

Withdrawal/Redaction Sheet

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. list	re: SSNs and DOBs [Personally Identifiable Information] [(2 pages)	05/18/1998	b(6)
002. email	Waves to Essence P. Washington re: WAVES Confirmation [Personally Identifiable Information] [partial] (2 pages)	05/18/1998	b(7)(C), b(7)(E), b(7)(F), b(6)

COLLECTION:

Clinton Presidential Records
Domestic Policy Council
Jose Cerda
OA/Box Number: 17180

FOLDER TITLE:

Tobacco: Police Groups

2016-0931-S

rc2329

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

b(1) National security classified information [(b)(1) of the FOIA]
b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

TREASURY



NEWS

OFFICE OF PUBLIC AFFAIRS • 1500 PENNSYLVANIA AVENUE, N.W. • WASHINGTON, D.C. • 20220 • (202) 622-2960

EMBARGOED UNTIL 11 A.M. EDT
Text as Prepared for Delivery
April 30, 1998

TREASURY DEPUTY SECRETARY LAWRENCE H. SUMMERS
SENATE JUDICIARY COMMITTEE

Thank you, Mr. Chairman. I am pleased to be joined this morning by the Director of the Bureau of Alcohol, Tobacco and Firearms, John Magaw and by the Acting Deputy Commissioner of Customs for International Affairs, Doug Browning. We are pleased to have this opportunity to discuss administrative and enforcement issues arising from the implementation of new tobacco legislation, particularly those issues related to controlling illegal domestic diversion and cross-border smuggling of tobacco products.

As you know, the prospect of comprehensive tobacco legislation is an issue of enormous consequence to the health and economic well-being of the American people. Comprehensive tobacco legislation such as Senator McCain's bill would stop 3 million teens from smoking over the next five years, prevent approximately one million premature deaths, and reduce the costs that smoking imposes on our economy by almost \$80 billion in the long run. The Department of the Treasury and the Administration support the efforts of your Committee and others in Congress to protect America's children from the deadly threat of smoking.

In addition, the Administration shares your interest in assuring that the enactment of tobacco legislation does not result in either a domestic black market or smuggling of tobacco products into the United States. We believe that it is essential that comprehensive tobacco legislation contain provisions that will minimize the diversion of cigarettes from legitimate domestic channels of distribution and the smuggling of cigarettes into the United States from abroad.

It is not possible to reach definitive conclusions about the risks of smuggling given the wide range of changes contemplated by comprehensive tobacco legislation. Incentives to smuggle may well be sensitive to details of tobacco legislation, including price changes, the way

RR-2408



in which assessments are levied and other specifics. Nonetheless, the Treasury Department believes that the creation of a sound regulatory system -- one that will close the distribution chain for tobacco products -- will ensure that the diversion and smuggling of tobacco can be effectively controlled and will not defeat the purposes of comprehensive tobacco legislation.

By closing the distribution chain for tobacco products, we will be able to ensure that these products flow through legitimate channels and effectively police any leakages that do take place. The Treasury Department already licenses tobacco manufacturers and export bonded warehouses in connection with collecting tobacco excise taxes. We believe that such licensing should be extended to the other entities in the upper end of the tobacco distribution chain -- wholesalers, exporters, importers and distributors. We are comfortable with a system that places primary responsibility for licensing retailers on state governments, as provided in Senator McCain's bill. Under this system, tobacco products would move through legitimate channels. Most importantly, such channels would not be open to America's youth.

An effective system must include the following elements:

- **First**, as I have described above, all entities in the distribution chain for tobacco products -- manufacturers, wholesalers, exporters, importers, distributors and retailers -- should be required to hold a license or a permit. Licensing of retailers could be done at the state level. Licenses would be issued based on certain clearly specified criteria and could be revoked or suspended for certain specified violations. Those conducting business without a license would be subject to penalties. Licensed entities should only be authorized to sell tobacco products to other licensed entities. The sale or distribution to any entity that is unlicensed would be unlawful.
- **Second**, legislation should require the marking, branding and identification of packages of tobacco products intended for domestic distribution and for export so that they may not be diverted or smuggled in circumvention of the legitimate channels of distribution.
- **Third**, any regulatory proposal should include penalty and administrative provisions that will allow for effective, efficient and uniform enforcement of controls over distribution.

A regulatory scheme for tobacco products such as that I just described would be similar to the way the Federal Government has effectively regulated alcoholic beverages for over sixty years. The system in place has allowed for effective commerce in alcoholic beverages while effectively curtailing trafficking in illicit, non-tax paid products. In addition, all states currently regulate their alcohol retailers.

Current laws regulating tobacco are aimed at collecting the Federal excise tax and assisting states in their efforts to collect excise taxes imposed on certain tobacco products, not at regulating the distribution of tobacco products and preventing smuggling. For example, the Contraband Cigarette Trafficking Act, or CCTA, was designed solely to assist states in enforcing

their tax laws. It does not address or ensure a closed national distribution system and was only intended to proscribe domestic diversion as it applies to state taxes. The CCTA does not address cross-border smuggling, and it applies only to cigarettes, and not to any other tobacco products.

With the necessary regulatory provisions in place to deal with potential smuggling, we do not expect a large-scale smuggling problem for several reasons. First, the "closed" distribution scheme I just described would limit drastically smugglers' ability to enter products into a legitimate distribution channel. Potential black marketeers will not be able to move products through legitimate wholesalers or distributors. Nor will they be able to sell products to retail consumers at the local convenience stores or other licensed retail outlets. Instead, without a way to place contraband products in the market legally, smugglers would have to sell cigarettes outside channels of legitimate distribution. This would be a risky proposition and one we do not believe will represent a significant problem. Second, U.S. cigarette manufacturers would have great incentives not to become complicit in any smuggling operation, as they would encounter enormous legal risks (such as the possibility of losing their license or, as the McCain bill provides, losing their cap on liability risk) and public opprobrium. Indeed, it is hard to imagine that large scale smuggling could occur without the manufacturers' knowledge. Third, the U.S. Customs Service has the expertise and the experience to deal with imported contraband products and has already made a substantial investment in the currently planned introduction of non-intrusive inspection systems and other equipment needed to detect smuggling of contraband. The organic nature of tobacco and the distinctive shape of cigarettes makes them readily detectable by equipment that Customs currently has in place.

Some have cited current levels of interstate smuggling as a reason why comprehensive tobacco legislation such as Senator McCain's bill will lead to wide-scale smuggling. Such arguments fail to account for the fundamental difference between interstate diversion and cross-border smuggling. Commerce between states is not controlled the way it is across the United States' international borders. The Customs Service simply does not monitor the movement of products across state borders, while it does effectively monitor our international borders. More importantly, the current levels of interstate smuggling exist without having in place a closed distribution system like the one I described earlier. If anything, such a system would be expected to have the collateral benefit of substantially reducing existing interstate diversion of tobacco products.

The Canadian experience is also frequently highlighted by those who predict the emergence of a large black market. There are several reasons to believe, however, that the Canadian experience is not an appropriate predictor of what would occur if tobacco legislation such as that supported by the Administration were to become law.

First, the size of the Canadian population as well as its concentration along the border with the United States, makes the Canadian example not particularly instructive for the United States. Because of its smaller population, the total number of cigarettes sold in Canada is only one-tenth as large as the number sold in the U.S., so small amounts of smuggling have a

noticeable impact on their tobacco market and would have none on ours. That is, it would take ten times as much smuggling by volume to have an equivalent proportional effect on the U.S. market for tobacco products. Moreover, smuggling became a problem in Canada because of the ease of access to alternative markets. Eighty percent of the Canadian population lives within a two-hour drive of the U.S. border, placing it within easy reach of smugglers transporting cigarettes from the United States. The U.S. population is more dispersed, making the logistics of a nationwide black market in smuggled cigarettes more complex and expensive for organized smugglers. The dispersal of the U.S. population also means that a U.S. resident is less likely than a Canadian resident to be able to cross the border routinely for casual cigarette smuggling.

Secondly, and most importantly, Canada did not have in place the type of effective licensing and enforcement regime that is advocated by the Administration. For example, Canada did not mark its cigarette packaging with "For Export Only" labels until after the smuggling problem of 1992-93. Canadian law enforcement had very few personnel devoted to tax evasion. The vast majority of enforcement with respect to Canadian taxes was done at the provincial level and there was little or no coordinated enforcement effort at the national or inter-provincial levels. In addition, Canada does not license the distribution chain with respect to tobacco products, with the exception of manufacturers. Finally, Canada's laws on tax evasion did not contain strong penalties and there were inadequate resources to enforce these laws.

We are confident that a proper regulatory enforcement system will minimize the diversion of tobacco products from legitimate channels and the development of cross-border smuggling. Such a system would closely parallel the regime that has been in place for the regulation of alcoholic beverages for more than sixty years. We look forward to working with you and your Committee, as well as other Committees in Congress, to fashion such a regulatory system.

Thank you, Mr. Chairman.



FRATERNAL ORDER OF POLICE

NATIONAL LEGISLATIVE PROGRAM

309 MASSACHUSETTS AVENUE, N.E. • WASHINGTON, DC 20002
PHONE: (202) 547-8189 FAX: (202) 547-8190



GILBERT G. GALLEGOS
NATIONAL PRESIDENT

BERNARD H. TEODORSKI
CHAIRMAN, NATIONAL LEGISLATIVE COMMITTEE

JAMES O. PASCO, JR.
EXECUTIVE DIRECTOR

FOR IMMEDIATE RELEASE
5 JUNE 1998

CONTACT: JIM PASCO
(202) 547-8189

STATEMENT OF GILBERT G. GALLEGOS, NATIONAL PRESIDENT OF THE FRATERNAL ORDER OF POLICE ON COVERDELL AMENDMENT TO S. 1415

The more than 272,000 rank-and-file members of the Fraternal Order of Police want to make absolutely clear our vehement opposition to language contained in an amendment offered by Senator Coverdell and others to S. 1415, the "Universal Tobacco Settlement Act."

This amendment, which has the laudable goal of augmenting the ability of the Customs Service to interdict contraband coming across the border, contains an anti-labor scheme to strip Federal agents of their rights as employees and thwart bargaining partnerships between rank-and-file agents and management by giving the Secretary of the Treasury the carte blanche power to nullify collective bargaining agreements.

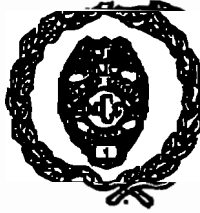
It also gives the Secretary additional retaliatory powers against officers who do not kow-tow to management's every whim by enabling the unheard of power of transferring--permanently--up to five percent (5%) of Customs officers employed to new duty stations. This not only removes experienced interdiction officers--and does so for potentially political reasons--it also uproots families. This is simply unacceptable.

Perhaps the most blatantly offensive language in the amendment is the "sense of Congress" that collective bargaining undermines the war on drugs at our border. This patently untrue. Is it the sense of Congress then, that the officers who are charged with keeping narcotics out of country, preventing drugs from reaching our neighborhoods and schools, would somehow be parties to agreements that undermine that responsibility? Many of the bargaining issues discussed at the table are critically important to the success of the law enforcement mission--officer safety, hour and wage issues. If Congress wishes to strengthen the ability of our officers to fight drugs on our border, they would do well to endorse and strengthen the commitment of the Treasury Department to agreements reached between labor and management at the bargaining table. This language in amendment does not make any "sense" at all.

The amendment also includes language which gives the Treasury Department the ability to nullify any agreement that might have been reached if negotiations continue for more than ninety (90) days and impose their own "last offer." This is absurdly unfair. No matter what happens, the Treasury Department will "win" in the collective bargaining process, and this amendment will substantially weaken the ability of Customs officers to negotiate on an equal playing field.

This amendment contains a poorly concealed attempt to strip away the rights of law enforcement officers, and the Fraternal Order of Police, cannot support Senator Coverdell's proposal unless he strikes the anti-labor language it contains.

Law enforcement officers have, arguably, one of the toughest jobs in the nation. They alone are charged with keeping the streets and neighborhoods of this country safe from crime and drugs. Every day, police officers put their lives on the line--life and death decisions are in the job description. To restrict the ability of these officers to sit down and talk with their employers about workplace issues--when the work they do is prevent drugs from making it into the United States--is counterproductive to the law enforcement mission and common sense.



MAJOR CITIES CHIEFS

May 6, 1998

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 Washington, D.C.
 Seattle, Washington
 Milwaukee, Wisconsin

Calgary, Canada
 Montreal, Canada
 Toronto, Canada

The Honorable Orrin G. Hatch
 Chairman, Judiciary Committee
 United States Senate
 Washington, DC 20510

Dear Mr. Chairman:

Thank you for your inquiry concerning the Major Cities Chiefs position on the tobacco legislation. The information you have provided from your committee hearing was very informative. Your thoughts on this issue were appreciated and will be shared with our members as we continue to review this legislation.

It appears that the division between the alternatives currently under consideration continues to grow. The need to increase taxation to cover the cost incurred by society as a result of using tobacco products is clear, as is the need to protect our youth from these known dangers. Your committee received testimony from several law enforcement entities which apparently had different views on the potential for a black market on tobacco products.

We clearly understand the importance of enacting legislation, carefully crafted, to eliminate any possibility of criminal misconduct. I concur with the belief that if taxation is excessive, it will drive the interest for black markets. However, we also believe that action needs to be taken. We believe a balance can be met by proceeding cautiously, with the inclusion of sufficient safeguards to provide law enforcement with appropriate resources, should they be necessary, but at the same time generating the funds to accomplish the task of addressing the cost of tobacco use and prevention of youth using tobacco.

Senator Orrin G. Hatch
May 6, 1998
Page 2

In addition, we hope that revenues derived as a result of any increase in taxation be dedicated equally between the medical needs of persons as a direct result of smoking and to law enforcement's efforts in support of after school programs for America's youth, as well as child care assistance for families at risk.

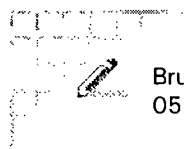
Thank you for your continued support, and if I can be of further assistance to you, please do not hesitate to contact me.

Sincerely,



RUBEN B. ORTEGA,
Chairman
Major Cities Chiefs

cc: Chief Nell Behan (Retire)
Director Mark G. Spurrier



Bruce N. Reed
05/27/98 03:33:35 PM

Record Type: Record

To: Jose Cerda III/OPD/EOP

cc: Elena Kagan/OPD/EOP, Cynthia A. Rice/OPD/EOP, Cynthia Dailard/OPD/EOP

Subject: cops & smokes

Police unions lobby on tobacco bill

By Laura Dunphy

Two rival law enforcement organizations have teamed up to lobby Congress for additional funds to combat an anticipated black market in cigarettes that would result from a sharp increase in cigarette prices mandated in Sen. John McCain's (R-Ariz) tobacco bill.

In an unusual alliance, the Fraternal Order of Police (FOP) and the International Union of Police Associations (IUPA) are leading the effort to encourage senators to include specific funding for additional law enforcement in any bill that would significantly raise the price of cigarettes.

[continued]

The groups agree that efforts should be made to accommodate for a significant rise in interstate smuggling, hijackings and other black market activity.

But while representatives from the FOP and IUPA work together in Capitol Hill hearing rooms, their local chapters are preparing for a potential battle to represent the Capitol Hill police force.

"What we have to do is agree to disagree" on the local issues, said Jim Pasko, legislative director for the national FOP. This way, he noted, the FOP and IUPA could work in concert on the issues that affect all police officers and leave the local issues to their respective chapters.

"Bottom line, they're two totally different subjects," said Rich Roberts, public information officer at the IUPA. "Our work with the FOP on legislative projects has been totally cooperative across the board."

So, despite the fact that the FOP has not obtained a contract for the Hill's officers and the IUPA plans to challenge the FOP, the groups are making headway in presenting a united front on tobacco legislation.

Tobacco regulation "still isn't, in fairness, our issue," Pasko said. "Our issue is public safety." "Normally we wouldn't pay a lot of attention to a social issue, a health issue," agreed Roberts. "Our initial concern was that it's a problem to police every store, a minor thing, but we need to be prepared."

He continued, "When they decided to substantially increase the price of cigarettes, that triggered some bells and whistles. They are, in essence, creating a brand new category of crime."

Members of the FOP and IUPA both noted they got the most rapid and serious response from Sen. Orrin Hatch (R-Utah), who has held hearings on such black market implications in the Senate Judiciary Committee, which he chairs.

They also noted that Sen. Patrick Leahy (D-Vt.) responded quickly and would offer a bipartisan amendment soon after the recess to provide funding to law enforcement through grants and calling for more stringent fines for smuggling.

JUN 05 '98 14:45 FR

TO 2280433



FRATERNAL ORDER OF POLICE

NATIONAL LEGISLATIVE PROGRAM

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Perhaps the most blatantly offensive language in the amendment is the "sense of Congress" that collective bargaining undermines the war on drugs at our border. This patently untrue. Is it the sense of Congress then, that the officers who are charged with keeping narcotics out of country, preventing drugs from reaching our neighborhoods and schools, would somehow be parties to agreements that undermine that responsibility? Many of the bargaining issues discussed at the table are critically important to the success of the law enforcement mission--officer safety, hour and wage issues. If Congress wishes to strengthen the ability of our officers to fight drugs on our border, they would do well to endorse and strengthen the commitment of the Treasury Department to agreements reached between labor and management at the bargaining table. This language in amendment does not make any "sense" at all.

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**Tobacco Settlement /Law Enforcement Meeting
Roosevelt Room, The White House
3-4:00 p.m., May 18, 1998**

White House Staff

Rahm Emanuel, Senior Adviser to the President
Cynthia Rice, Special Assistant to the President for Domestic Policy
Jose Cerda, Special Assistant to the President for Domestic Policy

Treasury Officials

Neal Wolin, Deputy General Counsel, Treasury
John McGaw, Director, Bureau of Alcohol, Tobacco and Firearms
Doug Browning, Acting Deputy Commissioner, U.S. Customs

Law Enforcement Organizations

Mark Spurrier, Legislative Director, Major Cities Chiefs
Walter Wallmark, Exec. Vice Pres., Federal Law Enforcement Officers Assoc. (FLEOA)
Mark Spaulding, Legislative Rep., Federal Law Enforcement Officers Assoc. (FLEOA)
Dan Rosenblatt, Exec. Dir., International Assoc. of Chiefs of Police (IACP)
Gene Voegtlin, Legis. Counsel, International Assoc. of Chiefs of Police (IACP)
Jim Pasco, Executive Director, Fraternal Order of Police (FOP)
Chris Donnellan, Legis. Director, International Brotherhood of Police Officers (IBPO)
Richard Roberts, International Union of Police Associations (IUPA)
Jody Hedeman, Comm. Dir., National Association of Police Organizations (NAPO)
Robert Stewart, Exec. Dir., National Org. of Black Law Enf. Executives (NOBLE)
Sheriff Pat Sullivan, Leg. Chairman, National Sheriffs' Association (NSA)
Dean Kueter, Legis. Rep., National Sheriffs' Association (NSA)
Johnny Hughes, Representative, National Troopers Coalition (NTC)
Chuck Wexler, Executive Director, Police Executive Research Forum (PERF)
Hubert Williams, President, Police Foundation



Jose Cerda III

05/13/98 07:45:37 PM

Record Type: Record

To: See the distribution list at the bottom of this message

cc:

Subject: Cops/Tobacco -- Update

Rahm/Bruce/Elena/Cynthia:

We can pull a group of open/supportive law enforcement groups, mostly management types, on Monday afternoon. However, we'll need to nail down a few things as soon as we can tomorrow. These include:

- 1. Availability of Senior Administration Officials.** Most importantly, we need to be able to get the right Administration officials in the room to talk to law enforcement. I understand this should include -- Kelly and/or McGaw, Bruce, Elena and/or Rahm, and maybe someone from McCain's office. I can work w/Beth Weaver of Treasury to get their participation, but I'll need the tobacco wing of DPC to secure the right mix of WH folks and/or McCain's staff.
- 2. Briefing materials.** We need a page or two of bullets that address the major arguments raised by some of the law enforcement folks. Also, do we have any smuggling/enforcement "fixes" that we're considering and want to float.
- 3. Desired outcome.** While I've sold the meeting as purely informational and "starting a dialogue w/law enforcement," a couple of the groups have indicated that -- providing they're satisfied with our position on enforcement issues -- they're willing to publicly support tobacco passage as something that is good for law enforcement on balance. Do we want to push for supportive statements or simply stop these groups from joining the others?

The groups that I have spoken with, and which are generally supportive, include: National Sheriffs Association, International Association of Chiefs of Police, Major Cities Chiefs, and Police Executive Research Forum. We could also invite the remaining currently non-aligned groups: International Brotherhood of Police Officers, National Troopers Coalition, Black Law Enforcement Executives, and Police Foundation.

Of course this doesn't obviate the need to meet the w/the four groups that wrote the bad letters that are out there -- National Association of Police Organizations, Fraternal Order of Police, Federal Law Enforcement Officers Association and International Union of Police Associations -- but we can do these later in the week. NAPO's head will be out of town until Wednesday, Christa says the FOP refuses to meet with us...period.

Let's talk about at tomorrow's meeting.

Jose'

facsimile
TRANSMITTAL

Name: Jose Cerda
Organization: DPC
Fax: 456-7028
Phone:
From: Rémi Ratliff and Sandra Bellew
Date: May 15, 1998
Subject: Briefing Paper on Tobacco Diversion/Smuggling
Pages: 5

622-1938
622-1938

Comments:

Attached is a draft version of the briefing paper "Controlling Tobacco Diversion/Smuggling Under Comprehensive Tobacco Legislation" for Monday's meeting with law enforcement organizations. We would REALLY appreciate it if you could get back to us ASAP with any comments or suggestions you have. We may be reached on 622-1932 or 622-1938.

Additionally, Neal asked that we find out when and where Monday's meeting is, and whether he should plan to attend. Thanks for your help.

TO: BRAD BUCKLES

FAX: 927-8876

DRAFT

CONTROLLING TOBACCO DIVERSION/SMUGGLING UNDER COMPREHENSIVE TOBACCO LEGISLATION

The Administration shares a common and very strong interest in assuring that the enactment of tobacco legislation will not result in either a domestic black market or the smuggling of tobacco into the United States. It is essential that comprehensive tobacco legislation contain provisions that will minimize the diversion and smuggling of tobacco from the legitimate chain of distribution. With some minor modifications, the Senate Commerce Committee bill contains provisions that will ensure that the diversion and smuggling of tobacco can be effectively controlled and will not defeat the purposes of comprehensive tobacco legislation — protection of young people from the addictions of smoking.

A "closed" distribution system can effectively control tobacco smuggling.

The creation of a sound regulatory system — one that will "close" the distribution chain for tobacco products — will ensure that tobacco products flow through legitimate channels and that any leakages will be effectively policed. An effective system must have the following elements:

- ▶ All entities in the distribution chain for tobacco products should be required to obtain a license. Manufacturers, importers, wholesalers, exporters and distributors should be required to obtain a Federal license. Licensing of retailers can be done at the State level. These licenses would be issued based on certain clearly specified criteria and could be revoked or suspended for specified violations. Those conducting business without a license would be subject to penalties.
- ▶ Licensed entities should only be authorized to sell tobacco products to other licensed entities or purchase tobacco products from other licensed entities. The sale or distribution to any entity that is unlicensed would be unlawful.
- ▶ Effective marking, branding and identification of packages of tobacco products intended for domestic distribution and for export should be required so that they may not be diverted or smuggled in circumvention of the legitimate channels of distribution.
- ▶ Record keeping requirements that will create an audit trail for distribution of tobacco products should be required.
- ▶ Any regulatory system should include penalty and administrative provisions that will deter would-be smugglers and will allow for effective, efficient and uniform enforcement of controls over distribution.

The fear of potential unlawful trafficking in tobacco products should not be a reason for failing to act on these issues because there are workable solutions.

-2-

The regulatory system in the Commerce Committee bill parallels the system in place for alcohol.

The proposed licensing scheme for tobacco products is similar to the way the Federal Government has effectively regulated alcoholic beverages for over sixty years. It would incorporate the years of experience the Federal Government has in administering that system.

- ▶ The distribution chain for alcoholic beverages is a tightly regulated, closed distribution system that includes Federal licensing and regulation of producers, importers and wholesale distributors and effective State licensing and regulation (or in some cases actual control) of the distribution of alcoholic beverages at the wholesale and retail level.
- * → ▶ The system regulating alcoholic beverages imposes marking and labeling requirements as well as record keeping requirements.
- ▶ This system has allowed for commerce in alcoholic beverages while effectively curtailing illicit trafficking.

Pricing.

- ▶ We estimate that the Commerce Committee bill will raise the real price of cigarettes by \$1.10 per pack by 2003. Given our projections of other underlying trends in cigarette prices, we estimate that this will result in an ultimate constant dollar price per pack of \$3.19 in that year (\$5.57 in 2003 dollars).
- ▶ These estimates have been validated by objective experts in this area. Professor Jeffrey Harris, an economist at MIT and a physician at the Massachusetts General Hospital, who is also one of the nation's leading authorities on tobacco taxation, testified on May 13th that the real price of cigarettes in 2003 will be \$3.38, quite close to our estimate of \$3.19.
- ▶ Some Wall Street analysts have claimed that the ultimate price per pack arising from this legislation could be in the range of \$5.00. But these estimates are inappropriate for a number of reasons:
 1. Some analysis assumes that the industry will pay the full amount of the youth look-back penalties in 2003, adding up to 40-45 cents to the price per pack. But our analysis, drawing on the scientific consensus in this area, is that the look-back targets will be easily met by 2003 with a \$1.10 price increase, so that there will be no look-back payments over this period.
 2. Some analysis assumes that firms will immediately pay the full amount of the liability cap (\$6.5 billion), and that this will be passed through to price, adding another roughly 40 cents to the price per pack. The legislation does not provide that any liability costs outside of the base payment should be

-3-

shared on an industry-wide basis, and therefore there is no reason to assume that it will be passed to price. We therefore assume that there is no incremental impact on the price of cigarettes from the liability cap.

3. Some projections also assume that the annual per-pack cost will be subject to a percentage mark-up by retailers and wholesalers. This contention is refuted by both expert analysis and previous empirical evidence; indeed, these mark-ups have actually fallen in the face of recent manufacturer price increases.
4. Some projections include increases in State excise taxes which exceed by a large magnitude both historical and recent experience.

The "Canadian Experience."

Many cite the problems Canada had with unlawful smuggling after it raised its excise taxes on tobacco products as support for the notion that the same will happen if comprehensive tobacco legislation similar to the Commerce Committee bill is enacted in the United States. There are several reasons to believe, however, that the Canadian experience is not an appropriate predictor of what would occur if tobacco legislation such as this bill is enacted.

- ▶ First, and most importantly, Canada did not have in place the type of effective licensing and enforcement regime that is contained in the Commerce Committee bill. This was borne out by testimony from David Swenor, Senior Legal Counsel for the Smoking and Health Action Foundation in Canada, who stated before the Senate Judiciary Committee on April 30th that "[t]he Canadian government appeared unable or unwilling to tackle the sources of the criminal trade. Our government did not take on the tobacco industry over its ultimate supplying of product to the smugglers, and failed to implement effective anti-smuggling measures." For example:
 1. Canada did not mark its cigarette packaging with "FOR EXPORT ONLY" labels until after smuggling became a significant problem.
 2. Canadian law enforcement had very few personnel devoted to tax evasion.
 3. The vast majority of enforcement with respect to Canadian taxes was done at the provincial level and there was little or no coordinated enforcement effort at the national or inter-provincial levels.
 4. With the exception of manufacturers, Canada does not license the distribution chain for tobacco products.

-4-

5. Finally, Canada's laws on tax evasion did not contain strong penalties and there were inadequate resources to enforce those laws.
- Second, the size of the Canadian population, as well as its concentration along the border with the United States, makes the Canadian example not particularly instructive for the United States.
1. Smuggling became a problem in Canada because of the ease of access to alternative markets.
 2. Eighty percent of the Canadian population lives within a two-hour drive of the U.S. border, placing it within easy reach of smugglers transporting cigarettes from the United States.
 3. The U.S. population is more dispersed, making the logistics of a nationwide black market in smuggled cigarettes more complex and expensive for organized smugglers. The dispersal of population also means that a U.S. resident is less likely than a Canadian resident to be able to cross the border routinely for casual cigarette smuggling.

Current Interstate Tobacco Diversion/Smuggling.

The current level of tobacco smuggling is not a good indicator for determining the level of smuggling that will take place if the Commerce Committee bill is enacted.

- The distribution chain for tobacco products is currently not "closed." Current Federal laws regulating tobacco are aimed at collecting the Federal excise tax and assisting States in their efforts to collect excise taxes imposed on certain tobacco products, not at regulating the distribution of tobacco products and preventing smuggling.
- The Commerce Committee bill contains several amendments to the Contraband Cigarette Trafficking Act (CCTA) that would enhance the Treasury Department's mandate to assist State and local law enforcement to control the unlawful trafficking in tobacco products to avoid State tobacco taxes. The CCTA was designed solely to assist states in enforcing their tobacco tax laws. It does not currently address or ensure a closed national distribution system and was only intended to proscribe domestic diversion as it applies to State taxes.
- Also, the Federal Government has the expertise and experience to deal with imported contraband products and already has made a substantial investment in the introduction of non-intrusive inspection systems and other equipment needed to detect the smuggling of contraband. The organic nature of tobacco and the distinctive shape of cigarettes makes

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them readily detectable by equipment that the Federal Government currently has in place at the border.

Resources.

The Administration agrees that there must be sufficient resources available to assist law enforcement to prevent the diversion and smuggling of tobacco products to a black market. Effective and efficient regulation of the distribution chain for tobacco products will require adequate resources to ensure compliance through verification.

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**Tobacco Settlement /Law Enforcement Meeting
Roosevelt Room, The White House
3-4:00 p.m., May 18, 1998**

DRAFT

White House Staff

Rahm Emanuel, Senior Adviser to the President
Cynthia Rice, Special Assistant to the President for Domestic Policy
Jose Cerda, Special Assistant to the President for Domestic Policy

Treasury Officials

Neal Wolin, Deputy General Counsel, Treasury
Jim Johnson, Assistant Secretary for Enforcement, Treasury
John McGaw, Director, Bureau of Alcohol, Tobacco and Firearms
Doug Browning, Acting Deputy Commissioner, U.S. Customs

Law Enforcement Organizations

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Walter Wallmark, Exec. Vice Pres., Federal Law Enforcement Officers Assoc. (FLEOA)
Mark Spalding, Legislative Rep., Federal Law Enforcement Officers Assoc. (FLEOA)
Dan Rosenblatt, Exec. Dir., International Assoc. of Chiefs of Police (IACP)
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Chris Donnellan, Legis. Director, International Brotherhood of Police Officers (IBPO)
Richard Roberts, International Union of Police Associations (IUPA)
Jody Hedeman, Comm. Dir., National Association of Police Organizations (NAPO)
Robert Stewart, Exec. Dir., National Org. of Black Law Enf. Executives (NOBLE)
Sheriff Pat Sullivan, Leg. Chairman, National Sheriffs' Association (NSA)
Dean Kueter, Legis. Rep., National Sheriffs' Association (NSA)
Jim Rhinebarger, Chairman, National Troopers Coalition (NTC) or designee
Martha Plotkin, Comm. Dir., Police Executive Research Forum (PERF)
Dennis Kenney, Research Dir., Police Executive Research Forum (PERF)
Hubert Williams, President, Police Foundation or designee

JC -

this is a paper that
we prepared for the
Hill on smuggling.

- Cynthia D.

Tobacco Legislation Should Contain Tough Anti Black Market Provisions

An effective licensing and enforcement system will minimize the impact of tobacco smuggling and ensure that smuggling does not compromise the central goal of reducing youth smoking.

What does an effective licensing and enforcement system entail?

To prevent black market activity, tobacco products should be regulated in a manner similar to the way the federal government has regulated alcoholic beverages for over 60 years. In other words, a system of licensing and enforcement should be in place to close the distribution chain for tobacco products and prevent smuggling. And just as states currently regulate alcohol retailers, states should have primary responsibility for licensing tobacco retailers.

Under this system, only manufacturers, wholesalers, exporters, importers, distributors and retailers of tobacco products that hold a license or permit would be allowed to engage in those businesses. Licenses would be issued based on certain specified criteria and could be revoked or suspended for certain specified violations. Those conducting business without a license would be subject to penalties. Licensed entities would only be authorized to sell tobacco products to other licensed entities. The sale or distribution to any entity that is unlicensed would be unlawful.

Additionally, legislation should require the marking, branding and identification of packages of all tobacco products intended for domestic distribution and for export so that they may not be diverted or smuggled in circumvention of the legitimate channels for distribution. Finally, any regulatory proposal should include penalty and administrative provisions that would allow for effective, efficient, and uniform enforcement of controls over the distribution. These measures will help ensure that tobacco smuggling is minimized and youth smoking is reduced.

Why aren't existing laws adequate to address these issues?

Existing Federal laws are aimed at collecting Federal excise taxes imposed on tobacco and at assisting States in their efforts to collect state excise taxes imposed on certain tobacco products, not at preventing black market activity.

How does this closed distribution scheme prevent black market activity?

A closed distribution system will ensure that products moving outside the legal channels of distribution can be easily earmarked and targeted for prosecution. This system would limit drastically smugglers' ability to enter products into a legitimate distribution channel. Potential black marketeers would not be able to move products through legitimate wholesalers or distributors. Nor will they be able to sell products to retail consumers at the local convenience stores or other licensed retail outlets. Instead, without a way to place contraband in the market legally, smugglers would

have to sell cigarettes outside channels of legitimate distribution. This would be very risky and criminal provisions and penalties would act as a significant deterrent to persons contemplating the unlawful diversion of tobacco products.

Does this proposal address cross-border smuggling?

Ensuring that the distribution chain for tobacco products is closed at the border would also address cross-border smuggling. That is, the product may legally only be imported, exported, and sold by and through licensees. Recordkeeping provisions, which create an audit trail, and marking requirements will help ensure that smuggled tobacco products do not enter the legitimate domestic distribution chain. Also, specific criminal provisions should be aimed at deterring the unlawful cross-border smuggling of tobacco products.

Would this system work to reduce youth smoking?

Yes. Youth will be a primary target for black market distribution, as a result of increased restrictions on access. Creating a closed distribution scheme will ensure that tobacco products legally move only through the legitimate chain of distribution and will minimize black market distribution of these products.

How would this system be funded?

Industry licensing and registration fees would self-fund this system. Funding includes costs for administering the licensing system as well as investigating unlawful domestic and international trafficking in contraband tobacco products.

Canada experienced a smuggling problem when they raised their excise tax. Why won't a similar problem arise under the McCain bill?

In the early 1990s, Canada did have a problem with cigarettes being legally exported to the US and illegally smuggled back to Canada. There are several reasons to believe that this example does not apply to the US.

- First and foremost, Canada did not have in place an effective licensing and enforcement system, as proposed above.
- Second, smuggling became a problem in Canada because of the ease of access to alternative markets -- 80 percent of the Canadian population lives within a two hour drive of the U.S. border. The U.S. population is much more dispersed.
- Third, sizeable cigarette taxes existed in Canada both before and after Canada's smuggling difficulties in the early 1990s, and thus smuggling in Canada does not seem directly related to price.

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Voting for Higher Cigarette Prices

The Senate Finance Committee made a comprehensive anti-smoking bill stronger last week when it voted to increase cigarette taxes by \$1.50 per pack over three years. That hefty increase should go far to deter youth smoking, and it is not apt to encourage widespread smuggling of cigarettes as industry propaganda suggests. Indeed, such smuggling can occur on a large scale only if the industry itself allows it.

Senator Alfonse D'Amato, Republican of New York, provided a key swing vote that allowed the committee to approve the tax increase by 10 to 9. Senator Daniel Patrick Moynihan of New York, the committee's ranking Democrat, also voted for it.

The committee's proposal will be voted on by the Senate this week as an amendment to the tobacco bill approved earlier by the Senate Commerce Committee. The Commerce bill, drafted by Senator John McCain, would impose annual assessments on the industry that would raise per-pack cigarette prices by \$1.10 over five years. Estimates are admittedly rough, but many public health experts say an increase of at least \$1.50 is needed to cut youth smoking rates significantly, and experts convened by the National Academy of Sciences have recommended increases of \$2 per pack.

The tobacco industry is raising the specter of a new black market in cigarettes if Congress forces a steep increase in cigarette prices. But such fear-mongering is insulting given the industry's apparent complicity in the growth of international cigarette smuggling.

Investigators of the European Union are now asking the United States Government to help combat illegal trade involving billions of American cigarettes that are smuggled into Europe to evade cigarette taxes. European authorities believe

American companies knowingly sell to dealers who ship the cigarettes into the contraband pipeline, but they have been unable to get the companies to cooperate with their investigation. The companies' refusal shows they have no interest in shutting down an illicit trade that directly benefits them.

Contraband cigarettes currently in the American market are largely the result of interstate smuggling driven by vastly different levels of state tobacco taxes. A higher national tax would not add to that problem since the tax would apply to all states. Few experts believe that a black market will arise from foreign-made cigarettes because Americans are accustomed to higher-quality cigarettes than those produced in places like China.

Instead, the worry is that American-made cigarettes will be exported to avoid the new Federal tax, then smuggled back to be sold at lower prices. Just this kind of export-import operation developed in Canada after it raised tobacco taxes. Because Canada's exported cigarettes were not marked with "export only" labels, it was impossible to distinguish between contraband packs that were smuggled back and legally sold packs. Canadian officials concluded that their top domestic manufacturers, affiliated with American and British tobacco companies, were aware of and benefited from the illegal activity.

That need not happen here: Strict licensing and marking requirements can help authorities track the movement of cigarettes from manufacturers to wholesalers, distributors, exporters and retailers. Tight Federal regulations have long applied to alcohol distribution, effectively ending illegal sales of wine and spirits in this country. The Senate should ignore the scare talk and approve a strong bill that would reduce smoking by raising prices.



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April 27, 1998

Honorable Orrin G. Hatch
Chairman, Senate Committee on the Judiciary
United States Senate
Senate Russell Building, Room 131
Washington, DC 20510

Dear Mr. Chairman:

On behalf of the approximately 14,000 members of the Federal Law Enforcement Officers Association (FLEOA) I am writing to you to express our concerns to S. 1415, the "Universal Tobacco Settlement Act", currently pending before your committee. FLEOA supports the goal of reducing youth smoking in this country, however, FLEOA's members also understand and, must plan for and deal with, the criminal black market enterprises that will arise up once this issue is finally settled.

Federal agents are disturbed that throughout the tobacco settlement talks no one has solicited law enforcement's opinion on the historic proposals now before Congress. FLEOA knows that you understand that law enforcement will be greatly affected by this legislation. Organized crime families, motorcycles gangs, and others will move into the lucrative contraband market for tobacco. The resultant rise in crime will not only effect federal law enforcement but also the state and local levels as well.

The emerging black market for tobacco will, in effect, be a new unfunded mandate for law enforcement. By reaching for the laudable goal of reducing youth smoking, Congress is setting up law enforcement for another battle. Congress should recognize this and put in motion proposals to strengthen and increase law enforcement, especially the U.S. Customs Service, the Bureau of Alcohol, Tobacco and Firearms, and multi-jurisdictional organized crime task forces. As S. 1415 is debated in Congress, the smuggling/black market problems that will arise must also be addressed. FLEOA knows that you will follow through with law enforcement's request of being provided the means to deal with whatever emerges.

If you have any questions or need further information, please feel free to contact me at (212) 264-8406 or (516) 368-6117.

Richard J. Gallo

Q&As on Tobacco
April 30, 1998

Q: I understand Deputy Treasury Secretary Larry Summers is testifying before the Senate Judiciary Committee today on the black market for tobacco. What's he going to say?

A: The Deputy Secretary is going to say that we can minimize black market activity through a system similar to the one that's been in place for alcoholic beverages for over sixty years by: 1) creating a "closed" distribution system for tobacco products so that only licensed entities can sell or buy products; 2) clearly branding packages for export, to prevent them from being diverted; and 3) establishing and enforcing penalties and other actions for violators. Senator McCain's bill largely addresses these issues, and we are working with him on technical changes to ensure that diversion and smuggling will not defeat the purposes of comprehensive tobacco legislation.

Q: But didn't Canada have a lot of smuggling when it raised cigarette prices?

A: In the early 1990s, Canada did have a problem with cigarettes being legally exported to the U.S. and illegally smuggled back into Canada. There are several reasons why we believe that example does not apply to the U.S.:

- First and foremost, Canada did not have in place the type of effective licensing, registration, and enforcement system advocated by the Administration to crack down on smuggling.
- Second, smuggling became a problem in Canada because of the ease of access to alternative markets -- 80 percent of the Canadian population lives within a two hour drive of the U.S. border. The U.S. population is more dispersed.
- Third, sizable cigarette taxes existed in Canada both before and after Canada's smuggling difficulties in the early 1990's, and thus smuggling in Canada does not seem directly related to price.

Q: Wouldn't this big government scheme extend the reach of the federal government to every mom-and-pop grocery store or 7-11?

A: No. We are comfortable with a system that places primary responsibility for licensing retailers on state governments, as the McCain bill does. Thirty six states already have licensing systems in place, so this will not represent a major change. In most of these states, retailers have to participate in only a modest and simple identification process, and this will continue to be the case. We will work with Congress to ensure that the scheme adopted in legislation will facilitate the effort to prevent smuggling, while not burdening retailers. The Administration will work with Congress, and the retailers themselves, on this issue.

Q: How do you answer the Wall Street charges that this will bankrupt companies?

A: We don't want to put the tobacco companies out of business. We just want to put them out of the business of selling cigarettes to kids. A central feature of comprehensive tobacco legislation is to ensure that most of the payments made by the tobacco companies are passed on to price, in order to reduce youth smoking. As a result, there will be at most a modest impact on the profitability of the tobacco companies. This is also an industry with significant cash flow and net assets that will allow it to easily absorb this modest profit decline. The operating earnings of RJR, Philip Morris, and Loews last year were *\$18 billion*. Even RJR, the most highly leveraged firm in this industry, had a \$1.5 billion operating profit for its domestic tobacco business, and has over \$4 billion in net assets from its Nabisco stock holdings. The only real risk of bankruptcy comes from losing a rash of lawsuits in court.

Q: Do you really think you'll get a tobacco bill this year?

The President believe we have an historic opportunity to pass bipartisan legislation this year which both contains the elements necessary to reduce teen smoking. And he's going to do everything he can to put politics aside and pass legislation that will achieve that objective. Senator McCain's legislation, which passed the Commerce Committee by a 19-1 vote, is a strong step in the right direction on the road to passing comprehensive tobacco legislation. It shows real momentum in both parties to pass effective, comprehensive tobacco legislation this year.

Q: Isn't the McCain bill a big government, big tax proposal?

A: No. What this bill does is to attack the problem of youth smoking comprehensively, as all experts say we need to do, by combining strong provisions on price, penalties, advertising and access, and FDA jurisdiction. Although we have some differences with Senator McCain, he also recognizes the need to move forward on all these fronts to reduce youth smoking. That's not about big government. It's about sensible, bipartisan steps to dramatically reduce youth smoking.

Q: But won't the McCain bill create 17 new federal bureaucracies?

A: No -- this isn't about big government. What the bill does is to ensure that the federal government has the authority to regulate tobacco products in order to reduce youth smoking, as well as the ability to target tobacco revenues to strong public health and research efforts. The so-called "bureaucracies" that the industry is now complaining about are nothing more than what's necessary to protect the public health in this way -- to ensure that cigarettes are not sold to minors, to promote effective education, and to encourage smoking cessation. The proof that this is an industry con job is clear: almost all these provisions were in the June 1997 proposed settlement put forward by 41 state attorneys general, which the industry agreed to. The industry is criticizing these provisions now only because the political tide has turned against it, and certain other aspects of the legislation have gotten stronger.



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GILBERT G. GALLEGOS
NATIONAL PRESIDENT

24 April 1998

The Honorable Orrin G. Hatch
Chairman, Senate Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman,

I am writing on behalf of the over 272,000 members of the Fraternal Order of Police with regard to S. 1415, the "Universal Tobacco Settlement Act" recently reported out of the Senate Commerce Committee. We are extremely apprehensive that passage of this legislation will precipitate the emergence of a thriving black market in cigarettes, posing huge problems for law enforcement at every level.

Law enforcement officials have genuine cause for concern. By drastically raising the price of tobacco products, S. 1415 will inevitably lead to the creation of a massive black market. Such a black market will give organized crime a new line of business and prove to be very burdensome to State and local law enforcement, as the experiences in Canada and other countries demonstrate. A black market not only erodes respect for the rule of law, it also undermines the real goal of the legislation--preventing underage tobacco use.

Here are a few examples of the anticipated effect if S. 1415 becomes law:

Black Markets for Less Costly Tobacco Products: Cross-border smuggling for less costly tobacco products will develop. These products will then make their way into every State in the country.

According to a Morgan Stanley analyst, "[S. 1415] would likely result in very significant cigarette smuggling. Cigarettes in Mexico currently retail for about \$1.00 per pack. In Canada, smuggling became a very serious issue when the per-pack pricing gap vs. the U.S. exceeded \$2.00.... The legislation's fifth year per-pack industry cost... would result in a retail price increase of approximately \$2.55 to \$4.50 (versus the current average retail price of \$1.95).... We anticipate that a significant black market would quickly emerge in the U.S. under the Commerce bill." (David Adelman, *Morgan Stanley Investor Report*, 31 March 1998.)

Canadian Black Market Experience: Beginning in the late 1980s, Canada instituted steep tax hikes on tobacco products, which led to sharp increases in criminal activity. As a result of law enforcement problems, Canadian officials were forced to roll back these high excise taxes in the mid-1990s.

Deputy Treasury Secretary Lawrence Summers, in his testimony on 24 March 1998, stated, "The experience in Canada was that when the price differential with the United States rose to about \$2.50 in 1993, you saw quite a substantial increase in black market activity. And when that price differential was narrowed, the incidence of black market activity declined substantially."

The price increases contemplated in the McCain bill far exceed the \$2.50 threshold that led to a rise in black market activity in Canada.

The result of an increase in black market activity is an increase in violent crime. According to Sgt. Giroux of the Royal Canadian Mounted Police, testified before the House Commerce Subcommittee on health and Environment last December that, "People were shooting each other. And also, we saw a lot of violence going on between groups trying to protect their loads of contraband. People were trying to rob each other. And also, what we saw is organized crime groups like motorcycle gangs and different ethnic criminal groups got involved in the contraband trade, and they were making a lot of money as a result of that."

Another result was the loss of tax revenue. Sgt. Giroux also noted that, "By early 1994, it was estimated that as much as forty percent (40%) of the Canadian domestic tobacco market was being supplied through smuggling, resulting in a loss of over two billion dollars (\$2 billion) in both Federal and provincial taxes."

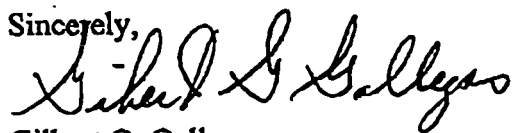
The goal of the Canadians was similar to the stated goal of S. 1415—to reduce youth smoking. Law enforcement's experience in Canada demonstrates that the effect of steep price hikes actually undermines that goal. According to Sgt. Giroux, "Kids were bringing in duffel bags of contraband tobacco, and they were just selling that to their friends."

Congress should learn from the dismal experiences that other countries have had with steep price hikes. Congress has heard from government officials, Wall Street analysts, and law enforcement officials in other countries. Now it is our turn.

Four years ago, with the help of Congress and the White House, we initiated a program to put 100,000 additional police officers on the streets. We succeeded, and, for the past five years, crime in this country has declined significantly. What we do not need now is Federal legislation that will have the net effect of increasing the number of criminals on the streets, undercutting the achievements of law enforcement in this country and exploding the ranks and profits of organized crime. The understaffed and underfunded law enforcement authorities along our southern border in particular are not equipped to handle additional problems of this magnitude without significantly increasing Federal, State and local law enforcement resources.

The National Fraternal Order of Police supports the goal of reducing youth smoking in this country, but we need not create a huge law enforcement problem in the process, particularly when that problem is not addressed by providing law enforcement with the tools it needs to meet the challenge. If we can be of further assistance on this issue, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script, reading "Gilbert G. Gallegos". The signature is written in dark ink and is positioned above the printed name and title.

Gilbert G. Gallegos
National President

WITNESS LIST

**Hearing Before the
Senate Committee on the Judiciary
on
"Raising Tobacco Prices: The Consequences"
Tuesday, May 12, 1998
10:30 a.m., 226 Dirksen Senate Office Building**

Panel I

**Gary Black
Research Analyst
Sanford C. Bernstein & Co.
New York, N.Y.**

**Martin Feldman
Tobacco Analyst
Salomon Smith Barney
New York, N.Y.**

**Matthew Myers
Executive Vice President
National Center For Tobacco-Free Kids
Washington, DC**



May 12, 1998

News Release

JUDICIARY COMMITTEE

United States Senate • Senator Orrin Hatch, Chairman

Contact: Jeanne Lopatto, 202/224-5225

Statement of Sen. Orrin G. Hatch

Hearing before the Senate Judiciary Committee

Raising Tobacco Prices: The Consequences

This is the Judiciary Committee's ninth hearing since June 20, 1997, when 40 courageous attorneys general, public health representatives, tobacco officials and the *Castano* litigants announced a major comprehensive tobacco settlement which they hoped would win swift consideration by Congress.

After 11 months have passed, the state of play is not encouraging.

The public health community has attempted to move the goal posts.

And the tobacco industry has attempted to take its ball and go home.

Both of these attempts are being met with a measure of success:

The tobacco industry's campaign against the legislation is picking up steam every day.

And Congress has readily proved itself an ally in upping the ante on the settlement, leading to a bill which many acknowledge has major flaws in terms of constitutionality, price and impact.

Left in the middle are the children of this nation.

We started out trying to craft a bill which would wean a generation of kids off of tobacco.

Now, Congress seems more interested in playing the politics of punishment than in making good policy. That is a serious disservice to our kids.

One of the most hotly-contested issues surrounding the tobacco legislation is the price increase that will be embodied in any comprehensive anti-tobacco legislation.

During our last hearing, the Committee heard conflicting testimony how much the Commerce bill will raise retail prices.

The Treasury Department predicted that the Commerce adds \$1.10 to the price of a pack of cigarettes over the next five years.

Two of our witnesses today will testify that the true cost is far higher.

In order to assess the reasons for this wide discrepancy in estimates, we asked the Treasury Department for the economic model it used to develop its analysis.

To date, that we have not received that information, severely impeding our ability to proceed.

A better understanding of the price to the consumer is imperative.

Public health experts believe that the higher the price, the less opportunity for kids to buy tobacco products.

At some point, however, the advantages of a significant price increase decline, since dramatically increased cigarette prices will no longer discourage consumption, but rather could encourage new black market opportunities as well as public disenchantment with the new program.

As a number of State Attorneys General said in a recent letter to me, "Our children will not be helped by creating a new product line for organized crime, nor providing new entry market for drug dealers."

They also wrote: "There is a definite correlation between tax rates and the level of smuggling."

I take their concerns seriously, especially in view of the growing number of letters I have received from law enforcement organizations who are genuinely concerned about the potential for increasing black market sales of tobacco products.

I know there will be attempts today to suggest that the black market can only be created with the tobacco companies' "complicity." If that is true, it is not borne out by the government's on-going investigations into smuggling, the majority of which do not appear to focus on industry involvement.

There will also be attempts to imply that law enforcement officers who express concern about the potential for smuggling are doing the industry's bidding.

As Chairman of the Judiciary Committee, I have worked very hard to support the needs of our law enforcement officers, who daily are on the frontlines protecting our homes and families. The notion that the law enforcement community would put the interests of any industry ahead of the public good is ludicrous.

I have worked with the men and women of these law enforcement organizations; I have talked to them about this legislation, and believe me, their concerns are genuine.

I find it interesting that the Administration and others are quick to tout law enforcement's position when it happens to support their political agenda. But when the law enforcement

community raises a concern which runs counter to their political objective, they are portrayed as "pawns" of the industry.

Arguments that there will be no black market also neglect abundant international experience to the contrary, as well as the concern expressed by many State Attorneys General about the potential for a black market.

I will submit for the record a letter I received last night from the National Association of Police Organizations, Inc., which concludes, "How much crime can be tolerated by the unintended consequences -- the black market -- of this proposed legislation? I am urging Congress not to pass legislation and worry about the consequences later."

We need to take this advice to heart. I think everyone would agree that we need to provide law enforcement with the tools it needs to preclude new black market opportunities. But let's be frank here, the Administration did not request one dime in new money for anti-smuggling efforts, even though their FY 1999 request asks for \$65 billion in new tobacco revenues.

With respect to the price of tobacco products, our success in accelerating the already downward trend in adult tobacco use will mean that each smoker may well pay even more per pack than the Treasury estimates.

While I am personally opposed to smoking, it is a legal adult behavior. We therefore must share with current adult smokers our best estimates of the financial burden they will shoulder for America.

The tobacco industry payments, while widely perceived as the chief disincentive to youth smoking, are also necessary to fund the comprehensive anti-tobacco program which public health experts concur is our best shot at reducing youth smoking.

Price increases are one tool in the arsenal.

Recently, Ms. Lisa Goldman and Dr. Stanton Glantz published an article in the *Journal of the American Medical Association* in which they concluded that the aggressive anti-advertising campaigns in California and Massachusetts were the most effective tool in a comprehensive plan to reduce youth tobacco use.

It would be ironic indeed if Congress imposed payments so high that industry was driven into bankruptcy, robbing us of long-term funding for an anti-tobacco program.

Today, we will hear additional testimony on the impact of proposed tobacco industry payments. This is a central issue in the tobacco debate, and I look forward to the testimony of our witnesses.

###

MAJOR CITIES CHIEFS

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Legal Division

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FACSIMILE TRANSMITTAL COVER SHEET

DATE: May 7, 1998

NAME: Jose Cerda

FIRM: The White House

FAX NO.: 202/456-7028

FROM: Mark G. Spurrer
General Counsel

NUMBER OF PAGES [INCLUDING THIS COVER PAGE]: 3

SUBJECT/COMMENTS:

The second letter.

Let me know if you need anything else.

Thank you.

[] ORIGINAL TO FOLLOW VIA MAIL/OVERNIGHT COURIER/HAND-DELIVERY

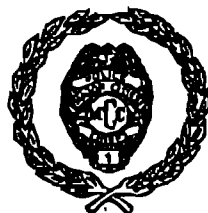
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May 6, 1998

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The Honorable Orrin G. Hatch
 Chairman, Judiciary Committee
 United States Senate
 Washington, DC 20510

Dear Mr. Chairman:

Thank you for your inquiry concerning the Major Cities Chiefs position on the tobacco legislation. The information you have provided from your committee hearing was very informative. Your thoughts on this issue were appreciated and will be shared with our members as we continue to review this legislation.

It appears that the division between the alternatives currently under consideration continues to grow. The need to increase taxation to cover the cost incurred by society as a result of using tobacco products is clear, as is the need to protect our youth from these known dangers. Your committee received testimony from several law enforcement entities which apparently had different views on the potential for a black market on tobacco products.

We clearly understand the importance of enacting legislation, carefully crafted, to eliminate any possibility of criminal misconduct. I concur with the belief that if taxation is excessive, it will drive the interest for black markets. However, we also believe that action needs to be taken. We believe a balance can be met by proceeding cautiously, with the inclusion of sufficient safeguards to provide law enforcement with appropriate resources, should they be necessary, but at the same time generating the funds to accomplish the task of addressing the cost of tobacco use and prevention of youth using tobacco.

Senator Orrin G. Hatch
May 6, 1998
Page 2

In addition, we hope that revenues derived as a result of any increase in taxation be dedicated equally between the medical needs of persons as a direct result of smoking and to law enforcement's efforts in support of after school programs for America's youth, as well as child care assistance for families at risk.

Thank you for your continued support, and if I can be of further assistance to you, please do not hesitate to contact me.

Sincerely,



RUBEN B. ORTEGA,
Chairman
Major Cities Chiefs

cc: Chief Nell Behan (Retire)
Director Mark G. Spurrier

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FROM: Mark G. Spurrier
General Counsel

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SUBJECT/COMMENTS:

Per our conversation, attached is a correspondence from Major Cities Chiefs concerning the pending tobacco legislation.

Should you have any further questions on the association's position, please do not hesitate to contact me.

Thank you.

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April 30, 1998

The Honorable Orrin G. Hatch
 Chairman, Judiciary Committee
 United States Senate
 Washington, DC 20510

Dear Mr. Chairman:

The Major Cities Chiefs is a professional association of police executives representing the largest jurisdictions in the United States. The association provides a forum for urban police chiefs, sheriffs and other law enforcement chief executives to discuss common problems associated with protecting cities with populations exceeding 500,000 people. Collectively, our association represents over 190,000 employees, of whom 159,000 are sworn officers, and serves a population exceeding 58,000,000.

On behalf of the Major Cities Chiefs, I am writing to express our strong support for comprehensive tobacco legislation that would protect America's youth from the dangers of smoking.

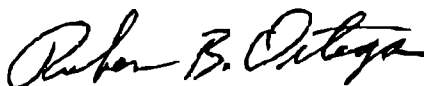
It is our understanding that several issues, concerning the legislation under consideration, has already been raised within your committee with respect to the potential of creating a domestic black market or the smuggling of tobacco products into the United States. As law enforcement leaders, we understand the importance that legislation be carefully crafted to eliminate these possibilities. However, we also believe that the safeguarding of America's youth from these empirically documented perils should not be diluted based upon speculation of what may occur. It is our hope that sufficient safeguards will be included within this legislation to provide law enforcement with the tools necessary to combat this problem should it arise.

The Honorable Orrin G. Hatch
April 30, 1998
Page 2

We have a long standing professional relationship with both the Bureau of Alcohol, Tobacco and Firearms and the United States Customs Service and we will continue to assist them in any future roles they may have as a result of the passage of this legislation.

Thank you for your continued support of law enforcement, and if we can be of further assistance to you in this matter, please do not hesitate to contact me.

Sincerely,



RUBEN B. ORTEGA,
Chairman
Major Cities Chiefs

cc: Chief Neil Behan (Retired)
Director Mark G. Spurrier

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April 30, 1998

The Honorable Orrin Hatch
Chairman, Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

I wanted to take this opportunity to thank you for holding this morning's hearing on the impact that an increase in tobacco prices may have on the proliferation of tobacco smuggling and the creation of a black market for tobacco products in the United States.

Like you, I am very concerned that a dramatic increase in tobacco prices could trigger a rapid increase in smuggling and the creation of a black market for tobacco products. Given the recent experience of the Canadian government and our own experience during the prohibition era, I feel it is important that the impact of any substantial increase in tobacco prices be carefully reviewed and the necessary steps taken to meet the challenges presented before any price increase is implemented.

Therefore, I believe it is vital that a regulatory system similar to that proposed at this morning's hearing by Deputy Treasury Secretary Lawrence Summers be implemented prior to the effective date of any tobacco legislation. Only by carefully regulating each step in the manufacturing, distribution, shipping and retail processes will law enforcement be able to successfully combat those who would attempt to profit through tobacco smuggling and black marketing.

Additionally, I would like to stress that for any regulatory system to be successful in combating smuggling and black marketing, it is essential that federal law

The Honorable Orrin Hatch

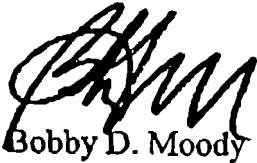
Page Two

April 30, 1998

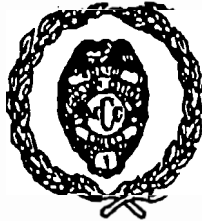
enforcement agencies work closely with state and local law enforcement agencies. Preventing the creation of a tobacco black market will be a difficult task, but one that federal, state, and local law enforcement can achieve if we work closely with one another.

Thank you for attention to this matter. If you have any questions, please do not hesitate to contact IACP's legislative staff at 703/836-6767.

Sincerely,

A handwritten signature in black ink, appearing to read "B. Moody", is written over the typed name.

Bobby D. Moody
President



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To Joe
 From Cynthia R

See my email

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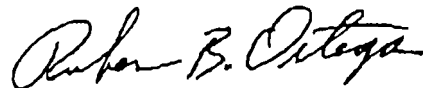
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JULES BERNSTEIN

LINDA LIPSETT

April 28, 1998

The Honorable Orrin G. Hatch
Chairman, Senate Judiciary Committee
The United States Senate
Washington, DC 20510

Dear Mr. Chairman:

In October 1997, a Lexington, Kentucky man pleaded guilty to one of the biggest cigarette smuggling cases in history. Over the period of one year, Donald Mikesell made nearly \$30 million transporting contraband cigarettes from Kentucky where the sales tax is 3 cents a pack for sale in Michigan, where the sales tax is 75 cents a pack. In a June 1997 raid, law enforcement officers seized 7,150 cartons of contraband cigarettes and more than \$380,000 in cash from Mikesell.

Chairman Hatch, on behalf of the National Association of Police Organizations (NAPO) representing more than 4,000 police unions and associations and over 220,000 sworn law enforcement officers across the country, I am writing to you today with regard to S. 1415, the "Universal Tobacco Settlement Act". I wish to warn Congress that if this legislation is passed, there may be countless individuals like Mikesell operating under sophisticated organized crime rings, a huge black market of cigarette sales across this nation. Criminals may quickly learn how lucrative this enterprise can be, and *law enforcement will not be able to contain it.*

The potential burden to law enforcement may be enormous, and with the huge amounts of money involved in the sale of contraband cigarettes, cigarette smugglers, like drug dealers, will likely find themselves involved in other even more serious crimes such as gang violence or murder.

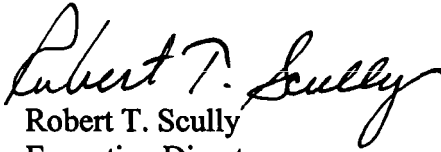
The crime is already happening, and may escalate to uncontrollable levels if this legislation is passed. I have seen some forecasts that this legislation would bring the overall price of a pack of cigarettes to \$5. Undoubtedly, at that price, cigarette smuggling may increase beyond our control. Congress simply cannot place this burden by increasing the responsibilities of our nation's law enforcement.

In fact, in the state of Washington last year, the state Legislature shifted the power to enforce the tobacco tax from the Revenue Department to the Liquor Control Board, whose agents carry guns and have police powers, reflecting the types of burdens that our nation's law enforcement are already facing and may face if this legislation is passed.

As a coalition member of the We Card Program, the National Association of Police Organizations has been working very hard over the past two years to fight underage tobacco use at the point of sale. NAPO has taken part in training sessions and press conferences across the country to educate and train retailers about the importance of NOT selling tobacco products to minors, and we will continue our efforts with the We Card Program.

The black market that will result from S. 1415 may also lead to a loss in millions of dollars in taxes, often used to pay for public safety, schools and even highways. It is unconscionable that legislation aimed at decreasing the use of tobacco by minors could actually threaten budget restrictions for these types of public services through the loss of revenue by a black market. As you know, the 1994 Crime Bill allowed for the hiring of 100,000 new officers, as of today over 73,000 of these officers have been funded. Let's concentrate the efforts of these and other officers to keep the nation's crime rate going down. It is NAPO's belief that S. 1415 may be a step in the wrong direction.

Sincerely,


Robert T. Scully
Executive Director

CONTROLLING TOBACCO DIVERSION/SMUGGLING UNDER COMPREHENSIVE TOBACCO LEGISLATION

The Administration has a strong interest in ensuring that the enactment of tobacco legislation will not result in either a domestic black market or the smuggling of tobacco into the United States. It is essential that comprehensive tobacco legislation contain provisions that will minimize the diversion and smuggling of tobacco from the legitimate chain of distribution. The Senate Commerce Committee bill, as improved by Senator McCain's Manager's Amendment, contains provisions that will ensure that the diversion and smuggling of tobacco can be effectively controlled and will not defeat the purposes of comprehensive tobacco legislation — protection of young people from the addictions of smoking.

A "closed" distribution system will effectively control tobacco smuggling.

The creation of a sound regulatory system — one that will "close" the distribution chain for tobacco products — will ensure that tobacco products flow through legitimate channels and that any leakages will be effectively policed. An effective system must have the following elements, all of which are included in the McCain bill:

- ▶ All entities in the distribution chain for tobacco products should be required to obtain a license. Manufacturers, importers, wholesalers, exporters and distributors should be required to obtain a Federal license. Licensing of retailers can be done at the State level. These licenses would be issued based on certain clearly specified criteria and could be revoked or suspended for specified violations. Those conducting business without a license would be subject to penalties.
- ▶ Licensed entities should only be authorized to sell tobacco products to other licensed entities or purchase tobacco products from other licensed entities. The sale or distribution to any entity that is unlicensed would be unlawful.
- ▶ Effective marking, branding and identification of packages of tobacco products intended for domestic distribution and for export should be required so that they may not be diverted or smuggled in circumvention of the legitimate channels of distribution.
- ▶ Record keeping requirements that will create an audit trail for distribution of tobacco products should be required.
- ▶ Any regulatory system should include penalty and administrative provisions that will deter would-be smugglers and will allow for effective, efficient and uniform enforcement of controls over distribution.

The fear of potential unlawful trafficking in tobacco products should not be a reason for failing to act on these issues because there are workable solutions. These solutions have been incorporated in the McCain legislation.

The regulatory system in the Commerce Committee bill parallels the system in place for alcohol.

The proposed licensing scheme for tobacco products is similar to the way the Federal Government has effectively regulated alcoholic beverages for over sixty years. It would incorporate the years of experience the Federal Government has in administering that system.

- ▶ The distribution chain for alcoholic beverages is a tightly regulated, closed distribution system that includes Federal licensing and regulation of producers, importers and wholesale distributors and effective State licensing and regulation (or in some cases actual control) of the distribution of alcoholic beverages at the wholesale and retail level.
- ▶ The system regulating alcoholic beverages imposes marking and labeling requirements as well as record keeping requirements.
- ▶ This system has allowed for commerce in alcoholic beverages while effectively curtailing illicit trafficking.

The real price of cigarettes is estimated to rise by \$1.10 per pack by 2003 under the Commerce Committee bill.

We estimate that the Commerce Committee bill will raise the real price of cigarettes by \$1.10 per pack by 2003. Given our projections of other underlying trends in cigarette prices, we estimate that this will result in an ultimate constant dollar price per pack of \$3.19 in that year (\$3.57 in 2003 dollars).

- ▶ These estimates have been validated by objective experts in this area. Professor Jeffrey Harris, an economist at MIT and a physician at the Massachusetts General Hospital, who is also one of the nation's leading authorities on tobacco taxation, testified on May 13th that the real price of cigarettes in 2003 will be \$3.38, quite close to our estimate of \$3.19.
- ▶ Some Wall Street analysts have claimed that the ultimate price per pack arising from this legislation could be in the range of \$5.00. But these estimates are inappropriate for a number of reasons:
 1. Some analysis assumes that the industry will pay the full amount of the youth look-back penalties in 2003, adding up to 40-45 cents to the price per pack. But our analysis, drawing on the scientific consensus in this area, is that the look-back targets will be easily met by 2003 with a \$1.10 price increase, so that there are likely not to be look-back payments over this period.

2. Some analysis assumes that firms will immediately pay the full amount of the liability cap (\$6.5 billion), and that this will be passed through to price, adding another roughly 40 cents to the price per pack. But given the history of tobacco litigation, there is no reason to think that the industry will be subject to this amount of judgments. Moreover, there is no reason to think that liability costs will be shared by all companies -- and thus that they will be passed on to price. We therefore assume that there is no incremental impact on the price of cigarettes from the liability cap.
3. Some projections also assume that the annual per-pack cost will be subject to a percentage mark-up by retailers and wholesalers. This contention is refuted by both expert analysis and previous empirical evidence; indeed, these mark-ups have actually fallen in the face of recent manufacturer price increases.
4. Some analysis includes projections about increases in State excise taxes, but these exceed historical and recent experience by a large margin.

The “Canadian Experience” is not an appropriate predictor of U.S. smuggling activity.

Many cite the problems Canada had with unlawful smuggling after it raised its excise taxes on tobacco products as support for the notion that the same will happen if comprehensive tobacco legislation similar to the Commerce Committee bill is enacted in the United States. There are several reasons to believe, however, that the Canadian experience is not an appropriate predictor of what would occur if tobacco legislation such as this bill is enacted.

- ▶ First, and most importantly, Canada did not have in place the type of effective licensing and enforcement regime that is contained in the Commerce Committee bill. This was borne out by testimony from David Sweanor, Senior Legal Counsel for the Smoking and Health Action Foundation in Canada, who stated before the Senate Judiciary Committee on April 30th that “[t]he Canadian government appeared unable or unwilling to tackle the sources of the criminal trade. Our government did not take on the tobacco industry over its ultimate supplying of product to the smugglers, and failed to implement effective anti-smuggling measures.” For example:
 1. Canada did not mark its cigarette packaging with “FOR EXPORT ONLY” labels until after smuggling became a significant problem.
 2. Canadian law enforcement had very few personnel devoted to tax evasion.
 3. The vast majority of enforcement with respect to Canadian taxes was done at the provincial level and there was little or no coordinated enforcement effort at the national or inter-provincial levels.

4. With the exception of manufacturers, Canada does not license the distribution chain for tobacco products.

Finally, Canada's laws on tax evasion did not contain strong penalties and there were inadequate resources to enforce those laws.

- ▶ Second, the size of the Canadian population, as well as its concentration along the border with the United States, makes the Canadian example not particularly instructive for the United States.
 1. Smuggling became a problem in Canada because of the ease of access to alternative markets. Eighty percent of the Canadian population lives within a two-hour drive of the U.S. border, placing it within easy reach of smugglers transporting cigarettes from the United States.
 2. The U.S. population is more dispersed, making the logistics of a nationwide black market in smuggled cigarettes more complex and expensive for organized smugglers. The dispersal of population also means that a U.S. resident is less likely than a Canadian resident to be able to cross the border routinely for casual cigarette smuggling.

Current laws are not adequate to prevent interstate diversion or smuggling.

The current level of tobacco smuggling is not a good indicator for determining the level of smuggling that will take place if the Commerce Committee bill is enacted.

- ▶ The distribution chain for tobacco products is currently not "closed." Current Federal laws regulating tobacco are aimed at collecting the Federal excise tax and assisting States in their efforts to collect excise taxes imposed on certain tobacco products, not at regulating the distribution of tobacco products and preventing smuggling.
- ▶ The Commerce Committee bill would enhance the Treasury Department's ability to assist State and local law enforcement to control the unlawful trafficking in tobacco products to avoid State tobacco taxes. The bill would broaden the scope of the Contraband Cigarette Trafficking Act (CCTA) to all tobacco products, lower the threshold amount for federal jurisdiction from 60,000 cigarettes to 30,000 cigarettes, eliminate the current loophole relating to states that do not require indicia of tax payment, and expand the forfeiture provisions of the CCTA so that proceeds traceable to violations will be subject to seizure and forfeiture.

- ▶ Also, the Federal Government has the expertise and experience to deal with imported contraband products and already has made a substantial investment in the introduction of non-intrusive inspection systems and other equipment needed to detect the smuggling of contraband. The organic nature of tobacco and the distinctive shape of cigarettes makes them readily detectable by equipment that the Federal Government currently has in place at the border.

Sufficient resources are necessary to prevent smuggling.

The Administration agrees that there must be sufficient resources available to assist law enforcement to prevent the diversion and smuggling of tobacco products to a black market. Effective and efficient regulation of the distribution chain for tobacco products will require adequate resources to ensure compliance through verification.

- McCain Block Grants for
~~the~~ state licensing + enforcement
- Leahy Block Grant. (TREASURY GRANTS)
- COPS Model
- TASK FORCE OPERATIONS
- Where the need is.
- Asset Forfeiture
- Spurrer's comments on joint-task-force
- \$ 25 Billion to states as
open pots as well.] - about
there

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Founders, Action America:
Murder Must End Now

FIGHT CRIME



INVEST IN KIDS

President
Sanford A. Newman

Associate Directors
Amy R. Dawson
Brendan J. Fitzsimons

Communications Director
John W. Bartlett

To: Cynthia Rice and Jose Cerda
456 7431 456-7028

From: Sandy Newman

Date: May 15, 1998

PAGES: 9

I've attached the draft of the memo we expect to send out to our advisory committee on the black market issues. *Also a rough Q + A.*

Also, because of the action the Finance Committee took last night, the Child Care Now Coalition, which had offered to pay for placing in the Post the ad copy that I faxed you yesterday has decided to run a different ad instead, so we have no immediate plans to run it.

It's not a secret, and was approved by Sheriffs and PERF, but I don't have any immediate ideas about how to make use of it.

Tried to fax Friday but couldn't get thru due to busy signals.

Why Do Police and Sheriffs Want Tobacco Bills to Support Child Care?

"Educational child care for young children and after-school programs for school age kids are two of the most powerful weapons to fight crime and to protect kids from getting hooked on tobacco."

**Buffalo Police Commissioner Gil Kerlikowske
President, Police Executive Research Forum**

In the hour after the school dismissal bell rings, turning five million latchkey kids out onto the street without adult supervision, violent juvenile crime triples. Teen sex also peaks in the after-school hours. Studies show that after-school programs dramatically and immediately cut juvenile crime—and cut in half kids' risk of smoking, drinking or using drugs.

Even before kids are old enough for school, their intellectual and moral development is being permanently shaped. Studies show educational child care programs dramatically reduce the risk that kids will grow up to become criminals — or to engage in other risky behaviors that threaten their own health.

No wonder hundreds of law enforcement leaders—including the Major Cities Police Chiefs organization, the Police Executive Research Forum, and the National District Attorneys Association recently called for emphasizing educational child care and after-school programs.

Are the Tobacco Companies really worried about crime? Raising the price of cigarettes to discourage teen smoking, and setting aside a fraction of the new tobacco revenues to enforce the law, can save millions of lives. But why stop there?

Educational child care and after-school programs help kids learn right from wrong, and grow into healthy, good neighbors instead of criminals or addicts of tobacco or drugs.

"Congress should strike a powerful blow *against crime and smoking* by allocating a quarter of the new tobacco revenues to help little kids get preschool programs, and give older kids constructive activities after school."

**Sheriff Patrick Sullivan, Legislative Chair
National Sheriff's Association**

FIGHT CRIME: INVEST IN KIDS

An organization of police, sheriffs,
prosecutors and crime victims
dedicated to fighting crime
www.fightcrime.org

CHILD CARE NOW! A coalition of
100 national organizations
representing millions of Americans
concerned about our children's
healthy development

For more information, call 1-800 233-1200

Word Count: 357 including organizational identification, phone number etc.

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**FIGHT
CRIME****INVEST
IN KIDS****President**
Sanford A. Newman**Associate Directors**
Amy R. Dawson
Brendan J. Fitzsimons**Communications Director**
John W. Bartlett**DRAFT****DRAFT****DRAFT****To:** Advisory Committee and Resource Council Members**From:** Sandy Newman, Brendan Fitzsimons, Amy Dawson**Date:** May 13, 1998**Re:** TOBACCO BILLS, CHILD CARE & BLACK MARKET ARGUMENT

The tobacco bill drafted by Senator McCain (R-AZ) and recently approved by the Senate Commerce Committee on a 19-1 vote is expected to come to the Senate floor on May 18th. The bill would require the tobacco companies to pay an annual fee, which the Treasury Department estimates would raise the price of a pack of cigarettes by \$1.10 over five years.

Among the other tobacco bills which have been introduced are three separate bills introduced by Senators Chafee (R-RI), Graham (D-FL), and Harkin (D-IA), by Senator Conrad (D-ND) and by Senator Kennedy (D-MA). Each of these bills would raise cigarette prices by \$1.50 a pack over the next five years, and is projected to prevent approximately 1.3 million premature deaths from smoking.

As you know, FIGHT CRIME: INVEST IN KIDS has advocated allocating for educational child care and after-school programs \$4 billion a year of the \$20 billion per year which would be raised annually by the McCain bill (or of the larger amounts raised by other proposals).

The Good News

In a reflection of your hard work and that of our allies, Senator McCain's bill now contains language which says that child care and after-school programs would be one of the appropriate uses for the new tobacco revenues. While we still have our work cut out for us to change this language so that a substantial portion of the new revenues are specifically *allocated* for child care and after-school programs, we are making progress.

If we are together successful in making that happen, passage of this legislation will be one of the most powerful steps ever taken by Congress to keep kids from becoming criminals.

The Black Market Controversy

The tobacco companies have been spending millions of dollars on a massive advertising campaign. As experts in marketing, they have focused on the arguments their polling and focus groups told them would do the most to shake public support for comprehensive tobacco legislation. Foremost among these is their argument that the fees imposed on tobacco companies would result in a massive increase in smuggling of tobacco products, accompanied by a rise in violent crime.

In support of this argument, they've been running ads asking: "If the police are afraid of tobacco legislation, how safe can it be?"

May 15, 1998

1

The ads even quote from letters which Senator Hatch (R-Utah) had requested from two of our good friends, Fraternal Order of Police President Gil Gallegos and International Union of Police Associations Vice President Art Reddy. Senator Hatch had asked them whether they would be concerned about smuggling impacts if the legislation resulted in a per-pack increase of between \$2 and \$3, rather than the \$1.25 projected by the Treasury Department.

Distortion: The ads create the false impression that the FOP and IUPA are opposed to the fees the McCain bill would impose on the tobacco industry. In fact, neither FOP nor IUPA have opposed the McCain bill. They have also indicated that they *strongly support earmarking funds for child care and after-school programs*. They have emphasized to us that their letters to Senator Hatch were intended to urge that the legislation: a) include anti-smuggling safeguards; and b) insure that a small fraction of the new revenues the legislation would raise would be available for law enforcement if needed to deal with any increase in smuggling which might result from the increase in cigarette prices.

Anti-Smuggling Protections Now Included in the McCain Bill

Senator McCain, in consultation with other Senators and the Bureau of Alcohol, Tobacco and Firearms, has now taken steps to address the smuggling concerns. The McCain bill now contains **important anti-smuggling protections**, which include requiring for the first time:

- that each cigarette pack bear a unique serial number;
- licensing of manufacturers, distributors and retailers, and record keeping so that everyone involved will know that law enforcement will be able to trace smuggled cigarettes to the place they "leaked" from the distribution chain;
- forfeiture of licenses and other stiff penalties, so that retailers and distributors and even manufacturers would know that their participation in smuggling could cost them their license to manufacture, distribute or sell cigarettes; and
- clear labeling of each pack to show whether it is for US consumption or for export to other countries, making it far easier than it would otherwise be to spot cigarettes being exported and then smuggled back into the country.

Moreover, while discussions about the best ways to provide additional law enforcement resources are still in process, **it appears that there is a consensus among those involved in crafting the legislation that an increase in enforcement resources will be provided.**¹ Sheriff Pat Sullivan, who chairs the National Sheriff's Association's Congressional Affairs Committee, has suggested that one approach might be to authorize a grant program similar to the Byrne Grants to deal with any tobacco smuggling problems that might arise.

Assessing Smuggling Concerns

As Ruben Ortega has suggested on behalf of the Major Cities Chiefs, it appears that a balance can be achieved by including "sufficient safeguards to provide law enforcement with appropriate resources [to combat smuggling], should they be necessary, but at the same time generating the funds to accomplish the task of addressing the cost of tobacco use and prevention of youth using

¹See, for example, comments of Lawrence H. Summers, Deputy Secretary of the Treasury and of Senator Patrick Leahy, transcript of Senate Judiciary Committee hearing, April 30, 1998.

tobacco [and for] law enforcement's efforts in support of after school programs for America's youth, as well as child care assistance for families at risk."

1) How much will the McCain bill raise the price of cigarettes?

The Treasury Department and many economists predict that the new fees (approximately \$1.10 per pack in the McCain bill) and already-scheduled excise taxes increases of 16 cents per pack over the next five years will simply be passed through to customers, resulting in a total increase of about \$1.25 per pack in the price of cigarettes. Anti-smoking experts estimate that this would cut the number of teen smokers by 29% by 2003, and that in combination with sales and marketing restrictions in the bill, it would keep three million teens from becoming smokers over that period, preventing one million premature deaths from smoking.

The industry claims that the will be multiplied throughout the distribution chain and will result in price increases of \$2.50-\$3.50 per pack in the price of cigarettes. After discussion with several economists and a review of the industry claims, we believe the Treasury Department's projection is far closer to the mark than that of the industry.

2) Will additional smuggling of cigarettes result from the legislation?

It's important to distinguish between two kinds of smuggling:

a) Smuggling between states. The US already has a significant problem with smuggling of cigarettes from states with low cigarette excise taxes to states with higher taxes. The anti-smuggling protections in the McCain bill will likely lead to a reduction in the smuggling which now occurs from states like North Carolina and Virginia with low cigarette taxes to states with higher cigarette taxes. We don't know enough, though, to quantify that reduction.

b) Smuggling across international borders. The Treasury Department points out that the McCain bill's anti-smuggling provisions are similar to those used to collect federal excise taxes on alcohol. They point out that we have experienced only very limited problems with smuggling to avoid federal alcohol taxation, and that this smuggling has not led to any significant increase in violent crime.

The tobacco companies point to Canada's unhappy experience with cigarette taxes which were far higher than those imposed under the McCain or the other pending tobacco bills here. It seems clear that those taxes did lead to very substantial smuggling problems. But the Canadian taxes brought the price of cigarettes to \$2.50 more than their cost across the border in the US — twice the impact of the US tax. Moreover, it is clear that they were not accompanied by anti-smuggling protections similar to those in the McCain bill or adequate law enforcement resources.

If international smuggling increases substantially due to passage of the McCain bill, that increase might outweigh the reduction the bill would achieve in smuggling across state lines. But it seems clear that we are unlikely to see from this bill anything like the smuggling problems that occurred in Canada.

Conclusion

1) Under these circumstances, it is prudent and important to assure that, if smuggling problems increase, additional funds will be available to provide the law enforcement resources necessary to nip the problem in the bud. We are confident provisions will be made in the bill to do just that.

2) As law enforcement leaders and crime victims we know too much about the value of life and the tragedy of unnecessary death to ignore expert predictions that this legislation will keep at least three million teens from getting hooked on cigarettes in the next five years, and prevent at least one million premature deaths.

3) If \$4 billion a year in new tobacco revenues are dedicated to quality educational child care and after-school youth development programs proven to dramatically reduce crime, this legislation would constitute one of the most powerful steps ever taken by congress to fight crime.

Please let us know if you would like to receive more detailed briefing information on some of the issues summarized above.

ROUGH DRAFT

Questions and Answers About Tobacco Proposals

How Much Will Proposed Legislation Raise the Price of a Pack of Cigarettes?

The Treasury Department estimates that the McCain bill would raise the price of a pack of cigarettes by \$1.10 over 5 years. A previously enacted federal excise tax increase currently being phased in will add an additional fifteen cents a pack. The total price increase attributable to the McCain bill and the separate excise tax would be \$1.25. Cigarettes, which average \$1.94 per pack today would cost \$3.19 a pack (in today's dollars) in 2003.

Aren't the Tobacco Companies claiming that the McCain Bill would raise cigarette prices by \$2 to \$3 per pack?

Yes, but these arguments hold about as much water as their claim that cigarettes don't cause cancer. Not surprisingly, they rely on the most extreme projection of cigarette prices available. But even the analyst who produced that projection, David Adelman of Morgan Stanley Dean Witter, noted that he was adding in price increases which would occur regardless of whether the McCain bill was enacted.

For example, he assumes that since tobacco companies have been choosing to raise their prices faster than the pace of inflation, they will continue to do so (Prosecutors will be reminded of the "I couldn't help myself" defense.) He then assumes that states will tack on their own hefty excise tax increases.

He also assumes — in the face of virtually all relevant empirical evidence and an overwhelming consensus among economists — that instead of simply passing the tax increase through to smokers, it will be "marked up" at each link in the distribution chain so that manufacturers, distributors and retailers each take an additional 10% profit on their "investment" in the tax. Other prominent analysts, such as Gary Black of Sanford Bernstein, project that wholesalers and retailers will simply pass the tax through to customers, and that they will in fact cut their mark-up on the base price of cigarettes in order to counteract the falling demand resulting from price increases.

Then, instead of reporting the price increase in "constant" 1998 dollars, Adelman adds in the rate of inflation each year. Of course, that inflation would occur with or without the imposition of tobacco fees. We all know that inflation means that the nominal price of nearly everything except high-tech electronics is more than it was a few years ago. But generalized inflation that affects everything we buy isn't going to result in more smuggling, especially since other countries also experience inflation, often at rates far higher than our own.

How would enforcement system for tobacco taxes compare to current alcohol excise tax enforcement?

The Treasury Department reports that the system would be very similar to the "closed" distribution system currently used for more than sixty years to tax and regulate alcohol. It points out that there has been little problem with black market sales or crime resulting from alcohol taxes.¹

¹Statement of Lawrence H. Summers, Deputy Secretary of the Treasury, Senate Judiciary Committee, April 30, 1999, p. 2.

The US already has a substantial cigarette smuggling problem between states with low cigarette taxes and those with higher cigarette taxes. Doesn't that show we'll just have greater problems if federal taxes are raised?

The Treasury Department projects that comprehensive tobacco legislation would result in a decrease in the smuggling currently occurring between states. The incentive for black marketing depends on the profit the black marketer can expect to make and the risk required to make it. The greater the difference between the price the black marketer must pay for the product and the price at which he or she can sell it, the greater the potential profit. Since the federal tax would be uniform, it wouldn't affect the price differential between the cost of cigarettes in one state and the cost in another, so there would be no increased profit incentive for interstate black marketers.

Since the closed distribution system (see above) would substantially increase the difficulty and risk of selling contraband cigarettes, it does seem reasonable to predict a net reduction in interstate smuggling (though, as noted below, this might be offset by an increase in smuggling across the US-Mexican border)

When Canada increased its tobacco taxes, it had a serious problem with cigarettes being smuggled in from the United States. Why wouldn't the US tobacco fee proposals result in similar levels of smuggling over the Mexican border?

We are still in the process of conducting our own independent analysis of this issue. In the meantime, testimony before the Judiciary Committee suggests that the Canadian experience is not a useful guide because:

- Canadian tax increases were so high that they created a 2.50 differential between Canadian prices and the prices at which the same cigarettes could be purchased after the tobacco companies exported them to the US, avoiding Canadian taxes.² That's twice the \$1.25 increase that would result from the McCain Bill and planned excise tax increases. Moreover, the increases contemplated by the McCain, Conrad, Chafee/Harkin/Graham and Kennedy bills would all leave US cigarette prices in the middle range of international cigarette prices. The McCain bill, for example, would result in a per pack price of about \$3.19, higher than Japan's \$2.02, but lower than Norway's \$6.82, Denmark's \$5.10, Britain's \$4.40, France's \$3.50, Canada's current \$3.35, and Germany's \$3.32.³
- The tobacco companies succeeded in preventing the Canadian parliament from enacting any of the anti-smuggling protections (serial numbering of packs; record keeping and licensing requirements for wholesalers, manufacturers, distributors, exporters and importers; marking of packages to indicate that they were for export only)⁴ that would be part of any US tobacco legislation. In the absence of these safeguards, tobacco companies had strong incentives to export large quantities of cigarettes to the United States, knowing that they would then be smuggled back into Canada.
- In contrast, under the McCain bill, US cigarette manufactures would have great incentives to protect against smuggling because: a) they could lose their manufacturing licenses [is this in the McCain bill] and be put out of business, and lose their cap on liability in civil lawsuits brought

²David T. Sweanor and Luc R. Martial, "The Smuggling of Tobacco Products: Lessons from Canada," Non-Smoker's Rights Association/Smoking and Health Action Foundation (Canada, 1994) p. 1.

³Lawrence H. Summers, Deputy Secretary of the Treasury, Testimony before Senate Committee on Commerce, Science and Transportation, March 24, 1998, Figure 1.

⁴David T. Sweanor and Luc R. Martial, *Ibid.*, p. 2.

by smokers,⁵ if they were complicit in smuggling; and b) the total amount the industry would have to pay between 1999 and 2003 would be a fixed amount, not dependent on the volume of cigarettes sold. Each company's share of that total would depend on the volume of cigarettes they sold in the US. This would mean that smuggling by one tobacco company would shift its fee burden to another tobacco company. As a result, each company would have a strong incentive to help police its competitors.

- With licensing requirements, serial numbering and clear labeling, black marketers would be unable to sell through retail outlets.⁶ The tobacco companies argue this will lead to teens buying cigarettes from drug dealers on the street corner. But other analysts suggest that: a) those who want to deal in illegal products already have many to deal in which will provide much larger profits than tobacco; b) those who haven't been recruited to participate in the drug trade are unlikely to be recruited to break the law to participate in a far less lucrative tobacco trade.

- 90% of the Canadian population lives within a two-hour drive of the U.S. border.⁷ Together with a very open border and the fact that an Indian reservation not subject to Canadian or US law enforcement straddled that border, this made smuggling easy, and mean that the ordinary transportation cost of moving the cigarettes within the country once they were smuggled in was extremely low. In contrast, the US-Mexican border is one fifth the length of the border between the US and Canada, has far fewer crossing points that could be used to transport large quantities of cigarettes, is far more carefully controlled than the Canadian border, with enforcement resources currently being substantially increased.

- American tobacco companies have invested a great deal in developing loyal followings for products with particular brand names and distinctive tastes not replicated by other cigarette manufacturers around the world. As a result, most international smuggling into the United States has been of American cigarettes which have been taken out of the country (often from duty free shop) into Mexico, and then smuggled back in. Smuggling of foreign-made tobacco into the United States has not been a problem because there has been no demand for it.⁸ While there will likely be some increase in smuggling of cigarettes manufactured in other countries, the marketing efforts of American tobacco companies make it likely that such imports will have a lower street value than American cigarettes. This may be enough to wipe out whatever price advantage black marketers gain by avoiding their share of federal tobacco fees. Meanwhile, clear labeling of cigarettes "For Export Only," serial numbering of packages, and creation of a closed distribution system will enhance enforcement efforts to block smuggling of contraband American-made cigarettes back into the US.

⁵Statement of Lawrence H. Summers, Deputy Secretary of the Treasury, Senate Judiciary Committee, April 30, 1999, p. 3

⁶Ibid. [Statement of Lawrence H. Summers, Deputy Secretary of the Treasury, Senate Judiciary Committee, April 30, 1999, p. 3]

⁷David T. Swenor and Luc R. Martial, Ibid., p. 1.

⁸Lawrence H. Summers, Deputy Secretary of the Treasury, transcript of April 30, 1998 hearing of Senate Judiciary Committee.

Tobacco and Strange Bedfellows

BY SAM LOEWENBERG

The latest salvo in the tobacco wars was fired last month not by tobacco industry lobbyists or by public health advocates, but by, of all things, police officers.

The heads of four national law enforcement associations sent letters in late April to Senate Judiciary Committee Chairman Orrin Hatch (R-Utah) warning that the pending tobacco control legislation could result in a Prohibition-style crime wave of cigarette smuggling.

The police are one of a host of groups weighing in on tobacco legislation now before Congress. The most prominent bill, sponsored by Sen. John McCain (R-Ariz.) could come to the floor for a vote as early as this week.

Most of these groups have no obvious affiliation with the tobacco industry and, on the surface, might seem to have little interest in the momentous health and policy issues now before Congress. But each has its own stake in the tobacco war, and each is pressing its views in Congress and in the media.

The groups fall across the spectrum of American life—from veterans to minorities, from medical device manufacturers to asbestos makers.

So far, the law enforcement organizations have emerged as the tobacco companies' favorite. Within a few days after the letters to Hatch appeared, the industry had scooped up the new ammunition to use in the public assault it has waged against tobacco legislation ever since negotiations broke off in early April.

In full-page ads in national newspapers, the industry reprinted excerpts from the police associations' letters under the headline, "If the police are afraid of tobacco legislation... How safe can it be?"

Jim Pasco, executive director of the Fraternal Order of Police, says the letters were not intended to take a position for or against any bill—but to make sure that legislation would include funds for increased policing to combat the black market that he says would result from a mandated increase in cigarette prices.

But Pasco's position may have been

motivated by more than law enforcement concerns, according to an article in *USA Today*, which reported last week that Pasco is also a part-time lobbyist for cigarette manufacturer Philip Morris Inc.'s Miller Brewing Co. subsidiary.

Pasco also told *Legal Times* that his organization received \$18,000 from Miller last year in support of a national peace officers memorial service. He says his tobacco-related work was limited to introducing a Philip Morris representative to someone in the Clinton administration last year. He declines to elaborate further.

Pasco denies that his police advocacy was in any way influenced by his work for Miller. He further denies an allegation in *USA Today* that he was the originator of the idea of writing public letters to Hatch.

"If I knew this would take on the significance it has taken on, I would probably have paid more attention to what was going on at the front end," Pasco says.

Rich Roberts of the International Union of Police Associations, which also sent a letter, says, however, that the idea for the letters came from Pasco's association, the Fraternal Order of Police. The other groups to send in letters were the National Association of Police Organizations and the Federal Law Enforcement Officers Association.

While the tobacco industry has seized on the smuggling issue, public health advocates characterize the argument as a scare tactic. In fact, tobacco companies are at best beneficiaries and at worst complicit in cigarette smuggling, says John Bloom, who specializes in international issues for the National Center for Tobacco Free Kids.

"When they raise the specter of cigarette

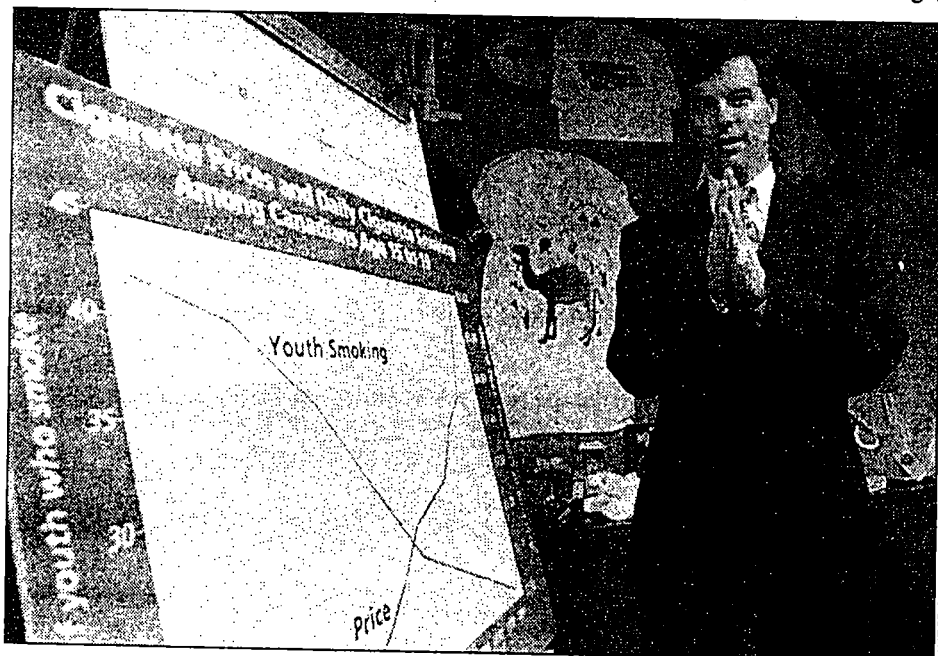
of Manufacturers and the U.S. Chamber of Commerce, are lobbying against the tobacco-control legislation on ideological grounds, arguing that it sets a precedent of government regulation that could easily spread to other industries.

NAM's chief lobbyist, Paul Huard, says that, for now, his group has merely sent letters to various senators registering its opposition to the McCain bill. But if it seems that the legislation really has a chance of passing, he says, "We will come down like a ton of bricks."

The possibility of a big payout from tobacco legislation has created an unusual alliance between the victims and manufacturers of another notorious product, asbestos. A coalition of asbestos victims groups, unions, trusts formed from the assets of bankrupt asbestos companies, and former asbestos manufacturers is seeking billions from the tobacco companies, because, they say, people exposed to asbestos who smoked are 87 times more likely to get lung cancer than normal smokers.

Coalition members have numerous lobbyists pushing their case, including Jack McMackin of the D.C. office of Chicago's Winston & Strawn; Brad Oelman of Owens Corning; Nicholas Calio of O'Brien Calio; William Michael House of Hogan & Hartson; Greg Lawler of The Lawler Group; and Timothy Nichols of the Building and Construction Trades Department of the AFL-CIO. Porter Novelli is the group's public relations firm.

McMackin says that in the McCain bill's April 1 markup, the group secured an amendment establishing a \$21 billion trust to be paid out over 15 years. In exchange,



John Bloom of the National Center for Tobacco Free Kids says the tobacco companies are in the best position to control any potential cigarette smuggling.

smuggling, it's more of a threat than anything else because the industry is in the best position to control it or encourage it," says Bloom.

Domestic smuggling is not a foreseeable problem according to Deputy Treasury Secretary Lawrence Summers' testimony before the Senate Judiciary Committee on April 30.

"It is hard to imagine that large-scale smuggling could occur without the manufacturers' knowledge," he told the panel.

Law enforcement is just one of the many groups that have weighed in on the tobacco deal. Some, like the National Association

the asbestos manufacturers will drop their suits against the tobacco industry.

One influential group heavily embroiled in the tobacco debate, although not specifically in the McCain legislation, is America's veterans. Their gripe is not directly with tobacco companies but with the Clinton administration and the Republican-led Senate Budget Committee. They say both parties are trying to cover an estimated \$10.5 billion in cost overruns in the recently passed transportation bill by keeping the Veterans Administration from

Note to Readers

In the May 4, 1998, issue, when identifying Kevin J. Arquit, the author of "Antitrust Is Alive in the Digital Age" (Page S38), *Legal Times* should have mentioned that Arquit represents Sun Microsystems, a software company that has frequently taken a position adverse to that of the Microsoft Corp.

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SEE LOBBY TALK, PAGE 5

Legal Times 5/18/98



Inside the Firms and Associations

TALK FROM PAGE 4

compensating victims of smoking-related illnesses.

The VA had previously approved claims by veterans groups that they were victims of the U.S. government because it promoted smoking among troops, says the executive director of the Veterans of Foreign Wars, Kenneth Steadman.

"Out there in the bush, we would get cartons of cigarettes, which we distributed to the rifle squads," says Vietnam War veteran Steadman. During World War II, he says, "you used to get a little tiny pack of four cigarettes in C rations."

Steadman says that his and other veterans groups are holding town meetings nationwide to defeat the budget cuts.

And all the tobacco legislation introduced so far, including the McCain bill, would adversely affect minority groups, says Todd Gee, a spokesman for Rep. Bennie Thompson (D-Miss.), chairman of the Congressional Black Caucus Tobacco Working Group.

Gee says the Black Caucus has teamed up with the Hispanic Caucus and the Asian-Pacific Islander Caucus to try to drive home the point that an increase in tobacco prices would amount to a regressive tax disproportionately affecting minorities, many of whom have higher rates of smoking than whites.

The coalition is working on language that it hopes to insert in the legislation to provide funding for minority programs on smoking cessation and prevention. The coalition has received support from both the

administration and the Republican leadership, says Gee.

The coalition also wants to make up for lost funding for minority community events that tobacco companies often underwrote, he says.

The tobacco war is being waged on regulatory fronts as well. The Health Industry Manufacturers Association, for instance, is concerned that the Food and Drug Administration wants to regulate cigarettes as medical devices. A HIMA letter to Sen. James Jeffords (R-Vt.) argued that regulating cigarettes in this way could set "administrative or judicial precedents entirely inappropriate" for traditional medical devices.

Public health advocates say police groups are not the only public servants the tobacco

industry used to block regulation: The industry lavished money on fire departments and fire prevention associations nationwide for more than a decade, according to *The Los Angeles Times*.

Although none of the nation's major firefighters groups have taken a stand on the McCain bill, the industry has enlisted their aid on other issues.

For example, proposals to mandate the development of fire-safe cigarettes were defeated as a result of the tobacco industry's intervention as early as 1990. Cigarettes are the leading cause of residential fire deaths in the United States, according to the Consumer Product Safety Commission.

According to *The Los Angeles Times*, the industry's efforts to block the safety proposals were aided by the National Volunteer

Fire Council, which has received millions of dollars in tobacco money since the 1980s, when it was a small group with little funding.

Another trade association that receives tobacco funds is the National Association of State Fire Marshals, which has joined with the tobacco industry against a current proposal for fire-safe cigarettes, although a spokesman says the group supports such a cigarette in principle.

Aside from funding, the fire marshals receive pro bono help from lobbyist Peter Sparber, a former vice president of the Tobacco Institute who reportedly counts R.J. Reynolds among his paying clients. He was traveling and did not return calls.

Philip Morris spokesman Brendan McCormick says that cigarette safety is an issue of personal responsibility.

"We are proud to support firefighting organizations because we believe they provide valuable service in the communities in which our employees live and work," says McCormick.

Veteran fire-safe cigarette advocate Andrew McGuire says that tobacco companies "buy innocence by association" by allying themselves with fire prevention organizations.

"It's great business sense on their part to try to buy out a potential lobbying force that could really put tobacco on its head on this issue—its brilliant," says McGuire.

Sam Loewenberg's e-mail address is sloewenberg@earthlink.net.



CATHERINE CORP

Kenneth Steadman (above) of Veterans of Foreign Wars says the VA is being stopped from compensating vets for smoking-related illnesses.

LOBBY LOG

Highlights from newly filed lobbying registrations appear on Pages 56 and 57.



NATIONAL ASSOCIATION OF POLICE ORGANIZATIONS, INC.

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Legislative Consultants

JULES BERNSTEIN

LINDA LIPSETT

May 11, 1998

The Honorable Orrin G. Hatch
Chairman, Senate Judiciary Committee
The United States Senate
Washington, DC 20510

Dear Mr. Chairman:

On the eve of the scheduled Senate Judiciary Committee hearing tomorrow regarding the consequences of higher tobacco prices, I wanted to take this opportunity to make perfectly clear so that there can be no misunderstanding our position on the "Universal Tobacco Settlement Act". As you know, as it now stands, the proposed legislation will undoubtedly impact tobacco prices. Forecasts have shown that they could rise to as much as \$5 a pack.

Chairman Hatch, let me make two things perfectly clear.

- There *already* exists a black market of illegal cigarette sales caused by the lack of uniformity in state laws on the taxation of tobacco products. It is my belief that Congress and the Administration should bring together governors and state legislators to discuss the crime problem that we *currently* now have.
- The "Universal Tobacco Settlement Act" may create a whole new black market opportunity for organized crime, thus creating a new undue hardship on law enforcement at the Federal, State and local levels.

It is my belief that law enforcement should be consulted on how we can address this problem in a preemptive rather than in a reactive manner. Currently, it seems that the real question being addressed is what level of crime is acceptable? How much crime can be tolerated by the unintended consequences (the black market) of this proposed legislation? I am urging Congress not to pass legislation and worry about the consequences later.

Sincerely,

Robert T. Scully
Executive Director



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GILBERT G. GALLEGOS
NATIONAL PRESIDENT

24 April 1998

The Honorable Orrin G. Hatch
Chairman, Senate Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman,

I am writing on behalf of the over 272,000 members of the Fraternal Order of Police with regard to S. 1415, the "Univcrsal Tobacco Settlement Act" recently reported out of the Senate Commerce Committee. We are extremely apprehensive that passage of this legislation will precipitate the emergence of a thriving black market in cigarettes, posing huge problems for law enforcement at every level.

Law enforcement officials have genuine cause for concern. By drastically raising the price of tobacco products, S. 1415 will inevitably lead to the creation of a massive black market. Such a black market will give organized crime a new line of business and prove to be very burdensome to State and local law enforcement, as the experiences in Canada and other countries demonstrate. A black market not only erodes respect for the rule of law, it also undermines the real goal of the legislation--preventing underage tobacco use.

Here are a few examples of the anticipated effect if S. 1415 becomes law:

Black Markets for Less Costly Tobacco Products: Cross-border smuggling for less costly tobacco products will develop. These products will then make their way into every State in the country.

According to a Morgan Stanley analyst, "[S. 1415] would likely result in very significant cigarette smuggling. Cigarettes in Mexico currently retail for about \$1.00 per pack. In Canada, smuggling became a very serious issue when the per-pack pricing gap vs. the U.S. exceeded \$2.00.... The legislation's fifth year per-pack industry cost... would result in a retail price increase of approximately \$2.55 to \$4.50 (versus the current average retail price of \$1.95).... We anticipate that a significant black market would quickly emerge in the U.S. under the Commerce bill." (David Adelman, *Morgan Stanley Investor Report*, 31 March 1998.)

Canadian Black Market Experience: Beginning in the late 1980s, Canada instituted steep tax hikes on tobacco products, which led to sharp increases in criminal activity. As a result of law enforcement problems, Canadian officials were forced to roll back these high excise taxes in the mid-1990s.

Deputy Treasury Secretary Lawrence Summers, in his testimony on 24 March 1998, stated, "The experience in Canada was that when the price differential with the United States rose to about \$2.50 in 1993, you saw quite a substantial increase in black market activity. And when that price differential was narrowed, the incidence of black market activity declined substantially."

The price increases contemplated in the McCain bill far exceed the \$2.50 threshold that led to a rise in black market activity in Canada.

The result of an increase in black market activity is an increase in violent crime. According to Sgt. Giroux of the Royal Canadian Mounted Police, testified before the House Commerce Subcommittee on health and Environment last December that, "People were shooting each other. And also, we saw a lot of violence going on between groups trying to protect their loads of contraband. People were trying to rob each other. And also, what we saw is organized crime groups like motorcycle gangs and different ethnic criminal groups got involved in the contraband trade, and they were making a lot of money as a result of that."

Another result was the loss of tax revenue. Sgt. Giroux also noted that, "By early 1994, it was estimated that as much as forty percent (40%) of the Canadian domestic tobacco market was being supplied through smuggling, resulting in a loss of over two billion dollars (\$2 billion) in both Federal and provincial taxes."

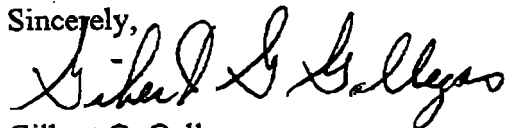
The goal of the Canadians was similar to the stated goal of S. 1415--to reduce youth smoking. Law enforcement's experience in Canada demonstrates that the effect of steep price hikes actually undermines that goal. According to Sgt. Giroux, "Kids were bringing in duffel bags of contraband tobacco, and they were just selling that to their friends."

Congress should learn from the dismal experiences that other countries have had with steep price hikes. Congress has heard from government officials, Wall Street analysts, and law enforcement officials in other countries. Now it is our turn.

Four years ago, with the help of Congress and the White House, we initiated a program to put 100,000 additional police officers on the streets. We succeeded, and, for the past five years, crime in this country has declined significantly. What we do not need now is Federal legislation that will have the net effect of increasing the number of criminals on the streets, undercutting the achievements of law enforcement in this country and exploding the ranks and profits of organized crime. The understaffed and underfunded law enforcement authorities along our southern border in particular are not equipped to handle additional problems of this magnitude without significantly increasing Federal, State and local law enforcement resources.

The National Fraternal Order of Police supports the goal of reducing youth smoking in this country, but we need not create a huge law enforcement problem in the process, particularly when that problem is not addressed by providing law enforcement with the tools it needs to meet the challenge. If we can be of further assistance on this issue, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Gilbert G. Gallegos". The signature is fluid and cursive, with the first name "Gilbert" and last name "Gallegos" clearly distinguishable.

Gilbert G. Gallegos
National President

CONTROLLING TOBACCO DIVERSION/SMUGGLING UNDER COMPREHENSIVE TOBACCO LEGISLATION

The Administration has a strong interest in ensuring that the enactment of tobacco legislation will not result in either a domestic black market or the smuggling of tobacco into the United States. It is essential that comprehensive tobacco legislation contain provisions that will minimize the diversion and smuggling of tobacco from the legitimate chain of distribution. The Senate Commerce Committee bill, as improved by Senator McCain's Manager's Amendment, contains provisions that will ensure that the diversion and smuggling of tobacco can be effectively controlled and will not defeat the purposes of comprehensive tobacco legislation — protection of young people from the addictions of smoking.

A “closed” distribution system will effectively control tobacco smuggling.

The creation of a sound regulatory system — one that will “close” the distribution chain for tobacco products — will ensure that tobacco products flow through legitimate channels and that any leakages will be effectively policed. An effective system must have the following elements, all of which are included in the McCain bill:

- ▶ All entities in the distribution chain for tobacco products should be required to obtain a license. Manufacturers, importers, wholesalers, exporters and distributors should be required to obtain a Federal license. Licensing of retailers can be done at the State level. These licenses would be issued based on certain clearly specified criteria and could be revoked or suspended for specified violations. Those conducting business without a license would be subject to penalties.
- ▶ Licensed entities should only be authorized to sell tobacco products to other licensed entities or purchase tobacco products from other licensed entities. The sale or distribution to any entity that is unlicensed would be unlawful.
- ▶ Effective marking, branding and identification of packages of tobacco products intended for domestic distribution and for export should be required so that they may not be diverted or smuggled in circumvention of the legitimate channels of distribution.
- ▶ Record keeping requirements that will create an audit trail for distribution of tobacco products should be required.
- ▶ Any regulatory system should include penalty and administrative provisions that will deter would-be smugglers and will allow for effective, efficient and uniform enforcement of controls over distribution.

The fear of potential unlawful trafficking in tobacco products should not be a reason for failing to act on these issues because there are workable solutions. These solutions have been incorporated in the McCain legislation.

The regulatory system in the Commerce Committee bill parallels the system in place for alcohol.

The proposed licensing scheme for tobacco products is similar to the way the Federal Government has effectively regulated alcoholic beverages for over sixty years. It would incorporate the years of experience the Federal Government has in administering that system.

- ▶ The distribution chain for alcoholic beverages is a tightly regulated, closed distribution system that includes Federal licensing and regulation of producers, importers and wholesale distributors and effective State licensing and regulation (or in some cases actual control) of the distribution of alcoholic beverages at the wholesale and retail level.
- ▶ The system regulating alcoholic beverages imposes marking and labeling requirements as well as record keeping requirements.
- ▶ This system has allowed for commerce in alcoholic beverages while effectively curtailing illicit trafficking.

The real price of cigarettes is estimated to rise by \$1.10 per pack by 2003 under the Commerce Committee bill.

We estimate that the Commerce Committee bill will raise the real price of cigarettes by \$1.10 per pack by 2003. Given our projections of other underlying trends in cigarette prices, we estimate that this will result in an ultimate constant dollar price per pack of \$3.19 in that year (\$3.57 in 2003 dollars).

- ▶ These estimates have been validated by objective experts in this area. Professor Jeffrey Harris, an economist at MIT and a physician at the Massachusetts General Hospital, who is also one of the nation's leading authorities on tobacco taxation, testified on May 13th that the real price of cigarettes in 2003 will be \$3.38, quite close to our estimate of \$3.19.
- ▶ Some Wall Street analysts have claimed that the ultimate price per pack arising from this legislation could be in the range of \$5.00. But these estimates are inappropriate for a number of reasons:
 1. Some analysis assumes that the industry will pay the full amount of the youth look-back penalties in 2003, adding up to 40-45 cents to the price per pack. But our analysis, drawing on the scientific consensus in this area, is that the look-back targets will be easily met by 2003 with a \$1.10 price increase, so that there are likely not to be look-back payments over this period.

2. Some analysis assumes that firms will immediately pay the full amount of the liability cap (\$6.5 billion), and that this will be passed through to price, adding another roughly 40 cents to the price per pack. But given the history of tobacco litigation, there is no reason to think that the industry will be subject to this amount of judgments. Moreover, there is no reason to think that liability costs will be shared by all companies -- and thus that they will be passed on to price. We therefore assume that there is no incremental impact on the price of cigarettes from the liability cap.
3. Some projections also assume that the annual per-pack cost will be subject to a percentage mark-up by retailers and wholesalers. This contention is refuted by both expert analysis and previous empirical evidence; indeed, these mark-ups have actually fallen in the face of recent manufacturer price increases.
4. Some analysis includes projections about increases in State excise taxes, but these exceed historical and recent experience by a large margin.

The “Canadian Experience” is not an appropriate predictor of U.S. smuggling activity.

Many cite the problems Canada had with unlawful smuggling after it raised its excise taxes on tobacco products as support for the notion that the same will happen if comprehensive tobacco legislation similar to the Commerce Committee bill is enacted in the United States. There are several reasons to believe, however, that the Canadian experience is not an appropriate predictor of what would occur if tobacco legislation such as this bill is enacted.

- ▶ First, and most importantly, Canada did not have in place the type of effective licensing and enforcement regime that is contained in the Commerce Committee bill. This was borne out by testimony from David Sweanor, Senior Legal Counsel for the Smoking and Health Action Foundation in Canada, who stated before the Senate Judiciary Committee on April 30th that “[t]he Canadian government appeared unable or unwilling to tackle the sources of the criminal trade. Our government did not take on the tobacco industry over its ultimate supplying of product to the smugglers, and failed to implement effective anti-smuggling measures.” For example:
 1. Canada did not mark its cigarette packaging with “FOR EXPORT ONLY” labels until after smuggling became a significant problem.
 2. Canadian law enforcement had very few personnel devoted to tax evasion.
 3. The vast majority of enforcement with respect to Canadian taxes was done at the provincial level and there was little or no coordinated enforcement effort at the national or inter-provincial levels.

4. With the exception of manufacturers, Canada does not license the distribution chain for tobacco products.

Finally, Canada's laws on tax evasion did not contain strong penalties and there were inadequate resources to enforce those laws.

- ▶ Second, the size of the Canadian population, as well as its concentration along the border with the United States, makes the Canadian example not particularly instructive for the United States.
 1. Smuggling became a problem in Canada because of the ease of access to alternative markets. Eighty percent of the Canadian population lives within a two-hour drive of the U.S. border, placing it within easy reach of smugglers transporting cigarettes from the United States.
 2. The U.S. population is more dispersed, making the logistics of a nationwide black market in smuggled cigarettes more complex and expensive for organized smugglers. The dispersal of population also means that a U.S. resident is less likely than a Canadian resident to be able to cross the border routinely for casual cigarette smuggling.

Current laws are not adequate to prevent interstate diversion or smuggling.

The current level of tobacco smuggling is not a good indicator for determining the level of smuggling that will take place if the Commerce Committee bill is enacted.

- ▶ The distribution chain for tobacco products is currently not "closed." Current Federal laws regulating tobacco are aimed at collecting the Federal excise tax and assisting States in their efforts to collect excise taxes imposed on certain tobacco products, not at regulating the distribution of tobacco products and preventing smuggling.
- ▶ The Commerce Committee bill would enhance the Treasury Department's ability to assist State and local law enforcement to control the unlawful trafficking in tobacco products to avoid State tobacco taxes. The bill would broaden the scope of the Contraband Cigarette Trafficking Act (CCTA) to all tobacco products, lower the threshold amount for federal jurisdiction from 60,000 cigarettes to 30,000 cigarettes, eliminate the current loophole relating to states that do not require indicia of tax payment, and expand the forfeiture provisions of the CCTA so that proceeds traceable to violations will be subject to seizure and forfeiture.

- ▶ Also, the Federal Government has the expertise and experience to deal with imported contraband products and already has made a substantial investment in the introduction of non-intrusive inspection systems and other equipment needed to detect the smuggling of contraband. The organic nature of tobacco and the distinctive shape of cigarettes makes them readily detectable by equipment that the Federal Government currently has in place at the border.

Sufficient resources are necessary to prevent smuggling.

The Administration agrees that there must be sufficient resources available to assist law enforcement to prevent the diversion and smuggling of tobacco products to a black market. Effective and efficient regulation of the distribution chain for tobacco products will require adequate resources to ensure compliance through verification.

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"Educational child care for young children and after-school programs for school age kids are two of the most powerful weapons to fight crime and to protect kids from getting hooked on tobacco."

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In the hour after the school dismissal bell rings, turning five million latchkey kids out onto the street without adult supervision, violent juvenile crime triples. Teen sex also peaks in the after-school hours. Studies show that after-school programs dramatically and immediately cut juvenile crime — and cut in half kids' risk of smoking, drinking or using drugs.

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Are the Tobacco Companies really worried about crime? Raising the price of cigarettes to discourage teen smoking, and setting aside a fraction of the new tobacco revenues to enforce the law, can save millions of lives. But why stop there?

Educational child care and after-school programs help kids learn right from wrong, and grow into healthy, good neighbors instead of criminals or addicts of tobacco or drugs.

"Congress should strike a powerful blow *against crime and smoking* by earmarking at least a quarter of the new tobacco revenues to help little kids get preschool programs, and give older kids constructive activities after school."

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HEADLINE: Philip Morris is client of police lobbyist fighting tobacco bill

BYLINE: Jim Drinkard

DATELINE: WASHINGTON

BODY:

WASHINGTON -- A police lobbyist who enlisted law enforcement groups to warn that a proposed tobacco bill could create a black market in cigarettes also has another employer: cigarette manufacturer Philip Morris.

The lobbyist is Jim Pasco, a former Bureau of Alcohol, Tobacco and Firearms official who now is executive director of the Fraternal Order of Police (FOP) and is registered as an advocate for the 272,000-member organization.

But Pasco also operates his own lobbying firm, and for the past 2 1/2 years has had Philip Morris as a client. Lobbying records show that last year, the company paid him \$ 24,000, mostly, he said, for work he did for its Miller Brewing Co. subsidiary.

Pasco said he saw no conflict in his dual role. "We're not doing this for Philip Morris. I don't make the policy here. . . . Obviously, I'm concerned. I don't want it to be construed that I have a conflict."

Pasco's boss, FOP President Gilbert Gallegos, wrote a letter April 24 to Senate Judiciary Committee Chairman Orrin Hatch, R-Utah, warning that a Senate bill to increase cigarette prices could create "a thriving black market" and pose "huge problems for law enforcement."

Hatch's committee is holding a hearing on the subject today as lobbying on the issue intensifies. The full Senate is scheduled to take up tobacco legislation next week.

Late last month, Pasco approached Arthur Reddy, the top lobbyist for the International Union of Police Associations, and suggested that Reddy's group express its concerns to Hatch on the potential for cigarette smuggling. Reddy wrote a letter on April 28, making many of the same points as the FOP.

"Jim made most of the phone calls" to solicit the letters, said Reddy, who said he had been unaware of Pasco's connection to Philip Morris.

USA TODAY, May 12, 1998

Pasco also contacted a lobbyist for the National Troopers Coalition, a state-police organization that has placed the issue on the agenda for its meeting this week in McLean, Va., a Washington suburb. The FOP also prompted an April 27 letter from the Federal Law Enforcement Officers Association.

Letters from four police groups were posted on the Internet site of the tobacco companies that are opposing the Senate bill. The address is www.tobaccoresolution.com. The letters also formed the basis for a full-page ad that ran in national newspapers Monday. The ad asked, "If the police are afraid of tobacco legislation . . . How safe can it be?"

In the ad, excerpts from the police letters argued that increased cigarette taxes will create an incentive for an underground market by pushing up cigarette prices.

The police connection is an illustration of tobacco's broad reach in Washington. Other groups are helping make the industry's case:

-- The National Smokers Alliance, a grass-roots group formed with seed money from cigarette makers, is seeking to generate opposition to a large tobacco tax included in several proposed tobacco bills.

-- The American Civil Liberties Union has weighed in against restrictions on advertising. For the past decade, the ACLU has received annual grants from cigarette makers Philip Morris and R.J. Reynolds, but it denies that the money has influenced its policy positions.

Contributing: Wendy Koch

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MANAGER'S AMENDMENTS TO SMUGGLING PROVISIONS OF S.1415

- ▶ **The Manager's amendments to smuggling provisions of S.1415 establish a "closed" distribution system for tobacco products.**
 1. Under the manager's amendments, all entities in the distribution chain for tobacco products will be required to obtain a license. Manufacturers, importers, wholesalers, exporters and distributors will be required to obtain a Federal license. Licensing of retailers will be done at the State level. These licenses will be issued based on certain clearly specified criteria and could be revoked or suspended for specified violations. Those conducting business without a license will be subject to penalties.
 2. Licensed entities will only be authorized to sell tobacco products to other licensed entities or purchase tobacco products from other licensed entities. The sale or distribution to any entity that is unlicensed will be unlawful. Licensing the distribution chain coupled with adequate record keeping provisions will enhance the Federal Government's ability to detect and prevent unlawful diversion and smuggling.
- ▶ **The Manager's amendments to the smuggling provisions of S.1415 strengthen the labeling and marking requirements of the bill.**
 1. Effective marking, branding and identification of packages of tobacco products intended for domestic distribution and for export will be required so that they may not be diverted or smuggled in circumvention of the legitimate channels of distribution.
 2. The Manager's amendments to the original bill expand the scope of the labeling requirements to ensure that imported products are labeled with a chain of custody stamp. The amendments also ensure proper export marking.
- ▶ **The Manager's amendments to the smuggling provisions of S.1415 accomplish the goal of regulating the exportation of tobacco products without being onerous.**
 1. Under the Manager's amendments, the bill's original export bonding provision has been substituted with a reporting requirement for exporters. The information contained in these reports can be shared with foreign governments to assist them in dealing with the unlawful distribution of tobacco within their borders. Additionally, the Manager's amendments make it clear that persons engaged in the business of exporting tobacco products will need a license. Finally, a provision has been added making it unlawful for any person, other than a licensed exporter or licensed manufacturer, to ship, transport, receive or possess for resale tobacco products in packages marked for export.

2. The Manager's amendments also eliminate the original bill's total ban on commerce in tobacco products in FTZs. However, the amendments make it clear that persons who engage in the importation or exportation of tobacco products from FTZs will need a license. There is also a reporting requirement on persons exporting tobacco products from an FTZ on behalf of a licensed entity.
3. The Manager's amendments also eliminate the total ban on the sale of tobacco products in duty-free stores. The amendments make it clear that duty-free stores that engage in single transactions of over 30 packages of cigarettes (or the equivalent for other tobacco products) shall be treated as an exporter.

► **The Manager's amendments to the smuggling provisions of S.1415 strengthen the penalty provisions to further deter unlawful conduct.**

The Manager's amendments have added criminal penalties, civil penalties and forfeiture provisions that will deter unlawful conduct.

- **The Manager's amendments to the smuggling provisions of S.1415 that relate to the Contraband Cigarette Trafficking Act address a number of technical problems with the original proposed amendments. The Manager's amendments also incorporate the reporting requirements of the Jenkins Act into the CCTA to further assist the States in preventing the domestic diversion of tobacco products to avoid State taxes.**
- **Under the Manager's amendments, the regulatory system in the bill parallels the system in place for alcohol.**

1. The amendments create a licensing scheme for tobacco products which is similar to the way the Federal Government has effectively regulated alcoholic beverages for over sixty years. It would incorporate the years of experience the Federal Government has in administering that system.

2. For example:

- The distribution chain for alcoholic beverages is a tightly regulated, closed distribution system that includes Federal licensing and regulation of producers, importers and wholesale distributors and effective State licensing and regulation (or in some cases actual control) of the distribution of alcoholic beverages at the wholesale and retail level.
- The system regulating alcoholic beverages imposes marking and labeling requirements as well as record keeping requirements.
- This system has allowed for commerce in alcoholic beverages while effectively curtailing illicit trafficking.

TITLE IV _NATIONAL TOBACCO TRUST FUND

Subtitle B _General Spending Provisions

SEC. 451. ALLOCATION ACCOUNTS.

(a) State Litigation Settlement Account._

(1) In general._ There is established within the Trust Fund a separate account, to be known as the State Litigation Settlement Account. Of the net revenues credited to the Trust Fund under section 401(b)(1) for each fiscal year, 40 percent of the amounts designated for allocation under the settlement payments shall be allocated to this account. Such amounts shall be reduced by the additional estimated Federal expenditures that will be incurred as a result of State expenditures under section 452, which amounts shall be transferred to the miscellaneous receipts of the Treasury. If, after 10 years, the estimated 25-year total amount projected to received in this account will be different than amount than \$196,500,000,000, then beginning with the eleventh year the 40 percent share will be adjusted as necessary, to a percentage not in excess of 50 percent and not less than 30 percent, to achieve that 25-year total amount.

(2) Appropriation._ Amounts so calculated are hereby appropriated and available until expended and shall be available to States for grants authorized under this Act.

(3) Distribution formula._ The Secretary of the Treasury shall consult with the National Governors Association, the National Association of Attorneys General, and the National Conference of State Legislators on a formula for the distribution of amounts in the State Litigation Settlement Account and report to the Congress within 90 days after the date of enactment of this Act with recommendations for implementing a distribution formula.

(4) Use of funds ._ A State may use amounts received under this subsection as the State determines appropriate, consistent with the other provisions of this Act.

(5) Funds not available as Medicaid reimbursement._ Funds in the account shall not be available to the Secretary as reimbursement of Medicaid expenditures or considered as Medicaid overpayments for purposes of recoupment.

(b) Public Health Allocation Account._

(1) In general._ There is established within the trust fund a separate account, to be known as the Public Health Account. Twenty-two percent of the net revenues credited to the trust fund under section 401(b)(1) and all the net revenues credited to the trust fund under section 401(b)(3) shall be allocated to this account.

(2) Authorization of appropriations._ Amounts in the Public Health Account shall be available

to the extent and only in the amounts provided in advance in appropriations Acts, to remain available until expended, only for the purposes of:

(A) Cessation and other treatments._ Of the total amounts allocated to this account, not less than 25 percent, but not more than 35 percent are to be used to carry out smoking cessation activities under part D of title XIX of the Public Health Service Act, as added by title II of this Act.

(B) Indian health service._ Of the total amounts allocated to this account, not less than 3 percent, but not more than 7 percent are to be used to carry out activities under section 453.

(C) Education and prevention._ Of the total amounts allocated to this account, not less than 50 percent, but not more than 65 percent are to be used to carry out_

(i) counter-advertising activities under section 1982 of the Public Health Service Act as amended by this Act;

(ii) smoking prevention activities under section 223;

(iii) surveys under section 1991C of the Public Health Service Act, as added by this Act (but, in no fiscal year may the amounts used to carry out such surveys be less than 10 percent of the amounts available under this subsection); and

(iv) international activities under section 1132.

(D) Enforcement._ Of the total amounts allocated to this account, not less than 17.5 percent nor more than 22.5 percent are to be used to carry out the following:

(i) Food and Drug Administration activities.

(I) The Food and Drug Administration shall receive not less than 15 percent of the funds provided in subparagraph (D) in the first fiscal year beginning after the date of enactment of this Act, 35 percent of such funds in the second year beginning after the date of enactment, and 50 percent of such funds for each fiscal year beginning after the date of enactment, as reimbursements for the costs incurred by the Food and Drug Administration in implementing and enforcing requirements relating to tobacco products.

(II) No expenditures shall be made under subparagraph (D) during any fiscal year in which the annual amount appropriated for the Food and Drug Administration is less than the amount so appropriated for the prior fiscal year.

(ii) State retail licensing activities under section 251.

(iii) Anti-Smuggling activities under section 1141.

(c) Health and Health-related Research Allocation Account._

S. 1415 Manager's Amdt.

Title 11 -- Subtitle B _Anti-smuggling Provisions

SEC. 1131. DEFINITIONS.

(a) Incorporation of Certain Definitions. _ In this subtitle, the terms ``cigar'', ``cigarette'', ``person'', ``pipe tobacco'', ``roll-your-own tobacco'', ``smokeless tobacco'', ``State'', ``tobacco product'', and ``United States'', shall have the meanings given such terms in sections 5702(a), 5702(b), 7701(a)(1), 5702(o), 5702(n)(1), 5702(p), 3306(j)(1), 5702(c), and 3306(j)(2) respectively of the Internal Revenue Code of 1986.

(b) Other Definitions. _ In this subtitle:

(1) Affiliate. _ The term ``affiliate'' means any one of 2 or more persons if 1 of such persons has actual or legal control, directly or indirectly, whether by stock ownership or otherwise, of other or others of such persons, and any 2 or more of such persons subject to common control, actual or legal, directly or indirectly, whether by stock ownership or otherwise.

(2) Interstate or Foreign Commerce. _ The term ``interstate or foreign commerce'' means any commerce between any State and any place outside thereof, or commerce within any Territory or the District of Columbia, or between points within the same State but through any place outside thereof.

(3) Secretary. _ The term ``Secretary'' means the Secretary of the Treasury.

(4) Package. _ The term ``package'' means the innermost sealed container irrespective of the material from which such container is made, in which a tobacco product is placed by the manufacturer and in which such tobacco product is offered for sale to a member of the general public.

(5) Retailer. _ The term ``retailer'' means any dealer who sells, or offers for sale, any tobacco product at retail. The term ``retailer'' includes any duty free store that sells, offers for sale, or otherwise distributes at retail in any single transaction 30 or less packages, or its equivalent for other tobacco products.

(6) Exporter. _ The term ``exporter'' means any person engaged in the business of exporting tobacco products from the United States for purposes of sale or distribution; and the term ``licensed exporter'' means any such person licensed under the provisions of this subtitle. Any duty-free store that sells, offers for sale, or otherwise distributes to any person in any single transaction more than 30 packages of cigarettes, or its equivalent for other tobacco products as the Secretary shall by regulation prescribe, shall be deemed an ``exporter'' under this subtitle.

(7) Importer. _ The term ``importer'' means any person engaged in the business of importing tobacco products into the United States for purposes of sale or distribution; and the term ``licensed importer'' means any such person licensed under the provisions of this subtitle.

(8) Intentionally._ The term ``intentionally" means doing an act, or omitting to do an act, deliberately, and not due to accident, inadvertence, or mistake. An intentional act does not require that a person knew that his act constituted an offense.

(9) Manufacturer._ The term ``manufacturer" means any person engaged in the business of manufacturing a tobacco product for purposes of sale or distribution, except that such term shall not include a person who manufactures less than 30,000 cigarettes, or its equivalent as determined by regulations, in any twelve month period;; and the term ``licensed manufacturer" means any such person licensed under the provisions of this subtitle, except that such term shall not include a person who produces cigars, cigarettes, smokeless tobacco, or pipe tobacco solely for his own personal consumption or use.

(10) Wholesaler._ The term ``wholesaler" means any person engaged in the business of purchasing tobacco products for resale at wholesale, or any person acting as an agent or broker for any person engaged in the business of purchasing tobacco products for resale at wholesale, and the term ``licensed wholesaler" means any such person licensed under the provisions of this subtitle.

SEC. 1132. TOBACCO PRODUCT LABELING REQUIREMENTS.

(a) In General._ It is unlawful for any person to sell, or ship or deliver for sale or shipment, or otherwise introduce in interstate or foreign commerce, or to receive therein, or to remove from Customs custody for use, any tobacco product unless such product is packaged and labeled in conformity with this section.

(b) Labeling._

(1) Identification._ Not later than 1 year after the date of enactment of this Act, the Secretary shall promulgate regulations that require each manufacturer or importer of tobacco products to legibly print a unique serial number on all packages of tobacco products manufactured or imported for sale or distribution. The serial number shall be designed to enable the Secretary to identify the manufacturer or importer of the product, and the location and date of manufacture or importation. The Secretary shall determine the size and location of the serial number.

(2) Marking requirements for exports._ Each package of a tobacco product that is exported shall be marked for export from the United States. The Secretary shall promulgate regulations to determine the size and location of the mark and under what circumstances a waiver of this paragraph shall be granted.

(c) Prohibition on Alteration._ It is unlawful for any person to alter, mutilate, destroy, obliterate, or remove any mark or label required under this subtitle upon a tobacco product in or affecting commerce, except pursuant to regulations of the Secretary authorizing relabeling for purposes of compliance with the requirements of this section or of State law.

SEC. 1133. TOBACCO PRODUCT LICENSES.

(a) In General._ Not later than 1 year after the date of enactment of this Act, the Secretary shall

establish a program under which tobacco product licenses are issued to manufacturers, importers, exporters, and wholesalers of tobacco products.

(b)(1) Eligibility._ A person is entitled to a license unless the Secretary finds_

(A) that such person has been previously convicted of a Federal crime relating to tobacco, including the taxation thereof;

(B) that such person has, within 5 years prior to the date of application, been previously convicted of any felony under Federal or State law; or

(C) that such person is, by virtue of his business experience, financial standing, or trade connections, not likely to maintain such operations in conformity with Federal law.

(2) Conditions._ The issuance of a license under this section shall be conditioned upon the compliance with the requirements of this subtitle, all Federal laws relating to the taxation of tobacco products, chapter 114 of title 18, United States Code, and any regulations issued pursuant to such statutes.

(c) Revocation, Suspension, and Annulment._ The program established under subsection (a) shall permit the Secretary to revoke, suspend, or annul a license issued under this section if the Secretary determines that the terms or conditions of the license have not been complied with. Prior to any action under this subsection, the Secretary shall provide the licensee with due notice and the opportunity for a hearing.

(d) Records and Audits._ The Secretary shall, under the program established under subsection (a), require all license holders to keep records concerning the chain of custody of the tobacco products that are the subject of the license and make such records available to the Secretary for inspection and audit.

(e) Retailers._ This section does not apply to retailers of tobacco products, except that retailers shall maintain records of receipt, and such records shall be available to the Secretary for inspection and audit. An ordinary commercial record or invoice will satisfy this requirement provided such record shows the date of receipt, from whom such products were received and the quantity of tobacco products received.

SEC. 1134. PROHIBITIONS.

(a) Importation and Sale._ It is unlawful, except pursuant to a license issued by the Secretary under this subtitle_

(1) to engage in the business of importing tobacco products into the United States; or

(2) for any person so engaged to sell, offer, or deliver for sale, contract to sell, or ship, in or affecting commerce, directly or indirectly or through an affiliate, tobacco products so imported.

(b) Manufacture and sale._ It is unlawful, except pursuant to a license issued by the Secretary under this subtitle_

(1) to engage in the business of manufacturing, packaging or warehousing tobacco products; or

(2) for any person so engaged to sell, offer, or deliver for sale, contract to sell, or ship, in or affecting commerce, directly or indirectly or through an affiliate, tobacco products so manufactured, packaged, or warehoused.

(c) Wholesale._ It is unlawful, except pursuant to a license issued by the Secretary under this subtitle_

(1) to engage in the business of purchasing for resale at wholesale tobacco products, or, as a principal or agent, to sell, offer for sale, negotiate for, or hold out by solicitation, advertisement, or otherwise as selling, providing, or arranging for, the purchase for resale at wholesale of tobacco products; or

(2) for any person so engaged to receive or sell, offer or deliver for sale, contract to sell, or ship, in or affecting commerce, directly or indirectly or through an affiliate, tobacco products so purchased.

(d) Exportation._

(1) In general._ It is unlawful, except pursuant to a license issued by the Secretary under this subtitle_

(A) to engage in the business of exporting tobacco products from the United States; or

(B) for any person so engaged to sell, offer, or deliver for sale, contract to sell, or ship, in or affecting commerce, directly or indirectly or through an affiliate, tobacco products received for export.

(2) Report._ Prior to exportation of tobacco products from the United States, the exporter shall submit a report in such manner and form as the Secretary may by regulation prescribe to enable the Secretary to identify the shipment and assure that it reaches its intended destination.

(3) Agreements with foreign governments._ The Secretary is authorized to enter into agreements with foreign governments to exchange or share information contained in reports received from exporters of tobacco products if the Secretary believes that such an agreement will assist in_

(A) insuring compliance with any law or regulation enforced or administered by an agency of the United States; or

(B) preventing or detecting violation of the laws or regulations of a foreign government with

which the Secretary has entered into an agreement.

Such information may be exchanged or shared with a foreign government only if the Secretary obtains assurances from such government that the information will be held in confidence and used only for the purpose of preventing or detecting violations of the laws or regulations of such government or the United States and, provided further that no information may be exchanged or shared with any government that has violated such assurances.

(e) Unlawful Acts._

(1) Unlicensed receipt or delivery._ It is unlawful for any licensed importer, licensed manufacturer, or licensed wholesaler intentionally to ship, transport, deliver or receive any tobacco products from or to any person other than a person licensed under this chapter or a retailer licensed under the provisions of this Act, except a licensed importer may receive foreign tobacco products from a foreign manufacturer or a foreign distributor that have not previously entered the United States.

(2) Receipt of re-imported goods._ It is unlawful for any person, except a licensed manufacturer or a licensed exporter to receive any tobacco products that have previously been exported and returned to the United States.

(3) Delivery by exporter._ It is unlawful for any licensed exporter intentionally to ship, transport, sell or deliver for sale any tobacco products to any person other than a licensed manufacturer or foreign purchaser.

(4) Shipment of export-only goods._ It is unlawful for any person other than a licensed exporter intentionally to ship, transport, receive or possess, for purposes of resale, any tobacco product in packages marked ``FOR EXPORT FROM THE UNITED STATES," other than for direct return to the manufacturer or exporter for re-packing or for re-exportation.

(5) False statements._ It is unlawful for any licensed manufacturer, licensed exporter, licensed importer, or licensed wholesaler to make intentionally any false entry in, to fail willfully to make appropriate entry in, or to fail willfully to maintain properly any record or report that he is required to keep as required by this chapter or the regulations promulgated thereunder.

(h) Effective date._ The provisions of this section shall become effective on the date that is 365 days after the date of enactment of this Act.

SEC. 1135. LABELING OF PRODUCTS SOLD BY NATIVE AMERICANS.

The Secretary, in consultation with the Secretary of the Interior, shall promulgate regulations that require that each package of a tobacco product that is sold on an Indian reservation (as defined in section 403(9) of the Indian Child Protection and Family Violence Prevention Act (25 U.S.C. 3202(9)) be labeled as such. Such regulations shall include requirements for the size and location of the label.

SEC. 1136. LIMITATION ON ACTIVITIES INVOLVING TOBACCO PRODUCTS IN FOREIGN TRADE ZONES.

(a) Manufacture of tobacco products in Foreign Trade Zones._ No person shall manufacture a tobacco product in any foreign trade zone, as defined for purposes of the Act of June 18, 1934 (19 U.S.C. 81a et seq.).

(b) Exporting or importing from or into a Foreign Trade Zone._ Any person exporting or importing tobacco products from or into a foreign trade zone, as defined for purposes of the Act of June 18, 1934 (19 U.S.C. 81a et seq.), shall comply with the requirements provided in this subtitle. In any case where the person operating in a foreign trade zone is acting on behalf of a person licensed under this subtitle, qualification as an importer or exporter will not be required, if such person complies with the requirements set forth in section 1134(d)(2) and (3) of this subtitle.

SEC. 1137. JURISDICTION; PENALTIES; COMPROMISE OF LIABILITY.

(a) Jurisdiction._ The District Courts of the United States, and the United States Court for any Territory, of the District where the offense is committed or of which the offender is an inhabitant or has its principal place of business, are vested with jurisdiction of any suit brought by the Attorney General in the name of the United States, to prevent and restrain violations of any of the provisions of this subtitle.

(b) Penalties._ Any person violating any of the provisions of this subtitle shall, upon conviction, be fined as provided in section 3571 of title 18, United States Code, imprisoned for not more than 5 years, or both.

(c) Civil Penalties._ The Secretary may, in lieu of referring violations of this subtitle for criminal prosecution, impose a civil penalty of not more than \$10,000 for each offense.

(d) Compromise of Liability._ The Secretary is authorized, with respect to any violation of this subtitle, to compromise the liability arising with respect to a violation of this subtitle_

(1) upon payment of a sum not in excess of \$10,000 for each offense, to be collected by the Secretary and to be paid into the Treasury as miscellaneous receipts; and

(2) in the case of repetitious violations and in order to avoid multiplicity of criminal proceedings, upon agreement to a stipulation, that the United States may, on its own motion upon 5 days notice to the violator, cause a consent decree to be entered by any court of competent jurisdiction enjoining the repetition of such violation.

(e) Forfeiture._

(1) The Secretary may seize and forfeit any conveyance, tobacco products, or monetary instrument (as defined in section 5312 of title 31, United States Code) involved in a violation of this subtitle, or any property, real or personal, which constitutes or is derived from proceeds

traceable to a violation of this chapter. For purposes of this paragraph, the provisions of subsections (a)(2), (b)(2), and (c) through (j) of section 981 of title 18, United States Code, apply to seizures and forfeitures under this paragraph insofar as they are applicable and not inconsistent with the provisions of this subtitle.

(2) The court, in imposing sentence upon a person convicted of an offense under this subtitle, shall order that the person forfeit to the United States any property described in paragraph (1). The seizure and forfeiture of such property shall be governed by subsections (b), (c), and (e) through (p) of section 853 of title 21, United States Code, insofar as they are applicable and not inconsistent with the provisions of this subtitle.

SEC. 1138. AMENDMENTS TO THE CONTRABAND CIGARETTE TRAFFICKING ACT.

(a) Definitions. _ Section 2341 of title 18, United States Code, is amended _

(1) by striking ``60,000" and inserting ``30,000" in paragraph (2); (2) by inserting after ``payment of cigarette taxes," in paragraph (2) the following: ``or in the case of a State that does not require any such indication of tax payment, if the person in possession of the cigarettes is unable to provide any evidence that the cigarettes are moving legally in interstate commerce,";

(3) by striking ``and" at the end of paragraph (4);

(4) by striking ``Treasury." in paragraph (5) and inserting ``Treasury;"; and

(5) by adding at the end thereof the following:

``(6) the term `tobacco product' means cigars, cigarettes, smokeless tobacco, roll your own and pipe tobacco (as such terms are defined in section 5701 of the Internal Revenue Code of 1986); and

``(7) the term `contraband tobacco product' means _

``(A) a quantity in excess of 30,000 of any tobacco product that is manufactured, sold, shipped, delivered, transferred, or possessed in violation of Federal laws relating to the distribution of tobacco products; and

``(B) a quantity of tobacco product that is equivalent to an excess of 30,000 cigarettes, as determined by regulation, which bears no evidence of the payment of applicable State tobacco taxes in the State where such tobacco products are found, if such State requires a stamp, impression, or other indication to be placed on packages or other containers of product to evidence payment of tobacco taxes, or in the case of a State that does not require any such indication of tax payment, if the person in possession of the tobacco product is unable to provide any evidence that the tobacco products are moving legally in interstate commerce and which are in the possession of any person other than a person defined in paragraph (2) of this section.".

(b) Unlawful Acts. _ Section 2342 of title 18, United States Code, is amended _

(1) by inserting ``or contraband tobacco products" before the period in subsection (a); and

(2) by adding at the end thereof the following:

``(c) It is unlawful for any person_

``(1) knowingly to make any false statement or representation with respect to the information required by this chapter to be kept in the records or reports of any person who ships, sells, or distributes any quantity of cigarettes in excess of 30,000 in a single transaction, or tobacco products in such equivalent quantities as shall be determined by regulation; or

``(2) knowingly to fail or knowingly to fail to maintain distribution records or reports, alter or obliterate required markings, or interfere with any inspection as required with respect to such quantity of cigarettes or other tobacco products.

``(d) It shall be unlawful for any person knowingly to transport cigarettes or other tobacco products under a false bill of lading or without any bill of lading."

(d) Recordkeeping._ Section 2343 of title 18, United States Code, is amended_

(1) by striking ``60,000" in subsection (a) and inserting ``30,000";

(2) by inserting after ``transaction" in subsection (a) the following: ``or, in the case of other tobacco products an equivalent quantity as determined by regulation," ;

(3) by striking the last sentence of subsection (a) and inserting the following:

``Except as provided in subsection (c) of this section, nothing contained herein shall authorize the Secretary to require reporting under this section.";

(4) by striking ``60,000" in subsection (b) and inserting ``30,000";

(5) by inserting after ``transaction" in subsection (b) the following: ``or, in the case of other tobacco products an equivalent quantity as determined by regulation,"; and

(6) by adding at the end thereof the following:

``(c)(1) Any person who ships, sells, or distributes for resale tobacco products in interstate commerce, whereby such tobacco products are shipped into a State taxing the sale or use of such tobacco products or who advertises or offers tobacco products for such sale or transfer and shipment shall_

``(A) first file with the tobacco tax administrator of the State into which such shipment is made or in which such advertisement or offer is disseminated, a statement setting for the persons name, and trade name (if any), and the address of the persons principal place of business and of any

other place of business; and

“(B) not later than the 10th day of each month, file with the tobacco tax administrator of the State into which such shipment is made a memorandum or a copy of the invoice covering each and every shipment of tobacco products made during the previous month into such State; the memorandum or invoice in each case to include the name and address of the person to whom the shipment was made, the brand, and the quantity thereof.

“(2) The fact that any person ships or delivers for shipment any tobacco products shall, if such shipment is into a State in which such person has filed a statement with the tobacco tax administrator under paragraph (1)(A) of this subsection, be presumptive evidence that such tobacco products were sold, shipped, or distributed for resale by such person.

“(3) For purposes of this subsection_

“(A) the term ‘use’ includes consumption, storage, handling, or disposal of tobacco products; and

“(B) the term ‘tobacco tax administrator’ means the State official authorized to administer tobacco tax laws of the State.”.

(e) Penalties._ Section 2344 of title 18, United States Code, is amended_

(1) by inserting “or (c)” in subsection (b) after “section 2344(b)”;

(2) by inserting “or contraband tobacco products” after “cigarettes” in subsection (c); and

(3) by adding at the end thereof the following:

“(d) Any proceeds from the unlawful distribution of tobacco shall be subject to seizure and forfeiture under section 981(a)(1)(C).”.

(f) Repeal of Federal Law Relating to Collection of State Cigarette Taxes._ The Act of October 19, 1949, (63 Stat. 884; 15 U.S.C. 375-378) is hereby repealed.

SEC. 1139. FUNDING.

(a) License Fees._ The Secretary may, in the Secretary's sole discretion, set the fees for licenses required by this chapter, in such amounts as are necessary to recover the costs of administering the provisions of this chapter, including preventing trafficking in contraband tobacco products.

(b) Disposition of Fees._ Fees collected by the Secretary under this chapter shall be deposited in an account with the Treasury of the United States that is specially designated for paying the costs associated with the administration or enforcement of this chapter or any other Federal law relating to the unlawful trafficking of tobacco products. The Secretary is authorized and directed to pay out of any funds available in such account any expenses incurred by the Federal

Government in administering and enforcing this chapter or any other Federal law relating to the unlawful trafficking in tobacco products (including expenses incurred for the salaries and expenses of individuals employed to provide such services). None of the funds deposited into such account shall be available for any purpose other than making payments authorized under the preceding sentence.

SEC. 1140. RULES AND REGULATIONS.

The Secretary shall prescribe all needful rules and regulations for the enforcement of this chapter, including all rules and regulations that are necessary to ensure the lawful distribution of tobacco products in interstate or foreign commerce.

THE WHITE HOUSE
WASHINGTON

Tobacco Settlement /Law Enforcement Meeting
Roosevelt Room
3-4:00 p.m., May 18, 1998

White House Staff

Rahm Emanuel, Senior Adviser to the President
Cynthia Rice, Special Assistant to the President for Domestic Policy
Jose Cerda, Special Assistant to the President for Domestic Policy

Treasury Officials

Neal Wolin, Deputy General Counsel, Treasury
John McGaw, Director, Bureau of Alcohol, Tobacco and Firearms
Doug Browning, Acting Deputy Commissioner, U.S. Customs

Law Enforcement Organizations

Mark Spurrier, Legislative Director, Major Cities Chiefs
Richard Gallo, President, Federal Law Enforcement Officers Assoc. (FLEOA)
Walter Wallmark, Exec. Vice Pres., Federal Law Enforcement Officers Assoc. (FLEOA)
Mark Spaulding, Legislative Rep., Federal Law Enforcement Officers Assoc. (FLEOA)
Judith Conte, Federal Law Enforcement Officers Assoc. (FLEOA)
Dan Rosenblatt, Exec. Dir., International Assoc. of Chiefs of Police (IACP)
Gene Voegtlin, Legis. Counsel, International Assoc. of Chiefs of Police (IACP)
Jim Pasco, Executive Director, Fraternal Order of Police (FOP)
Chris Donnellan, Legis. Director, International Brotherhood of Police Officers (IBPO)
Richard Roberts, International Union of Police Associations (IUPA)
Melissa Trotter, International Union of Police Associations (IUPA)
Jody Hedeman, Comm. Dir., National Association of Police Organizations (NAPO)
Robert Stewart, Exec. Dir., National Org. of Black Law Enf. Executives (NOBLE)
Sheriff Pat Sullivan, Leg. Chairman, National Sheriffs' Association (NSA)
Dean Kueter, Legis. Rep., National Sheriffs' Association (NSA)
Johnny Hughes, Representative, National Troopers Coalition (NTC)
Chuck Wexler, Executive Director, Police Executive Research Forum (PERF)
Eugenie Gratto, Police Executive Research Forum (PERF)
Hubert Williams, President, Police Foundation

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
002. email	Waves to Essence P. Washington re: WAVES Confirmation [Personally Identifiable Information] [partial] (2 pages)	05/18/1998	b(7)(C), b(7)(E), b(7)(F), b(6)

COLLECTION:

Clinton Presidential Records
Domestic Policy Council
Jose Cerda
OA/Box Number: 17180

FOLDER TITLE:

Tobacco: Police Groups

2016-0931-S

rc2329

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]



WAVES_CONF @ PMDF.EOP.GOV
05/18/98 01:05:46 PM

Record Type: Record

To: Essence P. Washington/OPD/EOP

cc:

Subject: WAVES Confirmation

ADDRESSEES: ESSENCE P. WASHINGTON
SUBJECT: CONFIRMATION: APPT. REQUEST FOR WASHINGTON, ESSENCE
FROM: WAVES OPERATIONS CENTER - ACO: (b)(6), (b)(7)c, (b)(7)e, (b)(7)f
Date: 05-18-1998
Time: 13:02:33

[002]

This message serves as confirmation of an appointment for the visitors listed below.

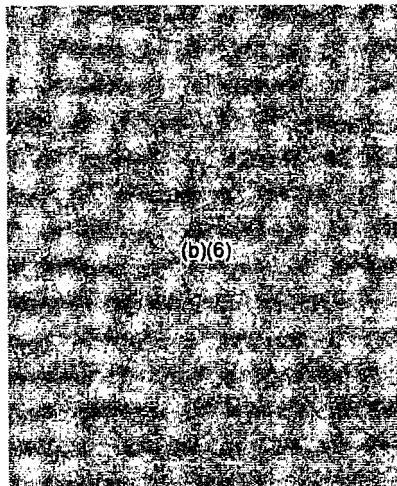
Please note: Appointment confirmation for visitor names you requested and not listed below may be forthcoming.

Appointment With: WASHINGTON, ESSENCE
Appointment Date: 5/18/98
Appointment Time: 3:00:00 PM
Appointment Room: WW
Appointment Building: WH
Appointment Requested by: WASHINGTON ESSENCE
Phone Number of Requestor: 67732
WAVES APPOINTMENT NUMBER: U59658

If you have any questions regarding this appointment, please call the WAVES Center at 456-6742 and have the appointment number listed above available to the Access Control Officer answering your call.

TOTAL NUMBER OF NAMES SUBMITTED FOR ENTRY : 22
TOTAL NUMBER OF NAMES OF CLEARED FOR ENTRY: 21

BRUNER, NANCY
CONTE, JUDITH
DONNELLAN, CHRISTOPHER
ENGLEMAN, JAMES
GALLO, RICHARD
GRATTO, EUGENIA
HEDEMAN, JOANNE
HUGHES, JOHN
KUETER, DEAN
ROBERTS, RICHARD
ROSENBLATT, DANIEL
SPAULDING, MARK
SPURRIER, MARK
STEWART, ROBERT
SULLIVAN, PATRICK



TROTTER, MELISSA
VOEGLIN, EUGENE
WALLMARK, WALTER
WEXLER, SHERWIN
WOLIN, NEAL
WOODWORTH, MICHAEL

