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Legal Affairs

TOBACCO: THE COMING FREE-FOR-ALL

Everyone wants a deal, but don't bet on it happening soon

After a three-month cease-fire, the bullets are starting to fly again in the tobacco wars. With the fate of the industry's proposed $368.5 billion global settlement of its legal and regulatory woes now in the hands of Congress, an all-out war is erupting over who will get the loot. President Clinton intends to stake a claim for $60 billion to pay for an array of programs from child care to medical research. The states--whose lawyers, after all, brought cigarette makers to the bargaining table--are trying to prevent Clinton and Congress from cheating them out of what they consider their fair share of the settlement windfall.

Public-health advocates, meanwhile, want to make the deal tougher, and cigarette makers are spending millions lobbying to preserve the deal as is. In an effort to avoid an onslaught of bad publicity, potentially harmful to the fragile agreement, the industry is now trying to settle its next major court challenge: Texas' suit to recover Medicaid expenses shelled out to treat smokers. Finally, Congress is busy on both sides of the aisle drafting legislation to embody the ever-changing terms of the pact.

TORT LAW. What makes the whole ordeal so daunting is that Congress has never before been asked to do anything like this. The deal wasn't the brainchild of any party or any lawmaker but rather was handed to Congress by a coalition of cigarette makers, state attorneys general, and plaintiffs' lawyers. Moreover, the logistical problems associated with deciding how to spend hundreds of billions of dollars, establishing a new regulatory regime for cigarettes, and taking the historic step of exempting the tobacco industry from American tort law are all enormous. "There's hardly an area of government not implicated by this," says Salomon Smith Barney analyst Martin Feldman.

And to top it all off, negotiations will coincide with an election year, when lawmakers are likely to be skittish about passing anything that might be construed as a bailout for Big Tobacco. That prospect is most worrisome to Republicans, who count on the industry as a major contributor, so the GOP is making an effort to be tougher. Senator Orrin G. Hatch (R-Utah) is proposing legislation to boost the industry payout--to about $400 billion--and raise penalties against the industry if it doesn't cut teen smoking enough. House Commerce Committee Chairman Tom Bliley (R-Va.), meanwhile, a close tobacco ally, last month released 834 industry documents, arguing that Congress can't consider granting legal protection unless it knows if the companies engaged in fraud. The GOP is also attacking the huge fees coming to many Democrat-affiliated plaintiffs' lawyers hired by the states to sue the industry.

But no Republican proposal challenges a core issue: immunity from class actions and a cap on the tobacco industry's yearly payouts to litigants. Cigarette makers, whose share prices have been dragged down by endless litigation, hope such protection would restore tobacco stock valuations. Feldman predicts that a deal that includes strong immunity would boost Philip Morris Cos. shares about one-third, to 60, and push up RJR Nabisco Inc.'s around one-quarter, to 45.

"HEALTH FEE." Across the aisle, the Democrats see tobacco as a no-lose issue. If the deal goes through, they will claim credit for pushing the toughest regulatory scheme possible on Big Tobacco. If it doesn't, they will claim they saved citizens from an industry bailout. "If this industry thinks they will get protection no other industry has, then they are smoking something," says Senator Kent Conrad (D-N.D.).

In late January, a Democratic tobacco task force led by Conrad is set to introduce a bill that would impose a $1.50-per-pack "health fee" on smokers and stiffen oversight by the Food & Drug Administration. While Conrad's Democratic task force is unlikely to give Big Tobacco protection from class actions, it will probably settle 40 pending state Medicaid suits. An even tougher bill pushed by Senator Edward M. Kennedy (D-Mass.) would allow the states to seek past Medicaid expenses--while giving them about $200 billion from a huge tobacco excise tax that would raise $600 billion.

But intra-party fissures could undermine positions forged by political leaders. While liberals could be lured by the spending goodies tax hikes would pay for, powerful tobacco-state Democrats, such as Senator Wendell H. Ford of Kentucky, probably will be reluctant to back anything that hurts homegrown industry. And though many Republicans want to impose tough limits on tobacco, government minimalists such as Senator Don Nickles of Oklahoma will bristle at higher taxes and tougher regulation.

Several Johnny-come-lately special-interest groups will also make life harder for proponents of the pact. Many union-backed health plans now argue that if the states deserve compensation for health outlays made on behalf of smokers, then they do, too. Tobacco farmers, meanwhile, want to be protected against a potentially calamitous drop in income. Another wild card: states that believe they are entitled to as much as $196 billion to cover Medi-caid expenses. But Congress may claim a share of this because the federal government finances about half of Medicaid.

Any of these or other vexing issues could scuttle a congressional deal. Take the question of money. The industry publicly claims that it is unwilling to cough up more than $368.5 billion. Although industry sources privately say the companies are willing to spend more, they could reach some breaking point. "The companies can be shot, but they won't commit suicide," says J. Phil Carlton, the lead settlement negotiator for the tobacco industry. "They won't approve any deal that leaves them in financial peril." Legal immunity is another potential deal-killer. A coalition of hard-line anti-tobacco health groups, led by the American Lung Assn. and former Surgeon General C. Everett Koop, has made opposition to legal protection its top priority.

Hoping to deflect some of the political heat, lawmakers from both parties want the President to push hard for a deal. White House officials say they are working with lawmakers from both parties to fashion a bipartisan bill. But on Jan. 13, Senate Majority Leader Trent Lott (R.-Miss.) accused Clinton of "inflaming the problem" by unilaterally dividing up the spoils before the deal becomes law.

Instead of sniping, Clinton and Lott must work together to cut a deal. Unless they do, the odds are high that this political hot potato will get dropped. For tobacco combatants, that means this fight could even wind up back where it started--in America's courtrooms.

By Susan B. Garland, with John Carey, in Washington and Mike France in New York

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Who Wants What

Even though Congress has not yet reconvened, lobbying is already starting to heat up over proposed smoking legislation

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Editorial The New York Times on the Web

February 7, 1998

President Clinton's Tobacco Numbers

President Clinton's budget assumes that $65.5 billion will be extracted from the **tobacco** industry over the next five years, either as voluntary payments from cigarette manufacturers or higher taxes on **tobacco** products. While he offers several enticing ways to spend the hypothetical money -- more biomedical research, day care subsidies, and financing for smaller class sizes -- the most important aspect of this budget item is its size. Mr. Clinton has now put on the table the amount he thinks needs to come from the **tobacco** industry in order to deter smoking, particularly among teen-agers.

Public health experts have long argued that while many strategies are needed to reduce teen smoking, like curbs on advertising, the key is raising the price of cigarettes. In order to cut teen smoking by 50 percent, most health economists believe the price of cigarettes would have to increase by at least $1.50 a pack. Experts convened by the National Academy of Sciences have recommended even higher increases of $2 a pack.

Mr. Clinton's budget plan would move toward higher prices, but would not reach those goals. Assuming that cigarette makers would pass any new costs on to consumers, the proposed $65.5 billion payment from the industry would mean a $1.10 per pack price increase over five years, according to White House budget analysts. That increase might cut teen smoking by perhaps 30 percent, probably not enough to protect most vulnerable youngsters from picking up the habit. Even so, it is nearly doubles the price increase projected under the settlement agreement reached last summer between 40 attorneys general and the **tobacco** industry. That proposal would increase cigarette prices by only 62 cents over 25 years.

Getting even the lower amount will not be easy politically. There is already talk that a national **tobacco** settlement is dead because the industry is insisting on immunity from future civil lawsuits as a trade-off for payments, an element that many health advocates oppose.

Indeed, recent disclosures from **tobacco** company documents of their aggressive efforts to target teen-agers make any talk of immunity increasingly unpalatable. But Mr. Clinton should not give up on the idea of comprehensive legislation that strongly regulates nicotine and significantly curbs **tobacco** consumption.

While he has rightly criticized the settlement backed by the attorneys general as too small, he has yet to unveil specific **tobacco** legislation. Instead, he has left the details to Congress. This hands-off approach is unlikely to generate the public support needed to force a reluctant Congress to place public health needs before the financial interests of cigarette makers.

Politics The New York Times ON THE WEB

February 25, 1998

Tobacco Executives Link Ad Curbs to Protection From Lawsuits

By DAVID E. ROSENBAUM

WASHINGTON -- The top executives of the major **tobacco** companies told Congress on Tuesday that they would never agree to modify their advertising and marketing practices unless the lawmakers gave the industry substantial protection against lawsuits.

"It's rightful, legal behavior for a consumer product company," said Steven F. Goldstone, chairman and chief executive officer of RJR Nabisco Holding Corp.

"It's our constitutional right, and if we stop doing it," he continued, making a swooping motion with his hand, "our business is going to go like that."

It is not reasonable for Congress to ask him to bankrupt his company, Goldstone added, and it would violate his fiduciary responsibility to his shareholders for him to accept that.

The issue is critical because a central element of the accord reached last June by the **tobacco** companies and most of the state attorneys general, which can go into effect only to the degree it is approved by Congress, involves a trade-off. The companies would waive what they believe to be their constitutional right to advertise their products broadly, and in exchange, they would be given immunity from class-action lawsuits and other protection against legal liability.

The political opposition to the settlement comes mainly from lawmakers who are reluctant to give any legal break to an industry that lied repeatedly over the years about the health consequences of its products and shamelessly marketed **cigarettes** to children.

The testimony from Goldstone and the top executives of the other four largest **tobacco** companies before the Senate Commerce Committee was in many respects a reprise of their testimony before a House committee last month.

As was the case last month, the tone of Tuesday's hearing was markedly different from the one four years ago when the previous regime of **tobacco** executives swore that they did not believe nicotine was addictive and questioned the link between **smoking** and serious illness like lung cancer.

Tuesday, pleading with Congress to approve the settlement with the attorneys general, the new cast of executives conceded that **tobacco** was a health hazard and to one degree or another addictive.

Sen. John McCain, R-Ariz., a former smoker who is the committee chairman, said he knew from personal experience that **tobacco** was addictive, and he asked the executives if they agreed.

Goldstone, whose company makes Winston and Camel **cigarettes**, said that he did agree and that with some difficulty, he had quit **smoking** himself as an example to his 12-year-old child.

But Nicholas G. Brooks, chairman of Brown & Williamson **Tobacco** Corp., whose brands include Kool and Lucky Strike, said that while he would not take issue with people who called **cigarettes** addictive, he himself did not like that term because so many people have successfully stopped **smoking**.

"I am a smoker myself," Brooks asserted. "I have in the past, on occasion, quit successfully, and I don't find that a particularly difficult experience."

The other executives who testified were Geoffrey C. Bible, chairman Philip Morris Cos., the manufacturer of Marlboro; Laurence A. Tisch, co-chairman of Loews Corp., whose Lorrilard unit makes Newport, and Vincent A. Gierer Jr., chairman of UST Inc., the parent of U.S. **Tobacco** Co., which makes the Copenhagen and Skoal brands of snuff.

In answer to a question about whether, as recently released documents show, his company used ammonia to enhance the nicotine in Winstons, Goldstone said that the purpose of the additive was to improve the flavor of the **cigarettes**. The documents leave no doubt that when ammonia was introduced to Winstons in 1970, the company thought it would boost the kick from nicotine.

McCain, who has sponsored legislation modeled on last June's settlement, said he hoped his committee would approve **tobacco** legislation by the middle of next month. But underscoring the partisan divide on the matter, he and Sen. Bill Frist, R-Tenn., a heart surgeon who said he had operated on thousands of patients whose illness was caused by **smoking**, were the only Republicans who arrived Tuesday to question the industry executives.

Monday, Senate Republican majority leader Trent Lott did not list **tobacco** as one of his legislative priorities and would not make a commitment that a **tobacco** bill would be brought to a Senate vote this year.

But if the committee room had been a ship, it would have listed to starboard as the Democratic senators, who see the **tobacco** issue as a political bonanza, showed up in force to challenge the executives.

Sen. Ron Wyden of Oregon said, for example, that he was skeptical that "it is actually a new day with respect to this subject."

"I think that the words are more artful than they were four years ago," Wyden said. "But a little bit of this is like Yogi Berra -- it's deja vu all over again."

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March 2, 1998

Congress Advised About Tobacco Ads

A.P. INDEXES: TOP STORIES | NEWS | SPORTS | OLYMPICS | BUSINESS | TECHNOLOGY | ENTERTAINMENT

Filed at 5:44 p.m. EST

By The Associated Press

WASHINGTON (AP) -- The White House told Congress Monday that tobacco legislation is almost certain to be challenged in court unless lawmakers pass a bill that is acceptable to all sides.

Specifically, a proposal to ban tobacco advertising on the Internet, for example, ``would raise significant constitutional concerns," White House Domestic Policy Adviser Bruce Reed said in a Feb. 27 memo to Senate Commerce Committee Chairman John McCain, R-Ariz.

The memo, which ignores many of McCain's questions about the administration's positions on proposed tobacco legislation, nonetheless provides the clearest guidance yet from the White House on what kind of tobacco policy President Clinton would sign into law.

But anti-smoking activists warned that the White House was bowing to an industry that hasn't earned goodwill from the government.

``I would caution everyone in Washington, on both sides of Pennsylvania Avenue, not to believe the smokescreens of an industry that has been lying to us for the past 50 years," said Sen. Frank Lautenberg, D-N.J.

The White House, McCain and Senate Judiciary Committee Chairman Orrin Hatch, R-Utah, say that supporting the industry's requests is a matter of pragmatics.

The tobacco industry has said it will voluntarily restrict its own marketing and advertising if Congress provides it the protection from most lawsuits included in the settlement companies struck with states in June.

Beyond Hatch and McCain, little willingness exists among congressional leaders to grant that protection, especially in an election year. Several alternative bills to be considered by congressional panels this month would delete the lawsuit shields and require the industry to curb its marketing practices in exchange for other incentives.

Such a quid pro quo, the memo says, ``would continue to raise substantial constitutional questions'' under the First Amendment's free speech protections.

At a hearing scheduled for Tuesday, McCain's panel plans to hear testimony on the proposed marketing restrictions from Sen. Connie Mack, R-Fla., the Federal Trade Commission and the Centers for Disease Control and Prevention.

The House is far behind the Senate in crafting tobacco legislation, as the issue isn't on the Republican leadership's priority list for the year. Rep. Henry Waxman, D-Calif., a senior member of the House Commerce Committee, told reporters that producing a bill on the issue this year would be difficult.

On other matters, the administration would oppose broad efforts by Congress to allow tobacco companies to set cigarette prices jointly, according to the memo. The proposed exemption from antitrust laws, the White House said, could allow companies to raise prices beyond the level that would deter teens from smoking to increase their own profits.

The White House ignored McCain's request to suggest new language for the proposal, saying it was unlikely Congress could craft a bill that would both grant the exemption and prevent companies from using it to enrich themselves.

``The administration is extremely skeptical that the proponents of this case will be able to meet the burden, except possibly in certain limited circumstances to restrict advertising to children,'' Reed wrote.

The administration also supports the right of states to set tobacco marketing restrictions that are tougher than federal curbs, according to the memo.

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March 25, 1998

Amending Tobacco's Sweet Deal

The tobacco industry is waging a fierce campaign to win Congressional approval for the agreement it reached with 40 state attorneys general last summer. The industry's desperate pitch is a good indication that the settlement is good for the tobacco industry and not good for everyone else.

The deal would give the industry what it desires most -- protection from future class-action lawsuits and other legal shields, with relatively little impact on future profits. Senator John McCain, chairman of the Senate Commerce Committee, now has the tough job of producing better tobacco legislation that can meet public health goals, give the states their expected payoff and persuade the industry to accept voluntary advertising controls.

A bipartisan plan sponsored by Senators Bob Graham, John Chafee and Tom Harkin has already won favorable reviews from President Clinton and public health experts such as former Surgeon General C. Everett Koop. It contains many crucial elements that must be included in any legislation that reaches the Senate floor.

Public health experts have long argued that raising cigarette prices is absolutely necessary to curb teen-age smoking. The Graham plan would extract roughly $25 billion a year out of the industry, or $630 billion over 25 years -- raising the price of a pack of cigarettes by $1.50 over the next two years, an amount most health economists believe would make a significant reduction in youth consumption. The agreement with the attorneys general, by contrast, would raise the per-pack price by only 62 cents, achieving very little impact on smoking rates.

The Graham proposal is also far stronger in other ways. It would preserve the Food and Drug Administration's full authority to regulate nicotine. It would not grant the industry any immunity against future lawsuits, and would impose stiffer penalties of up to $10 billion a year on the industry if youth smoking rates do not fall by 65 percent over the next 10 years. It would also end outdoor cigarette advertising, ban the use of cartoon characters and other promotional activity.

In exchange, the bill would cap the industry's financial exposure to lawsuits in any given year to $8 billion. The industry would pay $4 billion annually into a separate victims' compensation fund. Money not spent would be rolled over to the next year. This mechanism would give the industry financial predictability, but would not shield it from any liability.

The industry, faced with damaging exposure about its past efforts to sell to teen-age smokers, is on the defensive. But it is by no means an impotent force in Congress. Its power to push through legislation is substantial, particularly since both the White House and the Republican leaders are eagerly eyeing money from any tobacco settlement to pay for their favorite programs. As the Senate takes on tobacco, it must remember that this issue is not about protecting the industry or plugging holes in the Federal budget. The aim here is improving public health, and any legislation has to be measured by that yardstick alone.

April 2, 1998

The Tobacco Crack-Up

Not that their troubles stir a great deal of pity in our breast, but credit must still be given to the tobacco companies for taking lemons and creating lemonade--for every industry in the country, that is, except tobacco. Endorphins of relief must be coursing through the ladder makers, the breast implant people, Detroit, the light aircraft industry, the manufacturers of lawn darts. As a Journal front-pager pointed out yesterday, lawyers by the dozens have been dropping whatever else they were doing so they can file lawsuits and get seats aboard the tobacco crack-up express.

These were not the beneficiaries the industry had in mind, of course. In the Washington pageant of absurdities over this dubious product, the most absurd is the cigarette industry's woundedness at now finding its "statesmanship" so rudely scorned. Under a new leadership, it had reached out (today's favorite verb of inclusion) to its opponents and adversaries. The settlement negotiated last year was supposed to bring them all altogether, the tort lawyers, the health lobby, the state politicians hoping to pad their Medicaid budgets with tobacco revenues, and the cigarette makers themselves.

Conflicting interest groups were to become one, big, unconflicted interest group. Congress would be moved to tears and action. In a gush of praise for the industry's wisdom and courage in rising above adversarialism, the settlement would become law. A new day of peace and compromise would dawn for a product and a habit that Americans exude decidedly mixed and overheated feelings about. A Harris poll just out found cigarette smoking hasn't dropped in 10 years, with about a quarter of the population still lighting up, despite all the tumult.

On Tuesday, the real world spoke up. The Senate voted 79-17 for a Republican-sponsored resolution opposing any legal immunity for tobacco. That was generally seen as paving the way for Senator John McCain's larger bill, which would enact most of the settlement's downside for tobacco and little of the upside, while scooping most of the money into the pockets of politicians.

Morally, the fault of the tobacco industry reaches way back to the early post-war years when they failed to say, "Customers, be cognizant of the growing evidence of smoking's risks." There are serious reasons to

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doubt whether tobacco's presence in our society, after 500 years, is merely an artifact of modern advertising and the industry's disingenuous legal posturing. Still, a special circle of hell awaits those who make misleading statements when they hope to influence the behavior of others. When they get there, the tobacco executives will undoubtedly find themselves sharing this circle with many politicians and lawyers.

But the industry still has a few residual responsibilities to its customers, its shareholders and to the larger business community of which it is part. The McCain bill throws tobacco's defection from these responsibilities back in its face.

The bill says, in effect, since you have abandoned any principled defense of your rights as a legal industry in a free society, we will turn you into a rightless adjunct of our own policy and political purposes. Particularly inventive, in a savage sort of way, was the provision that would smack the tobacco industry with additional, punitive taxes unless teenagers decide to begin making their parents happy by smoking less. By what mechanism this transfer of parental and retailer responsibility would take place, of course, is a miracle the industry would have to think up itself.

The industry says it will fight any such law in court, and undoubtedly it could gin up a good case that asking citizens to perform miracles is unconstitutional. But why should that dissuade any Senator? The industry already has rolled over for the state Medicaid suits, voluntarily transferring to itself a liability for the respiratory diseases of people whom the states, in their wisdom, decided to insure. Surely, the industry can also relieve the politicians of their duty under their own laws to prevent cigarette sales to minors.

J. Phil Carlton, the industry's lead lawyer, fulminated this week that the McCain legislation was "based not on economic or legal reality but on political expediency." In fact, all three have been advanced by tobacco in justification of its surrender of principle in the original settlement. Not the least of its sins, the industry threatened to scuttle the cause of tort reform when genuine progress was being made.

Others, like the Big Three of Detroit, have discovered the wisdom of fighting rather than settling, understanding themselves to be making a long-term investment in curbing frivolous litigation. Meanwhile, tobacco has flipped 180 degrees. After decades of laying out the dough to uphold its rights under the law, it tried to pay off the lawyers and politicians to escape the admittedly imperfect legal system we use to defend and secure our rights. The system is all we have, and business should be defending its basic integrity even while seeking to redeem its flaws.

So the tobacco companies need not act so surprised by the disrespect paid them in the Senate. As somebody once said of another profession, by their own actions, the cigarette companies have shown us what they are. All that remains is to determine the price.

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The Bulletin's Frontrunner

April 10, 1998, Friday

SECTION: LEADING THE NEWS

LENGTH: 1393 words

HEADLINE: Clinton Courts Tobacco Farmers On Their Turf.

BODY:
The Lexington Herald Leader (4/10, Gibson) reported on President Clinton's visit to Kentucky yesterday, saying Clinton "brought the nation's turbulent tobacco talks to the heart of burley country, where he promised Kentucky growers protection amid national efforts to crack down on youth smoking." Clinton "pressed his case for a national tobacco policy, saying it would offer farmers and tobacco-dependent rural communities a more certain future." Addressing "growers, farm leaders and high school students," Clinton said: " If you want to do this, and do it right, we can do it. We don't have to wreck the fabric of life in your community. We don't have to rob honest people of their way of life."

The Louisville Courier Journal (4/10, A1, Cross) reported: "Though Clinton has lost support in tobacco counties" by backing "aspects of the settlement, he was greeted with frequent applause" during his speech at the high school in Carrollton, "especially when he hammered on the 'urgent national need' to reduce teen smoking."

The AP (4/10, Chellgren) said Clinton's visit "was aimed at increasing pressure on the industry not to fight Congress as it works to curb teen smoking and compensate states for smoking-related health care costs."

the WSJ (4/10, A12, Taylor, Cummings) said Clinton "chastised cigarette makers for resisting tobacco legislation and told farmers he expects steep cigarette- price increases to cut demand for their product." Clinton "sought to soothe tobacco farmers and wholesalers with promises of assistance, but didn't soft- pedal the fact that many in Washington would like to plow their crop under." Said presidential adviser Bruce Reed: "We're at war."

The NY Times (4/10, A16, Rosenbaum) reported, "One reason for Mr. Clinton's visit, aides said, is to exploit a widening rift between tobacco growers and cigarette manufacturers, and to convince the farmers that the companies' legislative interests were not theirs."

The Cincinnati Enquirer (4/10, Crowley) reported Clinton "said he thinks a tobacco settlement can be reached this year, even though the tobacco companies have balked and congressional leaders like Senate Majority Leader Trent Lott (R-MS) have said that achieving a settlement this year will be difficult."

ABC (351 words, Jennings) last night described Clinton's message as "both sympathetic and direct. He doesn't want to hurt the tobacco farmers, but the fight with the tobacco companies goes on." ABC (Donaldson) said the purpose of the trip was for Clinton "to persuade people here that their interests lie in helping to perfect tobacco legislation, not in fighting it. In a battle of 'us against them,' the President hopes to put the companies on the other side all by themselves."

CBS (4/9, 63 words, Rather) said Clinton's "reception was mostly polite as he pledged to 'do right by the families that grow tobacco,' but the President emphasized he will still fight against teen smoking."

National Public Radio (4/10) reported this morning that Clinton's message in tobacco country "received mixed reviews from local growers."

Farmer "Steals The Show" From Clinton.

The Louisville Courier Journal (4/10, Cross) reported tobacco farmer Mattie Mack yesterday "stole the show from the President of the United States" during a roundtable discussion. Mack was "one of eight citizens invited" to the "stage-managed...discussion of tobacco and teenage smoking," and Mack "bluntly told the President that he is unfairly punishing tobacco farmers" with the policies he supports. Mack also told Clinton "that she raised 38 foster children and four of her own in a house where no one smoked, but paid its bills with tobacco money." On the prevention of teen smoking, Mack told Clinton: "It's the parents. The parents are going to have to teach these children the right way about this tobacco." Mack's "message was blunt," but she "delivered it with style and verve, and Clinton was clearly entertained -- perhaps one performer enjoying another in a setting designed for television."

Protests Greet Clinton.

USA (4/10, A4, Lee) said that as Clinton arrived in the town of Carrollton yesterday, he "passed a demonstration by tobacco factory workers bused in from a Brown & Williamson Co. plant in Louisville. Some hoisted signs reading, 'Don't Tax Us Out Of Our Jobs!'" Phil Carlton, who has been " the tobacco companies' "chief negotiator in Washington, said farmers shouldn't count on the President to protect them."

The Louisville Courier Journal (4/10, Kaukas) described the protesters, saying they "stood in a line about a hundred yards long, raising signs that read, 'Tobacco Is My Livelihood' and, "I'm A Tobacco Employee,' among other things. They chanted, 'Save Our Jobs, Save Our Jobs,' as (Clinton's) motorcade whisked past." Brown & Williamson officials "said they had put together 11 busloads of protesters -- more than 500 people. Among them was Nicholas Brookes, B&W's chairman."

Tobacco Industry Plans PR Blitz.

The WSJ (4/10, A3, Hwang) reported the nation's major tobacco companies "are planning to go directly to the public with a massive campaign designed to turn voters against" the bill sponsored by Senate Commerce Committee Chair John McCain (R- AZ). The tobacco companies "are discussing a coordinated public-relations effort led by their chief executives." Some of the "tactics being contemplated" include "television and radio ads, discussions with important constituencies such as tobacco farmers and retailers, and perhaps even speeches in small towns across America." The industry "plans to firm up details next week," and it is also "expected" that the companies will "take advantage of their huge mailing lists of millions of smokers."

The NY Times (4/10, A1, Mitchell) said the tobacco industry has "gambled" with its "defiant decision to go on the offensive against the tobacco legislation taking shape in Congress." The industry is hoping "that it can muster enough allies to stop or reshape a legislative process over which it has lost any control." The NYT said the public relations campaign begun by tobacco companies shows "that the industry is now hoping to peel off Republican votes in particular. ... But the tobacco companies have previously misgauged their diminished levels of political support in Congress, and the risk for them now is that their decision will only boomerang."

Budget Focus Remains On Tobacco Funds.

Reuter (4/9, Mikkelsen) reported the White House is "keeping plans to use tobacco settlement money for 1999 budget programs," despite this week's announcement from RJ Reynolds' chief Steven Goldstone that "there was 'no hope' for a settlement bill." Office of Management and Budget spokeswoman Linda Ricci said, "We are forging ahead with our plans." Reuter added that Clinton "proposed in his budget request for the 1999 fiscal year, which begins this October, that some $65.5 billion in 'lump sum' payments from the tobacco industry over five years be used for a variety of social and health programs, including biomedical research, child care and smoking cessation plans."

USA (4/10, A4, Page, Welch) said, " One reason President Clinton and congressional Republicans are so determined to seal a tobacco deal is that they already have decided how they want to spend the windfall it would bring."

In a WSJ (4/10, A10) column entitled "Pols Prove As Greedy As Big Tobacco," Paul Gigot said, "Everyone here claims that what they really care about is 'teen smoking.' And maybe there are five or six people left who really believe that. But for most politicians, this is about the mob psychology of a gold rush. The point is to avoid being trampled while grabbing a share."

Tobacco Trial Continues In Minnesota.

The AP (4/10, Karnowski) reported on the tobacco/Medicaid trial taking place in Minnesota, saying lawyers for the tobacco industry have filed a motion claiming Judge Kenneth Fitzpatrick "has demonstrated a pattern of bias against the defense throughout the 12-week trial." Chief Judge Lawrence Cohen "said he would review the defense motion, but did not indicate when a ruling would be announced." Testimony in the case is "scheduled to resume today."

LANGUAGE: ENGLISH

LOAD-DATE: April 10, 1998

2ND STORY of Level 1 printed in FULL format.

The New York Times

April 11, 1998, Saturday, Late Edition - Final

SECTION: Section A; Page 1; Column 1; National Desk

LENGTH: 1875 words

HEADLINE: Cooperation and Miscalculations On Shaping Tobacco Legislation

BYLINE: By STEVE LOHR and BARRY MEIER

BODY:

It started with an angry confrontation on a television news show.

The date was Jan. 15, and another batch of tobacco industry documents had just been made public. One R. J. Reynolds memorandum, from 1974, described teen-agers as young as 14 as "tomorrow's cigarette business."

That evening, Bruce Reed, President Clinton's domestic policy adviser, appeared along with Senator John McCain, Republican of Arizona, on "The News Hour With Jim Lehrer" to discuss youth smoking.

When Mr. McCain criticized the Clinton Administration for playing politics and dragging its feet on a tough cigarette bill, Mr. Reed angrily parried those charges. But he called the Senator the next day to offer the Administration's help in writing legislation.

"That was a watershed," Mr. McCain recalled last week, "when the White House really shifted into gear."

Mr. Reed's call marked the beginning of months of wary but widening cooperation between the Administration and leading Senate Republicans. And the terms of cooperation were soon set: the White House, preoccupied by accusations of sexual misconduct by Mr. Clinton and recalling its disastrous first-term experience trying to pass national health legislation, would not take the lead by proposing a tobacco bill, but would back Senator McCain's efforts.

For the tobacco industry, Mr. Reed's call amounted to the final break in what had been a worsening relationship with the White House. In negotiations that led to an agreement last June, the tobacco industry had included the Administration. But shortly after the deal was announced the White House had moved to distance itself from it.

Now the Administration was going further, agreeing to work with Republicans -- and, as it turned out, without the industry -- on a tougher bill. The Administration had calculated that public opinion and the political pendulum had moved still further against the cigarette makers.

Indeed, the negotiations on tobacco since Jan. 15 are partly a tale of the Administration's -- and the Republicans' -- recalculations of the industry's political power. But they are a story of the cigarette makers' calculations as well, in this case faulty ones of their own power and whom they needed to appease.

"They dramatically overestimated their ability to get their phone calls returned," Mr. Reed said.

The rapprochement between Mr. Reed and Senator McCain began a marathon series of meetings and negotiations involving lawmakers, the White House, public health officials, state attorneys general and trial lawyers that led to the Senate Commerce Committee's passage of a bipartisan bill on April 1.

While few people doubt that the legislation is only one step in a process that has an uncertain ending, the bill is now framing the escalating debate over the nation's tobacco policy, and has become the target of the tobacco industry's anger.

Companies Back Out,And Face Big Risks

The nation's five largest cigarette makers announced on Wednesday that they would no longer work for comprehensive legislation to regulate tobacco, and would vigorously fight the Senate bill.

"We signed on last year for a rational process that would make the tobacco industry smaller but acceptable," said Laurence A. Tisch, chairman of the Loews Corporation, the parent company of Lorillard, maker of Kent and Newport cigarettes. "But the industry has been demonized now and the process has been totally politicized. That's what the Senate bill reflects."

The industry also made tactical mistakes. While it included the White House in last year's negotiations, it excluded Congressional leaders. The industry assumed it had to work hardest to appease the White House, a potentially fierce antagonist. A Republican-controlled Congress, the industry assumed, could be counted on to support it.

That assumption proved to be wrong. "There was clearly a need to engage the leadership in Congress much earlier in the process," said J. Philip Carlton, the industry's chief lobbyist. "Part of our problem was that we had no one in Congress who felt any ownership stake in the June agreement."

Politically, the McCain bill -- approved by the Commerce Committee on a 19-to-1 vote -- demonstrates that tobacco is now seen as an issue on which tough action could pay off for both the President and Congress. And a major tobacco bill, if passed, could pay off financially by helping the Government balance its budget.

The bill has a price tag of $516 billion over 25 years, increases penalties if teen-age smoking does not drop, and leaves tobacco producers without some of the lawsuit protections promised in the June accord.

Without the industry's cooperation, advertising and marketing restrictions in the proposed bill might have to be dropped. Still, the big tobacco companies face daunting risks if they walk away from Congress.

The biggest risk is of a series of huge court judgments that could cripple the five cigarette manufacturers -- the Philip Morris Companies, RJR Nabisco Holdings Corporation, B.A.T. Industries, Loews and UST Inc., the parent company of U.S. Tobacco.

It was the industry's anxiety over the prospect of a rising wave of court judgments that prompted the companies to seek an accord with the state attorneys general last year. Within months, however, it was clear that the June agreement had been all but scuttled.

After a delay, Mr. Clinton refused to endorse the proposed settlement, choosing instead to sketch out his tobacco policy as a set of broad principles rather than offering a concrete alternative.

By the end of last year, dozens of tobacco bills had been introduced in Congress. Though some lawmakers like Senator Orrin G. Hatch, Republican of Utah, made runs to grab the leadership on the issue, other Republicans backed off, seeing tobacco legislation as a potential political cudgel that the White House and Democrats could use against them.

It soon emerged that the Senate Commerce Committee, headed by Mr. McCain, had the best chance to build bipartisan legislation, since it had jurisdiction over a broad range of issues, like marketing, labeling and liability.

Senator McCain, who has built coalitions on thorny issues, including campaign financing, seemed well-suited to the task. And as a man with Presidential ambitions, he was eager for the opportunity and the headlines that would result from shepherding a bill that could affect the welfare of millions of Americans.

Putting the Emphasis On the June Accord

By last fall, anti-smoking advocates like David A. Kessler, the former Commissioner of Food and Drugs, and C. Everett Koop, the former Surgeon General, had seized the public stage. As the Congressional debate began, the two continued to lobby behind the scenes with White House officials and lawmakers for tough legislation.

The industry's response was akin to paralysis. Despite decades of campaign contributions and highly paid lobbyists, few lawmakers saw any benefit in defending cigarette makers. And with industry lobbyists like Mr. Carlton insisting in Congressional hearings on the terms of the June accord, even independent figures associated with that deal began to lose their luster.

One apparent casualty was Michael A. Moore, the Mississippi Attorney General, who was a chief craftsman of the June agreement and clung stubbornly to it.

"The June-20-or-bust line wasn't helpful," said Mr. Reed, the Clinton adviser. "It was mistake for Mike Moore to hold to that line for so long."

For tobacco producers, one senior company executive said, the quandary was that the five companies involved in the June agreement had different financial conditions and views on tobacco regulation. As a result, despite repeated efforts to negotiate among themselves more attractive alternatives to the June accord, the companies could not reach a consensus.

By March, Mr. McCain had been endorsed as the point man on tobacco legislation by the Senate leadership. Until then, the Senator had been holding hearings on tobacco. But once in charge, he sharply accelerated the pace and began bargaining for a bill in earnest.

Mr. McCain and his staff met regularly with White House policy advisers, and sent the Administration list after list of questions.

Dr. Kessler came to Washington three times to advise Mr. McCain, who also met with Dr. Koop. State attorneys general, Wall Street industry analysts, trial lawyers, Treasury Department officials and Senate members from anti-smoking liberals to tobacco-state conservatives were all invited to talk.

Senator McCain reached out to just about everyone except the tobacco industry, reflecting the political reality that any bill that was viewed as being endorsed by the industry would be defeated.

Seeking Consensus On Sensitive Issues

The Senator moved ahead step by step to build a consensus for the bill. Enlisting the Administration's assistance was essential.

The economic impact on the industry, for example, was a concern. So Lawrence H. Summers, Deputy Secretary of the Treasury, estimated at a Commerce Committee hearing on March 24 that the bill's impact would be to cut industry profits by 23 percent, a significant but not catastrophic decline. The industry disputes the Treasury projections.

The bill's proposal to give the Food and Drug Administration sweeping new powers to regulate tobacco products was a politically sensitive issue. Mr. McCain delegated another Republican on the Commerce Committee, Senator Bill Frist of Tennessee, a heart surgeon, to write the F.D.A. provisions with Administration officials.

To get his bill out of the 20-member committee, Mr. McCain had to include provisions to make it palatable to senators of various stripes.

For example, Senator Wendell H. Ford, Democrat of Kentucky, demanded that the people who worked the thousands of tobacco farms in his state be protected. "If my farmers aren't taken care of," Mr. Ford told the committee, "this carpet's going to run red." So a fund of $28 billion is earmarked in the bill to aid tobacco farmers.

To be sure, the McCain bill is merely the new focus for debate on tobacco. The proposed legislation left many of the toughest issues for the next round before the full Senate. But with the bill, the debate about tobacco policy in America has entered a new stage -- one that few would have anticipated until recently, and one whose outcome is uncertain.

"There is no going back from this bill," said Matt Myers, a lawyer with the Campaign for Tobacco-Free Kids, a coalition of public health advocacy groups that helped negotiate last year's agreement. "This is a play whose ending isn't yet even remotely written."

New York Action Threatened

The New York Times, April 11, 1998

ALBANY, April 10 (AP) -- State Comptroller H. Carl McCall said today that he would try to use the power of the state pension system's stock holdings to prevent tobacco companies from abandoning settlement talks with Congress.

New York's pension fund, which has reached nearly $100 billion, owns more than $450 million worth of stock in tobacco companies.

Mr. McCall called on other institutional investors to pledge not to support the directors of tobacco companies that fail to return to negotiations.

LANGUAGE: ENGLISH

LOAD-DATE: April 11, 1998

1ST STORY of Level 1 printed in FULL format.

The National Journal

April 11, 1998

SECTION: THE WEEK; Pg. 792; Vol. 30, No. 15

LENGTH: 1592 words

HEADLINE: Letting Others Take The Lead On Tobacco

BYLINE: Michael Kelly

HIGHLIGHT:

Clinton dragged his feet on the June deal, PROMPTING lawmakers to ratchet up the penalties on Big Tobacco.

BODY:

This week, President Clinton began a familiar legislative dance. The subject was Social Security reform, necessary to deal with the great glut of baby boomer alte kockers that will swamp the system in the relatively near, but not immediate, future. Clinton would like to rescue Social Security for the next generation; this would join welfare reform and a balanced federal budget to form the Big Three of the Clinton domestic policy legacy. And, with strong bipartisan support on Capitol Hill, a legislative rescue is within the grasp of the 106th Congress, if not the 105th.

Accordingly, the President went to Kansas City, Mo., and . . . did not propose legislation. Instead, he laid out, in somewhat delphic terms, what he would accept in someone else's legislation. He seemed to rule out the more radical Republican proposals to wholly, or nearly wholly, privatize the system, saying, ''would I favor totally privatizing the system? No.'' He also seemed to rule out the standard Democratic response of simply hiking taxes, saying, ''I don't know anybody who thinks that we should try to preserve the status quo program with an increase in the payroll tax.''

And Clinton seemed to smile on the middle-ground approach that has been offered in the Social Security Solvency Act of 1998 by Democratic Sens. Daniel Patrick Moynihan of New York and Robert Kerrey of Nebraska. The Moynihan-Kerrey plan would--most significantly for a Democratic proposal--permit a measure of privatization, allowing workers to use the 2-percentage-point cut in the payroll tax for personal retirement savings accounts. ''Could you construct some system which also made allowance for private accounts?'' the President asked himself. ''I think you could, yes,'' he answered.

Clinton's approach here--not putting forward his own legislation, but rather laying out a few broad principles and waiting to see what emerges from Congress--is unusual in the larger context of presidential behavior, but it is usual with this President. Ever since the debacle of his first attempt at major legislation, the 1993-94 health care reform effort, Clinton has favored on major policy issues the Alphonse-Gaston approach he demonstrated this week.

This approach at times infuriates congressional leaders, yet it has won some victories, notably with welfare reform and omnibus crime legislation. It may work again with Social Security reform. Even Republican critics of Clinton's legislative style say the President is wise to resist the temptation to put forward his own, necessarily, polarizing legislation, and to let Moynihan and Kerrey take the heat for Democratic heresy. In the meantime, the President will lead a leisurely national discussion to acclimate the public to serious reform.

But there is a reason that more-conventional Presidents have favored the more conventional approach to legislation. In the absence of hard-pressing presidential leadership behind a single bill, things may fall apart, the center may not hold. That happened this week, in the collapse (at least for now) of what was to be one of the great domestic policy achievements of Clinton's second term, the historic regulatory agreement between the tobacco companies, Congress, the states and the federal government.

The deal that was hatched on June 20, 1997, was an ambitious creation. It called for the industry to pay out $ 368.5 billion over 25 years, including approximately $ 60 billion in punitive damages. This money would have been used to create a $ 25 billion trust fund for public health matters, to finance a tobacco-control program at $ 1.5 billion per year and to pay the states $ 15 billion annually for 25 years for costs rising out of tobacco-related illnesses. In addition, the companies would have been required to reserve $ 4 billion per year to pay for compensatory damages from individual lawsuits. Moreover, the industry agreed to accept the Food and Drug Administration's authority to regulate tobacco products as drugs; pay penalties of up to $ 2 billion a year for every year in which teen smoking failed to drop by agreed-upon rates (30 per cent in five years, 50 per cent in seven years and 60 per cent in 10 years); accept sweeping restrictions on advertising; fund a nationwide antismoking public relations campaign and programs to help smokers quit; and disband the industry's propaganda arms, the Tobacco Institute and the Council for Tobacco Research.

In exchange for accepting these punishments and restrictions, some of them clearly unconstitutional, the tobacco industry was to be granted a settlement in potentially bankrupting class action suits that had been brought by the states' attorneys general, and a ban on such suits in the future.

It is important to note four things about this settlement: It involved a remarkable surrender of rights and interests by the industry; it was barely reached, and only after lengthy and extremely difficult negotiations; it would have been the government's greatest victory in its long war against smoking; and it was arrived at with the direct involvement of, and at least implicit blessing by, the White House, in the person of one of the President's closest advisers, Bruce Lindsey.

Under these circumstances, one might have expected the President to quickly clasp the deal to his bosom, and to soon afterward send enabling legislation to Congress. Instead, the President gave mixed signals, saying that the deal was ''a terrific achievement,'' but calling for a 30-day review to determine whether it was tough enough.

The 30-day review took 90 days, and during that 90 days the White House, responding to pressure from anti-tobacco activists within and without the Administration, began chipping away at the deal.

On July 9, Clinton rejected as ''totally unreasonable'' a provision that would have required the FDA to prove, before it could order the industry to reduce nicotine levels, that such a move would not create a black market in high-nicotine cigarettes. On Aug. 15, White House domestic policy adviser Bruce Reed publicly confirmed that the Administration had rejected the penalties for insufficient drops in teen smoking as insufficiently punitive. On Sept. 16, the President said the agreement would have to be radically amended to allow FDA officials more power in regulating nicotine in cigarettes, and to more than double the fines on the industry for failing to curb teen smoking. All told, Clinton's amendments would increase the cost of a pack of cigarettes by $ 1.50, more than double the 62-cent hike proposed in June.

But still, in what The Washington Post called ''the White House's determination to keep its distance from a politically volatile issue,'' Clinton declined to send his own bill to Congress. This decision guaranteed that no bill would pass in 1997, and it set up a dynamic in which legislators competed to ratchet up politically popular punishments against Big Tobacco. The White House went along for the ride, and in February blessed a bill by Sen. Kent Conrad, D-N.D., that would impose a $ 1.50-per-pack tax on cigarettes over the next three years.

The Conrad measure was far more punitive than anything the industry had agreed to accept, and even Hill Democrats admitted it had no chance of passage. It was supplanted in the Senate Commerce Committee by a compromise measure worked out by Sen. John McCain, R-Ariz., and it was the 19-1 committee passage of the McCain bill last week that led to the announcement on Wednesday by four of the nation's five major cigarette manufacturers that they regarded the negotiations for a comprehensive tobacco deal as dead.

Small wonder. For what emerged from the combination of White House nonleadership and congressional one-upmanship was vastly worse for the industry than the deal it had agreed to--with, remember, White House involvement--in June. Instead of paying out $ 368 billion, the industry would have to fork over $506 billion over 25 years, the money to be raised by increasing the price of a pack of cigarettes over five years until it's up by $ 1.10 per pack in 2003. Protection against future class action lawsuits--the critical element in the June deal from the industry's point of view--would not be granted. Instead, damages against the industry would be limited to $ 6.5 billion per year, and even this cap was not guaranteed. The penalties for failing to cut teen smoking were increased to a limit of $ 3.5 billion per year. And, most extraordinary, the FDA would have been given the power to outlaw any nicotine-carrying or tobacco product entirely, unless Congress overruled the agency.

The early line around town is that the tobacco industry is only bluffing here, and that a new comprehensive deal will emerge because the industry has no choice. I'm not so sure. After the experience of the last year, it might seem to Big Tobacco that it would be better off letting Congress and the President do whatever they want, fighting the legislation in court, continuing to shift operations overseas--and waiting for 2000 in hopes of getting a White House it can do business with.

LANGUAGE: ENGLISH

LOAD-DATE: April 15, 1998

News Scoops

Critics Vocal About Bliley's Silence

By Jim VandeHei

Fearing that inaction on tobacco could cost the party dearly in the November elections, some Republicans are grumbling that House Commerce Chairman Tom Bliley (R-Va) has been conspicuously silent on the issue that is dominating the Congressional agenda.

"Had he made his intentions clear, perhaps the tobacco industry would not have pulled up stakes," said a senior aide to a Republican on the Commerce panel. "We have no idea what he is doing. None of us on the [committee] do."

Senate Majority Leader Trent Lott (R-Miss) publicly took Bliley to task last week by saying, "Bliley will have to show some leadership on this. He hasn't done it yet."

But Bliley's allies note that he ignored his critics two years ago by implementing a similar closed-mouth strategy to pass a sweeping reform of the telecommunications industry. Bliley's allies insist that he can't be pigeonholed as a tobacco defender just because he's received $160,000 in industry campaign contributions since 1991 and his Richmond district is home to thousands of Philip Morris employees.

Bliley will push a strong anti-smoking bill, his friends say, but he won't try to extinguish the industry.

"Tom's style is close to the vest, and he is more comfortable with that, and it serves him well," said Rep. Howard Coble (R-NC), one of the chairman's closest friends. "I think Bliley has always been synonymously associated with the tobacco industry, and [it has been] synonymously concluded that this is the number-one spokesperson for tobacco. I always regard him as the lead dog when it comes to the tobacco issues."

Indeed, it was Bliley who angered the tobacco industry by subpoenaing 39,000 pages of documents last year. And Bliley's friends say he has been strategically quiet as he reviews those damaging documents, puts the finishing touches on his own tobacco bill, and waits for President Clinton to blink first.

But Bliley's style is precisely what is irritating some GOP colleagues, especially Members on the Commerce Committee and some Republicans on House Speaker Newt Gingrich's (R-Ga) task force on tobacco.

"You never know what Tom is doing," said one source who attends the task force meetings. "There is criticism of him by Newt and others in leadership that he doesn't keep us informed of his plans."

Even Rep. Jim Greenwood (R-Pa), a member of the GOP task force who has met several times with Bliley to discuss the issue, conceded, "He has not shown his cards to me either."

Several Commerce Committee and leadership sources said Bliley and others need to present an anti-tobacco proposal soon or GOP candidates could suffer in November.

"We need to show we're not in the industry's pocket," a Commerce Committee source said.

Bliley has shown little public interest in the global tobacco settlement, opposes the bill crafted by Senate Commerce, Science, and Transportation Chairman John McCain (R-Ariz), but has yet to offer his own suggestions for a comprehensive bill to regulate tobacco.

But Rep. Deborah Pryce (R-Ohio), head of the House task force, said Bliley is content to let the Senate strike first before calculating which direction House Republicans should head.

"It's always been the House game plan to watch the Senate and learn from their experience on this," Pryce said. "[The House] is a much more unwieldy body and by definition anything this huge will be much more difficult to get through the House than the Senate. Now that we have the benefit of their experience, the time has come for our chairmen to start to move."

Greenwood voiced support for Bliley's approach, too. "I think the first thing a good leader does is go out and gather information and not act precipitously," he said. "Bliley is hesitant to let Members climb out on a limb and have the President saw it off."

Bliley, his supporters argue, did rip into tobacco company executives last year for withholding internal documents that contained clandestine plans to target youth smokers. And last week he was one of many lawmakers who demanded access to even more sensitive documents on Big Tobacco's activities.

But, as Coble explained, Bliley remains an ardent defender of tobacco growers, manufacturers, wholesalers, and distributors. His allegiance to the industry likely will preclude Bliley from embracing Senate Republicans' version of anti-tobacco legislation , his friends say.

Coble, who had spoken with Bliley earlier in the day, said last Thursday: "I think he would agree with me that the latest deal is a recipe for bankruptcy for the tobacco industry."

Sources say Bliley is intent on passing a bill to reduce teenage smoking. But he has reservations about granting immunity to tobacco companies, raising taxes on cigarettes, and passing any legislation that adversely impacts tobacco growers, his friends said.

That won't please anti-smoking advocates, but it places Bliley in the mainstream of the House GOP Conference. Several GOP sources and Members intimately involved in crafting the GOP's tobacco plans said there's little consensus inside the Conference to do anything beyond a teen-smoking ban and regulations to keep cigarette away from children.

As Pryce explained: " We have the no-new-social-program people, the no-new-taxes people, the no-money-to-trial-lawyers people, [and] the no-immunity people," so it will be difficult to move a larger bill.

Instead, Bliley and GOP leaders are looking at linking an anti-teen smoking bill to a politically popular anti-drug package and calling it a Congress, according to sources.

"That's where we have consensus, and that's the direction the [tobacco task force] is heading," one House leadership source said.

"My recommendation is to keep staking out our position: We are committed to reducing smoking, especially for teenagers, and blame the industry for costing us millions of dollars in heath care costs," Greenwood said. "That's all we can do now."

Bliley himself said last week, "I hope Congress will ultimately agree on a tough bipartisan plan to reduce teen smoking. We have lacked strong leadership from the President. Now we don't have the cooperation of the tobacco industry. That is unfortunate, but not a reason for inaction."

Bliley, however, has never been interested in acting too harshly.

"I am proud to represent thousands of honest, hard-working men and women who earn their livelihood producing this legal product," Bliley said at a 1994 hearing. "And I'll be damned if they are to be sacrificed on the altar of political correctness."

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Front Page Stories

The Hill - Wednesday, May 20, 1998

Senate Dems say Clinton ignored them on tobacco
By Laura Dunphy and Philippe Shepnick

Continued from the front page.

They were incensed over the White House's deal-cutting with Sen. John McCain (R-Ariz.), principal architect of the tobacco bill and were concerned that the White House would cut a deal with McCain that would preclude any Democratic input. They particularly objected to White House attempts to dissuade Democrats from supporting a $1.50 per-pack increase.

The hour-long meeting, in the Lyndon Baines Johnson Room off the Senate floor, was described by one Democratic staffer as "vocal, but not shouting." The senators were most concerned over raising caps and liability, most specifically an increase in the price of packs of cigarettes.

"I wasn't frustrated," Biden told The Hill. "What I did was told the administration that they should make clear exactly what they agreed to with McCain" so the Democrats would be prepared when the bill came to the floor.

The Senate Democrats' anger brought to mind the outrage of House Republicans who were ignored by President Reagan, who frequently cut deals with the Democrats who controlled the House throughout his tenure.

One of the sticking points was whether the Clinton administration's cooperation with McCain would undermine the more stringent $1.50 per-pack increases favored by some Democrats, a staffer said.

Bowles said that Democratic senators had been involved in the negotiations, and Minority Leader Tom Daschle (D-S.D.) had been informed every step of the way, according to a White House spokesman.

McCain's bill, which calls for a per-pack increase of $1.10, was supported by the president. Other senators, such as Kent Conrad (D-N.D.) who sponsored an amendment to raise the price increase to $1.50, didn't understand why the administration favored the $1.10 proposal.

A source at the Finance Committee said that until Thursday morning there was "no inkling that the White House would not be supporting the $1.50." Nor was there any idea that Conrad's amendment would be proposed that day, as Senate Minority Leader Tom Daschle (S.D.) had been equivocating on bringing the amendment forth.

Some senators were surprised when Conrad's bill mandating a $1.50 was passed that day at a Finance Committee hearing, a staffer said. Some senators were hoping it would have been introduced later, which would have given it a better chance of remaining in the bill.

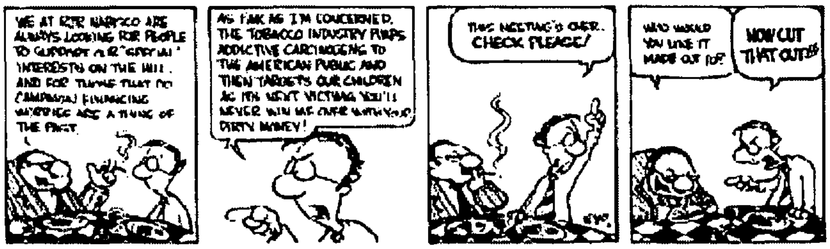
The point is moot, since Majority Leader Trent Lott (R-Miss.) deleted the amendment Monday night. Lautenberg and Kennedy plan to introduce their own $1.50 per pack tax increase proposal tomorrow.

Regardless, the issue raised some heads - and voices - at the Bowles meeting. "Lautenberg was very vocal that the administration was stuck on a $1.10 and that he wouldn't go to a $1.50. Bowles said that's where the president has been for six months. That's where the president is," the staffer said. Bowles added that the president would support the $1.50 increase if it passsed with such a provision.

Some felt that the Clinton administration had left Democrats out to dry. One staffer said "the triangle offense of the president (putting himself between the Republicans and Democrats) has made Democrats unhappy for a long time."

One staffer went even further. "This is nothing about triangulation, it's strangulation. This will keep the Democrats in the minority party for the next 10 years. What's the point of having a meeting with Bowles if he's gonna go back and double deal ya?"

One Democratic staffer noted that Bowles' trip to the Hill marked a significant effort to win back the favor of the influential Democrats the White House alienated on this issue. Bowles brought with him administration figures, such as Larry Stein, assistant to the president and director for legislative affairs, Bruce Reed, assistant to the president for legislative policy and his deputy Elena Kagan.



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Questions or comments can be sent to jyngling@hillnews.com

SN News

Tuesday, 9 June 1998

American apathy

Momentous tobacco legislation draws little interest

By Bruce L. Dusenberry

What does it take to capture the attention of people in this country? A $195 million Powerball jackpot certainly piques our interest. So does any news about Ken Starr's investigations and the alleged indiscretions of President Clinton. Indeed, the final episode of ``Seinfeld" was one of the most anticipated events of the year - a national celebration of an irrelevant television show about nothing.

The United States Senate is now debating what is probably the most significant public health legislation of this century, yet many of us are oblivious to this momentous occurrence. There seems to be little public awareness of the historic opportunity that exists today for the passage of meaningful national tobacco control legislation.

Tobacco kills about 400,000 Americans each year, accounting for one of every five deaths in this country. More than 5 million of our children under age 18 will eventually die from smoking-related diseases, including cardiovascular diseases and stroke. After declining in the early 1970's, smoking among high school seniors is now at a 19-year high. More than one out of three high school seniors smokes. Every day another 3,000 young Americans start smoking. These are not just abstract numerical facts. They represent thousands upon thousands of destroyed lives.

In early April, the Senate Commerce Committee approved a comprehensive anti-tobacco bill on a bipartisan 19-to-1 vote. The chairman of the Commerce Committee, and sponsor of the legislation, is Arizona's Sen. John McCain. The bill sets forth a complete package of tobacco control measures, financed by tobacco industry payments of more than $500 billion over 25 years. It establishes full Food and Drug Administration authority over tobacco products and places tough restrictions on youth access to tobacco products. The bill imposes penalties on the tobacco industry if it fails to meet goals to reduce teen smoking rates, and it puts strong limits on the industry's ability to market and advertise to children. Most importantly, the legislation would raise the price of cigarettes by $1.10 over five years.

McCain's legislation is an excellent starting point. It is clear, however, that more should be done. Former Surgeon General C. Everett Koop and others, including the American Heart Association, are pressing for an amendment that would raise the price by $1.50 per pack over two to three years. Recent polls show that over two-thirds of Americans favor raising cigarette prices by $1.50 to reduce youth smoking.

Stronger measures are also needed to protect people from the hazards of second-hand smoke. States cannot be allowed to opt out of clean indoor air provisions. In any event, the provisions of the original bill must not be weakened. Of course that is exactly what some members of Congress, who have accepted substantial financial contributions from the tobacco companies, are trying to do.

Make no mistake about it. The tobacco companies are keenly aware of the threat to their profits if this legislation is adopted. They are focusing their considerable resources on a multi-million dollar deceptive ad campaign attacking McCain's efforts as an alleged plot to burden the average American with higher taxes and to create more government bureaucracy. We cannot allow the tobacco industry to sidetrack vital health issues affecting the lives of our children by creating willful distortions about ``big taxes" and ``big government."

We know now of the tobacco industry's long record of lies about the harmfulness of its products, about its addictive nature, and about marketing tobacco to children. The current ad campaign is just another chapter in the long history of tobacco industry distortions calculated to perpetuate the epidemic of underage smoking.

The monies raised by public health charities like the American Heart Association, the American Cancer Society and the American Lung Association are primarily used to fund medical research to fight the diseases caused by smoking. These organizations do not have the financial resources to purchase advertising on the same scale as the tobacco industry. What public health organizations do have is the support of the American people and, most importantly, American voters.

Majorities in both houses of Congress and the administration have focused unprecedented attention and resources on crafting meaningful, sustainable legislation. As the debate progresses over the next several days the politics of big tobacco money and of industry deception will place tremendous pressure on our elected representatives to water down this bill or prevent its passage altogether. We must not allow that to happen.

If we could set aside time to purchase our Powerball tickets and watch the final episode of ``Seinfeld," then surely each of us can make the small effort to pick up the phone and call our senators to urge support of the tobacco legislation and the amendments designed to strengthen it. The telephone numbers are: Sen. McCain (202) 224-2235 and Sen. Kyl (202) 224-4521. Tell them you want strong legislation to protect the lives of our children. Do it today.

Tucsonan Bruce L. Dusenberry is secretary of the American Heart Association, Desert/Mountain affiliate.

KENTUCKY CONNECT

A service of the Lexington HERALD-LEADER

Fertilized by money

Industry's 'grass-roots' campaign choking tobacco bill

Herald-Leader Editorial Board

If you're able to spend enough, you will get Congress's ear.

Big Tobacco is proving this unfortunate truth yet again in its attack on the anti-smoking bill that Majority Leader Trent Lott has pronounced "dead in the water."

This time, though, it isn't Big Tobacco's contributions to political war chests that are turning the tide. Despite the millions that cigarette companies have poured into congressional campaigns, Congress was poised to approve a hefty cigarette tax increase to deter new smokers. Public opinion was drowning out Big Tobacco's money -- for a while.

Then the tobacco companies started putting their millions -- $25 million to $50 million, according to the Los Angeles Times -- into drumming up a "grass-roots" movement against the bill. This tactic of orchestrating public reaction is one the health-care industry has used nationally and in Kentucky to fight insurance reforms.

In their ad campaign, cigarette makers are trying to shift attention from their documented wrongs to the perceived wrongs of the federal government. And they've added a new twist: a toll-free number that people can use to send a telegram or call a Senate office. By the middle of last week, 150,000 people had gotten in touch with their senators, according to the Los Angeles Times. "In terms of sheer size and scope, the tobacco industry has taken this technique to a new level," Democratic pollster Mark Mellman told the newspaper.

This trumped-up outpouring of "public" opposition, along with the wrangling over tax cuts, has provided enough cover for the elected minions of Big Tobacco to resume the position in which they feel most comfortable -- deep in the pockets of the cigarette-makers.

Our own Sen. Mitch McConnell is one of the snuggest in Big Tobacco's deep pockets since he raises money not just for himself and his Kentucky proteges, but for all Republican Senate campaigns as chairman of the National Republican Senatorial Campaign Committee.

The cigarette companies don't like Sen. John McCain's bill because

The cigarette companies don't like Sen. John McCain's bill because they think it will cost them too much money. News that the bill is floundering sent Philip Morris stock surging yesterday.

But the real problem with the McCain bill is that it's too mild to be effective. The bill proposes a cigarette tax increase of $1.10 a pack over five years. But it will take a price shock of closer to $1.50 a pack over a shorter time to really cut down the number of new smokers.

The push last week by both parties to attach an income tax cut to the tobacco bill also is troubling. It makes no sense to tie a recurring item, such as a tax cut, to a revenue source that you're trying to diminish. And the goal should be to diminish cigarette sales.

As for tobacco farmers and the communities that depend on them, well, the death of the McCain bill would leave them dangling farther out on a limb than ever. McConnell has written off the tobacco price-support program as politically hopeless. Sen. Wendell Ford, whose LEAF Act would have continued the program and financed education for tobacco farmers and rural development for tobacco-dependent communities, is retiring this year. Kentucky farmers won't have Ford's considerable clout backing them in future congressional fights.

Without McCain, or some comprehensive package that includes a cigarette tax increase, tobacco communities will be at the mercy of the cigarette-makers as the demand for U.S.-grown leaf declines.

Editorials

License-to-kill lobby is winning tobacco fight

It is almost unbelievable: Senate leader Trent Lott says federal anti-tobacco legislation is "dead in the water."

Here is a product that kills 450,000 Americans annually, millions more abroad.

Associated health-care costs are in the billions, much of that born by taxpayers -- for Medicare, Medicaid and military medicine.

Texas and three other states have taken Big Tobacco to court, settling before trial for some $30 billion in Medicaid reimbursements.

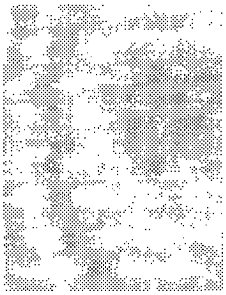
During discovery for those trials, the tobacco cabal's own secret files were exposed, showing the industry utilized ingredients and marketing schemes to hook teen-agers, and quashed its own research that said nicotine is addictive and tobacco kills.

Remember the seven tobacco chief executives telling a congressional committee under oath in 1995 that cigarette smoking isn't addictive?

What has happened to the anti-tobacco legislation offered by U.S. Sen. John McCain, R- Ariz., is insulting.

After the bill, S 1415, sailed through the Commerce Committee, 19-1, in April, Big Tobacco launched a $100 million campaign, including advertising and political donations, to destroy it.

The bill now is weighed down by amendments, such as one to cut taxes attached by Texas U.S. Sen. Phil Gramm, that are designed to build opposition to the



bill, not improve it.

The McCain bill is about health and paying for tobacco- caused health care. It is not about taxes. But apparently, as Lott says, the license-to-kill lobby is winning.

Monday, June 8, 1998

News Scoops

Capitol Sting Shows Smoking Problem

Teen Buys Cigarettes in House, Senate Shops

By Amy Keller and John Bresnahan

Jennifer Tahan, a 15-year-old high school student from Silver Spring, Md., said she was nervous when she walked into the Pizza Plus located in the basement of the Rayburn Building and asked for a pack of Kool cigarettes -- but neither her age, nor her nervousness, prevented the sale.

Tahan, in fact, was able to purchase cigarettes at five out of seven locations she visited in the Capitol complex last week in a sting operation conducted by the America Lung Association with the help of Rep. Henry Waxman's (D-Calif) staff.

"The US Capitol should be an example, not an embarrassment," said Waxman, the House's most ardent anti-tobacco activist. "Most Americans would be shocked that in the House of Representatives, a 15-year-old girl could go to different locations and buy cigarettes."

But John Czwartacki, a spokesman for Senate Majority Leader Trent Lott (R-Miss), blasted the Waxman-ALA sting operation.

"I wonder: What other illegal acts did Rep. Waxman participate in?" asked Czwartacki. "Has he been asking [the teens] to buy drugs in DC? I wonder if Rep. Waxman contributed to the delinquency of a minor."

House Oversight Chairman Bill Thomas (R-Calif) said in a prepared statement that he was alarmed by the results.

"I have instructed House officers to look into this matter immediately to ensure that the proper action is taken to remedy any problems," he said.

But Thomas also attacked the political nature of the sting operation, saying he asked for a copy of the ALA report but was rebuffed.

"I am concerned that any party with information that shows that our policy has not been followed, and will not share that information with the responsible authorities, may want to make a political statement rather than protect the health of our youth," said Thomas.

The results of the sting surprised officials at Guest Services Inc., the Fairfax, Va., company that operates several of the Capitol facilities targeted in the operation.

"It is certainly not our policy to do that," said Guest Services spokesman John Fish of allowing teens to buy cigarettes. "If we need to investigate our policies and take any actions to strengthen them, we will certainly do that."

Tahan's experiences in trying to buy cigarettes inside the House, the Senate and the Capitol are all detailed in a report to be released today by the ALA.

Besides the Pizza Plus, Tahan was also able to easily purchase cigarettes at: the Rayburn cafeteria, where she bought a pack of Virginia Slims; the Cannon Carryout, where she bought a pack of Newports; the Senate sundry shop located between the Hart and Dirksen Buildings, where she bought a pack of Camels; and the Senate Refectory, where she purchased a pack of Marlboro Lights.

The two sting operations were run this week and last.

Only cashiers in the Capitol Carryout and in the Senate sundry shop, which is located between the Senate Russell and Dirksen Buildings, asked the teenager her age and refused to sell her cigarettes. On one of those occasions, Tahan recalled, a Capitol policeman was present.

That same day, another 15-year-old volunteer working for the ALA attempted to buy cigarettes at two locations in the Senate complex but was stopped by clerks.

In a follow-up operation this week, a teenage volunteer was able to buy a pack of Camel Lights at one of two stores in the Senate, as well as purchasing a pack of Marlboros in the Capitol building itself.

Under federal law, teenagers are not legally allowed to purchase cigarettes until they are 18. Retailers are required to ask for identification with a birth date of anyone who is 27 years old or younger.

District of Columbia regulations on cigarette sales to minors largely mirror the federal law.

The American Lung Association's experiment also turned up the fact that there is still one cigarette vending machine in the House -- despite the fact that the GOP leadership supposedly removed all cigarette vending machines when they took control of Congress in 1995.

ALA officials found a vending machine in the basement of the Rayburn Building near the banquet rooms. The machine, which also sells snacks and candies, has two shelves devoted to $2 packs of cigarettes.

Although the cigarette shelves were empty when a Roll Call reporter checked it out on Tuesday afternoon, a House employee boasted, "It's the only vending machine that sells cigarettes in the House."

Thomas vowed to investigate the vending machine controversy.

"Soon after the Republicans won control of Congress [in 1994], we eliminated all cigarette vending machines in public places to keep cigarettes out of the hands of children," he said. "The sale of cigarettes to minors is not only illegal but intolerable."

Christina Martin, spokeswoman for House Speaker Newt Gingrich (R-Ga), added, "Since taking control of the House of Representatives four years ago, which is, by the way, long before Democrats converted tobacco from a serious health issue into an excuse to raise taxes, Republicans have taken proactive steps to prevent any and all teen access to cigarettes within the Capitol. Should this alleged study be confirmed, the Speaker is certain Chairman Thomas and the CAO will act immediately to address the situation with their contractors."

Carter Cornick, spokesman for Sen. John Warner (R-Va), chairman of the Senate Rules and Administration Committee, was unhappy with the results of the ALA sting.

"There's no room for mistakes in matters like this," said Cornick. "The Rules Committee will be consulting with the Architect [of the Capitol] to make certain they are monitoring the sale of tobacco products in full compliance with the law."

According to the ALA report, more than 60 percent of youngsters ages 12 to 17 buy their own cigarettes. Of those teenagers trying to buy cigarettes, almost half claim they're never asked for identification.

Waxman said he was astounded that on five out of nine occasions a teenager was able to purchase cigarettes on Capitol Hill.

"It's incredible to think that a 15-year-old could buy cigarettes so easily," said Waxman. "It's completely unacceptable. Congress owes a responsibility to the pages, their parents and thousands of schoolchildren who visit or intern here every year to enforce the law."

Waxman added, "Almost every Member of Congress has said we should not be selling cigarettes to kids around the country. We haven't passed a new law to add teeth to that, but the place we do closely control it is the House and Senate."

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September 1, 1998

Is Tobacco Industry Playing Politics With Issue Ads?

By JEFFREY TAYLOR
Staff Reporter of THE WALL STREET JOURNAL

WASHINGTON -- In late June, GOP Sen. Mitch McConnell of Kentucky told his colleagues the tobacco industry would run television ads to support senators who had voted to kill an antismoking bill.

Since then, the industry has continued an unprecedented barrage against the measure and any effort to revive it. In one ad, a voter pledges "to remember this fall what the politicians do this summer."

Tobacco Negotiations to Resume After Massachusetts Walks Out

With such ads, analysts and political consultants assert, the industry is straying close to the line separating legitimate issue advocacy from political advertising. "It's remarkable how clearly political" the recent ad is, says Kathleen Hall Jamieson, dean of the Annenberg School of Communications at the University of Pennsylvania and author of a study on tobacco advertising. "This ad is telling people to consider voting against candidates who supported the bill."

The distinction between issue advertising and political ads is an important one: The former are unregulated and largely unreported, while the latter are governed and limited by election laws. The Campaign for Tobacco-Free Kids, an antismoking group, has complained to the Federal Election Commission that the industry campaign violates election laws, and the Justice Department is reviewing a request from Senate Democratic Leader Tom Daschle of South Dakota for a formal investigation.

Big Tobacco's Ad Campaign

The Message ...

Excerpts from television ads against Senate legislation to regulate and increase taxes on cigarettes:

- "Washington's tobacco legislation -- What's in it for you? Half a trillion dollars in new taxes ... "
- "... lots of money for new government bureaucracy ... But remember, it is your money they are giving away."
- "I'm going to remember this fall what the politicians do this summer." [woman facing camera]
- "At election time, the politicians are always telling us they're against taxes and for the working people. Well, now they have a chance to prove it before the elections." [man at lunch

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And the Markets

Top five markets for tobacco ad buys on noncable television April 1-July 18, 1998, in millions of dollars

Atlanta	$1.53
Detroit	1.38
St. Louis	1.03
Denver	0.94
Las Vegas	0.94

Sources: Annenberg Public Policy Center of the University of Pennsylvania, National Journal and Strategic Media

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Tobacco industry spokesman Steve Duchesne says the purpose of the advertising "was to defeat bad legislation." Tobacco makers continue to advertise, he says, "to ensure that the industry's view stays out there and to keep similar legislation from being resurrected."

Nationwide Campaign

The industry's campaign is nationwide, targeted, at various times, at 30 to 50 major television markets. From April 1 through July 18, its top five markets of choice included Atlanta, Denver and St. Louis, where Republican senators who opposed the bill are up for re-election, according to numbers compiled for National Journal by a broadcast research firm called Strategic Media.

Another of the top five markets is Las Vegas, where Democratic incumbent Harry Reid, who supported the tobacco bill, is in a tight race for re-election. The fifth top market is Detroit; Republican Spencer Abraham isn't up for re-election, but he backed a version of the bill in the Commerce Committee before opposing the final version on the Senate floor.

"It's more than a coincidence that the top spending happens to be in states where Senate races are the closest and members voted to kill the tobacco bill," says Matthew Myers, executive vice president of the Campaign for Tobacco-Free Kids. The tobacco industry won't say how it chooses where to concentrate its advertising.

Regardless of the industry's intentions, its ads have had the effect of helping to neutralize tobacco as an issue in some Senate races, analysts say. In Colorado, Sen. Ben Nighthorse Campbell was one of the GOP moderates antitobacco activists were counting on to support the antismoking legislation. In the end, however, Sen. Campbell opposed the bill; it died in June, when the Senate failed by three votes to muster the 60 needed to end debate on the measure.

Sen. Campbell is a frequent recipient of tobacco-industry campaign contributions, and his Democratic opponent, Dottie Lamm, has tried to make an issue of them and of his vote to kill the bill. But tobacco hasn't emerged as an effective issue for Ms. Lamm, and some consultants believe tobacco-industry advertising is among the reasons why.

Big-Government Boondoggle

The industry advertised heavily in the Denver television market against the tobacco bill, branding it a big-tax, big-government boondoggle. "The tax message worked," says Floyd Ciruli, president of Ciruli Associates, a nonpartisan Denver polling firm. "The ads reinforced the substantive and strategic problems the bill had, and the issue has been neutralized in Campbell's race."

Stuart Roy, Sen. Campbell's campaign manager, says the senator opposed the tobacco legislation "because he thought it was a bad bill" and denies the ads have been of much help in the senator's campaign for re-election. "I probably watch more TV than anybody, and if I haven't seen them, I don't see how they could be giving us much help," Mr. Roy says.

The Justice Department, in a written response to Sen. Daschle's request for an investigation, said it is "presently examining" the allegation that tobacco companies "may have promised favorable political advertising in exchange for a senator's vote on specific legislation." The allegation, according to the letter from L. Anthony Sutin, an assistant attorney general, raises "concerns under the bribery and gratuity statutes" of federal law. But Mr. Sutin's letter said the department hasn't yet determined whether a formal investigation is warranted.

No Apologies

Sen. McConnell, who heads the Senate GOP campaign committee, played a prominent role in the tobacco bill's demise, his Republican colleagues say, advising Senate Majority Leader Trent Lott of Mississippi that he could kill the measure without fear of voter reprisal. In June, in an interview with The Wall Street Journal, Sen. McConnell made no apologies for telling fellow Republicans that the industry would advertise to support those who voted against the bill, saying that such ads "would be generally helpful to people who decided to kill this bill as a big tax increase on working Americans."

A spokesman for Mr. McConnell said this week that the senator told fellow Republicans that cigarette makers "would continue to fight for their interests, and they have."

The industry says it wasn't the only party in the tobacco debate that tried to influence the legislative process through advertising. The Campaign for Tobacco-Free Kids ran ads in newspapers that named individual lawmakers and framed their votes on the issue as a choice between children and big tobacco. The group's Mr. Myers counters that, unlike the industry ads, his group's ads "were geared entirely to influence public opinion with regard to an upcoming vote and not with an eye to influencing electoral politics."

The tobacco industry has spent tens of millions of dollars on its campaign against tobacco legislation, and the success of the issue-oriented ads appears likely to spawn similar efforts against other measures. Sen. Daschle, in his letter to the Justice Department, noted that the health-insurance industry is running issue ads opposing managed-care overhaul. "Unless a prompt inquiry is undertaken," he said, "I fear that these practices will constitute a trend and result in yet another loophole in our campaign-finance laws."

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Dark Secrets of Tobacco Co. Exposed

By Todd Lewan
AP National Writer
Saturday, September 12, 1998; 11:25 a.m. EDT

Inside the restricted laboratory compound on the south coast of England, five senior scientists for B.A.T. Industries, the world's second-biggest cigarette maker, were devising ways to make it harder for people to quit smoking.

At the start of the ``Brainstorming" session on April 11, 1980, Dr. Robin A. Crellin, the team research leader, offered an insight. ``B.A.T. should learn to look at itself as a drug company," he said, ``rather than a tobacco company."

Just eight months earlier, B.A.T. scientists had laid out some basic assumptions about cigarettes. An Aug. 28, 1979, memo reads:

``We are searching explicitly for a socially acceptable addictive product involving: A pattern of repeated consumption; a product which is likely to involve repeated handling; the essential constituent is most likely to be nicotine or a 'direct' substitute for it."

Public disclosure of once-secret industry documents has shown that Big Tobacco privately considered tobacco addictive and harmful at least four decades ago, even as it brushed aside claims that it manipulated nicotine in cigarettes to hook smokers.

Now, a review by The Associated Press of thousands of B.A.T. documents -- some stamped ``CONFIDENTIAL," ``SECRET," and ``S-H-R-E-D" -- offers new insight into the scale and sophistication of efforts to keep millions of users hooked on nicotine, and the motives driving a project that created a more addictive tobacco.

Taking the reader inside the once-impregnable industry, the papers disclose:

-- Why B.A.T. lost its position as the world's No. 1 cigarette maker to Philip Morris and its Marlboro brand in the 1960s (short answer: a nicotine breakthrough).

--Why B.A.T. and its affiliates spent 17 years and tens of millions of dollars to create a new, nicotine-rich, harder-to-kick tobacco (to outdo Marlboro's nicotine technology and to produce more nicotine at lower cost).

-- How vital it was to the industry to forestall broader government regulation of tobacco products -- so vital that B.A.T.'s scientific and marketing efforts eclipsed reports by company researchers on the health dangers of nicotine.

B.A.T., formerly British American Tobacco, did finally develop its super-tobacco, a genetically altered variety with the code name Y-1.

This high-nicotine tobacco is used today by Brown & Williamson Tobacco Corp., B.A.T.'s American subsidiary and the third largest U.S. cigarette maker. Y-1 is in nine brands sold in the United States: Prime, Summit, Raleigh King Size, Raleigh 100s, Pall Mall Plain King Size, Lucky Strike Plains, Raleigh XLP, Private Stock and Richland.

B.A.T. declined to comment on the documents, collected for Minnesota's recently settled lawsuit against cigarette makers. The British conglomerate referred questions to Brown & Williamson.

Dr. Sharon Boyse, director of scientific communications at Brown & Williamson, said many of the research reports represented pure science with ``no application in a commercial sense."

After being read passages from several documents, Boyse remarked: ``A lot of these studies are experimental -- to try to understand the underlying process of smoke chemistry -- and may not necessarily turn into products."

However, the 5,000 pages of memos, letters and reports -- pulled by the AP from among 7 million B.A.T. documents made public at the Minneapolis tobacco document repository -- show that Y-1 tobacco became more than a theory.

The papers outline Y-1's creation, detailing not only the nuts-and-bolts science but the breezy chat at gatherings of researchers in locales such as Rio de Janeiro and Sydney, and the private strategy sessions of B.A.T.'s highest executives in London.

These are the Y-1 papers, and this is the story they tell.

The wording was as dry as a warning label on a cigarette pack.

But the conclusion of B.A.T. nicotine report No. RD-437-R became the basis for research that led to the invention of Y-1 tobacco.

It read: ``Increased smoker response is associated with nicotine reaching the brain more quickly."

It meant: The faster nicotine reaches a smoker's brain, the bigger the drug rush -- and the more likely the smoker will come back for more.

Dr. J.D. Backhurst, who delivered the report on Sept. 30, 1966, at B.A.T.'s laboratory in Southampton, England, had confirmed that nicotine exists in two chemical forms -- not one, as had been generally assumed.

The first is the ``bound" form, which the body has trouble absorbing. The other is the ``free" form, which passes instantly through the mouth, throat and lungs and into the bloodstream. Free nicotine reaches the brain faster, and, Backhurst demonstrated, gives the smoker a more addicting ``kick."

If B.A.T. wanted to make it tougher for people to give up its cigarettes, perhaps all the company needed to do was increase the free nicotine in them.

Philip Morris, B.A.T.'s competitor, already had discovered that by adding ammonia to its cigarettes, it could increase the ratio of free nicotine, and consequently the popularity of its Marlboro brand. In a few years, sales of Marlboro, with ammonia added, propelled Philip Morris past B.A.T. to become the world's No. 1 cigarette manufacturer.

B.A.T. would research and use ammonia technology, too. To this day, it says ammonia was added to increase flavor. But the Y-1 papers show the company didn't want to just follow Philip Morris' innovations -- B.A.T. wanted to go one up on its rival.

To do that, it needed to know more about nicotine.

So B.A.T.'s scientists experimented with mice, squirrel monkeys, beagles and mechanical mouths. They stuck electrodes on adult smokers and measured changes in their brain waves and heart rate.

They swapped findings at conferences held wherever B.A.T. had overseas subsidiaries: Germany, Italy, Australia, Canada, Brazil and the United States.

The objective was to ``make the administration of nicotine better," wrote Dr. S.J. Green in a March 2, 1967, memo. That meant ``making the administration pleasanter or more convenient" with fewer ``undesirable physiological side effects."

The Y-1 papers show B.A.T. scientists already had learned that nicotine -- not just tar, as had been thought -- did bad things to people's arteries, hearts and brains.

``Certain medical studies would seek to blame nicotine for cardiovascular disease," Dr. D.J. Wood, a senior B.A.T. scientist, wrote for a nicotine presentation to B.A.T. executives in Chelwood, England, in September 1969.

Most of the studies were B.A.T.'s own. Later B.A.T. research turned up something even uglier -- that nicotine might contribute to cancer.

Notes from a Feb. 5, 1979, research conference in England read: ``In the B14 experiment using three levels of nicotine citrate, the high nicotine is more tumorigenic (tumor-creating) and possibly more malignant."

Nine years later, an abstract of another B.A.T. study, ``Mutagenicity of Cigarettes Containing Added Nicotine," suggested a link between nicotine and carcinogens in tobacco smoke.

Independent studies have since confirmed the danger. Although nicotine is not a carcinogen in its own right, other chemicals in burned tobacco convert some nicotine into a carcinogen, said Jack Henningfield, an addiction specialist at the Johns Hopkins Medical School.

For B.A.T., this raised a worrisome question: What if governments ordered cigarette makers to reduce nicotine in their products?

Twelve scientists from five countries met at an inn in the Florida Keys, surrounded by lagoons, palm trees and the turquoise surf. It was a healthy setting for B.A.T.'s January 1974 conference on how to make a ``safe" cigarette.

The researchers discussed techniques to remove carcinogens from tobacco smoke: asbestos filters; microscopic holes in the cigarette paper to dilute the smoke; synthetic nicotine substitutes; even a ``noninhalable cigarette."

None of these ideas ever worked. The Y-1 papers suggest that by the late 1970s, B.A.T. had all but given up on making a ``safe" cigarette. Dr. Robert A. Sanford, then Brown & Williamson's vice president of research, even discouraged toxicological testing of cigarette smoke in an Aug. 18, 1980, letter to Dr. Alan Heard at B.A.T.'s Southampton research center.

Research into ``irritation and inhalation of smoke," he wrote, was a ``dangerous area. Do not publish or circulate."

It didn't abandon nicotine. That's why smokers smoked.

``If the nicotine delivery is reduced below a threshold 'satisfaction' level, then surely smokers will question more readily why they are indulging in an expensive habit," wrote Green, the senior B.A.T. scientist, on March 29, 1976.

He recommended the company divert attention from nicotine's health risks and frame the public health debate around the dangers of tar. ``It is advocated that every opportunity is taken to separate tar and nicotine in the minds of consumers and legislators."

The fear that public health officials might press for drastic reduction of nicotine was so great that some B.A.T scientists even suggested the company diversify into other ``mood-affecting" substances: marijuana, tranquilizers and the like.

That never happened, but during the April 11, 1980, brainstorming session at B.A.T.'s Southampton laboratory, Crellin noted that, one day, such drugs might be ```'socialized' like alcoholic drinking and tobacco smoking."

There was another way B.A.T. could address its fear of nicotine regulation. It could change the form of nicotine in cigarettes.

B.A.T. knew that government regulators, when measuring nicotine deliveries in tobacco products, do not distinguish between the highly addictive, free nicotine and the less addictive, bound nicotine.

So, if B.A.T. could chemically convert more of the bound nicotine in its products to free nicotine, it wouldn't need to put as much nicotine in cigarettes to keep smokers hooked. In fact, it could promote a nicotine ``reduction" while actually giving cigarettes more nicotine kick.

Marlboro's success proved the theory. Philip Morris had added ammonia, causing the conversion and giving smokers a stronger nic-kick, which drove up sales.

B.A.T. also began using ammonia in its products, but found only a limited amount could be used without making the smoke ``very noxious," according to an Oct. 22, 1979, Brown & Williamson research report.

Dr. T.R. Shori, its author, suggested that free nicotine in cigarettes might be increased by altering the tobacco leaf itself. A high-nicotine tobacco, he said, could cause ``more nicotine to be available to the smoker as free nicotine."

``We could develop an ultra-low-tar cigarette that produced considerably more impact than its delivery level (nicotine, as measured by the government) would suggest," he wrote.

And governments would be clueless.

To play its shell game, B.A.T. needed a high-nicotine tobacco. The corporate giant turned for help to a smalltime tobacco grower, Lloyd Vernon Jones, and his 18-acre farm in Stantonsburg, N.C.

It was the summer of 1977, and farmers in America's Southern tobacco belt were worried. Public health advocates were railing against tobacco; cigarette consumption in the United States was falling.

So when a representative for Brown & Williamson showed up at Jones' ranch house and offered to pay him handsomely to grow some new plants rich in nicotine, the farmer obliged.

Tobacco genetics were about to take a quantum leap: The five ``Virginia" tobacco varieties sprouting in Jones' fields had been genetically cross-bred to produce twice the nicotine of regular leaf.

Two of the plant lines lived to maturity. Brown & Williamson code-named them Y-1 and Y-2 (the latter was eventually supplanted by Y-1). Then, in 1983, it quietly took them away.

What happened to the tobacco once it left the Jones farm? The Food and Drug Administration figured out part of the story in the spring of 1994.

The agency learned that Brown & Williamson had taken Y-1 to DNA Plant Technology, or DNAP, a biotech company in Cinnaminson, N.J. DNAP did more genetics work to increase Y-1's yield and disease resistance.

The FDA also learned that Y-1 was grown in Brazil and then used in five Brown & Williamson brands sold in the United States. Although this was legal, the agency was concerned enough to disclose its findings to Congress in June 1994.

Brown & Williamson said it was only trying to make cigarettes safer, but, concerned about bad publicity, agreed to stop using Y-1.

But last December, the AP reported it had found tons of Y-1 and related high-nicotine strains being cultivated in Brazil for the world market by Souza Cruz, B.A.T.'s Brazilian subsidiary. In February, the AP reported Brown & Williamson had resumed the use of high-nicotine tobaccos in American cigarettes in 1995. This time, Brown & Williamson said it would stop using Y-1 by April 1, 1999.

The Y-1 papers, however, show the project was much bigger than previously known -- a global operation coordinated by the highest executives at B.A.T. Industries' world headquarters in London.

The ``Tobacco Strategy Review Team" sessions included Sir Patrick Sheehy, who retired as chairman in 1996; Martin Broughton, B.A.T. Industries' present chairman; Ulrich Herter, now the managing director of B.A.T. Industries; and, R.J. Pritchard, a former Brown & Williamson chairman and former member of B.A.T. Industries' board of directors. Chairmen of B.A.T.'s subsidiaries in England, Germany, Brazil and Canada also participated in the meetings. B.A.T. declined an AP request to interview the executives.

Brown & Williamson ran the project, said Boyse, though ``often, B.A.T. Industries would act as a coordination point."

Under pressure to outdo Philip Morris' ammoniated Marlboro cigarettes, B.A.T. pushed its Y-1 project into high gear in 1983.

High-nicotine seed and pollen were assigned code numbers and shipped from the United States to affiliates around the world: Brazil, Canada, Germany, Honduras, Chile, Venezuela, Zimbabwe, Nigeria and Pakistan, the Y-1 papers show.

Brown & Williamson didn't apply for the special U.S. customs permit required to export tobacco seed and pollen, according to the U.S. Department of Agriculture.

The project didn't stop with mild, Virginia leaf. DNAP, the biotech company, also transferred nicotine-making genes from Y-1 and Y-2 into ``Burley" tobacco, the coarser leaf used in cigar, pipe and chewing tobacco.

The new Burley varieties packed 50 percent to 75 percent more nicotine than the old lines, according to an April 25, 1990, DNAP memo. This high-nicotine Burley was also used in cigarettes sold in the United States, the Y-1 papers show.

Accounting memos show that between 1985 and 1991, Brown & Williamson grew at least 142,700 pounds of Y-1 and additional quantities of its Burley cousins in North Carolina, Kentucky, New Jersey and California -- ignoring a price-support agreement between tobacco companies and the government not to grow high-nicotine tobacco on American soil.

In the end, southern Brazil became the place for major production, the Y-1 papers show.

Making Y-1 tobacco wasn't cheap: The seed cost $2,200 a pound (B.A.T. would eventually spend a total of $4 million producing seed). Research was costly; in 1989 alone, it totaled $9 million, the documents show. With travel, meetings, field surveys, farm subsidies, shipping, patent applications, taste testing, studies and other work, costs may have climbed into the tens of millions of dollars.

Boyse said she did not know how much money was spent on the entire Y-1 project.

Because Y-1's yield was lower than regular Virginia leaf, Souza Cruz had to pay Brazilians 55 percent more for Y-1 than natural leaf, according to company correspondence.

The documents suggest B.A.T. regarded it as money well spent.

``Y-1 gives 50 percent more nicotine per acre even with 20 percent less leaf yield," read a May 14, 1990, memo from Brown & Williamson's research department.

By 1987, Y-1 tobaccos were shipped to Finland, Norway, England, Germany and Switzerland, and then to France, Malaysia and Australia, for consumer trials. There was just one problem.

Even when blended with weaker tobaccos, Y-1 leaf packed too sharp a nicotine ``jolt."

``Y-1 Lights products may be too strong for lights smokers," wrote Lynn A. Walker, a Brown & Williamson researcher, in a Sept. 17, 1990, memo.

If B.A.T. didn't do something to spread out Y-1's nicotine more uniformly in a puff, the project might end up a colossal failure.

Then a breakthrough came, quite literally, out of thin air.

The technique that made Y-1 more palatable -- and profitable -- was discovered inside B.A.T.'s Southampton laboratory in late 1990. It's known to scientists as ``the expansion process."

This involves heating shreds of cured tobacco with liquid carbon dioxide in a chamber. The carbon dioxide turns to vapor and puffs the dry tobacco up like Rice Krispies.

Cigarette makers expand tobacco to save money by giving customers more air and less leaf. Less tobacco is supposed to mean the smoker gets less tar and nicotine.

Y-1 reacted differently when bulked up. Not only did Y-1 retain its nicotine power, it released nicotine more gradually as it burned, giving the user a smoother smoke. Sure enough, B.A.T. taste testers liked cigarettes blended with expanded Y-1.

The discovery pumped new life into the project.

During the next three years, B.A.T. did at least three major studies on Y-1's impact on the body. Its subsidiaries started adding expanded Y-1 to cigarettes in 1992, and by 1994 some $18.2 million worth of Y-1 leaf had been stockpiled in Brazil and the United States, according to a June 9, 1994, Brown & Williamson memo.

On March 8, 1994, B.A.T. reviewed Y-1 tobacco's effects on smokers.

Nineteen copies of report No. P-35 were distributed to B.A.T. executives in England, Brazil, Germany and the United States. Each page carried the warning, ``Do not copy or show to unauthorized persons."

Dr. P.C. Bevan, the author, wrote that he hoped his report would ``assist in pointing the way towards being able to manipulate and modify the impact" of nicotine on smokers, and proceeded to lay out the results of two experiments -- ``Project NATO" and ``Project FELT" -- in which testers had smoked cigarettes blended with Y-1 tobacco.

His conclusion: Y-1 leaf was special because, unlike natural leaf, it had a lower proportion of tar to nicotine. The sticky tar compounds -- the same ones that cause cancer -- block nicotine from entering the bloodstream, he explained. Without all the tars, Y-1's extra nicotine was absorbed faster.

``Increased nicotine delivery," he wrote, occurred because the throat and lungs were ``less protected by the tar" from the nicotine.

``Technically, Bevan may be correct," said Boyse of Brown & Williamson. But the test cigarettes referred to in the report, she said, were nothing like the ones that went to market. Those cigarettes, she said, would have ``tasted like a cigar."

Bill Farone, a former Philip Morris research director, reviewed the Bevan report at the request of the AP and offered a different interpretation.

``B.A.T. was figuring out how to increase the drug-rush sensation of nicotine without ammonia," he said, countering Boyse. ``What they were doing was making their cigarettes more addictive."

Thirty-seven days after Bevan's ``manipulate and modify" report, the chief executive officers of America's seven biggest tobacco companies stood side by side and took an oath to tell the truth to a committee of the U.S. House of Representatives.

That spring morning, April 14, 1994, the CEOs were asked, for the record, whether they believed nicotine was addictive.

One by one, they said no. Thomas E. Sandefur, the chief executive of Brown & Williamson, was sixth. ``I believe that nicotine is not addictive," he said.

Sandefur, who died in 1996, was called back to testify before the committee on June 27, 1994. ``Do you manipulate the nicotine levels of your cigarettes?" asked Rep. Tom Bliley of Virginia.

``We do not manipulate the nicotine levels of our cigarettes," Sandefur replied. ``No, sir."

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USA TODAY **Opinion**

10/12/98- Updated 02:05 AM ET The Nation's Homepage

New 8-state deal derails plan

Once again, several states and the tobacco industry are playing let's make a multibillion-dollar deal. And once again, it looks like the cigarette companies are calling the shots.

Eight state attorneys general are crafting a $198-billion deal to settle the remaining three dozen state lawsuits against tobacco firms. Those suits seek to recoup the enormous costs smoking imposes on public health programs.

Last year, a different set of attorneys general with loftier ambitions than profit led the talks. They were among the first to challenge the industry in court and wanted to use the leverage of those suits to force the industry to stop targeting teen-age smokers. Even so, clever tobacco lawyers dangling boatloads of money managed to blow holes in the public health provisions. When Congress tried to plug them, the industry walked, and the deal collapsed.

Four of the leading states involved in that 1997 deal have since settled. And the industry took care this time to select the weak sisters from the remaining states for talks. This group has given up any pretense of seeking real public health gains. All they see are the dollar signs.

The latest plan calls for $198 billion in industry payments to states over 25 years. That's certainly an impressive figure to money-hungry state legislators. From a health standpoint, however, it's all but meaningless, translating into a mere 35-cent boost in cigarette prices. Not even price-sensitive teen smokers would notice the difference. And that's assuming the industry passes the costs onto smokers, which the deal wouldn't require.

Worse, there's no "look-back" provision - arguably the most promising public health proposal to emerge from the June 1997 settlement. The idea is to give the tobacco companies a financial interest to cut teem smoking rates by harshly penalizing them if rates don't fall fast enough. The industry hates it, for obvious reasons, and watered it down to the point of meaninglessness last summer. This time the attorneys general apparently aren't even bothering to try.

Nor are they trying to get the industry to give up its opposition to Food and Drug Administration (FDA) regulation of tobacco.

The attorneys general say they're boxed in by recent legal and congressional setbacks. The courts ruled against the FDA's authority over the industry in August. And without federal legislation, they say, the toughest provisions of the last deal can't be replicated.

What's really happening, however, is that the eight states are less interested in using the lever they have in hand to deter smoking than they are in collecting cash. That's an ideal scenario for the industry, which sees the lawsuits as a costly, unpredictable menace - one it would love to clear off in a single swoop.

With settlement talks reportedly on recess until next week, the states should take the time to awaken from their money-induced slumbers and stand firm against a bogus deal.

If they sign onto this plan, the tobacco companies will simply eat the costs and go right on recruiting new armies of teen smokers.

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National

The New York Times ON THE WEB

November 19, 1998

A Slave of Smoke in an Anti-Smoke Land

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By DIRK JOHNSON

SYCAMORE, Ill. -- It was not quite 8 a.m. as Jan Binder stood on the sidewalk in a cold Midwestern drizzle. Her fellow workers hustled past her toward the office, some of them shaking their heads in dismay.

"They're thinking," Ms. Binder said, "she doesn't have the sense to come in from the rain."

Despite the shivers, the tall woman with auburn hair stood in the drizzle, her fingers clutching the last precious inch of a burning cigarette.

To be a smoker in America today is to be an outcast. It means being viewed as weak, offensive and, perhaps most of all, dimwitted. These are people, after all, who do not seem to have the sense to come in from a toxic thunderstorm.

Most people who have never smoked cannot fathom why anyone would put a cigarette in her mouth and draw the noxious fumes. It should be simple to stop. But almost anyone who has smoked heavily knows otherwise.

There are few riddles in life more enigmatic than the spell that smoking can cast, even to smokers like Jan Binder, a smart 38-year-old who has walked the horror chamber of nicotine.

It was two years ago, in a hospital room, that a doctor looked into the eyes of her husband, James, and told him, "Mr. Binder, you have lung cancer."

That evening her husband walked in the door at home, switched on a lamp, turned to her and sized up his life.

"I don't regret anything," he told her, "except a few million cigarettes."

Seven months later, he was dead. He was 37. His daughter Mary was 7. Kate was 5.

"When they told Jim he was going to die," Ms. Binder said, "and I saw the look on his face, I knew I would never smoke again."

She was certain sheer will power could do it. But it was like willing herself to stop drawing breath.

She has tried going cold turkey. She has tried the nicotine patch. She has tried the drug Zyban.

Nothing has worked for more a week.

"People look at me and think, 'How can you still smoke?'" Ms. Binder said. "And God knows, I don't want to smoke. But I am like a slave to it. It rules your life."

This is a woman who scarcely lacks fortitude. Besides her full-time job for a state education consortium that oversees programs for disabled students, she fills her late husband's partnership in his pizza business, doing the books and overseeing the payroll.

She digs deep into her pockets to pay for her daughters to attend private school, to take piano lessons, to play soccer and softball. She rises before daybreak to clean the house and wash school uniforms. She carries 50-pound bags of water softener down the stairs to her basement.

But when it comes to those feather-light sticks of tobacco, she feels helpless.

"Sometimes I think they should just lock me up," she said.

Her girls, Mary and Kate, have come to view cigarettes the way some children think of monsters under the bed. They have thrown their mother's cigarette packs into the trash. In some cases, they have taken each cigarette out of the pack and broken every single one into pieces.

They have begged, pleaded and cajoled her to stop. And they have thrown tantrums.

Kate erupted in the kitchen one afternoon after seeing her mother light a cigarette, shouting that she hated her, over and over again.

Ms. Binder listened for a long time, motionless and ashamed. She knew that the girls worshiped the memory of their father. In one of those moments of weakness that every parent experiences, and regrets immediately, she looked for mercy. Why, she asked the girls, did they so scorn her for smoking, when they had given a pass to their father when he smoked.

"Because," Kate screamed, her eyes blazing with anger, "I didn't know he was going to get tumors and die."

It is the rare smoker who does not wish to quit. A recent survey found that two-thirds of smokers have tried seriously to stop, most of them at least three times. Medical experts say nicotine has a powerful effect on the chemistry of the brain, improving mood and in some cases masking depression. One treatment for that is an anti-depressant like bupropion hydrochloride, which has been marketed as Zyban as an aid to quitting smoking.

What is not as commonly understood, is the way that smoking makes people feel guilty and ashamed, looking at themselves as failures for not being able to kick a habit.

As a child growing up in the Wisconsin suburb of Monona, just outside Madison, Ms. Binder rode with her family in the car almost every weekend to see her grandparents in the farm town of Dodgeville. The car was always full of smoke, a cloud that billowed from the cigarettes of her father, a high school history teacher and football coach.

"I hated the smoke," Ms. Binder recalled. "It made me sick."

As a 12-year-old, walking home from Winnequah Junior High School, she watched a girlfriend pull out a pack of cigarettes and light one.

"Give me one of those," young Jan Louise Rundle told her friend.

She took a puff and coughed, puffed again and coughed harder. Determinedly, she kept smoking until she could draw the smoke into her lungs without gagging. Moments later, feeling dizzy and lightheaded, she walked home to her family's three-bedroom ranch on Arrowhead Drive.

The next day, she reached into her father's pockets and took one of his cigarettes. She smoked it on the way to school, cupping it in her hands to hide it.

In high school, she was a talented artist, the queen of the "Snowball" dance, a star athlete. She was named to the all-state team of top basketball players in Wisconsin. Through it all, she smoked.

She did not sit in the parked cars outside the school building and puff, like many of the other students who smoked. That was far too dangerous, especially for a girl whose father was a teacher at the school. She picked her spots more carefully.

Sometimes, she used lunch money to buy cigarettes, plunking her change in vending machines or buying packs at the corner store. If the clerk raised any question about an adolescent's buying cigarettes, she simply explained that they were for her father. But usually, there were no questions.

A generation ago, it was hardly scandalous for young people to smoke. Many of their parents, after all, had started smoking themselves as teen-agers. And the signals from popular culture made cigarettes seem acceptable, even downright wholesome.

Anybody over age 35 can remember flickering images of Johnny Carson on the living room television, smoking away as he chatted and laughed with guests. Even Andy Griffith, as nice a sheriff and as fine a Pa as television ever created, would occasionally relax with a cigarette in his Mayberry home. President John F. Kennedy was known to sometimes smoke a cigarette. Baseball star Richie Allen would smoke in the dugout before strutting to the batter's box, where he often slammed home runs. And the great Green Bay Packers coach, Vince Lombardi, smoked on the sidelines and racked up football championships.

Teachers' lounges were usually hazy with smoke. Some high schools even had smoking lounges for students. No table was properly set without an ashtray. People smoked just about everywhere they went, even at wakes, puffing away as they paid their last respects.

After Jim Binder was diagnosed with cancer, he tried valiantly to live a pristine life. Facing death, he bore a crushing guilt, a husband and father who would be leaving his family behind.

"He wanted so desperately to undo what he had done," Ms. Binder said

To extend his days, he ate organic foods and drank herbal tea. He meditated. He prayed.

And he tried his very damndest to give up cigarettes.

But there were moments, early in the morning before the children would rise, that he would sit out on the back porch, gazing into the distance, drawing hard on a cigarette, shrouded in a smoky cloud that, for the moment at least, served as a kind of scutcheon.

It is now his wife who carries the guilt, a mother who cries in the shower about her fatherless children, and about their terrible, completely logical fears when they see her light up. She has gotten rid of the ashtrays in her house.

She has vowed so many times to her children that she will quit, often setting a date. And when that time comes, she tries. The minutes crawl like years, and she feels as if she is coming out of her skin, a jangle of nerves and emotion. And suddenly her hand is reaching for a pack, almost reflexively. Or she is standing at the counter of a convenience store, with the $3 that will feed an insatiable craving.

"I am going to quit -- I have to," she vowed one recent day, as a cigarette burned on a plate, a makeshift ashtray, in the kitchen of house that falls quiet, too quiet, in the nighttime. "I just don't know how."

Desperate for a Deal

By C. Everett Koop and David Kessler

Friday, November 20, 1998; Page A29

Big Tobacco once again has met with several state attorneys general behind closed doors. The public, especially public health experts, once again was specifically excluded from complicated negotiations. The public once again has been presented with the details of a proposed tobacco "settlement." And we are expected to believe that the tobacco industry is not once again up to its old tricks?

After failing to buy special protections from Congress, Big Tobacco is back to courting the attorneys general. Believing that anyone will sell his virtue if the price is right, the highly profitable tobacco industry is offering several states billions of dollars to gain protection and privileges that no honest business would be granted. Big tobacco is desperate for a deal, but why?

The tobacco industry wants to limit the public's knowledge of its chicanery. Each lawsuit that actually goes to trial means that more secret documents become public, shedding more light on what this greedy, lying industry does to the nation's health. In addition, the industry knows that when increasingly incriminating information becomes part of the public domain, other states' chances of getting more money become better. Any attorneys general who decide to reject the settlement and push on with their cases in court are likely to not only recoup more of their states' money but also make more of big tobacco's misdeeds public.

We wonder why no one stops to think about why Big Tobacco has so much money. For decades the industry has bought special privileges and protections that have allowed it to charge dearly for a cheap product. Profits are huge because costs are transferred to the public. Other companies have to pay for damages from defective products, even when defects were not intended, but Big Tobacco has the taxpayer paying. You pay more than $2 for every $1 Big Tobacco makes.

The desire of all negotiating parties for complete secrecy is a clear sign that the public will suffer substantial losses in the terms, just as it would have under the June 20, 1997, terms. Imagine the public and media outrage if Congress suddenly decided that all legislative hearings were now to be conducted in secret. The industry wants to surprise the public with only one day of headlines so that a complete, thoughtful, and sound review is not feasible. Apparently, the negotiating parties are going to ignore state Administrative Procedures Acts requiring public review and comment of usually at least 30 to 60 days before adoption of major policies. The blinding

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amount of money offered, even though it represents not even half of what is needed for just compensation, is supposed to hide this obligation.

The parties involved made a deal without public review of compromises that the attorneys general as elected officials made for the citizens of their state. And those attorneys general who have not already signed on have only a matter of days to make this decision, a deadline imposed by the tobacco industry because it knows that if there is proper public inspection and debate on the settlement the public will be outraged.

And what is the industry proposing? Cents on the dollar, compared with states that settled their cases individually; no provision for federal regulation of an addictive drug; stunningly weak restrictions on advertising; increased roadblocks to the federal government to increase cigarette taxes; improper immunity for an industry that still has not admitted its misdeeds.

Big Tobacco should not be protected from suits by aggrieved individual citizens, groups and organizations. Full disclosure must continue. Liability should not be capped. Community laws should not be preempted by either states or federal law, nor co-opted by an illegitimate, closed-door agreement between attorneys general and Big Tobacco.

Some have called this a "milestone" in the war against tobacco, implying that Congress will take up the issue again. But this agreement would in fact mark one of the last miles in this long war. The settlement sends a signal to Congress that the states accept the industry's group settlement as acceptable punishment, thereby stunting further federal legislation. And the more states accept the settlement, the stronger that destructive signal will be.

Any attorney general who buys into the industry's lies is changing the health of Americans for the worse. This settlement might be quick, but it is no fix.

C. Everett Koop was surgeon general of the United States from 1981 to 1989. David Kessler was commissioner of the Food and Drug Administration from 1990 to 1997.