

Confidential

MEMORANDUM

To: Mr. Toms  
Mr. Harrington  
Mr. Moran

May 8, 1964

From: F. P. Haas

I attended a series of meetings yesterday at Covington & Burling with regard to the Code and F.T.C. problems as well as Congressional Hearings. Others in attendance were:

Senator Clements  
Miss Brown - American Tobacco  
Messrs. Smith and Krash - Philip Morris  
Mr. Ramm - R. J. Reynolds  
Messrs. Russell and Wald - Lorillard  
(Mr. Wald only F.T.C. problems)  
Mr. Yeaman - Brown & Williamson  
Mr. Forsyth - United States  
Messrs. Austern and Temko - Tobacco Institute

This memorandum will treat first things first although not in the order in which they came up at the conferences.

First of all, we have been advised that the following have indicated that there is no basis upon which to discuss the possibility of becoming the Administrator of the Code:

Frank S. Hogan. He states that he would have to give a year's notice before he left the District Attorney's Office and that, putting political ambitions aside, which he frankly admits to exist, he will stay in his present office indefinitely.

Judge Frederick Van Pelt Bryan. Despite rumors to the effect that Judge Bryan might well be available, he is not.

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Henry H. Fowler. Mr. Fowler has advised that he is not interested.

William L. Cary. Mr. Clayton and Mr. Tamm, both intimate friends of Mr. Cary, will see him today to determine whether he would be interested.

Stephen Miles. Paul Porter is getting in touch with him today. He is a former Undersecretary of the Army and an able lawyer. (He was in St. Louis yesterday.)

Edward M. Levi. Mr. Provost of the University of Chicago, is an intimate friend of both Mr. Fortas and Mr. Krash and they intend to speak with him.

Next week, if nothing comes of the above approaches which remain open, it is thought that we should consider William T. Gossett, formerly of the Hughes, Hubbard firm here in New York and formerly Vice President and General Counsel of the Ford Motor Company, who is highly recommended and who is at present without any permanent connection. He is well known to Crison Warden and to Mr. Perkins, either of whom may arrange to see Gossett unless objection is voiced by any one of the Companies.

The name of J. Edward Day, a former Postmaster General, was mentioned but no decision was made as to whether to speak to him. The committee as a whole seemed to think that among the non-lawyers who might be available we should consider in the order of preference:

Milton Eisenhower. Now President of Johns Hopkins University.

Lawrence A. Kington. A non-lawyer who was Chancellor of the University of Chicago and who now is a Vice President of Standard Oil of Indiana.

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I am supposed to give any reactions which you may have to Henry Ramm Monday because this whole area will probably be an area of further discussion at Hot Springs next week.

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Earle Clements thinks that hearings on a labeling bill will probably be scheduled for late May or early June. We discussed witnesses for the Hearings and the following outlines the present status.

Sowman Gray and Brooks George of Larus Brothers will be industry spokesmen. George Allen will testify broadly on the economics of the industry.

In connection with the economics of the industry in more detail the following have been conferred with and are willing to testify:

Professor Arthur Eurns, Chairman of the Department of Economics, George Washington University.

Professor David Berlo, Chairman of the Faculty of Communications, Michigan State University.

Professor Gary Steiner, of the Graduate School of Business, University of Chicago, who is an expert in behavioral sciences and a special consultant to CBS.

Professors Berlo and Steiner will testify with respect to the lack of need of labeling due to the widespread public knowledge of the health charges; that in any event labeling

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is not necessary in advertising; that if labeling is to take place with respect to cigarettes, numerous other products would be in a similar category.

Apparently Professors Berko and Steiner independently believe that a survey as to the extent to public knowledge of health charges against smoking would be helpful and could be obtained at a cost of about \$25,000. There was considerable discussion as to whether such a survey should be undertaken and whether it should be done by an organization such as Gallop or Roper or by a university. While no final decision was made it was thought advisable to have the professors draw up a questionnaire in any event and possibly a preliminary survey might be undertaken. If it were to be undertaken it would, of course, have to be undertaken by counsel so that it would not be subject to subpoena from company files. It was also pointed out that if there is a substantial percentage of unawareness of the health charges such a survey could backfire.

Mr. Weil, of the Association of National Advertisers, is almost certain to testify and, if the hearings are announced, it is hopeful that the following would also consent:

- Mr. Collins of National Association of Broadcasters
- Mr. Cash of Television Bureau
- Mr. Hansen of American Newspaper Association
- Mr. Bunker-Radio Bureau of Advertising
- Possibly, Mr. Herbert of Magazine Publishers Association

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Mr. Yasman and Mr. Matsko will see Mr. Kolodny after the announcement of the hearings.

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The status of medical witnesses is as follows:

Epidemiologists

Dr. Sterling of Cincinnati may be available but is a large recipient of NIH grants and would vastly prefer to have a committee of epidemiologists report to Congress.

Mr. Hardy and Miss Brown are to see him again next week and the Scientific Advisory Board of the Council will consider making Sterling a grant in this field.

Dr. Yerushalmy. This doctor, if available at all, would only be available at the request of the Congressional Committee.

Dr. Joseph Berkson. We have yet been unable to see him but it might well be that he would make a written presentation whether or not at the request of the industry.

Clinicians

Dr. Hiram Langstrom, a surgeon from Chicago, will be a witness.

Dr. Milton Rosenblatt is willing to appear but in any event will file a written statement.

Dr. H. L. Garland, who has been available as a witness in all of our cases, would probably appear but would prefer to be asked by the Committee.

Dr. Ian Macdonald is available.

Dr. Russek, a heart specialist at the VA Hospital, Staten Island, is available.

Dr. Seltzer of Harvard who is an expert on personality and constitutional theories will be seen next week, as well as Dr. Keyes of the Mayo Clinic, another heart specialist.

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Pathologists

Dr. Thomas Moran

Dr. Douglas Sprunt

Dr. Harry S. N. Greene (will be held in reserve)

Emphysema and Bronchitis

We as yet have no witnesses in this field although Dr. Pappaport of New York is to be seen.

Industry Research

Drs. Hockett and Little are preparing statements.

\* \* \* \*

Colonel Joyner who had sat through the rest of the discussion on Congressional Hearings will undertake to have farm groups approach various Governors to make statements and will discuss with Mr. Royster, the head of the Bright Belt Warehousemen's Group, who would be best to make the statement on their behalf. Apparently those who know him feel that Mr. Royster would make an excellent witness. There was a good deal of diplomatic discussion between Senator Clements and Colonel Joyner and it was agreed that the farm groups would not emphasize the price support program but place emphasis on the fact that tobacco is so important to the economy of a number of states.

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Mr. Wald joined the meeting and there was discussion of the following matters:

1. The request of Commissioner Elman, which was joined in by Chairman Dixon, to have the Code filed as part of the F.T.C. proceedings. It was decided not to do so for a number of reasons; principally, the fact that it could well prejudice obtaining a ruling from the Antitrust Division and would dignify as hearings what we have maintained were not proper hearings in the F.T.C.

2. Whether we should submit any material in response to voluminous reports filed by the F.T.C. staff dealing with various resolutions on medical issues by scientific and political entities and the summary of advertising and television programs. It was decided not to respond to them because there is very little that could be said with respect to either.

3. Mr. Wald seemed to favor entering into negotiations with the F.T.C. in the hope of obtaining a softer labeling requirement or deletion from any labeling requirement from advertising. In view of a recent speech by Chairman Dixon in Nashville and statements made by Commissioner Elman to the group of Washington counsel, it was the considered opinion of Mr. Austern that negotiation would have no practical effect. Secondly, if we were to negotiate a label we then could hardly attack additional labeling requirements in the courts at some

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insurance. Thirdly, if we were to negotiate with the F.T.C. we probably could not obtain Justice Department clearance. Although the door was not closed to reconsideration of the matter it was decided not to enter into negotiations at this time.

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Senator Clements would like very much to obtain a summary of what each company is doing in the field of agricultural research or what it has been doing in recent years. He thinks that this would be very helpful on the Hill. I stated that I would request Mr. Harrington and Mr. Moran to take the proper steps to have such a statement prepared. Included could be grants made to research stations, independent farm experiments conducted by the Company, analysis of leaf tobacco for flavor and chemical constituents, both independently and for Government bodies; manufacture of sample cigarettes for the Government; etc. etc. Such a statement could be sent to me and I in turn could deliver it to Frank J. Welch of The Tobacco Institute who would make a composite study of what the industry is doing as a whole.

F. P. H.

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Col. Hartfield of White & Case stated that he believes that ex-Governor Weyner should be added to our list of possibilities to act as an Administrator. Hartfield says he knows Weyner and says he is an able and vigorous fellow. Several of his clients know Weyner well and speak well of him. Hartfield will call the Prudential Insurance Company who also are close to Weyner and obtain their estimate of him. I stated that I would pass the name along to you for clearance to be added to the list.

F. P. W.

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