

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

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

**WRITTEN DIRECT EXAMINATION**

**OF**

**ROBERT J. DOLAN, Ph.D.**

**SUBMITTED BY THE UNITED STATES PURSUANT TO ORDER #471**

# Written Direct Testimony of Robert J. Dolan, Ph.D.

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1 **I. EXPERTISE**

2 **Q. Dr. Dolan, please introduce yourself to the Court.**

3 A. My name is Robert J. Dolan.

4 **Q. Have you provided the Court with a copy of your curriculum vitae?**

5 A. Yes, at U.S. Exhibit 78,528.

6 **Q. What is your understanding of the expertise for which you are being offered in this**  
7 **case?**

8 A. I understand that I am being offered as an expert on marketing, and on the tobacco  
9 companies' marketing practices in particular.

10 **Q. Your education and professional experience have been in marketing, is that correct?**

11 A. Yes. Over my professional career, I have researched, consulted on and taught marketing.

12 **A. Education**

13 **Q. Please tell the Court about your educational background.**

14 A. In 1969, I received a Bachelors degree in Mathematics from Boston College. In 1976, I  
15 received a Masters of Science degree in Business Administration from the University of Rochester,  
16 Graduate School of Management. In 1977, I received a Ph.D. from the University of Rochester,  
17 Graduate School of Management.

18 **Q. What was the topic of your Ph.D. dissertation?**

19 A. My dissertation was entitled "Priority Pricing Models for Congested Systems." Generally, it  
20 covered how one could use pricing to best administer a system when there was more demand than  
21 supply available. When a system gets congested, a waiting line forms. It makes sense to serve the  
22 customers whose cost of waiting is very high before others. My system set the price of service in  
23 such a way that waiting customers will truthfully reveal their costs of waiting.

1 **Q. What are some possible applications of your ideas?**

2 A. The two major ones were in setting airport landing fees and in pricing computer time – back  
3 in the days of centralized computers.

4 **Q. Was this dissertation work published?**

5 A. An article I wrote relating to the dissertation was published in the *Bell Journal of*  
6 *Economics*.

7 **Q. What, if any, honorary degrees do you hold?**

8 A. I was granted an honorary Master's degree from Harvard University in 1986. At the time, it  
9 was the practice that if you were promoted to the rank of full professor with tenure at Harvard, you  
10 were also granted an honorary masters degree.

11 **B. Employment Positions**

12 **Q. After receiving your Ph.D., where were you first employed?**

13 A. At the University of Chicago Graduate School of Business.

14 **Q. What position did you hold there?**

15 A. From September 1976 to July 1980, I was an Assistant Professor of Management Science  
16 and Marketing. I had a joint appointment, dividing my time between marketing and management  
17 science. Management science is essentially quantitative analysis for business. I taught and did  
18 research in both marketing and management science. Over time, as my interest in marketing grew, I  
19 decided that Harvard Business School, with its links to the practical side of business, would be a  
20 better fit for me. I joined the faculty there with an appointment as an Associate Professor in the  
21 marketing area in 1980.

22 **Q. For what period of time were you employed at Harvard Business School?**

1 A. From June 1980 through July 2001, I was employed at the Harvard University Graduate  
2 School of Business Administration, which I will refer to as the Harvard Business School.

3 **Q. Did you hold different positions at the Harvard Business School?**

4 A. Yes. For all my 21 years at Harvard, I had an appointment in the marketing area. From July  
5 1980 to June 1985, I was an Associate Professor of Business Administration. In 1985, I was  
6 promoted to professor with tenure at the school. In 1990, I was named a chaired professor, the  
7 Edward W. Carter Professor of Business Administration.

8 **Q. Can you explain the responsibilities you had in those three positions?**

9 A. Generally, my duties at Harvard Business School involved research, teaching and course  
10 development, and administration. I conducted research on marketing issues, and published my  
11 findings in books, journals and technical notes. In addition, through the time period, I developed  
12 teaching materials, designed courses and taught students.

13 **Q. Could you describe your teaching responsibilities at the Harvard Business School?**

14 A. When I started at the Harvard Business School, I was an instructor in the marketing course  
15 required of all MBA students in their first year at the school. It was a very comprehensive course  
16 that covered all aspects of marketing. I later developed and taught my own elective course on new  
17 product development that was offered to MBA students in their second year. I then taught  
18 marketing in Harvard's senior executive program, the Advanced Management Program, for a  
19 number of years. Finally, in the four years just before I left Harvard, I served as course head and an  
20 instructor in the marketing management course required of all MBA students in their first year at  
21 the school.

22 **Q. Did you teach both undergraduate and graduate students at the Harvard Business**  
23 **School?**

1 A. At Harvard Business School we offered no undergraduate courses so I taught only graduate  
2 students (MBAs) and executives. I also was regularly involved teaching Ph.D. students.

3 **Q. Can you estimate the number of graduate students you have taught?**

4 A. Something on the order of 3000 over the twenty-eight years I have been teaching.

5 **Q. What were your responsibilities as course head at the Harvard Business School?**

6 A. In addition to teaching my own group of 85 students, I had overall responsibility for the  
7 development and delivery of the course to the entire MBA class of over 800 students. In this  
8 capacity I led a team of five or six faculty in the development of the course and its delivery to  
9 students. I had to decide what topics we would cover and the specific teaching materials we would  
10 use. A significant part of my job was training the faculty assigned to me in the art of case method  
11 teaching for which Harvard Business School is noted. The teaching group met for about five hours  
12 per week to go over the teaching approach we would use in each of the classes for the week. I also  
13 sat in on many of the professors' classes so I could provide "on-the-job" training in teaching  
14 methods.

15 **Q. Did you also hold administrative positions at the Harvard Business School?**

16 A. Yes.

17 **Q. What positions?**

18 A. From 1986 to 1994, I was the Marketing Area Chairman. From 1996 to 1997, I served as  
19 one of the MBA Program Faculty Chairs.

20 **Q. Please explain your responsibilities as the Marketing Area Chairman at the Harvard  
21 Business School.**

22 A. We had about 20 marketing faculty at the Harvard Business School. My responsibility was  
23 to develop a strategy for the group of marketing faculty and manage its day-to-day operations. I

1 consulted with the Dean and other senior administrators at the school to develop the plan via which  
2 the marketing area could deliver the maximum value to the school. This involved being aware of  
3 the latest marketing developments and working with firms so we could sense where the marketing  
4 field was headed. This was a key to our faculty recruiting plan as we had to identify the type of  
5 marketing expertise we wanted to have in the group. For example, we might look to see if we  
6 needed to attract a scholar on Internet marketing issues, on international marketing, or on marketing  
7 ethics. I was also responsible for the professional development of all the marketing faculty in the  
8 group. I worked with them to ensure the success of their research programs. I was ultimately  
9 responsible for the full set of marketing courses we offered to the students at the school and which  
10 marketing faculty had a particular assignment.

11 **Q. Please explain your responsibilities as the MBA Program Faculty Chairman at the**  
12 **Harvard Business School.**

13 A. In 1996, we expanded the size of the MBA program so that the program had 11 groups of 85  
14 students each. We decided that was too many for any one faculty member to manage so we split the  
15 duties up among three faculty. I had responsibility for four sections. My job was to ensure that the  
16 whole educational process was working for these students. If there was a problem in one of the  
17 courses, I would consult with the course head for that course to rectify it. I counseled students  
18 experiencing academic difficulty and helped with any personal issues impacting their studies.

19 **Q. What is your current position of employment?**

20 A. Currently, I am the Dean of the Stephen M. Ross School of Business at the University of  
21 Michigan. I also serve as the Gilbert & Ruth Whitaker Professor of Business Administration at the  
22 school. I am also the President of the William Davidson Institute. This Institute studies issues  
23 related to emerging economies and is located at the University of Michigan.

1 **Q. When did you begin serving as Dean of the University of Michigan Business School?**

2 A. July 2001.

3 **Q. What are your responsibilities as Dean of the University of Michigan Business School?**

4 A. I guess the easiest way to explain it is that a Dean is basically the equivalent of a Chief  
5 Executive Officer of a company. Our budget is about \$110 million per year; we have about 3,000  
6 students, 125 full-time faculty and 75 part-time faculty. My duties include setting a vision and  
7 strategy for the school, hiring faculty and staff to execute that strategy, marketing the school to  
8 prospective students, managing the finances of the school, coordinating with the central University  
9 Administration and fundraising for the school.

10 **Q. Could you explain what you mean by setting a vision and a strategy for the school?**

11 A. Sure. It is my job to set the course of the school, i.e. decide what type of institution we want  
12 to be and what kind of contribution we want to make to society. In this, I consult with the faculty,  
13 alumni, and University Administration. I need to bring the faculty together to implement this  
14 strategy. And, I need to make sure the strategy resonates with alumni because we need their  
15 financial support to execute it.

16 **Q. What strategy have you set for the University of Michigan Business School?**

17 A. We try to set ourselves apart from other business schools offering MBA degrees. There are  
18 lots of really fine MBA programs in the country. My goal was to set out an identity for ourselves so  
19 we could compete for students, faculty and alumni support with the well-known “brands” in our  
20 business, e.g. private institutions like Harvard Business School, Wharton, University of Chicago,  
21 Northwestern and Stanford. Our approach is captured in our motto of “Leading in thought and  
22 action.” We train our students in the essential business concepts. We make sure they have



1 exposure to the right “thought” in our classrooms. We also give them the opportunity to apply these  
2 concepts to real-world situations – this is the action part.

3 **Q. Could you explain what you mean when you say hire faculty and staff to execute that**  
4 **strategy?**

5 A. Business schools are always competing for the top talent. Part of my job is to make sure we  
6 have the financial resources to pay competitive salaries, but also I have to help attract the best  
7 people to the school with a motivating message about who we are, what we are trying to do and  
8 why the school would be a great place for them to work.

9 **Q. Could you explain what you mean by marketing the school to prospective students?**

10 A. We compete with schools like Dartmouth, MIT, Harvard, Wharton, Duke, Chicago,  
11 Northwestern and Stanford, among others, for the top students in the world. I first have to make  
12 sure that I have a “product” they want, i.e. I need to have the kind of educational experience they  
13 are looking for. Then, I have to make sure they know about us and our distinctive approach to  
14 business education. Then, I have to figure out how to “price” what we offer, i.e. what tuition we  
15 charge. But, this whole process starts with us figuring out what kinds of students we want joining  
16 us. We don’t just go out and try to attract everyone who is thinking about going to business school.  
17 We focus on certain people for example with significant work experience. Once we have focused  
18 on a certain group, I have to make sure we have the product to attract them and also that they know  
19 about this product. Then I have to make the tuition side works out – offering “need” scholarships to  
20 some who cannot afford to pay and “merit” scholarships to some who are really attractive to have as  
21 part of the school. So, working with my Director of Admissions and my Communications group, in  
22 addition to serving as Chief Executive Officer of the School, I also effectively serve the functions of

1 the Chief Marketing Officer of the School, applying the marketing lessons I have taught for many  
2 years.

3 **Q. Has your position as Dean provided you additional understanding of the field of**  
4 **marketing?**

5 A. Yes. Since obtaining my Ph.D. in 1976, I have consulted with and advised many companies  
6 on their marketing strategies. For the past three years, as Dean, I have been responsible for actually  
7 doing it myself, i.e. I had to put into practice for the University of Michigan Business School myself  
8 the marketing principles I had espoused to others for years. So, my last three years as Dean really  
9 deepened my understanding of how marketing works.

10 **Q. Is the University of Michigan Business School nationally recognized?**

11 A. Yes it is. We received a lot of recognition in September 2004, when we received the largest  
12 gift ever given to a business school. This \$100 million gift was over 60% larger than any single gift  
13 previously given to a business school. It was something I had been working on with the donor for a  
14 couple years. This led to the school being named the Stephen M. Ross School of Business. This  
15 news was covered in about 150 newspapers.

16 **Q. Is the University of Michigan Business School nationally recognized for the quality of**  
17 **its programs?**

18 A. Yes. In my mind, the two most important “ratings” in our world are those published  
19 annually by the *Wall Street Journal* and every other year by *Business Week*. The *Wall Street*  
20 *Journal* poll is based on how recruiters judge the quality of your MBA graduates; the *Business*  
21 *Week* poll is roughly one-half recruiters’ judgments and one-half student satisfaction. On  
22 September 21, 2004, the *Wall Street Journal* ranked us as the top business school in the country. In

1 the article about us, it cited our distinctive approach of merging “thought and action.” On October  
2 7, 2004, *Business Week* ranked us sixth, up from the eighth position we held two years ago.

3 **Q. What schools were ranked ahead of you in the *Business Week* poll?**

4 A. The “top 5” in *Business Week* were the same as two years ago: Harvard, Wharton,  
5 University of Chicago, Northwestern, and Stanford. So, it is a strong group.

6 **Q. How many students do you have at the University of Michigan Business School?**

7 A. We have approximately 860 “day” MBA students, 1000 evening MBA students, 130  
8 Executive Program MBA students, and 50 Global MBA students in a program we run in Korea and  
9 Japan. In addition, we have 650 undergraduates seeking a BBA degree, 65 students seeking a  
10 master’s degree in accounting and about 100 Ph.D. students. We also have a non-degree executive  
11 education operation that generates about \$20 million in revenues annually.

12 **Q. What is the William Davidson Institute, where you serve as president?**

13 A. The William Davidson Institute is a research operation set up in 1992 at the University of  
14 Michigan to study issues arising in transitional economies, i.e. those moving from communistic to  
15 capitalistic systems. We have since broadened our focus to cover emerging markets more  
16 generally. The Institute does research and seeks to influence academics, policy makers and  
17 practitioners with its findings. For example, recently there has been lots of discussion about  
18 outsourcing of jobs by companies to foreign countries like India. We have undertaken research to  
19 investigate key questions related to this issue. For example, what types of jobs were really  
20 threatened? What incentives does a firm have to pursue outsourcing or “offshoring”? What kind of  
21 governmental policies might help the situation?

22 We worked with former Secretary of State Madeleine Albright on these issues and presented  
23 a conference on Capitol Hill to inform decision makers. Secretary Albright has been a

1 Distinguished Scholar at the Institute for the past three years. Currently, we continue our research  
2 on what we call “globalization of services.” We plan to publish papers and hold additional  
3 conferences.

4 **Q. What are your duties as President of the William Davidson Institute?**

5 A. I oversee the operations of the Institute and work with its Executive Director to set the  
6 strategy for the organization. The Executive Director works full-time on Institute issues and has  
7 day-to-day responsibility for operations. I evaluate the Executive Director’s performance and  
8 recommend appointments or renewal of appointments as Executive Director to the Institute’s Board.  
9 The current Executive Director and I set the research direction of the Institute and the scope of  
10 activities. We also prepare and recommend a budget to the Board.

11 **C. Scholarly Work and Publications**

12 **Q. What is the focus of your scholarly work?**

13 A. Since 1980 it has been marketing.

14 **Q. Has your academic work been published?**

15 A. Yes, I have authored or co-authored a number of textbooks on marketing management as  
16 shown on my curriculum vitae. I have also authored or co-authored 24 articles. About half of these  
17 articles were written for an academic audience and published in peer-reviewed journals, such as the  
18 *Journal of Marketing*. Others were written for a managerial audience. To best reach that audience,  
19 I published in outlets like the *Harvard Business Review*.

20 **Q. Have the textbooks that you have authored or co-authored been used at business  
21 schools?**

22 A. Yes, they have been. Many schools have relied on the work of myself and Harvard  
23 colleagues as the foundation of their marketing courses.

1 **Q. Generally, what subjects have you written about in these textbooks?**

2 A. For most of my books, the topic is marketing management. These are fairly comprehensive  
3 treatments of the major issues one faces as a marketing manager, e.g. how do I:

- 4 • Analyze the market to figure out what customers want?
- 5 • Select a specific group of people to pursue?
- 6 • Design a product to meet customers' needs?
- 7 • Get that product made available to customers in an efficient way?
- 8 • Develop and compensate a sales force?
- 9 • Develop and execute a communications campaign to inform and motivate customers to buy  
10 my product?
- 11 • Set a price to generate maximum profit?
- 12 • Change my program over time as the market changes?

13 **Q. Do any of your books focus on specific areas of marketing?**

14 A. Yes. My book Managing the New Product Development Process is focused on how to  
15 generate ideas for new products, test new product concepts with consumers, and then bring a new  
16 product to market. In this book, I brought together the materials I developed at Harvard and some  
17 other materials that I used in my new products class there. The purpose was to provide a book that  
18 professors and students elsewhere could use as the main text in a new products course.

19 **Q. Have you written any other specialized books?**

20 A. Yes. In 1996, I wrote a book on pricing that was directed to marketing managers, and less  
21 intended for class room use. I wrote this with a professor from Germany so we could together  
22 generate a book with international coverage and appeal. It was called Power Pricing: How  
23 Managing Price Transforms the Bottom Line.

1 **Q. What topics do you cover in your articles?**

2 A. Articles, being shorter than books, tend to be more specialized or focused. So, while I have  
3 expertise in the general area of marketing management and have authored or co-authored books on  
4 that broad topic, the particular areas of focus of my articles have been product policy and pricing.

5 **Q. What do you mean by product policy?**

6 A. Product policy is a term we use in marketing to cover decisions a firm has to make about the  
7 array of products to be offered to customers. These questions include:

- 8 • What features should a product have?
- 9 • How many varieties of the product should be offered?
- 10 • Should the same product be offered worldwide or should different products be  
11 offered in different countries?

12 We can look at Coca-Cola's product policy for an example. In 1985 Coca-Cola decided that Coke  
13 should be reformulated because it was losing out to Pepsi in taste-tests. Coca-Cola quickly decided  
14 this reformulation was a mistake and switched back to the original formulation. It later decided that  
15 it would offer many varieties of Coke, e.g. Regular Coke, Diet Coke, Caffeine-free Coke, Cherry  
16 Coke, Vanilla Coke, etc. Finally, on the question of standardizing your product around the world or  
17 not, Coke markets essentially the same products worldwide. These are all elements of Coca-Cola's  
18 product policy.

19 **Q. What do you mean by pricing?**

20 A. Pricing is the process of deciding the amount to charge your customers for your product. It  
21 involves not only setting the "list price" but also what discounts might be offered (e.g. "20% off if  
22 you buy 3 or more") and other terms and conditions of the sale.

1 **Q. Your curriculum vitae lists a number of case studies at pages 2 and 3. What is a case**  
2 **study?**

3 A. A case study is based on research about a firm facing a management problem. In developing  
4 the case, the case writer analyzes the situation of the firm and tries to focus on important decisions  
5 the firm has. The written case (which would typically run about 15 pages or so) forms the basis for  
6 discussion in a classroom setting. Harvard Business School is well known for its case writing  
7 activity and for basing virtually its entire MBA program on case discussions.

8 **Q. Can you describe the process of writing a case?**

9 A. There are two kinds of cases – ones you write with the cooperation of the firm and ones in  
10 which you just rely on publicly available information about the firm.

11 **Q. Can you describe the process of writing a case when you have the firm's cooperation?**

12 A. Probably the best way to answer this is to give a description of a typical situation. One of  
13 my cases which is very well known in academic marketing circles is on “Launching the BMW Z3  
14 Roadster.” I was the head of the required marketing management course at Harvard at the time  
15 BMW was introducing its first convertible car, the Z3. I was interested in BMW's marketing  
16 strategy for this car which was to really downplay traditional marketing approaches, like advertising  
17 on television or in magazines, and instead to introduce the car to the public by having it driven by  
18 James Bond in the new spy movie “Goldeneye.” This represented an entirely new marketing  
19 approach. The objective was to use the product placement in the movie to create “buzz” about the  
20 product through a wide set of potential customers. I thought it would be a great situation to discuss  
21 in our marketing class. So, I set out to write a case which would serve as the basis for the  
22 discussion. I knew some of the senior executives at BMW so I called them to ask if a junior faculty  
23 member and I could come talk to them, and possibly develop a case study on the BMW Z3 launch.

1 BMW agreed so this faculty member and I went to BMW's United States headquarters. There, we  
2 interviewed relevant senior executives about their decision on marketing the Z3. We asked for and  
3 reviewed relevant marketing plans from BMW. We needed to understand the "4 C's": their  
4 company's skills and objectives, the customers they were trying to attract, the competitors they  
5 would face, and the channels they would use to get the product to market. This is a pretty standard  
6 framework I and many others regularly use in analysis of marketing situations. We supplemented  
7 the data we obtained from BMW with research in the library and on-line. We then developed a  
8 draft of the case which showed us where we needed additional data to complete the study. With this  
9 knowledge of additional data needs in hand, we went back to BMW and asked for and received  
10 more information. We then completed our draft and sent it to BMW for approval.

11 **Q. Why did you send the case to BMW for their approval?**

12 A. Two reasons. First, it was Harvard Business School policy that once you approached a  
13 company for help in researching a case about that company, you could not use or publish the case  
14 without their formal permission. Frequently, a company would reveal confidential information to  
15 Harvard faculty for background understanding to write a case, but the company did not want that  
16 information disclosed in the case because that would make it known to their competitors. Before  
17 you "go public" with a case you want to make sure you were not revealing anything the company  
18 did not want you to. A good example of a piece of data they wanted kept confidential would be  
19 their cost of producing an item. The second reason for sending a case to the company was you  
20 wanted the company's check on "did we get this right –have we accurately captured the situation"?

21 **Q. Did BMW approve the case?**

22 A. We made a couple of minor changes that BMW requested and then BMW approved it.

23 **Q. What happened then?**



1 A. We used the case as the basis for a class discussion at Harvard Business School in the first  
2 year marketing course I was running. BMW's Vice President of Marketing came and sat in on the  
3 discussions. The case was a great success.

4 **Q. How do you know it was a success?**

5 A. First, BMW told us that it really captured the reality of their situation. Then, the class  
6 discussions were great – providing deep learning for the students.

7 **Q. What happens after a case is used at Harvard Business School?**

8 A. With the permission of the company discussed in the case, Harvard Business School  
9 Publishing publishes the case and makes it available for sale to others. It typically charges about  
10 \$5.00 per copy. Individuals can buy cases but the major market is professors and students at other  
11 schools who use cases in their classes.

12 **Q. Did anyone outside Harvard buy the “Launching the BMW Z3” case?**

13 A. Yes. It has been one of Harvard's best sellers ever since it was published.

14 **Q. How many cases have you researched and written?**

15 A. Nineteen cases or case series. A case series has multiple parts, which we customarily call  
16 the “(A) case” and the “(B) case,” etc. You might write the (A) case to take the story up to one  
17 point in time. Then, you follow it with a (B) case which tells what happened in the next year and  
18 then poses new questions. Fourteen of my nineteen cases or case series involved field research with  
19 cooperating companies.

20 **Q. You mentioned that the BMW Z3 case was officially designated a “best seller” by  
21 Harvard Business School Publishing. Are any of your other cases “best sellers”?**

22 A. Yes. Currently five of my cases are designated as best sellers.

23 **Q. Are cases peer reviewed prior to publication?**

1 A. Not in the formal way that academic journals are peer reviewed. When developing a case,  
2 you typically ask colleagues for comments but there is no formal review prior to publication other  
3 than the company review I described earlier.

4 **Q. How do you know what other academics think of the quality of your research efforts**  
5 **on cases?**

6 A. Some people will comment to you, but the best indication of their valuation of your research  
7 on cases is whether they adopt the case for use in their course or not.

8 **Q. To your knowledge did many of your colleagues at Harvard or other academics adopt**  
9 **your case studies for use in their courses?**

10 A. Yes. My cases are very widely used and have stood the test of time. For example, one of my  
11 best seller cases was written in 1982.

12 **Q. On pages 3-4, your curriculum vitae lists textual notes you have authored that are also**  
13 **published by Harvard Business School. What is a textual note?**

14 A. It is a paper usually written with students in mind to explain some concepts or methods you  
15 want them to be familiar with prior to coming to class and engaging in case discussions.

16 **Q. How many textual notes have you published?**

17 A. Twenty-two.

18 **Q. Are any of these on Harvard's "best seller" list?**

19 A. Yes, seven. These range from an overview note on developing a marketing strategy to more  
20 focused notes. For example, two of my widely used notes are specifically on analyzing consumers  
21 and developing a communications plan.

22 **Q. How many copies of your cases and textual notes has Harvard Business School**  
23 **Publishing sold to individuals outside Harvard Business School?**

1 A. Well over one million copies.

2 **Q. Do you know the revenue Harvard generated just in the last year selling your**  
3 **materials?**

4 A. Yes, over \$300,000.

5 **Q. Are some of your materials still used at Harvard Business School?**

6 A. Yes, a number of my cases are still taught and my textual notes are still assigned to students  
7 even though I no longer teach there.

8 **D. Editorial Boards and Reviewing**

9 **Q. Have you served on the editorial board of, or as a reviewer for, any journals?**

10 A. Yes, in the past, I was a member of the Editorial Review Board of the *Journal of Marketing*  
11 and *Marketing Science*. I was also an Area Editor for *Marketing Science*. My duties as Dean  
12 preclude me from maintaining as active a role with journals as in the past but I am currently a  
13 member of the *Journal of Public Policy and Marketing*.

14 **E. Consulting**

15 **Q. Have you advised any companies on marketing issues?**

16 A. Yes. As shown on my curriculum vitae, over the years, I have had experience with a wide  
17 range of organizations on marketing issues. For example, I advised a governmental organization,  
18 NASA, on how to price zero-gravity experiments on the space shuttle. At the other end of the  
19 spectrum, I have advised several start-up companies on how to get a new product developed and  
20 launched.

21 **Q. Have you served on the boards of any publicly traded companies?**

1 A. Yes. I have served on three public boards: Warnaco, an apparel manufacturer; Knoll, a  
2 manufacturer of office furniture; and Precise Software, a provider of software to companies,  
3 enabling them to better manage their data and computer networks.

4 **Q. What role did you play on these boards?**

5 A. In each situation, I was sought as a director to provide oversight of business operations and  
6 also to be a long-term advisor on marketing activities who understood all aspects of the business.

7 **Q. Have any organizations engaged you to teach marketing management to their**  
8 **executives?**

9 A. Yes, many.

10 **Q. Can you name a few?**

11 A. Some examples would be Allied Signal, Bethlehem Steel, Chase Manhattan, Citicorp, the  
12 Ethicon Division of Johnson & Johnson, Ford Motor Company, General Electric, IBM, 3M, Merrill  
13 Lynch, and Xerox.

14 **Q. What specifically did you teach the executives at these firms?**

15 A. It varied. Sometimes it was pretty general – teaching all aspects of marketing such as  
16 analyzing a market to understand consumer wants, designing products, developing a plan to  
17 communicate to customers, getting the product to consumers, and pricing. My assignment at  
18 Xerox, for example, was of this type.

19 **Q. And on other occasions would the firm ask you to focus on a particular topic?**

20 A. Yes, that's right. Often it would be to educate the executives about one of my specialty  
21 areas, product policy or pricing. For example, my work for Allied Signal and 3M was in the pricing  
22 arena. Sometimes a firm would want me to focus on a particular business sector and the marketing  
23 challenges there. For example, lots of the work I did for IBM was general marketing management,

1 but once IBM asked me to develop a seminar for their sales managers responsible for selling to  
2 retailers, so the sales managers could better understand how retailers worked, the challenges they  
3 faced, and how information technology might help them.

4 **Q. How is your consulting work relevant to this case?**

5 A. Working with many of the leading firms in the country, either teaching their executives or  
6 working with them on problems, has enabled me to see how marketing really works – how it gets  
7 done within large corporations. I know the processes a large, multinational company is going to use  
8 to market. And, I know the type of marketing planning documents a firm like Philip Morris or the  
9 other tobacco companies is going to have, and how it developed them.

10 **F. Expert Witness Work**

11 **Q. Have you served as an expert witness in other litigation?**

12 A. Yes. I have served as an expert in over fifteen cases.

13 **Q. Have all of these been tobacco related?**

14 A. No. I have served as an expert in many cases unrelated to tobacco.

15 **Q. Let's talk about those cases first, and then I'll ask you about your tobacco-related  
16 expert work. In what types of non-tobacco related cases have you served as expert?**

17 A. I have been involved in a number of cases about different intellectual property issues. My  
18 first case was in the late 1980s for Polaroid in its litigation with Kodak over Kodak's violation of  
19 Polaroid's instant camera patents. The main purpose of my testimony in that case was to describe  
20 how the market would have evolved but for Kodak's entry into the instant camera market. This  
21 involved analyses of research data on consumers, Kodak's marketing activities and Polaroid's  
22 capabilities. I had to develop an opinion of the power of the Kodak brand relative to Polaroid. This  
23 case resulted in an award of about \$1 billion to Polaroid. I have also offered trial testimony on

1 marketing issues in a number of technology-driven fields, e.g. auto-focus cameras, cardiac stents,  
2 pharmaceuticals and internet browsers.

3 **Q. How many of your cases involved analyzing a company or companies selling to  
4 individual customers, i.e. the public at large, rather than businesses?**

5 A. Many of them. For example, I've worked on three cases involving cameras, one on  
6 toothpastes, and another on pens. A number of cases I worked on involved selling both to  
7 companies and individuals, e.g. spreadsheet software, Internet browsers, ink-jet printers, and  
8 personal computers.

9 **Q. In how many tobacco-related cases have you served as an expert?**

10 A. I was an expert in two state cases, the State of Minnesota and Blue Cross and Blue Shield of  
11 Minnesota v. Philip Morris, Inc., et al. and the Commonwealth of Massachusetts v. Philip Morris,  
12 Inc., et al.. In the Minnesota case, I provided both deposition and trial testimony; in the  
13 Massachusetts case, I provided deposition testimony only. In both cases, I described the marketing  
14 activities of the firms in the cigarette business in the United States from 1954 onward, and offered  
15 conclusions about their marketing practices.

16 **Q. As part of your work on the Minnesota case, did you review the deposition and trial  
17 testimony that Defendants' employees gave in that case?**

18 A. Yes, I reviewed the testimony of executives such as Geoffrey Bible, James Morgan, Andrew  
19 Schindler, and Lynn Beasley and other testimony of executives related to tobacco company  
20 marketing practices.

21 **Q. Do you have a particular methodology that you use in your expert witness cases?**

1 A. Yes. I have been doing this type of work for about 15 years now so I have developed an  
2 approach or method I apply across very different kinds of issues and different kinds of products.  
3 My approach to expert work is very similar to the approach I use in developing my case studies.

4 **Q. Could you describe that methodology?**

5 A. Yes. In describing a marketing situation, I usually use the 4 C's framework to organize my  
6 thinking and data collections. I have to understand:

- 7 • Company's goals, strengths, and weaknesses
- 8 • Competitors' strategies
- 9 • Customers' preferences and perceptions
- 10 • Channels' role in the process (i.e. how the company is going to reach customers)

11 If you can develop a good understanding of what customers are like and what they want, that is a  
12 key first step. So, that's the first thing I try to develop, for example in Polaroid, it was critical to  
13 figure out how much customers valued the "instant" feature Polaroid cameras offered. In  
14 Honeywell v. Minolta, the case, or my part of it anyway, revolved around understanding how much  
15 customers valued the "auto-focus" feature that Minolta was first to bring to the market in its camera.  
16 Both Polaroid and Kodak had lots of market research data on this which were available to me.  
17 Basically, I sorted through enough of it to get a consistent view on consumer behavior. After a  
18 while, a pretty coherent picture emerged. I did not read every Polaroid marketing plan, every  
19 Kodak market plan, or review every piece of research either did on consumers. But I looked at  
20 enough reliable data to be able to sort out any disparities and get to a general conclusion on  
21 consumer behavior.

22 **Q. How do you look at the "4C's"?**

1 A. I look at the “company” and “competitors” together. Most of the time in my expert witness  
2 work there is some focal company, e.g. Minolta auto-focus cameras or Hewlett-Packard in printers.  
3 I try to understand the strengths that the firms in the industry bring to playing the game. I can  
4 usually get a good sense of this from a company’s own marketing plans where it often discusses its  
5 position in the market and then relative strengths and weaknesses. With regard to the “channels,” I  
6 analyze how the manufacturers get their goods to the consumer. This is the other component you  
7 have to understand to really know how the market works. Do they use partners, like retailers?  
8 What functions does each entity perform?

9 **Q. And you used this approach in other expert witness assignments?**

10 A. Generally, yes. Sometimes, there is so little germane research on an issue you can look at  
11 all the germane research. For example, there was so little data on the importance of stripes in  
12 AquaFresh toothpaste from company files, you could analyze all of it. Generally, though, in  
13 litigation involving large firms over a number of years, you don’t look at all documents relating to a  
14 particular question. You start with what might be key ones and keep going until you have a  
15 consistent view. It is the same thing you do in a consulting assignment or case writing engagement.

16 **Q. Can you explain that process further?**

17 A. Yes. There are three steps: (1) make sure that you have sufficient data; (2) make sure that  
18 you are using reliable data; and (3) triangulate. By triangulate, I mean: are the different sources of  
19 data leading you to the same conclusions? When you look through a different lens, do you still see  
20 the same thing? You have to keep looking until you see clearly and are able to resolve any seeming  
21 inconsistencies.

22 **Q. How are the cases you researched and wrote relevant to your testimony in this case?**



1 A. Yes. Through my case writing I have developed an approach or framework for collecting,  
2 analyzing and summarizing data about what a firm is doing and why. I generally apply that same  
3 basic approach from case writing in my expert witness work, including this case. Before I make  
4 any judgments, I have to develop a solid description of what is going on. In most of my case  
5 writing, I have direct access to the executives involved for interviews. The parallel in expert  
6 witness work is interviews with executives from companies on the side of the case you are on and  
7 depositions of executives on the other side. Through my case writing I developed a process of  
8 gathering data and boiling it down to essentials to get a concise, yet deep and accurate, portrayal of  
9 key facts of the situation. In case writing, this forms the basis for students making judgments in  
10 class. In expert witness work, this and my marketing expertise form the basis for my conclusions  
11 and judgment.

12 **Q. Is the same true for the textual notes you have written?**

13 A. Yes. Collectively, my notes cover just about all aspects of marketing. So, they provided a  
14 framework for analyzing the tobacco companies' behavior. My note on marketing strategy, for  
15 example, explains all the processes a firm should go through to develop its marketing approach to  
16 its customers. So, I had all these steps in mind as I went through documents in this case so I could  
17 develop a good descriptive sense of what the tobacco companies were doing in terms of their  
18 marketing strategies and the data they were relying on. Then I also have more detailed notes on  
19 specific elements of marketing which helped me to "drill down." For example, my integrated  
20 marketing communications note describes all the possible ways of communicating with prospective  
21 customers and how different approaches complement one another. I used the framework of that  
22 note to look at the communications activities of the tobacco companies.

23

1 **II. SUMMARY OF CONCLUSIONS**

2 **Q. Can you summarize the conclusions you have reached in this case?**

3 A. Yes. My major conclusions are as follows: 1) contrary to their public statements, the  
4 tobacco companies' marketing practices were directed to and did impact the number of people who  
5 began smoking; 2) the tobacco companies clearly understood that these "starters" were, to a large  
6 degree, teenagers; 3) contrary to their public statements, the tobacco companies' marketing aimed to  
7 and did decrease the likelihood that smokers would quit smoking; and 4) contrary to their public  
8 statements, the tobacco companies' marketing aimed to increase the average rate of consumption of  
9 smokers.

10 While the tobacco companies claimed that the only goal of their marketing efforts was to  
11 impact the brand choice of current smokers, their goal and impact was much broader. The  
12 marketing practices of the tobacco companies was not the only factor impacting the likelihood of an  
13 individual's smoking. It is well recognized that behavior of other family members and peers also  
14 contribute. However, the marketing of the tobacco companies, carried out in a highly sophisticated  
15 and heavily financed fashion, was a substantial contributing factor to the number of teenagers who  
16 began smoking, the likelihood they continued as smokers, and their consumption rate.

17 **Q. Have you reviewed tobacco company documents that explicitly refer to teenagers or**  
18 **young age groups under age 18?**

19 A. Yes. I will cite some of these later. Specific, explicit references to particular age groups  
20 tend to decline over time, however. They are replaced by other terminology to refer to the starting  
21 population.

22 **Q. Are there specific terms that the tobacco companies use in their internal documents to**  
23 **discuss starters or teenage smokers?**

1 A. Yes. The most general term is “Young Adult Smokers” with the acronym “YAS.” As I will  
2 discuss, firms understood how brand loyal their customers were. Attracting “YAS” meant attracting  
3 a young person before he or she was taken by another brand. R.J. Reynolds coined the term  
4 “FUBYAS” meaning “First Usual Brand Young Adult Smokers.” The “S” part of FUBYAS was  
5 “smoker” included to fit with the public statements of not impacting anyone’s decision to start  
6 smoking. But, R.J. Reynolds wanted to be the first brand adopted – that’s the “FUB” part. So,  
7 clearly this term signals a focus on starters.

8 **Q. Have you learned why Defendants stopped explicitly referring to teenagers and began**  
9 **using other terms such as YAS or FUBYAS?**

10 A. Yes. It is clear from a review of the overall document set that Defendants were aware of the  
11 possibility of internal documents becoming public information and they did not want their internal  
12 documents to compromise their public statements about marketing practices.

13 **Q. Does the tobacco companies’ change in terminology over time change your conclusions**  
14 **that Defendants market to teenagers?**

15 A. No.

16 **Q. Why not?**

17 A. Because it is clear from my consideration of a large set of their plans that share a desire to  
18 attract starters and their knowledge of who these starters were, that new terminology was for  
19 litigation and public relations purposes, not a true change in policy.

20 ***III. THE THREE PURPOSES OF MARKETING***

21 **Q. Could you define “marketing”?**

22 A. “Marketing” is a comprehensive process by which a firm or organization creates value for  
23 its customers.

1 **Q. Can you give an example?**

2 A. Just about every firm engages in marketing of some form or another. The Washington  
3 Redskins football team “markets” themselves to their fans. They try to build a good team (or  
4 “product” in marketing terms) to put on the field. Their public relations office works to generate  
5 publicity for the team. They communicate directly to fans and they have a set of pricing plans for  
6 tickets. Political candidates market themselves to voters. Schools and universities market  
7 themselves to prospective students. We as consumers see marketing directed to us many times per  
8 day. Advertisements make us aware of new products and displays at retail outlets educate us on  
9 products and make it obvious where we can buy them.

10 **Q. Is marketing the same thing as advertising?**

11 A. Many lay people equate marketing with advertising. Marketing is really a much broader  
12 phenomenon than that. Advertising is a part of marketing, but only a small part.

13 **Q. Can you explain?**

14 A. Yes. Advertising is one small piece of marketing. For example, for a number of years, I  
15 taught courses on advertising management at the University of Chicago. I have also taught courses  
16 in marketing management – many times, starting with when I was still a graduate student in the  
17 early 1970s on through my days at Harvard Business School. These two types of courses are very  
18 different. Advertising would be one of many topics covered in a marketing management course.  
19 For example, when I was the head of the required marketing course for MBAs at Harvard Business  
20 School, we included advertising as one of the topics we would cover with students. However,  
21 advertising was the focal point of our discussion less than 10% of the time in our marketing course.

22 **Q. Would it be appropriate to focus just on advertising in examining the marketing**  
23 **activities of the cigarette companies in this litigation?**

1 A. No. That would be totally inappropriate. Marketing is the full set of activities you  
2 undertake to create value for your chosen customers. One element of this is how you communicate  
3 to customers about the product. Lots of other things go into creating the value – not the least of  
4 which is the product itself. Advertising is only one small piece of the communication plan. To  
5 think you could understand the tobacco companies’ overall marketing approach just by analyzing  
6 their advertising would be a grave mistake.

7 **Q. How does a firm typically approach marketing?**

8 A. It varies some across firms – large firms with annual sales over a billion dollars and an  
9 international scope will obviously be a little more sophisticated in their approach than one of the  
10 specialty stores in Georgetown. But there are three key stages in marketing.

11 **Q. What are the three stages?**

12 A. The three main stages of marketing are:

13 1. Analyze the opportunity and select the customers you want to serve. In marketing terms,  
14 this is “target market selection.”

15 2. Design the marketing program to deliver value to your selected market segments.  
16 Specifying the marketing plan includes identifying the marketing partners (including  
17 possibly retailers) you choose to help you reach your chosen customers.

18 3. Manage and adapt the marketing program over time as things change.

19 **A. Stage 1: Analyze the Opportunity and Select Your Customers**

20 **Q. Could you elaborate on Stage 1?**

21 A. The first part of Stage 1 is to analyze the opportunity. Since the objective of marketing is to  
22 create something customers perceive to be valuable, you first have to figure out what people want.  
23 Sometimes this is pretty easy. For example, automobile manufacturers can be pretty sure that we

1 would all like to get better gas mileage. They hardly have to conduct a telephone survey of  
2 thousands of us at the dinner hour to figure that out. Similarly, Gillette can be pretty sure its razor  
3 blade customers would like a closer, less irritating shave. Nike can be pretty sure many of its  
4 customers want to be on the “cutting edge,” wearing what the professional athletes wear.

5 In other situations, it is not so obvious what customers want and a second consideration is  
6 that a firm’s potential customers can have different wants or reactions to potential features of a  
7 product. For example, the couple with six children living in Reston and the young single person  
8 living in Georgetown both want better gas mileage for their cars. However, the two are likely to  
9 have very different reactions to the idea of a video screen and DVD player for riders in the back  
10 seat.

11 In many situations, one can figure out what potential customers want just by bringing a  
12 learning disposition to the everyday conduct of business. In these cases, the idea of “putting  
13 yourself in the shoes of the customer” can yield the necessary insights. Staying “tuned in” to  
14 emerging trends via publicly available information like magazine articles, and books can be helpful.

15 In other cases, it is less clear what customers want or how much they would be willing to  
16 pay for it. For example, most people would like the option to print in color in addition to black-and-  
17 white, but how much more would they be willing to pay in terms of initial cost and slower printing  
18 time? Firms may conduct formal market research in order to answer this type of question. A large  
19 number of organizations specializing in market research stand ready to help out with answering  
20 these questions. They might propose a quantitative survey of many customers producing answers to  
21 questions like “what percentage of people in the Boston area would be willing to pay \$200 for a  
22 remote automobile starting system?” Other times, they might assemble a small group of Bostonians  
23 to talk about “what do you see as the biggest problems with living in Boston in the winter?” So, the

1 first step is to get a good sense of customers, understanding what different types of individuals are  
2 looking for. That is the foundation of the marketing program.

3 **Q. So, the first part of Stage 1 is “analyzing the opportunity.” What is the remainder of**  
4 **Stage 1?**

5 A. The second part of Stage 1 is to take the results of the customer analysis and opportunity  
6 assessment and decide who you are going to try to serve – or, put another way, who you are going  
7 to try to get to be a customer of yours.

8 The opportunity assessment phase will often show you what is pretty common sense – that  
9 different people want different things. People can differ in what they want from a product. For  
10 example, in buying toothpaste, its ability to “prevent cavities” may be one person’s primary  
11 consideration, while a second might focus on “freshens breath” and a third “whitens teeth.” In  
12 marketing, we often use the term “market segment” to refer to a group of customers who will  
13 respond similarly to a marketing effort because they have similar wants.

14 **Q. How do marketers select market segments?**

15 A. It depends on the situation. The toothpaste example above is by “benefit sought.” You see  
16 the same in coffee – some customers perceive it as a way to wake-up while others see it as a real  
17 treat, a respite in their day. Other common ways to define “segments” of the market are by  
18 demographics, e.g. geographic location and age. The response of people in Boston to the idea of a  
19 remote automobile starter to get the defroster going is likely to be different from the response of  
20 people in Phoenix. Sometimes it is useful to segment the market by current product usage, e.g.  
21 distinguishing between people who are currently “heavy users,” “light users,” and “non-users.”

22 **Q. What do you do after you segment the market?**

1 A. You decide which segment or segments you want to focus on. You try to figure out a  
2 segment or segments you have a special capability of serving. Sometimes, the answer to the  
3 question of which segments a company tries to serve is “all segments.” For example, General  
4 Motors studies and segments the automobile buyer market to understand different wants of  
5 customers and then designs a set of cars to (hopefully) meet the wants of every segment. That’s  
6 why GM markets so many different brands (Cadillac, Buick, Chevrolet, Pontiac, Oldsmobile,  
7 Saturn, Saab, Hummer, and GMC) and car types of a given brand (e.g. seven different Buick  
8 models). More typical than trying to serve “all segments” is some focus on a certain segment or  
9 segments. Starbucks, for example, does not really try to sell its premium priced coffee to everyone;  
10 rather it focuses on the segment of people for whom coffee is something more than just a way to get  
11 a quick caffeine boost. For these people, coffee is an experience, a respite in their day. Starbucks’  
12 strategy was to have their coffee and stores combine to create a “front porch” for people away from  
13 their homes. The Starbucks Company did little formal market research on this. Instead, the founder  
14 had the simple idea that the coffee bar concept that he observed to be so prevalent and popular in  
15 Europe could find success in the United States.

16 ***B. Stage 2: Design a Marketing Program***

17 **Q. Could you elaborate on Stage 2 of marketing?**

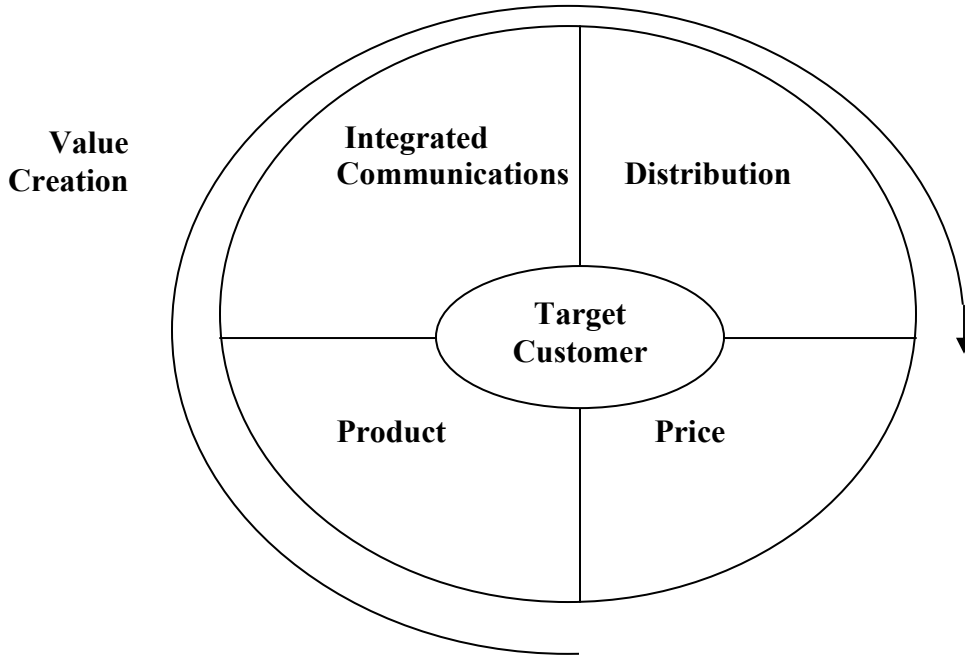
18 A. Once you have selected the set of customer groups, or segments, you want to serve, you  
19 have to design the marketing program that results in their perceiving value in what you are offering.  
20 You bring together a number of elements in the marketing program or what we often call the  
21 “marketing mix.” Demonstrative #1 is helpful in showing this.

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**Demonstrative #1: Marketing Mix**



**Q. Can you explain Demonstrative #1, which shows the marketing mix?**

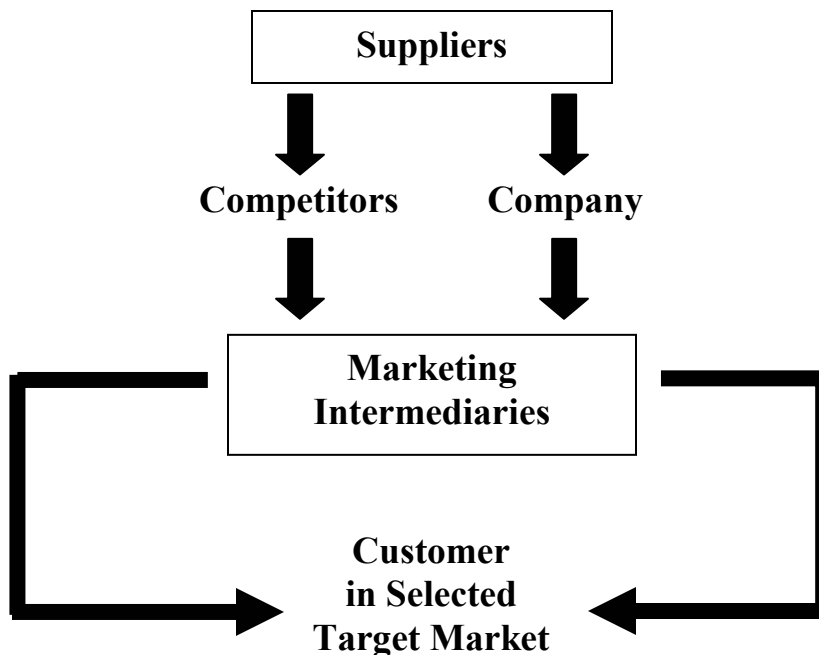
A. The marketing mix is all of the marketing activities that create value for the customer. The target customer is at the center of these activities. The most obvious element in creating value for the customer is the product or service itself shown in the lower left of Demonstrative #1. Product design can be a very complicated process, e.g. as in the case of an automobile or cardiac stent. Or it can be pretty simple, e.g. a ball-point pen. The product is designed so it meets customers’ wants. Once a product is designed, the organization has to let the target customer know about it and its features. This is done by an Integrated Communications package (shown in the upper left of Demonstrative #1) bringing together multiple ways of communicating with customers to make them aware of the product, understand its features, and communicate the benefits of owning and consuming the product. Sometimes the benefits communicated are quite tangible (e.g. the recent ad stating “The Xerox Phaser 8400 is the fastest color printer in the world for under \$1,000”); other times, the benefits are more emotional (e.g. Nike commercials featuring star athletes suggesting that

1 with a purchase you too can be a star). Sometimes, communicating the benefits is quite  
2 complicated so you need a personal sales call to go over the product. Other times, firms try to  
3 stimulate “word-of-mouth” about a product to encourage a customer to talk to others about it.

4 **Q. So, referring to Demonstrative #1, can you explain distribution?**

5 A. Distribution is the remaining element of the value creation process. Marketers have to  
6 figure out how their product is going to get to consumers. For example, General Motors uses an  
7 extensive network of local dealers to sell, deliver and service vehicles. A typical marketing system  
8 is shown in Demonstrative #2. If we focus on the “Company” at the upper right hand side, the  
9 Demonstrative shows that typically the firm does not work alone to deliver value to customers.  
10 Often, some important inputs to the production process will come from suppliers (shown at top).  
11 These suppliers might also be selling raw materials to the company’s competitors as shown.  
12 Moving downstream, the company then has to decide if it will get help from other firms in the  
13 execution of its marketing or if it will do the whole job itself. It has to select its “marketing  
14 intermediaries.”

15 **Demonstrative #2: Typical Marketing System to Deliver Value**



1 **Q. Can you give an example of marketing intermediaries?**

2 A. There are two basic kinds. The first type are firms who resell your product for you.  
3 Prominent among these are retailers like Walmart, K-Mart, Marshall Fields, Nordstrom, Hechts,  
4 Safeway, and CVS. For example, Kodak wants its film to be readily available to consumers  
5 whenever and wherever they need it. It really is not practical to have a Kodak film store on every  
6 corner so Kodak sells its film through convenience stores, drug stores, mass merchants, and grocery  
7 stores. A second kind of “helper” or intermediary is a firm offering supporting services like market  
8 research, advertising help, or public relations support. Again, just as your competitors might obtain  
9 raw materials from the same suppliers, your competitors might use some of the same intermediaries  
10 as you. For example, it is common for a retailer to distribute products from several competitors at a  
11 given point in time. A typical drugstore will sell both Kodak and Fuji film; Best Buy sells  
12 television sets from General Electric, Toshiba, Samsung, Sony and others; and Hechts sells  
13 cosmetics of L’Oreal, Estee Lauder, Clinique and a host of others.

14 **Q. Do competing firms choose similar sets of marketing intermediaries?**

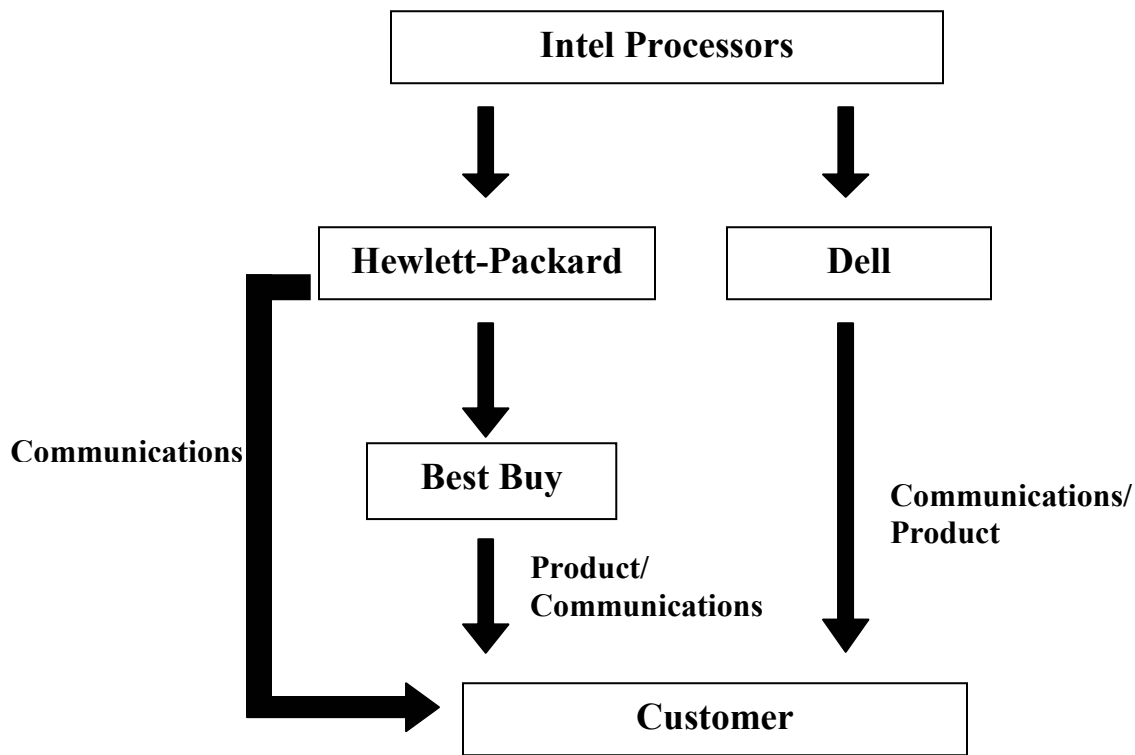
15 A. Sometimes. For example, Kodak and Fuji have similar resellers – where you find Kodak  
16 you are likely to find Fuji film and vice-versa. The cigarette manufacturers often share marketing  
17 intermediaries. In other industries or for other products, it can be quite different.

18 **Q. Can you give an example where competitors have made very different decisions about**  
19 **their marketing intermediaries?**

20 A. One very well-known situation today is Dell computers. I show the situation in  
21 Demonstrative #3. The demonstrative shows that Dell and a competitor, e.g. Hewlett-Packard, both  
22 obtain at least some supplies from the same source, e.g. Intel processors, but then the route to  
23 chosen customers is different. Dell uses no resellers, instead it does all the marketing by itself using

1 the “Dell Direct” model of selling to customers who placed orders directly with Dell via telephone  
2 or the internet. Hewlett-Packard (HP), on the other hand, chooses to use retailers, such as Best Buy,  
3 to get their products into the hands of consumers. Best Buy not only helps HP make its products  
4 available locally (so consumers do not have to travel far and can take home the product), but it also  
5 helps to communicate to the customer about HP products via featuring them in Best Buy  
6 advertisements, displays in the store, and information delivered by Best Buy salespeople in the  
7 store. In the HP case, the customer is actually receiving communications from both HP and its  
8 marketing intermediary Best Buy to increase the perceived value of the HP personal computer.

9  
10 **Demonstrative #3: Hewlett-Packard Using Best Buy as a Retail Marketing Partner vs. Dell**  
11 **Direct Model**  
12



1 **Q. What is shown in Demonstrative #4?**

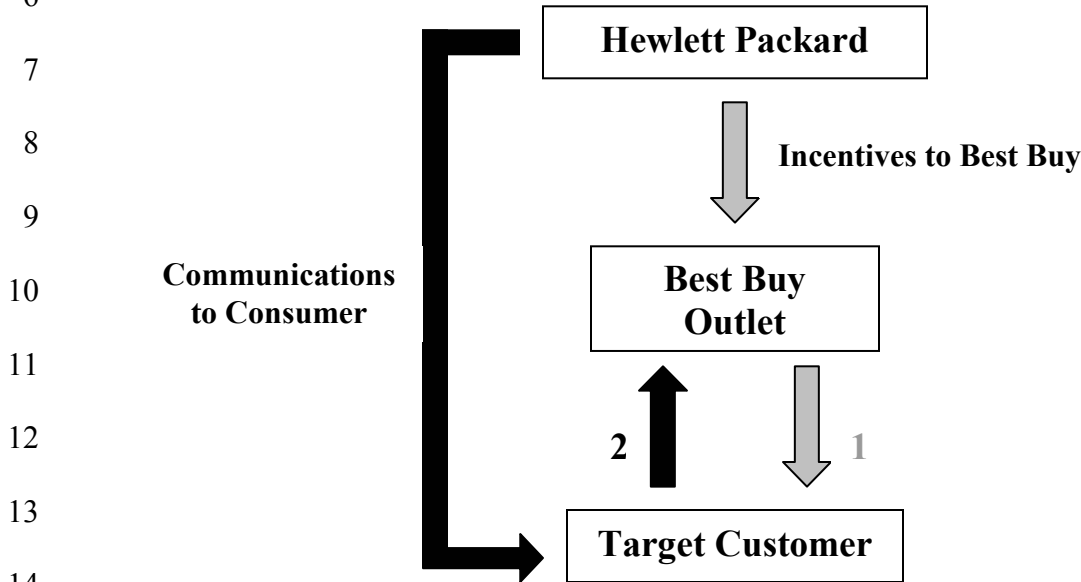
2 A. As I show in Demonstrative #4, there are two different forces acting on the customer here.

3 In marketing terms, we call this “push” and “pull.”

4

5 **Demonstrative #4: “Push” (1) and “Pull” (2) on Customer**

6



15 **Q. Can you explain Demonstrative #4 further?**

16 A. As shown, there are two kinds of things HP is doing. It is sending communications (e.g. an  
17 advertisement) directly to its target customers, who are firms or individuals looking to buy a  
18 computer, and it is also providing incentives to Best Buy to sell its computers. In sending messages  
19 to customers, HP is trying to increase the value target customers see in the HP product. Marketers  
20 call this creating “pull” – creating a preference in customers so they “pull” the product down  
21 through the marketing system.

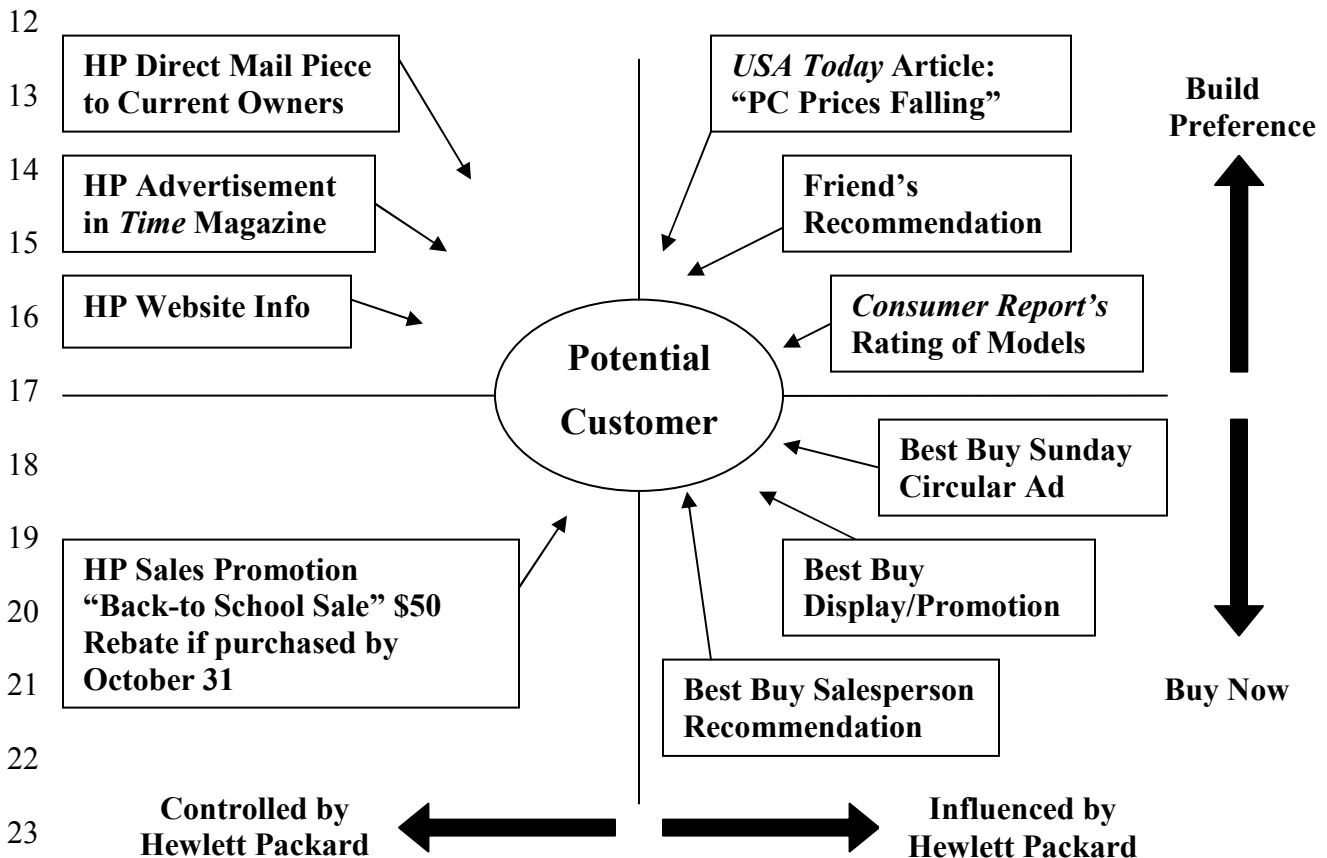
22 HP is also enlisting Best Buy’s support to “push” its product, i.e. it is trying to use the  
23 intermediary to “push” its product down through the marketing system to the customer. HP enlists  
24 Best Buy’s support by offering Best Buy a product it can sell at a retail price above what it pays HP.

1 This difference between the retail price and price paid by Best Buy to HP is referred to as the  
 2 retailer's margin. HP also will offer Best Buy incentives from time to time. For example, it can  
 3 offer to share the cost of advertisements run by Best Buy if they feature HP products, give a price  
 4 discount if certain volumes of HP computers are sold, or give a financial incentive to Best Buy to  
 5 display its product in a prominent way. These payments are sometimes referred to as "push  
 6 money." So, in this example, the potential customer is likely to receive a number of  
 7 communications about HP products.

8 **Q. What does Demonstrative #5 show?**

9 A. In Demonstrative #5, I continue with the HP example and show the broad range of  
 10 communications that can impact the potential customer.

11 **Demonstrative #5: Integrated Communications**



1           On the left-hand side of Demonstrative #5, I show all the things that HP has direct control  
2 over. In the upper-left quadrant, I show the communications HP might direct to customers to build  
3 their preference for HP. This is to create customer “pull” by increasing the perceived value of HP  
4 products. As a specific example of HP direct “pull” efforts, HP might mail a brochure directly to  
5 the home of current HP owners whose addresses and current HP models owned they know from  
6 warranty card information provided. (Please note this is just illustrative based on my general  
7 knowledge of HP practices from observing and reading about HP; I am not attempting to describe  
8 what HP actually did in a given time period.) It could also then advertise in a medium like *Time*  
9 magazine and also suggest people visit the website at [www.hp.com](http://www.hp.com) for additional information.

10           In the lower left quadrant, I show an effort by HP to get the customer to take action and  
11 “buy now.” A “promotion” is offered to the customer typically with some kind of incentive to buy  
12 by a certain time. For example, HP might offer a \$50 mail-in rebate on a “Back-to-School”  
13 promotion on purchases made by the end of October.

14 **Q.     What is on the right-hand side of Demonstrative #5?**

15 A.     There I show the communications which HP tries to influence but does not directly control.  
16 In the lower right quadrant, I show the activities of a market intermediary it chose to work with,  
17 Best Buy. HP provides Best Buy an opportunity to earn a margin from selling products and also  
18 offers “push money” for services provided. HP hopes to be on the front page of Best Buy’s Sunday  
19 Circular, but so do lots of other brands carried by Best Buy. That is why HP will follow a common  
20 practice and offer to share the cost of the advertisement if it features HP. Similarly, HP wants great  
21 display space and salesperson support so it provides incentives to obtain that from Best Buy.

22 **Q.     What is in the upper right quadrant?**

1 A. That shows all the other messages a potential customer might get. HP has less direct  
2 influence on these probably but it still does try to impact them. For example, a *USA Today* writer  
3 preparing an article on “PC Prices Falling” is likely to find an HP spokesperson willing to give the  
4 company’s point of view on the subject. Similarly, HP will give a ratings type magazine like  
5 *Consumer Reports* any relevant product information and perhaps samples of new models for testing.  
6 HP will try to stimulate people to talk to friends about their HP purchase.

7 So, the general point of Demonstrative #5 is that a potential customer accesses information  
8 from lots of different sources and the marketer’s job (in this example HP) is to make sure that it all  
9 “adds up” to have the desired impact on the customers the company is seeking to serve. Sometimes,  
10 the messages not controlled by the marketer could be quite damaging. For example, the *USA Today*  
11 article on “PC Prices Falling” might conclude that “with prices falling 30% per year, people would  
12 do well to hold on to old models as long as possible since next year’s deals will be lots better.” The  
13 marketer might then try to offset this advice to potential customers to delay purchasing by offering a  
14 \$50 mail-in rebate if the purchase is made within the next month.

15 The marketer has to weave together an integrated communications package of all  
16 communications types to have the best impact possible on the potential customer.

17 **Q. Does the wide variety of communication types shown in Demonstrative #5 happen only**  
18 **for expensive items like personal computers?**

19 A. No. You could develop a similar diagram for inexpensive everyday purchases. For  
20 example, I wrote a case study on L’Oreal’s development and marketing of its new Plentitude brand  
21 of skin care products in mass market outlets like drug stores. L’Oreal had to develop an integrated  
22 communications package including the L’Oreal brand name, advertising for the new line, and store  
23 support that all came together with evaluations in influential magazines.



1 **Q. Does Demonstrative #5 give an example of each of the major communication vehicles?**

2 A. No. There are many, many more. I did not try to develop an exhaustive list.

3 Communication vehicles are limited only by the imagination – everything from blimps flying above  
4 sporting events to flyers handed out on the street corner and sponsorships of everything from the  
5 American Ballet Theater to local kid’s soccer and baseball teams. The tobacco companies, for  
6 example, used a wide variety of communication tools. The media they used changed over time but  
7 at one time television, magazines, and outdoor were quite important. Other examples include the  
8 fact that the tobacco companies offered free samples of their products. They sponsored parades in  
9 ethnic communities, concerts, and “bar nights.” They engaged in large-scale public relations  
10 campaigns and tried to influence what others were saying about cigarette smoking. “Push money”  
11 was used extensively to get good display space and signage at retail outlets.

12 **Q. Do many firms engage in communications about corporate social responsibility?**

13 A. It’s fairly common and serves a number of purposes. Employee morale is often enhanced by  
14 people seeing their firm contributing to worthy causes and it can also help the organization’s image  
15 with the customers. For example, Exxon Mobil in its business has to be concerned with how  
16 customers perceive its concern for the environment. Exxon Mobil set up the Exxon Mobil  
17 Foundation which in 2003 donated \$103 million to causes around the world, e.g. underwriting the  
18 United States National Safety Council’s new global leadership award for corporate excellence in  
19 safety, health, and the environment.

20 **Q. What other purposes are served by a firm’s communications about corporate social**  
21 **responsibility?**

22 A. These communications can impact the company’s image with customers. A small  
23 expenditure on a “good cause” trumpeted by the firm can make it a more trusted source, a better

1 company to buy from in the eyes of potential customers. In short, it increases the customers'  
2 perception of the value of buying from the firm, customers buy more, thus corporate social  
3 responsibility expenditures become a route to greater profits.

4 **Q. What has been the trend in communications media over time?**

5 A. The first important thing to note is the proliferation of options within a type of  
6 communications vehicle. For example, not so long ago, television sets had dials that went up to 13  
7 and most dial settings got you nothing but static – since the television options were limited to the  
8 three networks. Today, ABC, NBC and CBS are joined by CNN, MSNBC, ESPN, MTV and others  
9 with somewhat specialized content, and a host of others with a truly particular focus, e.g. the Golf  
10 Channel. Even a modest monthly cable TV expenditure gets you over a hundred channels. A  
11 similar proliferation happened in magazines, except the specialty magazines did not just join the  
12 general interest ones such as *Look* and *Life*, they put the general interest ones out of business.

13 The second trend is the emergence of a much broader set of communication options – e.g.  
14 the World Wide Web, information kiosks, and engaging point of purchase displays. Marketers now  
15 can communicate with their customers at home (through direct mail, magazines, television, etc.), at  
16 the point-of-purchase, and out-of-the-home through a variety of media.

17 **Q. We have just used Demonstratives # 2 to #5 to talk about three of the four overall**  
18 **elements of Demonstrative #1. Now, let's go back to Demonstrative #1. How does price – the**  
19 **fourth element shown on Demonstrative #1 – fit in?**

20 A. Product, integrated communications, and distribution are the three elements that come  
21 together to create the perception of value in the mind of the customer. The fourth piece of the story  
22 is price. A firm creates perceived value in the mind of the customer by designing a product which  
23 fits customer wants, by making sure through communications that the customer is made to feel the

1 product does fit his or her wants, and then making it easy to obtain. Pricing is different from these  
2 first three elements of the marketing program. The product, integrated communications plan, and  
3 distribution all impact the customer's perception of the value of the product. Pricing is about taking  
4 part of that created value back to the firm. It's what a customer has to give up to get the perceived  
5 benefits. If a firm prices its product above the value a customer perceives, the customer does not  
6 buy the product. If the firm sets price below the value, though, a transaction takes place – i.e. the  
7 consumer buys the product. Part of the value created is transferred back to the firm via the price it  
8 charges. This money can be reinvested in the firm and used to cover the firm's cost of making and  
9 marketing the product. Firms seldom charge a price below their cost for long. The key to a  
10 sustainable business is the ability to create value in a manner such that the value exceeds your costs.  
11 Pulling all four elements of Demonstrative #1 together in a way that resonates with the target  
12 customer is what Stage 2 of marketing is all about.

13 **C. Stage Three: Manage and Adopt Marketing Program Over Time**

14 **Q. Let's turn to stage 3 of the marketing process, which you said was to "manage and**  
15 **adapt the marketing program" over time. Can you explain that?**

16 A. In most markets, things are always changing. There are some product categories where  
17 things are pretty stable – the customers stay the same, no new products are being offered, and  
18 customers routinely repurchase from the same suppliers based on long-term contracts, but the norm  
19 is:

- 20 - new customers coming into the market
- 21 - new communication/distribution options become available
- 22 - new products and brands being offered
- 23 - customers' attitudes changing

1 - customers' valuation of products changing

2 Typically, a marketer systematically tracks what is happening in the marketplace and adapts  
3 the marketing program to these changes and conditions. As customers' wants change, the most  
4 value-producing way to meet these wants changes. Within firms, this is often done in an annual  
5 review process to develop the "marketing plan" for the upcoming year.

6 **Q. What elements of the marketing plan change over time?**

7 A. In many cases, all elements will change. If the product changes, you have to change the  
8 communication plan to address and inform the customer about changes. Distribution tends to be a  
9 little "sticky" – changing less over time than other elements – but it too can change if the functions  
10 you need to perform to get the product to customers change. Changes in either your cost of doing  
11 business or the value consumers place on the product warrant changing the price of the product.

12 **Q. And do customers change also?**

13 A. Sure. Customers are changing all the time. For example, they have experiences using the  
14 product. If customers like the product, the value they place on it goes up; if they do not like it, the  
15 value goes down. Or, maybe customers hear something about the company they do not like, e.g.  
16 they read in the newspaper that it just "off-shored" 1,000 jobs to India and put some of its U.S.  
17 based employees out of work. The value customers place on the product goes down because they  
18 don't like doing business with the company as much. Or maybe what's important to them changes.  
19 For example, they just had a child – so maybe they are more sensitive to price because they don't  
20 have as much disposable income or are more sensitive to adopting a healthier lifestyle so they will  
21 be around to bring up their child.

22 **Q. So, how does the marketer adapt?**

1 A. By changing the products – modifying the ones you have or replacing them with new  
 2 models. Marketers also change their communication plans and distribution strategies. Markets are  
 3 always changing so that’s why a firm always has to be on top of what’s going on and has to adapt.  
 4 It’s what makes marketing interesting.

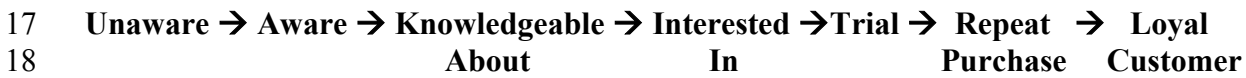
5 **D. Marketing Is a Powerful Tool**

6 **Q. Do firms use marketing as a tool?**

7 A. Yes, and marketing is certainly a powerful tool. It is often the difference between a firm  
 8 being quite successful and not surviving.

9 **Q. How do companies use marketing as a powerful tool?**

10 A. Through the coordination of all elements of the marketing program. This coordination is  
 11 really key. All elements of marketing campaigns need to be “in sync.” A great marketing  
 12 campaign consists not just of impactful advertising, but has a well-coordinated bundle of products,  
 13 communications and distribution to create customer value and a pricing strategy in concert with the  
 14 overall value creation strategy. Marketing can move a consumer through what marketers  
 15 sometimes call a “hierarchy-of-effects.” The hierarchy describes a customer’s relationship with the  
 16 product. An example hierarchy would be:



20 Different elements of the marketing program are most useful at different stages. For example,  
 21 advertising is typically effective for making potential customers who are unaware of the product at  
 22 least aware of its existence. The entire integrated communications package, including “push” by  
 23 marketing intermediaries as described above, moves the customer toward a trial purchase as more  
 24 information is provided. A sales promotion, such as coupon or premium with purchase (e.g., a free  
 25 hat with purchase), can help generate trial. The customer’s experience with the product is typically

1 key to generating repeat purchase, but it is often reinforced by communications providing assurance  
2 to the customer that the right purchase decision has been made.

3 An effective marketing campaign can:

- 4 • Bring new users into a product category as buyers (e.g. by portraying product  
5 benefits).
- 6 • Impact choice of a specific brand (e.g. by articulating a brand's advantage over other  
7 brands).
- 8 • Turn occasional users into regular users (e.g. by reinforcing benefits or  
9 communicating new usage occasions).
- 10 • Help keep people in the category as buyers (e.g. by reassuring of wisdom of  
11 purchase).

12 **Q. Is marketing a science?**

13 A. In some respects, it is: there are scientific elements to marketing. A leading academic  
14 journal in the field is called *Marketing Science*. When we teach marketing in universities we draw  
15 heavily on underlying disciplines such as psychology and economics. But, marketing is an art as  
16 well. It is easy to say that all elements of marketing should be coordinated or integrated. But,  
17 looking at Demonstrative #5, you can see how hard it is in reality to integrate all aspects of  
18 communication. Then, you have to integrate all communications with the product, distribution, and  
19 pricing.

20 **Q. In your career, have you had the opportunity to examine many companies' marketing  
21 practices and their success or failure?**

22 A. Yes. I have had the opportunity to do this first hand in both my consulting work and case  
23 development. As a case method teacher, every day I walked into class to teach a case, whether it

1 was written by me or one of my colleagues, this is what I was doing. Prior to class I prepared  
2 extensively, understanding the situation, the marketing approach, what was working, what was not,  
3 in order to discuss the next best steps for the firm.

4 **Q. Is there much variation in the quality of marketing by firms?**

5 A. A tremendous amount – even among firms which are “household names.” For some firms,  
6 their marketing capability is a key strength. Even a given firm can vary over time in the quality of  
7 its marketing. For example, through the 1960s, 1970s and up to the mid-1980s, it would be hard to  
8 find many firms who matched Coca-Cola in the excellence of their marketing. But, in 1985, they  
9 made a big mistake replacing traditional Coke with a new formulation. And, they are struggling  
10 today as customer tastes have changed.

11 **IV. PURPOSES OF TOBACCO COMPANY MARKETING**

12 **A. The Cigarette Market**

13 **Q. You generally described marketing as a “comprehensive process” consisting of three**  
14 **stages in which a marketer would: (1) analyze the opportunity and select desired customers;**  
15 **(2) design the marketing program to deliver value, perhaps using marketing intermediaries**  
16 **like retailers; and (3) manage and adapt the marketing program as things change over time.**  
17 **Based on your review of tobacco company documents, do the tobacco companies market in**  
18 **this fashion?**

19 A. Yes. The tobacco companies regularly and systematically analyzed the market to identify  
20 opportunities and threats to their business. They understood the challenge of bringing in new  
21 people including teenagers into the market and they focused on increasing the perceived value of  
22 their products to achieve this. In addition, they marketed to current smokers to help keep them in  
23 the market. The tobacco companies also designed programs to have the dual forces of “push” and

1 “pull” operating as outlined in Demonstrative #4. And, they regularly reviewed and dynamically  
2 adapted their marketing programs over time. They introduced new products such as low tar  
3 cigarettes, adopted their marketing messages and how they were delivered, and innovated with new  
4 programs. They introduced many new products, innovated in marketing approaches, effectively  
5 mixed advertising and promotion activity and got great support from intermediaries they chose to  
6 work with, particularly the retailers of their products.

7 **Q. Is marketing a powerful tool in the cigarette business?**

8 A. Absolutely. Philip Morris in its own Annual Reports has attributed its own success to its  
9 superior marketing capability and its ability to “build a brand.” Cigarette manufacturers have  
10 pursued very sophisticated marketing programs. The Marlboro brand created by Philip Morris is  
11 often mentioned as one of the most valuable brands in the world by third parties.

12 **Q. What have you concluded about Defendants’ marketing skills?**

13 A. In my judgment, the tobacco companies were very skilled in the art and science of  
14 marketing. Based on my examination of the documents in this case and my experience with many  
15 marketing situations, I would say the tobacco companies were very sophisticated practitioners of the  
16 craft of marketing.

17 **Q. You testified that Defendants innovated by introducing new products. Can you  
18 explain?**

19 A. Much is in fact going on in the cigarette market. For one thing, information about the health  
20 impact of cigarettes was changing and impacting customers’ desires. A notable example was the  
21 1964 Report of the Surgeon General. At that time, 61% of the cigarettes smoked in the United  
22 States were filter cigarettes. By 1995, this percentage increased to 97% as firms changed their  
23 product mix given customers’ concerns. In 1967, only 2% of the cigarettes smoked in the United



1 States had 15 milligrams or less of tar by the FTC Method. By 1995, the percentage was 73%.  
2 Firms introduced many product line extensions. Line extensions are new varieties under the same  
3 brand name, e.g. Coca-Cola has Coke, Diet Coke, and Caffeine-free Coke. Philip Morris “line-  
4 extended” Marlboro, introducing Marlboro Lights, Marlboro Extra Lights, and Marlboro Ultra  
5 Lights. Firms also brought out new brands, particularly ones with low tar and nicotine, e.g. Philip  
6 Morris introduced the new brand Merit and later offered line extensions of it. In another vein, new  
7 brands were introduced to appeal to specific segments.

8 **Q. Did Defendants manage their marketing programs over time?**

9 A. Both for their cigarette businesses as a whole and for individual cigarette brands in  
10 particular, the tobacco companies engaged in the managing and adapting of marketing programs  
11 over time. For example, Philip Morris increased its total spending over time and reallocated it  
12 across categories. For example, Philip Morris’s \$1.06 billion in total brand spending on Marlboro  
13 in 1997 increased to \$3.7 billion by 2002. Philip Morris’s direct to consumer spending dipped  
14 slightly from \$591 million to \$583 million over the time period but spending on promotions to  
15 influence what happened at retail skyrocketed from less than \$500 million to over \$3 billion.  
16 2085298045-8095 at 8082 (U.S. Ex. 25,249). Philip Morris’s line extension strategy mentioned  
17 above resulted in multiple products under the Marlboro brand name umbrella as shown in  
18 Demonstrative #6.

19 Over time, more than 20 Marlboro varieties were offered to meet customers’ varying tastes.  
20 As Demonstrative #6 shows, Marlboros were found all across the spectrum of nicotine levels:  
21 Marlboro; Marlboro Lights introduced in the 1970s; Marlboro Mediums introduced in 1992;  
22 Marlboro Extra Lights; and Marlboro Ultra Lights introduced in 1998.

23

1

**Demonstrative #6: Listing of Marlboro Varieties**

Marlboro	Marlboro Medium	Marlboro Lights	Marlboro Extra Lights	Marlboro Ultra Lights	Marlboro Filter	Marlboro Green Menthol Filter	Marlboro Red King
	100's 100's Box	King Size 100's			Hard Box Filter King 25 100's- Hard Box		
	Filter King Filter King Box	100's Box  Filter  Filter Box Filter King 25 Menthol 100's Box Menthol Filter King Box					

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Thus, Philip Morris was dynamically evolving the product line, communications and intermediary support for Marlboro. The marketing planning process of tobacco companies shows this adaptation was an ongoing process.

**Q. You also mentioned that Defendants innovated new marketing approaches. Can you explain?**

A. If you go back to the time of the 1964 Report of the Surgeon General, cigarettes were sold like a lot of other household items. The majority of the communications budget was spent on television, e.g. the industry spent \$170 million of the total \$261 million expenditures on television in 1964. (Federal Trade Commission Report to Congress for 1997) (U.S. Exhibit 76,080). Newspapers and magazine advertisements heavily supported the television spending. Over time, the companies used new methods, partly in response to the marketing restrictions imposed or adopted and also because they saw more effective ways to get their message across. Outdoor

1 advertising (billboards) was brought to new heights by the tobacco companies. The tobacco  
2 companies used event marketing extensively, where a program of communication is built around an  
3 event. Sponsorships are a form of event marketing.

4 **Q. What are sponsorships?**

5 A. A sponsorship is when a firm associates its name (usually for a fee) with an event such as  
6 the Winston Cup in car racing or the Virginia Slims tennis tour. Sponsorships are part of the  
7 integrated communications strategy. All those attending the event or seeing advertising for the  
8 event see the brand name and some of the brand's imagery in a different context. The tobacco  
9 companies also sponsored community events like parades.

10 **Q. Can you give an example of event marketing that is not sponsorship?**

11 A. Philip Morris sponsored what they called "Bar Nights" where they would go into bars to set  
12 up special nights with special signage, contests, and giveaways. They also ran sweepstakes where  
13 winners would have a chance to go to the Marlboro Ranch or the Marlboro Racing School.

14 **Q. Are there examples of other marketing innovations by Defendants?**

15 A. The tobacco companies began using continuity programs. These are programs whereby a  
16 customer collects proof-of-purchase, like a UPC code from the package and with a certain amount  
17 of purchases gets to select a free product from a catalog. The companies also began sophisticated  
18 direct mailing operations.

19 **Q. Are there other marketing innovations in the tobacco industry?**

20 A. Over time, promotions to consumers became very important. This was a way to overcome  
21 customer resistance to price increases and also have buyers "stock up." For example, Marlboro ran  
22 promotions such as "Buy 3, Get 2 Free" and "Buy 2, Get 1 Free," referring to packs of cigarettes.  
23 Distribution of coupons to customers was also important, e.g. in 2001, Marlboro used "45 cents off"

1 and “50 cents off” per pack coupons. They effectively pulled together advertising and promotions  
2 such as these.

3 **Q. What type of distribution did the tobacco companies have?**

4 A. The tobacco companies want their products to be easily available at many retail outlets.  
5 This they achieved by their distribution in convenience stores, drug stores, grocery stores, service  
6 stations, and general merchandise stores. Their products are not only available at these outlets, but  
7 were prominently displayed. They gained good retail visibility.

8 **Q. What is retail visibility?**

9 A. Retail visibility refers to how prominently displayed the products are at the point-of-  
10 purchase. How much shelf-space does the product get? Is it at eye-level so it is easily noticed by  
11 customers? Is it in the middle of dominant traffic flow, e.g. near the cash register where everyone  
12 has to go?

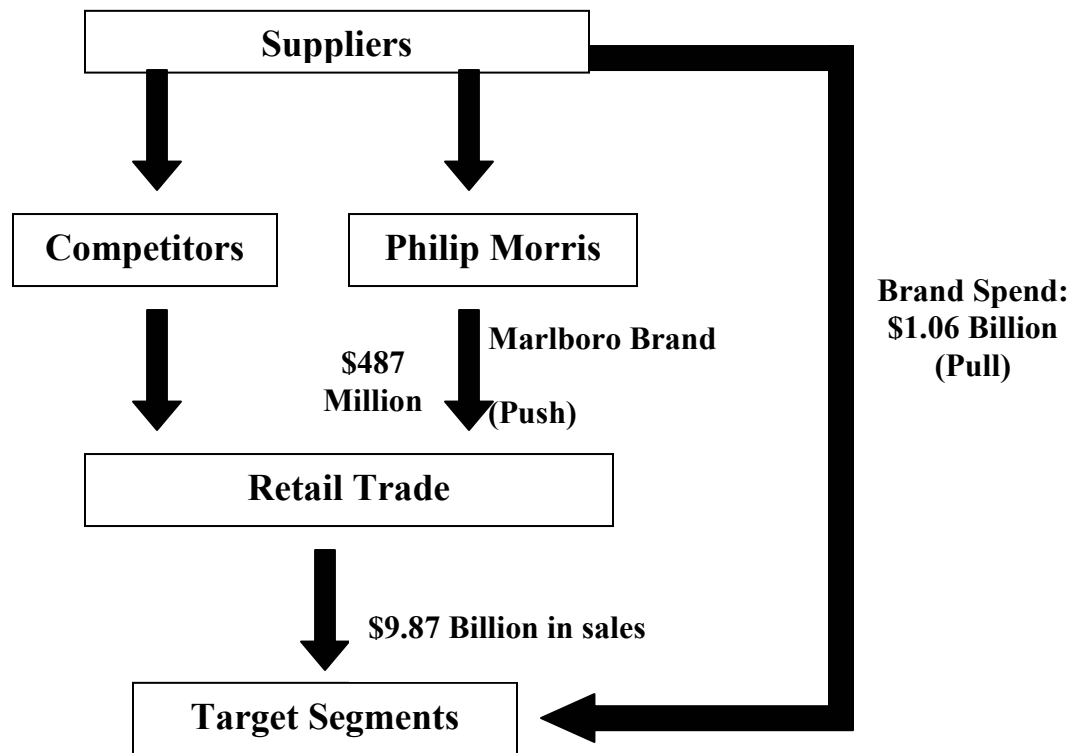
13 **Q. Were the tobacco companies successful in obtaining retail distribution, displays, and**  
14 **support?**

15 A. Yes, extremely successful. For example, in 1999, Philip Morris conducted a research  
16 program which led it to conclude that “Marlboro is clearly the leading brand in terms of perceived  
17 retail visibility, not only as compared to other brands of cigarettes, but across categories as well. . . .  
18 Even brands as big as Coke and Budweiser lag significantly behind Marlboro’s retail visibility, as  
19 perceived by adult smokers.” 2073970827-0848 at 0831-0832 (U.S. Ex. 43,390). Thus, the leading  
20 brand in the cigarette category got better visibility and impact on the people coming in the store  
21 than any other product offered. While Philip Morris’s achievement for Marlboro retail visibility  
22 was the best of all cigarettes at this point in time, other cigarette brands also commanded good shelf  
23 and display space.

1 **Q. What does Demonstrative #7 show?**

2 A. Demonstrative #7 is the Marlboro analog of Demonstrative #4's illustrative example of  
3 Hewlett Packard. Demonstrative #7 shows the actual behavior of Philip Morris for Marlboro – the  
4 best selling cigarette brand in 1997.

5  
6 **Demonstrative #7: Philip Morris Spending on Marlboro – 1997**  
7 **Payments to Trade (“Push”) and Brand Spending to Consumer (“Pull”)**



19  
20 **Q. Could you explain Demonstratives #7 to the Court?**

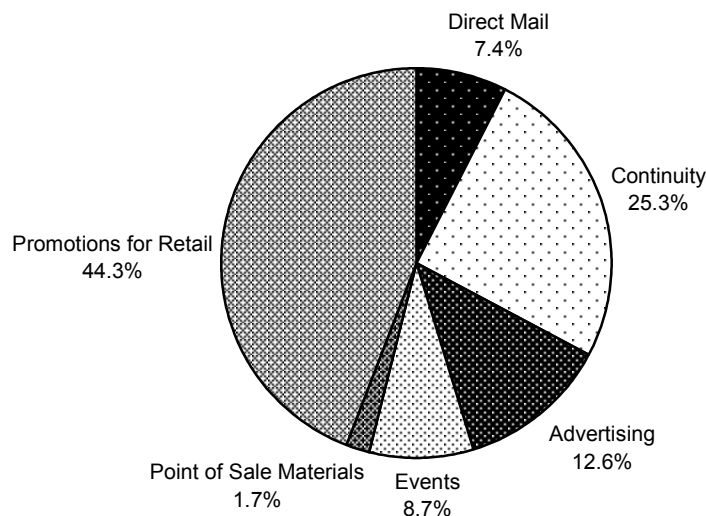
21 A. In 1997, Philip Morris spent \$1.06 billion on the Marlboro brand on what it referred to as  
22 “Total Brand” spending, or spending directed to the customer: this is shown on the right hand side  
23 of Demonstrative #7. This consisted of advertising, events (such as programs run in bars to  
24 promote Marlboro and auto racing sponsorship), and point-of-sale materials (displays, signage,

1 racks at retail outlets) advertising Philip Morris brands. It also included the cost of direct mail, a  
2 continuity program where a customer could turn in “proofs-of-purchase” for items in a catalog, and  
3 promotions such as “buy 2, get one free.” In addition, Philip Morris made \$486.9 million in  
4 payments (\$373.8 million of this to retailers) to support the Marlboro brand at retail, e.g. to  
5 reimburse retailers for offering a lower price than the regular price to customers. This helped to  
6 generate \$9.87 billion in revenues for Marlboro in 1997. 2085296400-6461 at 6412 (U.S. Ex.  
7 45,702).

8 **Q. What does Demonstratives #8 show?**

9 A. In Demonstrative #8, I show a “pie-chart” to capture the breakdown of the spending by  
10 category.

11 **Demonstrative #8: Breakdown of 1997 Philip Morris Spending to Consumer for Marlboro**



12

13 **Q. Could you explain Demonstrative #8 to the Court?**

14 A. Demonstrative #8 covers the breakdown of Philip Morris’s spending on Marlboro’s  
15 consumer marketing in 1997. Note that advertising represents only 12.6% of the total Marlboro  
16 communications spending. This shows how important it is not to confuse advertising and

1 marketing. Advertising is only a small part of even the communications piece of marketing. As  
2 discussed, Philip Morris made many marketing innovations in communication elements such as  
3 continuity programs and events.

4 **Q. Was the \$1.06 billion Philip Morris spent on marketing Marlboro in 1997 an unusually**  
5 **large amount?**

6 A. Marlboro was, at the time, by far the best-selling brand and its marketing spending was well  
7 above that of other cigarette brands.

8 **Q. You said Defendants approach marketing systematically. How do they do this?**

9 A. By creating marketing plans. Plans for individual cigarette brands are typically established  
10 annually. An example is R.J. Reynolds's 1985 Marketing Plan for its Salem brand. The table of  
11 contents for this 264 page document shows the structure and issues considered:

- 12 I. Overview
- 13 II. Business Analysis
- 14 III. Problems and Opportunities
- 15 IV. Business Review
- 16 V. Marketing Objectives
- 17 VI. Marketing Strategy Summary
- 18 VII. Positioning Statement
- 19 VIII. Financial Information
- 20 IX. Product Development
- 21 X. Advertising Plan
- 22 XI. Promotion Plan
- 23 XII. Special Markets
- 24 XIII. Other Marketing
- 25 XIV. Marketing Development
- 26 XV. Action Programs

27  
28 503938209-8212 at 8209 (U.S. Ex. 50,529).

29 What we see here are the first two stages in what I set out earlier as the comprehensive  
30 process of marketing. R.J. Reynolds is analyzing the opportunity (sections II-IV) and then setting  
31 out the integrated marketing plan to accomplish the resulting objectives.

1 **Q. What types of topics are covered in marketing plans?**

2 A. As an example, Philip Morris U.S.A. developed a “Five Year Plan” in 1973 on “Tobacco  
3 Marketing.” The plan covered the following topics and made the observations shown under each  
4 heading:

5 I. “Industry Trends”

- 6 - For 1973, estimated that unit sales in industry would grow by 2.1% to 561 billion  
7 units.  
8 - The 15-19 year old age group, “the primary source of new smokers” will grow only  
9 1.9%.  
10 - State taxes on cigarettes increasing by 9% per year on average.  
11 - Demographic profile of customers attracted by each of the six major companies.  
12 (at 9043-9051)

13  
14 II. “Assessment of Competition”

- 15 - In the last two years, the industry launched 18 new products.  
16 - Total advertisement spending by industry increased to \$219 million; \$90.5 million  
17 in magazines and \$53 million in outdoor were two major mediums used.  
18 (at 9052-9055)

19  
20 III. Line Analysis

- 21 - Increasing responsibilities at retail store level, e.g. expanded promotions, display  
22 requirements will result in increase of “retail manpower strength” of approximately  
23 3% per year over the next 5 years.  
24 - Supermarkets account for 38% of industry sales and will continue to grow in  
25 importance.  
26 - Convenience stores offer the best opportunity for merchandising. They “lean  
27 favorably” toward cigarette merchandising. Philip Morris’s “merchandising  
28 position” within convenience outlets is excellent.  
29 - The sales organization is organized as follows:  
30 Director of sales -  
31 Regional Managers -  
32 Section Sales Managers -  
33 Area Managers -  
34 Division Managers -  
35 Sales Representatives  
36 - Sales representatives are responsible for:  
37 · gaining distribution of brands  
38 · merchandising products of store fixtures  
39 · setting up special displays  
40 · placing point-of-sale advertising  
41 · placing special items, e.g. clocks



- 1 - The arena in which we compete for the consumers' attention "grows ever nearer the  
2 retail cigarette outlet"  
3 - By 1977, Philip Morris projected to have:  
4 6 Regional Sales Managers  
5 24 Section Sales Managers  
6 116 Division Managers  
7 45 Area Managers for Chain Stores  
8 50 Area Managers for Distributors  
9 21 Military Representatives  
10 691 Sales Representatives  
11 - Current merchandising techniques will continue, e.g. paying for shelf space and  
12 counter displays.  
13 - Vending machines account for 20% of industry sales.  
14 - Chain drug stores account for 60% of industry sales.  
15 - Media: mass oriented magazines, e.g. *Saturday Evening Post*, *Look*, *Life*, *Saturday*  
16 *Review*, *This Week* disappearing. New publications are more specialty oriented.  
17 Outdoor is an effective vehicle to build reach.  
18 (at 9057-9091)  
19

20 IV. Brand Analysis

- 21 - New product introductions important though difficult post broadcast ban.  
22 - Present five year plan for individual brands:  
23 1. Marlboro  
24 - "Marlboro's demographics reflect the brand's youthful appeal."  
25 - "Marlboro's advertising continues to be the primary tool in  
26 motivating the consumer."  
27 - "Our advertising, if supported at a significant dollar expenditure,  
28 will continue to be a major determinant of Marlboro's future success."  
29 - Similar presentation for:  
30 2. Benson and Hedges  
31 3. Virginia Slims  
32 - "The number of women smoking is not declining; women are  
33 haveing [sic] less success in their efforts to stop smoking." Therefore,  
34 "if brand advertising continues to deliver brand image" the growth  
35 rate should continue.  
36 - Virginia Slims is a "most dynamic brand" and "pressure must be  
37 kept up on the consumer."  
38 4. Parliament  
39 5. Alpine  
40 6. Multifilter  
41 (at 9093-9162)  
42

43 V. Economic Forecast

- 44 - U.S. population by age  
45 (at 9164-9168)  
46

1 1005159031-9168 (U.S. Ex. 26,207).

2 **B. Defendants' Public Statements About the Purpose of Their Marketing Activities**

3 **Q. Did the cigarette manufacturers ever publicly state the purpose of their marketing**  
4 **activities?**

5 A. Yes, quite frequently.

6 **Q. What did they say publicly?**

7 A. Their message was quite consistent. It was that all of their marketing activities had one and  
8 only one purpose: to impact the brand choice of adults who had already chosen to smoke. There are  
9 two elements to brand choice. The first is to influence someone smoking another brand to switch to  
10 your brand. The second is to keep those people who are smoking your brand loyal to you rather  
11 than switch to a competitor. The tobacco companies also regularly stated that they did not wish to  
12 impact teenagers and in fact only marketed to adults. The tobacco companies expressly stated they  
13 had no interest in either (1) increasing the likelihood of anyone's beginning to smoke or (2)  
14 decreasing the likelihood that a current smoker would quit.

15 **Q. Can you give any examples from the 1970s where Defendants made such public**  
16 **statements?**

17 A. Yes. In 1979, the Tobacco Institute's pamphlet "Fact or Fancy?" stated: "the tobacco  
18 industry does not try to persuade anyone to smoke. Nor does it discourage anyone who makes up  
19 his or her mind to quit. Smoking is an adult custom, to be decided by mature, thinking persons."

20 TIMN0133740-3798 at 3786 (U.S. Ex. 21,280).

21 Also in 1979, the Secretary of Health, Education and Welfare received letters from both R.J.  
22 Mulligan, the President of Liggett, and C.I. McCarthy, the Chairman of Brown & Williamson, to  
23 this effect. Specifically, Mulligan wrote in a letter dated May 18, 1979: "this Company does not

1 promote or advertise its cigarette products to children or young people under twenty-one years of  
2 age, nor are promotional activities and advertising aimed at encouraging such children and young  
3 people to begin smoking or even continue smoking.” 1003058023-8024 at 8023 (U.S. Ex. 20,149).

4           McCarthy of Brown & Williamson wrote in a letter dated June 1, 1979: “We maintain a  
5 strict policy against promoting cigarettes to persons under 21 years of age.” 660008960-8961 at  
6 8960 (U.S. Ex. 21,524).

7 **Q.     What do the Defendants’ statements you have just cited communicate to the public?**

8 A.     They state two important things that the tobacco companies claim not to do. First, they  
9 declare that they do not market to anyone under the age of 21. Second, they say the tobacco  
10 companies make no attempt to encourage anyone to begin smoking nor do the tobacco companies  
11 try to deter anyone from quitting. This means there is only one thing, according to their statements,  
12 that the tobacco companies marketing aims to do. That is to influence the brand choice of someone  
13 who is already smoking.

14 **Q.     Can you cite any instances from the 1980s where the Defendants made similar public**  
15 **statements?**

16 A.     Again, there are many but I will just cite a few. In fact, it is the tobacco companies public  
17 position today that nothing they do impacts the number of people smoking at a given time but rather  
18 impacts only just the brand choice of those who smoke. In a 1981 pamphlet entitled “Smoking  
19 Issues,” British American Tobacco stated: “BAT and other major tobacco companies have adopted  
20 a policy of neither promoting their products to children nor of making their cigarettes attractive to  
21 them.” 109358710-8719 at 8716 (U.S. Ex. 34,861).

22           In 1984, R.J. Reynolds stated in a document entitled “Questions and Answers”: “We do not  
23 target our advertising to minors. . . . We do not develop marketing plans against young people, we

1 do not advertise to young people, we do not conduct consumer surveys among young people, and  
2 we have no intention of ever making any efforts to bring them into our market.” 502276627-6637  
3 at 6633 (U.S. Ex. 20,698).

4 In 1984, the Tobacco Institute spoke for the industry saying: “we do not want youngsters  
5 smoking cigarettes. That has been our policy for many years and it is a policy which has guided  
6 and will continue to guide our industry’s marketing, promotion and advertising practices.”  
7 TIMN0053189-3191 at 2189 (U.S. Ex. 77,043).

8 A Tobacco Institute publication from January 1989 entitled “The Anti-Smoking Campaign:  
9 Enough is Enough” stated: “Fact: the purpose and function of cigarette advertising is to maintain  
10 brand loyalty or promote brand switching among people who already smoke.” 507635309-5348 at  
11 5331 (U.S. Ex. 66,484).

12 **Q. What do the Defendants’ statements you have just cited communicate to the public?**

13 A. They show how consistent the companies have been over the years in saying their marketing  
14 is meant to have no impact on young people and that the only impact is on the brand choice of those  
15 who already smoke.

16 **Q. Can you cite any examples from the 1990s showing that Defendants continued to make  
17 similar public statements?**

18 A. Again, there are many but I will just cite a couple. In 1991, a Philip Morris advertisement  
19 read: “smoking is an adult decision. . . . Philip Morris USA does not market cigarettes to children  
20 because smoking is an adult choice.” 2022881503-1503 (U.S. Ex. 20,365).

21 Another example is a British American Tobacco statement from 1993 in a document entitled  
22 “Statement of Business Conduct” that “tobacco advertising and marketing programs are used to

1 cause existing adult smokers to switch from one brand to another and are not to encourage young  
2 people to start smoking.” 503074962-4985 at 4979 (U.S. Ex. 21,869).

3 At the Minnesota tobacco trial in 1998, Lynn J. Beasley, Executive Vice President for  
4 Marketing at R.J. Reynolds, was asked if “getting new smokers into the market” was ever an  
5 objective of R.J. Reynolds’s marketing. She replied: “No it has never been.” Testimony of Lynn J.  
6 Beasley, State of Minnesota v. Philip Morris Inc., et al., April 20, 1998, C1-94-8565, 35:16-20.

7 **Q. What do the Defendants’ public statements you have just cited communicate?**

8 A. They show the continuation over another decade of the many public statements that none of  
9 the millions (and recently billions) of dollars the tobacco companies spent on marketing every year  
10 – on new products, on gaining retail visibility, on coupons to provide “cents-off” at retail, on  
11 advertising, on having a large sales force, on public relations – have any impact at all on the number  
12 of smokers at a given time. The tobacco companies claim absolutely no interest in or effort to gain  
13 new smokers. And, the tobacco companies declare explicitly that they do not market to young  
14 people, new smokers, or teenagers in any way.

15 **Q. Have Defendants changed their public position on the purpose of their marketing since**  
16 **1998 when they entered into the Master Settlement Agreement?**

17 A. No. The companies still declare the industry position that smoking is an adult custom and  
18 the only impact of their cigarette marketing is to influence the brand choice of adults who have  
19 already chosen to smoke, i.e. tobacco companies publicly state that they engage in marketing for  
20 brands only to draw smokers from other brands to their brand and to protect their brand from similar  
21 incursion by others.

22 **Q. Dr. Dolan, did you have a chart created that shows many of Defendants’ public**  
23 **statements?**

1 A. Yes. Because of its length, it is attached at the end of my testimony and labeled  
2 Demonstrative #9.

3 **Q. Does your Demonstrative #9 include any of Defendants' public statements that the**  
4 **cigarette market is a "mature market"?**

5 A. Yes. For example, I cite to a public statement made by Tobacco Institute spokesperson  
6 Brennan Dawson on *CBS News Nightwatch*, broadcast on February 27, 1990. Dawson stated:  
7 "advertising doesn't cause smokers . . . And advertising in a mature market doesn't create the urge  
8 to run out and buy a pack of cigarettes." CORTI1731-1738 at 1734, 1737 (U.S. Ex. 87,735).

9 **Q. Have Defendants described the cigarette market as a "mature market" in other**  
10 **contexts?**

11 A. Yes. Defendants described the cigarette market as a "mature market" in their Final  
12 Proposed Findings of Fact, filed July 1, 2004, citing to their expert Richard Semenik. Defendants'  
13 Findings state: "Dr. Semenik explains that cigarettes, as a 'mature product,' for [sic] advertising and  
14 marketing expenditures cannot and do not affect primary demand." Defendants' Final Proposed  
15 Findings of Fact (R. 3416; filed July 1, 2004) at Chapter 6, ¶ 256.

16 **Q. What does the term "mature market" mean in a marketing context?**

17 A. Some people use it to refer to a market in which not much is going on in terms of changes.  
18 As I mentioned above, some categories are "pretty stable" in the sense that no new products are  
19 being introduced, customers pretty much stay the same and they routinely purchase the same  
20 products. These markets tend to be situations in which the buyer is a business, not an individual.  
21 Often the buyer and seller will negotiate a long-term contract because neither the products available  
22 nor the buyer's requirements are changing. The need to adapt your marketing program due to  
23 market change is by far a more common phenomenon than the market maturity phenomenon

1 because more often new customers enter the market, existing customers' needs change, new  
2 varieties of product are offered and the rest of the marketing program is adapted.

3 **Q. Is a mature market one in which the overall size of the market is declining over time?**

4 A. No. Some people make that mistake. You can have a market where unit sales are declining  
5 over time but the market is still quite dynamic.

6 **Q. Would you describe the cigarette market as a "mature market"?**

7 A. No.

8 **Q. Why not?**

9 A. I regard it as a poor characterization to describe the cigarette market as a mature market. I  
10 do realize that the general trend in consumption of cigarettes per capita in the United States has  
11 been on a decline since 1973, but to characterize it as a mature market misses the fact that new  
12 consumers are entering the market all the time, smokers' concerns and attitudes are changing, the  
13 tobacco companies are introducing new brands, and many smokers are actively trying to quit. It's a  
14 very dynamic market with the trend of total marketing spending by the tobacco companies on a  
15 steady increase. For example, since 1994, Defendants' marketing spending went from \$6 billion to  
16 almost \$12 billion in 2001 – as noted by Defendants in their opening statement in this case.

17 **C. Actual Purposes of Defendants' Cigarette Marketing**

18 **Q. Now that you've discussed some of Defendants' public statements about their**  
19 **marketing, what conclusions have you reached about the purpose and impact of Defendants'**  
20 **marketing?**

21 A. The tobacco companies' cigarette marketing had many purposes and impacts. One aspect of  
22 the tobacco companies' marketing was directed to and did impact brand choice. Marketing could  
23 reinforce a brand's value to a user, thus decreasing the likelihood that the user would switch to

1 another brand. It could also increase the attractiveness of a brand, increasing its ability to draw  
2 current smokers away from his or her brand. But the purpose and impact of the tobacco companies'  
3 marketing was broader than just brand switching among adult smokers. In addition to impacting  
4 brand choice, the tobacco companies' marketing activities created a perception of value and  
5 convenience in acquiring and using the product that also: 1) brought new people including teenagers  
6 into the market; 2) kept people from quitting; and 3) increased the average rate of use of smokers.

7 **Q. Did cigarette manufacturers face any special challenges in their marketing of**  
8 **cigarettes?**

9 A. Yes. There were at least four characteristics of cigarettes and the cigarette market that  
10 presented special challenges for Defendants to deal with in their marketing. The first was that there  
11 is a narrow age window for attracting someone into the product category. Market research showed  
12 all the tobacco companies that, unless an individual began smoking by age 18, it was very unlikely  
13 that he or she would ever start. So there was only a limited time in which to induce a person to  
14 begin smoking.

15 Second, most potential customers when first trying smoking did not enjoy the taste or  
16 product experience. Thus, the tobacco companies knew that other benefits of smoking, like its role  
17 in showing your independence or maturity, had to be established in the mind of the consumer.

18 Third, and again this is something which was well known to the cigarette companies from  
19 their own market research, cigarettes are a product category with high brand loyalty. This means  
20 that once a person picks a particular brand, he or she tends to stick with it. Brand switching, i.e. a  
21 consumer switching from one brand to another, is a pretty uncommon phenomenon in the cigarette  
22 market. So, it is a challenge in the sense that if a competitor gets a new customer, it will be hard for  
23 another tobacco company to lure them away.



1 Fourth, the vast majority of those who do start smoking eventually want to quit. This  
2 potential problem for cigarette manufacturers was somewhat offset by the addictive nature of  
3 cigarettes, making it difficult to quit. But still, this desire to quit presented an added burden or task  
4 to cigarette marketers as compared to most product categories.

5 **Q. Given these four known factors, how did Defendants approach marketing?**

6 A. From these four aspects, which the tobacco companies understood quite well, they  
7 developed an understanding of what it would take to be successful. Given that once the tobacco  
8 companies got someone to smoke their brand, they were likely to keep them smoking that brand, the  
9 tobacco companies wanted to get people as they entered the market. Second, the time to get  
10 someone to enter the market was as a teenager. If the tobacco companies did not get a person to  
11 begin smoking and begin smoking their brand as a teenager, they likely never got that person as a  
12 customer. This showed the importance of “starters” to the tobacco companies. Finally, the tobacco  
13 companies had to be aware of the fact that there was the chance a smoker would quit smoking and  
14 they had to counteract that. This was the model of success the tobacco companies pursued quite  
15 systematically as shown in their marketing plans.

16 **Q. Was encouraging brand switching among adult smokers the sole purpose of**  
17 **Defendants’ marketing?**

18 A. No, encouraging brand switching among adult smokers was not the sole intended impact of  
19 the marketing programs of cigarette manufacturers. Based on my review and analysis, both the  
20 intended and actual impact were broader – increasing the perceived value of smoking to induce  
21 teenagers to begin smoking, attracting them as “starters,” and encouraging them to remain smokers;  
22 increasing the rate at which smokers consumed cigarettes; and to a lesser extent, restarting quitters.

23 **Q. What was the actual impact of Defendants’ marketing programs?**

1 A. Based on my review and analysis, the impact of marketing by cigarette manufacturers went  
2 beyond brand selection to increasing the perceived value of smoking to induce teenagers to begin  
3 smoking and remain smokers. Their marketing also was effective in increasing the consumption  
4 rate of current smokers and drawing back quitters into the market.

5 **Q. Have you had a demonstrative prepared to illustrate the purposes of Defendants’**  
6 **marketing?**

7 A. Yes, it is Demonstrative #10.

8

9 **Demonstrative #10: Cigarette Marketing Purposes**

10

11

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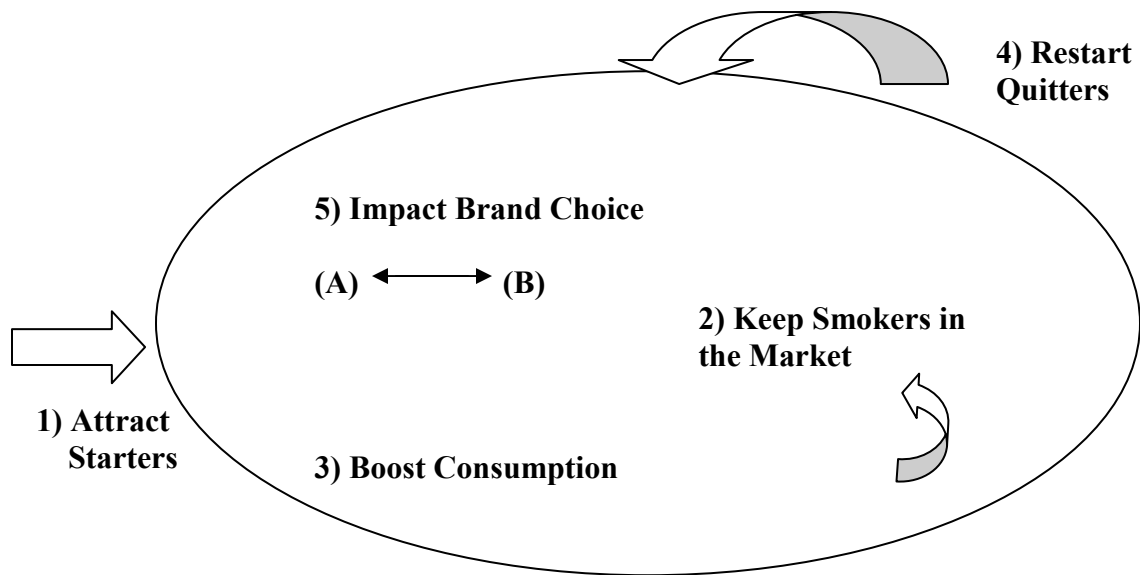
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23 **Q. Can you explain Demonstrative #10 to the Court?**

24 A. As Demonstrative #10 shows, in my judgment, the intended and actual impact of the  
25 tobacco companies’ marketing went beyond brand choice. While this is a figure of my  
26 construction, one can find similar diagrams in the company documents. By publicly stating that the

1 only impact (intended and actual) of their marketing is to impact brand choice, the manufacturers  
2 are stating publicly they do not care in any way about the size of the market overall, i.e. the number  
3 of cigarettes consumed in a year. The tobacco companies publicly say that they are not concerned  
4 with or attempt in any way to influence:

- 5 1. the number of new people including teenagers entering the market and becoming smokers  
6 (“Attract Starters” in Demonstrative #10)
- 7 2. the number of current smokers who quit (“Keep Smokers In the Market” in Demonstrative  
8 #10)
- 9 3. the consumption rate of people who do smoke (i.e. the number of cigarettes per day) (“Boost  
10 Consumption” in Demonstrative #10)
- 11 4. the number of people who have quit “restarting” as smokers (“Restart Quitters” in  
12 Demonstrative #10)

13 In my judgment, contrary to their repeated public statements which I have cited from the  
14 1970s, 1980s and 1990s, the companies did seek to influence the overall number of cigarettes sold  
15 in a time period by impacting each of these four factors. This is in addition to the “Brand Choice”  
16 purpose, which is shown as purpose #5 in Demonstrative #10.

17 **Q. How did Defendants seek to influence the overall number of cigarettes sold by**  
18 **impacting these four factors?**

19 A. Through their marketing activities. First, they used a wide variety of marketing approaches  
20 to establish the value and appeal of smoking. They knew precisely the teenage groups likely to start  
21 smoking and marketed to these “starters.” Once a person started, the tobacco companies sought to  
22 provide reassurances that any negative health issues were really in doubt and “not proven” to keep  
23 that smoker smoking. They worked to provide the greatest opportunity for smoking and to

1 encourage the public to accommodate smokers to keep smoking rates from dropping. Though many  
2 smokers expressed a desire to quit, most attempts to quit were unsuccessful. This was due to the  
3 addictive nature of the product which the companies designed and the health reassurances they  
4 offered. In this way, and in the same ways used to deter smokers from quitting in the first place,  
5 companies brought temporary quitters back into the market.

6 **Q. Can you explain briefly how attracting starters is a purpose of cigarette marketing?**

7 A. The tobacco companies knew that if they did not attract starters, the market would contract  
8 as current smokers died or quit. Marketing helped them establish the intangible benefits of smoking  
9 to the young. Tobacco companies knew that with marketing, cigarette smoking becomes not only a  
10 physical experience but also is an expression of adulthood and a contributor to one's self image.  
11 The tobacco companies understood the special motivations of those they knew to be most likely  
12 "new" smokers - teenagers.

13 **Q. Can you explain briefly how boosting consumption as you show in Demonstrative #10  
14 is a purpose of the tobacco companies' cigarette marketing?**

15 A. A smoker's rate of use of cigarettes is a function of a number of things. The tobacco  
16 companies sought to make sure that a smoker never "ran out" of cigarettes. They did this by  
17 making cigarettes available at an extensive array of retail outlets. Also, as mentioned above, they  
18 offered deals on purchases of multiple packs so the smoker would maintain an inventory at home.  
19 They fought excise tax increases to keep the price down, making it cheaper to smoke than it  
20 otherwise would be. Defendants knew from research that tax increases had an important impact on  
21 consumption rates. They also worked to afford the smoker as many opportunities to smoke as  
22 possible by defeating proposals on smoking bans, e.g. bans at work and in restaurants. They  
23 worked to keep smoking a "socially acceptable" phenomenon.

1 **Q. Can you explain briefly how keeping users in the market is a purpose of the tobacco**  
2 **companies' cigarette marketing?**

3 A. Cigarette smoking is kind of an unusual practice in that most of the people who do it want to  
4 quit. Defendants knew this and wanted to decrease this urge to quit. They did this by marketing to  
5 downplay the health risks of cigarette smoking, offering low tar brands to provide what they called  
6 "health reassurance" even though they knew low tar cigarettes were in fact no better for you than  
7 regular cigarettes, and offering supportive advertising messages.

8 **Q. How important was successful marketing to Defendants?**

9 A. It was vital. Just consider how valuable a "pack-a-day" customer is to a cigarette  
10 manufacturer. Using numbers from R.J. Reynolds' website, the average retail price of a package of  
11 cigarettes in 2003 (through November) was \$3.76. \$1.74 of this represented taxes of various forms  
12 meaning \$2.02 was left for the wholesaler/retailer ("the intermediaries") and manufacturer. The  
13 revenue to the manufacturer was \$1.71 per pack, making a pack-a-day customer worth \$661 per  
14 year in revenues. If a customer smoked for 50 years, he or she would represent \$33,000 in revenues  
15 to a firm.

16 ***D. Defendants Market to Starters Who Are Primarily Teenagers***

17 ***1. Defendants Set Marketing Objectives Aimed At Starters***

18 **Q. We will cover each of Defendants' efforts in more detail. Let's begin with the**  
19 **attraction of new people into the market from your Demonstrative #10. You have just**  
20 **testified that Defendants marketed their cigarettes to starters. What do Defendants mean by**  
21 **"starters"?**

22 A. The term "starters" is used in quite a few of the Defendants' documents. A starter is  
23 someone who is new to the market, someone who begins smoking. The companies knew that the

1 outcome of their marketing was that “starters” were typically teenagers. That’s why they publicly  
2 claimed to have no interest in the phenomenon and claimed to do absolutely nothing which  
3 increased anyone’s likelihood of beginning to smoke.

4 **Q. What is your basis for concluding that cigarette manufacturers market to starters who**  
5 **are primarily teenagers?**

6 A. I have based this conclusion on my examination of internal company documents. While the  
7 companies’ public statements during this time period were that their marketing programs were not  
8 directed to starters, the documents including tobacco company marketing plans I have reviewed  
9 show otherwise. Companies typically created annual marketing plans setting out objectives for the  
10 year. I described the contents of a typical plan earlier. These plans were the basis for discussion  
11 within the company and approved by senior management to guide the activities for the year.

12 **Q. Can you provide an example of such a document which indicates a concern or**  
13 **objective with respect to new smokers or “starters”?**

14 A. Yes. R.J. Reynolds’s “1969 Camel Filter Marketing Plan” listed under “Objectives” for  
15 1969: “Camel Filter’s relative ability to attract switchers and new smokers should be maintained at  
16 present levels” and identified R.J. Reynolds’s “Sales Promotion Plan Strategy” as: “[t]o attract and  
17 hold new male smokers.” 502324051-4079 at 4062, 4067 (U.S. Ex. 49,120).

18 **Q. What is important about this plan?**

19 A. In this marketing plan, R.J. Reynolds is saying that its objective for Camel Filter is to attract  
20 two distinct groups. First are “switchers,” i.e. people who are already smoking other brands who  
21 R.J. Reynolds wants to get to switch to Camel. The plan then goes on to name explicitly and  
22 unambiguously a second group, i.e. “new smokers,” who R.J. Reynolds also wants to attract to  
23 smoking its brands. This is a direct contradiction of their public statements about having no interest

1 in new smokers. This document does not itself reference an age of the “new smokers.” However,  
2 Defendants knew very well who these new smokers were. As I mentioned earlier, there was a very  
3 narrow window of time during which to attract people. The tobacco companies know that if you  
4 didn’t start smoking as a teenager, you were unlikely to ever start.

5 **Q. How do you know that Defendants were aware of this fact?**

6 A. The documents show that Defendants both researched this point and cited research carried  
7 out by others. As a specific example, a widely circulated report at R.J. Reynolds noted that “less  
8 than one-third of smokers start after age 18.” 507241613-1838 at 1617 (U.S. Ex. 20,774).

9 **Q. Can you provide another example of a document showing that Defendants set**  
10 **marketing objectives aimed at teenagers?**

11 A. Yes. R.J. Reynolds’s “Winston Menthol 1969 Marketing Strategy” noted that the “brand’s  
12 marketing effort will be aimed at . . . [one of three listed] Appealing to new adult smokers.”  
13 501161582-1582 at 1582 (U.S. Ex. 48,728).

14 **Q. Why do you point to this strategy document?**

15 A. Again, while R.J. Reynolds is saying publicly it has no interest in new smokers, here is a  
16 plan for one of its brands which clearly states that the marketing effort for Winston Menthol is to be  
17 “aimed at” new smokers. In this case, it does say “new adult smokers” but the document again  
18 shows that R.J. Reynolds’s marketing objective is more than just brand switching, and the company  
19 knows that the majority of new smokers are teenagers.

20 **Q. Can you provide another example?**

21 A. Yes. An R.J. Reynolds “Winston SKS [Super King Size] 1969 Marketing Strategy” state  
22 that the “marketing effort will be directed at . . . [one of four listed] Attracting new adult smokers  
23 to Winston SKS.” 501161585-1585 at 1585 (U.S. Ex. 48,729).

1 **Q. How is this marketing strategy document important?**

2 A. This is similar to the last R.J. Reynolds strategy document I cited. The previous marketing  
3 plan was for Winston Menthol. This is for Winston Super King Size saying that R.J. Reynolds's  
4 aim is attracting "new" smokers.

5 **Q. Can you provide another example?**

6 A. Yes. A July 16, 1969 R.J. Reynolds marketing plan entitled "1970 Salem Brand Marketing  
7 Plan Final Draft" indicated that "[t]he brand's marketing effort will be directed at . . . [one of five  
8 listed] Appealing to new adult smokers entering the market for the first time," and that "Salem must  
9 continue to recruit new young adult smokers entering the cigarette market for the first time. . . . this  
10 may be Salem's best potential source of new users to replace those who leave the brand by 'giving  
11 up' smoking altogether." 500782015-2026 at 2017, 2019 (U.S. Ex. 48,445).

12 **Q. What is the relevance of this marketing plan?**

13 A. This plan is important because it talks about another R.J. Reynolds brand – Salem – and  
14 shows that with regard to that brand, at about the same time, R.J. Reynolds had a "new smoker"  
15 objective. The document makes explicit who R.J. Reynolds's marketing efforts will be "directed  
16 at." The plan makes it very clear as it not only says that R.J. Reynolds must "recruit new" people to  
17 smoke Salem but also goes on to elaborate that these should be people "entering the cigarette  
18 market for the first time. . . ."

19 **Q. Can you provide another example?**

20 A. Yes. R.J. Reynolds's "Salem Cigarettes 1971 Marketing Plan" dated June 30, 1970 stated  
21 under the heading "Marketing Strategy Summary" that "[t]he Salem brand's marketing efforts will  
22 be directed at: . . . [one of five listed] Appealing to the young adult smokers (under 25) entering the  
23 market for the first time." The plan also noted, in reference to the above group, "this source of new



1 business should be protected and, if possible, expanded . . .” 500781987-2014 at 1994, 2006 (U.S.  
2 Ex. 48,444).

3 **Q. How is this marketing plan important?**

4 A. In this Salem plan dated June 30, 1970, again, R.J. Reynolds’s effort for Salem is to be  
5 directed to those “entering the market for the first time.” This shows that the recognition of the  
6 importance of those entering the market (who were known to be predominantly teenagers) as a  
7 “source of new business” was not just a fleeting thing. Rather, it was a consistent theme. There  
8 was regular recognition of the importance of “starters” and a brand’s ability to generate them.

9 **Q. Did this Salem objective continue into the future?**

10 A. Yes. R.J. Reynolds’s “Salem 1971 Annual Marketing Plan” stated that the “[m]arketing  
11 effort will be directed to . . . [one of six listed] Appealing to young adult smokers who are ‘new’ to  
12 the market.” One of four promotion plan strategies listed was “[m]aintaining competitive pressure  
13 in the market place to capture new smokers . . .” 501140435-0494 at 0445, 0461 (U.S. Ex. 48,724).

14 **Q. Why do you point to this plan?**

15 A. This is the Salem plan for 1971. So, in the last three documents we have seen R.J. Reynolds  
16 plans dated 1969, 1970, and 1971 make a consistent effort directed to those “new to the market.”

17 **Q. Was this directing of efforts to those “new to the market” a continuing phenomenon  
18 for other R.J. Reynolds’s brands as well as Salem?**

19 A. Yes. Picking up with Winston, for which we earlier looked at 1969 plans, an August 24,  
20 1971 document prepared for R.J. Reynolds by the William Esty Co., Inc. entitled “Winston 1972  
21 Media Objectives and Spending Strategy” stated that “Winston will allocate 10% of total working  
22 media to major market areas which contain the highest concentration of ‘new smokers’.” Under the

1 heading “Spending Summary,” the plan suggested allocating 30% of total budget to “[a]ttract new  
2 users.” 500729229-9238 at 9235, 9238 (U.S. Ex. 48,355).

3 **Q. Can you provide another example?**

4 A. Yes. R.J. Reynolds’s “Total Winston 1977 Marketing Plan Summary” listed as part of the  
5 “Marketing Strategy”: “Utilize advertising, the ‘Candid’ campaign [an advertising campaign] and  
6 media as the principal vehicle for strengthening the loyalty of current smokers and for persuading  
7 new/competitive smokers to switch to Winston.” 500372548-2560 at 2550 (U.S. Ex. 48,188).

8 **Q. Why do you point to this marketing plan?**

9 A. Here we jump ahead six years with Winston to 1977. There is a mention of using  
10 advertising to “strengthen loyalty of current smokers” and getting “competitive smokers to switch to  
11 Winston.” These are the two components of the single brand switching goal stated by Defendants  
12 as the sole impact of their marketing. But their public statements say brand switching is the only  
13 goal. This document, continuing the theme that started with documents from 1969 referenced  
14 above, explicitly states another purpose of “persuading new” smokers to smoke Winston.

15 **Q. Can you provide another example from another brand?**

16 A. Yes. An R.J. Reynolds document entitled “Kool Family Utopian Objectives, 1979-1985”  
17 emphasized that “Kool must achieve a user image that is acceptable to the majority of young adult  
18 and starter smokers.” 680559149-9162 at 9149 (U.S. Ex. 54,048).

19 **Q. How does this document inform your conclusions?**

20 A. The objective is to get an image that resonates not with “current adult smokers” who are the  
21 only group that Defendants regularly say they are concerned with in their marketing efforts. Here,  
22 it quite explicitly says an added, important objective is the individual who is a “starter.”

1 **Q. Earlier you quoted the testimony of Lynn Beasley, Executive Vice President for**  
2 **Marketing at R.J. Reynolds, at the 1998 Minnesota trial, stating that R.J. Reynolds never had**  
3 **an objective of “getting new smokers into the market.” What conclusion do you draw from**  
4 **this testimony in light of these R.J. Reynolds documents?**

5 A. I don’t believe one can reconcile that the Executive Vice President said that R.J. Reynolds  
6 never sought new smokers or directed marketing activity to this end with these documents. It is an  
7 example of the disconnect between their public statements and actual internal plans.

8 **Q. You have provided some examples from R.J. Reynolds. Did other companies have**  
9 **similar documents?**

10 A. Yes. For example, a British American Tobacco Company document from 1985 entitled  
11 “The Current Group R&D Projects” stated under the heading “BAT: General Marketing Policies”  
12 that “[o]verall BAT strategy will be market specific and multi-brand but within each major market  
13 major effort behind one brand aimed at starters/young adults.” 109870521-0561 at 0536 (U.S. Ex.  
14 21,925).

15 **Q. Why do you point to this document?**

16 A. BAT is saying that in “every major market” – this means geographic region around the  
17 world – they would have a brand “aimed at” starters. It is another concrete example of how the  
18 tobacco companies’ public statements about having no interest in starters are simply not true.

19 **Q. Can you provide an example from any other companies?**

20 A. Yes. Lorillard’s “Newport 1992 Strategic Marketing Plan” stated that the Newport brand  
21 should position itself as “[t]he leading entry level, full flavor cigarette brand in the freshness  
22 segment.” The marketing plan also stated that the “Consumer Sales Promotion Objective” was  
23 “delivering impactful incentives . . . to reward current smokers and generate interest and trial

1 amongst entry-level smokers and competitive users.” 92011118-1156 at 1125, 1137 (U.S. Ex.  
2 22,352).

3 **Q. How is this plan significant?**

4 A. Newport was a Lorillard menthol brand that had the freshness/coolness image like R.J.  
5 Reynolds’s menthol brand Salem. Here, Lorillard distinguishes between two groups: (1)  
6 competitive users and (2) those entering the market. Lorillard’s consumer promotions for Newport  
7 were designed not only to “reward current smokers” and appeal to “competitive users” but also to  
8 “generate interest and trial amongst entry-level smokers.” Newport sought to be the leading “entry  
9 level” brand in the freshness or menthol segment. Impacting the “entry” process is one of  
10 Lorillard’s key concerns. Again, companies understood these “entry” people were predominantly  
11 teenagers.

12 **Q. Can you sum up the many documents you’ve just discussed about starters?**

13 A. The tobacco companies could not be more clear and consistent in their public statements  
14 about their proclaimed purpose and impact of their marketing programs. Their public statements  
15 are clear: the brand choice impact is the one and only one impact of their marketing. No one who is  
16 not already smoking is supposed to be impacted in any way. No teenager is to be impacted by any  
17 of their marketing. Despite industry marketing spending in the billions of dollars in recent years, no  
18 one is supposed to be more likely to begin smoking due to any marketing efforts of the companies  
19 or their retail partners. While these are their public statements, the internal documents tell a  
20 different story. Marketing efforts are directed to (quoting from these documents, cited above) those  
21 who are: “new smokers”; “entering the market for the first time”; “new to the market”; “new users”;  
22 “starter smokers”; “starters”; “entry-level smokers.” The documents show that the tobacco  
23 companies consistent public statements about the purpose of their marketing are false.

1                                   2.       *Defendants Track Starters*

2   **Q.     Why were “starters” so important to the tobacco companies?**

3   A.     First, the tobacco companies needed new people to replace those leaving the market due to  
4   death or quitting. Second, they knew that the brand loyalty phenomenon was operating – so a  
5   captured “starter” was likely to stay with you and be a source of profit for a long time.

6   **Q.     What impact did this recognition of brand loyalty and the importance of starters have  
7   on the tobacco companies?**

8   A.     It led them to measure and track performance on starters, e.g. how many they were  
9   attracting. And they attached the long-term success of a brand to how well it did in attracting  
10   starters.

11   **Q.     Is this reflected in the Defendants’ documents?**

12   A.     Yes. In marketing plans that I have reviewed, the tobacco companies set out objectives for  
13   starters and described their importance. Some of these plans show that tobacco companies tracked  
14   their performance via the percentage of their volume of cigarettes sold attributable to new starters  
15   and the share of starters it attracted.

16   **Q.     Can you provide an example of such a plan?**

17   A.     Yes. A 1973 Camel Filter Marketing Plan included a chart describing “Source Of  
18   Gain/Loss” for Camel Filter, these sources of gains and losses included: “Stopped Smoking” and  
19   “New Smokers.” 501496947-6983 at 6959 (U.S. Ex. 48,902).

20   **Q.     What does this plan show?**

21   A.     It shows that R.J. Reynolds was tracking how it was doing with starters, not just competitive  
22   adult switchers. R.J. Reynolds was measuring how much of their business came from “new  
23   smokers.” Again, this is while claiming publicly to have no interest in new smokers.

1 **Q. Can you provide another example?**

2 A. Yes. An R.J. Reynolds document entitled “Camel Filter 1973 Annual Marketing Plans”  
3 stated: “Camel Filter continues to perform better than the NFF category in terms of switching gains  
4 and gains from new smokers.” 500781016-1089 at 1026 (U.S. Ex. 48,386) (emphasis added).

5 **Q. How is this plan significant?**

6 A. Again, R.J. Reynolds is tracking gains from two distinct sources: switchers and new  
7 smokers, despite claiming no interest in, or efforts to attract, new smokers.

8 **Q. Can you provide another example?**

9 A. Yes. The 1974 Winston Annual Marketing Plan under the heading “Why Sample Winston”  
10 stated: “[t]o maintain Winston’s No. 1 position, we must improve our current percentage of New  
11 Smokers versus Competitors.” 502365820-5988 at 5823 (U.S. Ex. 49,126) (emphasis in original).

12 **Q. What does this plan show?**

13 A. It shows R.J. Reynolds considered its performance with respect to new smokers the key to  
14 maintaining their #1 position. So, giving away free samples was not just to induce switching but  
15 also to help garner new smokers.

16 **Q. Can you provide another example?**

17 A. Yes. A June 16, 1977 plan entitled “Kool 1978 Marketing Plan” prepared for Brown &  
18 Williamson by the Ted Bates Advertising Agency lists “Kool has a high starter index” as a brand  
19 strength. 674150758-0776 at 0765 (U.S. Ex. 53,900). Brown & Williamson soon after developed a  
20 Kool marketing plan. The “Brown & Williamson Tobacco Corp. 1979 Marketing Plans Complete  
21 Brand Plans” noted that Kool needs “significant improvement to maintain starter attraction.”  
22 680067329-7537 at 7357 (U.S. Ex. 53,988).

23 **Q. Why do you point to these plans?**

1 A. They show another tobacco company's focus on starters and the strategic significance the  
2 firms placed on starters.

3 **Q. Can you provide another example?**

4 A. Yes. The "Winston Lights 1980 Annual Marketing Plan" contained a chart describing  
5 "Winston Lights Business Analysis. . . . 1978 Gains/Losses," in which consumers are separated into  
6 the categories "Total," "New," "Stopped" and "Switched." 502245626-5722 at 5636 (U.S. Ex.  
7 49,087).

8 **Q. What is the significance of this plan to your conclusion?**

9 A. Earlier we saw R.J. Reynolds tracking new smokers for Camel in 1973; here they are doing  
10 the same for Winston in 1980. So, it was not a "one-time" thing. On a continuing basis, R.J.  
11 Reynolds was assessing its performance with a starter group it publicly claimed to have no interest  
12 in. They make a clear distinction between "switched" and "new."

13 **Q. Can you provide another example?**

14 A. Yes. Brown & Williamson's "Kool Strategic Brand Plan" from 1980 listed "target  
15 audiences" in "priority order" as: "a) Current Kool ethnic franchise b) Young adult starting  
16 smokers." 670624652-4705 at 4654 (U.S. Ex. 20,973).

17 **Q. Why do you point to this plan?**

18 A. This shows continued focus on starters by Brown & Williamson. Here it specifically refers  
19 to "starting smokers" as one of its "target audiences."

20 **Q. Can you provide another example?**

21 A. Yes. In the "1985 Winston Marketing Plan," an R.J. Reynolds observation listed under  
22 "Conclusions" is: "Marlboro's ability to attract and keep new/young adult smokers offsets its  
23 switching losses." 504403375-3435 at 3396 (U.S. Ex. 50,606).

1 **Q. How is this plan important?**

2 A. In this case, it is one company, R.J. Reynolds, looking at a competitor, Philip Morris, to  
3 figure out why the competitor has been so successful with its Marlboro brand. One factor R.J.  
4 Reynolds saw in the Philip Morris success was its ability to attract “new” smokers to Marlboro.

5 **Q. Can you provide another example?**

6 A. Yes. The “Salem 1985 Marketing Plan” noted that “Salem significantly increased first usual  
7 brand selectors, helping fuel Salem’s gains among younger adults” and also looked at incidence  
8 trends for the following four groups: “New”; “Quit”; “Switched Into”; and “Switched Out.”  
9 503938209-8347 at 8222, 8232 (U.S. Ex. 50,529) (U.S. Ex. 50,530).

10 **Q. What does this plan show?**

11 A. It shows the continuing interest in “new” smokers as well as switchers at R.J. Reynolds.  
12 Here we also see the terminology of “first usual brand selectors” effectively meaning starters.

13 **Q. Can you provide another example?**

14 A. Yes. In a September 16, 1986 Philip Morris memorandum about the “Benson & Hedges  
15 1987 Marketing Plan” to Bob Roper, International Vice President of Marketing at Philip Morris,  
16 and Rick Stirlen, Director and Brand Manager at Philip Morris, from Renee V.H. Simons, Brand  
17 Manager for Benson & Hedges, Simons expressed concern over the fact that “it is expected that  
18 start rates for younger smokers will weaken in this important segment [smokers between the ages of  
19 18-24], making it more difficult for the brand to attract new smokers.” 2043641067-1083 at 1068  
20 (U.S. Ex. 38,325).

21 **Q. Why do you point to this plan?**

22 A. It shows Philip Morris’s concern with “start rates.” The industry professed repeatedly that  
23 no tobacco company cared about the number of starters. Here we see planning for a brand impacted



1 by the fact that, with “start rates” weakening, it would be difficult for Philip Morris to obtain new  
2 smokers.

3 **Q. Can you provide another example?**

4 A. Yes. R.J. Reynolds’s “Strategic Plan 1990-1992” stated that “[e]very brand and company in  
5 the cigarette industry on a long-term growth trend can trace success to attracting first usual brand  
6 smokers.” 507533003-3035 at 3011 (U.S. Ex. 51,220).

7 **Q. What does this plan show?**

8 A. This shows that R.J. Reynolds believed that attracting starters before they found a first brand  
9 was key to success for any brand. This is due to the well understood brand loyalty phenomenon. If  
10 a company gets a starter, it is likely to be able to keep him or her.

11 **Q. Can you provide another example?**

12 A. Yes. A 1993 Brown & Williamson document entitled “Kent Key Business Issues” tied  
13 Kent’s “long term rate of decline” to “Product Positioning and brand image not strong enough to  
14 attract new smokers.” 94258307-8313 at 8307 (U.S. Ex. 74,520).

15 **Q. How is this plan significant?**

16 A. It shows that Brown & Williamson, like R.J. Reynolds, regarded an inability to attract  
17 “new” people as very detrimental to a brand. Notable here is that it ties Kent’s “long term” rate of  
18 decline to its inability to attract new smokers.

19 **3. Defendants Research Teenagers**

20 **Q. Did the tobacco companies understand who these starters typically were?**

21 A. Yes, they knew that starters were teenagers due to the extensive tracking they had done on  
22 youth smoking behavior.

23 **Q. Is this reflected in Defendants’ documents?**

1 A. Yes. The tobacco companies undertook many studies of teenagers. While the companies  
2 publicly maintained they were interested only in “adult smokers,” they collected extensive data on  
3 teenagers and their smoking behavior.

4 **Q. Can you provide an example where Defendants collected data on teenagers?**

5 A. Yes. A December, 1958 Research Summary prepared for R.J. Reynolds by William Esty  
6 Co. entitled “The Youth Research Institute Study Regarding Cigarette Smoking Among 8,112 High  
7 School and College Students in 82 Cities Throughout the United States, October-November, 1958”  
8 showed the number of surveyed students as “High School Students: Freshman-Sophomore Classes-  
9 1,066; Junior Senior Classes-1,986” and “College Students: Freshman-Sophomore Classes-2,914;  
10 Junior-Senior Classes-2,146.” The report collected data on smoking incidence (e.g. finding that  
11 58% of high school students smoked) and brand preferences of teenagers. 501113743-3749 at  
12 3744, 3746-3749 (U.S. Ex. 22,362). In a similar Research Summary prepared in December 1959,  
13 the breakdown was “High School Students: Freshman-Sophomore Classes-812; Junior Senior  
14 Classes-1,889” and “College Students: Freshman-Sophomore Classes-2,424; Junior-Senior Classes-  
15 2,396.” 501113724-3730 at 3725 (U.S. Ex. 20,672). Therefore, over two years, this survey studied  
16 the smoking behavior of almost six thousand high school students.

17 **Q. What do these reports show?**

18 A. They show that R.J. Reynolds engaged a market research company to collect data on a large  
19 number of high school students including freshmen. From this data, they knew 58% of high school  
20 students smoked for example.

21 **Q. Was this an isolated document for R.J. Reynolds?**

22 A. No. R.J. Reynolds often studied the smoking behavior of young people including teenagers.

1 **Q. Please provide further examples of the R.J. Reynolds documents you have just**  
2 **described and briefly explain each one’s significance.**

3 A. There are many possible studies to cite. For example:

4 First, an April, 1971 R.J. Reynolds meeting summary entitled “Summary of Decisions Made  
5 in MRD-Esty Meeting on April 7, 1971 Concerning Spring NFO Tobacco Products Survey,”  
6 pointed out that for “Respondents Aged 13 and Younger: Cards are to be punched for those who are  
7 cigarette smokers, to provide a count, by year of the very young smokers reported.” The summary  
8 also noted that “[s]moking incidence and brand preference, by age, of the under-20 respondents to  
9 the new questionnaire. Age breaks to be used are 14-15, 16-17, 18-20.” 500347108-7111 at 7108  
10 (U.S. Ex. 20,628).

11 What this shows is that data were broken out to show the particular behavior of those 13  
12 years of age and younger. R.J. Reynolds also wanted to separately understand the behavior of two  
13 other “all teenage” groups, including those between 14 and 15 years old and those between 16 and  
14 17.

15 Second, a 1972 R.J. Reynolds document entitled “Young Adult Male Market” stated “[i]t is  
16 also interesting to note that 61% of males 14-20 years old prefer the 85 mm NFF category.”  
17 501496947-6983 at 6949 (U.S. Ex. 48,902).

18 Here is another example of R.J. Reynolds studying the preferences of teenagers. R.J.  
19 Reynolds is looking at the likes/dislikes of those as young as 14 years of age. The report title is  
20 “Young Adult Male Market” and here we see R.J. Reynolds considered 14-year olds as part of this  
21 “young adult” group and studied their tastes.

22 Third, a September 26, 1972 R.J. Reynolds memorandum from Joseph H. Sherrill, Director  
23 of Marketing Research at R.J. Reynolds, to William S. Smith of the Tobacco Institute Advertising

1 Committee, entitled “Share of Smokers: By Age – Top Ten Brand Items,” included a chart that  
2 tracked the share of market by age group including 14-17 year olds. 502353747-3750 at 3749 (U.S.  
3 Ex. 49,122).

4 This shows R.J. Reynolds’s concern with those as young as 14 years of age was not a “one-  
5 time thing” but a continuing phenomenon.

6 Fourth, in an October 30, 1975 product research report sent to T.L. Ogburn entitled “Share  
7 of Smokers by Age Group” authored by J.M. Wallace, an R.J. Reynolds Marketing Research  
8 Department employee, Wallace gives an “annual update of trends in share of smokers by age,”  
9 based on National Family Opinion (NFO) data that includes “Total Younger Smokers (14-17).”  
10 503542726-2729 at 2726 (U.S. Ex. 50,407).

11 This 1975 document is three years after the prior documents I cited showing a concern for  
12 14-year olds and it shows that R.J. Reynolds is continuing to study their behavior.

13 Fifth, in an August 12, 1976 memorandum to T.L. Ogburn entitled “Share of Smokers by  
14 Age Group,” Tim Key of R.J. Reynolds Marketing Research Department wrote that “Winston  
15 King’s share among this 14-17 year age group is off two points. . . .” and “Salem King appears to  
16 have retained most of the share gain seen during 1975 among 14-17 year olds.” 500234050-4051 at  
17 4050 (U.S. Ex. 48,071).

18 This shows R.J. Reynolds tracking the performance of two of its brands among 14-17 year  
19 olds. R.J. Reynolds specifically is gathering data so it can see how well or poorly it is doing among  
20 these teenagers. R.J. Reynolds knew that performance with this group would significantly impact  
21 future performance for the company due to the brand loyalty phenomenon.

1 Sixth, in an October 31, 1977 memorandum to T.L. Ogburn entitled “Share of Smokers by  
2 Age Group,” Jeffrey Durgee, R.J. Reynolds Product Design employee, examined brand share  
3 among “Total Younger Smokers (14-17).” 501380878-0889 at 0881-0889 (U.S. Ex. 48,844).

4 This shows continuation of a focus on the behavior of teenagers. During 1977, there was  
5 also other tracking of Salem’s share of the 14-17 year old group.

6 Seventh, R.J. Reynolds’s “Salem 1977 Annual Marketing Plan” noted under “Situation  
7 Analysis” that Salem had a “41% Menthol category share among 14-17 year olds.” 501162045-  
8 2134 at 2048 (U.S. Ex. 48,730).

9 Eighth, R.J. Reynolds’s “Total Salem Brand Marketing Plan” from 1977 pointed out that  
10 “[t]he brand’s SOM [share of market] among 14-17 year old smokers is in excess of 10% and  
11 growing rapidly.” 501156901-6934 at 6904 (U.S. Ex. 48,727).

12 Here R.J. Reynolds is noting the success that the Salem brand is having with 14-17 year olds  
13 in growing its market share.

14 Ninth, a February 1, 1980 memorandum to Uziel Frydman, written by Stephen R. Perry,  
15 both R.J. Reynolds Marketing Research Department employees, entitled “Teenage Smokers (14-17)  
16 and New Adult Smokers and Quitters” noted that “this report examines the demographics and  
17 smoking behavior fo [sic] 14-17 year old smokers.” 501293693-3702 at 3693 (U.S. Ex. 66,335).

18 This shows the continuation of R.J. Reynolds’s tracking of teenagers into 1980. This is also  
19 shown in another 1980 document.

20 Finally, a July 22, 1980 R.J. Reynolds memorandum from G.H. Long, R.J. Reynolds  
21 Executive Vice President, to Edward A. Horrigan, Jr., R.J. Reynolds's CEO, entitled “MDD  
22 [Marketing Development Department] Report on Teenage Smokers (14-17),” stated: “Philip Morris  
23 had a total share of 59 among 14-17 year old smokers.” 508453894-3894 at 3894 (U.S. Ex. 20,811).

1 **Q. As a group, do these R.J. Reynolds documents have any significance to your conclusion**  
2 **that Defendants collected extensive data on teenagers' smoking behavior?**

3 A. These ten R.J. Reynolds documents, covering a long period of time, unambiguously show  
4 that R.J. Reynolds is studying the behavior of teenagers as young as 14 years of age.

5 **Q. Did companies other than R.J. Reynolds collect data on teenagers?**

6 A. Yes, for example Philip Morris did so.

7 **Q. Could you provide an example?**

8 A. Yes. A May 23, 1969 memorandum from Myron E. Johnston, Senior Economist for  
9 Research and Development at Philip Morris, to Robert S. Seligman, Director of Commercial  
10 Development, Tobacco Products at Philip Morris, was entitled "Marlboro Market Penetration [sic]  
11 by Age and Sex." It included a chart that tracked share of the market, separated out by age group  
12 for teenagers as young as 15. 1000306237-6239 at 6238 (U.S. Ex. 20,091).

13 **Q. How is this memorandum important?**

14 A. A senior economist at Philip Morris was collecting data on 15, 16, and 17 year olds and the  
15 brands they smoked at a time when the company claimed no interest in these people.

16 **Q. Was this the only instance of a document in which Philip Morris collected data on**  
17 **teenagers?**

18 A. No.

19 **Q. Can you provide other examples of such documents and briefly explain the significance**  
20 **of each one?**

21 A. Yes. I offer these documents as illustrative examples:

22 First, Philip Morris's "Tobacco Marketing: Five Year Plan" dated June 1973 tracked 15-19  
23 year olds: "[h]owever, the new-smoker age group (15-19) will increase only 1.9% over the total

1 period. . .” and quoted a smoking incidence rate of 18% for 12-17 year olds from another study.  
2 1005159031-9168 at 9034, 9044 (U.S. Ex. 26,207).

3 Here, Philip Morris was referencing how many adolescents and teenagers as young as 12  
4 were smoking. It refers to those 15, 16, 17, 18 and 19 years old as the “new-smoker age group”  
5 showing they clearly understood that the starting population was largely teenagers.

6 Second, a July 1974 research report written by the Roper organization for Philip Morris  
7 entitled “The New Competition for Marlboro’s Franchise” stated that the study was undertaken  
8 “with the intention of probing the dynamics of the market among smokers below the age of 24.  
9 (This was not the ‘usual’ sample of age 18-24; in this study, no lower age limit was set.)”  
10 Respondents were sought out at: “drive-ins, bowling alleys, near military bases, at beaches, etc.,”  
11 and the sample obtained included 693 people aged “18 & less.” 2022245802-5823 at 5803, 5804,  
12 5811 (U.S. Ex. 26,748).

13 This shows that data on teenagers was of such importance to Philip Morris that it went to  
14 unusual methods to obtain the data. Philip Morris knew that a telephone sample of households  
15 would not yield enough respondents of the age they wanted so they went to beaches and bowling  
16 alleys. Almost 700 people age 18 and less were found and quizzed about their smoking behavior.

17 Third, in a May 21, 1975 memorandum to Robert B. Seligman, Director of Commercial  
18 Development, Tobacco Products at Philip Morris, entitled “The Decline in the Rate of Growth of  
19 Marlboro Red,” Myron Johnston, Senior Economist for Research and Development at Philip  
20 Morris, stated “my own data, which includes younger teenagers, shows even higher Marlboro  
21 market penetration among 15-17 year olds.” 1003285497-5502 at 5497 (U.S. Ex. 20,160).

1           This is a second memorandum from Johnston in which he cites data which the company  
2 collected (i.e. the “my own data” rather than data from a government agency for example) on the  
3 behavior of teenagers as young as 15.

4           Fourth, a March 29, 1979 Philip Morris internal memorandum entitled “Marlboro” stated:  
5 “Marlboro dominates in the 17 and younger age category.” 20483828174-8176 at 8174 (U.S. Ex.  
6 21,517).

7           This is similar to R.J. Reynolds tracking the share that its brands held in young age groups.  
8 Here, Philip Morris is examining how Marlboro is performing in the 17 and younger group.

9           Fifth, March 31, 1981 Philip Morris research report written by Myron Johnston entitled  
10 “Young Smokers: Prevalence, Trends, Implications, and Related Demographic Trends,” found that  
11 “between 1968 and 1974, the number of 12-18 year-olds who smoked ten or more cigarettes per day  
12 doubled.” 1000390803-0855 at 0808 (U.S. Ex. 22,334).

13           Here, Philip Morris is examining the behavior of those as young as 12. Collectively, these  
14 documents show unambiguously a long-term interest in teenagers and their smoking behavior.

15 **Q. Did companies other than Philip Morris also collect data on teenagers?**

16 A. Yes. For example, a November, 1964 marketing plan prepared for Lorillard by Grey  
17 Advertising entitled “Old Gold Spin Filters 1965 Marketing Plan,” found that “46% of all adults 16  
18 years and older smoke.” 84443158-5001 at 3189 (U.S. Ex. 67,524).

19 **Q. What is significant about this Lorillard plan?**

20 A. It shows that Lorillard was also interested in teenagers as young as 16 and their smoking  
21 behavior.

22

23



1                   4.       *Defendants Know That Smokers Are Very Brand Loyal*

2   **Q.     Why did Defendants focus on these “new smokers” or “starters” or “entry level”**  
3 **teenagers?**

4   A.     They regarded young people as vital to their long term success. The tobacco companies  
5 understood them to be critical to their long term success because of the phenomenon of brand  
6 loyalty. Defendants knew that once someone started with a brand they were likely to stick with it.

7   **Q.     How did cigarette manufacturers know this?**

8   A.     They were well aware of studies documenting the loyalty in the product category and its  
9 implications.

10 **Q.     What is your basis for this conclusion?**

11 A.     I have reviewed Defendants’ internal documents which show that they collect data on  
12 loyalty.

13 **Q.     Can you provide an example of such a document?**

14 A.     Yes. In an April 13, 1984 memorandum entitled “Strategies and Segments” to R.J. Nordine  
15 of the R.J. Reynolds Product Design Department, E.C. Fackelman noted that “[i]t is relatively easy  
16 for a brand to retain 18-year-old smokers once it has attracted them. Conversely, it is very difficult  
17 to attract a smoker that has been won over by a different brand.” 502033156-3157 at 3156 (U.S.  
18 Ex. 49,017).

19 **Q.     What does this document tell you about R.J. Reynolds’s understanding of brand**  
20 **loyalty?**

21 A.     It is pretty clear what the belief was at R.J. Reynolds. R.J. Reynolds had done many  
22 investigations of youth behavior and here concluded that it was “relatively easy for a brand to  
23 retain” (i.e. keep brand loyal) while it was “very difficult to attract . . . from a different brand” (i.e.

1 induce brand switching). Thus, if you could get a starter, that person was likely to be your customer  
2 for years to come. For as much as the tobacco companies publicly said their marketing was to  
3 induce brand switching, they recognized that switching did not happen much.

4 **Q. Can you provide another example?**

5 A. Yes. Another R.J. Reynolds memorandum from February 2, 1984 entitled “A Perspective  
6 on Appealing to Younger Adult Smokers,” from R.J. Harden of the R.J. Reynolds Marketing  
7 Development Department to A.M. Curry stated: “[a] cigarette brand's (and the associated  
8 company's) long-term vitality is strongly influenced by its ability to attract young adult smokers.”  
9 502034940-4943 at 4940 (U.S. Ex. 20,695).

10 **Q. Why do you point to this document?**

11 A. This is similar to the last document. The reason that ability to attract new smokers is key to  
12 long-term vitality is because of the phenomenon of brand loyalty. This shows the overall strategy  
13 companies follow. Recognizing that long-term success came from attracting starters, they pursued  
14 them.

15 **Q. Can you provide another example?**

16 A. Yes. A July 18, 1984 R.J. Reynolds presentation entitled “Marketing Workshop for Law  
17 Department,” pointed out that “[t]he cigarette market is quite loyal. Only a small portion of  
18 smokers switch outside their brand families.” 501893936-4129 at 3952 (U.S. Ex. 66,350).

19 **Q. How is this presentation relevant?**

20 A. It shows the same general recognition of brand loyalty in the cigarette category. Only a  
21 “small portion” switch. So, if you get a person to start with your brand you are likely to have them  
22 smoking your brand for years to come.

23 **Q. Can you provide another example?**

1 A. Yes. An R.J. Reynolds “Strategic Plan” for 1990-1992 stated that “[l]oyalty, not switching,  
2 is the major factor driving any tobacco company’s business.” The plan also noted that the market  
3 generally shows “[h]igh brand loyalty (only 2-3% switch per year).” 507533003-3035 at 3010  
4 (U.S. Ex. 51,220).

5 **Q. What is important about this plan?**

6 A. This is important because, for all of the companies’ statements about marketing being about  
7 brand switching, here is an internal document saying that switching does not happen much and it  
8 quantifies an estimate. Only 2-3% per year switch; over 97% stay loyal. Thus, the key was  
9 attracting new smokers.

10 **Q. Can you provide another example?**

11 A. Yes. A June 21, 1990 R.J. Reynolds report entitled “U.S. Cigarette Market in the 1990s,”  
12 stated that “[c]igarettes are the most brand loyal category in the U.S. Our customers are much more  
13 likely to exclusively adopt 1 brand. Smokers also stay loyal to their brand over time.” 507798137-  
14 8230 at 8141 (U.S. Ex. 20,789).

15 **Q. How is this report significant?**

16 A. Here R.J. Reynolds is saying that cigarettes are characterized by more loyalty than a  
17 category such as toothpaste, soap or soda. Customers tend to “exclusively adopt one brand.” It is  
18 not like a situation where a customer drinks Pepsi one day and Coke the next, or buys a Bic pen one  
19 day and a Papermate the next time. Smokers tend to devote all the purchasing to one brand rather  
20 than use a variety of brands at a given time. And they pick a brand when they start and stick with it  
21 over time. Getting a starter when they enter the market means a long series of purchases.

22 **Q. Can you provide another example of a company examining the brand loyalty**  
23 **phenomenon?**

1 A. Yes. A May 1, 1985 report entitled “Smoking Behavior and Attitudes” prepared by the  
2 Roper Organization for Philip Morris noted that “10.7% switched packings or began smoking in  
3 past 12 months.” 2042255883-5935 at 5912 (U.S. Ex. 66,713).

4 **Q. Why do you cite to this report?**

5 A. This is again reinforcing that Defendants know that brand loyalty is the main behavior  
6 phenomenon. According to the data discussed by Philip Morris, switching cannot occur for more  
7 than 10.7% of people because that number is the percent who either switched or began smoking.  
8 Recall that earlier I cited an R.J. Reynolds estimate of 2-3% switching in a year.

9 **Q. Can you provide another example?**

10 A. Yes. A March 20, 1984 Philip Morris report entitled “The Cigarette Consumer” found that  
11 “Smokers [are] extremely brand loyal,” and they exhibit “strong habitual behavior.” 2500002189-  
12 2207 at 2199 (U.S. Ex. 21,460).

13 **Q. How is this report important?**

14 A. It’s another recognition of brand loyalty, characterizing smokers as “extremely” loyal. The  
15 phenomenon of brand loyalty was critical to how the tobacco companies marketed their products.

16 5. **Defendants Believe That Capturing the Teenage Market Is Important to**  
17 **Their Long Term Financial Success**  
18

19 **Q. How did the brand loyalty phenomenon impact Defendants’ focus on teenagers?**

20 A. The route to long-term success for a brand and a company was well understood by the  
21 tobacco companies. If you got someone to start smoking your brand, they typically dedicated all  
22 their purchases to you from then on. First, on a given day they did not seek variety by jumping  
23 around from one brand to the next. You did not have to share them with anybody. Second, they  
24 picked a brand and stuck with it over time. Given the dynamics of the cigarette market, Defendants  
25 understood that these starters were likely to be teenagers. The tobacco companies know that, if you

1 didn't attract a good share of these starters, whom you could count on to be loyal to you, you were  
2 in trouble long-term. This was the key dynamic of the business and a driver of companies'  
3 planning.

4 **Q. Is this reflected in R.J. Reynolds's documents?**

5 A. Yes, it is shown in the market plan documents, which typically set out a brand's strategy for  
6 the upcoming year.

7 **Q. Can you provide an example of a R.J. Reynolds's marketing plan that shows its belief  
8 about the importance of teenagers?**

9 A. Yes. R.J. Reynolds's "1969 Camel Filter Marketing Plan" pointed out that "[i]mprovement  
10 must be made among younger smokers if we are to be successful," and that the company "must . . .  
11 improve performance among younger smokers who can assure the brand's longevity." 502324051-  
12 4079 at 4054, 4063 (U.S. Ex. 49,120).

13 **Q. What does this plan show?**

14 A. R.J. Reynolds saw that the key to success – a "brand's longevity," meaning its long term  
15 performance – was tied to how the brand was doing with teenagers. Bring young people to the  
16 brand, you get to keep them for the long-run, and that is the key to success.

17 **Q. Did other R.J. Reynolds's marketing plans and internal documents show its belief  
18 about the importance of teenagers?**

19 A. Yes.

20 **Q. Could you provide examples and briefly explain the importance of each one?**

21 A. Yes. For example, R.J. Reynolds's "Salem 1971 Annual Marketing Plan" indicated that  
22 "[y]ounger adults must be recruited for trial and subsequent long-term loyalty." 501140435-0494 at  
23 0453 (U.S. Ex. 48,724).

1           This plan shows the two factors which combine for success in the company’s mind.  
2 “Recruit” the young for the brand and then rely on “long-term loyalty.” This strategy was  
3 elaborated upon a few years later for the company as a whole.

4           On September 30, 1974, R.J. Reynolds held a “1975 Marketing Plans Presentation” at Hilton  
5 Head. This presentation noted “the growing importance of the young people in the cigarette  
6 market” and specifically defined the young adult market as the “14-24 age group.” Note that just  
7 above, I discussed R.J. Reynolds’s tracking of 14 year olds during this time period. At the Hilton  
8 Head meeting, Reynolds’s first of four key “opportunity areas” was to “increase our young adult  
9 franchise” as they “represent tomorrow’s cigarette business.” The presentation reported on  
10 Reynolds’s tracking of share within the 14-24 year old group: 38% for Philip Morris and 21% for  
11 R.J. Reynolds. At the time, R.J. Reynolds held a weak competitive position with 14-24 year olds as  
12 Winston held only a 14% share versus competitor Marlboro’s 33% and its Salem brand in the  
13 “freshness” or menthol segment trailed Kool among 14-24 year olds, where Salem held 9% share  
14 versus Kool’s 17%. Based on these analyses R.J. Reynolds concluded: “our strategy becomes clear.  
15 . . . direct advertising appeal to the younger smokers.”

16           This strategy was to be achieved via new advertising campaigns and increased advertising  
17 spending “with more target efforts against young adults to more fully exploit this potential.” The  
18 media plan included “increased advertising insertions in traditional young adult magazines like  
19 Sports Illustrated, Playboy and Ms.” Other elements of the marketing program were developed to  
20 “reach young adults where they work, play, and where they purchase their cigarettes.” 500746950-  
21 6976 at 6951, 6952, 6953, 6956, 6959 (U.S. Ex. 21,609).

22           Several months later, the importance of the 14-24 year old group was again emphasized  
23 within R.J. Reynolds. James Hind wrote in a January 23, 1975 memorandum to a senior executive:

1 “[t]o ensure increases and longer-term growth for Camel Filter, the brand must increase its share  
2 penetration among the 14-24 age group. . .” 505775557-5557 at 5557 (U.S. Ex. 50,861).

3 These documents show that R.J. Reynolds had a clear view of how to be successful. It had  
4 to get those who were “tomorrow’s business.” The age group including teenagers as young as 14  
5 was key to R.J. Reynolds and was directly targeted by the company with its marketing.

6 **Q. Did R.J. Reynolds continue to focus on young people?**

7 A. Yes.

8 **Q. Could you provide examples and briefly explain the importance of each one?**

9 A. Yes. First, a March 15, 1976 report prepared by the R.J. Reynolds Marketing Research  
10 Department entitled “Planning Assumptions and Forecast for the Period 1977-1986” states: “[t]he  
11 brands which these beginning smokers accept and use will become the dominant brands in future  
12 years . . . the 14 to 18 year old group is an increasing segment of the smoking population, RJR-T  
13 must soon establish a successful new brand in this market if our position in the Industry is to be  
14 maintained over the long term.” 501630269-0288 at 0283 (U.S. Ex. 60,642).

15 Again, the key strategy for cigarettes is described. R.J. Reynolds equates the brands of  
16 today’s “beginning smokers” with those which will be “dominant” in future years. Long-term  
17 success meant first getting teenagers – here explicitly stated as the 14-18 year old group – and  
18 second, keeping them brand loyal. It was well known that the second of these (i.e. keeping them  
19 brand loyal) was pretty easy to accomplish.

20 Second, a 1984 Research Report entitled “Younger Adult Smokers: Strategies and  
21 Opportunities” was written by Diane Burrows, R.J. Reynolds Marketing Development Department  
22 researcher, and widely distributed throughout upper management at R.J. Reynolds. It did define  
23 “younger adult smokers” as being 18-24 years old in contrast to the 14-24 year old group named in

1 the 1975 Hilton Head presentation. It did, however, report data on age of beginning smoking  
2 showing the median “starting age” of males to be 16.7 years old and noted that 69% of smokers  
3 started by age 18. The report noted that the “renewal” of the market “stems almost entirely from  
4 18-year-old smokers.” It said that “younger adult smokers are the only source of replacement  
5 smokers.” 501928562-8550 at 8526, 8465 (U.S. Ex. 76,187) (emphasis added).

6 The only way to be a “replacement” for someone who stops smoking is to be a non-smoker  
7 who starts smoking. The document uses phrases to avoid language about “starters” or “new  
8 smokers” but it is clear that what is being talked about is getting new people to come into the  
9 market and adopt your brand. Each year brings an influx of “18-year old smokers” to a brand and  
10 the report distinguishes these from “switchers.” Burrows pointed out that: “In every sense,  
11 companies with strong younger adult brands hold the high ground. . .” Burrows also stated that  
12 “Once a brand becomes well-developed among younger adult smokers, aging and brand loyalty will  
13 eventually transmit that strength to older age brackets.” 501928562-8550 at 8466, 8472 (U.S. Ex.  
14 76,187).

15 This report reconfirms the tobacco companies’ general theory of success for a brand: attract  
16 starters, i.e. draw in the young people to replace those smokers who die or quit, attract them to your  
17 brand and “aging and brand loyalty” will take care of the rest. This is the route to success which all  
18 the tobacco companies well understood.

19 A third relevant R.J. Reynolds document is a February 2, 1984 R.J. Reynolds memorandum  
20 entitled “A Perspective on Appealing to Younger Adult Smokers.” In this memorandum, R.J.  
21 Harden of the R.J. Reynolds Marketing Development Department wrote to A.M. Curry: “A  
22 cigarette brand’s (and the associated company’s) long-term vitality is strongly influenced by its  
23 ability to attract younger adult smokers” 502034940-4943 at 4940 (U.S. Ex. 20,695).



1           This memorandum is similar to those documents above linking long-term success to the  
2 tobacco companies' ability to get young smokers. It is very hard to switch people away from  
3 brands once they adopted them, so the key is to get entrants and attract them to your brand.

4           Fourth, a July 18, 1984 R.J. Reynolds presentation entitled "Marketing Workshop for Law  
5 Department" stated that "[b]ecause smoker loyalty is so high, younger adults are more important in  
6 cigarettes than in other businesses." The report also pointed out that "[t]he most successful brands  
7 of the last half century have derived their strength from high younger adult smoker development . . .  
8 Younger adult smoker gains have been a long term indicator of the brand's total market share  
9 gains." 501893936-4129 at 3953, 3955 (U.S. Ex. 66,350).

10           Fifth, in an April 13, 1984 R.J. Reynolds memorandum entitled "Strategies and Segments"  
11 to R.J. Nordine of the R.J. Reynolds Product Design Department, E.C. Fackelman suggested the  
12 following principle: "Attract a smoker at the earliest opportunity and let brand loyalty turn that  
13 smoker into a valuable asset." 502033156-3157 at 3157 (U.S. Ex. 49,017).

14           This is perhaps the most succinct statement of how to be successful. Get someone "at the  
15 earliest" and then let the brand loyalty phenomenon work in your favor.

16           Sixth, in 1986, R.J. Reynolds's "Camel Advertising Development 'White Paper'" stated that  
17 "[t]he future success of any cigarette brand is driven by its ability to attract younger adult smokers  
18 . . . . The aging of younger adult smokers combined with their brand loyalty guarantees the growth  
19 of a brand for decades." 506768775-8784 at 8777 (U.S. Ex. 20,764).

20           Finally, R.J. Reynolds's "Camel Y&R Orientation" from 1988 stated: "Each year 1.0MM  
21 new adult smokers enter the cigarette market. . . . YAS are the only source of replacement smokers  
22 – Less than one-third of smokers start after age 18. . . . The value of FUBYAS compounds over

1 time due to extreme brand loyalty and rate per day increases.” 507241613-1838 at 1617 (U.S. Ex.  
2 20,774).

3 This is significant because it shows that R.J. Reynolds knew the majority of starters were  
4 teenagers. It coined the term FUBYAS – “First Usual Brand Young Adult Smokers” – as a  
5 substitute for saying new smoker. But the key to success R.J. Reynolds is setting out is clear. Get  
6 the young entrants, have brand loyalty work in your favor, and have them smoke more as they grow  
7 old, that is the way to build a successful brand.

8 **Q. What conclusions do you draw from the R.J. Reynolds documents above?**

9 A. They show that R.J. Reynolds recognized that attracting teenagers to its brands – before they  
10 were smoking a competitive brand – was key. R.J. Reynolds also recognized that the majority of  
11 people who would eventually be smokers were already “taken” by one brand or another by the time  
12 they reached age 18. As just mentioned, less than one-third of smokers start after 18, so to tap the  
13 market a tobacco company had to follow a principle R.J. Reynolds suggested in 1984: “attract a  
14 smoker at the earliest opportunity. . .” 502033136-3157 (U.S. Ex. 49,017).

15 **Q. Did other tobacco companies hold similar views about the importance of the teenager?**

16 A. Yes. Philip Morris recognized that success with teenagers today positioned the brand well  
17 for the future. In a March 31, 1981 research report entitled “Young Smokers: Prevalence, Trends,  
18 Implications, and Related Demographic Trends,” Myron Johnston stated “[t]oday’s teenager is  
19 tomorrow’s potential regular customer, and the overwhelming majority of smokers first begin to  
20 smoke while still in their teens.” He also noted the origin of the “success of Marlboro Red . . . [it]  
21 became the brand of choice among teenagers who then stuck with it as they grew older. . .”  
22 1000390803-0855 at 0808 (U.S. Ex. 22,334).

23 **Q. What is the importance of this document?**

1 A. It shows that Philip Morris recognized that the “overwhelming majority” of smokers began  
2 while “in their teens.” Thus a focus on starters meant a focus on a group with an “overwhelming  
3 majority” of teenagers.

4 **6. Defendants Target Teenagers**

5 **Q. Did the tobacco companies undertake efforts directed at teenagers?**

6 A. Yes they did. Internal documents show Defendants specifically targeted teenagers.

7 **Q. Can you provide an example of such a document?**

8 A. Yes. In a September 15, 1964 memorandum entitled “Lorillard Sales Position” to Morgan J.  
9 Cramer, Lorillard President and Chief Executive Officer, Manuel Yellen, Vice President at  
10 Lorillard, wrote that Newport is marketed to a “‘certain type’ of person . . . [it] obtained a youthful  
11 group as well as immature group of smokers.” 01124257-4265 at 4262 (U.S. Ex. 34,485).

12 **Q. What does this memorandum show?**

13 A. It does not mention an age level explicitly but noted Newport was marketed to and was  
14 successful with a group described by the adjectives “youthful” and “immature.”

15 **Q. Can you provide another example?**

16 A. Yes. An August 24, 1971 Report prepared by the William Esty Co. for R.J. Reynolds  
17 entitled “Winston 1972 Media Objectives and Spending Strategy” stated that “the major markets [to  
18 be pursued via media spending] must also contain greater numbers of younger smokers (14-20).”  
19 500729229-9238 at 9235 (U.S. Ex. 48,355).

20 **Q. How is this document important?**

21 A. Here there is a reference to a specific age group – 14 to 20 year olds. It shows that R.J.  
22 Reynolds was directing its advertising dollars to teenagers, including those as young as 14 years  
23 old.

1 **Q. Can you provide other examples?**

2 A. Yes. An R.J. Reynolds document from 1972 entitled “Young Adult Male Market” included  
3 a section entitled “Camel Filter and the Young Adult Male,” where it noted that “Camel Filter’s  
4 marketing efforts are currently targeted to this group” and that Camel filter has “a favorable position  
5 from which to take an offensive posture against the young adult male market.” 501496947-6983 at  
6 6951, 6952 (U.S. Ex. 48,902).

7 Similarly, R.J. Reynolds’s “Camel Filter 1973 Annual Marketing Plans” stated that  
8 “[r]ecognizing the growing importance of the young adult market, virtually all aspects of our  
9 marketing program are geared toward this segment.” Under the heading “Strategies,” the plan  
10 listed: “1. Target all marketing efforts against young adult males.” 500781016-1089 at 1026, 1044  
11 (U.S. Ex. 48,386).

12 Another R.J. Reynolds document from December 4, 1973, a memorandum entitled  
13 “Cigarette Concept to Assure RJR a Larger Segment of the Youth Market” from Frank G. Colby,  
14 Associate Director of Scientific Information at R.J. Reynolds, to R.A. Blevins, Director of  
15 Marketing Planning at R.J. Reynolds, suggested developing “a new RJR youth-appeal brand.”  
16 501166152-6153 at 6152 (U.S. Ex. 23,051).

17 A November 26, 1974 R.J. Reynolds memorandum entitled “R.J. Reynolds Tobacco  
18 Company Domestic Operating Goals” stated that the R.J. Reynolds’s Growth Objective for 1975  
19 would be achieved by: “Increase our Young Adult Franchise: 14-24 age group . . . We will direct  
20 advertising appeal to this young adult group.” 500796928-6934 at 6928 (U.S. Ex. 22,363).

21 While some of the just cited R.J. Reynolds documents use terms like the “young market”  
22 without stating the specific age group, this one does define “young adult” as including those as  
23 young as 14. These goals were formalized after the Hilton Head Conference discussed above where

1 a youth focus was described and the “young adult” market was defined as 14-24 year olds. For  
2 example, the Hilton Head presentation stated for Winston: “New ‘Candid’ Advertising Campaign . .  
3 . especially design [sic] to appeal to young adults”; for Salem: “Significant improvements have been  
4 made in the advertising, designed for more young adult appeal”; for Camel Filter: “Prime Prospects:  
5 Young Adult Males . . . A new marketing program was put into test market, targeted at young  
6 adults”; and for Vantage: “Ad spending has increased in 1975 with more targeted efforts against  
7 young adults.” The presentation also stated about special events: “each of our major special events  
8 is directed against young adults” and “[w]e will continue our special sampling programs on  
9 beaches, resort areas and sports arenas – where there are large congregations of young adults.”  
10 500746950-6976 at 6953, 6955, 6957, 6960 (U.S. Ex. 21,609).

11 **Q. What do these documents show?**

12 A. They show R.J. Reynolds’s focus on the “young” and at least a couple documents are  
13 specific in setting the age of the “young adult” market as 14-24.

14 **Q. How about other Defendants?**

15 A. A 1976 Brown & Williamson document entitled “Viceroy Agency Orientation Outline”  
16 identified the “target audience” as: “1. Full taste cigarette smokers; 2. Males 16-35 primarily.”  
17 680116947-6968 at 6959 (U.S. Ex. 21,877).

18 **Q. What does this document show?**

19 A. Brown & Williamson is targeting teenagers as young as 16.

20 **Q. Can you provide another example?**

21 A. Yes. A June 16, 1977 marketing plan prepared by the Ted Bates Agency for Brown &  
22 Williamson entitled “Kool 1978 Marketing Plan” listed “Target Audience by Demographics: Kool

1 Kings and Box – Young adult males, 16-25, young blacks (both sexes), 16-25, and some females  
2 16-25." 674150758-0776 at 0771 (U.S. Ex. 53,900).

3 **Q. What does this plan show?**

4 A. As with Viceroy in 1976, Brown & Williamson was targeting teenagers as young as 16.

5 **Q. Can you provide another example for another Defendant?**

6 A. Yes. An August 30, 1978 Lorillard memorandum from Ted Achey, Lorillard's Director of  
7 Sales in the Midwest, to company President Curtis H. Judge entitled "Product Information" stated:  
8 "The success of Newport has been fantastic during the past few years. . . . the base of our business  
9 is the high school student." 03537131-7132 at 7131 (U.S. Ex. 22,499).

10 **Q. What is your interpretation of this document?**

11 A. As R.J. Reynolds counsel pointed out in his opening statement in this litigation, Mr. Achey  
12 was not a senior executive of the company. But he was a regional director of sales for R.J.  
13 Reynolds, and thus a person very close to what was happening at the point-of sale. From the  
14 vantage point of observing what was happening out-in-field on a regular basis, he wrote to senior  
15 management noting the foundational importance of the high school student.

16 **Q. Can you provide another example?**

17 A. Yes. A Philip Morris "Product Testing Short Course" from January 23-24, 1984 noted that  
18 "[t]hose brands [Marlboro, etc.] experienced a second share-growth period. . . . those second-growth  
19 periods are probably due mostly to new smokers," and that "Marlboro floundered for eight years  
20 and then hit a responsive chord among post-war baby-boom teenages [sic] with the theme from the  
21 Magnificent Seven and an image uncalculatedly right for the wave of teenages [sic] coming of  
22 smoking age." 2028817401-7575 at 7500, 7504 (U.S. Ex. 76,180).

23 **Q. How do you read this document?**

1 A. Philip Morris was attributing Marlboro’s success to how the Marlboro advertising campaign  
2 did with teenagers.

3 **Q. What do you conclude from these documents about the importance of starters to**  
4 **Defendants?**

5 A. The documents establish quite clearly that two phenomena were critical. First, as a  
6 document noted, the “overwhelming majority” of starters were teenagers. Second, these starters  
7 were very brand loyal. Putting these two things together, companies saw their long term success  
8 was tied to their ability to attract starters who were teenagers. As I showed, contrary to their public  
9 statements, they did target starters. They knew who these starters were. Quite clearly, an intent and  
10 impact of their marketing was to contribute to bringing starters into the marketplace. In addition to  
11 impacting brand choice, the tobacco companies’ marketing had this impact as well.

12 ***E. Defendants Market to Deter Smokers from Quitting***

13 ***1. Defendants Collect Data on Smokers’ Desires to Quit***

14 **Q. You testified that one of the purposes that Defendants used marketing for was to deter**  
15 **people from quitting smoking. Can you explain this further?**

16 A. Yes. The tobacco companies used marketing to keep smokers smoking. They sought to  
17 deter people from quitting and to decrease the number of people who quit. They understood that  
18 many people wanted to quit and they sought to limit this phenomenon.

19 **Q. Did Defendants admit that this was one purpose of their marketing efforts?**

20 A. No. They denied this was ever a purpose of their marketing. Again, they maintained that  
21 the one and only purpose of their marketing was to influence the brand choice of smokers. They  
22 continually denied that their marketing was designed to or did have any impact on the number of  
23 people who smoked at a given time.

1 **Q. What is your basis for your conclusion?**

2 A. Contrary to their public statements, Defendants used marketing to decrease the number of  
3 people who quit smoking. My review of tobacco company documents shows that they were well  
4 aware that most people wanted to quit. The tobacco companies tracked how much business was lost  
5 to quitting and they devised programs to deter smokers from quitting. They were aware of how  
6 prevalent smokers' desire to quit was. The tobacco companies regularly collected data on this while  
7 claiming quitting was a phenomenon they had no interest in impacting.

8 **Q. Can you provide an example of such a document?**

9 A. Yes. A November 1964 Lorillard plan entitled "Old Gold Spin Filters 1965 Marketing  
10 Plan" noted that "[o]nly about one-half of smokers say they really enjoy smoking." 84443158-3221  
11 at 3190 (U.S. Ex. 67,524).

12 **Q. What does this plan show?**

13 A. It shows that cigarette companies faced an unusual challenge. About one-half of the users of  
14 their product did not really enjoy using it. It's obvious that if the situation developed such that you  
15 don't enjoy something and you have to pay to do it, you will consider giving it up. The cigarette  
16 companies did not want this to happen.

17 **Q. Can you provide another example showing that Defendants researched smokers'**

18 **desires to quit?**

19 A. Yes. A May 1978 study performed by the Roper Organization for Philip Morris entitled "A  
20 Study of Public Attitudes Toward Cigarette Smoking and the Tobacco Industry in 1978" found,  
21 when smokers were asked: "How much do you want to quit?" that "[s]ixty-six percent of smokers  
22 would like to quit." 501565967-6019 at 6009 (U.S. Ex. 21,866).

23 **Q. Why is this study important?**



1 A. This shows that Philip Morris knew the majority of smokers would like to quit. It would  
2 have been a great threat to the companies' financial performance if anything near this number of  
3 people quit smoking. The companies also believed that the more people who smoked, the greater  
4 was the likelihood someone would start. So that was an important reason as well for wanting to  
5 deter people from quitting.

6 **Q. Can you provide another example and briefly explain its importance?**

7 A. Yes. An April 23, 1979 BATCo Research Report found that "most smokers wish to quit  
8 smoking." 105562110-2189 at 2114 (U.S. Ex. 21,516).

9 This BATCo report has essentially the same kind of research data collected by Philip Morris  
10 showing the vast magnitude of potential business loss due to quitting.

11 **Q. Can you provide another example and briefly explain its significance?**

12 A. Yes. An April 1983 Report to BATUS Board of Directors on Smoking and Health indicated  
13 that "[t]hirty-three percent of smokers would 'very much like to quit.'" 512106944-6964 at 6959  
14 (U.S. Ex. 51,618).

15 This gives an indication of the strength of the desire to quit. The tobacco companies knew  
16 that one third of smokers had a very strong desire to quit.

17 **Q. How are these documents important?**

18 A. Defendants maintain that they never cared if someone stopped smoking or not. But these  
19 data show that many people who smoked eventually came to a point when they wanted to quit and  
20 Defendants were well aware of this fact. Marketing was the process via which the companies could  
21 address smokers' reservations and concerns, thereby keeping more people in the market.

22 **Q. Can you provide another example and briefly explain its significance?**

1 A. A September 28, 1987 inter-office memorandum written by Carolyn Levy, then Assistant  
2 Director of Consumer Research, and sent to David Dangoor, Executive Vice President at Philip  
3 Morris, outlined "smoker dynamics" and "the most important consumer-related questions which  
4 should be addressed," among them: (1) "What are the factors which influence brand choice of  
5 smokers reentering the market? Can we capitalize on these?"; (2) "Which new product options will  
6 appeal to former smokers?"; and "Can we determine the relative importance of various factors  
7 which influence quitting? Are there segments which can be characterized?" Carolyn Levy, long-  
8 time Philip Morris executive testified that the "umbrella reason" Philip Morris studied the factors  
9 that influence quitting smoking, and conducted a study on quitting smoking, was to learn the  
10 reasons why people quit that can be addressed with a new product feature. She further  
11 acknowledged that "people quit because of health concerns." 2080009516-9522 at 9517, 9520  
12 (U.S. Ex. 45,291); Deposition of Carolyn Levy, United States v. Philip Morris, et al., April 26,  
13 2002, 518:25-519:13.

14 This document shows that Philip Morris did regard understanding the drivers of quitting as  
15 one of the "most important" questions to be addressed in research. This was at the same time as the  
16 company claimed to have no interest in influencing the rate of quitting.

17 **2. Defendants Track Quitters and Quit Attempts**

18 **Q. You testified that Defendants tracked quitters and potential quitters. Can you explain**  
19 **further?**

20 A. Yes. Above, I talked about the data companies had on how much people enjoyed smoking  
21 (or did not) and how much individuals would like to quit. Companies also did research to assess  
22 how many people acted on their desires to quit and how successful they were with those attempts.

23 **Q. Can you provide examples of such documents?**

1 A. Yes. First, a February 7, 1984 Philip Morris memorandum to Leo Meyer from Myron  
2 Johnston included a chart which showed that 60.4% of white males had “made a serious attempt to  
3 quit.” 2001255595-5615 at 5597 (U.S. Ex. 36,470).

4 Second, a 1988 memorandum from Carolyn Levy to John Zoler, then Director of Market  
5 Research, further explains the research conducted by Philip Morris that was discussed in the earlier  
6 memorandum of September 28, 1987. Under "Smoker Dynamics," the document states "Conducted  
7 a major study on quitting, showing demographics of quitters, quitting by brand, reasons for quitting,  
8 methods used to quit, substitutes used for cigarettes." Carolyn Levy testified at her deposition in  
9 this case that the Philip Morris study researched as many as 300,000 to 500,000 people and revealed  
10 that "the number one reason for people quitting smoking were health concerns." 2080009523-9529  
11 (U.S. Ex. 45,292); Deposition of Carolyn Levy, United States v. Philip Morris, et al., April 26,  
12 2002, 519:14-526:13.

13 Third, in a July 20, 1988 memorandum entitled “Quitting,” Andrew Schwartz, a Philip  
14 Morris Manager, wrote: “About one quarter of adults who smoked in the past year report having  
15 tried to quit (27%) . . . among those . . . about one-third report having successfully quit.”  
16 2043898156-8166 at 8156 (U.S. Ex. 69,923).

17 Fourth, a June 21, 1990 R.J. Reynolds report entitled “U.S. Cigarette Market in the 1990s”  
18 stated “[t]he number of smokers attempting to quit also increased in the 1980s” and included a chart  
19 detailing the percentage of “smokers who tried to quit in past year” which showed that 13% tried to  
20 quit in 1978 and 32% tried to quit in 1986. 507798137-8230 at 8144 (U.S. Ex. 20,789).

21 Fifth, a March 1993 Philip Morris document entitled "Quitting Dynamics" showed statistics  
22 from "Smoker Tracking" that indicated that the percentage of Low Tar smokers not making a quit

1 attempt was greater than the percentage of Full Flavor smokers not making a quit attempt.  
2 2062362453-2474 at 2473 (U.S. Ex. 39,555).

3 **Q. Why did such a large percentage of people wish to quit?**

4 A. Basically it is because the value or benefit they now perceived in continuing to smoke was  
5 less than the costs they perceived. The majority of smokers started smoking before the age of 18  
6 and perhaps the motivation to start then (e.g. to be one of the crowd, look grown-up or feel like the  
7 independent Marlboro Man) no longer operated. For some, health concerns had become an issue.

8 **Q. How did Defendants react, if at all, to potential quitting?**

9 A. The tobacco companies perceived a significant threat from the potential quitting  
10 phenomenon. Consider the collection of facts that I just have related. They knew that only about  
11 half of those who were spending a significant portion of their disposable income on the smoking  
12 habit stated that they really enjoyed smoking any longer. Most people who smoked wanted to quit  
13 and the majority tried to quit at some point.

14 **Q. Did the companies understand why people wished to quit?**

15 A. Yes. They understood that the main reason was due to health concerns. Sometimes, these  
16 health concerns were raised to the smoker by family and friends. Thus, the smoker was made to  
17 feel guilty about continuing to smoke.

18 **Q. Did Defendants' marketing address these concerns?**

19 A. Yes, and I believe Defendants' marketing was successful in this.

20 3. ***Defendants' "Continuing Controversy" Campaign Was Intended to Be An***  
21 ***Effective Marketing Tool in Deterring Smokers From Quitting***  
22

23 **Q. What were the major marketing approaches used by the companies to deter quitting?**

24 A. Their marketing in general attempted to enhance the perceived value of smoking in the mind  
25 of the consumer. But, two very specific activities directed at deterring quitting were: (1) the

1 fostering of a “continuing controversy” denying that any negative health impacts had been proven  
2 and (2) the introduction of low tar and nicotine brands as “health reassurance brands.”

3 **Q. Let’s focus first on the “continuing controversy.” What was this?**

4 A. This was the strategy adopted by the cigarette companies to deal with the health issues  
5 related to smoking. The strategy was not to deny that smoking possibly carried health risks.  
6 Instead, the tobacco companies went the route of saying that such risks have “not been proven” and  
7 that the whole issue of whether or not smoking caused disease required more scientific  
8 investigation. The impact of this was to place doubt about negative health impacts in the smoker’s  
9 mind and the minds of friends and family. If nothing had actually been proven about the health  
10 risks of smoking, perhaps it was okay to continue smoking and not to feel guilty about it. The  
11 smoker, facing a difficult withdrawal from an addiction, could find reason not to quit in the  
12 “nothing has been proven” rationale.

13 **Q. When would you say the “continuing controversy” began?**

14 A. It began at least 50 years ago. The 1954 newspaper advertisement “A Frank Statement to  
15 Cigarette Smokers” placed by the industry stated that studies linking smoking to lung cancer “are  
16 not regarded as conclusive in the field of cancer research” and “We believe the products we make  
17 are not injurious to health.” 11309817-9817 at 9817 (U.S. Ex. 20,277). The advertisement  
18 announced the formation of a trade group, the Tobacco Industry Research Council, to guide  
19 research efforts into “all phases of tobacco use and health.”

20 **Q. Was this advertisement widely distributed?**

21 A. This advertisement was published in 448 newspapers and signed by the Presidents of  
22 American Tobacco, Benson and Hedges, Brown & Williamson, P. Lorillard, Philip Morris, R.J.  
23 Reynolds, and United States Tobacco, among others.

1 **Q. Why, from your perspective as a marketing expert, did Defendants create and place**  
2 **this newspaper advertisement?**

3 A. As Defendants stated at the Minnesota tobacco litigation in 1997 and 1998, the companies  
4 expected consumers to rely upon these statements. These statements sought to comfort smokers by  
5 reassuring them of the companies' public health concerns and their commitment to providing a non-  
6 health-threatening product. It provided a mechanism for those smokers who wanted a rationale for  
7 continuing to downplay the negative health implications of smoking and counter any guilt feelings.

8 **Q. What Minnesota testimony are you referring to in particular?**

9 A. I am referring to the deposition and trial testimony of Joseph F. Cullman III; Alexander W.  
10 Spears III; Walker P. Merryman; and Eric Gesell.

11 **Q. Could you quote the testimony of Mr. Cullman?**

12 A. Joseph Cullman III, who was Vice President of Benson & Hedges in 1954 and ultimately  
13 became President and Chief Executive Officer of Philip Morris, testified at his deposition in  
14 Minnesota:

15  
16 Q. The cigarette companies intended consumers to rely on the  
17 information asserted in this Frank Statement; correct?

18 A. . . . . We would hope people would have read it. . . .  
19 \*\*\*\*\*

20 Q. And you hoped people would believe them; right?

21 A. Yes.

22 Q. And you hoped people would rely on them; right? . . . Conduct  
23 their affairs with the belief that what is asserted herein is true  
24 and accurate?

25 A. I believe it was true and accurate.

26 Q. And you wanted the people who read this to believe that it was  
27 true and accurate; correct?

28 A. I would expect that was the reason, yes.

29 Q. Okay. And you wanted them, in conducting their affairs, to  
30 rely on the facts asserted herein as being true and accurate;  
31 right?

32 A. They were true and accurate.

1 Q. And you wanted people to believe and rely on that; right?

2 A. I see no reason why they shouldn't . . . . We hoped they  
3 would. . . .

4 Q. And that's what you wanted then; right?

5 A. Yes.

6  
7 Deposition of Joseph F. Cullman III, State of Minnesota v. Philip Morris Inc., C1-94-8565, June 11,  
8 1997, 88:12-89:20 (objections omitted).

9 **Q. Could you quote the testimony of Dr. Spears?**

10 A. Alexander Spears, Lorillard's CEO, testified at his deposition in Minnesota:

11 Q. Do you believe that smoking has been proved to cause lung cancer?

12 A. No, I do not.

13 \*\*\*\*\*

14 Q. And to the extent that the Tobacco Institute has made that statement  
15 publicly in the past, do you believe that smokers have the right to rely  
16 upon that statement?

17 A. I believe they should have -- they should rely on information that's  
18 provided along with other information that they have.

19  
20 Deposition of Alexander W. Spears III, State of Minnesota v. Philip Morris Inc., C1-94-8565,  
21 September 25, 1997, 558:25-559:2; 559:9-15.

22 **Q. Could you quote the testimony of Mr. Merryman?**

23 A. Walker Merryman, spokesperson for the Tobacco Institute, testified at his deposition in  
24 Minnesota:

25 Q. And it is true, isn't it, that the Tobacco Institute has  
26 consistently in its public statements on smoking and health  
27 taken the position that no scientific proof had been found to  
28 convince -- to convict smoking as a hazard to health?

29 A. We have said that from time to time.

30 Q. And in fact you intended people who received this publication  
31 and read it to believe what was being said; correct?

32 A. Correct.

33 Q. And sir, the sentence -- the paragraph goes on to say, quote,  
34 "The statistical, clinical and experimental findings have not  
35 established smoking as a cause of any disease," close quote.

36 A. That -- that is correct.

1 Q. And in fact The Tobacco Institute intended the people who  
2 received this publication and read it to believe what the  
3 Tobacco Institute was saying.

4 A. Yes.

5  
6 Deposition of Walker P. Merryman, State of Minnesota v. Philip Morris Inc., C1-94-8565, July 15,  
7 1997, 110:13-111:13 (objections omitted).

8 **Q. Could you quote the testimony of Mr. Gesell?**

9 A. Eric Gesell of American Tobacco testified at his deposition in Minnesota that:

10 Q. You expect people to be able to rely on the advertising that you place  
11 on behalf of the American Tobacco Company; correct?

12 A. Sure.

13 Q. And you know, in fact, people will rely?

14 A. Yes.

15 Q. And one of the best measures of reliance would be sales;  
16 correct?

17 A. Correct.

18  
19 Deposition of Eric Gesell, State of Minnesota v. Philip Morris Inc., C1-94-8565, September 18,  
20 1997, 22:8-22:20 (objections omitted).

21 **Q. Did Defendants continue to publicly create a “continuing controversy” beyond the**  
22 **1954 Frank Statement?**

23 A. Yes. A September 27, 1960 TIRC press release entitled “New Evidence Shows  
24 Complexities of Lung Cancer, Scientist Says” quoted Clarence Cook Little, Scientific Director of  
25 TIRC as saying: “Charges that smoking causes lung cancer ‘have not been proved in the scientific  
26 laboratory. . . . No one really knows what part, if any, smoking plays in causing lung cancer. But  
27 new evidence tends to throw doubt on, rather than support, the charges against smoking as a major  
28 causative factor in this disease.’” 500518873-8875 at 8873 (U.S. Ex. 20,635).

29 **Q. What is important about this statement?**



1 A. Clarence Cook Little was a noted cancer researcher. He was offering reassurance to  
2 smokers that things “have not been proven” and that “doubt” is the current state of affairs. Thus, a  
3 smoker looking for a rationale to continuing smoking rather than go through a painful withdrawal  
4 from an addictive product found one in the tobacco companies’ false statements.

5 **Q. Can you provide further examples of instances where Defendants created a**  
6 **“continuing controversy”?**

7 A. Yes. In a November 18, 1962 radio broadcast interview with George V. Allen, President of  
8 the Tobacco Institute, entitled “The Smoking Question Part II,” Allen was asked “Does the Institute,  
9 or does anybody in the industry feel that a case has been established that smoking is connected with  
10 lung cancer?” Allen’s answer was: “No. The industry – and you say anybody in the industry- as far  
11 as I have heard anybody express himself, it is that the matter needs thorough and energetic scientific  
12 investigation.” 500062010-2018 at 2011 (U. S. Ex. 20,619).

13 **Q. What were the Defendants communicating to the public?**

14 A. The tobacco companies were again saying that nothing had been decided about possible  
15 negative health consequences; we need to do more research. In the meantime, one should not  
16 assume a connection between lung cancer and smoking.

17 **Q. Can you provide another example?**

18 A. Yes. An April 23, 1968 distributed report entitled “The Cigarette Controversy: An  
19 Examination of the Facts by the Tobacco Institute” asked: “Do cigarettes cause disease?” and  
20 answered: “This is the central question in the continuing cigarette controversy that concerns  
21 millions of Americans. The debate has not been closed; it has really only begun.” The report noted  
22 “there is still no proof that cigarette smoking is a cause of lung cancer – or any other disease.” The  
23 conclusion of the report again asked the question “Do cigarettes cause disease?” and answered “In

1 spite of all the debate – in spite of all the research – that questions [sic] is still unanswered. The  
2 industry will continue to seek the truth in the continuing cigarette controversy.” 502644592-4616 at  
3 4594, 4596, 4615 (U.S. Ex. 20,703).

4 **Q. What was the purpose of this Tobacco Institute report?**

5 A. Consider the difference to a smoker between two scenarios. In scenario #1, the companies  
6 collectively and in unison state: “we believe smoking is harmful to your health.” Scenario #2 is  
7 what the tobacco companies did in the “continuing controversy.” They stated: the health of our  
8 consumers is our paramount interest. Because of that, we are rigorously investigating the situation,  
9 and so far there were no proven negative health consequences. We will continue our quest for the  
10 truth in an energetic way. Scenario #2 has a significantly different impact on smokers’ attitudes and  
11 thoughts about quitting from the truth scenario of scenario #1. Deception is at the root of the  
12 “continuing controversy,” and it was effective in giving smokers a reason not to endure the painful  
13 process of discontinuing use of an addictive product.

14 **Q. Can you provide another example?**

15 A. Yes. An October 18, 1968 Hill and Knowlton, Inc. memorandum to the Tobacco Institute  
16 described the desired content for the Tobacco Institute’s writing and production of tobacco and  
17 health research. In a section on “Criteria for Selection” of material to be published, the  
18 memorandum listed: “The most important type of story is that which casts doubt on the cause and  
19 effect theory of disease and smoking.” TI3890-3893 at 3891 (U.S. Ex. 21,614).

20 **Q. How is this memorandum significant?**

21 A. The tobacco companies and the Tobacco Institute had promised consumers they would  
22 conduct research to find the answer to key health questions. But this document shows they really  
23 were not trying to provide truthful information. Rather, they were trying to find a way to distort the

1 facts of the situation to continually bring the health impact of smoking into question and sow seeds  
2 of doubt in the smoker's mind about negative health impacts.

3 **Q. Can you provide another example?**

4 A. Yes. The headline of a December 1, 1970 advertisement by the Tobacco Institute read:  
5 "After millions of dollars and over 20 years of research: The question about smoking and health is  
6 still a question." TIMN0081352-81352 (U.S. Ex. 21,305).

7 **Q. How, if at all, is this statement part of Defendants' marketing campaign?**

8 A. This paid advertisement of the collective voice of the industry continues the "doubt"  
9 campaign into its 16<sup>th</sup> year since the Frank Statement. It says the tobacco companies have looked at  
10 the question a great deal – through 20 years of research – and still have found nothing definitive.  
11 The question is unanswered.

12 **Q. Can you provide another example?**

13 A. Yes. In a January 3, 1971 interview on a CBS Television and Radio Broadcast of "Face the  
14 Nation," Joseph F. Cullman, III, Chairman of the Board for Philip Morris, Inc., stated "We do not  
15 believe that cigarettes are hazardous; we don't accept that." 1002605545-5564 at 5560 (U.S. Ex.  
16 35,622).

17 **Q. How, if at all, is this statement part of a marketing campaign?**

18 A. This is part of the tobacco companies' overall strategy of reassuring smokers. This  
19 appearance by a top Philip Morris executive on a television show is an element of the public  
20 relations campaign. It sets out the position that much research has been conducted so the question  
21 of whether or not cigarettes are hazardous has been closely examined. Based on that extensive  
22 examination, a person who really should know (as an executive at the maker of the product) states

1 he does not believe cigarettes are “hazardous.” This statement assures the smoker that the key  
2 question has been rigorously analyzed and that investigation surfaced no need for concern.

3 **Q. Can you provide another example?**

4 A. Yes. In a May 1, 1972 memorandum to Horace Kornegay, Tobacco Institute Chairman,  
5 Fred Panzer, Vice President of the Tobacco Institute, described the “cigarette controversy” strategy  
6 as “brilliantly conceived and executed” by “creating doubt about the health charge without actually  
7 denying it.” 87657703-7706 at 7703 (U.S. Ex. 79,218).

8 **Q. How, if at all, is this statement indicative of the impact of Defendants’ “continuing  
9 controversy” marketing campaign?**

10 A. It shows that looking back on 18 years of experience the Tobacco Institute regarded the  
11 “continuing controversy” begun in 1954 as brilliant in both its concept and execution. The industry  
12 knew that flat out denial of any health issues was not credible. The strategy of creating doubt was  
13 brilliant because it offered the reassurance necessary to someone looking for a justification for not  
14 quitting. The Tobacco Institute’s judgment that the campaign had been brilliantly executed as well  
15 shows it was having the desired effect.

16 **Q. Can you provide another example?**

17 A. Yes. In a July 18, 1973 television interview on “60 Minutes,” James C. Bowling, Vice  
18 President and Director of Sales at Philip Morris, Inc., stated: “As moral people we want to know  
19 whether or not the charges against cigarettes are true. We spend more money on cigarette and  
20 health research than anybody in an attempt to find the answers to that, because we want to find the  
21 answers.” He also stated, “it doesn’t seem to me to serve a scientific cause to act as if the case is  
22 proven when it is still very much a controversy.” 503665744-5757 at 5745, 5746 (U.S. Ex. 66,413).

23 **Q. How, if at all, is this statement part of Defendants’ marketing campaign?**

1 A. This is an example of how the industry seized the mantle of authority setting itself up as the  
2 expert who should be relied upon for the vital information about whether one's health and life are at  
3 risk or not. This message gives the smoker two important and related reasons to rely on the  
4 cigarette manufacturers. First, according to Bowling, the foundation is one of basic morality. He  
5 reassures smokers that the manufacturers are "moral people" dedicated to finding the truth. So,  
6 there is no need to question the intent or integrity of their investigation. Second, the manufacturers  
7 should be considered the source of truth and wisdom on the issue because, combined with their  
8 highest integrity, is the fact that they simply have examined the question in more depth and with  
9 more rigor than anyone, by saying "we spend more money" on research than anyone else. The end  
10 result is that manufacturers are the most credible source of information on this issue – due to their  
11 morality and thoroughness of their investigations. This most credible source then tells smokers that  
12 the smoking and health issue is still "very much a controversy."

13 **Q. Can you provide another example?**

14 A. Yes. In an October 20, 1983 television interview on a "20/20" show entitled "Growing Up  
15 in Smoke," Anne Browder, a representative of the Tobacco Institute, stated: "The case is still open.  
16 The jury has not come in." When asked "It may not be harmful? You're not convinced?" Browder  
17 answered: "It may be or it may not be. We don't know." 690149518-9531 at 9519-9520 (U.S. Ex.  
18 21,046).

19 **Q. How, if at all, is this statement part of Defendants' marketing campaign?**

20 A. In 1983 it was almost 30 years since the Frank Statement and the story remains the same. It  
21 is remarkably consistent across companies, individuals, and media. It is in published pamphlets and  
22 paid advertising. This statement is part of the public relations effort. The industry positions itself  
23 as caring, moral and competent. They seize the position of the most credible, authoritative source

1 of information. They say they have looked high and low for definitive proof, but the only thing  
2 they can say is “We don’t know.”

3 **Q. Did Defendants continue to make such statements?**

4 A. Yes, the story continued into a fourth decade.

5 **Q. Can you provide some examples, and briefly explain the purpose of these statements?**

6 A. A January 17, 1984 R.J. Reynolds internal memorandum concerning how to answer  
7 questions on R.J. Reynolds advertisements relating to smoking and health stated, “We believe, for  
8 example, that the case against smoking is not a closed case but an open controversy, as yet  
9 unresolved. . . . Much more research is necessary before we will know whether or not smoking  
10 causes diseases. Until we do, the issue remains an open controversy.” 502276627-6637 at 6627-  
11 6628 (U.S. Ex. 20,698).

12 In a February 2, 1984 television interview with Ted Koppel on the ABC News program  
13 “Nightline,” Edward Horrigan, Chairman of the Board for R.J. Reynolds, stated “. . . science has  
14 still failed to establish a causal link . . . it is not a closed case . . . we continue to believe that it is  
15 an open case and not a closed case . . . . It is not known whether cigarettes cause cancer.”  
16 502371212-1223 at 1215-1216 (U.S. Ex. 20,699).

17 R.J. Reynolds’s advertisement copies contained in a “Public Issues Overview” Presentation  
18 from July 8, 1988 noted: “We at R.J. Reynolds think you will find such evidence very interesting.  
19 Because we think reasonable people who analyze it may come to see this issue not as a closed case,  
20 but as an open controversy. . . . Like any controversy, this one has more than one side. We hope the  
21 debate will be an open one.” 506646968-7008 at 6992 (U.S. Ex. 66,461).

22 A March 13, 1990 letter from the R.J. Reynolds public relations department (in answer to a  
23 letter from an individual with questions about advertising) stated: “The answers to the many

1 unanswered controversies surrounding smoking- and the fundamental causes of the diseases often  
2 statistically associated with smoking- we believe can only be determined through much more  
3 scientific research.” 507706398-6399 at 6398 (U.S. Ex. 66,487).

4 This doubt creation campaign was consistently carried out, continuing even to the time of  
5 Geoffrey Bible’s testimony in the Minnesota trial in 1998.

6 **Q. What was the purpose of Defendants’ campaign?**

7 A. The “continuing controversy” campaign was intended to be an effective marketing tool in  
8 deterring people from quitting. Clearly the intent was to create doubt in the mind of smokers  
9 making them feel less guilty about smoking and less anxious to quit. The goal of doubt creation  
10 was accomplished by using a wide variety of media and public relations efforts. Over the years, the  
11 same basic themes were stressed in a consistent fashion. The first theme for the tobacco companies  
12 was to tell the public and smokers in particular that: you can trust us. We are “moral people.” We  
13 want to know truth and we will share our findings with you. The second theme was that the  
14 examination of the question was undertaken with vigor. We are spending more than anyone and  
15 rigorously seeking the truth. The implication of such extensive, rigorous inquiry was that if there  
16 really was a link we would have found it. The third theme was that despite the commitment to the  
17 task and the research spending undertaken by the manufacturers on behalf of the smoking public,  
18 we just don’t know yet. We will keep looking but for now nothing has been proven. These three  
19 themes were the foundation of the tobacco companies’ extensive campaign to reassure smokers and  
20 deter quitting.

21 **Q. Was the campaign an effective marketing tool?**

22 A. Yes, and as noted above the tobacco companies recognized it as such, being “brilliantly  
23 conceived and executed.”

1                   4.       **Defendants Intend Low Tar Brands to Offer “Health Reassurance” To**  
2   **Deter Quitters**  
3

4       **Q.       The second specific method of deterring quitting you mention was the introduction of**  
5       **low tar and nicotine brands. Can you explain?**

6       A.       Yes. Companies introduced a number of brands and brand extensions lower in tar and  
7       nicotine and positioned them as “health reassurance” brands to meet health concerns of smokers.  
8       But this was one of the great deceptions in the marketing of cigarettes.

9       **Q.       What are some examples of the companies’ low tar and nicotine brands?**

10      A.       The companies introduced many low tar and nicotine brands over the years. Notable among  
11      these were Philip Morris’s new Merit brand and its line extension of Marlboro to Lights, Ultra  
12      Lights, and other varieties. Other companies also introduced such low tar and nicotine brands, e.g.  
13      R.J. Reynolds introduced Vantage, Brown & Williamson introduced Carlton, and Lorillard  
14      introduced True.

15      **Q.       Could you explain why you say this was one of the “great deceptions” in the marketing**  
16      **of cigarettes?**

17      A.       Yes. In reality, low tar and nicotine cigarettes offered smokers no differential health impact  
18      as compared to regular cigarettes. The manufacturers understood this – senior executives from  
19      Philip Morris (James Morgan) and R.J. Reynolds (Andrew Schindler) both stated this at the  
20      Minnesota trial. However, the tobacco companies’ marketing had the impact of creating the belief  
21      among some smokers that there was a differential health impact, i.e. that low tar/nicotine brands  
22      were “better for you” and less likely to cause health problems.

23      **Q.       Can you cite any specific documents which show that Defendants understood how**  
24      **smokers viewed these low tar/nicotine products?**



1 A. Yes. For example, there is a December 1976 Lorillard document entitled “SHF [super high  
2 filtration] Cigarette Marketplace: Opportunities Search and Situation Analysis: Volume II.” The  
3 mid-1970s was the time when low tar and nicotine products became extremely popular. This study  
4 of consumers’ attitudes found that “Health concerns are the usual reason for switching to a low  
5 T&N [tar and nicotine] brand. Such cigarettes are ‘better for you’ – milder and less irritating now  
6 as well as less likely to cause serious problems (later),” and “To many SHF smokers, a low T&N  
7 cigarette represents a compromise smoke between a more satisfying smoke and not smoking at all.”  
8 The document further stated: “Those who smoke low tar and nicotine cigarettes do so because they  
9 believe such cigarettes are ‘better for you’ . . . smoking them helps reduce (physical) dependence  
10 on/addiction to smoking/nicotine; and reduces smoking anxiety, guilt.” 84053709-3744 at 3712,  
11 3719 (U.S. Ex. 21,073).

12 **Q. What does this internal document show?**

13 A. This document says quite a lot about low tar and nicotine cigarettes and the impression  
14 created by Defendants’ marketing of them. First is the simple point that Lorillard’s research on  
15 consumers established that those who smoke low tar brands do so because they believe these  
16 cigarettes are “better for you.” This is an incorrect belief. The companies knew it was a false belief  
17 but sought to build on the misperception rather than correct it. Second, the research showed that  
18 smoking low tar and nicotine helped a smoker to reduce guilt about smoking and thus made a  
19 smoker less likely to quit. Smoking a “health reassurance” product with its low tar was a  
20 “compromise” to justify not quitting. This document shows the deep impact on consumers and why  
21 these products were important in deterring quitting.

22 **Q. Can you provide another example?**

1 A. Yes. Lorillard's Five Year Plan for 1977-1981 stated: "The structure of the market is  
2 changing in the direction we forecast in 1976 – toward brands responsive to the cigarette  
3 controversy." The plan further pointed out: "The success rate of new products. . . is again on the  
4 uptrend with the emergence of products responsive to very specific and tightly focused concerns  
5 about the cigarette controversy." 04100641-0706 at 0642, 0646 (U.S. Ex. 74,853).

6 **Q. How is this plan important?**

7 A. It shows that in the mid-1970s, Lorillard believed that low tar and nicotine products, being  
8 perceived by smokers as responsive to their health concerns, were changing the entire structure of  
9 the market. As just discussed, cigarette manufacturers were perpetuating the controversy. They  
10 were not denying cigarettes carried negative health impacts, just saying that "we don't know" if  
11 they do or not. Now, with the low tar cigarettes, in case you as a smoker are concerned, here is a  
12 way to address that concern. These brands were "responsive" to consumers' health concerns and  
13 this ability to address these concerns was behind the success of new products.

14 **Q. Can you provide another example?**

15 A. Yes. A July 25, 1977 Brown & Williamson study prepared by Hawkins, McCain and  
16 Blumenthal Advertising entitled "Low 'Tar' Satisfaction" found that "[a]lmost all smokers agree  
17 that the primary reason for the acceptance of low 'tar' brands is based on the health reassurance  
18 they seem to offer." 775036039-6067 at 6047 (U.S. Ex. 21,053).

19 **Q. Why is this study important?**

20 A. Again, it shows that Defendants knew that smokers accepted the low tar and nicotine brands  
21 due to the "health reassurance" they offered. This was a complement to the doubt creation  
22 campaign. Companies could not prove their product was safe so reassurance was offered by these  
23 "health reassurance" cigarettes.

1 **Q. Did this continue?**

2 A. Yes. A November, 1976 study entitled “Lorillard 1976 Switching Study Summary,”  
3 prepared for Lorillard by Marketing Corporation of America found that “low T&N [tar and  
4 nicotine] brands, seem to be satisfying smokers’ intellectual T&N concerns.” The study noted that  
5 the results “fully support the Lorillard strategy in the 5-year plan (updated 11/15/76) to: 1. Focus  
6 marketing and R&D efforts against brands responsive to the cigarette controversy.” 03296482-  
7 6544 at 6485, 6498 (U.S. Ex. 46,455).

8 **Q. How do you interpret this study summary?**

9 A. It shows that smokers had “intellectual” concerns about tar/nicotine. There were many  
10 messages in the environment about the health consequences of cigarettes. As discussed above,  
11 many people wanted to quit because of their concerns over health. The Lorillard study showed the  
12 role of low tar and nicotine brands in addressing these concerns. It also shows that in 1976,  
13 Lorillard planned to focus its marketing on the low tar brands with the foundation of a false premise  
14 of being more responsive to consumers’ health concerns.

15 **Q. Can you provide another example?**

16 A. Yes. A BATCo memorandum entitled “Year 2000” dated April 4, 1979 forecast that: “Low  
17 tar products will eventually and substantially define the tobacco business. This will serve as an  
18 important mechanism for reassuring smokers.” 109883101-3103 (U.S. Ex. 21,518).

19 **Q. What is the significance of this document?**

20 A. It shows that the false reassurance about health became a fundamental driver of the cigarette  
21 market. This creation of a misperception – its “important mechanism for reassuring smokers” – was  
22 so important that BATCO saw the deceptively marketed low tar products as the products which  
23 “substantially define the tobacco business.”

1 **Q. Can you provide another example?**

2 A. Yes. An August 5, 1980 R.J. Reynolds memorandum entitled "Project HR" and marked  
3 "RJR SECRET" from M. D. Shannon to Dr. W. M. Henly and Dr. R. A. Lloyd, all R.J. Reynolds  
4 researchers, described smokers of very low-tar brands as follows: "Victims of pressure from peers  
5 and loved ones to quit or reduce smoking"; "Feelings of guilt about smoking are very strong. . .";  
6 "Many would like to quit but cannot. This tends to fuel their low self-esteem"; "do not feel good  
7 about themselves." 500251567-1570 at 1567-1569 (U.S. Ex. 21,563).

8 **Q. What is the significance of this document?**

9 A. This document shows that R.J. Reynolds understood that smokers had strong guilt feelings  
10 and low tar brands were a way of trying to deal with this guilt, while they were not able to quit  
11 smoking.

12 **Q. Can you provide other examples?**

13 A. Yes. A Brown & Williamson document entitled "Kool Family Utopian Objectives 1979-  
14 1985" stated under the heading "Share Objectives" that "Kool must move into the health  
15 reassurance segment. . ." 680559149-9162 at 9149 (U.S. Ex. 54,048).

16 A January 23-24, 1984 report by Daniel M. Ennis, John E. Tindall and Lisa Eby, all  
17 employees in Philip Morris's Product Evaluation Division, entitled "Product Testing Short Course"  
18 noted: "susceptibility to our traditional response to anti-smoking publicity – lower tar – is . . .  
19 decreasing." 2028817401-7576 at 7506 (U.S. Ex. 20,016). This shows that Philip Morris regarded  
20 low tar brands as a way to deal with negative information about the effects of smoking.

21 **Q. Can you provide other examples?**

22 A. Yes. A March 20, 1984 Philip Morris marketing report entitled "The Cigarette Consumer"  
23 described the reason for the success of the low-tar brands: ". . . motivation [to switch to them] has

1 come from health issue. People willing to stick with lower tar because they feel are doing  
2 themselves a favor. Most successful new brands have had low tar/health motivation: Merit."  
3 2500002189-2207 at 2199 (U.S. Ex. 21,460).

4 **Q. What is the significance of this document?**

5 A. This document indicates that Philip Morris's own consumer research showed that those who  
6 smoked low tar and nicotine cigarettes did so because they perceived them as a way to address the  
7 health issue. As of 1984, Philip Morris saw that the reason for most new brands' success was this  
8 health motivation.

9 **5. Defendants Market Low Tar Brands to Offer "Health Reassurance" To**  
10 **Deter Quitters**

11  
12 **Q. How did Defendants market low tar and nicotine brands?**

13 A. Defendants marketed them in such a way that customers were reassured these brands were  
14 better for their health than regular cigarettes. In some instances, low tar cigarettes were specifically  
15 marketed as a substitute for quitting.

16 **Q. Can you provide an example?**

17 A. Yes. A November 29, 1976 Brown & Williamson memorandum from F.E. Latimer to B.L.  
18 Broecker and M.J. McCue, all Brown & Williamson marketing employees, stated: "Good cigarette  
19 advertising in the past has given the average smoker a means of justification." 680086039-6044 at  
20 6039-6040 (U.S. Ex. 20,984).

21 **Q. Can you provide some specific examples of advertisements?**

22 A. Tar levels were trumpeted in advertising and both new brands and line extensions such as  
23 Lights and Ultra-Lights were introduced. Virtually every major brand undertook line extensions  
24 and by 1980 over 50% of cigarettes sold were "low-tar" (by industry definition "low-tar" was less  
25 than 15 milligrams tar on the FTC Method).

1 For example, in 1976 Philip Morris introduced a new brand, Merit, at 9 milligrams Tar with  
2 “enriched flavor.” Merit formed the basis for line extensions to Merit Ultra at 4 milligrams and  
3 later Merit Ultima at 1 milligrams. The three were jointly advertised in a “low, lower, lowest”  
4 presentation of the product line. 1002325022-5022 (U.S. Ex. 21,510); (U.S. Ex. 5,087).

5 Similarly, R.J. Reynolds introduced the low-tar Vantage brand in 1971 and later brought out  
6 Now with advertising proclaiming it “significantly lower than 98% of all cigarettes sold.” (U.S. Ex.  
7 3,545); (U.S. Ex. 5,852).

8 Advertisements in the late 1940s and early 1950s were relatively explicit in their health  
9 claims. For example, Lorillard advertised Kent with its Micronite filter as removing “7 times more  
10 nicotine and tars” and offered demonstrations so “you could see the proof of Kent’s health  
11 protection.” (U.S. Ex. 87,186); (U.S. Ex. 87,187).

12 American Tobacco labeled its Carlton brand as an “unusual new cigarette” which is “so low  
13 in ‘tar’ and nicotine we print test results on all packs and cartons.” In 1968, Carlton advertising  
14 stressed the fact that it was found lowest in ‘tar’ by U.S. Government testing and cited its “unique  
15 Air-Stream Filter” as the source of its ability to reduce tar down to 4 milligrams (as compared to a  
16 then industry average of over 20 milligrams). ATX40397140-7141 (U.S. Ex. 85,020);  
17 MNAT00386652-6652 (U.S. Ex. 85,112); (U.S. Ex. 3,028); (U.S. Ex. 88,689).

18 A True cigarette magazine advertisement positioned True as a means of making not only  
19 smokers but also those concerned about a smoker’s health feel better. For example, a True  
20 advertisement copy stated: “My wife bugged me into it, would you believe it? It seemed every time  
21 I’d light up a cigarette, my wife would put on that look . . . So, we had one of our little talks . . .  
22 Look hon, I said . . . would it make you feel better if I changed to a low tar and nicotine cigarette?  
23 She smiled. So I bought a pack of True next morning.” 01767161-7161 (U.S. Ex. 74,702).

1 Another True cigarette advertisement specifically offered True as an alternative to quitting stating:  
2 “I thought about all I’d read and said to myself, either quit or smoke True. I smoke True.”  
3 03061394-1394 (U.S. Ex. 21,700); (U.S. Ex. 10,447); (U.S. Ex. 4,853). Another True cigarette  
4 advertisement copy stated: “I’d heard enough to make me decide one of two things; quit or smoke  
5 True. I smoke True.” 01408237-8237 (U.S. Ex. 21,808) (U.S. Ex. 87,462).

6 **Q. How significant were low tar and nicotine cigarettes to the market?**

7 A. The tobacco companies thought that low tar and nicotine cigarettes were an important  
8 phenomenon in the market. As I mentioned, in 1976, one firm saw these products bringing about a  
9 change in the “structure of the market.” Later, another company said these products “will  
10 eventually and substantially define the tobacco business.” Thus, a set of products predicated on the  
11 false premise that they are better for you were seen to be a key driver of the market.

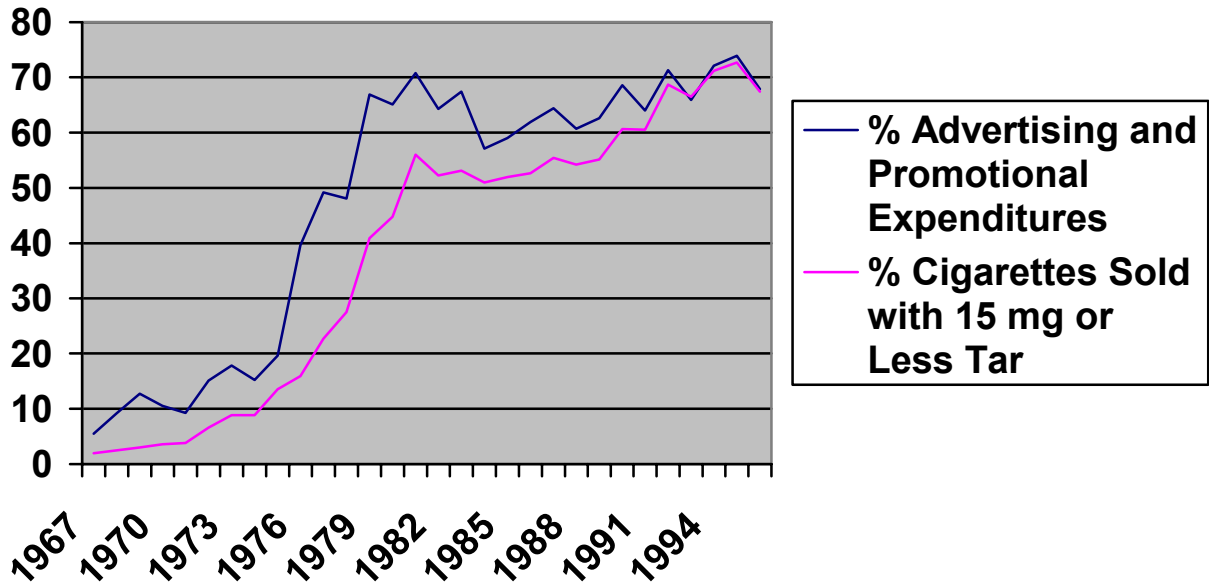
12 **Q. Were Defendants correct?**

13 A. Yes these two tobacco companies were correct in their judgments that these products would  
14 substantially reshape and define the cigarette market. The chart below, labeled as Demonstrative  
15 #11, shows the growth of products built on the false premise of being better for you from 1967 to  
16 1996. It shows the percentage of cigarettes sold in the United States of the low tar and nicotine  
17 variety, namely those with 15 milligrams or less of tar on the FTC Method. It also shows the  
18 percentage of the tobacco companies’ advertising and promotional spending dedicated to these  
19 brands.

20 As shown in the chart, the real “boom” time for these cigarettes is the late 1970s. In 1974,  
21 manufacturers devoted about 15% of their advertising and promotion dollars to these products. By  
22 1979, this spending grew to 67%. At the time, the percent of sales represented by low tar was only  
23 30%, so spending was disproportionately high on these “health reassurance” brands. These

1 products, which accounted for less than 15% of cigarette sales in 1975 came to hold the majority of  
2 the market by 1981. As shown, by the mid-1990s both percentage of sales held by low tar brands  
3 and spending on them were about 70% of the industry total.

4 **Demonstrative #11: Percentage of Low/Tar Nicotine Cigarettes Sold in the United States**  
5 **(1967-1996) and Defendant's Advertising and Promotional Expenditures on These Brands**  
6 (Source: FTC Report to Congress for 1997, pp 24-27 (1999)) (U.S. Exhibit 76,080)



7  
8 **Q. Considering the internal documents and the advertisements you have discussed above,**  
9 **what is the purpose of Defendants' low tar/nicotine cigarette marketing?**

10 **A.** Along with the "continuing controversy" campaign, this is another major effort by the  
11 tobacco companies to use marketing for a purpose other than brand switching. Companies' research  
12 showed they were successful in creating the false impression among consumers that these products  
13 offered a health benefit. The advertising and promotional support behind health reassurance brands  
14 was designed to deter smokers from quitting. As referenced above, the tobacco companies knew  
15 these products were a mechanism via which a smoker could assuage guilt; smokers saw them as a  
16 viable alternative to quitting.



1 Publicly, the tobacco companies often stated the only purpose of their cigarette marketing  
2 was to impact adult smokers' brand choice. The tobacco companies contended that their marketing  
3 never was intended to impact the number of people smoking at any time. Contrary to these  
4 statements, the companies did knowingly influence the number of smokers – both by influencing  
5 the starting rate as discussed earlier and quitting rates as set out in this section. Not only did they  
6 seek to deter people from quitting – contrary to their public statements – but this health reassurance  
7 program was also built on what they knew was a false premise, i.e. that these low tar and nicotine  
8 products offered smokers a health benefit.

9 ***F. Defendants Market to Increase the Consumption Rate***

10 ***1. Defendants Fought “Negative” Forces to Increase Cigarette Consumption***

11 **Q. Let's turn now to another purpose of Defendants' marketing activities. You have**  
12 **testified that one of the purposes of Defendants' marketing activities was to impact the**  
13 **consumption rate of smokers. Please explain further.**

14 A. Defendants' activities were also designed to and did impact the consumption rate of current  
15 smokers. This was contrary to their public declaration that they only used marketing activity to  
16 influence brand choice, and not how much people smoked.

17 **Q. What is the “consumption rate”?**

18 A. The consumption rate is the average number of cigarettes smoked in a day by a smoker.

19 **Q. What were Defendants' marketing efforts that impacted the consumption rate?**

20 A. There were a number of them and I have already described some in relation to other  
21 purposes of marketing. As discussed, the tobacco companies sought to decrease smokers' concerns  
22 about smoking. There were messages, e.g. from public health authorities, in the environment about  
23 negative health consequences. The tobacco companies sought to counter those messages. Smoking

1 bans made it harder for smokers to smoke cigarettes. The tobacco companies fought these. They  
2 also knew from studies that any increase in prices consumers had to pay decreased consumption.  
3 So, they vigorously fought any tax increases. Generally, they tried to make the environment more  
4 accepting of smokers.

5 **Q. What is your support for this conclusion?**

6 A. Tobacco company documents provide evidence of this effort and impact.

7 **Q. Has the market for cigarettes grown or declined over time?**

8 A. Generally, per capita consumption in the United States has been declining. It was  
9 reasonably stable from 1963 to 1979. But from 1980 to the late 1990s, it declined pretty steadily to  
10 only 60% of what it was in 1980.

11 **Q. Does that fact undermine the conclusion that you have stated, that Defendants  
12 attempted to and did increase the rate of consumption by smokers?**

13 A. No.

14 **Q. Why not?**

15 A. Because sales would have decreased at an even greater rate if the companies did not  
16 undertake their efforts to impact consumption. The key issue is not sales from one year to the next.  
17 Rather, it is to assess the impact the companies' marketing did have. Comparing sales from one  
18 time period to the next does not really address the question of whether the companies' efforts to  
19 increase the average consumption rate were successful. Overall sales were decreasing over time  
20 due to a number of factors such as more information about health issues, increasing retail prices,  
21 and more smoking restrictions. But, given these factors, the marketing activities of the Defendants  
22 still boosted consumption rates.

23 **Q. Did Defendants' marketing effect the size of the cigarette market?**

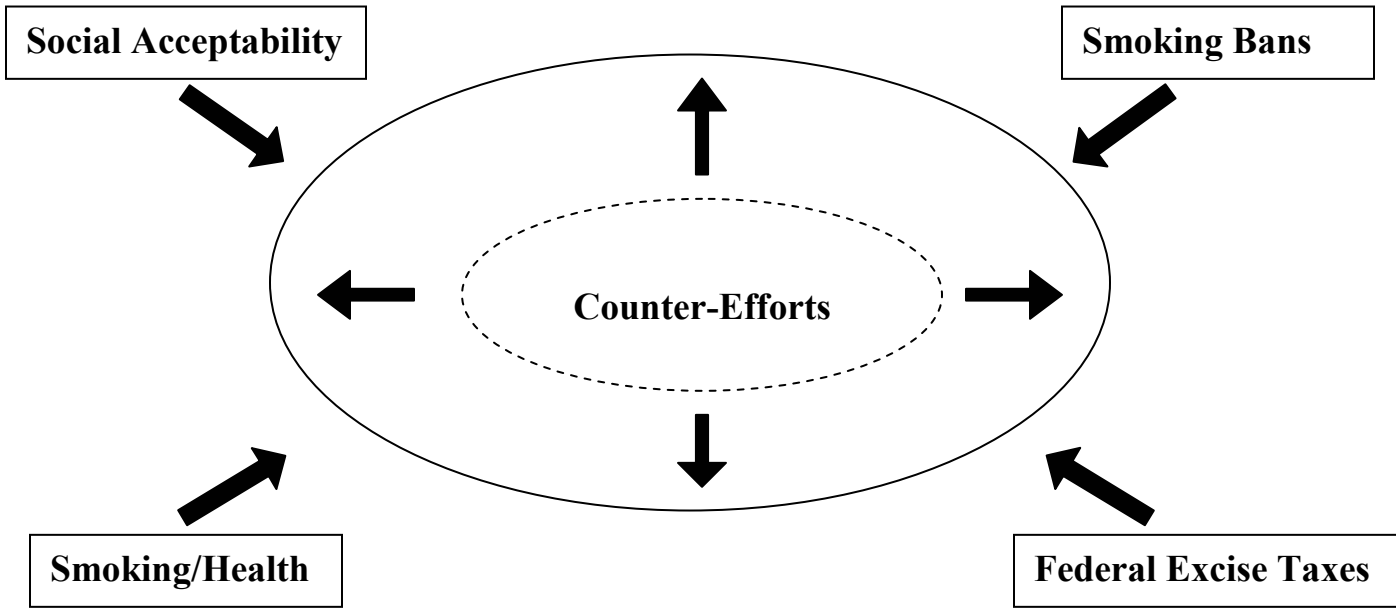
1 A. Defendants were very effective in developing resources and deploying them to counter the  
2 forces in the environment which suppressed smoking rates. As a result, their marketing activities  
3 did have a positive impact on the overall size of the cigarette market. As noted above, the  
4 companies claimed only to be interested in their share of the market – not how big the market was.  
5 But, this focus on “counter-efforts” to those forces which would otherwise shrink the overall size of  
6 the market shows this not to be true. Above I describe how the companies did impact the number of  
7 smokers (by impacting starting and quitting rates) and they also impacted smokers’ average  
8 consumption rate.

9 **Q. Have you created a demonstrative to illustrate your conclusion?**

10 A. Yes, Demonstrative #12 shows the market and the forces that expand and contract it.

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**Demonstrative #12: The “Hostile Environment” That “Squeezes Our Marketplace” and Industry Counter-Efforts**



1 **Q. Could you generally explain Demonstrative #12?**

2 A. The solid-lined outer oval conceptually represents the size of the market. Based on my  
3 review of the tobacco companies' documents, I specify four types of forces perceived by the  
4 tobacco companies as "hostile" to their products and smokers' rate of consumption of them. These  
5 forces push on or squeeze the outer solid oval making it smaller; contracting it into the inner  
6 broken-lined oval unless these forces pressing in are met by counter-efforts pushing out. Looking  
7 first at the "hostile" forces, the greater are the health concerns of smokers (shown at the lower left),  
8 the less a smoker will smoke and the smaller the market will be. Similarly, moving around the  
9 Demonstrative in a clockwise direction, the more negative feedback or decreased social  
10 acceptability smokers feel, the greater the number of bans on where and when people can smoke,  
11 and the higher the price (due to increased taxes) consumers have to pay, the less a smoker will  
12 smoke and the smaller the overall market will be. The tobacco companies' documents show they  
13 understood this and wished to counteract each of these "hostile" forces.

14 **Q. Can you provide an example of the "smoking/health" contracting force you show on**  
15 **Demonstrative #12?**

16 A. Yes. For example, a November, 1964 marketing plan prepared by Grey Advertising for  
17 Lorillard entitled "Old Gold Spin Filters 1965 Marketing Plan" noted that "[t]otal dealer purchases  
18 of cigarettes for the first eight months of 1964 totaled 220.2 billion units, 3.7% below year ago sales  
19 . . . Bi-monthly sales registered their lowest 1964 volume in January-February, reflecting the full  
20 effects of the Surgeon General's Report." 84443158-3221 at 3163 (U.S. Ex. 67,524) (emphasis  
21 added).

22 **Q. How is this marketing plan significant?**

1 A. It shows both that Lorillard was concerned about the total volume of cigarettes sold and that  
2 they saw the negative health messages in the 1964 Report of the Surgeon General as responsible for  
3 driving sales down.

4 **Q. Can you provide an example of the “social acceptability” force?**

5 A. Yes, Philip Morris’s “R&D Strategic Plan 1971-1975” dated July 15, 1970 cautioned that  
6 “[w]ithout an effective counter-effort by cigaret [sic] makers, there is likely to be an erosion of the  
7 social acceptability of smoking.” 1000837808-7813 at 7809 (U.S. Ex. 20,110).

8 **Q. What does Philip Morris mean when it refers to the “social acceptability of smoking”?**

9 A. It refers to how welcomed cigarette smoking would be in society. Would the public accept  
10 smoking as the right of an individual or would some actively discourage the smoking of others? In  
11 the early 1970s, a number of people were advocating bans on where smoking could take place. The  
12 “social acceptability” of smoking was likely to erode – meaning that it would be less enjoyable for  
13 smokers to smoke and the occasions on which they would be inclined to smoke would be fewer.

14 **Q. Does Philip Morris’s strategic plan direct what must be done about the “erosion of the  
15 social acceptability of smoking”?**

16 A. Yes. Philip Morris specifically sets out that “cigaret makers” had to engage in mounting an  
17 “effective counter-effort.”

18 **Q. Why would an erosion of “social acceptability” of smoking be of concern to the  
19 cigarette manufacturers?**

20 A. Because it had a big impact on their sales revenue. The manufacturers knew this impact in  
21 quantitative terms. At a Brown & Williamson National Sales Management Meeting, Wilson W.  
22 Wyatt, Jr., Manager of Corporate Affairs at Brown & Williamson, remarked: “We must analyze and  
23 combat the hostile environment that surrounds and squeezes our marketplace . . . if we don’t have a

1 positive program, those environmental forces are sure to shrink the marketplace. . .” and “If public  
2 smoking regulations forced each smoker in this country to reduce consumption by one cigarette per  
3 day, the loss to our industry would be \$500,000,000 per year.” 690144372-4388 at 4374, 4377  
4 (U.S. Ex. 69,189).

5 **Q. What does this statement show?**

6 A. It shows that manufacturers viewed it as a \$500 million per year problem if each smoker  
7 smoked even one less cigarette per day. It also showed that the tobacco companies used the  
8 terminology of a “hostile environment” that “squeezes our marketplace.” Demonstrative #12 shows  
9 the conceptualization of the tobacco market being squeezed by four hostile forces.

10 **Q. Can you provide another example of Defendants’ belief that the “hostile environment”**  
11 **would cause overall industry sales to go down if not effectively countered?**

12 A. Yes. A March 29, 1985 Philip Morris document entitled “The Perspective of PM  
13 International on Smoking and Health Issues (Text of discussion document used at meeting of top  
14 management)” stated: “. . . we must attack the anti-smoking groups. . .” and “While marketing  
15 restrictions and public and passive smoking do depress volume, in our experience taxation  
16 depresses it much more severely.” 2023268329-8337 at 8334, 8336 (U.S. Ex. 26,784);  
17 2023268339-8339 (U.S. Ex. 36,997).

18 **Q. What is important about this document?**

19 A. It clearly states the view of Philip Morris that restrictions on how they can market their  
20 products, restriction on smoking, and excise taxes “do depress volume.” In answer to this, to  
21 protect against this depression in volume, Philip Morris planned to “attack.”

22 **Q. Did Philip Morris follow up on these “attack” plans?**

1 A. Yes. In a January 6, 1987 memorandum to Stanley Scott, Vice President and Director of  
2 Corporate Affairs for Philip Morris, entitled “1987-1991 Five Year Plan: Corporate  
3 Communications,” George Knox wrote: “Our primary objective is to affect the context within  
4 which Philip Morris is considered . . . A collateral responsibility is to neutralize the media as an  
5 effective delivery vehicle for opposing points of view.” 2046874134-4138 at 4134 (U.S. Ex.  
6 38,562).

7 **Q. How does this memorandum inform your conclusions?**

8 A. It shows that Philip Morris Corporate Affairs saw its job as influencing the environment for  
9 smokers. In short, the attempt was to make the environment less “hostile” to smokers. Corporate  
10 Affairs viewed one of its responsibilities to use its influence with the media to make it difficult for  
11 opposing views about smoking to be expressed.

12 **Q. Is this consistent with other documents?**

13 A. Yes it is. A month later, Philip Morris stated the magnitude of the stakes. The Philip Morris  
14 U.S.A. Five Year Plan 1987-1991 dated February 1987 noted that “[w]hile the anti-tobacco  
15 movement continues to pose an industrywide threat, PM-USA enters the Plan period with  
16 formidable internal assets. . . . These assets position us to achieve long-term volume and profit  
17 growth.” The plan also pointed out that: “Importantly, the major threat to PM-USA’s long-term  
18 volume and profit growth is the potential impact of anti-smoking initiatives on industry volume.”  
19 2024465760-5786 at 5763, 5766 (U.S. Ex. 37,142).

20 **Q. How is this five year marketing plan significant?**

21 A. It shows that the market leader, Philip Morris, did not view fellow tobacco companies as the  
22 main threat to achieving its goals. Marketers of competitive cigarettes were not the key problem.  
23 Rather, Philip Morris viewed the activity of parties on “anti-smoking initiatives” as the “major

1 threat” and understood it was critical for them to use their “formidable internal assets” to counter  
2 these forces. Philip Morris felt these assets in which it had invested “positioned” Philip Morris to  
3 be successful in achieving its volume goals. The document shows a specific concern about  
4 “industry volume” which the company publicly professed having no desire or intent to impact.

5 **Q. Can you provide an example of smoking bans as a contractive force shown on the**  
6 **upper right of Demonstrative #12?**

7 A. Yes. There is an example of both the tobacco companies’ concern about smoking bans and  
8 how they felt they effectively countered it. The Philip Morris U.S.A. Five Year Plan 1980-1984,  
9 dated March 1980, pointed out that “An essential parameter of Philip Morris U.S.A.’s plan is the  
10 forecasted stability in total U.S. cigarette industry volume during the 1980-84 period. . . . One of the  
11 major negative factors which might affect demand is the continued efforts by antismoking forces  
12 . . . . In recent years, the tobacco industry has taken a more active stance toward anti-smoking  
13 groups. . . . This approach has met with some success. In 1979, 113 bills were introduced  
14 throughout the country which sought to curtail smoking in public places . . . only 8 enacted.”  
15 2026316735-6797 at 6752 (U.S. Ex. 37,340).

16 Here is a specific statement that smoking bans are a “negative” factor which could depress  
17 volume. In terms of Demonstrative #12, it shows how the bans pressed inward on the market.  
18 Second, however, it shows the “tobacco industry” (not just Philip Morris) mounted counter-efforts  
19 to reduce the impact of bans. Third, it shows that these industry efforts were very successful as less  
20 than 8% of introduced smoking bans were enacted during 1979.

21 **Q. Did other Defendants fight smoking bans?**



1 A. Yes. The R.J. Reynolds Strategic Plan for 1997-1999 stated as one goal of its “External  
2 Relations/R&D/Marketing Plan” to (among other things) “defend against restrictive, exclusionary  
3 smoking bans.” 520218899-8928 at 8922 (U.S. Ex. 52,500).

4 **Q. Can you provide an example of the last contractive force you show at the lower right of**  
5 **the oval in Demonstrative #12 – excise taxes?**

6 A. Yes. The Philip Morris PM-USA 1985-1989 Five Year Plan dated January 31, 1985  
7 indicated that consumption should stay stable at “25 cigarettes per day,” and then listed five  
8 “Downside Risks,” which were: “Excise taxes”; “Social Acceptability”; “Ambient Smoke Issue”;  
9 “Smoking in Public Places”; and “Smoking in Work Place.” The plan stated: “Strategy and Tactics:  
10 The Anti-Smoking Movement: Stem the growing social unacceptability of smoking; Communicate  
11 our side of the story – aggressively; Put anti-smoking groups on the defensive.” 2043535401-5503  
12 at 5415 (U.S. Ex. 38,301).

13 **Q. Is there evidence that Philip Morris fought excise tax increases?**

14 A. Yes. A July 8, 1994 Philip Morris draft presentation entitled “CAC Presentation #4”  
15 pointed out that “[t]he immediate implications for our business are clear: if our consumers have  
16 fewer opportunities to enjoy our products, they will use them less frequently.” The presentation  
17 also noted: “we’ve never pulled out the stops on an issue the way we did on FET [Federal Excise  
18 Tax]. We approached the FET the way the Allies approached Normandy Beach on D-Day, as a ‘do-  
19 or-die’ coordinated assault.” 2041183751-3790 at 3752, 3770 (U.S. Ex. 37,924).

20 **Q. What does this document show?**

21 A. First, it shows that Defendants knew that smoking bans, meaning fewer opportunities to  
22 smoke, would mean a reduction in the consumption rate. Second, it showed the focus the tobacco  
23 companies put on defeating excise tax increases. Above, I cited a 1985 Philip Morris document in

1 which it noted that excise taxes depress volume “much more severely” than other hostile forces.  
2 This document is from 1994 but reflects the belief that, because of the importance to its business,  
3 excise taxes were fought with a vigor comparable to the Normandy invasion – a “do-or-die”  
4 coordinated assault.

5 **Q. Is this consistent with other documents?**

6 A. Yes. The PM-USA Five Year Plan Summary for 1995-1999 indicated that: “On the external  
7 front, PM-USA will mobilize all resources to defeat excise tax increases and anti-tobacco  
8 legislation and regulation.” 2079001669-1701 at 1671 (U.S. Ex. 45,232).

9 **Q. Did Philip Morris continue its efforts to impact the size of the market beyond 1995?**

10 A. Yes. The PM-USA Five Year Plan Summary for 1996-2000 stated “we will continue to  
11 work to defeat excise tax increases at both the State and Federal levels.” 2047892284-2451 at 2286  
12 (U.S. Ex. 27,011).

13 **Q. At the core of your Demonstrative #12, you use the term “counter-efforts.” What do  
14 you mean by that?**

15 A. As the documents cited above show, the companies engaged in a number of activities to  
16 respond to and counter the impact of the “hostile” forces as they put it. First, as discussed above,  
17 they used the “continuing controversy” to create doubt about smoking and health claims. Second,  
18 they tried to induce others not to transmit negative health messages. Third, they pressed for  
19 “smokers’ rights” and accommodation of smoking to boost the social acceptability of smoking –  
20 both in the minds of the smokers and other people. Fourth, they fought smoking bans. Fifth, they  
21 made “Normandy Invasion” type efforts to defeat excise tax increases.

22 **Q. Did the Defendants ever publicly state that these “counter-efforts” to impact industry  
23 volume were one purpose of their marketing?**

1 A. No. Again, Defendants regularly state that there was one and only one purpose to their  
2 marketing – to impact the brand choice of those who already had decided to smoke. Defendants  
3 maintain that none of their marketing efforts in any way impact the consumption rate of smokers or  
4 the overall size of the cigarette market. They profess they have no concern about the overall size of  
5 the market – merely their share of it. But, it is notable above that Philip Morris saw the main  
6 challenge to its achievement of its goals not being the other tobacco companies with which it  
7 contended for market share, but rather those external forces that could impact industry and Philip  
8 Morris volume.

9 **2. Defendants Sought to Maximize Industry Volume**

10 **Q. Is there any other evidence that Defendants attempted to impact the size of the**  
11 **market?**

12 A. Yes, the tobacco companies' highest level planning documents show that they were  
13 concerned about volume growth as well as share growth. Share refers to the percentage of the total  
14 number of cigarettes sold by a firm. Industry volume for a year is the number of people smoking  
15 multiplied by the average number of cigarettes smoked by an individual smoker in a year. A  
16 company's sales volume is the number of cigarettes it sells and consequently gets revenue from.  
17 So, volume sold is the driver of the firms' profits. A concern about volume is a concern about the  
18 number of people who are smoking and how much they smoke. While the Defendants publicly  
19 claim that they are interested only in share, not the absolute number of cigarettes sold, internal  
20 tobacco company documents actually do show a concern with volume i.e. the number of smokers  
21 and how much they smoke, as well as share.

22 **Q. Can you give an example of a document showing Defendants' concern with volume**  
23 **growth?**

1 A. Yes. R.J. Reynolds's "Salem 1971 Annual Marketing Plan" noted that the "MRD  
2 [Marketing Research Division] forecasts a 1.6% year ago decline in industry volume during 1971  
3 . . . Salem's business objectives are to generate a volume gain of more than 3.0% and to increase the  
4 Brand's total share of market by 0.4 share points." 501140435-0494 at 0438 (U.S. Ex. 48,724)  
5 (emphasis added).

6 **Q. Why do you emphasize the portion of the plan that refers to the "volume gain"?**

7 A. It shows that R.J. Reynolds is not concerned solely about share. Its market research group is  
8 projecting the overall size of the market and Salem's first objective is to increase volume (i.e. the  
9 number of Salem cigarettes sold) by over 3%.

10 **Q. Can you provide another example of Defendants' objective to increase volume?**

11 A. Yes. A Philip Morris U.S.A. Tobacco Marketing Five Year Plan dated June 1973  
12 emphasized that "[m]aintaining the momentum of our profit and unit sales growth is our primary  
13 strategic concern." 1005159031-9168 at 9033 (U.S. Ex. 26,207) (emphasis added).

14 **Q. How does this plan support your conclusion?**

15 A. Here the company says "unit sales growth" is their "primary" concern. This continued into  
16 the next year, when the "Tobacco Strategy" in the Philip Morris U.S.A. 5 Year Plan 1974-1979  
17 dated July 1974 was: "Maintaining the momentum of our unit sales growth and managing our  
18 resources to provide increased profit growth is our primary strategic concern." 2043577432-7492 at  
19 7438 (U.S. Ex. 38,314) (emphasis added). So, contrary, to the tobacco company public statements,  
20 which said market share was the only concern, here internally the "primary strategic concern" is  
21 "unit sales."

22 **Q. Can you provide other examples?**

1 A. Yes. The PM-USA 1985-1989 Five Year Plan, dated January 31, 1985 listed as one of the  
2 “1985-1989 Five Year Plan Objectives. . . Total volume growth of at least 30 billion units.”

3 2043535401-5503 at 3405 (U.S. Ex. 38,301) (emphasis added).

4 And in a September 16, 1986 Philip Morris memorandum entitled “Benson & Hedges 1987  
5 Marketing Plan” from Renee V.H. Simons, Brand Manager for Benson & Hedges, to Bob Roper,  
6 International Vice President of Marketing at Philip Morris and Rick Stirlen, Director and Brand  
7 Manager at Philip Morris, Simons emphasized that “[t]he 1987 Plan was developed specifically to  
8 address and moderate the long standing volume weakness on Benson & Hedges.” 2043641067-  
9 1083 at 1067 (U.S. Ex. 38,325) (emphasis added).

10 **Q. Can you provide another example?**

11 A. Yes. R.J. Reynolds’s “1974 Winston Annual Marketing Plan” stated that “[t]he major thrust  
12 of Winston marketing efforts in 1974 will be to establish volume momentum for Winston.”  
13 502365820-5988 at 5844 (U.S. Ex. 49,126) (emphasis added).

14 **Q. What is important about this plan?**

15 A. The “major thrust” of R.J. Reynolds’s market efforts is volume not simply market share. So,  
16 their marketing purpose is broader than they state in public. A concern about volume is a concern  
17 about the number of people who are smoking and how many cigarettes they are smoking.

18 **Q. Can you provide another example of Defendants’ concern with increasing volume?**

19 A. Yes. Another R.J. Reynolds Winston Marketing Plan from 1974 listed as the number one  
20 objective: “Generate volume momentum for Winston King (Soft Pack/Box) and increase volume  
21 momentum for Winston Super King.” 501316412-6421 at 6413 (U.S. Ex. 48,831).

22 **Q. Can you provide another example of Defendants’ concern with increasing volume?**

1 A. Yes. An R.J. Reynolds document entitled “Salem Brand Black Market Promotion Plan”  
2 from April 1984 planned that the company “[u]tilize in-store retail displays in pack-action outlets to  
3 increase national volume” and “[u]tilize targeted black media delivered couponing programs  
4 designed to generate volume.” 503911939-1949 at 1942 (U.S. Ex. 50,528) (emphasis added).

5 Also, R.J. Reynolds’s Salem 1985 Marketing Plan stated that “[i]n 1985, Salem’s marketing  
6 plan is designed to maximize volume . . .” 503938209-8347 at 8210 (U.S. Ex. 50,529) (emphasis  
7 added).

8 **Q. How are these statements significant?**

9 A. Here we see R.J. Reynolds specifying specific marketing actions with an explicitly stated  
10 volume goal.

11 **Q. Can you provide another example of Defendants’ concern with increasing volume?**

12 A. Switching to Lorillard, its “Newport 1992 Strategic Marketing Plan,” dated August 15, 1991  
13 listed “To sell incremental volume” as an “Objective” and “Introduce Newport Halfpack” as a  
14 “Strategy” to reach this objective. 92011118-1156 at 1147 (U.S. Ex. 22,352) (emphasis added).

15 **Q. Is it logical for a company to have a volume goal?**

16 A. Yes, it is generally.

17 **Q. What have you concluded about Defendants’ volume goals?**

18 A. Defendants continually claimed that their marketing was neither directed to nor impacted the  
19 number of people who smoked at a given time or how much they smoked. This public position was  
20 important for litigation and public relations purposes. But it is contradicted by their internal  
21 documents. These quotes just cited are samples from some of their most important planning  
22 documents. These plans show that tobacco companies specifically undertook efforts to increase or

1 prevent a decrease in these volume numbers. Their internal documents stated goals as volume goals  
2 as well as share goals.

3 **G. Defendants Use Marketing to Increase Public Perceptions of Corporate**  
4 **“Responsibility”**  
5

6 **Q. Can you describe briefly Philip Morris’s current Responsible Marketer and**  
7 **Manufacturer Campaign?**

8 A. Basically, this is a Corporate Responsibility campaign. As stated by Thomas Dudreck,  
9 corporate designee for Leo Burnett, Philip Morris’s advertising agency, in his deposition in this  
10 case, Philip Morris refers to the Responsible Marketer and Manufacturer Campaign as the  
11 “Corporate Responsibility Campaign.” The objective was to improve the public’s and customers’  
12 perceptions of Philip Morris as a company to do business with. Philip Morris saw this as essential  
13 for the “success of the business.” So, the campaign was directed to business results and its success.  
14 Deposition of Thomas Dudreck, United States v. Philip Morris, et al., August 26, 2003, 478:10-15.

15 **Q. Dr. Dolan, what is the purpose of Philip Morris’s current Responsible Marketer and**  
16 **Manufacturer Campaign?**

17 A. The purpose of Philip Morris’s Responsible Marketer and Manufacturer Campaign is stated  
18 clearly in their planning document, i.e. the “communication objective” is “credibility.” Philip  
19 Morris hoped to create the perception that it was dealing responsibly with its business. As Philip  
20 Morris’ advertising agency Leo Burnett discussed in its “RMM 2002 Pre-Planning Discussion  
21 Work Session” September 21, 2001 memorandum which had the purpose “to develop the 2002  
22 RMM communications plan.” In this memorandum, Leo Burnett expressed that establishing such  
23 credibility and a perception among the public that “things are changing” was necessary “for the  
24 sustainability of the business.” LB0078164-8179 at 8166 (U.S. Exhibit 58,935).

1           While the campaign did address issues such as “there is no such thing as a safe cigarette”  
2 and information on how to discourage kids from smoking, the objective of the campaign was not to  
3 decrease smoking rates by encouraging people to consider the health consequences or preventing  
4 kids from starting. Discussing these issues was seen by Philip Morris as a means to the end of  
5 establishing credibility for Philip Morris. It is similar to the efforts the tobacco companies made in  
6 the continuing controversy to establish the industry as the most credible source of smoking and  
7 health data.

8 **Q. Did Philip Morris stop making public statements that it markets only to adults as part**  
9 **of its Responsible Marketer and Manufacturer Campaign?**

10 A. No.

11 **Q. Did Philip Morris stop making public statements that it has only one purpose for**  
12 **marketing – to impact brand switching – as part of its Responsible Marketer and**  
13 **Manufacturer Campaign?**

14 A. No.

15 **Q. What conclusions do you draw from these facts about Philip Morris’s Responsible**  
16 **Marketer and Manufacturer campaign?**

17 A. The Responsible Marketer and Manufacturer Campaign was designed with a business  
18 purpose in mind. In a “PMUSA Communications Strategy” memorandum that identifies the  
19 timeframe as January 2002 through June 2003, the first group that Philip Morris’ advertising agency  
20 Leo Burnett lists under “Who” – meaning the target audience for its message of credibility and  
21 responsibility – is “Policy Makers.” The second group is “Employees/Families.” The third is the  
22 “Media.” Philip Morris is trying to boost its reputation with policy makers as a way to influence the  
23 future course of the industry and the context in which business is conducted. While the campaign



1 included messages on the health impact of cigarettes and youth prevention, the primary desired  
 2 impact of this campaign was neither on smokers or young people. As clearly stated in the internal  
 3 documents, Philip Morris’s primary objective was to create credibility for Philip Morris with policy  
 4 makers. LB0078150-8163 at 8150 (U.S. Exhibit 33,165).

5 **V. DEFENDANTS’ ADAPTATION OF MARKETING PROGRAMS AS MARKET**  
 6 **CONDITIONS CHANGE**  
 7

8 **Q. Has Defendants’ fundamental approach to marketing changed over the years?**

9 A. The fundamental approach has been the same, i.e. to use marketing not only to impact brand  
 10 choice but also to make smoking attractive to “starters,” including teenagers, deter smokers from  
 11 quitting, and boost the consumption rate of smokers. However, the tobacco companies monitored  
 12 changes in the market and adopted their marketing programs to them. The tobacco companies  
 13 changed specific elements of their marketing programs, and significantly increased their marketing  
 14 spending over time.

15 **Q. Could you explain how these programs changed?**

16 A. Yes. Data from the FTC Report to Congress for 1997 (issued in 1999) provide a good  
 17 summary of the general trend. This data is shown below in Demonstrative #13.  
 18

19 **Demonstrative #13: Defendant’ Marketing Expenditures**

Year	Total Industry Advertising and Promotion Spending in Millions (\$)	Advertising				Promotions*
		TV	Magazines	Newspaper	Outdoor	
1970	\$361	57%	13.9%	3.9%	2.0%	9.4%
1975	\$491	0%	26.6%	21.3%	17.2%	14.7%
1980	\$1,242	0%	21.4%	24.5%	15.6%	14.4%
1985	\$2,476	0%	16.0%	8.2%	12.1%	22.2%
1990	\$3,992	0%	8.2%	1.8%	9.4%	55.2%
1995	\$4,895	0%	5.1%	.4%	5.6%	65.6%

20 \*This is Promotional Allowances + Coupons + Retail Value Added

1           This chart shows spending from 1970 to 1995 in five-year intervals. It shows total dollars  
2 spent by the industry and the breakdown by type of spending. Several observations are worth  
3 making.

4           First, the tobacco companies' total spending increased dramatically over time. Their  
5 spending of \$4.9 billion in 1995 was ten times the spending of 1975.

6           Second, one can see how dramatically money was moved from one medium to another over  
7 time. On January 1, 1971, cigarette advertising was banned from television. In 1970, the tobacco  
8 companies spent \$207 million or 57% of the total industry spending on television advertising. The  
9 television ban did not cause tobacco company marketing spending to go down however. Rather  
10 than reduce overall spending, the tobacco companies reallocated their television budgets to other  
11 media. Magazines, Newspaper, and Outdoor (primarily billboards) represented only 19.8% of  
12 spending in 1970 when television advertising was permitted. By 1975, this percentage had grown  
13 to 65.1%. Despite the television ban, overall spending went up one-third from 1970 to 1975.

14           A Philip Morris executive, James Morgan, noted at the Minnesota trial how the ban on  
15 television gave rise to great outdoor advertising on billboards as Philip Morris innovated in the  
16 quality of billboard images. The industry's spending on billboards went from \$7 million in 1970  
17 when television advertising was permitted to \$84 million in 1975; by 1981, spending for outdoor  
18 advertising on billboards was \$228 million, topping the amount spent on television in 1970.

19           Magazines, Newspaper, and Outdoor were the major areas of investment by manufacturers  
20 through 1980. Beginning in 1980, there came to be heavier reliance on promotional activity. This  
21 included cents-off coupons, free cigarette deals such as "buy one pack, get one free" and item  
22 giveaways such as a free key chain with the purchase of cigarettes. This reliance has grown over  
23 time.

1 Also, the nature of the product changed over time, as the “health reassurance” low tar and  
2 nicotine brands came to dominate the market.

3 **Q. What conclusions do you draw from Defendants’ evolving marketing as you just have**  
4 **described it?**

5 A. The companies were very sophisticated in their marketing, changing all elements of the  
6 marketing program. As I noted above, the third stage of a comprehensive marketing program was  
7 to adapt continuously as market conditions changed. If one marketing medium was gone,  
8 Defendants adeptly moved to another and often increased spending on that new medium  
9 exponentially.

10 **Q. Are you aware of the agreement Defendants entered with numerous states known as**  
11 **the Master Settlement Agreement (MSA)?**

12 A. Yes.

13 **Q. Did the MSA impact Defendants’ marketing practices?**

14 A. Yes. Defendants agreed to a number of restrictions on marketing practices. For example,  
15 they agreed to stop advertising on billboards. They agreed to stop using cartoons characters in their  
16 cigarette brand advertising. Sponsorships were limited. They agreed that retail signs could only be  
17 a certain size. Retail establishments selling cigarettes could have advertisements facing outside as  
18 long as they were not larger than 14 square feet. Despite these rules, lots of marketing still takes  
19 place at the point-of-sale. Such signs and retail promotions and displays are seen by youth today.

20 **Q. Under the MSA, did the Defendants agree to any restrictions on the total amount of**  
21 **money that they would spend on marketing?**

22 A. No. In fact, tobacco companies have dramatically increased spending on advertising and  
23 promotion, and particularly on promotion, since they signed the MSA.

1 **Q. Under the MSA, did Defendants agree to reduce youth smoking by any number or**  
2 **percentage?**

3 A. No.

4 **Q. How would you describe the nature of the limitations Defendants did agree to under**  
5 **the MSA?**

6 A. The tobacco companies agreed to provisions on inputs to the marketing system, i.e. their  
7 marketing activities, but not on the outputs or end results of their marketing efforts, e.g. youth  
8 smoking rates. By inputs, I am referring to the tobacco companies' inputs into the marketing  
9 system – their marketing programs such as point of purchase, product lines, their advertising  
10 communications, and so forth. Outputs would include things like sales and adoption rates by new  
11 customers, the percent of people who have been quitting, who come back into the system, and so  
12 forth.

13 The MSA's restrictions on inputs, i.e. the way companies can engage in marketing, does  
14 present challenges to the companies. Because of the MSA, the companies did modify their  
15 marketing practices. As they had in the past, however, they were able to draw on their marketing  
16 expertise to come up with a revised marketing approach to achieve their objectives or outputs.

17 As James Morgan said in his testimony in Minnesota, the real story of the ban on television  
18 advertising is that it was a stimulus to the development of the greatest outdoor campaign ever. If an  
19 agreed-to restriction on marketing practices makes marketing less efficient, Defendants could  
20 simply substitute additional dollars or effort to compensate for this, as they have in the past.

21 Neither the tobacco companies' spending levels nor outcomes such as the number of teenagers who  
22 continue to take up smoking were addressed by the MSA.

23 **Q. Have Defendants continued to market to youth following the Master Settlement**

1 **Agreement?**

2 A. Yes.

3 **Q. Please explain the ways that Defendants continue to market to youth.**

4 A. Youth continued to be exposed to the marketing efforts of Defendants through  
5 communications and promotions at the point of purchase, media advertising for some brands, and  
6 mailings made to people whose age was not verified by a government issued identification on file.  
7 Programs such as the Bar Program have a direct impact on 21-and-older people but also had the  
8 objective of creating “buzz” which would be felt throughout the population including those of prime  
9 smoking initiation age.

10 **Q. Does Defendants’ marketing impact teenage smoking, including teenagers starting to**  
11 **smoke and continuing to smoke?**

12 A. Yes.

13 **Q. According to the most recent data you have, at what average age do people start**  
14 **smoking?**

15 A. According to the National Survey of Drug Use and Health, in 2001, the average age for  
16 starting to smoke was 16.1 years of age. Thus, while specific practices were restricted, there was no  
17 change in a fundamental dynamic of the industry. The majority of beginning smokers were still  
18 teenagers.

19 **Q. According to the most recent data you have, how many teenagers smoke?**

20 A. As of 2003, 24.4% of teenagers smoked. One source of data for smoking by teenagers is the  
21 Monitoring the Future Study from the University of Michigan which tracks the prevalence of  
22 smoking for teenagers including 12<sup>th</sup> graders. From 1975 to 2003, teenage smoking prevalence has

1 fluctuated, reaching a high of 38.8% in 1976, then dropping to 28.6% in 1989, rising to 36.5% in  
2 1997, and then falling to 24.4% in 2003.

3 **Q. Can you take us up to the present day in describing Defendants' marketing over time?**

4 A. Yes. The trend in tobacco companies' spending on marketing has continued to increase  
5 dramatically. Tobacco industry spending of \$2 billion on advertising and promotion in 1980  
6 reached \$4 billion in 1988 and then \$6 billion in 1994. After four years around the \$6 billion mark,  
7 spending shot up \$11.2 billion by 2001. In 2002, the last year for which data is available, the  
8 tobacco companies spent \$12.47 billion, an increase of 11.61% over 2001. The fundamental  
9 dynamic of the industry has not changed though. The tobacco companies knew that brand loyalty is  
10 a key phenomenon and if someone doesn't start smoking as a teenager, he or she is unlikely to start.

11 The tobacco companies have publicly cited marketing activities such as the Bar Program  
12 held in over-21 outlets and using direct mail as ways they can correspond only with current adult  
13 customers. But, internal documents show an objective of Philip Morris' Bar Programs was to create  
14 a "street buzz" so the impact was to be felt outside the bar on the street. 2070802716-2770 at 2728  
15 (U.S. Ex. 89,172). Philip Morris defined this type of marketing as Grassroots marketing and noted  
16 its ability "to create face value and 'buzz' on the streets." 2085154625-4626 at 4625 (U.S. Ex.  
17 89,173).

18 In addition, tobacco companies' spending on direct mail went from \$39 million to \$134  
19 million over the 1996 to 2001 time period. While the tobacco companies publicly professed that  
20 this was a mechanism to address only current customers over the age of 21, they sent many mail  
21 pieces to people whose age they really did not know for sure, i.e. they sent mailings to people  
22 without a Government issued identification, such as driver's licenses, on file as verification of their  
23 age. From 1989 to 2003, Philip Morris sent mailings to 18,847,776 such individuals, including

1 60,973,164 marketing mailings. 3000196023-6025 at 6023 (U.S. Ex. 23,056). In 2002 alone, Philip  
2 Morris sent 61 million pieces of mail to 16.6 million such individuals (U.S. Ex. 23,056); Brown &  
3 Williamson sent many pieces of mail to many such people and Lorillard sent 9 million mailings to  
4 3.2 million such people. (U.S. Ex. 90,002).

5 The basics of the business have not changed. Defendants still represent that the only  
6 objective of marketing is impacting brand choice while they implement marketing programs which  
7 increase the value potential customers see in smoking – attracting people including teenagers to the  
8 market and deterring others from quitting.

9 **Q. Thank you, Dr. Dolan.**