

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

---

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	Civil No. 99-CV-02496 (GK)
v.	)	
	)	
PHILIP MORRIS USA INC.,	)	
f/k/a PHILIP MORRIS INC., <i>et al.</i> ,	)	
	)	
Defendants.	)	

---

**UNITED STATES' WRITTEN DIRECT EXAMINATION OF  
DR. CHERYL G. HEALTON  
SUBMITTED PURSUANT TO ORDER #471**

1 **Q: Please identify yourself to the court.**

2 A: My name is Cheryl G. Healton.

3 **Q: What is your current position?**

4 A: I am President and CEO of the American Legacy Foundation.

5 **Q: Have you ever given testimony in court before?**

6 A: I have never testified in court before today.

7 **Q: Are you testifying in court today voluntarily?**

8 A: Yes, I am testifying voluntarily.

9 **Q: Have you been paid for any of the time you spent preparing for your testimony or**  
10 **for testifying in this case?**

11 A: No, other than my normal salary from the foundation.

12 **Q: Why did you agree to testify in this case?**

13 A: Ms. Eubanks asked if I would testify on behalf of the United States. I agreed to because I  
14 believed then and I believe now that it is the right thing to do.

15 **Q: Has anyone in the Justice Department said that they would try to get money for the**  
16 **foundation if you were to testify?**

17 A: No. I have been generally aware for some time from a press report that there was a  
18 possibility that the Justice Department might seek funds for youth prevention in this case.  
19 However, I have not discussed this case as a possible funding source for the foundation  
20 with anyone at the Justice Department. The foundation has absolutely not been offered  
21 anything in return for my testimony.

1 **Q: What is the American Legacy Foundation?**

2 A: The American Legacy Foundation is the foundation described in the Master Settlement  
3 Agreement (MSA). The states obtained as part of that settlement an agreement for the  
4 creation of a foundation to combat youth smoking and other forms of youth substance  
5 abuse, to educate the public broadly about the hazards of tobacco product use, and to  
6 study and support programs to counteract the diseases associated with tobacco use. The  
7 states were so committed to the creation of the foundation that they allocated part of their  
8 recovery to fund it. The MSA is quite clear that the foundation was created at the behest  
9 of the states and not the tobacco companies. In fact, in the MSA the companies  
10 specifically disavow any responsibility for the foundation. The foundation was  
11 established in March 1999, less than six months after the MSA was signed. As set out in  
12 the MSA, it is a national, independent public health foundation located in Washington  
13 D.C. and organized pursuant to section 501(c)(3) of the tax laws. As anticipated, it has  
14 been funded primarily by payments designated by the settlement.

15 **Q: How did you come to the foundation?**

16 A: I was offered the job at the foundation in November 1999, after the Board of Directors  
17 completed a nationwide search. After several months commuting between my previous  
18 position at Columbia University and Washington DC, I went on the foundation's payroll  
19 on March 1, 2000. I have spent my entire career in public health and felt that my  
20 background uniquely prepared me for taking on the extremely exciting challenge of  
21 serving as the first President/CEO of the American Legacy Foundation.

1 **Q: Tell me a little more about your career background?**

2 A: I have worked in the area of public health for nearly thirty years. Most of my career  
3 before coming to the foundation was spent at Columbia University. Immediately before  
4 coming to the foundation, I served as Head of the Department of Sociomedical Sciences  
5 and Associate Dean for Columbia's Joseph L. Mailman School of Public Health. I  
6 founded and directed Columbia's Center for Applied Public Health. I was an Associate  
7 Dean at the School of Public Health and an Associate Dean and Assistant Vice President  
8 at Columbia University, Health Sciences Division/College of Physicians and Surgeons.  
9 Before coming to Columbia, I was a Director of the Faculty Practice Plan, Cornell  
10 University Medical College and a Departmental Administrator, Department of OB/GYN,  
11 Columbia Presbyterian Medical Center. While much of my work had been in the area of  
12 HIV/AIDS, I had also done substantial work in connection with the tobacco epidemic  
13 which, of course, is the largest cause of preventable death in the U.S. today. I had lead or  
14 co-lead grant-funded projects for the Centers for Disease Control and Prevention (CDC)  
15 to study the effects of marketing and counter-marketing on youth tobacco use; developed  
16 a series of prevention partnerships linking public health researchers with New York State  
17 tobacco-health policy makers; evaluated intervention programs for the state's largest  
18 youth tobacco prevention program; worked at Columbia to bring an interdisciplinary  
19 approach to tobacco control and prevention, developing innovative grants which link  
20 academic researchers to public health practitioners; and written a chapter on cessation and  
21 smoking policy in the book, Treatment of the Hard Core Smoker.

1 **Q: Please give a brief description of your other professional activities?**

2 A: I have published nearly 100 articles, the substantial majority of which were in peer-  
3 reviewed journals, abstracts, book chapters and reports on public health topics and have  
4 made dozens of presentations to academic and other conferences and meetings. I have  
5 been the principal investigator or co-investigator on numerous grant-funded initiatives. I  
6 have served on a wide array of professional organizations, committees, task forces and  
7 commissions for public health and policy issues related to tobacco, HIV/AIDS, violence  
8 and alcoholism. My professional contributions have been recognized by the United States  
9 Department of Health and Human Services, the American Public Health Association, the  
10 American Lung Association, the State of Hawaii and the New York Department of  
11 Health.

12 **Q: Do you currently hold an academic appointment?**

13 A: Yes. In addition to serving as President and CEO of the foundation, I currently hold an  
14 appointment as Professor of Clinical Public Health at the Columbia University School of  
15 Public Health. I am also Adjunct Professor in the School of Nursing and Health Studies at  
16 Georgetown University.

17 **Q: What is your educational background?**

18 A: I hold a Doctorate in Public Health (with Distinction) from the Columbia University  
19 School of Public Health, a Masters of Public Administration, Health Policy and Planning  
20 from the Robert F. Wagner School of Public Administration, New York University, and a  
21 Bachelor of Arts degree from New England College.

1 **Q: Let's return to the American Legacy Foundation. What is the foundation's**  
2 **mission?**

3 A: The foundation's mission is to build a world where young people reject tobacco and  
4 anyone can quit. In addition, the foundation has two goals that guide its work. They are,  
5 first, to arm all young people with the knowledge and tools to reject tobacco and, second,  
6 to eliminate disparities in access to tobacco prevention and cessation services.

7 **Q: Are the mission and goals straight out of the MSA?**

8 A: The substance is based directly on the MSA. Our Board of Directors approved the actual  
9 language after a lengthy board and staff process.

10 **Q: Please describe the foundation's Board of Directors?**

11 A: The Master Settlement Agreement provides that our board shall have eleven members  
12 consisting of two governors, two state attorneys general and two state legislators  
13 designated respectively by the National Governors Association, the National Association  
14 of Attorneys General and the National Council of State Legislatures. These six Directors  
15 choose the additional five. Of those five, one is required to have expertise in public  
16 health and four are required to have expertise in medical, child psychology, or public  
17 health disciplines. Our board, of course, complies with these provisions. We have always  
18 been fortunate to have an extremely distinguished and bi-partisan Board of Directors.

19 **Q: Who currently sits on the foundation's board?**

20 A: Currently our board includes our Chair, Steven Schroeder, M.D., Distinguished Professor  
21 of Health and Health Care, Director, Smoking Cessation Leadership Center, Department

1 of Medicine University of California, San Francisco and former President and CEO of the  
2 Robert Wood Johnson Foundation; Vice Chair, Dr. Alma Adams, North Carolina State  
3 Representative and Professor, Bennett College; Treasurer, William H. Sorrell, Attorney  
4 General of the State of Vermont and current President of the National Association of  
5 Attorneys General, as well as the following directors: Susan Curry, Ph.D., Professor of  
6 Health Policy & Administration, Director of the Health Research & Policy Centers,  
7 University of Illinois at Chicago; Ellen R. Gritz, Ph.D., Frank T. McGraw Memorial  
8 Chair in the Study of Cancer, Professor & Chair, Department of Behavioral Science,  
9 University of Texas M.D. Anderson Cancer Center; Elmer Emilio Huerta, M.D., M.P.H.,  
10 The Cancer Preventorium, Founder & Director, Cancer Risk Assessment & Screening  
11 Center at the Washington Cancer Institute, Washington Hospital Center, Washington,  
12 D.C. and President-elect of the American Cancer Society; Linda Lingle, Governor,  
13 Hawaii; Janet Napolitano, Governor, Arizona; Raymond D. Rawson, D.D.S., M.A.,  
14 former state senator Nevada; George A. Strait, Jr., Associate Vice Chancellor for Public  
15 Affairs, University of California, Berkeley; and Lawrence G. Wasden, Attorney General  
16 of the State of Idaho.

17 **Q: Who are some of your former board members?**

18 A: Our former board members include: Christine Gregoire, former Attorney General and  
19 now Governor of Washington; Carla Stovall, former Attorney General of Kansas (both  
20 Governor Gregoire and General Stovall are former presidents of the National Association  
21 of Attorneys General); Mike Fisher, former Attorney General of Pennsylvania and now a

1 judge on the United States Court of Appeals for the Third Circuit; Mike Leavitt, former  
2 Governor of Utah and now Secretary of the United States Department of Health and  
3 Human Services; Thomas Carper, former Governor of Delaware and currently U.S.  
4 Senator; Parris Glendening, former Governor of Maryland; John J.H. Schwarz, M.D.,  
5 former Michigan state senator and now Member of the House of Representatives from  
6 Michigan; Lonnie Bristow, M.D., former President of the American Medical Association;  
7 and Kenneth Warner, Ph.D., Avedis Donabedian Distinguished University Professor of  
8 Public Health, University of Michigan. We have also had two young people, Jenny Lee  
9 and Jaime Fiorucci-Hughes, on our board, to assure that the youth perspective is closely  
10 integrated into our work.

11 **Q: Could you generally describe the foundation's programs?**

12 A: The foundation develops both national and local programs to educate the public about the  
13 addictiveness, social cost and health effects of tobacco use through grants, technical  
14 training and assistance, youth activism, strategic partnerships, counter-marketing and  
15 grass roots marketing campaigns, public relations, and community outreach to  
16 populations disproportionately affected by the toll of tobacco. Our principal, but far from  
17 exclusive, focus is on youth.

18 We are actively involved in smoking cessation efforts. We run our own telephone  
19 quitline, the Legacy Learn to Quit Line, which serves the Washington D.C. area including  
20 Northern Virginia and Maryland. In fact, the Legacy Learn to Quit Line is now  
21 Maryland's officially designated quit line. Other foundation cessation programs include

1 the Great Start quitline for pregnant women and the associate provision of patient and  
2 provider materials, the Hollywood Quits program which is a program providing services  
3 to smokers in the entertainment industry in order to raise awareness and promote change  
4 in Hollywood portrayals of smoking which adversely affect youth, and the Bob and Mary  
5 Quits “reality” cessation advertising and education programs. You may have seen the  
6 Mary Quits campaign which blanketed the DC area last fall. We also support the U.S.  
7 component of the North American Quitline Consortium.

8 **Q: What criteria does the foundation rely on in developing its smoking cessation**  
9 **programs?**

10 A: In our cessation work, we principally rely on the criteria developed and disseminated by  
11 the United States Public Health Service, but we have worked to tailor the Public Health  
12 Service’s Guideline to maximize its effectiveness for specific population groups as well  
13 as for heavy smokers. We have been particularly interested in further developing the  
14 criteria regarding the appropriate combination of behavioral counseling, social support  
15 and pharmacotherapy. We have also focused on adapting the criteria to achieve culturally  
16 and linguistically appropriate cessation services for lower-income and underserved  
17 communities. We would very much like to do more in the critically important area of  
18 cessation but we do not currently have the resources to do so. Based on our extensive  
19 experience in running a national public education campaign, we believe that it would cost  
20 in the neighborhood of \$100 million annually to mount an effective and comprehensive  
21 national public education campaign on smoking cessation –one which would motivate

1 adults to attempt to quit.

2 **Q: What, if any, efforts does the foundation undertake with respect to secondhand**  
3 **smoke?**

4 A: We are also involved in the effort to educate the public about the dangers of second hand  
5 smoke which kills an estimated 50,000 Americans every year. In 2002, approximately  
6 thirteen million children under the age of eighteen were exposed to second hand smoke in  
7 their homes. We have just launched an edgy public education campaign in collaboration  
8 with the Ad Council to encourage families to keep smoking out of their homes and cars.  
9 As with our work in cessation, we would like to do more in this very important area but  
10 do not have the resources to do so. Again, we believe that the \$100 million a year figure  
11 would be an appropriate estimate of the amount of money necessary to run an effective  
12 and comprehensive national public education campaign on second hand smoke. Such a  
13 campaign would have two main effects – reducing non-smokers’ exposure to second hand  
14 smoke and sharply increasing the quit rate. The U.S. Public Health Service 2010  
15 objective for adult smoking is 12%. At current rates of decline, this will likely not be  
16 met.

17 We also have an extensive evaluation program to determine whether our programs  
18 are effective and modify them as needed. I believe that I will discuss our evaluation  
19 programs in more detail later in my testimony.

20 **Q: I want to ask you some questions about the foundation’s programs for youth. I will**  
21 **begin by asking what role do youth programs play overall at the foundation?**

1 A: The bulk of our resources go to programs designed to prevent young people from  
2 smoking.

3 **Q: Is there a particular reason the foundation devotes most of its resources to youth?**

4 A: The great majority of smokers begin smoking before their 18<sup>th</sup> birthday. Between one-  
5 third and one-half of youth who try a cigarette will go on to become daily smokers. The  
6 theory is straight-forward. If we can stop teen-agers from starting to smoke, the tobacco  
7 epidemic will slowly end as current smokers will no longer be replaced. Our youth  
8 programs consist of the **truth**<sup>®</sup> countermarketing campaign, our youth advisory board, the  
9 2030 internship program, the speakers bureau, “streettheory”, and our youth empowerment  
10 grant program which is now winding down but which has supported state-level youth  
11 activism programs. In addition, we conducted a successful on-line program with AOL  
12 called “Eyeno” to reach pre-teens from 9 to 11, known as tweens. We hope to bring this  
13 successful program back, resources permitting. There are also youth components of some  
14 of our other initiatives. **truth**<sup>®</sup> is principally directed at open-to-smoking, sensation-  
15 seeking 12 to 17 year olds. Numerous foundation grants focus on underserved, low-  
16 income as well as on gay youth. Our other programs are directed more at youth activists,  
17 as opposed to the kids who are most likely to take up smoking. However, all of our youth  
18 tobacco prevention programs are firmly based in our view that young people must be  
19 front and center in the effort to end what is properly called an epidemic, rooted in  
20 youthful experimentation followed by lifelong addiction and adverse health effects  
21 including, for a third of the young people who start smoking, premature death.

1 **Q: What is the truth<sup>®</sup> campaign?**

2 A: **truth<sup>®</sup>** is the foundation's advertising, grassroots, and online campaign to prevent youth  
3 smoking. It is designed to reach edgy 12 to 17 year olds, precisely the population that is  
4 most likely to begin experimenting with smoking. Its primary focus is what we call open-  
5 to-smoking or sensation-seeking teens. However, this program also reaches a substantial  
6 number of tweens as well as 18 to 24 year olds. Since it was launched in February 2000,  
7 **truth<sup>®</sup>** has become the largest youth smoking prevention campaign ever mounted in this  
8 country, and, I believe, the world. I am extremely proud to say that **truth<sup>®</sup>** has helped  
9 reduce youth smoking rates to the historic lows we now see. Its success is imperiled by a  
10 loophole in the MSA – which I will address in more detail later in my testimony -- and  
11 the steady increase in tobacco marketing.

12 **Q: I'd like to ask some general questions about the foundation's other programs that**  
13 **are directed at young people. Could you tell me about the youth advisory board?**

14 A: We have a youth advisory board consisting of 11 young tobacco control activists that  
15 advises the foundation on how to talk to young people about the health risks of tobacco  
16 products. Panel members provide a youth perspective on our initiatives as well as  
17 invaluable feedback on our youth outreach programs. One advisory board member serves  
18 as a youth liaison to our Board of Directors.

19 **Q: You've mentioned that the foundation runs a youth internship program. What is**  
20 **that?**

21 A: The Project 2030 internship program creates opportunities for committed young people

1 from around the country to work with experienced professionals in reducing tobacco  
2 addiction in the U.S. The foundation provides summer internships in our Washington  
3 D.C. offices as well as year-round, semester-long internships with our staff and with our  
4 organizational partners in public health, advertising, and public relations. By the way, the  
5 name of the program is drawn from the World Health Organization's prediction that by  
6 the year 2030 – unless something dramatic is accomplished – tobacco will be the leading  
7 cause of adult death worldwide.

8 **Q: What about the speaker's bureau?**

9 A: The foundation recruits and trains a group of diverse speakers from a national pool of  
10 youth tobacco control groups and community organizations. These college-age youth give  
11 presentations to state and local tobacco control programs, conferences and summits,  
12 national and local youth organizations and schools.

13 **Q: What is streetheory?**

14 A: Streetheory is a website ([www.streetheory.org](http://www.streetheory.org)) which links young tobacco activists across  
15 the country to share ideas about strategies, resources, local interventions, and activism  
16 ideas that are utilized in their own communities. The site offers facts and information  
17 about tobacco prevention, as well as initiatives that activists can bring to their local  
18 communities. These initiatives do not involve any lobbying activities since the  
19 foundation isn't permitted to lobby – even for its own survival.

20 **Q: Can you give me more information about the youth empowerment grants?**

21 A: Yes. Through this five year matching grant program, the foundation awarded \$35 million

1 to 19 states and the District of Columbia to establish and support state-wide youth  
2 movements against tobacco use. This program is now coming to an end, another program  
3 being terminated due to the end of the National Public Education Fund payments.

4 **Q: Can you describe the foundation's other initiatives which have youth components?**

5 A: Yes. Our Priority Populations Grants Initiative provides support to programs serving six  
6 populations, African Americans, Hispanics, Asian-Americans, Native Americans, GLBT  
7 (gay, lesbian, bi-sexual and transgendered persons) and low SES (socio-economic status)  
8 persons which bear a disproportionate share of the burden of tobacco. This is particularly  
9 true for lower income persons, among whom rates of smoking are two to four fold higher  
10 than among the college educated, depending on the state of residence. (States with low  
11 prices and/or low investments in tobacco control have sharply higher smoking rates.) Our  
12 Circle of Friends Grants Initiative builds social support networks to assist women in  
13 quitting tobacco use and staying quit. Our Community Voices Initiative includes research  
14 demonstration projects designed to integrate tobacco cessation and prevention into health  
15 care delivery systems for uninsured and underserved populations. The foundation's Great  
16 Start program provides education and assistance to pregnant women, many of them youth,  
17 to help them quit smoking. The foundation's Small and Innovative Grants Initiative  
18 provides support for small projects designed to test and explore new approaches to  
19 tobacco control. Finally, the Prevention Research Center component of our Research  
20 Demonstration Projects Initiative supports research and evaluation of best practices in  
21 tobacco control through a grant to the CDC Foundation. Our Legacy Research and

1 Evaluation grantees include, among others, the Harvard School of Public Health,  
2 Columbia University, UC San Francisco, and the University of Michigan. Many of these  
3 collaborators are contributing to the amelioration of youth smoking. I think that's  
4 everything.

5 **Q: Let's return to the truth<sup>®</sup> campaign. Can you tell me more about the campaign?**

6 A: The truth<sup>®</sup> counter-marketing campaign is designed to accomplish exactly what the MSA  
7 contemplated that Legacy would do: prevent smoking among youth ages 12 to 17.

8 truth<sup>®</sup> reaches teens through print, radio, and television, the latter especially including  
9 youth-oriented television networks such as MTV, the WB, and UPN. It has its own  
10 website, [www.thetruth.com](http://www.thetruth.com), as well as a grassroots component known as the truth<sup>®</sup> tour.

11 **Q: Can you describe the truth<sup>®</sup> advertisements?**

12 A: Yes. truth<sup>®</sup> features hard hitting, fast-paced, no-nonsense style advertisements that  
13 present facts on the numbers of deaths and types of diseases attributed to smoking, the  
14 ingredients contained in cigarettes, the addictiveness of cigarettes and the social costs of  
15 smoking and tobacco-related disease. truth<sup>®</sup> ads educate young people about the tobacco  
16 industry and how it has marketed its products over the years. truth<sup>®</sup> ads do not "preach"  
17 at young people or tell them what – or what not – to do. Rather, they contain information  
18 conveyed in an edgy, thought-provoking and sometimes humorous way that encourages  
19 teens to make informed choices about tobacco use. With the campaign, we are helping  
20 young people to be fully informed and skeptical consumers when it comes to tobacco  
21 products.

1 I would imagine that most of the people in this courtroom, including Your Honor  
2 – like the great majority of adults – have probably not seen these ads on TV or in  
3 magazines. That is by design. These ads are created for teens, not for adults, and we  
4 place them where young people are most likely to see and hear them. It is also important  
5 to keep the intended audience in mind if and when you view these ads. For example,  
6 many of them rely on approaches that don't appeal to adults. A good example of that is  
7 our use of potty humor. I can tell you that I don't find potty humor particularly amusing  
8 myself. But teens do. And that, of course, is the point. The ads are not designed for those  
9 of us in this courtroom. They are designed for young people at risk of smoking.

10 **Q: Have you brought examples of any of the truth® ads?**

11 A: Yes. I have brought six of our television ads.

12 **Q: Have those advertisements been marked as U.S. Exhibit 89,449?**

13 A: Yes.

14 **Q: If it pleases the court, we would like to show those ads now. Moving forward, I  
15 understand that truth® has won numerous awards?**

16 A: That's right. The campaign has won literally dozens of awards, many of them the most  
17 prestigious in the advertising, marketing and social marketing industry. Let me describe  
18 just one of which we are particularly proud. In 2003, the **truth**® campaign was the  
19 recipient of the Gold and Grand EFFIE -- some call the latter the Oscar of the advertising  
20 industry -- for the effectiveness of its "Infect **truth**®" campaign and for its  
21 groundbreaking success in driving down youth smoking prevalence to the current historic

1           lows – smoking is now at the lowest point in 27 years. The foundation was just the  
2           second nonprofit organization to earn this top honor in the EFFIE's 35-year history. The  
3           EFFIE Awards, given by the New York chapter of the American Marketing Association,  
4           recognize advertising campaigns that deliver superior results in meeting the objectives  
5           they were designed to achieve.

6   **Q:    Would you please talk more about the theory underlying the truth<sup>®</sup> campaign?**

7   A:    I would be happy to. The campaign had its genesis in some of the recommendations made  
8           by a panel convened by the Columbia University School of Public Health from 1995 to  
9           1999 and funded by the Office on Smoking and Health of the Centers on Disease Control  
10          and Prevention. The panel, which is referred to as the Columbia Expert Panel, included  
11          youth marketing experts whose charge was to create the framework for a tobacco counter-  
12          marketing campaign, using their expertise and skill developed in the world of commercial  
13          youth marketing. I was not on the panel but did serve as a co-author of a structured  
14          literature review on the marketing and counter-marketing of cigarettes which was done in  
15          conjunction with the panel. There was considerable interaction between public health  
16          experts and the marketing panel members. The project was carried out within the  
17          Department I chaired.

18                 In my judgment, the key insight and recommendation by the panel was that the  
19                 tobacco counter-marketing effort should utilize a “brand”, much like the other brands  
20                 which pervade youth culture. Unlike Nike or Sprite, however, which are brands designed  
21                 to market *things* to teens, this brand would market the youth tobacco prevention message

1 using a counter-marketing approach of our brand versus theirs. The branding  
2 recommendation also recognized that some of the most powerfully marketed and  
3 successful brands we see are tobacco brands. In fact, we know that teens overwhelmingly  
4 smoke the three most heavily marketed brands – Marlboro, Camel and Newport.  
5 According to data from the 2002 National Youth Tobacco Survey, 83% of high school  
6 students and 75% of middle school students who smoke chose one of those three brands  
7 as their usual cigarettes. And, a higher percentage of teens smoke these brands than do  
8 adults.

9 **Q: Do you have information on the amount of revenues to the tobacco companies which**  
10 **are generated as a result of youth smoking?**

11 A: Yes. A recent analysis conducted by Research Triangle Institute in which I was involved  
12 concluded that in 2002, the tobacco industry reaped approximately \$1.2 billion in revenue  
13 from youth smoking.

14 **Q: Let me return to the Expert Panel. Did the panel's work inform the truth<sup>®</sup>**  
15 **campaign in other respects?**

16 A: Yes. In addition to the recommendation of the development of a brand, the panel had  
17 valuable insights into what the brand should look like in order to effectively  
18 countermarket to youth. These youth marketing experts understood that effective  
19 messages would include, for example, that teens are being manipulated by adults and  
20 adult institutions (the tobacco industry spends billions of dollars a year marketing its  
21 products); teens have been lied to (the industry has denied that nicotine is addictive and

1 that smoking caused disease – remember that the Panel was meeting during the period  
2 that the industry was taking this position before Congress); and information is being  
3 withheld from them about the true impact of tobacco products as well as the industry that  
4 produces these products. The panel recognized that, in order to reach teens, advertising  
5 must speak to them as if they were adults and be designed to give teens the information to  
6 make up their own minds. This meshes with our view that simply telling teens not to  
7 smoke or that smoking is not good for them is not an effective counter-marketing  
8 strategy.

9 **Q: Is the Legacy campaign the first campaign to rely on the Expert Panel's**  
10 **recommendations?**

11 A: No. The first campaign to rely on these recommendations was the campaign launched by  
12 Florida in 1998. Their mass media campaign, also known as TRUTH, sought to counter  
13 the industry marketing juggernaut by utilizing hard hitting television advertisements to  
14 deglamorize smoking and provide young people with information about the tobacco  
15 industry and its products.

16 **Q: What were the results of the Florida campaign?**

17 A: They were very significant. They were published in an article by Bauer, Johnson,  
18 Hopkins and Brooks published in JAMA (*Journal of the American Medical Association*)  
19 in August, 2000. The article concluded that the Florida campaign resulted in the  
20 reduction of youth tobacco use in each of its first two years. The declines in youth  
21 smoking in Florida, after two years of the program, were 40% for middle school students

1 and 18% for high school students.

2 **Q: Did these results influence the Legacy campaign?**

3 A: Yes.

4 **Q: How did they influence the Legacy campaign?**

5 A: Although the definitive research wasn't published until after we launched our campaign, I  
6 was able to see the early version of the JAMA paper I just mentioned, including the  
7 results which were later published, as we were deciding how best to proceed. It was clear  
8 that the Columbia Expert Panel recommendations and Florida TRUTH represented the  
9 state of the art in how to counter-market to youth about tobacco.

10 **Q: Did you simply adopt the entire approach taken by Florida?**

11 A: No. We certainly adopted the general approach of using hard-hitting and edgy ads  
12 emphasizing the role of the industry and the deadly toll of tobacco to educate and reach  
13 open-to-smoking, sensation seeking kids. And we used the approach of teens talking to  
14 teens. But we didn't approach it exactly the same way as Florida did. I think it's safe to  
15 say that we put more of an emphasis on the substantiation of the facts presented in our ads  
16 both because we were highly committed to accuracy and because we have recognized that  
17 we were at risk of litigation brought by the tobacco industry from day one. Also, our  
18 board was quite involved in our ad campaign. They set forth the guidelines which  
19 governed the ads and they also implemented a board approval process for our ads.  
20 Finally, Legacy must observe the vilification and personal attack provision included in the  
21 MSA which did not apply to the Florida campaign. In fact, the only place these

1 restrictions apply is to Legacy.

2 **Q: Did the information on the success of the Florida campaign influence in any way**  
3 **Legacy's decision to launch its truth<sup>®</sup> campaign on a national basis?**

4 A: It did. There was much discussion as to whether we should immediately implement  
5 **truth<sup>®</sup>** on a national basis or begin with smaller randomized regions so we could study its  
6 effectiveness in the most straightforward fashion by comparing the impact on young  
7 people who were exposed to **truth<sup>®</sup>** as compared to a control group of young people who  
8 weren't exposed to **truth<sup>®</sup>**. The scientist in me leaned toward the randomized sample  
9 approach since that would be the more cautious and traditional way to proceed. However,  
10 with the dramatic positive results coming out of the Florida campaign, we determined that  
11 there was a high likelihood that the type of campaign we were contemplating would be  
12 effective. As a result, we concluded that it would be unethical to withhold its benefits  
13 from a control group of young people. We decided to launch **truth<sup>®</sup>** as a national  
14 campaign – as opposed to one of randomized samples. As we anticipated, our evaluation  
15 process was rendered more complex and expensive as a result of that decision. However,  
16 we have been able to demonstrate that the **truth<sup>®</sup>** campaign has made a significant  
17 contribution to the decline in youth smoking which I will discuss later in my testimony.

18 **Q: I want to ask you about the development of advertisements for the truth<sup>®</sup> campaign**  
19 **before we turn to the evaluation of the campaign. First of all, you indicated that the**  
20 **truth<sup>®</sup> is aimed at 12 to 17 year olds. Is there any reason the campaign's target**  
21 **does not include 9 to 11 year olds?**

1 A: The 12 to 17 year old age range is where the vast majority of smoking initiation begins.  
2 We wanted our campaign to speak to kids who are entering the phase of life where they  
3 are seeking to assert their independence by making choices such as to smoke or not to  
4 smoke. Moreover, reaching the 9 to 11 year old market would require an entirely different  
5 strategy of media placement and creative development if they were the central target. The  
6 9 to 11 year old audience is far less likely to be sensation and independence seeking in the  
7 way the teen audience is, and they watch different kind of media. In essence, we would  
8 have to develop an entirely separate campaign to reach this younger audience. There is  
9 also greater efficiency in going after the older audience because younger kids tend to  
10 emulate teens much more so than teens will emulate the behavior of the under twelve  
11 audience. By reaching teens, we hope to create better role models for younger kids. It is  
12 also perfectly plausible that those tweens who watch the type of television where **truth®**  
13 ads tend to air are at higher risk themselves and more likely to directly benefit from the  
14 campaign.

15 **Q: In the development process, how do you insure that advertisements are directed to**  
16 **the target audience?**

17 A: The advertisements themselves are designed with the sensation seeking teens in mind.  
18 Our advertising agencies have considerable expertise on reaching this target market, and  
19 the agencies also use quantitative trend data to keep track of teen's likes, dislikes and  
20 interests. Then, before concepts are produced, we actually test the ad concepts to see  
21 whether the approaches we are exploring resonate. Another important element of this

1 exercise is making sure that the advertisements are shown in places where youth are  
2 watching. So, for example, **truth**® television ads are shown on programs with high  
3 youth viewership with an effort to skew toward programs that appeal to the sensation  
4 seeking target.

5 **Q: Based on your work with the truth® campaign, have you developed an**  
6 **understanding as to whether it is common to utilize tracking information on**  
7 **attitudes, likes and dislikes of a target age group when developing an advertising**  
8 **campaign?**

9 A: Yes. Keeping track of this sort of trend data is essential in effectively communicating  
10 with the teen audience. Indeed, there is an entire industry devoted to providing this kind  
11 of research. Teen Research Unlimited (TRU), for example, is a company that is  
12 dedicated to collecting that sort of information, and the foundation (through its agencies),  
13 as well as many corporate clients, use this company as a resource for such data. The  
14 head of TRU served as one of the Columbia Expert Panel members.

15 **Q: Is it more cost effective to run a national advertising campaign than to buy media on**  
16 **a market by market basis?**

17 A: Yes. However, that was not by any means the primary reason that we chose to introduce  
18 **truth**® on a national basis as opposed to as a randomized delivery across different  
19 markets. The overwhelming reason was, as I just said, that we had solid evidence from  
20 Florida that the approach taken by **truth**® would very likely be successful. We wanted to  
21 get an effective intervention to as many of America's teens as quickly as possible to start

1 saving as many lives as possible.

2 **Q: Has Legacy evaluated the truth<sup>®</sup> campaign?**

3 A: Yes.

4 **Q: How has Legacy gone about its evaluation of the campaign?**

5 A: From the outset of our campaign in early 2000, and very much on an ongoing basis, the  
6 foundation has committed considerable resources to a rigorous analysis to determine  
7 whether **truth<sup>®</sup>** is effective in preventing youth smoking. Obviously, we have no interest  
8 in a program that doesn't work and we want the very best information so we can structure  
9 the most successful possible program and, if warranted, abandon an ineffective program.

10 Based on the literature regarding the analysis of behavior change, we undertook  
11 this evaluation in two basic stages. The first phase of our evaluation focused on  
12 measuring changes in attitudes associated with the campaign and likely to be precursors  
13 of behavior change. The second phase looked at changes in behavior.

14 Let me explain. Because attitudes predict behavior change, in the first year of the  
15 campaign we looked at whether there were demonstrated changes in tobacco-related  
16 beliefs and attitudes among teens. In the second phase, approximately two years after the  
17 campaign's launch, we examined whether exposure to **truth<sup>®</sup>** was associated with actual  
18 behavioral change -- reductions in youth smoking prevalence. Very briefly, we know  
19 from the Monitoring the Future survey conducted by the University of Michigan that the  
20 prevalence of youth smoking declined from 25.8% in 2000 to 18.0% in 2002. We looked  
21 at this decline in youth smoking prevalence and asked three basic questions. First, did

1 **truth**<sup>®</sup> play a role in that decline? Second, if the answer to the first question was yes,  
2 how much of the decline was attributable to **truth**<sup>®</sup>? And, third, was the amount of  
3 **truth**<sup>®</sup> viewed associated with these declines (i.e., was more **truth**<sup>®</sup> associated with less  
4 smoking)? That is, what was the **truth**<sup>®</sup> effect?

5 **Q: What conclusions, if any, were reached as a result of the evaluation of the truth<sup>®</sup>**  
6 **campaign?**

7 A: Here I am speaking to the second phase of our evaluation: did the campaign result in  
8 behavior change? Our results indicate that the **truth**<sup>®</sup> campaign contributed  
9 approximately 22% of the overall decline in youth smoking rates between 2000 and 2002.

10 This translates into approximately 300,000 fewer teen smokers in 2002 than there  
11 otherwise would have been and who will not face premature death and disease from the  
12 tobacco epidemic if they stay smoke-free. An article setting out our analysis and results  
13 has been accepted for publication by the peer-reviewed journal, the *American Journal of*  
14 *Public Health*. It appears in this March's edition of AJPH.

15 **Q: Is U.S. Exhibit 89,452 a copy of this article?**

16 A. Yes.

17 **Q: Did you play a role in the preparation of the article?**

18 A: Yes. I am a co-author. I am personally familiar with the analysis and findings set forth in  
19 it. In fact, I suggested using an analytic approach which examined youth smoking trends  
20 over a substantial time period pre- and post-campaign (1997 to 1999 compared with 2000  
21 to 2002).

1 **Q: Do you know if the defendants have been provided with a copy of that article?**

2 A: Yes. Prior to my deposition we provided them with the then current version of the article.

3 We have since provided them with the final version

4 **Q: Let's go through this in detail. To begin, what is the Monitoring the Future study?**

5 A: Monitoring the Future consists of annual surveys designed to monitor youth alcohol,  
6 tobacco and illicit drug use in the U.S. It is primarily funded by the National Institutes of  
7 Health - National Institute on Drug Abuse and is conducted by the University of  
8 Michigan's Institute for Social Research. It includes approximately 18,000, 17,000 and  
9 16,000 8<sup>th</sup>, 10<sup>th</sup> and 12<sup>th</sup> grade students per year, respectively. It is considered the most  
10 reliable sources for this type of information.

11 **Q: How is the survey conducted?**

12 A: The survey is conducted in about 420 public and private secondary schools each year. It  
13 has been in the field since 1975. Tobacco questions were added for grade 12 in 1977 and  
14 for grades 10 and 8 in 1991. It uses a multistage random sampling design to provide a  
15 nationally representative sample of students in each grade. More simply put, the  
16 sampling procedure first randomly selects geographic areas, then randomly selects a  
17 school or schools within those areas, and then randomly selects classes within each  
18 school. The result is a nationally representative sample of high school students. Students  
19 self-administer the surveys in the class room during normal class periods. The response  
20 rates are quite high, averaging well over 80%.

21 **Q: Can you be more specific about the information the survey asks about smoking?**

1 A: Certainly. The key question in the survey is: “How frequently have you smoked  
2 cigarettes during the past 30 days?” The possible answers included none, less than 1  
3 cigarette, 1 to 5 cigarettes, about ½ pack, about 1 pack, about 1 and ½ packs, and 2 packs  
4 or more per day.

5 **Q: So that is the basis for the number of high school students who are smoking. How**  
6 **did you analyze the question of the impact of the truth<sup>®</sup> campaign on these**  
7 **numbers?**

8 A: We compared the documented trends in youth smoking with the exposure to the **truth<sup>®</sup>**  
9 campaign.

10 **Q: How did you measure the exposure of youth to the truth<sup>®</sup> campaign?**

11 A: We use something called cumulative gross rating points (GRPs) to measure students’  
12 exposure to the **truth<sup>®</sup>** campaign in each of the 210 television markets in the United  
13 States. GRPs measure the total volume of delivery of a media campaign to a target  
14 audience. The measure is best understood as the percentage of the target audience that  
15 saw an advertisement multiplied by the average number of times they saw the  
16 advertisement. For example, if 100% of a target audience of youth aged 12-17 was  
17 exposed to an ad 20 times, the gross rating points would equal 2000 (20 x 100). Similarly  
18 if 50% of the target audience was exposed to an ad 40 times, the gross rating points  
19 would still equal 2000 (40 x 50). GRPs are expressed in whole numbers as opposed to  
20 percentages. We obtain GRP information from a media tracking service.

21 We categorized the varying level of ad delivery across the 210 media markets in

1 the United States into 5 levels of exposure to **truth**<sup>®</sup>, 1 being the lowest level of exposure  
2 to **truth**<sup>®</sup> and 5 being the highest exposure level. This grouping was based on the total  
3 GRPs in each market from the launch of the campaign in February 2000 to the 2d quarter  
4 of 2002. The Monitoring the Future 2002 survey coincided with the end of the second  
5 quarter. Although **truth**<sup>®</sup> is a national campaign, it doesn't mean that all media markets  
6 get the same amount of **truth**<sup>®</sup> ads. Across the nation, there is variation in how many  
7 viewers are reached, and the frequency with which the ads are aired.

8 **Q: But aren't there other potential explanations for how much a young person smokes,**  
9 **other than just exposure to **truth**<sup>®</sup>?**

10 A: You're absolutely right. The next step in the analysis was to take into account other  
11 potential explanatory variables that may have influenced youth smoking prevalence.  
12 Those variables included grade, race/ethnicity, gender, parental education for mother and  
13 father separately, and income. We did not control for parental smoking since Monitoring  
14 the Future does not collect this information. However, our analysis of National Youth  
15 Tobacco Survey data, which does ask whether there are smokers in the household, has  
16 shown that the observed effect of exposure to the **truth**<sup>®</sup> did not change when  
17 controlling for smokers in the household. We also recognized that we had to account for  
18 the variation in the media market dose of **truth**<sup>®</sup>. We know, for example, that markets  
19 receiving a relatively low exposure of **truth**<sup>®</sup> tend to be more rural and white, less  
20 educated, and having lower income. Media market variables included average youth  
21 smoking rates for each media market and media market demographic variables. Finally,

1 to account for potential state-level influences, we also included data on inflation-adjusted  
2 cigarette prices (taking into account the dramatically different excise taxes imposed in  
3 different states) as well as investments in tobacco control programs at the state level.

4 The literature suggested that higher prices as well as tobacco control programs contribute  
5 to lower youth smoking rates – although prices might not strongly affect youth initiation  
6 since initiating youth smokers often don’t buy their cigarettes -- but we wanted to make  
7 sure that we were separating those effects from those attributable to the **truth**<sup>®</sup> campaign.

8 **Q: Did the study control for the effect of peer smoking?**

9 A: No. While it is certainly true that youth who smoke are more likely to have peers that  
10 smoke, controlling for that factor wouldn’t be appropriate. While it might seem intuitive  
11 that this factor would be relevant to an analysis of the impact of **truth**<sup>®</sup> on youth  
12 smoking, understanding how this dynamic plays out is actually more complicated. The  
13 problem is it is impossible to know whether a teen has peers who smoke because smoking  
14 teens naturally seek one another out or whether a teen has peers who smoke because the  
15 teen’s peers influence behavior. This is what would be known as a “choice variable” in  
16 statistics because different choices could explain the effect. Fundamental principles of  
17 statistics indicate that explanatory variables in a model should not be choice variables,  
18 especially when these choices are closely linked to the behavior one is trying to explain:  
19 in this case, choosing to smoke and choosing friends who smoke.

20 There is a second problem to including peer smoking when evaluating the **truth**<sup>®</sup>  
21 campaign. Since **truth**<sup>®</sup> can influence teen smoking by reducing the number of their

1 friends that smoke (i.e., it the “causal pathway” of the effect might be the change in  
2 behavior of the peer group which in turn was caused by **truth**<sup>®</sup> exposure), by controlling  
3 for peer smoking, we would bias the **truth**<sup>®</sup> effect towards zero. A classic example from  
4 epidemiology illustrates this point. Epidemiologic studies have found a positive  
5 correlation between smoking and lung cancer. However, if you include coughing (on the  
6 causal pathway, i.e., smoking causes coughing then coughing causes lung cancer) in a  
7 model of lung cancer, the effect of smoking is reduced or eliminated because then  
8 smoking would only be identifiable as the cause in smokers who did not cough but did  
9 suffer from lung cancer.

10 **Q: Then what did you do?**

11 A: We analyzed the data. We looked at the overall change of the prevalence of youth  
12 smoking from 1997 to 2002 overall and by grade. We included students surveyed from  
13 1997 to 1999 to serve as a non-exposed comparison group, since a national **truth**<sup>®</sup>  
14 campaign didn't exist before 2000. We compared the annual rate of change for the period  
15 leading up to the campaign, from 1997 to 1999 to rates during the campaign, from 2000  
16 to 2002, to determine whether declines in smoking appeared to accelerate after the launch  
17 of the campaign. Given that youth smoking rates were declining and the speed of the  
18 decline was increasing, sophisticated regression models were used to isolate the impact of  
19 the **truth**<sup>®</sup> campaign from the overall pre-existing declining trend.

20 **Q: Who did the actual data analysis?**

21 A: Our research and evaluation contractor, Research Triangle Institute International, worked

1 closely with the staff of the Monitoring the Future Study at the University of Michigan.

2 This study operates under strict confidentiality provisions regarding both the schools and  
3 students who participate in it and is understandably very vigorous in protecting that  
4 confidentiality. Indeed, schools are explicitly promised confidentiality as a condition of  
5 their participation. To avoid the possibility of identifying any of the schools or young  
6 people who are so helpful in responding to the survey, the Monitoring the Future staff  
7 stayed involved to assure that the analysis was conducted without violating the  
8 confidentiality restrictions.

9 **Q: What did the results show?**

10 A: The data showed a large decline in smoking prevalence overall and for each grade  
11 between 1997 and 2002. In fact, among all grades, smoking prevalence decreased by  
12 36% during that period. The data also showed that the decline accelerated after the  
13 launch of the **truth**<sup>®</sup> campaign. The annual percentage decline was 3.2% for the period  
14 of 1997 to 1999 and 6.8% from 2000 to 2002. The regression analyses also demonstrated  
15 a statistically significant dose-response relationship between exposure to the campaign  
16 and current smoking. This means that the more a teen is exposed to **truth**<sup>®</sup>, the more  
17 likely they are to be a non-smoker. We also found that the exposure effect to **truth**<sup>®</sup>  
18 levels off after a fairly high level of **truth**<sup>®</sup> exposure – more than 10,000 GRPs. An  
19 effective **truth**<sup>®</sup> dose may therefore be maintained at lower levels of GRPs.

20 **Q: How did you isolate the percentage of the decline that is attributable to **truth**<sup>®</sup>?**

21 A: We calculated what the projected declines in youth smoking for the period 2000 to 2002

1 would have been if they had remained at the same rate as they were in 1997-1999 prior to  
2 the launch of the **truth**<sup>®</sup> campaign, controlling for all of the variables. We then  
3 calculated the actual declines in youth smoking and compared the rates between the  
4 projected declines and the actual declines. Since the projected decline for 1999 through  
5 2002 would have been 5.8% if **truth**<sup>®</sup> didn't exist, and the actual decline was 7.3%, the  
6 difference in reduction in youth smoking can be attributed to the campaign. This  
7 difference attributed to the **truth**<sup>®</sup> campaign is approximately 22% of the total decline in  
8 youth smoking between 2000 and 2002.

9 **Q: Were these results evenly distributed from the time of the launch of the truth<sup>®</sup>**  
10 **campaign in 2000?**

11 A: Actually they weren't. There was no statistically significant relationship between youth  
12 smoking and the campaign in its first few months when data was collected in 2000. The  
13 effect didn't become significant until a year later, in 2001. This evidence is consistent  
14 with previous studies which document the evolution of public health campaigns and show  
15 that changes in attitudes and beliefs precede changes in behavior. It is noteworthy that the  
16 truth effect of 300,000 fewer teen smokers was achieved over approximately eighteen  
17 months including most of 2001 and half of 2002.

18 **Q: Are there any potential limitations to the analysis you have described?**

19 A: There are, of course, limitations to any kind of research and analysis. But we -- and those  
20 who peer reviewed the paper for the American Journal of Public Health -- have carefully  
21 considered the possible limitations and concluded that they do not negate our results. Let

1 me explain a few of the potential limitations. We recognize that the measures of youth  
2 smoking are self-reported so there is always a possibility that young people, especially  
3 those in areas with high exposure to the **truth**<sup>®</sup> campaign, would report what they think  
4 we want to hear – that they don't smoke. This is called a social desirability bias.  
5 However, we don't think this is operative. Biochemical studies which compare youth  
6 self-reporting with an actual physical test for substances associated with smoking indicate  
7 that youth typically provide valid reporting of their smoking behavior. In addition, we  
8 needed to be sure that other factors didn't account for the share of the decline we have  
9 attributed to **truth**<sup>®</sup>. As I have discussed, we carefully controlled for exposure to other  
10 tobacco use prevention education and other factors such as price.

11 **Q: How do the statistical results translate into numbers of young people who didn't**  
12 **start to smoke as a result of the truth<sup>®</sup> campaign?**

13 A: These percentages translate into, as of 2002, about 300,000 fewer youth smokers as a  
14 result of the campaign. This is an extraordinary public health success. We are currently  
15 beginning the analysis of the 2003 and then the 2004 data. We hope we have been able to  
16 sustain the impact of **truth**<sup>®</sup> as the industry has consistently stepped up its marketing and  
17 promotional spending. That industry spending has risen nearly two-fold from \$6.75  
18 billion in 1998 to nearly \$12.5 billion in 2002, greatly outstripping inflation.

19 **Q: Do you rely on other studies regarding the effectiveness of the truth<sup>®</sup> campaign?**

20 A: Yes. These findings are consistent with previous studies. For example, the first phase of  
21 the evaluation research conducted by the foundation showed that, in its first year, the

1 **truth**<sup>®</sup> campaign reached about three-fourths of American youth and was associated with  
2 statistically significant changes in tobacco-related beliefs and a change approaching  
3 significance in intentions toward tobacco use. As I discussed earlier, changes in attitudes  
4 precede changes in behavior. Our latest results demonstrate the behavioral impact of the  
5 campaign. These findings are consistent with findings related to health behavior change  
6 to address public health problems.

7 **Q: So what do you see as the bottom line?**

8 A: We believe that these results are powerful evidence of the effectiveness of the approach  
9 taken by the **truth**<sup>®</sup> campaign – hard hitting ads educating teens about the health effects,  
10 addictiveness and social costs related to tobacco products, showing at-risk youth  
11 rejecting tobacco and revealing deceptive industry marketing tactics. When youth have  
12 an opportunity to act as wary consumers they clearly rise to the challenge.

13 **Q: Does the foundation have sufficient financial resources to continue this effective**  
14 **campaign?**

15 A: No. At least not for very much longer. The foundation is facing what can only be called  
16 a financial crisis. Let me explain. The Master Settlement Agreements provided for  
17 financial payments to come to the foundation through three separate funding streams.  
18 First are the Base Fund payments which provide the foundation with a total of \$250  
19 million over 10 years (\$25 million per year through 2008). Second are the National  
20 Public Education Fund payments which were guaranteed only for five years, from 1998  
21 through 2003. These payments began with an initial payment of \$250 million. The

1 subsequent four years averaged around \$270 million per year. The total payments were  
2 about \$1.3 billion. After 2003, these payments stopped because of a stipulation in the  
3 Master Settlement Agreement that after the first five years, they only will be made in  
4 years in which the participating tobacco manufacturers collectively maintain at least a  
5 99.05 percent share of the U.S. tobacco market. It is my understanding that the  
6 participating manufacturers' market share is currently well below the threshold. We do  
7 not expect the 99.05% threshold to ever be met and as a result we do not expect to receive  
8 further payments to the National Public Education Fund under the MSA as things now  
9 stand. Finally, we also receive funds pursuant to the settlement with the smokeless  
10 tobacco companies which provides \$96 million total, paid in installments over 10 years.

11 **Q: Please take a look at U.S. Exhibit 17,817. Can you please explain this chart?**

12 A: This chart represents the actual and projected MSA payments from the three separate  
13 funding streams I discussed in my previous answer. As you can see, the MSA payments  
14 to the foundation have decreased dramatically since the foundation stopped receiving  
15 payments from the Public Education Fund.

16 **Q: Has the foundation taken steps to address the funding situation?**

17 A: We have acted as prudently as possible, but the bottom line is that we can't make up this  
18 enormous funding shortfall on our own. Let me explain in more detail. Knowing that the  
19 contributions to the public education fund would likely end, we have put significant funds  
20 into our reserves. However, because of our rapidly declining income – what we refer to as  
21 the funding cliff – we must begin spending both the income from our reserve fund as well

1 as part of the reserves themselves in order to maintain our programs and to bring others to  
2 an orderly and unfortunate end. This, of course, creates a downward spiral in available  
3 funds as principal begins to be depleted. As a result of all of this, our budgets will  
4 decline significantly over the next few years. We expect that by 2009, our annual budgets  
5 will level off at between approximately \$35 and \$40 million, only a fraction of what they  
6 were in our early years. While this may look like a sizable sum, we have to remember  
7 that we are far and away the major force counteracting the more than \$12.4 billion that  
8 the tobacco industry spent in 2002 on marketing its products in the United States, as  
9 reported by the Federal Trade Commission. The foundation's resources will not be nearly  
10 sufficient for a campaign to counteract the marketing expenditures of the tobacco  
11 industry.

12 **Q: Please take a look at U.S. Exhibit 17,818. Can please explain this chart?**

13 A: This chart compares the foundation's revenue received through the MSA with the  
14 foundation's operating expenses. As I explained in my previous answer, the foundation's  
15 budget will decline substantially due to the loss of revenue from MSA payments.

16 **Q: Have you had discussions with any tobacco companies about funding needs and the  
17 continuing viability of the truth® campaign?**

18 A: With the approval of my board, I have spoken to Mr. Szymanczyk on several occasions  
19 about the possibility of Philip Morris agreeing to continue to fund the Public Education  
20 fund through an amendment to the Master Settlement Agreement or some other legally  
21 binding agreement. I have also participated in meetings chaired by our attorney general

1 board members on the same topic. Additionally, Secretary Joseph Califano leads the  
2 Citizen's Commission to Protect the Truth, a group that consists of all former U.S.  
3 Secretaries of Health, Education and Welfare and Health and Human Services; all former  
4 U.S. Surgeons General; and all former Directors of the Centers for Disease Control and  
5 Prevention. The Commission has called upon the tobacco industry to continue financing  
6 the Public Education Fund through the MSA.

7 **Q: Have these efforts resulted in any agreement to continue funding?**

8 A: Not so far.

9 **Q: So what exactly does this mean for the truth<sup>®</sup> campaign?**

10 A: If we do not find substitute funds for the public education payments that stopped in 2003,  
11 the simple fact is that the campaign will not be able to continue at anything near its  
12 optimum level. At best, it will be a campaign limited to those states with the political  
13 will and resources to co-fund it with us. A national media buy will not be possible unless  
14 our board chooses to sunset the foundation and spend all of our reserves. And then, we  
15 will only be able to undertake a national buy until our reserves are depleted. That would  
16 be about seven or eight years at the most. To give just a sense of the magnitude of the  
17 risk, as of 2002 about 4.6 million 13 to 17 year olds smoked and millions more are in the  
18 pipeline to start.

19 **Q: What has the foundation spent on the truth<sup>®</sup> campaign?**

20 A: Running a campaign of this sort is extremely expensive. Let me give you the amounts we  
21 have spent for the campaign in each of our fiscal years. The numbers I am about to give

1 you include what we have spent on purchasing media, producing advertisements, agency  
2 fees, our **truth**<sup>®</sup> website, marketing research, the grassroots component of the **truth**<sup>®</sup>  
3 program and related expenses. They do not include salary and overhead costs to the  
4 foundation or the money we have spent to evaluate the effectiveness of the campaign. In  
5 FY 2000, we spent just over \$104 million. In FY 2001, our highest year, we went up to  
6 \$112.7 million. In FY 2002, we spent about \$77.5 million. In FY 2003, the number was  
7 about \$62.1 million. And in FY 2004, we spent about \$58.9 million. In addition, we have  
8 spent close to \$21 million over the years on the evaluation of our campaign conducted by  
9 our outside contractors. As I have discussed earlier, the amounts we can spend on the  
10 campaign will continue to decline with the likely diminished effect of the campaign.  
11 Soon funds will be insufficient to support a national presence.

12 **Q: What do you believe is a realistic budget for an effective, national campaign to**  
13 **prevent and reduce youth smoking?**

14 A: Based on our experience in running what is the only national independent youth tobacco  
15 prevention campaign -- and one that is demonstrated to be effective -- it is my judgment  
16 that an effective and comprehensive national campaign will cost between \$100 and 150  
17 million, in current dollars, on an annual basis. The figure is higher than the adult  
18 cessation and second hand smoke figures I discussed earlier for two reasons: youth need  
19 constantly changing creative and the cost of reaching them is higher. Unlike the anti-drug  
20 campaign conducted by the Office of National Drug Control Policy (ONDCP), we pay  
21 full market rates

1 **Q: Let's turn to the industry's so-called youth prevention campaigns. Has the**  
2 **foundation ever conducted any analysis of the effects of tobacco industry-sponsored**  
3 **youth smoking prevention programs?**

4 A: Yes. Based on Waves I and II of the Legacy Media Tracking Survey, the foundation has  
5 examined the effect of tobacco company sponsored youth smoking prevention programs  
6 on knowledge and attitudes related to smoking and the tobacco industry. I would refer to  
7 my earlier testimony where I explained that we studied changes in attitudes and beliefs  
8 because they precede changes in behavior

9 **Q: What do you mean by "knowledge and attitudes?"**

10 A: By knowledge, I mean whether youth are aware of key facts about the addictiveness,  
11 health effects and social consequences of tobacco use and are armed with knowledge to  
12 help them reject tobacco.

13 By attitudes, I mean the actual shifts in belief that occur as a result of the  
14 awareness of the impact of tobacco use on themselves and others. It is also important to  
15 shift teens' attitude toward tobacco products and their manufacture and marketing to be  
16 certain that they are wary and informed consumers. I would refer back to my earlier  
17 testimony about the fact that attitudinal change precedes behavioral change. For example,  
18 one attitude we look for is a reported intent to smoke in the next year. If youth who have  
19 seen advertisements report a reduced intention to smoke, we know the advertisement is  
20 having the intended effect because evidence suggests that this reported intent is  
21 associated with the desired behavior.

1 **Q: Were the results of the foundation’s study of tobacco company sponsored youth**  
2 **smoking prevention programs ever published?**

3 A: Yes. The results of that study were published by Legacy and RTI in a report titled  
4 “Getting to the Truth: Assessing Youths’ Reactions to the **truth**<sup>®</sup> and ‘Think. Don’t  
5 Smoke’ Tobacco Countermarketing Campaigns.” The study was also published in the  
6 June 2002 issue of the American Journal of Public Health under the title “Getting to the  
7 Truth: Evaluating National Tobacco Countermarketing Campaigns.” The American  
8 Journal of Public Health is a peer-reviewed journal that publishes articles relevant to the  
9 field of public health. I was a co-author on both of those publications.

10 **Q: Is JD-065578 a copy of the article published in the June 2002 edition of *the***  
11 ***American Journal of Public Health*?**

12 A: Yes.

13 **Q: Can you describe the Legacy Media Tracking Surveys?**

14 A: These surveys measure exposure to tobacco marketing and counter-marketing, attitudes  
15 and beliefs toward tobacco, and tobacco use behaviors among youth. The surveys also  
16 contain questions about social and environmental influences and sociodemographic  
17 information. For example, the survey asks whether the interviewee has friends or  
18 relatives who smoke, whether there are smokers in the house, and the like.

19 An initial baseline survey, which we refer to as LMTS-I, was conducted by  
20 telephone between December 6, 1999, and February 6, 2000, prior to the launch of the  
21 **truth**<sup>®</sup> campaign. A second telephone survey, which we refer to as LMTS-II, was

1 conducted from September 8 to December 23, 2000. Both surveys were designed to  
2 produce nationally representative samples of youths ages 12 to 17 and young adults ages  
3 18 to 24. These two surveys formed the basis of the published analysis.

4 Based on the answers to the questions we were able to create a detailed model of  
5 youth attitudes towards smoking, including whether they think it is cool to smoke,  
6 whether they think it is dangerous, and whether they see it as a sign of independence;  
7 their reported intentions to smoke in the future; their current smoking behavior; and their  
8 feelings towards the tobacco industry.

9 **Q: What kinds of questions were asked regarding attitudes towards smoking?**

10 A: The actual questions that were asked are publicly available on the foundation's website  
11 [www.americanlegacy.org](http://www.americanlegacy.org). An example of a question establishing youth attitudes toward  
12 smoking would be asking for a respondent's reaction to the statement "not smoking is a  
13 way to express your independence" on a one to five scale with 1 representing "strongly  
14 agrees," 2 representing "agrees," 3 representing "disagree," 4 representing "strongly  
15 disagree," and five being "no opinion." Similarly, youth were asked about their  
16 agreement with the statements "smoking makes people your age look cool or fit in"; "I  
17 would like to see cigarette companies go out of business"; and "cigarette companies get  
18 too much blame for young people smoking." Those are all just by way of example. The  
19 survey book for LMTS-II is over 70 pages long. Not every question in the book would be  
20 asked in every instance, but the survey is comprehensive in scope. Great care is taken in  
21 the wording of the questions and order of delivery to account for any factors which could

1 bias the results.

2 The Legacy Media Tracking Survey has been repeated after LMTS-I and LMTS-  
3 II, and, in fact, we are currently collecting wave ten. The foundation is constantly  
4 measuring the effectiveness of its programs and youth attitudes on tobacco issues  
5 generally. It is our firm belief that evaluation of programs is a cornerstone of good  
6 decision making.

7 **Q: You stated earlier that these surveys also track exposure to tobacco marketing and**  
8 **counter marketing. What tobacco sponsored youth smoking prevention programs**  
9 **did the LMTS I and II data cover?**

10 A: LMTS-I and II only asked questions regarding tobacco industry-sponsored youth smoking  
11 programs that used paid media. So, the study sample only included the Philip Morris  
12 “Think. Don’t Smoke” program and the Lorillard “Tobacco is Whacko if You’re a Teen”  
13 advertisements. The other companies have never engaged in a national paid media  
14 strategy for youth smoking prevention that I am aware of. To the best of my knowledge,  
15 they have focused their efforts on things like sponsorship of conferences, school based  
16 education programs, grant making and the like. I believe the RJR “Right Decisions,  
17 Right Now” may distribute a limited number of unpaid public service announcements --  
18 and their website indicates that this program is ongoing -- but that kind of unpaid media is  
19 very difficult to track.

20 **Q: Did the survey show youth awareness of the tobacco company programs?**

21 A: The results of LMTS-I showed an unaided awareness of 3.2% for the “Think. Don’t

1 Smoke” program, and a less than 1% unaided awareness of the “Tobacco is Whacko if  
2 You’re a Teen” program. By unaided awareness, I mean respondents that reported  
3 awareness of the campaign without any prompting from the interviewer. The unaided  
4 awareness of these ads in LMTS-II was essentially unchanged.

5 Respondents were also asked to confirm their awareness of advertisements by  
6 further identifying details of the ads. If the respondent correctly described the ad,  
7 responses were categorized as “confirmed awareness.” The confirmed awareness of  
8 “Think. Don’t Smoke” ads for LMTS-I was 70.5% and the confirmed awareness of  
9 “Think. Don’t Smoke” ads for LMTS-II was 65.5%. So, there is pretty good evidence  
10 that the “Think. Don’t Smoke” program was fairly well known among the target  
11 audience even though the unaided recall of the program was fairly low.

12 Due to the less than 1% unaided awareness of the “Tobacco is Whacko if You’re a  
13 Teen” campaign, and the much smaller media buy for that campaign, the media reach of  
14 Tobacco is Whacko was insufficient to scientifically evaluate. We focused our in-depth  
15 analysis on the “Think. Don’t Smoke” campaign. We focused on two purposes: to  
16 differentiate its effects from those of **truth**<sup>®</sup> and to compare the relative effects of the two  
17 campaigns.

18 **Q: What did the survey show about youth awareness of the foundation’s truth<sup>®</sup>**  
19 **campaign?**

20 A: Keep in mind that LMTS-I was a pre-launch baseline survey, so that survey obviously  
21 showed no awareness of truth. The unaided awareness of the **truth**<sup>®</sup> campaign reported

1 in LMTS-II was 21.9% (as opposed to the 3.2% for “Think. Don’t Smoke as I previously  
2 stated). The confirmed awareness was 74.9%. Both the unaided and confirmed  
3 awareness for the **truth**<sup>®</sup> campaign in LMTS-II were already higher than “Think. Don’t  
4 Smoke” only ten months into the **truth**<sup>®</sup> campaign. This was despite the fact that “Think.  
5 Don’t Smoke” had been running for over two years with a budget of around a \$100  
6 million dollars a year at that point.

7 **Q: What is the significance of the survey findings?**

8 A: All of this means that a respondent was nearly seven times more likely to have unaided  
9 recall of a **truth**<sup>®</sup> campaign advertisement than a “Think. Don’t Smoke” advertisement.  
10 This suggests that the **truth**<sup>®</sup> campaign captured the attention of youth and young adults  
11 at a much higher rate than the “Think. Don’t Smoke” advertisements.

12 **Q: Are there reasons that the survey results show that the truth<sup>®</sup> campaign was more  
13 effective in communicating youth prevention messages?**

14 A: The principles for creating an effective media campaign are well known. I have earlier  
15 discussed the Columbia Expert Panel Report. Keep in mind that the Expert Panel  
16 specifically advised against the sort of directive messages featured in the “Think. Don’t  
17 Smoke” and “Tobacco is Whacko if You’re a Teen” campaigns. Directive messages and  
18 those indicating that “smoking is for adults” inspire sensation-seeking youth to engage in  
19 these precisely forbidden activities. The Philip Morris and Lorillard messages couldn’t be  
20 a clearer example of this approach.

21 Interestingly, it is my understanding from a group dialogue with Dr. Carolyn

1 Levy, who previously was with youth marketing at Philip Morris and then was in charge  
2 of the Philip Morris youth prevention program, that the “Think. Don’t Smoke” slogan  
3 was chosen by Philip Morris corporate and not the company’s youth smoking prevention  
4 team. I was told by Dr. Levy that this slogan had not been thoroughly tested with youth  
5 prior to the campaign’s launch in order to test their reaction and receptivity to the  
6 message. The tests that were done were mainly mall intercepts where youth were  
7 interviewed with their parents present, a particularly unreliable method and one virtually  
8 certain to result in under-reporting of the target: open-to-smoking youth.

9 **Q: What did the foundation’s study show about the effect of the “Think. Don’t Smoke”**  
10 **campaign?**

11 A: Among other findings, the study showed that exposure to “Think. Don’t Smoke”  
12 advertisements was associated with a 23% increase in the odds of reporting an intent to  
13 smoke in the next year. It is noteworthy that subsequent unpublished analyses we have  
14 conducted have confirmed this effect.

15 **Q: That seems like a pretty astonishing finding. What accounts for this result?**

16 A: It is actually entirely predictable. Since the teens who are most open to smoking tend to  
17 be risk-taking and rebellious, a “Don’t Smoke” message is likely to produce the exactly  
18 opposite response. If an authority figure tells this type of teen “Don’t do it,” the result is  
19 that they will be more likely to engage in the forbidden behavior. So, giving the open to  
20 smoking teen an order to “Don’t Smoke” is essentially an invitation to engage in  
21 smoking. The other hypothesis, which I believe is less likely, is that “Think. Don’t

1 Smoke” ads have higher recall and appeal to those already smoking. This would suggest  
2 the ads are not reaching the open-to-smoking target but rather those who are already teen  
3 smokers. Either way, the campaign is not reaching the teens who are most likely to start  
4 smoking.

5 What we have learned, and as I have discussed at length earlier, is that it is  
6 essential to take a very different approach to reach the teens most open to smoking. In  
7 order to reach the rebellious, risk-taking, open to smoking youth, the most effective  
8 approach is to give the young person a way to rebel – to be cool –other than by smoking.  
9 That is, to replace the allure of the tobacco brands with something else. You see how we  
10 have done that with **truth**<sup>®</sup> and how we have documented its success.

11 **Q: Did the survey results show anything about youth attitudes towards tobacco**  
12 **companies themselves?**

13 A: The study shows that exposure to “Think. Don’t Smoke” is associated with favorable  
14 feelings towards the tobacco industry. For example, the odds of agreeing with the  
15 statement “cigarette companies have denied that cigarettes cause disease” declined by  
16 24% with exposure to any “Think. Don’t Smoke” advertisement, and exposure to  
17 additional advertisements reinforced this effect. Similarly, exposure to “Think. Don’t  
18 Smoke” was associated with a 20% decrease in the odds of a respondent agreeing with  
19 the statement “I would like to see cigarette companies go out of business.”

20 **Q: What is the significance of youth attitudes about the tobacco industry ?**

21 A: Youth attitudes are significant because we have demonstrated that one of the most

1 effective strategies in preventing youth smoking is to educate young people about how  
2 tobacco products are created and manipulated and how they are marketed. If you shift  
3 key attitudes there is a high chance behavior change (here that would be not starting to  
4 smoke) will follow. “Think. Don’t Smoke” ads may well reinforce young people who  
5 already smoke and those who never intended to smoke and it certainly seems designed to  
6 create good public relations for the company. But the bottom line is that it is not a  
7 program to counter youth smoking by appealing to edgy, open-to-smoking youth.  
8 Tellingly, the program has produced no publicly available evaluation results of its own  
9 nor have they shared any outcome results privately when asked. The contention raised  
10 post hoc that the program targets tweens is curious since, to my knowledge, no national  
11 survey tracks data on smoking of students below grade 6, the grade levels of most tweens.

12 **Q: Have any of the tobacco companies responded to the Legacy study?**

13 A: Philip Morris has not been pleased with the results. We initially presented our findings at  
14 a November 2001 conference including the state attorneys general, the tobacco industry,  
15 and representatives from the public health community. It was the first of the “triennial  
16 meetings” mandated by the MSA. This was before they were published. I understand that  
17 after the presentation, Dr. Carolyn Levy, who was then Philip Morris’s Senior Vice  
18 President of Youth Smoking Prevention, approached the foundation’s then Executive  
19 Vice President Dr. Lyndon Haviland, and they had a lengthy discussion about the basis of  
20 our findings. This was followed up by a longer meeting in December 2001 which  
21 included myself, Dr. Haviland, and Dr. Matthew Farrelly, the lead author of the study.

1 We essentially gave Philip Morris a preview of the study findings and gave them quite a  
2 bit of background into the study methodology. Dr. Levy brought an outside statistician  
3 consultant to this meeting along with one or two other Philip Morris employees who were  
4 involved in their youth marketing efforts. After asking a multitude of questions of us, the  
5 outside consultant acknowledged that she could not dispute our methods or sampling.  
6 During this same meeting we learned more about the formative process used for the  
7 “Think. Don’t Smoke” campaign. Our efforts to learn about Philip Morris’s own  
8 evaluation efforts were fruitless.

9 **Q: What happened next?**

10 A: Those conversations were followed by months of back and forth correspondence, with  
11 Philip Morris focusing on their desire to obtain the raw data sets from LMTS-I and  
12 LMTS-II before our article was published.

13 **Q; Did you provide them with any information?**

14 A: We did. In early 2002, we provided charts showing the ratings of two of the Philip  
15 Morris ads broken out by 12-14 and 15-17 year old respondents. In addition, we  
16 informed them that the survey had an open field question that allowed all respondents to  
17 discuss any other anti-tobacco ads they had seen. Keep in mind that our study was  
18 focused on capturing awareness of their campaign. The combination of these two types  
19 of questions fairly achieved this goal.

20 **Q: Please address your attention to U.S. Exhibit 89,434. Can you tell me what this**  
21 **document is?**

1 A: This is a letter dated February 7, 2002 from Dr. Carolyn Levy to Dr. Lyndon Haviland,  
2 who was then an Executive Vice President at Legacy and directly involved in this entire  
3 matter. In that letter Dr. Levy acknowledges receipt of those charts. She also requests  
4 significant additional information from us.

5 **Q: Please address your attention to U.S. Exhibit 89,436. Do you recognize this**  
6 **document?**

7 A: Yes. This is Dr. Haviland's response. I reviewed it at the time it was sent. Let me read  
8 the relevant portions of the letter. Dr. Haviland wrote: "As discussed at our December  
9 meeting in Washington DC, Legacy has spent considerable efforts developing an  
10 evaluation methodology and data collection system that allows for the measurement of  
11 the reach and impact of our youth prevention programs. At our meeting, we attempted to  
12 answer the variety of questions that you posed and provided detailed information about  
13 our data collection methods, our sample design, our analysis equation and our results. If  
14 you have specific questions, I would be prepared to request that RTI [that's our research  
15 contractor] do some limited analysis. . . . We are in the process of preparing a dataset for  
16 public use that will allow analysis of the results. As I mentioned in our previous  
17 correspondence, there is enormous public interest in our dataset and we are working to  
18 develop data use and sharing protocols so we can meet this demand. We are excited  
19 about the possibilities of multiple investigators analyzing the data."

20 **Q: What happened next?**

21 A: There was a great deal more correspondence back and forth of this type. We did answer

1 questions about our analysis and sent additional information, including tables providing  
2 data from the Legacy Media Tracking Data. However, Philip Morris persisted in its  
3 demand for the full data set to be made available, prior to the publication of our findings.

4 **Q: Let me refer your attention to JD-052683. Are you familiar with this document?**

5 A: Yes. It is a letter dated April 23, 2002 from me to Howard Willard, Senior Vice President  
6 for Smoking Prevention at Philip Morris.

7 **Q: Why did you send this letter?**

8 A: I became personally involved in light of Philip Morris's unremitting demands for the full  
9 data set. In this letter, I explained why we would not make it available prior to  
10 publication of our article and also reminded Mr. Willard how much information we had  
11 already provided to Philip Morris.

12 **Q: Can you explain in more detail why the foundation declined Philip Morris's**  
13 **requests for the full data set prior to the publication of the article?**

14 A: Yes. It is the normal practice to publicly release raw data only after the study results are  
15 published through a peer-review process and many researchers do not even do this. All  
16 leading research entities including, for example, the National Institutes of Health, the  
17 Centers for Disease Control, virtually every university and so forth, follow this approach.  
18 More specifically, I was advised by research and public relations experts, as well as  
19 members of my board, that if we shared our data, Philip Morris might well launch a PR  
20 blitz in an attempt to discredit our findings prior to publication. I concurred with this  
21 advice. Also, Philip Morris's demands were particularly frustrating since they were

1 completely one-sided. They have never provided us – or made public in any way— their  
2 outcome data on “Think. Don’t Smoke”. So there was no opportunity whatsoever for us  
3 to understand or critique their own evaluation of their program. Accordingly, I sent the  
4 letter of April 23, 2002 to inform Philip Morris in writing that we would not release the  
5 data set until the study findings were published.

6 **Q: Did the foundation ever release the data sets?**

7 A: Yes. We released the LMTS data sets, about a month later, in May 2002 and put them on  
8 our website [www.americanlegacy.org](http://www.americanlegacy.org) for everyone to see at approximately the same time  
9 as the publication of the study in the *American Journal of Public Health*.

10 **Q: Did this satisfy Philip Morris?**

11 A: No. After the data were released, Philip Morris began criticizing the study results  
12 directly. They asked for a meeting with us to further explain the study and we had a  
13 meeting in January 2003. At that point, Dr. Levy had left Philip Morris and Howard  
14 Willard had been appointed the new Senior Vice President of Youth Smoking Prevention.  
15 He came with a team of people from Philip Morris. I attended the meeting along with Dr.  
16 Farrelly, Dr. Haviland, Dr. Messeri, our general counsel, the executives in charge of our  
17 marketing department, staff from our research department, and Legacy Board Member  
18 Attorney General William Sorrell of Vermont. Dr. Mary Northridge, the editor-in-chief  
19 of the *American Journal of Public Health* and Dr. Roger Vaughn, consulting editor of the  
20 journal for statistics and evaluation were also both at the meeting. As I recall it, the  
21 meeting essentially consisted of the Philip Morris team raising concerns regarding the

1 methodology of the study, to which we responded both at that meeting and later in  
2 writing.

3 **Q: Did you make any requests of Philip Morris at that meeting?**

4 A: We did. We asked for evaluation and outcome data, including their media tracking data,  
5 related to their campaign.

6 **Q: Let me direct your attention to U.S. Exhibit 89,437. Can you tell me what this is?**

7 A: Yes. It is a letter dated July 29, 2003 from me to Howard Willard.

8 **Q: Does this letter address your requests for information from Philip Morris?**

9 A: It does.

10 **Q: Could you please read the portions of the letter that you believe are most relevant to**  
11 **this issue?**

12 A: Certainly. In referring to earlier correspondence I wrote of “my frustration with your  
13 unwillingness to share information concerning strategy and efficacy for your youth  
14 smoking prevention programs.” I wrote further “As was stated in our letter dated April  
15 23, 2003, I continue to be disappointed by the limited sharing of information regarding  
16 your programmatic research and evaluation efforts, especially your media tracking data  
17 which we learned about at the end of our most recent meeting. While we at American  
18 Legacy Foundation provided detailed answers to specific research and evaluation  
19 questions raised by Phillip Morris USA in a letter dated February 24, 2003, questions  
20 posed by Legacy at the January 29<sup>th</sup> meeting and also in a letter dated April 23, 2003  
21 continue to go unanswered. Although your letter indicates your willingness to have a

1 constructive dialogue, this failure to respond to our questions is at odds with your stated  
2 intention.”

3 Finally, we attached extensive answers to questions which had been raised by  
4 Philip Morris.

5 **Q: Did they ever provide you with the information you had requested?**

6 A: No. They have never provided us with any such information

7 **Q: Please review U.S. Exhibit 89,438. Are you familiar with this document?**

8 A: I am. It is a letter dated February 6, 2003 to me from Howard Willard.

9 **Q: Does this letter reference the January 2003 meeting?**

10 A: It does. In it, Mr. Willard wrote: “Thank you for taking the time to meet with us last  
11 Wednesday. I found our dialog thought-provoking and useful in helping us understand  
12 your perspective on Philip Morris USA’s efforts to reduce youth smoking.”

13 **Q: Does the letter include anything else?**

14 A: Mr. Willard asked a number of additional questions of us.

15 **Q: Did you respond to those questions?**

16 A: We did.

17 **Q: Let me direct your attention to U.S. Exhibit 89,439. Are you familiar with this  
18 document?**

19 A: I am. It is a letter dated February 19, 2003 from me, Dr. Haviland and Dr. Farrelly – our  
20 outside research contractor – providing detailed responses to Philip Morris’s questions. It  
21 also states that we are sending a letter to the *American Journal of Public Health* – the

1 journal where the article was published – to correct two typo’s in the confidence intervals.

2 **Q: Please refer to U.S. Exhibit 89,440. Are you familiar with this document?**

3 A: I am. This is a revised version of the February 19, 2003 letter. As you can see, we made  
4 very serious efforts to be responsive to Philip Morris’s questions and were happy to  
5 correct a legitimate error which was brought to our attention.

6 **Q: Dr. Heaton, please refer to U.S. Exhibit 89,441. Are you familiar with this  
7 document?**

8 A: I am. It is a letter dated February 19, 2003 from me, Dr. Haviland, Dr. Farrelly, and Dr.  
9 Messeri to Dr. Mary Northridge, Editor-In-Chief of the American Journal of Public  
10 Health, to correct an error in the article, as I just discussed. We acknowledged that the  
11 error was pointed out to us by Dr. Daniel M. Ennis, a consultant to Philip Morris.

12 **Q: What was the result of this back and forth?**

13 A: After a lengthy series of letters, I finally informed Philip Morris we would not engage in  
14 further private discussions regarding the merits of the study. Debating the merits of the  
15 findings in a private forum simply is not appropriate once those results have been  
16 published. Under accepted standards of scientific discourse, disagreements with regard to  
17 scientific findings are conducted in the public arena so that the issues are squarely in the  
18 public domain. For whatever reason, Philip Morris has declined to take this approach.

19 **Q: What were Philip Morris’s objections to the foundation’s research?**

20 A: The primary objection was that the survey allegedly didn’t account for all of the “Think.  
21 Don’t Smoke” advertisements that ran during the survey period. In collecting our data

1 regarding which ads ran, we used a highly respected service called Video Monitoring  
2 Service.

3 In any event, even if specific questions were not asked about a portion of the  
4 “Think. Don’t Smoke” ads, as we have repeatedly explained to Philip Morris, both in  
5 writing and in person, this criticism is baseless. First, the survey design included “catch-  
6 all” questions designed to capture awareness of all of the ads run during the period. So,  
7 the factual premise for this criticism is false. But, even taking that criticism at face value,  
8 it would have no impact on the results we saw. Subsequent LMTS waves, which include  
9 specific references to more advertisements – as both more truth and “Think. Don’t  
10 Smoke” ads ran -- than LMTS-I and LMTS-II, have shown similar levels of awareness of  
11 “Think. Don’t Smoke” advertisements and the same negative associations with reported  
12 intentions to smoke. In other words, more ads are associated with greater intentions to  
13 smoke.

14 The second major objection is a bit more complicated. In developing our study  
15 model, we felt it was important that opinions of all demographic groups be appropriately  
16 represented. Because of our concern that the survey sample be appropriately diverse, we  
17 took special efforts to increase representation of African Americans, Asians, and  
18 Hispanics by placing more telephone calls to areas with high proportions of these racial  
19 and ethnic groups. We did random dialing off of a list of households where the telephone  
20 number was registered to a person with a Hispanic or Asian surname. We also took steps  
21 to make sure there was representation of both urban and rural areas, age, and residence in

1 states both with and without state funded counter-marketing campaigns. In survey design  
2 language these strategies to get more respondents from underrepresented populations is  
3 called “over-sampling.”

4 To adjust for this over-sampling technique, the standard practice is to assign  
5 these responses a “weight” in the final survey design. By way of example, if 40% of your  
6 survey pool was a population that only constituted 10% of a pool based on actual US  
7 population, those answers would be weighted accordingly in the final survey model. This  
8 is the normal, scientifically standard approach. Otherwise we would be unable to assess  
9 campaign effects on key racial and ethnic groups.

10 **Q: What were Philip Morris’s objections to the research technique you just described?**

11 A: Philip Morris asserted that certain answers were improperly weighted in the final survey  
12 model and that the model would produce different results if the weighting changed. This  
13 criticism is flawed for two reasons. First, the alternate weighting suggested by Philip  
14 Morris was flawed because it didn’t take into account the nature of the LMTS over-  
15 sampling methods to generate the weight values it proposes. The arbitrary weights  
16 suggested by Philip Morris would have lead to a more positive analysis of the “Think.  
17 Don’t Smoke” program. The weights used in the final model of our published study were  
18 generated according to commonly accepted practices given our sampling  
19 methodology and were reviewed as part of the peer review process prior to publication in  
20 the American Journal of Public Health. Second, and in any event, analyses of subsequent  
21 waves of LMTS data as well other datasets such as National Youth Tobacco Survey,

1 which all have different sampling weights, have demonstrated the persistence of the  
2 negative effect of “Think. Don’t Smoke.” Our data continue to demonstrate an  
3 association between intention to smoke and exposure to “Think. Don’t Smoke”  
4 advertisements.

5 **Q: What happened to the “Think. Don’t Smoke” campaign?**

6 A: It went off the air shortly after our findings were released to the press.

7 **Q: Did any part of the discussions with Philip Morris involve the company sharing any**  
8 **information with the foundation?**

9 A: Well, we certainly tried to get them to share information with us. After the meeting we  
10 had in January 2003, I wrote Mr. Willard and told him that if we were to meet again, we  
11 really needed to make it a mutual sharing process instead of just the foundation  
12 responding to an endless series of requests and criticisms from Philip Morris. All they  
13 did was direct us to a publicly available tracking telephone survey (TABS) which they  
14 conduct. We have a number of concerns about this survey. First, when the survey  
15 interviewer asks a parent’s permission to speak to their child, they do not disclose that  
16 Philip Morris, or, for that matter, a tobacco company, is behind the survey.

17 **Q: Is it correct that entities taking a survey often don’t identify themselves to potential**  
18 **respondents?**

19 A: That is true. But this is a different situation. It is my understanding based on what I have  
20 been told by Philip Morris employees that the survey identifies itself as being taken by an  
21 organization interested in youth smoking prevention. This is what they tell parents when

1 they are seeking permission to speak to their children. It is my view that this is extremely  
2 misleading and many parents would not let their children participate in the survey if they  
3 knew it was being taken by a tobacco company.

4 **Q: Do you have other concerns about the TABS survey?**

5 A: I do. We expressed concern at the January 2003 meeting that the TABS (telephone  
6 survey) data could easily be shared outside of the youth smoking prevention programs at  
7 Philip Morris. We were particularly concerned since the survey is so similar to marketing  
8 research that it could be used for marketing purposes. We were told that there was a  
9 firewall between youth smoking prevention and other parts of Philip Morris, but Mr.  
10 Willard did concede that the information was available for thirty dollars to anyone who  
11 wanted it from the Philip Morris USA website. Subsequently, the President of Philip  
12 Morris told me that the staff from other parts of Philip Morris rotate through the Youth  
13 Prevention group to expose a broad range of staff to the issue of youth smoking  
14 prevention.

15 During the January 2003 meeting, Mr. Willard indicated there were other internal  
16 Philip Morris data that directly addressed the effectiveness of the “Think. Don’t Smoke”  
17 program, but the company has never shared any of that data with us. We have seen  
18 TABS data but that data doesn’t provide any information about the effectiveness of  
19 “Think. Don’t Smoke.” We have been repeatedly told that the ads send the message  
20 “don’t smoke” and “smoking is bad.” But as anyone familiar with social marketing  
21 knows, the measure of a campaign like this must be whether it changes attitudes of

1 relevance and ultimately behavior. Simply saying that “smoking is bad” is altogether  
2 inadequate. And as I have discussed, a “don’t do it” message is ineffective when it comes  
3 to the edgy, sensation-seeking kids who are most open to smoking.

4 **Q: Did you make any other information requests?**

5 A: We also asked whether Philip Morris had any data showing whether or not the youth  
6 access “We Card” program, which is heavily supported by the large tobacco companies,  
7 has had any impact on youth tobacco use. The evidence supporting youth restrictions as  
8 an effective barrier to youth tobacco use are decidedly mixed, and to the best of our  
9 knowledge, there is no evidence at all supporting the effectiveness of the “We Card”  
10 program. Given the investment the tobacco companies have put into the program, it  
11 would be useful to see if it has had real results, but we never got any information on this  
12 request either.

13 **Q: Dr. Heaton, I’d like to switch topics and discuss the subject of Philip Morris’s**  
14 **website. Please refer to U.S. Exhibit 89,442. What is this document?**

15 A: This is a letter I wrote to Edward Largo, the Director of Research, Corporate  
16 Responsibility Initiatives at Philip Morris USA, on May 10, 2004 regarding Philip  
17 Morris’s website, in response to a letter to me from him suggesting that I was  
18 misrepresenting the website at a public forum.

19 **Q: Let me direct your attention to the letter beginning with the second sentence. It**  
20 **reads as follows:**

21 **“I would like to elaborate on my comments regarding the Philip Morris USA**

1 website (<https://www.smokersignup.com/signup/>) .

2 “Philip Morris has television advertisements that direct smokers to that website for  
3 information on smoking cessation. However, that same website also links to a  
4 website (<https://www.smokersignup.com/signup/>) that offers cigarette coupons and  
5 special offers. This page may be accessed from the PM USA website in one step, by  
6 clicking on “Join Mailing List.” It can be accessed in multiple steps by clicking on  
7 “Contact Us,” or “Frequently Asked Questions.” In fact, under “Frequently Asked  
8 Questions,” “Catalogs, Promotions, and Coupons” it is the first item on the drop  
9 down menu. This section also gives specific phone numbers for consumers to call  
10 that relate to Philip Morris cigarette brands. According to the website, these phone  
11 numbers are for smokers “21 years of age or older with inquiries about any of our  
12 other cigarette brands, including information about promotional offers, catalogs  
13 and coupons.”

14 “My concern is that while directing people who wish to quite smoking to your  
15 website, you are also directing them to discounts on cigarettes, which may prevent  
16 them from quitting.”

17 “As for your parent communications efforts, your brochure does address parental  
18 smoking, (albeit nearly at the end of the brochure) but it does not mention a key  
19 factor – that parents who smoke should quit. Parental smoking is not only  
20 associated with much higher rates of youth smoking, but it also places infants and  
21 children at higher risk for second hand smoke exposure. New research indicates

1           **that this may be even more important to the health of children than previously**  
2           **understood, as three studies have now shown that while parents can reduce their**  
3           **children’s secondhand smoke exposure by smoking outside, they do not eliminate it**  
4           **completely.”**

5           **Could you please explain why you sent this letter?**

6   **A:**    I was very concerned about the fact that Philip Morris was running a national media  
7           campaign styling itself as supporting smoking cessation and driving people to its website  
8           to find resources to help them quit, while that very website provided information about  
9           and access to promotional materials for the purchase of cigarettes. I was also concerned  
10          that Philip Morris was putting out materials ostensibly designed to help parents  
11          communicate with their children about not smoking but the materials did nothing to  
12          encourage parents to stop smoking. Parents need to be informed that there is a clear  
13          association between parental smoking and youth smoking. In other words, parents who  
14          smoke need to understand that one of the best way to keep their children from smoking is  
15          for them to stop smoking themselves.

16   **Q:**    **Did anything happen after you sent the letter?**

17   **A:**    The specific links to the [www.smokersignup.com](http://www.smokersignup.com) website were eventually removed.  
18          However, the Philip Morris website continued to provide information about purchasing  
19          cigarettes through the listing of a series of 1-800 brand-specific telephone numbers.

20   **Q:**    **To your knowledge, has Philip Morris added information to its communications to**  
21          **parents encouraging them to quit smoking in order to more effectively keep their**

1 **children from smoking?**

2 A: To my knowledge, it has not.

3 **Q: Let me direct your attention to U.S. Exhibit 89,443. Can you tell me what this is?**

4 A: Yes. This is a letter I sent on November 1, 2004 to Michael Szymanczyk about my  
5 ongoing concerns about the Philip Morris website and the fact that it continued to provide  
6 information about access to promotional information for cigarettes.

7 **Q: Could you please read to me the relevant sections of the letter?**

8 A: Certainly. I began by referencing my previous letter and then, in the middle of the first  
9 paragraph stated: “Although the links to the [www.smokersignup.com](http://www.smokersignup.com) that were  
10 referenced in that letter now appear to have been removed, the website still includes  
11 phone numbers that website visitors can call to receive cigarette promotional  
12 information.” I continued in the next paragraph to say: “The continuing presence of  
13 promotional information on a website Philip Morris has spent tens of millions of dollars  
14 promoting on television and radio belies the company’s claim that the website is meant as  
15 a health resource.” After stating that the foundation believes that these ads might well  
16 constitute a violation of the federal ban on cigarette advertising, I then asked for  
17 information about the number of visitors to the website, the number of website visitors  
18 who have pursued the promotional information on the website, the number of website  
19 visitors who have pursued quit resources and any other information Philip Morris has  
20 about the public health impact of its campaign. I concluded by asking that Philip Morris  
21 remove the campaign from the nation’s airwaves.

1 **Q: Did you get a response to your questions?**

2 A: No.

3 **Q: Did Philip Morris remove the ads or, at least, the promotional information?**

4 A: On December 2, 2004, Legacy's General Counsel, Ellen Vargyas, received a letter from  
5 Philip Morris's General Counsel, Denise Keane, addressing this question. Ms. Keane had  
6 written in response to a letter from Ms. Vargyas setting out in more detail why we believe  
7 that the Philip Morris campaign violated the federal ban on cigarette advertising.

8 **Q: Let me show you U.S. Exhibit 89,444. Can you identify this document?**

9 A: Yes. This is the letter from Ms. Keane to Ms. Vargyas. Most of the letter addresses  
10 another question.

11 **Q: Does the letter also address the question of the continued presence of cigarette  
12 promotional information on the Philip Morris website?**

13 A: It does. The letter states: "Despite the fact that we disagree with your characterization of  
14 the contents (referring to the website), and believe them to be clear evidence of Philip  
15 Morris USA's responsible marketing practices, we have removed the information from  
16 the website while we consider alternative means for providing information requested by,  
17 and obtaining government issued identification from, smokers 21 years of age and older."

18 **Q: Was this then the end of the matter?**

19 A: It wasn't. While the brand specific 1-800 numbers were taken off the initial website  
20 screen, they still appeared when a website visitor clicked on the relevant "Print Page"  
21 button.

1 **Q: Let me direct your attention to U.S. Exhibit 89,445. What is this document?**

2 A: This is a letter I sent on January 4, 2005 to Howard Willard, Senior Vice President of  
3 Philip Morris for Youth Smoking Prevention and Corporate Responsibility, setting out  
4 the continuing problem.

5 **Q: Does this letter address the same question of cigarette promotional information on**  
6 **the Philip Morris website?**

7 A: It does.

8 **Q: Can you read for me the relevant section of the letter?**

9 A: It states: “Despite your assurances that Philip Morris has removed brand-related toll-free  
10 numbers on its website, the numbers are still on the website. All one need do is go to the  
11 Frequently Asked Questions Page and click on the “Print Page” button. I have enclosed a  
12 copy of the page as it printed out on January 4, 2005. Needless to say, I hope that this  
13 page will be taken down forthwith.”

14 **Q: What happened after you sent this letter?**

15 A: After this letter was sent, the 1-800 numbers were finally taken down from the website.  
16 However, website visitors can still access promotional information for Philip Morris  
17 cigarettes through the customer response center phone number posted on the website.

18 **Q: I would like to switch topics and discuss your interactions with the other defendants**  
19 **in this case. Did you ever meet with any other of the defendants regarding their**  
20 **youth smoking programs?**

21 A: I was asked by the Chairman of my board to schedule meetings with all of the major

1 tobacco companies because they wanted to permit them to share expertise on youth  
2 smoking prevention. As a result we met with all of the major manufacturers except RJ  
3 Reynolds. We attempted to schedule a meeting five or six times with RJ Reynolds, but  
4 the efforts were unsuccessful.

5 **Q: Did you meet with Lorillard?**

6 A: We are in litigation with the Lorillard Tobacco Company. Outside of our litigation, I met  
7 with them once in person on the general subject of youth smoking prevention.

8 **Q: Leaving aside the litigation-related meetings, please describe your meeting  
9 regarding Lorillard's youth smoking prevention program.**

10 A: My recollection is that I met with two or three people from the Lorillard youth smoking  
11 prevention program and Lorillard's general counsel, Ronald Milstein, sometime in late  
12 2000 to discuss Lorillard's youth smoking prevention efforts.

13 Two things stand out in my mind about that meeting. The first is that Lorillard, at  
14 that time, was running an essay contest which requested teens to send in essays regarding  
15 the reasons they don't smoke. I expressed my view that this was a questionable practice  
16 as information from the contest could potentially be used to accumulate marketing data  
17 about youth. In fact, because of this risk, it is my view that tobacco companies should not  
18 be engaged with minors regarding tobacco-related attitudes and behaviors, whether  
19 through their youth smoking prevention programs or otherwise. I also told them that I  
20 thought the name "Tobacco is Whacko if You're a Teen" was fundamentally flawed,  
21 particularly if they really wanted an effective program.

1 **Q: Did you ever meet with Brown and Williamson regarding youth smoking prevention**  
2 **programs?**

3 A: I had a meeting with Corky Newton on October 27, 2000, who at the time was in charge  
4 of Brown and Williamson's youth smoking prevention efforts. Interestingly, Ms. Newton  
5 acknowledged that directive messages such as "Don't Smoke" were counter-productive.  
6 She also said that she thought that tobacco companies weren't the proper parties to  
7 develop media programs themselves because it was like the fox guarding the henhouse.  
8 She was very critical of a Philip Morris program that included sending out branded school  
9 book covers, and took the position that branding a youth smoking prevention initiative  
10 with a tobacco company name was wrong.

11 Ms. Newton is no longer running the youth smoking prevention program for  
12 Brown and Williamson, and, of course, Brown and Williamson has since merged with  
13 Reynolds. I am not aware of the current shape of the new company's youth smoking  
14 prevention efforts or whether they have a youth smoking prevention program at all.

15 **Q: Has Legacy looked at the issue of flavored cigarettes?**

16 A: Yes, we have.

17 **Q: Why is Legacy interested in this issue?**

18 A: We are very concerned that flavored cigarettes, very much along with the marketing  
19 campaigns accompanying them, will be attractive to teens and will encourage them to  
20 smoke.

21 **Q: What has the foundation done on this subject?**

1 A: In addition to speaking out on the subject, we included a series of questions on this topic  
2 in our most recent Legacy Media Tracking Survey which was administered in January  
3 2005.

4 **Q: Were there any findings of interest?**

5 A: Yes. Preliminary results show that teens who reported having seen an ad for flavored  
6 cigarettes were more than three times more likely to have tried the product than those  
7 who reported not having seen any ads. This is a statistically significant and extremely  
8 concerning result.

9 **Q: Let's turn back to the topic of the truth<sup>®</sup> campaign. What was the tobacco  
10 industry's reaction to the truth<sup>®</sup> campaign when it was first launched in February,  
11 2000?**

12 A: Unfortunately, the industry aggressively attacked both the initial ads and Legacy. Philip  
13 Morris criticized the foundation as violating the MSA and threatened to pull its funding  
14 from the foundation. I was asked by our Board Chair and others who weighed in to meet,  
15 with our lawyers, with Philip Morris's lawyers to discuss these issues and I did so.

16 **Q: Did this interfere with the campaign itself?**

17 A: Initially, it absolutely did. Although our board had approved all of the advertisements  
18 before they were aired, some were very concerned about all of the industry generated  
19 criticism. Remember that the foundation was new and the board had just been formed  
20 when all of this controversy hit. By a narrow margin, the board decided to take the ads  
21 temporarily off the air to give it sufficient time to re-review the ads and discuss the

1 appropriate course to take at the next board meeting which was just a few weeks later in  
2 March. At that meeting, the board decided that the ads were appropriate and should go  
3 back on the air and the internet – and they did. However, all of this created a rocky start  
4 for the campaign.

5 **Q: Did the attorneys general get involved?**

6 A: Yes, on both sides, although we were gratified to receive quite a bit of support. In  
7 particular, we were very concerned by the threats that the companies might unilaterally  
8 stop making the payments required under the MSA. The next payments were due in only  
9 a month or two. This was a particular problem since we were concerned that Legacy  
10 itself might not have the right to enforce the payment obligations of the tobacco  
11 companies. Legacy is not a party to the settlement. The then-Chair of our Board, Christine  
12 Gregoire, who was Attorney General of Washington at the time, reached out to the  
13 NAAG Tobacco Committee to clarify the role of the AG's with regard to enforcement of  
14 the MSA.

15 **Q: Dr. Healtson, please direct your attention to U.S. Exhibit 89,446. Can you tell me**  
16 **what this is?**

17 A: Yes. This is a letter dated March 20, 2000 from Heidi Heitkamp, who was then Attorney  
18 General of North Dakota and Chair of the NAAG Tobacco Committee, to General  
19 Gregoire. In the letter General Heitkamp recognized the concerns that – and I am quoting  
20 from the letter -- “there is a real or perceived threat that the tobacco companies may stop  
21 payment(s) due the Foundation.” She continued, “As you know, the Master Settlement

1 Agreement is enforceable by the parties to the agreement. It is my position as Chair of  
2 the Tobacco Committee for the National Association of Attorneys General that the  
3 payments are due the foundation irrespective of an alleged violation of the terms of the  
4 agreement by the foundation. Therefore, I stand ready to enforce the payment provisions  
5 should the companies fail to timely and completely make the required payments.” As I  
6 recall, this letter was widely distributed. We were very grateful for that support from  
7 NAAG.

8 **Q: Was this the last of the threats from the tobacco companies to not make their MSA**  
9 **payments?**

10 A: No.

11 **Q: Please direct your attention to U.S. Exhibit 89,447. Can you tell me what this is?**

12 A: Yes. This is a letter dated August 1, 2001 to me from Charles Blixt, Executive Vice  
13 President and General Counsel of RJ Reynolds. In this letter, Mr. Blixt complained about  
14 certain of our ads and threatened to consider all remedies available to RJ Reynolds,  
15 “including all legal remedies and the termination of continued funding for ALF.”

16 **Q: Did Mr. Blixt follow up on these threats?**

17 A: To date, no.

18 **Q: Did any of the other companies threaten to withhold payments to the foundation?**

19 A: Yes. Lorillard did.

20 **Q: Dr. Heaton, please refer to U.S. Exhibit 89,448. Can you tell me what this**  
21 **document is?**

1 A: Yes. This is a letter dated March 25, 2003 from William Sorrell, Attorney General of  
2 Vermont and then Chair of the NAAG Tobacco Committee to Ronald Milstein, Vice  
3 President, General Counsel and Secretary of the Lorillard Tobacco Company.

4 **Q: Have you sent this letter before?**

5 A: Yes, I have.

6 **Q: Let me read to you the relevant sections of this letter. General Sorrell wrote, on**  
7 **behalf of the NAAG Tobacco Committee: “We have received a copy of a letter dated**  
8 **March 21, 2003, from you to the Independent Auditor purporting to be Lorillard**  
9 **Tobacco Company’s “Notice of Dispute” regarding the Independent Auditor’s Final**  
10 **Calculations for payments due March 31, 2003, under Sections VI(b) and (c) of the**  
11 **Master Settlement Agreement. In your letter, you assert that Lorillard is (1) giving**  
12 **notice of a “dispute” regarding the Independent Auditor’s Final Calculations for the**  
13 **payments due under Sections VI(b) and (c), and (2) instructing the Independent**  
14 **Auditor to place Lorillard’s payments due March 31, 2003, in the Disputed**  
15 **Payments Account and to “escrow” them pending conclusion of a case in the**  
16 **Chancery Court of Delaware that the notice says will resolve the question of**  
17 **whether the American Legacy Foundation (“Legacy”) qualifies as the foundation**  
18 **established under Section VI of the MSA.”**  
19 **“As I indicated to you during our telephone conversation this afternoon, I am**  
20 **strongly of the view that the MSA does not permit Lorillard to take the actions**  
21 **described in your March 21 notice. In particular, the issues relating to Legacy to**

