

RESEARCH PAPER

“Stay away from them until you’re old enough to make a decision”: tobacco company testimony about youth smoking initiation

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Objective: To determine common themes used by US tobacco industry witnesses pertaining to youth smoking initiation during litigation in the United States.

Methods: Qualitative thematic analysis of transcripts from 29 tobacco litigation cases dating from 1992 to 2002.

Results: Youth smoking is portrayed by the tobacco industry as a source of great concern to them. Youth smoking prevention programmes developed by US tobacco companies are supposedly intended to delay decision-making about smoking until age 18, when individuals are then seen to be of an age where they are able to “choose to smoke”. Tobacco industry media campaigns, youth access, community and school-based programmes are predicated on peer influence, parental factors, and commercial access being the primary influences on youth smoking uptake, rather than tobacco marketing, inaccurate risk appraisal, price and other factors known to influence youth smoking. Despite substantial financial investment in tobacco industry programmes, their witnesses were able to describe only weak evaluation methods, being preoccupied with measures of message comprehension, programme reach and uptake, and the associated costs of their efforts, rather than any evaluation designed to assess effects on youth smoking behaviour.

Conclusion: Stated concerns about youth smoking and youth smoking prevention programmes are put forward in litigation as evidence that the tobacco industry is “serious” about tackling youth smoking, and serve as a primary strategy to improve the tobacco industry’s public image. The tobacco industry’s evaluation of the effectiveness of their youth smoking prevention programmes is demonstrably insufficient under current public health evaluation standards. Public health and welfare agencies should avoid engagement with tobacco industry-sponsored programmes.

An important outcome of a number of lawsuits against the tobacco industry has been the internal tobacco industry documents that have been made available to the public through settlement agreements.^{1–3} Among other things, these documents have provided a key source of information on tobacco industry activities in relation to youth smoking. Documents have indicated that tobacco companies tracked youth smoking trends and brand choices when they publicly denied doing so,⁴ and that they clearly understand teenage smokers are critical to future profits, since they replace existing smokers who die, or quit smoking.^{4–5} Carter⁶ traced the dynamic position tobacco companies have taken in relation to youth smoking, from unproblematic advertising to children in the 1950s and 1960s, to aggressive denials in the 1980s, and finally to the “social alignment” strategies of the 1990s, concluding that the issue of youth smoking has become increasingly central to the tobacco industry’s promotional agenda over 50 years.

The past decade has seen major tobacco companies launch a range of youth smoking prevention (YSP) programmes, including programmes for retailers to prevent the sale of tobacco products to minors, television and print advertising campaigns, school education programmes and collaborations with community groups.⁷ Given that the vast majority of smokers commence smoking during adolescence⁸ and make brand choices during this time that they largely maintain for life,^{4–8} it seems doubtful that tobacco companies would sacrifice the future viability of their industry by running effective youth prevention programmes. For this reason, most tobacco control advocates view the tobacco industry’s YSP

programmes with considerable scepticism, considering them solely to be a strategy for promoting a positive corporate image.^{9–11}

Tobacco control researchers and advocates have noted how tobacco is implicitly presented in tobacco industry-sponsored programmes as “forbidden fruit”, providing an initiation into the adult world.^{10–12} Tobacco document research has shown how the tobacco industry actively works to block and delay effective legislation and other programmes that would be successful in reducing youth smoking, using their YSP programmes as a “front” for advocacy activities.^{11–13} For example, engagement in efforts to ostensibly prevent sale of cigarettes to minors has allowed the tobacco industry to develop strategic links with retailers and legislators, facilitating effective lobbying against the implementation of youth access laws and laws prohibiting sales to minors at local, state and federal levels^{14–17} and also weakening point of purchase legislation.^{18–19} Thus, the tobacco industry is capable of presenting one position about youth smoking to the general public and pursuing opposing objectives in other forums.

The emergence of YSP initiatives has occurred not only to help the tobacco industry position itself more positively with the public and legislators,¹⁰ but specifically to be able to improve its defence in the rising tide of tobacco litigation in

Abbreviations: CDC, US Centers for Disease Control and Prevention; DATTA, Deposition and Trial Testimony Archive; LST, Life Skills Training Program; MSA, Master Settlement Agreement; YSP, youth smoking prevention

the United States.²⁰ This begs the question as to how the tobacco industry uses youth smoking and related issues in the context of legal cases. This paper is one of the first to investigate an issue across legal cases, using evidence given under oath by tobacco industry representatives about youth smoking issues during tobacco lawsuits filed in the United States. Unlike most internal tobacco company documents that are comprised of reports and correspondence, examination of deposition and trial testimony transcripts permits analysis of how tobacco industry witnesses describe, defend and redefine their position on youth smoking in the dynamic interactive environment of a legal case. This paper also analyses the way tobacco industry representatives explain and justify the development, implementation and effectiveness of their YSP programmes.

METHODS

Research was conducted using the Deposition and Trial Testimony Archive (DATTA) housed online at www.tobacco-documents.org. The sampling frame for this study consisted of 337 trial testimony and deposition transcript segments dealing with issues concerning “youth smoking initiation” from 57 trials dated from 1992 to 2002, as identified by trained coders at the Michigan Public Health Institute and which were indexed up to November 2003. By prior agreed definition, these segments included material on: trends in tobacco use among youth; reasons why young people initiate or continue the use of tobacco products; programmes, communications and strategies designed to reduce or prevent youth tobacco use; the development of tobacco dependence, and advertising and promotion when it pertains to youth initiation. From this sampling frame, we selected only those transcripts from tobacco company employees or company expert witnesses. Our final sample consisted of 198 transcripts from 29 trials dating from 1992 to 2002 (see Appendix 1 for trial details). The segments concerned solely with “marketing to youth” category were excluded, as this area was the focus of another team.²¹

To develop the coding framework, two of the authors (KM and MW) read and discussed the contents of a random sample of 20 transcripts and identified initial themes. An additional sample of 20 transcripts was analysed to test their applicability, resulting in revision of the themes. The two authors then applied the draft coding framework to a sample of the same texts, assessed concordance and discussed any differences in the coding. After making minor modifications, another sample of transcripts was double-coded. A level of agreement in coding in excess of 90% was achieved by the two authors and the final coding framework was approved by all authors.

The main categories in the final coding framework were: “witnesses’ views about smoking prior to age 18”; “smoking at age 18 and beyond”; “youth smoking prevention efforts”; “tobacco company policy and practice in relation to youth smoking”; and “witness courtroom tactics”. The coding framework was applied to all transcripts in our sample using the qualitative analysis software package MAXqda,²² with coding being distributed among the three authors.

RESULTS

Why do youth smoke?

Throughout the trial testimony and deposition transcripts we examined, tobacco industry witnesses consistently portrayed tobacco companies as not having any responsibility for the initiation of smoking by young people. In a companion article in this supplement, Goldberg and colleagues²¹ detail how witnesses used a range of arguments to deny that tobacco marketing influences youth. Rather, testimony given by industry witnesses repeatedly stressed the central role of

parents and peers in youth smoking initiation, both through reference to their own opinions and from interpretation of government reports and reviews of the literature. For example, Lucy Henkel, Professor of Marketing at University of New Hampshire, testifying as a defence expert for Philip Morris asserted:

“I have found that for many years people from several different disciplines and government agencies have looked at this issue, and the findings are consistent in that peer influence and parent influence is cited time after time as the reasons for initiation of smoking.”²³

Witnesses referred to youth as often sourcing and obtaining their early cigarettes from parents who may leave unsupervised cigarettes around the home. Witnesses went so far as to point the finger at parents for not sufficiently educating their children about smoking. Thus, “bad parenting”, rather than bad role modelling of smoking by parents, was constructed by witnesses as increasing the risk of a child taking up smoking. In this example, Timothy Meyer, Communications Professor at the University of Wisconsin and expert witness for American Brands explains:

“... in households where parents make no effort to socialize their children into the negative aspects of smoking, this can be a factor then that contributes to a child starting to smoke, either experimenting or continuing to smoke...And so it [the literature] says that parents need to play an active role. And when they don’t, it increases the risk that their children will experiment with smoking.”²⁴

Witnesses also framed youth smoking as a characteristic of “at risk” youth. These are perceived as youth who are disposed to engage in a range of risk-taking activities and behaviours—of which smoking is but one—perhaps because their parents give them less than optimal parental supervision. For example, Carolyn Levy, the Director of the Youth Smoking Prevention department at Philip Morris, indicated there were a variety of definitions of an “at risk” youth:

“There are other definitions that include having both parents working or being a single parent family. Having a parent who has a drug problem, what have you. But the concept of it being a youth at risk leads you—in fact, if you were a youth at risk by any of these definitions, leads you to be more likely to engage in this cluster of activities, smoking, drinking, illegal drug use, teenage sex, teen violence. So I think part of the issue is how do you provide support and positive choices for kids that are finding themselves in these circumstances.”²⁵

The implication of this interpretation is that youth who are prone to smoke are deviant or in some way socially vulnerable. Youth smoking initiation was also conceived as being a result of lack of self-esteem, which leads youth to be unable to resist peer pressure. Carolyn Levy went on to remark:

“And so one of the angles that we are looking at, how can we help kids at risk. And it would be not just in terms of helping to educate them about the risk involved with smoking, which is being done pretty effectively in our public school systems, but also helping to build their self-esteem, which I don’t think is being done as effectively in schools. Help them resist peer pressure because peer

pressure has been shown to be a really primary factor in kids smoking. And so how to resist peer pressure it seems to me is something I would want kids to learn."²⁶

Some witnesses went so far as to suggest that the problem of youth smoking was due to increased attention being put upon the issue by governments. This attention served to make smoking more attractive to youth. Here, James Morgan, retired president and CEO of Philip Morris speculates:

"... the Clinton Administration, in a very well-orchestrated manner, including the Surgeon General, the head of HEW (U.S. Department of Health, Education and Welfare), the FDA (U.S. Food and Drug Administration), the President, the Vice President, everybody was out there talking about the problem of youth smoking. The numbers were turning up when they were doing that. I will let other people draw no more than I do—draw conclusions as to why all of a sudden, after all these years, that America's youth decided that smoking underage was all of a sudden this neat thing to do again."²⁷

Contrary to this assertion, youth smoking rates began to climb in the late 1980s, just after the introduction of the Joe Camel campaign, rather than at the onset of the Clinton administration in 1991.⁴

The age of consent: we're concerned and law-abiding corporate citizens

During testimony, witnesses used their own experience as parents to illustrate how concerned they were about youth smoking. Witnesses sought to position themselves as "just like everyone else" in being concerned about youth smoking. For example, in response to the question from a Brown & Williamson defence lawyer, "Why do you care why kids smoke?", Theresa Burch, manager of Youth Smoking Prevention Programs at Brown and Williamson explained:

A. "I'm a mother. I have two small children, two girls, eight and six. I don't want my children to smoke. I don't want anybody's kids to smoke. So it's very important to me.

Q. How does Brown & Williamson feel about it?

A. Brown & Williamson feels exactly the same as I do. Brown & Williamson is made up of parents and grandparents, aunts, uncles. Nobody wants kids to smoke at Brown & Williamson."²⁸

Tobacco company witnesses repeatedly reminded the court that the US government defines when a youth becomes an adult, not the tobacco industry. Witnesses deferred to the social and cultural norms that confer adult status on those turning 18 years old. When questioned by a plaintiff lawyer, RJ Reynolds chemist David Townsend portrayed tobacco industry representatives as responsible, law-abiding corporate citizens who do not want youth to be breaking these laws:

Q. "What are underage smokers?

A. Illegal smokers.

Q. What are illegal smokers?

A. It's clearly defined by state laws, isn't it?"²⁹

The tobacco industry repeatedly sought to echo the views of government that the law has defined an 18-year-old as

capable of making responsible, considered decisions about their risk-taking behaviours. Thus, before turning 18, witnesses asserted that youth should not attempt to make any decisions about smoking, because they would be both "breaking the law", and did not possess sufficient maturity to be able to assess the risks associated with smoking. In contrast, every 18-year-old has the "right to choose" supported by law, which the tobacco industry says should be respected. For example, James Morgan said:

"I do not want kids to smoke. This is an adult custom. There is risk associated with it. It requires a knowledgeable decision, and I do not believe that kids could be making the decision to smoke. They should be encouraged to make the decision not to smoke until they are adults."³⁰

Once an adult, at age 18, tobacco industry representatives advocated a full evaluation of the degree of risk the individual wants to live with, balanced against the "pleasures" of smoking. Smoking was portrayed as just one example of a risky behaviour that people could decide to live with or not. Ellen Merlo, Senior Vice President of the Corporate Affairs Department at Philip Morris explains:

"I think people should know all of the risks that can be involved. I think they need to weigh what they see as – as the – the – the pleasure of smoking against what some of the stated risks that have been discussed by others and – in society and have all of that information and be able to weigh it in a way to make an informed decision. And that is something that should be left to an adult."³¹

Youth smoking prevention programmes

Overall, the problem of youth smoking was conceptualised as being one of a need for greater individual level education, rather than structural or policy changes that might apply to the entire population. When policy approaches were supported, it was in relation to youth-specific policies that might prevent youth from buying tobacco or punish them for smoking.

Witnesses sought to make the case that youth smoking was bad for business because it brought a bad name to the tobacco industry. Reference was made to the unfairness of legislation preventing tobacco companies from advertising their products—legislation driven by concern about its effects on youth—when the sole purpose of advertising was claimed to be to encourage adult smokers to move to their brands. A picture was painted that if fewer youth smoked, the day-to-day business of marketing and selling cigarettes would be easier. The relationship between the youth smoker and tobacco industry business is clear to David Townsend, an RJ Reynolds chemist:

"Business-wise it makes no sense for my company to want underage smokers, because every underage sale, illegal sale to minors, gets in the way of our ability to market to legal smokers, to overage smokers, because what happens is regulatory bodies and agencies look at the industry and they say: we're going to restrict, we're going to curtail, we're going to constrain you from marketing to legal people in an effort to prevent underage sales."³²

Witnesses portrayed tobacco companies as being unfairly accused of influencing youth smoking, which was more properly the result of parental and peer influence and deviant

youth who are disposed to engage in risky behaviour. For example, James Morgan explains:

“We are paying a tremendous price today for kids smoking, we, a company. We don’t sell to them. Retailers sell. I say we don’t market to them. But kids smoke, and the public is ascribing the responsibility of kids smoking to us and we are paying a huge price for that.”³³

Given public attribution of some degree of responsibility to tobacco companies for youth smoking, witnesses stressed that they were “very serious” about trying to reduce youth smoking. Considerable effort was made to deny the charge that youth smoking prevention efforts were primarily undertaken for their public relations value. When questioned by a defence lawyer during the Engle v. RJ Reynolds trial, Ellen Merlo responded in this way:

Q...“there’s been suggestions that Philip Morris doesn’t really care about youth smoking prevention; that this is all PR; that it’s all just for show. What is your response to that?

A. ... I certainly understand the skepticism. I’ve had people come up to me and say: There’s no way you can be sincere about this because, if you’re really successful, you won’t have a business 10 or 15 years from now. Our response has been: If the day comes when society doesn’t want cigarettes to be sold anymore, then so be it. I mean, that will be the occurrence. But adults—there’s still a lot of adults who do chose to smoke. And that’s the business we’re in. And we’ll stay in and be responsible in the way we stay in it. But we don’t want kids to be smoking, and we’re very committed to this issue.”³⁴

To stress how serious they were about reducing youth smoking, witnesses often referred to the amount of funding allocated to their youth smoking prevention activities or indicated that they would be prepared to entertain a decline in business. This latter point, of course, is premised on the assumption that the tobacco industry’s YSP activities would be effective in reducing youth smoking. For example, Carolyn Levy, in discussing her move from the Director of Corporate Affairs at Philip Morris to become to new Director of YSP programmes said:

“When Mike Szymanczyk (CEO of Philip Morris) and I were talking about this job and he was telling me that he wanted me to take the job, we discussed the possibility that the size of the market could shrink if we were effective in Youth Smoking Prevention efforts, we looked each other in the eye and said: “That is okay.”³⁵

When pressed, tobacco company witnesses admitted that the aim of their prevention programmes was to delay uptake of smoking until the age of 18, rather than prevent people from taking up smoking completely. After the age of 18 years, young people are viewed as fair game by tobacco companies. In this interchange with a lawyer acting on behalf of the plaintiff, Carolyn Levy admits:

A. “What we want to do is to develop programs that will help kids never to start smoking....

Q. May I interrupt? I apologize. When you say never, do you mean never until they turn 18 or do you mean never ever?

A. I mean never until they are adults and then can make a free choice to smoke. So that is clarified.”³⁶

Philip Morris witnesses admitted that the company does track youth smoking in order to inform its youth smoking prevention efforts. Internal tobacco company documents indicate that the company did this in the past,⁴ but witnesses either deny this or claim to have no knowledge of it. This response from Jeanne Bonhomme, Director of Youth Smoking Prevention Research at Philip Morris is typical:

“Since I joined Philip Morris in 1979 I’ve never seen tracking of cigarette consumption among minors for the main line business. But now that I work in youth smoking prevention, I mean the Youth Smoking Prevention Department does look at all the data that tracks cigarette consumption about minors, because that’s the information we are going to use to help develop programs and communication tools to reduce youth smoking.”³⁷

School programmes

The tobacco industry witnesses focused primarily on the type and content of school-based programmes as a way to demonstrate their commitment to youth smoking education. The type and content of the tobacco industry’s school-based programmes generally reflected but lagged behind the scientific literature. School-based efforts included peer influence only after there had been success with the “social influences” model⁸; attention to access followed increased attention by the US Centers for Disease Control and Prevention (CDC) on this issue; the application of “evidence-based” programmes has only been addressed since the late 1990s, and without outcome evaluations of any of these efforts. Lynn Beasley, Vice President of Marketing at RJ Reynolds, describes their schools programme:

“We provide for teachers in the schools six different study guides that teachers use with kids to help them make better decisions, to learn refusal techniques, to learn how to resolve conflict, so they’re prepared to say no to the risky behaviors that they are open to in that age group (12–15 years).”³⁸

Evaluation of tobacco industry-developed programmes generally consisted of measures of the number of youth or schools who were reached (without evidence of involvement or implementation), money committed, and testimonials, rather than measurement of any behaviour changes among youth resulting from the programmes. After two decades of criticism, Philip Morris began funding the Life Skills Training Program (LST), a tobacco use prevention programme with positive effectiveness data, recommended by the CDC.³⁹ For LST, there was more limited “reach”, however. The LST programme adoption was in response to criticisms that tobacco industry-adopted programmes were ineffective, but it is unknown for how long the companies will continue to sponsor “effective” programmes. Philip Morris reports that they have spent US\$9.5 million on LST, US\$4 million in 1999 and US\$5.5 million in 2000.⁴⁰ In the Engle v. RJ Reynolds Tobacco Co trial, Nicholas Brookes, CEO of Brown & Williamson explains:

“Indeed, one of the programs that we’re funding, in cooperation actually with Philip Morris, is a program that’s called Life Skills Training, and it’s endorsed by the Centers for Disease Control as being actually measurable

and effective in reducing kids' risky endeavors; and that has a health segment on how kids should be trained to resist advertising of products, not just tobacco, but advertising liquor and beer and other adult customs."⁴¹

It was apparent, though, that for most of the past 25 years, the tobacco industry's primary concern with school programme evaluation was the number of students and schools reached, rather than the quality, and this was seen repeatedly in the testimonials. Andrew Schindler, CEO and President of RJ Reynolds, described their school-based programme in this fashion:

"Right Decisions Right Now, and it's directed at middle schools throughout the country. Today it's in about 10,000 middle schools, and by September of this year it should be in 12,000 middle schools throughout the country, which I understand is about 90...would be about 90 percent of the middle schools."⁴²

The school programmes sometimes created minor controversies, because school personnel questioned the tobacco industry's motives. For example, in 2000, Philip Morris provided schools across the country with covers for students' school books, featuring the "Think. Don't Smoke" message. Some schools expressed concern that the book covers appeared to contain a subliminal message about a cigarette and considerable news coverage ensued⁴³ about the company's motivations for trying to get into schools. Ellen Morris from Philip Morris considered this experience to be a "kind of a mixed bag. Some people resented them. Some people liked them..."⁴⁴ She reflected that the company had changed, in that "one of the things that we're really trying to do that maybe we didn't do in the past is listen", and in future, the company would "think long and hard because maybe people are not yet ready for us to supply something like a book cover".⁴⁵ Testimony was framed as though the community had not yet caught up with new, more responsible tobacco company practices.

Community programmes

The witnesses also described other community programmes that were intended to reinforce youth prevention efforts outside school. The witnesses described past and ongoing programmes and the amount of funding spent on such programmes. These community programmes generally involved partnering with national community agencies such as Jaycees Against Youth Smoking,⁴⁶ 4-H and the Boys and Girls Clubs of America,⁴⁷ America's baseball camps,⁴⁸ and Kiwana's international group of service agencies.⁴⁹ For example, Nicholas Brookes describes a programme in Chicago where Brown & Williamson found a community partner in need of funding and willing to extend their mission to include tobacco use prevention:

"There is an organization in Chicago called the St. Agnes's church. The pastor there—it is one of the worst, most deprived areas in Chicago. I believe it has the unfortunate reputation as being the murder center of America, and these kids clearly are at risk because it is an after call [sic - school] program, and they are encouraged to get involved in the programs that will hopefully build their self-confidence and self-esteem and allow them to resist peer pressure. The program, when we founded it, was not involved in youth smoking. It was involved in guns, gangs and drugs but not in smoking cessation, and we've

given it sufficient resources to allow it to expand into smoking cessation programs for the young people."⁵⁰

This strategy is also elaborated on by Theresa Burch in an exchange with a defence lawyer:

A. "What we do at Brown & Williamson is we work with outside organizations, organizations like Big Brothers/Big Sisters, St. Agatha, the Jaycees, a number of organizations. We ask them to develop their own smoking prevention programs. Then we provide them the money to carry those programs out.

Q. Why outside organizations?

A. Because we, at Brown & Williamson, don't think we should be working directly with kids. That's why we want to work with organizations that are experts at helping kids. These are the ones that have the experience. They develop their own programs. And then we provide them the funding to carry those programs out."⁵¹

In general, the witnesses described an approach of supporting effective programmes for a limited period of time, but then expecting other government monies to support future funding of community programmes. Mike Symanczyk, CEO of Philip Morris, thought that such programmes ought to be sustainable through available Master Settlement Agreement (MSA) monies. This example focuses on a school programme, but was also reflected in the discussions of community programmes:

"What we want to see happen is we'd like to see there be a broad enough utilization of the program [Life Skills Training], that then schools can see the results and then take those results and go to their state funding agencies or state legislatures; and then there is a large sum of money available from the Master Settlement Agreement and request the funding from that to be sure that this program is available to every child in the United States."⁵²

Again, there were controversies over funding of these programmes, a notable example being Philip Morris' funding of the 4-H Clubs and the outcry from the public health community, especially the Center for Tobacco Free Kids, that 4-H might accept funding from Philip Morris.⁵³

Access programmes

There was emphasis by tobacco industry witnesses, especially in early trials, on reducing youth access to tobacco products. They described the nature and history of a variety of programmes, such as Action Against Access (Philip Morris) and It's the Law (RJ Reynolds), which mostly involved the training of retailers and provision of store signage. The witnesses provided the primary rationale for the tobacco industry's efforts in this area as being "to keep kids away from tobacco". As explained by Geoffrey Bible, past CEO of Philip Morris, in describing the rationale for their Action Against Access programme, "we thought that if kids could not buy cigarettes, then they couldn't smoke cigarettes."⁵⁴

There were no data cited to suggest these efforts were effective in reducing youth smoking. Like other programme efforts, much emphasis was placed upon the number of instructional kits distributed, the number of retailers trained and so on. For example, in describing RJ Reynolds' We Card programme, Andrew Schindler, CEO of RJ Reynolds, explained that "over 400,000 retail employees have been trained since 1996 and over 500,000 We Card kits have been

distributed. 453 police departments have requested materials and around 100 health departments nationwide."⁵⁵

It was apparent that enforcement of the tobacco industry youth access prevention programmes was relatively rare, particularly when it came to sanctions that were to be given by the companies themselves. Testimony from Ellen Merlo at Philip Morris, when questioned by a plaintiff lawyer, revealed that the company used an extremely passive approach, relying on others to make them aware of violations:

A. "We don't have an enforcement team. But we certainly, if we're made aware of violations, go in and discuss it with the store, ask them to take the "We Card" Program, ask them to train their clerks, tell them that if they're fined or convicted, that we will withhold merchandising payments. And when we get that information, we do withhold merchandising payments.

Q. And how many times has Philip Morris withheld merchandising payments because of violations?

A. Several hundred.

Q. Across the country?

A. Across the country."⁵⁶

Blame for any lack of effectiveness of access programmes was attributed to others, such as state government enforcement efforts and alerting systems, rather than tobacco industry enforcement efforts. Much was made by Philip Morris witnesses of former US Senator Warren Rudman's audit of the Action Against Access programme, as independent evidence of how much Philip Morris is doing about youth access and that the problem lies with state government systems:

"Many of the states do not have a process in place to report to us, so that we can withhold merchandising benefits. And in fact, he [Rudman] made a point in his audit, that it's a very effective means of ensuring that age verification is going on, because it's very lucrative and it means quite a loss for a retailer to lose their merchandising benefits. And where it was being implemented and where we were getting the information, in fact, he saw very positive results."⁵⁷

Media campaigns

Both Philip Morris and Lorillard have launched mass media campaigns as a component of their youth smoking prevention efforts. Philip Morris launched ads to publicise their youth access programmes in 1996.⁷ In December 1998, Philip Morris launched a national media campaign to advertise itself as a proponent of youth smoking prevention. The campaign, with an annual budget of US\$100 million before it was withdrawn in the United States in January 2003, had the slogan, "Think. Don't Smoke" and was putatively targeted to youth aged 10–14 years.⁷ In July 1999, Philip Morris launched a campaign emphasising parental responsibility for talking to children about smoking with the slogan, "Talk. They'll listen".⁵⁸ In October 1999, Lorillard also launched a youth smoking prevention campaign with the slogan "Tobacco is Whacko if You're a Teen"⁷ with a budget of around \$13 million.⁵⁹ The rationale put forward for the choice of advertising message was argued as resting on research conducted by others and promoted by CDC that peer and parental factors are important in smoking. Messages about health risks were discounted as being unnecessary for Philip Morris to run, given other health agencies strongly promoted these kinds of messages. The companies portrayed

themselves as working with public health agencies to battle the problem of youth smoking. When asked to explain why Philip Morris advertisements do not contain any health messages, Mike Szymanczyk says:

"I think right now that a range of messages is what's appropriate. If you look into the literature, one of the things it says in the literature is that – that knowledge of health consequences among adolescents is not a predictor of smoking behavior; that they are well educated on this in school, and it doesn't seem to be enough to stop them when they come under peer pressure or they are in a circumstance where someone offers them the opportunity to smoke if they're in a high-risk category. So my belief is that a range of messages is appropriate. We've chosen what we believe to be and what are indicated in the Surgeon General's literature as the two most important issues to focus on with our advertising. But I think having other advertising is appropriate, provided it's well-researched and we make sure there aren't unintended consequences from it."⁶⁰

Advertising messages in the youth smoking prevention programmes were generally assessed using main message take out only. Advertising was not subject to other population-based research to discover whether it was linked to youth smoking attitudes or intentions or behaviour. Much was made of the percentage of the target group comprehending the main message of the ad, and measures of ad liking. For example, Philip Morris's Ellen Merlo repeatedly stressed how some 90–95% of kids who viewed their ads understood the main message of the ad.⁶¹ Merlo went on to describe to a defence lawyer that main message takeout was used by Philip Morris as a criterion for message effectiveness:

Q. "What is it that determines the decision by somebody that it's effective? Is it a statement by the kids that see the ads, that this is the message?

A. Yes, if they – if they accurately play back to us the message that we're trying to communicate to them, and they understand what the ad is about and what it's trying to communicate, then you think you have a communication that is working."⁶²

Even though these companies presumably have at their disposal sophisticated methods for assessing advertising effects, they have neither undertaken themselves nor commissioned independent research to assess whether such ads are associated with change in youth intentions about or attitudes to smoking.

Tobacco industry witnesses commonly detailed how smoking prevention ads were tested with the primary target group of 10–14-year-olds, but not with 15-, 16- or 17-year-olds to exclude the possibility that these older teens might gain the message that smoking is permissible for them.⁶³ When pressed on this point, Ellen Merlo reiterated that the target group was 10–14-year-olds, so the message was only tested on that group. Unusually however, youth-directed ads were tested with parents to see if parents thought the ads would "resonate with their kids".⁶⁴ Presumably, Philip Morris dearly wanted to ensure parental acceptance of the message.

Like other programmes, tobacco industry witnesses described how they relied upon evidence of campaign reach as a means to convince audiences about effectiveness. Reference was made to media monitoring companies who were able to report that around 90% of 10–14-year-olds have seen their advertising.⁶⁵ The tobacco industry witnesses made

much of their dollar investment in youth smoking prevention as evidence that they are serious about reducing youth smoking. Ellen Merlo testified that Philip Morris spent US\$110 million in 1999, the majority of which went on the TV advertising campaign.⁶⁶ In later testimony in 2001, she outlined that Philip Morris allocated US\$75–80 million which went on advertising in 1998, and in 2001 US\$55–60 million went on advertising and US\$45–50 million on other parts of YSP.⁶⁷

Tobacco industry witnesses make the case that the amount they are investing is commercially realistic when compared with investment for advertising of other products. Merlo indicated that a \$70 million spend on a television advertising strategy was:

“...extremely high, and it’s very competitive. I mean, when we looked at how to judge whether or not we were spending the right amount, enough money to get the communications message through, we looked at other products that target these kids, 10- to 14-year-olds. So we looked at computer games and soft drinks, and we looked at fast foods and other people that advertise to this group. And our advertising spending was at least as much but, in most cases, more than most of those other companies would spend on advertising.”⁶⁷

Nonetheless, when Larry Tisch, Chairman and CEO from Lorillard, testified about the company’s advertising campaign efforts, he was unable to defend the discordance between the ratio of \$2.80 spent on youth smoking prevention efforts between 1954 to 1994 for every \$10 000 spent on advertising tobacco products.⁶⁸

DISCUSSION

In defending legal cases, the tobacco industry uses purported concern about youth smoking and youth smoking prevention programmes as a key public relations strategy. This strategy seeks to create an image of an industry that is caring and concerned about youth, law-abiding and respectful of people’s choices. Identifying this strategy in trial testimony and deposition transcripts reveals the current views of the tobacco industry in a way that is not possible from the largely historical data of tobacco industry documents. Also, the data are more dynamic, in that unlike tobacco company documents, the questioner is able to challenge and clarify statements made by tobacco industry witnesses. Finally, unlike the case in internal tobacco company documents, witnesses are under oath.

Tobacco industry representatives frequently refer to government legislation that makes some activities and behaviours, including smoking, legal at age 18. It benefits the tobacco industry to support both sides of this construction, in that they meet public expectations by advocating that youth aged under 18 should not smoke and simultaneously give credence to the idea that smoking at 18 is an “adult” choice that every individual is capable of, and has the right to make. Witnesses often seek to give these concepts a human dimension by telling stories about their own smoking histories and parenting styles. The distinction between youth and adults is a powerful tool for the tobacco industry, in that it makes marketing tobacco to people over the age of 18 a legitimate and valid activity, and distances the industry from being responsible for the death and disease resulting from tobacco use.

In depositions and testimony, tobacco companies seek to communicate a consistent view that peer pressure and parenting style or practices are by far the most important factors responsible for youth smoking, drawing upon

government reports and reviews to substantiate their arguments. Although evidence indicates that parental and peer factors are important,⁸ a considerable body of peer-reviewed studies and expert government reports also point to the key role of tobacco marketing, inaccurate risk appraisal and price of tobacco in youth smoking uptake.^{69–72} Thus, the tobacco industry’s exclusive focus on parental and peer factors is at best, tunnel-visioned, and at worst, misleading.

In the 1950s–60s the tobacco industry advertised the massive funding it contributed to the Council for Tobacco Research as a way to show they were seriously investigating the causes of disease attributed to smoking.⁷³ The tobacco industry employs the same strategy in relation to youth smoking today: investment in YSP programmes allows the industry to mount a defence during litigation that they are a serious and legitimate player in reducing youth smoking. Philip Morris has demonstrated a consistent and escalating commitment to YSP since the mid-1990s, which can be connected to their ongoing involvement in litigation. Philip Morris responded to the *Minnesota v. Philip Morris* litigation by increasing investment in YSP. Funding for YSP was again increased after US President Bill Clinton announced in 1999 the Department of Justice lawsuit: *United States of America v. Philip Morris USA Inc, et al.* The tobacco industry continues to promote an image of proactive concern about youth smoking by advertising the funds it provides to YSP. On 4 April 2005, in the Department of Justice lawsuit, Howard Willard, Senior Vice President Youth Smoking and Corporate Responsibility at Philip Morris, described the amount of money Philip Morris has committed to YSP since 1998:

“Our budget has fluctuated from year to year, but on average, we have spent \$100 million a year over the last 6 years in the department. The expenditures from 1998 to 2004 total \$657 million.”⁷⁴

This indicates that Philip Morris has found demonstrating an ongoing financial commitment to YSP assists their case in litigation.

By emphasising the considerable financial resources they allocate to these activities, the tobacco industry is able to suggest that other organisations are not doing enough to reduce youth smoking—for example, their assertion that government law enforcement agencies are not adequately supporting youth access programmes. The tobacco industry suggests that funds from the MSA be used for YSP programmes, again attempting to shift responsibility away from tobacco companies. The choice of focus of the YSP programmes allows the tobacco industry to have a public image on youth smoking that is devoid of any discussion on the negative health effects of smoking, and they claim others are covering this aspect of educating youth about tobacco products. Yet another benefit of investment in YSP programmes is that the tobacco industry can now freely admit to monitoring youth smoking behaviour, ostensibly in order to inform YSP efforts. YSP programmes give the tobacco industry legitimate access to an ongoing source of information about youth smoking—a vital resource in developing strategies to attract young people to smoking.

Overall, the transcripts revealed that the tobacco industry used very weak, mostly process and not outcome (behaviour) evaluation methods to evaluate campaigns and other prevention-oriented youth access, community and school programmes, relying on measures of reach and message take-out and employing qualitative focus groups. Given the resources of the tobacco industry, more sophisticated research designs, measures, and analyses are available to them to determine the effectiveness of programmes in

What this paper adds

Prior research has used internal tobacco industry reports and correspondence to understand the industry's activities in relation to youth smoking. This paper examines for the first time an issue across many legal cases, using the deposition and trial testimony transcripts of tobacco industry witnesses about youth smoking in the dynamic interactive environment of litigation in the United States. The transcripts show how tobacco industry representatives position the industry as a putatively concerned and active player in the reduction of youth smoking. Tobacco industry representatives describe substantial investment in youth smoking prevention programmes, but do not detail any substantive outcome evaluation that shows the programmes have been effective in reducing youth smoking. The tobacco industry uses youth smoking prevention activities as a primary strategy to promote a positive corporate image to jurors and judges when defending legal cases.

changing youth smoking behaviour. It is even more remarkable that companies are satisfied with these process evaluation methods, given the amount of funding allocated to these programmes. This kind of half-hearted approach undermines tobacco company assertions that they are serious about running programmes that will reduce youth smoking.

Other independent research has confirmed that the main message of tobacco company youth smoking prevention ads are indeed understood by youth, but that the message is not new, relevant or effective in motivating them to avoid smoking in either American youth⁷⁵⁻⁷⁷ or those in other countries.⁷¹ In one study, tobacco industry YSP advertisements were found to engender favourable feelings towards the industry.⁷⁵ In 2004 Action on Smoking and Health UK investigated an advertising campaign on MTV Europe funded by British American Tobacco, Philip Morris, and Japan Tobacco, and revealed that less than one in seven young people in the UK will have seen the advertisement even once over the course of the campaign, leading researchers to conclude: "It seems extraordinary that companies with such a strong track record in advertising would deliberately spend millions of pounds on a campaign with little or no impact."⁷⁸ Tobacco industry programmes to prevent youth access to tobacco at the retailer level have also been exposed as ineffective due to low compliance by retailers to the programmes.⁷⁹⁻⁸⁰ More broadly, a review of tobacco industry-funded programmes concluded that they do not have the components required to effect changes in youth smoking.⁷

Only after prolonged questioning would witnesses admit that the primary aim of YSP programmes is to delay smoking until age 18. This contrasts with the aims of public health funded programmes, which are to encourage people to never take up smoking—the chief preventable cause of death in the developed world. The likelihood that YSP programmes have unintended rebound or boomerang effects on older teens is high, given that the primary sole message is that smoking is acceptable for adults but not for teens.^{7 10 75 81 82} It was notable that unlike most public health sponsored anti-smoking campaigns, Philip Morris did not test their youth smoking preventions ads with audiences such as older teens for whom the message might conceivably rebound or boomerang.

In US deposition and trial testimony, the tobacco industry is adept at seeking to portray itself as an active and effective player in youth smoking prevention. Given the focus of these programmes, it is most likely that they are ineffective in changing youth smoking behaviour. However, they serve an

important role in enabling the tobacco industry to communicate concern about youth smoking to jurors and judges, and to portray their companies as reformed and good citizens. The tobacco industry would be most effective in reducing youth smoking if it supported—rather than continuing to vigorously oppose—increased tobacco taxes, tobacco marketing bans, and anti-smoking advertising campaigns. Given the enormous resources of the tobacco industry, it is clear that they have been directed to programmes and policies that minimise their potential to make a significant impact on the prevalence of youth smoking.

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REFERENCES

- 1 Daynard RA, Parmet W, Kelder G, *et al*. Implications for tobacco control of the multistate tobacco settlement. *Am J Public Health* 2001;**91**:1967-71.
- 2 Heaton C. Who's afraid of the truth? *Am J Public Health* 2001;**91**:554-8.
- 3 Bero LA. Implications of the tobacco industry documents for public health and policy. *Annu Rev Public Health* 2003;**24**:267-88.
- 4 Perry CL. The tobacco industry and underage youth smoking. Tobacco industry documents from the Minnesota litigation. *Arch Pediatr Adolesc Med* 1999;**153**:935-41.
- 5 Pollay RW. Targeting youth and concerned smokers: evidence from Canadian tobacco industry documents. *Tob Control* 2000;**9**:136-47.
- 6 Carter S. From legitimate consumers to public relations pawns: the tobacco industry and young Australians. *Tob Control* 2003;**12**(suppl III):iii71-8.
- 7 Sussman S. Tobacco industry youth tobacco prevention programming: a review. *Prevention Science* 2002;**3**:57-67.
- 8 US Department of Health and Human Services. *Preventing tobacco use among young people. A report of the Surgeon General, 1994*. Atlanta, Georgia: Public Health Service, Centers for Disease Control and Prevention, Office on Smoking and Health, 1994. (US Government Printing Office Publication No S/N 017-001-00491-0.)
- 9 Chapman S. The pied pipers of puffing. *Tob Control* 1999;**8**:14-6.
- 10 Landman A, Ling PM, Glantz SA. Tobacco industry youth smoking prevention programs: protecting the industry and hurting tobacco control. *Am J Public Health* 2002;**92**:917-30.
- 11 Assunta M, Chapman S. Industry sponsored youth smoking prevention programme in Malaysia: a case study in duplicity. *Tob Control* 2004;**13**(suppl II):ii37-42.
- 12 Glantz SA. Preventing tobacco use—the youth access trap. *Am J Public Health* 1996;**86**:156-8.
- 13 Ling PM, Landman A, Glantz SA. It is time to abandon youth access tobacco programmes. *Tob Control* 2002;**11**:3-6.
- 14 Andersen BS, Begay ME, Lawson CB. Breaking the alliance: defeating the tobacco industry's allies and enacting youth access restrictions in Massachusetts. *Am J Public Health* 2003;**93**:1922-8.
- 15 Forster JL, Wolfson M. Youth access to tobacco: policies and politics. *Annu Rev Public Health* 1998;**19**:203-35.
- 16 DiFranza JR, Godshall WT. Tobacco industry efforts hindering enforcement of the ban on tobacco sales to minors: actions speak louder than words. *Tob Control* 1996;**5**:127-31.
- 17 Arno PS, Brandt AM, Gostin LO, *et al*. Tobacco industry strategies to oppose federal regulation. *JAMA* 1996;**275**:1258-62.
- 18 Feighery EC, Ribisl KM, Schleicher NC, *et al*. Retailer participation in cigarette company incentive programs is related to increased levels of cigarette advertising and cheaper cigarette prices in stores. *Prev Med* 2004;**38**:876-84.

- 19 **Slater SJ**, Chaloupka F, Wakefield MA. State variation in retail promotions and advertising for Marlboro cigarettes. *Tob Control* 2001;10:337-9.
- 20 **Czaplewski AJ**, Olson EM. Adaptive strategies of tobacco firms subsequent to the 1998 Master Settlement Agreement: an examination of emergent tobacco promotional mix efforts. *Social Marketing Quarterly* 2003;9:3-17.
- 21 **Goldberg ME**, Davis RM, O'Keefe AM. The role of tobacco advertising and promotion: themes employed in litigation by industry witnesses. *Tob Control* 2006;15(suppl IV):iv54-67.
- 22 **VERBI Software**. MAXqda. London: Scolari/Sage Publications Software, 2002.
- 23 **Henkel LL**. Professor of Marketing, University of New Hampshire. Trial Testimony. Local No. 17 Bridge and Iron Workers Ins. Fund v. Philip Morris Inc. Case No. 1: 97CV1422. United States District Court, Northern District of Ohio Eastern Division. 1999: 3110, <http://tobaccodocuments.org/datta/HENKEL030899.html>.
- 24 **Meyer TP**. Communications Prof. at University of Wisconsin. Deposition. Tompkin v. American Brands Inc. Case No. 5: 94-CV-1302. United States District Court for the Northern District of Ohio Eastern Division. 2001: 136, <http://tobaccodocuments.org/datta/MEYERT061801.html>.
- 25 **Levy CJ**. Vice President of Youth Smoking Prevention, Philip Morris. Videotape Deposition. Massachusetts v. Philip Morris Inc. Case No. 95-7378-J. New York: Winston & Strawn offices. 1998:62, <http://tobaccodocuments.org/datta/LEVYCO62398.html>.
- 26 **Levy CJ**. Vice President of Youth Smoking Prevention, Philip Morris. Videotape Deposition. Massachusetts v. Philip Morris Inc. Case No. 95-7378-J. New York: Winston & Strawn offices. 1998:63, <http://tobaccodocuments.org/datta/LEVYCO62398.html>.
- 27 **Morgan JJ**. President and CEO, Philip Morris. Deposition. Leslie Whiteley v. Raybestos-Manhattan Inc. Case No. 303184. Superior Court of the State of California County of San Francisco. 2000: 319-20, <http://tobaccodocuments.org/datta/MORGANJ022000.html>.
- 28 **Burch T**. Manager of Youth Smoking Prevention Programs, Brown & Williamson. Trial Testimony. Engle v. R.J. Reynolds Tobacco Co. Case No. 94-08273 CA (22). Circuit Court of the 11th Judicial Circuit in and for Dade County, Florida. 2000: 37, <http://tobaccodocuments.org/datta/BURCHT062000AM.html>.
- 29 **Townsend DE**. R.J. Reynolds chemist. Trial Testimony. Engle v. R.J. Reynolds. Case No. 94-08273 CA22. Circuit Court of the 11th Judicial Circuit in and for Dade County, Florida. 1999: 25955, <http://tobaccodocuments.org/datta/TOWNSEND030399PM.html>.
- 30 **Morgan JJ**. President and CEO, Philip Morris. Deposition. Texas v. American Tobacco Co. Case No. 5: 96CV0091. The United States District Court for the Eastern District of Texas. 1997: 126, <http://tobaccodocuments.org/datta/MORGANJ091297.html>.
- 31 **Merlo E**. Senior Vice President of the Corporate Affairs Department, Philip Morris. Deposition. Minnesota v. Philip Morris. Case No. C1-94-8565. State of Minnesota District Court. 1997: 159, <http://tobaccodocuments.org/datta/MERLOE092397.html>.
- 32 **Townsend DE**. R.J. Reynolds chemist. Trial Testimony. Engle v. R.J. Reynolds. Case No. 94-08273 CA22. Circuit Court of the 11th Judicial Circuit in and for Dade County, Florida. 1999: 25976, <http://tobaccodocuments.org/datta/TOWNSEND030399PM.html>.
- 33 **Morgan JJ**. President and CEO, Philip Morris. Deposition. Minnesota v. Philip Morris. Case No. C1-94-8565. State of Minnesota District Court. 1997: 137, <http://tobaccodocuments.org/datta/MORGANJ090497.html>.
- 34 **Merlo E**. Senior Vice President of Corporate Affairs, Philip Morris. Trial Testimony. Engle v. R.J. Reynolds Co. Case No. 94-08273 CA (22). Circuit Court of the 11th Judicial Circuit in and for Dade County, Florida. 2000: 37, <http://tobaccodocuments.org/datta/MERLOE062300AM.html>.
- 35 **Levy CJ**. Vice President of Youth Smoking Prevention, Philip Morris. Deposition. Massachusetts v. Philip Morris Inc. Case No. 95-7378-J. New York: Offices of Winston & Strawn. 1998: 73-4, <http://tobaccodocuments.org/datta/LEVYCO62398.html>.
- 36 **Levy CJ**. Vice President of Youth Smoking Prevention, Philip Morris. Deposition. Massachusetts v. Philip Morris Inc. Case No. 95-7378-J. New York: Offices of Winston & Strawn. 1998: 71-2, <http://tobaccodocuments.org/datta/LEVYCO62398.html>.
- 37 **Bonhomme JV**. Director of Youth Smoking Prevention Research, Philip Morris. Deposition. Tobacco Litigation (Medical Monitoring Cases) [Blakenship]. Case No. 00-C-600. Circuit Court of Ohio, West Virginia. 2000: 76-7, <http://tobaccodocuments.org/datta/BONHOMMEJ090800.html>.
- 38 **Beasley LJ**. Vice-President of Marketing, R.J. Reynolds. Trial Testimony. Whiteley v. Raybestos-Manhattan Inc. Case No. 30318. Superior Court of the State of California in and for the City and County of San Francisco. 2000: 6090, <http://tobaccodocuments.org/datta/BEASLEYL032300.html>.
- 39 **Botvin GJ**, Griffin KW. Life skills training as a primary prevention approach for adolescent drug abuse and other problem behaviors. *International Journal of Emergency Mental Health* 2002;4:41-7.
- 40 **Merlo E**. Senior Vice President of Corporate Affairs, Philip Morris. Trial Testimony. Engle v. R.J. Reynolds Co. Case No. 94-08273 CA (22). Circuit Court of the 11th Judicial Circuit in and for Dade County, Florida. 2000: 43, <http://tobaccodocuments.org/datta/MERLOE062300AM.html>.
- 41 **Brookes NJ**. CEO, Brown & Williamson. Trial Testimony. Engle v. R.J. Reynolds Co. Case No. 94-08273 CA (22). Circuit Court of the 11th Judicial Circuit in and for Dade County, Florida. 1998: 68, <http://tobaccodocuments.org/datta/BROOKESN061600AM.html>.
- 42 **Schindler AJ**. CEO, R.J. Reynolds Company. Trial Testimony. Minnesota v. Philip Morris. Case No. C1-94-8565. State of Minnesota District Court, County of Ramsey, Second Judicial District. 1998: 6844, <http://tobaccodocuments.org/datta/SCHINDLERAJ030698.html>.
- 43 **Clegg Smith K**, Wakefield M. USA: the name of Philip Morris to sit on 28 million school desks. *Tob Control* 2001;10:8.
- 44 **Merlo E**. Vice President of Corporate Affairs for Philip Morris. Trial Testimony. Boeken v. Philip Morris. Case No. BC 226593. Superior Court of the State of California for the County of Los Angeles. 2001: 4239, <http://tobaccodocuments.org/datta/MERLOE050201.html>.
- 45 **Merlo E**. Vice President of Corporate Affairs for Philip Morris. Trial Testimony. Boeken v. Philip Morris. Case No. BC 226593. Superior Court of the State of California for the County of Los Angeles. 2001: 4240, <http://tobaccodocuments.org/datta/MERLOE050201.html>.
- 46 **Kelsey M**. Corporate Marketing Manager, Jaycees. Trial testimony. Engle v. R.J. Reynolds Co. Case No. 94-08273 CA (22). Circuit Court of the 11th Judicial Circuit in and for Dade County, Florida. 2000: 11-2, <http://tobaccodocuments.org/datta/KELSEYM062100.html>.
- 47 **Merlo E**. Senior Vice President of Corporate Affairs, Philip Morris. Trial Testimony. Whiteley v. Raybestos-Manhattan Inc. Case No. 303184. Superior Court of the State of California in and for the City and County of San Francisco. 2000: 5885, <http://tobaccodocuments.org/datta/MERLOE032200.html>.
- 48 **Beasley LJ**. Vice-President of Marketing, R.J. Reynolds. Trial Testimony. Whiteley v. Raybestos-Manhattan Inc. Case No. 30318. Superior Court of the State of California in and for the City and County of San Francisco. 2000: 6092, <http://tobaccodocuments.org/datta/BEASLEYL032300.html>.
- 49 **Brookes NJ**. CEO, Brown & Williamson. Trial Testimony. Local No. 17 Bridge and Iron Workers Insurance Fund v. Philip Morris Inc. Case No. 1:97CV1422. United States District Court, Northern District of Ohio Eastern Division. 1999: 2924, <http://tobaccodocuments.org/datta/BROOKESN030599.html>.
- 50 **Brookes NJ**. CEO, Brown & Williamson. Trial Testimony. Local No. 17 Bridge and Iron Workers Insurance Fund v. Philip Morris Inc. Case No. 1:97CV1422. United States District Court Northern District of Ohio Eastern Division. 1999: 2904, <http://tobaccodocuments.org/datta/BROOKESN030599.html>.
- 51 **Burch T**. Manager of Youth Smoking Prevention Programs, Brown & Williamson. Trial Testimony. Engle v. R.J. Reynolds Tobacco Co. Case No. 94-08273 CA (22). Circuit Court of the 11th Judicial Circuit in and for Dade County, Florida. 2000: 38, <http://tobaccodocuments.org/datta/BURCHT062000AM.html>.
- 52 **Szymanczyk ME**. CEO and President, Philip Morris. Trial Testimony. Engle v. R.J. Reynolds Tobacco Co. Case No. 94-08273 CA (22). Circuit Court of the 11th Judicial Circuit in and for Dade County, Florida. 2000: 103-4, <http://tobaccodocuments.org/datta/SZYMANCZYKMO61200PM.html>.
- 53 **Rosenberg NJ**, Siegel M. Use of corporate sponsorship as a tobacco marketing tool: a review of tobacco industry sponsorship in the USA, 1995-99. *Tobacco Control* 2001;10:239-46.
- 54 **Bible GC**. Chairman and CEO, Philip Morris. Trial Testimony. Minnesota v. Philip Morris Inc. Case No. C1-94-8565. State of Minnesota District Court, County of Ramsey Second Judicial District. 1998: 6270, <http://tobaccodocuments.org/datta/BIBLEG030498.html>.
- 55 **Schindler AJ**. CEO, R.J. Reynolds Tobacco Co. Trial Testimony. Engle v. R.J. Reynolds Tobacco Co. Case No. 94-08273 CA (22). Circuit Court of the 11th Judicial Circuit in and for Dade County, Florida. 2000: 79-80, <http://tobaccodocuments.org/datta/SCHINDLERAJ061900AM.html>.
- 56 **Merlo E**. Senior Vice President of Corporate Affairs, Philip Morris. Trial Testimony. Whiteley v. Raybestos-Manhattan. Case No. 303184. Superior Court of the State of California in and for the City and County of San Francisco. 2000: 5956, <http://tobaccodocuments.org/datta/MERLOE032300.html>.
- 57 **Merlo E**. Senior Vice President of Corporate Affairs, Philip Morris. Deposition. California v. Philip Morris Inc. Case No. 95-7378-J. New York: Offices of Winston & Strawn. 1998: 30, <http://tobaccodocuments.org/datta/MERLOE062498.html>.
- 58 **Fairclough G**. Study slams Philip Morris ads telling teens not to smoke: how a market researcher who dedicated years to cigarette sales came to create antismoking ads. *Wall Street Journal* New York, 2002.
- 59 **Farrelly MC**, Niederdeppe J, Yarsevich J. Youth tobacco prevention mass media campaigns: past, present, and future directions. *Tob Control* 2003;12(suppl 1):i35-47.
- 60 **Szymanczyk ME**. CEO and President, Philip Morris. Trial Testimony. Engle v. R.J. Reynolds Tobacco Co. Case No. 94-08273 CA (22). Circuit Court of the 11th Judicial Circuit in and for Dade County, Florida. 2000: 91, <http://tobaccodocuments.org/datta/SZYMANCZYKMO61200PM.html>.
- 61 **Merlo E**. Senior Vice President of Corporate Affairs, Philip Morris. Trial Testimony. Engle v. R.J. Reynolds Co. Case No. 94-08273 CA (22). Circuit Court of the 11th Judicial Circuit in and for Dade County, Florida. 2000: 29, <http://tobaccodocuments.org/datta/MERLOE062300AM.html>.
- 62 **Merlo E**. Senior Vice President of Corporate Affairs, Philip Morris. Trial Testimony. Whiteley v. Raybestos-Manhattan. Case No. 303184. Superior Court of the State of California in and for the City and County of San Francisco. 2000: 5879-80, <http://tobaccodocuments.org/datta/MERLOE032200.html>.
- 63 **Merlo E**. Senior Vice President of Corporate Affairs, Philip Morris. Trial Testimony. Whiteley v. Raybestos-Manhattan; Taylor v. Philip Morris Inc. Case No. 303184. Superior Court of the State of California in and for the City and County of San Francisco. 2000: 142-3, <http://tobaccodocuments.org/datta/MERLOE010500.html>.
- 64 **Merlo E**. Senior Vice President of Corporate Affairs, Philip Morris. Trial Testimony. Whiteley v. Raybestos-Manhattan; Taylor v. Philip Morris Inc. Case No. 303184. Superior Court of the State of California in and for the City and County of San Francisco. 2000: 145-6, <http://tobaccodocuments.org/datta/MERLOE010500.html>.

- 65 **Merlo E.** Senior Vice President of Corporate Affairs, Philip Morris. Trial Testimony. Engle v. R.J. Reynolds Co. Case No. 94-08273 CA (22). Circuit Court of the 11th Judicial Circuit in and for Dade County, Florida. 2000: 26–9, <http://tobaccodocuments.org/datta/MERLOE062300AM.html>.
- 66 **Merlo E.** Senior Vice President of Corporate Affairs, Philip Morris. Trial Testimony. Engle v. R.J. Reynolds Co. Case No. 94-08273 CA (22). Circuit Court of the 11th Judicial Circuit in and for Dade County, Florida. 2000: 26–7, <http://tobaccodocuments.org/datta/MERLOE062300AM.html>.
- 67 **Merlo E.** Senior Vice President of Corporate Affairs, Philip Morris. Trial Testimony. Engle v. R.J. Reynolds Co. Case No. 94-08273 CA (22). Circuit Court of the 11th Judicial Circuit in and for Dade County, Florida. 2000: 27–8, <http://tobaccodocuments.org/datta/MERLOE062300AM.html>.
- 68 **Tisch AH.** Chairman and CEO, Lorillard Tobacco. Deposition. Minnesota v. Philip Morris Inc. Case No. C1-94-8565. State of Minnesota District Court, County of Ramsey Second Judicial District. 1997: 378–9, <http://tobaccodocuments.org/datta/TISCHA100197.html>.
- 69 **US Department of Health and Human Services.** *Reducing tobacco use: a report of the Surgeon General.* Atlanta, Georgia: US Department of Health and Human Services, Public Health Service, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2000.
- 70 **Liang L,** Chaloupka F, Nichter M, *et al.* Prices, policies and youth smoking, May 2001. *Addiction* 2003;**98**(suppl 1):105–22.
- 71 **Wakefield M,** Durrant R, Terry-McElrath Y, *et al.* Appraisal of anti-smoking advertising by youth at risk for regular smoking: a comparative study in the United States, Australia, and Britain. *Tob Control* 2003;**12**(suppl II):ii82–ii6.
- 72 **Romer D,** Jamieson P, Ahern RK. The catch-22 of smoking and quitting. In: Slovic P, eds. *Smoking: risk, perception, and policy.* Thousand Oaks: Sage Publications, 2001.
- 73 **PR Watch.** *Council for Tobacco Research.* Madison, WI: Center for Media and Democracy, 2005. www.prwatch.org/improp/ctr.html (Accessed 23 May 2005).
- 74 **Willard H.** Senior Vice President, Youth Smoking Prevention and Corporate Responsibility, Philip Morris. Trial Testimony. United States of America v. Philip Morris. Case No. 99-CV-2496(GK). United States District Court for the District of Columbia. 2005: 9, www.altria.com/download/pdf/media_doj_livewitness_willard_04042005.pdf.
- 75 **Farrelly MC,** Heaton CG, Davis KC, *et al.* Getting to the truth: evaluating national tobacco countermarketing campaigns. *Am J Public Health* 2002;**92**:901–7.
- 76 **Biener L.** Anti-tobacco advertisements by Massachusetts and Philip Morris: what teenagers think. *Tob Control* 2002;**11**(suppl II):ii43–6.
- 77 **Terry-McElrath Y,** Wakefield M, Ruel E, *et al.* The effect of anti-smoking advertisement executional characteristics on youth appraisal and engagement. *Journal of Health Communication* 2005;**10**:127–43.
- 78 **Action on Smoking and Health UK.** *Critique of MTV Europe: "Youth Smoking Prevention" Campaign, sponsored by BAT, Philip Morris and Japan International, Action on Smoking and Health UK, 2004.* www.ash.org.uk/html/advspo/html/mtv europe.html (Accessed 8 July 2004).
- 79 **DiFranza JR,** Savageau JA, Aisquith BF. Youth access to tobacco: the effects of age, gender, vending machine locks, and "It's the Law" programs. *Am J Public Health* 1996;**86**:221–4.
- 80 **DiFranza JR,** Brown LJ. The Tobacco Institute's "It's the Law" campaign: has it halted illegal sales of tobacco to children? *Am J Public Health* 1992;**82**:1271–3.
- 81 **DiFranza JR,** McAfee T. The Tobacco Institute: helping youth say "yes" to tobacco. *J Family Pract* 1992;**34**:694–6.
- 82 **Henriksen L,** Fortmann SP. Young adults' opinions of Philip Morris and its television advertising. *Tob Control* 2002;**11**:236–40.

Appendix 1

Trial	State	Outcome
Barnes (Arch) v. American Tobacco Company	Pennsylvania	Certification denied
Blue Cross and Blue Shield of New Jersey v. Philip Morris Inc.	New York	Case terminated
Boeken v. Philip Morris Inc.	California	Settled: US\$50 million in punitive damages
Broin v. Brown & Williamson	Florida	Settled: no monetary payments made to injured flight attendants. Payment of US\$300 million to fund a research foundation, and US\$49 million to plaintiffs' attorneys for their work on the case
California v. Philip Morris Inc.*	California	Settled: US\$25.5 billion over 25 years
Dunn (Wiley) v. RJR Nabisco Holdings Corps.	Indiana	Defendants held not liable
Engle v. RJ Reynolds Tobacco Company	Florida	Settled: US\$12.7 million compensatory damages
Falise v. American Tobacco Company	New York	Mistrial
Florida v. American Tobacco Company*	Florida	Settled: US\$10 billion over 25 years
Henley v. Philip Morris Inc.	California	Settled: US\$9 million punitive damages
Kings County Tobacco Litigation	New York	Defendants held not liable
Kueper v. R.J. Reynolds	Illinois	Defendants held not liable
Local No. 17 Bridge and Iron Workers Insurance Fund v Philip Morris Inc.	Ohio	Defendants held not liable
Massachusetts v. Philip Morris Inc.*	Massachusetts	Settled: US\$8.3 billion over 25 years
McMullin v. United States Smokeless Tobacco Company	Florida	Settled for an undisclosed amount
Minnesota v. Philip Morris Inc.*	Minnesota	Settled: US\$6.6 billion over 25 years
Mississippi Tobacco Litigation*	Mississippi	Settled: US\$3.6 billion over 25 years
National Asbestos Workers Medical Fund v. Philip Morris Inc.	New York	Case dismissed
New York Class Action Tobacco Litigation	New York	Case dismissed
Schwartz v. Philip Morris Inc	Oregon	Settled: US\$168,500 in compensatory damages and US\$100 million in punitive damages. This case is on appeal to the Oregon Court of Appeals in 2006.
Scott v. American Tobacco Company	Louisiana	US\$591 million awarded to smoking cessation programmes over 10 years
Oklahoma v. R.J. Reynolds Tobacco Company*	United States District Court, State of Oklahoma	Settled: US\$2 billion over 25 years
Texas v. American Tobacco Company*	The United States District Court for the Eastern District of Texas	Settled: US\$15.3 billion over 25 years
Tobacco Litigation (Medical Monitoring Cases) [Blankenship]	Circuit Court of Ohio, West Virginia	Tobacco industry not liable for funding a medical monitoring programme
Tompkin v. American Brands Inc.	Ohio	Defendants held not liable
Washington v. American Tobacco Company*	Washington	Settled: US\$4.5 billion over 25 years
Whiteley v. Raybestos-Manhattan Inc.	California	Settled: US\$1.72 million compensatory damages, US\$20 million punitive damages
Wilkes v. American Tobacco Company	Mississippi	Defendant held not liable
Williams v. Philip Morris Inc.	Oregon	Settled: US\$80 million

*The settlement figures given for each state constitute the amount to be paid by the tobacco industry over 25 years. However, the settlements do not end with the 25th year, but rather obligate each settling tobacco company to continue paying the states in perpetuity for as long as the company remains in business.