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<u>Box Number</u>	<u>Folder Number</u>	<u>Document Date</u>	<u>No Date</u>	<u>Subject</u>	<u>Document Type</u>	<u>Document Description</u>
4	17		<input checked="" type="checkbox"/>	Domestic Policy	Report	Report highlighting potential electoral consequences of anti-tobacco policies. Includes appendices documenting policies, positions and statements of various officials and departments, including Surgeon General, HEW, Commerce, Justice. 36 pgs.
4	17	1/18/1972	<input type="checkbox"/>	Campaign	Memo	Memo from Lee Nunn to Attorney General re: problems with tobacco lobby, states in light of administration tobacco policy, statements. 1 pg.

COMMITTEE FOR THE RE-ELECTION OF THE PRESIDENT

January 18, 1972

1701 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, D. C. 20006
(202) 333-0920

CONFIDENTIAL

MEMORANDUM FOR THE ATTORNEY GENERAL

SUBJECT: Tobacco

In 1968 the President carried all of the principal tobacco states with the exception of Georgia, and that went to Wallace. We should do as well in 1972. However, the Democratic nominee will be in a position to build a very strong case against this Administration unless we are able to change the attitude of HEW, the Surgeon General, and FTC toward the tobacco industry.

In most areas handled by these departments there is an indication of moderation and fairness with everyone except tobacco. The Surgeon General has termed it more dangerous than heroin and marijuana - a danger to non-smokers as well as smokers - has apparently publicized unfavorable and withheld favorable information concerning tobacco and has committed other sins in the eyes of the tobacco industry.

I hope something can be done to convince our tobacco friends - from here on out more moderation will be used by our people and that a sense of fairness will prevail.

The Tobacco Institute representing the industry in Washington is composed of friends of this Administration even though most of them are members of the Democratic Party. They are having a difficult time continuing their friendship under present day conditions. It is just about impossible to get any funds for the campaign from the tobacco industry at this time. My chief worry, of course, is what our opponents could do with the anti-tobacco material that will be available unless we can bring about a change.


Lee R. Nunn

President Nixon's re-election prospects are not being advanced by the narrow and zealous anti-smoking campaign that is being conducted by the United States Public Health Service, under the leadership of Surgeon General Jesse Steinfeld.

John F. Kennedy and Lyndon B. Johnson carefully kept the cigarette controversy at arm's length from the White House. While President Nixon is personally maintaining a hands-off posture, it is likely that his '72 campaign will be damaged by the ceaseless efforts of career bureaucrats to eliminate cigarette smoking.

They have a willing spokesman in the Surgeon General. His constant attacks on cigarette smoking and the tobacco industry could easily be used by Democratic strategists to deny President Nixon votes in the South and nationally.

Any attacks on tobacco are counter-productive in Kentucky, North Carolina and Virginia, where tobacco growing and manufacturing are vital to the economy. The same is true to a lesser, but still significant, extent in Tennessee, Georgia, South Carolina, Florida and Maryland.

Outside the South, the Surgeon General's excessive campaign against smoking -- almost to the exclusion of every other health or environmental hazard -- gives the appearance of an Administration diversion to protect some of the major targets of the anti-pollution forces. This semblance of a cover up could play into the hands of the Democrats in their efforts to portray the Republican Party as the party of the big business pollutionists. Needless to say, the effort could hurt with the young and the suburban voter.

Apparently, the President himself is aware of the dangers. He has personally never committed the White House beyond his 1968 campaign statement on tobacco, in which he said:

"It seems to me that the Federal Government has placed the warning before the people in an adequate manner...I would say that the job of the Federal Government here is simply to lay it before the people and then if people determine on their own that despite the warnings they're going to continue to smoke, I don't think the Federal Government could go further than that..."(see attachment A)

Unfortunately, the bureaucracy, most notably the Surgeon General, has gone much further than that.

On a recent broadcast, for example, he stated that he was "in favor of all those things which will lead to less cigarette smoking," including -- higher taxes,

graduated taxes based on "tar" and nicotine content, banning all advertising, and ending tobacco price supports for farmers. But this is not surprising for a man who regards cigarette smoking -- not heroin addiction, marijuana, alcoholism, or auto accidents -- as America's number one health problem. (His obsession with tobacco and relative unconcern with other alleged hazards is documented in Attachment B.)

What is surprising is that a key Administration health appointee can continue to march to the tune of a different drummer. It is also surprising to see Cabinet Secretaries joining in, although unwittingly. For example:

On October 20, 1969, a letter prepared by the anti-smoking arm of HEW cleared Secretary Finch's office without his knowledge. It went to Senator Moss of Utah, who was facing a strong challenge from Representative Burton, a candidate personally selected by President Nixon. The "Finch letter" praised the Utah Democrat for his "successful efforts to remove cigarette advertisements from radio and television" and "pledged support of efforts to have anti-smoking ads carried in print media." Senator Moss promptly released it to the press and later circulated it widely during his 1970 Senatorial campaign. (See Attachment C.)

On April 18, 1969, without checking with Secretary Stans, who was out of the country, the new General Counsel of the Commerce Department forwarded a staff-prepared letter to the House Interstate and Foreign Commerce Committee. This letter strongly supported anti-cigarette

legislation. Where most of the other Department reports deferred to HEW, the Commerce Department report went beyond the HEW position. However, after Secretary Stans returned and learned what had happened, he shook up his staff. As a result, his General Counsel sent a supplementary letter on May 22, backing off from its previous support of a bill which could have effectively stopped the export of cigarettes from the U. S. Further, the Counsel explained that the earlier letter was based on the assumed validity of the Surgeon General's findings which was vigorously protested at the committee hearings, he noted. (See Attachment D.)

On November 30, 1970, the Justice Department filed pleadings in re: Capital Broadcasting et al v. John Mitchell et al (U. S. District Court for the District of Columbia) which (a) completely fail to recognize that a scientific controversy exists regarding smoking and health, and (b) erroneously attribute to Congress a finding that a causative relationship exists between smoking and health and that smoking is an "inherent" health hazard. (See Attachment E.)

If practical political considerations do not provide sufficient grounds for better treatment from the Administration, perhaps simple justice does. For the tobacco industry has a unique record of responsible self-regulation in an effort to resolve what is essentially a perplexing scientific controversy.

**In 1963 the cigarette industry stopped all advertising and promotion on college campuses and college publications.

**In 1964 the industry established the Cigarette Advertising Code and named former Governor Meyner of New Jersey as administrator. The code effectively ended the use of young

persons and athletes as models and barred advertising in programs and publications directed at youth audiences.

**In 1969 the industry volunteered to stop all advertising on radio and television.

**In 1970 cigarette companies voluntarily submitted a plan to the Federal Trade Commission to display the "tar" and nicotine content in all print and outdoor advertising.

**In 1971 cigarette companies volunteered to show the side panel carrying the Congressionally authorized health warning in all advertising.

**In 1972 the industry reached agreement with the Federal Trade Commission on making this warning more conspicuous and clear.

Parallel with self-regulation that may well be unique in American business, the entire industry -- growers, distributors, and manufacturers -- have maintained an unprecedented commitment to objective scientific research. Beginning in 1954, the tobacco industry has committed \$40 million for smoking and health research through two independent granting agencies -- The Council for Tobacco Research and the American Medical Association's Education and Research Foundation.

Thus, it is spending more money on this special field of research than any other source, public and private. Far more than the voluntary health organizations which make a career of attacking tobacco.

Great hope for cooperative government-industry research was felt in 1969 when Secretary Finch met with industry and HEW scientists and officials and issued a press release stating:

"I believe that industry and government working together offers great promise of finding the answers we need. I am confident our joint effort will yield a cooperative research program which strongly promotes the public interest."
(See Attachment F.)

Congress too in its report of the Cigarette Advertising and Labelling Act of 1969 recognized the need for cooperative research as the best way to identify and close the gaps in our knowledge of tobacco and health.

Since then little innovation or initiative has been seen at the top level of the Department of Health, Education and Welfare. Hopefully, the Secretary can work with industry toward resolving this scientific controversy. It would be more beneficial to his President and the American people than falling in line with the Surgeon General and HEW's career anti-smoking bureaucrats, whose present limited objective seems to be a ban on smoking in HEW conference rooms and segregation of smokers in HEW cafeterias. (See Attachment G.)

WB-10
9/11/68

I don't believe that any senator really should go to the cabinet, uh we need them there in the Senate. Uh, that's my view on that.

Tobacco
Whitehurst: Mr. Nixon, if we may turn a bit from how you're going to get elected to some of your stands on...on issues, there are some things that are particularly important in this part of the country. And one thing is tobacco. Now in light of the knowledge between cigarette smoking and cancer, do you feel the Federal Government has gone too far or far enough in say, the warnings and efforts to uh, convince people to stop smoking cigarettes?

Nixon: Well, as a non-smoker and I suppose that isn't going to win me many votes in this great tobacco country, and of course, I spent a lot of time in Durham, and I am well aware of how much this industry means to uh, North Carolina and the rest of the South...uh, my view on this is purely objective. Uh...I can say that it seems to me that the Federal Government probably has uh...has uh, placed the warnings before the people in an adequate manner. And it seems that no matter how many warnings are placed before the people, uh those who are potential smokers uh, that uh, it doesn't seem to have a... a very much effect on what people do. Now, uh I've read the studies, some of the studies on the relationship of the use of tobacco and cancer and I know that it's quite controversial uh, but I would say that the job of the Federal Government here is simply to lay it before the people and then if people determine on their own that despite those warnings they're going to continue to smoke, uh I don't think the Federal Government could go further than that in protecting the people against what they think is, uh a vice that they are willing to

pay the price for.

Whitchurst: Well of course, there is an effort now to strengthen this warning on the cigarette...uh cigarette packages, and I was wondering if your administration would...would support such an effort to make that warning even more uh, frightening?

Nixon: I have no present intention to do that. Uh, no one has recommended it from my task forces and uh, unless I get some pretty strong evidence that the warning that is presently used is not adequate, I would not move in that direction.

Alvord: Do you consider the general philosophy of the type of campaign to sell an idea on the part of the Federal Government agencies such as the HEW's use of Post Office trucks and things of this nature to get out the word? Do you consider that uh, good government policy? Is there something that could be dangerous?

Nixon: It could be dangerous if it were in the hands of a...a potential dictatorial type in the Presidency of the United States. Uh, I just don't think we are going to elect that kind of a man... in any event. Uh...I, I must say that...that I am going to watch very carefully in my administration the use of Voice of America, uh either abroad or in those areas where it could be used at home and the use of all government agencies with this immense power that the Government could have over the minds of people. Uh, I think it's very important not to let that power to be used to influence the people in a way that uh, would not be proper and appropriate to the government function.

END
TOBACCO

B

The Surgeon General Has Determined...

Each year, 29 million packs of cigarettes warn Americans, by Act of Congress, that "the Surgeon General has determined that cigarette smoking is dangerous to your health."

Jesse L. Steinfeld, M.D. is the man who stands behind this official warning to consumers. Dr. Steinfeld is also a man who takes his anti-smoking stance very seriously. He has said, for example, that cigarette smoking is "a dirty, smelly, foul, chronic form of suicide" and that "it is high time to ban smoking from all confined public places."

But we live in an age of many hazards. What has Dr. Steinfeld determined about some of the others?

DRUG ABUSE, ALCOHOLISM, AUTO ACCIDENTS

"Cigarette smoking, not drug abuse, is America's number one public health problem," the Surgeon General of the United States said here yesterday. Dr. Jesse L. Steinfeld listed alcohol, auto accidents and drug abuse as other serious public health problems secondary to smoking."

Los Angeles Times, July 10, 1971

MARIJUANA

"Indeed, Dr. Burke, president of the American Historical Reference Society and consultant to the Smithsonian, reports that no less than seven U.S. Presidents smoked marijuana, including Washington, Jefferson, Madison, Monroe, Jackson, Taylor and Pierce." ((Steinfeld's testimony to National Commission on Marijuana and Drug Abuse))

Wall Street Journal, Oct. 20, 1971

PHOSPHATES

"My advice to housewives at this time would be to use the phosphate detergent. It is safe for human health."

Washington Post, Oct. 21, 1971

SUPERSONIC TRANSPORT HAZARD

"Surgeon General Jesse L. Steinfeld of the United States Public Health Service took issue today with reports which have appeared recently suggesting that world-wide use of the Supersonic Transport (SST) in the 1980's and after would result in an additional 10,000 cases of skin cancer in United States Citizens."

HEW Press release, Dec. 1, 1970

MERCURY, LEAD, ARSENIC, CADMIUM, ETC.

"Dr. Jesse L. Steinfeld...said today that the health effects of mercury, lead, arsenic, cadmium, and other toxic substances in the environment were not a cause for hysteria... We are not presently faced with widespread, serious human health hazard from these substances."

New York Times, Aug. 28, 1970

HERBICIDES AND PESTICIDES

"The evidence that is available now does not in my judgment support a conclusion that formulations of 2,4-D as now marketed and under current use present a hazard to public health."

New York Times, June 19, 1970

CYCLAMATES

"There is absolutely no evidence to demonstrate in any way that the use of cyclamates has caused cancer in man... We have no indication that human bladder cancer from whatever cause is increasing to any significant degree."

HEW Press Conference, Oct. 18, 1969

NERVE GAS SHIPMENT

"Our department wishes to take this opportunity to reassure the Congress and the American people that the transportation involved in Operation CHASE is less hazardous than that occurring daily in similar mass movements of chlorine, phosgene, of LPG,

liquified petroleum gas, and anhydrous ammonia. The appellation, 'nerve gas' conjures images that are true enough when weapons are ready to fire, but are not similarly appropriate when the weapons are encased in concrete."

Senate Commerce Committee
Hearings, Aug. 5, 1970

WATER POLLUTION

"As we reduce the number of smokers in the nation... the quality of our environment could improve, somewhat, since there would be fewer cigarette butts to...find their way to our water sources."

Speech to Interagency Council
on Smoking and Health,
Sept. 10, 1970

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OCT 20 1969

Dear Senator Moss:

Our Department was indeed gratified at the decision of the cigarette industry to withdraw its advertising from radio and television. You and your Committee played a large part in helping bring this about, and you deserve the thanks of the medical and health community for your success.

For some five years, our Department has carried on a smoking education program and so, for an even longer period, have the American Cancer Society, the American Heart Association, and the National Tuberculosis and Respiratory Disease Association. If newspapers and magazines are now ready to give greater support to our programs, we obviously have the responsibility to make our materials available to them, in whatever is the most effective way. If this appears to call for an Advertising Council campaign, we will ask the Council for this help.

As a beginning, I am asking staff of the National Clearinghouse for Smoking and Health to meet with the voluntary agencies and later with the Advertising Council to explore how an effective campaign in the print media can best be mounted. We will keep you informed of our progress. In the meantime, I would once again express my thanks to you for your continuing support of our smoking and health programs.

Sincerely,

ROBERT H. STROB

Secretary

Honorable Frank E. Moss
United States Senate
Washington, D. C. 20510

RSNUTCHINGS/BNORN/nzn 10/8/69
cc: HSMHA, Room 3A50, NIH, Bldg. 31
RMPB, Room 3C-10, Wilson Bldg.
Official file copy located in Room 808 Webb Bldg.

cc: Mrs. Byers, Room 5550 HEW-N
ExSec, Room 5627, HEW-N

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Health Services and Mental Health Administration

Secretary
Through: Director, OPIBRIEFING MEMORANDUMChief, Health Information Section
National Clearinghouse for Smoking and Health

Senator Moss' Request for an Advertising Council Campaign on Smoking

The Question

Senator Moss has recommended to you that our Department request a full-scale Advertising Council program on smoking and health in conjunction with the American Cancer Society, the American Heart Association, the American Public Health Association, and the National Tuberculosis and Respiratory Disease Association. Such a campaign, limited to the print media, would reinforce and eventually replace the "anti-smoking" announcements now appearing on radio and television under the FCC's fairness doctrine.

Background

A number of previous proposals have been made that the Council mount an anti-smoking campaign. One was made early in 1967 by the four voluntary health agencies, who asked the Surgeon General to request such a campaign and volunteered to pay \$75,000 towards its cost. Another proposal was made in 1968 by the Surgeon General's Task Force on Smoking and Health. Neither of these proposals was acted upon; for one reason, because they were then unnecessary inasmuch as the fairness doctrine was already providing far more exposure than the Council could have given.

The situation is, of course, now changed. Cigarette advertising will end by September 1970, and along with it will end the fairness doctrine campaigns.

The smoking issue has been an embarrassment to the Advertising Council for some years. The cigarette industry helps support the Council and, with only a handful of exceptions, its cooperating advertising agencies all handle cigarette advertising. On the other hand, many other friends of the Council recognize cigarette smoking as a major health hazard and feel it is an area in which the Council should be active. Included among these are important publishers. (Even Joseph F. Cullman, 3rd, Chairman of the Executive Committee of the Tobacco Institute, said at the Senate hearings of July 22 that he would not "oppose" a campaign at this time.)

OFFICE	SURNAME	DATE	OFFICE	SURNAME	DATE

FILE COPY

Pressures have now mounted to such a degree that, in our opinion, the Council will now accept a campaign on smoking if requested to do so by the Administration. It might even do so if the request came from the health agencies alone.

Discussion

There would be important advantages in a Council campaign. It would be a strong acknowledgement of the hazards of smoking; it would extend our educational campaigns to new media; it would tend to check advertising excesses in the media; it would please those publishers willing to cooperate with the campaign, by giving them a single agency to work with.

The most troubling question to be raised against a Council campaign is whether it could be an effective one in view of the ambivalence of many of the Council's principals. At the minimum, advertising needs to assert unequivocally that smoking is harmful; when it is addressed to young people, it must advise them not to take up the habit. Anything less than this could encourage smoking among children rather than discouraging it.

Recommendation

Because of the question raised immediately above, it is recommended that no immediate action be taken, but that discussions be started with the voluntary health agencies and later with the Council. Out of these discussions, at your direction, can come either a formal Advertising Council proposal or some satisfactory alternative method of meeting the problem. A suggested letter to Senator Moss is submitted to this effect.

Robert S. Hutchings

Enclosure

RSHUTCHINGS/DHORI/nsp 10/18/69 /

cc: HSIRIA, Room 3A-50, Bldg. 31, NLR

RPS, Room 3C-10 Wisconsin Bldg.

Official file copies located in Room 803, Webb Bldg.

cc: Mrs. Byers, Room 5550, WBLD-1

UPI-18

(SMOKING)

WASHINGTON--THE WHITE HOUSE PRIVATELY EXPRESSED DISPLEASURE AT NEW SECRETARY FINCH'S PUBLICLY ANNOUNCED INTENTION TO PUSH FOR ANTI-SMOKING ADVERTISEMENTS IN NEWSPAPERS AND MAGAZINES. IT WAS LEARNED TODAY.

FINCH DISCLOSED HIS INTENTION LAST WEEK IN A LETTER TO SEN. FRANK E. HOSS, R-UTAH. THE LETTER INCLUDED A PARAGRAPH PRAISING HOSS' DRIVE AGAINST RADIO AND TV CIGARETTE COMMERCIALS. THE UTAH HORNET SENT COPIES OF THE LETTER TO NEWSMEN.

A WHITE HOUSE OFFICIAL SAW THE NEWS ITEM, A SOURCE SAID, AND TELEPHONED FINCH'S OFFICE, COMPLAINTING HE SHOULD HAVE KEPT HIS THOUGHTS TO HIMSELF.

HOSS, HEARTILY, ANNOUNCED HE WOULD SEEK SENATE COMMERCE COMMITTEE APPROVAL THURSDAY OF A MEASURE DESIGNED TO END ALL BROADCAST CIGARETTE COMMERCIALS NEXT SEPTEMBER.

IN EFFECT, THE PROPOSAL WOULD LEGALLY BLESS A PLAN UNDER WHICH ALL CIGARETTE MERCHANTS SIMULTANEOUSLY WOULD STOP BROADCASTING ADVERTISING.

IN OFFERING THE BROADCAST BLACKOUT, THE TOBACCO INDUSTRY SAID IT WOULD HEED THE LEGAL SANCTION AS INSURANCE AGAINST ANTITRUST ACTION. BUT HOSS SAID HE WOULD OPPOSE A HOUSE-PASSED PROVISION FORBIDDING THE FTC TO REQUIRE A HEALTH WARNING IN PRINTED CIGARETTE ADS.

10/27--GE946A

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SECRETARY FINCH COMPLIMENTS AND PLEDGES SUPPORT FOR MOSS
EFFORTS ON CIGARETTE ADVERTISEMENTS

WASHINGTON, D. C. ---- Secretary of Health, Education and Welfare, Robert H. Finch, has complimented Senator Frank E. Moss and the Senate Commerce Committee for successful efforts to remove cigarette advertisements from radio and television.

The Secretary also pledged support for efforts to have anti-smoking ads carried in print media. Several major newspapers and magazines have indicated to Senator Moss they would carry such ads if they were available. Some suggested that the Advertising Council should be asked to mount such a campaign.

Following is the text of Secretary Finch's letter to Senator Moss:

Dear Senator Moss:

Our Department was indeed gratified at the decision of the cigarette industry to withdraw its advertising from radio and television. You and your committee played a large part in helping bring this about, and you deserve the thanks of the medical and health community for your success.

For some five years, our Department has carried on a smoking education program and so, for an even longer period, have the American Cancer Society, the American Heart Association, and the National Tuberculosis and Respiratory Disease Association. If newspapers and magazines are now ready to give greater support to our programs, we obviously have the responsibility to make our materials available to them, in whatever is the most effective way. If this appears to call for an Advertising Council campaign, we will ask the Council for this help.

As a beginning, I am asking staff of the National Clearinghouse for Smoking and Health to meet with the voluntary agencies and later with the Advertising Council to explore how an effective campaign in the print media can best be mounted. We will keep you informed of our progress. In the meantime, I would once again express my thanks to you for your continuing support of our smoking and health programs.

Sincerely,

Robert H. Finch
Secretary

(Oct. 20, 1969)

69-431

UPI-144

ADD 1 SMOKING, WASHINGTON (UPI-13).
ON CAPITOL HILL, IN A LETTER RELEASED TODAY BY SEN. FRANK E. MOSS,
D-UTAH, HEW SECRETARY ROBERT W. FINCH PROMISED HE WOULD TRY TO SPREAD
ANTI-SMOKING ADVERTISEMENTS TO NEWSPAPERS AND MAGAZINES. THEY NOW ARE
BROADCAST ON TELEVISION AND RADIO.

FINCH SAID HE WAS ASKING THE NATIONAL CLEARING HOUSE FOR SMOKING AND
HEALTH, AN HEW AGENCY, TO MEET WITH THE AMERICAN CANCER SOCIETY, THE
AMERICAN HEART ASSOCIATION, THE NATIONAL TUBERCULOSIS AND RESPIRATORY
DISEASE ASSOCIATION AND THE ADVERTISING COUNCIL "TO EXPLORE HOW AN
EFFECTIVE CAMPAIGN IN THE PRINT MEDIA CAN BEST BE MOUNTED."

FINCH SAID HEW "WAS INDEED GRATIFIED AT THE DECISION OF THE
CIGARETTE INDUSTRY TO WITHDRAW ITS ADVERTISING FROM RADIO AND
TELEVISION."

10/23--EG&DP359P
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UPI-145

(CONGLOMERAT

D

GENERAL COUNSEL OF THE DEPARTMENT OF COMMERCE,
Washington, D.C. April 18, 1969.

Hon. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce, House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: This is in further reply to your request for the views of this Department with respect to the following bills:

H.R. 643, a bill "To amend the Federal Cigarette Labeling and Advertising Act with respect to the labeling of packages of cigarettes, and for other purposes,"

H.R. 1237, a bill "To direct the Federal Communications Commission to establish regulations prohibiting certain broadcasting of advertising of cigarettes,"

H.R. 3055, a bill "To strengthen the Federal Cigarette Labeling and Advertising Act," and

H.R. 6543, a bill "To extend public health protection with respect to cigarette smoking and for other purposes."

The Federal Cigarette Labeling and Advertising Act makes it unlawful for any person to manufacture, import, or package for sale or distribution in the United States any cigarettes unless the cigarette package bears the statement (conspicuously placed) "Caution: Cigarette Smoking May Be Hazardous to Your Health." The Act prohibits the requirement of (1) any other statement relating to smoking and health on a cigarette package, and (2) any statement relating to smoking and health in the advertising of cigarettes if the packages of such cigarettes are labeled as required under the Act. The Act contains an exemption of packages of cigarettes manufactured, imported, or packaged for export from the United States.

The Act also states that the provisions of the law which affect the regulation of advertising shall terminate on July 1, 1969. Hereafter, consequently, action could be taken by any Federal agency under other legal authority to require a statement relating to smoking and health in the advertising of any cigarettes.

H.R. 643 would require a stronger statement on cigarette packages, reading "Warning: Cigarette Smoking Is Dangerous to Health and May Cause Death From Cancer and Other Diseases." The package must also state the average tar and nicotine yields per cigarette. The bill would require these statements also in cigarette advertisements. In addition, H.R. 643 would authorize the Secretary of Health, Education, and Welfare and the Federal Trade Commission to prescribe rules establishing the maximum lengths for cigarettes if the Secretary determines that longer cigarettes increase the risk to smokers.

H.R. 3055 would require a statement on cigarette packages of the quantity of tar and nicotine in the mainstream smoke of cigarettes, and as to the identity and quantities of any "incriminated agent" (as determined by the Federal Trade Commission). H.R. 3055 would require this information to be stated in cigarette advertisements involving the sale or distribution of cigarettes in interstate commerce. This bill would also require this information to be stated on packages of cigarettes manufactured, imported, or packaged for sale or distribution abroad.

H.R. 6543 would reenact the Federal Cigarette Labeling and Advertising Act, in its present form, except that it would make permanent the bar against any requirement of a statement relating to smoking and health in the advertising of cigarettes. H.R. 1237 would require the Federal Communications Commission to regulate broadcast advertising, to (1) prohibit such advertising between hours and in connection with programs which the Commission determines are most likely to influence children of elementary or secondary school age, and (2) control the total amount of such advertising.

This Department does not object to the enactment of H.R. 643 or H.R. 3055, with certain amendments, but recommends against the enactment of H.R. 1237 and H.R. 6543.

As demonstrated by the increased growth of filter brands as compared with nonfilter brands, the public has become increasingly concerned with the harmful contents of cigarettes. It is therefore desirable to further assist the consumer in the comparison and selection of brands by providing him with a more convenient

and complete source of information on contents. The provision which would require statements of tar and nicotine content to be included in the advertising of cigarettes will contribute to informed selection of brands and provide an important inducement to the cigarette industry to develop by research and manufacture cigarettes with lower tar and nicotine. To give the consumer complete information, we support in particular the provision contained in H.R. 3055, alone, which would require disclosure of any other "incriminated agent" which (as determined by the Federal Trade Commission after consultation with the Surgeon General) contributes to the hazard of smoking to human health. However, we urge the amendment of section 1 of H.R. 3055 to make clearer the authority of the Federal Trade Commission to take into account differences among advertising media (e.g. newspaper ads. and spot radio announcements) in prescribing the form of required statements as to the presence of nicotine, tar, and other incriminated agents under the bill. We would not object to extending these provisions to cigarettes sold abroad.

Nor would we object to requiring the stronger warning statement provided in H.R. 613. We also do not object to the provision in H.R. 643 which would permit the Department of Health, Education, and Welfare and the Federal Trade Commission to establish rules as to the maximum lengths for cigarettes if there is substantial evidence that the length of cigarettes is an important factor in increasing the hazards to smokers.

The proposal, under H.R. 6543, to continue the existing legal bar against requirements in cigarette advertising like those which now affect package labeling is objectionable. Evidence continues to mount as to the dangers of cigarette smoking. It becomes increasingly important to make reasonable requirements that advertisements advise the public, particularly for the benefit of potential new smokers, of the hazards. The existing provision of the law which prevented regulation of cigarette advertising through July 1, 1969 should be permitted to terminate under the terms of the existing law.

We also do not favor the provisions of H.R. 1237 which seek a solution to the problem of the impact of cigarette advertising on school children by providing for restrictions as to the hours of broadcasting, the programs, or the total amount of such advertising. We doubt that such statutory provisions could effectively minimize the impact of cigarette advertising on the young. A more positive approach of education to develop proper community attitudes toward cigarette smoking appears to be a more helpful approach to the problem.

We have been advised by the Bureau of the Budget that there would be no objection to the submission of this report to the Congress from the standpoint of the Administration's program.

Sincerely,

JAMES T. LYNN,
General Counsel.

* * *
GENERAL COUNSEL OF THE DEPARTMENT OF COMMERCE,
Washington, D.C., May 22, 1969.

Hon. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Our letter dated April 18, 1969 set forth the views of this Department with respect to the following bills:

H.R. 613, a bill: "To amend the Federal Cigarette Labeling and Advertising Act with respect to the labeling of packages of cigarettes, and for other purposes,"

H.R. 1237, a bill: "To direct the Federal Communications Commission to establish regulations prohibiting certain broadcasting of advertising of cigarettes,"

H.R. 3055, a bill: "To strengthen the Federal Cigarette Labeling and Advertising Act," and

H.R. 6543, a bill: "To extend public health protection with respect to cigarette smoking and for other purposes."

In view of further information which has been brought to our attention, we believe it important to supplement our prior letter insofar as it relates to exports.

Our earlier lack of objection to extending the labeling requirement to export sales was based upon the belief that such labeling would not result in diminished export sales. As a matter of strict logic the label should not affect buyer preference inasmuch as the warning relates to cigarette smoking in general, as opposed to U.S.-manufactured cigarettes alone. However, The Tobacco Institute, Inc. maintains that this does not take into account the potency of a possible whispering campaign abroad to the effect that only cigarettes with the label "may be hazardous". The Institute anticipates that to avoid this possibility U.S. manufacturers will meet foreign demand from their plants outside the United States in lieu of exports if the labeling requirement is extended to exports. These views are set forth in a letter from Earle C. Clements, the Institute's President and Executive Director, to our Department, dated May 16, 1969, a copy of which is enclosed.

We urge careful consideration of this possibility that extension of the labeling requirement to exports will lead not to accomplishing the objectives of the export provision of the bill—broader publication of the warning—but rather to substitution of foreign-made cigarettes with attendant loss of exports at a time when our Nation is marshaling every effort to increase exports.

One further point deserves mention. The views expressed in our April 18 letter assume validity of the Surgeon General's findings as to the dangers of cigarette smoking. As indicated by the hearings before your Committee, the tobacco industry continues to protest such findings vigorously. Accordingly, we welcome the announcement of the Department of Health, Education and Welfare of April 25 that representatives of that Department and of the tobacco industry are developing a cooperative research program on the problems of tobacco and health.

We have been advised by the Bureau of the Budget that there would be no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

JAMES T. LYNN, *General Counsel.*

THE TOBACCO INSTITUTE, INC.,
Washington, D.C., May 16, 1969.

E

MEMORANDUM

RE: CAPITAL BROADCASTING CO. ET AL. v. JOHN MITCHELL ET AL.

Misleading Statements Regarding Smoking
And Health In Defendants' Pleadings

The complaint in the instant case, Civil Action No. 3495-70, was filed in the United States District Court for the District of Columbia on November 30, 1970. Cross motions for summary judgment have been filed by the parties. Defendants have also joined an alternative motion to dismiss.

Among the pleadings filed by the Justice Department on behalf of the defendants are a "Memorandum of Points and Authorities" in support of its motions, and a "Statement . . . of Material Facts as to Which There is no Genuine Issue", filed pursuant to Local Rule 9(h). A significant part of these pleadings is directed toward the circumstances attending passage of the Public Health Cigarette Smoking Act of 1969, subsequent to the expiration of predecessor legislation enacted in 1965. The pleadings completely fail to recognize that a scientific controversy exists regarding the alleged health dangers of cigarette smoking, and they implicitly characterize the issue as closed.

Even more seriously, the pleadings misstate the Congressional policy and purpose in enacting the 1969 Act. They erroneously attribute to Congress a determination that a causative relationship exists between smoking and disease and that smoking is an "inherent" hazard to health. The following examples of such misstatements appear in the pleadings:

1.

"4. Among its provisions, section 3 of the [Cigarette Labeling and Advertising] Act (15 U.S.C. 1333) required cigarette manufacturers to place conspicuous cautionary labels upon cigarette packages. Such labeling

was intended to inform the purchaser of the health dangers found to be inherent in cigarette smoking." [Par. 4 of the "Statement", emphasis added.]

2.

"Section 3 of the Act (15 U.S.C. 1333) required cigarette manufacturers to place conspicuous cautionary labels upon cigarette packages designed to inform the purchaser of the health dangers found to be inherent in cigarette smoking." [Pp. 3-4 of the "Memorandum", emphasis added.]

3.

"The Congress evidently believes that cigarette advertising by means of the electronic media, including radio communications, presented unique hazards to the public health" [P. 28 of the "Memorandum", emphasis added.]

4.

". . . [T]he sole issue is whether there is a reasonable basis for the Congressional conclusion that the commercial promotion of cigarettes -- by any medium of advertising -- contributes to the baleful medical effects of cigarette smoking." [P. 28 of the "Memorandum", emphasis added.]

5.

"This evidence is more than sufficient to sustain the Congressional conclusion that cigarette advertising directly contributes to cigarette consumption and thereby endangers the public health.

". . . Congress having satisfied itself that the commercial promotion of cigarette consumption contributed to a growing public health hazard" [P. 31 of the "Memorandum", emphasis added.]

The clear import of the foregoing statements is that Congress, in enacting the 1969 Act, concluded that cigarette smoking is inherently dangerous to health. Such statements of purported Congressional conclusions, policy or intent, are wholly inaccurate. Congress concluded only that cigarette smoking may be hazardous to health and that the public should be advised accordingly of the possible health hazard. In this respect, section 2 of the 1969 Act, "Declaration of Policy", is quite precise:

"Sec. 2. It is the policy of the Congress, and the purpose of this Act, to establish a comprehensive Federal program to deal with cigarette labeling and advertising with respect to any relationship between smoking and health, whereby--

"(1) the public may be adequately informed that cigarette smoking may be hazardous to health by inclusion of a warning to that effect on each package of cigarettes" [Emphasis added.]

Further evidence on this point is provided by the Committee Report to the House of Representatives, which, unlike the Senate, conducted extensive hearings in 1969 on the scientific evidence pertaining to the smoking and health controversy. That report summarized the evidence as follows:

"On the basis of these hearings the committee concludes that nothing new has been determined with respect to the relationship between cigarette smoking and human health since its hearings in 1964 and 1965. The arguments pro and con with respect to cigarettes

are the same now as then, though supported by a larger statistical base" [Report of the Committee on Interstate and Foreign Commerce, House of Representatives, No. 91-289, June 5, 1969, p. 5.]

As Congressman Preyer, a former United States District Judge, stated during floor debate on the Bill:

". . . . [T]he Public Health Cigarette Smoking Act of 1969 is modest in what it does not attempt to do--that is, it does not legislate the causes of human diseases. Only qualified scientists conducting objective research can add to the state of knowledge about cigarette smoking and human disease. Only they can determine by research the causes of disease and discover their cures." [Congressional Record 116 (42), March 18, 1970, p. H1923, emphasis added.]

Further substantiation of the Congressional intent in passing the 1969 Act is provided by the new warning label required by section 4 to be printed on all cigarette packages:

"Warning: The Surgeon General Has Determined That Cigarette Smoking Is Dangerous to Your Health."

This warning obviously does not reflect a Congressional determination that cigarette smoking is hazardous to health. It serves only to advise the public that there is a body of opinion, represented by the Surgeon General, which believes cigarette smoking to be dangerous. As Congressman Preyer stated:

". . . . [T]he warning label required by the 1965 act and this act speak for themselves. They are without hidden meaning. The declared policy and purpose of the Congress in enacting this legislation remains unchanged, that is, 'to inform the public that cigarette smoking may be hazardous to health.' The warning label required in the 1965

act and the one required in this act are intended to carry out this policy and purpose." [Congressional Record 116(42), March 18, 1970, p. H1923, emphasis added.]

Section 6 of the 1969 Act prohibits cigarette advertising over television and radio after January 1, 1971. Several statements contained in the pleadings filed by the Department of Justice in this case conclude that the enactment of section 6 reflects a Congressional determination that cigarette advertising "endangers the public health." This conclusion is unwarranted. The legislative history of this section reveals that the Congress was concerned that advertising on the electronic media had a unique appeal to the young. Further, Congress apparently believed that the young should be shielded from radio and television advertising of a product which may be hazardous. Another factor obviously influencing the enactment of section 6 was the tobacco industry's voluntary offer made before the United States Senate to withdraw cigarette advertising from radio and television. The Congressional policy and purpose as stated in the Act remain unchanged and do not include the determination as alleged in the pleadings.

The statements by the Department of Justice noted above are not warranted by the present state of scientific knowledge and misstate the declared policies and purposes of the Congress in enacting the Public Health Cigarette Smoking Act of 1969. Their misleading nature reflects an underlying lack of objectivity which is inappropriate for a Department of the United States Government.

F

U.S. DEPARTMENT OF
HEALTH, EDUCATION, AND WELFARE
Office of the Secretary
Washington, D.C. 20201

FOR IMMEDIATE RELEASE
Friday, April 25, 1969

Representatives of the tobacco industry and the Department of Health, Education, and Welfare are developing a cooperative research program on the problems of tobacco and health, HEW Secretary Robert H. Finch announced today.

Discussions between the industry and the Department were initiated last summer to identify gaps in knowledge about tobacco and health, and to recommend the research activity needed to fill these gaps.

After a meeting last week with officials of the Tobacco Institute, The Council for Tobacco Research USA, and his own Department, Secretary Finch said:

"I believe that industry and government working together offers great promise of finding the answers we need. I am confident our joint effort will yield a cooperative research program which strongly promotes the public interest."

Participants in the ongoing industry-government discussions include representatives of the National Cancer Institute of the National Institutes of Health, the Scientific Advisory Board to The Council for Tobacco Research USA, and the Committee for Research on Tobacco and Health of the American Medical Association's Education and Research Foundation.

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THE SECRETARY OF HEALTH, EDUCATION, AND WELFARE
WASHINGTON, D. C. 20201

July 26, 1969

Dear Mr. President:

I am pleased to transmit herewith a report concerning current information on the health consequences of smoking as directed by Section 5(d) (1) of the Federal Cigarette Labeling and Advertising Act.

As you will see, the information presented in the report strengthens the conclusions of previous studies published by this Department. Cigarette smoking continues to be confirmed as a serious health hazard to the people of this country, one which is the cause of much unnecessary disease and death.

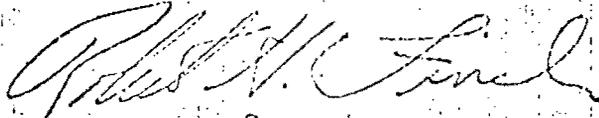
It would appear that the July 20 announcement by the cigarette industry, to the effect that it is prepared to discontinue its broadcast advertising in the near future, is of major significance. As you know, the Department has long felt, and I personally have shared the opinion, that television and radio advertising of cigarettes has a special impact upon young people.

We believe that this forthright response by the industry to a very serious problem should be commended.

In an announcement issued by this Department on April 25, 1969, I pointed out that discussions between officials of the cigarette industry and of the Department had led to the establishment of a group of scientific experts whose purpose is to furnish a report at an early date identifying the gaps in our knowledge of the relationships between smoking and health.

It had been my hope that the preliminary report of the scientific group might be available for reference in the report which I now transmit to you. I am advised that they have made substantial progress. Their report has not been completed, but it is my hope that it will be at an early date.

Sincerely,



Secretary

Enclosure

The Honorable Spiro T. Agnew
President of the Senate
Washington, D. C. 20510

G

HEW to Ban Smoking in Some Areas

United Press International

The Health, Education and Welfare Department, government's second largest employer, announced yesterday it would call a halt to smoke-filled conference rooms and would segregate smokers in its cafeterias.

The announcement was made by pipe and cigar-smoking HEW Secretary Elliot L. Richardson in a letter to John F. Banzhaf III, head of an anti-smoking organization.

"I am anxious that this department protect its non-smoking employees from this hazard," Richardson wrote. He said he expected certain "administrative problems" in pursuing an aggressive anti-smoking policy at HEW, but said there were "limited actions" he will take soon.

They include establishment of no-smoking areas in HEW cafeterias, no-smoking policies for HEW conference rooms and auditoriums and no-smoking work areas "wherever possible."

HEW, which employs 107,000 workers across the country and is second in size only to the Defense Department, has been government's foremost agency in attempts to curb cigarette smoking. The Surgeon General, non-smoking Dr. Jesse L. Steinfeld, has signs posted in his offices: "Thank you for not smoking."