COMMITTEE OF COUNSEL

3. 31. 83

Office of Lorillard NYC
Tom "
Francis Decker

LG 2000805

(1)

Re: Committee of Counsel (Jim & Francis Pechlan)
3/24/83
Hart & Stevens meeting –

1) (a) Legislative Update – I WARNING NOTICE
Waxman Hearings – next session in Senate
Mon 4/25/83
Courtesy, Finance: Tue 4/20, then 4/26 –
then 4/25/83 date for Hatch committee. 9:30/10:00
4 panels – here only 2 hrs devoted. / With
suggests moving Industry position to last. Temple +
Cunningham to any delay is a plus. – Cancellation
reached that delay would be advantageous.
A discussion – led by Hellzman – the
Congress is "hearing" industry; suggestion by Temple –
apparently to take position of waiting to take off
warning notice; then it would not to taken off
Likely discussion follows as to how Waxman's Q
as to position of industry – if warning notice
were to be deleted. Consensus seems to be:
position of industry is that it always has
opposed notice as not being supported by the
scientific evidences & to extend it expense
the suspicion of the Public Health Service –
public already aware of such. This position is
taken with 100% assumption that warning
notice would not / will not be repealed.
Further discussion – Cannon recapitulates. If
Judge to answer (e.g.: Dos of Lovelland),
speaking personally –
1) Not a serious Q – {Since no such pending legs
2) If serious – Q industry has always opposed warning
notice – given specifics
3) Reason – not supported by scientific evidence
4) ~~[illegible]~~ the would favor repeal of notice

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Holtzman suggests that answer of Kirk Judge to Q of broadcast exposure is that such is permitted. But problem, according to Stevens, is that such a position does not reflect position (in actuality) of Lorillard.

Quite possibly a policy Q that will surface at Committee meeting. Stevens thinks that CEQ's should focus in Q before hearings to be ready if Q surfaces at hearings. Pelletier thinks opposite, position; does not want B & W to have participated in a discussion on this subject.

Stevens then concludes that Judge's answer will be:

1) Lorillard will not comment on ~~complete~~ motives of other ~~company~~ companies ~~in such~~ in engaging in such promotions — a ~~competitive~~ area of competitive decision-making, &

2) Lorillard is "doing other things" as far as its ~~appr~~ marketing/advertising efforts.

(6) SELF-EXTINGUISHING:

[illegible] – Kornegay wrote to each of the general counsels.

3 considerations re self-extinguishing Q. by Warren committee.

1) ~~[illegible]~~ Possibility of a "study hell".
~~[illegible]~~
~~[illegible]~~
2) Pre-emption – so as to avoid state legislative efforts.
3) Submission of Data

Kornegay says he is of understanding that position of industry is (and he so took the position at hearing):

1) Industry is concerned; all companies are of one mind.
2) Industry trying to contribute to a solution
3) Trying to reduce ignition potential – w/ Ea. company working independently.
4) No technologically feasible answer at present
5) Industry co-operating w/ firm-tire industry.

→ (Pg 147) Kornegay answers Q: if information becomes available, it is "inconceivable that such would not be shared by all of the manufacturers in the public interest."

With Q: Should industry avail itself of the possibility of a "study proposal"?

(2)

new subject → BROADCAST EXPOSURE

(1) Mention of brand names thru sports/music (2) - eg: indirect publication of brand names. Not w/i current Hatch/Packwood bill - but Q might surface. Q is on of promotions - eg - promotions of sporting events (etc), by a tobacco company whether there is widespread TV/Radio coverage.

Proposed answer for Lorillard (~~since~~ if Lorillard asked why it is not in such if Lorillard is depending indirectly on such "indirect" advertising thru promotions: Lorillard "simply" doing other things.

Hartzman - ~~Radio~~ TV Station in Boston received a letter from Justice Dept - saying: has come to attn of Justice that Station ~~to~~ covered Va. Slims Tournament in Boston; TV Station on notice that if brand identification covered, a complaint possible vs TV station under Act. Pm received letter this week - ~~[illegible]~~ ~~[illegible]~~ from Justice requesting Pm - (Q's etc) w/ TV station so as to reach decision as to whether complaint should be filed.

Hearing for 4/25/83 - to be:

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Four Panels:

1)

2) Health Effects of Smoking on Women and Children

3)

4)

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CHILCOTE:
~~CHILCOTE~~ recommends that –
1) Data be submitted, &
2) Endorse a "study bill", w/ state pre-emption

Stevens thinks companies are going to have to give "some data" (non-proprietary information) to support its witnesses (On Spears) – otherwise companies are in deep trouble.

Q – in absence of a Fed S/, will there be a Statue bill passed? CHILCOTE: no.
Rupp – 4 of 10 or 11 (Oregon/Calif/Conn/NY) still difficult. But Oregon/Calif/Conn in better shape ~~[illegible]~~ than originally thought. NY – with recently – very sick. But Rupp now ~~[illegible]~~ hopeful than bill will be defeated in NY.
Then Q to Kovaczy: can bill be ~~[illegible]~~ defeated altogether in Congress? Kovaczy: no. ..., should not the offer of a "study bill" be accepted?

Strong/Stevens position: must do "something" as far as data submission – otherwise – all options to be taken away – no one "better equipped" to do so than Waxman.

[CPSC: Consumer Products Study Commission]
[NBS: (National Bureau Stats)]

Pebbles concerned w/ a study bill – since you will end up w/ a product ~~[illegible]~~ modification. Stevens also has questions over recommending to Lindland any "study bill"

Process suggests an "inter-company" effort — under an anti-trust exemption. But Kornegay thinks such an effort will be too late.

5/13/83 Day set for Senate side.
→ Stevens: invest now some movement. Industry ~~[illegible]~~ fortunate in Waxman hearings.

Jacob recommends: a "study bill" — but w/ 1) industry financing in large part, & 2) industry participation in large part — in cooperation — in doing the study, & 3) even HEW participation to put emphasis ~~[illegible]~~ on T&N escalation results.
[Self-extinguishing — a ~~[illegible]~~ Mokely bill — not a Waxman-Kill]

Specific Proposal by Pebbles: ~~[illegible]~~
1) Industry financed — no expense to gov
2) Obtain best objective experts
3) Voluntary — not legislative
4) Submission of company data

Stevens: has a problem w/ Pebbles' proposal — suggests a "lesser proposal"
1) ~~Company~~ Companies which are willing — to submit data properly packaged
2) Committee to be so informed — w/ confidentiality worked out as best possible
3) Has committee to engage consultants to evaluate such, &
4) ~~[illegible]~~ legislation until such has been so evaluated.

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Holtzman: thinks "bargaining" w/ Committee should continue. Thinks a bill is inevitable anyway.

*8 → Tempko: should work on a bill: w/ tendency up of company people + John Rupp — w/o necessity of offering up of data.

This is the decision reached. [10:30 → 1:00]
GET Parker's notes.

→ Decision made:
① Counsel (Rupp, et al) to TI drafts a proposed bill — (
② Draft bill to be submitted to companies
③ Assuming agreement as to contents — Konegay to submit such to Cantor.

Freedman 7/27/83 The meeting UFAC
#9 a cordial meeting — but adversarial + UFAC negotiating. UFAC position: UFAC has gone as far as it can go; modifications to materials have raised prices + UFAC will not go farther w/o government mandate, then UFAC "got off" w/ an in-industry study + why ~~[illegible]~~ does not tobacco industry do as well. UFAC thinks their ex got somewhat good at Wayman hearings. Ultimate position of UFAC: tobacco industry needs to make "some movement" before UFAC will be satisfied.

2. L.S., Inc. (4/18/83 [illegible]
[illegible] on implementation to be given

7. Legislative Update - II
7.
13. California - Product liability legislation

4/6/83 Hearings in Congress
4/28/83

Sen. Holland opposed to Kasten bill.
Nat Assoc of Mfgr - et al
Rep. Waxman - House side.
Max CROHN of Jacob Medinger reports.
The 2 sections which are of concern:
a) Design defect §5
b) Failure to warn §6

~~The~~ Max Crohn's (& others) efforts in ~~the~~ lobbying has been thru trade associations - not T.I.
Litigation sections of ABA against such.
Admin. not in support of bill

California - a bill has been introduced in Calif to overturn SINDELL, except for "DES" cases. Pharmaceutical industry has not been organized in support of such.

$5-7K contributed wanted.
B & W - supporting
Pm - supporting
Lockland - under consideration but unlikely.

5. WRFIT : Stevens says he understands such is "going back" to Executive Committee. Then Pebbles speaks to such. Pebbles thinks ad crosses threshold into dangerous area. Can cross into FTC warning/deception area problems. B&W people say ad ineffective w/ warning ad in it; if warning ~~[illegible]~~ is deleted, then at least 3 problems; to wit:

1) Product liability
2) Health assurance
3) FTC warning/deception consent decree problems, eg - it argues for health benefits of smoking

If ad is run - then possibly ~~[illegible]~~ actionable; if not - certainly opens tobacco industry to a blast. Also, it puts tobacco industry into forbidden area of contending positive health benefits from smoking. The worst case scenario would be a FTC injunctive effort which succeeded.

A well-considered condemnation of such by Pebbles. Sam Chilcote gives review of the ad's development as such - to comply w/ executive committee's request for the ad.

~~Tempko~~ Tempko - thinks each attorney should take a firm position w/ respective executives. Even tho possibly a business decision - w/ warning ad out - the up-side potential far out-weighed by down-side danger. Not just a theoretical danger but a good probability of serious legal problems; eg: 1) a violation of consent w/ FTC, +2) ~~[illegible]~~ FTC

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going f-- injunction + 3) possibly even a criminal violation.

Each atty should discuss this w/ executives; seems to be strong feeling should not be run w/o warning label.

This position taken by Com. of Counsel. After so counseling CEO's — ad to be reviewed again by Executive Comm.

8. Smoking in The Workplace, Chilcote speaks; material to be distributed in near future. Stevens invites attention to 1/12/83 report. Appears to be a problem that is gathering momentum.

4. HHS Ingredients Temko reports at some point in time - counsel used to project future course of inquiry - eg: what are the ingredients. Kirkham (partner of Temko) made a mess of everything.

8. FTC Working Paper #76

Somewhat "dated", when paper came out, Stevens thought it helped industry to make some argument against "addiction" question. Stevens opinion that good argument developed against addiction argument/conclusion w/o FTC Working Paper #76. Elmin conclusion: not a blockbuster + should only be kept in mind for possible future use.

10. ASHRAE / BOCA

Earl Newman reports. A serious matter — & a new battleground.

ASHRAE Standard requires different ventilation stds for smoking as against non-smoking rooms. Standards moved to be re-formulated.

BOCA — Building Code Group.

1) ~~Pr~~ Proposal to adopt Ashrae stds in model Building Code rejected Tobacco industry developing allies.

2) 2nd proposal — (?)

3) 3rd proposal — (?)

Danger area is that if Ashrae stds adopted, "enlightened builders" will end up building non-smoking buildings — since such are less expensive.

Kramer — recommends retention of consultants to work against adoption of ASHRAE stds in building codes — will ~~rep~~ require / IIKI

~~Suggestion~~ Newman suggestion: have TI staff continue working on matter, with Newman/Kupper to be a sub-committee of Comm. of Counsel to report back.

6. CTR — Tax Credits

Witt: Involve tax credits available for ~~[illegible]~~ outside research contributions. Witts discusses Reynolds contemplation of research contributions, but w/o underwriting CTR —

Q is whether other companies would have any objection to Reynolds so proceeding. We [illegible] under the Tax Code, Regimes a written (R) between grantor-donor & grantee. Tenko offers comments as to all monies going thru CTR - w/ CTR being agent of donor-company.

Discussion centers on Reynolds' direct funding of certain outside research w/o funding thru CTR.

An urgency for Reynolds. Lovelland to be excepted - others waive objection apparently. Stevens injects concern of "appearance" quite aside from tax considerations.

3. SAMPLING Legislation — With more a less unable to report. Tenko reports that proposed legislation an "active" matter but apparently has been put off time and again. A Philadelphia proposed ordinance. With to re-circulate current information when he collects such.

Stevens suggests leaving matter w/ With to come up w/ proposed legislation to use in lieu of that usually introduced.

11. Litigation Update

(a) Lee v. Wass. Dept of Public Welfare

Tel report today; State as Δ has moved ~~[illegible]~~ to dismiss on basis of pleadings.

Basis: (i) Sovereign immunity

(ii) S/L

No ruling as yet; no prospect of settlement

(b) Mansfield case : discussed by Decker
Just commenced in NJ

~~[illegible]~~ Jacobs discussed new case in Santa Barbara, Calif.

Jacobs comments upon: impending class action of 30 IIIs against all tobacco companies.

12. Pending Special Project approvals
Shinn: Lgt needs to respond to Washington Univ. in St. Louis —
(?)
ck w/ Green

Stevens bings fwd proposed VC. Wk's comp. proposal:
ck [illegible] VC [illegible] comp amendments

NEXT MEETING
4/25 5/13 : Hatcher bings - letter on self-expiry.
5/18/83 : TI excess

HHS =

CTR = Council for Tobacco Research — We are not a member

ASHRAE =

BOCA =

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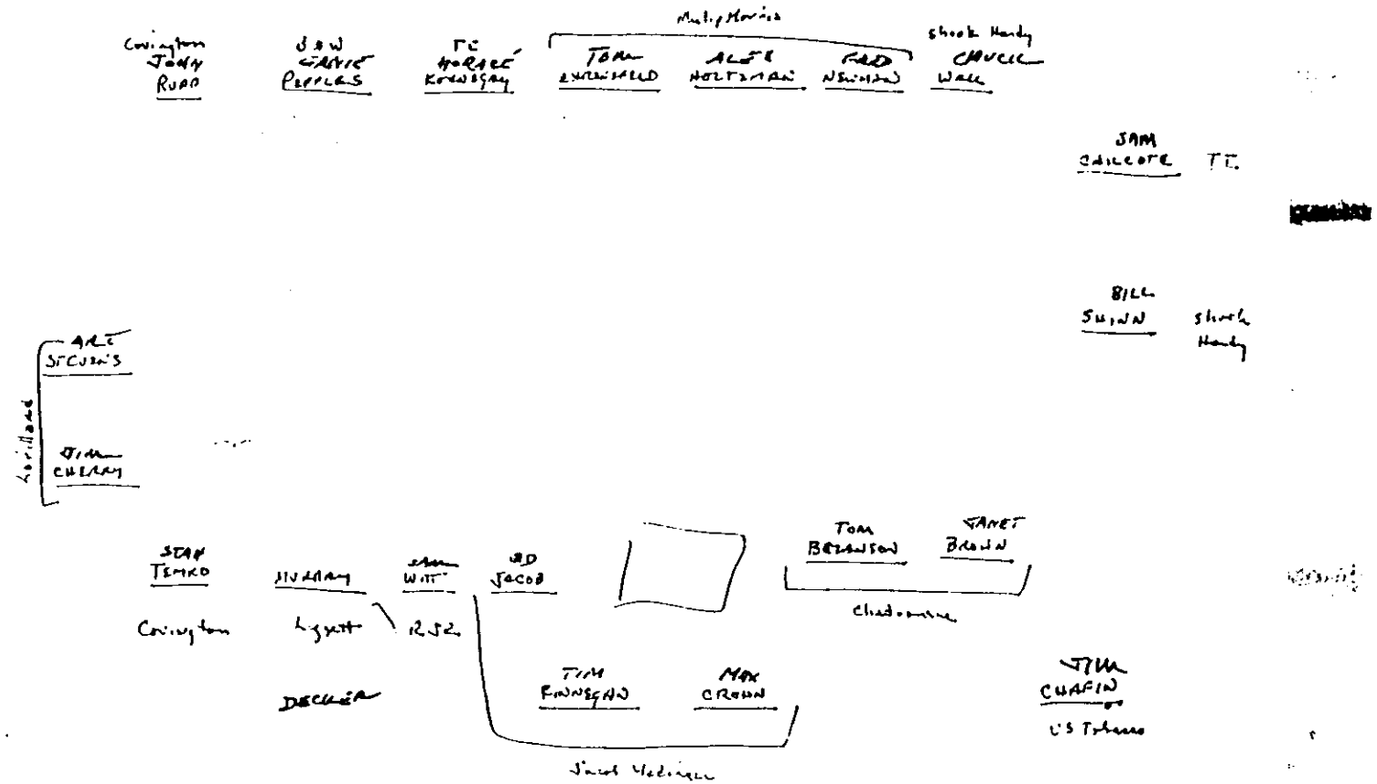
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