Tobacco Liability '98

Back From the Brink With Iraq

Refraining from military action sometimes requires greater courage by a President than using force, as Lyndon Johnson learned too late in Vietnam. President Clinton wisely decided yesterday to hold his fire against Iraq, tentatively endorsing the agreement reached over the weekend between Saddam Hussein and Kofi Annan, the Secretary General of the United Nations. If Mr. Hussein honors his newly minted commitments, the threat of military conflict should recede further in the days ahead.

The agreement, though all its details have yet to be disclosed, sounds stronger than initially described. It gives U.N. weapons inspectors unrestricted access to any site in Iraq that they suspect may contain weapons of mass destruction or the means to make them. That includes but is not limited to eight presidential sites that have been closed to inspectors, as well as dozens of other locations that Iraq has shielded in recent months. If honored, the agreement will for the first time make comprehensive inspections possible in Iraq. Sending diplomats with the inspection teams when they visit presidential sites, a concession made by Mr. Annan, should not compromise the inspectors' work.

Mr. Clinton rightly insists that Iraq now deliver on its promises, and properly reserves the option of using military force if the agreement is breached. To maintain maximum pressure on Iraq, American and British forces should remain in the region. With fresh Iraqi promises in hand, other Security Council members like Russia and France will find it harder to argue against the use of force if Iraq once again impedes or blocks inspections.

Mr. Annan proved a skillful and determined negotiator in Baghdad, yielding little to Mr. Hussein while putting the American threat of force to good use. It was the kind of useful diplomatic role that few U.N. chiefs have mastered. Management of the crisis has also been well handled by Mr. Clinton. America sometimes has little choice but to use its power. Preventing the development or use of chemical and biological weapons by Iraq could be such a case. But Washington, as Mr. Clinton said yesterday, should also have the self-confidence not to use its strength when peaceful means can better achieve its objectives.

No Immunity for Tobacco

It would be foolish and unjust to grant the tobacco industry any legal immunity for past or future conduct given newly released industry documents showing that cigarette manufacturers targeted young smokers and very likely manipulated nicotine in cigarettes to provide a greater physiological "kick." Yet tobacco industry leaders insist that they will not curb advertising and merchandising that is attractive to youths without Congressional approval of a settlement that grants them substantial immunity from liability.

Under a settlement proposal forged by 40 state attorneys general who sued the industry to recover tobacco-related Medicaid costs, the industry would pay $368.5 billion over 25 years, end outdoor advertising, ban cartoon characters in ads and curtail a range of marketing efforts. In exchange the industry wants to be shielded from all future class-action lawsuits, third-party claims, such as suits by health insurers to recover costs related to smoking, and punitive damage awards based on past misconduct. Lawsuits by individuals would still be allowed.

The industry is eager to ban class-action lawsuits because of the threat they pose to its reprehensible behavior. But shielding the industry from future class-action suits would practically invite more abuses. It would also deprive many tobacco victims who were not represented at the negotiating table of adequate legal recourse.

For example, more than two dozen suits have been filed by multi-employer union health funds to recover costs spent on tobacco-related diseases. Most of them would be wiped out by the proposed immunity deal. So would suits by several asbestos companies seeking compensation for the added harm smoking caused people exposed to asbestos. The tobacco industry recently paid $300 million to settle a class-action suit brought by flight attendants for illnesses caused by secondhand smoke. Similar suits by restaurant workers or others injured by secondhand smoke would be barred.

The industry is offering the advertising restrictions as bait for immunity, arguing that Congress cannot constitutionally impose the restrictions by law. But without raising any First Amendment issues at all, Congress can properly agree to settle the suits by the state attorneys general in exchange for voluntary advertising controls. It need not give the industry any concessions on immunity that would dangerously undermine public health goals.

The New York Times

TUESDAY, FEBRUARY 24, 1998

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Statement on International Tobacco Initiatives

Tobacco use is a growing threat to global public health. Today, tobacco products account for three million deaths worldwide each year; by 2025, that number is expected to rise to ten million per year, with over 70 percent of tobacco-related deaths occurring in developing nations.

As the world's leading exporter of tobacco products, the United States has a moral responsibility to address the adverse impact of its products on global public health. As a part of any effort to address tobacco use, Congress should establish a responsible international health policy by enacting these five proposals:

1. **End U.S. Government Support for Tobacco Abroad.** The federal government should be prohibited from promoting the sale or export of tobacco or tobacco products abroad. It should also be prohibited from attempting to weaken a foreign tobacco regulation unless the regulation discriminates against U.S. products in an arbitrary and unjustifiable manner and is not a reasonable means of protecting the public health.

2. **Adequately Fund Global Nongovernmental Tobacco Control Efforts.** A private, nonprofit organization should be established to assist public health organizations in other countries through public education programs, technical assistance to health professionals, mass media campaigns, grants and other general assistance.

3. **Establish a Code of Conduct for Labeling and Advertising Overseas.** U.S. tobacco companies should be required to print health warning labels on tobacco products sold overseas that are as stringent as those required in the United States. U.S. tobacco companies should also be prohibited from selling, advertising or marketing tobacco products to children in other countries, with the same standards applied to their overseas conduct as at home.

4. **Stop International Tobacco Smuggling.** The Bureau of Alcohol, Tobacco and Firearms, which currently regulates alcohol smuggling, should be given authority to deter tobacco smuggling through, among other things, a system of export permits and increased record keeping.

5. **Fund International Tobacco Control Through a Licensing Fee.** Every U.S. tobacco company should pay a two-cent fee for each package of cigarettes it sells overseas. The money raised through such a fee should be used for tobacco control efforts by governmental and non-governmental entities.

The United States has the opportunity to act as a world leader in promoting public health. If Congress passes any measure to confront domestic tobacco use, it must also tackle the health problems caused by the use of American tobacco products abroad. We strongly endorse these proposals to establish a responsible U.S. policy for the promotion of global public health.

Thomas Manton, D-N.Y., are expected this week to release their own Superfund proposal, which they say is patterned on consensus Superfund legislation introduced in the 103rd Congress.

HEALTH: This week, the major event on the tobacco issue promises to be the Wednesday markup by **Senate Labor and Human Resources Chairman Jeffords** of his bill (*see related story, page 1*). Last week, no votes were taken, as committee members deadlocked over several issues.

Wednesday's session promises more of the same, according to a Democratic committee aide, who said disagreement remains between **committee ranking member Edward Kennedy**, D-Mass.,

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Week Ahead

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and Jeffords on the issue of FDA authority over tobacco.

Kennedy supports the FDA's contention that cigarettes should be regulated under its current drug and device authority, while Jeffords wants a new category for tobacco.

Commerce Chairman McCain will continue his journey toward a March 25 markup of legislation he will introduce.

McCain said last week he plans to meet with **House Commerce Chairman Bliley** early this week, in the hope of creating as much common ground as possible between his bill and a measure Bliley is expected to introduce should the Senate continue its forward momentum on the tobacco issue.

McCain also will hold a hearing Tuesday on the issue of smokeless tobacco.

On other health-related fronts, the Senate Labor and Human Resources Committee Thursday will hold a hearing on a GAO report that found insurance companies are using tactics to exclude benefits required under the 1996 Kassebaum-Kennedy bill.

Health Care Financing Administration chief Nancy-Ann Min DeParle, association witnesses, consumer advocates and state administrators will testify.

The hearing will focus on contentions in the GAO report that the law has led to large price increases for workers who use the Kassebaum-Kennedy option.

Also Thursday, the House Commerce Health and Environment Subcommittee will review Medicare fraud and abuse in home health care. The panel will review a GAO report to be released that day; the report was requested by Bliley and **ranking member John Dingell**, D-Mich.

Fazio Bill: No Immunity, No Caps

Tobacco legislation to be unveiled today by **House Democratic Caucus Chairman Vic Fazio** of California will not include provisions granting cigarette makers immunity from civil suits, nor will it establish annual monetary caps on the industry's

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civil liability, *CongressDaily* has learned. Fazio's "Healthy Kids Act" — the same name given to a bill recently unveiled by **Sen. Kent Conrad**, D-N.D. — will be trumpeted today at a Capitol Hill news conference, where Fazio, Conrad, **Sen. Richard Durbin**, D-Ill., HHS Secretary Shalala and **Rep. Henry Waxman**, D-Calif., will speak. Waxman and Shalala will not endorse the bill, however, but are expected to say it meets their goals for tobacco legislation.

Among the bill's cosponsors are **Rep. Martin Meehan**, D-Mass., and **Minority Whip Bonior**. Fazio aides were scrambling to sign up at least one GOP member Tuesday, and were hopeful they would find one by this morning, a House Democratic aide said. Fazio's bill would settle state, federal, Castano group and asbestos industry related lawsuits. It would require an initial nontax deductible payment during the first year of $16 billion from the industry, with $1 billion of the total reserved to settle suits based on the claims of former asbestos producers and asbestos workers, who say they are at a higher risk for smoking-related illnesses. The 25-year bill would ultimately allot $20 billion for lawsuits tied to the asbestos industry. Unlike the Conrad measure, which the bill in many ways closely resembles, there would be no tax or fee assessed on a pack of cigarettes.

Instead, the industry would be required to make annual payments totaling $82

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billion during the first five years, with payments ratcheting up to $29.1 billion during year 25. After the first year, payments would be tax deductible.

Youth smoking rates would have to decline 20 percent by 2001, 40 percent by 2003, 55 percent by 2005 and 67 percent by 2007. Otherwise, penalties the Democratic aide described as "very harsh" would be assessed cigarette makers on a company-specific basis.

Such so-called look back provisions would also be applied to mandated reductions in smoking among minorities.

A total of $27 billion over 25 years would be provided to tobacco growers and communities. No tobacco-area members have endorsed the bill, but the source indicated that these members were heavily involved in crafting the bill's tobacco provisions.

The bill also includes a provision guaranteeing the industry buy a fixed amount of American tobacco leaf.

Fazio would spend revenue on a variety of health-related programs.

But the bill would also allocate funds for certain other administration priorities, including $16.5 billion over five years for child care and early development and $5 billion over five years to hire 100,000 teachers.

Monies would also be set aside for historically black colleges and Hispanic educational institutes to fund health and other research related to smoking among minorities.

Meanwhile, new details have emerged on a separate measure to be offered this week by **Senate Environment and Public Works Chairman Chafee, Agriculture ranking member Tom Harkin**, D-Iowa, and **Sen. Bob Graham**, D-Fla.

According to a document obtained Tuesday by *CongressDaily* — labeled "Working Draft" and dated last Friday — Chafee, Harkin and Graham are planning to call for cigarette makers to reduce smoking rates on a slightly steeper schedule than required under the proposed settlement with the state attorneys general.

The 11-page document includes several graphics and detailed explanations of what is called the "KIDS Deserve Freedom from Tobacco Act of 1998," or "KIDS Act."

The document states that youth smoking must decline by a fixed amount every year, including a drop of 30 percent in five years, 50 percent in seven years, and 65 percent in 10 years.

For every percentage point the industry comes up short in a given year, a penalty of 2 cents per pack — on top of the $1.50 per pack price hike envisioned overall by the bill — would be assessed.

After two consecutive years of missing the goal, the penalty would become 4 cents per pack; after four consecutive years, 6 cents per pack. And for each percentage point missed by an individual company, the penalty would be approximately $1,500 per teen smoker.

And, unlike the settlement, "the KIDS Act would contain no abatement or rebate provision for tobacco companies," the document states.

States would also have their own incentives, with each being allowed to draw from a $500 million pool of funds for exceeding federally set targets.

While eliminating the preconditions for FDA regulation of tobacco set forth in the settlement, the KIDS Act would also prohibit the FDA from banning the sale of tobacco products to adults.

FDA domain over the issue would be established by classifying nicotine as a drug and tobacco products as Class II drug delivery devices.

"Tobacco farming families" and "tobacco-dependent communities" would be provided $15 billion under the bill for "compensation, income support and transitional assistance."

As under the settlement, $193.5 billion would be set aside over 25 years for use by the states. Half of the amount would be used by states at their discretion, the other half targeted for various public health and anti-smoking programs.

The bill would also encode many marketing-related and youth access provisions of the settlement, such as a ban on human or cartoon characters and a ban on outdoor advertising.

Other provisions include $3.225 billion per year for research on tobacco-related diseases; $625 million per year for research on ways to prevent and stop people from smoking; $750 million annually for anti-tobacco advertising campaigns; $1.5 billion per year to help current smokers stop smoking; $300 million each year for federal anti-smuggling activities; and $100 million annually for "global education efforts"

The industry would be required to sign consent decrees agreeing not to legally challenge provisions of the bill and to pass through industry payments — pegged at $20 billion the first year and $25 billion thereafter, with a $10 billion up-front payment — so that the price rises at least $1.50 over two years.

These payments and the youth reduction penalties would all be indexed to inflation.

The consent decrees would also force the industry to accept the bill's marketing provisions.

While many of the bill's provisions will be controversial, perhaps none may cause more consternation than the one that hits closest to home: The bill would extend to Congress the executive branch smoking ban.

— By Keith Koffler

Senate In Motion On Tobacco Bill

HEALTH

LAST FALL, **Judiciary Chairman Hatch** presented his colleagues with two related measures. One was the so-called PROTECT Act, which codified many of the provisions of the settlement between the state attorneys general and the tobacco industry.

The other, at least figuratively speaking, was the riot act: Hatch told his colleagues they had better quit waiting for tobacco legislation simply to happen and get busy with the enormous amount of work that passing a bill would require.

In September, Hatch, his voice resounding off the walls of a nearly vacant Senate chamber, railed against forces of inertia.

"As far as the proposed global tobacco settlement goes, people around here seem to assume it's going to happen, when really nothing is being done," Hatch declared.

He would not offer such comments today. While final passage of comprehensive tobacco legislation is far from certain, the Senate has roused itself and lumbered into action on the issue.

Working in tandem with **Commerce Chairman McCain**, Hatch is now at the forefront of a leadership-sanctioned effort to move legislation to the floor.

McCain has vowed to begin marking up a bill March 25, and **Majority Leader Lott** has put out the word that the issue should be addressed by June 1 — before the appropriations process cranks into high gear.

Meanwhile, **Labor and Human Resources Chairman Jeffords**, **Labor and Human Resources ranking member Edward Kennedy**, D-Mass., **Budget ranking member Frank Lautenberg**, D-N.J., and **Sen. Kent Conrad**, D-N.D., all filed comprehensive bills earlier this year.

And the most recent measure was unveiled last week by **Senate Environment and Public Works Chairman Chafee**, **Agriculture ranking member Tom Harkin**, D-Iowa, and **Sen. Bob Graham**, D-Fla.

In the House, **Democratic Caucus Chairman Vic Fazio**

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Tobacco

Continued from page 1

of California put his bill in the hopper last week. Also in play is a companion piece to the Kennedy bill that has emerged in the House.

Sources say House Republicans are waiting for the legislative game to play out in the Senate before attempting to unite behind any bill.

Nonetheless, **Speaker Gingrich**, who earlier had charged **Rep. Deborah Pryce**, R-Ohio, with heading up the tobacco effort, now has tasked a group of leading House Republicans to address various aspects of the issue, according to a knowledgeable source.

Commerce Chairman Bliley will analyze the FDA's role with respect to tobacco, **Judiciary Chairman Hyde** will survey the options for limiting the fees of attorneys involved in the settlement, and **Agriculture Chairman Smith** will research the types of provisions for farmers that should be included in a bill.

And **National Republican Congressional Committee Chairman John Linder** of Georgia will assess the potential political fallout a bill may have in tobacco states, especially if liability protection is not granted and cigarette taxes are raised.

For his part, Bliley — who has held several tobacco related hearings and has more in store — has been mulling the outlines of legislation he may propose should the baton be handed over from the Senate.

In what would make up one of Capitol Hill's stranger sets of political bedfellows, traditional tobacco ally Bliley — who represents a Richmond-based district that is home to the R.J. Reynolds tobacco firm — and **Rep. Henry Waxman**, D-Calif., an ardent anti-tobacco crusader, are engaged in a serious tobacco detente, according to a House Democratic aide.

Waxman, the source asserted, has assured Bliley he will not sign on to any legislation until he and Bliley agree or agree to disagree.

What is nourishing the gathering momentum for tobacco legislation?

The answer may lie in last summer's budget deal — which, with its ironclad caps on spending and tax levels, showed up this year as the skunk at the garden party for tax cutters and spending enthusiasts.

The prospect of a major league donation to the federal government from the tobacco industry may have freshened the air and set the music to playing again.

"What group of politicians in Washington doesn't get excited over such a huge chunk of change?" quipped one House GOP aide.

The White House is the working residence of the first group of politicians who seized onto the excitement, discovering earlier this year that $65 billion could be taken from the tobacco industry's coffers and used for five years worth of new spending initiatives.

More recently, House conservatives rallied around **Budget Chairman Kasich**, who vowed to remand the money back to the public in the form of tax cuts.

Senate Budget Chairman Domenici wants the cash for Medicare. **Sen. Connie Mack**, R-Fla., wants a piece for the National Institutes of Health.

And Hatch himself says all spending should be directed at health and anti-smoking related initiatives.

Of course, Washington's appetite for spending and tax cuts is superseded only by its hunger for voter approval.

And, according to many Hill sources, Republicans are recognizing in growing numbers that the White House and congressional Democrats will use the tobacco issue in the way they intend to use many of the president's popular proposals: They will try to force the GOP-led Congress to pass them or bash the Republicans on the campaign trail for failure to act.

President Clinton can increasingly be found perched atop the bully pulpit, imploring Congress to pass a "comprehensive" bill before fleeing town this year.

Clinton said Friday he would consider forcing Congress to stay put until a measure becomes law, an idea met with disdain by **Senate Majority Leader Lott** and other Republicans.

Democrats will soon announce a "countdown drive" for the remainder of the month to keep the pressure on the GOP and to persuade rank-and-file Democratic members to broach the tobacco issue with constituents during the April recess, according to a Democratic congressional aide.

The effort will include a series of events led by Clinton, the congressional Democratic leadership, and other Democrats.

The countdown itself refers to several themes Clinton began pounding home last week — the diminishing number of days left on the congressional calendar this year, the 3,000 children Clinton says become addicted to cigarettes each day, and the 1,000 he says will therefore die prematurely.

The $65 billion question is whether Congress will give the industry a grant of immunity from certain categories of civil litigation in exchange for the cash and for an industry vow to stop pitching ads at children.

Hatch supports the idea, and McCain has indicated that he may too.

And while many liberal senators have rejected the scheme out of hand, several others are giving it consideration, raising the prospect of a bipartisan consensus on the issue.

At a hearing last week, **Commerce Committee member John Kerry**, D-Mass., mulled the issue aloud as he questioned Conrad — who was appearing before the committee. Conrad's proposal grants the industry immunity only from state and federal suits.

Another Commerce Committee member, **Sen. Ron Wyden**, D-Ore., has indicated he might bite too, although he clearly finds the idea somewhat unsavory.

Since two other Democrats on the committee hail from tobacco regions — **Commerce ranking member Ernest (Fritz) Hollings**, D-S.C., and **Minority Whip Ford**, a Kentuckian — a McCain bill granting the industry liability protection may have significant momentum when it reaches the floor.

For his part, Hatch first issued his warning about the need for action in

September, then returned to the matter in a November floor statement.

"I am willing, indeed eager, to work with all interested parties to refine this legislation as it moves forward," Hatch said. "What I am not willing to do, however, is further delay action on what could be the most important opportunity to advance public health in decades."

Hatch could yet return to the floor this spring to address the tobacco issue once more. This time, he may need only to cast his vote.

— *By Keith Koffler*

Mo.'s Ashcroft starts on the right track for 2000

A victory in a Christian Coalition poll puts the conservative senator on course for a possible run for the GOP presidential nomination. Now he has to prove he can withstand national competition.

By Jill Lawrence
USA TODAY

WASHINGTON — Two years before the first presidential primary, Sen. John Ashcroft of Missouri is consolidating support in the influential traditional-values wing of the Republican Party.

Ashcroft was the hands-down winner in a straw poll this month of 65 top state officials of the Christian Coalition. Coalition founder Pat Robertson and Focus on the Family President James Dobson, two powerhouses of the right, are expected to be in Ashcroft's corner if he makes the race.

The head start is no guarantee he'll emerge as a top-tier contender, but the coalition's support is valuable for any GOP White House hopeful. And Ashcroft may well be one.

"I am giving it serious consideration," he says of the 2000 presidential race, even as he teases that "senator" is an acronym for "super-ego not admitting to openly running."

Ashcroft, a former two-term Missouri governor, is a record-setting vote-getter in his home state. In the past six weeks he's collected more than $300,000 in pledges to his political action committee, which finances his travel and contributions to other candidates. During the same period he has raised his profile — and increased his appeal to Christian and cultural conservatives — with strong denunciations of the moral climate in the White House.

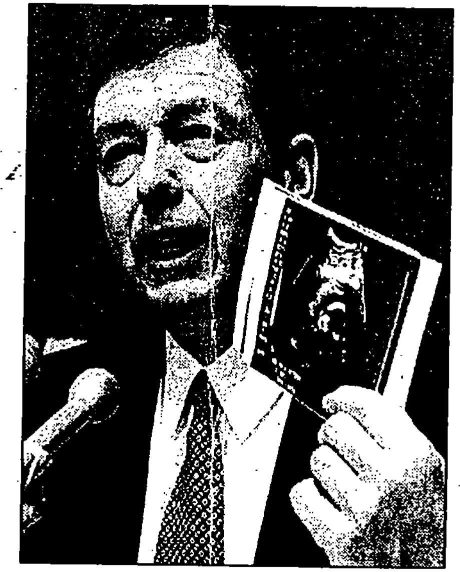
These "family-values" conservatives wield considerable clout in the GOP, particularly in local races and primary-season presidential contests that attract only the most committed voters. Education and religious issues are important to them. They oppose abortion and gay rights.

Ashcroft's potential competitors for this segment of the party include activist Gary Bauer, a take-no-prisoners conservative with proven fund-raising ability, and politicians far better known than Ashcroft, such as former vice president Dan Quayle, 1996 vice presidential candidate Jack Kemp and Texas Gov. George W. Bush.

The charismatic, well-connected Bush is concentrating for now on his re-election campaign. He will be a formidable candidate if, as expected, he enters the 2000 race.

Quayle and Kemp are considered nonstarters at this point in some GOP circles because, fairly or not, they earned negative reviews for past performances on the national stage. Provocateurs such as Bauer and Patrick Buchanan are viewed as lacking the wide appeal needed to win the White House.

"The general feeling is that we've blown two presidential elections in a row. We want to win. There's going to be an emphasis on viability," says Atlanta-based consultant Ralph Reed. He is informally advising several prospects and will choose one this fall.



By Rick Wilking, Reuters

Ashcroft: Shows a sonogram of his unborn grandchild in voicing opposition to abortion

Ashcroft won a second gubernatorial term by a record margin (64%-35%) in 1988 and carried every county in Missouri in his 1994 Senate race. His boosters say his low-tax policies in Missouri, his new federal tax-cut proposal and his record on workplace issues important to women give him broad appeal.

"He is the only candidate out there who can provide a legitimate bridge" between the economic and social conservatives, says Wayne Berman, finance chairman of the Republican Governors Association, who is helping Ashcroft prepare for a national bid.

THE ASHCROFT FILE

Age: 55

Born: May 9, 1942, Chicago.

Family: Wife Janet, a business-law professor at Howard University; three children.

Education: Yale University, B.A. in history, 1964. University of Chicago Law School, law degree, 1967.

Public service career: Missouri auditor, 1973-74; Missouri attorney general, 1977-85; Missouri governor, 1985-93; U.S. senator, 1995-present.

Books: Co-authored two college business-law textbooks with his wife.

Hobbies: Singing, piano-playing, fishing, tennis, hiking, dirt-biking.

Even before the White House intern scandal, Ashcroft was attacking Clinton administration ethics and values. When it broke, other congressional Republicans followed advice to say little. But Ashcroft spoke out strongly in speeches and TV interviews.

He has led fights against the National Endowment for the Arts and judicial nominees he considers liberal activists. He also tried to block Clinton's choice for surgeon general, David Satcher, over his stands on drug treatment and abortion. Satcher was confirmed 63-35 last week, but Ashcroft's opposition resonated with social conservatives. "You can sometimes win by losing," Berman says.

Late last month Ashcroft got three standing ovations at the Conservative Political Action Conference. He chided fellow Republicans for their silence on "the presidential matter" and declared: "It is time for us to say what we know to be right. To say, 'Mr. President, if these allegations are true, you have disgraced yourself, you have disgraced this country, you have disgraced the office, and you should leave.'"

Later that day Ashcroft received a private note from Focus on the Family's Dobson, who hosts a radio show on 2,900 stations and mails a magazine to 2.5 million households. "You are the messenger," Dobson said in the faxed note to his longtime acquaintance. "Whatever I can do, I'm yours."

Robertson is expected to announce his support soon. But Dobson, despite private signals to Ashcroft, is making no public endorsement for now. He is in a delicate position: Focus on the Family is a tax-exempt nonpolitical organization and he is close to Bauer, whose Family Research Council lobbying group is an offshoot of Focus on the Family.

Bauer, who was President Reagan's chief domestic policy adviser, says speculation on Dobson's loyalties at this point is "humorous because no one is a declared candidate." As for his own viability, Bauer says his political action committee, Campaign for Working Families, raised $2.6 million last year and will spend up to $5 million on 1998 elections.

Ashcroft's political action committee, Spirit of America, raised $235,500 last year. He recently brought in a new PAC director to ratchet up the tempo. Cash pledges already this year are well beyond the 1997 take.

Ashcroft has traveled to more than half the states and nearly 60 cities in the past year. He is hiring aides who are familiar with the political landscape in key states. But it's his PAC that will hold early clues to whether he becomes a footnote or a contender.

"The biggest test is his ability to raise money," Berman says. "He has to prove that he can attract the financial support that's absolutely essential to running for president."

Health groups line up against tobacco deal

By Jessica Lee
USA TODAY

WASHINGTON — Leading public health groups coalesced Tuesday against legislation that would protect cigarette makers from certain lawsuits.

But the tobacco industry warned that without such protection, it wouldn't voluntarily agree to restrict its advertising and marketing.

"We oppose granting the tobacco industry immunity against liability for past, present or future misdeeds," former surgeon general C. Everett Koop and former Food and Drug Administration chief David Kessler said in a letter to House Speaker Newt Gingrich and Senate Majority Leader Trent Lott.

The letter commits 20 medical and public health groups to work for comprehensive tobacco legislation based on its impact on public health. It represents the first time the groups have taken a united position on the tobacco bill.

The industry, meanwhile, hardened its insistence on some protection from lawsuits, which it regards as an essential part of any national tobacco deal.

Last June, the industry negotiated a deal to settle lawsuits pending in 40 states and restrict its advertising and marketing practices in exchange for limited immunity from lawsuits. Congress would have to approve the deal before it could become law.

Industry spokesman Meyer Koplow told reporters that if Congress passes legislation lacking "essential liability provisions, at a minimum, you're not going to get the industry to voluntarily give up things."

Koplow warned that the industry might return to practices such as cartoon advertising if Congress fails to grant protection from lawsuits. It will also challenge in court any provisions the industry considers to be unconstitutional, he said.

Among the legal protections sought by the industry are a ban on future class-action suits, a prohibition on lawsuits by insurance companies or other third-party payers and a $5 billion cap on annual liability payments.

But Koop and Kessler argued that Congress is under no obligation to negotiate with the tobacco industry. "Congress should not alter the legal system in any way that would weaken its ability to protect the public health or permit the tobacco industry or others to engage in any behavior that otherwise would be condemned," they said.

In addition to Koop and Kessler, the letter was signed by leaders of such influential groups as the American Medical Association, American Cancer Society, American Heart Association and Campaign for Tobacco-Free Kids.

▶ Tobacco ads, 1B

USA TODAY · WEDNESDAY, FEBRUARY 18, 1998

tobacco – liability – gw

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The industry is offering the advertising restrictions as bait for immunity, arguing that Congress cannot constitutionally impose the restrictions by law. But without raising any First Amendment issues at all, Congress can properly agree to settle the suits by the state attorneys general in exchange for voluntary advertising controls. It need not give the industry any concessions on immunity that would dangerously undermine public health goals.

The New York Times

TUESDAY, FEBRUARY 24, 1998

Moving Forward at the N.A.A.C.P.

With Myrlie Evers-Williams stepping down, the National Association for The Advancement of Colored People has chosen the veteran legislator and civil rights worker Julian Bond to replace her as chairman. In Mr. Bond the nation's oldest civil rights organization has selected a solid, charismatic figure with proven credentials and a steady compass on race relations.

He served more than 20 years in the Georgia Legislature and started his public life in the front line of the struggles against segregation and the Vietnam War. He helped create the Student Nonviolent Coordinating Committee, which worked to desegregate public accommodations in the South. Back then, Mr. Bond and the Young Turks around him saw the very group he now leads as stodgy.

But it has endured in part by its ability to absorb talent from the more activist wing of the movement. Indeed, the N.A.A.C.P.'s organizational survival owes a lot to Ms. Evers-Williams, who became chairwoman three years ago. The group was millions of dollars in debt and plagued with scandals. Ms. Evers-Williams brought a steadying force and was instrumental in hiring an effective former Congressman, Kweisi Mfume, to the newly created position of chief executive officer.

The group endured sharp program cuts to wipe out its deficit and has yet to return to full fiscal strength. But at the annual meeting last weekend in New York, it was clear that Ms. Evers-Williams has done a fine job of untangling a bureaucratic mess and getting the country's oldest and most important civil rights organization running again.

Speaking just after his election, Mr. Bond suggested that the N.A.A.C.P. would broaden its appeal to include minorities other than African-Americans, saying that "Colored people come in all colors, and we want very much to reach out to all of these emerging minorities in America." New policies have yet to be articulated, and according to published reports, fund-raising is still running short. But given that the battle for racial justice is far from complete, it is good to see the N.A.A.C.P. back in the fray with a team of committed leaders.

The Reagan Riddle

As President, Ronald Reagan projected optimism, conviction and nostalgia for a simpler time in America. Now retired and afflicted, he is poignantly beckoning Americans once again to recall a moment when Presidential leadership itself seemed more simple and open than it is today. The President who stood for irreducible verities like opposing Communism and unleashing "the magic of the marketplace," as he unself-consciously put it, has been vividly captured by the two-part documentary broadcast on PBS last night and tonight. No less impressive is the program's acknowledgment that the man in the middle remains an enigma.

The program is only the latest of several recent displays of affection for Mr. Reagan. As his 87th birthday approached, normally fractious Republicans in Congress united to name an airport after him in the capital city he reviled. Cover stories in Forbes and The Weekly Standard asserted that the current economic boom should be ascribed to a Presidency that ended nine years ago. Almost everyone seems to believe that he will be known as the leader who vanquished the "Evil Empire," a phrase that shocked the mainstream when he uttered it.

It does Mr. Reagan's memory a disservice to suggest that his leadership was flawless or his legacy uncomplicated. He advocated balanced budgets but never submitted one. His program favored the rich over the poor, and his approach to social policy was brutish. His sweeping tax cuts of 1981 were followed by tax increases in his own term and then under Presidents Bush and Clinton, with little ill effect. The President who savagely opposed the missile treaty negotiated by his predecessor, Jimmy Carter, managed to live under its terms. His resolution in foreign policy was compromised by trading arms for hostages in Iran.

Mr. Reagan's great gifts are nonetheless worth celebrating. From the time of Teddy Roosevelt, only a handful of the nation's chief executives have pushed through their programs by sheer force of personality. At a time when many had concluded that the job was too much for one man to handle, he charted where he wanted to go, and thereby expanded the possibilities of the office itself.

Several moments in the PBS program are startling. There is the discovery by Edmund Morris, whose long-awaited biography of Mr. Reagan is due later this year, that the President's capabilities slipped steadily from the time he was shot in March 1981, for instance. But most striking is the essential loneliness and intellectual slightness of a man who had few if any intimate friendships beyond that with his wife and was blissfully unquestioning about himself and his beliefs.

"You're not going to figure him out," declares Ron Reagan Jr., in a virtual challenge to the film makers. "That's the first thing you need to know. I don't think he's figured himself out." That may be beside the point. Mr. Reagan figured out a few big, simple truths about the country, which is why Americans remember him fondly today.

The New York Times

TUESDAY, FEBRUARY 24, 1998

TUESDAY, MARCH 10, 1998

Tobacco – [illegible handwriting]

Proposed Senate Tobacco Liability Caps Causing Stir

Tobacco legislation being crafted by **Senate Environment and Public Works Chairman Chafee, Agriculture ranking member Tom Harkin**, D-Iowa, and **Sen. Bob Graham**, D-Fla., would require cigarette makers to pay at least $4 billion per year that would accumulate into a permanent fund used to settle civil suits against the industry, Senate sources said Monday. The bill would also mandate a $1.50 per pack increase in the price of cigarettes over two years. The $1.50 price hike would be accounted for by annual payments by cigarette makers of $20 billion the first year and $25 billion per year thereafter. The bill, which is expected to be unveiled this week, would cap annual liability payments at $8 billion per year. However, the industry would be required to pay $4 billion of that amount every year, whether it is successfully sued or not.

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Still, **House Speaker Gingrich** Monday said he is "very skeptical if not hostile" to limits on liability for the tobacco industry, noting that no other industry has that kind protection, including companies that make lifesaving products such as heart valves. "I don't think we have to pay back the tobacco companies to tell them not to addict our kids," Gingrich said. He also said he is "very, very concerned" about state tobacco settlements which he said have fallen short in checking the "predatory behavior" of the tobacco industry and trial lawyers. Speaking before the American Medical Association, Gingrich said any federal settlement should have a cap on what trial lawyers who argued the case could collect — perhaps a cap on fees based on an hourly rate of $150. Gingrich observed that money which ends up in the hands of trial lawyers is money that does not go to prevent teen smoking. Gingrich noted that money could be raised by hiking the

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cost per pack to discourage teens form buying cigarettes.

He also suggested settlement money could be used by trial lawyers for future lawsuits against other industries.

Meanwhile, sources said the $4 billion in the Chafee-Harkin-Graham bill, which is included in the $20 billion and $25 billion totals, would roll over every year, creating a permanent fund.

If the industry is sued for more than $4 billion — but less than $8 billion — the extra amount could be added on top of the $20 billion and $25 billion caps.

Chafee, Harkin and Graham are attempting to procure White House support for their effort, and although many provisions of the emerging legislation are consistent with President Clinton's stated "principles" on tobacco, the White House has yet to sign on.

Chafee held a brief meeting on Capitol Hill Monday with White House Chief of Staff Bowles and White House Domestic Policy Assistant Bruce Reed.

The *Associated Press* reported Monday night that the two camps were close to agreement.

"It's the first bipartisan bill consistent with the overarching principles that the president sent out," a White House official familiar with the meeting between the administration and the bill sponsors told the *AP*.

The three senators will have the backing of certain health groups willing to consider a cap on tobacco industry liability.

Only the ENACT coalition — which includes the National Center for Tobacco Free Kids, the American Cancer Society and the American Heart Association — has said it would consider such provisions.

But another group, led by the American Lung Association, will not accept any limits on industry liability, and is therefore unlikely to sign onto the Chafee-Harkin-Graham effort.

The senators are mulling a floor strategy bypassing committee consideration, but would consider rolling their bill into a measure to be proposed by **Senate Commerce Chairman McCain** if an agreement can be reached.

McCain has officially been tapped by **Majority Leader Lott** to head the GOP tobacco effort. **Majority Whip Nickles** — who had been running the effort — is now likely to play more of a consulting role, sources indicated.

McCain has invited the chairmen and ranking members of each of the relevant committees to appear before the Commerce Committee Wednesday to provide their views on the settlement.

Sources characterize the invitation as an effort by McCain not to be perceived as making a grab for the issue from other committee chairmen, and to open up his effort to as many views as possible.

— By Keith Koffler and Stephen Norton