

Matt Myers

234-9000

# Colleges Ending Investments in Tobacco Stocks

Harking back to the late 1980's when many colleges and universities divested themselves of the stocks of companies that did business with South Africa, some educational institutions are applying the same pressure tactic to the tobacco industry.

Last week, Haverford College, a small liberal arts institution near Philadelphia, announced that it was divesting itself of all tobacco stocks, specifically its shares in the Philip Morris Companies, the RJR Nabisco Corporation and American Brands. The college joins at least a dozen other institutions that have taken similar action in recent years — among them, Smith College in Northampton, Mass., the City University of New York, Harvard University, Johns Hopkins University in Baltimore, Tufts University in Medford, Mass., Wayne State University in Detroit and the public universities of Texas and Vermont.

Haverford's governing board said its action was based on "the college's responsibility to refrain from profiting from the manufacture and sale of a product having no positive benefits and causing significant health problems for its user."

The \$3.03 million in tobacco stocks now held by Haverford represents 1.6 percent of the market value of its \$192 million endowment.

Douglas Cogan, director of the tobacco information service at the Investor Responsibility Research Center in Washington, a nonprofit research and reporting service for institutional investors, said there were significant differ-

ences between tobacco divestiture and the anti-apartheid ones.

"The effort to punish South Africa was a student-led thing, involving the occupation of administration buildings, but tobacco does not resonate with students that way," Mr. Cogan said. "Today, faculty and administrators are leading the charge. That is particularly true when a school does cancer research and the faculty and administrators see a contradiction with its portfolio."

Because the total amount to be divested by the colleges represents only several million dollars in a multibillion-dollar industry, Mr. Cogan said, the impact is only symbolic.

WILLIAM H. HONAN

## Indian-Run Colleges Fight for Federal Support

WASHINGTON

Leaders of the United States' Indian-run colleges say Federal support has failed to keep up with rising enrollments that are likely to swell further as an overhaul in welfare programs drives more American Indians to seek job training.

The leaders hoped that a new report on tribal colleges being released today would again call attention to their role in moving Indians out of poverty and into higher education.

The Carnegie Foundation for the Advancement of Teaching said the tribal colleges, mostly two-year institutions, excelled

at job training, business creation and community building even though money and buildings were scarce.

"Despite overwhelming obstacles, America's tribal colleges are educating thousands of our people, providing them with perhaps their only chance of economic self-sufficiency," said Janine Pease-Prétty On Top, president of Little Big Horn College in Crow Agency, Mont.

Total enrollment in tribal colleges nationally has shot up to more than 24,000 in 1996 from about 10,000 in 1989. Yearly Federal support for the institutions has remained at about \$27 million since 1995, although President Clinton wants to raise that amount by \$3 million in 1998.

The amount of support, about \$2,890 per full-time student, is less than the \$5,820 authorized in the Tribally Controlled Community College Assistance Act of 1978.

Robert Lorence, president of Northwest Indian College near Bellingham, Wash., said the Indian institutions often served as bridges to four-year colleges.

Mr. Lorence said that his 650-student college struggled largely with teaching basic reading, math, and writing, and that the demand on basic training would rise.

"I'm assuming welfare reform will include some additional funds for training," Mr. Lorence said, "but I haven't seen where that is or how it will come from the colleges."

(A.P.)

## University Dean Selected To Lead Gambling Study

WASHINGTON, May 20 (AP) — Kay James, a university dean with a background in conservative social issues, was selected today to lead a national study of legalized gambling.

Ms. James, the dean of the school of government at Regent University in Virginia Beach, Va., was selected by the Republican leaders of Congress, Speaker Newt Gingrich of Georgia and Senator Trent Lott of Mississippi. She will lead the two-year, \$5 million study on how legalized gambling affects the United States.

"Kay James has a long and distinguished record in Government, the private sector, and academia, and I know she will bring a fair-minded perspective to this dialogue," said Mr. Gingrich, who had chosen her to be a member of the commission.

Ms. James was appointed last year to her post at Regent, a university founded by the religious broadcaster Pat Robertson.

## F.B.I. Agents Punished In Olympic Bombing

ATLANTA, May 20 (AP) — The head of the F.B.I.'s Atlanta office said today that he was censured for tricking Richard A. Jewell into answering questions about the Olympic Park bombing last summer without a lawyer present.

The agent, Woody Johnson, said he had been given a letter of censure. David Tubbs, in charge of the bureau's Kansas City office, was also censured, and a third agent, Don Johnson, was suspended for five days without pay, WSB-TV reported today.

Mr. Jewell's lawyer said the punishments were not enough.

"This is a whitewash," the lawyer, Wayne Grant, said. "These agents should be terminated."

The Justice Department, in an unreleased internal report, concluded that they made "a major error in judgment" in asking Mr. Jewell to waive his right to a lawyer.

# The New York Times

WEDNESDAY, MAY 21, 1997

# On Its Own, Economy Prepares for Less Growth

By LOUIS UCHITELLE

Whatever the Federal Reserve does over the next few months, the American economy appears to be heading, on its own, into a period of slower economic growth.

“Weaker is not bad,” said Robert D. Reischauer, a senior fellow at the Brookings Institution. “We are still talking about positive economic growth.”

Virtually no economist is predicting a recession, only a slowdown to perhaps half the booming annual growth rate of more than 4 percent that prevailed from October through March. Many analysts consider such rapid growth to be inflationary, if it lasts long enough. Eventually, with very strong growth, shortages of labor and merchandise develop, which push up wages and prices.

But the spurts of growth during the current recovery, like the one this last winter, have not lasted long. Counting the slower periods, the gross domestic product, valuing all the goods and services that the nation produces in a given year, has risen at an average annual rate of only 2.7 percent since the last recession ended, in the spring of 1991. That growth rate has not been strong enough to create the shortages that push up inflation. And the growth rate is even less, a very mild 2.1 percent a year, if the 1990-91 recession is averaged in.

The economic expansion of the 1990's, now in its seventh year, has been marked by alternating periods of strong and weak growth. A booming 1994, for example, was followed by a weak 1995, mostly because the Fed had raised interest rates sufficiently to slow the economy. The slowdown

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under way now — after a winter in which the economy boomed — appears to reflect more natural causes.

“With the economy slowing, it is quite plausible that we can have a 2.5 percent growth rate, and the Fed does not have to lift a finger,” said Lee Price, chief economist at the Commerce Department. The Fed's top officials, at their policy meeting yesterday, decided not to follow a rate increase in March with another one now.

Since early April, retail sales have fallen and stockpiles of unsold goods have piled up. This inventory accumulation accounted for a big chunk of the strong economic growth in the first quarter. Working off those stockpiles now, in the face of weaker retail sales, means cutbacks in industrial production, at least tempo-

## A surplus of goods may weaken industrial output.

rarily. These cutbacks have already begun to show up in Government statistics as weaker growth in the second quarter.

“What is going on now is a mini-inventory correction,” said Lyle Gramley, a consulting economist at the Mortgage Bankers Association and a former Fed governor. “That is normally a short phenomenon.”

The big question is how long the slowdown will last. There is no way to answer that question yet.

But if the inventory correction follows a typical pattern, the economy might be growing more strongly again by fall or winter, once retailers and wholesalers decide to step up orders to restock their shelves.

However, some ingredients of last winter's strong growth are lacking now. Warmer-than-usual weather encouraged above normal shopping and construction activity, strengthening the economy temporarily, particularly in the first quarter. So did tax refunds, which flowed to Americans in unexpectedly large amounts in the weeks before April 15.

Other factors suggest that a longer period of mild growth might lie ahead. Consumer debt is at a record high, eating into household income, and borrowing to finance purchases has tapered off. New-vehicle sales, having held above 15 million at an annual rate through the winter,

dropped below that level in April, and the auto industry has responded with rebates and sales incentives.

“When the economy slows, we slow even more,” said Wynn Van Bussman, chief economist at the Chrysler Corporation, “and we are confirming that slowdown because it is becoming more and more difficult to sell new vehicles.”

Similarly, home construction was quite strong this winter, contributing noticeably to economic growth, particularly when all the accessories — carpeting, appliances, furniture, remodeling — are added in. Construction is still high, but no longer rising. “Some of the early-year exuberance has worn off,” said David F. Seiders, chief economist of the National Association of Home Builders.

Slower economic growth — 2.5 percent or less annually — is touted by most economists and policy makers as necessary to avoid the shortages that drive up the inflation rate. Corporate executives and union officials increasingly argue that the American economy is capable of greater growth without rising inflation.

Slower growth also makes an economy more susceptible to the sort of “accident” that can tip a weakened economy into recession: the Persian Gulf crisis played a role in provoking the 1990-91 recession, along with the Fed's decision to keep interest rates up. Similarly, a sharp decline in stock prices could undermine the confidence of American households, nearly half of whom own stocks, either directly or through mutual funds and retirement accounts.

Or the Federal Reserve, trying to slow the economy to avoid a rise in the inflation rate, could push up interest rates too much, in its effort to discourage borrowing and spending. “Every recession since 1957 has been caused by a spike in interest rates or an oil price shock,” Robert Gordon, a Northwestern University economist, said.

The Fed in its decision yesterday seemed to recognize the danger of pushing up rates too much.

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# The New York Times

WEDNESDAY, MAY 21, 1997

# Anti-Tobacco Groups Push For Higher Cigarette Taxes

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By DAVID CAY JOHNSTON

In a drive to reverse a recent surge in teen-age smoking, anti-tobacco forces are pushing for a combination of state and Federal tax increases that could raise the cost of a pack of cigarettes by more than \$1.

Buoyed by public revulsion at disclosures that tobacco companies have been aiming at teen-agers for years with sophisticated advertising and marketing techniques, advocates are lobbying for tax increases in 19 states and hope to have campaigns going in all 50 states by next year.

Also, Congress is considering a bill introduced last month by Senators Orrin G. Hatch, Republican of Utah, and Edward M. Kennedy, Democrat of Massachusetts, to nearly triple the Federal excise tax on cigarettes, to 67 cents a pack from 24 cents.

With polls showing that a vast majority of Americans — and even most smokers — support raising taxes to discourage adolescents from lighting up, politicians from both parties are rushing to attach their names to that rarity, a tax rise that seems not only safe, but positively virtuous.

"Raising tobacco taxes is our No. 1 strategy to damage the tobacco industry," said John D. Giglio, manager of tobacco-control advocacy for the American Cancer Society. "The tobacco industry has found ways around everything else we have done to reduce smoking by teen-agers, but they can't repeal the laws of economics."

The anti-tobacco lobby's goal is to raise state cigarette taxes to a uniform \$2 a pack nationwide in the next several years, from the current range of 2.5 cents in Virginia to 81.5 cents in Washington State.

If the Federal Government increases its tax to 67 cents as well, the average cost of a pack of cigarettes would rise to \$4.23, from \$1.80, as the result of the tax increases alone. That, opponents of smoking believe, would be enough to drive millions of smokers, adults and teen-agers alike, to kick the habit and dissuade hundreds of thousands of young people

The anti-tobacco forces say the campaign has strong grass-roots support. State Representative Con Bunde, a Republican who is sponsoring Alaska's bill, agrees. Three years ago, he would have got nowhere if he had pushed such a measure, he said.

"But now the debate is not about if we will raise the tax, but whether it will be a dollar a pack or \$1.29," Mr. Bunde said.

Mr. Bunde, a bush pilot, said he thought the same forces that shaped the debate in his state were at work across the country. "What changed is that Republicans went home for the election last fall and found that while generally speaking no one likes more taxes, tobacco taxes are an exception," he said.

Opponents of smoking say they turned to the cause of higher cigarette taxes after the industry blunted efforts to limit cigarette vending machines, restrict where people can smoke and, in California and Massachusetts, broadcast government-financed anti-smoking messages intended for teen-agers. By next year, they say, they hope to have campaigns under way in every state. They expect support for their cause to grow as the result of the Liggett Group's break with the industry last month. Liggett, the maker of Chesterfields and L & M's, acknowledged that nicotine was addictive and that the industry had long picked young people as targets.

The movement to make cigarettes more expensive comes as many states, flush with budget surpluses, are considering cuts in income or sales taxes or one-time refunds. But even champions of lower taxes like the looks of this increase. In Maryland, Gov. Parris N. Glendening, a Democrat, is backing a bill to double cigarette taxes in tandem with a bill to cut state income taxes by 10 percent. Last week, Maryland legislators rejected the cigarette tax increase, but the bill could be revived this week.

"The issue the Governor is raising is, What can we do to prevent kids from starting to smoke and to get those who have started to stop?" said Ray Feldmann, a spokesman for Governor Glendening. The two main groups behind the current drive are the Robert Wood Johnson Foundation in Princeton, N.J., which has committed \$100 million to anti-smoking efforts, and the American Cancer Society, which has committed \$10 million. The money is being used to hire organizers, distribute voter education materials, hold conferences and take surveys. The two organizations are also the main financial backers of the Campaign for Tobacco-Free Kids, a national tobacco-control advocate.

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"Legislators read polls," said Dr. Steven Schroeder, the foundation's president, "and the polls tell them that this is probably the only tax that has widespread appeal. People know it is a deterrent and that the longer you can delay kids from starting smoking, the less likely they are to become smokers."

That is a truism that the tobacco industry has long understood — and worried about. A memo inside the Philip Morris Companies from 1981 said the company should "take seriously" a statement by the National Bureau of Economic Research, in Cambridge, Mass., that higher Federal excise taxes could be used to reduce smoking by young people.

"It is clear that price has a pronounced effect on the smoking prevalence of teen-agers," the memorandum said, adding that the bureau's estimate that a 10 percent increase in cigarette prices would lead to a 12 percent decline in the number of teen-agers taking up smoking was "of greatest significance to the company."

Asked about the memorandum, a Philip Morris spokeswoman, Mary Carnovale, said, "We don't want kids to smoke and we want stricter enforcement of state laws, restrictions on vending machines, stopping cigarettes through the mail, stopping sampling, things of that nature."

An informal survey of teen-age smokers in New Jersey, however, suggests it will not be easy to get them to stop. At the Monmouth Mall in Eatontown, Wanda Morales, 18, of Long Branch, said a 50-cent or \$1 increase would be enough to make her discard her pack-a-week habit because "I want to quit anyway." But hardened puffers said they would be more resistant. Thirteen-

## Even smokers want to discourage adolescents from taking up the habit.

year-old Karl Becker of Atlantic Highlands, who started smoking at the age of 11 when a friend offered him a cigarette, conceded that \$5 a pack "would make me rather upset." But, he added, an extra dollar or two would not bother him.

And in Union City, teen-agers taking lunchtime drags at a bodega two blocks from their high school said nothing could induce them to quit.

"It kills all the stress, you know?" said Robert Diaz, a 17-year-old sophomore. "It makes me feel good."

One of his friends, Mike Perez, 14, pulled a package of Djarum cigarettes out of his pocket.

"These cost \$4 a pack already, but that's what I like," he said. "Those companies, you know, they make it all look so nice — bright colors, lots of kids smiling. I just can't let my grandma find out I smoke."

In Albany, bills that would raise cigarette taxes from a nickel to a quarter per pack, with the money going to finance health care for children of the working poor, have been introduced by Democrats but are not moving toward passage.

Smoking by teen-agers had been declining for years, but that trend has reversed in the 1990's. According to annual surveys by the University of Michigan, the portion of high school seniors who indulge went up

to 34 percent last year, from less than 28 percent in 1992.

Part of that increase, Mr. Giglio of the American Cancer Society said, reflects an upward swing in drug and alcohol use, but part of it results from steep price reductions on Marlboros and other heavily advertised cigarettes in 1994. The median price of a pack of cigarettes, including taxes, has fallen since 1993, a Tobacco Institute report shows, to \$1.80 last year from \$1.84 in 1993. Adjusted for inflation, the decline would be even greater.

Even William F. Shughart, who has served as an expert witness for the cigarette industry, said that raising cigarette taxes would reduce teen-age smoking. "They are more price-sensitive than adults," said Mr. Shughart, a senior fellow with the Independent Institute, a libertarian research center in Oakland, Calif., and the Self Professor of Economics at the University of Mississippi. He added, though, that higher taxes could not be justified because the costs to society of smoking were more than covered by existing cigarette taxes.

Mr. Merryman of the Tobacco Institute complained about the anti-tobacco lobby's embrace of popular programs to spend the extra tax money on, like mandatory kindergarten in New Hampshire.

"Who is going to say they are against kindergarten for kids?" he asked.

But Eric Gally, an organizer with the Campaign for Tobacco-Free Kids, said public awareness that cigarette companies had sought to attract children was "beginning to erode the enormous clout that the tobacco industry has in state legislatures, and it is no secret how they have gained that clout — through decades of contributions, by hiring the best lobbyists, by wining and dining legislators, sponsoring golf outings, giving tickets to sporting events."

Most teen-agers do not smoke, and some are vocal in their distaste for tobacco. Joe Lewis, 17, a senior at Wootton High School in Rockville, Md., and a member of a local group, Students Opposed to Smoking, says bumping up taxes by a nickel or a dime would have little effect. He advocates the full shock treatment.

"If cigarette prices went up by a dollar, a lot of kids would still try cigarettes once, like I did," he said. "But the younger ones, the seventh and eighth graders, couldn't afford it and wouldn't become addicted."

The New York Times

THURSDAY, APRIL 3, 1997

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from taking it up.

Utah and Arkansas have already approved small cigarette-tax increases this year, and increases of as much as \$1 a pack are being debated in Maryland, Alaska and Maine. Anti-smoking forces say chances are good for passage in those states and in Alabama, Hawaii, New Hampshire and perhaps New Jersey, Wisconsin and Wyoming as well. South Dakota, Virginia, and Wyoming have rejected cigarette tax increases this year, but the Wyoming measure is expected to be revived.

While the number of states considering higher taxes is lower than in some previous years, both advocates and opponents of the measures say the energy and money behind the current effort make it more formidable than ever.

"Any legislator can introduce a bill," said Walker Merryman, a vice president of the Tobacco Institute, the industry trade association. "What is different is the seriousness of these efforts. Our industry is the subject of a coordinated, energetic campaign to raise cigarette taxes. All we can do is redouble our efforts."

# The Mideast Muddle

## As Step-by-Step Negotiations Bog Down, Idea of a Bold Final Stroke Gains Ground

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By SERGE SCHMEMANN

JERUSALEM, April 2 — In the search for ways to salvage the foundering Israeli-Palestinian peace, one idea gaining ground is the diplomatic equivalent of radical surgery — bypassing the badly damaged “Oslo process” of gradual steps and plunging boldly to a quick final settlement.

The approach has obvious weaknesses. For one thing, Yasir Arafat dismissed it as a “gimmick” when Prime Minister Benjamin Netanyahu most recently proposed the idea last month; for another, it is difficult to imagine that an agreement that requires fundamental concessions on both sides could be reached quickly when mutual trust has almost totally wasted away.

Yet it is that loss of trust that has led not only Mr. Netanyahu, but also President Clinton and King Hussein of Jordan to seriously consider going for broke.

The architects of the Oslo process worked from the premise that both sides had the same end in view, and that the best way of getting there was via a staged, multilayered negotiating process. That approach was intended to insure that if one track got stalled, progress could be made on another.

It also gradually prepared the people on both sides for the major compromises that would be required when talks reached the hypersensitive “final status” issues of Jerusalem, refugees and the like.

But in the 10 months since the Israelis elected a Government with a fundamental distaste for the Oslo process, each step, intended to foster confidence, has done the exact opposite, feeding conflict and anger.

Last month, Mr. Arafat's fury over the size of the proposed Israeli withdrawal from occupied territories and Israel's decision to build a new Jewish housing project in East Jerusalem led him to freeze negotiations altogether, leading to two weeks of constant clashes and three suicide bombings.

What little trust the Arabs had for Mr. Netanyahu has turned to open hostility, guaranteeing that every step he takes and idea he proposes will be met with at least suspicion and probably violence.

Mr. Netanyahu's solution, which

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he floated when he took office and then revived again during the latest crisis, is temptingly simple: to set aside the contentious interim steps and produce a comprehensive package that can be presented to the public — including the ideological foes of the agreement — as accomplished fact.

As envisioned by Mr. Netanyahu, the idea would be to gather Israeli and Palestinian negotiators and American mediators in some isolated location with orders to negotiate until done. That is much the way warring factions from the former Yugoslavia were tucked away in Dayton, Ohio, and Israelis and Egyptians were corralled in Camp David by President Carter.

And if the negotiations fail, Mr. Netanyahu added, the Oslo process can always be resumed, since in any case it requires no further action until another incremental Israeli withdrawal from the West Bank is due in six months.

Mr. Netanyahu has rendered the idea more tempting by giving ample signs that he is not averse to forming a “national unity” Government with Shimon Peres, the leader of the opposition Labor Party and the premier architect of the Oslo accords. Mr. Peres has made it abundantly clear that he is eager to re-enter government and to nurse the peace effort back to life. He has held meetings on the possibility with his followers, with Mr. Netanyahu, and with President Ezer Weizman.

Mr. Netanyahu has found advantage in fostering the idea of a national-unity government, both because it has kept the Labor opposition conveniently quiet, and because the public demonstration that he has an option has helped keep right-wing coalition partners in line.

It is known, however, that he would prefer to avoid bringing the Labor Party into the Government, both because that would dilute his power, and because he would have to negotiate every aspect of the peace effort with Mr. Peres first.

In any case, forming such a government has an inherent deadline: Labor Party elections are due in June, when Ehud Barak, a popular former general, is certain to take Mr. Peres's place, and Mr. Netanyahu would not bring his future challenger into his Government.

However tempted President Clinton may be by the idea of intense final-status talks, there are many obstacles to overcome just to get Mr. Arafat and Mr. Netanyahu talking, since both have set conditions on any resumption of contacts.

Mr. Arafat is feeling betrayed not only by Mr. Netanyahu, but also by Mr. Clinton, over American vetoes of United Nations resolutions that criticized the Israeli housing development in East Jerusalem.

In order to resume talks, he would be likely to require a series of measures, such as the opening of an airport and a seaport in Gaza and a safe-passage route between Gaza and the West Bank, which have been repeatedly promised him.

And if Mr. Arafat were to agree to enter intensive final-status talks, which is far from certain, he would probably do so only if Mr. Netanyahu agreed at least to a freeze on settlement construction and on the confiscation of land in the West Bank.

Mr. Netanyahu, who has made much of the charge that Mr. Arafat gave a green light to terrorist attacks, and that the Palestinians have deliberately used disorder as a pressure tactic, will demand that the United States bring tangible evidence from Mr. Arafat that he is bringing security to Israel.

And if Mr. Clinton did get both sides to some secluded negotiating table, it would require extraordinary statesmanship to envision a settlement that both sides would accept as fair, and to sell it to them in six months, or even a year.

The challenge would be daunting even if all sides were in basic agreement on the goal. But of the many variables, President Clinton must weigh, probably the biggest is Mr. Netanyahu.

The Administration's relations with Mr. Netanyahu have been strained. The White House made no secret of its preference for Mr. Peres in the elections last year, and of its dismay at Mr. Netanyahu's recent actions.

Mr. Netanyahu, on his side, is miffed that the Administration has qualified its criticism of Palestinian violence. According to Israeli accounts, the Prime Minister's trip to the United States next Monday has two goals — to meet with Mr. Clinton, but also to press the pro-Israeli lobby to urge Mr. Clinton to get tougher with Mr. Arafat.

Yet Mr. Clinton has made clear what sort of peace he advocates and what role he is prepared to play, and Secretary of State Madeleine K. Albright is certain to follow in the path of all her modern predecessors and to dedicate considerable time to the problem.

For his part, Mr. Arafat has been consistent in his declared goal of a Palestinian state with part of Jerusalem as its capital. And whether the Palestinian leader actually gave a “green light” to terrorism or not, it is no mystery that the threat of violence is one of the few cards in his hand.

The real question is Mr. Netanyahu, whose election 10 months ago dramatically changed the equation in the Middle East, whose actions have touched off one crisis after another, and who has now circulated the striking proposal to advance the entire problem to a swift conclusion.

In conversations and interviews, Mr. Netanyahu insists that he is ready and willing to conclude a peace, but that he is trapped between a right-wing Cabinet that threatens to bring him down if he wavers from the true nationalist path, and Palestinians who harbor unrealistic expectations.

He insists that he has nonetheless demonstrated his good faith by withdrawing Israeli troops from Hebron and by releasing female prisoners.

Yet Mr. Netanyahu's vision of the final settlement is still unclear.

In his writings and speeches before he was elected, he depicted a peace in which Palestinians gained extensive self-rule in areas where they lived, but not a state, and no part of Jerusalem.

That, in effect, is what the Palestinians already have in Gaza and the West Bank, and Mr. Netanyahu has yet to show what else he is prepared to offer.

# Child Development Enhanced By Good Day Care, Study Finds

WASHINGTON, April 3 (AP) — High-quality day care, where adults give lots of attention to the children, enhances early language use and the ability to think, a new study shows.

Researchers at 14 universities analyzed 1,300 families to determine the effect on children of leaving them in day-care centers from the age of one month through 7 years.

"The most striking aspect of these results from the early child-care study is that children are not being placed at a disadvantage in terms of cognitive development if they have high-quality day care in their first three years," said Dr. Duane Alexander, director of the National Institute of Child Health and Human Development. The agency, one of the National Institutes of Health, sponsored the study.

The research also found a weak association between the amount of time children spent in day care and how the parental relationship devel-

oped. The more time a child spent in day care, the study found, the less sensitive mothers were toward infants at 6 months, the more negative the parent was toward the child at 15 months and the less sensitive the mother was toward toddlers at age 36 months.

From the child's point of view, a longer time in day care resulted in less affection toward the mother at 24 and 36 months of age.

The interaction between mother and child was evaluated by videotaping the test subjects during play and by observing the mother's attention toward the child during the interview with researchers.

Dr. Sarah Friedman of the child-health institute said the study found that the amount of talk directed at a child in a day-care center could affect the development of learning and language skills. These skills, she said, "are the bedrock of school readiness."

## Unabom Defense Team Is Denied Array of Government Documents

SACRAMENTO, Calif., April 3 (Reuters) — A Federal magistrate has rejected a request by the lawyers of the Unabomber suspect, Theodore J. Kaczynski, for a wide range of documents they hoped to use to challenge the prosecution's evidence.

In an order filed in Federal District Court here on Wednesday night, the magistrate, Gregory Hollows, denied the defense team's request to review "essentially all documents" used by Government investigators to obtain a search warrant for Mr. Kaczynski's remote Montana cabin.

"Nothing that has transpired in this case thus far supports that present counsel, or the F.B.I. for that matter, has actively concealed exculpatory evidence" that would help in Mr. Kaczynski's defense, Magistrate Hollows said in the order.

Mr. Kaczynski was arrested in April 1996 at his rustic one-room cabin in Montana. He is accused of

being the shadowy Unabomber, who killed 3 people and injured 23 during an anti-technology bombing campaign that lasted from 1978 to 1995.

The 54-year-old suspect, who is being held in Sacramento, has pleaded not guilty. His trial here, on charges related to four of the bombings, is scheduled to start in November.

Prosecutors and investigators have said they found extensive evidence at the cabin incriminating Mr. Kaczynski, including bomb components and a diary that they say contained his "detailed admission" to the Unabomber attacks.

The defense has asked the court to throw out all the evidence seized from the cabin, saying the search was illegal because the Federal Bureau of Investigation had given misleading information in an affidavit supporting its request for a search warrant.

## California Joins Tobacco Accord

By BARNABY J. FEDER

California will be included in the Liggett Group's settlement of lawsuits by 22 other states that seek reimbursement for tobacco-related Medicaid expenses.

The agreement yesterday clears the way for California to obtain Liggett documents if it sues other tobacco companies.

Without having to sue Liggett, California would also receive part of whatever Liggett pays into a settlement fund. Liggett has agreed to pay 25 percent of its pretax income over the next 25 years. But the actual payments may end up being negligible, because the company is on the edge of bankruptcy.

Under a separate agreement, also announced yesterday, Liggett will pay no money to settle Medicaid claims in suits that San Francisco and 12 California counties have filed.

The accord will provide those governments with the same documents that are being sent to California and other states.

California accounts for 20 percent of all Medicaid spending. The state's Attorney General, Daniel E. Lungren, had repeatedly rebuffed demands by antitobacco groups that he join in the Medicaid suits, asserting that California would be blocked from pursuing such claims by a 1987 law that limited the tobacco industry's liability.

Last week, Democrats in the California Assembly introduced legislation to make it clear that such a suit would be allowed, and Mr. Lungren pledged to file a suit if the bill passed.

By reaching agreement with California, Liggett and its parent, the Brooke Group Ltd., have disposed of 70 percent of the potential Medicaid liabilities.

The New York Times

FRIDAY, APRIL 4, 1997

## CURRENCY MARKETS

### Dollar Falls vs. Mark and Yen Ahead of Report on U.S. Jobs

By Reuters

The dollar fell against the mark and the yen yesterday after the release of strong German economic data and a report from the International Monetary Fund that said the yen had room to rise.

Nervousness ahead of American employment data for March and meetings between Treasury Secretary Robert E. Rubin and top Japanese Government officials today also weighed on the dollar.

"The market is very afraid about whether Rubin will say more about trade in Japan and we're also cautious ahead of the nonfarm payrolls number on Friday," said Bob Near, a vice president on the corporate foreign exchange desk at the Bank of New York.

The currency market has been preoccupied for much of the week with United States concern about the size of Japan's trade surplus with the United States, which has risen in part because of the dollar's two-year rise against the yen. This has made Japanese goods more affordable in the United States.

In New York, the dollar settled at 122.65 yen, down from 123.25 on Wednesday. The dollar cost 1.6685

marks, down from 1.6765. The British pound cost \$1.6464, up from \$1.6431.

Strong German industrial output figures for February were behind the mark's strong performance. German production, driven by manufacturing strength and a seasonal rebound in construction, rose 1.9 percent in February from January and by 7.1 percent from February 1996. The dollar weakened against the yen after release of an International Monetary Fund paper scheduled to be presented at a meeting of finance officials from the Asia-Pacific region over the weekend.

The report said that the yen's depreciation since reaching post-World War II highs in early 1995 had corrected misalignments, but also said that some of the yen's fall could be reversed. "The I.M.F. comments gave the market an excuse to sell the dollar against the yen," said Hillel Waxman, chief foreign exchange dealer at the Bank Leumi Trust Company of New York.

Over all, however, Mr. Waxman said that trading was fairly subdued ahead of today's March jobs report, which is expected to clarify prospects for another interest rate increase.

## FUTURES MARKETS

### Coffee Prices Settle 8% Lower As Fears About Supply Fade

By The Associated Press

Coffee futures prices fell 8 percent yesterday on speculation that one of the tightest supply situations in 20 years eased considerably in March. On other markets, wheat and soybeans fell sharply, while pork futures prices surged.

The United States Green Coffee Association's report on April 15 is expected to show that the nation's supplies jumped by as many as a million 132-pound bags last month. That would be the largest increase since June 1994 and would lift American supplies well above inventory levels a year earlier.

Latin American producers have rushed much of their harvest to market to take advantage of the sharply higher prices.

"Mexico has been selling everything they have," Walter Spilka, an analyst at Smith Barney, said.

Coffee prices peaked at almost \$2 a pound earlier this year — nearly double the price in December — amid dwindling reserves and worries that the South American harvest would be poor.

Green arabica coffee for May delivery fell 15.45 cents on the Coffee, Sugar and Cocoa Exchange in New

York, to \$1.78 a pound. That was the steepest drop since March 17.

Wheat and soybean futures fell sharply on the Chicago Board of Trade after a Government report showed that exports fell sharply the last week, which eased concern about dwindling supplies.

May soybeans fell 12½ cents, to \$8.71 a bushel. July wheat fell 13 cents, to \$3.73 a bushel.

Pork futures soared the daily limit on the Chicago Mercantile Exchange after Japan suggested that it might lower restrictive tariffs by 25 percent on pork products.

Two weeks ago, Japan banned imports of pork from Taiwan amid an outbreak of foot-and-mouth disease that is not harmful to humans but is fatal to the animals. Because Taiwan sells most of its pork to Japan, the United States stands to benefit, Charles Leeavit, an analyst at Alaron Trading, said. With fewer supplies from Taiwan, Japanese wholesale prices have shot up 24 percent since mid-March.

April lean hogs rose the 2-cent limit, to 73.97 cents a pound, 9 percent higher than before Taiwan reported its problems.

## Government Securities Prices Remain Mixed for a Second Day

By ROBERT HURTADO

Government securities prices remained mixed for a second session yesterday, as investors waited for today's report on unemployment to see whether the risk of another interest rate increase should be priced into bonds.

The Federal Reserve moved to raise rates last week after strong economic reports, in an effort to head off inflation. If the employment numbers for March are strong, the Fed may be more likely to continue tightening monetary policy.

Traders said Treasury bills, the securities with the shortest maturities, were most strongly bid yesterday after the Fed went into the market to buy bills of several maturities. The move, known as a bill pass, was intended to permanently add \$4 billion in reserves to the banking system. Though that did not signal any

### Key Rates

| In percent            | Yesterday | Previous Day | Year Ago |
|-----------------------|-----------|--------------|----------|
| PRIME RATE            | 8.50      | 8.25         | 8.25     |
| DISCOUNT RATE         | 5.00      | 5.00         | 5.00     |
| FEDERAL FUNDS*        | 5.63      | 5.50         | 5.25     |
| 3-MO. TREAS. BILLS    | 5.11      | 5.13         | 4.97     |
| 6-MO. TREAS. BILLS    | 5.27      | 5.28         | 5.03     |
| 10-YR. TREAS. INFL.** | 3.56      | 3.58         | N.A.     |
| 10-YR. TREAS. NOTES   | 6.85      | 6.85         | 6.34     |
| 30-YR. TREAS. BONDS   | 7.07      | 7.07         | 6.67     |
| TELEPHONE BONDS       | 8.04      | 8.05         | 7.80     |
| MUNICIPAL BONDS***    | 5.96      | 5.96         | 5.97     |

\*Estimated daily average, Telerate

\*\*Realized dollar amount rises with inflation

\*\*\*Municipal Bond Index, The Bond Buyer

Sources: Salomon Brothers and Telerate for Treasury's bellwether bonds, notes and bills

change in monetary policy, the prices of bills were up substantially because of the move.

But the 30-year bond was unchanged at a price of 94½ to yield 7.07 percent, while the yield on a two-

year note fell to 6.37 percent from 6.39 percent. Yields and prices move in opposite directions.

Donald Fine, chief market analyst at Chase Asset Management, said predictions about the number of non-farm jobs added to payrolls, the most closely watched figure in the employment report, "are all over the lot, ranging from a modest rise of 100,000 to another sharp gain of 300,000."

"An increase of 240,000 or more will clearly be strong and disturb an already unsettled bond market," he said. "Whereas a considerably more moderate rise of say, 150,000, is likely to produce a favorable, though tempered, reaction simply because first-quarter employment growth will still be quite substantial."

Furthermore, he said, it would be difficult to determine whether a weaker-than-expected payroll number implies a trend or simply a partial offsetting of the strong growth seen in January and February.

And while the payroll number is the most closely followed, he said, market reaction is also highly influenced by other components of the report, including the unemployment rate, average hourly earnings and the index of aggregate hours worked.

"The unemployment rate, currently at 5.3 percent, is generally expected to drop a notch to 5.2 percent, which would make the Fed and the bond market squirm a bit," he said.

Hugh Whelan, vice president and portfolio manager at Aeltus Investment Management Inc. in Hartford, predicted that the payroll number would come in on the strong end of the range of predictions, at about 250,000 to 300,000 new jobs.

If that is the case, he said, short-sellers, who sell borrowed securities in the hope that they can later buy them back and make a profit, will feel no pressure to cover their short positions, contributing to the market's downward trend.

## Federal Reserve

Monetary Aggregates\* Average in billions of dollars.

|                           | One week ended |           | Annual growth rate |        |         |
|---------------------------|----------------|-----------|--------------------|--------|---------|
|                           | Mar 24         | Mar 17    | 3 mos.             | 6 mos. | 12 mos. |
| M-1                       | 1,068.0        | R 1,072.4 | -0.6%              | -4.1%  | -3.9%   |
| M-2                       | 3,880.2        | R 3,877.2 | 6.0                | 5.4    | 4.8     |
| M-3                       | 5,015.7        | R 5,009.1 | 7.8                | 7.8    | 7.0     |
| Monetary Base (St. Louis) | 470.9          | R 471.1   | 3.5                | 4.3    | 4.4     |

Reserve Data Average in millions of dollars.

|                   | 2 weeks ended | 2 weeks ended | Avg. 3 months |
|-------------------|---------------|---------------|---------------|
|                   | Mar 26        | Mar 12        | ended Feb     |
| Total Reserves    | R 47,976      | R 48,448      | 49,529        |
| Borrowed Reserves | 194           | 35            | 80            |
| Extended Credits  | 0             | 0             | 0             |
| Required Reserves | R 46,883      | R 47,210      | 48,303        |
| Excess Reserves   | R 1,093       | R 1,238       | 1,226         |

|                   | Week ended Apr 2 | Mar 26 |
|-------------------|------------------|--------|
| Borrowed Reserves | 623              | R 55   |
| Extended Credit   | 0                | 0      |

R Revised. \*Seasonally adjusted. N.A. Not available.

"Bulls may have to wait a while for the softer economic and/or inflation data they need so badly," he said.

Mr. Whelan said that if the report

showed a strong gain in payrolls, a drop in the unemployment rate and a gain in hourly earnings, the yield on the long bond might soon reach 7.20 percent.

# Another 'Camp David'?

ALL THE PARTIES to the Middle East negotiation see a looming crisis, and Israel's prime minister, Binyamin Netanyahu, is due in Washington with a rescue plan. He would park the broken-off talks on the "Oslo accords" for a Palestinian-Israeli interim settlement and open crash talks on the big permanent-settlement issues—Jerusalem, Jewish settlements, Arab refugees, borders, security. Mr. Netanyahu hopes for accord in six months, perhaps with American help at a Camp David-like pressure-cooker finale.

Strange things happen in the Mideast, and so you cannot say this idea could never work. But very strange and unlikely things would have to happen for the Netanyahu plan to produce a breakthrough. We don't think there is any new magic in the step-by-step process that he would at least temporarily abandon, and there has been plenty of frustration and disappointment in it. But we also think there is a huge and even determinative shortage of the trust needed to make either incremental or comprehensive talks prove useful. Day one would bring the statement of starting, maximal bargaining positions. Day two? And if the new talks fail? Go back to Oslo?

On the opposite page Charles Krauthammer, writing in favor of the Netanyahu proposal, argues that Yasser Arafat killed Oslo. He is right that Mr. Arafat has slyly altered its terms in some respects and that he has failed to keep the Palestinians' anti-terrorism end of the bargain. But Israel too has played a big part in undermining the Oslo process, and it now, to save bargaining chips, wants to put off the "redeployments" devised at Oslo and to move to a new venue.

Israel also, by adding a Jerusalem housing project that Labor governments had avoided as inflammatory, has unilaterally mooted later negotiation on Jerusalem, and has otherwise doled out territory so scanty and gerrymandered as to mock the idea of a feasible Palestinian state.

Ask why the current negotiations are flagging. The Palestinians are failing to provide the Israelis with adequate security. This is a fact and a very consequential one. It has understandably made some Israelis doubt that a safe peace is attainable, while others use the Israeli occupation and Palestinian equivocation to press claims, by construction and by confiscation, to extensive territory claimed by Palestinians, too. Palestinians step up the inexcusable violence, and more Israelis conclude that territory is better than a dubious peace.

This seems like an unbreakable cycle, but the familiar internationally approved formula of land for peace suggests at least the possibility of a way out. Peace requires greatly improved security for Israel—there is no doubt about that, and it is not and should not be negotiable. Land means political expression for the Palestinians. These things are achievable if the United States will press the Palestinians hard to stop playing games with terrorists and press the Israelis hard to stop conducting a unilateral annexationist policy. Palestinian responsibility on peace would make Israel readier for compromise. Israeli easing up on land would undercut the terrorism. This is what Mr. Netanyahu needs to hear from Mr. Clinton.

## No Deal With Big Tobacco

A COUPLE OF signals seem to crop up reliably whenever the tobacco industry feels itself particularly threatened by the press of events. One is talk that the industry and its adversaries—who may include the White House, state governments, plaintiffs in tobacco lawsuits or all of the above—are finally ready to sit down and make some kind of global deal. The details of such a deal are never clear, but in outline the exchange is simple: In return for some astronomical but finite sum of money—paid into a fund for education, health care or other good deeds, and in exchange for some restrictions on their operations—the tobacco companies get immunity from some degree of liability or regulation. In other words, they get stability in their immediate business future, a shield from the frightening unknowns of full-scale regulation or actual justice.

Such rumors of a settlement are on the rise again this week after a month of unprecedented difficulty and danger for the tobacco merchants. The small Liggett Corp. admitted it lied about the lethal effects of smoking, said it knows smoking is addictive and causes cancer, and agreed to turn over incriminating documents about youth marketing, which, if the other companies fail to block their release, could spread domino charges of conspiracy and perjury throughout the industry. Meanwhile, lawsuits against the other four cigarette manufacturers are advancing in 22 states, while a North Carolina court weighs

the constitutionality of far-ranging new federal regulations on tobacco as a drug. This time, accordingly, the talk is of a settlement in which the companies would accept *real* teeth.

It's all too obvious what's in it for the tobacco companies if a settlement—no matter how Draconian-seeming—is reached and submitted to Congress, there to be enshrined in law and made hard to undo or to update. But what's in it for the White House, said to be eagerly considering such a move, and the several southern governors who would have to get on board is harder to fathom. Everyone from this president on down is susceptible to the temptation to get a "solution" to the problem of tobacco's legality, something he or she can put a name on and take credit for, something neater and more concrete than the spreading mess of consequences now starting to threaten tobacco in a way that might finally bring it to the table.

All of which means it is exactly the wrong time to make a deal with the purveyors of this deadly stuff. Previous deals have seemed Draconian too—on advertising, as in the 1964 ban on TV commercials—and have ended up giving the companies time to plan for, market to and hook another generation. What settlement under those circumstances can overcome the skepticism that attends any industry's agreeing to crimp itself in a way that would truly reduce the number of smokers?

The Washington Post

FRIDAY, APRIL 4, 1997

# Mr. Curry's Deft Budget Work

PRINCE GEORGE'S County Executive Wayne Curry, presenting the latest in his series of finely manicured, tight-times budgets, has followed the instructions of the voters who slammed the door on any increases in taxes without their permission. His budget for the coming fiscal year is but 2.7 percent higher than this year's—and yet puts money where the voters clearly want it: into schools and public safety.

There's no trick math to it. When revenues are stunted, the new money for schools and police takes a heavy toll on other services. The Curry formula is to comb and cut almost everything except funds for education and law enforcement. This means cutting costs of shelters for the homeless, maternity clinics, public works employees and many other services that county residents came to enjoy in more flush years. Until there is some easing of the rigid revenue limits, this pattern is likely to continue.

The budget rationale couldn't be more basic: Mr. Curry recognizes that the county's quest for stability and economic strength depends on education, public safety and economic development. "We can't have a viable economic program," he says, "if we can't provide safe streets and adequate schools."

While he pursues new upscale stores, restaurants and a Potomac River resort to serve residents of higher-income housing that he is encouraging, his budget calls for an increase in the police force from 1,275 officers to 1,400. After two years of no pay increases, it includes one-time increases for some county employees, a one percent cost-of-living increase for all school employees and some previously deferred merit pay, and money to reduce class sizes.

The financial future is not all bleak. Though property values in the county crawled up only slightly—increasing by 0.2 percent—that's better than their being flat or tumbling. Mr. Curry hopes that new growth will build on this modest increase. He also has stepped up his lobbying efforts in Annapolis, where he and Montgomery County Executive Doug Duncan have teamed to leverage the political power the two counties can have if they work together. Their coalition clearly got the leadership's attention this year and may get their counties some significant state money for schools. This power shift alone would be a notable change not only in how the state legislature treats this region but also in how Prince George's copes with its self-imposed tough fiscal discipline.

## Ever an Oriole

WHEN BALTIMORE'S beloved Brooks Robinson said his ceremonial farewell to Orioles fans on a September day in 1977, he was driven into the packed stadium in a 1950s-era convertible, symbolic of his 23 years with the same team. These days, the idea of a ballplayer's spending his entire career with one team—indeed, of making any decision about where he plays on other than purely economic grounds—would be considered hopelessly idealistic and old-fashioned. Sort of like Cal Ripken Jr., bless him.

Mr. Ripken, it now appears certain, will end his playing days where he began them—with the Orioles. His new contract agreement, reached just in time (because of the distraction, he doesn't negotiate during the season), is likely to keep him in Baltimore three more years, by which time he'll be 40 and perhaps ready to be driven into Camden Yards in a 1982 convertible. But even if he goes on playing awhile longer, it's hard now to conceive of the game's steadiest player ever, one who was practically born into the Orioles' organization, leaving it for a last fling at big money.

Under his contract, Mr. Ripken will continue to make a little over \$6 million a year, which is in the upper brackets for baseball but considerably less

than is paid to a number of players who will never begin to match his contributions to the game. It was Cal Ripken who pretty much rescued baseball's reputation in 1995 with his march past Lou Gehrig in the record books. In the welter of of free-agent greed, strikes, owners' obduracy and selfish, show-offy play, Mr. Ripken provided an example of how ballplayers ought to behave and what they should be giving back for all that money. He plays without fail or complaint, works at his craft endlessly, puts a lot into charity and community work, and signs autographs for the kids. And of course he hasn't missed a game since 1982.

In fact, given Mr. Ripken's high standing—not just in the Baltimore-Washington area but in ballparks all over the country—it would be easy to suspect the Orioles' ownership of signing him up just to avoid alienating all his admirers. But the man has always had a way of making the club executives look like shrewd businessmen. On opening day Wednesday he had a home run, two doubles and made a Brooks Robinson-class play at third base, a new position where, as his manager, Davey Johnson noted, "most people would probably be uncomfortable." However, Mr. Johnson added unnecessarily, "most aren't Cal Ripken."

# The Washington Post

FRIDAY, APRIL 4, 1997

# Comments Couldn't Kill Tobacco Rule Process

*FDA Had to Upgrade Its Review Methods to Meet Opposition to Curbs on Marketing to Minors*

By John Schwartz  
Washington Post Staff Writer

For many at the Food and Drug Administration, the year between August 1995 and August 1996 passed as a blur. During that time, the agency proposed and finalized new rules on teenage smoking. For people like Sharon L. Natan, the FDA's associate commissioner for strategic initiatives, it was "the year of no sleep."

The FDA's tobacco plan, which restricts advertising the agency says is aimed at minors and restricts marketing and promotion, generated the biggest response ever to a proposed rule. The tobacco industry alone turned in a 2,000-page comment and 45,000 pages of supporting documents just before the comment period closed on Jan. 2, 1996. Under the Administrative Procedure Act, all that and every other piece of mail had to receive "full and serious consideration."

Given the usual time estimates for that kind of review and the number of documents received, the tobacco industry's FDA-watchers estimated it would take the agency from three to seven years to complete the review, according to Philip Morris spokesman Vic Han. Yet the FDA managed to get through hundreds of thousands of comments in 12 months.

Han said his company found the historically sluggish agency's quick turnaround on the tobacco rule "curious."

In many ways, the tobacco initiative, which was challenged in court only last week and will begin being phased in this month, followed the usual course of any Washington rule-making, a course undertaken by agencies across the federal government hundreds of times a year. But in order to deal with the unprecedented challenge in record time, the FDA essentially had to reinvent the way it writes new regulations—from purchasing a new computer system the agency used to scan, store and retrieve all the comments it received to carefully winnowing form letters, even those that were hand-written by supporters and opponents of the rule.

Ordinarily, the rule-making process works like this: A proposal is published in the Federal Register and the public has a set amount of time to comment on it before the agency issues its final version. In this way, the public can be heard on regulatory matters and ensure that federal agencies don't act in a vacuum.

Tobacco industry lawyers contend the agency did just that. As lawyers from the government and the tobacco industry prepared for a face-off last week in a North Carolina courtroom, Daniel W. Donahue of R.J. Reynolds struck a common theme in an interview, deriding the "unelected bureaucrats" who he said were trying to "rewrite constitutional law" and create an enormous new bureaucracy.

But agency officials say they did their job, listening to the public and working punishing hours to get the rule out the door.

The "unelected bureaucrats" included John Gomez, who led his own team who gave every document submitted to the agency an initial review. Also on hand was Ann Witt, who spent her first year of marriage at the office and wrote some 300 pages of the final rule. And there was consultant Rick Lunglhofer of Oracle Corp., who during the January 1996 blizzard that immobilized much of the Washington, spent the weekend at an FDA warehouse methodically debugging the agency's still-balky computer network and subsisting on vending-machine fare.

What was new about the FDA's strategy was not changing the process so much as finding innovative ways to streamline it. It relied on knowing what high technology could and could not do. The new computer system, for example, saved FDA reviewers countless hours normally wasted in the traditional process of chasing paper.

But before paper entered that system, John Gomez's team had to go over every submission in order to match up duplicate entries. They tracked, then papered, the walls of their office with the more than 500 forms that various campaigns used to generate mail. Some people just sent in instructions sheets for writing form letters distributed by tobacco companies, simply circling phrases they agreed with.

So when some 250,000 cards came in protesting the proposed elimination of name-brand sponsorship for sporting events, Gomez's team was able to file them as a single comment: C34.

Han of Philip Morris said that his company piggybacked a letter-writing campaign onto ongoing promotional activities as part of grass-roots mobilization. "It's the same thing the anti-tobacco people do," he said, "but nobody ever says 'boo' about them doing it."

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# Court Protects Ex-Employees From Retaliation

## Decision in Maryland Case Affects Firms Subjected to Job Discrimination Complaints

By Joan Biskupic  
Washington Post Staff Writer

The Supreme Court ruled yesterday that employers may not write bad job references or otherwise retaliate against former employees to punish them for filing job discrimination complaints.

Federal anti-discrimination law prohibits companies from retaliating against anyone who brings a job bias complaint. But until yesterday, courts were split on whether that protection extended to workers who already had been let go.

Civil rights advocates asserted that the ruling from the high court helps ensure that victims of discrimination will not be reluctant to file a complaint against an employer that fires them for fear that the company will seek revenge. But the reality of the workplace, business groups say, is that the decision will force employers to think twice about giving any negative review—even one that is warranted—to a former worker who had filed a discrimination complaint.

Yesterday's unanimous decision is of particular importance to workers and companies in Maryland and Virginia. It immediately reverses the stance of the 4th U.S. Circuit Court of Appeals, covering those states and three others, which had ruled that ex-employees were not protected against bad references or other retaliation by former bosses.

"The court has substantially strengthened the protections that workers in the 4th Circuit have against retaliation for complaining about job bias, said University of Washington law professor Eric Schnapper, one of the lawyers who represented the Maryland man whose case was decided by the court yesterday.

But Ann Reesman, general counsel at the Equal Employment Advisory Counsel, said the decision "is going to continue to make employers more cautious about the content of references they give. It's more likely to limit what employers say to name, rank and serial number."

Yesterday's case involved Charles T. Robinson of Jessup, Md., who claimed Shell Oil Co. fired him from his sales job because he is black. While Robinson's race discrimination lawsuit was pending, he applied for a position at Metropolitan Life Insurance Co. When the company asked Shell for a reference, the oil giant gave Robinson the lowest possible ratings and said it would not rehire him.

Robinson then filed a second job discrimination claim against Shell, saying the company was retaliating against him for the first complaint. The 4th Circuit said Robinson could not sue Shell because he no longer was its employee.

Yesterday, the Supreme Court reversed that opinion and broadly interpreted the anti-retaliation provisions of Title VII of the 1964 Civil Rights Act, which forbids "an employer to discriminate against any of his employees or applicants for employment" who have filed job discrimination charges. The critical question was whether the term "employees" included former workers.

The Equal Employment Opportunity Commission had submitted a "friend of the court" brief, saying that if former employees were not protected, they "would be chilled from taking action to report or oppose discrimination."

Yesterday the court agreed. Justice Clarence Thomas, EEOC chairman for much of the 1980s, wrote for the court, "EEOC quite persuasively maintains that it would be destructive to [the purposes of anti-bias law] for an employer to be able to retaliate with impunity." The ruling also protects witnesses who would bolster a claim of discrimination from retaliation.

Thomas acknowledged in *Robinson v. Shell* that the statute as written was ambiguous about whether the term "employees" covers former employees but said, after reviewing the language and purpose of the law, it was meant to be inclusive.

Richard T. Seymour of the Lawyers Committee for Civil Rights Under Law said yesterday's decision, combined with other recent rulings, sends a message to employers: "Stop thinking that there is refuge in technical loopholes. It is time to start living up to the obligations of the law."

Robinson eventually lost his original race discrimination case. Allen M. Lenchek, who argued for Robinson at the high court, said Robinson has a new job at a new company.

Shell's lawyer, L. Chris Butler, was not available for comment yesterday, but in arguing the case told the justices that Congress had intended to limit claims of retaliation to actions taken during employment. He had said that if the 4th Circuit's position were overturned, disgruntled former employees could sue former employers over employment references even if the references are true.

### FOR MORE INFORMATION

For the text of Supreme Court decisions this term, click on the above symbol on the front page of The Post's site on the World Wide Web at

<http://www.washingtonpost.com>

## SUPREME COURT CALENDAR

The Supreme Court will hear oral argument today from 10 a.m. to noon in the following cases:

No. 95-2074. *City of Boerne v. Flores*. Did Congress exceed its authority when it passed a law in 1993 providing greater religious freedom than the Supreme Court had allowed in an earlier ruling? (One hour.)

No. 95-2024. *Lawyer v. Department of Justice*. Whether a federal court may order mediation to resolve a race redistricting lawsuit. (One hour.)

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Thousands of other comments submitted for and against the proposal were more spontaneous. They came from people who simply wanted to have their say. In Spanish. Polish. Even Braille.

Some spoke out for freedom of choice, or against the tobacco industry, while others wanted to write about a relative who had died of a smoking-related illness. Some threatened FDA Commissioner David Kessler's life. In more than a few cases, staffers couldn't quite make out whether the correspondence was for or against the tobacco rule.

Ultimately, Gomez cut down the workload for the formal reviewers from more than 700,000 comments to 93,000.

As the comments were processed, Natanblut gathered 25 recruits in temporary space on the 17th floor of the FDA's Parklawn building in Rockville to consider the comments, which had been entered into the computer system and sorted by more than a hundred topics raised by the thousands of letters. One staffer read every comment on the plan to eliminate all vending machine sales; another focused on the proposal to restrict billboards near schools.

The reviewers worked through the comments, and two teams began the job of actually writing the final rule. Kessler, working with Witt, Deputy Associate Commissioner for Policy Mitchell R. Zeller and others, oversaw the part of the document that dealt with the agency's jurisdiction over tobacco products. Deputy Commissioner William B. Schultz worked with Natanblut, Catherine C. Lorraine and others to craft the regulation itself. Each group met with the experts from the 17th floor, working through the issues and hashing out the implications for the final rule.

This is one area where the new computer system made a huge difference, FDA staffers say. One issue that came up, for example, was whether vending machines should be converted for use solely with tokens that could be distributed from behind a bar. Instead of combing through the hundreds of thousands of submissions by hand, staffers were able to type in the word "tokens" and instantly find some 15 comments that mentioned the technology.

Some of the letters shaped the final rule. Bonnie Laidlaw of Scottsdale, Ariz., wrote an angry broadside saying that the agency was going to put her out of business. She and her husband had developed a vending machine that would dispense single cigarettes. Designed for use in bars, their brainchild stood to violate the FDA's proposed rule on two grounds—as a vending machine and a system for selling less than a full pack. "I think this latest infringe-

ment on my constitutional rights to be diabolical," Laidlaw wrote. "I am sending another loud, clear and precise message to the bureaucrats who just don't get it. I OBJECT!"

The bureaucrats reconsidered. The drafters of the final rule softened their initial drive to ban all cigarette vending machines and, on page 4,442 of the Federal Register notice, proposed instead that such machines could be used where access by minors could be restricted. Loosening the ban on single cigarette sales, machines like the Uni-Cig could go forward.

HHS delivered the final rule to the Office of Management and Budget in August. After all the work, the enumerated restrictions to be placed on the marketing and sales of tobacco products took up just two pages out of the three-inch-thick Federal Register document.

Tobacco industry representatives denounce the year-long effort as a charade. Walker Merryman, a spokesman for the Tobacco Institute, said, "They knew where it would come out anyway. It was an exercise, I guess, everyone knew we all had to go through." Merryman said he was "underwhelmed" by the changes the agency did make, which he called "distinction without a difference. . . . Whoop de do . . . many of us could have written their final conclusions months ago."

Bonnie Laidlaw, the woman whose letter nudged the regulatory juggernaut, would agree. The change in the rule came too late for her business. The company lost orders for 100 machines the day that the president announced the tobacco proposals, and the tiny venture never recovered. It closed last February.

Since the final rule was announced, most members of the FDA's review team have picked up their lives and old jobs. At the end of this month, Kessler will leave the office he headed for six years to become dean of Yale University's medical school. The computer system is still in use at the FDA tackling other complex document management tasks.

When he announced his resignation, Kessler said that he believed a legislative end to the long process was likely because of the substantial pressure in Washington to forge a congressionally-mandated end to the many complex lawsuits against the tobacco industry. Despite his efforts—or perhaps because of them—Kessler said, "At some point, some time, I think there will be legislation on tobacco." And that may mean aspects of the tobacco rule could end up as a bargaining chip.

## SNUFFING OUT ACCESS

*The FDA tobacco regulations are designed to limit access by minors to cigarettes and smokeless tobacco products and to sharply restrict advertising the agency claims is aimed at minors.*

*The rules, which will be phased in over the next two years:*

- Require photo ID for tobacco buyers under the age of 27.
- Ban vending machines, except in "adult" facilities such as nightclubs.
- Prohibit billboards within 1,000 feet of schools and playgrounds, and restrict ads to black and white text in magazines with a substantial underage readership.
- Ban the sale or giveaway of promotional items such as caps or gym bags with tobacco brand names or logos.
- Eliminate brand-name sponsorship of sporting events.

The Clinton administration has asked for \$34 million to fund the program in its first fiscal year.

—John Schwartz

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# F-16 Pilot Cleared in Airliner Incident

## *Air Force Acts to Improve Flight Training, Operating Procedures*

By Bradley Graham  
Washington Post Staff Writer

Investigations into the close encounter two weeks ago off the New Jersey coast between a military jet fighter and a civilian Boeing 727 have found evidence of poor communication by a military controller, but no error in procedures by the Air National Guard pilot who steered his F-16 close to the airliner, officials reported yesterday.

The action by the military pilot prompted the commercial plane, a Nations Air Express charter flight, to take evasive action and raised public alarm about military air operations around civilian aircraft. In back-to-back news conferences yesterday, civilian safety inspectors and an Air Force general issued assurances that neither the New Jersey incident nor three other reported civilian-military encounters that occurred the same week represented an epidemic of near collisions in U.S. airways.

But the officials said the New Jersey case, in particular, had revealed some shortcomings in military pilot training and operation of military flight training areas, which the Air Force has moved in recent days to remedy.

Among the changes, Air Force pilots now must stay well clear of civilian planes passing through military special-use airspace. Military pilots also will be receiving instruction for the first time in the anti-collision warning systems that have become standard equipment on commercial airliners.

Maj. Gen. Donald Peterson told reporters at the Pentagon yesterday that because military planes are not equipped with the anti-collision system, Air Force pilots never were given formal instruction about them. In the New Jersey incident, the F-16 set off warnings in the 727 cockpit, moving the civilian pilot to descend then climb steeply, throwing three passengers to the floor.

Peterson strongly defended the actions of the F-16 pilot, saying he had been following standard procedures for visual identification of unknown aircraft in choosing to close in on the Nations Air flight. The pilot also was exonerated by National Transportation Safety Board officials, who faulted a military air controller for not clearly alerting the F-16 pilot to the 727's authorized presence crossing a military training area.

"There clearly was miscommunication or a lack of communication" between the F-16 and a Navy air controller in Virginia Beach monitoring the military airspace, NTSB Chairman Jim Hall told reporters.

As the Air National Guard pilot entered the training area to practice intercepts with a student in another F-16, the controller merely advised of "working traffic" in the area, according to a transcript of the communication. Civilian investigators said the controller's language was too vague and should have included references to the type, location and course of the Nations Air flight as well as a United Parcel Service DC-8 passing through the restricted zone.

Detecting the unidentified Nations Air flight on his radar from about 20 miles away, the F-16 pilot had two choices: radio back to the controller for more information or approach for a visual inspection. Civilian and military officials said the pilot's approach was done by the book.

"It was a controlled procedure; it was done in a methodical manner," Greg Feith, lead NTSB investigator in the case, told reporters. The only safety hazard to the Nations Air pas-

sengers, Feith added, may have been the evasive maneuvers the civilian pilots took when their anti-collision warning system sounded.

The F-16 pilot continued to close in on the 727 even after being given more specific information about the airliner by the Navy controller when the two planes were about five miles apart. Pressed yesterday on whether the military pilot should have broken off his approach at that point, Peterson said the pilot was intent on fully identifying the aircraft and ensuring it left the training area.

The general took sharp issue with an earlier suggestion by Mark W. McDonald, the president of Nations Air, a small Atlanta-based carrier, that the F-16 pilot may have been "having fun."

"Fun and flying in the area of airliners is not part of our syllabus," said Peterson, an assistant deputy Air Force chief of staff. "We just don't accept hot-dogging. This is not World War II."

## The Washington Post

WEDNESDAY, FEBRUARY 19, 1997

FINAL

By BRUCE INGERSOLL  
And MICHAEL K. FRISBY

Staff Reporters of THE WALL STREET JOURNAL  
WASHINGTON — Is a truce at hand in the tobacco wars?

The cigarette industry has fought for decades against legions of antitobacco lawyers and now is girding for a court battle with federal regulators. But since the November elections, some of the combatants have indicated they may be willing to light up the peace pipe. Factions on both sides have signaled growing interest in striking a historic deal: In return for Congress's granting immunity from future liability suits, the industry would accept the Food and Drug Administration's landmark regulations to curb underaged use of tobacco.

There are numerous indications that they aren't just blowing smoke. This month, Steven F. Goldstone, chief executive officer of RJR Nabisco Holdings Corp., reiterated his call for a legislative settlement. Meantime, Thomas Hale Boggs Jr., one of Washington's superlobbyists, has been sounding out leading antitobacco lawyers about the prospects for a deal. His involvement is particularly significant because he represents both tobacco clients and the Association of Trial Lawyers of America.

## Possible Advisory Panel

Mr. Boggs also has participated in discussions about appointing an advisory panel of political veterans — retiring Alabama Sen. Howell Heflin, former Senate Majority Leader Howard Baker and Leon Panetta, the departing White House chief of staff — to help broker a legislative compromise that would pass muster with the industry, the plaintiff's bar, smoking foes, the Clinton administration and lawmakers. Sen. Heflin confirms that such a troika is under consideration, but insists it's "premature" to discuss it. Mr. Boggs declines to comment.

At this point, nobody in the administration appears ready to take up the tobacco issue. At the White House, senior officials say that they know nothing about a "three-wise-men" plan, and that Mr. Panetta isn't interested in any peace-making role. They also insist that striking a deal with Big Tobacco isn't a presidential priority. The White House hasn't even found a successor for the chief staffer on tobacco issues, Jennifer O'Connor, who took another administration job last fall.

When tobacco lobbyists call Mr. Panetta, as they have in recent months, his message to them has been: "We want to get kids to stop smoking. We've gone about it the best way we can to make that happen. Do you have a better idea?"

But White House officials caution that the industry shouldn't interpret that to mean Mr. Clinton might be willing to deal. Having fought the battle over FDA regula-

tions last year and won, they say, why would he revisit it? Where is the political upside? The officials say they can envision the president's returning to the matter only if legislation begins moving in Congress. Then, the administration might weigh in with suggestions on the measure's objectives and wording.

In Congress there is equally strong reluctance to take the initiative on tobacco. Last year nobody on Capitol Hill moved to protect the tobacco industry from FDA regulation. What's more, nobody was willing to embrace a proposed watered-down version of the FDA regulations offered by Philip Morris Cos., largely because the No. 1 cigarette maker only had the industry support of U.S. Tobacco Co.

Executives say the industry remains divided on how to proceed with any settlement. On Dec. 5, the Tobacco Institute trade group asked its members for suggestions about a compromise. But mighty Philip Morris reportedly declined to respond, and the proposal wasn't on the Tobacco Institute's Dec. 12 executive committee agenda. The institute declined to comment on its internal workings, and a Philip Morris spokesman said the proposal wasn't on the agenda for reasons that had nothing to do with the company.

## Proposal Falls

A sweeping proposal to settle future liability issues advanced by Mississippi Attorney General Mike Moore and trial lawyer Richard Scruggs also went nowhere last year, largely because of overwhelming opposition from health groups and other attorneys general. The proposal would have immunized cigarette makers against liability suits for 15 years and spared them from FDA regulation in return for multibillion-dollar payments to reimburse several states for health costs. The lack of unanimity was more than enough to dissuade Mr. Scruggs's brother-in-law, Senate Majority Leader Trent Lott, from sponsoring such a settlement.

Mr. Scruggs, for one, believes the legal campaign against Big Tobacco has reached a high-water mark. "It's foolish not to settle now," he asserts. But some industry critics doubt that any proposal akin to the one that he and Mr. Moore shopped around last year can succeed. "Why should the tobacco industry be immune, given the harm they've caused?" asks Matt Myers, executive vice president for the National Center for Tobacco-Free Kids.

## Loss of Allies

In the House, meantime, Virginia Republican Thomas J. Bliley has made it clear to colleagues that he doesn't want to be known as "the congressman from Philip Morris." In a Dec. 9 speech, the House Commerce Committee chairman left tobacco off his legislative agenda. "You're not going to move legislation unless the administration signs on," he said.

Some in the industry hope the administration might be more amenable to a legislative compromise in the second term than it was in the first. The antitobacco movement will soon lose two important allies — FDA Commissioner David Kessler and Harold Ickes, White House deputy chief of staff. Dr. Kessler's departure raises the possibility of a successor more willing to compromise.

Mr. Panetta, who is going home to California next month, has advocated seeking a peaceful resolution with the cigarette manufacturers, but his aides say he has no interest in serving on any peace-making troika. His successor, North Carolina investment banker Erskine Bowles, isn't expected to differ much from Mr. Panetta. As a tobacco-state native, however, Mr. Bowles has a better understanding of the industry's grave problems.

## Heating Up

### August 1995

Food and Drug Administration proposes to ban tobacco sales to young people under age 18 and to sharply curtail industry advertising.

### March 1996

Liggett Group enters first-ever settlement of tobacco lawsuits.

### August 1996

Brown & Williamson Tobacco Co. loses a landmark \$750,000 jury verdict in Florida case.

### February 28, 1997

FDA ban on tobacco sales to minors is scheduled to take effect.

Cigarette manufacturers clearly are on the defensive. In March, Liggett Group broke ranks with the rest of the industry and agreed to a multimillion-dollar settlement of several large liability cases. In August, the industry's courtroom invincibility was shattered when Norwood Wilner, a Jacksonville, Fla., plaintiff's lawyer, won a shocking \$750,000 judgment against Brown & Williamson Tobacco Corp., prompting other lawyers to go after the industry. Much more costly setbacks may be in the offing. Sixteen states have suits pending against the industry to recoup billions of dollars in Medicaid outlays for smoking-related illnesses.

For now, the industry is focused on its Feb. 28 showdown with the FDA — despite the conciliatory remarks of RJR's Mr. Goldstone in a Dec. 10 appearance before fellow CEOs. The industry has asked a federal judge in Greensboro, N.C., to block the FDA's ban on tobacco sales to smokers under 18 years old and its advertising restrictions.

"We believe the case against the FDA is best made in court," said Thomas Lauria, spokesman for the Washington-based Tobacco Institute.

The impending court battle hasn't diminished the swirl of rumors about a possible legislative compromise. A few weeks ago, John Angell, a top Panetta aide, telephoned Mr. Boggs, the superlobbyist, to find out what all the fuss was about, according to the White House. Mr. Boggs believes, according to several accounts, that the rumors began after Hugh Rodham Jr., a Florida antitobacco lawyer, discussed the industry's huge liability problem with his brother-in-law, President Clinton, over Thanksgiving at Camp David.

Circulating among trial lawyers, however, is a different version of the call, which has Mr. Angell calling Mr. Boggs to take soundings on the attitudes of leading antitobacco attorneys toward a legislative settlement.

Wendell Gauthier, a New Orleans trial lawyer who has assembled a team of 60 lawyers for a massive class-action suit against Big Tobacco, confirms that Mr. Boggs contacted him about 10 days ago. He says he told Mr. Boggs that any settlement with the cigarette manufacturers would have to codify the FDA regulations.

"Our fight with those rascals has to do with them targeting the kids," says Mr. Gauthier. "Settlement discussions are probably premature. We are going to have to have some trials first."

—Milo Geyelin and Suein L. Hwang  
in New York  
contributed to this article.

## FBI Arrests Veteran Agent On Spy Charges

By JOE DAVIDSON

Staff Reporter of THE WALL STREET JOURNAL

WASHINGTON — The Federal Bureau of Investigation arrested a 13-year agency veteran who was charged with selling names of undercover agents and national defense and other secrets to Moscow.

FBI Director Louis Freeh said Earl Pitts was arrested yesterday at the FBI Academy in Quantico, Va., where he worked in the behavioral-science unit. He was charged with conspiracy to commit espionage and attempting to commit espionage. He faces life in prison if convicted.

According to an FBI affidavit outlining the case, Mr. Pitts was an agent for Soviet and Russian intelligence agencies from 1987 through 1992, when he allegedly was paid more than \$224,000. At the time, Mr. Pitts's alleged spying went undetected by the FBI. But in August 1995, after a former Soviet official based at the United Nations gave authorities information about the agent's earlier spy work, the bureau began an undercover operation, known as "false flag," to catch Mr. Pitts.

Mr. Pitts's wife also contacted FBI agents because she suspected he might be spying.

"The purpose of the false flag operation was to confirm Pitts's 1987-1992 suspected espionage activities and, most importantly, to determine what FBI information, projects, and operations Mr. Pitts compromised," said Helen Fahey, U.S. attorney for the eastern district of Virginia, during a news conference.

During the operation, according to the FBI, Mr. Pitts, who is also a lawyer, was convinced that his services were again needed by Russia's intelligence service. As outlined in the affidavit, the cooperating witness visited Mr. Pitts at his home in

Fredericksburg, Va., in August 1995, and said: "There is a guest visiting me. He wanted to see you. He's in my car. He's from Moscow."

The person in the car was a U.S. undercover intelligence officer who told Mr. Pitts that the Russians were concerned about the behavior of a Russian spy in the U.S. "I'll help you if I can," Mr. Pitts replied, and was given \$15,000 in used, unmarked, nonsequential \$100 bills, according to the affidavit.

That meeting also sparked the suspicions of Mr. Pitts's wife, Mary, a former FBI support employee, the FBI said. Mrs. Pitts contacted the agency after she found a letter to Mr. Pitts from the U.S. undercover agent indicating the covert tasks Mr. Pitts was to perform.

Although Mrs. Pitts told her husband that she had talked to the FBI, and although he found an electronic surveillance device during the course of the investigation, he allegedly continued his espionage activities. Those activities included giving the phony Russian agent the names of U.S. agents posing as secret Russian agents, secret national defense documents, a stolen FBI handset to a telecommunications device used to transmit classified information, plans to smuggle a Russian technical expert into the FBI Academy and even Mr. Pitts's own FBI identification badge.

Mr. Pitts's lawyer, Nina Ginsberg, had no comment.

Mr. Freeh said the arrest marks the "termination of a significant threat to our national security." He added, however, "I would not compare him with Aldrich Ames in any degree." Mr. Ames, a Central Intelligence Agency employee, was sentenced to life in prison in April 1994 on an espionage conviction.

Mr. Pitts was a counterintelligence officer assigned to New York from January 1987 to August 1989. According to the FBI, its investigation indicates Mr. Pitts initiated his double-agent activities in 1987, apparently writing a letter asking to meet the person who now is the cooperating witness.

# The District's Public Safety Debate

**D**C. POLICE officer Brian T. Gibson was not the first person to die a violent death in the District this year. But the callous and cowardly way in which he was killed still managed to shock and sicken a city that has seen too much bloodshed and wanton murder. When a police officer who represents all that stands between the law-abiding and the lawless is shot dead at point-blank range in cold blood, citizens know—without being told—that a dangerous line has been crossed.

Even in the wake of a horrible slaying of a police officer, there's no holiday for homicides in the District. Between Officer Gibson's death early Wednesday morning and his burial yesterday, at least two other people have died violently on District streets. Their murders bring this year's total to at least 47, which is on a par with last year, when the D.C. homicide rate increased by 10 percent over 1995. Meanwhile, murder rates declined in many other large American cities. It is around those depressing statistics—and the slaying of a police officer—that calls for "drastic action" are now being heard within the city and in Congress.

The proposed actions range from the familiar to the bizarre. A Senate bill sponsored by Utah Republican Orrin Hatch makes all murders in the District a federal offense, thus subject to the death penalty. Another bill, introduced yesterday by Texas GOP Sen. Kay Bailey Hutchison, makes the murder of a police officer a capital crime. Neither bill strikes us as the best or most effective response to the problem. Besides, they run up against the

longstanding opposition of District residents to the death penalty—a position we share. The chairman of the D.C. Fraternal Order of Police's labor committee, Ron Robertson, wants the police department under the control of an independent commission appointed by the president, Congress and D.C. officials. And the mayor's contribution? Mr. Barry cites Maryland's and Virginia's role as the source of guns on D.C. streets and then takes this observation to the following proposal: "What we need from the federal government is an iron net around Washington."

Senate Majority Leader Trent Lott has called on President Clinton to convene a summit on crime at which congressional leaders, the White House and local corporate and government officials could mull over what to do about the crime problem. "Here we sit in the Capitol and in the White House, high and dry, and there's deterioration going on all around us," Sen. Lott said. He will get no argument from District residents on that. Weaknesses within the police force and lack of safety on the streets—even in broad daylight and in the company of others—contribute to the concern that local leaders can't handle the problem. The financial control board is already leading a study to produce recommendations that improve police operations. That route should be pursued with greater urgency. In the meantime, city leaders need to stop finger-pointing, hold their rhetoric in check and cut through the red tape that's holding up funds for much-needed police equipment, cruisers and other resources.

## Tobacco Regulation in Court

**T**HE ONE-DAY hearing in a Greensboro, N.C., courtroom yesterday was only the opening salvo—a long-awaited one, to be sure—in the legal war over federal regulation of tobacco sales to minors. Almost three years after the Food and Drug Administration floated the idea that nicotine might meet the criteria for an addictive drug, and thus a substance over whose sale and distribution it could claim regulatory authority, a judge finally heard arguments from Justice Department and tobacco company lawyers weighing that assertion and its complicated legal, legislative and scientific history. The drum-roll, to spectators, may have seemed interminable, but the stakes in the case match it in portentousness—not just in money, though there's plenty of that, but in human lives. The complexity of the past few years' maneuvering has made it ever more difficult to concentrate on the fundamental issue surrounding these regulations—whether the government may take a hand in preventing the illegal sale to minors of an otherwise legal, but lethal, product.

Even this one-day proceeding is merely a prelude to the real case. Lawyers for tobacco companies and some advertising companies asked U.S. District Judge William Osteen to grant summary judgment blocking the ambitious set of regulations, some of which are slated to go into effect Feb. 28. Their argument is twofold: that the government, and specifically the FDA,

has no authority to regulate nicotine generally and that even if it did, the regulations ought to be overturned because the clauses aimed at restricting cigarette advertising violate the First Amendment. It is true that of the battery of regulations that would choke off the flow of cigarettes to children by blocking everything from billboards near schools to vending machines in public places, there are some that cut close enough to specific content and manner of expression to raise constitutional questions. Some trade associations of magazine and newspaper publishers, including several to which parts of The Washington Post Co. belong as members, have filed comments opposing the regulations on that same basis, and a North Carolina-based advertising company, Coyne Beahm Inc., is among the plaintiffs in the Greensboro case. But there is a vast difference between opposing a part of the effort to regulate tobacco sales to young people—specifically, the part that would regulate how it is advertised and with what sort of words and pictures—and opposing the whole scheme on that basis. The core of the FDA's effort is sound; more than that, given the rising rate of smoking among teens, the effort is long overdue. Though Judge Osteen has said he will wait several weeks before issuing a judgment, that delay should not become an excuse for suspending these urgent measures indefinitely.

# *A Fair Look at Gambling*

**W**E HAD a bad fact and implication yesterday in our piece on the gambling commission about to be named. One name on the list of possible White House choices was Richard Leone, who, contrary to the suggestion in our editorial, has been an outspoken critic of gambling, including lotteries, for decades. While Mr. Leone has been a longtime friend of U.S. Sen. Robert Torricelli (whom we incorrectly listed as a member of the House—to make matters worse), the two men have differed on the gambling issue over the years. We think we fell into the trap of assuming anyone from a state that is a site of big-time casino gambling automatically would be a supporter of gambling business interests, and for that we apologize.

Our interest in the composition of the commission is undiminished, and so is our sense that the remaining appointments to be made are critical and that it is awfully important that President Clinton not load the group in favor of big-donor gambling interests. The legislation called for the

commission to be chosen last October, and it was not reassuring that the choices were put off until after the election.

Gambling industry representatives note that the legislation calls for individuals who have “knowledge or expertise” on the subject. But that does not mean a preponderance of people with industry connections. The list of people chosen so far includes some with direct connections to the industry as well as some outspoken foes. Fair enough—and now the selections still to be announced by the White House could have much to say about how the commission proceeds. Those who pressed hardest for passage of the bill note that their bipartisan effort was not intended to create a commission evenly balanced between pro- and anti-gambling forces. The commission makeup would benefit from having at least several members who have no vested interests in the outcome of the commission’s study of this fast-growing industry—and that can still happen.

# *Paying for Job Security*

**T**HE NEWS LAST Friday that unemployment in Germany had reached levels not seen since 1933 was both more and less ominous than it seemed. Democracy is well planted in Germany, and another Hitler is not about to come to power. In that sense, comparisons to Depression-era Weimar Germany are more misleading than helpful.

But high and apparently intractable levels of joblessness, not only in Germany but throughout much of Western Europe and Canada, are very real. So is the long-running economic slowdown in Japan. There, unemployment remains relatively low (although high by traditional Japanese standards), but the economy is not growing, the stock market has plunged, and the financial system is fragile. All this stands in marked contrast to the United States, currently the envy of the rest of the industrialized world. The U.S. economy grew last year by 2.5 percent—not as fast as many would like, but quite respectable in the comparative scheme of things. Unemployment stands at 5.4 percent—compared with 12.2 percent in Germany and 9.6 percent in Canada—and inflation also is under control.

Why the difference? As always with such things, economists offer various answers, no one of which will suffice; every country’s situation is

particular. But most agree that Western Europe and Canada are paying a high price for the governmental measures they have taken to promote job security and comfortable safety nets. Unemployment and welfare benefits tend to be higher than in the United States, vacations longer, layoffs rarer. Partly as a result, taxes are higher and regulations far more constricting, and employers are accordingly less eager to take on new hires. In Japan, a social rather than legal compact similarly emphasizes security for those already employed, again inhibiting entrepreneurship, venture capital and job creation.

Certainly there are costs associated with the American style of capitalism, too: Downsizing, job insecurity and a growing inequality in wages properly command much attention these days. Too many Americans fall through the safety net altogether. The point of looking abroad is not to gloat, although U.S. industrialists and workers can take pride in how far they have come since the 1980s, when American business was widely written off. The point, rather, is to remember that the ferment of American capitalism brings benefits as well as costs. So far no one has found a way to increase job security or guarantee every citizen’s welfare without paying a price. Germany is paying a high price today.

## **The Washington Post**

TUESDAY, FEBRUARY 11, 1997

# Judge Hears Arguments on Tobacco Regulation

By John Schwartz  
Washington Post Staff Writer

GREENSBORO, N.C., Feb. 10—The tobacco industry today asked a federal judge to block the Clinton administration's controversial plan to impose tough new federal regulations to reduce smoking among young people.

During a day-long hearing in a crowded U.S. District courtroom, attorneys representing the tobacco industry and other businesses that would be affected by the plan argued that the federal Food and Drug Administration had grossly overstepped its authority.

"We are dealing with a revolutionary expansion of FDA authority over a major industry that it has never before regulated," said Washington attorney Richard Cooper, representing the tobacco industry.

Meanwhile, attorneys for the government countered that FDA Commissioner David A. Kessler was well within his legal authority to take the action, which was necessary to counter a teenage smoking epidemic.

"The commissioner hasn't acted willy-nilly here," said Justice Department attorney Gerald Kell. Kessler, he said, "has looked at a serious health problem" and tried to fashion a reasonable response.

The arguments came during a one-day hearing on the first court test of the FDA action—a request by the tobacco, advertising, publishing, convenience store and other industries for Judge William L. Osteen Sr. to issue a summary judgment blocking the plan. If Osteen rules against the industry, a full trial will be held. Any outcome is likely to be appealed, perhaps as far as the Supreme Court.

Osteen said he would not announce a decision for five to 10 weeks.

In the meantime, the first phase of the FDA regulations—a federal requirement that young people buying tobacco products be required to produce photo identification to prove they are at least 18 years old—will go into effect Feb. 28.

Restrictions on tobacco advertising, including requirements that ads in magazines with a large youth readership be restricted to black-and-white text—are scheduled to go into effect in August. A ban on tobacco industry name-brand sponsorship of sporting events would take effect a year later.

The hearing focused on three broad issues: whether the FDA has jurisdiction over tobacco, whether it had applied its own rules properly and whether the agency's advertising restrictions violate the First Amendment.

On the first issue, tobacco industry attorneys argued that Congress had never granted the FDA authority to regulate tobacco and that the agency itself had expressly rejected requests in the past from anti-tobacco activists to assert such authority.

The industry attorneys relied largely on congressional deliberations from 1964 and 1965 after the first surgeon general's warning on tobacco's health risks. Congress gave some authority for tobacco to the Federal Trade Commission and took on the task of crafting cigarette warning labels itself.

Attorneys for the government contended that the agency must have the flexibility to change course when new evidence emerges. Recent revelations about tobacco industry practices and knowledge of nicotine's addictive qualities justified a shift, they argued.

"These are not the same products they were in 1938," when the federal Food, Drug and Cosmetics act was first passed, said Justice Department attorney George Phillips. "They are a highly manufactured, engineered product."

Even if Osteen finds that the agency has jurisdiction over tobacco products, the notion that cigarettes and smokeless tobacco can be classified as a combination drug and medical device was "truly strange" and "an amazing series of evasions and distortions," Cooper said.

It was absurd for the government to contend that the tobacco industry has shown its intent to sell tobacco because it contains nicotine—an essential element of the agency's jurisdictional claim—when the industry does not make explicit claims for its products' drug effects, Cooper said.

Some of the strongest language against the FDA rules concerned the

advertising restrictions. Dan Troy, a Washington lawyer representing advertising companies, called the plan "patently over-broad" and said that the agency "cannot attack with a blunderbuss what it should attack with a scalpel."

Osteen prodded both sides with tough questions, often catching the attorneys off guard.

He interrupted Cooper's argument that the industry should be held accountable only for claims that it makes explicitly, saying: "That's a pretty tenuous line." And Osteen suggested that the government's substantial interest in protecting children helped justify the government's case.

But he also admonished a government attorney who alluded to his daughters in his argument. He told the lawyer to focus on the law and not emotional appeals.

At one point Cooper, who without saying himself that cigarettes are dangerous noted that the FDA had reached that conclusion, suggested that the agency's only recourse under the law was to ban tobacco products outright.

That call for a ban "comes from a strange quarter," Kell said.

## FOR MORE INFORMATION

To read Justice Department briefs defending the FDA's tobacco jurisdiction and an FDA guide on compliance with the regulations, click on the above symbol on the front page of The Post's site on the World Wide Web at <http://www.washingtonpost.com>

## CORRECTION

Two photo captions accompanying a story yesterday about the Baltimore Longitudinal Study of Aging incorrectly identified the research project. It is both run and funded by the National Institute on Aging.

# The Washington Post

TUESDAY, FEBRUARY 11, 1997

# CEA: Jobless, Inflation Rates Sustainable

*Report Suggests Fed Can Leave Interest Rates Alone for Some Time*

By John M. Berry  
Washington Post Staff Writer

The president's Council of Economic Advisers, in its annual report released yesterday, lauded the nation's current combination of low unemployment and low inflation and said that it could continue more or less indefinitely.

If the council's analysis is correct, it would mean that the Federal Reserve might be able to leave short-term interest rates at their current level for a long time to come, barring some sort of outside shock to the economy. Those rates have been unchanged for more than a year as the economy experienced healthy growth accompanied by either stable or falling inflation.

Federal Reserve Chairman Alan Greenspan has expressed concern that keeping the nation's jobless rate as low as it has been for the past year could sooner or later cause inflation to rise, but the CEA report said, in effect, "not to worry."

The key point, the council said, is that the unemployment rate associated with a stable inflation rate—known to economists as the "non-accelerating inflation rate of unemployment," or NAIRU—has come down substantially since the 1980s.

For example, many economists believed then that the unemployment rate could not drop below about 6 percent without triggering a surge in wages, which would spur inflation. However, the unemployment rate has averaged 5.5 percent over the roughly two-year period from September 1994 through December 1996, while inflation has dropped. The inflation rate, as measured by the 12-month change in the consumer price index, excluding volatile food and ener-

See CEA, D2, Col. 1

## CEA, From D1

gy prices, fell from 3 percent to 2.6 percent during that period.

If the NAIRU were still as high as 6 percent or more, an average unemployment rate of 5.5 percent should have led to about a half-percentage point increase in the inflation rate, the council's report said. The CEA said the fact that inflation has not already increased is strong evidence that the NAIRU is lower than it used to be.

Despite Fed policymakers' concern that this situation may not last, they have not acted preemptively to raise rates and slow economic growth. Rather, as the minutes of a December meeting put it, Fed officials are in a position of "watchful waiting" to see what happens next.

However, Greenspan warned last month that the unexpectedly benign situation may be due to workers settling for smaller pay increases because they are worried about keeping their jobs. And there are some signs this may be a

cyclical rather than a permanent shift, and that it could end at any time, he said.

Furthermore, Fed board member Laurence H. Meyer, a noted forecaster, said recently that last year's drop in core inflation was due to some special factors, such as an exceptionally large decline in computer prices, which are not likely to be repeated this year. Meyer believes the NAIRU is around 5.8 percent and he expects the core CPI to rise more this year than it did in 1996.

The council's report, however, argues that the NAIRU has come down for three reasons, all of which are likely to be enduring:

- The composition of the labor force has changed. "The single most important demographic change is the aging of the baby boom generation: The United States now has a more mature labor force, with smaller representation of age groups that traditionally have higher unemployment rates," such as teens and young adults, the report said.

This change alone probably has lowered the NAIRU by about half a percentage point, the council estimates.

- Workers now accept that smaller productivity gains limit what employers can pay them. This second point is akin to Greenspan's explanation that job security worries have made workers reluctant to press for the sort of wage increases they sought in the past when labor markets were as tight as they are today. But the council describes it in terms of productivity growth—increases in how much a worker produces each hour on the job—which is the ultimate source of any increase in a worker's real pay.

The report argues that when productivity growth slowed markedly in the early 1970s, workers were very slow to realize that fact. Well into the 1980s, employees were still seeking wage increases based on the higher productivity gains of the past, which "put upward pressure on the inflation rate and required a higher level of unemployment to stabilize the rate of inflation," the re-

port states. "However, workers have now had time to lower their aspirations for real wage growth to reflect the slower productivity growth... lowering the NAIRU by a meaningful amount since the early 1980s."

- Competition has increased. Facing increased competition from abroad and deregulation of some U.S. markets, employers are having a harder time making price increases stick and are therefore reluctant to let labor costs rise. Meanwhile, "changes in labor market institutions"—that is, the decline in the share of the work force in unions—can plausibly explain much of the decline in the NAIRU that is not accounted for by the other two reasons, the council said.

The CEA report does acknowledge that the exact level of the NAIRU is very hard to pin down using statistical analysis and that it might be anywhere between 5 percent and 6 percent. On the other hand, CEA Chairman Joseph E. Stiglitz said it is clear that the nation faces no inflation "precipice."

If the NAIRU turns out to be higher than it appears to be, the impact on inflation would be gradual enough that the Fed would have time to react and bring it down again, Stiglitz said. The "watchful waiting" stance of the Fed indicates central bank officials agree on that point.

## The Washington Post

TUESDAY, FEBRUARY 11, 1997

GREENSBORO, N.C., Feb. 10—How crowded was the Greensboro Hilton Sunday night?

The hotel, the closest one to the federal courthouse, was so full of tobacco company attorneys, anti-tobacco activists, Food and Drug Administration officials and journalists that when FDA Commissioner David A. Kessler checked in at 10 p.m., the only accommodation left for him was a smoking room.

It was just one of the little ironies leading up to today's landmark hearing on regulation of tobacco that lent a surrealistic air to the event.

There was, for example, the journalistic camp out. Judge William Osteen Sr. set aside 30 seats in the airy courtroom for the news media, though many more were expected for the high-profile case. So reporters began to arrive at the courthouse about 3:30 a.m. and huddled under blankets until the doors opened four hours later. Many of those at the scene said it reminded them of waiting in college for Bruce Springsteen concert tickets, except that fewer Springsteen fans wore neckties.

Some of those who were able to remain at the Hilton slept no more soundly than the journalists at the courthouse.

Shortly after midnight, FDA official Mitchell Zeller said he received a call from someone who said he was a pizza delivery man and that Zeller's sausage and pepperoni pie was ready. When Zeller sleepily answered that he had not ordered a pizza, the caller became abusive, screaming obscenities and making threats.

Another FDA official reported receiving a pizza call, as did Matthew L. Myers of the Coalition for Tobacco-Free Kids. "I told him I grew up in a kosher household and never would have ordered a sausage and pepperoni pizza," said Myers, who added that this did not calm down the crank caller.

— John Schwartz

# Ames Turned Over Secrets From the Start, Soviet Says

By Walter Pincus  
Washington Post Staff Writer

The original Soviet handler of confessed spy Aldrich H. Ames is quoted in a new book as saying Ames turned over valuable information from the beginning of his spying, rather than duping the Soviets at the start with worthless data as Ames has claimed.

Retired KGB officer Viktor Cherkashin said the first secrets turned over to Moscow by the now-jailed former CIA counterintelligence officer included identification of two KGB officers then stationed in the Soviet Embassy in Washington but working for U.S. intelligence.

This statement "contradicts Ames's claim that he [initially] was scamming the Soviets with useless information and indicates he was coldbloodedly selling the names of two vital . . . recruits," writes Pete Earley in his new book, "Confessions of a Spy," excerpted this week in U.S. News & World Report.

Earley writes that he was not able to determine whether Cherkashin or Ames was telling the truth, since he was unable to get a copy from the KGB's successor organization of the original letter Ames sent to Moscow with his first delivery of information. "Until it surfaces," Earley writes, "it will be impossible to know the truth."

The two Soviet embassy-based KGB officers whom Ames turned in, Valery Martynov and Serkey Motorin, had originally been recruited by the FBI. They were later executed and were among the 10 that CIA officials have already identified as slain as a result of Ames's identification of them as working for U.S. or western intelligence agencies.

Earley writes that during interviews he had with Ames in 1994 in prison in Alexandria, the 31-year veteran CIA officer said he had identified 25 "human assets" working for western intelligence to the KGB. That is more than twice the number of individuals that U.S. officials have acknowledged publicly.

Ames has claimed in previous in-

terviews that his first delivery of information in April 1985 to the Soviets, for which he was paid \$50,000, was for the names of double agents—Russians whom the CIA had learned the KGB was going to make available to western intelligence but were really still acting for Moscow. It was only after Ames received the first \$50,000 that he decided to deliver a major "dump" of all the agents he had learned about for whatever money he could get.

In the excerpt published yesterday, Earley says that during the three years, from 1983 to 1986, that Ames ran the counterintelligence branch of the Soviet division within the CIA's clandestine service he read about several highly classified electronic intelligence operations the agency had under way in the Soviet Union.

One that has not been made public before was called "Absorb," according to Earley. It used a "souped-up Geiger counter" to determine the number of nuclear warheads that individual Soviet intercontinental ballistic missiles were carrying. Mounted on a cargo container sneaked onto a train that traveled through the Soviet Union, the device counted the warheads on trains that passed it.

Another operation that Ames read about, but which has been made public before, was the CIA's use of tunnels to tap Soviet communications to a secret Soviet space facility outside Moscow.

In late 1985, the Moscow wire-tapping project and Absorb were both discovered by the Soviets and ended. At the same time, the KGB started calling back to Moscow many agents that western intelligence had recruited.

Those U.S. setbacks were attributed to information passed to the Soviets by Edward Lee Howard, a former CIA officer fired in 1983 for drinking. Howard was identified as a spy in 1985 and fled to Moscow, where he lives today.

Ames, according to Earley, may also have been responsible for telling Moscow about some of these highly secret operations.

# EPA Given More Time to Issue Revised Air Quality Standards

Reuter

A federal court yesterday gave the Environmental Protection Agency an additional three weeks to issue new air quality standards, giving the public more time to weigh in on the EPA's controversial proposal.

With the new deadline, the public comment period on the EPA's proposed soot and smog standards was extended to March 12 and the agency is to issue a final rule by July 19.

The EPA, at the urging of the National Governors' Association, had asked a U.S. District Court in Arizona to extend the public comment period and court-imposed deadline on the new air pollution rule by 60 days.

But the American Lung Association, which had sued the EPA in the Arizona court to force it to review its standard for dust and soot pollution, had said the agency should be ordered to meet the original June 28 deadline to issue the rule.

"Although we would have preferred more time, we will obviously comply with the court's order and complete

the public comment period for proposed ozone and PM standards by March 12," EPA Administrator Carol Browner said in a statement.

Ozone is smog-forming pollution and PM is particulate matter, or soot and dust, that can penetrate deep into lung tissue.

In one of its most significant moves in recent years, the EPA has proposed much stricter standards against both types of pollutants that it said will prolong and improve lives of millions of children, older people and people with respiratory problems.

But a number of industries, along with some state and local government officials, have said the rules would cost billions of dollars to implement and would throw many areas out of compliance with air quality standards.

The Lung Association, in a statement, applauded the court's decision. The ruling "underscores the urgent need for EPA to get on with the business of protecting the public's health from this serious health hazard," said Fran Du Melle, the association's deputy managing director.

## Teens Tell Researchers High School Is Too Easy

By Rene Sanchez  
Washington Post Staff Writer

Teenagers nationwide have issued a decisive verdict on their high schools. A new study reports that most think their classes are not challenging enough, often lack exemplary teachers and are filled with too many disruptive students.

The study, conducted by the national nonprofit group Public Agenda, sketches a portrait of American high schools in which most students are coasting without much effort through their classes—and know it—and who view their years there as time spent to gain practical job skills and good work habits.

Most students who were questioned as part of the survey said they liked their schools overall. But about 70 percent said that unruly students distract them and undermine classes. Also, 65 percent of students said they do not try very hard to succeed in class, and half reported that teachers do not insist on high academic standards.

Researchers highlighted the comment of one California teenager who took part in the survey as typical of many student responses illustrating how easy it is to earn acceptable grades without much work: "I didn't do one piece of homework last year in math," he said. "I just took the tests. I'd get A's on the tests, not do the homework, and I got a B in class. There's just lots of ways to get around it."

The survey, titled "Getting By," included the responses of more than 1,300 high school students nationwide who were selected randomly and interviewed by telephone. Most of them attend public schools. Small groups of teenagers also were gathered together at five sites around the country to discuss their attitudes about high school.

The findings match those in other recent studies that found substantial numbers of students disengaged from learning. A sur-

vey of college freshmen nationwide conducted annually by researchers at UCLA this year found that a record number of them, 35.6 percent, reported that they often were bored in their high school classes.

The Public Agenda report also suggests that the priorities of most high school students are the same: They are eager to master basic reading and math, to work with computers and to gain values such as honesty and tolerance. But they often question the relevance of learning subjects such as history or literature.

In the survey, 75 percent of students said that learning computer skills was "extremely important." But only 32 percent gave the same priority to learning history or geography around the world, and only 23 percent to learning classics by Shakespeare or Plato. Studying modern American writers such as Ernest Hemingway or John Steinbeck ranked last on a list of subjects given to students to rate. Only 18 percent of them said that studying those works is extremely important.

"Teenagers see very little reason to study academic subjects such as history, science and literature," the study concludes. "They view most of what they learn in their classes—apart from the 'basics'—as tedious and irrelevant."

Still, researchers said they were heartened to find strong support among students for having tougher standards in class. Three-fourths of them said they believed they would learn more, and that school would seem more meaningful, if they were pushed harder by better teachers.

"The students seem to be crying out for the adults in their lives to take a stand and inspire them to do more," said Deborah Wadsworth, Public Agenda's executive director. Copies of the survey can be obtained by calling the group at 212-686-6610.

# The Washington Post

TUESDAY, FEBRUARY 11, 1997

Suits or truce for tobacco makers in 1997?

Wire Service: RTf (Reuters Financial Report)  
Monday, December 30, 1996  
By Gail Appleson, Law Correspondent

NEW YORK, Dec 30 (Reuter) - The once-invincible tobacco industry, which found in 1996 that its seemingly bottomless legal war chest no longer scared off foes, enters 1997 facing a flood of lawsuits and speculation that a settlement is the only answer.

Litigation against cigarette companies has reached an all-time high, with hundreds of individual and class-action personal injury lawsuits filed across the country, 18 states suing to recoup health care costs of smokers and the Justice Department investigating allegations that manufacturers lied to federal agencies.

While the tobacco industry has won most of the personal injury cases brought over the past 40 years, because juries held individuals responsible for their decision to keep smoking, many legal and financial experts think this attitude is changing.

A \$750,000 Florida verdict against Brown & Williamson Tobacco Corp. in August is an indication jurors are angry over internal tobacco industry memos about the addictive nature of nicotine that have become public and will increasingly find cigarette companies liable for smokers' illnesses, these experts say.

"Jurors no longer see this as a matter of choice ... the fact this jury (in Florida) has sent a message to the world that they are willing to hold tobacco companies liable is a dramatic and significant result. It's not a fluke. It's not an aberration," said jury consultant Robert Gordon, director of The Wilmington Institute in Dallas.

Tobacco companies will most likely continue to win some and maybe even many of the lawsuits, but experts say they run a risk of losing big, damaging cases that would send stock prices plummeting and continue to boost their already skyrocketing legal fees.

Mary Aronson, a Washington, D.C.-based institutional investment adviser, said she thought the industry should seriously consider negotiating a deal to indemnify itself against smokers' lawsuits before it suffers a big loss.

"I think they would be foolish to wait until then (losing a case)," Aronson said. "If the plaintiffs' bar starts winning cases, they will be much harder to buy off."

She predicted an accord would boost stock prices.

"That kind of vulnerability may be good for the industry,"

Aronson said of the Florida verdict. "It will force them to consider some sort of deal."

In the meantime, some state attorneys general and plaintiffs' lawyers are trying to come up with a legislative solution, but many believe reaching an accord that would satisfy all parties will be a lengthy and complex task if it is possible at all.

"I expect some movement on this in the next congressional session. I can't tell you exactly what form it will take but I expect some movement and I expect to be involved," said Mississippi Attorney General Mike Moore, who has been pushing for a settlement.

Moore cautioned that a final settlement could take some time, if one is reached at all, and was unlikely before three state lawsuits against the industry go to trial next year. He said talks aimed at a settlement have been escalating but his group has not yet met directly with tobacco officials and continues to work through intermediaries.

"We've been meeting about it a lot. I'm real optimistic," he said. He pointed to recent remarks by RJR Nabisco Holdings Corp. Chief Executive Officer Steven Goldstone as possible evidence that top-ranking executives would consider an accord.

In a Dec. 5 speech to executives in Boston, Goldstone said many forces were at work favoring a settlement with the tobacco industry. "In 1997, the most meaningful thing I can do is come to some solution on this problem," he added.

Daniel Donahue, R.J. Reynolds Tobacco Co. senior vice president and deputy general counsel managing the tobacco litigation, denied his company was in any settlement talks and said it planned to keep fighting the lawsuits.

"We are not in the process of any kind of negotiations or discussions of any kind of settlement, primarily because these attempts by plaintiffs' lawyers to twist and turn the litigation system of this country are basically wrong," he said, adding that he expected to "successfully defend" the cases.

The new year will certainly provide plenty of opportunities for the industry to show if it can maintain a winning streak.

As early as Feb. 10, the industry will argue against U.S. Food and Drug Administration plans to limit cigarette advertising and marketing. Lawsuits by Mississippi, Florida and Texas seeking to recoup the costs of health care for poor smokers are scheduled for trial next year, along with at least two of the class actions.

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CIGARETTES

# IS BIG TOBACCO READY TO DEAL?

## RJR's Goldstone hopes to lead the industry toward a compromise

**F**or the head of a major U.S. tobacco company, they were revolutionary words. Cigarette makers "can't continue in public as kind of an outlaw industry," declared RJR Nabisco CEO Steven F. Goldstone in a Dec. 5 speech to executives in Boston. More than that, he continued, "a lot of forces are at work" favoring some broad settlement with industry adversaries. "In 1997," Goldstone proclaimed, "the most meaningful thing I can do is come to some solution on this problem."

Goldstone's remarks were the strongest that any major tobacco company executive has ever made in favor of making peace with the industry's enemies. In one bold stroke, the 50-year-old attorney stepped forward as the industry's leading proponent of compro-

mise, raising the possibility that Big Tobacco will offer to make a historic deal: accepting Food & Drug Administration regulation of tobacco in exchange for legal protection against future courtroom attacks.

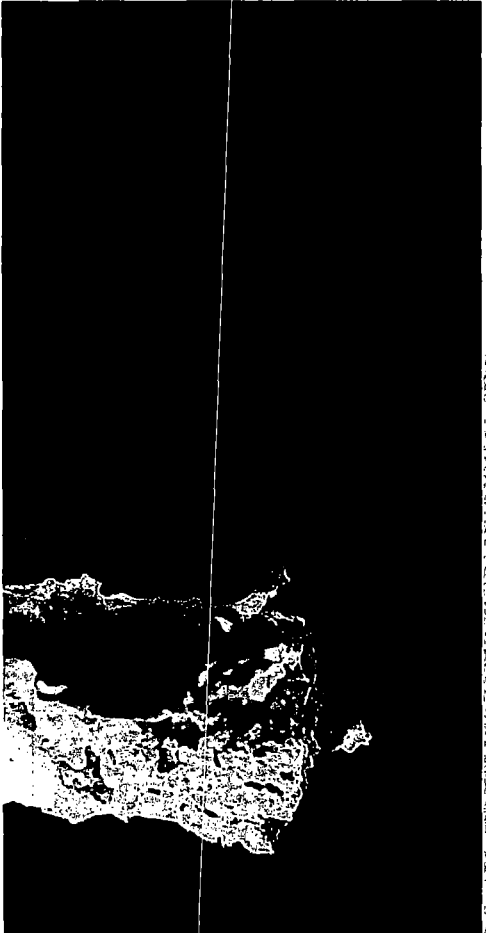
The conciliatory stance helped push shares of RJR Nabisco Inc. and arch-competitor Philip Morris Cos. to new 52-week highs. No wonder. The tobacco industry has been mired for years in a Byzantine tangle of increased regulation and hundreds of liability suits from individuals and state governments. In August, investors were shocked when Brown & Williamson Tobacco Corp. suffered a landmark \$750,000 judgment in a personal-injury case in Florida. The threat of an asbestos-like courtroom meltdown, analysts say, has depressed share prices by 50% or more.

A broad settlement, then, "is what needs to be done. It's what the companies need to get back on track," says Jeffrey A. Altman, a vice-president at Franklin Mutual Advisors Inc. in Short Hills, N.J., a major tobacco shareholder. Despite makers' consistently superior profitability, courtroom battles are siphoning both management's attention and hundreds of millions in legal fees.

Resolution of future litigation also could help Goldstone fend off financiers Carl C. Icahn and Bennett LeBow, who are pressing for a spin-off of Nabisco. Some investors and analysts suspect that Goldstone may be initiating settlement maneuvers in part to counter the raiders' charges that he hasn't taken sufficient steps to boost share price. In fact, RJR Nabisco's stock has underperformed the market, in spite of improvements that Goldman Sachs & Co. analyst Marc I. Cohen estimates will lift profits 14% this year, to \$860 million.

**BALANCING ACT.** Goldstone clearly is gambling. By holding out an olive branch, he risks appearing weak—inviting a new round of lawsuits or tempting adversaries to make harsher demands. But if there's one thing the experienced trial lawyer knows, it's how to float a peace offering while maintaining a show of strength. To keep the litigation dam from breaking, Goldstone is managing his public statements skillfully.

He first indicated his openness to a settlement in an interview with the London-based *Financial Times* in March, then backpeddled when news of his statements broke in the States. This time, he spoke at an out-of-the-way



and promotion restrictions aimed at reducing teen smoking. The FDA regs go into effect in August, but the industry is challenging them in a North Carolina federal court. Analysts think the industry will prevail—and then dangle its willingness to accept the regulations as a bargaining chip in later negotiations. If necessary, Goldstone is thought to be willing to accept permanent, but limited, oversight by the agency—a prospect the industry has fought for years.

In exchange, he hopes for a congressional guarantee that tobacco makers will be protected against future injury lawsuits—a shield potentially worth billions in saved litigation and settlement costs. According to several analysts who have spoken to sources inside the company, such immunity would not apply to pending cases, but it would protect manufacturers from suits filed after some selected date in the future.

Why isn't Goldstone interested in settling any of the pending suits filed against RJR by plaintiffs' attorneys and state attorneys general? Because he thinks it will be cheaper to continue fighting these opponents, according to Martin Feldman, a Smith Barney Inc. tobacco analyst. Given the industry's almost flawless courtroom record, Feldman says, Goldstone sees no reason to shell out the billions of dollars annually that plaintiffs' attorneys have indicated they are seeking from tobacco makers—especially if he can get some form of legal protection from Congress without doing so.

Philip Morris, with United States Tobacco Co.'s support, brought forth a more modest FDA peace treaty last May but failed to win any political backing. Now, says Gary D. Black, a tobacco analyst at Sanford C. Bernstein & Co., which holds large chunks of Philip Morris and RJR stock, executives at Philip Morris and United States Tobacco are more interested in a settlement than ever. "We continue to be amazed at the

180-degree turn within the industry, embracing the concept of a legislative settlement," Black wrote in a Dec. 11 report. Philip Morris wouldn't comment.

There still is widespread disagreement in the industry about how a deal should be structured and pursued. For example, some execs at Philip Morris and other tobacco companies fear it will be politically impossible for the industry to win congressionally guaranteed immunity from lawsuits. According to David J. Adelman, a tobacco analyst at Dean Witter Reynolds Inc., some members of this group are willing to accept the proposed FDA rules in exchange for a promise that the FDA won't take permanent jurisdiction over tobacco. Instead, they would be willing to submit to the oversight of the Federal Trade Commission, which is authorized to review some advertising issues. These execs note that the FTC doesn't concern itself with health issues and is considered friendlier to business than the FDA.

**UNDER WRAPS.** Details of the status of settlement negotiations are sketchy. Because of the sensitivity and complexity of the discussions, the parties are certain to try to keep any talks under wraps. Goldstone told BUSINESS WEEK that while he "is going to do things" to bring about a resolution, it would not "help the result come about" by discussing it publicly. Key players in the health community and Congress deny they have been contacted by the industry.

Black thinks the industry will attempt to cook up a deal behind closed doors, then try to get a friendly member of Congress, such as Trent Lott or House Commerce Committee Chair Thomas J. Bliley Jr., to sponsor it. But on Dec. 9, Bliley was pessimistic about a legislative resolution. "You are not going to be able to move legislation unless the Administration signs on," he says.

There are, indeed, plenty of reasons to be skeptical that a deal will succeed. For starters, it's not clear that rivals

breakfast gathering of CEOs at Northeastern University—but in a subsequent interview with BUSINESS WEEK, he refused to offer any details (page 34). With such cautious communications, Goldstone has put the issue of a compromise in play without stoking fears of industry vulnerability—a perception that caused tobacco shares to plummet after Liggett Group Inc. announced its settlement of addiction suits in March.

According to sources inside and outside the company, as an opening offer, Goldstone is willing to agree to most, if not all, of the FDA's recent advertising

## WHAT THE TERMS MIGHT BE

*RJR Chief Steven Goldstone is hinting that an agreement to resolve legal and regulatory issues could be negotiated. Here's what he and other industry execs are thought to want.*

### NO PROHIBITION

Cigarette makers, fearing that regulators' ultimate aim is to outlaw their products, seek a congressional guarantee that the production and use of tobacco in the U.S. will remain legal.

### IMMUNITY

The companies want isolated protection from injury lawsuits filed after a certain date. They see such protection as the only way to remove the uncertainty depressing tobacco stocks by 50% or more. Currently pending liability suits, however, probably would not be affected.

### FDA JURISDICTION

Manufacturers are willing to agree to the terms of recently approved FDA rules aimed at preventing teen smoking, which they are now challenging in federal court. Tobacco may also be willing to accede to permanent agency oversight on such issues as marketing.

such as Philip Morris and RJR will be able to agree on a plan. RJR failed to join Philip Morris' earlier compromise proposal, though, in a sign of conciliation, Goldstone now goes out of his way to praise the Philip Morris plan.

Even if manufacturers can reach agreement on terms, they will have a hard time stiff-arming the politically powerful plaintiffs' attorneys, who fear

that any legal protection for manufacturers will limit their ability to win money in current suits. Most industry experts expect plaintiffs' lawyers to succeed in forcing the industry to settle current cases as part of the broader resolution—creating a mammoth challenge for the companies in determining how much money to fork over. The next hurdle: the health community,

which also has the clout to block a deal.

But for RJR Nabisco, the alternative may be worse: the bloodiest litigation war in history and years of continued pariah status. Given such a prospect, it's hardly surprising that Goldstone wants to strike a deal now.

*By Mike France, with Lori Bongiorno in New York, John Carey in Washington, and David Greising in Atlanta*

## 'THE INDUSTRY IS WILLING...TO REACH COMPROMISES'

**A** year ago, Steven F. Goldstone took over as chief executive at RJR Nabisco Inc. Since then, while fending off litigation and raiders, he has recast management and lifted profits by an estimated 14%. *BUSINESS WEEK's* Lori Bongiorno and Mike France spoke with Goldstone on Dec. 9.

**Q:** RJR is still under pressure from Carl Icahn and Bennett LeBow, who want a spin-off of the company's food unit. Why are you resisting?

**A:** Our board has come to a judgment that although a spin-off might be in the interest of our shareholders, it will only be in the interest of our shareholders if done at the appropriate time. Simply put, now is not the appropriate time.

**Q:** Can RJR survive these continuous attacks?

**A:** I'll tell you something. I think one of my greatest accomplishments this year is that I've proved not only that we can survive these attacks, but that we can thrive in this environment. I don't waste my time thinking about Ben LeBow and Carl Icahn. Both of them are, frankly, astoundingly irrelevant to this company and to our shareholders.

**Q:** [In a Dec. 5 talk] in Boston, you mentioned that you believed that you'll soon come to reasonable ground on a tobacco industry legislative settlement.

**A:** I proceed from the assumption that tobacco is an important product in the U.S. and around the world. It is not going to go away. So it makes sense for political, economic, social, and other forces in this country to focus on [deciding]



**RJR CEO STEVE GOLDSTONE**

"I don't waste my time thinking about Ben LeBow and Carl Icahn. Both of them are, frankly, astoundingly irrelevant."

how to accommodate a legal product that's enjoyed by millions of Americans but that is, admittedly, quite controversial. This summer, Philip Morris proposed an innovative and far-reaching legislative proposal regarding youth access. That proposal unfortunately went nowhere, probably because it got lost in election-year politics. But it demonstrates that the industry is willing to attempt to reach compromises and address real concerns.

**Q:** Do you support Philip Morris' proposal?

**A:** I'm really not directly focusing on that proposal right now because nobody is considering it. But I will tell you this, it certainly merits more discussion.

**Q:** Does it make sense for the industry to agree to increased regulation in return for immunity from litigation?

**A:** That kind of thing has the ring of sense to it. Although it makes sense in a theoretical way, it's difficult [to implement].

**Q:** In Boston, you mentioned that a lot of forces right now favor a settlement.

**A:** I think you've seen some innovation and flexibility from the industry, and President Clinton has indicated an interest in the subject and an interest in getting a resolution. You saw the rumors over the summer that at least some of the [states'] attorneys general are interested in [addressing] the policy issues.

**Q:** Is a resolution desirable?

**A:** I have been fairly clear that I believe a resolution of the basic controversy is in the interest of our shareholders.

**Q:** Is the company taking any steps to bring this about?

**A:** If it is a priority of mine—and it is a priority of mine—I am going to do things to try to have that result come about. But I'm not going to help the result come about by talking to you about it.

**Q:** All the distractions aside, what are RJR Nabisco's prospects for next year?

**A:** We have management in place. We've got Nabisco humming, and we've got our international tobacco business growing at a very nice rate. We're going to focus on our domestic business, on getting good returns for our shareholders, and on all the external events. I expect 1997 will be a year of good results.

# New Buzz in Beverages

## Still Wet Behind the Ears, Fledgling Industry Opens Eyes in Capital With Caffeinated Water

AI

By Karl Vick  
Washington Post Staff Writer

It is a paradox in a bottle, now available in stores: caffeinated water.

"It seems like an inspired invention to me, frankly," says Mary Ellen Glynn, a deputy press secretary at the White House. She first sampled a brand of caffeinated water named Water Joe while in San Diego for the second presidential debate, then spent the rest of the campaign vainly searching—through eyes heavy from lack of sleep—for more.

"No calories," Glynn explains. "Good for your teeth. Keeps your heart pumping."

In September, when the House Appropriations Committee staff was up for three nights straight pounding out the nation's budget, the choices through the wee hours were coffee, Diet Coke and Coke. They got a little old.

"We think it's fabulous!" cries committee staff member Elizabeth Morra, who hasn't had the pleasure of sampling caffeinated water but can hardly wait. "Fill up the water cooler!"

At least four companies in the last year have begun marketing what one company calls "spring water with an attitude." The target audience in most regions remains truck drivers, night watchmen and students struggling to stay awake for all-nighters. In fact, the inspiration for Water Joe, the granddaddy of this infant industry, came during a late night over the books at Arizona State University to a student who despised the taste of coffee but

See WATER, A4, Col. 1

### WATER, From A1

needed to stay up. But in Washington, students aren't the only ones pulling all-nighters.

The city that alternately prides and admonishes itself for the hours it keeps sizes up as a caffeinated water market that has remained, you might say, untapped.

"I've got to think there's a tremendous number of late-night staffers there," says David J. Holdener, president of Water Concepts LLC, the Chicago company that makes Water Joe. "The city doesn't sleep, and I don't mean to compare it to Las Vegas."

A half-liter bottle of Water Joe contains about as much caffeine as a cup of coffee. Introduced in Chicago a year ago, it has moved from its Midwestern base while inspiring imitators with names such as "Krank 2-O," "Edge 2-O" and "Java Johnny."

It also has inspired a measure of awe.

"It is just fascinating to me that something that in its natural state was viewed as a healthful beverage, i.e. water, should be a vehicle for adding back some of the factors that are, in fact, the very reason why water was promoted in the first place," marvels Linda Van Horn, a professor of preventive medicine at Northwestern University. "It's just so typical of our country, I think. If there's a market for a product, somebody will make it."

In this case, that somebody was David Marcheschi.

"I'm wide awake," he says by phone from suburban Chicago. The creator of Water Joe splits his time between a home office and Water Concepts, the fledgling company that grew out of lunch with a friend six years after Marcheschi held his nose and swallowed that coffee at Arizona State. The friend's dad owned a beverage company, which had a chemist who eventually succeeded in blending caffeine and water.

The water is drawn from an artesian well owned by Nicolet Forest Bottling Co., in northern Wisconsin. The "boost" comes from coffee beans used in making decaf. The extracted caffeine arrives at the plant in the form of white powder. "You wouldn't want to be caught with it in your car," says Holdener, who founded Nicolet.

The end result—a clear, noncarbonated fluid, free of calories and taste—has exceeded sales expectations tenfold, Holdener says.

It quickly became the beverage of choice on the nianic floor of the Chicago Board of Trade, which bars coffee and soft drinks because they might stain.

In the Washington area, in addition to local 7-Elevens, Rockville distributor Vintage Beverages Inc. makes regular deliveries to an Alcoholics Anonymous meeting house, the Baltimore Ravens personnel office and the Starbucks at the University of Maryland.

The rapid expansion has been fueled by a slew of publicity, plus word

*"It's just so typical of our country, I think. If there's a market for a product, somebody will make it."*

— Linda Van Horn,  
professor of preventive medicine

of mouth abetted by an Internet Web site listed on every bottle.

At [www.waterjoe.com](http://www.waterjoe.com), consumer testimonials appear beneath the heading "What's Your Story? (Feel Free to Embellish)."

Some fans write with tips: Coffee brewed with Water Joe will pack twice the caffeine.

A testimonial signed "George Z." announces that he has just run a two-minute mile, then thoroughly cleaned the park where he did it. "Other people noticed and asked me how I could have so much energy after just breaking the world record for the mile. So, I gave them some Water Joe."

"P.S. This e-mail was written in 12 seconds."

John Sicher, publisher of Beverage Digest, says it's too early to tell if caffeinated water will carve the kind of niche that upstarts such as Snapple and Arizona have in an industry dominated by the giant soft drink companies.

"I think the success of this project hinges on the caffeinated water people virtually creating a new category," Sicher says. That, he says, means walking a tightrope between the health-oriented, relatively upscale marketing tradition of bottled water and the dicier examples of products like "Jolt" cola. By advertising twice the caffeine and sugar of regular colas, Marcheschi says, Jolt's makers "have hampered themselves by scaring people."

Of the caffeinated waters, Water Joe has taken the gentlest approach to marketing—a definite plus in Washington, where hard edges do not wear well. The tasteful label reads "caffeine enhanced," and the product comes only in half-liter bottles that sell for about \$1. That water cooler at the Appropriations Committee would have to be filled by hand.

"We did a test of five-gallon bottles," Holdener says. "The world's not ready for it yet."

The problem, he explains, is that no matter how many warning signs you put on a water cooler, people treat what's inside as water. "There's definite side effects when you OD on caffeine," Holdener says. "Diarrhea. Headaches."

Nutritionist Van Horn says caffeinated water carries no more health concerns than coffee, cola and chocolate: Pregnant women and those with cardiovascular problems, including hypertension, should use caution. But that can be easy to forget when the product looks benign, she adds.

"We work pretty late on this committee, but this is the more mellow 105th Congress," says Ari Fleischer, spokesman for the House Ways and Means Committee. "One of the signals of the election was to move to the center, maybe a little to the right of center."

"Caffeinated water sounds a little extreme to me."

The Washington Post

TUESDAY, NOVEMBER 19, 1996

## In Ex-Soviet Markets, U.S. Brands Took On Role of Capitalist Liberator

**A** By James Rupert and Glenn Frankel  
Washington Post Staff Writers

In the summer of 1990 the Soviet Union's terminal economic crisis descended upon the product that many Russians considered their most irreplaceable: cigarettes. Faced with mass shortages of Soviet-made brands, angry smokers in Moscow, Leningrad, Kiev and other Soviet cities staged the protests that became known as the tobacco rebellion. A desperate President Mikhail Gorbachev fired the minister in charge of the industry and pleaded with the West for help.

To the rescue rode Philip Morris and R.J. Reynolds.

In return for cash and barter goods, the American tobacco giants agreed to deliver 34 billion cigarettes—the single biggest export order in their history. The crisis abated, and Gorbachev and the old order helped buy themselves an extra year in power. And the companies achieved an important foothold in a vast market that for decades had kept them tightly restricted or had shut them out altogether.

Since then, the American companies and their European counterparts have swept across Eastern Europe and the republics of the shattered Soviet Union, buying up failing state-owned enterprises and ancient factories, launching mass advertising campaigns and asserting broad influence over new governments and political leaders. In the process they have laid the foundation for a Western-owned tobacco industry in a vast market that may someday surpass the shrinking markets of the United States and Western Europe.

See TOBACCO, A18, Col. 1

### TOBACCO, From A1

Big Tobacco's entry into Ukraine, one of the largest former communist markets, is in many ways typical. While other Western industries hung back, scared off by Ukraine's formidable bureaucracy, chaotic laws and unstable currency, Philip Morris Inc., R.J. Reynolds Tobacco Co. and Reemtsma, the giant German tobacco conglomerate, moved in quickly, buying up shares in the new nation's five largest cigarette factories and capturing 75 percent of its manufacturing capacity.

Their billboards became a regular feature of Kiev's urban landscape, and they launched advertising campaigns that provided much of the revenue that kept the state-run broadcast industry afloat. And when the country's small but active anti-smoking movement persuaded the national parliament to pass a ban on tobacco ads, the industry responded with a well-financed lobbying campaign that recently overturned the ban.

The results are visible throughout Ukraine: Billboards for the Marlboro Man and the rugged Lucky Strike motorcyclist are back, ads for American brands again dominate the country's coffee shops and trolley cars, and the brands' brightly painted logos adorn posters, T-shirts and shopping bags. And while the companies have yet to see the kind

of profits that would justify their vast investment in Ukraine, they have great hopes for the future. "It's risky . . . but the potential is huge," said Ronnie Lindquist, general director of Reynolds in Ukraine.

When the tobacco companies went to the thriving but closed markets of East Asia in the 1980s, they went as invaders, using the full weight of the U.S. government and the threat of trade sanctions as a weapon to force their way in. But as their 1990 Soviet rescue mission illustrates, they went to the ruined economies of the former Soviet empire as self-styled liberators and capitalist pioneers, bringing hundreds of millions of investment dollars, advanced technology and a dynamic, take-charge enthusiasm to societies that are as starved for optimism as they are for cash.

"We have enormous opportunities to use the tobacco industry as a powerful force for improving the economic and social well-being of this part of the world," said James W. Johnston, then chairman of Reynolds, in a Moscow speech last year that captured the spirit the industry is trying to project.

Opponents see it very differently. Public health officials contend the industry is preying upon a set of supine and vulnerable societies still recovering from the collapse of the Soviet empire, selling a product that kills more people than any other in the world. These critics argue that the companies are using their advertising and marketing skills to addict a new generation of young people while riding roughshod over the fledgling tobacco control movements that are struggling to take root throughout the region.

"They are very clever, very powerful, very intelligent and very experienced, and we are a very small group without any money," said Witold Zatonski, a Polish cancer specialist who has emerged as the unofficial leader of Eastern Europe's anti-smoking movement.

The American tobacco industry operates abroad in many different forms. In Asia, its point men were lawyers wielding legal briefs to force open restricted markets. In Eastern Europe, fast-talking entrepreneurs spearheaded a mass buying spree in the early 1990s. And in Kiev, the industry's newest agent is a young Ukrainian American advertising executive from Chicago who engineered its victory over the tobacco ad ban. While the companies hailed their campaign as a triumph for freedom of speech, its success illustrates the power that the industry and its allied advertising agencies and financial consultants wield in new economies eager for their money and susceptible to their influence.

### World's Greatest Smokers

No one smokes more cigarettes per capita than East European men—and no one has higher rates of tobacco-related diseases such as lung cancer and respiratory problems. Ukraine and the other pieces of the former Soviet Bloc constitute the second largest tobacco market in the world after China—40 percent larger than the U.S. market.

For more than three decades, American companies sought a foothold in the region's cigarette trade through cooperative agreements and other arrangements, but communism kept them small, constricted and under tight state control. When the Berlin Wall came down in 1989, however, the companies were free at last to make their move.

Philip Morris led the way, committing more than \$1 billion to acquire plants in the region.

The industry as a whole—including Philip Morris, Reynolds, Reemtsma and British-American Tobacco, the British parent of American cigarette maker Brown & Williamson—made commitments exceeding \$2 billion. That sum made

the tobacco industry by far the largest investor in the former Soviet Bloc. Five years ago, Reynolds sold no cigarettes in the republics of the former Soviet Union. Today, it sells 50 billion a year.

When Philip Morris hired former British prime minister Margaret Thatcher as a part-time consultant on a three-year contract reportedly worth \$2 million, one of her first tasks was to travel to Kazakhstan to help persuade its leaders to sell a major stake in its state tobacco company to Philip Morris. Analysts project that within the next decade Western companies will gain control of the entire East European cigarette market.

Ukraine's cash-strapped cigarette industry had virtually no experience

*"Advertising does not encourage people to smoke. It encourages them to try a specific brand. Ukrainians smoked heavily before we got here—and those were non-filters. We're moving them to a better product."*

— American Kalyna Hrushetsky, representing Philip Morris in Ukraine

in dealing with Western firms. Still, local factories and the U.S. companies seemed to jump into each others' arms. "The Ukrainian tobacco industry has a higher share of privatized entities and foreign investment than any other sector of the [Ukrainian] economy," the U.S. consulting firm Deloitte & Touche noted in a 1995 study. Foreign firms "are expected to invest more than \$520 million" by 1999, the study said.

When the foreign companies arrived, they were dismayed to find a ragged collection of ancient brick factories with wheezing machinery that churned out harsh, poor-quality cigarettes. The plants were "a real mess. . . . Nobody had done any housekeeping" for years, Reynolds' Lindquist said. In many cases, "it would have been more rational to put a bulldozer to [the existing plant] and build a new, streamlined factory from the ground up."

Ukraine's legal code is in a similar state of disarray. Every aspect of business is overshadowed by the murky legal environment of a country still writing its most basic laws. Ukraine adopted a constitution only in July, and is still working on a new tax code.

"As a big company, we have to be law-abiding," said Lindquist, but as the company makes business decisions, "nobody can tell us whether what we are doing is legal or not."

American tobacco companies contend they are selling much more than a product. Long before the communist collapse, millions of people in Eastern Europe and the former Soviet Union had grown weary of an existence that seemed grayer and meaner than in the West. As these societies join the world economy, it has become possible to sell almost anything there that is perceived as representing Western wealth and sophistication—especially if it is American.

"People assume that whatever comes from the West is better," said Miroslav Matseikiv, a psychology professor in Kiev. Consumer goods produced domestically, he added, "are associated with the failure of the Soviet system."

Advertising companies such as the Leo Burnett agency—which handles much of Philip Morris's overseas advertising—recognized the American advantage early on. Marlboro's colorful billboards of dramatic sunsets and Old West vistas soon dominated the gray, Soviet-era cityscapes and kiosks of Kiev and other urban centers. Foreign cigarette brands became the leading advertisers on Russian television and radio. Tobacco ad revenues maintained municipal transit systems from St. Petersburg to Sofia, Bulgaria. In Bucharest, Reynolds provided a year's supply of bulbs used in traffic lights—in exchange for permission to add the Camel logo to each yellow light.

From the beginning, tobacco companies faced opposition from East European public health officials. Poland—and Zatonski, the cancer specialist—have led the way, with a comprehensive tobacco control program that includes strong health warnings on cigarette packaging, bans on smoking in public places and tough restrictions on advertising. But the companies are resisting Zatonski's proposed next step: heavy

tax increases to cut cigarette consumption and fund anti-tobacco education. "They are fighting us in every possible way," he said in a telephone interview.

The most recent battle has been fought over advertising. The tobacco companies argue that advertising is one of the most effective ways to present their products in markets that state-owned monopolies dominated for decades. But Zatonski and his supporters contend that the sophisticated advertising campaigns also are designed to induce young people and women to smoke.

The ads introduced in Ukraine in the early 1990s "were artistically beautiful, professionally photographed, like movies," recalled Vitaliy Movchanyuk, director of the Ukrainian Health Ministry's public education institute. "The Soviet Union never had such advertising. People are used to it in the West. They have learned to sift through it for truth and lies. . . . But our consumers are more psychologically vulnerable to being manipulated by slick advertising."

Public health advocates campaigned successfully for advertising bans in Russia, Poland and Bulgaria, but the bans often were ineffective. After the Russian parliament banned ads from television, radio and billboards in 1993, Russian media firms, desperate for cash, kept selling ads in defiance of the law. The companies skirted a Polish ban by advertising brand names and logos without mentioning cigarettes.

Still, Movchanyuk and his allies set out to push an advertising ban through Ukraine's new government—and the tobacco industry began mobilizing a campaign to stop them.

### In Legal Limbo

When Kalyna Hrushetsky arrived in Kiev in the spring of 1995, cigarette billboards already were beginning to disappear from the city, due to a temporary decree by President Leonid Kuchma. Her first mission was to find a way to get them back up.

Hrushetsky was just 26 when the Burnett agency sent her to open a Kiev office, largely to manage the Philip Morris ad account. Her parents had fled Ukraine after World War II, and she spoke fluent Ukrainian. "I was pretty young to be a candidate to run an [overseas] office," Hrushetsky recalled. But her language skills and high energy level helped her win the job.

Hrushetsky's parents would have preferred that she return to their homeland as a missionary for the Ukrainian Orthodox Church, but she had no problem defending her work. "Advertising does not encourage people to smoke," she said, echoing the industry's long-standing position. "It encourages them to try a specific brand. . . . Ukrainians smoked heavily before we got here—and those were non-filterers. We're moving them to a better product."

When she arrived, Hrushetsky was

surprised to find that the young Ukrainians who formed an embryonic local advertising industry had given no thought to the advertising ban. "I tried to explain that this was a big problem," she recalled, "but I didn't get much response."

Kuchma's decree had left tobacco firms and their advertisers in legal limbo. The ban did not define advertising, so tobacco firms avoided ads that referred directly to cigarettes. Instead, they focused on trademark advertising, emblazoning cigarette logos on T-shirts, cafe umbrellas—even trolley cars.

Martin Nunn, a British business consultant working in Kiev for Reynolds, sponsored gala parties organized by a Kiev fashion magazine called Looks International. Reynolds made videotapes showing affluent, fashion-conscious young sophisticates dancing, drinking champagne and smoking in a nightclub adorned with Camel posters, featuring a skimpily clad Camel girls' dance group. The state TV network, too poor to produce its own programs, gladly filled evening broadcast hours with reruns of the parties—with the Camel logo prominently displayed.

To head off a legal ban, five foreign tobacco companies signed a voluntary code of advertising conduct and offered it as the basis for an advertising law, which the legislature—called the Supreme Rada—had begun considering. Among other things, the code barred the broadcasting of tobacco commercials on television before 10 p.m. and in movie theaters before 7 p.m., and outlawed billboard ads located less than 100 yards from schools.

They almost succeeded. After lobbying by the companies, the Rada gave preliminary approval to a law that was "practically a translation of the [voluntary] code," said Konstantin Kuznetsov, co-owner of Diallya Communications, a leading Kiev ad firm.

But the Rada's action triggered a sharp response from tobacco opponents. The Health Ministry contacted doctors, the Ukrainian Red Cross, the Afghan veterans' committee and other groups concerned with health issues, encouraging them to push for a tougher ban. Faced with powerful opposition, the legislature enacted a stronger, mandatory ban in March.

As a result, Hrushetsky had no trouble persuading her Ukrainian colleagues to go to work. They formed a coalition to lobby against the new law, and several times a week she held standing-room-only meetings in her tiny office. "Hrushetsky," Kuznetsov recalled, "was like a tornado."

She got Diallya and other firms to contribute billboard space and TV and radio time to the campaign. The group contacted newspapers, which, fearful of losing ad revenues, published articles criticizing the bill. The

group prepared flyers that Hrushetsky personally carted into the lobby of the Rada chambers to distribute to legislators. They also lobbied aides to Kuchma, who soon sent the bill back to the Rada.

One of the most effective lobbying tools was a slick information packet produced by Philip Morris. A cover photo displayed the figure \$400 million laid out in crushed tobacco leaves. "That's the amount that Ukraine's economy will lose in the next five years as the result of a ban on tobacco advertising," it warned.

The estimate came from Deloitte & Touche, which had opened an office in Kiev to advise Western firms trying to enter Ukraine's markets, and produced a 40-page report projecting the ban's economic cost to Ukraine.

The Philip Morris folder did not reveal its sponsor. One of the documents inside said it had been "prepared for the members of the Supreme Rada ... by the Association of Independent Advisors on the Question of Reviving the Ukrainian Tobacco Sector." There was, in fact, no such association. Michael Parsons, a spokesman for Philip Morris International in Lausanne, Switzerland, later acknowledged the company's authorship.

The secretiveness of Philip Morris's lobbying was essential, said tobacco industry and Rada officials. Many Ukrainian legislators, especially in the large Communist and Socialist factions, retain Soviet-era suspicions of foreign involvement in the country. Had they known of the company's role, they might have sided with the anti-smoking forces, industry officials said.

In the end, the industry's opponents were outspent and outmaneuvered. The Health Ministry distributed its own materials to lawmakers—gray pages of typewritten statistics. Neither its data nor its presentation came close to matching the work of Philip Morris, Deloitte & Touche and Hrushetsky's advertising coalition, said Zoya Sharykova, a consultant to the Rada's committee on mass media.

The \$400 million estimate "played a great role in forming the advertising law," said Volodymyr Rudyi, staff director of the Rada's health committee and a proponent of the ban. "The legislators could see a concrete figure of what it would cost" to ban tobacco advertising, he said, while proponents lacked the funds to do their own counter-study, which might have demonstrated the health costs associated with tobacco use.

On July 3, the Rada reversed its vote, scrapping the ad ban except for television and radio. Within weeks, cigarette ads began sprouting again on signs and billboards. "Now that we have this law—boom!" said a triumphant Hrushetsky, soon installed in a bigger office in downtown Kiev. "You're going to see a lot of changes in this city."

The repeal of the ad ban may yet be seen as the high-water mark in the tobacco industry's conquest of Eastern Europe. Even industry officials say they expect anti-smoking advocates to press a strong counterattack that, inevitably, will impose the kinds of restrictions on smoking that are now commonplace in the West. Still, company officials say they are confident that they have made enormous, irreversible inroads into the East European market.

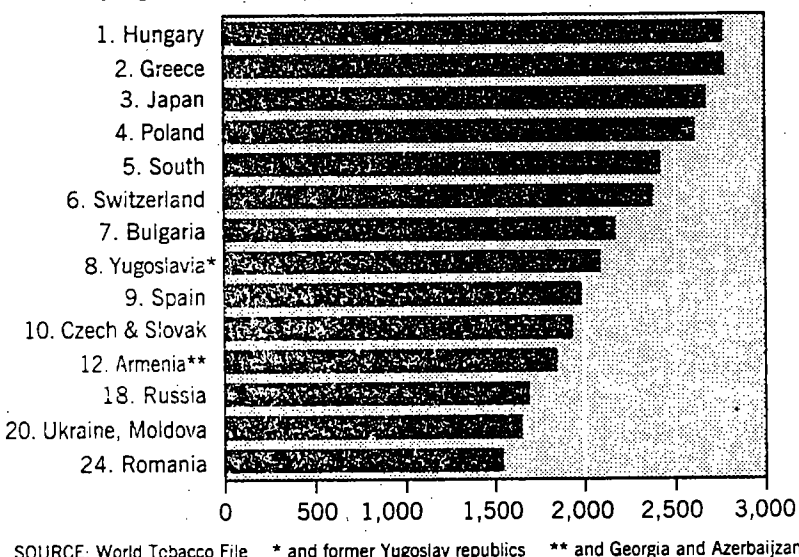
There remains one more market, however, that the industry is determined to crack open. China is the elusive grand prize in the tobacco companies' world campaign—and in the anti-smoking movement's attempt to stop them. It is the last—and biggest—battlefield.

*Frankel reported from Washington and New York, Rupert from Kiev, Ukraine.*

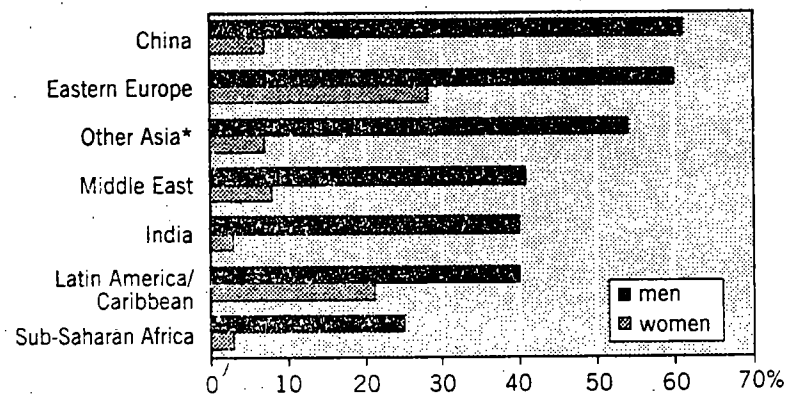
## EAST EUROPEAN SMOKERS

**M**en in Eastern Europe smoke more than in any other region of the world. Five East European nations are among the top 10 consumers of cigarettes per capita. Smokers are a higher percentage of the population there than any place else except China.

**The top 10 smoking nations, and selected other East European nations, ranked by cigarettes smoked per person per year, 1993:**



### Percentage of smokers by region



MONDAY, NOVEMBER 18, 1996

# White House Finds Anti-Tobacco Pledge Not So Easy to Keep

By Glenn Frankel  
Washington Post Staff Writer

Two years after the decision in the Thailand case, the Clinton administration came into office promising a new approach to cigarette trade disputes: Washington no longer would go to bat automatically for the American tobacco industry, or stand in the way of foreign governments imposing genuine health restrictions on cigarettes.

The point man for the new policy was Clinton's trade representative, Mickey Kantor. A California lawyer who had worked on tobacco litigation and whose firm had represented Philip Morris Inc., Kantor came to office determined to demonstrate his independence from the industry. "We will not challenge the health-based regulations of other countries as [they] were challenged in the past concerning tobacco products," he declared early on.

But the old policy has proven more resilient and the administration more ambivalent than public health activists had hoped. And in the case of a controversial tobacco control law introduced in Thailand after the GATT ruling, U.S. officials took the side of the industry—a stand diametrically opposed to that of the government's chief anti-smoking official.

In 1992 the Thai government enacted an ingredients-disclosure law that requires tobacco companies to divulge the contents of their products. Its purpose was to alert Thai smokers to possibly harmful additives that companies use to boost flavor and, according to critics, increase the effect of addictive nicotine.

Thai public health activists such as Prakrit Vateesatokit and Hatai Chitanondh have demanded since then that the companies disclose ingredients by brand—and Thailand's cabinet finally approved their proposal two months ago. But the industry has waged an intense lobbying campaign against the measure, arguing that such a detailed disclosure to the Thai government would fall almost immediately into the hands of the Thai state tobacco monopoly, which could then create its own versions of the American brands. Instead, the industry has insisted on submitting only companywide lists of ingredients, as is required in the United States.

The U.S. Embassy in Bangkok sided with the companies. "The chances of the list being kept confidential are almost nil," one diplomat said earlier this year.

In September 1993, at the industry's behest, David E. Lambertson, the U.S. ambassador to Thailand, informed the Thai public health minister in a letter that "the recipe of ingredients for a cigarette brand represents extremely valuable intellectual property" and pleaded with him to accept a compromise stipulating disclosure by company. And last year the embassy's economic counselor forwarded the Thai Council of State a 15-page report from Philip Morris challenging the regulation.

But while the embassy was urging Bangkok to adopt the looser U.S. standard, the director of the U.S. Office on Smoking and Health was advising Thai officials to stick to their more stringent one. "We would recommend that you not use the current U.S. law as an example in drafting regulations," Michael Eriksen advised his Thai counterpart in an August 1992 letter. Eriksen said U.S. law was "insufficient for any meaningful analysis of the health effects" of the ingredients and suggested that Thailand instead adopt a far more stringent disclosure rule used in Canada.

Kantor appeared to side with the companies, telling the National Journal in October 1995 that the administration was prepared to protect their intellectual property rights. But U.S. trade officials now contend the embassy went too far in opposing the ingredient disclosure proposal and say they are only seeking more information from Bangkok about the proposal.

"The embassy made a mistake in taking upon itself to interpret a fairly complex agreement," said a senior trade official, who requested his name not be used. "At this point we've told the embassy that while we want them to monitor the situation, we don't want them advocating on this issue."

The confusion over ingredients disclosure illustrates the difficulty that even an avowedly anti-smoking administration has in dealing with cigarette trade issues. "Our position . . . is that we will not intervene in any countries where there are legitimate and nondiscriminatory health standards in place," said Philip Ziegler, spokesman for the trade representative's office. "At the same time, we do still have a legal obligation to intervene in any country where U.S. products are being discriminated against."

Public health advocates had hoped that any contradictions in the U.S. position would be reconciled by a special interagency group set up in 1993 to review tobacco trade policy. Its white paper was supposed to be completed by summer 1994 but never appeared. "We realized that essentially what was coming out of that discussion was nothing different than what had already been enunciated as the policy of this administration," said the senior trade official.

Supporters of tobacco control are not satisfied with that explanation. "We'd still like to see a clear and unequivocal statement of support for making health a priority in tobacco trade policy," said John Bloom, a longtime activist for the Center for Tobacco-Free Kids.

Anti-smoking advocates also would like to see the Clinton administration release Japan, South Korea and Taiwan from cigarette trade agreements they made under pressure of trade sanctions during the presidencies of Ronald Reagan and George Bush. U.S.

trade officials set conditions on South Korea last year, but only after hard-fought, year-long negotiations. "These agreements violate our sovereignty and have made it harder for us to get good tobacco control measures in our countries," said David Yen, a Taiwanese public health activist.

Commercial officers in U.S. embassies abroad say they have been

*"I'm sure that Camel and the other splendid products of the R.J. Reynolds Co. will prosper in Romania."*

— Alfred H. Moses,  
U.S. ambassador to Romania

advised to be less aggressive in helping tobacco companies expand overseas and ordered not to promote American cigarettes. But there are no written rules governing how far they should go in handling requests from the industry. "Different attachés have different approaches," said Kenneth Howland, director of the Agriculture Department's Tobacco, Cotton and Seeds Division and a former embassy staffer. "There are no clear guidelines."

In opening markets in Eastern Europe since the fall of communism, the industry has not sought the intervention of U.S. trade officials the way it did in Asia in the 1980s. Nonetheless, anti-smoking activists contend embassies still often side with the companies. Alfred H. Moses, the U.S. ambassador to Romania, drew complaints when he attended the opening of a new R.J. Reynolds plant in Bucharest two years ago and declared, "I'm sure that Camel and the other splendid products of the R.J. Reynolds Co. will prosper in Romania."

Witold Zatonski, a Polish cancer specialist who is the unofficial leader of the tobacco control movement in Eastern Europe, said anti-smoking conferences dispatched letters to Presidents Bush and Clinton pleading for support but received no reply. The U.S. ambassador to Poland has declined invitations to attend news conferences held by Zatonski and his colleagues.

"I feel strongly that the United States has only helped Philip Morris but has never really helped us," Zatonski said in an interview. "At the least, we would like to see President Clinton have the same policy for Polish children that he has for American children."

The companies themselves decline to criticize the administration, even though they are at odds with the White House over domestic tobacco issues.

"American trade policy has not changed in this arena," said Owen C. Smith, general counsel and vice president of Philip Morris and a longtime specialist in tobacco trade issues. "The United States has always been very clear—in all of the administrations—that it will not tolerate other countries discriminating against U.S. exports in any industry. That is our policy today. . . . It was the policy of the previous administration [and] the administration before that."

# DNC Lays Off Fund-Raiser Huang, A Figure in Foreign Donors Dispute

By Ruth Marcus  
Washington Post Staff Writer

The Democratic National Committee has laid off controversial fund-raiser John Huang as part of a post-election downsizing and is returning another \$5,000 raised at a Buddhist temple fund-raiser in April, DNC press secretary Amy Weiss Tobe said yesterday.

Tobe said Huang, who has been the DNC's finance vice chairman since December 1995 and raised \$2.5 million for the party, was among 50 DNC employees let go Friday. Huang, a former Commerce Department official, was removed from his fund-raising duties but continued to receive his \$60,000 annual salary after press reports focused on his solicitations in the Asian American community.

The party has returned nearly \$600,000 that Huang raised, including \$250,000 from a Korean company that the DNC determined came from overseas funds, a violation of federal election law, and \$325,000 from a California businessman who claimed in a court hearing that he had no assets. The DNC has also asked the Federal Election Commission to investigate its activities.

The Commerce Department has asked its inspector general to look into Huang's activities while he was an official there. A former top executive of the Lippo Group, an Indonesian-based banking and real estate conglomerate that has interests in

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*"People in this game know that this work is seasonal."*

—Amy Weiss Tobe,  
DNC press secretary

the United States, Huang had extensive contacts with Lippo officials while at Commerce, and also spoke repeatedly with DNC fund-raisers and donors to the party.

Tobe said the decision to lay off Huang was not related to any of the controversy surrounding him, noting that four other fund-raisers specializing in ethnic communities were also let go. "People in this game know that this work is seasonal and with John it was just in the normal course of downsizing," she said.

One of the events that Huang organized was an April 29 fund-raiser at a Buddhist temple in Hacienda Heights, Calif., that brought in \$140,000. The party now says a temple was an inappropriate place to hold a fund-raiser. The DNC had already returned \$5,000 after a woman at the event said she was given cash in small bills and asked to make the donation.

Tobe said the party would return another \$5,000 contribution from that event after the temple's lawyer determined that the woman who made the contribution was not a U.S. citizen or permanent resident. She had an application for permanent residency status pending. In its FEC report, the party listed the woman's name as Chia Hui Ho and gave her address as the location of the Hsi Lai Temple.

Peter Kelly, the temple's lawyer, describes the woman as a devotee who owns a house in the temple compound. He said he had reviewed about 15 contributors who listed the temple as their address when making donations to the party and found no other problems.

In addition to the \$10,000 in donations received at the event that it has returned, the party has also repaid \$15,000 to the temple for the cost of the fund-raiser.

The Washington Post

MONDAY, NOVEMBER 18, 1996

## BIG TOBACCO'S GLOBAL REACH

Second of Four Parts

# Thailand Resists U.S. Brand Assault

### *Stiff Laws Inspire Other Asians to Curb Smoking*

A1

By Glenn Frankel  
Washington Post Staff Writer

**B**ANGKOK—The first thing Prakrit Vateesatokit noticed were the billboards. The broad cowboy vistas and the chiseled features of the Marlboro Man sprouted suddenly in the summer of 1985 along the main highway to Bangkok International Airport, followed a few months later by full-color ads in Thai newspapers and magazines.

More disconcerting were the T-shirts, kites, baseball caps and school notebooks that began appearing with the Marlboro trademark. Philip Morris Inc. denied making or distributing these items and accused pirates of stealing the company logo. But it seemed to Prakrit, a doctor and a leader of Thailand's fledgling anti-smoking movement, that someone was targeting children specifically to familiarize them with the brand.

All of it was a bit strange because Thailand's rules effectively banned the import of foreign cigarettes, and the only American brands available for sale were either in the duty-free shop at the airport or smuggled packs sold under the table by small-time street vendors. Then, in March 1989, Prakrit learned to his surprise that after three years of secret talks, the Thai Finance Ministry was on the verge of approving a deal with the U.S. Trade Representative's Office that would open the country's markets to American brands. American tobacco was poised to enter a new and thriving market.

What Prakrit witnessed was the beginning of a full-scale assault. Just as they had in three other promising Asian markets, the U.S. big three cigarette companies—Philip Morris, R.J. Reynolds and Brown & Williamson—had targeted Thailand.

See TOBACCO, A14, Col. 1

## TOBACCO, From A1

and enlisted Washington's help in prying it open for their products. Following a carefully planned strategy, they started by softening the Thai market with advertisements and sponsorships, then applied U.S. government pressure and the threat of trade retaliation as stipulated by Section 301 of the U.S. Trade Act. After previous successes in Japan, South Korea and Taiwan, the companies were anticipating another triumph. Owen C. Smith, a Philip Morris executive who spearheaded the industry's campaign, said the companies hoped to ring up at least \$150 million in cigarette sales from Thailand within a few years.

It did not happen. Instead, a handful of determined Thai health officials and doctors resisted the assault and rolled it back. Led by Prakrit and fellow physician Hatai Chitanondh, a senior official in the Thai Public Health Ministry, the counterattack was aided by anti-smoking activists from other parts of Asia and from the United States. Invoking Thai nationalist sentiment and economic self-interest, they enlisted the support of the government and the state-run tobacco monopoly. They got themselves appointed to the official delegations that fought U.S. trade demands and pleaded Thailand's case before the World Trade Organization (WTO) in Geneva. There they made an impassioned health argument that won acceptance by the panel.

Technically speaking, the tobacco industry won. The Geneva panel agreed that Thailand's ban on imported cigarettes violated the General Agreement on Tariffs and Trade (GATT), and Bangkok voluntarily lifted the ban on foreign brands in 1990.

But in practical terms, Thailand won an enormous victory. Today it boasts some of the strongest anti-smoking laws in the world. And imported cigarettes still account for less than 3 percent of the legal Thai market, a far cry from the 25 percent anticipated by U.S. firms. Big Tobacco's dreams for Thailand never came true.

Thailand's resistance campaign played a crucial role in creating the anti-smoking movements that are taking root today throughout Asia. Countries as diverse as China, Japan, Taiwan, Mongolia and South Korea are adopting tough tobacco control laws that restrict advertising and sales of cigarettes, although sales for the most part are still increasing. And the Thai case also led to the first break in solidarity between U.S. trade officials and American cigarette exporters.

Still, Asian public health activists contend that even under the Clinton administration Washington remains a reluctant ally of the tobacco industry when it comes to foreign markets (see story on Page A15). In recent years, U.S. officials retarded efforts to ban cigarette advertising in Taiwan and South Korea and opposed Thailand's attempt to require manufacturers to disclose the ingredients they use in their brands.

Despite the progress the anti-smoking movement has made in Asia, the tobacco industry still predicts its sales will increase through the turn of the century on much of the continent. Public health activists say they are up against not just American companies but a socioeconomic wave of modernization, urbanization and growing affluence that has given Asian women and young people more independence, more money and more impetus to smoke. In many ways, activists are struggling against history. But it was in Thailand that health advocates proved Big Tobacco was not infallible.

"I don't think the companies expected any real opposition," said Judith Mackay, a Hong Kong-based anti-smoking campaigner. "They thought they could come in and have a free ride. But in the end the 301 cases [cases threatening trade retaliation under the U.S. Trade Act's Section 301] probably did quite a lot of good because they galvanized people. They united people in Asia in outrage. And Thailand was the key."

## The Campaign Begins

Prakrit Vateesatokit was 45 years old in 1989, a man with a quick, wide grin and long, jet-black hair that made him look far younger. But the smile was deceptive. Behind it was a deep reservoir of anger and disgust, all of it focused on one subject: the damage done to the human lung by the act of smoking.

Trained in Bangkok and at the New Jersey College of Medicine in Newark, Prakrit specialized in chest and lung diseases, chairing the department of medicine at Ramathibodi Hospital and medical school here and operating his own private practice as well. Most of his patients were heavy smokers, many of them suffering from chronic emphysema, a slow ticket to the grave. Each night Prakrit would go home to his wife and three sons for dinner, then drive to nearby Hyathai Hospital to look in on his stricken patients.

"With lung cancer at least they go quickly," he said as he toured the hospital on a steamy Bangkok night recently. "But most of my patients stay in the hospital for years and years on the ventilator, and they die very, very slowly. There came a point when I began to feel it was all very stupid, very unnecessary, and that my work as a doctor trying to help these people was totally useless."

In the early 1980s, Prakrit became involved in Thailand's fledgling tobacco control movement. He helped push public efforts to require health warnings on cigarette packs and restrict smoking in public places. But when the Ramathibodi medical school dean asked him to organize a new anti-smoking campaign in 1986, he was reluctant.

"I had worked in tobacco control on and off for 10 years and nothing much had happened," he recalled. "But my dean said this time it will be different. He said I'd get a secretary and some funding. He would not allow me to say no."

1/4

# Immigration Issues Await New Congress

## Surging Legal Influx Will Be Among Topics Of Renewed Debate

**A1**

By William Branigin  
Washington Post Staff Writer

The far-reaching immigration law that took effect last month has left many issues festering, and legislators on both sides of the political divide agree that renewed debates are likely when Congress reconvenes next year.

The law, which was hailed as landmark legislation when it was signed by President Clinton in September, dealt with the relatively soft target of illegal immigration. Although there was broad agreement on the need to curb the influx of illegal aliens, controversies over how to go about it nearly derailed the bill. Left over for the new Congress is the much thornier question of what to do about legal immigration, which rose sharply in 1996 and is projected to keep climbing next year.

The debate over legal immigration revolves around numbers. At its core is the question of how many newcomers should be let into the country. But while there seemed to be bipartisan support for reducing legal immigration in line with the recommendations of an independent commission last year, efforts to legislate such cuts ran into stiff opposition, not just from ethnic and immigrants' rights lobbies but also from business.

According to the Immigration and Naturalization Service, legal immigration increased about 25 percent during fiscal 1996 from the previous year, meaning that about 900,000 people entered the country. When other categories of newcomers are factored in, such as asylum seekers and "parolees" granted special admission, the total approaches 1 million.

The surge in legal immigration is attributed in large part to a decade-old amnesty law that legalized 2.6 million illegal aliens, many of whom have become citizens and sought permanent resident status for their

See IMMIGRATION, A12, Col. 1

### IMMIGRATION, From A1

family members. Unlike other immigrant categories, the visa allotment for "immediate relatives" of U.S. citizens has no numerical limits.

The recent influxes have raised alarms in Congress over the long-term impact of immigration, particularly on the country's population growth. Lawmakers concerned about the high levels of immigration also complain about the more immediate social costs of the system and a loss of control over who is allowed to immigrate. The system, they say, is driven less by America's needs than by "chain migration," in which successive waves of immigrants bring in their relatives.

Immigration imposes a burden on public schools and health services, these restrictionists argue, while it tends to depress wages in certain sectors and frustrates efforts to move Americans from welfare to work. What is needed now, they assert, is an immigration "time-out" so that those already here can be assimilated.

On the other side of the debate are members of Congress from both parties who laud the historical contributions of immigrants to American life and who worry that cuts would prevent families from reunifying and deny businesses access to the world's "best and brightest." Immigrants have helped revitalize inner-city neighborhoods and contributed to America's high-tech edge, these advocates say.

While in principle some may favor slight reductions, it has proved impossible up to now to reach consensus on where to make cuts. Every proposal to reduce or eliminate a category of legal immigrants, whether family-based or employment-related, has provoked an outcry from those concerned.

Meanwhile, the influx seems to have taken on a life of its own, with an impact far beyond the numbers usually associated with legal immigration.

The INS estimates, for example, that America's illegal immigrant population, about 4.6 million, is increasing by about 300,000 people a year. Adding them to the total of about 1 million immigrants and asylum seekers, then subtracting the estimated 200,000 people a year who emigrate, leaves a net annual addition of about 1.1 million people from all forms of immigration.

It is true that, of this number, an unknown percentage were already living in the United States when granted legal immigrant status. On the other hand, the total does not include more than 650,000 people a year who are admitted for periods ranging from three to 10 years under several "nonimmigrant" visa categories, State Department figures show. Many of these "nonimmigrants" end up staying permanently.

According to the Census Bureau, about one-third of population growth in the United States stems from immigration. When U.S.-born children of recent immigrants are included, immigration accounts for more than half the population growth, the bureau says.

The surge in legal immigration in recent years—levels are double what they were two decades ago—has contributed to a sharp revision of the Census Bureau's projections for population growth in the next century. In 1989, the bureau forecast that the U.S. population, now about 265 million, would level off at about 300 million by the year 2050. But in 1992, the bureau had to withdraw that projection, largely because of trends in immigration and the fertility of nonwhite women.

The Census Bureau now puts the

U.S. population in 2050 at nearly 400 million. By a less conservative estimate based on somewhat higher immigration, it could even surpass half a billion, the bureau says.

About 93 percent of the population growth in the year 2050 will result from immigration that has occurred since 1991, the bureau

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estimates. Citing these and other census statistics in a House speech earlier this year, Rep. Anthony C. Beilenson (D-Calif.) warned that far from leveling off, the U.S. population "will continue to grow unabated into the late 21st century."

More immediately, the new Congress is expected to have its hands full with what some legislators say is the "unfinished business" of immigration reform.

Sen. Edward M. Kennedy (D-Mass.) wants to restrict the ability of employers to use temporary foreign workers to replace Americans. Critics of job-related immigration say employers often use it to cut salary and benefit costs, and that the influx of temporary workers tends eventually to drive jobs overseas and erode the U.S. tax base.

Kennedy, a senior member of the Senate committee that deals with immigration, says he favors a "modest reduction" in legal immigration, but indicates he is most interested in obtaining additional Labor Department inspectors and cracking down on employers who hire illegal workers.

"The key question next year is whether we protect American workers or coddle the unscrupulous employers," Kennedy said.

Other Democrats want to roll back provisions of the new welfare and immigration laws that restrict benefits to legal immigrants and make it more difficult for people seeking political asylum to enter the country.

Republicans, meanwhile, may try again to give states the option of denying free public education to illegal immigrant children and end automatic birthright citizenship for children born in the United States to illegal immigrant parents—both highly controversial issues and sources of division within the GOP.

The naturalization of record numbers of immigrants, which has been under investigation by a House subcommittee, appears likely to continue drawing fire in the Republican-controlled Congress, especially because new citizens may have tipped the balance in favor of a Democrat in at least one House race.

**The Washington Post**

MONDAY, NOVEMBER 18, 1996

# FBI Chief Finds Himself Under Microscope

String of High-Profile Episodes at Bureau Casts Shadow on Freeh's Accomplishments

The Washington Post

MONDAY, NOVEMBER 18, 1996

A1

By Roberto Suro  
Washington Post Staff Writer

FBI Director Louis J. Freeh has seven years remaining on his 10-year appointment. But last month, he took the unusual step of sending a memo to each of the bureau's 25,000 employees assuring them that, rumors to the contrary, he would not be abandoning his post.

"I am proud to be the FBI director," Freeh wrote.

That Freeh felt obliged to deliver such a declaration is a clear measure of the controversies that have bedeviled him for much of the past year. While he is still generally regarded in Congress as an effective law enforcement officer, Freeh's judgments in several high-profile episodes are coming under increased scrutiny that is likely to escalate in the weeks and months ahead.

Among the most vexing, and potentially damaging, issues is that involving bureau files that were shredded after the deadly 1992 Ruby Ridge standoff. A criminal inquiry into the alleged FBI coverup now revolves around one of Freeh's closest associates, Larry Potts. Freeh made Potts deputy director even after the initial Ruby Ridge inquiries censured him, and Freeh backed Potts even as the charges were mounting, until the director finally confessed to having a "blind spot" for his friend.

Another Freeh favorite, FBI General Counsel Howard M. Shapiro, faces questions about his legal judgment and accusations of partisanship in the con-

See FBI, A11, Col. 1

FBI, From A1

trovery over the hundreds of confidential files on Republican officials that the FBI gave to the Clinton White House. Independent counsel Kenneth W. Starr, Justice Department ethics investigators and congressional Republicans are looking into aspects of the case, ensuring that Freeh will once again face difficult choices regarding the fate of a prized subordinate.

Richard Jewell, the Atlanta security guard and onetime suspect in the Olympic park bombing, presents yet another embarrassing matter. Jewell has vowed to sue the FBI for allegedly leaking his name to the news media and for trying to trick him into giving up his constitutional right to be represented by an attorney.

Although Jewell's suit faces legal obstacles, it keeps the spotlight on an incident that has proven thoroughly disconcerting to the FBI and raises questions about the bureau's interrogation and policing practices. In a widening probe of the incident, internal Justice Department investigators will determine whether FBI headquarters supervisors, including Freeh, helped conceive the ruse that drew Jewell into the FBI's Atlanta offices on the pretext that he was making a training video.

At the very least, law enforcement officials predict, the Jewell case will reveal extensive micromanagement from Washington of a prominent investigation with far from ideal results.

Freeh declined to be interviewed for this story, and a spokesman for the bureau declined to comment, noting that all the matters cited involve pending cases.

None of these probes appears to involve allegations of serious ethical lapses by Freeh, let alone charges of criminal wrongdoing. But even doubts about administrative decisions, such as personnel appointments, take on added seriousness because of the extraordinary police powers exercised by the FBI.

These recent episodes are particularly troubling for a man who was so highly extolled when he assumed control of the FBI three years ago. A former FBI agent, federal prosecutor and U.S. District Court judge, Freeh was billed as the director who would oversee the development of a more modern and effective FBI. In recent months, however, his troubles have nearly overshadowed his achievements—such as his streamlining of headquarters bureaucracy, the arrest of a suspect in the Unabomber case and the peaceful end to the Freeman standoff in Montana.

"Freeh is suffering from the cumulative effect of his mistakes rather than from any single disaster," said a former U.S. attorney who asked not to be identified by name.

How damaging these matters can be became evident last August when House Republicans denied the FBI expanded wiretap authority despite pleas from Freeh that, without it, the bureau could not keep up with the sophisticated communications equipment available to criminals. House Speaker Newt Gingrich (R-Ga.) said that, in the wake of the White House files controversy, "it's very hard to justify giving that agency more power."

Freeh, 46, has outlined an ambitious, long-term agenda to amass greater resources and powers at home and abroad that would allow the bureau to fight drug trafficking, terrorism and organized crime. Now, even some of Freeh's supporters say that he needs to bolster his credibility in the coming months or risk damaging that agenda and perhaps his reputation with it.

"Freeh has had problems and he still has problems, but I think he is man enough to handle them," said Sen. Arlen Specter (R-Pa.).

Although Freeh still enjoys "a great deal of confidence" in Congress, Specter, a senior member of the Senate Judiciary Committee, said he plans to call Freeh to hearings later this month on Ruby Ridge and the Olympic bombing.

"It is still the top of the 7th for him as far as some of these pending matters are concerned," Specter said.

That level of support—positively inclined but nonetheless cautious—seems widespread among congressional members whose committees keep watch on the FBI's operations. Yet for the first time since Freeh took office, some legislators are openly doubting whether Freeh can regain his credibility.

"I think he's been hurt a lot," said Rep. Bob Livingston (R-La.), chairman of the Appropriations Committee. "I think the FBI has been hurt during his tenure, and I am not confident he can undo the damage."

Like many of Freeh's critics, Livingston emphasized that his concerns were measured against high expectations. "The nation needs to have faith in an utterly professional and uncorruptible FBI and an FBI director that inspires unquestioned confidence," Livingston said. "I don't think Freeh has lived up to his job."

Freeh's fans and his critics agree that the gravest problems he faces emerge from the allegations of partisan conduct in the White House files controversy. Throughout the FBI's history, no issue has been more sensitive than the need to protect the bureau from political manipulation.

In the files case, Shapiro has admitted errors of judgment for working too closely with the White House during a period of political damage control, particularly what Shapiro

has described as his "horrific blunder" in giving the White House a "heads-up" about potentially damaging information that concerned first lady Hillary Rodham Clinton.

Gingrich, Livingston and several other prominent Republicans insist that Shapiro's resignation is overdue, but Freeh has stood by the 36-year-old attorney he brought with him from New York, saying that Shapiro enjoys "my full confidence."

The files controversy, perhaps more than any other pending matter, poses a challenge for Freeh within the FBI itself. Freeh is generally regarded by observers inside and outside the bureau as having imposed strict standards of conduct. For example, early in his tenure, he suspended two veteran agents for what he considered intemperate comments in the news media. Now, FBI agents are grumbling that Freeh has not applied the same standards to Shapiro.

"It gets very annoying when you feel that a guy with so much power over your life is playing favorites and that's exactly what's happening with Shapiro—he's protected, he's a favorite," said a senior agent who asked not to be named.

The grumbling about Freeh comes at a time when morale within the bureau is said to be slipping.

John J. Sennett, president of the FBI Agents Association, a professional group for the bureau's 8,000 agents, wrote in a recent newsletter to members that "the past year was a very eventful but also unsettling year." Sennett referred to the ongoing Ruby Ridge inquiries and said the files controversy "has emerged as a disturbing series of events which has raised serious concerns about the bureau's role." As a result, he noted that even when promoting issues of employment rights and benefits "we find members of Congress are distracted by disturbing news accounts involving the bureau."

Sennett said in an interview that most agents do not hold Freeh personally responsible for these difficulties and that "they want to count on the director to be a forceful, unhindered spokesman."

Still, as Freeh battles through the various probes in the coming months, FBI watchers agree that he has little margin of error.

"In comparison to the crises the bureau has gone through in the past, this is all still fairly small stuff," said Carl Stern, until recently the Justice Department spokesman, referring to the Watergate era. But he added that demands on the FBI are higher than they have ever been.

"The FBI is playing in the Super Bowl every day," said Stern, a professor of journalism at George Washington University. "In the law enforcement business you can't afford to come in second. That's the standard which the director and the whole of the FBI are measured against every day."

# The Washington Post

MONDAY, NOVEMBER 18, 1996

## ASIA'S SMOKERS

### DEVELOPMENT OF CIGARETTE CONSUMPTION IN ASIA over the past two decades, ranked in order of fastest increase

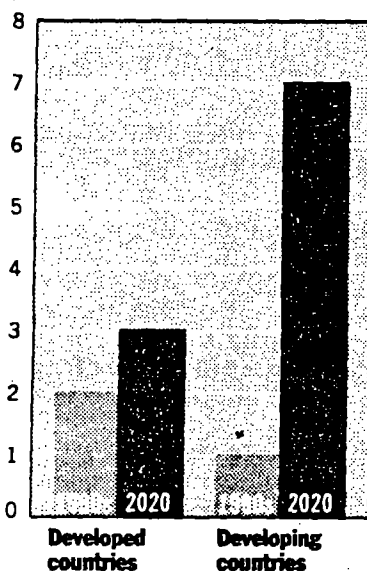
CIGARETTES SMOKED PER PERSON AGE 15 OR OLDER

| Country     | 1970-72<br>cigarettes<br>per year | *rank | 1980-82<br>cigarettes<br>per year | *rank | 1990-92<br>cigarettes<br>per year | *rank | places moved<br>up/down<br>from 1972-'92 |
|-------------|-----------------------------------|-------|-----------------------------------|-------|-----------------------------------|-------|------------------------------------------|
| China       | 730                               | 72    | 1,290                             | 56    | 1,900                             | 32    | +40                                      |
| Indonesia   | 500                               | 83    | 950                               | 72    | 1,180                             | 59    | +24                                      |
| South Korea | 2,370                             | 20    | 2,750                             | 15    | 3,010                             | 5     | +15                                      |
| Bangladesh  | 510                               | 81    | 630                               | 82    | 990                               | 67    | +14                                      |
| India       | 1,010                             | 62    | 1,310                             | 55    | 1,370                             | 53    | +9                                       |
| Japan       | 2,950                             | 12    | 3,430                             | 5     | 3,240                             | 4     | +8                                       |
| Thailand    | 810                               | 69    | 1,080                             | 66    | 1,050                             | 62    | +7                                       |
| Malaysia    | 1,400                             | 42    | 2,050                             | 30    | 1,630                             | 44    | -2                                       |
| Philippines | 2,010                             | 27    | 2,190                             | 27    | 1,760                             | 37    | -10                                      |
| Singapore   | 2,510                             | 17    | 2,550                             | 20    | 1,610                             | 45    | -28                                      |

\* ranks refer to World Health Organization estimates in 111 countries.  
Note: Taiwan is not a WHO member and was not included in the study.  
The 1993 consumption there was estimated to be 1,765 cigarettes per person.

SOURCE: World Health Organization

### ESTIMATED DEATHS AS A CONSEQUENCE OF SMOKING IN MILLIONS PER YEAR



SOURCE: World Health Organization

*"Unless smoking behavior changes, three decades from now premature deaths caused by tobacco in the developing world will exceed the expected deaths from AIDS, tuberculosis, and complications of childbirth combined."*

—World Bank.  
World Development Report 1993:  
Investing in Health

#### MARKET SHARE HELD BY IMPORTED CIGARETTES

|             | 1985 | 1995 |
|-------------|------|------|
| Japan       | 2%   | 21%  |
| South Korea | 2    | 6    |
| Taiwan      | 0    | 22   |
| Thailand    | 1    | 3    |

SOURCE: U.S. Department of Agriculture

### ABOUT THIS SERIES

This series of stories—based on reporting in Bangkok, Beijing, Boston, Hong Kong, Kiev, New York, Taipei and Washington—focuses on American tobacco's watershed move overseas. It is based on interviews with many of the principals, government records and memos from the files of the U.S. government and the tobacco industry, some of which have never been disclosed before.

■ **Sunday:** How the industry enlisted the Reagan and Bush administrations to break open closed monopoly markets in Asia.

■ **Today:** How one little country, Thailand, unexpectedly fought back and set off a backlash that helped create a growing tobacco control movement in Asia.

■ **Tuesday:** How the companies have set their sights on the ruined economies of the former Eastern Bloc, where they have brought millions of investment dollars and a take-charge enthusiasm to societies as starved for optimism as they are for cash.

■ **Wednesday:** How China, with its 300 million smokers, has become the supreme battleground between the industry and the anti-smoking movement.

4/4

Faced with growing pressure and working for George Bush, a president who seemed less inclined than Ronald Reagan to go all out for tobacco, Hills broke precedent. She suspended the 301 procedure and referred the Thailand case to the WTO in Geneva for adjudication under the provisions of GATT.

Smith opposed the move—he feared the process could be time-consuming and knew the industry would have little or no leverage over the GATT hearing's panel. In a pointed letter to USTR, Smith's association called Hills's decision "unnecessary, unprecedented, unsuccessful and against the interests of United States exporters."

Hills did not budge. "I believed

*"I do believe there are health problems with cigarettes, but I'm not [the Food and Drug Administration]."*

— Carla Hills

Former U.S. trade representative

that where you have an international rule that governs trade you ought first to use it before you apply unilateral sanctions," she recalled. It was the first clear break between Washington and the tobacco industry on a cigarette trade issue.

Still, the industry saw no reason to panic. Article XI of GATT unequivocally prohibited signatory countries from banning or discriminating against other countries' products and gave the panel the power to order changes in governmental policies. The United States argued that Thailand's import licensing restrictions and discriminatory taxes amounted to an improper restraint of trade. And because Thailand exported cigarettes elsewhere in Asia, the U.S. brief dismissed the health argument as incongruous.

Prakit had never heard of GATT before Hills announced her decision. But he and Hatai, his colleague, wrangled appointments to the official Thai delegation in Geneva. In February 1990 they took an all-night flight from Bangkok. Prakit had borrowed a copy of the GATT treaty from a friend, and when they arrived at the Rome airport at 5 a.m. for a two-hour layover, he began reading. His tired eyes were blurry, but he came upon a clause in the preamble that woke him up. It summed up the reasons for the agreement: "... recognizing that their relations in the field of trade and economic endeavor should be conducted with a view to raising standards of living, ensuring full employment and ... developing the full use of the resources of the world."

See TOBACCO, A15, Col. 1

TOBACCO, From A14

In other words, as he read it, the purpose of GATT was to promote health and welfare. Yet cigarettes undermined both.

"I think we've got something to argue," he told the leader of the delegation.

The U.S. delegation had not enlisted a health expert for its team; instead, it marshaled the tobacco industry's standard arguments—claiming, for example, that American cigarettes were healthier than Thai products because they contained less tar.

Connolly, serving as an expert witness for the World Health Organization, replied, "It's like jumping from the 10th floor versus the seventh floor. At the end, all cigarettes, in any way, shape or form, will eventually kill you."

In November 1990 the GATT panel concluded that Thailand's failure to allow imported cigarettes was indeed a clear violation of Article XI. At the same time, however, the panel ruled that smoking constituted such a serious health risk that Thailand justifiably could restrict cigarette sales and ban advertising, as long as it applied the rules equally to both domestics and imports. The health testimony proved decisive: The panel's report included four pages of Connolly's testimony virtually verbatim.

Hills and USTR declared the GATT decision a victory. But they also quietly dropped their demand that Thailand allow cigarette ads. The two governments reached an agreement two days before the Nov. 25 deadline set by the 301 complaint.

Prakit and Hatai were advised in advance by friends in the Commerce Ministry to prepare a new tobacco control law to cushion the public health impact. With help from Connolly and other American activists, they drafted one of the world's strictest anti-smoking codes.

The Tobacco Products Control Act bans all cigarette advertising, as well as sales to young people. No cigarette promotions or free samples are allowed. Cigarette packs must prominently display one of 10 health warnings. Another provision requires companies to disclose to the Public Health Ministry the ingredients and additives in each of their brands.

A second law, the Non-Smokers Health Protection Act, bans smoking in most public places. In effect, the new laws meant that while American tobacco companies were allowed to enter Thailand, they were denied the tools they traditionally use to attract new customers.

Smith was philosophical about the outcome of the Thailand case. "It's a little bit like making sausage," he said in a recent interview. "No result of a trade negotiation is likely to be perfect."

Hatai still wages a one-man campaign against new incursions. When Japan Tobacco introduced cigarette cartons and packs with pictures of Thai Buddhist shrines, Hatai led a protest at the Japanese Embassy. The shrine photos quickly were withdrawn. Hatai personally patrols restaurants and tobacco shops, confiscating ashtrays, napkins and anything else that displays the trademarks and logos of cigarette brands.

Nonetheless, Hatai has a folder full of charts and statistics suggesting that after a decade of fervent tobacco control efforts, smoking is increasing among Thai teenagers. "I still don't think we are winning this war," he said.

"It's not like fighting tuberculosis. There you know if you have a good antibiotic you have won more than half the battle. But in tobacco control there's no antibiotic. Once you have the tobacco companies inside your country, you have to fight them all the way and all the time. It never ends," Hatai added.

Thailand's success reverberated throughout Asia.

## Asian Backlash

Led by a handful of activists in each country, the anti-smoking movement began to push for higher tobacco taxes, warning labels on cigarette packs, disclosure of tar and nicotine data, as well as restrictions on cigarette advertising and promotion, sales to young people and smoking in public places. By 1995, 33 of 35 Asian countries had tobacco control laws on their books, according to Mackay, the Hong Kong-based anti-smoking campaigner.

Those laws were prompted not just by health concerns but by a sense of righteous Asian nationalism. According to a widespread conviction, the United States and Europe were seeking to inflict death and addiction on Asia in a replay of the opium wars of the 19th century.

"America has given us so many good things over the years," said David Yen, a Taiwanese businessman who founded the John Tung Foundation in Taipei after his own brush with cancer cost him a lung and caused him to quit his two-pack-a-day habit. "We think it's a pity that with so many wonderful products to sell, you have insisted on pushing disease instead."

Japan, South Korea and Taiwan all had signed binding 301 agreements with the United States that not only allowed American brands into their markets but permitted certain forms of advertising and set tax limits. Now they pressed for Washington's consent in amending the pacts. But U.S. trade officials again sided with the industry, delaying or defeating tobacco control measures in all three countries.

For example, when Taiwanese health officials sought a total advertising ban to counteract an alarming increase in high school smoking rates after American brands entered the country in 1988, USTR officials objected. Reciting the industry's arguments, U.S. officials argued that such a ban would not reduce cigarette consumption and did not qualify as a health measure. Officials also again raised the threat of opposing Taiwan's application to join GATT. The proposed ban has since been bottled up by pro-tobacco forces in the Taiwanese parliament.

While Asia remains a market of great promise for international tobacco companies, their growth is being challenged at every step by increasingly aggressive and self-assured tobacco control campaigners. By contrast, there is another region where public health movements are frail and where governments are not just willing but desperately eager for the industry, its brands and its money.

With the fall of the Soviet Union and the collapse of communism, Eastern Europe put out the welcome mat for Western products, technology and investment capital. While other Western companies hung back, wary of the risks involved in entering the ruined economic landscape, the tobacco industry moved swiftly and boldly through the newly opened door.

Prakit's new office opened its doors at a pivotal moment. The U.S. Cigarette Export Association—which represents the three largest American tobacco companies—was pressing the U.S. government to turn its attention to Thailand. The Royal Kingdom operated a typical, state-protected cigarette industry. Lurking behind high tariff walls, the Thai Tobacco Monopoly was run directly by the Finance Ministry, and its profits and revenues provided a substantial part of the government's annual budget.

The monopoly did not have to advertise or work hard for market share—indeed, in 1988 at the urging of Prakit's organization, the government banned all advertising of tobacco products. More than 60 percent of Thai men and just 6 percent of Thai women smoked. They were in effect a captive market. There was a substantial black market in Marlboros and other foreign brands, but the state monopoly dominated.

For Smith, a veteran trade lawyer for Philip Morris who served as president of the export association, Thailand was an irresistible target. In 1985 the country began a remarkable decade of double-digit economic growth that remains among the world's highest. American franchises such as McDonald's, Baskin-Robbins and Radio Shack all established beachheads. Still, their products were a drop in the trade bucket. Thailand, with its cheap textiles, jewelry, processed food and electronic components, had a \$2 billion annual trade surplus with the United States. And the Americans were keen to get some of it back.

Smith saw a sleepy, bloated state tobacco monopoly ripe for challenge. As it had in the past, his association turned to the Office of the U.S. Trade Representative (USTR) for help. Thailand "didn't have a case and they didn't have any justification" for keeping out American cigarettes, he said.

In March 1989, Hatai, then deputy permanent secretary in the Thai Public Health Ministry, was tipped off by a friend in the Finance Ministry about an impending deal with U.S. officials. Hatai, who was trained as a neurologist, had developed a hatred of tobacco in his job as a public health official. Hatai's cabinet minister was away in London, but rather than wait, he decided to act on his own, denouncing "tobacco colonialism" at a news conference. Within days, Prakit and other anti-smoking activists had joined in protest, along with tobacco farmers and cigarette factory workers.

Bowing to pressure, the finance minister put the deal on hold. Shortly

after, Smith's association filed an unfair trade practices complaint with USTR. In the petition, the companies demanded the right to import, sell and distribute cigarettes in Thailand. They also insisted that Bangkok lift its advertising ban so they could promote their products "in order to overcome years of exclusion from the market." The petition said the ad ban was motivated not by health considerations but by a need "to put imported products at a competitive disadvantage." Smith held a news conference in Washington at which he lumped Thailand with Syria and Iran as the only three noncommunist countries that banned U.S. imports.

Carla Hills agreed with Smith's argument. Like her predecessor, Clayton Yeutter, the new head of USTR was a nonsmoker; indeed, one of her first acts was to declare the Winder Building, USTR's Civil War-era headquarters on 17th Street NW, a no-smoking zone. But Hills believed that Thailand was shutting out foreign cigarettes merely to shelter its own state-run monopoly. Her stance was endorsed by a coalition of tobacco and farm state senators in a letter signed by Jesse Helms, Robert J. Dole, Al Gore and 16 others.

"I do believe there are health problems with cigarettes, but I'm not [the Food and Drug Administration]," Hills said in a recent interview. "My job was to enforce statutory requirements for USTR and remove trade barriers. Any market that wants to declare a ban against cigarettes, that's great, but countries that have their own industries should treat foreign companies no different than domestic ones."

In April 1989 Hills accepted the case under Section 301, a provision that gave Thailand a year to comply or face retaliatory sanctions. USTR officials quickly began drawing up lists of Thai products to target. Spokesmen for those products—jewelry, textiles, furniture and processed food—met with Thai trade officials to plead for a peaceful resolution. But a phalanx of Thai public health officials and representatives of the tobacco monopoly, in an opportunistic marriage of interests, stood fast in opposition. The Bangkok government, which two years earlier had been forced to resign over trade issues, was not prepared to defy this coalition.

### A Veteran Joins the Fight

A few weeks after the complaint was filed, Prakit traveled to Taiwan to attend the first meeting of the Asia-Pacific Association for Control of Tobacco. There he met a number of veteran anti-smoking activists for the first time, including Gregory Connolly, head of the Massachusetts Tobacco Control Program and a representative of the American Public Health Association, who had become an avowed enemy of the tobacco industry after his sister died of lung cancer.

Connolly listened to Prakit describe Thailand's struggles with the 301 complaint and pleaded with him to hang tough. "Whatever you do," he told Prakit, "don't let the Americans in. They'll launch an incredible advertising campaign, and they'll get Thai women and children to smoke."

Under Connolly's tutelage, Prakit received a crash course in the international politics of tobacco. Soon the lone fax machine at Ramathibodi Hospital was humming with newspaper articles, reports and ideas. Connolly persuaded Prakit to apply to USTR for a public hearing, something the agency had not held in any previous 301 case. Connolly also helped form a Thailand task force in Washington that included representatives of various American anti-smoking groups, which began pressuring USTR for the hearing.

Prakit used personal connections with the Commerce Ministry to get himself appointed to the official Thai delegation for the first session with USTR negotiators in late July 1989. Although Peter Collins, the head of the U.S. delegation, insisted in his opening remarks that the issue was strictly a matter of trade, not health, he reluctantly agreed to allow Prakit to participate.

The atmosphere was tense. The USTR delegation was so afraid of public protests that Collins insisted on holding the sessions in the town of Pattaya, a two-hour drive from Bangkok, and Thai officials say he refused to allow local television crews to film the opening of the meeting. At the first session, USTR asked a series of questions on how the state tobacco monopoly was run and how taxes were collected. Then Prakit gave a history of the Thai anti-smoking movement and the cigarette ad ban.

Prakit was not informed of later negotiating sessions, and a Thai official told him that the USTR team had insisted he be dropped from the delegation. At around this time he also stopped receiving invitations to attend social events at the U.S. Embassy in Bangkok.

A few weeks later, Prakit received a letter from USTR granting a public hearing and inviting him to appear. Connolly was delighted. He saw the hearings as a golden opportunity for the anti-smoking movement to make its case. But Prakit was terrified at the notion of being interrogated by lawyers in public. "In Thailand the patient never sues," he said. "The whole idea of a public hearing was very scary to me."

The hearing, held in September 1989, was a turning point. Hills and USTR, usually lauded in the press, suddenly found themselves portrayed as handmaidens of Big Tobacco. No USTR witnesses appeared at the session. Instead the agency was defended by Philip Morris's Smith and a handful of tobacco state lawmakers. They were opposed by a parade of advocates from every major American public health group as well as former surgeon general C. Everett Koop and congressional critics. "It is my firm belief that America's dark secret of cigarette promotion overseas cannot survive in the sunshine of public scrutiny," testified Rep. Chester G. Atkins (D-Mass.).

Prakit testified that the Thai government was opposing imported cigarettes not merely at the bidding of the state tobacco monopoly. Using slides and reading a text in English, he sought to convince the panel that an authentic anti-smoking movement existed in Thailand.

# Vast China Market Key to Smoking Disputes

A1

By Glenn Frankel and Steven Mufson  
Washington Post Staff Writers

In the ornate Negotiation Room at the headquarters of the China National Tobacco Corp. in Beijing, two renowned anti-smoking crusaders and executives of the world's largest producer of cigarettes forged an unlikely alliance two years ago.

Judith Mackay, a Hong Kong physician who has campaigned throughout Asia for tough tobacco control laws, and cancer epidemiologist Richard Peto of Oxford University had come to seek the powerful, state-controlled monopoly's help in ensuring that proposed regulations banning cigarette advertising in China be as stringent as possible. Their goal was simple: to help protect China's health by blocking foreign tobacco companies such as Philip Morris Inc., R.J. Reynolds Tobacco Co. and British-American Tobacco Co. from gaining a foothold in the Chinese market.

Peto put it bluntly. According to minutes of the 1½-hour meeting, he noted that strong regulations would not only shield Chinese young people from the lure of American advertising, it would "protect the [Chinese monopoly] from foreign marketing competition."

After listening to Mackay and Peto, Jiang Ming, director general of the monopoly, agreed to allow the two activists to make recommendations and review the final draft of the regulations. Speaking through a spiraling haze of cigarette smoke, Jiang agreed they all had the same goal: "serving the Chinese people."

In the worldwide conflict between the international tobacco industry and the anti-smoking movement, China is the ultimate battlefield. With an estimated 350 million smokers, China has many more customers than the United States has people. Tobacco companies see it as the grand prize, the place where they can recapture and far outstrip the sales volumes they are losing in the West.

China already is overtaking countries such as France, Italy, Germany, Denmark and Britain in the number of cigarettes smoked per person, and it is one of only six countries in the world where per capita cigarette consumption is steadily rising.

For the same reasons, anti-smoking campaigners see China as the crucial theater where they must challenge the industry in order to mitigate a public health disaster already in the making. Everywhere the companies have ranged throughout Asia and Eastern Europe over the past decade, health activists have followed, building fledgling tobacco control movements modeled largely along American lines.

But as the January 1994 meeting in Beijing illustrates, the contest in China is not a simple, two-way struggle but a complex, three-sided affair in which the Chinese play a crucial yet ambivalent role.

China's state monopoly—which produces 1.7 trillion cigarettes per year, three times the total number sold in the United States—wants the advanced technology and marketing know-how that companies such as Philip Morris and R.J.R. possess in abundance. It cautiously has accepted the companies as limited partners in a handful of Chinese factories, while seeking to deny anything but the most restricted access to its jealously guarded market.

The Beijing government, which gets 12

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## TOBACCO, From A1

percent of its annual revenue from cigarette sales, wants to protect the monopoly from foreign competition. At the same time, however, an increasingly vocal public health lobby is seeking to undermine the monopoly's influence within the government and to demonize cigarettes in a society where smoking has long been a symbol of affluence and sophistication.

It is a complex and sometimes dirty war. Critics contend that the international companies have turned a blind eye to massive cigarette smuggling operations that have helped "soften" the Chinese market by creating a demand for their brands (see story on Page A23). They also charge that the companies have appealed blatantly to women and young people with the advertising and marketing campaigns that are now being restricted by the government—a charge the companies vehemently deny. Meanwhile, Mackay and other anti-smoking activists have come under fire for forging their alliance of convenience with the state monopoly.

The role of Washington is equally ambiguous. Four years ago, near the end of the Bush administration, the Office of the U.S. Trade Representative (USTR) negotiated an agreement in which China promised to eliminate tariffs and other barriers on American cigarettes and 105 other categories of products within two years. Yet when it comes to tobacco, Beijing has made it clear that China has no intention of honoring the pact, and the Clinton administration has shown no enthusiasm for enforcing it. "We have received no request from the tobacco industry to intervene on finished tobacco products," said a USTR spokesman.

For now the companies are sitting tight, knocking very gently on a door that remains all but closed. "Anyone competing for China has to take the long view, to work with the monopoly and go with it wherever it's going," said Robert Fletcher, chairman of the Tobacco Institute of Hong Kong, an industry trade group. The potential reward, he added, is "a future that is very, very bright."

## Joint Ventures

Shortly after learning about the invention of the cigarette rolling machine in 1881, James B. Duke reportedly asked his subordinates to bring him a world atlas, according to the book "Big Business in China" by Sherman Cochran. The future tobacco tycoon, a founder of the British-American Tobacco Co. (BAT), flipped through the pages, looking not at the maps but at population statistics, until he came to China. There he saw the figure: 430 million.

"That," Duke declared to aides, "is where we are going to sell cigarettes."

By the turn of the century, BAT's sales reps were storming through China like an invading army, selling millions of cigarettes and driving out local manufacturers. The campaign continued until the company was evicted after World War II when the Communists seized control of the country and nationalized the tobacco industry. Foreign cigarettes were condemned as an evil of the capitalist West, yet remained popular; Mao Zedong was a notorious chain smoker of BAT's popular 555 State Express brand.

After China legalized foreign investment in 1979, BAT and its fellow multinational companies came knocking again. This time, however, they took the role of collaborators rather than conquerors. The China National Tobacco Corp. (CNTC) was eager for Western technology to expand production and serve a growing population of smokers. It signed up for 10 joint ventures with BAT, Philip Morris and other foreign companies. One of the biggest was the joint R.J.R./CNTC factory in Xiamen in southeastern Fujian Province. Opened in 1988, the Xiamen plant annually produces 2.5 billion Camels, Winstons and Golden Bridges—a popular local brand.

"We feel we have a good working relationship with the CNTC," said Jan F. Smith, a spokeswoman for R.J. Reynolds International. The Xiamen plant, she added, "was an excellent opportunity to gain a pioneering position in the world's largest cigarette market."

Still, despite the fact that the plant turns a profit for both R.J.R. and its Chinese partners, it is tightly restricted. Everything—from the leaf it uses to the retail price of each pack—is controlled by the state monopoly. Each year the factory has applied to the government to increase its production quota to 3 billion cigarettes; each year the application has been rejected.

With the help of foreign partners, the CNTC tripled its production between 1978 and 1992, according to Peto's estimates. The monopoly also began to export Chinese tobacco products to other Asian countries. Today the CNTC boasts more than 500 brands, 183 cigarette factories, 150 tobacco drying plants, 30 research institutes and 520,000 workers.

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Nonetheless, the CNTC announced in July that China would launch no new joint ventures with foreign tobacco companies over the next five years. Officials cited overcapacity as the reason. "Because cigarettes are a special commodity, if we produce too much it's useless," said Zhou Ruizeng, director of the foreign affairs office of the State Tobacco Monopoly Administration, in an interview. But anti-smoking activists believe the Chinese also were motivated by fears that foreign companies would use joint ventures to garner a larger share of the Chinese market.

Although restricted, the joint ventures have given foreign companies an opening they have quickly exploited through advertising. Philip Morris and BAT each spend more than \$20 million in advertising in China, according to estimates from an industry source, with RJR close behind.

The companies use an aggressive advertising style once common in the United States. And although cigarette ads were formally banned as early as 1984, the companies have skirted restrictions by advertising brands without explicitly showing or mentioning cigarettes. They sponsor popular sports such as Marlboro national football games, Kent billiards contests and the Beijing Salem tennis tournament, as well as the Marlboro Music Hour, one of China's most popular radio shows.

"Foreign companies know how to do promotion and build image," said a U.S. company representative in Beijing who asked not to be identified. For example, he said, "Tennis is a symbol of the middle class, so Salem wants to build an image that its cigarette is a product for the white-collar class. Marlboro is famous and makes people think about something rough, very masculine."

BAT is perhaps the most aggressive company in pursuing younger Chinese. Three nights a week, for instance, it transforms the Nightman Disco in Beijing into a free-floating advertisement for its 555 brand. Slender Chinese women in blue tops, miniskirts and boots all emblazoned with the 555 logo greet people at the door, handing out free cigarettes. Customers crowd the smoke-filled dance floor, writhing to rock music below two huge banners with the 555 logo that proclaim: "Be free from worldly cares."

Still, the American companies have been sufficiently frustrated to seek help from Washington. During the Bush administration, they complained to U.S. Trade Representative Carla Hills about China's trade barriers against cigarettes; in 1991, Hills' office obligingly added cigarettes to a long list of American-made products subject to discriminatory treatment. Washington also threatened to impose retaliatory tariffs against China's own exports if Beijing did not eliminate the restrictions. In October 1992 the Chinese government agreed to lower barriers on the entire list and gradually open its market to U.S. exports. In return the United States dropped the trade investigation and pledged to "staunchly support" China's application to join the General Agreement on Tariffs and Trade.

When it comes to cigarettes, however, Beijing has not loosened restrictions. China lowered tariffs in 1993 at a time when the CNTC failed to meet local demand, then doubled them again the following year, virtually wiping out all imports. Today, the tax on imported cigarettes is set at 260 percent, and Chinese officials estimate that foreign brands hold no more than 3 percent of the legal

Chinese market—a tiny share that still amounts to 50 billion cigarettes per year.

But Washington has played down China's failure to honor the agreement. A few months after the pact was signed, the Clinton administration came into office declaring a new and far more wary approach to helping American tobacco companies abroad. In trade talks with China, cigarettes have all but vanished from the agenda.

### Pact of Convenience?

The multinational tobacco companies consider Judith Mackay a particularly painful thorn in their side. A senior executive for Philip Morris International last year described her as the focal point of "a well-organized and very, very sophisticated" worldwide conspiracy against

the industry—a charge she derides as "utterly ludicrous."

Born and raised in a small village on the northeast coast of England, Mackay got her medical degree from Edinburgh University and married a Scottish doctor who had opened a practice in Hong Kong. After raising two sons, she began working full-time on tobacco control issues in 1984 at age 40. Five years later she established the Asian Consultancy on Tobacco Control, a one-woman, two-telephone office that she runs out of her home and funds on a shoestring with work for the World Health Organization.

When Mackay started out, only two Asian countries, Singapore and Hong Kong, had serious tobacco-control legislation on their books. She traveled from Mongolia to Vietnam carrying model laws in her briefcase, holding seminars and lobbying health ministries. Spurred by Thailand's success in challenging the entry of American tobacco companies, other Asian countries began to take notice. By last summer, Mackay estimated that 33 of the 35 countries she had visited had adopted some form of anti-smoking restrictions.

Mackay and her British colleague, Richard Peto, who has specialized in studying and projecting the grim toll from tobacco-related diseases, made their first trip to Beijing in 1987 at the invitation of the Chinese Public Health Ministry. Peto warned them that China's dramatic success in lowering the child mortality rate and increasing life expectancy meant people were facing the West's chronic diseases of middle age: high blood pressure and smoking-related illnesses.

Peto calculated that China already was suffering a half-million deaths per year from tobacco-related disease, and projected that the figure would reach 2 million by 2025. "My message was very simple," he recalled. "If the Chinese smoke like Americans, they'll die like Americans."

A small anti-smoking movement already was taking root, funded by the Public Health Ministry and the newly established National Institute of Health Education. The movement gained modest fame in 1988 following the observance of a No Tobacco Day in Beijing when someone handed a note to Deng Xiaoping in the National People's Congress, reading, "Please do not smoke in the Presidium." When Deng good-naturedly agreed to the request, the news was widely reported.

Mackay and Peto quickly realized that the huge national tobacco monopoly was a crucial factor in any tobacco control effort because of its enormous influence. While they acknowledged that collaborating with a company that produced as many cigarettes as Philip Morris, RJR and BAT combined was in effect sleeping with the enemy, they concluded that the monopoly was more benign on health issues than its foreign competitors.

"Some people think you're getting in bed with the devil," Mackay said. "But the local firms are nowhere near as bad as the multinationals. They don't deny the health evidence or obstruct tobacco control efforts, and they don't advertise or promote their products. You can at least talk to them and find shared concerns."

Mackay has made 23 more trips to China, and she had her first meeting with Jiang Ming of the CNTC in 1989. Citing the experiences of Latin American countries in the 1950s and '60s, she warned Jiang that the multinationals would be very friendly at first, offering technical cooperation and joint ventures in order to get their foot in the door. Later they would begin to compete directly with the monopoly and threaten trade sanctions. Finally, they would squeeze the monopoly until it collapsed. Her purpose was, as she put it later, "to plant even a seed of doubt in their minds that today's friends [the multinationals] may be tomorrow's enemies."

Jiang thanked her for the warning, but said the monopoly knew how to deal with the foreign companies. "We are not afraid of them," he told her. "No one can come in here and conquer China."

Over the last seven years, Jiang and his fellow executives have cooperated with Mackay in several important areas: They agreed to gradually decrease the level of cancer-inducing tar in their cigarettes by half by 2000. They allowed a 1992 law that substantially increased funding for anti-tobacco education and required health warnings on all cigarette packages while banning advertising. And they promised to keep the multinationals on a short leash.

Mackay's critics in the tobacco industry contend she has forged a cynical pact of convenience with its competitors that may someday backfire.

"Judith Mackay is a very clever person and what she does she does well," said the Tobacco Institute's Fletcher. "But the key to it is, whether by design or not, she has fallen upon a political alliance with the government. She provides them cover. It's not a health issue for them but a matter of preserving their own monopolies."

### **A New Strategy**

But the struggle over China's fate has only just begun. Next year the World Health Organization will stage its World Conference on Smoking and Health in Beijing, an event that will mark a coming of age for China's growing anti-smoking movement. At the same time, however, Beijing is moving toward membership in the World Trade Organization, a move that will require it to remove or significantly lower trade barriers and remove many of the chains from foreign companies, such as the international tobacco industry.

"In general, when it comes to the Chinese market, we feel we need to be patient," said Jan Smith of RJR. "We feel there will be growing opportunities in the long term."

The CNTC has its own strategy for the future—one that could prove chilling to anti-smoking crusaders. Despite vocal opposition from the Public Health Ministry, the tobacco monopoly has won support from government economic planners for a 5 percent increase in cigarette production over the next five years.

A key element in the strategy is a long-term shift similar to that adopted by Japan Tobacco Inc. in the mid-1980s. As foreign tobacco companies enter the CNTC's market, the Chinese giant plans to enter theirs. Already the CNTC reports exports of more than \$400 million per year.

"China is fully capable of making high-quality cigarettes to cater to the demands of some countries and regions," Jin Maoxian, a retired senior administrator, said at an international tobacco conference in Vienna two years ago. He added: "China needs the international market and the international market needs China."

While Mackay insists she is making progress throughout Asia, she readily acknowledges that hers is an uphill struggle.

"People in America assume that because cigarette use is coming down there, somehow the war against tobacco is being won," she said. "But it's not. It's just being shifted from the rich countries to the poorer ones. At best we're waging guerrilla warfare against a powerful army, and on a global basis I fear that we're still losing."

*Frankel reported from Washington and Hong Kong.  
Mufson from Beijing.*

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# Former Texaco Official Charged With Obstruction

## Prosecutors Say Documents Were Withheld

A1

By Sharon Walsh  
Washington Post Staff Writer

A former Texaco Inc. official was charged yesterday with obstructing justice by destroying some documents and withholding others in connection with a race discrimination lawsuit that was settled last week by the company for \$171.6 million.

Richard A. Lundwall, the former personnel coordinator for Texaco's finance department who turned over controversial tape recordings to lawyers for Texaco employees, was accused in a complaint filed in federal court by the U.S. attorney's office in the Southern District of New York. Lundwall, whose attorneys did not return a reporter's telephone calls, was released on \$50,000 personal bond.

The charges against Lundwall could signal a move by prosecutors to pressure him to give them information in their ongoing investigation of Texaco and its handling of documents requested by plaintiffs' lawyers in the race discrimination lawsuit, according to defense attorneys.

"If Mr. Lundwall did what he is charged with, he was acting in direct violation of express company policy as well as written instructions from the company's general counsel to preserve all documents relating to the discrimination lawsuit," said a Texaco spokesman. He added that the company is cooperating with the investigation.

If convicted, Lundwall could face up to 10 years in jail and a \$250,000 fine.

Attorneys and legal scholars said the complaint against Lundwall is an unusual use of obstruction-of-justice charges, which are

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more frequently used when documents are destroyed or withheld in a criminal case, an agency probe or a congressional investigation.

"The Department of Justice has been loathe to get embroiled in discovery in civil litigation," said Ira Raphaelson, a former prosecutor who is an attorney at O'Melveny & Meyers. "Every so often, there's a real egregious one that they prosecute. The system requires that records be preserved. To destroy them is to corrupt the system."

Lundwall, 55, left Texaco in August after a downsizing in his department. Following the loss of his job, he called attorneys for Texaco employees and told them that he had a tape recording of conversations about the company's personnel practices, according to the complaint filed against him in White Plains, N.Y.

At later meetings with the plaintiffs' lawyers, he made it clear that he had participated in the shredding of documents that were requested by the plaintiffs and were relevant to the claims of the Texaco workers, the complaint said. One of the purposes of the meeting he taped was to discuss hiding documents, destroying them or deleting information that would be harmful to the company in the lawsuit, the complaint alleged.

In a handwritten note on one of the documents Lundwall recently produced under subpoena, the former personnel supervisor wrote: "Advised by [Texaco in-house attorney] Eric Silberstein to delay publishing survey results to avoid it becoming part of the 'discovery' process in the . . . litigation."

Discovery is the process by which lawyers request records from the party they are suing. There is no indication that the attorney was involved in any discussions of destroying documents. There was no listing for Silberstein in White Plains and he could not be located for comment.

A Texaco spokesman said that the handwritten note was not subject to discovery and was not requested by the plaintiffs' attorneys. Plaintiffs' attorneys disagreed with that assessment.

One of the documents subpoenaed was a personnel survey in which 63 percent of employees said they did not believe the company's criteria for promotions were applied consistently and fairly, according to documents turned over to a grand jury. And 64 percent said they did not feel they could express that concern without fear of retribution.

The company's measurement of performance was one of the major issues in the lawsuit, which alleged that the company unfairly evaluated black employees and did not give them the same opportunities for pay and promotion as white employees.

The Texaco lawsuit created a public storm of criticism of the company after transcripts of secret tape recordings, made by Lundwall, were released in court. The tapes were originally thought to contain racist epithets, a charge the company's outside experts denied. But Texaco Chairman Peter I. Bijur said that whether the racist comments were made or not, the tone of the conversations, in which the executives made fun of ethnic holidays and talked about destroying records, was unacceptable.

Robert W. Ulrich, Texaco's then-treasurer, was among those heard on the tapes. Ulrich told other company officials: "We're gonna purge the [expletive] out of these books. . . . We're not going to have any [expletive] thing that . . . we don't need to be in them."

Ulrich headed the finance department, one of the departments targeted by plaintiffs in the lawsuit. He has since retired. Ulrich's attorney said yesterday that he has not been contacted by the U.S. attorney's office about the investigation.

After two weeks of escalating protests by civil rights leaders, Texaco settled with all 1,400 of its black employees last week for \$176.1 million. That figure includes \$115 million in cash for current and former black Texaco employees, \$26.1 million in pay increases for current black workers over five years and \$35 million for diversity programs at the company.

There was little discernible support for a boycott against the company, mostly because consumers said they believed it was unfair to target independent service station owners for Texaco's mistakes.

But civil rights leader Jesse Jackson said people who are waiting for an instantaneous effect of the protest are missing the point.

"It takes time for a boycott to take effect, and we have the time," Jackson said. In the interim, Jackson said that he and other black leaders are looking at the minority hiring records of Texaco's board members—some of whom, Jackson said, are in charge of companies that have done poorly in the hiring of blacks and other minority groups.

Civil rights activists also are buying Texaco stock to gain a voice in the company's governance, Jackson said.

Staff writer Warren Brown contributed to this article.

### FOR MORE INFORMATION

To read a federal report on barriers faced by minorities and women wanting to move into positions of corporate leadership, click on the above symbol on the front page of The Post's site on the World Wide Web at <http://www.washingtonpost.com>

# DIRECT LINK FOUND BETWEEN SMOKING AND LUNG CANCER

## FIRST CELLULAR EVIDENCE

### Statistical Studies Supported — Broad Impact Expected for Tobacco Litigation

**A**

By DAVID STOUT

A team of researchers says it has found a direct scientific link between smoking and lung cancer, a discovery that adds yet another piece to the already substantial evidence that tobacco-smoking is a cause of cancer.

The findings, published today in the journal *Science*, report the first evidence from the cell biology level linking smoking to lung cancer. The scientists say a chemical found in cigarette smoke has been found to cause genetic damage in lung cells that is identical to the damage observed in many malignant tumors of the lung.

The findings reported today establish the long-missing link, in the opinion of experts in the field of cancer genetics, and may also play a role in pending litigation about smoking illnesses and passive smoking.

While many scientists have long been convinced by statistical studies and animal experiments that tobacco causes cancer, a statistical association was not in itself absolute proof. This shortfall has allowed defenders of smoking to deny that cigarettes cause cancer, and scientists have not known the exact mechanism of causation that would put the matter beyond doubt.

"This paper absolutely pinpoints that mutations in lung cancer are caused by a carcinogen in cigarette smoke," said Dr. John Minna, a researcher at the University of Texas Southwestern Medical Center. "It is the smoking gun that makes the connection."

"It puts a very firm nail on this coffin," said Dr. Bert Vogelstein of the Johns Hopkins Oncology Center.

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in Baltimore.

The Tobacco Institute, a trade group based in Washington, and the New York office of Philip Morris said yesterday that they were not prepared to comment on the *Science* article.

Tom Lauria, an institute spokesman, said the Tobacco Institute's position has been that "the causal link remains to be established" between smoking and lung cancer. He said the institute recognized that "smoking has been shown to be an important

risk factor in heart disease, lung cancer and emphysema."

John Banzhaf, a professor of law at Georgetown University who is familiar with laws and lawsuits that deal with smoking said the new research would have profound consequences, both in the courtroom and in everyday life.

"This is very important in imposing liability on the cigarette industry and in protecting nonsmokers from secondhand smoke," said Mr. Banzhaf, who is executive director of ASH, for Action on Smoking and Health, a nonprofit anti-smoking group.

Mr. Banzhaf said the latest study would be a powerful weapon for eliminating smoking from those public places that still allow it. "We're moving to ban smoking even in bars, the last bastion," he said.

And he predicted that the research's pinpointing of a specific mechanism for lung cancer would be a severe blow to the tobacco industry in court, where until recently it had been all but impervious to lawsuits from people claiming that they had become ill from smoking.

Scientists familiar with the work described in the *Science* article predicted that the techniques would

have wide use in establishing links between other suspected carcinogens and specific types of cancer. Dr. Minna, the University of Texas researcher, said the methods described in the article would become "the DNA forensic pathology of the future."

In the paper published today in *Science*, researchers from the University of Texas M.D. Anderson Cancer Center in Houston and the Beckman Research Institute of the City of Hope in Duarte, Calif., studied the effects of a cigarette-smoke ingredient on a gene known as p53.

The gene is vital to the body's well-being because it acts to suppress the runaway growth of cells that lead to tumors. When p53 genes are dam-

aged, the body becomes much more susceptible to cancer. Dr. Vogelstein said that problems with the p53 gene are related to half of all human cancers and are found in up to 70 percent of lung cancers.

Lung cancer is the leading cause of cancer death in the United States, with about 170,000 new cases being diagnosed in the country each year.

A critical factor in the research was the knowledge that, in lung cancers, most of the p53 defects, or mutations, occur at three specific points, or "hot spots," along the DNA molecule. DNA, for deoxyribonucleic acid, is the molecule that carries the hereditary information of living cells. Directed by Dr. Gerd Pfeifer of the Beckman Institute and Dr. Moon-

shong Tang at M.D. Anderson, the team exposed human lung cells to the chemical BPDE, a powerful carcinogen that is produced in the body from the breakdown of benzo[a]pyrene, a chemical in tobacco smoke.

Two researchers, Dr. Mikhail Denissenko and Dr. Annie Pao, examined the p53 gene and found that molecules of BPDE had bound chemically to the p53 DNA at precisely the three points that had already been identified as mutational hot spots in lung cancer.

Asked why such studies were not performed earlier, Dr. Pfeifer said in a telephone interview yesterday that the technology was not available until fairly recently.

**The New York Times**

FRIDAY, OCTOBER 18, 1996

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# A General on His Own

By ALESSANDRA STANLEY

Continued From Page A1

MOSCOW, Oct. 17 — Cocky and unbowed, Aleksandr I. Lebed announced his presidential ambitions only three hours after President Boris N. Yeltsin angrily dismissed him as national security adviser.

**News** "I will begin streamlining a political structure and begin preparing for possible elections," he said serenely at a news conference today.

**Analysis** Mr. Lebed added somewhat testily that the chief of staff, Anatoly B. Chubais, had masterminded his fall from grace — and added that the Yeltsin aide did so because he "wants to be President."

Now free to campaign openly to replace the ailing 65-year-old President, whom he called an "aged and sick man," Mr. Lebed was dismissed today largely because he had not

tried very hard to conceal his designs on the Kremlin while in it.

His dramatic dismissal could energize voters and allow the populist and already highly popular Mr. Lebed to rally public discontent and disgust over government-as-usual.

But Mr. Lebed may also find that the rivals who drove him out of office after months of intense and highly public skirmishing will prove just as determined to chase him off the political stage — and possibly more effective.

Mr. Yeltsin's address was shown by all the Russian networks. Mr. Lebed's news conference was not broadcast live or in full by any of them. Late-night broadcasts showed brief excerpts, bracketed by long denunciations of Mr. Lebed's actions by Prime Minister Viktor S. Chernomyrdin and other leading political figures.

Mr. Lebed has declared open war on Mr. Chubais, the skillful bureaucrat who orchestrated Mr. Yeltsin's re-election this year, using the incumbent's access to almost unlimited state and private financing and control over Russian media to keep his rivals off balance and out of the limelight.

Though it is unlikely that the deeply unpopular Mr. Chubais will ever run for elected office himself, he

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surely will try to use his power and experience to keep Mr. Lebed from ever ruling the country.

The blunt and forceful Mr. Lebed is far more admired by Russian voters than any of his rivals, including the dour Prime Minister. He is better known nationally than the powerful, populist Mayor of Moscow, Yuri M. Luzhkov. He is popular with reporters, but not with the businessmen who own most of the country's newspapers and television networks.

Mr. Lebed also needs money to become a serious candidate, and money comes from the oligarchies that control banking and industry in Russia. Those oligarchies are very fond of Mr. Chernomyrdin and Mr. Luzhkov. They do not like the brash Mr. Lebed.

His political future is also tied to the rebel republic of Chechnya. Tonight, he pledged, "I will do everything I can so that the war in Chechnya is not resumed."

So far, Mr. Lebed's efforts to negotiate peace have received mixed reviews, with many Russians fearing he sold out Russian national interests to the separatists. That is how his enemies within the Kremlin have painted him thus far, and that portrait will only become more deeply etched as he enters private life.

No longer in charge of seeking peace in Chechnya, Mr. Lebed may not be held accountable for future turmoil there. But he may also be blamed for dropping the crisis when it got too hot to handle.

And, after claiming victory, he seemed worried both about the fate of the war there and the political consequences of renewed fighting. "I am the only one trusted in Chechnya," he told reporters. "And not only in Chechnya."

Mr. Lebed first warned that without him to guide the negotiations, they could well collapse and then insisted that the fighting in Chechnya would not resume.

"I will greatly regret it if the efforts of especially dull-witted men lead to a resumption of fighting in Chechnya," he said. He added quickly that he thought this was unlikely. "The backbone of the war has been broken," he said.

Already sounding like a man on the hustings, Mr. Lebed made the case for his candidacy. "I did everything I could to stop the war and to organize work in the army and the fight with crime," he said. "The fight

## Kremlin's odd man out faces a tough mission on unfamiliar terrain.

against crime is useless if people with rotten hearts stand at the head of the security forces. The whole system has to be changed."

But it was Mr. Lebed's recent alliance with the President's ousted security chief, Aleksandr V. Korzhakov, that helped persuade Mr. Yeltsin to dismiss Mr. Lebed.

Mr. Korzhakov, a former Yeltsin bodyguard, had accumulated unprecedented power and influence inside the Kremlin until Mr. Chubais finally squeezed him out during the election campaign last summer. In his televised address, the President mentioned their recent pint appearance at a public ceremony in the city of Tula with visible outrage.

Even out of office and at odds with his former boss, the well-connected and K.G.B.-informed Mr. Korzhakov retains considerable power and influence around the country — the kind Mr. Lebed may feel he needs in a presidential race. But he is hardly a symbol of reform and opposition to corruption.

Mr. Lebed, who called Mr. Korzhakov a "slandered Russian general," defended his friendship with him somewhat defensively, saying that since the prosecutor's office had not found fault with the shadowy former Kremlin aide, neither would he.

The blunt and belligerent Mr. Lebed did not try tonight to mend bridges to the news executives who supported the President and have been since been rewarded with even more control over Russia's denationalized television networks.

He attacked both Boris Berezhovsky, the car dealer who owns a huge share of the ORT network, and Vladimir Gusinsky, a banker who owns another big network, NTV, and just acquired four more channels from the Government, accusing them of conspiring to get him out of the way.

Mr. Berezhovsky and Mr. Gusinsky together virtually control the Russian airwaves. And both men are sworn enemies of Mr. Korzhakov — and now Mr. Lebed. The Communist leader, Gennadi A. Zyuganov, complained bitterly and often correctly that Russian news programs kept him off the air. So did a democratic challenger, Grigory A. Yavlinsky.

Mr. Lebed, who came in a strong third in the first round of the presidential elections in June, did so on the strength of his strong personality and anti-crime and corruption message.

But he also did well because late in the campaign, Mr. Yeltsin's strategists recognized his raw potential as a running mate and as a foil to Mr. Yavlinsky, and began funneling back-channel advice and funds to Mr. Lebed's campaign. Even the most inattentive viewers could detect that Mr. Lebed, almost absent from news programs in the beginning of the race, was covered prominently and positively toward the end — with the Kremlin's blessing.

Mr. Lebed, who seems aware that he may be forced from the public

eye, insisted stoutly today that he would keep his hand in issues like Chechnya, the expansion of NATO and Afghanistan. But he will have to rely almost entirely on the attention and support of grass-roots groups and the voters. The elites who really rule Russia have already begun circling the wagons.

"The will of the President should be respected," was how the new Mayor of St. Petersburg, Vladimir Yakovlev, responded to Mr. Lebed's removal.

And politicians who tonight expressed hope that Mr. Lebed would

run for a lesser office than the Kremlin were summarily set right.

When asked if his reference to "possible elections" indicated that he might run in a parliamentary or gubernatorial race, Mr. Lebed replied grandly, "That is not a czar's business."

The New York Times

FRIDAY, OCTOBER 18, 1996

# Why Americans Hate Democracy

**W**hile we Americans may pledge allegiance to democracy, we really don't like it very much.

And the times that we hate the democratic process the most may be when it's working the best, as when Congress and the president square off over the nation's toughest problems, said John Hibbing, a political science professor at the University of Nebraska.

That's because Americans don't like to see mommy and daddy fight, preferring that the *sturm und drang* of politics be waged behind closed doors on Capitol Hill.

"When they see political conflict right out in the open, they don't like it," he said. "Americans love the rules of the democratic game, but when they see the game in practice they have trouble with that."

Hibbing has tracked congressional and presidential job ratings in public opinion polls over the past 30 years. He found that the popularity of legislators and, to a lesser extent, the president typically takes a substantial hit precisely during the times that Congress is wrestling with major issues such as deficit reduction, health care or the confrontations over the budget and the GOP's Contract With America.

What bothers Americans most about the democratic process? They don't like debate, which they see as 'mud-slinging' even when it is substantive, and

they don't like compromise, which they read as selling out on your principles," said Hibbing, co-author with Elizabeth Theiss-Morse of the recent book, "Congress as Public Enemy."

The problem, of course, is that loud, public and impassioned debate and compromise are not only inevitable but healthy in a democracy.

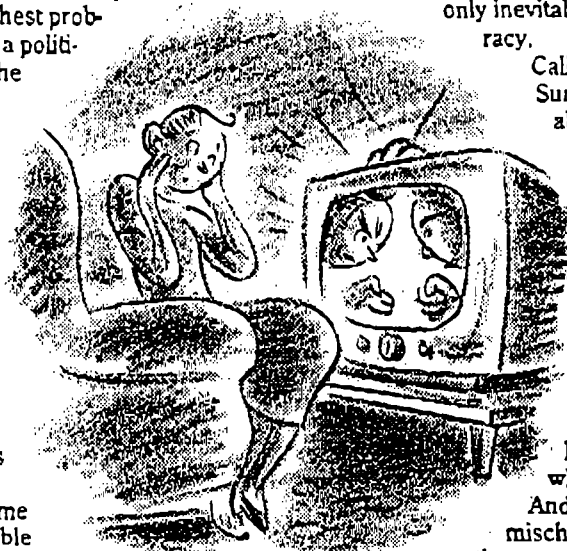
Call it political Darwinism: Survival of the fittest ideas. But absent such cathartic confrontations, Hibbing said, "the question remains, exactly what would the public do on major issues that divide the country? The practice of democracy really can't be much different than it is right now."

Politicians contribute to the problem "by talking like they can solve things when they can't," he said.

And of course the media makes mischief here, too, "by playing up the competitive fight rather than the solutions part of the debates."

But the politicians at least may be learning a lesson. The recent debate between congressional Republican and Democratic leaders was more of a '60s love-in than a frank exchange of views. President Clinton and Bob Dole have been dutifully throwing each other rhetorical kisses before getting down and dirty in their speeches.

But don't expect a Politics of Nice anytime soon. A pioneering Mr. or Ms. Nice might try turning down the volume and turning up the civility and "make a few waves, but I don't know if they would win."



Elizabeth

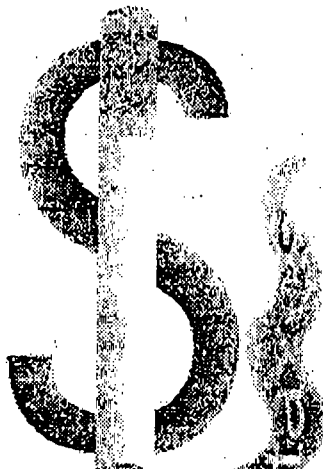
## Tobacco Taxes Revisited

**R**emember how the Unconventional Wiz told you recently that a 10 percent hike in cigarette taxes appears to result in a 5 percent decline in smoking?

Well, an unconventionally wise reader reports there's even more to the tobacco tax story. While tax hikes do prompt some smokers to cut back or quit, other puffers are pushed in exactly the opposite direction: They switch to longer (and longer-lasting) smokes or begin smoking cigarettes with more tar and nicotine, in an apparent attempt to get more buzz for their bucks.

So dramatic is this shift to high-powered cigarettes that for some age groups, a tax increase results in smokers sucking down more tar and nicotine each day than they did when cigarettes were cheaper, says economist Matthew Farrelly of the Research Triangle Institute in North Carolina.

Farrelly and his research colleague William Evans of the University of Maryland examined state-by-state and national



**WHAT LEADERSHIP LOOKS LIKE** Still more evidence that looks matter:

Researchers surveyed 334 members of the West Point class of 1950 who served 20 or more years in the military. Each man was

rated on how facially dominant he appeared in his 1950 West Point year-book photo, with higher scores typically going to cadets whose faces appeared more muscular, angular, not baby-faced and certainly not smiling. Controlling for a host of other factors, they found that the cadets who were rated as more facially dominant were significantly more likely than baby-faced West Pointers to end up as colonels or generals, reported Allan Mazur of Syracuse University and Ulrich Mueller of the University of Marburg in Germany in the journal *Social Forces*.

**YOU ARE WHO YOU EAT WITH** Who says

UNCONVENTIONAL WISDOM

New facts and hot stats from the social sciences • By Richard Morin

The Washington Post

SUNDAY, OCTOBER 6, 1996

data on smoking and taxes collected over the past three decades. They found that tax increases prompted remaining smokers to puff fewer cigarettes.

They also discovered that "young smokers, aged 18-24, are much more responsive to changes in taxes than older adults"—in both good ways and bad.

For example, "the shift to higher tar and nicotine cigarettes is so large for this group that total daily tar and nicotine intake among young smokers actually increases after a tax hike," thus potentially eliminating "many of the health benefits generated by reduced smoking participation."

Their recommendation: Tax tar and nicotine levels. Farrelly said that will make smokers pay for the pleasure of sucking on more potent cigarettes—and potentially drive cost-conscious heavy smokers to less expensive and less damaging low tar and nicotine brands.

more on a caste system in America? Just visit any lunchroom at any high school, says sociologist Murray Milner Jr. of the University of Virginia. He says that teens seek out the "right" group to eat with in the cafeteria for much the same reason that traditional Indians refused to eat with anyone who was not a member of their caste: It's status-by-association. "The status of those with whom you associate—especially those in intimate relationships—affects your status. In all societies marriage and eating practices are publicly visible signs of intimacy and are, therefore, carefully regulated," he said.

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*Want to share bits of unconventional wisdom? E-mail them to: [morinr@clark.net](mailto:morinr@clark.net)*

BY PETER ALSBERG—THE WASHINGTON POST

**FAX**

UNITED STATES SENATOR • CONNECTICUT

**Joseph I. Lieberman**



Fax to: Elizabeth Drye Date 10/9/96  
456-7028

Fax# Bill Bonvillian Pages 3

From: \_\_\_\_\_

Message: Here's the latest outrageous and offensive lie from  
your friends at Tobacco ~~see~~ Kids.

Author: Jim Kennedy at Lieberman-DC  
Date: 10/9/96 3:08 PM  
Priority: Normal  
TO: Bill Bonvillian  
Subject: here it is.

## ----- Message Contents -----

11 USN 10-07-96 11:38 EST 63 Lines. Copyright 1996. All rights

## BC-ANTI-TOBACCO-ADS

Anti-Tobacco Ads Hit Marks, Says Campaign for Tobacco-Free Kids  
To: National Desk Contact: Brian Ruberry or Kathryn Kahler  
Vose, 202-296-5469,

both of the Campaign for Tobacco-Free Kids

WASHINGTON, Oct. 7 /U.S. Newswire/ -- With a batting average above .500, a new series of advocacy ads by the Campaign for Tobacco-Free Kids is hitting home runs in persuading politicians to endorse the recent FDA measure to reduce youth tobacco use.

Of the 15 members of Congress the newspaper ads have featured since Sept. 6, eight have made public statements supporting the FDA policy announced last month by President Clinton. None had previously stated positions on the federal regulation to cut teen tobacco use in half.

"We are elated with these endorsements for the FDA rule by members of Congress. These senators and representatives are standing up for America's kids. We are now going to expand this ad campaign," said William D. Novelli, president of the Campaign for Tobacco-Free Kids. Novelli co-founded Porter-Novelli, one of the largest advertising and public relations agencies in the country. "Clearly, advocacy advertising with a 50 percent positive response rate is almost unheard of. I don't ever remember enjoying this much success with this type of ad."

The ad campaign has appeared in eight states, starting Sept. 6 in Connecticut and South Dakota. The ads have also run in Hawaii, Louisiana, Missouri, Nebraska, Indiana and North Dakota. The next series of ads will start Oct. 14 in a number of other states.

→ Six senators and two congressmen featured in the ads have so far pledged support of the FDA rule. The senators are Joseph Lieberman (D-Conn.), Christopher Dodd (D-Conn.), J. Bennett Johnston Jr. (D-La.), Byron Dorgan (D-N.D.), Kent Conrad (D-N.D.) and Larry Pressler (R-S.D.). House Minority Leader Richard Gephardt (D-Mo.) and Pressler's Senate challenger, Rep. Timothy Johnson (D-S.D.), have also endorsed the federal regulations.

The ads feature photos of the elected officials and candidates above a headline asking, "When it comes to tobacco, will (names of officials) stand with America's kids?" The text asks for their support of the new rule, urges readers to call their office and provides their phone numbers. "We've featured elected officials whom we believe will side with America's children if provided the facts," said Novelli. The ads were created by Smith and Harroff Inc., a full-service strategic communications firm based in Alexandria, Va.

Novelli said his organization is also running other print advertising throughout the country and airing a radio spot in

~~SENATOR LIEBERMAN-DC~~ ~~Public~~ to urge Congress  
get behind the FDA rule.

The Campaign for Tobacco-Free Kids is the largest initiative ever undertaken to decrease youth tobacco use in the United States. Its mandate is to focus the nation's attention and action on keeping tobacco marketing from seducing children and making tobacco less accessible to kids. The Campaign's 100-plus member organizations include the American Medical Association, American Heart Association, American Lung Association, American Cancer Society, American Academy of Pediatrics, National Association of Elementary School Principals, National Association of Secondary School Principals and National PTA. -0- /U.S. Newswire 202-347-2770/

## LEVEL 1 - 2 OF 8 STORIES

The Associated Press

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September 11, 1996, Wednesday, PM cycle

SECTION: Business News

LENGTH: 748 words

HEADLINE: Smoke Free Initiative Stalled

BYLINE: By LAURAN NEERGAARD, Associated Press Writer

DATELINE: WASHINGTON

BODY:

When President Clinton targeted teen-age smoking, the other half of the government's tobacco war - fighting secondhand smoke - appeared to get sidetracked.

Tobacco foes say that left millions of Americans breathing other people's smoke in the workplace, and now they're renewing the attack: asking a federal appeals court to order the Occupational Safety and Health Administration to speed up workplace smoking rules.

At the same time, health officials acknowledge they're considering asking Clinton to sign an executive order they drafted last year that would ban smoking in every federal office building.

Still, it's unlikely any action on the politically charged issue of secondhand smoke would come before November's election.

"There's been a general retreat on the part of the federal government about clean indoor air," said Stanton Glantz, a University of California, San Francisco, expert on secondhand smoke. "That's unacceptable."

Clinton administration officials are angered by such criticism. They point to last month when the Food and Drug Administration unveiled the nation's most sweeping tobacco regulation, attempting to cut in half teen-age smoking by restricting advertising and blocking minors from buying tobacco. Clinton quickly approved the rules.

"Without apology, the children's tobacco initiative was the administration's priority," said Victor Zonana, spokesman for the Department of Health and Human Services.

But whether there is harm in breathing someone else's smoke is a different controversy, one that the Environmental Protection Agency ignited in 1993 when

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The Associated Press, September 11, 1996

it declared that secondhand smoke kills 3,000 Americans a year from lung cancer alone.

Infuriated tobacco companies insist scientists have not proved that secondhand smoke is dangerous.

The EPA report "has been the justification for smoking bans all across this country," said Peggy Carter of R.J. Reynolds, one of several tobacco companies that sued the EPA to get its data retracted. "It's not accurate."

OSHA is required to regulate workplace exposure to carcinogens, so it proposed a smoking ban in 6 million workplaces, from office buildings to bars.

Labor Secretary Robert Reich insists OSHA is hard at work finalizing that ban.

"It's still very much alive," Reich said. "We still believe that smoking in the workplace is an issue that must be dealt with, and we are intent on making workplaces safer."

But OSHA's proposal was made in the same week in 1994 that FDA Commissioner David Kessler began considering whether to regulate tobacco as a drug. Two years later, those regulations to cut teen smoking have been written. But OSHA - battered by congressional attempts to shut it down and operating under a tighter budget - hasn't completed its regulations and can't estimate when it will.

Only one OSHA employee is working on the rules full time, slogging through the 110,000 public comments the agency received about the proposed ban. That task alone could take an additional six months.

OSHA officials won't move forward on the regulations because "they don't want to have to take on the tobacco industry, they don't need a new big powerful foe," contends attorney John Banzhaf of Action on Smoking and Health, who has petitioned the federal appeals court to make OSHA speed up its rulemaking. A hearing on the petition is scheduled for Oct. 1.

Despite delays at OSHA, tobacco foes are pushing HHS to dust off an executive order the agency quietly drafted a year ago that would ban smoking in all federal buildings.

"The executive order is still under consideration" at HHS, confirmed Dr. Michael Eriksen, tobacco chief at the federal Centers for Disease Control and Prevention. But the government's "primary focus right now is prevention of nicotine addiction from occurring in the first place."

Smoking bans aren't the only battleground.

EPA scientists complain that since the agency was sued by the tobacco industry, they are not being allowed to study any relationship between secondhand smoke and heart disease. An EPA official, who spoke on condition of anonymity, would say only that the agency couldn't justify spending limited resources when efforts against secondhand smoke already have "enough momentum."

Glantz, however, questions whether that momentum is real.



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The Associated Press, September 11, 1996

"There's all this rhetoric about providing a safe workplace, when a smoke free workplace is the easiest, simplest, cheapest and one of the most effective things you can do," he said.

LANGUAGE: ENGLISH

LOAD-DATE: September 11, 1996



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# Tobacco Companies Are Low-Key in San Diego

By MICHAEL K. FRISBY

Staff Reporter of THE WALL STREET JOURNAL  
SAN DIEGO — Most corporations at the Republican convention are out to get all the attention they can. But the tobacco industry isn't so easy to find.

In a daily game of cat and mouse, demonstrators from the American Lung Association seek out tobacco-industry functions. A luncheon for the GOP's Texas delegation had just begun, when suddenly the drapes were closed in the hotel ballroom. The reason: to block out three protesters with signs attacking the event's sponsor, Philip Morris Cos.

Facing more public pressure than ever, the tobacco industry has as much at stake

in a GOP victory in November as any industry. On Tuesday, the Food and Drug Administration forwarded to the White House its draft of a new rule that would ban tobacco marketing deemed accessible to minors. And just last week, the industry lost a landmark court decision in Florida to a lung-cancer sufferer and his wife. Tobacco executives are counting on a GOP Congress or a GOP president as their best friend to fend off the attack.

## Low Profile

Philip Morris, the industry leader, donated some \$500,000 to the host committee to help put on the convention. The industry has given \$4.8 million to the

Republican Party in the past 19 months, including \$1.8 million from Philip Morris. But here in San Diego, the industry is generally taking a low-key approach.

Both Philip Morris and U.S. Tobacco Co., a unit of UST Inc., have boats docked in the marina behind the convention site, where they entertain small groups of people. But only official convention-goers, who can clear the security checks, can reach their floating parties. The industry has largely taken to hosting small gatherings for state delegations or individual lawmakers. RJR Nabisco Holdings Corp., parent of the nation's second-largest tobacco concern, R.J. Reynolds Tobacco Co., held a reception for Rep. Thomas J. Bliley (R., Va.), chairman of the House Commerce Committee and one of the company's best friends in Congress.

Philip Morris has entertained several delegations, including those from Connecticut and New York, as well as sponsored a trip to the Nixon library. Even this level of participation has delivered them access: At the Texas lunch, Jack Dillard, a company vice president, was seated at the head table between Sen. Kay Hutchison (R., Texas) and State Party Chairman Tom Pauken.

At the Democratic convention in Chicago two weeks away, the involvement will be starkly different. Philip Morris will only sponsor two delegate parties, for Virginia and Kentucky, while no other tobacco companies will host events. Moreover, Philip Morris made a \$100,000 donation to Chicago's host committee in the name of its subsidiary, Kraft Foods Inc.

## Controversy Over Art

Despite the low profile, the tobacco makers haven't avoided controversy. The biggest flap involves Philip Morris's backdoor sponsorship of an event at San Diego's Museum of Art. Months ago, the company was negotiating with the museum to sponsor an exhibit by artist Deborah Butterfield and to hold functions there during the convention. After protests from antismoking groups, the museum announced that Philip Morris wouldn't be using the facility. Yet on Monday, a reception for the Georgia delegation, including House Speaker Newt Gingrich (R., Ga.), was held there. Philip Morris was among the corporate sponsors.

How did it happen?  
Museum officials insist they didn't know the sponsors. Darienne Dennis, director of communications for Philip Morris, says, "We gave money . . . for the function. They [Georgia delegation] chose where to hold it."

## The Television Picture

### Their own drummer

The networks dis GOP speakers like J.C. Watts and John Kasich Tuesday to interview right-wingers. CBS has Pat Robertson, ABC nabs Pat Buchanan and NBC grabs Phyllis Schlafly (that's after a long shot of red, white and blue Dumpsters outside the festivities). Republicans strike back by skedding Susan Molinari for interviews with 15 local stations and James Baker for two hours of interviews. "Nightline" anchor Ted Koppel packs up and leaves San Diego, citing no news.

### Oh, baby



Susan Ruby Paxon

Networks hand GOP a gift during the Susan Molinari

### TODAY'S HIGHLIGHTS

- ★ 8:05 p.m. Sen. Trent Lott of Mississippi
- ★ 8:10 p.m. Gov. Christine Todd Whitman of New Jersey, introducing Jack Kemp
- ★ 8:15 p.m. Jack Kemp
- ★ 10:05 p.m. Filmed biography of Robert Dole
- ★ 10:10 p.m. Robert Dole's acceptance speech

Note: Eastern Time. All times are approximate.

speech: shot after shot of elephant-bibbed babies. NBC had a great shot from below of a baby just about to drool on the camera lens. Look for tiny Susan Ruby Paxon on the next Wheaties box.

### Workin' the crowd

Delegates provide just so much color. After asking a white-hat-wearing Texan for his thoughts on the convention and getting nothing noteworthy in response, ABC's Sam Donaldson says it's back to you, Peter. "If I had a real story, I'd let you know." Working for MTV, rapper Chuck D asks Sen. Strom Thurmond on the floor what

he has to say to the younger generation and to urban blacks. "Whaddya say?" Mr. Thurmond asks after a pause.

### That sinking sound

Slipping from already-low 1992 levels, ABC and NBC each pull in 4.1% of TV households Tuesday, CBS draws 3.4% and CNN 1.4%, says Nielsen Media Research. Proving it was aliens, not bureaucrats, that made the film "Independence Day" so popular, Fox's "The Invaders Part II" got a higher 4.9% rating Tuesday.

### Check-off

MSNBC's Andrea Mitchell garbles an overworked bit of folk wisdom (it was late): "Politics ain't beanpole."

—Christina Duff



Journal Link: For updated convention news, see The Wall Street Journal Interactive Edition at <http://wsj.com>

Date: 06/13/96 Time: 20:07

## DCampaigning in Tobacco Country, Dole Rejects Nicotine Regulation

LOUISVILLE, Ky. (AP) Campaigning in the heart of tobacco country, Bob Dole on Thursday denounced government efforts to regulate nicotine as a drug and denied that cigarettes are necessarily addictive.

Playing to his Kentucky audience, Dole said he supported proposals to ban cigarette vending machines to help keep children away from tobacco. But he said the Food and Drug Administration should otherwise stay out of the tobacco business.

"I wish the FDA would spend a little more time on medical devices and approving new drugs to help people," Dole said in response to reporters' questions.

"To some people, smoking is addictive, to others they can take it or leave it. Most people don't smoke at all. I hope children never start," Dole added.

Dole is on a whirlwind three-day "heartland tour" that has been scripted as a series of sunny photo opportunities to showcase the ex-senator as a man freed from Washington. Sights along the way: country music concerts in Branson, Mo., a Louisville steamboat ride, a Louisiana Cajun crawfish boil.

In the scorching noon sun, Dole and his wife, Elizabeth, cruised the Ohio River aboard the Belle of Louisville, a 1914 stern wheel steamboat. With tickets selling for as much as \$5,000, the hourlong river tour was a fund-raiser that was expected to bank \$125,000 for the Republican Party.

Dole beamed as the pilot handed over the controls and declared, "We're going full-steam ahead in my campaign."

"You better warn the Coast Guard," joked Mrs. Dole as an old-fashioned calliope began puffing "Happy Days Are Here Again" and fireworks were launched into blue skies from a river barge.

A number of difficult political issues have overtaken the lighthearted ambience of Dole's tour along the way.

After a week of Republican discord on abortion, Dole affirmed his opposition to the procedure Thursday and called President Clinton's veto of a late-term abortion ban "the worst thing that he's done" in office.

Seeking unity in the fight against Clinton, Dole held firm to his position that the GOP platform should state that abortion-rights supporters are welcome in the party.

And one day after Clinton visited the site of a burned-down South Carolina church, Dole condemned the recent rash of arson attacks on black churches as "a hate crime with no place in our society."

He called on the Justice Department to step up its investigation and accused the president of seeking political advantage from the tragedy. "He probably politicized it some. He politicizes about everything he does," Dole said.

On tobacco, Dole was asked about FDA consideration of regulating nicotine as a drug.

"If they should claim jurisdiction and find that cigarettes are a drug, then in effect, you're banning cigarettes and production of tobacco, so it's going to affect a lot of people," Dole told

reporters.

In his decades in Congress, Dole had a record of support for tobacco subsidies and fighting efforts to tighten cigarette regulations. His campaigns over the years have received thousands of dollars in contributions from tobacco companies.

``Apparently when it comes to Bob Dole's policies, you get what you pay for,'' Clinton campaign spokesman said of Dole's defense of tobacco. ``Bob Dole should spend more time looking at the scientific evidence and less time counting his campaign contributions.''

At least one smoking health group complained about Dole's characterization of the FDA's activities. ``Dole is misinforming and misleading the public. The FDA's proposal is not a ban on cigarettes and the production of tobacco. It is aimed at protecting children from the marketing practices of the industry,'' said Kathryn Kahler of the National Center for Tobacco Free Kids.

In a brief speech, Dole made only veiled reference to the current flap over the GOP abortion plank, framing his proposed changes as a matter of tolerance, not compromise.

``Bob Dole wants to bring people together. If I was able to do anything as a United States senator, I was able to bring people together in my own party ... but you can't compromise principle,'' he said.

His position wasn't good enough for 71-year-old Virginia Coffey, who carried a heart-shaped ``Choose Life'' poster to the rally.

``To me that's just vacillating,'' she said of Dole's platform proposal. ``Why's he doing it? For votes, I guess.''

Working the crowd after his speech, Dole told another dissatisfied abortion opponent: ``The Bible says we ought to be tolerant. ... We'll work it out.''

Later, at a rally of some 600 supporters in downtown Louisville's Jefferson Square, Dole stressed both racial harmony and party unity while criticizing Clinton for breaking promises and perpetuating ``big, big government.''

APNP-06-13-96 2011EDT

# How to Make the Airports Safer? Try Putting a Tree on the Tower

By SCOTT MCCARTNEY

Staff Reporter of THE WALL STREET JOURNAL

You can never be too careful when building an airport these days.

So at a Federal Aviation Administration ceremony two weeks ago to mark the "topping out" of a \$9 million control tower at the new airport in Austin, Texas, construction workers hoisted a scrubby mesquite tree to the top of the 20-story building to ward off "evil spirits."

The ritual — which the FAA says wasn't part of any new safety directive or presidential initiative — is an old construction superstition with roots in Scandinavian folklore. Cedar trees are placed on top of new buildings for good luck. In central Texas, however, this summer's drought has wilted the local cedars, so the building contractor opted for the hardy mesquite instead as a crash-prevention measure.

It may be the first time the ritual has been tried on an airport. FAA officials don't remember putting trees on top of the new control towers at airports in Houston, New Orleans and Kansas City. "We did put some radars on top of the one in Houston, but nothing else," quipped FAA spokesman John Clabes.

If ever there was an airport where evil spirits needed to be warded off, it's Denver

International Airport. The control tower there suffered leaks during rain and the entire airport was plagued by construction delays and embarrassing glitches. Denver airport spokesman Steve Klodt says officials there don't remember a tree hoisting. "But we did have a Christmas tree when we were building the terminal," he adds.

Air-traffic controllers in Austin aren't a very superstitious lot, says Ernie Saulmon, a tower supervisor, but they did appreciate the precaution. "Maybe it will help," he said.

Putting up the 10-foot-tall tree was the brainchild of SpawGlass Contractors Inc., which built the FAA tower. SpawGlass wanted to raise the tree "so as not to tempt the fates," SpawGlass manager Pat Williams said at the ceremony.

City officials say they need all the good luck they can get. The control tower is part of a project to convert abandoned Bergstrom Air Force Base into a new municipal airport. Bidding and construction delays already have delayed the airport's projected opening by six months, until April 1999.

"We better build a forest up there," Austin Mayor Bruce Todd told the Austin American-Statesman. "Maybe I should plant a tree in my office."

## Tobacco Companies Sue State to Overturn New Disclosure Law

By a WALL STREET JOURNAL Staff Reporter

BOSTON — Four tobacco companies sued the Commonwealth of Massachusetts in U.S. District Court here, seeking to overturn a tobacco disclosure law signed Friday by Gov. William Weld.

The companies argued that the law, which includes provisions for disclosing cigarette ingredients brand-by-brand, would force them to give up trade secrets, therefore violating Constitutional provisions against seizing property without compensation.

Under the law, Massachusetts plans to publish a breakdown of exactly how addictive various brands of cigarettes are. The law would force tobacco companies to reveal additives in each brand, including ammonia-based compounds that tobacco critics say increases nicotine levels and makes cigarettes more potent.

The suit was filed by units of Philip Morris Cos. and RJR Nabisco Holdings Corp.; Brown & Williamson Tobacco Corp., a unit of B.A.T. Industries PLC, London, and Lorillard Tobacco Co., part of Loews Corp. The companies also claimed the required disclosures would place an "undue burden" on interstate and foreign commerce.

The lawsuit named the Massachusetts attorney general and the commissioner of public health as defendants. A spokesman for Massachusetts Attorney General Scott Harshbarger said Friday the state stood behind its new law, and intended to fight the suit.

## CORRECTIONS & AMPLIFICATIONS

ROBERT MONDAVI INC.'S STOCK rose about 60%, not nearly 100%, in the 12 months prior to a July 15 article on the winery. A standard 750 milliliter bottle holds 25.4 ounces of wine, not 22.5 ounces. Also, the family dispute that caused Robert Mondavi to leave the winery once headed by his father was mischaracterized; it occurred in 1965, after his father's death, when Robert Mondavi was 53 years old.

THE NATIONAL RIFLE Association is opposed to a White House proposal calling for a Treasury Department study of the use of taggants in gunpowder. The group says it wants an independent study done before any legislative commitment is made to use the tiny, coded plastic chips. In an article about the use of trace materials to track terrorist use of explosives in Friday's paper, the NRA was described as "strongly opposed to even studying" the use of taggants in gunpowder.

DUANE ACKERMAN is vice chairman of BellSouth Corp. An article Friday incorrectly stated he was vice president of the company.

## Iraqi Bank Is Sued by U.S. To Get Back \$2.1 Billion

By a WALL STREET JOURNAL Staff Reporter

NEW YORK — The U.S. government sued an Iraqi bank and Iraq's banking authority to get back nearly \$2.1 billion that an arm of the Agriculture Department paid after the foreign bank allegedly defaulted.

The lawsuit, filed in federal court here on the sixth anniversary of Iraq's invasion of Kuwait, alleges that Rafidain Bank, a Baghdad-based bank owned by the Iraqi government, breached contracts and defaulted on letters of credit involving the financing of U.S. agricultural exports to Iraq. The agreements with nine other banks were made between 1987 and 1990.

The Commodity Credit Corp., an arm of the U.S. Department of Agriculture, brought the lawsuit, asserting that it paid the nine institutions for their losses when Rafidain defaulted. The federal agency guaranteed any such losses.

The letters of credit were issued to Rafidain by Arab Banking Corp.; Banca Nazionale del Lavoro; National Bank for Cooperatives; DG Bank; Girozentrale und Bank der Oesterreichischen Sparkassen AG; Gulf International Bank; the Morgan Guaranty Trust Co. unit of J.P. Morgan & Co.; National Bank of Kuwait; and UBAF Arab American Bank of New York.

THE WALL STREET JOURNAL  
MONDAY, AUGUST 5, 1996

July 10, 1996

MEMORANDUM TO JENNIFER O'CONNOR

DAVID FINE

LORRAINE VOLES

GINNY TERZANO

ELIZABETH DRYE ✓

FROM: BARBARA WOOLLEY

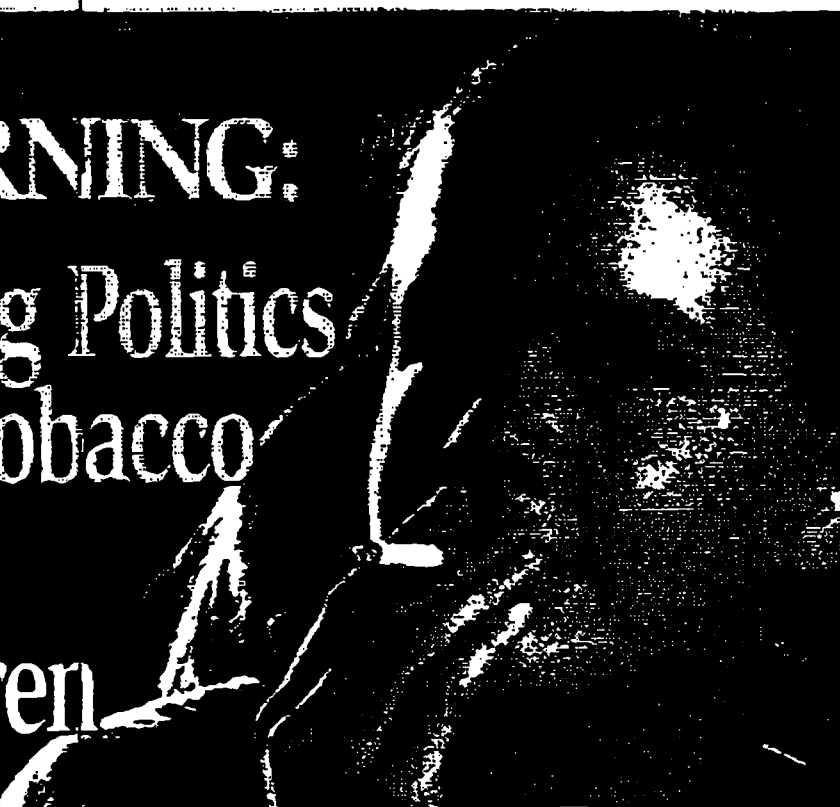
RE: TOBACCO AD AND A & P VOTES TO ELIMINATE CIGARETTE  
VENDING MACHINES

---

Enclosed is a copy of a tobacco ad that will appear beginning today in the New York Times, Washington Times, Roll Call, and Washington Post and possibly in other publications. The ad supports former Surgeon General C. Everett Koop's comments that politics should not take opposing sides on matters of scientific fact.

Also, James Wood, Chairman and CEO, A & P, recently reported that at their company's Board of Directors meeting voted to totally eliminate cigarette vending machines from all of their retail stores. Rather than waiting until the end of 1996, they voted to discontinue the use of cigarette vending machines in their stores by the end of July 1996.

# WARNING: Playing Politics with Tobacco Hurts Children



Former Surgeon General C. Everett Koop recently cut through the election-year rhetoric on tobacco: "I don't think politics should take opposing sides on scientific fact," he said.

## Here Are the Facts:

- Tobacco is highly addictive.
- Nearly all tobacco victims start smoking as children.
- Three thousand kids begin smoking each day.
- One-third will die from their addiction.

## Tobacco Cash Distorts the Facts

This year more than ever, tobacco companies are flooding political parties and politicians with cash. Make no mistake: Tobacco cash corrupts. It buys influence and prevents action to protect our children.

## Get Tobacco Cash Out of Politics

Urge all candidates and all political parties to just say no to tobacco money. Tell them not to play politics with the lives of our children.

To learn more, call 1-800-284-KIDS.

This ad sponsored by the American Academy of Pediatrics, Interreligious Coalition on Smoking OR Health, American Cancer Society, American Heart Association, American Lung Association, and the American Society of Addiction Medicine.

## CAMPAIGN FOR TOBACCO-FREE KIDS

NATIONAL CENTER FOR TOBACCO-FREE KIDS

Date: 07/02/96 Time: 12:27

## DDole Blasts Media, Democrats on Cigarette Smoking

WASHINGTON (AP) Bob Dole today accused the Democratic Party of hypocrisy about cigarette smoking and charged that television networks may be violating federal regulations ``by always sticking up for the Democrats.''

Dole, in a combative broadcast interview, also contended that marijuana use has doubled during the Clinton administration saying: ``I don't see Al Gore or President Clinton talking about that. In fact, they have almost dismantled the national drug policy.''

Dole, in the taped interview broadcast today on NBC's ``Today'' show, said Democrats and a liberal news media have taken his comments on cigarette smoking and nicotine addiction out of context.

``You know, there is a mixed view among scientists and doctors whether it's addictive or not. I'm not certain whether it's addictive. It is to some people,' ' Dole said. ``I had a lot of trouble stopping. Some people say it's addictive, it's harmful. People shouldn't smoke.''

But, Dole asked, ``Are we going to regulate everybody's adult life? I mean, adults ought to be free to make choices. I'm not advocating that anybody do anything except stop, S-T-O-P, and don't start if you're young.''

Asked if former Surgeon General Everett Koop had been ``brainwashed'' by the media for denouncing Dole's position on addiction and smoking, Dole said ``probably a little bit.

``He's a Dole supporter,' ' Dole said, but, ``Dr. Koop, he watches the liberal media and he probably got carried away. ...''

Dole blasted Democrats and the news media for suggesting he and other Republicans ``were in the pocket'' of the tobacco industry by virtue of their acceptance of political contributions.

Of the tobacco industry, Dole said, ``As far as I know, they're in a legal business and I assume that maybe NBC may be sponsored in some part by tobacco companies.

``They're in a lot of businesses now, not just tobacco. RJR (Nabisco) for example, is in a lot of things and so are the others; they're not just in tobacco,' ' he said.

``I'm not in their pocket,' ' Dole said heatedly. ``My view is as I've said time and time again the liberal media ... goes right back to the Democratic line. He said they may be violating federal regulations ``by always sticking up for the Democrats, advertising their line on your show.''

Asked about Dole's comments, NBC News spokeswoman Beth Comstock defended the network's news coverage and said it accepted no tobacco advertising. ``NBC News by its very mandate is an organization that covers the news fairly and objectively,' ' she said.

Dole complained about ``the hypocrisy of the Democrats, who have accepted hundreds of thousands of dollars from tobacco since 1982, to come out and make that statement and try to turn it around so somehow Bob Dole was urging young people to smoke.''

Dole disputed reports that his campaign has accepted \$477,550 from the tobacco industry, saying ``I raise money for other candidates.' ' He said tobacco interests have given to both parties, including ``over \$600,000 to the (Democratic) National Committee and other committees that are controlled by Democrats.''

Tobacco interests contributed \$4.5 million to the Republican Party from 1993 through 1995 and \$800,000 to the Democratic Party during the same period.

``Only people like you in the media don't question the Democrats

-and how much money they receive.''

''The liberal elite always buys the Democratic line,''

Dole said.

Dole's comment that marijuana use is up among teen-agers may have been based in part on an annual study released in February that showed teen-age marijuana use climbing.

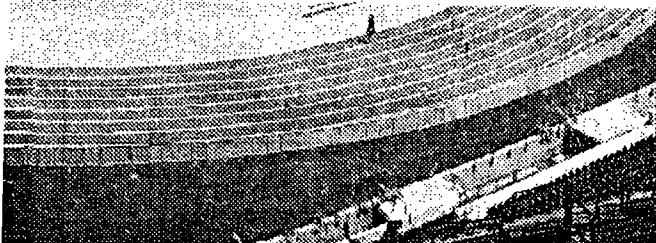
The Partnership for a Drug Free America said a survey of 9,341 teen-agers, pre-teens and parents found marijuana usage was up to levels unseen since 1988. Twenty-one percent had smoked pot in the last 30 days, compared with 14 percent in 1993. Thirty-eight percent reported experimenting with marijuana, the highest total in seven years.

Later, Dole used a Wisconsin re-fueling stop en route to California to mark the 45th day since Clinton endorsed Wisconsin's welfare overhaul, which is still awaiting federal approval.

''In a Dole administration, no state will have to play the waiver game, trekking to Washington, hat in hand, to beg for approval to fix a failed system,''

Dole said at a brief news conference with state welfare administrators on the tarmac at the Dane County Regional Airport.

APNP-07-02-96 1232EDT



BY GARY HERSHORN—REUTERS

event today when it hosts an International Amateur Athletic other venues that will host events at the Summer Games will be done by July 19, when Games begin. Story, Page B1.

the controversy over the common pins would destroy his reputation

See NAVY, A10, Col. 1

## Dole's Link to Big Tobacco Aged in Years of Dealmaking

*GOP Leader an Important Ally of Industry*

By Glenn Frankel

Washington Post Staff Writer

When Bob Dole takes his born-again presidential campaign to Charlotte, N.C., tonight for the Winston Select auto race, the Republican candidate will undoubtedly speak about the joys of auto racing and the dangers of government overregulation. But he will also be practicing the politics of tobacco.

The tobacco industry has long been a primary sponsor of auto racing, and many fans fear the money will dry up if the Clinton administration succeeds in banning tobacco advertising at such events. This will be the fourth NASCAR race Dole has attended in the past year, and he has used each one to proclaim his opposition to the administration's proposal without ever mentioning the industry. Last September he won cheers from the crowd at the

Southern 500 in Darlington, S.C., by displaying a T-shirt declaring: "Keep government out of racing."

Over the course of four decades on Capitol Hill, Dole has become an important ally of the tobacco industry. As a supreme legislative dealmaker, he has been instrumental in setting its taxes and its subsidies. He has also supported its dramatic expansion into overseas markets and has fought its enemies, such as Food and Drug Administration Commissioner David A. Kessler, architect of the proposed ad ban. In return, the industry has made significant contributions to his campaigns and has supported him with corporate plane trips and six-figure donations to foundations he has established. Indeed, Dole even owes the Senate majority leader post he is leaving to senators from tobacco states.

See DOLE, A8, Col. 1

## ers Burden Yeltsin

*, President Beggars Voters' Forgiveness*

"For weeks and months not a free minute, and un-ely we forget about the i war veterans," Yeltsin rgive us."

rov, one of thousands of s who received similar let-ently, wasn't all that im-l by Yeltsin's appeal. "I y I was touched by it," he

ie same time, campaign ds for Yeltsin have gone und Moscow, showing a f hard-working, proud vet-

erans and pensioners. "I trust, I love, I hope," the billboard pro-claims, with a big "Boris Yeltsin" signature underneath.

It is an extraordinary spectacle for a Russian president to beg forgiveness from voters, and it offers a telling sign of Yeltsin's political troubles a month before the presidential election. He is facing a stiff challenge from the Communist Party candidate, Gennady Zyuganov, in a battle that has not, as Yeltsin had hoped, focused simply

See YELTSIN, A16, Col. 1



BY PETER TOBIA—PHILADELPHIA INQUIRER

Bridget Ward, center, and her two daughters had lived in Philadelphia's Bridesburg section less than a day when racist graffiti was smeared on their house. They moved out yesterday.

## 'College Career' Evaporates At Graduation

By Victoria Benning

Washington Post Staff Writer

For four years, Brad Wagner told his parents that college was going well, and they gave him money for tuition and rent. He talked to his roommates about his engineering classes and homework. He told them he had a job lined up after graduation as a chemical engineer in Charlotte.

But it was all a lie, it seems.

When Wagner's parents came to Virginia Tech a week ago for his graduation, he was nowhere to be found. What's more, they learned that their son had not been a student at the Blacksburg, Va., school since 1993.

On Monday, the Wagners reported his disappearance to police, who have yet to find him.

"We'd just like Brad to call home. No matter what the problem, anything can be worked out," his father,

Wife Charged in Death of Newborn Baby

# DOLE, From A1

But, as the auto race appearances illustrate, the links between Dole and the tobacco industry are never conspicuous. He characterizes his anti-FDA stance as opposition to government intrusion in the marketplace and as protecting congressional prerogative; his lobbying for tobacco exports overseas is presented as supporting free trade. And his opposition to increasing cigarette excise taxes is undertaken in the name of protecting family farmers.

"When you look at the record, you see Bob Dole has been a quiet warrior for tobacco," said Matthew Myers, a longtime anti-smoking lobbyist. "It isn't good politics to be seen doing the bidding of the tobacco industry, so Dole always puts it some other way. If he were candid he'd say this is an industry I'm comfortable defending, but that's not the way Bob Dole does business. It's all done by indirection—what you see is not what you get."

Dole is not eager to discuss his tobacco industry ties; his campaign office requests to interview the senator on the subject. Instead, Clarkson Hine, Dole's Senate press secretary, a statement saying Dole "discourages smoking and has consistently supported the goal of deterring the use of tobacco by minors," but believes the FDA is "unilaterally asserting new authority" with its proposed regulations, which are designed to discourage teenage smoking.

As for the industry's support for Dole, deputy campaign press secretary Christina Martin said, "A wide range of industries and small businesses actively supports Bob Dole because of his firm opposition to the excessive regulations and higher taxes which become the hallmark of the Clinton administration."

Nonetheless, Dole is near the top of the list of lawmakers who receive campaign contributions from the tobacco industry. Its executives and political action committees have donated more than \$100,000 to Dole's campaigns over the past decade and another \$250,000 to Dole's Better America Foundation, the conservative think tank he founded and later disbanded after critics charged it was serving as an arm of his presidential campaign. The industry also contributed a record \$2,369,534 last year in so-called "soft money" to the Republican National Committee and other GOP institutions to help pay for the party's nominating convention, voter registration and dissemination of political literature, all of which will indirectly assist Dole.

While many in the tobacco industry view President Clinton as a threat, industry operatives deny they are planning any kind of coordinated effort to elect Dole. "Some of us believe we should be doing a lot more, that this is in fact a watershed election," said one tobacco lobbyist who insisted on anonymity. "But the fact is we're not. It's very hard to get the Big Three [Philip Morris, RJR Nabisco and Brown & Williamson] to agree on anything, let alone to coordinate on helping Bob Dole."

Dole himself quit smoking cigarettes—smoking was one of his few pleasures during his long months of convalescing from his near-fatal wounds during World War II, according to author Richard Ben Cramer. Dole's relationship with the industry is on pragmatic politics and legislative dealmaking, not great affection. "And no one in the industry looks on Dole as a sure bet on every tobacco issue."

They recall that as Senate Finance Committee chairman he was instrumental in passing legislation in 1982 that doubled cigarette excise taxes from 8 cents to 16 cents per pack, and that he briefly entertained the idea of

raising those taxes again in 1994 to help pay for health care reform.

Still, said one veteran tobacco lobbyist, "Dole is considered someone you can talk to. He understands there are certain things that are important to certain senators and he understands tobacco politics. And he's very sensitive to the needs of his colleagues from the tobacco-growing states."

At times the industry has looked upon Dole as a lion who should not be aroused. An October 1989 memo from James W. Dyer, then director for Washington relations for Philip Morris, noted Dole's sponsorship of a resolution condemning Turkish genocide against the Armenian people. The tobacco industry opposed the resolution because Turkey was both a major supplier and customer. "However, I am sensitive to our need to do nothing to upset Senator Dole," Dyer wrote. "He is too valuable a friend to alienate over this issue."

More often, Dole has been a willing partner in helping tobacco fulfill its legislative desires. Although there are no tobacco farmers in his native Kansas, Dole has been part of a coalition of farm state lawmakers that for decades has protected agricultural subsidies of all varieties. As a pivotal member of both the Senate Finance and Agriculture committees, he was especially well-placed to defend tobacco interests on tax matters as well.

In 1981 he was widely credited with rescuing the federal tobacco subsidy program after widespread resentment among senators of Agriculture Committee Chairman Jesse Helms's (R-N.C.) hardball tactics almost sunk it.

An amendment to gut the program failed on the floor by one vote after Dole intervened. The following year, Helms and fellow North Carolina Republican John P. East repaid the favor by not opposing the cigarette excise tax increase, part of a measure to reduce the federal deficit.

Legislative observers say Dole's intervention on behalf of Helms was typical of how the Kansas lawmaker works best—quietly and behind the scenes. "Dole's influence doesn't show up in big bills, it's in little details like amendments or punctuation," said Josh Goldstein, research director of the Center for Responsive Politics. "That's where a lot of the work gets done and where a leader can influence things to help someone out."

Dole's relationship with tobacco interests was solidified in November 1984 when Helms helped him edge Sen. Ted Stevens (R-Alaska) to win a narrow, surprise victory in the contest for majority leader. Some of Stevens' supporters complained bitterly at the time that Dole had gotten his margin at the last minute by selling out to Helms and other tobacco state Republicans.

Stevens, who sponsored legislation banning smoking in most parts of federal office buildings and airplanes, does not blame tobacco interests for the last-minute switch. "I didn't have any tobacco people on my side to begin with," he said. Helms's office did not respond to repeated requests for comment.

Within months of his victory, Dole was once again instrumental in aiding Helms and the tobacco industry. He

took legislation to extend the life of the cigarette excise tax increase and tacked on the Tobacco Program Improvement Act of 1985, a broad 41-page amendment championed by tobacco farmers and cigarette manufacturers that Helms was having trouble getting through the Agriculture Committee.

Supporters said the amendment would reform the costly tobacco subsidy program, reduce huge federal tobacco surpluses and earn a paper profit for the government. But critics—including Reagan administration budget officials—said the plan amounted to a \$1 billion bailout that would allow cigarette manufacturers to buy surplus crops at up to a 90 percent discount. Finance Committee Democrats strenuously objected, saying Dole was ramming through a complex bill that rightly belonged back in the Agriculture Committee. Still, the measure passed in an unrecorded show of hands.

"It is outrageous," proclaimed Sen. Daniel Patrick Moynihan (D-N.Y.) at the time.

"It's just a way to get it done," responded Dole.

Later that year, Dole helped the smokeless tobacco industry ward off large federal excise taxes. After reports linking smokeless tobacco products to oral cancer, Sen. John H. Chafee (R-R.I.) proposed taxing snuff at \$1.20 per pound and chewing tobacco at 40 cents per pound—roughly the same rates as cigarettes. But Michael Kerrigan, lobbyist for the Smokeless Tobacco Council, countered with a proposal whose levels were only one-

fifth of Chafee's. Dole, saying he was concerned about the impact on "low-income chewers and snufflers," endorsed Kerrigan's measure. Anti-smoking activists have calculated that the amendment has saved users at least \$250 million in taxes.

In 1986, Dole joined Connecticut Sens. Lowell Weicker Jr. (R) and Christopher J. Dodd (D) in a letter to the government of Hong Kong on behalf of UST Inc., a Connecticut-based smokeless tobacco manufacturer. The letter urged the British crown colony not to ban smokeless tobacco and implied that the United States might engage in trade retaliation if it did. "I imagine they thought it was more important to save a Connecticut firm's profits than Asian lives," wrote then-Surgeon General C. Everett Koop in his memoirs.

UST has provided Dole with 26 flights aboard its corporate jets since 1993 (Philip Morris also has provided on six corporate flights for Dole over the past two years, records show). UST has donated more than \$40,000 to Dole's political committees and \$50,000 to the Better America Foundation. And its senior vice president, Edward D. Kratovil, is a board member and fundraiser for the Dole Foundation, which helps train and provide job opportunities for people with disabilities. Company officials say they give money to

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A16 THE WALL STREET JOURNAL MONDAY, MARCH 25, 1996

# Tobacco Industry's Figures on Political Spending Don't Reflect Gifts to Think Tanks, Other Groups

By TIMOTHY NOAH  
And LAURIE MCGINLEY

Staff Reporters of THE WALL STREET JOURNAL  
WASHINGTON — The embattled tobacco industry is spending more money than ever to influence the political process, but some of its largess eludes political radar.

That's because the industry's record \$4.1 million in donations to political candidates and parties last year represents but a portion of its contributions — the part that must be disclosed to the public. There's another, largely undisclosed, dimension to the tobacco industry's political giving. Philip Morris Cos. and R.J. Reynolds Tobacco Co., for example, also lavish donations on like-minded think tanks and other groups that share its views — particularly an antipathy toward David Kessler's Food and Drug Administration, which wants to regulate cigarettes.

These tobacco donations represent a kind of stealth spending that reinforces the

## Speaking Hypothetically

RJR Nabisco's Steven Goldstone said he would consider a "resolution" that would end the legal, regulatory and social controversy surrounding cigarettes, but he stressed that RJR would never consider settling any individual smoking case. Article on page B3.

industry's direct political contributions. No one knows exactly how much additional money this giving represents because the groups don't have to disclose it. A few groups voluntarily answered queries from The Wall Street Journal about their tobacco donations, but most declined to furnish exact numbers. Internal tobacco company documents and tax filings offer a few scraps of additional information. What's clear is that donations to these organizations are considerable and have helped the tobacco industry cultivate influential allies.

Groups that have received tobacco industry donations have been busy of late. The Washington Legal Foundation and the Competitive Enterprise Institute have recently taken high-profile steps to bolster the tobacco industry's arguments against FDA regulation of cigarettes and have pressed the courts and Congress to make sweeping changes in the way the FDA operates.

The Washington Legal Foundation received a \$30,000 donation from the RJR Nabisco Foundation in 1993 and a \$25,000 donation from Philip Morris in 1991, according to available documents. The foundation won't discuss whether it has received more-recent contributions. The Competitive Enterprise Institute lists Philip Morris as one of its "competitive allies," meaning its annual donation is more than \$10,000.

Then there is Citizens for a Sound Econ-

## Tobacco Money

Top ten tobacco PAC recipients in current charges (donations received 1986 through 1995), in thousands

|                                    |       |
|------------------------------------|-------|
| 1 Rep. Thomas Bliley (R., Va.)     | \$124 |
| 2 Rep. Charlie Rose (D., N.C.)     | 105   |
| 3 Rep. Lewis Payne (D., Va.)       | 93    |
| 4 Sen. Jesse Helms (R., N.C.)      | 77    |
| 5 Sen. Wendell Ford (D., Ky.)      | 76    |
| 6 Rep. Rick Boucher (D., Va.)      | 75    |
| 7 Rep. Jina Bunning (R., Ky.)      | 72    |
| 8 Rep. Bill Hefner (D., N.C.)      | 70    |
| 9 Sen. Mitch McConnell (R., Ky.)   | 68    |
| 10 Rep. Richard Gephardt (D., Mo.) | 67    |

Source: CITIZENS FOR A SOUND ECONOMY

omy, which has spent \$2 million in its campaign to overhaul the FDA, arguing that the agency should stick with its "original mission" of approving new drugs and medical devices. The group received \$91,800 from Philip Morris in 1991, according to tobacco company documents that have been made public. (The group refuses to identify donors.)

Still another group, the Progress and Freedom Foundation, which got contributions last year from both Philip Morris and R.J. Reynolds, wants to drastically reshape the agency, parceling out many duties to private entities.

"The whole war against the FDA is grounded in this tobacco issue as much as any other issue," says Rep. Richard Durbin, an Illinois Democrat who has led antismoking efforts in Congress. "The firepower of Citizens for a Sound Economy and these other highflying, great-named organizations is tobacco money. They are trying to cripple the FDA, because Dr. Kessler and this administration have taken them head on and they don't like it."

The groups, which generally share a conservative philosophy and advocate shrinking the federal government, all say they don't need prodding by the tobacco donations to declare war on federal rules and bureaucracy; it comes naturally. "We were writing about tobacco taxes and tobacco-type issues long before we ever got a dime from these companies," says analyst Jerry Taylor of the libertarian Cato Institute, which he says received more than \$100,000 last year from Philip Morris and \$50,000 from R.J. Reynolds, a unit of RJR Nabisco Holdings Corp. "We're adults; we should have a right to live our lives as we see fit."

Still, these organizations, which operate with limited resources, engage in campaigns that neatly dovetail with the tobacco industry's needs. Mr. Taylor, for example, is Cato's resident expert on environmental matters, and last fall wrote an op-ed article for the Washington Times

attacking the FDA's proposed rule restricting tobacco marketing to kids. The think tanks' activities lend an intellectual support to pro-tobacco arguments that would sound self-serving coming from the industry itself.

In an effort to mock the FDA's proposed regulation of tobacco, the Competitive Enterprise Institute a few months ago filed a petition asking the agency to regulate coffee and other caffeinated drinks as a drug. Sam Kazman, the group's general counsel, acknowledged that although regulating caffeine would produce "no social benefit," it was needed because the FDA's criteria for regulating tobacco "are as applicable to caffeine as they are to nicotine."

Conservative groups aren't the only ones receiving tobacco-industry contributions; so are some liberal groups such as the American Civil Liberties Union, which gets about \$50,000 to \$70,000 a year from the tobacco industry, according to a spokesman, Denny Lee. The ACLU, a staunch defender of free speech, opposes the FDA's proposed restrictions on tobacco advertisements deemed accessible to minors.

Tobacco companies that give directly to nonprofit groups aren't required to disclose the donations unless they make them through a tax-exempt foundation, as does R.J. Reynolds (though it also makes contributions directly from the company itself, which needn't be disclosed). Recipients — even nonprofit groups — aren't required to disclose their benefactors to the public.

All of the think tanks deny that they are swayed by the donations, and they don't apologize for taking on the FDA.

Daniel Popeo argues that pressure from his group, the Washington Legal Foundation, helped prompt FDA Commissioner Kessler to take long-overdue steps to speed drug approvals. Jeffrey Eisenach of the Progress and Freedom Foundation notes that his FDA-design plan was overseen by former Health and Human Services Secretary Louis Sullivan, a longtime smoking foe. "I think the content of our report and the substance speaks for itself," he says. Mario Lewis of the Competitive Enterprise Institute notes that his group, unlike tobacco companies, believes that "cigarettes are addictive." Brent Bahler, a spokesman for Citizens for a Sound Economy, says, "no donor can influence our mission."

Tobacco companies also deny any cause-effect link between charitable giving and think-tank advocacy. Philip Morris "gives to think tanks because their philosophy and programs are consistent with points of view that Philip Morris supports," says Darienne L. Dennis, communications director for Philip Morris. "Open market, lower taxes, less regulation."

Date: 06/13/96 Time: 20:07

## DCampaigning in Tobacco Country, Dole Rejects Nicotine Regulation

LOUISVILLE, Ky. (AP) Campaigning in the heart of tobacco country, Bob Dole on Thursday denounced government efforts to regulate nicotine as a drug and denied that cigarettes are necessarily addictive.

Playing to his Kentucky audience, Dole said he supported proposals to ban cigarette vending machines to help keep children away from tobacco. But he said the Food and Drug Administration should otherwise stay out of the tobacco business.

"I wish the FDA would spend a little more time on medical devices and approving new drugs to help people," Dole said in response to reporters' questions.

"To some people, smoking is addictive, to others they can take it or leave it. Most people don't smoke at all. I hope children never start," Dole added.

Dole is on a whirlwind three-day "heartland tour" that has been scripted as a series of sunny photo opportunities to showcase the ex-senator as a man freed from Washington. Sights along the way: country music concerts in Branson, Mo., a Louisville steamboat ride, a Louisiana Cajun crawfish boil.

In the scorching noon sun, Dole and his wife, Elizabeth, cruised the Ohio River aboard the Belle of Louisville, a 1914 stern wheel steamboat. With tickets selling for as much as \$5,000, the hourlong river tour was a fund-raiser that was expected to bank \$125,000 for the Republican Party.

Dole beamed as the pilot handed over the controls and declared, "We're going full-steam ahead in my campaign."

"You better warn the Coast Guard," joked Mrs. Dole as an old-fashioned calliope began puffing "Happy Days Are Here Again" and fireworks were launched into blue skies from a river barge.

A number of difficult political issues have overtaken the lighthearted ambience of Dole's tour along the way.

After a week of Republican discord on abortion, Dole affirmed his opposition to the procedure Thursday and called President Clinton's veto of a late-term abortion ban "the worst thing that he's done" in office.

Seeking unity in the fight against Clinton, Dole held firm to his position that the GOP platform should state that abortion-rights supporters are welcome in the party.

And one day after Clinton visited the site of a burned-down South Carolina church, Dole condemned the recent rash of arson attacks on black churches as "a hate crime with no place in our society."

He called on the Justice Department to step up its investigation and accused the president of seeking political advantage from the tragedy. "He probably politicized it some. He politicizes about everything he does," Dole said.

On tobacco, Dole was asked about FDA consideration of regulating nicotine as a drug.

"If they should claim jurisdiction and find that cigarettes are a drug, then in effect, you're banning cigarettes and production of tobacco, so it's going to affect a lot of people," Dole told reporters.

In his decades in Congress, Dole had a record of support for tobacco subsidies and fighting efforts to tighten cigarette regulations. His campaigns over the years have received thousands of dollars in contributions from tobacco companies.

"Apparently when it comes to Bob Dole's policies, you get what you pay for," Clinton campaign spokesman said of Dole's defense of

tobacco. ``Bob Dole should spend more time looking at the scientific evidence and less time counting his campaign contributions.''

At least one smoking health group complained about Dole's characterization of the FDA's activities. ``Dole is misinforming and misleading the public. The FDA's proposal is not a ban on cigarettes and the production of tobacco. It is aimed at protecting children from the marketing practices of the industry,' ' said Kathryn Kahler of the National Center for Tobacco Free Kids.

In a brief speech, Dole made only veiled reference to the current flap over the GOP abortion plank, framing his proposed changes as a matter of tolerance, not compromise.

``Bob Dole wants to bring people together. If I was able to do anything as a United States senator, I was able to bring people together in my own party ... but you can't compromise principle,' ' he said.

His position wasn't good enough for 71-year-old Virginia Coffey, who carried a heart-shaped ``Choose Life'' poster to the rally.

``To me that's just vacillating,' ' she said of Dole's platform proposal. ``Why's he doing it? For votes, I guess.''

Working the crowd after his speech, Dole told another dissatisfied abortion opponent: ``The Bible says we ought to be tolerant. ... We'll work it out.''

Later, at a rally of some 600 supporters in downtown Louisville's Jefferson Square, Dole stressed both racial harmony and party unity while criticizing Clinton for breaking promises and perpetuating ``big, big government.''

APNP-06-13-96 2011EDT

## Philip Morris, in Voluminous Comment, Denies Manipulating Cigarette Nicotine

By TIMOTHY NOAH  
And SUEIN L. HWANG

Staff Reporters of THE WALL STREET JOURNAL

Philip Morris Cos., in comment submitted to the Food and Drug Administration, denied allegations by three former employees that the company manipulates the nicotine level in its cigarettes.

The written comment, prepared by the Washington law firm Arnold & Porter, also said that "even if all of the assertions in the three declarations were true (and they are not) . . . they are still legally irrelevant to the issue of FDA jurisdiction over cigarettes."

The FDA last month released three statements by former Philip Morris employees which the agency maintains provide significant rationale for FDA regulation of tobacco products. In August the agency proposed sweeping new regulations restricting the marketing of tobacco products to minors, including a proposed ban on cigarette-vending machines and tight restrictions on print advertisements deemed accessible to minors.

When the FDA released the statements by the three former Philip Morris employees in mid-March, it was required by law to give the company and the general public a set period of time to comment. That period ended last Friday.

### Multivolume Comment

The FDA's final rule is expected some time this summer. But agency officials must first comb through yesterday's multivolume comment from Philip Morris and a separate, relatively brief comment from the four biggest cigarette makers. Liggett Group, adhering to its unprecedented settlement of a number of tobacco lawsuits, was not included in the group. Liggett is a unit of Brooke Group Ltd.

In its comments, the four companies and the Tobacco Institute called the FDA's proposed rule to eliminate outdoor cigarette ads within 1,000 feet of playgrounds and schools "arbitrary and capricious." It further described a proposed rule restricting cigarette advertising in magazines as a violation of the First Amendment.

Philip Morris complained in its comment that the FDA refused to grant the company a 17-day extension to present information drawn from additional testimony from two of the three former employees. A company official said this testimony was to come from a lawsuit brought by the state of Mississippi seeking to recover health costs from tobacco manufacturers.

But William Schultz, FDA deputy commissioner for policy, told Arnold & Porter in an April 12 letter that the extension wouldn't be granted. In the letter, Mr. Schultz also denied an apparent request

from Philip Morris that the FDA disclose transcripts of interviews with the three former employees.

### Senior Scientist's Deposition

The bulk of the company's comment focused on a March 1 deposition by Ian Uydess, a former associate senior scientist at Philip Morris. In the deposition, Mr. Uydess said, "nicotine levels were routinely targeted and adjusted by Philip Morris in its various products at least in part, through blend changes and blend design."

But Philip Morris said in its response that Mr. Uydess "had no role in the formulation of any brand of Philip Morris cigarettes." It also said that much of Mr. Uydess's information "was derived from colleagues who shared their 'experiences' during coffee breaks," and that his statement misrepresented the nature of the research. Neither Mr. Uydess nor his lawyer, Richard Scruggs, could be reached for comment. But Matthew Myers, general counsel for the Campaign For Tobacco-Free Kids, said that in response to "one of the most damaging salvos ever launched against the tobacco industry, Philip Morris's response is remarkably weak."

## White House, GOP Press For Spending-Bill Pact

By a WALL STREET JOURNAL Staff Reporter

WASHINGTON — The White House and Republicans are pressing for a final settlement this week of an omnibus spending bill to keep much of the government funded through Sept. 30.

In negotiations yesterday, Republicans relaxed their stand significantly in a key dispute over logging in the Tongass National Forest in Alaska. Elsewhere in the budget, the GOP is offering to restore money for President Clinton's domestic priorities by borrowing more than \$1 billion from money previously set aside for future disaster aid.

White House Chief of Staff Leon Panetta is expected to meet today with the leaders of the House and Senate Appropriations Committees from both parties.

The two sides are working against a deadline of tomorrow night when a stop-gap bill is due to expire. Even if a settlement is reached, some short-term extension is likely to be needed simply to allow time for the massive bill to be debated on the floor.

The Tongass timber issue is one of the highest-profile environmental disputes between the two sides, and the administration has been adamant that Republicans drop legislative provisions that would delay its revised harvest plan for the huge forest.

# GOP Adopts Risky Strategy on Medicare, Taking Case for Cuts Openly to Voters to Blunt Attack Ads

By CHRISTOPHER GEORGES

Staff Reporter of THE WALL STREET JOURNAL  
CLEARWATER, Fla. — Republican

Rep. Michael Bilirakis looks out over his audience of nearly 120, most of whom are elderly. Some are in wheelchairs. Others, hard of hearing, crowd the seats up front.

"God bless Social Security and Medicare, but only one group is truly entitled,"

**CAMPAIGN**  
**★ 96**

he tells them, skipping a beat for emphasis, "veterans." Later, he informs his elderly constituents that Medicare spending has grown in 30 years by "1,049%!" It works:

A few gasp at the statistic. "It would be easy to keep piling money on the program. You'd get votes, but it wouldn't be responsible," he says.

Rep. Bilirakis's approach reflects the straightforward — and risky — GOP political strategy on what may be the pivotal issue of the 1996 political campaign, one that will determine whether Republicans cement their control of Congress or lose it after just two years. Both the White House and Republicans have proposed plans calling for steep cuts in planned spending for Medicare, the giant government health program for Americans aged 65 and older. With the system forecast to go broke by 2002, both sides have tacitly agreed that it must be "fixed" by the next Congress and president.

## Touching the 'Third Rail'

That's the policy reality. But the Medicare politics of the 1996 campaign offer a starkly different picture. Democrats and their allies are mounting an aggressive drive to paint Republicans as Medicare's undertakers, ignoring the Democrats' own overhaul proposals and charging instead in a national advertising campaign that the GOP wants to savage the program. "In a courageous but foolhardy way, Republicans touched the third rail," says William Kristol, a conservative political strategist and editor of the Weekly Standard. "This is the Democrats' strongest card."

That's why GOP House leaders cite senior citizens as one of the key voter groups that will determine the outcome of the 1996 election. But the Republicans' response, thus far, is an unusual one. They are not only sticking by their plan to slow the growth of Medicare spending, they are openly taking their case for such action to elderly voters.

"We're addressing it head on," says Rep. Mark Foley, another Florida Republican. Many GOP lawmakers, such as Mr. Bilirakis and Wisconsin Rep. Mark Neumann, have been holding issue forums in their districts, "explaining rates of growth and funding formulas," Mr. Neumann says. Some, such as Iowa Rep. Greg Ganske, are running ads at home to try to explain the GOP plan.

Their reasoning? "To change course now would be political suicide," says New Hampshire Republican Rep. Charles Bass. Then, he says, Republicans would face heat both for their previous votes and for

## Overhauling Medicare

Comparison of key elements of most recent GOP and White House Medicare overhaul plans:

- **Republicans would cut** projected Medicare spending by \$168 billion over seven years; the White House would cut planned spending by \$124 billion over seven years.
- **Republicans would raise** the average amount Medicare spends on each beneficiary by 5.6% a year; the White House would raise the amount by 6.5% a year. Under current law, the average would increase by 8.5% a year.
- **Republicans and the White House** both would encourage more elderly to migrate to managed-care plans, though the GOP plan does so more aggressively.
- **Both would wring** savings primarily from lower projected payments to doctors and hospitals who provide fee-for-service Medicare.
- **Republicans would require** higher out-of-pocket premiums, about \$11 a month more in 2002, for Part B doctors' services.

backing off their original position. Most Republicans predict that a painstaking education effort will ultimately win them public approval, even among elderly voters. "When people hear and understand our plan, we kick butt," says House Budget Committee Chairman John Kasich of Ohio.

## Ignoring Clinton's Cuts

Mr. Kasich is right about one thing: Someone's butt will be kicked on this issue this fall. To make sure it's not theirs, Democrats are continuing to hammer at the GOP proposal, while largely ignoring the fact that President Clinton's plan also would deeply pare future Medicare spending. Republicans "are wrong to cut Medicare benefits," says one recently produced ad from the Democratic Party. "And President Clinton is right to protect Medicare," it says.

Democratic House leaders such as Majority Leader Richard Gephardt of Missouri are less restrained. "The extremist Republican Medicare cuts will destroy and devastate the program," he says. Party strategists plan to distribute campaign kits to Democratic congressional challengers encouraging them to push that message.

Exactly how different are the most recent competing plans? "If you keep this in its proper perspective, they're within striking distance of each other," explains Robert Reischauer, former head of the Congressional Budget Office, now at the Brookings Institution. Republicans would cut projected Medicare spending by \$168 billion over the next seven years, according to the CBO, while Mr. Clinton would cut \$124 billion. While several key policy differences reside in the details, both are based on encouraging more elderly people to migrate to managed-care plans.

Even so, Republican candidates face an uphill political battle. In a recent Wall Street Journal/NBC News poll comparing Mr. Clinton's with congressional Republicans' approach to an array of issues, Mr. Clinton registered his highest rating on Medicare, while Republicans scored nearly their lowest.

"It's a real challenge to explain our position — to undo the damage Democrats have done," concedes Rep. Dave Weldon of Florida. The GOP's argument — and its plan — are complex.

Making matters worse, virtually all

GOP House members, in voting last year for the seven-year GOP balanced budget, are on the record as voting to cut planned Medicare spending by \$270 billion in the original Republican plan. While some Democrats may support the president's plan to hold down Medicare growth, their voting records are clean.

The GOP's Medicare woes are perhaps best captured by a coming Democrat Medicare ad blitz, sampled successfully earlier this year, featuring House Speaker Newt Gingrich saying, "We believe it's going to wither on the vine." The ads assert that Mr. Gingrich was referring to Medicare. "There's no way they will be able to overcome [that] with their education effort," says Patrick Burns, a spokesman for the National Council of Senior Citizens, a liberal advocacy group.

Republicans are already crying foul, saying that Mr. Gingrich was referring not

to Medicare, but to a hoped-for cutback in the size of the federal bureaucracy that oversees the program. Transcripts of Mr. Gingrich's somewhat-rambling remarks show that it's unclear to what the speaker was referring.

Democrats also will get a huge boost from allied interests, such as the AFL-CIO's recently announced \$35 million issues-education campaign. The six-million-member National Committee to Preserve Social Security and Medicare plans to spend "tens of thousands of dollars" to get its message out, says a spokesman for the group. Perhaps most aggressive will be the National Council of Senior Citizens, which plans to tap deeply into its \$300,000 campaign fund to stage rallies and produce ads. A slice of its spending will go to launch, at Republican campaign events, dozens of massive (8 feet in diameter) purple balloons inscribed, "No more hot air. Stop attacks on Medicare."

"There's nothing these Republicans can do when the balloons go up behind them," says Mr. Burns. "The TV news will show the balloons, while Republicans will come off as 'blah, blah, blah.'"

"We don't have any way to match [Democrats' allies] dollar for dollar," concedes Republican National Committee Chairman Haley Barbour. The United Seniors Association is pledging "a few thousand dollars" to help the GOP get its message out, says spokeswoman Nona Wegner, adding, "Where are the big bucks going to come from? I don't know."

Nor are the health-care industries and the business community — the Republicans' most vocal Medicare boosters throughout the balanced-budget battle — expecting to mount a large support effort. Instead of money or a media campaign, says Neil Trautwein, manager of health-care policy at the Chamber of Commerce, his group will offer mostly moral support on the issue. "We think the truth is our greatest weapon," he says.

# R.J. Reynolds Marketing Memo Discusses Young Smokers' Brand 'Image'

By John Schwartz  
Washington Post Staff Writer

A newly available internal document from tobacco giant R.J. Reynolds, detailing marketing efforts in the 1970s, appears to belie consistent company denials that it has targeted underage smokers or that advertising has any effect on young people.

A July 3, 1974, memo from marketing research executive D.W. Tredennick noted that a new male smoker "generally starts during his teens," with more than half becoming regular smokers before the age of 18. It concludes that new smokers choose a brand because of "the user image a brand projects and differentiated product characteristics," along with peer pressure.

"To some extent young smokers 'wear' their cigarette and it becomes an important part of the 'I' they wish to be, along with their clothing and the way they style their hair."

The RJR document on youth smoking, and three other documents discussing the drug properties of nicotine, were obtained by Mis-

issippi Attorney General Mike Moore in the course of that state's efforts to sue the tobacco industry for reimbursement of Medicaid expenses. They were filed with the Food and Drug Administration as part of the FDA's extended "comment period" on its proposal to regulate tobacco in order to curb youth access.

The newly filed RJR documents seem to be consistent with other documents that have come to light in recent months. A 1973 memo by Claude E. Teague Jr. (then RJR assistant director of research and development), made public last year, proposed marketing cigarettes to underage smokers, suggesting that teenage rebellion might make the risks of smoking more attractive to that market.

"Realistically, if our Company is to survive and prosper, over the long term, we must get our share of the youth market," he wrote.

The documents also seem to presage a late-1980s Reynolds project, "First Usual Brand Young Adult Smokers," that attempted to monitor brand choice for new smokers, and a "Young Adult Smokers" marketing program that mentioned stocking stores near high

schools and college campuses with the kinds of promotional items, including hats and other clothing, that appeal to youngsters.

Other documents included in the Mississippi submission contain statements that also could be damaging to RJR, the nation's second-largest tobacco company. A Jan. 5, 1978, interoffice memorandum from T.A. Perfetti on comparisons between nicotine and opiates suggested that the company conduct further tests to better understand the concept of "satisfaction" for smokers, saying "I have no doubt that the work will be done and relatively soon, since nicotine is the next naturally occurring alkaloid used in appreciable amounts which has been implicated as an addictive drug. I can't stress this fact enough, since its results could be devastating to the tobacco industry as a whole."

Another memo from a top RJR researcher, Murray Senkus, was based on a talk delivered to RJR's "tobacco marketing and marketing research personnel" in late 1976 and 1977. In the talk, Senkus compares the drug effects of nicotine to those of alcohol and caffeine, and

said that "without any question, the desire to smoke is based on the effect of nicotine on the body."

Tobacco companies, he said, "are fully aware of the advisability of maintaining a low tar value and also maintaining the nicotine as high as possible," and suggests a target range of nicotine strength for a new brand.

All such statements would appear to contradict long-held industry positions that companies do not manipulate nicotine levels in tobacco products, that flavor is the chief reason people smoke and that nicotine is merely a component of the overall flavor of the cigarette.

RJR officials did not return calls requesting comment.

In April 1994, then-R.J. Reynolds CEO James Johnston told Congress that his company, which uses the "Joe Camel" cartoon character in its advertising, does not market to underage smokers. "Our market is adult smokers" and the aim is to get current smokers to switch brands, he testified. "Every time a kid lights up a cigarette, we get accused of luring kids in and tempting them into our prod-

ucts, and that results in calls for specific ads to be banned or all ads to be banned. . . . It would be stupid and crazy for me to threaten my ability to advertise by targeting kids."

Philip Morris also made its latest round of filings to the FDA public yesterday. The 67-page submission said that the statements of three former employees who had told the FDA that the company routinely monitors and adjusts nicotine levels during manufacturing were "either wrong or seriously misleading." It stated that the three former employees' contentions are irrelevant because they do not prove the company's "intent" to sell tobacco products for their drug effects—a key contention in the FDA regulatory attempt.

The FDA claims that the industry's actions constitute a clear case of "objective intent," a recognized legal standard that "is not limited to expressions in labeling or advertising, but may be based on the totality of the relevant evidence showing the seller's awareness of how its product is actually used and affects the structure or function of the body, regardless of how the product is labeled or advertised."

# Postmaster Sticks With Stamp Vow

*Runyon Says He'll Try  
To Keep Rates Steady*

By Bill McAllister  
Washington Post Staff Writer

Postmaster General Marvin T. Runyon yesterday reconfirmed his earlier pledge to avoid boosting the price of a stamp next year and promised he will attempt to retain the 32-cent stamp until the year 2000.

"You have my word: There will be no increase in stamp prices through 1997," Runyon told the National Postal Forum in Anaheim, Calif. He also said the agency has set "an unprecedented goal" of keeping rates level for five years in a row.

But that will require "radical change and breakthrough performance" he told the gathering of commercial mailers. His promise also will keep the pressure on the Postal Service and its workers to curtail costs and to find additional revenues for the federal agency, perhaps through new products.

Congressional staffers said yesterday the agency has notified the Hill that it intends to begin testing an electronic funds transfer system in California and Texas that will allow postal customers to wire money to Mexico instead of sending postal money orders.

The postmaster general set another goal, one that has eluded previous postmasters general. He pledged to have delivery bar codes placed on all first-class mail by the end of 1998. The codes are used to sort mail and can allow machines rather than postal clerks to sort the mail.

Former postmaster general Anthony M. Frank once promised that the agency would have 95 percent of its letter mail bar-coded by 1995, but postal spokesmen said only 67 percent of the mail was bar-coded during fiscal 1995. That had led to much criticism of the agency's \$4.7 billion automation program, which Runyon defended yesterday. "It's nothing short of a revolution," he told the mailers.

## CORRECTION

A photograph of a carousel horse on the cover of Washington Home last Thursday should have been credited to Don Vanderbrook of Cleveland.

## CLARIFICATION

In a story Saturday about the presidential campaign of Sen. Robert J. Dole (R-Kan.), numbers were transposed for the amount spent by the campaign last month. The campaign spent a total of \$5.2 million in March, but not all of that counts toward the pre-convention spending limit of \$37 million. As the story reported, that leaves the campaign with slightly under \$2 million that it is allowed to spend before the August convention.

# Study Sees Job Gains From End to Smoking

## *Industry Forecast of Nationwide Loss Rejected*

Associated Press

Six major tobacco-growing states would lose jobs if Americans stop smoking, but the nation as a whole would gain thousands of new jobs, according to a study that contradicts predictions by tobacco companies.

The study, released yesterday, estimates that the states where tobacco is grown and cigarettes are manufactured would have lost about 303,000 jobs if the United States had stopped all spending on cigarettes in 1993.

But the authors of the study said Americans would spend money previously earmarked for cigarettes on other job-creating goods.

The study estimated that by the year 2000 the number of lost jobs in the tobacco states would be about 222,000, but that jobs gained in the rest of the country would more than offset the losses in North Carolina, Kentucky, South Carolina, Virginia, Tennessee and Georgia.

"If tobacco sales were eliminated in 1993, the economy would have an estimated 133,000 more jobs in the year 2000," said the study, to be published today in the *Journal of the American Medical Association*.

The tobacco industry has contended that the nation would have a net loss of jobs if the Food and Drug Administra-

tion imposes restrictions that discourage consumption of cigarettes or eliminate tobacco use altogether.

But the study's lead author, Kenneth E. Warner, an economist and health policy professor at the University of Michigan, said that argument is based on the flawed economic idea that money not spent on tobacco would not be spent at all. Instead, Warner and his associates said, "when people stop spending money on one thing, the money does not simply disappear; it is spent elsewhere."

Walker Merryman of the Tobacco Institute, which speaks for the industry, would not specifically address what Warner called the flaw in the tobacco industry's comments on job losses.

"Economic theory is fine for Ken Warner, but when it comes down to groups of people who are in a position to lose their jobs, I operate in the real world, not in some economic ivory tower," said Merryman.

The study is based on figures from 1993, when 1.8 million jobs nationwide were connected with tobacco growing, processing and sales. About 353,000 jobs are directly connected with farming and processing tobacco, and about 1.4 million "spinoff" jobs are associated with tobacco sales and distribution nationally, the study said.

## AMA Urges Investors to Sell Stock of Tobacco Companies

By John Schwartz  
Washington Post Staff Writer

The American Medical Association, which dumped all tobacco stocks from its portfolio a decade ago, is now urging America's investors to do the same.

Unveiling the latest edition of the *Journal of the American Medical Association (JAMA)*, which is devoted almost entirely to issues of tobacco cessation and the political fight over tobacco regulation, the AMA urged doctors, institutional investors and others to divest themselves of stock in 13 companies that make tobacco products and the 1,474 mutual funds that hold tobacco-related stocks and bonds.

The companies listed by the AMA include American Brands Inc., Brooke Group Ltd., Culbro Corp., DiMon Inc., Loews Corp., Maico Consolidated Group Inc., Philip Morris Cos., RJR Nabisco Holdings Corp., Sara Lee Corp., Schweitzer-Mauduit International Inc., Standard Commercial

Corp., UST Inc. and Universal Corp. The AMA said that about one in five mutual funds held stock in at least one of the companies between May 1993 and January 1996.

The JAMA contained an editorial stating that doctors had to do more to fight tobacco, recommending that all doctors urge their patients to quit smoking as part of routine treatment.

"As we work toward a tobacco-free society, we must begin with the house of medicine," Ronald M. Davis of the Henry Ford Health System in Detroit wrote.

Although many health professionals have kicked the tobacco habit and many health care facilities are now smoke-free, "in less obvious ways, however, we are still dependent on, or uncomfortably close to, tobacco" for research funding and in legislative efforts that employ lobbyists who also work for the tobacco industry.

THE WASHINGTON POST  
WEDNESDAY, APRIL 24, 1996

# Should Ma Bell Be Put Back Together Again?

*Some Experts Say U.S. May Have to Step In if More Mergers Threaten Competition Under New Law*

By Steven Pearlstein  
Washington Post Staff Writer

Only a month ago there were seven. Then six. And now five.

But if these proposed mergers of regional phone companies are such a good idea, as the companies claim, why stop there? Why not merge them all together and have just one?

"Sounds like a wonderful idea," quipped F.M. Scherer, a mergers expert at Harvard University. "You could call it AT&T."

Fifteen years after the government moved to break up the old telephone monopoly, the industry is trying to put itself back together again, arguing that the potential benefits of consolidation—greater efficiency, lower prices and one-stop shopping for consumers—

outweigh any of the downside risks to lessened competition.

That was exactly the logic that AT&T used in the unsuccessful defense of its monopoly against the forces of competition. And while many things have changed since then—in particular, the advent of competing technologies such as wireless communications and cable television—some antitrust experts predict that government will again be forced to step in if this merger wave continues.

From a competitive standpoint, the two recent deals—Nynex Corp. with Bell Atlantic Corp., and SBC Corp. with Pacific Telesis Group Inc.—look at first blush to be relatively benign, involving regional phone monopolies that do not now compete against each other.

But a rewrite of the federal telecommunications

law, signed into law only two months ago, would have soon allowed them to invade each other's territories to offer not only competing local service, but also long-distance, video and computer services. And that's where the potential antitrust problems arise.

"There is a long line of antitrust lore that makes elimination of potential competition as big a problem as the elimination of existing competition," said Harvard's Scherer.

Proving what competition might have developed is a tricky matter, however. The merging Bells, for example, already are arguing that alone they would have been financially too weak to take on the risk and expense of building nationwide long-distance networks or invading neighboring territories with a competing local service.

See MERGER, F4, Col. 3

## MERGER, From F1

And Justice Department lawyers have tended to shy away from other cases that relied too heavily on speculation about what competition might have occurred in the future—most notably in the case of software giant Microsoft Corp.

Stephen Sallop, a mergers expert at Georgetown University Law Center, said this week he thought it would be difficult for the government to block one or two mergers among the seven Baby Bells. But with each combination, he warned, the benefits to consumers would decline while the cost—in the form of foregone competition—would increase "exponentially."

"Concentration has a way of feeding on itself," agreed Robert Willig, a Princeton University economist who served as a top antitrust official in the Bush administration. "The first merger may be rather benign in its impact, but each subsequent increment of concentration is more harmful to the public."

This anomaly gives something of a "first-mover advantage" to companies that merge early in an industry's consolidation. Once an industry gets too concentrated, the government can move to block a merger that, in almost every other respect, is identical to one it had earlier approved.

Certainly there is nothing magical about having seven local phone companies. The number was imposed somewhat artificially in 1981 by then assistant attorney William F. Baxter, who argued that dividing AT&T's local phone service monopoly among seven regional monopolies would allow them to benefit from most of the economies of scale while keeping them close to their customers.

Now at Stanford University, however, Baxter is less than enthusiastic about merger wave among the Baby

Bells he helped to create. He declined further comment for the record.

As in most antitrust reviews, these will turn on the somewhat technical matter of what industry the merged companies are really in.

Nynex and Bell Atlantic, for example, argue that the relevant market is the entire telecommunications industry, which includes not only the five remaining Baby Bells, but long-distance giants AT&T, MCI Communications Corp., Sprint Corp., plus cable companies, wireless phone networks, broadcasters and even Internet services. By that definition, they argue, there will be plenty of competition left to protect consumer interests, even after a merger.

"As a practical matter, with all the different technologies, there are probably 10 actual or potential competitors in each of these markets," said Sallop. "And there is no reason to think the telecommunications market can support as many of 10 competitors. So some consolidation is probably inevitable."

But some consumer advocates argue that the relevant market, at least for the immediate future, is limited to local, wired telephone service. And in that limited market, they argue, competition is most likely to come from Baby Bells in contiguous regions, such as Nynex and Bell Atlantic, which might try to try to "cherry pick" high-volume customers such as brokerage firms and airlines from each other.

Others, such as long distance companies AT&T and MCI, worry that the combined Baby Bells will use their added clout and clever pricing strategies to keep out competition from their local service areas.

"In a period of technological uncertainty, the best strategy is to let a thousand flowers bloom," said Harvard's Scherer.

THE WASHINGTON POST

WEDNESDAY, APRIL 24, 1996

## U.S. Checks Phoenix Company For Lapses in Handling Blood

WASHINGTON, April 23 (AP) — The Government is investigating whether anyone received tainted blood from a Phoenix company. But officials said the blood supply is safe and getting safer every year.

On Monday the Food and Drug Administration announced a consent decree calling for the company, United Blood Services, which supplies blood to hospitals in 18 states, to spend \$16 million to strengthen the safety of its blood products.

Inspections by the agency had found problems at United Blood since 1994, when the company voluntarily surrendered the licenses for three of its Texas blood centers.

But the agency discovered some company-wide problems too, mostly in how United Blood screened donors to insure that they had no infectious diseases. Some donors were not properly questioned or, when they revealed possible risks, the company did not take the proper next step, deciding to investigate further or that the risk was serious enough to reject the donor, said Mary Pendergast, F.D.A. deputy commissioner.

Also, United Blood sometimes did not follow instructions for testing blood against certain viruses, which can throw off a test result, she said.

The agency has not found any cases where an improperly screened donor's blood also was not properly tested, so it cannot say that any tainted blood was used.

"It's a possibility; we're not certain," Ms. Pendergast said. If "the blood bank isn't perfect, up to the standards we expect of it, it does not mean necessarily the unit of blood is a contaminated unit."

But the Government is investigating "a handful" of reports from patients who fear they were exposed to

the AIDS virus or hepatitis, she said. United Blood insists no tainted blood escaped. "The blood supply we have is very, very safe," Barbara Kain, a spokeswoman, said.

The consent decree is not unusual — even the American Red Cross, which provides half the blood in the country, has operated under one since 1993 after the F.D.A. found similar problems at a Red Cross center in Florida.

Blood banks are required to report to the agency any errors in their safeguard system, even if those errors are caught in time to prevent improperly scrutinized blood from being shipped. That is because a lapse might not cause a problem one time, but if not corrected it could hurt someone later.

But many blood banks did not report errors unless they required blood to be recalled. So in 1993, the F.D.A. began cracking down, and reports of errors have risen 44 percent.

Ms. Pendergast said that does not mean more blood banks are committing more errors. In fact, 5 percent of blood banks in 1994 committed violations so severe they needed regulatory action, but that number dropped to 3 percent last year, the F.D.A. says.

"If anybody needs a blood transfusion they should get it because the risk of not getting the blood far exceeds any risk of getting it," said Ms. Pendergast.

United Blood provides blood to hospitals in Chicago and parts of 17 other states: Alabama, Arizona, Arkansas, California, Colorado, Louisiana, Minnesota, Mississippi, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, South Dakota, Texas and Wyoming.

## U.S. Is Enlisting Doctors In Campaign Against Smoking

By BARNABY J. FEDER

CHICAGO, April 23 — Doctors should routinely ask patients about their tobacco use and actively work to get those who smoke, chew or sniff tobacco to quit, according to new guidelines released today by the United States Agency for Health Care Policy and Research, an arm of the Department of Health and Human Services.

The guidelines will be published on Wednesday in a special issue of the weekly Journal of the American Medical Association to be devoted entirely to tobacco. "I wouldn't say it's malpractice not to inquire about tobacco, but it is now a standard of care doctors should meet," said Dr. Randolph Smoak, secretary treasurer of the medical association. "It's a whole cultural change for someone to quit smoking and doctors should try to help them."

The Robert Wood Johnson Foundation, which is active in anti-smoking programs, today announced a grant to the medical organization to print the new practice guidelines and distribute them to 200,000 doctors. Although 70 percent of the nation's 46 million adult smokers say they want to quit, only 50 percent have ever been urged to do so by their doctors, according to Dr. Michael K. Flore, a professor at the University of Wisconsin Medical School who led the panel that developed the guidelines.

In the new issue of the medical journal, the doctors' group also calls on investors to stop investing direct-

dustry. Shares in Philip Morris, the industry leader, were off 12.5 cents, at \$87.875, in trading on the New York Stock Exchange. Those of RJR Nabisco Holdings, R.J. Reynolds' parent, rose 25 cents to \$29.75.

"There's been so much noise. Investors are not paying any attention," said Alan Kaplan, who follows the industry for Merrill Lynch. It would take a loss in one of the many lawsuits against the industry to really shake investors, he said.

Articles in the new issue of the medical journal run the gamut from politics to medical practice. One calls on local governments to move more aggressively to ban cigarette billboard advertising. Another recommends that doctors routinely prescribe nicotine patches to help patients in programs to halt smoking and concludes that it would be cost-effective for the insurance industry to pay for such therapy.

Washington's statewide ban on smoking in private workplaces was ordered in 1994 by the state's Department of Labor and Industries. Maryland is the only other state in which anti-tobacco groups have achieved similarly sweeping rules through regulation. A number of towns and cities have adopted such regulations when statewide efforts failed.

Lawyers for the industry say they plan to appeal the decision, which has not yet been issued as a written opinion. R.J. Reynolds said today that the memorandum reported on Monday by CBS did not contradict the company's contention that advertising played no significant role in children's decisions to start smoking. The company said the memorandum focused on the role of advertising in influencing the brand choice of smokers.

"It's true that this memo alone is not the smoking gun," said William Novelli, coordinator for the Campaign for Tobacco-Free Kids in Washington. "But it makes it clear that RJR saw advertising as providing a personality that kids want to slide into as they choose their first brand."

Nearly lost in the new wave of criticism of the industry was Philip Morris' response to testimony given to the F.D.A. about the company's research and production methods.

Two former company researchers and a former manufacturing executive had suggested that Philip Morris manipulated both research and production in ways that support the F.D.A.'s contention that the industry privately views cigarettes as nicotine-delivery devices. The F.D.A. has proposed issuing sweeping new regulations of the industry in order to reduce the exposure of children under 18 to such products.

On Monday, Philip Morris told the F.D.A. that William A. Farone, one of the former researchers, had made false claims previously aired by others, and that a statement by Ian Udyess, a microbiologist who worked under Mr. Farone, was misunderstood hearsay from informal conversation with colleagues, mistaken recollections of the results of projects he worked on or intentionally false. The company also said that Jerome Rivers, a former manufacturing supervisor for the company, either lied or was mistaken in describing company manufacturing processes.

### Making inquiries about tobacco use 'a standard of care doctors should meet.'

ly in tobacco companies or in mutual funds that have such companies in their portfolios. In the mid-1980's, the medical association divested itself of all stock in tobacco.

The journal issue, the second devoted entirely to tobacco in less than a year, comes as the industry continues to fight investigations by the Justice Department, lawsuits in several states trying to recover money spent on health care for smokers, and efforts by the Food and Drug Administration to regulate tobacco as a drug. This week tobacco companies have been hit with a new spate of negative news.

On Monday, a Washington State court upheld a state regulation banning smoking in private workplaces. On Sunday, scientists at an American Association for Cancer Research meeting in the nation's capital presented new research linking smoking to cervical cancer in women.

Meanwhile, on Monday, the CBS Evening News reported on a 1974 research memorandum from the R.J. Reynolds Tobacco Company that tobacco critics say suggests that the company believed that advertising influences teen-age smokers. The company has consistently denied that advertising plays any role in the decision by teen-agers to smoke.

Wall Street was undisturbed by the onslaught of new attacks on the in-

## More Preschoolers Cared For By Nonrelatives, Report Says

WASHINGTON, April 23 (AP) — When mothers go back to work, the job of caring for preschoolers most often falls to caretakers outside the family, and a growing number of them are in organized day care centers, according to a Census Bureau report made public today.

Forty-eight percent of the 9.9 million preschoolers who had working mothers in 1993, the most recent data available, were watched by relatives. That was down from 53 percent two years earlier.

Thirty percent of the preschoolers were cared for in organized centers in 1993, up from 23 percent two years earlier, according to the report, "Who's Minding Our Preschoolers?"

"I was stunned that the use of organized facilities went up to 30 percent," Lynne M. Casper, a Census Bureau statistician, said of the growth in day care and preschool centers. "That's an all-time high."

The other 22 percent of preschool-

ers with working mothers who were cared for by nonrelatives were in their homes or those of their caretakers.

The percentage of preschoolers with working mothers who are cared for by nonrelatives has fluctuated since the bureau first took a comparable sampling in 1977, when nonrelatives cared for 43 percent of them. In 1988, the figure was 56 percent.

The Census Bureau also found that the care of the preschoolers by fathers, which rose from 1988 to 1991, giving rise to speculation that more fathers were becoming involved in their families, was back to near the 1988 level.

The increase in preschoolers watched by fathers rose to 20 percent in 1991 from 15 percent in 1988. But the share fell back to 16 percent in 1993, and the Census Bureau now attributes the earlier rise to higher unemployment or underemployment of the fathers.

THE NEW YORK TIMES

WEDNESDAY, APRIL 24, 1996

# G.O.P. Moderates in House Face Dilemma on Wildlife Bill

By JOHN H. CUSHMAN Jr.

WASHINGTON, April 23 — Moderate Republicans, who hold a crucial bloc of votes on sensitive environmental issues, are in an uncomfortable position as the House prepares to take up a bill making it harder for the Fish and Wildlife Service to limit recreation and hunting on Federal wildlife refuges.

At a time when the Republicans are struggling to soften their image on environmental issues, the bill is one that many moderates would rather avoid altogether. But the House leadership, sensing a victory and anticipating considerable support from conservative Democrats, is sending the bill to the floor, perhaps as early as Wednesday.

The legislation splits hunters and environmentalists, two vocal constituencies who often share common goals and who have both supported the wildlife refuge system in the past. Further complicating matters for wavering Republicans, the bill is coming to the floor at an awkward moment, just after Earth Day, which was observed on Monday.

The central question in the debate is one never before addressed explicitly by Federal legislation: what is the main purpose of a wildlife refuge?

The legislation drafted by the House Resources Committee would give hunting and other recreation equal standing with conservation as central purposes of the nation's 95 million acres of wildlife refuges.

The bill is sponsored by Representative Don Young of Alaska, perhaps the most conservative Republican member on environmental issues. It is strongly opposed by most major environmental groups. The Administration has threatened to veto the bill, but it is supported by quite a few Democrats and appears to have a fairly good chance of passing the House. The Senate has not yet considered the issue.

Environmental groups want the conservation of wildlife and their habitats to be the overriding goal when the Fish and Wildlife Service regulates the use of refuges by the public. That policy has long been in place, but it has not been written into law. The Clinton Administration recently clarified the policy, asserting in an executive order that hunting and fishing, among other uses, were high priorities, but secondary to the goal of conservation.

Environmental groups generally agree with that. They say hunting, fishing, bird-watching and other ac-

tivities are valid uses of many refuges, but only after ensuring that these activities will not interfere with the refuges' central purpose: protecting wildlife.

By contrast, national parks have tourism as a basic purpose, and in national forests, the law sets multiple uses, including logging, as the basic purpose.

The Young bill presents a problem for many of the nearly 50 Republicans who have given the House leadership fits in the past year over votes on the Clean Water Act, antiregulatory amendments to spending bills and other hot-button environmental issues. They are torn this week over whether to support the bill, to oppose it or to seek some middle ground.

Representative Sherwood Boehlert of upstate New York, a Republican who has often taken on his party's leaders on environmental issues, sought middle ground amid last-minute environmental lobbying.

He has negotiated with Mr. Young a series of amendments aimed at improving the bill without actually changing its fundamental direction, Congressional aides said.

Under Mr. Boehlert's approach, hunting would remain a basic purpose of refuges, but moderating language will be inserted elsewhere in the bill to emphasize conservation.

Mr. Boehlert will also propose watering down the bill's restrictions on new purchases of property by the Fish and Wildlife Service, which can use the money raised from hunting fees to establish new refuges. Mr. Boehlert will propose that the agency be allowed to buy smaller sections of land but that it would have to seek Congressional approval to buy more than 500 acres at a time, an aide said.

Democratic staff aides, meanwhile, were working today with environmentalists to write a substitute House bill. But, reflecting the Democratic split, it was not clear which Democrat would offer it. Representative George Miller, a liberal Democrat from California, might do so, but at the risk of alienating conservative Democrats.

Environmentalists were quick to reject Mr. Boehlert's approach. "It's just not going to cut it," said Evan Hirsche, director for wildlife refuge advocacy at the Audubon Society. "The bill is fundamentally flawed and is going in the wrong direction."

# Vote Blocks Term-Limit Bill; Political Echoes May Linger

WASHINGTON, April 23 (AP) — A proposed constitutional amendment to limit Congress members' years in office was blocked in the Senate today by a Democratic filibuster, and Republicans served notice that they would make a political issue of it.

The vote was 58 to 42, 2 votes short of the 60 needed to stop the debate that had forestalled voting on the amendment. A short time later, Senator Bob Dole, the majority leader, pulled it from the floor.

"We'll bring it up again next year if need be," Senator Fred Thompson, a Tennessee Republican, said shortly before the vote. Mr. Thompson, who was elected to the Senate in 1994, led the fight for the measure, which enjoys majority support in public opinion polls.

All 53 Republicans and 5 Democrats voted to curtail debate on the proposal. All the votes against ending the debate were cast by Democrats.

The measure would have limited senators to two six-year terms and House members to six two-year terms. That would have become effective when the amendment had been ratified by the required three-fourths of the state legislatures.

The Constitution does not limit the length of Congressional service, and long service has generally been a way to accumulate power in Congress. As lawmakers gain seniority, they rise to leadership positions on subcommittees and full committees. The leaders of those panels have enormous power over Federal money and programs.

The term-limits proposal is part of the House Republicans' Contract With America, which they campaigned on in the 1994 election. Even so, the House, controlled by Republicans, rejected term limits, with 227 voting in favor of limits and 204 against, well shy of the two-thirds majority needed for a constitutional amendment.

That made the Senate proceedings largely symbolic, although some Republican strategists hope that Senator Bob Dole, the party's expected Presidential nominee, and other Republican candidates will get credit from voters this fall for having brought the measure to the floor.

The Democrats labored to prevent that.

The Democratic national chairman, Donald L. Fowler, said: "After 35 years in Congress, Senator Dole has committed the ultimate flip-flop. This is an extremely late, campaign-year conversion to the term-limits

position."

Mr. Fowler released a compendium of comments that Senator Dole had made in recent years in opposition to term limits.

"I think it's clear that I've been lukewarm to the idea for some time," Mr. Dole conceded shortly before the vote. But he said he was "proud that Republicans" had brought the issue to the floor of both houses of Congress.

Republican officials, speaking on the condition of anonymity, said that at a closed-door party caucus, Senator Dole appealed today for support on the vote to end the filibuster, even from Republicans who might vote against the bill on final passage.

Shortly after the vote, Mr. Dole said that the voters "can now sift through the records and make a determination who was for and who was against" ending debate and moving toward a vote.

The Democrats, seeking to embarrass Mr. Dole and other Republicans, tried to offer an amendment to make the proposed amendment retroactive. Republicans flinched from having to vote on that and used their parliamentary prerogatives to keep it off the floor.

Several argued that term limits would help in the battle against budget deficits. Lawmakers who did not expect to spend their lives in Congress would be more willing to vote against additional spending, they said.

Senator Kay Bailey Hutchison, a Republican first elected from Texas in 1993, said term limits would "bring back the concept of a citizen legislature."

Given the measure's popularity, relatively few Democrats spoke against it unambiguously.

One who did was Senator Robert C. Byrd, Democrat of West Virginia, who was first elected senator in 1958 and is serving his seventh six-year term. He said that in 1787, the framers of the Constitution had rejected the idea of limiting Congressional terms.

Senator Byrd argued that term limits would permit "a few large states" to control the House of Representatives by banding together and dictating who would hold committee chairmanships.

The five Democrats who voted to end debate were Jim Exon of Nebraska, Dianne Feinstein of California, Herb Kohl of Wisconsin, Bob Graham of Florida and Paul Wellstone of Minnesota.

THE NEW YORK TIMES

WEDNESDAY, APRIL 24, 1996

## Teen-Agers Are More Responsive to Cigarette Ads, Study Says

WASHINGTON, April 3 (AP) — Teen-agers are three times as likely as adults to respond to cigarette advertisements, and 79 percent of teen-age smokers prefer brands depicted by the Marlboro Man, Joe Camel and the fun couples of Newport, a study published today says.

The study does not prove that seeing these advertisements makes a teen-ager who otherwise would not have smoked take up the habit, but it provides evidence to support pending Federal regulation of cigarette advertisements, said the study's author, Richard Pollay of the University of British Columbia.

"Whatever the intent of the firms," the author said, "it is the youth of the nation who pay attention to and respond to the advertising." Mr. Pollay's 20-year tracking of cigarette advertising was published in the *Journal of Marketing*.

Tobacco companies insist that their advertisements are not directed toward teen-agers and that they are merely an effort to get adults to switch brands. The industry also runs a program that trains store clerks not to sell cigarettes to minors.

"Teens follow adults and they do the popular thing," said Thomas Lauria, a spokesman for the Tobacco Institute. "Teens will wear popular sneakers, drink popular sodas and popular beers and smoke popular cigarettes."

Anti-smoking groups have long contended that cigarette advertising encourages teen-agers to smoke by portraying the habit as fun and sexy.

An estimated three million teen-agers smoke, consuming nearly a billion packs a year. Now the Gov-

ernment is preparing to restrict cigarette advertising to areas where teen-agers are less likely to see it, and to curb images that it considers appealing to young people.

Mr. Pollay tracked nine cigarette brands. On average, he said, whenever a brand increased its advertising budget by 10 percent, its share of the adult smoking market grew 3 percent but its share of teen-age smokers increased 9 percent.

Three brands had the biggest gap between adult and teen-age consumers. Marlboro accounted for 12.7 percent of the industry's advertising and had 59.5 percent of the teen-age smoking market, but only 21.9 percent of the adult market.

Camel accounted for 4.9 percent of the advertising and had 8.7 percent of teen-age smokers and 3.7 percent of adults. Newport accounted for 4.7 percent of advertising and had 11.1 percent of teen-age smokers and 3.8 percent of adults.

But having the most advertising did not always mean having the most teen-age smokers. Winston, for example, accounted for 6.9 percent of the advertisements but had only 2.5 percent of the teen-age smoking market, as against 9.6 percent of adults.

The advertisements had to catch a teen-ager's eye, Mr. Pollay said. Winston advertisements, for example, are known for mountain views.

The new three-dimensional Joe Camel offering smokers free concert tickets is more "likely to be particularly effective among adolescents," he added.

Maura Ellis, a spokeswoman for the RJR Nabisco Holdings Corporation, whose subsidiary, R.J. Reynolds Tobacco, manufactures Camels, called the offering of concert tickets "a very broad-based, very adult and in some ways upscale promotion."

Camel aims for upscale customers in their 20's, Ms. Ellis said, noting that those people are the same customers who buy Ticketmaster tickets. Ninety percent of Ticketmaster customers are over 21, she said, and most earn more than \$35,000 a year.

## Study of 19,000 Finds No 'Gulf War Syndrome'

WASHINGTON, April 3 (AP) — A clinical study of thousands of veterans of the Persian Gulf war has found frequent cases of headaches, fatigue, memory loss and depression but no single cause or mystery ailment to support suspicions about the existence of a gulf war syndrome.

The survey said 36 percent of the patients suffered from psychological or ill-defined ailments in a wide variety of diagnoses.

The study of 18,924 veterans, the largest of its kind by the Pentagon, was conducted over the last two years at an estimated cost of \$80 million and involved thorough medical examinations of most of the more than 20,000 gulf war veterans who registered for a special program with the Pentagon. The program,

which is continuing, is open to gulf veterans, of which there are over 500,000, and family members.

The survey, released on Tuesday, was prompted by some veterans' persistent complaints that they suffer from a mystery disease, possibly the result of a parasite or chemical war agent, that causes chronic fatigue, skin rashes, memory loss and other ailments. Defense Department medical teams did find many of those ailments in the survey. The most common complaints were joint pain, fatigue, headache, memory loss, sleep loss, rash and depression.

In only a few cases were the symptoms so serious that patients were unable to work. The results were consistent with preliminary Pentagon reports released during the early

stages of the survey.

Dr. Stephen C. Joseph, Assistant Secretary of Defense for health affairs, said the study represented "what will in all likelihood be the definitive report." But Mr. Joseph said the Pentagon would continue to provide services to gulf veterans and would continue to study the issue.

Of those examined in the survey, 18 percent were found to have symptoms with psychological causes; 18 percent had ailments with ill-defined causes, and 18 percent had ailments that were "musculoskeletal" in origin. Ten percent were found to be healthy, and smaller percentages had ailments involving the nervous system, the digestive system, the respiratory system or skin disease.

# Abortion Clinics Report Drop in Harassing Incidents

By MIREYA NAVARRO

CORAL SPRINGS, Fla., Apr. 3 — In a state that has been one of the bloodiest battlegrounds in the abortion debate, the anti-abortion pickets outside the office of Dr. Ben Graber, a legislator who sometimes performs the procedure as part of his gynecological practice, would not have been surprising in the past.

But that protest two weeks ago was the first he had faced in three years, and their actions paled in comparison to those of the past, he says, when he has been threatened and stalked, and demonstrators chained themselves to his office door and forced him to shut down a clinic.

A new survey by abortion providers found that the lull that Dr. Graber experienced was not unique: violence and harassment by abortion protesters across the nation dropped significantly in the first seven months of 1995. The survey of 310 clinics, to be released this week by the Feminist Majority Foundation, an advocacy group in Arlington, Va., attributes the trend to a 1994 Federal law guaranteeing access to clinics that provide abortion and to a Supreme Court ruling that year that upheld the constitutionality of "buffer zones" to keep protesters away from the offices.

It is the first time in the three years of the survey that more clinics reported decreases in violent incidents than increases, the group said.

"It is definitely a major improvement and it is directly correlated with law-enforcement response," said Eleanor Smeal, the foundation's president.

Clinic blockades have all but disappeared and death threats, which have in the past been a prelude to violence, were noticeably down.

Among surveyed clinics, 39 percent reported instances of serious violence and harassment like arson and death threats in the period of study last year, compared with 52 percent in a comparable 1994 period.

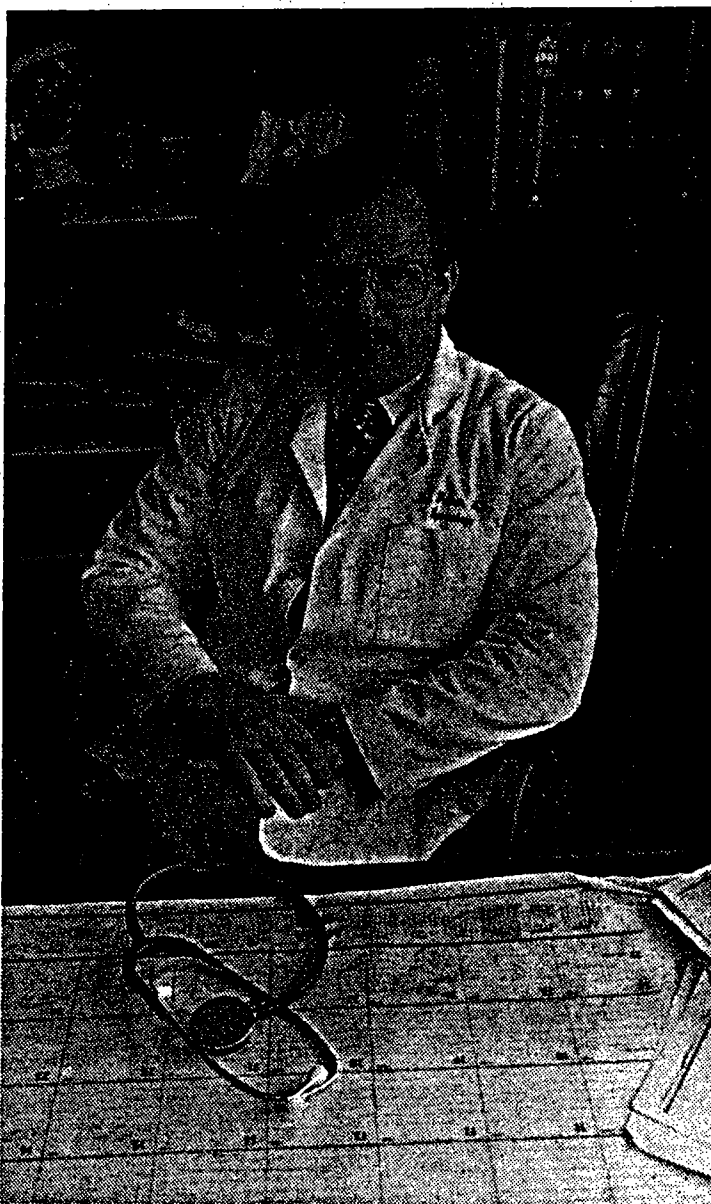
The proportion of clinics that suffered acts of vandalism — from nails in clinic driveways, to broken windows and tampered utilities — dropped to 25 percent from 35 percent, the survey found.

But the number of clinics reporting that their staff members were being harassed, including some workers whose homes were picketed, was about the same as in 1994, about one in five.

Clinics in general took extra security measures after two receptionists were killed at abortion clinics in Brookline, Mass., in December 1994, but about a third of those surveyed were also protected under civil injunctions or buffer zones that limit protesters to a certain distance from entrances.

In Florida, the only state where antiabortion extremists have killed doctors, an eight-foot "law-enforcement area" at the murdered doctors' clinics in Pensacola brought in a permanent police presence and has kept away all but small prayer groups that do not interfere with patients, local abortion rights advocates say.

Gone are the bullhorns, the video cameras and what a former clinic



Dr. Ben Graber, a gynecologist, recently faced the first anti-abortion protests at his Coral Gables, Fla., office in three years.

## Abortion groups cite Federal access law and a Supreme Court ruling.

escort called the "party" atmosphere of earlier protests.

"It's 300 percent better than it was a year ago," said Hallie Joyce, a clinic escort for two years who now heads the Pensacola chapter of the Religious Coalition for Reproductive Choice.

In Tallahassee, tensions between anti-abortion groups and Dr. Graber rose when, as chairman of the state House of Representatives' health-care committee, he refused to schedule hearings two weeks ago on a bill requiring a 24-hour waiting period for women requesting abortions.

But he said he has faced only a one-day protest with little of the vehemence of the past.

Far from intimidated, Dr. Graber, who does not perform many abortions or act as a major advocate, settled a lawsuit last year against a church and others who had regularly blocked doors to a clinic in Pompano Beach, winning damages and an end to blockades.

"It's something you do because it needs to be done," Dr. Graber, who is now running for Congress, said of abortions. "When you don't have legal abortions women die."

Abortion providers attribute the easing of tensions to the enactment in May 1994 of the Freedom of Access to Clinic Entrances Act, which permits civil and criminal actions against those who use force to obstruct abortion patients and staff. They also said that local law-enforcement authorities have been more likely to respond to complaints with arrests or investigations.

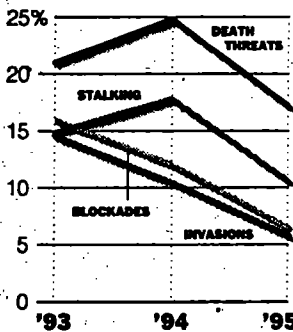
After the 1993 murder of Dr. David Gunn and the 1994 murders of Dr. John B. Britton and clinic escort James H. Barrett in Pensacola, Federal marshals began protecting 20 to 25 clinics nationwide. That number is

### A CLOSER LOOK

#### Incidents in Decline

The percentage of clinics providing abortions that reported harassment and violence has declined, a survey by the Feminist Majority Foundation found.

PERCENT OF CLINICS REPORTING INCIDENTS IN FIRST 7 MONTHS OF EACH YEAR



Source: Feminist Majority Foundation

now down to six because the threat is perceived to have diminished and because local law enforcement have taken over vigilance, said United States Marshal Service spokesman Bill Licatovich.

Some abortion opponents contend that the restrictions around clinics have also chilled legitimate protest and free-speech. (The Supreme Court, which has upheld buffer zones, this month agreed to decide whether protesters have a free-speech right to approach abortion patients as they walk toward a clinic to try to dissuade them from the procedure.) The opponents also say that anti-abortion leaders should be given some credit for condemning violence.

"We were responsible, we were balanced, and people saw that those in our movement wouldn't tolerate that," said Patrick Mahoney, executive director of the Christian Defense Coalition, a lobbying group in Washington, who, as head of Florida's chapter of Operation Rescue, was arrested during protests against Dr. Graber and was sued by him.

The Rev. Flip Benham, director of Operation Rescue National, said lawsuits and arrests had reduced the number of demonstrators but had not diminished their effectiveness. He cited the reduced numbers of abortions and abortion providers nationally.

"The abortion industry is crumbling under the weight of its own sin and we say 'Hallelujah!'" he said.

In battlegrounds like Pensacola, where anti-abortion violence dates back to the Christmas 1984 bombing of a clinic, there is still fear that the drop in violence may not last.

"There's incredible fear," said Jodie Manale, an abortion-rights lobbyist from Pensacola. "They just know that they are being watched more carefully. My sense is that it's a temporary delay of the game."

Continued From Page A1

## A United Front By Big Tobacco Starts to Crack

### Liggett Agrees to Settle Class-Action Lawsuit

By BARNABY J. FEDER

One of the nation's major tobacco companies broke ranks yesterday and agreed to settle a huge class-action lawsuit, exposing cracks in the powerful industry alliance that has battled antismoking cases for decades.

The Liggett Group, the smallest of the nation's five major cigarette companies, and lawyers representing millions of smokers agreed to drop the company from the suit in return for payments to a national quit-smoking campaign and Liggett's promise to withdraw from the fight against new Food and Drug Administration tobacco regulations.

In addition to breaking the \$45 billion tobacco industry's previously solid ranks opposing both lawsuits and F.D.A. regulation, Liggett and the plaintiffs' lawyers were scrambling yesterday to broaden the settlement to another battleground: lawsuits brought by states to recover billions of dollars of Medicaid spending to treat illnesses that tobacco was blamed for.

"The industry's previously monolithic policy of denial, evasion, obfuscation and stonewalling has only served to enrich lawyers," Mike Moore, Attorney General for Mississippi, a pivotal figure in the negotiations with the states, said. "This could be the first big crack in the tobacco industry's 50-year-old dam."

The industry received yet another dose of bad news yesterday in the Florida Legislature. Despite an intensive lobbying campaign to overturn a law that made it easier for the state to establish liability in a suit to recoup Medicaid costs from tobacco companies, the industry lost when the State Senate failed to muster the votes to override a Governor's veto.

The accumulating challenges to the industry sent share prices down for all major tobacco companies despite analysts' comments playing down the likely impact of the Liggett action.

Liggett's larger rivals responded to the settlement by saying the agreement was riddled with loopholes, starting with a provision voiding the deal if any of the other defendants win the class-action suit. They also said Liggett's proposed payments to those suing the industry were so modest as to be unlikely to be approved in the court overseeing the class action. Even if the settlement is approved, they said, it would have no impact on most of the litigation facing the industry or its plans to aggressively contest the cases and further Federal regulation.

Nor is the agreement seen as hav-

ing any impact on a wide range of other issues vital to the industry, from Federal proposals to restrict smoking in workplaces to debate over whether local communities should be allowed to pass stricter tobacco laws than state or Federal Governments.

"The settlement addresses only a limited piece of the tobacco landscape and is so full of holes that it won't affect our approach to litigation or regulation," Steven Parrish, a spokesman for the Philip Morris Companies, the largest tobacco company, said.

Investors seemed to agree, sending shares of tobacco companies down but only modestly. Philip Morris shares fell \$4.375, to \$98. RJR Nabisco shares fell \$1, to \$33.875, while the stock of the Brooke Group, Liggett's parent, was up \$1.50, to \$9.875.

The settlement's framers concede that Liggett by itself, with just 2 percent of the market is a minuscule wedge. The money it proposes paying, based on a small percent of annual profits, represents three hours' profit for the industry as a whole. And while Liggett agreed in the settlement not to engage in several marketing and advertising practices the F.D.A. proposes to ban, those were symbolic concessions because Liggett, whose only name brand is Chesterfield, does little public marketing of the cheap private label brands in which it specializes.

"This appears to be a positive development," Dr. David A. Kessler, the F.D.A. commissioner, said in a cautious assessment. "It is encouraging that at least one company recognizes that there is a real effect on our children by all the advertising and promotion of the industry."

The stakes in a potential settlement could be higher though because Liggett's parent, the Brooke Group Ltd., is locked in a battle for control of RJR Nabisco Holdings Inc., the owner of RJR Tobacco, the nation's second-largest tobacco company. The terms of the settlement would extend to RJR if Brooke is successful and the two tobacco companies are merged as Bennett S. LeBow, Brooke's chairman, plans.

If that happened, the settlement would cover nearly 30 percent of the market and bring more than a billion dollars into programs to curb smoking over the next 25 years. In addition, any settlement with the states would be far more lucrative. A deal would also decimate the industry consensus that the only viable option for tobacco companies is to fight nearly every damage claim and challenge all regulations.

"It would no longer be a question of whether the companies will be liable, but what's the deal?" said Richard Daynard, executive director of the Tobacco Products Liability Project, which monitors tobacco-related litigation from Northeastern University in Boston.

Clearly, the settlement will have to be a much richer to satisfy many antitobacco activists and lawyers. "I think the settlement is outrageous," said Stan Rosenblatt, a lawyer who represents plaintiffs in two separate lawsuits against tobacco companies.

"People are being asked to give up their right to sue for cancer in exchange for a lousy discount at a Smoke Enders course," Mr. Rosenblatt said. "My goal is to destroy the industry and thereby save millions of lives."

Those who negotiated the settlement say that the abandonment of such a scorched-earth policy was the key to the deal, which they argue will have more benefits for current smokers and society.

"The breakthrough was the recognition that it was possible to construct a deal with public health benefits instead of just money," said Dr. David M. Burns, a medical school professor at the University of California at San Diego who drafted the Surgeon General's reports on smoking from 1975 to 1984 and is a frequent consultant to the Federal Gov-

ernment.

Dr. Burns, who was brought into the negotiations in mid-December to serve as a health policy adviser, said that the annual direct cost of smoking-related problems to society — about \$50 billion — exceeded total industry revenues so that any attempt to fully compensate victims monetarily would be fruitless. Current and future smokers would get a better deal by accepting less money in return for industry cooperation with stronger regulations, Dr. Burns said.

One key question was how much the settlement might strengthen the F.D.A. effort to assume a role regulating the industry. The industry argues that the F.D.A. has been repeatedly told by Congress that it has no authority over tobacco. But the agency, with strong support from President Clinton, is nonetheless asserting jurisdiction in an effort to lay down sweeping restrictions based on what it claims is new evidence that cigarettes are actually "nicotine-delivery devices" that are addicting millions of children annually. It is proposing sweeping new regulations on how tobacco is sold, distributed and advertised.

Liggett said it would no longer oppose the F.D.A.'s current proposals, but it did not go the extra step and agree that the agency had jurisdiction over the industry. It also said it would endorse parts of the agency's plan, such as a ban on advertis-

### Liggett's rivals say a settlement is riddled with loopholes and approval is unlikely.

ing within 1000 feet of schools or playgrounds. But it balked at the one F.D.A. proposal that would really pinch its current marketing program: a proposed restriction on point-of-purchase advertising displays in stores.

"No one in public health will say this is an adequate settlement for the industry in general, but it is an important first step," Dr. Burns said.

Critics say the step is too small to be acceptable. Several states that have balked at agreeing to use the settlement as a basis for ending the Medicaid cases privately agree with the major tobacco companies that Liggett's proposal looks more like a tool for Mr. LeBow's assault on RJR than a worthwhile settlement offer. Some noted that the terms could allow for the Castano lawyers to get more in fees than the states would get in compensation payments if Liggett is not merged with RJR.

"It would have to involve all the defendants and much more money," said Michael Cerisi, the lead counsel for Minnesota, which announced yesterday that it had refused the settlement plan.

Massachusetts, Mississippi, West Virginia and Florida were still actively involved as of last night, seeking a joint statement of intent with Liggett that could lead to a definitive deal by the end of the week. Louisiana, which filed suit yesterday, was also participating in the negotiations.

The size of the payments to the states would depend on the number that reached agreement, but one proposal would have Liggett pay four states \$4 million over 10 years and 2 percent to 7 percent of its pretax income over 24 years. The settlement would become far richer if Liggett succeeds in taking over RJR Nabisco.

The differences among the states partly reflect their varying assessments of their chances of winning in court. Minnesota, which has strong consumer protection laws and the state's Blue Cross/Blue Shield company as a co-plaintiff, has already won several pretrial rulings that are helping it pile up evidence.

Continued on Page D6, Column 5

# FORBES PLANNING ON DROPPING OUT OF G.O.P. CAMPAIGN

THE NEW YORK TIMES  
THURSDAY, MARCH 14, 1996

## 'TOO MUCH OF A REALIST' Only a Handful of Delegates After Having Spent at Least \$25 Million of Fortune

By ERNEST TOLLERSON

Steve Forbes, the publishing magnate who had challenged the Republican establishment on Capitol Hill with his call for a radical restructuring of the tax system, will drop out of the race for the Republican Presidential nomination today, his campaign manager said yesterday.

Mr. Forbes's decision came after he had spent \$25 million to \$30 million of his personal fortune, a record amount, in a quixotic quest for his party's nomination. In the end, he managed to win a mere 71 Republican convention delegates, less than 10 percent of the 996 needed to prevail. Calculated against the cost of his campaign, Mr. Forbes spent \$352,112 to \$422,535 for each delegate he gained.

Mr. Forbes first hinted that he was having second thoughts about continuing his candidacy on Tuesday night after his poor showing in the Super Tuesday primaries, each of which was won by Senator Bob Dole of Kansas. Mr. Forbes finished a distant second in Florida and third in the other six contests.

William Dal Col, the Forbes campaign manager, said Mr. Forbes realized that the days before next Tuesday's primaries in the Midwest would not be enough time for him to mount a credible challenge that might result in a primary victory or close second to the presumptive front-runner, Mr. Dole, the Senate majority leader.

"He's too much of a realist," Mr. Dal Col said. "He looked at it pragmatically and made his decision." He said Mr. Forbes informed him of his decision at about 10:45 yesterday morning in a brief conversation. Mr. Dal Col quoted Mr. Forbes as saying, "I've made a decision that it's time to get out."

Other close advisers, including former Senators Malcolm Wallop, Bob Kasten and Gordon J. Humphrey, were informed at midday in person or by telephone. Jack F. Kemp, the former Congressman from Buffalo and Housing Secretary in the Bush Administration who had recently endorsed Mr. Forbes's candidacy, was also told yesterday.

Reacting to word of Mr. Forbes's intentions, Senator Dole was quoted by The Associated Press as saying yesterday, "No doubt about it, it helps." Gov. Christine Todd Whit-

man of New Jersey, a childhood friend of Mr. Forbes who urged him on Monday to abandon the race, said his withdrawal was "in the best interests of a unified Republican Party." She said she intended to invite Mr. Forbes, who is a resident of New Jersey, to be a member of the state delegation committed to Mr. Dole at the Republican National Convention.

While Mr. Forbes has barely 16 percent of the votes cast during the Republican primary season, and a tenth of the delegates amassed by Mr. Dole, his candidacy nevertheless managed to remind Republicans nationwide that the supply-side wing of the party, however small, was still alive and well. His pro-growth-hope-and-opportunity banner inadvertently became a devastating critique of the Capitol Hill Republicans' Contract With America.

The Forbes candidacy managed to broaden the national focus of debate from just a discussion of cutting the deficit and balancing the Federal budget to include the question of what kinds of policies will produce a better economy, more jobs and economic security.

"Steve understood that the Republicans made a tactical error in approaching Medicaid/Medicare debate the way they did," said Ken Tomlinson, the former top editor of Reader's Digest, and an adviser to Mr. Forbes. Mr. Forbes's candidacy, he said, showed the party that it could champion conservative principles without advocating "root canal" Republicanism.

While flying from the Midwest to New Jersey on Tuesday night on his chartered campaign plane, Mr. Forbes discussed the same theme at length in an interview: "You can't govern by polling. You can't govern by focus groups. The Contract has a lot of sensible ideas but you have to give it coherence, an overview. And by emphasizing the budget so much instead of combining it with some of the tax and other positive changes, they left themselves open."

He continued: "What they did was say 'Gee, Ross Perot said the balanced budget was important. Ross Perot won 19 percent of the vote.' They didn't realize that people voted for Perot because they saw him as a lever to register that they wanted a change. It was a genuine protest vote. Again they lost sight sometimes, some of them, that a balanced budget is supposed to be a means to an end, not an end unto itself."

Depending on circumstances, Mr. Dal Col said that Mr. Forbes, who is 48, could be a Presidential candidate in the year 2000. "He's built a base, he's a bright, articulate spokesman," Mr. Dal Col said. "He clearly outlasted the professional politicians. He proved what he can do and it's a base to build on in the future."

The base Mr. Dal Col referred to was his clear-cut victory in the Arizona primary and a more ambiguous one in Delaware, where Mr. Forbes and Alan Keyes were the only ones to campaign in person.

Other observers were less certain about Mr. Forbes's future viability as a candidate or public policy figure. "The grass-roots support for supply side economics is relatively small," said Alan Brinkley, the Columbia University historian. "I don't think this is a popular proposal shared by many outside of elites of any kind."

In the interview on Tuesday, Mr. Forbes expressed interest in speaking at the Republican convention in San Diego, but it was clear that this was not his highest priority. Asked what role he would like to play, he said: "I look beyond the convention. I'll be directing my message to voters, to citizens."

In recent days, Mr. Forbes had added appeals to independents and pro-growth Democrats in his stump speeches, which focused on his advocacy of a 17 percent flat tax. "That's how you create a realignment," he said on Tuesday.

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By ALIX M. FREEDMAN

Staff Reporter of THE WALL STREET JOURNAL

Amid growing scrutiny of the tobacco industry, yet another federal grand jury—the fifth—is now investigating industry practices, this time involving the issue of secondhand smoke.

The grand jury, in Alexandria, Va., is looking into the relationship between the tobacco industry and a purportedly independent building-inspection firm that for years has played down the risks to non-smokers of inhaling secondhand smoke.

The Fairfax, Va., firm, Healthy Buildings International, has assured the public in numerous forums—including congressional subcommittees and state and municipal bodies—that smoking in well-ventilated buildings poses minimal health risks to occupants.

Among other things, prosecutors are examining whether HBI violated the law by failing to tell legislators and regulators that it was paid for some of its work by the Tobacco Institute, the industry trade group. The grand jury is also exploring whether HBI falsified data on secondhand smoke to make findings look more favorable to the industry, people familiar with the probe say. If HBI gave false testimony based on the data, that could constitute perjury.

From August 1985 through September 1994, HBI testified 129 times for the Tobacco Institute before various government groups, according to data provided to Democratic Rep. Henry Waxman of California by the Tobacco Institute. Prosecutors are looking at precisely how the firm identified itself in this testimony.

Gray Robertson, HBI's president, said yesterday: "I am absolutely certain that at no time was this company ever involved in any unprofessional business practices, and we never to my knowledge involved ourselves in any kind of fraudulent dealing with any client."

Brennan Dawson, a spokeswoman for the Tobacco Institute, said that it is a

## TOBACCO

matter of public record that HBI has been a consultant to the Tobacco Institute. "I can specifically recall any number of occasions at public hearings when HBI officials testified and among the first words out of their mouth was: 'I am here at the request of the Tobacco Institute,'" Ms. Dawson said.

In recent months, HBI has received grand-jury subpoenas seeking documents related to its work on secondhand smoke.

**Healthy Buildings International has assured the public in numerous forums that smoking in well-ventilated buildings poses minimal health risks to occupants.**

In addition, the grand jury has subpoenaed documents pertaining to HBI from Philip Morris Cos.; R.J. Reynolds Tobacco Co., a unit of RJR Nabisco Holdings Corp.; Brown & Williamson Tobacco Corp., a unit of B.A.T. Industries PLC; Lorillard Tobacco Co., a unit of Loews Corp.; Liggett & Myers, a unit of Brooke Group Ltd.; the Tobacco Institute; and the Center for Indoor Air Research, an industry-funded research organization for which HBI conducted studies on secondhand smoke.

Payments from these organizations to HBI totaled several million dollars, people familiar with the inquiry say. Some of these payments were first made through the Tobacco Institute and then through the prestigious Washington, D.C., law firm

Covington & Burling, which directly made the payments to HBI, the people say.

People close to the criminal probe say prosecutors want to know whether the industry was using Covington & Burling in an effort to shield its ties to HBI and preserve HBI's appearance of independence. While the arrangement might be lawful in itself, prosecutors want to know if it was part of a scheme by HBI and the tobacco industry to mislead governmental bodies.

Involving a law firm in the matter could also be helpful if HBI's research produced results that the tobacco industry didn't want to make public. The law firm could invoke attorney-client privilege to keep research in its possession under wraps, people familiar with the investigation say. It isn't yet clear whether prosecutors expect to look specifically at Covington & Burling's role in the matter, these people say.

The Tobacco Institute's Ms. Dawson declined to comment on the amount of money paid to HBI. But she said that the "Tobacco Institute paid HBI directly," adding, "I have no knowledge of direct payments made by Covington & Burling."

Edward Dunkelberger, a partner at Covington, acknowledged that the firm represented the Tobacco Institute on various matters but declined to discuss any Covington role in funding HBI. "Whether something like that was or wasn't done is traditionally highly confidential between lawyer and client," Mr. Dunkelberger said.

In launching so many separate investigations, federal prosecutors acknowledged that the level of scrutiny lavished on a single industry is highly unusual. But they maintain that the intensity of the attack, rather than signaling a witch hunt, reflects the scope of the allegations against tobacco companies.

"This isn't a concerted strategy to

drive the tobacco industry out of business," explains one prosecutor in Washington, adding: "This is a coordinated effort to make sure we don't trip over each other. We are all trying to work very closely and trying to share information."

The controversy over secondhand smoke dates back to 1971, when the surgeon general first raised the possibility of health risks from the smoke that comes off the burning end of the cigarette. In the mid-1980s, a major report from the surgeon general concluded that secondhand smoke causes lung cancer and other diseases.

At the end of 1992, the Environmental Protection Agency said secondhand smoke was responsible for the lung-cancer deaths of at least 3,000 nonsmokers a year. The EPA recommended that smokers smoke in separately ventilated lounges or outside

**Prosecutors are examining whether Healthy Buildings International violated the law by failing to tell legislators and regulators that it was paid for some of its work by the Tobacco Institute.**

their buildings. Also in 1992, the American Heart Association conducted a broader epidemiological review and concluded that secondhand smoke was implicated in the deaths of as many as 45,000 nonsmokers from heart disease and lung cancer combined.

Tobacco-industry officials say that  
Please Turn to Page B3, Column 4

Wall Street Journal 2/15

**W**

## Secondhand Smoke Is Focus of New Probe By Federal Grand Jury

*Continued From Page B1*

such research is flawed because people overestimate the amount of smoke they have been exposed to or lie about their own smoking habits. In recent years, HBI has played a key role in keeping the controversy alive.

Mr. Robertson's premise is that poor ventilation, not individual contaminants like tobacco smoke, is the main cause of indoor air pollution. During congressional hearings into tobacco in March 1994, Mr. Robertson testified that having the correct level of ventilation and filtration in a building "does adequately cope with tobacco smoke."

Until 1985, when HBI was retained by the landlord of the Tobacco Institute's building to inspect its ventilation system, the company was an obscure firm that consulted on indoor-air pollution. "There were these men in our offices checking our air quality and we asked what they were doing and that's how a relationship developed," Ms. Dawson recalls.

HBI emerged from this chance encounter with the tobacco trade group as a significant client. But as HBI officials toured the country to allay legislators' and

regulators' concerns about secondhand smoke, they often made no reference to the firm's tobacco patrons, according to members of Rep. Waxman's staff who investigated HBI and issued a report in 1994. A transcript of 1991 testimony in the Utah legislature by Jeffrey Seckler, then an HBI employee, indicates that he didn't identify the Tobacco Institute as a client. Instead, he ticked off such clients as the Supreme Court and the United Nations.

Marc Efron, a lawyer for HBI, says that HBI "often" disclosed its ties. In an Oct. 26, 1994, letter to Congressman Waxman, Jeffrey Howard, another HBI lawyer, cited four instances when HBI volunteered its tobacco ties to federal and local government bodies and stated: "HBI's relationship with tobacco interests was never a secret."

Mr. Seckler, an HBI employee from 1989 to 1991, may turn out to be an important figure in the investigation. In 1993, Mr. Seckler brought a civil suit against HBI, alleging it defrauded federal agencies by failing to disclose that it "was directly and secretly subsidized" by the Tobacco Institute and its member companies. The Justice Department declined to join the case, which was filed in federal court in Washington. The case is expected to go trial in March. Mr. Seckler couldn't be reached for comment. His lawyer didn't return calls seeking comment.

But in a Dec. 6, 1994, affidavit that Mr. Seckler provided to the congressional subcommittee on health and the environ-

ment, he said he was instructed by Mr. Robertson not to disclose HBI's relationship with the Tobacco Institute unless directly asked to do so. The purpose, Mr. Seckler said, was to fulfill the Tobacco Institute's objective that "HBI always be perceived as an independent expert with no loyalties to any outside group."

The question of whether HBI falsified data has previously drawn scrutiny from Rep. Waxman, then chairman of the subcommittee, and his staff. In the congressman's Dec. 20, 1994, report, three HBI employees are quoted as saying that HBI's data was often faked to minimize the appearance of health risks. The report cited "both testimonial and documentary evidence of a widespread practice of data alteration at HBI."

For instance, after reviewing raw data used by HBI for a 1991 study of 585 buildings, conducted for the Center for Indoor Air Research, the Waxman report stated that "significant alterations occurred in over 25%" of the measurements of environmental tobacco smoke.

In a Dec. 15, 1994, letter to Phillip Barnett, the counsel for the subcommittee at the time, Mr. Howard, the HBI lawyer, noted that the subcommittee had raised concerns about some 17 offices in the survey of 585 buildings. Mr. Howard wrote: "HBI has provided a technically sound explanation for all of these, other than perhaps four offices, and vehemently denies that any of these data were falsified as you seem to suggest."

In Mississippi, attorney general Mike Moore and attorney Scruggs are leading the charge with a legal theory, never before deployed in anti-tobacco suits, called "unjust enrichment." Rather than suing on behalf of specific sick individuals, a strategy that has yet to succeed, the states are claiming they are tobacco's hit-and-run victims, stuck paying out billions of taxpayer dollars each year to treat the array of health problems wrought by smoking. In other words, says one frustrated tobacco-industry lawyer, "the states are taking the position that they don't have to prove anything except the company sold the cigarettes." This denies tobacco's advocates all their favorite defenses--that the individual's health problems may have been caused by workplace or environmental toxins, or by personal habits such as lack of exercise and a high-fat diet, and that in any case, he or she made the choice to smoke. Says Dan Donahue, senior vice president and deputy general counsel for RJ Reynolds Tobacco: "It's brand-new law. There have nowhere, never, ever, been the same kinds of claims made as they're making."

That would explain the vehemence with which tobacco is fighting back--in some cases pre-emptively. Industry lawyers have already filed suits trying to block the possible Maryland and Texas cases. In West Virginia, Governor W. Gaston Caperton, with the support of several of his own judicial appointees, has for now effectively scuttled that action by suing his own attorney general, Darrell McGraw, on the grounds that he did not have the authority to file a Medicaid suit. A few weeks ago, Mississippi Governor Kirk Fordice, following Caperton's example, filed a similar suit against attorney general Moore. Fordice, though elected with the help of tobacco contributions, claims he is no special friend to the cigarette makers, but is merely concerned that industry will be driven from Mississippi if corporations are held liable for every illness their products cause. "When pepperoni kills 425,000 people a year, we'll go after the pepperoni business," snaps Moore, who won his third term with the backing of friendly plaintiffs' lawyers. "Do you know what the 'AG' in attorney general stands for?" RJR's Donahue asks. "Aspiring Governor."

The tobacco wars may be hottest in Florida right now. In the last five minutes of the last day of the 1994 session, the state legislature overwhelmingly--and according to some, unwittingly--passed Senate Bill 2110, a Medicaid amendment that holds the tobacco industry responsible for the estimated \$300 million to \$800 million a year the state pays to treat tobacco-related illnesses and that allows lawsuits to collect these funds to use statistical evidence compiled by the Centers for Disease Control. "Profound sneak attack," charges one tobacco lobbyist. The tobacco industry and some associated industries, like U.S. Sugar, filed suit to repeal the bill; the Florida Supreme Court is expected to rule soon. Although last year Governor Lawton Chiles vetoed the legislature's repeal of the legislation, the lawmakers are expected to override that veto next month. Many have been swayed by lobbyists' arguments that if the state can sue the tobacco industry no one is safe, and the liquor industry and manufacturers of high-fat foods had better start worrying. "There is, after all, such a thing as equal protection," notes Donahue, "even for the tobacco industry." But Chiles, vehemently anti-tobacco, has proclaimed his determination to make hash of his political enemies and refile the suit if necessary. "The Governor has made it very clear [that] if you expect access to this office to get the great favors, you're with him in this issue," says his general counsel, Dexter Douglas. "We've adopted fixed bayonets, and when that order comes, that's it. It's them or you. You start using the knives when the bullets run out."

As tobacco champions twist their minds around possible defenses to the suits, they appear to be falling all over themselves in a vaudeville of contradictions. On the one hand, they argue, disease cannot be definitively linked to smoking; on the other, they have suddenly begun to point out that of course cigarettes are bad for us. "How can anybody, in good faith, take the position that the risks of the use of this product are not well known to everyone?" demands Donahue. "When you come to the bottom line, what does the consuming public know? They know everything." As Philip Morris attorney Mike York puts it, "You'd have to be living under a rock to not know there are risks associated with smoking."

The lawyers are less quick with a response, however, when asked about what Florida assistant attorney general Jim Peters refers to as "the big bad bear out there": the federal perjury probe launched after seven tobacco CEOs testifying at the Waxman hearings swore that nicotine was not addictive. Philip Morris lawyers point out that their former CEO, William Campbell, did not say tobacco is not addictive: he only said he doesn't believe it is addictive, a "personal viewpoint he has every right to hold," says York. Some tobacco experts speculate that the tobacco industry may seek a deal in which cigarette companies agree to some level of FDA regulation in return for corporate and personal immunity from any charges of wrongdoing.

For looming over the industry is yet another threat, this one from Washington, where FDA chief David Kessler is considering a series of regulations on tobacco advertising and tobacco's availability to teenagers. The FDA proposal, which would ban cigarette-vending machines, free samples, mail-order sales, and outdoor advertising within 1,000 feet of schools, depends on an agency determination that cigarettes are a "drug-device combination product." But such a move would provoke cries of anguish from tobacco allies, who claim that Kessler, with the support of President Clinton, is actually seeking an all-out ban. "I believe nothing less than complete prohibition is good enough for the regulators over at the FDA and the anti-tobacco zealots," said Kentucky's Democratic Senator Wendell Ford last fall. Kessler insists this is not the case--that the FDA has no interest in provoking the kind of social disruption that would result from weaning 40 million smokers from nicotine.

Even if the teen smoking regulations were to go into effect, most would merely shore up existing, if unenforced, laws. And just as smoking wafts in and out of vogue, reports of tobacco's demise may be greatly exaggerated. David Adelman, a tobacco-industry analyst for Dean Witter Reynolds, points out that the industry has a remarkable ability to shift gears. "Ninety-five different things have come out in the past, and you have the anti-tobacco people saying this is it, this is going to be the case that brings victory," he says. "But it's a pretty high hurdle." As Congressman Waxman concedes, "Tobacco companies are the strongest special-interest group in Washington."

Meanwhile, Jeffrey Wigand, a devotee of things Zen since a stint in Japan as an Air Force medical technician, sits remarkably calmly in the eye of a storm he helped create, maintaining what may be the most realistic vision of how far the tobacco wars can ultimately go. "I'm not an antismoking activist," he insists. "I think people are going to continue smoking, no matter what." And that inescapable fact, in the end, may be the best weapon Big Tobacco has.

--Reported by Hannah Bloch/Washington, Elisabeth Kauffman/Nashville, Elaine Rivera/New York and Elaine Shannon/Louisville



Text Only

TIME Magazine

March 11, 1996 Volume 147, No. 11

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## TOBACCO BLUES

The tobacco industry has never lost a lawsuit. But a new billion-dollar legal assault, and a high-ranking defector, may change that

*ELIZABETH GLEICK*

One night a few months ago, Carl Alfarano returned to his Westchester, New York, home after work to discover that he had just missed a visit from two private detectives. They told his wife they wanted his help with a "personality sketch" of Alfarano's old friend Jeffrey Wigand. The pair claimed they had come in person only because they did not have Alfarano's telephone number--something Alfarano insists is not true. "I found it rather unnerving," says Alfarano, who worked with Wigand at two medical-device companies in the 1980s and who gave the men no information. But when he learned about the thick dossier the detectives had managed to compile about Wigand, a former vice president of Brown & Williamson and the highest-ranking tobacco executive ever to turn whistle blower, he was appalled. "It hit me like a silver bullet," says Alfarano. "[B&W] can deal with one or two defectors, but I think [they wanted] to send a signal to anybody else who's thinking about testifying."

That would explain why the team from Investigative Group Inc., a high-powered Washington detective agency, was so assiduous in its investigation that it also paid visits to Wigand's first wife and tried to track down his 22-year-old daughter from that marriage. B&W lawyers even subpoenaed Wigand's personnel record from the Louisville, Kentucky, school system, where Wigand now teaches science and Japanese. The investigators may have thought they would turn Wigand's fellow educators against him. They were wrong. "Not all of us agree with what [Wigand] is doing," says Barbara Fendley, who supervises Wigand at DuPont Manual High School and is married to a tobacco farmer. "But we all support his right to do what he thinks is right. We're bigger than Brown & Williamson."

To date, however, no one has ever bested the nearly \$50 billion-a-year tobacco industry, which historically has been willing to spend whatever it takes to neutralize its enemies. In all the years of litigation against cigarette makers, they have yet to pay out even a nickel in damages.

But Wigand, with his allegations that B&W manipulated nicotine levels in cigarettes, knowingly used a carcinogenic additive to make pipe tobacco taste better and covered up research into "safer" cigarettes, has begun talking to lawyers, grand juries and the media at an inopportune moment for tobacco. The Food and Drug Administration has proposed to regulate nicotine as a drug in cigarettes; teen smoking rates have taken an alarming jump; and five grand juries are looking into possible perjury and malfeasance by industry executives. At the same time, a novel legal strategy, which would hold the tobacco industry responsible to taxpayers rather than individual smokers, is gaining momentum around the country. "The current round of attacks on the tobacco industry is better thought out, better funded and better organized than at any time in history," says Matthew Myers, a Washington lawyer who has spent 14 years litigating cases on behalf of the Coalition on Smoking OR Health. "And it comes at a time when the tobacco industry is more vulnerable than ever, given the disclosures from inside the industry."

So far, no B&W colleagues have jumped the wall to support Wigand; in fact, none have even contacted him to offer words of encouragement. That is understandable: Wigand, who says he received two telephoned death threats after he began cooperating with investigators, has been reduced to traveling with a security guard, and another guard watches over his two young daughters. His corporate career in the biomedical field, which until he worked at B&W had been on a steady upward

trajectory ("I wanted to be CEO of a company," he confesses), has foundered. His marriage hit the rocks owing, he says, to the stress of battling his former employer. Nevertheless, Wigand, 53, tells Time that now that he has begun to talk, he has no plans to stop. Though he has been tied up in suits filed by his former employers since he left the company in 1993, he is countersuing, claiming B&W invaded his privacy, made false statements about his personal life, destroyed evidence and abused the legal process in an effort to intimidate him. He is also weighing a libel action against B&W, IGI and Manhattan publicist John Scanlon for waging what he regards as a smear campaign. "I believe the industry as a whole is flagrantly deceptive and dishonest," he explains. "It says one thing and does another, and I think the public needs to know that."

His allies believe Wigand is just the man to bring a jury into tobacco's inner sanctum. "Wigand can personalize the story and give...firsthand evidence...as to how the industry was conducting its business and what its motivations were," says Scott Ballin of the Coalition on Smoking OR Health, which includes the American Cancer Society, the American Lung Association and the American Heart Association. "The efforts that they are going through to discredit him are directly proportional to the damage they know his testimony can do," says Richard Scruggs, the Mississippi lawyer who is shepherding Wigand through the courts.

Even if Wigand were mysteriously to vanish tomorrow, however, antismoking advocates are convinced the deck is at last stacked in their favor. Through earlier litigation and the efforts of other whistle blowers, 30 years of internal documents have been exhumed that appear more damning than any single witness. They confirm, for instance, that, as one Philip Morris executive put it in the early 1970s, "smoke is beyond question the most optimized vehicle of nicotine and the cigarette the most optimized dispenser of smoke," and that as early as 1963 B&W executives knew nicotine was addictive. "Of course it's addictive," F. Ross Johnson, former CEO of RJR Nabisco, told the Wall Street Journal two years ago. "That's why you smoke."

Many tobacco executives swore otherwise when testifying before Representative Henry Waxman's health subcommittee in 1994, but consistency has never been central to the industry's legal defense--overwhelming force has. As RJ Reynolds lawyer J. Michael Jordan put it in a 1988 memorandum, "To paraphrase General Patton, the way we won those cases was not by spending all of Reynolds' money but by making that other son of a bitch spend all his." Liggett Group, for instance, spent an estimated \$75 million fighting the Cipollone case in New Jersey; though the jury awarded the husband of Rose Cipollone, who died of lung cancer, \$400,000 in damages, that verdict was overturned on appeal. Tobacco experts insist they are undaunted by the slew of new lawsuits, and they point out that Jeffrey Wigand has yet to be cross-examined. In fact, five law firms are representing B&W in its breach-of-contract lawsuit against Wigand, who notes dryly, "I'm just a little schoolteacher, and they are how many? Pretty even odds, I think."

Now, however, the anti-tobacco forces are taking a page from the cigarette makers' own playbook. "This king-of-the-mountain game they've played is a game that would be played by a schoolyard bully," says Northeastern University law professor Richard Daynard, chair of the Tobacco Products Liability Project, which conducts research for anti-tobacco lawsuits. "After you've beaten a couple of kids up, nobody dares take you on. But the moment the kids say, 'We can take him if we band together,' the bully is finished." It helps too that the new legal strategy of states filing third-party claims against the tobacco companies to recoup the Medicaid dollars spent treating smoking-related illness involves possible monetary settlements--and legal fees--so huge that anti-tobacco litigation is now attracting the top guns of tort law. To date, five states--Florida, Minnesota, Mississippi, West Virginia and Massachusetts--have filed such suits. Maryland plans to join the fray soon, and Texas may follow. In most states, prestigious private firms have agreed to bear all costs of litigation, hoping to recoup those, and much more, from their percentage of projected billion-dollar judgments.

For big tobacco, which has traditionally deployed veritable armies of attorneys from such white-shoe firms as King & Spalding in Atlanta, Covington & Burling in Washington and the Kansas City firm of Shook, Hardy & Bacon, this new assault amounts to a dangerous game of dominoes. "The moment they lose one the other states are going to have to file," says Daynard. "Imagine being the attorney general of a state and saying while my neighboring attorney general is getting \$400 million in restitution for the taxpayers of his state, I am not going to file as a matter of principle. At that point, you'd very quickly get a lot more cases filed than the industry can pay for." And the states that have filed so far are sharing documents, witnesses and strategies. Maryland attorney general J. Joseph Curran Jr., for example, says he has met with officials from 33 states who want information about launching similar suits.

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Transcript of a Press Conference by the President (part 1 of 2)  
To: National Desk

Contact: White House Press Office, 202-456-2100

WASHINGTON, Aug. 10 /U.S. Newswire/ -- Following is a transcript of a press conference by the President (part 1 of 2)

The East Room

1:32 P.M. EDT

THE PRESIDENT: Good afternoon. Today I am announcing broad executive action to protect the young people of the United States from the awful dangers of tobacco.

Over the years we have learned more and more about the dangers of addictive substances to our young people. In the '60s and '70s we came to realize the threat drugs posed to young Americans. In the '80s we came to grips with the awful problem of drunk driving among young people. It is time to take a third step to free our teenagers from addiction and dependency.

Adults are capable of making their own decisions about whether to smoke. But we all know that children are especially susceptible to the deadly temptation of tobacco and its skillful marketing. Today and every day this year, 3,000 young people will begin to smoke. One thousand of them ultimately will die of cancer, emphysema, heart disease, and other diseases caused by smoking. That's more than one million vulnerable young people a year being hooked on nicotine that ultimately could kill them.

Therefore, by executive authority, I will restrict sharply the advertising, promotion, distribution and marketing of cigarettes to teenagers. I do this on the basis of the best available scientific evidence, the findings of the American Medical Association, the American Cancer Society, the American Heart Association, the American Lung Association, the Centers for Disease Control. Fourteen months of study by the Food and Drug Administration confirms what we all know -- cigarettes and smokeless tobacco are harmful, highly addictive and aggressively marketed to our young people. The evidence is overwhelming, and the threat is immediate.

Our children face a health crisis that is getting worse. One-third more 8th-graders, and one-quarter more 10th-graders are smoking today than four years ago. One out of five high school seniors is a daily smoker. We need to act, and we must act now, before another generation of Americans is condemned to fight a difficult and grueling personal battle with an addiction that will cost millions of them their lives.

Adults make their own decisions about whether or not to smoke. Relatively few people start to smoke past their teens. Many adults have quit; many have tried and failed. But we all know that teenagers are especially susceptible to pressures. Pressure to the manipulation of mass media advertising, the pressure of the seduction of skilled marketing campaigns aimed at exploiting their insecurities and uncertainties about life.

When Joe Camel tells young children that smoking is cool, when billboards tell teens that smoking will lead to true romance, when Virginia Slims tells adolescents that cigarettes may make them thin and glamorous, then our children need our wisdom, our guidance and our experience. We're their parents and it is up to us to protect them.

So today I am authorizing the Food and Drug Administration to initiate a broad series of steps all designed to stop sales and marketing of cigarettes and smokeless tobacco to children. As a result, the following steps will be taken.

First, young people will have to prove their age with an I.D. card to buy cigarettes. Second, cigarette vending machines which circumvent any ban on sales to kids will be prohibited. Third, schools and playgrounds will be free of tobacco advertising on billboards in their neighborhoods. Fourth, images such as Joe Camel will not appear on billboards or in ads in publications that reach substantial numbers of children and teens. Fifth, teens won't be targeted by any marketing gimmicks, ranging from single cigarette sales to T-shirts, gym bags and sponsorship of sporting events. And, finally, the tobacco industry must fund and implement an annual \$150-million campaign aimed at stopping teens from smoking through educational efforts.

Now, these are all common-sense steps. They don't ban smoking; they don't bar advertising. We do not, in other words, seek to address activities that seek to sell cigarettes only to adults. We are stepping in to protect those who need our help, our vulnerable young people. And the evidence of increasing smoking in the last few years is plain and compelling.

Now, nobody much likes government regulation. And I would prefer it if we could have done this in some other way. The only other way I can think of is if Congress were to write these restrictions into law. They could do that. And if they do, this rule could become unnecessary. But it is wrong to believe that we can take a voluntary approach to this problem. And absent congressional action, and in the presence of a massive marketing and lobbying campaign by cigarette companies aimed at our children, clearly, I have no alternative but to do everything I can to bring this assault to a halt.

The issue has touched all of us in personal ways. We all know friends or family members whose lives were shortened because of their involvement with tobacco. The Vice President's sister, a heavy smoker who started as a teen, died of lung cancer. It is that kind of pain that I seek to spare other families and young children. Less smoking means less cancer, less illness, longer lives -- a stronger America. Acting together we can make a difference. With this concerted plan targeted at those practices that especially prey upon our children, we can save lives, and we will.

To those who produce and market cigarettes, I say today, take responsibility for your actions. Sell your products only to adults. Draw the line on children. Show by your deeds as well as your words that you recognize that it is wrong as well as illegal to hook one million children a year on tobacco.

Q Mr. President, with your decision on tobacco you're taking on one of the biggest cash crops in a region where you've already got major political problems. Are you writing off the south for next year's elections? And isn't this a blow to other Democratic candidates in tobacco states?

THE PRESIDENT: Well, first of all, the most important thing is that there is an epidemic among our children. You've got a third more 8th-graders, a quarter more 10-graders smoking than there were 10 years ago. Whatever the political consequences, a thousand kids a day are beginning a habit which will probably shorten their lives. I mean,

that is the issue. And I believe that is the issue everywhere.

I believe there are tobacco farmers in the states which grow tobacco, who have been involved in it a hundred years or more --their families -- who don't want their kids to start smoking. We're not talking about whether they have a right to grow tobacco, or reap the paltry four and a half cents, which is all they get out of a pack of cigarettes. We're talking about whether we are going to do what we know is the right thing to do to save the lives of America's children. And I think it is more important than any political consequence.

Q Mr. President, given the powerful evidence of the dangers of smoking which you cited, wouldn't it have been more logical to impose an outright ban instead of a regulatory partial step which has the effect of getting the federal government into the business of regulating the size of print in advertising?

THE PRESIDENT: Well, first I don't know that the federal government will regulate the size of print; we regulate the warning labels. And, of course, there is a proposal here on advertising to try to deal with restricting access to billboard advertising and others.

But I think it would be wrong to ban cigarettes outright because, number one, it's not illegal for adults to use them. Tens of millions of adults do use them, and I think it would be as ineffective as prohibition was. But I think to focus on our children is the right thing to do. Purchasing of cigarettes by young people, children is supposed to be illegal in all 50 states, but they do it regularly. These fine young people here were with me this morning, and one of them talked about how he bought cigarette pack after cigarette pack after cigarette pack out of vending machines to try to demonstrate to his local legislators that the laws were a sham. These will not make the laws a sham. This will enable us to save young people's lives.

Q Mr. President, last week you said that you did not want to advance a tobacco strategy that would get caught up in the courts and prevent any kind of action from taking place for years. Now you seem to have embarked on that strategy. Tobacco companies have already today filed suit against your proposals. Why did you determine a voluntary effort in concert with the tobacco companies would not work? And is there any hope for some sort of compromise, some sort of either compromise with the tobacco companies or congressional action before you implement these regulations?

THE PRESIDENT: Well, first of all, I had hoped that the tobacco companies would agree to support these restrictions and to put them in law. And it's still not too late for that. The FDA -- Dr. Kessler has announced today a rulemaking procedure on the assumption of jurisdiction and on the specifics that I just outlined. If the tobacco companies accept those and this Congress will write them into law, then you will not have a long regulatory proceeding. But you will have immediate -- immediate -- effects. That is, if they would rather have a law than federal regulation, the FDA Director, Dr. Kessler, and I would rather have an immediate impact on teen smoking, not two years of litigation and then start the work. So it is not too late for that.

But I am against a voluntary plan. I'm against it for several reasons. First of all, there would be no way to enforce it. Secondly, the history of voluntary agreements with the tobacco industry is not good, to put it mildly. And, thirdly, even if they tried to adhere to it I don't believe they could legally do so.

Let me just give you one example. Suppose you were in the vending machine business and you sued the tobacco companies for deciding together that they were going to not let your vending machines go anywhere, without a legal requirement there's a good chance that could be held in a court of law to be a restraint of trade. So I think even if they tried to do it, they couldn't do it.

So we have to have a mandatory system. But I would just as soon have an act of Congress. Doctor Kessler agrees because we've got an epidemic of teen smoking, and far better to start right now as soon as we can pass a law than wait until we wade through all this litigation.

Q In going after teenage smoking, Mr. President, did you consider including alcohol abuse as part of that? I know you mentioned drunk driving in your opening remarks, but alcohol among young people is thought to be as much of a problem as smoking is.

THE PRESIDENT: First of all, it is far less accessible. It's harder to get. What we have advocated there, and I hope the Congress will adopt, is a national zero tolerance for alcohol among young drivers. If we go to zero tolerance among young drivers, I think it will make a difference. Now, I noted last week and I would like to give the state credit for it -- one state adopted zero tolerance this last week. We are now up to 27 states that have done it on their own. But I think zero tolerance is the best thing to do.

Q Mr. President, are you sure you wouldn't like to pledge today not to smoke cigars anymore to set an example? (Laughter.)

THE PRESIDENT: Well, you mean should I go from five or six down to zero a year? Maybe so. But I don't think that's the point. The point I want to make is, number one, cigars and pipes were not found by the FDA to be part of this. Did you know that?

Number two, the issue is, for me -- I try to set a good example. I try never to do it when people see -- I admitted that I did do it when Captain O'Grady was found because I was so happy. It was a form of celebration. But I don't think you should let that become the issue. The issue is whether the children are smoking cigarettes in this country.

Q Mr. President, the steps that you outlined today are tailored very carefully to curb the sale of tobacco to young people. My question is, if they're implemented, will the FDA retain power that would allow them at a future date to ban or curb sale of tobacco to adults?

THE PRESIDENT: Well, of course, that's what the tobacco I guess. Our belief is that this is a pediatric disease. This is a problem for children; that when tobacco is lawful, it would be wrong for a government agency to try to in any way the access of adults to it --if it is lawful. So the answer is, I don't know what the law would be because, in this case, I'm not the lawyer for the agency. I can't give you a lawful answer. I can tell you that the policy of this government is that the focus should be on our children -- their health and their welfare. That is the focus.

If there is a worry underlying the question you asked, there is an answer to that worry -- put it in the law. Let's have the tobacco companies come in, let's talk to the members of Congress from the tobacco-growing states. Let's pass it into law. Pass these restrictions. Put them into law. Do it now. Then we won't have all these lawsuits, and we will begin immediately -- right now -- to

protect the children of this country. That is the answer.

Q Mr. President, on the FDA rule again. A coalition of advertisers is filing suit today saying that for a legal product, your rule would go far beyond any precedent in restricting First Amendment rights. Is there any precedent that you could cite that would be equivalent in its reach into the First Amendment? And, if not, are you not concerned about that aspect?

THE PRESIDENT: First of all, nobody who's ever held this office loved the First Amendment any more than I do. And no one has ever felt both edges of it any more than I have. I believe in the First Amendment. That's what my speech about religious freedom was about the other day. I believe in it.

But I would remind you of just a few basic facts. It is illegal for children to smoke cigarettes. How then can it be legal for people to advertise to children to get them to smoke cigarettes? And does anybody seriously doubt that a lot of this advertisement is designed to reach children so we get new customers for the tobacco companies as the old customers disappear? It cannot be a violation of the freedom of speech in this country to say that you cannot advertise to entice people to do something which they cannot legally do. So I just don't buy the First Amendment argument, it's just not true.

And by the way, that is why -- to go back to an earlier question -- the FDA ran the risk of having a rather complex rule to make it clear that there should be some freedom left, some considerable freedom left to advertise to adults.

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## HOW SMOKERS GET HOOKED

Take a puff of tobacco, and a blast of 4,000 chemicals fills your lungs, blood and brain. The smoke delivers a strong hit--about 2 mg in each cigarette--of nicotine, a compound the U.S. Surgeon General in 1988 deemed an addictive drug. But is nicotine alone what hooks people on tobacco? Apparently not. According to a new report, smoking may exert yet another powerfully addictive influence, one that enhances the effect of nicotine in what a leading researcher calls a "diabolical synergism."

In the new research, published in the journal *Nature*, scientists ran brain scans on smokers and abstainers and found that smokers had 40% less of a brain enzyme known as monoamine oxidase B, or MAO B. The enzyme breaks down dopamine, a chemical messenger in the brain associated with feelings of pleasure. Because of its exquisitely satisfying effects, says Joanna Fowler, a chemist at Brookhaven National Laboratory and one of the study's authors, "dopamine is crucially important in reinforcing and motivating behavior."

Thus smoking appears to create a self-perpetuating cycle: less MAO B leads to more dopamine, leads to more pleasure, leads to more smoking, leads to less MAO B and so on.

Scientists have not yet identified what factor in smoke lowers levels of MAO B, but Fowler speculates that it may be working synergistically with nicotine to boost dopamine levels. Earlier research showed that nicotine also increases dopamine levels by gripping like Velcro to receptors clustered in the forebrain.

There may be an even more dangerous synergy at work, according to Alan Leshner, director of the National Institute on Drug Abuse. "Every substance that is addicting leads to an increase in dopamine levels in the brain," he says. That may help explain why people who abuse one substance so often abuse another. Fowler likens the effect to creating a biochemical pathway or channel: "A drug may leave an imprint in the brain, so that the next drug becomes more pleasurable than it would otherwise." In short, the brain gets into a rut that just grows deeper and deeper.

--By Anastasia Toufexis. Reported by Alice Park/New York



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## JEFFREY WIGAND DOESN'T LIVE HERE ANYMORE

There are two Jeffrey Wigands. One is the grave, embattled, righteous man millions of viewers watched on 60 Minutes last month as he offered up potentially devastating inside information about the machinations of his former employer, tobacco giant Brown & Williamson. Then there is the somewhat antic teacher his high school students know and love. One day recently he was darting about the dingy science classroom at DuPont Manual High School in Louisville, Kentucky, like a gnome on triple espresso, questioning and wisecracking in his rapid-fire Bronx rasp as 30 ninth-grade advanced physical-science students went over results of field research. DuPont principal Beverly Keepers remembers walking in one time on Wigand, who holds a Ph.D. in endocrinology and biochemistry, to find him standing on a table juggling golf balls and keeping up a running patter on the properties of matter in motion. Says student Irina Rasputnis: "He's, like, the best teacher I've had this year."

Though much has been made of the fact that Wigand once earned \$300,000 a year as vice president for research and development at B&W and is now reduced to a \$30,000 teaching salary, in many ways Wigand's new profession suits him better. After a long career in the biomedical field working for such companies as Pfizer and Johnson & Johnson, he was unprepared, he says, for the rough-and-tumble culture he encountered at B&W when he started work there in 1989--a corporate environment dominated not by the scientists but by advertising and marketing men, and lawyers.

In the dossier B&W compiled about Wigand to help discredit his testimony, the whistle blower comes across as a chronic troublemaker, quick to complain if his consumer goods were lost or damaged. He also left a previous job under something of a cloud. Several weeks ago, Jack Paller, CEO of Biosonics, Inc., a New Jersey medical-device company, told TIME that in 1987 he had demanded the resignation of Wigand, who was chief operating officer, because he was abusive to the staff. Wigand's attorney contends his client was concerned that Paller was misrepresenting the efficacy of a product to the FDA and blew the whistle. The FDA did, in fact, investigate the device but found nothing improper. To many who have worked with him, Wigand possesses great integrity and refuses to engage in corporate gamesmanship. "If someone hands him a line of crap, he says, 'That's a line of crap,'" says Richard O'Leary, a psychologist and colleague of Wigand's in the 1980s at E. Merck Diagnostic Systems. Although O'Leary says his colleague was sometimes impatient, "I have never known him to cross the line into abusive behavior."

The B&W gumshoes also unearthed a domestic-violence complaint in his past, but Wigand takes issue with the dossier's claim that he "beat his wife." He does admit that he and his wife Lucretia had a serious fight in 1993, that 911 was called and that he volunteered to attend anger-control classes for about a week. "I don't think anybody is as pure as the driven snow," he says. "They've distorted the truth. It's not different from what they've done traditionally." Though he and his wife reconciled, in late January Wigand returned home from the airport after receiving an award in New York City to find that Lucretia had filed for divorce. "I saw this letter from an attorney and said, 'Hell, I don't want this,'" Wigand recalls. "But my little girl Rachel, she likes to open mail. She said, 'Open this.' So I opened it. I almost dropped." Lucretia Wigand says through her lawyer that "the notoriety of the claims and counterclaims between Dr. Wigand and the tobacco industry have caused tremendous stress to the family." Wigand now lives in a bare bachelor apartment, while his two daughters, Rachel, 9, who has spina bifida and requires expensive daily medical treatments, and Nicole, 7, remain with their mother. Lucretia's job at a Louisville department store offers adequate medical coverage for Rachel, whose condition is improving.

When asked if whistle blowing has been worth the price, Wigand responds, "I don't know yet." About all he can be sure of these days, he says, is that unlike at his last job, "I make a difference. I feel good at the end of the day."

## U.S. Defends Quota on Canada Lumber Necessary Means to Avert Trade War

## Pentagon to Spend \$2.5 Billion Less On Missile Defense

By ROBERT S. GREENBERGER  
And ROSANNA TAMBURRI

Staff Reporters of THE WALL STREET JOURNAL  
Despite some grumbling from Canada, the Clinton administration contends that an agreement limiting Canadian lumber shipments to the U.S. was the only practical way to prevent market instability and a widening trade dispute.

The two neighbors agreed last week to a five-year pact that sets quotas on Canadian softwood lumber shipments to the U.S., in an effort to end a 13-year fight that threatened to flare anew. U.S. Trade Representative Mickey Kantor said Friday, when the agreement was announced, that it would "provide the necessary relief and the level playing field that U.S. companies and workers have sought for so long and certainly deserve."

The protection for American companies also makes sense politically in a presidential election year. Mr. Kantor noted that in the Pacific Northwest, nearly 6,000 jobs have been lost due to mill closings in the past two years. The region includes vote-rich California. Canadian lumber imports have climbed to 36% of the U.S. market from 27% in 1991, he added. He estimated that as imports have increased, prices have dropped about one-third from their January 1994 peak.

Softwood is used for home building and other construction. The National Association of Home Builders, a U.S. industry group, has said that the agreement with Canada would add to the cost of framing lumber, which totals about \$8,000 in a typical new home. However, Mr. Kantor, in a news briefing Friday, said that the effect would be "negligible, if any."

Some trade analysts in Canada had urged their government to resist the voluntary export controls, arguing that such measures would set an unwelcome precedent for future trade disputes and would undermine the U.S.-Canada free trade agreement. Binational trade panels set up under the free trade accord have consistently ruled in Canada's favor in the lumber dispute.

"This is as close to blackmail as you can imagine," said Gordon Ritchie, a Canadian trade analyst who helped negotiate the free-trade accord. He added that Canada's producers had little choice but to accept the deal or face retaliatory duties.

A U.S. official said that without the accord, the U.S. industry probably would

have prevailed in a countervailing-duty suit that would have imposed stiff duties on Canadian producers. The official added that Canada then would have challenged the U.S. action in the World Trade Organization and under the North American Free Trade Agreement, resulting in a continuing trade dispute.

For its part, the U.S. has pledged not to initiate any further trade action against Canadian softwood producers for five years.

Under the accord, which takes effect April 1, British Columbia, which accounts for about 60% of the Canadian exports, would impose an export tax for shipments above a specified quota; Mr. Kantor estimated this would reduce shipments by about 14%. Quebec would raise tree-cutting fees it charges provincial producers by about 100 million Canadian dollars (US\$72.6 million) a year. The agreement also contains certain backup measures to ensure that the targeted reductions occur.

A U.S. official, when asked to reconcile the accord with the administration's advocacy of free trade, conceded that, "certainly, we're treating this sector in an exceptional way." But, he said it warranted special treatment because, among other things, the Canadian provinces sell timber rights to Canadian lumber mills at below-market prices.

By JOHN J. FIALKA

Staff Reporter of THE WALL STREET JOURNAL

WASHINGTON — The Defense Department has restructured an assortment of programs designed to protect the U.S. and its allies against the threat of ballistic missiles, removing some \$2.5 billion from the programs over five years.

The changes, which include a delay in the largest program, the Army's Theater High Altitude Area Defense project, were immediately attacked by Republicans in Congress, who have been pushing for a nationwide missile-defense program.

Rep. Floyd Spence of South Carolina, chairman of the House National Security Committee, said the move amounts to "guaranteeing that the United States will remain vulnerable to ballistic-missile attack well into the next century."

Defense Secretary William Perry asserted that the change would deploy an improved version of the Army's current area-missile-defense system — the Patriot — more quickly and accelerate the Navy area defense program, which has been strongly pushed by Congress. The Navy's program would build on the missiles and the radars of its Aegis-class cruisers to provide an antimissile defense for a given region.

The revamped program commits \$14 billion in the next five years to missile systems that can strike and destroy an enemy missile in the upper atmosphere, far away from its intended target. As Mr. Perry noted, this is important if the enemy missile is carrying a nuclear, chemical or biological warhead.

By delaying for at least three more years a decision on which system might be used to build a nationwide missile-defense system, Mr. Perry asserted, competition and improvements in technology would ensure a better system. The Central Intelligence Agency recently estimated that it sees no long-range ballistic missile threat to the U.S. for the next 10 to 15 years. However, shorter-range threats, such as those U.S. troops experienced during the Gulf War, are multiplying.

President Clinton recently vetoed a defense bill calling for an early commitment to deploy a national missile-defense program. House and Senate Republicans are preparing to push the issue again, a move designed to turn national missile defense into a campaign issue in the fall. The \$2.5 billion savings produced by the restructuring will be used in other procurement programs, such as the purchase of trucks, according to Pentagon officials.

## *GOP's Chief Pushed Pro-Tobacco Bill At State Level, Arizona Lawmaker Says*

By TIMOTHY NOAH

Staff Reporter of THE WALL STREET JOURNAL

WASHINGTON — In an unusual action for the head of a national party, Republican National Committee Chairman Haley Barbour phoned the Arizona House speaker last spring to pressure him into supporting a pro-tobacco bill, the legislator said.

National party chairmen rarely involve themselves in state legislation. But the

### **Mississippi Mudfight**

Mississippi Gov. Kirk Fordice is suing the state's attorney general, Michael Moore, alleging that he overstepped his bounds in his attack against cigarette makers. Article on B1.

GOP has been relying increasingly on contributions from the tobacco industry. Mr. Barbour didn't return phone calls inquiring about the matter, reported last week in the Arizona Republic.

Arizona House Speaker Mark Killian, a Republican legislator for 14 years, said in an interview that Mr. Barbour called him at home to urge him to bring legislation sought by the tobacco industry to a floor vote. The measure, one of many "pre-emption" bills pushed by tobacco interests at the state level, would have blocked cities from imposing smoking rules more restrictive than those imposed by the state.

"I thought he was kind of calling to congratulate us on Arizona's ability to bring forth the revolution on tax cuts and welfare reform and medical savings accounts," Mr. Killian said. "And what does he do? He tries to get me to bring a tobacco bill to the floor. It ticked me off."

Mr. Killian said he ended up blocking the bill because he thinks "cities ought to be able to make their own rules and regulations." But he said another factor in his decision was his anger that Mr. Barbour got involved in the matter.

"To the best of my knowledge, this is the first time a chairman of a national political party has ever tried to pressure a state legislator on behalf of a tobacco company," said Matthew Myers, counsel to the Coalition on Smoking OR Health, an antitobacco group. "It would be appalling if the Republican Party wants to be known as the party that has been bought and paid for by the tobacco companies."

Tobacco industry "soft money" dona-

tions to the Republican Party totaled almost \$2.3 million in 1995. Philip Morris Cos. and RJR Nabisco Holdings Corp. gave the GOP nearly \$1.7 million in 1995, which is nearly double what they gave the previous year. Among the likely reasons for the increase is the Republicans' takeover of Congress and the Clinton administration's pursuit of more aggressive tobacco regulation, including a proposed Food and Drug Administration rule that would sharply curtail tobacco marketing thought to be aimed at minors.

Tom Lauria, a spokesman for the Tobacco Institute, an industry group, declined to comment directly on Mr. Barbour's reported phone call. "We give money to both parties with no strings attached," he said, "and in return we hope that people will give our point of view a serious hearing."

In Arizona, a bill similar to last year's pre-emption bill is now moving forward in the state Senate. But "if it's got the same provisions in it," Mr. Killian said, "I'll tube it again."

## Under Siege in the U.S., Joe Camel Pops Up Alive, Well in Argentina

By JONATHAN FRIEDLAND  
Staff Reporter of THE WALL STREET JOURNAL

Thanks to Bill Clinton, Joe Camel may soon be an endangered breed in the U.S. But in Argentina, he's just becoming a star.

Just as Mr. Clinton was trying to ban the dapper dromedary from advertising aimed at minors last month, the Argentine licensee of Camel cigarettes, Nobleza Piccardo SA, whose major shareholder is B.A.T. Industries PLC, launched a promotional campaign featuring the cartoon character.

The campaign, a first in Latin America, offers prizes to those smokers who find a playing card in their cigarette pack bearing the images of Joe Camel and the four members of his Hard Pack blues band. The four — Eddie, Floyd, Max and Bustah — were introduced on billboards here last year and share the same wrap-around shades and lounge-lizard slouch as their leader.

While most of the prizes are posters, shot glasses and boxer shorts, the top prizes are 10 Harley-Davidson motorcycles now on display at shopping malls.

The promotional gimmicks infuriate Argentine antismoking activists, who say teens and young adults are the target of

the advertising campaign, which is featured heavily at rock concerts and nightclubs. "Motorbikes aren't exactly a temptation for 50-year-olds," points out Leonardo Daino of the Argentine League for the Fight Against Cancer. "Using them to sell cigarettes is an absolute barbarity."

Nobleza says the campaign isn't aimed at kids. "These motorcycles are collectors' items," says Jorge Basso Dastugue, Nobleza's director of corporate affairs.

He says the idea of Joe Camel merchandise giveaways came about last year when the company noticed that advertisements it posted in public buses were disappearing almost as fast as they went up. It began to offer Joe Camel stickers and posters via an 800 number and was deluged by more than 200,000 calls. Phone operators made sure callers "were over 18 years of age," insists Mr. Basso Dastugue. Argentina has no national cigarette age, but some of its provinces set 16 as the minimum for buying cigarettes.

Sales of the formerly marginal Camel brand have shot up 50% since Joe Camel and his cohorts first made their appearance. "We've detected among Camel smokers a huge desire for things to collect," Mr. Basso Dastugue says. "They feel a special bond with the product."

## North Carolina Attempts to Fine-Tune A Proposal for Tobacco Legislation

By SUEIN L. HWANG  
Staff Reporter of THE WALL STREET JOURNAL

North Carolina Attorney General Mike Easley is hammering out state legislation on underage smoking in an effort to develop a model for state smoking laws that would win the industry's support.

Mr. Easley said No. 2 cigarette maker R.J. Reynolds Tobacco Co. signed off on the majority of his proposed restrictions last June, and has been working to bring the other major cigarette makers into the fold. "Philip Morris and Reynolds are on board with this, with Reynolds being the spokesman," he said. The proposal is expected to be introduced to North Carolina's Legislature when it reconvenes in the beginning of next year.

Reynolds acknowledged that it had discussed the proposal with Mr. Easley a few months ago, but denied yesterday that it had agreed to any of the restrictions. "We were never asked to agree to this proposal and we have not," said a spokesman for Reynolds, a unit of RJR Nabisco Holdings Corp. Philip Morris also denied approving the plan, saying such a proposal would be better handled at the federal

level. In its current issue, Advertising Age reported details of Mr. Easley's plan and Reynolds' support of it.

According to a June draft of the legislation, the proposed set of laws would further restrict vending machine sales and require consumers to provide photo identification with their age before buying a pack of cigarettes. It also includes such voluntary restrictions as banning billboard advertising on taxis and buses and prohibiting ads in baseball, football, basketball, soccer or hockey facilities. But the legislation falls far short of rules recently issued by the Food and Drug Administration in its bid to regulate the industry. The issue of underage smoking had emerged as a lightning rod for both the FDA and the Clinton administration, which is supporting the agency's regulatory efforts.

The proposed state legislation appears to mark yet another effort by the industry to deflect the intense legal and regulatory attacks it has been battling for the last few years. As reported, Reynolds in recent months had been working with lobbyists to craft a sweeping legislative proposal that would have given cigarette makers immunity from liability suits for the next 15 years and allow them to escape FDA regulation. Reynolds, like the rest of the industry, has denied any role in the effort.

Mr. Easley said he has already approached the attorneys general of several other states — including Missouri and Arizona — to gather support for his proposed legislation. But he added that he is still trying to create rules that would directly prohibit advertising to children.

# Fast Growth Lands Low-Cost Airline in Trouble

By SCOTT MCCARTNEY  
And ANDY PASZTOR

Staff Reporters of THE WALL STREET JOURNAL

America West Airlines, the nation's ninth-largest carrier, is paying a high price for fast growth.

Yesterday, the airline warned that third-quarter earnings would be below

## CORPORATE FOCUS

last year's 45 cents a share because of higher fuel prices, aggressive fare sales and "operating dependability difficulties encountered during the summer." In fact, the carrier, based in Phoenix, has stumbled over its own ambitious growth plan: too few planes and crews, causing hundreds of cancellations and late arrivals.

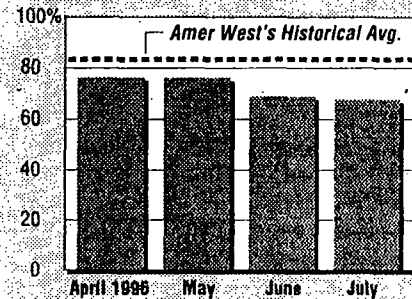
But America West, like all U.S. fast-growth low-cost carriers, is also feeling the effects of change in the wake of this year's ValuJet Airlines crash in the Everglades—which is to say increased scrutiny from the Federal Aviation Administration. America West hasn't had a fatal accident in 13 years. But Barry Valentine, the FAA's acting safety chief, says: "Any carrier that shows rapid growth is part of the group we watch very closely."

The FAA recently conducted a rigorous annual inspection of America West—the carrier's first of the new get-tough era precipitated by the ValuJet disaster. Although America West passed on flight operations, the FAA found flaws in the

## The Price of Growth

### America West's operations have struggled ...

Percentage of flights arriving on time according to Department of Transportation



NOTE: DOT database to date (Sept 1987-July 1996)

### ... as the carrier has grown

Percent change from the first eight months of 1996 compared with 1995 for traffic, measured in revenue passenger miles and for capacity, measured by available seat-miles

Traffic

12.5%

Capacity

9.0%

carrier's record-keeping and also ordered it to hire 56 additional maintenance workers. "The airline has enjoyed growth that far outstrips the industry," says America West's chairman and chief executive, William A. Franke. "We've paid some price for that."

After a 1994 bankruptcy reorganization and a 10% work-force reduction last year, America West launched a plan last September to increase its size by 29%, adding flights from its Phoenix, Las Vegas and Columbus, Ohio, hubs. The carrier flies nationwide.

But a hot market for high-quality used planes hampered efforts to lease additional aircraft; and Mr. Franke, a financier, scuttled transactions he didn't think were cost-effective. The lack of planes led to scheduling snafus. Crew shortages became a major problem; vacations were canceled, crews were borrowed from other carriers and pilots complained about problems adjusting to a new contract. Some pilots ran out of flying hours under FAA limits before the end of the month. That forced more cancellations and sparked tension between pilots

and management.

Meanwhile, since firing 400 mechanics and closing its heavy maintenance operations in Phoenix, America West has had trouble scheduling maintenance work with its outside contractor, Tramco Inc., a unit of B.F. Goodrich Co. The result has been more cancellations and a schedule so uncertain that the carrier didn't publish a spring timetable (it plans one for October).

Historically, America West has the second-best on-time record among major airlines. But in the second quarter this year, it dropped to ninth, rebounding only to seventh in July. Last year, America West canceled the fewest flights in the industry; this year, its percentage is near the bottom. In Phoenix, the carrier sent so many passengers to Southwest Airlines that the rival carrier recently sent pizzas and a thank-you note to beleaguered America West workers.

The flight attendants' union is making progress in negotiating its first contract with America West, but Deborah Volpe, head of the union, says, "The frustration level among employees is bad out there."

Debbie Fleming, a veteran gate agent for America West, saw her employer cancel so many summer flights that she bought Southwest Airlines tickets for a family trip to Omaha, Neb., rather than banking on a free ride with her own company. "I didn't trust that we wouldn't

Please Turn to Page B4, Column 3

Continued From Page B1

cancel," Ms. Fleming says.

National Transportation Safety Board officials say privately they are focusing on America West's schedules, partly because of pilot complaints and partly because of human factors. Experts say the company's schedules feature proportionately more off-peak-hour flying than most domestic schedules. More than 14% of America West's flights are red-eye trips operating through its Las Vegas hub. In recent months, dozens of company pilots have complained to federal safety officials about fatiguing late-night and early morning schedules that they claim pose safety problems.

Management says that all pilot schedules comply with federal rules and that pilots, while flying more under the company's first-ever pilot contract, don't put in as many hours as their counterparts at Southwest. "It's a lifestyle issue for the pilots," Mr. Franke says.

Best known for a restructuring at Circle K Corp., Mr. Franke arrived at America West in 1992 and helped the carrier emerge

from bankruptcy-court protection with one of the industry's strongest balance sheets. For the next two years, the carrier searched for a profitable niche. Steering clear of too much overlap with low-cost king Southwest, it became more of a long-haul carrier, focusing on low-fare leisure passengers often overlooked by bigger airlines.

The strategy has attracted more passengers. Traffic, fueled in part by the new routes, is up 12.5% through the first eight months of this year. Despite boosting capacity by 9%, the carrier still has been able to fill more than 72% of its seats through August.

America West's share price peaked at \$23.75 in April. Yesterday, on news of the expected lower earnings, America West shares closed at \$12.75, down 37.5 cents, in New York Stock Exchange composite trading.

The company remains optimistic. Last week, it hired a new senior vice president of operations. "You're going to see improvement," vows Mr. Franke. "The major focus for the next 18 months is on the product."

THE WALL STREET JOURNAL  
TUESDAY, SEPTEMBER 10, 1996

The main goal with regard to Congress is to prevent the passage of legislation that the Administration does not support because it would weaken the President's initiative.

The most likely vehicle for such legislation would be a Senate floor amendment attached to any number of potential reauthorizations or appropriations measures that might be considered before the summer.

To guard against this possibility, we are identifying those Senators who will work with the Administration on a cloture motion if such a bill or amendment is scheduled for consideration on the floor. We are holding separate discussions with the staff of each Senator on the attached list. Our goal is to determine their level of support, to discuss any areas of concern with our proposal, and to establish a working relationship with each office on any matter pertaining to the issue.

At this time, we do not expect any action in the House given the reported opposition of the Commerce Committee Chairman who has said the issue should be left to the courts.

1. Sen. Daniel Akaka (D-HI)
2. Sen. Max Baucus (D-MT)
3. Sen. Robert Bennett (R-UT)
4. Sen. Joseph Biden (D-DE)
5. Sen. Jeff Bingaman (D-NM)
6. Sen. Barbara Boxer (D-CA)
7. Sen. Bill Bradley (D-NJ)
8. Sen. Richard Bryan (D-NV)
9. Sen. Dale Bumpers (D-AR)
10. Sen. John Chafee (R-RI)
11. Sen. William Cohen (R-ME)
12. Sen. Thomas Daschle (D-SD)
13. Sen. Thomas Dodd (D-CT)
14. Sen. Byron Dorgan (D-ND)
15. Sen. Russ Feingold (D-WI)
16. Sen. Dianne Feinstein (D-CA)
17. Sen. John Glenn (D-OH)
18. Sen. Bob Graham (D-FL)
19. Sen. Tom Harkin (D-IA)
20. Sen. Mark Hatfield (R-OR)
21. Sen. Daniel Inouye (D-HI)
22. Sen. James Jeffords (R-VT)
23. Sen. Edward Kennedy (D-MA)
24. Sen. Robert Kerrey (D-NE)
25. Sen. John Kerry (D-MA)
26. Sen. Herb Kohl (D-WI)
27. Sen. Frank Lautenberg (D-NJ)
28. Sen. Patrick Leahy (D-VT)
29. Sen. Carl Levin (D-MI)
30. Sen. Joseph Lieberman (D-CT)
31. Sen. Barbara Mikulski (D-MD)
32. Sen. Carol Moseley-Braun (D-IL)
33. Sen. Daniel Patrick Moynihan (D-NY)
34. Sen. Patty Murray (D-WA)
35. Sen. Claiborne Pell (D-RI)
36. Sen. David Pryor (D-AR)
37. Sen. Harry Reid (D-NV)
38. Sen. Jay Rockefeller (D-WV)
39. Sen. Paul Sarbanes (D-MD)
40. Sen. Paul Simon (D-IL)
41. Sen. Alan Simpson (R-WY)
42. Sen. Olympia Snowe (R-ME)
43. Sen. Arlen Specter (R-PA)
44. Sen. Paul Wellstone (D-MN)
45. Sen. Ron Wyden (D-OR)

050B

180

- Tobacco

Justice Dept. - CTR

- Cancil for Tobacco Research -  
did they mislead on non-profit status.

= perjury re Health Business International -

- Justice is looking at whether  
B&W tried to intimidate a Fed witness.

Waxman - Met w/ FDA / HHS

= Tom Falletti - Durbin -

= Brian Williams - Hanson -

- more directly <sup>make</sup> ~~not~~ <sup>discrepancies</sup> ~~conf.~~ for commitment

~ 82 - need 14/5 (?) to make  
vero proof. -

Press is in a frenzy too -

~~3000~~ 3000 kids a day smoking start doing -  
- way to draw attention -

EXECUTIVE OFFICE OF THE PRESIDENT

16-Feb-1996 01:26pm

*Shana Tesler*

TO: Elizabeth E. Drye  
FROM: Jeremy D. Benami  
Domestic Policy Council  
SUBJECT: RYI

*Jennifer  
O'Connor  
6-2-95*

If you want to start to going to tobacco stuff, this would be the group to join!

You may want to give Jen a call and tell her you will be Carol's designee from now on.

I have never been able to make the meetings!!

E X E C U T I V E   O F F I C E   O F   T H E   P R E S I D E N T

16-Feb-1996 01:13pm

TO:            (See Below)

FROM:        Francis J. Szollosi  
             Office of the Chief of Staff

SUBJECT:     TOBACCO MEETING

Tuesday's tobacco meeting has been moved to Wednesday 4pm in room 180.

Distribution:

TO:           Marilyn Yager  
TO:           Kathryn Higgins  
TO:           LeeAnn Inadomi  
TO:           Julia Moffett  
TO:           Christopher D. Cerf  
TO:           Lorraine McHugh  
TO:           Kinney Zalesne  
TO:           Alexis Herman  
TO:           Alison Bracewell  
TO:           Sheila D. Turner  
TO:           Janice A. Enright  
TO:           Ruby G. Moy  
TO:           Debbie B. Bengtson  
TO:           Kevin M. O'Keefe  
TO:           Daniel Tate  
TO:           Jeremy D. Benami  
TO:           Barbara D. Woolley

CC:           Shana E. Tesler  
CC:           Jennifer M. O'Connor

## DRAFT

## ISSUE BRIEF TOPICS AVAILABLE ON ALL-IN-ONE

Domestic Policy (78A)Affirmative Action — **WAGNATH**AIDS — **FLEMING**Child care and Head Start — **McCAIN**

Child Nutrition

Child Welfare — **McCAIN**Community Empowerment **WEINSTEIN**Crime **BURKE**Disability Policy **FORTUNA**Drugs **BURKE**Education **McCAIN**Empowerment Zones **WEINSTEIN**Health care Reform **SENNINGS/KLEIN**

Homelessness

Housing — **BROTHMAN**Immigration **WAGNATH**Line-item Veto — **WEINSTEIN**Medicare **SENNINGS/KLEIN**

Medicaid

Native Americans

Regulatory Reform — **WEINSTEIN**

Reinventing Government

Reproductive Rights — **FINE**School Prayer — **WAGNATH**

Seniors

Teen Pregnancy — **ABRAMS**

Unfunded Mandates

Veterans — **WAGNATH**

Welfare Reform

Women's Issues

Pol. Reform — **WEINSTEIN**Environment (Baker)

Clean Air Act

Endangered Species Reform

Northwest Forest Plan

Regulatory Reform

Safe Drinking Water

Superfund

Takings

Wetlands Reform

Reinventing Government (Anderson)

Federalism

Regulatory Reform

Reinventing Government--Phase II

Reinventing Government--Overview

National Security (17)

American Leadership

Bosnia

Science and Technology ( )

Technology Accomplishments

Technology Policy

Information Superhighway

Space Program

Economy (68)

Economy under Clinton

Minimum Wage

Budget

Trade

Constituency Groups (M. G. Y.)

African-Americans

Hispanics

Asian-Americans

Women

Seniors

Native-Americans

Catholics

Veterans

• Additional topics to be determined.

- political reform?

- tobacco

- telecomm

- educ. technology

Trade - C.D.



Tax reform

Retaining - G/ B. 11

no-47320

- AG.  
- Rural

- One-page public  
    ↳ need it today  
    on rural AG.
- ① - As speech we do  
    - fold into the packet
- ② AG, rural
- ③