

ACTION PLAN  
On  
Smoking Restrictions

The Institute staff has been asked to state its Action Plan in combating restrictive smoking measures with particular reference to governmental facilities. In this connection we have considered many aspects of the problem and without narrow focus on legislative bodies, the courts or other places. Rather, our attention is more broadly given to sources of the problem and the effect of such upon public reaction and governmental response. In short, we perceive the objective of the industry and the Institute in this instance is to create "a passive public attitude towards passive smoking."

We are examining many approaches and discuss several here. At the same time we offer caveats as to some and disapproval of others. Our studies, research and judgment will support recommendations made. No importance should be assigned to the order of treatment.

Public Relations

Axiomatically, good PR is a combination of deeds and words. We have to understand and admit our single greatest PR handicap: lack of credibility. The only communications medium for which we have evidence of breaking down this barrier is the most impractical one for mass persuasion--the face-to-face, one-on-one dialogue of the sort in which our spokesmen frequently participate.

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Our next-best reception apparently occurs in communication which is factually rather than issue oriented. Pre-publication testing of our "tobacco" ads taught us this. Their publication should be extended.

This suggests that in addition to more strenuous, short-term PR activity on public smoking, we should develop separate, long range, credibility-building efforts, regardless of direct relevance.

Of the several opportunities suggested, the first is research.

We recommend that the CTR Board take steps to seek grant applicants immediately in each area of needed research specified in the Jacob-RJR memo. The "windfall" return of unused AMA-ERF funds should be earmarked in support and to the extent necessary the regular CTR budget should be increased. If it is judged that the SAB is not expertly qualified to oversee this task, a new Public Smoking Advisory Board should be organized. Information about CTR's interest in grant applications should be made available pervasively in both scientific and lay avenues of communication and information about the program should be made available to the general press.

The second opportunity relates to careless smoking. For four years, The Institute staff has considered but not advanced a project to use car cards, newspapers, billboards and radio in an anti-careless smoking campaign.

The key was that the materials were to be distributed by local fire department chiefs and labeled as co-sponsored by their departments and The Institute. We recommend that this campaign be implemented.

A third effort is to tell the public "the truth about tobacco smoke in the atmosphere and health." This should be done in newspaper advertisements in terms of the specifics about false assertions, who makes them, and the correct scientific truths, with citations. We so recommend.

We should urge smokers to be mindful of annoyance possibilities and "to be courteous to others." Three years ago, The Institute rejected this as the theme of an advertising effort. The requirement for it has grown. Available survey information makes it clear that without evidence that something is being done about the annoyance of smoke, there is over whelming public agreement that government should act.

Specifically, a "let's bring back good manners" campaign, set into a context of all kinds of major and minor annoyances and the advisable forebearances will not only enhance our credibility but will convince at least some potential regulators that we are earnest and interested in getting them off the hooks of the agitators and fanatics. We recommend this.

Another long-range credibility builder can be found

in the research area--not that which we support, but that which we encourage. As a result of our investigation, The Tobacco Observer has this month urged the Damon Runyon-Walter Winchell Cancer Fund as the choice alternative for public contributions to cancer research. As a logical next step, TI should, in cooperation with its members, help plan and execute publicly visible fund-raising events for the Fund. We recommend this.

#### Forums

It is important to remember in the process of planning that a forum is not an end in itself. Rather, it is only important in terms of what use to which its product can be put. Decision to employ any forum must rest upon sound political, scientific and legal judgment. Timing is, of course, important as well as an evaluation of impact upon the public at large. At the same time, we have to be prepared to deal with a forum which is thrust upon us and for this purpose the progress already made to secure scientific personnel to testify is of vital importance. This effort should be intensified.

With this in mind, The Institute will continue to explore the following:

1. The Congress
2. The Courts, state and federal
3. Regional Congressional Forums
4. Citizens Commissions

5. Pure science type--domestic and/or foreign on the order of Rylander.
6. Labor union - international
7. Think-Tank Forums

1. Congressional Forums

Background: In the House, jurisdiction over smoking in government buildings is complicated. Any authorizing or appropriating committee for a government agency could claim such jurisdiction if it chooses, but its direct responsibility is uncertain. A logical choice would be the Committee on Government Operations. Which of its subcommittees would actually hold hearings is not easily determined. One possibility would be the Subcommittee on Intergovernmental Relations and Human Resources.

Another possibility is the Committee on Public Works and Transportation, which has responsibility for construction and repair of certain government buildings including those within the District of Columbia. Any designation of smoking and nonsmoking areas that requires remodeling, such as ventilation systems or partitions, could be referred to its Subcommittee on Public Buildings and Grounds.

A comparable situation applies in the Senate. The Governmental Affairs Committee may be most appropriate.

A smoking policy question could be referred to a number of Subcommittees, most likely the Subcommittee on Civil Service and General Services. But other Subcommittees of Governmental Affairs might be given jurisdiction.

Strengths: This forum would have high credibility and visibility with the potential of developing political support, possible concessions, as well as a final hearing document for further dissemination and attribution.

Weaknesses: Controversy and opportunity afforded for opposing testimony. In addition, friendly witnesses could be roughly handled by hostile members and adversary witnesses could be inadequately examined. At present, there is no clear legislative purpose for such a forum except antismoking bills, such as the Drinan and Kennedy bills. Hence a hearing could be totally counter productive.

Recommendation: The Congressional forum is not suitable.

## 2. The Courts, State and Federal

A. A general industry policy of challenging in court restrictions on public smoking might be warranted if there were substantial reasons to believe that the courts would hold that most such restrictions violate the Due Process Clause or related guarantees of the United States Constitution. There is the view that any such holding would represent a substantial departure from existing case law. There is also the view that the least drastic alternative approach has merit. Counsel must resolve this.

In any event, we recommend that the industry continue to deal with public smoking restrictions on a case-by-case basis and weigh carefully the risks and the chances afforded by the particular facts and forum.

B. The public smoking regulation adopted by the New Jersey Public Health Council may be vulnerable to legal challenge on several grounds, the most promising of which may be that the regulation exceeds the Council's delegated authority and is impermissibly vague. Although the success of these arguments is far from certain, an adverse court decision is unlikely to have substantial significance as precedent in other jurisdictions.

If the effective date of the regulation is delayed, we recommend that the industry not seek a final court determination of the regulation's lawfulness until any further administrative proceedings have been completed. If necessary to preserve the industry's rights to challenge the regulation already issued, a protective notice of appeal or petition for review should be filed in a timely manner. If the regulation is not withdrawn, or altered in ways that appear to cure the possible legal deficiencies that have been identified, we recommend that the industry take whatever steps appear to be appropriate to obtain a final court determination of the regulation's lawfulness.

C. There appears to be statutory authorization for the restrictions announced by Secretary Califano on January 11, 1978 on smoking in buildings and facilities occupied by HEW. A plausible argument can be made, however, that Secretary Califano should not have proceeded to implement the restrictions before preparing an environmental impact statement (EIS). Although, if successful, that argument might delay

implementation of the restrictions pending the preparation of an EIS, an EIS prepared under Secretary Califano's auspices may well have serious long-range consequences adverse to the industry.

We therefore recommend that the industry not file, or encourage the filing, of a lawsuit challenging the restrictions.

D. We should continue to monitor all lawsuits of interest to the industry, and to provide to the appropriate party any back-up support that may be requested or appear to the industry to be desirable. Decisions to participate formally in such litigation, whether through intervention or the filing of an amicus brief, should be made on a case-by-case basis.

### 3. Regional Congressional Forums

As a result of the recommendation that a Congressional forum is unsuitable it would appear logical to foster public expression against HEW policy at the Congressional district level for a Member of the House or statewide for a Member of the U. S. Senate.

Such expression would be in the format of a called public meeting held in a federal facility which would be arranged by the Congressman or Senator's office. A suggested format could be worked out by the staff personnel of the Member of Congress along the following lines:

1. Location
2. Time and place



3. Advance notice to local media
4. Stenographic facilities for reproduction
5. Advance work with witnesses
6. Coordination on Congressman's prepared remarks.

It would appear logical that such a forum would be limited to approximately two to three hours and that to facilitate all parties, and enhance the content of the record, allowance would be made for the filing of statements to be a part of the record by interested groups.

After such regional forum is held the material could then be printed as the Congressman's forum on public opinion for an obvious multitude of uses.

Strengths: High exposure for the Members of Congress; available record for distribution to full Congressional membership, media and federal agencies; grassroots expression.

Weaknesses: Criticism by opponents in utilizing facilities under government control; adverse witnesses in opposition to the entire industry.

Recommendation: Develop a forum in an area of solid economic support, i.e., Richmond, Virginia--manufacturing, exporters; London, Kentucky--growers, auction facilities; Lexington, Kentucky--exporters, auction facilities; New Bern, North Carolina--growers, exporters and auction facilities. (All of the above locations have federal courthouse facilities.)

#### 4. Citizen Commission

As a further point in this preliminary examination, let's recall the activity of the Commission on Smoking and Public Policy and consider whether it suggests another activity for us. We recommend discussion of appointment of a Commission on Public Smoking Policy as demonstration of the industry's interest and concern. After appropriate study and hearings or consultations with experts, including as many contrasting points of view and scientific conclusions as are available, and including examination of economic, enforcement and other questions, the Commission could provide a documented report and conclusions which could serve as a "handbook" for any potential regulator.

#### 5. Scientific Forums

Background: The industry accepts as fact the view that the present state of knowledge supports the conclusion of no health hazard to the nonsmoker. However, the opposition is chipping away with studies and simple assertions of adverse effect. Shook-Hardy and Jacob-Medinger have the expertise and experience in this area. A question is location, inside or outside of the U. S.

Strengths: Visibility and credibility would result initially as well as a subsequent documented record in the form of proceedings for dissemination and attribution. A more objective record could be put together outside the U. S.

Weaknesses: A one-sided forum could be viewed as an industry effort. It would be disrupted by antismoker "gate-crashers."

Recommendation: An international scientific forum should be pursued, perhaps as a follow-up to the Rylander Conference. Because of difficulty of U. S. press coverage and the delay in publication of a proceeding, we recommend special PR treatment.

#### 6. International Trade Union Forum

Background: The Secretary-Treasurer of The Tobacco Workers International Union is considering a meeting on the nonsmoker issue of tobacco trade unions worldwide. He would be open to industry participation. Present thinking envisions a format that would cover the scientific, economic, political, social and legal aspects of this issue.

Strengths: High visibility and credibility plus sympathetic reception of economic arguments which would be stated in terms of jobs rather than corporate profits. Broadened format would permit discussion into areas of majority public approval such as freedom of choice and over-regulation by the government rather than limited to health issue. Heightened political impact.

Weaknesses: Except for charges of undue industry influence, the downside risk appears minimal.

Recommendation: This approach should be pursued.

## 7. A "Think Tank" Forum

Background: The American Enterprise Institute has achieved something of a reputation as a right-of-center intellectual center vis-a-vis the liberal-oriented Brookings Institution. However, it does no contract work, so an approach would have to be made on the merits of our case. AEI is now actively seeking support.

Strengths: Visibility, credibility and access to opinion leaders and their journals. AEI provides a wide variety of publications and forums, some of which lend themselves to the non-smoker issue. It would produce results similar to those outlined above on the international union forum.

Weaknesses: No guarantee AEI would undertake the assignment. AEI television forum is adversarial in nature and would require the appearance of an antagonist. While irritating, this format would enhance credibility.

Recommendation: Urge member receptivity to AEI fundraising campaign.

## B. Smoking Policy in Federal buildings and Facilities

Objective: To attack HEW's new policy on smoking in its buildings, and to discourage its spread throughout other departments and agencies.

### A. Legal Research

A direct challenge seems unproductive.

PRIVILEGED MATERIAL REDACTED

Finally, remedial legislation should be drafted if necessary for example, broadened application of the Snyder Bill barring smoker discrimination on airplanes.

B. Action Against Government Smoking Policies

Last January 11, Secretary Califano said that GSA Administrator Solomon had agreed with him "to set up a joint HEW-GSA Working Group with a view toward strengthening GSA's antismoking guidelines for the more than 10,000 buildings it manages for the government. Our aim is not only to protect the health and well-being of Federal employees, but to set a standard for other employers

across the country."\*

The question is whether, if the Working Group has been organized, it should function without Institute intervention.

Strengths: It is not likely that without our initiative the Working Group would have access to information indicating the lack of health consideration in its work. Covering this gap could be helpful, as well as producing current information for us on the status of widening regulation in government buildings.

Weaknesses: There has been no public visibility to the Working Group agreement since its announcement. Intervention might stimulate an activity that is somewhat dormant.

Recommendation: We should learn the status of the Working Group and, if it is moving forward, intervene promptly in the interest of objective decision.

#### C. Activating Federal Employee Unions

Background: Meetings were held with officials of the American Federation of Government Employees (AFGE) and the National Federation of Federal Employees (NFFE). Leadership is cooperative. They view the smoking policy trend as counter-productive to labor-management relations, detrimental to promotion opportunities and work assignments,

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\*To date, the only agency which has examined the scientific evidence put forward by smoking adversaries for regulatory purposes is the FAA. Its medical staff rejected the evidence as inconclusive, suggesting the likelihood of a similar rejection if the Working group becomes aware of it.

and having possibly weakening collective bargaining procedures. They are sensitive to the singling out of Federal employees for special health protection and the civil rights implications. Both unions would be receptive to disseminating appropriate information materials to their membership through their publications and conventions. AFGE prefers to respond to an appeal from the Tobacco Workers Union; NFFE would be willing to let its tobacco inspectors local take the leadership role.

Strengths: Union reaction would force government agencies to think twice about stringent implementation of smoking policy. Agencies would so be forced to include in their plans greater consideration for smoking employees. Zealots in the Federal establishment might temper their zeal.

Weaknesses: Union officials will be more fervent than their members and the split between smokers and non-smokers can be expected to be about the same as it is in the general public. However, we do have a targeted audience and an opportunity to raise their consciousness.

Recommendation 1: This activity should be pursued; appropriate material should be developed. It will be necessary to consult with the Tobacco Workers on their leadership role.

Recommendation 2: A special briefing team should be developed for union leadership; and local union membership meetings.

Recommendation 3: An exhibit and/or hospitality suite program should be developed for union conventions, national or regionals.

D. Environmental Impact Statements (EIS)  
Inflation Impact Statements (IIS)

Background: Respectable legal arguments exist that government regulations such as those on smoking policy must be supported by EIS and IIS. HEW has not done so, it is doubtful that any agency has. Demands for impact statements, registered either by TI, a union or an individual would convey a new spirit of resistance that might deter the rush to restrict smoking in Federal buildings.

Strengths: A deterrent challenge to our adversaries, a morale booster to smokers in the government and an out for bureaucrats who might take the opportunity to rethink the situation. A collection of EIS's and IIS's could present an opportunity for GAO or congressional oversight investigation of the total cost, which in the aggregate could be considerable.

Weaknesses: Could not stop but only delay. Could open us up to criticism for being unrelenting opposed to a "good health" measure to protect commercial sales.

Recommendation: Proceed with formal requests for EIS's and IIS's on a case-by-case basis.

1979 Surgeon General's Report

Another specific follow-up on the Califano front related to the new Surgeon General's Report to be published in January. On March 13 a staff committee was appointed to recommend an industry policy and plan for response to



it. The group has met three times to prepare its recommendations. They have learned that an outline for the new report has been completed at H.E.W. Our committee has agreed to focus its suggestions on three end-points: An Institute news conference, perhaps pre-emptive as we did in the case of Califano's January speech; a written report of our own for public consumption; and material for Congressional hearings which, for planning purposes, we choose to believe will be a significant result of the new Surgeon General's Report. In addition, the committee is also considering interim activities to soften the unwarranted impact of what we expect to be a completely one-sided report.

#### TAN

An integral part of the Institute's Action Plan, is, of course, the development of TAN. Reports as to the progress of this activity are periodically made to the TAN coordinating committee and the Executive Committee.

Additionally, the State Activities Section is exploring the possibilities of local hearings, with high public visibility, such as the Chicago City Council, where a favorable climate is reported to exist.

#### Conclusion

The Institute will continue to explore and develop these and other avenues. Member companies, however, should be reminded that their own imaginative talents should be made available to The Institute and that timely reaction to

recommendations is essential. There is no worthwhile plan of action which is not subject to expansion, elaboration and alteration.

May 14, 1978