outcomes. The second, which Kyle will focus on, is the question of how best to regulate, if indeed regulation is thought appropriate.

Nearly half of our manuscript is devoted to showing that the market for cigarettes is encumbered by a variety of market failures, each of which tends to make consumers disregard risks that might otherwise alter their behavior. We describe three general types of market failures. First, we argue that smokers are *imperfectly informed* of the risks of smoking. We argue, for instance, that they are *optimistic* with respect to the risks posed by products — that is, they systematically underestimate those risks. Moreover, we show that even if consumers overestimate or accurately estimate the risks of cigarettes generally, they do not know the specific risks associated with specific brands of cigarettes. I'll make clear the implications of those conclusions in a moment.

Second, smokers do not take risks into account to the extent that they are insured for product risks through *imperfect first-party insurance* arrangements. Briefly, the argument goes like this: Consumers are insured through privately and publicly provided first-party mechanisms for at least some portion of the risks posed by cigarettes, and those insurers rarely adjust premiums to take into account consumers' smoking choices — choices such as whether to smoke, which brand of cigarettes to smoke, how many cigarettes to smoke. Insofar as consumers are insured and their insurers fail to adjust for consumption choices, consumers can disregard those risks of smoking. Finally, consumers will often not take into account the risk that their smoking injures *third-parties* — for example, in the form of second-hand smoker — because such costs typically are not borne by the consumers themselves.

We are by no means the first scholars to investigate the question of whether the market for cigarettes is well functioning. Numerous economists and policy-oriented scholars have asked that question, and most have concluded, contrary to our conclusion, that there are no significant market failures, and that, therefore, no regulation of the cigarette market is required. Much of what we do in the first half of the paper, therefore, is to rebut arguments of those scholars.

We will spare you the details or rebuttal for two reasons. First, the issues are too complex to develop in the little bit of time that we have. And, second, there is really no reason to review them here. After all, the proposed settlement is premised on an assumption that the cigarette market has several market failures, and that regulation is therefore required. For instance, it's pretty clear that the settlement is intended to deal with the problem of imperfect information. Similarly, the proposal assumes that there are insurance externalities; indeed, the AGs cases underlying the settlement can be understood as an attempt to correct for insurance that fails to make appropriate adjustments to take into account each individual insured's smoking status. Finally, there the settlement includes some provisions intended to help reduce the problem of environmental tobacco smoke.

OK, so on the assumption that there are significant market failures, I'm going to walk through an extremely simple law and economics model to demonstrate the public health consequences of the market failures and, then, the potential advantages of regulation.

Imagine a world in which cigarette markets are completely unregulated. Now imagine an individual consumer who is faced in that world with the following choice: "Buy and smoke a pack of cigarettes or do not."

$2.00 productions costs = nominal price
<u>$2.00 health costs</u>
$4.00 total costs

If the consumer decides to smoke the cigarettes, she faces the following costs: $2.00, equaling the nominal price or the purchase price of the cigarettes (reflecting the production and marketing costs), plus another $2.00, equaling the present value of the future health-related costs to herself and to others associated with smoking those cigarettes.

Ideally, a consumer would purchase a pack of cigarettes if and only if she valued a pack at $4.00 or higher. If the consumer fully took those costs into account — or, as economists like to put it, "internalized" those costs — that would be the result. Consumers would not purchase a pack of cigarettes if they did not value it at at least $4. Assume, however, that, owing to the presence of imperfect consumer information, imperfect first-party insurance, or third-party effects, the health-related costs of smoking are not "internalized" by smokers — that is, the $2.00 of costs has no effect on the consumer's decision to smoke. As a result, the consumer in our example, when making her smoking decision, would internalize only the $2.00 purchase price so that, even if she valued the cigarettes at only $3.00, she would purchase and smoke the cigarettes.

That result would have several undesirable public health effects. For example, each smoker would smoke too many cigarettes. For instance, when the consumer purchased the pack of cigarettes in our example, there would be a net social loss of $1.00 equaling the difference between the consumer's total valuation and the total social cost of the pack. At the margin, every smoker would be consuming more cigarettes than they would if forced to take into account all the costs. (Indeed, some, perhaps all, would quit if forced to bear those costs.)

For another example, manufacturers would invest too little in making their products safer. Here's why. Suppose that the manufacturer could completely eliminate the $2.00 per-pack risk by investing an additional $1.50 per-pack in safety measures. Obviously, the desirable outcome would be for the manufacturer to make the investment and thereby eliminate the risk associated with the cigarettes.

$2.00 basic production costs
$1.50 precautions
<u>$0.00 health costs</u>
$3.50 total costs = nominal price

If the manufacturer made the investment to eliminate the risk, the total price of a pack of cigarettes would then be (adding the $1.50 in safety investments to the production costs of $2.00) $3.50, which would also be the nominal price charged to consumers for a pack of cigarettes.

Under our assumptions, however, in the absence of regulation, the manufacturer would not invest the $1.50 in risk reduction, because doing so would cause the manufacturer immediately to go out of business.

$2.00 basic production costs
$1.50 precautions
<u>$0.00 health costs</u>
$3.50 total costs = nominal price

$2.00 productions costs = nominal price
<u>$2.00 health costs</u>
$4.00 total costs

If the manufacturer made the investment, consumers would have to pay a $1.50 increase in the nominal price of cigarettes, but, by hypothesis, they would not take into account the $2.00 reduction in risks associated with the additional cost. Thus, consumers would prefer to purchase cheaper but "unsafe" cigarettes (the ones produced by manufacturers who do not make the $1.50 investment in safety expenses). After all, who wants to pay $3.50 for a product that is, in effect, indistinguishable from a product that costs only $2.00.

Thus, absent regulation, the market acts as the enemy to public health — it leads manufacturers to invest too little in product safety and consumers to consume too many unsafe cigarettes.

OK, now let's consider the potential benefits of regulation. Specifically, I'll imagine a legal regime that makes cigarette manufacturers pay for all the damages caused by their products. Such a regime would be a form of what political scientists and economists call an *incentive-based regulation*. The significance of that characterization will become apparent in a few minutes when, Kyle details the distinctions among different types of regulatory approaches. As we'll see, the beauty of *incentive-based regulation* is that it forces manufacturers, and in turn consumers, to take into account the total costs of cigarettes.

Going back to our example, if cigarette manufacturers were made to pay for the $2.00 in social costs of cigarettes, they would raise the price of cigarettes to reflect the total costs.

$2.00 productions costs
<u>$2.00 health costs</u>
$4.00 total costs = nominal price

Given that consumers would perceive this increase in the nominal price of cigarettes, competitive pressures would lead manufacturers to invest the $1.50 per pack necessary to eliminate the $2.00 of costs.

$2.00 basic production costs
$1.50 precautions
<u>$0.00 health costs</u>
$3.50 total costs = nominal price

Thus, in the long run, the nominal price would be $3.50 per pack. Because the nominal price would equal the total real price, a consumer would purchase a pack of cigarettes only when the benefits to her of that pack exceeded the future costs of that pack to that smoker and to others. So, for example, our consumer from earlier who valued the next pack at only $3.00 would not buy under an incentive-based regulatory regime, because the price would be $3.50.

Now that you have some idea of how an incentive-based regulatory regime would work, let me describe several other beneficial effects of such a regime. So long as manufacturers were bearing the total costs associated with their products, they would have a significantly reduced incentive to mislead consumers with respect to the risk properties of cigarettes. Manufacturers would have to pay for the costs that they are understating and, in that sense, would be bonded. Insofar as they would have to put their money where their mouth is, they would have a significantly reduced incentive to understate risks. Moreover, even if they understated the risks, they would still have to charge a price that would reflect true risks. The price would counteract false claims.

Similarly, cigarette manufacturers would still want to target consumers, but their motives in targeting consumers would be very different. Under an incentive-based regime, manufacturers would seek to attract low-risk smokers, other things equal. There are a number of ways in which consumers may be low-risk. Some consumers may be more likely, other things equal, to quit smoking before suffering many of the ill-health effects of long-term smoking. There is some evidence, for example, that quitting rates increase as education levels increase, other things equal. Some groups may be less likely to suffer serious ill health effects of smoking. For instance, the younger a person is when he or she starts smoking the worse the long-term health consequences of smoking, other things equal. Thus, under an incentive-based regulatory system, manufacturers would not only lose some of their incentive to target kids, they might have an incentive to discourage kids from smoking.

Now, we understand that most public health advocates are unaccustomed to thinking in these terms. Some have the view, for instance, that smoking should be prohibited, or that the concept of safe cigarettes is oxymoronic. Part of what influences them, however, is the widely held perception that nothing that cigarette manufacturers ever do or say can be trusted. Our argument here is that the reason that cigarette manufacturers lack credibility is because they have never been required to pay for the costs that their products cause. They have never, in other words, had to put their money where their mouth is. If, however, an incentive-based regime were implemented, the market would become the friend, not the enemy of public health.

Finally, you might be interested to know what the costs are that we believe cigarette manufacturers would need to pay for if an incentive-based regulation were adopted. Kyle and I spend a lot of time in the paper calculating the per pack ill-health costs of cigarettes. As Table B in our portion of the handouts indicates, we estimate that the costs that cigarette manufacturers should be required to bear is, on average, around $7.00 per pack. As you can see in that table, some other economists have very different bottom lines than ours. Those economists conclude that manufacturers should have to bear few if any of the ill-health costs associated with cigarettes, because they conclude that there are no significant market failures in the cigarette market. A significant portion of our paper is dedicated to rebutting their arguments and showing why the market does fail and why, therefore, some form of regulation should be adopted. As high as $7.00 per pack may sound, we explain in the paper why it probably significantly understates the total per pack costs of smoking. On the other hand, we should also note that we are pretty confident that the per pack costs of cigarettes would likely come down significantly over time, inasmuch as the market creates an incentive for manufacturers to manufacturer safe cigarettes.

In sum, we think the case for regulation of the cigarette industry is extremely strong. Kyle will now discuss our views on how best to regulate that industry.

PRESENTATION NOTES FOR HARVARD LAW SCHOOL CONFERENCE ON TOBACCO SETTLEMENT AGREEMENT: PART II

July 31, 1997

Kyle D. Logue
University of Michigan Law School

Introduction

I will describe in very general terms the range of regulatory approaches to dealing with the market failures in the cigarette context, and I will summarize our argument for preferring one regulatory approach to the others. Finally, I will argue that the proposed tobacco settlement agreement chooses the wrong mix of types of regulation.

It will be useful to describe the range of regulatory approaches as three points along a continuum.

Command and Control ------------------------> **Performance Based** -----------------------> **Incentive Based**

The type of regulation that Jon described -- incentive-based regulation -- lies at one end of the continuum, and I will return to it shortly. But I will begin at the other end of the continuum and discuss what regulators and regulatory scholars call "command-and-control" regulation.

Under command-and-control regulation, sometimes called "input regulation," the regulator imposes specific requirements on the regulated firm. Essentially, with such regulation, the regulator -- Congress or an agency -- tells the regulated party how specifically to run some part of its business. For example, with the regulation of pollution, the regulator might prescribe specific steps that must be taken, specific technologies that must be employed, by manufacturers to reduce the level of pollution being emitted into the environment by the manufacturers' smokestacks. There are also many examples of command-and-control regulation in the tobacco settlement agreement. One of them, for example, provides that the FDA would have the authority to mandate "less hazardous tobacco products" if "technically feasible" and after following the normal rule-making process. In addition, the warning requirements and the advertising restrictions that the agreement would impose on manufacturers can also be understood as types of command-and-control regulation.

Under "performance-based regulation," by contrast, which falls somewhere between command-and-control and incentive-based regulation, the regulator gives manufacturers a target of some sort that the manufacturers are expected to meet. That target is sometimes called a "performance standard." The regulator leaves the manufacturers, however, to decide how best to reach that target. A performance standard, for example, might be a maximum quantity of pollution that a firm is allowed to emit from its smokestack. Under such a standard, the regulator would not specify the means by which the manufacturers must achieve that target. That decision would be left to the manufacturer. Failure to reach the target, however, would result in a fine or additional regulation.

In the tobacco settlement agreement, there are several performance-based standards. To name just one example, the agreement's "look-back" provision would set target levels of underage smoking that the industry would be expected to meet or else face a fine.

Scholars and policy makers tend to prefer performance-based regulation to command-and-control regulation. One alleged advantage of performance-based regulation is that it can create incentives for manufacturers to choose the best technology for achieving a particular regulatory target; and it gives them an incentive over time to develop better technologies. To put the point slightly differently, performance-based regulation, when compared to command-and-control regulation, reflects a greater degree of humility and skepticism with regard to how much the regulator can be expected to know about the cutting-edge technology in a given industry. So, for example, under performance-based regulation, if installing smokestack scrubbers is the best way to achieve the regulator's pollution targets, the manufacturers will install scrubbers. If, however, some other approach -- such as, say, using a different quality of coal in the production process -- would be a more cost-effective means of achieving the same goal, the manufacturer would have the flexibility to do that.

Jon and I agree with the assumption that, in the cigarette context, manufacturers generally can be expected to have better information on these sorts of questions than a regulator will. A strong argument can be made, however, that fully effective performance-based regulation requires the regulator to have all of the same information and cutting-edge expertise as command-and-control regulation requires. This is a complicated argument, which is spelled out in our paper. I don't have the time to review the argument here, but the core of it is suggested in the following question: How is the performance-based regulator supposed to choose the target level of performance? For instance, how is the EPA supposed to know how much pollution should be allowed? Or how is the FDA to know how many carcinogens (or what level of nicotine) to permit in cigarettes? Note the similarities between those questions and the questions that the command-and-control regulator has to ask.

Here I will simply make an assertion (which is defended at some length in the paper): choosing the appropriate performance standard requires just as much information as command-and-control regulation requires.

All of this is not to say that there are no advantages of performance-based regulation over command-and-control regulation. If there is a performance standard or target that is *assumed* to be desirable, performance-based regulation can be superior to command-and-control regulation as a means of achieving that standard, for the reason already described -- manufacturers have better information. In addition, if we know what the target standard is, then enforcement of such a standard is relatively easy (because of the ease of monitoring compliance) compared to enforcement of command-and-control regulation, where the regulator must constantly defer to the informational advantage of the manufacturer.

Now consider the opposite end of the continuum -- incentive-based regulation. That is what Jon described in his example: Manufacturers are forced to pay the total costs of their activities, which leaves the manufacturers to decide what to do about those costs, if anything. So incentive-based regulation does not, in any way, tell manufacturers how to run their business (as command-and-control regulation does). Nor does it require the regulator to choose the ideal regulatory target (as performance-based regulation does). It simply makes the industry pay its costs, and lets the market sort things out. Which the market would do. Once manufacturers have internalized those costs, competition among manufacturers would lead to safer cigarettes and reduced levels of smoking.

In sum, incentive-based regulation is generally superior to performance-based and command-and-control regulation because it can achieve those goals by relying on manufacturers, instead of on the regulators, to have the relevant information and to do the relevant cost-benefit analysis.

As we turn our focus to incentive-based regulation, consider one additional distinction between our analysis and that of the economists working in this area. To illustrate this distinction, however, I will need to introduce a bit more jargon and to draw a distinction between "ex ante" and "ex post" incentive-based regulation. Under ex post incentive-based regulation, the regulator waits until after the harm occurs and then imposes the costs of that harm on the particular manufacturer responsible for it. Thus the manufacturer, in making its initial production decisions, will anticipate the possibility of such ex post liability and will take into account the expected value of those liability costs. That is the cost internalization that Jon talked about. Under current law, we have a form of ex post incentive-based regulation: Tort law or products liability law. Tort plaintiffs who suffer harm caused by a product bring a lawsuit against the product manufacturer. A court (jury or judge) then determines the amount of harm that the product caused the plaintiff and forces the manufacturer to pay that amount to the plaintiff

Ex ante incentive-based regulation, on the other hand, tries to impose those same accident cost on manufacturers before the harms happen. The typical example of this type of regulation is a tax imposed on cigarettes that reflects the average per-pack external costs of cigarettes. What is interesting is that the excise tax seems to be the preferred form of regulation among most economists. Indeed, among the economists writing about cigarettes, it seems to be the only regulatory tool that is given serious consideration. Why do economists have this preference for excise taxes? It is because a tax supposedly requires less information on the part of the regulator than command-and-control or performance-based regulation does: Again, the idea is that the regulator can just measure harm and impose it on the manufacturer.

There are two general reasons why we disagree with economists about the efficiency advantages of excise taxes over the other systems, particularly in the cigarette context. First, it is very difficult to determine what the precise level of tax ought to be before the harm ever occurs. In fact, it probably requires all the same information that is required by fully effective command-and-control and performance-based regulation. (The argument to support that assertion can be found in our Article.)

Our second response requires a bit more explanation here, because understanding this point is necessary to understanding our critique of the settlement agreement, and it is a point that seems to have been missed by virtually everyone (even the most sophisticated policy analysts).

We call it the "unraveling" problem or the "averaging" problem. It stems from the fact that an excise tax, as economists understand it, is based on *average* costs or is fixed in amount. Such a tax does not produce incentives to make safer cigarettes. To the contrary, it creates incentives not to.

To see that point, let's return to the example Jon introduced. But let's assume that, instead of one manufacturer, there are ten, each with one brand of cigarette and each with 10 percent of market share. Now suppose that the average tax imposed on manufacturers was $2.00/pack, because that is the average health-costs they cause. The question is, under a tax that is based on average external costs, would manufacturers have an incentive to invest optimally in safety. The answer is no. Indeed, under such a regime each manufacturer would have a strong incentive to avoid making safety investments. This can be seen in our example:

$2.00 basic costs
<u>$2.00 tax costs</u> (average health costs)
$4.00 total costs

Now again suppose that for $1.50 an individual manufacturer could prevent the $2.00 of health costs that its product causes. That manufacturer would not invest in preventing those liability costs, because the liability costs it faces are basically fixed. In fact, in our example, the most tax-reduction benefit that a manufacturer can ever get from making safe cigarettes is 20 cents. $2.00 in health costs and 10 percent market share will always yield 20 cents in tax reduction. Thus, the manufacturer would only do so if the cost of prevention were less than 20 cents. And this outcome holds true irrespective of what the other manufacturers do.

Moreover, each manufacturer has a very strong disincentive to make such health-cost-prevention investments for the following reason. If any manufacturer makes the investment, and one or more of the others do not, then the manufacturer who made the investment would lose business. Go back to the example. If one manufacturer made the safety-improving investment, but none of the other nine companies did, that would reduce the tax to everyone in the industry to $1.80 per pack.[1] Thus, the new per-pack cost structures faced by the company which made the investment (A) and each of that company's competitors (B) would look like this:

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1 Why? Just do the math: 9 companies with $2 health costs each; and one company with none. Thus it would be $18 averaged over all 10 companies, leaving $1.80 per pack.

(A)	(B)
$2.00 basic costs	$2.00 basic costs
$1.80 tax costs (new average)	$1.80 tax costs
$1.50 prevention costs	
$5.30 total per pack costs	$3.80 total per pack costs

As a result, (A) would have to charge $5.30 per pack for its cigarettes, while the other manufacturers would be able to charge $3.80 per pack. (A) therefore goes out of business. Because all manufacturers ex ante see that this will happen to them if they invest in reducing the health risks of their cigarettes, no manufacturer would have an incentive to make such investments. And consequently, in our example, smoking-related health costs (and hence the excise tax) would remain at $2 per pack.

This is an extremely simple example. But economists have found that the result applies in numerous settings. Russell Hardin called this the problem of the tragedy of the commons. What is the solution?

One solution, of course, would be command-and-control regulation. Simply tell all of the manufacturers what safety investments to make and then monitor them to be sure that they do it. But if one thinks that command-and-control regulation is generally undesirable, and one prefers to rely more on the market and less on the regulator, one might choose some form of ex post incentive-based regulation, such as product's liability law, which forces each manufacturer to internalize the expected accident costs associated with that manufacturer's brand of cigarettes.

Under a products liability regime, in our example, if an individual manufacturer made the $1.50 per pack safety-enhancing investment, that company's own liability costs would drop by $2 per pack, regardless of what the other manufacturers did. Thus, all the manufacturers in the example would have an incentive to make the safety-enhancing investment.

Products liability law and tort law more generally are currently not the most popular tools for altering incentives. For whatever reason, many people simply do not trust juries to make the necessary determinations; and many also feel that tort law, compared to some other systems of injury compensation, is too costly to administer. If that is a concern, an alternative would be something like workers' compensation. We could call it **smokers' compensation**. Under smokers' comp, a claimant would bring their claim of smoking-caused harm to a fact finder (agency, administrative law court, or expert panel, but not a lay jury) who would attempt to determine the extent to which the manufacturer of the cigarettes consumed by the claimant should be forced to pay for the claimant's harms. The only factual question for the regulator would be causation. And once causation was determined, based on the best available scientific data regarding the link between cigarettes and various health conditions, the regulator would determine the manufacturer's level of payment by referring to a prescribed schedule of damages.

That is the outline of our argument for ex post incentive-based regulation of cigarette risks. Now let's take a moment to locate the proposed tobacco settlement agreement on the regulatory continuum we have identified. What we see is that the agreement is loaded with command-and-control provisions, sprinkled with severely limited performance-based provisions, and virtually devoid of incentive-based provisions.

Starting with the last first, the agreement dramatically reduces effect of products liability law and does not provide any effective replacement in terms of an ex post incentive-based approach. Examples of provisions affecting tort law include the elimination of punitives for past conduct and the elimination of class action lawsuits. Some say those and other such changes substantially reduce the likelihood that any tort suits will be brought, much less won, against the industry. (See remarks at this conference of Alan Morrison.)

In any event, whatever is left of tort law in the cigarette context will be largely ineffective in producing safer cigarettes because of the unraveling problem. All of the payments that the industry must make under the agreement are either based on market share or are fixed. Thus the plan contains no link between brand-specific harms and a given manufacturer's payments.

In addition, the agreement adopts numerous elements of command-and-control regulation. As I emphasized earlier, command-and-control is likely the *least* effective form of regulation, for two general reasons. First, it requires the regulator to have an enormous amount of information about the product, which information the regulator must inevitably rely on the industry to provide. Second, because the industry is the source of the regulator's information, it becomes relatively easy for the regulated industry to manipulate the process and avoid really having to internalize the costs of their actions.

The agreement also contains some performance-based regulation. But where performance-based regulation is used, there are substantial loopholes or the penalty amounts for failure to meet the standards are too low. (See Professor Jeffrey Harris's remarks at this conference.) In addition, the same unraveling problem that plagues the other payments under the agreement would also plague the penalties imposed by the performance-based provisions in the agreement.

Conclusion

It is worth reemphasizing that the mix of regulatory regimes chosen by the settlement agreement -- lots of command-and-control; some qualified performance-based; and virtually zero incentive-based regulation -- is precisely the reverse of what we would recommend. Moreover, it is worth noting that the choice of that mix of regulatory regimes was probably not an accident. This is because the mix of regulatory methods selected by the agreement, although precisely the opposite of the mix that would be in the public interest, is entirely consistent with the interests of the tobacco industry. The tobacco companies almost certainly prefer command-and-control regulation and performance-based regulation to ex post incentive-based regulation, especially to the extent the former include limits on the regulator's authority -- such as the requirement that before the FDA may mandate reduced nicotine levels (or reduced levels of "other harmful components") it must first show that such reduction "will result in a significant reduction of the health risks associated with such products," is "technologically feasible," and "will not result in the creation of a significant demand for contraband or other tobacco products that do not meet the product safety standard."

For all of these reasons, we recommend that the proposed agreement either be tossed out (and Congress start over from scratch) or substantially revised along the lines argued above. In the absence of comprehensive federal legislation in this area, we would recommend that the existing products liability system be used to create the necessary incentives to improve cigarette safety and to ensure that the prices of cigarettes reflect their full social costs.

CONFERENCE ON THE PROPOSED TOBACCO SETTLEMENT: SHOULD TORT LAW BE ON THE TABLE?

THURSDAY, JULY 31, 1997
8:30 A.M. TO 6:00 P.M. (BREAKFAST AND LUNCH SERVED)
HARVARD LAW SCHOOL
POUND HALL 101

Breakfast & Registration (outside Pound 101)	**8:30 - 9:00**

A Real-World Assessment of the Proposed Settlement

Introduction	**9:00 - 9:15**
Views from Public Interest/Public Health Perspective	**9:15 - 10:10**
MATT MYERS, Executive Director & General Counsel, Campaign for Tobacco-Free Kids	(20)
ALAN MORRISON, Public Citizen Litigation Group	(20)
Question and Answer	(15)
Break	**10:10 - 10:25**
Views from the Trenches *(5 min. each & roundtable disc'n)*	**10:25 - 12:35**

DAN BENSON, Kasowitz, Benson, Torres & Friedman (New York, NY), Counsel for Liggett

JOHN BROADDUS, Connerton & Ray (Washington, DC), National Class Counsel for class actions by multiemployer health and welfare funds

ELIZABETH CABRASER, Lieff, Cabraser, Heimann & Bernstein (San Francisco, CA), Chair, Castano Law Committee

DAN CHILDS, Johnson & Childs (Philadelphia, PA), Plaintiff's attorney in Kent Micronite filter cases

TOM GREEN, First Assistant Attorney General (Boston, MA)

DAVID KENTOFF, Arnold & Porter (Washington, DC), National Coordinating Counsel for Philip Morris

MEYER KOPLOW, Wachtell Lipton Rosen & Katz (New York, NY), Lead Negotiator for Philip Morris

SCOTT STRAND, Staff Attorney, Attorney General's Office (Minneapolis, MN)

NORWOOD WILNER, Spohrer Wilner Maxwell Maciejewski & Stanford (Jacksonville, FL), Plaintiff's attorney, *Carter v. Brown & Williamson* and related cases

Lunch (outside Pound 101)	**12:35 - 1:35**

Views from the IvoryTower

Introduction	**1:35 - 1:45**
Economic Considerations	**1:45 - 3:00**
JEFFREY HARRIS, Massachusetts Institute of Technology	(20)
JON HANSON, Harvard University	(20)
KYLE LOGUE, University of Michigan	(20)
Question and Answer	(15)
Other Policy Considerations: Part I	**3:00 - 3:55**
ARTHUR LICATA, Arthur Licata, P.C. (Boston, MA)	(20)
SUSAN KONIAK, Boston University	(20)
Question and Answer	(15)
Break	**3:55 - 4:10**
Other Policy Considerations: Part II	**4:10 - 5:05**
MARC GALANTER, University of Wisconsin	(20)
RICHARD DAYNARD, Northeastern University	(20)
Question and Answer	(15)
General Discussion and Conclusion	**5:05 - 6:00**

July, 1997

Dear :

I am writing to invite you (or a member of your staff) to a day-long conference on the issue of the proposed national tobacco settlement. The conference, entitled "Should Tort Law Be on the Table?," will take place at Harvard Law School, on July 31, 1997.

The conference is motivated by two striking features of the settlement negotiations and their aftermath. First, probably because of the secrecy and urgent pace of the negotiations, legal theorists and policy-oriented scholars have had little or no opportunity to weigh in on the matter. Second, perhaps reflecting the general anti-tort and anti-plaintiff-lawyer sentiment in this country, very little attention has been devoted to considering the implications of the settlement's tort law restrictions. The primary purpose of this symposium is to begin a balanced discussion of those implications, while there is still time.

Speakers will include some of the key players on both sides of the settlement negotiations, lawyers involved in related tobacco litigation, and policy-oriented academics with a demonstrated interest in the topic. Speakers will address the following sorts of questions:

- Is it appropriate to modify tort law and civil procedure for the benefit of a single industry?
- To what extent does the proposal discourage tort suits?
- Does the settlement go too far or not far enough in abrogating tort law?
- How, if at all, are tort goals different from "public health goals?"
- Are the *goals* of tort law being served by the agreement?
- If not, how might the proposal be amended to preserve tort law or to ensure that its goals are fulfilled?
- Who will end up paying for the settlement, and, from a tort law perspective, who should?
- What effect might the settlement have on the future of tort law as applied to other products?

The agenda is still being worked out, but it is very likely that there will be at least one round-table discussion among practitioners and a half dozen presentations by legal, economic, and policy-oriented scholars. Following the round table discussion and the presentations there will also be question-and-answer sessions in which speakers take questions from the audience.

Unfortunately, there is not adequate funding to pay for anyone's travel expenses. Still, I very much hope that you will attend and participate in what I expect will be an illuminating and important conference.

A block of rooms is being held for the Tobacco Conference participants until Monday, July 21 at The Sheraton Commander Hotel (800/535-5007 or 617/547-4800). There are other hotels in the area including The Charles Hotel (617/864-1200), The Inn at Harvard (617/491-2222), and The Double Tree Guest Suites (617/783-0090).

Please let me know whether you would like to attend by returning the enclosed form or by contacting Carol Igoe by phone (617-495-4863) or by e-mail (cigoe@law.harvard.edu) by July 23, 1997. Please be sure that your reply contains all the information asked for on the attached reply form.

Thank you very much for your consideration.

Sincerely,

Jon Hanson
Professor of Law

help support a global electronic clearinghouse and communications network to standardize, strengthen and facilitate the global exchange of tobacco-related information. Funds might also be employed to assist countries to participate in developing an ***International Framework Convention*** as recommended in May 1996 by the World Health Assembly.

In addition to international cooperative efforts and technical assistance, funds can be made available to conduct ***international research*** on tobacco policy, prevention effectiveness of developing country tobacco interventions, economic cost-benefits, health risks and outcomes, and macro-effects of tobacco agriculture and production. Official inter-governmental efforts should complement and be coordinated with those undertaken by non-governmental organizations (NGOs). There are many medical organizations (e.g., the American Cancer Society and the American Medical Association) as well as other NGOs (including the National Center for Tobacco-Free Kids, the Center for Communications, Health and the Environment and the Advocacy Institute) active in tobacco control and which could substantially increase their international contributions if additional funding were available. Indeed, funds could be employed as seed money for a new global coordinating mechanism for NGO tobacco control activities in the field.

Creation of an international fund would be integral to implementing a global tobacco control strategy. An initial **fund of $50 million** has been suggested. This would be increased as capacity and knowledge to conduct more aggressive and effective programs increases. In addition to stimulating, supporting and helping to implement tobacco control prevention activities, particularly in developing countries, and funding international capacity building, funds could be used to increase U.S. domestic capacity, including developing international tobacco control policies that are consistent with domestic tobacco control policies and training USG Foreign, Commercial and Agricultural Service employees stationed abroad regarding tobacco use and its adverse health effects.

Although HHS would continue as the USG focal point for international health issues related to tobacco, cooperation with the Departments of State, Commerce, Agriculture, Treasury and the USTR will be essential to ensure proper coordination in the development and implementation of comprehensive and science-based tobacco control policies. Representatives of these agencies would have a policy advisory role to ensure that fund resources are appropriately allocated in pursuit of global objectives.

Thomas L. Freedman
09/10/97 03:51:42 PM

Record Type: Record

To: Bruce N. Reed/OPD/EOP

cc: Mary L. Smith/OPD/EOP
Subject: Re: International tobacco

Paul's out, but he is telling international tobacco people that I'm writing you something.

In case you want them, here are three principles that can be gleaned by the international group's work.

1. Consistent with international trade, current and future Clinton Administration policy is to not interfere with foreign country's health efforts, but that American products should not receive unfair treatment based simply on the fact it is American.

2. We should make the efforts of our embassies etc. consistent with our domestic program. No efforts to increase the overall consumption of tobacco products.

3. We should participate in a global effort to share US expertise in the field of health and tobacco. NEC informally has endorsed the idea of greater participation. HHS has a $50 million suggested program and Summers would like to use the $50 million funneled through various international institutions. Currently, only a small amount of money, perhaps a million dollars, is devoted to this problem.

Did you see the Times editorial today on the issue?

Regards, Tom

DRAFT SPENDING OPTIONS FOR THE TOBACCO SETTLEMENT

OPTION	COST/YR ($ billions)	RATIONALE & LINK TO TOBACCO
RESEARCH		
Double Tobacco-Related Research	1.3	Contributes to finding treatments and cures for tobacco-related illnesses. Supplements the significant increase in base package.
21st Century Trust Fund	2 to 3	Builds overall research infrastructure and funds a broad range of biomedical research.
PUBLIC HEALTH		
Children's public health	0.2 to 0.4	Complements the Settlement's and the Administration's focus on children with programs like school-based health education & expanded prenatal care through Health Start or CHCs.
Tobacco-related illness initiatives	0.2 to 0.4	Funds prevention programs for tobacco-related illnesses like cardiovascular disease and cancer; or expand substance abuse programs since it is linked with tobacco use.
COVERAGE		
Pre-Medicare Buy-In	2 to 4 or more	Allows groups of people under age 65 to buy into Medicare since long-term smokers usually face barriers to buying insurance and are more likely to have illnesses that make them uninsurable.
Workers Changing Jobs	2 to 3	Makes insurance affordable as well as accessible through premium assistance. Job change is the most common reason why people lose health coverage.
Medicaid Children's Outreach	0.5 to 1	Gives states a higher Medicaid matching rate for enrolling uninsured children already eligible. Consistent with the Settlement intent to fund children's health coverage.
OTHER		
Farmers' Compensation	0 0.1 to 0.2	No-cost option: Tobacco industry agrees to purchasing minimums from domestic farmers. Cost option: Subsidizes farmers and communities to offset losses due to lower consumption.
International tobacco programs	0.05 to 0.1	Doubles World Health Organization tobacco control efforts.
FDA enforcement	0.1	Supplement funds in the Settlement to improve FDA efforts.
Child care initiatives	0.5 to 2	Complements the Settlement's and the Administration's focus on children through potential initiatives in the child care area (not yet specified).
Congressional set-aside	?	Sets aside a certain amount of funding for Congressional priorities, which could improve the likelihood of passage.
Budget offsets	2 to 5	Offsets the potential reductions in Federal & state tobacco tax revenue & possible increases in Medicaid costs.

Minimum funding

more

10.95 - 20.5

After School Program

Jerold R. Mande

06/26/97 11:19:14 AM

Record Type: Record

To: Thomas L. Freedman/OPD/EOP, Mary L. Smith/OPD/EOP

cc: Paul J. Weinstein Jr./OPD/EOP
Subject: FYI... Tobacco/Farmer Article

Farmers: Your move
Disastrous tobacco deal highlights leadership void

Lexington Herald-Leader
Thursday, June 26, 1997

Sucker punched, Kentucky farmers are reeling from a blow that was all the more debilitating because it came from a supposed member of "the tobacco family."

In the deal to make their legal exposure go away, cigarette companies abandoned positions that farmers and their congressional representatives had long defended for the companies.

The $368 billion settlement includes payments for "smoking-cessation aids'' but not a penny to help rural communities break their economic addiction to tobacco.

The exclusion of farmers is probably all the reason Kentucky's congressional delegation will need to try to thwart the settlement.

But what should farmers be demanding from the deal? And who speaks for rural Kentucky?

These are not rhetorical questions. Kentucky agriculture faces a crisis of leadership. Against the settlement backdrop, the vacuum stands out like a full moon on a clear night.

Does Gov. Paul Patton speak for agriculture? His idea of rural economic development is a new factory in every county. Kentucky's elected agriculture commissioner's vision ends at the next election.

The Kentucky Farm Bureau historically has taken cues from Philip Morris, which now has thrown in with smoking's enemies to protect a company that minimized its dependence on tobacco, through diversification, long ago.

Of the major farm organizations, the Burley Tobacco Growers

Cooperative Association has shown the most vision, but its leadership is dominated by older farmers and large landowners.

It's the younger generation of farmers whose future is on the line. Who speaks for them?

The Community Farm Alliance is too small to command much attention. The University of Kentucky has the same problems as the Farm Bureau and burley co-op.

Several ideas are floating around for what rural communities should seek from the settlement.

One school of thought wants to preserve the status quo by requiring the companies to keep paying tobacco farmers indefinitely.

Others see this as a chance to let farmers cash out of the troubling business of growing tobacco through a quota buyout.

Still others see a golden opportunity to extract a healthy down payment on a post-tobacco future.

There's considerable overlap among all three viewpoints. But can anyone say with any authority what the Kentuckians with the most at stake want from the settlement? We doubt it, but someone should start listening and speaking up.

Because you can stand stricken at the crossroads for only so long before becoming road kill.

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Clinton Panel Likely to Bless Tobacco Deal

By Jeffrey Taylor
And Hilary Stout
Staff Reporters of The Wall Street Journal

WASHINGTON – The Clinton administration task force reviewing the landmark tobacco settlement probably will recommend that the president embrace the deal, so long as it includes tougher penalties for cigarette companies, greater government authority to regulate nicotine and several other smaller changes.

Hoping to finish their review of the proposed $368.5 billion settlement next month, officials have narrowed their demands to two major areas: beefing up provisions asserting the Food and Drug Administration's ability to regulate nicotine and strengthening the penalties tobacco companies would pay if smoking by the young doesn't fall to targeted levels. The task force also will probably offer explicit recommendations for how the money should be spent, including calling for tobacco farmers to receive some compensation for anticipated reduction in demand for their crop. Moreover, the group may push cigarette companies to turn over more documents than the current settlement requires.

Officials cautioned that they aren't finished with their review and stressed that President Clinton will make the final decision on whether to support the settlement, which was negotiated by state attorneys general, representatives of public-health groups and Philip Morris Cos., RJR Nabisco Holdings Corp. and B.A.T Industries PLC.

The tobacco companies negotiated the deal to settle dozens of lawsuits filed by states to recover Medicaid costs for smoking-related illnesses.

Vice President Al Gore is said to be skeptical of the settlement and unsure that the tobacco industry can be trusted to hold up its end of the agreement. Nevertheless, officials said that even Mr. Gore isn't arguing that the settlement should be abandoned.

In one of the clearest signs that a deal is possible, administration officials said they probably can accept one of the tobacco industry's most important priorities – a provision barring smokers' lawsuits seeking punitive damages for the industry's past behavior.

It isn't clear whether the industry will fight the changes the administration plans to seek. At a briefing with reporters last week, two tobacco-industry representatives said they were willing to consider changes in the FDA provisions, but they defended the settlement's three prerequisites for any enforced reduction of nicotine: that such an action be proved to reduce health risks, that it be technically feasible and that it not lead to a Prohibi-

Please Turn to Page A16, Column 1

Continued From Page A3

tion-style black market in high-nicotine cigarettes.

President Clinton already has said that the black-market point is unacceptable. Administration officials said they plan to insist on legislation that strongly affirms the FDA's power to regulate cigarettes with a clear and explicit description of the agency's authority over nicotine.

The Teen-Smoking Campaign

The administration also is concerned about parts of the settlement that spell out penalties the industry would have to pay if smoking among teenagers isn't sharply reduced. The settlement prescribes a schedule of reductions, starting with 30% after five years and growing to 50% in seven years and 60% in 10 years. Tobacco companies would have to pay fines of as much as $2 billion a year if they fail to meet these targets but could deduct such payments from their taxes and could petition to get 75% of their money back if they prove they pursued all "reasonably available measures" to reduce youth smoking.

The administration plans a substantial reworking of the youth-smoking penalties. Officials probably will insist on eliminating the tax deduction and may prohibit or sharply restrict the industry's ability to apply for refunds. The administration also probably will require that those penalties be assessed on a company-by-company basis, as was recommended by an anti-smoking task force headed by former FDA commissioner David Kessler and former surgeon general C. Everett Koop. It also may change the method used to calculate the fines to be sure they are substantial.

While tobacco companies won't necessarily agree with all these changes, the two industry representatives said last week that they are open to discussing different ways to structure the penalties.

The industry delegates seemed convinced that they were entitled to deduct from taxes the $368.5 billion that they would pay under other parts of the settlement, arguing that all existing legal precedents support allowing such a deduction as an ordinary business expense. The Clinton administration appears likely to leave this deduction intact but to argue that the youth-smoking penalties are different and can't be deducted.

The administration also may seek to force the industry to release thousands of pages of documents that officials believe might help in the effort to understand how to reduce the dangers of smoking. Members of the Senate Judiciary Committee, including Democrat Patrick Leahy of Vermont, and Minnesota Attorney General Hubert Humphrey III argue that cigarette companies shouldn't be given immunity from civil liability for punitive damages until they have released any incriminating documents.

Potential Demand for Documents

The tobacco industry's representatives said last week that they are willing to establish procedures for the disclosure of many documents but stated that they see no way to do so without immunity from punitive damages for past misconduct.

The administration will suggest clarifications in parts of the agreement it regards as vague, such as how the money for a $25 billion "research fund" will be spent. The administration also will propose changes to some "technical" aspects of the settlement, including those that spell out the sweeping advertising and marketing restrictions that would eliminate characters such as the Marlboro Man, prohibit placement of cigarette brands in movies and require such boldface warnings on cigarette packs as "Smoking Can Kill You."

The settlement calls for tobacco companies to sign a separate "protocol" that spells out these restrictions, but the administration wants to change the protocol's wording to eliminate any potential loopholes.

Separately, Democratic Sen. Frank Lautenberg of New Jersey complained that the Senate Appropriations Committee didn't provide $34 million that the Clinton administration requested to enforce an FDA rule to prevent teens from buying cigarettes. The panel instead provided $4.9 million as part of an agricultural appropriations bill it approved last week; the committee leadership said that it needed the rest of the money for a food-safety initiative and that the proposed settlement would yield enough money for tobacco enforcement.

—David Rogers contributed to this article.

LeBow Says Philip Morris Paid Some Liggett Law Bills

MIAMI (AP)—Philip Morris Cos., the nation's biggest cigarette maker, paid Liggett Group's legal bills for months in an attempt to buy its silence about the dangers of smoking, a lawyer charged.

Stanley Rosenblatt, an attorney for flight attendants suing the tobacco industry for $5 billion because of illnesses they blame on smoky cabin air, made the charge during testimony by Liggett owner Bennett LeBow.

Philip Morris "didn't pay his bills out of the goodness of their heart," Mr. Rosenblatt said. "That was a means of buying his silence and his cooperation so he would not be a spokesman for the opposite position."

Mr. LeBow testified that Philip Morris agreed to pay $10 million a year of his company's legal bills while he rethought his position on smoking and health.

In March 1996, Liggett, a unit of Brooke Group Ltd., became the first tobacco company to break ranks and acknowledge that cigarettes are addictive and cause cancer.

Philip Morris declined to comment yesterday. But previously the company has said it paid Liggett's legal fees to allow the smaller tobacco firm to present an aggressive defense.

Mr. LeBow told the jury that Philip Morris made the offer in late 1995 and canceled it after five or six months.

THE WALL STREET JOURNAL TUESDAY, JULY 22, 1997

Tobacco

Bob Stone
Jeff Maisel

Owner Testifies Cigarettes Are Addictive (mi) By Myron Levin (c) 1997, Los Angeles Times

MIAMI Testifying in court for the first time since the defection of his maverick tobacco company, Liggett Group owner Bennett S. LeBow told jurors Monday at a landmark secondhand smoke trial that cigarettes cause cancer, heart disease and emphysema and are "very addictive ... for many people."

LeBow, who shook the industry in March when he acknowledged the dangers of smoking as part of a legal settlement, said he was proud of Liggett's history-making step.

"I believe we absolutely did the right thing," he said. "We'd do it again in a second."

Liggett, the fifth largest cigarette maker with about 2 percent of the U.S. market, made peace in large part to avoid being crushed by legal costs. But the jury in Dade County Circuit Court was not permitted to hear that Liggett's admissions were part of a legal settlement, as opposed to a simple change of heart.

LeBow, chairman of Liggett owner Brooke Group Ltd., also testified that industry leader Philip Morris for a time was paying Liggett's legal fees. A plaintiff's lawyer described this as an attempt to "buy his (LeBow's) silence," but he said it without the jury present.

The case was filed on behalf of airline flight attendants who claim to have suffered illnesses from breathing secondhand smoke before the airline smoking ban. It is the first class-action suit tried against the tobacco industry, as well as the first case alleging harm to bystanders from other people's cigarettes.

Lawyers in the case gingerly questioned LeBow to avoid exposing jurors to discussion of tobacco settlements, which Judge Robert P. Kaye has declared forbidden ground. LeBow, 59, spent more than an hour on the witness stand but talked for no more than 10 or 15 minutes.

His testimony was interrupted by a barrage of defense objections, resulting in numerous sidebar conferences with the judge, and in jurors twice being sent out of court so the lawyers could debate admissibility questions.

"I think the industry made a mistake in objecting constantly," said Gary Black, a tobacco analyst with Sanford Bernstein. "It almost made LeBow seem more important than he is."

Kaye has ordered parties in the case not to discuss either of the two big tobacco settlements: Liggett's deal in March with a group of state attorneys general; and the giant "global" settlement of June 20, in which Liggett's larger rivals agreed to pay $368.5 billion in exchange for eliminating state lawsuits and most private class actions.

Apart from a vast difference in money, a crucial distinction between the two settlements is that Liggett agreed to admit the hazards of smoking and to surrender potentially incriminating documents that could be used against the other companies. In their settlement, the other companies agreed to various anti-smoking measures but made no admissions, thereby preserving their ability to defend remaining court cases.

In the secondhand smoke case, one of the matters not settled, the companies maintain that smoke in airline cabins was far too dilute to cause lung cancer or the other illnesses claimed by the plaintiffs.

Liggett is accused along with the other companies, but has taken a position that hardly bolsters the defense. Claiming that Liggett does not know if secondhand smoke is harmful, Liggett lawyer Michael Fay has merely asked the six jurors to carefully consider the evidence.

Bosnia Becomes Tale of Two Economies (Sarajevo) By Richard Boudreaux (c) 1997, Los Angeles Times

SARAJEVO, Bosnia-Herzegovina On one side of Bosnia's postwar divide, teen-age survivors of the siege of Sarajevo skate through what was once a military bunker and is now a booming underground mall. Shoppers browse air-conditioned boutiques and sporting goods stores, selecting beachwear for their first vacations in years. Some venture into the bigger showrooms, looking to replace cars and appliances destroyed by almost four years of ethnic slaughter.

On the other side, in the drab little ski resort of Pale just 10 miles away, the closest thing to a mall are rows of flimsy metal tables under sidewalk umbrellas. There, forlorn-looking women peddle gum, candy, cigarettes and cheap brandy to the few passersby who can afford them. "If I am not here working 12 hours a day, seven days a week, my children don't eat," said Mira Kujaca, who rarely brings home more than $3 a day.

The two markets illustrate an ling gap between B a-Herzegovina's postwar entities. While the Muslim-Croat Federation's economy is rebounding with infusions of foreign aid, the ethnic Serb mini-state, called Republika Srpska, is mired in the poverty of defiant self-isolation.

In 1996, the first year after the halt in fighting, the federation gained 200,000 jobs, mostly in reconstruction of housing and public works, cutting its 90 percent unemployment rate by nearly half, according to the World Bank. The recovery has helped trade more than industry, but some factories are reviving and average wages have tripled to about $150 a month.

Republika Srpska, though less damaged by the war and better endowed with minerals and farmland, remains destitute. Eight in 10 there are jobless. The average monthly wage is $40 and never paid on time. Skilled workers leave and investors shy away. Factories are idle, including dozens that were dismantled by the Serbs in wartime Sarajevo, trucked out and reassembled. There is simply no money to restart them.

"The Serbs registered a blip (of growth) early last year, but now their peace dividend is gone," said Rory O'Sullivan, chief of the World Bank mission in Sarajevo, the Bosnian capital. "They have probably reached a point where they are worse off than they were at the end of the war."

Western diplomats and aid officials, struggling to make December 1995 peace accords work, say the economic gap is dangerous. It reinforces the Bosnian Serb leadership's resentment of the outside world, they say, and feeds a perception by the Muslim-Croat Federation's strengthening army that its old enemy is weak and vulnerable. "It breeds jealousy, mistrust and opportunism," a senior aid official said. "And that can lead back to war."

The accords signed at Dayton, Ohio, were supposed to unite Bosnia's rival Serbian, Croatian and Muslim enclaves in a jointly run multiethnic state that would allow refugees to return to areas subjected to brutal "ethnic cleansing" during the war. International aid was supposed to pay for things such as railroads and bridges that join rather than divide.

While Muslims and Croats have resisted parts of the accord, the Serbs have refused to go along with any kind of re-integration. They resist reopening their airport, reconnecting telephone and mail service with the rest of the country or accepting a common Bosnian license plate for cars.

One notable agreement, a common currency, has yet to take effect because the Serbs insist on putting two-headed eagles and Orthodox monasteries symbols of their nationalism on the bills.

The Serbs are paying for their obstinacy.

Of $5 billion in international aid targeted under the Dayton accords, up to $1.4 billion could have gone to their republic, which occupies 49 percent of Bosnia. Instead, the World Bank says, the Serbs have received less than 4 percent of the $1.1 billion distributed so far.

Individual foreign donors bypass the Serbs for refusing to let refugees go home or to hand over war crimes suspects even though the Muslims and Croats have not fully complied with those peace terms either.

But the Serbs also hurt themselves with mundane forms of isolation. By refusing to link their electrical grid with the federation, for example, they qualified for just 20 percent of the $285 million in World Bank funds for the project rather than half the package.

Many of those struggling to survive in Pale, Republika Srpska's capital, abandoned Sarajevo when their neighborhoods came under Muslim control as part of the Dayton accords.

But the once-besieged city they left behind and much of the federation it governs looks better by the day.

Two hundred yards from Sarajevo's battered front line, 80 Muslims and Croats driven from Bosnian Serb territory are working for Turkish contractors rebuilding a high school, their first steady income since the war.

About 150 cars are imported by the federation each day, many driven by their new owners from shopping trips to Germany. Sarajevo's traffic jams are as bad as before the war, aggravated by four-wheel-drive vehicles from the United Nations and other peace-monitoring agencies that give direct employment and good salaries to hundreds of Bosnians on the federation side.

A Benetton fashion boutique and an Internet cafe have opened here, along with scores of restaurants and traditional outdoor cafes, frequented by reddened Sarajevans who have just rediscovered the Adriatic seacoast without remembering how to avoid sunburn.

The big Skenderija mall has 400 shops that, along with more basic goods, offer luggage, designer eye wear, health food, travel services, video games and color photo processing in 24 minutes.

So much cash is circulating that Esref Bibic, a husky 40-year-old who shopping for a big-screen color television set and a stove in a

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Tobacco Critics Begin Heavy Attack on Settlement, Cal

By JOHN M. BRODER

WASHINGTON, June 23 — Critics began a concerted attack on the proposed tobacco settlement today, citing numerous provisions they consider too favorable to cigarette makers and demanding that major portions of the agreement be rewritten.

Among the provisions that have come under harsh scrutiny are the penalties that would be imposed on tobacco companies if they failed to meet targets for reductions in teenage smoking, the provision allowing companies to deduct from corporate taxes the $368.5 billion cost of the proposal and the lack of strong Federal enforcement power.

Senior Administration officials began a comprehensive review today of the settlement, which is expected to last at least a month. Officials said they would not prejudge the outcome of the review but suggested that they anticipated major changes before the agreement is presented to Congress for ratification.

Donna E. Shalala, the Secretary of Health and Human Services, said in a telephone interview that officials in her department would "take apart" the 68-page tobacco settlement proposal to study each piece and see how they fit together as a package.

"What we have here is a first draft," Ms. Shalala said. "This was obviously a balancing act and there were trade-offs to get a final proposal. But they put a lot of work into it and it deserves careful study."

But others not directly involved in the Administration review were more categorical in their assessment.

Dr. C. Everett Koop, the former Surgeon General and longtime anti-tobacco crusader, said today that the deal was "deeply flawed." He said he was particularly unhappy with the $2 billion annual limit on the penalties cigarette producers would pay if anti-smoking efforts did not produce specified reductions in under-age tobacco use. The agreement calls for the tobacco industry to take steps to insure reductions in teen-age smoking of 30 percent in five years, 50 percent in seven years and 60 percent in 10 years.

He criticized the proposal's provision that would allow tobacco companies to recover as much as 75 percent of those fines if they can demonstrate that youth smoking did not decline despite their "good faith" efforts.

Dr. Koop said that even if the full $2 billion fine was levied, it would amount to only 8 cents per pack of cigarettes, 3 cents of which would be deductible as a business expense.

"So the fine comes to a nickel a pack," Dr. Koop said. "An unscrupulous C.E.O. of a tobacco company could say, 'Let's market to kids all we want and raise the price by 6 cents a pack and make a fortune.'

"I can't believe those things weren't known when they signed this deal. I think we've been snookered."

Dr. Koop's opinion carries considerable weight because he and Dr. David A. Kessler, the former Commissioner of Food and Drugs, are the co-chairmen of a panel of health experts who are advising Congress and the Clinton Administration on the settlement proposal. The White House is unlikely to embrace a deal that is not endorsed by that panel.

Critics also pointed to what they consider a second flaw in the sion for reducing smoking by agers. Penalties are imposed industry as a whole, even if on pany is chiefly responsible for to meet the goals.

Representative Henry A. man, Democrat of California has waged war against cig manufacturers for years, sa only way to insure that tobacc panies reduce consumption by agers is to penalize them har they fail to do so. Spreading th across the entire industry will

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A spokesman for the tobac dustry said that the four comp involved in the settlement would not comment on specific sions in the plan. But he compl that critics were sniping at in ual provisions without weighin merits of the deal as a whole.

"People can't sit and focus o little piece they don't like," said Williams of Bozell Sawyer Group, a public relations fir tained by the tobacco ind "They have to look at it as an package in which enormous co mises were made by industry provides immediate and measu

Army Hearing in Sex Case Must Be Open, Court Says

By ELAINE SCIOLINO

WASHINGTON, June 23 — In a surprise move, the military's highest court today ordered the Army to open to the public a hearing involving sexual misconduct charges against the Army's senior enlisted soldier.

The Army had initially decided to close the hearing, now scheduled for Wednesday, which is to determine whether there is enough evidence to order Gene C. McKinney, the Sergeant Major of the Army, tried by court-martial.

But after hearing oral arguments today from lawyers representing the Army on one side and Sergeant Major McKinney, five television networks and two military justice groups on the other, the civilian judges who sit on the United States Court of Appeals for the Armed Forces ruled that the public had the right to know the details of such a proceeding.

This means that the Army faces another high-profile, embarrassing court proceeding.

Chief Judge Walter T. Cox did not explain why the court ruled as it did. But during the brief hearing, he made it clear that he was not persuaded by the Army's arguments.

At one point, Judge Cox brusquely interrupted Maj. Fred Taylor in mid-sentence as he tried to explain why

Sergeant Major McKinney, the result of a three-month Army investigation, include maltreatment of subordinates, adultery, assault, communication of threats and obstruction of justice. He has declared his innocence of all the charges and last month asked the Army to allow him to retire with an honorable discharge and full benefits.

Mr. Gittens insisted today that the request for an open hearing was not designed to press the Army to act quickly on his client's request to retire. Senior Army officials have said that it was unlikely that the Army would move on the retirement request until after a decision about whether Sergeant Major McKinney should be tried by court-martial.

But Sergeant Major McKinney, a heavily decorated soldier with an impeccable 29-year Army record and the first African-American to become sergeant major of the Army, has hinted that if the Army tries him by court-martial, he may try to put the Army on trial as well.

"Although I was slow to believe it, I am now convinced that race and ethnicity are driving the investigation and the way it is being conducted," he wrote in a sworn statement in April proclaiming his innocence.

Specifically, he said that the two

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tack on Settlement, Calling It Soft on Cigarette Makers

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Representative Henry A. Waxman, Democrat of California, who has waged war against cigarette manufacturers for years, said the only way to insure that tobacco companies reduce consumption by teenagers is to penalize them harshly if they fail to do so. Spreading the pain across the entire industry will serve

Fines and the ability to pass along costs are criticized.

only to encourage individual companies to evade the rules, he said.

A spokesman for the tobacco industry said that the four companies involved in the settlement talks would not comment on specific provisions in the plan. But he complained that critics were sniping at individual provisions without weighing the merits of the deal as a whole.

"People can't sit and focus on one little piece they don't like," said Scott Williams of Bozell Sawyer Miller Group, a public relations firm retained by the tobacco industry. "They have to look at it as an entire package in which enormous compromises were made by industry that provides immediate and measurable health benefits, as opposed to years of confrontation."

Officials of the American Lung Association, which has opposed negotiations with the tobacco industry from the start of the talks, said that the overall $368.5 billion cost of the proposed settlement to the industry was far too low.

Fran Du Melle, deputy managing director of the association, said that the actual cost to the industry would be less than the settlement amount because every dollar of the payment is tax deductible. The agreement specifically states that all payments "shall be deemed ordinary and necessary business expenses."

The question of enforcement is another area of the agreement that has generated concern among public-health advocates. The tobacco companies agreed to end billboard advertising of cigarettes, store displays of tobacco products, sponsorship of sporting events, vending machine sales and giveaways of merchandise bearing cigarette brand logos.

But the Food and Drug Administration does not have an army of inspectors to police these bans and the agreement does not provide resources for any other agency to monitor compliance.

A number of states and cities have enacted strict anti-tobacco marketing measures, and the agreement states that nothing in the settlement would pre-empt them.

But if local governments cannot enforce anti-tobacco ordinances, the tobacco makers could evade national limits with impunity, said Graham E. Kelder Jr., managing attorney for the Tobacco Products Liability Project, an anti-smoking group at Northeastern University. "If you can't enforce the settlement at the local level, you can't enforce the settlement at all — and the industry knows that," Mr. Kelder said.

Analysts noted potentially important omissions in the document.

In the pact, the tobacco companies are not required to divulge the amounts of liability insurance they carry or what portion of the settlement's cost would be covered under such policies — continuing their insistence on keeping corporate information confidential.

Nor does the document address how the settlement money will be divided among states, private plaintiffs' attorneys and other parties, such as private health insurance companies, which are not included in the pact.

The proposal also does not say whether plaintiffs who are currently part of class actions — which would be barred under the deal — could "opt out" of joint suits and sue as individuals.

"There is no way in the world this proposal gets enacted the way it was announced on Friday," concluded Philip M. Schiliro, the Democratic staff director for the House Governmental Reform and Oversight Committee. "There will be enormous differences between the proposal and the legislative language, when it gets written." Legislation is needed before any agreement can take effect.

"What remains to be seen is how different, and how long it takes and whether it ever gets done at all," Mr. Schiliro said.

Friends don't

held more than 25 hearings on FDA reform in the 104th Congress, but House bills (H.R. 3199, 3200, 3201) never came to a committee vote, and the full Senate never voted on its version, S. 1477.

The drug industry did tote up one little-noticed win, however. In March 1996, Congress passed legislation that allows companies to export to other countries drugs that are not approved for sale in the U.S. That bill was folded into H.R. 3019, a continuing resolution, which became Public Law No. 104-134 on April 26, 1996.

PRODUCT LIABILITY REFORM.
Limiting consumer suits for faulty products.

Issue. If the 104th Congress had its way, a host of disincentives for filing product liability lawsuits would now be the law of the land. After a decade of lobbying by manufacturers, doctors, drug companies, and other business groups, the House and the Senate passed tort reform legislation, only to see President Clinton veto it.

There already is talk of a new fight. In November 1996, the American Tort Reform Association (ATRA), an industry coalition, announced it would try to persuade the new Congress to start moving a bill early in 1997.[140] ATRA's goal, said president Sherman Joyce, is to craft a bill that Clinton will sign.

ATRA members include companies ranging from General Motors to Eli Lilly to the American Dental Association. The organization argues that an "explosion" of frivolous lawsuits harms their profit margins. Joining ATRA in the lobbying campaign for tort reform are other industry coalitions, such as the Product Liability Alliance. "Increased litigation costs have burdened American families and businesses with higher auto insurance premiums, reduced incentives for auto safety features, and contributed to higher medical costs," states a 1996 report by the Joint Economic Committee.[141]

On the other side is the trial lawyer lobby, joined by consumer groups. They argue that access to the courts is an important way for people to hold companies responsible for faulty products, pointing to such examples as the Ford Pinto and the Dalkon shield.

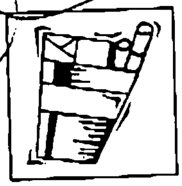
Money.[142]
PAC and Soft Money Contributions, 1996 election cycle

Contributor	PAC/Soft	Amount	Dem Pct	Repub Pct
ATRA, PLA members	PAC	$21,704,740	29%	71%

The Association of Trial Lawyers of America (ATLA) spent $2.2 million in the 1996 elections, 89 percent to Democrats, making it the most generous business PAC.

Trial lawyers are also big givers on the state level. The American Tort Reform Association reported that trial lawyers contributed nearly $20 million to candidates in state legislative and judicial races in Alabama, California, and Texas between 1990 and 1994.

Action. The House and the Senate passed The Common Sense Product Liability Reform Act of 1996, H.R. 956, in March 1996. President Clinton vetoed the measure on May 2, 1996. On May 9, 1996, the House failed to override the veto by a vote of 258-163.



TOBACCO: *Regulations and Restrictions?*

Issue. The tobacco industry spent most of the 104th Congress on defense. In 1995, the Food and Drug Administration (FDA) proposed to regulate tobacco as a drug and restrict advertising aimed at minors. Despite heavy lobbying, the industry did not stop the FDA from issuing final regulations in August 1996. Not that tobacco companies have given up: A U.S. District Court judge in North Carolina is expected to rule in spring 1997 on their legal challenge of the regulations.

Meanwhile, the industry successfully defended itself on Capitol Hill, defeating bills that would have raised tobacco excise taxes and eliminated agricultural programs for tobacco farmers.

Anti-smoking groups such as the American Cancer Society, the Coalition for Tobacco Free Kids, and the Coalition for Smoking or Health point to the high cost of tobacco (both in illness and dollars). The nation's medical bill for smoking-related illnesses was an estimated $50 billion in 1993, according to a study by the Centers for Disease Control. Roughly 43 percent of that amount comes out of taxpayers' pockets, through Medicare, Medicaid, and other federal and state programs.[143]

That doesn't even count, say anti-smoking advocates, millions of dollars in federal subsidies enjoyed by the tobacco industry. Tobacco farmers benefit, for example, from agricultural education services and crop insurance. Tobacco companies also take tax deductions for their advertising costs. In 1994, the tobacco industry spent $4.83 billion on advertising.

The tobacco industry, however, is famous for its clout.

Run by a handful of large companies, including Philip Morris and RJR Nabisco, the industry counts on the advocacy of lawmakers from tobacco states such as Virginia and the Carolinas.

MONEY.

PAC and Soft Money Contributions, 1996 election cycle

Contributor	PAC/Soft	Amount	Dem Pct	Repub Pct
Tobacco	PAC	$2,109,076	26%	74%
	Soft	$5,802,903	17%	83%
Total		**$7,911,979**	**19%**	**81%**

Tobacco firms were a presence at the 1996 presidential nominating conventions, hosting receptions honoring delegations from tobacco-growing states. Philip Morris contributed $100,000 to the Republicans' convention host committee, and its subsidiary, Kraft Foods, gave $100,000 to the Democrats' host committee. It also contributed about $200,000 to help stage the presidential debates.

During the first half of 1996 alone, tobacco firms spent more than $15 million to lobby Capitol Hill and federal agencies.

Tobacco firms sprinkle contributions among Washington think tanks and advocacy organizations that support their views, mostly libertarian or free-market oriented groups that lobby against government interference in the economy. Such groups include Citizens for a Sound Economy, the Competitive Enterprise Institute, the Progress and Freedom Foundation, and the American Civil Liberties Union.[144] Philip Morris made headlines in 1996 when reporters discovered the company was the major funder of Contributions Watch, a new non-profit group that conducts state-level research on money and politics. The group released a major study on contributions from trial lawyers.

Action. Pro-tobacco lawmakers defeated efforts to strip funding for tobacco farmers from the Agriculture Department's budget in both 1995 and 1996. Other tobacco-related legislation never saw a vote. For example, Rep. David Funderburk (R-N.C.) gathered 53 cosponsors for his bill, H.R. 2265, to prohibit the Department of Health and Human Services from restricting tobacco advertising at stock car races. The bill died in committee. Rep. Scotty Baesler (D-Ky.) had just three cosponsors for his bill, H.R. 2414, which would codify the federal government's authority to regulate tobacco. That bill also did not see a vote in committee.

VOTES.

Senate. S Con Res 13, Fiscal 1996 Budget Resolution, Ford (D-Ky.), May 25, 1995. Kill proposal by Sen. Bradley (D-N.J.) to raise tobacco taxes and use revenue for health care funding and programs to assist tobacco farmers to convert to new crops.

A YES vote benefits the tobacco industry.

Senate Average 1991-1996 PAC Contributions, By Vote

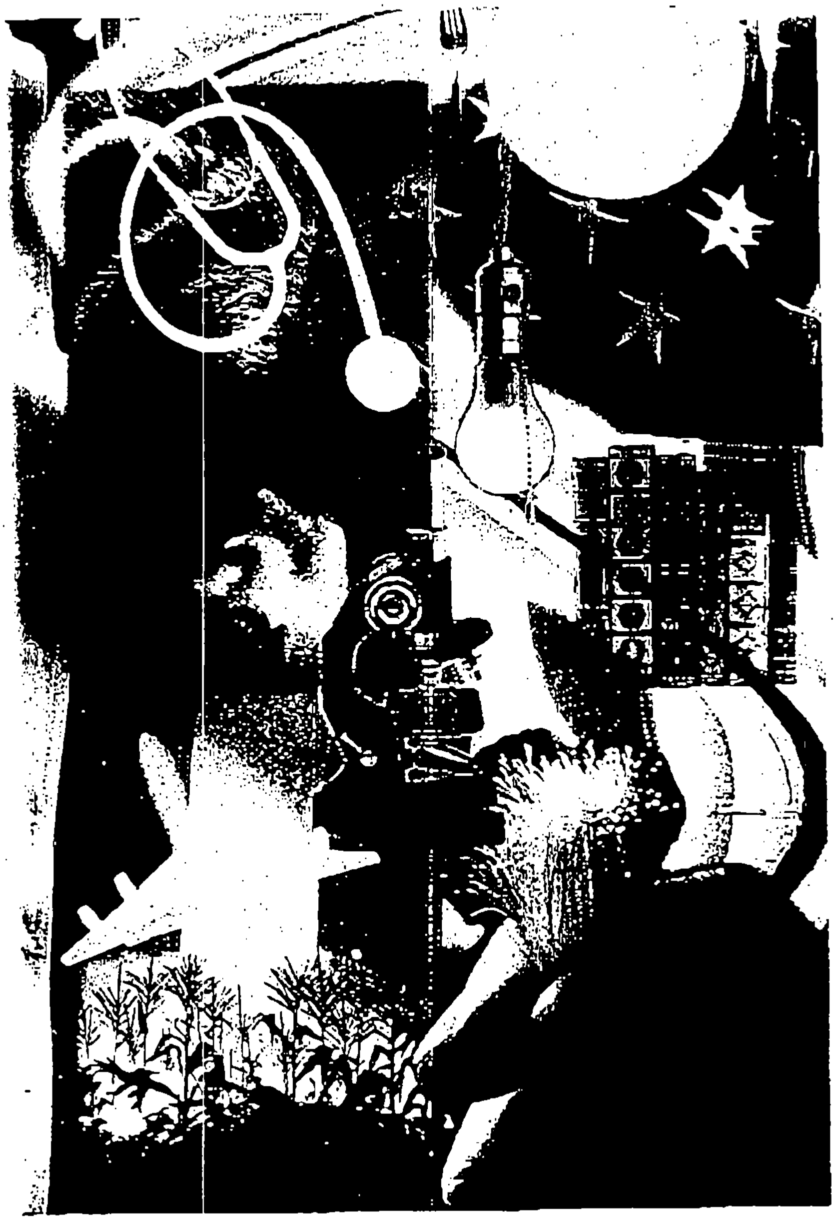
Vote	Vote Tally	Average
Yes	62	$19,003
No	38	$2,436

House. H.R. 3603, Fiscal 1997 Agriculture Appropriations, Durbin (D-Ill.), June 12, 1996. Strip $25 million from agriculture budget for tobacco crop insurance and extension programs for tobacco farmers.

A NO vote benefits the tobacco industry.

House Average 1995-1996 PAC Contributions, By Vote

Vote	Vote Tally	Average
Yes	210	$1,279
No	212	$5,764



from the Center for Responsive Politics

CASHING IN

A Guide to Money, Votes, and Public Policy in the 104th Congress

By Nancy Watzman, James Youngclaus & Jennifer Shecter

Gulf illness treated 'cavalierly'

Schwarzkopf says he, Pentagon made errors

By Norm Brewer
and John Hanchette
Gannett News Service

WASHINGTON — Gulf War illnesses in the years following the 1991 conflict with Iraq were "handled rather cavalierly" by the Pentagon, says retired general Norman Schwarzkopf, who led the troops who now say they are sick.

Schwarzkopf also told Gannett News Service that he regretted not telling senators earlier this year about a chemical weapons case involving an Ohio soldier.

Unpublished battlefront reports showing that Schwarzkopf knew about the soldier in 1991 raised questions about why he told Congress this year that he had no knowledge of anyone being exposed to chemical weapons.

The commanding general of Desert Storm has been a defender of the war and an advocate of helping sick veterans. But he previously has shied from criticizing the Pentagon's investigation of why more than 100,000 Gulf War veterans report being sick.

"When the initial reports (of illness) were coming in it was taken somewhat lightly by some people in the Department of Defense," said Schwarzkopf, who later said he wanted to amend "cavalierly" to say: "It wasn't taken as seriously as it could have been."

But, he said, that changed with the 1996 appointment of Bernard Rostker to head the Pentagon's probe.

Department of Veterans Affairs doctors also have failed to believe veterans are sick, Schwarzkopf said.

World Wide Photos via AP

Desert Storm commander: Norman Schwarzkopf says he regrets that he did not testify about a case involving chemical burns suffered by a soldier in the Gulf War.

The chemical weapons incident involved Pfc. David Fisher of the 3rd Armored Division, who was crawling through a destroyed Iraqi bunker when he came into contact with munitions that blistered his upper arm. Schwarzkopf was told of Fisher's case on March 3, 1991, in a field report from Army VII Corps officers.

"CINC (commander in chief Schwarzkopf) did not want us to make a big deal out of one soldier suffering chemical agent burns," the report says. "Don't deny the report to the press."

But in Senate testimony in January and February, Schwarzkopf passed up several opportunities to tell of it.

"We never ever had a single report, number one, of verified chemicals and, number two, of anyone ever showing any symptoms consistent with nerve agent poisoning," he told the Armed Services Committee.

He told the Veterans Affairs Committee, "We never had a single symptom shown by any of our troops of known symptoms of any chemical contamination and I never received a single report of the Iraqi use of chemicals."

Fisher was considered a confirmed mustard agent casualty by VII Corps, and chemical detection units found traces of blister compound on his clothes. But Schwarzkopf said the reports were conflicting.

"Yes, it was a chemical burn, no it wasn't a confirmed chemical burn," is how he now describes information coming in from the field. "The final report we got back was that we can't confirm it was a chemical burn."

Why didn't Schwarzkopf mentioned the case to senators?

"I wish I had now," he said. "It wasn't a question of it slipping my mind. I should have said it."

Schwarzkopf said he has referred to the case "over and over again" in "private conversations" and in a 1993 letter to Rep. Lane Evans, D-Ind.

Schwarzkopf also disputed that he ever told officers in 1991 not to treat the Fisher incident as a "big deal." He said there were "some misinterpretations of my remarks the first night."

Schwarzkopf has been the target of veterans activists like Jim Brown, president of the Desert Storm Justice Foundation, who says the commanding general didn't react to warning signs.

Brown said the Fisher incident and other warnings should have made the brass more cautious about Khamisiya, an Iraqi ammo dump that, when blown up by U.S. troops on March 4, might have exposed 100,000 to chemical agents.

Schwarzkopf said additional protective measures were not ordered because there was no "smoking gun."

Pentagon spokesman Kenneth Bacon said Sunday that "although neither we nor the presidential advisory committee can explain what causes the illness that some veterans are suffering, we are working hard to provide the best medical care we can and to conduct research that will help us answer remaining questions."

Weld sees sup... on 'Main Street'

By Beth Powell
The Associated Press

WASHINGTON — William Weld is counting on Main Street America to push for a hearing on his nomination to be ambassador to Mexico. But congressional leaders say it's time for Weld and President Clinton to give up.

AP

Weld: Won't give up on nomination

"This nomination is dead," Senate Majority Leader Trent Lott said Sunday. As majority leader, Lott has the power to bring the nomination before the full Senate, bypassing Sen. Jesse Helms, R-N.C., and his Foreign Relations Committee.

But Lott said on CBS's *Face the Nation* that "the president, for the sake of our relationships with Mexico and all the other issues that we need to take up, needs to go ahead and find a way to move away from this nominee."

Lott said he talked Clinton Saturday and encouraged him to find a new nominee.

But White House spokeswoman Julie Green said Lott did not persuade the president to give up on a hearing for Weld. "Absolutely, the president continues to support the nomination," Green said.

Weld, a moderate Republican, has been criticized for ruffling conservative Helms, who has refused to allow Senate hearings on the nomination. Helms says the former Massachusetts governor's support of medical use of marijuana means he's soft on drugs and unqualified for the job.

"I've been advised by a number of experts in Washington, D.C., that the thing to do is come down here on bended knee if you want anything from your government," Weld said Sunday on NBC's *Meet the Press*. "That's not really my style." Weld said he will continue to fight despite declarations from Lott and other leaders that his nomination is dead and that the president should look elsewhere.

Weld said senators from both parties told him that when they went home for the August recess that his nomination was at the top of the list of things constituents asked about.

"I think that this battle is now in the court of public opinion," Weld said. "There are 100 senators, if they hear from people out there on Main Street, that's what's going to change the dynamic here."

USA TODAY · MONDAY, SEPTEMBER 15, 1997

Tobacco deals may unravel, some worry

By Doug Levy
USA TODAY

Tobacco companies reached the $368.5 billion national settlement because they faced pressure from 39 state lawsuits and more than a dozen major private class-action lawsuits.

Now, with the national deal losing momentum, some advocates of the deal worry that tobacco companies will revert to their decades-old technique of defending against lawsuits at all costs.

There are reasons why that could make sense.

Among the pending state lawsuits, Texas' until recently had been seen as one of the industry's more serious legal threats. But last week, U.S. District Judge David Folsom in Texarkana, Texas, dismissed five of that state's six main counts against the tobacco industry.

The state still can press its case on racketeering and several lesser charges at a trial set to begin Sept. 29. But the ruling makes it unlikely that even if the state wins, it could recover substantial damages.

Minnesota's case poses more of a threat to the industry. The state has strong consumer-protection laws and the state's litigation team has amassed millions of pages of industry documents.

Just last week, a court official recommended that at least 800 key documents be released. The industry maintains that most of the material is protected as attorney-client communication. But the state claims the privilege does not apply because the documents are evidence that industry lawyers helped tobacco companies perpetuate crimes such as fraud.

Some settlement proponents say other legal threats to the industry remain strong enough that backing away from it could prove costly for the companies. For example, the first of the cases brought by a consortium of trial lawyers on behalf of millions of individual smokers and their families goes to trial in Pennsylvania on Oct. 14.

The greatest fear among settlement supporters now is that prolonged deliberation over the deal will eliminate either side's desire for it. A big anti-tobacco win in court would bolster anti-settlement forces, while a big win for tobacco might weaken industry resolve for a settlement.

IRS overhaul: A taxing topic

By James Kim
USA TODAY

Congress begins hearings this week on overhauling the government agency that Americans love to hate.

The future of the Internal Revenue Service will be the issue Tuesday, when the House Ways and Means Committee begins hearings on who should govern the agency.

The National Commission on Restructuring the IRS, a panel chaired by Rep. Rob Portman, R-Ohio, and Sen. Bob Kerrey, D-Neb., has argued that the agency should be run by a seven-person board including the Treasury secretary, an IRS employees union person and five non-IRS employees. The panel charges that the current overseer, the Treasury Department, is not up to the task.

Treasury Secretary Robert Rubin and other experts already have criticized the plan. "In their view, the plan would open the IRS to lots of potential conflicts of interest," says Clint Stretch, tax policy expert for Deloitte & Touche.

Most board members, some of whom likely will come from the corporations, will have to recuse themselves from ruling on many critical issues, critics argue. They also say the plan may be unconstitutional and that is unwise for a civilian board to run a law-enforcement agency.

Still, Rep. Bill Archer, R-Texas, chairman of the House Ways and Means Committee, aims to push the plan through the House this year.

The IRS — which has long been criticized as inefficient and hard to deal with — will remain in the spotlight through Sept. 23-25, when the Senate Finance Committee holds hearings. It will examine the results of a six-month probe.

"At worst, our investigation has uncovered an agency in which a subculture of fear and intimidation has been allowed to flourish — both in the internal treatment of some employees, and in the treatment of some taxpayers," Finance Committee Chairman William Roth, R-Del., told Reuters. He has not said if he will push to pass an IRS reform bill this year.

USA TODAY · MONDAY, SEPTEMBER 15, 1997

Shalala Offers Plan on Curbing Smoking

Penalties Urged for Firms Based on the Popularity Of Brands Among Youth

By JEFFREY TAYLOR
Staff Reporter of THE WALL STREET JOURNAL

WASHINGTON – Health and Human Services Secretary Donna Shalala proposed that lawmakers levy penalties aimed at curbing youth smoking on a company-by-company basis, so that those that make brands popular among underage smokers pay more than others.

"I think it's doable," Ms. Shalala told the Senate Labor and Human Resources Committee. "We do know that kids in particular are sensitive to brand names. This will be a very important point for Congress to consider as it reviews the legislation."

Donna Shalala

Ms. Shalala suggested that such penalties could be levied on the basis of state-by-state data that surveyed youths about the cigarette brands they preferred. "This is a very sophisticated industry, not very fragile, very good at what they do," she said. "And we think that the economic incentives ought to be sophisticated."

The company-by-company proposal was as specific as Ms. Shalala got during two hours of testimony before the Senate labor panel about President Clinton's plan for toughening the proposed national tobacco settlement.

Market leader **Philip Morris** Cos. likely would be most affected by such a plan, because industry executives say its No. 1-ranked Marlboro brand has a disproportionate share of the underage market. Both Philip Morris and **Loews** Corp.'s Lorillard Tobacco Co. are most opposed to levying penalties by company, whereas other market leaders that control less of the youth market feel less strongly about it.

Industry spokesman Scott Williams contended that assessing penalties by company wouldn't be as effective as the industrywide penalty plan contained in the proposed settlement. "There is a very strong incentive in the current proposal for the entire industry to work in concert to reduce underage tobacco use," he said. A Philip Morris spokesman declined to comment.

GOP leaders in Congress have criticized the Clinton administration's plan as too general because it was sketched out as a set of broad policy goals and didn't contain specific legislative recommendations. Yesterday, at the administration's first extensive discussion of the president's plan since he announced it last week, senators chided Ms. Shalala for its generality.

"I am disappointed that the administration has not come forward with a specific bill," said Republican Mike DeWine of Ohio. Added his Republican colleague, Judd Gregg of New Hampshire: "If the administration isn't going to provide legislation . . . I don't know where it's going to come from."

Ms. Shalala said the administration wants to "be Congress's partner" in the drafting of a tobacco bill.

On the other side of the aisle, Democrat Tom Harkin of Iowa said he was skeptical that the centerpiece of the president's plan; a cigarette-price increase of as much as $1.50 a pack over 10 years, would do enough to deter underage smoking. "I think $1.50 over 10 years isn't going to work," Mr. Harkin said. "It's got to be imposed sooner than that."

The administration hasn't spelled out how much of the $1.50 would be imposed immediately and how much would be levied as penalties later for failures to curb youth smoking. Antismoking Democrats in the Senate have proposed raising excise taxes on cigarettes by $1.50 a pack within one to three years as an alternative to the president's 10-year approach. "Waiting 10 years to raise the price of cigarettes is like waiting until the patient is dead to administer the medicine," said Sen. Frank Lautenberg of New Jersey.

Republicans on the labor panel, one of the committees expected to help shape tobacco legislation, expressed strong reservations about granting the Food and Drug Administration broad authority to regulate tobacco as a drug, as the president proposed doing. This previewed the difficulty the administration is likely to have pressing its pro-FDA stance at a time of strong deregulatory sentiment in Congress.

"There is a real fear that we're giving the FDA unprecedented authority that it hasn't had," said Republican Sen. Bill Frist of Kentucky. He questioned whether the FDA, if it has that authority, would outlaw tobacco completely.

Big Tobacco vs. Texas

Preliminary jury selection is set to begin Monday in a lawsuit against cigarette makers by the state of Texas, which says the companies owe it billions of dollars for state Medicaid outlays to treat sick smokers. **Article on page B1.**

Ms. Shalala said the agency wants to "reduce youth smoking, not eliminate tobacco as a product." Nonetheless, she insisted, the FDA already has "the same authority over tobacco that it has over any other drug." A federal court in North Carolina ruled recently that the FDA does have the right to regulate nicotine content in cigarettes; all sides in the tobacco debate eagerly await the result of the tobacco industry's appeal of that decision.

The proposed settlement called for the tobacco industry to pay $368.5 billion to settle state lawsuits seeking compensation for Medicaid-related health-care costs. Ms. Shalala wouldn't specify how much, if at all, Mr. Clinton's plan would increase that figure, but said any tobacco legislation must pay for federal health-care costs as well as those of the states.

—Suein L. Hwang contributed to this article.

White House Wants Greater FDA Controls on Produce

By a WALL STREET JOURNAL *Staff Reporter*

WASHINGTON – The White House says it plans to propose legislation next week that would improve the Food and Drug Administration's authority to regulate fruit and vegetable imports.

The proposal is aimed at answering food-safety concerns raised by lawmakers and is timed to coincide with President Clinton's campaign to win "fast-track" authority from Congress to negotiate new trade agreements.

More than 80 House members wrote President Clinton urging him to renegotiate the North American Free Trade Agreement to improve border protections against potentially unsafe food imports. Food-safety concerns were heightened in March when 179 Michigan school children contracted hepatitis after eating tainted Mexican strawberries.

THE WALL STREET JOURNAL, FRIDAY, SEPTEMBER [illegible], 1997

FBI Transferred, or Even Promoted, Problem Agents

By LAURIE P. COHEN
Staff Reporter of THE WALL STREET JOURNAL

The FBI was so unhappy with the work of Special Agent Terry Lee Rudolph that it moved him in 1988 from his sensitive crime-lab job to a teaching post at the FBI Academy at Quantico, Va.

The explosives specialist says he looked upon the new assignment, in which he taught crime-lab work to state and federal agents, as a promotion. "That was a very sought-after position," he told Justice Department investigators last year. "You got away from headquarters – a great atmosphere to work in."

Mr. Rudolph added that he wasn't told the transfer was the result of poor performance, although Federal Bureau of Investigation lawyers now say that was the reason. And no written record was kept of the bureau's dissatisfaction with the quality of some of Mr. Rudolph's crime-lab analyses, which had been put to use in more than 650 criminal cases over 10 years.

Mr. Rudolph's quiet transfer reflects what FBI officials have described as a standard practice of dealing with agents who don't measure up: They are moved elsewhere in the bureau, unaccompanied by any written reprimand that might come back to haunt the FBI or prosecutors in court cases.

Critics say the practice may affect the integrity of court cases in which agents testify. "It's the kind of practice that obstructs the truth-seeking process," says defense lawyer Barry Scheck, famous for his examination of DNA evidence in the O.J. Simpson case. "Failing to expose incompetence will, ultimately, acquit the guilty and convict the innocent."

The FBI said yesterday that Director Louis Freeh has ordered that the performance-appraisal process be redesigned, and that the agency's policy is to document performance, good and bad.

Explosives Expert Criticized

In its highly critical report on the FBI crime lab last April, the Justice Department Inspector General's office, which complained about unqualified examiners and inaccurate court testimony, saved some of its toughest words for Mr. Rudolph. Among other things, the report said Mr. Rudolph "indiscriminately disregarded appropriate scientific methods and failed to document his work." (Mr. Rudolph responds that the report was unfair and that his work "was very accurate.")

The report didn't explore the broader issue of how the FBI responded to internal concerns about its agents. But the bureau's practice of transferring such employees without reprimands was detailed in at least six interviews that Justice Department investigators conducted with current and former FBI officials in preparing the crime-lab report. The interviews and other materials related to the investigation were obtained by The Wall Street Journal under the Freedom of Information Act.

According to one internal memo by Justice Department investigators, former FBI Deputy General Counsel Stephen Robinson "explained that the FBI does not document poor work performance but transfers poor performers to other duties." The investigators added that "the transfer may even be a promotion." Two of Mr. Rudolph's former bosses spoke of concerns that written evaluations might get into the hands of defense lawyers, who might use them to impeach FBI witnesses or overturn convictions.

Mr. Robinson says he's aware that disciplinary transfers have been made for agents other than Mr. Rudolph, although he says he isn't at liberty to name them.

Subject of Monday Hearing

How the FBI managed its problematic employees—along with other investigative findings that the Justice Department didn't include in its report – are expected to be discussed at a Monday hearing of the Senate judiciary subcommittee headed by Sen. Charles Grassley (R., Iowa).

At least four current and former FBI agents are expected to testify, including Frederic Whitehurst, the FBI agent whose allegations touched off the Inspector General's investigation, and Special Agent William Tobin, a crime-lab metallurgist who told Justice Department investigators that agents sometimes provided inaccurate pro-prosecution testimony.

Senators will also hear from Special Agent Edward Kelso, chief of the FBI's Evidence Response Team, who told department officials that he had warned FBI Director Louis Freeh long ago that some crime-lab agents "were playing golf instead of doing their jobs," and from former lab official James Corby, who spent two years before his 1995 retirement reviewing 200 of Mr. Rudolph's cases.

The subcommittee won't hear from the 55-year-old Mr. Rudolph, who retired from the FBI last year.

As the lab's senior explosives examiner in 1983, Mr. Rudolph hosted the FBI's first international symposium on analysis and detection of explosives. Experts from all over the world received copies of his paper on the FBI's protocol for analyzing explosives. Among other things, the protocol established the requirement that the examiner use two different tests in combination to ensure accuracy.

San Francisco Case

It was a procedure, investigators said, that Mr. Rudolph didn't always follow. In a San Francisco criminal investigation in 1982, Mr. Rudolph conducted just one of the tests, according to the Inspector General's report, and concluded that powder removed from the tools of a suspected explosives smuggler was a substance commonly used in bombs.

The apparent shortcut was brought out in cross examination. The defendant ultimately was acquitted. (Mr. Rudolph defends the single test as sufficient and says he reached the correct conclusion, despite the verdict.)

In July 1989, after the trial was over, the federal prosecutor in charge of the case wrote FBI lab officials to complain that Mr. Rudolph's performance was "deficient" and was partly responsible for the loss. That letter triggered a month-long investigation into Mr. Rudolph's work. Although reviewers identified a number of problems in a handful of Mr. Rudolph's cases, including missing notes and charts and weak analytical procedures, his superiors let the investigation drop.

"There was no indication that any miscarriage of justice [occurred] or that anyone was in jail that shouldn't be there," said Kenneth Nimmich, Mr. Rudolph's former boss, explaining his decision to Justice Department officials last year. Besides, Mr. Rudolph had already been transferred to Quantico as a result of earlier complaints about his work, according to Mr. Nimmich, who retired as head of the FBI's forensic-science research and training center in 1996.

Were potentially damaging inaccuracies lurking in his testimony in past cases in which defendants may have been wrongly convicted? The FBI wouldn't find out, because it didn't order an in-depth review of all of Mr. Rudolph's cases.

Murder Conviction

If it had done such a review, it might have come upon the names Christopher Boots and Eric Proctor. The two Oregon men were convicted of murdering a convenience-store employee in the mid-1980s. Initially, local prosecutors hadn't brought charges because of insufficient evidence. But three years after the murder, in 1989, a local investigator brought in Mr. Rudolph, who confirmed that a flake found on Mr. Proctor's pants was gunpowder.

Based on this new evidence, charges were brought and the defendants were convicted. They would serve eight years in prison before someone else was identified as the killer by his accomplices. Released in November 1994, Messrs. Boots and Proctor have sued the state for $42 million; suits of this nature against the FBI are barred under federal law. Mr. Rudolph still stands by his lab analysis.

The Inspector General's report said the crime lab should have "recognized Rudolph's incompetence in 1989 and initiated a complete file review and appropriate disciplinary measures."

Explosives experts who have examined the files in the Boots and Proctor case at the request of The Wall Street Journal say such a review would have raised several red flags. Aside from using the test deemed insufficient in the other case, the FBI normally doesn't examine evidence that was tested previously – in this case, by the local crime lab. The experts also raised questions about the way the evidence was handled.

The Inspector General's report also contained tough criticism of former explosives unit chief J. Thomas Thurman, who the report said had altered lab reports in ways that rendered them inaccurate and who hadn't adequately reviewed the erroneous work of an examiner in the Oklahoma City bomb case. The report recommended that Mr. Thurman be "reassigned to a component of the FBI outside the Laboratory." Soon after the report was issued, Mr. Thurman was transferred.

Mr. Thurman, who declines comment, is now the chief of the FBI's Bomb Data Center, a unit within the FBI Laboratory that trains state and federal agents to handle bomb scenes. The FBI says his job doesn't involve forensic analyses, writing lab reports or giving expert testimony.

THE WALL STREET JOURNAL FRIDAY, SEPTEMBER 2[illegible], 1997

[C]linton to Seek Big Changes on Accord With Tobacco Industry, Delaying Law

By JACKIE CALMES
And YUMIKO ONO
Staff Reporters of THE WALL STREET JOURNAL

WASHINGTON — President Clinton won't propose specifics to rewrite the massive tobacco settlement but, instead, will call in general for big changes, thus ruling out any chance of the negotiated accord becoming law this year — and perhaps diminishing its chances for later.

The president is likely by midweek to pronounce his qualified verdict on the nearly three-month-old settlement reached by the tobacco industry, states and public-health advocates, before leaving Thursday for California to take daughter Chelsea to college, administration officials say. Mr. Clinton met Friday with his top advisers on the issue. Despite their differences on the settlement's particulars, they agreed that, because Republican leaders have made clear that Congress won't act this year, anyway, the president shouldn't spell out his stance in the detail that had been expected.

Some proponents of the proposed $368.5 billion accord had hoped Mr. Clinton could prod Congress to act by sending a bill to Capitol Hill. But while Mr. Clinton wants to claim a potentially historic tobacco deal as part of his political legacy, he has faced increasing pressure from within his administration and his party in Congress to seek greater concessions from the tobacco industry—especially on penalties for failing to curb youth smoking, federal regulation, aid for tobacco farmers and industry liability.

The White House decision to avoid specifics is based partly on tactical political considerations. A detailed presidential announcement now, White House officials said, would merely give opponents of any deal a convenient target to shoot at while waiting for Congress to act.

"The president wants Congress to pass sweeping tobacco legislation, and we hope Congress will make it a priority next year," said Bruce Reed, his domestic-policy adviser. Mr. Reed and Secretary Donna Shalala of the Department of Health and Human Services are heading up the administration's review of the tobacco settlement.

Kicking the issue into next year — a congressional election year — clouds the fragile settlement's fate. Supporters of an accord, including White House officials, argue that antitobacco political pressures will force the GOP-led Congress to act, and in a way that is tougher on the industry than its settlement with state attorneys general and antismoking groups. But industry opponents, especially Democrats, would rather keep the issue alive politically, and they will have more leverage to block action by painting the settlement's supporters as pro-tobacco.

Further strengthening their hands, opponents expect in coming months to gain access to anti-industry testimony and documents, thanks to pending court cases in Minnesota and other states among the 40 that have filed lawsuits against the industry to recoup health-insurance costs. While the industry so far has a good trial record, it agreed to the proposed national tobacco settlement in large part to win some protection against such costly law-

Please Turn to Page A4, Column 1

Continued From Page A3

suits from states and smokers.

The wild card of new courtroom disclosures about the industry's past practices and knowledge of tobacco's addictive traits also underlies the administration's and the Congress's reluctance to embrace the tobacco settlement. Democratic Sen. Kent Conrad of North Dakota — who along with Senate Minority Leader Thomas Daschle met last Thursday with the administration's Mr. Reed and Ms. Shalala — said: "My advice to them was, let's make sure we have all the information we need to make a decision that stands the test of time."

'Better to Do It Right'

Among his colleagues, Sen. Conrad said: "The consensus is, it's better to do it right than to do it right now."

The tobacco industry isn't planning to offer any last-minute concessions before Mr. Clinton's announcement, an industry spokesman said. "We are committed to the June 20th agreement," said Scott Williams, a spokesman for the industry at the public relations firm Bozell Sawyer Miller Group. He emphasized that the industry is already making compromises that "until now have never been achieved through the legislative process, judiciary or regulatory means."

Within the tobacco ranks, the feeling has emerged that any concessions offered up now, given dismal prospects for the current proposal, would only weaken the industry's position should terms be debated anew.

Analysts said they expect the delay to have little effect on stock prices for the giant tobacco companies. "The market has largely assumed that there will be no legislation this year," said Martin Feldman, a tobacco analyst at Smith Barney. Should Mr. Clinton's remarks suggest the settlement won't be completed even next year, he said, "expect to see some softness in the prices, but nothing significant."

In the meantime, tobacco stocks, whose valuations have been tied closely to news of the settlement, will revert increasingly to the likelihood of winning or losing individual liability suits. "While there is no [tobacco proposal] settlement, the market would lurch from case to case," Mr. Feldman said.

Some cases are expected to advance soon. The tobacco industry indicated week that it no longer planned to settle multibillion-dollar lawsuits brought by states to recover their public health-care costs linked to smoking, and will instead go to trial.

Ads Would Be Banned

In Texas, jury selection in the state's suit against the tobacco industry over Medicaid costs is expected to begin Sept. 29 in the federal court in Texarkana. The federal appeals court in Richmond, Va., is expected to rule on the FDA's jurisdiction of tobacco. And a suit brought by the state of Minnesota and Blue Cross & Blue Shield of Minnesota to recoup the health costs of smoking is set for trial in St. Paul next January.

The proposed national tobacco settlement, in addition to the $368.5 billion payment, would ban billboard advertising, vending machines, sports promotions and ads with people and cartoon characters, such as the Marlboro Man. In exchange, the proposal would simultaneously settle suits by 40 states that claim the industry should pay for tobacco-related Medicaid costs, and would provide broad liability protection against future lawsuits.

Meanwhile, House Speaker Newt Gingrich said yesterday on ABC-TV's "This Week" that the House would go along with the Senate in repealing a provision in the new balanced-budget law that could have reduced the industry's $368.5 billion in settlement payments over the next 25 years by roughly $50 billion in new cigarette taxes in the law. House Republicans had resisted repeal, until the Senate voted 95-3 last week for the move. But the Georgia Republican reiterated that the provision was added to the budget law with White House acquiescence.

THE WALL STREET JOURNAL
MONDAY, SEPTEMBER 15, 1997

On the Road Again, a 'Blue Dog' Senses Complacency

By Dennis Farney
Staff Reporter of The Wall Street Journal

GRANITE FALLS, Minn.—Ah, the open road, the whir of bicycle wheels and the feel of pollen collecting on the eyeballs. Is this the way to take the pulse of a congressional district or what?

It is if you are Rep. David Minge. Every fall the Democratic congressman sallies forth with his wife, Karen, across the district on their two-person bicycle. Recently they hit the roads here in southwest Minnesota again, with this reporter chugging along behind — farther and farther behind, actually, as a 52-mile day wore on.

Rep. Minge, a fiscally conservative "Blue Dog" Democrat, was the subject of a feature story in The Wall Street Journal last spring as he and other Blue Dogs fought a gallant but ultimately frustrating battle to put more teeth into the balanced-budget agreement. The bike trek offered an opportunity to see what the grass roots actually thinks of that agreement, hailed in Washington as historic.

Short answer: The grass roots is scarcely thinking about it at all.

It's the Economy

Prosperity is the great fact in this rural district now, muting everything else. Unemployment is nil, small towns are short of labor, people are spending money. All this is reassuring news for incumbents like 55-year-old Rep. Minge. "The economy makes it very easy for people to overlook a lot of things," he smiles.

Gary Revier, a Republican who unsuccessfully challenged Rep. Minge in both 1994 and 1996, also senses a sea change in attitudes. "In 1994, there was a movement toward change," he says. "By 1996, people were somewhat complacent. Now, people are fairly happy. There's no burning issue out there. What they're most likely to get angry about is road detours." Mr. Revier won't run in 1998. In fact, he showed up to greet Rep. Minge warmly on the first day of his three-day bike trip.

It could be argued that the current mood is just temporary, masking a growing voter dissatisfaction with the obsolete ideologies of both parties. This is the thesis of a thoughtful paper circulated among Minnesota Republican leaders by Stephen B. Young, an unsuccessful candidate for the GOP senatorial nomination last year.

"The future is up for grabs," Mr. Young argues. "No majority party exists [in Minnesota], but the components which would make for a long-lasting majority coalition are at hand."

As he sees it, the crucial swing voter is tuning out both traditional Democratic liberals and Republican Christian conservatives. He thinks the GOP is better-positioned to forge a long-term majority — if Christian conservatives and moderate Republicans could ever get past their mutual distrust.

That is a tall order. He concedes that so far the Democrats have moved more quickly to the center, co-opting conservative themes and ideas. He calls Rep. Minge a Democrat "dressed up in Republican clothing."

Rep. David Minge and his wife, Karen

People's Panacea

Ultimately, Mr. Young thinks, a new majority coalition will crystallize around a centrist position that rejects both the liberal notion of government and the Christian conservative notion of government as a cure-all for secular problems and the Christian conservative notion of government as a cure-all for moral problems. He calls this centrist philosophy "invigorated traditionalism."

This label, as it happens, is a pretty good description of what Rep. Minge already is: a fiscal conservative who nevertheless believes government has a role to play in social and environmental policies. (He isn't an absolute purist when it comes to budget-cutting, having voted to protect costly farm and ethanol subsidies that are important to this rural district.) But the mild-mannered Mr. Minge can testify from bitter experience that prac[illegible] is harder than it looks.

True, many voters in this [illegible] seem to like his style. "H[illegible] conservative," says an approvi[illegible] Kaardal at a roadside picnic. "He's [illegible] exactly what he's supposed to do — guar[illegible]ing the pocketbook without turning his back on social problems."

Trouble is, many of Rep. Minge's Democratic colleagues in the House are far [illegible] supportive — and he has the lumps to prove it. "I've grown a little discouraged," he admits. For example, he now doubts the Blue Dogs made a great deal of difference in the budget process, except to provide President Clinton with much-needed Democratic cover as he negotiated with Republicans. Though he still thinks the budget pact was "timid," a missed opportunity to make structural changes in entitlement programs, he concedes the issue he worked so hard on is fading away.

"Given a continued good economy, [the budget issue] will be gone by next year," he predicts.

Next Target

His reformist bent has also irritated the Democratic powers-that-be in the H[illegible] When he proposed in the Democratic caucus that committee chairmen (and minority ranking members) be limited to three consecutive terms he was crushed. "Even friends deserted me like rats [illegible]ting a sinking ship," he says ruefully.

But he won't — can't — quit. Something in his Lutheran conscience, something in his Norwegian stubbornness has already compelled him to move on to another high-risk issue: overhauling Social Security, which stands to run out of money just about the time the big Baby Boom generation retires. This issue is so explosive that even some of his fellow Blue Dogs are ducking it.

Still, Rep. Minge presses on, gingerly exploring prospects for a bipartisan, centrist coalition with moderate House Republicans. He is far from fashioning a specific proposal, but says every controversial idea — every live hand grenade — is [redacted] the table. Among the ideas he is kicking around: adjusting downward the formula used for annual cost-of-living benefit increases; raising the cap on the amount of income that can taxed to support Social Security; instituting means-testing for Social Security benefits.

It is an issue of "generational fairness," he insists. The alternative to acting is to leave "a terrible legacy, a political and social shipwreck, to our children and grandchildren."

The very expansiveness of the countryside hereabouts seems to encourage the long view. The bike route winds in and out of the Minnesota River valley—placid now, but raging with floods last spring—woods and blooming goldenrod and sumac beginning to flame in autumnal red. By coincidence, here in Granite Falls it ta[illegible] the congressman past the Victorian home of another congressman who once represented this district and bucked the popular tide—in his case, harvesting mostly unpopularity in the process. It is the home of the late Andrew J. Volstead, identified by a historical sign out front as the man whose Volstead Act tried to enforce Prohibition.

The question arises: What would David Minge like a historical sign in front of his own house to say?

"The man who saved Social Security," he grins over his shoulder. And then, pumping powerfully, he picks up speed and recedes into the distance — on his bike, as in politics, pedaling uphill.

THE WALL STREET JOURNAL.
MONDAY, SEPTEMBER 15, 1997

COVER STORY

Calls for changes in tobacco deal may stamp out approval

By Richard Benedetto
USA TODAY

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WASHINGTON — When R.J. Reynolds lawyer D. Scott Wise sat down to testify before a congressional panel earlier this month, Sen. Edward Kennedy puffed himself up to red-faced indignation.

"You haven't got much credibility coming in here," the Massachusetts Democrat fumed, serving notice that anything the tobacco industry favors is going to be viewed suspiciously by many lawmakers.

Kennedy's outburst was another sign that a proposed $368.5 billion settlement of states' lawsuits against tobacco companies, a settlement reached after six months of tortuous negotiations, is falling apart inside the Beltway.

And if that deal unravels, it could be back to square one for the tobacco industry and its opponents. That would mean lawsuits that could drag on for years in many states across the nation.

It would also mean a lot of blown expectations. When they announced the deal in June, negotiators expressed optimism that the deal would receive congressional approval and President Clinton's signature this fall.

But less than three months later, the deal appears dead for this year and perhaps beyond, demonstrating just how hard it is to get something so complex done in Washington.

"We could decide we don't want to do anything. Not passing legislation is one option," says Sen. Don Nickles, R-Okla.,

COVER STORY next page ▶

Continued from 1A

who will direct the Senate's consideration of the tobacco settlement. "Some people assume that if this is altered here or there, we've got a deal. That's not so."

The state officials and tobacco industry representatives who announced the pact with much fanfare in June underestimated the difficulty of getting the necessary approvals in Washington. In the past 10 weeks, the pact has been picked apart by interest groups, White House advisers and lawmakers on Capitol Hill, where anti-tobacco sentiment is rising.

President Clinton is this week expected to outline in very broad terms what he thinks of the deal and the changes he'd like to see. He says he'll "do whatever I think will best further public health and will best increase the chances that we can dramatically reduce smoking among young people."

COVER STORY

It's highly unlikely Clinton will give a strong endorsement. But even if he does, it might not be enough to breathe new life into the settlement.

"This is probably the most complex piece of legislation to come along in recent memory," says Rutgers University political scientist Ross Baker. "The idea that the settlement can kind of sail through Congress is naive, at best."

The deal would require tobacco companies to pay states $368.5 billion over 25 years to cover Medicaid costs of treating smoking-related illness. The companies also would submit to tougher advertising and sales restrictions. In return, the states would drop their lawsuits and more than a dozen class-action cases would be settled. And, most important for the companies, there would be a cap on how much each firm would have to pay out in damages each year if any anti-tobacco lawsuits are successful, as well as a ban on future class-action lawsuits.

From the states' perspective, the deal would provide a cash windfall and curb teen smoking. From the companies' perspective, the settlement would remove the uncertainty of fighting the lawsuits state-by-state. The companies could win many of those suits, but they carry the potential for penalties to soar through the roof.

Amid much hoopla, the June 20 pact was hailed as the greatest victory for anti-smoking forces since the surgeon general's warnings were posted on cigarette packs in 1965.

Mississippi Attorney General Mike Moore, the lead negotiator for the states, called the settlement "the most historic public health achievement in history." A jubilant Florida Attorney General Bob Butterworth boasted that "the Marlboro Man will be riding into the sunset on Joe Camel."

The ink on the proposed settlement had barely dried when the attacks began. Public health advocates such as former surgeon general C. Everett Koop and former Food and Drug Administration chief David Kessler said the pact was too easy on the cigarette makers.

AP

Nickles: Not passing any legislation at all is an option

The American Lung Association, a key leader in the anti-smoking fight, denounced the pact as "a sweet deal for the tobacco companies and a bad deal for the American people."

Then came the tobacco farmers, who fear economic losses as smoking declines, and the convenience stores, which fear sales losses as cigarette advertising is restricted. Advertising agencies don't like restrictions on billboards. And the auto-racing industry is concerned about the loss of a major sponsor.

In short, the pact affects dozens of interest groups, most of which employ lobbyists seeking to get the best deal they can for their clients. Lobbyists for the tobacco industry alone collected $8 million in fees the first six months of this year.

Money is no small part of the story about why the settlement is so tenuous. There's a lot at stake. The tobacco industry takes in about $8.4 billion annually in profits before taxes and provides an annual income of $2.8 billion for 100,000 farmers in 16 states. What's more, federal, state and local government take in about $15 billion in taxes a year from tobacco products.

As all the competing forces have fought for Clinton's ear, the White House review of the settlement has dragged on longer than expected. The review has been led by Health and Human Services Secretary Donna Shalala, an ex-smoker who is deeply suspicious of the tobacco companies and would like to punish them, and Clinton domestic policy chief Bruce Reed. He's a non-smoker who approaches the subject with a more detached, policy-oriented perspective.

After getting his advisers' conflicting recommendations, Clinton is expected to come out this week in favor of a settlement. But he's expected to condition his approval on certain changes being incorporated.

Learning from his ill-fated health care reform plan, the president is expected to outline major principles, rather than try to write the legislation himself. And mindful of maintaining his high approval ratings, he knows that talking tough on tobacco plays well with most voters. Clinton is expected to call for these changes in the agreement:

▶ More power for the Food and Drug Administration to regulate nicotine and stiffer fines if teen smoking doesn't drop.

▶ Greater disclosure of industry documents relating to cigarette additives and marketing strategies.

▶ Repeal of a $50 billion tax credit for the tobacco industry that was inserted into the recently enacted tax law. (The Senate voted for such a repeal last week, and on Sunday House Speaker Newt Gingrich said he will urge House members to also vote for repeal.)

▶ Some type of financial protection for tobacco farmers.

Moore has been working with the White House in an effort to ensure that Clinton's proposals aren't so tough that the companies walk away. "We want Congress to pass a national tobacco policy. We want to get it right but we don't want to let the perfect become the enemy of good enough," he says.

On Capitol Hill, however, one can almost hear the scrape of the legislative brakes being applied. "I don't think any of us knows for sure where we'll end up," says Sen. Jim Jeffords, R-Vt., chairman of the Senate labor committee.

Because no members of Congress were at the table when the deal was cut, the settlement has been somewhat of an orphan on Capitol Hill. Kennedy and other anti-smoking lawmakers have done little but trash it. And those who generally favor the tobacco companies, and receive big financial contributions from them, are reluctant to step forward to embrace it. Republican presidential candidate Bob Dole, during a 1996 campaign swing through Kentucky, caught flak when he said he didn't [illegible] if smoking is addictive and added that "some people say milk is addictive."

"Many Republicans saw the way Dole mishandled the smoking issue in [illegible] year's presidential election and [illegible] want to be seen as defenders of big tobacco," says William Kristol, a GOP strategist and editor of the conservative *Weekly Standard*.

The tobacco industry continues, however, to use political contributions to bolster its sagging support on Capitol Hill. Common Cause says that the first six months of this year the tobacco industry gave $1.6 million to the Republican Party and $324,000 to Democrats.

The tobacco companies say that any attempt by the White House or Congress to increase the $368.5 billion price tag will be a deal-breaker. They recoil at a bill in Congress that would prevent the companies from taking tax deductions for the $368.5 billion in payments, raising the effective [illegible] of the settlement by some $100 billion.

"Who's going to make the payments if we go out of business?" asks [illegible] industry lawyer J. Phil Carlton. "This is a delicately balanced compromise," says RJR's Wise. "The companies do not have the ability to do more."

But many on Capitol Hill believe the companies are bluffing. Not only do some lawmakers think the payouts [illegible] penalties are too low, they also [illegible] like the part of the deal that would pr[illegible] the tobacco companies from future lawsuits, even though that's a cente[illegible] of the settlement.

If the comprehensive settlement ultimately falls apart, the fight against smoking and the tobacco companies is certain to continue.

Clinton could press for greater FDA control over nicotine. New restrictions on advertising and sales could be enacted. Higher taxes on cigarettes [illegible] be levied. And tobacco companies [illegible] be expected to fight [illegible] through lobbying [illegible] action.

In the meantime, [illegible] against tobacco companies on the state level are [illegible] ahead. And if the national settlement grows too costly, the tobacco industry appears ready to take its chances in court, eschewing further state-by-state deals like those reached with Mississippi [illegible] Florida. That prospect, says Moore, could be a "double-edged sword."

"States could start winning on [illegible] own and say, 'Why should we [illegible] the payments with other states?'" Moore says. "Or the companies can [illegible] winning and say, 'Wait just a minute on this settlement.' This settlement is the deal we can get. The time for Congress to act is now."

Contributing: Jessica Lee, Doug Levy

NATIONLINE

Ariz. prosecutors: Suspects weren't bounty hunters

Arizona prosecutors said Sunday they have filed first-degree murder charges against five men who stormed a Phoenix house and killed a young couple inside, saying the men were not bounty hunters as they claimed.

Maricopa County Attorney Rick Romley said the charges were upgraded from second-degree murder after new evidence showed the group had planned to rob the house on Aug. 31, not capture a California fugitive.

"The bounty hunter story was just a ruse to get them out of trouble if something went wrong," Romley said.

Police said the men, wearing body armor, broke in at 4 a.m., tied up a woman and held her children at gunpoint. The men then kicked down a bedroom door and engaged in a fierce gun battle with Christopher Foote, 23, that left Foote and girlfriend Spring Wright, 19, dead.

Calif. wildfire consumes 13 buildings

By William Wilson Lewis III, AP

Taking a break: Firefighters rest before rejoining the battle against a southern California wildfire that raged over more than 1,200 acres, consuming 11 homes and two other buildings near Running Springs. Hundreds of residents were evacuated. Firefighters and advance Hurricane Linda rain had the blaze 80% contained.

BART IS BACK: The San Francisco Bay area's commuter rail system was ready to roll today after a strike by union workers idled trains and created traffic nightmares. Bay Area Rapid Transit trains haven't run since Sept. 6, the day before 2,600 workers walked off the job. Management and the unions reached a tentative four-year contract Saturday. Traffic jams and packed buses were the rule as travel times doubled and tripled for many riders seeking ways in and out of San Francisco. BART handles 275,000 riders a day.

EXTRA CELL: Oklahoma City bombing defendant Terry Nichols uses a neighboring cell equipped with a videocassette recorder as an office to help prepare his defense, *Newsweek* reports today. The 6-by-8-foot cell at Denver's Federal Correctional Institution holds thousands of pages of transcripts and briefs and a VCR to watch footage related to the bombing, the magazine reported. Nichols faces trial Sept. 29, on murder, conspiracy and related charges in the April 19, 1995, Alfred P. Murrah Federal Building bombing that killed 168 and injured more than 500. Timothy McVeigh already has been convicted and sentenced to die.

CARGO CRASH PROBE: Fine Air Services Inc., the cargo carrier that suspended flights after an August crash that killed five, says it plans to fly again within three weeks under an agreement with federal regulators. The Miami-based airline halted operations Sept. 4 pending an investigation. Its DC-8, taking off from Miami International Airport, crashed into a street, killing all four aboard and one motorist. The National Transportation Safety Board is trying to determine if 45 tons of textiles were stored improperly on the plane. Fine Air has agreed to improve cargo handling procedures and pay a reduced fine of $500,000.

Bicyclists raise $7.5M for AIDS

By Anders Krusberg, AP

3-day journey over: 'The Riderless Cycle,' a tribute to AIDS victims, makes its way toward the closing ceremonies of the Boston-to-New York AIDS ride. All 3,200 participants had gathered eight blocks from the Manhattan finish line to conclude the three-day, 275-mile journey en masse. The ride raised $7.5 million for AIDS programs.

APPLIANCE SCIENCE: Bern, Kan., had a 38% savings in overall water usage and a 56% energy savings since the U.S. Energy Department's "Energy Star Residential Technology" pilot program began in June, federal officials said. Maytag high-efficiency Neptune washers were installed in 104 homes in and around Bern, population 204. The department, now testing refrigerators, window air conditioners, heat pumps and other appliances, hopes to promote use of those found most environmentally friendly.

REDWOOD PROTEST: Thousands of environmentalists gathered to protest logging of centuries-old redwoods in northern California's Headwaters Forests. Among the protesters in nearby Stafford was singer Bonnie Raitt, one of 1,000 people arrested during a similar protest a year ago.

Written by John Bacon with staff and wire reports. Contributing: Carrie Hedges.

USA TODAY · MONDAY, SEPTEMBER 15, 1997

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COMMENTARY

By Mike France & John Carey

TOBACCO: DON'T JUMP AT THIS DEAL

America now has an unprecedented opportunity to save millions of lives. With public outrage at Big Tobacco hitting all-time highs, and the industry's power sinking to new lows, it appears to be politically feasible—for the first time ever—to impose a powerful regulatory regime on cigarettes, one of the world's deadliest consumer products.

But there's a risk that the country will blow this historic opportunity. Well-publicized peace talks are now under way over the future of tobacco. Unfortunately, these negotiations—and the public debate—are dominated by three groups that do not necessarily have society's best interests at heart: the industry, plaintiffs' lawyers, and attorneys general from 24 states that have sued manufacturers. Rather than focusing on the regulation of tobacco, these players have put the bulk of their energy into developing a $250 billion to $300 billion fund that would compensate the industry's alleged victims. It's clear what they find appealing about such a deal: Plaintiffs' lawyers stand to make hundreds of millions; the industry wants to limit its liability and stabilize its stock valuations; and the state AGs will be able to crow about the billions they have won for their states.

TEMPTATION. But these peace talks are worrisome. While it's tempting to grab the industry's billions now, the price for such a mammoth compensation fund will be far too high. In exchange for a share of tobacco's profits, the powerful lawyers at the bargaining table may have to trade off the right to fully regulate everything from tobacco advertising to nicotine content. While the attorneys would obtain tougher limits than those that currently exist, there are already signs that they would fall far short of what is needed to seriously slash tobacco use. Then America's hands would be tied, since the negotiators want to cement their deal in congressional legislation. Says former Food & Drug Administration Commissioner David A. Kessler: "We can't afford to buy into a system that looks good today but may turn out not to be effective."

Kessler is right. While there may come a time when settlement talks are appropriate, now isn't it. The public-health community, unprepared for the speed with which Big Tobacco's political power has crumbled, still has to do some serious thinking about the right way to cut tobacco use. Moreover, the wrong parties are at the table. The industry, the AGs, and the plaintiffs' lawyers share a strong financial interest in striking a deal that focuses on compensating Big Tobacco's victims rather than regulating it in the future. While paying money to smokers and states that have shouldered huge Medicaid bills may one day be desirable, it isn't the top priority.

Instead, it is far more important to take immediate steps to raise cigarette taxes, curb tobacco advertising, and accelerate the campaign to ban smoking in public places. Only after these goals have been achieved should the issue of a compensation fund be addressed. "If there is only a limited amount of money available, it's always better to use that money to prevent future loss than to compensate people for past loss—as cruel as that choice may seem to be," says Jeffrey O'Connell, a professor at the University of Virginia law school and expert in injury-compensation plans.

Taking tougher steps to prevent future smoking is possible right now—without conceding anything to the industry. An enormous legal hurdle to regulation fell on Apr. 25, when a North Carolina federal judge declared that the FDA has jurisdiction over tobacco. If the decision is upheld on appeal, as

ILLUSTRATIONS BY JEFFREY SMITH

The lawyers at the table are focusing too much on many legal experts expect, the FDA could accelerate its attack on teenage smoking—and begin thinking about such dramatic future steps as requiring reductions in the amount of nicotine in cigarettes. Before striking an irreversible deal with the industry, let's see what the FDA can do first.

What, specifically, should be done? Looking forward, policymakers should be guided by some fundamental principles. University of Michigan tobacco policy expert Kenneth E. Warner, for instance, advocates four key rights: All Americans have the right to breathe air not tainted with tobacco smoke at work and in public places; addicted smokers deserve more help to quit; children and teenagers have the right to an environment free of ads and other inducements to use tobacco; adults who are well-informed about all the risks should have the right to use tobacco.

We would add to Warner's list another important right, dear to the hearts of Americans: the right to sue manufacturers of dangerous products.

TAX HIKE. We must, of course, be careful to respect freedom of choice, also a cherished American value. If restrictions are placed on people's smokes, critics wonder, what will be next? "Before I jump on the tobacco bandwagon, I want to know why aren't caffeine, chocolate, sugar on there, too," grumbles Lawrence W. Schonbrun, a Berkeley (Calif.) attorney who fights excessive class-action lawyers' fees.

Keeping all these principles in mind, here are some steps worth taking. For starters, the most effective way to prevent smoking is to raise the tax on cigarettes. A 10% rise in the cost of tobacco sends sales down 4%—and among youths, the drop is higher, perhaps as much as 12%. "Kids are sensitive to price, if not to risk," explains health economist Willard G. Manning of the University of Minnesota (table, page 112). We should heed the recommendation of smoking foes for a major nationwide tax increase—about \$2 per pack, to roughly \$4.50.

From an international perspective, that's still not very high: A pack costs \$4.80 in Britain. But it would be enough to discourage children and push millions of adults to cut back or quit. Admittedly, new taxes are a hard sell in Congress, but polls show that Big Tobacco is a pariah to a majority of Americans, so cigarette taxes may be a breed apart. Some key Republicans have signed onto a bill that would modestly raise cigarette levies, and a record number of states are considering boosts. The billions of dollars raised could be used to fund education programs and hard-hitting antismoking campaigns. Such revenues might eventually fall as consumption does, but that's the point, after all.

Another effective tool: strict curbs on ads and promotions aimed at kids. Right now, America's youth are bombarded with merchandise offers, clever ads in magazines and on billboards, and alluring store displays—a barely regulated free-for-all. That's just what the FDA was trying to curb when it announced new ad restrictions last fall. U.S. District Judge William L. Osteen blocked the FDA's ad limits in his recent ruling, but the U.S. Supreme Court on Apr. 28 endorsed the government's right to regulate commercial speech for the public good—a sign that some restrictions on tobacco marketing are likely to be tolerated.

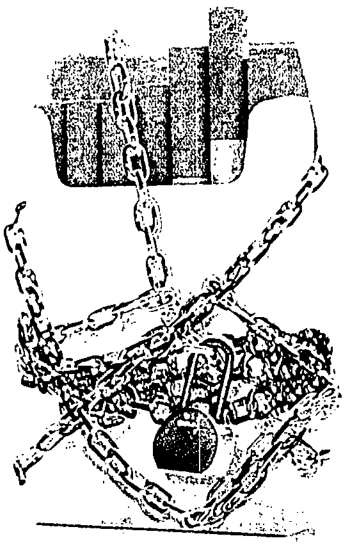
That's welcome news. More than 90% of current smokers begin puffing before the age of 18, and in recent years such enticements as cartoon characters and free merchandise have helped boost smoking by kids. Typically, they're well aware of the hazards of smoking, and they never intend to make it a lifelong habit. But before they reach adulthood, they're hooked. "The big problem is that kids underestimate the addictive power of nicotine," explains Neal Benowitz, an addiction expert at the University of California at San Francisco Medical School.

The message that smoking is cool also comes from secondary-source promotion through the mass media, such as Hollywood movies. There is a deliberate industry-funded effort to get cigarettes placed in movies and TV shows. "We're getting killed in the entertainment media," laments Gregory Connolly, director of the tobacco-control project at Massachusetts' Public Health Dept. It's a tough problem to solve, given the First Amendment. But it's worth trying to jawbone Hollywood into deglamorizing smoking.

We also need to push companies and local government to

the past, rather than on preventing future smokers

WHAT WE SHOULD DO ABOUT TOBACCO



POSTPONE THE SETTLEMENT TALKS Current negotiations amount to a backroom deal by lawyers and would give away too much to industry and hobble our ability to regulate in the future.

BAN ADVERTISING AND PROMOTION AIMED AT KIDS Without trampling the First Amendment, we need to keep the industry from hooking smokers early.

RAISE TAXES Boost the price of cigarettes—by as much as $2 a pack—to dramatically cut sales, especially to kids.

EXPAND SMOKE-FREE WORKPLACES AND PUBLIC AREAS Studies show that when a company bans indoor smoking, nearly 25% of its smokers quit and others cut back. More states need to sign on.

DISCLOSE ALL INGREDIENTS Adults could make more reasoned decisions. Now many smokers think "lite" cigarettes are safer than nicotine patches.

KEEP FDA ON THE CASE Current rules barring tobacco sales to kids are only a start. We need a strong regulatory hand that could impose further restrictions.

make everything from offices to sections of restaurants smoke-free. "It's the most effective single intervention," says Stanton A. Glantz, a prominent antitobacco activist. When a company bans smoking, about one-quarter of smokers quit, and the rest cut back 20%. But we have a long way to go: A new Massachusetts survey shows that in 1995, 35% of companies in the state still didn't have such a ban—and Massachusetts is one of the more enlightened states on this issue.

Individuals should be free to smoke, of course. But full disclosure of all the ingredients in tobacco—and their effects—is crucial if people are to make more rational choices. Massachusetts officials, using recent focus groups, discovered that a majority of smokers believe "lite" cigarettes offered a safer way to quit than nicotine patches did. That's because the patches come with an extensive list of warnings about their dangers, while cigarettes, despite containing a bevy of more toxic ingredients, say next to nothing about their dangers.

HOOKED. We may also want to consider the controversial idea of reducing the level of nicotine in cigarettes. That could conceivably allow teenagers to experiment with tobacco without getting hooked. It would also take away the most compelling reason for adult smoking. "We've largely won the public-health battle if we take the nicotine out of cigarettes," says a former FDA lawyer.

True, there's the problem of 48 million Americans still addicted to the drug. Heavy smokers would have to smoke more to get their daily nicotine fixes. And it might encourage bootlegging of stronger foreign brands. But patches, gum, or other delivery systems could be just as effective in satisfying the craving, without many of the health risks.

Naturally, any course of action needs flexibility, fine-tuning, and plenty of debate. And it's wise to remember that in the case of even the most well-meaning regulations, the industry has a history of turning the laws to its advantage. After the 1971 ban on radio and TV tobacco ads, for example, companies rebounded with a series of strategies—from merchandise giveaways to sports sponsorships—that reached impressionable youth.

Once a strong regulatory scheme is in place, then it may be time to move on to the issue of compensating Big Tobacco's victims. But beforehand, society needs to reach a consensus on how much money smokers really deserve. After all, the vast majority knew of the risks of cigarettes and therefore contributed to their own injuries. So is it fair to force the industry to pay for their full medical expenses?

There's also reason to believe that any compensation scheme for tobacco victims would be a mess. The crux of the problem: Smoking causes a wide variety of health ailments, but it is not the sole cause of any of them. If a compensation scheme tries too hard to separate legitimate claimants from illegitimate ones—weighing factors such as how long they smoked—it will burn up every penny in the fund. But without some guidelines, millions of people could be eligible for money—reducing the average payout to a fraction of most victims' medical expenses and lost wages.

Given these flaws, it may never be worth handing the industry blanket immunity from liability solely in exchange for a compensation fund. There's no reason to deprive people of their day in court, especially since the FDA's recent triumph in court has reduced the need to provide the tobacco industry legal protection in exchange for cooperation.

America is at a crucial crossroads. The tobacco industry is on the run, and there is a unique opportunity to shape the future. Let's not rush into a lawyer-driven deal that sacrifices this once-in-a-lifetime chance to kick the tobacco habit.

Mike France covers legal affairs from New York, and John Carey reports on health from Washington.

THE POWER OF TAXES

A recent study shows the strong correlation between high cigarette taxes and reduced consumption, especially among young people:

PROPOSED TAX INCREASE	REDUCTION IN NUMBER OF YOUTH WHO SMOKE	REDUCTION IN CIGARETTE CONSUMPTION BY YOUTH
$1.00	**25%**	**50%**
$2.00	**40%**	**70%**

DATA: CHALOUPKA & GROSSMAN FOR NATIONAL BUREAU OF ECONOMIC RESEARCH, BW

PHOTOGRAPH OF CIGARETTE BOX BY TED MORRISON. PHOTO ILLUSTRATION BY JOHN BLACKFORD

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Dow Jones Newswires -- June 9, 1997

Amer Cancer Society Says Tobacco Deal Addresses Its Concerns

Dow Jones Newswires

ATLANTA -- The American Cancer Society said the proposed settlement between the **tobacco** industry and the attorneys general of 33 states appears to address its six general principles for public health.

In a press release Monday, the society said "it is not endorsing any settlement agreement language until it has the opportunity for an extensive review of all elements."

The American Cancer Society said it is "encouraged" by the proposals and urges the attorneys general to present a complete plan so a full evaluation can be conducted.

The society believes settlement talks "appear to have produced substantive elements with the potential for controlling **tobacco** industry activities" and providing protection for future generations.

The society said it seeks a settlement "that gets us to a smoke-free generation as quickly as humanly possible." A settlement that embraces its public-health goals is preferable to "waiting for the uncertain result of many years of continued litigation," the society said.

Defendants in the suits against the **tobacco** industry include B.A.T. Industries Ltd.'s (BTI) Brown & Williamson **Tobacco** Corp.; American **Tobacco** Co.; RJR Nabisco Holdings Corp.'s (RN) R.J. Reynolds **Tobacco** Co.; Philip Morris Cos. (MO); and Liggett Group Inc., a unit of Brooke Group Ltd. (BGL).

The American Cancer Society's six principals are Food

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and Drug Administration authority to regulate tobacco; allowing the FDA to augment FDA requirements governing youth access and **tobacco** marketing; no immunization from lawsuits for the **tobacco** industry; a sustained public education and tobacco-control campaign; a prohibition on Congress preempting state or local laws that are stronger than federal laws; and disclosure by the **tobacco** industry of its research and studies.

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Guide to Tobacco Files:

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a. The settlement
b. The doings of Koop & Kessler

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2. Document Disclosure
    a. Anne Weismann's comments on Appendix VIII of the settlement
    b. Document disclosure issues affecting FDA

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4. Company Liability
    a. Memo on punitive damages

5. Penalities for Violations
    a. Side/side: settlement v. Existing law

6. Constitutional Problems
    a. Web article- Due Process, state sovereignty, and 10th Amendment problems
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7. Financial Concerns
    a. Web article- FTC concern over price-fixing

File 3-INTERNATIONAL/TRADE

a. Elizabeth's notes
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c. CDC report on internt'l HHS activities and international implications of the settlement
d. International portfolios of the tobacco companies
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File 4- REGULATION

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2. FDA Regulation
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File 5-ECONOMIC TASK FORCE

a. Preliminary draft outline of progress report on economic issues from CEA

File 6-ENVIRONMENTAL TOBACCO SMOKE

a. Introductory memo and side/side from DOL (Draft #1)
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1. Yellow- Cessation/Education
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File Tobacco - Farmers

U.S. DEPARTMENT OF AGRICULTURE

OFFICE OF THE SECRETARY

DATE: 7-30-97

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FROM: Charlie Rawls

PHONE #: 720-6158

FAX #: 720-5437

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TALKING POINTS

- We fully understand the significance of tobacco production in each of your States and Congressional Districts. Even though tobacco is only grown in 21 States nationwide, it is the sixth largest cash crop.

- Tobacco production and marketing is the single most important economic engine in many counties throughout the country and especially in the Southeast. Net returns per acre dwarf the returns per acre for any other major crop produced in the United States.

- Tobacco production is especially important to farmers with limited financial resources and minority farmers.

- The Administration will not forget the concerns of the farmers in its review of the Tobacco Settlement. Since the announcement of the settlement, the Administration has maintained an active dialogue with tobacco farmers, and their elected representatives, in order to fully understand their views and concerns with the agreement.

- Farmers were not invited to participate in the negotiations. However, they deserve to be heard now, and to have their views fully and fairly considered in the course of the review conducted now by the Administration and later when Congress considers legislation.

- We can provide our commitment to work with you when the Congress considers legislation to ensure that farmer concerns are addressed.

- The Administration is committed to the fulfilment of its youth smoking goals. Without exception we have found that tobacco farmers also support these goals.

- Tobacco farmers have not, and will not be singled out for punitive, or unfair treatment by the Administration in its efforts to address youth smoking.

... Lieut. Gen. James F. Hollingsworth, who led all American forces in South Korea in the 1970's.

Lieut. Gen. David R. Palmer, re-

Papers Crucial In Florida Deal Over Tobacco

By BARRY MEIER

As a trial nears in a major smoking-related lawsuit against the tobacco industry, a legal confrontation is looming between Florida officials and cigarette company lawyers over the disclosure of documents.

Florida's Attorney General, Robert A. Butterworth, said yesterday he would not settle the state's Medicaid-related lawsuit against tobacco producers unless they dropped their efforts to prevent the release of eight sensitive Liggett Group documents.

"Unless they show good faith and let these documents go," Mr. Butterworth said, "there is no way they're going to see me at a bargaining table."

The Liggett documents, which cover strategy talks among tobacco industry lawyers, were divulged by Liggett as part of a separate settlement agreement it reached earlier this year with state attorneys general. But since then, other tobacco companies, which reached their own $368.5 billion settlement proposal last month with state officials, have gone to court to block release of the papers, claiming they are covered by the attorney-client privilege.

While the proposal is pending, states that have sued the industry can pursue those lawsuits or settle them. Jury selection in Florida's lawsuit is set to begin on Friday in West Palm Beach. The state is seeking to recover billions of dollars in Medicaid expenses for treating smoking-related illnesses.

Normally, exchanges between lawyers representing different clients are protected from disclosure unless the plaintiffs can show that the lawyers were involved in a crime or fraud. So far, several judges in Florida have ruled the documents produced by Liggett, a subsidiary of the Brooke Group, contain evidence that industry lawyers were involved in such conduct.

Cigarette companies have appealed those decisions, and one industry official said they would continue to do so.

The differing positions of Mr. Butterworth and cigarette company executives raise the possibility that Florida's Medicaid case could go forward despite efforts in recent weeks to negotiate a settlement.

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GOVT RECOVERY CASE

SUMMARY OF BUDGETARY EFFECTS OF PROPOSED SETTLEMENT
BASE SCENARIO WITH BBA CREDIT REPEALED AND YOUTH TARGETS MET
(In billions of dollars)

09/11/97
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	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	98-03	98-08	98-23
RECEIPTS														
Base Payment (inc. trust and up-front payment)	**10**	**11**	**12**	**15**	**18**	**19**	**19**	**19**	**19**	**19**	**19**	**84**	**179**	**464**
Payments to Recoup Excise Tax Credit and/or Losses	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Adult Sales Volume Adjustment	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Credit for Personal Compensation Claims	—	—	(1)	(1)	(1)	(1)	(2)	(2)	(2)	(4)	(4)	(4)	(16)	(76)
Inflation Adjustment	—	(1)	(1)	(1)	(1)	(1)	(0)	0	1	1	1	(4)	(2)	72
Credit for BBA Excise Taxes	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Look-Back Surcharge for Youth Consumption	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Net Industry Settlement Payments	**10**	**10**	**11**	**13**	**16**	**17**	**17**	**18**	**18**	**16**	**16**	**77**	**161**	**460**
Tax Offsets														
Indirect Business Tax Offset	(3)	(3)	(3)	(3)	(4)	(4)	(4)	(4)	(5)	(4)	(4)	(19)	(40)	(115)
Corporate Income Tax on Look-Back Surcharge	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Youth Excise Tax Trigger	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Reduction in Existing Federal Excise Taxes	—	(0)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(4)	(11)	(29)
Total Federal Tax Offsets	(3)	(3)	(3)	(4)	(5)	(6)	(6)	(6)	(6)	(5)	(5)	(24)	(51)	(145)
Net Additional Receipts to US Government	**8**	**7**	**7**	**9**	**11**	**12**	**12**	**12**	**12**	**11**	**11**	**53**	**110**	**316**
POTENTIAL USES/CHANGES														
State Attorneys General Proposals, Total	—	7	7	8	10	12	10	10	10	6	6	44	86	204
Offset Reduction in State Excise Taxes	—	1	1	1	1	2	2	2	2	2	2	6	15	49
Use of Youth Look-Back Surcharge (90% grants)	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Potential Increase in Federal Medicaid Match	1	2	2	2	3	3	3	3	3	3	3	13	29	85
Total Potential Uses	**1**	**10**	**10**	**12**	**14**	**16**	**15**	**15**	**15**	**11**	**11**	**63**	**130**	**338**
Memoranda:														
Ad Valorem Equivalent of Net Payments		**22%**	**23%**	**29%**	**34%**	**38%**	**38%**	**38%**	**38%**	**38%**	**39%**			
Change in Total Cigarette Consumption		**-10%**	**-11%**	**-13%**	**-16%**	**-17%**	**-18%**	**-18%**	**-18%**	**-18%**	**-18%**			
Percentage Point Shortfall from Youth Target						—	—	—	—	—	—			

SUMMARY OF BUDGETARY EFFECTS OF PROPOSED SETTLEMENT
BASE SCENARIO WITH BBA CREDIT REPEALED AND YOUTH TARGETS MET

09/11/97
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(In billions of dollars)

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	98-03	98-08	98-23
RECEIPTS														
Base Payment (inc. trust and up-front payment)	**10**	**9**	**10**	**12**	**14**	**15**	**15**	**15**	**15**	**15**	**15**	**69**	**144**	**369**
Payments to Recoup Excise Tax Credit and/or Losses	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Adult Sales Volume Adjustment	—	(1)	(1)	(2)	(2)	(3)	(3)	(3)	(3)	(3)	(3)	(9)	(23)	(74)
Credit for Personal Compensation Claims	—	—	(0)	(1)	(1)	(1)	(1)	(1)	(1)	(3)	(3)	(3)	(13)	(59)
Inflation Adjustment	—	0	0	1	1	2	2	3	3	3	3	5	18	109
Credit for BBA Excise Taxes	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Look-Back Surcharge for Youth Consumption	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Net Industry Settlement Payments	**10**	**8**	**8**	**10**	**12**	**13**	**13**	**13**	**14**	**12**	**12**	**62**	**125**	**344**
Tax Offsets														
Indirect Business Tax Offset	(3)	(2)	(2)	(2)	(3)	(3)	(3)	(3)	(3)	(3)	(3)	(15)	(31)	(86)
Corporate Income Tax on Look-Back Surcharge	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Youth Excise Tax Trigger	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Reduction in Existing Federal Excise Taxes	—	(0)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(3)	(8)	(23)
Total Federal Tax Offsets	(3)	(2)	(3)	(3)	(4)	(4)	(4)	(4)	(4)	(4)	(4)	(19)	(40)	(109)
Net Additional Receipts to US Government	**8**	**6**	**6**	**7**	**8**	**9**	**9**	**9**	**9**	**8**	**8**	**43**	**86**	**234**
POTENTIAL USES/CHANGES														
State Attorneys General Proposals, Total	—	6	6	7	8	10	8	9	9	5	5	39	74	165
Offset Reduction in State Excise Taxes	—	1	1	1	1	1	1	1	1	1	1	5	11	39
Use of Youth Look-Back Surcharge (90% grants)	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Potential Increase in Federal Medicaid Match	1	1	2	2	2	2	2	3	3	2	2	10	22	63
Total Potential Uses	**1**	**8**	**9**	**10**	**12**	**14**	**12**	**12**	**13**	**8**	**9**	**54**	**108**	**268**
Memoranda:														
Ad Valorem Equivalent of Net Payments		**17%**	**18%**	**22%**	**26%**	**28%**	**28%**	**29%**	**29%**	**29%**	**29%**			
Change in Total Cigarette Consumption		**-7%**	**-8%**	**-10%**	**-13%**	**-13%**	**-14%**	**-14%**	**-14%**	**-14%**	**-14%**			
Percentage Point Shortfall from Youth Target						—	—	—	—	—	—			

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~~GOV'T RECOVERY CASE~~

SUMMARY OF BUDGETARY EFFECTS OF PROPOSED SETTLEMENT

09/11/97

~~BASE SCENARIO WITH BBA CREDIT REPEALED AND YOUTH TARGETS MET~~

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(In billions of dollars)

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	98-03	98-08	98-23
RECEIPTS														
Base Payment (inc. trust and up-front payment)	**10**	**23**	**25**	**30**	**37**	**39**	**40**	**40**	**40**	**40**	**40**	**163**	**361**	**953**
Payments to Recoup Excise Tax Credit and/or Losses	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Adult Sales Volume Adjustment	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Credit for Personal Compensation Claims	—	—	(1)	(1)	(1)	(1)	(2)	(2)	(2)	(4)	(4)	(4)	(16)	(76)
Inflation Adjustment	—	(4)	(4)	(5)	(7)	(8)	(7)	(7)	(6)	(5)	(4)	(28)	(57)	(7)
Credit for BBA Excise Taxes	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Look-Back Surcharge for Youth Consumption	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Net Industry Settlement Payments	**10**	**19**	**20**	**24**	**28**	**30**	**31**	**31**	**32**	**31**	**32**	**131**	**288**	**871**
Tax Offsets														
Indirect Business Tax Offset	(3)	(5)	(5)	(6)	(7)	(8)	(8)	(8)	(8)	(8)	(8)	(33)	(72)	(218)
Corporate Income Tax on Look-Back Surcharge	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Youth Excise Tax Trigger	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Reduction in Existing Federal Excise Taxes	—	(1)	(1)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(8)	(20)	(53)
Total Federal Tax Offsets	(3)	(6)	(6)	(8)	(9)	(10)	(10)	(10)	(10)	(10)	(10)	(41)	(92)	(271)
Net Additional Receipts to US Government	**8**	**13**	**14**	**16**	**19**	**20**	**21**	**21**	**22**	**21**	**21**	**90**	**196**	**600**
POTENTIAL USES/CHANGES														
State Attorneys General Proposals, Total	—	10	10	12	13	15	14	14	15	12	12	60	127	348
Offset Reduction in State Excise Taxes	—	2	2	2	3	3	3	3	3	3	3	11	27	89
Use of Youth Look-Back Surcharge (90% grants)	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Potential Increase in Federal Medicaid Match	1	4	4	4	5	6	6	6	6	6	6	24	53	162
Total Potential Uses	**1**	**15**	**16**	**18**	**21**	**24**	**23**	**23**	**24**	**21**	**21**	**95**	**207**	**599**

Memoranda:

	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Ad Valorem Equivalent of Net Payments	**45%**	**49%**	**59%**	**72%**	**78%**	**79%**	**79%**	**80%**	**80%**	**80%**
Change in Total Cigarette Consumption	**-19%**	**-21%**	**-25%**	**-30%**	**-32%**	**-32%**	**-32%**	**-32%**	**-33%**	**-33%**
Percentage Point Shortfall from Youth Target					**-2%**	**-4%**	**—**	**—**	**—**	**—**

SUMMARY OF BUDGETARY EFFECTS OF PROPOSED SETTLEMENT
BASE SCENARIO WITH BBA CREDIT REPEALED AND YOUTH TARGETS NOT MET

09/11/97
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(In billions of dollars)

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	98-03	98-08	98-23
RECEIPTS														
Base Payment (inc. trust and up-front payment)	**10**	**9**	**10**	**12**	**14**	**15**	**15**	**15**	**15**	**15**	**15**	**69**	**144**	**369**
Payments to Recoup Excise Tax Credit and/or Losses	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Adult Sales Volume Adjustment	—	(1)	(1)	(2)	(2)	(3)	(3)	(3)	(3)	(3)	(3)	(9)	(24)	(76)
Credit for Personal Compensation Claims	—	—	(0)	(1)	(1)	(1)	(1)	(1)	(1)	(3)	(3)	(3)	(13)	(59)
Inflation Adjustment	—	0	0	1	1	2	2	2	3	3	3	5	18	108
Credit for BBA Excise Taxes	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Look-Back Surcharge for Youth Consumption	—	—	—	—	—	1	—	3	—	2	2	1	6	29
Net Industry Settlement Payments	**10**	**8**	**8**	**10**	**12**	**14**	**13**	**16**	**14**	**13**	**13**	**62**	**131**	**370**
Tax Offsets														
Indirect Business Tax Offset	(3)	(2)	(2)	(2)	(3)	(3)	(3)	(4)	(3)	(3)	(3)	(16)	(33)	(92)
Corporate Income Tax on Look-Back Surcharge	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Youth Excise Tax Trigger	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Reduction in Existing Federal Excise Taxes	—	(0)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(3)	(9)	(23)
Total Federal Tax Offsets	(3)	(2)	(3)	(3)	(4)	(4)	(4)	(5)	(4)	(4)	(4)	(19)	(41)	(116)
Net Additional Receipts to US Government	**8**	**6**	**6**	**7**	**8**	**9**	**9**	**11**	**9**	**9**	**9**	**43**	**90**	**254**
POTENTIAL USES/CHANGES														
State Attorneys General Proposals, Total	—	6	6	7	8	10	8	8	9	5	5	39	74	165
Offset Reduction in State Excise Taxes	—	1	1	1	1	1	1	1	1	1	2	5	12	39
Use of Youth Look-Back Surcharge (90% grants)	—	—	—	—	—	1	—	3	—	2	2	1	6	29
Potential Increase in Federal Medicaid Match	1	1	2	2	2	3	2	3	3	2	3	11	23	68
Total Potential Uses	**1**	**8**	**9**	**10**	**12**	**15**	**12**	**15**	**13**	**10**	**10**	**54**	**115**	**301**
Memoranda:														
Ad Valorem Equivalent of Net Payments		**17%**	**18%**	**22%**	**26%**	**29%**	**28%**	**33%**	**28%**	**32%**	**32%**			
Change in Total Cigarette Consumption		**-8%**	**-9%**	**-10%**	**-13%**	**-14%**	**-13%**	**-16%**	**-13%**	**-15%**	**-15%**			
Percentage Point Shortfall from Youth Target						**6%**	**2%**	**23%**	**17%**	**24%**	**30%**			

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SUMMARY OF BUDGETARY EFFECTS OF PROPOSED SETTLEMENT
WITH BBA CREDIT REPEALED AND TOUGHER YOUTH SURCHARGE (EX TAX EQUIV)

(In billions of dollars)

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	98-03	98-08	98-23
RECEIPTS														
Base Payment (inc. trust and up-front payment)	**10**	**9**	**10**	**12**	**14**	**15**	**15**	**15**	**15**	**15**	**15**	**69**	**144**	**369**
Payments to Recoup Excise Tax Credit and/or Losses	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Adult Sales Volume Adjustment	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Credit for Personal Compensation Claims	—	—	(1)	(1)	(1)	(1)	(2)	(2)	(2)	(4)	(4)	(4)	(16)	(76)
Inflation Adjustment	—	(0)	(0)	(0)	(0)	(0)	0	0	0	1	1	(1)	0	49
Credit for BBA Excise Taxes	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Look-Back Surcharge for Youth Consumption	—	—	—	—	—	1	1	4	7	3	7	1	23	161
Net Industry Settlement Payments	**10**	**8**	**9**	**10**	**13**	**15**	**14**	**18**	**20**	**15**	**19**	**64**	**150**	**503**
Tax Offsets														
Indirect Business Tax Offset	(3)	(2)	(2)	(3)	(3)	(4)	(4)	(4)	(5)	(4)	(5)	(16)	(38)	(126)
Corporate Income Tax on Look-Back Surcharge	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Youth Excise Tax Trigger	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Reduction in Existing Federal Excise Taxes	—	(0)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(4)	(10)	(31)
Total Federal Tax Offsets	(3)	(2)	(3)	(3)	(4)	(5)	(5)	(6)	(6)	(5)	(6)	(20)	(48)	(156)
Net Additional Receipts to US Government	**8**	**6**	**6**	**7**	**9**	**10**	**10**	**12**	**14**	**10**	**13**	**45**	**103**	**346**
POTENTIAL USES/CHANGES														
State Attorneys General Proposals, Total	—	6	6	7	9	10	9	9	9	5	5	39	75	166
Offset Reduction in State Excise Taxes	—	1	1	1	1	1	1	2	2	2	2	5	14	52
Use of Youth Look-Back Surcharge (90% grants)	—	—	—	—	—	1	1	4	7	3	7	1	23	161
Potential Increase in Federal Medicaid Match	1	2	2	2	2	3	3	3	4	3	3	11	27	93
Total Potential Uses	**1**	**9**	**9**	**10**	**12**	**15**	**13**	**18**	**21**	**12**	**17**	**56**	**138**	**472**
Memoranda:														
Ad Valorem Equivalent of Net Payments		**17%**	**19%**	**23%**	**28%**	**31%**	**31%**	**39%**	**44%**	**36%**	**44%**			
Change in Total Cigarette Consumption		**-8%**	**-9%**	**-11%**	**-13%**	**-15%**	**-15%**	**-18%**	**-20%**	**-17%**	**-20%**			
Percentage Point Shortfall from Youth Target						**4%**	**-1%**	**19%**	**10%**	**4%**	**24%**			

ALTERNATIVE TOBACCO SETTLEMENTS -- SUMMARY

(Dollar amounts in billions)

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	Baseline	AG Settlement	Tougher Youth Surcharge	Restore Gov't Share	Payment of $1.50 Per Pack
Youth Targets Not Met:					
Average Payment per Pack in 2003 1/		0.57	0.60		
Average Price per Pack in 2003 1/	1.93	2.49	2.53		
Millions of Smokers in 2003	51.5	46.2	45.9		
Gross Payments over 25 Years 2/:					
Base Payments		369	369		
Youth Smoking Penalty		18	98		
Total		386	467		
Net Federal Revenues, Cumulative:					
Five Year Total (1998-2003)		43	45		
Ten Year Total (1998-2008)		90	103		
25-Year Total (1998-2023)		254	346		
Payments and Revenues in 2003:					
Gross Industry Payments		17	16		
Net Industry Payments		14	15		
Net Federal Revenues		9	10		
Specified AG spending		11	11		

Note: all scenarios assume repeal of the TRA97 excise tax credit.
1/ In constant 1996 dollars. Includes BBA97 excise tax increase.
2/ In constant 1998 dollars.

ALTERNATIVE TOBACCO SETTLEMENTS -- SUMMARY

(Dollar amounts in billions)

health care costs

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	Baseline	AG Settlement	Tougher Youth Surcharge	Restore Gov't Share	Payment of $1.50 Per Pack
Youth Targets Met:					
Average Payment per Pack in 2003 (96$)........................		0.54	0.54	0.73	1.50
Average Price per Pack in 2003 (96$).............................	1.93	2.47	2.47	2.66	3.43
Millions of Smokers in 2003..	51.5	46.3	46.3	45.1	40.2
Gross Payments over 25 Years (98$):					
Base Payments..		369	369	95 464	489 953
Youth Smoking Penalty..		0	0	0	0
Total...		369	369	464	953
Net Federal Revenues, Cumulative:					
Five Year Total (1998-2003)...		43	43	53	90
Ten Year Total (1998-2008)..		86	86	110	196
25-Year Total (1998-2023)...		234	234	316	600
Payments and Revenues in 2003:					
Gross Industry Payments...		17	17	18	31
Net Industry Payments...		13	13	17	30
Net Federal Revenues..		9	9	12	20
Specified AG spending...		10	10	12	15

3.5 bill anti-litigation credit

Note: All scenarios assume repeal of the TRA97 excise tax credit and include the BBA97 excise tax increase..

NORTH CAROLINA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

POSITION ON CURRENT TOBACCO NEGOTIATIONS AS IT RELATES TO PRODUCTION

A meeting was held today at the request of Commissioner James A. Graham to discuss farmer needs in connection with the current tobacco settlement. The following people were in attendance: Commissioner Graham, NCDA (chairman); Deputy Commissioner Weldon Denny, NCDA; W.B. Jenkins, NC Farm Bureau; Larry Wooten, NC Farm Bureau; Lionel Edwards, Flue-Cured Stabilization; Arnold Hamm, Flue-Cured Stabilization; Charles Harvey, Tobacco Growers Assn. of NC; Robert Caldwell, NC State Grange; John Cyrus, NC State Grange; Mac Dunkley, Bright Belt Warehouse Assn.; Paul Dew, NC Agribusiness Council; Sam Coley, USDA-FSA; Carol Holley, USDA-FSA; William Upchurch, NCDA; Carl Sofley, NCDA; David McLeod, NCDA; Harry Daniel, NCDA; Peter Daniel, NCDA.

The group recommends as follows:

1. PROTECT THE CURRENT TOBACCO PROGRAM.

2. MAINTAIN THE TOBACCO QUOTA AND CURRENT PRICE SUPPORT SYSTEM.

3. A COMMITMENT FROM THE TOBACCO COMPANIES TO PURCHASE 600 MILLION POUNDS OF FLUE-CURED TOBACCO ANNUALLY.

It was a consensus of this group that any legislation enacted by Congress to implement the settlement should address the following growers concerns.

4. AUTHORIZE THE SECRETARY OF AGRICULTURE TO IMPLEMENT PROGRAM CHANGES THROUGH A REFERENDUM BY THE GROWERS.

5. SET ASIDE ONE PERCENT (1%) OF SETTLEMENT PACKAGE TO ALLOW FOR QUOTA BUY-DOWN OR OTHER PROGRAM ENHANCEMENTS.

6. TOBACCO GROWERS, GROWERS' ORGANIZATIONS, WAREHOUSES, AND DEALERS SHOULD RECEIVE THE SAME IMMUNITY OR LIMITATION OF LEGAL LIABILITY AFFORDED TO THE TOBACCO COMPANIES.

Prepared July 10, 1997 by the North Carolina
Department of Agriculture and Consumer Services
James A. Graham, Commissioner

END

Proposal on Negotiated Settlement On Behalf of Flue-Cured Tobacco Producers

1. **Continue Current Program**

   A. Contractual commitment by manufacturers to annually purchase a minimum of 585 million pounds (90% of 650 million).

   B. Continue current price support program.

   C. Complete 1994 buyout agreement.

   D. USDA shall continue to administer the tobacco program.

   E. No net cost assessments and other costs to administer the program shall continue as under the current program.

2. **Transition Payments and Quota Compensation**

   In the event the tobacco program is eliminated or phased out by congressional action, or manufacturers fail to meet purchase agreements, transition payments and/or quota compensation shall be made to tobacco producers as follows:

   A. **Transition Payments** -- The 1996 market price average shall be the base for transition payments. If prices for 1998 and subsequent years (up to eight years) average less than the 1996 beltwide market average, producers will receive a transition payment that will bring that year's average up to the 1996 market average.

   B. **Quota Compensation** -- When purchase agreement is not fulfilled and purchases fall below 585 million pounds and requires a quota reduction, the quota reduced shall be retired and quota owner paid $4.00 per pound for lost quota. If quota is reduced below 50% of the 1996 basic quota, the remaining quota is immediately retired and quota owner paid at $4.00 per pound.

Funds to cover transition payments and quota compensation shall be allocated as a part of the 368.5 billion dollar settlement agreement.

It is anticipated that 5.5 billion dollars should be allocated for flue-cured tobacco to cover the 8-year transition payments and quota retirement.

Recommendation for On-going
Tobacco Strategy Plan

1. Centralize Information: there will be a need for collecting infomation in a prompt and coherent way, including: what is happening on capitol hill, waht is being said in the media, what public interest groups may be preparing to say. All of these things could have an impact on the progress of the deal.

2. Rapid Analysis: There should be a preordained system for anaylzing and distribting information on the impact on deal financially, politically.

3. Organize legislative response

Function:

Designations

Structure:

International Tobacco Fund

Early in the next century, tobacco will be the leading global cause of premature death and preventable illness. According to the World Health Organization (WHO), worldwide deaths from tobacco are likely to exceed ten million per year by 2025, with 70 percent of those deaths occurring in developing countries. While the proposed tobacco industry settlement addresses the industry's future in the United States, it is silent with regards to the overseas impact.

Tobacco consumption, and its deleterious effects, are a global problem which should not be ignored; the problem cannot simply be exported away. The United States Government should take the opportunity offered by the proposed settlement to take the lead mobilizing the international health community to reduce the consumption of tobacco products, particularly as it affects the health of children and youth. Such an undertaking will have many facets, but should leverage efforts already underway in bilateral and multilateral, official and non-governmental fora. However, resources that currently can be brought to bear are tiny in relation to both the scope of the problem and the resources that can be brought to bear by the tobacco industry.

We can begin to address this imbalance through a creation of a new fund [with a portion of settlement proceeds] that will focus efforts in international public health and education efforts. These efforts include:

- ***Bilateral Collaborations***, including cooperative agreements with key countries to promote the development of national and international tobacco control and prevention programs. Funds can be mobilized to deliver 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. The goal should be to promote globally consistent and reinforcing regulations that restrict tobacco advertising and minors' access to tobacco products, for example.

- ***Regional and Multilateral Collaborations***, including working with UN agencies, the multilateral development banks (MDBs), and other development organizations to expand their tobacco use reduction efforts, and promoting efforts to expand or create regional alliances to facilitate and promote collaboration and cooperation on tobacco-related issues, such as the prevention of cigarette smuggling. Grants could be used to supplement MDB financing for existing activities and/or to establish new programs aimed at discouraging tobacco usage and production, as well as to help offset the medical costs of tobacco use. Other technical assistance can be provided through the MDBs, including policy advice they give to borrowing governments relating 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).

- ***Global Strategies***, such as increased support for the WHO's Tobacco or Health Plan of Action (1996-2000), which promotes comprehensive national tobacco programs, advocates strong tobacco control policies, and disseminates global and country-specific health data and tobacco prevention and control strategies. Increased funding can help to enhance staffing and

T. Francis

THE WHITE HOUSE
WASHINGTON

From the Office of:

The Domestic Policy Council

Elena Kagan
Deputy Assistant to the President
for Domestic Policy

TO: Tom Freedman

FAX: 67431

PHONE:

PAGES: 5

MESSAGE:

Please call (202) 456-5584 if there are any problems with the transmission.

Charlie Ruff → 720 6158

North Carolina Department of Justice
PHONE: ~~(919) 733-3377~~ 919-716-6400
FAX: ~~(919) 733-7491~~ 919-716-6750

TO:	Bruce Lindsey
FROM:	Mike Easley
FAX:	202-456-2983
PHONE:	
DATE:	8-15-97
ATTENTION:	

Bruce:

The difference in the $1.40billion (first 50 per cent of the quota) and the second 50 per cent of the buyout of $2.08 billion is a result of a gradual decrease of 6.25 per cent over the first eight years.

Thanks for all your help.

Mike

Rush

Tom -

Could you take a look at this and come talk to me about it ASAP.

Erskine

1996 Quota

Base Line of 873 million lbs. 6 cents per year

	Year	Dollars		Transition Payment	
	1996	$1.8300 per lb.	=	0.00	
	1997	1.8300 per lb.	=	0.00	
6¢	1998	1.7700 per lb.	=	52.38 million	= 873 mill/lbs x 6¢
12¢	1999	1.7100 per lb.	=	104.76 million	
18¢	2000	1.6500 per lb.	=	157.14 million	
24¢	2001	1.5900 per lb.	=	209.52 million	
30¢	2002	1.5300 per lb.	=	261.90 million	
36¢	2003	1.4700 per lb.	=	314.28 million	
42¢	2004	1.4100 per lb.	=	366.66 million	
48¢	2005	1.3500 per lb.	=	419.04 million	
				$1,885.68 billion	

50% decrease in Quota

Quota	$4 x Quota Loss	6.25% decrease over 8 Years		
873	1998	54.56 million lbs. x 4	=	$218.24 million
818.44	1999	51.15 million lbs. x 4	=	$204.60 million
767.28	2000	47.95 million lbs. x 4	=	$191.80 million
719.33	2001	44.95 million lbs. x 4	=	$179.80 million
674.38	2002	42.14 million lbs. x 4	=	$168.56 million
632.23	2003	39.51 million lbs. x 4	=	$158.04 million
592.73	2004	37.04 million lbs. x 4	=	$148.16 million
555.69	2005	34.73 million lbs. x 4	=	$138.92 million
				$ 1,408.12 billion

To retire all quota 520.96 million lbs. x $4 = $2,083.84 billion

$2,083.84 billion	$1,408.12 billion			
$1,408.12 billion	$1,885.68 billion			
$1,885.68 billion	$3,293.8 billion	+ 8	=	$411.725 million per year
$5,377.64 billion		+ 8	=	$672.205 million

THE TOBACCO SETTLEMENT PAYMENT MAZE

($ Billions)	Upon Enactment	12/31 of: Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Year 11	Years 12+
Lump Sum Cash Payment	10.0	—	—	—	—	—	—	—	—	—	—	—	—
Public Health Funds													
Smoking Cessation	—	1.0	1.0	1.0	1.0	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.5
HHS smoking initiative	—	0.125	0.125	0.125	0.225	0.225	0.225	0.225	0.225	0.225	0.225	0.225	0.225
FDA enforcement	—	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3
State and Local ASSIST	—	0.075	0.075	0.1	0.125	0.125	0.125	0.125	0.125	0.125	0.125	0.125	0.125
Research	—	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1
NASCAR, Rodeo	—	—	0.075	0.075	0.075	0.075	0.075	0.075	0.075	0.075	0.075	0.075	—
Counter-Advertising	—	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5
Unallocated	—	—	—	—	—	0.175	0.175	0.175	0.175	0.175	0.175	0.175	0.25
SUBTOTAL	—	2.1*	2.175	2.2	2.325	3.0	3.0	3.0	3.0	3.0	3.0	3.0	3.0
Tort Fund	—	4.0	4.0	4.0	4.0	4.0	4.0	4.0	4.0	4.0	4.0	4.0	
"Public Health Trust"	—	2.5	2.5	3.5	4.0	5.0	2.5	2.5	2.5	—	—	—	—
Medicaid Payments to States	—	—	0.825	1.8	3.675	3.0	5.5	5.5	5.5	8.0	8.0	8.0	8.0
TOTAL	10.0	8.5	9.5	11.5	14.0	15.0	15.0	15.0	15.0	15.0	15.0	15.0	15.0

*First Year number for Public Health Funds is supposed to be capped at 2.0

Amounts do not include: (1) additional liability payments not covered by tort fund (up to an additional $1 billion per year),
(2) youth smoking reduction penalties (up to $2 billion per year); or
(3) attorneys fees

Proposal on Negotiated Settlement On Behalf of Flue-Cured Tobacco Producers

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Fuels
ɔn Earth

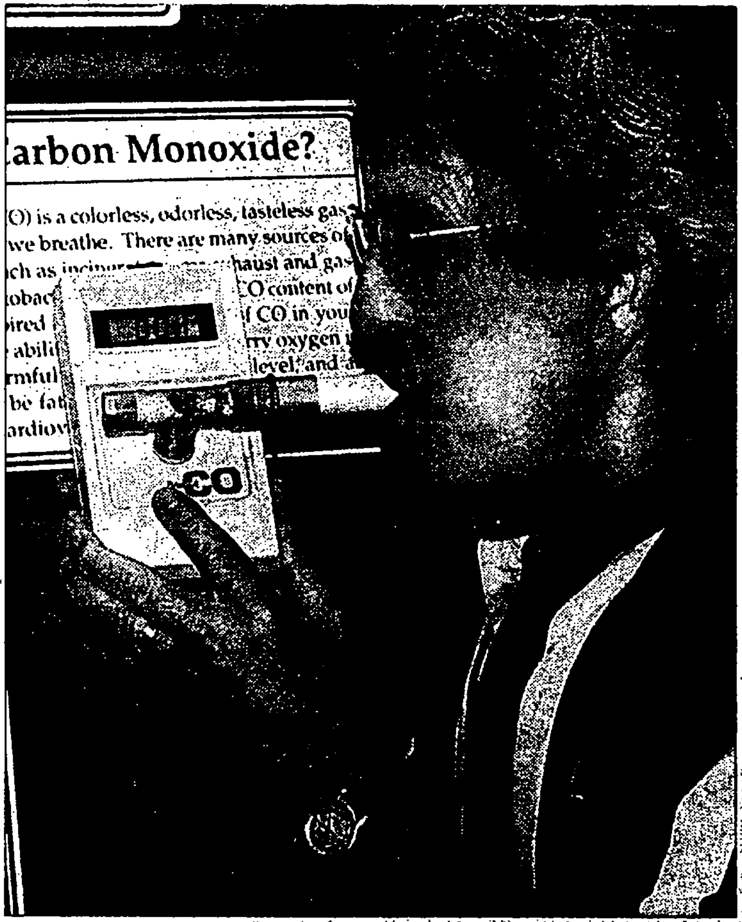
ınd rocks and probably run ıe Earth's surface chemis- Folk wrote. He called his ıaking microbes nannobac-

ASA team picked up Dr. ırd and concept when de- he egg-shaped forms they Martian meteorite as "sim- ze and shape to nannobac-

ss as the phrase may seem, ighting words to microbiolo- ıy of whom believe that nan- ı do not and probably cannot ntists at the National Aero- ınd Space Administration ı maneuvering delicately to ısible middle position in the veen those who say that nan- ı have shaped the face of the ı those who deny they exist

acterium is a word that by pelling throws down a gaunt- crobiologists. Nano, with a ' in the middle, is a prefix one-billionth, but geologists ant spelling in their word for ean creatures called nanno- Dr. Folk adopted the geolo-

ontinued on Page C6



Skip Heine for The New York Times

Russell Spence, who is trying to quit smoking after 47 years, two heart attacks and a bypass operation, using a carbon monoxide testing machine at the Mayo Clinic nicotine dependence program.

Hard-Core Smokers, Last-Ditch Remedies

By GINA KOLATA

ROCHESTER, Minn.

THEY stay in a small unit at the end of the hall on the 10th floor of Methodist Hospital here — the incorrigible cigarette smokers. Five men and three women, all at the end of their rope, each having paid $3,000 to spend eight days living in a bland hospital room of the Mayo Clinic, and each fervently hoping that an intense residential program will make it possible to quit.

There is Russell Spence, a lanky trial lawyer from Spring Valley, Wisc., who has been smoking for 47 years, since he was 13, who watched his cigarette-addicted father develop lung cancer when he was 50 and die of a heart attack at the age of 51, his cigarette-addicted brother die of emphysema and his father-in-law die of lung cancer. Mr. Spence has had two heart attacks. Yet still he smokes.

There is vivacious Melissa Phillips from Richmond, 35, the youngest of the group, a smoker since she was 16, with a sensuous relationship with tobacco.

"Cigarettes were my lover," Ms. Phillips said. "They embraced me when I needed to be embraced. They laughed with me when I was happy. They gave me a feeling of control when all else was out of control. There was no time when they were not enjoyed by me."

Although her mother is a smoker with chronic obstructive pulmonary disease and although Ms. Phillips has developed asthma and her chest hurt from smoking, she could not stop.

There is a 68-year-old retired military man from Maitland, Fla., who insisted on anonymity. He said he had started smoking as a joke. When he was 12, he recalled, he and his brother and a few friends climbed to the top of a beech tree and lit up, and a neighbor thought the tree was on fire and called the fire department. Now, 56 years later, he is desperate to quit, so short of breath that

Continued on Page C8

NETICS

ocal minority still stions Dolly's ıing. Page C3.

ARCHEOLOGY

Reassessing the Jewish role in settling the New World. Page C4.

COMPUTERS

Games for the mind, not the trigger finger. Page C5.

NYT Tues 7/29/97
C1

Hard-Core Smokers Make Last-Ditch Effort to Kick the Habit

Continued From Page C1

it is hard to walk up a flight of stairs or reel in a fish.

The program's patients are enthu- ... insisting that this time they really will break their smoking habit. But the odds are not with them. Although the doctors and counselors directing the Mayo Clinic's nicotine dependence clinic use every method that has ever shown success — nicotine patches and sprays, a drug that acts on the chemical pathway stimu- ... by nicotine, counseling and group dynamics — only 43 percent of the patients who go through the pro- ... stop. Yet it is one of a handful of in-patient programs for nicotine ... n in the United States, and its results are among the best, addiction experts says.

These days, in the United States, many who could stop smoking already have.

"The sense of our counselors is that almost on a year-by-year basis, the patients are harder to treat," said Dr. Richard Hurt, an ex-smoker who directs the Mayo Clinic's nicotine dependence program. "They have more co-morbidity, more alcoholism, more psychiatric problems, more medical problems. Back in the 1960's, over half of all adult men were smokers. Now it's 27 percent; everyone else has stopped smoking or died."

On average, Dr. Hurt said, the program's patients have tried to stop at least eight times and almost 80 percent have health problems directly related to their smoking. Some were on waiting lists for transplants but were taken off because they could not stop smoking. Emphysema patients have come to the clinic wheeling their oxygen canisters.

This raises the question, why is it so hard for some people to stop smoking? Is this stubborn addiction what decades of inhaling nicotine-laden cigarette smoke does to people? Or are these intransigent people the outliers, the extreme edge of the bell curve? In a society in which so many adults have tried cigarettes, why did some embrace smoking and others shun it?

The first surprise, to researchers at least, is how variable cigarette addiction can be. Few were prepared when a recent study found that some people can smoke regularly, even daily, and never become addicted.

"It kind of violates what someone has labeled the exposure model of drug abuse: as long as you have a certain amount of exposure, you're going to get addicted," said the study's author, Dr. Saul Shiffman, a psychologist at the University of Pittsburgh.

The 65 nonaddicted smokers he studied had each smoked more than 50,000 cigarettes.

"We didn't study people who just smoked on weekends," Dr. Shiffman said. "We deliberately chose people who smoked pretty regularly."

No one knows what share of smokers can take cigarettes or leave them, suffering no withdrawal symptoms when they abstain. But many researchers say they believe that the nonaddicted smokers are the exception. Most who start smoking become addicted but can quit. And at the other extreme are smokers like those at the Mayo Clinic.

Ms. Phillips smoked though a recent bout with pneumonia.

"I literally was gasping for breath," she said. "You feel like you're intelligent, you have an M.B.A., you've turned companies around." But she said, "Addiction is not rational."

In 1986, less than six months after Mr. Spence had his first heart attack, he had another. He was working with a chain saw — and smoking a Marlboro. He had a triple bypass.

"When I got back to my private room, I took my pole and all my equipment and went to the lounge," he said. There he picked a cigarette butt out of an ashtray and lit it. A nurse saw him and looked away.

He was back at the hospital a few months later when his bypass graft closed, tended by the same nurse. Mr. Spence said she looked at him and said, "I want you to know how sad I felt seeing you take cigarette butts out of the ashtray. He added, "We both cried."

Clearly, most smokers are not that desperate, leaving the crucial question of why cigarettes are so alluring to people like Mr. Spence.

Now to scientists' surprise, their hypotheses about addicted smokers turn out to have been wrong. The prevailing notion had been that many of those who become addicted found cigarettes irresistible from the start, that they knew from the first time they lit up that cigarettes were the drug for them.

Some smoke with asthma. Others never get addicted.

Few were prepared for findings by Dr. Ovid Pomerleau, director of the behavioral medicine program at the University of Michigan. Dr. Pomerleau found that people who become addicted to cigarettes almost always feel sick, nauseated and dizzy when they first try to smoke.

"It turned upside down what I thought was the case," Dr. Pomerleau said. "I thought that if you get sick behind grandpa's barn, that's the best way to guarantee that you won't become nicotine-dependent. Now it looks like getting sick behind grandpa's barn is not going to do it."

On the other hand, Dr. Pomerleau and others are finding, there are some features that characterize addicted smokers. They are likely to be depressed, they are likely to be current or former alcoholics, they often have attention deficit disorder, they are likely to be uneducated and poor. Even the teen-agers who smoke fall into predictable categories.

Dr. Michael C. Fiore, the director of the Center for Tobacco Research and Intervention at the University of Wisconsin in Madison's medical school, said that about 13 percent of college graduates smoke but that about 40 percent of people with only high school degrees smoke.

Dr. Lloyd Johnston, the program director of the Institute for Social Research at the University of Michigan, said, "For some time, it's been the case that cigarette smoking has been directly correlated with educational achievement." This means, he said, that "the people who were going on to get more education weren't smoking as kids."

In his 1996 national survey of 18,000 eighth graders, Dr. Johnston found that 39.8 percent of eighth-graders who did not expect to graduate from a four-year college had smoked in the last 30 days. But 18.2 percent of those who expected to get a college degree had smoked.

The social-class effect, with smokers concentrated in the lower classes, may have a great deal to do with attitudes toward smoking but may also be related to some of the factors that increase the risk of becoming addicted — depression, attention deficit disorder, alcoholism.

"There may be a downward social mobility associated with these factors," Dr. Pomerleau said, adding, "We are talking about serious conditions" that could handicap people in many lines of work.

Dr. Hurt said that about 40 percent of his clinic's cigarette-addicted patients were alcoholics. Yet these smokers were not typical — they had to take eight days away from work and pay $3,000 out of their own pockets to come to the clinic, factors that preclude most poor people.

Although no one knows exactly why some smokers become so addicted, it is thought to involve spikes of nicotine hitting pleasure centers in the brain that use dopamine, a neurotransmitter. Studies have shown that tools like counseling, along with nicotine patches, gum and inhalers and nasal sprays, can help smokers quit. So can buproprion, an antidep drug that increases dopamine levels.

Yet treatments are far from ideal. "We're kind of where we were 50 years ago when we only had penicillin and sulfa drugs to fight infections," Dr. Hurt said. "The devices we have are kind of crude."

On Wednesday afternoon, Dr. Hurt met with the eight people who were trying to quit smoking. One asked whether he would ever be able to take a puff of a cigarette again.

Dr. Hurt responded: "The overpowering urge to smoke is not behavioral. It is not a habit. It is probably a biochemical urge."

The urge gradually diminishes as smokers abstain, but once a formerly hopelessly addicted smoker takes a single puff, the urge to back, stronger than ever.

"I would say to each of you in this room that it is probably not possible to have just one, not ever," Dr. Hurt said. "I wouldn't want to try it, even after 25 years of abstinence. It's just not worth it."

Growing Fetal Tissue for Surgery at Birth

By KAREN HSU

EXPERIMENTS on lamb fetuses may have put scientists closer to developing tissues for repairing birth de- in ms.

Two Harvard researchers report that they have been able to remove bladder and skin cells from fetal and grow these cells to create tissue that was used in surgery on the lambs after their birth.

The researchers, Dr. Dario Fauza and Dr. Anthony Atala of Harvard Medical School and Children's Hospital in , said the technique come into wide use in humans in the next several years. Dr. Fauza described the technique at a meeting of the *British Association of Pediatric Surgeons* in Istanbul last week.

Surgeons have difficulty repairing birth defects in newborns because the tiny infants have little tissue to spare. But if the lamb experiments can be developed for human use, doctors could look for possible fetal birth defects and remove cells to grow tissue for repairs during the pregnancy. Such defects can be detected as early as 14 weeks into a pregnancy.

Drs. Fauza and Atala said that in the next three months, they will start trials of a similar technique in which cells would be removed from older children with bladder defects, grown into tissue and used to repair the problems.

One condition for which this technique could be used is bladder exstrophy, in which a baby is born with the bladder outside its body. The best procedure right now is to enclose the bladder in the first 48 hours, said Dr. Atala, who has researched bladder tissue engineering for the last seven years. But there is often not enough tissue to fully repair the defect.

Surgeons now use tissues from other parts of the body, such as the intestine or the stomach, which function differently than the bladder. Intestinal tissue absorbs nutrients and water, for instance, while bladder tissue extracts chemicals and water for excretion, Dr. Atala said. This can cause the repaired bladder to function badly.

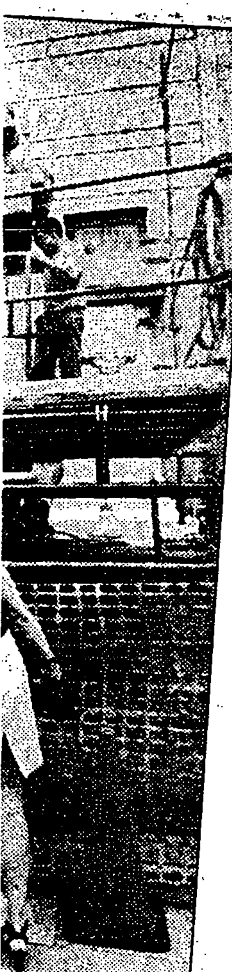
In their experiment, on a lamb fetus two-thirds into its development, Dr. Fauza said, he and Dr. Atala created a defect similar to one found in human infants. A few weeks later, they inserted a fiber-optic camera lens and scissors through tiny incisions in the uterus and removed bits of tissue. The operation was guided by video images projected on a screen. Once the cells multiplied, they were molded into the shape of an organ. Since fetal tissue grows as much as four times faster than adult tissue, it only takes a month to grow enough tissue for use in most surgeries. In six weeks, a pea-size amount can grow enough tissue to cover a football field one-cell thick.

Dr. Michael Harrison of the University of California at San Francisco, the first surgeon to operate on human fetuses, said combining tissue engineering and fetal surgery was an interesting idea.

"Fetal tissue is just better than more differentiated adult tissue in everything, including wound-healing, growth, adaptability," Dr. Harrison said. Dr. Fauza and Dr. Atala are also growing diaphragm and trachea tissues from fetal lambs.

COMPUTER SERVICES GUIDE

Wash-Post Tues 7/29/97 B1, B5



-TON—THE WASHINGTON POST

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Beyer Talks Up Life After Tobacco

Jobs to Depend on What You Know, Not Grow, He Tells Va. Farmers

By Ellen Nakashima
Washington Post Staff Writer

Vilified by Southside Virginia farmers for supporting the national tobacco settlement and federal regulations against teen smoking, Donald S. Beyer Jr. is using his Democratic campaign for governor to push an economic plan for the region that points to a life beyond the Golden Leaf.

The lieutenant governor recently made his first presentation to farmers in Danville, not in a tobacco field, as his Republican opponent did, but in a community college library.

The place he chose spoke volumes. Although Beyer, a Northern Virginia businessman, is advocating lots of aid for tobacco farmers—continued crop insurance and price supports and a "substantial" share of any settlement—he emphasized a larger vision of office parks, high-tech centers, new roads and better schools. It would be his foundation for a "Southside Century."

Implicit in his pitch was this message: Tobacco is under assault in the United States, and it is gradually losing its importance in the region, so we need to look at new opportunities.

That's bitter medicine for people whose livelihood, for generations, has depended on the crop, which pumps about $186 million into the state's economy. But Beyer says diversification is key to the community's survival.

"The world's changed," he said, dressed in a business suit and standing next to a bank of computer terminals. "We need to make sure that people have the education and skills they need. The big-picture writing on the wall is that information and knowledge jobs are dominating this economy and will be for the next 100 years."

Political analysts say Beyer's message about a new Southside reality may be harsh for some, but those are votes he would have had difficulty snagging anyway. The implied theme of tobacco's decline aligns with the Democrat's philosophy on the future of the work force, they say.

"It's in concert with Don Beyer's overall message from Northern Virginia: that high technology is the wave of future economic development," said William Wood, executive director of the Sorensen Institute for Political Leadership in Charlottesville.

"For folks whose livelihood is dependent upon tobacco, Don's not

See BEYER, B5, Col. 3

Va. Mental Health Care Recovering, Official Says

By Mike Allen
Washington Post Staff Writer

Virginia's mental health commissioner told legislators yesterday that federal investigators found that four state mental hospitals were "far below their expected standards of care," but he said an aggressive program of hiring staff and expanding treatment should improve the hospitals.

"The time has come when the system is ready to change, but it took a while to get there," said the commissioner, Timothy A. Kelly. "It's hard to get the ball rolling, but it is rolling. System reform has begun."

The changes are part of the state's response to four Justice Department investigations of state hospitals, including two in Northern Virginia. In reports in 1994 and 1995, the Justice Department found that four mental patients had died at three state hospitals because of improper care.

Kelly, who heads the state Department of Mental Health, Mental Retardation and Substance Abuse Services, said that the Justice Department expected active treatment programs but that Virginia had been providing more passive, custodial care.

To change that, Kelly said, Eastern State Hospital in Williamsburg has added a "treatment mall" where ... variety of activities, rehabilitation and counseling.

The Justice Department's Civil Rights Division filed lawsuits charging that patients' rights had been violated at Eastern State, the Northern Virginia Training Center in Fairfax County and the Northern Virginia Mental Health Institute in Falls Church.

The state has won dismissal of the three suits, in part by adding 202 employees. At Central State Hospital in Petersburg, the state is still negotiating a response to a federal investigation but has begun hiring 37 people. To bring 15 state facilities up

5-year-old boy, Richard Flis, on both legs, fought with the 105-pound Chesapeake Bay retriever, named Floyd, and chased the three adults and three children as they ran toward their home, not giving up pursuit until one woman punched and kicked the fox.

"It was absolutely terrifying," said Rosemarie Cikotas, who was with Richard. "It was just relentless. It just kept coming."

Several 911 calls made after this attack brought police, but by then the fox had disappeared.

Then, about 11 that night, a second attack was reported, after Jessica Teore, 15, was scratched and bitten while walking nearby on Bedrock Road.

She thought the fox was a cat, but it chased her "and went straight at my leg," Jessica said. She kicked the fox, which stumbled, then lunged again. It ran off, she said, only after one of her friends "got its attention and started to hit it with a big orange cone."

Police officer Joseph Furman reported to the scene, found the fox and shot it to death.

David R. Flagler, director of the county Department of Animal Control, said that his department is to blame and that he is devastated that the lack of an immediate response apparently contributed to the two attacks.

"All of the excuses in the world are not adequate to explain what occurred," he said, adding that an autopsy on the fox confirmed it had rabies. "This goes beyond embarrassment. This is beyond red-faced. We failed in our duties."

Eight people are being given rabies vaccinations—a series of five shots over a month—because in addition to the two who were bitten, six came into contact with Floyd, the retriever.

The dog had received a rabies shot before encountering the fox and subsequently received a booster shot. The dog is in a 90-day quarantine. If he develops rabies, he will be

[..]RIES

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[..]orn in Washing[-] [..]Hyattsville. After Hyattsville High for minor league [..]e Detroit Tigers [..]eral seasons. [..]ompany, which [..] youth [..]ocal professional

for the Col[-] [..]an Legion and Ruth League for [..]d Girls Clubs in [..]o He was [..]outhern Prince Club the Rainier-Brent[-] [..] Club. He was a [..] George's [..]and was induct[-] [..]ington Baseball

[..] his wife of 48 [..]Cann; five chil[-] [..]hes and Laura [..]tsville, William [..]burg, Richard [..]nd Melanie Posi [..]a sister, Nancye brother, Robert [..] and 11 grand[-]

Administration hospital in Dublin, Ga. He had suffered strokes.

Mr. Charles, a resident of Dry Branch, Ga., lived in Chevy Chase until 1982. He was a native of Boston who moved to the Washington area as a child. He graduated from Central High School and attended American University.

He served in the Navy in the 1950s, worked in broadcasting in Baltimore and joined NASA in the late 1960s. He was a broadcasting technician in Georgia until the mid-1990s.

Mr. Charles was a member of the Children of the American Revolution.

His marriage to Doris Anne Hassell ended in divorce.

Survivors include four children, Robert Bruce Charles of Chevy Chase, Anita Susan Charles Gelder of Standish, Maine, Cynthia Anne Charles of Monhegan, Maine, and Roland Wilbur Charles III of Gray, Maine; and three grandsons.

STEPHEN CHECKON
Educator

Stephen Checkon, 62, who retired in 1994 as vice principal of Poolesville Junior-Senior High School, died of stomach cancer July 26 at his home in Rockville.

He was a native of Spangler, Pa., and a graduate of Indiana University of Pennsylvania, where he also received a master's degree in mathematics. He received a doctorate in education from American University, where he also taught statistics and research design to graduate students as an adjunct professor.

Dr. Checkon moved to Montgomery County in 1961 to teach math and coach football at Gaithersburg High School. He later was director of pupil and program appraisal in the county's office of educational accountability and director of research and evaluation at Mark Twain School.

He was a member of the Montgomery County Secondary School Principals Association and St. Gregory of Nyssa Byzantine Catholic Church in Beltsville.

Survivors include his wife of 33 years, Gerrie Marsar Checkon of Rockville; and two children, Steve Checkon of Bethesda and Tara Downey of Arlington, Tex.

URSULA ELIZABETH GRAY

[..]ham, 87, a re[-] [..]epresented air[-] [..]vil Aeronautics [..]line companies [..]ate Commerce July 27 at his [..]e had Alzheim[-]

[..]as a native of a graduate of He received a [..]octorate in law [..]f North Caroli[-]

Soon Information, Not Tobacco, Will Be Job Base, Beyer Says

BEYER, From B1

going to get many of those votes. But he never was anyway. And he has a larger message which is consistent with his overall message: economic development."

Beyer's expressions of support for farmers were immediately dismissed by his GOP rival, former state attorney general James S. Gilmore III, as yet another example of Beyer flip-flopping on an issue, this time by trying to cast himself as farmer-friendly.

"He's a liberal politician with no credibility," said Mark Miner, Gilmore's spokesman. "He's been fighting tobacco farmers for two years now. Now he goes to Southside to make up lost ground."

Other GOP critics say Beyer is trying to play it both ways—appeal to health-conscious voters in Northern Virginia and appease farmers in Southside. "He's a walking Mason-Dixon Line," said Mike Salster, spokesman for the Republican candidate for lieutenant governor, John Hager, a former tobacco company executive. "He says one thing up north and another thing down south."

In an interview, Beyer said tobacco will always have a role in Southside Virginia. "But the jobs that we create in Virginia and America in the next 25 years are going to be based on what we know, primarily, much more than what we grow or what we get out of the ground," he said.

Back in Danville, two tobacco growers stood quietly to the side of the college library, taking stock of the politician. They cautiously praised Beyer's ideas for economic development but said they would reserve judgment until they had a chance to share his plan with other growers.

"This is really the first thing we've heard from Don Beyer," said J.T. Davis Jr., a crop insurance specialist, adding that he considered Gilmore "tobacco-friendly" for his opposition to Food and Drug Administration regulation of tobacco. "When it comes to voting, the tobacco growers are going to look at who best is going to meet their economic needs."

Out in the rolling hills of tobacco, a more raw sentiment emerges.

"No More Taxes or Bans on Our Tobacco," shouts a sign off Route 360 west, next to the Charlotte County tobacco farm of C.W. Vaughan and his 20-year-old son, Charlie.

It was the younger Vaughan who got so fired up about the federal assault on tobacco a year ago that he hand-lettered the sign and stuck it high on the road shoulder for all to see. He hopes Beyer takes notice.

"Don Beyer's coming down here to Danville, to tobacco country, to say all this about supporting us," he said. "Why isn't he saying it in Richmond?"

C.W. Vaughan, 56, grudgingly allowed that Beyer has a point about the changing economy. But it still hits him in the gut. "The future of tobacco doesn't look good now," he said. "It's been here 400 years. And all of a sudden it's gone."

A grower of flue-cured tobacco like his father before him, C.W. Vaughan farms 40 acres. He gave up cigarettes and said he doesn't want children to smoke. "But don't you think that's where the parents ought to come in?" he asked. "It ain't up to Uncle Sam to tell us how to raise our kids."

Charlie Vaughan said he fears for his father. "He's been in it for 30 years," he said. "He doesn't really know anything else. I can kind of go into something different."

In fact, the young farmer, who has a Virginia Tech degree in animal agriculture, has taken out a $220,000, nine-year loan to build hog houses. Just in case.

Beyer has proposed $40 million in economic development incentive grants for distressed regions such as Southside, Southwest and the Eastern Shore. He has proposed tax credits for businesses that retrain workers and a sports center to attract tourists to Southside.

BY RICHARD T. DAVIS—DANVILLE REGISTER [..]
Donald S. Beyer Jr., right, talks with John Looney, of South Boston, Va. [..] son Sean at the Cantaloupe Festival. The Turbeville event was held [..]

Beyer would not say what percentage of the federal settlement he thinks tobacco farmers should get, but said that some of Virginia's share should be reserved for public health programs.

At a cantaloupe festival set amid the tobacco farms of Halifax County, just up the road from Danville, Beyer made a stop last week to greet prospective voters. A man who had noticed signs leading to the festival saying, "Don Beyer, Stay Off Our Farms," asked Beyer for his opinion of tobacco "in 20 words or less."

Beyer smiled wanly and launched into a well-rehearsed response.

"Number one, we have to be [..]sive in protecting children," he [..] "I supported the FDA regs that are in the settlement now. . . . But I also think we need to make [..] we support our tobacco-g[..] com[-] munities."

The candidate said he [..] not expect to be greeted with open arms by tobacco farmers. He [..] his stands have made him unwelcome in tobacco country.

"The only way I can address it is to come to Danville and to Halifax and to show up and say, 'I'm not the enemy,'" he said. "I think we're all striving for the same things."

Virginia Working to Improve Mental Health Care, Legislators Told

MENTAL, From B1

would require 1,677 positions and $67 million a year, Kelly said.

In a report last month, the Justice Department said that an inspection of Central State, Virginia's only mental hospital with a maximum-security unit, had found "numerous conditions [..]

was adding a new wing and hiring more workers.

"We're recruiting now, but we've had a hard time," he said, adding that the pool of qualified workers is limited.

Democratic lawmakers, who dominate the panel, were skeptical.

"We've been trying since 1992 to [add staff], and it just hasn't hap[-]

On Friday night, Gilmore released a "Five-Point Plan for the Future of Mental Health in Virginia," saying that as governor he would personally inspect the state's 15 mental hospitals, "including unannounced visits."

Gilmore's spokesman, Mark A. Miner, said the announcement was not timed to coincide with [..]

In a letter to the Justice [..]ment about the mental hos[..] in 1995, Gilmore wrote, "The Department of Justice seeks to curtail the scope of self-government traditionally enjoyed by the people of Virginia." [..] Beyer said the issue [..]

Date: 07/03/97 Time: 11:27
TAG: Tobacco industry agrees to settle Mississippi's lawsuit

JACKSON, Miss. (AP) The tobacco industry has agreed to pay Mississippi more than $3 billion to cover health-care costs caused by smoking, guaranteeing the state its share of the proposed national tobacco agreement, state officials said today.

``It's going to be a big chunk up front and then paid every year,'' Attorney General Mike Moore told The Associated Press in a telephone interview from his Washington motel. ``I'm leaving Washington shortly to bring home some mighty good news.''

The settlement comes only five days before the state was to take cigarette makers to court in Pascagoula. Chancery Judge William Myers was to hear the case without a jury.

Tobacco industry spokesman Lance Morgan declined to comment on the settlement.

Moore helped lead the national negotiations between states and the tobacco industry that ended last month with a $368.5 billion out-of-court settlement proposal involving 40 state lawsuits.

When Moore filed Mississippi's lawsuit in May 1994, seeking $940 million in compensation for state tax money spent on smoking-related illnesses, it was described as the first of its kind. Thirty-nine other states eventually followed suit.

It also would have been the first to go to trial. Moore had set a deadline of this afternoon, saying a settlement had to be reached by then or the trial would begin Monday as scheduled. He had refused to have the trial in Jackson County Chancery Court delayed until Congress and the White House have a chance to review the national agreement.

He had said he figured Mississippi's share of the national settlement should be about 1 percent. The state has roughly 1 percent of the U.S. population.

Assistant Attorney General Trey Bobinger said the settlement amount ``is consistent with and part of a national settlement. This is our share.

``Mississippi needs this settlement with the tobacco industry to protect its position,'' Bobinger said. ``If this agreement falls apart in Congress, this proposed national agreement, we need this settlement to protect the people of Mississippi.''

Members of Congress, President Clinton and top health authorities have expressed serious concerns about the national settlement. Among other things, it limits federal control of nicotine and smokers' ability to sue, as well as allowing tobacco companies to claim all of the payments as tax deductions.

Moore called today ``a very important day for Mississippi and the rest of the country.''

``This is the first time anyone has ever collected money from the tobacco industry,'' Moore said. ``It underscores the importance of continuing my leadership role and Mississippi's leadership role in getting a comprehensive (national) plan.''

He said it was important that Congress act on the national agreement reached June 20 between attorneys general and industry negotiators because many areas of concern remained, including restrictions on advertising and regulation of the industry.

``My job is only half done,'' he said.

Mississippi's lawsuit survived a challenge from an unlikely source: the state's own governor.

Gov. Kirk Fordice, a Republican, had asked the state Supreme Court to block the lawsuit, saying Moore, a Democrat, overstepped his authority by trying to collect Medicaid funds, a program handled through the governor's office, without consulting Fordice.

Fordice said he would not have agreed to the lawsuit.
In March, the high court said Fordice should have taken his challenge to a lower court first.
Mississippi's deal leaves Florida's lawsuit in line to begin Aug. 1. Florida Attorney General Bob Butterworth also has talked with tobacco companies about settling his own case.
APNP-07-03-97 1143EDT

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TELEFAX COVER SHEET

TO: ELIZABETH DRYE

FROM: PHIL SCHILIRO

Number of pages including cover sheet: 4

If you have any problems reading this material, please call (202) 225-3976.

IN THEIR OWN WORDS: TOBACCO INDUSTRY VIEWS ON THE SETTLEMENT

WHAT THE INDUSTRY WANTS

In a Wall Street Journal article describing Martin Broughton's (the CEO of B.A.T. Industries) views on the tobacco settlement negotiations, Mr. Broughton was quoted as expressing support for the settlement: "I think, really, you're then in a business deal. They want to be paid off and we want a peaceful life."

Wall Street Journal, June 17, 1997, "B.A.T. Chief Tells Colleagues to Toughen Up"

COMFORT ON NICOTINE

In a Wall Street Journal article describing the agreement, the reporters described Mr. Broughton's view on whether the agreement would result in the regulation of nicotine.

"In an interview, Mr. Broughton... says he isn't worried about FDA ever regulating nicotine. 'It's an unlikely prospect,' he says. 'The contraband part gives me the most comfort.'"

Wall Street Journal, June 23, 1997, "Burning Questions: Tobacco Pact's Limits--and its Loopholes--Presage Fierce Debate"

ON LIABILITY AND NICOTINE

In a discussion of the terms of the settlement, Roy Burry, a respected tobacco industry expert and analyst for the New York investment firm Oppenheimer, said "Let me tell you what the tobacco companies got...The industry has virtual immunity, virtual immunity. Secondly, there are also some restrictions on how FDA can deal with product construction, of course, the most important being nicotine...That was restricted as far as the FDA going forward."

Later in the program, Mr. Burry emphasized that the industry was getting "absolutely full immunity, total full immunity."

The NewsHour with Jim Lehrer, June 20, 1997

THE IMPORTANCE OF LEGITIMACY

"Most important, the agreement secures the tobacco industry's rightful place in the mainstream of legitimate U.S. commerce."

June 20, 1997 letter from Steven Goldstone, CEO of RJR Nabisco Holdings Corp., to RJR employees.

ADVERTISING: WHY A REAL PERFORMANCE STANDARD MATTERS

A Wall Street Journal article focusing on the settlement's advertising restrictions noted:

"Joe Camel and the Marlboro Man may be galloping off Madison Avenue, but the advertising industry is already cooking up a host of new ways to adapt to the sweeping restrictions proposed in the landmark tobacco settlement. They are testing creative new ads, scrambling to line up replacements, and are even thinking up new marketing gimmicks that are pegged to the settlement.

"...Anticipating the ban, Interpublic Group's Long Haymes Carr, which creates ads for RJR Nabisco Holdings' Winston Cigarettes, has recently been testing magazine ads that focus on witty monologues in large print.

"One ad shows the line, 'Until I find a real man, I'll settle for a real smoke.' The next page shows a picture of a smoking woman, but...the ad works even without the picture of the woman.

"Leo Burnett recently created print ads for Philip Morris's Benson & Hedges brand that show a cigarette lounging on a hammock and the tagline, 'Rest and Relaxation.' The agency has also concocted ads that conjure up all the Western imagery of the Marlboro Man--without the man himself. One ad features a rugged cabin, while another shows a close-up of silver-plated lighter."

Wall Street Journal, June 23, 1997, "Firms Scramble for Ways to Sell Cigarettes"

THE TOBACCO INSTITUTE BY ANY OTHER NAME

In a Los Angeles Times story focusing on the settlement's requirement that the Tobacco Institute be closed, Walter Merryman, the Institute's Vice President, said "All we're going to do is change the name on the door." Merryman went on the note that the settlement allows the new trade industry association to be formed.

Merryman added: "We're going to continue to do what we've always done. I don't really understand why they're going through this exercise, frankly."

The Times noted that "Like other elements of the settlement, the proposed elimination of the Institute--and its sister scientific organization, the Council for Tobacco Research U.S.A.--may not be all it initially appeared."

Mr. Merryman also noted that "No one around here is updating their resumes and overloading the copiers."

Mr. Merryman, in summarizing the deal's effect on the Institute, said "We'll not only change the name on the door, but we'll also change a few names on the board."

Los Angeles Times, June 24, 1997, "Tobacco Institute Workers Confident of Reincarnation"

Benjamin Steinbruch

Tough approach seen from new CVRD head

Page 23

Financial Times

Illicit drugs

Global turnover $400bn, 8% of world trade

World Drug Report, Page 4

Israel

Does Netanyahu know where he is going?

Page 12

//www.FT.com THURSDAY JUNE 26 1997 USA $1.50 Canada C$2.00 Bermuda $2.00

BAT calls targets for under-age smoking reductions unrealistic

Tobacco chief attacks pact

By Richard Tomkins in New York

One of the three tobacco chiefs who last week signed a $368.5bn settlement between the US tobacco industry and its foes says the pact will fail to meet one of its main objectives: achieving drastic cuts in teenage smoking.

In an interview, Mr Martin Broughton, chief executive of BAT Industries, the British tobacco and insurance group, described the targets for reductions in under-age smoking as "unrealistic", saying: "My expectation is that we will fail to meet them."

Mr Broughton's comments could severely damage the chances of the White House and Congress giving their approval by reinforcing the belief among anti-smoking groups that the settlement will benefit tobacco companies more than society. New federal legislation, giving the industry immunity from big legal claims, is a condition of the deal.

Mr Broughton said the tobacco companies had only agreed to have the under-age smoking targets written into the agreement because their opponents had insisted that a deal could not be done without them.

"You must remember that this whole deal is not something we agree with," he said. "We don't support a lot of things that are in this package. But it is a package we are prepared to support overall in order to get a deal."

US president Bill Clinton is heavily committed to reducing under-age smoking, having made the issue part of his re-election campaign last year, and he faces a decision fraught with political risk as he weighs up whether or not to support the tobacco settlement.

BAT is the parent company of Brown & Williamson Tobacco, the biggest cigarette company in the US after Philip Morris and RJR Nabisco. All three companies were represented in the negotiations that ended last Friday, but Mr Broughton is the only executive yet to have spoken out about the deal.

The settlement sets out to achieve a gradual reduction in smoking by discouraging young people from taking it up. It proposes extensive advertising restrictions, including a ban on the use of human or cartoon figures, and controls on teenage access to cigarettes, including a ban on vending machines and a licensing system for cigarette vendors.

Under-age smoking is targeted to fall by 30 per cent in five years and 60 per cent in 10 years, with the tobacco industry to be penalised by up to $2bn a year if the targets are missed. But these payments can be reduced by 75 per cent if the industry can show it has "pursued all reasonably available measures" to achieve the goals.

Mr Broughton called the targets unrealistic. He said they were based on the "totally false premise" that youngsters only smoked because cigarette companies advertised to them and made their products freely available to them.

"It makes a ridiculous assumption that it is nothing to do with societal factors or peer pressure or parental pressure," he said.

"All these things are swept under the carpet, and the assumption on the anti-smoking side is that, if it weren't for the cigarette companies marketing their product directly to kids, they would never smoke. It's a stupid position. It's a totally unsupported position."

● An influential panel of public health advocates headed by Mr David Kessler, former Food and Drug Administration commissioner, and Mr C. Everett Koop, former surgeon general, yesterday rejected a key part of the tobacco settlement, saying conditions attached to the FDA's powers to regulate nicotine were "unacceptable".

BAT chief fumes, Page 3

France Telecom sale expected in autumn

Move would signal shift by Socialists

By David Owen in Paris

defence electronics company.

pean partners". His words

Anderse[n] partners fail aga[i]n to agree o[n] new chief

By Jim Kelly in London

Partners of Anders[en] Worldwide have plunged [the] world's largest accounting [and] consulting organisation i[nto] turmoil by rejecting for [the] second time their boar[d's] nomination of a new ch[ief] executive.

The board, meeting by te[le]conference, was told that [the] 2,700 partners had failed [to] provide the required tw[o-] thirds majority to elect [Mr] George Shaheen, the head [of] Andersen Consulting wor[ld]wide.

Earlier this month Mr J[im] Wadia, head of accountan[cy] Arthur Andersen in the U[K], won a majority of votes c[ast] in 80 countries but also fail[ed] to secure the required tw[o-] thirds "super-majority".

The rejection of Mr Sha[h]een's candidacy produces co[n]stitutional gridlock at And[er]sen Worldwide and reopens debate about its structure [–] two businesses – Arth[ur] Andersen and Andersen Co[n]sulting – under one organi[sa]tional umbrella.

The failure of Mr Shaheen['s] candidacy – like that of [Mr] Wadia's – appears to indic[ate]

Martin Broughton sees little hope of meeting main public health targets

BAT chief fumes at US tobacco deal

By Richard Tomkins
in New York

Mr Martin Broughton, chief executive of Britain's BAT Industries, is fuming over the US tobacco industry's \$368.5bn settlement with its foes. Words like "stupid" and "ridiculous" figure in his comments on the deal – even though he is one of its main signatories.

The industry's big win from the settlement, if Congress approves it, will be immunity from multi-million dollar litigation. But Mr Broughton protests bitterly over some of the concessions that have been wrung out of the industry in return, some of which he sees as misguided.

Indeed, he puts himself on the same side as the deal's critics by suggesting that its main public health measures – the restrictions on cigarette advertising, the targeted cuts in teenage smoking and regulation by the Food and Drug Administration – are likely to fall short of delivering the desired benefits.

On the advertising restrictions, which are so severe as to come close to a ban, he says: "All of our experience is that a ban on advertising makes absolutely no difference to the number of smokers or the number of cigarettes smoked.

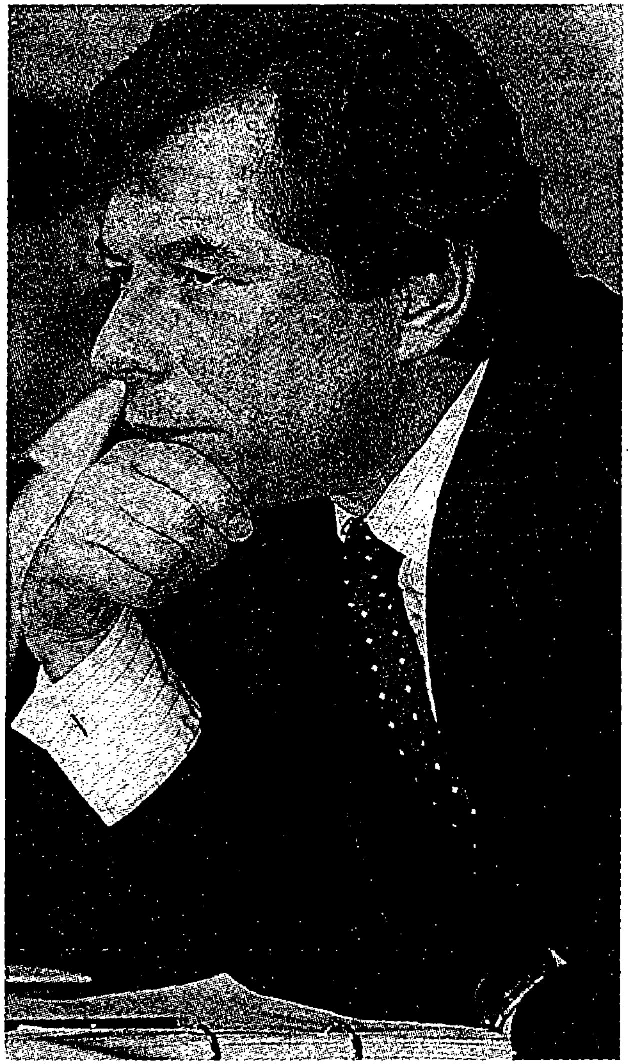
"It's a bit like motor cars: it's a mature product. Advertising cars doesn't suddenly make somebody who couldn't drive before decide he's going to pass the test and go out and buy a car."

Instead, Mr Broughton says, the restrictions will simply limit cigarette makers' ability to compete with one another. "If we agreed voluntarily to do what we are doing here, without Congressional approval, we would be up before the Justice Department on an anti-trust charge that said we were deliberately preventing competition."

Mr Broughton is a 50-year-old qualified accountant who joined BAT Industries as a travelling auditor in 1971. He worked his way up through the ranks to become senior finance director in 1990 and chief executive in 1993.

He found himself drawn into the US tobacco negotiations when Philip Morris and RJR Nabisco, BAT's two bigger rivals in the US market, agreed to start talks with anti-tobacco lawyers at the beginning of April. As the talks neared their climax, he was identified as a stumbling block to a deal because of his strong opposition to some of the concessions being demanded by the anti-tobacco side.

Last week's signing of the deal seems to have done little to alleviate his concerns. In particular, the targets for reducing under-age smoking rankle because they seem to rest on the assumption that the tobacco companies can control smoking by teenagers - a premise he rejects as "totally false".



Martin Broughton: deeply unhappy at deal

"It's all worked on the basis that the only reason under-age smokers smoke is because cigarette companies advertise to them and make the product freely available to them," he says, protesting that this argument ignores societal and cultural pressures.

The deal proposes that teenage smoking should fall by 30 per cent in five years and 60 per cent in 10 years, with penalties of up to \$2bn a year against the tobacco companies if the targets are not met. The penalties, however, may be reduced by 75 per cent if the industry can show that it "pursued all reasonably available measures" to reach the goals.

Mr Broughton says the anti-tobacco negotiators insisted on the penalties so the tobacco companies could be held to blame if the targets were missed. "The assumption is that if these targets, which we believe to be unrealistic, are not met, it must be our fault, so we have to pay some more."

Mr Broughton says he is concerned that the deal gives the Food and Drug Administration powers to reduce, and eventually eliminate, the nicotine content of cigarettes, but he takes comfort from a condition that prevents the FDA from doing so if a black market in full-nicotine cigarettes would result.

He says it would be "a damned stupid thing for anybody to suggest" that a product should be prohibited if that merely led to a black market in which people kept on consuming the product but the government received no tax from it.

"It's not a loophole at all: it's the one practical thing in there to say that if we are going to eliminate nicotine, at least only do it when there is going to be consumer acceptance of a product without nicotine. Doing it now flies in the face of reality."

Although Mr Broughton appears to see little impact from the public health measures contained in the deal, he expects smoking to decline in the US because of the price increases that will be introduced to fund the settlement.

"Market analysts are seeing a fall of 10-12 per cent, and that doesn't look like an irrational forecast to me," he says. He says that BAT's US profits will suffer: "Only time will tell by how much."

But he is not too worried that other countries will seek similar deals. "I think there will be a lot of noise from people in other countries, but when you look at this coolly, this is a uniquely American situation and a uniquely American solution to it.

"Fortunately, most other countries are not blessed with the same legal structures and systems that the Americans have."

Mexico begins sell-off of satellites

Tobacco

The program basically keeps prices up by limiting supply through quotas. The government determines each year how much tobacco the companies expect to buy and how much will be sold overseas, and then divides up the right to grow that amount among the quota holders. A price-support system ensures that farmers get an acceptable price even when the companies buy less than they said that they would.

The settlement agreement with the Attorneys General did not outline a plan to compensate farmers for the diminished domestic tobacco sales that might result from comprehensive legislation. You, however, made protecting tobacco farmers and their communities one of the five key elements of his plan for comprehensive tobacco legislation.

- Producers of different kinds of tobacco vote in triennial referenda to determine if they wish to continue the federal tobacco program for their kind of tobacco.

- In a referendum in late February, 97.5 percent of burley producers voted to continue the price support-production control program.

- In 1997, over 600 million pounds of burley tobacco was produced in the United States, of which approximately 70 percent came from Kentucky.

- Including sales from flue-cured and dark air-cured tobacco, Kentucky tobacco producers received over $800 million from the 1997 crop. Tobacco sales represent over 40 percent of the crop sales receipts and over 20 percent of all agricultural sales in Kentucky.

1 **<u>Background on Kentucky Tobacco Farmers</u>**

There are two main types of tobacco, flue-cured and burley. Burley tobacco is the primary crop in Kentucky, with revenues of more than $1 billion in 1997 for the 696,485,163 pounds grown. The majority of burley tobacco producers in Kentucky favor continuation of the federal price support program.

Large farms dominate Kentucky's burley tobacco business. Last year 125,000 Kentucky farms sold 474 million pounds of burley tobacco, but 70 percent of the total weight came from only 26 percent of the farms. Increasingly, small quota holders have leased or rented their rights to large farms. Some very large quota holders also lease out their quotas. Up to one-third of the tobacco grown in Kentucky is grown by someone other than the quota holder.

- Tobacco sales account for nearly 30 percent of the total crop revenue for Kentucky. Nearly $4 billion is generated annually from the production and sale of tobacco.

- The 1992 Ag Census listed more than 59,373 tobacco producing farms, with more than 268,140 acres planted with tobacco.

- Many Kentucky tobacco farms are very small. The average Kentucky tobacco farm plants only 4.5 acres of tobacco, while Alabama averages 23.9 acres of tobacco per farm, and South Carolina averages 25.5 acres per farm.

- Of the 151,668 tobacco quotas and allotments in 1996, 134,424 were for burley tobacco.

- In 1996, 167,695 owners were listed for burley quotas
  98.7 percent were listed as white
  1.2 percent as black
  66.7 percent as male
  31.7 percent as female
  1.6 percent as corporate entities

Kentucky Burley Tobacco Farms	Estimate (1997 Burley Tobacco)		
	Number of Farms	**Number of Pounds**	**Pounds per Farm**
Grows ONLY Farm Quota *(Does not lease in or out)*	27,183	122,137,986	4,493
Grows Farm Quota PLUS Leases in Pounds	24,340	196,015,410	8,053
Grow ONLY Farm Quota *(Quota Raised by Tenants)*	19,761	105,046,575	5,316
Grows Farm Quota PLUS Leases in Pounds *(Quota Raised by Tenants)*	15,843	133,538,504	8,429
Leases Away Entire Quota	57,544	139,746,688	2,429

3 **Legislative Background**

Last week, the Senate Commerce Committee voted 19-1 in favor of the comprehensive tobacco legislation. Senators Lott and McCain indicated that the bill probably will go to the floor during the week of May 18.

Previously, three types of legislative approaches have been discussed. First, Senator Lugar proposed legislation that would quickly "buy-out" quota owners from the governmental system at approximately $8 a pound. In Senator Lugar's plan, tobacco prices would then be subject to the free market. Second, Senator Ford proposed legislation that would maintain the current quota system, while also compensating farmers (up to $8 per pound) for the difference between the prices they would have enjoyed without legislation and the diminished prices they may experience. Senator Ford's bill also includes a $500 million a year transition fund for communities. Finally, Senator Robb has proposed legislation that would combine elements of both of the above approaches. He wants to buy-out farmers, but replace the quota system with a production control system based on licenses. Unlike quotas, licenses would be given only to those who actually grew tobacco and could not be bought or rented.

Senator Ford's proposal, the LEAF Act, appealed mostly to burley growers like those in Kentucky who have small farms and want to continue the quota program. Senator Robb's approach gained some support from flue-cured farmers (based mainly in North Carolina and Virginia) who believe the buy-out and license system better fits more capital-intensive flue-cured production. Senator Lugar's approach has not attracted widespread support; even tobacco-state senators like McConnell who philosophically favor this approach probably will not come out for it publicly.

Farmers' Legislation Included in McCain Tobacco Bill

Senators Ford, Frist, and Hollings, the three members of the Senate Commerce Committee from tobacco-growing states, joined together to include a broad-based farmer package in the McCain comprehensive tobacco legislation. While maintaining a production control system for all tobacco farmers, this packages sets up somewhat different systems for burley and flue-cured tobacco. For burley tobacco (grown mostly in Kentucky), the package includes an optional buy-out for quota holders at $8 per pound, and retains the quota system for those who do not take the buyout, but provides payments to both remaining quota holders, lessees, and tenants to the extent that quota prices decline. For flue-cured tobacco, the plan provides for a mandatory buyout of existing quota holders, and replaces the quota system with a permit system that gives the new no-cost permits to active producers, regardless of whether they previously held a quota. This transferring of quotas from inactive quota holders to actual producers was part of the Senator Robb's proposal. The McCain package also provides assistance to tobacco-producing communities. This package would cost $2.1 billion per year for the first ten years and $500 million for years 11-25 for a total of $28.5 billion. For the most part, tobacco farmers are very pleased with the proposal included in the McCain legislation.

Below is a table with the major provisions of the McCain tobacco farmers legislation.

Payments to Tobacco Farmers Under Proposed McCain Legislation		
	Burley, fire-cured, and dark air-cured tobaccos	**Flue-cured tobacco**
Buy-out	Optional one-time buy-out at $8/lb over 10 yrs or less	Mandatory buy-out of all quota holders at $8/lb over 10 yrs or less

	Burley, fire-cured, and dark air-cured tobaccos	Flue-cured tobacco
Those who remain in program --quota or permit	Those who do not take the optional buy-out retain their existing quota	~~Only~~ active producers will be issued a new permit ~~for no~~ cost -- this changes the old quota system to a new permit system for flue-cured, ~~ensuring that~~ only active producers stay in program
Payments to remaining quota holders who remain in system	Remaining quota holders get payments to the extent quota falls equal to $4/lb for every pound quota drops, with a lifetime limit of $8/lb times the entire quota	No remaining quota holders
Lessees (Burley), Renters (Flu-cured), and tenants (essentially sublessees)	Lessees and tenants get (1) option to acquire relinquished quota (if any), and (2) payments to the extent quota falls equal to $2/lb for every pound quota drops, with a lifetime limit of $4/lb times the entire quota	Renters and tenants get (1) permits limiting right to produce future crops, and (2) payments to the extent national quota falls equal to $2/lb for every pound quota drops, with a lifetime limit of $4/lb times the entire quota

Other Provisions:

Costs Incidental to the Program: All USDA costs associated with tobacco are paid out of a tobacco growers trust fund, including administrative costs, crop insurance, cooperative extension service costs, and any other costs.

Farmer Opportunity Grants: Quota holders and active tobacco producers and their families are eligible for higher education grants of up to $1,700 per academic year, adjusted upward every five years by $300. Academic eligibility is modeled after Pell grants, and the program is administered by the Secretary of Education.

Benefits for Dislocated Workers: Up to $25 million annually for 10 years will be made available to provide benefits based on the NAFTA displaced workers program. This program will be administered by the Secretary of Labor.

Tobacco Community Economic Development Grants: Block grants to tobacco states will be made annually for rural business enterprise grants, farm ownership loans, initiatives which create farm and off-farms employment, expanding infrastructure, long-term business technical assistance, supplemental agricultural activities, value-added agricultural initiatives, and compensation to warehouse owners. At least 20 percent of the funds must be spent on agricultural activities, 4 percent on long-term technical assistance, and 6 percent on warehouse owners.

Total Costs: $2.1 billion per year for the first ten years, $500 million for years 11-25, for a total of $28.5 billion.

- Annual payments to tobacco farmers set at $1.65 billion.
- Economic development grants set at $375 million less administrative costs for first ten years.
- Assistance for dislocated workers set at $25 million annually for ten years.

<u>Secretary Glickman's Trip to Kentucky</u>

Last Friday, on April 3, Secretary Glickman traveled to Lexington, Kentucky to attend a Farm Forum at Gentry Tobacco Warehouse with 600 to 700 farmers, government officials, and agribusiness leaders. The farmers were generally supportive of the Administration. Their main concerns were that the tobacco program be kept in place and that small farmers not be adversely affected.

<u>Attachments</u>

- Local press clips from Secretary Glickman's visit to Kentucky on April 3
- Maps showing the distribution of tobacco production in Kentucky
- Background on the Tobacco Program (prepared by USDA)
- Background on General State of the Tobacco Industry (prepared by USDA)
- Background on Risk Management Agency (prepared by USDA)
- Background on Farmer Portion of the McCain Legislation (prepared by USDA)
- Press Release by Senator Ford with summary of major provisions
- Questions and Answers (Prepared by USDA)
- Highlights of Kentucky Tobacco Farmer Survey from February 10-19, 1998 (Campaign for Tobacco-Free Kids and the Kentucky Health and Agriculture Forum)

THE COURIER-JOURNAL
SATURDAY,
APRIL 4, 1998

Price-support program called crucial safety net

PHOTOS BY MICHAEL HAYMAN, THE COURIER-JOURNAL
Robert Richardson of Versailles, right, introduced U.S. Secretary of Agriculture Dan Glickman to other farmers.

Agriculture chief says president won't abandon tobacco farmers

Richardson and Glickman examined weather-damaged leaf from last year's tobacco crop.

By JOE WARD
The Courier-Journal

LEXINGTON, Ky. — U.S. Secretary of Agriculture Dan Glickman told farmers gathered in a tobacco warehouse in Lexington yesterday that the federal tobacco program has served as a safety net for the family farm — and that the stability it provides must be preserved.

He pledged that President Clinton will sign no tobacco bill that doesn't protect the farmers.

It was what the farmers wanted to hear.

At the warehouse forum, attended by 600 to 700 farmers and government officials and employees, and during an earlier visit by Glickman to a Woodford County tobacco farm, the main thrust of farmer commentary was the same: Kentucky farmers need the tobacco price-stability program.

"We're not here to save tobacco," Daviess County farmer and Burley Co-op president Rod Kuegel said at the forum.

"We're here to save the family farm. What people need to realize is that you can't do one without the other here in Kentucky."

Earlier, as Glickman talked with farmers on a grassy slope on Robert and John Richardson's farm on Steele Road, Woodford County farmer Rusty Thompson told him the furor over tobacco in the Congress and the news media is wearing on tobacco farmers.

"As tobacco farmers, we're getting shot all to pieces every day," Thompson said.

"We've played by the rules all of our lives, and so did my father and grandfather," and don't believe punishment is in order, he said.

Glickman told the farmers that the aim of tobacco legislation pending in Congress is to reduce smoking among the nation's young people, which he said is a worthy goal.

But he said it also is important that the legislation protect the "tens of thousands of farmers" who have been the beneficiaries of the federal tobacco program — which he said has worked better over several decades than most other federal agriculture programs.

"We need a solution that provides stability and is fair to the farmers the small communities," he said.

Congress is considering a massive tobacco bill that would extract several hundred billion dollars from the tobacco industry, and in exchange provide them with some limited protection against lawsuits from parties alleging

See GLICKMAN
Page 7, col. 1, this section

THE COURIER-JOURNAL
SATURDAY,
APRIL 4, 1998

Glickman reassures growers

Continued from Page F 1

they were injured by smoking.

The legislation has been in the works since last June, when tobacco companies and attorneys general for 40 states worked out a tentative agreement involving payment of $368 billion by the industry and curbs on advertising.

Tobacco farmers have long believed that any time Congress considers any tobacco legislation, the federal tobacco program that keeps their prices stable is in jeopardy. The program long has been a target of anti-smoking forces.

The pending legislation also holds the potential of drastically reducing the amount of tobacco consumed, which could seriously cut farm income.

Farmers have had difficulty deciding among themselves what they should seek from Congress. Some favor a buyout that would give farmers who have depended on the program enough money to move to other crops.

Others say tobacco will be grown as long as it is legal, and they want to keep growing it, but they need the program to do it.

The program basically keeps prices up by limiting supply through quotas. The government finds out each year how much tobacco the companies expect to buy and how much can be sold overseas, and then divvies up the right to grow it among the farmers.

That way, the farmers don't overproduce and drive prices down. A price-support mechanism that involves government loans makes sure the farmers get an acceptable price even when the companies buy less than they said they would.

Kuegel and others — including U.S. Sen. Wendell Ford of Kentucky, who long has been tobacco's premiere champion in Congress — say the program enables families to make a living on much smaller farms than would otherwise support them.

Picking up that theme at yesterday's forum, Kentucky Gov. Paul Patton urged that Glickman, when dealing with tobacco and other farm issues, "take into account the cultural value of small farms."

"Tobacco is the reason we have so many family farms, and so many Kentuckians enjoy the value of rural living," the governor said.

Glickman told reporters at a brief press conference after the forum that he assumes the President and legislators who champion tobacco will accept nothing less than a continuation of the program for farmers who want to keep growing tobacco, and a reasonable price for those who want out.

The pending legislation would do just that, buying quotas from those who want to opt out at $8 a pound over 10 years.

Lexington Herald-Leader
Saturday, April 4, 1998

Finding facts firsthand about family farms

PHOTOS BY FRANK ANDERSON/STAFF

Agriculture Secretary Paul Glickman, with hand outstretched, addressed about 25 Woodford County tobacco farmers yesterday, during a visit to the farm of Robert Richardson. Later, he held a USDA forum in a tobacco warehouse in Lexington.

U.S. agriculture secretary visits farms, hosts forum

By Kit Wagar
HERALD-LEADER STAFF WRITER

U.S. Agriculture Secretary Dan Glickman came to Central Kentucky yesterday to take the pulse of American agriculture, and farmers let him know that Kentucky lives and dies by tobacco price supports.

"We are not here to save tobacco," said Owensboro tobacco grower Rod Kuegel. "We are here to save the family farm. But you can't do one without the other in Kentucky."

Kuegel's comments set the tone for yesterday's farm forum, the first of seven such meetings Glickman is holding across the country to see firsthand how new federal farm policies are working. Sitting in a warehouse filled with the pungent aroma of cut tobacco, officials could not have gotten away from tobacco if they had tried.

Kuegel, who is president of the Burley Tobacco Growers Cooperative Association, told Glickman and other federal agriculture officials that some farms in Kentucky have only 6 to 10 tillable acres.

"It's tobacco that makes them viable," Kuegel said.

Glickman said he understood the role that tobacco price supports had played in creating a nearly unique culture of small farms in Kentucky. He promised that tobacco farmers would not be left out of a national tobacco settlement.

"The president has said that a fair and reasonable settlement for tobacco farmers is a linchpin of any settlement," Glickman said.

But he declined to endorse a specific plan to protect farmers, saying only that the proposal by Democratic Sen. Wendell Ford of

See GLICKMAN, B2

Gov. Paul Patton, left, listened to Glickman speak at the USDA forum yesterday.

Lexington Herald-Leader
Saturday, April 4, 1998

GLICKMAN: Talk covers tobacco, hemp, ostriches

From Page B1

Kentucky was a positive step. The administration, he said, wants to see a consensus in Congress before endorsing a specific plan.

Ford has proposed a plan that would allow farmers to sell their tobacco quota to the government for $8 a pound, paid over 10 years. Growers who lease quota could receive $4 a pound. Farmers who chose to continue growing tobacco would still participate in a price-support system.

The farm forum, which attracted several hundred growers from across Kentucky, included questions that ran the gamut from ostrich farming to hemp growing.

Glickman said he was trying to end the Agriculture Department's traditional bias toward large operations by emphasizing research into ways that small and medium-size farms can be competitive.

He said he was concerned about overconcentration in the beef processing industry, where four firms have 80 percent of the market. In 1980, that portion of the market was shared by 12 firms. He said he is seeking tougher enforcement of antitrust laws to stop monopolistic practices.

He assured growers that the controversial proposed standards for organic foods would be changed. When the standards were issued for comment, he said, they generated some 16,000 responses, more than any other issue in modern history.

The proposed standards included many practices that organic farmers considered heresy. At $4 billion a year, the organic foods industry can no longer be considered a fringe business, he said.

One farmer asked why the government was not moving to help the U.S. hemp industry. Hemp is legal in Germany and Canada, which is providing $50 million in assistance to get the hemp industry up and running.

"That issue is to some extent above my pay grade," Glickman said, prompting laughter. He acknowledged that farmers in other states also had inquired about the possibility of growing hemp, a cousin of marijuana that lacks THC, the substance that causes smokers to get high.

He said the future of hemp is tied up in anti-marijuana issues, so the Agriculture Department has made no decision on whether hemp promotion would be a good idea.

"All I can tell you is: Keep the information flow coming," he said.

Earlier in the day, Glickman visited the Woodford County tobacco farm of Robert Richardson. He told local growers they need to make their voices heard. All of agriculture faces a tough political situation, he said, because farmers make up only 2 percent of the population.

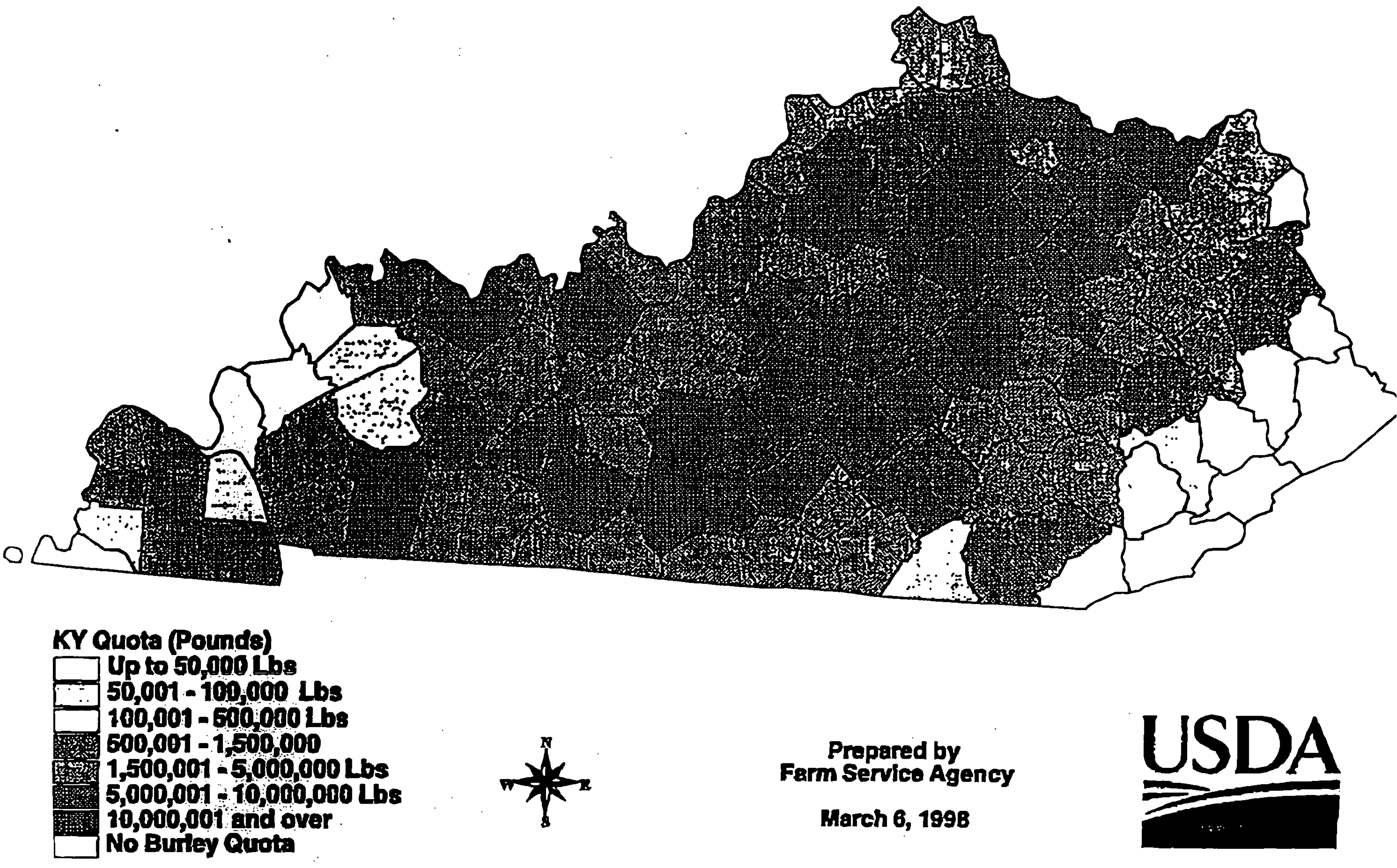
Under new farm policies, which phased out most price supports, the ultimate safety net is export markets, Glickman said. The Agriculture Department was trying to ensure that farm credit remained plentiful and that barriers to U.S. farm exports were eliminated. Farming, he said, is a growth industry because the world's population is exploding and people everywhere want U.S. farm products.

John Richardson, who raises cattle and with his brother grows 120 acres of tobacco, was unimpressed.

"It was about the same thing they say all the time," Richardson said.

"They talk more about grain farmers than tobacco farmers. It gets them off the subject of tobacco."

1997 Burley Quota - Kentucky

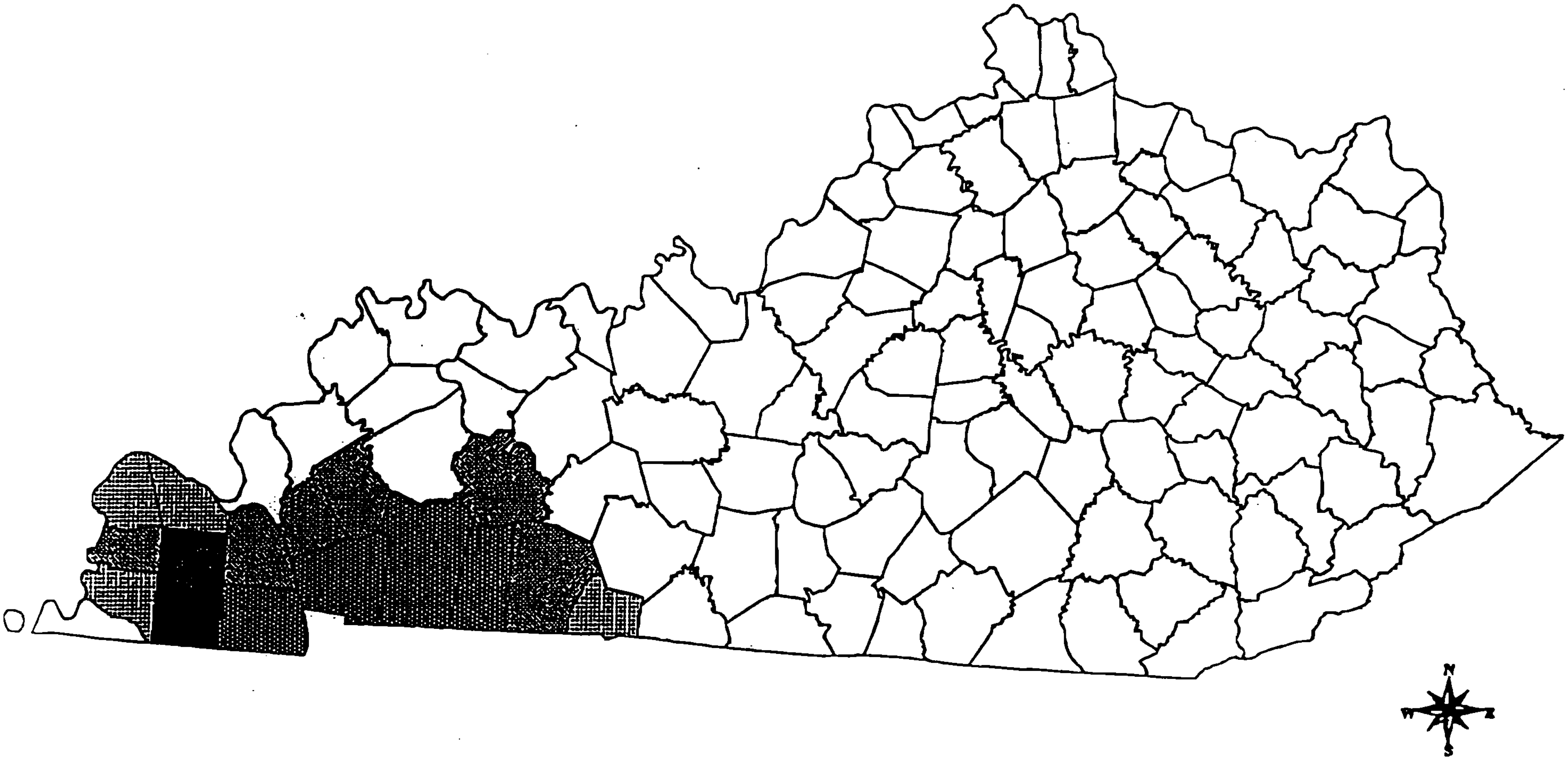


Prepared by
Farm Service Agency

March 6, 1998

USDA

1997 Fire-Cured (Types 22-24) Tobacco Pounds
Kentucky



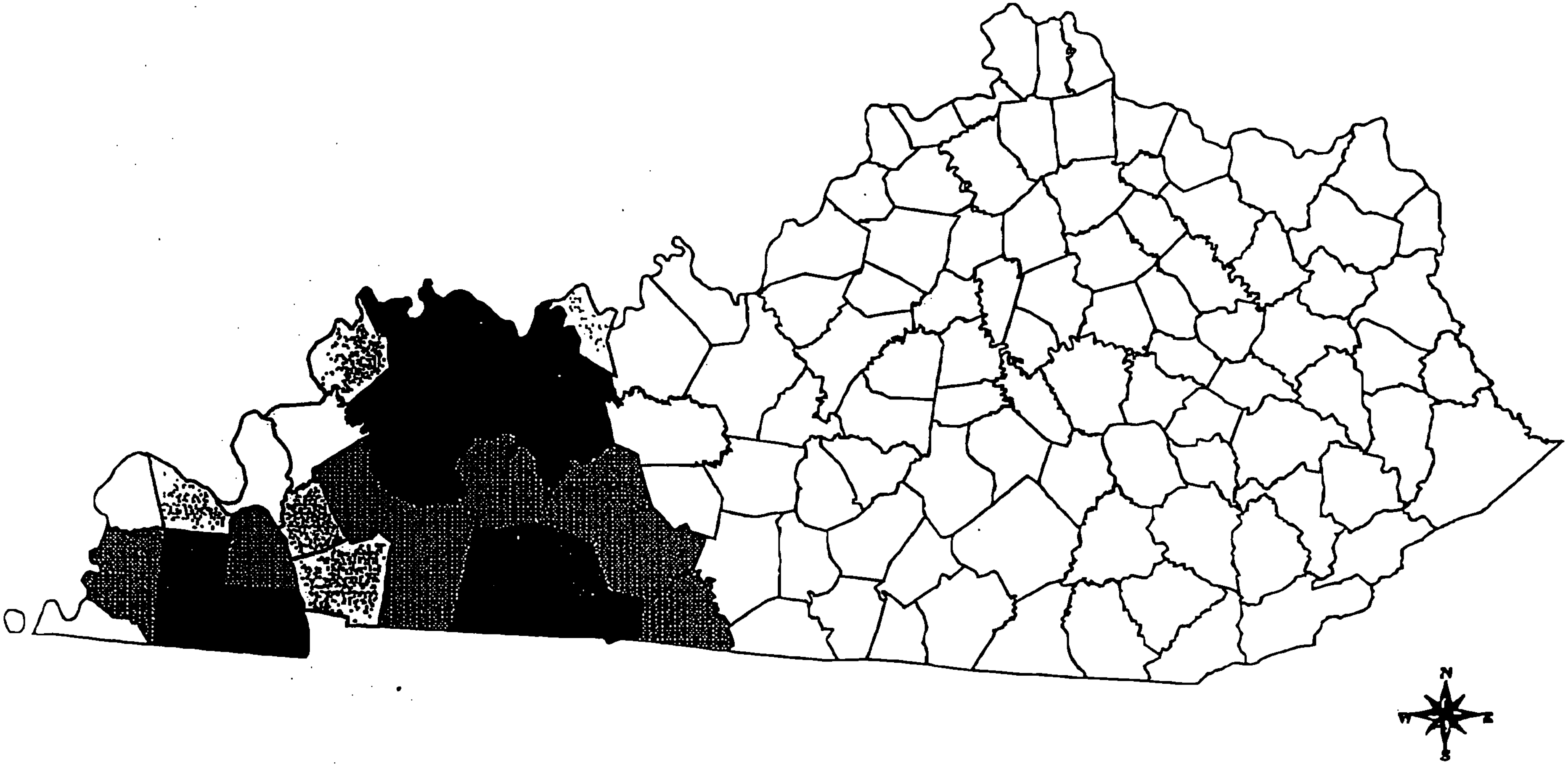
Ky Fire Cured (Types 22-24)
- Up to 20,000 lbs
- 20,001 to 300,000 lbs
- 300,0001 to 1,000,000 lbs
- 1,000,001 to 5,000,000 lbs
- Over 5,000,001 lbs
- No Fire-Cured

Source: USDA FSA
County File Upload 370
Other Kinds of Tobacco
1997 Farm Crop File
Summarized by County

USDA

Prepared by
Farm Service Agency

1997 Dark Air-Cured (Types 35-36) Tobacco Pounds
Kentucky



Ky Dark-Air Cured (Types 35-36)
- Up to 5,000 lbs
- 5,001 -50,000 lbs
- 50,001 - 150,000 lbs
- 150,001 - 1,000,000 lbs
- Over 1,000,001 lbs
- No Dark Air Cured

Source: USDA FSA
County File Upload 370
Other Kinds of Tobacco
1997 Farm Crop File
Summarized by County

USDA

Prepared by

THE TOBACCO PROGRAM

ISSUE:

Most tobacco produced in the United States is under the Federal price support-production control program. The tobacco program operates under permanent legislation, and does not have to be renewed by 5- or 7- year Farm Bills.

IMPORTANCE:

Tobacco provides $3 billion in income annually to producers. The price support-production control program stabilizes production and income for small and large producers.

TALKING POINTS:

- Producers of different kinds of tobacco vote in triennial referenda to determine if they wish to continue the Federal tobacco program for their kind of tobacco.

- In a referendum in late February, 97.5 percent of burley producers voted to continue the price support-production control program, as they have for many years.

- In 1997, over 600 million pounds of burley tobacco was produced in the United States - 70 percent in Kentucky.
- Including sales from fire-cured and dark air-cured tobacco, Kentucky tobacco producers received over $800 million from the 1997 crop. Tobacco sales represent over 40 percent of crop sales receipts and over 20 percent of all agricultural sales in Kentucky.

BACKGROUND:

In spite of the controversy surrounding the Federal program, tobacco-state congressmen were able to obtain permanent legislation. However, numerous changes have been made to the program via amendments to Farm Bills or other legislation. The most notable is the No-Net-Cost Tobacco Program Act of 1982, which requires the tobacco price support program to operate at no-net-cost to taxpayers. This program is currently under additional criticism as the Congress acts on the tobacco settlement.

SUMMARY:

The Federal tobacco program is under permanent legislation, which has provided production and income stability for tobacco producers since the late 1930's. Tobacco is a key source of income for several states, especially Kentucky.

CONTACT: Verner Grise, Tobacco and Peanuts Division, FSA 202-720-5291; home 703-354-1887

FARM AND FOREIGN AGRICULTURAL SERVICES

ISSUE:

Assessment of the general state of the tobacco industry.

IMPORTANCE:

Tobacco provides $3 billion in income annually to producers. The price support-production control program stabilizes production and income for small and large producers.

BACKGROUND:

Sales of tobacco products reached a record $50 billion in 1997. Although consumption of tobacco products have declined, exports of cigarettes reached a record high in 1996 before declining a little in 1997. In 1997, tobacco production totaled 1.7 billion pounds with a value of over $3 billion, the highest production and crop receipts since 1992.

Most tobacco is under a price support production control program that guarantees producers a minimum price in exchange for limiting production and works to stabilize supply and prices. In a referendum in late February, 97.5 percent of burley producers (the majority of tobacco grown in Kentucky) voted to continue the price support-production control program, as they have for many years.

FARM AND FOREIGN AGRICULTURAL SERVICES

KENTUCKY

ISSUE:

The Risk Management Agency (RMA) helps stabilize the agricultural economy by providing a sound system of crop insurance. The program leverages scarce federal resources by using the expertise and resources of 18 crop insurance companies and 15,000 private insurance agents to provide producers superior products and services. Primary issues are the RMA budget request and sales related issues like association marketing.

IMPORTANCE:

Risk management programs, such as crop insurance, are USDA's primary means of helping farmers survive a crop loss. Since enactment of the Federal Crop Insurance Reform Act of 1994, participation has nearly doubled. In 1997, crop insurance provided producers over $25 billion in protection through 1.3 million policies on more than 181 million acres. Participation has remained high despite modification of the requirement that producers obtain crop insurance in order to participate in most USDA farm and credit programs.

BACKGROUND:

Kentucky experienced a very abnormal year with their 1997 burley tobacco crop. Adverse weather conditions resulted in tobacco with high moisture content that either receives a low grade and price or no grade at all. RMA has addressed this situation with Bulletin No: MGR-98-06 dated March 16, 1998. This provides a deviation in loss adjustment procedures for the 1997 crop year only and is currently being used to complete the 1997 claims for indemnity.

TALKING POINTS:

- Kentucky is second only to North Carolina in total tobacco production and is the largest producer of burley tobacco. Cash value is excess of $700,000,000 a year.

- This issue involves burley - type 31 tobacco. This is one of five types of tobacco that is grown in Kentucky. The other types are dark fired - types 22 and 23, and dark air cured - types 35 and 36. Burley tobacco accounts for 92% of the total tobacco production in Kentucky.

- There are 26,642 tobacco crop policies in Kentucky for the 1997 crop year. This provides protection (liability) of $177,115,750 and covers 48% of the total crop.

- Loss Adjustment is currently ongoing to settle the remaining 1997 crop year claims for indemnity. The end of the insurance period was February 28, 1998, and the policy allows claims to be submitted for sixty days after the end of the this period. Early reports from the companies indicate the new loss procedures are being well received by the insureds.

SUMMARY:

Strengthening the agricultural safety net is critical to our Nation's farmers. To ensure that producers have the knowledge and tools they need to manage their risks, USDA has launched a risk management education initiative and made new products like revenue insurance widely available. Similar efforts are expected to continue and intensify in the future.

CONTACT:

Larry Whitford, Director, Jackson, Mississippi, Regional Service Office, (601)-965-4771.

FARM AND FOREIGN AGRICULTURAL SERVICES

ISSUE:

Proposed provisions to help tobacco farmers in the Ford Bill ("Leaf Act") section of the McCain Bill in relation to the proposed National Tobacco Settlement.

DISCUSSION:

The tobacco settlement will have a wide reaching impact on all segments of the tobacco industry, but a disproportionate effect on small and minority tobacco quota owners and producers. Of the 338,000 individual tobaccos quotas nationwide, nearly 66 percent are considered small farm operations. Five percent of all quotas are owned by minorities, the majority of which run small and family-sized operations. If a settlement is reached, cigarette prices would increase sharply because of manufacturer payments or increased taxes, and tobacco production would decline with a concomitant reduction in income. Limited resource farms would be especially vulnerable because of their already low level of income and significant dependence on tobacco as a source of family income.

BACKGROUND:

Several bills have been introduced to compensate tobacco quota holders and producers for the reduced income resulting from a tobacco settlement. The three bills that received the most attention were the Ford Bill (as known as the Leaf Act), the Lugar Bill, and the Robb Bill. The Leaf Act would continue the current program with payments for lost production, the Lugar Bill would buy out quotas and eliminate the current program, and the Robb Bill would shift the program from a Federal to privatized program. The tobacco farm leadership has adopted the Ford Bill/Leaf Act as a model and incorporated some provisions of the Robb Bill, especially for flue-cured tobacco.

The Ford Bill has been incorporated in the McCain Bill (S.1415) as the farmer portion of the McCain Bill. On April 1, the Senate Commerce Committee approved the bill, 19 to 1, and Senator McCain said he hoped the Bill would be before the full Senate before Memorial Day. A few modifications were made during the markup, but the thrust of the farmer portion of the Ford Bill remained intact.

TALKING POINTS:

As we understand the current compromise, the following are the main points included in the farmer portion of the McCain Bill:

- **Payments to Farmers for:**

  - **Burley, fire-cured, and dark air-cured tobaccos** - (in Kentucky, more than 95 percent of the quotas are for burley tobacco).

    - All quota holders given a one-time option to relinquish quota and get $8.00 per pound over 10 years or less.

    - Remaining quota holders get payments to the extent quota falls below the base level equal to $4 per pound for every pound quota drops, with a lifetime limit of $8 per pound times the entire base quota.

    - Quota lessees and tenants get (1) option to acquire relinquished quota and (2) payments to the extent quota falls below the base level equal to $2 per pound for every pound quota drops, with a lifetime limit of $4 per pound times the base quota.

  - **Flue-cured tobacco** - (Not produced in KY, but produced in NC, SC, GA, FL, VA, and AL)

    - All quota holders relinquish quota and get $8 per pound over 10 years or less.

    - Active quota holders will be issued permits limiting right to produce future crops.

    - Quota renters and tenants get (1) permits limiting right to produce future crops and (2) payments to the extent national quota falls below the base level equal to $2 per pound for every pound quota drops, with a lifetime limit of $4 per pound times the entire base quota.

- **Base Quota Years** - Years upon which payments will be based are the average of 1996 through 1998 crop years.

  - Burley - base quota 657 million pounds.

  - Flue-cured - base quota 885 million pounds.

- **Costs Incidental to the Tobacco Program** - All USDA costs associated with tobacco are paid out of a tobacco growers trust fund, including administrative costs, crop insurance, cooperative extension service costs, and any other costs, as calculated by the Secretary of Agriculture.

- **Farmer Opportunity Grants** - Quota holders and active tobacco producers and their families are eligible for higher education grants of up to $1,700 per academic year, adjusted upward every five years by $300. Academic eligibility is modeled after Pell grants, and program is administered by the Secretary of Education.

- **Benefits for Displaced Workers** - Up to $25 million annually for 10 years will be made available to provide benefits for displaced workers program. The program is administered by the Secretary of Labor.

- **Tobacco Community Economic Development Grants** - Block grants to tobacco States will be made annually for rural business enterprise grants, farm ownership loans, initiatives which create farm and off-farm employment, expanding infrastructure, long-term business technical assistance, supplemental agricultural activities, value-added agricultural initiatives, and compensation to auction warehouse owners.

- **Total Costs of the Farmer Portion of the McCain Bill** - $28.5 billion total over 25 years, $2.1 billion per year for the first ten years, $500 million for years 11-25.

  - Annual payments to tobacco farmers set at $1.65 billion for up to ten years.

  - Economic development grants set at $375 million minus administrative costs for first ten years. Six percent of economic development funding is earmarked for auction warehouse owners for ten years.

- **Total Cost to Industry/Cigarette Price Increase** -

  - Total cost to tobacco manufacturers over the 25 year period are projected to be $506 billion.

  - An increase in cigarette prices of $1.10 per pack over five years was anticipated. However, in the markup of the Bill, more than half --65 cents per pack would become effective in 1999.

  - The 65 cent increase would result in a more abrupt drop in cigarette consumption and thus demand for U.S. grown leaf than originally anticipated.

  - Consumption would fall nine to ten percent because of the 65 cent cigarette price increase. Demand for U.S. flue-cured and burley would decline by a similar amount or even more as manufacturers attempted to trim costs by using greater quantities of cheaper imported leaf.

- **Other Provisions of the McCain Bill -**
  - Civil liabilities damages capped at $6.5 billion per year.
  - Marketing and advertising would be curtailed considerably.
  - Goals of reducing youth smoking of 15 percent in three years and 45 percent in 10 years were established.
  - The Food and Drug Administration would be given broad latitude in regulating tobacco products.

NEWS RELEASE
WENDELL H. FORD of KENTUCKY
UNITED STATES SENATE

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FOR IMMEDIATE RELEASE
March 27, 1998

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FORD MAKES MODIFICATIONS TO STRENGTHEN "LEAF ACT"; EXPECTS PROPOSAL TO BE IN PACKAGE FOR SENATE DEBATE

WASHINGTON-- Bringing together burley and flue-cured growers, U.S. Senator Wendell Ford (D-KY) today said he has made some modifications to his "LEAF Act" that will "solidify and broaden the support" necessary to have Congress pass the proposal.

With the Senate Commerce Committee set to begin marking-up the proposed tobacco settlement legislation next week, Ford said it was imperative to have the strongest broad-based farmer protection package ready for inclusion in the final bill.

Ford noted that he fully expects the Committee to include his proposal in legislation that will be debated on the Senate floor in the coming weeks.

"These modifications to the LEAF Act broaden and strengthen our support while still holding to the principles we've always fought for: maintaining the quota program, fair compensation for lost quota, and providing a safety net if the program is threatened or eliminated in the future, all while remaining fiscally realistic," Ford said.

The modified LEAF Act incorporates some changes in the flue-cured program as advocated by Senator Charles Robb (D-VA) and other flue-cured representatives, such as transferring quotas from inactive quota holders to actual producers.

For burley growers, the LEAF Act would allow a quota holder to relinquish their quota in exchange for $8/pound, payable over a period of ten years or less. Unlike a proposal by Senator Richard Lugar (R-IN), that quota could then be reallocated to a farm owned by a quota lessee or tenant if they were the principal producer of the tobacco.

Another modification would specifically earmark a portion of economic development funding for tobacco warehouse owners.

"I've listened very hard over the last several weeks to growers and have tried to incorporate every constructive idea, so long as it didn't run into unrealistic funding requirements.

Congressional approval. I think this is that package, and I'm going to do all I can to see that it becomes law," Ford said.

In addition to Ford, Senators Ernest Hollings (D-SC) and Bill Frist (R-TN), the other two tobacco-state members of the Senate Commerce Committee, are supporting the legislation.

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Summary of Proposal

I. Payments to Farmers

- TYPES OF TOBACCO OTHER THAN FLUE-CURED
  - √ All quota holders given one-time option to relinquish quota and get $8 per pound over 10 years or less
  - √ Remaining quota holders get payments to the extent quota falls equal to $4 per pound for every pound quota drops, with a lifetime limit of $8 per pound times the entire quota (as under original LEAF Act)
  - √ Lessees and Tenants get (1) option to acquire relinquished quota (if any), and (2) payments to the extent quota falls equal to $2 per pound for every pound quota drops, with a lifetime limit of $4 per pound times the entire quota
- FLUE-CURED
  - √ Quota holders relinquish quota and get $8 per pound over 10 years or less
  - √ Active quota holders will be issued permits limiting right to produce future crops
  - √ Renters and Tenants get (1) permits limiting right to produce future crops, and (2) payments to the extent national quota falls equal to $2 per pound for every pound quota drops, with a lifetime limit of $4 per pound times the entire quota (as under LEAF Act)

II. Costs Incidental to the Program

All USDA costs associated with tobacco are paid out of a tobacco growers trust fund, including administrative costs, crop insurance, cooperative extension service costs, and any other costs, as calculated by the Secretary.

III. Farmer Opportunity Grants

Quota holders and active tobacco producers and their families are eligible for higher education grants of up to $1,700 per academic year, adjusted upward every five years by $300. Academic eligibility is modeled after Pell grants, and program is administered by the Secretary of Education.

IV. Benefits for Displaced Workers

Up to $25 million annually for 10 years will be made available to provide benefits based on the NAFTA displaced workers program. The program is administered by the Secretary of Labor.

V. Tobacco Community Economic Development Grants

Block grants to tobacco states will be made annually for rural business enterprise grants, farm ownership loans, initiatives which create farm and off-farm employment, expanding infrastructure, long-term business technical assistance, supplemental agricultural activities, value-added agricultural initiatives, and compensation to warehouse owners. At least 20% of funds must be spent on agricultural activities, 4% on long-term technical assistance, and 6% on warehouse owners.

VI. Total Costs

$2.1 bil. per year for the first ten years, $500 mil. for years 11-25, $28.5 bil. total.

Summary of LEAF Act Modifications

General:

1. **Base Years:** Base years upon which payments are made changed from 1994-96 to 1996-98.

2. **Funding:**

a. Annual payments to tobacco farmers raised to $1.65 billion from $1.6 billion. Total payments to farmers raised to $16.5 billion from $16 billion.

b. Economic Development grants set at $375 million minus administrative costs for first ten years; unchanged for years 11-25.

c. Assistance for dislocated workers set at $25 million annually for ten years.

3. **Optional Buyout:** For all types of tobacco other than flue-cured, quota holders are given a one-time optional buyout at $8 per pound, in exchange for relinquishing their quota. Payments will be made over a period of up to ten years, depending on (1) how many take a buyout, and (2) how far national quota falls. Remaining quota holders who stay in the program will be eligible for LEAF Act payments as under the original bill.

4. **Reallocation of quota:** For all types of tobacco other than flue-cured, when an optional buyout is taken, quota lessees or quota tenants who were the principal producer of tobacco under the quota will be given the option of having the quota reallocated to a farm they own. Otherwise, the quota is redistributed among remaining quota holders in the county (or in states with cross-county leasing like Tennessee, redistributed throughout the state.)

5. **Flue-cured permits.** All flue-cured quotas will be relinquished, in exchange for an $8 per pound payment over ten years. Inactive quota holders are out of the program. Active quota holders will be issued individual tobacco production permits. Quota renters or tenants who were principal producers of flue-cured tobacco during 1998 will also be issued individual tobacco production permits. Quota renters or tenants remain eligible for LEAF Act payments to the extent national quota declines. Permit holders must remain active producers to maintain permits. Permits may not be sold or leased, but may be transferred to descendants.

6. **Warehouse owners:** Six percent of economic development funding is earmarked for warehouse owners for ten years.

Technical:

1. Definition of "active tobacco producer" changed to "participating tobacco producer"
2. Dark tobacco poundage conversions to be based on actual farm yield, not county yield.
3. Funding for farmer payments divided between flue-cured and all other types of tobacco.
4. Reallocation of leased quotas where a tenant is the primary producer is split between quota lessee and quota tenant.
5. If the program is voted out by referendum, this does not trigger accelerated LEAF Act payments.
6. Flue-cured permit holder must invest at least 100 percent of the costs of production in the crop in order to be considered an "active" producer.
7. Flue-cured tobacco must still be grown in the same county under a permit as it was under previous quotas.
8. Flue-cured permits must be assigned to a farm within the same county.

FARM AND FOREIGN AGRICULTURAL SERVICES

ISSUE:

The importance of the tobacco settlement, and the effect on small farmers.

Q. How important is tobacco as an agricultural crop?

A. In 1997, tobacco production totaled 1.7 billion pounds with a value of over $3 billion, the highest production and crop receipts since 1992. Sales of tobacco products reached a record $50 billion in 1997.

Q. How important is tobacco to Kentucky producers and the overall economy?

A. Including sales from fire-cured and dark air-cured tobacco, Kentucky tobacco producers received over $800 million from the 1997 crop. Tobacco sales represent over 40 percent of crop sales receipts and over 20 percent of all agricultural sales in Kentucky.

In 1997, over 600 million pounds of burley tobacco was produced in the United States - 70 percent in Kentucky.

Q. How important is tobacco to small farmers?

A. Tobacco is a high value crop that generates receipts of $4,000 to $5,000 per acre. Profits from 1 acre of tobacco are equivalent to between 15 and 20 acres of corn or soybeans. On small farms in Kentucky, with an average of 22 acres of harvested cropland in 1992, tobacco is vital to the economic survival of farmers. (source: 1992 Ag Census)

Q. Who will be affected by a settlement?

A. The tobacco settlement will have a wide-reaching impact on all segments of the tobacco industry, but a disproportionate effect on small and minority tobacco quota owners and producers. Of the 338,000 individual quotas, about 66 percent are considered small farm operations. Five percent of all quotas are owned by minorities, the majority of which are small producers.

Q. Is anyone in Washington concerned about the impact a tobacco settlement could have on tobacco farmers and on the rural communities where tobacco is grown?

A. The Administration supports the concept of compensation to quota owners, along with producers, and of course the rural communities. USDA's Farm Service Agency, is providing analysis and interpretation of various proposals that have been made, to ensure that tobacco farmers, and their rural communities, are included.

Q. What is the likelihood of Congress approving a settlement?

A. There appears to be considerable movement in the Senate. Senator McCain's bill was passed by the Senate Commerce Committee on April 1. They have not agreed on all the details, but the Senate is moving toward approval of a settlement. The House has not made as much progress.

Q. When might the settlement legislation happen?

A. I don't know how soon it may happen. I would like to see Congress approve a bill before the House and Senate adjourn for the Fall campaigns.

Q. Will you sign the national tobacco settlement legislation?

A. I cannot commit to that without knowing the terms the bill will contain. I will not sign any bill that fails to provide for the economic losses which will be sustained by tobacco farmers and by the rural communities in which tobacco is grown.

FARM AND FOREIGN AGRICULTURAL SERVICES

Crop Insurance Statistics in Kentucky

In Kentucky, there were 20,782 active burley tobacco policies in 1997. Based on 1996 data, 75% of the policyholders reported 5 or less acres (less than $10,000 in liability and probably received less than $20,000 in average income).

In Ohio, there were 1,189 active burley tobacco policies in 1997. Based on 1996, 85% of the policyholders reported 5.00 acres or less.

HIGHLIGHTS OF KENTUCKY TOBACCO FARMER SURVEY

A new survey of 400 Kentucky tobacco farmers shows strong support for provisions of a national tobacco plan to discourage tobacco use by young people and to provide assistance to tobacco-dependent communities. While most of the farmers would prefer to continue growing tobacco as they have for years under the current tobacco program, they express some uncertainty about the future of tobacco farming and are therefore willing to explore alternatives. The farmers surveyed also question how concerned the tobacco companies are about the well-being of tobacco farmers.

Support for National Tobacco Control Measures

Almost three-fourths of Kentucky tobacco farmers support establishing a national minimum age of eighteen for buying tobacco products, with the requirement that retailers check identification of all young buyers. Just 15 percent oppose this provision as part of a national tobacco policy. Sixty-four percent support prohibiting tobacco companies from marketing or advertising to children, with just 22 percent opposed.

The farmers are also want consumers to know what is in tobacco products. Eighty-three percent support a requirement that tobacco companies provide accurate information about the ingredients of their products.

The tobacco farmers clearly believe they should be part of any national tobacco policy. Nearly three-fourths (73%) of those surveyed say a national tobacco policy should provide economic development assistance to tobacco-dependent communities. Sixty-eight percent support allocating a portion of revenues from a federal excise tax on tobacco products to tobacco-dependent communities.

This level of support for public health measures is somewhat surprising given that large majorities of the farmers surveyed agree that health groups (84%) and restrictions on smoking (76%) are a threat to tobacco farmers.

Opinions on the Tobacco Program

While most Kentucky tobacco farmers (82%) agree Congress should leave the tobacco program alone, a majority (59%) believe the program will be eliminated within the next five years. Thus, it is not surprising that just 41 percent of the farmers surveyed say it is very likely that they or someone in their family will be growing tobacco on their farm in ten years; another 19 percent say it is somewhat likely. Fifty-nine (59%) say that if they had children, they would encourage them to grow tobacco.

This uncertainty about the tobacco program leads 57 percent of Kentucky tobacco farmers to favor a voluntary buyout, where they could either decide to keep their quota or sell it. Another 7 percent support a mandatory buyout that would end the current quota and price support system for everyone. About one-fourth (27%) oppose a burley buyout of any kind, saying the current program should be maintained. When asked what a fair buyout price would be, the median response was $12, although almost 20 percent offered no response.

Forty-eight percent of the tobacco farmers said they are very (16%) or somewhat (31%) interested in trying additional non-tobacco activities on their farms. Forty-three percent said they are somewhat (8%) or very (35%) uninterested. Reflecting this split, 43 percent said they would use money from a buyout to expand or diversify their farming operation. The most popular uses of the funds were to invest in a savings or retirement plan (71%) and pay off debts (69%).

Opinions of Tobacco Companies

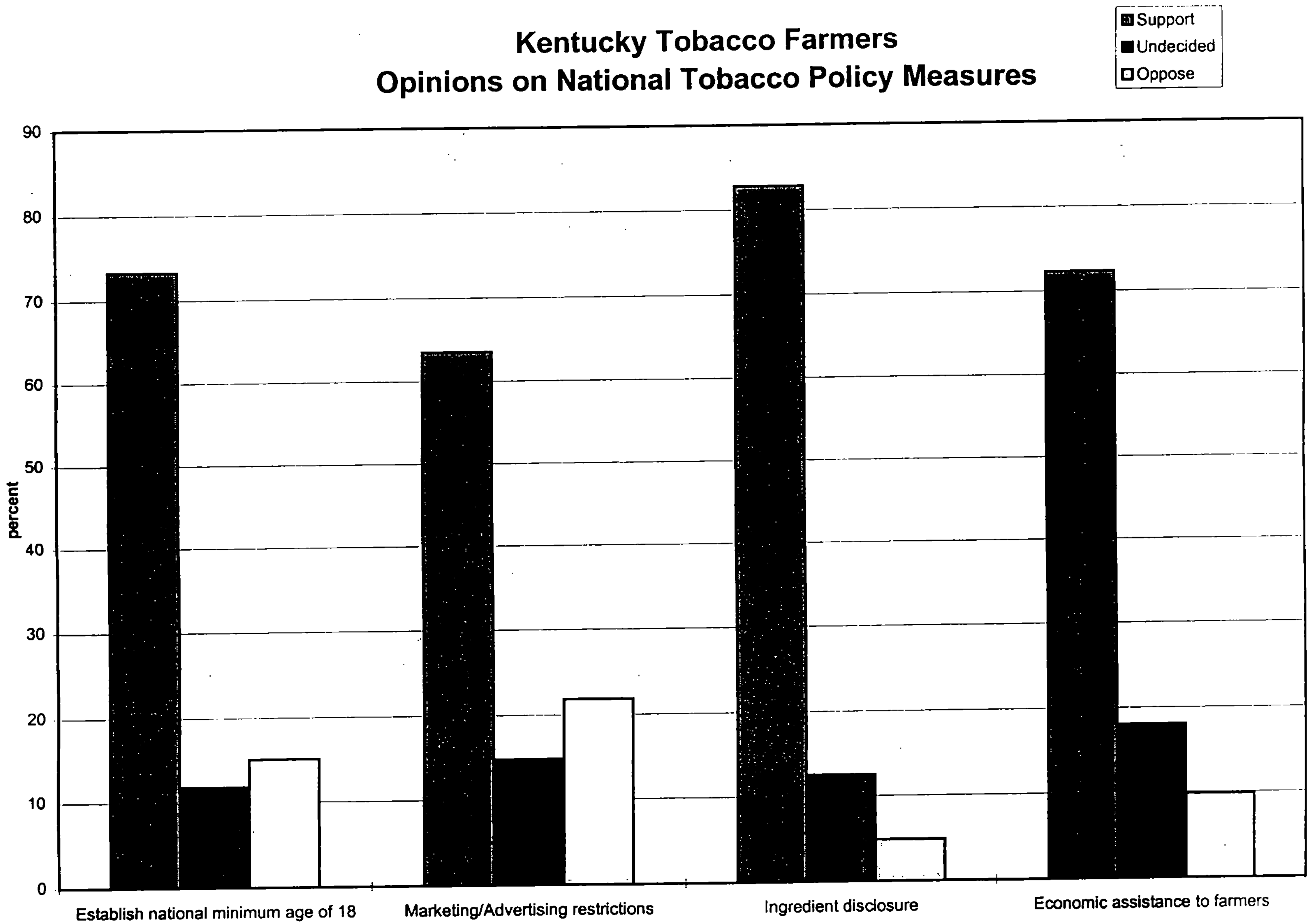
The uncertainty on the part of tobacco farmers about the future of the enterprise may reflect, in part, their apparent ambivalence toward the tobacco companies. One-half of those surveyed disagree strongly (32%) or somewhat (18%) that tobacco companies are concerned about the well-being of tobacco farmers, while 41 percent agree strongly (19%) or somewhat (23%) that the tobacco companies are concerned about them.

Fifty-nine percent of the tobacco farmers agree that if tobacco companies do well, tobacco farmers do well. Thirty-seven percent disagree with this assertion.

The Survey

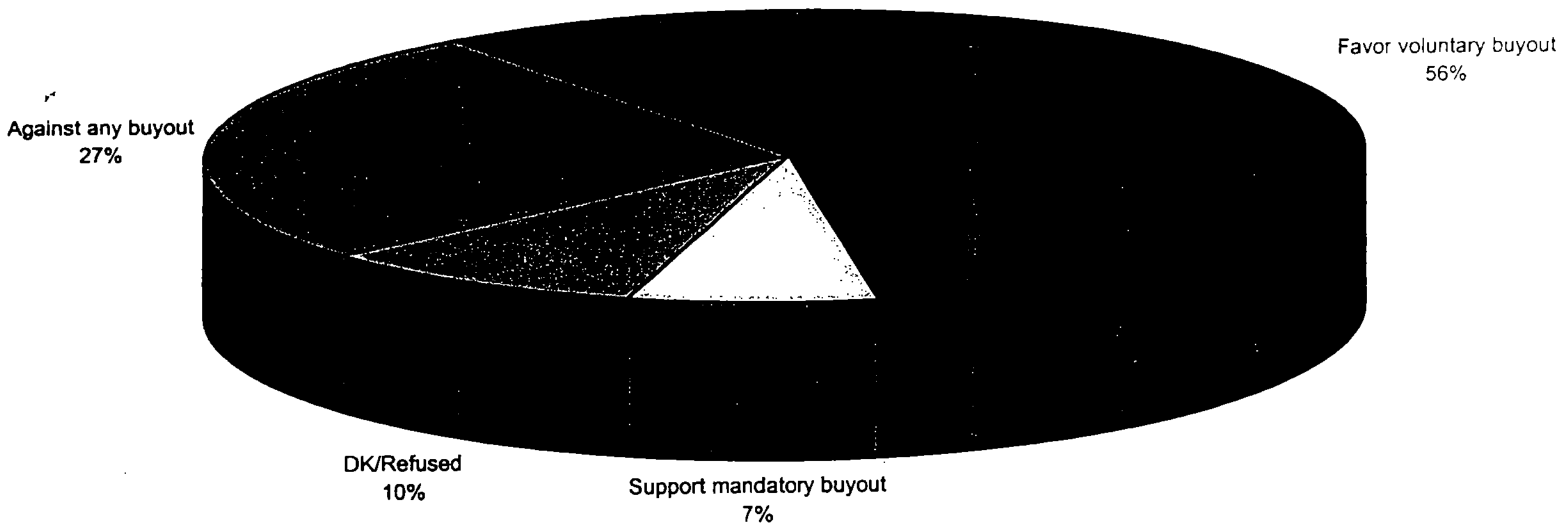
The telephone survey of 400 Kentucky tobacco farmers was a cooperative effort between the Campaign for Tobacco-Free Kids and the Kentucky Health and Agriculture Forum. It was conducted by Global Strategies, Inc. with a random sample of burley quota holders from a list provided by the United States Department of Agriculture. Qualified respondents live in the state of Kentucky and have an effective burley quota of 2200 pounds (roughly one acre) or more. The sample of 400 has a margin of error of plus or minus 4.9 percentage points.

Kentucky Tobacco Farmers
Opinions on National Tobacco Policy Measures



Campaign for Tobacco-Free Kids survey of 400 Kentucky Tobacco Farmers, February 1998

Kentucky Farmers' Opinions on a Burley buyout



Campaign for Tobacco-Free Kids survey of 400 Kentucky Tobacco Farmers, February 1998