

DRAFT -- FOR DISCUSSION PURPOSES ONLY

TO: Steve Parrish
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FROM: David Nicoli *DN*

SUBJECT: Going Forward

The President has now publicly opined on the PR, called for a meeting with the Congressional Leadership in early October, and there is a solid consensus that Congress will not pass tobacco control legislation until 1998. As a result of these developments, we have a clear enough picture to begin putting together a comprehensive plan to achieve our ultimate objective. I have set forth below numerous actions we must complete in the short term, and other items we should quickly consider and come to closure on in order to develop a comprehensive plan to pass legislation embodying the PR in 1998.

1. **STC/Small Cigarette Companies** -- Industry is blocked from effectively communicating with Bliley and staff until STC issue is resolved with respect to financial issues. Staff has indicated that small cigarette company problems have to be resolved as well. This, along with items 2 and 3 below, must be the industry's number one priority going forward.
2. **Growers** -- We are without a base of supporters on the Hill right now. Without resolving this quickly, we will be unable to gain any traction to support the elements of the PR we need. Our key objective in this process must be to enlist support among tobacco state Members for the "must have" provisions of the PR as a necessary part of resolving the grower issue. Up to 50 votes in the House and 12 votes in the Senate could turn on this.

NOTE: Letter from Phil Carlton to grower leadership and Senate Agriculture Committee must be sent immediately to deal with what the Indiana AG said about the industry's posture during the negotiations concerning growers. A courtesy copy needs to be given to tobacco state members in House and Senate.

3. **Bill Drafting** -- Industry drafting of June 20 PR must be brought to closure now. We must immediately turn to meeting with negotiating partners and reach consensus on legislative language -- lock them in a room and keep them there for as long as it takes. The legislative process cannot begin to our benefit without a baseline bill reflecting

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June 20 PR; it can begin with a Lautenberg or Kennedy bill and that will not be to our benefit.

4. **Bliley Plan** -- Assuming we solve the STC/small cigarette company problem in a timely fashion, PM needs to put immediate focus into repairing the Bliley relationship so that we can move forward constructively with him on a day-to-day, productive basis. We need to use all of our best assets -- Jim Frye, Juanita and Geoff with Bliley personally; Jay Poole with Linda Pedigo; Juanita, Jeff McKinnon and John Jarvis with JD. In other words, we need to do a sustained and well thought out full court press.
5. **Congressional Leadership Meetings** -- In light of the upcoming White House meeting with Congressional Leadership, we need to: 1) determine the Leadership that is likely to be invited; and 2) set up industry meetings with the Leadership in advance of the White House meeting to deliver clear, concise messages to them with respect to our needs and concerns.
6. **Develop And Communicate The "Bottom Line" List** -- Whether we choose to develop "principles" that give us and our Hill allies flexibility to maneuver, or whether we enumerate specific bottom lines or a combination of the two, it is essential for us to put forward a "bottom line" quickly. The conventional wisdom on the Hill is that there is no bottom line, and as a result, no one can dig in and even begin to attempt to defend positions critical to us.
7. **CEO Appearances Before Senate Commerce** -- October 21 is the tentative date, premised on the notion that McCain wants to finish all hearings this year. That notion may no longer be operable, so we need to begin executing the following course of action: 1) ascertain whether we can put off such appearances until next year; 2) if that is not possible, begin negotiating on the makeup of the panel on which the CEO's will appear (e.g. CEOs alone or in a combination with selected AGs, trial lawyers, public health etc.); 3) also negotiate limiting the subject matter of the hearing and who, if anyone, can accompany the CEOs; and 4) begin intensive preparations by industry of CEOs.
8. **Bible Preparation** -- Assuming October 21 hearing goes forward, PM lawyers must complete the process of getting Geoff comfortable with the terms of the June 20 PR and with the President's announcement. Geoff's schedule needs to be cleared for a full week before the hearing so that we can: 1) ensure that he has personal meetings with as many Commerce Committee members we wish him to see as possible; 2) work with him to prepare him for questioning and to properly "moot court" him; and 3) finalize both a written and oral statement for his ultimate appearance.
9. **Setting Strategy And Tactics For 1998 Passage** -- Now that the 1997 passage scenario is by the boards, we must step back and take a new

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look at what confronts us. PM needs to determine what is in its best interests first and foremost -- which this week's off-site meeting will help us determine. Then we must take our new plan forward to the industry and sell it so that we quickly put in place a new strategic plan designed to secure passage of a minimally acceptable bill in 1998. Any such plan will need to include contingency plans/exit strategies at key points in the process.

10. **Short-Term Strategic Imperatives** -- There are at least four short-term imperatives that we must move out on in full force across all fronts if we are to have a chance at securing our ultimate objective. These would be good subjects on which to focus during the off-site meeting later this week.

- **Liability Restrictions/Non-Participating Company Provisions** -- Although all of our focus since the President's speech has been on the former, the latter is integrally tied to liability restrictions and is absolutely necessary for us so that a level playing field emerges from the passage of tobacco control legislation next year. Resolving the grower/STC/small cigarette company problems will give us a base to move from on these issues, but is woefully short of the critical mass we will need to keep these provisions in the legislation. Reed's comments over the weekend will help and the White House meeting with settlement participants could also help on Tuesday, but the point is that unless we lock this down in the short term and have a plan in place that can be sustained to keep this locked down, we will be in disastrous shape next year.
- **"Containment Strategy"** -- A concurrent plan must be put in place across all fronts to keep the non-beneficial aspects of the PR from continuing to drift inexorably to the left -- whether it be on dollars, documents, regulation, or what have you. I don't even begin to have answers for how to do this, but only know that it is critical that we develop a plan and begin executing it ASAP.
- **Look-Back Strategy** -- This really is a sub-set of the "containment" strategy, but is deserving of special treatment because of the dangers it poses to PM specifically. The industry statement made some progress in this regard, but we need to fan out across all fronts in order to keep this issue manageable in both the short and long term.
- **Crafting A Conservative Republican Position In Support Of PR** -
- I have attached to this memo a document written by Senate Steering Committee staff that continues to reflect Conservative Republican concerns with the PR. We should direct some of our next rounds of polling and focus group work to explore

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messages and themes that arise from the PR that would resonate with Conservative Republicans, and that might address some of their concerns. If nothing else, this would allow us to anticipate and understand some of the same sort of work that I am sure Republicans will initiate for themselves.

11. **Integration Of Industry Lobbying Team** -- As the Hill process moves forward, our margin for error grows increasingly smaller. As a result, it is essential that we have a clear, easily understandable structure to the industry lobbying apparatus, both for our internal purposes and so the Hill is receiving clear, consistent messages. Verner Liipfert and Barbour Griffith continue to operate independently from the industry operation with predictable adverse results. Howard Baker's firm has now entered the field of play as well. A variety of different structures may work here -- the only point is that we must select one structure, educate industry participants and the Hill about the structure, and enforce adherence to that structure.

NOTE: **Tobacco Institute** -- The companies need to determine with finality how to integrate TI's assets into our plan if we wish to at all. This has occurred to date on an informal basis with uneven results. At bottom, we need to determine how we wish to use TI, communicate that to Sam, and give Sam a point person from whom to take directions and to whom to direct questions.

12. **Coordinating Mechanism With Other Parties To The PR** -- Once we have the structure of the industry lobbying team in place and operational, we need to establish a mechanism to enable the industry to coordinate our White House/Hill activities going forward with other parties to the PR so that we are not working at cross purposes with each other on issues of critical concern. Again, a variety of different structures may work here -- but, we must select one structure, educate participants and the Hill about that structure, and enforce adherence to that structure.
13. **Mass Industry Meeting Re Marching Orders** -- Once the industry has established a strategic plan for 1998 passage that embodies politics, communications, grassroots/tops, etc., we should again do a half-day briefing of all consultants/lobbyists to lay out the plan and the command and control structure. The goal here is to get everyone on the same page moving forward, and simultaneous communication is the most efficient way to do so.
14. **Industry "Negotiating" Team** -- Some quarters of the Leadership have told our consultants that there is a constantly shifting group of industry lobbyists that speak to them (e.g., Haley one day, David Bockorny the next, Tommy Payne the next, etc.), and that it would be more productive if we had a clearly identified "team" with whom they could deal. This will become a necessity when true negotiations open up on

the Hill. What we need to focus on now and decide is whether we should package a "negotiating team" right now and communicate that fact to key Hill offices.

15. **Lead Horses** -- As the press and certain Members have remarked, the PR is an "orphan" on the Hill because it was birthed off the Hill. The industry needs to step back and identify, in a realistic fashion, who the most likely "lead horses" could be on the Hill that will ensure fair treatment to the industry and will be willing, with the President's recent announcement, to take the ball and run with it.
16. **Defensive Plans** -- We have witnessed significant high level opposition surface to date to the PR by ATLA, NACs, Connerton health and welfare funds, asbestos manufacturers and Liggett, among others. These activities have included newspaper ads, Congressional testimony, Hill lobbying and related activity. With respect to these groups and others that are likely to surface in the coming months, we need to have in place a rapid response plan that responds in the manner that is most appropriate to meet the threat posed. Right now, the industry is not doing this in a systematic manner, and that is allowing these groups to gain significant traction for the positions they are advancing.
17. **Rapid Response Mechanism** -- We all recognize the problem of mushrooming opposition to the PR from various groups and/or on various issues and our sluggish response time in facing these problems. We also know we face a constant problem with the anti's repeating the "Big Lies," which become part of the conventional wisdom when we do not correct the record (e.g., on "immunity," gutting FDA authority, etc.) This has arisen because of legal clearance problems, the crush of events, judgments made in the heat of the battle to let the issue lie, etc. I would suggest that we quickly begin to systematically respond to all issues/groups in the venues we choose with the messages we choose; but in order to do so, we need a system designed to produce quickly the necessary background material that gives us the ammunition to make the response decision quickly. The industry should have an "issues book" of one-pagers" on every issue, which can be used for lobbying and communications purposes. This should be the minimum output of a new system, freed of the current cumbersome legal clearance process, that will provide the industry with the tools it needs in a real-time fashion.
18. **Interplay Of Near-Term Cases And PR Advancement** -- We need to quickly analyze what we may be facing in the upcoming Texas and Pennsylvania trials, as well as the ongoing Broin trial and the pending Fourth Circuit appeal. Each of these cases has the potential to significantly change the landscape here in Washington, not only in terms of their ultimate results, but also in terms of the day-to-day media coverage of testimony and documents. Both our communications and political plans need to factor these areas in so that are able to navigate the fallout for good and bad.

19. **The "Documents" Issue** -- Although the White House position on this potentially gave us some cover, it is unlikely to solve the political problem that this issue presents. Once we have an overall strategic plan in place, we need to come to closure on how we are best able to manage this issue given the legal constraints facing us, and move forward on that plan.
20. **The "Acknowledgments" Issue** -- Given the pendency of the Senate Judiciary Committee letter, the possible CEO appearance on October 21, and the fluidity of the current environment, correctly managing the release of the acknowledgments issue will be of critical importance. Once we have an overall strategic plan in place, we need to come to closure on when, where and how this event should best occur.
21. **Tax Deductibility Issue** -- Mack/Harkin are making a hard run at this issue out of the box, putting us behind the curve on this issue on the Hill. The White House position on this issue will help somewhat, but the lobbying team will need more than we currently have to stop possible hemorrhaging on this issue. Whether this comes from a communications plan, White House statements, or other sources, we are isolated on this point right now.
22. **FET v. PR Payment Scheme** -- Given emergence of tax deductibility as a salient issue in Mack/Harkin approach along with the complexity of the PR funding scheme, we need to examine closely now the upside/downside to a congressional FET substitute for the current PR payment scheme. There are some strong currents on the Hill for moving in that direction, and we need to be ahead of that curve in a position to influence it, not just to react to it. We know that various troublesome issues like deductibility do not come into play if FET is the funding mechanism.
23. **Connerton/LMC** -- As this week's AFL-CIO convention is demonstrating, the Connerton problem continues to grow. Their message to Congress is to "leave their suits alone" if Congress processes settlement-related legislation. This spearhead is costing us with key elements of the D caucus in the House. We are currently using TI's LMC and our own relationship with BCT, Machinists and HERE to combat Connerton's moves, but our efforts are being overwhelmed at the moment. We will need more than an inside lobbying game to deal with this threat -- we will need a holistic approach that combines lobbying, communications, and/or aggressive litigation efforts in order to begin making headway.
24. **Third-Party Allies** -- There will be plenty of third-party groups advocating the adoption of the "bitter pill" positions of the PR; what we do not have right now are many third-party groups pushing for the terms of the PR that we need and acting as a "containment" mechanism to oppose the expansion of the "bitter pill" provisions so that they are even worse for us. We need to step back and develop plans that enable us to harness third-party groups for these two

purposes so that we can help produce real and effective support on the Hill.

25. **Hospitality Industry Plan On ETS** -- Although the White House message on smoking restrictions is somewhat ambiguous, it will lend itself to huge pushes to enact H.R. 3434 as introduced by Waxman. This is one third party ally that has some force and we must set in play an effective plan by them now to lock down the hospitality exemption.
26. **Economic Issues** -- Jeff Harris has gained significant traction on the Hill with his economic analysis of the settlement, where he has opined that the price has to be hiked to \$1.50 per pack to reimburse all levels of government for health care costs and in order to meet the reduction targets for youth smoking. His case has been bolstered by the Treasury study -- which neither we nor the Hill has yet seen -- that scores the settlement at 62¢ per pack upon full implementation with an upward limit on the look-back of 8-10¢ per year once that provision kicks in. An FTC study along the same lines is due to be issued sometime in the next week based on our best intelligence. We need to continue developing our own figures based on the June 20 PR and be in a position to quickly back up Carlton's public statements that June 20 raises prices well more than 62¢. Moreover, we need to develop a plan that secures credible third-party or industry-retained economic opinions in this area. An integral part of this, of course, is the "Who is the real David Kessler et al" communications/lobbying plan on the youth reduction measures.
27. **Hearing Strategies** -- To date, we have been reactive rather than proactive in terms of how we have dealt with the various congressional hearings that have been held. This is not a criticism, but a realistic assessment of the spot in which we were placed while the White House conducted its review. Now that we are moving on to a different playing field where we plan to be more proactive from a communications point of view, we must also do this where practicable with respect to future Congressional hearings. We need to be suggesting to Committees where we have an open door the kinds of hearings that we believe will be beneficial to us. Once we are set on an overall strategic plan, the ability to make progress on this front will be greatly enhanced.
28. **Youth Shouldn't Smoke Ad Campaign** -- In my view, the only real advertising the industry or PM should be doing over the next 6 months, and one of the few visible and lasting "good faith" efforts we can productively undertake. Model on AB campaign to speed execution, insulate from attack, and to enlist congressional support in advance.

cc: E. Woodward

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