tobacco-
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Tobacco Agreement/Legal Fees

Awareness for the tobacco agreement is at 73%.

Awareness	9/9	10/1	10/8
Heard	82	81	73
Haven't heard	17	19	25

Unaided support	9/9	9/30	10/8
Support	41	46	45
Oppose	43	41	40

Which do you think is most important, increasing efforts to curb...

15% tobacco use
13% alcohol use
66% illegal drug use

This question demonstrates the power of the Republican response to respond to tobacco by bringing in the issue of drugs. This is why we are highlighting the anti-drug program as a major accomplishment of the administration tomorrow.

Legal Fees – this is a powerful issue related to the settlement. Just hearing that lawyers could receive $15 billion in fees is enough to make most people turn on the settlement. This suggests that Governor Chiles is right when he made the legal fees a major issue in Florida, and clamped down on them as part of any settlement.

"Many states involved in negotiating the settlement with the tobacco companies hired outside attorneys to represent the state. If the settlement is approved by Congress and the White House, these lawyers could receive more than 14.7 billion dollars from the 368.5 billion dollar settlement over 25 years. Knowing this would you strongly favor, somewhat favor, somewhat oppose, or strongly oppose a settlement with the tobacco companies?"

34% favor (11% strongly + 23% somewhat)
59% oppose (39% strongly + 20% somewhat)

"The fees that were agreed to between the states and the lawyers were often contingency fees, meaning they would receive a certain percent of the settlement when it is reached. The fees agreed to range from $250,000 to thirty percent of the settlement amount. If all lawyers' fees were capped at the low end of this range, at 3%, would you would you strongly favor, somewhat favor, somewhat oppose, or strongly oppose a settlement with the tobacco companies?"

62% favor (29% strongly + 33% somewhat)
32% oppose (20% strongly + 12% somewhat)

One alternative would be to pay the lawyers an hourly fee based on the amount of time they spent working on the settlement.

25% prefer the lawyers receive an hourly fee; 66% say a limited contingency fee.

Economic Surplus

Longer-term concerns show the public split on what to do with the possibility of additional money in the budget – 48% new programs (ed/infrastructure as an example); 51% reducing the debt and cutting taxes. One bill already suggests a split like this, though specific programs in specific areas will probably be sustainable if they are attractive. The polling however does illustrate the advantages of issues such as education and health over highways as a preference.

Due to the good economy, the government may have an extra $15 billion next year above what was expected. Should this extra money go primarily to:	First Choice	Second Choice
New programs in areas such as education and health	42	22
Reducing the U.S. debt	35	22
Reduced taxes	16	27
Improving our infrastructure with new investments in transportation, highways or other structures	6	27

The Child Care Conference

The original research showed that people do not believe that child care is safe, available or affordable, and these are the three themes for expansion of child care.

Do you think that the Child Care in this country is adequate or inadequate?	Adequate	Inadequate
Child Care	29	64

What is the biggest priority?

	Total	Democrats	Republicans	Independents
Improving quality and safety	31	31	28	35
Increasing the availability of child care	22	27	23	17
Making it more affordable	39	39	42	16

All of the ideas tested on child care meet widespread public approval, starting with background checks, and improving safety standards.

The data again underscores that voters want an incentive for an employer to provide child care at their place of work. This is the class-neutral way to expand the availability of child care – rather than targeted just to poor families or to taking people off of welfare. 84% want help making it available where they work. They want work and family to go together, not be separated.

All of these add up to a major initiative to expand the safety, availability and affordability of child care. While parts of it can begin with the Child Conference, expanding quality child care would be a major initiative that could be fought for, even as a priority item with any new monies from a budget surplus.

I am going to read you some proposals for improving the quality of day care nationally. For each one, please tell me if you would strongly support, somewhat support, somewhat oppose or strongly oppose this proposal.	**Strongly Support**	**Total Support**	**Total Oppose**
Require background checks on all child care workers	88	92	3
Requiring any states that receive funds for child care to meet set safety regulations for their facilities	73	89	7
Provide a tax-credit for businesses that provide child care for their employees	63	84	13
Creating a commission of business people to make recommendations on how they can do a better job of providing child care for their employees and community members	60	83	13
Give funding to each state to use for expanding child care, including child care for low income families and after school programs for school-age children	59	81	15
Providing financial incentives, such as scholarships and loan forgiveness to qualified child care workers	47	74	20
Using 4 billion dollars per year from the federal budget to provide child care for one million children while their parents work, and after school programs for another million children	45	70	23

69% think that public schools should be kept open after hours with programs for children so that no after school child care would be necessary.

"Suppose President Clinton announced a $5 billion program to broaden the availability of child care, making it available at low cost to the children in 1 million low income families who otherwise could not afford it and also providing funds to keep open more schools with after hours programs. Would you support or oppose this?"

71% support; 25% oppose
61/26 more/less favorable

But there are limits and the attack of big government is always possible if these are structured as anything but our conventional formula which is 1) rules to tighten safety and quality 2) helping those in need and 3) a middle class initiative (Kohl tax credit).

47% say that child care is the responsibility of parents and the role of the government in it should be kept very limited; **49**% say that child care has become so important as 70% of all mothers are now in the workforce, that the government has to play a role in making quality child care much more available or these children will lose out.

Care for Aged – Some surprising findings

In many ways we are not looking at the Medicare reforms process in the same way we looked at the balanced budget – the reform commission should not just be an opportunity to trim and contain Medicare with HMOs and CPI adjustments, but an opportunity to refocus its priorities to deal with the emerging problems of the 21st Century. And of the original list of issues identified years ago, increased, not decreased long-term care is so far the only one not addressed.

And most voters, particularly older voters, an eroding base of the Democratic party, put this at the top of their list of issues, it is even more important than the child care problem.

In many ways addressing these two issues together – doing right for both our children and our parents makes sense.

Do you think that the **long-term care** for our aged in this country is adequate or inadequate?	**Adequate**	**Inadequate**
Long Term Care	20	69

Which is a Greater Priority?	**Child Care**	**Care for Aged**
Total	**42**	**45**
Democrats	42	47
Republicans	42	56
Independents	44	32
Congressional Vote		
Dem	45	42
GOP	39	52
Don't Know	43	36
Likelihood to Vote		
Absolutely Certain	36	51
Very Likely	46	40
Possibly	56	33
18-24	76	17
25-34	41	42
35-49	50	37
50-64	**23**	**61**
65+	**37**	**53**

And safety, availability and affordability are the same three issues that again are part of the problem – the answer society has now is to impoverish any senior citizen to make them qualify the long-term care or to take away virtually everything they have built up is a hard one. And the public attitudes on this are quite strong – and can be mobilized in an electorally potent way as part of Medicare reform.

The numbers are astounding:

Do you think that Medicare should provide long-term care, either at home or in a nursing home for every senior citizen who cannot take care of him or herself?

Yes	**88%**
No	**8%**
DK	**5%**

If they cannot afford it? 91%

Do you think the government does that now?

Yes	26%
No	68%
Dk	6

Only 28% believes we do that now.

Suggest that this issue be reviewed as part of the reforms of Medicare and its financial stability or is this too impractical to consider?

Consider	81%
Impractical	12%

And while child care is considered a responsibility of the family, long term care of senior citizens is not – 16% say it is the responsibility of families, 80% say that government has a role in making the care available.

The point is that electorally we have moved over to the children, but we are letting go of senior citizens (we lose male senior citizens) and the oldest baby boomers.

And we have two major phenomena of the 21st Century affecting lifestyles – the growth of both single parent families and two career couples that created the need for child care, and the greater longevity of our population, creating the expanded need for senior nursing and home care. We should have clear proposals for both of those areas as part of reforms so that we continue to reorient the priorities of our government to solve the problems of the next century.

Misc. Issues

84% would support requiring country of origin labels on all fruits and vegetables sold in the United States.

82% support eliminating religious discrimination in the workplace by allowing all employees to practice their religion as long as it does not disturb others.

But needle exchanges are on the opposite end –

70% oppose and 25% support the availability of **needle exchanges** where drug addicts can receive free, sterile needles.

61% oppose and 34% support the **sale of hypodermic needles** at pharmacies (one alternative would be just to make needles available over the counter - their cost is insignificant compared to the cost of drugs).

This is seen by the public as totally inconsistent with a tough drug policy.

Presidential Message Schedule

Date	Event
Saturday, October 11	Radio Address (Taped)
Sunday, October 12 – Sunday, October 19	Foreign Travel
Wednesday, October 22	Volunteer event
Thursday, October 23	WH Conference on Child Care
Friday, October 24	Foreign Policy Speech
Thursday, October 30	STARBRIGHT Foundation Event
Friday, October 31	Education Event

FEB. 2. 1998

U.S. SENATE COMMITTEE ON

Commerce, Science, and Transportation

JOHN McCAIN, Chairman

www.senate.gov/~commerce

Tobacco - McCain Questions / EW

CC: EK
Tom
JRM
+ return

FAX

TO: Bruce Reed

OFFICE:

FAX NO: 456-2878

DATE: 2/2/98 TIME: 1:23 pm

PAGE 1 OF: 11

FROM: John Raidt (202) 224-1251

SUBJECT:

United States Senate

COMMITTEE ON COMMERCE, SCIENCE,
AND TRANSPORTATION

WASHINGTON, DC 20510-6125

February 2, 1998

The Honorable William Clinton
The White House
Washington, DC 20500

Dear Mr. President:

As you know, Congress intends to consider comprehensive tobacco legislation during the upcoming legislative session.

The issues raised by the global tobacco settlement and involved in the crafting of legislation to implement responsible national tobacco policy, are extremely diverse and intensely complex.

As I stated in my letter to you of six weeks ago, it's imperative that Congress and the administration work together in a cooperative and bi-partisan fashion if we are to craft a bill that will gain public support, Congressional approval and your signature.

In that regard, it will be particularly important for the Administration to exercise its executive responsibilities by providing Congress with detailed assessment of the provisions of pending tobacco legislation, and your specific policy and legislative recommendations.

The Senate Commerce Committee which I chair, and which has jurisdiction over key components of tobacco legislation, will hold hearings on the issue early this year. To assist with these deliberations I would like to request the administration's answers to the attached tobacco related questions.

These are the first in a series of questions to which we must have answers if we are to properly assess global tobacco settlement legislation, and move forward with the most effective and appropriate bill.

With the advice and expertise of the executive branch, we can ensure that federal tobacco legislation is based on a firm understanding of the facts, grounded in a solid understanding of the true consequences of our actions, and formulated by consensus. Most importantly, these disciplines will enhance our ability to achieve our most important goal of dramatically reducing youth smoking.

Thank you for your assistance in providing the Committee and Congress with the information requested. With regards,

Sincerely,

John McCain
Chairman

JM/jr

QUESTIONS REGARDING GLOBAL TOBACCO SETTLEMENT LEGISLATION

THE FOLLOWING IS THE FIRST SET IN A SERIES OF QUESTIONS PERTAINING TO S. 1415, LEGISLATION IMPLEMENTING THE GLOBAL TOBACCO SETTLEMENT PROPOSAL AGREED TO BY THE ATTORNEYS GENERAL OF THE VARIOUS STATES AND THE TOBACCO INDUSTRY.

QUESTIONS RELATED TO SPECIFIC LEGISLATIVE LANGUAGE SHOULD USE S. 1415 AS THE REFERENCE. ADDITIONAL QUESTIONS WILL FOLLOW.

I. BAN ON OUTDOOR ADVERTISING, INCLUDING IN STADIA AND ARENAS

The agreement (bill page 15) bans outdoor tobacco product advertising, and tobacco advertising in stadia and arena.

1. What data does the administration have to substantiate that a ban on outdoor advertising, including stadia and arenas will reduce smoking and, in particular, youth smoking?

2. To what extent do you believe such restrictions be expected to reduce smoking?

3. Does the administration support such a ban. If so, why? If not, why not?

4. What specific changes, if any, in the legislative language implementing the ban would the administration propose? Please provide specifics.

II. BAN ON HUMAN FIGURES AND CARTOON FIGURES IN ADVERTISING

The agreement (bill page 15) bans the use of human figures and cartoons in tobacco advertising.

1. What data does the administration have to substantiate that barring the use of human figures and cartoon advertising will reduce smoking, in particular, youth smoking?

2. To what extent do you believe such restrictions can be counted on to reduce smoking?

3. What entity would you propose to determine what constitutes a human image or cartoon character?

4. What penalty do you believe is appropriate and should accrue for a violation of the prohibition on material containing figures deemed to be human or cartoon?

5. Does the administration support this ban. If so, why? If not why not?

6. What specific changes, if any, in the legislative language implementing the ban would the administration propose? Please provide specifics.

III. BAN ON INTERNET ADVERTISING

The agreement (bill page 16) bans tobacco advertising on the internet.

1. Does the administration support such a ban? If so, why? If not, why not?

2. How can and should a ban on internet advertising of cigarettes be enforced?

3. What, if any, concerns does the administration have regarding Constitutional free speech issues raised by any such ban?

4. What specific changes, if any, in the legislative language implementing the ban would the administration propose?

IV. BAN ON POINT-OF-SALE ADVERTISING

The agreement (bill page 16) bans point-of-sale tobacco except for advertisements which comply with that certain restrictions.

1. What data does the administration have to substantiate that a ban on point-of-sale advertising would reduce smoking, in particular, youth smoking?

2. Does the administration support such a ban? If so, why? If not, why not?

3. Is the exemption of point-of-sale advertisement for adult stores and tobacco outlets appropriate?

4. Is it appropriate to grant companies with greater cigarette market share additional point-of-sale advertising rights? If so, why? If not, why not?

5. Does such a privilege constitute a statutorily granted competitive advantage? Please discuss.

6. Does the administration support this grant? If so, why? If not, why not?

7. What specific changes, if any, in the legislative language implement the ban would the administration propose? Please provide specifics.

V. LIMITATIONS ON POINT-OF-SALE ADVERTISING

The agreement (bill page 17) specifies the size and design of permissible point-of-sale advertising.

1. What data does the administration possess to suggest that such limitations will reduce smoking, particularly among youth?

2. Does the administration support this provision? If so, why? If not, why not?

3. If so, what is the justification for statutorily determining a particular size limitation and for the particular size and restrictions proposed?

4. What specific changes in legislative language, if any, does the administration propose? Please provide specifics.

VI. BAN ON ADVERTISING RESTRICTION AGREEMENTS

The agreement (bill page 17) includes a prohibition on arrangements to limit the ability of a retailer to display permissible point-of-sale advertisement or promotional material originating with another manufacturer or distributor.

1. Are such agreements currently against federal or state law? If so, is such a provision necessary?

2. Does the administration support such a provision? If so, why? If not, why not?

3. Does the administration support the limitation. If so, why? If not, why not?

4. What specific changes, if any, in the legislative language implement the ban would the administration propose? Please provide specifics.

VII. GLAMORIZATION OF TOBACCO

The agreement, (bill page 20) prohibits payments to glamorize or promote the image or use of tobacco through pint, films or live performance that appeals to individuals under 18 years of age.

1. What data does the administration possess to indicate whether and to what extent this provision will reduce smoking, particularly among youth?

2. What entity does the administration propose will determine what activity constitutes promoting the image or use of a tobacco produce?

3. How does the administration envision such a ban will be enforced?

4. Does the administration support such limitations?

5. What specific changes, if any, in the legislative language would the administration propose? Please provide specifics.

VIII. **RESTRICTION ON COLOR ADVERTISEMENTS**

The agreement (bill page 21) prohibits the use of color advertising except in adult publications.

1. What data does the administration have to substantiate that a ban on color ads, except in publications with limited youth readership, will reduce smoking, particularly youth smoking?

2. Does the administration believe that the threshold for the restriction of two million readers is the appropriate threshold?

3. How does the administration envision readership demographics being determined?

4. How would this restriction be enforced?

5. Does the administration support this restriction? If so, why? If not, why not?

6. What specific changes, if any, in the legislative language implementing the restriction does the administration propose? Please provide specifics.

IX. GENERAL QUESTION REGARDING MARKETING/ADVERTISING BAN

1. Can the marketing and advertising restrictions envisioned in the settlement be constitutionally imposed, with or without the industry's consent? Please discuss.

X. WARNING LABELS

The agreement, (bill page 26- 28), authorizes a variety of new warning labels for tobacco products.

1. Does the administration believe that these are appropriate warning labels?

2. Does the administration possess data suggesting that these warning will effectively reduce smoking, particularly youth smoking?

3. What data suggests that the various new warnings will

be as or more effective than the current warning requirements?

4. Does the administration support the provisions authorizing specific new labels? If so, why? If not, why not?

5. What specific changes, if any, in the legislative language implementing this provision would the administration propose? Please provide specifics.

IX. WARNING LABEL SIZE AND LOCATION REQUIREMENTS

The agreement (bill page 28-29) specifies, the size, placement and print type of the various tobacco warning labels.

1. What data does the administration have to suggest that these specifications will reduce smoking, particularly youth smoking?

2. Does the administration support these particular specifications? If so, why? If not why not?

3. Does the administration support the exception (page 29) provided for flip-top cigarette packages? If so, why? If not, why not?

4. What specific changes, if any, in the legislative language to implement these restrictions would the administration propose? Please provide specifics.

X. SMOKELESS TOBACCO ALTERNATIVE LABELS

The agreement (bill page 34) provides for various new warning label options for smokeless tobacco

1. What data does the administration have to suggest that the various new warning labels will effectively reduce the use of smokeless tobacco, particularly among youth?

2. Does the administration support the use of these alternative labels?

3. What changes, if any, to the legislative language implementing this provision would the administration propose? Please provide specifics.

XI. ENFORCEMENT OF ADVERTISING, MARKETING AND LABELING RESTRICTIONS

The agreement (bill page 36-37)provides for the enforcement of advertising, marketing and labeling restrictions.

1. Does the administration support the enforcement provisions regarding advertising, marketing and labeling? If so why? If not, why not?

2. What changes in legislative language, if any, does the administration recommend regarding this provision? Please provide specific language.

XII. PREEMPTION OF STATE AND LOCAL ACTION

The agreement (bill page 38) prohibits state and local requirements related to the packaging or advertising of cigarettes or smokeless tobacco.

1. Does the administration support such preemption? If so, why? If not, why not?

2. What changes in legislative language, if any, does the administration recommend regarding this provision? Please provide specific language.

XIII. EXEMPTION OF EXPORTS

The agreement (bill page 40) exempts exports from the packaging, labeling and advertising requirements.

1. Does the administration support this exemption? If so, why? If not, why not?

2. What ramifications does this provision have in the area of foreign relations?

3. What changes in legislative language, if any, does the administration recommend regarding this provision? Please provide specifics.

XIV. RESTRICTION ON ACCESS TO TOBACCO PRODUCTS

The agreement (bill page 40-41), prohibits the sale of tobacco products to individuals under 18 years of age; requires that retailers verify the age of individuals purchasing tobacco; and exempts individuals 27 years of age or older from the photo identification requirement.

1. Does the administration support these provisions? If so, why? If not, why not?

2. How does the administration envision that this provision will be enforced and can it be enforced effectively?

3. What changes in legislative language, if any, does the administration recommend regarding this provision? Please provide specifics.

XV. PROHIBITION ON SALE OF LESS THAN A FULL PACK OF CIGARETTES

The agreement (bill page 41) prohibits the sale of less than a full pack of cigarettes.

1. Does the administration support this prohibition? If so, why? If not, why not?

2. What changes in legislative language, if any, does the administration recommend regarding this provision? Please provide specifics.

XVI. STATE LICENSURE TO SELL TOBACCO

The agreement, (bill page 44) requires states to license sellers of tobacco products.

1. What data, if any, does the administration have to indicate that licensure will effectively reduce access to tobacco by minors?

2. What entity does the administration envision would enforce the licensure requirement if a state should be unable or unwilling to implement the licensure program?

3. Has the administration developed or formulated the cost of a licensure program?

4. Does the administration support the licensure program? If so, why? If not, why not?

5. What changes in legislative language, if any, does the administration recommend regarding this provision? Please provide specifics.

XVII. ANTI-TRUST EXEMPTION

The agreement, (bill page 94), provides anti-trust exemption for the tobacco industry.

1. Does the administration support such an exemption? If so, why? If not, why not?

2. Could such an exemption be used to set prices beyond those necessary to deter youth smoking, but to increase profits for the industry?

3. What changes in legislative language, if any, does the administration recommend regarding this provision? Please provide specifics.

XVIII. APPLICABILITY TO NEW ENTRANTS IN TOBACCO INDUSTRY

1. Under the agreement, and the implementing legislation, what is the assurance that new entrants into the tobacco industry will comply with the statute and any related consent agreements not to challenge the legality of the agreement implementation legislation.

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Tobacco Questions
1/16/98

Question: What is the Administration's view of the settlement announced today between Texas and the tobacco industry?

We are very pleased with today's news. It is another indication that the tobacco industry will be held accountable for the harms it has caused. And it should serve as an impetus for the passage of national tobacco legislation.

Question: Why is national legislation necessary if each state can settle with the tobacco companies?

First, it's unlikely that each state will be able to settle with the industry, given the range of state laws on the subject. Second and more important, individual state settlements cannot accomplish important objectives relating to the public health, such as giving FDA authority over tobacco products, establishing a comprehensive scheme of penalties for failure to reduce youth smoking, and putting into place a nationwide licensing system for the distribution of tobacco products. Settlements can ensure that the tobacco companies pay out money for some of the harm they have caused. But we need national legislation to put in place the kind of comprehensive regulatory measures that will protect the public health and our nation's children.

Question: Some Republicans have begun to talk about enacting tobacco legislation piecemeal, with legislation on youth smoking this year. Would the Administration go along with such a plan?

We believe that Congress must enact comprehensive tobacco legislation this year. We will not be able to reduce youth smoking -- let alone meet our other public health objectives -- without a comprehensive measure. To reduce youth smoking over the long term, we must not only establish a system of penalties for failing to meet youth smoking targets, but also increase the price of cigarettes, guarantee FDA jurisdiction over tobacco, establish a licensing system, and regulate access and advertising. Those measures are also necessary to improve the health of adults. We shouldn't abandon the effort to enact comprehensive legislation before we've even started.

Question: Will the President reject tobacco legislation that includes limits on liability, given the new RJ Reynolds documents?

The new documents are horrific, but they only confirm what we've long suspected, while making the need for legislation in this area more clear than ever. Comprehensive legislation stands a far better chance of reducing youth smoking and protecting the public health than lawsuits brought by smokers against the tobacco industry. The President will focus on the legislation as a whole

Tobacco
Public
health
2/98

Anti-Tobacco Activists May Heal Rift

Koop Works to Unite Public Health Groups

By John Schwartz
Washington Post Staff Writer

An increasingly bitter rift between two factions of the nation's public health groups over the proposed national tobacco settlement could be moving toward resolution—and a united and harder stance against cigarette-makers.

Since the announcement last year of a possible national settlement, public health groups have been divided over whether the industry should get protection from class-action civil lawsuits and punitive damages.

The division between the two sides became so acrimonious that it appeared to present a significant stumbling block for national legislation based on the deal. Sen. John McCain (R-Ariz.) sent a Jan. 13 letter to public health groups stating that they "must play a vital role" in shaping legislation, and warning that "Legislative progress would be seriously impeded if the public health community is not fully engaged and substantially in accord."

One coalition, which includes the American Cancer Society and leadership of the American Medical Association, has been willing to accept limited liability protection from class-action lawsuits and punitive damages to get the sweeping concessions by the industry to help reduce underage smoking. They banded together under the name ENACT.

The other coalition, made up of the American Lung Association, Public Citizen and a number of smaller regional anti-tobacco organizations, has remained deeply suspicious of the deal and opposed even the most limited grants of immunity. (That position on immunity was also endorsed in a vote of the AMA's House of Delegates, a direct challenge to the AMA leadership.) The anti-deal group has named itself Save Lives, Not Tobacco, and officially makes its debut this morning at a news conference in Washington. Former surgeon general C. Everett Koop was scheduled to speak, but bowed out at the last minute.

Koop said he hoped to be able to announce he had achieved that goal of a truce within two weeks. "I am almost there," he said. In the meantime, "I don't think that going to one press conference of one coalition is the way to announce unity between the two," he said.

When ENACT formed late last year, the group asked Koop to serve as a spokesman. Koop refused. In an interview yesterday, he said that the group didn't go far enough in fighting the industry, and "I also didn't feel I ought to associate myself with one community versus another." Since then, Koop and former Food and Drug Administration commissioner David A. Kessler have worked to reconcile the two groups: specifically, to try to get key players in the ENACT coalition to speak out against the civil liability protections.

Neither ENACT nor a key member, the National Center for Tobacco-Free Kids, has stated support for immunity, focusing instead on the public health issues. But their silence on the issue has been broadly taken as assent. Matthew L. Myers, executive vice president and general counsel of the National Center for Tobacco-Free Kids, disputed that interpretation, however. He said: "The campaign opposes any changes in the civil justice system that would weaken the courts' ability to protect the public health, permit the tobacco industry to operate outside the normal boundaries of the law, or escape accountability for its wrongdoing. We welcome Dr. Koop's efforts to try to permit the public health community to enter this crucial year as united as possible."

In a press briefing yesterday morning, Myers said that the situation in Congress had "moved beyond" the original national settlement proposal, and "it's important that Congress set a high mark and move toward" it, while keeping an eye on "what's achievable."

Michael Pertschuk, co-director of the Advocacy Institute and an adviser to public health groups, said that the balance of power at the time the June 1997 deal was announced has shifted because of new revelations about the industry, including new evidence that cigarette-makers targeted minors. And that has reopened liability issues. "The parties had really gotten closer," Pertschuk said, "but they were yelling at other and not talking to each other until Koop came along."

A tobacco industry spokesman warned that if the reconciliation attempt between the two coalitions is successful and a strong statement against liability protection emerges, the tobacco industry would almost certainly withdraw its support for legislation. "The limited liability provisions contained in the June 20 proposal are essential," spokesman Steve Duchesne said.

FOR MORE INFORMATION

For comprehensive Post coverage of the tobacco debate, click on the above symbol on the front page of The Post's Web site at www.washingtonpost.com

The Washington Post
THURSDAY, JANUARY 22, 1998

Testifying Publicly, Carey Blames Aides for Teamsters Campaign Irregularities

By Frank Swoboda
Washington Post Staff Writer

Publicly testifying under oath for the first time since the start of the campaign finance scandal that has rocked the nation's largest trade union, Teamsters President Ron Carey yesterday denied any wrongdoing, portraying himself as a leader who trusted those around him and is now paying the price.

Testifying before the three-member Independent Review Board, which is considering his ouster from the union, Carey said he was a "bottom-line" kind of guy who spent much of his time out on the road and didn't want to be bothered with a lot of bureaucratic details. "I viewed my job as not just sitting in my office. That's a waste," Carey said. "I reserve for myself the high-priority areas."

Carey, who will resume his testimony under cross-examination today, sounded as though he were still on the campaign stump for much of his time in the witness box. His attorney, Reid Weingarten, gently led him through the highlights of his five-year term as Teamsters president.

The 61-year-old union leader told how he had spent his entire professional life in the Teamsters, working his way up from shop steward to international president. He told how he had rid the union of "the luxury and all the perks" enjoyed by past leaders of the Teamsters so that he could serve the members and "the working families of America."

Carey and William Hamilton, the union's former director of government affairs, are on trial before the review board, which has accused them of embezzling money from the union's general treasury to help finance Carey's reelection campaign. In more than 300 cases, the review board has never exonerated anyone facing its censure.

Carey narrowly defeated James P. Hoffa in the 1996 election, but the election results have been thrown out and Carey has since been disqualified from running for office again because of the financing allegations involving his campaign. Carey has previously testified under oath in depositions before other government offices investigating the Teamsters—but he had not previously testified in public.

The 1.4 million-member union has been operating under court supervision since 1989 as part of a consent decree signed by the union with the Justice Department to settle civil racketeering charges. Carey, running as the reform candidate pledging to rid the union of corruption, was elected in 1991 in the first direct election of national officers in Teamsters history. Both the 1991 and the 1996 elections were conducted under strict government supervision.

Lawyers for the two union officials have argued that both were the victims of Jere Nash, who managed Carey's 1996 reelection campaign and has since been convicted of criminal fraud charges, and Martin Davis, another Carey campaign operative convicted of fraud who was also a business associate of Nash. Nash and Davis have not been sentenced and are cooperating with federal prosecutors in New York who continue to investigate the Carey campaign.

Carey and Hamilton did score a potential victory in the courtroom yesterday when the U.S. attorney for the Southern District of New York agreed to ask that Nash be allowed to testify at the review board's hearing to give the two men a chance to confront their accuser face-to-face and under oath. Late in the day, a request was made to also allow Davis to appear. The U.S. attorney's office had originally blocked both men's appearances.

Attorneys for Davis and Martin can still refuse to allow their clients to appear, and the review board does not have subpoena power to force them to testify.

At the heart of the allegations both Carey and Hamilton ... been referred to as ... which the Teamsters ... to various grass-roots political ... that support Democratic candi... exchange for those groups ... have their political friends ... tions to the Carey ... these schemes, the ... the campaign ... to illegally ... forts.

At ...

Tobacco
— documents
— written

Elena Kagan
01/19/98 02:19:02 PM

Record Type: Record

To: Thomas L. Freedman/OPD/EOP

cc:
Subject: tobacco question

The President asked us when the recently released "children's marketing" documents were prepared and whether smoking was then illegal for pre-18 year olds in all states (or if not, in how many). Could you prepare something for the weekly? Thanks.

301-
571-2355

→ 619-3482
→ 690-7000

Int'l tobacco → EW

BRIEK
(1) Draft guidance to embassies from USTR/State. I emailed you about.
(2) Draft memo on smuggling bill from Hill. I also sent note on.
TOM

Tobacco: Guidance for U.S. Diplomatic Posts on Health, Trade and Commercial Issues

General Policy

The opening of international markets to U.S. products, non-discriminatory treatment for U.S. exporters, and removal of barriers to international trade are high priorities of the U.S. Government and the Clinton Administration. At the same time, given the importance of health measures internationally, there is a need to distinguish between protectionist policies and legitimate health-based actions, so as not to undermine other countries' efforts to improve the health of their citizens.

Tobacco sits squarely at the intersection between trade and health policies. In light of the serious health consequences of tobacco use, the U.S. Government will not promote the sale or export of tobacco products. This policy also conforms to the provisions of Section 618 of the Act Making Appropriations for the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies for FY 1998, which stipulates that, "none of the funds provided by this Act shall be available to promote the sale or export of tobacco or tobacco products, or to seek the reduction or removal by any foreign country of restrictions on the marketing of tobacco or tobacco products, except for restrictions which are not applied equally to all tobacco or tobacco products of the same type." The U.S. respects the rights of foreign governments to establish and maintain sound public health practices, encourages them to do so, and, where appropriate, may support such efforts with multilateral and bilateral assistance. On the other hand, the U.S. Government will continue to seek elimination of discriminatory trade practices and will strive to ensure that U.S. firms are accorded the same treatment in foreign countries as that country's own firms and firms from other countries. The overall objective is to shrink the global market for tobacco without disadvantaging U.S. firms.

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FTC & tobacco — EW
1/22/98

Lorraine Miller – FTC briefing
jurisdiction

1) Get FTC Econ. study on blackmkt/price.

House Senate & Commerce hearings

Harriet (HHS)
Jodie Bernstein (Consumer)

everything hrings. (Leg. Counsel)

– coordinate w/ HHS

McCain asked agenda for 2 hrings
- Mkting
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FTC authority would go to FDA

OSTP

Rachel

Competition
- Structure of industry
- DOJ has TV ban issue.
- State AG's enforce fed'l law (telemarketing sales act to serve as fed'l prosecutors & not FTC reg'l Fair Credit Reporting Act)

- ban on billboards.

Panel III: > Interested players

Panel IV

- Current restrictions
-

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- Consent agreements
- Joe Camel
-

Legal implications

St [illegible] on mkting & compet

Letter DOJ

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, reduce

House - ~~M~~ CEO's
→ Advertising & marketing
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- Tom M...

- Bing...

DEC 16

U.S. SENATOR • ARIZONA

JOHN McCAIN

www.senate.gov/~mccain

PRESS RELEASE

FOR IMMEDIATE RELEASE
MONDAY, DECEMBER 15, 1997

CONTACT: PIA PIALORSI 202-224-2670
NANCY IVES 202-224-7130

McCAIN CALLS FOR "SPECIFICS" FROM WHITE HOUSE AT TOBACCO HEARINGS

WASHINGTON, D.C. – Senator John McCain (R-AZ), Chairman of the Committee on Commerce, Science, and Transportation, today requested that the Administration participate in a series of tobacco hearings to be held early next year to provide detailed analysis and specifics of the tobacco settlement. McCain believes that the Administration's input is critical to build congressional consensus and public support on the issue, in addition to effectively achieving federal tobacco policy goals.

"I want to ensure that an Administration representative is prepared to testify at our hearings, and provide the Committee with the Administration's analysis, specific policy position and legislative proposals," McCain said in a letter to President Clinton today.

"There's little to be gained from another recitation of the problem or reiteration of general goals by the Administration," McCain said. "What Congress and the public need are specific comments and recommendations on the terms of the global tobacco settlement and to what extent they should be amended to best meet our public health objectives."

In November, Senators McCain, Ernest Hollings (D-SC), Slade Gorton (R-WA), and John Breaux (D-LA) introduced legislation, S.1414 and S.1415, which would implement the proposed global tobacco settlement reached between the State Attorneys General and the tobacco industry.

"I fear the White House may simply opt to provide general observations, and evade the tougher, specific direction we need," McCain said. "In order to gain the public support necessary to move such sweeping legislation, the Administration's leadership and expertise is absolutely necessary."

The Senate Committee on Commerce, Science and Transportation has a large area of jurisdiction including marketing, advertising, labeling and liability issues. To date, the Committee has held three hearings including the Global Settlement of Tobacco Litigation on July 29, Tobacco Marketing and Youth on September 16, and the Public Health Benefits of a Global Settlement of Tobacco Litigation on October 9.

(letter attached)

241 Russell Senate Office Building • Washington, D.C. 20510 • Contact: Nancy Ives • 202 224-2235 TDD 202 224-7132

United States Senate

COMMITTEE ON COMMERCE, SCIENCE,
AND TRANSPORTATION

WASHINGTON, DC 20510-6125

Tom/Bruce—
what
response?
BR

December 15, 1997

The Honorable William Clinton
The White House
Washington, DC 20500

Dear Mr. President:

Shortly before adjournment of the congressional session last November, Senator Hollings and I, among others, introduced legislation, S. 1414 and S. 1415, which would implement the proposed global tobacco settlement reached between the State Attorneys General and the tobacco industry.

The legislation will serve as a vehicle for analysis, debate and action on how to best achieve federal tobacco policy goals. The Senate committees which have jurisdiction over tobacco policy issues will be holding extensive hearings on the legislation and relevant matters in the coming session.

The Senate Committee on Commerce, Science and Transportation has a large portion of the jurisdiction on issues touched by the settlement. As Chairman of the panel I intend to hold a series of hearings in February and March on the tobacco settlement issues within the Committee's jurisdiction, and we envision the Administration playing a key role in those hearings.

We're confident that you will agree, consensus is critical if we are to enact a bill that will win public support and best serve the interests of the nation.

In order to build such consensus, and to properly develop the best possible legislation, we believe it's essential that the Administration be prepared to testify with detail and specificity on the terms of the pending tobacco bill, and to make specific proposals regarding whether and how bill language should be modified to most appropriately and effectively achieve federal tobacco policy goals.

I would like to ensure that the appropriate administration representative is prepared to testify at those hearings and to provide the Committee with the Administration's analysis, specific policy positions and legislative proposals. We respectfully request your assistance and leadership in ensuring that the Administration takes what actions are necessary to fully prepare for that effort.

Thank you for your consideration and assistance. I'm confident that, working together, Congress and the Administration can produce a bill that will help us meet federal tobacco policy goals--the most vital of which is to reduce, dramatically, the number of children and youth who smoke.

Sincerely,

John McCain

John McCain
Chairman

JM/jr

FTC & tobacco

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Chairman

JM/jr

tobacco documents — Bliley

Judge fines 2 tobacco firms

St. Paul judge says companies disregarded order for data

By David Phelps
Star Tribune Staff Writer

The tobacco industry is encountering an increasingly irritated Judge Kenneth Fitzpatrick at a time when it is asking him to limit potentially damaging commentary about its conduct, including references to a John Grisham novel, during the upcoming trial in Ramsey County District Court.

On Tuesday, Fitzpatrick slapped two defendants with a $100,000 fine and promises of stiff penalties for not producing certain internal documents sought in the smoking-and-health lawsuit brought by the state of Minnesota and Blue Cross and Blue Shield of Minnesota.

Fitzpatrick accused the companies, American Tobacco Co. and Brown & Williamson Tobacco Co., which acquired American two years ago, of willful disregard of his order last May requiring the delivery of American Tobacco's records to the state and Blue Cross.

The judge said the companies' response to his order was "incomplete, evasive, and lacking in good faith and due diligence." He said B&W's assertion that the records left American's control when it was acquired by B&W in 1994 was "highly suspect and disingenuous."

Fitzpatrick, who last week accused the industry of a "conspiracy of silence," also ordered B&W to pay attorneys' fees incurred by the state and Blue Cross while fighting the discovery battle and promised to impose a fine of $100,000 a day in two weeks if the documents aren't turned over by then.

Brown & Williamson spokesman Mark Smith said the company does not know how to respond to Fitzpatrick's order. "What do you do when you're asked to do something you can't do?," Smith said.

"They [the plaintiffs] think we have access to the files of a foreign company in a foreign land. We don't," Smith said, referring to American's former European sister company, Gallaher Ltd., where records of biological research are believed to be on file.

Minnesota Attorney General Hubert Humphrey III said, "The order speaks for itself."

12-31-97 Minneapolis Star Tribune

Tobacco firm in state suit faces record fine

■ St. Paul Judge demands release of documents

DAVID SHAFFER STAFF WRITER

LITIGATION

A St. Paul judge on Tuesday levied the largest sanction ever against a tobacco company, ordering the maker of Lucky Strike cigarettes to pay a $100,000 fine and to hand over 1,114 secret documents.

Brown & Williamson Tobacco Corp. of Louisville, Ky., also faces additional fines of $100,000 a day and crippling restrictions at trial if it doesn't comply with orders to produce other documents.

The ruling is a huge victory for the Minnesota attorney general and Blue Cross and Blue Shield of Minnesota, whose consumer fraud lawsuit against major cigarette makers is set for trial Jan. 20 in St. Paul.

Ramsey County District Judge Kenneth Fitzpatrick said Brown & Williamson and its 1994 merger partner, American Tobacco Co., "have blatantly disobeyed an order of the court" to produce documents in the case.

At issue are research papers and memos held by a former unit of American Tobacco, which dominated the U.S. cigarette market in the first half of the century with its Lucky Strike and Pall Mall brands. Brown & Williamson acquired the lagging American Tobacco in December 1994, four months after the Minnesota lawsuit was filed.

Fitzpatrick said the number of documents culled from the files of the 100-

TOBACCO CONTINUED ON 5A ▶

12-31-97 St. Paul Pioneer Press

TOBACCO

▼ CONTINUED FROM 1A

year-old American Tobacco Co. were "minuscule and incomplete" and its response to court orders "evasive and lacking in good faith." The judge said the merged companies caused a seven-month delay through the "filing of frivolous appeals."

The ruling has major implications for the upcoming Minnesota tobacco trial. Using documents from the companies' files, the attorney general and Blue Cross hope to prove that cigarette makers deceived the public for decades about the perils of smoking and should pay at least $1.8 billion in medical costs for treating smokers.

Under the ruling, Brown & Williamson must disclose to Minnesota lawyers 1,114 of its most sensitive documents within 10 days. As a further penalty, the judge threw out the company's claims that those documents were protected under the doctrine of attorney-client privilege.

Richard Daynard, chairman of the Tobacco Products Liability Project at Northeastern University in Boston, said the lawyer-held documents could turn out to be highly important evidence, considering the steps the company took to prevent their disclosure.

"You have no way of knowing how significant they are," Daynard said. "If you measure it by the risks they (the merged companies) have taken, presumably these are the next step up from a smoking howitzer."

Daynard, who assists attorneys suing the tobacco industry, said only one other tobacco company, Lorillard, has been sanctioned by a U.S. court. That penalty involved paying opponents' attorneys fees.

Fitzpatrick similarly ordered Brown & Williamson to pay Minnesota lawyers' fees for the seven-month fight over the documents. No one immediately tallied the fees, but they easily could be in the tens of thousands of dollars.

It's also unclear how many additional documents Brown & Williamson is supposed to turn over. An unknown number of research papers are held by a former unit of American Tobacco known as Gallaher Ltd. of UK.

Brown & Williamson turned over 3 million pages of American Tobacco documents held in the United States but contends that Gallaher now is a separate company — and its new owner won't relinquish its files.

"How do you produce something that you don't have, that you have no control over?" said Mark Smith, a spokesman for Brown & Williamson. "We have done everything we can to comply."

Smith said the company doesn't know how it will respond to the order. It could appeal, but an earlier challenge on this issue resulted in a Minnesota Court of Appeals order warning of sanctions if further appeals are made.

Fitzpatrick made it clear that he doesn't accept Brown & Williamson's argument that it is impossible to obtain the documents. He called it "highly suspect and disingenuous" and suggested the American Tobacco merger was "an attempt to divest itself of documents and corporate relationships."

If the Gallaher documents aren't turned over, Brown & Williamson could face a major problem at the trial. The judge said jurors may be told that claims of fraud against the company have been established, leaving little defense against the damage claims.

Blue Cross and the attorney general's office made almost no comment on the ruling, saying it speaks for itself.

Tobacco-documents -Bliley -SW

FAX COVER

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

DEMOCRATIC STAFF OFFICE

HON. HENRY A. WAXMAN
RANKING MINORITY MEMBER
B350A RAYBURN HOUSE BUILDING
PHONE (202) 225-5051
FAX (202) 225-4784 or 8185

DATE: 1-15-98

TO: Tom Freedman FAX # 456-5587

FROM: Phil Barnett

SUBJECT: Mangini documents

NO.OF PAGES 8
(EXCLUDING COVER SHEET)

COMMENT:

IF THERE IS A PROBLEM WITH THIS TRANSMITTAL, PLEASE CALL OFFICE A.S.A.P.

2204 Rayburn House Office Building
Washington, DC 20515-0529
(202) 225-3976

District Office:
8436 West 3d Street
Suite 600
Los Angeles, CA 90048-4183
(213) 651-1040

Ranking Member
Committee on Government Reform and Oversight
Member
Committee on Commerce
Democratic Steering Committee

Congress of the United States
House of Representatives
Washington, DC 20515-0529

HENRY A. WAXMAN
29th District, California

January 14, 1998

The Honorable Tom Bliley
Chairman, Committee on Commerce
2125 Rayburn House Office Building
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Bliley:

With the cooperation of the plaintiffs and their attorneys in the Mangini litigation in California, I have obtained over a thousand of pages of previously secret documents from the R.J. Reynolds Tobacco Co. These documents address one of the most important public health questions facing our nation: Have the U.S. tobacco companies deliberately marketed tobacco products to our children? These documents show that at least one major company, RJR, has in fact sought to market its tobacco products to children for decades.

In recent years, there has been considerable disclosure of documents from Philip Morris and Brown & Williamson. These documents have primarily addressed tobacco industry manipulation of nicotine and suppression of health information. There has been little disclosure of documents from RJR and little disclosure of documents discussing tobacco industry efforts to market to children. The Mangini documents thus have special significance: they are the first detailed window into RJR and the first detailed revelations of a tobacco company's efforts to exploit children.

I am transmitting with this letter over 80 documents from RJR, along with a legal analysis of the documents prepared by the lawyers for the Mangini plaintiffs. The vast majority of the documents have never been previously been disclosed to the public.[1] This letter summarizes some of the most important new documents and conveys my thoughts about their legal and policy significance.

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[1]Of the 81 documents being transmitted with this letter, it appears that fewer than 10 have been previously disclosed to the public.

RJR's Public Statements on Youth Smoking

Senior RJR executives have testified before the Commerce Committee that RJR does not market cigarettes to children. On April 14, 1994, the chairman and chief executive officer of R.J. Reynolds Tobacco Co., James W. Johnston, testified that "we do not market to children and will not." He also testified that "[w]e do not survey anyone under the age of 18." More than a decade earlier, on March 12, 1982, the then chairman and chief executive officer of R.J. Reynolds Tobacco Co., Edward A. Horrigan, testified that "our advertising is not designed to attract new smokers of any age and is not having that effect."

In 1995, a few internal RJR documents began to surface that suggested that RJR has in fact targeted children. News reports disclosed that an RJR researcher named Claude Teague had written a 1973 memorandum that stated that "if our Company is to survive and prosper, over the long-term we must get our share of the youth market." RJR, however, continued to deny that these documents reflected corporate policy. In their 1996 submission to the Food and Drug Administration, RJR stated that the Teague memorandum was not evidence of RJR corporate policy because Teague "was never an officer of RJRT," "never had responsibility for marketing," and was expressing only "his personal thought processes -- not institutional positions of RJRT." RJR reiterated to FDA what the company had told our Committee: that they "never 'targeted' underage individuals."

Summary of the Mangini Documents

The Mangini documents portray a vastly different picture of RJR's activities than conveyed in the company's testimony to this Committee and its comments to FDA. They show (1) that RJR has extensively surveyed teenage smoking behavior, (2) that RJR has designed and implemented marketing programs to increase its share of the youth market, and (3) that RJR executives at the most senior levels of the company -- including its board of directors -- had detailed knowledge of these activities.

The legal analysis prepared by the lawyers for the Mangini plaintiffs summarize each of the RJR documents being transmitted to you. Rather than repeat this detailed analysis, this letter will highlight a few of the many significant new documents obtained through the Mangini litigation.

1. Presentation from C.A. Tucker, Vice President of Marketing, to the Board of Directors of RJR Industries (Sept. 30, 1974) (Mangini exhibit 1)

This document contains an extensive discussion of the importance of the youth market and RJR's intentional efforts to increase its share of this underage market. Because the document is a presentation from RJR's most senior marketing executive to the board of directors of RJR

Industries, the parent corporation, it reveals that RJR's efforts to market to children were not the "personal thought processes" of rogue employees -- but rather deliberate corporate policy endorsed by the company's top officials.

Specifically, the 1974 board presentation:

- o States that "this young adult market, the 14-24 age group, ... represent[s] tomorrow's cigarette business. As this 14-24 age group matures, they will account for a key share of the total cigarette volume -- for at least the next 25 years." (p. 1)

- o Describes how "[b]oth Philip Morris and Brown & Williamson ... have shown unusual strength among these younger smokers," which "suggests continued growth for Philip Morris and B&W as their smokers mature," while "[o]ur two major brands, Winston and Salem, show comparative weakness ... among these younger smokers," which "suggests slow market share erosion for us in the years to come unless the situation is corrected." The document specifically reports that "Winston is at 14% in the 14-24 age group versus Marlboro at 33%. Salem is at 9% versus Kool at 17%." (p. 2)

- o Reaches the conclusion that "our strategy becomes clear for our established brands: 1. Direct advertising appeal to the younger smokers." (p. 3)

The board presentation also describes steps that RJR has already taken to market its product to "young adults," which are defined on the first page of the document as "the 14-24 age group." For example, the document states:

- o "For Salem, significant improvements have been made in the advertising, designed for more young adult appeal under its greenery/refreshment theme. These include: More true-to-life young adult situations. More dominant male visuals. A greater spirit of fun." (pp. 3-4)

- o "We have also increased our media efforts toward young adults for our brands. These include: Increased advertising insertions in traditional young adult magazines like Sports Illustrated, Playboy and Ms. Have added new young adult special interest magazines like Road and Track and Motorcycling. Expanded outdoor with selective locations for maximum young adult exposure -- e.g., posters in Greenwich Village and in areas with large college student populations." (p. 6)

- o "For Camel Filter, we ... will have pinpointed efforts against young adults through its sponsorship of sports car racing and motorcycling." (p. 7)

- "Our special merchandising division is in its second year with its successful wholesale operation of premiums at beaches. ... We anticipate selling over a million items in 1975 -- a million 'walking billboards' for our brands." (p. 10)

2. Memorandum from G.H. Long, Executive Vice President of Marketing, to E.A. Horrigan, Chairman of R.J. Reynolds Tobacco Co. (July 22, 1980) (Mangini exhibit 26)

This document confirms the essential point made in the 1974 board presentation -- namely, that increasing the company's share of the underage market has been an important objective of RJR's most senior management. The person who prepared the 1980 memorandum was RJR's vice president of marketing, G.H. Long, who subsequently became the company's chief executive officer. The recipient of the memorandum was the then chairman of R.J. Reynolds Tobacco Co., Edward A. Horrigan. The title of the memorandum is "Report on Teenage Smokers (14-17)."

Like the 1974 board presentation, the document describes how RJR was losing the youth market to Philip Morris. The memorandum states:

> Last January, a report was issued ... that indicated that Philip Morris had a total share of 59 among 14-17 year old smokers, and specifically, Marlboro had a 52 share. This latest report indicates that Philip Morris' corporate share has increased by about 4 points. ... Importantly, the report further indicates that RJR continues to gradually decline, and between the spring and fall 1979 periods, RJR's total share declined from 21.3 to 19.9."

And like the 1974 board presentation, the memorandum demonstrates that RJR was taking steps to increase the number of teenagers smoking its brands. G.H. Long, the company's senior marketing executive, expresses the view that "[h]opefully, our various planned activities that will be implemented this fall will aid in some way in reducing or correcting these trends."

3. "Smokers Screening Profile (14-17), Conducted for R.J. Reynolds Tobacco Co. by National Family Opinion, Inc. (April 1976) (Mangini exhibit 14)

The *Mangini* documents demonstrate that RJR has been secretly conducting extensive surveys of the smoking habits of teenagers for decades. The "Smokers Screening Profile (14-17)" from April 1976 is a representative example of these surveys. In this survey, the contractor hired by RJR, National Family Opinion, analyzed the smoking habits of over 11,000 teenagers aged 14-17.

The survey collected comprehensive data on the smoking habits and demographics of these teenagers, including data on their brand of cigarette; cigarette consumption; cigarette purchasing habits; age; sex; religion; household income; education and occupation of parents; and residence. This raw data was then compiled into hundreds of pages of detailed tables on youth smoking habits. One typical table (Table 20) shows (1) the percentage of Newport and Kool smokers who were male or female teenagers; (2) the subbrands these teenagers smoked (such as Newport Soft or Newport King Box); (3) whether these teen smokers were light, average, or heavy smokers; (4) whether Newport and Kool were smoked more heavily by young teenagers (ages 14-15) or older teenagers (ages 16-17); (5) the occupation, education level, and income level of the parents of the teen smokers; (6) the religion of the teen smokers; and (7) and the city size and census region of the teen smokers.

The existence of detailed youth smoking surveys like the "Smokers Screening Profile (14-17)" underscores the importance of the youth market to RJR. It also raises serious questions about the veracity of RJR's 1994 testimony to our Committee and RJR's 1996 submission to FDA. For example, in the company's FDA comments, RJR stated:

- As a matter of corporate policy, Reynolds conducts its brand market research only among those aged 21 or older -- and then only if they smoke. Reynolds has taken this conservative approach since 1992. Prior to 1992, at all relevant times, Reynolds' policy was to conduct brand market research on all lawful smokers aged 18 and older.

4. Memorandum on "Teenage Smokers (14-17) and New Adult Smokers and Quitters" (Feb. 1, 1980) (Mangini exhibit 17)

This 1980 document is representative of the types of documents prepared by RJR to summarize the youth smoking data collected for RJR by National Family Opinion. The document states that "[m]any adult smokers have already formed consistent smoking patterns by the time they enter the market at age 18" (p. 1). It then explains that "[t]o improve our ability to forecast future trends, this report examines the demographics and smoking behavior of 14-17 year old smokers" (p. 1). Like many other RJR documents, this document again finds that "RJR's share of teenager smokers has declined" while "[t]he share of teenagers ... who smoke[] P. Morris brands has increased" (p. 4).

5. Documents Relating Specifically to Camel Cigarettes

Many of the Mangini documents describe RJR's plans for marketing Camel cigarettes to underage smokers, including the development of the "Joe Camel" campaign. These documents include the following:

- A 1973 RJR marketing document states that "[i]n view of the need to reverse the preference for Marlboros among younger smokers, ... [a] comic strip type copy might get a much higher readership among younger people than any other type of copy. It would certainly seem worth testing a heavy dose of this type of copy in a test market to get a research reading on percentage of readership and copy recall." (Mangini exhibit 8, p. 5)

- A 1975 memorandum to C.A. Tucker, the vice president for marketing, states that "[t]o ensure increased and longer-term growth for Camel Filter, the brand must increase its share penetration among the 14-24 age group which have a new set of more liberal values and which represent tomorrow's cigarette business." (Mangini exhibit 13)

- A 1990 document on "Camel Brand Promotion Opportunities" states that "[t]arget smokers are approaching adulthood. ... Their key interests include girls, cars, music, sports and dancing." (Mangini exhibit 69)

In public statements, RJR has continually emphasized that peer pressure -- not advertising -- causes children to smoke. In the company's 1982 testimony to the Committee, Edward Horrigan testified that "[p]eer pressure and not our advertising provides the impetus for smoking among young people." Twelve years later, James Johnston made the same point, testifying that "the driving force in an underage person starting to smoke is peer pressure." What the Mangini documents show, however, is that RJR deliberately tried to capitalize on peer pressures to increase teen smoking of Camel cigarettes. For example, a 1986 memorandum on the new Joe Camel advertising campaign states:

> Camel advertising will be directed toward using peer acceptance/influence to provide the motivation for target smokers to select Camel. Specifically, advertising will be developed with the objective of convincing target smokers that by selecting Camel as their usual brand they will project an image that will enhance their acceptance among their peers. (Mangini exhibit 58, p. 1)

6. Documents Relating to "Young Adult Smokers"

The Mangini documents contain numerous references to targeting "young adult smokers." RJR has publicly asserted that these "young adult smokers" are smokers 18 years old and older. As the Mangini lawyers demonstrate in their comprehensive analysis, however, the term "young adult smokers" became a company code-word for teen smokers. For example, one 1987 document discussing "Project LF," the code-name for Camel Wides, states "Project LF is a wider circumference non-menthol cigarette targeted at younger adult male smoker (primarily 13-24 year old male Marlboro smokers)" (Mangini exhibit 41).

The Legal and Policy Significance of the Mangini Documents

The Mangini documents have obvious legal significance. In the recent criminal information against DNA Plant Technology, Justice Department lawyers stated that they had found evidence that a tobacco company "knowingly concealed" material information from FDA. The Mangini documents raise similar issues. They reveal corporate activities that appear to conflict directly with the testimony of RJR executives before this Committee and the company's comments to FDA. Whether the executives committed perjury or otherwise made illegal false statements to this Committee or FDA is a matter that the Justice Department should thoroughly investigate.

The Mangini documents also have major policy significance. The documents reveal that tobacco companies have an enormous financial stake in attracting teen smokers. As the 1974 board presentation recognized, "the 14-24 age group ... represent[s] tomorrow's cigarette business." Congress's efforts to restrict youth smoking will be doomed to failure unless we grasp this point and create a legal framework that removes the companies' incentives to exploit our children.

It will not be enough for Congress to pass laws that restrict tobacco advertising and marketing. As they have in the past, the companies will find ways to circumvent these laws. Indeed, one of the Mangini documents, an RJR report prepared in the early 1990s entitled "Operating in a Restricted Environment," presents "sales/marketing recommendations" for minimizing the impact of advertising bans. It recommends that RJR "[p]lace even greater priority on direct marketing," "more thoroughly develop" the "retail environment," and preserve the gains from its Camel campaign by "transfer[ing] Old Joe's irreverent, fun loving personality to other creative properties which do not rely on models or cartoon depictions." Indeed, the analysis sees benefits for RJR in advertising restrictions, stating "[w]hile we would stand to lose minor brand styles, with five of the top ten brands currently, RJR could benefit from this type of industry profile change on a relative basis" (Mangini exhibit 61, pp. 1, 4, 5, 9).

The lesson in the Mangini documents is that Congress must enact a new approach. We must set targets for reducing youth smoking rates and hold the tobacco companies individually accountable for achieving these reductions. RJR needs to know that if it does not reduce the number of children smoking its products, it will face additional restrictions, such as significant price increases, that will place the company at a competitive disadvantage. Only this kind of approach will fundamentally change the tobacco company's economic incentives.

The Mangini documents thus underscore one of the central policy recommendations of the Koop-Kessler Committee and, more recently, the Institute of Medicine: the need for company-specific performance standards for reducing youth smoking. As the IOM recognized earlier this month in its most recent tobacco report, "[i]ncentives to reduce youth tobacco use will be most powerful if penalties for failure to achieve goals fall hardest on those firms making brands attractive to underage users."

Mr. Chairman, I know you sincerely want to reduce the incidence of youth tobacco use in the United States. The documents that I am transmitting to you today emphasize the importance of this goal and provide insights on how we can best achieve it. I value your leadership on this issue and look forward to working with you to achieve our common goal this year.

Sincerely,

Henry A. Waxman
Member of Congress

cc: • Members of the Committee on Commerce

Thursday December 18 10:42 AM EST

Congress Releases Tobacco Papers to Public

WASHINGTON (Reuters) - A sensitive batch of tobacco industry documents that may shape the coming congressional debate on tobacco settlement legislation was made public Thursday.

Virginia Republican Thomas Bliley, the House Commerce Committee chairman who obtained more than 800 documents under subpoena this month, made the papers public on the Internet.

Bliley said Congress must review the documents before considering legislation based on an agreement reached last June by tobacco industry and state attorneys general.

Under that deal, the industry would pay $368.5 billion and make health concessions but would win partial immunity from future lawsuits.

The settlement must be enacted by Congress, where many anti-tobacco lawmakers have demanded tougher terms for the industry. If the tobacco industry documents contain damaging revelations, or evidence of crime, it would strengthen the hand of the industry foes.

The 864 papers are part of a much larger cache being stored in warehouses in the United States and Britain and being bitterly fought over in court, especially in the pending Minnesota lawsuit against the industry.

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- Congress Makes Tobacco Papers Public on 'Net - Thu Dec 18 10:02 am
- Tobacco Documents Likely to be Public Soon - Thu Dec 18 6:49 am

tobacco documents — Bliley

Judge fines 2 tobacco firms

St. Paul judge says companies disregarded order for data

By David Phelps
Star Tribune Staff Writer

The tobacco industry is encountering an increasingly irritated Judge Kenneth Fitzpatrick at a time when it is asking him to limit potentially damaging commentary about its conduct, including references to a John Grisham novel, during the upcoming trial in Ramsey County District Court.

On Tuesday, Fitzpatrick slapped two defendants with a $100,000 fine and promises of stiff penalties for not producing certain internal documents sought in the smoking-and-health lawsuit brought by the state of Minnesota and Blue Cross and Blue Shield of Minnesota.

Fitzpatrick accused the companies, American Tobacco Co. and Brown & Williamson Tobacco Co., which acquired American two years ago, of willful disregard of his order last May requiring the delivery of American Tobacco's records to the state and Blue Cross.

The judge said the companies' response to his order was "incomplete, evasive, and lacking in good faith and due diligence." He said B&W's assertion that the records left American's control when it was acquired by B&W in 1994 was "highly suspect and disingenuous."

Fitzpatrick, who last week accused the industry of a "conspiracy of silence," also ordered B&W to pay attorneys' fees incurred by the state and Blue Cross while fighting the discovery battle and promised to impose a fine of $100,000 a day in two weeks if the documents aren't turned over by then.

Brown & Williamson spokesman Mark Smith said the company does not know how to respond to Fitzpatrick's order. "What do you do when you're asked to do something you can't do?," Smith said.

"They [the plaintiffs] think we have access to the files of a foreign company in a foreign land. We don't," Smith said, referring to American's former European sister company, Gallaher Ltd., where records of biological research are believed to be on file.

Minnesota Attorney General Hubert Humphrey III said, "The order speaks for itself."

12-31-97 Minneapolis Star Tribune

Tobacco firm in state suit faces record fine

■ St. Paul Judge demands release of documents

DAVID SHAFFER STAFF WRITER

A St. Paul judge on Tuesday levied the largest sanction ever against a tobacco company, ordering the maker of Lucky Strike cigarettes to pay a $100,000 fine and to hand over 1,114 secret documents.

Brown & Williamson Tobacco Corp. of Louisville, Ky., also faces additional fines of $100,000 a day and crippling restrictions at trial if it doesn't comply with orders to produce other documents.

The ruling is a huge victory for the Minnesota attorney general and Blue Cross and Blue Shield of Minnesota, whose consumer fraud lawsuit against major cigarette makers is set for trial Jan. 20 in St. Paul.

Ramsey County District Judge Kenneth Fitzpatrick said Brown & Williamson and its 1994 merger partner, American Tobacco Co., "have blatantly disobeyed an order of the court" to produce documents in the case.

At issue are research papers and memos held by a former unit of American Tobacco, which dominated the U.S. cigarette market in the first half of the century with its Lucky Strike and Pall Mall brands. Brown & Williamson acquired the lagging American Tobacco in December 1994, four months after the Minnesota lawsuit was filed.

Fitzpatrick said the number of documents culled from the files of the 100-

TOBACCO CONTINUED ON 5A ▶

LITIGATION

12-31-97 St. Paul Pioneer Press

TOBACCO

▼ CONTINUED FROM 1A

year-old American Tobacco Co. were "minuscule and incomplete" and its response to court orders "evasive and lacking in good faith." The judge said the merged companies caused a seven-month delay through the "filing of frivolous appeals."

The ruling has major implications for the upcoming Minnesota tobacco trial. Using documents from the companies' files, the attorney general and Blue Cross hope to prove that cigarette makers deceived the public for decades about the perils of smoking and should pay at least $1.8 billion in medical costs for treating smokers.

Under the ruling, Brown & Williamson must disclose to Minnesota lawyers 1,114 of its most sensitive documents within 10 days. As a further penalty, the judge threw out the company's claims that those documents were protected under the doctrine of attorney-client privilege.

Richard Daynard, chairman of the Tobacco Products Liability Project at Northeastern University in Boston, said the lawyer-held documents could turn out to be highly important evidence, considering the steps the company took to prevent their disclosure.

"You have no way of knowing how significant they are," Daynard said. "If you measure it by the risks they (the merged companies) have taken, presumably these are the next step up from a smoking howitzer."

Daynard, who assists attorneys suing the tobacco industry, said only one other tobacco company, Lorillard, has been sanctioned by a U.S. court. That penalty involved paying opponents' attorneys fees.

Fitzpatrick similarly ordered Brown & Williamson to pay Minnesota lawyers' fees for the seven-month fight over the documents. No one immediately tallied the fees, but they easily could be in the tens of thousands of dollars.

It's also unclear how many additional documents Brown & Williamson is supposed to turn over. An unknown number of research papers are held by a former unit of American Tobacco known as Gallaher Ltd. of UK.

Brown & Williamson turned over 3 million pages of American Tobacco documents held in the United States but contends that Gallaher now is a separate company — and its new owner won't relinquish its files.

"How do you produce something that you don't have, that you have no control over?" said Mark Smith, a spokesman for Brown & Williamson. "We have done everything we can to comply."

Smith said the company doesn't know how it will respond to the order. It could appeal, but an earlier challenge on this issue resulted in a Minnesota Court of Appeals order warning of sanctions if further appeals are made.

Fitzpatrick made it clear that he doesn't accept Brown & Williamson's argument that it is impossible to obtain the documents. He called it "highly suspect and disingenuous" and suggested the American Tobacco merger was "an attempt to divest itself of documents and corporate relationships."

If the Gallaher documents aren't turned over, Brown & Williamson could face a major problem at the trial. The judge said jurors may be told that claims of fraud against the company have been established, leaving little defense against the damage claims.

Blue Cross and the attorney general's office made almost no comment on the ruling, saying it speaks for itself.

Tobacco documents - Bliley - SW

FAX COVER

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

DEMOCRATIC STAFF OFFICE

HON. HENRY A. WAXMAN
RANKING MINORITY MEMBER
B350A RAYBURN HOUSE BUILDING
PHONE (202) 225-5051
FAX (202) 225-4784 or 8185

DATE: 1-15-98

TO: Tom Freedman FAX # 456-5587

FROM: Phil Barnett

SUBJECT: Mangini documents

NO.OF PAGES 8
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COMMENT:

IF THERE IS A PROBLEM WITH THIS TRANSMITTAL, PLEASE CALL OFFICE A.S.A.P.

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District Office:
8436 West 3d Street
Suite 600
Los Angeles, CA 90048-4183
(213) 651-1040

Congress of the United States
House of Representatives
Washington, DC 20515-0529

HENRY A. WAXMAN
29th District, California

Ranking Member
Committee on Government Reform and Oversight

Member
Committee on Commerce
Democratic Steering Committee

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Chairman, Committee on Commerce
2125 Rayburn House Office Building
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Washington, D.C. 20515

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3. "Smokers Screening Profile (14-17), Conducted for R.J. Reynolds Tobacco Co. by National Family Opinion, Inc. (April 1976) (Mangini exhibit 14)

The Mangini documents demonstrate that RJR has been secretly conducting extensive surveys of the smoking habits of teenagers for decades. The "Smokers Screening Profile (14-17)" from April 1976 is a representative example of these surveys. In this survey, the contractor hired by RJR, National Family Opinion, analyzed the smoking habits of over 11,000 teenagers aged 14-17.

The survey collected comprehensive data on the smoking habits and demographics of these teenagers, including data on their brand of cigarette; cigarette consumption; cigarette purchasing habits; age; sex; religion; household income; education and occupation of parents; and residence. This raw data was then compiled into hundreds of pages of detailed tables on youth smoking habits. One typical table (Table 20) shows (1) the percentage of Newport and Kool smokers who were male or female teenagers; (2) the subbrands these teenagers smoked (such as Newport Soft or Newport King Box); (3) whether these teen smokers were light, average, or heavy smokers; (4) whether Newport and Kool were smoked more heavily by young teenagers (ages 14-15) or older teenagers (ages 16-17); (5) the occupation, education level, and income level of the parents of the teen smokers; (6) the religion of the teen smokers; and (7) and the city size and census region of the teen smokers.

The existence of detailed youth smoking surveys like the "Smokers Screening Profile (14-17)" underscores the importance of the youth market to RJR. It also raises serious questions about the veracity of RJR's 1994 testimony to our Committee and RJR's 1996 submission to FDA. For example, in the company's FDA comments, RJR stated:

> As a matter of corporate policy, Reynolds conducts its brand market research only among those aged 21 or older -- and then only if they smoke. Reynolds has taken this conservative approach since 1992. Prior to 1992, at all relevant times, Reynolds' policy was to conduct brand market research on all lawful smokers aged 18 and older.

4. <u>Memorandum on "Teenage Smokers (14-17) and New Adult Smokers and Quitters" (Feb. 1, 1980) (Mangini exhibit 17)</u>

This 1980 document is representative of the types of documents prepared by RJR to summarize the youth smoking data collected for RJR by National Family Opinion. The document states that "<u>[m]any adult smokers have already formed consistent smoking patterns by the time they enter the market at age 18</u>" (p. 1). It then explains that "<u>[t]o improve our ability to forecast future trends, this report examines the demographics and smoking behavior of 14-17 year old smokers</u>" (p. 1). Like many other RJR documents, this document again finds that "RJR's share of teenager smokers has declined" while "[t]he share of teenagers ... who smoke[] P. Morris brands has increased" (p. 4).

5. <u>Documents Relating Specifically to Camel Cigarettes</u>

Many of the <u>Mangini</u> documents describe RJR's plans for marketing Camel cigarettes to underage smokers, including the development of the "Joe Camel" campaign. These documents include the following:

- A 1973 RJR marketing document states that "[i]n view of the need to reverse the preference for Marlboros among younger smokers, ... <u>[a] comic strip type copy might get a much higher readership among younger people than any other type of</u>

copy. It would certainly seem worth testing a heavy dose of this type of copy in a test market to get a research reading on percentage of readership and copy recall." (Mangini exhibit 8, p. 5)

- A 1975 memorandum to C.A. Tucker, the vice president for marketing, states that "[t]o ensure increased and longer-term growth for Camel Filter, the brand must increase its share penetration among the 14-24 age group which have a new set of more liberal values and which represent tomorrow's cigarette business." (Mangini exhibit 13)

- A 1990 document on "Camel Brand Promotion Opportunities" states that "[t]arget smokers are approaching adulthood. ... Their key interests include girls, cars, music, sports and dancing." (Mangini exhibit 69)

In public statements, RJR has continually emphasized that peer pressure -- not advertising -- causes children to smoke. In the company's 1982 testimony to the Committee, Edward Horrigan testified that "[p]eer pressure and not our advertising provides the impetus for smoking among young people." Twelve years later, James Johnston made the same point, testifying that "the driving force in an underage person starting to smoke is peer pressure." What the Mangini documents show, however, is that RJR deliberately tried to capitalize on peer pressures to increase teen smoking of Camel cigarettes. For example, a 1986 memorandum on the new Joe Camel advertising campaign states:

> Camel advertising will be directed toward using peer acceptance/influence to provide the motivation for target smokers to select Camel. Specifically, advertising will be developed with the objective of convincing target smokers that by selecting Camel as their usual brand they will project an image that will enhance their acceptance among their peers. (Mangini exhibit 58, p. 1)

6. Documents Relating to "Young Adult Smokers"

The Mangini documents contain numerous references to targeting "young adult smokers." RJR has publicly asserted that these "young adult smokers" are smokers 18 years old and older. As the Mangini lawyers demonstrate in their comprehensive analysis, however, the term "young adult smokers" became a company code-word for teen smokers. For example, one 1987 document discussing "Project LF," the code-name for Camel Wides, states "Project LF is a wider circumference non-menthol cigarette targeted at younger adult male smoker (primarily 13-24 year old male Marlboro smokers)" (Mangini exhibit 41).

The Legal and Policy Significance of the Mangini Documents

The Mangini documents have obvious legal significance. In the recent criminal information against DNA Plant Technology, Justice Department lawyers stated that they had found evidence that a tobacco company "knowingly concealed" material information from FDA. The Mangini documents raise similar issues. They reveal corporate activities that appear to conflict directly with the testimony of RJR executives before this Committee and the company's comments to FDA. Whether the executives committed perjury or otherwise made illegal false statements to this Committee or FDA is a matter that the Justice Department should thoroughly investigate.

The Mangini documents also have major policy significance. The documents reveal that tobacco companies have an enormous financial stake in attracting teen smokers. As the 1974 board presentation recognized, "the 14-24 age group ... represent[s] tomorrow's cigarette business." Congress's efforts to restrict youth smoking will be doomed to failure unless we grasp this point and create a legal framework that removes the companies' incentives to exploit our children.

It will not be enough for Congress to pass laws that restrict tobacco advertising and marketing. As they have in the past, the companies will find ways to circumvent these laws. Indeed, one of the Mangini documents, an RJR report prepared in the early 1990s entitled "Operating in a Restricted Environment," presents "sales/marketing recommendations" for minimizing the impact of advertising bans. It recommends that RJR "[p]lace even greater priority on direct marketing," "more thoroughly develop" the "retail environment," and preserve the gains from its Camel campaign by "transfer[ing] Old Joe's irreverent, fun loving personality to other creative properties which do not rely on models or cartoon depictions." Indeed, the analysis sees benefits for RJR in advertising restrictions, stating "[w]hile we would stand to lose minor brand styles, with five of the top ten brands currently, RJR could benefit from this type of industry profile change on a relative basis" (Mangini exhibit 61, pp. 1, 4, 5, 9).

The lesson in the Mangini documents is that Congress must enact a new approach. We must set targets for reducing youth smoking rates and hold the tobacco companies individually accountable for achieving these reductions. RJR needs to know that if it does not reduce the number of children smoking its products, it will face additional restrictions, such as significant price increases, that will place the company at a competitive disadvantage. Only this kind of approach will fundamentally change the tobacco company's economic incentives.

The Mangini documents thus underscore one of the central policy recommendations of the Koop-Kessler Committee and, more recently, the Institute of Medicine: the need for company-specific performance standards for reducing youth smoking. As the IOM recognized earlier this month in its most recent tobacco report, "[i]ncentives to reduce youth tobacco use will be most powerful if penalties for failure to achieve goals fall hardest on those firms making brands attractive to underage users."

Mr. Chairman, I know you sincerely want to reduce the incidence of youth tobacco use in the United States. The documents that I am transmitting to you today emphasize the importance of this goal and provide insights on how we can best achieve it. I value your leadership on this issue and look forward to working with you to achieve our common goal this year.

Sincerely,

Henry A. Waxman
Member of Congress

cc: Members of the Committee on Commerce

Thursday December 18 10:42 AM EST

Congress Releases Tobacco Papers to Public

WASHINGTON (Reuters) - A sensitive batch of tobacco industry documents that may shape the coming congressional debate on tobacco settlement legislation was made public Thursday.

Virginia Republican Thomas Bliley, the House Commerce Committee chairman who obtained more than 800 documents under subpoena this month, made the papers public on the Internet.

Bliley said Congress must review the documents before considering legislation based on an agreement reached last June by tobacco industry and state attorneys general.

Under that deal, the industry would pay $368.5 billion and make health concessions but would win partial immunity from future lawsuits.

The settlement must be enacted by Congress, where many anti-tobacco lawmakers have demanded tougher terms for the industry. If the tobacco industry documents contain damaging revelations, or evidence of crime, it would strengthen the hand of the industry foes.

The 864 papers are part of a much larger cache being stored in warehouses in the United States and Britain and being bitterly fought over in court, especially in the pending Minnesota lawsuit against the industry.

Earlier Related Stories

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Final

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Assistant Secretary
for Legislation

Washington, D.C. 20201

tobacco
HHS
GW

January 9, 1998

The Honorable Tom Bliley
Chairman, Committee on Commerce
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

In response to your letter, dated November 21, 1997, to Secretary Shalala concerning additional questions submitted by members of the Commerce Committee, the Secretary asked me to provide you with the enclosed responses.

Thank you for the opportunity to complete the Committee's hearing record.

Sincerely,

Rich

Richard J. Tarplin
Assistant Secretary for Legislation

Enclosure

among various populations, including tobacco use among ethnic/racial groups, were identified as the result of NIDA-sponsored research. For example, the *Monitoring the Future* Survey tracks changes in the beliefs, attitudes, and drug use of young people in the United States. The Community Epidemiology Work Group provides descriptive and analytical information regarding the nature and patterns of drug abuse, emerging trends, characteristics of vulnerable populations and social and health consequences.

In addition to analyzing and monitoring trends in smoking behavior, NIDA sponsors research into effective prevention programs to meet the specific needs of minority populations, including African Americans. For example, NIDA is currently funding the Tri-Ethnic Center for Prevention Research at Colorado State University to study drug abuse prevention among minority youth as well as several other grants specifically addressing prevention issues among minority youth. All of these studies have tobacco use as a major target of prevention efforts.

To better understand the root causes of the observed racial and ethnic differences, NIDA also is sponsoring research to examine nicotine sensitivity in minority populations. For example, an investigator at the San Francisco General Hospital, has an ongoing grant exploring individual and racial/ethnic differences in susceptibility to tobacco addiction and its health consequences focusing on nicotine pharmacokinetics and metabolism. Another grant, "Biobehavioral Nicotine Dependence in Black Women," is examining smoking behavior, nicotine metabolism and the effect of menthol-containing cigarettes on smoking behavior specifically in African American women. As a better understanding of the underlying biochemical mechanisms of these differences is developed, treatment programs can be designed to address the needs of the African American community.

tobacco and alcohol use. These interventions emphasize parent-family member involvement in such issues. Investigators at Duke University are focusing on techniques related to cancer risk communication among African-Americans in order to develop cost-effective interventions to improve decision-making about cancer related behaviors such as smoking reduction and increased use of mammography. NCI-supported investigators at San Diego State University have recently begun a project entitled, "Reducing Cancer Risk in Migrant Hispanic Adolescents," designed specifically to reduce tobacco use among Hispanic youth ages 12 to 15.

Lastly, NCI has developed and funded a variety of innovative tobacco intervention programs for Native Americans. These projects have dealt with a variety of techniques to reduce habitual tobacco use among both adolescents and adults. For example, investigators at the Center for American Indian Research and Education and the University of California-Berkeley targeted fourteen rural and four urban northern California Indian clinics to increase long-term smoking cessation through health-provider-based investigations. At the University of New Mexico investigators included Indian children in grades 5-7 in fourteen schools in New Mexico and Arizona to compare the effectiveness of a school-based curriculum versus curricula augmented with family/community interventions. Other investigations among Native Americans are being conducted.

National Heart, Lung, and Blood Institute (NHLBI): Menthol cigarettes pose a number of questions for basic science, clinical science, and public health that can only be answered by further research. In particular, it is not clear whether a preference for menthol cigarettes among blacks and Asians is culturally derived or the result of selective advertising. However, understanding racial and cultural differences in smoking patterns and brand preferences is critical to the success of a public health effort to reduce consumption of tobacco products.

In the area of smoking prevention, NHLBI research is seeking to understand race-specific reasons for habitual smoking. For example, one project is examining national survey data to uncover attitudes and practices that lead to acquisition of smoking habits among African American teenagers.

A number of studies are attempting to identify effective ways of encouraging and facilitating smoking cessation among minorities. For example, interventions are being delivered through prevention coordinators in the primary care setting, churches and other African American community organizations, public health nurses providing care to maternity patients, and pediatric clinics serving low-income young mothers.

National Institute on Drug Abuse (NIDA): NIDA research spans many areas from prevention to treatment. Many of the observed differences in drug use behaviors important strides are being taken in understanding the role of tobacco among youth and adults in minority communities.

CDC's National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health: Smoking patterns differ significantly between African American and white youth. In 1995, white high school students had double the smoking prevalence of black high school students. To better understand these large differences in youth smoking among racial groups, CDC is sponsoring multisite collaborative qualitative research among teenagers. This research has revealed striking differences in teen attitudes and determinants of smoking by race. For example, African American girls report particularly negative perceptions of smoking and the potential impact of smoking on their reputations and future; these attitudes correspond to the lower smoking rates experienced among African American girls as compared to white girls.

The upcoming Surgeon General's Report on tobacco use among minority populations will review the latest research findings on the health consequences of tobacco use, including use of mentholated products, among minority populations. The report also will review patterns of use, factors influencing tobacco use, and tobacco control and education efforts among minority populations.

National Cancer Institute (NCI): Minority smoking interventions have remained a strong focus of NCI-supported smoking control research. For example, in the 17 state ASSIST demonstration projects, all participating sites are required to address minority smoking issues. More than 10 million African Americans and seven million Hispanics or members of other ethnic groups are affected by ASSIST cessation and prevention interventions.

Additionally, NCI supports a broad portfolio of behavioral and intervention research related to tobacco use among African American, Hispanic and Native Americans. For example, NCI continues to support two broad-based community-oriented cancer prevention and control initiatives aimed specifically at Black and Hispanic populations which have significant smoking control components. The National Black Leadership Initiative on Cancer and the National Hispanic Leadership Initiative on Cancer represent grassroots efforts to reduce cancer incidence and mortality by modifying environmental and lifestyle factors which have been associated with increased cancer risk.

An NCI-supported project conducted at Stanford University (entitled *Community-Based Approaches to Tobacco Control*) is designed to provide postdoctoral training in community-based intervention strategies, including interventions focused on minority groups. Investigators at Columbia University are testing intervention strategies suitable for community sites to reduce cancer risks associated with

RESPONSE: Public health studies of tobacco use and the incidence of tobacco-related death and disease are necessary to determine accurately the scope of this problem within minority communities. Many of these issues will be addressed in the upcoming Surgeon General's Report on *Tobacco Use among Minority Populations*. However, significant data gaps must be closed before we can be sure that effective measures to prevent and control tobacco use among minority youth are successful.

Culturally appropriate strategies are created through partnership and collaboration with members of minority population groups. This collaboration promotes a sense of ownership, enhances receptivity, and elevates the impact of tobacco control messages to minority youth. The experience of the Department of Health and Human Services is extensive. For example, the Centers for Disease Control and Prevention (CDC) fund 32 states, the District of Columbia and several national organizations to ensure participation by diverse community groups, coalitions and leaders to strengthen tobacco control initiatives nationwide. NIH's National Cancer Institute (NCI) funds 17 states for tobacco control. NCI initiated a Multicultural Committee which seeks to address diversity issues in tobacco control programming. The Indian Health Service also reduces tobacco use through cessation programs and several policy efforts. The Health Resources and Services Administration researches the effectiveness of medical care delivery systems which treat nicotine addiction and provide training programs that reach many minority communities.

Building on this experience, the Administration will continue to work with Congress to make sure that the health research and tobacco control programs that result from this legislation are responsive to our minority communities.

3. In addition to research for effective prevention and cessations programs for minorities, there are a number of minority health issues related to tobacco use that require further research. For example, 76 percent of African Americans smoke menthol cigarettes compared with 23 percent of whites.

   This is particularly disconcerting since menthol cigarettes can be inhaled more deeply, and therefore, cause more damage to the lungs. However, most admit that research on menthol cigarettes is severely lacking. What kinds of research efforts can be undertaken on menthol cigarettes and other tobacco-related public health issues that are specific to the minority community?

   RESPONSE: Research that examines the causes and ultimate effects of tobacco use is being conducted by several Public Health Service (PHS) agencies, particularly the Centers for Disease Control and Prevention (CDC) and the National Institutes of Health (NIH). While this research has not focused on additives in cigarettes,

Questions submitted by MR. RUSH

1. The *Chronicle of Higher Education* has reported that African American scholars received less than one percent (0.4%) of the National Institutes of Health (NIH) research that was awarded by NIH in 1991. These rates have not improved significantly since then.

   Although minority medical schools and educational institutions receive little federal assistance for minority health research, they continue to commit significant funds to this vital area.

   Researchers at minority institutions are most likely to be familiar with the community resources needed to develop effective tobacco control programs in this community.

   Therefore, what steps will the Administration take to use funds from the settlement to support effective public health programs?

   RESPONSE: Despite significant progress in the overall health of the Nation, there are continuing disparities in the burden of death and illness experienced by minority populations as compared to the U.S. population as a whole. These disparities are noteworthy in the area of tobacco. Minority groups and other special populations suffer a disproportionate burden of tobacco-related disease and are often among the greatest users of tobacco products.

   Given these trends, the Administration is currently considering ways to target resources to address these health disparities in a host of health areas (e.g., heart disease, HIV/AIDS, diabetes, and infant mortality). We look forward to working with Congress in crafting innovative ways to address these public health problems.

2. Several studies on reducing tobacco use, including the Department of Health and Human Services (DHHS) report, "Strategies to Control Tobacco Use in the United States: A blueprint for public health action in the 1990s" by Dr. Louis Sullivan (1991), have argued that innovative strategies will have to be developed to operate effective education and cessation campaigns in the minority community.

   In light of these studies, what types of efforts does the Administration feel DHHS and other agencies can have in designing and overseeing the types of extensive community-based measures that will be required to truly reduce tobacco use in the minority community?

pursuant to the provisions of its plan in compliance with section 1902(a)(25)...."

Since Medicaid's inception, the statute has mandated that the federal government share in any recoveries just as it shares in payment of Medicaid costs. To excuse states from sharing Medicaid-related tobacco recoveries would require specific statutory authority.

4. Does the Administration believe that the Health Care Financing Administration should be allowed to recoup the federal share of the judgment?

   RESPONSE: As noted in question 3, current law requires that HCFA pursue recovery of the federal share of any settlement or judgment. With respect to the proposed legislation, on December 5, the President sent a letter to the National Governors' Association and to the National Association of Attorneys General indicating his desire that the allocation of funds between state and federal government be "resolved through legislation."

5. If changes to current law are required to allow the states to keep the settlement proceeds, does the Administration support such a change?

   RESPONSE: The President stated in his December 5 letter that he "would prefer to see the allocation of tobacco funds resolved through legislation" and he "looks forward to working with the States and with Congress to find a mutually agreeable purpose for the funds generated by tobacco legislation."

6. Should the litigation in Minnesota, which is scheduled to go to trial in January, delay Congressional action on the settlement?

   RESPONSE: Minnesota's lawsuit against the tobacco industry is currently scheduled to begin on January 20, 1998. If it proceeds, this trial could last for months. Consideration of comprehensive tobacco legislation, which can begin once the Congress reconvenes, does not have to interfere with that litigation. Both can take place at the same time.

7. Why should states be allowed to recover the costs they spent treating tobacco related illness, but private insurance plans and union plans will not?

   RESPONSE: There is nothing to prevent the Congress from considering claims by private insurance plans and union plans in its deliberations on comprehensive tobacco legislation.

RESPONSE: The President made it clear that any tobacco legislation must protect tobacco farmers and their communities. Most tobacco farmers live and work on small family farms; in many cases, their families have been growing tobacco for generations. In some states, entire communities rely on income from the tobacco crop. The Administration is committed to working with Congress in a bipartisan fashion to protect the financial well-being of tobacco farmers, their families and their communities. As I mentioned in my testimony, there are several active proposals before Congress and there will be more to come. Secretary Glickman and I will continue to work with Congress to develop effective solutions.

Questions submitted by MR. STUPAK

1. What are the public health ramifications of not approving the proposed settlement or some variation?

   RESPONSE: Each day, nearly 3,000 young people in the United States become regular smokers. Almost 1,000 of those young people will have their lives cut short by diseases caused by their use of tobacco. In fact, 5 million young people alive today will die prematurely because of tobacco use. We must act now to prevent this terrible tragedy from continuing, and the President's five principles lay a strong foundation for congressional action on meaningful, comprehensive tobacco legislation in 1998.

2. Under current law, if a plaintiff is awarded a judgment against a state's Medicaid program, is the federal government responsible for paying its pro-rata share of the judgment?

   RESPONSE: HCFA will match all court-ordered state Medicaid expenditures, as long as the payment falls within the parameters of Title XIX. The federal government will pay all *pro rata* shares of the judgment arising from proper operations of the Medicaid program. However, if the state is taking actions not permitted by the Medicaid program, or is sued for a non-Medicaid issue, HCFA will not participate.

3. Is it your understanding that current law would have to be amended to allow the states to keep 100 percent of the settlement?

   RESPONSE: Yes. Section 1903(d) of the Social Security Act clearly states, "*(2)(B) Expenditures for which payments were made to the State under subsection (a) shall be treated as an overpayment to the extent that the State or local agency administering such plan has been reimbursed for such expenditures by a third party* reduce the toll of tobacco-related illness. To make significant progress in preventing illness and addiction, improving treatments, and better understanding the causes of tobacco-related diseases, we should support a robust and comprehensive research portfolio. Such a portfolio should examine tobacco's impact on health, disease, and quality of life, and include studies from seven broad research categories: biomedical, clinical, behavioral, health services, public health, product design, community-based and surveillance/epidemiologic research. Research must address issues at the national, state and local levels and include studies of tobacco use among both youth and adults. While most tobacco-related research is currently funded through the NIH, significant research in this field also is conducted by the other PHS agencies. In addition to these current activities, there are other important areas of tobacco-related research to explore. For example–

- Research directed toward ensuring that young people do not start using tobacco;
- Research to identify and test the most effective interventions for helping current users to stop use of tobacco with emphasis on special populations (especially children);
- Research to prevent disease in former smokers;
- Research to assess baselines and monitor trends in incidence and prevalence of tobacco use behaviors and exposures to tobacco smoke (including appropriate use of biomarkers);
- Research to definitively characterize the environmental and biobehavioral underpinnings of nicotine addiction in both children and adults;
- Research on non-addictive and reduced risk tobacco products;
- Research on health effects of tobacco smoke in the environment;
- Research to characterize all tobacco and combustion products (including those of newly-introduced tobacco products) and their health consequences;
- Research to evaluate the success of approaches to limit access by children and youth to tobacco products;
- Scientific review of tobacco industry research and other information that has been released and that will be released. This would include work on product design, marketing strategies (especially youth-oriented strategies), and health research. The review will help us determine our future research priorities and enhance the development of technologies and products to reduce the adverse health effects of tobacco products.

4. I was pleased to note the Administration's concern about the impact of the tobacco settlement, and any related legislation, on the variety of interests that were not involved in the settlement negotiations, such as tobacco farmers, retailers, vending machine companies, and others. What proposals is the Administration developing that will try to minimize adverse impact on tobacco farmers and others?

2. In discussing the need for international tobacco control, your testimony stated that American embassies and missions should not be taking actions or be involved in activities that promote the demand for tobacco, especially among young people. What specific kinds of activities are you referring to? What activities should Congress and the administration be attempting to curtail?

RESPONSE: Congress approved an amendment to the FY 1998 appropriations bill for Commerce, Justice, State and the Judiciary (Section 618 of P.L. 105-119) which stipulates that funds provided under the appropriations act cannot be used to promote the sale or export of tobacco products, or to seek the reduction or removal by any foreign country of restrictions on the marketing of tobacco products, except for restrictions that are not applied equally to all tobacco products of the same type. An interagency working group is now preparing comprehensive guidance on tobacco-related issues for distribution to all overseas posts.

The United States should increase its commitment to the efforts of the international health community to reduce tobacco use abroad, particularly as it affects the health of children and youth especially in developing countries. This can be accomplished by improving training, surveillance, research, and education. To reach out to foreign countries, the U.S. should act either to initiate multilateral and bilateral collaborations, or to invigorate our involvement in already existing collaborations, such as the WHO's Tobacco or Health Plan of Action (1996-2000).

3. In talking about an enhanced research agenda, you emphasized in your testimony the need for a comprehensive approach that includes a whole spectrum of activities, from basic biomedical research and disease-specific studies to epidemiological and other research. What level of research funding are you envisioning? How does this future research agenda compare with what is going on already, funded by NIH, CDC, SAMHSA, and others?

RESPONSE: Tobacco use is our nation's leading cause of premature death and preventable illness. It is responsible for 30 percent of the cancer incidence, one-third of cardiovascular disease deaths and 90 percent of chronic obstructive pulmonary disease, taking the lives of 400,000 Americans each year and consuming $50 billion in medical expenditures to treat. Each year, work by the National Institutes of Health (NIH) and other Public Health Service (PHS) agencies identify additional diseases (SIDS, low-birth weight babies, miscarriage, and birth defects such as cleft lip and palate, and periodontal disease) where tobacco use is implicated.

Targeted funding to support a broad spectrum of tobacco-related research could help take advantage of the many promising scientific opportunities that could

In all Medicaid recoveries, the federal share is based on the individual state's match rate (the percentage of its Medicaid costs paid for by the federal government). On average, the federal government pays about 57 percent of Medicaid expenditures for services. Therefore, the federal government will recover about 57 percent of the Medicaid-related share of the total settlement. The federal government also pays half of the administrative and litigation costs related to Medicaid, including those incurred by the states in recovering funds from liable third parties.

At present, it is difficult to estimate exactly the Medicaid-related share of the total settlement. We believe most state suits were primarily based on Medicaid expenditures, though some may be related, in varying degrees, to state programs other than Medicaid. We expect states to credit us with the federal share whenever the state receives payment from the tobacco industry. In these tobacco settlements, HCFA will work with each state involved to determine the appropriate amounts. The 11/3/97 letter from HCFA to state Medicaid directors invites them to discuss this with us.

Questions submitted by MR. DINGELL

1. Madam Secretary, the President's proposal includes an element related to increasing the price per pack of cigarettes, up to $1.50 per pack over the next 10 years. You know there will be an argument that such a price increase will penalize adult smokers and, further, that a price increase of this magnitude or higher could result in destroying the American tobacco industry. This argument is extended to point out that such a result would be counter-productive, because it could mean that the agreed-on financial contributions could not be made by the tobacco industry and, therefore, the expected public health activities could not be undertaken. How do you respond to these arguments?

   RESPONSE: The President called for a combination of industry payments and penalties to increase the price of cigarettes by up to $1.50 in the next decade, as necessary to meet youth smoking reduction targets of 30 percent in 5 years, 50 percent in 7 years, and 60 percent in 10 years. We have proposed this because increasing the price of cigarettes is the most effective method of reducing underage smoking. Youth smokers are far more price sensitive than adult smokers, which means that price increases should disproportionately reduce youth smoking – our primary goal in this initiative. Although price increases may reduce adult smoking as well, we believe the tobacco industry will be able to meet its obligations.

   The President's fundamental intent in this initiative is to focus on this historic opportunity to significantly reduce the use of tobacco among young people. Raising the price of tobacco products is a critical element in achieving that goal.

RESPONSES TO QUESTIONS FOR SECRETARY SHALALA

Questions submitted by MR. BURR

1. Has your department, in its submissions to the Office of Management and Budget for next year's budget, included any aspect of the proposed tobacco settlement? If so, what did you include? What will the baseline assume with respect to the spending and revenue aspects of the tobacco settlement? What are the assumptions you made in the submissions to OMB? If you did not make assumptions, why not? Won't the settlement have an impact on HHS's budget, and other aspects of the budget for Fiscal Year 1999 and beyond? What do you expect those impacts to be?

   RESPONSE: Our budget request to OMB is part of the internal, deliberative process required to produce the President's budget, now scheduled for release in early February. At that time, we will be pleased to discuss the details of our request which reflects the policies announced by the President on September 17, 1997.

2. Your department has sent a notice to the states that you expect the states to reimburse the federal government for its share of past Medicaid expenditures, as is required under current law. What has been the response from the states thus far? What share of total Medicaid expenditures is funded by the federal government? What will be the share of the total settlement that you expect the federal government to collect? Over what time frame do you plan to collect these funds, or withhold payments to the states?

   RESPONSE: On November 3, 1997, the Director of the Center for Medicaid and State Operations in the Health Care Financing Administration (HCFA) sent a letter to the state Medicaid directors to remind them that if a state receives funds as a result of a lawsuit to recoup Medicaid costs incurred in treating tobacco-related illnesses, then federal law requires the payment to the federal government of a pro-rata share of the settlement.

   On November 7, 1997, the Governors who comprise the Executive Committee of the National Governors' Association wrote to the President stating their opposition to repayment of the federal share of Medicaid costs from tobacco settlements. The Attorneys General of 52 states and territories wrote a letter to the President expressing similar opposition.

   On December 5, 1997, the President responded to both the Governors and the Attorneys General and noted that current law requires HCFA to seek recovery of the federal portion of reimbursements for Medicaid that may be part of any state tobacco settlement. He assured them that he "would prefer to see the allocation of tobacco funds between federal and state government resolved through legislation...."

Ronald Alan Stewart

Mr. Stewart of Hood River, **Oregon**, is a certified organic farmer and operates his farm with his wife and sons. They grow apples, pears and cherries. He also owns a packing facility and stores, packs, and markets fruit for their farm and 5 other small farms. He is a member of the Small Farms Commission.

Emma Jean Cervantes

Ms. Cervantes is the owner and operator of Cervantes Agribusiness in Southern **New Mexico**. She raises cotton, pecans, alfalfa, chile peppers, and various vegetables. She won the New Mexico Governors' Award for Outstanding Business Women and New Mexico State Universities Agriculturist Award of Excellence. Ms. Cervantes is a fourth generation New Mexico farmer.

Don Crittenden

Mr. Crittenden is one-half Cherokee and has resided in Cherokee County, **Oklahoma** for 42 years. He is serving his fifth term on the Cherokee Nation tribal Council. He is a retired teacher, coach and administrator. Mr. Crittenden is a rancher.

Frank Gonzalez

Mr. Gonzalez is a 16th generation farmer from Corrales, **New Mexico.** His family was among the first Spanish settlers to farm New Mexico almost 300 years ago. Mr. Gonzalez produces fruits and vegetables.

Gary Cornelious

Mr. Cornelious grows award-winning vegetables in **Iowa**, and has also raised goats, lambs, and poultry. Mr. Cornelious is a member of the Black Farmers, and was recently appointed to serve on the Iowa Farm Service Agency State Committee.

Ralph Paige

Mr. Paige has worked for the Federation of Southern Cooperatives/Land Assistance Fund in Atlanta, **Georgia** for 25 years. The fund serves low income and black family farmers accross the South, and has been presented with numerous awards from Humanitarian Organizations for its work. Mr. Paige has been Executive Director of the Federation/LAF for 12 years.

Calvin King

Mr. King, of Little Rock, **Arkansas**, has served as the executive director of the Arkansas Land and Farm Development Corporation for over a decade. He is one of the founders of that organization. Mr. King recieved a Public Service Award from, then Governor Clinton of Arkansas, and has followed this accomplishment

TOBACCO

Background: Tobacco production and marketing is important to several individuals attending the meeting. Tobacco is the sixth largest cash crop in the U.S. Sales at the farm gate in 1997 will total $2.85 billion. Consumers spent about $50 billion, and Federal, State, and local tax revenues on tobacco products amounts to $13.4 billion in 1996. Tobacco is produced under the provisions of the Agricultural Adjustment Act of 1938, which establishes quotas on how much tobacco may be marketed without penalty. These quotas restrict the marketing of tobacco such that tobacco has been very profitable for farmers over many years. Governor Hunt often says that tobacco is ten times more profitable than the next most profitable crop in North Carolina, which happens to be soybeans.

Flue-cured tobacco quotas are set under a statutory formula for the following marketing year in December. Primary considerations in setting the quota are the purchase intentions of the tobacco companies and carryover stocks. Purchase intentions are dramatically lower for the 1998 marketing year, and under the statutory formula, quotas should be reduced by 20 percent. However, do to the negative effect such a reduction would have on producer income, the Secretary will use his discretionary authority to only allow a 17 percent quota cut. This decision will please growers in the flue-cured tobacco region.

Effect of Tobacco Settlement On Tobacco Program: The primary concern of all tobacco producers, and quota holders, is the effect of the proposed tobacco settlement on their livelihood and on the community where they live. If the settlement results in dramatically lower demand for U.S. tobacco, the resulting quota reductions will hurt the ability of tobacco farmers to continue as a profitable venture. Several bills have been introduced to compensate tobacco quota holders for these losses. Senator Lugar has proposed another more controversial approach which would buy-out tobacco quotas and terminate the program. Attendees may also be concerned about the flue-cured tobacco quota.

Talking Points:

- I know that tobacco production is especially important to both minority and small farm producers. The average U.S. tobacco farm is 126 acres with 35 acres total harvested cropland, and tobacco production on only 6.7 acres. In tobacco growing states, the proportion of African-American operated farms producing tobacco is nearly three times that of all farms.

- Secretary Glickman and other Administration officials have been clear that, while tobacco farmers were not included in the settlement negotiations, the Administration will work with Members of Congress from the tobacco region to insure that the concerns of the farmers are adequately addressed. Specific remedies have not been identified as there has yet to be any consensus among these Members as to how to address the concerns of their constituents.

- I understand that continuation of the tobacco program and compensation for lost quota are the two primary commitments sought by most growers. Some producers are beginning to consider the effect of a buy-out. However, a major drawback of a buy-out plan is that tobacco farmers who cash rent, and therefore do not own quota, could be left behind when buy-out payments are made.

- I also understand that there has been some discussion of the usefulness of an economic development fund to help tobacco farmers diversify their economic pursuits. We will be working closely with Congress on all these issues, and I want to reiterate that we will make every effort to ensure that the concerns of tobacco farmers are adequately addressed.

- Lastly, I know that some of you are concerned about the drastic 20 percent flue-cured quota reduction which was estimated under the statutory formula. However, I understand that the Secretary on Monday exercised his full discretionary authority to mitigate this reduction by 3 percent. This will help the situation significantly. Of course, we should be concerned about the long-term implications for the program of such a large quota reduction. But we must keep the program in balance and move forward. That is the way the program has always worked.

GW

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Tim Pigford

Mr. Pigford, of Riegelwood, **North Carolina**, filed a program complaint (loan issues) in the early 1980s. After investigation in 1987, a finding of no discrimination was made. He has not accepted that determination, and continues to try and get his case reopened. In the meantime, he lost his farm. No current case is in the administrative log.

Gary Grant

Mr. Grant, a Hallifax, **North Carolina** farmer, has complaints also filed by Richard and Matthew Grant, his father and brother. His complaint involves an inventory sale, while his brother and father have loan issues. The father (Matthew) has a debt history more than 20 years old, and is in foreclosure. All three cases are in the investigation stage (contractor).

George Hall

Mr. Hall is a Boligee, **Alabama** vegetable farmer. After initially filing a complaint dealing with disaster benefits in 1994, a determination of discrimination without damages was made in 1996. In 1997 Mr. Hall filed a second complaint, this one dealing with loan issues, which is moving to adjudication. A decision is expected by January 31, 1998. Mr. Hall is also named as a plaintiff in the Pigford class action suit.

John Boyd

Mr. Boyd is a peanut farmer from Chase City, **Virginia**. While poultry farming in 1993 he had a complaint (loan issues) that was adjudicated with a finding of discrimination in 1996. He was subsequently awarded compensatory damages. The damages were negotiated and the case was closed in May 1997. Currently, he is president of the National Black Farmers Association.

Eddie Ross

Prior to filing his 1991 and 1992 complaints (loan issues), Mr. Ross was a Vicksburg, **Mississippi** soybean and wheat farmer. Corrective action was taken regarding his 1991 complaint, and a determination of no discrimination was made following his 1992 complaint. Mr. Ross filed four addtional complaints between 1993 and 1994 (loan issues), which have been investigated jointly. After adjudication a finding od discrimination was issued, and compensatory damages and programmatic relief was made.

Walter Powell

Mr. Powell farms cotton and soybeans in West Monroe, **Louisiana**. He had a 1992 complaint (loan issues) that was decided in his favor in 1994. He was also listed as part of James Myart's class action suit, after which his case was settled this summer. Mr. Powell filed another complaint on November 19, 1997 (loan issues), which is currently being reviewed to determine whether investigation or settlement is called for.

Welchel Long

Mr. Long of **Georgia**, filed a complaint in 1991 relating to denials of emergency loans. A finding of discrimination was issued in 1993, however, no specific relief was provided. In March 1994, Mr. Long filed a civil suit in District Court. In 1995, James Myart (an attorney who represents the Small Farmers

Association of Texas) attempted to file a class action complaint in federal court on behalf of Mr. Long and other black farmers, but in 1997 the class was denied certification. Subsequently the Department settled four individual complaints, including Mr. Longs', through mediation involving the Department of Justice.

William Head

Mr. Head has a 1997 complaint (loan issues) being investigated by the USDA Office of Civil Rights.

Bruce Flye

Mr. Flye is a farmer, and President of the Flue-Cured Tobacco Stabiliation Cooperative. He is also President of the Pitt-Greenville Chamber of Commerce in **North Carolina**. Mr Flye is a constituent of Representative Eva Clayton.

tobacco
dec. 7 | '97
by JRM

Q: Can you bring us up to date on what the White House is currently doing to ensure that Congress sends the President the comprehensive tobacco legislation he called for in September.

A: First, the Vice President has been traveling around the country to build support for the President's plan. The Vice President has held 3 public forums (in Florida, Iowa, and Ohio) and he is conducting a 4th forum next week on December 16, in Seattle.

Second, working alongside the Vice President, Bruce Reed and Secretary Shalala continue to lead a vigorous effort to enact bipartisan, comprehensive tobacco legislation that meets the President's five goals:

- reduce teen smoking
- full authority for the FDA
- changes in the way the tobacco industry does business
- progress toward public health goals
- protection for tobacco farmers and their communities

They have been meeting internally, they have been meeting with outside groups, and they have been meeting with members of Congress.

Q: Is the Administration working with any specific members of Congress to draft legislation the President can support?

A: Since the President met with Congressional leaders on October 1, Bruce Reed and Secretary Shalala have met with most of the committee chairs and ranking members who have jurisdiction over tobacco. We have offered to provide technical assistance to them and several of them have taken us up on that offer.

Q: Can you clarify the Administration's position on the money states have received from tobacco settlements. Are the states required to share that money with the federal government? The President and HCFA has sent out separate letters on this subject and some would say the two letters contradict one another.

A: The states, particularly the state attorneys general, deserve enormous credit for their role in the fight against the tobacco companies. But the law is very clear on this subject. States must report to the Health Care Financing Administration reimbursements for Medicaid that may be part of any state tobacco settlements. The President has said he prefers to see the law changed. He would like to work with the states and Congress to find a mutually agreeable use for the funds generated by tobacco legislation. But to change the current requirement Congress must enact comprehensive tobacco legislation.

Thomas L. Freedman
12/04/97 12:15:15 PM

Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP

cc: Mary L. Smith/OPD/EOP

Subject: Ideas for Tobacco Agenda

I. Updates

Hearings Info-- attorneys fees, medicaid. A tentative hearing scheduled for Dec. 10 in Judiciary (Courts & Intellectual Property) on attorneys fees. Bilirakis hearing on Medicaid? Any requests to agencies.

Decisions for document release are due by Dec. 4th to Bliley (today)

Attorney fee fights in Florida

Medicaid responses

Share rumors on bills- Kennedy (met with), Hatch, Bliley/Waxman

Met with ENACT

II. Check on

Contacts with the agencies by the Hill

VP events status (event yesterday)

III. FY '99
tobacco budget
— FDA - Assist 1 impact - NIH
— USDA

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USTR - Doggett Amendment — looking on current policy. Nothing happened

Doggett requested docs. not much. Korea MOU

[illegible]

VP — Fees to [illegible]. Chairman letter educate new witness. Center for communications health in the environment group.

European Union banned

— Should draft legislation. Rich/Diane. Jeffries

— Senate Dems

— Int'l moves.

→ legislation — release letter

— ATF - Bilirakis

Gilman

Bilirakis —

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→ $1.50
→ penalty

tobacco
— SW

1. *The President has called for an increase in tobacco prices of $1.50 in a combination of price increases and penalties. The tobacco industry argues that a number of exogenous factors, including inflation, should be counted in determining the price increase. However, most economists believe that only real price increases, not nominal price increases, should be included in this calculation. As the Administration analyzes the effects of the price increases on tobacco consumption, the incidence of smoking, and the profitability of the tobacco industry and other industries in the tobacco supply chain, which price increases are relevant to the analysis? In particular, should inflation or exogenous price increases (for example, the ongoing trend of increased state and local sales and excise taxes) be taken into account, or should only those price increases directly attributable to the proposed settlement or comprehensive legislation be considered?*

Price increase is key.

- The President called for a "combination of industry payments and penalties to increase the price of cigarettes by *up to $1.50* a pack over the next decade as necessary to meet the youth smoking reduction targets."
- The intent of the statement was to call for a *real, settlement-induced* price rise of up to $1.50, which would amount to a more-than-doubling of the real industry payments called for the by settlement.
- The distinction between nominal and real prices is of critical importance, because it is the real price that matters for affecting the demand for cigarettes. Hence, the component of the price increase resulting solely from inflation will have no effect on demand. This is why the administration feels that substantial *real* price increases are required to meet the youth smoking targets.
- Unfortunately, the President's statement is being misinterpreted by the industry and Wall Street analysts. In particular, these parties are claiming that, even under the agreed-to settlement, prices would rise by more than $1.50 by the year 2007. The following table helps to show the different components of the industry's nominal price increase estimate:

Component	Estimated Effect on Price per Pack
Real Settlement Cost	$0.62
Inflation Effect	$0.78
Real Excise Tax Increase	$0.09
Other	$0.03
Total Nominal Increase	$1.52

I. Price is best
II. Penalty — take
① penalties ⇒ revenue
②
III. Sliding is really irresponsible

- The tobacco industry projections show a *nominal* price increase of $1.52 by 2007 under the proposed settlement. Industry representatives point to that number as showing that the settlement already meets the President's goal of a price increase up to $1.50.

- But their estimate includes several things that cannot be directly attributed to the settlement: inflation, Federal and state excise tax changes, and increases in wholesale and retail markups.

- The most important difference is inflation as the distinction between the industry's *nominal* estimate and the President's *real* price amount becomes quite large 10 years out. *Over 85 percent* of the difference between the industry's projected $1.52 increase and the $0.62 real cost of the settlement is attributable to inflation. As a result, their real price increase is less than half as large as the price increase called for in the President's statement.

- The real excise tax increase of $0.09 (accounting for the $0.15 nominal increase and the inflation erosion on total Federal excise tax over time) will affect total use as well, but is *not part of the settlement*.

- Thus, in analyzing any legislation, only *real* price increases should be taken into account. Which real increases should be counted depends to some extent on the goal of the legislation:

  - If the goal is solely to reduce smoking, then all real price increases regardless of their source -- whether they result from settlement costs, excise taxes, or industry markups -- should be recognized as helping to reach that goal.

  - However, if a goal of the legislation is to provide funding for health programs, education, enforcement, etc., then the portion of the real price increase attributable to the real cost of the settlement becomes important.

2. *What are the implications of different levels of price increases on tobacco consumption, adult smoking rates, youth smoking rates, tobacco industry profitability and share prices, tobacco farmer profitability, tobacco wholesalers and retailers, and state and local tax revenues? For example, what would be the effects of the proposed settlement? What would be the effects of a 75 cent per pack increase? $1.00 per pack? $1.25 per pack? $1.50 per pack? $1.75 per pack? $2.00 per pack? $3.00 per pack?*

The following table shows our estimates of the reductions in total cigarette consumption, the number of adult smokers, and the number of teen smokers relative to a current law baseline for the various *real* price increases as described in the question.

Projected Smoking Reductions in the Sixth Year from Real Price Increases
(Percent Reductions from Current Law Baseline)

Real Price Increase	Total Cigarette Consumption	Adult Participation	Teen Participation
$0.67--settlement	-15	-10	-20
$1.00	-21	-13	-30
$1.25	-26	-16	-36
$1.50	-30	-19	-41
$1.75	-34	-22	-46
$2.00	-38	-24	-51
$3.00	-51	-34	-66

The above estimates are based on Treasury methodology and estimation procedures. Estimates from other analysts -- including the JCT and the CBO -- could end up being different from what we have found.

Effects on tobacco industry profitability and share prices: A large legislatively-induced real rise in prices would lead to a decline in profits for the tobacco industry, as sales volume would fall through the price effect noted above.

- On the other hand, to the extent that any legislation limited legal liability or advertising, as did the original settlement, it would offset this fall in revenues to some extent by lower legal and advertising costs

- After accounting for both of these factors, the original June 20 settlement was estimated to have lowered profits by 10-17%.

- But that estimate does not account for other possible changes. As shown in the FTC analysis (*Competition and the Financial Impact of the Proposed Tobacco Industry Settlement*), potential cooperative behavior by tobacco companies along with historical information indicate that companies could try to increase profits by raising prices in excess of the settlement costs. With a greater price increase, industry profits would rise as well, and the increase could be significant.

  - To the extent that the settlement facilitates cooperative price fixing (it has language calling for an antitrust exemption), discourages entry, reduces advertising, and raises the costs of output expansion, it could lead to price increases greater than the excise-tax equivalent of the industry payment.

  - A greater-than-1-for-1 pass through of the industry payment could actually lead to a *rise in industry profits*, which will be incrementally taxed at only 25 percent by this settlement.

  - The FTC analysis shows that, with a 200 percent pass-through of settlement costs to prices, the present value of after tax industry profits increases by about 78 percent.

- In any case, tobacco companies could gain from any legislation in this area *even if earnings were to decline*, if the legislation included the type of liability protection offered by the June 20 settlement. As a result, share prices could actually rise, as was suggested by many Wall Street analysts in the wake of the June 20 announcement, because of the reduced risk of high future liabilities.

  - Tobacco companies entered into the agreement for a very important reason: they were seeking protection from civil liabilities. That exemption is very valuable to the tobacco companies, due to the enormous uncertainty about the upside value of these future liabilities

  - For this reason, most Wall Street analysts recommended the purchase of tobacco stocks in the wake of the settlement. and suggested that tobacco price/earning ratios could rise sharply due to this form of "insurance" that has been provided.

Effects on tobacco farmer profitability: Most of U.S. tobacco production has been under a price support and supply control program since the 1930s. Producers are guaranteed higher than market equilibrium prices in exchange for limiting marketings through marketing quotas. The quotas are based on intended purchases by cigarette manufacturers, export levels, and tobacco inflows needed to maintain specified reserve levels.

- Under the settlement, domestic use and marketings of tobacco would fall. As a result, the settlement likely would result in a decline in marketing quotas, as well as their value. Farmers would be adversely affected to the extent that the value of their production falls because of reduced quantities that could be marketed and because alternative crops that could be grown are not as profitable as tobacco. Generally, as cigarette prices rise and domestic tobacco use declines, the size and ~~value~~ of the marketing quota will decline.

Effects on tobacco wholesalers and retailers: Because of competitive market pressures, it is unlikely that wholesalers and retailers will be able to have an additional price markup beyond that of the manufacturers' markup. As a result, wholesalers and retailers will be affected by the reduction in the volume of demand for the product as a result of the price increase.

- As the volume of cigarette sales declines, the total revenues wholesalers and retailers receive from the sales will decline.

- In addition, retailers could face higher costs from meeting age-verification and point-of-sale advertising and access restrictions; these issues are discussed in detail in the FDA rule in the Federal Register (Vol. 61, no. 168, pp. 44426*ff*, 44577*ff*).

- Retailers would also face the higher potential costs from the monetary fines and criminal penalties that would be imposed for violating the laws relating to sales to minors.

Effects on state and local tax revenues: If state excise taxes grow only with inflation, then real State tax revenues from excise and sales taxes on tobacco products will decline as sales of tobacco products decline (from prices increases).

- For a state with a fixed real excise tax, the percentage decline in the real revenues that state receives would be equal to the percentage decline in the volume of sales in that state.

- Different levels of revenue effects will be realized because of differing volumes of sales and differing excise tax rates across states. For example, the states of Massachusetts, Michigan, and Washington have cigarette excise taxes of $0.75 per pack or more, while Kentucky, North Carolina, and Virginia have excise taxes of $0.05 per pack or less. The effects on state tax revenues from declining cigarette sales will obviously be greater in the states with the highest excise tax rates and lower in the states with the lowest excise tax rates.

6 Dont know

3. *Some analysis suggest that sudden, dramatic price increases have a greater effect on smoking rates than a series of smaller price increases. How is the above analysis affected by the timing of the price increases?*

- Our analyses have not assumed any differential impact between a one-time real price increase or the same real price increase that is phased in over time. Generally, we have not experienced this type of change in the past and there is a large degree of uncertainty about this issue.

- There are factors on both sides of this issue, factors that could enhance or deter progress in reducing smoking.

  - On the beneficial side, a large one-time change could promote a sudden behavioral change that leads to reduced consumption, due to changing social norms about smoking in an environment of much higher prices.

  - Alternatively, individuals may be more successful over time in adjusting their behavior -- in this case, use of an addictive substance -- than over a very short time period.

- It's also possible that, because of difficulties of users to reduce consumption in the short-run, that a large one-time price increase may promote smuggling behavior more than a gradual change. Generally, black market activity will compromise the beneficial effects of price increases in reducing smoking.

4. *The proposed settlement envisions companies paying per pack amounts into a settlement fund and covering these payments through an increase in the price of tobacco products. The settlement contains an anti-trust exemption, in part to ensure that companies raise prices in concert. Others have suggested that the price increase should be effectuated through an increase in the Federal excise tax or through a public health user fee imposed on a per pack basis. What are the pros and cons of these three approaches?*

The FTC report *Competition and the Financial Impact of the Proposed Tobacco Industry Settlement* (September 1997) specifically addresses the proposed antitrust exemption in an Appendix entitled "An Analysis of the Proposed Antitrust Immunity for Tobacco Product Manufacturers." The FTC addressed three arguments for having the tobacco companies receive some anti-trust immunity from the tobacco settlement:

- The tobacco settlement proposes shifting the cost of the settlement to consumers by allowing collusive pricing behavior by the companies.

- The settlement's restraints on advertising may be a violation of First Amendment rights of free speech.

- Achieving the targets for the reduction of youth smoking requires an ability to control, and possibly to sanction, retailers not cooperating in eliminating sales to underage smokers.

The FTC report concluded that even without shielding tobacco industry coordination from the antitrust laws, the proposed settlement would likely lead to price increases as large or greater than the cost of the settlement. There is little reason to believe competitive pressures would inhibit any company from passing on the (industry-wide) settlement costs fully.

- The greatest impact of anti-trust immunity with respect to price coordination would therefore be to open up the opportunity to raise prices by more than the settlement costs, and produce enhanced profits for the tobacco companies.

- On the basis of past experiences with increases in State tobacco excise taxes, the industry appears to be quite capable of increasing prices by the amount of the new taxes *without any grant of anti-trust immunity.* Recent cigarette price increases in relation to the Florida and Mississippi litigation provide support to the FTC's interpretation that the price increases will occur without the anti-trust exemptions.

The other arguments not related to price fall short as well:

- The proposed legislation already contains sufficient incentives for tobacco companies to individually sanction non-complying outlets. An antitrust exemption is therefore not needed to discipline outlets, and could be exploited for other anti-competitive purposes.

- It is not necessary or advisable to confer broad anti-trust immunity up front to cover the speculative contingency that the governmental restrictions on advertising might be ruled unconstitutional. At the most, a very narrowly focused exemption, might be warranted.

Hence, the arguments presented above are not sufficient to support the settlement's call for tobacco manufacturers to be able to "jointly confer, coordinate or act in concert" in order "to achieve the goals of [the] Agreement and the Act relating to tobacco use by children and adolescents."

A volume-adjusted penalty, excise tax, or per pack charge are effectively identical. In terms of the price increase and the user response to the price increase, there is no real difference between a volume-adjusted penalty, an excise tax, and a per pack penalty.

- Under the proposed settlement, the volume adjustment for the annual payments effectively converts the payments into an excise tax equivalent: the total payment tracks the number of packs sold, so that the amount that is paid per pack sold remains constant

- As a result, this is identical to any other per pack charge, be it through a tax or through a per-pack "user fee".

This highlights the problems of the settlement mechanism for rising revenues. The current net stream of government revenues envisioned by the settlement will be much smaller than the statutory value of payments, and will decline over time. But if one objective of the settlement is to provide adequate funding for public health programs (such as children's health initiatives), the payment should rise over time in line with the needs and costs of such programs.

- The actual annual payments will be substantially smaller than their $15 billion face value (to the extent that price increases and an underlying declining trend lead to less smoking) which in turn will reduce the payment through the quantity adjustment mechanism.

- Even the volume-adjusted payments are much larger than the net receipts to the government, due to offsets to other excise and income tax receipts and the costs to the government of a rise in the CPI.

- Although the annual payments are adjusted for general price inflation, many of the programs that may be funded are health and entitlement programs that have traditionally experienced rates of cost growth far in excess of overall inflation rates. Even non-entitlement spending can be expected to grow in real terms. As a result, the ability of the industry payments to fund entitlement programs will shrink due to reduced purchasing power.

5. *If price were the only factor affecting smoking rates, how big a price increase would be required to achieve the youth smoking targets called for in the settlement? How much "credit" should be given for the non-price policy changes proposed in the settlement?*

First, it should be stated that price increases due to inflation will not help to meet the youth smoking targets; it requires *real* price increases to reduce youth smoking as well as total consumption.

- The settlement calls for phased-in targeted reductions in youth smoking from a base amount of 15.2 percent: a 30 percent reduction from base by the fifth year of the settlement; a 50 percent reduction by the seventh year; and a 60 percent reduction by the tenth year.

- Our estimates show that meeting the targeted reduction *through price increases alone* would require a *real* price increase of about $1.45 in the fifth year to achieve the 30 percent reduction; about $2.40 in the seventh year to achieve the 50 percent reduction; and about $3.00 per pack in the tenth year when the ultimate targeted reduction of 60 percent takes effect. These estimates do not include any effect from non-price aspects of the settlement, such as access and advertising restrictions.

The question of the effect of "non-price" aspects of the settlement is more difficult to answer.

- A review of the relevant studies and analyses indicates that comprehensive and enforced restrictions on youth access -- similar to what is proposed in the national tobacco settlement -- could have significant effects in reducing underage use of cigarettes and other tobacco products.

- To be effective, however, access and other restrictions would have to be strongly enforced. It is fairly clear to us that individual states and local communities will all have to make concerted efforts to assure compliance with efforts to reduce youth smoking. Some type of incentives for the local communities may be necessary in order to promote compliance efforts.

- The evidence on the role of advertising restrictions and counter-advertising is less clear. The FDA cites a number of studies and cases in which advertising restrictions or counter-advertising have led to reductions in underage or overall use of cigarettes. However, a significant number of other studies -- some funded by the tobacco industry -- presented contrary results showing that advertising restrictions or counter-advertising were not responsible or effective in initiating or retarding use of cigarettes; other factors, such as family and peer use, were the key factors in determining whether an underage individual would smoke.

- The above information suggests that a reduction in underage teen smoking could be accomplished by properly implemented and enforced access restrictions contained in the national tobacco settlement. An estimate for the general range of the effect suggests that perhaps as much as a 20 to 40 percent reduction from current levels of use could result from these types of restrictions. Without full enforcement, however, little or no effect on underage smoking should be expected.

6. How big a price increase would be required to offset the costs of smoking-related illnesses to the Federal government (including Medicare, Medicaid, veterans benefits, CHAMPUS and FEHBP) over the next 25 years?

Generally, there are offsetting effects for the role that cigarette smoking plays in terms of the cost to Federal health programs. Smoking-related illnesses directly raise the cost of health care costs because of the cost of service provided to ill individuals. However, because smoking reduces the life span of smokers, the cost of many programs is reduced over a longer horizon; hence, a settlement-induced reduction in smoking could boost costs from having longer life expectancy.

- *Medicare:* The cost of smoking-related illnesses to Medicare is, on balance, unclear, because the lower costs of a healthier population are offset by the increased life expectancies associated with reduced rates of smoking.
  - On the one hand, costs are higher because per person lifetime Medicare costs are higher for smokers, lowering both HI (Medicare Part A) and SMI (Medicare Part B) program expenditures. In addition non-smokers will contribute additional payroll tax revenue to the HI Trust Fund.
  - On the other hand, this will be offset to some extent by the lower lifetime costs of smokers due to the fact that they have shorter life expectancies and therefore collect fewer years of Medicare benefits after age 65.
  - Thus, raising the price of cigarettes has offsetting effects: it lowers spending on those former smokers who are alive, since they are healthier, but raises spending because former smokers live for more years.
- The effect on Medicaid is also problematic.
  - Annual per person Medicaid costs are higher for smokers. Further costs accrue from the fact that female smoking raises the incidence of very costly low birthweight babies.
  - However, raising cigarette prices would lead to increased Medicaid expenditures on the eligible elderly population, through increased Medicaid long term care payments for the now longer-lived population.
- Veterans benefits and the FEHBP would experience similar conflicting effects. For example, with reduced smoking under the settlement, over time the Veterans Health Administration would likely realize lower acute hospital care costs but higher nursing home care costs. Similarly, a reduction in the number of Federal employee smokers would lead to lower costs of managing smoking-related illnesses, but Federal retirees would live longer, leading to higher medical costs over time.

- The effect on the Defense Health Program under TRICARE (formerly known as CHAMPUS), would be more direct because of its primary focus on active duty personnel, their dependents, and individuals under the age of 65. For this program, the benefit from the reduction in the direct costs of servicing smoking-related illnesses would be the primary effect.

Only current military

7. The President called for a $1.50 per pack increase in cigarette prices in a combination of price increases and penalties for missing the youth smoking targets. What are the implications for cigarette consumption, smoking rates, industry profitability, farmers, retailers and wholesalers of different combinations of price increases and penalties? For example, how do the effects of a $1.00 price increase and a 50 cent penalty differ from the effects of a 50 cent price increase and a $1.00 penalty? What about 75 cents each? Or a $1.25 price increase and 25 cent penalties?

First, it should be stated that the President called for an increase in the price of cigarettes of *up to $1.50* if youth smoking reduction targets are not met.

There are three key issues for thinking about the difference between price increases and penalties.

The first is whether penalties for youth smoking actually lead the industry to actively deter youth smoking through non-price mechanisms (which they will have an incentive to do, so long as the penalties are larger than the profits earned from that youth smoker)

- If the tobacco industry has any ability to deter youth smoking, then youth penalties have an auxiliary benefit relative to price increases, since there is both a price and a non-price impact on youth smoking rates.

- In contrast, if the industry is completely unable to affect the youth smoking decision, then there would be little expected difference in results from equivalent per pack payments or penalties.

The second issue is the potential tension that could arise between fighting smoking and having a stable funding stream.

- For example, with a reliance on youth penalties, if success is attained in reducing youth smoking, then the policy would be unsuccessful from the perspective of raising revenues. In contrast, if there were a lack of success in reducing youth use, then the policy would be successful in raising revenues.

The third issue is administrative difficulties that arise when we rely solely on youth penalties as a means of raising the settlement revenues:

- There are potential concerns about the reliability of youth smoking rates as measured through survey evidence, particularly as a basis for the determination of billions of dollars of penalty payments.

- Also, to the extent that the industry could simply shift from targeting underage youths to targeting young adults, even if success were attained in reducing underage use and penalty payments were low as a result, ultimate success in reducing adult smoking may not be attained.

8. *Look-back penalties for missing the youth smoking targets could be structured in several different ways. The following questions would help the task force understand the implications of some potential options for look-back penalties:*

8A. *What are the pros and cons of imposing penalties on an industry-wide, company-specific, or brand-specific basis? Would some combination of these approaches make more sense and why? If the penalties are imposed on a company- or brand-specific basis, is there justification for a de minimus exemption? Does this create a potential loophole?*

In order to provide the proper incentives, a mix of both industry-wide and company-specific penalties would probably be best. Industry-wide penalties would help to promote an effort on the part of all companies to encourage lower overall underage use of cigarettes. Company-specific penalties would provide incentives to *not* encourage use of their brands or even *discourage* underage use of their brands.

- Under the settlement, the smoking reduction targets are specified based on industry-wide underage usage. As a result, *individual* firms would have a monetary incentive to keep selling to youths because they would reap the full reward while bearing only part of the penalty. The advantage of specifying the fines on a *company by company basis* is that the fine would hit an individual firm's profits directly if it failed to reduce youth smoking of its brands.

- To be effective, any penalties must be a multiple of the expected profits deriving from a given youth smoking for the remainder of his/her life; otherwise, the penalty will not provide incentives for firms to reduce youth smoking.

- However, there are potential disadvantages to relying solely on company-specific fines. Relatively small differentials across companies in per pack penalties could place individual companies at a severe competitive disadvantage. Also, data problems exist for a company-by-company approach that would have to be addressed before it could be implemented; there are no current national data collected on brand-specific smoking rates by youth.

Regarding the de minimus exemption: Substantial economic justification exists for a *de minimus* exemption. If companies or the industry have little control over "hard core" use, and are effectively unable to promote additional reduction in underage use beyond some low level, then penalties in that range will provide no incentive to the companies to try to reduce use. To create the proper incentives, and to attain the greatest reduction in use possible for a given fine, having higher penalties at higher levels of use -- where companies presumably could have an impact -- would be more effective.

8B: *What are the implications of collecting this penalty as a tax increase collected on each pack sold in the year following a year in which the youth smoking target was missed versus a one-time payment in the following year assessed on the basis of a per pack charge for each pack sold during the year in which the target was missed? If the former option were adopted, would there be administrative difficulties with assessing different per pack taxes on different brands or computing the size of the tax in time to impose the tax at the beginning of a calendar year?*

In the first case, which specifies the penalty as a tax on forthcoming sales will result in uncertain revenues, because the (1) tax increase will affect the level of sales and (2) the level of sales will be unknown when the tax rate is instituted. The latter case will provide a known amount of revenue because the volume of sales from the previous year will be known.

- If the tax were levied on a per-pack basis in the year following a missed target, it would be difficult to determine the proper per-pack tax level to generate a given level of payments because the quantity would not be known.
  - As the size of the per-pack tax is increased, the quantity likely would decline as price increases, and any such change could only be predicted with an error. As a result, the expected revenues would also be subject to uncertainty. In this case, the per-pack price increase from taxes would be known with certainty.
- The second case of a one-time payment assessed on the basis of the previous year's quantity of sales would yield exact revenue estimates as the per-pack penalty would be known with certainty and the quantity on which it would be based (last year's quantity) would also be known with certainty. In this case, however, the exact effect on the pack price would be uncertain, depending on how much of the penalty firms attempted to pass through to prices.

Concerning the assessment of different taxes on different brands: It would be very difficult to administer *brand-specific* taxes. Companies could shift costs from high-tax brands and spread them over other brands, reducing the price effect for the brand with the higher tax. Also, companies could reduce production of high-tax brands and increase production of lower-tax brands, or even introduce new brands. Company-specific penalties may be feasible, but brand-specific fines likely would be very difficult or impossible to implement successfully.