

NEW YORK CITY COUNCIL
HEARING ON PROPOSED LOCAL LAW INTRO.818
THE TOBACCO PRODUCT REGULATION ACT
DECEMBER 17, 1991

The hearing for Intro.818 was held today before the New York City Council's health committee. Chairman Lisa, and council members Fields, Michaels, Maloney, Povman, Cerullo, Wooten, Robles, and Harrison were present. Chairman Lisa began by boasting that New York City was the first in the nation to be "politically correct" in passing the Clean Indoor air Act and again is in the forefront with the proposed counter ad legislation. He stated that the tobacco industry spends 3 1/2 billion dollars on advertizing each year to sell death and that the council is attempting to ensure that citizens get the other side of the picture with this legislation.

Consumer Affairs Commissioner Mark Green and Andrew Goodman, Assistant Commissioner for the Department of Health, began the testimony as a team. They both cited a litany of facts and figures as to the amount of deaths attributed to smoking in the city of New York and the billions of dollars smoking costs the city each year. They both cited what I found to be an amusing little gem and was, not surprisingly, repeated by every person who followed and testified in support of this legislation. This gem was a statement that the deaths caused by cigarettes each year amount to more than the deaths attributed to traffic accidents, fires, aids, drug use, airplane crashes, and murders combined. I guess what I found so amusing was that they left out radon. Anyway, Green went on to slam the tobacco industry and claim that we are purposely targeting children. He spent a great deal of time attacking old Joe and RJR in particular. He referred to the New England Journal of medicine's study that children recognize the camel ad as easily as they recognize Mickey Mouse, another theme that was repeated throughout the day by the anti's, as proof positive that tobacco advertizing causes children to smoke.

Oddly enough as part of their testimony, Green had with him an attorney from the city's law department who basically said that the legislation would not withstand a legal challenge due to the "serious legal questions the legislation's intent raises. She referred to the constitutionality as well as the applicability to the Metropolitan Transit Authority and the Transit Authority, two autonomous bodies that have sole discretion as to the content of ads placed on their property. Additionally she stated that the legislation is unclear about who is responsible for paying for the public health messages and said that it would be difficult to determine how many ads the tobacco companies have in total. The only thing she said that could be remotely close to Green's thinking was that the law department commended the council for their intent. Why Green included her testimony with his is

unclear. It was reminiscent of watching Moira Lasch call Ted Kennedy to the stand as a witness for the prosecution.

Chairman Lisa asked the attorney for her opinion on police powers and referred to recent law passed by the council prohibiting assault rifles in the city and empowering the city to confiscate such weapons. His point was that while such a law could be deemed unconstitutional, the city invoked police powers to protect the good and well being of the citizens of New York. His question to her was that in the interest of public health could they not go ahead and pass this law anyway. She of course answered yes.

Green was immediately followed by our friends at TI. I thought they did a fair job of getting across the message that the tobacco industry does not want children smoking, either. I thought they missed the boat in refuting the New England Journal study and making a case that the study did not prove that advertisements affect smoking initiation. This study was repeated throughout the day by the anti's.

Councilwoman Maloney asked Brennan Dawson if she thought it was fair to allow tobacco advertizing on billboards and such when they were dangerous enough to ban from T.V. and radio. Dawson countered with the fact that T.V. and radio bans were volunteered by the industry and are regulated in a different way than print ads. Maloney then very smugly asked Dawson if she thought tobacco was a legal product and Dawson conceded before the T.V. cameras that it was not, because it is illegal for those under 18 to smoke. This concession opened the way for Maloney to cite other additional ways cigarettes are illegal products such as smoking on airplanes, in vending machines, and indoors in New York City. She then finished up by asking why it would be appropriate to allow advertizing of an illegal product.

A representative from Assemblyman Pete Grannis' office followed TI. Grannis is the biggest Anti in the state legislature. He was followed by a representative from the United Federation of Teachers Union who spoke out against the legislation and its provision to ban smoking on school property. While she felt it is correct to ban kids from smoking, the adults should be permitted to do so, and any regulations regarding smoking by teachers should be part of a collective bargaining process and not something that is legislated.

Unlike the last hearing I attended, there seemed to be an effort to balance the testimony between pro and con and the order of their appearance. Past hearings have had the anti's stacked in the first half and those on our side left to testify last when the hearing chambers have been all but vacated. I mentioned in a recent weekly the fact that the council instructed callers seeking information on these bills to call Joe Cherner to find out about hearing notices. Following this revelation, I had group members call and write the council to complain about their obvious bias and the lack of fair treatment for their side. I'd like to think they got the message.

I had 2 partisans, a retailer, and a wholesaler testify. The third partisan ran out of time and could only submit her written testimony. I would like to commend Bob Hensley and Coley Hudgins for their efforts in helping me pull the testimony together. It was a true test of the service bureau when we arrived today to find the council requesting written testimony for the record. I had given my people prepared testimony but we had all scribbled notes on them during our pre hearing meeting. A half hour into the hearing I called Coley and asked if he could retype the testimony as an official written statement for the committee complete with addresses of our partisans. 1 hour later our people had clean and properly prepared testimony to submit to the council.

The following people and organizations testified:

+ in support of Intro.818 - in opposition to Intro.818

Sierra Club +

NY Association of Food Merchants - (they did not appear but PM entered their testimony into the record.

NY Association of Convenience Stores-

Advertisizing Agency's-

Union of Operating Engineers-

NYPIRG +

Sloan Kettering Cancer Institute+

Gannett Transit-

American Advertisizing Federation-

American Association of Advertisers-

Alliance for Smoke Free Air+

Reverend Calvin Butts+

various school children+

Yes, I saved the best for last, JOE CHERNER

He gave is usual tap dance but scored big points with his video showing the camel club promotions. It created quite a commotion and was very effective for their side. It showed young adults dancing, smoking and having their pictures taken with the camel. Cherner explained that there are video contests where you get to make a video with the smooth character. He displayed the free T-shirts with ole Joe on the back that are given out free of charge. He also stated that these promotions are held where young kids hang out. This statement was followed by loud gasps in the audience. Chairman Lisa called for order and asked if there was anyone from R.J. Reynolds in the audience who could testify to the fact that these clubs are held in New York. No one said a word, not even TI. During a break however John O'Conner from TI told Lisa that these promo's are held in bars where you must be 21 years to enter. Lisa said he would like something in writing from RJR on this since they were not there to testify. A letter or a prepared statement must reach Lisa's office by Thursday morning as he will leave the record open until 1:30 p.m. on this bill. I gave the particulars to Maura Payne.

51711 5845

I spoke with both Lisa and his counsel after the hearing and he said it was very important that RJR comment on the video. The bill will change numbers as of the first of the year and additions and changes can be made at that point. I was told that is entirely possible that a ban on promotions of this kind could be added, or brought in under a separate bill.

Cherner also had his young infant daughter with him and he held her up for the cameras and the audience to various shrieks and ahs from the anti's in the audience as he stated that he is fighting the tobacco companies for his child and the children of fellow citizens so that they will not be Addicted to tobacco.

Speaking of children, Rev. Butts had about 250 of them marching and carrying signs outside city hall that read STOP TEENAGE ADDICTION TO TOBACCO. Some carried STOP signs. All were black. Additionally the Sierra Club brought some kids along to testify with them. The kids had put together a map of a mile radius of the school. The kids were asked to go out and spot places where they have seen tobacco ads. They then pin pointed them on the map. I can't recall the total number they said they saw but it was significant.

Later in the afternoon another child testified and had her own map only it showed 500 camel ads within one block of her school.

We were outmatched in testimony. I worked with Sharon Portnoy of PM in getting people to testify, and as of Monday she was confident that we had all bases covered. She even told me my people might not get to testify because there were too many people. However most of the folks she had lined up including Gannett Transit did not show and just entered something into the record. It was clearly a one sided hearing with Lisa and the anti's exchanging pleasantries throughout the testimony and the day. Lisa is leaving the council to become a judge.

There are two more hearings scheduled for this proposal in January. I am told that the other ad restriction bills currently pending are all but dead. This info I got from TI.

The hearing ended at 2:30 and many people did not get a chance to speak. They can submit testimony by Thursday. I think it would be worthwhile to find out from government relations who on the committee is undecided and target them for phone calls and letters from our partisans. The anti's have already started doing this for their side.