

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

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

**WRITTEN DIRECT EXAMINATION OF:
ANDREW J. SCHINDLER
SUBMITTED PURSUANT TO ORDER # 471A**

***AS CORRECTED BY ANDREW J. SCHINDLER
Pursuant to Order #471A***

1 **Q: Please state your name.**

2 A: Andrew J. Schindler.

3 **Q: With whom are you employed?**

4 A: Reynolds American, Inc. and R.J. Reynolds Tobacco Co.

5 *I am employed by Reynolds American Inc.*

6 **Q: Presently you are executive chairman of Reynolds American Inc.?**

7 A: Yes.

8 **Q: Reynolds American is the parent of R.J. Reynolds Tobacco Co.?**

9 A: Yes.

10 *Reynolds American is the parent of R. J. Reynolds Tobacco Co. Holdings, Inc. R.J. Reynolds*
11 *Tobacco Company is an indirect subsidiary of Reynolds American.*

12 **Q: And R.J. Reynolds Tobacco Co., in its current form, includes the U.S. operations of**
13 **Brown & Williamson Tobacco Company, with which you merged, effective July 30, 2004?**

14 A: Yes.

15 **Q: Susan Ivey – she is president and chief executive officer of Reynolds American Inc., and**
16 **chairman and chief executive officer of R.J. Reynolds Tobacco Company?**

17 A: Yes.

18 **Q: You are planning to retire at the end of this month, January 2005?**

19 A: Yes.

20 *Yes. I will retire as Executive Chairman and continue as non-Executive Chairman.*

21 **Q: Until then, though, Susan Ivey reports to you?**

22 A: Yes.

23 *No. She reports to the Board of Directors of Reynolds American.*

24 **Q: She is your subordinate?**

25 A: Yes.

1 No.

2 **Q: Let's step back – you received your bachelors degree in history from Franklin and**
3 **Marshall College in 1972?**

4 A: Yes.

5 **Q: And then you received your M.B.A. from the University of Pennsylvania in 1974?**

6 A: Yes.

7 **Q: You have spent your entire post graduate career with Reynolds Tobacco or one of its**
8 **parents or affiliates?**

9 A: Yes.

10 **Q: In 1974, you joined R.J. Reynolds Industries, Inc.?**

11 A: Yes.

12 **Q: At that time, R.J. Reynolds Industries was the parent of R.J. Reynolds Tobacco Co.?**

13 A: Yes.

14 **Q: R.J. Reynolds Industries also owned food and other non-tobacco businesses?**

15 A: Yes.

16 **Q: In 1976, you became national manager of sales personnel at R.J. Reynolds Industries?**

17 A: Yes.

18 *Yes, but at R. J. Reynolds Tobacco Company.*

19 **Q: In 1979, you switched over to Reynolds Tobacco Co. and become Director of**
20 **Organization & Management Development there?**

21 A: Yes.

22 *In 1979 I assumed this position.*

23 **Q: In 1981 you became Plant Manager in Reynolds Tobacco Facility # 64?**

24 A: Yes.

25 **Q: In 1987 you moved over to Nabisco Foods?**

1 A: Yes.

2 **Q: Nabisco Foods was a different division of the [new] parent company, RJR-Nabisco?**

3 A: Yes.

4 *Nabisco Foods was a separate subsidiary.*

5 **Q: You became Director of Manufacturing there?**

6 A: Yes.

7 **Q: In 1988 you went back to Reynolds Tobacco and became Vice President of Personnel**

8 **there?**

9 A: Yes.

10 **Q: You also joined the Company's Executive Committee in or about October 1988?**

11 A: Yes.

12 *Yes, but at the time it was called the Operating Committee.*

13 **Q: In 1989 you became Senior Vice President for Operations at Reynolds Tobacco?**

14 A: Yes.

15 **Q: And in 1991 you became Executive Vice President for Operations at Reynolds Tobacco?**

16

17 A: Yes.

18 *No, I became Senior Vice President of Manufacturing, Engineering and Quality Assurance.*

19 **Q: In 1994 you became President and Chief Operating Officer at Reynolds Tobacco?**

20 A: Yes.

21 **Q: In 1995 you became President and Chief Executive Officer at Reynolds Tobacco?**

22 A: Yes.

23 **Q: In 1999 you became Chairman, President and CEO at Reynolds Tobacco?**

24 A: Yes.

1 **Q: Also in 1999 you became Chairman, President and CEO for R.J. Reynolds Tobacco**
2 **Holding Inc.?**

3 A: Yes.

4 *Yes, R.J. Reynolds Tobacco Holdings, Inc.*

5 **Q: At that time Reynolds Tobacco was a wholly owned subsidiary of R.J. Reynolds**
6 **Tobacco Holding Inc.?**

7 A: Yes.

8 *Yes, R.J. Reynolds Tobacco Holdings, Inc.*

9 **Q: Effective this past July 30, 2004, R.J. Reynolds Tobacco Company merged with the U.S.**
10 **operations of Brown & Williamson Tobacco Corporation (B&W)?**

11 A: Yes.

12 **Q: More precisely, R.J. Reynolds Tobacco Holdings Inc. – then your company's parent –**
13 **bought B&W?**

14 A: Yes.

15 *Yes, R.J. Reynolds Tobacco Holdings, Inc. acquired the U.S. cigarette and tobacco business of Brown*
16 *& Williamson Tobacco Corporation and Lane Ltd.*

17 **Q: The purchase price was \$2.6 billion?**

18 A: Yes.

19 *The transaction was valued at approximately \$5 billion on the day of closing, representing*
20 *approximately 62 million shares of R.J. Reynolds Tobacco Holdings, Inc. stock for Brown &*
21 *Williamson Tobacco Corporation and \$400 million in cash for Lane Ltd.*

22 **Q: A new publicly traded parent company, Reynolds American Inc. – "RAI" – also was**
23 **established as part of the transaction?**

24 A: Yes.

25 **Q: RAI had been formed earlier in 2004?**

1 A: Yes.

2 **Q: The newly combined tobacco companies now operate under the name R.J. Reynolds**
3 **Tobacco Company?**

4 A: Yes.

5 **Q: Reynolds American is the parent of R.J. Reynolds Tobacco Company?**

6 A: Yes.

7 *R.J. Reynolds Tobacco Company is an indirect subsidiary of Reynolds American.*

8 **Q: This newly formed combination, R.J. Reynolds Tobacco Company, makes about one out**
9 **of every three cigarettes sold in United States today?**

10 A: Yes.

11 **Q: Reynolds American also is the parent of Santa Fe Natural Tobacco Company, Inc.;**
12 **Lane Limited; and R.J. Reynolds Global Products, Inc.?**

13 A: Yes.

14 *Yes, that's correct as to Santa Fe Natural Tobacco Company, Inc., but Lane Ltd. and R.J. Reynolds*
15 *Global Products, Inc. are indirect subsidiaries.*

16 **Q: Santa Fe, Lane Limited, and Global Products each also manufacture tobacco products?**

17 A: Yes.

18 **Q: From here on, let's refer to R.J. Reynolds Tobacco Co. as "Reynolds," okay?**

19 A: Okay.

20 **Q: Since the merger, the first reporting period at Reynolds American to reflect activity of**
21 **the merged companies was the third quarter of 2004?**

22 A: Yes.

23 **Q: And that covered one month of pre-merger activity (July) and two months post merger**
24 **(August, September) activity?**

25 A: Yes.

1 **Q: Reynolds American's third quarter 2004 performance reported \$1.886 billion in net**
2 **sales?**

3 A: Yes.

4 *It reported \$1.866 billion in net sales.*

5 **Q: By comparison, in the third quarter of 2003, you had \$1.384 billion in net sales?**

6 A: Yes.

7 **Q: An increase of \$502 million or 34.8%?**

8 A: Yes.

9 *The increase was \$482 million, the percentage is correct.*

10 **Q: For the first three quarters of 2004 – January to September – you had \$4.436 billion in**
11 **net sales?**

12 A: Yes.

13 **Q: By comparison, the first three quarters of 2003 had \$4.033 billion in net sales?**

14 A: Yes.

15 **Q: So there was an increase of 10%?**

16 A: Yes.

17 **Q: This past quarter – Reynolds American paid a dividend on its common stock?**

18 A: Yes.

19 **Q: This is the second dividend that Reynolds American has declared since it became a**
20 **public company?**

21 A: Yes.

22 **Q: R.J. Reynolds Tobacco Holdings, Inc., which is now a wholly owned subsidiary of**
23 **Reynolds American, had paid 20 consecutive quarterly dividends during the five years that it**
24 **was a publicly traded company?**

25 A: Yes.

1 Q: 1995 was your first year as CEO at Reynolds?

2 A: Yes.

3 Q: Reynolds's "mission" that year, according to its "1995 Objectives and Strategies" (U.S.
4 Exhibit 51,857) was to "Make Money[;] **Make Lots of Money[;] Make More**
5 **Money Each Year**"?

6 A: Yes.

7 Q: You have profited personally, as well?

8 A: I suppose.

9 Yes.

10 Q: In calendar year 2003, you received \$1,076,250.00 in salary and \$1,285,000.00 in bonus
11 pay?

12 A: Correct.

13 Q: With additional short term and long term compensation, your total compensation for
14 calendar year 2003 was \$10,301,913.00?

15 A: Yes.

16 Q: Now the bonus pay you have received, such as the \$1,285,000.00 in 2003, that pay was
17 based in part on the popularity of your cigarettes with minors?

18 A: What do you mean?

19 Q: According to the way bonuses are structured at Reynolds, 30% of your bonus as CEO
20 was connected to Reynolds's market share performance?

21 A: Yes.

22 Q: And if that market share goal is accomplished by sales or increased sales to minors, the
23 bonus is still paid?

24 A: Yes.

1 While that is technically correct, the sale of Reynolds cigarettes to minors represents an extremely
2 small amount of Reynolds' total sales and thus is insignificant to any bonus.

3 **Q: This is the bonus structure that is applied to every employee at Reynolds?**

4 A: Yes.

5 **Q: Even the people who work for Reynolds's youth smoking prevention program have this**
6 **bonus system?**

7 A: Yes.

8 **Q: Nothing in the bonus system at Reynolds rewards people for decreases in sales to**
9 **minors?**

10 A: Correct.

11 **Q: Though you have the power to set up bonus structure that way?**

12 A: Yes.

13 **Q: Nothing in the bonus system rewards people for decreases in sales to 18-20 year olds?**

14 A: Correct.

15 Correct. These are legal age smokers.

16 **Q: And you could make that happen, as well?**

17 A: Yes.

18 **Q: You just have chosen not to?**

19 A: That's correct.

20 **Q: You have maintained this bonus system structure since the merger with B&W?**

21 A: Yes.

22 **Q: So on top of all of the 4,900 or so Reynolds pre-merger employees who personally**
23 **profited from increases in sales of your cigarettes to minors, since the merger there are an**
24 **additional 5,000 or so former B&W employees throughout the U.S. who have no financial**
25 **incentive to decrease the sale of Reynolds cigarettes to minors?**

1 A: I wouldn't put it that way.

2 **Q: In fact, when you went out and bought B&W, you increased your market share among**
3 **minors?**

4 A: I suppose we did.

5 *I suppose we did, but it never crossed my mind, and that certainly was not part of the business*
6 *judgment that lead to that decision.*

7 **Q: Camel, Doral, Salem and Winston are all brands made by Reynolds, pre-merger?**

8 A: Yes.

9 **Q: And the former B&W made Carlton, Kool, Misty, Pall Mall and Viceroy?**

10 A: Yes.

11 **Q: J.D. Exhibit 067884 is the "Results From the 2003 National Household Survey on Drug**
12 **Use & Health, published by the Substance Abuse and Mental Health Services Agency**
13 **("SAMHSA") of the U.S. Department of Health and Human Services?**

14 A: Yes.

15 **Q: That document does not itself contain the detailed tables of results, but at page v of the**
16 **Table of Contents, it says those tables can be found at www.oas.samhsa.gov/nhsda.htm**

17 A: Yes.

18 **Q: Looking at Table 7.48B from that SAMHSA study, it shows that in a survey taken in**
19 **2003, that of the 12-17 year olds who have reported smoking within a month of being surveyed,**
20 **11.9% of them reported smoking either Camel, Doral, Salem or Winston?**

21 A: Those were the survey results.

22 **Q: That is, it estimates that these four brands held 11.9% of the 12-17 year old market?**

23 A: Yes.

24 *I am not familiar with this survey - other than having heard of it - but, after looking at it, my*
25 *impression is that this chart does not provide share of market data.*

1 **Q:** According to Table 7.48A of that survey, that translates into 363,000 twelve to seventeen
2 year olds reporting smoking those brands (Camel, Doral, Salem or Winston)?

3 A: Those were the survey results.

4 **Q:** And according to that survey (at Table 7.48B), of the 12-17 year olds who have reported
5 smoking within a month of being surveyed, 3.3% of them reported smoking either Carlton,
6 Kool, Misty, Pall Mall or Viceroy – brands of the former B&W?

7 A: Yes.

8 **Q:** According to Table 7.48A of that survey, that translates into 100,000 twelve to seventeen
9 year olds reporting smoking those brands (Carlton, Kool, Misty, Pall Mall or Viceroy)?

10 A: Yes.

11 **Q:** So, by adding B&W, you went out and acquired a company that, during at least one 30
12 day period in 2003, sold cigarettes to 100,000 children?

13 A: According to that survey.

14 *I disagree in several respects. None of the brands were sold by Brown & Williamson at retail;
15 further, this survey does not address sales, it appears to address reported smoking behavior.*

16 **Q:** And, assuming things stay the same, you increased your share of the 12-17 year old
17 market 3.3%?

18 A: According to that survey.

19 *As I said, I am not familiar with this survey - other than having heard of it - but, after looking at it,
20 my impression is this chart does not provide share of market data.*

21 **Q:** Adding 3.3% is an increase of over 25% in Reynolds's share of the 12-17 year old
22 market?

23 A: According to that survey.

24 *My answer would be the same.*

25 **Q:** You were aware of this when you bought B&W?

1 A: Yes.

2 No.

3 **Q: And that increase in the 12-17 year old market has the potential to make more bonus**
4 **money for you and your employees?**

5 A: Yes.

6 *Even if the survey reported market share, and it doesn't, for the reasons I have described, as a*
7 *practical matter it is inconsequential to any bonus.*

8 **Q: It will make more money for the company, as well?**

9 A: Yes.

10 *Yes, as a purely technical matter, but it is an extremely small percentage of sales and not part of our*
11 *thinking.*

12 **Q: Increased market share has improved the Company's standing?**

13 A: Generally.

14 *I am not sure what you mean, but the overall market share of the combined companies has continued*
15 *to decline.*

16 **Q: It has also aided the Company's stock value?**

17 A: Yes.

18 No.

19 **Q: Stock prices generally have improved since you took over at Reynolds in 1994?**

20 A: Yes.

21 *The Reynolds tobacco business did not have a publicly traded stock until 1999.*

22 **Q: For instance, at noon on January 11, 2005, shares of RAI were valued at \$78.34?**

23 A: Yes.

24 **Q: By comparison, on February 2, 2004, – after the planned merger had been announced**
25 **but before it was completed – RJR shares were valued at \$59.06?**

1 A: Yes.

2 *Yes, but I assume you are referring to shares of R.J. Reynolds Tobacco Holdings, Inc.*

3 **Q: And on February 3, 2003, before the planned merger was announced to the public, RJR**
4 **shares were valued at \$42.36?**

5 A: Yes.

6 *Yes; but again, I assume you are referring to shares of R.J. Reynolds Tobacco Holdings, Inc.*

7 **Q: Over your years with the company, receiving stock options has been part of your**
8 **personal compensation package at times?**

9 A: Yes.

10 **Q: Those options allow you to purchase stock shares at a price per share frozen at its value**
11 **at the time it was awarded to you?**

12 A: Yes.

13 **Q: Then, if at some point after that the share value has increased, you can turn around and**
14 **exercise those options by purchasing shares at the frozen price and, if you desire, sell them at**
15 **the current price?**

16 A: Yes.

17 **Q: At the close of calendar year 2003, you personally held 380,997 exercisable but not-yet-**
18 **exercised options?**

19 A: Yes.

20 **Q: As well as 85,000 then-unexercisable and not-yet-exercised options?**

21 A: Yes.

22 **Q: Since then, you have been exercising some of those options?**

23 A: Yes.

24 **Q: In particular, you began exercising options after the merger was accomplished on July**
25 **30, 2004?**

1 A: Yes.

2 **Q: For instance, on or about August 5, 2004, you exercised options on 103,485 shares of**

3 **RAI at a purchase price of about \$31.71 per share?**

4 A: Yes.

5 **Q: This purchase cost you approximately \$3.49 million?**

6 A: Yes.

7 **Q: On that same day, you turned around and sold those shares at a price of \$72.40 per**

8 **share, taking in approximately \$7.49 million?**

9 A: Yes.

10 **Q: Your profit from that transaction, then, was approximately \$4 million?**

11 A: Yes.

12 **Q: On or about September 7, 2004, you exercised options on 107,572 shares of RAI at**

13 **purchase prices ranging between \$26.01 per share and \$28.70 per share?**

14 A: Yes.

15 **Q: This purchase cost you approximately \$2.95 million?**

16 A: Yes.

17 **Q: On that same day, you turned around and sold those shares prices ranging between**

18 **\$75.08 and \$75.60 per share, taking in approximately \$8.1 million?**

19 A: Yes.

20 **Q: Your profit from that transaction, then, was approximately \$5.15 million?**

21 A: Yes.

22 **Q: On or about October 4, 2004, you exercised options on 130,000 shares of RAI at a**

23 **purchase price of about \$32.44 per share?**

24 A: Yes.

25 **Q: This purchase cost you approximately \$4.22 million?**

1 A: Yes.

2 **Q: On that same day, you turned around and sold those shares at a price of \$68.51 per**
3 **share, taking in approximately \$7.55 million?**

4 A: Yes.

5 **Q: Your profit from that transaction, then, was approximately \$3.33 million?**

6 A: Yes.

7 **Q: On or about November 1, 2004, you exercised options on 125,000 shares of RAI at a**
8 **purchase price of about \$32.44 per share?**

9 A: Yes.

10 **Q: This purchase cost you approximately \$4.05 million?**

11 A: Yes.

12 **Q: On that same day, you turned around and sold those shares at a prices ranging from**
13 **\$68.96 to \$69.55 per share, taking in approximately \$8.6 million?**

14 A: Yes.

15 **Q: Your profit from that transaction, then, was approximately \$4.55 million?**

16 A: Yes.

17 **Q: Is it fair to say that your profit from these August 2004 to November 2004 transactions**
18 **alone was approximately \$17.03 million?**

19 A: Yes.

20 **Q: Today you are in court as a witness called by the United States?**

21 A: Yes.

22 **Q: Additionally, you have been named as a witness to appear live for the defense when it**
23 **presents its case to the Court?**

24 A: That's correct.

1 **Q:** On or about May 5, 2004, the defense described the scope of your possible testimony as
2 a defense witness as follows: "Mr. Schindler is the Chairman, President and Chief Executive
3 Officer of R.J. Reynolds Tobacco Company ("Reynolds"). Mr. Schindler is also President,
4 Chairman and Chief Executive Officer of R.J. Reynolds Tobacco Holdings, Inc. He may
5 address Reynolds' management and operation, including corporate mission and responsibilities,
6 corporate governance, corporate policies, business operations and practices, regulations related
7 to the marketing of cigarettes, external communications, research and development efforts and
8 other matters. He may also address the business environment in which Reynolds has operated
9 during the tenure of his employment. Mr. Schindler may also address the Master Settlement
10 Agreement ("MSA"), including but not limited to, the post-MSA business environment. He may
11 also address any other matters within his knowledge or experience to rebut the allegations of
12 the United States." Is this description consistent with your understanding of the potential scope
13 of your testimony as a witness for the defense"?

14 A: Yes.

15 **Q:** During your tenure at Reynolds, you have been aware that numerous lawsuits have
16 been brought by individuals as well as government entities against Reynolds and the other
17 major U.S. tobacco companies relating to issues of smoking and health?

18 A: Yes.

19 **Q:** You are aware that the issues in those cases included whether smoking cigarettes cause
20 lung cancer and other diseases and are addictive?

21 A: Yes.

22 **Q:** In order to properly carry out your responsibilities, you have needed to be aware at
23 least generally of the issues in these cases, as well as the evidence both in favor of and against
24 Reynolds positions?

25 A: Yes.

1 **Q: You have kept abreast of developments in those cases?**

2 A: Yes.

3 *Yes, generally.*

4 **Q: You have participated in selecting outside counsel to handle those cases?**

5 A: Yes, at times.

6 *Not that I recall.*

7 **Q: Outside counsel handling those cases, either directly or through your in-house counsel,**
8 **periodically have reported to you and others at Reynolds about the status of those cases?**

9 A: Yes.

10 **Q: Such reports have included assessments of the problems in the litigation, prospects for**
11 **success, the nature of the evidence and issues?**

12 A: Yes.

13 *Yes, generally.*

14 **Q: You also have reviewed or examined (or were briefed on) some of the documents and**
15 **other evidence in those cases?**

16 A: Yes.

17 *Yes. Occasionally.*

18 **Q: Similarly, you have reviewed or examined (or were briefed on) some of the documents**
19 **and other evidence in those cases?**

20 A: Yes.

21 *My answer is the same.*

22 **Q: To understand the issues in those cases and to assist outside counsel, it has been**
23 **important for you and others at Reynolds to become aware of the nature of similar litigation on**
24 **smoking and health issues that occurred prior to your tenure at Reynolds?**

25 A: Yes.

1 *That responsibility is generally left to our law department.*

2 **Q: Likewise, to carry out your responsibilities it has been important for you to know some**
3 **of the history of smoking and health related issues that took place before your tenure at**
4 **Reynolds?**

5 A: Yes.

6 *Yes, to a limited extent.*

7 **Q: Reynolds intends for the public rely on its public statements regarding smoking and**
8 **health issues?**

9 A: Yes.

10 *Reynolds intends for the public to rely on its statements as accurate reflections of the views and/or*
11 *policies of the company. Reynolds' policy as to smoking and health is that the public should rely on*
12 *the conclusions of the Surgeon General, and public health and medical officials for information*
13 *regarding smoking and health when making any decision regarding smoking, as we note on the*
14 *website.*

15 **Q: Reynolds intends for the public rely on its public statements regarding addiction?**

16 A: Yes.

17 *My answer is the same.*

18 **Q: It is important to Reynolds that the public understands the message that Reynolds is**
19 **seeking to convey to the public in its public statements about smoking and health issues?**

20 A: Yes.

21 *I do not completely understand the question, but when the company issues a statement we hope it is*
22 *understandable.*

23 **Q: It is important to Reynolds that the public understands the message that Reynolds is**
24 **seeking to convey to the public in its public statements about addiction?**

25 A: Yes.

1 *My answer is the same.*

2 **Q: You have been involved in reviewing and approving Reynolds's public statements**
3 **regarding smoking and health issues, and whether smoking is addictive?**

4 A: Yes.

5 *Yes, generally from July 1996 through July 2004*

6 **Q: You are aware that Reynolds has conducted research on how the public perceived**
7 **Reynolds's public statements regarding smoking and health, whether smoking caused disease**
8 **and is addictive?**

9 A: Yes.

10 *Not that I recall.*

11 **Q: In your position at the head of Reynolds, you have always maintained it is your duty to**
12 **make sure the public is aware of the risks or harms that smoking cigarettes poses?**

13 A: Yes.

14 *Yes, and we fulfill that by complying with the requirements of federal law and putting the*
15 *congressionally-mandated warnings on every package of cigarettes we sell and in our advertising.*

16 **Q: And it is your duty to not withhold from the public information that has a material**
17 **impact on people's understanding of the risks or harms of cigarette smoking?**

18 A: That is correct.

19 **Q: Reynolds has never admitted that smoking causes lung cancer?**

20 A: We have not.

21 *During my tenure as CEO, we didn't use those exact words, but on our website Reynolds states that*
22 *we believe that smoking has significant and inherent health risks for a number of serious diseases,*
23 *and may contribute to causing these diseases in some individuals. Reynolds also states that*
24 *individuals should rely on the conclusions of the Surgeon General, and public health and medical*

1 officials that smoking causes serious diseases, including lung cancer and heart disease, when making
2 any decision regarding smoking.

3 **Q: And you do not admit today that smoking causes lung cancer?**

4 A: We do not.

5 *My answer is the same.*

6 **Q: Reynolds has never admitted that smoking causes coronary heart disease?**

7 A: We have not.

8 *My answer is the same.*

9 **Q: And you do not admit today that smoking causes coronary heart disease?**

10 A: We do not.

11 *My answer is the same.*

12 **Q: Reynolds has never admitted that smoking causes chronic obstructive pulmonary**
13 **disease (COPD)?**

14 A: We have not.

15 *My answer is the same.*

16 **Q: And you do not admit today that smoking causes COPD?**

17 A: We do not.

18 *My answer is the same.*

19 **Q: Please take a look at U.S. Exhibit 17,203 – it is a demonstrative exhibit listing diseases**
20 **and other adverse health effects the United States Surgeon General has determined to be caused**
21 **by active smoking?**

22 A: I've seen a list of such diseases and effects the Surgeon General said is caused by active
23 smoking, if not in this precise format.

24 *I have not seen a list in this format, but we link to the Surgeon General's website on our website.*

1 **Q: The U.S. Surgeon General has determined that smoking causes esophageal cancer – but**
2 **Reynolds has never admitted that smoking causes esophageal cancer?**

3 A: We have not.

4 *My answer is the same.*

5 **Q: And you do not admit today that smoking causes esophageal cancer?**

6 A: We do not.

7 *My answer is the same.*

8 **Q: The U.S. Surgeon General has determined that smoking causes aortic aneurysm – but**
9 **Reynolds has never admitted that smoking causes aortic aneurysm?**

10 A: We have not.

11 *My answer is the same.*

12 **Q: And you do not admit today that smoking causes aortic aneurysm?**

13 A: We do not.

14 *My answer is the same.*

15 **Q: The U.S. Surgeon General has determined that smoking causes kidney cancer – but**
16 **Reynolds has never admitted that smoking causes kidney cancer?**

17 A: We have not.

18 *My answer is the same.*

19 **Q: And you do not admit today that smoking causes kidney cancer?**

20 A: We do not.

21 *My answer is the same.*

22 **Q: The U.S. Surgeon General has determined that smoking causes bladder cancer – but**
23 **Reynolds has never admitted that smoking causes bladder cancer?**

24 A: We have not.

25 *My answer is the same.*

1 **Q: And you do not admit today that smoking causes bladder cancer?**

2 A: We do not.

3 *My answer is the same.*

4 **Q: The U.S. Surgeon General has determined that smoking causes laryngeal**
5 **cancer – but Reynolds has never admitted that smoking causes laryngeal cancer?**

6 A: We have not.

7 *My answer is the same.*

8 **Q: And you do not admit today that smoking causes laryngeal cancer?**

9 A: We do not.

10 *My answer is the same.*

11 **Q: The U.S. Surgeon General has determined that smoking causes acute myeloid leukemia –**
12 **but Reynolds has never admitted that smoking causes acute myeloid leukemia?**

13 A: We have not.

14 *My answer is the same.*

15 **Q: And you do not admit today that smoking causes acute myeloid leukemia?**

16 A: We do not.

17 *My answer is the same.*

18 **Q: In fact, even though the U.S. Surgeon General has determined that smoking also causes**
19 **stomach cancer, oral cancer, cataracts, cerebrovascular disease, low bone density,**
20 **atherosclerosis, acute respiratory illness, peptic ulcer disease, pancreatic cancer, cervical**
21 **cancer, and adverse reproductive outcomes, Reynolds has never admitted that smoking causes a**
22 **single one of these diseases or adverse health effects?**

23 A: We have not.

24 *My answer is the same.*

1 **Q: And today you do not admit that smoking causes a single one of these (listed) diseases or**
2 **adverse health effects?**

3 A: We do not.

4 *My answer is the same.*

5 **Q: Instead, you just say that there are risks inherent in smoking?**

6 A: Yes.

7 *No -- As I previously explained, we provide consumers with the information Congress has specified to*
8 *adequately inform consumers of the risks of smoking; Reynolds' website informs consumers that*
9 *smoking has significant and inherent health risks for a number of serious diseases, and may*
10 *contribute to causing these diseases in some individuals. Reynolds also states that individuals should*
11 *rely on the conclusions of the Surgeon General, and public health and medical officials that smoking*
12 *causes serious diseases, including lung cancer and heart disease, when making any decision*
13 *regarding smoking.*

14 **Q: By 1994, you had become President and Chief Operating Officer at Reynolds Tobacco?**

15 A: Yes.

16 *Yes, in June 1994.*

17 **Q: And in that role, you appeared with then-Reynolds Chairman and Chief Executive**
18 **Officer James Johnston at an April 14, 1994 hearing of the U.S. House Energy and Commerce**
19 **Committee, Subcommittee on Health and the Environment chaired by U.S. Representative**
20 **Henry Waxman?**

21 A: Yes.

22 *Yes, but at that time I was Executive Vice President of Operations.*

23 **Q: Let's refer to these as the "1994 Waxman Hearing," if that is ok with you?**

24 A: Yes, fine.

25 **Q: Mr. Johnston was under oath during his testimony?**

1 A: Yes.

2 Q: And you also were under oath at the hearing?

3 A: Yes.

4 Q: U.S. Exhibit 62,645 is a transcript of the 1994 Waxman Hearing?

5 A: Yes, it appears to be.

6 Q: At internal page 8, the transcript reflects that Mr. Johnston introduced you to the

7 subcommittee as "our head of manufacturing and operation[sic]"?

8 A: Yes.

9 Q: And on at least one occasion during the Hearing, Mr. Johnston called upon you to

10 respond to a question for the company?

11 A: Yes.

12 Q: For instance, page 43 of U.S. 62,645 shows you responding to a question about levels of

13 nicotine in a leaf of tobacco?

14 A: Yes.

15 Q: In addition to you, Mr. Johnston also brought with him to this 1994 Waxman Hearing

16 Reynolds's head of Research and Development, Dr. Carl Ehmann, as well as Richard Cooper,

17 outside counsel to the Company?

18 A: Yes.

19 Q: Please look at pages 35 and 36 of U.S. 62,645 – there Mr. Johnston testified that

20 smoking "may" cause heart disease; lung cancer; emphysema, bladder cancer, stroke and low

21 birth weight?

22 A: That's correct.

23 Q: When he gave that testimony, he was announcing the public positions of the company?

24 A: Yes.

1 **Q: Mr. Johnston explained that he did not know whether smoking actually caused lung**
2 **cancer because "all of that is statistically generated data" that are "epidemiological as opposed**
3 **to empirical"?**

4 **A: Yes.**

5 *Yes, and he also added: "[t]here have been no laboratory studies which have been able to confirm*
6 *any statistics."*

7 **Q: When he gave that testimony, he was announcing the public positions of the company?**

8 **A: Yes.**

9 **Q: Three years later, on April 14 1997, you testified at a deposition in the Engle v. R.J.**
10 **Reynolds Tobacco Co. case?**

11 **A: Yes.**

12 **Q: And there you testified (at pages 22-24) that smoking was a "risk factor" and therefore**
13 **"may cause" lung cancer, heart disease, emphysema and may complicate pregnancies?**

14 **A: Yes.**

15 **Q: When you gave that testimony, you were stating the public positions of the company?**

16 **A: Yes.**

17 *I was stating my position, which was consistent with the company's position.*

18 **Q: Your explanation (at pages 41-42) for the "risk factor" and "may cause" language with**
19 **regard to cancer, at least, was that Reynolds had not figured out the "causal mechanism" of**
20 **this disease?**

21 **A: Yes.**

22 *This question truncates my testimony. My complete answer also referred to the absence of*
23 *confirming experimental evidence.*

24 **Q: When you gave that testimony, you were stating the public positions of the company?**

25 **A: Yes.**

1 Q: On September 22 1997, you were deposed in the Minnesota, et al. v. Philip Morris, et al.
2 case?

3 A: Yes.

4 Q: And there (at pages 20-22) you testified that, "per the epidemiology," smoking
5 cigarettes increases the risk of certain diseases such as "lung cancer, heart disease and other
6 diseases"?

7 A: Yes.

8 Q: But you stated that "there are some gaps in the science relative to absolute proof on
9 causation"?

10 A: Yes.

11 Q: And therefore (at page 53), you would not say that smoking causes these diseases?

12 A: Yes.

13 *I don't believe you have fully characterized my testimony on page 53 of that transcript. I was asked:*

14 *"Q: So I guess your answer to my question would be no, the epidemiology hasn't shown that cigarette*
15 *smoking causes cancer and other disease?" I responded: "I think the - - right, I think epidemiology*
16 *has shown that it increases the risk. Q: But not caused. You won't give me caused. A: Not on the*
17 *epidemiology, no."*

18 Q: You were stating the public position of the Company at that time?

19 A: Yes.

20 Q: Your scientists had told you there is no such thing and never will be any such things as
21 "absolute proof", yet you made that statement anyway?

22 A: Yes.

23 *I do not recall Reynolds scientists telling me "there is no such thing and never will be any such*
24 *thing[s] as 'absolute proof' that smoking causes "disease" or words to that effect.*

25 Q: And you did so for litigation reasons?

1 A: Yes.

2 No.

3 **Q: Back in 1998, Reynolds was owned by RJR-Nabisco, Inc. with Steven Goldstone as**
4 **Chairman and CEO?**

5 A: Yes.

6 **Q: At that time Steven Goldstone was Chairman and CEO of RJR-Nabisco, Inc.?**

7 A: Yes.

8 **Q: Therefore, Mr. Goldstone was your boss at that time?**

9 A: Yes.

10 **Q: Mr. Goldstone also testified before Congress – in 1998?**

11 A: Yes.

12 **Q: And that was on January 29, 1998 before the House Commerce Committee, then**
13 **chaired by U.S. Representative Thomas Bliley, and on February 24, 1998 before the Senate**
14 **Committee on Commerce, Science, and Transportation?**

15 A: Yes.

16 **Q: U.S. Exhibit 76,202 is a transcript of the January 1998 Bliley Hearing?**

17 A: It appears to be.

18 **Q: And there Mr. Goldstone testified, "I believe that cigarette smoking carries health**
19 **risks"?**

20 A: Yes.

21 **Q: You were President and Chief Executive Officer at Reynolds when Goldstone made that**
22 **statement?**

23 A: Yes.

24 **Q: When Mr. Goldstone gave that testimony, he was announcing the public positions of the**
25 **company?**

1 A: Yes.

2 **Q: Now, before we move on, that U.S. Representative Thomas Bliley who presided over the**
3 **January 1998 hearing, he now has left the Congress and now works for a private law firm?**

4 A: Yes.

5 *I don't know.*

6 **Q: You know that because his law firm represents Reynolds?**

7 A: Yes.

8 *I don't know that.*

9 **Q: In fact, Reynolds is one of Congressman Bliley's personal clients?**

10 A: Yes.

11 *I don't know that.*

12 **Q: But you cannot say that Congressman Bliley represents you because, even though he**
13 **works for a law firm and you are one of his clients, Congressman Bliley is not an attorney?**

14 A: I believe that is correct.

15 *I don't know that he does.*

16 **Q: So, is it more accurate to say that Congressman Bliley "advises" Reynolds?**

17 A: Perhaps it is.

18 *Not to my knowledge.*

19 **Q: Getting back to Reynolds and disease causation, on January 29, 1999 you gave a**
20 **deposition in the case Local No. 17 Bridge & Iron Workers Insurance Fund v. Philip Morris**
21 **Inc.?**

22 A: Yes.

23 **Q: There you testified (at pages 36-38) that smoking puts you at increased risk of certain**
24 **diseases such as lung cancer, heart disease, emphysema, high blood pressure, pregnancy**
25 **problems and low birthweight?**

1 A: Yes.

2 Q: On September 18, 2000 you were deposed in the case of Thomas v. R.J. Reynolds
3 Tobacco Co., et al.?

4 A: Yes.

5 Q: And there you testified (at pages 86-87) that "people who smoke have a significantly
6 increased risk of disease"?

7 A: Yes.

8 Q: You were stating the public position of the Company at that time?

9 A: Yes.

10 Q: The company website, at http://www.rjrt.com/TI/TIhealth_issues.asp, states: "R.J.
11 Reynolds Tobacco Company (RJRT) manufactures products that have significant and inherent
12 health risks for a number of serious diseases, and may contribute to causing these diseases in
13 some individuals[]"?

14 A: Yes.

15 Q: The website, on the same page, continues, "There is universal awareness of the
16 conclusions of the Surgeon General, and public health and medical officials that smoking causes
17 serious diseases, including lung cancer and heart disease. Individuals should rely on these
18 conclusions when making any decision regarding smoking[]"?

19 A: Yes.

20 Q: You've used this position as a way to shed any liability for what you admit is your duty
21 to make sure the public is aware of the risks or harms that smoking cigarettes poses?

22 A: Yes.

23 *No. As I said before, we fulfill that by complying with the requirements of federal law and putting the*
24 *congressionally-mandated warnings on every package of cigarettes we sell and in our advertising.*
25 *This is the company's view on this issue.*

1 **Q: You figure that so long as you direct smokers who happen to be reading your website to**
2 **look up these medical findings, that is the endpoint of your obligation?**

3 A: Yes.

4 *No, in terms of informing consumers about the risks of smoking, we adhere to the requirements of*
5 *federal law. The function of the website is to provide a place for persons interested in information*
6 *about Reynolds, its policies, and/or its products. Reynolds intends for the public to rely on its*
7 *statements as accurate reflections of the views and/or policies of the company. Reynolds' policy as to*
8 *smoking and health is that the public should rely on the conclusions of the Surgeon General, and*
9 *public health authorities and medical officials for information regarding smoking and health when*
10 *making any decision regarding smoking, as we note on the website.*

11 **Q: In fact, so long as you say that other people think that smoking causes these diseases, it**
12 **frees you to question or challenge their conclusions about causation?**

13 A: Yes.

14 *No, for the reasons I just stated.*

15 **Q: You understand that if someone at your company publicly and definitively stated that**
16 **smoking cigarettes causes lung cancer or any of the diseases we've been talking about today,**
17 **that would have a greater impact on a person's decision to smoke than just saying there are**
18 **"risks" or "significant risks" inherent in smoking?**

19 A: Yes.

20 *No.*

21 **Q: You agree that admitting causation is a qualitatively different statement than is**
22 **admitting there are "risks" or "significant risks" inherent in smoking?**

23 A: Yes.

1 *Based on conversations with Reynolds scientists, it is my understanding that these terms can have*
2 *different scientific meanings, but I do not believe they are qualitatively different. Certainly, in terms*
3 *of running my business, they really are not.*

4 **Q: In fact, you soften the impact of your statement about there being risks of disease by**
5 **following those statements with statements like the following, from**
6 **http://www.rjrt.com/TI/TIhealth_issues.asp, "While these studies do indicate that smokers as a**
7 **group are at higher risk, they do not predict the likelihood of any individual smoker getting**
8 **lung cancer, heart disease or any other condition that has been linked to smoking. An**
9 **individual's risk for contracting a smoking-related disease is based on many factors in addition**
10 **to smoking[]"?**

11 **A: Yes.**

12 *No.*

13 **Q: So, you won't try to find out or confirm what the harms are from smoking, because if**
14 **you did then you would have to admit them?**

15 **A: It's not the responsibility of the company to find that out.**

16 *I don't agree with the premise of your question. Those judgments have been made by the Surgeon*
17 *General and others and our policy is to advise individuals to rely on those judgments.*

18 **Q: I'd like to ask you some questions about nicotine now?**

19 **A: Okay.**

20 **Q: Let's talk again for a minute about Jim Johnston's testimony at the 1994 Waxman**
21 **hearings, at which you also appeared and were sworn in?**

22 **A: Okay.**

23 **Q: Going back to page 43 of the transcript, Mr. Johnston responded to a question about**
24 **nicotine being addictive by saying that "cigarettes and nicotine clearly do not meet the classic**
25 **definition of addiction. There is no intoxication" – yes?**

1 A: Yes.

2 Q: Mr. Johnston was stating the Company's public position here?

3 A: Yes.

4 Q: Earlier in this 1994 Waxman Hearing, during his prepared remarks to the
5 subcommittee, as reflected in page 18 of U.S. 62,645 , Mr. Johnston stated, "Cigarettes are
6 clearly not in the same class as addictive, mind-altering drugs like heroin and cocaine. I agree
7 that for some people, cigarette smoking is habit-forming, in the same way that other
8 pleasurable activities, such as watching TV, eating your favorite foods, sometimes overeating
9 your favorite foods, and drinking coffee can be habit-forming"?

10 A: Yes.

11 Q: Again, this was part of the Company's position as it intended to present it not just to the
12 subcommittee, but to the American public?

13 A: Yes.

14 *This submission addressed issues raised by the Committee. This was not an effort to "convert" the*
15 *public to Reynolds' views to the extent you are implying that. Certainly we were aware that these*
16 *issues might garner public reaction.*

17 Q: In 1995, you became President and Chief Executive Officer at Reynolds?

18 A: Yes.

19 Q: And since then you have given sworn testimony in response to questions about cigarette
20 smoking, nicotine and addiction?

21 A: Yes.

22 Q: In your 1997 deposition in the Engle case, for instance, you testified that cigarettes are
23 like caffeine, not cocaine or heroin, in terms of their "addictive" nature?

24 A: Yes.

25 Q: You were stating the public position of the Company at that time?

1 A: Yes.

2 *I was stating my personal beliefs which were consistent with the Company's position.*

3 **Q: In your September, 2000 deposition in the Thomas case, you testified that while**
4 **smoking is a behavior that is difficult to quit and "addictive" in the "everyday term that is used**
5 **today," smoking is not "like heroin and cocaine and hard drugs in that form of addiction" and**
6 **that smoking does not meet that "pattern of addiction that is like heroin and cocaine or**
7 **alcoholic[sic], or that type of thing." Is that accurate?**

8 A: Yes.

9 **Q: And in December 2000, in your Scott case deposition, you were asked what your opinion**
10 **as Chairman of R.J. Reynolds Holding Company and as CEO and Chair of Reynolds Tobacco**
11 **was about nicotine in cigarettes being addictive, and again you stated that smoking is**
12 **"addictive" as that phrase is "used in everyday terminology today[,] but that smoking is not**
13 **"really hard drug addiction like heroin and cocaine"?**

14 A: Yes.

15 **Q: At each Scott and Thomas, you were stating the public position of the Company at that**
16 **time?**

17 A: Yes.

18 *As I said before, I was stating my personal beliefs which were consistent with the Company's position.*

19 **Q: Now when you were sitting with Johnston in 1994, he said smoking is not addictive, and**
20 **you have said in Scott and Thomas in 2000 that it is addictive?**

21 A: Correct.

22 *Mr. Johnston said it was not addictive in the classical sense, and when I said it, I was speaking as the*
23 *term is used every day.*

1 **Q: But there is no inconsistency here, because Johnston was referencing what Reynolds**
2 **refers to as the "classical" definition of addiction as set out in the 1964 Surgeon General's**
3 **Report, and you were not?**

4 A: That's correct.

5 **Q: So the Company's position has not changed from 1994 to 2000?**

6 A: Correct.

7 *The company's position has not changed and it has never denied that it can be very difficult to quit.*

8 *The term used to describe smoking behavior has changed over time.*

9 **Q: Rather the point of reference – i.e., how "addiction" is defined – is different?**

10 A: Yes.

11 *Yes, the scientific definition of addiction has changed over time, as well as the public use and*
12 *understanding of the term.*

13 **Q: Now, in between Johnston's congressional testimony in the 1994 Waxman Hearing and**
14 **your year-2000 deposition testimony in those lawsuits, Steven Goldstone also testified before**
15 **Congress in 1998?**

16 A: Yes.

17 **Q: As we discussed, that was on January 29, 1998 before the House Commerce Committee,**
18 **then chaired by U.S. Representative Thomas Bliley, and on February 24, 1998 before the Senate**
19 **Committee on Commerce, Science, and Transportation?**

20 A: Yes.

21 **Q: U.S. Exhibit 76,202 is a transcript of the January 1998 Bliley Hearing?**

22 A: It appears to be.

23 **Q: As reflected in page 66 of U.S. 76,202, Mr. Goldstone responds to a question about**
24 **whether smoking is addictive by saying, "Yes, I think under the way people use the term today,**
25 **I agree, it is"?**

1 A: Correct.

2 Q: You were President and Chief Executive Officer at Reynolds when Goldstone made that
3 statement?

4 A: Yes.

5 Q: And when he said, "under the way people use the term today," you understood that was
6 not a departure from Reynolds's public position, but rather was Mr. Goldstone choosing not to
7 use the 1964 Surgeon General's report definition as his point of reference?

8 A: Yes.

9 Q: So, again, no change in position between 1994 and 1998?

10 A: Correct.

11 Q: Even though a casual reader of say, a newspaper in January 1998, who saw both
12 Johnston's 1994 Waxman Hearing testimony (at page 43 in U.S. 62,645) that, "cigarettes and
13 nicotine clearly do not meet the classic definition of addiction[,]" and Goldstone's 1998 Bliley
14 Hearing testimony (at page 66 in U.S. 76,202) that, "Yes, I think under the way people use the
15 term today, I agree, it is [addictive]" might think there has been a wholesale change in company
16 position about smoking and addiction, there really wasn't any change at all?

17 A: That's correct.

18 *I don't think a fair-minded person looking at the complete statements of both Mr. Goldstone and Mr.*
19 *Johnston would conclude that they are inconsistent with each other.*

20 Q: And today it remains both your and your company's position that cigarette smoking is
21 not "addictive" according to what Reynolds refers to as the "classic" or 1964 Surgeon General
22 Report's use of the term?

23 A: That's correct.

24 Q: In fact, in this litigation, in Defendant R.J. Reynolds Tobacco Company's Responses to
25 Plaintiff's First Set of Requests For Admissions to All Defendants (U.S. Exhibit 77,413),

1 Reynolds responds to Request No. 36 by stating in part, "Reynolds admits that many people
2 believe cigarette smoking (or the nicotine in cigarette smoke) is "addictive" and, as the term is
3 commonly used today, it is, but that (1) smoking is not addictive in the same sense as heroin,
4 cocaine or similar substances, (2) any smoker with a sincere desire and determination to stop
5 smoking can – and should – quit, and (3) smoking does not meet the classic definition of
6 addition set forth, *inter alia*, in the 1964 Report of the Committee to the Surgeon General[.]"

7 A: That's correct.

8 Q: The context of that definition of addiction in the 1964 Surgeon General's Report (U.S.
9 Exhibit 64,057) – what you continue to call a "classic" definition of addiction – is to distinguish
10 between "drug addiction" and "drug habituation" – as set out at page 351?

11 A: Yes.

12 Q: And Reynolds's point is that the 1964 Report classified tobacco use as "habituating"
13 rather than "addicting"?

14 A: Yes.

15 Q: Now you and the Company have made it clear that there is a difference between
16 cigarette smoking and cocaine use?

17 A: Yes, we've said it a number of times.

18 Q: And your point is that cigarette smoking is not addictive in the same way that cocaine
19 use is?

20 A: Yes.

21 Q: You agree that cocaine is addictive, don't you?

22 A: Yes.

23 Q: You do know, don't you, that the Surgeon General has classified cocaine as
24 "habituating" – just like cigarette smoking was classified there – rather than "addicting" under
25 the 1964 Report's definition?

1 A: I did.

2 *No, I don't know that.*

3 **Q: So "cocaine" per that "classic" definition, as you call it, is not addicting?**

4 A: I suppose not.

5 *No, I don't know that.*

6 **Q: Despite that finding, do you still maintain your distinction between cigarette smoking,**
7 **on the one hand, and cocaine use, on the other, in terms of addictive quality?**

8 A: Yes.

9 **Q: In that same response to Request for Admission No. 36 discussed above (U.S. Exhibit**
10 **77,413), one of the reasons Reynolds says cigarette smoking is not within the "classic" definition**
11 **and "is fundamentally different from addiction to alcohol or illegal drugs" is that "cigarette**
12 **smoking is not intoxicating, and it does not impair the individual's ability to make voluntary**
13 **choices about whether to abstain from or to continue smoking"?**

14 A: Yes.

15 **Q: You stand by that position today?**

16 A: Yes.

17 **Q: Then first let's talk about the distinction the Company makes between alcohol/illegal**
18 **drugs and cigarette smoking based on the Company's assertion that cigarette smoking is not**
19 **intoxicating – okay?**

20 A: Okay.

21 **Q: You do understand that the 1964 Surgeon General's Report definition of addiction,**
22 **which included "intoxication", was an adaptation of a definition set forth in 1957 by the World**
23 **Health Organization?**

24 A: Okay.

25 *I don't recall that.*

1 **Q: And you know that within months of the publication of the 1964 Surgeon General's**
2 **Report, the World Health Organization revised its definition of "drug addiction" that excluded**
3 **"intoxication" as an element of addiction?**

4 A: I did not know that.

5 **Q: Your Research and Development staff never told you that?**

6 A: No.

7 *Not that I recall.*

8 **Q: No one at the company ever told you that?**

9 A: No.

10 *Not that I recall.*

11 **Q: You are aware that, like WHO, no other organization classifying drugs since 1964 has**
12 **used intoxication as a necessary criterion?**

13 A: I don't know.

14 *No, I am not aware of that.*

15 **Q: Assuming that is correct, that would mean that "intoxication" has not been an element**
16 **of "drug addiction" definitions – "classic" or otherwise – for 40 years?**

17 A: Yes.

18 *No, I disagree. It is my understanding that it was part of the Surgeon General's definition until 1988.*

19
20 **Q: Isn't this distinction on the grounds of whether or not cigarette smoking is intoxicating**
21 **just a red herring?**

22 A: I don't know what you mean by that.

23 *I don't believe so.*

24 **Q: Next let's turn to Reynolds's assertion (in response to Request for Admission No. 36 –**
25 **U.S. Exhibit 77,413) that cigarette smoking "is fundamentally different from addiction to**

1 alcohol or illegal drugs" because "cigarette smoking . . . does not impair the individual's ability
2 to make voluntary choices about whether to abstain from or to continue smoking" – okay?

3 A: Okay.

4 Q: Are you aware of findings cited by the Food and Drug Administration in 1996 (at U.S.
5 Exhibit 33,031, page 97, note 200) that "persons who know that their lives are in imminent
6 danger from smoking nevertheless continue to smoke"?

7 A: I was not aware of them.

8 *At the time of the FDA's proposed regulation I was generally aware of FDA's proposal and read*
9 *some but not all of the accompanying materials and met with Reynolds scientists, but I have no*
10 *specific recollection of this.*

11 Q: Your Research and Development staff never told you about that?

12 A: No.

13 *Not that I recall.*

14 Q: No one at the company ever told you that?

15 A: No.

16 *Not that I recall.*

17 Q: Isn't it Reynolds's public position that if the sale of cigarettes were outlawed in the
18 United States, that people would still seek to purchase them and a large black-market situation
19 would be created as a result of that demand?

20 A: I suppose it is.

21 *Yes.*

22 Q: You agree that when sale of alcohol was prohibited by the Eighteenth Amendment,
23 people still sought to purchase and consume it and that demand created a large black-market
24 situation?

25 A: Yes.

1 **Q:** You agree that despite the fact that cocaine and heroin sale and possession is illegal in
2 this country, people still aggressively seek to purchase them?

3 A: Yes.

4 **Q:** If you agree with the proposition that there would be a black market demand for
5 contraband cigarettes, doesn't the belief that people would risk breaking the law to get them
6 speak to an impairment of the individual's ability to make voluntary choices about whether to
7 abstain from or to continue smoking?

8 A: I suppose so.

9 *No. Many people who consumed alcohol during prohibition were not impaired and certainly black*
10 *market purchases occur even without regard to chemical impairment, such as buying black market*
11 *cds or dvds.*

12 **Q:** In another portion of Reynolds's response to Request for Admission No. 36 (U.S.
13 Exhibit 77,413) that we have been discussing, it asserts that cigarette smoking is not within
14 what Reynolds calls the "classic" definition of addiction and "is fundamentally different from
15 addiction to alcohol or illegal drugs" because, "cessation of smoking does not involve severe
16 physical distress as does withdrawal from alcohol or classic drugs or abuse"?

17 A: That's correct.

18 **Q:** You stand by that position today?

19 A: Yes.

20 **Q:** Are you familiar with scientific conclusions that cocaine was not classified as addictive
21 per the 1964 Surgeon General Report's definition in part because withdrawal is not a hallmark
22 of cocaine use cessation?

23 A: Not that I recall.

24 **Q:** Your Research and Development staff never informed you of these conclusions?

25 A: No.

1 *Not that I recall.*

2 **Q: No one at the company ever told you that?**

3 A: No.

4 *Not that I recall*

5 **Q: In that same response to Request for Admission No. 36 (U.S. Exhibit 77,413) we have**
6 **been discussing, in the paragraph discussing how smoking "is fundamentally different from**
7 **addiction to alcohol or illegal drugs[,]" Reynolds states that, "[c]igarette smoking does not**
8 **involve the destruction of family and business relationships that is commonly seen with**
9 **consumption of alcohol or classic drugs of abuse."**

10 A: Correct.

11 **Q: You stand by that position today?**

12 A: Yes.

13 **Q: You have testified in the past that you understand public health and government**
14 **authorities have estimated that smoking causes 400,000 deaths annually in the United States**
15 **alone and millions annually world-wide?**

16 A: Yes.

17 **Q: If your R&D staff confirmed the scientific conclusion that smoking causes 400,000**
18 **deaths annually in the United States alone and millions annually worldwide, would that qualify**
19 **as "the destruction of family and business relationships" tantamount to those you say are**
20 **"commonly seen with consumption of alcohol or classic drugs of abuse"?**

21 A: Yes.

22 *No. I believe you are confusing two different concepts: behavioral effects and health effects. The*
23 *impairment criterion primarily address the debilitating effect of addictive alcohol and other classic*
24 *drugs of abuse on the ability to function normally in family and business settings. This is not true of*
25 *smoking.*

1 Q: As required by federal law, your company rotates a series of warning labels on your
2 cigarette packs, one of which is, "Smoking by Pregnant Women May Result in Fetal Injury,
3 Premature Birth and Low Birth Weight"?

4 A: Yes.

5 Q: And your website (at www.rjrt.com/IN/COHowWeThink_smokinghealth.asp) states,
6 "We believe pregnant women should not smoke"?

7 A: Yes.

8 Q: Evidence that smoking by pregnant women had caused fetal injury, premature birth
9 and low birth weight, either prior to or after this warning label came out, amounts to "the
10 destruction of family and business relationships" tantamount to those you say are "commonly
11 seen with consumption of alcohol or classic drugs of abuse" – doesn't it?

12 A: Yes.

13 *I disagree for the reasons I just described.*

14 Q: In that same response to Request for Admission No. 36 (U.S. Exhibit 77,413) we have
15 been discussing, in the paragraph discussing how smoking "is fundamentally different from
16 addiction to alcohol or illegal drugs[,]" Reynolds states that, "Cigarette smoking also does not
17 generate medically recognized tolerance as do classic drugs of abuse, such as heroin and
18 cocaine. In other words, cigarette smokers do not continually increase the amount that they
19 smoke" – is that correct?

20 A: Yes.

21 Q: And you cite the 1964 Surgeon General's Report for that proposition?

22 A: Yes.

23 Q: You stand by that position today?

24 A: Yes.

1 **Q: Are you aware of findings cited by the Food and Drug Administration in 1996 (at U.S.**
2 **Exhibit 33,031, page 98) that "only about 10% of cigarette smokers are able to sustain a level of**
3 **intake of five or fewer cigarettes per day[, and that . . .] one study found that 90% of people**
4 **who smoke escalate to daily doses of five or more cigarettes"?**

5 A: I was not aware of them.

6 *As I said before, I was generally familiar with the FDA issues at the time, but I don't specifically*
7 *recall this.*

8 **Q: Your Research and Development staff never told you about that?**

9 A: No.

10 *Not that I recall.*

11 **Q: Did anyone ever inform you of this?**

12 A: No.

13 *Not that I recall.*

14 **Q: Are you aware of findings cited by the Food and Drug Administration in 1996 (at U.S.**
15 **Exhibit 33,031, page 98) that "Cigarettes are similar to morphine-like drugs in that, when**
16 **either substance is readily available to the user, intake often escalates over a period of months**
17 **or years and then stabilizes at a level that may vary little from day to day for many years"?**

18 A: I was not aware of them.

19 *Again, although I was generally familiar with the FDA issues at the time, I don't specifically recall*
20 *this.*

21 **Q: Your Research and Development staff never told you about that?**

22 A: No.

23 *Not that I recall.*

24 **Q: No one at the company ever told you that?**

25 A: No.

1 *Not that I recall.*

2 **Q: Please look at U.S. Exhibit 20,862 – this is a lengthy project report from October 1988**
3 **entitled, "An Integrated Research Program for the Study of Nicotine and Its Analogs"?**

4 **A: Yes.**

5 *I had not seen this document before. I have looked at it briefly and have concluded that I lack the*
6 *background to understand this science.*

7 **Q: On the first page, number 4567, the report states the objective of the investigation as,**
8 **"The development and initiation of an integrated in-house/ex-house program to increase**
9 **understanding of the basic physical, chemical, pharmacological and toxicological properties of**
10 **nicotine and its analogs"?**

11 **A: Yes.**

12 **Q: Turn to pages 4586-4587 – your researchers state, "What is known about nicotine is**
13 **that it elicits the typical consequences of sympathoadrenal activation when administered in**
14 **doses that produce plasma concentrations similar to those achieved during smoking. Among**
15 **these are tachycardia, increases in blood pressure, cardiac output, and stroke volume In**
16 **addition, there is a fair amount of tolerance induced with regard to sympathetic activation by**
17 **smoking or chronic nicotine administration."?**

18 **A: Yes.**

19 **Q: No one on your R&D staff nor anyone else in the Company told you that an in-house**
20 **investigation conducted by eight scientists from four R&D divisions concluded that "there is a**
21 **fair amount of tolerance induced with regard to sympathetic activation by smoking or chronic**
22 **nicotine administration"?**

23 **A: No.**

24 *Not that I recall.*

1 **Q: Dr. John Robinson is one of the authors – he is your expert on smoking behavior at**
2 **Reynolds?**

3 A: Yes.

4 **Q: He has never told you about he and his colleagues concluding that "there is a fair**
5 **amount of tolerance induced with regard to sympathetic activation by smoking or chronic**
6 **nicotine administration"?**

7 A: No.

8 *I don't know what that means and do not recall discussing that with him.*

9 **Q: Another author, Dr. Donald deBethizy – he was Vice President for Product Evaluation**
10 **at Reynolds until 2000 when he went to run a 41%-Reynolds-owned subsidiary, Targacept,**
11 **which focuses exclusively on nicotine analogs?**

12 A: Yes.

13 *Targacept was never a subsidiary of Reynolds. It was an investment and Reynolds' stake in it is now*
14 *down to less than 10%.*

15 **Q: And he never told you about he and his colleagues concluding that "there is a fair**
16 **amount of tolerance induced with regard to sympathetic activation by smoking or chronic**
17 **nicotine administration"?**

18 A: No.

19 *Not that I recall.*

20 **Q: Dr. deBethizy served as a spokesman for the company on scientific issues from 1990 to**
21 **2000 when he left the company?**

22 A: Yes.

23 *He was a spokesman on certain issues at various times, but I can't confirm that he served in the*
24 *capacity for that entire time period.*

25 **Q: And even in that context he never told you about R&D's findings about tolerance?**

1 A: [No proposed answer supplied.]

2 *As I said, not that I recall.*

3 **Q: Are you aware of scientific conclusions that "tolerance" as defined here is not a**
4 **hallmark of cocaine use?**

5 A: Not that I recall.

6 *I am not aware of how "tolerance induced with regard to sympathetic activation" is defined in that*
7 *memorandum, or what it means.*

8 **Q: Your Research and Development staff never informed you of such conclusions?**

9 A: No.

10 *Not that I recall.*

11 **Q: No one at the company ever told you that?**

12 A: No.

13 *Not that I recall.*

14 **Q: Now, as we have seen, you and the company have urged a distinction between a**
15 **cigarette smoking "habit" and cocaine or heroin "addiction"?**

16 A: Yes.

17 *My distinction is based on differences in the behavior, not on terms used to describe the behavior.*

18 **Q: You stand by that position today?**

19 A: Yes.

20 **Q: Are you aware that in 1964, when the World Health Organization ("WHO") revised its**
21 **criteria for addictive drugs shortly after the 1964 Surgeon General's Report, the WHO report**
22 **recommended the distinction between "addiction" and "habituation" be dropped and replaced**
23 **with the term "dependence"?**

24 A: I am not sure whether I knew that.

1 *I am aware that at some point the scientific community moved away from the use of the term*
2 *addiction in favor of the use of the term dependence, although I cannot tie that understanding to*
3 *particular reports.*

4 **Q: Are you aware of findings cited by the Food and Drug Administration in 1996 (at U.S.**
5 **Exhibit 33,031, pages 156-157) that "studies show a higher percentage of addiction among**
6 **tobacco users than among users of other addictive drugs, including cocaine and heroin"?**

7 A: No.

8 *I am generally aware of this issue being raised in the FDA proposal and of the many public*
9 *statements made to the effect that smoking was more addictive than cocaine or heroin.*

10 **Q: Your Research and Development staff never told you about that?**

11 A: No.

12 *They may well have, I certainly recall the issue.*

13 **Q: No one at the company ever told you that?**

14 A: No.

15 *My answer is the same.*

16 **Q: Your R&D staff never told you that the 1988 Surgeon General's Report found that a**
17 **much higher percentage of smokers met criteria for dependence than do alcohol or opioid (one**
18 **of which is heroin) users?**

19 A: No.

20 *I was generally aware of issues raised by the 1988 Surgeon General's Report, at some point. I don't*
21 *recall these specifics.*

22 **Q: No one at the company ever told you that?**

23 A: No.

24 *My answer is the same.*

1 **Q: Your R&D staff never told you that the 1988 Surgeon General's Report – U.S. Exhibit**
2 **64,591 at page 15 and in Chapter V – concludes that, "The pharmacologic and behavioral**
3 **processes that determine tobacco addiction are similar to those that determine addiction to**
4 **drugs such as heroin and cocaine"?**

5 A: I was not aware of that.

6 *Although I don't recall the timeframe, I have general recollections about it and general recollections*
7 *of comparisons between cigarettes and other behaviors.*

8 **Q: No one at the company ever told you that?**

9 A: No.

10 *My answer would be the same.*

11 **Q: No one ever informed you of the 1988 Surgeon General's Report – U.S. Exhibit 64,591**
12 **at pages 272-274 and 594 – citing findings that nicotine has the ability to produce strong**
13 **physiological and behavioral effects similar to that of amphetamines and morphine in adults**
14 **and children?**

15 A: I was not aware of that.

16 *My answer is the same.*

17 **Q: While the company scientists may not have been letting on about scientific knowledge**
18 **with regard to nicotine and addiction, this is not a topic that escaped Reynolds's lawyers' eye, is**
19 **it?**

20 A: What do you mean?

21 **Q: The Company's lawyers have warned Reynolds management about the scientists' head-**
22 **in-the-sand approach toward nicotine addiction science, haven't they?**

23 A: You'll have to show me what you mean.

24 **Q: U.S. Exhibit 21,020 is a document from the late 1980s entitled "Key Tobacco Documents**
25 **Corporate Activity Project – Draft Report by Jones Day Reavis & Pogue"?**

1 A: Yes.

2 *I don't believe I have ever seen this document.*

3 **Q: We'll refer to Jones Day Reavis & Pogue as "Jones Day", okay?**

4 A: Okay.

5 **Q: Jones Day is the law firm representing you and the company here in court today?**

6 A: Yes.

7 **Q: At internal pages 344-345 of U.S. Exhibit 21,020, Jones Day informs Reynolds, "G.**

8 **Robert DiMarco stated in Browner that Reynolds does not accumulate data related to addiction**

9 **because 'we don't believe there is addiction,' but if there were a concern Reynolds would rely on**

10 **CTR. Although he is aware of allegations that the use of tobacco is addictive, DiMarco did not**

11 **know if CTR has ever funded pertinent research."**

12 A: That's what it says.

13 *I don't believe I have ever seen it, I accept your representation as to what it says. I am not aware of*

14 *whether Jones Day informed Reynolds of any of the information in this document.*

15 **Q: You knew Dr. DiMarco when he was at Reynolds?**

16 A: Yes.

17 **Q: He served as director of the Research and Development Department from**

18 **approximately 1982 to 1992?**

19 A: Yes.

20 **Q: At page 345 of U.S. Exhibit 21,020, Jones Day informs Reynolds, "Documents produced**

21 **by Reynolds reflect that relatively little attention was given to addiction literature" and that**

22 **"two RJRT documents indicate that Reynolds has not intensively studied the addiction**

23 **literature as late as 1979[]"?**

24 A: Yes.

1 *I don't believe I have ever seen it, I accept your representation as to what it says. I am not aware of*
2 *whether Jones Day informed Reynolds of any of the information in this document.*

3 **Q: "RJRT" is a common acronym for R.J. Reynolds Tobacco Company?**

4 **A: Yes.**

5 **Q: Jones Day goes on to tell Reynolds about these two documents, describing the first as**
6 **one in which "Dr. Piehl identified the need for a 'behavioral scientist to review, evaluate and**
7 **coordinate information in the smoking behavior area"?**

8 **A: Yes.**

9 *I don't believe I have ever seen it, I accept your representation as to what it says. I am not aware of*
10 *whether Jones Day informed Reynolds of any of the information in this document.*

11 **Q: And Jones Day characterizes (at page 346) the second document as saying, "'A**
12 **comprehensive literature review was not conducted as complete understanding requires a**
13 **competent behavioral scientist. The field is complex and controversial and we are basically**
14 **ignorant and dependent on outside evaluation. This issue is based only on a general awareness**
15 **of the literature over the last 5 years, our competitor's activity and personal judgment."**

16 **A: Yes.**

17 *I don't believe I have ever seen it, I accept your representation as to what it says.*

18 **Q: And Jones Day goes on to tell Reynolds (at 349), "Prior to 1980, very little research was**
19 **conducted or funded by RJRT to evaluate the possibility that cigarettes possess habituating or**
20 **addicting properties."**

21 **A: Correct.**

22 *I don't believe I have ever seen it, I accept your representation as to what it says. I am not aware of*
23 *whether Jones Day informed Reynolds of any of the information in this document.*

24 **Q: Of those documents that Jones Day does identify (at page 348 of U.S. Exhibit 21,020) for**
25 **Reynolds management, one is a 1979 document by a Dr. Piehl that identifies "the six types of**

1 smokers" – one of which is "Addictive – People who find it unbearable to run out of cigarettes
2 are described as using addictive-type smoking."

3 A: Yes.

4 *I don't believe I have ever seen it, I accept your representation as to what it says. I am not aware of*
5 *whether Jones Day informed Reynolds of any of the information in this document.*

6 Q: On that same page of U.S. Exhibit 21,020 Jones Day points out that Piehl identified
7 another "type" of smoker other than the "addictive" one, and this one involves smokers who
8 "'tend to smoke heavily, . . . and find it very difficult to stop smoking'"?

9 A: Yes.

10 *I don't believe I have ever seen it, I accept your representation as to what it says.*

11 Q: So here a Reynolds scientist has not only said that some smokers are addicted, but that
12 this smoker "type" is separate and apart from the "type" of smoker who "find it very difficult
13 to stop smoking"?

14 A: Yes.

15 *I don't believe I have ever seen it, I accept your representation as to what it says.*

16 Q: By contrast, your statements about cigarette smoking – statements you make in public
17 fora like lawsuit testimony – assert that smoking is "addictive" in the "everyday term that is
18 used today" *precisely because it is "difficult to quit"*?

19 A: Okay.

20 *I don't believe I have ever seen the Jones Day document. For that reason, I really can't respond to*
21 *your question.*

22 Q: So the Company management has been willing to ignore scientific distinctions made by
23 its own company researchers in favor of politically or semantically favorable constructs
24 regarding addiction?

25 A: No.

1 *As I said, I don't believe I have ever seen the Jones Day document you are referring to, so I don't*
2 *know.*

3 **Q: Now, just looking down the page – page 348 of U.S. Exhibit 21,020 – the footnote # 550**
4 **gives the reference to the name and date of that Piehl document – "Smoking Behavior – A**
5 **Review," September 1979?**

6 A: Yes.

7 *I don't believe I have ever seen it, I accept your representation as to what it says.*

8 **Q: One thing that is missing is a reference in the footnote to a "bates number" for that**
9 **document?**

10 A: There is no bates number listed there.

11 *I don't believe I have ever seen it, I accept your representation as to what it says.*

12 **Q: In your experience with tobacco litigation, a document is not produced to the other side**
13 **unless and until it has a bates number?**

14 A: That has been my experience.

15 *I don't know.*

16 **Q: At page 37 of U.S. Exhibit 21,020 Jones Day tells Reynolds, "documents describe a**
17 **British American Tobacco Company sponsored conference in 1978, attended by PM and B&W**
18 **representatives. One of the findings of the conference was: 'Serious smokers smoke to prevent**
19 **withdrawal symptoms.'"**

20 A: Yes.

21 *I don't believe I have ever seen it, I accept your representation as to what it says. I am not aware of*
22 *whether Jones Day informed Reynolds of any of the information in this document.*

23 **Q: Despite these scientific findings presented at an industry-sponsored conference, your**
24 **Company's position has been and remains that quitting smoking is not accompanied by a**
25 **withdrawal syndrome akin to that of cessation of alcohol or illegal drug use?**

1 A: Yes.

2 *I am not familiar with the conference or the findings or the underlying scientific support for such*
3 *findings, but your summary of Reynolds' position I believe to be accurate.*

4 **Q: The Company's lawyers have told Reynolds, "[T]he defense must not concede that**
5 **cigarette smoking has been proved to be addictive. Indeed there are substantial benefits to be**
6 **derived over waging a definitional battle." That's what Jones Day told Reynolds in U.S. Exhibit**
7 **21,020 at pages 361-362?**

8 A: That's what it says there.

9 *I don't believe I have ever seen it, I accept your representation as to what it says. I am not aware of*
10 *whether Jones Day informed Reynolds of any of the information in this document.*

11 **Q: And one example Jones Day points to (at pages 362-363 in U.S. Exhibit 21,020) is the**
12 **distinctions between 'habituation' and 'addiction' set forth in the 1964 Surgeon General's**
13 **Report?**

14 A: It is discussed there.

15 *I don't believe I have ever seen it, I accept your representation as to what it says.*

16 **Q: This is a distinction that Mr. Johnston made or alluded to in his testimony at the 1994**
17 **Waxman Hearing?**

18 A: Yes.

19 *I seem to recall that Mr. Johnston did make or allude to a distinction between habituation and*
20 *addiction in his testimony.*

21 **Q: And it is a distinction Reynolds makes in its responses to Request for Admission No. 36**
22 **(U.S. Exhibit 77,413) we have been discussing today?**

23 A: Yes.

24 *A distinction between addiction and habituation is made in this exhibit, but I would add that it is not*
25 *in communication with the general public on the website.*

1 **Q:** So even if the scientists were to tell you that there is no scientific dispute over whether
2 or not cigarette smoking is addictive, the lawyers have told you that there is no litigation
3 advantage to making such an admission?

4 A: I don't know.

5 *I don't know what admission you are talking about. We acknowledge that it is addictive on our*
6 *website.*

7 **Q:** Whether you call it "habituating", "addicting", "dependence-producing" or something
8 else, there is no doubt that Reynolds has always sought to deliver the necessary amount of
9 nicotine in its cigarettes to keep its customers smoking its products?

10 A: Generally, yes.

11 *I've never heard of such a thing. I ran a plant, later company operations, and I don't ever recall*
12 *anyone talking about getting the nicotine up to keep people smoking.*

13 **Q:** Then let's talk a bit about how Reynolds makes its cigarettes, okay?

14 A: Okay.

15 **Q:** You recall that in 1994 the issue of whether the major U.S. cigarette manufacturers
16 manipulated nicotine in their cigarettes in order to addict smokers received national media
17 attention?

18 A: Yes.

19 **Q:** In fact, this issue was the subject of a series of Congressional hearings in 1994, wasn't
20 it?

21 A: Yes.

22 **Q:** And, as you have testified, you attended the 1994 Waxman Hearing with CEO Johnston
23 and a number of other Reynolds representatives?

24 A: Yes.

25 **Q:** The issue of nicotine manipulation was discussed then, too?

1 A: Yes.

2 **Q: You attended the hearing with James Johnston and other representatives of Reynolds,**
3 **right?**

4 A: Yes.

5 **Q: And James Johnston was the Chief Executive Officer of Reynolds at the time, wasn't**
6 **he?**

7 A: Yes.

8 **Q: The CEO's of all of the major U.S. cigarette manufacturers, including Mr. Johnston,**
9 **testified at the hearing?**

10 A: Yes.

11 **Q: The investigation by Congress at these hearings addressed the question of whether the**
12 **U.S. cigarette manufacturers "spiked" their cigarettes with nicotine by adding nicotine during**
13 **the manufacturing process?**

14 A: Yes.

15 **Q: And the investigation also addressed whether the U.S. cigarette manufacturers used any**
16 **other cigarette design techniques or manufacturing processes to manipulate the nicotine**
17 **contained in their products?**

18 A: Yes.

19 **Q: You were familiar with Reynolds's cigarette manufacturing processes through your**
20 **work at Reynolds prior to 1994?**

21 A: Yes.

22 **Q: Specifically, in your positions as Senior Vice President and ultimately Executive Vice**
23 **President for Operations, you had oversight over the functions of cigarette manufacturing,**
24 **engineering, quality assurance, and tobacco processing, among others?**

25 A: Yes.

1 **Q: And for a number of years you were a plant manager at Reynolds, as well?**

2 A: Yes.

3 **Q: In preparation for the 1994 Waxman Hearing, during which you, Mr. Johnston, and**
4 **other representatives of Reynolds were called on to testify regarding Reynolds's cigarette**
5 **manufacturing processes, did you familiarize yourself with the manufacturing processes that**
6 **had been used by Reynolds before the time you had oversight of Operations?**

7 A: Yes.

8 *No.*

9 **Q: Then you were aware at the time of the 1994 Waxman Hearing that Reynolds had used**
10 **ammonia or forms of ammonia in its cigarette manufacturing process since the 1970s?**

11 A: Yes.

12 *I do not recall knowing at the time of the Waxman hearings about the history of ammonia usage,*
13 *although I have known since about 1991 we were using some ammonia in the processing for some*
14 *brands.*

15 **Q: Mr. Johnston also was aware of that?**

16 A: Yes, he was aware of that.

17 *I don't know.*

18 **Q: Okay, at the time of the 1994 Waxman Hearing, you also were aware that scientists at**
19 **Reynolds believed that the use of ammonia in cigarette manufacturing affected the pH of**
20 **cigarette smoke?**

21 A: Yes.

22 *No. I became aware of that issue in about 1996-1997 from seeing documents in connection with*
23 *deposition testimony.*

24 **Q: And you were aware that scientists at Reynolds believed that changing the pH of**
25 **cigarette smoke affected the amount of nicotine available to a smoker?**

1 A: Yes.

2 *Not at the time.*

3 **Q: However, in response to the House subcommittee's questioning regarding Reynolds's**
4 **manufacturing processes, neither you nor Mr. Johnston informed the subcommittee of**
5 **Reynolds's belief that use of ammonia in cigarette manufacturing affected the amount of**
6 **nicotine available to a smoker?**

7 A: No.

8 *As I said, I didn't know about that theory at the time.*

9 **Q: Reynolds has used ammonia in cigarette manufacturing since at least 1975?**

10 A: Yes.

11 **Q: And Reynolds continues to use ammonia in manufacturing many of its blends and**
12 **brand families today?**

13 A: Yes, we continue to have ammoniated reconstituted tobacco in some of our blends.

14 **Q: One of the ways that Reynolds has used ammonia in the cigarette manufacturing**
15 **process is in the production of reconstituted tobacco?**

16 A: Yes.

17 **Q: Reynolds's reconstituted tobacco is referred to internally as G7?**

18 A: Yes.

19 **Q: And there are numerous different formulations of G7?**

20 A: Yes, there are a variety of G7 formulations that are designed for particular blends and brands
21 and brand styles. The formulations are identified internally using specific numbers, such as G7-1,
22 G7-2, G7-3, etc.

23 **Q: It's true, isn't it, that G7 is the largest blend component in the tobacco blends used to**
24 **manufacture the various cigarettes sold commercially by Reynolds?**

25 A: Yes, that's correct.

1 No.

2 **Q: Please direct your attention to U.S. Exhibit 51,628. This document is a memorandum**
3 **dated April 29, 1994 on the subject of “Revised Item Id. Codes for Processed/Reconstituted**
4 **Tobaccos”?**

5 A: Yes.

6 **Q: You are listed on the first page of this Exhibit as a recipient of the memorandum?**

7 A: Yes.

8 **Q: Looking at the page 7858 of this exhibit, there is a list of several different formulations**
9 **of G7?**

10 A: Yes.

11 **Q: And the list identifies each particular formulation of G7 and indicates how that**
12 **formulation is used by Reynolds?**

13 A: Yes.

14 **Q: This list indicates that Reynolds had numerous commercial G7 formulations that**
15 **contained ammonia?**

16 A: Yes, the list refers to a number of G7 blends as being ammoniated.

17 *Yes, the list refers to a number of G7 formulations as being ammoniated.*

18 **Q: Specifically, focusing on the description column, some of the descriptions simply refer to**
19 **the G7 formulation as “Ammoniated,” such as G7-2 and G7-2 TI?**

20 A: Yes.

21 **Q: And other descriptions, such as the description for G7-25 refer to the use of “DAP” and**
22 **“NH₃,” right?**

23 A: Yes.

24 **Q: On this list, “DAP” refers to diammonium phosphate?**

25 A: Yes.

1 Q: And "NH₃" refers to ammonia?

2 A: Yes.

3 Q: I'd like to ask you a few questions about reconstituted tobacco and tobacco extract. You
4 are generally familiar with the process of making reconstituted tobacco?

5 A: Yes.

6 Q: That process basically involves taking the stems and other small pieces of material
7 separated from the tobacco leaf and forming those materials into sheets?

8 A: Yes.

9 Q: Those sheets are then cut or chopped into small pieces that become part of the tobacco
10 blend used in cigarettes?

11 A: Yes.

12 Q: The reconstitution process involves the addition of water to the tobacco materials?

13 A: Yes.

14 Q: The addition of water allows water soluble materials to be removed from the tobacco so
15 that it can be formed into sheets?

16 A: Yes.

17 Q: And once the sheets are formed, the water soluble substances that were removed from
18 the tobacco in order to form the sheets are added back?

19 A: Yes, that is correct.

20 Q: And this material that is added back generally is referred to as tobacco extract?

21 A: Yes.

22 *No, the material that is added back at the end of the reconstitution process is not generally referred*
23 *to as tobacco extract. It is commonly referred to as either "water solubles" or "extract."*

24 Q: The nicotine in the tobacco material used to make reconstituted sheet is water soluble?

25 A: Yes.

1 **Q: So nicotine is among the water soluble material that is initially removed and eventually**
2 **added back during the process of making reconstituted tobacco sheets?**

3 A: Yes, some of the nicotine is inevitably lost during the reconstitution process, but most of it is
4 added back to the reconstituted sheet.

5 **Q: Okay, please direct your attention to U.S. Exhibit 51,299. This document is entitled**
6 **“Review of the G-7 Process and Product Development Programs” dated October 16, 1991?**

7 A: Yes.

8 **Q: This appears to be slides that accompanied an oral presentation?**

9 A: Yes, that is what this appears to be.

10 **Q: And the first page indicates that the information contained in this document was**
11 **presented to you and to G.R. DiMarco?**

12 A: Yes, it says “Presented to: A.J. Schindler and G.R. DiMarco.”

13 **Q: This document is a presentation that reviews the G7 production process and identifies**
14 **certain objectives Reynolds had for changing or improving that process?**

15 A: Yes.

16 **Q: Okay, please turn to page MTP001 9879 of this Exhibit. Do you see the bullet point that**
17 **says “G-7-4”?**

18 A: Yes.

19 **Q: “G-7-4” is described here as a “reduced soluble extract”?**

20 A: Yes, that is what this says.

21 **Q: And it also says that this extract was used in Winston Light and Camel Light**
22 **development?**

23 A: Yes.

1 **Q:** Okay, if you will turn back for a moment to U.S. Exhibit 51,628, which is the list of
2 various G7 formulations that we discussed earlier, this document describes the G7-4
3 formulation as “W.S. [water soluble] Ammoniated”?

4 A: Yes.

5 **Q:** And in the last column describing where G7-4 is used, this document indicates that this
6 ammoniated extract had been used in Reynolds full flavor and light products?

7 A: Yes.

8 **Q:** Okay, returning to U.S. Exhibit 51,299, page MTP001 9879, do you see the bullet point
9 that says “G-7-7”?

10 A: Yes, I see that.

11 **Q** This document describes G7-7 as an ammoniated extract?

12 A: Yes, that is what it says.

13 **Q:** And turning again to the list of G7 formulations in U.S. Exhibit 51,628, this document
14 describes the G7-7 formulation as “G7-1 Ammoniated Extract”?

15 A: Yes.

16 **Q:** And this document indicates that Reynolds used G7-7 in its full flavor, light, and ultra
17 light products?

18 A: Yes.

19 **Q:** Finally, turning back to U.S. Exhibit 51,299, page MTP001 9879, do you see the bullet
20 point titled “G-7-25”?

21 A: Yes, I see that.

22 **Q:** This Exhibit describes G7-25 as “Heat treated extract – DAP addition”?

23 A: Yes.

24 **Q:** This Exhibit also indicates that Reynolds used G7-25 in Camel Ultra?

25 A: Yes, that is what is says.

1 Q: And it also indicates that G7-25 had “High potential for use across all Brands”?

2 A: Yes.

3 Q: And looking at G7-25 on the list of G7 formulations in U.S. Exhibit 51,628, it is
4 described as “G7 Heat Treated Extract + DAP + NH3”?

5 A: Yes.

6 Q: It also indicates that Reynolds used G7-25 in its full flavor, light, and ultra light
7 products?

8 A: Yes.

9 Q: So these two documents – U.S. Exhibits, 51,629 and 51,299 – indicate that Reynolds used
10 tobacco extract in many of its commercial products?

11 A: Yes.

12 *These documents actually refer to the use of various formulations of reconstituted tobacco in its*
13 *commercial products rather than tobacco extract.*

14 Q: They also indicate that in addition to ammoniating its reconstituted sheet, Reynolds
15 often ammoniated the tobacco extract that was applied to the sheet?

16 A: Yes.

17 *These documents actually refer to the use of various formulations of reconstituted tobacco in its*
18 *commercial products rather than tobacco extract.*

19 Q: Do you recall that during the 1994 Waxman Hearing you attended that Mr. Johnston
20 was asked about Reynolds’s use of tobacco extract in its commercial products?

21 A: He may have been asked. I don’t recall that specifically.

22 *Yes.*

23 Q: Do you recall that Mr. Johnston testified that Reynolds only used tobacco extract in
24 Premier?

25 A: I don’t recall that specifically.

1 Yes.

2 **Q: Take a look at U.S. Exhibit 62,645. If you turn to the page that is numbered 147 at the**
3 **bottom, you see that Mr. Johnston was asked a question by Representative Waxman regarding**
4 **Reynolds use of tobacco extract?**

5 A: Yes.

6 **Q: Specifically, Representative Waxman asked: "There's been a lot of interest in tobacco**
7 **extract and whether nicotine is added by use of a tobacco extract. Mr. Johnston, has RJR ever**
8 **used tobacco extract [in] any of its products sold domestically or abroad?"**

9 A: Yes.

10 **Q: And Mr. Johnston replied, "Not to my knowledge, Mr. Chairman."**

11 A: Yes.

12 **Q: And Mr. Johnston went on to clarify his answer as follows: "Pardon me. In Premier,**
13 **there was a spray of dried tobacco extract used. In our Winstons and Camels and so forth, that**
14 **is not the case"?**

15 A: Yes.

16 *Yes, although you slightly misread this quote by adding the word "of" between the words "spray" and*
17 *"dried".*

18 **Q: Mr. Johnston's testimony about Reynolds's use of tobacco extract was not true?**

19 A: The testimony Mr. Johnston gave about the use of tobacco extract was not accurate.

20 *No. Mr. Johnston's testimony about the use of tobacco extract was accurate. Prior to Rep. Waxman*
21 *asking Mr. Johnston that question, I testified about the reconstituted tobacco process and the fact that*
22 *some nicotine is lost in the process when the water soluble material is added back to the sheet*
23 *material at the end of the process. Rep. Waxman then asked that each company provide information*
24 *for the record concerning methods, other than the reconstitution process, for changing nicotine*
25 *levels. One of the things that he asked specifically about was the use of tobacco extract. Rep.*

1 Waxman was well aware that the tobacco extract he was talking about was something different than
2 the water soluble material initially removed and then added back to the sheet in the reconstitution
3 process. It was very clear that Rep. Waxman's subsequent question to Mr. Johnston did not refer to
4 the reconstitution process, but to the spray dried tobacco extract that was used in Premier. Mr.
5 Johnston's answer was entirely accurate.

6 **Q: And neither you nor anyone else sitting at the table with him corrected him?**

7 A: No, none of us did.

8 *There was nothing to correct.*

9 **Q: Next, Mr. Schindler, I would like to ask you some questions about the ways in which**
10 **Reynolds has talked to consumers about its products, okay?**

11 A: Yes.

12 **Q. Aside from Eclipse, you cannot say with any certainty that Reynolds has ever**
13 **manufactured and sold any cigarette that was safer than any other cigarette that Reynolds has**
14 **manufactured and sold?**

15 A: Correct.

16 *We do not use the terms "safe" or "safer" to refer to cigarettes. In fact, the website states there is no*
17 *such thing as a "safe" cigarette. I disagree that we have referred to Eclipse as "safer."*

18 **Q: And your answer includes all of Reynolds's low tar cigarette brands?**

19 A: Yes.

20 *Yes. Let me add that, while I'm not an expert, my understanding is that there are some*
21 *epidemiological studies that indicate that smokers of lower tar cigarettes may have reduced risk, and*
22 *of course the Government and many health authorities for years stated that such cigarettes likely*
23 *reduced the risk of smoking.*

24 **Q: You have no new information today that would establish that low tar cigarettes are**
25 **safer?**

1 A: Correct.

2 **Q: Please look at U.S. Exhibit 72,410. Would you agree that this document is comprised of**
3 **statements from Reynolds's website?**

4 A: Yes.

5 **Q: The date in the lower right hand corner indicates that this document was printed from**
6 **Reynolds's website on January 16, 2004?**

7 A: Yes.

8 **Q: Reynolds uses its website as a way for the company to communicate with smokers?**

9 A: Yes.

10 *It is there for the general public, anyone interested in Reynolds, its policies and/or its products.*

11 **Q: And Reynolds intends for smokers to read and rely upon the statements that it places on**
12 **its website?**

13 A: Yes.

14 *Reynolds intends for the public to rely on its statements as accurate reflections of the views and/or*
15 *policies of the company. Reynolds' policy as to smoking and health is that the public should rely on*
16 *the conclusions of the Surgeon General, and public health and medical officials for information*
17 *regarding smoking and health when making any decision regarding smoking, as we note on the*
18 *website.*

19 **Q: Please turn to page TLT0770111. The second paragraph states "Today, Reynolds**
20 **Tobacco offers a wide variety of cigarettes, ranging from the lowest 'tar' cigarettes on the**
21 **market to a number of full-flavor cigarette styles. Our company, like other cigarette**
22 **manufacturers, uses brand descriptors such as 'full flavor,' 'lights' and 'ultra lights' to**
23 **differentiate cigarette brand-styles in terms of such characteristics as strength of taste, and**
24 **reported 'tar' and nicotine yield. These terms do not, and are not meant to, imply that any**
25 **cigarette brand-style, or any category of cigarettes, is safer than any other[]"**

1 A: Yes.

2 **Q: Do you agree that this statement has appeared on Reynolds's website?**

3 A: Yes.

4 **Q: Your position is that Reynolds uses brand descriptors like "light" and "ultra light"**
5 **primarily to communicate taste differences among cigarettes, and not to imply that they are less**
6 **hazardous than regular cigarettes?**

7 A: Yes.

8 *No, as the website says, these labels enable us to differentiate brand-styles in terms of such*
9 *characteristics as strength of taste and reported tar and nicotine yields as determined by the FTC*
10 *Method.*

11 **Q: And to your knowledge, Reynolds has always denied publicly that it markets "light"**
12 **and "ultra light" cigarettes to communicate health reassurance?**

13 A: Correct.

14 *Reynolds has publicly acknowledged that it developed and markets light and ultra light cigarettes in*
15 *response to recommendations by the government and public health community and in response to*
16 *consumer demand for those products as a result of government and public health community*
17 *recommendations. That wasn't an environment we created, it was one we lived in. It is my*
18 *impression that early on it was more about tar, and today it is more about taste.*

19 **Q: You are aware that there is a broad misunderstanding about low tar cigarettes, and that**
20 **many people have come to believe that they pose less risk than full flavor cigarettes?**

21 A: Yes.

22 *No. To my knowledge people hold different beliefs regarding whether low tar cigarettes pose less*
23 *risk than full flavor cigarettes. Finally, I would note that all cigarettes carry the same*
24 *congressionally-mandated warnings that adequately inform the public of the risks of smoking*
25 *regardless of the brand or brand-style.*

1 **Q:** And your company and the board that runs it has fought efforts to correct that
2 misunderstanding about health reassurance?

3 A: I would not say that.

4 **Q:** Please look at U.S. Exhibit 87,993 – this is a March 21, 2003 announcement from you
5 about the annual stockholders meeting of your then-parent-company, R.J. Reynolds Tobacco
6 Holding Company?

7 A: Yes.

8 **Q:** Turn to the page marked 33 at the bottom – it is a "Stockholder Proposal on Warnings
9 Related to Health Risks of Smoking 'Light' Brands?

10 A: Yes.

11 **Q:** The stockholder proposed the following resolution: "Resolved that the shareholders
12 request the Board to find appropriate ways of informing our customers about the actual health
13 risks of smoking 'light and ultralight' cigarettes to disassociate them from any belief that such
14 products are safer and deliver less tar and nicotine"?

15 A: Yes.

16 **Q:** In support of that resolution, the stockholder cited the conclusions of the National
17 Cancer Institute's Monograph 13 indicating that low tar cigarettes present no significant
18 reduction in harmfulness relative to full-flavor cigarettes, and that "'many smokers choose
19 these products as an alternative to cessation'" out of a mistaken belief that they are less
20 harmful?

21 A: Yes.

22 **Q:** The Board of Directors recommended a vote "AGAINST this proposal"?

23 A: Yes.

1 **Q: The Board argued that everyone already knows that there is no difference in health**
2 **risks between low tar and full flavor cigarettes, and therefore "further independent action by**
3 **RJR" is unnecessary?**

4 **A: Yes.**

5 *As you can see from the document, the Board gave several reasons why, in its view, this proposal*
6 *warranted rejection. These reasons included the congressionally-mandated warnings, scientific*
7 *information, and pending FTC consideration of the issue. I don't see in here that the Board argued*
8 *that "everyone already knows that there is no difference in health risks."*

9 **Q: The Board also argued against the proposal by referencing the "Impact on Litigation**
10 **Strategy"?**

11 **A: Yes.**

12 **Q: The Board asserted, "Finally, this proposal squarely implicates issues that are the**
13 **subject matter of multiple lawsuits involving RJR and RJR Tobacco [that] RJR and RJR**
14 **Tobacco are vigorously defending. . . . This proposal would interfere with and pre-empt**
15 **management's right and duty to defend such litigation, and therefore is inappropriate"?**

16 **A: Yes.**

17 **Q: So the Board is saying that it could not own up to this misunderstanding about health**
18 **reassurance even if it wanted to?**

19 **A: That is not correct.**

20 **Q: The Board has a fiduciary obligation to its stockholders?**

21 **A: Yes.**

22 **Q: And approving and implementing this resolution would be contrary to the Board's**
23 **fiduciary obligations?**

24 **A: Yes.**

25 *I disagree.*

1 Q: At the time of this meeting, you were the Chairman of the Board?

2 A: Yes.

3 Q: And a member of the Board of Directors, as well?

4 A: Yes.

5 Q: In fact, beyond trying to correct the misunderstanding about health reassurance and
6 low tar cigarettes, Reynolds has affirmatively marketed low tar cigarettes to communicate
7 health reassurance?

8 A: I disagree.

9 Q: In the 1970s, Reynolds ran a marketing campaign called "Doral Diet," correct?

10 A: Yes.

11 *I don't remember this campaign.*

12 Q: Doral was what Reynolds considered a low tar cigarette brand in the 1970s?

13 A: Yes.

14 Q: Please look at U.S. Exhibit 4,746. This is a magazine advertisement for Doral that
15 Reynolds placed in the June 30, 1975 edition of Sports Illustrated?

16 A: Yes.

17 Q: And this advertisement is an example of the "Doral Diet" campaign?

18 A: Yes.

19 *It appears to be.*

20 Q: The bolded heading of this advertisement states "How I lost 700 mg. of 'tar' the first
21 week . . . without losing out on taste"?

22 A: Yes.

23 Q: Continuing on, the advertisement states "I'm not too big in the willpower department.
24 But I lost 700 milligrams of 'tar' the first week on what I call 'The Doral Diet.' Now I can still
25 enjoy smoking, and cut down on 'tar' and nicotine, too"?

1 A: Yes.

2 **Q: So one intended communication of this advertisement is that switching to Doral is like**
3 **going on a diet, because Doral will lower your tar intake?**

4 A: Yes.

5 *I was not involved in this so I can't speak to what was intended, but it seems to me that the ad says*
6 *this is a lower tar brand.*

7 **Q: Going on a diet is something people commonly do to improve their health?**

8 A: Yes.

9 *That is certainly one of the reasons.*

10 **Q: And Reynolds's internal consumer research on the Doral Diet campaign indicated that**
11 **smokers thought it communicated health reassurance?**

12 A: Yes.

13 *I am not familiar with that internal research.*

14 **Q: For instance, look at U.S. Exhibit 22,150. This is a June 24, 1975 advertising research**
15 **report for the Doral "Diet Filter" advertising campaign prepared by Reynolds's Marketing**
16 **Research Department?**

17 A: Yes.

18 **Q: Please turn to the second page, number 7576; the first paragraph states "This research**
19 **was conducted to aid in evaluating six "Doral Filter" executions in recall impact and**
20 **communication"?**

21 A: Yes.

22 **Q: So this research recorded smokers' impressions and perceptions of Doral**
23 **advertisements?**

24 A: Yes.

1 Yes. I should add that I haven't seen this before; it's about 131 pages long. It appears that there are
2 a substantial number of smokers (about 70%) who couldn't recall the ad.

3 **Q: Let's look at some of these impressions. If you turn to page 7581, the first paragraph**
4 **quotes a smoker's impression of the advertisement as follows: "It showed a man and the Doral**
5 **Cigarettes in menthol and regular. The ad said something about a diet of tar and nicotine. My**
6 **impression was that they had less tar and nicotine than other brands. The main idea was that**
7 **they're better for you because of the cut-down in tar and nicotine"?**

8 A: Yes.

9 *Yes, that is what that smoker said.*

10 **Q: And the heading on that page indicates that the smoker is referring to a Doral**
11 **advertisement that ran in the April 14, 1975 edition of Newsweek magazine?**

12 A: Yes.

13 **Q: Please turn to page 7591, the first paragraph states "It showed a man sitting in a chair**
14 **and lighting up a Doral. It said that it had less 'tar', but the taste didn't change. The impression**
15 **it brought out was just the fact that it's a safer cigarette for your health, if you have to smoke.**
16 **They were trying to get across that it has less 'tar', and is still as good in taste as the other**
17 **cigarettes"?**

18 A: Yes.

19 *Yes, that is what that smoker said.*

20 **Q: And the heading on that page indicates that the smoker is referring to a Doral**
21 **advertisement that ran in the April 28, 1975 edition of Newsweek magazine?**

22 A: Yes.

23 **Q: At page 7599, the third paragraph states "There was a man sitting in an office telling**
24 **you the statistics on lower tar. It was an executive giving figures on smoking Doral. The ad**

1 said it is lower in tar; therefore, it is healthier. The idea brought out was it would be a safer
2 cigarette. The main point was it is healthier to smoke, since it is lower in tar”?

3 A: Yes.

4 *Yes, that is what that smoker said.*

5 Q: And if you turn to the next page, 7600, the first paragraph states "The ad showed a man
6 with a cigarette. It's a small black and white picture surrounded by writing. There's a pack of
7 cigarettes. The ad said that this man lost so many mg. of tar on his Doral Diet. My impression
8 was that by smoking Doral, you are taking in less harmful tar. The main idea of the ad was to
9 try a healthier smoke, try the Doral Diet”?

10 A: Yes.

11 *Yes, that is what that smoker said.*

12 Q: The heading on that page indicates that these two smokers are referring to a Doral
13 advertisement that ran in the May 5, 1975 edition of Newsweek magazine?

14 A: Yes.

15 Q: If you turn to page 7608, the second-to-last paragraph states "A man was smoking a
16 cigarette. The ad said that Doral is lower in tar and nicotine than any other cigarette. The
17 impression that came across was that they would be less harmful if you smoked them. There's a
18 lower tar and nicotine count. The main idea of the ad was that smoking Doral is better for your
19 health”?

20 A: Yes.

21 *Yes, that is what that smoker said.*

22 Q: So U.S. Exhibit 22,150 indicates that Reynolds was aware that at least some smokers
23 viewed its Doral advertisements as promising a health benefit if you switch to Doral?

24 A: Yes.

1 *No. I don't think you can conclude that from this document. You're quoting isolated remarks;*
2 *however, it appears that only 3-6% recalled the "Doral Diet" tag line, about 6-9% recalled the "700*
3 *mgs." phrase, and only 17-23% remembered low tar. They don't even seem to have a category to*
4 *measure "health" takeaway.*

5 **Q: Now, please look at U.S. Exhibit 4,789. This is a Doral Diet ad that Reynolds ran in the**
6 **August 4, 1975 edition of Sports Illustrated?**

7 A: Yes.

8 **Q: So this advertisement ran in August 1975, after the June 24, 1975 advertising research**
9 **report that we just looked at in U.S. Exhibit 22,150?**

10 A: Yes.

11 **Q: And U.S. Exhibit 4,789, the August 1975 Doral advertisement, features the headline**
12 **"How I lost 1400 mg. of 'tar' the first week... without losing out on taste"?**

13 A: Yes.

14 **Q: So U.S. Exhibit 4,789 mentions the loss of twice as much tar – 1400 mg. – as does the**
15 **June 30, 1975 advertisement we looked at earlier, U.S. Exhibit 4,746, which mentions a loss of**
16 **700 mg.?**

17 A: Yes.

18 **Q: Please review U.S. Exhibit 22,075. This is a 1975 Reynolds study regarding the**
19 **effectiveness of the alternate "Wise Up" advertising campaign for Doral?**

20 A: Yes.

21 **Q: On the first page of this document, number 9738, under the heading "Summary of**
22 **Findings," it states that "Attitude diagnostics indicated that smokers had no problem**
23 **understanding the 'Wise Up' campaign. Respondents felt that 'Wise Up's' main point was a**
24 **low tar and nicotine claim (84%) with some taste mentions (24%)"?**

25 A: Yes.

1 *Yes, that is what it says. This is the first time I have seen this that I recall.*

2 **Q: Please turn to page 9748. This page includes the study participants' impressions of the**
3 **Doral advertisements?**

4 A: Yes.

5 **Q: The first paragraph, last sentence states "The main idea they were trying to get across**
6 **was it's less dangerous to the health and better tasting"?**

7 A: Yes.

8 *Yes, that is what that smoker states.*

9 **Q: And the third paragraph states "I guess the idea is that Doral is safer to smoke, as it has**
10 **less tar and nicotine than others"?**

11 A: Yes.

12 *I don't see that in this paragraph.*

13 **Q: If you turn to page 9755, paragraph number 12 states in the last sentence "The main**
14 **point of the ad was you can have good taste and be a little less harmful, too"?**

15 A: Yes.

16 *Yes, that is part of what one smoker said.*

17 **Q: And the heading of these pages indicates that the smokers are referring to a Doral**
18 **advertisement that Reynolds placed in the February 10, 1975 edition of Time magazine?**

19 A: Yes.

20 **Q: Please take a look at U.S. Exhibit 22,103. This is a July 27, 1976 Reynolds letter**
21 **discussing Doral's marketing "positioning"?**

22 A: Yes.

23 *No it is not. It appears to be a letter to Ed Blackmer at Reynolds. I have never seen this before.*

24 **Q: If you turn to page 4148, the next to last paragraph under the heading "Target User**
25 **Group" states that "the NFF [non full flavor] smoker we are going after must be concerned**

1 about the health controversy. It is understood that we cannot necessarily target our media
2 against 'concerned' smokers, but that this must be accomplished via creative. Nevertheless, we
3 believe it is an important factor in further 'segmenting' our target audience”?

4 A: Yes.

5 Q: So this Reynolds document indicates a desire to "go after," or target, smokers who are
6 concerned about the health controversy?

7 A: Yes.

8 *No. It does not appear to be a Reynolds document. So I can't conclude that it reflects a desire or*
9 *decision of the company.*

10 Q: Now, Mr. Schindler, you are aware that at least some smokers smoke lights because
11 they think that lights are better for them?

12 A: Yes.

13 Q: But as we saw in your website exhibit, U.S. 72,410, Reynolds's public position is that it
14 uses low tar brand descriptors to differentiate cigarettes by strength of taste, not to
15 communicate health reassurance?

16 A: Yes.

17 *As I've pointed out earlier, I don't think you accurately described Reynolds' public position as*
18 *articulated on our website. In addition to taste, the low tar descriptors are used to differentiate*
19 *cigarette brand styles based on reported tar and nicotine yields. Moreover, the use of these*
20 *descriptors was consistent with the government and public health communities' recommendations to*
21 *Reynolds and other manufacturers to develop and market to consumers these low yield cigarettes.*

22 Q: You are aware that some percentage of smokers dislike the taste of lights but smoke
23 them anyway because they think they are better for them?

24 A: Yes.

25 *No, I wouldn't agree with that.*

1 **Q:** And there are Reynolds research documents that indicate that smokers are willing to
2 sacrifice taste for health reassurance?

3 A: Yes.

4 *I don't know.*

5 **Q:** Please review U.S. Exhibit 22,158. This is a November 17, 1975 report entitled "An
6 Evaluation of the 120MM Market and Its Potential for RJR" prepared for Reynolds?

7 A: Yes.

8 **Q:** At pages 1436-1437, under the heading "Reasons for Switching to Current Brand," it
9 states that "Smokers of High Filtration brands really believe they are killing themselves by
10 smoking. While they have not been able to give up smoking to date, they feel the low tar and
11 nicotine brands are much safer and much less of a health hazard. They are readily willing to
12 sacrifice taste for a 'longer life,'" did I read that correctly?

13 A: Yes.

14 **Q:** Please review U.S. Exhibit 85,036. This is a June 21, 1982 Product Research Report
15 entitled "Non-Menthol Ultra Low Tar Consumer Probes," created by the RJ Reynolds
16 Marketing Development Department?

17 A: Yes.

18 **Q:** And the second page, number 4460, indicates that the research was intended to provide
19 R&D with consumer input to help them better understand ultra low tar smokers?

20 A: Yes.

21 **Q:** Now, under the heading "Conclusions" on that page, it classified ultra low tar non-
22 menthol smokers into two groups: (1) smokers who are extremely concerned about tar levels
23 and (2) smokers who are moderately concerned about tar levels?

24 A: Yes.

1 **Q:** Continuing under that same heading, the report goes on to state that "Smokers who are
2 extremely concerned about tar levels primarily seek products that are lowest in tar. These
3 smokers are willing to trade-off such smoking benefits as strength, taste/flavor and ease of draw
4 for brands which may not deliver these benefits but which are lowest in tar"?

5 **A:** Yes.

6 **Q:** Then if you turn to page 4463, under the heading "ULT [Ultra Low Tar] Smoking
7 Experience" it states that when smokers were asked to compare the taste of ultra low tar
8 cigarettes to that of regular cigarettes, "Versus higher tar brands, respondents generally
9 characterized ULT cigarettes as having a harder draw, reduced smoke density - which they
10 expressed as 'smoking air,' less taste/strength/flavor, and less smoking sensation"?

11 **A:** Yes.

12 **Q:** So, according to this document, the taste of ultra low tar cigarettes was less desirable
13 than regular cigarettes?

14 **A:** Yes.

15 *Yes, that appears to be true at least initially for some of the smokers in the focus group, but others*
16 *according to that document preferred the milder taste of the ultra low tar cigarettes.*

17 **Q:** Mr. Schindler, please refer back to the website exhibit, U.S. 72,410 and turn to page
18 TLT0770118. Under the heading "Marketing Philosophy," the last sentence of the first
19 paragraph states "Reynolds Tobacco is not interested in trying to persuade any nonsmokers to
20 begin smoking or in persuading any smokers not to quit"?

21 **A:** Yes.

22 **Q:** Do you agree that this is a statement that has appeared on Reynolds's website?

23 **A:** Yes.

24 **Q:** Is it your position that Reynolds Tobacco is not interested in trying to talk any smokers
25 out of quitting?

1 A: Yes.

2 **Q: To your knowledge, Reynolds has always denied publicly that it is interested in talking**
3 **smokers out of quitting?**

4 A: Correct.

5 *To my knowledge we have not attempted to tell smokers that.*

6 **Q: But there are internal Reynolds documents that express a desire to prevent smokers**
7 **from quitting?**

8 A: Yes.

9 *During my tenure, I am not aware of any such documents. Based on my experience since October*
10 *1988, this has never been company policy.*

11 **Q: U.S. Exhibit 22,153 is a 1976 research document prepared for Reynolds discussing its**
12 **Limit brand cigarette, an ultra low tar cigarette?**

13 A: Yes.

14 *Yes, this document appears to have been sent to RJR by an outside ad agency. I have never seen this*
15 *document.*

16 **Q: Please look at page 4094. Under the heading "Need," the document states that "LIMIT**
17 **will satisfy the needs of smokers who wish for the ultimate in low 'tar' assurance – providing**
18 **the strongest health reassurances available in cigarettes today”?**

19 A: Yes.

20 *Yes, that appears to be what William Esty was suggesting. I do not recall that we marketed a brand*
21 *called Limit.*

22 **Q: So this document indicates a desire to market Limit cigarettes in such a way as to**
23 **provide smokers with health reassurance?**

24 A: Yes.

25 *Yes, that appears to be what the William Esty Company is suggesting.*

1 **Q: Please turn to page 4097. This page defines the "Target Audience" for Limit as "The**
2 **extreme worriers. That large group of smokers on the fringe of quitting who are on the verge of**
3 **that final step: quitting smoking all together. This enormous group of smokers of various ages**
4 **who have unsuccessfully tried to quit. Our target group will also include smokers whose**
5 **concern with the health implications of smoking surpass their needs for full flavor in a**
6 **cigarette”?**

7 **A: Yes.**

8 *Again, yes, that appears to be what the William Esty Company is suggesting.*

9 **Q: This document indicates a desire to market Limit to potential quitters?**

10 **A: Yes.**

11 *Yes, that appears to be the target audience that the William Esty Company is suggesting.*

12 **Q: Let me ask you about Vantage brand cigarettes. Vantage is a Reynolds brand that has**
13 **been marketed as a low tar cigarette?**

14 **A: Yes.**

15 **Q: Reynolds has marketed Vantage as an acceptable alternative to quitting?**

16 **A: Yes.**

17 *No, not in my experience.*

18 **Q: Take a look at U.S. Exhibit 5,198. This is a 1976 advertisement for Vantage that**
19 **Reynolds placed in Sports Illustrated magazine?**

20 **A: Correct.**

21 **Q: The ad reads, "To smoke or not to smoke, . . . That is the question”?**

22 **A: Yes.**

23 **Q: Continuing on, it states "With all the slings and arrows that have been aimed at**
24 **smoking, you may well be wondering why you smoke at all," and skipping down a bit, the**
25 **advertisement states "if you do smoke, you may enjoy it so much you don't want to stop”?**

1 A: Yes.

2 Q: And then skipping down, the ad states "Vantage is the cigarette that succeeds in cutting
3 down 'tar' and nicotine without compromising flavor" and skipping a bit more it states "If you
4 smoke try a pack of Vantage," and the last line of the advertisement states "It might settle the
5 question"?

6 A: Yes.

7 Q: And the "question" to be settled is whether "to smoke or not to smoke"?

8 A: Yes.

9 Q: Please direct your attention to U.S. Exhibit 4,403. This is a 1974 advertisement for
10 Vantage that Reynolds placed in Sports Illustrated magazine?

11 A: Yes.

12 Q: The bolded headline of the advertisement states "Instead of telling us not to smoke,
13 maybe they should tell us what to smoke"?

14 A: Yes.

15 Q: Then in smaller print below it states "For years, a lot of people have been telling the
16 smoking public not to smoke cigarettes, especially cigarettes with high 'tar' and nicotine. But
17 the simple fact is that now more Americans are smoking than ever before"?

18 A: Yes.

19 Q: Skipping down a bit it states "Since the cigarette critics are concerned about high 'tar'
20 and nicotine, we would like to offer a constructive proposal. Perhaps instead of telling us not to
21 smoke cigarettes, they can tell us what to smoke. For instance, perhaps they ought to
22 recommend that the American public smoke Vantage cigarettes"?

23 A: Yes.

24 Q: Please direct your attention to U.S. Exhibit 4,954. This is a 1975 magazine
25 advertisement for Vantage?

1 A: Yes.

2 **Q: This advertisement states "Out of the last 6 years of smoking, I've only enjoyed the last**
3 **5 months. I started to pay attention to all the fuss about smoking about 6 years ago. That's**
4 **when the uproar about 'tar' and nicotine started to get in the way of my pleasure. For me, it**
5 **made the real difference between just liking smoking and really enjoying it. I thought of**
6 **quitting, but I really didn't want to. So I decided to switch to a low 'tar' and nicotine**
7 **cigarette," and then towards the bottom the advertisement states that "for the last five months,**
8 **I've really enjoyed smoking Vantage"?**

9 A: Yes.

10 **Q: So the message of these Vantage advertisements we just looked at is that instead of**
11 **quitting, smokers can switch from their current higher tar brand to Vantage?**

12 A: Yes.

13 *I disagree with that. It seems to me that the message is that for smokers who have decided not to quit,*
14 *or who "really didn't want to," Vantage is a good-tasting low tar brand, as referenced in the quote*
15 *above.*

16 **Q: U.S. Exhibit 80,222 is a Reynolds memorandum dated July 9, 1980 entitled "Teenage**
17 **Smokers (14-17) and New Adult Smokers and Quitters"?**

18 A: Yes.

19 **Q: On page 5013, the first sentence on this page states "The purpose of this analysis is to**
20 **identify trends among new smokers and quitters, and to estimate their impact on company and**
21 **key brands' share"?**

22 A: Yes.

23 **Q: Reynolds was tracking the number of smokers who were quitting smoking?**

24 A: Yes.

25 *I have never seen this document before, but that appears to be true.*

1 **Q:** And according to this document, the purpose of tracking quitters was to estimate the
2 impact that this had on Reynolds's cigarette brand share?

3 **A:** Yes.

4 *Yes. But that is not a complete description: "The purpose of this analysis is to identify trends among*
5 *new smokers and quitters, and to estimate their impact on company and key brands share. It is not*
6 *designed to be used as a tool for developing marketing strategies for these population segments."*

7 **Q:** At page 5015, under the heading "Key Findings," the memorandum states that "There
8 is no indication as of yet that the ultra low tar category is walking smokers out of the market:
9 relative to their share, ultra low tar smokers are no more likely to quit smoking than are fuller
10 flavor low tar smokers or full flavor smokers"?

11 **A:** Yes.

12 **Q:** So this Reynolds research presupposes that ultra lights cigarettes could facilitate
13 quitting, and thus "walk smokers out of the market"?

14 **A:** Yes.

15 **Q:** In other words, the hypothesis was that ultra-lights would be a way of stepping down or
16 weaning yourself off cigarettes?

17 **A:** Yes.

18 **Q:** But the author of the document concludes that this was not in fact occurring; that ultra
19 low tar smokers were no more likely to quit smoking than are full flavor smokers?

20 **A:** Yes.

21 **Q:** Continuing onto the next page, number 5016, the last sentence of that same paragraph
22 states "New smokers and quitters by category will continue to be tracked in the future in order
23 to gain a better understanding of the effect ultra low tar category has on new smokers and
24 quitters"?

25 **A:** Yes.

1 **Q: So Reynolds intended to continue tracking the number of quitters in the future to see**
2 **how ultra light cigarettes were affecting quitting rates?**

3 A: Yes.

4 *That is what the document says.*

5 **Q: Let's talk more about marketing, okay?**

6 A: Yes.

7 **Q: As reflected in U.S. Exhibit 20,845, in 1992 Reynolds's Executive Vice President for**
8 **External Relations, Tom Griscom, reported that "actual business performance" data showed**
9 **"underage smokers" to have purchased a total of 510,000,000 Camel cigarettes?**

10 A: That's the figure he puts in the letter – ".51 billion."

11 *That appears to be the number estimated, based on Government data.*

12 **Q: Looking at the data he used, you would agree that this report of 510-million Camel**
13 **cigarettes purchased by minors is for a one-year period?**

14 A: I think that is safe to assume.

15 **Q: If you divide that by 20 cigarettes per pack, that figure gives you 25.5 million packs of**
16 **Camel cigarettes purchased by minors during that period?**

17 A: Yes.

18 **Q: And as we discussed earlier, the 2003 National Survey on Drug Use & Health shows (at**
19 **Table 7.48A) that translates into 363,000 twelve to seventeen year olds reporting smoking those**
20 **brands (Camel, Doral, Salem or Winston) within a month of being surveyed?**

21 A: Those were the survey results.

22 *I am not sure I can agree with that because your calculation is based on two different surveys taken*
23 *11 years apart.*

24 **Q: You were deposed on September 18, 2000 in the case of Thomas v. R.J. Reynolds**
25 **Tobacco Co., et al.?**

1 A: Yes.

2 **Q: At page 205 of that deposition transcript, you were asked, "I assume it is your position**
3 **that reduction of youth smoking is an important issue to R.J. Reynolds?"**

4 A: Yes.

5 **Q: Your response was, "Yes. If you didn't have underage smoking it would eliminate a**
6 **major issue that people are constantly coming at us with"?**

7 A: Yes.

8 **Q: You went on to say (at 206), "To me, youth smoking is a serious issue. The elimination**
9 **of it would make my life, and folks that work in this company and this industry, a lot easier"?**

10 A: Yes.

11 **Q: You've given a more polished version of your company's response to that question by**
12 **saying that minors should not smoke because persons of that age are not capable of making an**
13 **informed and rational decision about smoking?**

14 A: Yes.

15 *No. These are two separate issues. Reynolds believes that persons under the age of 18 should not*
16 *smoke because they lack the maturity of judgment to make an informed decision about whether to*
17 *smoke, and it's illegal. In the deposition I was observing that, in my view, the issue of youth smoking*
18 *was one of significant public scrutiny and for which we are blamed and attacked. If youth didn't*
19 *smoke that would remove a fairly frequent source of controversy about our business.*

20 **Q: Minors should not smoke because, in your opinion, cigarettes pose significant risks and**
21 **when you start smoking on a regular basis it can become difficult to quit and people at that age**
22 **are not mature enough to make that kind of judgment?**

23 A: Yes.

24 **Q: Part of that lack of maturity comes from the risk that minors are too vulnerable to peer**
25 **pressure?**

1 A: Yes.

2 *I've never thought of it as relating to peer pressure, even adults are subject to peer pressure. My*
3 *judgment is based on my belief that youth lack the maturity of judgment to make an informed decision*
4 *given the serious and inherent risks of smoking.*

5 **Q: You agree that scientists have estimated that if you smoke, you have a 10 or so times**
6 **greater risk of getting lung cancer?**

7 A: Yes.

8 **Q: But part of that lack of maturity that counsels against minors smoking is that they**
9 **won't take that risk seriously?**

10 A: Yes.

11 **Q: Some minors just might not understand the idea of an increased risk of getting lung**
12 **cancer at all?**

13 A: Yes.

14 *No, I think they understand it.*

15 **Q: And for others, even if they understand it, they might be willing to trade the faraway**
16 **seeming risk of potential harm in favor of short term rewards or reinforcement?**

17 A: Yes.

18 **Q: This immature risk calculation ability is shown not just in decisions about whether or**
19 **not to smoke, but also, for instance, in decisions such as whether or not to complete your high**
20 **school education versus taking a job that pays a little money now but not much in the future?**

21 A: That's a fair example.

22 *I disagree, that doesn't seem to be an appropriate analogy to me.*

23 **Q: Another example of a similar immature risk calculation ability might be decisions not to**
24 **get regular check-ups at the doctor even when you are not sick?**

25 A: I suppose that also is a fair example.

1 Again, I disagree. I don't think that is an appropriate analogy. In my experience, parents have a
2 great deal of control over when their children get check-ups. Moreover, many adults don't get
3 regular check-ups.

4 **Q: Especially if a lack of health insurance means that you or your parents have to pay cash**
5 **for the well-care check-up?**

6 A: Yes.

7 *I don't see how this relates to youth risk taking behavior.*

8 **Q: And when you talk about smoking being difficult to quit when you start doing it on a**
9 **regular basis, part of the problem is that children might not sufficiently be motivated to or have**
10 **the will to quit?**

11 A: Yes.

12 *I know that that may be true for adults and it may well be the case for children, but I don't know.*

13 **Q: Or that they will not be able to include in their calculus about whether to try to quit the**
14 **risk that if they don't, they are more likely to get cancer or another smoking-related illness at**
15 **some point in the future?**

16 A: I think that is what I have been saying.

17 *I am not sure I understand your question, but it is my belief that youth lack the maturity to make an*
18 *informed judgment about the health risks of smoking.*

19 **Q: And those are some of the reasons why you and Reynolds have publicly stated that**
20 **minors are just too vulnerable a population to smoke, even if it were legal for them to do so?**

21 A: That's correct.

22 *I don't think the reasons I have described match the reasons you have set forth in your question in*
23 *several instances. Our belief that persons under the age of 18 lack the maturity to make an informed*
24 *judgment is the primary basis for our position that they should not smoke; in addition, it is illegal to*
25 *sell to them in every state.*

1 **Q: The truth is, though, that it is precisely this sort of vulnerable population that Reynolds**
2 **has targeted with its marketing in the past, and for some of the very same reasons that you**
3 **publicly say that minors should be off limits?**

4 A: I categorically deny that.

5 **Q: When Reynolds has gone after women, it has in the past fifteen years specifically**
6 **targeted the just-legal, poorly educated and poorly-employed subset of that population, even if**
7 **that meant that they are among the least likely to have health insurance or other protections**
8 **against smoking related illness?**

9 A: No.

10 **Q: Reynolds has targeted these women precisely because they are least likely to quit,**
11 **despite the heightened potential consequences derived from their situation?**

12 A: Not true.

13 **Q: Reynolds has targeted this subset of women because, Reynolds concluded, they were less**
14 **health conscious and less inclined to take measures to ensure good health in their older age?**

15 A: No.

16 **Q: And when Reynolds has pursued the African-American community in the past, it has**
17 **targeted that portion of the population who, despite having an historically higher rate of**
18 **smoking-related illness, even when they are aware of that fact, "Fortunately for the Industry,**
19 **this health concern does not translate strongly to anti-smoking attitudes"?**

20 A: No.

21 **Q: Well, you clearly agree that the company makes more money if a person who has been**
22 **smoking chooses to continue smoking rather than chooses to quit?**

23 A: That's true.

24 **Q: Right, so if there is information coming at a smoker of Reynolds' products saying, "you**
25 **are at high risk; you should quit smoking or somewhere down the road you could become very**

1 **ill" and the person chooses to continue smoking anyway, that's good news for the financial**
2 **bottom line of the company?**

3 A: I suppose so.

4 *I haven't thought of this in this manner, but all smokers are informed of the risks and we make money*
5 *selling cigarettes to adults who choose to smoke.*

6 **Q: It's better news for the for the financial bottom line of the company than if this**
7 **Reynolds smoker decides to quit?**

8 A: I suppose so.

9 **Q: So that's the kind of smoker – someone who won't quit even when he is aware of grave**
10 **or mortal risks in continuing – you want Reynolds to get, rather than have your competitor get**
11 **him or her?**

12 A: I suppose so.

13 *No, we want adults who choose to smoke, to smoke our brands.*

14 **Q: Reynolds, and the cigarette industry in general, have had their greatest success by**
15 **selling to the poorest and least educated segments of the population?**

16 A: The smoking population skews to less education and less income.

17 *I don't believe that this is true historically, but I do believe that in recent years smokers on average*
18 *have somewhat lower educational levels than the population as a whole.*

19 **Q: Then let's first talk about education level and adult smoking?**

20 A: Yes.

21 **Q: According to the 1997 National Household Survey on Drug Abuse published by the**
22 **Substance Abuse and Mental Health Services Agency ("SAMHSA"), of adults considered**
23 **"heavy smokers" by virtue of smoking a pack of cigarettes or more per day, there is an inverse**
24 **relationship between amount of education and percentage of heavy smokers?**

25 A: That is what this report concludes.

1 *That may be true. But I'm not personally familiar with the report.*

2 **Q: The less education you have, the more likely you are to be a "heavy smoker"?**

3 A: That is what this report concludes.

4 *That may be true. I don't recall ever seeing this.*

5 **Q: Persons who did not graduate from high school were more than twice as likely to be**
6 **heavy smokers than were college graduates (18.5% of the former group; 8.2 % of the latter**
7 **group)?**

8 A: That is what this report concludes.

9 *That may be true. I don't recall ever seeing this.*

10 **Q: Persons who graduated high school but went no further were more than twice as likely**
11 **to be heavy smokers than were college graduates (17.1% of high school graduates; 8.2% of**
12 **college graduates)?**

13 A: That is what this report concludes.

14 *That may be true. I don't recall ever seeing this.*

15 **Q: You are familiar with this publicly available report, or at least your staff is?**

16 A: I believe so.

17 *That may be true. I don't recall ever seeing this.*

18 **Q: In fact, J.D. Exhibit 065391 suggests that some members of your External Relations**
19 **team were themselves looking at a preliminary version of the results of the 1997 study?**

20 A: Yes.

21 *No.*

22 **Q: You have no reason to dispute these data?**

23 A: No.

1 **Q: SAMHSA's 2001 National Household Survey on Drug Use and Health (J.D. Exhibit**
2 **066026) reports (at internal page 37) that with regard to smoking generally among adults, the**
3 **prevalence of cigarette smoking decreases with increasing levels of education?**

4 A: That is what this report concludes.

5 **Q: Among adults aged 18 or older in 2001, college graduates were the least likely to report**
6 **smoking cigarettes (13.8 percent) compared with 26.7 percent of adults with some college, 32.1**
7 **percent of adults with only a high school diploma, and 33.8 percent of adults who lacked a high**
8 **school diploma?**

9 A: That is what this report concludes.

10 **Q: "Past-month" cigarette use was reported by 32.9 percent of full-time college students**
11 **compared with 44.6 percent of their peers who were not enrolled full time, or not enrolled at**
12 **all?**

13 A: That is what this report concludes.

14 **Q: You are familiar with this publicly available report, or at least your staff is?**

15 A: I believe so.

16 *I am not personally familiar with this report.*

17 **Q: You have no reason to dispute these data?**

18 A: No.

19 **Q: And with regard to your agreeing that the smoking population skewing to lesser income**
20 **populations, the 1997 National Survey on Drug Use and Health finds that 23.8% of unemployed**
21 **adults in the survey were "heavy" smokers – smoking a pack of cigarettes or more per day –**
22 **compared to 15.1% of those adults who were employed full-time being heavy smokers?**

23 A: That is what this report concludes.

24 *That may be true. I'm not personally familiar with the report.*

1 **Q: The 2001 National Survey on Drug Use and Health finds that rates of current cigarette**
2 **smoking were 40.6 percent for unemployed adults in 2001 compared with 28.6 percent of adults**
3 **employed full-time?**

4 A: That is what this report concludes.

5 **Q: You have no reason to dispute these data?**

6 A: No.

7 **Q: Your company has sought to capitalize on these trends?**

8 A: In some ways, yes?

9 *I don't agree we try to capitalize on the trends you are referring to. I've never thought about it this*
10 *way. We direct our efforts towards those adults who choose to smoke.*

11 **Q: For instance, "Less educated – Today's Trend ... Tomorrow's Market???" (U.S. Exhibit**
12 **89,342) is a report Reynolds issued internally in 1985?**

13 A: Yes.

14 **Q: That report noted that only 12% of the current adult market have a college degree or**
15 **more?**

16 A: Yes.

17 **Q: It concluded that while the older adult smoker market (35+) will become more educated**
18 **owing to the "aging of the very well educated baby bubble," the younger adult market (18-34)**
19 **will become increasingly less educated?**

20 A: Yes.

21 **Q: This report noted that, "since the onset of anti-smoking campaigns, people with higher**
22 **educational aspirations have become less likely to smoke" and as a result, the younger adult**
23 **market has become less educated than its predecessor, and "all evidence suggest this trend will**
24 **continue"?**

25 A: Yes.

1 **Q: The report concluded that this was a "new/emerging market opportunity"?**

2 A: Yes.

3 *No. I believe you have misquoted the document. On the last page under the heading "Implications,"*
4 *it states "The 'less educated' smoker does not represent a new brand opportunity in the traditional*
5 *sense of a new/emerging marketing opportunity."*

6 **Q: And that it would take about 20 years for this trend to have an impact on the market as**
7 **a whole?**

8 A: Yes.

9 **Q: If this prediction is correct, then 2005 is when it will hit?**

10 A: Yes.

11 *I don't know what you mean; it appears to refer to an evolving trend and you have to keep in mind*
12 *that most forecasts from 20 years ago have not proven true.*

13 **Q: In 1988 you joined Reynolds's Executive Committee?**

14 A: Yes.

15 *Yes, but at that time it was called the Operating Committee.*

16 **Q: In 1989, you were promoted to Senior Vice President for Operations at Reynolds**
17 **Tobacco?**

18 A: That's correct.

19 *My title was Senior Vice President for Manufacturing, Engineering and Quality Assurance.*

20 **Q: And you still were a member of the Company's Executive Committee?**

21 A: That's correct.

22 *Yes, but it was called the Operating Committee.*

23 **Q: At that time, the Executive Committee would meet weekly or almost weekly and each**
24 **member would give an update on what was going on with his or her part of the Company?**

25 A: Yes.

1 *Yes, but it was called the Operating Committee.*

2 **Q: And among the people present at those meetings were individuals whose department**
3 **was responsible for marketing?**

4 A: Yes.

5 *Yes, the head of marketing was a member of the Committee.*

6 **Q: Also present were individuals whose department was responsible for new product**
7 **development?**

8 A: Yes.

9 *Yes, the head of R&D was a member of the Committee.*

10 **Q: And someone whose department was responsible for R&D?**

11 A: Yes.

12 *Yes, as I just said.*

13 **Q: And marketing issues certainly came up and were discussed during these Executive**
14 **Committee meetings?**

15 A: Yes.

16 *Yes, but it was called the Operating Committee.*

17 **Q: In addition to the Reynolds people, back in 1989 or 1990, every quarter members of the**
18 **Executive Committee would meet with the top executives of the parent, RJR-Nabisco, for an**
19 **operating review – to present the business and issues to them?**

20 A: Yes.

21 *Yes, there were quarterly meetings of the Operating Committee that some members would attend.*

22 **Q: And you participated in those quarterly meetings, as well?**

23 A: Yes.

24 **Q: So you were made aware and kept abreast of issues arising throughout different parts of**
25 **the Company during those years?**

1 A: Yes.

2 **Q: According to Reynolds's 1990 Business Plan (U.S. Exhibit 89,345), by the first half of**
3 **1987 the Company's retail market share had peaked and was in decline?**

4 A: Yes.

5 **Q: This report was presented in December 1989?**

6 A: That's correct.

7 **Q: The Company concluded that it has been losing smokers faster than it had attracted**
8 **new smokers and switchers?**

9 A: Yes.

10 **Q: The report found that Reynolds's smoker population has been concentrated in the older**
11 **smoker with a significant deficit among younger adult smokers?**

12 A: Yes.

13 **Q: It found, for instance, that Reynolds's share of younger adult smokers was much less**
14 **than its share of total smokers – 14% vs. 30.5%?**

15 A: Yes.

16 **Q: And another Reynolds report from that year – U.S. Exhibit 89,344 – estimated that**
17 **Reynolds loses nearly 0.6 share points annually "due to its low development among YAS**
18 **[Young Adult Smokers] and large shares among older smokers" and concludes that "Unless**
19 **RJR is able to improve performance among YAS," it will become increasingly difficult to**
20 **achieve volume/earnings growth"?**

21 A: Correct.

22 **Q: The problem Reynolds identified (in the 1990 Business Plan – U.S. 89,345) with having a**
23 **predominantly older "franchise" was that this group has a greater propensity to switch to**
24 **lower price brands or quit?**

25 A: Yes.

1 **Q: So Reynolds decided to target younger smokers?**

2 A: What do you mean?

3 **Q: The 1990 Business Plan (U.S. Exhibit 89,345) called for a strategy for 1990-1993 to build**
4 **share among younger adult smokers "to position RJRT for long term growth"?**

5 A: Correct.

6 **Q: To pursue this strategy, Reynolds planned to devote 43% of its 1990 marketing budget**
7 **to "build younger adult smoker share"?**

8 A: Yes.

9 **Q: Reynolds 1989 internal report, "Smoker Dynamics" (U.S. Exhibit 89,344), similarly**
10 **concluded (at page 1563) that, "Y[ounger]A[dult]S[moker] are the only source of replacement**
11 **smokers"?**

12 A: Yes.

13 **Q: Part of the younger adult smoker strategy announced in the 1990 Business Plan (U.S.**
14 **Exhibit 89,345 at page 13) was to launch "two new brands to assess opportunities among key**
15 **YAS sub-segments"?**

16 A: Yes.

17 *Yes, it planned to test market two new brands.*

18 **Q: One new brand was to grow out of Project VF – which was designed to attack**
19 **Marlboro's vulnerability among younger adult female smokers?**

20 A: Yes.

21 **Q: And the second new brand was to grow from Project UT, which was targeted to**
22 **Newport's strong franchise among younger adult Black smokers?**

23 A: Yes.

24 **Q: Project UT, according to the Business Plan (at page 56) was part of Reynolds's "Black**
25 **Initiative" to increase Reynolds's share of 18-20 year old black smokers by 2.5 points in 1990?**

1 A: Yes.

2 Q: Let's talk about Project VF first, okay?

3 A: Okay.

4 Q: "VF" stands for "Virile Female" and grew out of something at Reynolds called "Project
5 Delta"?

6 A: Yes.

7 Q: Ultimately, "VF" resulted in Reynolds's "Dakota" cigarette?

8 A: Yes.

9 Q: Dakota sold in test market in a few cities for about two years, starting in 1990?

10 A: Yes.

11 Q: Let's start with Project Delta. Delta began around September 1988?

12 A: Yes.

13 Q: It was a task force at Reynolds which combined specialists from research and
14 development, brand management, and marketing research to form a special task force designed
15 to develop new brand ideas targeted to 18-24 year old smokers?

16 A: Yes.

17 Q: In 1989, Reynolds issued an internal report we have talked about, "Smoker Dynamics"
18 – U.S. Exhibit 89,344?

19 A: Yes.

20 Q: This report traced data from 1965 to 1987, and states (at page 1550) that ""females
21 have become more important in the cigarette market because smoking incidence has declined
22 less among women than among men"?

23 A: Yes.

24 Q: For instance, the report noted that females' incidence of smoking had declined 2.8%
25 between 1980 and 1985, less than half of the decline seen in male populations?

1 A: Yes.

2 **Q: It also concluded (at 1552-1554) that, "Smoking incidence is highest among downscale**
3 **consumers and it has also declined less among this group"?**

4 A: Yes.

5 **Q: The report relied on data about smoking incidence by socioeconomic status and**
6 **smoking incidence by education level to support this conclusion?**

7 A: Yes.

8 **Q: Accordingly, the report noted further (at 1555) that "RJR needs to be sensitive to the**
9 **growing gap between well educated marketers/advertisers and the less educated smoker"?**

10 A: Yes.

11 **Q: And as we mentioned before, it went on to conclude (at page 1563) in its "Market**
12 **Overview" section that, "YAS" [Younger Adult Smokers] are the only source of replacement**
13 **smokers"?**

14 A: You've pointed that out, yes.

15 **Q: And then it identifies (at page 1572) "Project Delta" as one of RJR's programs to**
16 **"improve [its] performance among YAS"?**

17 A: Yes.

18 **Q: U.S. Exhibit 51,128 is an April 25, 1989 document entitled, "Project VF Qualitative**
19 **Research – [Secret] Marketing Research Report No. 378"?**

20 A: Yes.

21 **Q: There (at page 7118) it states that Delta Task Force identifies a new brand opportunity**
22 **among younger adult female smokers?**

23 A: Yes.

24 **Q: Specifically, Delta concluded that 62% of 18-20 yr old female smokers had Marlboro as**
25 **their usual brand, and that current "female brands" don't provide meaningful positioning**

1 **against younger adult females to compete with Marlboro, leaving Marlboro as the best**
2 **available option for them?**

3 A: Yes.

4 **Q: So Delta concluded that an opportunity existed to develop a cigarette brand which**
5 **provided 18-20 year old female smokers with an alternative to Marlboro"?**

6 A: Yes.

7 **Q: And field research revealed that the "VF" and "Dakota" positioning approach they**
8 **tested was the most favorable concept to fill that opportunity?**

9 A: Yes.

10 **Q: The methodology employed in the field work that reached this conclusion was a series of**
11 **focus groups and one-on-one interviews conducted in Philadelphia with female Marlboro**
12 **smokers aged 18-20?**

13 A: Yes.

14 **Q: These focus groups and interviews were moderated by Dr. Gene Shore?**

15 A: That's what the document says.

16 **Q: Dr. Shore is a psychologist?**

17 A: Yes.

18 *I don't recall what his professional background was.*

19 **Q: And he was a psychologist at the time he conducted this field research for Reynolds?**

20 A: Yes.

21 **Q: U.S. Exhibit 89,338 dated June 1989, is another "Project VF Qualitative Research –**
22 **[Secret] Marketing Research Report" and reflects that Dr. Shore moderated additional focus**
23 **groups and one-on-one interviews in Atlanta with female Marlboro smokers aged 18-20?**

24 A: Yes.

1 **Q: This research confirmed the strength of Dakota proposition and identified that the**
2 **primary desire of this group is to one day get married and have children?**

3 **A: Yes.**

4 *Yes, for many in the focus group it appears that was the primary desire.*

5 **Q: U.S. Exhibit 51,140 shows that in August 1989, Reynolds reported that more focus**
6 **groups were to be moderated by Dr. Gene Shore in Chicago?**

7 **A: Yes.**

8 **Q: The document reflects that these focus groups involved female Marlboro smokers aged**
9 **18-20, but only those who had "no education beyond high school"?**

10 **A: Yes.**

11 **Q: And so, out of Delta came Dakota which, according to Reynolds "State of the Business**
12 **From Brands R&D Perspective – January 1990" (U.S. Exhibit 89,343 at 4941) was a "full flavor**
13 **product designed for virile younger adult females – specifically Marlboro females with their**
14 **unmet image desires"?**

15 **A: Yes.**

16 **Q: The "virile" in Virile Female is from "Virile" being one of five market segments into**
17 **which RJR divided the smoking population in the 1980s, based on an assessment of "smoker**
18 **wants"?**

19 **A: Yes.**

20 *Yes, except at the time there were six segments.*

21 **Q: These five segments, along with "virile," included "coolness," "stylish," "moderation,"**
22 **and "concerned"?**

23 **A: Yes.**

24 *No, I believe you left out the "traditional" and "savings" segments and split the "moderation/concern"*
25 *segment into two.*

1 Q: As early as 1986, in its "New Brands Strategic Plan" (U.S. Exhibit 89,341 at 3605), the
2 Company had concluded that that despite overall declines in domestic cigarette sales, the
3 "virile" segment had shown share-of-market stability since about 1960?

4 A: Yes.

5 *I see the statement that the "virile" segment had shown share-of-market stability since about 1960,*
6 *but I do not see a reference to overall declines in domestic cigarette sales.*

7 Q: As reflected in Reynolds "Virile Segment, The Right Stuff" document (U.S. Exhibit
8 89,339, the company surveyed over 3,400 smokers to determine the characteristics of the
9 "virile" smoker?

10 A: Yes.

11 Q: In looking at the "core belie[f]s" of the "virile" segment (on page 2000), Reynolds found
12 that the single greatest distinguishing "social and personal attitude" between "viriles" and the
13 rest of the smoking population was that the viriles were the least likely to get regular physical
14 checkups?

15 A: Yes.

16 *That's what the document says.*

17 Q: Reynolds found the viriles were also less likely to "take measures to have good health
18 when I get old"?

19 A: Yes.

20 *That's what the document says.*

21 Q: This led Reynolds to conclude that the viriles are "less health conscious" than even the
22 rest of the smoker population?

23 A: Yes.

24 *I see those quoted words here and presume this is a comparison to the other segments.*

1 **Q: Smokers who are the "less health conscious" subsection of the smoker community –**
2 **would you agree that the smoker community is, in general, less health conscious than the non-**
3 **smoking population?**

4 **A:** I don't know.

5 *I don't know, but I do know that smokers smoke with the awareness of its health risks.*

6 **Q: If you did agree, wouldn't that mean that the virile smoker was the "worst of the worst"**
7 **in terms of health consciousness?**

8 **A:** I don't know.

9 **Q: If the public health authorities are correct that a smoker has a 10 times greater risk of**
10 **getting lung cancer than a non-smoker, these core beliefs and attitudes about health among**
11 **viriles are a recipe for disaster, aren't they?**

12 **A:** I don't know.

13 **Q: It's reasonable to conclude that those least likely to have regular physical checkups are**
14 **also the least likely to have early detection of tumors or other signs of forthcoming onset of**
15 **debilitating illness?**

16 **A:** Yes.

17 *That may be true, I don't know.*

18 **Q: It's bad enough if you are at 10 times greater risk of getting cancer if you smoke, but**
19 **isn't it logical to conclude that if, on top of this, you are least likely to detect it early makes you**
20 **among the most likely that you are going to die from cancer, rather than beat it?**

21 **A:** Yes.

22 *That may be true, I don't know.*

23 **Q: And if you add to that a general attitude about not "tak[ing] measures to have good**
24 **health when I get old," doesn't that reflect or suggest a person highly incapable of doing a**
25 **mature risk calculation when confronted with the decision to start smoking?**

1 A: Yes.

2 *No. The choices made by people in this broad category do not necessarily mean that they are*
3 *incapable of making informed decisions about which risks they are willing to accept and those they*
4 *are not. If your theory were correct, this entire segment of the adult population would be deemed*
5 *incapable of making normal, legal, adult decisions about how to conduct their own lives.*

6 **Q: Mix in the fact that, as you say, smoking is a difficult habit to give up, and you have a**
7 **person who has less incentive to quit even in the face of prospective health problems?**

8 A: That's possible.

9 *I don't understand the question.*

10 **Q: These questions flesh out a description of a person similar to the characteristics of the**
11 **minor who you do not want to be smoking?**

12 A: No; they are adults

13 *No. They are adults capable of making informed personal decisions about which risks to accept or*
14 *reject.*

15 **Q: Let's look further – in a Reynolds document the cover page of which says "Virile**
16 **Segment Demographics" (U.S. Exhibit 89,340 at 8492), is a description of the virile smoker as**
17 **someone who is "less upscale"?**

18 A: Yes.

19 **Q: To the extent that "less upscale" correlates with "less likely to have health insurance**
20 **even if you are working," do you agree that this demographic characteristic puts the "less**
21 **health conscious" smoker at even greater risk of death or serious illness?**

22 A: I don't know.

23 **Q: You are not an epidemiologist?**

24 A: No.

1 **Q: In fact, so long as you have been associated with Reynolds, the Company has never had**
2 **a full time epidemiologist on its staff?**

3 A: Not to my knowledge.

4 **Q: Another characteristic of the virile smoker, according to Reynolds's "Virile Segment**
5 **Demographics" (U.S. 89,340 at 8492), is that two-thirds of them do not have a college**
6 **education?**

7 A: That's what the report says.

8 **Q: That's where you targeted Dakota?**

9 A: Possibly.

10 *I don't know.*

11 **Q: U.S. Exhibit 51,140 shows that by August 1989, your retained psychologist, Dr. Gene**
12 **Shore, had zeroed in his qualitative research for Dakota strictly on 18-20 year old female**
13 **smokers who had "no education beyond high school"?**

14 A: Yes.

15 *I haven't seen this document before but this study focuses on this age group.*

16 **Q: And Reynolds agreed with that operating premise?**

17 A: Reynolds did not disagree.

18 *I don't know what you are asking me.*

19 **Q: U.S. Exhibit 89,353 is an April 1989 Reynolds memo entitled "Project VF" which**
20 **describes the "target demographic" as an 18-20 year old female Marlboro smoker, "majority**
21 **no education beyond high school" with "low-middle income long term earning potential"?**

22 A: Yes.

23 **Q: Please look at U.S. Exhibit 89,350?**

24 A: Okay.

1 **Q: In June 1989, Trone Advertising – the advertising agency of record for Dakota –**
2 **described (at internal page 4) the “target customer[‘s]” demographics as follows:**

3 **Age/gender Caucasian Females, Age 18-20 (secondarily 21-24)**

4 **Education No education beyond high school**

5 **Occupation Entry level service or factory job**

6 **Is that correct?**

7 **A: Yes.**

8 **Q: Trone further describes the target customer’s employment lifestyle to be “Now working**
9 **at whatever job she can get; high level of unemployment and part-time”?**

10 **A: Yes.**

11 **Q: And the target customer’s aspirations included “to have a relationship with a man” and**
12 **“to get married in her early twenties and have a family”?**

13 **A: Yes.**

14 **Q: She “spends her free time . . . with her boyfriend doing whatever he is doing”?**

15 **A: Yes.**

16 **Q: In U.S. Exhibit 89,352 at page 8366, Trone’s “Year 1 Promotion Recommendations”**
17 **states, “Promotions for this target must be easy to understand and require little or no effort,**
18 **‘thinking,’ or action to participate”?**

19 **A: Yes.**

20 **Q: Reynolds joined Trone in this assessment?**

21 **A: Trone was our agent, yes.**

22 *I don't know.*

23 **Q: U.S. Exhibit 89,337 is a July 1989 memo from Laura Bender to Don White of Trone**
24 **Advertising?**

25 **A: Yes.**

1 **Q: Ms. Bender was then a Senior Brand Manager for New Brands at Reynolds and the**
2 **person there who led the team that developed Dakota and launched it into test market?**

3 **A: Yes.**

4 *I remember her name; and that may have been her title.*

5 **Q: Ms. Bender told Mr. White that based on the information gleaned from focus groups for**
6 **Dakota, "effective promotions cannot be too complicated, mentally taxing or require much**
7 **consumer planning/followup"?**

8 **A: Yes.**

9 **Q: U.S. Exhibit 89,336 is a December memo from Bender to her supervisor Ned Leary,**
10 **"Dakota Smoker Profile for Sales Conference," which describes the "typical Dakota smoker**
11 **[as] fairly downscale with a high school education or less and generally has an 'unskilled' job ...**
12 **[who] seldom reads magazines"?**

13 **A: Yes.**

14 **Q: So, taking all this information, now Reynolds had a composite picture of a "target**
15 **customer" for Dakota who is "virile" segment female smoker as young as 18 years of age with**
16 **or without a high school diploma and little or no job, who is not health conscious and is not**
17 **getting regular checkups and is not thinking down the road about her health?**

18 **A: That is one composite.**

19 *I don't know. That is not the target for the brand as it went to test market.*

20 **Q: What you also knew about this composite is that she likes to do whatever her boyfriend**
21 **does – does that describe a teenager who is subject to peer pressure?**

22 **A: It may be, but here it describes an adult.**

23 *The research in every document you have shown me relates to adult smokers 18 and older.*

24 **Q: Well, take a look at U.S. Exhibit 51,139 – it's an August 31, 1989 memo on Trone letter**
25 **head addressed to Laura Bender?**

1 A: Yes.

2 Q: The topic is "Summary of VF Qualitative Research Chicago, August 28-29, 1989"?

3 A: Yes.

4 Q: On the second page, under "Research Findings," the author tells Bender, "Overall it
5 became very evident how much peer pressure affects women within this age segment"?

6 A: Yes.

7 Q: The memo continues, "Followers were easily swayed by the opinion leaders in each
8 group. Some of the respondents even went so far as to change their own written opinions of the
9 ads to match what others were saying"?

10 A: Yes.

11 Q: So, even if you do not accept that conclusion, it is fair to say that Reynolds was told by
12 the advertising company it hired to promote Dakota that the target population was very
13 susceptible to peer pressure?

14 A: It's fair to say.

15 Q: Now, add into the mix the fact that Reynolds was aware that this not-health-conscious
16 teenager who does not get regular check-ups also wants to get married in her early twenties and
17 have babies?

18 A: Yes, those are two characteristics in the context of this composite.

19 *I don't understand that question.*

20 Q: Reynolds also knew at the time that the public health community believed that one of
21 the risks to women who smoke is infertility?

22 A: Yes.

23 *I don't know that specifically, but I would presume the company would be aware of claims of this*
24 *nature by the public health community.*

1 **Q: And Reynolds also knew at the time that the public health community believed that**
2 **pregnant women who smoke have significantly higher rates of spontaneous abortion, premature**
3 **delivery, and still births?**

4 **A: Yes.**

5 *I don't know that specifically, but I would presume the company would be aware of claims of this*
6 *nature by the public health community. It was one of the congressionally-mandated warnings.*

7 **Q: Despite these heightened risks and the risk that they were exacerbated by the personal**
8 **characteristics of these young women, Reynolds still wanted to sell these young women Dakota**
9 **cigarettes?**

10 **A: They were adult smokers.**

11 *As I have indicated, my recollection is that the target when this went to test market was male and*
12 *female adult smokers.*

13 **Q: You did testify earlier that, whether legal or not, there are some personality**
14 **characteristics – peer pressure-susceptible, poor at evaluating risks, immature – who should not**
15 **be smoking?**

16 **A: I said that about minors.**

17 *No, in addition to it being illegal, what I said was that Reynolds' view is that youth lack the maturity*
18 *of judgment to make an informed decision about smoking given its serious and inherent health risks.*

19 **Q: On Feb 17, 1990, the Washington Post published a front page story about Dakota prior**
20 **to its being released into test market?**

21 **A: Yes.**

22 **Q: This is U.S. Exhibit 89,359?**

23 **A: Yes.**

24 **Q: Fair to say that Reynolds perceived this to be a critical story?**

25 **A: Fair to say.**

1 **Q: Reynolds knew this story was coming out before it went to press?**

2 A: We learned that it might be coming.

3 *I don't know that.*

4 **Q: Take a look at U.S. Exhibit 52,291 – that is the November 5, 1998 deposition of Laura**
5 **Bender in the Richardson v. Philip Morris case?**

6 A: Yes.

7 **Q: Toward the back of the document is Deposition Exhibit no. 10,415 – that is a February 6**
8 **1990 memo from Laura Bender to L.J. Beasley?**

9 A: Yes.

10 **Q: "L.J. Beasley" is Lynn J. Beasley?**

11 A: Yes.

12 **Q: Presently, Lynn Beasley is President and Chief Operating Officer of Reynolds Tobacco**
13 **Company?**

14 A: Yes.

15 **Q: At the time of this memo, in February 1990, Ms. Beasley was vice president of strategic**
16 **marketing?**

17 A: I believe so.

18 *I don't remember her title at that time.*

19 **Q: "Vice President of Strategic Marketing" is a management position at the company?**

20 A: Yes.

21 *It may have been at the time.*

22 **Q: So, Ms. Beasley was on the Company's Executive Committee at the time?**

23 A: Yes.

24 *No.*

25 **Q: As were you?**

1 A: Yes.

2 **Q: You also interacted with Ms. Beasley then because of your position in charge of**
3 **Operations?**

4 A: Yes.

5 *Infrequently at this time.*

6 **Q: In fact, she sort of followed you up the Reynolds Company ladder and, prior to the**
7 **merger, she was just behind you in terms of running the company?**

8 A: Yes.

9 *At the time of the merger she was the President and Chief Operating Officer.*

10 **Q: In this memo, on the first page, Bender tells Beasley about anticipated issues likely to**
11 **arise due to Dakota's introduction and says that this memo summarizes "the Brand Division's**
12 **recommended response plan"?**

13 A: Yes.

14 **Q: She reports, in light of press in Adweek and an Atlanta newspaper, that they anticipate**
15 **criticism of Dakota because of its female targeting?**

16 A: Yes.

17 **Q: The Brand Division's first recommended response, in order of priority, was to "deny**
18 **female positioning"?**

19 A: Yes.

20 **Q: And the rest of the recommendations below that were to be used only "if**
21 **criticism/skepticism persists"?**

22 A: Yes.

23 **Q: Denying the female positioning of Dakota would have been untruthful?**

24 A: That's right.

25 *It would have been untruthful to deny that females were included in the target population.*

1 Q: In addition to all the other documents we have seen, take a look at U.S. Exhibit 89,354 –
2 an October 17, 1989 document entitled, "Project VF – Project Review Committee"?

3 A: Yes.

4 Q: This document describes the Project VF objective as "replac[ing] Marlboro as the most
5 relevant brand among young adult female smokers" and defines its "action standard" as
6 "parity to Marlboro among 18-20 year old female smokers"?

7 A: Yes.

8 *Yes, except the word "competitive" should be added before "smokers".*

9 Q: U.S. Exhibit 89,336 is a December 7, 1989 memo from Laura Bender to Ned Leary?

10 A: Yes.

11 Q: Mr. Leary was a superior of Ms. Bender's in Brands at the time?

12 A: I believe so.

13 Q: This document, "Dakota Smoker Profile for Sales Conference" describes the "typical
14 Dakota smoker [as] ... an 18-24 year old female ... [who] is fairly downscale with a high school
15 education or less and generally has an 'unskilled' job"?

16 A: Yes.

17 Q: U.S. Exhibit 89,355 is a December 20, 1989 letter from Laura Bender to "VF Team
18 Members" noting, "Also, let's not let anyone cause us to lose sight of our true focus – we're a
19 younger adult female targeted brand, and if it's not right for the target, it's not right for the
20 brand"?

21 A: Yes.

22 Q: And "target" here is underlined in the memo?

23 A: Yes.

1 **Q: So, in light of all these documents, would you agree that if the Company took the advice**
2 **of the Brands division and denied the female targeting of Dakota in the press or other public**
3 **statements, that would not have been honest?**

4 **A: Yes.**

5 *As I said, it would have been untruthful to deny that females were included in the target population.*

6 **Q: But, in fact, that is just what Reynolds did?**

7 **A: Yes.**

8 *No.*

9 **Q: Please look at U.S. Exhibit 89,360 – in Reynolds's press release in response to the**
10 **Washington Post story, then-CEO James Johnston stated, "The Dakota marketing plan is**
11 **focused on adult Marlboro smokers – nothing more, nothing less[]"?**

12 **A: Yes.**

13 **Q: No mention of women only?**

14 **A: Correct.**

15 *Yes. The press release refers to the intended target being male and female adult smokers.*

16 **Q: No mention of women as the primary target group?**

17 **A: Correct.**

18 **Q: No mention here of an 18-20 or 18-24 age group?**

19 **A: Correct.**

20 **Q: So, Johnston made an untruthful statement?**

21 **A: Yes.**

22 *No, for the reasons I previously indicated.*

23 **Q: And when Reynolds issues a press release, it is intended to be stating its public position**
24 **on an issue?**

25 **A: Yes.**

1 **Q: So that was an untruthful public statement?**

2 A: Yes.

3 *No, for the reasons I previously indicated.*

4 **Q: One last set of questions about Dakota – the documents we've seen mention that Dr.**
5 **Gene Shore moderated focus groups and other qualitative research such as one-on-one**
6 **interviews during the development of Dakota?**

7 A: Yes.

8 **Q: Gene Shore was a licensed psychologist?**

9 A: Yes.

10 *As I indicated before, I don't recall his professional background.*

11 **Q: You have taken the position that you won't use a psychologist to study ads to see if they**
12 **appeal to children?**

13 A: That's correct.

14 **Q: You won't take that route even if it is for the purpose of making sure that one of your**
15 **ads does not appeal to children?**

16 A: Correct.

17 **Q: That was your testimony (at pages 49-52) in your June 12, 2002 deposition in this case?**

18 A: Yes.

19 *Yes, essentially. I believe I was asked about hiring a child psychologist or hiring an expert in*
20 *marketing to children. I indicated that Reynolds doesn't hire people who specialize in child*
21 *marketing because such an effort would likely be misconstrued as an effort to market to that*
22 *population.*

23 **Q: Yet with regard to Dakota, Reynolds was willing to and did use a psychologist to study**
24 **what would appeal to 18 year old girls who were very susceptible to peer pressure?**

25 A: Yes.

1 *You are implying that is why he was hired, I just don't know that.*

2 **Q: Now, the other new brand Reynolds was seeking to introduce in the 1989-1990 time**
3 **period was "Project UT" or "Uptown"?**

4 A: Yes.

5 **Q: Ultimately, Uptown never made it to market because the product was withdrawn as the**
6 **result of a controversy that emerged about how it was targeted for African Americans?**

7 A: Yes.

8 **Q: But going back to how it was developed, Project UT was to focus on African-American**
9 **smokers?**

10 A: Yes.

11 *Yes, African-American competitive adult smokers.*

12 **Q: The truth is, the subset of the African-American community Project UT was targeting**
13 **was the young, poor, and uneducated?**

14 A: Yes.

15 *No, it tried to focus on African-American competitive adult smokers.*

16 **Q: Targeting the young, poor, and uneducated subset of the African-American community**
17 **had for decades been an area of focus at Reynolds?**

18 A: They are within the community of African-Americans whose business we have sought.

19 *I don't know that.*

20 **Q: Well, as we've discussed, Project UT was part of Reynolds's "Black Initiative" to**
21 **increase Reynolds's share of 18-20 year old black smokers by 2.5 points in 1990?**

22 A: Yes.

23 **Q: But this sub-population had been in Reynolds's sights since at least the early 1970s?**

24 A: It's true that Reynolds had focused since the early 1970s on increasing sales to young
25 African-American smokers.

1 *I have general awareness that Reynolds wanted to be more competitive in the market for younger*
2 *adult African-American smokers. I was aware of that fact in the 1980s, and have since seen*
3 *documents in the course of litigation relating to that issue.*

4 **Q: U.S. Exhibit 85,228 consists of a Reynolds Marketing Research Department employee**
5 **sending (in December 1973) a packet of information to the New York advertising agency**
6 **Rosenfeld, Sirowitz & Lawson including "profiles of smokers age 14-20" and "our 1973 Negro**
7 **Market Audits" with an eye towards collaborating on a project apparently involving Salem,**
8 **"young people and blacks"?**

9 A: The packet and the cover letter contain and reference those elements, yes.

10 **Q: U.S. Exhibit 89,349 is a 1974 Reynolds document , "Exploratory Research for Salem**
11 **Cigarettes," that summarized "in depth" qualitative research "to aid in the development of a**
12 **creative strategy for the Salem brand"?**

13 A: Yes.

14 **Q: The first two pages reflect that this research involved seven focus groups of 18-21 year**
15 **olds in New York and Chicago?**

16 A: Yes.

17 **Q: Starting at page 6388 of this document, there is a section entitled, "Menthol and the**
18 **Black Smoker"?**

19 A: Yes.

20 **Q: This section concludes (at page 6389), "There appears to be a mystique about menthol**
21 **among Blacks. *** Menthol appears to help the Black cope with his environment by**
22 **continuously giving him a pleasurable experience. Blacks ... feel that menthol helps retain the**
23 **'high' achieved by drinking wine and other alcoholic beverages and by using drugs."?**

24 A: Yes.

1 **Q:** And in commenting on Kool, Reynolds's chief menthol competitor to Salem, the report
2 goes on to say, "Many Blacks also state that Kools tastes like a 'joint' and also is the best
3 cigarette to 'keep a high going.'" And that "Blacks ... see Kools as the 'in' cigarette,
4 particularly in the ghetto environment. In fact, they state that smoking Kools is almost dictated
5 by the ghetto lifestyle"?

6 **A:** Yes.

7 **Q:** Going back to the first page of this document, page 6365, the purpose of this document
8 was to understand young Salem and Kool smokers and develop a creative strategy for Salem
9 against Kool?

10 **A:** Yes.

11 *Yes, but as you've pointed out, this was research on 18-21 year-old adult smokers.*

12 **Q:** At page 6392 and 6393, the report says, "The inroads made by Kool among young
13 smokers appear to be related to the image of the cigarette rather than product qualities. ***
14 Salem appears to have no image or, if anything, a negative image among young people. ***
15 [W]hile Salem has a definite upscale, sophisticated image . . . this is not translated into a
16 positive factor for the brand. This may be due to the fact that Salem's overall imagery is not in
17 tune with young people's behavior, needs and desires"?

18 **A:** That's what it says.

19 **Q:** And the Reynolds document concludes (at 6393), "These findings strongly suggest the
20 need for Salem to meaningfully reach the young smoker before he has made a final
21 commitment to a brand for the rest of his life. Failure to accomplish this could mean the
22 erosion of the Salem franchise"?

23 **A:** Yes.

24 **Q:** So people involved in the "ghetto lifestyle" seems to be what Reynolds understood it had
25 to target to compete for Kool smokers?

1 A: In part, yes.

2 *I don't know the background of this document, so I can't speak to what Reynolds understood based on*
3 *this.*

4 Q: Well, the question persisted, didn't it – for example, U.S. Exhibit 89,348 is a "RJR
5 Confidential" 1975 memo from a John Palmer of the Reynolds Marketing and Research
6 Department about Salem strategic planning for 1976, discussing "The Street Black" and the
7 issue of whether RJR needed to develop special marketing approaches to the downscale black"?
8

9 A: Yes, it is.

10 *That is what the document said.*

11 Q: And in 1984, Dianne Burrows of the Marketing Development Department presented a
12 lengthy "Secret Strategic Research Report" entitled "Young Adult Smokers Strategies and
13 Opportunities" pointing out (U.S. 76,187 at internal pages 42-43) that "younger adult Black
14 and Hispanic smokers are dramatically increasing in importance and will, conservatively,
15 comprise 20% of the 18-24 market by 1990," that "since Kool in the 1960s, younger adult
16 Blacks have moved increasingly to menthol products, which have accounted for 90% of the
17 younger adult Black market in recent years," and that, "Newport is the growth brand among
18 younger adult Blacks"?

19 A: Yes.

20 Q: And this earmarked the beginning of the Black Initiative at Reynolds in the 1980s that
21 focused on the young, low income, and lesser educated segment of the African-American
22 community?

23 A: I don't know if that was the starting point.

24 Q: In 1989 Reynolds's Advertising and Promotion Research Division presented "1990 New
25 Marketing Ideas" (U.S. Exhibit 89,351) which included an "Inner City Black Targeted Brand"

1 that would be a "distinctive cigarette brand targeted at the inner-city Black smoker" that "will
2 leverage the Black consumers' desire to use products which . . . are more 'potent' (e.g., Blacks
3 drink malt liquor rather than beer)"?

4 A: Yes.

5 *I don't know what this document is. I don't recall Reynolds having an "Advertising and Promotion*
6 *Research Division."* I see the portion that you're quoting.

7 Q: This "Inner City Black Brand" spoke of incorporat[ing] many distinct features which
8 will appeal to the Black smoker[,] including "10 cigarettes per pack" because "Blacks . . . have
9 less money" and a box that packs the cigarettes filter side down because "many inner-city
10 Blacks open their packs from the bottom to keep the filter end from getting dirty when
11 they/others remove a cigarette"?

12 A: Yes.

13 Q: And they recommends a pack with "possibly a graffiti look" called "Fat Boys"?

14 A: Yes.

15 Q: Well, the name "Fat Boys" didn't survive, but when Reynolds tested Uptown it found a
16 high "purchase interest in 10's" – meaning 10 cigarettes per pack – particularly when set at
17 one-half the price of 20's?

18 A: Yes.

19 *I don't know. I do not recall Reynolds marketing any brand with so-called half-packs.*

20 Q: Uptown's pack placed the cigarette filter-side down?

21 A: Yes.

22 *Yes, I think so.*

23 Q: And just as the Inner City Black Brand wanted the "malt liquor" version of a cigarette,
24 Uptown delivered it by yielding 19 milligrams of tar?

25 A: Yes.

1 *I don't know either of these things.*

2 **Q: That 19 milligram tar yield was highest of all Reynolds brands at the time, with the**
3 **exception of unfiltered Camel cigarettes?**

4 A: Yes.

5 *No, I believe More 120s were higher than that.*

6 **Q: So no other filtered Reynolds brand yielded as much at the time?**

7 A: Correct.

8 *I think I have answered that.*

9 **Q: Shortly after this Inner City Black Brand memo, Reynolds issued a document internally**
10 **entitled "Black Opportunity Analysis" – which is U.S. Exhibit 89,347?**

11 A: Yes.

12 *I don't know. I can't tell if this is a Reynolds document.*

13 **Q: In the "Opportunity Assessment" section of the memo the authors assert in this**
14 **document (at page 5253) that "Black smokers have been identified as a potential opportunity**
15 **sector for RJR"?**

16 A: Yes.

17 **Q: In support of that finding it points out that African-Americans "have a consistently**
18 **higher reported smoking incidence than the general market[, and estimates that] 1 in 6**
19 **FUBYAS [First Usual Brand Younger Adult Smokers] are already Black, and ... Blacks will**
20 **gain nearly a share point of importance by 1990"?**

21 A: Yes.

22 **Q: Again, Reynolds's problems with the African-American community mirror its problems**
23 **generally – that Reynolds's Black franchise was too old?**

24 A: Yes.

1 *I don't recall having thought about it that way. As I said before, we were trying to attract adult*
2 *African-American competitive smokers to our brands.*

3 **Q: And the document points this out (at 5255), "RJR's SOS in the Black market has**
4 **remained flat at 32% while P. Lorillard has grown at B&W expense. ... Shares among YAS**
5 **have fallen 10 points. ... RJR is strongest among older Blacks"?**

6 A: Yes.

7 **Q: At 5256, Six brands have nearly 70% of the Black market and Salem is flat at 16%;**
8 **Younger and older Blacks are very different in the brands they buy"?**

9 A: Yes.

10 **Q: So Reynolds turned to focus on the young Black smoker?**

11 A: It appears so.

12 *No. To my knowledge, younger adult competitive smokers, including African-American adult*
13 *competitive smokers.*

14 **Q: Young, under-employed and under-educated Black smokers, in particular?**

15 A: It appears so.

16 *My answer is the same.*

17 **Q: In the "Blacks as People" section of the document (starting at page 5268), it shows that**
18 **Reynolds conducted six focus groups of Black smokers "who reside in the city of Baltimore and**
19 **who have no more than a high school education"?**

20 A: Yes.

21 **Q: In discussing "Blacks as brand users" (at 5284) it concludes, "Incidence [of brand**
22 **loyalty] among Blacks has consistently been found to be higher than among Whites[, ... and t]he**
23 **overall 'less educated' status of Blacks might, in fact, explain the higher overall Black**
24 **incidence."?**

25 A: Yes.

1 *I am not sure, this appears to refer to smoking incidence.*

2 **Q: It further points out, "The 'less educated' gap also appears to be widening among Black**
3 **smokers v. non-smokers, as in the total market."**

4 A: Yes.

5 **Q: The research found (at 5269), "Generally the lifestyle of the younger adult, inner-city**
6 **Black smokers is a day-to-day struggle for survival. Most of the younger adult women**
7 **participants were single parents, unemployed and living on welfare"?**

8 A: Yes.

9 **Q: At 5270, "Most younger adult male participants were employed part-time or were**
10 **unemployed. The ones who were employed had unskilled jobs[.]"**

11 A: Yes.

12 **Q: After interviewing these young African-American smokers, Reynolds concluded (at**
13 **5275), "Blacks feel more powerless than Whites"?**

14 A: Yes.

15 *That is what the document says.*

16 **Q: At 5278, "Inner city Black smokers are resigned to a future which permits only modest**
17 **aspirations. . . . It was evident that most of these men had surrendered to their dismal fate**
18 **rather than actively seeking a solution"?**

19 A: Yes.

20 **Q: And at 5282, concludes "The Black smoker is extremely downscale and their**
21 **socioeconomic status is not improving"?**

22 A: Yes.

23 **Q: Reynolds also explored the health consciousness issue of these young, underemployed,**
24 **less educated smokers?**

25 A: Yes.

1 *Not to my knowledge.*

2 **Q: At 5271, "In addition to poverty, disease and crime are a more significant threat to**
3 **Blacks than Whites" – noting a "Ratio of Black to White Deaths" for stroke as 1.8 to 1, for**
4 **cancer as 1.3 to 1 and for infant disease 2.1 to 1?**

5 A: Yes.

6 **Q: Reynolds managed to find the silver lining though – on the very next page, 5272, the**
7 **reporter concludes, "Fortunately for the Industry, this health concern does not translate**
8 **strongly to anti-smoking attitudes, although Blacks are aware of such attitudes as others"?**

9 A: Yes.

10 *That is what the document says.*

11 **Q: Once again, just as with Dakota, Reynolds endeavored to find out and whether there**
12 **was some sort of disconnect between awareness of the mortal risks of smoking in the relatively**
13 **distant future and taking precautions to prevent them?**

14 A: It's not a disconnect, it's a choice by adults.

15 **Q: Regardless of whether it is a valid choice or not, this is evidence that Reynolds**
16 **qualitative marketing research valued information about this characteristic to inquire about it**
17 **in developing both a cigarette for 18 old year "virile" female smokers and 18 year old African-**
18 **Americans?**

19 A: Perhaps.

20 *Not to my knowledge. To my knowledge, neither brand was targeted to just the smokers you've*
21 *described.*

22 **Q: And just like with the "virile segment," these young African-American smokers with a**
23 **lesser inclination to prevent delayed but mortal health risks fell into a sub-population for whom**
24 **Reynolds sought to design a cigarette?**

25 A: It appears so.

1 *I don't have knowledge about this.*

2 **Q: Might the sense of powerlessness the interviewers discovered among this group explain**
3 **their lower concern about the heightened health risks they face?**

4 A: It might.

5 *I don't know they discovered that.*

6 **Q: And so along came Uptown – a high octane cigarette for lower income, lower education,**
7 **urban young people?**

8 A: Uptown was not distributed.

9 *My recollection is that Uptown was full flavored and never made it to test market.*

10 **Q: U.S. Exhibit 89,346 is an "RJR Secret Marketing Research Report" dated October 18,**
11 **1989, stating (at 8254), "Project UT is a new brand targeted to younger adult Black smokers"?**

12 A: Yes.

13 **Q: This document reveals that, as with the "Black Opportunity Analysis . . . Blacks as**
14 **People" research, "Qualitative Advertising Research" for Project UT consisted of 5 focus**
15 **groups in Chicago, all 18-24 year old inner city Black male and female FF M 85 mm**
16 **smokers[; . . .t]hese smokers had a high school or less education, and a total household income**
17 **under \$20,000 per year"?**

18 A: Yes.

19 **Q: Before Reynolds launched its intended test-market in Philadelphia, though, then**
20 **Surgeon General Dr. Louis Sullivan gave a speech at your alma mater, Penn, condemning**
21 **Uptown?**

22 A: Yes.

23 **Q: Some time after that, Reynolds decided not to bring Uptown to market?**

24 A: Yes.

1 **Q: Mr. Schindler, it is true that when Reynolds was talking about focusing these campaigns**
2 **on "virile females" and African-Americans starting at age 18, in fact it was also reaching a**
3 **market of those sub-populations who were below the legal age of 18?**

4 A: It's possible.

5 *My recollection was that our focus was on adult male and female competitive brand smokers. To the*
6 *extent you are referring to possible "spillover," it is true that some younger people may see it, but*
7 *that's not the reason we advertise.*

8 **Q: Reynolds was aware of that?**

9 A: Perhaps.

10 *Yes.*

11 **Q: And Reynolds intended for these campaigns to reach these minors?**

12 A: Not correct.

13 **Q: The problem with going after young adult smokers ages 18-20 or 18-24, however, is that**
14 **if you wait that long, they may already be committed to a different brand?**

15 A: That's a possibility.

16 *Our marketing is directed at adult smokers, primarily those who smoke competitive brands.*

17 **Q: In one of the 1989 documents that gave way to Dakota and Uptown – "Smoker**
18 **Dynamics" (U.S. Exhibit 89,344) realized, only 31% of smokers start *after* age 18 – i.e., 69%**
19 **start when they are 18 or younger, and only 5% start after age 24?**

20 A: Yes.

21 *I don't know whether this document "gave way" to those campaigns. It does appear to contain the*
22 *referenced information.*

23 **Q: And for many pre-18 smokers, that brand with which they already had connected was**
24 **Philip Morris's Marlboro?**

25 A: Yes.

1 **Q:** The 2003 SAMHSA study shows (at Table 7.48B) that in 2002 Marlboro was the brand
2 of choice for 49.8% of the 12-17 year olds surveyed?

3 A: It did.

4 *That is what the document says.*

5 **Q:** And Table 7.50B of the 2003 SAMHSA study shows that among 12-17 year old *females*,
6 in 2002 Marlboro was the brand of choice for 50.8% of them?

7 A: It did.

8 *No, this isn't market share data.*

9 **Q:** And you have no reason to believe that Marlboro's market share in these total or
10 female-only pre-18 groups was any worse in 1989?

11 A: No.

12 *As I testified earlier I don't think you can determine market share from the data. I don't know what*
13 *Marlboro's market share was in 1989.*

14 **Q:** In fact, Marlboro's market shares in these pre-18 groups in 1989 probably were even
15 better than 49.8% and 50.8%?

16 A: Yes, I think they were.

17 *I don't know.*

18 **Q:** Again, looking at "Smoker Dynamics" (U.S. 89,344), the authors – your colleagues –
19 noted (at page 1567) that Marlboro had 61% of 18-20 year old smokers?

20 A: Yes.

21 **Q:** You agree that all these people did not start smoking Marlboro's on the day they turned
22 18?

23 A: I agree.

1 **Q: So, when these Dakota documents talk about targeting female Marlboro smokers aged**
2 **18-20, it is reasonable to concluded that many if not most of the members of this group of**
3 **females started smoking Marlboro before they turned 18?**

4 **A: It is a reasonable conclusion.**

5 **Q: It is your position that advertising has little or nothing to do with what a teenager**
6 **smokes, but rather that is determined by things like peer pressure or what her parents smoke?**

7

8 **A: Yes.**

9 **Q: Look at U.S. 49,017, an April 13, 1984 memo from Dick Nordine to E.J. Fackelman?**

10 **A: Okay.**

11 **Q: In that memo, U.S. 47,019, Nordine stated that “[i]t is relatively easy for a brand to**
12 **retain eighteen-year-old smokers once it has attracted them. . . . Conversely, it is very difficult**
13 **to attract a smoker that has already been won over by a different brand”?**

14 **A: Yes.**

15 **Q: At the time of writing that memo, Mr. Nordine was Group Manager of Strategic**
16 **Research at Reynolds?**

17 **A: Yes.**

18 *Yes, I believe so.*

19 **Q: Prior to that position Mr. Nordine had been Manager of Quantitative Methods at**
20 **Reynolds?**

21 **A: Yes.**

22 *Yes, I believe so.*

23 **Q: And after that Group Manager position, Mr. Nordine subsequently rose in the company**
24 **to Director of Strategic Marketing, then Director of Strategic Research, and ultimately to the**
25 **position of Director of New Business Development?**

1 A: Yes.

2 *I don't remember that.*

3 **Q: And the addressee, E.J. Fackelman – he was the Director of Reynolds's New Brands and**
4 **Strategic Research at the time?**

5 A: Yes.

6 *I don't recall.*

7 **Q: And the New Brands and Strategic Research division at Reynolds was in the company's**
8 **Marketing Development Department?**

9 A: Yes.

10 *I think so.*

11 **Q: Going back to Uptown and Reynolds's "Black Initiative" that focused on African-**
12 **American smokers beginning at age 18, according to "Smoker Dynamics" (U.S. 89,344 at pages**
13 **1567-1568), your chief competitor there was Lorillard's Newport with 12% of the total 18-20**
14 **year old market, but was "the dominant brand [47.8%] among Black YAS . . . [while] RJR's**
15 **share of this group has slipped from 22.4% to 15.8%?"**

16 A: Those were the figures we had for 1987, yes.

17 *That is what the document says.*

18 **Q: And the 2003 SAMHSA study (Table 7.52B which breaks down brand choice by age**
19 **and race) shows that in 2002, Newport was the brand of choice for 73.4% of the 12-17 year olds**
20 **surveyed?**

21 A: Those were the figures for 2002, yes.

22 *No, I don't believe this is market share data.*

23 **Q: And this notion of having already lost a smoker by the time he turns 18 is not something**
24 **Reynolds first realized in 1989 in "Smoker Dynamics" (U.S. 89,344), but rather has time and**
25 **again concluded?**

1 A: I suppose so.
2 *That is apparently the perspective of the author, but not an opinion you can broadly attribute to*
3 *Reynolds. For example, there was significant switching to the savings segment in the 1980s-1990s,*
4 *and there has been significant switching since the MSA to brands of non-original participating*
5 *manufacturers.*

6 **Q: Look at U.S. Exhibit 20,688 – there it shows that in 1974, Donald Tredennick,**
7 **Reynolds's Manager of Consumer Research, was directed by a supervisor to determine what**
8 **caused smokers to select their first brand of cigarettes, and he sent a July 3, 1974 memorandum**
9 **to F. Hudnall Christopher, Director of Marketing Research for R.J. Reynolds?**

10 A: Yes.
11 *I see this exhibit but I don't know why he wrote the memo.*

12 **Q: Using publicly available sources and consumer surveys of people over 18, Tredennick**
13 **found that “most smokers begin smoking regularly and select a usual brand at or before the age**
14 **of 18”?**

15 A: That's what the memo says.

16 **Q: And to this memo he appended a table entitled “Age Started Smoking,” which included**
17 **a category for “12 & Under” ?**

18 A: He did.

19 **Q: Also in 1974, U.S. Exhibit 89,349 is the "Exploratory Research for Salem Cigarettes"**
20 **document we discussed earlier. On the first page it states that "The research was specifically**
21 **conducted among young smokers (18-21) because they are closer to the beginning of the**
22 **smoking situation[. . .]”?**

23 A: Yes.

24 **Q: This certainly seems to acknowledge that the Salem smokers they were targeting**
25 **already were smoking before they reached the age of majority?**

1 A: Yes.

2 *I don't interpret it that way as this involves legal age smokers, but I am not familiar with this*
3 *memorandum.*

4 **Q: In fact, if you turn to page 6368 of that document, it shows that the respondents in the**
5 **seven focus groups studied told Reynolds that their introduction to smoking "began at very**
6 **early ages – generally between 10 and 13" and "while the first smoking experience was**
7 **physically very negative . . . the psychological and social benefits counteracted these feelings,**
8 **[and] respondents therefore continued to smoke until they adjusted to the sensation and it**
9 **became a positive"?**

10 A: Yes.

11 **Q: 1980 – as shown in U.S. Exhibit 20,861 – one of the series of “Teenage Smokers (14-17)**
12 **and New Adult Smokers and Quitters” reports from Reynolds's Marketing Research**
13 **Department states, “Many adult smokers have already formed consistent smoking patterns by**
14 **the time they enter the market at age 18”?**

15 A: It does.

16 **Q: 1982 – U.S. Exhibit 20,641 – Diane S. Burrows, Reynolds's Marketing Development**
17 **Department researcher, stated, “if a man has never smoked by age 18, the odds are three-to-one**
18 **he never will. By age 21, the odds are twenty-to-one”?**

19 A: Yes.

20 **Q: And again in 1982 – U.S. Exhibit 21,057 – "Since we cannot direct our media or our**
21 **creative to starter smokers, the optimal target group is young adult smokers between the ages**
22 **of 18-24”?**

23 A: Yes.

24 *Yes, but this is an RJR-MacDonald brand, a part of the international business.*

1 **Q: This particular statement was made with regard to Reynolds's leading Canadian**
2 **brand?**

3 A: That's correct.

4 *It refers to a brand of RJR-MacDonald, a separate Canadian company at that time.*

5 **Q: But at that time (1982) those operations were still directed by a Reynolds affiliate?**

6 A: Yes.

7 **Q: And it nonetheless recognized by virtue of its distinction between "starter smokers" and**
8 **18-24s that smokers begin before the age of majority?**

9 A: It appears that way.

10 **Q: So there is and always has been a clear tension between the fact that most people start**
11 **smoking before it is legal to do so, on the one hand, and that once a person finds his usual**
12 **brand, it is hard to change that choice?**

13 A: Yes.

14 *I disagree that there's a tension there.*

15 **Q: And Reynolds realized that since you can't get caught marketing directly to minors,**
16 **marketing to 18 year olds might be effective on the theory that minors look to trends attractive**
17 **to these new adults?**

18 A: I don't agree with that.

19 **Q: Look at U.S. Exhibit 32,322 – it's a 1977 memo by Jeffrey F. Durgee of Reynolds**
20 **Product Design, "As a group, younger smokers probably emulate the smoking habits of**
21 **smokers in the next oldest group, the 18-24 year olds, since trends for younger smokers tend to**
22 **follow (by 2-3 years) trends for the latter group"?**

23 A: It does say that.

1 **Q: And again, go back to 1982 and U.S. Exhibit 21,057 – it says, "Since we cannot direct**
2 **our media or our creative to starter smokers, the optimal target group is young adult smokers**
3 **between the ages of 18-24"?**

4 **A: Yes.**

5 *I think I have already answered this question.*

6 **Q: Now, your company already has admitted that there was at least some period in the past**
7 **during which Reynolds marketed its products to minors?**

8 **A: Yes.**

9 *Not to my knowledge.*

10 **Q: In 1998, RJR-Nabisco was your company's parent?**

11 **A: Yes.**

12 **Q: You've testified earlier about Mr. Goldstone testifying before a committee of the U.S.**
13 **House of Representatives in January 1998?**

14 **A: Yes.**

15 **Q: Mr. Goldstone also testified before the U.S. Senate's Committee on Commerce, Science**
16 **and Transportation that year – on February 24, 1998?**

17 **A: Yes.**

18 **Q: U.S. Exhibit 35,023 is a transcript of that Senate committee hearing?**

19 **A: It appears to be.**

20 **Q: Please turn to page 41 of U.S. 35,023. During his initial statement during that Senate**
21 **testimony, Mr. Goldstone talked about some Reynolds documents "from the early 1970s" with**
22 **which he "had real problems" because "[t]hey represent a way of doing business that I simply**
23 **do not agree with"?**

24 **A: Yes.**

1 **Q: And that "way of doing business" with which Mr. Goldstone did not agree was that**
2 **Reynolds, "look[ed] at the habits of adolescents in determining how to make business plans in a**
3 **tobacco company"?**

4 **A:** That was his statement.

5 **Q: You or someone from Reynolds met with Mr. Goldstone or someone from RJR-Nabisco**
6 **prior to Mr. Goldstone's House testimony?**

7 **A:** Yes.

8 *I did not, but I believe someone did.*

9 **Q: And perhaps you or someone from Reynolds met with Mr. Goldstone or someone from**
10 **RJR-Nabisco prior to Mr. Goldstone's Senate testimony?**

11 **A:** Yes.

12 *My answer is the same.*

13 **Q: At the very least, there were some communications between your company and the**
14 **parent about these congressional appearances?**

15 **A:** Yes.

16 *Probably, but I don't know for sure.*

17 **Q: And you and or your people at Reynolds had a pretty good idea of what he was going to**
18 **say, at least in terms of his prepared remarks?**

19 **A:** Yes.

20 *I did not.*

21 **Q: So you knew that what he said before the Senate about "look[ing] at the habits of**
22 **adolescents in determining how to make business plans in a tobacco company" was coming?**

23 **A:** Yes, in those words or similar.

24 *No.*

1 **Q:** In fact, seconds after he made those remarks, he referenced you – "I am convinced
2 about those ethics and morals today. And I know that Andy Schindler and the people who run
3 our domestic tobacco business and our international tobacco business agree with my point of
4 view completely"?

5 A: Yes.

6 **Q:** So even if you did not know about him planning to talk about how Reynolds had
7 "look[ed] at the habits of adolescents in determining how to make business plans in a tobacco
8 company" in advance of his saying so, you learned about it soon afterward?

9 A: Yes.

10 **Q:** And you did not go out and issue an immediate contradiction or otherwise challenge
11 that statement?

12 A: No, we did not.

13 **Q:** But subsequently you, Andrew Schindler, have backed away from those statements?

14 A: In some way, yes.

15 No.

16 **Q:** In your December 5, 2000 deposition testimony in the Scott v. American Tobacco case,
17 you said (at page 193) that, "the company for a period from the 1950s up until somewhere
18 around 1980 collected data on brand choice of smokers, which included brand choice of
19 underage smokers[,] " but that you "do not view that as a marketing study"?

20 A: Yes.

21 **Q:** You said, "I view it as a collection of data and not a marketing study" and (at page 194),
22 "But that is not a marketing study and I have never heard anyone portray that as a marketing
23 study"?

24 A: Yes.

1 **Q:** When you say, "I have never heard anyone portray that as a marketing study," you are
2 telling us that you have spoken with other people in the company about these documents and
3 how they were or were not used?

4 A: Yes.

5 **Q:** You said (at 195-196), "Just simply[sic] data on brand choice is – gives you absolutely
6 no insight whatsoever on how to adjust your marketing programs or anything else to get
7 competitive smokers"?

8 A: Yes.

9 **Q:** Instead, you said (at 287-288), "If we are going to study a segment of the market or
10 competitive smokers as a segment or something, you do more than tabulate what brand choices
11 are, you interact in surveys about attitudes and perceptions of ideas that exist and new ideas,
12 you have extensive focus groups. And to me, the record clearly shows through this whole
13 period that the company wasn't doing marketing research on 14-year-olds because if that were
14 the case, you'd have more witnesses talking about how they were in a focus group in 1975 or
15 1980 than you could shake a stick at"?

16 A: Yes; that was my testimony.

17 **Q:** And in your June 12, 2002 deposition testimony in this case, at page 52 you state,
18 "Because I have personally experienced that, where somebody was collecting data twenty years
19 ago that was tracking brand selections - or this was more than twenty years ago - of underage.
20 Everything at least I understood about it, they weren't using it for marketing purposes"?

21 A: Yes.

22 **Q:** Let's look at some of these then?

23 A: Okay.

1 Q: U.S. Exhibit 22,361 is a document from March 14, 1958 showing that W.A. "Archie"
2 Suggs of your company asked the William Esty advertising company in New York to propose a
3 "study of attitudes toward cigarette smoking among high school students"?

4 A: Yes.

5 Q: George MacGovern of the Esty Company responded to Suggs's request for a study by
6 proposing to interview juniors and senior in high school "focused largely on the age group 17-
7 18 years" in four cities – Hartford, Columbus, Memphis and Los Angeles?

8 A: Yes.

9 Q: 800 students were to be interviewed – 400 current smokers, "achieved by approaching
10 an equal number of boys and girls," and 400 boys and girls "who formerly smoked and who
11 have never smoked"?

12 A: Yes.

13 Q: So in response to Reynolds's request for an attitude survey among high school students,
14 Esty was proposing face to face interviews with "boys and girls"?

15 A: Yes.

16 Q: And one-half of these interviews were to be conducted with boys and girls who did not
17 smoke?

18 A: Yes.

19 Q: It is your opinion that such a study would not be a marketing study?

20 A: That's correct.

21 Q: You testified in Thomas (at 287-288) that to be a marketing study you have to interact
22 in surveys about attitudes, and here (in U.S. 22,361) you are being provided with a "study of
23 attitudes"?

24 A: Yes.

1 *I believe you are actually referring to my deposition in the Scott case, and it appears to be attitudes*
2 *towards smoking.*

3 **Q: So when an advertising company responds to a request from someone in your company**
4 **to design a "study of attitudes toward cigarette smoking" among smokers and non-smokers,**
5 **you don't think the results of the study the advertising company gives back to Reynolds would**
6 **have been used in making any marketing decisions?**

7 A: No.

8 *No, I don't believe so, it refers to projecting consumption.*

9 **Q: It is your experience that at least a fair percentage of the studies Reynolds has**
10 **commissioned an advertising company to do for it is intended to be used for marketing**
11 **decisions?**

12 A: Perhaps.

13 *Yes.*

14 **Q: Take a look at the attachment to U.S. Exhibit 22,361, at pages 3765-3768, entitled**
15 **"Special Cigarette Survey" and dated March 13, 1958?**

16 A: Yes.

17 **Q: This is the "study of attitudes toward cigarette smoking among high school students"**
18 **referenced in the March 14 letter?**

19 A: Appears to be.

20 **Q: Looking at the last page, under "classification data," it indicates an intent to question**
21 **respondents "under 17"?**

22 A: An intent or a possibility.

23 **Q: It's 25 questions long?**

24 A: About.

1 **Q: It asks not just about last brands smoked (Questions 6 and 13a), but also about prior**
2 **brands switched from (Questions 9a and 15a)?**

3 A: Yes.

4 **Q: And it asks about "why" the person switched from one brand to the other (Questions 9**
5 **and 16), urging the questioner to "probe" for reasons?**

6 A: Yes.

7 **Q: And on the last page, it asks the respondent his/her opinion in response to statements**
8 **about health risks from smoking?**

9 A: Yes.

10 **Q: But this is not market research?**

11 A: No.

12 *This isn't information used to develop a marketing plan.*

13 **Q: Now please look at U.S. Exhibit 22,362. It is a document dated December 1958 and**
14 **“William Esty Company, Inc.” is printed at the bottom of each page?**

15 A: Yes.

16 **Q: The document is entitled “Summary of Findings” of “The Youth Research Institute**
17 **Study Regarding Cigarette Smoking Among 8,112 High School and College Students in 82**
18 **Cities Throughout the United States, October – November, 1958”?**

19 A: Yes.

20 **Q: Page 3744 of this report shows that both high school and college students were**
21 **interviewed for this study?**

22 A: Yes.

23 **Q: And among high school boys and girls, not only juniors and seniors were surveyed, but**
24 **also freshmen and sophomores?**

25 A: Yes.

1 **Q:** Some high school freshmen boys and girls are as young as fourteen years old?

2 A: Yes.

3 **Q:** This first page (3744) also shows that both smokers and non-smokers were interviewed?

4

5 A: Yes.

6 **Q:** In fact, of the high school freshmen and sophomore boys and girls interviewed, the

7 majority – 54% – were non-smokers?

8 A: Yes.

9 **Q:** Not only was smoking incidence measured, but (on page 3745) volume of smoking was

10 measured among those surveyed?

11 A: Yes.

12 **Q:** And that is broken down by high school class?

13 A: Yes.

14 **Q:** Combined with brand choice and some census information, this would be a piece of

15 information a company could use in estimated demand for its product among high school

16 students?

17 A: It could be used as one element of such an equation.

18 **Q:** Page 3746 shows brand choice, broken down by class and gender?

19 A: Yes.

20 **Q:** For instance, it tells you the percentage of freshmen boy and girl smokers who smoked

21 your Camel unfiltered cigarettes?

22 A: Yes.

23 **Q:** And it told you the percent of those 14 or so year old freshmen boy and girl smokers

24 who smoked your Winston filtered cigarettes?

25 A: Yes.

1 **Q: Page 3748 compares shows whether a high school boy or girl smoker's current cigarette**
2 **has always been the same, or if he or she formerly preferred another brand?**

3 A: Yes.

4 **Q: If the "now prefer" figure is less than the "formerly preferred" figure, the conclusion**
5 **was (per the asterisk) that the brand suffered a "loss in preference share"?**

6 A: Yes.

7 **Q: In that way it gives you some information about the strength of brand loyalty to yours**
8 **and others' cigarettes?**

9 A: Yes.

10 *It appears to me to give information that switching is occurring, but not why.*

11 **Q: It gives the reader some information about who was gaining switchers and who was**
12 **losing switchers?**

13 A: Yes.

14 **Q: It is your opinion that this study would not be a marketing study?**

15 A: That's correct.

16 *It appears to give some indication that switching is occurring, but not why.*

17 **Q: Not marketing research?**

18 A: No.

19 *No, not in the sense of trying to get information about how to develop brand marketing.*

20 **Q: You do agree that having information about which of your products is vulnerable to**
21 **having 18 year old high school seniors switch away from it in favor of another brand is of value**
22 **for making marketing decisions?**

23 A: It has value for making marketing decisions.

24 *No.*

1 **Q:** And having information about which of your competitor's brands is vulnerable to
2 attack to try to persuade 18 year old high school seniors to switch to one of your brands also is
3 of value for making marketing decisions?

4 **A:** It has value for making marketing decisions.

5 *No.*

6 **Q:** For instance, if you received information showing a trend that younger smokers were
7 switching from higher priced brands to lower priced brands, that would give you information
8 about how to market those brands to this age group?

9 **A:** Yes.

10 *No.*

11 **Q:** When you were shown this document during your Scott case deposition (at pages 238-
12 240), you questioned whether Reynolds solicited this study?

13 **A:** Yes.

14 **Q:** You stated (at page 240), "it's not clear to me anywhere in here that the company
15 commissioned or even asked for this"?

16 **A:** That's correct.

17 **Q:** So prior to your testimony in Scott you had never seen that document or had seen it but
18 never endeavored to find out whether Reynolds had commissioned or even asked for the study
19 the results of which are printed there?

20 **A:** I can't say.

21 *I had never seen it.*

22 **Q:** Looking back to U.S. Exhibit 22,361, the letter from Esty's MacGovern to Reynolds's
23 Suggs dated nine months earlier and discussing Reynolds's request for a "study of attitudes
24 toward cigarette smoking among high school students," does that change your conclusion about

1 **whether Reynolds commissioned or otherwise asked for the study the results of which are**
2 **printed at U.S. Exhibit 22,362 on Esty Company stationary?**

3 A: I'm not sure.

4 *Yes. They appear to be different, although the type of information being collected seems similar.*

5 **Q: Please take a look at U.S. Exhibit 22,366. It's a cover letter and an attachment?**

6 A: Yes.

7 **Q: The cover letter is from George MacGovern of the Esty Company and it is addressed to**
8 **Archie Suggs of R.J. Reynolds?**

9 A: Yes.

10 **Q: It is dated December 9, 1959?**

11 A: Yes.

12 **Q: The letter references a "Youth Research Institute 1959 Cigarette Smoking Study**
13 **Among High School and College Students" and speaks of containing a comparison to the**
14 **"findings of the Institute's 1958 study"?**

15 A: Yes.

16 **Q: The next page, 3724, is entitled, "Summary of Findings" of "The Youth Research**
17 **Institute Study Regarding Cigarette Smoking Among 7,521 High School and College Students**
18 **in 80 Cities Throughout the United States, October – November, 1959"?**

19 A: Yes.

20 **Q: It contains many of the same tables studying the activities and preferences of the same**
21 **groups studied in the 1958 study presented in U.S. Exhibit 22,362?**

22 A: Yes.

23 **Q: Including study of high school freshmen and sophomore boys and girls, smokers (42%)**
24 **and non-smokers (58%)?**

25 A: Yes.

1 **Q:** It shows you, for instance at page 3728, that Winston's popularity among high school
2 freshmen and sophomores, each boys and girls, increased from 1958 to 1959?

3 A: Yes.

4 **Q:** It is your opinion that this study would not be a marketing study?

5 A: That's correct.

6 **Q:** At this point, looking at U.S. Exhibits 22,361; 22,362; and 22,366 together, do you have
7 any remaining doubt that the 1958 study – U.S. Exhibit 22,362 – was either commissioned or
8 otherwise asked for by Reynolds?

9 A: No.

10 Yes.

11 **Q:** Please look at U.S. Exhibit 80,621. It is a January 16, 1964 letter from George
12 MacGovern of the William Esty Company to Archie Suggs at Reynolds referencing an attached
13 "plan for consumer research in 1964 on cigarette smoking" that Suggs had requested?

14 A: Yes.

15 **Q:** According to the letter, the plan Esty is suggesting "ha[s] been guided by the directions
16 [Suggs] provided and the plan reflects, [Esty] believe[s], [Suggs'] thinking and [Suggs']
17 suggestions?

18 A: Yes.

19 **Q:** The plan includes a proposal for research on "[t]rend studies on cigarette smoking at
20 the teenage level"?

21 A: Yes.

22 **Q:** It is your opinion that such a "consumer study" would not be a marketing study?

23 A: That's correct.

24 I cannot tell.

1 Q: U.S. Exhibit 20,632 is a report dated February 1964 printed on William Esty Company
2 entitled "Summary of Findings" of "National Studies of Trends in Cigarette Smoking and
3 Brand Preference Base Period Study – January, 1964"?

4 A: Yes.

5 Q: Page 6572 reflects that these data were gathered via a survey conducted by National
6 Family Opinion, Inc. ("NFO")?

7 A: Yes.

8 Q: That page shows that NFO received responses from 4,969 families regarding 7,485
9 smokers?

10 A: Yes.

11 Q: It gathered information about smoking incidence, smoking volume, and brand
12 preferences for smokers as young as 16?

13 A: Yes.

14 Q: It presents data on each of Reynolds's leading brands at the time?

15 A: Yes.

16 Q: For instance, at page 6589 it says that Winston's share "varied inversely by age" and
17 was greatest "among the youngest smokers"?

18 A: Yes.

19 Q: And the "youngest smokers" group reported in this study is an age 16-19 group?

20 A: It is.

21 Q: U.S. Exhibit 20,687 is a March 12, 1964 letter from W.A. Sugg to William S. Smith
22 attaching a survey of smoking as of early January containing responses of "approximately
23 5,000 families and 7,500 individual smokers"?

24 A: Yes.

1 **Q:** The letter goes on to state, "We [R.J. Reynolds] put a similar study in the field about
2 February 10 using the same panel of smokers"?

3 A: Yes.

4 **Q:** And it says, The most interesting finding in the study is the great strength of
5 WINSTON among young smokers, the brand having its highest preference share with teen-
6 agers . . . "?

7 A: Yes.

8 **Q:** The purpose of gathering this information, Suggs said, was to "help us in evaluating
9 changes in incidence of smoking, volume of smoking, and brand switching resulting from the
10 report of the Surgeon General's committee and subsequent developments"?

11 A: Yes.

12 **Q:** So, one thing Reynolds might have been looking for here is determining by age group
13 whether the then-recent Surgeon General's Report scared them off or if they were relatively
14 impervious to that message?

15 A: Yes.

16 *I have no information about this beyond what is stated in the exhibit.*

17 **Q:** You recall our discussing Reynolds's "Black Opportunity Analysis" how the Company
18 deemed it to be "fortunate[]" that African-Americans were resistant to changing their smoking
19 habits despite awareness of their community's higher than average risk of death and disease
20 from smoking related illness?

21 A: I recall your showing me those pages.

22 **Q:** That was something that made this group an attractive one on which to focus marketing
23 and new brand development efforts?

24 A: Yes.

25 *I don't know that, and that would be inconsistent with my experience at Reynolds.*

1 **Q:** And in the 1980s, when Reynolds was mapping out "virile" smokers, in "Virile
2 Segment, The Right Stuff" the company probed and concluded that this was the least health
3 conscious group among smokers?

4 **A:** Yes.

5 *Yes, you showed me a document expressing that opinion.*

6 **Q:** And you agree that Dakota was an effort to switch "virile" female Marlboro smokers?

7 **A:** Yes.

8 *No, for the reasons I have described.*

9 **Q:** So if in 1964 you were collecting information about which of your competitors' brands
10 were susceptible to raiding for switchers by age group and which age group was resistant to
11 heeding the message of the 1964 Surgeon General's Report, just like with Dakota and Uptown,
12 that would give the company some valuable information with which to make marketing
13 decisions?

14 **A:** I don't agree with the premise.

15 **Q:** Look at U.S. Exhibit 21,659 – it's a 1968 memo from T.P. Haller at Reynolds to R. A.
16 Blevins at Reynolds requesting a semi-annual study of "consumer attitudes toward smoking,
17 particularly as they apply to the health issue"?

18 **A:** Yes.

19 **Q:** "[M]ost importantly, it will put light on the very vital teenage sector of the market," is
20 what Haller said?

21 **A:** Yes.

22 **Q:** Haller wanted to know if teenagers received any advice from adults about smoking, and
23 if so, what role did that adult play in the teenager's life?

24 **A:** Yes.

25 *I have no information about this beyond what the document states.*

1 **Q: He also wanted to know about attitudes about whether cigarettes were proven to be**
2 **harmful and whether high tar cigarettes were the only dangerous ones?**

3 **A: Yes.**

4 *My answer is the same.*

5 **Q: More testing of how resistant teenage smokers were, in terms of smoking behavior, to**
6 **messages about the reported harms of smoking?**

7 **A: Perhaps.**

8 *My answer is the same.*

9 **Q: Both Haller and Blevins were in the Marketing Research Department at Reynolds at the**
10 **time of this document's writing?**

11 **A: Yes.**

12 *I don't know about Mr. Haller, I think that is correct for Mr. Blevins.*

13 **Q: U.S. Exhibit 20,628 – that document reflects an an April 7, 1971 meeting between**
14 **representatives of Reynolds's Marketing Research Department and the William Esty Company,**
15 **during which a decision was made to include and count smokers ages 13 and under and to begin**
16 **profiling of 14 to 20-year olds in future NFO surveys?**

17 **A: Yes.**

18 **Q: U.S. Exhibit 20,751 is a July 2, 1971 letter from William Esty Company to Jerry**
19 **Clawson of Reynolds's Marketing Research Department, reporting the preliminary findings of**
20 **a study requested by R.J. Reynolds regarding “smoking incidence and preference shares, by**
21 **age, among those aged 14 to 20 responding to the new questionnaire" during the National**
22 **Family Opinion survey and discussing changes requested to count "13 or younger"?**

23 **A: Yes.**

1 **Q: Is it your testimony that when your Marketing Research Department and your**
2 **advertising company decide to and successfully solicit NFO to change how it collects data, these**
3 **activities are not done for the purpose of making marketing decisions?**

4 **A: Yes.**

5 *Yes, it appears this relates to brand tracking.*

6 **Q: U.S. Exhibits 21,865 and 22,498 are Spring 1974 letters from Reynolds's Marketing**
7 **Research Department to NFO discussing how Reynolds wishes NFO to collect data for it,**
8 **including those tables entitled "Product Testing Availabilities," "Smoking Incidence & Brand**
9 **Preference - ages 14-17"?**

10 **A: Yes.**

11 *Those are two of the reports discussed. I do recall that NFO conducted product testing for Reynolds*
12 *for a time. It is my understanding that work was restricted to adult smokers.*

13 **Q: Now please turn to U.S. Exhibit 21,605 – it is a March 15, 1976 document entitled,**
14 **"Planning Assumptions and Forecast for the Period 1977-1986 for R.J. Reynolds Tobacco**
15 **Company"?**

16 **A: Yes.**

17 **Q: At page 14, "Products," the report says,**
18 **"WINSTON and SALEM market shares will peak and decline during**
19 **the projection period. . . . Extremely important are our related**
20 **objectives to have a leading product in each category and to discover**
21 **and produce leading products in new categories.**

22 *********

23 **The present large number of people in the 18 to 35 year old age group**
24 **represents the greatest opportunity for long-term cigarette sales**
25 **growth. Young people will continue to become smokers at or above**

1 the present rate during the projection period. The brands which these
2 beginning smokers accept and use will become the dominant trends in
3 future years. Evidence is now available to indicate that the 14 to 18
4 year old group is an increasing segment of the smoking population.
5 RJRT must soon establish a successful new brand in this market if our
6 position in the industry is to be maintained over the long term."

7 A: Yes.

8 Q: "WINSTON and SALEM market shares will peak and decline during the projection
9 period" – that sort of projection can be based at least in part from the type of NFO and brand
10 preference data we have been discussing today?

11 A: Yes.

12 Q: "Young people will continue to become smokers at or above the present rate during the
13 projection period. The brands which these beginning smokers accept and use will become the
14 dominant trends in future years." That sort of projection can be based at least in part from the
15 type of NFO and brand preference data we have been discussing today?

16 A: Yes.

17 Q: "Evidence is now available to indicate that the 14 to 18 year old group is an increasing
18 segment of the smoking population." The sort of smoker/non-smoker studies we have been
19 looking at today could be the basis for a projection such as this?

20 A: Yes.

21 Q: "RJRT must soon establish a successful new brand in this market if our position in the
22 industry is to be maintained over the long term." That's a suggestion about where to direct new
23 product development and corresponding marketing efforts?

24 A: Yes.

1 Q: U.S. Exhibit 20,631 is an October 8, 1976 Reynolds Marketing Department Report
2 entitled "Marketing Department Key Issues – Position Papers"?

3 A: Yes.

4 Q: The report points out (at 7822) observed that adult smokers under age 25 would "show
5 a major shift in brand preference" away from Marlboro and that the decline in Marlboro's
6 share of this market would continue to open the market for another dominant brand to emerge
7 from peer group pressures?

8 A: Yes.

9 Q: The basis for this projection was a National Family Opinion study showing that
10 "Marlboro's acceptance among 14-17 year olds had dropped from 39% to 32%. This pattern
11 has been repeated by three brands with Pall Mall peaking in 1969, total Winston in 1970, and
12 total Marlboro should peak share in 1978"?

13 A: Yes.

14 Q: Using brand preference data of 14-17 year olds to predict an opening for a competitor to
15 Marlboro for smokers under 25 "to emerge from peer group pressures" is not using NFO data
16 to make new product development and corresponding marketing decisions is not marketing
17 research?

18 A: No, it's not.

19 *I find your question very confusing. This information doesn't help you design a marketing campaign.*

20 Q: Please look at U.S. 89,348 – a "Salem 1976 Strategic Planning" memo from the
21 Marketing Research Department?

22 A: Yes.

23 Q: On page 2146, the author suggests using "geographic analysis and tracking" in order
24 "to detect and respond to geographical brand problems that might exist"?

25 A: Yes.

1 Q: In other words, to use tracking for planning on how to deal with *future* problems that
2 may arise?

3 A: Yes.

4 *I don't interpret this suggestion that way, but I have no information regarding this.*

5 Q: Please look at U.S. Exhibit 49,012 – it is a June 30, 1978 report entitled “Demographic
6 Characteristics of Smokers” authored by Reynolds employee G. Harry Durity attaching tables
7 “display[ing] the demographic characteristics of smokers as compiled from survey data
8 supplied by the National Family Opinion (NFO),” including data on the incidence of smoking
9 among males and females ages 14-17?

10 A: Yes.

11 Q: U.S. Exhibit 22,532 is a memorandum dated one week earlier – June 23, 1978 from that
12 same G.H. Durity, addressed to H.H. Cudd, Jr., Business Planning and Research Manager?

13 A: Yes.

14 *Yes, but I don't know H.H. Cudd's title.*

15 Q: Durity stated, “For legal reasons we do not include in our calculations persons under 18,
16 although we recognize that they are potential smokers”?

17 A: Yes.

18 Q: “For legal reasons . . .” – this might be one explanation for an absence of a paper trail
19 explicitly saying, “Use these data on 14-17 year olds to make marketing decisions” on it?

20 A: Yes.

21 *I don't think so.*

22 Q: U.S. Exhibit 20,811 is an internal July 22, 1980 memo from Reynolds's Executive Vice
23 President G.H. (Jerry) Long to Reynolds's CEO Edward A. Horrigan, Jr. entitled “MDD
24 [Marketing Development Department] Report on Teenage Smokers (14-17)”?

25 A: Yes.

1 **Q: It stated: "Attached is a MDD report covering the aforementioned subject. Last**
2 **January, a report was issued on this subject that indicated that Philip Morris had a total share**
3 **of 59 among 14-17 year old smokers, and specifically, Marlboro had a 52 share. This latest**
4 **report indicates that Philip Morris's corporate share has increased by about 4 points; however,**
5 **Marlboro remains the same at 52." It went on to say, "R.J. Reynolds continues to gradually**
6 **decline," and concluded, "hopefully, our various planned activities that will be implemented**
7 **this fall will aid in some way in reducing or correcting these trends"?**

8 **A: Yes.**

9 **Q: This reveals how Reynolds was using and planning again in the future to use "MDD"**
10 **data tracking brand preference among 14-17 year olds to determine the effectiveness of its**
11 **marketing decisions?**

12 **A: I don't know.**

13 *I don't believe that. I've never seen any planned activities marketing our products against 14-17*
14 *year-olds.*

15 **Q: Please look at U.S. Exhibit 21,785 – it is a September 20, 1982 internal memorandum**
16 **from Greg Novak, Reynolds's Group Director of Marketing Services, to J.W. Johnston and H.J.**
17 **Lees, stating: "Our Forecasting Group has determined that younger adult smokers,**
18 **particularly younger adult male smokers, tend to be very price sensitive. The effect of a price**
19 **increase on younger adult male smokers could be three to four times greater than on smokers in**
20 **general, in terms of negative impact on volume"?**

21 **A: Yes.**

22 **Q: And the document goes on to say that, "This has obvious implications to the growth of**
23 **Marlboro"?**

24 **A: Yes.**

1 **Q:** Here he is suggesting that since Marlboro dominates this subpopulation of smokers,
2 price changes could soften its strength in that market?

3 **A:** You could read it that way.

4 *That may have been his view, I don't know. But I should add that I don't agree with that analysis and*
5 *my experience is contrary to that.*

6 **Q:** Now please turn to U.S. Exhibit 22,347 – this is a September 27, 1982 memo from Diane
7 Burrows of Reynolds's Marketing Development Department discussing the National Bureau of
8 Economic Research ("NBER") findings on the relative price sensitivity of age and gender?

9 **A:** Yes.

10 **Q:** It discusses NBER models based on consumers' responses to government smoking
11 surveys?

12 **A:** Yes.

13 **Q:** Here Burrows tells her superior, J.R. Moore, that the NBER found "teenagers and
14 younger adult males are highly price sensitive"?

15 **A:** Yes.

16 **Q:** And the chart she presents on the first page shows that the "teens 12-17" group is the
17 most price sensitive of those studied in terms of the effect of price on both incidence of smoking
18 and consumption?

19 **A:** Yes.

20 **Q:** And she concludes that while the immediate impact of this price sensitivity will be
21 greatest with regard to males over 35, "the loss of younger adult males and teenagers is more
22 important to the longer term, drying up the supply of new smokers to replace the old . . . [t]his
23 is not a fixed loss to the industry: its importance increases with time"?

24 **A:** Correct.

1 **Q: U.S. Exhibit 20,851 shows that on October 6, 1982, Ms. Burrows sent the text of U.S.**
2 **Exhibit 22,347 (minus the attachments) to L.W. Hall, Jr. Vice President of Reynolds's**
3 **Marketing Department?**

4 A: Yes.

5 **Q: U.S. Exhibit 20,709 shows that on the same day, Ms. Burrows also wrote a memo to P.E.**
6 **Galyan, "Marketing Implications of the NBER Models"?**

7 A: Yes.

8 **Q: There Ms. Burrows repeats that "younger adult males are highly sensitive to price" and**
9 **adds that an expected steep rise in prices "could threaten the long term vitality of the industry,**
10 **by drying up the supply of new/younger adult smokers" and "could also undermine the long**
11 **range growth potential of brands which rely on new/younger smokers, including Marlboro and**
12 **Newport"?**

13 A: Yes.

14 **Q: So she suggests that Reynolds could "break the price barrier" with a new brand**
15 **targeted to younger adult males, an economy size pack and/or marketing "half-packs"**
16 **containing 10 or 12 cigarettes apiece?**

17 A: Yes.

18 **Q: Now, using price to sustain or increase a market for your cigarettes is a marketing**
19 **strategy?**

20 A: Yes.

21 *Yes, in that pricing can be part of a marketing strategy. To my knowledge, we never implemented Ms.*
22 *Burrows' recommendation and we have not used pricing strategies to affect youth smoking.*

23 **Q: In fact, at times Reynolds has spent significant portions of its marketing budget on**
24 **price-related incentives and strategies?**

25 A: Yes.

1 **Q: Even more than it has spent on advertising in some of those time periods?**

2 A: Yes.

3 **Q: For instance, in 1998. Reynolds spent about \$1.3 to \$1.5 billion on marketing?**

4 A: Yes.

5 *I don't recall the total budget, but it was a substantial amount.*

6 **Q: Of that, only \$135 million went to advertising, while the vast majority was spent on**
7 **price discounting?**

8 A: That's correct.

9 *I don't remember the specific amount, but that is probably correct.*

10 **Q: But it remains your position that collecting data, by age, on smoking incidence, cigarette**
11 **consumption amount, and price elasticity is not doing marketing research?**

12 A: Yes.

13 *Depending upon the context of certain data, this type could be relevant to market research, but as I*
14 *stated earlier, data of the type discussed above is not helpful in the development of marketing plans.*

15 **Q: Here, in U.S. Exhibit 20,709, makes suggestions for a "younger adult male" but at the**
16 **beginning of the memo talks about new/younger smokers"?**

17 A: Yes.

18 **Q: You know from the documents we've discussed today that Reynolds has long believed**
19 **that a "new" smoker is usually someone 18 years old or younger?**

20 A: Yes.

21 *I don't know.*

22 **Q: And at the time of this Burrows memo (September 27, 1982), U.S. Exhibit 20,641 (dated**
23 **September 20, 1982 – "if a man has never smoked by age 18, the odds are three-to-one he never**
24 **will") shows that she understood that phenomenon, as well?**

25 A: Yes.

1 *I can't answer that other than by referring you to what she wrote.*

2 **Q: Now from the documents we have looked at today we know that Reynolds either**
3 **gathered, sought to gather, or considered gathering data about minors and their brand**
4 **preference, smoking consumption, switching behavior (prior, current, reasons for changing),**
5 **immunity (or not) from messages about health threats and sensitivity to price variability?**

6 A: Yes.

7 *Yes, some of the documents contain some of that information.*

8 **Q: It is your testimony that in your opinion those are not factors from which marketing**
9 **decisions are made by your company?**

10 A: Yes.

11 *Not as reflected in these documents.*

12 **Q: And it is your testimony that from the people you have spoken with about these**
13 **documents and how they were or were not used is that such factors are not they type from**
14 **which marketing decisions have been made by your company?**

15 A: Yes.

16 *Not as reflected in these documents.*

17 **Q: At the same time as Reynolds was gathering this sort of information, the company's**
18 **executives were making plans to target the 14-24 year old sector of the smoker population?**

19 A: What do you mean by that?

20 **Q: Please take a look at U.S. Exhibit 21,609. You've testified about this document before,**
21 **including in the Minnesota, et al. v. Philip Morris, et al. trial?**

22 A: That's correct.

23 **Q: This is a September 1974 document entitled, "1975 Marketing Plans Presentation**
24 **Hilton Head"?**

25 A: Yes.

1 **Q: This was a presentation Reynolds made to its board of directors?**

2 A: Yes.

3 **Q: As shown on the first page (page 6951), Reynolds told its board that the company's**
4 **"paramount marketing objective" was to grow market share?**

5 A: Yes.

6 **Q: And the number one "opportunity area" for the next quarter century to do so was to**
7 **"increase our young adult franchise"?**

8 A: Yes.

9 **Q: In this document, on that first page, it defines "this young adult market" as "the 14-24**
10 **age group"?**

11 A: Yes.

12 **Q: It uses population data to project its effect on "tomorrow's cigarette business" and**
13 **"total cigarette volume" for "at least the next 25 years"?**

14 A: Yes.

15 **Q: You agree with me that cigarette volume can be estimated using information such as the**
16 **number of smokers in an age group and the number of cigarettes each of those smokers**
17 **consumes?**

18 A: Yes.

19 **Q: And the number of smokers in an age group and the number of cigarettes each of those**
20 **smokers consumes are precisely the sort of data that Reynolds had been receiving from sources**
21 **like those gathered by the William Esty Company?**

22 A: Yes.

23 *I don't know.*

24 **Q: The next page, 6952, shows that Reynolds told its board during this "Marketing Plans**
25 **Presentation" about how its competitors, Philip Morris and Brown & Williamson, were**

1 dominating "the 14-24 age category," providing specific percentage shares their brands such as
2 Marlboro and Kool had amongst 14-24 year olds?

3 A: Yes.

4 *That is what the document says.*

5 Q: You agree with me that information such as specific percentage shares their brands
6 such as Marlboro and Kool had amongst 14-24 year olds are precisely the sort of data that
7 Reynolds had been receiving from sources like the NFO and those gathered by the William Esty
8 Company?

9 A: Yes.

10 *It appears to be similar.*

11 Q: Using this information, Reynolds projected that their "Strong young adult franchises
12 and high cigarette brand loyalties" suggested good news for those companies in the future?

13 A: Yes.

14 Q: Now statements about whether a brand has a "strong franchise" or "high cigarette
15 brand loyalty" in this 14-24 age group are the type of conclusions that can be based on
16 information of the sort William Esty provided to Reynolds regarding what brands these
17 smokers were and were not switching to and from, and in the case of those switchers, why they
18 were doing so?

19 A: Yes.

20 *I don't believe so.*

21 Q: And at the bottom of page 6952, Reynolds told its board about how "our two major
22 brands, Winston and Salem" were doing in terms of percentage share of the 14-24 age group?

23 A: Yes.

24 Q: Again, Reynolds had access to information of this sort from those things you have tossed
25 off as simply "tracking information" that have nothing to do with marketing research?

1 A: Yes, that is one possible source for such information.

2 *I don't believe that fairly captures my testimony. Tracking information cannot be used to create*
3 *marketing plans.*

4 **Q: And based on all of this information, Reynolds told its board (bottom of page 6952) the**
5 **cautionary news that, "This suggests slow market share erosion for us in the years to come**
6 **unless the situation is corrected"?**

7 A: That's what the document says.

8 **Q: And out of the information gleaned from this data, Reynolds proposed its marketing**
9 **strategy?**

10 A: What do you mean?

11 **Q: At 6953, "Thus, our strategy becomes clear for our established brands: . . . Direct**
12 **advertising appeal to the younger smokers[. . .]"?**

13 A: Yes.

14 **Q: For Winston, Reynolds developed its "Candid" advertising campaign that was**
15 **"especially designed to appeal to young adults[. . .]"?**

16 A: Yes.

17 **Q: And with regard to use of the term "young adults," we know from the first page of this**
18 **document that Reynolds was telling its board about appealing to "the 14-24 age group"?**

19 A: Yes.

20 *It appears that the term "young adults" is used for different age groups within this document, for*
21 *example, "under 35 age group," "18-34," and "18-24," at bates pages 6954, 6955, and 6957.*

22 **Q: With regard to this "Candid" campaign, Reynolds reveals (at page 6953) that it had**
23 **done "research . . . among young adults" to determine ad recall and to find out how persuasive**
24 **the ads were "compared to the Marlboro campaign"?**

25 A: Yes.

1 **Q: "Young adults," in the context of this presentation to the board, are "the 14-24 age**
2 **group"?**

3 A: Yes.

4 *I don't believe so. That is how the author chose to refer to them in discussing demographic*
5 *population trends, but elsewhere the actual targets of the campaigns appear to be adult smokers 18*
6 *and older.*

7 **Q: You told the jury during your Scott v. American Tobacco case deposition (at pages 196-**
8 **197) that tracking data was not marketing research because "raw data" doesn't "provide you**
9 **guidance" but instead, "What provides you guidance is coming up with an idea, gathering focus**
10 **groups of franchising competitive smokers to get their opinion on that ad or promotion or a**
11 **new pack design"?**

12 A: That was my testimony.

13 *I also explained that "[a]ll raw data tells you is how many people are smoking this brand and how*
14 *many people are smoking that brand. It doesn't tell you why they're smoking it, it doesn't tell you*
15 *what you need to change about what you are doing to get them interested in your brands. It provides*
16 *absolutely no insight into where to go from a marketing standpoint."*

17 **Q: Going back to U.S. Exhibit 21,609, reflecting what Reynolds told its board about during**
18 **this "Marketing Plans Presentation," page 6953 talks about "Salem['s] improved ad campaign"**
19 **being "designed for more young adult appeal"?**

20 A: Yes.

21 **Q: "Young adults," in the context of this presentation to the board, are "the 14-24 age**
22 **group"?**

23 A: Yes.

24 *I disagree for the reasons I have described.*

1 Q: And here, too, at page 6954, Reynolds tells its board that the Salem ad campaign was
2 subject to "research" concluding that changes in the ads "have measurably improved" them in
3 terms of recall, "refreshment playback," and "more young adult appeal"?

4 A: Yes.

5 Q: Looking at page 6955, with regard to a "new program for Camel filter," Reynolds told
6 its board that it had been test marketing "a new marketing program targeted at young adults"
7 to compete with Marlboro?

8 A: Yes.

9 Q: This included a change in the blend, more ad spending, and a "new 'Meet the Turk'
10 advertising campaign"?

11 A: Yes.

12 Q: Page 6957 shows Reynolds told its board that Camel filter would also "pinpoint[]
13 efforts against young adults through its sponsorship of sports car racing and
14 motorcycling[. . .]"?

15 A: Yes.

16 Q: Similarly, on that page, for Winston special events, Reynolds announced, "each of our
17 major special events is directed against young adults"?

18 A: Yes.

19 Q: "Young adults," in the context of this presentation to the board, are "the 14-24 age
20 group"?

21 A: Yes.

22 *I have answered that question.*

23 Q: Vantage was Reynolds's other major brand at the time?

24 A: Yes.

1 Q: Pages 6955 and 6956 show that Reynolds was focusing its ad spending against young
2 adults because Vantage "has shown the ability to attract . . . new and younger smokers"?

3 A: Yes.

4 Q: It shows as proof of that conclusion that, "Field sales reports Vantage has pockets of
5 strength on college campuses[. . .]"?

6 A: Yes.

7 Q: You testified in the Local No. 17 Bridge & Iron Workers Insurance Fund v. Philip
8 Morris Inc. case via deposition on January 29, 1999?

9 A: Yes.

10 Q: Page 115 of that transcript reflects that you testified, "I have yet to see anywhere in any
11 of these documents, in any of this litigation, anybody presenting me with a marketing plan
12 targeted at 14 to 17 year olds. So I know the policy of the company. I worked in sales for two
13 years and there were rigorous standards about placements of displays and don't be on college
14 campuses and all that sort of stuff, and that was above 18 year olds"?

15 A: Yes.

16 Q: "Field sales," at a minimum, was watching what was going on at college campuses?

17 A: That's what this document suggests.

18 Q: And as to your comment that, "I have yet to see anywhere in any of these documents, in
19 any of this litigation, anybody presenting me with a marketing plan targeted at 14 to 17 year
20 olds" – you had seen this document, U.S. Exhibit 21,609, in 1997 during your deposition
21 testimony in the Minnesota case and in 1998 during your trial testimony in the Minnesota case?

22 A: Yes, at a minimum I had seen this document during the Minnesota deposition and then the
23 trial.

1 Q: And that was up to two years prior to your sworn statement in Iron Workers that, "I
2 have yet to see anywhere in any of these documents, in any of this litigation, anybody presenting
3 me with a marketing plan targeted at 14 to 17 year olds"?

4 A: Yes.

5 Q: In your September 22, 1997 deposition testimony in the Minnesota case, you testified (at
6 pages 128-129) that this document (U.S. Exhibit 21,609) – the "1975 Marketing Plans
7 Presentation Hilton Head" – is not a "marketing program" because "it does not have an
8 advertising plan in it, it doesn't have a promotion plan that I can see up to this point in time,
9 and I'm telling you I have never seen a specified ad campaign, retail promotion effort in that
10 sense, that tactical sense, developed or executed against 14-year-olds. It has always been the
11 policy of the company not to sell cigarettes to people at that age. I don't know of any effort that
12 the company's ever done in that direction. I never even heard anybody talk about selling
13 cigarettes to 14-year-olds in all of my time with the company, and including back during this
14 period." Is this your testimony today, as well?

15 A: Yes.

16 Q: So U.S. Exhibit 21,609 – the "1975 Marketing Plans Presentation Hilton Head" – is not
17 a "marketing plan targeted at 14 to 17 year olds"?

18 A: It is not.

19 Q: Please take a look at U.S. Exhibit 22,363. You've testified about this document before,
20 including in the Minnesota, et al. v. Philip Morris, et al. trial?

21 A: That's correct.

22 *It says what it says - but it is not a marketing plan.*

23 Q: U.S. Exhibit 22,363 is "R.J. Reynolds Tobacco Company Domestic Operating Goals"?

24 A: Yes.

1 Q: And "domestic operating goals" at Reynolds announce the annual business goals for the
2 Company?

3 A: Yes.

4 Q: Under "Marketing Goals," it says that the primary goal in 1975 is to "reestablish RJR's
5 share of growth in the domestic tobacco industry" by "increas[ing] our young adult franchise"?
6

7 A: Yes.

8 Q: In this document, "young adult" is referenced as the "14-24 age group"?

9 A: Yes.

10 *That may be the case, the reference is ambiguous and I am not certain what the author meant.*

11 Q: It presents brand choice information for various brands and then says Reynolds "will
12 direct advertising appeal to this young adult group without alienating the brand's current
13 franchise"?

14 A: Yes.

15 Q: So, it says pretty much the same thing as U.S. Exhibit 21,609 – "1975 Marketing Plans
16 Presentation Hilton Head" – does?

17 A: Similar in that respect.

18 Q: So, would you call U.S. Exhibit 22,363 a marketing plan targeted at 14-17 year olds?

19 A: No.

20 Q: Looking back briefly at U.S. Exhibit 21,609 on page 6955, the presentation to the
21 Reynolds board discusses Camel filters and "a new marketing program targeted at young
22 adults" to compete with Marlboro that included a "new 'Meet the Turk' advertising
23 campaign"?

24 A: Yes.

1 Q: And with regard to use of the term "young adults," we know from the first page of this
2 document that Reynolds was telling its board about appealing to "the 14-24 age group"?

3 A: Yes.

4 *I think that is incorrect. The target specified in the Hilton Head document for this campaign is 18-24.*

5 Q: Now turn to U.S. Exhibit 21,797 – You've testified about this document before,
6 including in the Minnesota, et al. v. Philip Morris, et al. trial?

7 A: That's correct.

8 Q: U.S. Exhibit 21,797 is a cover note from C.A. Tucker attached to a January 1975 "RJR
9 Secret No. 204" memo from Jim Hind regarding the Camel "Meet the Turk" ad campaign?

10 A: Yes.

11 Q: "C.A. Tucker" is Charles Tucker?

12 A: Yes.

13 Q: And back in January 1975, Mr. Tucker was the vice president of marketing and sales at
14 Reynolds?

15 A: Yes.

16 Q: And his job entailed being in charge of the development of marketing plans, sales plans,
17 ad campaigns, promotions, distributions, and merchandising at retail, to name a few?

18 A: Yes.

19 Q: Today – in 2005, however, it is your understanding that Mr. Tucker is gravely ill?

20 A: Yes.

21 *I have heard that he is sick.*

22 Q: You remember Jim Hind, as well?

23 A: Yes.

1 Q: The second page of U.S. Exhibit 21,797 is a note from Hind to Tucker recommending to
2 expand nationally the test-marketed "Meet the Turk" campaign "to increase our young adult
3 franchise"?

4 A: Yes.

5 Q: It then says, "To ensure increased and longer-term growth for CAMEL FILTER, the
6 brand must increase its share penetration among the 14-24 age group which have a new set of
7 more liberal values and which represent tomorrow's cigarette business"?

8 A: Yes.

9 Q: Flip back to the cover page of U.S. Exhibit 21,797 – it's a forwarding note from Tucker
10 to "WDH" saying that "the test market plan on Turk is the most professional and the most
11 conclusive I've seen" and goes on to say he "would like to go national with Turk" – seeking
12 WDH's approval to proceed in April 1995?

13 A: Yes.

14 *Yes, except I think you meant to say April 1975.*

15 Q: And it appears from that page that "WDH" writes back, "OK"?

16 A: Yes.

17 Q: When you were asked about this document in your September 22, 1997 deposition
18 testimony in the Minnesota case, you testified (at pages 131-134) that, "I don't remember ever
19 anybody developing marketing plans to do that or talking about that. It wasn't in the language
20 of the organization. The language of the organization was you didn't do that"?

21 A: Yes.

22 Q: Is that your testimony today regarding this document, as well?

23 A: Yes.

24 Q: So U.S. Exhibit 21,797 – this is not a "marketing plan targeted at 14-17 year olds"?

25 A: No, it is not.

1 *No, it is not. It appears from the attachment to this memo that the campaign was researched among*
2 *adult smokers 18-34; it was thought to appeal to that group and that was the stated target.*

3 **Q: "Meet the Turk" did go forward, though?**

4 A: Yes.

5 **Q: But it was short-lived because at the same time there were political tensions between**
6 **Greece and Turkey?**

7 A: Yes.

8 **Q: In the 1980s, Reynolds began another campaign for Camel, this one featuring "Joe**
9 **Camel"?**

10 A: Yes.

11 **Q: U.S. Exhibit 21,704 is an October 18, 1984 memo from Charles A. Martin of the**
12 **Reynolds Marketing Development Department entitled "Younger Adult Smoker Perceptions of**
13 **Camel"?**

14 A: Yes.

15 **Q: It discusses how young adults' perceptions of Camel could be used to increase market**
16 **share, especially among FUBYAS (First Usual Brand Younger Adult Smokers), by matching**
17 **the "wants" of this group with certain perceptions of Camel?**

18 A: Yes.

19 **Q: Subsequently, that same Charles A. Martin drove a proposal, "Established Brand**
20 **Research Proposal: Camel Younger Adult Smoker Focus Group," which is marked here as U.S.**
21 **Exhibit 52,788?**

22 A: Yes.

23 *I don't know, but I see his name on this document.*

1 **Q:** The proposal stated, "[d]ue to the growing importance of younger adult smokers,
2 Camel has developed a campaign which is directed solely towards this group" and proposed
3 conducting focus groups for this campaign made up exclusively of 18-20 year olds?

4 **A:** Yes.

5 **Q:** The results are reported in a February 1985 "Marketing Research Report,"
6 U.S. 50,628, which Martin summarized (on page 5738) as: "Overall, many of the male and
7 female respondents held negative user and product perceptions of Camel. In their minds,
8 Camel was thought to be a non-filtered, harsh product smoked by older males. However,
9 exposure to the younger adult ads appear to somewhat improve these attitudes. This
10 improvement stemmed primarily from two characteristics: humor, and relevancy to younger
11 adult smokers. Certain ads did convey the message that Camel was acceptable choice for
12 younger adult smokers."

13 **A:** Yes.

14 **Q:** Martin also discussed (on page 5739) focus group reactions to advertisements featuring
15 the "French Camel," – "These ads were well-received due to the fun/humor aspect of the
16 cartoons. More than any other theme, the 'French Camels' appeared to attract the
17 respondents' attention"?

18 **A:** Yes.

19 **Q:** He warned that one of the main drawbacks of these executions was that "they may be
20 appealing to an even younger age group[]"?

21 **A:** Yes.

22 *Yes, and that is why certain of the executions were not used.*

23 **Q:** The French Camel is a cartoon character that had been used abroad as an advertising
24 device?

25 **A:** Yes.

1 *Yes, but I did not think of it as a cartoon character, rather as an illustration.*

2 **Q: In 1988, Reynolds launched the Joe Camel campaign with the “Camel’s 75th Birthday**
3 **Celebration,” a year long print and billboard advertising, promotional, and point of sale**
4 **campaign?**

5 A: Yes.

6 **Q: In advertisements that featured the cartoon character Joe Camel, he was often shown**
7 **engaging in “adult activities” that teenagers would aspire to do, including hanging out at bars,**
8 **visiting casinos, riding motorcycles, or driving cars?**

9 A: That certainly describes some of his portrayals.

10 *That certainly describes some of his portrayals, and I believe these executions appeal to adult*
11 *smokers and our marketing research confirmed this.*

12 **Q: For instance, U.S. Exhibit 20,823 is one such ad used in the first year of Joe Camel’s**
13 **introduction?**

14 A: Yes.

15 **Q: Ned Leary, who is presently Senior Vice President of Marketing and President of Sports**
16 **Marketing for R.J. Reynolds, testified at his May 2, 2002 deposition in this case, R.J. Reynolds**
17 **conducted research among 18 to 24 year old smokers about “every aspect” of Joe Camel “for its**
18 **appeal and relevancy to the target.” Do you agree with that assessment?**

19 A: Yes.

20 *Yes, but Mr. Leary has since retired.*

21 **Q: Mr. Leary added that, in putting together this campaign, Reynolds understood that**
22 **“kids would like to be adults.” Do you agree with that assessment?**

23 A: Yes.

24 *I haven't reviewed Mr. Leary's testimony and I am not aware of the context of this statement so it is*
25 *difficult for me to comment.*

1 Q: U.S. Exhibit 29,840 shows Reynolds reporting that, “In 1988, Camel Ex. Regular posted
2 a 2.2 point national gain in usual brand share among males 18-24 (the brand’s target) and a
3 gain of 1.4 points among total 18-24 (YAS)”?

4 A: Yes.

5 Q: It reports that this “was the largest 12 month gain ever recorded on Tracker, for Camel
6 or any other RJR Brand”?

7 A: Yes.

8 Q: And the report finds “this turnaround” is “closely related to key changes in Camel
9 marketing,” identifying two changes, one of which was “national expansion of the ‘Old Joe’
10 imagery”?

11 A: Yes.

12 Q: U.S. Exhibit 20,826 is a May 4, 1990 report prepared for Reynolds entitled “Camel
13 Brand Promotion Opportunities” which discusses a number of promotional items geared
14 directly at “young adult target smokers?”

15 A: Yes.

16 *I don't recall having seen this document and it appears to be a proposal to Reynolds, rather than a*
17 *report. I don't know whether any of the proposals were adopted by Reynolds.*

18 Q: The report described the “target smokers” as “approaching adulthood, hence they are
19 sensitive to peer group perceptions regarding their maturity and masculinity. . . . [Y]oung adult
20 target smokers are active, sociable and fun loving in nature. Their key interests include girls,
21 cars, music, sports and dancing - all of which can include family and friends and can be
22 accomplished on a limited budget[]”?

23 A: Yes.

24 Q: The promotional items suggested by this report included blank audio tapes with Camel
25 logo, a Camel Walkman case and other “entertainment-oriented incentives.” Other suggestions

1 included the “Camel pocket game,” which included chess, checkers, dominoes, or Parcheesi, all
2 using Camel logos, graphics and visuals, or the idea that “Camel can even go so far as to design
3 its own game to reinforce major marketing themes” such as “Camel sliders” in which the object
4 was to slide a “slider” molded to look like Joe Camel across the tabletop and get closest to the
5 target?

6 A: Yes.

7 Q: U.S. Exhibit 22,055 is an October 1991 research summary entitled “A Qualitative
8 Assessment of Camel Advertising Equity,” prepared by Ellison Qualitative Research for
9 Reynolds, reporting the findings of focus groups of young adult smokers, ages 18 to 34, which
10 were conducted to measure consumer perceptions of Joe Camel advertising?

11 A: Yes.

12 Q: This qualitative research found, as summarized on page 2892, “By all indications, the
13 repositioning of the Camel brand seems to be generating a sense of up-graded appeal and
14 relevance among key smoker segments – particularly adult males 18-24. A principal part of the
15 repositioning – the “Smooth Character” advertising and integrated communications programs
16 – appear to be critical in helping make the recent Camel effort successful”?

17 A: Yes.

18 Q: You agree, Mr. Schindler, that there was a cause-and-effect relationship between the
19 Joe Camel campaign and the growth Reynolds saw in Camel sales in the 18-24 year old age
20 group?

21 A: Yes.

22 Q: And it is your opinion that such a cause-and-effect relationship between an advertising
23 campaign and such substantial growth in a market is quite unusual in the cigarette business?

24 A: Yes.

25 *I would not characterize it that way.*

1 **Q:** The 18 to 24 year olds mentioned as Camel smokers in 1991 were 15 to 21 years old
2 when the Joe Camel campaign began in 1988?

3 A: Yes.

4 **Q:** Joe Camel was so successful for Reynolds that the company continued to market his
5 image even after it said it would stop?

6 A: What do you mean?

7 **Q:** Reynolds told the public that it would stop marketing Joe Camel in July 1997?

8 A: Yes.

9 *I believe that what the company said was that the campaign was ended in print and on billboards and*
10 *was being phased out at point of sale.*

11 **Q:** And in January, 1998, your boss, Steven Goldstone, told the United States Congress,
12 "[O]ur company . . . should not be using Joe Camel. . . . We are not going to use Joe Camel"?

13 A: Yes.

14 **Q:** But at the time Mr. Goldstone was testifying, Reynolds was about to roll out a "Camel
15 Cash catalog" with a section called "The Joe Years" selling Joe Camel memorabilia such as t-
16 shirts, posters (e.g., "the illustrated history of Joe"), lighters, dart games, and ash trays?

17 A: Yes.

18 **Q:** Your explanation for this public mis-statement is that Mr. Goldstone may have
19 forgotten or he may not have known?

20 A: Yes.

21 **Q:** Of course, whether he forgot or did not know does not explain the fact that after you
22 told the public there was no more Joe Camel, your company undertook a program to sell Joe
23 Camel memorabilia?

24 A: No, it doesn't.

1 What you are referring to was a retrospective of Camel memorabilia covering items over five decades
2 and I don't believe including a limited number of Joe Camel items in that collection was inconsistent
3 with our press release.

4 **Q: The people at Reynolds in charge of this Camel Cash Catalog – they knew that you had**
5 **told the public that Joe Camel was no more – hence the use of the term “memorabilia” –**
6 **pertaining to something from the past?**

7 A: They knew.

8 **Q: They hadn't forgotten, had they?**

9 A: No.

10 **Q: In fact, this Camel Cash Catalog came across your desk at some point before it was**
11 **rolled out?**

12 A: Yes.

13 *It might have, I don't recall.*

14 **Q: You had not forgotten about those public statements, either?**

15 A: No.

16 **Q: Moving on to another topic, Mr. Schindler, you have testified in the past that in 1992,**
17 **Reynolds adopted a policy not to "interact with" or "talk to" 18, 19, and 20 year olds, but**
18 **rather conducts its interactive marketing practices only with those 21 and older?**

19 A: That is correct.

20 *That is correct with respect to the development of marketing plans or campaigns.*

21 **Q: The policy was originally set forth in U.S. Exhibit 51,672, a May 28, 1992 memo from**
22 **James Schroer, who was then Executive Vice President for Marketing and Sales at Reynolds?**

23 A: Yes.

24 **Q: The memo states at the top of the second page, "[I]t would be in our long term best**
25 **interests to ... limit our advertising and marketing efforts to smokers 21 years of age and**

1 older. . . . We don't believe for a minute that this will silence our adversaries[.] . . . We do feel
2 that it would blunt this point of attack and provide us with a three year "cushion" that can be
3 used in response to claims that we're after the underage market"?

4 A: Yes.

5 Q: And when you took the reigns at Reynolds in 1994, you chose to maintain this policy?

6 A: Yes.

7 Q: You have maintained that policy in order to create a buffer between adult smokers and
8 minor smokers, in your words (in your June 12, 2002 deposition in this case at page 218), "so
9 that plaintiffs' lawyers and others can't accuse me of the iterative process down to
10 sixteen[. . .]"?

11 A: Yes.

12 *Yes that is one of the reasons.*

13 Q: In other words, people have accused Reynolds you of marketing to teenagers because it
14 has marketed to eighteen year olds before, so this is a way to defend against such charges by
15 saying that you are creating more distance between you and the under-18 market?

16 A: Yes.

17 Q: And you maintain that reasoning?

18 A: Yes.

19 Q: So, just like your earlier statements that eliminating youth smoking would "eliminate a
20 major issue that people are constantly coming at us with," so too does this under-21 policy exist
21 to give you some defense against or comfort and relief from litigation?

22 A: I suppose I have said as much, yes.

23 *That is a consideration, but it is not the only reason.*

1 **Q:** And as a result of this policy, you maintain that the company has not since 1992 and will
2 not ever talk to anybody about any marketing idea, packaging, promotion, [who is] under
3 twenty-one years old?

4 A: Correct.

5 *That's incorrect, as I have explained above.*

6 **Q:** This is a company-wide policy?

7 A: Yes.

8 **Q:** It applies to all without exception?

9 A: Yes.

10 **Q:** You and your fellow company executives have worked to make sure that everyone is
11 aware of it?

12 A: Yes.

13 **Q:** And you and your fellow company executives have worked to make sure that everyone
14 follows it?

15 A: Yes.

16 **Q:** Despite this policy not to talk to 18-20 year olds, you have never even considered the
17 question of whether an ad designed to appeal to a 21 year old also might appeal to a 20 year
18 old?

19 A: Correct.

20 *I do not believe that is correct.*

21 **Q:** And despite this policy, since 1992 you have not changed any ads to separate out or
22 otherwise not appeal to 18-20s?

23 A: Correct.

24 *I don't believe that to be the case.*

1 **Q: You have not done anything to try to determine whether any of your ads or ad**
2 **campaigns could be changed for the purpose of appealing to 21 and over only?**

3 A: No, we have not.

4 *This seems to be the same question I just answered.*

5 **Q: Since this 1992 policy, Reynolds never sought to take the information from focus groups**
6 **about what 18-20 year olds like and then withdraw or revise ads accordingly?**

7 A: No, we have not.

8 **Q: Indeed, despite the announcement of this policy, Reynolds did not respond by**
9 **withdrawing its "Joe Camel" campaign?**

10 A: Correct.

11 **Q: Even though you assert that the target group of this campaign was 18-24 year olds?**

12 A: Correct.

13 *My recollection is that the target of the Joe Camel campaign was adult smokers 18 and older.*

14 **Q: So, if an 18 year old sees an ad campaign you have developed by talking only to 21 year**
15 **olds, likes it, and switches to your cigarettes as a result, that is not a problem in terms of the**
16 **spirit of this policy?**

17 A: It's not a problem.

18 **Q: It's not a problem because, according to you, you have no idea what the 18 year old**
19 **thinks of the ad campaign when you launch it?**

20 A: Correct.

21 *It is not a problem because they are of legal age to buy the product.*

22 **Q: Additionally, you have not changed how your cigarettes are sold at the retail level in**
23 **response to this policy?**

24 A: That is correct?

1 **Q: For instance, since 1992, Reynolds has not required that its cigarettes only be sold in**
2 **vending machines the locations which its cigarettes were limited to age-21+ venues?**

3 A: No, we have not.

4 **Q: You have the power to do so, if you choose?**

5 A: Yes.

6 *I don't know that I have that power.*

7 **Q: May we talk a bit more about how this policy means you will not "talk to" 18-20 year**
8 **olds?**

9 A: Yes.

10 **Q: This policy, as stated in U.S. Exhibit 51,672 does provide an "out" in the sense that it**
11 **also says, "Research conducted to understand and track the cigarette category and the**
12 **performance of our brands and those of our competitors can continue to be conducted among**
13 **all adult (18+) smokers"?**

14 A: It does say that, though I would not call it "an out."

15 **Q: Let me make sure I get this straight – when you were testifying about Reynolds's**
16 **history of collecting what you called "brand choice" tracking data from sources such as NFO**
17 **and the like, you testified in the Scott case deposition (at 194), "The policy of this company now**
18 **and back then was to not market to underage people who smoked. In my view, it was wrong to**
19 **collect the data because of that policy. If you have that as a policy, I don't think it's real smart**
20 **to be collecting data on segments of the market that you will not market to, should not market**
21 **to, so that's my personal view"?**

22 A: Yes.

23 **Q: Now you purport to have a policy that you will not market to people under 21?**

24 A: Yes.

1 *During my tenure as CEO, our policy was to limit our efforts to those 21 and older smokers. By this I*
2 *mean we developed our campaigns for smokers 21 and over. We did not include 18 to 20 year olds in*
3 *our development of marketing campaigns. Certain aspects of these policies are currently under*
4 *review following the merger.*

5 **Q: Yet you still collect data on people under 21?**

6 A: Yes.

7 **Q: You will ask people, "do you smoke"?**

8 A: Yes.

9 **Q: You'll ask "What brand?"**

10 A: Yes.

11 **Q: You'll ask, "Have you seen this ad?"**

12 A: Yes.

13 *I do not believe we ask that question. I believe at some point we stopped, but I do not know the date.*

14 **Q: But to you this does not involve marketing, and therefore you are not "talking to"**
15 **them?**

16 A: Correct.

17 *No, this means we are not talking to them in the development of our marketing campaigns.*

18 **Q: Please turn to U.S. Exhibit 22,116?**

19 A: Yes.

20 **Q: In 1997 you had come up with a repositioning on Winston, a new no-additives product?**

21 A: Yes.

22 **Q: And your new positioning slogan was "No Bull, No Additives"?**

23 A: Yes.

24 **Q: And you had a new packaging design?**

25 A: Yes.

1 **Q: You test-marketed components of that in Florida for about a year?**

2 A: Yes.

3 **Q: Prior to deciding whether to go national with this marketing campaign?**

4 A: Correct.

5 **Q: The goal of this campaign was to use Winston as a competitor against Marlboro?**

6 A: Yes.

7 **Q: That is, to get Marlboro smokers to switch to Winston?**

8 A: Yes.

9 **Q: And use "No Bull" to convince them to do that?**

10 A: Yes.

11 **Q: Winston used to be the biggest seller in the market until Marlboro overtook it?**

12 A: Yes.

13 **Q: And you've been chasing Marlboro ever since?**

14 A: Yes.

15 **Q: The time-line was to go with the national launch of No Bull in the summer of 1997?**

16 A: Yes.

17 **Q: U.S. Exhibit 22,116 is entitled, "1997 Winston Launch Plan" and dated February 1997?**

18 A: Yes.

19 **Q: The "E.C. Leary" at the bottom of the first page – that's Ned Leary?**

20 A: Yes.

21 **Q: He was in charge of marketing for the Winston brand at the time?**

22 A: Yes.

23 **Q: Page 1680 of this document is headed, "Winston 'No Bull' Assessment"?**

24 A: Yes.

1 Q: The summary point is that there was "clear evidence of significantly improved Winston
2 performance from repositioning" – conservatively assessing a .5 gain in market share?

3 A: Yes.

4 Q: "Repositioning" as it is used here is just another word for marketing plan?

5 A: Yes.

6 *No it is not.*

7 Q: The "summary" goes on to say that "share and volume trends show decline has
8 STOPPED"?

9 A: Yes.

10 Q: And "modeling demonstrates positioning is driving incremental business"?

11 A: Yes.

12 Q: So here Leary, the head of Winston marketing, is drawing a conclusion that this new
13 marketing plan is responsible for stemming the drop in Winston sales and turning it around to
14 perhaps a .5 market share increase?

15 A: Yes.

16 Q: An increase of .5 market share means increased sales of literally billions of cigarettes?

17 A: Yes.

18 *Yes, on a nationwide basis.*

19 Q: Translating into additional revenues of tens of millions of dollars, or more?

20 A: Yes.

21 Q: Back to the No Bull assessment on page 1680, it further notes "significant improvement
22 in Winston perceptions and negative impact on Marlboro"?

23 A: Yes.

24 Q: This suggests a conclusion that the No Bull positioning might make inroads into the
25 Marlboro market?

1 A: Yes.

2 Q: Please turn to page 1689, "Consumer Leverage," where the document again discusses
3 "improvement in Winston perceptions and negative impact on Marlboro"?

4 A: Yes.

5 Q: The table presented there identifies the subjects whose perceptions were being asked
6 about as "NM 18-34 Non-Winston"?

7 A: Yes.

8 Q: That means non-menthol, non-Winston smokers 18 to 34 years of age?

9 A: Yes.

10 Q: Presumably, then, 18, 19 and/or 20 year olds were asked about their perceptions?

11 A: Yes.

12 Q: Comparing Winston to Marlboro, they were asked about which better stood for the
13 propositions "no artificial ingredients" and "no additives"?

14 A: Yes.

15 Q: They were asked which smoker – the Winston smoker or the Marlboro smoker – did
16 they perceive to be more of a "straightforward person" and more "true to his/her convictions"?

17

18 A: Yes.

19 Q: They were asked which smoker – the Winston smoker or the Marlboro smoker – did
20 they perceive to be more inclined to "reject[the] phony/artificial" and which more stood for a
21 "no bull" brand?

22 A: Yes.

23 Q: And they were asked to compare the products and their perceptions of it which speak
24 more to "smooth taste", "has attitude like you" and which they were more likely to purchase?

25 A: Yes.

1 Q: Now, when these 18-34 year olds, which presumably included some 18, 19 and/or 20
2 year olds, were asked about these perceptions, you don't know if it took 10 questions or 100
3 questions to gauge their responses?

4 A: Correct.

5 Q: And when you look at the top of this page (1689) containing this smoker perceptions
6 information, it is entitled "Consumer Leverage"?

7 A: Yes.

8 Q: Return for a moment to page 1680 – there it says "Qualitative indicators (focus groups,
9 sales, Winston Cup) support significant leverage opportunity"?

10 A: Yes.

11 Q: "Focus groups" was one method by which Ned Leary made this conclusion about
12 "leverage opportunity"?

13 A: Yes.

14 Q: And (on page 1689), "consumer leverage" is assessed in terms of information gleaned
15 from information provided by 18-34 year olds, which presumably included some 18, 19 and/or
16 20 year olds?

17 A: Yes.

18 *Yes, but the quantitative information referred to here did not come from focus groups.*

19 Q: Now please turn to page 1691 – the "Recommendation" there is for a June 2 national
20 launch?

21 A: Yes.

22 Q: And looking at page 1653, that means Leary was recommending an expenditure of \$309
23 million for the launch effort?

24 A: Yes.

1 Q: And, per this page, the launch was planned to include discounting, promotions, point-of-
2 sale activity, advertising, event marketing, relationship marketing, and intercept marketing?

3 A: Yes.

4 Q: This decision to pursue this full-fledged marketing plan was informed at least in part by
5 focus group research?

6 A: Yes.

7 *No. That decision was motivated by the performance of the campaign in the marketplace.*

8 Q: This decision to pursue this full-fledged marketing plan was informed at least in part by
9 information gleaned from gauging the perceptions of 18-34 year olds, which presumably
10 included some 18, 19 and/or 20 year olds?

11 A: Yes.

12 Q: Please now take a look at U.S. Exhibit 52,564 – this is an April 1997 report to Ned Leary
13 about No Bull's test market in Florida?

14 A: Yes.

15 Q: Specifically, this report presents information about the results of the eighth month
16 Reynolds had spent tracking No Bull performance in Florida?

17 A: Yes.

18 Q: And again, Florida was the test market upon which the decision would be made about
19 going national with the No Bull repositioning for Winston?

20 A: Correct.

21 Q: Page 9088 of this document has the heading, "Supporting Factors for Positive Share
22 Trends" and states, "Momentum of 'No Bull' positioning still evident with increase in share of
23 smoker and proposition awareness"?

24 A: Yes.

1 Q: Of those factors noted, there is "Proposition awareness among 18-34 year old smokers
2 increased from 29% in Jan[uary] to 37% in Feb[ruary], driven largely by males"?

3 A: Yes.

4 Q: And also, "The competitive buyer profile for Winston in Florida skews more younger
5 adult (18-34) and Marlboro CUB than the balance US"?

6 A: Yes.

7 Q: Suggesting that 18, 19 and/or 20 year olds fall within what Reynolds has determined is
8 the profile of the smoker whom the company could successfully target with the Winston No Bull
9 marketing plan?

10 A: Yes.

11 *No. The target group for Winston No Bull was 21 and older competitive smokers.*

12 Q: Do you know how this report reached that conclusion?

13 A: Yes.

14 *I am not sure what conclusion you are talking about.*

15 Q: Turn to page 9097 – "Winston 'No Additive' Test Market Tracking Results," subtitled
16 "Awareness and Usage Measures?"

17 A: Yes.

18 Q: You believe the information presented on this page was gained from telephone
19 interviews conducted by or for Reynolds?

20 A: Yes.

21 Q: Here, the interviewees were asked questions about "proposition awareness"?

22 A: Yes.

23 Q: And that, to you, means the extent to which the person is familiar with the advertising
24 campaign – the "proposition"?

25 A: Yes.

1 **Q:** You are asking if they are aware of the claim – the brand proposition?

2 A: Yes.

3 **Q:** To cover this information, you don't know if the interviewee was asked one, five or a

4 few dozen questions?

5 A: I do not.

6 **Q:** These interviewees were asked questions about whether they ever had tried Winston No

7 Bull, and if they had done so in the prior four weeks?

8 A: Yes.

9 **Q:** And these interviewees were asked questions about whether they ever had purchased

10 Winston No Bull, and if they had done so in the prior four weeks?

11 A: Yes.

12 **Q:** The table shows that among those interviewed were "18-34" – which means people aged

13 18-34 years old?

14 A: Yes.

15 **Q:** Presumably that included people 18, 19 and/or 20 years old?

16 A: Yes.

17 **Q:** Please turn back a few pages to page 9095 – – "Winston 'No Additive' Test Market

18 Tracking Results," subtitled "Action Standard Criteria and Perceptions"?

19 A: Yes.

20 **Q:** The page says, "Base = Competitive UB Non-WINSTON UB's 18-34"?

21 A: Yes.

22 **Q:** Under perceptions, the interviewees were asked questions about whether Winston No

23 Bull "Has a good overall taste"?

24 A: Yes.

25 **Q:** They were asked questions about whether No Bull "is smooth tasting"?

1 A: Yes.

2 Q: They were asked questions about whether it "is harsh tasting"?

3 A: Yes.

4 Q: They were asked questions about whether it "is a brand your friends would smoke"?

5 A: Yes.

6 Q: They were asked questions about their perceptions as to whether it "contains no

7 artificial ingredients"?

8 A: Yes.

9 Q: They were asked questions about their perceptions as to whether it "has no additives"?

10 A: Yes.

11 Q: They were asked questions about whether it "is for a straight forward person"?

12 A: Yes.

13 Q: They were asked questions about whether it "is a good value for the money"?

14 A: Yes.

15 Q: They were asked questions about whether it "is for a person who is true to his or her

16 convictions"?

17 A: Yes.

18 Q: They were asked questions about whether it "reflects an attitude you like"?

19 A: Yes.

20 Q: They were asked questions about whether it "is for a person who rejects phony or

21 artificial things"?

22 A: Yes.

23 Q: They were asked questions about whether it "has advantages over other brands"?

24 A: Yes.

25 Q: They were asked questions about whether it "is a 'no bull' brand"?

1 A: Yes.

2 **Q: They were asked questions about whether it "has an Authentic Tobacco Taste"?**

3 A: Yes.

4 **Q: They were asked if they intended to purchase it in the future?**

5 A: Yes.

6 **Q: And they were asked questions comparing it to Marlboro along certain lines, such as**
7 **their perceptions of what type of person smokes this cigarette, and how each compared to**
8 **generic cigarettes?**

9 A: Yes.

10 **Q: This breadth of topics makes it sound more like a conversation took place between the**
11 **interviewer and the interviewees?**

12 A: I don't know.

13 *I believe it was a survey.*

14 **Q: Again, you don't know how many questions were asked – one, five, or a dozen – to**
15 **obtain the information recorded about each of these topics?**

16 A: No, I don't.

17 **Q: Now when you were asked about tracking and this document during your June 12, 2002**
18 **deposition in this case, you responded that these interviews are not focus groups, (at page 181)**
19 **"this isn't sitting down in a conference room with them for four hours asking them all sorts of**
20 **intricate questions about it"?**

21 A: Correct.

22 **Q: And because of this, it is consistent with the 1992 "no-under-21" policy and is not**
23 **"talking to" or "interacting with" anyone under 21 years of age?**

24 A: Correct.

1 *It is not a violation of the policy. After you drew my attention to this at my deposition, I investigated*
2 *this. I then decided to refine the policy.*

3 **Q: Focus group or not, you still used this information to help make the decision to go**
4 **national with No Bull?**

5 A: Yes.

6 **Q: And "No Bull" was a marketing plan?**

7 A: Yes.

8 *No, there was a marketing plan to support the No Bull proposition.*

9 **Q: And you did go forward with it?**

10 A: Yes.

11 **Q: None of this "no-under-21" policy means that you are not interested in 18-20 year olds**
12 **smoking your products?**

13 A: Correct; it is legal for them to do so.

14 **Q: And this "no-under-21" policy means that you are not going to find ways to convince**
15 **18-20 year olds to smoke your product?**

16 A: What do you mean?

17 **Q: Do you remember how we were discussing earlier Reynolds' efforts in the late 1980s and**
18 **early 1990s to target young adult African-American smokers?**

19 A: Yes.

20 **Q: Such as Reynolds's "Black Initiative" to increase the Company's share of 18-20 year old**
21 **black smokers by 2.5 points in 1990?**

22 A: Yes.

23 **Q: And how Uptown conducted its focus groups by including only 18-24 year old inner city**
24 **African-American male and female smokers with a high school or less education, and a total**
25 **household income under \$20,000 per year?**

1 A: Yes.

2 **Q: Well wouldn't a lay person who was informed about the 1992 "no-under-21" policy**
3 **think that the 18-20 year old portion of that community was now off-limits to the focus of**
4 **Reynolds's marketing initiatives?**

5 A: As I have testified, the 1992 policy was about who we talk to in testing our marketing
6 strategies.

7 *As I have testified, the 1992 policy was about who we talk to in development of our marketing*
8 *strategies.*

9 **Q: At Reynolds there is a program called "Network 2000"?**

10 A: Yes.

11 **Q: Network 2000 was formed by African-American professionals in the Company for the**
12 **purpose of addressing career development and diversity issues?**

13 A: Yes.

14 **Q: And career development for your African-American employees is something you take**
15 **very seriously?**

16 A: Yes.

17 **Q: Likewise, diversity issues as they affect your Company – you take them very seriously?**

18 A: Yes.

19 **Q: Network 2000 ideas are taken seriously by the senior management of your company?**

20 A: Yes.

21 **Q: They are not discarded out of hand?**

22 A: Of course not.

23 **Q: They get attention and they are responded to?**

24 A: Yes.

1 **Q:** You have worked hard to assure opportunities for minority employees to reach the
2 highest positions in your company?

3 A: Yes.

4 **Q:** And you have sought to assure opportunities in every aspect of the business – including
5 marketing, manufacturing and product development?

6 A: Yes.

7 **Q:** You have met with some success in doing so?

8 A: Yes.

9 **Q:** You welcome and encourage contributions from all populations within your company?

10 A: Of course.

11 **Q:** Members of Network 2000 – they come from all different sectors of the company?

12 A: Yes.

13 **Q:** Please take a look at U.S. Exhibit 52,508 – that is a Network 2000 Brainstorming Session
14 – "Ideas on How to Get More Newport and Competitive Smokers to Choose Our Products"?

15 A: Yes.

16 **Q:** It's dated September 15, 1995?

17 A: Yes.

18 **Q:** Newport is a menthol cigarette?

19 A: Yes.

20 **Q:** Made by Lorillard?

21 A: Yes.

22 **Q:** In 1995, Newport was a popular brand in the African-American community?

23 A: Yes.

24 **Q:** At that time, it was selling better than Reynolds's leading menthol, Salem?

25 A: Yes.

1 Q: Pages 6847 and 6848 identified the "strategic issues" discussed during this
2 brainstorming session?

3 A: Yes.

4 Q: Among the strategic issues discussed were, "Target Newport smokers with advertising
5 (inner city, daring hairstyles, bagg[y] clothing, today's verbiage)[,]" to "Incorporate more
6 diversity in Salem advertising[,]" and "Positioning based on image"?

7 A: Yes.

8 Q: Pages 6849 and 6850 of this document identifies feedback that was given about how the
9 brainstorming session was conducted?

10 A: Yes.

11 Q: Page 6850 reflects a suggestion that the group "bring in Newport/Kool smokers or 18-24
12 young black males"?

13 A: Yes.

14 Q: Network 2000 was suggesting involving 18-24 year old black in internal company
15 discussions about issues such as positioning and advertising?

16 A: Yes.

17 *No. I don't think that is what they were talking about, but I am not certain.*

18 Q: Tommy Hickman is listed as the "client" on the front page of this document?

19 A: Yes.

20 Q: Mr. Hickman is Reynolds's vice president for manufacturing?

21 A: Yes.

22 Q: He serves on the Company's Executive Committee?

23 A: Yes.

24 *No.*

25 Q: He is the highest ranking African-American in your Company?

1 A: Yes.

2 No.

3 Q: Now please look at U.S. Exhibit 20,857 – it is a "Competitive Summary – SALEM
4 Positioning Development Review," dated January 1996?

5 A: Yes.

6 Q: You were involved in this Salem positioning development?

7 A: Yes.

8 Q: The company was working on ideas about how to reposition Salem to make it
9 competitive after years of decline?

10 A: Yes.

11 Q: This document is a summary of something about which there was constant discussion at
12 the Company at the time?

13 A: Yes.

14 Q: At page 840 of this document, it summarizes Salem's then-current marketing strategy,
15 including, "No working positioning platform from which to base advertising/promotion
16 support"?

17 A: Yes.

18 Q: To your memory, that is an accurate assessment of the situation?

19 A: Yes.

20 Q: It goes on to say, "Development of viable positioning critical issue for 1996"?

21 A: Yes.

22 Q: That, too, is an accurate assessment of the situation as you recall it?

23 A: Yes.

24 Q: So this is a document summarizing the position and activities of Salem's competitors,
25 and presents a strategy about how to make Salem compete with them?

1 A: That's a fair statement.

2 **Q: Page 0834 of this document is part of a competitive summary of Newport that Reynolds**
3 **prepared?**

4 A: Yes.

5 **Q: And it says that Newport's strategic intent is to "dominate the menthol category by**
6 **owning 18-24 smokers"?**

7 A: Yes.

8 **Q: To become the "Marlboro of Menthol[s]"?**

9 A: Correct.

10 **Q: Reynolds concluded that 25 percent of Newport's smokers were in the 18-24 age group?**

11 A: Yes.

12 **Q: And at page 0842, Reynolds says that Newport is the brand of choice among African-**
13 **Americans?**

14 A: Yes.

15 **Q: In particular, 68% of African-American smokers in the 18-24 age group chose Newport**
16 **as their brand?**

17 A: Yes.

18 **Q: This was not news to you – everyone knew that Newport had high share among 18-24**
19 **year old African-Americans?**

20 A: Yes.

21 **Q: At page 0881, Reynolds states, "vast majority of 18-24 African-Americans continue to**
22 **choose a menthol product"?**

23 A: Yes.

24 **Q: And also observes that following a more-than-50% decline since 1981, performance of**
25 **menthol smokers among white 18-24 year olds has stabilized at 15%?**

1 A: Yes.

2 **Q: Page 884 shows that while Newport and Marlboro Menthol have posted recent gains**
3 **among the "key 18-24 smoker group", at the same time Salem "has fallen to below 1.0"?**

4 A: Yes.

5 **Q: Now, page 866 talks about "positioning opportunity" for Salem, noting the importance**
6 **of "significant involvement with 18-24 [year old] smokers" and how it is**
7 **"critical that Salem have front door opportunity to ensure long-term viability"?**

8 A: Yes.

9 **Q: "Positioning opportunity" means the strategy for the brand?**

10 A: Yes.

11 *To me it means developing the strategy for the brand.*

12 **Q: And here the strategy for the Salem brand was to have "front door opportunity" to the**
13 **18-24 year old smoker?**

14 A: Yes.

15 **Q: It doesn't talk about getting in to the front door of the 21-24 age group?**

16 A: No.

17 **Q: It talks about the brand strategy as getting in to the front door of the 18-24 age group?**

18 A: Yes.

19 **Q: On page 0867 there is a discussion of this positioning opportunity, this brand strategy,**
20 **in terms of a "Fresh Expression Rationale"?**

21 A: Yes.

22 **Q: It says, "Enduring: Identified core values have been integral part of eighteen-to-twenty-**
23 **four mind-set for decades"?**

24 A: Yes.

25 **Q: Again, here Reynolds is talking about 18-24, rather than 21-24?**

1 A: Yes.

2 **Q: By the way, the source of all these data about share of market by age group among**
3 **menthol smokers and among African-Americans – these are from "Marlin"?**

4 A: Yes.

5 *No.*

6 **Q: "Marlin" is the modern equivalent of NFO?**

7 A: That's fair to say.

8 *No.*

9 **Q: So this modern-day NFO provided the factual rationale for this positioning strategy?**

10 A: To some extent, yes.

11 *No.*

12 **Q: Mr. Schindler, please turn your attention now to U.S. Exhibit 36,251 – this is a**
13 **document entitled "Master Settlement Agreement?"**

14 A: Yes.

15 **Q: Are you familiar with this document?**

16 A: Yes, I am.

17 **Q: Let's refer to the "Master Settlement Agreement" as the "MSA" - okay?**

18 A: Okay.

19 **Q: The MSA is an agreement between the Attorneys General and other representatives of**
20 **46 states, Puerto Rico, the U.S. Virgin Islands, American Samoa, the Northern Mariana Islands,**
21 **Guam, and the District of Columbia and the five largest tobacco manufacturers in the United**
22 **States to settle state suits filed to recover costs associated with treating smoking-related**
23 **illnesses?**

24 A: That is a fair description.

1 **Q: And those forty-six states and the various United States territories are known under the**
2 **MSA as the "Settling States"?**

3 A: Yes, that is correct.

4 **Q: And specifically, which cigarette manufacturers are parties to the MSA?**

5 A: Brown & Williamson Tobacco Corporation, Lorillard Tobacco Company, Philip Morris, Inc.,
6 R.J. Reynolds Tobacco Company, Commonwealth Tobacco, and Liggett & Meyers.

7 *Brown & Williamson Tobacco Corporation, Lorillard Tobacco Company, Philip Morris, Inc., and*
8 *R.J. Reynolds Tobacco Company are the Original Participating Manufacturers. There are many*
9 *Subsequent Participating Manufacturers.*

10 **Q: Those manufacturers are known as "Original Participating Manufacturers" under**
11 **Section II (hh) of the MSA?**

12 A: Yes, that is correct.

13 *I think I just answered that.*

14 **Q: When did the MSA become effective?**

15 A: The parties signed the MSA on November 23, 1998.

16 **Q: And after signing the MSA, each state was required to go to its state court and file a**
17 **motion for the approval of the settlement agreement?**

18 A: Yes, that is correct.

19 **Q: States that had sued the tobacco manufacturers were required to seek state court**
20 **approval of the MSA by December 11, 1998, and states that had not filed a suit were required to**
21 **seek such approval by December 23, 1998?**

22 A: Yes.

23 **Q: In 1998, at the time the MSA was signed, you were Chief Executive Officer of**
24 **R.J. Reynolds?**

25 A: Yes.

1 **Q:** And since that date, you have been the person at Reynolds ultimately responsible for the
2 Company's compliance with the provisions of the MSA?

3 A: Yes, that is correct.

4 **Q:** Now, the MSA contains a section III entitled "Permanent Relief" beginning on page 18?
5

6 A: Yes.

7 **Q:** You would agree that Section III of the MSA contains certain restrictions regarding the
8 advertising and marketing of cigarettes?

9 A: Yes.

10 **Q:** Those restrictions includes such things as the ban on the use of cartoons (p. 19),
11 limitations on tobacco brand name advertising (p. 19), sponsorship restrictions (p. 19), certain
12 limitations on outdoor advertising and transit advertising (p. 22), bans on tobacco brand name
13 merchandise (p. 25), restrictions on youth access to free samples (p. 26), corporate commitments
14 related to youth access and consumption (p. 29), and limitations on lobbying (p. 29)?

15 A: Yes.

16 **Q:** Directing your attention to Section III(a) of the MSA beginning on page 18, Section
17 III(a) reads as follows: "Prohibition on Youth Marketing: No Participating Manufacturer
18 may take any action, directly or indirectly, to target youth within any Settling States in the
19 advertising, promotion or marketing of Tobacco Products, or take any action the primary
20 purpose of which is to initiate, maintain, or increase the incidence of Youth smoking with any
21 Settling State"?

22 A: Yes, that is what the MSA provides.

23 **Q:** And Reynolds is, of course, an original participating manufacturer?

24 A: Yes, it is.

1 **Q: In response to the MSA, Reynolds made no changes to the content of any of its**
2 **advertisements?**

3 A: That is correct.

4 **Q: In response to the MSA, Reynolds did not discontinue or withdraw any of its existing**
5 **print ads or print ad campaigns?**

6 A: That is correct.

7 **Q: In response to the MSA, there were no print ads or print ad campaigns in Reynolds's**
8 **pipeline that it decided to discontinue, withdraw or cancel?**

9 A: That is correct.

10 **Q: Neither did you, in response to the MSA or otherwise, hire or use anyone who**
11 **specializes in child psychology or child advertising to determine whether the content of our ads**
12 **appeal to minors?**

13 A: That is correct.

14 **Q: Rather, at Reynolds, you assert that this sort of determination is “inherent in the**
15 **process” of the development of the ads, where people in legal, marketing, external relations and**
16 **some Reynolds employee review panel looks at the ads?**

17 A: That is correct.

18 **Q: According to you, everyone in the company knows Reynolds does not market to kids**
19 **and that is what guides decision making?**

20 A: That is correct.

21 **Q: Yet nowhere in this "process" is the specific question, “Would this ad appeal to**
22 **minors?” posed or answered?**

23 A: That is correct.

24 *I believe there are several steps in the process where this issue is addressed*

25 **Q: Instead, the sole questions asked is if adults like an ad or not?**

1 A: That is correct.

2 *I disagree, as I just described.*

3 **Q: Indeed, after the MSA, there was no internal discussion at Reynolds about how to make**
4 **an ad that appeals to adults but not to minors?**

5 A: That is correct.

6 **Q: Now, from your work you are familiar with its media advertising schedules?**

7 A: Yes.

8 *Only in a general sense.*

9 **Q: A media advertising schedule is a plan the company utilizes to determine what media to**
10 **utilize, including magazine advertising, to advertise and market its various brands?**

11 A: Yes.

12 **Q: A after it signed the MSA in 1998 Reynolds was contacted about its advertising**
13 **practices?**

14 A: Yes.

15 **Q: Specifically, representatives from the National Association of Attorneys General**
16 **Tobacco Committee and employees from Reynolds attended a meeting in Winston-Salem in**
17 **1999 in which the Attorneys General informed Reynolds of its complaints?**

18 A: Yes.

19 *Yes, but I did not attend the meeting.*

20 **Q: The Attorneys General expressed its belief that newspaper bags constituted a form of**
21 **outdoor advertising prohibited by the MSA, and that, in particular, the drawings of a dog**
22 **Reynolds used on such bags for the company's Doral brand constituted a cartoon?**

23 A: Yes.

24 *That's my understanding.*

1 **Q: The Attorneys General also expressed it belief that Reynolds was violating the MSA by**
2 **targeting youth through its advertising?**

3 A: Yes.

4 *I don't recall.*

5 **Q: The Attorney General of California and the National Association of Attorneys General**
6 **asked Reynolds to modify its policies and practices to reduce youth exposure to its magazine**
7 **advertising?**

8 A: Yes.

9 *I don't know when, but I do know they raised that issue.*

10 **Q: Reynolds responded to this request in a letter that is marked as U.S. Exhibit 24,831?**

11 A: Yes.

12 **Q: This is a December 10, 1999 letter from Reynolds's Deputy General Counsel Guy Blynn,**
13 **in which he informed the Attorneys Generals that Reynolds would maintain its policy of**
14 **advertising in publications whose under-21 readership was no more than 50% of its total**
15 **readership?**

16 A: Yes.

17 **Q: In other words, Reynolds did not offer to change its policy in response to the concerns**
18 **raised by the Attorneys General?**

19 A: Not at that time.

20 **Q: You approved this decision and this letter you prior to it being mailed?**

21 A: Yes.

22 *Yes, but I don't believe I saw the letter before it was mailed.*

23 **Q: After repeated communications between the Attorneys General and Reynolds, the**
24 **Company, by letter dated June 16, 2000, informed Oklahoma Attorney General, W.A. Drew**
25 **Edmondson, and the National Association of Attorneys General that it would no longer**

1 **advertise in publications whose youth readership was 33 1/3% or more of the publication's**
2 **readership?**

3 A: Yes.

4 **Q: You approved this decision and this letter prior to it being mailed?**

5 A: Yes.

6 *Yes, but I don't believe I saw the letter before it was mailed.*

7 **Q: During this time, did any of the other cigarette companies modify their policies with**
8 **respect to youth exposure to magazine advertisements?**

9 A: Yes.

10 **Q: Returning to Reynolds, the Company and the Attorneys General continued to debate**
11 **and negotiate this issue?**

12 A: Yes.

13 **Q: Please look at U.S. Exhibit 78,675 – it shows that on February 16, 2001, the California**
14 **Attorney General sent Reynolds a letter giving 30 days notice of intent to initiate proceedings**
15 **against the Company?**

16 A: Yes.

17 **Q: Still the issue remained unresolved?**

18 A: Yes.

19 **Q: On March 19, 2001, the State of California, through its Attorney General, filed a lawsuit**
20 **alleging that Reynolds violated the MSA by targeting youth through placement of its tobacco**
21 **advertisements in national consumer magazines in the years 1999, 2000, and 2001?**

22 A: Yes.

23 **Q: On that same day as the suit was filed, Reynolds announced to the media that it would**
24 **no longer advertise in publications whose youth readership was 25% or more of the**
25 **publication's readership?**

1 A: Yes.

2 Q: The case went to trial in April and May of 2002?

3 A: Yes.

4 Q: In June 2002, the trial court found in favor of the State of California and against
5 Reynolds on the grounds that Reynolds indirectly targeted minors, and entered judgment
6 permanently enjoining Reynolds from continuing to violate the MSA, subsection III(a) by
7 exposing youth to its tobacco advertising at levels similar to the levels of exposure of adult
8 smokers?

9 A: Yes.

10 Q: The court also ordered that the company take reasonable measures designed to reduce
11 exposure of its advertising to youth to a level significantly lower than exposure levels of target
12 youth adult smokers?

13 A: Yes.

14 Q: And the court awarded \$20 million pursuant to the MSA, and also awarded the State of
15 California its costs and attorneys' fees?

16 A: Yes.

17 Q: Reynolds appealed this judgment?

18 A: Yes, it did.

19 Q: In February 2004, the appeals court affirmed the trial court's judgment on liability?

20 A: Yes.

21 Q: But it found that Reynolds had targeted youth in violation of the MSA on a different
22 ground than did the trial court, namely that the substantially similar levels of exposure of
23 Reynolds cigarette advertisements to youth and to young adult smokers demonstrated intent to
24 target youth as a matter of law?

25 A: Yes.

1 *I don't recall the specifics of the Court of Appeals legal reasoning.*

2 **Q: The appeals court concluded that after entering the MSA, "Reynolds initially made no**
3 **changes to its media advertising schedules?**

4 A: Correct.

5 **Q: It found that Reynolds did not include in its media plans the goal of reducing exposure**
6 **of its advertising to youth?**

7 A: Correct.

8 **Q: And it found that Reynolds did not determine the extent its advertising was exposed to**
9 **youth?**

10 A: Correct.

11 **Q: The appeals court affirmed the monetary sanctions as to entitlement but reversed as to**
12 **amount and remanded for further proceedings?**

13 A: Yes.

14 **Q: This opinion is reported at 116 Cal.App.4th 1253 (2004)?**

15 A: Yes.

16 *Okay.*

17 **Q: After that, eventually, the parties reached a settlement of the disputes concerning the**
18 **amount of monetary sanctions, attorneys' fees, costs, and the application of the MSA's**
19 **prohibition against youth targeting to Reynolds' placement of cigarette advertising in Youth-**
20 **measured publications in 2002, 2003, and 2004?**

21 A: Yes.

22 **Q: What was the amount of the settlement?**

23 A: \$11,417,263.65 was awarded for monetary sanctions, and \$5,832,736.35 was awarded for
24 attorneys fees and costs incurred in the action.

1 \$11,417,263.65 was agreed to for monetary sanctions, and \$5,832,736.35 was agreed for attorneys
2 fees and costs incurred in the action.

3 **Q: In addition to the money, Reynolds agreed it would no longer advertise in publications**
4 **whose youth readership was 15% or more of the publication's readership, effective January 1,**
5 **2005?**

6 A: Yes.

7 **Q: This was a court-approved settlement?**

8 A: Yes.

9 **Q: The settlement was approved by the Superior Court of California, County of San Diego**
10 **on December 22, 2004?**

11 A: Yes.

12 **Q: So, it took over five years to resolve the Attorneys General's complaint over Reynolds'**
13 **magazine advertising policy from the date of the meeting in Winston-Salem in 1999 until the**
14 **appellate decision, remand, and finally settlement?**

15 A: Yes.

16 **Q: The MSA also put limits on sponsorship of events?**

17 A: Yes.

18 **Q: Each company could only have one, and it could not have a significant youth audience?**

19 A: Yes.

20 **Q: Until recently, that one event Reynolds held onto was NASCAR Winston Cup Series?**

21 A: Yes.

22 **Q: In terms of the requirement about "significant youth audience," you believe that the**
23 **attendance at the races was predominantly 21 and older?**

24 A: Yes.

1 **Q: But at the time you were deposed in this case in June 2002, you had no idea whether the**
2 **NASCAR Winston Cup Series television audience was predominantly 21 and older?**

3 A: That is correct.

4 **Q: Nor had the Company endeavored to find that out by that date?**

5 A: That is correct.

6 *I don't know.*

7 **Q: Switching gears a bit here, Mr. Schindler, you have already testified today that**
8 **Reynolds does not make cigarettes designed to addict the smoker to nicotine?**

9 A: That's correct.

10 **Q: And you have said that you don't want to market to children?**

11 A: Correct.

12 **Q: But the Company has never done anything in terms of cigarette design to make sure**
13 **that it makes a cigarette that does not appeal to minors?**

14 A: I wouldn't know how to do that.

15 **Q: You have never asked your cigarette design people in R&D to try to make a cigarette**
16 **that has characteristics that appeal to adults but not to the tastes of children?**

17 A: No; that would be impossible to do.

18 **Q: The Company has designed cigarettes to appeal to women?**

19 A: What do you mean?

20 **Q: Chelsea brand had a vanilla-type aroma added to it to be attractive to women?**

21 A: Yes.

22 *Yes that was part of the proposition.*

23 **Q: Dakota was designed to yield more puffs than a Marlboro when the same person smokes**
24 **it?**

25 A: Yes.

1 *I don't recall.*

2 **Q: And that was done to make it more attractive to the 18-24 year old female target group?**

3

4 **A: Yes.**

5 *As I have indicated, the target at the time of the test market included male and female adult smokers.*

6 **Q: In fact, even though you say it's impossible to make a cigarette that appeals to adults**
7 **but not to children, you do agree that Reynolds has either considered or gone forward with**
8 **producing cigarettes that it believes might have appeal to children?**

9 **A: Not to my knowledge.**

10 **Q: U.S. Exhibit 23,051 is a December 1973 memo from Dr. Frank Colby of your R&D**
11 **department to R.A. Blevins, then-director of Marketing Planning entitled "Cigarette Concept to**
12 **Assure RJR a Larger Segment of the Youth Market"?**

13 **A: Yes.**

14 **Q: There Dr. Colby suggests a new "youth-appeal" brand to compete with Marlboro would**
15 **be "easy to develop" for market testing by modeling in some aspects the "the old filter**
16 **cigarettes . . . of the 1950s prior to the Surgeon General's report?**

17 **A: Yes.**

18 **Q: Specifically, the three features Dr. Colby suggests be the hallmark of the new youth-**
19 **appeal cigarette are (1) delivering more flavor; (2) delivering "more 'enjoyment' or 'kicks'**
20 **(nicotine)"; and delivering at least 20% more puffs?**

21 **A: Yes.**

22 *This is what the document says. To my knowledge no action was taken in response to Dr. Colby's*
23 *proposal.*

24 **Q: Please look at U.S. Exhibit 20,808 – this is a February 28, 1974 memo from Dr. A.H.**
25 **Laurene, R&D Director at Reynolds, to Dr. Murray Senkus, Director of Research for Reynolds,**

1 and Dr. Claude Teague, entitled ““New Product Proposals Which Would Require Some
2 Research”?”

3 A: Yes.

4 Q: This memo reflects that one or more of these scientists had attended a meeting that day
5 at which “the results of the NFO tests on the 2100 series cigarettes” were presented?

6 A: Yes.

7 Q: “NFO” stands for National Family Opinion – the producers of the surveys we discussed
8 earlier today?

9 A: It could, in this context.

10 Q: The presentation led Dr. Laurene to conclude that (at bullet 7 on the first page) “a low
11 tar cigarette (‘tar’ range of VANTAGE and below) with good Marlboro character might be a
12 winner in the youth market and in the elder Marlboro smokers’ market”?

13 A: Yes.

14 Q: Again referencing this meeting, as well as “the response of management to the
15 presentations by Woods and Stowe, Dr. Laurene proposed “applied research and development”
16 work on a “VANTAGE with increased smoke pH”?

17 A: Yes.

18 Q: “Woods and Stowe” – they were scientists in R&D at the time?

19 A: Yes.

20 Q: And at that time – 1974 – Reynolds was of the belief that “increased smoke pH” meant a
21 greater nicotine hit?

22 A: I think so; I think that was the understanding at the time.

23 *I think that may have been the theory of some people at the time, based upon documents I have seen*
24 *in litigation.*

1 **Q:** A greater nicotine hit as a feature of a youth market cigarette similar to Marlboro is
2 similar to the “new youth-appeal” cigarette Dr. Colby had been suggesting a year earlier, in
3 1973?

4 **A:** Yes.

5 *I don't know.*

6 **Q:** Please turn to U.S. Exhibit 48,080 – it is a June 5, 1974 memo on the letter head of
7 Tatham-Laird & Kudner Inc. Advertising reflecting a meeting about “New Products” with
8 representatives of its client, “R.J. Reynolds Tobacco”?

9 **A:** Yes.

10 **Q:** Among those present for the client, Reynolds, were people identified in the other two
11 above-discussed documents pertaining to youth-appeal cigarettes (U.S. Exhibit 23,051 and U.S.
12 Exhibit 20,808) – Blevins (of Marketing), Teague (of R&D) and Stowe (of R&D)?

13 **A:** Yes.

14 **Q:** The stated purpose of the meeting was “to determine whether any of the technical
15 developments to date could, at this time, be utilized in the development of new brands for
16 marketing”?

17 **A:** Yes.

18 **Q:** The technical people at the meeting presented “a number of technically feasible ideas,”
19 including a “Cigarette Designed for Beginning Smokers”?

20 **A:** Yes.

21 **Q:** It was described: “This cigarette would be low in irritation and possibly contain an
22 added flavor to make it easier for those who have never smoked before to acquire the taste for it
23 more quickly. It would not necessarily be low in tar and nicotine content. The taste would be
24 somewhat bland; there would be minimal aftertaste/buildup – which would tend to cut down on

1 the 'motorman's glove' morning-after mouth taste The idea is based on the fact that
2 smoking to the initiate is a fairly traumatic experience”?

3 A: Yes.

4 *I haven't seen the document before. The material you quote appears in the document, however it is*
5 *followed by this sentence: "The brand could not, however, be positioned against youth."*

6 Q: So these were ideas about lowering the barriers to smoking – such as making the first
7 cigarette less of a traumatic experience”?

8 A: Yes.

9 *I don't know.*

10 Q: And the “beginning smoker” – as we have discussed while looking at other Reynolds
11 documents today – was understood at the Company primarily to be someone under 18?

12 A: Yes.

13 *No, the document says it can't be positioned against youth.*

14 Q: At some point in time, Reynolds thought about how its lower risk cigarette, Eclipse,
15 might be a method of lowering the barriers to smoking initiation?

16 A: What do you mean?

17 Q: Eclipse is a cigarette Reynolds makes that it presently claims may reduce the risk of
18 cancer to smokers who choose it over conventional cigarettes?

19 A: Yes.

20 Q: Although it was not until the year 2000 that Reynolds started making those claims about
21 Eclipse, Reynolds put Eclipse into test market in 1996?

22 A: That's correct.

23 Q: “GTC” was a name used in house at Reynolds for Eclipse during its development
24 phase?

25 A: Yes.

1 **Q:** Please look at U.S. Exhibit 51,860, the first page of which is headlined “Current Status
2 of the Youth Smoking Market”?

3 A: Yes.

4 **Q:** On each page of this document there is a watermark, “Property of RJRTC”?

5 A: Yes.

6 **Q:** On that first page, 0001, It divides the universe of this youth smoking market into
7 "current smokers," "former smokers," "experimenters" or "never smoked"?

8 A: Yes.

9 **Q:** At page 0006, it looks at factors such as age, home environment, personality and
10 attitudes, and cigarette use as lenses through which to examination propositions such as: (a)
11 “Parents may be less forceful about their kids smoking if they perceive the new products as
12 having healthier[sic] benefits”; (b) “Less concern about the risks associated with smoking
13 (minimizes initial physical reaction to smoking)”; (c) “New product minimizes the impact of the
14 millions spent on ... activities to keep kids from smoking”; (d) “More likely to experiment”; (e)
15 “By influencing adult smoking incidence, impact is made on smoking by adolescents through
16 parental example (seen as healthier, minimizes ETS problem, minimizes social smoking
17 problems)”; and (f) “Less likely to quit smoking under perception of lower risk associated with
18 smoking and because smoking is seen as less objectionable among peers.”?

19 A: Yes.

20 *I believe this document was prepared by someone in External Relations in response to an anticipated*
21 *attack on the Eclipse product, based on our experience with the Premier product.*

22 **Q:** On that same page, 0006, the question is posed, "Is there a difference in how a 10 year
23 old views the proposition vs. a 15 or 17 year old?"?

24 A: Yes.

1 **Q: At page 0007, it asks, “How does GTC Impact the Youth Smoking Situation?” and**
2 **offers the following responses: (a) “Induces trial among current non-smokers”; (b) “Reduces**
3 **concern over health consciousness and smoking”; (c) “Adolescents may view the product as an**
4 **alternative to quitting”; (d) “Enticement to those who have already suffered through quitting”;**
5 **and (e) [Low ETS] provides adolescents with a way to mask their smoking”?**

6 **A: Yes.**

7 **Q: Finally, at pages 0008 and 0009 there is a survey form dated November 28, 1995, “Base**
8 **Data Needed Before GTC Market Launch”?**

9 **A: Yes.**

10 **Q: And this survey form poses questions to each parents, teachers and adolescents?**

11 **A: Yes.**

12 **Q: Among other questions, it asks the adolescents not just whether and what they smoke,**
13 **but why they smoke that brand and what their opinion is about health risks associated with**
14 **smoking?**

15 **A: Yes.**

16 **Q: When you were deposed in this case on June 12, 2002, you testified (at page 219) that**
17 **you “absolutely” do not want to develop a cigarette that appeals to children?**

18 **A: Yes.**

19 **Q: But at the same time, you testified (at 219-220) that Reynolds has not and would not**
20 **seek to find out what kind of cigarettes – in terms of cigarette makeup – appeals to children so**
21 **as to avoid making them?**

22 **A: That’s correct.**

23 **Q: You also testified that day (at pages 228-229) that a cherry flavored cigarette with a**
24 **cherry aroma might appeal to children and “certainly you would be accused of trying to appeal**
25 **to children”?**

1 A: That's correct.

2 **Q: And you took the same position about lemon flavored cigarettes?**

3 A: Yes.

4 **Q: At virtually the same time as you were giving that testimony, Reynolds was**

5 **contemplating the production of "Camel Kauai Kolada" – billed as "Hawaiian Hints of**

6 **Pineapple & Coconut" – as well as "Camel Twista Lime" – billed as "A Citrus Tiki Taste**

7 **Sensation!"?**

8 A: These lines were "official blends of summer" that were offered for a limited time only in

9 2004.

10 **Q: You prepared print advertisements for them?**

11 A: Yes.

12 **Q: In fact, you had an entire national advertising campaign for these blends?**

13 A: Yes.

14 **Q: One of the color ads for these two blends featured a provocatively posed brunette in a**

15 **grass skirt and bikini top laying under a tiki umbrella and across the top of brightly colored**

16 **packs of these cigarettes?**

17 A: Yes.

18 **Q: This is portrayed in U.S. Exhibit 89,357?**

19 A: Yes.

20 **Q: And these packs – they were not the usual paper in cellophane, but instead were tin**

21 **boxes – further distinguishing them from most cigarettes on the market?**

22 A: Yes.

23 **Q: The tins keep the cigarettes fresh?**

24 A: Yes.

25 **Q: And they are re-usable?**

1 A: Yes; they are collectibles.

2 *I guess so.*

3 Q: These were the kind of tins that open face front and re-close, and could be used again to
4 store other things?

5 A: Yes.

6 *I guess so.*

7 Q: The summer before, 2003, the limited time offer Camel exotic blends included Camel
8 “Beach Breezer” with a “swirling layer of tropical fruit flavor” and “Margarita Mixer” with a
9 “splash of lime”?

10 A: Yes.

11 Q: You had full page color ads for these two, as well?

12 A: Yes.

13 Q: One ad featured twin blonde women in bathing suits, back to back, on their knees,
14 astride a colorful tin of each brand?

15 A: Yes.

16 Q: Please turn to U.S. Exhibit 10,761 – this ad appeared in the July 7, 2003 issue of Sports
17 Illustrated?

18 A: Yes.

19 Q: Middle of the summer – when school is out in most places?

20 A: Yes.

21 Q: On the cover is a photo of the Chicago Cubs' two young ace pitchers, Mark Prior and
22 Kerry Wood?

23 A: Yes.

24 Q: The brightest hopes for a 15 year old Cubs fan who has never known a World Series
25 played in his town?

1 A: Yes.

2 *I have no idea.*

3 **Q: Camel “Cinnzabar” with a swirl of cinnamon was introduced in 2001?**

4 A: Yes.

5 **Q: “Mandarin Mint” with orange and mint flavors has been around since 2001 or earlier?**

6 A: Yes.

7 **Q: So has Camel “Dark Mint” with chocolate and mint notes been available since 2001?**

8 A: Yes.

9 **Q: And Camel “Twist” with a “splash of citrus flavor” has been around for just as long?**

10 A: Yes.

11 **Q: Same with Camel “Crema” with a creamy hint of vanilla flavoring?**

12 A: Yes.

13 **Q: In 2002 you distributed an “exotic blends” line of Camel that included “Mandalay**
14 **Lime” with “exotic fruits blended right in”?**

15 A: Yes.

16 **Q: Camel “Bayou Blast” with a “blast of berry flavor” has been released around Mardi**
17 **Gras in 2003 and 2004?**

18 A: Yes.

19 **Q: U.S. Exhibit 89,356 is a picture of that product?**

20 A: Yes.

21 **Q: And today, Twist, Crema, Mandalay Mint, Dark Mint, Izmir Stinger (sweet and tart**
22 **profile) and Back Alley Blend (hint of bourbon) are Camel Exotic Blends available today to buy**
23 **at retail stores?**

24 A: Yes.

1 **Q:** To find a store near you, just "google" the phrase "Camel Exotic Blends Store
2 Locator"?

3 A: Yes.

4 **Q:** And that takes you to
5 www.smokerswelcome.com/CAM/pub/exotic_blend_retail/exotic_locator.jsp, where you just
6 type in your zip code and get a list with addresses?

7 A: Yes.

8 **Q:** There is no age restriction on getting access to this information on the web?

9 A: No.

10 **Q:** And when the minor arrived at the retail outlet, even he could get ahold of a pack with
11 some assistance from a willing adult?

12 A: Yes.

13 *Yes, if the adult were willing to violate the law.*

14 **Q:** Take a look at J.D. Exhibit 047592 and turn to (internal page number) page 92, please?

15 A: Okay.

16 **Q:** This is a circa-1989 ad for Camel with a coupon for a free pack?

17 A: Yes.

18 *This coupon was intended to be a joke. When people objected to the ad, we withdrew it, and CEO*
19 *James Johnston publicly apologized.*

20 **Q:** It offers "smooth move #437" for people who "don't like to redeem coupons"?

21 A: Yes.

22 **Q:** Three of the "smooth moves" it suggests are (1) "ask your best friend to redeem it"; (2)
23 "ask a kind-looking stranger to redeem it"; and (3) "ask a good-looking stranger to redeem
24 it"?

25 A: Yes.

1 **Q:** So at least once in the past, a Reynolds ad has suggested that someone use an adult "best
2 friend" or "stranger" assist another in obtaining a pack of Camels for him?

3 A: Yes.

4 *I don't agree that Reynolds ever intended to suggest that someone underage use an adult to help him*
5 *or her illegally obtain cigarettes.*

6 **Q:** The Company did not really think that someone had such a fear or aversion to
7 redeeming a coupon that he would actually need assistance to do so?

8 A: I don't know.

9 **Q:** Instead, Reynolds is just recognizing a variation on a behavior pattern that has
10 happened and will continue to happen – that an underage teenager – perhaps an attractive 17
11 year old girl – will stand outside a retail store and approach a stranger and say, "hey mister,
12 would you do me a favor and go buy me a pack of smokes?"

13 A: Yes.

14 No.

15 **Q:** Just like everyone knows stories or has witnessed teens getting their big brothers or
16 their friends' big brother to buy them beer?

17 A: Yes.

18 **Q:** It may not be right, but this sort of thing happens all the time all across America?

19 A: Yes.

20 **Q:** And here, with the "smooth moves" ad, Reynolds was just tapping in to this very
21 common practice?

22 A: Yes.

23 No.

24 **Q:** And you agree, with Camel Twist or any of the other exotics, it is possible for that to
25 have happened and will happen again in the future?

1 A: Yes.

2 *It could happen if an adult wants to violate the law. I don't think it is more likely to happen with*
3 *exotic blends than it is with regular cigarettes.*

4 **Q: Camel "Winter Mocha Mint" and "Warm Winter Toffee" also presently are available?**

5 A: Yes.

6 **Q: Please look at U.S. Exhibit 10,767 – this contains an ad for Camel Exotic Blends**
7 **containing Crema, Mandarin Mint, Twist, Dark Mint, Izmir Stinger and one other?**

8 A: Yes.

9 **Q: All surrounded by an attractive woman in a strapless, low-cut dress?**

10 A: Yes.

11 **Q: This ad is contained in Sports Illustrated's 2003 annual swimsuit issue?**

12 A: Yes.

13 **Q: The Sports Illustrated swimsuit issues regularly are filled with photographs of female**
14 **models wearing strapless bikini tops or less above the waist?**

15 A: Yes.

16 **Q: Many of whom appear in alluring or provocative poses?**

17 A: Yes.

18 **Q: You know that now and you knew that in advance of its publication?**

19 A: Yes.

20 **Q: This 2003 swimsuit issue, in particular, also offers "behind the scenes photos"?**

21 A: Yes.

22 **Q: Even though Sports Illustrated meets the "75% adult readership" cutoff you have set**
23 **for Reynolds, didn't it occur to you that this, the Swimsuit issue, might garner a very high**
24 **absolute number of adolescent boys looking at it, even if the 25% threshold was not breached?**

25 A: Yes.

1 *No. Sports Illustrated meets the standard we have set and is read overwhelmingly by adults. In*
2 *addition, this was subsequent to the entry of the order in the California lawsuit and complied with*
3 *that order.*

4 **Q: Didn't it occur to you that even if actual sales figures for this issues were not**
5 **astronomically higher for adolescents, this is the one issue that has a huge potential for one 10th**
6 **grade boy who did buy it to take it to school and share around with all of his pals?**

7 A: Yes.

8 *No, this did not occur to me.*

9 **Q: But you did not choose to just sit this issue out?**

10 A: No.

11 **Q: The swimsuit issue is an annual event, so you knew it was coming?**

12 A: Yes.

13 **Q: And instead of sitting it out, you put an ad featuring a voluptuous woman into a**
14 **magazine filled with photos of voluptuous women?**

15 A: Yes.

16 **Q: And not just for any of your products, but for ones with flavorings that might appeal to**
17 **underage youth?**

18 A: Yes.

19 *No, I don't agree.*

20 **Q: Now you approve every ad that goes out the door at Reynolds?**

21 A: Yes.

22 *That had generally been my practice, but as of approximately March 2003, the demand of other*
23 *business, including the merger and restructuring, prevented me from reviewing every single ad after*
24 *that time.*

25 **Q: But you are not alone in coming up with ads or ad placement decisions?**

1 A: No, of course not.

2 **Q: How many people did this ad and this ad placement go through before it reached your**
3 **desk – a dozen?**

4 A: At least.

5 **Q: And not one of those people suggested to you that it was a bad idea to put**
6 **this or any other ad in the swimsuit issue of Sports Illustrated?**

7 A: Correct.

8

9 **United States: Pass the witness, Your Honor.**

10