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UNION TRUST BUILDING  
WASHINGTON, D. C. 20005  
REPUBLIC 7-5900

May 6, 1967

Hon. Earle C. Clements  
President  
The Tobacco Institute  
1735 K Street, N.W.  
Washington, D. C. 20006

Dear Earle:

Yesterday Ed DeHart forwarded to me a copy of Mr. Yellen's letter of May 3, 1967, withdrawing from The Tobacco Institute.

Ed's principal concern was that possibly this letter might be released to the press and he might be called upon to issue a press release. Later he indicated that Mr. Grant had stated that Lorillard did not plan to release the letter "at this point."

Moreover, there is the question of how you directly, on behalf of the Institute's Board of Directors, ought to respond.

I have considered these questions since receipt of the letter, and have been privileged to discuss them with some of my colleagues. Our recommendations would be equally applicable to any press release, which might have to be promptly formulated, and to any reply to this letter.

After an ~~explication~~ <sup>expression</sup> of regret over their conclusion to withdraw, there would be, in our opinion, no point in dealing at length with the fourth sentence of the second paragraph.

The most that might be said in response to that sentence would be to state that the Institute has never been authorized to nor has it ever made any efforts to impose either uniformity or restrictions on the actions or business policies of any of its members. Indeed, its bylaws preclude it from doing so.

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The heart of any public difficulty with Mr. Yellen's letter resides in the first full paragraph on page 2. It is there asserted that Lorillard has been excluded from certain councils of the Institute. This is not true. There have been conferences among the general counsel of various cigarette manufacturers to which those holding these conferences have not seen fit to invite the counsel for Lorillard. There is no legal impropriety in lawyers meeting to discuss common legal problems. Likewise, there is no legal impediment to their electing for any reason that appeals to them not to include other lawyers in those meetings.

The statement in the fourth sentence of this key paragraph is primarily untrue. No one to my recollection, and as I am satisfied anyone's notes would confirm, asked Mr. Grant for any assurances about any Lorillard action or policy. What was said to him was that it appeared that the views of his client and those of the clients of others present appeared to be diverse. It was further said that there was no confidence that anything discussed would not be immediately reported back to the Federal Trade Commission.

Since the conference was called for a legal examination of the Commission's authority and the meaning of an identical letter sent to each of the companies, it is obvious that lawyers may, rightly or wrongly, ask for some assurance that their discussions and conclusions not be reported back to those who might turn out to be adverse party litigants.

Consequently, we are of the opinion that there must be a flat denial of this third sentence. Subject to everyone else's views, I would phrase that denial as follows:

"We are constrained to tell you that the statements in the fourth paragraph of your letter are untrue. Their ~~inaccuracy~~ inaccuracy is possibly due to inadvertence in being reported to you. At no time was Mr. Grant asked for any assurances as to Lorillard's advertising in general or as to any of its brands. It was noted that

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Lorillard, alone in the industry, took the position that the labeling or advertising of "tar" and nicotine content of cigarettes, without a health disclaimer, would not be deceptive or misleading to the public. Lorillard is, of course, free to pursue its own policies. Moreover, as you are aware, the Institute has no authority and has never remotely endeavored to concern itself with the advertising or marketing policies or practices of any of its members."

Finally, in the next paragraph there are references to "restricting Lorillard" and to "obvious restraint of competition implications." These, however, primarily are tied to the misstatements of what was said and are contained in the preceding paragraph. An effective denial of those statements would, in our judgment, make it unnecessary to respond to this conclusory paragraph.

Any letter from the Board ought further to make reference to your being confident that Lorillard will honor its obligations to the Institute in accordance with the bylaws of the Institute.

Regrettably, I shall be unavailable on Monday and Tuesday of next week, but if you have any questions Mr. Temko will be available. I shall arrive in Lancaster by Wednesday evening. If no press release is required, I assume that at Lancaster any draft of a reply for you to make can be finalized. In view of the possible time exigencies, I am sending a copy of this letter directly to the other counsel concerned.

Sincerely yours,



bh  
cc: Messrs. Haas  
Hetsko  
Ramm  
Smith  
Yeaman