

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
2 FOR THE COUNTY OF LOS ANGELES  
3 DEPARTMENT 308 HON. CHARLES MC COY, JUDGE  
4 RICHARD BOEKEN, )  
5 PLAINTIFF, )  
6 )  
7 VS. ) CASE NO. BC226593  
8 PHILIP MORRIS, )  
INCORPORATED, A )  
9 CORPORATION; INTERNATIONAL )  
HOUSE OF PANCAKES )  
10 INCORPORATED, A )  
CORPORATION. )  
11 DEFENDANTS. )  
12 \_\_\_\_\_)

13 REPORTER'S DAILY TRANSCRIPT OF PROCEEDINGS  
14 TUESDAY, APRIL 17TH, 2001

15 APPEARANCES:

16 (FOR PLAINTIFF)

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17

18  
19 (FOR DEFENDANTS)

20

21

22

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1 LOS ANGELES, CALIFORNIA; TUESDAY, APRIL 17TH, 2001

2 9:00 A. M

3 DEPARTMENT 308 HON. CHARLES MC COY, JUDGE

4

5 (THE FOLLOWING PROCEEDINGS  
6 WERE HELD IN OPEN COURT OUT  
7 OF THE PRESENCE OF THE JURY:)

8

9 THE COURT: GOOD MORNING, GOOD COUNSEL.

10 MR. PIUZE: GOOD MORNING.

11 THE COURT: GOOD TO SEE YOU.

12 WE ARE OUTSIDE THE PRESENCE AND  
13 COUNSEL HAS ASKED FOR AN OPPORTUNITY TO SPEAK TO  
14 THE COURT.

15 MR. CARLTON: YES, YOUR HONOR.

16 YESTERDAY, MR. PIUZE PROVIDED TO US COPIES OF  
17 DOCUMENTS THAT HAVE BEEN RECEIVED, APPARENTLY, FROM  
18 THE STATE ARCHIVIST OF WISCONSIN.

19 THE COURT: THOSE CAME IN, THEY WERE ON  
20 MY DESK. I OPENED THEM UP. I HAD NO IDEA WHAT  
21 THEY WERE FOR.

22 MR. CARLTON: AND WE THOUGHT THIS WOULD  
23 PROBABLY BE A GOOD TIME TO RESOLVE MAYBE A FEW  
24 ISSUES REGARDING THOSE DOCUMENTS, AND IF IT IS ALL  
25 RIGHT WITH YOU --

26 THE COURT: PLEASE.

27 MR. CARLTON: -- WE WILL WORK THROUGH  
28 THEM

1 THE COURT: ENLIGHTEN ME.

2 MR. CARLTON: OKAY, TO THE EXTENT I CAN,  
3 I WILL START WITH, WELL, THE FIRST DOCUMENT IS  
4 APPARENTLY JULY 8TH, 1954 LETTER FROM THIS MAN,  
5 JOHN HILL, OF HILL & KNOWLTON, TO TIMOTHY HARTNETT,  
6 WHO, I BELIEVE, HAS HAD SOME RELATIONSHIP WITH  
7 T. I. R. C.

8 AND OUR OBJECTION TO THIS DOCUMENT,  
9 AND AGAIN, ALL OF THESE ARE FROM THE  
10 HILL & KNOWLTON FILES. WE HAVE NO PROBLEM WITH  
11 THEIR AUTHENTICATION AS DOCUMENTS FROM THE  
12 HILL & KNOWLTON FILES. SO TO THE EXTENT THAT THEY  
13 HAVE THOUGHT THAT WAS AN ISSUE, THAT'S NOT AN  
14 ISSUE.

15 WE DO HAVE SOME ADDITIONAL  
16 PROBLEMS, HOWEVER, WITH SOME OF THEM

17 THIS ONE, FOR INSTANCE, WAS NOT ON  
18 THE EXHIBIT LIST, FIRST TIME WE SAW IT WAS  
19 YESTERDAY, AND THAT SEEMS FAIRLY LATE IN THE GAME  
20 TO BE DOING THAT.

21 BUT IN ADDITION, IT CONTAINS DOUBLE  
22 HEARSAY OR HEARSAY. IN THE BODY OF THE LETTER, MR.  
23 HILL IS REFERRING TO AND DESCRIBING A CONVERSATION  
24 HE HAD WITH DR. LITTLE AT SOME OTHER TIME. AND  
25 HE'S GOING THROUGH AND TALKING ABOUT THE SUBSTANCE  
26 OF THAT CONVERSATION.

27 SO WE WOULD OBJECT TO THAT AS  
28 DOUBLE HEARSAY.

1                   AND THAT WOULD BE THE FIRST  
2 DOCUMENT.

3                   DO YOU HAVE A LIST OR ANYTHING TO  
4 GO ON?

5                   THE COURT: I DON'T HAVE ANYTHING. I AM  
6 COMPLETELY IN THE BLIND.

7                   MR. CARLTON: YOUR HONOR, WE THOUGHT THIS  
8 MIGHT WORK SINCE THE JURORS WERE, SOME OF THE  
9 JURORS WERE A LITTLE LATE. BUT IN LIGHT OF ALL  
10 THIS, I DON'T KNOW, IT MIGHT BE BETTER, YOU COULD  
11 GET THE DOCUMENTS AND WE COULD DEAL WITH IT AT THE  
12 BREAK.

13                  THE COURT: WHEN DO YOU WANT TO USE  
14 THESE?

15                  MR. PIUZE: NOT UNTIL AFTER THE BREAK.

16                  THE COURT: TODAY?

17                  MR. PIUZE: YES, YOUR HONOR.

18                  THE COURT: ALL RIGHT.

19                  MR. PIUZE: BUT TO MAKE THINGS FLOW MORE  
20 SMOOTHLY, I MIGHT, BECAUSE I AM MALLEABLE, OR  
21 AGREEABLE, I MAY WELL -- I MAY JUST USE THE ONES TO  
22 WHICH THEY DON'T HAVE AN OBJECTION AND WE CAN  
23 HANDLE THIS LATER AND WE WILL USE THESE SOME OTHER  
24 TIME.

25                  THE COURT: I HAVE THE WHOLE NOON HOUR,  
26 IF WE HAVE TO. I HAVE AN HOUR AND A HALF THERE  
27 WHERE I AM COMPLETELY AVAILABLE. WE'D HAVE TO SORT  
28 OF WORK OFF THE RECORD AND THEN GO ON THE RECORD TO

1 CONFIRM UP ANYTHING WE HAVE DONE.

2 MR. PIUZE: I MAY WELL BE BRIEFING THIS  
3 AFTERNOON'S WITNESSES DURING THE LUNCH HOUR.

4 I CERTAINLY APPRECIATE YOUR OFFER.

5 AT ANY RATE, LET'S PUT IT THIS WAY,  
6 I WON'T OFFER FOR NOW ANYTHING TO WHICH THERE'S AN  
7 OBJECTION.

8 THE COURT: FAIR ENOUGH.

9 SO CAN YOU TELL MR. GOLDSTEIN THE  
10 ONES TO WHICH YOU DON'T OBJECT?

11 MR. CARLTON: IT'S NOT A LONG LIST, BUT  
12 404.

13

14 (AT THIS TIME, A RECESS  
15 WAS TAKEN.)

16

17 (THE FOLLOWING PROCEEDINGS  
18 WERE HELD IN OPEN COURT IN  
19 THE PRESENCE OF THE JURY.)

20

21 THE COURT: GOOD MORNING, LADIES AND  
22 GENTLEMEN. OUR JURY PANEL IS WITH US.

23 COUNSEL ARE PRESENT.

24 THE WITNESS IS ON THE WITNESS  
25 STAND.

26 SIR, YOU UNDERSTAND YOU ARE STILL  
27 UNDER OATH.

28 THE WITNESS: YES, I DO.

1 THE COURT: WOULD YOU REMIND THE JURY OF  
2 YOUR NAME.

3 THE WITNESS: MARVIN GOLDBERG.

4 THE COURT: THANK YOU, SIR.

5 MR. PIUZE.

6

7

8 MARVIN GOLDBERG, PH. D. ,  
9 CALLED AS A WITNESS BY THE PLAINTIFF, HAVING BEEN  
10 PREVIOUSLY DULY SWORN, RESUMED THE WITNESS STAND  
11 AND TESTIFIED FURTHER AS FOLLOWS:

12

13 DIRECT EXAMINATION (RESUMED)

14

15 BY MR. PIUZE:

16 Q. GOOD MORNING, DR. GOLDBERG.

17 A. GOOD MORNING.

18 Q. I WANT TO SHOW YOU A MOVIE.

19 A. OKAY.

20 Q. READY?

21

22 (VIDEO PLAYED)

23

24 Q BY MR. PIUZE: THAT IS THE COUSIN  
25 OF THE GUY THAT WE WERE LOOKING AT YESTERDAY ALL  
26 DAY.

27 A. IF NOT, IT'S A VERY CLOSE COPY.

28 Q. ONE OF THE MAIN OTHERS THAT I

1 WANTED YOU TO RENDER AN OPINION ON HAD TO DO WITH  
2 WHETHER OR NOT, IN YOUR VIEW, PHILIP MORRIS  
3 SPECIFICALLY, LET'S FORGET ABOUT THE TOBACCO  
4 INDUSTRY GENERALLY, PHILIP MORRIS, SPECIFICALLY,  
5 THROUGH ITS MARKETING OF THE MARLBORO BRAND  
6 STARTING BACK IN THE MID-50'S, BACK IN 1955, WAS  
7 TARGETING YOUNG MEN, MEANING, YOUNG PEOPLE UNDER 18  
8 YEARS OLD TO START SMOKING THEIR CIGARETTES?

9 MR. LEITER: OBJECTION, CALLS FOR  
10 SPECULATION.

11 THE COURT: JUST THE QUESTION, SIR.

12 MR. PIUZE: I AM SORRY?

13 THE COURT: I DON'T THINK IT WAS PUT IN  
14 THE FORM OF A QUESTION BUT MORE OF A STATEMENT.

15 Q BY MR. PIUZE: I APOLOGIZE.

16 THE COURT: IT MAY BE THAT I MISSED IT.

17 MR. PIUZE: NO, I MISSED THAT.

18 Q BY MR. PIUZE: I DON'T WANT TO  
19 KNOW YOUR ANSWER YET.

20 DO YOU HAVE SUCH AN OPINION?

21 THE WITNESS: WITH REGARD TO WHAT AGAIN,  
22 I AM SORRY?

23 Q BY MR. PIUZE: DID PHILIP MORRIS,  
24 THE DEFENDANT IN THIS CASE, STARTING AROUND 1990 --  
25 EXCUSE ME, 1955, PURPOSELY TARGET MINOR -- MEANING  
26 UNDER 18 YEARS OLD -- MALES, TO SELL THEIR  
27 CIGARETTES TO, THEIR MARLBORO CIGARETTES TO? I  
28 DON'T WANT TO KNOW YOUR OPINION YET.

1 DO YOU HAVE AN OPINION?

2 A. YES.

3 MR. LEITER: I AM GOING TO OBJECT.

4 THE COURT: FROM WHAT YOU HAVE SEEN OF  
5 THE ADVERTISEMENTS AND, OF COURSE, THIS IS NOT  
6 PHILIP MRRIS, SO YOU CAN ONLY SPEAK AS TO WHAT YOU  
7 SEE FROM THE ADVERTISEMENTS.

8 PROCEED.

9 THE WITNESS: YES, FROM THE ADS THAT WE  
10 REVIEWED YESTERDAY AND THE BROADER SET THAT I AM  
11 AWARE OF, YES, I HAVE AN OPINION.

12 Q BY MR. PIUZE: YOU CAN STATE IT?

13 A. I DO BELIEVE THAT PHILIP MRRIS  
14 TARGETED YOUNG PEOPLE, YOUNG MALES WITH REGARD TO  
15 THEIR MARLBORO ADVERTISING, YES.

16 Q. NOW, I JUST WANT YOU TO BE CLEAR,  
17 MY QUESTION IS GOING BACK 46 YEARS NOW TO AROUND  
18 1955, STARTING IN THAT ERA. THAT'S THE WAY YOU  
19 UNDERSTOOD THE QUESTION?

20 A. YES. AND SPECIFICALLY WE LOOKED AT  
21 AND I AM REFERRING TO THE ADS WE SAW YESTERDAY THAT  
22 WERE CIRCA '55.

23 Q. THANK YOU.

24 NOW, YESTERDAY, AS WE WENT THROUGH  
25 THE PICTURES, YOU MADE SOME COMMENTS, AND I DON'T  
26 WANT TO REVISIT ALL THAT, AND I DON'T WANT TO SAY  
27 THAT ALL AGAIN, BUT I WOULD LIKE YOU TO STATE THE  
28 REASONS FOR YOUR OPINION. JUST TELL THE JURY, IN A

1 SUCCINCT, TO THE POINT KIND OF WAY, THE REASONS FOR  
2 THE OPINION YOU JUST GAVE.

3           A.     THE UNDERSTANDING THAT THE CHILD  
4 DEVELOPMENT LITERATURE HAS GENERATED AS WELL AS  
5 SOME FOCUSED GROUP RESEARCH DONE BY THE INDUSTRY  
6 HAS RESULTED IN, AS I SAY, AN UNDERSTANDING THAT  
7 THE MOTIVATION FOR YOUNG MALES, AS THEY COME INTO  
8 THEIR ADOLESCENT YEARS, IS TO INDIVIDUATE, TO  
9 SEPARATE AWAY FROM THEIR PARENTS, TO WANT TO  
10 MATURE, SEEM MATURE, GROW UP, BECOME INDIVIDUALS,  
11 BECOME, FOR MALES, STRONG, INDEPENDENT, MASCULINE,  
12 VIRILE. AND WITH THAT IN MIND, THE ADS THAT WE  
13 LOOKED AT THAT WERE GENERATED BY MARLBORO, BY  
14 PHILIP MORRIS FOR MARLBORO, VERY MUCH MATCH THAT  
15 PROFILE.

16                     THERE IS -- THE PROFILE OF THE  
17 MODELS, THE ACTIVITIES THEY ARE ENGAGED IN, ARE  
18 THAT OF A VERY INDIVIDUATED, THE MAN IN THAT VIDEO,  
19 FOR EXAMPLE, IS WORKING OFF BY HIMSELF, GETS LOST,  
20 NOBODY IS APPARENTLY AROUND TO YELL AT HIM TO COME  
21 BACK FROM WHAT HE IS DOING. HE IS A FREEMAN. AND  
22 ASSOCIATED WITH THAT FREEDOM AND INDIVIDUALITY, HIS  
23 RASPY, TOUGH VOICE, MASCULINITY, VIRILITY,  
24 INDIVIDUATED, OFF BY HIMSELF, NOT UNDER THE CONTROL  
25 OF OTHERS, THAT'S VERY MUCH WHAT YOUNG BOYS ARE  
26 SEEKING AS THEY WANT TO GROW UP AND BE SOMEONE LIKE  
27 HIM, ENGAGED IN ACTIVITIES THAT HE IS ENGAGED IN,  
28 MECHANICAL, THAT SORT OF THING.

1 Q. WELL, THANK YOU. BUT I WANT TO  
2 TELL YOU, 35-YEAR-OLD GUYS COULD BE WATCHING THAT  
3 AD?

4 A. UH-HUH.

5 Q. 29-YEAR-OLD GUYS COULD BE WATCHING  
6 THAT AD. 46-YEAR-OLD GUYS COULD BE WATCHING THAT  
7 AD. SO I AM CHALLENGING YOU, FLAT OUT, STRAIGHT  
8 OUT, IF MEN AND WOMEN OF ALL AGES COULD BE WATCHING  
9 THAT AD, DOESN'T THAT CHANGE YOUR MIND THAT THAT AD  
10 IS GEARED TOWARD UNDER 18 MALES?

11 A. NO. CERTAINLY, WE WOULD NOT  
12 PRECLUDE THESE ADS FROM BEING OF INTEREST,  
13 CERTAINLY, MORE TO 30-YEAR-OLD MEN RATHER THAN  
14 WOMEN, BUT IT WOULD NOT PRECLUDE IT FROM BEING A  
15 CONSIDERABLE INTEREST TO 30-YEAR-OLD MALES, TO  
16 18-YEAR-OLD MALES OF LEGAL AGE.

17 BUT AS I SAID YESTERDAY, THERE'S  
18 NOTHING A 15-YEAR-OLD WOULD RATHER BE THAN 18. AND  
19 SO THE HOLDING UP OF A MODEL THAT'S ATTRACTIVE,  
20 DOING SOMETHING ATTRACTIVE, LOOKS ATTRACTIVE,  
21 SOUNDS ATTRACTIVE AND MATCHES THE MOTIVATIONS OF  
22 THOSE YOUNG PEOPLE, IT IS, IN EFFECT, BETTER TO  
23 HOLD UP A 18 OR A 20-YEAR-OLD THAN TO HOLD UP, THAN  
24 TO USE A 14-YEAR-OLD.

25 A 15-YEAR-OLD IS FAR MORE  
26 INFLUENCED BY AN 18-YEAR-OLD THAN HE IS ANOTHER  
27 15-YEAR-OLD.

28 BUT THE 18-YEAR-OLD IS WHO HE WANTS

1 TO BE.

2 Q. OKAY, THANK YOU.

3 NOW, I WANT TO TALK ABOUT YOU A  
4 LITTLE BIT.

5 WE ARE GOING TO GO BACK TO THE  
6 SUBJECT MATTER BUT I WANT TO TALK ABOUT YOU A  
7 LITTLE BIT FOR THE JURY.

8 IN YOUR C. V. , CURRICULUM VITAE,  
9 THERE'S A LIST OF VARIOUS THINGS, AND I AM NOT  
10 GOING TO READ THEM ALL. BUT ARE THERE AT LEAST A  
11 DOZEN OR MORE JOURNALS THAT YOU HAVE CO-AUTHORED  
12 THAT HAVE TO DO WITH THE TOPIC OF SMOKING?

13 A. CERTAINLY, BROADLY, ADVERTISING AND  
14 SOME OF THEM SMOKING.

15 Q. YES, WELL, ADVERTISING AND SMOKING  
16 IS WHAT I AM ASKING.

17 A. A LARGE SEGMENT. I DON'T KNOW THE  
18 NUMBER.

19 Q. IS THERE ONE GROUP OF ARTICLES THAT  
20 YOU HAVE BEEN THE CO-AUTHOR ON THAT DEAL WITH THE  
21 TOPIC OF ADVERTISING LIGHT CIGARETTES TO THE PUBLIC  
22 AND SOME OF THE RAMIFICATIONS THAT GO ALONG WITH  
23 THAT?

24 A. YES, THERE IS.

25 Q. AND IS THERE ANOTHER GROUP OF  
26 ARTICLES THAT YOU PUBLISHED THAT DON'T NECESSARILY  
27 HAVE TO DO WITH TOBACCO, SOME DO, BUT HAVE TO DO  
28 WITH MARKETING SPECIFICALLY TO CHILDREN?

1 A. YES, THERE IS.

2 Q. I WANT TO START THIS SEGMENT OF MY  
3 QUESTIONING RIGHT NOW, JUST GIVING THE JURY AN IDEA  
4 OF SOME OF THE RESEARCH YOU HAVE DONE AS FAR AS  
5 MARKETING GOODS TO CHILDREN.

6 READY TO DO THAT?

7 A. YES.

8 Q. AND I DON'T WANT IT -- TO START  
9 OFF, I DON'T WANT TO NECESSARILY KEEP US TO TOBACCO  
10 JUST TO GIVE US SORT OF AN OVERVIEW

11 WHERE DID YOU GROW UP?

12 A. IN MONTREAL, CANADA.

13 Q. IS MONTREAL A BI-LINGUAL CITY?

14 A. YES. IT'S, PERHAPS, PREDOMINANTLY  
15 FRENCH WITH A SIGNIFICANT ENGLISH-SPEAKING  
16 POPULATION.

17 Q. WERE THERE ENGLISH-SPEAKING  
18 TELEVISION SHOWS IN MONTREAL?

19 A. THERE WERE, YES.

20 Q. WHERE DID THEY ORIGINATE?

21 A. MOST OF THEM, AND, PERHAPS, 90  
22 PERCENT OF WHAT THE POPULATION WATCHED, CHILDREN  
23 AMONG THEM, CAME FROM THE NORTHERN BORDER POINTS IN  
24 THE UNITED STATES. MOST OF THE POPULATION ACROSS  
25 CANADA IS VERY CLOSE TO THE AMERICAN BORDER. SO  
26 CANADA IS THE MOST CABLED COUNTRY IN THE WORLD TO  
27 PULL UP THOSE BORDER STATIONS.

28 SO WE WOULD WATCH NBC FROM

1 PLATTSBURGH, NEW YORK, AND CBS FROM BURLINGTON,  
2 VERMONT.

3 Q. IN MONTREAL ITSELF, WERE THERE  
4 FRENCH-SPEAKING STATIONS?

5 A. YES, THERE WERE. AND THOSE WERE  
6 TARGETED AT THE, ACROSS QUEBEC, THE PROVINCE OF  
7 QUEBEC, AND IN MONTREAL, THE PREDOMINANT FRENCH  
8 POPULATION.

9 Q. IN THE 1980'S, DID THE PROVINCE OF  
10 QUEBEC BAN ADVERTISING, NOT CIGARETTE ADVERTISING,  
11 ALL ADVERTISING THAT TARGETED KIDS?

12 A. YES, THEY DID. IT WAS A  
13 BROAD-BASED LAW IN THAT ULTIMATELY IT WAS PASSED  
14 AND SUPPORTED IN THE COURTS THAT ELIMINATED ALL  
15 ADVERTISING ON ALL OF THE RADIO AND T.V. STATIONS  
16 IN QUEBEC AND THINGS LIKE TEXTBOOK COVERS AND THAT  
17 SORT OF THING IN SCHOOLS.

18 Q. SO JUST AS AN EXAMPLE, NO SUGAR  
19 POPS, NO MATEL TOYS, NO STUFF LIKE THAT, BEING  
20 TARGETED FOR KIDS?

21 A. THAT IS RIGHT.

22 Q. DID YOU HAVE SOMETHING TO DO WITH  
23 THAT?

24 A. I CERTAINLY HAD DONE SOME STUDIES  
25 EARLIER THAT WERE USED TO BUILD THE CASE. AND I  
26 THEN WAS A CONSULTANT WITH THE QUEBEC GOVERNMENT AS  
27 THEY MOVED THIS THROUGH LEGISLATION AND THROUGH THE  
28 COURTS.

1 Q. EARLIER IN THE 1970'S, LATE '70'S,  
2 DID YOU TESTIFY BEFORE THE U.S. CONGRESS IN REGARD  
3 TO SIMILAR ISSUES?

4 A. I TESTIFIED BEFORE -- I THINK IT  
5 WAS EARLY '70'S, THAT THERE WAS A CONSIDERABLE  
6 MOVEMENT ACROSS NORTH AMERICA, MAYBE THE WORLD, TO  
7 CONSTRAIN OR CONSTRICT ADVERTISING TO CHILDREN.  
8 AND THERE WERE HEARINGS BOTH IN WASHINGTON, THE  
9 FEDERAL TRADE COMMISSION WHERE I TESTIFIED AND IN  
10 OTTAWA WITH THE FEDERAL GOVERNMENT IN CANADA AS  
11 WELL.

12 Q. I AM SORRY, IT WASN'T CONGRESS, IT  
13 WAS THE U.S. FEDERAL TRADE COMMISSION?

14 A. RIGHT.

15 Q. ONE WAY OR THE OTHER, HAD YOU HAD  
16 SOME INVOLVEMENT IN THE ISSUE OF BANNING CHILD  
17 ADVERTISING FOR A DECADE OR SO THROUGHOUT THE  
18 MID-70'S TO MID-80'S?

19 A. YES.

20 Q. NOW, WHEN -- WHO, BESIDES, QUEBEC,  
21 THE PROVINCE OF QUEBEC, THE FRENCH-SPEAKING  
22 PROVINCE, WHO, IF ANYONE, ADOPTED RESTRICTIONS?

23 A. THE MOVEMENT, I GUESS, PETERED OUT,  
24 IN A SENSE, THROUGH THE '70'S. IT WAS ONLY THE  
25 JURISDICTION OF QUEBEC THAT ACTUALLY WENT FORWARD  
26 WITH SOMETHING CONCRETE AND THERE ARE PROBABLY SOME  
27 MINOR CONSTRAINTS THAT DEVELOPED LATER, BUT NOT IN  
28 THE REST OF NORTH AMERICA.

1 Q. IN THE PROVINCE OF QUEBEC AND  
2 CANADA, WHEN ADVERTISING TO KIDS WAS BANNED, DID  
3 THAT GIVE YOU AN OPPORTUNITY TO DO SOME RESEARCH  
4 HAVING TO DO WITH THE EFFECT OF TAKING AWAY  
5 ADVERTISING AIMED AT KIDS?

6 A. YES, IT DID. I DID PROCEED TO DO  
7 SOME RESEARCH ASSESSING THE EFFECTIVENESS OF THAT  
8 LAW

9 Q. EXPLAIN TO THE JURY HOW YOU DID  
10 THAT, PLEASE.

11 A. WELL, I GUESS IT REFLECTS HOW I DO  
12 A LOT OF MY RESEARCH. I LOOKED AROUND IN MY  
13 ENVIRONMENT. AND MY OWN CHILDREN WERE THE SOURCE  
14 OF THE IDEA FOR THE RESEARCH.

15 I NOTICED THAT WHEN THE LAW PASSED,  
16 AS TOUGH AS IT WAS, NO ADVERTISING IN ALL THE  
17 STATIONS IN QUEBEC, IT DIDN'T EFFECT MY KIDS AT ALL  
18 BECAUSE THEY CONTINUED TO WATCH THOSE  
19 ENGLISH-SPEAKING PROGRAMS FROM VERMONT AND NORTHERN  
20 NEW YORK STATE.

21 AND I SAID, WELL, THERE IS RATHER  
22 AN INTERESTING SITUATION. WE HAVE WHAT IS CALLED A  
23 NATIONAL EXPERIMENT. WE DON'T HAVE TO PULL PEOPLE  
24 INTO A LABORATORY. QUEBEC IS THE LABORATORY.

25 BECAUSE WE HAVE ONE GROUP OF KIDS,  
26 THE ENGLISH-SPEAKING ONCE THAT ARE, IN EFFECT, NOT  
27 IMPACTED BY THE LAW. THEY ARE KIND OF LIKE WHAT WE  
28 CALL A CONTROL GROUP. THEY ARE THE GROUP WE DON'T

1 DO ANYTHING TO.

2                   THEN THE NATIONAL LAW, THE NATIONAL  
3 EXPERIMENT HAD THIS LAW THAT SAID, OKAY, ALL THESE  
4 FRENCH KIDS, THEY ARE BOUNDED, THEY ONLY SPEAK  
5 FRENCH, THEY HAVE TO WATCH THOSE QUEBEC STATIONS,  
6 THEY ARE NOT WATCHING THE AMERICAN STATIONS, THEY  
7 WATCH THE FRENCH TELEVISION STATIONS AND THOSE NO  
8 LONGER HAVE ANY COMMERCIALS, NOT FOR TOYS, NOT FOR  
9 CIGARETTES, NOT FOR ANYTHING.

10                   SO WE COULD DO A COMPARISON OF  
11 THESE TWO GROUPS OF KIDS.

12                   SO WHAT I DID WAS TAPE RECORD OFF  
13 OF THESE AMERICAN STATIONS THE TOY ADS JUST FOR  
14 CHRISTMAS AND I CLIPPED OFF THE LAST FEW SECONDS  
15 WHERE THEY HAD THE NAME OF THE TOY. I PLAYED IT  
16 FOR THE ENGLISH KIDS AND THE FRENCH KIDS, NO SOUND,  
17 SO THEY COULDN'T HEAR THE NAME OF THE TOY, GAVE  
18 THEM A MULTIPLE CHOICE TEST, HERE'S FOUR DIFFERENT  
19 CHOICES, WHAT IS THE NAME OF THAT TOY.

20                   WELL, WHEN I PLAYED IT FOR THE  
21 ENGLISH KIDS, ABOUT FIVE IN THE COMMERCIAL, THEY  
22 WOULD GIVE ME AN ANSWER I WOULDN'T HAVE TO FINISH  
23 THE COMMERCIAL.

24                   I PLAYED IT FOR THE FRENCH KIDS,  
25 THEY DIDN'T KNOW ANYTHING, THEY SORT OF GUESSED.  
26 THERE'S A RANDOM NUMBER OF CHOICES AND A CORRECT  
27 NUMBER YOU EXPECTED BY CHANCE.

28                   WELL, WHEN IT CAME TO SUGARED

1 CEREALS, I GAVE THEM A LIST OF ABOUT, I DON'T KNOW,  
2 MUST HAVE BEEN 25 CEREALS THAT COULD CONCEIVABLY BE  
3 OF INTEREST TO KIDS, MOST OF THEM SUGAR. AND I  
4 SAID, JUST CHECK OFF WHAT YOU HAVE IN YOUR HOME.

5 THE ENGLISH-SPEAKING KIDS HAD ABOUT  
6 TWICE AS MANY SUGARED CEREALS IN THEIR HOMES.  
7 THOSE THAT HAD BEEN EXPOSED CONTINUED TO WATCH ALL  
8 THOSE AMERICAN ADS DURING ALL THE AMERICAN  
9 PROGRAMMING.

10 FRENCH KIDS, FAR FEWER.

11 NOW, THERE'S ALWAYS A POSSIBILITY  
12 THAT SOMEHOW THERE'S THESE CULTURAL DIFFERENCES  
13 THAT MAYBE FRENCH KIDS DON'T LIKE SUGARED CEREALS.

14 SO WHAT WE DID WAS WE WOULD SAY,  
15 AMONG THE FRENCH KIDS, SOME OF THEM MIGHT WATCH A  
16 LITTLE AMERICAN T.V., LET'S SEE, WE WILL ASK EACH  
17 OF THEM TO GO THROUGH THEIR T.V. SCHEDULE FOR THE  
18 WEEK.

19 SOME OF THEM WATCHED A LITTLE BIT,  
20 SOME OF THEM NONE. IT TURNED OUT AMONG JUST THE  
21 FRENCH KIDS, THOSE THAT WATCHED A LITTLE BIT OF  
22 AMERICAN T.V., THEY HAD A LITTLE BIT MORE SUGARED  
23 CEREALS.

24 THOSE THAT WATCHED NONE, FAR FEWER.

25 SO IT'S NOT CULTURAL.

26 SO WE COULD SEE IN THIS NATIONAL  
27 LABORATORY ADVERTISING HAS A POWERFUL EFFECT. YOU  
28 CUT IT OUT, YOU MAKE REAL CHANGES IN KIDS'

1 BEHAVIOR.

2 Q. SO WHEN YOU STATE THEN, ADVERTISING  
3 GEARED AT KIDS WORKS?

4 A. ABSOLUTELY. I HAVE GOT LOTS OF  
5 OTHER STUDIES THAT I CAN RELATE THAT MAKES THE SAME  
6 POINT.

7 Q. ALL RIGHT. THANK YOU.

8 I KNOW THERE ARE LOTS AND LOTS OF  
9 STUDIES, I DON'T WANT TO TAKE THE WHOLE MORNING  
10 TALKING ABOUT ALL THE STUDIES, BUT MAYBE ONE MORE,  
11 SPEND JUST A COUPLE MINUTES ON.

12 DID YOU HAVE A STUDY THAT HAD TO DO  
13 WITH, SEE IF I GET THIS RIGHT, A SHOELACE HAVING TO  
14 DO WITH MATEL TOYS?

15 A. YES, I DID. IT WAS, I THINK, THE  
16 FIRST STUDY I DID.

17 Q. WAS THIS STUDY SPONSORED BY THE  
18 MATEL TOY COMPANY?

19 A. YES, IT WAS.

20 Q. AND THEY ASKED YOU TO DO IT?

21 A. WELL, I APPROACHED THEM AND SAID I  
22 NEED SOME HELP AND THEY SAID, SURE, WE WOULD  
23 SUPPORT IT.

24 Q. BEFORE YOU TELL US ABOUT THE  
25 SPECIFICS OF IT HERE, WHAT WAS THE INTENT, IN OTHER  
26 WORDS, WHAT WERE YOU TRYING TO SHOW OR DISPROVE?

27 A. WELL, VERY OFTEN RESEARCH,  
28 RESEARCHERS ARE LIMITED TO ASKING KIDS QUESTIONS,

1 DO YOU THINK ADVERTISING INFLUENCES, SOMETIMES THEY  
2 ARE SUSPECT, ARE THEY TELLING US THE TRUTH OR NOT.

3 SO I WANTED TO DO A STUDY WHERE I  
4 WASN'T GOING TO ASK THEM SOME QUESTIONS I WAS GOING  
5 TO GIVE THEM REAL BEHAVIOR TO DO. I WANTED TO SEE  
6 IF COMMERCIALS, IF, WHEN THEY SAW THEM, COMMERCIALS  
7 FOR A TOY WOULD REALLY EGG THEM ON ENOUGH SO THAT  
8 THEY WOULD SIT THERE AND PERSIST AT A REALLY TOUGH  
9 TASK. DON'T TELL ME YOU LIKE COMMERCIALS, DON'T  
10 TELL ME YOU THINK THEY ARE MEANINGFUL, I WANT TO  
11 SEE WHAT YOU REALLY DO.

12 AND SO WE HAD THIS PUZZLE, A SET OF  
13 METAL LOOPS AND THERE WAS A SHOELACE KIND OF CORD  
14 LOOPED THROUGH THE METAL LOOPS. AND THE TASK WAS  
15 YOU HAD TO EXTRACT THAT SHOELACE.

16 THERE ISN'T, I DON'T THINK, ONE  
17 PERSON, ONE OUT OF A HUNDRED ADULTS COULDN'T DO IT.  
18 IT'S ALMOST IMPOSSIBLE TO DO. IT'S A REALLY TOUGH  
19 TASK.

20 THE IDEA WAS WE WANTED TO SEE HOW  
21 LONG THESE KIDS WOULD PERSIST AT THIS VERY  
22 FRUSTRATING TASK AND WOULD THEY PERSIST LONGER IF  
23 THEY WERE EGGED ON BY SEEING COMMERCIALS FOR THIS  
24 TOY.

25 WE ARE GOING TO SAY YOU ARE GOING  
26 TO WIN THIS TOY IF YOU CAN GET THIS CORD OFF OF  
27 THESE LOOPS. YOU ARE GOING TO WIN THIS TOY, A \$12  
28 TOY, PRETTY APPEALING.

1 WELL, WE SHOWED HALF THE KIDS THE  
2 ADS FOR THE TOY AND THE OTHER HALF JUST SAW THE  
3 BOX.

4 THE KIDS THAT SAW THE AD FOR THE  
5 TOY, I THINK THEY WORKED AT THIS PUZZLE SOMETHING  
6 LIKE 10 OR 15 MINUTES LONGER. THEY WERE ALL HIDDEN  
7 AWAY FROM ONE ANOTHER IN THESE LITTLE CUBICLES AND  
8 WE TIMED THEM UNTIL THEY GAVE UP.

9 ONCE IN A BLUE MOON, A KID WOULD  
10 SOLVE IT, AND WE WOULD JUST NOT COUNT THAT.

11 AND WHAT AMAZED ME MOST OF ALL, I  
12 COULD GIVE YOU THE STATISTICS, BUT I WILL NEVER  
13 FORGET THE DAY, AND THIS TOOK DAYS AND DAYS TO RUN  
14 BECAUSE WE DID IT WITH A COUPLE HUNDRED KIDS, WE  
15 ONLY DID FIVE OR TEN KIDS AT A TIME.

16 ABOUT FIVE MINUTES INTO THE SESSION  
17 WITH THESE KIDS, A KID COMES OUT AND HE HAS GOT THE  
18 SHOELACE OFF BECAUSE HE'S CHEWED THROUGH IT. THIS  
19 IS ONE OF THE KIDS THAT SAW THE COMMERCIALS.

20 ENOUGH MOTIVATION TO SAY I WANT  
21 THAT TOY, I AM GOING TO CHEW THROUGH.

22 HE WON, MAYBE NOT QUITE FAIR AND  
23 SQUARE BUT WE GAVE HIM THE TOY.

24 SO YOU SENSE THE POWER TO MOTIVATE.  
25 IT'S NOT JUST, YEAH, COMMERCIALS, I LIKE  
26 COMMERCIALS, NOT JUST VERBALLY, THEY PUT TIME INTO  
27 IT AND THEY WERE FRUSTRATED AND THEY STAYED THERE.

28 AND THIS ONE KID WAS FRUSTRATED

1 ENOUGH THAT HE CHEWED THROUGH IT.

2 SO THAT WAS EARLY ON IN MY CAREER  
3 AND PERHAPS MORE THAN ANYTHING, SO I AM GOING TO  
4 PURSUE THIS A LITTLE MORE AND SEE JUST HOW POWERFUL  
5 THIS EFFECT CAN BE WITH THESE KIDS, THIS IS BEFORE  
6 I HAD MY OWN CHILDREN.

7 Q. THANK YOU.

8 GIVE US JUST A ROUGH IDEA WHAT YEAR  
9 THAT WAS, JUST WITHIN --

10 A. 1972.

11 Q. FINE.

12 THANK YOU. I WANT TO FAST FORWARD  
13 YOU AT LEAST 25 YEARS FROM 1972 UNTIL THE LATE  
14 '90'S. OKAY?

15 A. RIGHT.

16 Q. AND HAVE YOU MUCH MORE RECENTLY  
17 BEEN INVOLVED IN ANTI-SMOKING CAMPAIGNS AIMED AT  
18 KIDS?

19 A. YES, I HAVE.

20 Q. EXPLAIN WHEN AND FOR WHOM, PLEASE.

21 A. THE MAJOR PROJECT, WHICH IS JUST  
22 ONE THAT HAS BEEN RECENTLY COMPLETED IS WITH A  
23 COLLEAGUE IN CALIFORNIA, CONNIE PETRIMAN IS HER  
24 NAME. AND WE ASSESSED THE REACTION OF OVER 2,000  
25 CALIFORNIA MIDDLE AND HIGH SCHOOL STUDENTS AND  
26 SHOWED THEM AN ARRAY OF DIFFERENT KINDS OF  
27 ANTI-SMOKING ADS. AND THE TASK WAS TO SEE WHICH  
28 ARE MORE EFFECTIVE AND WHICH ARE LESS EFFECTIVE.

1                   AND WE DEFINITELY SEE THAT WE HAVE  
2 SOME EFFECTS, PERHAPS, MORE WITH SOME AND PERHAPS  
3 LESS WITH OTHERS, WE ARE JUST TEASING THROUGH IT,  
4 AND THE ULTIMATE GOAL IS, OF COURSE, TO SEE IF IT  
5 REDUCES SMOKING.

6                   AND IN THE SHORT-TERM, WE ASKED  
7 THEM, WHETHER, AFTER SEEING ONE TYPE OF  
8 ANTI-SMOKING AD OR ANOTHER, WE ASKED THEM, WELL,  
9 HOW LIKELY ARE YOU TO THINK ABOUT CHANGING YOUR  
10 IDEAS OF SMOKING AND WE CAN SEE THERE'S MORE EFFECT  
11 OF SOME THAN OTHERS.

12                 Q.     HAVE YOU DONE THIS TYPE OF STUDY  
13 THAT'S ACTUALLY TURNED INTO A FINISHED PRODUCT  
14 READY FOR USE?

15                 A.     WELL, CERTAINLY, I HAVE CREATED AND  
16 HELPED CREATE A RADIO COMMERCIAL THAT IS ACTUALLY  
17 AVAILABLE FROM THE C. D. C. , THE CENTER FOR DISEASE  
18 CONTROL, ON THE ISSUE OF LIGHT CIGARETTES.

19                 Q.     OKAY. NOT FOR KIDS, THOUGH?

20                 A.     NO.

21                 Q.     AS THE ANTI-SMOKING MESSAGE THAT  
22 YOU ARE TEASING THESE KIDS WITH GOT STRONGER, DOES  
23 THE STRONGER MESSAGE SEEM TO HAVE MORE POSITIVE  
24 BENEFITS THAN A WEAKER MESSAGE?

25                 A.     IT DEPENDS ON WHAT YOU CALL BY  
26 STRONGER.

27                         ACTUALLY, I AM INVOLVED IN ANOTHER  
28 STUDY THAT -- AND I FEEL THAT THIS IS AN APPROACH

1 THAT IS VERY PROMISING AND OTHERS HAVE USED IT AS  
2 WELL. WE SEE SOME ON THE AIR. I THINK IT IS  
3 IMPORTANT. IT COMES OUT OF WHAT IS CALLED MEDIA  
4 LITERACY.

5 WE HAVE TO MAKE CHILDREN MORE  
6 LITERATE AS TO HOW MEDIA WORKS AND HOW ADVERTISING  
7 PERSUADES THEM AND WHY THEY ARE BEING PERSUADED AND  
8 THE FACT THAT CIGARETTE COMPANIES, WHEN THEY  
9 ADVERTISE, DON'T HAVE CHILDREN'S BEST INTERESTS AT  
10 HEART.

11 MR. LEITER: I AM GOING TO OBJECT AND  
12 MOVE TO STRIKE.

13 THE COURT: SUSTAINED. THE WHOLE LINE OF  
14 QUESTIONING, BUT I HAVEN'T HEARD ANY OBJECTION.

15 Q BY MR. PIUZE: I WANT TO GO  
16 BACKWARDS HERE TO THE EARLY '60'S, PLEASE. AND  
17 FORGIVE ME, YOUR HONOR, CAN I TAKE A MINUTE HERE?

18 THE COURT: SURE.

19

20 (INTERRUPTION IN PROCEEDINGS.)

21

22 Q BY MR. PIUZE: I'D LIKE TO SHOW  
23 YOU 8002.83 AND 84.

24 AND YOUR HONOR, WHILE I AM AT IT,  
25 CAN I HAVE THAT TAPE THAT WE PLAYED THIS MORNING  
26 MARKED AS 8002.85 PLEASE.

27 /// /// ///

28 /// /// ///

1                   \* (EXHIBIT 8002.85, VIDEO,  
2                   MARKED FOR I. D.)

3  
4                   (EXHIBITS 8002.83 AND 8002.84  
5                   BLOWUPS OF GRAPHS, MARKED FOR  
6                   I. D.)

7  
8                   THE COURT: POINT 85, MARKED.

9                   Q     BY MR. PIUZE: I WANT TO TALK TO  
10                  YOU AWHILE AND HAVE THE ANSWERS FOR THE JURY ABOUT  
11                  TELEVISION ADVERTISING OF CIGARETTES BACK IN THE  
12                  ERA OF THE LATE 1950'S, EARLY '60'S.

13                                 ARE YOU READY TO DO THAT A LITTLE  
14                  BIT?

15                  A.     YES.

16                  Q.     HAVE YOU EVER HEARD OF THE "I LOVE  
17                  LUCY" SHOW?

18                  A.     YES.

19                  Q.     WAS THAT PLAYING IN THE LATE '50'S?

20                  A.     YES, IT WAS.

21                  Q.     NETWORK TELEVISION?

22                  A.     YES.

23                  Q.     WHO SPONSORED IT?

24                  A.     PHILIP MORRIS.

25                  Q.     DO YOU KNOW THE YEARS, THE EXACT  
26                  YEARS THAT PHILIP MORRIS SPONSORED IT IN THE '50'S?

27                  A.     IT WAS THROUGH THE '50'S, I KNOW  
28                  ABOUT TO '55, I BELIEVE.

1 Q. IN ITS ERA, WAS THAT ONE OF THE  
2 VERY MOST POPULAR T. V. SHOWS?

3 A. I THINK IT WAS THE TOP SHOW  
4 LUCILLE BALL AND DESI ARNAZ.

5 MR. LEITER: YOUR HONOR, I AM GOING TO  
6 OBJECT AS TO THE FOUNDATION OF HIS KNOWLEDGE AND  
7 EXPERTISE.

8 THE COURT: ALL RIGHT. HE IS TESTIFYING  
9 FROM PERSONAL KNOWLEDGE AT THE PRESENT TIME. I  
10 WILL LET YOU CONTINUE.

11 Q BY MR. PIUZE: NOW, THE JURY HAS  
12 NOT SEEN 8002. 84. YOU CAN SEE THAT EVEN THOUGH IT  
13 IS AT AN ANGLE?

14 A. ONLY BARELY.

15 Q. YOU HAVE SEEN A SMALL VERSION OF  
16 THAT?

17 A. YES.

18 Q. AND 8002. 83, AGAIN, THE JURY CAN'T  
19 SEE IT. YOU ARE FAMILIAR WITH THAT, SEEN A SMALL  
20 VERSION OF IT?

21 A. YES.

22 Q. WHERE DID THE INFORMATION THAT WENT  
23 ONTO THOSE DIAGRAMS COME FROM?

24 A. THE ORIGINAL SOURCE WAS THE FEDERAL  
25 TRADE COMMISSION AND THEY GENERATED THAT IN  
26 PREPARATION FOR THE SURGEON GENERAL'S REPORT OF  
27 1964.

28 Q. SO THAT'S THE UNITED STATES OF

1 AMERICA GOVERNMENT FEDERAL TRADE COMMISSION?

2 A. RIGHT.

3 Q. AND WERE THESE DISPLAYS TAKEN RIGHT  
4 OFF OF GOVERNMENT DOCUMENTS?

5 A. THE COLORS AND ALL WERE ADDED TO BY  
6 A DOCUMENT PREPARED BY RICK POLLAY, BUT THE  
7 ORIGINAL SOURCE OF THE DATA WAS THE FEDERAL TRADE  
8 COMMISSION DATA.

9 Q. IS THAT ALL RIGHT?

10 THE COURT: PROCEED.

11 MR. PIUZE: THANK YOU.

12 Q BY MR. PIUZE: BEFORE I PUT THIS  
13 UP, THIS IS FOR 1963. YESTERDAY WE WERE  
14 CONCENTRATING OR AT LEAST MY QUESTIONS HAD YOU  
15 CONCENTRATING ROUGHLY '55 TO '59, IN THAT GENERAL  
16 AREA.

17 AND I HAVE MY REASONS FOR IT  
18 BECAUSE IT CORRESPONDED WITH WHEN MR. BOEKEN WAS  
19 STARTING TO SMOKE.

20 IS THERE SIMILAR DETAIL  
21 DOCUMENTATION LIKE THIS OF WHICH YOU ARE AWARE FOR  
22 '57 AND '58?

23 A. NO, THERE'S NOT.

24 Q. DID YOU CHOOSE THIS ONE BECAUSE THE  
25 FEDERAL TRADE COMMISSION HAD DONE THIS IN-DEPTH  
26 STUDY AND THIS INFORMATION WAS AVAILABLE?

27 A. YES. IT'S EXTENSIVE.

28 Q. SO I WILL SHOW YOU .84, 8002.84.

1 THE CLERK: COUNSEL, I THINK WE HAVE  
2 8002. 84 HERE.

3 MR. PIUZE: WHAT DO YOU SUGGEST? SORRY.

4 THE CLERK: THAT' S ALL RIGHT, HOW ABOUT  
5 86.

6 MR. PIUZE: 86, GREAT.

7 Q BY MR. PIUZE: CAN YOU SEE THAT  
8 OKAY FROM WHERE YOU ARE?

9 A. YES. AS A BLOCK.

10 Q. WHAT IS THIS?

11 A. IT' S THE WEEKLY SCHEDULE, AND --

12 Q. YOUR HONOR, CAN I ENTICE HIM DOWN?

13 THE COURT: SIR, WOULD YOU STEP DOWN.  
14 SIR, YOU CAN STAY DOWN THERE WITH  
15 MR. PIUZE.

16 MR. PIUZE: IT' S FINE TO STAY DOWN HERE  
17 AS LONG AS THESE JURORS DOWN HERE DON' T GET  
18 BOTHERED.

19 Q BY MR. PIUZE: WHAT IS THIS MEANT  
20 TO REPRESENT?

21 A. THIS IS THE PRIME TIME T. V.  
22 SCHEDULE THAT IS THE EVENING SCHEDULE ON THE MAJOR  
23 NETWORKS IN, AND THE ADVERTISING, ACCORDING TO THE  
24 COLOR CODE, THAT WAS DONE ON THOSE PROGRAMS, WHO  
25 SPONSORED THEM

26 Q. IS THIS -- DOES THIS SHOW TOBACCO  
27 ADVERTISING?

28 A. YES, IT DOES.

1 Q. ONLY?

2 A. YES.

3 Q. SO WHERE THERE'S WHITE ON THE  
4 BOARD, THOSE ARE PROGRAMS THAT DID NOT HAVE A  
5 TOBACCO COMPANY AS A SPONSOR?

6 A. OR ADVERTISING IN IT.

7 Q. AND EVERYTHING THAT ISN'T WHITE IS  
8 A TELEVISION SHOW THAT WAS EITHER SPONSORED BY A  
9 TOBACCO COMPANY OR HAD TOBACCO ADVERTISING IN IT?

10 A. THAT IS CORRECT.

11 Q. LET'S JUST JUMP DOWN TO THE BOTTOM  
12 HERE. DO YOU SEE THE SYMBOLS AT THE BOTTOM?

13 A. YES.

14 Q. COULD YOU JUST READ THEM OFF FOR  
15 THE JURY.

16 A. AMERICAN TOBACCO IS ON THE LEFT AND  
17 BROWN & WILLIAMSON, LIGGITT, P. LORILLARD, PHILIP  
18 MORRIS, RJ REYNOLDS.

19 Q. SO IT'S ALL COLOR-CODED SO WE KNOW  
20 WHO IS SPONSORING WHAT; CORRECT?

21 A. YES.

22 Q. LET'S -- THERE ARE A LOT OF PEOPLE  
23 THAT PROBABLY NEVER HEARD OF THESE TELEVISION SHOWS  
24 OR ONLY HAVE THE VAGUEST IDEA WHAT THEY WERE ABOUT?

25 MR. LEITER: OBJECT TO THE COMMENTARY.

26 THE COURT: SUSTAINED.

27 Q BY MR. PIUZE: IN CASE THERE ARE  
28 PEOPLE WHO DON'T KNOW WHAT THESE ARE, COULD YOU

1 DISCUSS JUST A LITTLE BIT WHAT THESE SHOWS WERE  
2 ABOUT?

3 A. "RED SKELETIN" WAS A COMEDY, MIMIC,  
4 CLOWN. IT WAS A COMEDY SHOW

5 "RAWHIDE" WAS A COWBOY SHOW

6 "PERRY MASON" WAS A DETECTIVE.

7 THAT ONE DOWN ON THE LIFT, "JACKIE  
8 GLEASON" WAS A COMEDY SHOW

9 GOING BACK UP, "ROUTE 66" WAS  
10 MYSTERY TYPE SHOW, I GUESS.

11 "PERRY MASON, " I MENTIONED WAS  
12 MYSTERY DETECTIVE.

13 "ALFRED HICHOCK" WAS SUSPENSE.

14 AND "EAST SIDE WEST SIDE, " I DON' T  
15 RECALL THAT.

16 Q. SO ALTHOUGH I DIDN' T ASK YOU TO,  
17 WHAT YOU DID IS ONLY READ OFF THE RED ONES; IS THAT  
18 RIGHT?

19 A. YES.

20 Q. WELL, LET' S STAY WITH THAT.

21 DO YOU REMEMBER "ROUTE 66"?

22 A. YES.

23 Q. WAS THE FEATURE CHARACTER IN "ROUTE  
24 66" A CORVETTE?

25 A. YES, IT WAS.

26 I DON' T KNOW WHAT THE END POINT  
27 IS --

28 THE COURT: SIR, YOU ARE GOING TO HAVE TO

1 SPEAK UP. I AM SITTING ABOUT WHERE OUR JUROR OVER  
2 HERE IS AND IT IS DIFFICULT FOR ME TO HEAR YOU.

3 MR. PIUZE: I WILL TELL WHAT YOU, YOUR  
4 HONOR, ME BEING RESPONSIBLE FOR GETTING THE WITNESS  
5 OUT OF THE BOX, OUT OF THE STAND, WHY DON'T I BE  
6 RESPONSIBLE FOR ASKING HIM TO GO BACK.

7 IS THAT OKAY?

8 THE COURT: YES.

9 THE WITNESS: MY RECOLLECTION OF THAT  
10 PROGRAM IT WAS VERY CALIFORNIA-ISH IN STYLE AND  
11 TEMPO OF THE TIMES, SURFING-LIKE AND VERY  
12 GALLIVANTING.

13 Q BY MR. PIUZE: WAS "ROUTE 66"  
14 ABOUT TWO YOUNG GUYS DRIVING AROUND THE COUNTRY IN  
15 A CORVETTE CONVERTIBLE LOOKING FOR FUN AND  
16 ADVENTURE?

17 MR. LEITER: OBJECT TO THE LEADING.

18 THE COURT: OVERRULED.

19 THE WITNESS: YES, IT WAS.

20 Q BY MR. PIUZE: "RAWHIDE," WAS  
21 "RAWHIDE" A TOUGH COWBOY SHOW?

22 A. "RAWHIDE" WAS THE ESSENTIAL COWBOY  
23 SHOW, VERY POPULAR, VERY TOUGH COWBOYS AND MARLBORO  
24 COULD READILY HAVE FIT IN THERE.

25 Q. IS TOBACCO ADVERTISING COVERING, I  
26 GUESS WE CAN DRAW OUR OWN CONCLUSIONS, DOES IT  
27 COVER MORE THAN 50 PERCENT OF THE BOARD THERE?

28 A. IT WAS A PRETTY PREDOMINANT

1 FEATURE.

2 IT WAS THE MOST SIGNIFICANT PRODUCT  
3 ADVERTISING, IN TERMS OF DOLLARS, ON THE AIR.

4 Q. "THE"?

5 A. YES, THE MOST SIGNIFICANT PRODUCT  
6 IN TERMS OF DOLLARS THAT WAS ADVERTISING ON THE  
7 AIR.

8 Q. LET ME SEE IF I CAN GET YOU TO SAY  
9 THAT DIFFERENTLY.

10 DID TOBACCO COMPANIES SPEND MORE TO  
11 ADVERTISE THEIR PRODUCTS ON TELEVISION THAN GENERAL  
12 MOTORS, FORD AND CHRYSLER?

13 A. YES.

14 Q. COMBINED?

15 A. I BELIEVE SO. IT WAS PRETTY HIGH  
16 AND I THINK THEY WERE HIGHER.

17 Q. I AM TRYING TO THINK OF ANOTHER  
18 EXAMPLE.

19 A. INCIDENTALLY, THE ACTUAL FIGURE --  
20 MR. LEITER: OBJECTION, NO QUESTION  
21 PENDING.

22 THE COURT: SUSTAINED.

23 Q BY MR. PIUZE: I WAS TRYING TO  
24 THINK OF ANOTHER EXAMPLE, BUT I WILL STOP. I WILL  
25 STOP.

26 SO A PERSON WATCHING TELEVISION IN  
27 THE U. S. DURING A WEEK IN 1963 WOULD SEE MORE  
28 CIGARETTE ADS THAN ANY KIND OF AD FOR ANYTHING ELSE

1 IN OUR ENTIRE SOCIETY?

2 MR. LEITER: OBJECTION, CALLS FOR  
3 SPECULATION.

4 THE COURT: OVERRULED.

5 THAT IS YOUR OPINION, SIR?

6 THE WITNESS: YES, IT WAS. IT IS.

7 Q BY MR. PIUZE: WAS THERE ANYTHING  
8 UNUSUAL ABOUT THE YEAR 1963 COMPARED TO '61 '66,  
9 '59, ANY OF THOSE YEARS?

10 A. NO. AS YOU LOOK, ACTUALLY, AT THE  
11 TOTAL DOLLAR FIGURE AND YOU GO FROM YEAR TO YEAR,  
12 AND THERE ARE FIGURES GOING FORWARD FROM '63,  
13 THERE'S KIND OF A STEADY INCREMENT. IT WAS A TOTAL  
14 IN 1963 WAS, I BELIEVE, 224 MILLION DOLLARS, A  
15 TOTAL OF 224 MILLION DOLLARS SPENT ON CIGARETTE  
16 ADVERTISING.

17 AND THE FIGURES GRADUALLY WENT UP  
18 UNTIL IT WAS TAKEN OFF THE AIR IN THE EARLY '70'S.

19 AND SO EXTRAPOLATING IT BACK, I  
20 THINK THERE WOULD BE NO RADICAL SHIFT.

21 Q. THANKS. LET ME JUST REMARK THIS  
22 POINT 86 AND THEN SHOW YOU THE OTHER BIG ONE AND  
23 MOVE ON TO ANOTHER TOPIC.

24 MR. PIUZE: THIS IS 8002.87.

25

26 \* (EXHIBIT 8002.87,  
27 BLOWUP, MARKED FOR I. D.)

28 /// /// ///

1 Q BY MR. PIUZE: OKAY, DO YOU SEE  
2 THAT?

3 A. YES.

4 Q. YOU HAVE TAKEN OFF ALL OF THE  
5 TOBACCO MANUFACTURERS EXCEPT PHILIP MORRIS AND JUST  
6 LEFT PHILIP MORRIS. OKAY.

7 DO YOU HAVE, IS THERE ANY  
8 SIGNIFICANCE TO THE TYPES OF SHOWS, IN YOUR VIEW,  
9 IS THERE ANY SIGNIFICANCE TO THE TYPES OF SHOWS  
10 THAT WERE BEING SPONSORED BY THIS PARTICULAR  
11 ADVERTISING?

12 A. YES.

13 Q. WHAT?

14 A. ONE, SOME OF THE VERY MOST POPULAR  
15 PROGRAMS WERE WHAT THEY HAD SELECTED TO SPONSOR,  
16 "JACKIE GLEASON, RED SKELETON" AND CERTAINLY THESE  
17 HAD A DISPROPORTIONATE NUMBER OF CHILDREN WATCHING  
18 THEM WELL ABOVE 30 PERCENT OF THEIR AUDIENCE WAS  
19 CHILDREN. AND THAT'S FAR BEYOND WHAT THE  
20 POPULATION OF CHILDREN WAS IN THE COUNTRY AT LARGE.

21 Q. STOP, PLEASE. WHERE DOES THAT COME  
22 FROM, HOW DO YOU KNOW THAT?

23 A. THE -- THAT'S A GOOD QUESTION. I  
24 BROADLY RECALL READING THAT. PERHAPS -- I AM  
25 TRYING TO RECALL WHERE IT WAS. BUT I THINK THE  
26 SURGEON GENERAL'S REPORT.

27 Q. OKAY.

28 A. IT WAS THE SURGEON GENERAL'S

1 REPORT.

2 Q. WHAT ABOUT THE REST OF THEM?

3 A. WELL, SOME OF THEM WERE, AGAIN  
4 WHEN, WE DESCRIBED THE "ROUTE 66" AND "RAWHIDE,"  
5 THE PROFILE OF THE PROGRAM WAS SUCH THAT THESE ARE  
6 POPULAR -- WELL, BUT THE PROFILE OF THE PROGRAM WAS  
7 SUCH THAT IT WAS A VERY NATURAL FIT TO PUT MARLBORO  
8 INTO THESE PROGRAMS, THE PROFILE THAT THE  
9 ADVERTISING WAS TRYING TO CREATE, THE PROGRAM WAS  
10 TRYING TO CREATE.

11 Q. WITHOUT MY DRAGGING OUT ALL THE  
12 PICTURES FROM YESTERDAY OR RERUNNING THAT FILM WE  
13 ALREADY SAW THIS MORNING, WERE THE PEOPLE WHO WERE  
14 THE STARS OF "RAWHIDE," TOUGH COWBOYS AND THE STARS  
15 OF "ROUTE 66," THE TWO GUYS IN THE CORVETTE LOOKING  
16 FOR ADVENTURE IN AMERICA, IN KEEPING WITH THIS,  
17 WHAT YOU SPENT A LOT OF TIME DISCUSSING, THE  
18 PROFILE YOU SPENT A LOT OF TIME DISCUSSING.

19 A. THOSE PROFILES WERE EXACTLY HOW THE  
20 MARLBORO PROFILE WAS CONSTRUCTED. AND IT WOULD  
21 HAVE A VERY NATURAL FLOW FROM THE PROGRAM TO THE  
22 ADS.

23 Q. NOW, BEFORE THEY GO AWAY FOR WHO  
24 KNOWS HOW LONG, AND BEFORE I LEAVE THIS TOPIC,  
25 WHILE TOBACCO ADS EXISTED ON TELEVISION FROM '55  
26 AND THROUGHOUT THE WHOLE '60'S, WAS TOBACCO, IF NOT  
27 THE MAJOR SPONSOR EVERY SINGLE YEAR, ONE OF THE  
28 MAJOR SPONSORS THROUGHOUT THE ENTIRE ERA, 15-YEAR

1 ERA?

2 A. IT WAS A VERY DOMINANT FORCE IN  
3 TELEVISION ADVERTISING, YES.

4 Q. ALL RIGHT, THANK YOU.

5 NOW, I' D LIKE TO SWITCH FROM THESE  
6 TOUGH GUYS WE HAVE BEEN LOOKING AT TO THE COWBOY.  
7 READY TO DO THAT?

8 A. YES.

9 Q. THIS IS POINT 88.

10

11 \* (EXHIBIT 8002. 88, BLOWUP,  
12 MARKED FOR I. D. )

13

14 Q BY MR. PIUZE: FIRST OF ALL, LET' S  
15 START WITH THE DATE.

16 YESTERDAY YOU EXPLAINED WHERE YOU  
17 GOT THE DATES FOR THE BIGGER PICTURES THAT WE  
18 SHOWED THE JURY.

19 DID YOU GET THE DATES FOR THESE  
20 FROM THE SAME SOURCE?

21 A. YES, I DID.

22 Q. AND THAT' S?

23 A. THE WEB SITE FROM THE ROSWELL PARK  
24 CANCER INSTITUTE AND THAT ORIGINALLY CULLS FROM THE  
25 POLLAY ARCHIVES.

26 Q. I AM SHOWING YOU 1969 NOW, I GUESS  
27 WE ARE ALL FAMILIAR WITH CURRENT MARLBORO COWBOY  
28 ADVERTISING. ISN' T THIS EXACTLY THE SAME?

1           A.     IT' S ONE OF A LONG SERIES, YES.

2           Q.     AS FROM YOUR STANDPOINT, MARKETING,  
3 ADVERTISING AND HOW EFFECTIVE IT IS, IS THERE ANY  
4 REAL DIFFERENCE BETWEEN WHAT YOU ARE SEEING HERE  
5 AND WHAT WE ARE SEEING NOW?

6           A.     NO.   IT' S BEEN A VERY CONSISTENT  
7 THEME IN THE ADVERTISING, VERY SUCCESSFUL,  
8 CERTAINLY AS A RESULT OF SALES, BUT ALSO FROM A  
9 POINT OF VIEW OF ADVERTISING, IT' S A RARITY THAT  
10 YOU SEE AN ADVERTISER WITH THE PATIENCE TO MAINTAIN  
11 A CAMPAIGN THAT LONG SO THAT PEOPLE CAN SAY,  
12 AH-HAH, I RECOGNIZE THAT, OVER AND OVER AGAIN.  AND  
13 AT THE SAME TIME, THE GENIUS OF THIS IS, AND I USED  
14 THE PHRASE YESTERDAY, VARIATION WITHIN A CONSISTENT  
15 THEME.

16                         SO THE THEME IS THERE FOR DECADES  
17 BUT NOBODY GETS TIRED OF IT BECAUSE THE SLIGHT  
18 VARIATIONS.  THERE' S THREE COWBOYS IN THIS, THERE  
19 MIGHT BE NONE IN THE NEXT AND JUST HORSES.  THERE  
20 MIGHT BE ONE IN THE NEXT.  THE SETTING MIGHT BE IN  
21 THE OPEN PLACE IN ONE.  NEXT IN THE MOUNTAINS IN  
22 ANOTHER, NEXT TO A STREAM IN ANOTHER.

23                         SO YOU GET VARIATIONS, SO NOBODY  
24 SAYS, OH, MY GOODNESS, I HAVE SEEN THIS FOREVER AND  
25 EVER.  I AM SO TIRED OF IT.

26                         ON THE OTHER HAND, THERE' S  
27 SOMETHING ABOUT IT FAMILIAR, COMFORTABLE AND WHEN  
28 SOMETHING IS FAMILIAR, COMFORTABLE, IT TAKES ON A

1 SENSE OF CORRECTNESS. THERE'S SOMETHING RIGHT  
2 ABOUT THIS. I HAVE SEEN THIS BEFORE.

3 Q. AND I HAVE A LOT OF THESE. SO I AM  
4 NOT GOING TO ASK YOU TO MAKE THE SAME COMMENT AS WE  
5 GO THROUGH EVERY ONE OF THESE PICTURES. SO I WILL  
6 DO IT RIGHT NOW, PUT THE SMALLER ONES UP.

7 YOU SPENT -- WE HAVE SPENT  
8 SIGNIFICANT AMOUNT OF TIME TALKING ABOUT THE IMAGE  
9 THAT WAS BEING PROJECTED, WHY YOU THOUGHT IT WAS  
10 EFFECTIVE FOR YOUNG MALES.

11 AND RIGHT NOW WE ARE SWITCHING OUT  
12 OF TOUGH GUYS FOR THE COWBOY, RIGHT NOW

13 SO I JUST LIKE YOU NOW, IF YOU  
14 WOULD, TO GIVE US YOUR OPINION OF THIS IMAGE, WHO  
15 THIS IMAGE IS AIMED AT, WHICH IS THE COWBOY, AND  
16 HOW IT COMPARES WITH THE IMAGE YESTERDAY.

17 AND THEN WHEN I SHOW THE REST OF  
18 THEM, I AM NOT GOING TO ASK YOU TO SAY IT AGAIN AND  
19 AGAIN. SO LET'S DO IT ONCE.

20 A. WELL, RECALL THAT ONE OF THE IMAGES  
21 WE DID SEE YESTERDAY IN THE '50'S WAS FOR A COWBOY.

22 SO THERE WAS THIS TRANSITION. AND  
23 ONE OF THE OTHER ONES WAS JUST A COWBOY IN THE  
24 DISTANCE AND THE OPEN PLAIN WITH SOME HORSES. SO  
25 THERE WAS THAT BRIDGE THAT THAT SENSE TO THE LONG  
26 SERIES OF THE MARLBORO COWBOY AND THE MARLBORO  
27 COUNTRY.

28 THE IMAGES THAT ARE PORTRAYED, IN

1 THIS EXAMPLE AS WELL AS OTHERS, IS THAT OF A  
2 RUGGED, INDEPENDENT, ATTRACTIVE INDIVIDUAL,  
3 MASCULINE.

4                   THERE IS NO FORM, THIS IS A MAN  
5 THAT STRUCTURES HIS OWN TIME, DOES HIS JOB IN HIS  
6 WAY AND HAS BROKEN FREE FROM THE TYPICAL MUNDANE  
7 CONSTRAINTS THAT THE REST OF US HAVE WHEN WAITING  
8 FOR A BUS AND WAITING FOR SOMEBODY TO TYPE A  
9 LETTER, WHATEVER.

10               Q.     OKAY. SO THESE COWBOYS DON'T HAVE  
11 TO GO ON JURY DUTY?

12               A.     I DON'T KNOW

13               Q.     ARE YOU FAMILIAR WITH TOBACCO  
14 INDUSTRY DOCUMENTS AND I'D LIKE TO ASK YOU TO  
15 CONCENTRATE ON PHILIP MORRIS, THAT DISCUSS ISSUES  
16 SUCH AS TRYING TO SELL THE IMAGE OF TOUGH, TRYING  
17 TO SELL THE IMAGE OF --

18               MR. LEITER: I AM GOING TO OBJECT TO  
19 PLAINTIFF'S COUNSEL CHARACTERIZING THE DOCUMENTS.  
20 HE CAN SHOW HIM THE DOCUMENTS.

21               THE COURT: FAIR ENOUGH.

22               MR. PIUZE: I WILL WITHDRAW THE QUESTION.

23               Q     BY MR. PIUZE: I WILL SHOW YOU  
24 SOME DOCUMENTS IN A LITTLE BIT. OKAY?

25               A.     YES.

26               Q.     ARE THERE, WITHOUT DISCUSSING THE  
27 CONTENT RIGHT NOW, ARE THERE PHILIP MORRIS  
28 DOCUMENTS THAT DEAL WITH THIS ISSUE?

1 A. YES.

2 MR. LEITER: OBJECTION.

3 THE COURT: OVERRULED.

4 Q BY MR. PIUZE: HERE' S 8002. 18,  
5 NOW, THIS IS A 1975 ADD. YOU CAN IDENTIFY THAT AS  
6 COMING OFF OF THEIR WEB SITE?

7 A. YES.

8

9 \* (EXHIBIT 8002. 18, BLOWUP,  
10 MARKED FOR I. D.)

11

12 Q BY MR. PIUZE: AND HERE' S 8002. 37,  
13 1983, AGAIN, YOU CAN IDENTIFY THAT AS COMING OFF OF  
14 THE WEB SITE AND THAT BEING THE PROPER YEAR?

15 A. YES.

16

17 \* (EXHIBIT 8002. 37, BLOWUP,  
18 MARKED FOR I. D.)

19

20 Q BY MR. PIUZE: 8002. 01 FROM 1983,  
21 DID YOU OBTAIN THAT FROM THE SAME SOURCE?

22 A. YES, I DID.

23 Q. AND YOU DATED IT THE SAME METHOD?

24 A. YES.

25

26 \* (EXHIBIT 8002. 01, BLOWUP,  
27 MARKED FOR I. D.)

28

/// /// ///

1 Q BY MR. PIUZE: THIS IS FROM 1988,  
2 8002. 12, SAME SOURCE WITH THE SAME WAY OF VERIFYING  
3 THE DATE?

4 A. YES.

5

6 \* (EXHIBIT 8002. 12, BLOWUP,  
7 MARKED FOR I. D.)

8

9 Q BY MR. PIUZE: UP TO 1990,  
10 8002. 85, CAN YOU ALSO VERIFY THAT COMES OFF OF THE,  
11 WHAT IS IT, ROSWELL PARK CANCER INSTITUTE?

12 A. I BELIEVE THAT'S THE CORRECT THING.

13 Q. WEB SITE AND THE DATE IS CORRECT?

14 A. YES.

15 THE CLERK: COUNSEL, UNFORTUNATELY, THE  
16 FILM IS MARKED 85. DID YOU SAY 85?

17 MR. PIUZE: I SAID 05.

18 THE CLERK: EXCUSE ME.

19 MR. PIUZE: I MUMBLE.

20

21 \* (EXHIBIT 8005. 05, BLOWUP,  
22 MARKED FOR I. D.)

23

24 Q BY MR. PIUZE: HERE IS 8. --  
25 EXCUSE ME, 8002. 03, 1991. SAME THEME?

26 A. YES.

27 Q. SAME SOURCE?

28 A. YES.

1 Q. SAME WAY OF VERIFYING THE DATE?

2 A. YES.

3

4 \* (EXHIBIT 8002.03, BLOWUP,  
5 MARKED FOR I. D.)

6

7 Q BY MR. PIUZE: WHY IS THE IDEA OF  
8 INDEPENDENCE, WHICH YOU HAVE SAID ON SEVERAL  
9 OCCASIONS, WHY IS THE IDEA OF INDEPENDENCE  
10 SIGNIFICANT IN MARKETING THROUGH THESE ADS?

11 A. WELL, AS I HAVE SAID, THE VERY  
12 SIGNIFICANT GOAL, MOTIVE, THOUGHT PROCESS, FOR A  
13 YOUNG MALE COMING INTO ADOLESCENCE, PUBERTY,  
14 POST-PUBERTY, IS A SENSE OF INDIVIDUALIZATION,  
15 SEPARATING FROM PARENTS, BECOMING YOUR OWN PERSON,  
16 FINDING OUT WHO YOU ARE, SEPARATE FROM OTHERS.

17 AT THE SAME TIME, PEOPLE DON'T WANT  
18 TO BE ISOLATED AND SO THERE'S AN EFFORT TO SAY I  
19 THINK THERE ARE OTHERS DOING THE SAME THING AS ME  
20 AND THAT'S A SOURCE OF COMFORT. THEY ARE TARGETING  
21 OTHER PEERS AT THE SAME TIME. SO I DON'T HAVE TO  
22 GO OUT ALL BY MYSELF, I CAN GET SOME SUPPORT. BUT  
23 WHAT I HAVE GOT TO DO IS BREAK AWAY FROM MY FOLKS  
24 AND THOSE KINDS OF PEOPLE.

25 Q. THE LAST DOCUMENT I HELD UP IS  
26 DATED '91. SO LET ME STOP THERE FOR A SECOND.

27 I ASKED YOU EARLIER WHETHER YOU HAD  
28 AN OPINION ABOUT MALES UNDER 18 BEING THE TARGET OF

1 THESE ADS, AND YOU TOLD US YOUR OPINION. THAT WAS  
2 BACK IN THE '55 TO '60, ROUGHLY, TIME ZONE.  
3 FOR '60 TO '70, IS YOUR OPINION THE  
4 SAME?

5 A. YES, ABSOLUTELY.  
6 I BELIEVE THAT ONE CERTAINLY  
7 WOULDN'T PRECLUDE THE TARGET BEING, SAY, THE  
8 30-YEAR-OLD MALE, BUT JUST AS EFFECTIVELY, IT WOULD  
9 BE A 15-YEAR-OLD MALE.

10 Q. WHAT ABOUT '70 TO '80, SAME  
11 OPINION?

12 A. SAME THING.

13 Q. '80 TO '90?

14 A. SAME THING.

15 Q. HERE'S 1990, ANOTHER ONE FROM '91,  
16 THIS IS 8002.32.

17

18 \* (EXHIBIT 8002.32, BLOWUP,  
19 MARKED FOR I. D.)

20

21 Q BY MR. PIUZE: SAME SOURCE, SAME  
22 WAY OF DATING IT?

23 A. YES.

24 Q. SAME MESSAGE?

25 A. YES.

26 Q. 1992, THIS IS 8. -- EXCUSE ME,  
27 8002.19, YOUR OPINION IS THE SAME AS TO THIS  
28 DOCUMENT?

1 A. YES.

2 Q. THIS IS 1992, 8.002.04, SAME  
3 SOURCE, SAME WAY OF DATING IT, SAME TARGET?

4 A. YES.

5

6 \* (EXHIBIT 8002.04, BLOWUP,  
7 MARKED FOR I. D.)

8

9 Q BY MR. PIUZE: HERE'S ONE FOR  
10 MARLBORO LIGHTS, 8002.02, 1992, SAME OPINIONS ABOUT  
11 THIS PARTICULAR ONE?

12 A. WELL, THE FACT THAT THEY ARE  
13 LIGHTS, DOES POINT TO THE FACT THAT THEY HAVE, THAT  
14 THERE IS CLEARLY A BROADENING, WHAT IS CALLED A  
15 BRAND EXTENSION, THAT MARLBOROS AND THE IMAGE FOR  
16 MARLBORO HAS NOW EXTENDED TO MARLBORO LIGHTS. AND  
17 GIVEN THAT MARLBORO LIGHTS IS CURRENTLY THE MOST  
18 POPULAR BRAND, THIS IS A VERY IMPORTANT STEP.

19

20 \* (EXHIBIT 8002.02, BLOWUP,  
21 MARKED FOR I. D.)

22

23 Q BY MR. PIUZE: WELL, THERE HAVE  
24 BEEN ADVERTISEMENTS FOR MARLBORO LIGHTS BEFORE '92,  
25 HADN'T THERE?

26 A. YES. THE POINT IS THAT WHEN YOU  
27 MAKE THE DECISION TO --

28 MR. LEITER: OBJECT TO THE NARRATIVE. HE

1 HAS ANSWERED THE QUESTION.

2 THE COURT: IT WASN'T REALLY A QUESTION.

3 MR. PIUZE: GO BACK.

4 Q BY MR. PIUZE: GO BACK TO REDS  
5 AGAIN, HERE'S 8002.06, THIS IS '93.

6

7 \* (EXHIBIT 8002.06, BLOWUP,  
8 MARKED FOR I. D.)

9

10 Q BY MR. PIUZE: WITHOUT MY ASKING  
11 THESE SAME QUESTIONS EACH TIME, YOU HAVE THE SAME  
12 OPINIONS THERE; RIGHT?

13 A. YES.

14 Q. AND HERE'S ONE UP TO 1996, THIS IS  
15 8002.23.

16

17 \* (EXHIBIT 8002.23, BLOWUP,  
18 MARKED FOR I. D.)

19

20 Q BY MR. PIUZE: FROM A MARKETING  
21 POINT OF VIEW, HOW IS THAT GUY FEELING?

22 A. VERY --

23 MR. LEITER: OBJECTION, VAGUE, CALLS FOR  
24 SPECULATION.

25 THE COURT: OVERRULED. JUST FROM A  
26 MARKETING PERSPECTIVE.

27 THE WITNESS: THIS CONVEYS A VERY  
28 HEALTHY, ENERGETIC, STRONG MAN THAT'S ENGAGED IN A

1 FUN ACTIVITY, IT WOULD SEEM

2 Q BY MR. PIUZE: WHEN IS THE LAST  
3 TIME YOU DID THAT?

4 A. NOT RECENTLY.

5 Q. I AM JUST GOING TO IDENTIFY THESE  
6 FOR THE RECORD. THIS IS 8002.21, FROM '96, WE WERE  
7 TALKING ABOUT THAT, IT'S EFFECTIVENESS IN  
8 HIGHLIGHTING EVERYTHING.

9 A. YES, I WAS. THIS IS SOME OF THE  
10 UBIQUITOUS, JUST EVERYWHERE SYMBOLISM AND SIGNAGE  
11 THAT MARLBORO HAD.

12

13 \* (EXHIBIT 8002.21, BLOWUP,  
14 MARKED FOR I. D.)

15

16 MR. PIUZE: FROM '97, 8002.36.

17 FROM '97, 8002.07.

18 FROM '97, 8022.22.

19 FROM '97, 8002.09.

20 FROM '97, 8002.11.

21 FROM '98, 8002.10.

22 AND ALSO FROM '98, 8002.33.

23

24 \* (EXHIBITS 8002.36, 8002.07,  
25 8002.22, 8002.09, 8002.11,  
26 8002.10 AND 800.33, BLOWUPS,  
27 MARKED FOR I. D.)

28 /// /// ///

1 Q BY MR. PIUZE: ALL OF THOSE THAT I  
2 JUST READ OFF, DID YOU PULL THEM OFF THE SAME WEB  
3 SITE AND DATE THEM IN THE SAME MANNER?

4 A. YES.

5 Q. NOW, BESIDES YOU, HAVE OTHERS  
6 LOOKED INTO THE ISSUE OF WHETHER OR NOT THIS  
7 ADVERTISING, THIS TYPE OF ADVERTISING THAT I JUST  
8 SHOWED YOU EFFECTS YOUTH SMOKERS AND MAKES YOUTH  
9 NOT SMOKERS INTO YOUTH SMOKERS?

10 A. YES, THERE IS A LARGE LITERATURE OF  
11 A WIDE ARRAY OF RESEARCHERS COMING FROM A BROAD SET  
12 OF FIELDS, SOCIOLOGY, PSYCHOLOGY, MARKETING,  
13 ADVERTISING, WHO HAVE LOOKED AT THIS AND, IN FACT,  
14 THERE ARE VERY COGENT SUMMARY CONSENSUS DOCUMENTS  
15 THAT PULL ALL OF THIS FIELD TOGETHER IN THESE, AS I  
16 SAY, CONSENSUS DOCUMENTS.

17 Q. HOW ABOUT ONE FROM THE INSTITUTE OF  
18 MEDICINE, ARE YOU FAMILIAR WITH THAT?

19 A. YES. THE INSTITUTES OF MEDICINE  
20 PUBLISHED, HAD A COMMITTEE OF, I BELIEVE, 14 VERY  
21 DISTINGUISHED SCIENTISTS COMING FROM MEDICAL  
22 SCIENCES, THE SOCIAL SCIENCES, SPENDING, I BELIEVE,  
23 18 MONTHS COLLECTING REPORTS FROM VARIOUS  
24 INDIVIDUALS, REVIEWING THE LITERATURE, AND  
25 REPRESENTS A VERY STRONG CONSENSUS CONCLUSION THAT  
26 THERE IS, INDEED, AN EFFECT OF ADVERTISING ON  
27 YOUTH, CIGARETTE ADVERTISING ON YOUTH.

28 MR. PIUZE: MAY I CONFER HERE, BRIEFLY.

1 (INTERRUPTION IN PROCEEDINGS.)

2

3 Q BY MR. PIUZE: IS THIS A  
4 PUBLICATION BY THE INSTITUTES OF MEDICINE?

5 A. YES, IT IS.

6 Q. DID YOU PROVIDE THIS TO ME?

7 A. YES.

8 Q. I' D LIKE TO DRAW YOUR ATTENTION  
9 HERE TO PAGE 150 AND ASK YOU TO CONCENTRATE.  
10 THERE' S AN AWFUL LOT OF YELLOW THERE. THERE MAY BE  
11 TOO MUCH. BUT CONCENTRATE, STARTING RIGHT AROUND  
12 HERE.

13 DO YOU SEE THAT, "THERE CAN BE NO  
14 DOUBT"?

15 CAN YOU READ THAT FROM WHERE YOU  
16 ARE?

17 A. YES, I CAN.

18 Q. (READING)

19 "THERE CAN BE NO DOUBT THAT  
20 TOBACCO COMPANIES AIM TO PORTRAY  
21 SMOKING IN FAVORABLE LIGHT. AND TO  
22 COMMUNICATE MESSAGES THAT LINK USE OF  
23 TOBACCO PRODUCTS TO POSITIVE FEELINGS,  
24 IMAGES AND EXPERIENCES, EVEN IF THE  
25 PRIMARY OBJECTIVE OF THOSE MARKETING  
26 EXPENDITURES IS TO PRESERVE OR EXPAND  
27 MARKET SHARE AMONG EXISTING SMOKERS,  
28 YOUNGSTERS ARE ROUTINELY EXPOSED TO

1 THE MESSAGES THAT ENCOURAGE THEM TO  
2 SMKE. TOBACCO ADVERTISING IS  
3 CHARACTERIZED BY IMAGES AND THEMES  
4 THAT ARE ESPECIALLY APPEALING TO  
5 ADOLESCENTS, AND SOME ARE APPEALING TO  
6 CHILDREN. IN ADDITION, A LARGE  
7 PROPORTION OF PROMOTIONAL EXPENDITURES  
8 ASSOCIATED USE OF TOBACCO WITH  
9 ACTIVITIES AND PRODUCT THAT ARE  
10 ATTRACTIVE TO CHILDREN AND YOUTHS.  
11 THE SHEER AMOUNT OF EXPENDITURES FOR  
12 ADVERTISING AND PROMOTION ASSURES THAT  
13 YOUNG PEOPLE WILL BE EXPOSED TO THESE  
14 MESSAGES ON A MASSIVE SCALE. IT IS  
15 CLEAR THAT SOCIETY'S EFFORTS TO  
16 DISCOURAGE YOUNG PEOPLE FROM SMOKING  
17 ARE OBSTRUCTED - AND PERHAPS FATALLY  
18 UNDERMINED - BY THE INDUSTRY'S EFFORTS  
19 TO PORTRAY THEIR DANGEROUS PRODUCTS IN  
20 A POSITIVE LIGHT.

21 "IN SUM, PORTRAYING A DEADLY  
22 ADDICTION AS A HEALTHFUL AND SENSUAL  
23 EXPERIENCE TUGS AGAINST THE NATION'S  
24 EFFORTS TO PROMOTE A TOBACCO-FREE NORM  
25 AND TO DISCOURAGE TOBACCO USE BY  
26 CHILDREN AND YOUTHS. "

27 DO YOU AGREE WITH ALL THAT?

28 A. I AM SORRY.

1 MR. LEITER: YOUR HONOR, MAY WE HAVE OUR  
2 STANDING OBJECTION.

3 THE COURT: YOU HAVE YOUR STANDING  
4 OBJECTION. WE WILL DISCUSS IT AT THE BREAK.

5 Q BY MR. PIUZE: DO YOU AGREE WITH  
6 THAT?

7 A. YES, I DO.

8 Q. TELL ME, TELL US, THE YEAR THAT WAS  
9 PUBLISHED, PLEASE.

10 A. THIS WAS PUBLISHED IN 1994.

11 Q. DO YOU RECOGNIZE THIS DOCUMENT I AM  
12 SHOWING YOU HERE?

13 A. YES, I DO.

14 Q. WHAT IS THAT?

15 A. THAT IS THE SURGEON GENERAL'S  
16 REPORT IN 1994, I CAN READ IT FROM HERE, CALLED  
17 "PREVENTING TOBACCO USE AMONG YOUNG PEOPLE."

18 Q. DID YOU PROVIDE THIS TO ME?

19 A. YES, I DID.

20 Q. C. D. C. , REMIND US.

21 A. NO, IT'S AT THE BOTTOM, UNITED  
22 STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES.

23 THE COURT: TELL YOU WHAT.

24 MR. PIUZE, BEFORE WE GET INTO THIS,  
25 BECAUSE YOU ARE JUST GOING TO A NEW REPORT, LADIES  
26 AND GENTLEMEN, IT IS NOW 10:30, SO IT'S A GOOD TIME  
27 FOR US TO TAKE OUR BREAK.

28 WE WILL HAVE YOU BACK AT QUARTER

1 TILL 11:00 PLEASE.

2 DON' T DISCUSS THE CASE WITH ANYONE.

3

4 (THE FOLLOWING PROCEEDINGS  
5 WERE HELD IN OPEN COURT OUT  
6 OF THE PRESENCE OF THE JURY:)

7

8 THE COURT: WE ARE OUTSIDE THE PRESENCE.

9 BUT STILL ON THE RECORD.

10 THE LAST QUOTE THAT WAS READ INTO  
11 THE RECORD DURING THIS WITNESS' S TESTIMONY, PART OF  
12 IT IS CLEARLY RELEVANT AND PERMISSIBLE UNDER  
13 CIPOLLONE BECAUSE IT IS CONNECTED BACK TO, AND I AM  
14 MAKING NO JUDGMENT ONE WAY OR ANOTHER OF THE  
15 ULTIMATE MERITS OF THIS, I AM JUST JUDGING THE  
16 EVIDENCE AS TO WHETHER OR NOT IT WOULD BE  
17 ADMISSIBLE, YOU UNDERSTAND THAT.

18 BUT IT IS RELEVANT TO AND RELATES  
19 TO EVENTS THAT OCCURRED IN THE 1950' S WHEN THERE  
20 WERE NO WARNINGS REQUIREMENTS AND AT THE TIME WHEN  
21 MR. BOEKEN BEGAN HIS SMOKING.

22 AND SOME OF THE INFORMATION FROM  
23 THE LATER DATES, AFTER THERE WERE WARNINGS, DOES  
24 ILLUMINE WHAT OCCURRED BACK IN THE 1950' S, AND  
25 THEREFORE, IN THIS COURT' S VIEW, IS CLEARLY  
26 RELEVANT.

27 THERE WAS SOME LANGUAGE, HOWEVER,  
28 IN WHAT WAS READ THAT TOUCHED ON, HOWEVER SLIGHTLY,

1 THE QUESTION OF UNDERMINING EFFORTS TO STOP SMOKING  
2 AMONG YOUTH IN THE 1990'S, IN THE POST-WARNING ERA.

3 AND, FRANKLY, THERE IS SOME CONCERN  
4 ON THE COURT'S PART ABOUT THAT. I AM OPEN-MINDED,  
5 I AM READY TO LISTEN TO BOTH SIDES. BUT I THINK  
6 IT'S TIME, PERHAPS, TO DISCUSS THAT, SO WE WILL  
7 HAVE A CLEAR PATH AND A CLEAR RULING FROM THE COURT  
8 AS WE PROCEED.

9 SO THERE WON'T BE ANY DOUBT AS TO  
10 WHAT THE COURT HAS OR HAS NOT ALLOWED.

11 MR. PIUZE: I'D LIKE TO OPEN UP, YOUR  
12 HONOR, BY HAVING THE RECORD REFLECT THAT I SHOWED  
13 EXACTLY WHAT I WAS GOING TO READ TO MR. LIGHTER  
14 BEFORE I DID IT AND GOT HIS ASSENT TO DO IT.

15 AND SO I AM SLIGHTLY NOW -- I DON'T  
16 KNOW IF BEFUDDLED IS A GOOD WORD, BUT I WENT RIGHT  
17 OVER TO HIM AND SAID, THIS IS THE STUFF, DO YOU  
18 HAVE ANY OBJECTIONS.

19 MR. LEITER: LET'S BE CLEAR. WHAT I  
20 ASSENTED TO WAS SHOWING A TREATISE WHICH IS  
21 ARGUABLY INADMISSIBLE UNDER EVIDENCE CODE 721, I  
22 THINK IT IS. HE ASKED ME WHETHER HE COULD PUT  
23 SCIENTIFIC LITERATURE UP ON THE BOARD AND I SAID  
24 THAT'S FINE, AS LONG AS I CAN DO IT ON CROSS. MR.  
25 PIUZE SAID THAT'S FINE.

26 WE DID NOT DISCUSS THE SUBSTANCE OF  
27 IT AND IN NO WAY DO I BELIEVE I HAVE WAIVED MY  
28 OBJECTION THAT I HAVE PREVIOUSLY ARTICULATED.

1 THE COURT: WELL, I WASN'T INVOLVED IN  
2 THAT TRANSACTION. SO THIS CONCERN -- AND COUNSEL  
3 JUST STOOD UP AND JUST ARTICULATED, ASKED FOR HIS  
4 CONTINUING OBJECTION BECAUSE HE KNOWS THAT THE  
5 COURT HAD SPOKE RATHER FIRMLY YESTERDAY, AND SO IT  
6 WOULDN'T SURPRISE ME THAT COUNSEL WOULD, IN A  
7 COURTEOUS WAY, HANDLE IT THAT WAY.

8 BUT THIS IS THE COURT SPEAKING.

9 MR. PIUZE: YES, SIR.

10 THE COURT: BECAUSE I WILL GO, I AM GOING  
11 TO FOLLOW CIPOLLONE AS I SEE IT, AND I THINK AT  
12 THIS POINT, I WOULD JUST CAUTION COUNSEL, IF YOU  
13 NEED FURTHER GUIDANCE BEFORE WE PUT THINGS LIKE  
14 THAT UP, THE COURT IS AVAILABLE. I DON'T SEE THIS  
15 AS ANYTHING PARTICULARLY SERIOUS AT THIS POINT.  
16 BUT IF IT WERE TO CONTINUE FOR ANY EXPANDED PERIOD  
17 OF TIME BEFORE THE JURY, WITHOUT SOME EXPLANATION,  
18 THE COURT COULD UNDERSTAND, IT WOULD BE CONCERNED  
19 THAT IT WOULD FALL WITHIN THE PROHIBITIONS OF  
20 CIPOLLONE.

21 MR. PIUZE: ACTUALLY HAD PAPER CLIPS ON  
22 WHAT I WAS GOING TO READ AND I GUESS IT WAS MY  
23 MISUNDERSTANDING AND, THEREFORE, I WILL APOLOGIZE,  
24 BECAUSE, AS I HAVE SAID BEFORE, THE LAST THING I  
25 WANT IS TO BE FLIRTING WITH ANYTHING WRONG BY  
26 SHOWING THIS WITH THE PAPER CLIPS AND EVERYTHING.  
27 I THOUGHT I WAS GETTING ASSENT. I WAS WRONG. I  
28 TAKE RESPONSIBILITY.

1                   AND I WILL STAY AS FAR AS I  
2 POSSIBLY CAN AWAY FROM IT.

3                   THE COURT: THEN WHY DON'T YOU JUST HAND  
4 TO IT ME. PERHAPS I SHOULD STRIKE SOME LANGUAGE.

5                   MR. PIUZE: IF -- WHATEVER PHILIP MORRIS  
6 WANTS.

7                   THE COURT: IT'S NOT WHAT PHILIP MORRIS  
8 WANTS.

9                   MR. PIUZE: OKAY.

10                  THE COURT: WHAT'S GOING ON HERE, THIS IS  
11 THE COURT MAKING SURE THAT THIS TRIAL IS DONE  
12 ACCORDING TO THE RULES THAT HAVE BEEN HANDED TO THE  
13 COURT BY THE SUPREME COURT.

14                  MR. PIUZE: WELL, YOUR HONOR, LET ME SAY  
15 THAT DIFFERENTLY. I WASN'T TRYING TO BE FLIP.

16                         IF PHILIP MORRIS DOESN'T WANT IT,  
17 AND I AM TRYING TO HAVE A CLEAR RECORD TOO, SOME  
18 LAWYERS WOULD SAY I DON'T WANT YOU TO STRIKE IT  
19 BECAUSE IT WOULD HIGHLIGHT IT.

20                         IF PHILIP MORRIS DOESN'T OBJECT TO  
21 THE COURT STRIKING IT, THAT'S FINE WITH ME.

22                  MR. LEITER: HERE'S MY SUGGESTION. WHAT  
23 WE ARE OBVIOUSLY CONCERNED ABOUT IS THAT WHATEVER  
24 ARGUMENTS THE PLAINTIFF MAY MAKE AND WHATEVER  
25 EVIDENCE THE JURY MAY SEE, THE JURY COULD USE THIS  
26 EVIDENCE IN ITS DELIBERATIONS TO FIND LIABILITY  
27 AGAINST PHILIP MORRIS ON A GROUND THAT WOULD BE  
28 PROHIBITED BY CIPOLLONE. THAT'S OUR CONCERN.

1                   WE BELIEVE IT WOULD BE APPROPRIATE,  
2 EITHER NOW OR AT A TIME DOWN THE ROAD, FOR THE JURY  
3 TO BE INSTRUCTED ON THE PROPER AND IMPROPER USE OF  
4 THIS KIND OF TESTIMONY TO THE EXTENT IT HAS BEEN  
5 ALLOWED IN OVER OUR OBJECTION.

6                   THE COURT: THAT'S THE BETTER WAY.

7                   I THINK THE BEST WAY IS WE WILL  
8 CONTINUE AS WE HAVE BEEN. THE COURT WILL, IT FEELS  
9 CONFIDENT THAT IT CAN HANDLE THIS BY WAY OF A JURY  
10 INSTRUCTION, AN APPROPRIATELY WRITTEN JURY  
11 INSTRUCTION. IT WON'T BE A LONG, DETAILED JURY  
12 INSTRUCTION, BUT, PERHAPS, A COUPLE SENTENCES WILL  
13 DEAL WITH THIS.

14                  BUT BEYOND THIS POINT, IF EITHER  
15 SIDE GETS INTO MATERIAL LIKE THIS FROM NOW ON,  
16 RATHER THAN HANDLING IT BY WAY OF AGREEMENT BETWEEN  
17 THE PARTIES WHERE THERE MIGHT BE SOME  
18 MISUNDERSTANDING, I ENCOURAGE BOTH SIDES TO BRING  
19 IT TO THE ATTENTION OF THE COURT BEFORE WE GET INTO  
20 THIS.

21                  MR. LEITER: VERY WELL. JUST SO WE ARE  
22 CLEAR ON AN ON-GOING BASIS, I HAVE A STANDING  
23 OBJECTION TO ALL SUCH TESTIMONY, SO I DON'T HAVE TO  
24 STAND UP.

25                  THE COURT: YOU DO, YOU DO. THE COURT  
26 WANTS TO BE VERY CLEAR WITH THE UNDERSTANDING ON  
27 BOTH SIDES SO THERE IS NO -- THIS CURRENT  
28 INFORMATION WITH THE EXCEPTION OF EROSION TYPE

1 SUGGESTIONS, IN THIS COURT'S VIEW, IS RELEVANT TO  
2 UNDERSTANDING WHAT OCCURRED IN THE 1950'S, WHEN  
3 MR. BOEKEN MADE HIS DECISIONS TO CHOOSE TO SMOKE.

4 THANK YOU, COUNSEL.

5

6 (AT THIS TIME, A RECESS  
7 WAS TAKEN.)

8

9 (THE FOLLOWING PROCEEDINGS  
10 WERE HELD IN OPEN COURT IN  
11 THE PRESENCE OF THE JURY.)

12

13

14 THE COURT: SIR, YOU UNDERSTAND YOU ARE  
15 STILL UNDER OATH.

16 THE WITNESS: YES.

17 THE COURT: PROCEED.

18 MR. PIUZE: THANK YOU.

19

20

21 MARVIN GOLDBERG, PH. D. ,  
22 CALLED AS A WITNESS BY THE PLAINTIFF, HAVING BEEN  
23 PREVIOUSLY DULY SWORN, RESUMED THE WITNESS STAND  
24 AND TESTIFIED FURTHER AS FOLLOWS:

25 /// /// ///

26 /// /// ///

27 /// /// ///

28 /// /// ///

1 DIRECT EXAMINATION (RESUMED)

2

3 BY MR. PIUZE:

4 Q. HERE'S WHERE WE WERE BEFORE THE  
5 BREAK. I AM DISPLAYING THIS SURGEON GENERAL  
6 REPORT. I WAS JUST ABOUT TO POINT DOWN HERE IN THE  
7 FORM OF C. D. C. , DO YOU SEE THAT?

8 WHAT IS THAT?

9 A. THAT'S CENTER FOR DISEASE CONTROL.  
10 I BELIEVE THAT THE SURGEON GENERAL'S OFFICE AND  
11 C. D. C. ARE BOTH PART OF THE U. S. DEPARTMENT OF  
12 HEALTH AND HUMAN SERVICES.

13 Q. AND I AM JUST GOING TO SHOW ONE  
14 PORTION HERE. AGAIN, DID YOU PROVIDE THIS DOCUMENT  
15 TO ME?

16 A. YES, I DID.

17 Q. THIS IS PAGE 188.  
18 CAN YOU READ THAT FROM WHERE YOU  
19 ARE?

20 A. I BELIEVE SO.

21 "A SUBSTANTIAL AND GROWING  
22 BODY OF SCIENTIFIC LITERATURE HAS  
23 REPORTED ON YOUNG PEOPLE'S AWARENESS  
24 OF AND ATTITUDES ABOUT CIGARETTE  
25 ADVERTISING AND PROMOTIONAL  
26 ACTIVITIES. RESEARCH HAS ALSO FOCUSED  
27 ON THE EFFECTS OF THESE ACTIVITIES OF  
28 PSYCHOSOCIAL RISK FACTORS FOR

1 BEGINNING TO SMOKE. CONSIDERED  
2 TOGETHER, THESE STUDIES OFFER A  
3 COMPELLING ARGUMENT FOR THE MEDIATED  
4 RELATIONSHIP OF CIGARETTE ADVERTISING  
5 AND ADOLESCENT SMOKING. "

6 Q. WHAT'S A MEDIATED RELATIONSHIP?

7 A. THE SUM TOTAL OF THE WEIGHT OF ALL  
8 OF THESE STUDIES HAS LED THE SURGEON GENERAL TO  
9 CONCLUDE THAT THERE'S A MEDIATED RELATIONSHIP  
10 BETWEEN CIGARETTE ADVERTISING AND SMOKING ON THE  
11 PART OF YOUTH.

12 WHAT THAT MEANS IS THAT ADVERTISING  
13 DOES NOT WORK IN A SENSE BY PUSHING A BUTTON AND  
14 EXPECTING THE AUDIENCE TO BEHAVE IN A ROBOT-LIKE  
15 WAY.

16 ADVERTISERS UNDERSTAND THAT.

17 WE ARE NOT SO SIMPLE AS HUMAN  
18 BEINGS AS TO LOOK AT A COMMERCIAL AND SAY, YES,  
19 AUTOMATICALLY, I AM GOING TO RUN TO BUY THAT NOW

20 IT'S USUALLY MEDIATED BY SOCIAL  
21 FACTORS, AMONG OTHERS. SO THAT WE SAW MR. BOEKEN,  
22 FOR EXAMPLE, I READ HIS DEPOSITION, SAID THAT HE  
23 AND HIS FRIENDS WOULD LEARN TO SMOKE TOGETHER, THEY  
24 WOULD MUTUALLY SUPPORT ONE ANOTHER.

25 THEY WERE ALL SUBJECT, AS I SAID  
26 YESTERDAY, TO THE SAME ADVERTISING INFLUENCES.  
27 THEY ALL WERE MOTIVATED TO PARTAKE IN THIS  
28 EXPERIENCE, I BELIEVE, BECAUSE OF THE SYMBOLIC

1 VALUE OF SMOKING AND HOW THIS MADE THEM OLDER AND  
2 MATURE AND STRONGER AND MORE VIRILE, AT LEAST  
3 SEEMING THAT WAY.

4 WELL, THESE PEOPLE SUPPORT ONE  
5 ANOTHER. THEY WERE REACTING TO THE ADVERTISING,  
6 AND IT'S MEDIATING THAT EFFECT.

7 NOW, VERY OFTEN, THERE'S A SENSE  
8 THAT THE PEER GROUP IS GOING TO -- AS IT WERE --

9 MR. LEITER: OBJECT TO THE NARRATIVE.

10 THE COURT: SUSTAINED.

11 Q BY MR. PIUZE: JUST DEFINE  
12 "MEDIATED." GIVE ME A ONE -- I APOLOGIZE FOR  
13 WALKING OVER HERE. I AM TRYING TO GRAB SOME OF THE  
14 NEXT STUFF I AM GOING TO USE WHILE YOU ARE TALKING.  
15 FORGIVE ME.

16 JUST DEFINE, CRISPLY, "MEDIATED,"  
17 AS IT IS USED THERE.

18 A. MEDIATED, AS IT IS USED, SIGNIFIES  
19 AN ENABLING DEVICE. THE SOURCE IS THE ADVERTISING,  
20 THE ENABLING OR FACILITATING DEVICE MAY BE SOCIAL  
21 ENVIRONMENT.

22 Q. THANK YOU.

23 NOW, HERE'S A DOCUMENT CALLED "THE  
24 FEDERAL REGISTER, WEDNESDAY, AUGUST 28, 1996,  
25 DEPARTMENT OF HEALTH AND HUMAN SERVICES." DID YOU  
26 PROVIDE THAT TO ME?

27 A. YES, I DID.

28 Q. I AM NOT GOING TO STICK THIS UP ON

1 THE BOARD.

2 DOES THIS GOVERNMENT DOCUMENT ALSO  
3 DISCUSS THE MEDIATED EFFECTS OF ADVERTISING ON  
4 YOUTH FOR TOBACCO?

5 A. YES, THEY DO. THEY ALSO, IT IS THE  
6 SAME KIND OF A CONSENSUS REPORT THAT COMES TO THE  
7 SAME KIND OF CONCLUSION.

8 Q. THANK YOU.  
9 AND WHAT I AM GOING FOR HERE IS,  
10 THIS IS 1996; RIGHT?

11 A. UH-HUH. YES.

12 Q. SO WE HAVE NOW TAKEN SOME MINUTES  
13 WITH THE JURY AND THE COURT TO SHOW THESE THREE  
14 DOCUMENTS; ONE FROM A PHYSICIANS' GROUP, ONE FROM A  
15 SURGEON GENERAL, ONE FROM THE FEDERAL REGISTER, IN  
16 THE MID-90'S. IT'S THE MID-90'S TIMEFRAME.

17 IN YOUR OPINION, IS THE  
18 OVERWHELMING CONSENSUS IN THE COMMUNITY THAT DEALS  
19 WITH YOUTH SMOKING ISSUES THAT THIS ADVERTISING  
20 EFFECTS YOUTH SMOKERS AND GETS THEM READY TO SMOKE?

21 A. YES. THERE'S A VERY BROAD  
22 CONSENSUS THAT HAS GONE INTO THESE THREE REPORTS,  
23 HUNDREDS AND HUNDREDS OF STUDIES, HUNDREDS AND  
24 HUNDREDS OF SUBMISSIONS. AND THESE ARE THE SUMMARY  
25 CONCLUSIONS OF, IN EFFECT, AT LEAST A HUNDRED  
26 DIFFERENT EXPERTS.

27 Q. THANKS.

28 NOW, HAVE -- NEW SUBJECT.

1                   HAVE I SHOWED YOU SOME DOCUMENTS  
2 FROM WITHIN PHILIP MORRIS COMPANY, IN OTHER WORDS,  
3 THEIR DOCUMENTS, THAT DEAL WITH THIS ISSUE?

4           A.     YES.

5           Q.     ARE YOU PREPARED TO DISCUSS THOSE?

6           A.     YES.

7           Q.     THIS IS EXHIBIT 218.00.

8  
9                   \* (EXHIBIT 218.00, PHILIP MORRIS  
10                   DOCUMENT, MARKED FOR I. D.)

11

12           Q     BY MR. PIUZE:  AND THE DATE ON  
13 THIS DOCUMENT IS MARCH 31, 1981.

14                   IS THIS THE ONE YOU WANT TO DISCUSS  
15 FIRST?

16           A.     YES.

17           Q.     FIRST I'D JUST LIKE TO SHOW THE  
18 COVER PAGE OF THE DOCUMENT.  AND I POINT OUT THE  
19 DATE HERE AND THE TITLE, "YOUNG SMOKERS,  
20 PREVALENCE, TRENDS, IMPLICATIONS, AND RELATED  
21 DEMOGRAPHIC FRIENDS. "

22                   NOW, I HAVE TAKEN THREE DIFFERENT  
23 PAGES OF A VERY LARGE DOCUMENT AND I HAVE EXPLODED  
24 OR HAD SOMEONE EXPLODE THEM OUT SO THAT WE CAN  
25 DISCUSS SOME OF THE THINGS HERE.

26                   CAN YOU READ THAT?  DO YOU WANT ME  
27 TO ZOOM IN ON THEM ONE AT A TIME?

28           A.     PROBABLY WOULD BE NICER IF IT WAS A

1 LITTLE BIGGER.

2 Q. ALL RIGHT.

3 SO THE ONE AT THE TOP, I AM GOING  
4 TO START RIGHT THERE:

5 "IT IS IMPORTANT TO KNOW AS  
6 MUCH AS POSSIBLE ABOUT TEENAGE SMOKING  
7 PATTERNS AND ATTITUDES. TODAY'S  
8 TEENAGERS ARE TOMORROW'S POTENTIAL  
9 REGULAR CUSTOMER, AND THE OVERWHELMING  
10 MAJORITY OF SMOKERS FIRST BEGIN TO  
11 SMOKE WHILE STILL IN THEIR TEENS. "

12 NOW, LET'S STOP RIGHT THERE AND  
13 TAKE THE LAST PART OF THAT FIRST.

14 "OVERWHELMING MAJORITY OF  
15 SMOKERS FIRST BEGIN TO SMOKE WHILE  
16 STILL IN THEIR TEENS. "

17 BASED ON ALL OF THE BACKGROUND,  
18 EDUCATION, RESEARCH WORK YOU HAVE DONE, DO YOU  
19 AGREE WITH THAT?

20 A. YES. VERY SPECIFIC EVIDENCE THAT  
21 SMOKING IS, STARTING SMOKERS ARE JUST  
22 OVERWHELMINGLY YOUNG ADOLESCENTS, I BELIEVE THE  
23 NUMBERS, AND I STATED YESTERDAY, WERE 80 PERCENT,  
24 90 PERCENT OF SMOKERS HAVE TAKEN THEIR FIRST  
25 CIGARETTE BY AGE 18. AND ALMOST 80 PERCENT HAVE  
26 BECOME REGULAR SMOKERS BY THE TIME THEY ARE 20.

27 Q. SO THIS IS A PHILIP MORRIS  
28 STATEMENT WITH WHICH YOU ARE IN AGREEMENT?

1 A. YES.

2 Q. AS FAR AS YOU KNOW, IS THERE ANYONE  
3 OUT THERE, IN GOVERNMENT, INDUSTRY, PUBLIC HEALTH,  
4 ANYWHERE, THAT DISAGREES WITH THE CONCEPT, "THE  
5 OVERWHELMING MAJORITY OF SMOKERS FIRST BEGIN TO  
6 SMOKE WHILE STILL IN THEIR TEENS"?

7 A. I THINK THAT'S PRETTY WELL  
8 UNDERSTOOD TO BE THE TRUTH.

9 Q. OKAY. THE NEXT THING THAT I HAVE  
10 HIGHLIGHTED.

11 "THE SMOKING PATTERNS OF  
12 TEENAGERS ARE PARTICULARLY IMPORTANT  
13 TO PHILIP MORRIS. "

14 AND THE REST OF IT IS KIND OF  
15 SMALL. I AM GOING TO READ THE REMAINDER OF IT.

16 "OF THE 11 PACKINGS OF WHICH  
17 THE MEDIAN AGE OF SMOKERS IS UNDER AGE  
18 30, SEVEN ARE PHILIP MORRIS PACKINGS  
19 AND SHARE -- THE SHARE INDEX IS  
20 HIGHEST IN THE YOUNGEST AGE GROUP FOR  
21 ALL MARLBORO AND VIRGINIA SLIM  
22 PACKINGS AND FOR BENSON AND HEDGES  
23 LIGHTS AND MENTHOLS. "

24 NOW, REMEMBER WE TALKED ABOUT  
25 VIRGINIA SLIMS YESTERDAY?

26 A. YES.

27 Q. DOES THE CONTEXT IN WHICH YOU  
28 DISCUSSED VIRGINIA SLIMS GO AFTER YOUNG WOMAN

1 SMOKERS?

2 A. YES.

3 Q. SORT OF THE FLIP SIDE OF THE  
4 MARLBORO?

5 A. VERY MUCH SO.

6 Q. TO CONTINUE OFF OF THEIR DOCUMENT.

7 "FURTHERMORE, IT IS DURING  
8 THE TEENAGE YEARS THAT THE INITIAL  
9 BRAND CHOICE IS MADE. AT LEAST PART  
10 OF THE SUCCESS OF MARLBORO RED DURING  
11 ITS MOST RAPID GROWTH PERIOD WAS  
12 BECAUSE IT BECAME THE, " UNDERLINED,  
13 "THE BRAND OF CHOICE AMONG TEENAGERS  
14 WHO THEN STUCK WITH IT AS THEY GREW  
15 OLDER. "

16 YOU DON'T HAVE TO BE AFRAID TO  
17 SPEAK UP, IF I AM MISSING IT.

18 OKAY, THAT BOTTOM ONE IS THE ONE I  
19 JUST READ.

20 A. OKAY. LET ME READ IT FOR A SECOND.

21 Q. (READING)

22 "FURTHERMORE, IT IS DURING  
23 THE TEENAGE YEARS THAT THE INITIAL  
24 BRAND CHOICE IS MADE. AT LEAST A PART  
25 OF THE SUCCESS OF MARLBORO RED DURING  
26 ITS MOST RAPID GROWTH PERIOD WAS  
27 BECAUSE IT BECAME THE BRAND OF CHOICE  
28 AMONG TEENAGERS WHO THEN STUCK WITH IT

1 AS THEY GROW OLDER. "

2 NOW, FROM A MARKETING STANDPOINT DO  
3 YOU AGREE WITH THAT?

4 A. DEFINITELY, YES.

5 THE EVIDENCE IS THAT SMOKERS ARE  
6 VERY BRAND LOYAL AND SO THAT ONCE YOU HAVE MADE A  
7 COMMITMENT, EARLY, AND IT TENDS TO BE EARLY, YOU  
8 STICK WITH IT. IT'S VERY, VERY LITTLE BRAND  
9 SWITCHING. AND THE EVIDENCE SUGGESTS THAT THE  
10 TOTAL AMOUNT OF BRAND SWITCHING IS LESS THAN IN ANY  
11 GIVEN YEAR, LESS THAN TEN PERCENT OF SMOKERS WILL  
12 MAKE ANY CHANGE AT ALL AND ONLY 7 PERCENT OF THAT  
13 IS REALLY BETWEEN COMPANIES.

14 SO IT OBVIOUSLY DOESN'T MATTER TO,  
15 SAY, PHILIP MORRIS, WHETHER SOMEBODY IS SWITCHING  
16 FROM ONE OF THEIR BRANDS TO THE OTHER.

17 SO IT'S ONLY 7 PERCENT THAT SWITCH.  
18 THE REST ARE PRETTY LOYAL.

19 Q. SO I WANT TO DIRECT YOUR ATTENTION  
20 NOW OR HAVE YOU REMEMBER MR. BOEKEN'S DEPOSITION  
21 WHICH YOU READ IN WHICH WE SAW HERE, AND WHEN HE  
22 DISCUSSED MARLBORO IS MY BRAND AND MARLBORO IS MY  
23 BRAND AND MARLBORO IS MY BRAND, AND GOING FROM RED  
24 TO GOLD TO MILD TO LIGHT TO PLATINUM, TO WHATEVER,  
25 IS HE PROOF OF THIS STATEMENT RIGHT HERE?

26 MR. LEITER: OBJECTION.

27 MR. PIUZE: IT WAS AN AWFUL QUESTION, I  
28 WILL WITHDRAW IT.

1 THE COURT: THANK YOU.

2 MR. PIUZE: I DID IT AGAIN, I AM SORRY.

3 Q BY MR. PIUZE: DO YOU HAVE AN  
4 OPINION, WHETHER OR NOT, MR. BOEKEN'S PORTRAYING OF  
5 HIMSELF AS A MARLBORO PERSON AND SWITCHING WITHIN  
6 THE MARLBORO FAMILY, IS AN EMBODIMENT OF WHAT  
7 PHILIP MORRIS SAYS HERE?

8 MR. LEITER: OBJECTION, ARGUMENTATIVE.

9 THE WITNESS: VERY SO. WHAT I RECALL  
10 READING IS NOT ONLY DOES HIS BEHAVIOR REFLECT BRAND  
11 LOYALTY, THAT IS, HE KEPT SMOKING FIRST MARLBORO  
12 RED AND THEN THE BRAND EXTENSION THAT WE TALKED  
13 ABOUT INTO OTHER KINDS OF MARLBORO, BUT HIS  
14 PSYCHOLOGY WAS THAT OF A VERY BRAND LOYAL PERSON.  
15 AND THAT'S VERY MUCH IMPORTANT IN THIS WHOLE  
16 APPROACH, THAT IS, HE DEFINES HIMSELF AS A MARLBORO  
17 MAN. I AM A MARLBORO MAN. IT'S NOT JUST MY  
18 BEHAVIOR DAY-TO-DAY IS, BUT MY PSYCHOLOGY IS.  
19 THERE'S NOTHING, IT JUST IS. I MIGHT BE A BLONDE  
20 OR BRUNETTE OR WHATEVER, I AM A MARLBORO MAN, TO  
21 THE CORE. THAT'S WHAT HE UNDERSTOOD HIMSELF TO BE.

22 Q. THANK YOU.

23 HERE'S ANOTHER PAGE OUT OF THIS  
24 PHILIP MORRIS DOCUMENT. AND, AGAIN, I HAVE  
25 EXPLODED IT OR HAD IT DONE IN SUCH A WAY THAT  
26 WE CAN LOOK AT A COUPLE OF AREAS THAT I WANTED TO  
27 DISCUSS WITH YOU.

28 "WE WILL NO LONGER --"

1 I MAYBE SHOULD GIVE YOU A LITTLE  
2 RUN IN.

3 "BEGINNING IN 1985, THERE  
4 WILL BE AN INCREASE WHICH TOO WILL  
5 ACCELERATE IN THE NUMBER OF PEOPLE  
6 REACHING THE AGES AT WHICH PEOPLE  
7 TYPICALLY BEGIN TO QUIT SMOKING OR CUT  
8 DOWN, AGE 45 TO 54. WE WILL NO LONGER  
9 BE ABLE TO RELY ON A RAPIDLY  
10 INCREASING POOL OF TEENAGERS FROM  
11 WHICH TO REPLACE SMOKERS LOSS THROUGH  
12 NORMAL ATTRITION. "

13 FROM A MARKETING STANDPOINT, THAT'S  
14 A PROBLEM, ISN'T IT?

15 A. VERY MUCH SO. IF THE OVERWHELMING  
16 NUMBER OF SMOKERS START WHEN THEY ARE YOUNG AND  
17 THEY DO NOT COUNTER -- THOSE NEW SMOKERS DO NOT  
18 COUNTER-BALANCE THOSE THAT ARE EITHER DYING OR  
19 QUITTING, THAT'S PRETTY MUCH THE ONLY SOURCE OF  
20 SMOKERS THAT CIGARETTE COMPANIES HAVE.

21 AND I BELIEVE THAT THIS ALSO  
22 REFERRED TO THE FACT THAT DEMOGRAPHICALLY, THERE  
23 WERE GOING TO BE SOMEWHAT FEWER TEENAGERS FOR THE  
24 NEXT SMALL PERIOD OF TIME. AND SO THE, THEY WOULD  
25 BE NO LONGER ABLE TO RELY ON THIS RAPIDLY  
26 INCREASING POOL.

27 I GUESS THE BABY BOOM GENERATION  
28 WAS ENDING. AND THAT WOULD SIGNIFY THE LOWER

1 NUMBERS OF TEENAGERS.

2 Q. OKAY, THANK YOU. WHICH, LEADS ME  
3 TO THE OTHER PORTION WHICH HAS BEEN HIGHLIGHTED.

4 "BECAUSE OF OUR HIGH SHARE  
5 OF THE MARKET AMONG THE YOUNGEST  
6 SMOKERS, PHILIP MORRIS WILL SUFFER  
7 MORE THAN THE OTHER COMPANIES FROM THE  
8 DECLINE IN THE NUMBER OF TEENAGE  
9 SMOKERS. "

10 NOW, I DON'T HAVE A QUESTION ABOUT  
11 THAT. I JUST READ IT. NO QUESTION.

12 HERE'S THE LAST PAGE OF THE  
13 DOCUMENT THAT I HAVE BLOWN UP HERE. AND I'D LIKE  
14 TO DRAW YOUR ATTENTION TO THIS TABLE. DO YOU SEE  
15 THAT?

16 A. YES, I DO.

17 Q. ARE YOU FAMILIAR WITH THAT?

18 A. YES, I AM

19 Q. DO YOU WANT TO DISCUSS THAT?

20 THE ISSUE HERE I WANT YOU TO  
21 DISCUSS HAS TO DO WITH MARKETING TO TEENAGERS,  
22 MARKETING TO YOUNG PEOPLE. OKAY.

23 WHAT DOES THIS TABLE FROM PHILIP  
24 MORRIS INTERNAL DOCUMENTS SAY TO YOU, NOT ABOUT  
25 WHAT THEY ARE THINKING, I DON'T WANT TO KNOW WHAT  
26 THEY ARE THINKING, BUT YOU, AS A MARKETING PERSON.

27 A. THIS IS A TYPICAL MARKETING  
28 RESEARCH TABLE THAT LOOKS AT CURRENT REGULAR

1 SMOKERS, YEARS '68, IS THAT, TO '74. AND SO YOU  
2 HAVE ALONG THE ROWS, '68, '72, '74, SO CHANGES IN  
3 TIME. AND THEN ACROSS, OR CROSS-TABULATED WITH THE  
4 AGES OF THE SMOKERS THAT WERE ASSESSED IN THIS  
5 SURVEY, AGES 12 TO 14, 15 TO 16 AND 17 TO 18.

6 AND SO AS YOU WOULD EXPECT, IF YOU  
7 GO ACROSS ANY ROW, YOU SEE AN INCREASING PROPORTION  
8 OF THESE RESPONDENTS THAT SMOKE, AS YOU GO ACROSS  
9 ANY ROW, AND THE AGE IS THE TOP, AND IF YOU GO DOWN  
10 A COLUMN, YOU TRY AND TRACK THE CHANGE IN SMOKING  
11 RATES FOR A GIVEN AGE RANGE ACROSS TIME.

12 AND IT'S, AGAIN, A VERY STANDARD  
13 MARKETING RESEARCH TABLE. AND THERE'S AN ATTEMPT  
14 HERE TO UNDERSTAND THE CURRENT, JUST BY WAY OF THIS  
15 TITLE, THE CURRENT, HOW MANY, WHAT PERCENTAGE OF  
16 KIDS, AGE 12 TO 14, 15, 16, 17, 18, YOUNG  
17 TEENAGERS, SMOKE.

18 Q. THE TOPIC HAS TO DO WITH PHILIP  
19 MORRIS MARKETING TO TEENAGERS. DOES THIS TABLE  
20 TELL YOU, MAKE YOUR OPINION STRONGER, WEAKER OR  
21 REMAIN THE SAME ON THAT ISSUE?

22 A. STRONGER. CERTAINLY THEY SEEMED  
23 THEY COMMISSIONED THIS STUDY AND THEY SEEMED TO BE  
24 INTERESTED IN THE RESULTS, AND I DON'T THINK IT  
25 WOULD HAVE BEEN FOR IDLE SPECULATION.

26 Q. OKAY, THANK YOU.

27 NEXT DOCUMENT FROM PHILIP MORRIS IS  
28 EXHIBIT 239.00. JUST TO GET US ALL STARTED HERE,

1 THIS IS JULY 25, 1974, FROM THE MARKETING RESEARCH  
2 DEPARTMENT AND THE SUBJECT IS "HIGHLIGHTS OF ROPER  
3 STUDY OF YOUNG SMOKERS. "

4 SO LET' S STOP THERE FOR A SECOND.  
5 WHAT' S ROPER?

6 A. ROPER IS A MARKETING RESEARCH FIRM  
7 THAT DOES PUBLIC OPINION POLLING AS WELL AS  
8 MARKETING RESEARCH STUDIES.

9  
10 \* (EXHIBIT 239.00, PHILIP MORRIS  
11 DOCUMENT, MARKED FOR I. D.)

12  
13 Q BY MR. PIUZE: AND THEN SHOW YOU  
14 PAGE 2.

15 CAN YOU READ THAT?

16 A. YES.

17 Q. WOULD YOU?

18 A. (READING)

19 "YOUNG SMOKERS WERE SOUGHT  
20 OUT IN 35 LOCATIONS AROUND THE COUNTRY  
21 AT POPULAR HANG-OUTS, AT DRIVE-INS,  
22 BOWLING ALLEYS, NEAR MILITARY BASES,  
23 AT BEACHES, ET CETERA. "

24 Q. I AM SHOWING YOU A TABLE THAT  
25 DOESN' T HAVE A PAGE NUMBER ON IT FROM THIS  
26 DOCUMENT. CAN YOU SEE THAT?

27 A. YES.

28 Q. BARELY?

1 A. OKAY. THIS IS, AGAIN --

2 Q. HERE'S WHAT I AM INTERESTED IN OVER  
3 HERE, THIS COLUMN, 18 AND LESS, 19 TO 21, 22 TO 24.

4 A. OKAY.

5 Q. I APOLOGIZE.

6 A. IT'S HARD TO SEE THEM ALL.

7 Q. THIS HAS TO DO WITH MARLBORO AND I  
8 AM DRAWING YOUR ATTENTION TO THESE AGE CATEGORIES  
9 OVER HERE.

10 DO YOU SEE THAT?

11 A. YES.

12 Q. OF THE PEOPLE THEY INTERVIEWED, THE  
13 LARGEST CATEGORY WAS 18 YEARS OLD AND LESS.

14 DO YOU SEE THAT?

15 A. YES.

16 Q. WHAT'S THE SIGNIFICANCE OF THIS  
17 TABLE TO YOU, AGAIN, THE TOPIC BEING WHETHER A  
18 MINORITY -- EXCUSE ME, WHETHER MINOR PEOPLE UNDER  
19 18 WERE BEING TARGETED?

20 A. THIS, AGAIN, IS A STANDARD  
21 MARKETING RESEARCH TABLE. ONE OF THE PIECES OF  
22 OUT-PUT OF THE ROPER STUDY THAT WAS COMMISSIONED BY  
23 PHILIP MORRIS, THE FACT THAT THE 18 AND LESS COLUMN  
24 HAS A LARGER NUMBER OF RESPONDENTS, 693, I THINK,  
25 IS A CONSEQUENCE OF THE GUIDELINES THAT ROPER WAS  
26 GIVEN IN TERMS OF HOW TO FIND THE PEOPLE.

27 THEY SAID GO OUT TO BEACHES AND  
28 DRIVE-INS AND PLACES THAT YOUNG PEOPLE HANG OUT

1 AND, IN EFFECT, TO INSURE THAT THEY COULD FULFILL  
2 THIS GOAL OF GETTING A LARGE NUMBER OF THOSE WHO  
3 WERE 18 AND UNDER AND THEN THAT WOULD ALLOW THEM TO  
4 ASSESS THE, WHAT BRAND WAS BEING USED BY THOSE WHO  
5 WERE 18 AND UNDER AS OPPOSED TO THOSE WHO WERE 18  
6 AND OVER. AND ALONG THE LEFT-HAND SIDE THEN YOU  
7 SEE THE VARIOUS BRANDS AND THE DATA THEN REFLECT  
8 THAT.

9 Q. THIS IS THE LAST PAGE I AM GOING TO  
10 SHOW OUT OF THIS PARTICULAR DOCUMENT.

11 AND THE TITLE OF THIS TABLE IS "THE  
12 BRAND SMOKE MOST OFTEN WHEN FIRST STARTED  
13 SMOKING."

14 AGAIN, I AM GOING TO DRAW --  
15 THERE'S AN OVERVIEW, MARLBORO IS ACROSS THE TOP. I  
16 AM DRAWING YOUR ATTENTION TO THE AGE GROUPS THERE.  
17 DO YOU SEE THOSE?

18 A. YES, I DO.

19 Q. FOR YOUNG PEOPLE 18 AND UNDER, JUST  
20 TAKE A LOOK AT THESE NUMBERS. JUST GO DOWN THE  
21 COLUMN FOR A SECOND, IF YOU WOULD. FIRST COLUMN  
22 WAS MARLBORO FAR AND AWAY THE CHAMPION BRAND FOR  
23 YOUNG PEOPLE 18 AND UNDER?

24 A. ABSOLUTELY DOMINANT, YES, AS  
25 STARTER CIGARETTES.

26 Q. AS STARTER CIGARETTES. YES.

27 JUST DOING A LITTLE MATH HERE, IS  
28 MARLBORO AS STRONG AS THE NEXT THREE COMBINED?

1 A. MORE SO, PROBABLY.

2 Q. DOES THAT TREND BASICALLY HOLD TRUE  
3 IN THE 19 TO 21 AGE CATEGORY?

4 A. MORE OR LESS. IT SLIPS A TOUCH,  
5 BUT NOT MUCH. A LITTLE BIT.

6 Q. I AM DONE WITH THIS DOCUMENT. BUT  
7 ONE MORE TO GO. AS FAR AS PHILIP MORRIS DOCUMENTS  
8 ARE CONCERNED. AND THIS IS NUMBER 229. I AM  
9 WRONG, I APOLOGIZE, THERE ARE TWO MORE TO GO.

10 THIS IS 229.

11

12 \* (EXHIBIT 229, PHILIP MORRIS  
13 DOCUMENT, MARKED FOR I. D.)

14

15 Q BY MR. PIUZE: THIS IS A SEPTEMBER  
16 17, 1981, AND THE SUBJECT IS "TEENAGE SMOKING AND  
17 THE FEDERAL EXCISE TAX ON CIGARETTES."

18 ARE YOU FAMILIAR WITH THIS  
19 DOCUMENT?

20 A. YES, I AM

21 Q. HERE IS PAGE 3 OF 3. AND THE TWO  
22 AREAS THAT I HAVE CHOSEN TO HIGHLIGHT READ AS  
23 FOLLOWS. THE FIRST ONE:

24 "WHEN IT COMES TO A CHOICE  
25 BETWEEN SMOKING CIGARETTES -- "

26 A. "CRUISING. "

27 Q. " -- OR CRUISING AROUND IN HIS CAR,  
28 THE AVERAGE TEENAGE MALE



1 THEM ALL. AND WE THEN HAVE CHANGES TO MAKE, NOT  
2 JUST WITHIN THE CIGARETTE CATEGORY, THIS IS THE  
3 IMPORTANT PART. THE ISSUE IS NOT JUST WHETHER  
4 ADVERTISING FOR CIGARETTES WILL CONVINCE THE  
5 TEENAGER TO BY MARLBORO RATHER THAN ANOTHER BRAND.  
6 THE ISSUE IS ALWAYS FOR ALL OF US, LARGER THAN  
7 THAT, CAN WE BE PERSUADED, CAN THE TEENAGER BE  
8 PERSUADED TO BUY CIGARETTES AT ALL OR WILL THEY  
9 SPEND THEIR MONEY ON OTHER THINGS.

10 SO THIS IS A COMPETITIVE BATTLE NOT  
11 JUST FOR ONE BRAND VERSUS THE OTHER, IT'S  
12 COMPETITIVE FOR OUR PURSE STRINGS. AND THE  
13 QUESTION THEN GOES TO DOES ADVERTISING STIMULATE  
14 TOTAL DEMAND OR IS IT JUST A TUG OF WAR BETWEEN  
15 BRANDS.

16 THERE IS A RECOGNITION HERE THAT IF  
17 THE PRICE OF CIGARETTES GOES UP, THERE'S ONLY SO  
18 MUCH MONEY IN THAT TEENAGER'S POCKET. IF THE PRICE  
19 GOES UP, HE WILL HAVE LESS MONEY ALL AROUND AND IF  
20 GASOLINE WINS, THE CIGARETTE COMPANIES LOSE.

21 SO NATURALLY, A CONSEQUENCE OF THAT  
22 MIGHT BE ADVERTISE MORE.

23 Q. SO YESTERDAY, I DON'T KNOW IF I  
24 USED THE WORD "CHALLENGE" OR NOT.

25 YESTERDAY THERE WAS A DISCUSSION  
26 AND I TOUCHED ON IT BRIEFLY.

27 ISN'T ALL OF THE ADVERTISING MONEY  
28 SIMPLY A BATTLE BETWEEN BRANDS, YOU SAID NO. IN

1 YOUR VIEW, IS THIS PROOF OF IT?

2 A. THIS IS VERY CLEAR THAT IT'S NOT  
3 SIMPLY A TUG OF WAR BETWEEN BRANDS. IT'S A TUG OF  
4 WAR WINNING PEOPLE OVER TO SMOKE AT ALL. AND  
5 EXPANDING THE MARKET IS A FUNCTION OF ADVERTISING.

6 Q. THIS IS EXHIBIT 85.00.

7

8 \* (EXHIBIT 85.00, LETTER,  
9 MARKED FOR I. D.)

10

11 Q BY MR. PIUZE: AND THIS IS A MAY  
12 26, 1970 LETTER TO SENATOR EARLE CLEMENTS OF THE  
13 TOBACCO INDUSTRY.

14 AND THIS LETTER IS FROM H. WAKEHAM  
15 VICE-PRESIDENT FOR CORPORATE RESEARCH AND  
16 DEVELOPMENT FOR PHILIP MORRIS.

17 AND I'D LIKE TO DRAW YOUR ATTENTION  
18 TO THIS.

19 "OUR MEDICAL RESEARCH  
20 SUPPORT EFFORTS THROUGH C. T. R. AND  
21 A. M. A. HAVE BEEN CONFUSING AND  
22 CONTRADICTIONARY IN THE PUBLIC EYE  
23 BECAUSE WE HAVE ON THE ONE HAND  
24 PROCLAIMED THESE ENDEAVORS TO BE AIMED  
25 AT, QUOTE, FINDING THE TRUTH ABOUT  
26 SMOKING AND HEALTH, CLOSE QUOTES, AND  
27 AT THE SAME TIME DENY THE EXISTENCE OF  
28 A PROBLEM "

1 JUMPING TO THE NEXT PAGE.

2 "THE FACT THAT A  
3 MULTI-BILLION DOLLAR INDUSTRY HAS PUT  
4 UP 30 MILLION DOLLARS FOR THIS OVER A  
5 TEN-YEAR PERIOD CANNOT BE IMPRESSIVE  
6 TO A PUBLIC WHICH AT THE SAME TIME IS  
7 TOLD WE SPEND UPWARDS OF 300 MILLION  
8 DOLLARS IN ONE YEAR ON ADVERTISING. "

9 DID I READ THAT RIGHT?

10 A. YES.

11 Q. SO WHAT? SO WHAT, IF ANYTHING,  
12 DOES THAT HAVE TO DO WITH YOUR OPINIONS ON  
13 ADVERTISING?

14 A. 300 MILLION DOLLARS IN ONE YEAR OF  
15 ADVERTISING IS AN OVERWHELMING AMOUNT. YOU KNOW, A  
16 TYPICAL BRAND WILL ADVERTISE MAYBE 20 MILLION, 30  
17 MILLION DOLLARS FOR A MAJOR NATIONAL BRAND.

18 AT THAT TIME, IT WOULD PROBABLY BE  
19 TEN MILLION.

20 SO 300 MILLION DOLLARS IN A YEAR'S  
21 WORTH OF ADVERTISING, INSURES THAT EVERY MAN, WOMAN  
22 AND CHILD IS GOING TO BE BLANKETED WITH THIS  
23 ADVERTISING.

24 Q. HAVE YOU EVER HEARD OF INFLATION?

25 A. YES.

26 Q. WHATEVER 300 MILLION BUCKS WOULD  
27 BUY IN THE YEAR 1970, DO YOU THINK IT WOULD TAKE A  
28 LOT MORE TO BUY NOW?

1           A.     ABSOLUTELY.

2                     I BELIEVE THE FIGURES NOW ARE IN  
3 THE BILLIONS, MANY BILLIONS.

4           Q.     NOW, I AM GOING TO SWITCH TOPICS  
5 AGAIN. I AM OFF THE PHILIP MORRIS DOCUMENTS AND I  
6 AM OFF OF THESE PUBLIC DOCUMENTS FOR NOW. I'D LIKE  
7 TO ASK YOU THE FOLLOWING.

8                     WERE THERE, THIS IS JUST -- WERE  
9 THERE STUDIES DONE THAT HAD TO DO WITH CORRELATING  
10 PEOPLE WHO SMOKED WITH THE IMAGE TOUGH, STRONG,  
11 INDEPENDENT?

12           A.     YES.

13           Q.     WERE THERE STUDIES DONE IN WHICH  
14 THESE ATTITUDES WERE FOLLOWED UP ON OR OVER A  
15 PERIOD OF TIME TO SEE IF YOUNG KIDS, YOUNG MALES,  
16 WHO SAW THEMSELVES AS TOUGH, STRONG AND  
17 INDEPENDENT, OVER A PERIOD OF TIME, WERE MORE  
18 LIKELY TO SMOKE AS TIME WENT ON?

19           A.     YES.

20           Q.     DISCUSS THAT, BRIEFLY.

21           A.     THERE ARE, IN FACT, A FEW STUDIES  
22 THAT CONVERGE TELLING US THE SAME THING. LET ME  
23 TELL YOU WHAT I THINK IS THE CLEAREST.

24                     THE YOUNG PEOPLE ARE QUESTIONED AS  
25 TO HOW THEY WOULD DESCRIBE THEMSELVES. AND SO  
26 THERE'S A WHOLE SERIES OF ADJECTIVES, ARE YOU COOL  
27 OR UNCOOL, ARE YOU TOUGH OR WIMPY, ARE YOU BRAVE OR  
28 COWARDLY, DESCRIBE YOURSELF. A WHOLE SERIES OF

1 THINGS.

2                                   AND THEN WOULD YOU PLEASE DO THE  
3 SAME THING FOR US, HOW DO YOU SEE SMOKERS, ARE THEY  
4 COOL OR COWARDLY OR COOL OR UNCOOL OR BRAVE OR  
5 COWARDLY, TOUGH OR WIMPY, 15 OR 16 OF THOSE.

6                                   IF YOU TAKE THOSE TEENAGERS THAT  
7 DESCRIBE THEMSELVES AS, AS IT TURNS OUT, COOL,  
8 TOUGH, BRAVE, AND THOSE THAT, AT THE SAME TIME, SEE  
9 SMOKERS AS COOL, TOUGH, BRAVE, AND TAKE THOSE  
10 PEOPLE AND YOU TAKE THOSE AND FIND THE ONES THAT  
11 SAY THOSE THINGS AND THEY DON'T SMOKE YET, AND YOU  
12 PREDICT, I BET, THAT THAT MIRRORING OF PEOPLE WHO  
13 SEE SMOKERS AS THE SAME KIND OF FOLKS THEY WOULD  
14 LIKE TO BE, THAT MIRRORING IS GOING TO BE  
15 PREDICTIVE, IT'S A RISK FACTOR.

16                                  IF YOU CAN HOLD OUT THAT IMAGE TO  
17 KIDS, THIS IS GOING TO BE WHAT YOU WANT, WE CAN GET  
18 YOU THERE THROUGH SMOKING, IT'S A RISK FACTOR, A  
19 YEAR LATER THEY COME BACK TO THESE KIDS, THEY  
20 HAVEN'T SMOKED YET, BUT THEY HAVE TOLD US THAT  
21 THEIR IMAGE CONVERGES WITH THAT STEREO TYPE,  
22 SMOKING, AND AS IT IS HELD UP OVER THE  
23 ADVERTISEMENTS, A YEAR LATER, THOSE KIDS ARE TWICE  
24 AS LIKELY TO SMOKE AS THE ONES WHO DON'T MATCH UP.

25                                  SO THAT CONVEYING TO KIDS THAT THIS  
26 IMAGE OUT THERE IS WHAT SMOKERS ARE ALL ABOUT, NOW,  
27 I DOUBT THAT THEY ARE, AS I SAID, YESTERDAY,  
28 PARENTS LOOKED THAT WAY OR SOUND THAT WAY, THEY ARE

1 FRIENDS, IT'S THROUGH ADVERTISING THAT THEY GET  
2 THESE IMAGES.

3                   WHEN THEY MATCH THEIR OWN PROFILE  
4 OF TOUGH, COOL, AND BRAVE, THESE ARE NOT BY  
5 HAPPENSTANCE. THIS IS WHAT -- THEY HAD ABOUT 15  
6 ADJECTIVES. THE ONES THAT SURFACED WERE THE ONES  
7 THAT SEEMED TO BE THE PREDOMINANT IMAGES THAT WE  
8 HAVE BEEN LOOKING AT.

9           Q.     OKAY, THANK YOU.

10                   YOUR HONOR, CAN I HAVE 30 SECONDS  
11 FOR A LITTLE INTERNAL TALK HERE.

12

13                   (INTERRUPTION IN PROCEEDINGS.)

14

15           Q.     BY MR. PIUZE: THANK YOU, YOUR  
16 HONOR.

17                   NEW SUBJECT, LIGHT CIGARETTES.

18                   READY?

19           A.     YES.

20           Q.     JUST GIVE US AN IDEA, IN ROUND  
21 NUMBERS, HOW MANY PUBLICATIONS YOU HAVE BEEN AN  
22 AUTHOR ON THAT DEAL WITH THE SUBJECT OF LIGHT  
23 CIGARETTES?

24           A.     ABOUT FIVE, SIX, SEVEN, EIGHT.

25           Q.     WHO HAVE YOU COLLABORATED WITH,  
26 PLEASE?

27           A.     CHIEF COLLABORATOR WOULD BE LYNN  
28 KOZLOWSKI.

1 Q. WHO IS LYNN KOZLOWSKI?

2 A. HE IS THE CHAIRMAN OF THE  
3 BIOBEHAVIORAL HEALTH DEPARTMENT AT PENN STATE  
4 UNIVERSITY, MY UNIVERSITY.

5 Q. OVER WHAT PERIOD OF TIME HAVE YOU  
6 COLLABORATED ON THESE PAPERS, PLEASE.

7 A. THE BETTER TIME OF MY STAY AT PENN  
8 STATE, THE LAST SEVEN OR EIGHT YEARS, ANYWAY.

9 Q. LET ME READ YOU OR READ THE JURY A  
10 COUPLE TITLES. I WOULD LIKE YOU TO JUST CONFIRM  
11 THESE ARE YOURS, OKAY, PLEASE.

12 A. YES.

13 Q. "SMOKERS REACTIONS TO RADIO MESSAGE  
14 THAT LIGHT CIGARETTES ARE AS DANGEROUS AS REGULAR  
15 CIGARETTES. "

16 A. YES.

17 Q. THAT'S ONE OF THE LAST ONES?

18 A. YES.

19 Q. "PERCEIVED RISKS OF LIGHT  
20 CIGARETTES IS MISLEADING FOR PUBLIC HEALTH POLICY. "

21 A. YES.

22 Q. "SMOKERS MISPERCEPTIONS OF ULTRA  
23 LIGHT CIGARETTES MAY KEEP THEM SMOKING. "

24 A. YES.

25 Q. "ADVERTISING FAILS TO INFORM  
26 SMOKERS OF OFFICIAL TAR YIELDS OF CIGARETTES. "

27 A. YES.

28 Q. "SMOKERS ARE UNAWARE OF THE FILTER

1 VENTS NOW ON MOST CIGARETTES, RESULTS OF A NATIONAL  
2 SURVEY. "

3 A. YES.

4 Q. OKAY. HOW DID YOU GET INVOLVED IN  
5 THE ISSUE OF LIGHT CIGARETTES AND MARKETING,  
6 PLEASE?

7 A. I WAS INTERACTING WITH LYNN  
8 KOZLOWSKI, APPROACH, BECAUSE OF MY MARKETING, TO  
9 GENERATE A SURVEY TRYING TO ASSESS HOW, WHAT PEOPLE  
10 UNDERSTAND ABOUT LIGHT CIGARETTES, HOW THEY REACT  
11 TO THEM, AND THEN ULTIMATELY, HOW THEY WOULD REACT  
12 TO A MESSAGE INFORMING THEM ABOUT LIGHT CIGARETTES.

13 SO LYNN KOZLOWSKI, IF YOU WOULD  
14 LIKE, IS SHE, WAS THE PERSON THAT HAD THE INTIMATE  
15 DETAILS AS TO THE MEDICAL SCIENCE OF OR THE  
16 CIGARETTE DESIGN. AND I WAS CONSULTED WITH REGARD  
17 TO MY EXPERTISE ON SURVEY DESIGN, QUESTIONNAIRE  
18 DESIGN AND ULTIMATELY THE CONSTRUCTION OF THE  
19 COMMERCIAL IN THAT LAST STUDY.

20 Q. THE LAST STUDY, THE ONE I READ  
21 FIRST, IS THAT A COMMERCIAL?

22 A. YES. WE CREATED A RADIO COMMERCIAL  
23 THAT IS NOW AVAILABLE THROUGH THE C. D. C. FOR  
24 ANYBODY TO USE, ACTUALLY.

25 Q. DID YOU MENTION THAT EARLIER?

26 A. I DON'T THINK SO.

27 Q. WELL, TAKE A COUPLE SECONDS, WHAT  
28 DOES IT SAY? WHAT DOES IT DO? WHO ARE THE PEOPLE

1 YOU WANT TO USE IT?

2 A. CAN I READ WHAT IT SAYS?

3 Q. THAT'S OKAY WITH ME.

4 A. I DO HAVE IT. SO THIS IS A MALE  
5 VOICE READING IN THE AD THAT WE CREATED.

6 "I THOUGHT LIGHT CIGARETTES  
7 WERE LIGHT, THE WAY THEIR NAME SAID.  
8 THEY FELT SMOOTHER AND I HOPED THEY  
9 WOULD BE A LITTLE BETTER FOR ME THAN  
10 REGULAR CIGARETTES. BUT MY DOCTOR  
11 SAYS I WAS WRONG.

12 "UNIVERSITY RESEARCHERS  
13 MEASURED WHAT ACTUALLY GETS INSIDE  
14 SMOKERS AND FOUND THAT ONE LIGHT  
15 CIGARETTE CAN GIVE SMOKERS JUST AS  
16 MUCH TAR AND NICOTINE AS ONE REGULAR.  
17 ONE LIGHT EQUALS ONE REGULAR.

18 "MY DOCTOR SAID, WITHOUT  
19 REALLY THINKING, SMOKERS PUFF MORE OR  
20 GET THEIR FINGERS OR LIPS IN THE WAY  
21 OF TINY VENT HOLES ON THE FILTERS. I  
22 LOOKED FOR THE VENTS AND ON SOME  
23 BRANDS, I COULDN'T EVEN SEE THEM

24 "I SAID, BUT LIGHTS FEEL  
25 EASIER ON MY CHEST. AND MY DOCTOR  
26 EXPLAINED THAT, YES, THAT COULD HAPPEN  
27 BUT THAT FOR MY HEALTH IT WAS A  
28 DIFFERENCE THAT DIDN'T MATTER. KIND

1           OF LIKE JUMPING OFF A 15-STORY  
2           BUILDING INSTEAD OF A 20-STORY  
3           BUILDING. THE DIFFERENCE JUST DOESN' T  
4           MATTER.

5                        I WAS FOOLED BY A LIGHT NAME  
6           AND A SMOOTH TASTE. I WAS KIDDING  
7           MYSELF WITH LIGHTS. I AM THINKING  
8           ABOUT QUITTING SMOKING. YOU SHOULD  
9           TOO. "

10           Q.       LET' S TALK ABOUT THE 15-STORY  
11 BUILDING AND THE 20-STORY BUILDING.

12                        HOW DID THAT COME TO BE THAT YOU  
13 USED THOSE TWO EXAMPLES, 15-STORY AND 20-STORY IN  
14 THAT COMMERCIAL?

15           MR. LEITER: OBJECTION, WE ARE GOING  
16 BEYOND HIS EXPERTISE.

17           THE COURT: I AM AFRAID WE ARE,  
18 POTENTIALLY.

19                        FOUNDATION.

20           MR. PIUZE: YEAH, I CAN, YOUR HONOR. I  
21 WILL.

22           THE COURT: ALL RIGHT.

23           Q       BY MR. PIUZE: ORIGINALLY, DID YOU  
24 TRY TO SELL, THROUGH THE COMMERCIAL, DID YOU TRY TO  
25 SELL THE CONCEPT THAT USING A LIGHT CIGARETTE WAS  
26 LIKE JUMPING 20 STORIES AND USING A REGULAR  
27 CIGARETTE WAS ALSO LIKE JUMPING 20 STORIES?

28           A.       YES. WE STARTED, AS ONE TYPICALLY

1 DOES, YOU DON'T JUST DESIGN A MESSAGE, YOU WORK  
2 WITH A NUMBER OF DIFFERENT VERSIONS AND YOU WORK  
3 WITH A SMALL GROUP OF PEOPLE, A SMALL DISCUSSION  
4 GROUP, FOCUS GROUPS, AND A NUMBER OF THESE.

5 Q. LET ME STOP YOU FOR A SECOND.

6 I WANT, I JUST WANT TO BE SURE WE  
7 ARE NOT TALKING ABOUT MEDICAL ASPECTS OF WHAT YOU  
8 ARE DOING NOW WE ARE TALKING ABOUT THE SALES JOB  
9 THROUGH THE COMMERCIALS?

10 A. THAT IS RIGHT.

11 Q. TRUE STATEMENT?

12 A. RIGHT.

13 Q. NO MEDICINE, INDEED?

14 A. NO.

15 Q. SO I GUESS WE HAVE ALL HEARD THE  
16 TERM FOCUS GROUP. BUT VERY BRIEFLY, FOCUS GROUP IS  
17 WHAT?

18 A. ONE ASSEMBLES A GROUP OF SIX OR  
19 EIGHT OR TEN PEOPLE AROUND A TABLE WITH A MODERATOR  
20 AND THERE'S, MORE OR LESS, OPEN-ENDED DISCUSSION OF  
21 ONE ISSUE OR ANOTHER. IT OFTEN THEN IS A MATTER OF  
22 TESTING OF COPY, WHERE YOU SHOW THESE PEOPLE A T. V.  
23 COMMERCIAL OR GET THEM TO LISTEN TO A SCRIPT THAT  
24 WOULD BE A RADIO COMMERCIAL AND ASK THEM FOR THEIR  
25 OPINIONS OF IT. AND THEY WILL BREAK IT DOWN  
26 SENTENCE BY SENTENCE AND TELL YOU WHAT THEY LIKE OR  
27 DISLIKE, BELIEVE OR DISBELIEVE.

28 Q. AND IN AN EARLIER PORTION OF THAT

1 COMMERCIAL, I CAN'T, I DON'T HAVE IT IN FRONT OF ME  
2 AND I CAN'T QUOTE IT, BUT IT BASICALLY SAID  
3 "LIGHTS, NON-LIGHTS, THEY ARE EXACTLY THE SAME";  
4 RIGHT?

5 A. YEAH. THE KEY PART OF IT WAS ONE  
6 LIGHT EQUALS ONE REGULAR.

7 Q. SO I PUT TO YOU, IF ONE LIGHT  
8 EQUALS ONE REGULAR, THEN JUMPING 20 STORIES SHOULD  
9 BE THE SAME AS JUMPING 20 STORIES. WOULD YOU AGREE  
10 WITH THAT AS A CONCEPT?

11 A. YES.

12 Q. DID YOU TRY TO SELL THAT IN THE  
13 FOCUS GROUPS?

14 A. YES.

15 MR. LEITER: OBJECT AS TO RELEVANCE.

16 THE COURT: I AM WAITING. PROCEED,  
17 COUNSEL.

18 Q BY MR. PIUZE: DID YOU TRY TO SELL  
19 THAT IN THE FOCUS GROUP?

20 A. YES. AND PEOPLE JUST DID NOT BUY  
21 THAT. THEY REACT AS WE PUT SOME OF THIS TEXT IN  
22 THAT SOMEHOW IT FELT A LITTLE MILDER SO IT MUST BE  
23 A LITTLE BETTER. AND WE JUST COULD NOT SELL THE  
24 IDEA THAT ONE EQUALS ONE, THAT 20 EQUALS 20.

25 SO WE SLIPPED BACK AND WE SAID  
26 MAYBE WE CAN COME CLOSE BY SAYING, WELL, IT'S LIKE  
27 JUMPING FROM A 15-STORY INSTEAD OF 20, IN THE END,  
28 IT DOESN'T MATTER.

1 Q. YOU ARE A MARKETING ADVERTISING  
2 EXPERT AND I WANT YOU TO TELL US, THE COURT, THE  
3 JURY, THE LAWYERS, WHY YOU THINK THAT'S RELEVANT OR  
4 SIGNIFICANT, THAT YOUR FOCUS GROUPS WOULDN'T BUY  
5 THE FACT THAT LIGHT CIGARETTES WERE JUST AS BAD OR  
6 JUST THE SAME AS REGULAR CIGARETTES.

7 MR. LEITER: OBJECTION, IT'S  
8 ARGUMENTATIVE AND ASKS FOR THE WITNESS'S LEGAL  
9 CONCLUSION AS TO WHAT'S RELEVANT.

10 THE COURT: WELL, LET'S STAY AWAY FROM  
11 THE WORD "RELEVANT" THAT WILL BE USED IN THE TERMS  
12 OF MARKETING SENSE. GIVE US YOUR MARKETING  
13 OPINION. WE ARE NOT INTERESTED IN ANY LEGAL  
14 OPINIONS YOU MIGHT HAVE.

15 PROCEED.

16 THE WITNESS: THIS STUDY FOLLOWED ON TWO  
17 OR THREE OTHERS WHICH HAD SAMPLED A NATIONAL RANDOM  
18 SAMPLE OF, AMONG OTHER THINGS, A LIGHT CIGARETTE,  
19 SMOKERS OF LIGHT CIGARETTES.

20 AND WE LEARNED THAT PEOPLE BELIEVED  
21 THAT THESE WERE AS SAFE, ONE EQUALED ONE, HAD NO  
22 CONCEPT IN THEIR HEAD.

23 WE ASKED THEM QUESTIONS LIKE HOW  
24 MANY CIGARETTES, HOW MANY LIGHT CIGARETTES WOULD IT  
25 TAKE TO EQUAL ONE REGULAR CIGARETTE.

26 AND, OF COURSE, IT SEEMS THAT THE  
27 ANSWER OUGHT TO BE ONE EQUALS ONE.

28 BUT TEN PERCENT OF THEM GAVE US

1 THAT NUMBER.

2 SO MOST PEOPLE HAVE NO SENSE OF THE  
3 NOTION THAT THERE'S AN EQUIVALENCE BETWEEN A LIGHT  
4 CIGARETTE AND A REGULAR CIGARETTE.

5 SO WE FOUND THAT IN THE FOCUS  
6 GROUPS, WE JUST COULD NOT GET PEOPLE TO BELIEVE US.

7 AND WE SAID THAT, WE SAID A DOCTOR  
8 SAYS THAT ONE EQUALS ONE, AND WE'D HAVE TO JUST  
9 BELIEVE THAT THIS IS --

10 MR. LEITER: YOUR HONOR, I AM GOING TO  
11 OBJECT. HE IS TESTIFYING AS TO THE MEDICAL ISSUES  
12 NOW AS TO WHAT IS --

13 THE COURT: HE IS TESTIFYING AS TO WHAT  
14 YOU CAN GET PEOPLE TO BELIEVE OR NOT, IRRESPECTIVE  
15 OF WHAT IS TRUE AND WHAT IS NOT TRUE.

16 MR. PIUZE: I AM GOING TO ASK YOU A  
17 LEADING QUESTION.

18 Q BY MR. PIUZE: DID YOU DRAW ANY  
19 CONCLUSIONS FROM THESE FOCUS GROUPS ABOUT THE POWER  
20 THAT PRIOR ADVERTISING TO THESE PEOPLE REGARDING  
21 LIGHT CIGARETTES HAD, QUESTION MARK?

22 A. YES. THEY WERE VERY HEAVILY  
23 MISLEAD, I THINK, THERE WAS SOMEHOW SOME BENEFIT  
24 THAT ONE DID NOT EQUAL ONE, AND IT WAS HARD TO  
25 CONVINCING THEM THAT IT WAS -- THAT WAS THE CASE  
26 THAT. SOMEHOW LIGHT CIGARETTES WERE DIFFERENT FROM  
27 REGULAR -- WERE NOT DIFFERENT FROM REGULAR  
28 CIGARETTES.

1 Q. DOES ADVERTISING, I AM THINKING  
2 ABOUT ALL OF THESE ADS THAT I HELD UP HERE, BORING,  
3 TEDIOUS, DOES THE REPETITIOUS NATURE OF  
4 ADVERTISING, OVER TIME, LET' S FORGET MARLBOROS FOR  
5 NOW, LET' S FORGET CIGARETTES FOR NOW, JUST AS A  
6 CONCEPT, DOES THE REPETITIOUS NATURE OF ADVERTISING  
7 OVER A LONG PERIOD OF TIME, POUND IN A MESSAGE SO  
8 THAT IT GAINS A FOUNDATION OF SOME SORT?

9 A. A LOT OF STUDIES, A WHOLE BOUNDARY  
10 OF STUDIES THAT SUGGEST THAT REPETITION, IN AND OF  
11 ITSELF, LEADS PEOPLE TO BELIEVE, IN AND OF ITSELF,  
12 THAT WHEN WE ARE FAMILIAR WITH STATEMENTS THAT ARE  
13 MADE, OVER AND OVER AGAIN, WE COME TO BELIEVE THEM

14 THERE' S A STUDY THAT DOCUMENTS  
15 EXACTLY THAT. THEY WILL REPEAT A SET OF  
16 STATEMENTS, THEY WILL TAKE SOME PEOPLE AND WILL  
17 REPEAT SOME STATEMENTS, OVER TIME, AND OTHERS ARE  
18 JUST THROWN AT THEM NEW

19 AND THE ONES THAT THEY HAVE SEEN  
20 OVER TIME, IT MIGHT BE AS SIMPLE AS ALLSTATE IS A  
21 BETTER INSURANCE COMPANY THAN SOME OTHER, THE FACT  
22 THAT THEY HAVE SEEN IT OVER AND OVER AGAIN LEADS  
23 THEM TO SAY, YES, THAT' S TRUE.

24 WHEN THEY ARE THROWN EQUIVALENT NEW  
25 STATEMENTS, WHETHER THEY ARE TRUE OR NOT, THE FIRST  
26 TIME YOU SEE SOMETHING, IT' S NOT FAMILIAR, YOU ARE  
27 NOT QUITE SURE, THERE' S A VALIDITY THAT' S GAINED  
28 OVER TIME. YOU SEE IT OVER AND OVER AGAIN. AND

1 THE STUDIES DOCUMENT, IT'S CALLED A TRUTH EFFECT,  
2 THAT SEEING SOMETHING OVER AND OVER AGAIN MAKES YOU  
3 COMFORTABLE WITH IT. IT'S AROUND ALL THE TIME, IT  
4 MUST BE TRUE IS A SURMISE.

5 Q. THE TRUTH EFFECT?

6 A. YES.

7 Q. LET ME JUMP BACK BRIEFLY TO THESE  
8 LIGHT SMOKERS IN THE FOCUS GROUP.

9 PUTTING ASIDE WHATEVER THE MEDICAL  
10 ASPECTS ARE, BECAUSE WE HAVE HEARD THAT BEFORE YOU  
11 EVER GOT THERE. PUT THAT ASIDE.

12 WHEN YOU HIT THEM OVER THE HEAD  
13 WITH, LOOK, DOCTORS SAY IT IS THE SAME, THERE'S NO  
14 DOUBT, IT'S BEEN PROVEN, AND AFTER DOING THAT, DID  
15 YOU HAVE RELUCTANT BUYERS?

16 A. VERY MUCH SO. VERY, VERY MUCH SO.

17 Q. NOW, THIS COMMERCIAL THAT YOU DID  
18 THAT YOU READ TO THE JURY, GIVEN TO THE CENTER FOR  
19 DISEASE CONTROL TO PLAY ON THE RADIO, IS THAT  
20 COMMERCIAL MEANT TO ACCOMPLISH A GOAL?

21 A. YES.

22 Q. WHEN YOU WERE PUTTING THAT  
23 COMMERCIAL TOGETHER WITH ALL OF YOUR BACKGROUND AND  
24 EXPERIENCE IN MARKETING, IN ORDER, IN YOUR VIEW, TO  
25 MAKE IT SELLABLE, DID YOU FEEL YOU HAD TO BACK OFF  
26 OF THE TRUTH OF THE MATTER IN ORDER TO HAVE PEOPLE  
27 LISTEN TO IT?

28 MR. LEITER: OBJECTION, ARGUMENTATIVE,

1 IRRELEVANT, MISSTATES TESTIMONY.

2 THE COURT: COULD WE SIDE BAR FOR JUST A  
3 SECOND.

4 WOULD YOU EXCUSE US. WE ARE GOING  
5 TO -- YOU STAY RIGHT THERE.

6 I AM GOING TO ASK THE LAWYERS TO  
7 JOIN ME, JUST OVER HERE.

8

9 (A DISCUSSION WAS HELD IN  
10 CHAMBERS, NOT REPORTED)

11

12 THE COURT: SOMETIMES THOSE ARE VERY  
13 HELPFUL. SOMETIMES I HAVE TO ASK THE LAWYERS WHERE  
14 ARE WE GOING AND I HAVE TO SATISFY MYSELF THAT WE  
15 ARE GOING IN A DIRECTION THAT'S RELEVANT.

16 COUNSEL. PLEASE.

17 Q BY MR. PIUZE: HOW MANY OF THESE  
18 FOCUS GROUPS DID YOU HAVE BEFORE YOU MADE THE  
19 COMMERCIAL?

20 A. I THINK SOMETHING ON THE ORDER OF  
21 SIX OR SOMETHING.

22 Q. IN TRYING TO CONVINCING PEOPLE IN THE  
23 FOCUS GROUP OF A MESSAGE THAT, WHATEVER MESSAGE YOU  
24 READ, THAT THE LIGHTS WERE JUST AS BAD AS THE  
25 REGULARS, DID ALL SIX FOCUS GROUPS RESIST THAT  
26 THOUGHT?

27 A. I THINK BY THE LAST ONE, WE WERE  
28 STARTING TO TOY WITH THE 15 AND 20. AND STARTING

1 TO -- I BELIEVE SO.

2 Q. LET'S FORGET THE 15 AND 20. I AM  
3 GOING FOR ONE TO ONE, THEY ARE JUST AS BAD, THE  
4 LIGHTS ARE JUST AS BAD AS THE REGULARS?

5 A. RIGHT.

6 Q. DID YOU GET RESISTANCE THROUGHOUT  
7 ALL THE GROUPS THAT YOU TRIED TO PLAY THAT MESSAGE  
8 TO?

9 A. WITH THAT MESSAGE, YES.

10 Q. REGARDLESS OF WHETHER IT'S TRUE  
11 THAT LIGHTS ARE JUST AS BAD AS REGULARS, LET'S PUT  
12 ASIDE THE MEDICAL TRUTH OF THAT, REGARDLESS OF  
13 WHETHER IT'S TRUE, IN TRYING TO DEVICE A MESSAGE  
14 FOR RADIO, PUBLIC SERVICE MESSAGE FOR RADIO THAT  
15 PEOPLE WOULD LISTEN TO, DID YOU FEEL YOU HAD TO  
16 BACK OFF OF WHAT YOU THOUGHT WAS THE TRUTH?

17 A. I'D LIKE TO ANSWER IT THIS WAY: I  
18 FELL BACK ON MY EXPERIENCE AND RESEARCH, IN  
19 PARTICULAR, WITH THE TOPIC OF EXTREMITY. I HAVE  
20 DONE RESEARCH LOOKING AT HOW SUCCESSFUL ADVERTISING  
21 IS WHEN IT'S EVEN MORE EXTREME, WHEN THE CLAIM IS  
22 MORE EXTREME OR LESS EXTREME. MY RESEARCH  
23 SUGGESTS, SUGGESTED TO ME, THAT WHEN THE MESSAGE IS  
24 PERCEIVED, WHETHER IT WAS ACTUALLY TRUE OR NOT,  
25 WHEN IT IS PERCEIVED AS BEING EXTREME, HIGHLY  
26 EXTREME, IT TENDS TO BE LESS EFFECTIVE.

27 AS AN EXAMPLE, IN EVERY DAY LIFE,  
28 THE PEOPLE MADE ME AWARE OF, PANASONIC SAYS IT'S

1 SLIGHTLY AHEAD OF ITS TIME. IT DOESN'T SAY IT IS  
2 WAY AHEAD OF ITS TIME.

3 WHEN A MESSAGE IS EXTREME, PEOPLE  
4 TEND TO COME BACK FROM IT.

5 I FELT, LOOKING AT THE RESPONSES TO  
6 THE FOCUS GROUPS, THAT PEOPLE WERE SAYING, THIS IS  
7 JUST TOO EXTREME FOR US TO BELIEVE. AND SO WE HAD  
8 TO DO SOMETHING TO GO BACK OFF OF THAT.

9 THE STUDY THAT I HAD DONE TALKED  
10 ABOUT A BRAND FOOD SUBSTANCE COMING EITHER FIRST OR  
11 FIFTH OR TWENTIETH IN THE TASTE TEST AMONG A  
12 HUNDRED. IT WAS A NUMBER. AND WHEN WE SAID FIRST,  
13 PEOPLE JUST DIDN'T BUY IT. WHEN WE SAID THIRD,  
14 THEY DID.

15 WELL, I FELL BACK ON THAT  
16 EXPERIENCE AND I SAID, IF ONE TO ONE DOESN'T WORK,  
17 AND 20 TO 20 DOESN'T WORK, LET'S GO TO 15 TO 20.

18 Q. NOW, I WANT TO JUST TRY TO MAKE  
19 THIS INTO A SLIGHTLY BROADER CONCEPT AND THEN BE  
20 DONE FOR THE MORNING.

21 DO YOU BELIEVE THAT IF A MESSAGE  
22 HAS BEEN REPEATED TO A CONSUMER, STARTING EARLY  
23 ON -- I AM GOING TO GIVE YOU A HYPOTHETICAL PERSON,  
24 ARE YOU READY FOR A HYPOTHETICAL PERSON?

25 A. UH-HUH, YES.

26 Q. TEN YEAR OLD KID WHO PICKS UP A  
27 BUTT TO SMOKE, WHO BECOMES A 13 YEAR OLD KID WHO  
28 STARTS SMOKING REGULARLY, EVERY DAY, MARLBOROS, WHO

1 IS A KID WHO LOOKS UP AND SEES HIMSELF AS THE GUY  
2 WHO SMOKES MARLBOROS AND IDENTIFIES STRONGLY WITH  
3 THAT. YOU GOT THAT?

4 A. UH-HUH.

5 Q. AND HERE'S IT AGAIN AND AGAIN AND  
6 AGAIN AND AGAIN, REPETITION. NOW, IF SOMEONE COMES  
7 ALONG, JUST LIKE YOU CAME ALONG TO YOUR FOCUS GROUP  
8 AND SAID, THESE ARE BAD, THESE LIGHTS ARE JUST AS  
9 BAD, YOU HAVE GOT RESISTANCE, DOES THIS KIND OF A  
10 PERSON WHO GETS THE REPETITION, THE MESSAGE, SMOKE  
11 THESE CIGARETTES, SMOKE THESE CIGARETTES, YOU WILL  
12 BE BIG AND STRONG AND TOUGH, AN ANCHOR ON YOUR HAND  
13 AND BE A COWBOY, IS THAT PERSON RESISTANT TO A  
14 MESSAGE WHICH IS, DON'T SMOKE, IT'S BAD FOR YOU?

15 MR. LEITER: OBJECTION, CALLS FOR  
16 SPECULATION AS TO AN INDIVIDUAL AND HOW THEY WOULD  
17 REACT.

18 THE COURT: OVERRULED.

19 YOU CAN TAKE HIM ON CROSS ON THAT.

20 THE WITNESS: I HAVE LOST YOUR QUESTION.

21 I THINK THAT WHEN YOU, FOR A  
22 DISPASSIONATE PERSON THAT HEARS A MESSAGE OVER AND  
23 OVER AGAIN, AND THAT'S WHEN YOU GET IN A LOT OF  
24 THESE EXPERIMENTS. THESE ARE NOT COMMITTED  
25 SMOKERS, ADDICTED SMOKERS. THIS IS JUST SOMEBODY  
26 WALKING INTO AN EXPERIMENTAL LAB OR, IF YOU REPEAT  
27 SOMETHING OVER AND OVER AGAIN, ESPECIALLY WHEN THEY  
28 ARE PREOCCUPIED WITH SOMETHING ELSE, IF THEY ARE

1 NOT -- EACH TIME THEY ARE NOT SAYING, LET ME THINK  
2 THIS THROUGH, LET ME THINK THIS THROUGH, DO I AGREE  
3 OR DISAGREE. YOU.

4 DISARM THIS A LOW KEY MESSAGE, IN  
5 THE BACKGROUND. YOU DON'T APPROACH IT EACH TIME,  
6 YOU DON'T HAVE TIME, YOU GOT TO LIVE YOUR LIFE,  
7 COUNTER-ARGUING SAYING, I DON'T BELIEVE THAT, I  
8 DON'T BELIEVE THAT. THIS IS A BACKGROUND. IT'S  
9 REPEATED OVER AND OVER AGAIN. BUT IT'S REPEATED IN  
10 THE BACKGROUND. IT'S A SUBTLE WHISPER. AND IT'S  
11 OVER AND OVER AND OVER AGAIN, SO THAT YOU ARE NOT  
12 ARGUING AGAINST IT BUT YOU ARE HEARING IT VAGUELY  
13 IN THE BACKGROUND.

14 WELL, BY THE TIME YOU GET TO  
15 SOMEBODY SAYING, NO, NO, NO, YOU ARE NOT A  
16 DISPASSIONATE PERSON THAT COMES INTO A LAB FOR A  
17 ONE DAY SHOT. YOU ARE SOMEBODY, OVER A LIFETIME,  
18 WHO IS NOT COMMITTED AND ADDICTED. YOU HAVE EVERY  
19 REASON IN THE WORLD TO SAY NO, SHOVE OFF.

20 Q. SORT OF IN A SIMILAR WAY THAT YOUR  
21 FOCUS GROUP PEOPLE TOLD YOU, NO?

22 A. ABSOLUTELY. THIS IS UNCOMFORTABLE,  
23 WRONG, JUST DIDN'T FIT WITH THEIR WAY OF  
24 UNDERSTANDING THE WORLD.

25 Q. OKAY, THAT'S WHAT I WANTED TO GET.  
26 YOUR HONOR, THANK YOU. I AM DONE  
27 FOR THE MORNING.

28 THE COURT: ALL RIGHT, LADIES AND

1 GENTLEMEN, WE WILL TAKE A BREAK.

2 IT'S NOW JUST A LITTLE BIT BEFORE  
3 NOON. WE WILL SEE YOU AT 1:30 THIS AFTERNOON.

4 TRY TO BE PROMPT, PLEASE.

5 JUROR NUMBER 10, MS. PUERTA AND  
6 JUROR NUMBER 9, MR. MRRIS, IF YOU COULD STAY WITH  
7 US JUST A SECOND LET ME ANSWER YOUR ISSUES.

8

9 (THE FOLLOWING PROCEEDINGS  
10 WERE HELD IN OPEN COURT OUT  
11 OF THE PRESENCE OF THE JURY:)

12

13 THE COURT: OKAY, WE ARE BACK ON THE  
14 RECORD.

15 MR. MRRIS, AND WE ARE OUTSIDE THE  
16 PRESENCE OF THE JURY, EXCEPT FOR MR. MRRIS AND  
17 MS. PUERTA.

18 MR. MRRIS, YOU HAVE AN INTERVIEW  
19 YOU'D LIKE TO DO BUT YOU SAID IT'S POSSIBLE YOU  
20 COULD DO IT ON MONDAY MORNING?

21 JUROR MRRIS: THE GENTLEMAN TOLD ME THAT  
22 THEY ONLY DO INTERVIEWS ON TUESDAY AND WEDNESDAYS.  
23 I DID INDICATE TO HIM THAT WE ARE FREE MONDAY  
24 MORNING AND HE TOLD ME IF YOU COULD NOT ACCOMMODATE  
25 THAT THEY COULD MAKE OTHER ARRANGEMENTS.

26 THE COURT: PLEASE. THANK HIM SO MUCH  
27 FOR THAT ACCOMMODATION AND TELL HIM THAT I WOULD  
28 PERSONALLY THANK HIM FOR THAT. SO YOU WOULD BE

1 DOING THE INTERVIEW NEXT MONDAY MORNING?

2 JUROR MORRIS: YES.

3 THE COURT: WHAT TIME DO YOU THINK IT  
4 WILL BE OVER?

5 JUROR MORRIS: I AM HOPING, IF I CAN GET  
6 THE APPOINTMENT FOR ABOUT 9:00, HOPEFULLY IT SHOULD  
7 BE OVER BY 10:00.

8 THE COURT: OKAY. GOOD. SO WE WON'T BE  
9 IN SESSION ON THE MONDAY MORNING AND WE WILL JUST  
10 SEE YOU AT 1:30 IN THE AFTERNOON ON MONDAY.

11 JUROR MORRIS: RIGHT.

12 THE COURT: ALSO, AS TO THE OTHER MATTER,  
13 I HAVE ASKED MY SUPERVISING JUDGE TO TAKE A LOOK  
14 AND SEE IF THEY CAN'T GET IT POSTPONED, THAT  
15 PROCEEDING, UNTIL THIS IS OVER. FAIR ENOUGH?

16 JUROR MORRIS: THAT'S FINE.

17 THE COURT: THANK YOU, SIR.

18 GO ON TO LUNCH.

19 AM I PRONOUNCING YOUR LAST NAME  
20 RIGHT?

21 JUROR PUERTA: PUERTA.

22 THE COURT: YES, I GOT IT RIGHT. GOOD.

23 THIS IS A SITUATION WHERE YOU ARE  
24 INVOLVED IN AN ARBITRATION AND YOU WANT TO HAVE  
25 FULL PARTICIPATION IN THAT. I CAN ABSOLUTELY  
26 UNDERSTAND THAT.

27 WOULD YOU PLEASE ASK YOUR LAWYER TO  
28 GIVE ME A CALL.

1 JUROR PUERTA: OKAY.

2 THE COURT: AND LET ME DISCUSS SOME  
3 ALTERNATIVES OR SOMETHING.

4 JUROR PUERTA: SURE.

5 THE COURT: SO THAT THINGS CAN BE  
6 ARRANGED SO THAT IT WON'T EFFECT IT ONE WAY OR  
7 ANOTHER, SO WE CAN HAVE YOUR FULL ATTENTION.

8 JUROR PUERTA: CERTAINLY.

9 THE COURT: OKAY. LET ME GIVE YOU A  
10 TELEPHONE -- HAVE HIM OR HER CALL THIS TELEPHONE  
11 NUMBER RIGHT HERE, AND I WILL JUST TELL MY CLERK,  
12 AS SOON AS YOU GET THIS CALL, WOULD YOU JUST PLEASE  
13 PUT HIM ON HOLD AND SLIP ME A NOTE SO I KNOW IT HAS  
14 COME IN. BECAUSE I WANT TO DEAL WITH IT  
15 IMMEDIATELY SO IT'S NO LONGER A PROBLEM FOR YOU.

16 JUROR PUERTA: SURE.

17 THE COURT: FAIR ENOUGH?

18 JUROR PUERTA: I REALLY APPRECIATE THAT.

19

20 (AT 12 NOON, THE LUNCH  
21 RECESS WAS TAKEN TO  
22 1:30 P.M. OF THE SAME DAY.)

23

24

25

26

27

28