

MEMORANDUM
January 13, 1964

Handwritten initials and a circular stamp.

To: Mr. Toms

A meeting of the Tobacco Institute Executive Committee was held on Sunday, January 12, 1964 and was attended by the executive committee and one or more counsel for each of the member companies. There follows a discussion of proceedings:

Mr. Gray stated that his initial analysis of the Report of the Advisory Committee to the Surgeon General on Smoking and Health indicated that it cuts off a number of the answers which the industry has used to advantage on the question. It is considered to be of prime importance that the industry maintain a united front and that if one or more companies were to conduct themselves as a matter of self interest, particularly in advertising, obvious vulnerability would be the result. He felt that Reynolds could not at this time make any detailed analysis of the Report for radio or television. He favored referring press media to the statement made on Saturday by George Allen.

Mr. Toms referred to a statement attributed to him in the Sunday issue of the New York Times, which he

said was a misquotation, which it obviously was. FPH was asked by Mr. Toms to read his statement, which he did, and the comment was made that the treatment of the statement by the Times was a good example of how management could be misquoted.

Mr. Cramer stated that he had no intention of making any statement other than reference to Mr. Allen's and that he would not subject himself to any interviews. Mr. Finch agreed, as did Mr. Cullman, who stated that he would make no statement until further meetings of this committee and receipt of a report by litigating counsel. Mr. Walker added his agreement but stated that he might be required to make some statement with regard to his new brand of cigarettes. Mr. Reed said that pressure had built up so much in Richmond that he had made a statement indicating that more research was required.

Mr. Walker added that CBS would carry and statement he had to make with regard to his new brand on Thursday, January 23, 1964.

* * *

Mr. Darrow of Hill & Knowlton stated that the Tobacco Institute has circulated facts and figures concerning

economics of the industry to the press and will fulfill further requests for such material. It was the consensus of opinion that industry spokesmen should not talk economics and that it would be best to have such material come from congressmen, etc.

Mr. Allen stated that Mr. Spivak's program "Meet the Press", "CBS Reports", and a number of other television programs are pressing for statements. He feared the result would be a crossfire of questions and preferred to stand on the statement he made yesterday.

* * *

Mr. Allen stated that there are already four Bills introduced in Congress concerning smoking and that Senator Neuberger would introduce two additional Bills on Monday, January 13. These are concerned with labelling, advertising, tar and nicotine content, education, etc. It was expected that early hearings might ensue.

Mr. Wald stated that Chairman Dixon of the FTC had informed him after the issuance of the Surgeon General's Report that the FTC is ready to take the lead and will act promptly. There are any number of courses of action open to the FTC, including proceedings against individual companies in particular cases, public hearings, and other possibilities

mentioned in appropriate memoranda. Mr. Wald felt that the FTC might act simultaneously in various directions.

Mr. Temko will act as clearing house with respect to inquiries or other actions taken against individual companies by the FTC or otherwise. All problems which arise are to be cleared through litigating counsel.

* * *

The proposed action of the Television Review Board of the National Association of Broadcasters which will meet in Miami on January 22 and 23, 1964 was discussed and it was determined that each company should act with respect to the invitation to attend as it saw fit.

* * *

Dr. Welch stated that his responsibility for watching over proposed State legislation would be considerably more difficult in the future and he expected an increase in the number of Bills to be presented in State Legislatures. He reported that the hearing in Boston on January 9 was satisfactory but that the opposition was somewhat better organized and that the situation could change in view of the Report of the Surgeon General's Committee.

* * *

FPH reported the informal conclusions arrived at by litigating counsel in the light of the Report. He made the following points:

1. The Committee's definition of cause is explicit (p. 21). No longer can counsel hope to put as much stock in the semantics of "causative factors". He also noted that as long as smoking is a contributory cause, this suffices on proof of causation.

2. Although the Report does not appear to contain much in the way of new evidence, it is very damaging because

(a) the material against smoking is now collected in one volume and is a ready source of material for plaintiff's counsel who have heretofore been quite uneducated, and for doctors who might oppose us. In large measure, putting aside those engaged in cancer research, opposing doctors have also been uneducated.

(b) the Report plays down the paradoxes which the defense has used to create serious issues of fact. It evidences little faith in the socio-economic urban, rural, ethnic and constitutional factors (p. 112).

(c) the Report seems to assume that certain changes in respiratory tissues are indeed pre-malignant.

(d) the Report does not define carcinogen as a substance carcinogenic to animals and definitely states that they may be so for men.

(e) although the Report states that statistical evidence does not prove cause and effect, the Report follows the argument heretofore advanced by Wynder, Overholt and others that converging evidence such as positive mouse painting experiments, clinical observations, and other laboratory observations afford the basis for finding causation.

(f) although not yet found in the Report, the fact is that Dr. Terry at the press conference talked of 41,000 cases of lung cancer last year and inferred causation. Despite the fact that the Report (p. 160) differentiated between epidermoid and adenocarcinoma, no differentiation was made by him as to causation for either type. Nor did he split off primary from secondary cancers.

(g) in its discussion of population studies (epidemiology) no saving statement is made to the effect that these do not prove causation in a given case.

(h) the Report accepts the increase in the incidence of lung cancer as a true one (p. 125 and 127). It puts little stock in our argument that diagnostic improvements would indicate that a large part of the increase is only apparent.

(i) the report plays down virus in terms of causation (p. 142 and 166).

3. FPH stated that we may expect that courts will continue to address specific interrogatories to juries on the question of causation and that we should not continue with the idea that this point will be answered in the industry's favor.

4. The Report may well make it very difficult for the industry to obtain expert witnesses. FPH alluded to the fact that our group of experts in large part cannot be depended upon to be of help in many more cases.

5. FPH alluded to the fact that we may expect further erosion of the breach of warranty defenses and that great pressures by opposing counsel and academic sources are being brought to bear with the argument that if the product is injurious to a consumer, the manufacturers should be deemed insurers on the theory that they are best able to bear the financial burden.

6. FPH indicated that assumption of risk appeared to him to be our best and only substantial defense (other than ones of technical nature); that any advertising statement making a positive or perhaps even inferential health claim for a particular brand would deny us this defense.

7. FPH also mentioned that although the Surgeon General's Committee did not find smoking to be a cause of coronary disease, it nevertheless assumed this.

L. P. HAAS

- 8 -

Mr. Hardy concurred with these remarks and stated that a more concentrated effort would be needed in defending the cases. Mr. Jacob also agreed but found some solace in the fact that the Report appears to repudiate Dr. Hammond in part as to causation of heart disease, emphysema and the impact of nicotine on the health question.

After the meeting Mr. Jacob undertook to see that each of our doctor friends has a copy of the Report, and the undersigned is ordering additional copies to be sent to local counsel.

* * *

A Meeting of the TIRC Executive Committee will be held January 29 at 2.30 p.m. and Liggett & Myers may be invited. The Ad Hoc Legal Committee is to meet Tuesday, January 14, at 10 a.m. The Executive Committee of the Institute is to meet at 10 a.m., January 17 in the Conference Room on the 57th Floor of the RCA Building. There may be an Executive Committee Meeting after the Annual Meeting of the Tobacco Ins-titute on January 30.

FPH reported on the status of the La Belle and Pritchard cases.

F.P.H.

16 2008210