switching to a Philip Morris price*
2 *value brand.*

3 **Q: The market share of young smokers smoking price value brands was increasing at this**
4 **time, correct?**

5 A: **Yes.** *No, not to the best of my recollection.*

6 **Q: And Philip Morris wanted to capture part of that increase, correct?**

7 A: *Yes, Philip Morris wanted to capture part of any growth in the price value segment.*

8 **Q: Philip Morris tracks people in part to better understand the needs of its target**
9 **audience, correct?**

10 A: *Yes, Philip Morris tracks legal-aged adult smokers to better understand what factors may*
11 *influence their purchase of cigarette brands.*

12 **Q: And the information Philip Morris gains from tracking young people is used by the**
13 **marketing department in designing and updating marketing campaigns, among**
14 **other uses, correct?**

15 A: *Yes, while I was at the company, Philip Morris' Marketing Department used data from the*
16 *Continuous Tracking Survey as one piece of information in designing and updating*
17 *marketing campaigns targeted at legal-aged smokers of all ages 18 and over.*

18 **Q: Marketplace tracking of young smokers didn't end in 1989, correct?**

19 A: *No, as indicated above, up until the time I left the company, Philip Morris included smokers*
20 *ages 18 and over in its Continuous Tracking Survey.*

21 **Q: The continuous tracking you described also included soliciting information from**
22 **people ages 18 to 20?**

23 A: *Yes, smokers ages 18 and over.*

24 **Q: You testified the Continuous Tracking Survey was launched in 1988. Until the time**

1 **you left Philip Morris in 2002, the Continuous Tracking Survey included 18 to 20year**
2 **olds, correct?**

3 A: *Yes, smokers ages 18 and over.*

4 **Q: Turning to U.S. Exhibit 41568, this document that contains data from the**
5 **Continuous Tracking Survey for year-to-date October 1993, correct?**

6 A: Yes.

7 **Q: It shows the respondents to the Continuous Tracking Survey by age from 48 states,**
8 **correct?**

9 A: *Yes, and the District of Columbia.*

10 **Q: And in column three it shows that 1193 males age 18-21 were contacted for this**
11 **survey as of October 1993, correct?**

12 A: *Yes, in the fourth column.*

13 **Q: In fact, when a market researcher working for Philip Morris calls a private home as**
14 **part of the Continuous Tracking Survey, they ask to speak to the youngest male**
15 **smoker 18 and over at home at the time, isn't that correct?**

16 A: *Yes, but not in those words.*

17 **Q: Except when a market researcher working for Philip Morris calls a private home in**
18 **Utah and Louisiana where the legal age is 19, the market researcher would interview**
19 **smokers 19 and older, correct?**

20 A: *Yes, but as I recall, the states where the legal age is 19 are Alabama, Alaska, and Utah, so it*
21 *would be when placing calls in Alabama and Utah that the market researcher would*
22 *interview only smokers 19 and over. Alaska was not included in the Continuous Tracking*
23 *Survey while I was at the company.*

24 **Q: You determined the age of the interviewee over the telephone by asking them how**

1 **old they were, correct?**

2 A: *Yes, this is how the marketer researcher placing the call would determine the interviewee's*
3 *age.*

4 **Q: The people who are interviewed over the phone are also asked how long they've**
5 **been smoking, correct?**

6 A: **Yes.** *No, as I recall, they are asked how long they have been smoking their regular brand.*

7 **Q: So, if an eighteen year-old is being interviewed, he would be asked, "[H]ow many**
8 **years have you been smoking Marlboro?"**

9 A: **Yes.** *Not exactly. As I recall, the legal-aged smoker being surveyed, including any 18 year*
10 *olds, would be asked "[h]ow long have you smoked" your regular brand.*

11 **Q: And you are familiar with research that finds that most smokers start smoking**
12 **before the age of 18, correct?**

13 A: *Yes, as stated above, I know that based on the 1994 Surgeon General's Report, 53.0% of*
14 *smokers of persons aged 30-39 who had ever smoked daily recalled that they had begun*
15 *smoking daily before they turned 18. Of that same group of people, 81.9% recalled that they*
16 *had tried their first cigarette before they turned 18.*

17 **Q: In addition to studying young smokers in the Continuous Tracking Survey, you also**
18 **did work on the social construct of smoking in American society and how young**
19 **people fit in this social construct, correct?**

20 A: Yes.

21 **Q: You did this work as part of a project called "mental highways," correct?**

22 A: Yes.

23 **Q: "Mental highways" refers to a construct that is formed in a person's mind about a**
24 **product, isn't that correct?**

1 A: Yes.

2 Q: Turning to U.S. Exhibit 85184. This exhibit is notes of a May 2, 1991 meeting that
3 looked at the mental construct of smoking in American culture, correct?

4 A: Yes.

5 Q: You worked on that project, correct?

6 A: Yes.

7 Q: And you attended the May 2, 1991 meeting reflected in these notes, correct?

8 A: Yes.

9 Q: Is that your handwriting on the document?

10 A: Yes.

11 Q: These are notes that you made, correct?

12 A: Yes.

13 Q: You placed a star next to the words "socializing/social bonding" and also next to
14 "reinforce/reaffirm your identity to you," correct?

15 A: Yes.

16 Q: What is the significance of the stars?

17 A: Those terms describe part of the construct of smoking.

18 Q: On the next page, you starred the words "Emotional versus logical/rational,"
19 correct?

20 A: Yes.

21 Q: You also underlined the term "nicotine effect" correct?

22 A: Yes.

23 Q: You also put two stars next to "importance of reinforcing adult's custom of
24 smoking," correct?

1 A: Yes.

2 Q: On top of page 3 it reads "Warning label role of tabu" with two question marks,
3 correct?

4 A: Yes, *it reads "Warning label - role in taboo??"*

5 Q: On page 6 it reads, "Smoking is a social ritual which enables us to express and
6 reaffirm our self image by reactivating the initiation in to adulthood." Under that it
7 says, " This tabu is for you." Correct?

8 A: Yes, *except the word is spelled "taboo."*

9 Q: It also says, "Playing with fire, forbidden fruit, U.B.U., badge of honor, it hurts so
10 good, dare to be me, the rite to be me," correct?

11 A: Yes.

12 Q: You wrote a summary or report regarding this mental highway project, correct?

13 A: Yes.

14 Q: This summary was provided to management at Philip Morris, correct?

15 A: Yes, *as I recall.*

16 Q: Based in part on this research, Philip Morris knows that smoking is a social ritual
17 that figures prominently in a smoker's self image, correct?

18 A: Yes.

19 Q: And also based on this research, Philip Morris knows that cigarettes are one of the
20 things that adolescents use in their transition from childhood to adulthood, correct?

21 A: Yes, *in part, but Philip Morris also knows this based on published literature.*

22 Q: In 1991, you testified that you left the consumer research department to be Vice
23 President of Planning, correct?

24 A: **Yes.** *No, as discussed above, I became Director of Planning in 1991.*

1 **Q: And you held the position of Vice President of Planning until 1993, correct?**

2 A: **Yes.** *No, I became Vice President of Planning in 1993 and held that position until 1994.*

3 **Q: And then you went back to doing consumer research work when you were named**

4 **Senior Vice President for Marketing and Sales Information in 1994, correct?**

5 A: **Yes.** *No, I did not personally perform consumer research work as Senior Vice President for*

6 *Marketing and Sales Information. Persons in departments under my supervision performed*

7 *such research.*

8 **Q: And during this time frame, from 1994 to 1998, you continued to conduct various**

9 **types of consumer research on young smokers, correct?**

10 A: **Yes.** *The Consumer Research Department, which reported to me, continued to conduct the*

11 *Continuous Tracking Survey, as well as other consumer research, that encompassed all*

12 *legal-aged smokers, including smokers ages 18 and over.*

13 **Q: Turning to U.S. Exhibit 38583, this is a report dated January 19, 1996 entitled,**

14 **"Talkin' About My Generation: an Examination of Generation X," correct?**

15 A: Yes.

16 **Q: Philip Morris contracted with Roper Starch to prepare this report, correct?**

17 A: Yes, *I assume so.*

18 **Q: Roper Starch is an organization that routinely prepares and presents reports to**

19 **Philip Morris containing relevant information about young people who were**

20 **considered to be part of Generation X and Generation Y, correct?**

21 A: **Yes.** *No, this study is the only study of Generation X that I recall by Roper Starch. Roper*

22 *Starch generates reports based on syndicated data for a variety of companies. I do not*

23 *recall any study of Generation Y.*

24 **Q: This document is an analysis of data that the Roper Starch organization collected**

1 **and analyzed about Generation X, correct?**

2 A: *Yes, that is what it appears to be.*

3 **Q: Turning to page 4, here Generation X is defined as individuals 15 to 29, correct?**

4 A: Yes.

5 **Q: However, the Roper reports sample begins at age 18, correct?**

6 A: Yes.

7 **Q: You would acknowledge that while the report sample begins at age 18, the results of**
8 **the survey would be generally applicable to all of Generation X, includint those ages**
9 **15 to 17, correct?**

10 A: **Yes.** *No, I do not believe that inferences about attitudes and values of a group comprised of*
11 *persons 18 to 29 years old can be generalized to those 15 to 17 years old.*

12 **Q: At page 34, Generation Xers 18-29 are described as "active, vital consumers who**
13 **have money to spend," correct?**

14 A: Yes.

15 **Q: And on that same page Generation Xers are described as "excellent prospects for**
16 **new products" and "active shoppers," correct?**

17 A: Yes.

18 **Q: And there are other types of information provided about the consumer behavior of**
19 **people who fall within Generation X, correct?**

20 A: Yes.

21 **Q: On page 37, under the heading "Brand Loyalty of 18-29 Consumers," the report**
22 **states:**

23 **18-29s represent a strong market for premium-priced goods which**
24 **help them establish a self-image and an image for others. Many**
25 **believe premium products are worth a higher price in some**
26 **categories. Paradoxically, this tendency is age-linked, with the**

1 youngest (least affluent) consumers most interested in premiums.

2
3 **Dis I state that correctly?**

4 A: Yes.

5 **Q: So the Roper organization reported to Philip Morris that the youngest consumers in**
6 **their survey were also the most interested in premium brands, correct?**

7 A: Yes, *that is what they reported for Generation X, individuals 18 to 29 years of age..*

8 **Q: Marlboro is Philip Morris's top selling premium brand, correct?**

9 A: Yes.

10 **Q: On page 39 the heading is, "Premium Appeal is High in Some Categories, Some**
11 **brands are different/better and worth paying more for," correct?**

12 A: Yes.

13 **Q: And for the category "Cigarettes" in the 18-29 column, it says that 54 percent of 18-**
14 **29s believe that premium brands are "different/better and worth paying more for,"**
15 **correct?**

16 A: Yes.

17 **Q: And for comparison purposes, 43 percent of 30-49 year olds and 33 percent of 50+**
18 **year olds reported that premium brands are "different/better and worth paying**
19 **more for," correct?**

20 A: Yes.

21 **Q: So more 18-29 year olds thought premium brands were worth paying for than 30-49**
22 **year olds and 50 plus year olds, isn't that correct?**

23 A: Correct, *a higher percentage. The document does not say whether there were more 18-29*
24 *year olds in absolute numbers who thought this.*

25 **Q: Finally, on page 40 under the heading "18-29s are Frequent Shoppers" it says,**

1 **"[O]n a monthly basis, 18-29s are far more likely than their elders to frequent: . . .**
2 **convenience stores . . . " and "P.O.S. messages/coupons etc. will reach them in these**
3 **retail locations," correct?**

4 A: Yes. *It also states that 18 to 29-year-olds are far more likely than their elders to frequent*
5 *discount stores, department stores, and specialty stores, which are included among the*
6 *"retail locations" referenced in the question.*

7 **Q: P.O.S. refers to "point of sale," correct?**

8 A: Yes.

9 **Q: Philip Morris markets at the point of sale at convenience stores and other similar**
10 **retail stores, correct?**

11 A: Yes.

12 **Q: And Philip Morris's own internal consumer research has drawn the same**
13 **conclusions as this document prepared by Roper, correct?**

14 A: Yes, *as I recall, Philip Morris' consumer research while I was at the company showed that*
15 *younger adult smokers frequented convenience stores more than older adult smokers.*

16 **Q: You have testified that you were named Senior Vice President for Youth Smoking**
17 **Prevention in March 1998. That was the time when the Youth Smoking Prevention**
18 **("YSP") Department was first created, correct?**

19 A: Yes.

20 **Q: The position was created in response to the proposed McCain legislation that**
21 **resulted from the state attorneys general's lawsuits in the 1990s, correct?**

22 A: **Yes.** *No, that is not my recollection. My recollection is that Philip Morris' CEO, Mike*
23 *Szymanczyk, decided to create a Youth Smoking Prevention Department as part of his effort*
24 *to implement the mission and values he had established for the company. This took place*

1 *against the backdrop of events such as proposed tobacco legislation, increasing youth*
2 *smoking rates, and litigation pending against the company that may have also influenced*
3 *this decision.*

4 **Q: Specifically, the proposed legislation included what were called "look-back"**
5 **provisions, correct?**

6 A: Yes.

7 **Q: And under the proposed look-back provisions, Philip Morris would have had to pay**
8 **penalties if youth smoking incidence rates were not reduced by certain amounts by**
9 **certain dates for Philip Morris brands, correct?**

10 A: Yes, *I believe that was true of at least some of the legislative proposals.*

11 **Q: So, in anticipation that this legislation might be enacted, Philip Morris decided to**
12 **appoint a Vice President for Youth Smoking Prevention, correct?**

13 A: **Yes.** *No. My understanding is that Mike Szymanczyk made the decision to create a Youth*
14 *Smoking Prevention Department for the reasons already described above.*

15 **Q: The Master Settlement Agreement (MSA), U.S. Exhibit 36251, that Philip Morris**
16 **ultimately entered into with the states, did not include any look-back provisions,**
17 **correct?**

18 A: That is correct.

19 **Q: So under the MSA, Philip Morris is not required to reduce youth smoking by**
20 **specific levels within specific time frames?**

21 A: No, it is not required to do so, *but the MSA requires Philip Morris to promulgate or*
22 *reaffirm corporate principles embodying a commitment to reduce the use of tobacco*
23 *products by youth. It also prohibits Philip Morris from directly or indirectly targeting*
24 *underage youth in the advertising, promotion or marketing of tobacco products.*

1 Q: The MSA does require Philip Morris to "encourage its employees to identify
2 additional methods to reduce youth access to, and the incidence of Youth
3 consumption of, tobacco products." Are you familiar with that provision?

4 A: Yes.

5 Q: And Philip Morris interpreted this provision to require it to post a suggestion form
6 on the company's intranet and put suggestions boxes in its factories, isn't that
7 correct?

8 A: Yes, *that is one of the steps that Philip Morris took as part of its commitment to reduce youth*
9 *smoking. We offered a \$250 tax-free award to any employee who submitted a new idea to*
10 *help reduce youth smoking that was implemented.*

11 Q: As of the date you resigned from Philip Morris, three employees had received a
12 plaque and a check for their suggestions, correct?

13 A: Yes.

14 Q: Another reason why your position was created in 1998 was because there was a
15 public perception that Philip Morris was not doing enough about youth access to
16 cigarettes, correct?

17 A: Yes, *among other reasons I have already noted above.*

18 Q: And another reason why your position was created in 1998 was because there was a
19 public perception that Philip Morris was not doing enough to make sure marketing
20 did not appeal to children, correct?

21 A: Yes, *among other reasons I have already noted above.*

22 Q: In order to change public perception, Philip Morris created the Youth Smoking
23 Prevention Department, correct?

24 A: Yes, *if you are referring to Philip Morris' desire to change the public's perception that the*

1 *company was not doing enough to help prevent youth smoking. But as I have already stated*
2 *above, I believe that the primary reason that Mike Szymanczyk created the Youth Smoking*
3 *Prevention Department was to help implement the mission and values he had established for*
4 *the company.*

5 **Q: And Philip Morris put you in charge of the newly created Youth Smoking**
6 **Prevention Department, correct?**

7 A: Yes.

8 **Q: Turning to U.S. Exhibit 45557, this is a presentation used at an internal Philip**
9 **Morris national sales meeting, correct?**

10 A: Yes, *as I recall.*

11 **Q: The presentation was given by Karen Daragan, correct?**

12 A: Yes, *as I recall.*

13 **Q: Karen Daragan was Director of Youth Smoking Prevention Programs before you**
14 **were named Senior Vice President for YSP, correct?**

15 A: **Yes.** *No, she was named to fill that position after I became Senior Vice President for Youth*
16 *Smoking Prevention.*

17 **Q: The presentation that is U.S. Exhibit 45557 is entitled, "Philip Morris USA YSP**
18 **Strengthening Resolve Building Resilience," correct?**

19 A: Yes.

20 **Q: The first page of the document reads, "Rationale: Youth Smoking Prevention**
21 **Protecting our business." Is that correct?**

22 A: Yes, *as well as "Fulfilling our mission/Being responsible" and "Exemplifying the right*
23 *approach/Promoting collaboration."*

24 **Q: The rationale for doing youth smoking prevention programs is to protect Philip**

1 **Morris' business, correct?**

2 A: **Yes.** *That was one of the reasons for Philip Morris to undertake its youth smoking*
3 *prevention efforts, and it was important to explain to the employees who were receiving this*
4 *presentation how youth smoking prevention was connected to Philip Morris' long-term*
5 *interests. I viewed the primary rationale to be to fulfill the mission and values of the*
6 *company, which is also reflected on this page of Karen Daragan's presentation*
7 *(2083650312).*

8 **Q: And "protecting" Philip Morris's business meant protecting Philip Morris's**
9 **corporate image, correct?**

10 A: *Yes, to the extent that protecting the business by fulfilling the company's mission in a way*
11 *that aligned with society's expectations could also help improve Philip Morris' public*
12 *image.*

13 **Q: You agree that the public's opinion of tobacco companies as being responsible or**
14 **irresponsible is in part determined by public concerns about youth smoking,**
15 **correct?**

16 A: *Yes.*

17 **Q: You agree that the public's opinion of tobacco companies as being responsible or**
18 **irresponsible is in part also determined by what Philip Morris was doing about**
19 **youth smoking, correct?**

20 A: *Yes.*

21 **Q: It's fair to say, isn't it, that to the extent that youth smoking is perceived as**
22 **attributable to the conduct of the industry, that that attribution hurts Philip**
23 **Morris's corporate image, correct?**

24 A: *Yes.*

1 **Q: Philip Morris publicizes its youth smoking prevention programs, correct?**

2 A: Yes.

3 **Q: For example, turning to U.S. Exhibit 45094, this is a memorandum dated July 9,**
4 **1999, with an attached newspaper letter-to-the-editor by you published in the**
5 **Denver Post. Are you familiar with this document?**

6 A: Yes.

7 **Q: As Senior Vice President of Youth Smoking Prevention you wrote letters of this**
8 **nature on various occasions, correct?**

9 A: Yes.

10 **Q: You wrote these letters to newspapers around the country, correct?**

11 A: Yes, *I would estimate that I wrote letters like this on about 20 occasions.*

12 **Q: This letter, U.S. Exhibit 45094, publicized Philip Morris's youth smoking prevention**
13 **programs, correct?**

14 A: *Yes, it may have had that effect to some degree. But my purpose was to respond to a*
15 *newspaper column that had appeared in the Denver Post criticizing the Denver public*
16 *school system for considering whether to accept funding for Life Skills Training from Philip*
17 *Morris' Youth Smoking Prevention Department and questioning Philip Morris' motives in*
18 *providing such funding. I also expressed Philip Morris' hopes that Colorado and other*
19 *states would use their tobacco settlement funds for youth smoking prevention. In publishing*
20 *my letter, the Denver Post excluded substantial portions, including, for example: "The CDC*
21 *'Programs that Work' Evaluation Fact Sheet on the LST program says, 'Twelve major*
22 *evaluation studies have been conducted with a variety of providers and populations to test*
23 *the effectiveness of Life Skills Training (LST). Findings from these studies indicate that LST*
24 *can reduce smoked tobacco use by up to 87% and use of alcohol and other drugs by up to*

1 80%. ”

2 **Q: Philip Morris did research to determine the public's perception of Philip Morris as a**
3 **result of its YSP campaigns, correct?**

4 A: **Yes.** *No, not as I recall.*

5 **Q: Turning to U.S. Exhibit 40439, this is a memorandum on "KRC Research"**
6 **letterhead to David Sylvia from Jennifer Sosin, correct?**

7 A: *Yes. I think I saw it for the first time at my deposition in this case.*

8 **Q: David Sylvia worked in corporate affairs for Philip Morris, correct?**

9 A: *Yes.*

10 **Q: Are you familiar with KRC Research?**

11 A: *Yes.*

12 **Q: Philip Morris hired KRC Research to do research on perceptions about Philip**
13 **Morris corporate contributions to causes like youth smoking prevention and the**
14 **arts, correct?**

15 A: **Yes.** *No, this document outlines proposals for two entirely separate research projects. The*
16 *first, which pertained to a possible program for publicizing corporate contributions, had*
17 *nothing to do with Philip Morris' youth smoking prevention efforts. The second, which*
18 *pertained to Philip Morris' youth smoking prevention efforts, was directed toward what role*
19 *Philip Morris could most effectively fulfill in the area of youth smoking prevention and how*
20 *best to communicate that role to the public, given the basic public distrust of any tobacco*
21 *company that is involved in youth smoking prevention. Specifically, as set forth in the*
22 *document, the proposal was to perform research concerning:*

23 *“(1) Developing a strategy for expanding Philip Morris’ role in youth smoking*
24 *prevention (while sustaining public acceptance);*

1 “(2) Identifying the most effective language to explain Philip Morris’ commitment to
2 youth smoking prevention;

3 “(3) Assessing the willingness of school board members in targeted states or
4 communities to accept YSP contributions from the tobacco industry.”

5 **Q: Turning to page 4 of the document under the heading, "Explaining Philip Morris's**
6 **Commitment to YSP," it says:**

7 For many consumers, Philip Morris' support of youth smoking
8 prevention programs seems inexplicable. Why, they ask, would a
9 company work to shrink its own market? Answering this question
10 persuasively and credibly is a daily challenge.
11 To identify the most effective response—defining “effective” as clear,
12 believable, and successful in increasing positive feelings about Philip
13 Morris while minimizing suspicion—we would suggest a two-step
14 process:

- 15 (1) Focus groups to explore consumer reactions to a range of
16 alternative answers, and to develop a small number of
17 core alternatives we believe are likely to be effective
18 among different audiences;
19 (2) Survey research to quantify the clarity, believability and
20 impact of core alternatives identified in focus groups.

21
22 **Is this stated correctly?**

23 **A: Yes.**

24 **Q: And the references to "core alternatives" means alternative messages explaining**
25 **Philip Morris' support for youth smoking prevention programs, correct?**

26 **A: Yes.**

27 **Q: Philip Morris did both qualitative and quantitative research on public perceptions**
28 **of its support for youth smoking prevention efforts, correct?**

29 **A: Yes.** *I believe some qualitative testing with focus groups was done, but I do not recall*
30 *whether any quantitative testing was done.*

31 **Q: And it studied the "impact" of these messages on adults, correct?**

32 **A: Yes.** *As set forth at page 4 of U.S. Ex. 40439, my recollection is that the research focused on*

1 *assessing how Youth Smoking Prevention could communicate its commitment in a clear,*
2 *believable, and successful manner, while minimizing suspicion about the company's role.*
3 *This was no small issue for the Youth Smoking Prevention Department's efforts. During my*
4 *tenure as Senior Vice President of Youth Smoking Prevention, we repeatedly encountered*
5 *resistance from the public health community and elsewhere to our efforts to fund youth*
6 *smoking prevention programs.*

7 **Q: Before you left Philip Morris, you were involved in planning surveys for July and**
8 **August 2002, conducted in malls, where parents were stopped and asked whether**
9 **they thought Philip Morris was a responsible company, after seeing two of its parent**
10 **brochures?**

11 A: **Yes.** *I do not recall planning or being aware of planning for such surveys before I left the*
12 *company in March 2002.*

13 **Q: Howard Willard, a former Vice President of Quality and Compliance for Philip**
14 **Morris, succeeded you as the now current Senior Vice President for Youth Smoking**
15 **Prevention, correct?**

16 A: *Yes. Mr. Willard was previously Senior Vice President of Quality and Compliance for*
17 *Philip Morris.*

18 **Q: Did he have a background in youth smoking prevention?**

19 A: No.

20 **Q: During the time you were Senior Vice President for Youth Smoking Prevention,**
21 **Philip Morris had a practice of rotating employees into and out of the Youth**
22 **Smoking Department approximately every 18 months, correct?**

23 A: Yes.

24 **Q: And that practice has continued since you left, correct?**

1 A: Yes, that is my understanding. *I do not know.*

2 Q: Like Howard Willard, at the time you were selected to be Senior Vice President of
3 Youth Smoking Prevention for Philip Morris, you had no background in youth
4 smoking prevention, is that correct?

5 A: Yes.

6 Q: Immediately prior to being named Senior Vice President for Youth Smoking
7 Prevention, you were Vice President for Marketing and Sales Information, correct?

8 A: Yes. *I was Senior Vice President for Marketing and Sales Information immediately prior to*
9 *being named Senior Vice President for Youth Smoking Prevention.*

10 Q: You did not have a background in youth development, correct?

11 A: No, I didn't.

12 Q: You didn't have a background in youth risk behavior, did you?

13 A: No, I didn't.

14 Q: In fact, you spent your career conducting nicotine or consumer marketing research on
15 cigarette brands at Philip Morris, correct?

16 A: Yes, *before becoming Senior Vice President of Youth Smoking Prevention, over the course of*
17 *my employment at Philip Morris, I worked on basic research, product testing, consumer*
18 *research, business planning and market research, including as a member of the Senior Team*
19 *since 1994.*

20 Q: Are you familiar with the Society for Prevention Research,

21 A: Yes.

22 Q: It is an organization of professionals in the area of youth smoking prevention,
23 correct?

24 A: Yes, *among other prevention research areas relating to youth.*

1 **Q:** After you were named Senior Vice President for Youth Smoking Prevention, did
2 you join the Society for Prevention Research?

3 A: No.

4 **Q:** Did you ever attend any of their seminars?

5 A: No.

6 **Q:** You are aware, are you not, that they publish a scientific journal?

7 A: Yes.

8 **Q:** Did you subscribe to that journal when you were Senior Vice President for Youth
9 Smoking Prevention at Philip Morris?

10 A: No, *but I had access to it.*

11 **Q:** Who do you consider to have expertise specifically in the area of youth smoking
12 prevention in the United States?

13 A: *Doctors Gil Botvin, Steve Sussman, and Cornelia Pechmann.*

14 **Q:** Can you name anyone else?

15 A: No. *I looked to experts, not just in youth smoking prevention, but also in youth risk*
16 *behavior, including Joy Dryfoos, Rich Lerner, and Jane Quinn.*

17 **Q:** Are you familiar with any of the various states' youth smoking prevention
18 programs?

19 A: I'm familiar with parts of several states' programs. I would not try to position myself as an
20 expert on any state's particular program.

21 **Q:** Did you consult with the states that had youth smoking prevention programs?

22 A: No. *Yes, over the course of my tenure as Senior Vice President of Youth Smoking*
23 *Prevention, I met with a number of state and local representatives about youth smoking*
24 *prevention programs.*

1 **Q: Prior to taking the Youth Smoking Prevention position, had you ever published any**
2 **articles in peer reviewed journals on the topic of Youth Smoking Prevention?**

3 A: No.

4 **Q: Prior to taking the Youth Smoking Prevention position, had you ever published**
5 **anything, even outside of a peer reviewed journal, on the subject of Youth Smoking**
6 **Prevention?**

7 A: No.

8 **Q: During the time you were Senior Vice President of Youth Smoking Prevention, did**
9 **you publish any peer reviewed articles or any books on the topic of youth smoking**
10 **prevention?**

11 A: No.

12 **Q: You received no formal or informal job training by any prevention specialists in the**
13 **field before being offered or accepting the position as senior vice president of Youth**
14 **Smoking Prevention, did you?**

15 A: No, *not beforehand. I began studying the area after I accepted the position.*

16 **Q: You were aware, however, when you were named Senior Vice President for YSP, that**
17 **the most prevalent or popular brand among youth is Marlboro, correct?**

18 A: Yes.

19 **Q: This has been true during the entire time you worked at Philip Morris, correct?**

20 A: Yes, *I believe it was true for much of the time that I worked at Philip Morris as reported in*
21 *publicly available information, but I do not know if it was true for the entire time from 1975.*

22 **Q: You had data available to you that showed that 60 to 70 percent of youths under 18**
23 **smoke Marlboro, correct?**

24 A: **Yes.** *I do not specifically recall what the publicly available data showed at the time I left the*

1 *company. In preparing this testimony, I reviewed the "Overview of Findings from the 2002*
2 *National Survey on Drug Use and Health" prepared by the Substance Abuse and Mental*
3 *Health Services Administration of the Department of Health and Human Services. It states*
4 *at page 36: "Among current smokers who were 12 to 17 years of age, 49.8 percent reported*
5 *Marlboro as their usual brand, 25.1 percent reported Newport, and 10.5 percent reported*
6 *Camel."*

7 **Q: And you had data available to you that showed that Marlboro's market share of**
8 **adults was in the range of 35 percent, correct?**

9 A: Yes.

10 **Q: So Marlboro's market share during the time you worked for Philip Morris was two**
11 **times greater among youths under 18 than adults, correct?**

12 A: Yes, *that may have been true at certain points in the past, but it does not appear to be*
13 *supported by the more recent data referenced above.*

14 **Q: Did you think it was important for you as Philip Morris's Senior Vice President for**
15 **YSP, to know why that high a percentage of youths under 18 were smoking**
16 **Marlboro?**

17 A: No. *My goal was to help reduce youth smoking overall. As such I tried to understand and*
18 *address why kids smoked, not why those who do smoke select Marlboro or some other*
19 *brand.*

20 **Q: You were aware from having been in the market research department for much of**
21 **your career at Philip Morris that youth under 18 smoked what they perceived to be**
22 **the most popular brands, correct?**

23 A: **Yes.** *No, not from having been in the market research department at Philip Morris, because*
24 *we did not conduct research on smokers under 18. I certainly became aware of this fact*

1 *while I was Senior Vice President of Youth Smoking Prevention, but I cannot recall whether*
2 *I was aware of it before then.*

3 **Q: When you were senior vice president of Philip Morris YSP, did you believe that it**
4 **was your job to decrease the amount of kids who were smoking Marlboro cigarettes,**
5 **to decrease that market share?**

6 A: *No, it was my job to help reduce the overall incidence of youth smoking, not just the*
7 *percentage of kids smoking a particular brand.*

8 **Q: Earlier you testified that under the MSA, Philip Morris is not required to reduce**
9 **youth smoking rates, correct?**

10 A: *Yes, the MSA does not specifically require this, but as I testified earlier, the MSA requires*
11 *Philip Morris to promulgate or reaffirm corporate principles embodying a commitment to*
12 *reduce the use of tobacco products by youth.*

13 **Q: And your salary, while the Senior Vice president for YSP was not tied to the**
14 **reduction of youth smoking rates, correct?**

15 A: *That is correct to the extent that my compensation was not tied to specific reductions in*
16 *youth smoking. Rather, my performance was measured against the Youth Smoking*
17 *Prevention department's ability to fulfill its role by designing and implementing strategies*
18 *and programs to help reduce youth smoking.*

19 **Q: And your bonuses, while a senior vice president in Youth Smoking Prevention, were**
20 **not tied to the reduction of youth smoking rates, correct?**

21 A: *That is correct, subject to the same explanation above.*

22 **Q: And your annual salary, while you were a senior vice president in Youth Smoking**
23 **Prevention was, \$250,000, correct?**

24 A: *Yes, this was approximately my salary in 1998 when I was named as Senior Vice President*

1 *of Youth Smoking Prevention. Immediately before I left the company in March 2002, my*
2 *annual salary was \$315,000.*

3 **Q: And your annual bonus, while you were a senior vice president in Youth Smoking**
4 **Prevention, was \$140,000, correct?**

5 A: *Yes, this was true at the time I was deposed in the Engle case, from which this testimony is*
6 *apparently taken. My incentive compensation for 2001, which was my final full year at*
7 *Philip Morris, was \$215,000.*

8 **Q: In addition, you also participated in Philip Morris's long term compensation program,**
9 **correct?**

10 A: Yes.

11 **Q: In addition, at the time you were senior vice president in Youth Smoking Prevention,**
12 **you owned around 9,000 shares of Philip Morris stock valued at around \$40 per**
13 **share, correct?**

14 A: *Yes, this was true at the time I was deposed in the Engle case, from which this testimony is*
15 *apparently taken. During my tenure as Senior Vice President of Youth Smoking Prevention,*
16 *I owned varying amounts of shares of Altria stock at various times.*

17 **Q: Were you familiar with Cornelia Pechmann's analysis of the necessary ratio of**
18 **antismoking advertisements to cigarette advertisements?**

19 A: Yes.

20 **Q: She discussed this issue in U.S. Exhibit 39717, an article entitled "Does Antismoking**
21 **Advertising Combat Underage Smoking? A Review of Past Practices and Research?"**
22 **by Cornelia Pechmann, correct?**

23 A: Yes.

24 **Q: Turning to page 196 in the last sentence of the first paragraph it reads, "[A] 1 to 4**

1 **ratio of antismoking ads to cigarette ads seems reasonable for present-day efforts."**

2 **Is that correct?**

3 A: Yes, *the full sentence reads: "Nevertheless, given the dearth of other data, a 1 to 4 ratio of*
4 *antismoking ads to cigarette ads seems reasonable for present-day efforts."* This was
5 *published in 1997, before the MSA.*

6 **Q: And then if you take that sentence in conjunction with the bottom of page 197,**
7 **where in the second-to-the-last paragraph, last sentence, "During the Fairness**
8 **Doctrine era when a 1 to 4 ratio of antismoking to cigarette ads reduced underage**
9 **smoking . . . the antismoking ads were not targeted solely at youth; under the Clinton**
10 **proposal the ads would target youth." Is that correct?**

11 A: Yes, *the quoted language appears in this chapter. It is not clear to me if that is all the*
12 *question is intended to ask.*

13 **Q: Do you agree with Ms. Pechmann's observation or conclusion that a one-to-four**
14 **ratio of antismoking advertisements to cigarette advertisements would reduce youth**
15 **smoking?**

16 A: I don't have any reason to quarrel with her conclusion, *but I believe this conclusion is based*
17 *on data from the 1970s and I am not certain that it is relevant today, particularly after the*
18 *MSA.*

19 **Q: Did that analysis influence your work at Youth Smoking Prevention?**

20 A: No.

21 **Q: Why not?**

22 A: It didn't seem relevant. *The amount of cigarette advertising in the United States was*
23 *dramatically reduced after the Master Settlement Agreement in comparison with when Dr.*
24 *Pechmann wrote this chapter in 1997. In addition, Philip Morris tried to follow the public*

1 *health community's advice to lower the overall profile of the cigarette category by reducing*
2 *its own brand advertising and visibility significantly.*

3 **Q: Is it your testimony that the ratio of youth smoking prevention advertisements to**
4 **cigarette advertisements was not relevant to you as Senior Vice President of YSP for**
5 **Philip Morris?**

6 A: **Yes.** *No, that is not my testimony. It is my belief that the dramatic reduction in the profile of*
7 *cigarette advertising following the MSA likely has had some effect on what the proper ratio*
8 *should be.*

9 **Q: Did Philip Morris YSP conduct research to test whether a one-to-four ratio of**
10 **antismoking to cigarette advertisements would reduce youth smoking?**

11 A: No.

12 **Q: Has Philip Morris Youth Smoking Prevention conducted research to determine**
13 **whether Philip Morris' YSP advertisements actually reduced youth smoking?**

14 A: *No, I did not believe it was possible to conduct research that would accurately separate out*
15 *and measure the impact of Philip Morris' YSP advertisements against the backdrop of all the*
16 *other youth smoking prevention efforts that were ongoing. We conducted extensive research*
17 *before running such advertising, however, to ensure that we were clearly communicating the*
18 *anti-smoking message that we intended to communicate. We also conducted research after*
19 *the advertising ran on television to gauge awareness.*

20 **Q: Has Philip Morris Youth Smoking Prevention conducted research to determine**
21 **whether its YSP programs actually reduced youth smoking?**

22 A: *No, Philip Morris Youth Smoking Prevention did not conduct such research. However,*
23 *Philip Morris Youth Smoking Prevention funded evaluations of many of the programs it*
24 *supported. For example, we funded evaluations of Life Skills Training and National 4-H*

1 Council's "Health Rocks" program.

2 **Q: It was your position when you were senior vice president of Youth Smoking**
3 **Prevention, that it was not possible to determine whether Philip Morris's youth**
4 **smoking programs actually reduce youth smoking, correct?**

5 A: **Yes.** *No, as stated above, Philip Morris Youth Smoking Prevention funded evaluations of*
6 *many of the programs that it supported.*

7 **Q: So it's your testimony that Philip Morris spent approximately \$100 million dollars a**
8 **year from 1999 to 2002, when you were Senior Vice President of Youth Smoking**
9 **Prevention, but that you could not measure whether any of those or advertisements**
10 **had any effect on reducing youth smoking?**

11 A: **That's correct.** *No, while there appears to be a word or words missing from the question, I*
12 *do not believe this is entirely correct. As I have stated above, I did not believe it was*
13 *possible to measure the impact of Philip Morris' YSP advertisements against the backdrop of*
14 *all the other youth smoking prevention efforts that were ongoing. But as I have also stated*
15 *above, Philip Morris Youth Smoking Prevention conducted extensive research on its*
16 *advertising and funded the evaluation of programs that it supported. Finally, I was very*
17 *pleased by the decline in youth smoking rates during my tenure, even though we could not*
18 *know specifically what role our work may have played in that decline.*

19 **Q: You were aware at that time that prevention experts in the field did not share your**
20 **views, correct?**

21 A: *Yes, I was aware that some experts had differing views, but I also thought that other experts*
22 *agreed with my position.*

23 **Q: In fact, there was much research to show that research methods could be used to**
24 **evaluate the effectiveness of prevention efforts on youth smoking rates, correct?**

1 A: **I don't know.** *Yes, insofar as there was extensive research on the effectiveness of various*
2 *school and community programs in preventing youth smoking. I am also aware of research*
3 *done on the effectiveness of state-level advertising campaigns in combination with school-*
4 *based programs before there were any overarching national advertising campaigns.*

5 **Q: However, Philip Morris performed no test to determine the effectiveness of its youth**
6 **smoking prevention advertisements on youth smoking rates, correct?**

7 A: That's correct.

8 **Q: Turning to U.S. Exhibit 39717, this is a copy of an article entitled, "Does**
9 **Antismoking Advertising Combat Underage Smoking? A Review of Past Practices**
10 **and Research?" by Cornelia Pechmann, Ph.D., correct?**

11 A: Yes.

12 **Q: You have testified that you consider Dr. Pechmann to be an expert on youth smoking**
13 **prevention. Have you read this article?**

14 A: Yes.

15 **Q: Turning to the top of page 200 of the article, where it states, "Overview of Method"**
16 **there's a discussion of the longitudinal type of studies and it also talks about using**
17 **control groups, is that correct?**

18 A: Yes.

19 **Q: Do you agree that Dr. Pechmann concludes or discusses in this article that it is**
20 **possible to test advertisements for effectiveness, such as decreases in smoking rates,**
21 **using longitudinal studies and control groups?**

22 A: *Yes, and she is referring to research done comparing communities in which advertising was*
23 *run versus control communities where advertising was not run. Historically, this kind of*
24 *research could be done prior to the time that national advertising campaigns went on air.*

1 **Q:** And did Philip Morris Youth Smoking Prevention try to replicate Dr. Pechmann's
2 methods described in this article to test its YSP programs or advertisements?

3 A: No.

4 **Q:** Philip Morris ran both child-directed and parent-directed communications when
5 you were Senior Vice President of YSP, correct?

6 A: Yes.

7 **Q:** This included television advertising and printed materials, correct?

8 A: Yes.

9 **Q:** The "first generation" of Philip Morris YSP advertisements were "child-directed,"
10 right?

11 A: Yes.

12 **Q:** These were developed and first run in 1998, correct?

13 A: Yes.

14 **Q:** The name of the child-directed advertising campaign developed in 1998 was
15 "Think, Don't Smoke," correct?

16 A: Yes, "*Think. Don't Smoke*" was the tagline.

17 **Q:** And this advertising campaign was intended to communicate to children that they
18 should not smoke, correct?

19 A: Yes.

20 **Q:** Are you aware of a 2002 peer-reviewed article by Cornelia Pechmann, Ph.D.,
21 entitled, "Does Antismoking Advertising Combat Underage Smoking? A Review of
22 Past Practices and Research," that measured the effectiveness of seven types of anti-
23 smoking messages and is contained in U.S. Exhibit 39717?

24 A: **Yes, I was aware of that article.** No. U.S. Ex. 39717 is a chapter written by Dr. Pechmann

1 with this title that appeared in Social Marketing: Theoretical and Practical Perspectives
2 published in 1997, not 2002. This chapter does not contain a discussion of measurements of
3 seven types of anti-smoking messages. As I recall, Dr. Pechmann did other work which
4 studied the effectiveness of anti-smoking messages.

5 **Q: Did you try to replicate Dr. Pechmann's study using the Philip Morris YSP**
6 **messages?**

7 A: **No.** I am not sure which study this question refers to.

8 **Q: Did you perform any similar study evaluating the effectiveness of Philip Morris'**
9 **child-directed advertisements?**

10 A: **No.** I am not sure which study this question refers to. As I have stated above, however, I did
11 not believe it was possible to measure the impact of Philip Morris' YSP advertisements
12 against the backdrop of all the other youth smoking prevention efforts that were ongoing.
13 We conducted extensive research before running such advertising, however, to ensure that
14 we were clearly communicating the anti-smoking message that we intended to communicate.
15 We also conducted research after the advertising ran on television to gauge awareness.

16 **Q: Did you consult with Dr. Pechmann to develop the YSP advertisements?**

17 A: No. I didn't consult with her for that purpose.

18 **Q: You were aware, when you were Senior Vice President of YSP, that one-third of all**
19 **experimentation with cigarettes occurs from ages 15-17, correct?**

20 A: **Yes.** I do not recall this specifically. I was aware of the data reported in the 1994 Surgeon
21 General's Report. Based on that data, when people aged 30-39 were asked to recall the age
22 at which they first tried a cigarette, 14.1 percent reported first trial before their 12th
23 birthday; 29.7 percent reported first trial before their 14th birthday; 48.2 percent reported
24 first trial before their 16th birthday; and 63.7 percent reported first trial before their 18th

1 *birthday.*

2 **Q:** You also had data that showed that two-thirds of all adolescents who smoke become
3 established smokers when they are 15-17?

4 A: Yes. *That may be true, but I do not recall such data.*

5 **Q:** But Philip Morris chose not to address, through its advertising, this segment of
6 adolescents, correct?

7 A: That's correct. *We addressed smoking among 15 to 17-year-olds through our youth smoking*
8 *prevention program funding.*

9 **Q:** Philip Morris YSP directed its child-directed YSP advertisements to 10- to 14-year-
10 olds, correct?

11 A: Yes.

12 **Q:** Philip Morris chose not to direct its child-directed YSP advertising at 15-17 year
13 olds, correct?

14 A: That is correct.

15 **Q:** In May 1999 Philip Morris was only supporting prevention efforts, correct?

16 A: Yes.

17 **Q:** In May 1999, Philip Morris did not support cessation efforts, correct?

18 A: That is correct.

19 **Q:** Not until 2001 did Philip Morris YSP fund some cessation programs, correct?

20 A: Yes. *As I recall, Philip Morris YSP may have begun funding cessation programs in 2000. I*
21 *also recall that I contemplated supporting cessation programs from the time that I started in*
22 *my position of the Youth Smoking Prevention Department. However, I recognized we can*
23 *only do so much at one time, and cessation quickly followed our successful support of the*
24 *implementation of Life Skills Training in schools, which was extremely time consuming.*

1 **Q:** **What was it called?**

2 A: Philip Morris funded END, a cessation program in high schools.

3 **Q:** **How much did Philip Morris spend on END?**

4 A: In 2001 around \$350 to \$400,000.

5 **Q:** **Was that program funded again in 2002?**

6 A: I don't know. It was going to be continued. I don't recall what the dollar amount was going
7 to be.

8 **Q:** **Philip Morris YSP advertisements and media campaigns were reviewed by various**
9 **groups within Philip Morris but outside the YSP Department, correct?**

10 A: Yes.

11 **Q:** **Media campaigns were reviewed by various Philip Morris employees before they**
12 **were aired, correct?**

13 A: Yes.

14 **Q:** **One such group that reviewed YSP advertisements before they were aired was**
15 **called the "YSP Council," correct?**

16 A: Yes, there was a group, but I do not recall the precise name.

17 **Q:** **The YSP Council was made up of Philip Morris employees from corporate affairs,**
18 **legal and other departments, correct?**

19 A: Yes.

20 **Q:** **And the purpose of the YSP Council was to screen YSP advertisements for potential**
21 **problems from a public affairs or legal standpoint?**

22 A: Yes, this group was established to review YSP communications materials so that we could be
23 sure that these materials clearly communicated their intended message.

24 **Q:** **Another group of more senior Philip Morris executives who reviewed all YSP**

1 **advertisements and campaigns was called the, "Senior Team," correct?**

2 A: *Yes, the Senior Team reviewed campaign themes and some but not all advertising*
3 *executions.*

4 **Q: The "Senior Team" included the Chief Executive Officer, Mike Syzmanczyk, and**
5 **all of the senior vice presidents of Philip Morris from departments unrelated to**
6 **youth smoking prevention, correct?**

7 A: *Yes, including me as Senior Vice President of Youth Smoking Prevention.*

8 **Q: Members of the Senior Team included the senior vice presidents for marketing,**
9 **consumer research, sales and research and development, correct?**

10 A: *Yes, except there was no senior vice president for consumer research.*

11 **Q: The Senior Team made decisions affecting all aspects of Philip Morris' business,**
12 **including its YSP campaigns, correct?**

13 A: Yes. No.

14 **Q: In fact, the Senior Team had to approve the focus of Philip Morris' YSP child-**
15 **directed media campaign, correct?**

16 A: Yes. No.

17 **Q: You have testified that Philip Morris' child-directed YSP media campaign focused**
18 **on 10-14 year olds, correct?**

19 A: Yes.

20 **Q: And this decision to focus the YSP media campaign on 10-14 year olds was made by**
21 **Mr. Syzmanczyk and the Senior Team, correct?**

22 A: Yes. No.

23 **Q: This age group (10-14 year olds) is referred to in internal Philip Morris documents**
24 **as "tweens," correct?**

1 A: Yes.

2 Q: Did the YSP Department ever recommend to the Senior Team that Philip Morris
3 shift and broaden its focus to cover 12-17 year olds?

4 A: Yes. No, I do not recall any such recommendation.

5 Q: But, the Senior Team did not adopt the YSP Department's recommendation, did
6 they?

7 A: No, because, as set forth above, no such recommendation was ever made to the best of my
8 recollection.

9 Q: And the reason that the YSP Department recommended that the media campaign be
10 directed to 12-17 year olds is because those are the ages of teenagers who are "at
11 greater risk of smoking," correct?

12 A: Yes. No, as set forth above, no such recommendation was ever made to the best of my
13 recollection.

14 Q: As a result, the YSP child-directed media campaign focused upon 10-14 year olds,
15 correct?

16 A: Yes, the YSP advertising campaign focused on 10-14 year olds, but not for the reasons
17 suggested in the questions above.

18 Q: Philip Morris YSP knew its child-directed advertisements were not reaching at-risk
19 youth, correct?

20 A: Yes. No, I am not sure what "reaching" is meant to imply.

21 Q: You knew this as a result of a study done by Teenage Research Unlimited ("TRU"),
22 correct?

23 A: Yes.

24 Q: Turning now to U.S. Exhibit 77469. This is a document entitled, "Counter-Tobacco

1 **Advertising Exploratory Summary Report January-March 1999," prepared by**
2 **Teenage Research Unlimited ("TRU"). Are you familiar with this document?**

3 A: Yes.

4 **Q: TRU conducted focus groups with 12 to 17 year old children to study the impact of**
5 **Philip Morris' YSP advertisements, correct?**

6 A: Yes, *but according to the document, the study consisted of focus groups among kids age 12-*
7 *16 at risk of using tobacco who were "exposed to and asked to evaluate a series of ads from*
8 *four of the states currently conducting anti-tobacco media campaigns, as well as ads from*
9 *Philip Morris."*

10 **Q: The TRU study involved 20 focus group in 3 states and six markets, correct?**

11 A: Yes.

12 **Q: On page 3 of U.S. Exhibit 77469 under, "Sample," it states, in the second sentence:**

13 **Specifically, respondents were screened to be at risk of using tobacco**
14 **by meeting any of the following three specifications: They "might" or**
15 **are "pretty sure" they will start using tobacco. . . . in the next year;**
16 **some to most of their family and/or friends use tobacco; . . . they are**
17 **found to hold certain attitudes or beliefs which indicate a disposition**
18 **to use tobacco.**

19
20 **Correct?**

21 A: Yes, *with some minor errors in the quotation.*

22 **Q: "The Choice" was one of the Philip Morris Youth Smoking Prevention**
23 **advertisement themes, correct?**

24 A: **Yes.** *No, that was not a theme of our youth smoking prevention advertisements. However,*
25 *in some of our advertisements, we did try to give kids credit for making good decisions,*
26 *which was a concept we developed based on published research.*

27 **Q: Turning to page 9, the third bullet reads, "'The 'choice' theme does not appear to be**
28 **strong enough to effectively prompt 'at-risk' youth to seriously 'stop and think'**

1 **about not using tobacco." Correct?**

2 A: Yes.

3 **Q: Some of the children tested in the TRU study thought the "choice" theme of Philip**

4 **Morris YSP advertisements was not clear on the serious consequences of smoking,**

5 **correct?**

6 A: Yes.

7 **Q: On page 8, TRU concluded "Other teens commented that these ads give kids a**

8 **choice to smoke or not to smoke -and noted that some kids will choose to smoke,**

9 **which is what the tobacco companies really want," correct?**

10 A: Yes.

11 **Q: It also says, "Therefore, campaigns should not be developed with a choice theme as a**

12 **key foundation," correct?**

13 A: Yes.

14 **Q: Did you read this study?**

15 A: Yes.

16 **Q: Did you find it informative?**

17 A: Yes, *I found some aspects informative.*

18 **Q: Philip Morris prepared talking points to use to attack the study, correct?**

19 A: **Yes.** *No. Philip Morris prepared talking points that could be used by spokespeople to*

20 *answer media questions about the study.*

21 **Q: Turning to U.S. Exhibit 40179, this is an internal Philip Morris document entitled,**

22 **"COUNTER-TOBACCO ADVERTISING EXPLORATORY STUDY" and on the**

23 **first page it has the heading "PM Messages" and "KEY POINTS TO BE MADE**

24 **ABOUT THE STUDY," do you see that?**

1 A: Yes.

2 Q: On page two, at the last bullet point in the document it says:

3 We don't know why some groups are so insistent our ads don't belong
4 in the mix. All the evidence suggests we are making a useful
5 contribution. Is this about young smoking prevention or industry-
6 bashing.

7

8 Do you see that?

9 A: Yes, *although "young" should be "youth."*

10 Q: So Philip Morris interpreted this study of the Philip Morris YSP advertisements as
11 "industry bashing," correct?

12 A: Yes. *No, that is not how I interpreted this study.*

13 Q: TRU, Teenage Research Unlimited, is a marketing research firm and not an
14 antitobacco group, isn't that correct?

15 A: Yes.

16 Q: Did you change any of the Philip Morris Youth Smoking Prevention advertisements
17 in response to the study?

18 A: No, *but the article did confirm that "[a]ds which included a diversity of young people were*
19 *praised by many respondents (especially the younger teens) for showing people their age (or*
20 *close to it) to whom they could relate."* I would note that future Philip Morris YSP
21 *advertisements did include a diversity of young people, and we did reduce or abandon*
22 *advertisements that featured one person.*

23 Q: Returning to U.S. Exhibit 77469, the second-to-the-last paragraph on page 9, states
24 that it's "also important to consider whether these types of ads, when shown within
25 states which are running comprehensive, cohesive and integrative campaigns –
26 might dilute the impact of these states' efforts," correct?

27 A: Yes.

1 **Q:** Did anyone at Philip Morris YSP do any research to determine whether its
2 advertisements might dilute the impact of the states' efforts?

3 A: No.

4 **Q:** Philip Morris only tested whether children understood its messages, correct?

5 A: Yes, that's correct. No, as already discussed above.

6 **Q:** The children tested in the TRU study did not like the Philip Morris Youth Smoking
7 Prevention advertisements, correct?

8 A: Yes. The study reflects certain criticisms of Philip Morris YSP advertisements by the study
9 respondents. However, I cannot tell from the exhibit if the respondents were asked
10 specifically if they liked the Philip Morris YSP advertisements.

11 **Q:** The children in the TRU study thought the children in the Philip Morris
12 advertisements were too wholesome and were "dorkey," correct?

13 A: Yes. No, I do not see that in this study.

14 **Q:** Philip Morris did not test the effectiveness of its YSP communications directed at
15 children in the same manner in which it tests the effectiveness of its cigarette brand
16 communications, did it?

17 A: No, Philip Morris conducted much more extensive research on YSP communications than it
18 would typically conduct for cigarette brand communications..

19 **Q:** And Philip Morris did not test to see whether its child-directed YSP advertisements
20 affected children's intentions to smoke, did it?

21 A: No. Yes, Philip Morris did test each of its YSP advertisements to determine whether it
22 affected children's intentions to smoke before airing it.

23 **Q:** And Philip Morris did not test to see whether its child-directed YSP advertisements
24 affected children's attitudes towards smoking, did it?

1 A: **No.** *Yes, we did.*

2 **Q:** **Philip Morris did not test to see whether its child-directed YSP advertisements**
3 **affected children's attitudes towards people who smoke, did it?**

4 A: No.

5 **Q:** **Philip Morris did not test its child-directed YSP advertisements through the use of**
6 **control groups, did it?**

7 A: No, it did not.

8 **Q:** **A control group experiment is where the test group receives the advertisements you**
9 **are developing and the control group does not, correct?**

10 A: Yes.

11 **Q:** **And then, in a control group experiment, you measure whether the advertisement**
12 **caused any change in the experimental group such as increased intention to smoke**
13 **that did not occur in the control group, correct?**

14 A: Yes, *or decreased intention to smoke.*

15 **Q:** **Based on your background in marketing research, by way of analogy, a control**
16 **group in testing for pharmaceuticals would be a group of people that received a**
17 **sugar pill, sometimes called a placebo, correct?**

18 A: That's right.

19 **Q:** **And this type of experimental method is used by professions in youth smoking**
20 **prevention to test the effectiveness of prevention efforts, correct?**

21 A: **I don't know.** *Yes. As I recall, this kind of methodology has been used to evaluate mass*
22 *media intervention and school programs by Dr. Brian S. Flynn in the early 1990s.*

23 **Q:** **Could Philip Morris have evaluated the effectiveness of its child-directed YSP**
24 **advertisements through the use of a randomized control group study where, you**

1 **have group of children who see a Philip Morris advertisement, and a control group**
2 **of children where they don't see the advertisement, and then you could measure**
3 **afterwards, whether seeing the advertisements had an impact on their behavior?**

4 A: *Theoretically, you You could do that kind of study. However, I have not seen any evidence*
5 *that any organization that runs youth smoking prevention commercials does such testing*
6 *before airing those commercials.*

7 **Q: But Philip Morris did not conduct such a study, correct?**

8 A: *That's correct.*

9 **Q: The American Legacy Foundation studied Philip Morris' youth-directed**
10 **advertisements in 2001, correct?**

11 A: *Yes, I heard about this study at the NAAG Triennial Meeting in October 2001.*

12 **Q: It concluded that several Philip Morris YSP advertisements made kids more open to**
13 **smoking, correct?**

14 A: *Yes. I have not seen the study, which I understand was published after I left the company.*
15 *As I recall, however, I was told by American Legacy Foundation representatives that two*
16 *Philip Morris YSP advertisements made kids more "open to smoking" according to Dr.*
17 *Pierce's measure of smoking susceptibility.*

18 **Q: American Legacy Foundation's research of Philip Morris' advertisements was**
19 **through an advertising tracking study, correct?**

20 A: *Yes, that was my understanding.*

21 **Q: The data for the advertising tracking study was collected via a telephone survey**
22 **conducted following Philip Morris Youth Smoking Prevention advertisements being**
23 **aired on television, correct?**

24 A: *Yes, that was my understanding.*

1 **Q:** The day after the American Legacy Foundation made their conclusions public,
2 Philip Morris took its "Karate Girl ad," one of the two advertisements the
3 American Legacy Foundation cited, off the air, correct?

4 A: Yes, *as a precautionary measure.*

5 **Q:** Did Karate Girl ever go back on the air?

6 A: No.

7 **Q:** The other ad the American Legacy Foundation had cited had already been taken off
8 the air, correct?

9 A: Yes, *it had stopped running months before American Legacy Foundation conducted its*
10 *telephone survey.*

11 **Q:** Philip Morris never measured whether these advertisements made kids more open
12 to smoking?

13 A: No, we didn't. *Yes, we did. Our extensive quantitative testing established that our*
14 *advertisements clearly communicated to kids the message not to smoke.*

15 **Q:** But Philip Morris developed talking points for company spokespersons to criticize
16 the American Legacy Foundation report, correct?

17 A: Yes. *No.*

18 **Q:** Turning to U.S. Exhibit 45659, this is a three-page document that contains talking
19 points to refute the American Legacy Foundation's conclusions that Philip Morris'
20 YSP advertisements made kids more open to smoking, correct?

21 A: Yes. *These appear to be points describing American Legacy Foundation's allegations about*
22 *our television advertising and some possible responses to those allegations. They may or*
23 *may not have served as the basis for talking points.*

24 **Q:** Turning to U.S. Exhibit 22291, entitled "YSP Teen TV Hiatus dated February 4,

1 **2002, are you familiar with this document?**

2 A: Yes.

3 **Q: Under "Background" on the first page, it indicates "1/7/02, decision made to close**
4 **'Think, Don't Smoke' YSP teen TV advertising." Is that correct?**

5 A: Yes.

6 **Q: Did Philip Morris stop running child directed advertising in July 2002?**

7 A: Yes.

8 **Q: Did Philip Morris develop a new child directed advertising campaign after that?**

9 A: No, *not while I was at the company.*

10 **Q: In 2001, Philip Morris' YSP shifted its communications from child-directed to parent-**
11 **directed advertising and brochures, correct?**

12 A: Yes, *although the child-directed advertising continued to run into 2002.*

13 **Q: It's fair to say, isn't it, that Philip Morris is concerned with parents' perception of its**
14 **corporate image?**

15 A: Yes. *Philip Morris is concerned with achieving its mission to be the most responsible and*
16 *respected cigarette manufacturer. Parents are certainly among Philip Morris' stakeholders*
17 *in connection with understanding and achieving its mission.*

18 **Q: And the theme of this parent-directed campaign was that parents should talk to their**
19 **children about not smoking, correct?**

20 A: Yes.

21 **Q: Philip Morris had no in-house expertise regarding talking to parents about their**
22 **children's smoking at the time, did it?**

23 A: **No.** *Philip Morris Youth Smoking Prevention reviewed literature, conducted qualitative*
24 *research, and consulted with outside experts. I consider that in-house expertise.*

1 **Q: Are you aware of any internal research by Philip Morris that measured whether**
2 **parent directed programs have any impact on teen smoking?**

3 A: *No, but we were aware from our internal review of the public health literature that parents*
4 *can have a substantial impact on teen smoking. Therefore, we believed that parent-directed*
5 *programs that improved parents' ability to practice "authoritative or hands-on" parenting*
6 *would have an impact on teen smoking.*

7 **Q: Has Philip Morris evaluated whether the children of parents who saw the Philip**
8 **Morris YSP advertisements exhibited lower rates of smoking?**

9 A: *No, we didn't measure that.*

10 **Q: Philip Morris YSP also has not analyzed whether its parent-directed advertisements**
11 **are more or less effective than the "Think, don't smoke" advertisements, has it?**

12 A: *I don't know if that analysis was done.*

13 **Q: Before you left there was never a discussion about comparing the effectiveness of the**
14 **suspended child-directed advertising to the parent-directed advertising, correct.**

15 A: *No there wasn't.*

16 **Q: Philip Morris publicly announced its shift to parent-directed advertising in 2001,**
17 **correct?**

18 A: *Yes.*

19 **Q: Turning to U.S. Exhibit 77467, this is a press release dated January 28, 2002,**
20 **correct?**

21 A: *Yes.*

22 **Q: And it quotes you as saying, "Philip Morris USA's Youth Smoking Prevention**
23 **department will be increasing its emphasis on communications to parents in 2002."**
24 **Is that correct?**

1 A: Yes.

2 **Q: Philip Morris launched its parent-directed television advertising during Super Bowl**
3 **XXXVI in 2002, correct?**

4 A: **Yes.** *No, Philip Morris Youth Smoking Prevention had run parent-directed television*
5 *advertising before this time.*

6 **Q: The Super Bowl is one of the highest rated, and therefore most watched programs**
7 **on television, correct?**

8 A: Yes.

9 **Q: In addition to television advertisements, Philip Morris YSP also published a parent**
10 **brochure, correct?**

11 A: Yes.

12 **Q: And sent it to over one million names in Philip Morris' direct mail database,**
13 **correct?**

14 A: Yes, *this brochure was sent to more than one million people, but the mailing list for the*
15 *distribution of this brochure was a combination of names from purchased lists as well as*
16 *Philip Morris' direct mail database.*

17 **Q: And distributed it at many retail locations, correct?**

18 A: *No proposed answer to this question was provided, but the answer is yes.*

19 **Q: When was the brochure first published?**

20 A: Late in 2001.

21 **Q: Philip Morris paid Beachfront Publishing to produce the brochure, correct?**

22 A: Yes.

23 **Q: There were no Ph.D.s or M.D.s or parenting experts on Beachfront Publishing' s**
24 **staff that worked on the brochure, were there?**

1 A: No. *I don't recall the educational backgrounds of the individuals on Beachfront*
2 *Publishing's staff, however, they had expertise in developing materials in this area. In*
3 *addition, we sought and received input from other parenting experts.*

4 **Q: The message of the brochure was that parents should talk to their kids about**
5 **smoking, correct?**

6 A: Yes, *the message of the brochure is that parents should talk to their kids about not smoking*
7 *and that parents had an important role to play.*

8 **Q: Has Philip Morris evaluated whether the children of parents who receive their**
9 **brochures exhibit lower rates of smoking?**

10 A: No, *not while I was at the company.*

11 **Q: Is it fair to say that you don't know if Philip Morris' parent-directed brochure**
12 **actually reduced youth smoking?**

13 A: That's right, I don't know.

14 **Q: And that's because Philip Morris did not evaluate the effectiveness of the brochures**
15 **on youth smoking rates, correct?**

16 A: **Yes.** *No, Philip Morris did evaluate the brochures in focus groups conducted among*
17 *parents, who said they found the information in the brochure helpful. This, combined with*
18 *the conclusion of the Surgeon General that parents can have a substantial impact on*
19 *whether their children smoke, does speak to the effectiveness of the brochure in discouraging*
20 *youth smoking.*

21 **Q: And you didn't evaluate whether children of parents who received the brochure had**
22 **any change in their intentions to smoke or their attitudes towards smoking, correct?**

23 A: **Yes.** *No, see my answer immediately above.*

24 **Q: I would like to ask you some questions about youth access to cigarettes. Turning to**

1 U.S. Exhibit *45288, this is a presentation titled, "Update on TABS and Review of
2 Youth Smoking Prevention Initiatives," dated December 2000, correct?

3 A: Yes.

4 Q: TABS refers to the Teenage Attitude and Behavior Study, correct?

5 A: Yes.

6 Q: Philip Morris Youth Smoking Prevention conducts the TABS survey, correct?

7 A: Yes.

8 Q: This is a different survey than the Continuous Tracking Survey, correct?

9 A: Yes.

10 Q: At page 81, it reports that data collected in TABS shows that 65 percent of 15 to 17
11 year olds say it's "very easy" to get cigarettes and 49 percent of 11-14 year olds say
12 it's "very easy" to get cigarettes, correct?

13 A: Yes, *except the percentage for 11 to 14-year-olds is 39 percent as of September 2000.*

14 Q: And Philip Morris YSP generated this data, correct?

15 A: Yes.

16 Q: Similarly, turning to U.S. Exhibit 77414, this document provides updated numbers
17 from the TABS survey for 2001, correct?

18 A: Yes.

19 Q: Turning to table 172 in U.S. Exhibit 77414, the question at the top is, "[h]ow easy is
20 it for people your age to access cigarettes?," correct?

21 A: Yes, *except the precise question is "[h]ow easy is it for people your age to get cigarettes."*

22 Q: Looking at the TABS study, for the past 30 day smokers (kids who indicated they
23 had smoked at least one cigarette in the past 30 days) 50.2 percent of 15-17 year olds
24 said that it was very easy to get cigarettes, correct?

1 A: Yes.

2 Q: And 37.4 percent of children ages 11-14 found it very easy to get cigarettes, correct?

3 A: Yes.

4 Q: Do you consider those high numbers?

5 A: I think they're really high numbers.

6 Q: Philip Morris told the public that it was committed to youth access reduction,
7 correct?

8 A: Yes.

9 Q: A June 27, 1995, Philip Morris press release, U.S. Exhibit 22928, announced a
10 program – Action Against Access – which was described as a “new initiative to
11 attack the problem of youth smoking.” It further stated that “Philip Morris U.S.A.
12 will fund a major retail compliance training program called ‘Ask First/It’s the Law’
13 on how to ask for and verify proof of age for the purchase of cigarettes.” The press
14 release hailed these initiatives as “the best way to keep kids away from cigarettes.”
15 Isn’t this correct?

16 A: Yes.

17 Q: And another public statement, at U.S. Exhibit 21804, is a press release dated
18 December 1994 titled, "Philip Morris Announces Initiatives to Prevent Youth
19 Access to Cigarettes; Oversight Panel Named," correct?

20 A: Yes. No. I have never seen this document before. It appears to be draft press release, and I
21 do not know that it was ever issued. In addition, I am not aware of a public statement to this
22 effect at that time.

23 Q: And the press release reads on the first page, continuing on to the second:
24 Kids shouldn't smoke. All of us share that objective. As the industry
25 leader, Philip Morris is taking aggressive steps to keep cigarettes out

1 of the hands of young people," said Mr. Bible, who took over as
2 president and chief executive officer six months ago. "Our initiative
3 will go a long way toward that objective, while preserving the ability
4 of adult smokers to make choices in a free market place," Bible said.
5 "I have no doubt that some of our critics will say this initiative is not
6 enough. There is no proposal we could make, no matter how extreme,
7 that would satisfy those whose agenda is to regulate cigarettes in a
8 manner that would severely restrict, if not prohibit, the sale of
9 cigarettes to adults," Bible said.

10
11 **Do you see that?**

12 A: Yes. *The draft press release states that.*

13 **Q: The "It's the Law" and "We Card" campaigns are the tobacco industry's response**
14 **to the levels of youth access to cigarettes, correct?**

15 A: Yes, but while "We Card" is an industry program, "It's the Law" was an earlier Philip
16 Morris access prevention program which was rolled into the "We Card" program. In
17 addition, Philip Morris had other programs that were aimed at preventing youth access.

18 **Q: And these two programs have been in place for years, correct?**

19 A: Yes, "We Card" has been in place for years.

20 **Q: And these high numbers of teenagers who reported that it was easy to get cigarettes**
21 **did so after these programs had been in place for years, correct?**

22 A: Yes, and that was the reason that Philip Morris developed additional youth access
23 prevention initiatives.

24 **Q: Has the "It's the Law" or "We Card" campaign actually reduced underage**
25 **smoking?**

26 A: I don't know.

27 **Q: Have they reduced youth access to cigarettes?**

28 A: **I don't know.** Yes, I believe it has.

29 **Q: Has Philip Morris evaluated whether the "It's the Law" or "We Card" campaigns**

1 **actually reduced underage smoking or youth access to cigarettes?**

2 A: No, *not that I recall.*

3 **Q: The final topic I would like to ask you about is the price sensitivity of children. You**
4 **have read articles on the price sensitivity of youth smoking behavior, correct?**

5 A: Yes.

6 **Q: Philip Morris YSP was aware that youth smoking behavior was price sensitive as a**
7 **result of data in the Philip Morris TABS survey you have testified about, correct?**

8 A: Yes, *as indicated in Table 243 of U.S. Ex. 77414, 33.1% of non-smoking kids aged 11-17*
9 *agreed completely with the statement “[i]t’s expensive” in response to the question, “How*
10 *much do agree that the following statement describes your reasons for not smoking?”*

11 **Q: And, when you were Senior Vice President of Youth Smoking Prevention,**
12 **beginning in 1998, you understood from Philip Morris's own TABS survey, that**
13 **teenagers reported that their smoking behavior was price sensitive, correct?**

14 A: Yes, *from the time that we started collecting TABS data in 1999.*

15 **Q: Turning to U.S. Exhibit 77414 which is the TABS study, in Table 243, Bates number**
16 **USX 3630447, the question reads "How much do you agree that the following**
17 **statements describe your reasons for not smoking cigarettes? It's expensive?" Is**
18 **that correct?**

19 A: Yes.

20 **Q: And table 243 lists 17,858 responses, correct?**

21 A: Yes, *17,859 to be precise.*

22 **Q: On the next page, Table 244 is set-up to break out the responses from nonsmokers**
23 **and responses smokers, correct?**

24 A: Yes, *the tables are entitled “Past Thirty-Day Smokers (Smoked a Cigarette in Past 30 Days”*

1 and "Non-Smokers (Have Not Smoked a Cigarette in Past 30 Days").

2 **Q:** But in Table 244 the column for "smokers" is blank, correct?

3 A: Yes, because survey respondents who indicated that they had smoked a cigarette in the past

4 30 days were not asked this question.

5 **Q:** And all 17,858 responses are from children that Philip Morris labeled as

6 nonsmokers, correct?

7 A: Yes.

8 **Q:** So when Philip Morris YSP was conducting this poll, youths under 18 who said they

9 smoked were not asked if they were sensitive to price, only youths under 18 who

10 said they did not smoke were asked that question?

11 A: Yes.

12 **Q:** For children who do not smoke, the percentage of 11 to 14 and 15 to 17 year olds

13 who agree that smoking is expensive is around 33 percent for each group, correct?

14 A: Yes.

15 **Q:** So, it's fair to say isn' it, that the price of cigarettes is an important variable in

16 preventing children them from smoking, correct?

17 A: Yes.

18 **Q:** As Senior Vice President of YSP, did you draw any conclusions from this data?

19 A: Yes, I concluded from this research that price affected youth smoking behavior, from this

20 research and from other reading that I have done that the price of cigarettes for some kids

21 appears to be an important variable in preventing them from smoking.

22 **Q:** You were made aware more than ten years earlier, weren't you, that youth smoking

23 behavior was sensitive to changes in cigarette prices, correct?

24 A: Yes.

1 **Q:** Turning to U.S. Exhibit 76177, this is a memorandum dated September 3, 1987, from
2 Philip Morris economist and analyst Myron Johnston, on which you were
3 copied, correct?

4 **A:** Yes.

5 **Q:** In 1987, you were Assistant Director of Consumer Research, correct?

6 **A:** Yes.

7 **Q:** In that memorandum, (emphasis in original) Mr. Johnson explained

8 Jeffery [sic] Harris of MIT calculated, on the basis of the
9 Lewin [sic] and Coate data, that the 1982-83 round of price
10 increases caused two million adults to quit smoking and
11 prevented 600,000 teenagers from starting to smoke. Those
12 teenagers are now 18-21 years old, and since about 70 percent
13 of 18-21 year-olds and 35 percent of older smokers smoke a
14 PM brand, this means that 700,000 of those adult quitters had
15 been PM smokers and 420,000 of the non-starters would have
16 been PM smokers. Thus, if Harris is right, we were hit
17 disproportionately hard. We don't need to have that happen
18 again.

19
20 **Correct?**

21 **A:** Yes.

22 **Q:** You understood this memorandum to mean that teenagers' smoking behavior is
23 affected by cigarette prices?

24 **A:** Yes.

25 **Q:** So, when prices go up, fewer teenagers will take up smoking, particularly daily
26 smoking; more teenagers will try to quit smoking; teenagers will smoke on fewer
27 days; and teenage smokers will smoke fewer cigarettes each day, correct?

28 **A:** Yes.

29 **Q:** And, when prices go down, more teenagers will take up smoking; teenagers will
30 smoke more frequently; and teenage smokers will smoke more cigarettes, correct?

1 A: Yes.

2 **Q: This document shows that at least as far back as 1987, Philip Morris understood**
3 **that federal excise tax increases affected teenage and adult smoking behavior,**
4 **correct?**

5 A: Yes.

6 **Q: Philip Morris understood in 1987 that its own pricing behavior - raising prices**
7 **before the tax increase -- in response to the tax increase further reduced teenage**
8 **and adult smoking, correct?**

9 A: Yes, *that is what I understand to be the conclusion of this memorandum.*

10 **Q: And, Philip Morris understood that its business was particularly affected by the tax**
11 **increase and its own price increases given its high market share among teenage**
12 **smokers for their brands particularly Marlboro, correct?**

13 A: Yes, *that is what I understand to be the conclusion of this memorandum.*

14 **Q: As a result of concluding that price affected youth smoking behavior, did you take**
15 **any action?**

16 A: Yes, I told Mike Szymanczyk that *I thought that Philip Morris should stop fighting excise*
17 *tax increases or take a neutral posture and that Philip Morris should lobby the states to use*
18 *some of the proceeds of increased taxes to fund youth prevention programs.*

19 **Q: Mike Szymanczyk is the CEO of Philip Morris, correct?**

20 A: Yes.

21 **Q: Did Philip Morris take any action as a result of your recommendation?**

22 A: **No.** *I don't know, but I am hopeful that over time my voice will have an impact.*

23 **Q: Thank you, Dr. Levy.**