KEEPING TRACK

Top Health Vacancies

Six months into his second term, President Clinton has yet to fill scores of offices. This list of vacancies at the Department of Health and Human Services is one of a series of occasional tallies of unfilled posts throughout the Administration, including Cabinet departments and the judiciary.

With vacancies in more than a third of the 21 top jobs at the Department of Health and Human Services, the Administration moved earlier this month to plug some of the gaps. The President nominated Dr. David Satcher, the head of the Centers for Disease Control and Prevention, in Atlanta, to fill two posts: that of Assistant Secretary for Health and Surgeon General.

There has been no word, however, on who might fill another post, that of Commissioner of Food and Drugs. The White House is likely to exercise extreme caution in filling the job because of the Food and Drug Administration's efforts to regulate tobacco.

SHERYL GAY STOLBERG

Major Vacancies — MONTHS VACANT

ASSISTANT SECRETARY FOR PLANNING AND EVALUATION ●●● ●●● ●●● ●●

Peter Edelman stepped down on Sept. 28, 1996, in protest over the President's decision to sign the welfare bill. On Aug. 6, Mr. Clinton nominated Margaret Hamburg, former New York City Health Commissioner.

ASSISTANT SECRETARY FOR AGING ●●● ●●● ●●● ●●● ●

Fernando Torres-Gil resigned on Aug. 2, 1996. On Sept. 2, Mr. Clinton nominated Jeanette C. Takamura, the first Deputy of Health for the Hawaii Department of Health.

ASSISTANT SECRETARY FOR CHILDREN AND FAMILIES ●●● ●●● ●●● ●●

Mary Jo Bane resigned on Sept. 28, 1996, also in protest over welfare bill. On April 15, Mr. Clinton nominated Olivia A. Golden, Acting Assistant Secretary; a Senate committee has unanimously recommended confirmation.

COMMISSIONER, ADMINISTRATION FOR YOUTH AND FAMILIES ●●● ●●● ●

Olivia A. Golden stepped down on Feb. 13. No replacement has been named.

COMMISSIONER OF FOOD AND DRUGS ●●● ●●●

Dr. David A. Kessler resigned on March 1 to become dean of Yale University's medical school. No replacement has been named.

SURGEON GENERAL ●●

Dr. Joycelyn Elders resigned on Dec. 30, 1994. Acting Surgeon General Audrey Manley retired on July 1. If confirmed, Dr. Satcher will fill the job.

Aide to Clinton Sees Flexibility On Tobacco

By Bloomberg News

WASHINGTON, Sept. 21 — President Clinton will accept some form of legal immunity for the tobacco industry in exchange for a strong program to reduce the number of teenage smokers, Bruce Reed, the head of the President's task force on tobacco, said today.

Mr. Reed said the Administration would not try to change the liability protections in the national tobacco settlement reached on June 20 as long as there were real moves to reduce the number of underage smokers.

"We've always said that some form of caps on liability is not a deal-killer for us, but we would condition that on getting the kind of comprehensive plan to reduce smoking that we're asking for," Mr. Reed said on Fox News on Sunday. "We very much want to get this done."

A limit on liability is what brought cigarette makers to the negotiating table, and they have always made it clear they will walk away from any agreement that does not include it.

President Clinton said this week that the agreement needed to be changed to give the Food and Drug Administration the unfettered right to regulate nicotine. He also said that unless goals were reached on reducing underage smoking, he wanted to see penalties increased to a level where cigarettes would cost up to $1.50 more per pack.

The New York Times
MONDAY, SEPTEMBER 22, 1997

Lightenii g Up

As Politicians Weigh Tobacco Legislation, Many Businesses Make Room for Smokers

By Lois Romano
Washington Post Staff Writer

A1

DENVER—It's 8:25 in the morning and the smoking lounge at the international airport here is hopping. Three television sets are blaring baseball replays and news, six wall clocks are ticking and more than 70 patrons—traveling salesmen, grandmothers and young couples—are settled into the comfortable armchairs chain-smoking.

And this, said the bartender, is a slow morning. At peak traffic times, they have had to turn people away from the 175-seat Aviator's Club, one of only two concessions that permit smoking at the sprawling, two-year-old airport. Some 2,000 passengers pass through the lounges daily.

"Finally, a place I'm welcomed," said Marilyn Lunbery, a Germany-bound software developer who smokes a pack of Camel Lights a day. "I've been made to feel I have to step to the back of the bus for too long. I know the risks, I know the score. But I enjoy smoking and I'm not quitting. That's the bottom line. So why try to punish me?"

Businesses across the country are starting to see her point. While in Washington, the White House and Congress prepare for battle to toughen the deal worked out between states and the tobacco industry, in the rest of the country, many corporations, hospitals and public transport systems are trying to find ways to accommodate the nation's 48 million smokers.

Many businesses say it is simply an acknowledgment that—despite the health risks and intense public pressure to quit—about 25 percent of the adult population continues to smoke. And these smokers happen to include their employees and customers. Statistics provided by the Centers for Disease Control and Prevention indicate that this percentage has remained virtually constant throughout the '90s.

In Des Moines, a businessman recently spent $10,000 creating a 4,000-square-foot smoking club called "Puffs" for his downtown mall, where people pay 50 cents to duck in for a smoke or $1.25 for a day pass. The University of Nebraska Medical Center—like many other smoke-free institu-

See SMOKE, A9, Col. 1

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SMOKE, From A1

tions—has opted to build 13 "smoking shelters" outside its buildings so employees and visitors will no longer have to smoke in doorways. One manufacturer of such shelters—which resemble translucent bus stop huts—reports a 70 percent increase in sales this year.

After a four-year smoking ban at Dallas/Forth Worth International Airport, the third-busiest airport in the world has just developed a $5 million plan to build 20 new smoking lounges. Dulles International Airport recently opened two smoking rooms. And Amtrak this year allocated a reported $8 million to convert 59 cars to smoking lounges on its long-distance routes.

"It's reality. People still smoke," said Ruth Davis, a vice president of Concessions International Inc., which is building the first smoking lounge at Hartsfield Atlanta International Airport to offer full-service food and beverage service. Davis said restaurant sales dropped 20 percent to 30 percent at Concession International's airport outlets when smoking was effectively eliminated from eating establishments there in 1993.

"We have to accommodate the consumer," said Davis. "Health food may be a trend, but the fact of the matter is that hot dogs are still the biggest selling item at the airport. We can't force people to eat healthy, and we can't force them to quit smoking."

Said Bruce Gerleman, the Des Moines mall owner, whose new smoking room offers pool tables, video games, a newsstand and food: "It's just too big a segment of the population to write off."

Nevertheless, the anti-smoking lobby is more effective and powerful today than it has ever been in this country. President Clinton on Wednesday called for tougher provisions to reduce youth smoking before he would endorse the $368.5 billion settlement between tobacco companies and state attorneys general, negotiated in June. The companies had already agreed to advertising restrictions and to pay states for smoking-related medical expenses. And last month, Clinton signed an executive order for the first time banning smoking in all federal buildings. In fact, only 1 percent of office buildings in the country still allow unrestricted smoking, according to a recent survey by the Building Owners and Managers Association.

A [illegible] of recent reports emphasizing the [illegible] risks [illegible]ated with second-hand [illegible] to mention the publicity generated by a class-action [illegible] filed by flight atten[illegible] will only amplify the voices of the anti-smoking crusaders in local jurisdictions. Restrictive measures are being considered in 41 states, and more than 80 proposed anti-smoking ordinances are pending in cities and towns.

Any movement toward "accommodation" (as it is referred to in the tobacco industry) is closely watched by smoking foes. "Obviously, any retrenching of the hard-fought public health accommodations is of extreme concern to us," said Norman Childs, a spokesman for the American Lung Association. "It sends a message to children that smoking is still okay."

Businesses assert that their decision to create smoking accommodations should not be viewed as an endorsement of the habit. Hutchinson Technology, in Minnesota, for one, would prefer that all its employees quit smoking and offers free cessation programs on site. But facilities director Jack Yates said that despite a four-year ban on smoking inside the plants, about 35 percent of Hutchinson's 7,200 employees remain undaunted smokers. Recently, Yates contacted Duo-Gard, a Michigan company that started out making commercial windows and sunroofs but whose newly developed smoking shelter business is now dominating its sales.

"We are not trying to encourage smoking," said Yates. "But we had to find a way to accommodate nearly half our work force." By year's end, Hutchinson will have at its facilities nine shelters, which cost from $1,500 to $40,000 depending on size and amenities. The shelters provide the added benefit of keeping the smokers and their haze away from the buildings.

Garry Rossino, facilities manager for Rockwell International's plant in Darien, Ill., purchased shelters from B&G Enterprises in California earlier this year because he could no longer watch his employees shivering outside in severe midwestern weather smoking. "Everyone acknowledges smoking is bad for you, but these are our people and I can't punish them because they can't quit," Rossino said.

At the University of Nebraska Medical Center, smoking was banned inside the buildings on the 80-acre campus several years ago. But with 6,000 employees and more than 200,000 patients coming through the facility annually, officials began studying how to deal with the steady stream of smokers lighting up near the hospital. This summer, they ordered 13 shelters.

"I was a hard-core supporter of a total ban, but I was overruled by our smoking committee," said Donna Katen-Bahensky, Nebraska's vice chancellor for business and finance. "The families who come here are under stress and we can't make them stop smoking, so we wanted to provide them with a sheltered place away from the hospital."

However, Katen-Bahensky said the center is launching an anti-smoking campaign and offering employees free smoking cessation

The Washington Post
Monday, September 22, 1997

discounts on nicotine patches

While most restaurants still offer small smoking sections, the fast-growing cigar fad among the glamorous and well-to-do has pushed some restaurants to establish special cigar bars and rooms. "The wealthy have formed a beachhead that is keeping some tolerance for tobacco," said Tom Lauria, a spokesman for the Tobacco Institute in Washington.

Despite this new acceptance by some, several high-profile corporations that have purchased shelters insisted that their names not be linked publicly with smoking. "We are not pro-smoking," said a spokesman for one large manufacturer of household products. "But we have 10,000 employees and it's unrealistic to think that we can force them to quit."

The American Cancer Society sees it differently. "We wish that employers in this position would spend that money on more smoking cessation programs," said spokesman Steve Dickinson. "Many people quit smoking because it's just plain socially unacceptable. Health risks didn't move them. . . . But the fact that they were social pariahs and not welcome in their own buildings did move them."

Defiant smokers beg to differ. They are tired of being treated as social outcasts, squeezed from every angle on an issue they believe is a matter of informed choice. As National Public Radio commentator David Sedaris joked bitterly recently, "I can find a gram of cocaine much easier than a cigarette machine."

Such pressure may be creating a backlash among smokers, who can choose to spend their money where they're welcome. CDC figures show that about a third of the nation's smokers fall below the poverty line. But millions of others "cut across demographic lines and they have a few dollars to spend," said Tom Humber, president of National Smoker's Alliance, a grass-roots pro-smoking organization with 3 million members. "Businesses are starting to appreciate this."

Indeed, the two smoking bars at [illegible] International Airport have become something of a legend in the airport business, annually grossing [illegible] million. "They are packed all the time," said Aviator's Club owner [illegible] Mosteller, who is building a third smoking lounge at [illegible] and who is talking to other airports about developing similar lounges. Mosteller spent $250,000 to install powerful filtering ventilation systems in the lounges, which he says turn over air 12 times every hour.

Others have gotten the same message. As the government has tightened restrictions—since 1990, smoking has been banned on domestic flights within the contiguous 48 states—airports have found that their smoking travelers need a place to go between flights. Chicago's O'Hare Airport is in the process of building 20 outside shelters after a two-year airport ban on smoking. Dallas/Fort Worth Airport estimates that 16 million smokers pass through its terminals each year. "That's 16 million people we can't turn our backs on," said Kevin Cox, deputy director of the airport. "We're in a service business."

> *"Everyone acknowledges smoking is bad for you, but these are our people and I can't punish them because they can't quit."*
>
> — Garry Rossino, facilities manager, Rockwell International Chicago plant

At National Airport's new terminal, officials hope smokers will gravitate to two outdoor plazas built with smoking in mind. A spokesman for Host Marriott Services—which runs the 24 restaurant concessions there—said the company opted to ban smoking at all its restaurants to avoid having "people run across the terminal and flock to the concessions that offer smoking."

Four years ago, Amtrak banned smoking on its short-distance routes but allowed smoking in certain public lounges on the overnight trains. After an extensive study, the rail line concluded that neither smokers nor nonsmokers were happy with the arrangement. This spring, it introduced 34 newly renovated smoking lounge cars on its long-distance routes. There are 25 more to come.

"There is no question we were losing revenues," said Steven Taubenkibel. "Twenty-five percent is a lot of people and a lot of lost revenue. We are trying to bring back those travelers."

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The Washington Post
MONDAY, SEPTEMBER 22, 1997

A1

What's News—

Business and Finance

IMF MEMBERS AGREED to chip in about $285 billion to boost the agency's capital base by 45%, responding to the rapidly escalating cost of global financial rescues. The move was overshadowed by a provocative condemnation of currency traders and western governments by the Malaysian prime minister, as well as by tension between the U.S. and Japan.

(Articles on Pages A2 and A16)

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Westinghouse Electric agreed to buy American Radio Systems for $1.6 billion, plus the assumption of $1 billion in debt. The Justice Department said it would do an antitrust review.

(Article on Page A3)

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American Express increased its share of the U.S. credit-card market during the first half, indicating a turnaround in the company's card business may be gathering steam.

(Article on Page A3)

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Long Term Capital is returning to investors nearly half its $6 billion in capital as arbitrage opportunities shrink in international bond markets.

(Article on Page C1)

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IBM will announce that it has become the first company to successfully substitute copper for aluminum in making semiconductors, a vital breakthrough in manufacturing faster and more powerful computer chips.

(Article on Page B14)

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Home Depot's results could be cut by 21% for the third quarter following its agreement to pay $65 million to settle a sex-discrimination suit.

(Article on Page B18)

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Kansas City Southern said it will separate its railroad business from its booming mutual-fund unit, which includes the big Janus Group.

(Article on Page C23)

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The tobacco industry expects much of what is in its proposed national settlement to be approved by Congress.

(Article on Page B5)

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The SEC's Levitt is expected to outline rule changes and tougher enforcement against small-company stock fraud in Senate testimony today.

(Article on Page B18)

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Rockwell is expected to unveil the first commercial chip designed specifically to run Sun Microsystems' Java computer programming language.

(Article on Page B14)

* * *

Virgin Records America is expected to name Nancy Berry as head of the music powerhouse as Phil Quartararo is expected to be appointed president of Warner Bros. Records.

(Article on Page B4)

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Union Carbide's stock fell 7.6% after the chemical maker said its quarterly results wouldn't meet estimates. Other chemical firms also could be hurt by rising raw-material prices.

(Article on Page A8)

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Delta Air Lines will give its former CEO, Ronald W. Allen, a lump-sum severance payment of $4.5 million.

(Article on Page B12)

* * *

Laboratoires Servier says it will be able to prove the safety of diet pills the French drug maker pulled from pharmacies world-wide last week.

(Article on Page A19)

* * *

Markets—

Stocks: Volume 630,539,610 shares. Dow Jones industrials 7917.27, off 5.45; transportation 3208.80, up 46.70; utilities 241.27, up 0.16.

Bonds: Lehman Brothers Treasury index 7197.13, up 10.93.

Commodities: Oil $19.38 a barrel, unchanged. Dow Jones futures index 147.32, up 0.37; spot index 145.29, off 0.03.

Dollar: 122.25 yen, up 0.30; 1.7753 marks, off 0.0041.

World-Wide

CAMPAIGN REFORM COULD get a boost from Reno's move against Clinton.

The attorney general, as she did earlier with Gore, has begun a review to determine if an independent counsel should be appointed to investigate possible fund-raising abuses by the president. The quickening pace of events has produced a truce among top Senate campaign-panel members, and hearings now will shift to issues designed to prod Republican leaders to schedule a floor debate on reform legislation. But many in the GOP are opposed, and they are well-positioned to block it. (Article on Page A3)

Clinton has said he can't remember making fund-raising phone calls from the White House. Gore admits such calls, and on Friday hired lawyers to defend him.

* * *

Poland's Solidarity looked set to take the largest number of parliament seats in an election defeat for ruling ex-Communists, exit polls projected. A clear majority appeared out of reach for the former trade union, but results could allow it to form a coalition government after losing power in '93. A pro-market party was running third.

* * *

Clinton and Congress struck a deal on a $247.7 billion Pentagon budget allowing the president to decide whether to buy more B-2 Stealth bombers. The pact Friday provides more spending in the home states of Gingrich and Lott. Meanwhile, Clinton said he'll veto an education bill if it lacks his national testing proposals. (Article on Page A24)

A military construction bill is loaded with pork-barrel provisions that are good targets for Clinton's new line-item veto power, critics say. Republican Sen. McCain has found 129. Meanwhile, Congress and Clinton reached a deal on two tax items he crossed out last month. (Article on Page A24)

* * *

The Senate Finance panel opens hearings on IRS conduct tomorrow, with employees due to testify that agency practices encourage tax collectors to bully taxpayers. Skeptics note that the hearings come amid a Republican effort to make the IRS a campaign issue and use such stories of abuse to help raise funds. (Article on Page A2)

* * *

Serbs voted in elections [illegible] Socialist candidates loyal to Milosevic, who, [redacted] from another term, is shifting his power base to the federal Yugoslav presidency. A boycott called by a disunited opposition, which forced concessions after big winter protests, appeared to fail.

* * *

Half a million Filipinos marched in Manila to oppose a second term for President Ramos, whose backers are trying to amend the constitution to allow it. On Saturday, Ramos said he won't run again. Separately, a collision of two Manila-bound commuter trains killed at least six and injured 141.

* * *

Ted Turner is using his pledge last week to give $1 billion to U.N. causes over 10 years as a way to escalate his campaign to get wealthy people to increase their giving. Turner's move apparently followed a spur-of-the-moment decision, and details remain to be worked out. (Article on Page B1)

* * *

The Sergeant Major of the Army should be court-martialed for indecent assault, adultery and obstruction of justice, a hearing officer reportedly is recommending after reviewing testimony in the sex-abuse case. The report was finished last week and is now being reviewed by senior officers.

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Israeli troops arrested dozens of Palestinian men in West Bank villages, and witnesses said it appeared a specific suspect was sought. Separately, Israel said Russian scientists helped Iran develop a long-range missile that could destabilize the Mideast.

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German Chancellor Kohl's party ran a strong second in Hamburg state elections viewed as an early indicator of the '98 national vote. A far-right party also did surprisingly well. The mayor quit after a thin victory margin for Social Democrats.

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Violence in Algeria continued as an armed group killed 53 civilians in an early-morning attack on a village 40 miles south of Algiers. In raids earlier on the weekend, police killed 19 suspected Muslim militants.

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A Japanese cabinet minister quit a week after Prime Minister Hashimoto appointed him to a post overseeing deregulation. The official drew criticism because of his conviction in the 1970s Lockheed bribery scandal.

* * *

Air Force investigators hunted for clues to the cause of a B-1 bomber crash Friday at a test range in southeastern Montana. Four crewmen died in the crash, which occurred during practice of low-altitude maneuvers.

THE WALL STREET JOURNAL MONDAY, SEPTEMBER 22, 1997

WASHING ON

Clintons return to oversee 'one of America's empty nests'

Emotionally and physically exhausted after dropping their daughter at Stanford University over the weekend, President and Hillary Rodham Clinton returned from California to the White House for a few hours Sunday to start, in the president's words, "officially overseeing one of America's empty nests." By evening, the Clintons were headed for New York City, where today he will address the United Nations and tonight the couple will attend an opera. Clinton goes to Little Rock on Thursday for the 40th anniversary of the integration of Central High School. At the time, federal troops had to be deployed to protect nine students who, under a court order, were the first African-Americans to be allowed to attend the school.
— Mimi Hall

ARMY SEX SCANDAL: The Army is weighing a hearing officer's recommendation that its top enlisted soldier be court-martialed on 22 counts of indecent assault, adultery and obstruction of justice.

Reuters

McKinney: Court-martial weighed

Six women accused Sgt. Maj. of the Army Gene McKinney of grabbing them, trying to kiss them and asking for sex. One said she had intercourse with McKinney unwillingly, but the hearing officer, Col. Robert Jarvis, rejected a prosecution request that McKinney be charged with rape. McKinney has denied all accusations.

Jarvis, following an eight-week hearing, submitted more than 6,000 pages of testimony and exhibits for review by Col. Owen Powell, commander of the Fort Myer garrison in Arlington, Va. The final decision will come from Maj. Gen. Robert Foley, commander of the Military District of Washington.

Rep. Carolyn Maloney, D-N.Y., who is trying to reform the military justice system, said the women were "brave soldiers who were willing to put their good names on the line. ... I'm glad the U.S. Army appears to be taking a lesson from them."

FOREST PROTECTION: Two Oregon lawmakers are proposing a bill to shift $50 million from a firefighting fund to remove dead timber and thin overstocked stands of trees from fire-prone national forests. The Forest Recovery and Protection Act calls for a five-year program of logging, prescribed burning, insect and disease control, riverbank restoration and tree-planting. Rep. Bob Smith, R-Ore., says that unlike a controversial salvage logging program a year ago, timber harvesting under his bill would have to comply with environmental laws. Sen. Gordon Smith, R-Ore., introduced the Senate version. Environmentalists say the politicians are exploiting public fear of forest fires and inventing a "forest-health crisis" to benefit the timber industry.

CENSUS SAMPLING: House Republicans are expected to try again this week to bar the Census Bureau from using sampling to arrive at a final figure for the 2000 Census. The GOP's first attempt failed last spring when lawmakers attached the ban to a disaster-relief bill and dared President Clinton to veto it. He did. The Census Bureau proposes to reach at least 90% of households and then use those results to estimate the number and characteristics of people who might not have been contacted or responded. Republicans say that the Constitution requires an actual head count, and that sampling would allow the Clinton administration to manipulate the numbers to the advantage of Democrats in redrawing congressional district boundaries for the 2002 elections.

WHITE HOUSE PAGERS: Purported White House pager messages being circulated on the Internet might be bogus, and even if real don't compromise security, White House spokesman Barry Toiv said. He said aides who need secure communication have it and they know pager messages aren't safe. The messages, such as "Don't forget to page me tonight when you want me in your room," are said to have been intercepted by hackers April 27.

LINE-ITEM VETOES: White House aides and members of the House tax-writing committee have a tentative agreement on two issues that President Clinton used his new line-item veto power to strike from the big tax bill in August. The measures, involving farmers' cooperatives and U.S.-based companies with overseas income, are expected to pass the House Ways and Means Committee on Tuesday. Talks continue on a third provision involving New York's Medicaid program.

ALSO ...

▶ **VOTER FRAUD:** A Dallas federal prosecutor says the Immigration and Naturalization Service is hindering an investigation into reports that foreigners illegally registered to vote and cast ballots. The probe is being delayed "because the INS officials in Washington have, so far, been uncooperative," Assistant U.S. Attorney Michael Uhl wrote in a letter to the INS district office in Dallas. INS didn't immediately comment on The Associated Press report.

▶ **TOBACCO TAX BREAK:** A proposed $50 billion tax deal for tobacco companies, which mysteriously appeared in the balanced budget bill, came at the behest of tobacco lobbyist and former Republican national chairman Haley Barbour, *Time* says. Barbour declined to comment. Congress later killed the measure.

▶ **CORRECTION:** An item Friday should have said the Senate approved $100 million for the National Endowment for the Arts.

Written by Paul Leavitt with staff and wire reports

FBI joins search for wealthy N.J. man

From staff and wire reports

AP

Gross: Son last saw him with two unidentified men.

The FBI has joined the search for a New Jersey millionaire missing for five days.

Nelson Gross, a prominent developer, restaurateur and one-time powerful Republican political activist, was seen with two unidentified men Wednesday before he withdrew $20,000 from his bank account. He was reported missing when he failed to show up later that day at his summer home in Bridgehampton, N.Y.

His wife, New Jersey Racing Commission Chairwoman Noel Gross, and other family members are offering a $100,000 reward for his safe return.

The case is "still being worked as a disappearance," said FBI Special Agent Ann Todd. But "we can't rule out the possibility" that he was kidnapped.

Gross's silver BMW sedan was found in Manhattan late Saturday, New York police said. The FBI is processing it for evidence, Todd said.

The Newark office of the FBI joined the Bergen County prosecutor's office Friday in the investigation. Published reports say as many as 100 agents have been assigned to the case.

A 65-year-old Saddle River, N.J., lawyer, Nelson Gross has been described as living a low-key, semi-retired lifestyle, splitting his time between the golf course and his restaurant and real estate businesses.

Officials initially focused on the $20,000 bank withdrawal before Gross's disappearance. But his brother, Michael Gross, says the withdrawal might have been a routine transaction. He told *The Record* of Hackensack that his brother withdrew $75,000 from the bank earlier in the week.

"I don't think my brother was coerced to remove that money," Michael Gross said. "This is a man who routinely moves large sums of money."

Michael Gross said his brother's son, Neil, saw his father at the family's restaurant parking lot with two men and went to investigate. At one point, Neil Gross called his father on a cellular phone.

Nelson Gross gave no indication of any trouble and told his son the meeting was "just business," he said.

A political activist until he was convicted of fund-raising irregularities in 1974, Nelson Gross was county and state GOP chairman. He served five months of a two-year prison term in 1976. He was a key fund-raiser for Richard Nixon during his 1968 presidential campaign. He ran unsuccessfully for the U.S. Senate in 1970.

USA TODAY • MONDAY, SEPTEMBER 22, 1997

Smoke gets 'I your lies

By John P. Walters
F.X. O'Gara

Give President Clinton credit — he isn't always wrong. The president has announced a five-part plan for keeping kids away from cigarettes or, more accurately, for keeping cigarettes away from kids. The plan calls for FDA regulation of nicotine, new restrictions on cigarette advertising, and paying farmers not to grow tobacco. But what got the most attention was a proposal that, if fully implemented, could add another $1.50 to the cost of a pack of smokes over the next decade.

The president's critics who discern a hidden tax hike are wrong, says Mr. Clinton, "To me, this is not about money. It is not about how much money we can extract from the tobacco industry."

What is it about, then? It is, of course, about kids: "One of the surest ways of reducing youth smoking is to increase the price of cigarettes," said the president at his Oval Office briefing. Skeptics will question whether making cigarettes expensive can really reduce consumption by kids. The skeptics should take note of a recent study from the University of Illinois and MIT, which estimates that a 10 percent increase in prices would cause a seven percent decrease in youth smoking.

Dr. Frank Chaloupka, who conducted the cigarette study, explains: "A lot of people think that because something is addictive that people are not going to respond to prices and other economic incentives, and our research shows that that is not the case." In fact, what Dr. Chaloupka describes as "standard economic theory" works for substances other than tobacco: "[I]ncreases in the price of marijuana will reduce marijuana use," says Dr. Chaloupka. Moreover, the opposite is true as well — the historical record is littered with cases of plentiful supply fostering demand. Why else did tens of thousands of Vietnam-era soldiers use (inexpensive, pure Vietnamese) heroin but stop when they returned to (expensive, hard to get, three percent purity) U.S. heroin? Why else does Malaysia have a major problem with heroin despite its mandatory death sentence for traffickers, if not because the country's proximity to the Golden Triangle conspires to make heroin cheap there? For an even more obvious example, why else did China's drug problem explode after the British East India Company began flooding China with 450 tons of opium year?

There is no m that supply fosters demand. The real question is why the Clinton administration has dismantled our nation's drug interdiction programs, the goal of which is to reduce availability and drive up prices. Don't believe that interdiction can change street prices? Why, then, did an aggressive effort during the Bush administration cause cocaine prices to jump 43 percent — the first such increase in 12 years? And why has the more than one-third reduction in cocaine street prices coincided with the Clinton administration's 50 percent cut to interdiction programs?

History is an excellent teacher, but the tragedy of the Clinton administration's failed drug policy is that history, specifically the normalized drug use of the 1960s and 1970s, is repeating itself as we watch.

The administration's own data tell the story. LSD use by teens has reached the highest rate since record keeping started in 1975. There is no evidence of any reduction in the hard-core addict population. A recent White House survey [the "Summer 1997 Pulse Check"] finds that "[h]eroin use continues to be common in almost all of the areas contacted, and eight of the eleven sources contacted report an increase in young heroin users . . . While there has been an increase in new, young users, heroin users are primarily adults, many of whom are former long-term users tempted back into use by the lower price, higher purity heroin now available." Translation: Heroin, which as recently as 1991 cost more than $1,600 per gram, is now so cheap that young people can afford it, and former addicts are getting back into the game.

There is a lot of talk about the need for more spending on drug treatment, but the fact is that treatment is simply not very effective when addicts can walk by street corners awash in cheap heroin. Nor is heroin the only drug whose plentiful supply has served as an inducement to youthful use. Marijuana is once more the drug of choice of many young people.

Fully 34 percent of the Class of 1996 have smoked at least once before graduation, double the rate of use just five years ago. Predictably, the White House's Pulse Check reports that "Marijuana continues to be highly popular with a wide variety of users, particularly young users" and "Marijuana appears to be plentiful in all areas. . . ." Actually, that is somewhat of an understatement. Marijuana prices — which during the Bush administration were driven higher, ounce for ounce, than gold — are currently at a 12-year low. The price of a joint of high-potency marijuana is now just a couple of dollars — allowance money.

The Clinton administration has slashed resources to drug interdiction, while its own reports show that the result has been a boom in the supply and availability of drugs, higher purity, and more drug use. The cigarette issue shows that the Clinton administration certainly understands this dynamic. The question is, what will it take for the president to devote some attention to the drug issue?

John P. Walters is the former Deputy Director of the Office of National Drug Control Policy. James F.X. O'Gara is a former drug policy advisor to Senate Judiciary Committee Chairman Orrin G. Hatch.

Where the tax bite is getting deeper

The Internal Revenue Service has just released data on tax collections in 1995. They show the wealthy are shouldering a heavier burden of taxation than ever.

According to the IRS, the top 1 percent of taxpayers, those with incomes above $209,105, paid more than 30 percent of all individual income taxes in 1995. In 1994, this group paid 28.7 percent. On average, the top 1 percent of taxpayers forked over 28.5 percent of their income to the federal government in 1995, up from 27.9 percent a year earlier.

Other upper-income groups also increased their shares of the tax burden. The top 5 percent of taxpayers, those with incomes above $96,104, paid almost 49 percent of income taxes. The top 10 percent of taxpayers paid more than 60 percent of income taxes, and the top 25 percent paid just over 80 percent. The top 50 percent of taxpayers, everyone with an income above $22,361, paid more than 95 percent of income taxes. This means that the bottom 50 percent paid less than 5 percent.

The Clinton administration will, no doubt, trumpet these figures as vindicating its 1993 tax increase, which raised the top income-tax rate from 31 percent to 39.6 percent. However, the trend toward higher tax payments by the wealthy was going on well before 1993 and even during periods when tax rates were being cut. In 1981, the top 1 percent of taxpayers paid just 17.6 percent of income taxes, rising to 27.4 percent by the end of the Bush administration in 1992.

Therefore, while the Clinton tax increase may have contributed to the increase in taxes by the wealthy, it is probably not the only reason. Economist Lawrence Lindsey of the American Enterprise Institute believes the recent rise in tax payments more likely results from the increase in the stock market. Higher stock prices have generated higher capital-gains realizations that mainly accrue to the rich.

Mr. Lindsey thinks that higher capital-gains realizations may also be responsible for the unexpected rush of taxes to the Treasury that caused the Congressional Budget Office to raise its revenue forecast by $225 billion earlier this year. He points out that revenue estimates are usually based on forecasts of gross domestic product. However, capital gains are not counted as income when GDP is calculated but are counted as income to individual taxpayers. Thus, if capital gains are a rising share of individual incomes, it will throw off the revenue forecasts.

Other upper-income groups also increased their shares of the tax burden.

In the end, it is clear that despite much rhetoric to the contrary, the U.S. tax system is indeed highly progressive. The higher one's income, the more taxes one pays. And the trend has been for the rich to pay more taxes, rather than less.

Bruce Bartlett is a senior fellow with the National Center for Policy Analysis and a contributing writer for The Washington Times.

The Washington Times
MONDAY, SEPTEMBER 22, 1997

Tobacco Profits May Soar Under Deal, Government Study Shows

By J M. BRODER

WASHINGTON, Sept. 22 — Tobacco industry profits could soar under terms of a legal settlement proposed in June by 40 state attorneys general and cigarette makers, according to a new analysis of the agreement by the Federal Trade Commission.

The study found that the tobacco companies could reap as much as $123 billion in additional profits in the next 25 years if the settlement plan were adopted as drafted.

The analysis, conducted in response to a request from Congress, also concluded that the $368.5 billion face value of the settlement was significantly overstated. The real cost to industry is about $207 billion because the companies' payments are to fall as cigarette consumption drops, the commission staff report found. The cost to industry of the June agreement is about $100 billion in today's dollars, the study found.

The settlement proposal is unlikely to be enacted by Congress without substantial changes, if at all. But the trade commission's findings are startling because the agreement has been depicted as extremely costly to the cigarette industry. Instead, the agency found, the industry would thrive financially while enjoying immunity from most litigation.

Scott Williams, a spokesman for the tobacco makers, said that the report was "highly speculative and misses the point." Mr. Williams, of the public relations firm Bozell Swayer Miller Group, said that the purpose of the settlement proposal was to reduce smoking by minors, not to maximize industry profits.

He declined to comment on the specific findings of the study.

The report said that the industry's potential windfall profits would result from the cigarette companies' raising prices much more than was necessary to cover the cost of the settlement. The tobacco industry historically has increased prices more quickly than its costs have risen, taking advantage of the small number of companies in the market and the millions of addicted customers.

But the trade commission study may already be largely obsolete, because President Clinton has rejected many parts of the June proposal, including the provision allowing the companies to pass along to smokers all of the costs of the settlement.

Under the President's proposal, cigarette prices would rise by as much as $1.50 a pack, but a substantial portion of the increase would be captured by the Government in the form of penalties if smoking by teenagers did not drop sharply.

The study also assumes that the cigarette companies will enjoy a $50 billion tax break that was part of the July balanced-budget accord. But both houses of Congress have voted to rescind the tax break.

Trade commission officials said that repeal of the tax break would reduce long-term industry profits by an unspecified amount.

Robert Pitofsky, the trade commission chairman, said that the June accord contained an trust exemption that would allow the cigarette makers to "jointly confer, coordinate or act in concert" to achieve the goals of the settlement.

He said that the exemption would permit the tobacco companies to collude to impose price increases far in excess of those required to cover the annual payments of roughly $15 billion required by the proposal.

"Taken at its worst, this exemption would allow the companies to get in a room and decide among themselves what is the best level of prices and what is the appropriate level of profits," Mr. Pitofsky said.

He noted that such collusive activity was ordinarily a violation of criminal anti-trust statutes.

Representative Marty Meehan, Democrat of Massachusetts, welcomed Mr. Pitofsky's conclusion that the anti-trust exemption was too broad.

"We now know that the exemption provides the industry with benefits that go far beyond the original justification," said Mr. Meehan, co-chairman of the Congressional task force on tobacco, which requested the report.

Separately, a CBS News poll showed that a large majority of the public doubted that the proposed agreement would significantly reduce the number of teen-agers who smoked. Only 19 percent of a national sample of 1,051 adults surveyed late last week said they believed the accord would reduce the number of teen-agers who begin smoking. By a 2 to 1 margin, the respondents — half of whom were current or former smokers — said that the Government and the tobacco industry could not take steps that would significantly reduce tobacco use by minors.

Washington Classes Start After Roofs Are Repaired

WASHINGTON, Sept. 22 (AP) — Schools here opened today three weeks late, with new roofs, tighter security, longer days and stiffer academic requirements.

Classes started later than those in most of the rest of the country because roofs were being replaced on 54 schools. The school day has been made 30 minutes longer to make up for lost time.

Julius Becton, the District of Columbia's schools superintendent, said new roofs and other repairs should help reduce fire-code violations that interrupted classes in recent years.

He also announced a reading program intended to insure that all children are reading by the third grade.

Treasure Hunter Finds Lost Presidential Yacht

ASSATEAGUE ISLAND, Va., Sept. 22 (AP) — A salvage operator searching for sunken Spanish treasure ships in the shallow waters off Assateague Island has instead found a piece of American history.

Using a magnetometer on Sept. 9, the salvor, Ben Benson, discovered the Despatch, the yacht of Presidents Rutherford B. Hayes, James A. Garfield, Chester A. Arthur, Grover Cleveland and Benjamin Harrison.

The yacht, built in 1873, ran aground and sank in stormy weather off Assateague in 1891. All members of the crew, who were the only ones on board, survived.

Corrections

An article in Business Day on Friday about a surge in the shares of the Bankers Trust New York Corporation after comments by an analyst, Thomas Hanley of UBS Securities, misidentified the forum in which he spoke. The comments, in which Mr. Hanley said the company was a takeover candidate, were made to UBS clients and its sales force and were reported by the CNBC cable network; Mr. Hanley himself did not appear on CNBC.

■

An article in Business Day on Saturday about legislative proposals to overhaul the Internal Revenue Service referred incorrectly to a plan for an oversight board. It would comprise appointees from government, education and business, not exclusively business.

■

A front-page article on Friday about a proposed combination of Coopers & Lybrand and Price Waterhouse misspelled the surname of an accounting professor at the Wharton School of the University of Pennsylvania who commented. He is Peter Knutson, not Knudsen.

A chart in Business Day ranking the Big Six public accounting firms on several measures, included some incorrect figures supplied by Bowman's Accounting Report for Ernst & Young and thus ranked the firms incorrectly in several categories. A corrected chart appears today on page D2.

■

A dance review on Friday about "Webbed Feats," performed in Bryant Park in Manhattan on Wednesday, misidentified the producers. They were the Bryant Park Restoration Corporation and Stephan, Koplowitz & Company, not Dancing in the Streets.

■

A film review on Friday about "In and Out," starring Kevin Kline and Joan Cusack, misstated Debbie Reynolds's role. She plays the mother of the high school teacher portrayed by Kevin Kline, not the mother of his fiancée.

The New York Times

TUESDAY, SEPTEMBER 23, 1997

FTC Criticizes Proposed Tobacco Accord

Agency Warns Big Profits Would Exceed Penalties Included in Settlement

By JOHN R. WILKE
And JEFFREY TAYLOR
Staff Reporters of THE WALL STREET JOURNAL

WASHINGTON — The Federal Trade Commission sharply criticized the proposed national tobacco settlement, concluding that cigarette makers could reap big profits that would far exceed the penalties the pact would impose.

The FTC's reaction strengthens the hand of President Clinton and those on Capitol Hill who are demanding a tougher settlement. The original deal, struck between tobacco companies, state attorneys general and public-health advocates on June 20, calls for the industry to pay $368.5 billion over 25 years to offset states' costs of caring for sick smokers.

"Cigarette prices are likely to rise more than the amount of the annual payments, and as things now stand, vast additional revenues will go to the tobacco companies," FTC Chairman Robert Pitofsky said yesterday. He found the proposed deal's broad antitrust exemption especially troublesome, saying it would give tobacco companies immunity from price fixing and let the largest grow stronger while squeezing out smaller players.

The FTC found that the plan could boost industry profits from $36 billion to as much as $123 billion over the life of the settlement, depending in part on whether industry tax exemptions are enacted.

"This study shows that the tobacco settlement is an even better deal for the industry than anyone had imagined," said Rep. Henry Waxman, a California Democrat who asked the FTC to study the proposed settlement. He said the antitrust exemption is among many provisions that will have to be changed as Congress drafts tobacco legislation.

A tobacco-industry spokesman, Scott Williams, rejected the FTC's report, saying it is "highly speculative and misses the point, which is that the price increases in the settlement are designed to maximize the reduction in underage tobacco use." He said the report "is based on assumptions that are at best inaccurate," such as the FTC's calculation that cigarette makers routinely pass on more than 100% of the cost of tax increases.

The settlement calls for reductions in youth smoking of 30% in five years and 60% in 10 years. If the industry fails to meet the targets, the pact would impose penalties of as much as $2 billion a year, which would probably be passed along to customers in the form of further price increases. The payments would also be tax-deductible, and the industry could apply for refunds. President Clinton has said he wants to toughen these penalties. The pact also includes an exemption from antitrust laws that would allow cigarette companies to cooperate on raising prices.

The FTC also said cigarette makers could end up paying significantly less than the $368.5 billion envisioned under the proposed settlement because the payments are linked in part to annual sales, which are expected to decline as consumer prices rise. Richard Lugar, the Indiana Republican who is chairman of the Senate Agriculture Committee, one of the panels likely to shape tobacco legislation, said Congress "will want sufficient funding of state and federal public-health costs caused by smoking."

Last week, President Clinton called for changes in the proposed settlement, demanding that the Food and Drug Administration be authorized to control nicotine levels in tobacco products and calling for price increases of as much as $1.50 a pack to attack smoking among youths.

The proposed settlement is being re-

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Continued From Page A3

viewed on Capitol Hill, which must come to terms with the president and pass legislation for its provisions to take effect. Congress isn't expected to begin the process in earnest until next year.

But the FTC's Mr. Pitofsky said price increases could give tobacco companies too much leeway to boost profits. "Prices per pack ought to go up, but the question is how much and where is the money going to go?" he said. "Even without the antitrust exemption, if prices rise $1.50 a pack, that produces vast revenues that are not yet accounted for."

Richard Scruggs, a plaintiffs attorney representing several states that sued the industry, said, "The intent of the settlement was to give the industry an exemption only to the extent necessary to fund the settlement. If the provision is too broad, we'll work to narrow it." He added that the settlement agreement was a "term sheet" rather than a detailed piece of legislation.

Moore Rejects 'Collusion'

Added Michael Moore of Mississippi, the lead negotiator for the state attorneys general, said, "We're certainly not for any collusion."

Mr. Moore said, however, "We always thought tobacco companies would raise prices higher than what they had to for the settlement, but truthfully we thought that was a good thing from a public-health perspective."

Industry lawyers say the tobacco companies are willing to work with the FTC to narrow the antitrust exemption. As drafted, it would permit tobacco companies "to jointly confer, coordinate or act in concert" to reach the settlement's goals, including eliminating billboard advertising and vending-machine sales. The companies, the attorneys said, believe they need the exemption to carry out these goals without violating antitrust laws.

But Mr. Pitofsky said the provision, "although possibly not intended . . . would allow the tobacco companies to coordinate their behavior and raise prices far in excess of levels necessary to cover the annual payments and keep the extra profits for themselves."

Highly Concentrated Industry

The FTC study said the tobacco industry has historically passed on to consumers more than government-required price increases. That is in part because the industry is highly concentrated, there are high barriers to entry by competitors, and customers are relatively insensitive to price increases.

Rep. Martin Meehan said the exemption's effect "has been completely overlooked" and provides the industry with benefits "that go well beyond the original justification." Indeed, the Democrat from Massachusetts said the companies can make the required payments without it.

Republican Orrin Hatch of Utah, who as chairman of the Senate Judiciary Commitee will play a crucial role in drafting legislation, said he is working with Ohio Republican Mike DeWine, chairman of the Senate antitrust subcommitee, to ensure that "any necessary antitrust exemption will be narrowly tailored to accomplish the legislative goal of reducing [youth] smoking."

Separately, Brooke Group Ltd.'s Liggett Group Inc. unit said it settled Nevada's tobacco-related Medicaid-reimbursement claims. Nevada is one of several states that filed suit against tobacco companies to cover billions of dollars in Medicaid costs. Among the terms of the settlement, the unit will put an added warning on its packs stating "smoking is addictive," and agreed to pay as much as 22.5% of its pretax earnings into a settlement fund for the next 25 years.

Deal could be windfall for tobacco firms

By Samuel Goldreich
THE WASHINGTON TIMES

Price-fixing exemptions under the proposed tobacco settlement could give the industry a $123 billion windfall over the next 25 years, according to a study released yesterday by the Federal Trade Commission yesterday.

The report, requested by a group of tobacco critics in Congress, suggests that the nation's top five tobacco firms easily can afford to sweeten their offer of $368.5 billion over the next 25 years to settle health liability lawsuits filed by 40 states and thousands of private citizens.

"Cigarette prices are likely to rise more than the amount of the annual payments," FTC Chairman Robert Pitofsky said. "As things stand now, vast additional revenues would go to the tobacco companies."

The tobacco deal, which President Clinton last week said Congress must strengthen to boost cigarette prices and reduce underage smoking, would create an unprecedented antitrust exemption to allow companies to set prices and decide on appropriate profit levels, he said.

Mr. Clinton insists that any tobacco deal must force a $1.50 jump in the price of a package of cigarettes over the next 10 years to discourage teenage smokers. He called for a combination of price increases and "penalties" if targets to reduce underage smoking are not met but did not address raising federal excise taxes.

Based on tobacco companies' past history of tacking on premiums when taxes go up, they probably would use the antitrust exemption to boost prices far beyond what is necessary to make annual payments under the settlement proposal, Mr. Pitofsky said.

FTC analysts said the price of a pack of cigarettes would rise 57 cents to $2.47 in five years, without the antitrust exemption included in the tobacco deal. But if price-fixing rules are waived, the price could jump to $3.04 by 2002.

The report estimated that tobacco industry profits would drop about $15 billion over the next 25 years if they simply passed to smokers the cost of the settlement. But profits could soar $123 billion, if the industry uses the exemption to recapture double the cost of the deal.

"The report raises the question of what ought to be done with any additional monies the settlement could generate," Mr. Pitofsky said.

The FTC report offered no suggestions for dealing with the tobacco industry. But Mr. Pitofsky noted that in other industries such as utilities, which operate under similar price-fixing exemptions, government agencies have the power to set prices and profits.

Tobacco critics immediately seized on the report to support demands for stiffer penalties and higher taxes to ensure that the industry does not get a windfall.

"The FTC report shows that the tobacco companies are likely to make even more money from the U.S. tobacco market under the deal than they would without a deal," said Rep. Henry Waxman, California Democrat.

The FTC report will be a "powerful tool" for Congress to rewrite the to-

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DEAL

From page B6

bacco deal, said Rep. Martin Meehan, Massachusetts Democrat and chairman of the 89-member Congressional Task Force on Tobacco and Health.

Sen. Frank Lautenberg, New Jersey Democrat, said last week that he will introduce a bill calling for an immediate $1.50 increase in the excise tax, which already is scheduled to climb 15 cents to 39 cents by 2002.

The tobacco companies that negotiated the settlement deal declined to comment yesterday.

But industry representative J. Phil Carlton said last week that the deal already would achieve a $1.50 jump in the price of cigarettes if retail and wholesale markups are added to the 62 cent-per-pack increase called for under the settlement. He said it would "certainly be unacceptable to try to raise the financial terms of this agreement."

Jonathan Baker, the FTC's director of economics, dismissed the notion that the 62 cent cost of the agreement alone would cause wholesalers and distributors to raise the price of cigarettes by $1.50 per pack.

"It's not plausible, given the competitiveness of the distribution industry," he said.

The Washington Times
TUESDAY, SEPTEMBER 23, 1997

The New York Times
THURSDAY, SEPTEMBER 25, 1997

Economic Scene | Peter Passell

Tobacco might thrive with a $1.50-a-pack rise for cigarettes.

IS the tobacco industry playing Brer Rabbit to President Clinton's Brer Fox? The President's assertion that if necessary, the price of cigarettes should rise by $1.50 a pack to deter teen-age smoking evoked bitter denunciations from Big Tobacco. "The industry should be not held solely accountable for social behavior that neither it, nor the Government, can control," read the cigarette manufacturers' collective response.

But a close look at Mr. Clinton's demands suggests that the industry could live — conceivably thrive — with the consequences. Jeremy I. Bulow, an economist at the Graduate School of Business at Stanford University, calculates that a settlement on the President's terms would cost the tobacco companies less than the continuing uncertainty over legal liability. "The best estimate now is that $1.50 a pack would increase the market value of tobacco stocks," Mr. Bulow argues.

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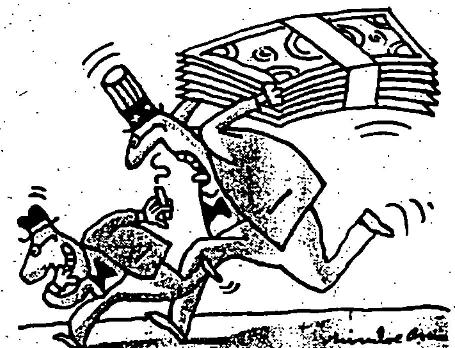
"Reducing youth smoking is the Administration's bottom line," President Clinton said. "One of the surest ways" to meet the Administration's goal of a 60 percent cut in teen-age smoking over a decade, he added, is to "increase the price of cigarettes."

Since teen-agers have less money than adults and are not yet addicted to nicotine, their consumption of tobacco is more responsive to price changes than that of adults. Nonetheless, to cut teen-age smoking by 60 percent would probably require a $1.50 price increase.

The combination of taxes and penalties built into the original settlement proposal — a proposal the Federal Trade Commission staff argued this week could actually increase industry profits — totaled 72 cents a pack. When a reporter asked Bruce N. Reed, director of the President's Domestic Policy



Nicolae Asciu

Council, whether the Administration's approach would double the 72-cent penalty, Mr. Reed said it would. That, in turn, led to the speculation that the President's approach would have doubled the cost of the original settlement, to about $700 billion.

But Martin Feldman, a tobacco industry analyst at Smith Barney, begs to differ. He notes that the 72 cents does not include the 15-cent-a-pack increase in the Federal excise tax on the books for the year 2002. Nor does it include future increases in state taxes, or in markups by retailers. All told, Mr. Feldman estimates that the abandoned settlement would have raised the price of a pack by $1.45 in just five years — almost as much as the President's proposed maximum increase over a decade.

Mr. Bulow of Stanford expects there is more daylight between the cost of the two proposals than Mr. Feldman argues because competition would prevent retailers from fattening their markups significantly. Nonetheless, the university economist is confident that cigarette makers could live with measures that would increase the supermarket price by $1.50 a pack.

Mr. Bulow's conclusion is based on the idea that the cigarette makers' goal is to maximize the total return for stockholders. He cites estimates by Gary Black, a tobacco analyst at Sanford C. Bernstein, that the domestic tobacco businesses of Philip Morris and RJR Nabisco are currently valued by the market at just one-third what they would be worth in the absence of uncertainty about future litigation and regulation.

He estimates that a tax of $1.50 a pack would reduce cigarette consumption by about one-third. The lost sales would mean a more-than-proportionate fall in profits, but Mr. Bulow estimates that part of the costs of the settlement would be recouped since marketing costs would also fall. On balance, he calculates that a $1.50 tax would pare the industry's $5 billion annual profit by a bit less than half.

• • •

That is hardly what the cigarette companies hoped for. But Mr. Bulow reckons that it is better than living with the current level of legal uncertainty, which has reduced the market value of the business by two-thirds. And since the Administration appears eager to set goals in terms of reduced youth smoking, rather than reduced smoking over all, the companies may find ways to salvage a portion of the lost profit.

For example, Mr. Bulow expects that an increase in the minimum legal smoking age to, say, 19, would deter teen-age smokers, yet have little effect on adults in the near term. So by supporting tougher restrictions on access to cigarettes, the companies might get away with a smaller tax that cut less deeply into profits from sales to adult addicts.

Concentrating on youth smoking directly has a social advantage, too. Smokers, on average, have lower incomes than nonsmokers. So relying more on direct regulation of youth smoking and less on cutting demand with across-the-board price increases reduces the regressivity of the policy. "It would be a shame to put most of the burden of the antismoking settlement on the backs of adults earning less than $10 an hour," Mr. Bulow said.

MEMORANDUM

TO: TOM FREEDMAN, MARY SMITH

FROM: SKYE PHILBRICK

RE: TOBACCO ARTICLES (SEPTEMBER 22-25)

DATE: SEPTEMBER 25, 1997

HERE ARE THE TOBACCO ARTICLES FROM THIS WEEK'S WHITE HOUSE PRESS CLIPPINGS.

The New York Times

MONDAY, SEPTEMBER 22, 1997

KEEPING TRACK

Top Health Vacancies

Six months into his second term, President Clinton has yet to fill scores of offices. This list of vacancies at the Department of Health and Human Services is one of a series of occasional tallies of unfilled posts throughout the Administration, including Cabinet departments and the judiciary.

With vacancies in more than a third of the 21 top jobs at the Department of Health and Human Services, the Administration moved earlier this month to plug some of the gaps. The President nominated Dr. David Satcher, the head of the Centers for Disease Control and Prevention, in Atlanta, to fill two posts: that of Assistant Secretary for Health and Surgeon General.

There has been no word, however, on who might fill another post, that of Commissioner of Food and Drugs. The White House is likely to exercise extreme caution in filling the job because of the Food and Drug Administration's efforts to regulate tobacco.

SHERYL GAY STOLBERG

Major Vacancies	MONTHS VACANT
ASSISTANT SECRETARY FOR PLANNING AND EVALUATION Peter Edelman stepped down on Sept. 28, 1996, in protest over the President's decision to sign the welfare bill. On Aug. 6, Mr. Clinton nominated Margaret Hamburg, former New York City Health Commissioner.	●●● ●●● ●●● ●●
ASSISTANT SECRETARY FOR AGING Fernando Torres-Gil resigned on Aug. 2, 1996. On Sept. 2, Mr. Clinton nominated Jeanette C. Takamura, the first Deputy of Health for the Hawaii Department of Health.	●●● ●●● ●●● ●●● ●
ASSISTANT SECRETARY FOR CHILDREN AND FAMILIES Mary Jo Bane resigned on Sept. 28, 1996, also in protest over welfare bill. On April 15, Mr. Clinton nominated Olivia A. Golden, Acting Assistant Secretary; a Senate committee has unanimously recommended confirmation.	●●● ●●● ●●● ●●
COMMISSIONER, ADMINISTRATION FOR YOUTH AND FAMILIES Olivia A. Golden stepped down on Feb. 13. No replacement has been named.	●●● ●●● ●
COMMISSIONER OF FOOD AND DRUGS Dr. David A. Kessler resigned on March 1 to become dean of Yale University's medical school. No replacement has been named.	●●● ●●●
SURGEON GENERAL Dr. Joycelyn Elders resigned on Dec. 30, 1994. Acting Surgeon General Audrey Manley retired on July 1. If confirmed, Dr. Satcher will fill the job.	●●

Aide to Clinton Sees Flexibility On Tobacco

By Bloomberg News

WASHINGTON, Sept. 21 — President Clinton will accept some form of legal immunity for the tobacco industry in exchange for a strong program to reduce the number of teenage smokers, Bruce Reed, the head of the President's task force on tobacco, said today.

Mr. Reed said the Administration would not try to change the liability protections in the national tobacco settlement reached on June 20 as long as there were real moves to reduce the number of underage smokers.

"We've always said that some form of caps on liability is not a deal-killer for us, but we would condition that on getting the kind of comprehensive plan to reduce smoking that we're asking for," Mr. Reed said on Fox News on Sunday. "We very much want to get this done."

A limit on liability is what brought cigarette makers to the negotiating table, and they have always made it clear they will walk away from any agreement that does not include it.

President Clinton said this week that the agreement needed to be changed to give the Food and Drug Administration the unfettered right to regulate nicotine. He also said that unless goals were reached on reducing underage smoking, he wanted to see penalties increased to a level where cigarettes would cost up to $1.50 more per pack.

Lightening Up

As Politicians Weigh Tobacco Legislation, Many Businesses Make Room for Smokers

By Lois Romano
Washington Post Staff Writer

A1

DENVER—It's 8:25 in the morning and the smoking lounge at the international airport here is hopping. Three television sets are blaring baseball replays and news, six wall clocks are ticking and more than 70 patrons—traveling salesmen, grandmothers and young couples—are settled into the comfortable armchairs chain-smoking.

And this, said the bartender, is a slow morning. At peak traffic times, they have had to turn people away from the 175-seat Aviator's Club, one of only two concessions that permit smoking at the sprawling, two-year-old airport. Some 2,000 passengers pass through the lounges daily.

"Finally, a place I'm welcomed," said Marilyn Lonbery, a Germany-bound software developer who smokes a pack of Camel Lights a day. "I've been made to feel I have to step to the back of the bus for too long. I know the risks, I know the score. But I enjoy smoking and I'm not quitting. That's the bottom line. So why try to punish me?"

Businesses across the country are starting to see her point. While in Washington, the White House and Congress prepare for battle to toughen the deal worked out between states and the tobacco industry, in the rest of the country, many corporations, hospitals and public transport systems are trying to find ways to accommodate the nation's 48 million smokers.

Many businesses say it is simply an acknowledgment that—despite the health risks and intense public pressure to quit—about 25 percent of the adult population continues to smoke. And these smokers happen to include their employees and customers. Statistics provided by the Centers for Disease Control and Prevention indicate that this percentage has remained virtually constant throughout the '90s.

In Des Moines, a businessman recently spent $10,000 creating a 4,000-square-foot smoking club called "Puffs" for his downtown mall, where people pay 50 cents to duck in for a smoke or $1.25 for a day pass. The University of Nebraska Medical Center—like many other smoke-free institu-

See SMOKE, A9, Col. 1

SMOKE, From A1

tions—has opted to build 13 "smoking shelters" outside its buildings so employees and visitors will no longer have to smoke in doorways. One manufacturer of such shelters—which resemble translucent bus stop huts—reports a 70 percent increase in sales this year.

After a four-year smoking ban at Dallas/Forth Worth International Airport, the third-busiest airport in the world has just developed a $5 million plan to build 20 new smoking lounges. Dulles International Airport recently opened two smoking rooms. And Amtrak this year allocated a reported $8 million to convert 59 cars to smoking lounges on its long-distance routes.

"It's reality. People still smoke," said Ruth Davis, a vice president of Concessions International Inc., which is building the first smoking lounge at Hartsfield Atlanta International Airport to offer full-service food and beverage service. Davis said restaurant sales dropped 20 percent to 30 percent at Concession International's airport outlets when smoking was effectively eliminated from eating establishments there in 1993.

"We have to accommodate the consumer," said Davis. "Health food may be a trend, but the fact of the matter is that hot dogs are still the biggest selling item at the airport. We can't force people to eat healthy, and we can't force them to quit smoking."

Said Bruce Gerleman, the Des Moines mall owner, whose new smoking room offers pool tables, video games, a newsstand and food: "It's just too big a segment of the population to write off."

Nevertheless, the anti-smoking lobby is more effective and powerful today than it has ever been in this country. President Clinton on Wednesday called for tougher provisions to reduce youth smoking before he would endorse the $368.5 billion settlement between tobacco companies and state attorneys general, negotiated in June. The companies had already agreed to advertising restrictions and to pay states for smoking-related medical expenses. And last month, Clinton signed an executive order, for the first time, banning smoking in all federal buildings. In fact, only 1 percent of office buildings in the country still allow unrestricted smoking, according to a recent survey by the Building Owners and Managers Association.

A spate of recent reports emphasizing the [illegible] risks [illegible]ated with [illegible]hand smoke, not to mention the publicity generated by a class-action suit filed by flight attendants, will only amplify the voices of the anti-smoking crusaders in local jurisdictions. Restrictive measures are being considered in 41 states, and more than 80 proposed anti-smoking ordinances are pending in cities and towns.

Any movement toward "accommodation" (as it is referred to in the tobacco industry) is closely watched by smoking foes. "Obviously, any retrenching of the hard-fought public health accommodations is of extreme concern to us," said Norman Childs, a spokesman for the American Lung Association. "It sends a message to children that smoking is still okay."

Businesses assert that their decision to create smoking accommodations should not be viewed as an endorsement of the habit. Hutchinson Technology, in Minnesota, for one, would prefer that all its employees quit smoking and offers free cessation programs on site. But facilities director Jack Yates said that despite a four-year ban on smoking inside the plants, about 35 percent of Hutchinson's 7,200 employees remain undaunted smokers. Recently, Yates contacted Duo-Gard, a Michigan company that started out making commercial windows and sunroofs but whose newly developed smoking shelter business is now dominating its sales.

"We are not trying to encourage smoking," said Yates. "But we had to find a way to accommodate nearly half our work force." By year's end, Hutchinson will have at its facilities nine shelters, which cost from $1,500 to $40,000 depending on size and amenities. The shelters provide the added benefit of keeping the smokers and their haze away from the buildings.

Garry Rossino, facilities manager for Rockwell International's plant in Darien, Ill., purchased shelters from B.I.G. Enterprises in California earlier this year because he could no longer watch his employees shivering outside in severe midwestern weather smoking. "Everyone acknowledges smoking is bad for you, but these are our people and I can't punish them because they can't quit," Rossino said.

At the University of Nebraska Medical Center, smoking was banned inside the buildings on the 80-acre campus several years ago. But with 6,000 employees and more than 200,000 patients coming through the facility annually, officials began studying how to deal with the steady stream of smokers lighting up near the hospital. This summer, they ordered 13 shelters.

"I was a hard-core supporter of a total ban, but I was overruled by our smoking committee," said Donna Katen-Bahensky, Nebraska's vice chancellor for business and finance. "The families who come here are under stress and we can't make them stop smoking, so we wanted to provide them with a sheltered place away from the hospital."

However, Katen-Bahensky said the center is launching an anti-smoking campaign and offering employees free smoking cessation

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The Washington Post
MONDAY, SEPTEMBER 22, 1997

d ts on nicotine patches

While most restaurants still offer small smoking sections, the fast-growing cigar fad among the glamorous and well-to-do has pushed some restaurants to establish special cigar bars and rooms. "The wealthy have formed a beachhead that is keeping some tolerance for tobacco," said Tom Lauria, a spokesman for the Tobacco Institute in Washington.

Despite this new acceptance by some, several high-profile corporations that have purchased shelters insisted that their names not be linked publicly with smoking. "We are not pro-smoking," said a spokesman for one large manufacturer of household products. "But we have 10,000 employees and it's unrealistic to think that we can force them to quit."

The American Cancer Society sees it differently. "We wish that employers in this position would spend that money on more smoking cessation programs," said spokesman Steve Dickinson. "Many people quit smoking because it's just plain socially unacceptable. Health risks didn't move them. . . . But the fact that they were social pariahs and not welcome in their own buildings did move them."

Defiant smokers beg to differ. They are tired of being treated as social outcasts, squeezed from every angle on an issue they believe is a matter of informed choice. As National Public Radio commentator David Sedaris joked bitterly recently, "I can find a gram of cocaine much easier than a cigarette machine."

Such pressure may be creating a backlash among smokers, who can choose to spend their money where they're welcome. CDC figures show that about a third of the nation's smokers fall below the poverty line. But millions of others "cut across demographic lines and they have a few dollars to spend," said Tom Humber, president of National Smoker's Alliance, a grass-roots pro-smoking organization with 3 million members. "Businesses are starting to appreciate this."

Indeed, the two smoking bars at Denver International Airport have become something of a legend in the airport business, annually grossing $2.5 million. "They are packed all the time," said Aviator's Club owner David Mosteller, who is building a third smoking lounge at DIA and who is talking to other airports about developing similar lounges. Mosteller spent $250,000 to install powerful filtering ventilation systems in the lounges, which he says turn over air 12 times every hour.

Others have gotten the same message. As the government has tightened restrictions—since 1990, smoking has been banned on domestic flights within the contiguous 48 states—airports have found that their smoking travelers need a place to go between flights. Chicago's O'Hare Airport is in the process of building 20 outside shelters after a two-year airport ban on smoking. Dallas/Fort Worth Airport estimates that 16 million smokers pass through its terminals each year. "That's 16 million people we can't turn our backs on," said Kevin Cox, deputy director of the airport. "We're in a service business."

> *"Everyone acknowledges smoking is bad for you, but these are our people and I can't punish them because they can't quit."*
>
> — Garry Rossino, facilities manager, Rockwell International Chicago plant

At National Airport's new terminal, officials hope smokers will gravitate to two outdoor plazas built with smoking in mind. A spokesman for Host Marriott Services—which runs the 24 restaurant concessions there—said the company opted to ban smoking at all its restaurants to avoid having "people run across the terminal and flock to the concessions that offer smoking."

Four years ago, Amtrak banned smoking on its short-distance routes but allowed smoking in certain public lounges on the overnight trains. After an extensive study, the rail line concluded that neither smokers nor nonsmokers were happy with the arrangement. This spring, it introduced 34 newly renovated smoking lounge cars on its long-distance routes. There are 25 more to come.

"There is no question we were losing revenues," said Steven Taubenkibel. "Twenty-five percent is a lot of people and a lot of lost revenue. We are trying to bring back those travelers."

The Washington Post
Monday, September 22, 1997

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A1 # What's News—

Business and Finance

IMF MEMBERS AGREED to chip in about $285 billion to boost the agency's capital base by 45%, responding to the rapidly escalating cost of global financial rescues. The move was overshadowed by a provocative condemnation of currency traders and western governments by the Malaysian prime minister, as well as by tension between the U.S. and Japan.

(Articles on Pages A2 and A16)

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Westinghouse Electric agreed to buy American Radio Systems for $1.6 billion, plus the assumption of $1 billion in debt. The Justice Department said it would do an antitrust review.

(Article on Page A3)

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American Express increased its share of the U.S. credit-card market during the first half, indicating a turnaround in the company's card business may be gathering steam.

(Article on Page A3)

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Long Term Capital is returning to investors nearly half its $6 billion in capital as arbitrage opportunities shrink in international bond markets.

(Article on Page C1)

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IBM will announce that it has become the first company to successfully substitute copper for aluminum in making semiconductors, a vital breakthrough in manufacturing faster and more powerful computer chips.

(Article on Page B14)

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Home Depot's results could be cut by 21% for the third quarter following its agreement to pay $65 million to settle a sex-discrimination suit.

(Article on Page B18)

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Kansas City Southern said it will separate its railroad business from its booming mutual-fund unit, which includes the big Janus Group.

(Article on Page C23)

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The tobacco industry expects much of what is in its proposed national settlement to be approved by Congress.

(Article on Page B5)

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The SEC's Levitt is expected to outline rule changes and tougher enforcement against small-company stock fraud in Senate testimony today.

(Article on Page B18)

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Rockwell is expected to unveil the first commercial chip designed specifically to run Sun Microsystems' Java computer programming language.

(Article on Page B14)

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Virgin Records America is expected to name Nancy Berry as head of the music powerhouse as Phil Quartararo is expected to be appointed president of Warner Bros. Records.

(Article on Page B6)

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Union Carbide's stock fell 7.6% after the chemical maker said its quarterly results wouldn't meet estimates. Other chemical firms also could be hurt by rising raw-material prices.

(Article on Page A8)

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Delta Air Lines will give its former CEO, Ronald W. Allen, a lump-sum severance payment of $4.5 million.

(Article on Page B12)

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Laboratoires Servier says it will be able to prove the safety of diet pills the French drug maker pulled from pharmacies world-wide last week.

(Article on Page A19)

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Markets—

Stocks: Volume 630,539,610 shares. Dow Jones industrials 7917.27, off 5.45; transportation 3208.80, up 46.70; utilities 241.27, up 0.16.

Bonds: Lehman Brothers Treasury index 7197.13, up 10.93.

Commodities: Oil $19.38 a barrel, unchanged. Dow Jones futures index 147.32, up 0.37; spot index 145.29, off 0.03.

Dollar: 122.25 yen, up 0.30; 1.7753 marks, off 0.0041.

World-Wide

CAMPAIGN REFORM COULD get a boost from Reno's move against Clinton.

The attorney general, as she did earlier with Gore, has begun a review to determine if an independent counsel should be appointed to investigate possible fund-raising abuses by the president. The quickening pace of events has produced a truce among top Senate campaign-panel members, and hearings now will shift to issues designed to prod Republican leaders to schedule a floor debate on reform legislation. But many in the GOP are opposed, and they are well-positioned to block it. (Article on Page A3)

Clinton has said he can't remember making fund-raising phone calls from the White House. [illegible] admits such calls, and on Friday hired lawyers to defend him.

* * *

Poland's Solidarity looked set to take the largest number of parliament seats in an election defeat for ruling ex-Communists, exit polls projected. A clear majority appeared out of reach for the former trade union, but results could allow it to form a coalition government after losing power in '93. A pro-market party was running third.

* * *

Clinton and Congress struck a deal on a $247.7 billion Pentagon budget allowing the president to decide whether to buy more B-2 Stealth bombers. The pact Friday provides more spending in the home states of Gingrich and Lott. Meanwhile, Clinton said he'll veto an education bill if it lacks his national testing proposals. (Article on Page A24)

A military construction bill is loaded with pork-barrel provisions that are good targets for Clinton's new line-item veto power, critics say. Republican Sen. McCain has found 129. Meanwhile, Congress and Clinton reached a deal on two tax items he crossed out last month. (Article on Page A24)

* * *

The Senate Finance panel opens hearings on IRS conduct tomorrow, with employees due to testify that agency practices encourage tax collectors to bully taxpayers. Skeptics note that the hearings come amid a Republican effort to make the IRS a campaign issue and use such stories of abuse to help raise funds. (Article on Page A2)

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Serbs voted in elections [illegible] Socialist candidates loyal to Milosevic, who, barred from another term, is [illegible]g his power base to the federal Yugoslav presidency. A boycott called by a disunited opposition, which forced concessions after big winter protests, appeared to fail.

* * *

Half a million Filipinos marched in Manila to oppose a second term for President Ramos, whose backers are trying to amend the constitution to allow it. On Saturday, Ramos said he won't run again. Separately, a collision of two Manila-bound commuter trains killed at least six and injured 141.

* * *

Ted Turner is using his pledge last week to give $1 billion to U.N. causes over 10 years as a way to escalate his campaign to get wealthy people to increase their giving. Turner's move apparently followed a spur-of-the-moment decision, and details remain to be worked out. (Article on Page B1)

* * *

The Sergeant Major of the Army should be court-martialed for indecent assault, adultery and obstruction of justice, a hearing officer reportedly is recommending after reviewing testimony in the sex-abuse case. The report was finished last week and is now being reviewed by senior officers.

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Israeli troops arrested dozens of Palestinian men in West Bank villages, and witnesses said it appeared a specific suspect was sought. Separately, Israel said Russian scientists helped Iran develop a long-range missile that could destabilize the Mideast.

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German Chancellor Kohl's party ran a strong second in Hamburg state elections viewed as an early indicator of the '98 national vote. A far-right party also did surprisingly well. The mayor quit after a thin victory margin for Social Democrats.

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Violence in Algeria continued as an armed group killed 53 civilians in an early-morning attack on a village 40 miles south of Algiers. In raids earlier on the weekend, police killed 19 suspected Muslim militants.

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A Japanese cabinet minister quit a week after Prime Minister Hashimoto appointed him to a post overseeing deregulation. The official drew criticism because of his conviction in the 1970s Lockheed bribery scandal.

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Air Force investigators hunted for clues to the cause of a B-1 bomber crash Friday at a test range in southeastern Montana. Four crewmen died in the crash, which occurred during practice of low-altitude maneuvers.

THE WALL STREET JOURNAL MONDAY, SEPTEMBER 22, 1997

WASHINGTON

Clintons return to oversee 'one of America's empty nests'

Emotionally and physically exhausted after dropping their daughter at Stanford University over the weekend, President and Hillary Rodham Clinton returned from California to the White House for a few hours Sunday to start, in the president's words, "officially overseeing one of America's empty nests." By evening, the Clintons were headed for New York City, where today he will address the United Nations and tonight the couple will attend an opera. Clinton goes to Little Rock on Thursday for the 40th anniversary of the integration of Central High School. At the time, federal troops had to be deployed to protect nine students who, under a court order, were the first African-Americans to be allowed to attend the school. — Mimi Hall

ARMY SEX SCANDAL: The Army is weighing a hearing officer's recommendation that its top enlisted soldier be court-martialed on 22 counts of indecent assault, adultery and obstruction of justice.

Reuters

McKinney: Court-martial weighed

Six women accused Sgt. Maj. of the Army Gene McKinney of grabbing them, trying to kiss them and asking for sex. One said she had intercourse with McKinney unwillingly, but the hearing officer, Col. Robert Jarvis, rejected a prosecution request that McKinney be charged with rape. McKinney has denied all accusations.

Jarvis, following an eight-week hearing, submitted more than 6,000 pages of testimony and exhibits for review by Col. Owen Powell, commander of the Fort Myer garrison in Arlington, Va. The final decision will come from Maj. Gen. Robert Foley, commander of the Military District of Washington.

Rep. Carolyn Maloney, D-N.Y., who is trying to reform the military justice system, said the women were "brave soldiers who were willing to put their good names on the line.... I'm glad the U.S. Army appears to be taking a lesson from them."

FOREST PROTECTION: Two Oregon lawmakers are proposing a bill to shift $50 million from a firefighting fund to remove dead timber and thin overstocked stands of trees from fire-prone national forests. The Forest Recovery and Protection Act calls for a five-year program of logging, prescribed burning, insect and disease control, riverbank restoration and tree-planting. Rep. Bob Smith, R-Ore., says that unlike a controversial salvage logging program a year ago, timber harvesting under his bill would have to comply with environmental laws. Sen. Gordon Smith, R-Ore., introduced the Senate version. Environmentalists say the politicians are exploiting public fear of forest fires and inventing a "forest-health crisis" to benefit the timber industry.

CENSUS SAMPLING: House Republicans are expected to try again this week to bar the Census Bureau from using sampling to arrive at a final figure for the 2000 Census. The GOP's first attempt failed last spring when lawmakers attached the ban to a disaster-relief bill and dared President Clinton to veto it. He did. The Census Bureau proposes to reach at least 90% of households and then use those results to estimate the number and characteristics of people who might not have been contacted or responded. Republicans say that the Constitution requires an actual head count, and that sampling would allow the Clinton administration to manipulate the numbers to the advantage of Democrats in redrawing congressional district boundaries for the 2002 elections.

WHITE HOUSE PAGERS: Purported White House pager messages being circulated on the Internet might be bogus, and even if real don't compromise security, White House spokesman Barry Toiv said. He said aides who need secure communication have it and they know pager messages aren't safe. The messages, such as "Don't forget to page me tonight when you want me in your room," are said to have been intercepted by hackers April 27.

LINE-ITEM VETOES: White House aides and members of the House tax-writing committee have a tentative agreement on two issues that President Clinton used his new line-item veto power to strike from the big tax bill in August. The measures, involving farmers' cooperatives and U.S.-based companies with overseas income, are expected to pass the House Ways and Means Committee on Tuesday. Talks continue on a third provision involving New York's Medicaid program.

ALSO . . .

▶ **VOTER FRAUD:** A Dallas federal prosecutor says the Immigration and Naturalization Service is hindering an investigation into reports that foreigners illegally registered to vote and cast ballots. The probe is being delayed "because the INS officials in Washington have, so far, been uncooperative," Assistant U.S. Attorney Michael Uhl wrote in a letter to the INS district office in Dallas. INS didn't immediately comment on The Associated Press report.

▶ **TOBACCO TAX BREAK:** A proposed $50 billion tax deal for tobacco companies, which mysteriously appeared in the balanced budget bill, came at the behest of tobacco lobbyist and former Republican national chairman Haley Barbour, *Time* says. Barbour declined to comment. Congress later killed the measure.

▶ **CORRECTION:** An item Friday should have said the Senate approved $100 million for the National Endowment for the Arts.

Written by Paul Leavitt with staff and wire reports

FBI joins search for wealthy N.J. man

From staff and wire reports

AP

Gross: Son last saw him with two unidentified men.

The FBI has joined the search for a New Jersey millionaire missing for five days.

Nelson Gross, a prominent developer, restaurateur and one-time powerful Republican political activist, was seen with two unidentified men Wednesday before he withdrew $20,000 from his bank account. He was reported missing when he failed to show up later that day at his summer home in Bridgehampton, N.Y.

His wife, New Jersey Racing Commission Chairwoman Noel Gross, and other family members are offering a $100,000 reward for his safe return.

The case is "still being worked as a disappearance," said FBI Special Agent Ann Todd. But "we can't rule out the possibility" that he was kidnapped.

Gross's silver BMW sedan was found in Manhattan late Saturday, New York police said. The FBI is processing it for evidence, Todd said.

The Newark office of the FBI joined the Bergen County prosecutor's office Friday in the investigation. Published reports say as many as 100 agents have been assigned to the case.

A 65-year-old Saddle River, N.J., lawyer, Nelson Gross has been described as living a low-key, semi-retired lifestyle, splitting his time between the golf course and his restaurant and real estate businesses.

Officials initially focused on the $20,000 bank withdrawal before Gross's disappearance. But his brother, Michael Gross, says the withdrawal might have been a routine transaction. He told *The Record* of Hackensack that his brother withdrew $75,000 from the bank earlier in the week.

"I don't think my brother was coerced to remove that money," Michael Gross said. "This is a man who routinely moves large sums of money."

Michael Gross said his brother's son, Neil, saw his father at the family's restaurant parking lot with two men and went to investigate. At one point, Neil Gross called his father on a cellular phone.

Nelson Gross gave no indication of any trouble and told his son the meeting was "just business," he said.

A political activist until he was convicted of fund-raising irregularities in 1974, Nelson Gross was county and state GOP chairman. He served five months of a two-year prison term in 1976. He was a key fund-raiser for Richard Nixon during his 1968 presidential campaign. He ran unsuccessfully for the U.S. Senate in 1970.

USA TODAY · MONDAY, SEPTEMBER 22, 1997

Smoke gets Tyot F'lles

By John P. Walters
F.X. O

Give President Clinton credit — he isn't always wrong. The president has announced a five-part plan for keeping kids away from cigarettes or, more accurately, for keeping cigarettes away from kids. The plan calls for FDA regulation of nicotine, new restrictions on cigarette advertising, and paying farmers not to grow tobacco. But what got the most attention was a proposal that, if fully implemented, could add another $1.50 to the cost of a pack of smokes over the next decade.

The president's critics who discern a hidden tax hike are wrong, says Mr. Clinton. "To me, this is not about money. It is not about how much money we can extract from the tobacco industry."

What is it about, then? It is, of course, about kids: "One of the surest ways of reducing youth smoking is to increase the price of cigarettes," said the president at his Oval Office briefing. Skeptics will question whether

John P. Walters is the former Deputy Director of the Office of National Drug Control Policy. James F.X. O'Gara is a former drug policy advisor to Senate Judiciary Committee Chairman Orrin G. Hatch.

making ... can really ... consumption by kids. The skeptics should take note of a recent study from the University of Illinois and MIT, which estimates that a 10 percent increase in prices would cause a seven percent decrease in youth smoking.

Dr. Frank Chaloupka, who conducted the cigarette study, explains: "A lot of people think that because something is addictive that people are not going to respond to prices and other economic incentives, and our research shows that that is not the case." In fact, what Dr. Chaloupka describes as "standard economic theory" works for substances other than tobacco: "[I]ncreases in the price of marijuana will reduce marijuana use," says Dr. Chaloupka. Moreover, the opposite is true as well — the historical record is littered with cases of plentiful supply fostering demand. Why else did tens of thousands of Vietnam-era soldiers use (inexpensive, pure Vietnamese) heroin but stop when they returned to (expensive, hard to get, three percent purity) U.S. heroin? Why else does Malaysia have a major problem with heroin despite its mandatory death sentence for traffickers, if not because the country's proximity to the Golden Triangle conspires to make heroin cheap there? For an even more obvious example, why else did China's drug problem explode after the British East India Company began flooding China with

450 of opium ... is no question that supply fosters demand. The real question is why the Clinton administration has dismantled our nation's drug interdiction programs, the goal of which is to reduce availability and drive up prices. Don't believe that interdiction can change street prices? Why, then, did an aggressive effort during the Bush administration cause cocaine prices to jump 43 percent — the first such increase in 12 years? And why has the more than one-third reduction in cocaine street prices coincided with the Clinton administration's 50 percent cut to interdiction programs?

History is an excellent teacher, but the tragedy of the Clinton administration's failed drug policy is that history, specifically the normalized drug use of the 1960s and 1970s, is repeating itself as we watch.

The administration's own data tell the story. LSD use by teens has reached the highest rate since record keeping started in 1975. There is no evidence of any reduction in the hard-core addict population. A recent White House survey [the "Summer 1997 Pulse Check"] finds that "[h]eroin use continues to be common in almost all of the areas contacted, and eight of the eleven sources contacted report an increase in young heroin users . . . While there has been an increase in new, young users, heroin users are primarily adults, many of whom are former long-term users tempted back into use by the lower price, higher purity heroin now available." Translation: Heroin, which as recently as 1991 cost more than $1,600 per gram, is now so cheap that young people can afford it, and former addicts are getting back into the game.

There is a lot of talk about the need for more spending on drug treatment, but the fact is that treatment is simply not very effective when addicts can walk by street corners awash in cheap heroin. Nor is heroin the only drug whose plentiful supply has served as an inducement to youthful use. Marijuana is once more the drug of choice of many young people.

Fully 34 percent of the Class of 1996 have smoked at least once before graduation, double the rate of use just five years ago. Predictably, the White House's Pulse Check reports that "Marijuana continues to be highly popular with a wide variety of users, particularly young users" and "Marijuana appears to be plentiful in all areas. . . ." Actually, that is somewhat of an understatement. Marijuana prices — which during the Bush administration were driven higher, ounce for ounce, than gold — are currently at a 12-year low. The price of a joint of high-potency marijuana is now just a couple of dollars — allowance money.

The Clinton administration has slashed resources to drug interdiction, while its own reports show that the result has been a boom in the supply and availability of drugs, higher purity, and more drug use. The cigarette issue shows that the Clinton administration certainly understands this dynamic. The question is, what will it take for the president to devote some attention to the drug issue?

The Washington Times
MONDAY, SEPTEMBER 22, 1997

Where the tax bite is getting deeper

The Internal Revenue Service has just released data on tax collections in 1995. They show the wealthy are shouldering a heavier burden of taxation than ever.

According to the IRS, the top 1 percent of taxpayers, those with incomes above $209,105, paid more than 30 percent of all individual income taxes in 1995. In 1994, this group paid 28.7 percent. On average, the top 1 percent of taxpayers forked over 28.5 percent of their income to the federal government in 1995, up from 27.9 percent a year earlier.

Other upper-income groups also increased their shares of the tax burden. The top 5 percent of taxpayers, those with incomes above $96,104, paid almost 49 percent of income taxes. The top 10 percent of taxpayers paid more than 60 percent of income taxes, and the top 25 percent paid just over 80 percent. The top 50 percent of taxpayers, everyone with an income above $22,361, paid more than 95 percent of income taxes. This means that the bottom 50 percent paid less than 5 percent.

The Clinton administration will, no doubt, trumpet these figures as vindicating its 1993 tax increase, which raised the top income-tax rate from 31 percent to 39.6 percent. However, the trend toward higher tax payments by the wealthy was going on well before 1993 and even during periods when tax rates were being cut. In 1981, the top 1 percent of taxpayers paid just 17.6 percent of income taxes, rising to 27.4 percent by the end of the Bush administration in 1992.

Therefore, while the Clinton tax increase may have contributed to the increase in taxes by the wealthy, it is probably not the only reason. Economist Lawrence Lindsey of the American Enterprise Institute believes the recent rise in tax payments more likely results from the increase in the stock market. Higher stock prices have generated higher capital-gains realizations that mainly accrue to the rich.

Mr. Lindsey thinks that higher capital-gains realizations may also be responsible for the unexpected rush of taxes to the Treasury that

Other upper-income groups also increased their shares of the tax burden.

caused the Congressional Budget Office to raise its revenue forecast by $225 billion earlier this year. He points out that revenue estimates are usually based on forecasts of gross domestic product. However, capital gains are not counted as income when GDP is calculated but are counted as income to individual taxpayers. Thus, if capital gains are a rising share of individual incomes, it will throw off the revenue forecasts.

In the end, it is clear that despite much rhetoric to the contrary, the U.S. tax system is indeed highly progressive. The higher one's income, the more taxes one pays. And the trend has been for the rich to pay more taxes, rather than less.

Bruce Bartlett is a senior fellow with the National Center for Policy Analysis and a contributing writer for The Washington Times.

Tobacco Profits May Soar Under Deal, Government Study Shows

By J[illegible] M. BRODER

WASHINGTON, Sept. 22 — Tobacco industry profits could soar under terms of a legal settlement proposed in June by 40 state attorneys general and cigarette makers, according to a new analysis of the agreement by the Federal Trade Commission.

The study found that the tobacco companies could reap as much as $123 billion in additional profits in the next 25 years if the settlement plan were adopted as drafted.

The analysis, conducted in response to a request from Congress, also concluded that the $368.5 billion face value of the settlement was significantly overstated. The real cost to industry is about $207 billion because the companies' payments are to fall as cigarette consumption drops, the commission staff report found. The cost to industry of the June agreement is about $100 billion in today's dollars, the study found.

The settlement proposal is unlikely to be enacted by Congress without substantial changes, if at all. But the trade commission's findings are startling because the agreement has been depicted as extremely costly to the cigarette industry. Instead, the agency found, the industry would thrive financially while enjoying immunity from most litigation.

Scott Williams, a spokesman for the tobacco makers, said that the report was "highly speculative and misses the point." Mr. Williams, of the public relations firm Bozell Swayer Miller Group, said that the purpose of the settlement proposal was to reduce smoking by minors, not to maximize industry profits.

He declined to comment on the specific findings of the study.

The report said that the industry's potential windfall profits would result from the cigarette companies' raising prices much more than was necessary to cover the cost of the settlement. The tobacco industry historically has increased prices more quickly than its costs have risen, taking advantage of the small number of companies in the market and the millions of addicted customers.

But the trade commission study may already be largely obsolete, because President Clinton has rejected many parts of the June proposal, including the provision allowing the companies to pass along to smokers all of the costs of the settlement.

Under the President's proposal, cigarette prices would rise by as much as $1.50 a pack, but a substantial portion of the increase would be captured by the Government in the form of penalties if smoking by teen-agers did not drop sharply.

The study also assumes that the cigarette companies will enjoy a $50 billion tax break that was part of the July balanced-budget accord. But both houses of Congress have voted to rescind the tax break.

Trade commission officials said that repeal of the tax break would reduce long-term industry profits by an unspecified amount.

Robert Pitofsky, the trade commission chairman, said that the June accord con[illegible] an anti-trust exemption that would allow the cigarette makers to "jointly confer, coordinate or act in concert" to achieve the goals of the settlement.

He said that the exemption would permit the tobacco companies to collude to impose price increases far in excess of those required to cover the annual payments of roughly $15 billion required by the proposal.

"Taken at its worst, this exemption would allow the companies to get in a room and decide among themselves what is the best level of prices and what is the appropriate level of profits," Mr. Pitofsky said.

He noted that such collusive activity was ordinarily a violation of criminal anti-trust statutes.

Representative Marty Meehan, Democrat of Massachusetts, welcomed Mr. Pitofsky's conclusion that the anti-trust exemption was too broad.

"We now know that the exemption provides the industry with benefits that go far beyond the original justification," said Mr. Meehan, co-chairman of the Congressional task force on tobacco, which requested the report.

Separately, a CBS News poll showed that a large majority of the public doubted that the proposed agreement would significantly reduce the number of teen-agers who smoked. Only 19 percent of a national sample of 1,051 adults surveyed late last week said they believed the accord would reduce the number of teen-agers who begin smoking. By a 2 to 1 margin, the respondents — half of whom were current or former smokers — said that the Government and the tobacco industry could not take steps that would significantly reduce tobacco use by minors.

Washington Classes Start After Roofs Are Repaired

WASHINGTON, Sept. 22 (AP) — Schools here opened today three weeks late, with new roofs, tighter security, longer days and stiffer academic requirements.

Classes started later than those in most of the rest of the country because roofs were being replaced on 54 schools. The school day has been made 30 minutes longer to make up for lost time.

Julius Becton, the District of Columbia's schools superintendent, said new roofs and other repairs should help reduce fire-code violations that interrupted classes in recent years.

He also announced a reading program intended to insure that all children are reading by the third grade.

Treasure Hunter Finds Lost Presidential Yacht

ASSATEAGUE ISLAND, Va., Sept. 22 (AP) — A salvage operator searching for sunken Spanish treasure ships in the shallow waters off Assateague Island has instead found a piece of American history.

Using a magnetometer on Sept. 9, the salvor, Ben Benson, discovered the Despatch, the yacht of Presidents Rutherford B. Hayes, James A. Garfield, Chester A. Arthur, Grover Cleveland and Benjamin Harrison.

The yacht, built in 1873, ran aground and sank in stormy weather off Assateague in 1891. All members of the crew, who were the only ones on board, survived.

Corrections

An article in Business Day on Friday about a surge in the shares of the Bankers Trust New York Corporation after comments by an analyst, Thomas Hanley of UBS Securities, misidentified the forum in which he spoke. The comments, in which Mr. Hanley said the company was a takeover candidate, were made to UBS clients and its sales force and were reported by the CNBC cable network; Mr. Hanley himself did not appear on CNBC.

■

An article in Business Day on Saturday about legislative proposals to overhaul the Internal Revenue Service referred incorrectly to a plan for an oversight board. It would comprise appointees from government, education and business, not exclusively business.

■

A front-page article on Friday about a proposed combination of Coopers & Lybrand and Price Waterhouse misspelled the surname of an accounting professor at the Wharton School of the University of Pennsylvania who commented. He is Peter Knutson, not Knudsen.

A chart in Business Day ranking the Big Six public accounting firms on several measures, included some incorrect figures supplied by Bowman's Accounting Report for Ernst & Young and thus ranked the firms incorrectly in several categories. A corrected chart appears today on page D2.

■

A dance review on Friday about "Webbed Feats," performed in Bryant Park in Manhattan on Wednesday, misidentified the producers. They were the Bryant Park Restoration Corporation and Stephan Koplowitz & Company, not Dancing in the Streets.

■

A film review on Friday about "In and Out," starring Kevin Kline and Joan Cusack, misstated Debbie Reynolds's role. She plays the mother of the high school teacher portrayed by Kevin Kline, not the mother of his fiancée.

The New York Times

TUESDAY, SEPTEMBER 23, 1997

FTC Criticizes Proposed Tobacco Accord

Agency Warns Big Profits Would Exceed Penalties Included in Settlement

By JOHN R. WILKE
And JEFFREY TAYLOR
Staff Reporters of THE WALL STREET JOURNAL

WASHINGTON — The Federal Trade Commission sharply criticized the proposed national tobacco settlement, concluding that cigarette makers could reap big profits that would far exceed the penalties the pact would impose.

The FTC's reaction strengthens the hand of President Clinton and those on Capitol Hill who are demanding a tougher settlement. The original deal, struck between tobacco companies, state attorneys general and public-health advocates on June 20, calls for the industry to pay $368.5 billion over 25 years to offset states' costs of caring for sick smokers.

"Cigarette prices are likely to rise more than the amount of the annual payments, and as things now stand, vast additional revenues will go to the tobacco companies," FTC Chairman Robert Pitofsky said yesterday. He found the proposed deal's broad antitrust exemption especially troublesome, saying it would give tobacco companies immunity from price fixing and let the largest grow stronger while squeezing out smaller players.

The FTC found that the plan could boost industry profits from $36 billion to as much as $123 billion over the life of the settlement, depending in part on whether industry tax exemptions are enacted.

"This study shows that the tobacco settlement is an even better deal for the industry than anyone had imagined," said Rep. Henry Waxman, a California Democrat who asked the FTC to study the proposed settlement. He said the antitrust exemption is among many provisions that will have to be changed as Congress drafts tobacco legislation.

A tobacco-industry spokesman, Scott Williams, rejected the FTC's report, saying it is "highly speculative and misses the point, which is that the price increases in the settlement are designed to maximize the reduction in underage tobacco use." He said the report "is based on assumptions that are at best inaccurate," such as the FTC's calculation that cigarette makers routinely pass on more than 100% of the cost of tax increases.

The settlement calls for reductions in youth smoking of 30% in five years and 60% in 10 years. If the industry fails to meet the targets, the pact would impose penalties of as much as $2 billion a year, which would probably be passed along to customers in the form of further price increases. The payments would also be tax-deductible, and the industry could apply for refunds. President Clinton has said he wants to toughen these penalties. The pact also includes an exemption from antitrust laws that would allow cigarette companies to cooperate on raising prices.

The FTC also said cigarette makers could end up paying significantly less than the $368.5 billion envisioned under the proposed settlement because the payments are linked in part to annual sales, which are expected to decline as consumer prices rise. Richard Lugar, the Indiana Republican who is chairman of the Senate Agriculture Committee, one of the panels likely to shape tobacco legislation, said Congress "will want sufficient funding of state and federal public-health costs caused by smoking."

Last week, President Clinton called for changes in the proposed settlement, demanding that the Food and Drug Administration be authorized to control nicotine levels in tobacco products and calling for price increases of as much as $1.50 a pack to attack smoking among youths.

The proposed settlement is being re-

Please Turn to Page A4, Column 3

Continued From Page A3

viewed on Capitol Hill, which must come to terms with the president and pass legislation for its provisions to take effect. Congress isn't expected to begin the process in earnest until next year.

But the FTC's Mr. Pitofsky said price increases could give tobacco companies too much leeway to boost profits. "Prices per pack ought to go up, but the question is how much and where is the money going to go?" he said. "Even without the antitrust exemption, if prices rise $1.50 a pack, that produces vast revenues that are not yet accounted for."

Richard Scruggs, a plaintiffs attorney representing several states that sued the industry, said, "The intent of the settlement was to give the industry an exemption only to the extent necessary to fund the settlement. If the provision is too broad, we'll work to narrow it." He added that the settlement agreement was a "term sheet" rather than a detailed piece of legislation.

Moore Rejects 'Collusion'

Added Michael Moore of Mississippi, the lead negotiator for the state attorneys general, said, "We're certainly not for any collusion."

Mr. Moore said, however, "We always thought tobacco companies would raise prices higher than what they had to for the settlement, but truthfully we thought that was a good thing from a public-health perspective."

Industry lawyers say the tobacco companies are willing to work with the FTC to narrow the antitrust exemption. As drafted, it would permit tobacco companies "to jointly confer, coordinate or act in concert" to reach the settlement's goals, including eliminating billboard advertising and vending-machine sales. The companies, the attorneys said, believe they need the exemption to carry out these goals without violating antitrust laws.

But Mr. Pitofsky said the provision, "although possibly not intended . . . would allow the tobacco companies to coordinate their behavior and raise prices far in excess of levels necessary to cover the annual payments and keep the extra profits for themselves."

Highly Concentrated Industry

The FTC study said the tobacco industry has historically passed on to consumers more than government-required price increases. That is in part because the industry is highly concentrated, there are high barriers to entry by competitors, and customers are relatively insensitive to price increases.

Rep. Martin Meehan said the exemption's effect "has been completely overlooked" and provides the industry with benefits "that go well beyond the original justification." Indeed, the Democrat from Massachusetts said the companies can make the required payments without it.

Republican Orrin Hatch of Utah, who as chairman of the Senate Judiciary Commitee will play a crucial role in drafting legislation, said he is working with Ohio Republican Mike DeWine, chairman of the Senate antitrust subcommitee, to ensure that "any necessary antitrust exemption will be narrowly tailored to accomplish the legislative goal of reducing [youth] smoking."

Separately, Brooke Group Ltd.'s Liggett Group Inc. unit said it settled Nevada's tobacco-related Medicaid-reimbursement claims. Nevada is one of several states that filed suit against tobacco companies to cover billions of dollars in Medicaid costs. Among the terms of the settlement, the unit will put an added warning on its packs stating "smoking is addictive," and agreed to pay as much as 22.5% of its pretax earnings into a settlement fund for the next 25 years.

THE WALL STREET JOURNAL TUESDAY, SEPTEMBER 23, 1997

Deal could be windfall for tobacco firms

By Samuel Goldreich
THE WASHINGTON TIMES

Price-fixing exemptions under the proposed tobacco settlement could give the industry a $123 billion windfall over the next 25 years, according to a study released yesterday by the Federal Trade Commission yesterday.

The report, requested by a group of tobacco critics in Congress, suggests that the nation's top five tobacco firms easily can afford to sweeten their offer of $368.5 billion over the next 25 years to settle health liability lawsuits filed by 40 states and thousands of private citizens.

"Cigarette prices are likely to rise more than the amount of the annual payments," FTC Chairman Robert Pitofsky said. "As things stand now, vast additional revenues would go to the tobacco companies."

The tobacco deal, which President Clinton last week said Congress must strengthen to boost cigarette prices and reduce underage smoking, would create an unprecedented antitrust exemption to allow companies to set prices and decide on appropriate profit levels, he said.

Mr. Clinton insists that any tobacco deal must force a $1.50 jump in the price of a package of cigarettes over the next 10 years to discourage teenage smokers. He called for a combination of price increases and "penalties" if targets to reduce underage smoking are not met but did not address raising federal excise taxes.

Based on tobacco companies' past history of tacking on premiums when taxes go up, they probably would use the antitrust exemption to boost prices far beyond what is necessary to make annual payments under the settlement proposal, Mr. Pitofsky said.

FTC analysts said the price of a pack of cigarettes would rise 57 cents to $2.47 in five years, without the antitrust exemption included in the tobacco deal. But if price-fixing rules are waived, the price could jump to $3.04 by 2002.

The report estimated that tobacco industry profits would drop about $15 billion over the next 25 years if they simply passed to smokers the cost of the settlement. But profits could soar $123 billion, if the industry uses the exemption to recapture double the cost of the deal.

"The report raises the question of what ought to be done with any additional monies the settlement could generate," Mr. Pitofsky said.

The FTC report offered no suggestions for dealing with the tobacco industry. But Mr. Pitofsky noted that in other industries such as utilities, which operate under similar price-fixing exemptions, government agencies have the power to set prices and profits.

Tobacco critics immediately seized on the report to support demands for stiffer penalties and higher taxes to ensure that the industry does not get a windfall.

"The FTC report shows that the tobacco companies are likely to make even more money from the U.S. tobacco market under the deal than they would without a deal," said Rep. Henry Waxman, California Democrat.

The FTC report will be a "powerful tool" for Congress to rewrite the to-

see DEAL, page B10

DEAL

From page B6

bacco deal, said Rep. Martin Meehan, Massachusetts Democrat and chairman of the 89-member Congressional Task Force on Tobacco and Health.

Sen. Frank Lautenberg, New Jersey Democrat, said last week that he will introduce a bill calling for an immediate $1.50 increase in the excise tax, which already is scheduled to climb 15 cents to 39 cents by 2002.

The tobacco companies that negotiated the settlement deal declined to comment yesterday.

But industry representative J. Phil Carlton said last week that the deal already would achieve a $1.50 jump in the price of cigarettes if retail and wholesale markups are added to the 62 cent-per-pack increase called for under the settlement. He said it would "certainly be unacceptable to try to raise the financial terms of this agreement."

Jonathan Baker, the FTC's director of economics, dismissed the notion that the 62 cent cost of the agreement alone would cause wholesalers and distributors to raise the price of cigarettes by $1.50 per pack.

"It's not plausible, given the competitiveness of the distribution industry," he said.

The Washington Times
TUESDAY, SEPTEMBER 23, 1997

The New York Times
THURSDAY, SEPTEMBER 25, 1997

Economic Scene | Peter Passell

Tobacco might thrive with a $1.50-a-pack rise for cigarettes.


Nenise Ascio

IS the tobacco industry playing Brer Rabbit to President Clinton's Brer Fox? The President's assertion that if necessary, the price of cigarettes should rise by $1.50 a pack to deter teen-age smoking evoked bitter denunciations from Big Tobacco. "The industry should be not held solely accountable for social behavior that neither it, nor the Government, can control," read the cigarette manufacturers' collective response.

But a close look at Mr. Clinton's demands suggests that the industry could live — conceivably thrive — with the consequences. Jeremy I. Bulow, an economist at the Graduate School of Business at Stanford University, calculates that a settlement on the President's terms would cost the tobacco companies less than the continuing uncertainty over legal liability. "The best estimate now is that $1.50 a pack would increase the market value of tobacco stocks," Mr. Bulow argues.

• • •

"Reducing youth smoking is the Administration's bottom line," President Clinton said. "One of the surest ways" to meet the Administration's goal of a 60 percent cut in teen-age smoking over a decade, he added, is to "increase the price of cigarettes."

Since teen-agers have less money than adults and are not yet addicted to nicotine, their consumption of tobacco is more responsive to price changes than that of adults. Nonetheless, to cut teen-age smoking by 60 percent would probably require a $1.50 price increase.

The combination of taxes and penalties built into the original settlement proposal — a proposal the Federal Trade Commission staff argued this week could actually increase industry profits — totaled 72 cents a pack. When a reporter asked Bruce N. Reed, director of the President's Domestic Policy Council, whether the Administration's approach would double the 72-cent penalty, Mr. Reed said it would. That, in turn, led to the speculation that the President's approach would have doubled the cost of the original settlement, to about $700 billion.

But Martin Feldman, a tobacco industry analyst at Smith Barney, begs to differ. He notes that the 72 cents does not include the 15-cent-a-pack increase in the Federal excise tax on the books for the year 2002. Nor does it include future increases in state taxes, or in markups by retailers. All told, Mr. Feldman estimates that the abandoned settlement would have raised the price of a pack by $1.45 in just five years — almost as much as the President's proposed maximum increase over a decade.

Mr. Bulow of Stanford expects there is more daylight between the cost of the two proposals than Mr. Feldman argues because competition would prevent retailers from fattening their markups significantly. Nonetheless, the university economist is confident that cigarette makers could live with measures that would increase the supermarket price by $1.50 a pack.

Mr. Bulow's conclusion is based on the idea that the cigarette makers' goal is to maximize the total return for stockholders. He cites estimates by Gary Black, a tobacco analyst at Sanford C. Bernstein, that the domestic tobacco businesses of Philip Morris and RJR Nabisco are currently valued by the market at just one-third what they would be worth in the absence of uncertainty about future litigation and regulation.

He estimates that a tax of $1.50 a pack would reduce cigarette consumption by about one-third. The lost sales would mean a more-than-proportionate fall in profits, but Mr. Bulow estimates that part of the costs of the settlement would be recouped since marketing costs would also fall. On balance, he calculates that a $1.50 tax would pare the industry's $5 billion annual profit by a bit less than half.

• • •

That is hardly what the cigarette companies hoped for. But Mr. Bulow reckons that it is better than living with the current level of legal uncertainty, which has reduced the market value of the business by two-thirds. And since the Administration appears eager to set goals in terms of reduced youth smoking, rather than reduced smoking over all, the companies may find ways to salvage a portion of the lost profit.

For example, Mr. Bulow expects that an increase in the minimum legal smoking age to, say, 19, would deter teen-age smokers, yet have little effect on adults in the near term. So by supporting tougher restrictions on access to cigarettes, the companies might get away with a smaller tax that cut less deeply into profits from sales to adult addicts.

Concentrating on youth smoking directly has a social advantage, too. Smokers, on average, have lower incomes than nonsmokers. So relying more on direct regulation of youth smoking and less on cutting demand with across-the-board price increases reduces the regressivity of the policy. "It would be a shame to put most of the burden of the antismoking settlement on the backs of adults earning less than $10 an hour," Mr. Bulow said.

Tobacco Producers

Tobacco is produced in 21 states with North Carolina and Kentucky accounting for 65% of production. An estimated 124,000 farms grew tobacco in 1992, about 3/4 of them classified as tobacco farms meaning that tobacco comprises at least 50% of sales. Tobacco is the 6th largest cash crop, and is a significant factor in the economy of many states. For instance, USDA estimates that there are 16,380 jobs (0.47% of state's total) in tobacco manufacturing in North Carolina, 9,550 tobacco manufacturing jobs in Virginia (0.31%), and Kentucky has 4,210 jobs (0.25%). Tobacco is extraordinarily profitable, approximately 20 times more profitable on a per acre basis than the next most lucrative crop.

Most U.S. production has been under a price support and supply control program since the 1930s. Producers are guaranteed higher prices in exchange for limiting marketings through marketing quotas. In response to surging tobacco imports, Congress enacted a provision in the Omnibus Budget Reconciliation Act (OBRA) of 1993 which required US manufactured cigarettes to contain 75% US grown tobacco. As a part of the Uruguay Round implementing legislation, domestic content provisions were replaced by the establishment of a tariff rate quota for certain imported tobacco, primarily flue-cured and burley.

Internal notes:

The settlement makes no provision for economic effects on farmers and tobacco related rural economies. The USDA estimates that a 50 cent per pack price increase would lead to a 10.5% decline in volume consumed. Cigarette exports are not restricted by the settlement and would likely continue their upward trend, thus USDA forecasts do not currently predict adverse economic effects on farmers.

Farmers groups and legislators have generally expressed support for proposals with certain shared characteristics: continuation of the governmental tobacco program, guaranteed purchase at set levels of tobacco crops by cigarette companies, and some provision for buy out and transition to other crops, on a voluntary basis, for farmers. The most discussed proposal is one released this month by Senators Ford and McConnell that would require companies to buy a minimum amount of domestic tobacco over 25 years and would install penalties on companies that do not meet the stated goals for tobacco buying. The proposal would also create a "Tobacco Community Revitalization Fund" administered by USDA, but not subject to the appropriation process which would be able to spend up to $1 billion a year for 25 years from the settlement fund and would cover costs related to the tobacco program such as administration and crop insurance, make supplemental payments of up to $500 million to producers whose income from tobacco drops below the 1996 level, pay up to $100 million in benefits for displaced cigarette factory workers; pay up to $250 million a year for rural economic development grants for states to create employment; and pay up to $50 million for agricultural grants to encourage supplemental crops. The legislation would also provide for compensation if there are substantial declines in property values, and suggests changes in the referendum system of determining quota rules and some immunity provisions for producers.

— More —

The USDA considers the proposal a reasonable if generous starting point for negotiations.

— end —

MOST RECENT ARTICLE on Ford McConell

The Courier-Journal (Louisville, KY.)

August 19, 1997, Tuesday KY:KENTUCKY

SECTION: NEWS Pg.01B

LENGTH: 689 words

HEADLINE: Baesler reassures **tobacco farmers**
Settlement need not be a disaster, he tells them

BYLINE: AL CROSS, C-J Political Writer

SOURCE: STAFF

DATELINE: FRANKFORT, Ky.

BODY:

Farmers worried about the proposed **tobacco** settlement should see it as an opportunity, not a calamity, 6th District U.S. Rep. Scotty Baesler of Lexington said yesterday.

''I think this settlement will give us the opportunity to lock in the future for the **tobacco farmer,**'' Baesler told the legislature's **Tobacco** Task Force.

But he told the lawmakers that Congress won't act on the settlement this year, and in an interview he said Congress probably won't approve it in its current form because both pro- and anti-tobacco forces are seeking changes.

Baesler also said he expects his fellow tobacco growers to get help from President Clinton, who angered them by regulating nicotine as a drug - one of the issues that makes the settlement dependent on congressional approval.

Meanwhile, representatives of 15 states and Puerto Rico met yesterday in Indianapolis to discuss ways to divide the proposed $ 368 billion tobacco settlement negotiated by tobacco manufacturers and attorneys general of the states that had sued to recoup the cost of tobacco-related health care.

The deal has left tobacco growers ''very, very discouraged,'' Democratic Rep. Tom McKee of Cynthiana told Baesler, a fellow grower. ''A lot of them think that it's over, and I try to emphasize that I don't think it's over, and I think you're telling us that.''

McKee said growers' apprehension about the future of their crop, and this year's bad weather, has been felt at Wal-Mart in Cynthiana, where the manager told him, ''Business is terrible.''

''He said, 'We had a staff meeting this morning, and we concluded that it's the uncertainty of the future of tobacco - and at this time we hadn't had any rain - and the uncertainty of the size of the crop.' Farmers haven't spent anything except what they have to.''

Baesler replied, ''I am bullish on the tobacco market'' - so much that he recently bought additional quota. ''I'm bullish on it because I think this settlement will give us the opportunity to lock in the future for the **tobacco farmer.**''

Baesler, a Democrat running for the U.S. Senate, repeated what has become an article of faith for tobacco-state lawmakers - that no settlement will pass without protection for growers, which could put an end to the congressional battles over the government help they get.

In the interview, he said chances of the settlement's passing in its current form are ''50-50 or less'' because anti-tobacco forces ''are really going after it'' as inadequate.

Just what protection growers will get is far from decided, partly because different kinds of growers want different things.

Large North Carolina growers of flue-cured tobacco are interested in selling their quotas as part of the settlement, but that has little appeal in Kentucky, where burley farmers are more numerous but have smaller quotas and are more interested in guaranteeing a stable market for their crops.

''Flue-cured growers could buy a Winnebago'' with a buyout check, while ''we could maybe buy some gas to go in it,'' Danny McKinney, chief executive of the Burley Tobacco Growers Cooperative Association, told the task force.

However, McKinney suggested that the growers would eventually find common ground. He said four or five proposals have been floated and ''I don't see any of us that far apart.''

Baesler said he and 14 other House Democrats from tobacco states have met with Clinton administration officials to discuss ways to protect growers and will make a proposal by the end of next month.

He said the plan is likely to resemble one offered by Kentucky Sens. Wendell **Ford** and Mitch **McConnell,** which includes various economic guarantees for growers and changes in the federal tobacco program.

Baesler said that - based on assurances from Agriculture Secretary Dan Glickman, Health and Human Services Secretary Donna Shalala and Clinton's domestic-policy director, Bruce Reed - he thinks Clinton will support such a plan.

Clinton said when he issued the nicotine regulations almost a year ago that those who favored them had an obligation to help farmers who would be hurt by the regulations.

LANGUAGE: English

LOAD-DATE: August 20, 1997

USDA

Tobacco

U.S. DEPARTMENT OF AGRICULTURE

OFFICE OF THE SECRETARY

Telephone (202) 720-3631 Fax (202) 720-5437

FAX COVER SHEET

DATE:

NUMBER OF PAGES 1 **, INCLUDING COVER SHEET**

PLEASE DELIVER TO: Tom F

FAX NUMBER: ( ) **PHONE NUMBER:** ( )

FROM: Charlie Rawls

MESSAGE:

The Proposed Tobacco Settlement
Position on Inclusion of
Quota Owner & Grower

While we believe it important to come to some agreement on current tobacco negotiations in a timely manner, it remains of the utmost importance to recognize and provide adequate means of compensation for those engaged in the production of all types of tobacco in the United States and especially those who own tobacco production quota beginning at such time as the production and price of tobacco, or some combination thereof, declines to an established trigger level determined by a board representing the best interest of these growers and quota owners.

Negotiations must include provisions that will accomplish the following:

1. Maintain and enhance the current Federal Tobacco Program.
2. Maintain the tobacco quota and current price support system.
3. Obtain commitment from tobacco companies to purchase 600 million pounds of U.S. grown Flue-Cured tobacco annually.
4. Provide from the settlement not less than $781 million per year for 8 years totaling $6.25 billion, specifically earmarked for transition payments, quota retirement and equity reductions.
5. Provide the same immunity or limitation of legal liability for tobacco producers, quota owners and producer associations as that afforded tobacco companies.
6. Provide the ability to make program changes as necessary through a referendum approved by a board representing tobacco growers and quota owners.

In the settlement agreement, the producer of Burley and all other types of U. S. tobacco would be compensated at a rate equal to provisions agreed to for flue-cured tobacco growers in the U. S.

Prepared September 10, 1997
NC Department of Agriculture & Consumer Services
Jim Graham, Commissioner

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*** ACTIVITY REPORT ***
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TX/RX NO.	9526
CONNECTION TEL	65542
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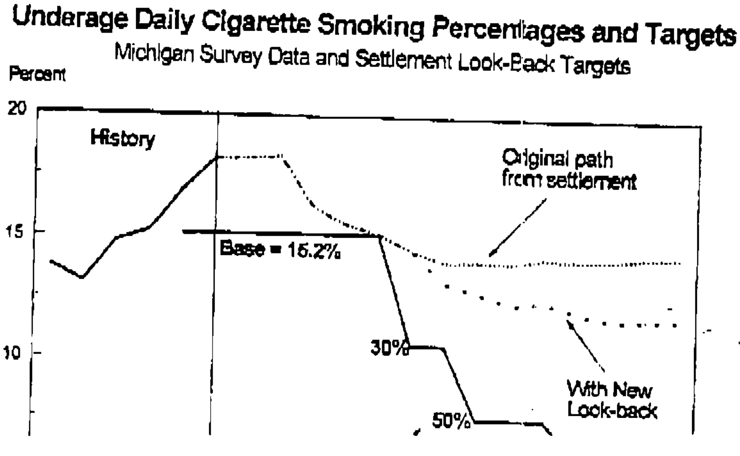
DRAFT

A Revised Youth Look-Back Surcharge

September 10, 1997

The proposed look-back surcharge of the Tobacco Settlement carries insufficient incentives to assure that tobacco firms will actively participate in reducing underage teen smoking. The following revised structure for the look-back surcharge addresses those shortcomings by establishing a two tier system with non-linear penalties related to the degree to which underage teen smoking remains in excess of the targeted reduction levels. One tier specifies *company-specific* fines determined by underage use of individual company brands. The second tier establishes penalties to be born by the industry as a whole (allocated by overall market share as would occur with the annual payments). The penalties of the second tier will be of significant magnitude and would likely boost the per pack price dramatically in the event underage use does not decline as targeted.

The new structure would maintain the broad features of the original proposed look-back surcharge, being based on the University of Michigan's High School Drug Use Survey and the phased reduction targets of 30% (year 5), 50% (year 7), and 60% (year 10). However, the survey would be expanded to determine the brands used by underage teens so company-specific information could be attained. Surcharge payments would be paid in the year following the survey year as specified in the settlement. However, there would be no abatement or double-count adjustment and payments would not qualify for tax deductibility.



The chart shows the projected paths for the underage teen smoking percentages for (1) the original settlement structure and (2) the settlement with the new look-back surcharge structure. Under the original settlement, the teen use percentage was projected to decline

DRAFT

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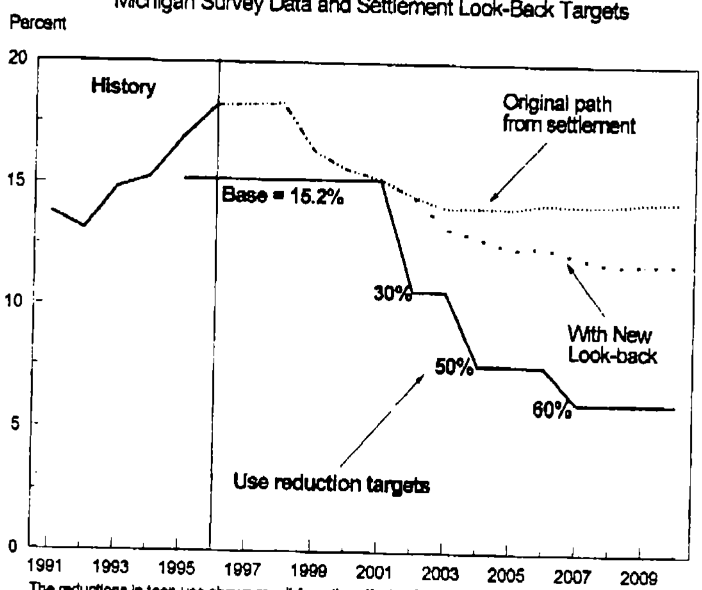
The chart shows the projected paths for the underage teen smoking percentages for (1) the original settlement structure and (2) the settlement with the new look-back surcharge structure. Under the original settlement, the teen use percentage was projected to decline from the recent high levels of about 18 percent to about 14 to 15 percent. Under the new look-back structure, teen use is projected to decline to below 12 percent.

Underage Daily Cigarette Smoking Percentages and Targets
Michigan Survey Data and Settlement Look-Back Targets



The reductions in teen use shown result from the effects of the price increases via the teen elasticity of demand; other provisions of the settlement are assumed to have no effect.

The New Structure

<u>Tier 1 -- Company-specific fines</u>

The look-back structure in the settlement suffers from a potential free-rider problem in which individual firms would have the incentive to market to underage users when all other firms were making efforts to reduce teen use. This problem results from the fact that the look-back surcharge would be paid by all firms according to their total (primarily adult) market share. To address that problem, company-specific penalties are specified as follows:

% Points of Shortfall from Targeted Reduction	Penalty per underage user*
0 to 30	$840
>30 to 50	$1280
> 50	$1680

*As derived from the weighted average 13-17 year old user percentage from the Univ. of Michigan survey for teen use percentages as specified in the agreement. Per smoker present value of $1540 x 2 x .2727 = $840, $1540 x 3 x .2727 = $1280, and $1540 x 4 x .2727 = $1680.

These escalating levels of fines represent increasing multiples of the present value of the profits a firm would expect to receive over the life of a teen smoker adjusted for the elimination of the double-counting provision (see note above).

The High School Use survey would be expanded to ask questions to determine the primary brand of use for underage smokers. Base brand-use percentages would be established and the percentage reduction targets would be measured relative to those base brand-use percentages. The excess number of underage users of a specific brand would then be specified as the percentage point reduction shortfall times the number of underage users.

Tier II -- Industry Penalty Payments

To assure that the industry as a whole will not continue to profit in the event underage use continues unabated, a severe and escalating penalty structure is established. In the event that underage use did not decline, the penalties would lead to large cost and price increases that would deter underage as well as overall smoking.

% Points of Shortfall from Targeted Reduction	Penalty per percentage point
0 to 30	$200 million
>30 to 50	$400 million
> 50	$600 million

The likely effects of these penalties would be to raise cigarette prices by about $0.30 per pack at the top of the first level; at the top of the second level, by about $0.70 per pack; and at the top of the third level by about $1.00 per pack.

ALTERNATIVE TOBACCO SETTLEMENTS -- SUMMARY

(Dollar amounts in billions)

09/11/97
12:58 PM

	Baseline	AG Settlement	Inflate At Health Inflation*	Restore Gov't Share*	Double Price Increase*
Youth Targets Met:					
Average Price per Pack in 2003 1/.....	1.93	2.47	2.52	2.66	3.01
Increase in Price per Pack in 2003 1/.		0.54	0.60	0.73	1.08
Millions of Smokers in 2003..............	51.5	46.3	46.0	45.1	42.9
Payments and Revenues in 2003:					
Gross Industry Payments................................		17	18	18	25
Net Industry Payments..................................		13	14	17	24
Net Federal Revenues..................................		9	10	12	16
Net Federal Revenues, Cumulative:					
Five Year Total (1998-2003)............................		43	45	53	72
Ten Year Total (1998-2008)............................		86	93	110	155
25-Year Total (1998-2023)...............................		234	291	316	463

Note: all scenarios assume repeal of the TRA97 excise tax credit.
1/ In constant 1996 dollars. Includes BBA97 excise tax increase.
* Volume adjustment eliminated.

What can you get ?

How do you justify it ?   Youth smoking
                            costs 10 U.S.

When does it become a
losers ?

Asking for
too little

ask for
too much

1) value to Sherry
2)

!

DRAFT
September 10, 1997

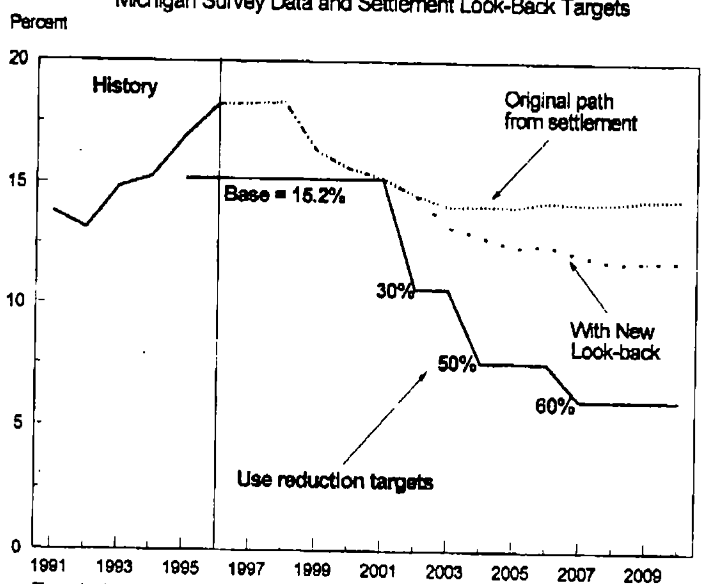
A Revised Youth Look-Back Surcharge

The proposed look-back surcharge of the Tobacco Settlement carries insufficient incentives to assure that tobacco firms will actively participate in reducing underage teen smoking. The following revised structure for the look-back surcharge addresses those shortcomings by establishing a two tier system with non-linear penalties related to the degree to which underage teen smoking remains in excess of the targeted reduction levels. One tier specifies *company-specific* fines determined by underage use of individual company brands. The second tier establishes penalties to be born by the industry as a whole (allocated by overall market share as would occur with the annual payments). The penalties of the second tier will be of significant magnitude and would likely boost the per pack price dramatically in the event underage use does not decline as targeted.

The new structure would maintain the broad features of the original proposed look-back surcharge, being based on the University of Michigan's High School Drug Use Survey and the phased reduction targets of 30% (year 5), 50% (year 7), and 60% (year 10). However, the survey would be expanded to determine the brands used by underage teens so company-specific information could be attained. Surcharge payments would be paid in the year following the survey year as specified in the settlement. However, there would be no abatement or double-count adjustment and payments would not qualify for tax deductibility.

The chart shows the projected paths for the underage teen smoking percentages for (1) the original settlement structure and (2) the settlement with the new look-back surcharge structure. Under the original settlement, the teen use percentage was projected to decline from the recent high levels of about 18 percent to about 14 to 15 percent. Under the new look-back structure, teen use is projected to decline to below 12 percent.

Underage Daily Cigarette Smoking Percentages and Targets
Michigan Survey Data and Settlement Look-Back Targets



The reductions in teen use shown result from the effects of the price increases via the teen elasticity of demand; other provisions of the settlement are assumed to have no effect.

30-50¢ per pack

3 mill. — 30,000 = 1%

The New Structure

<u>Tier 1 -- Company-specific fines</u>

The look-back structure in the settlement suffers from a potential free-rider problem in which individual firms would have the incentive to market to underage users when all other firms were making efforts to reduce teen use. This problem results from the fact that the look-back surcharge would be paid by all firms according to their total (primarily adult) market share. To address that problem, company-specific penalties are specified as follows:

% Points of Shortfall from Targeted Reduction	Penalty per underage user*
0 to 30	$840
>30 to 50	$1280
> 50	$1680

$16 bill

*As derived from the weighted average 13-17 year old user percentage from the Univ. of Michigan survey for teen use percentages as specified in the agreement. Per smoker present value of $1540 x 2 x .2727 = $840, $1540 x 3 x .2727 = $1280, and $1540 x 4 x .2727 = $1680.

These escalating levels of fines represent increasing multiples of the present value of the profits a firm would expect to receive over the life of a teen smoker adjusted for the elimination of the double-counting provision (see note above).

The High School Use survey would be expanded to ask questions to determine the primary brand of use for underage smokers. Base brand-use percentages would be established and the percentage reduction targets would be measured relative to those base brand-use percentages. The excess number of underage users of a specific brand would then be specified as the percentage point reduction shortfall times the number of underage users.

Tier II -- Industry Penalty Payments

To assure that the industry as a whole will not continue to profit in the event underage use continues unabated, a severe and escalating penalty structure is established. In the event that underage use did not decline, the penalties would lead to large cost and price increases that would deter underage as well as overall smoking.

$10 bill.

% Points of Shortfall from Targeted Reduction	Penalty per percentage point
0 to 30	$200 million
>30 to 50	$400 million
> 50	$600 million

The likely effects of these penalties would be to raise cigarette prices by about $0.30 per pack at the top of the first level; at the top of the second level, by about $0.70 per pack; and at the top of the third level by about $1.00 per pack.

Tobacco issues

1. Do you support the settlement?

Should bc support settlement or instead press congress to enact control legislation to further reduce youth smoking, more money, Class action ?

Open-ended

What should BC goal be, lower smoking, lower youth smoking, punish companies

Can you beat the free choice ~~of adults argument? Addiction~~

Would the public support a less addictive product for adults?

Help growers/farmers, hypocritical to do both?

Amount of money

price per pack to lower smoking/ how much would you support, help kids quit

costs much less than other countries here

penalities for industry

International trade

Protect growers

→ process

→ mtgs w/ leaders

(1) Settlement As written

(2) As written - strong look back

(3) Much higher - up to 2x of Settlement - youth look back

→

documents
Int'l - $ 100 mill
~~FDA~~ tobacco comp.
FDA global effort

X, Int'l

Reducing Tobacco Use World-Wide: An Action Plan

HHS Proposal Draft -- 8/6/97

I. Background

According to the World Health Organization, worldwide deaths from tobacco are likely to exceed ten million per year by 2025, with 70 percent of those deaths occurring in developing countries. The total is likely to exceed deaths from tuberculosis, malaria, acute viral infections (such as *Ebola*), and maternal conditions combined. In fact, early in the next century, tobacco will be the leading global cause of premature death and preventable illness. Through HHS, and in collaboration with multilateral organizations, the United States Government (USG) should seek to mobilize the international health community to reduce the consumption of tobacco products, particularly as it affects the health of children and youth.

II. Objective

To reduce the consumption of tobacco products, particularly among young people, and especially in developing countries.

III. Plan to Achieve the Objective

A. Domestic Elements

- Issue a Presidential decision directive, similar to the directive on emerging infectious diseases, that recognizes the reduction of tobacco use as both a domestic and international health priority, and calls for improved international cooperation, training, surveillance, research and public awareness of this health threat.

- Strengthen the role of HHS as the USG focal point for international health issues related to tobacco, and provide adequate resources and staffing to:

  - broadly stimulate, support and implement tobacco control and prevention activities, particularly in developing countries;

  - educate and train U.S. diplomatic officials regarding tobacco use and its adverse health effects;

  - consult with the Departments of State, Commerce, Agriculture, Treasury, and the USTR to develop comprehensive and science-based Federal policies that treat tobacco commensurate with the harm that it causes.

- Support HHS' and the Department of Treasury's cooperative activities with the World Bank, which establish a global policy that makes tobacco control, and reduction in tobacco consumption an economic development priority for all countries.

B. International Elements

- ***Bilateral collaborations:*** Expand existing bilateral cooperative agreements or establish new agreements with key countries to promote the development of national and international tobacco control and prevention programs. Key countries include, at minimum, Russia, India, China, Thailand, and Poland, in which a concentration of new resources and collaborative technical assistance would significantly improve existing tobacco control and prevention programs.

  - ➤ Agreements would provide a framework for HHS to provide comprehensive technical assistance, including training, exchange of public health experts, organization of workshops and symposia, and exchange of publications and information related to tobacco control and prevention.

  - ➤ Agreements would promote globally consistent and reinforcing regulations that restrict tobacco advertising and minors' access to tobacco products, and collaboration on efforts to access industry documents that reside offshore.

- ***Regional Collaborations:*** Working particularly through regional multilateral development banks (MDBs), expand existing regional alliances or establish new alliances that facilitate and promote collaboration and cooperation on tobacco-related issues, such as resource development, trade and taxation policies, and smuggling.

- ***Framework Convention:*** Participate in the development of the proposed framework convention, as recommended in May 1996 by the World Health Assembly. U.S. contributions to the development of the framework convention should be concentrated on those issues and activities that can reduce the appeal and access of tobacco products to children and youth.

- ***WHO:*** Support global strategies, such as WHO's Tobacco or Health Plan of Action (1996 - 2000), that promote comprehensive national tobacco programs, advocate strong tobacco control policies, and disseminate global and country-specific health data and tobacco prevention and control strategies. HHS will evaluate various options for support, including level and type of technical assistance, staffing and funding. Examples include:

  - ➤ Promoting the development of self-sustaining tobacco control units by supporting country missions that place public health experts at health ministries and multilateral or development organizations to provide epidemiologic, programmatic or policy development or training assistance;

- Supporting a global electronic clearinghouse and communications network to standardize, strengthen and facilitate the global exchange of tobacco-related information, particularly supporting epidemiologic data collection, analyses and surveillance; and

- Updating, promoting and disseminating WHO guidelines and protocols on epidemiologic surveillance and program evaluation to promote global standardization of these measurements.

• ***Other multilateral collaborations:*** Cooperate with UN agencies, MDBs, and other development agencies in their expansion of tobacco use reduction efforts. HHS will evaluate various options to work with these organizations to ensure maximum benefit, promote cooperation, and provide technical assistance and consultation on public health issues.

- Regarding the MDBs, HHS will work with the Treasury Department toward the following objectives:

I. If funds from a settlement are available, the USG should:

(a) contribute a portion of the funds to the World Bank and Asian and European development banks in the form of grants to supplement financing for existing activities and/or to establish new programs aimed at discouraging tobacco usage and production, and to deal with the health effects of tobacco use; and

(b) encourage the banks to pursue and expand their efforts in tobacco-related areas, including policy advice the banks give to borrowing governments. Such advice can relate to regulatory issues (such as advertising bans); trade policies (to incorporate effective health and safety measures); and tax and fiscal policies (to help governments reduce reliance on revenues from tobacco sales).

II. If funds from a settlement are not available, the USG should pursue the course outlined in I. (b) above.

- Pending resolution of the funding issue, initiate discussions with the World Bank and regional MDBs to lay the groundwork for a feasible level of cooperation, given available resources.

➤ Support capacity for strong economic research and presentation of issues relevant to each country.

➤ The United Nations will be encouraged to implement resolutions involving collaboration on issues such as crop substitution and similar problems of developing countries whose economies depend on tobacco production.

- ***International Research:*** Establish funds for non-governmental (NGO) and multilateral organizations to conduct research on international tobacco policy, prevention effectiveness of developing country tobacco interventions, economic cost-benefits, health risks and outcomes, and macro-effects of tobacco agriculture and production.

IV. Budget: $50 million

HHS will implement this proposal by building upon existing networks of contacts around the world through WHO, regional and bilateral working relationships and in collaboration with development institutions such as the World Bank and others as described. To implement this global strategy HHS proposes an initial budget of $50 million, which would increase as capacity and knowledge to conduct more aggressive and effective programs also increases.

Funds will be used to:

➤ establish USG international tobacco control policies that are consistent with USG domestic tobacco control policies;

➤ increase U.S. domestic capacity, including, but not limited to, developing an infrastructure and training USG employees stationed abroad; and

➤ increase international capacity building, including developing bilateral and multilateral collaborations, participating in the Framework Convention development, providing technical assistance, and supporting global strategies for tobacco control by collaborating and cooperating with UN agencies, MDBs, WHO and among those other development organizations.

DRAFT

SUMMARY OF TOBACCO SETTLEMENT SPENDING PROPOSALS

Spending Category	State AG Proposals	Current Federal Efforts	Other Proposals	Comment
Research	New $25B research "trust fund" ($4.8B in '03.)	HHS FY97 funds: $142M on "smoking & health" and $1.3B on diseases frequently linked to smoking (e.g. lung cancer, stroke..)	Increase HHS tobacco-related research by $1.3B a year -- more than double current efforts.	Much high-quality research could be funded within $1.3B a year of new funds.
Prevention/ Education	New national anti-smoking ad campaign ($600M in '03), increase funding for HHS state-based programs ($100M in '03) and create new "Reduced Use" states grants ($300M in '03).	HHS FY97 funds: 2 state-based prevention programs ($30M) and school-based tobacco prevention activities ($15M).	Moderate settlement funding. Consolidate funds for state-based and "Reduced Use" grants into one grant program. Target funds for school-based smoking prevention activities, not explicit in settlement.	Studies show prev/ed programs can reduce smoking, but not as well as tobacco price increases. Efforts should be aimed at youth since most smokers begin while teenagers. State grant programs proposed may be duplicative.
Cessation	New national cessation fund ($1.7B in '03) to finance cessation counseling and services for all smokers trying to quit.	No specific Federal program. Cessation services are optional Medicaid benefit which some states already offer.	$300M a year for cessation-related activities, but not create national fund. Smokers pay for over-the-counter nicotine NRT which costs about the same as smoking. Encourage private plans with quality measures, technical assistance and education to offer cessation services. Finance cessation services for uninsured/poor through CHCs and low-income pregnant women with "Healthy Start" grants.	More cost-effective to prevent smoking than to help quit after addiction. Formal cessation programs have low success and uptake rates, especially among youth. $1B a year fund would likely fund services for most who would quit using own resources and discourage private plans from offering coverage for services.

Spending Category	State AG Proposals	Current Federal Efforts	Other Proposals	Comment
Enforcement	$300M a year for FDA and states to enforce minor access provisions, including vendor licensing (similar to alcohol).	HHS FY97 funds: $16M on enforcement. Budget increases to $45M in FY98.	$100M a year assuming aggressive enforcement, but no licensing requirements.	Aggressive enforcement activities in some states have contributed to lowering teen smoking rates.
Compensation	Up to 33% of base annual payments available for judgements and settlements of civil liability cases. If 33% cap is not reached, Presidential Commission allocates surplus amount.	n/a	Separate from payments for individual compensation, settlement funds could be used to: (1) compensate state for their loses of tobacco excise tax as a result of higher cigarette prices ($1B in 2003) and/or (2) compensate tobacco farmers ($80M in FY 2003). *	Not clear whether 33% of base payments is appropriate set-aside for this purpose or whether full amount would actually be spent. Also a very large sum that could use up much of net revenues.

* Any civil liabilities allowed under the settlement will also be included in the amount of the compensation.

September 11, 1997

DRAFT

Proposed and Alternative Tobacco Settlement in 2003
(Assumes Repeal of $50B BBA Tax Credit and Youth Targets Are Met)

(Current $ in Billions)

Part I. Payments and Revenues Assumed in Base Settlement	FY 2003
Net Industry Payments	13.3
Total Net Federal Revenues	9

Part II. Spending Assumed in Base Settlement	**Settlement**	**Illustrative Alternative Option**
Research	FY 2003	FY 2003
Public Health Trust Fund	4.7	1.3
Federal Research to Discourage Tobacco Use	0.1	0.0
Sub-Total Research	4.8	1.3
Prevention/Education		
HHS "Reduced Use" Grants to States	0.3	0
Grants to States for Assist-type Programs	0.1	0.2
National Anti-Smoking Ad Campaign	0.6	0.3
Sub-Total Prevention/Education	1	0.5
Cessation		
National Fund for Cessation Services	1.7	0.3
Enforcement		
FDA Enforcement and Grants to States	0.3	0.1
Miscellaneous		
Payments to Tobacco-Sponsored Teams/Events	0.1	0
International Programs	0	0.1
Spending of Look-Back Surcharge (90% for State Grants)	0	0
State Excise Tax Offset	0	1.5
Offsets to Federal-Matched State Programs	0	*
Tobacco Farmer Compensation	0	0.08
Spending of Unused Civil Suit Credit for New Initiatives	2.2	2.2
Total Specified Spending	10	6.1
New Initiatives	0	2.9
(Unspecified Residual, Federal Share -- non-add)	(0)	(2)
Total Spending (Specified + New Initiatives)	**10.2**	**9**

cc: EK, Tom, Bruce L.

The global warming constituency is entirely young people, aged 18-25, who rated global warming as high as education. The rest of the electorate had little or no concern for this issue.

Tobacco Agreement

The dynamic of this settlement is simple: more from the tobacco companies will always be viewed by the public as better. And the goal of every one of the hands it passes through is to place a unique stamp shaping the agreement. Deductibility is a strong issue in the public's mind, though the Republicans appear to have gone in the opposite direction.

Much of this is how it is viewed – is this a major settlement of the issue that protects children from Tobacco, or is this a cash cow for financing social programs? If it is the first, then we should make changes consistent with that objective. If it is the second, then we could try to push the tobacco companies to the limit.

If the settlement itself is supported by us and enough of the health groups, it will be accepted by the public. We, and the not the Republicans are the major stamp of approval for this settlement.

It seems that no modifications would not make sense – Congress would then strengthen the settlement and we would seem too closely aligned with the Tobacco companies; Modest changes, along the lines of our tobacco objectives, which would get us the 21st Century Medical Science Research fund, strict regulation of nicotine and strengthened penalties for teen smoking, are most consistent with the original objectives of the effort and are unlikely to endanger the settlement. Some additional changes by Congress would be expected given the dynamic of piling on the tobacco companies.

Polling update:

Awareness for the tobacco agreement is at 82%. This compares to 66% awareness on August 4.

66% have heard about the proposed settlement, a 20% decrease since July 15.

Unaided, 41/43 support/oppose a settlement with the tobacco industry, **a ten point drop since August**

Awareness	7/1	7/15	8/4	9/9
Heard	82	86	66	82
Haven't heard	15	11	34	17

Unaided support	7/1	7/15	8/4	9/9
Support	53	52	51	41
Oppose	31	33	35	43

The level of support is consistent across parties and demographic groups
Unaided Support (9/9): Democrat: 41/43, Republican, 45/43, Independent: 40/46

45% of respondents say they will be more favorable to the President if he agrees to the settlement (14% much more + 31% somewhat), 39% unfavorable (18% much less + 21% somewhat).

Essentially, the supporters of the settlement have done a poor job at communicating the details of it. When explained to the public, it rises significantly:

> "The settlement the tobacco companies have reached would allow the Food & Drug Administration to regulate nicotine, the tobacco companies would accept marketing regulations imposed by the government which would eliminate figures such as Joe Camel, and the tobacco industry would pay $368 billion over 25 years. The $368 billion fund would go to expand children's health care and fund anti-smoking advertising, programs to help smokers quit, anti-smoking efforts targeting children, and compensatory damages to smokers and their families. In return, the settlement places limits on lawsuits against the tobacco companies, and allows the sale of cigarettes for at least 12 years. Given this, would you strongly favor, somewhat favor, somewhat oppose, or strongly oppose a settlement with the tobacco companies?"

Aided, support for the settlement increases 16 points to 57/38

57% favor (28% strongly + 29% somewhat)
38% oppose (22% strongly + 16% somewhat)

Support is stronger among families:
Support/Oppose: Children at Home: 64/32, No children 54/40

Opposition from smokers is not significantly stronger than non-smokers:
Support/Oppose: Smokers: 54/39, Non-Smokers: 59/36

Do you think that the President should:	
Accept the settlement as is	21
Reject the settlement	19
Say he will accept it if changes are made to strengthen the penalties for failing to meet targets for reduction in teen smoking and strengthening regulation of nicotine	**33**
Say he will accept it only if major changes are made to greatly increase the money that tobacco companies would pay by several hundred billion dollars	14

33% say the agreement is too weak on tobacco companies, 20% say too tough and 40% just about right.

	Too tough	Too weak	Just about right
Democrats	15	37	44
Republicans	23	26	40
Independents	19	36	39
Men	27	34	32
Women	14	32	48

Respondents in the South are more likely to think the agreement is too tough

Region	Too tough	Too weak	Just about right
Northeast	13	35	48
Midwest	13	33	46
South	26	26	39
Farm	11	40	45
West	28	39	27

If the President said the settlement was not strong enough and pressed for a stronger deal, 56% would be more favorable and 32% would be less favorable.

> "President Clinton and The White House have said that the provisions of the settlement are not strong enough, and will not endorse the deal unless federal regulatory authority over tobacco are strengthened, penalties for failing to meet targets for reductions in teen smoking are increased and the overall cost to the industry be raised."

47% trust President Clinton more to reach a settlement with the tobacco companies versus 35% for Republicans in Congress. When asked to choose between Democrats and Republicans in Congress, the gap widens to 20% (47% Dem/27% GOP).

Support for the settlement rises when respondents are asked:

> **"The President will propose specific changes to the settlement next week. If the tobacco companies agree to this settlement with the changes proposed by the President would you strongly support, somewhat support, somewhat oppose or strongly oppose a settlement with the tobacco companies?"**
>
> **67% support (32% strongly + 35% somewhat)**
> **24% oppose (13% strongly + 11% somewhat)**

This is the scenario that works for us – changes that are in line with our policies and that the tobacco companies accept. The deal is done, and this chapter is closed.

52% would support the settlement (40% oppose) even "if Congressional Democrats like Ted Kennedy and activists like David Kessler say these changes are not strong enough and we need to go much further in penalizing the tobacco companies beyond the 368 billion."

But from a public perspective, one issue that is hard to defend is the tax deductibility of the settlement:

69% do not believe the tobacco companies should be able to deduct the cost of the settlement from their taxes as a cost of doing business (24% say yes). Even when you say that changing this would bring the cost to the tobacco companies to $500 billion and possibly end the deal, 57% still are against deductibility. This suggests another area for changing the settlement – making the penalty portion non-deductible, while leaving the other portions of the settlement as deductible, to put in to practivce the principle that the companies would not be able to force any of the health care reimbursements on the taxpayers. This could be done for a modest increase in the settlement.

When told "that making it non-deductible would put the cost to tobacco companies at over $500 billion and possibly end the settlement," still 57% oppose making the cost deductible, 33% favor

59% oppose the provision in the balance budget agreement "that would allow the tobacco industry to deduct $50 billion raised from the new federal excise taxes from the amount of payment agreed to in the tobacco settlement" (28% oppose).

56% believe that if Congress does not agree to eliminate the $50 billion tax break the $50 billion should be added to the cost of the settlement to the tobacco companies, 33% do not.

Cutting down on teen smoking is the most important objective, and parental involvement is believed to be the most effective way to reduce teen smoking by a wide margin

What do you think the most important goal for President Clinton should be in the tobacco deal:	
Reducing teen smoking to the point that only adults in the country smoke	**24**
Ensuring that the government and tax payers are not paying for the implications of smoking	**19**
Penalizing tobacco companies to the point they are put out of business	**17**
Allowing strict federal regulation of nicotine	**17**
Compensating states for the costs incurred to treat people who used tobacco	**9**
Compensating people who have been hurt by tobacco	**5**

Raising the price of cigarettes was not seen as the most effective way to stop teen smoking:

What is the most effective way to reduce teen smoking:	
Parents playing more of a role in preventing smoking by their children	**46**
Increase educational efforts through advertising on the dangers of smoking	**28**
Banning advertising to minors by tobacco companies	**11**
Raising the price of a pack of cigarettes	**10**

20% of respondents believe that adults who choose to smoke are entitled to compensation for health care as a result of illnesses resulting from smoking. 76% say they are not entitled to compensation. (Kind of makes you wonder why the tobacco companies are settling at all.)

Having the support of health organizations is critical in persuading the public about the settlement.

For the following people or organizations, please tell me how important their opinion is to you on whether this is a fair settlement with the tobacco industry. For each one would you rate their opinion on the settlement as very important, somewhat important, somewhat unimportant or very unimportant?

Ranked by very important	Very Imp	Total Imp	Total Unimp
American Lung Association	72	95	2
American Heart Association	72	94	5
American Cancer Society	71	95	3
American Medical Association	61	91	7
State Attorney Generals involved in the negotiations	46	77	18
Former Surgeon General C. Everett Koop	44	74	19
President Clinton	44	74	24
Donna Shalala, Secretary of the Department of Health and Human Services	37	73	18
Vice President Gore	26	63	32
Congressional Democrats	25	69	25
Tobacco company executives	20	40	58
Congressional Republicans	19	65	29
Newt Gingrich	15	44	47

development grants for states to create employment;   and pay up to $50 million for agricultural grants to encourage supplemental crops. The legislation would also provide for changes in the referendum system of determining quota rules and some immunity provisions for producers.

The USDA considers the proposal a reasonable if generous starting point for negotiations.

Tobacco settlement

Note that there is the $25B Public Health Trust Fund (2.5- 5.0 billion per year) for "tobacco-related medical research."

Proposal recommends a Presidential commission be appointed to allocate the fund -- Commission members would include representatives of the public health community, Attorneys General, trial attorneys, and others.

We need experts' advice on -- how to spend funds generally, whether a Commission or some other process makes sense.

The President will want some sense of how the fund should be used --

1. How would we use the $25 billion fund ? Do we have specific research priorities we should insist are covered by the fund? How specific should we be in stating them when the Administration comments on the settlement?

2. Is "smoking-related research" the right way to describe how funds should be used? Do we need a broader definition? What scope of research should we consider?

3. What are we spending today on nicotine research:

   - reduction of nicotine in cigarettes (NIH held recent conference)
   - addiction/pharmacology research

4. What kind of research agenda would we need to support FDA's regulation of tobacco products? What would it cover? What would it cost?

Tobacco

37TH STORY of Level 1 printed in FULL format.

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HEADLINE: WORLD-WIDE TOBACCO

BYLINE: ANNE PLATT MCGINN

BODY:

Though many Americans have stopped smoking, multinational tobacco companies continue to make a killing in the developing world. Record cigarette sales threaten a public health crisis that could overshadow all infectious diseases combined.

The fastest growing public health menace in the world isn't a disease - it's a product. The consumption of tobacco has reached the proportions of a global epidemic. Tobacco companies are cranking out cigarettes at the rate of 5.5 trillion a year - that's nearly 1,000 cigarettes for every man, woman and child on the planet. Already, one person out of five is a smoker. And just as a successful pathogen adapts to changing conditions as it spreads, tobacco is proving adept at exploiting new markets. Within 25 years, tobacco-induced illness is expected to overtake infectious disease as the leading threat to human health worldwide.

Big tobacco owes its growth in large measure to its promotional strategies. The industry is dominated by seven multinational companies, which in 1995 accounted for almost 45 percent of global cigarette sales. (The largest cigarette producer of all, the China National Tobacco Corp., accounts for 32 percent of global sales; but because it sells only within China, it has little influence on the international market.) The sophisticated, big-budget marketing strategies used by the multinationals - especially Philip Morris, British-American Tobacco and R.J. Reynolds - are increasingly setting the pace for the industry as a whole. In many parts of the world, tobacco marketing now involves a comprehensive mix of ads, sponsorship of cultural events, subsidized farm projects - even campaign donations.

The results mean addiction now not only for smokers but also for governments. Tobacco sales and the tax revenues they generate often create a high degree of economic dependence. But this is a false economy; for every 1,000 tons of tobacco produced, nearly 1,000 people will eventually die from tobacco-related illnesses. Worldwide, these illnesses are estimated to cost nearly $ 200 billion a year in health care expenses and lost productivity.

It is the growth of tobacco use in developing countries that will soon make it the world's leading killer. Richard Peto, an epidemiologist at Oxford University's Imperial Cancer Research Fund, calculates that tobacco killed 3 million people in 1995, 1 million of whom lived in developing countries. By 2025, Peto estimates, tobacco's annual death toll will reach at least 10 million. More than 7 million of the victims will die in developing countries - a 700 percent increase in just one generation. If present trends continue, according to the World Bank's 1993 World Development Report, tobacco-related deaths will in 30 years' time exceed the death toll from tuberculosis, AIDS-realted illnesses and complications in childbirth combined.

At one time or another tobacco multinationals have targeted most of the globe. In the 1960s, the industry focused on emerging markets in Latin America; in the 1980s, it turned to the newly developing nations in Asia; today it is focused on Eastern Europe, Africa and China.

But the off-shore expansion coincides in large measure with rejection at home. Beginning in the 1970s, the U.S. domestic market began to shrink in response to growing public awareness of the dangers of smoking.

So the tobacco companies found themselves facing a stark choice: either continue to compete with each other for shares of a shrinking pie or build market share abroad. So in 1981, three companies - Philip Morris, R.J. Reynolds and Brown and Williamson - banded together to form the United States Cigarette Export Association. The association turned its attention to Asia, in a bid to open closed markets under the banner of free trade.

Aggressive marketing, direct exports, the creation of overseas subsidiaries and more intense local competition have scaled up tobacco markets throughout the developing world. In the mid-1970s, 41 percent of the world's cigarettes were consumed in developing countries. But that proportion jumped to 61 percent a decade later and is expected to hit 70 percent by 2000. Production in the developing world is rising dramatically too. In the early 1960s, developing countries produced 53 percent of the world's tobacco; by the late 1980s, their share was almost 75 percent.

The industrialized countries are cranking out cigarettes at record rates as well. The export market is the growth sector. In the United States, exports accounted for 33 percent of cigarette production in 1996 - up from 8 percent in 1984. In 1996, the United States had a $ 5.3 billion trade surplus in tobacco.

A standard refrain in tobacco PR is that the companies are not in the export business to convert nonsmokers into smokers - they are merely trying to shift demand from the frequently inferior domestic cigarettes to their own, better-tasting, safer products. But such claims don't do justice to the promotional onslaught that big tobacco has unleashed on foreign markets.

Tobacco advertising often targets sectors in which smoking is less common. In South Africa, for instance, the advertisers favor publications read by women and blacks, although most smokers fall into other demographic categories.

Multinational tobacco companies pursue new and inexperienced smokers with menthol-filtered cigarettes and lighter brands. They sometimes get into price wars with domestic producers, a practice that also tends to boost consumption among marginal users, chiefly the young.

Many countries, both developing and industrialized, restrict tobacco advertising in one form or another - although enforcement is often lax. But companies have developed strategies to get around such regulations. They are, for example, major sponsors of sporting events - everything from car races to tennis tournaments. They sponsor just as broad a spectrum of entertainment events, from rock concerts to art shows. At such events, company representatives often hand out clothes and other items emblazoned with cigarette logos - and even cigarettes. In Malaysia, where a total tobacco ad ban is in effect, Salem sponsors a free rock concert series where ''cigarette girls'' hand out free cigarettes.

Warning labels on cigarette packages probably do little. In many countries, cigarettes are sold by the stick, that is, individually. And of course, many customers are illiterate or too poorly educated to understand the warnings. Or they don't read English - and for U.S. cigarettes, English remains the language of choice for warning labels, even in overseas markets. Perhaps the saddest irony of tobacco advertising is the use of that little block of often-incomprehensible text as a seal of authenticity. The surgeon general's health warning has become proof that those Marlboros really are made in the U.S.A.

The companies benefit from a form of ''shadow marketing'' as well. Smuggling, principally of U.S. brands, is prevalent throughout Europe and Asia, in countries that impose high import tariffs or sales taxes on tobacco. Smuggling helps the multinational companies because it creates a kind of illegal introductory price for their brands - far below what the legal products sell for. This helps ''soften'' the market for a bigger sales assault.

Tobacco promotion often targets the young and the poor - a strategy so common that it can be found practically anywhere Big Tobacco goes. In Kenya, for example, the ad medium of choice is FM radio, whose majority audience is primary and secondary school children. In Chicago, a study based on data from the 1990 U.S. Census found three times as much tobacco billboard advertising in poorer neighborhoods, where most residents are black or Hispanic, as it did in white areas - a relation nearly one-third higher than would have been expected strictly in terms of population.

Unfortunately, these targeted campaigns work. This is apparent, for instance, from the growth in smoking among the youngest consumers. Consider the Asian countries the U.S. firms moved into during the 1980s: In Taiwan, smoking rates among high school students jumped from 22 to 32 percent between 1985 and 1987. In Korea, smoking among male teens rose from 18 percent in 1988 to 30 percent just one year later. And in Japan, 26 percent of senior high school girls were smokers in 1990, although only 8 percent of their mothers were.

Many children acquire the smoking habit well before they reach their teens. In Kenya, a 1989 survey found that about 40 percent of primary school children are smokers. In Hong Kong, children as young as 7 are addicted. And in China, a 1988 survey of elementary school children in Beijing found that nearly half had tried smoking between ages 5 and 9 and that 28 percent of the boys and 3 percent of the girls had smoked during the past month. Assuming current trends continue, about 800 million of the world's 2 billion children are destined to become smokers, according to the World Health Organization, and tobacco will eventually kill at least one-third of them.

Smoking is an expensive pursuit. According to a rough global estimate developed by the World Bank, feeding one smoker's habit typically takes from 1 percent to 5 percent of a family's income. In some countries the costs are higher. In China, tobacco sometimes absorbs up to 17 percent of household income and 60 percent of personal income. And in many developing countries - from Jamaica to Ghana - households with just one smoker commonly spend more on cigarettes than on health care.

Smoking imposes a heavy cost on societies in the form of medical expenses. The United States spends $ 50 billion in medical expenses directly attributable to smoking - or $ 2.06 for every pack of cigarettes sold in the country.

That figure doesn't include the indirect costs, such as the economic value of years of life lost to premature deaths or lost productivity. Smoking is very expensive for U.S. employers, who pay out on average $ 960 per year in lost work time and health expenses for every smoker on their payroll. If these indirect costs are included in the bill, the total cost of smoking in the United States swells to nearly $ 100 billion, or 1.8 percent of the GDP in 1993.

Yet many countries, especially in the developing world, have come to rely on cigarette production and sales for revenue. In countries as diverse as Chile, Pakistan and Sri Lanka, taxes on domestic tobacco production can account for up to 10 percent of national tax receipts. Even countries that do not grow their own tobacco can still profit from import duties, on the order of 1 to 4 percent of total tax revenues. Once tobacco begins to make a substantial contribution to the tax coffers, a government can end up just as hooked as an individual smoker.

A full accounting of the tobacco ledger never ends up in the black. The health care costs always far outweigh the profits, so any public effort to build a revenue base on tobacco is doomed. China is a good example. In 1995, China reported that it took in a total of $ 8.6 billion in tobacco revenues, which made that industry the country's single largest domestic source of tax revenue. But a study by China's Academy of Preventive Medicine showed that the national costs of smoking amounted to $ 11.3 billion in 1993, and the bill in 1995 was presumably higher.

If you factor in the public health expenses, tobacco is an enormous corporate welfare scheme. And as with so many other harmful industries that rely on government handouts, the system tends to benefit shareholders and company executives to a far greater degree than the people on the industry's front lines. The tobacco boom has not been an unqualified success for the farmer, even in countries that subsidize tobacco production. In the United States, the growth in cigarette production has coincided with a steady decline in tobacco farmers' earnings as a percentage of sales. In 1957 farmers earned 16 cents for every retail dollar of tobacco sales; by 1993, farmers' share of that dollar was 3 cents. That year, manufacturers and wholesalers made 63 cents on every dollar, and 29 cents went for excise taxes. Even the retail share - 5 cents - was 40 percent more than what the farmers made.

In agricultural terms, tobacco is a crop with a mixed record. Certain kinds of light tobacco flourish in dry, sandy soils; in many parts of the world, these varieties are being grown on land that probably wouldn't support much else. But in some areas, tobacco is displacing much-needed food crops. The growth of Zimbabwe's tobacco export industry has pulled some 3 percent of the country's arable land into tobacco production. Yet Zimbabwe still relies on international food aid. Overall, about .3 percent of the world's arable land is in tobacco. If converted to food crops, that land might feed as many as 17.5 million people a year.

Tobacco also may interfere with the farm labor economy. Uganda's tobacco export industry is blamed for absorbing labor: Time and effort that farm families might have invested in food crops, child care and other more productive pursuits go to producing tobacco.

Two years ago in Ballagio, Italy, a group of doctors and public health authorities sat down with their counterparts from the U.S. Agency for International Development, the World Bank and seven other international development agencies for a conference on tobacco. That conference produced what amounts to an indictment of the tobacco industry as a cause of poverty and disease and as an obstacle to sustainable development. Action on that indictment is long overdue. The task of reform is enormous, but policy makers and nongovernmental organizations have many possibilities open to them:

Develop anti-smoking campaigns targeted at children. Such campaigns are probably second only to childhood immunization programs as a cost-effective means of improving public health.

Restrict or ban tobacco advertising. Many countries already have some regulations in place; many others - including Belgium, Brazil, Mexico and Russia - are attempting to establish them. All bans - new and old - should have ''teeth.''

Crack down on smuggling.

Dismantle subsidies for growing tobacco. Removing government support for the tobacco industry would make economic sense. In Costa Rica, a study found that once the subsidies are factored out, even a common crop like sorghum yields higher farm profits than tobacco.

Raise tobacco taxes. In India, cigarette sales declined by 15 percent after the excise tax on popular brands more than doubled in 1986. According to a rough rule of thumb commonly cited by tobacco researchers, a 10 percent increase in cigarette prices corresponds to a 4 percent decline in the total number of smokers - and a 10 percent decline in the number of young smokers.

Earmark a share of tobacco taxes for public health programs. Several countries, including Ecuador, Indonesia and Korea, use part of their cigarette tax to fund anti-smoking campaigns.

Promote disinvestment. Both individual and corporate investors should be encouraged to sell their tobacco stocks.

Practice anti-tobacco diplomacy. The Tenth World Conference on Tobacco or Health to be held in Beijing from Aug. 23 to Aug. 28 offers a forum for high profile diplomatic action. One useful gesture would be to support the International Tobacco Control Convention. Already endorsed by a majority of WHO member states, but not by the United States, the convention seeks to reduce smuggling, help regulate prices and advertising and encourage the sharing of information.

All of these approaches are based on one simple premise: Tobacco is addictive and its use is therefore a kind of social disease. If a virus or bacterium were killing as many people as tobacco does, it would be cause for general panic. If an illegal drug were the agent, we could expect substantial government efforts to take it off the streets. But this killer is a legal product - and a very common, ordinary one at that. To some extent our familiarity with tobacco has blinded us to its danger. Our most basic challenge may therefore be cultural: We need to find ways to value our public health. Once we have done that, tolerating tobacco won't make any more sense than tolerating smallpox or polio.

LOAD-DATE: August 11, 1997

July 11, 1997

Attached is the first rough draft of the Tobacco-Related Research workgroup report. Please provide me changes, comments, and other input on all aspects of the draft, including the report outline/format. If I'm not available, feel free to provide input to Dr. Lynn Cates, (202) 690-7996.

If you have any downloading problems call Nicole Lawrence, (202) 690-6870, and she'll fax you a copy.

Please let me know if you will be involved in the subgroup drafting the next draft and final report (if possible, before Monday's meeting). Subsequent drafting will probably involve carving-up the document and assigning sections to different offices.

Thanks.

Burke Fishburn
(202) 690-7807
bfishbur@osaspe.dhhs.gov

DRAFT (July 10, 1997)

TOBACCO-RELATED RESEARCH

Workgroup Report

CONTENTS

Introduction

A robust, comprehensive and well funded tobacco research program is essential to guide and strengthen new policies, regulations, and programs supported by public and private funds. Research must address issues at the national, state, local, and individual level, and must include studies of adult tobacco use and its impact on youth. Of particular urgency is the need for information to inform federal and state policies and programs that are under development. As new resources for tobacco control become available from HHS agencies, state governments, and possibly the tobacco industry, research must guide their use.

I. ANALYSIS OF APPLICABLE SETTLEMENT PROVISIONS

A. **Funds Available**. The proposed settlement contains four potential funding sources that could be utilized for health-/tobacco-related research:

125 m

1) Reduction in Tobacco Usage. $125 million (years 1-3) and $225 million annually thereafter would be allocated by HHS to activities designed to reduce tobacco use. Allowable expenditures would include:

- "research into and development and public dissemination of technologies and methods to reduce the risk of dependence and injury from tobacco product-usage and exposure; and
- "identification, testing and evaluation of the health effects of both tobacco and non-tobacco constituents of tobacco products."

100 m

2) Prevention/Cessation Research. $100 million annually to fund research and the development of methods for how to discourage individuals from starting to use tobacco and how to help individuals to quit using tobacco.

1 bill.

3) Tobacco Use Cessation Trust Fund. $1 billion in years 1-4 and $1.5 billion thereafter paid into a trust fund to be used to assist individuals who want to quit using tobacco to do so. Trust fund <u>does not *currently*</u> allow funds to conduct cessation or evaluation research.

25 b.

4) Public Health Trust Fund. $25 billion trust fund is established with funding accruing at an increasing rate of $2.5 billion per year for eight years. Funds are to be used for "tobacco-related medical research" as determined by a Presidential Commission "to include representatives of the public health community, Attorneys General, Castano attorneys and others."

B. **Key Questions to Be Addressed and Areas for Potential Modification of Settlement**

1) Defining "Tobacco-related Research." There is a concern that tobacco-related research (TRR) identified in the proposed Settlement is inadequately defined. TRR should broadly represent a comprehensive research portfolio including basic biomedical research, health services research, and tobacco-related control interventions. Any agreement needs to appropriately divide available funding between basic biomedical research areas and tobacco-related prevention (including health services research).

2) Mechanisms for Decisionmaking, Investment and Priority Setting, Administration. Significant issues surround the Public Health Trust Fund governing structure. Including using the Trust Fund as a mechanism for allocating health research funds.

- The composition of the board is an issue, including defining the appropriate role of the State Attorney Generals and Castano attorneys with regard to the allocation of research funds.

- There is a need to clarify the objectives of the Trust Fund and the goals that should guide annual expenditures. Consideration needs to be given to designing the fund to provide needed research funds into perpetuity. To accomplish this annual expenditures should not deplete the initial $25 billion capital reserve.

- Consider keeping separate the funding streams for different research areas--if one area of research was shut down or de-emphasized, it should not effect other areas funded through the Trust Fund.

- Consider issues to protect against supplantation . It is critical that additional funding not be allocated to the general NIH research base and instead be earmarked for specific program areas. A truly comprehensive tobacco control research portfolio will contribute to real reductions in tobacco use only if it is linked closely to ongoing and expanded intervention programs and the findings of cutting edge biomedical research.

- Productive partnerships with public and private organizations are essential. Funding should be made available not only for the activities of the current NIH national research institutes but also the Agency for Health Care Policy Research which should take the lead in developing more effective delivery mechanisms for cessation services.

3) Maintenance of Effort Protections. Specific protections will be needed to prevent the new research funds from supplanting the Congress' annual appropriation. Settlement funding should be in addition to current appropriations and not reduce Congress' annual appropriation to the NIH, AHCPR or agencies engaged in tobacco-related research.

4) Relationship between Tobacco Use Cessation Trust Fund and Public Health Trust Fund. It is unclear what, if any, relationship exists between the Cessation and Public Health Trust Funds.

II. BASELINE: CURRENTLY AVAILABLE SERVICES AND ACTIVITIES

[Placeholder: NIH with CDC provide summary of baseline data]

[Use workgroup framework:
A. Basic:
1) Biomedical
2) Clinical
3) Behavioral

B. Applied
1) Health Services
2) Public Health & Community
3) Surveillance/Epidemiological
4) Behavioral]

III. GAPS AND NEEDS

A. Basic Research

1) Biomedical: Including carcinogenesis, pharmacology of addiction, molecular biology, genetics.

2) Clinical: Including (both behavioral & pharmacological) diagnosis, and prevention, treatment, rehabilitation tobacco-related disease,

3) Behavioral: Including animal studies (crosses over to applied research), substance abuse, other areas linked to tobacco use (sexual abuse).

Examples of basic research needs:

- Basic research on product and ingredients; not only nicotine, but other harmful effects of product in ways that may not be obvious.
- Assessing the health effects of cigar use among youth and adults;
- Biological processes of tobacco-related disease;
- Genetic predictors of nicotine addiction and genetic markers of diseases caused by tobacco; and

- Ways to improve the treatment of diseases caused by tobacco.
- Research on the impact of developing less hazardous tobacco products; has this and would this ultimately benefit public health? (For example, "light" cigarettes may have actually kept people in the market, increasing prevalence of disease and death.) Crosses over to behavioral and epidemiological research.

B. Applied Research

1. **Health Services**: Including patterns of use (are people getting cessation), access, reimbursement, delivery, patient compliance, implied implementation in health care systems, recidivism in programs, cost and cost effectiveness, and treatment guidelines.

2. **Public Health & Community**: Including research and evaluation of public & private policy, community & state programs and laws, field programs, impact of enforcement , and role of community agencies in affecting advertising policy norms.

3. **Surveillance/Epidemiological**: Including laboratory work on the product (e.g., what chemicals are added?) ETS, trends in use, attitudes toward use, trends in initiation, trends in policies, and quitting trends.

4. **Behavioral**: social processes and modeling, developmental risk factors (e.g., prenatal exposures), animal studies, research on addiction and craving, effects of pricing (behavioral economics), health behavior and attitude, pre-disposal, determinants of initiation, community, behavioral intervention, studies of nicotine as a "gateway", prevention, and effect on special populations.

Examples of applied research needs:

- Monitoring of product and ingredients, including nicotine, but other harmful effects of product, including ETS.
- Tobacco industry "culture change."
- State and community program implementation; clean indoor air laws, excise tax increases, advertising restrictions, youth access restrictions.
- Product and ingredient monitoring.
- Product distribution changed as a result of current differences and changes Federal state excise taxes.
- Efficacy of current and planned control efforts & enforcement efforts.
- New, proposed, and future regulations, e.g., reducing nicotine content of cigarettes; evaluating technologies to reduce the health risk of tobacco products.
- Racial, cultural, and gender influences in youth tobacco use.
- Health services research targeted to improving the effectiveness and the delivery of tobacco cessation programs.

- Assessing the impact of tobacco use on the economy and health care system (time missed form work, cost of premature death, burden of disease on health care costs).

IV. OPTIONS FOR SETTLEMENT IMPLEMENTATION AND SPENDING

A. **Priorities**. Consideration of areas for research funded by the Settlement, as well as priority setting within those areas should be guided by two overriding principles. Such research should contribute to a science and knowledge base which would:

- reduce tobacco use, and
- reduce the burden of disease on society caused by tobacco use.

[Placeholder: workgroup to consider Robert Wood Johnson (RWJ) portfolio]

In addition, there will be a important need for evaluation of the Settlement, e.g., impact of warning labels, litigation, penalties, etc. An overall evaluation would be very complex.

B. **Funding Strategy**. Consideration should be given to the principle which would provide half of the available funding for basic research and the other half for applied research, as defined elsewhere in this document. [Need more discussion on logic.]

[Placeholder: other principles?: research which contributes to improving the effectiveness of state and local tobacco control programs and their components;

V. SUFFICIENCY OF SETTLEMENT FUNDING

In consideration of the serious needs and gaps in current research efforts, the funding level is inadequate.

One approach is to view the funding for research commensurate with the toll that tobacco related disease places on the disease burden of the American people. Tobacco-related disease represents a major burden on the NIH research agenda. A settlement with the tobacco industry should provide NIH with an annual supplemental payment commensurate with that burden.

The National Cancer Institute currently spends only $70 million of its $2 billion annual appropriation for tobacco-related medical research. Yet tobacco use is responsible for 30 percent of the cancer incidence, one-third of cardiovascular disease deaths and 90 percent of chronic obstructive pulmonary disease. Science continues to identify additional diseases (SIDS, low-birth weight babies, miscarriage) where tobacco use is implicated.

Given the magnitude of tobacco use as a public health problem, the many new programs and regulations proposed in the settlement, and the scientific opportunities we know exist, consideration should be given to a more appropriate budget "supplement" for tobacco related health research should be in the range of $2-4 billion annually. These funds should be in addition to whatever funds are allocated to tobacco cessation programs.

VI. APPROACHES FOR FLOW OF SETTLEMENT FUNDING/OTHER FUNDING MECHANISMS

[Placeholder: 50/50 split discussion]

Consideration should be given to using an existing Congressionally established mechanism such as the existing NIH National Foundation for Biomedical Research, or the establishment of a new entity modeled after the Department of Defense's Jackson Foundation.

Tobacco Producers

Tobacco is produced in 21 states with North Carolina and Kentucky accounting for 65% of production. An estimated 124,000 farms grew tobacco in 1992, about 3/4 of them classified as tobacco farms meaning that tobacco comprises at least 50% of sales. Tobacco is the 6th largest cash crop, and is a significant factor in the economy of many states. For instance, USDA estimates that there are 16,380 jobs (0.47% of state's total) in tobacco manufacturing in North Carolina, 9,550 tobacco manufacturing jobs in Virginia (0.31%), and Kentucky has 4,210 jobs (0.25%). Tobacco is extraordinarily profitable, approximately 20 times more profitable on a per acre basis than the next most lucrative crop.

Most U.S. production has been under a price support and supply control program since the 1930s. Producers are guaranteed higher prices in exchange for limiting marketings through marketing quotas. In response to surging tobacco imports, Congress enacted a provision in the Omnibus Budget reconciliation Act (OBRA) of 1993 which required US manufactured cigarettes to contain 75% US grown tobacco. As a part of the Uruguay Round implementing legislation, domestic content provisions were replaced by the establishment of a tariff rate quota for certain imported tobacco, primarily flue-cured and burley.

Internal notes:

The settlement makes no provision for economic effects on farmers and tobacco related rural economies. The USDA estimates that a 50 cent per pack price increase would lead to a 10.5% decline in volume consumed. Cigarette exports are not restricted by the settlement and would likely continue their upward trend, thus USDA forecasts do not currently predict adverse economic effects on farmers.

Farmers groups and legislators have generally expressed support for proposals with certain shared characteristics: continuation of the governmental tobacco program, guaranteed purchase at set levels of tobacco crops by cigarette companies, and some provision for buy out and transition to other crops, on a voluntary basis, for farmers. The most discussed proposal is one released this month by Senators Ford and McConnell that would require companies to buy a minimum amount of domestic tobacco over 25 years and would install penalties on companies that do not meet the stated goals for tobacco buying. The proposal would also create a "Tobacco Community Revitalization Fund" administered by USDA, but not subject to the appropriation process which would be able to spend up to $1 billion a year for 25 years from the settlement fund and would cover costs related to the tobacco program such as administration and crop insurance, make supplemental payments of up to $500 million to producers whose income from tobacco drops substantially below the 1996 level, pay up to $100 million in benefits for displaced cigarette factory workers; pay up to $250 million a year for rural economic development grants for states to create employment; and pay up to $50 million for agricultural grants to encourage supplemental crops. The legislation would also provide for changes in the referendum system of determining quota rules and some immunity provisions for producers.

The USDA considers the proposal a reasonable if generous starting point for negotiations.

Direct mention of the USDA or tobacco farming occur in two instances within the agreement. The first simply states that tobacco farmers will not be subject to additional regulations over and above those existing for other producers of raw products "Tobacco farmers will face no greater regulatory burden than the producers of other raw products regulated by the federal government." [Title I, Subtitle E}. The second mention addresses the issues of limitations on FDA regulatory jurisdiction and states: "-- Grower Limitation: FDA jurisdiction does not extend to the growing cultivation or curing of raw tobacco (USDA has exclusive authority)." [Title V, Subtitle A]

Attached are some relevant clips and possible discussion topics.

Tobacco

2-3 Names

DRAFT (July 9, 1997)

SMOKING CESSATION & PUBLIC EDUCATION

Workgroup Report

CONTENTS

Introduction

There are three prongs to this issue, preventing and deterring people from starting to smoke, cessation and protecting non-smokers. Therefore, public education should be treated as an integral component of any approaches designed to reduce the use of tobacco products.

There are approximately 50 million smokers and 70 percent say they would like to quit; of those, 10 percent seriously attempt to quit, of which 20 percent actually succeed. The Settlement provides substantial funds to help them do so.

Cessation strategies must take into account that smoking is an addiction. It should not be anticipated that success rates for cessation treatments will be as high or as easy to measure as those for more acute processes (e.g., antibiotic treatment for infections). Instead, cessation programs should be regarded in the same light as other chronic conditions such as diabetes, and their success should be held to realistic standards.

[Placeholder: summary of data on cost of quitting, average number of times it takes the average person to quit (on their own, product-assisted, behavioral intervention, enter health care system).]

[Placeholder: summary of data on what is known about the effectiveness of cessation and education programs.]

I. ANALYSIS OF APPLICABLE SETTLEMENT PROVISIONS

A. **Funds Available**. The Settlement does not provide prescriptive detail on how the money is to be spent on cessation and education activities, particularly, given the amounts of the allocations. The funding streams specified for cessatiopn and education actiovities include the following:

- ***Reduction in Tobacco Usage ($5.325 billion)***: For Secretary of HHS to encourage current tobacco users to quit through media-based and non-media based education, prevention and cessation campaigns.

- ***Programs like ASSIST ($3.0 billion)***: For state and local tobacco control, similar to the community-based model of the ASSIST program

- ***Education ($12.5 billion)***: To fund an Independent, non-profit organization to run a multi-media campaign to discourage and de-glamorize tobacco use.

- ***Cessation Fund ($35.5 billion)***: To create a trust fund to promote effective cessation programs and provide financial assistance to access such programs. $1 billion per year for 4 years, and then $1.5 billion per year to assist cessation for those who want to stop using tobacco products

There also is the potential for crossover with two other funds: the Teams' Fund and the

Public Health Trust Fund.

- ***Teams' Fund ($1.8 billion)***: For 10 years, to compensate events, teams, or entries in such events who lose sponsorship by the tobacco industry as a result of the Settlement. After 10 years, funds will be reallocated to education, enforcement of provisions, and community-based programs.

- ***Public Health Trust Fund ($25 billion)***: A Presidential Commission will be created to identify and fund specific tobacco-related medical research.

B. Implementation of Settlement

1) **Mechanism of administration of Settlement funds**. [Placeholder: Analysis of Settlement's wording re: Secretary's responsibilities]

2) **Permissible use of Settlement funds**. [Placeholder: Analysis of programs provided for in Settlement]

3) **Restrictions on use of Settlement funds**. [Placeholder: Analysis of restrictions on use of Settlement funds]

C. Key Questions to Be Addressed and Areas for Potential Modification of Settlement

1). **Mechanisms for Decision-making, Investment and Priority Setting**. Possibilities include government, nonprofit, or a combination of different mechanisms.

2) **Mechanisms for Administration of Settlement Funds.** Possibilities include government, nonprofit, or a combination of different mechanisms. The funds could be allocated into separate and distinct pots for management and distribution, or commingled in certain areas. There are pros and cons of each approach.

3) **Monitoring and Surveillance Systems**

4) **Investments in Current Mechanisms and Development of New Strategies**. Priority should be given to strategies targeting adolescents

5) **Appropriate Allocation of Resources for Cessation to Indian Tribes**. The Settlement treats tribes like states, but the formula is based on tribal population as a percentage of state population, thus not providing adequate

funds for successful program implementation

II. BASELINE: CURRENTLY AVAILABLE SERVICES AND ACTIVITIES

NIH ASSIST and CDC IMPACT programs have created the infrastructure for broader cessation and education program implementation. They permit local input, assuring that programs are tailored to local needs. The current ASSIST budget is $1.2 million per year per state in 17 states. This level of funding is considered to be bare bones. The success of at least some of the programs is the result of certain states' voluntarily providing matching funds. Even so, the funds are not always sufficient to provide services throughout the state.

A. Public Programs

1) **Public Cessation Programs.** [Placeholder: GAO study on/summary of all cessation programs.]

a. ASSIST and IMPACT. Summary of NIH ASSIST and CDC IMPACT cessation activities.

[Summary and reference to CDC document--attachment.] CDC analysis of state spending for cessation programs ranges from $0.11 to $11.00 per capita, with a clear dose-response relationship (i.e., states with the biggest investments like California and Massachusetts have had the most success in reducing smoking).

b. AHCPR Guidelines. [Summary and reference to AHCPR cessation document--attachment.] AHCPR has smoking cessation guidelines and is evaluating implementation and cost-effectiveness.

c. Medicare/Medicaid. Six states' Medicaid programs reimburse for some cessation services. [Placeholder: what percentage of Medicaid patients are accessing programs/benefits.]

No cessation benefits are funded by Medicare

d. Federal/State Excise Tax. [Placeholder: data on impact on cessation of price increases such as excise taxes (adult, youth, "rational addiction")]

2) **Public Education Programs**. [Placeholder: Reference CDC document on education/media] and [Placeholder: summary of data state and local program including schools]

B. **Private and Non-profit Cessation and Education Programs**. Currently, if any cessation benefits are provided at all by insurance companies or managed care organizations, there are limits (e.g., eligibility, co-pays, number of visits, payment contingent on smoker's actually quitting or having not smoked for 6 months, etc.).

[Placeholder: analysis of NGO investments in media messages]

[Placeholder: More data/analysis needed here]

III. GAPS AND NEEDS

A. **Access**. We need to increase our ability to reach the people who need help when they want it. It has been hard to get people into intensive treatment, and the reasons have not yet been well-defined, but are felt to include the lack of availability of programs when they are ready to use them and/or, if programs are available, the complicated procedures required to enter them.

Additionally, there is concern that minorities and lower-income people cannot afford currently available or future strategies to stop smoking (e.g., cost of nicotine-replacement without counseling is approximately $500-600 per person)

[Placeholder: analysis of Medicare provided coverage of cessation programs, all states cover through Medicaid.]

B. **Cost-Effectiveness of Cessation Program Expansion**. There is some evidence that although it costs more to provide cessation services to more individuals, after a certain point there is an economy of scale, and costs per individual begin to decrease so that the overall program is more cost-effective (i.e., the higher the investment, the more return you probably will see per dollar invested).

C. **Continuous Funding of Current Efforts Is Not Guaranteed**. The ASSIST program currently has a budget of $1.2 million per state for 17 states, but this funding will end in 1999. If it is not refunded, an important infrastructure will be lost.

D. **Perception of Cessation Programs**. Cessation programs are perceived by some to be ineffective and there has been criticism of spending money on programs that have not been demonstrated to be effective. It needs to be made clear that treatment for tobacco addiction will not have the same success rate as antibiotic therapy for infections, and that this problem needs to be perceived and managed with approaches comparable for those for chronic diseases such as diabetes.

E. **Advertising**. The current advertising market needs to be analyzed with regard to strategies and cost.

1) **Advertising strategies**. Some research has been performed evaluating effectiveness of media messages and advertising campaigns and, as a result of analysis done for the FDA tobacco rule, information has become available about what is necessary to penetrate target markets. Any use of media in cessation campaigns needs to be comprehensive and not just include strategies that traditionally come to mind first, such as TV and radio advertising. Successful marketing strategies of tobacco companies and other industries (e.g., Levi Strauss and Nike) should be examined for their applicability.

2) **Advertising costs.** One nicotine-replacement manufacturer spends an estimated $120 million per year on advertising for a nicotine-replacement product. If the successful media campaign currently being employed by the state of Massachusetts were expanded to the entire nation, the estimated cost would be approximately $600 million ? per year. However, in order to achieve the same success rates, national programs would probably be more expensive because Massachusetts is a relatively homogenous state and national strategies would have to take into account more ethnic and cultural diversity. In addition to any national effort, it will be critical that states have discretionary funds to provide appropriately targeted local.

E. **Evaluation**. Monitoring and evaluation of efficacy of current and proposed efforts have been inadequate to date.

F. **Eligibility**. Requirements for benefits are unclear. [Need data]

G. **Provider education**. There is no organized or comprehensive nationwide approach for clinicians (including physicians, nurses, hospitals, health plans, etc). Such efforts could be designed along the lines of AHCPR's 2/3 campaign.

H. **Research on Alternatives to Current Cessation Strategies**.

I. **Affordability**.

IV. SETTLEMENT IMPLEMENTATION AND SPENDING APPROACHES

A. Priorities

1) **Education & Assistance -vs- Service Delivery**. There is an issue about whether to use funds to invest in areas (education and assistance) that create demand for cessation services/products, or on service delivery or programs that are or could/should be provided by others (particularly the private sector). In areas where we do fund services, those services should be targeted at specific subpopulations. Regardless, we needs strategies to encourage the private sector to deliver cessation products/programs/services.

2) **Youth Programs**. Need to develop effective cessation programs for youth (controversial, e.g., use of nicotine replacement products).

3) **Access**. Develop better ways for people who want to stop smoking to get into programs (e.g., 1-800- phone number to hotline on each pack of cigarettes, or well-advertised hot lines such as those successfully implemented in California which provide counseling and make referrals)

4) **Clinician Education**. Some portion of cessation and education money needs to go to teach clinicians (nurses and doctors) and managed care plans as to how to encourage smoking cessation.

5) **Matching Funds**. Whenever possible means to provide matching funds for private or local initiative should be employed, instead of creating and funding entire programs in order to help stretch Settlement dollars (e.g., by reaching more individuals and/or eliminating current limits), encourage innovative new strategies, and complement current work without supplanting it. Careful limits should be set for the kinds of work that will be funded (e.g., in planning ASSIST, it was determined that the program would not pay for cessation, but would educate to stimulate a demand for smoking cessation services that is filled by the private sector). This could use Medicaid/Medicare as a model)

6) **Public/Private Partnerships**. Develop partnerships (intergovernmental and public/private) whenever feasible disseminate information and provide services.

7) **Education Campaigns**. Implement new educational and public relations campaigns

8) **Non-nicotine Replacement Techniques**. Implement results of promising research on non-nicotine replacement techniques that currently are under study.

9) **Eligibility**. Define eligibility requirements for (Federally supported) services.

B. Research Agenda

1) **Pursue Innovative Strategies for Prevention and Cessation**. Study replacement products (other than nicotine-replacement) as well as social and psychological methods.

2) **Market Analysis of Successful Private Sector Cessation Programs/products**. Government does not necessarily need to deliver cessation products and services itself, since successful prevention and cessation education campaigns may create a market for cessation services sufficient to attract private investment (e.g., nicotine-replacement). Market analysis is needed to test this hypothesis.

3) **Analysis of Affordability.** Can youth, minorities and lower socioeconomic groups (i.e., those populations at highest risk) afford nicotine-replacement and other smoking cessation products or strategies as they are developed?

V. SUFFICIENCY OF SETTLEMENT FUNDING

[Need some analysis and fact-checking here]

Not enough funding if all smokers who want to quit do it at the same time. (e.g., need a minimum of $500-600 per person for nicotine replacement, without considering counseling - this Settlement provides only $100 per person)

If there are 50 million smokers who all want to quit at one time at a cost of $1000 per smoker, it would cost $50 billion. However, if assumptions are relaxed to reflect more likely scenario that not all smokers would desire to quit right away, then the amount provided in the Settlement is not necessarily inadequate, particularly when the decreasing numbers of new smokers are taken into consideration. It must be borne in mind that, most likely, we will not be having to pay all costs for cessation for each smoker - that many of the costs are incurred by the smoker, or are free (e.g., strong enough desire to quit without formal therapy or other intervention)

Would need a total of $2 million per state per year to fund an ASSIST-like program (which currently covers 17 states (coupled with IMPACT all states and D.C.?). Therefore, $125 million would be sufficient) - even at that, it would only budget pennies per capita, and successful programs like California and Massachusetts provide several ($11) dollars per capita. However, this would fund only a portion cessation intervention programs--the money would be leverage for state (and private?) matching funds.

VI. APPROACHES FOR FLOW OF SETTLEMENT FUNDING/OTHER FUNDING MECHANISMS

A. **National Insurance Program**. A national program could insure one population (smokers) for one indication (smoking cessation).

B. **Increased Funding to Medicaid and Medicare**. Funds could be applied to smoking cessation benefits. Currently only 6 states have funding for smoking cessation under Medicaid, and none under Medicare.

C. **Private Nonprofit Entity**. This organization could to manage funds at the national level with funding flows to state and local levels. The ASSIST/IMPACT infrastructure and funding could be used for a national campaign coordinated with a strong state and local component.

July 11, 1997

Tobacco

To: Workgroup, Children's Health Insurance and Other Investments

From: Lynn Cates, ASPE

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Please let me know if you will be involved in the subgroup drafting the final report. Subsequent drafting will probably involve carving-up the document and assigning sections to different office.

Please bring to the meeting today a rough estimate of costs for any options you have proposed.

If you have any questions, please contact me at:

Phone (202) 690-7996
E-mail LCATES@OSASPE.DHHS.GOV.

Thanks

DRAFT (July 11, 1997)

CHILDREN'S HEALTH INSURANCE AND OTHER HEALTH INVESTMENTS

Workgroup Report

INTRODUCTION

The charge of this workgroup is to devise a menu of options that would be appropriate for Department spending of the Tobacco Settlement's unallocated funds (approximately $100-200 billion). These funds represent the residual of the Settlement funds and the total amount is unpredictable for several reasons. First, funding for health projects will compete with civil judgements. Second, it is to be assumed that the states will claim at least a portion of these funds, because one of the reasons the states' attorneys general negotiated the Settlement was to obtain reimbursement for tobacco-related Medicaid expenses. Further, if the Settlement's goals of reducing tobacco use are successful, less money will be available in the future. Finally, it remains unclear whether or not the funds in the Settlement will be tax-deductible.

Options are not necessarily limited to those which are tobacco-related or Medicaid-related, but it is felt that since those are the two most important factors leading to the Settlement, projects related to either will be more likely to be endorsed.

GENERAL ISSUES

- Who should distribute the funds?
  (i.e., what proportion should be under federal control?)

- How should funds be distributed?
  (e.g., direct funding versus via government - and, if government, at what level - versus a combination)

- Targeting of funds
  (i.e., who should receive benefits from these funds?)

- What proportion of the funding should be devoted to tobacco-related conditions?

- How much of this money should be spent versus set aside to earn interest?

- Importance of not supplanting current funding (maintenance of effort)

- Accountability and cost-effectiveness of efforts

- Interrelationships among Settlement-funded programs and between Settlement-funded programs and currently available programs

PRIORITIES FOR FUNDING

It is anticipated, and highly desirable, that most of these options can be coordinated with each other, and with existing programs, for maximum impact. Further, they can all be designed to build upon a "base service" and primary care.

1. Public Health

- Safety nets
  Especially community health departments

- Infrastructure investment

- Public health training
  Including epidemiologists

- Information services
  Including monitoring, surveillance, and data systems
  Data collection, analysis and dissemination

- Prevention and health promotion
  (e.g., Healthy People 2000 and 2010)

- School- / community-based health education programs to integrate health care promotion, prevention and nutrition education and provide comprehensive education across diseases

- School- / community-based health centers to integrate health care services with education about health care promotion, prevention and nutrition

- Substance abuse and teen pregnancy prevention programs
  (e.g., combine programs for sex education with those for tobacco, alcohol and drug abuse)

- Environmental health
  Including environmental tobacco smoke

- Primary care needs for special populations
  (e.g., birth defects, HIV, etc.)

- Raising eligibility for Medicaid
  (e.g., up to 150-185% poverty for children in all states)

- Research to prevent non-tobacco related drains on Medicaid
  (e.g., birth defects, HIV)

- Dental services for adults and children

- Injury and violence

- Special health care needs of Indian tribes
  (e.g., a relatively small amount of money could have a major impact on diabetes programs)

2. Child Health

- Insurance
  It may be that sufficient funds will have been targeted to children's health insurance if the Senate's $8 billion is added to the $16 billion already proposed. However, these funds could be used to augment the program by funding relatively expensive outreach to the very hard to find populations, and increasing eligibility (e.g., up to 150-185% FPL).

- Link children to health services
  Especially high risk infants and children

- Integrate child support, children's health insurance and health care delivery
  Build infrastructure

- Expand the range of "T" in EPSDT
  Improve treatment delivery for all services, with particular emphasis on mental health/substance abuse, without supplanting current funding

- Health care services for non-Medicaid eligible low income children

- Screening for preventable childhood diseases / disabilities

- Integrate prenatal care with longitudinal follow-up of children
  (e.g., school-readiness)

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  Community after school programs with a link to health and nutrition. There is a real crisis and a lack of d\funding for those kinds of program. They can be tied to school cessation programs and community efforts. In the past child care has been more recreational, but there is an urgent need to make it more health and nutrition-related).

  Important target populations that currently are being ignored are middle school students and adolescents.

Babies are another important target population. About half of state require women with children under the age of one year to return to work (some as soon as 12 weeks). These babies are in high risk families already, and there are no provisions for child care. This should probably be coordinated with a prenatal component.

3. Adult Health

- Respite benefits
  Particularly for adults with disabilities due to tobacco use or ETS
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- Home / community-based waivers for conditions related to smoking
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July 11, 1997

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Tobacco

10 July 1997

NOTE TO: Gary Claxton, ASPE

From: Lee Wilson, SAMHSA

Subject: Tobacco Price Elasticities

I am attaching a revision of document we prepared on price elasticities a few months ago. It hasn't been written to address specifics around the proposed settlement, however, it does give a pretty succinct presentation about what is known in the field.

Let me know if this is helpful and/or whether you would like for us to make some edits. I will be out of town through Monday morning, but I will be retrieving my voice-mail while away. My number oi 301-443-6085

Analysis of Tobacco Price Elasticity Research

From the literature on the price elasticities of cigarettes this review, the following conservative estimates of price elasticities by age group for cigarettes are shown in the table below. The summarized results are quite robust across studies:

Age Group	Total Elasticity	Smoking Rate	Quantity per Smoker
12–19	-1.2	-0.70	-0.50
20–25	-0.90	-0.55	-0.35
26–35	-0.45	-0.25	-0.20
36–74	-0.40	-0.20	-0.20

Based on these studies, the rate of smoking may be distinguished from the quantity of cigarettes consumed by smokers. For youth smoking rates the reductions result from decisions not to start smoking (reduced initiation rates), while with adult smokers the reductions are due to decisions to quit smoking (quit rates).

For smokeless tobacco, the price elasticity for those in high school is -0.60 (-0.40 for smoking rate and -0.20 for smoking quantity). For older groups, no studies are available, but based on the age-price elasticities for cigarettes we estimate the price elasticities for smokeless tobacco to be -0.55 for those 20–25 and -0.35 for those 26 and older. Researchers note that an increase in cigarette taxes, without a commensurate increase in taxes on smokeless tobacco, leads to an increase in use of smokeless tobacco.

Additional findings include:

- The projected elasticities are based on a percentage increase in tobacco prices. As tobacco taxes are unit based and not price based, the effect of tobacco tax increases is impacted by tobacco industry decisions regarding tax "pass through" policies on price and on "erosion" over time because of increases in the CPI. Overall, the percentage increase in tobacco prices due to tobacco taxes will likely diminish over time, with resultant diminished effects in the projected elasticities.

- Short-term effects (within 1 year) differ from long-term effects (within 3 years). When the increase in price is long-term, the elasticity is found to be greater. For example, for adults, the elasticity in the first year following a tax increase is -0.30, but after 3 years the elasticity increases to -0.60.

- Education and/or income appear to impact elasticities. Those with higher education/income are unresponsive to price, while those with lower education/income are more responsive to price (-0.60).

- There are presently too few studies of women to establish differential price elasticities for men and women.

- The studies establish that price differentials between a state and neighboring states may be an important determinant of demand. For most states, however, this variable does not have a substantial effect.

- One study finds that as price goes up, smokers substitute toward higher nicotine cigarettes. While this implies that the price effect on quantity smoked would overstate the expected health benefits of reductions in smoking quantity, it does not alter the expected changes in initiation and quit rates.

- The studies do not provide estimates for the effect of introduction of lower priced generic brands of tobacco in the marketplace following a tax increase.

As a final note, there is evidence that the tobacco industry has been creative in reducing the impact of mandated price increases on the actual price of tobacco paid by the consumer. Therefore, the price elasticities provided above, while based on the research to date, are overly optimistic, especially as to long-term effects. Related research and modeling have been performed in the area of alcohol pricing and elasticity which supports these conclusions. This research has shown that projected price effects over time were overstated, and significant reductions in effects had to be factored for the model to successfully project historical patterns.

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Memorandum

tobacco

To: Sarah Bianchi
Tom Freedman
Jeanne Lambrew
Mary Smith
From: Kevin Brown
Date: September 25, 1997
Subject: Tobacco settlement-Senate hearing

Senate Labor and Human Resources Committee, DSOB 430, 10:00 a.m.

Senators in attendance: Jeffords (chair), DeWine, Hutchinson, Gregg, Harkin, Wellstone, Frist, Murray, Reed

Witness: Donna Shalala, Secretary of Health and Human Services

Shalala began by outlining the 5 principle parts of any tobacco legislation announced by the POTUS last week. She stressed that we must get national legislation right the first time, and also that government institutions/agencies may have to be strengthened in order to carry out the settlement. She also reiterated that current FDA guidelines regarding nicotine should be kept the same and included as part of the settlement in order to make them more clear. The Secretary stressed throughout the entire hearing, that the main purpose of this legislation should not be about money, but about reducing teen smoking. She announced that the Vice President would take the lead in encouraging bipartisan support for the legislation.

JEFFORDS: Questioned whether the POTUS's announcement should be viewed as a separate framework from the settlement and also questioned why the administration had not introduced legislation. Shelala reinforced the notion that the POTUS's 5 core principles HAD to be at the center of any legislation that the administration would support and that the administration did want to work with Congress on developing the legislation. Later in the hearing, Jeffords also questioned whether or not the agreement would fall through if changes were made and the companies pulled out. Secretary indicated that the companies are not fragile and she believed there would negotiate with Congress.

WELLSTONE: Asked if the Secretary saw any way that the U.S. could take the lead in reducing youth smoking around the world. She indicated that any program abroad should reflect our domestic program and mentioned working with such groups as WHO and the World Bank. Wellstone also said that he had heard on NPR that rising cigarette prices results in inelastic demand and asked what the effect of a price increase would be. Shalala answered that studies have shown that a 10% rise in price will drop smoking by 7%. She stressed, however, that this (price increase) was only one small part of the solution and is designed to work with all of the other initiatives to reduce teen smoking.

GREGG: Began by saying that he did not understand where the actual legislative language was going to come from, and that it was certainly not going to come from the Hill. Went on to ask whether the FDA currently has the authority to ban tobacco use altogether. Finally, Shalala admitted that the FDA could currently ban tobacco/nicotine under current regulations and said that those regulations must be kept in tact, but that there were no plans for such a ban. Commented that the provision for farmers seemed to smell like politics and went on to ask if convenient store owners should be compensated since they might also lose revenue. Shalala stated that it was very important to consider the situation of the farmer and that their views should be considered. Gregg stated that farmers are subsidized by the government and this was inconsistent if we were also stating that people should quit smoking.

HARKIN: Reminded Gregg that tobacco farmers were not subsidized, and said that it is a no-net cost program. Harkin asked why they could not get a copy of a treasury department audit that showed if and how much tobacco companies profit from price increases. Harkin asked the chair to obtain that document. Stated that we were in fact trying to eliminate tobacco use in this country (in response to Shalala who said FDA was not trying to eliminate tobacco). Harkin went on to say that our end goal was to eliminate its use. Stated that the $1.50 increase needs to happen more quickly in order to have a greater effect.

REED: Asked if the $1.50 increase will be a windfall for companies. Shalala stated that this should be looked at, however, the main point is to reduce youth smoking!

ENZI: Indicated that issues should be looked at such as the problem smoking causes Medicare/Medicaid. Secretary Shalala stated that the number one priority was to reduce smoking now, and then in the future associated medical costs will decrease.

MURRAY: Appreciated the POTUS's announcement last week. Asked how the settlement would be carried out? Shalala stressed that FDA should be given the resource to carry out, however, other agencies such as CDC, NIH etc. should also have roles. Also stated that the companies must have powerful economic incentives in order to have good reason to help reduce youth smoking.

DEWINE: Stated that he was disappointed that the administration has not introduced a bill and indicated that it was going to be very tough to create a bill without the administration due to its complexity, etc. Shalala stressed that Congress WILL have the help of the administration in a bipartisan way. DeWine asked about holding individual companies responsible if their brand was being smoked more by youth. Shalala indicated that this could be done by brand and company.

FRIST: Cited a CBS Poll that said the government does not have the ability to reduce teen smoking. Asked what assurance(s) can be given to the public that the government can. The Secretary said that it was not just the government's responsibility, but everyone else as well. It takes all aspects of the settlement to accomplish the goal. Frist asked how far the FDA should go to regulate nicotine. Shalala said that there were no plans to manipulate nicotine levels, but there must be more research. She stated that as science changes, we must be able to make changes to the current policy. Frist also praised the POTUS's inclusion of farmers in his statement. The Secretary referred questions as to specific help for farmers to Sec. Glickman. Shalala said it was time that everyone come together on this settlement: farmers, Congress etc. Frist ended the hearing by asking if consumption of tobacco products would be referred to the criminal world/black market. Shalala said that the settlement focuses on youth, therefore, it does not have black market implications.

SUMMARY:
Three main issues were continually brought up during the hearing. The first was the lack of specific legislation offered by the administration. Several Senators indicated that this was a major stumbling block and made passing the settlement much more difficult. The second issue was in regards to FDA. These questions revolved around how much control FDA would have and what its responsibilities would be. Secretary Shalala stressed that it was very important that the legislation maintain FDA's current status in relation to the control of tobacco. The third issue that got quite a bit of discussion was the proposed inclusion of farmers. Some Senators questioned this and thought it might be sending the wrong message. The Secretary responded that it was very important that the concerns of farmers be heard since they were not at the table when the settlement was drafted. Throughout the entire hearing, Secretary Shalala reinforced the idea that we are going to have legislation because of one reason, and that is to reduce teen smoking.

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to 4cc00

What's Behind Curtain Number Three?

The public discussion of the proposed national tobacco settlement has thus far been profoundly and dangerously confused. And the confusion can be found in ample supply among both the supporters and the opponents of the settlement.

Supporters of the proposal can be heard [all across the country, but particularly in Washington,] reminding anyone who will listen that, to date, cigarette manufacturers have never paid a penny in civil liability damages, even though smoking plaintiffs have brought scores of lawsuits over the past fifty years. Compared to plaintiffs' dismal courtroom record, the argument goes, the settlement figure, $368.5 billion (that would be 36.85 trillion pennies), looks pretty good.

By making the comparison in that way, settlement supporters have, in effect, asked policy makers and the American public to play a gargantuan game of "Let's Make a Deal." Behind curtain number one is a pile of money bigger than any of us has ever imagined. Behind curtain number two is nothing. Not one penny. Framed that way, the choice is a no brainer.

It is unsurprising that the deal's supporters would see the choice in such stark terms. After all, many of the proposal's architects are state-hired tort lawyers, whose success in their own day-to-day representation of clients is measured primarily by the size of the prize. In the trenches of tort warfare, success means winning (or settling for) the most money possible. Thus, if we, the American public, see ourselves as the "clients" of these dealmakers, it would appear that we owe them praise and gratitude for making our choice so easy.

The most influential opponents of the settlement, on the other hand, recognize that the decision is considerably more complicated than simply assessing the size of the settlement. These critics insist that the essential question is this: How well would the proposal serve the goal of "public health"? Although they have not carefully defined precisely what they mean by the public-health goal, they have made clear their view that, however the public-health goal is defined, the settlement proposal as currently drafted would not achieve it. The principal complaint is that under the current proposal too many limits would be placed on the FDA's power to regulate cigarettes, including the level of nicotine in cigarettes. Many of the public-health opponents of the proposal, however, have indicated a willingness to "sign on," if the proposal is revised to strengthen the FDA's role. And some would be willing to accept such a revised proposal even if it would severely weaken tort law. Sacrificing tort litigation for the sake of public health is a worthwhile trade. As Dr. Koop recently put it, "I don't believe we've gotten that much from litigation."

In sum, critics and supporters of the settlement share several key premises, which seem to be dictating the terms of the policy debate. First, both sides assume that the primary purpose of liability law in this context is simply to transfer money to compensate those injured by smoking. Second, both sides seem to agree that civil liability laws have, to date, failed to serve that goal, --a goal that, in any event, pales in significance when compared to public health goals. Finally, both sides agree that FDA regulation could accomplish the truly important goal of public health. Each of those premises is, in our view, false. And here is where much of the confusion lies.

The primary goal of products liability law is *not to compensate plaintiffs*. Products liability law is, according to the vast majority of legal scholars, a regulatory mechanism — an extremely powerful but often misunderstood means of forcing parties to behave properly. The transfer of money from defendant to plaintiff in any given products liability case is, in other words, not necessarily an end in itself; it is a means to an end. In policy-wonk speak, that end is the correction of market failures by internalizing costs that consumers either do not fully appreciate or externalize to others. Put less technically, the goal of products liability law is *public health*.

Those who would sacrifice tort law to bolster FDA authority implicitly assume that the public health benefits of a stronger FDA would outweigh the public health costs of a weakened tort system. But that assumption has been largely unexamined and is, in our view, highly questionable. However one wishes to protect public health, it *should* attempt to respond to the sorts of market failures mentioned above. And although FDA intervention in the form of command-and-control regulations is one potential response to those problems, it is probably not the best response.

Over the past two decades, the clear trend in regulation has been away from command-and-control type rules and toward incentive-based systems, which require regulated industries to pay the costs that they cause and then leave it to individual firms to determine what to do about those costs. That trend, which has been endorsed by President Clinton, reflects an emerging scholarly consensus that incentive-based — sometimes called "market-based" — regulatory systems are often superior to other approaches because they harness the power of the market to generate the desirable outcomes and do not rely on regulators to attempt to identify and require those outcomes. Whereas command-and-control regulations seek to prohibit or discourage certain market outcomes, incentive-based regulations seek to eliminate the underlying market failures that may give rise to undesirable outcomes.

Strikingly, however, public health advocates seem more interested in treating symptoms through command-and-control regulations than they are in treating the underlying disease through one or another form of incentive-based regulation. After all, products liability law, properly understood, is one type of incentive-based regulatory system. And the claim that we "have not gotten much" from litigation is belied by the fact that we are having this debate. While it is true that liability laws have yet to produce a penny in damages for any individual smoking plaintiff, it is also true that the pressure brought by the threat of liability is largely responsible for the very settlement proposal under discussion, which, as we have already noted, would yield a train load of pennies. Moreover, an important reason why tort law has not been even more successful is that smoking victims have been repeatedly tripped up by hurdles intended for cigarette manufacturers and erected by administrative regulators believing that they knew precisely how to correct one of the most deadly market failures in history. The 1964 warning requirements are a perfect example. [SEE PAPER FOR THIS AND OTHER EXAMPLES.] Obviously, the source of the problem is precisely what the economists have concluded justifies incentive-based regulation — the regulator's lack of knowledge . . . . In light of this history, David Kessler recently admonished: "The tobacco industry has always been able to get around or hurdle over measures we set up to try to stop them . . . to make victories of steps we thought would set them back[.]" "We don't want that to happen again here." We completely agree. And it is for that reason that policy makers should be considering strengthening rather than abandoning products liability law, making it easier rather than harder for smoking plaintiffs to bring tort claims against cigarette companies.

Although the anti-tort sentiment in this country may be too strong to overcome in this context, that is no reason to abandon the goals of incentive-based regulation. To the contrary, policy makers should refocus their attention on incentive-based regulatory alternatives to the current proposal. For example, a system loosely modeled on the existing worker's compensation program — call it a "smoker's compensation" system — could, if properly designed, internalize the costs of cigarettes to manufacturers and thus to consumers. Such a system would, among other things, provide manufacturers a strong incentive to manufacture safer cigarettes and to sell to less risky consumers. In addition, it would require that manufacturers price cigarettes to reflect their relative risks. At the same time, it would reduce litigation costs and uncertainty for manufacturers. In light of the potential benefits of incentive-based regulation, we urge Congress and the White House to do what is clearly the right thing: Slow down and carefully consider all the options.

It is a mistake to view liability law as simply a method for compensating injured plaintiffs. It is wishful thinking to believe that the FDA can accomplish much more than has previously been accomplished through command-and-control administrative regulation. It is just wrong to assume that tort law has accomplished nothing to date and is incapable of achieving public health goals in the future. It is foolish to favor command-and-control regulation of cigarettes by the FDA without fully considering the regulatory power of tort law or other incentive-based approaches. In short, if we're going to make a deal, it would be a serious mistake to enact any tobacco legislation without taking a good long look behind curtain number three.

[Jon Hanson and Kyle Logue are law professors at Harvard University and University of Michigan, respectively. Their law review article, entitled "The Costs of Cigarettes: The Economic Case for Incentive-Based Regulation" will be published by the Yale Law Journal *in March of 1998.]*

Presentation Notes for Harvard Law School Conference on Tobacco Settlement Agreement: Part I

July 31, 1997

Jon D. Hanson
Harvard Law School

Kyle Logue and I have been working for several years on a manuscript about tobacco manufacturer liability. For obvious reasons, we've been working especially hard in the last six months.

We think we have something worth saying on this question, though we recognize that persuading others of that may be especially difficult in light of recent events. The settlement proposal has had the effect of solidifying many people's opinions on the questions that we are exploring. Moreover, because we are latecomers and because our arguments are unlike any that we hear being made by others, we expect that our ideas will probably have to overcome some significant presumption against them.

Here's the manuscript! We hope that volume counts for something in this debate. Obviously, we can only provide you a sample of our arguments. But we hope that by doing that much, we might begin to destabilize what we perceive to be a growing consensus regarding what is good and what is bad about the proposed resolution.

To do so, we need briefly to describe a few key insights of two highly influential branches of, or literatures within, economics. The first branch that I will introduce you to is the economics of law, which, today, is clearly the dominant intellectual paradigm in tort theory and products liability theory. In his presentation, Kyle will introduce you to the second relevant branch of economics, sometimes referred to as the economics of regulation. Both of these overlapping literatures have been around for at least 30 years and have had an extraordinary influence on the way policy makers and analysts approach and attempt to resolve most policy problems.

Many practicing lawyers and public health experts likely have some loose familiarity with some of the language and insights of both of those branches of economics. Indeed, Kyle and I believe we have identified numerous ways in which both literatures fundamentally influenced the shape of the proposed tobacco resolution. We suspect, however, that the influence was sub-conscious or, in any event, confused. As we'll argue, the regulatory instruments and devices that the proposed resolution would employ are, roughly speaking, precisely the opposite of what the basic lessons of those literatures would suggest.

We've got our work cut out for us. First, we need to summarize some key insights of two vast economic literatures. Second, we have to show you how it is that the proposed resolution is, from an economic perspective, flawed and how it might be improved. And third, we need to somehow persuade you that the insights of economics are relevant -- indeed, central -- to the public health concerns that motivate many of you and that seemed to motivate some of the settlement negotiators.

There are two very broad questions that economists often ask when examining particular markets. The first, which I will be focusing on, is the question of *whether to regulate*. That question boils down to an analysis of whether and to what extent there are so-called "*market failures*" — that is, reasons why an unregulated market will not, by itself, lead to desirable