

IN THE SUPREME COURT OF THE STATE OF NEVADA

SANDRA CAMACHO; AND ANTHONY
CAMACHO,

Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT COURT OF
THE STATE OF NEVADA, IN AND FOR THE
COUNTY OF CLARK; AND THE HONORABLE
NADIA KRALL, DISTRICT JUDGE,

Respondents,

and

PHILIP MORRIS USA, INC., a foreign
corporation; R.J. REYNOLDS TOBACCO
COMPANY, a foreign corporation, individually,
and as successor-by-merger to LORILLARD
TOBACCO COMPANY and as successor-in-
interest to the United States tobacco business of
BROWN & WILLIAMSON TOBACCO
CORPORATION, which is the successor-by-
merger to THE AMERICAN TOBACCO
COMPANY; LIGGETT GROUP, LLC., a foreign
corporation; and ASM NATIONWIDE
CORPORATION d/b/a SILVERADO SMOKES &
CIGARS, a domestic corporation; LV SINGHS
NC. d/b/a SMOKES & VAPORS, a domestic
corporation,

Real Parties in Interest.

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*PETITIONERS' APPENDIX
VOLUME 21 (Nos. 3264-3434)*

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DISTRICT COURT

CLARK COUNTY, NEVADA

TIMOTHY A. GEIST, individually and as
administrator and personal
representative of the estate of VERNA
LEE GEIST,

Plaintiff,

vs.

Case No.

A-19-807653-C

PHILIP MORRIS USA INC., a foreign
corporation; R. J. REYNOLDS TOBACCO
COMPANY, a foreign corporation,
individually and as successor-by-merger
to LORILLARD TOBACCO COMPANY and as
successor-in-interest to the United
States tobacco business of BROWN &
WILLIAMSON TOBACCO CORPORATION, which
is the successor-by-merger to THE
AMERICAN TOBACCO COMPANY; LIGGETT
GROUP, LLC, a foreign corporation;
C-CIGARETTES CHEAPER, a Nevada limited
liability company; MARWAN MEDIATI d/b/a
C-CIGARETTES CHEAPER, a Nevada business
entity; CHRISTINE MEDIATI d/b/a
C-CIGARETTES CHEAPER, a Nevada business
entity; DOES I-X; and ROE BUSINESS
ENTITIES XI-XX, inclusive,

Defendants.

DEPOSITION OF LOUIS M. KYRIAKOUIDES, PH.D.

[via web videoconference]

Taken on Tuesday, November 30, 2021
by a Certified Court Reporter
At 7:00 a.m. PST

Reported by: Ellen A. Goldstein, Nevada CCR 829

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1 TUESDAY, NOVEMBER 30, 2021 - LAS VEGAS, NEVADA

2 7:00 A.M. PST

3

4 THE REPORTER: Good morning. My name is Ellen
5 Goldstein. I am a Nevada Certified Court Reporter here
6 on behalf of Oasis Reporting Services. My CCR number is
7 829.

8 Today's date is November 30, 2021. The time is
9 approximately 7:00 a.m.

10 This is the deposition of Louis Kyriakoudes,
11 Ph.D. in the matter of "Timothy A. Geist versus Philip
12 Morris USA Inc., et al.," venued in the District Court of
13 the State of Nevada for the County of Clark, Case
14 No. A-19-807653-C.

15 At this time I will ask counsel to identify
16 themselves, state whom they represent, and agree on the
17 record that there is no objection to this deposition
18 officer administering a binding oath to the witness
19 through remote videoconferencing. If no objection is
20 stated, we will proceed forward, with the agreement of
21 all counsel. We will begin appearances with the noticing
22 attorney.

23 MR. GREEN: Good morning. This is Philip Green
24 appearing on behalf of Defendant R. J. Reynolds Tobacco
25 Company, and I have no objection to proceeding in the

1 manner described by Miss Goldstein.

2 MR. TEPIKIAN: Bruce Tepikian, T-e-p-i-k-i-a-n, from
3 Shook Hardy & Bacon on behalf of Philip Morris. No
4 objection.

5 MS. RUIZ: Good morning. This is Maria Ruiz for
6 Liggett Group, LLC. No objection.

7 MR. REYES: Good morning. This is Nick Reyes. I
8 represent the plaintiff in this case, and we have no
9 objection.

10

11 LOUIS M. KYRIAKOUDDES, PH.D.,
12 called as a witness by and on behalf of the defendants,
13 was duly sworn by the certified court reporter and
14 testified as follows:

15

16

EXAMINATION

17 BY MR. GREEN:

18 Q Good morning, Dr. Kyriakoudes. It's good to
19 see you.

20 A Good morning.

21 Q Are you on campus today?

22 A I am on campus today. You can see the hazy
23 mess of my office in the background.

24 Q I thought I recognized that.

25 Well, you understand that we are here to take

1 your deposition in the Geist case, G-e-i-s-t; right?

2 A That's correct, I understand that.

3 Q And you have been retained by the plaintiff to
4 serve as an expert witness in this case?

5 A That's correct.

6 Q Do you have any sort of agreement with counsel
7 for the plaintiff as to what your compensation will be in
8 this case?

9 A Yes. It's the same compensation arrangement
10 that I have, and I've testified to frequently, with all
11 clients and both plaintiffs and defendants, and I can
12 explain that if you want.

13 Q Well, I think I can just ask a few questions
14 and knock it out fairly quickly if it's the same
15 arrangement.

16 First of all, did you receive a retainer
17 of \$5,000 from counsel for the plaintiff for this case?

18 A I did.

19 Q Okay. And I believe you testified before that
20 you charge \$550 an hour for record review; for example,
21 review of depositions or other records in the case?

22 A That's correct, and the composition of any
23 expert-report material. And just for clarification, the
24 retainer is 10 hours for \$550 -- I'm sorry, I misspoke --
25 \$5,500. I'm not sure what you had asked me.

1 Q Okay. The retainer is \$5,500?

2 A Right, ten hours that I bill against.

3 Q And you of course charge for a deposition a
4 flat fee of \$4,400; right?

5 A That's correct.

6 Q And were you able to confirm that you received
7 payment for that yesterday?

8 A I did.

9 Q Very good. And in terms of -- first of all,
10 are there any other financial terms for your compensation
11 for your work in this case?

12 A No, no. Those are the terms and it's
13 consistent with the terms I've done, you know, for
14 example, in the last year and have testified to in other
15 depositions and at trial.

16 Q Yeah. So if you testify at trial in this case,
17 you'll charge again a flat fee of \$4,400 per day?

18 A That's correct.

19 Q And did you actually review the depositions in
20 this case?

21 A I did. I reviewed the deposition -- two-volume
22 deposition -- of Mr. Timothy Geist. I also reviewed a
23 set of Interrogatories.

24 Q Did you review any other case-specific
25 materials in this case?

1 A No. Two -- Timothy Geist, a two-volume
2 edition, and Interrogatories.

3 Q And did you review every page of the two
4 volumes of depositions of Mr. Geist?

5 A I did. I read the entire thing. I missed one
6 thing, which I can state, which I discovered on my
7 re-review preparing for this deposition.

8 Q I'll ask you about that in just a bit.

9 A Yeah, we'll get to that. I'll throw it in at
10 the appropriate time.

11 Q Sure. In terms of the total amount of time
12 that you've spent reviewing the depositions, the
13 Interrogatories, and of course writing your report in
14 this case, what is the total amount of time you've spent
15 thus far?

16 A Right. I wrote a case-specific report --
17 reviewed the documents and wrote a case-specific report.
18 That took me 8 hours; and then I wrote an amended or
19 updated report having read the second volume, which was
20 made available to me later, and reading that and writing
21 it took another 3 hours. So 11 hours would be the time
22 I've spent on this.

23 Q Okay. So in terms of the time you spent thus
24 far, you've accrued 11 total hours at \$550 an hour. So
25 that's around a little more than \$6,000; right?

1 A Right.

2 Q And in this deposition you're prepared to
3 express the opinions that you're going to testify about
4 at trial in this case?

5 A Yes, I am.

6 Q And of course if I ask you any question that
7 you don't understand and it needs to be rephrased, let me
8 know and we'll do that as we've done before, okay?

9 A Yes, all right.

10 Q Of course when we're talking about your
11 testimony, you're here in this case to testify as an
12 historian; right?

13 A That's correct.

14 Q You're not here to testify as a medical doctor,
15 a psychiatrist, psychologist, addiction specialist, or a
16 lawyer, are you?

17 A That's correct.

18 Q And you're not here to testify as a biologist,
19 chemist or engineer; right?

20 A That's correct, just, you know, the history.
21 Now, some of those subjects involve historical
22 perspectives, but as those disciplines are practiced
23 today, no.

24 Q Right. And when we're talking about those
25 disciplines, you don't have -- you don't consider

1 yourself an expert in biology, chemistry or engineering,
2 do you?

3 A That's correct. I've studied the history of
4 certain aspects of biology and certain aspects of the
5 history of engineering in specific situations but not as
6 disciplines or practice today.

7 Q Okay. You will not be offering any opinions in
8 this case that Mrs. Geist was addicted to cigarette
9 smoke?

10 A Well, she smoked a lot, but I'm not going to
11 offer a medical diagnosis of her addiction. I can
12 testify as to what she smoked as in the historical
13 record, but there are specialists in that practice, that
14 diagnostic area.

15 Q Exactly.

16 A And I'm not that person.

17 Q That's what I was going to ask.

18 You're not one of the specialists and you're
19 not going to provide an expert opinion that Miss Geist
20 was addicted to smoking, are you?

21 A No.

22 Q You're also not going to be offering any
23 opinions in this case as to the cause of any of
24 Mrs. Geist's medical conditions, are you?

25 A I'm not going to offer any diagnostic testimony

1 or opinions on the causes of her cancer and other
2 conditions.

3 Q And you of course have reviewed your
4 expert-witness disclosures in this case; right?

5 A Yes.

6 Q Have you formed any new opinions with respect
7 to the topics identified in your expert-witness
8 disclosure that you have not testified to at trial in the
9 past?

10 A Well, as they pertain to the tobacco industry
11 and its actions and the broader role of the cigarette in
12 American life, no; but as indicated in my Expert Report,
13 I do have some case-specific opinions. But I understand
14 your question to be what sometimes is called the generic
15 views and, no, my opinions in that area are consistent
16 with prior testimony. I have no new opinions.

17 Q Okay, very good, and that's a fair distinction.
18 Setting aside the case-specific opinions that
19 you have in this case, do you have any new opinions that
20 you have not testified about previously at trial that
21 aren't related to your case-specific opinions?

22 A No, no. My testimony will be consistent with
23 prior testimony.

24 Q And will you be testifying about any documents
25 that you've not testified previously to at trial?

1 A Well, that one is hard to say. I've not
2 consulted with the plaintiff's attorney about the direct
3 examination. So, you know, we show a lot of documents.
4 In my testimony in my last trial I was on the stand four
5 full days, for example; and I don't know the exact number
6 of documents we showed, but we showed over a hundred
7 documents to the jury. So it's difficult for me to
8 predict what the plaintiff's counsel will want to discuss
9 in terms of documents 'cause there are so many.

10 I would, though, encourage you to review the
11 Expert Report that I submitted in this case and those
12 documents that are cited in that Expert Report plus what
13 I've testified at trial that might not be reflected in
14 that report, 'cause, you know, I mean how long can I make
15 the report? It's already long enough. That would I
16 think be a good baseline, but -- and again I'm trying to
17 be up front and as responsive as possible, but there may
18 be a document that the plaintiff wants to show me that --
19 and comment on -- that I have not previously testified
20 about.

21 Q Let me dive into that, because you of course
22 recognize that we want to know -- and this is the process
23 for depositions -- we want to know what you're going to
24 testify about at trial. And so with that understanding,
25 if I ask you do you, Dr. Kyriakouides, sitting here right

1 now have any intention at present to testify about any
2 documents that you've not previously discussed at trial,
3 sitting here right now you don't have that intention;
4 right?

5 A That's correct, and that's a different question
6 you asked me. And my answer to that would be really what
7 I just said, which is, you know, my recent prior
8 testimony -- say, for example, earlier in November I
9 testified in a case called "Morse versus
10 R. J. Reynolds" -- M-o-r-s-e v. R. J. Reynolds -- in
11 Broward County, Florida. That plus what's in my Expert
12 Report would -- as I sit here, you know -- that would be
13 the universe that I intend to talk about right now.

14 Q We want to discuss any new documents that you
15 intend to talk about at trial. So if that intention
16 changes, if you plan to talk about any new documents that
17 you've not testified about at trial, will you please
18 alert counsel for the plaintiff, who will then alert us,
19 so that we can have an opportunity to question you at
20 deposition about those documents?

21 A Yes, and I will make myself available happily.

22 Q Great. Thank you very much.

23 Are you researching any new topics on the -- as
24 it relates to the issues that you'll testify to at trial?

25 A No. Consistent with my prior work.

1 Q Okay. I'm putting in the chat box what we'll
2 mark as Exhibit No. 1, and I'll ask you to confirm that
3 Exhibit No. 1 is the notice for your deposition here
4 today.

5 A Yes, that's correct.

6 Q All right. And of course Schedule A, as you're
7 well familiar, has the request for you to bring documents
8 with you; right?

9 A That's correct.

10 Q And --

11 A I'm looking at it right now. That's why I'm
12 turning my head. I have two screens, one on the left,
13 and I'll put the exhibits up on the screen to my left,
14 just so you know when my head turns.

15 Q Thank you very much.

16 And I understand that -- try to find this --
17 that you provided a document that has an updated document
18 of your testimony, your testimony list; right?

19 A Yeah. I'm a little behind in updating that,
20 but that's the most current version that I have.

21 Q Okay. We'll put that in the chat box and mark
22 it as Exhibit No. 2 and ask you to confirm that what
23 we've marked as Exhibit No. 2 --

24 A Yes.

25 Q -- is your list of your trial and deposition

1 testimony.

2 A That's correct.

3 Q That's the most current list; right?

4 A It's the most current list I have. I've
5 testified in two cases this fall that I've not added to
6 that list, I believe.

7 Q One of those is the Ledo case?

8 A Yes.

9 Q And the other is the Morse case that you were
10 just referencing?

11 A That's correct.

12 Q Okay. And then we'll mark as Exhibit No. 3
13 your CV you just provided to us ahead of time, if you'll
14 open that up and confirm that the CV that we've marked as
15 Exhibit 3 is the most current CV that you have.

16 A Yes, that's correct.

17 Q Okay. Do you have any email correspondence
18 with plaintiff's counsel or anyone else as it relates to
19 this case?

20 A Mr. Reyes informed me that he had collected the
21 email correspondence and would be providing that.

22 Q Okay.

23 A I've only communicated with Mr. Reyes on this
24 matter and generally logistical matters.

25 MR. GREEN: Nick, has that been produced? I haven't

1 seen that.

2 MR. REYES: It hasn't. I'll produce it.

3 MR. GREEN: Thank you.

4 Q And then of course we have -- well, beyond
5 correspondence, your CV, and your testimony list, are
6 there any other documents that are responsive to this
7 Schedule A per your Notice of Deposition, Doctor?

8 A No.

9 Q You didn't take any notes on the depositions or
10 any other materials you reviewed?

11 A No. I read the depositions. My practice is to
12 scribble a line -- page and line number on a Post-it, and
13 then as I go through the Post-its after I review the
14 depo, I throw them away and that's the material I've
15 included in the Expert Report. So in essence the Expert
16 Report provides -- those are the notes, and in the report
17 I do quote from Mr. Geist's, Timothy Geist's, deposition.

18 Q Yes, sir. And when you were taking -- when
19 you're scribbling down on the Post-it notes, are you
20 writing anything other than a page and line notes on
21 there?

22 A No. Just to know, you know, where to go to
23 when I write the case-specific portion of the report.

24 Q Okay. We've put as Exhibit No. 4, marked as
25 Exhibit No. 4, the expert disclosure. I put it in the

1 chat box and I'll ask you to confirm that Exhibit 4 is
2 the expert disclosure for you, which starts on page 7.
3 It's dated October the 15th of 2021.

4 A Yes, yes. This is the report -- I mean the
5 disclosure. Pardon me.

6 Q Then I'll mark as Exhibit No. 5 and ask you to
7 confirm that Exhibit 5 is the supplemental expert
8 disclosure that was filed last night.

9 MR. REYES: Or in the morning.

10 MR. GREEN: Yes, yesterday morning. I'm sorry.

11 THE WITNESS: Yes.

12 MR. GREEN: Okay.

13 Q And was there a reason for the supplemental
14 expert disclosure that was filed yesterday? Are there
15 any differences that you're aware of?

16 A No. I don't know -- this looks like it's -- I
17 mean as I review it, it seems to be the same as the first
18 disclosure. I'd have to put them, you know, next to each
19 other to compare them word by word.

20 MR. REYES: Is the exhibit not attached to that?

21 MR. GREEN: The report itself?

22 MR. REYES: Yeah. There wasn't an exhibit attached
23 to it?

24 MR. GREEN: I'll go through that.

25 MR. REYES: Got it, okay.

1 THE WITNESS: Okay. So I guess really to clarify
2 things, Mr. Green, when I received the second volume of
3 Mr. Geist's deposition, which was not available to me and
4 I did not consult for the first Expert Report, I reviewed
5 that and, you know, added I think two or three pages,
6 very brief addendum, you know, so that my opinions based
7 on that particular document could be known to you.

8 MR. GREEN: Okay.

9 Q And you're talking about your report that you
10 wrote for this case, right, which is a separate document
11 in the disclosure?

12 A That's correct, yes.

13 Q We'll mark that and go through it.

14 A Okay.

15 Q And in terms of your general disclosure that we
16 see here that was filed and supplemented yesterday, is
17 that a fair description of the topics that you're going
18 to testify about at the trial of this case?

19 A Yes.

20 Q Okay. And if we look at -- looking at
21 Exhibit 5, which is the supplemental report, on page --

22 A That would begin on page 7.

23 Q Yep. I'm looking at page 8.

24 A Okay.

25 Q And you see the lines are numbered; right?

1 A Yes.

2 Q And as it goes through, in the first half of
3 the page, the general topics you're going to testify
4 about, on line 7 it says that you're going to talk about
5 the likely historical impact of different behavior by the
6 cigarette industry with respect to the foregoing issues,
7 including health impacts. Did I read that correctly?

8 A Yes.

9 Q What do you anticipate testifying about in
10 terms of the likely historical impact of different
11 behavior by the cigarette industry with respect to the
12 general issues that you're going to testify about at
13 trial?

14 A Yes. And this is consistent with prior
15 testimony, essentially two broad issues: You know, what
16 if the cigarette manufacturers had not conspired, had
17 made different choices in history in terms of their
18 response to the smoking/health debate, if they had made
19 different choices in the development of different
20 products, you know? And I've testified about that; for
21 example, an R. J. Reynolds heat/not burn technology.

22 Q Okay. And you said there were two issues. Was
23 that the first or was that both of them?

24 A That's both of them, one being if the industry
25 had made different choices -- say, for example, in 1953

1 December and later -- and if they had made different
2 choices in regards to alternative products.

3 Q Okay. Have you yourself done any studies or
4 performed research to support your opinions as to
5 counterfactuals of what might have happened had the
6 tobacco companies made different choices?

7 A Yes.

8 Q And what studies have you done and what
9 research have you done?

10 A Well, I have researched extensively all manner
11 of historical data, historical sources relevant to
12 understanding the public's knowledge at different points
13 in historical time about cigarettes and how they behave,
14 how they operate, and what their expectations were at
15 points in historical time, and that is relevant to the
16 question that you asked me. I've also studied carefully
17 the marketing and advertising and promotion of the
18 industry's products, including alternative products,
19 noncombustible products, in the historical record. So
20 those would be the studies I've done.

21 Q Let me drill down on this.

22 On the first issue, what are you going to tell
23 the jury in terms of your opinions as to what would have
24 happened if tobacco companies had made different choices
25 historically in response to the smoking and health

1 debate?

2 A Yeah, well, I'll have to break that down into
3 parts to answer your question.

4 The first part is what were the options
5 available to the industry, and those options are not ones
6 that I have considered or invented but, you know, what
7 were the viable opinions that were actually before the
8 industry at critical junctures in time; say, for example,
9 in 1953 and again maybe in 1958 when they created the
10 Tobacco Institute, and 1964 in their response to the
11 surgeon general's report. So that's the first part, and
12 I would explain those options and the decision making
13 that was going on, explain the actual decisions.

14 And while I can't -- you know, history is not
15 an experiment where you can change the variables like a
16 test-tube experiment and see how it works out. We don't
17 have the ability to rerun history, so to speak, at the
18 lab bench; but we can engage in an exercise, well, what
19 if the industry had, you know, shared what it knew in
20 1953, for example, about cancer causation or what if the
21 cigarette manufacturers had accepted, worked with more
22 honestly -- or honestly -- with the surgeon general, had
23 shared what they knew about the addictiveness of nicotine
24 at the time and accepted the findings of the surgeon
25 general's report, had shared what they knew internally?

1 What would the history of smoking and health have looked
2 like? And we can't know for sure, but it would have been
3 quite different and we can turn to actual evidence to
4 assess it.

5 So, for example, in 1964 and again in 1966, in
6 a series of Health Education and Welfare Polls -- the
7 U.S. Department of Health Education and Welfare --
8 essentially what's come to be known as the "Adult Use of
9 Tobacco Survey," one of the questions is, you know, will
10 people believe that cigarettes are harmful when the
11 tobacco industry admits it or accepts it? I forget the
12 exact wording. I cited it in my report. And you get
13 like two-thirds of women and about two-thirds of men,
14 just a little bit slightly lower response from men,
15 agreeing with that statement, that people will accept it
16 when the tobacco industry accepts the findings.

17 And so that would be an example of, you know,
18 we can say that there would have been a different
19 consumer expectation, a different understanding among the
20 smoking public if the industry had chosen not to conceal,
21 not to conspire, not to lie, but instead chosen to tell
22 the truth. That would be an example.

23 Q Okay. So you would have different consumer
24 expectations if tobacco companies admit that smoking can
25 cause serious diseases, including cancer, and smoking can

1 be addictive; right?

2 A The history. At these particular points in
3 history, that would be the counterfactual I would engage
4 in. You know, there are critical junctures where the
5 smoking and health debate presents the industry with
6 options for which they can choose to act; and I would
7 focus -- for me at least, I would focus on 1953, 1958
8 with the creation of the Tobacco Institute, 1964 with the
9 first surgeon general's report on smoking and health.

10 Later surgeon general's reports offer an
11 opportunity to choose different courses of action; and in
12 particular the 1988 surgeon general's report also
13 involves a choice of a different action and, you know,
14 what those actions were, to not just admit but to fully
15 come clean and make an admission and inform that
16 admission with the same energy, enthusiasm and resources
17 that it supplied to the advertising, promotion and
18 marketing of its products.

19 Q What would the consumer expectations be in a
20 circumstance where any tobacco company admits that
21 smoking can cause serious diseases, including cancer?

22 A Well, that admission is a first step of
23 changing consumer expectations. The next step is for the
24 cigarette manufacturers to disseminate that information.
25 I mean they could make an admission that could be buried,

1 for example, in a publication. It can be buried, you
2 know, deep in Congressional testimony or it can be buried
3 in a deposition, for example. There are examples of that
4 in the historical record. But that has to be widely
5 disseminated and shared with the public in a way that
6 would have the same impact as the advertising, marketing,
7 and promotion of the cigarettes, which doesn't contain
8 that admission. But if you did have that situation, that
9 would I think have a significant impact on consumer
10 expectations in history.

11 Q What would the consumer expectations be as it
12 relates to cigarette smoking in a circumstance where
13 tobacco companies admit that smoking causes very serious
14 diseases, including cancer? What would the expectation
15 be?

16 A Yeah. If the industry made the admissions with
17 the publicity and resources that I've described in my
18 previous answer and if those admissions were that "Our
19 products are addictive, that the addictiveness of our
20 products leads directly to compulsive use and deadly
21 disease and serious health concerns in 70 percent of
22 long-time users of our product, and that those include
23 lung cancer, COPD and a host of other conditions, and
24 that our products are that dangerous," you know, if the
25 industry actually -- which they haven't done, I might

1 add -- actually informed the public of how dangerous
2 their product was, that would change the consumer
3 expectation, especially if they did it with the kinds of
4 resources that they have historically used to promote the
5 use of the product.

6 Q Part of -- one thing that shapes consumer
7 expectations, by the way, is messaging from scientists
8 and public-health officials; right?

9 A That's correct. That's one aspect of it in
10 terms of knowledge about cigarettes, and that's in the
11 historical record and I've testified to that frequently.

12 Q Okay. And so let me go back. We got
13 sidetracked a little bit.

14 On the issue of what you will testify about in
15 terms of what if tobacco companies had made different
16 choices with respect to the response to the smoking and
17 health debate, you're not able to say exactly what would
18 have happened, right, because that would be speculation?

19 A It would be, yeah. I mean if I did testify to
20 it, I'd have to say it's speculation, you know; and there
21 are degrees of speculation and I was trying to express
22 that in my previous answer --

23 Q Right.

24 A -- at the beginning of this line of questioning
25 to be cautious about what I can say.

1 Q It would be similar to what we're dealing with
2 with COVID; right? I mean you wouldn't be able to say
3 how many fewer deaths there would be from COVID if only
4 China had been up front and transparent about the origins
5 or how widespread the disease was in the beginning;
6 right? You wouldn't be able to say that?

7 A Yeah, I've not studied that issue. You know, I
8 don't know any more about that than any other person who
9 reads the newspaper and keeps up with current events. So
10 I don't -- you know, that's not an area that I'm expert
11 in.

12 Q Right, and it would be speculation anyhow, just
13 like if you were speculating as to how many fewer COVID
14 deaths you would have had if you'd had a vaccine a few
15 months earlier than we had it; right?

16 A Right, but the difference between your analogy
17 and -- of COVID -- and what I looked at in the historical
18 record for smoking is that we have a really broad and
19 deep historical record of what actually happened with the
20 history of smoking in the United States. So, for
21 example, you could come up with a series of alternative
22 scenarios -- I've never testified to this, but I've
23 looked into this in my own research -- where you can look
24 at the shift in the decline of smoking prevalence, you
25 know, with peak sales in 1982, and say, well, if there

1 had been different information available, would that peak
2 have happened at an earlier point in time? And if you
3 move back that peak in time and move back that decline of
4 smoking prevalence, let's say from 1982 to 1962, move it
5 back ten years, then you can actually calculate a figure
6 that estimates -- and it's an estimate -- of lives that
7 would not have been lost due to lower smoking prevalence.
8 So there is -- what I'm saying is there is the ability to
9 make some estimates, and again they're just estimates, of
10 less loss of life if the decline of combustible
11 cigarettes had happened sooner.

12 Q How many lives -- what is the number in terms
13 of lives that are impacted under that analysis?

14 A Well, you know, the peer-reviewed literature
15 indicates about -- I believe it's one case of lung cancer
16 for every million cigarettes smoked. So with each
17 million reduction of cigarettes in use in a population,
18 you know, that's -- I believe that's the figure; I'm
19 drawing upon memory here -- that's, you know, the
20 reduction in lung-cancer diagnoses. That would be one
21 example. I'd have to refresh my recollection on -- you
22 know, for other diseases.

23 But, you know, you can estimate at the
24 population level. This is a historical epidemiology and
25 historical demography analytic of, you know, the number

1 of cigarettes smoked and the number of deaths.

2 Q There are people who are going to smoke
3 regardless of what tobacco companies say or do; right?

4 A Perhaps on the margins.

5 Q The margins? I mean how many people smoke
6 today?

7 A Our national smoking prevalence is 14 and
8 change, 14 percent and a decimal number, a little bit
9 over 14 percent.

10 Q Okay. And the second issue you identified is
11 everything that you're going to testify about as it
12 relates to what would have happened if tobacco companies
13 had made different choices with respect to alternative
14 products.

15 A Yes. What's the question? I mean, yes, that's
16 the second part of it. I'm not sure what you're asking
17 me.

18 Q Give me all of your opinions as it relates to
19 that issue and the bases for your opinions, please.

20 A Yeah, well, this would be something that I
21 brought up in two of the trials that I testified in this
22 year, one called "Spurlock versus R. J. Reynolds" and the
23 other called "Morse," M-o-r-s-e, "versus R. J. Reynolds,"
24 and that is the history of the Premier cigarette, which
25 is a heat/not-burn technology. Today the noncombustible

1 nicotine-delivery product category is a large category.
2 Cigarette manufacturers have explicitly identified this
3 as the future of the industry. In fact Philip Morris
4 International has run a series of advocacy full-page ads
5 in the Wall Street Journal over the last few years
6 talking about a smoke-free future or "unsmoke our
7 future," which is the language they use. Now, these are
8 different products. I'm not going to offer a medical
9 opinion about the products, but they don't rely on
10 combustion technology.

11 We find earlier in the historical record, with
12 the British American Tobacco Company in the 1960s with
13 Project Ariel and with the rollout of the Premier
14 cigarette in the late 1980s, '89, that these types of
15 products do exist in the historical record and, as I've
16 testified many times and I give some examples, the
17 industry painted itself into a corner with a reduced-harm
18 product that could not honestly explain to the public how
19 it was a reduced-harm product because they didn't admit
20 that their regular products were deadly. So that would
21 be the testimony there, and it would be in keeping with
22 what I've testified about in the two cases that I
23 indicated to you at the beginning of my answer.

24 Q Okay. So it's essentially a historical
25 recitation of what happened with respect to the

1 development of different noncombustible products; right?

2 A That's correct. And again the counterfactual,
3 if you will, is simply the observation that I identified
4 that they had painted themselves into a corner.

5 Q How is that a counterfactual?

6 A Well, a counterfactual would have been, if the
7 industry had in fact been honest about its combustible
8 products and therefore allowing it to be honest with its
9 noncombustible nicotine-delivery products, you would have
10 had a different tobacco market at the time.

11 Q What would the tobacco market have been?

12 A Well, by telling people that they knew that
13 combustible cigarettes were deadly, that they caused
14 addiction, which directly caused compulsive use and
15 serious diseases along the lines that I talked about,
16 again something that the industry still doesn't admit.
17 So we're not in a position where these admissions have
18 been made. You know, they haven't admitted that they've
19 marketed to children and a whole series of other actions.

20 We could see a completely different history in
21 the 1990s -- again with Premier being issued in 1989 --
22 to the history of tobacco that would have given perhaps
23 more support for stricter regulation of combustible
24 cigarettes. What that would have looked like, you know,
25 I don't know, but certainly more regulation, with the

1 industry acting as a partner perhaps, that would have led
2 to the voluntary withdrawal of combustible cigarettes or,
3 if not withdrawal of combustible cigarettes from the
4 market, perhaps combustible cigarettes sold under very
5 strict conditions in which people were fully informed of
6 the outcomes of using that product.

7 So, you know, there are many different
8 scenarios. There may have been calls for, you know, help
9 with nicotine addiction and more research to improve
10 these noncombustible nicotine-delivery systems so that
11 they could help people transition to a safer use of
12 nicotine and then, beyond that, to free themselves of
13 nicotine addiction, which itself is an injury and harm.

14 Q You've listed a number of scenarios, and you're
15 essentially speculating that those scenarios could have
16 happened if only the companies had admitted that
17 combustible cigarettes cause cancer.

18 A Well, I was a little bit more precise on the
19 admissions, and I'll refer to the answer that I gave
20 without having to --

21 Q One of the things you said was if the companies
22 had only admitted that they marketed to youth. How does
23 that impact the issue you're talking about right now?

24 A Oh, a significant impact because it would have
25 provided more support for regulations on the advertising,

1 marketing and promotion of combustible cigarettes. For
2 example, in other nations -- so we can look at what's
3 happened in other nations.

4 You would have had more informative warning
5 labels, for example, support for that.

6 Possibly -- again this is all speculation --
7 you would have had stricter controls over the sale of
8 cigarettes to minors with stricter regulations and more
9 enforcement and more penalties.

10 You would have had a curtailment of tobacco
11 advertising where it could be seen by children. So, for
12 example, when a 16-year-old puts gasoline in the car that
13 he or she can now drive because they've gotten their
14 license, they won't see a "buy one, get one free"
15 Marlboro ad or a Camel Crush ad on top of the gas pump
16 or, when they walk inside to get a candy bar and a
17 Coca-Cola, they won't walk past a warren of point-of-sale
18 advertising messages.

19 In the United Kingdom, for example, cigarettes
20 are kept behind a curtain or in a closed cabinet and the
21 purchaser has to ask for the product by name, and then it
22 is retrieved and sold to the person, still legally sold,
23 but the tobacco power wall is not a part of, you know,
24 the retail environment in the United Kingdom.

25 So I agree with your point about this being

1 speculation. Alternative outcomes we can't know for
2 sure, but there is some value in using these
3 hypotheticals to understand what actually happened.

4 Q All right. But to the very end, I mean it all
5 is speculation because we don't know for sure whether any
6 of this would have happened and we've seen some of these
7 restrictions that you've talked about; right?

8 MR. REYES: Excuse me for one second.

9 Mr. Green, for the record, is there somebody
10 else in the room with you?

11 MR. GREEN: Excuse me?

12 MR. REYES: For the record, is there somebody else
13 in the room with you?

14 MR. GREEN: Mr. Fahlbusch, who is on here -- you see
15 right there -- is present but not appearing.

16 MR. REYES: Got it. Okay, thank you.

17 MR. GREEN: Yes, sir.

18 THE WITNESS: To answer your question, Mr. Green,
19 yes, it is a speculative exercise. It is a hypothetical
20 or counterfactual. Historians do engage in this as a way
21 to understand what actually happened. It's in that
22 regard an analytic exercise.

23 The most famous example of this would be Robert
24 Fogel, the eminent economic historian who actually won
25 the Nobel Prize in economics. Yay, economic historians,

1 three cheers for him. He had an early work in which he
2 wrote about, essentially, if there had not been the
3 invention of the railroad in 19th century America, what
4 would the impact have been on American economic
5 development; and that's still a widely used and widely
6 cited piece of scholarship, published in the 1960s so
7 fifty years old, but still widely used and cited because,
8 by using that counterfactual, one is able to kind of
9 understand what actually happened and understand its
10 impacts.

11 MR. GREEN: Okay.

12 Q Are you finished?

13 A Yes.

14 Q Have we covered all of the opinions and bases
15 for your opinions as it relates to the likely historical
16 impact of different behavior by the cigarette industry?

17 A Yes.

18 Q Okay. In your disclosure right before that on
19 line 11 on page 8 it says, "Plaintiff may provide
20 Dr. Kyriakouides with certain assumptions regarding
21 decedent's smoking use, place of residence, brands of
22 cigarettes, number of cigarettes smoked, and other
23 pertinent facts."

24 I assume, because you've read the depositions
25 in this case, that that is -- that they weren't providing

1 you with any assumptions; right?

2 A I haven't been provided with any assumptions.
3 I will say the discovery process in this matter does seem
4 to be ongoing. I'm not up on all the details, but you
5 know, I got one deposition, then I got another
6 deposition, and there may be others. So I don't know.

7 Q Okay. If you review any other case-specific
8 evidence, including any depositions that may or may not
9 occur in the future, will you alert counsel and us so
10 that we can discuss that with you?

11 A Yes.

12 Q Okay. Right below that on the same page in the
13 disclosure, it says that you may comment upon any and all
14 disclosures and statements of defendants' experts who
15 offer opinions regarding any of the issues about which
16 you are qualified to offer testimony. So let me ask you,
17 which if any of the defendants' experts in this case do
18 you plan to comment on?

19 A Well, I don't know who has been disclosed as
20 experts in this matter, but I can say just as a general
21 principle if there are experts that are testifying on the
22 subject areas that are part of my disclosure, that
23 would -- if I'm asked, you know, by the plaintiff's
24 counsel to comment on that testimony, I would be
25 qualified to offer my opinions. So all the subjects, if

1 you -- you know, say for example if there's a historian
2 retained by the defense, I may be asked to testify on
3 that person's testimony if that person is testifying, you
4 know, on what -- you know, the subject matters that I've
5 indicated. Sometimes -- again I don't know who has been
6 disclosed in this case. Sometimes economists will
7 testify on subjects of public knowledge and the like, and
8 I can certainly offer my historical expertise to comment
9 on that testimony.

10 Q Okay. Let me ask you some questions.

11 You haven't seen any disclosures or Expert
12 Reports of any expert identified by the defendants in
13 this case, have you?

14 A I haven't, no.

15 Q So you don't have any opinions as to any of the
16 matters identified by any of the experts disclosed by the
17 defendants in this case, do you?

18 A As I sit here now, no, but you know, if asked I
19 can review those -- review that testimony.

20 And, as you know, I've actually published
21 peer-reviewed research on this very question on a very
22 important article in a leading journal, Tobacco Control,
23 a leading journal in the field.

24 Q That's not my question. My question is, you
25 have not -- you don't have any opinions about any of the

1 expert witnesses the defendants have disclosed because
2 you haven't reviewed it; right?

3 A That's correct, yes, but I --

4 Q So I can't ask you what your opinions are
5 because you haven't reviewed any of it; right?

6 A That's correct.

7 Q If you do review it, will you alert us so that
8 we can depose you?

9 A Yes. And I will make myself available at a
10 time convenient to all parties involved.

11 Q Okay.

12 A That part I've said many times. One of the
13 aspects of our civil procedure that I respect and honor
14 is the kind of everybody plays with cards up, so to
15 speak, no hidden --

16 Q Thank you very much. I appreciate that.
17 That's what I was trying to get to.

18 A Yeah, I'm -- absolutely. No surprises.

19 Q No surprises, and we count on that.

20 A Yes.

21 Q So let me ask you -- we alluded to your Expert
22 Report. Let me see if I can find it here. I'll mark as
23 Exhibit No. 6 your initial Expert Report and ask you to
24 confirm that that is the case.

25 A Yes.

1 Mr. Green, before you start asking me questions
2 on this, may I take a quick comfort break, if I can call
3 it that?

4 Q Always, any time.

5 A I might not -- the thumbs up tells me I might
6 not be the only person. So I'll be back. I'm just going
7 to run to the restroom.

8 Q Okay, very good.

9 (Brief recess taken.)

10 BY MR. GREEN:

11 Q To pick up where we left off, what we've
12 marked as Exhibit No. 6 is your initial Expert Report in
13 this case; right, sir?

14 A That's correct.

15 Q All right. And pull up the other one. What
16 we'll mark as Exhibit No. 7 is the supplement to your
17 Expert Report, which you provided yesterday, November the
18 29th; right?

19 A That's correct.

20 Q There are no other supplements or amendments to
21 your report beyond what we've marked as Exhibits No. 6
22 and 7, are there?

23 A No. That's it.

24 Q And in your Expert Report and the supplement,
25 that reflects the opinions and testimony you plan to give

1 in this case as it relates to Mrs. Geist?

2 A Yes, with one minor minor addition. In
3 reviewing depositions the first time, I somehow missed on
4 page 163 the statement that Ms. Geist informed her
5 husband Timothy that she had begun smoking at age 14. I
6 missed that in the first report. I can -- so I will just
7 add -- you know, and he indicated that she smoked Winston
8 at that age. So that's indicated in the deposition, the
9 first volume of the deposition. I didn't indicate that
10 in the report. So that's the one qualification or
11 condition or addition, whatever you want to call it.

12 Q And we will talk about that in a little more
13 detail, but in Mr. Geist's deposition, he testified that
14 Miss -- well, first of all Mr. Geist met Mrs. Geist in
15 1993; right?

16 A That's correct.

17 Q When she was 40 years old; right?

18 A 40 or 41, that's right, yes.

19 Q And Mr. Geist was I think 27; right?

20 A That sounds about right, yes.

21 Q And Mr. Geist said he had of course no personal
22 knowledge himself of Miss Geist or her smoking history
23 before 1993. That's what he testified to; right?

24 A Right. Technically he -- well, when he was
25 asked that question, that's the section that he gave the

1 answer that I gave a moment ago. But to be precise about
2 it, he doesn't have firsthand observational knowledge of
3 her smoking initiation. That would be the accurate way
4 to describe it.

5 Q Let me re-ask.

6 Mr. Geist did not have firsthand personal
7 observation of Miss Geist smoking before 1993; right?

8 A Right, because he wasn't there in -- would have
9 been sometime in 1966 when she began smoking. I believe
10 she was born in 1952. I think I have it in the report.
11 The -- but he would have had personal knowledge in the
12 sense that she reported -- or he testified that she told
13 him that, yes. So it's one of those distinctions that
14 would be more important to historians than an attorney,
15 but I have to make it.

16 Q Because Mr. Geist did not have firsthand
17 observational knowledge of Miss Geist smoking before
18 1993, he had to rely solely on what he remembers her
19 telling him?

20 A Right. And I think we can assume with a high
21 level of confidence that Miss Verna Geist was there when
22 she had her first cigarette. I know that sounds like a
23 silly answer, but I think that's an important
24 distinction.

25 Q I wasn't asking about the first cigarette

1 though. So my question is a little more broad, and I'm
2 going to ask you additional questions as it relates to
3 when she started smoking, okay?

4 Generally speaking, because Mr. Geist did not
5 have firsthand personal observation of Mrs. Geist before
6 1993, he has to rely solely on what she tells him as it
7 relates to her smoking history; right?

8 A That's correct.

9 Q And what he remembers of what she told him;
10 right?

11 A Yes. Memory is how we store information in our
12 heads, yes.

13 Q In his deposition Mr. Geist testified that
14 Mrs. Geist started smoking in 1966 because that's what
15 she -- well, strike that. Let me start over.

16 In his deposition Mr. Geist testified that
17 Mrs. Geist told him that she started smoking in 1966;
18 right?

19 A That's correct.

20 Q In his sworn interrogatory responses, which
21 were submitted before his deposition, Mr. Geist verified
22 under oath that Mrs. Geist told him she started smoking
23 in 1968; right?

24 A That's right. There is some discrepancy there.

25 Q And you saw, in reviewing the deposition of

1 Mr. Geist, that in the medical records, when Mrs. Geist
2 is reporting her smoking history to her doctor, she
3 reported that she started smoking in 1976; right?

4 A I did not review medical records, so I can't
5 speak to what's in the medical records.

6 Q But you did review the deposition and there was
7 some discussion about that in the deposition; right?

8 A That's correct, yes. I thought you were
9 talking solely about the medical records. Yes, there is
10 that in there, yes.

11 Q I'm sorry?

12 A You're correct.

13 Q Okay. And I want to go back to your disclosure
14 for just a minute. We'll talk about some of those issues
15 in more detail.

16 A Yes.

17 Q I'm going to put your expert disclosure -- can
18 you see the PDF on the screen here?

19 A I can, yes.

20 Q Okay. This is Exhibit No. 5, the supplemental
21 expert disclosure. Give me one moment.

22 In your disclosure you identify that in your
23 work as an expert witness you've been retained by
24 plaintiffs approximately 60 percent of the time and by
25 defendants approximately 40 percent of the time; right?

1 A That's in all litigation, not one in which --
2 I'm probably anticipating your question, so I'll just say
3 that's in all litigation.

4 Q Right. In cases that were brought against
5 tobacco companies, you've only testified for plaintiffs;
6 right?

7 A That's correct. The other matters involve
8 everything ranging from insurance to asbestos litigation
9 where my expertise as an historian in the tobacco
10 industry is relevant; same testimony, same expertise,
11 just different context.

12 Q In the deposition we had when I came up to
13 Nashville in the Hensley case -- do you remember that?

14 A Yes.

15 Q We looked at your reliance list in the Hensley
16 case; right?

17 A Yes.

18 Q Have you added any materials to your reliance
19 list since we had your deposition in the Hensley case?

20 A I haven't, but if I could say, I included some
21 new materials in this Expert Report which I haven't had
22 time to add to that kind of living breathing document
23 which is my reliance list. So for your purposes, if you
24 could simply add the citations that appear in this Expert
25 Report, then that would be complete.

1 Q Okay. So if we were to look at what you would
2 consider to be a reliance list in this case, we would
3 look at the reliance list from the Hensley deposition and
4 any new citations you included in your Expert Report?

5 A That's correct.

6 Q Sitting here today, are you able to identify
7 what citations you added to your Expert Report generally
8 speaking?

9 A I can actually, and let me go back.

10 On page 76 of the Expert Report, there is a
11 section there. Many of those repeat on the reliance list
12 you referenced, but I believe that I added some new
13 material. Maybe -- let me go back. Let me go back to
14 61. I'm just refreshing my recollection.

15 Okay. So if you would look at the section of
16 the report that begins on page 61 and continues to
17 page -- the very top of page -- or continues to page 64,
18 I think you would find in footnotes numbered 114 through
19 footnotes numbered 121 some new materials.

20 Q Okay.

21 A That way you don't have to kind of hunt and
22 peck.

23 Q Thank you.

24 And you referenced a few minutes ago page 76.
25 Are there any --

1 A As I reviewed that, I think that section is
2 fully represented in the reliance list.

3 Q Okay. So the new citations would be starting
4 on page 66 -- I'm sorry, 61 -- through the top of 64;
5 right?

6 A Yes. So the -- and I indicated the actual
7 footnote numbers for your use, and I believe each one of
8 those footnotes has a link to the documents so that you
9 can access those easily.

10 Q Thank you very much.

11 So let me ask you this: Why did you add this
12 section to your report?

13 A This is just new material that I've come across
14 in my research, which is ongoing, that deals with the
15 particular issue of filters, lights and low tars in terms
16 of what the cigarette manufacturers knew about their
17 customers' expectations, wants, knowledge; and so these
18 are examples of tobacco-industry internal survey,
19 marketing, and polling research seeking to understand
20 their customers' understanding or knowledge and
21 expectations on these particular products.

22 Q All of the citations that you include on the
23 subject matter of company knowledge on filter, light, and
24 low-tar cigarettes, all those citations are before the
25 year 2000; right?

1 A Did you ask me that they all dated before the
2 year 2000?

3 Q Yes, sir.

4 A That's correct.

5 Q Did you have any discussions about the subject
6 matter of this new section on page 61 or any of the
7 citations -- did you have any discussions about those
8 issues with plaintiff's counsel before you wrote the
9 section F?

10 A No, I didn't, not before. I discussed it and
11 explained it afterwards, after I had written the report
12 briefly.

13 Q What did you explain about that to plaintiff's
14 counsel?

15 A I told plaintiff's counsel that I had done some
16 new research on, you know, the public's understanding of
17 filters, lights and low tars from documents in -- you
18 know, or from research conducted by the tobacco industry
19 and that this was a new section to the report and he
20 might want to read it, because if he read a previous
21 version of my report, this would represent new material,
22 some of it new material.

23 Q Was there any particular reason you added this
24 section or these materials?

25 A Yeah. It's just I'm responsive to what I said

1 back in 2006 in my Tobacco Control article. Cigarette
2 manufacturers were the experts not only in their product
3 obviously 'cause they designed and manufactured it, but
4 they were also the experts in their customers; and the
5 more we know about what the tobacco industry knew about
6 customers, smokers, the more informed we can be about the
7 history.

8 Q All right. Let me ask you some questions about
9 your case-specific opinions.

10 First of all, what conversations have you had
11 with plaintiff's counsel in this case about this case
12 specifically or about your case-specific opinions?

13 A Not much. I haven't really -- I had a short
14 telephone call yesterday. I'll tell you exactly how long
15 it was. I had about a 25-minute phone conversation with
16 Mr. Nick Reyes, who is here in the deposition, yesterday
17 just about, you know, general procedural matters and some
18 scheduling and the like. I haven't had much direct
19 conversation about my opinions otherwise.

20 I've been asked -- I was asked at the beginning
21 to provide case-specific opinions and to review the
22 case-specific materials, which is not always the case in
23 every matter in which I'm retained, and I agreed to do
24 that. And in keeping with the disclosure that we've
25 already talked about, I was asked to, you know, provide

1 that as a framework for my analysis, you know, in terms
2 of the smoker's smoking history, any knowledge about the
3 smoker's understanding that was reflected in the text of
4 the testimony; and, you know, part of that is the tobacco
5 industry's understanding of their customers. So very
6 brief, very general.

7 I did not discuss my findings and my report
8 itself prior -- you know, while I was writing it. I just
9 worked on it and sent it in before the deadline, which
10 was -- they gave me a deadline sometime in November,
11 earlier this past month, or earlier this month.

12 Q Were you finished?

13 A Yes.

14 Q So have all of your communications with counsel
15 for the plaintiff in this case been with Mr. Reyes?

16 A Yes, yes.

17 Q I think you said you had an initial
18 conversation about them asking you to review the
19 case-specific materials; right?

20 A Yes.

21 Q And in that initial conversation, did you have
22 any discussion about any of the facts of the case?

23 A Just in a very general sense that the smoker of
24 concern or of interest in terms of the research was
25 deceased; she was, you know, not alive; and that the

1 case -- and that she had lived some period of time in
2 Las Vegas, Nevada, which is where the case is noticed. I
3 learned the facts of her life from reading the deposition
4 testimony.

5 Q Any other discussion with Mr. Reyes before you
6 reviewed the deposition testimony?

7 A No.

8 Q Was your next conversation with Mr. Reyes about
9 this case -- was it in the 25-minute call you talked
10 about that you had yesterday?

11 A Yes. I haven't had much communications.
12 There's some emails, which Mr. Reyes had collected and
13 said he was going to provide to you, but I haven't --
14 really haven't talked to the attorneys about this case,
15 just made the report, sent that in, made sure that they
16 received the report, because it was close to a deadline
17 and I was working to make that deadline and I just wanted
18 to make sure they got it.

19 Q So the second and only other conversation that
20 you've had with plaintiff's counsel in this case is the
21 25-minute call yesterday?

22 A Yes.

23 Q Okay. And tell me everything you discussed in
24 the 25-minute call yesterday with the plaintiff's
25 counsel.

1 A Is the deposition still going on? I've had a
2 number of them postponed, which is fine. You know, it's
3 a complicated scheduling. So the answer was yes. I
4 talked generally about the two Expert Reports. I
5 mentioned that in my re-review of getting ready for the
6 deposition, I had missed the point about, you know,
7 essentially the pediatric initiation of smoking; and as a
8 side, you know, it's not a significant issue to me
9 whether the age is 14 or 16. That range is suitable for
10 my opinions. I told him that I had missed that in the
11 report in my haste and apologized and said I would bring
12 it up at deposition. That was it.

13 Q Okay. And did you have any discussion at all
14 with Mr. Reyes about any of your recent trial testimony
15 or the types of topics that might be discussed here
16 today?

17 A I briefly mentioned to him that I had testified
18 in a trial in November, the Morse case. I just told him
19 that I had done that, and he was aware of that apparently
20 'cause you all keep up on that. I don't. I mentioned
21 that I had been down there.

22 Q Beyond mentioning that you had testified, did
23 you talk about your testimony in the Morse case in any
24 respect beyond the simple fact that you had testified?

25 A No, no, no.

1 Q And did you and Mr. Reyes discuss in any way,
2 shape or form the types of topics that we might address
3 here today at your deposition?

4 A No, we didn't because you're in the driver's
5 seat on that one to ask your questions.

6 Q We're going a little slow, so let me pick it up
7 a little bit.

8 First of all I think you mentioned just a
9 minute ago that there was some discrepancy that we've
10 already covered as to when exactly Miss Geist started
11 smoking and that it did not matter to you whether she
12 started smoking at age 14 or age 16; right?

13 A That's correct.

14 Q And if we look at the panoply of discrepancies,
15 does it matter to your opinions whether she started
16 smoking at age 14, 16 or age 24?

17 A Well, I guess on the 24, I find that -- I'm
18 reluctant to -- I mean I have not reviewed the medical
19 records, so I'm relying on what you've represented.

20 We know a great deal about smoking initiation.
21 Cigarette manufacturers knew a great deal about smoking
22 initiation. We know that an infinitesimally small number
23 of people become regular smokers at age 24, less than 1
24 out of 20. So we do know that for women especially, the
25 median age of regular smoking initiation is right at the

1 end of the 16th year and the beginning of the 17th year
2 of life.

3 So, you know, my job as a historian is not to
4 be the biographer of any particular smoker but to put
5 that person in historical context, and one of those
6 contexts is the extensive knowledge we have about the
7 historical epidemiology and historical demography of
8 smoking initiation.

9 So, you know, the 14- to 16-year age group,
10 given that she was from a more modest background and kind
11 of a rural area of northern Arkansas, all this supports
12 somebody in the mid 1960s beginning their regular smoking
13 before they turned 18. So there is a youth initiation
14 here and that is a significant factor. I can't, you
15 know, say about a document I haven't seen, but given just
16 the sheer probabilities involved and what we know about
17 smoking initiation, the 24 is an unlikely age.

18 Q Right. And my question wasn't asking you to
19 comment on the credibility of the information, so let me
20 try it a different way.

21 You've testified in cases in which the smoker
22 started smoking at age 24 or later. You've done that;
23 right?

24 A That has been in the record. I'm not recalling
25 one case. Maybe you can refresh my recollection. I

1 don't know that I testified about that aspect of their
2 life.

3 Q Right. If in this case Miss Geist had started
4 smoking at age 24, would that impact your opinions as it
5 relates to your case-specific opinions?

6 A Well, the case -- it wouldn't. I guess what
7 I'm saying is, you know, based on the reasons that I gave
8 in my earlier answer, she very likely began smoking at
9 the earlier age.

10 Q Okay. So in this case, are you taking on the
11 role of resolving discrepancies in the evidence in this
12 case?

13 A No. I'm just telling you what my opinions are.

14 Q And --

15 A And when a scholar of social sciences has to
16 deal with complex historical evidence, there's always
17 discrepancies. So we're always engaged in weighing
18 evidence and evaluating evidence. That's part of the
19 normal process of analysis in any of the social sciences.

20 Q Okay. Let me ask you a few questions.

21 Number one, you never spoke to or interviewed
22 Mrs. Geist; right?

23 A That's correct.

24 Q You never spoke to or interviewed Mrs. Geist's
25 husband, the plaintiff in this case, Mr. Timothy Geist;

1 right?

2 A That's correct.

3 Q You've never spoken to or interviewed any of
4 Mrs. Geist's relatives, friends, or treating doctors;
5 right?

6 A That's correct.

7 Q And to your knowledge, other than plaintiff's
8 counsel, you haven't spoken to anyone who knew or treated
9 Mrs. Geist; right?

10 A That's correct.

11 Q I think you said this: You haven't reviewed
12 any of her medical records; right?

13 A That's correct.

14 Q Have you reviewed any of -- any photographs or
15 any other personal records of Mrs. Geist?

16 A No. They were referenced in the -- things like
17 that were referenced in the deposition, but I actually
18 didn't have the exhibits then. The descriptions were
19 enough for my use.

20 Q So you have not reviewed any of the exhibits
21 that were marked to Mr. Geist's deposition?

22 A That's correct. Just the descriptions and the
23 questions that stem from those exhibits.

24 Q And you have not reviewed any deposition of any
25 witness who knew Mrs. Geist before 1993; right?

1 A That's correct.

2 Q And you have not talked to or interviewed any
3 person who knew Mrs. Geist before 1993; right?

4 A That's correct.

5 Q And there's no witness in this case who
6 provided personal knowledge, firsthand observations, of
7 Mrs. Geist's smoking history, her brands, her smoking
8 routine or anything else before 1993; right?

9 A Well, I'm not aware of that beyond Mr. Timothy
10 Geist.

11 Q And Mr. Timothy Geist reported Mrs. Geist's
12 brand history; right?

13 A Yes, he did.

14 Q And when he was reporting her brand history
15 before 1993, he's reporting what he says now that he
16 remembers that she told him; right?

17 A That's correct, much along the same lines as
18 the question about smoking initiation that you asked me
19 earlier.

20 Q In other words, Mr. Geist himself did not have
21 personal knowledge, firsthand observations, of what
22 brands Mrs. Geist smoked before 1993?

23 A He did not have firsthand observation of what
24 she smoked before he met her.

25 Q Okay. Mrs. Geist was born in November of 1952;

1 right?

2 A That's correct.

3 Q In Culp, Arkansas?

4 A Yes.

5 Q Do you know where that is?

6 That, by the way, Miss Goldstein, is C-u-l-p.

7 A Yes, I do actually. It's an area near the
8 White River that's well known for fly fishing.

9 Q Have you fished on the White River?

10 A I have not, but I hope to because I do like to
11 fly fish.

12 Q You and me both.

13 You've reviewed some information as to where
14 Mrs. Geist lived over the years; right?

15 A Yes. There was some -- a residential history
16 provided in the Notice of Deposition -- I'm sorry, I
17 misspoke -- in the Interrogatories.

18 Q Right. For example, she is reported by
19 Mr. Geist to have lived in Culp, Arkansas and -- is it
20 Muscatine, Iowa -- between 1952 and 1962; right?

21 A Right. She seems to have had some -- you know,
22 her family moved for a period of time. It's actually not
23 that far from, you know -- well, I guess it's all
24 relative, but yeah, they seemed to move -- have moved in
25 her childhood and then moved back.

1 Q And one of the areas in Arkansas that
2 Mrs. Geist lived in her childhood, according to
3 Mr. Geist, was a town near Culp called Mountain Home;
4 right?

5 A Right, yes. And that's a more well-known place
6 because it's a resort community.

7 Q That's what I was going to ask you, is Mountain
8 Home is actually a larger town in that part of the state?

9 A Yes, that's right. It's the larger town,
10 exactly, yeah.

11 Q And Mrs. Geist attended school until the age of
12 16; right?

13 A That's right. She did not graduate from high
14 school.

15 Q I'm sorry. Were you finished?

16 A Well, I just said she did not graduate. She
17 was a dropout.

18 Q And she dropped out of high school because she
19 got married to her first husband, Pat Walters, in 1969 at
20 the age of 16; right?

21 A That's correct.

22 Q She had two children with Mr. Walters?

23 A That's my understanding, yes.

24 Q And she and Mr. Walters divorced in 1977 when
25 Mrs. Geist was about 25; right?

1 A Yeah, that's correct, yes.

2 Q And Mr. Walters, Mrs. Geist's first husband,
3 was a smoker; right?

4 A That's correct.

5 Q Mrs. Geist married Jerry Martin in 1985; right?

6 A That's right. She had another marriage.

7 Q That's her second husband. And while they did
8 not have any children together, Mr. Martin came into the
9 marriage with five children of his own; right?

10 A That's correct.

11 Q Mr. Martin was also a smoker?

12 A That's correct.

13 Q And based on the testimony of Mr. Geist,
14 Mrs. Geist's parents, sibling, and most of her family
15 smoked?

16 A That's the testimony, correct.

17 Q Okay. Mr. Geist claimed that Mrs. Geist's
18 first regular brand was Winston?

19 A That's correct. That's his testimony.

20 Q He also acknowledged that he didn't know what
21 brand Mrs. Geist smoked when she had her first cigarette?

22 A That's correct.

23 Q All he knew in terms of the age at which he
24 claimed Mrs. Geist had her first cigarette was that she'd
25 smoked a cigarette; right? He didn't know any of the

1 details surrounding her first cigarette?

2 A Like, for example, how she got the cigarette,
3 who she was with, that's correct, yes; and I indicate
4 that in my Expert Report, that we don't know a lot about
5 that. I just wanted to add the qualification of the
6 dates, the age.

7 Q Whatever age Mrs. Geist had her first
8 cigarette, Mr. Geist did not know the circumstances, who
9 she was with, how she got it, how she reacted to it,
10 whether she hid it from her parents, or anything else
11 like that; right?

12 A That's correct.

13 Q And Mrs. Geist did not tell Mr. Geist that
14 advertising was the reason that she smoked her first
15 cigarette?

16 A It didn't say either way.

17 Q Okay. Other than claiming that Mrs. Geist
18 smoked Winston for some period of time before he met her
19 in 1993, Mr. Geist didn't really have any details about
20 Mrs. Geist's smoking of Winston before they met; right?

21 A Right. You know, he just had the information
22 that he shared at the deposition.

23 Q For example, Mrs. Geist never told him why she
24 smoked Winston cigarettes before they met?

25 A Didn't have any information on that.

1 Winston had become a leading brand, in fact the
2 leading brand, by that time in the country.

3 MR. GREEN: Move to strike, nonresponsive after the
4 word "that."

5 MR. REYES: I object to moving to strike.

6 MR. GREEN: Okay.

7 Q Looking at Mr. Geist's testimony, he didn't
8 know anything about the specific type of Winston that she
9 smoked; right?

10 A That's correct. He just indicated Winston.

11 Q And they never had any conversation where she
12 provided him with any reason why she smoked Winston
13 cigarettes before 1993; right?

14 A That's correct, although I should by way of
15 explanation point out that in 1966 or even 1968 Winston
16 was just regular Winston. The other line extensions
17 would come out later in the late '60s and '70s.

18 Q Mr. Geist was born in 1966; right?

19 A That's correct. That's my recollection, yes.

20 Q Every pack of cigarettes sold during
21 Mr. Geist's lifetime had a warning label on it?

22 A Some form of caution label, then later warning
23 labels, first the surgeon general's warning and then the
24 1984 rotating warnings.

25 Q Regardless of when Mrs. Geist started smoking,

1 every pack of cigarettes that she could have bought
2 during her smoking history would have had either a
3 caution label or a warning label on it?

4 A Well, yes, with an explanation that's a
5 significant explanation.

6 If she did in fact start smoking at -- well,
7 no -- yeah, correct, yes, yes. I mean it depends when in
8 1966 she, you know, actually started smoking, because the
9 law wasn't rolled out I believe on the first of that
10 year; it was later in the year. But in any case, yes,
11 generally.

12 Q Well, if you accept that she started smoking at
13 age 14 -- right?

14 A Yes, that was '66, correct.

15 Q She didn't turn 14 until the end of the year,
16 until November of 1966.

17 A That's a good point. And so the answer -- I
18 kind of became long winded there, so I'll give you a nice
19 clean answer to your question: Yes.

20 Q Let me re-ask it then so we're clear on what
21 we're answering.

22 Every pack of cigarettes that Mrs. Geist would
23 have bought in her smoking history, regardless of which
24 date of initiation you choose, would have had a warning
25 label -- caution or warning label on it?

1 A Yes.

2 Q Okay. Mr. Geist did not have a lot of
3 information about Mrs. Geist working or employment
4 history before 1993; do you agree?

5 A Yes, I would agree with that.

6 Q He did testify, however, that when he met her
7 she was working at Anthony's Key Largo Hotel and Casino
8 in Las Vegas; right?

9 A Yeah, she was involved in the casino industry,
10 yes.

11 Q I think she was a slot floor person at the
12 time; right?

13 A Right, somebody involved in the gambling or
14 casino aspect of the business, yes.

15 Q At that time Mr. Geist was stationed in Alaska,
16 but he was on temporary duty in Las Vegas?

17 A Right, yes. He was I believe in the Air Force,
18 if I recall correctly.

19 Q Right. Did I say a different branch? If I did
20 I didn't mean to.

21 A No, no. That was my recollection.

22 Q And I think he said that they met when he was
23 at the bar at her casino and they started up a
24 relationship shortly thereafter; right?

25 A Yes.

1 Q Mr. Geist returns to Alaska and he doesn't see
2 Mr. Geist -- or Mrs. Geist -- for six or eight months
3 after they initially meet and start their relationship;
4 right?

5 A That sounds about right, yes. You know, I
6 wasn't really focusing on their courtship, but I do
7 recall that from my reading.

8 Q But in any event, she moves to Alaska in
9 October of 1993 and that's when they first live together;
10 right?

11 A Yes.

12 Q Okay. And they married I think in November of
13 '94?

14 A That's correct, yes.

15 Q When they lived in Alaska, Mrs. Geist worked at
16 a convenience store. Do you remember seeing that?

17 A Yes.

18 Q She actually worked at the 7-Eleven I think;
19 right?

20 A Yes.

21 Q And Mr. Geist testified that working as a clerk
22 at the 7-Eleven, that Mrs. Geist sold cigarettes to
23 customers?

24 A Yes. The convenience stores are a major
25 outlet, and have been, for the sale of cigarettes.

1 Q But Mrs. Geist specifically, when she worked at
2 the 7-Eleven, sold cigarettes to customers; right?

3 A Yes.

4 Q Okay. When they returned to Las Vegas in 1995,
5 Mrs. Geist went back to working for a casino; right?

6 A That's my understanding, yes.

7 Q I think there was a period of maybe one year
8 where she worked at the Continental Hotel and Casino,
9 1994 to 1995; right?

10 A I recall that she went back to the casino
11 industry. I did not note the particular, you know,
12 facilities or companies that she worked for, but I'll
13 accept that representation.

14 Q And then -- we're almost done with this -- last
15 one: Mr. Geist testified that Mrs. Geist worked at the
16 Skyline Casino from November of 1995 until she retired in
17 2015?

18 A I am aware that she worked in the casino
19 industry until she had to stop working.

20 Q And she worked as a slot floor person or as a
21 casino manager in her work for the casino industry;
22 right?

23 A Yes, that's my understanding.

24 Q And the reason she quit working was because she
25 wanted to retire in 2015, according to Mr. Geist?

1 A Something like that, yeah. I don't actually
2 recall what the reasons for her stop working were. So
3 I'm not sure, but I'll accept -- you know, I'd have to
4 refresh my recollection in the testimony to really give
5 an affirmative response to that.

6 Q Okay. In any event, Mr. Geist testified that
7 Mrs. Geist -- that they enjoyed gambling, they enjoyed
8 going to casinos together, and that she would sometimes
9 gamble after work. Do you recall seeing that?

10 A Yes. It's Las Vegas. They do that.

11 Q They do.

12 And when they met in 1993, Mr. Geist testified
13 that she, Mrs. Geist, was smoking one pack per day;
14 right?

15 A I believe that's what he testified, yes, and
16 she had shifted to another brand.

17 Q When we're talking about the amount that
18 Mrs. Geist smoked, Mr. Geist testified that that amount
19 stayed consistent. In other words, she was smoking a
20 pack per day when they met and she continued smoking a
21 pack per day until she quit for good?

22 A That sounds right. I'm just -- I'm going back
23 to -- I'm just looking at the report that is one of the
24 exhibits to remind myself of what I had written.

25 Q I can point you to the testimony if that helps.

1 A No, that sounds about right. That sounds about
2 right.

3 Q And in terms of the evidence in this case,
4 Mrs. Geist is someone who smoked the same amount
5 throughout her smoking history. That's about a pack per
6 day.

7 A Yeah, and that's a common amount.

8 Q Okay.

9 A And by way of an explanation, there's a whole
10 literature in the epidemiological tobacco-science
11 literature, the scholarship and science, about how
12 there's bias in how people report their usage, you know,
13 because science is interested in number of actual
14 cigarettes, and they're sold in packs and people think in
15 terms of packs, so they'll say they smoke a pack a day or
16 a pack and a half. So, you know, for my opinions these
17 more fine-grain usage distinctions that appear in the
18 testimony are not as important as they might be to
19 others, you know, and other specialists or experts.

20 MR. GREEN: Respectfully move to strike as
21 nonresponsive 'cause I'm asking something different. So
22 let me reframe this for you.

23 Q We're talking about Mr. Geist, who is talking
24 about his observations of Mrs. Geist; right?

25 A Yes.

1 Q The evidence in this case is that Mrs. Geist
2 smoked consistently the same amount of cigarettes, around
3 a pack per day, throughout her smoking history; right?

4 A That's right.

5 MR. REYES: Objection; misstates the testimony.

6 BY MR. GREEN:

7 Q You said "that's right," right, sir?

8 A Yes.

9 Q Mr. Geist provided some testimony about when
10 Mrs. Geist smoked particular brands before they met in
11 1993; right?

12 A That's correct.

13 Q And we talked about Winston and I'll ask you
14 several questions about each of these brands, but just
15 putting a time frame on it, Mr. Geist testified that it
16 was his belief that Mrs. Geist smoked Winston from when
17 she became a regular smoker until the late 1970s; right?

18 A That's the testimony, yes.

19 Q And he doesn't actually identify a specific
20 conversation with Mrs. Geist where she reports that she
21 smoked Winston over that period of time, does he?

22 A Well, he testifies to what his knowledge of her
23 smoking history is.

24 Q But he doesn't identify a conversation with
25 Mrs. Geist where she's providing specifics on this

1 history, does she?

2 A I don't recall and that's of no consequence. I
3 mean who remembers those kinds of conversation. You
4 remember the outcome of the conversation or the subject
5 of the conversation. That's how memory works.

6 Q And Mr. Geist testified that Mrs. Geist smoked
7 Merit brand cigarettes for a period of time before they
8 met in 1993; right?

9 A That's correct.

10 Q And Mr. Geist claims that Mrs. Geist started
11 smoking Merit sometime in the late 1970s?

12 A Yes.

13 Q And he wasn't able to identify when it was that
14 she actually started smoking Merit, was he?

15 A No, but again the historian's job is to put
16 this information in context. We know when Merit was
17 introduced. So, for example, she couldn't have smoked
18 Merit in the early '70s.

19 Q The bottom line is we don't know when she
20 started smoking Merit, do we?

21 A Well, the testimony is the late '70s. That's
22 good enough. I mean it was introduced in the mid '70s,
23 '75, with other line extensions coming out later in '80,
24 '81.

25 Q There's no witness in this case who saw

1 Mrs. Geist smoke Merit before 1993?

2 A That's correct. We simply are relying on her
3 husband's knowledge.

4 Q And there's no witness in this case that saw
5 Mrs. Geist smoke Winston before 1993?

6 A That's true. We have her husband testifying to
7 what his knowledge was of her smoking history based on
8 what she told him. They were married and spent a lot of
9 time together presumably.

10 Q Mr. Geist testified that Mrs. Geist did not
11 ever tell him why she chose to smoke Merit?

12 A Well, he indicates -- I'm not so sure about
13 that. My recollection was that he testified that she
14 smoked Merits because of the advertising, because of its
15 marketing as a health cigarette. Again just I'm looking
16 at the deposition on page 174. I cite that in the report
17 on page 85 of my report.

18 Q Okay. Let's talk about this.

19 Page 174 Mr. Geist provides one version of
20 events where he mentions advertising; right?

21 A Yes.

22 Q But Mr. Geist does not ever identify any health
23 issue or reason as to why Mrs. Geist is smoking Merit.
24 He doesn't --

25 A No, but Merit was explicitly advertised on

1 powerful health framing, to use the term of the Merit
2 internal documents. You know, this was a major entry
3 into the health field by the Philip Morris Tobacco
4 Company with an enormous amount of advertising, all of it
5 geared towards these, you know, light low-tar fraudulent
6 representations of it being a safer cigarette.

7 MR. GREEN: Move to strike after "no," 'cause -- and
8 I'll tell you, I'm going to ask you about your opinions
9 about Merit and other brands.

10 Q But in any case, Mr. Geist did not identify
11 any -- that Mrs. Geist told him that she started smoking
12 Merit for any specific health reason or that she believed
13 Merit was safer or better than other types or brands of
14 cigarettes; right?

15 MR. REYES: Objection; form.

16 THE WITNESS: Well, he says -- you know, this is a
17 case where, you know, the historian has to look at the
18 entire body of evidence, which is again this first volume
19 of his deposition. He states frequently that she saw
20 filters as offering some measure of protection, and Merit
21 was a filter cigarette that was heavily advertised as a
22 light, low-tar -- you know, framed in the health context.
23 So that's the basis of my opinion that she turned to
24 Merits because she thought they were safer, and that
25 is -- you have to look at the totality of the evidence.

1 You're correct in saying that he doesn't have -- at least
2 I don't recall an explicit statement, and maybe I missed
3 it, that she smoked Merits 'cause she thought they were
4 safer, but when you look at the totality of the
5 testimony, that is clearly the case.

6 MR. GREEN: I move to strike as nonresponsive
7 respectfully because my question was asking specifically
8 about the testimony.

9 Q When we look at Mr. Geist's testimony, he does
10 not identify any instance in which Mrs. Geist told him
11 that she smoked Merit for health reasons or because she
12 thought it was safer than any other brand or type of
13 cigarettes. That is correct?

14 MR. REYES: I object as asked and answered and I
15 object to moving to strike as he was responding to the
16 answer.

17 Go ahead.

18 THE WITNESS: I have to answer no to that question,
19 and I'll point you to this element in the testimony where
20 he says -- he's recounting what she said.

21 "I know that she had said that she had saw
22 magazine ads with Merits and there was -- you know,
23 looked like cool people in the magazine ads and she
24 thought, 'Well, you know, maybe if I smoke these, I'll be
25 good.'"

1 Given what happens prior and after that
2 testimony, my understanding as a historian is "I'll be
3 good" means "I'll be safer."

4 BY MR. GREEN:

5 Q You're entirely speculating about that, aren't
6 you?

7 MR. REYES: Objection; form.

8 THE WITNESS: No. That's why I pulled -- you asked
9 me a question, and my answer is no, and that's why I
10 pulled that particular quote to include in my Expert
11 Report.

12 BY MR. GREEN:

13 Q Mr. Geist does not identify any instance in
14 which Mrs. Geist told him that Merit cigarettes would be,
15 quote, "safer," end quote, than any other type or brand
16 of cigarettes. We agree there; right?

17 MR. REYES: Objection; form.

18 THE WITNESS: He doesn't use that exact language.
19 He uses the language I identified a minute ago.

20 BY MR. GREEN:

21 Q In another instance in his deposition,
22 Mr. Geist testified that Mrs. Geist did not ever tell him
23 why she smoked Merit cigarettes; right?

24 A What page is that?

25 Q That is page 171, lines 8 through 10 --

1 A Yeah, just let me refresh my --

2 Q -- or 8 through 13. Tell me when you get there
3 and I'm going to read it into the record.

4 A Yeah, let me -- I'm opening my own copy. Could
5 you please just tell me the page number. I was trying to
6 do two things at once, so I don't remember. What page
7 should I go to?

8 Q Go to page 171, and then I'll point you to the
9 specific testimony I want to ask you about, okay?

10 A Thank you.

11 Q Are you there?

12 A Yes, I am.

13 Q On page 171 line 8, Mr. Geist was asked in his
14 sworn testimony, "Question: Do you know why Mrs. Geist
15 smoked Merit cigarettes?"

16 He answered, "No."

17 And then he was asked, "Did she ever tell you
18 why she chose to smoke Merit?"

19 And he answered, "No."

20 Did I read that correctly?

21 A Yes, you did.

22 Q And Mr. Geist -- there's some inconsistency in
23 his deposition where in one instance he's testifying that
24 she did not tell him why she smoked Merit and another
25 instance in which she did; right?

1 A That's correct. And by way of explanation, the
2 job of the historian is to confront these
3 inconsistencies, which are always the case in all
4 historical evidence, including testimony, and rely on
5 broader historical context or other knowledge, as I
6 described in my earlier answer, to ascertain what
7 actually happened.

8 Q There were a variety of inconsistencies that
9 you saw in Mr. Geist's testimony as well; right? It
10 wasn't just on this issue but on others as well,
11 including when she started smoking.

12 A That's correct, and we've already addressed
13 that; and this again is normal as part of every case I've
14 seen and, I might add, as part of every historical
15 research project I've ever engaged in. We always have
16 inconsistent evidence. Part of the job of the historian
17 is to weigh that evidence, evaluate it, provide context,
18 and to deal with it.

19 Q Okay. Mr. Geist testified that Mrs. Geist
20 started smoking Doral in early 1994; right?

21 A Correct. In fact it's on the same page where
22 that is discussed, yes.

23 Q So let me ask you some questions about Doral,
24 all right?

25 A Yes.

1 Q You're familiar of course with the Doral brand
2 cigarettes from your research in these cases?

3 A Yes. And Doral, just by way of clarifying the
4 record, is an R. J. Reynolds product unlike Merit, which
5 is a Philip Morris product.

6 Q Doral was introduced nationally in the late
7 1960s; right?

8 A Yes.

9 Q And it was introduced from the beginning as a
10 filtered cigarette; right?

11 A That's correct.

12 Q You're familiar, from reviewing materials, that
13 by 1980 all marketing support for Doral brand cigarettes
14 actually ceased; right?

15 A Yes. R. J. Reynolds had some brands, and still
16 does, which they promote more heavily than others. Some,
17 you know, develop a following and, you know, kind of
18 sustain themselves at lower levels of market share.

19 Q For Doral specifically, the marketing support
20 for that brand ceased in 1980; right?

21 A Yes, but it was still for sale, still
22 available. I see it at my local store when I go into the
23 drugstore at the Walgreens.

24 Q It just wasn't really advertised.

25 A Right. And most of that advertising was

1 point-of-purchase advertising, which generally is a quite
2 low cost but high impact technique.

3 Q And after 1980, the point-of-purchase
4 advertising for Doral or Doral Lights was -- had a theme
5 of it being cheaper, a discount brand?

6 A Yes. And this was a time of inflation where
7 that was an important marketing angle.

8 Q Right. And Doral Light 100s were introduced in
9 1984. Do you agree with that?

10 A Yes, I do. Yes, that's correct.

11 Q And around that same time in the early 1980s,
12 Doral was positioned as a discount brand to compete with
13 generic cigarettes?

14 A Yes, that's right. That was a feature of 19 --
15 early 1980s and 1980s products, during a time of
16 relatively high inflation.

17 Q Let me ask you this: As it relates to Doral
18 and more specifically Doral Light 100s, what opinions are
19 you going to testify about at the trial of this case
20 about Doral and Doral Light 100s?

21 A It was a filter cigarette. It was a light
22 low-tar extension. I mean it was marketed. While you
23 talk about the low support, you know, in the mid '90s
24 R. J. Reynolds did actually put some marketing muscle
25 behind it. They had the Doral Tobaccoville promotion,

1 and there is evidence that the Geists received some of
2 the themed merchandise, coffee mugs and ashtrays, which
3 were part of that promotion.

4 But again the main opinion is that it was just
5 another entry into the light, low-tar, filter cigarette
6 that fraudulently sought to persuade smokers not to quit
7 and to keep on smoking.

8 Q Any other opinions on Doral brand cigarettes
9 that you intend to offer at the trial of this case,
10 including Doral Light?

11 A No.

12 Q Are you aware of any nonpoint-of-purchase
13 advertising that was done for Doral or Doral Lights
14 after, say, 1984?

15 A Well, yeah. The whole Tobaccoville -- Doral
16 Tobaccoville campaign, that was a pretty substantial
17 marketing effort that involved direct mail, coupons, the
18 creation of the branded merchandise that I mentioned a
19 moment ago.

20 Q Are you aware of any ads for Doral or Doral
21 Lights that were placed in magazines or newspapers or
22 billboards after 1984?

23 A I just couldn't answer that question right now
24 'cause I did not research that particular subject. So
25 I'm not sure.

1 Q Okay. The promotional theme that you're
2 talking about, Tobaccoville, right, can you tell us what
3 the theme of those promotional materials were for Doral
4 and Doral Lights?

5 A Yeah. It was -- the main theme was the ability
6 to get branded merchandise. Tobaccoville references an
7 actual place where the R. J. Reynolds Tobacco Company has
8 a major manufacturing facility, which it maintains to
9 this day; but, you know, kind of, you know, trying to
10 connect Doral to tobacco to tradition, you know, that
11 kind of theme, which was a common technique among many
12 brands.

13 Q But there were no direct, I guess, health
14 claims in these Tobaccoville promotions for Doral and
15 Doral Lights; right?

16 A Well, the lights is a health claim and the
17 filter is a health claim. Now, the use of the adjective
18 "direct" requires me to point out that the cigarette
19 manufacturers have been subject to a number of Federal
20 Trade Commission directives to prevent them from
21 explicitly advertising on health in 1955, for example.
22 So the claims become implicit.

23 But there's been a huge amount of research on
24 that, and all of that evidence points to the fact that --
25 including within the tobacco industry -- smokers

1 understood filters and lights and low tars as being safer
2 types of cigarettes even if they were not safer.

3 Q Let me take your word so that I'm accurate.

4 Do you guys hear an echo?

5 THE REPORTER: Yes.

6 MR. GREEN: I'm going to fix mine.

7 Q Okay. There were no explicit health claims in
8 ads for Doral or Doral Lights in the 1980s or the 1990s;
9 right?

10 A Implicit health claims, not explicit, for the
11 reasons I mentioned in my previous answer. The industry
12 had been sanctioned by the Federal Trade Commission back
13 in the 1950s.

14 Q Okay. There's no explicit health claims for
15 Doral or Doral Lights in the 1980s or the 1990s; correct?

16 A No. Implicit claims, though, which
17 tobacco-industry internal research indicates were quite
18 effective.

19 MR. GREEN: Okay. I'll move to strike after "no" as
20 nonresponsive.

21 Q The implicit claims that you are suggesting
22 were there for Doral and Doral Lights were the fact that
23 the package had the word "lights" or "filters" on them;
24 right?

25 A Yeah.

1 Q There were no other implicit forms of health
2 claims for Doral or Doral Lights in the 1980 or the 1990s
3 beyond the fact that the package or the advertising said
4 "filter" or "lights"; right?

5 A That was enough, yes.

6 Q But nothing else; right?

7 A That's my understanding, yes.

8 Q Okay. And, for example, in the 1980s and the
9 1990s, you didn't see advertising for Doral or Doral
10 Lights that talked about the specific type of filter that
11 it had or comparing the filter that it had to other types
12 of cigarettes; right?

13 A Advertised on the basis of their filter; is
14 that what you're asking me? Maybe I misunderstood your
15 question.

16 Q Yeah, I'm asking a very particular and specific
17 question. That is, in the 1980s and the 1990s, there was
18 no advertising for Doral that talked about the specific
19 type of filter that it used or compared that specific
20 type of filter to other brands or types of cigarettes?
21 That wasn't a theme in the Doral advertising in the 1980s
22 or the 1990s; right?

23 A That sounds about right, yeah.

24 Q Have you done any sort of study or research as
25 to what additives or flavors were used in Doral Lights

1 from, say, 1993 to 1998?

2 A I have not, no.

3 Q Do you know whether ammonia or diammonium
4 phosphate was used in Doral Lights between those specific
5 years, 1993 to 1999?

6 A I haven't looked into the specific additives in
7 this particular brand of cigarettes, so I don't know. I
8 haven't researched that.

9 Q So then you don't know what the pH levels of
10 Doral Lights were then between 1993 and 1998; right?

11 A I don't, not for that brand.

12 Q And do you know what the FTC tar and nicotine
13 yields were for Doral Lights from 1993 to 1998?

14 A I don't have those figures at my fingertips
15 memorized.

16 Q Let's say from 1984 through the entire time
17 Mrs. Geist smoked Doral Lights there were no advertising
18 for Doral that claimed it was safer than any other brand
19 or type of cigarettes.

20 A They didn't use that language.

21 Q Okay.

22 A They used implicit: Lights, low tars, filters.

23 Q Winston cigarettes --

24 A Mr. Green, since you're shifting -- are you
25 shifting gears a little bit to a different brand?

1 Q Take a break?

2 A Can I just take, yeah, just a short break?

3 Q Absolutely, any time.

4 (Brief recess taken.)

5 BY MR. GREEN:

6 Q Continuing with our discussion, you're not
7 aware of any advertisements for any cigarette brand with
8 the word "light" in its name that said that that brand of
9 cigarettes was safe, safer, better, cleaner, healthier or
10 less dangerous, in those words; right?

11 A That's correct. The industry avoided those
12 explicit terms and relied on implicit assurances.

13 Q And there was no tobacco-company executive or
14 representative that ever said on television or in print
15 that light cigarettes were safe, safer, better, cleaner,
16 healthier or less dangerous; right?

17 A That's correct, because no tobacco executive
18 ever admitted that there was any problem with regular
19 cigarettes.

20 Q Okay. And that means that no tobacco-company
21 representative, executive, or any trade group or
22 otherwise ever said in a magazine or on television that
23 light cigarettes are safer than regular cigarettes?

24 A That's correct, because they wouldn't admit
25 that there were any health problems with their -- any

1 cigarettes, their regular ones, filtered, unfiltered, or
2 what have you.

3 Q Okay. Merit brand cigarettes, what opinions do
4 you intend to offer at the trial in this case as it
5 relates to the Merit cigarette brand Merit Lights?

6 A Merit was Philip Morris' entry into the health
7 category of cigarettes. It was a cigarette implicitly
8 advertised as being a smarter cigarette to smoke.
9 Knowledge and smarts was part of their advertising theme.
10 Merit even distributed headlines from the New York Times
11 from the century before to kind of portray Merit as
12 something that informed smokers would use. Merit was
13 sold. It was widely advertised. It was a successful
14 brand for the Philip Morris Tobacco Company. In the
15 1990s Merit did come out with some other line extensions,
16 including Merit De-Nic.

17 Mr. Geist was asked about that in the
18 deposition and responded -- and I'm paraphrasing -- that
19 he had never heard of it. It was not a widely advertised
20 line extension, but it did exist.

21 Q Okay. Any other opinions you intend to offer
22 as it relates to Merit cigarettes in this case?

23 A No. The main one is that, like all light
24 cigarettes and filter cigarettes, it was intended to
25 reach a health-conscious market to persuade people to

1 smoke those brands instead of quitting.

2 Q Anything else?

3 A That's it.

4 Q As it relates to Merit, do you know what
5 additives or flavors were used in Merit cigarettes during
6 the years that Mrs. Geist smoked them?

7 A I haven't researched the components of the
8 Merit cigarettes, so I just don't know the answer to that
9 question.

10 Q So then I take it then you don't know what the
11 pH levels for Merit cigarettes or what the FTC tar yields
12 of those cigarettes were during the years that Mrs. Geist
13 smoked them?

14 A No. I don't have those facts at my fingertips,
15 no.

16 Q Have you done any study of the filter as it
17 relates to Merit cigarettes?

18 A It had a filter. That's sufficient for my
19 opinions.

20 Q And as it relates to Merit, none of the
21 advertising for Merit specifically said that Merit was
22 safe, safer, better, cleaner, healthier, or less
23 dangerous than any other brand or type of cigarettes;
24 right?

25 A That's correct. They used implicit assurances.

1 Q Okay. Winston and Winston Lights, first of
2 all, for Winston, what is -- what are the opinions that
3 you'll offer at the trial of this case as relates to
4 Winston?

5 A I did address that in my supplemental report.
6 Just to bring that up, give me a second here to bring up
7 the window where we have the exhibits. Close some
8 windows on my computer. I'll have to open it. I'm just
9 trying to find -- how many hundreds of windows can I have
10 open on a computer? I think I might have too many open.
11 I do apologize for the delay.

12 We did add the -- it is an exhibit, correct,
13 the supplemental report?

14 Q Exhibit No. 7, yes. Would you like me to put
15 it on the screen? It should be the last document in the
16 chat box.

17 A Okay, there it is. Okay, thank you very much.
18 That was so helpful.

19 Q You're welcome.

20 A Yeah, so I'm just reminding myself what I wrote
21 over the weekend.

22 And just as a -- you had asked me about Doral.
23 I should add that, you know, she does indicate that she's
24 turned to Doral Lights because she thought they were
25 safer for her. That is indicated in the testimony.

1 For Winston, go ahead and ask your Winston
2 question again so that I'm clear.

3 Q What opinions do you intend to offer at the
4 trial of this case as it relates to Winston full-flavored
5 cigarettes?

6 A Well, one, Winston was heavily marketed and
7 advertised and it was heavily marketed and advertised in
8 ways that the testimony indicates directly impacted the
9 Geist family. Mr. Geist was a racing fan. As he said
10 somewhere in the deposition, if it had wheels, he was
11 interested in it. I believe that was his description.
12 And Winston sponsored both what had formerly been known
13 as the Grand Nationals of NASCAR, the National
14 Association of Stock Car Racing, and they also sponsored
15 hot rod racing, National Hot Rod Association, which is a
16 form of drag racing, and those were both heavily promoted
17 nationally but also in Las Vegas, which was a major
18 center for both of those events. So that would be an
19 opinion. Mr. Geist indicated that his wife tended not to
20 accompany him to the races but they would watch them on
21 television. So that was the angle there for her.

22 She also was impacted by the shift in the mid
23 '90s of Winston to the no-additives formulation. Winston
24 went to a no-additives marketing campaign and indicated
25 that -- he says that "I believe this is why she switched

1 to Winston Lights." "No bull, no additives" was the
2 phrase, and this was heavily quoted through the racing
3 but other media as well. And then I'll offer the opinion
4 that Winston was later enjoined from using that campaign
5 by the Federal Trade Commission because it was deemed to
6 be deceptive.

7 Q Any other opinions on Winston?

8 A That's it.

9 Q With respect to Winston Light, what opinions do
10 you have that you intend to offer at the trial of this
11 case as to Winston Lights?

12 A Well, essentially the same opinion.

13 Q Or Winston Light 100s. Let me be specific.
14 Either one.

15 A Well, I may need to explain to the jury what
16 100 means. 100 millimeters was a longer cigarette; and
17 that was a marketing device, a design feature that was
18 used as a marketing device.

19 And, you know, Winston Lights were part of the
20 same marketing campaign and efforts as regular Winston,
21 often featured in the same advertising, both line
22 extensions. And there was also Ultra Lights. Although
23 it's not mentioned in the deposition, it was a line
24 extension along in that area. And like all other filter
25 and light cigarettes, they were frauds that sought to

1 persuade people not to quit smoking, to smoke what was
2 implicitly believed by the customers to be a safer
3 product.

4 Q Do you have any other opinions of Winston,
5 Winston Light 100s, or Winston Lights that you intend to
6 offer at the trial in this case?

7 A No.

8 Q You talked about the fact that Mr. Geist was a
9 fan of racing really in any form; right?

10 A That's how he describes it.

11 Q And he testified that he would go to races. I
12 think you acknowledged Mrs. Geist would not go with him;
13 right?

14 A No. He testified, as I indicated earlier, that
15 they would watch it on television together. He did
16 testify, though, that he would bring back themed
17 merchandise.

18 Q I'm going to ask you about the television
19 aspect of this, but in terms of going to races, Mr. Geist
20 testified that Mrs. Geist never went with him; right?

21 A That's correct.

22 Q And Mr. Geist testified that he enjoyed
23 watching NASCAR races on television, but Mrs. Geist did
24 not share that enjoyment of watching races; right?

25 A Not to the degree that he enjoyed it. He was

1 clearly a very devoted fan, but he did indicate they
2 would watch together.

3 Q In fact Mrs. Geist would complain whenever he
4 would put racing on television.

5 A He indicated that on occasion, yes.

6 Q Mr. Geist talked about the types of T-shirts he
7 would get for Camel or Winston and I think there was one
8 more. It was Camel, Winston and Marlboro, but he would
9 get those T-shirts at the races that he would attend,
10 right, and he would bring those home?

11 A That's correct.

12 Q All right. Winston Lights were introduced in
13 1974; right?

14 A That's correct.

15 Q They were introduced as a filtered cigarette?

16 A All Winstons were filtered. There was never an
17 unfiltered Winston of any line extension.

18 Q The 100 size, Winston Light 100s, was
19 introduced in 1977; right?

20 A That's right.

21 Q Do you have any opinions, by the way, on
22 Winston lights versus Winston Light 100s? Are they any
23 different beyond the fact that they're a different size?

24 A No, no. Just the 100s was a marketing
25 component.

1 Q It was a different size cigarette; right?

2 A Yes, they were a different size, as I indicated
3 earlier. That's obvious, yes.

4 Q And did Winston Light -- did the advertising
5 for Winston Light have the same theme of no additives, no
6 bull that you were talking about?

7 A Well, that didn't come until the '90s. That's
8 my recollection, yes.

9 Q In any event, there were no advertising for
10 Winston, Winston Lights, or Winston Light 100s that used
11 the term safe, safer, better, cleaner, healthier or less
12 dangerous, were there?

13 A That's correct. They relied on implicit
14 assurances of less harm.

15 Q And there were never any advertisements for any
16 light cigarettes of any brand that you're aware of that
17 ever had a claim that they would not cause disease or
18 would not be addictive; right?

19 A They did not use that language, but again these
20 terms were found to be fraudulent and therefore have been
21 banned by federal regulation.

22 Q My question was different.

23 There were no advertisements for any light
24 cigarette brand that specifically said that the
25 cigarettes would not cause disease or would not be

1 addictive?

2 A That's correct. They didn't use that language.

3 Q I think you said Merit was introduced in the
4 early 1970s; right?

5 A '75 actually, so the mid '70s.

6 Q '75, thank you for correcting me on that.

7 And Winston Light was introduced, I think as we
8 mentioned, in 1974 and Doral Lights were introduced in
9 1984. Is that right?

10 A Well, the answer, to get those things --
11 because there are so many brands, the Tobacco Merchants
12 Association publishes a brand directory guide, and I rely
13 upon that for all of the dates of introduction of these
14 materials. Let me pull that up. I'm having trouble with
15 my computer.

16 You know, let's agree to that date subject to
17 confirmation in basic tobacco-brand reference works that
18 I mentioned earlier.

19 Q In any event, because of the timing, any
20 advertisement for Winston Light, Merit, or Doral Light --
21 any print or billboard advertisement for any of those
22 brands would have had the surgeon general's label on it,
23 right, warning label?

24 A That's correct.

25 Q And that same is also true for Pyramid Light as

1 well; right?

2 A That's correct.

3 Q And with respect to Winston Light, Mr. Geist
4 initially testified that Mrs. Geist never told him why
5 she switched to Winston Light 100s, didn't he?

6 A Well, again this is similar -- in the second
7 volume of the deposition he does indicate that she told
8 him why. There's some conflicting information, that's
9 true.

10 Q In the first session of the deposition,
11 Mr. Geist specifically said that Mrs. Geist never told
12 him why she switched to Winston Lights; right?

13 A Right. And then in the second one he says that
14 he does remember her giving a reason.

15 Q You're aware of course that Mr. Geist, as he
16 testified, met with his lawyer for three days to prepare
17 for the deposition; right?

18 MR. REYES: Excuse me. Which deposition?

19 MR. GREEN: His deposition.

20 MR. REYES: Which one, Volume I or Volume II?

21 MR. GREEN: I don't know. Does it matter?

22 MR. REYES: It does matter, 'cause what you're going
23 to try and insinuate is I met with him -- when?

24 MR. GREEN: Why don't you object to the form.

25 MR. REYES: Object to the form; misstates the

1 testimony.

2 BY MR. GREEN:

3 Q Dr. Kyriakouides, Mr. Geist did testify that he
4 met with his lawyer for three days to prepare for his
5 deposition; right?

6 MR. REYES: Objection as to specificity of which
7 deposition. There's two days of deposition.

8 MR. GREEN: Okay.

9 Q I can refer you to the page if that helps.

10 A Yeah, let me get that open again.

11 Q Volume I, page 11.

12 A Page 11?

13 Q Yes, sir.

14 A Yeah, that's normally not something I note in
15 my review. I'm not interested in those issues, but I'm
16 reading that page and he says, "I met with my lawyer for
17 the last three days. We met for an hour for the first
18 night, about two hours the next night, and another hour
19 last night. Then last night I reviewed the
20 Interrogatories after he left."

21 So I guess to say that -- the answer then --
22 did he meet for three days prior to the first deposition?
23 The answer would be no. He did meet with his lawyer but
24 not for three days 'cause that would be approximately 24
25 hours of meeting if you take a full working day.

1 Q Well, then let's be specific.

2 Mr. Geist testified that he met with his
3 lawyers three days prior to his deposition for a total of
4 four hours and then he also testified that he met with
5 his lawyer the morning of his deposition as well on the
6 next page; right, sir?

7 A Right, yeah, so probably about four, four and a
8 half -- four hours and ten minutes 'cause he said he met
9 with him ten minutes, yeah.

10 MR. REYES: And to specify, it's Volume I of the
11 deposition.

12 THE WITNESS: Yes, this is prior to the first
13 deposition, which occurred on, just so that we're clear,
14 May 21st, 2021.

15 MR. GREEN: I've got to object to that. Nick,
16 you're not here to testify. I already specified it was
17 Volume I and we're not here to do that kind of thing. If
18 you have an objection to form, please make it.

19 MR. REYES: Okay.

20 MR. GREEN: Try to get back on track.

21 Q Pyramid, what are your opinions as it relates
22 to the Pyramid brand of cigarettes or Pyramid Light
23 specifically?

24 A It was manufactured by the -- I believe it was
25 the Liggett Company and was generally marketed as a

1 value-priced or discount-priced cigarette, but it was a
2 filter cigarette and they had a lights extension. So in
3 regard to filters and lights, my opinions would be the
4 same as they are to all filter and all light cigarettes.

5 Q Okay. Anything else as it relates to Pyramid
6 or Pyramid Lights that you intend to testify about at
7 trial?

8 A No. They're still sold today, but that's just
9 an observation really.

10 Q Mr. Geist testified that Mrs. Geist smoked
11 Pyramid Light 100s over the course of about a six-month
12 period in the late 1990s at the same time that she was
13 smoking Doral; right?

14 A Right, yes.

15 Q And you mentioned something that Pyramid was a
16 discount brand; right?

17 A Yeah, as was Doral, yes.

18 Q They were kind of competitors with each other
19 in that discount category to compete with generic brands
20 of cigarette; right?

21 A Yes.

22 Q And Mr. Geist testified that he didn't know any
23 reason why Mrs. Geist smoked Pyramid; right?

24 A That's my recollection, yeah.

25 Q But he did know that they would buy their

1 cigarettes from a store that sold them for a cheaper
2 price; right?

3 A Yes. I mean that's reasonable. Why would you
4 want to pay more?

5 Q And when she was smoking Pyramid and Doral at
6 the same time, Miss Geist would pick the brand of
7 cigarettes whichever one was on sale; right?

8 A Yes.

9 Q And price was sort of an important factor for
10 her in terms of which brand of cigarettes she would buy?

11 A In this case, yes.

12 Q And I think that was not just something that
13 had to do with cigarettes, but Mr. Geist testified that
14 they used coupons for everything they bought?

15 A Yes. These are effective marketing devices
16 employed by not only cigarette manufacturers but other
17 product manufacturers to promote use of their particular
18 brand.

19 Q And I think Mr. Geist said, "We used coupons
20 for everything."

21 A Yes.

22 Q And he said that the coupons they used were to
23 get money off of brands that she was already smoking,
24 brands of cigarettes; right?

25 A Well, to save money, right.

1 Q In other words, Mrs. Geist never tried any
2 brand of cigarette solely because of a coupon; right?

3 A I don't recall that being discussed in the
4 testimony.

5 Q Well, Mr. Geist actually said that, didn't he?
6 Would you like me to refer you to the page?

7 A Yeah, go ahead just 'cause I haven't memorized
8 the whole thing.

9 Q Page 264.

10 A Okay, so this is the second volume.

11 Q This is the first volume.

12 A First volume, okay. Thank you.

13 Q Tell me when you're there. I'll refer you to
14 the testimony.

15 A Yeah, I see it. Yeah, he says -- line 5, yeah.

16 Q And he says that Mrs. Geist, on line 7, never
17 tried any brand of cigarettes solely because of a coupon;
18 right?

19 A Right. He says that on line 10 and 11 when he
20 answers that, yeah.

21 Q Okay. And by the way, he also testified that
22 Mrs. Geist never received free cigarettes or free samples
23 of cigarettes either in person or in the mail; right?

24 A He did indicate that, yes.

25 Q And Mrs. Geist's use of coupons as it related

1 to cigarettes was essentially to get money off, to get a
2 dollar off here or two dollars off there; right?

3 A Right, for that and other products.

4 Q And Mr. Geist testified that they didn't read
5 the fine print. They weren't looking at what was said on
6 the coupon. They were just trying to save money; right?

7 A Correct, yes.

8 Q And by the way, Pyramid was made by Liggett;
9 right?

10 A Yes. I already said that.

11 Q We talked about where Mrs. Geist was born and
12 where she grew up. Part of where Mrs. Geist lived in her
13 earlier life was in the Ozark region in Arkansas; right?

14 A Yeah. That's where Mountain Home is located,
15 in the Ozarks.

16 Q And have you done any sort of specific research
17 as it relates to Mountain Home specifically or the Ozarks
18 generally?

19 A Well, yes. I did review the -- I believe it
20 was The Baxter Bulletin just for background and context
21 in that area. Let me go -- I have a huge newspaper
22 collection. Give me a second. Yeah, a local paper
23 called The Baxter Bulletin, which I access digitally
24 through a newspaper -- online digital newspaper archive.

25 Q Okay. I'm going to ask you -- I have some

1 questions to ask you about that newspaper actually.

2 A Okay.

3 Q When we're talking about the Ozark region where
4 Mountain Home is, the predominant denomination -- the
5 prominent religion is Christian, right, in that area of
6 the country?

7 A Right.

8 Q Protestant Christian specifically?

9 A Yes.

10 Q And more specifically Southern Baptist and
11 Methodist in that part of the south?

12 A There's a lot of Pentecostal and other. Church
13 of God is a -- 'cause many of those people trace their
14 roots to Kentucky and Tennessee, westward migrants. That
15 is an area known as Cane Creek Revival. Probably more
16 religious history than you want to know, but the whole
17 Church of God, Church of Christ denomination is there
18 too, which is another variety of American Protestantism,
19 what we call the Camelot churches.

20 Q I think they're based in Cleveland, Tennessee;
21 right?

22 A That's correct. Very good.

23 Q In fact that movement really sort of originated
24 and focused in the Appalachian region, as you mentioned,
25 from Kentucky to Tennessee even down to Georgia?

1 A Yes. North Georgia is also --

2 Q But when we're talking about Pentecostals --
3 which is Church of God and Church of Christ; right?

4 A Yes.

5 Q Pentecostals or Southern Baptists, each of
6 those denominations teach abstinence from tobacco and
7 alcohol; right?

8 A Yes. That doesn't mean that their members
9 follow it, but yeah, really alcohol is the big problem
10 there. Their teachings on tobacco are more ambiguous and
11 less decisive.

12 Q Well, the teachings of Southern Baptists and
13 Pentecostals and even Methodists about tobacco is
14 abstention, that people should abstain from using
15 tobacco, 'cause the Bible --

16 A I'm not familiar with any Methodist -- I mean
17 you could probably find Methodist ministers who say don't
18 smoke, but I'm not familiar with any formal position in
19 the Methodist church saying to abstain from tobacco.

20 One of the most famous Methodist families in
21 southern history is the family of James Buchanan Duke.
22 Duke University to this day is still affiliated with the
23 Methodist church. There's a lot of tobacco money behind
24 that college.

25 Alcohol, yes, they firmly -- the Methodist

1 Church South, M.E. Church South, which would have been
2 the relevant denomination at the time, was explicitly for
3 alcohol temperance.

4 Q You're talking about just Methodist. I mean if
5 we remove that and I ask you for Southern Baptist and for
6 Pentecostals, as it related to tobacco, their teachings
7 were to abstain from tobacco, that adults and youth
8 should abstain from using tobacco.

9 A I'm not familiar with a statement in the
10 Southern Baptist Church in their Articles of Faith that
11 says don't use tobacco. You can find individual
12 ministers that would preach against tobacco, and during
13 the anticigarette movement period before the 1920s, quite
14 a few did focus on cigarettes as the problem. But again,
15 you know, cigarettes themselves are largely a product of
16 the south. The Reynolds were, you know, an upcountry
17 Piedmont country family that headed down from Virginia to
18 Winston-Salem to sell tobacco.

19 Q So is it your testimony then that the Southern
20 Baptists and the Pentecostals did not teach that people
21 should abstain from tobacco?

22 A No. What I'm saying is I'm not -- I'm not
23 aware, unless someone shows me a document otherwise, of
24 an official position of the Baptist Sunday School Board,
25 which would have been the main headquarters of the

1 Southern Baptist Church at this time, explicitly saying
2 do not use tobacco. They were against the use of
3 alcohol. You can find preachers who would preach against
4 the evils of tobacco and the evils of liquor, but in the
5 decentralized faiths, you know, that essentially are
6 confederations of churches, there's great variation and
7 diversity on these issues. They're always against
8 liquor, but on tobacco there's great variation.

9 Q Weren't the churches of these evangelical
10 denominations sort of part of the driving forces behind
11 the temperance movement?

12 A They were. During the period leading up to the
13 adoption of the 18th Amendment, they were very much for
14 alcohol prohibition, that's correct.

15 Q And tobacco prohibition as well; right?

16 A Some were, yes; but always -- you know, alcohol
17 was always the number one evil.

18 Q And we've talked about tobacco prohibition
19 before of course and the fact that Florida passed a law
20 in -- I think it was 1899 making it illegal to sell
21 cigarettes in the state of Florida; right?

22 A Yes, which remained on the books for about two
23 weeks before it was struck down on technicality.

24 Q That's Florida. 16 or 17 other states passed
25 laws similar to that law, making it illegal to sell

1 cigarettes in those individual states; right?

2 A You're correct, yes. And one of the great
3 accomplishments of cigarette advertising or promotion in
4 the first third of the 20th century was to re-establish
5 the cigarette as a respectable item. So you're correct,
6 yes.

7 Q Wait. I'm correct that 16 or 17 other states
8 passed laws making it illegal to sell cigarettes around
9 the beginning of the 1900s; right?

10 A That's correct, between 1890 and the early
11 1920s. Most of those laws were repealed in the 1920s;
12 not all, most. And then but by way of explanation, you
13 know, one of the great accomplishments of cigarette
14 advertising and promotion was to establish the cigarette
15 as a respectable item of use.

16 MR. GREEN: Okay. And respectfully I'll move to
17 strike after "repealed in the 1920s" as nonresponsive.

18 Q In any event, one of the reasons behind the
19 laws prohibiting the sales of cigarettes around the turn
20 of that century was that people believed smoking ruined
21 the morals of young people; right? That was one of the
22 reasons?

23 A Yes, that's right. It was seen as a gateway to
24 alcohol use. A source of youthful juvenile delinquency I
25 guess maybe is the best term.

1 Q And as you said before, another reason was
2 because cigarettes were deadly; right?

3 A Yes. Many did point this out, yes.

4 Q And another reason is that some people believed
5 that cigarettes could be addictive?

6 A Yes. The addictiveness, the compulsion to
7 continue using cigarettes, was often cited by the
8 anticigarette forces as a reason to ban them as a product
9 unfit for human use. The practice of inhalation, which
10 struck the anticigarette forces as a new feature,
11 compared to cigars, pipes, was also something that they
12 pointed to as an evil and a flaw in the cigarette.

13 Q Right. And specifically -- I think you've
14 testified about this before, but the state of Iowa
15 specifically banned the sale of cigarettes from 1896 to
16 1921, so about a 25-year period; right?

17 A Yes. Iowa was on the list of anticigarettes
18 and then it was repealed.

19 Actually the American Tobacco Company, now part
20 of the R. J. Reynolds family of companies' corporate
21 structure, played a role in Iowa in lobbying against that
22 law and getting it repealed.

23 MR. GREEN: Okay. Move to strike after "yes" as
24 nonresponsive.

25 Q But in any event, Iowa had the first law of the

1 states banning the sale of cigarettes when it banned them
2 in 1896; right?

3 A Well, I thought Washington State was the first
4 as I sit here, and I'd have to look it up, but it was
5 certainly one of the first.

6 Q There we go, one of the first.

7 And Iowa was also one of the leading states for
8 the Christian temperance movement as well; right?

9 A Yes, Iowa was a center of temperance, yes,
10 that's correct.

11 Q And as you've said before, the anti-tobacco
12 sentiment was actually more intense in Iowa than the rest
13 of the country as a whole, particularly when we talk
14 about the fact that cigarettes were banned for a 25-year
15 period around the turn of the century; right?

16 A Yeah. Iowa was a center for that period of
17 time of anticigarette sentiment. That was overcome by
18 cigarette advertising, marketing, promotion, lobbying
19 efforts and other efforts.

20 Q In the first half of the 20th Century in Iowa
21 and frankly in Arkansas as well, there were articles that
22 were published that were talking about the fact that
23 cigarettes could be deadly or could be addictive as well;
24 right?

25 A You can find articles in the press both

1 condemning cigarettes and also articles praising tobacco.

2 Q And the articles that condemned cigarettes in
3 the first half of the 20th century in Iowa and Arkansas
4 were condemning them because they were deadly and could
5 be addictive; right?

6 A Yes, you can find articles critical of
7 cigarettes pointing to health problems, but you can also
8 find articles praising cigarettes as, you know, cleaning
9 your mouth, for example. That was a common thing in the
10 1920s you'd see in the press or that the cigarettes were
11 just fine. So you see both.

12 Q And my question to you is, when we look at
13 articles that were condemning cigarettes in Iowa and
14 Arkansas in the first half of the 20th century, those
15 articles reported that smoking could be deadly and
16 addictive; right?

17 A Some did, yes.

18 Q And we talked about Iowa. Arkansas also had a
19 statewide ban on the sale of cigarettes, and that ban was
20 between 1904 and 1920; right?

21 A That's correct, and again that was repealed.

22 Q Arkansas was also a leading state for the
23 Christian temperance movement to ban the sale of
24 cigarettes; right?

25 A Well, it was a leading state for the Christian

1 temperance movement. Temperance refers to alcohol, and
2 Arkansas did have a strong anti-alcohol movement, yes.

3 Q And it also had a strong anti-tobacco movement
4 as well in the early 1900s.

5 A Yes. Those were the ones that championed the
6 anticigarette law.

7 Q In fact --

8 A But they were -- as you indicated, they were
9 defeated in time.

10 Q In fact in 1920 the governor of Arkansas
11 actually issued an edict declaring that cigarettes were
12 harmful. You talked about that before; right?

13 A Yes. There were opponents of cigarettes in
14 Arkansas, that's true.

15 Q That edict would have been covered in the press
16 in Arkansas and in surrounding states; right?

17 A Yes, when it happened in 1920.

18 Q These laws or prohibition against cigarettes,
19 those were laws that only banned cigarettes; right? They
20 didn't ban cigars, pipe tobacco, or chewing tobacco?

21 A That's correct. The anticigarette movement
22 made a distinction between -- generally made a
23 distinction between different types of tobacco use. I
24 mean you can find exceptions. There were some that said
25 all tobacco is bad, but generally the cigarette was

1 identified as the evil.

2 Q And Iowa actually banned not just the sale of
3 cigarettes but also cigarette papers or cigarette
4 wrappers, so you couldn't even go and make your own
5 cigarettes in Iowa.

6 A That's correct, yes.

7 MR. GREEN: Let's go off the record for a quick
8 second.

9 (Recess taken from 10:03 a.m. to 10:34 a.m.)

10 BY MR. GREEN:

11 Q Dr. Kyriakouides, we were talking about Iowa,
12 the fact that it had banned the sale of cigarettes for a
13 25-year period around the turn of the 20th century;
14 right?

15 A Yes, which ended a quarter century before
16 Miss Geist was born, but that's correct.

17 Q Relatedly but a little bit of a tangent, have
18 you heard of a musical called The Music Man?

19 A Yes.

20 Q And that is actually a very famous musical in
21 the 1950s, the 1960s, and even after that too; right?

22 A Yeah. It's a 1960s film starring Robert
23 Preston and Shirley Jones and others. There's trouble in
24 River City.

25 Q I'm sorry?

1 A There's trouble in River City.

2 Q That's right. River City, Iowa to be specific;
3 right?

4 A Yes.

5 Q And when this musical was on Broadway in 1957,
6 it earned a host -- I think five Tony Awards, one for
7 best musical and other awards too; right, sir?

8 A It's a classic.

9 Q And there were even revivals of the musical
10 that happened in the 1960s and the 1980s on Broadway as
11 well?

12 A It's also a staple of high school drama
13 programs.

14 Q And for those who aren't aware, it was actually
15 one of the most famous Broadway shows that's been made
16 into a movie; right?

17 A It was made into a popular film. You know, if
18 you were going to rank Broadway musicals, you certainly
19 would put Oklahoma, West Side Story far ahead of that
20 one; but, you know, The Music Man was entertaining. Also
21 had -- oh, the kid that played Opie -- Ron Howard. He
22 appeared in it, young Ron Howard.

23 Q Ron Howard, that's right, Opie Taylor.

24 A I was going to call him Opie Cunningham, but
25 that's the nickname he got on a famous Saturday Night

1 Live skit.

2 Q Okay. And you said, "There's trouble in River
3 City." That's sort of a reference to the story being
4 about -- the musical being about a con man who comes to
5 Iowa; right?

6 A Yes. And that's actually one of the more
7 famous songs that deals with the corruption of youth. So
8 that's actually what I was referencing. "There's trouble
9 in River City, which begins with T, which rhymes with P,
10 which stands for pool."

11 Q That's pretty good, pretty impressive.

12 A I know my musicals.

13 Q You do.

14 A Don't ask me about sports history. I'm not so
15 good on that.

16 Q Except for maybe the Saints or the Dodgers;
17 right?

18 A Yeah, yeah, Yankees in the '70s kind of stuff.

19 Q But in any event, as we're kind of dancing
20 around, the musical was set in the early 1900s in Iowa in
21 a town called River City; right?

22 A That's correct.

23 Q And I'm going to play a short clip. I'm going
24 to put it in the chat box. We will mark it as
25 Exhibit No. 8, a clip, and I'm actually going to try to

1 share it on my screen, okay, if I can get it to work.

2 Just one second. I'll see if it works, if you can hear

3 the volume when I do this. Let me try to set this up.

4 First of all can you see on the screen --

5 A Yes.

6 Q Okay, good.

7 A There is a "share audio" command. You might

8 have to click a little thing in Zoom to share computer

9 audio.

10 Q Share sound.

11 A Share sound, yes.

12 Q I just clicked that. We'll see if this works.

13 (The video was played.)

14 BY MR. GREEN:

15 Q Let me do that again.

16 A I heard it.

17 Q Oh, you did?

18 A "River City. Station stop, River City."

19 Q I don't hear it, but I'm going to play it again

20 anyway.

21 (The video was played.)

22 BY MR. GREEN:

23 Q You were able to hear the audio on that; right,

24 sir?

25 A Yes.

1 Q Okay. There was a part where the train is
2 heading into River City. A man starts to do a -- or to
3 roll his own cigarette; right? He's standing up there.

4 A That's correct.

5 Q And the conductor says, "Put out your
6 cigarette. Cigarettes are illegal in the state of Iowa."

7 A He says, "Cigarettes are illegal in this
8 state," yes.

9 Q That's sort of a popular reference to the
10 prohibition against the sale of cigarettes in Iowa that
11 had occurred decades before.

12 A Right. It's funny. It's a joke.

13 Q Did you know that the author and composer of
14 the play, who was Meredith Willson, was actually inspired
15 by growing up in Iowa and then drawing upon his memories
16 in writing this play?

17 A I knew generally that he was from Iowa and this
18 was inspired by his experiences.

19 Q Okay. That is unfortunately it on The Music
20 Man.

21 Continuing on with prohibition, when some
22 states lifted the prohibition on the sale of cigarettes,
23 they still prohibited the sale of cigarettes to persons
24 under a certain age depending upon the state; right?

25 A That's correct.

1 Q And, for example, when Arkansas permitted the
2 sale of cigarettes in 1921, it prohibited the -- when it
3 permitted the sale of cigarettes in 1921, it prohibited
4 the sale of cigarettes to minors?

5 A That's my understanding, yes. That was true in
6 most states.

7 Q Okay. And I'll walk through some of this and
8 I'm happy to show you some of the underlying documents or
9 laws if we need to; but specific to Iowa, from 1921
10 through about 1962, Iowa prohibited the sale of
11 cigarettes to individuals under the age of 21?

12 A I believe that's the case, yes.

13 Q Okay.

14 A And then they lowered it.

15 Q In Iowa in that time period, it was -- you
16 could actually -- it was legal to sell or gift tobacco
17 that was not cigarettes to minors 16 or older, but it was
18 illegal to sell or gift cigarettes specifically to people
19 under the age of 21; right?

20 A Yeah, that's my understanding.

21 Q Right. So Iowa and other states actually drew
22 a distinction between cigarettes and other forms of
23 tobacco products between the 1920s and the 1960s,
24 prohibiting the sale of cigarettes but not other forms of
25 tobacco; right?

1 A That's correct.

2 Q And it was also illegal in Iowa between the
3 1930s and the 1960s to advertise the sale of tobacco
4 within 400 feet of a school; right?

5 A That sounds about right, yeah. There's a very
6 authoritative study of Iowa tobacco laws by Marc Linder
7 at the University of Iowa Law School, which I read a very
8 long time ago.

9 Q Very good.

10 A I seem to recall that.

11 Q And if you violated any of those prohibitions
12 in Iowa, you could be fined or imprisoned or both; right?

13 A Right. But one of the things too that Linder
14 points out is these were rarely enforced; but they were
15 on the books, you're correct.

16 Q Okay. Let me ask you this: From the 1920s
17 through the 1960s, you're not aware of any documents or
18 other evidence that between the 1920s and the 1960s show
19 that R. J. Reynolds was sending sales representatives to
20 prep schools or high schools specifically in Iowa or
21 Arkansas, are you?

22 A Well, they had a national program to do that
23 and we have seen those national documents distributed
24 widely to all of the sales reps, including ones that
25 would have been stationed in Iowa. I've never seen any

1 reference to Iowa or Arkansas separate and distinct from
2 the national campaigns, but Iowa and Arkansas, being part
3 of the nation, were part of those advertising campaigns.

4 Q When you're referring to you've seen documents
5 of the national campaigns, are you referring to the two
6 documents, one from 1926 and one from 1928 from
7 R. J. Reynolds, or are there more documents that you're
8 referring to?

9 A Well, yeah, actually if you go to my Expert
10 Report, I have ones from the 1940s which, given the
11 chronology of the smoker in this case, would certainly be
12 more relevant. I'll show you -- okay, I'll get you
13 there.

14 So if you go to page 26 and 27 of my Expert
15 Report, I certainly reference the 1927 document known
16 informally as "School Days are Here," that sales
17 memorandum, but then I also cite one from 1929 -- 1949.

18 Q Okay.

19 A And so that would be -- so and that one the
20 directive -- and it's nationally distributed -- is for
21 the salespeople to visit the school and college campuses
22 in their sales territory to determine, quote, "how the
23 various brands of cigarettes and smoking tobacco sell
24 among the students at each school and college," end
25 quote, and that's national. I can send you the link to

1 that.

2 Q No, I have it. I'm pulling it up.

3 So let me ask you this: The three documents
4 that you have listed here don't specify that sales
5 representatives were sent specifically to Iowa or
6 Arkansas, do they?

7 A No, but those sales representatives in Iowa and
8 Arkansas -- and Reynolds did have people in those
9 states -- would have received this directive.

10 Q Show me the evidence that you have, documentary
11 evidence that you have, that R. J. Reynolds had sales
12 representatives in Iowa and Arkansas that received that
13 directive.

14 A Again this is -- this is a nationally
15 distributed document to division managers, as it says on
16 the cover. The document itself -- I mean the document
17 itself indicates it's nationally distributed to division
18 managers, and it's directing the division managers to
19 instruct their salesmen to do what I just indicated that
20 I read into the record.

21 Q How many division managers and salesmen did
22 R. J. Reynolds have in Iowa and Arkansas in the 1950s and
23 1960s? Oh, I'm sorry, the 1940s when this memo was --

24 A I'm not recalling that particular statistic,
25 but Reynolds -- I have seen documents that illustrate the

1 hierarchical sales structure of Reynolds at approximately
2 this time -- it would be the early '50s actually -- and
3 I'm just not recalling the exact numbers; but Reynolds
4 advertised, marketed and promoted its products nationally
5 and it had done so since the rollout of the Camel
6 cigarette in 1913. So they had a national sales force.

7 Q In what instances did R. J. Reynolds --
8 specific instances did R. J. Reynolds, from the 1920s
9 through the 1960s, send a sales representative to prep
10 schools or high schools in Iowa or Arkansas? Please name
11 any evidence that you have for that.

12 A Well, this is the evidence that I have, that
13 they were directing the division managers to instruct
14 their salesmen -- and they were actually all men at this
15 time -- to engage in this activity.

16 Q And you don't have any evidence that any sales
17 representatives located in Iowa or Arkansas actually went
18 to prep schools or high schools in those states from the
19 1920s to the 1960s, do you?

20 A I don't have documents at my fingertips that
21 indicate a guy walking and showing up and writing down
22 that he attended a particular school at a particular time
23 in a particular place. What I have is this directive to
24 the entire sales force across the country to engage in
25 this activity.

1 Q You don't have any evidence that anyone, any
2 sales representative in Iowa or Arkansas, acted upon this
3 directive --

4 A Well --

5 Q -- and actually sent any sales representatives
6 to prep schools or high schools in Iowa or Arkansas
7 specifically, do you?

8 A Well, they also indicate college campuses, just
9 FYI.

10 No. I have this directive and this is a
11 national directive to the staff. I've seen no evidence
12 to the contrary. In particular I've seen no evidence,
13 during the time period of these documents at various
14 periods, where there are memoranda indicating that
15 division managers or lower-level sales staff were not
16 following the directives of the company and therefore
17 should be disciplined or their services discontinued from
18 the company. I have not seen anything like that.

19 So given the success at this time, in
20 particular in selling the flagship product Camel -- in
21 1949 that was the flagship cigarette of the
22 R. J. Reynolds Tobacco Company -- I'm engaging in that --
23 I'm drawing the line between historical documents to
24 indicate that what the managers indicated to the sales
25 staff was what the sales staff was directed to do and

1 what they did.

2 Q I understand the inference that you're making.
3 My question is, so that I understand all of the evidence
4 that you have, is do you have any evidence that any sales
5 representative located in Arkansas or Iowa acted on a
6 directive from R. J. Reynolds or any other tobacco
7 company and actually sent sales representatives to prep
8 schools or high school or colleges in either Iowa or
9 Arkansas specifically?

10 A Well, to be clear, this particular directive
11 says, "school and college campuses in your division."
12 It's the other document, the earlier document, that says
13 prep schools, and this is what I have. This is from this
14 time period. This is what I discovered in the historical
15 record and upon which I base my opinion that Reynolds was
16 marketing to students.

17 Q These three documents that you've been talking
18 about is the evidence that you have; right?

19 A Yes, that I included in my Expert Report, yes.

20 Q You don't have any follow-on -- you don't have
21 any documents or other evidence that shows that these
22 directives were implemented specifically in Iowa or
23 Arkansas and that any sales representatives were sent to
24 any type of high school, college, or prep schools in
25 those states, do you?

1 A I don't have memoranda that specifically apply
2 solely to Arkansas or Iowa.

3 Q Okay. With respect to -- let me go back to
4 something.

5 You testified about the Florida Health Notes
6 multiple times before; right?

7 A Yes.

8 Q And more specifically, the 1906 Florida Health
9 Notes that say, among either things, "Today the cigarette
10 is looked upon by all smokers as the very worst form of
11 tobacco addiction." You're familiar with that; right?

12 A Right, 'cause it's laced with opium and other
13 contaminants manufactured -- I mean you can read the
14 whole quote. I don't have the document in front of me,
15 but the whole quote is of interest.

16 Q In any event, you're familiar with the Florida
17 Health Notes from 1906; right?

18 A I'm familiar with it, yes.

19 Q Were you aware that the language that was in
20 the Florida Health Notes in 1906 addressing cigarettes
21 was also used in other state -- by other state
22 departments around the country?

23 A Yes, 'cause it was a quote from a prominent
24 religious figure -- I forget his name but -- in the
25 Florida Health Notes, and you see this in other places.

1 That is a description of cigarettes offered by a
2 minister.

3 Q Reverend James Hammond; right?

4 A Yes.

5 Q I put in the chat box and it's marked as
6 Exhibit No. 9 --

7 A Oh, I see, okay. I didn't even pay attention
8 to that chat box.

9 Q That's all right. Any time I put something in
10 there, I'll let you know.

11 A Right.

12 Q If you'll confirm that Exhibit No. 9 is the
13 Iowa Health Bulletin from June of 1906.

14 A Yes.

15 Q And if we look at the second page of the PDF,
16 in the right-hand column it addresses cigarettes and
17 foods, similar language to the 1906 Florida Health Notes
18 that "Today the cigarette is looked upon by all smokers
19 as the very worst form of tobacco addiction. It is so
20 cheap, it is so generally inhaled, it is often so loaded
21 with drugs and so many times made up from cigar stumps
22 and street scrapings, that there is every argument
23 against its use." Right?

24 A That's what it says. And it continues,
25 "Reverend James L. Hammond tells what he saw in a

1 San Francisco opium den:

2 "In a room not more than 20 feet square, down
3 three stories underground, dimly lighted and dingy where
4 the air was so foul it almost overcame you as you stood
5 in the entrance, I found 12 Chinamen busy at work.
6 Sitting flat on the floor in the midst of indescribable
7 filth, they were rolling cigarettes for the American boy
8 to smoke.

9 "There was a great pile of material in one
10 corner of the room, and we struck a match and stooped
11 down to examine it. We found it was cigar stumps and
12 quids of tobacco mixed with the vilest of sewer
13 excretions," and then the citation is The Healthy Home.

14 This was widely circulated at the time.

15 Q Yes, this was widely circulated at the time.
16 That's what I was going to ask you. It was published not
17 just in Florida and Iowa but by a number of other state
18 departments of health around the country in 1906 or
19 around that time; right?

20 A Right. And in other areas you can do a Google
21 book search for that text and you'll find it in a number
22 of places. It was part of the religious critique. Of
23 course it's associating a whole class of people with
24 filth too, so it's a very racist statement, but it's
25 indicative of the time period. Historians have to deal

1 with this all the time.

2 MR. GREEN: Okay. Move to strike the "very racist
3 statement."

4 Q So Iowa and Arkansas, like other states, in the
5 1950s and 1960s, had in the grade-school curriculum,
6 textbooks that taught about the dangers of smoking?

7 A Yes. That's -- and you have to actually read
8 the specific textbooks to see the content of the
9 instruction, the kinds of information.

10 Q I'll show you some of them, a few of them.

11 First thing we're going to do is for the state
12 of Arkansas, and we'll mark as Exhibit No. 9 --

13 MS. RUIZ: Hey, Phil, I think you marked this
14 bulletin as Exhibit 9 and I don't have an Exhibit 8. I
15 don't know if you meant the clip to be Exhibit 8.

16 MR. GREEN: Yes, okay. So, number one, you're
17 right, Maria. The Music Man clip that I did not mark as
18 Exhibit No. 8, I'll mark it as Exhibit No. 8. The Iowa
19 Health Bulletin is Exhibit No. 9, and I just misspoke a
20 moment ago.

21 Q What I'm putting in the chat box now,
22 Dr. Kyriakouides, if you will confirm that what we are
23 marking as Exhibit No. 10 is a 1953 Bulletin on Teaching
24 Aids in Health, Elementary Science, and General Science
25 in Little Rock, Arkansas in 1953.

1 A Yes, that's correct.

2 Q And if you'll look on page 3 -- page 4 of the
3 PDF, which is page 3 of the document at the top --

4 A Yep.

5 Q -- it references that a textbook called Science
6 for Modern Living is to be used in grades 1 through 8 in
7 Arkansas and identifies the corresponding teachers'
8 manuals for that textbook; right?

9 A That's correct.

10 Q So we'll mark as Exhibit No. 11 that textbook,
11 if you'll confirm that what we've marked Exhibit No. 11
12 is the textbook Science for Modern Living that was to be
13 taught in grades 1 through 8 in Arkansas in the 1950s.

14 A Yes. I've seen this book.

15 Q You have?

16 A Yes, I have. I have a large collection.

17 Q Very good. On the -- let me get my hard copy
18 'cause I can't see it.

19 If you look at the second -- the third page of
20 the PDF, at the top it says it's copyright 1951 by JB --

21 A Lippincott.

22 Q -- Lippincott --

23 A The publisher, yes.

24 Q And then if we look at page 9 of the PDF, which
25 is page 166 --

1 A Uh-huh.

2 Q -- of the textbook, there's a section that's
3 titled "How are Alcohol and Tobacco Harmful?" Do you see
4 that?

5 A Yes.

6 Q And it says in the first paragraph, "Normal
7 boys and girls know that it is stupid to build healthy
8 bodies and then to harm them by use of poisonous drugs.
9 The most common injurious drugs are alcohol and the drug
10 found in tobacco."

11 Did I read that correctly?

12 A You read that correctly.

13 Q Okay. So this 1951 textbook in Arkansas, used
14 in Arkansas, says that tobacco is a drug; right?

15 A Yes.

16 Q If we flip to the next page of the PDF,
17 page 169 of the textbook, right above where it says
18 "Things to think about," it says, quote, "Cancer of the
19 throat and the tongue is more common among smokers than
20 among nonsmokers. A study of many thousand death reports
21 show that heavy smokers live shorter lives than do
22 nonsmokers. It seems that smoking is an altogether
23 undesirable habit."

24 Did I read that correctly?

25 A Yes.

1 Q This 1951 textbook in Arkansas is saying that
2 cancer of the throat and tongue is more common among
3 smokers than nonsmokers; right?

4 A You read that correctly.

5 Q And the book is teaching students that heavy
6 smokers live shorter lives than nonsmokers do; right?

7 A That's correct. As I recall -- it's been a
8 while since I've looked at the entirety of this book. I
9 did some research in the Library of Congress, which is a
10 good place to review all of these. My recollection is
11 there's no mention of lung cancer in this work.

12 And then I would just point to, by way of
13 explanation, the point I make in the Expert Report that
14 the AMA NEA -- National Education Association -- health
15 guidelines specifically direct teachers to avoid
16 exaggerating the risk of smoking because many students
17 see adults smoke with no apparent injury, including
18 doctors, and that's in my Expert Report.

19 Q Okay. Are you finished with your answer?

20 A Yes.

21 MR. GREEN: Okay. And respectfully move to strike
22 as nonresponsive.

23 Q My question is simply, the textbook that was
24 used in Arkansas says that heavy smokers live shorter
25 lives than do nonsmokers?

1 A You read that section correctly, yes.

2 Q Let's look at the next one.

3 And you've reviewed different versions of
4 textbooks published by the JB Lippincott Company; right?

5 A And other publishers as well, but I guess what
6 you're saying, I've looked at editions as they evolve
7 over time, as they come to change the information that
8 they include? Is that what you're asking?

9 Q I'm just asking if you've reviewed other
10 textbooks or editions by the JB Lippincott Company.

11 A Yes. They published a wide variety of school
12 textbooks. They were a large publisher. Still are.

13 Q If you'll confirm what I've put in the chat box
14 and am marking as Exhibit 12 is the 1959 edition of the
15 very same textbook we were just talking about.

16 A Yes, that's correct.

17 Q And if you care to look at page 31 of the PDF
18 and page 40 of the PDF, it has the exact same information
19 that we were looking at that was published in 1951, if
20 you'll confirm that.

21 A PDF page 31?

22 Q PDF page 31 and PDF page 40.

23 A All right. Let me -- give me a second to
24 review that if I may.

25 Q Sure.

1 A You got a lot of pages on the PDF and it's kind
2 of small.

3 Okay. PDF page 39 is the index.

4 Q Page 31.

5 A PDF 31, okay. I'm trying to get to this as
6 quickly as I can.

7 Okay, yeah, "How are Alcohol and Tobacco
8 Harmful?" Yeah, let me refresh my recollection 'cause
9 this is familiar to me. Right, this is an example of --
10 it's almost word for word the same. That's what you're
11 asking me; right?

12 Q That's my only question.

13 A Yes, and that is true. So, you know, even
14 after all of the science that had been released in the
15 1950s, this 1959 edition still has such woefully outdated
16 and, quite honestly, incorrect health information for the
17 young people, no mention of lung cancer, any of the
18 things that had happened over the course of the 1950s
19 from Wynder and Graham, Doll and Hill, and all of those
20 other pioneering confirmatory researchers.

21 Yeah, very interesting. This is a very -- this
22 is a very interesting case, yes, thank you.

23 Q You're welcome.

24 Respectfully move to strike as nonresponsive.

25 My only question was simply, is it the same as

1 the prior version?

2 A It appears word -- yeah, Mr. Green, it appears
3 word for word a decade later.

4 Q In the 1950s, in the 1951 edition of this
5 textbook and the 1959 edition of this textbook that was
6 used in Arkansas, it refers to cigarettes -- or refers to
7 tobacco as containing a drug. It refers to the fact that
8 cigarettes cause cancer of the throat and tongue and that
9 heavy smokers live shorter lives than nonsmokers; right?

10 A That's correct.

11 Q Let's look at the next one. I'll put it in the
12 chat box. We'll mark it as Exhibit No. 13. If you will
13 confirm that what we've marked -- or what we are
14 marking -- as Exhibit No. 13 is a 1958 Handbook for
15 Health Education in Arkansas Schools sponsored by the
16 Joint Committee on School Health of the Arkansas State
17 Board of Health; right?

18 A Yeah, that's correct.

19 Q All right. And we've talked about curriculum
20 guides before. This is what appears to be a curriculum
21 guide; right?

22 A Let me make sure I'm -- let me make sure I've
23 got the right things here.

24 Okay, yes. Let me -- yeah, for health
25 education in Arkansas schools, yes. This is a standard

1 curriculum guide, correct. The answer is yes. I was
2 just having trouble getting my file open.

3 Q Sure. On the very first page it's sponsored by
4 the Joint Committee on School Health of the Arkansas
5 State Board of Health; right?

6 A Yes, and the State Department of Education.

7 Q Exactly. In 1958; right?

8 A That's correct.

9 Q And on the right-hand side of page 69 of the
10 document it says, "Chapter 4 - Health Instruction." Do
11 you see that?

12 A Yes.

13 Q And then there's a section titled "Purpose."
14 It says, "The purpose of health instruction is primarily
15 concerned with the development of healthful behavior in
16 the daily activities, practices, habits and attitudes of
17 the child."

18 Did I read that correctly?

19 A Yes.

20 Q And under the principles -- under the heading
21 Guiding Principles it says, No. 2, "Health instruction
22 should be continuous from the first grade through the
23 twelfth"; right?

24 A Yes, that's what this says.

25 Q And then No. 3, "Health instruction programs

1 should be planned for each of the 12 school years to
2 prevent omissions and unnecessary duplication."

3 Did I read that correctly?

4 A Yes, you did.

5 Q So the Arkansas state curriculum requiring
6 health instruction from the first grade through the
7 twelfth; right?

8 A That's correct.

9 Q On the next page of the PDF on the right it
10 says, "Junior High Level." Do you see that?

11 A Yes.

12 Q And under the Social section it says, "Students
13 in junior high are to be taught" -- in Arkansas -- "are
14 to be taught the effects of alcohol, drugs, tobacco,"
15 parentheses, "(social and economic implications)."

16 Did I read that correctly?

17 A You read that correctly.

18 Q On the next page on the senior high level in
19 section C, "Students in Arkansas in senior high are to be
20 taught about analyzing the effects of narcotics, drugs,
21 tobacco and alcohol"; right?

22 A That's what it says. You read that correctly.

23 Q And so in Arkansas in 1958 it was required that
24 students from the first grade through the twelfth be
25 given health instruction analyzing the effects of drugs,

1 tobacco and alcohol"; right?

2 A Right, their social and economic implications.
3 I don't see the health implication, but I do see social
4 and economic implications.

5 Q And we could look at examples of textbooks to
6 determine what was specifically taught; right?

7 A Yes, or at least what the textbook said.
8 What's taught is, you know, determined by the lesson
9 plan.

10 Q Right. Exhibit 14, which I'm putting in the
11 chat box --

12 A Okay.

13 Q -- if you'll confirm that that is a document
14 titled "General Science and Biology for Secondary
15 Schools" in the state of Iowa in 1950.

16 A Let me get it open.

17 That's correct, yes.

18 Q And that's published -- as you see at the
19 bottom of the title page, it's published by the state of
20 Iowa; right?

21 A That's correct.

22 Q Okay. I'm going to direct you to page 75 of
23 the PDF, which is page 187 of the actual document.

24 A Okay.

25 Q You're right, these are large PDFs.

1 A No problem.

2 I'm on 187 of the document.

3 Q Yep. And this lists one of the textbooks
4 provided to be used in Iowa as the textbook titled
5 "Exploring Biology"; right?

6 A What's the author?

7 Q I'm sorry. Down at the very bottom, second to
8 the last.

9 A That's one of the books -- that's one of the
10 basic textbooks indicated as -- they say useful with all
11 units, yes.

12 Q Do you recall seeing that textbook before?

13 A Exploring Biology? That one is not coming to
14 mind.

15 Q Let me show it to you, if you'll confirm that
16 what I've put in the chat box and we'll be marking as
17 Exhibit No. 15 is an excerpt of the textbook used in Iowa
18 called "Exploring Biology" dated -- published in 1949.

19 A Here, let me get that. Give me a second here.

20 Q So in this textbook that was used in Iowa, on
21 page 20 of the PDF, which is page 288 of the textbook,
22 there's a section on alcohol and tobacco; right?

23 A Yes.

24 Q And if we look at the next page, there is a
25 section that actually lists "Raymond Pearl's Findings."

1 Do you see that?

2 A Yes. I've seen this book before.

3 Q Yeah. And it actually says students in Iowa
4 were taught about Raymond Pearl's findings and it says,
5 quote, "A statistical study by the late Raymond Pearl of
6 Johns Hopkins University revealed some rather startling
7 facts. Dr. Pearl studied 6,813 white males selected at
8 random. He grouped them in three classes: Nonsmokers,
9 moderate smokers, and heavy smokers. On the basis of
10 these studies he arrived at the following conclusions:
11 One, 66,584 nonsmokers out of every 100,000 age 30 years
12 may be expected to live to be 60 years old. Two, 61,911
13 moderate smokers out of every 100,000 age 30 years may be
14 expected to live to be 60 years old. Three, only 46,226
15 heavy smokers out of every 100,000 age 30 may be expected
16 to live to be 60 years old."

17 Did I read that part correctly?

18 A You did, yes. And I'm struck -- reminded again
19 of the importance of the copy heading because, as the
20 first paragraph says, "Dr. Pearl studied 6,813 white
21 males selected at random"; and how they arrived at
22 66,000, 61,000 and 46,000 nonsmokers, moderate smokers,
23 and heavy smokers is something of a mystery. I think
24 anybody with basic numerical skills would be struck by
25 that unusual bit of text. But you did read it correctly.

1 Q Whatever the correct mathematical numbers are,
2 I mean the textbook is clearly delivering statistics
3 showing that heavy smokers are much less likely to live
4 to be 60 years old than moderate smokers or nonsmokers.

5 A Yes. Now, as a context -- that's correct, and
6 Pearl did find -- you know, he did find that, you know,
7 heavy smokers died prematurely compared to nonsmokers,
8 and that is accurate. It's just they seem to have
9 totally botched his actual findings from the scientific
10 publications to the publication of the textbook.

11 Q The textbook goes on to report that,
12 "Statistically speaking, the average life of heavy
13 smokers does not appear to be as long as the average life
14 of moderate smokers and nonsmokers"; right?

15 A Right, yes, implying that there is a safe
16 dosage of cigarette use.

17 MR. GREEN: Move to strike that as nonresponsive
18 after the word "yes."

19 Q All right. Let's look at the next edition
20 of -- well, let me just ask you this: You wouldn't be
21 surprised to see subsequent editions of this very same
22 textbook used in Iowa containing the same information,
23 including citations to Raymond Pearl's findings; right?

24 A It wouldn't surprise me. Do you have a later
25 edition? We might as well enter that into the record

1 just to --

2 Q We can do that.

3 A -- have a complete record. I'm happy to do
4 that. And I'll answer the way I'm indicating, but it
5 would be good to confirm it if you have it. If you don't
6 have it, that's okay.

7 Q I do. I just know how much people enjoy
8 walking through these documents. I was trying to make
9 it --

10 A No, I understand, but this is your opportunity
11 to -- and I'm here until you need to be done.

12 Q At this rate that might be tomorrow.

13 So if you'll confirm that what I have marked as
14 Exhibit No. 16 and put in the chat box is the 1954
15 edition of this book Exploring Biology that was taught in
16 schools in Iowa.

17 A Yep.

18 Q And if you look at page 18 of the PDF, page 324
19 of the textbook, it has a section called "Alcohol and
20 Tobacco" that reports Raymond Pearl's findings just as we
21 were looking at in the prior --

22 A Yes, in the exact same language. So, yes, the
23 answer is yes.

24 Q Okay. And in Iowa the curriculum -- well, let
25 me just show you this. I'll mark this as Exhibit No. 17,

1 if you'll confirm that this is a document from the state
2 of Iowa in 1962 entitled "The Educational Program - A
3 Curriculum Design."

4 A Yes, I see it.

5 Q If you flip to the last page, it identifies
6 that in secondary schools, that students -- the
7 curriculum was required to include health instruction
8 specifically on narcotics, alcohol and tobacco, right, in
9 the 1960s?

10 A Yeah. Oh, yeah, in the box, yes. I'm just
11 trying to -- yes, the very last item, that's correct.
12 You read that correctly and that's in fact what it says.
13 That's correct, yes.

14 Q Okay. You talked earlier about a newspaper
15 called The Baxter Bulletin; right?

16 A Yes.

17 Q That was the newspaper from Mountain Home,
18 Arkansas.

19 A Yes. It was a weekly paper. It came out every
20 Thursday.

21 Q Let me see if I can get my stuff organized. I
22 want to show you a few articles from The Baxter Bulletin.

23 Put this in the chat box and we'll mark as
24 Exhibit No. 18 -- 17, I'm sorry.

25 A Okay.

1 Q No, I'm sorry, Exhibit 18. The last one was 17
2 and that was the Iowa curriculum guide.

3 Exhibit No. 18, if you'll confirm, is an
4 article from the Baxter Bulletin from November the 4th of
5 1954; right, sir?

6 A Yeah, let me get that. It's taking a little
7 while for the documents to show up in the chat.

8 Q Oh, sorry about that.

9 A That's okay. And then now it's downloading.
10 Why it's downloading so slow -- you know, I'm at the
11 university where we have fast internet.

12 MS. RUIZ: I'm having the same issue. I don't think
13 it's you, Doctor.

14 THE WITNESS: Oh, okay.

15 MR. GREEN: It's probably having to route through
16 Mountain Home, Arkansas.

17 THE WITNESS: That's right.

18 Okay, I've got it, yes.

19 BY MR. GREEN:

20 Q Exhibit 18 is an article from the Baxter
21 Bulletin November the 4th of 1954 titled "Higher Death
22 Rate for Cigarette Smokers"; right?

23 A Let me find that. It's probably down towards
24 the bottom.

25 Q On the left.

1 A Yes, I see that and I've seen this article.
2 I've done a review of this paper.

3 Q Okay. And it says, "The American Cancer
4 Society" -- you can zoom in on this and see it; right?

5 A Uh-huh, yeah, I can see it just fine.

6 Q It says, "The American Cancer Society recently
7 cleared up most of the confusion about health and
8 cigarette smoking when it reported that deaths among
9 cigarette smokers from 50 to 70 years of age are as much
10 as 75 percent higher than those among nonsmokers. The
11 report was" -- there appears to be a typo. "The report
12 was" -- well, I'm sorry. It says, "The report was no
13 tentative or qualified report"; right?

14 A That's what it says, yeah.

15 Q And then in the third paragraph starting with
16 "originally" it says, "Originally the American Cancer
17 Society intended to wait another year before reporting on
18 the study, but officials of the Society report that
19 cigarette smokers were found to have so much higher death
20 rates, they didn't think they could withhold the
21 information another year. They also said they were
22 releasing this information because 'we are thinking of
23 saving lives.' Lung cancer deaths were found to be at
24 least three times and possibly nine times as common among
25 cigarette smokers as among nonsmokers."

1 Did I read that correctly?

2 A Yes, yes. This is the famous Hammond Horn
3 study and this particular piece of information was
4 reported all over the country.

5 Q Right. Including in 1954, the Hammond and Horn
6 study results were reported on in Mountain Home,
7 Arkansas; right?

8 A That's correct.

9 Q And the findings of that study were reported in
10 Mountain Home that lung-cancer deaths were at least three
11 times, and possibly nine times, as common among smokers
12 as among nonsmokers; right?

13 A That's correct, and that's what this particular
14 newspaper story says.

15 Q At the bottom it says, "This is stunning news
16 of great significance to the civilized world and it
17 cannot be ignored or contradicted by medical authorities
18 anywhere. The American Cancer Society certainly has no
19 axe to grind. It has been conducting this study for
20 years and will continue it for another two and a half
21 years."

22 That was reported on in Mountain Home in 1954;
23 right, sir?

24 A That's what that story says, yes.

25 Q Let's look at another one.

1 A What's the date of this?

2 Q This is -- if you'll confirm that Exhibit 19 is
3 a Baxter Bulletin article dated June the 2nd of 1960.
4 You see it on the top right.

5 A Yeah. Let me -- okay, I've got it open.

6 Q There's a section we see in the middle towards
7 the right called "Comments on the County Beat," and on
8 the next part of the PDF -- here, let me share this on
9 the screen.

10 A It's pretty small. I'm going to have to
11 enlarge it just to read it.

12 Q I've got it here for you. Can you see this on
13 the screen?

14 A Uh-huh.

15 Q The article June 2nd, 1960 in the Baxter
16 Bulletin says, "Latest warning on the cigarette threat
17 comes from the National Tuberculosis Association, which
18 has issued a statement on these three points: One, there
19 is an alarming increase in deaths from lung cancer. Two,
20 cigarette smoking is a major cause of lung cancer. And,
21 three, the risk of lung cancer increases with the number
22 of cigarettes smoked."

23 That's what was being reported June the 2nd,
24 1960 in the Baxter Bulletin; right?

25 A Yes. And that was the position, you know -- I

1 mean, you know, earlier that year they had a story about
2 how the National Cancer Institute was developing a cancer
3 pill that would protect smokers. So there's a lot of
4 conflicting information.

5 Q Have you seen any reference to the cancer pill
6 being reported upon in the Baxter Bulletin?

7 A Yeah, May 1963, front page.

8 Q Okay. This article on June 2nd of 1960 in the
9 Baxter Bulletin is reporting that smoking is a major
10 cause of lung cancer and the risk of lung cancer
11 increases with the number of cigarettes smoked; right?

12 A That's correct. And in other editions of the
13 paper they're saying, "Don't worry, they're developing a
14 pill." But you're right. What you read is correct.

15 MR. GREEN: Move to strike after the first "correct"
16 as nonresponsive.

17 Q At the very bottom, The Baxter Bulletin in 1960
18 reported that "No present method of treating tobacco or
19 filtering the smoke has been proved to reduce the harmful
20 effect of cigarette smoking. Up to now these harmful
21 effects can be avoided only by not smoking cigarettes."

22 Did I read that correctly?

23 A That's correct, yes.

24 Q All right. In your review of The Baxter
25 Bulletin, did you see evidence in 1960 that was reporting

1 that the local unit of the American Cancer Society showed
2 a film to teenage students and adults informing them of
3 the dangers of smoking?

4 A Yeah. They had an active branch of the
5 National Cancer -- the American Cancer Society in
6 Mountain Home, the town of Mountain Home. Yes, I did see
7 that, yes.

8 Q Okay. And let me show you the next one.

9 Exhibit No. 20, if you'll confirm, is an
10 October the 11th, 1962 article from the Baxter Bulletin
11 as soon as it loads.

12 A Yeah, it's a little slow. Sorry about that.

13 What are the first four or five characters of
14 the file? The last one I have is KN-02 then PMU 99462.
15 Is that the one or am I still waiting for another one to
16 come?

17 Q Still waiting for another one to come.
18 Apparently these are large files. I don't know why, but
19 they are.

20 A Yeah, this one's not even starting to download.

21 Let me -- okay. This one is 99465?

22 Q Yes, sir.

23 A Okay, great. Yeah, I'm sorry that it's slow.

24 Q No. It's probably my fault somehow.

25 A It's quicker than you flying to Murfreesboro.

1 Q I got to come back up there. I'll be in
2 Gatlinburg this weekend.

3 A That's nice. Yeah, that's always a pleasant
4 place. You get to eat dinner with your family tonight
5 and that's a positive thing.

6 Q That is exactly right.

7 Okay. Exhibit No. 20 is an October the 11th,
8 1962 article from The Baxter Bulletin; right?

9 A Yes. Give me -- a little wheel is spinning as
10 it downloads. Click to open. Okay, here it is. Sorry
11 for the delay.

12 Q That's all right.

13 There's an article here titled, if you look at
14 page 2 and 3 of the PDF, "Dr. Peale Speaks at a Medical
15 Event."

16 A Yes, I see that.

17 Q And at the very last page towards the bottom,
18 the article reports about Dr. Ochsner; right?

19 A Yeah, let me -- okay. There it is, Alton
20 Ochsner, yes, a prominent anticigarette health activist.

21 Q Yep. He was actually speaking at a festival.

22 Are you guys getting an echo?

23 THE REPORTER: Yeah.

24 MR. GREEN: All right, hang on.

25 Is that better?

1 THE REPORTER: Yes.

2 MR. GREEN: All right.

3 Q This article in 1962 is reporting that
4 Dr. Ochsner was speaking at a festival in Arkansas in
5 1962; right?

6 A That's correct.

7 Q And at this event Dr. Ochsner told the people
8 attending the festival, towards the bottom, that the risk
9 of a cigarette smoker incurring lung cancer is eight
10 times as great as that of a nonsmoker; right?

11 A That's what it says, that's correct, yes.

12 Q Okay. The next one is uploading. I'm not sure
13 why it takes a minute, but it is uploading.

14 A Okay. Mr. Green, is this one 99465?

15 Q No. That's the prior one. This one is still
16 uploading. I apologize to everyone for the delay. I
17 really don't know why it's taking the time that it is,
18 but it should be almost done.

19 Okay. That should work.

20 A Okay. I'm opening it now.

21 Q We'll mark this as Exhibit No. 21, if you'll
22 confirm that it is an article from April the 4th of 1963
23 from the Baxter Bulletin. Right, sir?

24 A I'm downloading it. Almost there.

25 Okay. I'm looking at it and I see the article

1 and it is, as you say, April 4th, 1963.

2 Q Okay. And the article is titled "Dr. Guenthner
3 Attends Seminar on Lung Cancer"; right?

4 A Yes.

5 Q And I don't know if you can see it. Are you
6 able to see on the second page what the article says?

7 A Yeah, I'm reading the article.

8 Q It says, "Dr. John Guenthner of Mountain Home,
9 president of the Baxter County Medical Society, returned
10 recently from St. Petersburg, Florida where he
11 participated in a postgraduate course in the changing
12 concepts of respiratory diseases. Lecturers included
13 leading medical authorities from different parts of the
14 country."

15 Did I read that correctly?

16 A Yes.

17 Q And the article goes on. "Dr. Daughtry said
18 suspicions that smoking is the primary cause of lung
19 cancer have been confirmed by data gathered over the past
20 50 years and that proper utilization of knowledge is to
21 think twice before lighting a cigarette.

22 "Conclusions based on research results, he
23 said, have led doctors in general to believe a great
24 percentage and perhaps all epidermoid cancer of the lung
25 is caused by smoking cigarettes."

1 That's being reported on by the Baxter Bulletin
2 in 1963.

3 A That's correct. That's what it says in this
4 edition of the paper.

5 Q I went ahead and marked the next exhibit and
6 put it in the chat box, which we'll mark as
7 Exhibit No. 22, which is an April 18th, 1963 edition of
8 the Baxter Bulletin; right?

9 A Yes, that's correct.

10 Q And on the second page of the PDF there's an
11 article that says, "Should I smoke cigarettes? The
12 American Cancer Society suggests that everyone know the
13 facts about lung cancer before deciding. About 40,000
14 men and women in the United States will die of lung
15 cancer this year if present rates continue."

16 It goes on, "About 30,000 of these deaths would
17 not occur if the victims had not been cigarette smokers,
18 according to Dr. Max Cheney of Mountain Home. Abstaining
19 from cigarettes, he said, would also save the lives of
20 additional thousands who will die this year of various
21 types of cancer related to smoking such as cancer of the
22 lip, mouth, tongue, larynx and esophagus."

23 Did I read that correctly?

24 A Yes.

25 Q Two paragraphs down it says, "For this reason,

1 the American Cancer Society, during its April
2 educational and fundraising crusade, is stressing the
3 health hazards of cigarette smoking."

4 Did I read that correctly?

5 A Yes.

6 Q And then two paragraphs below that it
7 references Dr. Cheney again and says, "Dr. Cheney pointed
8 out that the American Cancer Society's main concern was
9 to get the facts to the public about the hazards involved
10 in cigarette smoking," quote, "'so that the individual
11 can make a realistic decision of whether to smoke or not
12 to smoke.'"

13 Did I read that correctly?

14 A Yes.

15 Q And this April 1963 Baxter Bulletin article is
16 reporting that 75 percent of those who die of lung cancer
17 are cigarette smokers; right?

18 A That's what he's reporting.

19 Q And The Baxter Bulletin continued to have
20 articles on the dangers of smoking and lung cancer and
21 other diseases going forward in the 1960s, the 1970s, the
22 '80s and the '90s; right?

23 A A few, yes. It's a weekly paper. It didn't
24 cover much national news. The ones you've covered from
25 the '50s and '60s, based on my analysis, is just about

1 it. There's a few others but not much more. For
2 example, the surgeon general's report, you know, merited
3 only an editorial, not actual news coverage.

4 Q The Baxter Bulletin published articles on the
5 benefits of quitting from the 1960s to the 1990s; right?

6 A Occasionally, yes.

7 Q You mentioned the surgeon general's report.
8 The Baxter Bulletin did include reporting -- I think you
9 said an editorial -- on the 1964 surgeon general's report
10 and the later surgeon general's reports as well; right?

11 A Right. It didn't warrant regular news coverage
12 like most papers, but they did have an editorial on it.
13 I mean it also ran stories promoting the growth of
14 tobacco as an industry for the community. It ran stories
15 celebrating the fact that Salem cigarette ads had been
16 filmed on the Buffalo River with fishermen and that that
17 was good for the county. So, you know, they're all over
18 the place.

19 MR. GREEN: Move to strike as nonresponsive.

20 Q My question is, specifically The Baxter
21 Bulletin reported on the 1964 surgeon general's report
22 and later surgeon general's reports as well; right?

23 A Ran an editorial, which is not quite reporting.

24 Q Have you reviewed editions of the Arkansas
25 Gazette?

1 A Yes. It's been a while, but I did that
2 extensively for an early case of mine.

3 Q Do you recall which case it was?

4 A "Boerner versus Brown & Williamson."

5 Q "Border"?

6 A B-o-e-r-n-e-r v. Brown & Williamson in Little
7 Rock, Arkansas in 2003 in federal court.

8 Q Thank you.

9 We're marking as Exhibit No. 23 -- it's in the
10 chat box -- if you'll confirm that is a July 18th, 1950
11 article from the Arkansas Gazette.

12 A That's correct, yes.

13 Q Okay. And this article is titled "Another Nail
14 in the Coffin. Studies Indicate Cigarettes are Lung
15 Cancer Cause"; right?

16 A Yes. This is by the great health reporter,
17 Alton Blakeslee, and is from the wire services, yes.

18 Q That's right. From the Associated Press;
19 right?

20 A Yep.

21 Q And it says, "Three" -- and by the way,
22 "another nail in the coffin," that's a reference to
23 coffin nails, which was used to refer to cigarettes;
24 right?

25 A That's correct. He has a question mark after

1 that, but that's what they're referring to, yes.

2 Q Right. And it says -- look what the article
3 says. It says, "Three teams of scientists today blamed
4 smoking, especially cigarettes, for apparently causing
5 part of the increase in lung cancer, the fastest growing
6 type of cancer in the United States."

7 That's being reported on by the Arkansas
8 Gazette in July of 1950; right?

9 A Yes. And we see Alton Ochsner show up again.

10 Q That's exactly right.

11 If we look still on the left-hand side, second
12 paragraph, it says, "Three reports, all by Americans,
13 were made to the Fifth International Cancer Research
14 Congress that constituted probably the most authoritative
15 discussion yet held on whether many years of habitual
16 smoking may cause cancer. By 'many years' the scientists
17 mean at least 20." Right?

18 A That's what it says, that's correct.

19 Q It's being reported in the Arkansas Gazette in
20 1950 that 20 years of smoking can cause cancer; right?

21 A That's what they say.

22 Q And then you referred to Dr. Ochsner. That's
23 towards the right-hand side of the article where it says,
24 "But it appears without doubt that inhalation of
25 cigarette smoke exerts a carcinogenic (cancer causing)

1 effect upon lung tissue."

2 That's a quote from Dr. Ochsner; right?

3 A Yes.

4 Q Dr. Ochsner is saying in this -- the quote from
5 Dr. Ochsner that's being reported in this article is
6 saying that inhalation can be cancer causing, right, in
7 the lung?

8 A Yes. He's identifying the inhalation of the
9 cigarette smoke as a problem, yes.

10 Q Then there's a reference to Dr. Wynder as well
11 in this article too; right?

12 A Yeah, on the next page, yes.

13 Q On the next page.

14 And in the two columns on the far right of the
15 same page it references a report. "The third report, a
16 study of over 7,000 hospital patients, was done by
17 Dr. Morton Levin, Dr. Paul Gerhardt," G-e-r-h-a-r-d-t,
18 and others from New York; right?

19 A That's correct.

20 Q And that was those three teams of scientists
21 that were referenced in this article, being reported on
22 in this 1950 Arkansas Gazette article, specifically
23 reporting that smoking cigarettes increases the risk of
24 lung cancer; right?

25 A Yes.

1 Q Alton Blakeslee from the Associated Press, you
2 said he's part of the wire services; right?

3 A Yeah. He was a prominent science and medical
4 writer, reporter, in the '50s and '60s.

5 Q And the wire services circulated around the
6 country articles in the early 1950s reporting on the Doll
7 and Hill studies from Great Britain as well; right?

8 A Yes. Those were covered in the national press.
9 This is an example where, you know, a lot of local
10 papers, medium town papers -- you know, Little Rock is
11 the state capital, but it's not that big of a town even
12 today -- they would rely on national news networks,
13 New York Times news service, Associated Press, UPI or
14 United Press International, to cover their national
15 stories.

16 Q Let's get a couple more.

17 The next one is Exhibit 25, if you'll confirm
18 that is an article from April the 3rd of 1960 from the
19 Arkansas Gazette.

20 MS. RUIZ: Hey, Phil, did I miss Exhibit 24?

21 MR. GREEN: Oh, I'm sorry, this is 24.

22 Q If you'll confirm Exhibit 24 is an April 3rd,
23 1960 article from the Arkansas Gazette entitled "Teachers
24 Told: Warn Students of Smoking"; right?

25 A Yes, that's what it -- that's the headline.

1 Q And this is also an article circulated by the
2 wire services; right?

3 A Yeah. This is AP, Associated Press.

4 Q And it says, "Science teachers" -- April 2nd --
5 "Science teachers should warn their students never to
6 smoke cigarettes, says a cancer expert."

7 Did I read that correctly?

8 A Yes.

9 Q "There's no method of treating tobacco or
10 filtering smoke that appreciably reduces the cancer risk,
11 Dr. John Heller told the National Science Teachers
12 Association Convention this week."

13 That's being reported on by the Arkansas
14 Gazette in April of 1960; right?

15 A You read that correctly. That's what the story
16 says.

17 Q Did you review any publications from the town
18 of Muscatine, Iowa?

19 A Muscatine Journal.

20 Q Okay.

21 A From a later time period, '70s.

22 Q I'm uploading an article right now. Okay, it
23 should be there.

24 Exhibit No. 25, if you'll confirm, is a January
25 the 11th, 1964 article from the Muscatine Journal.

1 A Yes.

2 Q Reporting on the surgeon general's report;
3 right?

4 A That's right. This was an afternoon paper.

5 Q And this article from January the 11th of 1964
6 in the Muscatine Journal reported that smoking cigarettes
7 is a major cause of lung cancer and other death-dealing
8 disease; right?

9 A That's correct.

10 Q And it was being reported, the day the surgeon
11 general's report was issued in Muscatine, Iowa, that the
12 surgeon general's panel indicated that the more you
13 smoke, the greater your risk of an early death; right?

14 A That was one of the findings of the surgeon
15 general, that's correct.

16 Q And it was also reported in the Muscatine
17 Journal that the risk of lung cancer increases the longer
18 you smoke and the more cigarettes you smoke in a day. It
19 lessens if you quit smoking; right?

20 A That's what it says, yes.

21 Q And the day the surgeon general's report was
22 issued, the journal was also reporting that smoking is --
23 cigarette smoking -- is the most important cause of
24 chronic bronchitis; right?

25 A And that was a finding of the surgeon general.

1 That's why they're reporting it.

2 Q The next one, Exhibit 26, if you'll confirm, is
3 an article from the Arkansas Gazette reporting on the
4 surgeon general's report on January the 12th of 1964.

5 A Yes.

6 Q And the Arkansas Gazette, when the surgeon
7 general's report was issued the next day, was also
8 reporting cigarette smoking is a cause of lung cancer,
9 chronic bronchitis and other deadly diseases; right?

10 A That's correct. Just, you know, so that we see
11 the entire page -- you don't have the full page here,
12 which is fine. It's just a section of the paper. But as
13 you see the headline below, "'Hell no,' One Smoker Says,"
14 I've seen this edition of the paper in my research. I
15 don't have a digital copy at my fingertips and -- but
16 it's a case where they say, "I don't believe it," just so
17 that we have a complete view of this particular paper.

18 Q Okay. You're saying that on January the 12th,
19 1964 in the surgeon general's report there's an article
20 entitled "'Hell No,' One Smoker Says" where your
21 recollection is that individual is reporting that he does
22 not believe the surgeon general's report; right?

23 A Right. It's a kind of "man on the street"
24 response to the whole story, interviewing smokers, yes.

25 Q If we look above, the article "Cigarette

1 Smoking Blamed for Lung Cancer and Other Ills by the
2 Surgeon General's Panel," the Arkansas Gazette is
3 reporting that the surgeon general and other
4 public-health officials conclude that smoking is a cause
5 of lung cancer and other serious diseases; right?

6 A That's correct.

7 Q Okay. If we look at the next one, if you'll
8 confirm that what we're marking as Exhibit 27 is a
9 March 7th, 1964 article from the Muscatine Journal.

10 A Yes.

11 Q And the article is titled "Teachers to View
12 Films at Cancer Society Event"; right?

13 A That's correct, that's what the headline says.

14 Q The paper is reporting that teachers in east
15 central Iowa are to preview a new film and film strip on
16 the smoking and lung-cancer relationship at a hotel in
17 Cedar Rapids; right?

18 A That's what it says, yes.

19 Q And the article is also reporting that biology
20 teachers, coaches, student counselors, and other teachers
21 in Muscatine County were invited to attend; right?

22 A That's what it says, yes.

23 Q And if you look on the right-hand side, there
24 is reporting on comments by President Addison Brown of
25 the American Cancer Society Iowa Division where it was

1 reported that Dr. Brown explained that the film strip was
2 for students at the sixth grade level to warn the
3 students about the health risks of smoking before they
4 start; right, sir?

5 A Right. Could you -- because the quality of the
6 reproduction of this one is not so great, could you again
7 state the date of it just so that I -- 'cause I can't
8 make it out on the thing, but whatever you -- it's
9 March --

10 Q 7th of 1964.

11 A Sixty-four, thank you. It's just hard to read.

12 Q Yes, sir. Sorry about that.

13 A No problem. You copy stuff so many times, you
14 know. It's just part of the process.

15 Q It is. It's also from 1964, which is I guess
16 57 years ago at this point; right?

17 A Right, that's right.

18 Q Okay. Exhibit 28 -- I think we're going to set
19 a record for the number of exhibits in this one, but
20 Exhibit 28, if you will confirm, is a copy of a
21 June 15th, 1968 article from the Arkansas Gazette.

22 A Yes, that's correct. That's what someone has
23 scribbled on there, which I believe.

24 Q Exactly. On the bottom right an article titled
25 "Programs Urged Against Smoking"; right?

1 A That's what it says.

2 Q And this 1968 Arkansas Gazette article is
3 reporting that cigarette smokers die younger than
4 nonsmokers and risk disability from lung cancer, chronic
5 bronchitis, emphysema, and coronary heart disease; right?

6 A Yes.

7 Mr. Green, we've been going for 90 minutes.
8 Could I take a little restroom break since you've paused?

9 Q I was hoping somebody would ask.

10 A Yeah, I'll be the one to speak up.

11 I'll be right back, and I suspect others are
12 probably eager for the same thing. So I'm going to go
13 off the record and come back in five minutes.

14 Q Okay.

15 A Thank you.

16 (Brief recess taken.)

17 MR. GREEN: I think five or six more.

18 Q The next one I have I've put in the chat box.

19 A Oh, okay. I'll bring that up.

20 Q And that is -- if you'll confirm, that is a
21 November the 15th, 1977 article from the Muscatine
22 Journal --

23 A Yes.

24 Q -- titled "Smokeout Thursday."

25 A Yep.

1 Q And this November 1977 Muscatine Journal
2 article is reporting on the American Cancer Society's
3 Great American Smokeout; right?

4 A That's correct.

5 Q And it's reporting that they were displaying in
6 a statewide campaign -- or in an event by the American
7 Cancer Society, they were displaying a normal lung, a
8 cancerous lung, and a lung with emphysema; right?

9 A That's what they indicate, yes.

10 Q And that was at the Muscatine Mall over a
11 couple of days; right?

12 A Well, I think they say it was at the public
13 library.

14 Q Okay.

15 A Part of an optiscopic lung at the Musser
16 Public Library on Wednesday and Thursday and -- oh, I'm
17 sorry -- the Muscatine Mall on Friday and Saturday. So
18 it was at both places, yes.

19 I'm sorry, it's hard to read.

20 Q So it was a four-day event over -- at two
21 different locations; right?

22 A Yep.

23 Q And that was something that was not unique to
24 Muscatine. It was common for the American Cancer Society
25 to have displays at chapters around the country

1 demonstrating the harms of smoking and its effect on the
2 lungs?

3 A Correct.

4 Q Okay. The next one, Exhibit 30, if you will
5 confirm, is a May 23rd, 1981 article again from the
6 Muscatine Journal, this one titled "Women and Smoking."

7 A Yes.

8 Q Okay. And this May 1981 article from the
9 Muscatine Journal is reporting that women develop lung
10 cancer -- more women are developing lung cancer as more
11 women are taking up smoking; right?

12 A Right. It says, "Women's smoking patterns are
13 becoming more like men's and more women are developing
14 more lung cancer."

15 Q It also reports that scientists know that
16 88 percent of lung-cancer cases in the United States are
17 caused by cigarette smoking and that the risk increases
18 with the amount and length of time smoked; right?

19 A That's what that says, yeah. That's actually a
20 little bit inaccurate. It's actually a higher
21 percentage, but that's what it says.

22 Q And the Muscatine Journal in 1981 also reports
23 that the risk of lung cancer decreases gradually after
24 someone quits smoking cigarettes?

25 A That's the meaning of what they say, yes. They

1 say decreases gradually after a smoker breaks that habit.

2 Q I went ahead and put the next one in the chat
3 box, Exhibit 31.

4 A And I'll observe that these are much quicker.

5 Q I'm trying to operate one step ahead. So as
6 you're opening that one, I'm putting the next one in.

7 If you will confirm that what we are marking as
8 Exhibit No. 31 is a November the 4th, 1982 article from
9 the Iowa City Press Citizen newspaper.

10 A Yes.

11 Q And this article is titled "Low-Tar Cigarettes
12 No Safer, Cancer Study Finds"; right?

13 A That's correct.

14 Q This is also an article by the -- it was
15 published by the wire services not just here but in other
16 newspapers around the country as well; right?

17 A Yeah. This is a nationally distributed story
18 over Gannett, yes.

19 Q And the subtitle of the article says, quote,
20 "Smokers who want to reduce the health hazards are best
21 advised to quit smoking entirely"; correct?

22 A Yes.

23 Q And the article leads off with a statement
24 "There is no such thing as a safe cigarette"; right?

25 A That's correct, that's what it says.

1 Q And then in the first paragraph, towards the
2 bottom of the first paragraph, this article reports that
3 there have been several reports that low-tar cigarettes
4 are as hazardous as other types of cigarettes; right?

5 A Right. I mean the point of this story is it
6 accepts the proposition that the public believes that
7 low-tar and low-nicotine cigarettes are, as they say
8 there, an answer to the health problems. They are trying
9 to persuade people otherwise, but they accept the basic
10 proposition that, as it says here in the third column,
11 people are deluded into thinking there is no problem
12 associated with light cigarettes.

13 Q You've seen this article before; right?

14 A Yeah, I've seen versions of this article in
15 other papers.

16 Q Since you know it was included or -- it was
17 something that was pushed out by the Gannett news
18 service, which now owns USA Today; right?

19 A Yes.

20 Q This article was published not just in Iowa but
21 also in other parts of the country as well; right?

22 A Right, yes. And it's one of the bases on
23 which, you know, I developed the opinion that people that
24 smoke lights and low tars misperceived and misunderstood
25 the risk and didn't think that they would suffer harm.

1 Q This article reports that there have been
2 several studies in recent years, including a recent
3 report by the surgeon general, that suggests that light
4 cigarettes are as hazardous as regular brands. That's
5 what the article reports; right?

6 A Yes, it does also report that, yes.

7 Q And then on the right-hand side, the two
8 right-hand columns, there's one paragraph that says, "The
9 most optimistic conclusion that can be drawn from the
10 study is that switching to light cigarettes makes it only
11 a tad less likely that a smoker will get into trouble
12 with lung cancer"; right?

13 A That's what it says, that's correct.

14 Q That's a quote from Dr. Lasagna at the National
15 Academy of Sciences; right?

16 A Yes, Dr. Lasagna.

17 Q And there's another quote at the very end of
18 the article where Dr. Lasagna says, "Smokers who want to
19 reduce the health hazards from their cigarettes are best
20 advised to quit smoking entirely"; right?

21 A That's correct, that's what he says.

22 Q If I was in my full-on dad-joke frame of mind
23 I'd make a joke about Garfield, but I'm not going to do
24 it.

25 A Right. Enliven a long day.

1 Q I'm going to put -- it might take a moment for
2 this to show up. While it's uploading, let me be
3 efficient.

4 We looked at a couple of articles from the
5 Arkansas Gazette earlier; right?

6 A That's correct.

7 Q That was a newspaper in Little Rock, Arkansas;
8 right?

9 A Yes.

10 Q Published between 1819 and 1991; right?

11 A I guess so, yeah. I guess that's right.

12 Q That was Arkansas' primary newspaper, most
13 widely circulated newspaper; right?

14 A Yeah, it was one of the -- yeah, it was the
15 state-capital paper. I guess the Arkansas Democrat would
16 be the other paper in that town.

17 Q Were you aware that the Arkansas Gazette was
18 known as the oldest newspaper west of the Mississippi
19 River?

20 A I didn't know that, but that's interesting.

21 Q You referenced the Arkansas Democrat. In 1991
22 the Gazette was acquired by the owner of the Democrat,
23 and the surviving paper became the Arkansas Democrat
24 Gazette; right?

25 A That's right.

1 Q Just like what happened in Atlanta with the
2 Atlanta Journal and the Atlanta Constitution?

3 A Yep.

4 Q Okay. I think that the next exhibit has been
5 updated at this -- uploaded at this point, if you'll open
6 it and confirm that Exhibit 32 is an article from the
7 Iowa Press Citizen, April the 8 of 1985.

8 MR. REYES: 99495?

9 MR. GREEN: Yes.

10 THE WITNESS: That's correct.

11 BY MR. GREEN:

12 Q And this is an article where the Iowa Press
13 Citizen is -- it's an Associated Press article titled
14 "Study links Rise in Lung Cancer Rate to smoking"; right?

15 A That's correct.

16 Q And in the article, the very first paragraph
17 says, "A rapid rise in lung cancer among Iowa women can
18 be blamed on an increase in cigarette smoking by women,
19 according to a study by an agency affiliated with the
20 University of Iowa"; right?

21 A Yes.

22 Q And there were also articles published in
23 Arkansas and in Iowa reporting in the 1970s and the 1980s
24 about the Great American Smokeout as well; right, sir?

25 A Yes. That was a project of the American Cancer

1 Society, and they publicized it as did the tobacco
2 industry's Great American Smoker's Kit and Smoker's Bill
3 of Rights.

4 Q Are you suggesting that the articles reporting
5 on the Great American Smokeout also referenced the
6 Smoker's Bill of Rights?

7 A Some did, but what -- my main point was to say
8 that, you know, the industry had a counter to this
9 program, as I've testified about in the past.

10 Q While the exhibit is uploading, we've shown
11 some documents from the Associated Press and other wire
12 services published in the local papers in Iowa and
13 Arkansas. Of course you know that newspapers around the
14 country would receive news reports from the Associated
15 Press or Gannett or UPI and then print those articles in
16 their local papers; right?

17 A That's correct.

18 So that I open the right document, is the file
19 name on this one 99497?

20 Q Yes.

21 A Okay, great. It just showed up. So I'm going
22 to open the most recent exhibit that you've sent so we
23 can talk about it.

24 Q Before we do that, let me finish my thought.
25 I've got two more questions on --

1 A Oh, okay. I'm sorry for interrupting. I
2 apologize.

3 Q That's okay.

4 Using wire services, from the 1950s to the
5 1990s, a lot of the articles that we've looked at today
6 and others you've been examined on at trial have been
7 articles that were published not just in Iowa or
8 Arkansas, for example, but published through the use of
9 the wire-service reports in newspapers around the
10 country, including in Nevada, Oklahoma, Colorado and
11 other states; right?

12 A Yes. That was the function of wire services,
13 to provide nationally relevant news stories to local
14 papers who did not have the resources to compose their
15 own national stories.

16 Q Including stories like what we've looked at
17 today reporting on findings that smoking caused lung
18 cancer, emphysema, and other serious diseases; right?

19 A That's correct.

20 Q Okay. Exhibit No. 33, if you'll confirm, is a
21 November 19th, 1986 article from the Iowa City Press
22 Citizen.

23 A That's correct.

24 Q And this is an article reporting -- it's titled
25 "Anyone Can Live without Cigarettes for a Day"; right?

1 A That's the title, that's correct, the headline.

2 Q And it is reporting on the Great American
3 Smokeout; right?

4 A That's correct.

5 Q And it's actually a Dear Abby article; right?

6 A That's right, the advice columnist.

7 Q It says, "Tomorrow will mark the tenth annual
8 Great American Smokeout, an upbeat good-humored one-day
9 event to encourage smokers to quit smoking for 24 hours
10 just to prove they can do it"; right?

11 A That's correct.

12 Q And it references -- it reports that the idea
13 was conceived by the American Cancer Society, which
14 insists that anyone who can live without a cigarette for
15 24 hours can quit forever. That's what it reports;
16 right, sir?

17 A That's correct.

18 Q And there's no reference in this article at all
19 to any counter program from tobacco companies, including
20 one about smokers' rights, is there?

21 A Not in this story, that's correct.

22 Q Do you recall -- and I'm finished with that.
23 Do you recall --

24 MS. RUIZ: Before you move on to the next one, Phil,
25 I've got two Exhibit 33s.