Blowing Smoke Rings Around the Statehouses

How the states roll over for the tobacco industry

BY MORTON MINTZ

A few years ago, Doctors Ought to Care (DOC), an anti-tobacco group in Houston, Texas, received a batch of internal Philip Morris documents from someone claiming to have found them "in a garbage can." The documents were periodic briefings prepared for senior Philip Morris executives from 1989 to 1990 by an unidentified supervisor of the company's lobbying in seven Southwestern states: Arizona, Kansas, Louisiana, Missouri, New Mexico, Oklahoma, and Texas.

The primary mission of the operative, dubbed "Smoking Gun" by tobacco foes, was to prevent increases in state cigarette excise taxes. The level of taxation of tobacco products is important because it quite literally can determine whether huge numbers of people become addicted, sicken, and die. Over the 11-year period starting in 1980, Canada raised its combined federal and provincial cigarette tax drastically—from an average of 46 cents per pack to $3.27 per pack. By 1991 per capita cigarette consumption had fallen by 40 percent and teen smoking by two-thirds, after accounting for smuggling of cheaper cigarettes from the United States.

In the United States, the average of state levies on cigarettes is only 32 cents per pack. Combined with a 24-cent federal tax, our rate of cigarette taxation is the lowest among 13 Western industrialized countries. A recent survey found the highest tax, $3.88 per pack, in Denmark. Next came Norway, at $3.44 per pack, and the United Kingdom, at $3.27. Canada, after drastic cuts in federal and some provincial taxes in 1994, still ranked ninth—with combined federal and provincial taxes totaling $1.96.

For the United States to follow the example of these countries by dramatically raising cigarette taxes would be to preserve the health and save the lives of huge numbers of Americans. By the conservative estimates of independent and government economists and experts on smoking, every 25-cent increase in excise taxes, indexed to keep pace with inflation, would discourage about 1 million persons from smoking and save between 200,000 and 300,000 of them from premature death. A $2 increase—favored by majorities of voters in every region, according to a 1993 poll by Marttila & Kiley—would avert 1.9 million

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premature deaths. Higher taxes would be especially effective in deterring young potential smokers from getting hooked. And while producing sharp declines in cigarette consumption, higher taxes would yield greater revenues that could help state and federal taxpayers bear the costs of tobacco-related diseases. These revenues could be immense: The Congressional Joint Committee on Taxation calculates that a tax increase of $1.76 would generate $86 billion in new revenues in five years.

Yet the tobacco industry has contrived to stifle not only efforts to raise cigarette excise taxes, but robust debate about the issue as well. In part, the industry has achieved this indirectly—by supporting conservatives who oppose all or nearly all new taxes. (In 1990 alone, Philip Morris gave $91,800 to Citizens for a Sound Economy, a Washington, D.C., think tank that advocates less regulation and lower taxes, as well as $40,000 to the Tax Foundation, a Washington think tank that sponsors the annual "Tax Freedom Day.") But the industry has been most successful with frontal assaults, and these have been most effective where they are least scrutinized: in the nation's statehouses.

It's at the state level that much of the real action on tobacco issues takes place—from excise taxes to anti-smoking laws to how strictly laws against selling to minors are enforced. Indeed, even on issues besides tobacco, lobbying at the state level is more intense, more blatant, and more successful, than in D.C., thanks in part to ludicrously lax campaign finance laws.

So it's not surprising that the tobacco industry has adopted the rhetoric of "states' rights" to try to protect its profits. At the 1995 Annual Conference of the National Foundation for Women Legislators, Inc., an organization with a membership of 500 sitting legislators, the Smokeless Tobacco Council sponsored a workshop called "The FDA's Assault on the Constitution and Legislative Prerogative." The purpose? To alert the legislators to proposed Food and Drug Administration rules that would regulate the sale, distribution, and promotion of tobacco products in all 50 states. A memo summarizing the workshop said that "The [Smokeless Tobacco C]ouncil pointed out that the FDA's proposal to regulate tobacco products clearly intrudes into areas that traditionally have been reserved as state legislative prerogatives.... The FDA has put at stake the accountability and credibility of state legislatures in this precedent setting rule making." And then the Council urged the women legislators to write the FDA opposing the proposed regulations "on the grounds that this is clearly a states' rights issue."

The GOP, of course, is also using the "states' rights" rubric to argue for the devolution of even more power and money to the states. Unfortunately, as the Philip Morris memos suggest, there's good reason to question the "accountability and credibility of state legislatures." The DOC memos offer a rare written chronicle of the tobacco industry's methods, but they also provide an unusually honest glimpse into how the political process too often functions in our states and localities.

States' Wrongs

In his internal Philip Morris memos, Smoking Gun was nothing if not candid:

• In Texas, where he foresaw a possible attempt to raise the excise tax, Smoking Gun bluntly equated campaign contributions with "buying," usually a no-no word for influence-peddlers: "Our new comptroller—the person to whom the governor and legislators look for the state's financial guidance—will be John Sharp. The plan is to give early and large campaign contributions, to Sharp, thereby ... at the very least buying [his] silence when it comes to locating new revenues."

But Smoking Gun was even more ambitious, noting that "our best, and, perhaps, only hope to combat a consumer excise tax increase in 1991" is "to help elect a Republican governor who is a 'no new taxes,' George Bush Jr./Will Clements kind of guy." Bush is the present and William Clements a former governor.

• As Missouri's governor, now-U.S. Senator John Ashcroft (R) had tried to raise excise taxes on cigarettes. "[Nineteen-ninety] will be another tough year in Missouri battling taxes," Smoking Gun reported. "Governor Ashcroft will continue to beat the cigarette tax drum. I mean this guy really hates us—He doesn't even dance for religious reasons. This past week the President Pro Tem of the Senate cut a deal with the Governor and said he will sponsor a bill to raise cigarette taxes."

A number of unnamed Missouri legislators elicited this observation from Smoking Gun: "This group really loves to hunt. The same guys I took to the racetrack in OK [Oklahoma] last year [1989] were the very ones that helped us hold the leadership firm on no new cigarette taxes. We will be doing some racetrack trips in 1990."

• On campaign contributions to Kansas state legislators, Smoking Gun had this to say: "Last year we gave out about $11,000 ... It may not sound like much but that's the most we could give without sticking out like a sore thumb." Apparently Philip Morris didn't want its buying of legislators to be too conspicuous.

• And of contributions to Louisiana state legislators: "We already help sponsor a legislative dove hunt, but I think our own fishing trip would be of benefit. We give [them] so much money ... and I think that knocks out the need for an honorarium unless they requested it coupled as a trip."

State political caucuses have long been favorites of the tobacco companies, on the common-sense basis that a coalition is inevitably more powerful than its individual members. Smoking Gun boasted, "We gave money ... to every caucus that ever existed and will continue to do so."

For 1990, Philip Morris budgeted a total of $5,000 for state legislative black caucuses in Kansas, Louisiana, Missouri, and Oklahoma. In Texas, the company budgeted $5,000 for the Mexican American Caucus, $3,000 for the Texas Black Caucus, and $1,000 for the Hispanic Women's Leadership caucus. While the Texas Senate was considering a smoking-restriction bill, Smoking Gun recalled, the industry "had a hard time ... [procuring] witnesses ... No one would come to our aid except the Black Caucus members to speak out against the tax and even then we had to use personal favors for them to hold the press conference."

Philip Morris went to even greater lengths to ensure both the goodwill of and access to the states' leaders. In 1990, for example, Philip Morris gave $20,000 to the Southern Governors Association, $12,000 to the National Governors Conference, and $10,000 to the National Bureau of Economic Research. As a Full Corporate Fellow of the National Governors Association (NGA), Philip Morris contributed $84,000 over eight years to the NGA. As an Associate Corporate Fellow for three years and a Full Corporate Fellow for one year, RJR Nabisco had contributed $27,000 before withdrawing in 1995. Among the benefits of Corporate Fellowship: an invitation to the governors' annual meeting (a private dinner is included for Full Corporate Fellows) as well as private receptions and meetings with the governors during the year.

The Smokeless Tobacco Council urged women state legislators to oppose the FDA regulation of tobacco products "on the grounds that this is clearly a states' rights issue."

Philip Morris is, of course, just one of many tobacco interests spending megabucks at the state level. Take U.S. Tobacco, the leading producer of smokeless tobacco, which George Bush's Surgeon General, Dr. Antonia Novello, predicted will cause an "epidemic" of oral cancer two or three decades from now. In the six years between 1989 and 1994, UST and the Smokeless Tobacco Council paid a stunning $9.2 million in fees to "state legislative consultants."

And in Massachusetts in 1992 and in Colorado in 1994, referenda were held on increasing the cigarette tax by 25 cents and 50 cents, respectively. To defeat these ballot initiatives, tobacco interests reported spending a total of $4.1 million merely on Washington-area advertising, direct-mail, and polling firms. The industry spent over $5.5 million in Colorado, where it won. The increase passed in Massachusetts—but tobacco lobbyists then succeeded in getting legislators to divert $19 million in tobacco tax revenues from the state's tobacco control program.

To be fair, a few of the states' attorney generals are leading, sometimes at great political risk, court battles to reclaim health-care costs from the tobacco industry. But on the whole, tobacco lobbyists have met with remarkable success in their state-by-state lobbying efforts. It's enough to make you think twice about the Republicans' devolution solution. □

The Real Blood Sport: The Whitewater Scandal Machine

Critics say Whitewater is about the Clintons' effort to contain a scandal. But even more, it's about their opponents' success in creating one

BY AMY WALDMAN

In 1983, Ronald Reagan's assistant attorney general Theodore Olson and the House Judiciary Committee faced off in a dramatic exchange over the administration's handling of environmental policy. After the committee demanded documents that Olson could not, or would not, provide, the committee produced a 3,100-page report about Olson's alleged obstruction. And then it got serious: The Democrats pressured Attorney General Edwin Meese to appoint an independent counsel to investigate Olson. After six months, independent counsel Alexia Morrison found no basis on which to prosecute Olson. But with the resources and purview of the independent counsel at her disposal, she pressed on—for four more years.

Understandably desperate, in 1987, Olson and two other former Justice Department officials went to court to argue that the Ethics in Government Act, which gave independent counsels virtually unlimited power to pursue wrongdoing, was unconstitutional. A federal appeals court agreed, with a judge writing that special prosecutors feel pressure to "justify" their appointment by bringing indictments and are therefore inherently biased against the people they investigate.

But the Supreme Court reversed the decision, and the investigations continued, finally concluding in 1988. Olson was never indicted, but six years of his life, and more than $1 million of his money, had been consumed by congressional and independent counsel investigations. When Olson recently testified before Congress on the flaws in the independent counsel law, he spoke with authority.

You would think, then, that he might feel at least some sympathy for Bill Clinton, who has spent the last three years enduring similar investigations over what's collectively known as Whitewater. To the contrary. Olson is instead representing the President's chief accuser, David Hale, on matters relating to the Senate investigation of Whitewater. Olson defends his representation of Hale, who has alleged that then-Governor Clinton pressured him to make an illegal loan, with the argument that he's always been willing to represent people being investigated by independent counsels—Olson was, for example,

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