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PHILIP R. STANBAUGH  
CHARLES A. MILLER

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

May 15, 1968

William W. Shinn, Esq.  
Shook, Hardy, Ottman,  
Mitchell & Bacon  
915 Grand Avenue  
Kansas City, Missouri

Dear Bill:

Re: Memorandum for Secretary Cohen

At a meeting of the Committee of Counsel held in New York yesterday, I was invited to comment on the proposed memorandum to be furnished to H.E.W. Secretary Cohen by Senator Clements on May 31, 1968. My initial response was that we had been advised that this assignment had been given to the Ad Hoc Committee, that members of that Committee were actively at work on it both in Kansas City and in Washington, and that we planned, absent objection by the Committee, to forward our suggestions promptly to you. Ed Jacob asked that we send copies directly to each member of the Ad Hoc Committee.

In addition, Ed outlined, in general terms, what I gather is the present thinking of the Ad Hoc Committee about the structuring of this report. It would consist of three parts. The first would be a detailed review of the medical area embracing, in somewhat abbreviated form, the materials in the Ad Hoc Committee report of August 10, 1967, updated to include any new material. The second portion would be a Summary of this medical material hitting the highlights of it. The third, as reported by Ed, would be a "Document For The Secretary" which would assume the validity of medical data and assertions in the other two portions, and would stress or be keyed to the need for additional research in important areas.

William W. Shinn, Esq.  
May 15, 1968  
Page Two

I assume that structurally the order of these documents will probably be reversed when the final report is readied. I will also assume that you will be or have been advised of some planned further meetings of the Committee of Counsel in New York City on May 25th and 26th to review the manuscript. I might also report, even though you will undoubtedly have it additionally reported, that the Committee of Counsel concluded that a printed document would not be appropriate.

Against this background, we are taking the liberty of offering a few comments and suggestions which cover in detail some general statements offered yesterday.

There seems to be general agreement that this report to Cohen should be in temperate style, wholly factual, and fully responsive to the Secretary's invitation to get anything that might indicate differences with the Gardner report of June 30, 1967.

Of course, it is unnecessary to elaborate that the overall target is to persuade Cohen that there is no basis for any recommendation that the present Act be changed.

You will recall that in the Gardner three-page report (as distinguished from his attachments which were later repeated and amplified in the printed "Health Consequences Of Smoking; a Public Health Service Review: 1967"), he made three recommendations. The first was that the warning statement be strengthened; the second was that it be required in all advertisements; and the third that both labeling and advertising include information on "tar" and nicotine levels.

The first recommendation in turn rested on his supposed review of what had happened since the 1964 Report in three areas. Obviously, we have no suggestions on the response to those conclusions of the Surgeon General. (To facilitate your job, our own box of aperture cards have been sent over to Simon O'Shea in order to provide double facilities for dealing with the references turned up in response to very elaborate questions put into the system on May 13th.)

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William W. Shinn, Esq.  
May 15, 1968  
Page Three

The 1967 second Gardner recommendation, that the warning statement should be included in advertisements, appears to rest upon two conclusions which he borrowed from the Federal Trade Commission. The first was that the present warning has not been a significant deterrent to cigarette smoking. The second is that the warning has had little impact on children and young people exposed to cigarette advertising. As to these, we believe that there might be a succinct persuasive section on public cognizance of the problem of smoking and health. This might rest upon pointing out that in HEW's own PHS Survey in 1964 and 1966 -- which appears as Appendix B to the FTC Report -- 93% of smokers were aware of the warning statement, and the majority of both current smokers and former smokers thought it was just about right, with additional percentages indicating that none was necessary.

As to the juveniles, we believe that the last Horn release based on the Chilton research indicates that the Gardner statement of 1967 that the warning on the package has no impact on young people has been answered by Horn himself. (For your convenience, I am enclosing a photocopy of Horn's speech based on the teenage survey.)

As to the issue of "tar" and nicotine, answering the Gardner statement that "the accumulated evidence strongly suggests" that lowered T&N means less harmful effect, rests on the medical data. I am confident that you also have the transcript of Hammond at the August 1967 Magnuson hearings on filters in which Hammond concluded that the case against T&N had not been established.

Whether it would be appropriate, or whether there would even be time, to include in the memorandum to Secretary Cohen any comments about FTC testing is a difficult question. I am enclosing copies of the last two memoranda filed by some tobacco companies pointing out to the FTC that their testing techniques are both imprecise and their reporting methods highly questionable. My own conclusion is that this possibly might be dealt with by pointing out that FTC testing efforts to date

William W. Shinn, Esq.  
May 15, 1968  
Page Four

have not resulted in sufficiently precise or scientifically acceptable results upon which inclusion of "tar" and nicotine levels in advertising can be based, wholly apart from the medical questions relating to T&N. In the accompanying materials these last two memoranda to the FTC might be included. Whether Senator Clements will agree that this is desirable, in the light of current discussions with the Commission about testing, I will endeavor to determine and let you know.

Finally, there is the whole area of the Morbidity Report. I have previously given the original Sawyer manuscript to David Hardy, and I assume it is available to you. We have rewritten this document but have not as yet gone over proposed revision with Sawyer. If you desire to quote his conclusions, we may want to get his permission next week. On the other hand, any of the ideas in his paper might well be used.

As to Dr. Sterling, the extent, if any, to which you want to use his challenges of the Morbidity Report will have to be determined by you. Yesterday the Committee of Counsel gave approval to certain forward efforts with Sterling, and I understand that he is now going to make an effort to get from the HEW the tapes underlying the statistical data in the Morbidity Report.

In this connection, I am constrained to report that it has been said that certain people in the HEW are unhappy with the industry criticisms of the Morbidity Report. My own view is that it cannot be overstressed that the Morbidity Report is 60% or more proxy reporting, is not in any sense clinical evidence, and is open to a wide variety of scientific objections. These are crystallized in a manner in which the Morbidity Report was summarized in the Public Health Service pamphlet (PHS Publication No. 1662), as contrasted with the somewhat restrained treatment which was given to it by Gardner and the Surgeon General in their 1967 Report. At the very least, the conclusion ought to be urged that the Morbidity Report cannot be accepted as medical evidence in any real sense.

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William W. Shinn, Esq.  
May 15, 1968  
Page Five

I hope that these suggestions will be of some utility to you in the tough job which you fellows have of getting this document out in so short a time. If we can be of any service in any connection, please do not hesitate to telephone Allan Topol who will get together anything that you may want.

With best regards.

Sincerely yours,

*Tommy*  
A.J.F.

bh  
Enclosures

cc w/o encls.: Ad Hoc Committee