

III. MANIPULATING TEXAS PUBLIC POLICY

We uncovered a small pool of tobacco legislation “threads” in the industry archives. In particular, excise taxes, clean indoor air initiatives, preemption/accommodation, tort reform and advertising restriction ordinances constitute the basic issue areas. In regard to tobacco industry activity in the legislative arena, Philip Morris spokesperson W.I. Campbell summarizes their interests in a 1993 leadership conference:

“Turning to the legislative front, there are two issues that affect the entire cigarette industry that I’d like to talk about.

The first issue is the continuing threat of higher federal and state excise taxes on cigarettes to compensate for the weakened economy and budget deficits. The federal excise tax rose 4 cents per [missing]...

The second issue is smoking restrictions. Undoubtedly you all heard last week’s EPA announcements regarding environmental tobacco smoke (ETS). As you know, we strongly question the reports scientific validity.” [taxes/93_speech.PDF/p.31-32]

Campbell proudly discusses the strong performance of all Philip Morris brands, yet emphasizes the importance of the Marlboro product:

“To protect our premium volume we plan to focus marketing support and retail sales efforts on Marlboro. The emphasis on Marlboro is obvious. It is the crown jewel of our portfolio due to its position as the world’s most profitable trademark. Its younger smoker base also means that its profit stream has a longer time horizon than our other brands. Finally, because Marlboro is the focus of the financial community’s attention, we cannot let its performance weaken.” [taxes/93_speech.PDF/p.21]

A. Tobacco Tax Initiatives

Proposals supporting increased tobacco excise taxes are attractive for a number of reasons. Pro-health advocates generally favor such initiatives as higher prices generally lead to lower consumption – particularly among young people. Governments benefit from increases as revenues increase accordingly.

Sticker Shock

The result of Texas’ hike in the excise tax charged to tobacco sales produced some unexpected results. As the government increased excise taxes, cigarette prices to consumers to rise accordingly. The significantly higher prices altered consumer habits, and the industry responded by providing discount coupons and creating smaller volume offers, i.e., three packs, to help reduce this consumer concern.

More importantly, the rise in prices resulted in a tremendous growth in an emerging tobacco market – generic discount products. Exerts from a 1991 Philip Morris inter-office memo illustrates the energy, and money, the industry allocates to compensate for the rapidly increasing price of tobacco products.

“Throughout the Dallas area, price value activity was high. The Texas state excise tax of \$0.41 per pack has increased the attractiveness of lower price products.

Pricing was fairly constant around Dallas with few exceptions. The table below presents representative carton and pack pricing. Please keep in mind that more and more retail accounts, primarily C-stores, have gone to three pack pricing to provide consumers with a volume oriented price point at less than carton quantities.” [taxes/price_review.PDF]

	Carton	Pack
Full Margin	\$17.49	\$2.15
Price Value	\$15.39	\$1.89
Sub-Generic	\$13.39	\$1.50

Coupons were well evident in all price tiers. Some examples are as follows:

Kent/True/Newport/Old Gold	\$0.50/pack
Doral	\$0.30/pack
Magna	\$0.40/pack
Sterling	\$6.00/carton

B. Clean Indoor Air Initiatives

Grassroots coalitions dedicated to ensuring smoke-free indoor air for all Americans represent a major force in the tobacco wars. Uncovered communications show industry executives believe laws that reduce the availability of places people can smoke equate to lower industry profits. Therefore, clean air initiatives strike at the heart of the tobacco industry. Associated industries, i.e., hospitality, bar and tavern, restaurant, bowling, perceive clean air legislation as dangerous to profits as well. These groups fear clean air laws will mandate either 100% indoor smoking restrictions or require owners to install sophisticated, and expensive, ventilation systems.

While the fundamental concern is money, groups opposing the public movement have joined the tobacco industry’s call to frame the debate as an issue of “preserving individual freedoms” [CIA.4/p.1-3], [CIA.9/p.1-2]. Industry proponents argue tobacco smoke is unfairly criticized as it can be “easily seen and smelled.” [CIA.8/p.1; CIA.4/p.1]. Similar to the industry’s historical deception regarding the health risks associated with smoking and the addictive nature of nicotine, tobacco allies continue working to undermine scientific evidence related to secondhand smoke [CIA.4/p.1-3].

It appears The Tobacco Institute played a leading role championing the industry-wide strategy regarding secondhand smoke, or environmental tobacco smoke (ETS). In a 1978 publication titled, "Special Report: Smoking and the Public," The Tobacco Institute positions their argument supporting the industry's program to secure accommodation for smokers:

"The campaign for outright bans or restrictions on smoking in public places is noteworthy for its lack of supporting scientific findings. However, it is causing unpleasant and potentially dangerous events. Smokers and nonsmokers, friends and neighbors, are being set against each other. Social friction has arisen in many instances. Violence and militancy have been kindled in some cases. And, most serious of all, personal freedoms in democratic societies are being attacked and eroded." [CIA.5/p.1]

Beaumont, Texas: A Case Study

A May 1979 Tobacco Institute Newsletter notes that "Beaumont (TX.) City Councilors voted to table a smoking restriction ordinance after restaurant owners offered to try voluntary no-smoking sections depending upon demand." [CIA.11/p.2]

In the same newsletter, the TI reports:

"B&W announced a new ad campaign concerning freedom of choice. We hope it will 'educate our adversaries,' said Bob Roach." [CIA.11/p.4]

"TI's Dr. Kastenbaum told a seminar at Oak Ridge Natl. Laboratory that 'there's a danger in government, or anyone else, accepting what's credible but may not be true,' the Oak Ridger reported." [CIA.11/p.4]

Austin, Texas: A Case Study

A 1980 Tobacco Institute letter to Larry Bewley of R.J. Reynolds documents the company's long-time interest in City of Austin public smoking legislation.

"Roger Mozingo informed me that you were interested in knowing whether the City of Austin, Texas has passed any ordinances restricting smoking in public places.

Our resources indicate that:

- In March, 1974, the Austin City Council passed an ordinance that banned smoking in city buses.
- In February, 1975, a smoking restriction ordinance was approved that covers 'theater-type chambers' (unclear about this terminology) and the city council chambers.
- In July, 1976, an ordinance was proposed in the City Council that would restrict smoking in supermarkets and restaurants. It was referred to the Legal Department and evidently died there.
- In 1977, an attempt to pass a broad smoking restriction ordinance was defeated.

Sharon Wall obtained the enclosed clippings relating to smoking restriction developments from the Austin area newspapers. Most of the articles report on the State law passed in 1975.

This is the extent of the information we have here at TI Headquarters. I assume Roger has contacted the TAN Director in Texas." [CIA.6/p.1]

We are able to ascertain the extent of the Texas tobacco network in an early 90s statement by Philip Morris. In this document, Jack Dillard, director of Government Affairs for PM U.S.A. overseeing the Texas region, summarizes the company's argument opposing a legislative proposal to restrict sampling and couponing [*sic*]. Dillard states:

"Philip Morris is a consumer packaged products company with over 6,000 employees at 61 facilities in 20 communities throughout Texas. Our tobacco division manufactures Marlboro and other well known cigarette brands.

Philip Morris strongly supports the current state law prohibiting the sale of cigarettes to minors. In 1989, we advocated the passage of legislation in Texas which raised the legal age for purchasing cigarettes from 16 to 18 years of age. We firmly believe that a decision to smoke, or not to smoke, is a choice which should be made only by adults.

Along with wholesalers and retailers of tobacco products, we are also concerned about some of the broad language in S.B. 373. In particular, we believe that the section of the bill which would prohibit the distribution of samples or the redemption of coupons would place an unreasonable burden on retailers and manufactures without reducing access to tobacco products by minors." [promo/youth_access_speech.PDF/p.1]

RJR Briefcase Program

A 1987 memo from Roger Mozingo to Samuel D. Chilcote, Jr. details the RJR Briefcase "PASS Program." Industry officials hired a consulting firm to surreptitiously install air quality monitoring devices in brief-case type containers. The firm made unannounced tests of facilities in designated test cities. [CIA.16/p.1-4]

"If the RJR briefcase program is to be of significant legislative use at the state and local levels in 1987-88, project approval will have to be forthcoming in the very near future.

For some months now, groundwork has been laid for a series of PASS program tests. At the April 16, 1987 meeting at Don Hoel's ETS Advisory Group final management and strategic problems were resolved. Just as soon as a few minor equipment adjustments are made this week, we will be ready to proceed with the program in our first target city, Dallas, Texas. We expect a tough Dallas restriction fight to come to a head early next month.

...The cost of a Dallas study by IT Corporation is quoted as \$73,429. The cost of conducting studies in a series of cities would, therefore, be in the neighborhood of \$500,000.

The Surgeon General's 1986 report has dramatically altered the smoking restriction debate and therefore the legislative outlook in many state capitols and city halls. We believe the RJR PASS project can help demonstrate – in practical terms – how the issue of environmental tobacco smoke has been blown out of all proportion." [CIA.13/p.1-2]

DWF Airport: A Case Study

A March 1993 memo from Ron Morris to Roger Mozingo and Tina Walls discusses the Dallas/Ft. Worth Airport. Morris comments that DFW is “one of the first major airports to propose a total ban on smoking.” Morris asks whether the industry would “be interested in paying for the construction of some smoking lounges to ensure continued accommodation [of] smokers as they move through this major airport?”

As observed in many ETS debates, the industry furthers a scare strategy by falsely suggesting passage of smoking restriction legislation will lead to significant financial losses.

“At the Institute’s request, Healthy Buildings International (HBI) conducted an indoor air quality (IAQ) test of one of the terminals and discussed with the officials suggestions on how to designate smoking areas, as well as cost estimates. In addition, the Board was also provided with an economic impact report, prepared by Philip Morris, estimating the revenue the airport is likely to lose if the total ban is enacted.” [CIA.13/p.1]

C. The Science of ETS

Today, the tobacco industry has admitted publicly that smoking poses significant health risks to the user. Yet the industry still denies that secondhand smoke, technically labeled environmental tobacco smoke (ETS), presents health risks to nonsmokers. The tobacco industry continues to obstruct pro-health advocates who seek more stringent indoor air quality standards by confusing the science associated with measuring ETS particulates. In a 1973 Tobacco Institute letter to James Dowdell of R.J. Reynolds, Anne Duffin, TI Vice President, discusses how they effectively “smashed” research by Texas scholars. Specifically:

“The former is by Luquette of West Texas State, whose research was done with Texas A & M faculty kids, and whose research was smashed by Bill in our first background paper on smoking and the nonsmoker...” [CIA.7/p.1]

Shockingly, Duffin casually notes the subjects were apparently exposed to a high concentration of cigarette smoke, and that the initial researcher either missed this or failed to report these findings. Duffin comments contradict industry’s claims that exposure to secondhand smoke is minimal.

“The latter is a study that the AMA’s Dukelow leaned on heavily in that infamous JAMA piece of last December. Harmsen and Effenberger did not comment on any cigarette equivalent for the nonsmoker but I discovered later that another German researcher had taken their 1959 data and estimated in 1965 that the nicotine concentration in their smoked-up conference room was equal to inhalation of smoker from 4 to 5 cigarettes an hour.” [CIA.7/p.1]

Continuing their work to confuse the public about the dangers of secondhand smoke, a May 1979 Tobacco Institute Newsletter reports:

"The Tobacco Institute of Australia has completed a half-hour documentary on "Smoking and the Nonsmoker," reports the Melbourne Herald. 'There is absolutely nothing in the claim that cigarette smoke is a danger to nonsmokers,' a Philip Morris executive told the newspaper." [CIA.11/p.5]

In a R.J. Reynolds interoffice memo, Dr. C. W. Nystrom briefs Dr. Charles R. Green about a 1986 American Industrial Hygiene Conference he attended in Dallas. Nystrom apparently presented a paper titled, "Contribution of Environmental Tobacco Smoke (ETS) to Specific Components of Indoor Air: Current Status."

Nystrom informs Green his paper "was well received" as "requests for copies of the manuscript were made by eight people." He notes this was encouraging, but that he was "brought back to the difficulty of the issue" when approached by another expert from the panel.

As Nystrom reports, his discussion with Steve Wermblesly illustrates the tobacco industry was well-aware of the scientific concerns regarding ETS as early as 1986. In this instance, Nystrom appears to have intentionally designed his research in a way to mislead the audience:

"Wermblesly seemed to be aware that the nicotine in aircraft study was an aircraft with one-pass air ventilation systems. Hence, he accused me of having misrepresented the facts, etc., since it didn't represent all aircrafts. He also expressed the opinion that cigarette smoking had no redeeming features; that it was a known carcinogen. Hence, my analogy to TLV for some ETS constituents were inappropriate. Also, my reference to the nitrosamine exposure in the rubber industry was inappropriate since rubber products served some useful purpose whereas tobacco does not. He seemed to have all the general accusations against the tobacco industry on the tip of his tongue. There would seem to be little opportunity to meet the charges of an individual such as Wermblesly." [CIA.10/p.1-2]

Nystrom continues his report to Green commenting on the work of other scholars who spoke at the conference. In regard to a paper presented by S.K. Hammond from the University of Massachusetts Medical School titled, "Measuring Exposure to Environmental Tobacco Smoke," Nystrom states:

"Dr. Hammond pointed out previous epidemiology studies have been hampered by the lack of good analytical data for ETS constituents. She indicated that serious misclassifications have resulted. 'However', she said, 'these misclassifications have tended to cause an underestimation of health effects of ETS.'

...Her study investigated exposure of clerks, brakemen, engineers, and shop repair workers in the railroad industry. Not surprisingly, those exposed indoors, where smoking was permitted, had the heaviest portion of the RSP [respirable suspended particulates] exposure due to ETS." [CIA.10/p.4-5]

“In a August 1992 letter titled, “MTD for lifetime inhalation studies on sidestream smoke” sent by Wolf Reininghaus of the German research facility, INBIFO, to Dr. Richard A. Carchman, manager, Biochemical Research for Philip Morris USA, Reininghaus writes:

“In skin painting studies using sidestream smoke condensate on mice, it has been shown that sidestream smoke (SS) contains compounds that act under extreme conditions like a complete carcinogen. Very probably this will also be true for excessive inhaled doses of SS in rats.” [CIA.14/p.1]

In a February 1992 report prepared for Philip Morris R&D by Donald M. Schleigh of the Laboratory of Materials Engineering in France, Schleigh discusses the results of research on the thermal decomposition of the known chemical irritant, acrolein. One purpose of the study was to determine if there are effective materials that could be added to cigarette paper to reduce either side stream smoke or irritant concentrations. The report acknowledges:

“In this particular work we have studied the thermal decomposition of acrolein, a known chemical irritant that has been observed in tobacco smoke.” [CIA.15/p.1]

D. Accommodation/Preemption and PAC-man Strategies

It is well known clean indoor air initiatives affect the bottom line of tobacco companies. As locations to smoke decrease, smokers either smoke less or initiate efforts to quit altogether. Due the increasing growth of strict indoor air quality standards across the country, generally from local governmental units, the tobacco industry has reacted by pushing their own proposals. Their preferred strategy appears to be accommodation. The industry argues smokers and nonsmokers can “work it out” and share air space without intrusion from government. Their second strategy, preemption, requests statewide regulation over clean indoor air standards that effectively prohibit local governments from imposing tougher restrictions.

In a July 1994 Presentation to the CAC, Philip Morris spokesperson Tina Walls outlines the industry’s response to efforts to reduce ETS. Walls introduces a new concept to the CAC members, ‘PAC-man’ strategy. As tobacco money most effectively purchases political support at the highest levels of government, health educators have been forced to act locally. Working from grassroots political bases across the nation, the health community has been able to thwart the well-funded, sophisticated political machinery driven by the tobacco industry.

“Let me give you a brief national situation analysis of some of the challenges of the environment in which we operate and why accommodation/pre-emption must be an integral part of our response to them.

First, the anti-smoking movement has become more sophisticated in its efforts to enact bans and restrictions on smoking. In addition to pursuing statewide restrictions, they have adopted a ‘PAC-man’ strategy where they attempt to gobble up one community at a time.

PAC-man, of course, is not to be confused with PHIL-PAC. PHIL-PAC gives us resources, PAC-man uses them up. The PAC-man strategy makes sense for the antis because it is easier for a group of extremists to have an impact on the local level than in larger jurisdictions.” [CIA.1/p.3]

In the same presentation, Philip Morris spokesperson David Laufer instructs the membership why the tobacco industry needs a new approach in the battle to restrict smoking in communities throughout America.

"...the economic arguments often used by the industry to scare off smoking ban activity were no longer working, if indeed they ever did. These arguments simply had no credibility with the public, which isn't surprising when you consider that our dire predictions in the past rarely came true." [CIA.1/p.28]

Walls sums up the industry's new strategy regarding clean indoor air ordinances.

"Today we want to discuss one of PM USA's most important priorities for 1994 and 1995 – accommodation/pre-emption. Our goal, simply stated, is to see some form of accommodation/pre-emption legislation passed in all 50 states.

The achievement of universal accommodation/pre-emption is imperative because the right of smokers to smoke where they work, play – and even where they live – is under attack as it has never been before.

The immediate implications for our business are clear; if our consumers have fewer opportunities to enjoy our products, they will use them less frequently and the result will be an adverse impact on our bottom line.

Even more important, accommodation/pre-emption laws shape the real-world environment in which our customers and their non-smoking friends and associates live every day. If smokers are banished to doorways and loading docks in front of buildings, it makes smokers feel like outcasts and gives encouragement to the antis.

On the other hand, if we live in a society that accommodates smokers and non-smokers alike, it sends the message that smoking is a viable life-style choice and an adult's decision to use a legal product should be respected.

Accommodation/pre-emption is vital to all the efforts of PM Corporate Affairs. If smoking is not seen as legitimate, our work on every other issue becomes that much more difficult." [CIA.1/p.2-3]

Walls comments about the concerns Philip Morris has for proposed OSHA regulations.

"As you know, the U.S. Occupational Safety and Health Administration – OSHA – has proposed banning smoking in all workplaces except in enclosed, specially ventilated rooms. The OSHA regulations are the anti-smokers' version of pre-emption. If these regulations go through in their present form it won't matter how many pre-emption laws are enacted by the states. The federal law will be a 900-pound gorilla that takes precedence over them all." [CIA.1/p.5]

The presentation continues as Walls passes the microphone to Philip Morris spokesperson, Ted Lattanzio. He provides the details of the industry's plan to counter the OSHA initiative.

"Our strategy for achieving this objective is to convert the promulgation process from bureaucratic fiat to political dogfight. With your help we've begun to generate a tidal wave of opposition from political leaders, state officials, business owners and thousands of individual Americans.

Over the next month, if we have anything to do with it, this opposition is going to intensity and we're going to give the poobahs at OSHA a taste of what democracy is really like." [CIA.1/p.8]

Jim Pontarelli, another Philip Morris spokesperson, presents the industry's plan to manage day-to-day activities in this battle. This is an important document as it illustrates the scope of the industry resources. As they collaborate with local retailers and various business organizations, they form a massive, and extremely powerful, political network.

Pontarelli also points out the real strength of the health movement – the grassroots activists. Even with the billions of dollars available to industry advocates, and the thousands of sympathizers, they cannot match the efforts of volunteers and educators who work at the fundamental level of American society.

"Given this scenario, we needed a fresh approach. We needed more tools on the state level, and we need to stop the bleeding on the local level.

Working with the New England Convenience Store Association (NECSA), we developed a network whereby local retailers would serve as our eyes and ears in every Massachusetts community. After all, we already have sales people and retailers on every main street in every town and city.

Once recruited, our fire-spotters were brought in for seminars and training by the Association. We taught them how to prowl the corridors of town halls reading bulletin notices of public hearings. Most importantly, we taught them how to pick up the telephone and dial our number when they spotted something.

Our local monitors have proven to be very effective and resourceful. We've discovered that if we can get enough advance notice to do some homework and mobilize local support, we can minimize the negative activity.

The actual mobilization and local lobbying is managed by a team that included people from RJR [RJ Renolds tobacco (Camel cigarettes)], US Tobacco, a representative from the New England Convenience Store Association (NECSA) and several others.

...We've also learned that the farther we get from the ground, the better chance we have of defeating a proposal. At the level of the town meeting, we're in real trouble. At the board of health level, we do better. At the city council level, we do very well." [CIA.1/p.14-15]

While Lattanzio speaks about giving “OSHA a taste of what democracy is really like,” Pontarelli boasts of a Philip Morris strategy previously implemented in Ohio, which has successfully resulted in impeding the governmental process.

“Board of Health members are not elected. They fear no constituency. Local elected officials in Ohio use the situation to insulate themselves from any political heat. They would throw up their hands when Scott lobbied then and say, ‘Gee! What can we do? Go talk to the Board of Health.’

So Scott has crafted legislation which requires elected officials to vote on any proposed smoking ordinances put forward by their board of health before it can become law.

The legislation doesn’t prevent boards of health from proposing bans, and it doesn’t violate home rule; it just imposes a bureaucratic nightmare of hoops a board must jump through before they can get their smoking ban proposals on the books.

Scott’s legislation provides that prior to enacting a smoking ban, the board must adopt a ‘resolution of intent.’ Within 30 days after that, written objectives to the resolution of intent must be filed. Finally, after all of this, the Board can send the written report to the local governing body for review. But that’s only the beginning. At this point, the process starts all over again for the legislative review.

You get the picture.

This entire process would take – at the very least – three full months. This give Scott and his people tons of time to marshal retailers and other allies, to generate letters, opinion pieces, etc. It also gives Scott time for a real shot at elected officials, who have to sign off on the proposal and take whatever political heat they have coming to them for doing it.

And it gives us a chance to amend the proposal during the process and make it more to our liking, if it looks like it’s going to get passed anyway. This may not be classical pre-emption, but it’s practical pre-emption.” [CIA.1/p.18-19]

Related to Texas, Philip Morris spokesperson, Barbara Trach, summarizes the company’s political activities across the state. We enter this document under the category of “things Philip Morris does not want the public to know.”

“In Corpus Christi, Texas, we helped prepare testimony for hospitality industry representatives, who used the Program’s Source Book as a guide during testimony. We also helped educate the local restaurant community about accommodation once a compromise had been reached.” [CIA.1/p.35]

“The International House of Pancakes called us interested in offering the Program to 75 restaurants in Texas where local legislation has been hurting business. They are also interested in working with us to oppose future restrictions, such as those pending in Plano.” [CIA.1/p.36]

Philip Morris spokesperson, Barbara Trach, continues her presentation on company political activities in Texas. In this exert, Trach comments how Philip Morris trains third party activists to further the industry's agenda. This strategy allows the company to remain behind the scenes and leaves the public with the impression the activists are neutral. This is another example of the ease, and frequency, that industry representatives plot to deceive the public.

"Our goal is to have a core group of Tier One participants in each state and region that we can call upon to mobilize against unnecessary legislation. We are in the process of surveying our existing participants to identify that top tier who are most willing to work with us.

Additionally, the Program can also serve as a catalyst for you. Because it comes from a perceived perspective that it 'neutral,' it can, and has been used to open doors that have been closed in the past, as well as to solidify existing relationships." [CIA.1/p.37]

Walls concludes the presentation by summarizing the company's position and leaving the participants with a rallying call to continue supporting both the company and smokers.

"We need those victories. There are more than 50 million adult American smokers out there who are depending upon us to do our jobs. So let's do it. Let's fight for our consumers and our company's future." [CIA.1/p.40]

E. Section Supplement

In the preceding section, we demonstrated how the industry attempts to block clean indoor air ordinances using scare tactics. They consistently argue such legislation has a negative financial impact on restaurants and related business. When the "doors are closed," industry representatives admit this is a flawed argument. From the Philip Morris files, we uncovered a May 1994 article titled, "TOWN WITHOUT SMOKE." This is an excellent example how industry strategy encourages third parties to claim financial hardship due to new smoking restrictions. Coincidentally, the complainant featured in the article owns an International House of Pancakes (IHOP). On the previous page, Barbara Trach, reported how Philip Morris collaborated with 75 IHOP restaurants in Texas on the issue of clean indoor air legislation.

The article summarizes the town situation as, "Two months after passing a tough no-smoking ordinance, Arlington, Texas, restaurants survey the damage." The article appeared in *Restaurant Business*.

"For over 21 years, Owen Henn has owned and operated an International House of Pancakes in Arlington, Texas. For the first time in nearly a decade, his business is down – by 20%. And the blame, says an angry Henn, falls squarely on local politicians. Since they enacted one of the country's toughest no-smoking ordinances on March 1, traffic has plummeted, and 'I'm not happy,' he barks.

A study of smoking bans in other towns and cities found no adverse effect on restaurant sales. Business actually increased after smoking was prohibited in the restaurants of Telluride, Colo., and Palo Alto, Calif., according to the data compiled by the University of California at San Francisco." [CIA.17/arlington_new_laws.PDF]