

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

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: 99-CV-7392 ROBERT A. FALISE; LOUIS KLEIN, (JBW)

JR.; FRANK MACCHIAROLA; and : CHRISTIAN E. MARKEY, JR.,

AS TRUSTEES, :

Plaintiffs, : United States Courthouse -against- Brooklyn, New York

: THE AMERICAN TOBACCO COMPANY;

R. J. REYNOLDS TOBACCO COMPANY; : B.A.T. INDUSTRIES, PLC; BROWN & January 4, 2001

WILLIAMSON TOBACCO CORPORATION; : 9:00 o'clock a.m. PHILIP MORRIS INCORPORATED;

LIGGETT GROUP, INC.; and : LORILLARD TOBACCO COMPANY,

: Defendants.

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TRANSCRIPT OF JURY TRIAL

BEFORE THE HONORABLE JACK B. WEINSTEIN

UNITED STATES DISTRICT JUDGE

APPEARANCES:

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22  
23  
24  
25

**EXCERPT**

1 Q Thank you very much, Professor Viscusi.

2 THE COURT: Do you want to take a few minutes before  
3 you begin to cross-examine?

4 MR. BICKS: Yes, your Honor.

5 (Jury excused.)

6 (Recess taken.)

7 (In open court; jury present.)

8 THE COURT: Go ahead, please.

9 CROSS-EXAMINATION

10 BY MR. BICKS:

11 Q Good afternoon, Professor Viscusi. My name is Peter  
12 Bicks, and I represent the plaintiffs here.

13 The first thing that I would like to talk to you  
14 about is the work that you have done for the Tobacco  
15 Industry. Is it fair to say that you first started working  
16 with the Tobacco Industry about thirteen years ago, 1987?

17 A I believe it was around then, yes.

18 Q You were, first, if I understood from your direct, you  
19 were retained by a law firm working for the Tobacco Industry?

20 A It was a law firm in Cleveland representing R.J.  
21 Reynolds.

22 Q And between 1987 and to date, under certain  
23 circumstances, you have been working with law firms for the  
24 Tobacco Industry, and under other circumstances, you have been  
25 actually working directly with the Tobacco Industry?

1 A Almost all of it has been law firms representing the  
2 industry. I worked on one warning for the Tobacco Industry,  
3 on the warning for the Premier cigarette that I helped design.  
4 It's almost all for the law firms.

5 Q In connection whether the Premier cigarette, that's some  
6 work that you had done in connection with the warning issue  
7 relating to the Premier cigarette?

8 A That's right. There was a fire risk from the cigarette.

9 Q Were you also paid to testify for the industry regarding  
10 FDA and OSHA jurisdiction?

11 A I didn't testify on jurisdiction, but I testified on  
12 aspects of the regulatory proposals by FDA and OSHA.

13 Q What about with respect to advertising issues? Did you  
14 work with the Tobacco Industry in connection with any  
15 advertising issues, Camel?

16 A No. I've worked on the FTC case involving Joe Camel, but  
17 I haven't done any advertising work designing ads.

18 Q That was for the Tobacco Industry?

19 A It was for law firms representing them, yes.

20 Q And you've also, obviously, been involved in doing work  
21 where there were actual lawsuits against the Tobacco Industry;  
22 correct?

23 A Yes.

24 Q And I think I've read from some of your prior testimony  
25 that you indicated, I believe, that most of your contacts have

1 actually been with lawyers for the Tobacco Industry, rather  
2 than people actually at the tobacco companies?

3 A That's correct.

4 Q Since your retention, you have actually worked on a  
5 number of different lawsuits; correct?

6 A That's right.

7 Q You worked on a lawsuit in the state of Mississippi for  
8 the Tobacco Industry?

9 A That's right.

10 Q You worked and were paid by the Tobacco Industry for a  
11 lawsuit in the State of Florida; am I correct?

12 A That's right.

13 Q You worked for the Tobacco Industry and were paid in  
14 connection with a lawsuit in the State of Minnesota?

15 A That's right.

16 Q You were working for the Tobacco Industry and getting  
17 paid in connection with a lawsuit in Texas; correct?

18 A That's right.

19 Q You were also working for the Tobacco Industry and  
20 getting paid in connection with a lawsuit in the State of  
21 Washington; am I right?

22 A That's right.

23 Q You also worked and were paid by the Tobacco Industry for  
24 a case in the state of Ohio; am I correct about that?

25 A No. They never paid me. I did no work in Ohio.

1 Massachusetts was the other one.

2 Q Did I read some testimony that you gave in the State of  
3 Ohio?

4 A That's the Ohio ironworkers' case. But that was not a  
5 state lawsuit.

6 Q I'm sorry. You testified in a case in the State of Ohio;  
7 right?

8 A That's correct.

9 Q You were obviously paid in connection with that work?

10 A That's right.

11 Q You also are retained by the tobacco companies and being  
12 paid in connection with a lawsuit filed by Blue Cross, are you  
13 not?

14 A That's right.

15 Q And you are also working for the Tobacco Industry and  
16 getting paid in connection with a lawsuit filed by something  
17 called National Asbestos Workers; correct?

18 A Yes.

19 Q In fact, we've got to get you out of here, because you  
20 have to testify in another lawsuit for the Tobacco Industry  
21 nearby here; correct?

22 A That's correct.

23 Q Are there any other cases for the Tobacco Industry, other  
24 than those that I have tried to remember, over the last  
25 thirteen years?

1 A There are some other individual cases in which I have  
2 been deposed. But I believe you certainly hit all of the  
3 state cases, and we've covered all the cases in which I've  
4 testified in court, which is two, counting today.

5 Q Tell us, then, how many total cases are there that you  
6 have been hired and paid by the tobacco companies to work on?

7 A I think it's roughly twenty cases. I don't know the  
8 exact number, but that would be how I would ballpark it.

9 Q It was pointed out, obviously on direct, that the Tobacco  
10 Industry is not the only industry that you have worked with;  
11 right?

12 A That's correct.

13 Q In fact, we have put up here Viscusi 5, which identifies  
14 some companies that you have worked for; right?

15 A These are companies I've consulted to, yes.

16 Q And I notice that one of the companies that wasn't on  
17 here was Exxon Corporation. You've actually done some  
18 consulting for Exxon Corporation?

19 A I've done consulting for them and against them.

20 Q In fact, you have done some consulting work for Exxon  
21 Corporation involving the Exxon Valdese oil-tanker spill;  
22 correct?

23 A No, I consulted against them, for the U.S. Department of  
24 Justice on the Exxon Valdese oil spill.

25 Q Have I read an article of yours where you acknowledged

1 that you received money from Exxon, a grant from Exxon; is  
2 that correct?

3 A Yes. But that's not related to the Exxon Valdese oil  
4 spill per se. That study focuses on jury behavior regarding  
5 punitive damages generally.

6 Q You have articulated your views, as financed by grants of  
7 Exxon, that punitive damages essentially should be abolished?  
8 You've put that in writing, correct?

9 THE COURT: No. Don't answer that.

10 Strike that question, ladies and gentlemen.

11 BY MR. WAGNER:

12 Q Now, let's talk a little bit about surveys. Actually,  
13 before I do that, let me ask you a little bit about your views  
14 of tobacco and health matters. Again, you have testified a  
15 number of times at depositions for the Tobacco Industry?

16 A That's correct.

17 Q And are you familiar with the current position, as we're  
18 right here, of the tobacco companies as to whether or not  
19 smoking causes cancer?

20 A I didn't ask them what their position was. I just  
21 testified based on my knowledge.

22 Q You have actually testified at your prior depositions,  
23 have you not, about whether -- your views about whether or not  
24 tobacco causes cancer?

25 A I've been asked questions along those lines. But --

1 yes. I have testified.

2 Q And you testified in the Minnesota deposition in 1997, do  
3 you remember that?

4 A I remember being deposed. I don't remember every  
5 question.

6 Q Do you remember at that time that the position of the  
7 tobacco companies was not that smoking causes cancer? Do you  
8 have a recollection of that?

9 A I don't recall that. But that's never been my position,  
10 either.

11 Q Do you know actually that in the court, in this courtroom  
12 -- and I can show you discovery, requests to admit, if you  
13 want -- the tobacco companies now actually say that smoking  
14 causes cancer; are you familiar with that?

15 A No.

16 Q Actually, at the time, at the time that you testified in  
17 Minnesota, the position was that it was not known that tobacco  
18 causes cancer; you've familiar with that right? That was the  
19 tobacco company position?

20 A I don't know what their position was then, and I don't  
21 know what it is now. I know what my position is.

22 Q You've testified under oath that to say that tobacco  
23 causes cancer, in your view, that would be very misleading; do  
24 you remember giving that testimony?

25 A I continue to believe that I don't like that wording. I

1 want to say that smoking increases the risk of cancer, which  
2 is what I have also said. It increases your probability of  
3 getting cancer. That's different than saying it causes  
4 cancer, which implies that you necessarily -- that you  
5 necessarily get cancer, with a probability of 1.0.

6 Q Here is the testimony you gave in Minnesota. You  
7 said: "I also don't accept that statement, cigarettes cause  
8 lung cancer, as a statement for a warning, because it implies  
9 it with certainty, and I think -- the question was sure. You  
10 said that would be very misleading.

11 That's your view, it would be very misleading to say  
12 that smoking causes lung cancer?

13 A As I indicated there, to say it with a probability of  
14 1.0, if people infer that from the word, because it's  
15 misleading. I prefer the terminology, smoking increases the  
16 risk of cancer.

17 Q You were also asked, with respect to your views on  
18 smoking and health questions, whether or not cigarettes  
19 contain carcinogens; do you remember questions along those  
20 lines?

21 A I believe I was asked questions like that, yes.

22 Q And I think you were asked whether you regard cigarette  
23 smoke to be at the same level of carcinogenicity as lettuce.  
24 You said it depends on how much of that smoke you are exposed  
25 to, so a small quantity of the tobacco smoke does have the

1 same carcinogenic potency as a head of lettuce; is that  
2 testimony you gave?

3 A It's consistent with statements by a National Cancer  
4 expert. It is consistent with the Ames studies.

5 Q This is testimony that you gave in 1997 in the Minnesota  
6 litigation, pages 249 and forward:

7 "It's true that there are dozens, literally dozens of  
8 carcinogens in coffee. It's a question of how potent these  
9 carcinogens are. For example, lettuce is carcinogenic, but I  
10 eat lots of it. Apple are carcinogenic, but I eat it. Beer  
11 and wine are carcinogenic, but I still drink. So, you care  
12 about the magnitude of the risk, not the counting up of  
13 carcinogens."

14 That's testimony you gave?

15 A Yes.

16 Q Now, let me ask you some questions about surveys.

17 I read in your Washington deposition that you said  
18 that other than general reading and work that you had done on  
19 job safety, you had not done research in the area of risk  
20 perception and smoking prior to your contact with this Tobacco  
21 Industry law firm in 1987; is that fair recitation of what you  
22 testified to?

23 A I had done reading and thinking about it, but I never  
24 published anything or written any articles.

25 Q Now, you have written -- you talked about on direct --

1 about some of the surveys that you have talked about today; is  
2 that correct?

3 A That's correct.

4 Q And the first survey you mentioned was done for a law  
5 firm, -- that survey was done in 1985 -- and that was done for  
6 a law firm for the Tobacco Industry; correct?

7 A Yes, this was.

8 Q And then, you mentioned that you did -- it was a survey  
9 of 200 people in North Carolina in 1991?

10 A Well, it's over 200 for the reported results, plus I did  
11 other people as pretests and verification.

12 Q Then, there were two other surveys that were actually  
13 done for the Tobacco Industry under the supervision of law  
14 firms in 1997 and 1998; correct?

15 A Well, '98 was my supervision. Law firms supervised '97.

16 Q The 1998 survey, that was a survey that was used in  
17 connection with litigation in Massachusetts?

18 A That's correct.

19 Q So, really, just so I know, we're talking about four  
20 surveys, one in 1985, one in 1991, one in 1997, and one in  
21 1998?

22 A Yes.

23 Q Am I correct that the Tobacco industry law firms funded  
24 three out of those four surveys?

25 A Yes.

1 Q The 1997 and the 1998 surveys, just so we're clear, were  
2 commissioned to defend lawsuits against the industry which  
3 were unrelated to this case that's brought us here today?

4 A Yes.

5 Q Now I want to shift to a different topic. And there's an  
6 exhibit which is in evidence in this case, which is Exhibit  
7 30862, and I think we actually have this up on a  
8 demonstrative, and I'm going to ask that we pull it up on the  
9 board here. This is an exhibit that is in evidence, and I  
10 want to ask you about this. This is a May 23, 1964  
11 memorandum. Are you familiar with this memo?

12 A I've never seen the memo, but it's been mentioned by  
13 plaintiffs' attorneys in depositions, but they never showed it  
14 to me.

15 Q Let me show it to you. It actually has appeared in Law  
16 Review articles and things like that, which have analyzed your  
17 work; am I correct?

18 A I've never seen a copy of the memo.

19 Q You have not?

20 A No.

21 Q You are familiar with Professor Hanson's work?

22 A I don't believe he reproduced the memo in his article.

23 Q Take a look at it. I want to make sure that you have  
24 seen it.

25 (Pause.)

1 Q It has redactions on it that we have put on at the  
2 direction of the court. Don't be misled in any way because  
3 things are blacked out.

4 (Pause.)

5 A I don't want to spend too much time.

6 Q You have seen it?

7 A I have the general idea, yes.

8 (Continued on next page.)

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1 CONTINUING CROSS-EXAMINATION

2 BY MR. BICKS:

3 Q You were aware, as this document indicates at the top  
4 here, that a decision was made in or about 1964 to proceed on  
5 a preliminary basis with a public opinion survey which it  
6 hoped would establish that there is a very high level of the  
7 public awareness concerning the health issue?

8 A No.

9 Q Of cigarette smoking?

10 A No.

11 Q Let me just say, when you met with lawyers who told  
12 us -- you told us that, in 1987?

13 A Yes.

14 Q Do I understand your testimony today this document that  
15 was before you now was not given to you?

16 A It's never been given to me.

17 Q At any of the meetings you've had with lawyers, this was  
18 never shown to you?

19 A That's correct.

20 Q If you see this memo as we go on, the second paragraph  
21 that is highlighted, it talks about if, for example, and I'm  
22 dropping down in that paragraph, starts out with "If  
23 Professors Berlo and Steiner," are you with me?

24 A No.

25 Q Do you know who they are?

1 A I've heard of Steiner before.

2 Q He's somebody who does survey market research?

3 A A market person.

4 Q If you drop down, this document says: If for example, we  
5 were able to establish that the American consumer  
6 overestimates the risks of habitual smoking, the case  
7 forewarning or labeling would be weakened, you see that?

8 A I do.

9 Q I'm dropping down not to this next paragraph -- let's  
10 talk about it, the one that says "the question has been raised  
11 of possible adverse use of a survey. Specifically, should the  
12 results of the survey prove unfavorable, they could be  
13 subpoenaed"?

14 A Yes.

15 Q It says: In any event, "If the returns were unfavorable  
16 they could be destroyed and there would be no record in any  
17 office of the nature of the returns." Do you see that?

18 A Yes.

19 Q Then you drop down, it says: "In the attached draft  
20 questionnaire, we have tried to avoid that problem by avoiding  
21 unnecessary questions which might elicit answers harmful to  
22 us."

23 I want to ask you something. You had certain records  
24 from your 1991 survey, did you not?

25 A I misspoke earlier, indicating -- I turned over all the

1 data; we turned over all the data but 1991. I kept all the  
2 survey results from my 1991 survey after I published it.  
3 Nobody requested it for five years. When I moved to Harvard  
4 the data didn't come with me, I threw away a lot of stuff.

5 Q Threw away the result of the survey?

6 A The main results were published so I moved on since  
7 nobody requested them up to that time.

8 Q The records that were destroyed contained results of  
9 questions that were different from other surveys that you've  
10 done; am I correct?

11 A I don't understand the question.

12 Q Let me ask you this. Do we have the opportunity to  
13 review those records if we wanted to?

14 A Not if they don't exist, no.

15 Q Did you keep a permanent log of the results?

16 A No, I published the key empirical results in my book.  
17 That was my main summary of the results, just as other  
18 researchers have done.

19 Q I wanted to ask you a little bit about this document that  
20 is up here and the last sentence that says: "In the attached  
21 draft questionnaire, we tried to avoid that problem by  
22 avoiding unnecessary questions which might elicit answers  
23 harmful to us." Do you see that?

24 A I do.

25 Q Can you tell us how someone can revise a questionnaire to

1 eliminate questions that might upset an otherwise favorable  
2 return?

3 A I don't know what question you could ask about smoking.  
4 My sense is that in the case of smoking risks, any fair way of  
5 asking the question is going to generate results like the kind  
6 I've got.

7 Q Do you think it's appropriate to revise a questionnaire  
8 to eliminate questions that are harmful?

9 A If you're trying to test hypothesis, you want to include  
10 all the questions that get at the truth, whether it harms your  
11 hypothesis or not.

12 Q This obviously is done in 1964. Let's just quickly jump  
13 to 1985 for a minute. Did you have any involvement in  
14 collecting the data for the 1985 survey?

15 A No, I did not.

16 Q You were actually given that data by lawyers from the  
17 tobacco companies; am I correct?

18 A I got it from Audits and Surveys. The lawyers gave me  
19 the questionnaire.

20 Q Would that be also true with respect to the 1997 survey?

21 A Yes, I got it from them as opposed to getting it  
22 directly.

23 Q Is it fair to say from 1985 and 1997, you have no actual  
24 firsthand knowledge of how the survey was developed or  
25 executed; is that fair?

1 A (No response).

2 Q In other words you didn't do it?

3 A I didn't do it, but I discussed with the people at Audits  
4 and Surveys how the survey was administered, how the data were  
5 coded so I could do my analysis.

6 Q Just to be clear, you actually weren't the person  
7 actually doing the work?

8 A I wasn't doing the work up front.

9 Q With respect to this Exhibit 30862, I gather then since  
10 you tell us you've never seen it, I assume that means you've  
11 never seen the questions that are attached to it?

12 A That's right.

13 Q You've never, for example, looked at whether or not any  
14 of the questions that are attached to this 1964 survey are in  
15 any way similar to any of the questions that, for example,  
16 were in 1985 or any other surveys?

17 A That's correct.

18 Q I have prepared a demonstrative exhibit for the 1964  
19 question that I would just like to pull up, if we can. This  
20 is actually one of the questions that is on this 1964 survey.  
21 You see that?

22 A I do.

23 Q There is a question out of Exhibit 30862. The question  
24 is, just to get a rough idea of the degree of the risk, would  
25 you take a guess at this. Suppose 100 men in all started

1 smoking in their late teens and smoked a pack a day from then  
2 on. About how many of them do you guess would get lung  
3 cancer? Then it says just a guess. You see that?

4 A I do.

5 Q Does this question at all look familiar to you?

6 A Well, it's different in a couple of ways, but the  
7 similarity is that each one has 100 as being the denominator  
8 for people to think about the risk.

9 Q Isn't it a fact this question with some rather minor word  
10 changes actually survives in each of the four surveys you've  
11 talked about on direct?

12 A We quibbled out what we mean by minor. Each asks about  
13 100, that parallel is there.

14 Q Let's put up the demonstrative which actually shows the  
15 questions and how they've changed, if at all, over time. Are  
16 you with me?

17 A I am.

18 Q What's up at the top there is the question that was in  
19 the 1964 survey questionnaire we've talked about. You see  
20 that?

21 A I do.

22 Q Then when we go to 1985, that's the question number 3 in  
23 the survey that was done for the law firm in Ohio that you  
24 talked about that was then, I guess, given to you when you met  
25 with the lawyers in 1987?

1 A That's correct.

2 Q This question, too, talks about 100, right, 100 people  
3 and then you see the way it ends at the end, probe. Just your  
4 best guess will do. Very similar, is it not, to question  
5 15-B, talks about a guess. It's similar, is it not?

6 A This is standard survey research firm lingo, whether it's  
7 your best guess or your best estimate. I don't think that's a  
8 big deal.

9 Q Look at question 3-A, out of the 1991 survey. This is  
10 actually the survey that you did of 200 people in North  
11 Carolina you told us about?

12 A That's one of my questions, yes.

13 Q Just so we're clear, I think I've seen about what  
14 survived in terms of the underlying documents of that survey;  
15 am I correct of the 200 people that were surveyed 160 of the  
16 actual survey questionnaires were the ones that you discarded?

17 A No, none of the documents you received, handed over,  
18 pertain to any of the final surveys. What you have are  
19 preliminary pretests administered to my students, secretaries  
20 in the department, spouses of secretaries where we're trying  
21 to get a sense whether people could understand the wording of  
22 the question. What you have has nothing to do with my  
23 published results.

24 Q Let's make sure I understand this. Of the 200 people  
25 that were surveyed, do we have any of the underlying

1 questionnaires that they filled out in your North Carolina  
2 survey?

3 A Some of the questionnaires are the same. None of those  
4 answers on the hard copies are part of my real sample.  
5 They're part of a preliminary retest.

6 Q What is it then you discarded?

7 A My full set of survey results.

8 Q You discarded the full set of survey results?

9 A The full set of survey results didn't make the move.  
10 They're in a different box, didn't make the move. I dug these  
11 out of another box I hadn't cleaned up.

12 Q He have let's then -- I'm looking at your 1991  
13 question. This again talks about, among 100 cigarette  
14 smokers, how many of them do you think will die of lung cancer  
15 because they smoke, that's again very similar to the question  
16 in 1985, isn't it?

17 A We're comparing '97 and --

18 Q 1987, 1991?

19 A Die instead of get.

20 Q The change between 1985 and 1991 is get versus die,  
21 that's the change made?

22 A Yes.

23 Q You go to 1997, the same question out of 100 cigarette  
24 smokers, how many of you think you will develop lung cancer  
25 because they smoked, then you changed it to use the word to

1 develop lung cancer?

2 A That's basically the same as get in 1985.

3 Q Then in 1998 the question was out of every one hundred  
4 cigarette smokers how many of them do you think will die from  
5 lung cancer because they smoke? That's just a very minor  
6 change from the 1997 question?

7 A I viewed it as the same as '91, get versus die could be  
8 important but it proved not to be.

9 Q When we went back to Exhibit 30862 which was this 1964  
10 memorandum --

11 THE COURT: Is this chart in evidence?

12 MR. BICKS: A demonstrative.

13 THE COURT: Whose?

14 MR. BICKS: We should call it Viscusi 1,  
15 demonstrative of the survey questions.

16 THE COURT: Are you going to admit this?

17 MR. BICKS: Yes.

18 THE COURT: It's in evidence -- well, he already  
19 has -- call it Plaintiff Viscusi 1. He also has a series  
20 already.

21 (So marked.)

22 MR. BICKS: So we're clear, the title of this is  
23 five cigarette/lung cancer survey questions. It goes from  
24 1964 to 1998.

25 THE COURT: It's in evidence.

1 Q So we're clear, it's fair to say that the question that  
2 was asked in 1964 which was done with the purpose of showing a  
3 very high level of awareness concerning the health issue  
4 involving cigarette smoking -- I'm reading from this 1964  
5 memo -- is similar, very very similar to the question that  
6 follows each of the surveys that are there; is that a fair  
7 statement?

8 A Subsequent questions are cleaner, but they are similar in  
9 that they all ask about population of 100.

10 Q While we have these up here, you used the word "guess."  
11 I want to ask you about that and ask you whether or not you  
12 agree with a statement that a good survey must be designed to  
13 ensure that respondents are simply not guessing or being asked  
14 to speculate.

15 A We use this terminology, if you ask people the question  
16 among 100 cigarette smokers, how many of them do you think  
17 will get lung cancer because they smoke, I don't know the  
18 exact answer. What you're trying to elicit from people is  
19 their estimate. If you're doing this in a telephone survey,,  
20 give me your best estimate or guess, you want to know what  
21 they think. This is not a quiz question where you want them  
22 to say I don't know the exact answer.

23 Q Let me ask you, do you agree with the statement that a  
24 good survey must be designed to ensure the respondents are  
25 simply not guessing?

1 A If guessing means giving your subjective answer, I think  
2 that's fine. If they're making up something up as they go  
3 along, it's not fine. It depends on what we're doing.

4 Q Are you familiar with an article by Bruce Keller, David  
5 Bernstein, Peter Johnson, Surveys in False Advertising Cases?

6 A No.

7 Q Let me ask you this. Do you agree with a statement that  
8 in a good survey earlier questions should neither provide nor  
9 suggest the answers to later questions?

10 A Usually yes, unless you're using the survey itself to  
11 educate people which we've done for the Environmental  
12 Protection Agency. We may be trying to educate people  
13 regarding things we want people to think about later on.

14 Q Do you remember in your 1985, 1991 and 1997 surveys, '85,  
15 '91, '97, whether this question that is up here on the board  
16 was preceded with a question that said cigarette smoking will  
17 most likely shorten a person's life or cigarette smoking is  
18 dangerous to a person's health, words or phrases of that  
19 substance?

20 A For three of the surveys, there were four statements, two  
21 of which were like that, two of which denied those risks. In  
22 1998 we rotated it. We took those statements, put them after  
23 the risk perception question and it didn't affect the  
24 results. Our conclusion was that that order was not  
25 important.

1 Q What about with respect to 1985?

2 A As I indicated, those questions were before the risk  
3 questions, but there were four statements, not just two.

4 Q I'm reading from your book, Smoking, Making the Risky  
5 Decision, right?

6 A That's right.

7 Q You actually have somebody on the cover of this book,  
8 right?

9 A I do.

10 Q What's the name of that person?

11 A Max Beckman (ph).

12 Q Was he a smoker?

13 A He was a smoker.

14 Q Do you know actually what happened to his health because  
15 of that.

16 A I think he died of respiratory disease or lung cancer or  
17 something.

18 Q This is a person you put on the cover of your book,  
19 actually has a smoking jacket on, tuxedo, smoking a cigarette  
20 even though my copies -- this is just a copy, right; is that  
21 right?

22 A Photocopy, yes.

23 Q Let's go back again to this question, I asked you, my  
24 original question was going to the point earlier questions  
25 should neither provide or suggest an answer to a question; you

1 remember that, we were talking about that? You agreed with me  
2 that's not a way a survey should be done, correct?

3 A Unless there's a reason why you want to do it, but yes,  
4 in general, for this survey you wouldn't want biased answers.

5 Q Let's go through your 1985 -- this is the survey done,  
6 again, for the law firm for the tobacco industry. Question 3,  
7 that's what we've got there, among 100 cigarette smokers, how  
8 many of them do you think will get lung cancer? Do you  
9 remember what question two was?

10 A There were four statements asking you have you heard any  
11 of the following four statements. Do you want to read the  
12 four statements?

13 Q Do you know them?

14 A I didn't memorize them, no.

15 Q The four statements were cigarette smoking will most  
16 likely shorten a person's life. Cigarette smoking is  
17 dangerous to a person's health. Cigarette smoke is bad for a  
18 person's health but not dangerous. Cigarette smoking is not  
19 bad for a person's health; is that right?

20 A That's right.

21 Q Your question was among 100 cigarette smokers, how many  
22 of them do you think will get lung cancer because they smoke,  
23 right?

24 A Yes.

25 Q What about with respect to the 1985 survey, did you have

1 similar introductory questions to the ones I just read?

2 A Those were the ones from the '85 survey.

3 Q The same ones?

4 A Those were the ones.

5 Q I'm in 1991 now, 1991 survey. What were the questions  
6 that directly preceded the one about 100 cigarette smokers,  
7 how many of them do you think will die of lung cancer because  
8 they smoked?

9 A I believe there's a similar format.

10 Q What about with respect to 1997?

11 A Same thing.

12 Q Let me ask you if you agree with this statement that it  
13 talks about objectivity of a survey. It says objectivity can  
14 be compromised where a survey is conducted in anticipation of  
15 litigation and by persons connected with the parties or for  
16 counsel are aware of its purposes in the litigation. Do you  
17 agree with that statement?

18 A In any circumstance it's possible to have a survey that  
19 is not objective, not just that circumstance.

20 Q Do you agree with that statement?

21 A I don't know why I would disagree with it. It's possible  
22 to compromise objectivity all the time.

23 Q I'm sorry, do you agree or not? I didn't follow?

24 A Yes, it's always possible to compromise objectivity,  
25 including litigation.

1 Q As I read that statement, do you know who made that  
2 statement?

3 A No.

4 Q Is it fair to say --

5 A Perhaps me.

6 Q No.

7 A No?

8 Q Not you.

9 Which of these surveys here were prepared in support  
10 of litigation?

11 A All but the '91.

12 Q According to the 1964 memorandum I've shown you, the  
13 individuals who drafted this sought to avoid questions that  
14 would elicit harmful answers to the tobacco industry, is that  
15 a fair reading of what we looked at?

16 A I don't know what the drafters actually did.

17 Q That's what it says, right? You read it.

18 A They said they could design such a survey. I don't know  
19 if they encountered any bad questions they didn't like.

20 Q In the attached draft questionnaire, we have tried to  
21 avoid that problem by avoiding unnecessary questions which  
22 might elicit answers harmful to us. Did you hear what I said,  
23 what I read there?

24 A I did. I didn't know what those questions would be.

25 Q Have you ever tested in any of your risk assessment work

1 on smoking whether people have a belief about whether nicotine  
2 or cigarette smoking is addictive?

3 A I've used data from the current population survey  
4 administered by the U.S. Department of Commerce to analyze  
5 that issue.

6 Q Do your surveys ask questions about addiction?

7 A My surveys don't.

8 Q When you were asked in your deposition in Minnesota, have  
9 you ever tested in any of your risk assessment work on smoking  
10 whether people have a belief, the public does, about whether  
11 nicotine or cigarette smoking is addictive, you answered I  
12 have not?

13 A I've done that since then, but as of then. I have not.

14 Q As of 1997 you have not?

15 A That's correct.

16 Q Have you seen studies which indicate that the risk of  
17 addiction is underestimated by people -- by new smokers?

18 A No, I've seen claims to that effect but I've never seen  
19 any convincing evidence to that effect.

20 Q Have your surveys been criticized for failing to consider  
21 the ramifications of addiction?

22 A Not by any scientist as far as I know.

23 Q Do you know who Paul Slovic is?

24 A He's an expert who served for the Plaintiffs in some of  
25 these cases.

1 Q Is he an expert in the area of surveys?

2 A He's a behavioralist who runs surveys. I disagree with  
3 his methodology and we have a battle going on survey  
4 methodology.

5 Q Let me ask you if he made the following statement. But  
6 the evidence of smokers short term perspectives and  
7 underestimation of the grip of addiction suggests that  
8 experimental and effective forces are leading many young  
9 people to make smoking decisions that they later regard as  
10 mistakes. Are you familiar with that statement?

11 A Yes, I don't think he mentioned my research in that  
12 statement, though.

13 Q Let's go to the next statement. Viscusi has placed great  
14 weight in the validity of his quantitative questions about  
15 smoking risk perceptions, however, there are behavioral  
16 reasons to be suspicious about the reliability of answers to  
17 his questions about the relative frequency of lung cancer  
18 among 100 smokers. You remember reading that comment by  
19 Mr. Slovic?

20 MR. WAGNER: We object, hearsay. Also, could we  
21 have a source of this?

22 THE COURT: Give the source, please.

23 MR. BICKS: From Paul Slovic, Do Cigarette Smokers  
24 Know the Risk in Smoking Risk Perception Policy, Chapter XI.

25 THE COURT: A public published work?

1 MR. WAGNER: I don't believe it is.

2 THE WITNESS: It's not.

3 MR. BICKS: Submitted for publication. It's my  
4 understanding it is going to be published. This is a very  
5 recent article.

6 THE COURT: An article or --

7 MR. BICKS: A chapter.

8 THE COURT: Show it to the witness, ask him if he  
9 agrees with the statement.

10 MR. BICKS: It indicates on the cover it's prepared  
11 for the book, Smoking Risk Perception and Policy, P. Slovic,  
12 Sage Publications. It's WZO-01534.

13 THE COURT: That's the document number?

14 MR. BICKS: Yes.

15 Q I'm showing you the statements at page 17 and 18 that I  
16 read and then the statements at page 21 with respect to your  
17 work. My question is just going to be, do you agree or  
18 disagree with what Mr. Slovic has said?

19 (Pause.)

20 A I disagree.

21 Q Thank you.

22 Let me follow up on a question that the judge asked  
23 you. It goes to the timing of your surveys. Again, so we're  
24 clear, the first survey that you talked about, again the one  
25 that was done and handed to you in 1987 done for this law firm

1 in Chicago, that was done in 1985, correct?

2 A The '85 survey was a Cleveland offer.

3 Q None of these surveys that you rely on attempted to  
4 measure the risk perceptions of the public in the 1950s,  
5 1960s, 1970s up until the mid-1980's, correct?

6 A That's correct.

7 Q Knowledge was certainly not the same in the '50s, '60s or  
8 '70s as it is today. For example, is it, with respect to  
9 cigarettes? Would you agree with that?

10 A I think it was pretty well established that cigarettes  
11 were very risky long before today, but we're continuing to  
12 learn new things; for example, environmental tobacco smoke.  
13 We're continuing to add to knowledge, but the message smoking  
14 is dangerous has been out there for a while.

15 Q You testified in Ohio when asked that question. Your  
16 answer was our knowledge has improved. Is that a fair  
17 statement?

18 A It has improved.

19 Q Have you made any attempt to compare information that's  
20 available, for example, to consumers today and compare that to  
21 the information that was available to people in the 1950s,  
22 1960s or 1970s?

23 A I've reviewed all the Surgeon General's reports, Gallup  
24 polls over that period of time. I've analyzed smoking  
25 trends. I've analyzed the kinds of cigarettes people smoke as

1 result of the information. So, yes, I have reviewed  
2 manifestations that would capture the effect of information.

3 Q Let me show you what you testified to when you testified  
4 under oath in Ohio when asked that same question.

5 "QUESTION: Let me ask you this: Did you try to  
6 make an attempt to determine what was the information  
7 available to consumers, including the people that might be in  
8 your surveys, in 1997 and '98 and compare them to the  
9 information that was available to people back in the 1950s,  
10 '60s or 70s?

11 "ANSWER: Well, I don't know what people had back  
12 then, so I don't see how I could do a comparison."

13 True testimony under oath?

14 A I've done more since then to review the data available at  
15 that time, statements by public health officials back in the  
16 '50s and other evidence.

17 Q This is since you testified under oath in March of 1999?

18 A That's correct.

19 Q In connection -- let's make sure we understand. Do you  
20 know when the average claimant to the Trust started smoking?

21 A I don't know the exact date, but perhaps in the 1940s.

22 Q That's pretty close, 1943. You knew I was going to ask  
23 you that question. 1943, right?

24 A I didn't know you would ask the question. If they're  
25 born around 1925 or so, I thought they would start smoking

1 around the 1940s.

2 Q If they started smoking in 1943, you know from the  
3 Surgeon General that at least in 1985 that blue collar smokers  
4 on average start smoking at about what, 16 and a half?

5 A If that's what you say he says, that's what I'll go with.

6 Q If people are born in 1943 and you add 16 to that, 16 and  
7 a half, that puts us about 1959?

8 A That's right.

9 Q Again, so we're clear, have you done a comparison of the  
10 information that was available, people just hypothetically in  
11 1959 as compared to the surveys that you talked about on  
12 direct, the 1985 to 1997 surveys?

13 A I have reviewed Gallup polls from the 1950s including  
14 Gallup poll from 1957 indicating that people were aware of the  
15 1951 cancer report regarding smoking. I also know that smoke  
16 risk information increased in the 1960s.

17 Q We'll talk a little bit about some of those surveys when  
18 we come back from lunch. Let me ask you, have you ever looked  
19 at internal tobacco company documents to determine what they  
20 were saying, the tobacco companies, about people's awareness,  
21 for example, on the question of nicotine?

22 A No.

23 Q Let me show you a 1972 -- let me back up for a minute.  
24 No documents have been provided to you by the tobacco  
25 companies that bear on what they were saying about the

1 question of awareness?

2 A That's correct.

3 Q What you talked about really today, in fairness to you,  
4 you've talked about the four surveys that we talked about,  
5 right, and then you talked about some other surveys, three  
6 other surveys on the question that deal with tobacco/asbestos  
7 issues?

8 A That's right.

9 Q You haven't talked about what the tobacco companies  
10 internally were saying about awareness issues, right?

11 A Yes, that's correct.

12 Q This is Exhibit 9937 which is an October 30th, 1972 RJR  
13 Reynolds memorandum to Mr. T. E. Sandefur?

14 THE COURT: Is that in evidence?

15 MR. BICKS: Yes, your Honor.

16 Q Do you have that in front of you?

17 A Really murky. Can I get up and read that one?

18 Q Are you having a hard time seeing it?

19 A Something is wrong with my screen.

20 Q It says the groups showed what other research has  
21 shown -- there is low awareness of tar and nicotine numbers  
22 and no comprehension of what they mean. Do you see that?

23 A This is what date?

24 MR. BICKS: 1972.

25 Q You see that?

1 A I can't see it here, but I heard it.

2 Q If you can't see it, then we're not doing what we need to  
3 have (handing).

4 A I see it.

5 Q This is a document you have not seen before?

6 A That's correct.

7 Q You're not, as you sit here today, going to dispute the  
8 conclusion of this document, are you?

9 A No.

10 Q Would you assume the tobacco companies have expertise on  
11 what people know?

12 A Not necessarily. I think they sell products but unless  
13 they ran a survey to figure out what people know, I don't know  
14 what they would know. So, I don't know what they use to get  
15 that answer.

16 Q Let me move forward a little bit in time. Let me just  
17 show you a 1978 memorandum that is from H.D. Steel to M.J.  
18 McHugh (ph), subject, future consumer reaction to nicotine.  
19 I'll show it to you --

20 THE COURT: This has a number?

21 MR. BICKS: 18107 and it is in evidence, your  
22 Honor.

23 Q What I'm going to ask you about is the highlighted  
24 portion I'm showing you here because it's hard to see because  
25 of the copy that we have.

1 A I don't understand the last word, cigarette?

2 Q Cigarette, that's a hard one to understand. You know  
3 what that is? Poison.

4 A Poison?

5 Q Poison, yes. Oh, you couldn't read the last word.  
6 Packs.

7 A Packs.

8 Q It's very hard to read.

9 (Pause.)

10 MR. BICKS: I've been told to hit the focus button.

11 Q Very few consumers are aware of the effects of nicotine,  
12 i.e., its addictive nature and that nicotine is a poison.  
13 Most smokers view nicotine as the number that follows the tar  
14 figure on cigarette packs.

15 Did I read that correctly?

16 A I think so, yes.

17 Q Again, so we're clear, as you've come here to talk to us,  
18 nobody provided this to you?

19 A No.

20 THE COURT: We have a problem. When do you have to  
21 appear at this other --

22 THE WITNESS: Monday.

23 THE COURT: I thought it was today. They're  
24 expecting you today?

25 MR. WAGNER: We were informed late last night while

1 they don't sit on Fridays, Professor Viscusi is there on  
2 Monday, that's fine. We're trying to get it all in today.  
3 That's what I was told late last night.

4 THE COURT: I was told to push this so you would be  
5 available this afternoon. Your understanding is that other  
6 trial won't require the professor?

7 MR. WAGNER: Wouldn't require him today. That's  
8 what I was told late last night.

9 THE COURT: We'll assume that's true. Would you  
10 mind having somebody check with the judge? I don't want him  
11 to think I ignored our conversation of last night.

12 We can all take a leisurely hour. Be back at 2:00  
13 o'clock, please.

14 I want to ask a question without the jury present.  
15 (Jury leaves courtroom.)

16 THE COURT: Did that 1964 reference result in a  
17 survey being conducted?

18 MR. BICKS: I don't think we know the answer. I  
19 think --

20 MR. WESTBROOK: Not that we've ever seen.

21 THE COURT: We don't have any figures for 1964?

22 MR. LOMBARDI: I think you would be able to see a  
23 document that shows the survey was never conducted.

24 THE COURT: Thank you very much.

25 (Luncheon recess; continued on next page.)

1                   A F T E R N O O N                   S E S S I O N

2                   (The following occurred in the absence of the  
3 jury.).

4                   THE COURT: The witness take the stand, please.  
5                   (Jury present.)

6                   MR. WAGNER: Your Honor, Professor Viscusi is in the  
7 washroom. It might be a second.

8                   THE COURT: All right. Sit down, everyone.  
9                   (Pause.)

10                  THE COURT: Remember, we are not meeting tomorrow. I  
11 understand that one of you has an important medical  
12 appointment on the 18th. I hope we may be finished by then,  
13 but if not, we will be off on the 18th. But Monday we will  
14 start at 10:00 o'clock promptly.

15                  The witness will be in in a moment.

16                  I have been able to procure for the trial a regular  
17 pointer.

18                  MR. BICKS: What am I to do with this, Judge?

19                  THE COURT: Keep it there and you can use it to  
20 point. Just to point at things.

21                  MR. WAGNER: Your Honor, you have two bits of  
22 information. One is this might be a minute.

23                  THE COURT: Okay.

24                  MR. WAGNER: The other is that we have received word  
25 that he is not needed in state court until 9:30 Monday

1 morning. We were able to confirm that.

2 THE COURT: That's fine. Thank you very much. So  
3 there is no pressure.

4 MR. WAGNER: I don't know if they've --  
5 (Pause.)

6 MR. WAGNER: He is on his way.  
7 (Witness present.)

8 EXAMINATION CONTINUES

9 BY MR. BICKS:

10 Q Good afternoon, Professor Viscusi.

11 Just a couple of quick cleanup items from some things  
12 that came up today.

13 Tell us on your 1985 survey, what was the confidence  
14 interval on the number that you came up with?

15 A Like point oh two, so standard error, so the confidence  
16 interval would be point oh four. Either way.

17 Q Let me show you some testimony you gave on direct, make  
18 sure I -- I understand it?

19 THE COURT: What is this from?

20 MR. BICKS: This is from this morning, page 17.

21 Q Here you are talking about your 1985 survey. Can you see  
22 that, by the way, on your screen? We need to fix it?

23 A It's good.

24 Q Great.

25 You were talking about the question for the 1985

1 survey. You said rather than asking how many of hundred  
2 smokers, I asked how many out of a thousand or how many out of  
3 the two million smokers in North Carolina. People answered 10  
4 percent, 20 percent.

5 You see what I am referring to there?

6 A That's correct.

7 Q Were you actually asking people the question of out of a  
8 thousand or out of two million how many people would get lung  
9 cancer?

10 A Yes.

11 Q And are you suggesting thus when you increase the number  
12 to, for example, a thousand, you got less than what was it  
13 about 40 percent that you were testifying to on direct out of  
14 a hundred?

15 A No. I am not suggesting that. What I am suggesting is  
16 that people answer the question in percentage terms rather  
17 than giving a number.

18 Q For example, if -- if you asked somebody how many out of  
19 eighteen million would get lung cancer, are you suggesting  
20 it's going to be the same percentage as the question if posed  
21 how many out of a hundred?

22 A Yes. Because people start answering in percentage  
23 terms.

24 Q Okay. Now, so there is no doubt about it, this is  
25 Exhibit 30862, which is this 1964 memo and it says here, in

1 any event, if the returns were unfavorable they could be  
2 destroyed and there would be no record in any office of the  
3 nature of the returns.

4 Based on your experience, this is the prospect of  
5 this is -- is reprehensible, is it not? The prospect of  
6 destroying unfavorable returns in a survey?

7 A If you are trying to test hypothesis you wouldn't want to  
8 destroy it, yes. You'd want to get at the truth.

9 Q Okay. Now, we were talking about the question of  
10 awareness of nicotine and addiction and things like that  
11 before we broke.

12 Let me show you Plaintiff's Exhibit 4495, which the  
13 defendants have indicated they have no objection to coming  
14 into evidence.

15 THE COURT: All right. Admitted.

16 (Marked.)

17 Q This is a February 22, 1979 memo from Doctor Wakeham to  
18 Mr. Seligman. Can you see that?

19 A Yes.

20 Q Okay. I have blacked out a word there and that's why  
21 that black mark is there.

22 You see the paragraph that I have highlighted? It  
23 says, people obviously take up the habit for psychosocial  
24 reasons long before they become aware, either consciously or  
25 unconsciously, of the nicotine in psychopharmacology. You see

1 that?

2 A I do.

3 Q Again, no internal documents were made available to you  
4 in connection with your coming to chat with us today?

5 A That's correct.

6 MR. KRAUS: Your Honor, with respect to the next  
7 document that Mr. Bicks wants to use, it is a multipaged  
8 document. We haven't had a chance to review all of it.

9 THE COURT: What part do you want to use?

10 MR. BICKS: I am going to want to talk about one  
11 page, Your Honor. I have shown him the page.

12 THE COURT: Let me look at the page, please.

13 MR. BICKS: What's that?

14 THE COURT: Let me look at the page, please.

15 Does this document have a number?

16 MR. BICKS: This is 9510. It is an RJ Reynolds  
17 consumer research report. That's the page I want to ask him  
18 about.

19 THE COURT: You can ask him about it. That page is  
20 in evidence.

21 MR. BICKS: Thank you, Your Honor.

22 (Marked.)

23 THE COURT: Is it numbered?

24 MR. BICKS: Yes. This is page six.

25 Q Mr. Viscusi, I am going to put on the screen here a May

1 1970 consumer research report produced by the Reynolds Tobacco  
2 Company. I take it, as I show this to you, you have not seen  
3 this before?

4 A That's correct.

5 Q Okay. This is a summary table section one smoker's  
6 opinion about smoking and health.

7 THE COURT: What date is this?

8 MR. BICKS: It is May 20, 1970.

9 MR. BICKS: I apologies because it is cut off a  
10 little bit on the side but I think that -- I think that we can  
11 read it.

12 THE COURT: All right.

13 Q I am focusing on the second line down. It says,  
14 cigarette smoking in moderation is safe. Do you see that?

15 A I do.

16 Q Then true is 41 percent. Then false is 29. Then 30  
17 percent answer they don't know, or no answer.

18 Do you see that?

19 A That's right.

20 Q That suggests here that 71 percent thought cigarette  
21 smoking in moderation was safe or they didn't know the answer  
22 to that?

23 A That's what these data say, yes.

24 Q Okay. Based on what you know about the actual risks of  
25 cigarette smoking, is that consistent with the actual risks?

1 A I would avoid qualitative terms like safe. The question  
2 before, hazardous, simply saying smoking is hazardous. That's  
3 why I favor numerical scales.

4 Q If you ask people whether they think something is  
5 hazardous or whether they think it is safe, you don't think  
6 words like "safe" and "hazardous" are words that lend  
7 themselves to common understanding and precise information  
8 that's useful to us when they respond to questions with those  
9 words in them?

10 A If you are smoking in moderation like in this question, I  
11 don't know how much you have to do to be really risky or  
12 unsafe.

13 Q Okay. Let's look at the line down which says -- it says  
14 smoking is safe as long as you don't inhale.

15 Thirty percent of people say true.

16 Is that true, by the way, smoking is safe if you  
17 don't inhale?

18 A I'd reword it, does it pose any significant risk. My  
19 guess is that smoking probably does not pose a substantial  
20 risk if you don't inhale. I am not sure what you are doing  
21 with the cigarette if you are not inhaling.

22 Q Let me ask you then, you are on the stand and I said to  
23 you, is smoking safe if you do not inhale?

24 A So if I put it in my mouth and don't breathe it in at  
25 all, it's only environmental tobacco smoke. Which I don't

1 think poses a huge risk. My tendency would be probably to say  
2 yes. It's probably not a big risk.

3 Q So you would say yes, it is safe if you don't inhale?

4 A I generally prefer questions that define risks on a  
5 meaningful scale. So I'd know what "safe" is. If "safe" is a  
6 risk of less than one in a hundred, then it's certainly safe.

7 Q You can only answer questions if it's within the contexts  
8 of one in a hundred?

9 A I'd say, questions that don't have a probability scale  
10 with a well defined quantitative metric do not have right or  
11 wrong answers.

12 Q This indicates to you that 61 percent of people either  
13 thought smoking was safe as long as you don't inhale or didn't  
14 know the answer, right?

15 A Thirty percent said true. Thirty-one percent said didn't  
16 know the answer. Thirty-nine percent said false.

17 Q Thirty and thirty-one is sixty-one, right?

18 A Right. But not knowing is not the same as yes.

19 Q Is it correct that your surveys do not elicit information  
20 on how long people expect to smoke when they start?

21 A That's correct.

22 Q Okay. Are you aware of survey evidence that says that  
23 many young smokers don't think they will smoke for more than a  
24 few years?

25 A I have seen some surveys that ask people how long they

1 expect to smoke and some younger smokers indicate a short  
2 period of time, yes.

3 Q Could this suggest to you that smokers feel that smoking  
4 is safe in the short term but potentially harmful in the  
5 long-term?

6 A No. In fact, my evidence contradicts that in terms of  
7 evidence on risk perception of youths.

8 Q But you are aware actually that there is survey evidence  
9 that says many young smokers don't think they will smoke for  
10 more than a few years?

11 A When people -- young smokers are asked the question, do  
12 you think you'll smoke more than five years, a lot of them do  
13 not indicate yes. That's correct.

14 Q You are familiar with the idea that people think they are  
15 going to be able to stop smoking, correct?

16 A I am not sure exactly -- the exact wording of the survey  
17 question.

18 Q Okay. Let me just show you then your testimony given on  
19 March 11, 1999 in Ohio.

20 Question: You are familiar with the idea that people  
21 think they are going to be able to stop smoking, correct?

22 Answer: Some people think they can quit.

23 Is that what you said?

24 A I agree, that many people have quit.

25 Q Many people haven't, right?

1 A As many people have quit as who now smoke.

2 Q What you have done in your survey is you have compared --  
3 what you compared was the actual perception of a lifetime  
4 smoker and then put up -- and then compared that to the risks  
5 of a lifetime smoker, correct?

6 A That's correct.

7 Q Okay. Now, does the phrase "tobacco asbestos synergy"  
8 appear in any of the polls that you have talked about, the  
9 four polls that you have written about and discussed a fair  
10 amount?

11 A Only the Roper poll. Not in any of my polls.

12 Q The statistical phrase "tobacco asbestos synergy" appears  
13 in the Roper poll?

14 A I guess the verbal equivalents of that, but that sort  
15 of -- my polls did not include anything relating to whether  
16 those words or different words.

17 Q Okay. In fact, there are no questions at all in any of  
18 the surveys that you were involved in that even touch on  
19 synergy, is that correct?

20 A That's correct.

21 Q And again, the four surveys I am talking about, I am  
22 talking about the three done with the tobacco industry and  
23 then the one that you did in North Carolina of the two hundred  
24 people in North Carolina. Are you with me?

25 A Yes.

1 Q Okay. Did you make any effort with respect to those four  
2 polls to identify asbestos exposed individuals?

3 A No.

4 Q Have you performed -- in connection with those four  
5 polls, have you performed or did you ever perform a  
6 statistical test to determine whether the samples in those  
7 polls are representative of the Manville trust claimant  
8 population?

9 A I've done detailed statistical analyses across broad  
10 demographic groups. I have looked at them by blue collar  
11 white collar status, found no difference. I have looked at it  
12 by educational group and found no difference. I have looked  
13 at it by gender. So that because these results are stable  
14 across broad segments of society, I didn't break out the  
15 specific population here.

16 Q Okay. So the answer is that you did not do a statistical  
17 test to determine whether your samples are representative of  
18 the Manville trust claimant population. I am talking about  
19 the four surveys that you were involved with.

20 A I have verified that the results are robust according to  
21 occupation and education, which means that any projection done  
22 would hold up.

23 Q Did the 1985 survey that was done for the law firm in  
24 Ohio, was that survey dealing with blue collar workers?

25 A It dealt with everybody.

1 Q Did it specifically focus on and break out blue collar  
2 workers?

3 A No.

4 Q Did your 1991 survey, the two hundred people in North  
5 Carolina, did that break out as a separate group blue collar  
6 workers?

7 A No.

8 Q If you had wanted to in connection with those four  
9 surveys, could you have designed a survey directed to asbestos  
10 exposed individuals and -- and designed to measure their  
11 understanding of the synergistic effects of tobacco and  
12 asbestos?

13 A I think I sort of missed the boat in terms of some of the  
14 timing, so in 1998 we probably would have a hard time finding  
15 currently exposed workers to asbestos.

16 Q When you say you missed the boat, what do you mean you  
17 missed the boat?

18 A The bigger asbestos exposure occurred before 1998. So  
19 you'd want to get people at the time they were exposed.

20 Q When did the biggest asbestos exposure occur?

21 A It was a large exposure during the shipyards, during  
22 World War II, and thereafter, in the advent of government  
23 regulation of asbestos by occupational safety and health  
24 administration and the Environmental Protection Agency,  
25 asbestos exposures have substantially diminished.

1 Q So again we are clear, the first poll that you even had  
2 any involvement relating to tobacco issues was the poll that  
3 you were given in 1987 when you were out in Ohio meeting with  
4 lawyers for the tobacco companies?

5 A Right. The '85 poll I got in '87.

6 Q Now, can we put up Hanson 28, demonstrative 28?

7 This is the 1980 Roper poll, a demonstrative exhibit  
8 that we used with Professor Hanson. You discussed the 1980  
9 Roper poll on direct?

10 A I did.

11 Q If we take this poll as accurate, how many -- how many in  
12 terms of a percentage does this indicate either don't know if  
13 it's true, looking up at the question, think it's not true or  
14 no, it's not true?

15 A Well, if you include the don't know's, then you are maybe  
16 32 percent.

17 Q Okay. So that would say here that -- rough numbers,  
18 essentially a third of this group don't know, think it's not  
19 true, no, it's not true, that if you smoke and have worked  
20 with asbestos, you are at least fifty times more likely to get  
21 lung cancer than if you have done neither?

22 A That's what this says.

23 Q Okay. This question as you look at it does not actually  
24 distinguish, does it, between the effects of asbestos as  
25 compared to the effects of tobacco, does it?

1 A No. It takes up the total effects of both exposures.

2 Q Let's just say, for example, you are familiar with some  
3 of the data on the asbestos awareness campaign?

4 A I have seen some publications regarding that.

5 Q You are aware that that data shows and I appreciate you  
6 question the methodology that's reported in those three Gallop  
7 polls, but those polls showed, do they not, that people had  
8 more of an awareness of asbestos problems but as interpreted  
9 by Gallop in the three polls, but a significant  
10 underappreciation of how tobacco and asbestos interact?

11 A That's not the way I interpret the NCI polls.

12 Q That's how the authors of the polls interpreted it. We  
13 can talk about the differences in interpretation. That's the  
14 way they have interpreted it, is that correct?

15 A I just looked at the raw numbers. I know the Surgeon  
16 General didn't interpret it that way.

17 Q Are you familiar, actually, you pointed out that this was  
18 included in the 1989 Surgeon General's report. Do you  
19 remember that?

20 A Yes.

21 Q Do you actually remember in the Surgeon General's report  
22 what that concluded about people's perceptions of the risk of  
23 smoking?

24 A I am not sure what you are driving at.

25 Q Okay. Let me show you, do you recall that this Surgeon

1 General's report did a fair amount of analysis on awareness of  
2 smoking?

3 A I did review a lot of the Gallop poll evidence, for  
4 example.

5 Q Okay. You are aware, are you not, that -- have you read  
6 the tobacco company's web cites?

7 A I have gone to them but I haven't read the entire web  
8 cite, no.

9 Q Are you aware or has it been pointed out to you that the  
10 tobacco company web cites refer us to the Surgeon General's  
11 reports?

12 A I do know that.

13 Q Do you know whether or not on the web cites they refer us  
14 to your analysis of awareness of risk perception?

15 A I don't know if they give me any plugs. I've never  
16 checked.

17 Q Do you recall what the Surgeon General concluded in 1989  
18 about awareness of risk of smoking?

19 A I don't remember what the report said.

20 Q Okay. This is a page of the 1989 Surgeon General's  
21 report, 50171.

22 THE COURT: What page is this?

23 MR. BICKS: This is page 244.

24 THE COURT: All right.

25 Q Can you see that on your screen?

1 A I can.

2 Q I have highlighted some paragraphs for us.

3 You obviously were familiar with these conclusions?

4 A I have read it about a decade ago, yes.

5 Q Is that the last time you looked at it?

6 A I have looked at parts of this report but I don't think I  
7 have read this page for a long time.

8 Q Okay. I am looking at paragraph four, where it says, it  
9 starts out, it says despite these impressive gains in public  
10 knowledge, substantial numbers of smokers are still unaware of  
11 or do not accept important health risks of smoking. For  
12 example, the proportions of smokers in 1986 who did not  
13 believe that smoking increases the risk of developing lung  
14 cancer, heart disease, chronic bronchitis and emphysema, were  
15 15 percent, 29 percent, 27 percent, and 15 percent,  
16 respectively. These percentages corresponded to between eight  
17 and fifteen adult smokers in the United States.

18 Did I read that correctly?

19 A Million adult smokers.

20 Q Yes. Did I read that?

21 A Yes. I think you left out million.

22 Q Oh. I'm sorry.

23 Paragraph six, some smokers today do not recognize  
24 their own personal risk from smoking or they minimize it. In  
25 1986, only 18 percent of smokers were very concerned about the

1 effects of smoking on their health, and 24 percent were not at  
2 all concerned.

3 That's what the Surgeon General concludes here. Am I  
4 correct?

5 A Yes.

6 Q It goes on to say, that in 1986, about half of current  
7 smokers and 40 percent of never smokers incorrectly believed  
8 that a person would have to smoke ten or more cigarettes per  
9 day before it would affect his or her health.

10 Is that what the Surgeon General concluded?

11 A Yes.

12 Q And then eight, it says a national survey conducted in  
13 1983 by Louis Harris and Associates found that the public  
14 underestimates the health risks of smoking compared with many  
15 other health risks.

16 Do you see that?

17 A I do.

18 Q And then paragraph nine, many smokers underestimate the  
19 population impact of smoking. In 1987, 28 percent of smokers  
20 and 16 percent of the general population disagreed with the  
21 statement, most deaths from lung cancer are caused by  
22 cigarette smoking.

23 Do you see that?

24 A I do.

25 Q Again, these are the conclusions of the Surgeon General

1 of the United States?

2 A They are in his report, yes.

3 Q Okay. Let me ask you something about this phrase, most  
4 deaths from lung cancer are caused by cigarette smoking. In  
5 any of your surveys, did you ask that question to anybody?

6 A No.

7 Q And how many deaths are there as a consequence of lung  
8 cancer?

9 A I don't know, there is over four hundred thousand total  
10 deaths due to smoking and if lung cancer accounts for half to  
11 a third of those, a hundred thousand to two hundred thousand  
12 deaths.

13 (Continued on the next page.)

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1 BY MR. BICKS:

2 Q I'm sorry. What was the number?

3 A Maybe 100,000 deaths.

4 Q Let me just ask you this: You were talking about the  
5 difference between peer-reviewed and law review publications  
6 on direct. Do you remember that?

7 A Yes.

8 Q You have actually published in law reviews; correct?

9 A In addition to my 200 peer-reviewed articles, yes.

10 Q You have published in the Duke Law Review; right?

11 A Yes.

12 Q Do you remember saying that there are 110,000 lung-cancer  
13 deaths per year, five percent of which are believed to be due  
14 to smoking?

15 A I don't recall those exact words, but it seems to be  
16 similar to the answer I just gave.

17 Q So, that would mean that out of 110,000 lung-cancer  
18 deaths, over 93,000 are caused by smoking, if I did my math  
19 right?

20 A If that's what those numbers say.

21 Q And the Surgeon General says here that in 1987,  
22 twenty-eight percent of smokers and sixteen percent of the  
23 general population disagreed with the statement most deaths  
24 from lung cancer are caused by cigarette smoking; you're  
25 familiar with that?

1 A You just read it, and I don't deny that he said that.

2 Q Let me ask if we can go back to the Roper poll, which was  
3 Hanson 28. Are you familiar with the criticisms that have  
4 been raised by various scholars, of questions which ask people  
5 to express risk estimates in numerical fashion like this?

6 A You're reading from Professor Hanson's article, I take  
7 it?

8 Q How did you know?

9 A I saw it when you picked it up.

10 Q You're exactly right. Let me quote: "There is also  
11 growing evidence that people, particularly smokers, have  
12 considerable difficulty expressing their risk estimates  
13 numerically."

14 Are you familiar with that concept?

15 A No, I don't believe it. I think that's his claim, but I  
16 don't believe it.

17 Q Then, you disagree, again, with Isaac Lipkus, a  
18 risk-communication expert at the Duke Comprehensive Cancer  
19 Center?

20 A I was at Duke for ten years. I held a endowed chair. I  
21 never even met Isaac Lipkus.

22 Q The judge asked you about this. Let me follow up on  
23 this, this question of optimism bias. You are familiar with  
24 that concept?

25 A I'm familiar with that hypothesis, yes.

1 Q And did you write, in the Supreme Court Economic Review,  
2 that "Even if smokers are aware of the risks associated with  
3 smoking, these risk perceptions may not affect smoking  
4 decisions. Individuals might, for example, not fully perceive  
5 the consequences of the adverse health effects of smoking for  
6 their welfare." Did you write that?

7 A That was a hypothesis that I then tested, yes.

8 Q So, would you agree that in order for a smoker to  
9 appreciate the health risks of smoking, the smoker has to  
10 believe that those risks are the same for him or her?

11 A Well, or that they are at least as big for him or her.

12 Q And are you aware of conclusions -- I showed you the  
13 Surgeon General's report of 1989 -- are you familiar with the  
14 1981 FTC report?

15 A Yes, I am.

16 Q Okay. This is Exhibit 50220. This is a page out of the  
17 1981 FTC report, a document you're familiar with?

18 A Yes.

19 MR. BICKS: Your Honor, I would move this into  
20 evidence.

21 THE COURT: 522540?

22 MR. BICKS: Yes.

23 MR. WAGNER: The page, or the whole report?

24 MR. BICKS: At this moment, 11. We'll move the whole  
25 report in.

1 MR. BERNICK: Your Honor already ruled the whole  
2 report does not come in.

3 THE COURT: What portions?

4 MR. BICKS: Page 11.

5 THE COURT: Page 11 is the only page in.

6 (So marked.)

7 BY MR. BICKS:

8 Q This is page 11 out of the FTC report, and it says:

9 "Finally, the survey data indicates that a large number of  
10 people do not believe that they will personally suffer the  
11 health consequences of smoking. Thus, although the medical  
12 evidence clearly indicates that smoking only a few cigarettes  
13 a day can be harmful, nearly one-third of those polled and  
14 forty percent of smokers polled believed that only heavy  
15 smoking is dangerous."

16 Are you familiar with that?

17 A Yes. Just having read it, yes.

18 Q Did you ever ask smokers, in the surveys that you  
19 conducted, whether or not they believe that they themselves  
20 would develop and die from lung cancer?

21 A No.

22 Q Indeed, you've never cited the concept of optimism bias  
23 in any of your work?

24 A I've criticized it in my work, and I've tested it for the  
25 U.S. Environmental Protection Agency.

1 Q But the Surgeon General has, in fact, suggested that  
2 asking a question that very way, to elicit smokers' beliefs  
3 regarding their own personal risk, might yield different  
4 information than other standard polling techniques? Are you  
5 familiar with that?

6 A No. I would like to see the statement.

7 Q This is, again, out of the 1989 Surgeon General's  
8 report.

9 THE COURT: Page?

10 MR. BICKS: Page 204.

11 THE COURT: Admitted.

12 (So marked.)

13 MR. BICKS: It's Exhibit 50171.

14 BY MR. BICKS:

15 Q "However, nonsmokers were asked to respond to the  
16 question, implying that the wording may not be understood by  
17 some respondents as referring to truly personalized health  
18 risks. Wording such as: "Do you think that your cigarette  
19 smoking is or is not harmful to your health?" might elicit a  
20 different response.

21 Are you aware of that?

22 A This is a 1990 Gallup poll question. I know the answer  
23 to it. Ninety-six percent of the smokers said, yes, it has  
24 harmed their health. So, yes I'm aware of it.

25 Q You're saying that the Surgeon General, that when the

1 Surgeon General says it, it's going to yield a different  
2 response. Did it yield a different response?

3 A Ninety-six percent of all smokers said, yes, I think my  
4 cigarette smoking is harmful to my health. It was tested the  
5 next year.

6 Q Okay. Have you been criticized in peer-review journals  
7 for not testing the risks faced by an individual smoker to him  
8 or herself?

9 A Only by the plaintiffs' expert, Paul Slovin, to the best  
10 of my knowledge.

11 Q What about Michael Schoenbaum?

12 A I know he's written a paper that cited me. I'm not sure  
13 exactly what he said.

14 Q This is Exhibit 76290.0043, which is a 1997 article in  
15 the American Journal of Public Health. This is a peer-review,  
16 respected journal?

17 A I know the article.

18 Q Okay.

19 MR. BICKS: Your Honor, I would move this into  
20 evidence.

21 THE COURT: All right. What number?

22 MR. BICKS: 76290.004 C.

23 THE COURT: Admitted.

24 MR. WAGNER: Your Honor, I was under the impression  
25 we were not admitting the journal in evidence.

1 THE COURT: May I see it?

2 THE COURT: This is from what paper?

3 MR. BICKS: I can't remember it, off the top of my  
4 head, your Honor. It's indicated on the bottom there.

5 THE COURT: American Journal of Public Health.

6 The witness will have to recognize it as a learned  
7 journal.

8 BY MR. BICKS:

9 Q This is a learned journal --

10 A It's a real journal, yes.

11 Q It's a real journal. Okay.

12 THE COURT: Admitted, only those portions quoted.

13 (So marked.)

14 BY MR. BICKS:

15 Q "None of Viscusi's questions gauge individuals'  
16 perceptions of years of life lost when one gets lung cancer,  
17 or years of disability. Second, and perhaps more critically,  
18 Viscusi asked about the risks of hypothetical smokers, not the  
19 risks faced by the individual smoker, him or herself; smokers  
20 may believe that smoking poses greater risks to others than to  
21 themselves."

22 You're familiar with this criticism of your work in  
23 this peer-review journal?

24 A Do you want me to comment on it? Yes, I'm familiar.

25 Q I'm asking whether you're familiar with it?

1 A I've seen it, yes.

2 Q Without asking you to comment, I know you are going to  
3 say that you disagree with this criticism of your work?

4 A Well, do you want me to comment? Briefly, the first  
5 comment only pertains to the 1985 survey. The life expectancy  
6 should be addressed with the '91, '97 and '98 surveys. The  
7 other comment is a hypothesis I disagree with, and I have  
8 written a paper responding to Professor Schoenbaum.

9 Q Now, I want to ask you a little bit about your book  
10 "Making the risky decision." Did I get the title right?

11 A "Smoking," --

12 Q "Smoking, making the risky decision"?

13 A Right.

14 Q In this book, you do a fair amount of discussion of the  
15 1985 poll that was undertaken for the tobacco law firm in  
16 Ohio?

17 A Yes.

18 Q Let me show you Exhibit 1105, and let me just ask you, --  
19 we had put up a Roper poll -- are you familiar with the  
20 relationship between the tobacco companies and the Roper  
21 polling organization?

22 A No.

23 Q Were you aware that the Roper polling organization had a  
24 long-standing relationship with the tobacco companies, and did  
25 a lot of polling work for the tobacco companies?

1 A I assume they do lots of work for lots of people, because  
2 they are a big outfit. Since I had worked with audits and  
3 surveys before, I didn't know that Roper had a special  
4 relationship.

5 Q This is a 1972 memorandum from Fred Panzer to Horace  
6 Kornegay, and it talks about the Roper poll.

7 Do you see that?

8 A Yes.

9 Q And there's a debate in here about whether or not a  
10 survey should go forward, and I want to show you the scenario  
11 for Action Points 4 and 5.

12 4 is: "Conduct the full-scale survey.

13 "And if the results are favorable, release them as a  
14 book in both hardcover and paperback version, hopefully  
15 published by a legitimate house."

16 Do you see that?

17 A I do.

18 Q Now, while we have to fast-forward to 1990, your book,  
19 does it not, discusses, I guess, what would be viewed as the  
20 favorable results of the 1985 survey; is that correct?

21 A The audits-and-surveys survey, yes, not Roper.

22 Q Again, so we're clear, the audits-and-surveys survey,  
23 that was done for law firms for tobacco companies; correct?

24 A That's right.

25 Q Were you aware of a 1970 public-opinion poll which showed

1 that a majority believe that cigarettes are only one of the  
2 many causes of smokers having more illnesses?

3 A I may have seen polls like that.

4 Q Let me show you.

5 THE COURT: What document are you using?

6 MR. BICKS: This is the same exhibit. 1105.

7 BY MR. BICKS:

8 Q Do you see this up on your screen?

9 A I do.

10 Q And it says that: "Our 1970 public-opinion survey showed  
11 that a majority, fifty-two percent, believed that cigarettes  
12 are only one of the many causes of smokers having more  
13 illnesses."

14 And then, it drops down: "Thus, there are millions  
15 of people who would be receptive to a new message, stating:  
16 Cigarette smoking may not be the health hazard that the  
17 anti-smoking people say it is, because other alternatives are  
18 at least as probable."

19 And then, it drops down: "The Roper proposal would be  
20 a persuasive, if not strictly scientific, medium for this  
21 message."

22 And then, it drops down and it talks about a scenario  
23 for action, and it says: "If favorable, present the results  
24 to carefully selected members of the following key groups."

25 And then it identifies a bunch of groups.

1           Are you familiar with this document?

2   A    Not until today.

3   Q    What do you think of the practice of distributing polling  
4 results only if they are favorable to select groups of people?

5   A    Well, political candidates do it all the time, I think.  
6 If they like the results, they release them. In general, when  
7 I do my research, I believe you should run the survey and let  
8 the chips fall where they may.

9   Q    Now, are you familiar with Lancet?

10  A    Yes.

11  Q    Respected journal?

12  A    Very respected. Distinguished.

13  Q    Has your work been criticized in Lancet?

14  A    There was a book review of one of my books, that made fun  
15 of my dust-jacket photo, among other things in Lancet.

16  Q    Is that the only thing? Was there substantive criticism  
17 raised in Lancet of your book?

18  A    I forget the substantive criticism. I know this reviewer  
19 did not like my book.

20  Q    Do you know who this reviewer was and what his  
21 credentials were?

22  A    No.

23  Q    Do you know he was a leading epidemiologist at Glasgow?

24  A    As opposed to being an economist. So, it's not somebody  
25 who works in my field of risk-perception analysis. It's a

1 physician.

2 Q You recall that in Lancet, it was stated that "Little  
3 else in this book merits serious consideration. What we are  
4 given is spurious argument, predicated on untenable assumption  
5 and based on gross over-interpretation of inadequate data."  
6 That was what was written in Lancet?

7 A Fortunately, my other reviews were better.

8 Q You are familiar with this?

9 A Yes.

10 THE COURT: Do you want to give that a number?

11 MR. BICKS: Yes.

12 THE COURT: What?

13 MR. BICKS: Plaintiffs' Exhibit Viscusi 2.

14 BY MR. BICKS:

15 Q You're familiar with it?

16 A Yes.

17 Q This review also concluded that "The central data source  
18 for this book is a telephone survey conducted on behalf of  
19 defense law firms involved with tobacco litigation, with an  
20 uncertain response rate and an ill-defined sample.

21 "The answers to a few questions about perceived risks  
22 of smoking have been used to suggest that smokers and  
23 nonsmokers overestimate the risks of lung cancer, and that  
24 people would, in fact, smoke more if they had a clearer  
25 understanding of the real risks."

1 Do you recall this review?

2 A I recall him saying that, yes.

3 Q Then he says: "The sparse data then tortured further, by  
4 extrapolating from risk perceptions to smoker behavior." Are  
5 you familiar with this review?

6 A I remember it, but I didn't like it.

7 Q Do you know who George Lowenstein is?

8 A He's a psychologist/economist of Carnegie Mellon.

9 Q A reputable organization?

10 A And he's a reputable scholar.

11 Q He has reviewed your work in a peer-review journal,  
12 Contemporary Sociology, May 1994, Volume 23, of the American  
13 Sociological Association?

14 A I know he's commented on my papers in a number of his  
15 papers. In fact, he's on my editorial board.

16 Q This is Plaintiffs' Exhibit Viscusi 3 from the Journal of  
17 Review, Contemporary Sociology, of your work?

18 A I have never seen it. I don't know the journal.

19 Q The American Sociological Association, are you familiar  
20 with that?

21 A I know who they are.

22 Q Respected peer-review journal?

23 A I don't know the journal. But the American Sociological  
24 Association is a real professional association of  
25 sociologists.

1 MR. BICKS: I would like to display one page from  
2 this.

3 THE COURT: All right. What page is this?

4 MR. BICKS: This is page 447.

5 THE COURT: What do you want to do about Viscusi 2?

6 MR. BICKS: Viscusi 2, I would like to move into  
7 evidence.

8 THE COURT: Just the portion quoted?

9 MR. BICKS: Right.

10 THE COURT: The same thing is true of Viscusi 3?

11 MR. BICKS: Yes. Thank you, your Honor. Sorry.

12 (So marked.)

13 BY MR. BICKS:

14 Q "Viscusi finds that smokers themselves have very negative  
15 attitudes toward smoking. Although he interprets this as  
16 supporting the idea that people know what they are getting  
17 into, and thus making a rational decision, the same  
18 observation could also support the view that smokers feel  
19 trapped in an activity whose implications they did not fully  
20 understand when they began. Other smoking statistics, such as  
21 that nearly every smoker becomes addicted before age twenty  
22 and that two-thirds of smokers would like to quit and a very  
23 large number have tried repeatedly, also don't fit well with a  
24 rationality model."

25 Do you recall reading this?

1 A I've never read this before.

2 Q I take it you disagree with the views that were expressed  
3 by Mr. Lowenstein in this article in Contemporary Sociology?

4 A Well, his views are a hypothesis, not a conclusion. And  
5 his results are contradicted by my results for the risk  
6 beliefs of young people.

7 Q Let me make sure, just while we've got on this, so we  
8 understand kind of the consequences of some of your views.

9 I have read some of your prior testimony, and is it  
10 your opinion that if people understood the actual risks of  
11 smoking, that more people would smoke?

12 A If risk perceptions decreased from forty-three percent  
13 to, let's say, forty percent or sixteen percent, the true risk  
14 range, more people would smoke.

15 Q And you were asked, from your point of view, would more  
16 smoking be for the public good, and under oath in Minnesota,  
17 you said that if people are not misled about the risks of  
18 smoking, but instead had more accurate risk perceptions and  
19 were more likely to smoke, then that would be good, from the  
20 public standpoint."

21 Did I read that testimony correctly?

22 A If people are making informed choices with full  
23 information, I think I would permit them to make those  
24 choices.

25 Q You think, for example, that from the view of the public

1 welfare, that it's not served by reducing the incidence of  
2 smoking in this society?

3 A The objective should be informed, rational choice. If we  
4 wanted to reduce smoking, ban cigarettes.

5 Q When you were asked in Minnesota, is the public welfare  
6 served by reducing the incidence of smoking in this society,  
7 your answer was, no, public welfare is served by people making  
8 more informed choices. Is that your testimony here today?

9 A The objective is still informed risk-taking behavior.  
10 That's our objective, not less smoking or more smoking.

11 Q If that leads to more smoking, then from your  
12 perspective, that's fine?

13 A If that's what people choose to do when they have full  
14 information, I support that.

15 Q And I gather your testimony and views would be the same  
16 as to those 18 million people who were exposed to tobacco and  
17 asbestos?

18 A This would be a voluntary choice on their part, yes. If  
19 they understood the risks fully.

20 Q So, with this group of 18 million people who are exposed  
21 to tobacco and asbestos, more accurate risk perceptions would  
22 lead to more smoking and, in your view, that would be good,  
23 from the public standpoint?

24 A In this case, we have the total risk is including the  
25 asbestos. So, it's a higher-baseline scientific-risk

1 estimate. So, the risk beliefs are actually closer to the  
2 actual risks than they are in general. So, you are going to  
3 get less of an effect by moving to twenty percent than you  
4 would by moving to ten percent. So, people's actual decisions  
5 are not far off -- would happen with full information.

6 Q In terms of actual risks, I think you said it on direct  
7 examination, no doubt in your mind that cigarettes kill  
8 people?

9 A On an expected basis, not guaranteed to kill each  
10 individual person. But, yes, lots of people die statistically  
11 because they smoke.

12 Q And from the perspective of the 1989 Surgeon General, who  
13 said that smoking is responsible for more than one of every  
14 six deaths in the United States, you would certainly not  
15 quarrel with that statement?

16 A If the Surgeon General said it, I'm not going to argue  
17 with it.

18 Q In fact, under your hypothesis and the rational-actor  
19 model that you proposed, that if people actually and fully  
20 understood the risks, that, in fact, that one-in-six number  
21 would be closer to one-in-five, would it not; more people  
22 would smoke?

23 A I don't understand the question.

24 Q Well, we walked through the consequences of your opinion,  
25 and you told us that from a public standpoint, that if people

1 really, actually understood the real risks of smoking, rather  
2 than overestimate it, that more people would smoke and, from  
3 your perspective, that would be fine?

4 A If they are making informed decisions and that leads to  
5 more people smoking, that's okay.

6 Q All I'm asking you is that when the Surgeon General  
7 concludes that one out of every six deaths in the United  
8 States is attributed to smoking, under your model, if people  
9 had the actual perception of smoking, the number would be  
10 closer to one in five, would it not?

11 A It's not my model.

12 Q Your opinion, your theory?

13 A My results say that, yes, if more people smoke, more  
14 people would die from cigarette smoke, that's correct.

15 Q And you know that the Surgeon General of the United  
16 States has said that smoking remains the single most important  
17 preventable cause of death in our society; do you agree with  
18 that statement?

19 A Yes.

20 Q You have no doubt that as the Surgeon General concludes,  
21 that cigarettes will cause a great deal of human suffering for  
22 many decades?

23 A I agree there will be many serious adverse health  
24 effects.

25 MR. BICKS: Your Honor, it's getting near 3:00.

1 Should we take a short break?

2 THE COURT: Are you almost finished? You can take a  
3 break.

4 MR. BICKS: I'm more than happy to keep going.

5 THE COURT: All right. If you can pull it together.  
6 We'll take a break. There will probably be some redirect,  
7 anyway.

8 Okay.

9 (Jury excused.)

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1 CONTINUING CROSS-EXAMINATION

2 BY MR. BICKS:

3 (Jury enters courtroom.)

4 Q Professor Viscusi, I thought I saw on one of your charts  
5 reference to President Carter. Did I read that correctly that  
6 you worked under the Carter administration?

7 A Yes.

8 Q Are you familiar with the views of President Carter on  
9 the tobacco industry?

10 A No.

11 Q You're not?

12 MR. WAGNER: I object, irrelevant.

13 THE COURT: Sustained.

14 Q Let me ask you a little bit about the 79, you refer to  
15 them as the NCI polls?

16 A Yes.

17 Q You told us in essence you do not agree with the  
18 conclusions in those polls; is that fair?

19 A I didn't like the survey question.

20 Q These were done by the Gallup organization?

21 A Yes, but not a test of synergy.

22 Q If you could just answer my question I will promise you  
23 we'll get out of here faster. Was it done by Gallup?

24 A I don't know. I assume so.

25 Q Is Gallup a reputable polling organization?

1 A Yes, they are.

2 Q In fact, there were three polls, were there not, done by  
3 Gallup on this question of asbestos awareness?

4 A There were three in succession, yes.

5 Q Three different polls, correct?

6 A Yes.

7 Q These polls were not done for the tobacco industry, were  
8 they?

9 A No.

10 Q These polls were designed to measure the level of  
11 understanding of the health risks of asbestos exposure and  
12 also to determine what an individual can do to reduce their  
13 health risks, including stopping smoking, is that a fair  
14 statement?

15 A That was part of one question, although there's no  
16 explicit mention of smoking in the question.

17 Q I'm sorry, no explicit mention of smoking?

18 A In the question.

19 Q That's your testimony today under oath?

20 A That's what I recall. I may be wrong, but that's my  
21 recollection.

22 Q Do you recall how many people that the Gallup  
23 organization interviewed?

24 A 1,000 each time -- I don't recall.

25 Q It was over 1500 people, was it not?

1 A Each time?

2 Q I'm asking you.

3 A I ballparked it at about a thousand each time.

4 Q Do you recall whether or not they actually polled  
5 specific sub groups within the population to get to the  
6 questions they wanted to focus on?

7 A I don't recall which sub groups they got. I believe this  
8 was part of a national poll.

9 Q Do you recall that they actually defined two sub groups,  
10 respondents over age 50 and manual laborers, those were about  
11 the two primary targets for the asbestos awareness campaign in  
12 the survey, are you familiar with that?

13 A I didn't see results reported specifically for that, I  
14 don't recall those.

15 Q Are you familiar with the conclusions in the poll that  
16 members of the two groups that I told you about, those two sub  
17 groups, responded at similarly low levels of awareness? You  
18 were familiar with that?

19 A I forget the exact wording of the report.

20 Q Let me just make sure. This is Exhibit 76196003 (sic)  
21 and the poll is in evidence. Let me make sure we put up, we  
22 know what the conclusion was. Can that be read on your  
23 screen?

24 A Yes.

25 Q The most important thing that a person exposed to

1 asbestos can do to protect himself is to stop smoking. Only  
2 five percent of the American public was aware of this in  
3 February; older Americans and manual laborers -- remember  
4 when I asked you about those two sub groups?

5 A Yes.

6 Q Does this refresh your recollection that this poll  
7 actually focused on older Americans and manual laborers?

8 A I do remember they had some demographic breakdowns, yes.

9 Q It says they were no better informed on this point.  
10 While the 5 percent figure represents an increase from the  
11 June level of two percent, it should be an area of significant  
12 concern to health planners. You see that?

13 A I do.

14 Q Again, just so we're clear, remember that there were  
15 actually three polls and this was the third poll, correct?

16 THE COURT: What was the date of this?

17 MR. BICKS: June, 1979.

18 A I don't know which one you're reading from but yes, there  
19 were three polls.

20 Q I'm sorry, let me show you. It's the third survey of  
21 public awareness, you see that (handing)?

22 A Yes.

23 Q You remember there were three of them spread out over  
24 roughly a year period of time, the first one, then a second  
25 one four or five months later and a third one to measure the

1 progress of the asbestos awareness campaign. You remember  
2 that?

3 A I do.

4 Q Let me make sure I understand. Did you actually ever  
5 look at the question that was asked to these people?

6 A Yes, I didn't recall which one it was when you asked me  
7 but yes, I have looked at the question.

8 Q The question was, remember, what if anything do you think  
9 people can do to reduce their health risks if they may have  
10 been exposed to asbestos? Is that right?

11 A That's correct.

12 Q Let me put up demonstrative Exhibit 4, it was Hanson 26,  
13 but it's 4. This is what 5 percent said, stop smoking, right?

14 A That's correct.

15 Q Did I take it that you criticized this poll because, I  
16 think you said, it was an open-ended question?

17 A It's an open-ended question plus it was part of a large  
18 national survey where people would act hastily when ended with  
19 an open-ended probe.

20 Q An open-ended question, you've written in your literature  
21 about the value of open-ended questions, right?

22 A I've run surveys for the Federal Government, including  
23 open-ended questions as well as open-ended questions with  
24 probes.

25 Q Just so we're clear, do you know the actual question that

1 was put to these individuals?

2 A I assume it's the question that you have here  
3 (indicating).

4 Q Do you know whether or not when you say it was  
5 open-ended, tell me why you know it was open-ended.

6 A Because they would say prompt, then go through a series  
7 of prompts, getting a list. If it was a survey in which you  
8 had formal prompts built into it, that is to say.

9 Q Do you recall whether or not these folks were actually  
10 given a general question and then asked specifically about  
11 whether or not they should stop smoking, get medical attention  
12 or anything else?

13 A I don't recall them being specifically asked about  
14 smoking.

15 Q Nobody actually showed you whether or not they were  
16 actually asked that?

17 A That's correct.

18 Q We'll call it Plaintiff's Exhibit 88040. This is a  
19 national asbestos alert campaign, marketing report prepared  
20 for the Occupational Safety and Health Administration for the  
21 National Cancer Institute.

22 Let me ask you if you've ever seen this (handing)?

23 A No.

24 Q This is actually a more complete version of the poll that  
25 I showed you because this actually has the appendix to it

1 which happens to be missing from the document that I think  
2 you've got.

3 MR. BICKS: Your Honor, I would move this into  
4 evidence.

5 MR. WAGNER: Your Honor, I've never seen the  
6 document before. It's a new exhibit number and I believe the  
7 document used did have an appendix attached.

8 MR. BICKS: This is cross-examination, never been  
9 listed.

10 MR. WAGNER: I object to the introduction of this  
11 evidence. I've never seen it before, this document. It's  
12 obviously a very thick document.

13 THE COURT: You're just putting in the appendix  
14 page?

15 MR. BICKS: Yes.

16 THE COURT: That page is admitted. It contains the  
17 question involved.

18 MR. BICKS: I'll withdraw it, your Honor. I'm  
19 finished.

20 THE COURT: You're not offering it?

21 MR. BICKS: No.

22 THE COURT: It's stricken. Does that complete the  
23 cross?

24 MR. WAGNER: Yes, your Honor.

25