

Preparation for Federal Hearings

The attached memoranda outline our current readiness for Congressional hearings on the tax, public smoking and advertising issues. Each describes the current situation, our expectations from the anti-smokers, the arguments that must be made in opposition, and the materials, allies and coalitions to make them.

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TAX HEARING READINESS

Staff Responsibility: Jeffrey Ross

Logically, 1987 should not be a tax year. Last session, The Congress permanently increased the cigarette excise tax to 16 cents and to promote tax fairness approved the landmark Tax Reform Act of 1986. But, the 100th Congress already is searching desperately for revenue sources to meet budget reconciliation targets and to fund programs like catastrophic health care. This political scenario, combined with anti-smoking efforts to deter smoking, creates an environment where the cigarette excise tax once again will be a probable target.

What We Can Expect

1. Anti-smokers will renew their effort to increase the federal cigarette excise tax. The Coalition on Smoking OR Health already has announced that doubling the federal cigarette excise tax is a top priority. These groups justify an increase to deter smokers--especially youth--and to compensate for the perceived cost smoking imposes upon society.
2. Congress is faced with a budget deficit of \$169 billion according to the Congressional Budget Office; the Gramm-Rudman target is \$108 billion. Congress is searching for revenue sources and the cigarette excise tax is a likely target. Although The Congress and the President philosophically opposes any tax increase, "sin" tax increases may be more palatable politically than other tax increases, such as raising income taxes.
3. Congress will consider the cigarette excise tax to fund health care programs. Although no hearings were held in the last Congress, some 20 bills were introduced earmarking the cigarette tax. Catastrophic health care will be a major issue this session. Senator Kennedy, chairman of the Senate health panel, may consider funding a catastrophic health care plan with a cigarette tax increase. Representative Roybal's national health insurance bill (HR 200) is financed in part by doubling the cigarette excise tax.

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4. The Bradley-Stark proposal to eliminate cigarette advertising deductability has been reintroduced. Although no hearings were held last session, if a ban on cigarette advertising stalls, this proposal may receive more serious attention.

5. Representative Pickel, chairman of the oversight subcommittee of Ways & Means, can be expected to address collection problems of excise taxes. Last year, Pickle held hearings on the loss of revenue from careless collection of federal gasoline taxes.

What TI and Its Allies Must Cover

Tobacco Institute testimony and that of its allies and interested parties should emphasize:

1. Excise taxes are regressive. They are imposed disproportionately on low and middle income people. The effective tax burden is ten times higher on lower income households.
2. Cigarette excise taxes are discriminatory. They fall disproportionately on Blacks and Hispanics.
3. Excise taxes are unfair. Consumers who use the products taxed are forced to pay more for government services shared by all people. Why should smokers pay more for national defense than nonsmokers in a comparable tax bracket?
4. Excise taxes are not a reliable revenue source. When excise taxes increase, sales--as well as tax revenue--decreases.
5. Excise tax increases have a negative impact on the nation's economy. When sales decrease, the result is lost jobs and revenue.
6. An increase in excise taxes will not significantly reduce the deficit.
7. The Bradley-Stark proposal to deny deductability of cigarette advertising is unconstitutional. To limit the industry's right to free (commercial) speech by making it pay a price that other industries do not pay would be a violation of the First Amendment.

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Resources and Status

1. To demonstrate the regressive nature of excise taxes on low and middle income people.

. David Wilhelm or Bob McIntyre of Citizens for Tax Justice are available to deliver Congressional briefings, to prepare and deliver testimony.

. Representatives of League of United Latin American Citizens and National Black Caucus of State Legislators are available to prepare and deliver testimony.

. Robert Tollison, George Mason University, Richard Wagner, University of Florida and Darwin Johnson, Policy Economic Group are available to prepare and deliver testimony.

. Coalition Against Regressive Taxation, an industry coalition opposing excise taxes is available to brief Congressman, prepare and deliver testimony.

. Susan Rees, executive director of Coalition on Human Needs, a coalition of charitable, labor and business groups opposed to regressive taxes, is available to prepare and deliver testimony.

. An eleven minute excise tax video summarizing all arguments was prepared specifically for one on one Congressional briefings.

. Representatives from The Tobacco Institute are available to prepare and deliver testimony.

Action Needed: Completion of identification of economists in appropriate Congressional districts. The economists will be available for drafting op-ed pieces, preparing and delivering testimony.

2. To prove the discriminatory aspect of certain excise taxes.

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. Robert Tollison, Richard Wagner and Darwin Johnson (see above). Johnson is prepared to discuss his study of the excise tax burden on five specific demographic groups.

. Representatives from League of United Latin American Citizens and the National Black Caucus of State Legislators (see above).

. Excise tax video (see above).

. Representatives from The Tobacco Institute are available to prepare and deliver testimony.

3. To point out that excise taxes are unfair.

. David Wilhelm or Bob McIntyre of Citizens for Tax Justice (see above).

. Robert Tollison, Richard Wagner and Darwin Johnson (see above).

. Representatives from Coalition Against Regressive Taxation (see above).

. Excise tax video (see above).

. Representatives from The Tobacco Institute are available to prepare and deliver testimony.

4. To demonstrate that excise taxes are an unreliable revenue source.

. Robert Tollison, Richard Wagner and Darwin Johnson (see above).

. Representatives from Coalition Against Regressive Taxation (see above).

. A video prepared by Hospital Corporation of America for the National Conference of State Legislators will be available for Congressional briefings. The video discusses health care financing and concludes excise taxes are an unacceptable funding mechanism.

. Representatives from The Tobacco Institute are available to prepare and deliver testimony.

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Action Needed: Identification of health care economists to deliver testimony opposing excise taxes as a health care funding mechanism. We also need to cultivate health care alliances that support our position.

5. To point out that excise taxes have a detrimental impact on the national economy

. Robert Tollison, Richard Wagner and Darwin Johnson (see above).

. Representatives from Coalition Against Regressive Taxation (see above).

. Bob Friedman, president of Corporation for Enterprise Development, an organization that helps state and local governments develop economic development programs, is available to prepare and deliver testimony on the negative impact of excise taxes on economic development.

. Representatives from Tobacco Growers, i.e., Carlton Blalock, executive director of the North Carolina Tobacco Growers Association, are available to prepare and deliver testimony focusing on the detrimental effect of cigarette excise taxes on tobacco growers.

. Representatives from tobacco distributor groups, i.e., Terry Burns, NATD and Malcolm Fleischer, RTDA are available to prepare and deliver testimony.

. A representative from the Bakery, Confectionery and Tobacco Workers Union is available to submit testimony.

. Tobacco family Congressman, i.e., Senator Terry Sanford, should be asked to prepare and deliver testimony.

. Representatives from The Tobacco Institute are available to prepare and deliver testimony.

. Excise tax video (see above).

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Action Needed: As hearings are announced, Federal Relations Division needs to determine which Congressmen will be available to submit and to deliver testimony.

6. To illustrate that raising excise taxes will not significantly reduce the federal deficit.

. Robert Tollison, Richard Wagner and Darwin Johnson (see above).

. Representatives from Coalition Against Regressive Taxation (see above).

. Tobacco family Congressmen (see above).

. Excise tax video (see above).

. Representatives from The Tobacco Institute are available to prepare and deliver testimony.

7. To demonstrate the unconstitutionality of the Bradley-Stark proposal. Cross reference with advertising hearing readiness.

. Barry Lynn, American Civil Liberties Union is available to prepare and deliver testimony.

. Craig Smith, president of Freedom of Expression Foundation is available to prepare and deliver testimony.

. Representatives from The Tobacco Institute are available to prepare and deliver testimony.

Action Needed: Identification of other alliances that are concerned with the dangerous precedent Bradley-Stark would establish. We also need to encourage the advertising industry to take the lead in opposing this proposal.

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PUBLIC SMOKING HEARING READINESS

Primary Responsibility: Susan Stuntz

When the Coalition on Smoking OR Health called a news conference to discuss public policy implications of the 1986 Surgeon General's report on "involuntary smoking," participants there confirmed what we already suspected: federal legislation and hearings on ETS issues can be anticipated as early as the first quarter of this year.

Sen. Hatch already has introduced legislation that would ban smoking on all means of public transport. It has been referred to the commerce committee (where Ernest Hollings is chairman; Wendell Ford heads the aviation subcommittee). We also have heard that Hatch has asked for labor committee hearings on ETS -- to give the Surgeon General yet another opportunity to review the findings of the report released December 16.

Rep. Scheuer has introduced legislation banning smoking on all domestic aircraft, and promises a bill that would extend the regulations announced by the General Services Administration in early December to federal employees who work in buildings not covered by GSA or Department of Defense regulations. Rep. Ritter has promised a federal workplace bill of his own.

What We Can Expect

Whatever the venue, we can anticipate the now-familiar litany of anti-smoking scientists and activists claiming that environmental tobacco smoke poses a health hazard to nonsmokers in the workplace, and that smokers are less productive and more costly to their employers than nonsmokers. These include:

- . Surgeon General C. Everett Koop
- . Lawrence Garfinkel (American Cancer Society)
- . Representatives from the Heart and Lung Associations
- . John Banzhaf (ASH)
- . James Repace
- . David Burns, Jonathan Samet, and other authors of the Surgeon General's 1986 report
- . Bob Rosner, William Weis, Tim Lowenberg of Seattle University's Smoking Policy Institute
- . Marvin Kristein, American Health Foundation, on the economics of smoking restrictions

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- . Representatives of state and local governments that have restricted smoking (possibly a Joe Califano or a New York Public Health Commissioner to report on their experiences in New York)
- . William Alli, American Federation of Government Employees
- . Representatives from the NAS passive smoking and cabin air quality committees
- . Aaron Lichtman, president of the new Citizens Against Tobacco Smoke (CATS), dedicated to banning smoking on airlines
- . Representatives from flight attendants' unions

We also could see, for the first time in federal public smoking hearings, testimony from workers who claim to have been harmed by exposure to ETS, from airline passengers who have been delayed or inconvenienced by smoking disputes, or from celebrities such as Roger Clemens, Cy Young Award winner and American League MVP, who attributed a poor performance in the World Series this year to exposure to tobacco smoke on an airline flight back to Boston from the league championship series.

What TI and Its Allies Must Cover

Tobacco Institute testimony and that of its allies and interested parties should emphasize:

1. The lack of scientific evidence that environmental tobacco smoke causes disease in healthy nonsmokers. Such testimony should note the difference in tone between the politicized introductions to NAS and Surgeon General's reports, and the scientific literature review that comprises the bulk of these documents. While the former claims health harm and recommends restrictions, the latter takes a far more cautious approach and recommends further research.
2. Smoking as but one aspect of a serious indoor air quality problem -- a problem that can and should be addressed not by restricting smoking, but by providing adequate and properly maintained ventilation systems.
3. Evidence that employers -- including the federal government -- can and are dealing with smoking problems in the workplace as they occur.
4. The lack of evidence that smokers are any more costly or less productive than nonsmokers.
5. Potential costs to employers of restricting smoking in workplaces.

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6. Discriminatory effects of smoking restrictions, including denying equal access to handicapped workers, selective enforcement, and implementation that affects minorities, women and blue collar workers and, excludes white male executives.
7. Potential collective bargaining problems for organized labor.
8. Evidence that the vast majority of the American public believes smoking restrictions are a matter to be addressed on a case-by-case basis, rather than by government fiat. In the case of public transportation, evidence that most of the flying public is satisfied with current rules and regulations.

Most of these arguments -- and the people to make them -- already are in place. A few are public opinion surveys and impact studies that are best completed once legislation is in hand.

Resources and Status

1. To note the lack of scientific evidence that environmental tobacco smoke poses a health hazard to nonsmokers.

. Continued briefings of Congressmen and their staff by TI legislative counsel and scientific consultants, on the ETS issue and on questions about scientific integrity and misrepresentation of fact.

, Representatives from the Indoor Air Pollution Advisory Group, probably Drs. Phil Witorsch and Nancy Balter, are up to date on the literature and ready to testify once hearing dates are set.

. We have asked the Department of Health and Human Services for documents used in preparing the 1986 Surgeon General's report. Assuming our request is denied, we are attempting to interest a Member of Congress in seeking the information.

Action Needed: Interested Congressmen should be encouraged to invite other independent scientists who have been outspoken on this issue. In particular, Dr. Ernst Wynder, a reviewer of the 1986 Surgeon General's report, is reported to have distanced himself from the conclusions of the report. Michael Lebowitz has made similar statements.

2. To place the ETS issue in the broader context of indoor air quality.

. Gray Robertson, ACVA Atlantic, Inc., is ready and willing. He should be a part of continued private briefings with Congressional staff.

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. Sal DiNardi, University of Massachusetts and another representative from IAPAG, also is available to testify.

. Representatives from organized labor who have continually pushed for smoking restrictions to be considered as part of a broader indoor air quality program, will be encouraged to include this issue in any testimony they submit.

. A representative from IT Corp., an independent laboratory which has agreed to analyze and discuss findings from portable indoor air sampling devices, can review results from samples taken in a cross section of government buildings, including Congressional hearing rooms. This resource will be made a part of the material on which Congressmen and their staffs currently are being briefed.

Action Needed: Delivery of and training on the portable air sampling devices is behind schedule. Public Affairs is pressing to put these briefcases into use as soon as possible.

On airlines, the Aviation Safety and Health Association has attempted in the past to place smoking-on-airlines in the context of cabin air quality. Although workload has prevented public affairs staff from meeting with ASHA officials, such discussions need to take place prior to any hearings.

3. Evidence that employers can and are dealing with this issue as necessary.

. TI should include this in its own testimony. Anecdotal evidence is available in quarterly corporate reports, and in the results of the voluntary programs put together in the last year.

. Organized labor will be encouraged to cite instances in which locals have successfully bargained on the issue.

Action Needed: Results of the program currently underway to brief agencies on requirements under the GSA regulations will be useful in describing the depth and breadth of local response to the General Services Administration's new requirements. These results may include examples of policies drafted and reports on success of or problems with implementation.

4. Lack of evidence that smokers are less productive or more costly to their employers than nonsmokers.

. UCLA economist Lew Solmon is prepared to appear and/or to submit a written statement

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detailing his research on the productivity/costs issue. He is prepared to ask to testify on his own, or he can be included as part of an industry panel.

5. An assessment of the potential costs to employers of imposing smoking restrictions.

. An economic impact study can be developed in two weeks' time, outlining potential costs to employers of posting signs, rearranging office space, and providing smoking breaks to employees. The study is tailored to legislation; all that is needed to proceed is a copy of the bill.

. Anecdotal information on any horror stories that have resulted from legislatively imposed smoking restrictions at the state or local level. The State Activities Division has commissioned a study of corporate experience with the Cincinnati ordinance. Results may be incorporated into TI testimony, or into the economic impact study, as appropriate.

Action needed: Testimony as to economic impact can be delivered with a liberal labor slant, or from the conservative corporate view. On the former, we have in the past obtained the sponsorship of the AFL-CIO, or of member unions; Jim Savarese is the witness. For the conservative corporate side, Bob Tollison presents the study. If and when testimony is to be given, we will need a judgment from Federal Relations as to whether we should seek labor sponsorship.

6. Discriminatory effects of workplace smoking restrictions.

. Tom Burch, chairman of the National Coalition of Vietnam Veterans, testified effectively last year as to the potential impact of federal smoking restriction legislation on the veteran population in VA hospitals and in the federal workforce. He is prepared to repeat his testimony, and to continue to call for assurances that any areas designated smoking and nonsmoking sections be equally accessible to the handicapped.

. The League of United Latin American Citizens (LULAC), and several state Hispanic chambers of commerce last year passed resolutions and/or submitted comments opposing workplace smoking restrictions. We will call on them for similar statements this year.

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. Representatives from organized labor will cite in their testimony the potential for selective enforcement singling out union activists, and problems with blue collar and lower level workers being disproportionately affected by restrictions in general office space.

7. Potential problems with collective bargaining contracts.

. TI should, of course, note this factor in its testimony.

. The strongest testimony here will come from organized labor, which will note the 1986 AFL-CIO resolution. We will approach the American Federation of Government Employees (AFGE), the Public Employee Dept. of the AFL-CIO, and the four other federal worker unions that commented on the GSA regulations. It will be our goal to encourage all to appear, or at a minimum to submit statements. Realistically, however, we can anticipate that a single representative will carry the message for all.

. In addition, we will approach the presidents of the five unions that commented on the 1986 Surgeon General's report, and ask them to submit a statement outlining their objections to the report.

Action needed: The Public Affairs Division continues its constant contact and briefings with organized labor; we continue to update unions as events occur.

8. Demonstrate that the vast majority of the American public believes that workplace smoking restrictions are best resolved on a case-by-case basis, and not by government fiat. For airlines, demonstrate that most of the flying public believes things work well the way they are.

. A public opinion survey commissioned in 1985 and released last year, revealed that the vast majority of voters in the Washington, D.C. area, and the majority of federal employees, believe that smoking restrictions in the workplace are best left to the individual manager and/or agency, and not a responsibility for the Congress. We can rerun that survey to obtain updated information.

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. Comments submitted on the proposed GSA regulations can be cited in TI testimony, and in testimony from allies and friends.

. Also in 1985, we updated an earlier telephone survey of frequent flyers. Most believe the current system of separate sections for smokers and nonsmokers works just fine. That survey, too, can be rerun and used to buttress the Department of Transportation's own complaint records.

Action needed: Both surveys can and will be fielded once we have received approval from the Federal Relations Division. C&B submitted a Freedom of Information request in August to obtain copies of all GSA comments. We continue to press for a response to that long-overdue request.

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ADVERTISING HEARING READINESS

Staff Responsibility: Fred Panzer

OVERVIEW

Congressional hearings may be delayed until after American Bar Association house of delegates votes on the advertising ban resolution. The outcome of that decision will have a crucial effect on the timing and momentum of this issue. If we lose, expect our opponents to push for high-visibility hearings.

In a year of deficit reduction, we can expect Sen. Bradley to continue to publicize his proposal to change the tax treatment of tobacco advertising and promotion as good way to raise revenue and help meet the Gramm-Rudman target. His bill was introduced February 3.

LEGISLATIVE SCENARIOS - HOUSE

Rep. Synar is expected to re-introduce his bill outlawing tobacco product advertising and promotion. He has said that he is doing so on behalf of the American Medical Association.

Chairman Waxman, whose health subcommittee has jurisdiction, favors the Synar bill, may go for something less than an ad ban to put his own trademark on it -- for example, tombstone advertising, circle and arrow warning format, or counter advertising.

Other referrals are possible to subcommittees chaired by Rep. Luken and Rep. Florio.

Rep. Stark's bill to deny the business deduction for cigarette advertising and promotional expenses will be re-introduced. Hearings are uncertain. Recall that Stark did not even try to hold hearings last year because of Chairman Rostenkowski's opposition.

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Matt Myers, executive director of the Coalition on Smoking OR Health, expects it will take three Congresses to pass an ad ban. This year, hearings will test the country's readiness for a tobacco advertising ban. Hearings may reveal that the Synar bill probably goes too far -- arousing too much opposition from other businesses, the legal profession, civil libertarians, and Members of Congress.

Waxman has made it known that he will try to report the Synar bill out of his subcommittee. If the attempt stalls, either in subcommittee or full committee, a compromise could be offered. Such a proposal could require tombstone content, circle-and-arrow warnings and industry-funded counter advertising. This would be a dangerous bill, especially coming in 1988, a congressional and presidential year, when campaign posturing and AMPAC campaign contributions would work against a reasoned approach.

Key Committees: Energy and Commerce
Ways and Means
Judiciary - Because an advertising ban has constitutional implication, this committee could also seek jurisdiction.

LEGISLATIVE SCENARIOS - SENATE

No Synar companion bill surfaced in the Senate last year. This year one is expected.

Senator Hollings should insist on referral to the Commerce Committee, although efforts may be made to draft a bill that could be referred to Sen. Kennedy's Committee on Labor and Human Resources.

Sen. Bill Bradley's proposal to deny treating tobacco advertising as a deductible business expense has been introduced and we must be prepared for hearings.

Key Committees: Commerce
Labor and Human Resources
Finance
Judiciary - Because an advertising ban has constitutional implication, this committee could also seek jurisdiction.

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STRATEGY

1. Position the advertising and media industries as the primary victims of an unwise public policy that restricts the truthful advertising of legal products. Focus public attention on the process rather than the products.
2. Position tobacco as the first of a number of products targeted by consumerists, thus, broadening our coalition.

THEMES, RESOURCES, WITNESSES

"Constitutional"

Advertising is "commercial speech" and is protected by the First Amendment of the United States Constitution.

Resources:

1. C&B Legal Memoranda on Synar.
2. C&B Legal Memoranda on Posadas.
3. Statements of legal and First Amendment experts. E.g.: Bert Neuborne, Scott Ward, Philip Kurland, Barry Lynn, Craig Smith, et al.

Witnesses:

1. Same as 3 above.

"Dangerous Precedent"

For the first time in history of our country an attempt is being made to ban the advertising of a legal product. This is an unwise public policy which can easily be extended to a host of other interests.

Resources:

1. Advertising-Media Coalition (IAC-AAF).
2. Patton, Boggs, Blow or similar coalition.
3. Freedom of Expression Foundation

Witnesses:

1. Advertising and Publishing industry spokespersons to be selected by above coalitions
2. Craig Smith, director Freedom of Expression Foundation.

"Radical Change is Unnecessary"

Advertising does not cause people -- of any age! -- to start smoking; it influences their selection of brands by smokers. Antismoking information and education is the best policy for a democratic society -- and it seems to be working.

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Resources:

1. University of Michigan youth smoking data. Analysis needed.
2. Children's Research Unit international study, "Why Do Juveniles Start Smoking?"
3. Aggregate demand study of Prof. Gary Wilcox, University of Texas.

Witnesses:

1. Academic experts: Prof. Blackwell
Prof. Scott Ward
Prof. Jean Boddewyn.
5. Advertising experts: John O'Toole, exec dir, AAAA
Charlotte Beers, chair, AAAA

"Ad Bans Don't Work"

Empirical evidence and studies from all over the world demonstrate that advertising prohibitions and restrictions simply do not affect the consumption of cigarettes.

Resources:

1. "Tobacco Advertising Bans and Consumption in 16 Countries," International Advertising Association brochure.
2. Literature review article on papers reaching the same conclusion. To be assigned.

Witnesses:

1. Ronald Beatson, Ph.D., head of the European Association of Advertising Agencies.
2. Jean Boddewyn
3. Michael Waterson

"Economic Impact of Ad Ban"

Injury is added to insult. An ad ban is a bad idea with painful economic consequences stemming from the loss of 44,400 jobs, according to a new study.

Resources:

1. "The Economic Consequences ... of a Ban on Cigarette Advertising and Promotion," a study conducted for us by the Policy Economics Group, a division of Peat, Marwick.

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Witnesses:

1. Darwin Johnson, lead economist the Policy Economics Group, who is prepared to testify on the impact.
3. A representative of the Committee on Affordable Sports and Entertainment (CASE) who could present specifics of the loss in that business.
4. Spokesman of labor unions in affected industry and trades. R&D needed.

STRATEGICALLY-DEPLOYED EXPERTS

Note: As a spin-off to work done on the excise tax issue, we have developed a resource that can be used on all of the above themes, singly or in any combination. This resource is a corps of some twenty academics -- business schools professors, political scientists, all with law backgrounds -- resident at universities in states with members on key Congressional Committees. They are prepared to make a contribution to the public affairs effort, e.g. writing op-ed articles, letters to editors, media visits, etc.

YOUTH ASPECT

Caveat: This is an extremely delicate area and should be addressed only in response to a clear need assessed by the Federal Relations staff.

As many legislators see it, tobacco ads are targeting teenagers. They note that most people become regular smokers before their 18th birthdays. They would approve HHS Secretary Bowen's call for states to set an 18-year-old smoking age.

Resources:

1. Standard Helping Youth Decided (HYD) materials, new Helping Youth Say No (HYS) booklet and promotion plan, and report on HYD community project in Ithaca, Michigan.
2. NASBE progress report, when needed, as well as exhibit materials on a proposed "It's the Law" awareness campaign.

Witnesses:

1. Jolly Ann Davidson, past president of the National Assn. of State Boards of Education (NASBE), reporting on the "Helping Youth Decide" (HYD) community program in Michigan and release of the second TI-funded NASBE parent guidebook "Helping Youth Say No" (HYS).

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STATUS

We are basically ready to meet the challenge of early hearings on the advertising ban. Our presentation and personnel would replicate last year's outing.

This time we must devote highest priority to:

1. Defeating the New York resolution at the American Bar Association. Primary responsibility: Covington & Burling.

2. Developing a broad-based coalition opposing advertising restrictions. Primary responsibility: TI President and senior staff.

3. Strengthening advertising alliance. Primary responsibility: Public Affairs issues manager.

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