

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 33 (Nos. 5072-5182)*

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1 DISTRICT COURT  
2 CLARK COUNTY, NEVADA  
3 CASE NO.: A-19-807657-C  
4 DEPT. NO.: XVII  
5 MARTIN TULLY, individually, and DEBRA  
6 TULLY, individually,  
7 Plaintiffs,  
8 vs.  
9 PHILIP MORRIS USA, INC., a foreign  
10 corporation; R.J. REYNOLDS TOBACCO  
11 COMPANY, a foreign corporation,  
12 individually, and as successor-by-merger to  
13 LORILLARD TOBACCO COMPANY and as  
14 successor-in-interest to the United States  
15 tobacco business of BROWN &  
16 WILLIAMSON TOBACCO CORPORATION,  
17 which is the successor-by-merger to THE  
18 AMERICAN TOBACCO COMPANY;  
19 LIGGETT GROUP, LLC., a foreign  
20 corporation; JAMEZ LLC (d/b/a JAMEZ  
21 SMOKES & CIGARS), a Nevada limited  
22 liability corporation; RED ROCK SMOKE  
23 SHOP INC., a domestic corporation; and DOES  
24 I-X; and ROE BUSINESS ENTITIES XI-XX,  
25 inclusive,  
Defendants.  
...../  
DEPOSITION OF ROBERT PROCTOR, PH.D.  
Taken Pursuant to Notice of Deposition  
Duces Tecum of Robert Proctor, Ph.D.  
DATE TAKEN: Tuesday, January 18, 2022  
TIME: 9:03 a.m. PST to 2:15 p.m. PST  
PLACE: ALL PARTIES REMOTE  
Examination of the witness taken before:  
Lisa M. Rollins, RPR, FPR,  
Notary Public, State of Florida at Large  
~ and ~

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DISTRICT COURT  
CLARK COUNTY, NEVADA

Case No. A-19-807653-C  
Dept. No. VIII

TIMOTHY A. GEIST, individually, and as  
Administrator and Personal Representative of the  
Estate of VERA LEE GEIST,

Plaintiffs,

vs.

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 ROBERT PROCTOR, PH.D.

Taken Pursuant to Cross-Notice of Deposition  
Duces Tecum of Plaintiff Expert

DATE TAKEN: Tuesday, January 18, 2022

TIME: 9:03 a.m. PST to 2:15 p.m. PST

PLACE: ALL PARTIES REMOTE

Examination of the witness taken before:  
Lisa M. Rollins, RPR, FPR,  
Notary Public, State of Florida at Large

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1 Thereupon,

2 ROBERT PROCTOR, PH.D.,

3 was called as a witness, and after having been first duly  
4 sworn, was examined and testified as follows:

5 THE WITNESS: Yes, I do.

6 DIRECT EXAMINATION

7 BY ATTORNEY HENNINGER:

8 Q. Good morning, Dr. Proctor. How are you?

9 A. Good morning. I'm doing fine. Thank you.

10 Q. You understand that I'm here taking your deposition  
11 in the Geist case pending in Nevada, correct?

12 A. Yes.

13 Q. And it's also cross-noticed and taking your  
14 deposition in the Tully case, correct?

15 A. That's my understanding.

16 Q. Okay. So, I'm going to try to separate out the  
17 cases, but to the extent that some of the questions overlap,  
18 I'll make that clear.

19 So let me ask you first. You have been retained by  
20 an -- by the Plaintiffs' counsel in both the Geist case, as  
21 well as the Tully case to render expert opinions, correct?

22 A. That's correct.

23 Q. And what do you understand your expert testimony to  
24 be?

25 A. I understand my testimony to have a great deal of

1 overlap with other testimony I've given in similar cases, but  
2 my understanding is that these -- both of these cases are  
3 Nevada cases, which also involve a product defect claim, which  
4 as I understand it, in Nevada, involves consumer expectations.  
5 So I would imagine I would give very similar testimony to what  
6 I've done in many other cases that you're familiar with,  
7 including the -- some defect testimony.

8 Q. Okay. And --

9 A. And I -- that I would be not testifying on the  
10 biographical particulars of either of these Plaintiffs.

11 Q. All right. And just so we're clear, when you say  
12 the biological -- I mean, the "biographical particulars,"  
13 you're talking about information related to either Mr. Geist  
14 or Mr. Tully in their life experiences or the smokers or  
15 anything that has to do with this case-specific details?

16 A. Well, yes. Specifically what they may have known or  
17 not known, what they read or didn't read, what they knew or  
18 didn't know, that sort of thing. What types of personal  
19 knowledge they may or may not have had about cigarettes.

20 Q. All right. How much --

21 ATTORNEY TEPIKAN: And, Ms. Henninger, just before  
22 you continue, it's "Mrs. Geist."

23 ATTORNEY HENNINGER: Mrs. Geist. Sorry. I --

24 ATTORNEY TEPIKAN: Yeah.

25 ATTORNEY HENNINGER: -- sorry. I keep thinking



1 about the Plaintiff, "Mr. Geist." And my apologies --

2 ATTORNEY TEPIKAN: Yeah. No worries. I just wanted  
3 to make sure we had the record right. That's all.

4 ATTORNEY WALD: And, Ursula, while you have a break  
5 for a moment, as we discussed off the record, if -- one  
6 objection from Mr. -- from either Mr. Reyes, as I, all  
7 Defendants agree can be an objection for both Plaintiffs  
8 in both Tully and the Geist matter.

9 ATTORNEY HENNINGER: Yes. We agree.

10 ATTORNEY WALD: Okay. Thank you --

11 ATTORNEY TEPIKAN: And same for the Defendants,  
12 correct?

13 ATTORNEY WALD: Yes.

14 ATTORNEY TEPIKAN: Yeah.

15 BY ATTORNEY HENNINGER:

16 Q. All right. So, Dr. Proctor, how much time have you  
17 spent on the Geist matter?

18 A. I've not spent any time looking into the particulars  
19 of that case -- apart from a brief conversation I had with  
20 Kimberly Wald and Nick Reyes, just about the venue and the  
21 scheduling and the kind of generalities that we usually talk  
22 about.

23 BY ATTORNEY HENNINGER:

24 Q. Okay. When you say you had a call with "Kimberly  
25 Wald and Nick Reyes," you understand that Ms. Wald represents

1 the Tully Plaintiff, correct?

2 A. Yes.

3 Q. And Mr. Reyes represents Mr. Geist, correct?

4 A. Yes.

5 Q. Okay. Have you -- clearly, you are compensated for  
6 your time. Have you sent any bills in either the Geist or the  
7 Tully case?

8 A. No. The only billing so far is my usual \$10,000  
9 retainer for -- for that case.

10 Q. Okay. And I understand that you have received the  
11 check for today's deposition; is that correct?

12 A. Yes, I have. Thank you.

13 Q. Okay. And what was the amount of that check, sir?

14 A. That was for \$6,000.

15 Q. Okay. And you indicated earlier that your testimony  
16 related to product defect claims would be similar to other  
17 types of cases. Are you referring to those outside of the  
18 state of Florida, generally?

19 A. Yes. Yeah. Typically, I've done a few cases like  
20 that in Boston, for example.

21 Q. Uh-huh, okay. Did you -- and Oregon as well,  
22 correct?

23 A. Correct.

24 Q. Okay. Have you formed any new opinions or basis for  
25 your opinions about tobacco company conduct since July of

1 2021, so July of -- this past July?

2 A. I don't think so, apart from the fact that there was  
3 some confusion about whether I had developed the opinion about  
4 combustion being a defect. So, you know, my view is that  
5 there are three principal defects in cigarettes and then a  
6 series of subsidiary defects. The three principal defects  
7 being: Inhaleability, addiction, and combustion. So, I just  
8 want to make sure that you're aware of those -- those three  
9 principal defects that I have in mind.

10 And then there are subsidiary defects which could  
11 also be called, in a sense, frauds because any fraud or  
12 deception in a sense becomes a defect if it's -- if it leads  
13 to a false expectation. So that would include things like  
14 filters and low tars and lights. So, those are defects in the  
15 sense that they led to false expectations, but they are  
16 subsidiary defects in the sense that they are defects having  
17 to do with the descriptions of the items, rather than their  
18 performance in a -- in a literal physical sense.

19 Q. Okay. Do you have any idea how much money you've  
20 made serving as an expert witness in 2021, last year? I know  
21 COVID probably cut down on some of the figures.

22 A. Yeah. It was probably only around -- I think it was  
23 less than 500,000 last year. I haven't done my taxes yet, so  
24 I don't know, but it's significantly less than average.

25 Q. And that's due to less -- the reduced number of

1 trials we've seen in 2020, and 2021?

2 A. Exactly.

3 Q. Okay. I'm going to mark as Deposition Exhibit  
4 Number 1 -- and I'm going to share my screen. It's been a  
5 while since I've done one of these Zoom depositions, so  
6 forgive me.

7 Here's the Deposition Notice for the Martin Tully  
8 case and Deborah Tully case.

9 (Exhibit No. 1 was marked for identification.)

10 BY ATTORNEY HENNINGER:

11 Q. You know there's a Schedule A attached to  
12 depositions. And did you review the Schedule A attached to  
13 the Tully notice of deposition, Dr. Proctor?

14 A. Yes.

15 Q. And did you provide or bring any documents with you  
16 responsive to that Schedule A, sir?

17 A. No. I think you have everything that -- already  
18 that's on there. The only thing that was new that was  
19 published was I did a conversation with Peter Galison from  
20 Harvard about agnotology for MIT Press, and that was  
21 published, I think, in October. So that's my only recent  
22 publication.

23 Q. Okay. So just to be clear, you have not produced  
24 any reliance materials in the Geist matter, correct?

25 A. Correct. As you know, I don't generally have

1 reliance material, but you're also, I'm sure, aware that you  
2 can expect my opinions to be those -- consistent with those  
3 I've already expressed in prior testimony.

4 Q. Okay. And if I were to ask you the same question,  
5 you have not produced your reliance materials in the Tully  
6 case either, correct?

7 A. Correct. I don't have reliance materials, and I  
8 haven't for many years.

9 Q. Have you provided or have you produced a list of any  
10 type of reliance materials in either the Geist or Tully case  
11 to Plaintiffs' counsel?

12 A. No.

13 Q. Okay. Were you provided any materials in the Geist  
14 case or the Tully case from Plaintiffs' counsel?

15 A. No.

16 Q. Okay. Did you bring e-mails you have between you  
17 and Plaintiffs' counsel?

18 A. No. I don't have any.

19 Q. Okay. You mentioned one meeting you had with  
20 Mr. Wald -- I mean, Ms. Wald, sorry -- Ms. Wald and Mr. Reyes.  
21 Have you had any additional meetings with them related to the  
22 Geist case or the Tully case?

23 A. I don't think so unless it would have been in the  
24 context of being retained for those cases several months ago.

25 Q. Okay. The meeting you did refer to having with

1     them, when did that occur?

2             A.    I think that was yesterday.

3             Q.    Do you recall how long it was, Dr. Proctor?

4             A.    It was probably less than half an hour.

5             Q.    Do you recall any of the specifics of your  
6     conversation?

7             A.    I was given a couple biographical details of both  
8     Plaintiffs, and then I was reminded that these were product  
9     defect cases. Those were the two most important things.

10            Q.    Okay.

11            A.    That I recall.

12            Q.    And just for the record, I'm also going to mark  
13     the -- as Deposition Exhibit Number 2, the notice of  
14     deposition in the Geist case.

15                    (Exhibit No. 2 was marked for identification.)

16     BY ATTORNEY HENNINGER:

17            Q.    Just so I have that as part of the record. And I  
18     assume, Dr. Proctor, the questions I just asked regarding the  
19     Schedule A related to the Tully case would be applicable here  
20     in Geist as well, correct?

21            A.    Correct.

22            Q.    Okay. Do you have any notes related to the Geist  
23     case or the Tully case?

24            A.    I don't.

25            Q.    Okay. I'm going to mark now as Deposition Exhibit

1 3 -- let me do -- make sure I keep track of this -- mark as  
2 Exhibit Number 2 -- sorry, Exhibit Number 3 -- this is your  
3 expert report -- Plaintiffs' expert report dated November  
4 30th, 2021.

5 (Exhibit No. 3 was marked for identification.)

6 BY ATTORNEY HENNINGER:

7 Q. You recall this report; is that correct,  
8 Dr. Proctor?

9 A. Yes.

10 Q. And this is actually an amended expert report; is  
11 that correct?

12 A. I don't really know, but I'll take your word for it.

13 Q. Okay. Well, do you recall amending your expert  
14 report in the Tully matter?

15 A. No. No. I think there was some mention of that,  
16 but I don't recall details about that.

17 Q. Okay. Well, I'm going to try to skim through this  
18 as briefly as possible, but if I represent to you that your  
19 expert report is 129 pages long, would you have any reason to  
20 disagree -- dispute that?

21 A. No.

22 Q. If I represented that it contained 422 footnotes and  
23 cites to hundreds of documents, you would agree with that as  
24 well, correct?

25 A. Yes.

1 Q. Are there documents that you intend to testify about  
2 at trial that are not referenced in your expert report,  
3 Dr. Proctor?

4 A. Presumably, there would be documents that I didn't  
5 reference that are -- that you'd be quite familiar with. In  
6 other words, in my testimony we'll show videos, for example,  
7 of the Flintstones or Death in the West, and I'm not sure  
8 whether I referenced those or not, but if you want to get a --  
9 an understanding -- and which I think you actually already  
10 have -- of the kinds of things I would testify, it would be  
11 very similar to other trials that -- that you and I have been  
12 involved in --

13 Q. Okay.

14 A. -- so in other words, I don't consider this an  
15 exhaustive list, partly because, I guess, I'm asked questions  
16 that I might not have anticipated by either side, actually.  
17 And so I would imagine that -- but I don't think they'll be  
18 any surprises, is another way to put it.

19 Q. Well, let me ask you this. Other than the videos  
20 that you mentioned, Death in the West, the Flintstones, can  
21 you identify any other documents that you may testify about  
22 that are not referenced in your expert report?

23 A. Not off the top of my head, but, again, those would  
24 be easily identified by simply looking at the previous  
25 testimony I've done for other -- Alvarez or Kelley Ustal



1 cases.

2 Q. Okay.

3 A. Which -- all of which you're quite familiar with.

4 Q. Okay. So, if you brought no documents with you to  
5 today's deposition in response to the notice, and if they're  
6 not in your expert report, you cannot tell me sitting here  
7 today how we're supposed to know the universe of documents  
8 that might be used at trial other than they would be similar  
9 to other Kelley Uustal or Alvarez trials?

10 A. Yes. And things you're completely familiar with.  
11 I've -- as you know, I've testified in 200 cases. You're  
12 quite familiar with my testimony, which has been repeated in  
13 many venues. And you and I have, you know, exchanged  
14 discussions on this probably a dozen times and others from  
15 your firm, you know, even more times. So, there's nothing  
16 that I would present that would be novel to you. And so I  
17 think that's -- you know, one could compile a list just from  
18 the previous testimony I've given. I'm sure you already have  
19 done such a thing.

20 Q. Okay. Do you intend to testify at trial about any  
21 opinions or basis of opinions that are not stated in your  
22 expert report?

23 A. Not that I know of, but I know that can also be a  
24 trick question because maybe I left off something that I  
25 testify about in every trial. In other words, when I provide

1 an expert report, it's kind of a summary of the topic, but  
2 it's not necessarily an exhaustive list of exhibits that might  
3 be used or demonstratives.

4 Q. Okay. What facts were you told about the Tully --  
5 the smoker in the Tully case --

6 A. Not very many, except for the fact that it's a --  
7 it's not a living Plaintiff -- or sorry, that it is a living  
8 Plaintiff and that it's essentially a Marlboro case.

9 Q. Okay. What facts were you told about -- if any,  
10 about Mrs. Geist?

11 A. Well, all I was told is that she's not alive and  
12 that she smoked a broader variety of cigarettes, including, I  
13 think, Doral -- mostly Reynolds products, but I think it was  
14 Doral and Winston, maybe Winston Lights or Merit Lights, a  
15 number of other light products -- I remember there was also  
16 some mention that she had smoked the -- the additive-free  
17 cigarettes that were introduced in a Winston form in the late  
18 1990s -- that was as part of that No Bull campaign.

19 Q. Okay.

20 A. So I would expect that that might be one type of  
21 question and answer that we might go through, is that -- as  
22 you know, one of my views is that additive-free is one of the  
23 dozen or so frauds -- design reassurance frauds built into the  
24 cigarette. In other words, you know, toasting, menthol, king  
25 size, filters, low tars, lights, ultra lights, milds, organic

1 cigarettes, additive-free cigarettes and natural cigarettes,  
2 those are the principal design reassurance frauds. And so  
3 given that this does involve an additive-free dimension, there  
4 would probably be some question and answer about that. That's  
5 just my guess. I would be prepared to talk about that, in  
6 other words.

7 Q. Okay. So, you have the belief that Mrs. Geist  
8 smoked an additive-free Winston at some point and would be  
9 prepared to offer opinions on that?

10 A. Yes.

11 Q. Okay.

12 A. Yeah. And not -- not particular to her smoking but  
13 just about that product more generally.

14 Q. Okay.

15 A. In other words, not to her particular beliefs but  
16 rather to the -- the fraud behind that representation.

17 Q. Fair enough.

18 I'm going to mark -- just so I'm clear, I've marked  
19 your expert report as Exhibit Number 3 in the Tully case. And  
20 Exhibit Number 4 is going to be your expert -- August 2nd,  
21 2021.

22 (Exhibit No. 4 was marked for identification.)

23 BY ATTORNEY HENNINGER:

24 Q. Exhibit 5 will be an amended expert report in the  
25 Geist case that you submitted in November of 2022 [sic].

1 (Exhibit No. 5 was marked for identification.)

2 BY ATTORNEY HENNINGER:

3 Q. Let me ask you this. Do you, sitting here today,  
4 know what the difference is between your original report in  
5 Geist and your amended report?

6 A. Not exactly, except I would assume that the New  
7 Mexico-specific elements of the previous report had been --  
8 had been removed. That -- I would assume that to be the case.

9 Q. Okay. So, there's some New Mexico-specific  
10 references in your first report I marked as Exhibit Number 4?

11 A. Presumably, yes.

12 Q. Okay. All right. Okay. And the questions and  
13 answers we just had related to the universe of your opinions  
14 and the exhibits that -- or documents that you may want to use  
15 that applies equally to both cases, correct?

16 A. I would assume.

17 Q. Okay. In other words, you don't have a list of  
18 exhibits for one case or reliance list for one case and not  
19 the other?

20 A. Correct.

21 Q. Okay. All right. Now, Dr. Proctor, you have not  
22 testified in a cigarette smoker case in Nevada before these  
23 cases; is that correct?

24 A. It is correct.

25 Q. Have you done any research on Nevada and cigarette

1 smoking?

2 A. Not in particular, no. No. I would assume that  
3 many of the patterns of deception or fraud, consumer  
4 perception, that you would find in Nevada would be common to  
5 the rest of the country.

6 Q. Okay. But you haven't done any specific research as  
7 to those issues, state-specific at least?

8 A. Correct.

9 Q. Okay. If I were to tell you that your book, Golden  
10 Holocaust, has no references in Nevada and cigarette smoking,  
11 I would assume you would agree with me?

12 A. I would not dispute that one way or the other --

13 Q. Okay.

14 A. -- I would imagine that in -- it's a big book. I  
15 would be surprised if Las Vegas is not mentioned once.

16 Q. Well, I'll be fair and say that, actually, there is  
17 only a reference to Nevada as it -- with regard to the belief  
18 in aliens landing in Area 51. That's the only time you're  
19 going to find it in Golden Holocaust.

20 A. Sounds --

21 Q. You know I had to find something fun to talk about,  
22 right?

23 A. That sounds strangely apt.

24 Q. Okay. Were you provided any materials from any  
25 source specific to Nevada?

1 A. No.

2 Q. Okay. And you would agree that there are not any  
3 Nevada-specific exhibits on your -- in your -- cited in your  
4 expert reports, correct?

5 A. I would take your word for that. I didn't check one  
6 way or another.

7 Q. Do you have any opinions about Nevada and smoking at  
8 all?

9 A. Well, as I mentioned, I don't think there's anything  
10 unusual about Nevada when it comes to cigarettes. I think if  
11 you look at all of the indicators, you know, cigarettes cause  
12 cancer in Nevada the same way they do in any other state.  
13 And --

14 Q. Okay.

15 A. -- I think public perceptions are pretty similar as  
16 well.

17 Q. Do you have any opinions about the historical or the  
18 present information environment in Nevada?

19 A. With regard to cigarettes, I assume you're talking  
20 about?

21 Q. I'm sorry. Yes.

22 A. I think that we can safely assume that the so-called  
23 information environment or misinformation environment was  
24 very -- would be very similar in Nevada or any other -- any  
25 other state.

1 Q. Okay. And I assume you're making that assumption  
2 for your opinions in this case?

3 A. Yes. Well --

4 Q. Okay.

5 A. -- just because it's true. I mean, I'm not  
6 tailoring them to the case. I'm just saying I think that's a  
7 reasonable assumption.

8 Q. Have you made any study of the current adult smoking  
9 prevalence in Nevada?

10 A. No.

11 Q. Have you made any study of the current youth smoking  
12 rates in Nevada?

13 A. No. No. I can give you rough figures for those  
14 because I know they're not generally different from those in  
15 the rest of the country.

16 Q. Now, I have a series of questions I'm going to ask  
17 you about the Tully case, and then I'm going to follow them up  
18 with Geist, just so the record's clear. I hope you  
19 understand --

20 A. Okay.

21 Q. -- other than -- other than speaking with Ms. Wald,  
22 have you spoken with anyone else related to Martin Tully?

23 A. No.

24 Q. Have you ever spoken with Mr. Tully?

25 A. No.

1 Q. Or any of his relatives?

2 A. No.

3 Q. Okay. Do you know or have you spoken to any of the  
4 fact witnesses in the Tully case?

5 A. No.

6 Q. Have you made any request to speak with Mr. Tully?

7 A. No.

8 Q. Have you -- as I understand it -- correct me if I'm  
9 wrong -- you have not done any work separately to prepare to  
10 testify in the Martin Tully case than you do for other smoking  
11 cases?

12 A. Correct.

13 Q. Okay. Have you received any information about  
14 whether Mr. Tully ever heard, read or otherwise had conveyed  
15 to him any specific statements or information concerning  
16 smoking and health or smoking and addiction from Reynolds or  
17 any other tobacco company?

18 A. No.

19 Q. Okay. Have you received any information regarding  
20 whether Mr. Tully ever read, heard or otherwise had conveyed  
21 to him any specific statements or information concerning  
22 smoking and health or smoking and addiction from the Tobacco  
23 Institute, CTR, TIRC or any entities related to the tobacco  
24 companies?

25 A. No.



1 Q. Okay. Are you aware of any case-specific evidence  
2 that Mr. Tully ever changed his smoking behavior or made  
3 smoking decisions because of anything any of the tobacco  
4 companies or related entities said about the health risks of  
5 smoking?

6 A. No.

7 Q. Okay. Have you received any information regarding  
8 whether Mr. Tully ever believed that there was a controversy  
9 over the dangers of smoking or the addictive properties of  
10 smoking?

11 A. No.

12 Q. Okay. Have you received any information regarding  
13 whether Mr. Tully was ever confused about the dangers of  
14 smoking or the addictiveness of cigarettes or nicotine?

15 A. No. As I said, I don't know anything about his  
16 beliefs or his biography.

17 Q. Do you have any case-specific information that  
18 Mr. Tully ever changed his smoking behavior because of  
19 something R. J. Reynolds, Brown & Williamson, Philip Morris or  
20 another tobacco company said or did?

21 A. No. Apart from the fact, obviously, that cigarette  
22 companies made the product. And so he, you know, in that  
23 sense, used their product.

24 Q. All right. And you will not be testifying at trial  
25 why Mr. Tully started to smoke, correct?

1 A. Correct.

2 Q. And you will not be testifying at trial why  
3 Mr. Tully continued to smoke, correct?

4 A. Correct.

5 Q. Okay. And you will not be testifying at trial what  
6 Mr. Tully specifically might have known or not have known  
7 about the health hazards or addictive nature of cigarette  
8 smoking when he began to smoke, correct?

9 A. Correct.

10 Q. Okay. And -- well, and not just when he began to  
11 smoke at any point in his life, correct?

12 A. Correct. Yeah. I -- if I touch on that topic, it  
13 will be for the population more generally rather than him as  
14 an individual.

15 Q. Okay. You do not know, for example, when Mr. Tully  
16 became a regular smoker, correct?

17 A. Correct.

18 Q. Okay. Now, I'm going to go through and ask you some  
19 of those same questions for Mr. Geist. Other than Plaintiffs'  
20 counsel, have you spoken with anyone about Mrs. Geist?

21 A. No.

22 Q. You've never spoken with Mr. Geist, correct?

23 A. Correct.

24 Q. Have you spoken with any of Mrs. Geist's relatives  
25 or any other fact witnesses in the Geist case?

1 A. No.

2 Q. Have you made any request to speak with Mr. Geist?

3 A. No.

4 Q. You have not done any work separately for the Geist  
5 case than any other tobacco case, correct?

6 A. Correct.

7 Q. Okay. Have you received any information about  
8 whether Mrs. Geist ever heard, read or otherwise had conveyed  
9 to her any specific statements or information concerning  
10 smoking and health or smoking and addiction from Reynolds or  
11 any other tobacco company?

12 A. No.

13 Q. Have you received any information regarding whether  
14 Mrs. Geist ever heard, read or had otherwise conveyed to her  
15 any specific statements or information concerning smoking and  
16 health or smoking and addiction from the Tobacco Institute,  
17 the Council for Tobacco Research or the TIRC --

18 A. Not --

19 Q. -- or any other entity related to tobacco companies?

20 A. No, I have not.

21 Q. Thank you.

22 Are you aware of any case-specific evidence that  
23 Mrs. Geist ever changed her smoking behavior or made smoking  
24 decisions because of anything the tobacco companies or related  
25 entities said about the health risks of smoking?

1 A. I'm not.

2 Q. Have you received any information regarding whether  
3 Ms. Geist ever believed that there was a controversy over the  
4 dangers of smoking or the addictive properties of smoking?

5 A. No.

6 Q. Have received any information regarding whether  
7 Mrs. Geist was ever confused about the dangers of smoking or  
8 the addictiveness of cigarettes or nicotine?

9 A. I have not.

10 Q. Okay. Do you have any case-specific information  
11 that Mrs. Geist ever changed her smoking behavior because of  
12 something R. J. Reynolds, Brown & Williamson, Philip Morris or  
13 any other tobacco company said or did?

14 A. Well, the "did" part is just, obviously, they're  
15 making cigarettes. And so, you know, she couldn't have smoked  
16 them unless they were made, but if you take off the "did"  
17 part, then I'm not.

18 Q. Okay. Fair enough. So I'll just take off the "did"  
19 part for the purposes of that question.

20 You will not be testifying at trial why Mrs. Geist  
21 started smoking, correct?

22 A. Correct.

23 Q. Or why she continued to smoke, correct?

24 A. Correct.

25 Q. You will not be testifying at trial what Mrs. Geist

1 specifically might have known or not known about the health  
2 hazards or addictive nature of cigarette smoking when she  
3 began smoking, correct?

4 A. Correct.

5 Q. And you will not be testifying at trial what  
6 Mrs. Geist specifically might have known or not known about  
7 the health hazards or addictiveness of cigarette smoking at  
8 any point in her life, correct?

9 A. Correct, yeah. Better to just say knew, rather than  
10 might have known because that invites speculation --

11 Q. Fair enough.

12 A. -- but the sense of your question, I will not be  
13 talking about that.

14 Q. Okay. And you would not be testifying at trial that  
15 Mrs. Geist specifically believed that there was a controversy  
16 over the dangers of cigarette smoking, correct?

17 A. That's correct. I will not be.

18 Q. Okay. And you will not be testifying at trial that  
19 Mrs. Geist was confused about the dangers of smoking or the  
20 addictiveness of cigarettes and nicotine, correct?

21 A. That's correct.

22 Q. Okay. And just like I asked with -- earlier with  
23 Mr. Tully, you're not aware of any of the particulars as to  
24 whether -- when Ms. Geist first became a -- first started  
25 smoking or became a regular smoker, correct?

1 A. Correct.

2 Q. Okay. You do not -- you will not be testifying that  
3 Mrs. Geist relied on any tobacco company advertising  
4 specifically, correct?

5 A. Correct.

6 Q. The same with regard to Mr. Tully: You will not be  
7 testifying at trial that he relied on any tobacco company  
8 advertising, correct?

9 A. Correct.

10 Q. Okay. And you do not know anything about the quit  
11 attempts of Mrs. Geist, correct?

12 A. I don't.

13 Q. And you do not know anything about the quit attempts  
14 of Mr. Tully, correct?

15 A. Correct.

16 Q. Okay. All right. And you do not have any  
17 case-specific evidence that Mrs. Geist heard any particular  
18 statements from the tobacco company disputing the dangers of  
19 smoking or the addictiveness of smoking, correct?

20 A. That's correct. I don't know what she did or did  
21 not hear.

22 Q. Okay. And you do not have any case-specific  
23 evidence that Mr. Tully heard any particular statements by the  
24 tobacco companies disputing the dangers of smoking or the  
25 addictiveness of smoking, correct?

1 A. Correct.

2 Q. Okay. All right. I may come back to a few more of  
3 those later, but I might just skip them, Dr. Proctor.

4 A. Okay.

5 Q. We'll let somebody yell at me later.

6 I'm going to go to Exhibit -- I believe, Exhibit 6.

7 (Exhibit No. 6 was marked for identification.)

8 BY ATTORNEY HENNINGER:

9 Q. And get to share my screen. My mouse doesn't want  
10 to work. There we go.

11 Okay. Hopefully, you can see this. I should have  
12 asked you with the other exhibits --

13 A. Very good. Yes, I can --

14 Q. Okay. Good. And I apologize for not asking  
15 earlier.

16 So I have marked as Exhibit Number 6, Tobacco Use in  
17 Nevada 2020, dated October 27th, 2020. And under "cigarette  
18 use, Nevada," it says, "In 2018, 15" -- well, let me first  
19 start out this way.

20 Let me go ahead and tell you, sir, in all fairness,  
21 Dr. Proctor, you see down at the bottom, this is a publication  
22 by the Truth Initiative about tobacco use in the state of  
23 Nevada; is that correct?

24 A. Yes, it is.

25 Q. Okay. And then I'll go back to the top of the page

1 so you can see it. And if I need to blow up anything later,  
2 let me know, but hopefully, you can see this all right.

3 A. Yes. Thank you.

4 Q. On page one, they give statistics for the current  
5 adult smoking rate and current youth smoking rate in Nevada,  
6 correct?

7 A. Yeah. They're virtually identical at around 16  
8 percent.

9 Q. Okay. And in 2018, 15.7 percent of adults smoked,  
10 and nationally, the rate was 16.1 percent, correct?

11 A. Yes.

12 Q. And in 2019, 3.6 percent of high school students in  
13 Nevada smoked cigarettes on at least one day in the past 30  
14 days; nationally, the rate was 6 percent. Did I read that  
15 correctly?

16 A. Yes.

17 Q. Okay. And if we go down to the last page of this  
18 exhibit, you'll see some of the references that footnotes to  
19 the references we just went through or the statements we went  
20 through, where the CDC Behavioral Risk Factor Surveillance  
21 System in 2018 and the CDC Youth Risk Behavioral Surveillance  
22 System in 2019. You would agree that today the adult smoking  
23 rate in Nevada is about the same as the national average adult  
24 smoking rate, correct?

25 A. Yes.



1 Q. And you would agree that today the youth smoking  
2 rate in Nevada is substantially lower than the national youth  
3 smoking rate, correct?

4 A. Yes. Yes --

5 Q. All right.

6 A. -- it's more like California in that sense.

7 Q. And you would agree that today less than 4 percent  
8 of adolescents in Nevada report that they have smoked a  
9 cigarette at least -- well, let me rephrase.

10 You would agree -- and I'll put it back up there --  
11 that -- you would agree that today less than 4 percent of  
12 adolescents in Nevada report that they have smoked at least  
13 one cigarette in the past 30 days --

14 A. Yes --

15 Q. -- correct?

16 A. -- that's the data from 2019. And I would expect it  
17 to be similar today.

18 Q. All right. Going to go back to Exhibit Number -- I  
19 believe -- let's see. Your report -- I've marked as Exhibit  
20 3, so I'm going to go back --

21 (Certified Stenographer clarification.)

22 BY ATTORNEY HENNINGER:

23 Q. I'm going to return to Exhibit Number 3, your report  
24 in the Tully case, I previously marked as Exhibit Number 3.

25 So I'm going to return to that. And I want to go to page 81,

1 Dr. Proctor. Sorry. My -- all right.

2 Okay. So I'm at page 81. Do you want me to scroll  
3 up so you can see kind of where this is coming from or are you  
4 familiar enough with your report --

5 A. I think in this case it speaks for itself.

6 Q. Okay. So, on page 81 of your expert report in the  
7 Tully case, which we have marked as Exhibit 3, you state:  
8 "Perceptions, paren, i.e., illusions, close paren, were  
9 crucial in such efforts. Cigarette manufacturers knew that  
10 smokers liked to see their filters darkening after smoking,  
11 believing this to be proof that poisons were being trapped,  
12 which is why Claude Teague at Reynolds in December of 1953,  
13 proposed adding color change chemicals to the filter-tips of  
14 cigarettes to give the impression that the poisons were being  
15 filtered out. There is no evidence that the color change  
16 chemicals of this particular sort were ever added to filters,  
17 but we do know that filters were made to appear as white as  
18 possible to achieve the same deceptive effect." Did I read  
19 that correctly?

20 A. Yes.

21 Q. There is no evidence that color change chemicals of  
22 the type described in Dr. Teague's December 1953 disclosure of  
23 invention document were ever added to cigarette filters,  
24 correct?

25 A. Well, not exactly like those, but there were other

1 whitening agents added.

2 Q. Okay. And what white -- what documents do you have  
3 or where do you get the opinion that there were other  
4 whitening agents added?

5 A. If you search titanium dioxide, for example, that's  
6 one of the most commonly-added whitening agents. It's  
7 whitening agents that's also added to foods, for example. You  
8 know, it's like kind of powdery white pigment. It's a  
9 relatively inert substance, and that was -- that's been added  
10 to many different types of cigarettes. So, if you search  
11 bleaching agents, whitening agents, you find that -- you also  
12 find the effect of that in the repeated theme of  
13 advertisements that you have a pure white filter. So there's  
14 clearly an effort to make the cigarette -- the cigarette  
15 filter as white as possible.

16 Q. Now, those -- the -- when you say when -- if you  
17 search titanium dioxide, bleaching agents or whitening agents,  
18 what am I searching? Am I searching your expert report?

19 A. No. I'm talking about the industry's documents.

20 Q. Okay. Are all of those documents cited in your  
21 report or referred to in your report?

22 A. No. No. I'm just telling you where to find them,  
23 but there's a long history of -- and I've testified about this  
24 before many times -- of whitening agents of various sorts  
25 added, as well as beaching agents, to make the filter as white

1 as possible.

2 Q. And we're going to talk about that in a second, but  
3 was there any description in Dr. Teague's December 1953  
4 proposal about adding titanium dioxide, beaching agents or  
5 whitening agents?

6 A. Well, there is a color change -- no, it's slightly  
7 different. You're correct on that. The proposal he's making  
8 is for a chemical that would darken. Whereas, the actual  
9 devices that were introduced involved making the filter as  
10 white as possible so that it would darken. So you're correct  
11 there's a slightly different methodology in the two means  
12 of -- of making it appear that poisons are being trapped.

13 Q. So let me go back to my question, just so I'm clear.  
14 There's no evidence that the color change chemicals of the  
15 type described in Dr. Teague's December 1953 disclosure of  
16 invention document were ever added to cigarette filters,  
17 correct?

18 A. Correct. The same effect, as I mentioned here, was  
19 achieved by bleaches, titanium dioxide, whitening agents. So  
20 the same deception was used albeit with different techniques.

21 Q. Isn't it true that before Dr. Teague wrote his memo  
22 in 1953, the filters in filter cigarettes sold in the United  
23 States, such as Kent and Viceroy, were white?

24 A. I think they were whitish. I don't know how white  
25 they were. Cellulose acetate often has a kind of brownish

1 tint to it. So they can be made more or less white by these  
2 different agents, but, yes, they are certainly whiter than --  
3 filters have always been, to my knowledge, whiter than  
4 tobacco, for example.

5 Q. Do you have any evidence that the filter in Winston  
6 cigarettes in 1954, 1955, was any whiter than the filter in  
7 the Kent or the Viceroy cigarettes in '52, to '53?

8 A. No. No. And, in fact, the Kent was a bluish filter  
9 that -- because it had, you know, asbestos in it, crocidolite  
10 blue asbestos. So that would have been a different kettle of  
11 fish.

12 Q. Isn't it true that if you chemically analyze the  
13 brown stains on smoked cigarette filters you will find the  
14 same chemicals and carcinogens that make up cigarette tar?

15 A. Generally, I think that is true. In other words,  
16 tar is just condensed smoke without the gas phase. And so,  
17 what is being condensed in the front of the cigarette is -- is  
18 really just tar. That -- that's correct.

19 Q. Okay. I'm going to continue on with Exhibit -- the  
20 same exhibit down to page 82. And where you say right here,  
21 "Lorillard used other techniques to capture and deploy medical  
22 authority for its products. The company admitted as much in a  
23 1957 marketing report, acknowledging that the Micronite filter  
24 had originally been introduced as a quasi-medicinal product."  
25 And then you have a cite to a footnote 238. Do you see that?

1 A. Yes, I do.

2 Q. Do you know what you're citing in -- in footnote  
3 238?

4 A. Well, it's a marketing report by Young & Rubicam on  
5 the Kent cigarette, basically marketing plans for 1957.

6 Q. And as you just stated, it is a 1957 document  
7 written by the advertising agency, Young & Rubicam, not by  
8 Lorillard Tobacco Company, correct?

9 A. Right. It's written for Lorillard, not by  
10 Lorillard. It's written by Lorillard's -- one of their main  
11 advertising agents.

12 Q. And Young & Rubicam was a separate company from  
13 Lorillard Tobacco Company, correct?

14 A. Yeah. Separate in the sense it's a different  
15 company but doing work for Lorillard in this sense, that's...

16 Q. Can you identify any internal document from the  
17 Lorillard Tobacco Company where an executive employee or any  
18 employee of Lorillard described Kent cigarettes as  
19 quasi-medicinal products?

20 A. Well, not with that exact words. But, of course,  
21 the whole point of the Micronite filter is to attract  
22 physicians. That's why physicians were much more likely to  
23 use it than nonphysicians. And it's also why Lorillard  
24 created their scientific fortnightly publication to target  
25 physicians with -- with Kent. So, now, it should be said that

1 by the time they're doing this scientific fortnightly in the  
2 late '50s, early '60s, the Micronite filter had fundamentally  
3 changed and was no longer an asbestos filter but was more of a  
4 traditional cellulose acetate filter. So there are some  
5 interesting changes there.

6 Q. Would you agree that just because an advertising  
7 company or marketing company sends a report to Lorillard, does  
8 not mean that Lorillard agrees with the statements or findings  
9 in the report or takes the actions recommended in the report?

10 A. Strictly speaking, that could be true. But when you  
11 consider the broader pattern of evidence, it's clear that the  
12 Micronite filter was introduced as a medical reassurance  
13 product, as were filters more generally.

14 Q. And the basis of that opinion is?

15 A. Well, reality. I mean, the filter part -- I mean,  
16 filters were clearly a reassurance device, right? They were  
17 clearly meant to imply that you would get a cleaner and,  
18 therefore, safer smoke. And that's explicit in some of the  
19 early ads for filters. For example, Viceroy, right on the  
20 pack of Viceroy cigarettes, it would say, you know, "offers  
21 health protection." So health protection, cleaner, safer,  
22 this is -- this is common rhetoric, both inside and outside  
23 the industry, until 1954.

24 Q. But going back specifically as to the Kent  
25 cigarettes, earlier I asked you if you could identify any

1 internal document from Lorillard Tobacco Company where an  
2 employee or an executive referred or described Kent cigarettes  
3 as quasi-medicinal, and as I understood it, you could not,  
4 correct?

5 A. Well, not off the top of my head, yeah. And it  
6 should also be said that you've identified a specific  
7 language. If you look a little bit more generally, in other  
8 words, the appeal to physicians, that's very clear. I mean,  
9 they produced an entire -- I should say Lorillard produced an  
10 entire Popular Science magazine directed to physicians where  
11 Kents were the only product advertised in that -- in that  
12 magazine. That's in the early 1960s and we know that, in  
13 fact, the Kent product was used disproportionately by  
14 physicians and that the other companies were envious of this  
15 fact of the health reassurance message. So if you look  
16 broader at the category of health reassurance, it's clear that  
17 filters in general and the Kent filter in particular had a  
18 very powerful health reassurance slant.

19 Q. Going through your report -- sorry, I'm just  
20 continuing on, on page 82 and it goes on to 83. "In a press  
21 release entitled, 'What tobacco companies are doing with  
22 respect to the possible relationship between cigarette smoking  
23 and lung cancer,' Lorillard research director H.B. Parmele" --  
24 is it Parmele?

25 A. Parmele. Yeah. Parmele.



1 Q. "Parmele announced that the company's response to  
2 the threat was to create the Micronite filter. Parmele  
3 explained that since the filter removed half the tar and  
4 nicotine consumers could transform themselves from heavy to  
5 moderate smokers without reducing their cigarette  
6 consumption." And you cite -- your cite for that is footnote  
7 240, and that's an H.B. -- it's an article by Dr. Parmele or  
8 Mr. Parmele, "What tobacco companies are doing with respect to  
9 the possible relationship between cigarette smoking and lung  
10 cancer," 1954. You cite a website of industry documents,  
11 correct?

12 A. Yes.

13 Q. Okay. And do you have evidence that Lorillard  
14 actually released to the press in 1954 the document, "What  
15 tobacco companies" -- this actual document, did they ever  
16 release it to the press? Was it picked up by the media?

17 A. I don't recall one way or the other.

18 Q. Okay. Did you ever look into whether or not it was  
19 actually released or picked up by the media in any form?

20 A. I don't recall.

21 Q. Do you know anything about whether or not it was  
22 published?

23 A. No.

24 Q. Or -- so -- at all, correct?

25 A. No. I would have to double-check that.

1 Q. Okay. I'm going to continue down on page 83.  
2 "Lorillard during this same time was deflecting attention from  
3 the dangers of its cancer-causing cigarettes by comparing the  
4 concentration of particulates found in urban air pollution to  
5 the concentration of such particulates in the smoke of Kent  
6 cigarettes. In a 1954 letter to Alden James, the vice  
7 president who oversaw Kent's advertising, Parmele produced air  
8 pollution figures for three cities: Jersey City, New Jersey;  
9 Richmond, VA; and Lewisville, Kentucky. Parmele reinsured  
10 James that the data he was providing was sufficient to enable  
11 you to say that the air you are breathing through a Kent  
12 cigarette is several times cleaner than the air you normally  
13 breathe in an average American city." Did I read that  
14 correctly?

15 A. Unfortunately, you did, yes.

16 Q. Okay. Do you have any evidence that Lorillard ever  
17 publicly stated that the air you breathe through a Kent  
18 cigarette is several times cleaner than the air -- average  
19 American city?

20 (Certified Stenographer clarification.)

21 (Off the record discussion.)

22 BY ATTORNEY HENNINGER:

23 Q. Do you have any evidence that Lorillard ever  
24 publicly stated that the air you breathe through a Kent  
25 cigarette is several times cleaner than the air you normally

1 breathe in an average American city?

2 A. I don't recall one way or the other, but my  
3 impression was that was a public statement.

4 Q. Okay. And where did you gain that impression? Do  
5 you know?

6 A. Well, I just remember hearing it so many times that  
7 I think it was public, not private. I -- that -- I would  
8 assume that's in Golden Holocaust, but I remember them making  
9 that rather outrageous claim that you're actually breathing  
10 cleaner air through a cigarette than if you just breathed  
11 outdoor polluted air.

12 Q. Do you have any evidence that Mr. Parmele didn't  
13 believe what he was telling the vice president of the company  
14 that they both worked for?

15 A. Not directly, no.

16 Q. Okay.

17 A. I mean, we do know that -- that Lorillard knew a lot  
18 about the hazards of their product, but as to that particular  
19 quote, I don't know. Also, you could probably define the  
20 metric narrowly enough that it would be true. So if you were  
21 just talking about one particular pollutant in air versus one  
22 particular pollutant in a cigarette, I'm sure there are some  
23 pollutants that -- you know, that are worse in polluted air  
24 than in cigarette smoke.

25 Q. I see what you're saying. So there could be some

1 instances that that particular statement would be accurate?

2 A. Exactly.

3 Q. Okay. I'm going to go up to an earlier part of your  
4 same expert report, so bear with me in my inability to scroll  
5 an appropriate way. I'm sure that the tech people have some  
6 faster way, but this is how I do it.

7 So, all right. We're going to talk about some  
8 things you say about Winston Lights, just to orient you, okay,  
9 Dr. Proctor --

10 A. Yes. Okay.

11 Q. On page 33 of Exhibit 3, your report in the Tully  
12 matter, you state: "R. J. Reynolds came to similar  
13 conclusions. In 1974, in a marketing document reflecting --  
14 in 1974, in a marketing document reflecting on the fact that  
15 consumers were beginning to be more health conscious than ever  
16 before and will be even more so as time goes on, cigarette  
17 marketers divided cigarettes as perceived into three  
18 categories: Least safe, safer, and safest. In the least safe  
19 category were brands like Camel and Marlboro, while Winston  
20 was perceived as safer and Winston Lights was perceived as  
21 safest. As Rosenfeld, Sirowitz & Lawson explained to  
22 Reynolds, 'Smokers of these brands are very concerned about  
23 health and quite aware of T&N numbers. Their concern ...  
24 causes them to switch to brands with low T&N numbers.'" Did I  
25 read that correctly?

1 A. Yes.

2 Q. In the document you refer here -- refer to here, you  
3 cite to here, is Rosenfeld, Sirowitz & Lawson, Incorporated,  
4 for Reynolds, "An evaluation of the 120 millimeter market and  
5 its potential for RJR." Correct?

6 A. Yes.

7 Q. And do you know what Rosenfeld, Sirowitz & Lawson  
8 is?

9 A. I think that's a marketing company. It's one of  
10 these external companies that is -- in this instance, working  
11 for Reynolds, much -- much as Young & Rubicam were working for  
12 Lorillard.

13 Q. So just to be clear, this document was not authored  
14 by an employee of R. J. Reynolds, correct?

15 A. Right. It's by someone working for Reynolds from an  
16 outside company. And by the way, just to -- just to sort of  
17 decorate that a little bit, it is often in these marketing  
18 firms that you find a little bit more honesty about the actual  
19 perception of various tobacco products because they're not as  
20 guarded in their language. And so the companies -- the  
21 cigarette companies tended to be much more careful about not  
22 saying explicitly that something was safer or more or less  
23 hazardous because they knew the potential dangers of that, but  
24 the advertising and marketing agencies were much less guarded.

25 Q. Okay. Do you have any documents or exhibits that

1 you can refer me to, to support your statement there that  
2 marketing companies were less guarded and tobacco companies  
3 were more guarded in their language?

4 A. Well, that's just clear from reading -- we've  
5 already seen two examples right here in this very report, but  
6 that's a pattern I've noticed, is that the companies were, you  
7 know, much more careful about that language because of the  
8 conspiracy and external agencies like Rosenfeld, Sirowitz &  
9 Lawson or Young & Rubicam were not technically part of the  
10 conspiracy, and so they were not hamstrung by the dictates of  
11 language that the companies were.

12 Q. But you would still agree that just because an  
13 advertising company or marketing company sends a report to  
14 Reynolds, it doesn't mean that Reynolds agrees with the  
15 statements or the findings in the reports or even actually  
16 takes any action because of the report, correct?

17 A. Of course, that's true. But what also has to be  
18 said is that they're just describing what is true, namely how  
19 these different cigarettes are being perceived, and it's  
20 almost common sense, right?

21 Q. Now, I want to go back to page 80 -- back in the 80s  
22 here.

23 All right. So page 86 from the same exhibit.  
24 "Tobacco manufacturers in the 1970s, were clearly aware that  
25 nicotine levels had to be kept above a certain level to create

1 and sustain addiction. Lorillard researchers in 1976,  
2 expressed this as follows: Quote, 'A cigarette with  
3 substantially lowered nicotine could not deliver the smoking  
4 satisfaction to sustain consumer purchase,' end quote. The  
5 challenge was to keep the nicotine level in cigarettes high  
6 enough to create and sustain addiction while simultaneously  
7 giving the appearance of lowering yields as determined by the  
8 standardized smoking robots of the FTC and ISO." Did I read  
9 that correctly?

10 A. You did.

11 Q. You would agree that a cigarette that contains 5  
12 milligrams of nicotine in the tobacco rod is just as addictive  
13 as a cigarette that contains 15 milligrams of nicotine in the  
14 rod, correct?

15 A. Generally, yes, though it depends on the size of the  
16 cigarette. So I think what you are really asking is for a  
17 cigarette that had a fixed amount of tobacco, and let's say  
18 three-quarters of a gram. In other words, if you -- it  
19 depends partly on the denominator as well. But, yes, in  
20 general, if you only reduced the percentage of nicotine in the  
21 rod by a factor of two, that would generally not be enough to  
22 make a substantial difference in whether that product could  
23 create and sustain addiction. You have to move to a  
24 substantially lower level. And by the way, it's better to  
25 talk in terms of percentages rather than milligrams. Because,

1 that way, we don't have the confusion of how much tobacco is  
2 in the rod. You see what I mean? So I think in your case the  
3 way you could translate your question is a cigarette that  
4 instead of having 2 percent nicotine in the rod had only 1  
5 percent would not be substantially less addictive, and I would  
6 agree with that question formulated in that manner. It's --  
7 that's not dropped sufficiently low.

8 Q. Okay. And you've had various -- you know, as you  
9 mentioned, in trial testimony, you've talked about internal  
10 company documents and asked the question about how low you can  
11 go with respect to nicotine. And you refer -- refer to this  
12 as the weaning problem, correct?

13 A. Yes.

14 Q. Okay. What is the lowest amount of total nicotine  
15 in the tobacco rod for any cigarette sold by Reynolds,  
16 Lorillard, American or Brown & Williamson?

17 A. Ever? I guess you're saying ever, right?

18 Q. Yes.

19 A. I don't know of a product -- they may have had a  
20 rare product that I don't know about, but the -- I don't know  
21 of any that dropped substantially less than about 1 percent.  
22 That's generally true of commercial cigarettes. There are  
23 some I think I've seen that are .8 percent, but typically, the  
24 cigarettes are kept at around 1 and a half to 2 percent  
25 nicotine by weight. Now, you left off Philip Morris, I know



1 on purpose there, because they, in fact, did produce those  
2 super lows, but I don't recall that Reynolds ever did that.  
3 They may well have done that.

4 Q. Okay. Would you agree that the lowest nicotine  
5 delivery cigarettes ever sold by Reynolds, American, Lorillard  
6 and Brown & Williamson still had at least five times more  
7 nicotine in the tobacco rod than the very low nicotine  
8 cigarettes that have been found not to create or sustain  
9 addiction?

10 A. That sounds correct to me, yeah -- I don't know  
11 where you got that number, but I think that's generally  
12 correct. They -- the Reynolds products I know about did not  
13 ever drop to the substantially lower levels that you find in  
14 Merit De-Nic, Benson and Hedges De-Nic and the standalone Next  
15 brand of Philip Morris.

16 Q. Okay. Even though Reynolds, American, Lorillard and  
17 Brown & Williamson sold cigarettes with very low nicotine  
18 deliveries by machine measure, it is not true that the  
19 nicotine in these cigarettes were only a little bit above the  
20 amount of nicotine in the cigarette that could not create and  
21 sustain addiction, correct?

22 A. That's -- I think you're correct, but that's such a  
23 complicated question. Can you --

24 Q. Yes.

25 A. -- I mean, I agreed with you up to the first half,

1 and then you added a whole bunch in the second --

2 Q. It is. Trust me, I've read this thing, like, ten  
3 times, figuring out a way to shorten it, Dr. Proctor --

4 A. I don't know if lawyers understand double negatives  
5 more than the rest of us, but --

6 Q. Well, I'm -- I'm going to read it again. Then we're  
7 going to go through this double negative because it stopped me  
8 when I was looking at it last night, okay?

9 A. Yeah.

10 Q. Even though Reynolds, American, Lorillard and Brown  
11 & Williamson sold cigarettes with very low nicotine deliveries  
12 by machine measure --

13 A. All that's correct, by the way, so far.

14 Q. Okay. Isn't it true that the nicotine in these  
15 cigarettes were only a little bit above the amount of nicotine  
16 in cigarettes that could not create or sustain addiction?

17 A. No. I don't think that's well said. I think they  
18 were substantially above the amount you would need to reduce  
19 it to in order to guarantee that it would be substantially  
20 less addictive. I think I get the sense of your question, and  
21 I would want to phrase it a little stronger to say that  
22 none -- which I think is in line with your question -- that  
23 none of the products Reynolds made were significantly distant  
24 in nicotine content from those truly denicotinized cigarettes  
25 that Philip Morris made. In other words, they -- as I'm

1 saying, they never went really below 1 percent, and to be  
2 safe, you've got to go like to a 10th of a percent, just to be  
3 sure. Because everyone's different, and you can compensate,  
4 and unless you really dive it way down, you know, you're going  
5 to get some people smoking even more of them.

6 Q. And that's exactly what I was going to get to, is  
7 the lowest nicotine cigarettes ever sold by Reynolds,  
8 Lorillard, Brown & Williamson and American, never came close  
9 to a "how low can you go" type of cigarette, correct?

10 A. Yes. I think that's better said, yes.

11 Q. Okay. I should have just done it the way I -- the  
12 easy way for Ursula first.

13 A. Sounds like Mike Powers is giving you an overly  
14 complicated question.

15 Q. Mike Powers is the smartest person I know, so I'm  
16 going to not comment.

17 Can you identify any internal tobacco company  
18 documents which showed that scientists at Reynolds, Lorillard,  
19 Brown & Williamson or American recognized in the 1970s, that  
20 the nicotine content in cigarettes had to be lowered to less  
21 than one-half milligram in the tobacco rod for a cigarette not  
22 to create or sustain addiction?

23 A. No. They would never have gone down that elaborate  
24 path of making anything quite that explicit. In other words,  
25 as I said, the industry is quite guarded in their language,

1 and so they generally -- they often don't even privately like  
2 to talk about nicotine being addictive at all. And so the  
3 idea of developing a cigarette that explicitly was not  
4 addictive, that was not on the cards. And so even when they  
5 did -- and we're talking here about Philip Morris developed  
6 nonaddictive cigarettes or substantially less addictive --  
7 they didn't even call them that, and you find that both  
8 outside and inside the industry's language. So, no, you would  
9 not expect something that precise to be explicit in the  
10 archives.

11 Q. Okay. Can you identify any internal tobacco company  
12 documents which show that scientists at Reynolds, Lorillard,  
13 Brown & Williamson or American recognized in the 1970s, that  
14 the nicotine content in cigarettes had to be lowered to less  
15 than 1 milligram in the tobacco rod for it not to create and  
16 sustain addiction?

17 A. No. It was never that explicit for that -- you  
18 know, phrased in that precise way. Or at least not in any  
19 document that's been preserved, I should say.

20 Q. All right. Are you okay to keep going? We've been  
21 going for about an hour. I was going to --

22 A. Yeah.

23 Q. -- go through one more area and then take a comfort  
24 break for everybody, if that works?

25 A. That sounds good to me.

1 Q. Okay. So I'm going to switch gears and mark as  
2 Exhibit Number 7 -- let me see.

3 (Exhibit No. 7 was marked for identification.)

4 BY ATTORNEY HENNINGER:

5 Q. Okay. I should be sharing now Exhibit Number 7.  
6 This is also identified as -- I'm going to go ahead and  
7 identify it as AS-001034. This is a Fortune Magazine article  
8 dated December 1953, and the one we're going to talk about is,  
9 "The Uproar in Cigarettes." Is that all right, Dr. Proctor?

10 A. Looks good.

11 Q. All right. And this is the table of contents from  
12 that Fortune Magazine, showing that "The Uproar in Cigarettes"  
13 is found on page 130. Does that look accurate?

14 A. Yes. And I think it's from February -- sorry. From  
15 December 1953.

16 Q. Oh, did I miss -- did I say something different? I  
17 apologize if I did.

18 A. No. I'm just noticing it.

19 Q. Okay. So December 1953. And if we go to page -- go  
20 through this and go to the actual article, "The Uproar in  
21 Cigarettes." Do you recall seeing this article before,  
22 Dr. Proctor?

23 A. I imagine I have, yes.

24 Q. All right. Okay. I'm going to read a portion of  
25 this if I can find it. Okay.

1           Here it is. Okay. I'm going to see if I can blow  
2 this up. I'm not sure how my --

3           A. There you go.

4           Q. Can you see it all right from the blowing up so far?

5           A. Yeah. I like it better blown up.

6           Q. Okay. Whoops. Now, look what I did. There. Okay.  
7 Let's see if I can do it just a little bit more.

8           How is that, sir?

9           A. That's even better --

10          Q. Good? Okay.

11          A. Yes.

12          Q. We're going to stop there and stop tempting my  
13 computer skills because they are severely lacking.

14               All right. So we're going to try to read this.  
15 "Whether it will remain so depends in part on the potential  
16 new entries in the filter-tip race. Each of the major  
17 filter-tip brands now on the market employs a different  
18 filter: Parliament, a plug of treated cotton; Kent, treated  
19 asbestos on the crepe paper; Viceroy, pure cellulose acetate;  
20 and L & M, cellulose acetate with the addition of some  
21 modified alpha-cellulose power." Did I read that correctly?

22          A. Yes.

23          Q. Which brings me back to the days when I crossed you  
24 at trial. You know, back when we used to do those kinds of  
25 things.

1 A. Those are the good ol' days.

2 Q. All right. And I'm going to go to Exhibit Number 7,  
3 which will be another article --

4 A. And by the way, the -- I hope you comment on this  
5 because it's -- it's quite unusual that asbestos would be  
6 explicitly mentioned. Maybe that's where you're going, but  
7 that's --

8 Q. That is where I'm -- that is where Mr. Powers is  
9 taking us, Dr. Proctor.

10 A. That's very good. It's a good find because it's  
11 quite unusual that they actually mention asbestos.

12 Q. And so now as Exhibit 8, I'm marking, is a Readers  
13 Digest article, and it is from -- this one is August of 1957.

14 (Exhibit No. 8 was marked for identification.)

15 BY ATTORNEY HENNINGER:

16 Q. And we're looking at the Readers Digest table of  
17 contents. Before I do so, let me state for the record this is  
18 Exhibit AZ 000652. It's the Readers Digest article, "Wanted  
19 And Available Filter-Tips That Really Filter," and it's August  
20 of 1957.

21 Have you seen this article, Dr. Proctor?

22 A. Yes, I have.

23 Q. Okay. And if we go down -- this is the actual  
24 article: "Wanted And Available Filter-Tips That Really  
25 Filter." Did I read that correctly?

1           A.    Yeah.  This is by Lois Miller and James Monahan, who  
2   were two internal writers for Readers Digest.  And,  
3   unfortunately, this is part of that embrace of filters that  
4   actually was partly responsible for the growth in filter use  
5   in the United States.  They succumbed to the fraud as much as  
6   anyone else.

7           Q.   And if we go down to page 46 of this article, it's  
8   stated by those authors:  "Dr. Harris B. Parmele, Lorillard's  
9   research director" -- that's a gentleman we've already talked  
10  about, correct?

11          A.   It is.

12          Q.   "Lorillard's research director, had barely begun the  
13  search for a more suitable filter material when he got what  
14  seemed like a lucky break.  The Atomic Energy Commission  
15  declassified a technical support describing an aerosol filter  
16  containing crocidolite" --

17          A.   It's pronounced crocidolite.

18          Q.   Crocidolite --

19          A.   Kind of like a crocodile.

20          Q.   Okay.  "Crocidolite, a kind of bluish asbestos,  
21  which was used to remove radioactive particles from the air in  
22  AEC installations.  Lorillard developed a filter-tip made of  
23  cotton fibers containing" -- how do I say it again?  Croc?

24          A.   Crocidolite.

25          Q.   "Crocidolite, and the Kent cigarette made its debut



1 in early 1952." Did I read that correctly?

2 A. Yeah. That's another good example of actually  
3 mentioning the blue crocidolite. And it's kind of remarkable  
4 that, generally, we're not allowed to mention that in trial,  
5 even though here it is in Fortune Magazine and Readers Digest.  
6 We're not even allowed to say that that early Kent filter was  
7 made of crocidolite asbestos, which is kind of bizarre, right?

8 Q. In the 1940s and 1950s, the air filtration systems  
9 in hospitals and laboratories and factories run by the Atomic  
10 Energy Commission of the federal government used asbestos  
11 because it was considered a very good material for air  
12 filtration, correct?

13 A. Sometimes they did, yes, not always, but  
14 occasionally.

15 Q. And in the 1950s, lay publications like the Readers  
16 Digest and Fortune Magazine published that the original filter  
17 in Kent cigarettes contained asbestos, correct? We just saw  
18 that.

19 A. Yes. That's right. I hope we're able to mention  
20 that at trial.

21 Q. And these publications did not express any dismay or  
22 outrage at this because at the time it was not understood in  
23 the scientific community that asbestos was dangerous, correct?

24 A. Well, that's not entirely true. It's true that many  
25 people regarded it as relatively safe, but already back in the

1 1920s, and '30s, there were fears that asbestos was causing  
2 asbestosis, mesothelioma and even lung cancer. And in  
3 particularly, if you look at the German literature, the  
4 scientific literature, they were quite strong in recognizing  
5 asbestos fibers as causing mesothelioma and lung cancer.  
6 That's actually recognized as an occupational hazard already  
7 by the German state in the early 1940s. So the -- one of the  
8 best sources on this is the Castleman -- Barry Castleman book.  
9 But it is fair to say that a lot of people, unfortunately,  
10 were still regarding it as a fairly benign chemical, even  
11 though there were some pioneering scholars who had recognized  
12 its deadly force.

13 Q. And -- and just like, you know, some of these  
14 articles talked about the Atomic Energy Commission of the  
15 federal government and federal agencies were using asbestos at  
16 that time, correct?

17 A. That's right.

18 Q. Now, do you have any evidence that the scientists at  
19 Lorillard understood that asbestos was dangerous before 1957?

20 A. Well, they do talk about the fact that asbestos  
21 particles are going into the lungs, but I don't recall  
22 specific statements about recognizing the hazard. And it's --  
23 it might be more in the category of they should have known  
24 rather than they did know, but I would have to double-check  
25 that.

1 Q. Okay.

2 ATTORNEY HENNINGER: Now, I'm going to go ahead and  
3 take a first comfort break if that's good for everybody.  
4 I've hit a good stopping point --

5 THE WITNESS: Good.

6 ATTORNEY HENNINGER: So I'm going to go ahead and  
7 recommend ten minutes, if that works. I have 1:26. We  
8 could just say -- or I -- here, on the East Coast, 1:26.  
9 Make it 1:40 or I guess what -- you'll do the math on  
10 your end, Doctor.

11 THE WITNESS: Okay. Sounds good. Ten minutes.

12 (Brief recess taken from 1:26 p.m. to 1:38 p.m.)

13 BY ATTORNEY HENNINGER:

14 Q. Dr. Proctor, we will continue now. I'm going to go  
15 back to Exhibit Number 3, which was your expert report in the  
16 Tully case. And during the break, at least I got it to the  
17 right page so you didn't have to deal with my scrolling.

18 On page 11 of your report, there's a line in here,  
19 the highlighted line, "High pH smoke is easily obtained by  
20 using low-sugar leaf blends of a sort found in traditional  
21 cigars, whose smoke is typically not inhaled." Did I read  
22 that correctly?

23 A. Yes.

24 Q. Is it your opinion that high pH smoke is easily  
25 obtained by using low-sugar leaf blends of the sort found in

1 traditional cigars?

2 A. Yes.

3 Q. Okay. Now, if we go to page -- this was on page 11.

4 If we go up to page six and seven -- let's see here.

5 It's at the end of page six. "Sugar is of crucial

6 importance in tobacco chemistry and plays a key role in

7 determining the extent to which a smoking device causes harm.

8 Tobaccos of the sort traditionally used in cigar or pipe

9 tobacco manufacture are air-cured simply by drying, which

10 reduces the sugar content of the leaf from about 25 percent by

11 weight to 2 percent." Did I read that correctly?

12 A. Yes.

13 Q. Is it your opinion that a cigarette that is

14 typically not inhaled can be made by using low-sugar leaf

15 blends of the sort found in traditional cigars with a sugar

16 content of 2 percent?

17 A. Yes.

18 Q. On page ten of your report, you go on to say, "Such

19 cigarettes have also been produced commercially. American

20 Tobacco Company from 1955, actually marketed a Half and Half

21 brand described as a revolutionary new product for both pipe

22 and cigarette smoker that could be smoked either in pipes or

23 in cigarettes with the presumption that it didn't have to be

24 inhaled: A pipe tobacco in the convenience of a modern filter

25 cigarette which need not to be inhaled to be enjoyed. Philip

1 Morris, in 1964, also marketed a Puritan brand cigarette, a  
2 cigaretto that need not be inhaled to be enjoyed. Madison,  
3 quote, 'little cigars,' end quote, made by Lorillard from 1958  
4 to 1988, were similar, as was the BT, Pipe Tobacco -- PT" --  
5 sorry -- "Pipe Tobacco, brand of cigarette marketed in 1964,  
6 by the" -- is it Bloch Brothers?

7 A. Yes.

8 Q. "Made -- Bloch Brothers made from the company's  
9 premium Kennedy Club tobacco to capitalize on the success of  
10 Half and Half. Madisons were also called cigarettos and were  
11 advertised with the slogan: 'Satisfy your smoking taste with  
12 Madison little cigars ... even without inhaling,' open paren,  
13 in the mid 1960s, closed paren. Several companies made  
14 cigar-like cigarettes in the 1950s and 60s, meaning cigarettes  
15 not designed to be inhaled. Lorillard actually made three  
16 different brands of the -- three different brands along these  
17 lines: Madisons, I've already mentioned, but Lorillard also  
18 marketed little cigars under the brand names Between the Acts  
19 and Omega in the menthol and cherry flavors, both of which  
20 were launched to capitalize on fears attached to conventional  
21 cigarettes." Did I read that correctly?

22 A. Yes.

23 Q. Let's see. Make sure I got -- yep.

24 Is it your opinion that the smoke from the Half and  
25 Half cigarette was typically not inhaled?

1           A.    It's possible. We don't know for sure because we  
2   don't -- at least I don't know the exact composition of that.  
3   But I know that they had the capacity to do that. That's the  
4   crucial point. Given that we don't really know or at least I  
5   don't know what exactly these were made of, it's a little hard  
6   to tell, but that's how they were perceived and that's how  
7   they were marketed. In fact, if you go on to look at the  
8   paragraph after the part you highlighted, it's actually a  
9   Consumer Reports report that these new cigarette-like cigars  
10  or cigar-like cigarettes were being introduced to capitalize  
11  on the health fears. So we do know that they had the capacity  
12  to do that and were implying that in their advertising of  
13  these products, but we don't know the exact formulas. So it's  
14  possible that they were just gimmicks. So let me give you one  
15  example of that. The -- the Winchester little cigar was  
16  advertised with this same kind of gimmicky idea: You need not  
17  inhale it. But, in fact, I think that one was inhaled. So it  
18  really just depends on the particular blend that was used. So  
19  my opinion is that the -- that all of the companies had the  
20  capacity to produce a noninhalable cigarette or a cigarette  
21  that was not designed to be inhaled. Whether they actually  
22  manufactured such a product is somewhat open to question -- to  
23  question.

24           Q.    Okay. So just so I'm clear, you do not have an  
25  opinion one way or another whether or not the smoke from Half

1 and Half cigarette was typically inhaled?

2 A. Yes. I don't. The -- they were advertised that  
3 you -- that you need not inhale, but whether that was purely a  
4 gimmick or actually a substantial design change is a little  
5 unclear.

6 Q. Okay. Is it your opinion that the Half and Half  
7 cigarette was less hazardous than the conventional American  
8 blend cigarette?

9 A. Not necessarily. It depends on the exact -- the  
10 smoke pH, and without knowing that, it would be hard to say.  
11 So in other words, there's an ambiguity. I know that they  
12 could have made it not inhalable, but whether they did or not  
13 is open to question.

14 Q. And that's because you -- you don't know any of the  
15 specifics of the composition of the Half and Half cigarette,  
16 correct?

17 A. Right. Yeah. And there's ambiguity in that since  
18 they were not open about exactly the degree to which they were  
19 less inhalable, there's uncertainty about whether they were  
20 actually safer.

21 Q. Okay. So, for example, you don't know the sugar  
22 content in the Half and Half?

23 A. Right.

24 Q. And you already told me you don't know the pH  
25 content in the Half and Half, but do you know of any Lorillard

1 Tobacco Company documents or any internal company documents  
2 that tested the smoke pH of Half and Half cigarettes?

3 A. There probably are, but I just don't recall them at  
4 the moment.

5 Q. Okay. And if they spoke -- oh, let me ask you this.  
6 Okay. Can you identify any internal tobacco company documents  
7 which tested Half and Half on regular habitual smokers and  
8 found that most of these smokers did not inhale smoke from  
9 that cigarette?

10 A. No.

11 Q. Can you identify any internal tobacco company  
12 documents which demonstrate that the smoke from the Half and  
13 Half cigarette brand is as hard to inhale as a full-sized  
14 traditional cigar with the smoke pH of 8 or above?

15 A. No.

16 Q. What was the highest market share that the Half and  
17 Half brand sustained?

18 A. I'm sure it was substantially less than 1 percent.

19 Q. Okay. Would you agree that a cigarette can have a  
20 smoke pH below 8 and still have sufficient unbound nicotine in  
21 the smoke that it does not need to be inhaled for the smoker  
22 to obtain a satisfactory level of nicotine?

23 A. That -- say that again. That's a little  
24 complicated --

25 Q. Sure. Yeah. Would you agree that a cigarette could



1 have a smoke pH below 8 and still have sufficient unbound  
2 nicotine in the smoke that it does not need to be inhaled for  
3 the smoker to obtain a satisfactory level of nicotine?

4 A. Yes. In other words, yeah, you could still be  
5 addicted -- you could still obtain nicotine from a device that  
6 was a low -- lower than pH 8.

7 Q. Okay. Now, so we talked about the Half and Half  
8 that I first read in this paragraph, and then you also go on  
9 to talk about Philip Morris marketed a Puritan brand. Can you  
10 tell me the sugar content of the Puritan brand of cigarette?

11 A. No. No. With all of these, there's uncertainty  
12 about whether they were honestly not inhalable or not. In  
13 other words, they all could have been noninhalable, but I  
14 don't recall ever seeing the sugar levels or the pH specified  
15 so that you'd be able to prove that it was not inhalable. All  
16 we really have is commentary from either public sources or the  
17 industry itself saying that these were efforts to capitalize  
18 on the fear of inhaling.

19 Q. Okay. So, I know you don't know the sugar content.  
20 Do you know the smoke pH in the Puritan cigarette brand?

21 A. No.

22 Q. Okay. Can you identify any internal tobacco company  
23 documents which state that the Puritan cigarette brand had a  
24 tested smoke pH of 8 or above?

25 A. No.

1 Q. Can you identify any internal tobacco company  
2 documents which tested Puritan on a regular -- on regular  
3 habitual smokers and found that most of those smokers did not  
4 inhale the smoke from that cigarette?

5 A. No.

6 Q. Can you identify any internal tobacco company  
7 documents which demonstrate that the smoke from the Puritan  
8 cigarette brand is as hard to inhale as a full-sized  
9 traditional cigar with the smoke pH of 8 or above?

10 A. No.

11 Q. Okay. Now, I want to talk about the Madison brand  
12 of cigarettes or cigarettos -- how would you say it?  
13 Cigarettes?

14 A. I would say cigarettos.

15 Q. Cigarettes?

16 A. Yes.

17 Q. Can you tell me the sugar content of the Madison  
18 cigarettes brand?

19 A. I don't recall.

20 Q. Do you know or have -- the smoke pH of the Madison  
21 cigarettes brand?

22 A. No.

23 Q. Can you identify any internal tobacco company  
24 documents which state that the Madison cigarettes brand had a  
25 tested smoke pH of 8 or above?

1           A.    No.

2           Q.    Can you identify any internal tobacco company  
3 documents which tested Madison cigarettos on regular habitual  
4 smokers and found that most of those smokers did not inhale  
5 the smoke from that cigarette?

6           A.    No.

7           Q.    Can you identify any internal tobacco company  
8 documents which demonstrate that the smoke from the Madison  
9 cigarettos brand is as hard to inhale as a full-sized  
10 traditional cigar with a smoke pH of 8 or above?

11          A.    No. No. And, again, part of the reason there is a  
12 lot of the products advertised as little cigars are just brown  
13 cigarettes.

14          Q.    Okay. And then as I've already read this, we  
15 continued on and you talk about -- after the Madisons, you  
16 talk about several companies made cigar-like cigarettes in the  
17 '50s, and '60s. Let me go ahead and ask you this. The ones  
18 you mentioned, the Between the Acts and Omega, were either of  
19 those cigarettes? I mean, was it tobacco wrapped in paper or  
20 were they cigars?

21          A.    Legally, I think they were cigars. In other words,  
22 all they really had to do at that time to turn a cigarette  
23 into a cigar was darken the paper. And so, you know, this is  
24 part of the problem, is that paper can be made from -- from  
25 tobacco, and a lot of tobacco is really ground-up leaves made

1 into a paper. And so the distinction between paper and leaf  
2 is kind of -- you might say manipulated or ambiguous. And a  
3 lot of these little cigars are just brown cigarettes. And the  
4 crucial distinction between a cigar and a cigarette legally is  
5 just what it's being wrapped in. But, functionally, the key  
6 issue of safety is what is the smoke pH and what is the sugar  
7 content. So there's a lot of confusion in this whole realm,  
8 and a lot of times you can't really -- really tell what's  
9 going on.

10 Q. Okay. Well, let me go back to the two brands that  
11 you talked about up in your report, the Between the Acts and  
12 the Omega. Do you know what the wrapping was on either of  
13 those products --

14 A. I don't. It would have been some -- since they were  
15 sold as cigars, namely little cigars, it would have been a  
16 tobacco-like product. Now, it could be -- I don't think it  
17 was leaf because that was reserved for more traditional  
18 cigars. I think it was probably a reconstituted tobacco leaf,  
19 which is basically paper made from tobacco, which for legal  
20 purposes was classified as tobacco, which is why they didn't  
21 have to call it a cigarette. And the reason they wanted to do  
22 that, it -- it did convey safety, but more importantly, or at  
23 least equally important, it was taxed at a lower rate.  
24 Because little cigars were taxed at a lower rate than  
25 cigarettes. And so by declaring a cigarette to be a cigar or

1 a little cigar, you could actually -- they could be sold  
2 without the high taxes.

3 Q. And --

4 A. Plus -- plus -- sorry. Plus, they didn't have to  
5 have the warnings --

6 Q. But --

7 A. -- you know, the warning labels didn't go on cigars  
8 until much -- little cigars until much later.

9 Q. But as you sit here today, specifically for the  
10 Between the Acts or the Omega, do you know what either of the  
11 wrappings were? Was it tobacco --

12 A. I think it was -- legally, it had to be tobacco, so  
13 I'm assuming it was tobacco. And since it was not leaf,  
14 probably -- it was probably reconstituted tobacco, but I would  
15 have to double-check to be sure.

16 Q. Do you know the sugar content of either the Between  
17 the Acts or the Omega brands?

18 A. No.

19 Q. And do you know the smoke pH of either the Between  
20 the Acts or the Omega brands?

21 A. No.

22 Q. Can you identify any internal tobacco company  
23 documents which state that the Between the Acts and Omega  
24 brands had a tested smoke pH of 8 or above?

25 A. No.

1 Q. Okay. Can you identify any tobacco -- internal  
2 tobacco company documents which tested the Between the Acts or  
3 the Omega brands on regular habitual smokers and found that  
4 most of these smokers did not inhale smoke from those  
5 cigarettes?

6 A. No.

7 Q. Okay. For the purposes of these questions,  
8 Dr. Proctor, I am measuring market share by what was  
9 historically reported in the Maxwell reports, okay --

10 A. Yes. Right.

11 Q. Would you agree that the Maxwell reports are a  
12 reliable source of information on the market share of  
13 cigarette brands over time?

14 A. Yes.

15 Q. Would you agree that according to Maxwell reports  
16 the highest market share achieved by the Half and Half  
17 cigarette brand was in 1965, when its market share was  
18 one-half of 1 percent?

19 A. Yes.

20 Q. Would you agree that by 1967, the market share of  
21 Half and Half had declined by 80 percent to one-tenth of 1  
22 percent?

23 A. Yes.

24 Q. So would it be -- so that -- let me rephrase.  
25 So that would be 1 out of the 1,000 cigarettes sold

1 in this country were Half and Half, basically?

2 A. Yes. So it would be under a billion cigarettes.

3 Q. Would you agree that by 1970, the market share of  
4 Half and Half was less than one-tenth percent?

5 A. Yes.

6 Q. Would you agree that the Maxwell never even listed  
7 the Puritan and the Madison cigarette brands in its reports on  
8 cigarette market share?

9 A. Well, you would expect them to at some point, but  
10 since they were small, it -- I'm sure it didn't commonly even  
11 list it. They only were sold, I think, for two years.

12 Q. Okay. Would you agree that the Puritan cigarette  
13 brand never had any measurable market share, meaning one-tenth  
14 of 1 percent?

15 A. I think the way to put it was it never had a  
16 significant market share. Typically, that's defined as a  
17 billion cigarettes. If you say there's 5 or 600 billion  
18 smoked -- typically, the industry will call any cigarette with  
19 a billion sales significant. And I don't think that  
20 particular cigarette ever reached a billion.

21 Q. Okay.

22 A. Half and half did, but not -- not Puritan.

23 Q. What about Madison, did Madison ever reach a  
24 billion?

25 A. I don't recall. And, of course, that's -- I don't

1 think that's a cigarette. That was a little cigar, but I --  
2 no, I don't -- I don't think it did. I just don't recall.

3 Q. Would you agree that cigar-like cigarette brands  
4 taken as a whole did not achieve even a 1 percent share of the  
5 market in the 1960s, '70s, or '80s?

6 A. That's -- that 1 percent sounds about right. If I  
7 had to guess.

8 Q. Okay. Would you agree that even though cigarette  
9 companies marketed cigar-like cigarettes as being cigarettes  
10 that do not need to be inhaled to enjoy, those cigarettes  
11 never became popular with smokers of traditional U.S. blend  
12 cigarettes?

13 A. They never became extremely popular like the  
14 traditional cigarettes.

15 Q. Would you agree that in the 1960s, cigar-like  
16 cigarettes were introduced by some tobacco companies,  
17 including American, Philip Morris and Lorillard, and they  
18 largely failed in the market?

19 A. Well, they also failed in the board -- board room  
20 because they were not -- there was never a -- a noninhalable  
21 cigarette that was advertised as such. They were advertised  
22 as "need not" be inhaled to be enjoyed, but they never said,  
23 look, this product is much less likely to give you lung  
24 cancer. So it's a mixture of failure in the marketplace and  
25 failure in the board room.



1 Q. Okay.

2 A. Much like Premier and Eclipse in that sense.

3 Q. The most successful cigar-like cigarette, the Half  
4 and Half, was unable to maintain a market share of even  
5 one-tenth of 1 percent six years after it was launched in  
6 1964, correct?

7 A. Yes. Unless you count the Winchester, which is a  
8 completely fake one, you know, that was advertised as a  
9 cigar-like cigarette. But then they were -- they got in  
10 trouble for that, and there were congressional hearings about  
11 it. That, I think, did have a bigger market share.

12 Q. And I was just asking for the -- mainly for the Half  
13 and Half. So you think Winchester might have gotten higher  
14 than one-tenth of 1 percent?

15 A. Yes.

16 Q. But you would agree that Half and Half was unable to  
17 maintain a market share of even one-tenth of 1 percent six  
18 years after its launch?

19 A. Well, it did not. Yes. That's correct. It did  
20 not.

21 Q. All right. All right. Would you agree that there  
22 has been a consensus, Dr. Proctor, in the scientific community  
23 for hundreds of years that the earth revolves around the sun?

24 A. Yes.

25 Q. Okay. I am going to move to Exhibit Number 9.

1 (Exhibit No. 9 was marked for identification.)

2 THE WITNESS: I like where this line of question is  
3 going.

4 ATTORNEY HENNINGER: I think -- off the record.

5 (Off the record discussion.)

6 BY ATTORNEY HENNINGER:

7 Q. Let me share my screen and identify what I am  
8 marking as Exhibit Number 9. This is a Gallup poll dated July  
9 6, 1999. "New poll gauges American's general knowledge level,  
10 fourth fifth -- four-fifths know earth revolves around sun."  
11 Did I read that correctly?

12 A. Yes.

13 Q. All right. So when we go down to page two of this,  
14 it says, "Probing a more universal measure of knowledge,  
15 Gallup also asked the following basic science question, which  
16 has been used to indicate the level of public knowledge in two  
17 European countries in recent years: Quote, 'As far as you  
18 know, does the earth revolve around the sun or does the sun  
19 revolve around the earth?,' end quote. In the new poll, about  
20 four out of five Americans, 79 percent, correctly responded  
21 that the earth revolves around the sun, while 18 percent say  
22 it's the other way around." Did I read that correctly?

23 A. Yes.

24 Q. If you go down to -- on page three, here's the  
25 actual polling results. "As far as you know, does the earth

1 revolve around the sun or does the sun revolve around the  
2 earth," and there's actually 3 percent, it looks like, that  
3 had no opinion about it other than the statistics I said  
4 earlier.

5 A. Yes.

6 Q. So you would agree that Gallup polling data that we  
7 just went through shows that at the turn of this century less  
8 than 80 percent of adults in this country knew that the earth  
9 revolved around the sun, correct?

10 A. Gauged by this question, yes.

11 Q. We're going to mark as Deposition Exhibit Number 10.  
12 (Exhibit No. 10 was marked for identification.)

13 BY ATTORNEY HENNINGER:

14 Q. And let me go to 10. Okay. We're going to do  
15 another Gallup poll. And this Exhibit Number 10 is: "August  
16 16th is the 23rd anniversary of Elvis' death, Americans still  
17 consider him the King of Rock and Roll, only 4 percent believe  
18 Elvis is still alive." So that's in the year 2000.

19 A. Yes.

20 Q. And then on page two, it goes on to say, "Very few  
21 Americans believe Elvis is alive today. Quote, 'Elvis lives,'  
22 end quote, is the mantra of many of the King's fans, and many  
23 have speculated over the years that Presley did not die, but  
24 rather went into hiding. Several people have reported Elvis  
25 sightings in recent years, but the vast majority of Americans

1 do, in fact, believe that Elvis is, in fact, dead. Only 4  
2 percent of Americans believe that Elvis is alive when asked in  
3 the 1997 poll, while 93 percent of Americans were certain  
4 Elvis is no longer alive, with 3 percent unsure." Did I read  
5 that correctly?

6 A. Yes.

7 Q. And it goes on to say, "The results below are based  
8 on telephone interviews with a randomly-selected national  
9 sample of 819 adults, 18 years or older, conducted on August  
10 12th through 13th, 1997, and 1,021 adults, 18 years or older,  
11 conducted on March 5th through 7th, 1999. For results based  
12 on this sample, one can say that 90 -- one can say with 95  
13 percent confidence that the maximum error attributed to  
14 sampling and other random effects is a plus or minus 3  
15 percentage points." Did I read that correctly?

16 A. Yes.

17 Q. And then if you go down it says, "Do you personally  
18 believe Elvis is still alive or not?" And there's the results  
19 we discussed. Four percent believe he is, 93 believed he is  
20 not and 3 percent had no opinion. Correct?

21 A. Yes.

22 Q. So, according to survey data in the mid to late  
23 1990s from Gallup, 20 years after Elvis' death, 93 percent of  
24 Americans in this country were convinced that Elvis is dead,  
25 and 7 percent or -- either believed he was alive or were not

1 sure, correct?

2 A. Yes.

3 Q. Why do you believe -- do you have any opinion or  
4 belief as to why 4 percent of the adult population in this  
5 country still believe that Elvis is alive 20 years after his  
6 death?

7 A. Well, I think there's -- you know, never  
8 underestimate the ignorance of the American public, right? I  
9 mean, I'm surprised it's only 4 percent --

10 Q. Yeah.

11 A. -- but I would think that that many people have  
12 probably never even heard of Elvis. So, I'm just not  
13 surprised. And I think, generally, the ignorance is -- of  
14 almost all topics is usually higher than these surveys reveal.  
15 These are people -- only the people who could, you know,  
16 presumably read or write or, you know -- unless they're  
17 telephone interviews, but even then, that would be -- there's  
18 some selection bias in all of these surveys.

19 Q. All right. I'm going to mark as Exhibit Number  
20 11 -- this is another Gallup poll, February 15th, 2001, "Did  
21 men really land on the moon, Fox TV special questions moon  
22 landing but public says 'no' to conspiracy theory."

23 (Exhibit No. 11 was marked for identification.)

24 BY ATTORNEY HENNINGER:

25 Q. And it goes on to say: "A new conspiracy-themed

1 television show airing on Fox Television asked viewers, 'Could  
2 the entire moon program have been an elaborate deception  
3 staged to fool the public?' Considering Gallup polling from  
4 1999, it's unlikely that the public will buy into such a  
5 theory. In the July '99 poll, the overwhelming majority of  
6 Americans, 89 percent, do not believe the U.S. government  
7 staged or faked the Apollo moon landing. Only 6 percent of  
8 the public believes the landing was faked, and another 5  
9 percent have no opinion. The survey methods" -- it goes on to  
10 describe the survey methods -- "the results below are based on  
11 telephone interviews with a randomly selected national sample  
12 of 1,061 adults, 18 years or older, conducted July 13th  
13 through 14th, 1999. For results based on this sample, one can  
14 say with 95 percent confidence that the maximum error  
15 attributed to sampling and other random effects is plus or  
16 minus 3 percentage points." Did I read that correctly?

17 A. Yes.

18 Q. And then, of course, they go on to say, "Thinking  
19 about the space exploration, do you think the government  
20 staged or faked the Apollo moon landing or don't you feel that  
21 way?" And then these are the results, where 6 percent in  
22 1999, thought it was staged, and in 1995, we have the same 6  
23 percent, correct?

24 A. Yes.

25 Q. And 89 percent did not believe that in '99, and 83

1 did not believe that in '95, correct?

2 A. Yes.

3 Q. And what did -- the "no opinions" change in those --  
4 two samples, correct?

5 A. Yes.

6 Q. So according to the survey data in the mid to late  
7 1990s, from both Gallup and Time CNN because this one's the  
8 Time -- has the Time and CNN, you'll see down here in the  
9 bottom, right?

10 A. Yes.

11 Q. The -- about 6 percent of adults in this country  
12 stated that they believe the government faked the Apollo moon  
13 landing, correct?

14 A. Yes.

15 Q. And close to 90 percent of the adults in this  
16 country disagreed that the moon landing was staged and  
17 believed we actually landed men on the moon, correct?

18 A. Yes. Again, I think it's probably a little bit  
19 lower than that, given that there would be people answering  
20 the phone who wouldn't want to be involved in such a survey  
21 who would probably be more skeptical.

22 Q. Okay. Why would 6 percent of the adult population  
23 not believe that Apollo mission to the moon was real? Do you  
24 have any beliefs on that?

25 A. Yes. I think there is just a lot of ignorance in

1 the American public, a lot of skepticism about the media, a  
2 lot of skepticism about science, a lot of skepticism about  
3 government and -- you know, there's all kinds of crazy views  
4 in the world. If you just watch the so-called History  
5 Channel, it's all about alien astronauts and this and that. I  
6 mean, it's cringe-worthy pseudoscience and we're awash in  
7 that.

8 Q. You don't like ancient aliens, Dr. Proctor?

9 A. I'm fascinated by it, but it's all bogus, so...

10 Q. There's T-shirts with that guy with the crazy hair  
11 and all sorts of stuff.

12 A. I know. The hair is half the appeal.

13 Q. It is.

14 Would you agree, Dr. Proctor, that it's difficult to  
15 get all of the population to agree on anything?

16 A. Presumably. I mean, it would depend on the  
17 question. You know, if you ask if water is wet or something,  
18 maybe you'd get even people to disagree with that.

19 Q. I'm going to go to Exhibit Number 12 now and mark  
20 that. Let's see.

21 (Exhibit No. 12 was marked for identification.)

22 BY ATTORNEY HENNINGER:

23 Q. Okay. No. It's not letting me unpause there.

24 Sorry, I'm having a technical issue. Okay. I'm going to do  
25 this and just redo it.



1           Okay. So this is going to be Exhibit Number 12, I  
2 believe. This is a Gallup publication, "Tobacco and smoking,  
3 Gallup historical trends." Correct?

4           A. Yes.

5           Q. Okay. And this is a rather lengthy summary of  
6 survey data published by Gallup historically on tobacco and  
7 smoking. You're familiar with this, correct?

8           A. Generally, yes.

9           Q. Okay. And if we go to page -- let's see. We'll go  
10 to page 28 and 29. If I didn't have so many exhibits, it  
11 would be easier to scroll.

12           All right. "What is your own opinion -- do you  
13 think cigarette smoking is one of the causes of lung cancer or  
14 not?" And then you see there are different dates represented  
15 down the side with different polling dates, correct?

16           A. Yes.

17           Q. Beginning in 1954, and continuing for many decades,  
18 Gallup asked adults in this country, "What is your own  
19 opinion -- do you think cigarette smoking is one of the causes  
20 of lung cancer or not?" Correct?

21           A. Right.

22           Q. And here, Gallup summarizes the answers to this  
23 survey question for the period 1954 through 19 -- or through  
24 2013, correct?

25           A. Yes.

1 Q. That's a 60-year period, correct?

2 A. That's correct.

3 Q. And you've seen this data on separate Gallup  
4 reports, correct?

5 A. Yes. In different forms.

6 Q. And you've testified about this polling data at  
7 trial, correct?

8 A. Yes.

9 Q. Okay. In 1967 -- I mean, sorry, in 1960, years  
10 before the 1964 Surgeon General is released, half of the  
11 adults in this country stated that they believed that  
12 cigarette smoking is one of the causes of lung cancer,  
13 correct?

14 A. That's right. When asked in that very weak form.

15 Q. And in 1969, 70 percent of adults in this country  
16 stated that they believed that cigarette smoking is one of the  
17 causes of lung cancer, correct --

18 A. Correct. When asked -- well, they were just asked  
19 "yes" or "no".

20 Q. In 1977, more than 80 percent of adults in this  
21 country stated that they believed that cigarette smoking is  
22 one of the causes of lung cancer, correct?

23 A. On this survey, yes.

24 Q. And since then, the percentage has been at least  
25 that high or higher, correct?

1           A.    Yeah.  What's -- what's -- one of the interesting  
2   things is it's actually declined in recent years, which would  
3   fit with the relative lack of concern about cigarettes over  
4   the last 20 years.

5           Q.    Since 1977, a higher percentage of adults in this  
6   country have known that cigarettes cause lung cancer than have  
7   known that the earth revolves around the sun, correct?

8           A.    Well, it -- I don't think you phrased it quite  
9   right.  One of the causes.  Right?  I mean, this is a very  
10  weak question, plus there's the bias in it.  There's a  
11  dysthymia bias in that, meaning that people are just ask --  
12  you know, answering "yes" or "no."  But, yeah, the -- there is  
13  a comparable percentage in those two types of questions.

14          Q.    In 1990, 94 percent of adults in this country stated  
15  that they believed that cigarette smoking is one of the causes  
16  of lung cancer, correct?

17          A.    Well, they answered "yes" to such a survey.  They  
18  didn't volunteer that.  You'd get quite a lower proportion if  
19  it was volunteered.  Also, the question is very weak.  It's  
20  not really in a sense true that it's merely one of the causes.  
21  It's the overwhelming majority of -- of causal force, and  
22  that's not what's being asked.

23          Q.    But whatever the question, "What is your own  
24  opinion -- do you think cigarette smoking is one of the causes  
25  of lung cancer or not," that was the question asked, correct?

1 A. Yes.

2 Q. And in 1990, 94 percent of adults in this country  
3 stated that they believed that cigarette smoking is one of the  
4 causes of lung cancer, correct?

5 A. Well, that's not technically correct. They just  
6 said "yes" when asked that. They didn't state that whole  
7 sentence you just gave. They just answered "yes" on a survey.

8 Q. Okay. So let me do it this way. In 1990, when  
9 individuals responded to a survey question, "What is your own  
10 opinion -- do you think cigarette smoking is one of the causes  
11 of lung cancer or not," 90 percent of adults in this country  
12 answered "yes" to that question, correct?

13 A. Well, when asked in that particular survey, yeah.  
14 Again, there's biases in the survey, but, yes, during that  
15 survey that was the result.

16 Q. And that was -- in 1990, that was a time when the  
17 tobacco companies were still disputing the dangers and  
18 addictiveness of smoking correct, Dr. Proctor?

19 A. Yes.

20 Q. According to the polling by Gallup, in the late  
21 1990s, about the same percentage of adults in this country  
22 believed that cigarette smoking is a cause of lung cancer as  
23 believed that Elvis is already dead?

24 A. Well, it's safer to say that as responded in a  
25 question because, in a way, these are not probing beliefs.

1 They're -- people are responding in a certain way. So it's  
2 better to stick to the question, "answered yes when asked."  
3 That's a safer way to say it rather than saying what they  
4 actually believed.

5 Q. Okay. Well, in the late 1990s, about the same  
6 percentage of adults when asked stated that they believe  
7 cigarettes -- or let me rephrase.

8 In the late 1990s, about the same percentage of  
9 adults in this country believed that Elvis was not dead as  
10 answered the question, "What is your own opinion -- do you  
11 think cigarette smoking is one of the causes of lung cancer or  
12 not," they answered "yes" to that question, correct?

13 A. Well, yes. If you take out the word "believe," it  
14 would be fine, yeah. When asked -- you know, if we compare  
15 two surveys, "when asked this, when asked that, these are the  
16 results," that's the safest way to say it.

17 Q. Okay. And in the mid to late 1990s, about the same  
18 percentage of adults in this country believed that the Apollo  
19 moon landing did not happen as answered the question, "What is  
20 your own opinion -- do you think cigarette smoking is one of  
21 the causes of lung cancer or not," "yes," correct?

22 A. Well, again, I would -- it's better if you phrase it  
23 "when asked, this was the result," rather than "believed"  
24 because there are some biases in the methodology. And those  
25 biases are eliminated if you just simply give the result of

1 the survey.

2 Q. Okay. I thought I did have when -- they answered  
3 "yes" when asked, "What is your own opinion" --

4 A. Yeah. That -- that part was correct, but you began  
5 it with "believed," so if you just take out the word  
6 "believed," it's -- I'll go along with that.

7 Q. Okay. Let's go to Exhibit Number 13, which -- okay.  
8 Pull it up.

9 (Exhibit No. 13 was marked for identification.)

10 BY ATTORNEY HENNINGER:

11 Q. All right. So you should see another Gallup poll up  
12 on your screen, which has been marked as Exhibit Number 13.

13 A. Yes.

14 Q. This is: "The Gallup Poll Public Opinion, 1935 to  
15 1971." The interviewing date is from 1969, so this poll was  
16 conducted in 1969, correct?

17 A. Right. This is a -- actually, a survey or a  
18 compilation of polls dating back to the '50s, and earlier.

19 Q. So if we go -- there's the interviewing date. So in  
20 1969, Gallup asked the entire sample of smokers and  
21 nonsmokers, "Do you think cigarette smoking or is not one of  
22 the causes of cancer of the lung?" Correct?

23 A. Yes.

24 Q. Okay. And then on the next page, we have some of  
25 the answers, smokers -- for smokers only, nonsmokers, and what

1 some of these answers are, correct?

2 A. Yeah. There's a significant difference between the  
3 responses of the smokers and the nonsmokers.

4 Q. In 1969, 71 percent of adults in this country stated  
5 that they believed that cigarette smoking is one of the causes  
6 of lung cancers, correct?

7 A. That's how they answered the question. When they  
8 were asked whether it was "one" of the causes, a very weak  
9 question, that's how they answered.

10 Q. In 1969, 59 percent of adult cigarette smokers in  
11 this country stated that they believed that cigarette smoking  
12 is one of the causes of lung cancer, correct?

13 A. That's how they answered the survey.

14 Q. Okay. All right. I'm going to go to another  
15 exhibit.

16 All right. This is another Gallup poll.

17 Dr. Proctor, can you see it up on the screen --

18 A. Yes.

19 Q. -- this one is: "Cigarette Smoking Public Opinion,  
20 1972 to 1977." I've marked this as Exhibit 14.

21 (Exhibit No. 14 was marked for identification.)

22 BY ATTORNEY HENNINGER:

23 Q. And page four of this document says, "October 13th,  
24 cigarette smoking." Has the interview date of 8/19 through  
25 the 22nd. Did I read that correctly?

1 A. Yes.

2 Q. All right. And in 1977 -- I'll go down here so I  
3 can get the exact questions correctly. In 1977, Gallup asked  
4 the entire sample of smokers and nonsmokers, "Do you think  
5 that cigarette smoking is or is not harmful to your health?"  
6 Correct?

7 A. Yes.

8 Q. And in 19 -- there's the data here, and I'm sure  
9 you've seen this before, correct?

10 A. Yes.

11 Q. In 1977, 90 percent of adults in this country stated  
12 that they believe that cigarette smoking is harmful to your  
13 health, correct?

14 A. They answered "yes" when asked that question.

15 Q. And in 1977, 83 percent of smokers in this country  
16 stated that they believed that cigarette smoking is harmful to  
17 their health; at least they answered that question, correct?

18 A. Yes. In that -- when asked that vague question.

19 Q. In 1977, smokers were as likely to believe that  
20 smoking is harmful to your health as Americans in general were  
21 to know that the earth revolves around the sun, correct?

22 A. Possibly. Yeah. Possibly.

23 Q. Okay. In 1977, Gallup asked the entire sample of  
24 smokers and nonsmokers, "Do you think" -- let me make sure  
25 I've got it. Right there it is -- "Do you think that



1 cigarette smoking is or is not one of the causes of heart  
2 disease?" Did I read that correctly?

3 A. Yes.

4 Q. Okay. And -- but this one also has the same  
5 question for: "Do you think that cigarette smoking is or is  
6 not one of the causes of lung cancer?" Correct?

7 A. Yes.

8 Q. And according to -- I'll put that data up there. In  
9 1977, 81 percent of adults in this country stated that they  
10 believed that cigarette smoking is one of the causes of lung  
11 cancer, correct?

12 A. Yes. That's how they answered the question with a  
13 significant 15-point difference between the smokers and the  
14 nonsmokers.

15 Q. And in 1977 -- and this is what I'm getting to --  
16 the smokers, 72 percent of adult cigarette smokers in this  
17 country stated that they believe cigarette smoking is one of  
18 the causes of lung cancer, correct?

19 A. They answered "yes" when asked that question weak  
20 question.

21 Q. Okay. And then if you go down, it says, "Do you  
22 think that cigarette smoking is or is not one of the causes of  
23 throat cancer?" That was also asked, correct?

24 A. Yes.

25 Q. In 1977, 79 percent of adults in this country stated

1 that they believed that cigarette smoking is one of the causes  
2 of throat cancer, correct?

3 A. They answered "yes" to that question.

4 Q. And in 1977, nearly three-quarters of adult  
5 cigarette smokers in this country stated that they believed  
6 that cigarette smoking is one of the causes of throat cancer,  
7 correct?

8 A. They answered "yes" to that question.

9 Q. Okay. Going to go to another exhibit.

10 You know what, Dr. Proctor? Just a little side note  
11 as I get my exhibits in order, as I was getting ready last  
12 night and I was looking through all this, I was, like, God,  
13 I'm never going to get through all this. And I think we're  
14 doing -- I think we're getting fairly quickly through a lot of  
15 stuff, so hopefully --

16 A. Yeah. I think we're moving at a good pace.

17 Q. Okay. So, I have now marked as Deposition Exhibit  
18 Number 15 -- I feel so out of practice without trials.

19 As we move on to Deposition Exhibit Number 15, this  
20 is a Gallup survey of attitudes towards smoking conducted for  
21 the American Lung Association.

22 (Exhibit No. 15 was marked for identification.)

23 BY ATTORNEY HENNINGER:

24 Q. And as I -- do you see that, correct?

25 A. Yes, I do.

1 Q. Okay. And this Gallup survey, survey of attitudes  
2 towards smoking, was conducted for the American Lung back  
3 association in July of 1987, correct?

4 A. Yes.

5 Q. Okay. Or it would have been in June, I guess, if  
6 it's published in July, correct --

7 A. Right. Presumably --

8 Q. Okay. All right. Now, let me see if I can find  
9 this. Okay. This goes back to some of that old type of  
10 print, so you're going to have to forgive me as I stumble  
11 through trying to read some of this.

12 "The findings are based on personal interviews with  
13 a national sample of 2,059 adults, 18 years of age or older,  
14 during the period from June 6 to June 21st, 1987." Correct?

15 A. Yes.

16 Q. Okay. Then if we go down to page four, we're going  
17 to talk about some of the findings. Here's the question that  
18 was asked: "Do you think cigarette smoking is or is not  
19 harmful to your health?" That was the question asked,  
20 correct?

21 A. Yes. In that binary form.

22 Q. Okay. And here's the -- the data that came back.  
23 In 1977, for the "is harmful," it was 90 percent. In 1981, 90  
24 percent; 1983, the 92 percent -- or sorry. I apologize. I  
25 misspoke. In 1977, it was 90 percent; in 1981, it was 90

1 percent. In 1983, it was 92 percent. In 1985, it was 94  
2 percent, and in 1987, it was 94 percent. Did I read those  
3 correctly?

4 A. Yes.

5 Q. Since 1977, 90 percent or more of adults in this  
6 country have stated that they believe that cigarette smoking  
7 is harmful to your health, correct?

8 A. Well, when asked, yeah, on a survey.

9 Q. Okay.

10 A. They didn't volunteer that.

11 Q. And going further down in this -- must be further  
12 up. No. It's still further down.

13 Okay. Then we get to the question cigarette smoking  
14 causes lung cancer. The question asked for the survey was:  
15 "Do you think cigarette smoking is or is not one of the causes  
16 of lung cancer?" Correct?

17 A. That's the question, yeah, that very weak question.

18 Q. Okay. And then the -- here is the results from that  
19 questioning. In 1987, 87 percent of adults in this country  
20 stated that they believed that cigarette smoking is one of the  
21 causes of lung cancer, correct?

22 A. They answered "yes" when asked that question.

23 Q. And in 1987, three-quarters of adult cigarette  
24 smokers in this country stated that they believe that  
25 cigarette smoking is one of the causes of lung cancer,

1 correct?

2 A. They answered "yes" when asked that question.

3 Q. Okay. And you can see it also then has the Gallup  
4 broke up responses by occupational categories as well,  
5 correct?

6 A. Yes.

7 Q. Some of these occupational categories are a rough  
8 proxy for being white collar worker, business and  
9 professional, and some are for more blue collar workers,  
10 manual labor, clerical service, correct?

11 A. Right. The pattern is with greater education -- you  
12 get a higher number, and with the unemployed, not in the labor  
13 force, you get a lower number.

14 Q. And we saw that -- we see that Gallup uses a plus or  
15 minus 3 percentage points for the margin of error in this,  
16 correct?

17 A. Apparently.

18 Q. Okay. So the difference in the responses for the  
19 respondents in the business, clerical service and manual labor  
20 categories are statistically not any different, correct?

21 A. For which categories again?

22 Q. For business, clerical service and manual labor?

23 A. Those are roughly comparable. They're all -- the  
24 range there is 88 to 92 percent.

25 Q. Would you agree that in 1987 -- that in the 1987

1 Gallup poll whether a person was a white collar business  
2 occupation or a blue collar manual labor or a service  
3 occupation had no meaningful impact on whether that person  
4 believed that cigarette smoking is one of the causes of lung  
5 cancer?

6 A. Well, I do think there is a difference according to  
7 education. You see here not in the labor force, that goes all  
8 the way down to 84 percent. So that's what the data -- that's  
9 what the data says. Again, a lot depends on how you ask the  
10 question. And this is a very uninformative poll because it's  
11 only asking one of the causes, which that could mean anything.  
12 It doesn't get at the crucial question of the nature and  
13 severity of the hazard, which is what you want to know.

14 Q. All right. So -- let me see. All right. So I'm  
15 going to switch gears for a second, and if you give me a  
16 moment, I'm going to have a sip of water before I do that.

17 Okay. All right. So I think -- something fun and  
18 different, Dr. Proctor. Don't get too excited though.

19 I am going to mark as Exhibit Number 16 -- this is a  
20 NSDUH study from 2019, on the results of the National Survey  
21 on Drug Use and Health.

22 (Exhibit No. 16 was marked for identification.)

23 BY ATTORNEY HENNINGER:

24 Q. You're familiar with these types of studies,  
25 correct?

1 A. Generally.

2 Q. Okay. So, I'm going to go down to page nine of this  
3 document. "Introduction. Substance use and mental health  
4 issues have significant impacts on people, families,  
5 communities and societies. The National Survey on Drug Use  
6 and Health, the NSDUH, conducted annually by the Substance  
7 Abuse and Mental Health Services Administration, SAMHSA,  
8 provides nationally representative data on the use of tobacco,  
9 alcohol, and illicit drugs; substance use disorders, SUDs;  
10 receipt of substance use treatment; mental health issues; and  
11 the use of mental health services among the civilian  
12 noninstitutionalized population aged 12 or older in the United  
13 States." Did I read that correctly?

14 A. Yes.

15 Q. All right. And then if we go down to the survey  
16 background -- let's see. There we go.

17 "The NSDUH is an annual survey of the civilian" -- I  
18 just read that. Didn't I?

19 A. No. You didn't read that one --

20 Q. Okay. It seems like I did. Thank you.

21 A. This -- it all sounds like bureaucratize.

22 Q. It's like, gosh darn, if I have to read another  
23 paragraph. Okay.

24 "The NSDUH is an annual survey of the civilian  
25 noninstitutionalized population aged 12 or older in the United

1 States. The survey is sponsored by SAMHSA with the U.S.  
2 Department of Health and Human Services, HHS. NSDUH covers  
3 residents of households and people in noninstitutionalized  
4 group quarters, paren, e.g., shelters, boarding houses,  
5 college dormitories, migratory workers' camps, halfway houses,  
6 closed paren. The survey excludes people with no fixed  
7 addresses" -- I'm going to skip that -- "military personnel on  
8 active duty and residents of institutionalized group quarters,  
9 such as jails, nursing homes, mental institutions and  
10 long-term hospital cares." Did I read that correctly with the  
11 exception of leaving out the one paren?

12 A. Yes.

13 Q. Okay. So this is not a -- survey, correct?

14 A. No.

15 Q. But respondents would include high school -- you  
16 know, school dropouts, correct?

17 A. Presumably.

18 Q. And they include people in homeless shelters and  
19 halfway houses, correct?

20 A. Yes.

21 Q. Okay. The -- I'm going to read on: "The NSDUH  
22 employs a stratified multi-stage area probability sample  
23 designed to be representative of both the nation as a whole  
24 and for each of the 50 states and the District of Colombia."  
25 Did I read that correctly?



1 A. Yes.

2 Q. Okay. And we have to get through this one. "The  
3 NSDUH is a face-to-face household interview survey conducted  
4 in two phases: The screening phase and the interview phase.  
5 The interviewer conducts a screening of a sampled household  
6 with an adult resident, paren, aged 18 or older, closed paren,  
7 in order to determine whether 0, 1 or 2 household residents  
8 aged 12 or older should be selected for the interview. The  
9 NSDUH collects data using an -- using audio computer-assisted  
10 self-interviewing, paren, ACASI, closed paren, in which  
11 respondents read or listen to the questions on headphones,  
12 then enter their answers directly into a NSDUH laptop  
13 computer. ACASI is designed for accurate reporting of  
14 information by providing respondents with a highly private and  
15 confidential mode for responding to questions about illicit  
16 drug use, mental health issues and other sensitive behaviors.  
17 NSDUH also uses computer-assisted personal interviewing,  
18 paren, CAPI, closed paren, in which is interviewers read less  
19 sensitive questions to respondents and enter the respondents  
20 answer into an NSDUH laptop computer." Did I read that  
21 correctly?

22 A. Yes.

23 Q. So even though the NSDUH survey is a survey taken  
24 where the respondent lives, the answers to sensitive questions  
25 are given privately and confidentially using the NSDUH's

1 laptop, correct?

2 A. Right. With the goal of generating a more honest  
3 response so you're not embarrassing yourself.

4 Q. And that's because they were asking questions, you  
5 know, about what adolescents and others think about illicit  
6 drug use, mental health history, cigarettes and other things,  
7 correct?

8 A. Yes. Correct.

9 Q. Would you agree that the NSDUH is a reliable survey  
10 for looking at patterns of cigarette, drug and alcohol use  
11 among adolescents in this country?

12 A. I would hope so.

13 Q. Okay. Various Surgeon Generals' reports have relied  
14 upon and cited data from the NSDUH surveys when looking at  
15 youth smoking and adult smoking patterns in prevalence,  
16 correct?

17 A. That's correct.

18 Q. Okay. And if we go on to page eight, "Substance use  
19 in the past month. This section provides an overview of  
20 estimates according to whether respondents aged 12 or older  
21 reported using any tobacco product, alcohol, illicit drug  
22 or" -- kratom? What is -- kratom?

23 A. I don't know what that is. I had originally thought  
24 it might be Kreteks cigarettes, but I don't know what a kratom  
25 is.

1 Q. You know, just seeing that now, I'm thinking, jeez,  
2 I should find out more about what my kids might be doing,  
3 so -- kratom -- let me go ahead and read that again without my  
4 little personal commentary. Sorry about that.

5 "This section provides an overview of estimates  
6 according to whether respondents aged 12 or older reported  
7 using any tobacco product, alcohol, illicit drug or --  
8 C-R-A-T-O-M -- in the 30 days before the NSDUH interview,  
9 i.e., in the past month also referred to as, quote, 'current  
10 use,' end quote, end paren." Did I read that correctly?

11 A. Yeah. Except for the -- it's "K," not "C" for --

12 Q. Okay. Thank --

13 A. -- kratom.

14 Q. Thank you. Gosh, I do that all the time.

15 C-R-A-T-O-M --

16 A. And, yeah, it should be "K."

17 Q. Oh. I did it again. K-R-A-T-O-M. I'm looking  
18 right at the thing too, so...

19 I'm going to read the next highlighted portion:

20 "Past month alcohol use refers to having more than a sip or  
21 two of any type of alcoholic drink, open paren, e.g., a can or  
22 a bottle of beer, a glass of wine or a wine cooler, a shot of  
23 liquor or a mixed drink with liquor in it, closed paren. Past  
24 month illicit drug use includes any use of marijuana, cocaine,  
25 paren, including crack, closed paren, heroin, hallucinogens,

1 inhalants or methamphetamine, as well as misuse of  
2 prescription stimulants -- tranquilizers or sedatives, open  
3 paren, e.g., benzodiazepines, closed paren, or pain  
4 relievers." Did I read that correctly?

5 A. Yes.

6 And I just Googled it, and the kratom, apparently,  
7 is an herbal extract that comes from the leaves of an  
8 evergreen tree, Mitragyna speciosa, grown in Southeast Asia  
9 containing a chemical, Mitragynine, which works like opioids,  
10 such as morphine.

11 Q. Well, thank you for answering that question. I have  
12 honestly never heard of that, so --

13 A. No, me neither. That's new to me also.

14 Q. So we got something new out of you, Dr. Proctor.

15 All right. So I'm going to now go to Exhibit 17.  
16 Which is -- oh, it's the same one. Sorry.

17 Yes. I want to go to page ten. Sorry. For some  
18 reason -- okay. Page ten.

19 Now, we're at age 12 to 17. Am I -- can you still  
20 see that, Dr. Proctor?

21 A. Yes, I can. Thank you.

22 Q. Just so the record's clear, we are still on Exhibit  
23 16. I mistakenly said we were moving to 17. This is still  
24 16.

25 A. Right.

1 Q. "Aged 12 to 17. Among adolescents aged 12 to 17,  
2 the percentage who were past month cigarette users declined  
3 from 13 percent, paren, or 3.2 million people, closed paren,  
4 in 2002, to 2.3 percent, or 572,000 people, in 2019." Did I  
5 read that correctly?

6 A. Yes.

7 Q. Okay. And these numbers are shown -- let's see.  
8 They're actually from this -- from page ten of this article,  
9 correct?

10 A. Yeah. They're depicted, I think, in Figure 3 on  
11 that same page.

12 Q. Yeah. There you go. Right here. Figure 3, "Past  
13 month cigarette use among people aged 12 or older from 2002 to  
14 2019," correct?

15 A. Yes.

16 Q. Okay. And there's -- Table 3 is also right below  
17 that, that has it in this form. And if you look at the 12 to  
18 17 age group, it has the past month and it goes through the  
19 years, correct?

20 A. Yes. From 13 percent to 2.3 percent.

21 Q. Okay. So, the estimated total number of adolescents  
22 in this country under the age of 18 who report that they have  
23 smoked at least one tobacco-burning cigarette in the past  
24 month is less than 600,000, correct?

25 A. Yeah. And that's just counting the age 12, I think,

1 to -- to 17. It -- in other words, it's not going all the way  
2 to zero.

3 Q. And but similar declines to this, from, you know, 13  
4 to 2.3, 13 in 2002, to 2.3 in 2019, similar declines for  
5 adolescents are also seen in other national surveys, like the  
6 MTF and the NYTS, correct?

7 A. Correct.

8 Q. Okay. And the 2.3 percent is the prevalence from  
9 this study we're looking at from the NSDUH, correct?

10 A. Correct.

11 Q. Okay. We go down to the next page, it goes on to  
12 say, "Among current cigarette smokers aged 12 to 17 in 2019,  
13 13.2 percent, or 75,000 people, smoked cigarettes daily within  
14 the past month." Did I read that correctly?

15 A. Yes. Yes. Okay. Yeah. So the -- among those who  
16 smoke at that young age, 13 percent smoke daily.

17 Q. Okay. So, 75,000 adolescent daily cigarette  
18 smokers, is what this is stating on page 11 of the NSDUH  
19 document, correct?

20 A. For that young age, yes. Age 12 to 17.

21 Q. Okay. Would you accept my math that 13.2 percent of  
22 2.3 percent is 0.3 percent?

23 A. Yes.

24 Q. Okay. The estimated prevalence of adolescents in  
25 this country under the age of 18 who report that they smoke

1 tobacco-burning cigarette on a daily basis is less than  
2 one-third of 1 percent, correct?

3 A. Yes.

4 Q. Less than 1 out of 333 adolescents in this country  
5 are daily cigarette smokers, correct?

6 A. Yes. It's probably a little bit above that from bad  
7 reporting because this is all based on self-reporting, but  
8 it's certainly on that order of magnitude.

9 Q. So if you had a school auditorium filled with a  
10 thousand students, about three of them would be daily smokers  
11 of tobacco-burning cigarettes, correct?

12 A. Yes.

13 Q. Okay. And we want to go on here. It says, "The  
14 percentage of adolescent daily smokers who smoked one or more  
15 packs of cigarettes per day was not reported for 2019, due to  
16 the low statistical precision." Did I read that correctly?

17 A. Yes.

18 Q. Would you agree that the percentage of adolescents  
19 in this country who smoke a pack of cigarettes a day is too  
20 low to be statistically measured with any precision?

21 A. It's certainly very low, yes.

22 Q. Okay. I'm going to go down to page 17 of this  
23 article. Let's -- okay.

24 "Among adolescents aged 12 to 17 in 2019, the  
25 estimates of past year heroin use were not reported due to low

1 statistical precision. However, the estimate of past year  
2 heroin use among adolescents in 2018, was lower than the  
3 estimates for most years from 2002 through 2014, but it was  
4 similar to the estimates of 2015 to 2017. About .1 to .2  
5 percent of adolescents used heroin in any year from 2002 to  
6 2017." Did I read that correctly?

7 A. Yes.

8 Q. They were able to measure use estimates as low as  
9 one-tenth of 1 percent, correct?

10 A. Yes.

11 Q. The percentage of adolescents in this country who  
12 smoke a pack of cigarettes a day is so low that it can't be  
13 reported with any statistical precision whether even 1 out of  
14 1,000 adolescents could smoke a pack of cigarettes a day,  
15 correct?

16 A. Yes. According to self-reported usage.

17 Q. But it was lower than the .1 percent of adolescents  
18 who tried heroin in 2017, or '18, correct?

19 A. That's right. Yeah. It's still surprising to me  
20 that 1 in 500 of these kids are using heroin.

21 Q. Yeah. Trust me, I find that surprising too.

22 I'm going to go on to page 18. "Among adolescents  
23 aged 12 to 17 in 2019, .2 percent, or 41,000 people, used  
24 methamphetamines in the past year. The percentage of  
25 adolescents who used methamphetamines in the past year remains



1     stable between 2015 and 2019." Did I read that correctly?

2             A.     Yes.

3             Q.     More adolescents have used methamphetamines in the  
4     past year than adolescents who are pack-a-day cigarette  
5     smokers, correct?

6             A.     Apparently.

7             Q.     All right. I'm going to go back up to page 12 of  
8     this article.

9     ATTORNEY HENNINGER: And if it's okay with  
10    everybody -- I know we've been going a little over an  
11    hour -- I'm going to finish this article, and then we can  
12    take a little break. Is everybody okay?

13             THE WITNESS: That's fine with me.

14             ATTORNEY HENNINGER: Okay. Thank you, Doctor.

15    BY ATTORNEY HENNINGER:

16             Q.     All right. So we're back to page 12. I'm going to  
17    read: "Among adolescents aged 12 to 17, the percentage who  
18    were past month alcohol users declined from 17.6 percent, or  
19    4.4 million adolescents, in 2002, to 9.4 percent, or 2.3  
20    million adolescents, in 2019." Did I read that correctly?

21             A.     Yes.

22             Q.     The -- remember, we talked about the 572,000 figure  
23    related to smokers up on page 10, that we talked about?

24             A.     Yes --

25             Q.     Do you remember that number?

1 A. Right.

2 Q. It -- it is estimated that about four times more  
3 adolescents in this country report that they have consumed  
4 alcohol in the past month than report that they have had  
5 smoked at least one tobacco-burning cigarette in the past  
6 month, correct?

7 A. Yes.

8 Q. You would agree among adolescents under the age of  
9 18 in this country, those who report having consumed alcohol  
10 in the last month outnumbered those who have reported smoking  
11 at least one cigarette in the last month by at least 1.7  
12 million, correct?

13 A. Yes.

14 Q. If we go down to page 13, there's some more --  
15 "Among current cigarette smokers aged 12 to 17 in 2019, 13.2  
16 percent, or 75,000 people, smoked cigarettes daily in the past  
17 month. The percentage was lower than the percentages in 2002  
18 to 2015, but it was similar to the percentages in the 2016 to  
19 2018. The percentage of adolescent daily smokers who smoked  
20 one or more packs of cigarettes per day was not reported for  
21 2019, due to low statistical precision." Did I read that  
22 correctly?

23 A. Yes.

24 Q. Okay. Hold on. Let me do something.

25 An estimated 1.2 million adolescents in this country

1 under the age of 18 report that they have engaged -- let me --  
2 let me go back. I think I read the wrong thing to you, and I  
3 apologize. I think I've read that portion to you, Doctor --

4 A. Yeah.

5 Q. -- and I apologize. My -- okay. Here we go.

6 A. Okay.

7 Q. There's a lot of sections that are listed age 12 to  
8 17 on here, so I apologize --

9 A. All right.

10 Q. Let me go back to -- let me read what I'm going to  
11 ask a question about. "Among adolescents aged 12 to 17, the  
12 percentage who were past month binge alcohol users declined  
13 from 5.8 percent, or 1.4 million adolescents, in 2015, to 4.9  
14 percent, or 1.2 million adolescents, in 2019." Did I read  
15 that correctly?

16 A. Yes.

17 Q. An estimated 1.2 million adolescents in this country  
18 under the age of 18 report that they have engaged in binge  
19 drinking alcohol in the past 30 days, correct?

20 A. Yes.

21 Q. You would agree that in this country more than  
22 twice as many adolescents under the age of 18 report that they  
23 have engaged in binge drinking alcohol in the past 30 days  
24 than report that they had smoked at least one tobacco-burning  
25 cigarette in the past month?

1 A. Yes.

2 Q. Okay.

3 ATTORNEY HENNINGER: That is all for this article,  
4 so, as promised, I'm going to let everybody take a  
5 comfort break and stretch their fingers and do all sorts  
6 of stuff.

7 THE WITNESS: Okay.

8 (Off the record discussion.)

9 ATTORNEY HENNINGER: I'm going to start off by first  
10 saying that I was -- misstated when I said I was done  
11 with that exhibit. So we're going to continue on with  
12 Exhibit 16, Dr. Proctor.

13 THE WITNESS: Okay.

14 ATTORNEY HENNINGER: But I -- the break was well  
15 needed, at least on my end.

16 BY ATTORNEY HENNINGER:

17 Q. So Exhibit 16 -- going back to this, on page 14 of  
18 the, "Key substance use and mental health indicators in the  
19 United States, results from the 2019 national survey on drug  
20 use and health." Go down -- it says, "Illicit drug use in the  
21 past year." It goes on to state that "the 2019 NSDUH obtained  
22 illicit drug use information for the use of marijuana,  
23 cocaine, including crack, heroin, hallucinogens, inhalants,  
24 methamphetamines, as well as for the misuse of prescription  
25 stimulants, tranquilizers, sedatives and pain relievers. See

1 the section on misuse of psychotherapeutic drugs for the  
2 definition of misuse." Did I read that correctly?

3 A. Yes.

4 Q. Okay. And then down on page 16, they have some of  
5 the data from this. And it says, "Among adolescents aged 12  
6 to 17, the percentage who were past year cocaine users  
7 decreased from 2.1 percent, or 508,000 people, in 2002, to .4  
8 percent, or 97,000 people, in 2019." Did I read that  
9 correctly?

10 A. Yeah. Half a million kids using cocaine.

11 Q. I know. So, remember, we had 75,000 adolescent  
12 daily cigarette smokers from page 11 of the NSDUH. And  
13 there's 97,000 cocaine users compared to roughly 75,000 daily  
14 cigarette smokers, correct?

15 A. Right. Yeah. But that's a bit apples and oranges  
16 because you're not talking about daily cocaine use.

17 Q. You would agree that more adolescents under the age  
18 of 18 report that they have used cocaine in the past year than  
19 report that they are daily smokers of tobacco-burning  
20 cigarettes?

21 A. Yeah. But that's kind of apples and oranges because  
22 you're comparing once in a year to daily use.

23 Q. Okay. So I want to go now to page 24. "Opioids are  
24 a group of chemically similar drugs that include heroin and  
25 prescription opioids, such as hydrocodone, e.g., Vicodin,

1   oxycodone, e.g., OxyContin, and morphine. In this report,  
2   opioid misuse includes the misuse of prescription pain  
3   relievers or the use of heroin. Prescription pain relievers  
4   could include some nonopioids because respondents could  
5   occasionally specify the misuse of other prescription pain  
6   relievers that are not opioids." Did I read that correctly?

7           A.   Yeah. So here, we're talking about the Sacklers.

8           Q.   Okay. The Thacklers. Okay. Yeah. Whole different  
9   litigation, but --

10               (Certified Stenographer clarification.)

11           THE WITNESS: Sacklers --

12           ATTORNEY HENNINGER: It's a family name. I'll let  
13   Dr. Proctor spell it if you need.

14           THE WITNESS: No. I think that's -- I think you got  
15   it.

16   BY ATTORNEY HENNINGER:

17           Q.   Okay. Age 12 to 17. This is on page 25: "Among  
18   adolescents aged 12 to 17, percentages for past year opioid  
19   misuse declined from 3.9 percent, or 980,000 people, in 2015,  
20   to 2.3 percent, or 567,000 people, in 2019. These estimates  
21   in 2019, were lower than those in 2015 and 2018 -- to 2015 to  
22   2018." Did I read that correctly?

23           A.   Yes.

24           Q.   When we -- remember, we were talking about the  
25   572,000 figure from page 10 of the NSDUH where the -- on page

1 10 where they reportedly tried cigarettes, correct?

2 A. Yes.

3 Q. Okay. Would you agree that about the same number of  
4 adolescents in this country under the age of 18 report that  
5 they have misused opioids in the past year, as reported that  
6 they have smoked at least one tobacco-burning cigarette in the  
7 past month?

8 A. Yeah. But, again, it's apples and oranges because  
9 you're comparing use over the past year to use over the past  
10 month.

11 Q. Okay. I mean, if we go on down -- let me see if I  
12 can get there faster.

13 I'm looking for this chart. Forgive me,  
14 Dr. Proctor.

15 Okay. I'm -- forgive me as I'm finding something.  
16 I may have to come back so I'm not wasting time.

17 A. Okay.

18 Q. I will pin this. Let me go -- stop sharing for a  
19 second. And let me -- give me one second.

20 Okay. There we go. I apologize, Doctor.

21 This is from the same Exhibit Number 16.

22 A. Okay.

23 Q. It's Table 7.6B, "Types of illicit drug, tobacco  
24 product and alcohol use in the past month among persons aged  
25 12 to 17, percentages 2002 to 2019."

1           If you need me to move any part of this chart, you  
2   let me know, Dr. Proctor. It is estimated that a higher  
3   percentage of adolescents are current past month users of LSD  
4   than are current daily smokers of tobacco-burning cigarettes,  
5   correct?

6           A.   Apparently.

7           Q.   And it is estimated that a higher percentage of  
8   adolescents that are current past month users of opioids than  
9   are daily smokers of tobacco-burning cigarettes, correct?

10          A.   Yes.

11          Q.   Okay. So, I'm going to pause for a second and get a  
12   different page, instead of making everybody dizzy. All right.

13                Okay. This is on page 25 of Exhibit 16,  
14   Dr. Proctor, and states: "Initiation of substance abuse --  
15   substance use. The 2019 NSDUH included questions to measure  
16   the initiation of substance use, that is, use of a particular  
17   substance -- substances for the first time during a person's  
18   lifetime. This report presents the estimated number of recent  
19   substance use initiates or prescription drug misuse initiates.  
20   Recent initiates were substance users or prescription drug  
21   misusers who reported first using or misusing, respectively, a  
22   particular substance in the 12 months before the NSDUH  
23   interview." Did I read that correctly?

24          A.   Yes.

25          Q.   So they are measuring initiation of use, that is,