

NLWJC - Kagan

DPC - Box 044 - Folder 005

**Tobacco-Settlement: Executive
Orders/Actions**



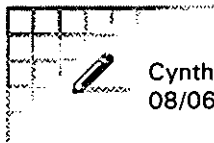
Cynthia A. Rice

08/06/98 04:21:17 PM

Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP, Laura Emmett/WHO/EOP
cc: Cynthia Dailard/OPD/EOP
Subject: You asked where the VP was with Hollywood

----- Forwarded by Cynthia A. Rice/OPD/EOP on 08/06/98 04:20 PM -----



Cynthia Dailard
08/06/98 03:08:33 PM

Record Type: Record

To: Cynthia A. Rice/OPD/EOP
cc:
bcc:
Subject: Re: did you ever reach David Beier re: Hollywood?

Toby told me the following:

In 2/97, the President went to Paramount studies to talk about the portrayal of cancer story lines in the media. He wound up blasting them for their portrayal of smoking, and was received with hostility. Toby said it took them a long time to recover from that.

In 12/97, he met with the head of the screen actors and writers guilds, along with Kristi Turlington, and some tv producers (about 7 people in all) to discuss the portrayal of smoking in the media. (Kristi's father died as the result of smoking, and she has done a PSA for the CDC on smoking).

Richard Mazur, head of the screen actor's guild, is most interested in the issue, and has made an effort to hold a few meetings with people in Hollywood, and is working to educate people by bringing in doctors to explain things, etc. Toby also noted that a few CA legislators have held hearings on the issue.

The VP's office got no where talking to Jack Valenti (head of the motion pictures association). Toby says that his indifference is definitely part of the problem.

Toby said that they haven't taken any action since 12/97. She said that except for Mazur, they encountered resistance and tremendous hostility from people.

Cynthia A. Rice



Cynthia A. Rice

08/06/98 01:53:36 PM



Cynthia A. Rice

08/05/98 06:54:44 PM

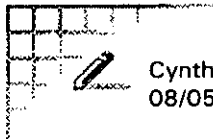
Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP, Laura Emmett/WHO/EOP
cc: Cynthia Dailard/OPD/EOP
Subject: Surgeon General's Report

Look at what we unearthed...you've gotta ask those bastards a direct question to get any info!
Actually, Ericksen's a good guy, others would have lied.

We'll push to get this ASAP.

----- Forwarded by Cynthia A. Rice/OPD/EOP on 08/05/98 06:53 PM -----



Cynthia Dailard
08/05/98 05:37:22 PM

Record Type: Record

To: Cynthia A. Rice/OPD/EOP
cc:
Subject: Surgeon General's Report

Eriksen said that they do have a Surgeon General's report coming out in the near future on tobacco. It is called "Reducing Tobacco Use", which discusses what works in terms of treatment, education, economics, regulatory action, etc. It has been in the works for 4 years, and is slated to be released in November. If we make it a priority, they can probably have it out in late September / early October. I asked if it addressed teens, and he said it does in terms of education, media, price and access.


If we do push them to release it sooner rather than later, it could get some decent play right before the election.

While this is not necessarily top secret, they are trying to keep it quiet. FYI.

Tob - nr - exec. actions

(aut)

Tob - nr - smuggling

 Bruce N. Reed
08/10/98 11:14:49 AM

Record Type: Record

To: Cynthia A. Rice/OPD/EOP
cc: Elena Kagan/OPD/EOP
Subject: Treasury smuggling actions

We should do this sometime after the legislative session is over.

----- Forwarded by Bruce N. Reed/OPD/EOP on 08/10/98 11:14 AM -----



Jerold R. Mande

07/31/98 05:18:38 PM

Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP, Cynthia A. Rice/OPD/EOP
cc: Cynthia Dailard/OPD/EOP
Subject: Treasury smuggling actions

Treasury called with its preliminary assessment of executive actions it could take to combat smuggling. As you may recall, we asked Treasury whether it could require prominent, 2-letter state abbreviations marked on each cigarette package.

There is good and bad news. The bad news is that Treasury does not believe it can require the 2-letter state marking on each package to combat interstate smuggling. The Contraband Cigarette Trafficking Act is the applicable law. Treasury believes it is already making full use of the authority provided by CCTA, although with more resources it could step up enforcement. I also asked DoJ for help finding a statutory basis to require state markings. I haven't received DoJ's report.

The good news is that Treasury could do a lot more to combat international smuggling using chapter 52 of the Internal Revenue Code. These actions could be taken to prevent the loss of federal revenues. Specifically through rulemaking or EO we could:

1. Require exported cigarettes to be clearly marked export-only.
2. Prohibit the reentry of exported cigarettes, which is currently allowed.
3. Increase the "proof requirements" for exported product. e.g., who is going to receive the cigarettes
4. Require tracking marks for exported cigarettes.
5. Tighten up the rules on allowable carriers and quantities for exported cigarettes. e.g., current

law allows exports to be carried by fishing vessels -- we could prohibit that.

Treasury is still vetting these proposals internally and will have a written report next week.

Tob - set - exec action
and
Tob - set - environmental
tobacco smoke

**Proposal for an Executive Order on
Environmental Tobacco Smoke**
July 1, 1998

Executive Order Proposal: To direct OSHA to issue an ETS standard separate from its pending Indoor Air Quality standard within one year.

Background: In 1991, OSHA identified problems with indoor air quality (IAQ) as an occupational hazard, and began the regulation process in order to protect workers. IAQ consists of two major components: (1) ETS; and (2) air pollutants (bacteria such as Legionella and hazardous chemicals). The proposed standard focuses on the maintenance and operation of heating, ventilation, and air conditioning systems to reduce adverse health effects related to indoor air pollution and ETS.

OSHA issued a notice of proposed rulemaking in 1991, and proposed the final rule in 1994. Public hearings followed the publishing of the proposed final rule. The ETS provisions received all of the opposition, stemming from mainly the tobacco and hospitality industries. The docket compiled was the largest ever for any OSHA standard, and they have been analyzing the docket ever since. OSHA indicated that it is years away from completing the standard, in part because the scientific evidence both indicating that indoor air pollutants are a problem and supporting OSHA's proposed remedy are not very strong.

Protecting Workers from ETS: ETS exposure in the workplace poses significant risks to employees who are non-smokers. These risks include increased risk of lung cancer, heart disease, and eye and nose irritation in adults. ETS also increases the frequency and severity of asthma attacks, increases the risk of bronchitis and pneumonia, and has been strongly associated with reduced birth weight and sudden infant death syndrome (SIDS).

Proposed Executive Action: The President could direct OSHA to issue a separate ETS standard. OSHA estimates that if the President ordered a separate standard, more resources could be devoted to the project and a final regulation could be delivered to OMB in 12 to 18 months. They believe that the public climate is more open to such regulation at this time.

Potential Drawbacks of this Approach: Issuing a separate standard for ETS means abandoning the issue of indoor air pollutants, because the "benefits" in the cost/benefits analysis will be largely absorbed by the second-hand smoke benefits and addressing the problem of indoor air pollutants alone will be prohibitively expensive for employers. The AFL-CIO is the major stakeholder in OSHA and the indoor air pollutant standard, and will be disappointed that we are abandoning the cause. The public health community may also voice some criticism for the same reason, but their enthusiasm over the expedited ETS standard may outweigh their concern. The restaurant industry is likely to file suit once OSHA has complied with the Executive Order and the regulation is in place.

▶ Paul J. Weinstein Jr.
07/24/98 11:48:27 AM
.....

Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP, Cynthia A. Rice/OPD/EOP
cc: Cynthia Dailard/OPD/EOP
Subject: Tobacco EO

Since no one liked my smoke free college campus idea, I thought I would share another of my brilliant proposals.


I was taking the Metro this morning when I saw an ad for cigarettes on the train. I suddenly realized that every metropolitan transit service receives federal aid. I am not familiar with the provisions on mass transit aid in TEA, but I believe we should explore if we can postpone/hold aid to urban areas which do not ban tobacco advertising on mass transit buses and trains. It should be noted in most urban areas, school kids are primary users of mass transit, in large part due to the subsidized transit passes that are allocated to students.



Cynthia A. Rice

08/04/98 06:18:32 PM

Record Type: Record

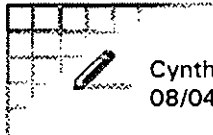
To: Cynthia Dailard/OPD/EOP
cc: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP, Laura Emmett/WHO/EOP, Nicole R. Rabner/WHO/EOP
bcc:
Subject: Re: California Tobacco Initiative 

Bruce/Elena -- do you think we would want to announce our support for this in LA next Wednesday? I think we could pull off a good event, showing there's bipartisan support for higher tobacco prices in California, etc., but I think it would be a small announcement... that may imply we could settle for \$.50 (which maybe we can if the state AGs settle).



eo_0804.wp I'd also like your advice on the other announcements we have brewing -- see this attached summary. Which to you think are most promising?

Cynthia Dailard



Cynthia Dailard
08/04/98 04:15:38 PM

Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP, Laura Emmett/WHO/EOP, Cynthia A. Rice/OPD/EOP
cc: Nicole R. Rabner/WHO/EOP
Subject: California Tobacco Initiative

The California Children and Families First Initiative (proposition 10) proposes a 50 cent per pack tax on cigarettes. It will raise \$700 million annually for anti-tobacco and early childhood development initiatives. 20% of revenues will go toward statewide initiatives (of this, 6% will go to a statewide media campaign designed to encourage pregnant women and parents of young children to stop smoking; the remainder will go to child care and early childhood development programs). The remaining 80% will go to the counties for them to use as they see fit for a very broad range of children's programs, which may also include assistance to pregnant women and parents of young children who want to quit smoking, and education and training programs on the avoidance of tobacco, drugs and alcohol .

Rob Reiner has spearheaded the effort, and supporters include Koop, Waxman, Boxer, and 250-300 groups including the American Cancer Society, American Heart Association, American Lung

Association, California Medical Association, child care organizations, a law enforcement organization, religious organizations, education groups, etc. The Mayors of LA, Sacramento and San Francisco are supporters, along with Michael Huffington (he is a major contributor). Wilson has not yet taken a position yet, nor has Feinstein (she proposed her own ballot initiative when she ran for Governor which included a \$1 per pack tax increase for education purposes, but it didn't go anywhere). Feinstein also apparently has some concerns about spending accountability -- I will try to find out more about that.

The only known opposition so far is the Committee Against Unfair Taxes, which is sponsored by the industry. The industry apparently has not been successful in recruiting to its side either the major anti-tax groups or law enforcement groups, in part because they apparently embarrassed their supporters 10 years ago during the last tobacco tax initiative. The industry plans to come out swinging in the upcoming months, but they haven't been very vocal yet. I only found one editorial opposing the initiative, and the complaints sound very familiar (Creates 59 new government commissions, "with friends like Rob Reiner, the poor in California don't need enemies", blah, blah).

The ballot initiative will be voted on in November. Proponents said that they collected the 1.2 signatures to qualify for the ballot rather easily. One recent poll shows 68% are in favor of the initiative. Another one shows that 54% are in favor, 32% oppose.

A tobacco tax ballot initiative has never been voted down in California. 10 years ago, Proposition 99 passed, which increased taxes by 25 cents a pack, mostly for health care\public health purposes. Proponents say that it cut smoking in CA by about a third. (During that ballot initiative, the industry outspent proponents by 10 to 1, but the initiative passed by a 10 point margin anyway.) About 6 years ago, the CA legislature passed an additional 2 cent per pack for the Breast Cancer Fund. Current state taxes on cigarettes are 37 cents a pack.

Nicole said that Reiner met with Mrs. Clinton and urged her to speak out publicly in favor of the initiative. She is supportive of his efforts, but has not committed to doing anything.

7-13-98

BR/EK/CR:

ATTACHED PLEASE FIND SOME INFO ON "JUVENILE TEEN COURTS" THAT MAY SERVE AS A MODEL FOR THE BACCOCOURTS IDEA.

I HAVE THE FULL PUBLICATION + WILL FORWARD IT TO CR. I'VE ALSO ATTACHED A COUPLE OF PAGES FROM THE REPORT TALKING ABOUT POPULATIONS TO TARGET + 3 POTENTIAL FEDERAL FUNDING SOURCES.

CC: LS/CD

Joe'

Tob - rcr - exec orders
and
Tob - rcr - new documents

**PRESIDENT CLINTON:
PROTECTING AMERICA'S YOUTH FROM TOBACCO**

July 17, 1998

"Let's agree on at least one thing: Children are not the future of our tobacco companies. They are the future of America. We must not let their future, or America's future, go up in smoke."

President Bill Clinton
July 17, 1998

Today, President Clinton signs an Executive Memorandum directing the Secretary of Health and Human Services (HHS) to coordinate a public health review of tobacco industry documents and develop a plan to make the documents more accessible to researchers and the public. The President also announces that the Department of Justice will file a brief in support of the State of Minnesota's efforts to make the tobacco industry's own, currently existing, computerized index to these documents available to the public. Through these actions, we can use the industry's darkest secrets to save a new generation of children from this deadly habit.

Most Tobacco Documents Are Not Readily Accessible. For decades, the tobacco companies sought to hide from the public the truth about the dangers of smoking and the industry's own efforts to target children. Documents that have been released show that even as tobacco companies denied the addictive nature of nicotine, they conducted secret research in their labs and devised marketing strategies to addict children to smoking. These documents are the tobacco companies' legacy of shame; however, most of these documents are not readily accessible by the public.

A Presidential Plan For Public Access To Tobacco Industry Documents. President Clinton is directing the Department of Health and Human Services to devise a plan to make these documents more accessible for all Americans. The President is calling on HHS to create a plan that would:

- Propose a strategy for coordinating the review of tobacco documents and make them available through an easily searchable index and/or digest of the reviewed documents;
- Devise a plan to widely distribute the index and/or digest as well as the documents themselves, including expanded distribution on the Internet;
- Provide a strategy for coordinating a broad public and private review and analysis of the documents to gain critical public health information. As part of this analysis, issues to be considered include, an analysis of nicotine addiction and pharmacology, biomedical research, product design, and youth marketing strategies.

Access To Documents Will Lead To Additional Research. By making these documents widely available, the public and private sector will benefit:

- Public health experts can design more effective anti-smoking strategies by studying marketing plans in these documents;

- Scientists can look to the documents for findings that can aid their research into nicotine addiction and tobacco-related illnesses;
- All Americans can understand the role the tobacco industry has played in addicting our children to this deadly habit.

Supporting Efforts To Unseal The Key Tobacco Industry Database. The President will announce that the Department of Justice will file a brief in the trial court of Minnesota in support of the efforts by the State of Minnesota to unseal a comprehensive index to industry documents created by the tobacco companies for use in litigation. This index is the tobacco industries' road map to its own documents, and it will significantly improve the ability of public health experts, scientists, state and federal officials, and the public to gain important public health information. Opening the doors to these documents will help lift the veil of secrecy regarding the tobacco industry's efforts to hook our children on cigarettes.

Tob - sec - exec. orders/
'98 JUL 15 PM5:44 actions
and
Tob - sec - new documents

July 17, 1998 -- 7/15 DRAFT (6:30pm)

MEMORANDUM FOR THE SECRETARY OF HEALTH AND HUMAN SERVICES

SUBJECT: Public Availability of Tobacco Documents

For decades, the American tobacco industry sought to hide from the American people critically important information about the health hazards of tobacco and the industry's efforts to induce children to smoke. Recently, court cases and congressional subpoenas have forced the tobacco companies to make many of their documents public.

These documents confirm that for decades the tobacco companies did intensive research on the smoking habits of children, knew their product was addictive and deadly, understood that a price increase would drive down the number of young people who smoke, and deliberately marketed their products to young people and minorities.

Because they provide new information about which types of advertising appeal to children, these documents can help public health experts design counter-advertising campaigns and other strategies to protect children. These documents also can assist scientists in understanding more about the addictive nature of nicotine, the health consequences of tobacco use, and the effects of certain tobacco product designs and ingredients. It is therefore critical to the fight against youth smoking that the nation's scientists and public health experts carefully examine and analyze these documents.

Although many tobacco industry documents are now public, most are not readily accessible. While many public health leaders have found and highlighted important documents, there is no comprehensive public index to help researchers locate documents. Only a small percentage of these documents are posted on the Internet and it is difficult to search through them in their current format.

The State of Minnesota is currently involved in litigation to obtain the public release of a computerized index (the so-called 4-A Index), created by the tobacco industry for use during litigation. The tobacco industry has fought to prevent the release of

this index. It is the industry's road map to its own documents and could improve significantly the ability of public health experts, scientists, state and federal officials, and the public to search through industry documents.

The bipartisan comprehensive tobacco legislation recently considered in the Senate contained strong provisions for public disclosure of tobacco industry documents. While I continue to fight to enact comprehensive tobacco legislation, I am determined to move forward to protect America's children from tobacco.

Therefore, I hereby direct you, working with the Attorney General, the States, public health professionals, librarians, and other concerned Americans, to report back to me in 90 days with a plan to make the tobacco industry documents more readily accessible to the public health community, the scientific community, the States, and the public at large. This plan should:

- (1) Propose a method for coordinating review of the documents and making available an easily searchable index and/or digest of the reviewed documents.
- (2) Propose a plan to disseminate widely the index and/or digest as well as the documents themselves, including expanded use of the Internet and other possible methods.
- (3) Provide a strategy for coordinating a broad public and private review and analysis of the documents to gain critical public health information. Issues that could be considered as part of this analysis are: nicotine addiction and pharmacology, biomedical research including ingredient safety, product design, and youth marketing strategies.

To assist in making tobacco documents more accessible to public health experts, scientists, State and Federal officials, and the public, the Attorney General has agreed to file an amicus brief in support of the State of Minnesota's motion to unseal the industry-created 4-A index.

You are authorized and directed to publish this memorandum in the Federal Register.

Tob - rec - new documents

and

Tob - sec - executive actions/orders



Cynthia A. Rice

07/16/98 05:36:34 PM

Record Type: Record

To: Laura Emmett/WHO/EOP

cc:

Subject: FOR ELENA: Look at this Staff Secretary final version of memorandum

Staff Secretary asked me to add a closing graph (and took out the "publish in the federal register" sentence) They also moved the AG announcement up higher -- not sure it works.

DOJ asked that we use "Justice Dept" rather than "Attorney General" and note that they will file the brief in trial court. This latter is very important because Seth Waxman hasn't signed the piece of paper he needs to authorize the appeal (if it comes to that) -- because he's been busy on the Secret Service appeal during the last 48 hours. If you can make this change to the press paper too, they would truly appreciate it.

I've underlined what's different:

MEMORANDUM FOR THE SECRETARY OF HEALTH AND HUMAN SERVICES

SUBJECT: Public Availability of Tobacco Documents

For decades, the tobacco industry sought to hide from the American people critically important information about the health hazards of tobacco and the industry's efforts to induce children to smoke. Recently, court cases and congressional subpoenas have forced the tobacco companies to make many of their documents public.

These documents confirm that for decades the tobacco companies did intensive research on the smoking habits of children, knew tobacco products were addictive and deadly, understood that a price increase would drive down the number of young people who smoke, and deliberately marketed their products to young people and minorities.

Because they provide new information about which types of advertising appeal to children, these documents can help public health experts design counter-advertising campaigns and other strategies to protect children. These documents also can assist scientists in understanding more about the addictive nature of nicotine, the health consequences of tobacco use, and the effects of certain tobacco product designs and ingredients. It is therefore critical to the fight against youth smoking that the Nation's scientists and public health experts carefully examine and analyze these documents.

Although many tobacco industry documents are now public, most are not readily accessible. While many public health leaders have found and highlighted important documents, there is

no comprehensive public index to help researchers locate information contained in the documents. Only a small percentage of the documents are posted on the Internet and it is difficult to search through them in their current format.

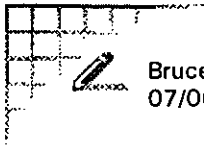
The State of Minnesota is currently involved in litigation to obtain the public release of a computerized index (the so-called 4-A Index), created by the tobacco industry for use during litigation. The tobacco industry has fought to prevent the release of this index. It is the industry's road map to its own documents and could improve significantly the ability of public health experts, scientists, State and Federal officials, and the public to search through industry documents. To help ensure greater access to these documents, the Department of Justice plans to file an amicus brief in the trial court in support of the State of Minnesota's motion to unseal the industry-created 4-A index. [This was moved from earlier and includes two changes DOJ wanted "Dept of Justice rather than "Attorney General" and "in trial court"]

The bipartisan comprehensive tobacco legislation recently considered in the Senate contained strong provisions for public disclosure of tobacco industry documents. While I will continue to fight to enact comprehensive tobacco legislation, I am determined to move forward to protect America's children from tobacco.

Therefore, I hereby direct you, working with the Attorney General, the States, public health professionals, librarians, and other concerned Americans, to report back to me in 90 days with a plan to make the tobacco industry documents more readily accessible to the public health community, the scientific community, the States, and the public at large. This plan should:

- (1) Propose a method for coordinating review of the documents and making available an easily searchable index and/or digest of the reviewed documents.
- (2) Propose a plan to disseminate widely the index and/or digest as well as the documents themselves, including expanded use of the Internet.
- (3) Provide a strategy for coordinating a broad public and private review and analysis of the documents to gain critical public health information. Issues to be considered as part of this analysis are: nicotine addiction and pharmacology; biomedical research, including ingredient safety; product design; and youth marketing strategies.

I remain committed to using every power of my office to protect our children from the dangers of tobacco smoke. Let us use the industry's darkest secrets to save a new generation of children from this deadly habit. Armed with the facts, we can and we will win this fight. [Staff Secretary asked for a closer, and this is what I propose. The second sentence was one Bruce added to the speech]



Bruce N. Reed
07/06/98 11:25:07 AM

Record Type: Record

To: Thomas L. Freedman/OPD/EOP, Cynthia A. Rice/OPD/EOP, Cynthia Dailard/OPD/EOP, Elena Kagan/OPD/EOP

cc:

Subject: Interesting idea from Britain

Retailers Back Teenage Id Card

Shopkeepers are backing a national identity card for teenagers in a drive to stamp out under-age purchase of alcohol, cigarettes, scratch cards, fireworks, videos and solvents.

The Citizen Card, which would bear a photograph and a hologram, would be a voluntary scheme available to youngsters aged 12 and above.

It will start at age 12 because that is the first threshold when a child needs to prove they are old enough to see 12-certificate films and videos.

Other important ages are: 14 when a teenager can enter a pub with by an adult and have a soft drink; 15 when further films and videos can be seen; 16 when tobacco and scratch cards can be bought, some fruit machines used, and youngsters can drink beer, cider and (in Scotland only) wine with a meal in a pub; 18 when alcohol and fireworks can be bought and young people can enter betting shops, bingo halls and some nightclubs, and 21, the minimum age for many nightclubs.

Youngsters would have to pay £5 to buy the card, but, if successful, it could end up being used by up to seven million people.

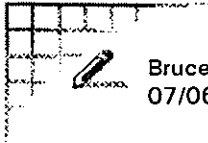
The card would protect retailers by allowing them to demand sight of the card, making it easier for them to stay within the law by only selling to children who are old enough.

The scheme is, reportedly, being considered by 16 trade associations, the National Lottery and Railtrack. It also has the support of the Tobacco Manufacturers Association and the National Federation of Retail Newsagents.

John Carlisle, public affairs director of the Tobacco Manufacturers Association, said: "We are certainly one of the card's supporters.

"It is absolutely essential with the ever growing problem of under age abuse of substances, which includes tobacco, alcohol and glue, and has our full support.

"If the Government support us that would be the icing on the cake. I'm confident that the Government will support us," he said.



Bruce N. Reed
07/06/98 11:19:07 AM

Record Type: Record

To: Cynthia A. Rice/OPD/EOP, Cynthia Dillard/OPD/EOP, Elena Kagan/OPD/EOP

cc:

Subject: tobacco court

Anything we can do with this? Talk to Jose about his drug courts.

Utah Opens a New Front in the War Against Teen Smoking

Katharine Biele, Special to The Christian Science Monitor, July 6, 1998

SALT LAKE CITY -- He was a kid who lived in a group home - very structured, very strict. So one night he slipped out. When he climbed back in the window at 3 a.m., they were waiting for him. He told the judge that he just wanted to get out for a smoke with his buddies.

"With some kids, smoking is like a right of passage," says Chris Decker, the guardian who worked with the boy in juvenile court. "It's something they can control, and gives them a feeling of freedom."

Normally, in a court system flushed with cases of drug dealing and violent crime, such offenders would get a \$25 fine or a short stint in a stop-smoking program. But under a pioneering new court to open this fall in Utah, teen smokers will get more attention - and harsher penalties.

Utah's Tobacco Court is the first of its kind in the nation. Coming at a time when President Clinton has put teen smoking high on the nation's agenda, it is an experiment in how best to reform young violators. And it could hold valuable lessons for other states seeking to cut rising youth-smoking rates.

The creation of Joseph Anderson, a judge in Utah's Third District, the court has been on the drawing board for the past 2-1/2 years. Judge Anderson found that he was one of a few juvenile judges trying to deal with smoking infractions, which most saw as insignificant compared with other juvenile problems.

"They said there are just too many of them.... 'We don't have the resources,' " says Anderson, whose Third District handles half of the state's 10,000 smoking violations each year. "Both in terms of health problems and legal problems, we needed to do something."

Indeed, proponents of the new court point out that, according to the US surgeon general, cocaine use is 30 times more likely among smokers than nonsmokers. Others say smoking is also a strong indicator of deep-seated problems.

"You tend to see kids smoking who don't have much else in their lives," says Mr. Decker.

For the Utah courts, other addictions and problems have been higher priority. Only reluctantly did

the Utah Supreme Court let Anderson experiment with his program for a year. The state court gave him \$10,000 to start, and he eked out \$20,000 more from other contributors including the state attorney general and the state health department. That's enough to get the program up and running.

Tobacco Court will work out of small claims court with volunteer, pro-tem judges. They will have the authority to levy fines as much as \$250, require community service, and send youths to smoking-education programs. If the teens thumb their noses at the law, they can have their driving privileges suspended.

"Our emphasis is to push them toward education," says Anderson. Tobacco Court will use a program called STTOP - Stop Teen Tobacco - one of a few substance-abuse programs that concentrates exclusively on smoking. The program reinforces good behavior through activities and is heavily reliant on parental participation, says coordinator Raymond Christy.

That was a problem for Anderson when he sentenced the boy from the group home. The courts had already terminated the boy's family's parental rights. Instead, Anderson sent the boy to the program with a worker from the home.

"Smoking isn't a simple problem," says Decker. "When you look at the different reasons kids smoke - their home life, emotional needs, and other situations ... it's hard to know which incentives and consequences you use."

Now, Tobacco Court has a year to prove that it can mete out the right incentives and consequences.

July 7, 1998 -- 7/1 DRAFT

MEMORANDUM FOR THE SECRETARY OF HEALTH AND HUMAN SERVICES

SUBJECT: Enforcement of Smoking Ban in Schools and Children's Services

Environmental tobacco smoke, commonly known as secondhand smoke, presents a serious health threat to children. Studies have show that secondhand smoke can cause aggravated asthma, ear infections, respiratory tract infections such as bronchitis and pneumonia, and it is a risk factor for sudden infant death syndrome.

Since 1994, smoking has been banned in buildings where federally funded children's health, day care, education, or library services are provided. The statute, Public Law 103-227, establishes civil monetary penalties for of up to \$1,000 for each day a facility is in violation.

Because of the critical importance of reducing children's exposure to ETS, I hereby direct you, working with the Secretary of Education, to report back to me in 45 days with a plan to ensure the strictest possible enforcement of the nonsmoking policy in facilities with federally funded children's services.

July 7, 1998 -- 6/30 DRAFT

MEMORANDUM FOR THE SECRETARY OF HEALTH AND HUMAN SERVICES

SUBJECT: Public Availability of Tobacco Documents

For decades, the American tobacco industry sought to hide from the American people critically important information about the health hazards of tobacco and the industry's efforts to induce children to smoke. Recently, court cases and Congressional subpoenas have forced the tobacco companies to make many of their documents public.

These documents confirm that for decades the tobacco industry did intensive research on the smoking habits of children as young as 14, the tobacco companies knew their product was addictive and deadly, tobacco companies knew a price increase would drive down the number of young people smoking and that tobacco companies have continued to market their products to young people.

Because they reveal the tobacco industry's strategy in portraying tobacco as socially acceptable and healthful to minors, these documents can play a critical role in helping public health experts design counter-advertising campaigns to prevent teenagers from using tobacco. These documents can also assist scientists in understanding the effects of tobacco use, including the addictive nature of nicotine, by unveiling industry research in this area.

Although many tobacco industry documents are now public, most are difficult to access. Currently, no index exists to help researchers locate documents by subject or date. While documents are posted on the internet, it is difficult to search through them in their current format. In addition, these documents are not available in most libraries accessible to the public.

The bipartisan comprehensive tobacco legislation recently considered in the Senate contained strong provisions for public disclosure of tobacco industry documents. While I continue to fight to enact comprehensive tobacco legislation, I am determined to move forward to protect America's children from tobacco.

Therefore, I hereby direct you, working with the Attorney General, the States, industry experts, public health professionals, and other concerned Americans, to report back to me in 45 days with a plan to make the tobacco industry documents more readily accessible to the public health community, the scientific community, and the public at large. This plan should:

(1) Create an easily searchable database and/or index of the documents which provides the ability

to search by type of document, title of document, author, addressee, document date, document purpose, general subject matter, and other pertinent information;

(2) Disseminate the documents, database and/or the index widely, including providing access through the internet, printing by the Government Printing Office, and making them available through the approximately 1,400 federal depository libraries.

(3) Provide for a coordinated strategy for scientists and public health professionals to analyze these documents.

You are authorized and directed to publish this memorandum in the Federal Register.

meaning what?

DRAFT: June 30, 1998

MEMORANDUM FOR THE SECRETARY OF HEALTH AND HUMAN SERVICES

Subject: Guidelines for Filming on Federal Property and the Portrayal of Underage Smoking

Films that glamorize tobacco use do a disservice to health of American children. An estimated 85 percent of children ages 12 to 17 attend movies, and those between the ages 12 and 20 account for a disproportionate number of movie goers. Regrettably, 77 percent of all major motion pictures in 1996 portrayed the use of tobacco. In most of these movies, the lead actor or actress smoked. In fact, every movie nominated for a 1996 Academy Award in the categories of best picture, best actor and best actress featured tobacco use by a leading character. The portrayal of smoking in films is on the rise, with half of movies released between 1990 and 1995 featuring a major character who smoked on screen, compared with 29 percent in the 1970s, according to a recent study at the University of California, San Francisco.

Children and adolescents are very impressionable, and popular culture plays a large role in their lives. Films that feature actors or actresses who smoke on-screen send confusing messages to children which may undermine anti-tobacco messages promoted by their parents, teachers and communities.

The pervasive depiction of smoking in television and movies may help account for why underage tobacco-use is such serious problem in this country. Every day, 3000 children and adolescents begin smoking on a regular basis, and 1000 die prematurely as a result. Cigarette smoking rates among high school students rose by nearly a third between 1991 and 1997, from 27.5 percent to 36.4 percent. Each year over 400,000 people in this country die from tobacco-related illnesses, and almost 90 percent of all smokers began using tobacco products as teenagers.

While I continue to fight to enact bipartisan, comprehensive tobacco legislation this year along the lines of the McCain legislation recently considered by the Senate, I am determined to move forward to protect America's children from tobacco. I encourage all film makers to act responsibly when it comes to the health of our children and refrain from portraying underage smoking in movies or television. And I call on Federal agencies to consider whether a proposed movie or television program portrays underage smoking when deciding whether to grant filming privileges on Federal property.

I therefore direct you to work with various executive agencies and departments to report back to me in 45 days with a plan to develop guidelines regarding the portrayal of underage smoking in movies or television programs filmed on Federal property. } Among other things, the report should:

- (1) examine the current process of granting filming privileges on Federal property;
- (2) assess the extent to which movies and television programs filmed on Federal property portray underage smoking; and

- (3) recommend guidelines for use by Federal agencies and departments to ensure that movies and television programs filmed on Federal property do not portray underage smoking.

You are authorized and directed to publish this memorandum in the Federal Register.

July 7, 1998 -- 6/30 DRAFT

MEMORANDUM FOR THE SECRETARY OF HEALTH AND HUMAN SERVICES

SUBJECT: Tobacco Counteradvertising Campaign

For decades, tobacco companies have marketed their products to children while denying that they are addictive and deadly. As a result, preschoolers are just as likely to recognize Joe Camel as Mickey Mouse, and one of every three teenagers smoke cigarettes. Every day, 3,000 children become regular smokers; 1,000 of them will have their lives cut short by a tobacco-related disease. We must halt this tragedy, and that is why I am committed to passing bipartisan comprehensive legislation to reduce youth smoking. At the same time, I am committed to taking every step I can -- with or without the Congress -- to stop teen tobacco use.

One important step we can take now is to increase the amount of counteradvertising teenagers see. These ads tell teens that tobacco is not glamorous -- in fact that in the words of one ad, "it makes your breath stink, your hair..[more]" The bipartisan comprehensive tobacco legislation recently considered in the Senate would have created a national counter-advertising campaign to reduce youth tobacco use. While I continue to fight to enact comprehensive tobacco legislation, I am determined to move forward to protect America's children from tobacco.

I hereby direct you to ensure that within 45 days every state public health department in the nation has available anti-teen smoking counteradvertisements at no cost to them. These counter-advertisements should be directed at underage teens who cannot legally purchase tobacco products.

Don't understand what this does.

Be specific about what we're doing.

And do more than just serve as clarifications.

June 30, 1998

**Draft Executive Memorandum
-- Banning Underage Smoking on Federal Land**

MEMORANDUM FOR THE _____

Subject: Standards to Ban Underage Smoking on Federal Land

[Talk about what we have done -- FDA Rule]

However, underage smoking remains a very serious problem in this country. Every day, 3000 teenagers begin smoking on a regular basis, and 1000 of them will die prematurely as a result. Cigarette smoking rates among high school students rose by nearly a third between 1991 and 1997, from 27.5 percent to 36.4 percent. Almost 90 percent of all smokers begin smoking as teenagers. Moreover, smoking takes an enormous financial and social toll on this nation. In fact, it costs this nation more than ___ in smoking related illnesses,

We must do more to prevent underage smoking. That is why I have called on Congress to pass comprehensive legislation that will stop young Americans from smoking before they start, raise the price of cigarettes, put in place tough restrictions on advertising and access, impose penalties on the industry if it continues to sell tobacco products to children, and ensure that the FDA has authority to regulate tobacco products.

I hope the Congress will enact legislation as soon as possible to reduce youth smoking. Even before Congress acts, however, we can take action to promote a reduction in underage smoking on Federal property.

I therefore direct you, working in consultation with the Department of Health and Human Services, to devise the guidelines necessary to ban underage smoking on Federal property.

again, meaning what?

what's the situation now?

what would we be changing?

on what fed lands and how enforced?

what penalties?

**Proposal for an Executive Order on
Environmental Tobacco Smoke**

July 1, 1998

Executive Order Proposal: To direct OSHA to issue an ETS standard separate from its pending Indoor Air Quality standard within one year.

Background: In 1991, OSHA identified problems with indoor air quality (IAQ) as an occupational hazard, and began the regulation process in order to protect workers. IAQ consists of two major components: (1) ETS; and (2) air pollutants (bacteria such as Legionella and hazardous chemicals). The proposed standard focuses on the maintenance and operation of heating, ventilation, and air conditioning systems to reduce adverse health effects related to indoor air pollution and ETS.

OSHA issued a notice of proposed rulemaking in 1991, and proposed the final rule in 1994. Public hearings followed the publishing of the proposed final rule. The ETS provisions received all of the opposition, stemming from mainly the tobacco and hospitality industries. The docket compiled was the largest ever for any OSHA standard, and they have been analyzing the docket ever since. OSHA indicated that it is years away from completing the standard, in part because the scientific evidence both indicating that indoor air pollutants are a problem and supporting OSHA's proposed remedy are not very strong.

Protecting Workers from ETS: ETS exposure in the workplace poses significant risks to employees who are non-smokers. These risks include increased risk of lung cancer, heart disease, and eye and nose irritation in adults. ETS also increases the frequency and severity of asthma attacks, increases the risk of bronchitis and pneumonia, and has been strongly associated with reduced birth weight and sudden infant death syndrome (SIDS).

Proposed Executive Action: The President could direct OSHA to issue a separate ETS standard. OSHA estimates that if the President ordered a separate standard, more resources could be devoted to the project and a final regulation could be delivered to OMB in 12 to 18 months. They believe that the public climate is more open to such regulation at this time.

Potential Drawbacks of this Approach: Issuing a separate standard for ETS means abandoning the issue of indoor air pollutants, because the "benefits" in the cost/benefits analysis will be largely absorbed by the second-hand smoke benefits and addressing the problem of indoor air pollutants alone will be prohibitively expensive for employers. The AFL-CIO is the major stakeholder in OSHA and the indoor air pollutant standard, and will be disappointed that we are abandoning the cause. The public health community may also voice some criticism for the same reason, but their enthusiasm over the expedited ETS standard may outweigh their concern. The restaurant industry is likely to file suit once OSHA has complied with the Executive Order and the regulation is in place.

July 7, 1998 -- 7/1 DRAFT

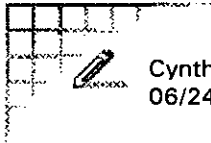
MEMORANDUM FOR THE SECRETARY OF HEALTH AND HUMAN SERVICES

SUBJECT: Enforcement of Smoking Ban in Schools and Children's Services

Environmental tobacco smoke, commonly known as secondhand smoke, presents a serious health threat to children. Studies have shown that secondhand smoke can cause aggravated asthma, ear infections, respiratory tract infections such as bronchitis and pneumonia, and it is a risk factor for sudden infant death syndrome.

Since 1994, smoking has been banned in buildings where federally funded children's health, day care, education, or library services are provided. The statute, Public Law 103-227, establishes civil monetary penalties for of up to \$1,000 for each day a facility is in violation.

Because of the critical importance of reducing children's exposure to ETS, I hereby direct you, working with the Secretary of Education, to report back to me in 45 days with a plan to ensure the strictest possible enforcement of the nonsmoking policy in facilities with federally funded children's services.



Cynthia Dailard
06/24/98 03:47:29 PM

Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP, Cynthia A. Rice/OPD/EOP, Laura Emmett/WHO/EOP

cc:

Subject: Executive Order Ideas



FILM0622.W

This e-mail lists ideas for Executive Orders relating to tobacco which we are pursuing. (The attached chart describes agency policy on filming privileges on federal property, mentioned below.) Any feedback on these ideas would be greatly appreciated.

1) Applying the FDA Rule to Federal Property -- An Executive Order could apply the FDA rule to Federal property, by directing agencies that contract with entities operating on Federal land to include provisions in their contracts requiring compliance with the FDA rule. HHS likes this idea, and we plan to ask Justice to draft language for an Executive Order. We would also need to run this idea by Interior, DOD and other agencies that regulate federal property.

Injunction?

2) Prohibiting Underage Smoking on Federal Property -- DOJ is determining whether there is statutory authority to issue an Executive Order making underage smoking on federal property illegal. There would be no penalty for violations, other than confiscating the tobacco product. Justice likes this approach, but HHS is concerned about the way it would play in the press (they think the press would make fun of the idea). HHS also does not like anything that appears to punish minors because they believe it is ineffective in deterring youth smoking.

Do we prohibit sales already? Why no punishment - driver licenses?

3) Smoking and Filming Privileges on Federal Property

(a) Prohibiting the Filming of Movies on Federal Property that Promote Smoking -- As you know, Senator McConnell said on the Senate floor that he would offer an amendment to the McCain legislation which would require federal agencies to prohibit the filming of movies on federal property which "depict the use of tobacco or illegal drugs as healthy, desirable, or socially acceptable." He also said that the President could issue an Executive Order to this effect. McConnell does not target the portrayal of youth smoking, but smoking in general.

We met yesterday with the Justice Department and the various Federal agencies which allow filming on federal property (Departments of Defense, Transportation (Coast Guard), Interior (Park Service), and Agriculture (Forest Service)) to learn more about their policies

and procedures for granting filming rights, and to elicit their views on the McConnell amendment. As you can see from the attached chart, their policies and procedures vary a great deal. For example, while the Park Service is explicitly prohibited from examining content in granting filming rights (they only seek to protect park resources and visitors), the DOD and the Coast Guard look closely at content. While the process for granting filming rights is very centralized for some agencies, it is very decentralized for others (ie. operating on a park by park basis).

All of the agencies raised objections to the McConnell amendment. The Park Service said that McConnell would directly contradict their policy which prohibits them from examining content. A number of agencies expressed strong concern about this route being a slippery slope, that could result in prohibiting the portrayal of other behavior (gay relationships, etc.), down the road. The DOD asserted that if they started engaging in this type of censorship, production companies would go elsewhere and "they would be out of business." Of course, some of the agencies are concerned about the administrative burden involved with reviewing thousands of scripts in this kind of detail.

The Justice Department's initial reaction is that McConnell's amendment raises First Amendment constitutional concerns because it is not viewpoint neutral. (They also privately expressed concern that current agency practice in granting filming privileges could be potentially unconstitutional as well.) They are in the process of researching the issue. They also want to explore whether we could regulate this type of speech because it results from a form of government subsidy (under Rust v. Sullivan), although they think this may be a stretch. They plan to give us an answer to these questions by the end of the week. The Supreme Court is expected to decide a case on Thursday or Friday on the National Endowment for the Arts which could shed some light on these questions, particularly in terms of free speech and government subsidies.

(b) Prohibiting the Filming of Movies on Federal Property that Portray Illegal Smoking - We have also asked the Justice Department to explore other alternatives to the McConnell amendment that would be viewpoint neutral, such as narrowing McConnell to prohibit the portrayal of illegal youth smoking. We will let you know what they say as soon as we hear from them.

4) Requiring OSHA to Issue a Standard on Environmental Tobacco Smoke -- OSHA has been working on a standard for almost a decade which would regulate indoor air quality, including ETS, Legionnaire's disease, etc. The standard is still several years away from completion. The President could issue an Executive Order directing OSHA to issue the ETS standard separately. OSHA believes that it would take two years to issue the ETS standard -- less time than completing the indoor air quality standard. OSHA is writing a memo providing us with the pros and cons of this approach. (A BNA reporter called OSHA about this today, because ASH is pushing the idea. OSHA had no comment.)

[INTERNAL WORKING DRAFT]

Filming for Entertainment Purposes on Federal Property --
 Agency Policy
 June 23, 1998

Agency	Is there a Written Policy?	Does Agency Issue Permits?	Does Agency Review Script?	Does Agency Oversee Filming?	Does Agency Review Content?/ What is Content Policy?
Agriculture (Forest Service)	Forest Service generally uses guidelines adopted by Southern California forest service. ¹	Yes. There is a fee schedule. Process for granting permits is decentralized.	Agency may request story boards in order to determine if activities are incompatible with Forest policy.	A Forest Service Officer may monitor filming to protect park resources and guard against fires.	Yes. Concerned only with scenes set on park land. Ensures that content does not depict practices that are prohibited on National Forest land; content also should not encourage unauthorized uses of National Forest land (ie. unauthorized vehicle use, littering, etc.) Also looks at depiction of Forest Service employees. They also have the discretion to consider nudity/profanity.
Interior (Park Service)	Yes -- Draft guidelines. These are explicit that Park Service should not regulate content.	Yes. Process for granting permits is decentralized.	No.	No.	No. Park Services issues permits to protect park resources and the public's enjoyment of the park.
GSA	N/A. Rules of occupying agency apply for each property. Smoking is not allowed on GSA property.	N/A.	N/A.	N/A.	N/A.

¹ Smoking by film crews is prohibited in order to prevent forest fires.

Agency	Is there a Written Policy?	Does Agency Issue Permits?	Does Agency Review Script?	Does Agency Oversee Filming?	Does Agency Review Content?/ What is Content Policy?
Defense	Yes.	No. DOD enters into license agreements with production company -- there is no fee. Process is very centralized.	Yes.	Yes. Project officer monitors compliance with script.	Yes. DOD is concerned with how military personnel are depicted. Looks for illegal and improper activity committed by military personnel (murder, treason, drug use). ² Tries not to be arbiter of morality when it comes to violence/nudity/smoking. Will determine whether portrayal of smoking in a given setting is realistic (ie., on a submarine).
Transportation (Coast Guard)	No. Bases its policy on DOD.	No. Coast Guard enters into licensing agreement with production company.	Yes.	Yes. A technical advisor ensures compliance with script.	Coast Guard reviews scripts for accurate portrayal of Coast Guard personnel. It is concerned about portraying the Coast Guard in a negative light. It will also look at the overall context of the project in terms of violence, nudity and levels of profanity.

² DOD guidance also says, "The production should not appear to condone or endorse activities by private citizens or organizations when such activities are contrary to US Government policy".