

Larry Sykes

CONFIDENTIAL

EYES ONLY FOR ADDRESSEE

— ^{with} ~~Genetic~~ Factor in certain human disease
all kinds diet genetic make-up

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revised draft. 11/3/93. JGR

draft Ellen Merlo Trade Press Briefing

Presentation to cover four areas:

- Some basic factors that are driving anti-tobacco legislation.
- The main issues we will face next year and beyond.
- What actions we're taking on those issues.
- What we can expect the social environment to be for smokers in the 21st century.

BASIC FACTORS DRIVING ANTI-TOBACCO LEGISLATION.

1. The EPA. The Environmental Protection Agency report of January 7, 1993 which alleged that ambient smoke has an impact on the health of non-smokers. Since the release of that report, proposals to ban workplace and public smoking have increased dramatically, and in almost every case, the EPA report is cited as justification for the proposed bans.

2. State Budget Crunches. Practically every state in the union has some kind of budget problem as a result of the recession and the anti-tax mood of the electorate. Tobacco taxes are seen as a fast, easy way to raise cigarette taxes at little political cost.

3. The social-cost argument. Anti-smoking activists are trying, in some cases successfully, to link cigarette taxes to the funding of health care and health care reform, on the deeply flawed premise that smokers cost the health system more and should therefore pay more to maintain it.

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These and other pressures mean that the tobacco industry faces stepped-up legislative activity on a number of fronts next year and beyond. These even include such issues as solid waste and so-called "fire safe" cigarettes.

But the three areas of most concern to us are

- Excise taxes.
- Smoking bans and restrictions.
- Marketing bans and restrictions.

EXCISE TAXES

I'll begin with our priority issue -- cigarette excise taxes both federal and state.

Federal excise tax. The Federal excise tax is now 24-cents per pack, but the Clinton administration wants to quadruple the tax in order to fund federal health care reform.

There are some very compelling reasons why a federal excise tax is a very bad idea. The Clinton Administration is calling for increasing the excise tax on a pack of cigarettes by 75 cents. But even a fifty-cent increase would:

- lead to the loss of more than 200,000 jobs in tobacco and related industries, according to analyses of data collected by Price Waterhouse on the economic contribution of the tobacco industry.

To give you a concrete idea of the magnitude of this job loss, the military base closings by the Department of Defense will lead to the loss of about 54,000 jobs in the Southern U.S. A tobacco tax increase of 75-cents per pack will lead to the loss of more than 98,000 jobs in those same southern states.

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Here's some other fall-out of federal excise tax increases that you don't hear the Administration talking about.

- Because cigarettes account for 2 percent of the CPI, and because social security and other entitlement programs are indexed to the CPI, an increase in the federal excise tax on cigarettes will cause an automatic increase in government spending, will increase inflation and contribute to an increase in the federal debt.
- Higher federal excise taxes and the higher prices that result from them may encourage highjacking, smuggling, inventory shrinkage and other illegal activity, and increase merchant costs -- insurance, security installations.
- Excise taxes are regressive. They hit hardest those least able to pay.
- Finally increasing the federal excise tax will drive down sales in the states and will not bring in the revenue the Administration expects. The only thing it will do is to automatically decrease state excise tax revenues, which are a traditional source of revenues for states and localities.

State excise taxes.

- Many of the arguments against federal excise taxes also apply to state excise tax increases.
 - Job loss
 - Smuggling (and add to that loss of revenues due to cross border purchasing)
 - Regressivity
 - Reduced revenues due to reduction in sales.

• We expect excise tax battles in about 33 of the 50 states next year. In several of them, the legislation will

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be driven by governors. One such battle is going on right now in Michigan. Other states where we expect tough fights with governor-backed tax increase are Florida, Iowa, Indiana, Maryland, Montana, New Jersey, New York, Ohio, South Dakota, Utah, Vermont, Washington and Wyoming. In 1994 we also see a potential for tax increases via ballot initiatives in Arizona, Montana, Nebraska and Oregon. Ballot initiatives are particularly hard to defeat, because the majority of non-smoking voters usually support the tax increase.

- Retailers in high tax states suffer particularly when their state's tax goes up, because there are increasing numbers of smokers who may consider buying their cigarettes across state lines, on Indian reservations or even from smugglers to avoid paying the tax.

Cross border purchasing is a measurable phenomenon. Recently, a Rhode Island retailers group made headlines by documenting that Massachusetts smokers were crossing the border in droves to buy their cigarettes in Rhode Island. The retailers proved that Rhode Island would actually lose revenue if the state increased its cigarette tax. Similarly, a study in Missouri demonstrated that its tax increase cost the state tax revenues. Because of lost sales, the tax increase was collected on a much smaller tax base.

WHAT WE'RE DOING ON BEHALF OF SMOKERS RIGHTS AND IN DEFENSE
OF OUR INDUSTRY AND COMPANY

ON THE FEDERAL EXCISE TAX.

- Coalition building with tobacco farmers, distributors, retailers, National Association of Manufacturers, Citizens for Tax Justice, and so on, to keep the heat on the Administration on the issues of:

- Job loss

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- increased government. spending because tax drives CPI.
- regressivity
- unstable source of revenues
- unfair to tax one group to pay for program designed to benefit everyone.

- Members of coalition are letting the Administration and their own elected officials know how they feel on the tax issue.

- We're also taking every opportunity we can to educate the public and legislators on the positive contribution tobacco makes to the economy and the U.S. balance of trade.

- Employs directly and indirectly 2.7 million Americans.
- Generates \$70 billion in compensation annually.
- Third leading contributor to U.S. manufacturers' trade surpluses, putting \$4.8 billion into the plus column in 1991 alone.
- Tobacco exports created 265,000 American jobs in 1992, generated \$1.7 billion in taxes.
- A 75-cent per pack federal excise tax increase on cigarettes would cost America more than 270,000 jobs -- tobacco farmers, distributors, retail clerks, truck drivers, warehouse workers, and so on.

- We're in touch with our own employees, and are encouraging them to let their legislators know how they feel.

- Our position is No Tax Increase!

WHAT WE'RE DOING ON STATE EXCISE TAX INCREASES

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- Many of the arguments we make on the FET also apply to higher state excise taxes.
- Additionally, at the state level there is the issue of cross border purchasing of cigarettes in adjoining states with lower taxes.
- There is growing evidence that "sin" taxes don't raise the projected revenues, and that states that depend upon them wind up seeking other sources of revenue to make up the shortfall.

THE SECOND MAIN ISSUE -- SMOKING BANS

- Cigarettes are a legal product. Adults make an informed choice to smoke. Government mandated warning labels in the U.S. have been on every pack of cigarettes and on every cigarette ad for a quarter of a century.
- Yet the anti-smoking activists feel they have the right to make decisions about where and when all adult smokers in the society can smoke a cigarette.
- The impact of smoking bans is cumulative. If smokers become increasingly limited in where and when they can smoke -- if they can't smoke on the way to work, at work, in stores, banks, restaurants, malls, stadiums, waiting areas, or other public places -- soon smokers will not be able to smoke anywhere.
- We expect smoking ban legislation of some kind or other to be introduced at the state level in the following states in 1994: Alabama, Alaska, Arizona, California, Colorado, Florida, Georgia, Hawaii, Iowa, Illinois, Indiana, Kansas, Maryland, Michigan, Minnesota, Massachusetts, New Hampshire,

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New Jersey, New Mexico, New York, Ohio, Pennsylvania, Rhode Island, South Carolina, South Dakota, Utah, Vermont, Washington, Wisconsin, West Virginia, and Wyoming. Maybe I just should have listed the states where we didn't expect trouble next year.

- Additionally, there will be any number of additional bans or restrictions proposed at the local level.

- In many cases, smoking bans and restrictions are being driven by the EPA report on ambient smoke. That is, much of the rhetoric used in smoking ban proposals relies on the EPA's report claiming that environmental tobacco smoke (ETS) can be harmful to non-smokers.

OUR RESPONSE TO SMOKING BAN PROPOSALS -- WHAT WE'RE DOING TO DEFEND SMOKERS RIGHTS

- We are challenging the claims made in the EPA report.

-- First, the EPA did not report any new evidence, and in fact conducted no original research itself. The EPA simply reviewed 30 studies on environmental tobacco smoke, 24 of which found no statistically significant relationship between ETS and lung cancer in non-smokers.

-- Second, the EPA report is scientifically flawed. For example, the EPA lowered its own official standards for establishing statistically significant risk so that the agency could make a case against ETS.

To use a football analogy, the EPA tried to kick a field goal and missed. So they halted the game, widened the distance between the goal posts, lowered the cross-bar, and then announced that the field goal they'd just missed was now good.

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Basically, this is analogous to what the EPA did in order to assure that their risk analysis on ETS reached statistical significance.

-- Third, the EPA chose not to include in its analysis one of the largest and most recent studies done in the U.S. on ETS, funded in part by the National Cancer Institute. That study found no statistically significant increase in risk to non-smokers due to ETS.

If the NCI-funded study had been included in the overall EPA risk analysis, it would have pushed down that overall assessment to statistical non-significance and the EPA wouldn't have had a report to issue.

-- Four, the EPA risk assessment focused on studies of non-smoking women married to smoking men. It did not include in its determination of relative risk any of the studies examining ETS in workplace and social situations.

In summary, the EPA report does not support the claim that ETS is harmful to non-smokers, particularly in public and the workplace.

-- In fact, because of the distortion of evidence the EPA engaged in, and because of the harm it caused the tobacco industry, Philip Morris and several other members of the tobacco family have filed suit against the agency in a federal court in North Carolina over the procedures the EPA used that resulted in ETS being put on the agency's Group A carcinogen list.

PRO-ACTIVE PROGRAMS DEMONSTRATE SMOKING BANS ARE NOT NEEDED

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- The Accommodation Program. Rather than draconian smoking bans driven by junk science and anti-smoker zeal, we are offering a more rational approach to seeing to the interests of both non-smokers and smokers through the Accommodation Program.

- Model program in Pittsburgh.

- Elements of program include proprietor and employee education on appropriate ventilation and other issues, and finally the indication to patrons that both non-smokers and smokers are welcomed at the establishment.

- We support the adoption of the ASHRAE Standard on ventilation, which standard we believe addresses the interests of both non-smokers and smokers.

OUR THIRD MAIN ISSUE -- MARKETING RESTRICTIONS

- Marketing restrictions range from local vending machine bans to state restrictions on self-service to federal proposals like that offered by Senator Ted Kennedy to allow every state to impose its own warning labels and advertising restrictions.

- Can you imagine the regulatory nightmare the industry -- including wholesalers and retailers -- would face having to conform to 50 different sets of warning labels and fifty different sets of advertising requirements?

There are three forces at work driving the proliferation of marketing restriction proposals.

- (1) The Synar Amendment -- or more accurately, the anti-smoking forces' manipulation of the Synar Amendment. We at Philip Morris wholeheartedly agree with the premise of the law. The Synar Amendment calls for:

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- The establishment of minimum age laws in the states for the purchase of cigarettes.
- The Conducting of unannounced inspections to determine if retail establishments in the state are in compliance with the minimum age law.
- The filing with the Federal Department of Health and Human Services (HHS) of a report demonstrating the steps the state is taking to enforce compliance.

The "teeth" of the Synar Amendment is the fact that HHS can withhold mental health and substance abuse program funding from states that are found not to be in compliance with the Synar requirements.

What we disagree with is the anti smoking lobby's attempt to turn "compliance" into a witch hunt. For example, their interpretation of "unannounced inspections" is to have sting operations run by anti-smoking groups where underage teens attempt to purchase cigarettes illegally and the whole process is videotaped.

Similarly, the antis would have the "evidence" in states' reports demonstrating their attempts to prevent minors from purchasing cigarettes to include:

- Bans on vending machines.
- Sampling bans.
- Licensing requirements where licensing fees are used to finance additional sting operations.

The debate about what constitutes "compliance" is still going on at HHS where regulations are currently being developed.

- (2) Project ASSIST. Total of \$115 million in federal funds earmarked for anti-smoking programs in 17 states. ASSIST moneys let local, private anti-smoking organizations meet

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their salaries and other overhead expenses through the federal trough, allowing them to use their own budgets to harass smokers, ban billboards, attack sampling and engage in other similar activities.

- (3) State laws (like Prop. 99 in CA and Question 1 in MASS) earmarking state cigarette tax revenues for further anti-smoking activities. Massachusetts on the East Coast, and California on the West Coast, provide testing grounds for the anti-smoker activists to test strategies, see what works and what doesn't, prior to exporting what does work to the other states.

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HOW WE ARE FIGHTING MARKETING RESTRICTIONS AND BANS

- Here we are also part of a broad coalition of groups that are fighting for freedom of commercial speech and against overly intrusive government regulation of free enterprise.
- In attempting to restrict our marketing ability, the antis make the false claim that we are actively engaged in marketing our products to minors.
- The truth is that we do not market to minors, and in fact we are involved in several programs designed to prevent underage purchase and use of tobacco products.

-- The "It's the Law" program was created by Philip Morris and is now adopted by the industry trade association to educate retailers on the minimum age requirements for the purchase of tobacco products, to provide them with materials that show them and their employees how to prevent minors from purchasing tobacco products, and to provide them with "It's the Law" signage that makes it clear to patrons what the minimum purchase age is and that the establishment enforces the law.

-- The "We'll see you in court" trade journal ad campaign to make sure our logos don't appear on products that children might use.

-- Our commitment to a strict code that sets requirement for: the models in our advertising, the publications our ads appear in, the locations of our outdoor ads, how we sample, and so on.

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WHAT THE 21ST CENTURY WILL LOOK LIKE.

- The anti-smoker movement has been a cyclical part of American history. At the beginning of this century, 15 states banned tobacco use. At present, we're in another peak anti-smoker phase. But in the past, rationality has prevailed, and we think it will here too.

- Of course, we expect continued anti-smoker activity in the future, but we also think that the principles of accommodation, common sense and common courtesy will prevail over the draconian steps the antis would force upon Americans.

- A founding principle of American has been free, individual choice. This applies to life-style choices as well as to other choices. We look to a 21st century where smokers are not singled out to pay for programs designed to benefit all citizens, where non-smokers and smokers are accommodated, where adults can freely decide what products to use.

- Finally, the antis' vision of "A smoke-free society" is clearly not going to be achieved, and rightfully so. It has no place in a society based on free choice.

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