Ammonia Amplifies Nicotine, Study Confirms

By John Schwartz
Washington Post Staff Writer
Wednesday, July 30, 1997; Page A04
The Washington Post

A new study provides new evidence that ammonia can dramatically boost the impact of nicotine in cigarettes.

The research provides confirmation of assertions made by the Food and Drug Administration, both in 1994 congressional testimony and in its landmark tobacco regulation. The FDA cited widespread use of ammonia compounds in cigarette manufacturing as evidence that the industry manipulated nicotine delivery in tobacco products. The agency relied in part on that finding when it asserted jurisdiction over cigarettes.

"It [the new study] confirms what we had heard before -- that ammonia is added solely for the purpose of enhancing the nicotine," said Rep. Henry A. Waxman (D-Calif.), who held the 1994 hearings. "It underscores the fact that the FDA's got to be able to regulate nicotine as a drug" in tobacco products, a key point of contention in the settlement proposal now being debated in Congress.

The new research, by James F. Pankow of the Oregon Graduate Institute of Science and Technology, is being published in Environmental Science and Technology, a journal of the American Chemical Society. Pankow conducted a series of laboratory studies to explore how ammonia compounds affect the chemical properties of nicotine.

Nicotine hitches a ride on the solid particles found in cigarette smoke. "What ammonia can do is make it easier for the nicotine to leave the smoke particles" by stripping a hydrogen ion from the nicotine molecule, Pankow found. That loosens the bond between the drug and the vehicle, Pankow explained. Some nicotine even goes directly to a gas phase. When the smoker inhales the particles, this more volatile form of nicotine can be quickly absorbed by lung tissue. Pankow's research showed this form of nicotine is absorbed 100 times more readily than the natural form.

The chemical process used to treat nicotine with ammonia, known as free-basing, is similar to that used to produce the powerful, highly addictive form of cocaine known as crack, Pankow said.

The FDA first learned of the ammonia connection through a 1991 handbook on leaf blending. The industry publication called ammonia an "impact booster" that "can liberate free nicotine from the blend, which is associated with increases in impact and 'satisfaction' reported by smokers."

When Kessler testified about ammonia, and about a secret Brown & Williamson Tobacco Co. program to develop a high-nicotine tobacco plant, Kessler said the findings "lay to rest any notion that there is no manipulation and control of nicotine."

Tobacco companies have denied in the past that they use ammonia to boost nicotine's power, and have argued that they use it only to reduce the amount of nicotine in tobacco products. Representatives of the Tobacco Institute and Philip Morris declined to comment on the new study yesterday.

Understanding those chemical processes led the FDA to develop a more sophisticated model of industry control over nicotine, Kessler said. Instead of simply manipulating the levels of the drug -- which had in fact declined over the decades -- the companies were able to actually fine-tune nicotine's potency. FDA researchers were always confident that they were on the right track with ammonia, Kessler said. "We were relying on basic laws of chemistry and the industry's own documents." Still, Kessler said, "it's important to have the science confirm what we said."

An in-depth investigation of the ammonia issue in the Wall Street Journal was the centerpiece of the 1995 reporting that won reporter Alix M. Freedman the Pulitzer prize.

T - nicotine

Scientists Give Nicotine Options

By Sonya Ross
Associated Press Writer
Wednesday, July 23, 1997; 1:25 p.m. EDT

WASHINGTON (AP) -- A group of scientists urged the White House today to use caution in trying to regulate nicotine, and suggested a closer look at alternatives to cigarette smoking that may yield a safer means of delivering the drug.

The scientists said there is abundant research on virtually all health aspects of tobacco use, much of it locked away from public knowledge. They said the Food and Drug Administration should use some research, such as that on alternative ways of delivering nicotine, to help discourage smoking.

Ken Warner of the University of Michigan said the FDA ought to explore ways to allow smokers ``at least some options whereby they might be able to get nicotine without inflicting such severe damage on themselves" with cigarettes.

``It's very expensive to acquire Nicorette and some of the other products. It's packaged in large quantities, it's made to taste bad," Warner said. ``The government ought not to favor the production, distribution and marketing of the dirty forms of tobacco products. ..."

The researchers were the latest in a series of groups consulted by the White House as it examines whether President Clinton should endorse the proposed settlement between the tobacco industry and the states. Bruce Reed, head of the White House advisory group on tobacco, said he expects to make recommendations to Clinton in a month.

Under the settlement, tobacco companies would pay $368.5 billion in penalties and would finance public health anti-smoking campaigns. State governments, in turn, would drop lawsuits against the industry.

Health and Human Services Secretary Donna Shalala said today's session did not produce firm conclusions to be given to the president. ``We're just listening to advice at this point," she said.

While the White House weighs its options, anti-tobacco senators are targeting U.S. cigarette exports with legislation to outlaw trade negotiations that weaken foreign tobacco curbs and to make sure smokers abroad get the same health warnings as Americans.

The bill, being introduced today, would forbid a repeat of 1988 trade negotiations with South Korea. Under the threat of sanctions, South Korea ultimately agreed to eliminate its ban on tobacco advertising -- and by 1993, U.S. cigarette imports had increased by 1,000 percent, said Sen. Frank Lautenberg, D-N.J.

Without restrictions, ``our government will be contributing to what will be a health crisis in the next century" worldwide, Lautenberg and Sen. Ron Wyden, D-Ore., wrote U.S. Trade Representative Charlene Barshefsky on Tuesday.

Barshefsky could not immediately be reached for comment, but has said trade negotiators should only object to foreign tobacco restrictions that discriminate against U.S. manufacturers.

The bill also will modify existing law to require that exported U.S. cigarette packs bear the same warning labels required in this country, but in the language of their destination.

The legislation comes after cigarette makers agreed to a multibillion-dollar tobacco settlement that, if ratified by Congress, would curb how tobacco is sold here. Critics want the deal modified to ensure it does not help Americans at the expense of developing countries, where U.S. cigarette makers are already hunting new markets.

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' obacco May Ease Figh Against Nicotine Controls

Progress Reported in Settlement Negotiations

By John Schwartz
and Saundra Torry
Washington Post Staff Writers

The tobacco industry has agreed in principle to drop its long-standing opposition to the government's regulating the amount of nicotine in cigarettes, according to sources involved in settlement negotiations between cigarette makers and their adversaries.

The negotiators also made progress in two important areas: how much protection the tobacco industry should get against lawsuits and how much money tobacco firms would set aside to pay successful claimants.

During talks held this week in New York, the companies "moved off flatly saying no" to any regulation of nicotine but still insisted that the Food and Drug Administration be prohibited from banning cigarettes or the nicotine in them, one source said. It remained unresolved, however, exactly "what does 'regulate' mean," according to another source familiar with the talks.

No aspect of the negotiations has been written in stone, and any final agreement would require approval by Congress.

But two sources in the anti-smoking camp said the group had all but resolved several difficult issues involving the scope of protection the industry would get from lawsuits. Under the plan, the industry would annually provide from $3.5 billion to $4.5 billion to create a fund, which would be used to pay individuals who sued cigarette companies. If one or more companies went out of business, the other companies would pick up their share of the fund.

However, class action lawsuits, in which thousands of individuals band together to sue, would be prohibited against the industry, and punitive damages, which are awarded to punish conduct, largely would be eliminated.

Also, many individuals would have to go through a smoking-cessation program to be eligible to file suit. The companies have also agreed in principle that there would be penalties for failing to meet targets for underage smoking reduction of, for instance, 50 percent after seven years, according to two sources.

At some point in the future—the date is still unresolved—individuals could no longer sue the cigarette makers unless their claims involved allegations of, for instance, a contaminated product, a violation of FDA rules or an illness not associated with smoking today.

The idea of gradually reducing nicotine in tobacco to levels that would render the products nonaddictive long has been discussed in the scientific literature as a way to wean smokers from the habit.

The FDA currently does not have plans to reduce the amount of nicotine, but the agency conceivably could do so under its new authority to regulate tobacco products. The industry has long contended that the elimination of nicotine in cigarettes would be tantamount to a ban.

Nicotine reduction was one topic at a 1994 meeting of an FDA advisory panel. At the time, the panel determined that there was not sufficient scientific evidence that such a plan could work, or have the intended effect of reducing smoking, because smokers might try to compensate for reduced nicotine by smoking more and exposing their bodies to greater harm.

In the intervening years, researchers have continued to examine the issue. In the spring issue of the journal Tobacco Control, eight leading tobacco researchers suggested that nicotine reduction in cigarettes could work because the FDA has approved other nicotine delivery devices such as oral inhalers that allow users to get a cigarette-like quick dose of the drug.

"Now that we have these other nicotine delivery products that more closely mimic cigarette smoking, we can now consider phasing out nicotine in conventional cigarettes," said Ronald M. Davis of Detroit's Henry Ford Hospital, an author of the article.

Davis and John Slade, a nicotine researcher at St. Peter's Medical Center in New Jersey, have served as technical advisers to the negotiators, though Slade said yesterday that the role is "pretty peripheral. . . . I simply responded to a few questions, that's all."

Meanwhile, opposition to the notion of a quick global settlement continued to coalesce. Anti-tobacco organizations have denounced the talks. And Attorney General Hubert H. Humphrey III of Minnesota and some colleagues from other states have grown increasingly concerned about the tendency of the state attorney general taking the lead in negotiations, Mike Moore of Mississippi, to move out ahead of the rest of the group.

"We don't want to be identified with proposals that fail to give the FDA full authority over tobacco and nicotine as a drug, that grant full or partial immunity to the tobacco cartel, or that provide damages so inadequate they send tobacco stocks soaring," said Eric Johnson, executive assistant to Humphrey.

The talks this week have involved a handful of the 30 attorneys general suing the tobacco industry and members of a coalition of trial lawyers who have filed suit against the industry in 15 states, including D.C. lawyer John P. Coale, Russ Herman of New Orleans, Stanley Chesley of Cincinnati and presidential brother-in-law Hugh Rodham of Florida.

Rep. Henry A. Waxman (D-Calif.) warned that the current focus on the incremental progress of the negotiations could be misleading. "I don't think anybody ought to be under any illusion that because some outside group presents us with a proposal . . . that we're going to be limited to those items," Waxman said.

Waxman and eight other members of Congress yesterday announced the formation of an advisory committee to guide lawmakers on any proposal that might emerge from the negotiations. The commission will be chaired by former food and drug commissioner David A. Kessler and former surgeon general C. Everett Koop.

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Presidential Vote Today Is Iran's Most Competitive

Anger at Corruption Enlivens Campaign

By John Lancaster
Washington Post Foreign Service

TEHRAN, May 22—Both are turbaned clerics with well-groomed beards, strong revolutionary credentials and scant affection for the West. Both describe themselves as the natural political heirs of Iran's popular outgoing president, Ali Akbar Hashemi Rafsanjani. Both are 54 years old.

But there are important differences between Ali Akbar Nateq Nouri and Mohammed Khatemi, the undisputed front-runners in Friday's four-way presidential election—the seventh and most competitive such contest since Islamic revolutionaries toppled the pro-American monarchy in 1979.

Nateq Nouri, the speaker of Iran's parliament, is an arch-conservative who last year described the United States as a "blood-sucking wolf" and recently found it necessary to deny rumors that he would require schoolgirls to wear the tent-like black robe known as the chador.

Khatemi is a scholar and educator who currently heads the national library and lost his job as minister of culture and Islamic guidance several years ago because he was seen as too permissive.

Although Nateq Nouri was once seen as a shoo-in, given his close ties to Iran's all-powerful religious establishment, the race has tightened in recent weeks, generating excitement among Iranians fed up with the failure of their clerical leaders to root out corruption and deliver on promises of jobs and prosperity.

While a Khatemi victory would be unlikely to temper Iranian hostility toward the West, at least in the short term, it almost certainly would usher in an era of greater political pluralism and social and cultural freedom, in the view of many foreign diplomats and Iranian political analysts.

"If Khatemi wins, things will become more interesting, partly because he is known to be more open-minded and partly because it will be seen as evidence that the system hasn't got everything its own way," said a Western diplomat in Tehran, speaking anonymously.

The race has been a rough-and-tumble one, featuring widespread vandalism of campaign posters and a hearty dose of negative campaigning, especially in the Nateq Nouri camp, which accuses Khatemi of being a "liberal" who secretly wants Iran to have warmer relations with the United States.

But Khatemi has been drawing large and enthusiastic crowds, particularly in Tehran, where he is enormously popular among students and poor people wooed by his liberal economic agenda. On Wednesday evening, an exuberant mob of 5,000 or more turned out to hear him speak at a mosque in east Tehran, waving placards and creating such a ruckus that plate-glass windows shattered under the pressure of so many bodies.

"He's a moderate and he's going to develop the country toward the West," Moshallah Zadeh, a 25-year-old university student, shouted above the din. "He's going to guarantee that we'll have freedom of thought."

Iranian democracy has its limits. Candidates are screened for ideological purity by the Council of Guardians, a conservative clerical body that also has the power to cancel election results without explanation.

This year, the council rejected all but four of 238 presidential candidates, including nine women.

Besides Nateq Nouri and Khatemi, the other two candidates are Mohammed Reyshari, a hard-line former intelligence minister, and Reza Zavarei, the deputy head of the judiciary and the only noncleric in the race.

Nateq Nouri enjoys the open support of key government ministers and state-run broadcast media and is widely said to have the backing of Iran's supreme leader, Ayatollah Ali Khameini. If neither candidate wins an outright majority Friday, the contest will be decided in a runoff that many Iranians predict will be rigged in favor of the parliamentary speaker.

That perception was fueled by the council's rejection as un-Islamic of a bill passed by parliament that would have allowed candidates to station observers in polling stations and vote-counting centers.

While diplomats and political analysts do not discount the possibility that Khatemi could pull off a full victory in the first round, whoever does get elected will still be subordinate to Khameini and, for that matter, Rafsanjani, who will take over as head of a newly expanded consultative body called the Assembly for Diagnosing the Interests of the Regime.

For those and other reasons, the race has failed to generate much enthusiasm among liberal critics of the regime such as Dariush Foruhar, a lawyer and former labor minister who now heads the outlawed

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but tolerated National Party of Iran. "I do not see any difference between them," Foruhar said over nonalcoholic beer the other day. "The whole problem is the religion-oriented status of the government."

But within the narrow context of Iranian politics, the distinction between the two front-runners seems clear.

Although Nateq Nouri has tempered his views somewhat since entering the presidential race, his tenure as parliamentary speaker has been marked by rigid views on social issues and relations with the West. He enjoys strong support in rural provinces, from religious traditionalists and among Iran's powerful *bazaaris*—wealthy merchants whose prosperity depends on import and export licenses granted by the government.

Khatemi, by contrast, is considered something of a liberal by Iranian standards. Although he wears the black turban that identifies him as a descendant of the Prophet Muhammad, he has hinted at doubts about strict women's dress codes and a government ban on satellite television. His support is strongest among intellectuals, the urban poor and students—an especially vital constituency in a country where the minimum voting age is 15.

Khatemi also has won the endorsement of pragmatists and technocrats such as Faezeh Hashemi, daughter of the outgoing president, an outspoken advocate of women's rights who now holds a seat in parliament. "If we have only one line ruling over the country, then the country will face stagnation," Hashemi told foreign journalists today. "There is a direct line between freedom and moderation."

Among ordinary Iranians, Khatemi has tapped into widespread anger over government mismanagement of the economy—unemployment is estimated at nearly 30 percent—and meddling in the private lives of individuals. A poll published in the Akhbar newspaper this week showed Khatemi with 59 percent of the vote and Nateq Nouri with 30 percent, although other polls have shown the reverse.

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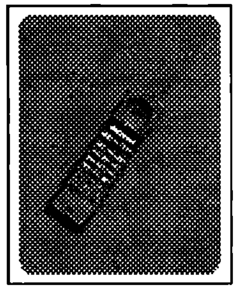
Key Players With Own Motives Helped End the Cigarette Wars

By ALIX M. FREEDMAN and SUEIN L. HWANG
Staff Reporters of THE WALL STREET JOURNAL



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Flash back to 1990 and try to imagine Big Tobacco, which was then flicking away opponents like so many ashes, ultimately agreeing to a settlement costing it more than $360 billion. What a difference seven years, and seven individuals, would make.

Although many other players were involved at every stage -- and many received far more publicity -- these seven emerged as nothing short of essential. Their motives varied, from economic and political gain to raw revenge. But together, they provided the ideas, the evidence and the strategies that changed the balance of power between cigarette companies and their antagonists and defined the astonishing terms under which they would make peace.


Jeffrey Nesbitt

Jeffrey Nesbitt came to Washington in 1981, an idealist still in his 20s. After stints with journalist Jack Anderson and Ralph Nader, his childhood heroes, he moved to the Food and Drug Administration as spokesman in 1989.

Two years later, as his father, a heavy smoker, was dying of cancer -- and his younger brother was fast becoming devoted to Camels -- he began to pepper his colleagues with a question: "Here's this product that cuts short the lives of millions of Americans, and it's totally unregulated. And here's the premier consumer-protection agency in the world. Why isn't it doing its job?"

Mr. Nesbitt discovered that his relentless badgering elicited surprising unanimity: FDA officials viewed cigarettes as classic regulatory quarry but believed it would be suicidal to wage war on the powerful industry. "There was a sense among many within the agency that you couldn't pull it off, and the last thing you wanted was to tackle something you couldn't pull off and have the agency get killed," says David Kessler, who became FDA commissioner in 1991.

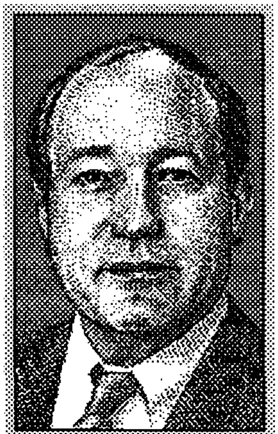
That spring, Mr. Nesbitt brought the commissioner and other top officials together for a brainstorming session. The meeting generated mixed reactions as to whether the FDA should accept the regulatory challenge, and Dr. Kessler made it clear that he had more pressing priorities. Even so, Mr. Nesbitt says, his boss made him the private promise that "this is something the FDA can and will do someday."

A few months later, Mr. Nesbitt, an Indiana native, left to become the communications director for Vice President Dan Quayle, a decision that he says shocked his liberal friends. But Mr. Nesbitt continued to call his former boss to remind him of his commitment.

By the spring of 1994, Dr. Kessler was convinced that the industry deliberately relied on nicotine to hook smokers -- and thus that cigarettes could be classified as drug-delivery devices. Evidence he believed showed that the industry intentionally marketed to minors gave him an additional theme: that smoking was a "pediatric disease." He used the term to powerful effect as he unveiled his 1995 proposal to restrict the sale and marketing of cigarettes to underage smokers.

The FDA's move into the tobacco arena -- with the latent threat that it might seek to regulate cigarettes out of existence -- proved crucial in motivating industry leaders to seek a deal.

These days, Mr. Nesbitt, now 39 years old, is back in the middle of the tobacco controversy. As staff director of a health-advocates' task force, he was at the White House with Dr. Kessler and others on Wednesday, pressing the administration to toughen the settlement's penalties against cigarette makers.


Michael Lewis

Michael T. Lewis was riding down a hospital elevator after making a final visit to his secretary's mother, a Salem smoker suffering from heart disease, when he hatched an oddball idea for a new kind of lawsuit against cigarette makers.

Mr. Lewis, who runs a personal-injury law practice with his wife in tiny Clarksdale, Miss., had never before taken on the tobacco industry. But by May 1993, he had done enough research into Big Tobacco's track record to know that the dying woman, Jackie Thomson, had almost no chance of winning a conventional lawsuit. The industry had won one case after another by persuading juries that individuals were responsible for their own decision to smoke.

Mr. Lewis's new approach would be different. For the first time, the plaintiffs wouldn't be smokers but wholly blameless victims, the taxpayers of the state. On their behalf, he figured, the Mississippi attorney general could sue tobacco companies to recover money the state spent in Medicaid bills for cigarette-related illness.

Mr. Lewis, 53 years old, who says he was "boiling with desire for revenge," nonetheless dithered for several weeks before getting up the nerve to call state Attorney General Michael Moore, an old law-school pal at the University of Mississippi. "I started the conversation, saying, 'I need a reality check. If you think this idea is too crazy or too grand, let me know.' I was a little worried about the grandiosity and the novelty of it because it seemed like if it was such a good idea someone else would have thought of it besides me."

In fact, the idea turned out to be nothing short of brilliant; the tactic could be replicated all over the country, multiplying by many times the possibility of a crippling verdict against the industry. In retrospect, perhaps, the most amazing thing is that it took a small-town lawyer to come up with the big breakthrough that had eluded other tobacco foes during more than four decades of fruitless ligitation.

After meeting with Mr. Lewis, Attorney General Moore immediately turned to Richard Scruggs, his closest law-school friend at Ole Miss, who had gone on to reap a fortune in asbestos litigation. Mr. Scruggs saw the potential for collecting billions of dollars in Medicaid bills incurred by vast numbers of smokers. In June 1993, he agreed to join forces with Mr. Lewis to help finance and litigate the state's ambitious Medicaid case.

Not content merely to represent the state of Mississippi, Mr. Scruggs, with the telegenic and politically ambitious Mr. Moore in tow, criss-crossed the country in his private jet to enlist other state officials to his cause. By the time the landmark settlement talks got under way in April 1997, 25 states had filed copycat suits against the industry. Tobacco companies were braced to lose three to four of the multibillion-dollar cases and, as one negotiator puts it, "the companies were worried that if they lost even one they wouldn't be able to post the bond for appeal."

Mr. Lewis, who quietly started it all, will get a still-undetermined cut of the lawyers' fees in the recent $3.6 billion settlement of the Mississippi suit -- and a good deal more if the $368.5 billion nationwide pact is approved by Congress.

On May 18, 1994, a man known only by his code name "Research" paid a visit to Dr. Kessler's office at the FDA. "Research" was so skittish and mistrustful that he refused to meet with anyone at the agency but Dr. Kessler himself -- and even then spoke only in the vaguest terms.

But soon the informant began to make a series of astonishing revelations. During one such session early on, Dr. Kessler was poring over the names of executives listed on the documents of Brown & Williamson Tobacco Corp., the U.S. unit of London's B.A.T Industries PLC. "Who's Jeff Wigand?" Dr. Kessler recalls asking. "I'm Jeff Wigand," deadpanned the informant, who was seated next to him at a conference table.

Mr. Wigand had come to B&W in 1989, lured by the promise that he would lead the development of a safer cigarette. But the company's new research chief quickly became frustrated as he came to believe that his efforts were being thwarted by his boss, B&W Chief Executive Thomas Sandefur Jr., who ultimately fired him. His bitterness grew when the company sued him for allegedly breaking his confidentiality agreement and pressured him to sign a more stringent one.

For a time, Mr. Wigand remained quiet. Then, on April 14, 1994, seven tobacco-company chieftains, including his former boss, swore to Congress that they didn't believe nicotine was addictive. "That put it over the top," says Mr. Wigand, now 54 years old. "When that TV image replayed itself in my mind, I realized that, by my silence, I was not that far removed from the men on my screen."

Over the course of the next three years, the scientist would reveal many of the industry's secrets and, in the process, help government officials and plaintiffs' lawyers who were investigating or suing the tobacco companies.

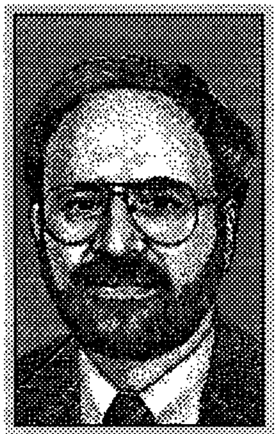
After the series of meetings with Mr. Wigand, Dr. Kessler was armed with enough ammunition to present to Congress the explosive charge that the industry not only relied on nicotine to hook smokers but deliberately heightened its impact. One particularly damaging insight Mr. Wigand provided was that leading tobacco firms added ammonia-based chemicals to cigarettes that converted nicotine into a more potent form.

"Jeff demonstrated the most blatant examples of nicotine manipulation," Dr. Kessler says. "It all went to the issue of the companies' intent."

When the sealed testimony Mr. Wigand gave to the state of Mississippi was leaked to the media, B&W, which by then had sued Mr. Wigand again, got personal. In January 1996, it distributed a 500-page dossier delving into the minutiae of Mr. Wigand's personal life and raising some unsavory allegations.

John Scanlon, a public-relations man who was hired by B&W to distribute the dossier, now concedes that the company's attacks on Mr. Wigand "certainly didn't help and probably did have an adverse effect on the tobacco industry's image." Says an executive at one of B&W's big rivals, "From the moment Brown & Williamson got personal with him, they turned him into a martyr."

On Nov. 30, 1992, at 3:20 p.m., an antitobacco activist named Clifford Douglas got a phone call from an ABC television producer who wanted to dig deeply into Big Tobacco.


Walt Bogdanich

Mr. Douglas ran a couple of ideas past the producer, Walt Bogdanich, who immediately seized on a premise that seemed highly improbable: that cigarette companies artificially controlled the levels of nicotine in their products.

At the time, the matter of how cigarettes were made had received virtually no attention. Indeed, for decades, the tobacco industry had carefully nurtured the belief that cigarettes -- with a heritage dating back to ancient Native American religious rituals -- were little more than natural tobacco leaves wrapped in paper. But on Feb. 28, 1994, Mr. Bogdanich's explosive segment on ABC's "Day One" newsmagazine blasted that myth away.

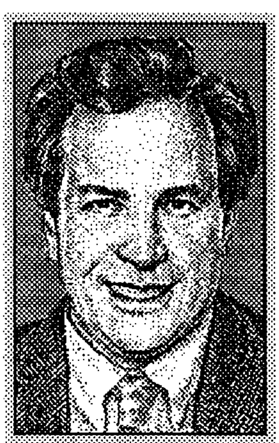
In 13 minutes, "Day One" changed the terms of the national debate over smoking, shifting the cigarette controversy from the well-known perils of cancer-causing tar to the techniques companies allegedly used to keep smokers hooked. The show also introduced millions of Americans to the centerpiece of Dr. Kessler's legal argument for regulating cigarettes: that they were, in essence, delivery systems for nicotine.

"Prior to the show, everybody assumed that nicotine was an inevitable constitutent of cigarettes, not a carefully controlled pharmacological agent," says David Vladeck, director of Public Citizen's litigation group and Mr. Douglas's lawyer.

When the show aired, it revealed that, in the course of manufacturing cigarettes, nicotine was taken out and then subsequently added in. The broadcast further suggested that this amounted to nicotine "spiking." Making the expose all the more dramatic was the shadowy silhouette of an industry informant, whom ABC insiders dubbed "Deep Cough," saying "yes" to the question of whether tobacco companies were "fortifying the product with nicotine."

The segment prompted Philip Morris Cos. to lodge a $10 billion libel suit against ABC for its use of the word "spiking." The network ultimately settled the case and made a public apology for mistakenly reporting that companies "add significant amounts of nicotine from outside sources." But the show's broad premise, that cigarette purveyors controlled the levels of nicotine in their brands, survived the controversy.

Mr. Bogdanich, 46, a former reporter for The Wall Street Journal and Pulitzer Prize winner, says he stands by his story. He adds, "I think it's fair to say that I had a sense of its historic dimensions early on and that's one reason why the cigarette industry decided to fight it so vigorously. They understood where it could lead and where it has, in fact, led."


Richard Morris

In early 1995, as President Clinton was aiming increasingly for the political center, then-presidential adviser Dick Morris was casting about for issues that might keep liberal voters in the fold.

At the time, cigarette regulation was barely on the political radar screen--indeed, deregulation was more in vogue. But the White House knew that Dr. Kessler was working on an FDA initiative aimed at teen smoking, and Mr. Morris had a hunch that this would serve his purposes well.

As the year progressed, Mr. Morris, who already had gauged attitudes on smoking in Mississippi for his close friend Mr. Scruggs, conducted a national poll and discovered this: More than 70% believed that the only purpose of cigarette advertising was to induce children to start smoking.

Even in the heart of tobacco country -- Virginia, North Carolina, Georgia, Tennessee and Kentucky -- Mr. Morris found there was strong public support for a teen-smoking initiative. "The more I polled on it, the more I realized that, while opinion was sharply divided on the issue of adult smoking, there was a strong consensus on teen smoking," Mr. Morris now says.

Although a nonsmoker himself, Mr. Morris also had more than a passing interest in the subject. His mother had died just two years earlier of lung cancer, heart disease and a bleeding ulcer after a lifetime of smoking two to three packs of Pall Mall a day. She had even smoked in the recovery room after cancer-related surgery. "I watched my mother's life more or less come apart over tobacco, so this was a big issue with me personally," Mr. Morris says.

By June 1995, Mr. Morris had emerged as one of Dr. Kessler's most vociferous supporters in weekly strategy meetings at the White House, government health-care officials say. In July, Mr. Scruggs arranged for Mr. Morris to speak directly with FDA officials so he could better tailor his arguments to the White House.

But Mr. Morris had a problem: His boss worried, despite the polls, that even the mildest antitobacco move would seal his election defeat in the five Southern tobacco states, according to Mr. Morris. "He really felt he was slitting his throat," Mr. Morris says.

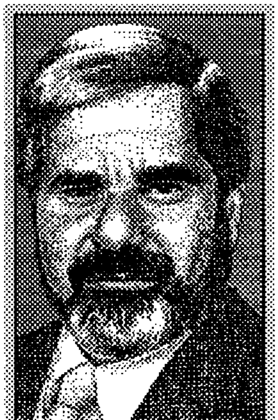
President Clinton's reservations were shared by other top advisers, including then-Deputy Chief of Staff Erskine Bowles, a North Carolinian who was philosophically in favor of youth-smoking curbs but was worried about retribution from the industry. "Let's don't fight with someone that spends $6 billion a year in advertising," Mr. Morris recalls Mr. Bowles pleading in a meeting. (Mr. Bowles declined to comment.)

But Vice President Al Gore, who was deeply committed to tobacco regulation, personally sold the FDA's youth-smoking initiative to the president, according to Mr. Morris, Mr. Scruggs and others involved at the time. And on Aug. 10, President Clinton, surrounded by children in the Oval Office, threw his own support behind Dr. Kessler's proposal.

"Dick Morris helped reassure the president that it was not only the right thing to do but politically viable as well," Mr. Scruggs says.

The following July, Republican candidate Robert Dole was widely ridiculed for expressing doubt about the addictiveness of nicotine. Sometime after that, Mr. Morris says, "Clinton told me, 'You know, this tobacco issue is working out the way you said it might.' "

Ultimately, the president won two of the five Southern tobacco states and lost Georgia by a bare 1% margin.



Bennett LeBow

In March 1996, the industry discovered it had a wholly different breed of enemy within: Bennett S. LeBow, the 59-year-old financier who controls Liggett Group, the industry's smallest and most debt-ridden player.

Mr. LeBow, long regarded as an interloper within the tobacco companies' cozy fraternity, unilaterally agreed to settle four state Medicaid suits and other major litigation pending against his firm. The shocking capitulation, at a time when the other tobacco firms were still vowing never to give in, sent stocks of his competitors plummeting.

Rivals excoriated the renegade chief. But Mr. LeBow, who acquired Liggett in 1986, had scant interest in the moral, legal or regulatory dimensions of the tobacco trade: His was purely a bottom-line calculation. And for his company, at least, settlement appeared to make sense.

This was a view first suggested to him in late 1995 by New York lawyer Marc Kasowitz. The attorney says he told Mr. LeBow that "if you were the first to settle these state cases, you could extinguish or at least significantly limit the company's financial exposure." The company could afford to offer a sizable percentage of profits because, unlike those of its rivals, Liggett's profits were so slim.

The lawyer's pitch happened to dovetail with Mr. LeBow's own mounting suspicions that the industry was more vulnerable than it would admit. "Over the years they kept telling me that they were going to win everything and increasingly I didn't believe a word of it," Mr. LeBow says. "What was I supposed to do--sit and wait for bankruptcy?" Significantly, too, Mr. LeBow hoped to use a settlement to his advantage in a proxy fight for control of RJR Nabisco Holdings Corp.

After the shock of his defection wore off, Wall Street started to warm to Mr. LeBow's idea. Although investors roundly rejected the specifics of Mr. LeBow's settlement plan -- and rebuffed his advances on RJR -- they began to signal their support for an industrywide settlement. This encouraged the bigger tobacco makers to take the idea of settlement a lot more seriously, too.

For instance, less than two weeks after Liggett's settlement, RJR CEO Steven Goldstone for the first time said he would consider a "resolution" to the legal, regulatory and social controversy surrounding cigarettes. Eager to calm investors after Liggett's gambit, Mr. Goldstone made veiled references to his interest in a settlement, helping fuel a 20% rise in RJR's languishing stock. In fact, virtually every time the notion of settlement was aired, cigarette stocks roared ahead -- a powerful message to the industry that investors wanted to eliminate the risk of a potentially catastrophic verdict.

About a year after Liggett's settlement, Mr. LeBow broke with his brethren again by making stunning admissions about the products he sold. Persuaded that his rivals would soon reach a broad settlement, and determined not to make any payments under such a deal, he effectively turned state's evidence. To settle on favorable terms with all 22 attorneys general then suing the industry, he declared nicotine addictive and pledged to stamp that warning on cigarette packs. He asserted that cigarette marketers target children. He even agreed to turn over privileged documents, including notes about three decades of meetings among lawyers from the leading tobacco firms.

Although the big cigarette makers were by then on the verge of pulling up to the bargaining table anyway, some believe that Mr. LeBow delivered one last prod. Says the attorney, Mr. Scruggs, "He just created more vilification for the industry on the national scene, which was one of their motivations for trying to settle."


Grady Carter

For more than 25 years, Grady Carter had tried everything from hypnosis to acupuncture to wean himself from Lucky Strikes. But he kicked the habit only after he was diagnosed with lung cancer in 1991. Three years later, as he watched the celebrated tableau of tobacco chiefs testifying before Congress, he decided to sue Lucky Strike manufacturer Brown & Williamson.

"I was really upset. I had tried so hard to quit and there they all were, saying it wasn't addictive," says Mr. Carter, a retired, 67-year-old air-traffic controller in Jacksonville, Fla. "I wasn't a crusader, but I became one."

On the surface, Mr. Carter didn't seem like a particularly sympathetic plaintiff. He was affluent. His cancer was in remission. As industry lawyers would point out, he was drawn toward risky activities; he flew small planes and regularly zoomed through his neighborhood on a motorcycle. Mr. Carter even admitted he was partly responsible for his illness. In the past, such cases had been won handily by the industry.

Nonetheless, on Aug. 9, 1996, Mr. Carter shattered the tobacco companies' perfect record in court, winning a $750,000 verdict against B&W. His victory intensified the industry's fear that jurors' attitudes were being shaped by the popular culture's relentless hostility toward cigarette makers -- and that Big Tobacco's blame-the-smoker defense was wearing thin.

The Carter verdict, which is under appeal, also provided evidence that the flood of internal documents that had surfaced from the industry's own files was taking a toll. Jurors cited Brown & Williamson documents -- some suggesting that officials there long understood the health risks of smoking -- as a key reason they held the company liable for Mr. Carter's illness.

As Mr. Carter celebrated his victory at a postverdict champagne party in the office of his lawyer, Norwood "Woody" Wilner, the stock of Philip Morris, by far the largest tobacco company, was dropping. By day's end, it had lost an extraordinary $11 billion, or 14%, of its market capitalization.

Shortly after the Carter loss, Martin Broughton, the 50-year-old chief executive of London-based B.A.T, made a trans-Atlantic phone call to Geoffrey Bible, the Philip Morris chairman, to ask whether he had given any thought to settling the tobacco cases once and for all. Mr. Broughton's exploratory phone call emboldened Mr. Bible to contact his counterparts at RJR, Loews Corp. and UST Inc., the other major U.S. tobacco firms.

Beginning in September of last year, Mr. Broughton and these CEOs held a series of secret meetings at the Plaza, St. Regis and Four Seasons hotels in New York to decide together what they would be willing to give up to make the Grady Carter loss their last as well as their first. On April 3, 1997, negotiations with the antitobacco forces began.

In an interview the day the settlement was announced last month, Mr. Broughton spoke of how the industry wanted "to bring an end to the demonization" of tobacco. "The sheer weight of cases," he added, "when you looked at them as a collection, presented the prospect of being at war forever and ever."

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LEVEL 1 - 1 OF 1 STORY

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HEADLINE: F.D.A. Taking Cautious Path In Its Regulation of Tobacco

BYLINE: By SHERYL GAY STOLBERG

BODY:

When a Federal judge in North Carolina declared last week that the Food and Drug Administration could regulate nicotine as a drug, he opened the way for tobacco foes to realize a once-distant dream -- a world where cigarettes could be so radically altered that the whole country, in the words of one addiction expert, "would become detoxified."

But the Federal agency is not going to do that, at least not now.

"You have 35 to 45 million Americans addicted to a product," said Dr. David A. Kessler, who recently stepped down as the Commissioner of Food and Drugs. "You can't experiment on people by making public policy without the data."

So officials are charting a delicate course. As scientists collect data that might bolster the case for reducing or eliminating nicotine from cigarettes, the agency is keeping a watchful distance, focusing instead on how to negotiate the political minefield of tobacco regulation.

The ruling by the Federal judge, William S. Osteen Sr., comes as food and drug regulators are under scrutiny from Congressional Republicans who would like to rein in their authority for approving drugs. Moreover, it is uncertain whether Congress will approve the agency's $1 billion budget request for 1998.

That has left tobacco critics worried that the Government will not have the resources to carry out its current rules to curtail the ability of young people to buy cigarettes. How the agency conducts itself with respect to future regulation of tobacco could prove critical as it tries to retain broad powers without overstepping its political bounds.

Until last Friday, the notion that the Government might quickly win its battle to classify nicotine as a drug seemed far-fetched, even to anti-smoking advocates.

"Never in a million years would I have predicted this," said Dr. Stanton Glantz, professor of cardiology at the University of California at San Francisco.

Now, one week later, the magnitude of the court's ruling is starting to sink in.

"Few people fully understand the potential, what it means for nicotine to be a drug," Dr. Kessler said. "It really changes the entire landscape. Nothing is going to happen overnight. But the implications are profound, and only beginning to be sorted out."

Dr. Kessler and other public health advocates envision a day when regulators might take full advantage of the power the judge bestowed upon them, perhaps using it to force a drastic redesign in cigarettes. If the decision stands, as many legal experts predict, the potential for Government intervention would be vast -- and far more damaging to the tobacco industry than the marketing and advertising restrictions the judge struck down.

Over time, for example, the agency could force cigarette makers to submit detailed information, of the sort drug companies must produce, and demand that the ingredients of cigarettes be listed on the packages.

It could order that certain ingredients be removed. High on the list might be ammonia, which the tobacco industry calls an "impact booster" for its ability to enhance the delivery of nicotine to the smoker.

Or it could require the manufacturers to reduce the level of nicotine in cigarettes, in effect weaning the smoking public. Under such a plan, said Neal Benowitz, a tobacco researcher at the University of California at San Francisco, cigarettes would become little more than props, "something to share with friends, or have in your hand or mouth."

Officials of the drug agency insist they have no immediate plans to adopt any of these ideas. Rather, said Mitch Zeller, the Associate Commissioner in charge of tobacco policy, the agency plans to vigorously pursue its appeal of Judge Osteen's decision that regulators could not restrict tobacco advertising. Those proposed regulations were intended to cut smoking by young people in half over the next seven years.

"Our focus is on kids," Mr. Zeller said, "and our focus will remain on kids."

For the record, the tobacco manufacturers maintain they are not worried. If Judge Osteen's ruling is upheld, they say they plan to return to North Carolina and request a trial on the facts underlying the agency's determination that nicotine is addictive and that cigarettes should be regulated as drug-delivery devices.

"The issue of does the F.D.A. have this authority is going to be tied up in court for years to come," said Charles Blixt, chief counsel for the RJR Tobacco Company. "The F.D.A. has facts in its analysis that we believe are incorrect, and we believe we will be able to prove that."

At the same time the industry is trying to negotiate a broad settlement to resolve its dispute with the agency and obtain immunity from a vast array of lawsuits filed by states and individual smokers.

For the drug agency, regulating tobacco poses a ticklish paradox. Its mission is to insure that drugs and medical devices are safe and effective. It would be impossible for regulators to offer such approval to cigarettes, which, according

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to the Federal Centers for Disease Control and Prevention, are responsible for the death of more than 400,000 Americans each year.

Nor can the agency simply ban them, as that would be politically untenable, not to mention unpracticable, given the vast number of people who are addicted. Without nicotine's calming effects, millions of smokers might crumble under life's daily stresses. A black market could erupt, with smugglers bringing cigarettes in from abroad. So officials have occupied a cautious middle ground, moving to restrict advertising aimed at the industry's new customers -- children. In light of Judge Osteen's ruling, some tobacco foes say the agency must expand that strategy, or at least lay the groundwork for it.

"The tobacco problem exists on a target, like in archery," said Cliff Douglas, a Chicago lawyer and longtime tobacco foe. "A lot of the proposals that have been made have involved shooting the arrow at the peripheral rings, dealing with questions of advertising and promotion, youth access, tobacco taxes.

"But the bull's-eye on that target is the product itself, which is what does the addicting, injuring and killing. Now, for the first time, we can begin to seriously explore policy options that aim at the bull's-eye."

At least one member of Congress is already exploring those options. Representative Martin T. Meehan, Democrat of Massachusetts, plans to reintroduce next week a bill that he has labeled the Freedom From Nicotine Addiction Act. The bill, which calls for nicotine to be phased out of cigarettes over the next seven years, was first submitted in 1995 but died in committee. Mr. Meehan says he believes that Judge Osteen's ruling could bring the bill new backers.

"When I first introduced my bill, many criticized it as being unrealistic," Mr. Meehan said. "Now it appears to be the most logical course."

The concept that nicotine in cigarettes could be gradually reduced is not new; in 1994, Dr. Benowitz, the San Francisco researcher, advocated it in an article in The New England Journal of Medicine. With **Jack E. Henningfield,** an addiction expert who helped edit the 1988 Surgeon General's report on nicotine addiction, he suggested that over 10 to 15 years the levels of nicotine in cigarettes could be cut to a point where smoking was no longer addictive.

The idea came from his studies of "chippers" -- people who, in the argot of heroin addiction, can indulge occasionally without becoming addicted. Dr. Benowitz said cigarette chippers typically consumed 5 milligrams of nicotine a day; the average smoker, by contrast, takes in about 4 times that much. If cigarettes could be altered so that most beginning smokers took in only 5 milligrams of nicotine a day in as many as 30 cigarettes, he reasoned, most people could smoke without becoming addicted.

But the plan has pitfalls, as even its authors acknowledge. No one knows the precise level at which nicotine in cigarettes is not addictive. And little is known about how millions of smokers, forced into simultaneous withdrawal, would cope.

In addition, research on the use of low-tar and low-nicotine cigarettes has shown that smokers often compensate for reductions in nicotine by taking more puffs or inhaling more deeply. So if cigarettes had less nicotine, people might simply smoke more. For these reasons, Dr. Kessler said, he rejected the idea.

"It sounded good in theory," Dr. Kessler said, "but would people end up smoking more to make up for the nicotine? That would not be the right public health approach. There was not the scientific data to answer those questions."

But research is under way that may give future agency commissioners the evidence Dr. Kessler lacked.

At the University of Pittsburgh, for instance, a professor of psychiatry, Kenneth Perkins, is examining the threshold at which smokers and non-smokers become sensitive to the mood-altering effects of nicotine. That work could help determine a non-addictive dose for cigarettes.

The industry's own research may also yield clues. The 22 state attorneys general who are suing the cigarette manufacturers for reimbursement of the Medicaid costs of treating the smokers' illnesses requested millions of pages of internal industry documents that could shed light on what happens to smokers when the ingredients in cigarettes are changed.

The negotiations to settle those lawsuits could determine the Food and Drug Administration's future power to control tobacco. After Judge Osteen's ruling, the anti-smoking forces insist they will not accept any settlement that bargains away the agency's right to classify nicotine as a drug.

"The F.D.A. is in much better shape than anybody expected it to be," Dr. Glantz said. "The prospects in the Supreme Court are looking good. To me the situation is a totally rosy one."

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